

Notes from meeting to discuss the Chesapeake Bay Preservation Ordinances (CBPO), and its implementation in Loudoun County

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Summary:

The CBPO is mandated by the Virginia legislature for 84 tidewater localities in Virginia. Loudoun County is not one of these. The rules/guidelines were designed to be tailored to local ordinances, and are therefore somewhat vague. Currently in Loudoun, the rules would not be tailored, so the lack of specificity causes uncertainty to landowners. Loudoun currently implements the spirit, if not the letter of the CBPO rules in its existing ordinances and land use regulations, so in a time of tight budgets, why implement a voluntary program that may cause problems down the road in interpretation. Therefore, the position is to vote against the CBPO implementation at this time.

Background:

The Virginia General Assembly enacted the Chesapeake Bay Preservation Act in 1988, as part of a multi-faceted response to its participation in the Chesapeake Bay Agreement. Within Virginia, 84 “tidewater localities” were identified, given expanded authority to regulate water quality and to establish a more specific relationship between water quality and local land-use decisions.

The Regulations are designed to establish a framework for compliance but do not dictate precisely what local programs must look like. Local governments have flexibility to develop water quality preservation programs that reflect unique local characteristics and embody other community goals.

Local Bay Act programs start by adopting or amending local land use plans and ordinances. Local governments must amend their zoning ordinances, subdivision ordinances, and comprehensive plans to incorporate water quality protection measures consistent with the Bay Act Regulations. The Regulations address non-point source pollution by identifying and protecting certain lands called Chesapeake Bay Preservation Areas.

Loudoun was/is not included in the 84 tidewater localities. The Board of Supervisors could adopt these, but our participation is voluntary. Most of the concern about the CBPO implementation is tied to the lack of specificity on the rules, and the potential for changing rulings about land use in the future.

Local impacts:

The areas immediately affected by the CBPO are designated Resource Protection Areas (RPA's) and they occupy about 8% of Loudoun County. This includes streams and buffer areas, but does not include wetlands and drainage areas. If the associated wetlands and drainage areas are included (called Resource Management Areas or RMA's), the area impacted within Loudoun County will be much larger (greater than 3 times larger). Currently the RPA is the affected area, but if the definition changes to the RMA areas, the impact is much greater.

Some areas of the county, such as the Route 28 tax district was designated for intense development, and subjected to additional taxation to pay for the required improvements. Much of the area is planned but not yet developed. Adopting the CBPO changes the "rules" and puts allowed uses in jeopardy, which creates uncertainty.

One example, is if 2500 square feet is disturbed, the CBPO would require a site plan and grading permit. Currently, the threshold is 10,000 square feet, and if it is on land zoned for agriculture, a site plan may not be needed. This is a significant impact. Tailoring the ordinance, to adopt Loudoun's existing definition would eliminate this.

Current county ordinances specify what a land owner can, and can not do with their property. The CBPO has subjective language, which was designed for tailoring and interpretation, and was not designed for direct implementation. Doing so adds a level of uncertainty to land owners, which adds risk for investment decisions.

Presently, Loudoun County is grappling with significant budget deficits, and required programs cannot be adequately funded. This would add staffing requirements, which would require funding, to pay for a voluntary program. Since most of the CBPO requirements are already being addressed within existing Loudoun county ordinances, the recommendation is to not add additional requirements on the county to implement CBPO requirements.

A larger question is why the county wouldn't tailor the rules, similar to what the 84 localities have done, to match current land use rules and regulations (resulting in little to no additional cost), but this is a larger question we didn't feel we had time to address properly.