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Centreville, VA 20120  
January 15, 2003

VIA FACSIMILE

The Honorable Peter Murphy, Chairman, and colleagues  
Fairfax County Planning Commission  
12000 Government Center Parkway, Suite 330  
Fairfax, VA 22035

Re: Chesapeake Bay Act amendments

Dear Chairman Murphy and Planning Commissioners:

On December 2, 2002, the Land Use and Transportation Committee of the Sully District Council of Citizens Associations reviewed the staff report and the draft amendments to the Chesapeake Bay Act, with proposed amendments to the zoning ordinance and related provisions. The committee compliments staff on its efforts. The committee voted to express its concerns, and constructive suggestions, to the Planning Commission on several points. We appreciate the consideration you can give to these comments.

**A. Notice to Homeowners Associations**

The committee supports the new requirement in the proposed amendment for notice of public hearing for certain activity to a nearby homeowners or civic association. But the staff recommendation, Section 118-6-3(c), to require the use of the "Real Estate Tax Assessment Files" in the Fairfax County Department of Tax Administration "DTA" records for a mailing address is a mistake. The committee instead recommends use of the information available in the State Corporation Commission website, [www.state.va.us/scc/division/clk/diracc.htm](http://www.state.va.us/scc/division/clk/diracc.htm) at least for homeowner and civic associations that own land. For civic associations that do not own land, they will not be listed in the DTA database.

Although the DTA records are fairly complete as to the ownership of any given parcel, and the addresses for many properties are accurate, the addresses listed for homeowners associations are woefully inadequate. When the subdivision is first platted, and entries originally made into the system, long before any homes are occupied, the address is usually care of the developer. The DTA records are not updated for common area parcels, because the land never is conveyed. No tax bills are ever sent out for those parcels, and those early addresses are not used for anything. It is nobody's job to update these old addresses, and there is no legal requirement for the HOA to update anything in that database. Using that unreliable information unfortunately leads to letters to associations going to bad addresses, and needlessly complicates public hearings where citizens complain that they never got notice.

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Article 2, Part 7 of the Zoning Ordinance requires that common open space parcels be titled in a nonstock, nonprofit corporation such as a homeowners association (or the county). Under the Virginia Code, § 13.1-936 (1999 Repl. Vol.), each corporation must file an annual report with the State Corporation Commission, listing, inter alia, its officers and directors, and a registered agent who is designated to receive legal notices on behalf of the corporation; see, e.g. § 13.1-836 (2002 Cum. Supp.). The corporate information is usually updated on an annual basis, and will be more reliable, and far more current at least as to HOA officers and addresses, than the DTA website. Because of the value of current and accurate information, SDC recommends therefore using the State Corporation Commission website for the address information, for corporations which own land.

As to other civic associations which do not own land, possibly the supervisor's office may have some information, but they probably would not be listed in either the SCC or DTA databases. The SCC lists corporations only, and the DTA records deal with parcels only. Some supervisors' lists are partially updated, but that is dependent on the cooperation of the association, and for new communities or smaller communities, the information may not be reliable.

#### **B. Composition of New Board**

The committee expressed opposition to the proposal to have a new board, the Exception Review Committee, Section 118-7-3, composed of five county employees, all appointed by the Director of DPWES, to hear the public hearings, especially if the Director is also required to pass on a recommendation of denial or approval or approval with conditions, Section 118-6-1, on every case. It is unclear whether these individuals would be independent decision makers, or employee subordinates, or how those roles could be separated.

If a new board is needed at all, the committee would prefer that the composition would be broader, involving perhaps representatives from across the county, and a mix of citizens, industry and other qualified individuals, similar to other existing boards and commissions. The committee would prefer that the board members be appointed by the Board of Supervisors, rather than by one individual such as the Director of DPWES, and that the appointees be as independent as possible. While staff expertise is very helpful, balance and diversity may help bring a more objective perspective to the process, and help make citizen participation in the public hearings more meaningful.

As drafted, the process seems too closely controlled by staff, especially with the appointments controlled by one individual. What is the point of speaking to five employees whose boss has already made a written recommendation as to what they are to do on every case?

How many county employees would feel free to disagree with the Director's recommendation,  
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especially those in a subordinate capacity? Surely in a county of one million residents, several independent persons qualified to hear these cases could be identified by the Board of Supervisors.

**C. Budgetary implications.**

The committee expressed concern about the budgetary implications of creating a new board to hear one category of case. Certainly there would be staffing requirements for a secretary, clerk and filing system. It is unclear in the staff report as to why those cases could not be more efficiently heard by the Planning Commission or some other existing body, without administrative duplication. In addition, the filing fee of \$100 referenced throughout, for applications requiring public hearing, seems insufficient to cover even the cost to the County of the newspaper advertising. The County ought not be losing money on every case filed.

**D. Definition of "Lot"**

The committee expressed concern about the recycled definition of "lot" in the amendments. The committee noted that the definition of "lot" appears to be underinclusive. The terms "lot" and "parcel" both are used, although "parcel" is not defined at all, and the terminology is very confusing. The existing Zoning Ordinance definition of "lot" also has been essentially repeated verbatim, without clarification, although the Circuit Court of Fairfax County, per Judge Vieregg, ruled in the Robertson v. Board of Supervisors case, Chancery 160618, that the zoning ordinance definition of "lot" was inadequate and did not include certain land. Slip opinion of September 17, 2002, p. 9 ("I ruled that because the Robertson Property was not the subject of an application for a special use permit, a special exception, a Building Permit, [etc.], it was therefore not "a lot" as defined by §20-300.)

In the draft proposed herein, see Section 118-1-6, Definitions, section (n):

"Lot" means a parcel of land that is designated at the time of application for a special permit, a special exception, a site plan, a building permit, residential/non-residential use permit, or other plan of development, as a tract of land which is to be used, developed or built upon as a unit under single ownership. A parcel of land shall be deemed to be a lot in accordance with this definition, regardless of whether or not the boundaries thereof coincide with the boundaries of lots or parcels as shown on any map of record or other plans of development.

Neither "parcel" nor "tract" is defined in this chapter, although those terms are apparently part of the definition. Even if the definition of "lot" were redrafted to be more expansive, the current language is very confusing.

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One objective of the amendments is to regulate use and disturbance of all the land in Fairfax County, at least the land which is not in a public right-of-way. The somewhat narrower definition of "lot" ought be rewritten, at least for the purposes of these amendments, to clarify what areas are meant to be regulated. If the term "parcel" also is important, then that term needs to be defined. It is unclear why the appropriate definition cannot include every parcel or geometric shape identified on the tax map, or why certain of those tracts of land would be exempt from the Chesapeake Bay Act.

The committee appreciates the consideration that the Planning Commission can give to these constructive suggestions. Thank you very much for reviewing these issues.

Very truly yours,

James R. Hart  
Virginia Run Community Association representative,  
Sully District Council of Citizens Associations

cc: Mark McConn, President  
Jeff Parnes, Land Use Chair  
The Honorable Michael Frey  
The Honorable Kate Hanley