



IMPORTANT CHANGES:

New Resource Protection Area Guidance Significantly Expands Buffers

The Virginia Department of Conservation and Recreation, Division of Chesapeake Bay Local Assistance has released draft guidance for determining which nontidal wetlands are required to be designated as Resource Protection Areas (RPAs) as defined under the Chesapeake Bay Preservation Area Designation and Management Regulations. These guidelines are intended to promote consistency for RPA interpretations by helping to define situations where wetlands “*are both contiguous and connected by surface flow to tidal waters or stream with perennial flow.*” Since their adoption in 1990, the CBPA regulations and the required designation of RPA buffers have focused primarily on perennial streams and directly associated wetland communities. The new guidance reverses the previous long-standing interpretation and standard of practice in favor of a more aggressive stance on what wetlands qualify as “contiguous and connected by surface flow.”

The draft guidance includes several examples and provides information on how regulated Virginia localities should evaluate existing wetland resources. In general, RPA designations will now be assigned to all nontidal wetlands that are ultimately contiguous (touching) to wetlands associated with downstream perennial systems. The application of the new guidance removes from consideration the source of hydrology for the wetlands in question and the proximity of the wetland to the perennial/intermittent break as distinguishing factors in the assignment of RPA boundaries.

The Chesapeake Bay Local Assistance Board has approved this guidance, effective immediately, with minor modifications pending. The final guidance document is expected to be published in early July 2007.

Bottom Line: Particularly in lower gradient stream and wetland systems, this guidance change is likely to result in the extension of RPA buffers further upstream, resulting in reduced development potential on upstream properties. Additionally, identification of RPA features on those upstream properties will become more complex and require study of off-site (downstream) resources to identify whether said resources are “contiguous and connected” under this broader interpretation.

Please refer to our website [www.wegnet.com] for a complete copy of the draft guidance.

For more information, please contact your WEG PM at any of our offices: Williamsburg (757) 220-6869, Richmond (804) 267-3474, Herndon (703) 437-3096 or Fredericksburg (540) 785-5544.