

**Position Paper**  
NAIOP & NVBIA – Loudoun County

**Proposed Loudoun County Chesapeake Bay Preservation Ordinance**  
September, 2010

Background:

Both NAIOP and NVBIA have extensive experience working with other jurisdictions' Chesapeake Bay Preservation Ordinances. Our membership participated on the Loudoun County Stakeholders Group and had previously worked with both Prince William County and Fairfax County during their ordinance adoption process. The effort with Fairfax County spanned over 3 years as the ordinance was carefully crafted to address property owners' concerns. The two local building industry chapters decided to combine their collective talent to offer Loudoun County input as the staff endeavored to draft the proposed Ordinance. Unfortunately, the staff first revealed its ordinance in its final form and then steadfastly defended their completed work. We attended the Loudoun County Planning Commission work sessions and hearing and remained involved as the Planning Commission deliberated to forward their recommendation to the Board of Supervisors. However, the building industry has never been afforded the opportunity to work directly with staff to make the ordinance language workable in the context of Loudoun County's unique requirements.

Position:

We recommend that the Loudoun County Board of Supervisors only consider the proposed Chesapeake Bay Preservation Ordinance (Ordinance) after developing it in tandem with the similarly focused requirements of the recently promulgated Watershed Implementation Plans (WIP) (web site: <http://www.deq.virginia.gov/tmdl/baywip.html>) published by the Commonwealth of Virginia to comply with the federally mandated Total Maximum Daily Loads (TMDL) requirements for controlling total phosphorus, total nitrogen, and total suspended solids in the Chesapeake Bay Watershed. The WIP will be public-noticed on September 24, 2010 for 45 days and finalized by December 31, 2010 in accordance with President Obama's Executive Order #13508. A Phase II WIP defining these requirements at the local level is scheduled to be drafted by June 1, 2011.

The obvious benefit to integrating the Ordinance with the upcoming WIP requirements will be to avoid creating duplicative and conflicting regulations. Developing and implementing regulations is a costly process. To minimize the cost and maximize the environmental benefits, we believe that it is only prudent to refine this Ordinance based upon these requirements that are being finalized later this year. Furthermore, developing an Ordinance to complement the WIP will actually place Loudoun County at the forefront of the Commonwealth's water quality improvement efforts.

Recommendation:

We suggest that you move the Ordinance back to the Planning Commission with the direction of:

- a. Using it to implement the portions of the WIP applicable to non-point source pollution sources in Loudoun County.
- b. Providing flexibility to meet the intent of the Chesapeake Bay Preservation Act without the need to match the state regulations in situations where they do not provide a significant benefit relative to their cost.
- c. Addressing the big picture discussion points noted by several sectors of our community in multiple meetings:
  1. Allowing small accessory structures in RPAs;
  2. Providing current flexibility for Erosion and Sediment control plans for agriculture users;
  3. Providing an effective and simple RPA definition that eliminates uncertainty for property owners and unnecessary engineering costs;
  4. Supporting urban fertilizer regulation;
  5. Protecting landowner investments and Loudoun County's tax base with a fair, explicit and non-discretionary grandfathering policy; and
  6. Funding the reforestation of stream buffers on agricultural lands.
- d. Considering the detailed comments on the Ordinance prepared by NVBIA/NAIOP and providing flexibility in working with the WIP.