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17
2-23-02

February 21, 2002

The Honorable Kerry Donley
Mayor, City of Alexandria
c/o City Clerk
City Hall, Room 2300
Alexandria, VA 22314

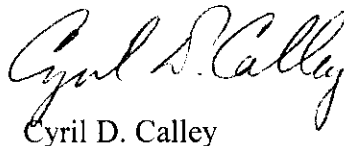
Re: Clermont Cove Apartment Development
Appeal of a Decision of the Planning Commission upholding a Decision of the
Director of Transportation and Environmental Services

Dear Mr. Donley:

The Applicant now withdraws its appeal, pursuant to Section 13-121(C) of the Zoning Ordinance of a decision of the Planning Commission on February 5, 2002 upholding the decision of the Director of Transportation and Environmental Services ("T&ES") decision denying the Applicant's request for an exception to the RPA buffer requirements set on your docket for February 23, 2002. Be advised that the applicant intends to resubmit its application for a buffer reduction under a modified plan that reduces the impact on the RPA buffer in the near future.

As always, we look forward to working with the City towards the successful completion of a mixed Affordable/Market Housing project on this site. Please do not hesitate to contact me.

Very truly yours,



Cyril D. Calley

cc: Ms. Eileen Fogarty
Mr. Ignacio Pessoa
Mr. Richard Baier
Mr. Scott Copeland

City of Alexandria, Virginia

17
2-23-02

MEMORANDUM

DATE: FEBRUARY 15, 2002

TO: HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

THROUGH: PHILIP SUNDERLAND, CITY MANAGER *PS*FROM: EILEEN FOGARTY, DIRECTOR, PLANNING AND ZONING *Eileen Fogarty*SUBJECT: CLERMONT COVE: APPEAL OF DECISION RELATED TO CHESAPEAKE
BAY REGULATIONS

ISSUE: Appeal of the Planning Commission decision to uphold the decision of the Director of Transportation and Environmental Services to deny a request for exceptions to the Chesapeake Bay regulations for five streams located on the land known as Clermont Cove.

CITY COUNCIL ACTION ALTERNATIVES: City Council may:

- (1) find that the Planning Commission's decision was reasonable, and affirm the decision of the Commission; or
- (2) find that the Commission's decision, in whole or in part, was unreasonable, and reverse that part of the decision found to be unreasonable and affirm any part found to be reasonable.

DISCUSSION: The applicant proposes to create a 15.58 acre development parcel by subdividing land from railroad right-of-way for the purposes of constructing a 487-unit apartment complex. The proposed development parcel contains streams and wetlands which are protected by the Chesapeake Bay regulations contained in the City's Zoning Ordinance. The ordinance designates streams and wetlands that are contiguous to and connected by surface flow to a tributary stream, and all land within 100' of such streams and wetlands, as Resource Protection Areas (RPA). Generally, development is not permitted within an RPA.

Director of Transportation and Environmental Services Decision

In conjunction with the proposed development plan, the applicant requested that the Director of Transportation and Environmental Services (T&ES) (a) determine that two of the five stream on the site to not do not qualify as RPAs, and (b) approve exceptions to the Chesapeake Bay regulations which would allow encroachments into the RPAs by reducing the 100-foot buffer to widths ranging from zero to 50 feet.

On December 5, 2001, the Director notified the applicant that the applicant's requests had been denied. The Director found that the requests triggered Section 13-120 of the Zoning Ordinance, which contain specific criteria for exceptions from the Chesapeake Bay regulations, and that the requests failed to meet those criteria.

In summary, the Director found that the characterization of two streams on the site as non-RPAs and the requested exceptions from the 100-foot buffer were inconsistent with the purpose and intent of the Chesapeake Bay Act and the Zoning Ordinance, and would be injurious to water quality and detrimental to the public welfare, and he, therefore, denied the applicant's requests.

Planning Commission Decision

The applicant filed an appeal to the Planning Commission of the Director's decision, and on February 5, 2002, the Planning Commission considered the appeal. City staff held a work session with the Planning Commission to review the intent and purpose of the Chesapeake Bay regulations and to brief the Commission on its authority under the Zoning Ordinance relative to the appeal. There were 24 speakers at the Planning Commission public hearing, in addition to the applicant and its representatives. Each of the 24 speakers spoke in support of the Director's decision and against the granting of the appeal (for more detail refer to the staff report action).

After the public hearing, on a motion by Mr. Dunn, seconded by Ms. Fossum, the Planning Commission voted to affirm the decision of the Director of Transportation and Environmental Services on every issue. The motion carried on a vote of 7 to 0.

Mr. Dunn noted specific reasons for the denial of the applicant's appeal. First, as to the question of whether streams #1 and #4 (wetlands) should be defined as Resource Protection Areas under the Zoning Ordinance, Mr. Dunn noted that the answer depends on whether the streams are "contiguous" with stream #5, and that this presented the technical issue whether "contiguous" can mean "adjacent" or must mean "touching." Mr. Dunn noted that the dictionary definition of "contiguous" allows for both views. Mr. Dunn further noted that it seems clear from a review of the legislative history that the Director's determination that the streams are "contiguous" is more consistent with the purpose of the Chesapeake Bay statute than the applicant's technical definition of "contiguous" which requires touching. Therefore, the Directors determination on this issue was found to be reasonable.

With regard to the issue of granting the exceptions to allow extensive encroachments into each of the five streams on the site, Mr. Dunn noted that the Director is given broad discretion and the Director had explained in great detail why he exercised that discretion to deny the request. Mr. Dunn also noted that, while the applicant had explained why it disagreed with the Director's determination and why it felt its view was better than the Director's, it had not shown that the Director's view is not permissible under the provisions of the Zoning Ordinance. Further, Mr. Dunn noted that the Director's decision was supported by the ordinance and the presentation and

information provided by the Director at the hearing. Therefore, the Director's determination to disallow the 100-foot buffer exceptions was found to be reasonable.

Finally, Mr. Dunn specifically noted that the Planning Commission did not want to create an impression that its decision was aimed at depriving the applicant landowner of the use of this property, because, in fact, the property can be utilized under its current zoning. He further noted that the fact that the Director had denied an application for an exemption did not mean that the Director would do so in all cases.

By letter dated February 6, 2002, the applicant filed an appeal of the Planning Commission's decision to the City Council.

A more detailed analysis of the issues in this case is provided in the staff report.

17 EXHIBIT NO. 3
2-2302

Sent to CC, CM, CA, Michele,
T+ES, P+Z, Kim Q.

HART, CALLEY, GIBBS & KARP, P.C.

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Requests hearing on
2/23/02 PH

February 6, 2002

The Honorable Kerry Donley
Mayor, City of Alexandria
c/o City Clerk
City Hall, Room 2300
Alexandria, VA 22314



Re: Clermont Cove Apartment Development
Appeal of a Decision of the Planning Commission upholding a Decision of the
Director of Transportation and Environmental Services
(DSUP #2001-0013, TMP/SUP #2001-0082, and REZ #2001-0004)

Dear Mr. Donley:

This is a formal appeal, pursuant to Section 13-121(C) of the Zoning Ordinance of a decision of the Planning Commission on February 5, 2002 upholding the decision of the Director of Transportation and Environmental Services ("T&ES") denying the Applicant's request for an exception to the RPA buffer requirements for the above referenced applications. The numbers of the streams referred to are the same as they are depicted in the Resource Protection Area Delineation dated July 2001 prepared by EnviroData-Wetlands (EDW).

The following is a specific delineation of the exceptions that were requested for the streams identified by the City on our site:

1. Stream 1: From 100 to 10 feet - (not an RPA feature pursuant to Section 13-105(B)(2));
2. Stream 2: From 100 to 50 feet;
3. Stream 3: From 100 to 50 feet;
4. Stream 4: From 100 to 0 feet - (not an RPA feature pursuant to Section 13-105(B)(2));
5. Stream 5: From 100 to 50 feet.
6. For purposes of the road that serves the site, from 100 feet to 0 feet for Streams 2 and 3. The road has to cross Stream 4, however, we continue to assert that Stream 4 is not an RPA feature.

The applicant respectfully submits that streams 1 and 4 as designated below are not an RPA feature pursuant to Section 13-105(B)(2) because the non-tidal wetlands associated with these streams are not contiguous to the tributary stream on site, Stream 5. In addition, they are not tributary streams pursuant to Section 13-103(T) as they are not "depicted on the most recent

Mr. Kerry Donley, Mayor
City of Alexandria
February 6, 2002
Page 2

U.S. Geological Survey 7 ½ minute topographic quadrangle map.” Specifically, Stream 1 is an intermittent stream formed by the discharge from two drop inlets on the adjoining improved property to the south. Stream 4 is an intermittent stream and forested wetland formed by storm water discharge from the adjoining improved properties to the south and perched groundwater. Intermittent streams on their own are not RPA features under the City’s Zoning Ordinance.

Further, we don’t believe Streams 1 & 4 reach the level of RPA designations based upon the fact that the presumption in favor of the Director’s decision is rebuttable pursuant to Section 13-106(A) and is so rebutted by our attachments both to our original waiver request and the additional attachments enclosed with the Appeal to the Planning Commission.

As justification for the above referenced exception requests, the applicant supplied the Director of T&ES with the following documents for his consideration:

1. Plat of the Streams on the Norfolk Southern Property and the Buildable Area outside the RPA;
2. Engineering Opinion from Bowman Consulting, Anthony C. Morse, P.E.;
3. Valuation Opinion from R.L. Kane Real Estate, Scott C. Humphrey; and
4. Updated WQIA from Bowman Consulting and EnviroData, Inc./EnviroData-Wetlands.

In addition to those materials, the applicant provided the Planning Commission with an amended version of the Updated WQIA from Bowman Consulting and EnviroData, Inc. consistent with the comments of the Director of T&ES, a letter from Bowman Consulting Group dated December 18, 2001 addressing the factual issues raised by the Director of T&ES, and an updated Resource Protection Area Delineation dated December 2001 prepared by EnviroData-Wetlands.

As always, we look forward to working with the City towards the successful completion of this project. Please do not hesitate to contact me.

Very truly yours,


Cyril D. Calley

cc: Ms. Eileen Fogarty
Mr. Ignacio Pessoa
Mr. Richard Baier
Mr. Scott Copeland

Docket Item # 9-A

Appeal of decision of the Director of Transportation & Environmental Services denying the exception request for encroachments into Resource Protection Areas under Section 13-120

ISSUE: Consideration of an Appeal of the decision of the Director of Transportation & Environmental Services to deny the exception request for encroachments into Resource Protection Areas for a proposed residential development under Section 13-120 of the Zoning Code.

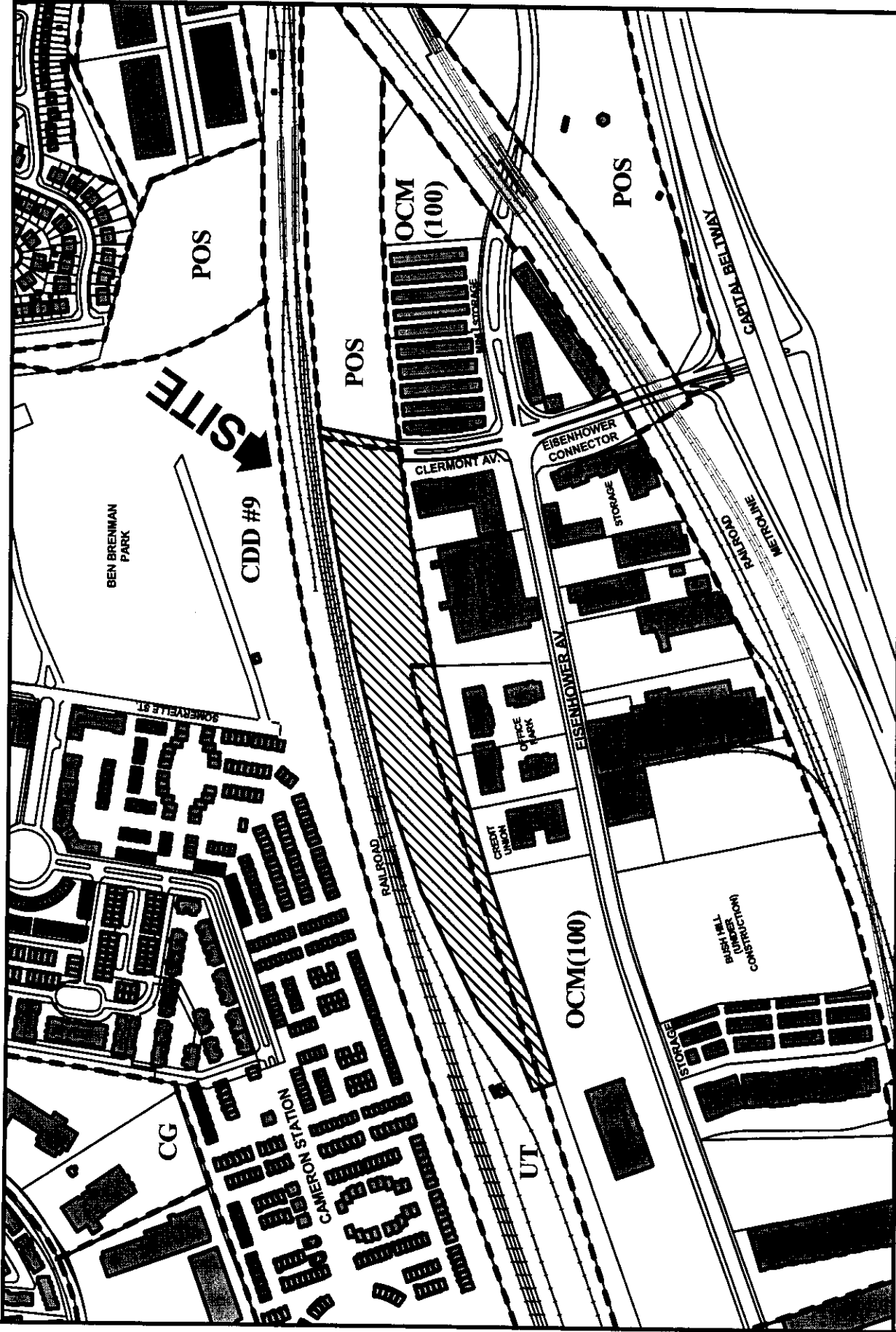
APPLICANT: Clermont Industries, LLC,
by Cyril D. Calley, attorney

PLANNING COMMISSION ACTION, FEBRUARY 5, 2002: On a motion by Mr. Dunn, seconded by Ms. Fossum, the Planning Commission voted to support the determination of the Director of Transportation and Environmental Services on all issues, denying the applicant's request for exception to encroach into resource protection areas. The motion carried on a vote of 7 to 0.

Reason:

Mr. Dunn noted specific reasons for the denial in conjunction with his motion. First, as to the determination of whether streams #1 and #4 (wetlands) should be defined as Resource Protection Areas under the City's zoning ordinance, Mr. Dunn noted that the determination depends on whether the streams are "contiguous" with stream #5, and the technical issue of whether "contiguous" can mean "adjacent" or must mean "touching." Mr. Dunn noted that the dictionary definition of contiguous allows for both views. Mr. Dunn further noted that it seems clear from a review of the legislative history that the Director's determination that the streams are "contiguous" is more consistent with the purpose of the Chesapeake Bay statute than the applicant's technical definition of "contiguous" which requires touching. Therefore, the Director's determination on this issue is reasonable.

With regard to the issue of granting the exceptions to allow extensive encroachments into each of the five streams on the site, Mr. Dunn noted that the Director is given great discretion and the Director has explained in great detail why he has exercised that discretion to deny the request. While the applicant has explained why it disagrees with the Director's determination and why it feels its view is a better view than the Director's, it has not shown that the Director's view is not permissible under the provisions of the zoning ordinance. Further, Mr. Dunn noted that the Director's view is supported by the ordinance, and therefore the Planning Commission should find that the Director's determination to disallow the exceptions is reasonable.



APPEAL OF DECISION

02/05/02



Finally, Mr. Dunn specifically noted that the Planning Commission did not want to create an impression that the Planning Commission decision was aimed at depriving the landowner of the use of this property, because, in fact, the property can be utilized under its current zoning. He further noted that the fact that the Director has denied an application here for an exemption does not mean that the Director will do so in all cases.

Other Commissioner's provided the following additional reasoning for supporting Mr. Dunn's motion.

Mr. Komoroske noted that the Planning Commission had previously granted development approvals that included this site when an application was filed for the U.S. Patent and Trademark Office development on the Army Material Command site. In that application, the Clermont Cove site was utilized for density in the development but was kept natural because of the wetlands that were there. In that context, arguments were made about how critical it was to preserve the wetlands. Mr. Komoroske also noted that the applicant's argument over the interpretation and application of "contiguous" did not demonstrate that the Director had misused or misinterpreted "contiguous" as defined by the ordinance and that the Director had therefore exercised his discretion properly in his application of the principles and purposes of the ordinance.

Mr. Leibach stated that he had listened very carefully to Mr. Pessoa's charge to the Commission as to the Commission's responsibility in reviewing the appeal and he supported the motion to deny the appeal because it was consistent with that responsibility.

Mr. Gaines stated that the applicant had not convinced him that the decision of Mr. Baier to deny the RPA encroachment request was unreasonable or unfair and, given the burden of the applicant and the responsibility of the Commission, he supported denial of the appeal.

Mr. Wagner noted that he supported the motion because he believed that the burden for finding for the appellant to overturn the Director's decision had not been met. The Director clearly made his decision in a reasoned fashion. He also stated he would go a step further to say that, if the standard for the Commission's decision allowed the Commission to substitute its judgement for the Director's judgement rather than being limited to a finding of whether the Director's decision was a reasonable one, based on the information that has been presented to the Commission, his decision would be the same way as the Director's. Under either standard, he would reach the same conclusion on this issue. Mr. Wagner noted that Mr. Baier and his team has done a fine job on the case, and that it was very clear that the intent of the ordinance had been met by the manner in which the Director decided the case.

Speakers

Steve Copeland, the applicant, presented the project by stating that the waiver is necessary to develop the site including 194 units of affordable housing.

William Ellen, environmental engineer for the project, presented the applicant's rationale for overturning the Director's decision to deny encroachments into the resource protection areas.

Harry Hart, attorney, represented the application

Michael Merritt, spoke in support of the Director's decision to deny the appeal because of five specific comments that had been made by the City Arborist in the staff report for the VDOT staging yard that stated there would be a significant loss and damage to trees as a result of encroachment into the RPA buffer zone.

Allen Lomax, reserved his right to speak on Docket Item #9C pending the motion and outcome on the appeal of Docket Item #9A.

William Dickinson, made the same request to defer speaking on the appeal, while reserving his right to speak on Docket Item #9C.

Katy Cannady, spoke in support of the Director's decision, questioning why we would be so desperate for additional buildings that we are willing to clear out trees, drain away wetlands and pollute the Chesapeake Bay to get more development, and noting that the wetlands are a natural cleaning agent for our waterways, lakes, bays, oceans and waterways of the United States.

Victor Addison, Cameron Station resident, spoke in support of the Director's decision, noting that the city needs to be careful about destroying natural areas with wetlands, trees and wildlife, and noting that building apartment complexes is not the way to improve the Chesapeake Bay.

Mariella Posey, 915 Second Street, spoke in support of the Director's decision, noting that even though affordable housing is badly needed in the city, the provision of 194 such units should not come at the expense of destroying resource protection areas and wetlands and further endangerment our water quality. She argued that we should take stock of the natural resources left in the City and begin to preserve them because once they're gone, they're gone; while housing developments can be replaced, natural resources cannot.

Sharon Hodges, Executive Director of the Eisenhower Partnership, spoke in support of the Director's decision, disagreeing with the applicant's assertion that there is no other project that can be proposed without a waiver of the RPA requirements. She also concurred with the findings and positions stated in the letter sent from the Alexandria Environmental Policy Commission to the Planning Commission which stated that the applicant had not demonstrated why a more suitable use of the land could not be accomplished to avoid the encroachments into the RPA.

Ellen Pickering, spoke in support of the Director's decision, noting her belief that this part of Eisenhower Avenue allows for necessary commercial and service uses that are useful for the people that live in Alexandria, that the U/T zoning on the property is the best land use zone for this parcel, and that the parcel provides a buffer zone to the railroad for the nearby warehouses so that when redevelopment does occur, there is a buffer zone between the railroad tracks and the sites along Eisenhower Avenue.

Mike O'Malley, resident of Cameron Station, spoke in support of the Director's decision, specifically questioning the applicant's assertion that the 25 to 35 foot separation between the contested resource protection areas and the stream did not qualify the contested areas as RPA's because they were not contiguous to the stream.

Mark Schwatz, 2nd Vice President of the Cameron Station Civic Association, spoke in support of the Director's decision, noting that the discussion about environmental standards means quality of life and that staff has considered the regional and local standards and has acted wisely in recommending that we adhere to the intent and purposes of the Chesapeake Bay regulations and RPA requirements for wetlands and forested areas. He stated that this particular proposal represents a serious compromise of the RPA standards, violates forested areas and reduces buffer zones and that it would set a very bad precedent to abridge these standards.

Arthur Impasto, spoke in support of the Director's decision for six reasons: 1) there are 4 separate governing entities saying to deny this request; 2) the submission failed 4 out of 5 requirements of Section 13-120; 3) the appeal doesn't adequately address the comments raised by the T&ES; 4) the submission would require rezoning and would essentially put people in the middle of an industrial park, which is inappropriate; 6) the project is unprecedented in terms of a waiver of the Chesapeake Bay regulations that would have serious negative environmental effects; and 6) this proposal is inconsistent with the City's Master Plan & adjoining land use. In summary, he noted there is nothing appealing about this appeal.

Judy Noritake, spoke as a private citizen who as spent 12 years making a living working on Environmental Policy, spoke in support of the Director's decision. She stated that she had testified before Congress on the importance of repairing resource protection areas and small streams that contribute to the overall health of our waterways, that our watersheds, streams and rivers die a death from a thousand cuts and that no matter how small a water resource may be, the effect is huge; and that the issue before us tonight is not about what the City used to do in terms of granting buffer reductions, but is about the future and that we need to do everything we can to maintain the parts of our stream systems that are in good shape.

Cindy Chambers, Chairperson of the Environmental Policy Commission (EPC) spoke on behalf of the Commission in support of the Director's decision. She stated that on January 28, 2002 the EPC adopted a resolution regarding the Clermont Cove development. The resolution supports the denial of the exemption request of the Director of T&ES as outlined in the Director's memo dated December 5, 2001. As outlined in the EPC's letter of January 29, 2002, the Commission recommended denial based on the information that was provided to the EPC by both the Department of T&ES and the developers of Clermont Cove. The EPC believed the proposal should be denied based on several grounds contained in their letter.

Roland Gonzales, President of the Cameron Station Citizens Association, spoke on behalf of the Association which is in strong opposition to the applicant's appeal and supports the Director's decision to deny the applicant's request for encroachments into resource protection areas. He stated that it is evident that the community, the City staff, the City's environmental Policy commission, the state's Chesapeake Bay Local Assistance departments are all in agreement that the proposal is inconsistent with the spirit and intent of the Chesapeake Bay Preservation Act.

Moina Ratcliff, spoke in support of the Director's decision because she believes the open space is almost non-existent, that trees are fast disappearing and that the development will be an inhumane with no play areas for children.

Lois Kelso Hunt, spoke in support of the Director's decision, stating her belief that the developer wishes to jam 487 apartments and two parking structures onto the site where the unfortunate inhabitants of the apartments, estimated to include 300 children, will have as neighbor railroad tracks, metro tracks, police pistol range and the waste energy incinerator.

Linda Courture, spoke in support of the Director's decision. She suggested that the City invest in property like Loudoun County does, and purchase the property to be kept as open space for the City to enjoy.

Richard Hobson, spoke in support of the Director's decision, stating his belief that the waiver requested by the applicant is not permitted by the zoning ordinance and that it is inconsistent with the City's Master Plan.

Kenyon Larsen, spoke in support of the Director's decision., stating that he had visited site and saw lots of wildlife. He agreed that the streams needed restoration, but he disagreed with the applicant's claim that the streams would be improve after development of the site.

Elizabeth Wright, spoke in support of the Director's decision.

Julie Crenshaw, spoke in support of the Director's decision, stating that affordable housing should not be utilized as a "bargaining chip" for encroaching into the resource protection areas. She had obtained a letter from Katherine Harold & Sean Smith of Chesapeake Bay Local Assistance Department that the two non-titled wetlands areas shown on the eastern & western portion of this site are eligible for inclusion as RPA components under "other lands" provision as noted under their information Bulletin #6.

Joseph Bennett, Cameron Station, spoke in support of the Director's decision, stating that the staff report is thorough and convincing and his belief that the proposal is only in the interest of the applicant and landowners, not that of the citizens.

Johnny Vitorovich spoke in support of the Director's decision because the wildlife and streams should account for something and expressed concern for what precedence will this set for the future if we don't stand our ground now.

Andrew McDonald, spoke in support of the Director's decision. He stated that the Chesapeake Bay Preservation Act provides the minimum protection to watersheds. If you remove trees, you decrease drainage in soil and so on. We need to be preserve what we have in the City which is trying to match good development with good protections of the Bay. He noted that the applicant's claim that "off-site water can be cleaned up on-site as part of this development" will destroy the site's ecosystem in order to accomplish this "clean up". He urged the Commission to consider ecological viability as well as economic viability.

Poul Hertel spoke in support of the Director's decision, noting that environmental laws particulate a desire to diminish environmental impact as opposed to property value maximization, and that the City staff has made strong case

SUMMARY

The applicant proposes to create a 15.58 acre development parcel by subdividing land from railroad right-of-way for the purposes of constructing a 487 unit apartment complex. The proposed development parcel contains streams and wetlands which are protected by the Chesapeake Bay provision of the Alexandria Zoning Ordinance. The ordinance designates the streams and wetlands that are contiguous to and connected by surface flow to a tributary stream, and all land within 100' of the streams and wetlands as a Resource Protection area (RPA). The RPA cannot be built upon.

In conjunction with the proposed development plan, the applicant has requested that the Director of Transportation and Environmental Services (T&ES) approve encroachments and exceptions to the Chesapeake Bay provisions in order to allow development to encroach into the RPAs. On December 5, 2001, the Director notified the applicant that the applicant's requests for an exception to reduce the buffer had been denied. The Director found that the waivers/exceptions necessary for the project:

- 1) are more extensive than those requested by the applicant,
- 2) trigger Section 13-120 of the Zoning Ordinance, establishing specific standards for review,
- 3) failed to meet criteria set forth in the Zoning Ordinance for review of exemptions under Section 13-120.

In summary, the Director found that the requested exceptions: are inconsistent with the purpose and intent of the Chesapeake Bay Act and the Alexandria zoning ordinance, and that the exceptions will be injurious to water quality and detrimental to the public welfare. The Commonwealth of Virginia's Chesapeake Bay Local Assistance Department (CBLAD) has reviewed the request for a waiver and does not support the waiver, stating: "the city should not approve a new lot that cannot accommodate development without encroaching into the RPA. Also the City should not approve the rezoning of these parcels knowing at the outset that this would require encroachments into the RPA."

The applicant has now appealed the Director's decision to the Planning Commission, who has the authority to grant the exceptions on appeal. If the Planning Commission denies the appeal, the development applications cannot be considered.

STAFF RECOMMENDATION:

Staff recommends the Commission **deny** the appeal, upholding the decision by the Director of Transportation and Environmental Services (T&ES) to deny the applicant's request for exceptions to encroach into the Resource Protection Areas at the Clermont Cove site.

BACKGROUND:

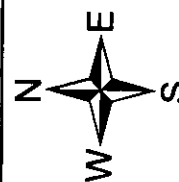
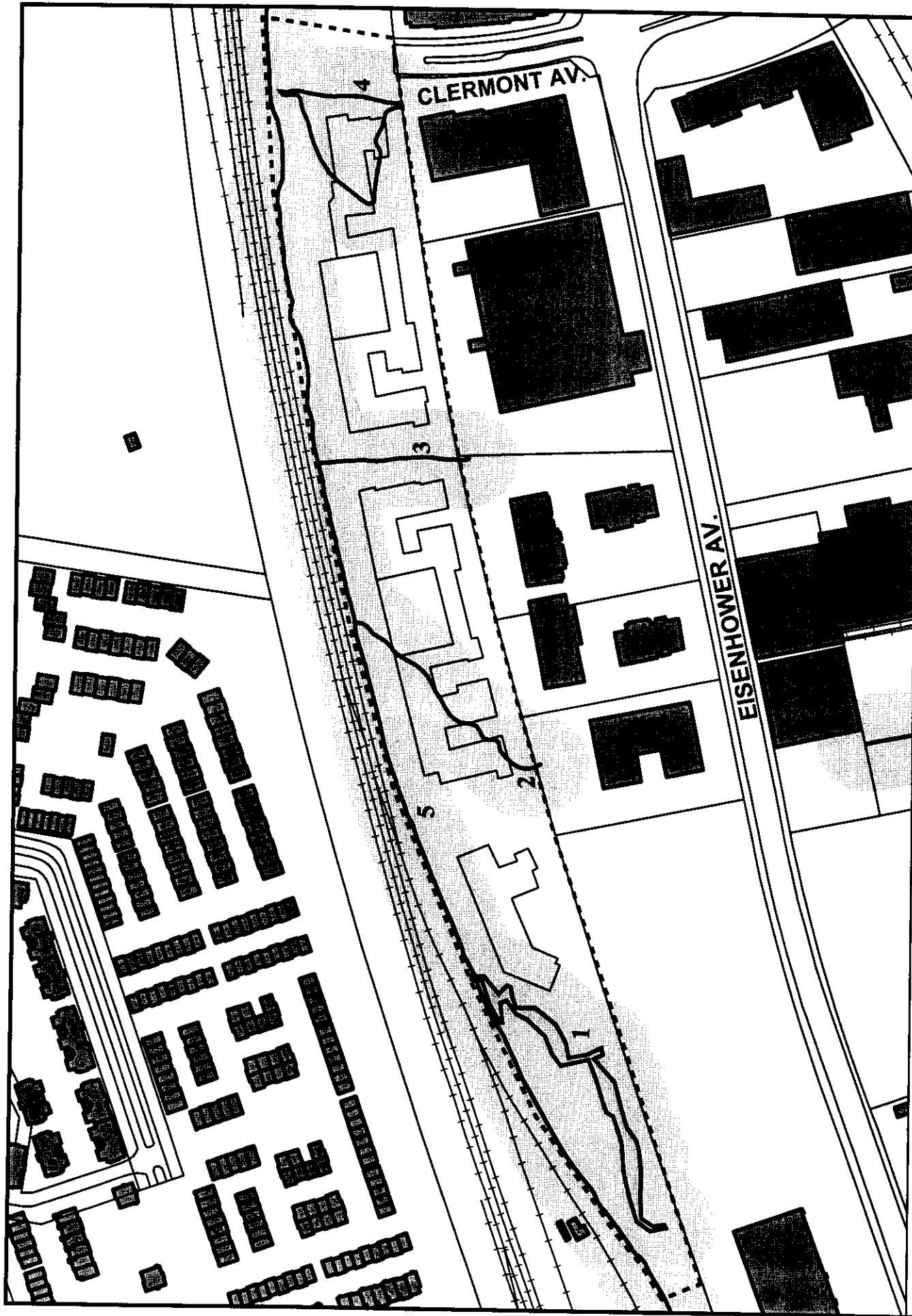
This 15.58 acre site is bordered and dissected by five watercourses. In an effort to be consistent with the Water Quality Impact Assessment (WQIA) submitted by the applicant, the following nomenclature is employed in describing these watercourses: Stream 1 (wetland), Stream 2, Stream 3, Stream 4 (wetland) and Stream 5. Streams 1-4 are those four watercourses running approximately South to North and discharging into Stream 5. Stream 1 is the western-most of the four contributing streams and Stream 4 is the eastern-most. Streams 2 and 3 lie between Streams 1 and 4 and fall in sequential order. Stream 5 is a tributary stream running west to east across the northern border of the site. (See graphic on the next page.)

Purpose of the Chesapeake Bay Provisions

The City's Chesapeake Bay provisions are defined in Article XIII of the zoning ordinance. These provisions define Resource Protection Areas (RPAs) as certain water features and the 100-foot buffer areas around those water features. RPAs are protected from all development except for specific uses described in Section 13-107 of the Ordinance; the exceptions include water dependent activities or uses such as utility installations, historic preservation activities or recreational uses.

The protection of RPAs from development encroachments is done to preserve and restore water quality in our streams and rivers. If encroachments are allowed into our water features and stormwater runoff from developments directed into water features, the water features will become degraded by the additional pollutants and erosion brought on by the development. Preserving 100-foot buffers to water features allows the natural environment to attenuate the stormwater impacts a development would have on water quality. If the 100-foot buffer is maintained, stormwater runoff is allowed to filter through vegetated areas and seep into the ground, thus recharging the ground water table, and what remains of Alexandria's tree canopy is preserved and wildlife habitat is left in place. With buffers in place, the stormwater that does not seep into the ground finds its way to the water feature in a more dispersed and natural manner than if it is discharged directly into the water feature instead of passing immediately from a sun heated asphalt surface into a stream or wetland.

The ultimate goal to protect and restore the Chesapeake Bay can only be reached when each municipality protects water quality in several ways but one of the most important is by preserving its RPAs. The results of these efforts will be witnessed downstream in the Chesapeake Bay; or, as a corollary, if we fail to protect our RPAs the degradation of our water quality will ultimately be witnessed downstream in the Chesapeake Bay.



LEGEND

- PROPOSED PARCEL
- STREAMS (Numbered)
- EXISTING STRUCTURES
- WETLANDS
- PROPOSED BUILDING FOOTPRINT
- RESOURCE PROTECTION AREA



Applicant's Request

The proposed project cannot be built without significant encroachments into environmentally sensitive wetlands and resource protection areas. As detailed in the table on the next page, eighty-two percent of the project site is either a water feature or a buffer to an associated water feature. The appeal:

- 1) contests the T&ES Director's determination that two of the five streams on the site (Streams 1 and 4) are properly categorized as RPAs, thus requiring protection under the Chesapeake Bay provisions; and
- 2) seeks an exception to reduce the buffer from 100' for each of the five streams on the site, as follows:

Stream 1: Although the application characterizes Stream 1 as having minimal disturbance, this is misleading as the plans do not show the required 100' RPA buffer for this stream. Staff estimates encroachment into this RPA will be within 10-feet of the wetland, a 90-foot encroachment into the 100' RPA.

Stream 2: Approximately 35 feet in length of this stream is proposed to be culverted under a private roadway, requiring a reduction in the RPA from 100' to 0'. For the remainder of the stream, an encroachment into the RPA buffer is shown to reduce the 100' buffer to 50' for actual building footprints.

Stream 3: Almost the entire length of Stream 3 on the property will be impacted. As with Stream 2, a reduction from 100' to 0' is required for a private road on a 35-foot portion of the stream. For the remainder of the stream, an encroachment into the RPA buffer is shown to reduce the 100' buffer to 50' for the building, and to 0' for a proposed pond which will function as a regional BMP.

Stream 4: As with Stream 1, the associated RPA is not mapped for this stream, therefore the application is misleading. However, the buildings will encroach into the entire RPA on the western and southern sides of the wetland, and will also destroy a significant portion of the wetland (0.48 acres).

Stream 5: For Stream 5, an encroachment into the RPA along the length (approximately 1820-linear feet) of the project varies in width, is at certain locations less than 50', but varies, with an average reduction of the 100' buffer to 50'.

The table below estimates the acreage of the on-site RPAs and proposed encroachments:

PARCEL AND ENCROACHMENT AREAS
(Estimates By Staff, Based on Applicant's Plans)

	Acres
<u>Total Site Area</u>	<u>15.85</u>
Total Area of Water Features	
(includes streams and wetlands but no buffers)	3.34
<u>Total Area of Water Feature Buffers</u>	<u>9.70</u>
Area of Site Designated as RPA on CBPA map	9.09
Additional Areas Determined By T&ES to be	
<u>RPA pursuant to Article XIII (contested)</u>	<u>3.94</u>
Encroachments into non-contested RPAs	
(Not including 0.5-acres wet pond)	3.02
Encroachments into contested RPAs	<u>1.30</u>
<u>Total RPA Encroachments</u>	<u>4.32</u>
Total Disturbed Area (RPA and Non RPA)	9.15
<u>Total Proposed Impervious Area</u>	<u>6.75</u>

STAFF ANALYSIS

Issue 1: The applicant contests T&ES's determination that streams 1 and 4 are RPAs and thereby afforded protection under the Chesapeake Bay Provisions of Article XIII.

Three of the five water courses on the site (2, 3 and 5) are depicted as Tributary Streams with 100-foot buffers on the City's Chesapeake Bay Preservation Area (CPBA) map; this map was approved by City Council in January 1992. The applicant agrees that these three streams are afforded protection under the Act. The other two watercourses (1 and 4) are wetlands and are not shown on the CBPA map. The applicant agrees with the delineation of the wetlands, but contends that the two wetland watercourses should not be designated as RPAs because they are not depicted on the CBPA map and do not fit the designation criteria stated in the city's Zoning Ordinance. The City's position is that the two wetlands identified on the site by the applicant meet the Zoning Ordinance criteria. Of the 4.3-acres of encroachment into the RPAs, 1.3-acres are associated with the two disputed RPAs.

First, the fact that the wetlands are not shown on the CPBA map does not exempt them from Chesapeake Bay requirements. In fact, while section 13-106 incorporates the CBPA map as a generalized depiction of the City's RPAs, it also specifically states *that in the event of conflict between the CBPA map and the designation criteria in section 13-105 of the Ordinance, the designation criteria shall be controlling.*

The applicant further contends that the two wetlands do not meet the designation criteria set forth in section 13-105 of the Zoning Ordinance, which requires *non-tidal wetlands that are contiguous to Tributary Streams and connected to Tributary Streams by surface flow to have an RPA buffer around them (100 foot buffer).* There is no dispute in this case that the non-tidal wetlands are present; the wetlands have been identified by the applicant and have been delineated by the applicant following Army Corps of Engineer's Guidance. The applicant's contention is that the two wetlands *are not contiguous to tributary streams and connected to Tributary Streams by surface flow*, and therefore do not meet the criteria for classification as an RPA.

The applicant states, and the Army Corps of Engineers confirms, that the most downstream portions (the northernmost 25 to 35-feet of the entire 240' and 700' lengths) of each of these two watercourses are *Waters of the US* rather than non-tidal wetlands, that these *Waters of the U.S.* separate the wetlands from the tributary stream to the north and therefore the wetlands do not meet the requirement of being *contiguous to the northern stream.*

Staff has been to the site with the applicant's environmental consultant and the Army Corps Field Person and has closely examined both of these areas. Staff feels strongly that those last few feet of watercourse for both areas are eroded streambeds showing a distinct and direct connection to the West-East running tributary stream. By the erosive

nature of that connection much of the hydrophilic soils and plants that would otherwise be evidenced in those areas have been washed downstream. The applicant states that as there are no designated wetlands in this last short distance of the watercourse into stream therefore it is not contiguous.

Staff disagrees; there is an obvious water course connection between both wetlands and the West-East stream. Although the two wetlands are not physically touching the tributary stream (Stream 5) they remain contiguous to Stream 5 for four reasons:

- * There is an obvious and direct connection to the Stream 5. Water passing from either wetland will pass immediately into an eroded channel and then to Stream 5. There is no meandering from either wetland nor is there any chance for the water to go anywhere but to Stream 5.
- * If Stream 5 is under high flow conditions it is quite possible that the stream would back up into the wetland areas; and thereby be physically touching.
- * These connections lie within the RPA of Stream 5, the area required by the City's Ordinance to be protected. It would then be unreasonable to think that only a portion of the wetland can be protected without protecting all of it.
- * Any degradation of either wetland will impact Stream 5.

With this reasoning both Streams 1 & 4 and their associated 100-foot buffers are protected by the City's Environmental Ordinance Article XIII. That the water leaving the wetland must pass a very short distance across an area designated by the Army Corps of Engineers as "Waters of the US" does not negate that the wetland is contiguous. Water quality impacts to either of the wetlands will, without question, have downstream impacts on Stream 5. Staff believes that the criteria designating contiguous and connected by surface flow was to eliminate the protection of isolated wetlands that do not drain to a water course. These type of wetlands would occur where ground water surfaces or stormwater is collected but the area does not drain to anywhere above ground. Staff contends that because both of these wetlands are obviously connected by surface flow to a tributary stream then they fit the aforementioned designation criteria described in the City Zoning Ordinance for RPAs and therefore must be considered RPAs.

Issue 2: The applicant requests encroachments into the RPAs on the site pursuant to Section 13-120 of the Zoning Ordinance.

The extent of RPA encroachments that are required for this development are exceptional; while the city has granted encroachments in the past, typically these encroachments are less than 50' and must only meet the requirements set forth in section 13-109 of the Zoning Ordinance. While the request to encroach into the RPA is described in the applicant's Water Quality Impact Assessment as only 50 feet or less, the plans, however, demonstrate that this is not the case for streams 2 and 3; the proposal will channel portions of both streams through pipes under a road crossing, thus encroaching

extensively more than the 50-feet stated. There are also portions of the access road on the northern side of the buildings that encroach further than the 50-foot line for stream 5. While no RPA is depicted by the applicant for Streams 1 and 4; their encroachments also exceed 50'.

An encroachment greater than 50-feet is not allowed at the discretion of the Director of T&ES under section 13-109. Rather, the proposed encroachments must be approved through the exception process outlined in Section 13-120 of the Zoning Ordinance, which sets forth five standards for consideration in reviewing an application for exception to the Chesapeake Bay Provisions of the Zoning Ordinance. The ordinance requires that the applicant must demonstrate by a preponderance of evidence that all the criteria outlined in 13-120 (B) (1) thru (5) are met. The criteria are:

1. *Granting the exception will not confer upon the applicant any special privileges that are denied to other property owners in the CBPA overlay district;*
2. *The exception is not based upon conditions or circumstances that are self-created or self-imposed, nor does the exception arise from conditions nor circumstances either permitted or nonconforming that are related to adjacent parcels;*
3. *The exception is the minimum necessary to afford relief;*
4. *The exception will be consistent with the purpose and intent of the overlay district, and not injurious to water quality, the neighborhood or otherwise detrimental to the public welfare; and*
5. *Due to the particular physical surroundings, shape topographical conditions, geotechnical characteristics of the site's soils and rock materials or other extraordinary situation or condition of the specific property involved, the strict application of the requirements of this Article XIII would effectively prohibit or unreasonably restrict the utilization of the property or would constitute a clearly demonstrable hardship approaching confiscation.*

Upon review of the applicant's request the Director of Transportation and Environmental Services ruled that the applicant failed to meet the burden of proof outlined in Section 13-120. In particular, the Director ruled that the applicant failed to meet the standards established by criteria 2, 3, 4, and 5 as discussed in more detail below.

First, the applicant has not demonstrated that the exception is not based upon conditions or circumstances that are self-created or self-imposed (13-120(B)(2)).

The applicant is creating the development parcel by subdividing it from a larger tract owned by the railroad, and is requesting a rezoning from UT/Utility Transportation to OCM/Office Commercial Medium to facilitate development of the project. The act of creating a parcel for development which requires an exception to the provisions of the

Chesapeake Bay Preservation Act and the Alexandria Zoning Ordinance is directly contrary to the Act and the AZO Section 13-120 (B)(2).

City Staff has contacted the Virginia State Chesapeake Bay Local Assistance Department (CBLAD) regarding this planned development. CBLAD concurs with the staff finding on this issue. (See attached letter.) The CBLAD letter states, "the City should not approve a new lot that cannot accommodate development without encroaching into the RPA. Also the City should not approve the rezoning of these parcels knowing at the outset that this would require encroachments into the RPA. By approving both the re-subdivision and the rezoning requests, the City will be placing itself in a position whereby it must approve the proposed development."

Second, the applicant has not demonstrated by a preponderance of the evidence that the exceptions requested are the minimum necessary to afford relief, and that the application of the regulations in question would effectively prohibit or unreasonably restrict the utilization of the property or would constitute a clearly demonstrable hardship approaching confiscation. (13-120(B)(3 and 5)

The property has long been utilized as railroad right-of-way. There is no evidence that such utilization is no longer suitable or economic. There is no evidence or analysis of alternative, less intrusive developments. The appraiser's evidence is vague and speculative: "reduction in developable area. without a waiver could so reduce density, restrict usable areas and increase the development and engineering costs." The appraiser's suggestion that a reduction in developable area "more than likely will certainly impact the highest and best use of the land" mischaracterizes the controlling law. The land is currently zoned UT/Utilities and Transportation Zone, under which the proposed use is prohibited. The proposed use requires a rezoning. By definition, the highest and best use is either permitted under the current zoning, or under a change in zoning that is reasonably probable of achievement. There is no support for the proposition that a use which requires both a rezoning and substantial waivers and modifications under the new zoning meets the applicable test.

In addition, there are alternative ways to utilize the site, even if it rezoned, which would not require the proposed encroachments. In fact, such a proposal was previously proposed by an applicant and was approved by the City, in 1996. In that application, the subject property was subdivided from the railroad property and consolidated with the adjoining property on Eisenhower Avenue. This approach allowed the land to be utilized for density purposes, providing significant value to the land owner while allowing the entire RPA to remain protected. That an alternative approach which did not impact the RPA was once requested by an applicant and approved by the City further illustrates that this request is not the minimum necessary and that the Director's determination does not approach confiscation.

Lastly, the Director of T&ES found that the exceptions requested are inconsistent with the purpose and intent of the Chesapeake Bay Act and AZO, and will be injurious to water quality and detrimental to the public welfare, contrary to Section 13-120(B)(4).

The loss of existing trees—which will occur not only on the site but within the RPA buffer area adjacent to the encroachments because of root damage--would result in a degradation of water quality and force urban wildlife to more dense confines further exacerbating the degradation of Hunting Creek, which is listed on the EPA 303d degraded water bodies list. The negative environmental impacts associated with this development plan include the loss of 0.48-acres of wetlands, the loss of approximately 4.3-acres of stream or wetland buffer and the loss of approximately 9-acres of tree canopy. All of these will contribute to a higher pollutant load, both sediment and chemical, in Stream 5 and Cameron Run and will fragment an relatively large tract of wildlife habitat.

Recommendation:

There is no entitlement to a buffer reduction; to the contrary, there is a significant burden of proof placed on an applicant when exceptions as substantial as those in this application are requested. City staff feels strongly that the proposed exceptions do not comply with the requirements of the Chesapeake Bay regulations adopted by the City and therefore cannot be approved. Staff recommends denial.

STAFF:

Richard J. Baier, P.E., Director, Transportation and Environmental & Services
William Skrabak, Division Chief, Environmental Quality, T&ES
Bill Hicks, Watershed Program Administrator, T&ES
Ignacio Pessoa, City Attorney
Gregory Tate, Urban Planner, P&Z

CLERMONT COVE
Appeal of Decision of
Director of T&ES

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HART, CALLEY, GIBBS & KARP, P.C.

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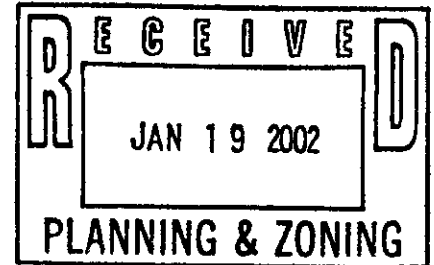
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OF COUNSEL
CYRIL D. CALLEY
ROBERT L. MURPHY

December 18, 2001

Mr. Eric Wagner, Chairman
Planning Commission
VIA Secretary of the Planning Commission
City Hall, Room 2100
Alexandria, VA 22314



Re: Clermont Cove Apartment Development
(DSUP #2001-0013, TMP/SUP #2001-0082, and REZ #2001-0004)

Dear Mr. Wagner:

This is a formal appeal, pursuant to Section 13-121 of the Zoning Ordinance of a decision of the Director of Transportation and Environmental Services ("T&ES") denying the Applicant's request for a waiver of the RPA buffer requirements for the above referenced applications. The numbers of the streams referred to are the same as they are depicted in the Resource Protection Area Delineation dated July 2001 prepared by EnviroData-Wetlands (EDW).

The following is a specific delineation of the waivers requested for the streams identified by the City on our site:

1. From 100 to 10 feet - (not a tributary stream pursuant to Section 13-103(T));
2. From 100 to 50 feet;
3. From 100 to 50 feet;
4. From 100 to 0 feet - (not a tributary stream pursuant to Section 13-103(T));
5. From 100 to 50 feet.

The applicant respectfully submits that streams 1 and 4 as designated below are not tributary streams pursuant to Section 13-103(T) as they are not "depicted on the most recent U.S. Geological Survey 7 1/2 minute topographic quadrangle map" and the appropriate procedure has not been followed in order to so designate them as resource protection areas. Specifically, Stream 1 is an intermittent stream formed by the discharge from two drop inlets on the adjoining improved property to the south. The stream is not identified as an RPA feature on the CBLAD-approved City resource map. Stream 4 is an intermittent stream and forested wetland formed by storm water discharge from the adjoining improved properties to the south and perched groundwater. Again, the stream is not identified as an RPA feature on the CBLAD-approved City resource map.

Mr. Eric Wagner, Chairman
Planning Commission
December 18, 2001
Page 2

Further, we don't believe Streams 1 & 4 reach the level of RPA designations based upon the fact that the presumption in favor of the Director's decision is rebuttable pursuant to Section 13-106(A) and is so rebutted by our attachments both to our original waiver request and the additional attachment enclosed herewith.

As justification for the above referenced waiver requests, the applicant supplied the Director of T&ES with the following documents for his consideration, additional copies are enclosed herewith as well:

1. Plat of the Streams on the Norfolk Southern Property and the Buildable Area outside the RPA;
2. Engineering Opinion from Bowman Consulting, Anthony C. Morse, P.E.;
3. Valuation Opinion from R.L. Kane Real Estate, Scott C. Humphrey; and
4. Updated WQIA from Bowman Consulting and EnviroData, Inc./EnviroData-Wetlands.

In addition to those materials, the applicant provides an amended version of the Updated WQIA from Bowman Consulting and EnviroData, Inc. consistent with the comments of the Director of T&ES, a letter from Bowman Consulting Group dated December 18, 2001 addressing the factual issues raised by the Director of T&ES, and an updated Resource Protection Area Delineation dated December 2001 prepared by EnviroData-Wetlands. As always, we look forward to working with the Planning Commission towards the successful completion of this project. Please do not hesitate to contact me.

Very truly yours,



Cyril D. Calley

Enclosures

cc: Mr. Scott Copeland, w/o enclosures
Tony Morse, Bowman Consulting Group, w/o enclosures
Carlos Vazquez, Lessard Architectural Group, w/o enclosures
Bill Ellen, Envirodata, Inc., w/o enclosures

December 18, 2001

RST Development
6001 Montrose Road
Suite 511
Rockville, Md. 20852
C/o Mr. Scott Copeland

Re: Clermont Cove Apartment Development
BCG No. 1513-01-001
(DSUP# 2001-0013, TMP/SUP #2001-0082, and REZ #2001-004)
Alexandria, VA.

Dear Mr. Copeland;

Pursuant to your request and the letter dated 12/05/01 from Mr. Richard J. Baier, P.E., of the City of Alexandria, Department of Transportation and Environmental Services, this letter is provided as a response to specific items contained within that letter. Those comments and our responses are provided below:

1. Comment: "DEQ has done a rough calculation to determine the extent of encroachments; those numbers were substantially greater than the 2.02 acres cited in the WQIA. See enclosed Tables."

Response: In regards to streams 2, 3, & 5, we are generally in agreement with the areas calculated by DEQ. The area of encroachment calculated by DEQ is 2.64 acres. Our calculations have indicated 2.523 acres and 2.59 acres. Based upon additional areas required for storm sewer outfalls and sanitary sewer connections, it appears that 2.64 acres is a reasonable number. Based upon this data, we question the comment, "...substantially greater than..."

2. Comment: "The proposed project does not meet the requirements of Section 13-117(B) of the AZO regarding treating 100% of the Water Quality Volume default."

15 20

Response: Based on the site and its specific physical constraints (i.e.: lot depth, narrowness, proximity to the RPA, and topography; we have provided as much treatment as is physically possible, and have compensated for the untreated areas by removing more pollutants in the treated areas. This is a commonly accepted practice in all the jurisdictions within the Chesapeake Bay watershed as well as the City of Alexandria, and has never been an issue in the past.

3. Comment: "On page 6 under Hydrology it is stated that 140-feet of stream will be piped; however, only 80-feet of piping is described."

Response: Based on the comment above, our consultant (EDW) has reviewed and analyzed this section of the report. The report has been revised, with the following quantities. Approximately 210 lf of total piping will be utilized. Stream 2 will require approximately 60 lf. Stream 3 will require approximately 90 lf. And stream 4 will require approximately 60 lf. of piping. These revised quantities are reflected within the revised report.

4. Comment: "On page 7 it states that there will be no disruptions to the supply of water to wetlands, etc. With respect to Stream 1, if as suggested the roof drains are to be piped to the nearest bio-retention filter any water that might have flowed westerly into the wetland will no longer do so."

Response: BCG has analyzed the drainage divides, flow paths and flow patterns of the area adjacent to Stream #1 before and after development. We have concluded that there is no change in the runoff tributary to the wetland areas in question. The site has been designed in a manner to "honor natural drainage divides", as much as practical. In further review of the existing drainage patterns adjacent to Stream # 1, we believe that the proposed system does allow for the natural flow of runoff into the existing wetland areas.


5. Comment: "The WQIA contains discrepancies regarding RPA encroachments requested and illustrated, i.e., 50-foot encroachments are requested for Streams 2, 3, and 5 whereas a much greater encroachment is depicted in the drawings."

Response: We concur that there may be minor "graphical" discrepancies relative to encroachments within the RPA. These areas have been accounted for within the area tabulation referenced in comment # 1, above. In addition, the encroachments of the "water dependent utilities" such as proposed bio-filters, overflow structures, and outlet pipes can be relocated outside of the 50' RPA limit (within the 12' temporary construction travel way) to minimize impact.

In closing, should you have any questions or concerns, please do not hesitate to contact Anthony C. Morse, P.E. or myself at 703-548-2188.

Sincerely,

Mark S. Stires, P.E.
Principal/Branch Manager



Cyril D. Calley
Bill Ellen (Envirodata, Inc.)
Carlos Vasquez (LAG)

June 25, 2001
Revised November 7, 2001
Revised December 18, 2001

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William Hicks
Watershed Program Administrator
City of Alexandria
Room 4120 City Hall
Alexandria, VA 22314

RE: Clermont Cove Apartments Resource Protection Area Exception
and Water Quality Major Impact Assessment

Dear Mr. Hicks:

Bowman Consulting Group has been engaged by Clermont Investor, LLC, as the project civil engineer for the development of a multi-family apartment complex known as Clermont Cove Apartments (the "Project"), on a 15.59-acre Norfolk Southern Railroad property (the "Parcel") located adjacent to Clermont Avenue. Clermont Investor hereby requests a Resource Protection Area Exception and has prepared the revised Water Quality Major Impact Assessment required for the buffer reduction for the Project. Attachment 1 illustrates the location of the subject property on the USGS *Alexandria* quadrangle, along with its latitude, longitude, Hydrologic Unit Code (HUC), stream classification, and watershed description.

A. Resource Protection Area Exception

1. Requirements. Pursuant to Section 13-109(B)(3)(a) of the City of Alexandria Zoning Ordinance, the RPA Buffer may be reduced to 50 feet if the Director of Transportation and Environmental Services determines that a combination of a smaller buffer and appropriate BMPs located landward of the buffer achieves a 75% reduction of sediment and 40% reduction in nutrients and achieves water quality protection, pollutant removal and water resource conservation. While neither the City Zoning Ordinance nor the State Chesapeake Bay Preservation Area Regulations codified in 9VAC-10-20 require the submission of an exemption request under 9VAC-10-20-150C or an exception under City Zoning Ordinance Section 13-120, we understand that the Chesapeake Bay Local Assistance Department (CBLAD) has requested that you use the exemption/exception process to justify even the 50-foot reduction allowed by Section 13-109(B)(3)(a). Therefore, we are submitting herewith for your review a Request of Exception to RPA Requirement, which provides additional information in support of your decision under Section 13-109(B)(3)(a).

2. Impact Area.

A buffer reduction is being requested for an area of approximately 2.64 acres, or 114,998 square feet in the RPA located adjacent to three tributary streams that flow through the Parcel.

3. Buffer Equivalency.

See Attachment 2, City of Alexandria Worksheet D: Buffer Equivalency.

B. Water Quality Major Impact Assessment (WQMIA)

Requirements. Pursuant to Section 13-118(D) of the City of Alexandria Zoning Ordinance, a WQMIA is required for development or redevelopment within RPAs of under an exception that involves more than 5,000 square feet of land disturbance adjacent to an RPA. The narrative below provides each element required by the WQMIA in *italics*, followed by the necessary information in plain text, or attached as indicated.

A major water quality impact assessment shall include a site drawing to scale, which shows the following:

- 1. Location of the components of the Resource Protection Area, including the 100-foot buffer area;*

Attachment 3 illustrates the components of the RPA existing on the subject property including the 100-foot buffer area, wetlands, intermittent and perennial streams, vegetative canopy cover for trees of 12" dbh and greater, topography, surface runoff characteristics, and the locations of geotechnical borings.

- 2. Location and nature of the proposed encroachment into the buffer area including: type of paving material; areas of clearing or grading; location of any structures, drives, or other impervious cover, and sewage disposal systems or reserve drainfield sites.*

Attachment 4 illustrates the proposed encroachment into the buffer area including apartment and garage building envelopes, limits of clearing and grading, utility corridors, access roads, and BMPs. All access roads outside the building and garage envelopes will be bituminous asphalt built in accordance with Virginia Department of Transportation standards. The property will be served by public sanitary sewer and water.

3. *Type and location of proposed best management practices to mitigate the proposed encroachment.*

Attachment 4 illustrates the proposed BMPs that will provide mitigation for the encroachment into the RPA buffer area. The structural BMPs include 1 ultra-urban sand filter, a stormwater management pond facility, and 4 biofiltration systems strategically located within the development to maximize their water quality enhancement function. In total, 85.6% of the runoff from the roofed areas on the site will be treated in the structural BMPs.

4. *A hydro-geologic element that:*

- a. *Describes the existing topography, soils, hydrology and geology of the site and adjacent lands.*

TOPOGRAPHY - The subject property is comprised of approximately 15.59 acres with access from Clermont Avenue. Currently, the property is wooded and undeveloped. The adjoining properties to the south and higher in the watershed are developed as warehouses and multi-story office buildings with paved curb-and-gutter parking lots and access roads. Elevations on the subject property range between 54' - 72' MSL. Topography on the site is described as relatively level and sloping to the east with a linear graded earthen fill traversing the east-west axis at varying heights above what appears to be the original contour and grade. In the eastern end a topographic relief of 9-11 feet exists between the subject and adjoining properties to the south; at the western end the property elevations are approximately equal.

SOILS - The subject property is located within the Coastal Plain Physiographic Province of Northern Virginia. Typically, Coastal Plain soils overlie the residual Piedmont soils and generally consist of sedimentary soils that have formed by erosion on inland mountains. Cretaceous Age clays and silts are typically found in the city of Alexandria. These clays and silts are commonly referred to as "marine clays" and are often encountered at depths ranging from 5 to 60 feet below the existing ground surface. The marine clay soils also contain layers of sands and gravels which are irregular in areal extent and elevation. These sand layers may be continuous or discontinuous and function as aquifers and movement pathways for groundwater. Perched groundwater is often encountered in these sand layers immediately above underlying clay soils.

During June 2001, the property was the subject of a subsurface exploration and geotechnical engineering analysis by Engineering Consulting Services, Ltd (ECS). Fieldwork associated with this analysis included 15 test borings to a depth of 50 feet. The results of these borings indicate the natural near-surface deposits are consistent with the regional geologic soil profile. All borings encountered a 2-4 inch topsoil layer, followed by coastal plain soils described as soft dark brown silty-clay to clay.

Groundwater was encountered in all of the borings at depths ranging from 5 to 12 feet below existing grades(1). The boring locations are illustrated on Attachment 3.

HYDROLOGY – The property is drained by one (1) perennial and three (3) intermittent streams flowing south-to-north. These streams, illustrated on Attachment 3 and described below, are tributaries of another perennial stream flowing west-to-east that forms the northern boundary of the subject property. Some reaches of stream bank across the property are currently undergoing erosion caused by the unrestrained discharge of storm water from the developed properties in the watershed.

Stream 1 – an intermittent stream formed by the discharge from two drop inlets on the adjoining improved property to the south. Stream classification for the water body is Class III non-tidal with a mixture of waters of the US and forested wetlands, the delineation for which was approved by the US Army Corps of Engineers during May '01. The drainage area for the stream is 16 acres with normal flows estimated at less than 1 cfs. The stream is not identified as an RPA feature on the CBLAD-approved City resource map.

Stream 2 – a perennial stream formed by storm water discharge from the adjoining improved properties. Stream classification for the water body is Class III non-tidal waters of the US, the classification for which was approved by the US Army Corps of Engineers during May '01. The drainage area for the stream is 238 acres with normal flows estimated at less than 5 cfs. The stream is identified as an RPA feature on the CBLAD-approved City resource map.

Stream 3 – an intermittent stream formed by storm water discharge from the adjoining improved property to the south. Stream classification for the water body is Class III non-tidal waters of the US as approved by the US Army Corps of Engineers. The drainage area for the stream is 65 acres with normal flows estimated at less than 1 cfs. The stream is identified as an RPA feature on the CBLAD-approved City resource map.

Stream 4 – an intermittent stream and forested wetland formed by storm water discharge from the adjoining improved properties to the south and perched groundwater. Stream classification for the water body is Class III non-tidal waters and forested wetlands, the delineation for which was approved by the US Army Corps of Engineers during May '01. The drainage area for the stream is 19 acres with normal flows estimated at less than 1 cfs. The stream is not identified as an RPA feature on the CBLAD-approved City resource map.

(1) Engineering Consulting Services, Ltd., Job No. 7085, *Report of Preliminary Subsurface Exploration and Geotechnical Engineering Analysis*, June 5, 2001.

Stream 5 – a perennial stream formed by storm water and groundwater discharge from the subject and upstream improved properties. Stream classification for the water body is Class III non-tidal waters of the US as approved by the US Army Corps of Engineers. The drainage area for the stream is 468 acres with normal flows estimated at slightly less than 5 cfs. The stream is identified as an RPA feature on the CBLAD-approved City resource map.

PRIOR FILLING ACTIVITIES - Surface runoff on the subject property at elevations higher than the streams is controlled by topography and slope. Prior filling and excavation activities on the property have altered the original surface runoff patterns. The perennial stream that forms the northern boundary appears to have been created as a drainage feature for the adjacent railbed. A portion/all of the earthen material excavated for the stream was stockpiled along the stream bank on the subject property altering the original surface runoff pattern. The existing surface runoff pattern along the stream is illustrated on Attachment 3.

The property also contains evidence of a relic rail bed extending linearly in an east-west direction parallel to Stream 5. To date, no historical documentation has been found to identify the use or source of this fill material. In an effort to identify any contamination associated with the fill material or its use, ECS performed laboratory tests on the near-surface material removed in conjunction with Boring B-3. This boring location was selected for testing because its landscape position is down gradient of the majority of the fill. The material tested was a composite sample of the 0-4' strata. The results of this analysis, included as Attachment 5, indicate that no contamination normally associated with rail yard operations was detected in the fill at boring location B-3.

b. Describes the impacts of the proposed development on topography, soils, hydrology and geology on the site and adjacent lands.

Attachment 4 illustrates the proposed plan of development for the Project. Unavoidable impacts to topography, soils, hydrology, and geology associated with the development are described as follows:

TOPOGRAPHY -- Development of the project will necessitate filling a portion of the site to match the grade of the adjoining properties to the south. On the east end of the property this fill will raise the existing grade 9-11 feet. The balance of the property within the clearing and grading limits illustrated on Attachment 4 will be graded to provide the building pad and parking garage elevations shown.

SOILS – The ECS geotechnical study found that the soils on the site are composed of an 8-10 inch topsoil A-horizon followed by a B-horizon of stratified silty-clay to clay to silty-sand with sandy gravel. The subsurface soil conditions were generally found to be suitable for the proposed development provided the building foundation design recommendations are followed.

HYDROLOGY – The development will necessitate piping approximately 210' of existing streams on the property. This piping, illustrated on Attachment 4, is needed for the construction of an access road from Clermont Avenue. The proposed impacts on these streams are described as follows:

Stream 1 – No impact.

Stream 2 – Approximately 60' of the perennial stream (WOUS) will be culverted to provide a road crossing for access across the site. The culvert will be sized to provide unobstructed flow in the stream in accordance with VDOT and US Army Corps of Engineers standards. A riprap splash apron will be installed at the invert to provide scour protection to the downstream banks.

Stream 3 – Approximately 90' of intermittent stream (WOUS) will be piped to provide a road crossing for across the site. The pipe will be sized to provide unobstructed flow in the stream in accordance with VDOT and US Army Corps of Engineers standards. A rip rap splash apron will be installed at the invert to provide scour protection to the downstream banks. A regional stormwater management facility is proposed for construction in the stream. The facility will include a permanent wet pool and a series of vegetated storm-surge benches. The total watershed area captured by the facility will be 55 acres.

Stream 4 – Approximately 0.48 acre of forested wetland (PFO) will be filled to provide building pad sites and storm water conveyance. The impacts to wetlands are described in subsequent sections. Storm water conveyance from the existing road culvert outfall to the undisturbed wetland area will be provided by pipes. The pipes will be sized to provide unobstructed flow in accordance with VDOT and US Army Corps of Engineers standards. A riprap splash apron will be installed at the invert to provide scour protection to the undisturbed wetland area.

STREAM 5 – No impact.

c. Indicates the following:

(1) Disturbance or destruction of wetlands and justification for such action;

The wetlands and waters on-site were delineated, field flagged, and survey-located during May '01 in accordance with the '87 US Army Corps of Engineers wetlands manual. The resulting wetland delineation plot was approved by the Corps of Engineers that same month. Based on the approved delineation, the proposed development will impact approximately 0.48 acre of forested wetland community (PFO). The need for this encroachment into wetlands is to create building pad sites and utility infrastructure improvements. Other alternatives considered include both total and partial avoidance of the wetland area. Because of building setback and height restrictions, the proposed plan was found to be the least environmentally damaging alternative that would provide a cost-effective solution and meet the minimum return-on-investment requirements of the developer.

(2) Disruptions or reductions in the supply of water to wetland, streams, lakes, rivers or other water bodies;

There will be no disruptions or reductions in the existing supply of water to wetland, streams, lakes, rivers or other water bodies. The proposed biofiltration systems will be located on the site to receive runoff from the site improvements with discharge to the affected stream and/or wetland.

(3) Disruptions to existing hydrology including wetland and stream circulation patterns.

The development will alter some of the existing surface runoff patterns as shown on Attachment 3. The areas of alteration will be confined to the building and grading envelopes as illustrated on Attachment 4. There will be no alteration of surface runoff patterns in the undisturbed RPA. The existing hydrology of Stream 3 will be disrupted by the construction of the proposed stormwater management facility.

(4) Source location and description of proposed fill material:

The source location and description of the fill material needed to develop the site is unknown at this time.

(5) Location of dredge material and location of dumping area for such material:

There is no dredge material or dredge material disposal area associated with this project.

(6) Location of and impacts on shellfish beds, submerged aquatic vegetation, and fish spawning areas;

There are no known shellfish beds on or adjacent to the subject property. No submerged aquatic vegetation (SAV) has been identified on the subject property. Responding to an earlier inquiry, the National Marine Fisheries Service has no information about the suitability of the perennial streams on the property for anadromas fish.

(7) Estimation of pre- and post-development pollution loads in runoff;

Attachment 6 (Worksheet A: New Development, page 2 of 2) provides an estimate of pre- and post-development pollution loads in runoff.

(8) Estimation of percent increase in impervious surface on site and type(s) of surfacing materials used;

Attachment 6 (Worksheet A: New Development, page 1 of 2) provides an estimate of percent increase in impervious surface on the site. The types of surfacing materials will consist of asphalt access roads and roofing materials and concrete decking on the parking garages.

(9) Percent of site to be cleared for project;

As illustrated on Attachment 4, approximately 59% of the site will be cleared.

(10) Anticipated duration and phasing schedule of construction project;

The anticipated phases of the construction project are illustrated on Attachment 4. The estimated duration for each phase is as follows:

Phase 1 – 12-18 months
Phase 2A – 12 months
Phase 2B – 12-18 months
Phase 3 – 18 months

(11) Listing of all requisite permits from all applicable agencies necessary to develop project;

On May 18, 2001, a Joint Permit Application form was submitted to the US Army Corps of Engineers for an Individual Permit to fill 0.62 acre of forested wetland and 388 linear feet of intermittent stream. The Public Notice for the application was posted on the Norfolk District's Internet webpage with a comment expiration date of June 25, 2001. No written comments were received by the Corps as a result of the notice. On July 10th, the permit application was revised by a reduction of the proposed forested wetland impacts to 0.48 acre. As a result of this revision, on September 19th the Corps verified the proposed impacts under Nationwide Permit 39 with compensatory mitigation. On August 6th, the Virginia Department of Environmental Quality waived the requirement for a Water Quality Protection Permit in accordance with their interagency agreement with the Corps. On June 19th, the Virginia Marine Resources Commission determined that no permit would be needed from the agency for the project as proposed. Prior to commencement of land clearing activities, a General Permit for Stormwater Discharges (VPDES) will be required from the Virginia Department of Environmental Quality. No other federal or state permits are required for the Project.

d. Describes the proposed mitigation measures for the potential hydro-geologic impacts. Potential mitigation measures include:

- (1) Proposed erosion and sediment control concepts; concepts may include minimizing the extent of the cleared area, perimeter controls, reduction of runoff velocities, measures to stabilize disturbed areas, schedule and personnel for site inspection;*
- (2) Proposed stormwater management system;*
- (3) Creation of wetlands to replace those lost;*
- (4) Minimizing cut and fill.*

The proposed structural and non-structural mitigation measures, illustrated on Attachment 4, are described below:

STRUCTURAL - One (1) ultra-urban sand filter, four (4) biofiltration systems, and a stormwater management facility are to be provided. These devices will provide water quality enhancements and quantity controls that will exceed city ordinance. In addition, the filtration systems will allow the re-introduction of a portion of the cleaned surface-

Clermont Cove Apartments

Bowman Consulting Group

June 2001

Revised November 2001

Revised December 2001

collected runoff, including parking garage runoff, back into the ground before it reaches the streams that drain the site.

As described in the previous existing site conditions section, some of the stream banks are currently undergoing erosion caused by the increased loading of the streams in the watershed. In an effort to fix the existing condition and mitigate for the effects of encroachment into the RPA, we are proposing to stabilize the eroding stream banks by bioengineering the slopes as illustrated on Attachment 7.

NON-STRUCTURAL – Construction of the Project will necessitate access to the rear of the buildings. This access will be provided by a 12-foot wide travel way parallel to the rear building line. This travel way is illustrated on Attachment 4. At completion of construction, the travel way will be graded and vegetated with indigenous shrubs and trees to match in-kind the adjacent undisturbed RPA. A recorded Natural Conservation Easement will protect the travel way area from future development.

As mitigation for the unavoidable loss of 2.64 acres (114,998 square feet) of CBLAD-approved RPA area plus 0.59 acres (25,700 square feet) of City staff imposed RPA area, we are proposing to replace the resource at a 1:1 ratio as follows:

1. 24,000 square feet of vegetated upland slope associated with the stabilization of the eroding stream banks; and,
2. 116,698 square feet of on and off-site RPA vegetation enhancement as directed by City staff.

As mitigation of the unavoidable loss of 0.48 acre of forested wetland, we are proposing a 2:1 vegetation enhancement ratio of both on and off-site forested and/or emergent wetlands as directed by City staff.

5. *A vegetative element that:*

- a. Identifies and delineates the location of all significant plant material on site, including all trees six inches or greater in diameter at breast height or, where there are groups of trees, said stands may be outlined.*

Attachment 3 illustrates and delineates the location of all significant plant material on site.

- b. Describes the impacts the development or use will have on the existing vegetation. Information should include:*

Clermont Cove Apartments

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June 2001

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Revised December 2001

(1) Replanting schedule for trees and other significant vegetation removed for construction, including a list of possible plants and trees to be used.

(2) Demonstration that the design of the plan will preserve to the greatest extent possible any significant trees and vegetation on the site and will provide maximum erosion control and overland flow benefits from such vegetation;

(3) Demonstration that indigenous plants are to be used to the greatest extent possible.

See Landscaping Plan in the Special Use Permit application package.

6. A wastewater element, where applicable, that:

a. Includes calculations and locations of anticipated drainfield or wastewater irrigation areas;

The Project will use city water and sanitary sewer facilities.

b. Provide justification for sewer line locations in environmentally sensitive areas, where applicable, and describe construction techniques and standards;

No water or sanitary sewer lines will be located in wetlands or RPA areas.

c. Discuss any proposed on-site collection and treatment systems, their treatment levels, and impacts on receiving watercourses.

No on-site collection and treatment systems are proposed for the Project.

d. Describe the potential impacts of the proposed wastewater systems, including the proposed mitigative measures for these impacts;

No wastewater treatment systems are proposed for the Project.

7. Identification of the existing characteristics and conditions of sensitive lands included as components of Chesapeake Bay Preservation Areas, as identified in this Article.

Three (3) streams on the Parcel are identified as components of Chesapeake Bay Preservation Areas on CBLAD-approved City resource maps. These streams have been characterized in previous sections of the exemption request. Besides these streams, there are no other known sensitive lands included as components of Chesapeake Bay Preservation Areas, as identified in the referenced Article.

8. Identification of the natural processes and ecological relationships inherent to the site and an assessment of the impact of the proposed use and development of land on these processes and relationships.

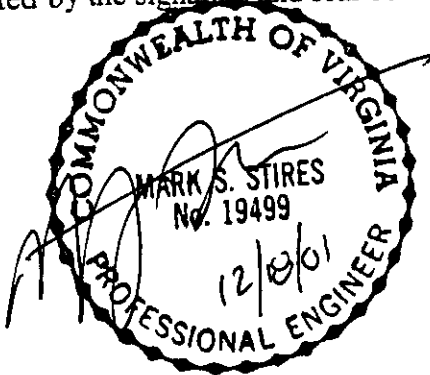
Because of its position in the watershed, the property provides a conduit for storm water runoff for the adjoining, up-gradient properties to the man-made perennial drainage feature along the rail bed. In its undeveloped state, the property also functions ecologically as a forested riparian buffer for the both the receiving tributary streams and perennial stream and provides transitional or temporary habitat for various species of indigenous wildlife, including deer and raccoon.

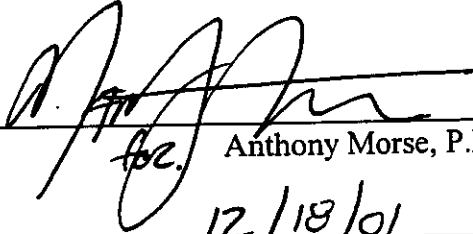
Our fieldwork on-site, however, found that these functions have been significantly impaired as a direct result of the development of all adjoining properties. Evidence of this impairment is seen in the eroded condition of the stream banks and the absence of sufficient land area to provide meaningful habitat for a sustainable wildlife population. Under a no-build alternative, the stream banks on the property will continue to erode and wildlife, not including scavenger species such as raccoons and opossum, will continue to limit their utilization for fear of discovery by the adjacent human activities.

Given these existing site conditions, the proposed mitigation for encroachment into the RPA buffer is appropriate. The structural BMPs will provide water quality enhancements and quantity controls for post-development runoff, and will correct the eroding condition of the existing stream banks. As a final measure, the non-structural protection afforded by the vegetation enhancements within both on and off-site RPA features will ensure the continued transitional use of by wildlife. Accordingly, we believe the public and private benefits associated with the development of the property coupled with the proposed mitigation plan outweigh the public and private detriments under a no-build alternative.

Certification

This Resource Protection Area Buffer Reduction Request and Water Quality Major Impact Assessment is certified as complete and accurate by a professional engineer, as indicated by the signature and seal below.

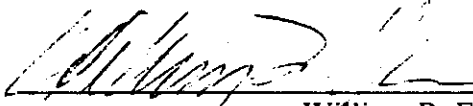




Anthony Morse, P.E.
12/18/01

Date

Pursuant to Section 13-118(E)(2), the additional elements required in a Water Quality Major Impact Assessment are certified as complete and accurate by a qualified environmental scientist as indicated by the signature below.



William B. Ellen
12-17-01

Date

ATTACHMENT 1

VICINITY MAP

1"=2000'



ALEXANDRIA QUADRANGLE
ALEXANDRIA, VA. - D.C. - MD.
38077-G1-TB-024

LATITUDE: 77° 11' 98"
LONGITUDE: 38° 80' 46"
HUC: 02070008

STREAM CLASSIFICATION: CLASS III - NON-TIDAL WATERS
WATERSHED DESCRIPTION: < 1 SQUARE MILE

SCALE:

DATE:

BOWMAN CONSULTING GROUP, LTD.
14020 THUNDERBOLT PL., SUITE 300
CHANTILLY, VIRGINIA 20151
PHONE: (703) 484-1000
FAX: (703) 481-8720

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CONSULTING
GROUP **ENGINEERS**
PLANNERS
SURVEYORS

CLERMONT COVE APARTMENTS
CITY OF ALEXANDRIA, VIRGINIA

SHEET 1 OF 1

WORKSHEET D: BUFFER EQUIVALENCY

1. Calculate the drainage area (A_d) served by the buffer.

Assume a maximum of 200 feet of overland flow can be handled by the buffer (the 200 foot maximum is required by the new ESC regulations (VR 625-02-00) and is suggested policy by both VDOT and ASCS-SCS). Average the width (W_{avg}) of the site along the inland side of the proposed reduced buffer.

$$A_d = 200' \times W_{avg}$$

$$A_d = 200 \times \underline{2180'} = \underline{436,000} \text{ sqft (AFFECTED AREA IN LINEAR FEET)}$$

2. Compile site-specific data and determine imperviousness (I) of the buffer drainage area (A_d).

I_a : structures	- <u>225,000</u> sqft
parking lot	- <u> </u> sqft
roadway	- <u>64,450</u> sqft
other	- <u>16,000</u> sqft
	- <u> </u> sqft
	- <u> </u> sqft
Total I_a	- <u>305,450</u> sqft

$$I = (\text{Total } I_a / A) \times 100 = \underline{70.1} \text{ percent expressed in whole numbers}$$

$$R_{v-d} = 0.05 + (0.009 \times I) = 0.05 + (0.009 \times \underline{70.1})$$
$$= \underline{.6809} \text{ unitless}$$

$$C: \begin{array}{l} - 1.08 \text{ mg/l if } I \geq 20 \\ - 0.26 \text{ mg/l if } I < 20 \end{array}$$

3. Calculate the pollutant load (L_d) generated by the drainage area of the buffer.

$$L_d = 8.16 \times R_{v-d} \times C \times A_d$$

$$= 8.16 \times \underline{.6809} \times \underline{1.08} \times \underline{436,000}$$

$$= \underline{60} \text{ lb/yr.}$$

ALEXANDRIA, VIRGINIA
PHOSPHOROUS
LOADING COMPUTATIONS

WORKSHEET D: BUFFER EQUIVALENCY

4. Determine the maximum load capable of being removed by the full buffer.

Multiply the load generated (from Step 3) by 0.40 (the removal rate dictated by the Regulations for a full 100-foot buffer).

$$R_{fb} = 0.40 \times L_d = 0.40 \times \underline{60} = \underline{24} \text{ lbs/yr.}$$

5. Determine the load removed by the remaining, undisturbed buffer.

<u>Total Buffer Length</u>	<u>Removal Efficiency</u>
100 (no encroachment)	.40
90 (10' encroachment)	.37
80 (20' encroachment)	.35
70 (30' encroachment)	.32
60 (40" encroachment)	.30
50 (max. encroachment)	.25

Multiply the load generated (from Step 3) by the appropriate removal rate shown above. **AVERAGE AREA REMAINING, (USE 63')**

$$R_{rb} = \text{Removal efficiency} \times L_d \\ = \underline{0.31} \times \underline{60} = \underline{18.6} \text{ lbs/yr.}$$

6. Determine the load removal requirement of an "equivalent" BMP.

$$RR_{bmp} = R_{fb} - R_{rb} = \underline{24} - \underline{18.6} \\ = \underline{5.4} \text{ lbs/yr.}$$

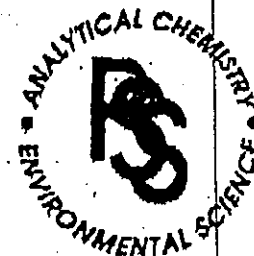
7. Determine available BMP options.

Sometimes an additional (relocated) buffer width may be appropriate.

ALEXANDRIA, VIRGINIA
Provide adequate BMP design. PHOSPHOROUS
LOADING COMPUTATIONS

OFFICES:
 6630 BALTIMORE NATIONAL PIKE
 ROUTE 40 WEST
 BALTIMORE, MARYLAND 21228
 410-747-8770
 800-932-8047
 410-788-8723 Fax
 www.phaseonllna.com

PHASE SEPARATION SCIENCE, INC.



CERTIFICATE OF ANALYSIS

No: 01081530-01 Page 1 of 1
 Engineering Consulting Service, Ltd
 June 19, 2001

Project: Claremont Apts.
 Site Location: Alexandria, VA
 Project Number: 7805
 Matrix: Soil

Date Sampled: 05/11/01

Date Received: 06/15/01

Sample ID: 7085B-3-0-4

	Result	Unit	Method	Limits	Extracted	Analyzed
Polychlorinated Biphenyls						
Aroclor 1018	< 0.5	mg/kg	EPA 8082		08/18/01	06/18/01
Aroclor 1221	< 0.5	mg/kg	EPA 8082		08/18/01	06/18/01
Aroclor 1232	< 0.5	mg/kg	EPA 8082		08/18/01	06/18/01
Aroclor 1242	< 0.5	mg/kg	EPA 8082		08/18/01	06/18/01
Aroclor 1248	< 0.5	mg/kg	EPA 8082		08/18/01	06/18/01
Aroclor 1254	< 0.5	mg/kg	EPA 8082		08/18/01	06/18/01
Aroclor 1260	< 0.5	mg/kg	EPA 8082		08/18/01	06/18/01
RCRA Metals						
Arsenic	1.2	mg/kg	EPA 200.8		08/18/01	06/18/01
Barium	48	mg/kg	EPA 200.8		08/18/01	06/18/01
Cadmium	< 2.5	mg/kg	EPA 200.8		08/18/01	06/18/01
Chromium	6.9	mg/kg	EPA 200.8		08/18/01	06/18/01
Lead	6.9	mg/kg	EPA 200.8		08/18/01	06/18/01
Mercury	0.1	mg/kg	EPA 200.8		08/18/01	06/18/01
Selenium	2.7	mg/kg	EPA 200.8		08/18/01	06/18/01
Silver	< 2.5	mg/kg	EPA 200.8		08/18/01	06/18/01
TCLP Metals						
Arsenic	< 0.5	mg/L	1311/200.8	5	08/15/01	06/19/01
Barium	< 10	mg/L	1311/200.8	100	08/15/01	06/18/01
Cadmium	< 0.1	mg/L	1311/200.8	1	08/15/01	06/18/01
Chromium	< 0.5	mg/L	1311/200.8	5	08/15/01	06/18/01
Lead	< 0.5	mg/L	1311/200.8	5	06/15/01	06/18/01
Mercury	< 0.1	mg/L	1311/200.8	0.2	08/18/01	06/19/01
Selenium	< 0.1	mg/L	1311/200.8	1	06/15/01	06/19/01
Silver	< 0.5	mg/L	1311/200.8	5	08/15/01	06/19/01

Reviewed By: 

Quality Assurance Chemist

Notes/Comments:

Results reported on an as received basis

ALEXANDRIA, VIRGINIA
PHOSPHOROUS
LOADING COMPUTATIONS

WORKSHEET A: NEW DEVELOPMENT

1. Compile site-specific data and determine site imperviousness (I_{site}).

POST-DEVELOPMENT

<p>A* - 15.58 acres</p> <p>I_a** structures - 4.90 acres</p> <p>parking lot - _____ acres</p> <p>roadway - 1.48 acres</p> <p>other (HARDWARE) - .37 acres</p> <p>- _____ acres</p> <p>- _____ acres</p> <p>Total I_a - 6.75 acres</p>	<p>$R_{v-post} = 0.05 + 0.009 (I_{site})$</p> <p>- 0.05 + 0.009 (44.33)</p> <p>- .449</p> <p>$R_{watershed}$ is embedded in the formula in Step 4.</p>
---	--

$$I_{site} = (Total I_a / A) \times 100$$

$$= 44.33 \text{ (percent expressed in whole numbers)}$$

*A is the total area of the site

** I_a is the total amount of impervious cover.

2. Determine need to continue.

<p>I_{site}</p> <p>$I_{watershed}$</p>	<p>- 44.33 % (from Step 1)</p> <p>- 41%</p>
--	---

If $I_{site} \leq I_{watershed}$ STOP and submit analysis to this point. WQV Default prevails. See p. 1-8 of the Alexandria Supplement.

If $I_{site} > I_{watershed}$ CONTINUE.

3. Select C-values (C_{pre} and C_{post}).

C = 0.26 mg/l when $I < 20$
 = 1.08 mg/l when $I \geq 20$

Since $I_{watershed}$ is > 20 , $C_{pre} = 1.08$ mg/l

WORKSHEET A: NEW DEVELOPMENT

4. Calculate the pre-development load (L_{pre}).

$$\begin{aligned} L_{Pre} &= 3.69 \times A \\ &= 3.69 \times \underline{15.58} \text{ Acres} \\ &= \underline{57.49} \text{ pounds per year} \end{aligned}$$

5. Calculate the post-development load (L_{post}).

$$\begin{aligned} L_{post} &= 8.16 \times R_v \times C \times A \\ &= 8.16 \times \underline{.449} \times \underline{1.08} \times \underline{15.58} \\ &= \underline{61.65} \text{ pounds per year} \end{aligned}$$

6. Calculate the pollutant removal requirement (RR).

$$\begin{aligned} RR &= L_{post} - L_{pre} \\ &= \underline{61.65} - \underline{57.49} \\ &= \underline{4.16} \text{ pounds per year} \end{aligned}$$

To determine the overall BMP efficiency required (%RR) when selecting BMP options:

$$\begin{aligned} \%RR &= RR/L_{post} \times 100 \\ &= (\underline{4.16}/\underline{61.65}) \times 100 \\ &= \underline{6.75} \% \end{aligned}$$

WORKSHEET G: COMPLIANCE

Select BMP options using screening tools and list them below. Then calculate the load removed for each option. DO NOT LIST BMPs IN SERIES HERE.

Selected Option	Removal* Efficiency x (% 100)	Fraction of CBPA Drainage Area Served (expressed in decimal form) x	L_{post} (lbs/yr)	Load Removed (lbs/yr)
SAND FILTERS				
2 BIO-RET. FILTER	<u>0.50</u>	(27% OF IMPERVIOUS AREA)	<u>61.65</u>	<u>8.32 lbs</u>
REGIONAL WET POND	<u>0.60</u>	(59% OF IMPERVIOUS AREA)	<u>61.65</u>	<u>21.82 lbs</u>
"	<u>0.60</u>	OFFSITE 100% (60 AC)	<u>64.45</u>	<u>38.67 lbs</u>
			<u>TOTAL</u>	<u>68.81 lbs > 10.14 lbs</u>

TOTAL REMOVAL REQ'D. = 4.74 lbs + 5.41 lbs = 10.14 lbs.

*For conventional BMPs, see Section IIa of the Northern Virginia BMP Handbook (NVBMPHB) published by the Northern Virginia Planning District Commission or Chapter 1 of the Alexandria Supplement to the NVBMPHB. For non-conventional BMPs, see Section IV, Chapter 1 of the Alexandria Supplement.

REGIONAL POND CALCULATIONS

60 ACRES OF OFFSITE & EXISTING DEVELOPMENT + 5 ACRES OF ONSITE DEVELOPMENT

19 ACRES WITH C FACTOR OF 0.76

46 ACRES @ HOUSING DEVELOPMENT ACROSS BELTWAY WITH C FACTOR OF 0.40

COMPOSITE C FACTOR = $(19/65 \times .76) + (46/65 \times .40) = 0.505$

REQUIRED STORAGE FOR FACTOR OF 0.505 = IMPERVIOUS FACTOR OF 0.37

STORAGE REQUIRED PER ACRE = 31.25 (37) = 1156.25

1156.25 (65 ACRES) = 75,150 CF FOR BMP

STORAGE PROVIDED = 75,150 CF

OFFSITE PHOSPHOROUS CALCULATION:

$8.16 \times .5045 \times 1.08 \times 60.0 = 64.45 \text{ lbs}$



City of Alexandria, Virginia

Department of
Transportation and Environmental Services

P. O. Box 178 - City Hall
Alexandria, Virginia 22313



December 5, 2001

Mr. Cyril D. Calley
Hart, Calley, Gibbs & Karp, P.C
307 North Washington Street
Alexandria, Virginia 22314-2557

Re.: Clemont Cove Apartment Development, DSUP 2001-0013
RPA Buffer Requirement Reduction and/or Exception

Dear Mr. Calley:

The Alexandria Zoning Ordinance (AZO) states that water dependent projects are allowed to encroach into Resource Protection Areas; however, this project is not a water dependent project, and encroachment into the RPAs is prohibited by Section 13-107 of the AZO. Therefore any encroachment into the RPAs on this site must be approved by the Director of T&ES as a buffer reduction under Section 13-109(B)(3)(a), or as an exception Section 13-120.

The Department of Transportation and Environmental Services, Division of Environmental Quality (DEQ) has reviewed your November 9, 2001 letter application and supporting documentation, which:

- (1) requests a reduction from 100 feet to 50 feet of the RPA buffer protecting streams 2, 3, and 5 within the project,
- (2) contests DEQ's determination that streams 1 and 4 are properly categorized as RPAs, and thus require buffer protection, and
- (3) in the alternative, requests a reduction and waiver of the RPA buffer from 100 feet to 10 feet as to stream 1, and from 100 feet to 0 feet as to stream 4.

Each of these requests is addressed below.

- Stream 1- Because Stream 1 is a wetland with surface flow to a tributary stream (Stream 5) the water feature and its buffers are considered RPAs under Section 13-105(B)(2), notwithstanding that the stream is not shown on the USGS map referenced in section 13-103(T). Encroachment

to 90 feet is not allowable under Section 13-109, and is denied under Section 13-120.

- Stream 2- Encroachment into the RPA buffer to 50 feet described by the application is incorrect. The encroachment on the most southern portion will be the entire 100-foot plus encroachment into the water feature by virtue of piping the watercourse and constructing a road on the surface. Encroachment into RPA buffer to 100 feet and piping of a tributary stream is not allowable under Section 13-109, and is denied under Section 13-120.
- Stream 3- Encroachment into the RPA buffer to 50 feet described by the application is incorrect. The encroachment on the most southern portion will be the entire 100-foot plus encroachment into the water feature by virtue of piping the watercourse and constructing a road on the surface. Encroachment into RPA buffer to 100 feet and piping of a tributary stream is not allowable under Section 13-109, and is denied under Section 13-120.
- Stream 4- Because Stream 4 is a wetland with surface flow to a tributary stream (Stream 5) the water feature and its buffers are considered RPAs under Section 13-105(B)(2), notwithstanding that the stream is not shown on the USGS map referenced in section 13-103(T). Encroachment into RPA buffer to 100 feet and destruction of 0.48 acres of the wetland is not allowable under Section 13-109, and is denied under Section 13-120.
- Stream 5- T&ES has stated consistently throughout review of this project and the previous project that it would entertain a maximum encroachment of 20-feet into required buffer, thereby easing constraints to develop this site by protecting only a minimum of existing trees on this highly vegetated site. It is possible that, even with a 20 foot reduction, the root damage done within the 20-foot encroachment will destroy many of the trees within the next 30-feet of the RPA buffer. Loss of those trees would result in a degradation of water quality and force urban wildlife to more dense confines around Stream 5 further exacerbating the degradation of Hunting Creek, which is listed on the EPA 303d degraded water bodies list. Encroachment into RPA buffer of Stream 5 beyond 20 feet pursuant to Section 13-109 is denied.

The request to encroach into the RPA is described in narration as only 50-feet or less for streams 2, 3, & 5. The plans, however, demonstrate that this is not the case for streams 2 and 3; the proposal will channel portions of both streams through pipes under a road crossing, thus encroaching extensively more than the 50-feet stated. There are also portions of the access road on the northern side of the buildings that encroach further than the 50-foot line for stream 5. An encroachment greater than 50-feet is not allowed at the discretion of the Director of T&ES under section 13-109. For this reason alone, the portions of the project shown to pipe Streams 2 and 3 and the encroachments greater than 50-feet for Stream 5 must be approved through the exception process outlined in Section 13-120.

The WQIA and your letter both state that Streams 1 and 4 are not tributary streams as defined in Section 13-103 (T) of the AZO. While this is true, these streams are wetlands connected by surface flow to Stream 5, a tributary stream as defined in Section 13-103(T). The WQIA describes Stream 1 and Stream 4 as a "Class III non-tidal with a mixture of water of the US and forested wetlands" as approved by the Army Corps of Engineers. The AZO in Section 13-105(B)(2) & -105(B)(5) defines Resource Protection Areas as both "Nontidal wetlands connected by surface flow and contiguous to tidal wetlands or tributary streams" and the 100-foot buffers adjacent to those wetlands. By this definition both Streams 1 and 4 are RPA features requiring that encroachment into these areas follow the requirements described in Article XIII of the AZO. The Chesapeake Bay Local Assistance Department (CBLAD), by both the enclosed letter addressing this particular site and the general published guidance (also enclosed), concurs with the inclusion of both streams 1 & 4 as RPA features. I hereby determine that both streams 1 & 4 are RPA features and are accorded the same protections of RPAs, and that encroachment into either the wetland or the buffer is subject to Article XIII of the AZO.

Under Section 13-109(B)(3)(a) there is no entitlement to a buffer reduction. See attached letter from CBLAD dated August 4, 1997. I find that the proposed landward BMPs and proposed 50 foot buffer adjacent to Stream 5 are inadequate under Section 13-109(B)(3)(a) and the CBLAD regulations. It is possible that, even with a 20 foot reduction, the root damage done within the 20-foot encroachment will destroy many of the trees within the next 30-feet of the RPA. Loss of those trees would result in a degradation of water quality and force urban wildlife to more dense confines around Stream 5 further exacerbating the degradation of Hunting Creek, which is listed on the EPA 303d degraded water bodies list. These adverse effects are assured with a 50 foot reduction. In addition, I note that recognition of the unique value of vegetated buffer areas in protecting the Chesapeake Bay Watershed is increasing. See Washington Post Metro Section, Monday, December 3, 2001.

With respect to the requested exceptions under Section 13-120, I find that you have failed to meet your burden of proof under the criteria listed in Sections 13-120(B)(2), -120(B)(3), -120(B)(4) and -120(B)(5).

In particular, I find that the condition is self-created and self-imposed. The existing parcel, the Norfolk Southern right-of-way, is substantially larger and the larger parcel is proposed to be subdivided to create a new parcel for this development. The act of creating a parcel the development of which requires an exception to the provisions of the Chesapeake Bay Preservation Act and AZO is directly contrary to the Act and AZO Section 13-120(B)(2). CBLAD concurs in this determination. See letter dated September 12, 2001. The fact that the resulting parcel may be elongated in shape does not negate the fact that the condition is self-created and self-imposed, and thus this resulting parcel does not qualify for relief under Section 13-120(B)(5).

In addition, I find you have failed to demonstrate by a preponderance of the evidence that the exceptions requested are the minimum necessary to afford relief, and that the

application of the regulations in question would effectively prohibit or unreasonably restrict the utilization of the property or would constitute a clearly demonstrable hardship approaching confiscation, as required under Sections 13-120(B)(3) and -120(B)(5). The property has long been utilized as railroad right-of-way. There is no evidence that such utilization is no longer suitable or economic. There is no evidence or analysis of alternative, less intrusive developments. The appraiser's evidence is vague and speculative: "reduction in developable area . . . without a waiver could so reduce density, restrict usable areas and increase the development and engineering costs." The appraiser's suggestion that a reduction in developable area "more than likely will certainly impact the highest and best use of the land" mischaracterizes the controlling law. The land is currently zoned UT/Utilities and Transportation Zone, under which the proposed use is prohibited. The proposed use requires a rezoning. By definition, the highest and best use is either permitted under the current zoning, or under a change in zoning that is reasonably probable of achievement. There is no support for the proposition that a use which requires both a rezoning and substantial waivers and modifications under the new zoning meets the applicable test.

Lastly, I find that the exceptions requested are inconsistent with the purpose and intent of the Act and AZO, and will be injurious to water quality and detrimental to the public welfare, contrary to Section 13-120(B)(4). The loss of existing trees would result in a degradation of water quality and force urban wildlife to more dense confines further exacerbating the degradation of Hunting Creek, which is listed on the EPA 303d degraded water bodies list.

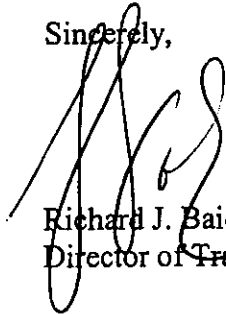
Accordingly, I conclude that the application for exceptions under Section 13-120 must be, and is, denied.

As a final matter, DEQ has noted the following errors, omissions and deficiencies in the WQIA as submitted. Collectively, these items constitute an independent grounds for denial of the present application.

- 1) DEQ has done a rough calculation to determine the extent of encroachments; those numbers were substantially greater than the 2.02 acres cited in the WQIA. See enclosed Tables.
- 2) The proposed project does not meet the requirements of Section 13-117 (B) of the AZO regarding treating 100% of the Water Quality Volume default.
- 3) On page 6 under Hydrology it is stated that 140-feet of stream will be piped; however, only 80-feet of piping is described.
- 4) On page 7 it states that there will be no disruptions to the supply of water to wetlands, etc. With respect to Stream 1, if as suggested the roof drains are to be piped to the nearest bio-retention filter any water that might have flowed westerly into the wetland will no longer do so.
- 5) The WQIA contains discrepancies regarding RPA encroachments requested and illustrated, i.e., 50-foot encroachments are requested for Streams 2, 3, and 5 whereas a much greater encroachment is depicted in the drawings.

This letter constitutes a final case decision, and may be appealed within 14 days of issuance to the Planning Commission, as provided under Section 13-121 of the AZO.

Sincerely,

A handwritten signature in black ink, appearing to be 'R. Baier', written over the printed name.

Richard J. Baier, P.E.
Director of Transportation and Environmental Services

Enclosure

Cc: I. Pessoa
E. Baker
W. Skrabak
K. Johnson
B. Hicks
G. Byrd
G. Tate
A. Morse, Bowman Consulting Group
W. Ellen, EnviroData
S. Smith, CBLAD

Clermont Cove Apartment Development
City Of Alexandria
RPA Encroachment Estimates for WQIA revised November 9, 2001

DEQ estimates the following as the encroachments illustrated in the plans included with the WQIA:

Encroachment	Length	Width	Area
	feet	feet	acre
Stream 2			
East	200	60	2.75
East-Road	25	100	0.06
West	155	45	0.16
West-Road	25	100	0.06
Stream 3			
East	195	45	0.20
East-Road	30	100	0.07
West	175	45	0.18
West-Road	30	100	0.07
Stream 5			
Bldg - East	600	45	0.62
Bldg - Middle	645	45	0.67
Bldg - West	270	45	0.28
Total			2.64
			acres
Encroachment	Length	Width	Area
	feet	Feet	acre
Stream 4			
East	140	80	0.26
East-Road	30	100	0.07
West	30	100	0.07
Stream 1			
East	240	35	0.19
Total			0.59
			acres



COMMONWEALTH of VIRGINIA
CHESAPEAKE BAY LOCAL ASSISTANCE DEPARTMENT

James S. Gilmore, II
Governor
John Paul Woodley, Jr.
Secretary of Natural Resources

James Monroe Building
101 North 14th Street, 17th Floor
Richmond, Virginia 23219
FAX: (804) 225-3447

Michael D. Clower
Executive Director

(804) 225-3440
1-800-243-7229 Voice/TDD

September 12, 2001

Mr. William D. Hicks, P.E., Watershed Program Administrator
City of Alexandria, Department of Transportation and Environmental Services
P.O. Box 178 - City Hall
Alexandria, Virginia 22313

RE: **Clermont Cove Apartments Development Project**
CBLAD Project Review No. LSPR-501-01-01

Dear Mr. Hicks: Bill

As you requested, we have reviewed the site plans and accompanying materials for the proposed Clermont Cove Apartments in the City of Alexandria. The following are our comments and recommendations.

The proposed development would entail the construction of 519 apartment units and two parking structures on a 15.65-acre site. The applicant has also has requested a reduction in the number of parking spaces from 1092 to 967 spaces. As currently designed, the proposed development would encroach upon the landward 50 feet of the 100-foot Resource Protection Area (RPA) buffer component for nearly the entire length of the RPA and obliterate the entire RPA along stream #3 as indicated on Sheets 9 and 10 of 24. A Water Quality Impact Assessment (WQIA) was submitted for review in conjunction with the request to encroach into the landward 50 feet of the buffer area, but does not include a request to completely obliterate the RPA adjacent to stream #3.

Note Number 1 on Plan Sheet 1 of 24 refers to the fact that this property is part of two different parcels, which raises the question as to whether the applicant is getting a re-subdivision to create one new parcel. If this is the case, the City should not approve a new lot that cannot accommodate development without encroaching into the RPA. Also, the City should not approve the rezoning of these parcels knowing at the outset that this would require encroachments into the RPA. By approving both the re-subdivision and the rezoning requests, the City will be placing itself in a position whereby it must approve the proposed development. The Chesapeake Bay Preservation Area Designation and Management Regulations and the City's current Bay Act Ordinance allow only water-dependent, redevelopment, and specifically exempted activities in RPAs. The applicant has not demonstrated why a more efficient use of land on the parcel cannot be accomplished so as to avoid the encroachment into the RPA i.e., placement of the parking lots underneath the planned buildings, heightening the buildings, or placing the swimming pool on the roof of the building.

An Agency of the Natural Resources Secretariat

Mr. Hicks
September 12, 2001
Page 2 of 2

The City's current Bay Act ordinance includes a provision that permits the director of transportation and environmental services to reduce the buffer to 50 feet under certain circumstances [see § 13-109(3)(a)]. The applicant further also requests a waiver of the stormwater criteria, required for development within Chesapeake Bay Preservation Areas (by note on Sheet 8 Of 24). The Department believes that granting such waivers would be inconsistent with the intent of the Act and Regulations and has provided the City with a letter outlining our concerns in 1997 (copy enclosed).

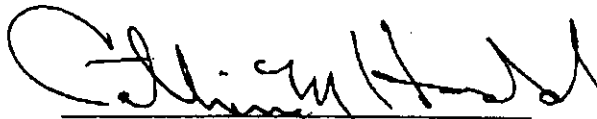
The Department concurs that the applicant should supply the City with the list of additional information requested by the City in its correspondence of July 13, 2001. The additional information is necessary to adequately evaluate the impacts of the proposed project on water quality, including impacts to the RPA. The City's Chesapeake Bay Preservation Area map indicates an RPA along stream #3 as do the site plans dated August 3, 2001. The WQIA indicates that this stream is not an RPA, but does not provide the justification for this determination. Also, the RPA buffer area as shown on the ESI Peer Review, sheet 5 of 6, is incorrectly delineated from the centerline of the stream and not the edge of the stream or stream bank as required under the Regulations and the City's Bay Act ordinance.

The sheets show clearing activities within the landward 50 feet of the buffer area, nearly the entire length of the property, yet the Buffer Equivalency worksheet on Sheet 8, shows an average undisturbed buffer area of 65 feet average. It does not appear that this average is appropriate, given the clearing limits shown on the plan sheets. It is not clear whether the buffer equivalency calculations take into account the reduction of the RPA along stream #2 and the obliteration of the entire buffer along stream #3.


The two nontidal wetland areas shown on the eastern and western portions of the project site, are eligible for inclusion as RPA components under the "other lands" provision as noted under Information Bulletin #6. While the designation of these areas as RPAs is not required under the Department's current guidance, the Department does encourage such areas to be protected through the designation of RPAs.

We appreciate the opportunity to provide our comments on this project. Please do not hesitate to contact us at 1-800-CHESBAY should you have any questions.

Sincerely,



Catherine M. Harold
Environmental Engineer



Shawn E. Smith
Principal Environmental Planner

Cc: Scott Crafton, CBLAD
Martha H. Little, CBLAD



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COMMONWEALTH of VIRGINIA
CHESAPEAKE BAY LOCAL ASSISTANCE DEPARTMENT

George Allen
Governor

Becky Norton Dunlop
Secretary of Natural Resources

805 East Broad Street, Suite 701
Richmond, Virginia 23219
Fax (804) 225-3447

August 4, 1997

Michael D. Clower
Executive Director

(804) 225-3440
1-800-243-7229 Voice/TDD

Mr. Warren Bell, PE
City Engineer/Deputy Director
Transportation & Environmental Services
City Hall
Post Office Box 178
Alexandria, Virginia 22313

Dear Mr. Bell:

In the course of investigating the citizen complaint relating to the parking lot development for the First Baptist Church in the City, the Department understood that the City routinely "reduces" the width of the 100-foot buffer to 50 feet for projects that incorporate water quality Best Management Practices (BMPs) that meet the pollutant removal requirements of the full 100-foot buffer.

Section 7-6-409.B(3) of the City's Environmental Management Code allows for the buffer to be "...reduced to 50 feet if the Director determines that a combination of a smaller buffer and appropriate BMPs located landward of the buffer achieves a 75% reduction of the sediment and a 40% reduction in nutrients." This section appears to follow § 9VAC10-20-130.B of the Regulations which states in part:

Except as noted in this subsection, a combination of a buffer area not less than 50 feet in width and appropriate best management practices which collectively achieve water quality protection, pollutant removal and water resource conservation, may be employed in lieu of the 100-foot buffer.

It is the Department's position, however, that all pertinent sections of the Regulations regarding the buffer area must be taken into account to arrive at a correct interpretation of what is permitted. First and foremost, a buffer area of not less than 100 feet in width is the landward component of the RPA (§9VAC10-20-80 of the Regulations), as measured from the landward edge of other RPA components such as wetlands, shores, and streams. The actual width of the other RPA components (wetlands, shores, and streams) may be determined based on site-specific field evaluations, and as a result, the width of those components may fluctuate (§ 9VAC10-20-110.B). However, the buffer area always remains 100 feet in width as measured from any point along the edge of the wetlands, shores, or streams in delineating the landward edge of the RPA. The buffer area also remains 100 feet in width regardless of the presence of permitted uses or equivalent water quality protection measures (§ 9VAC10-20-80.B.5), as described below.

The types of development or uses which are allowed in the RPA are specified in § 9VAC10-20-130.A, which clearly states that land development may be allowed only if it (i) is water

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Mr. Warren Bell
August 4, 1997
Page 2

dependent or (ii) constitutes redevelopment.

Section 9VAC10-20-130.B relates solely to the water quality function performed by the full 100-foot buffer area and not the uses described above. According to the Regulations, a 100-foot buffer area shall be retained if present and established where it does not exist. A combination of a buffer area not less than 50 feet in width and appropriate best management practices located landward of the buffer area which achieve water quality protection equivalent to the 100-foot buffer area may be employed. However, any permitted modifications to the buffer and the situations to which they apply are subsequently noted under Sections 9VAC10-20-130.B.1 through 4. [See under § 9VAC10-20-130.B: "Except as noted in this subsection, a combination of....." (emphasis added)].

Section 9VAC-10-20-130.B does not allow the buffer to be modified by right for the purposes of establishing a use, such as a new principal structure, with or without equivalent water quality measures. Furthermore, § 9VAC10-20-130.B in no way alters or modifies the permitted uses specified under § 9VAC10-20-130.A.

Section 9VAC10-20-130.B.2 specifies the primary situation where buffer modifications and equivalent measures may be applicable, which states:

"When the application of the buffer area would result in the loss of a buildable area on a lot or parcel recorded prior to October 1, 1989, modifications to the width of the buffer area may be allowed in accordance with the following criteria....."

Based on the appropriate sections of the Regulations, the Department does not believe that the City's practice of administratively allowing a reduction of the buffer to 50 feet with water quality BMPs, under § 7-6-409.B(3) of the City's Environmental Management Code is consistent with the Department's interpretation of the authority granted to localities, or with previous interpretive guidance issued by the Department. (See Information Bulletin #10 and Local Assistance Manual pp. IV-46, IV-50, and IV-51)

I hope this information clarifies CBLAD's position on this issue. If you have any questions regarding this letter, or need any additional assistance, please call either Shawn Smith or myself at 1-800-243-7229.

Sincerely,



Scott Kudlas
Chief of Planning Assistance

c: Ms. Shawn Smith, AICP
Mr. Michael Clower



City of Alexandria, Virginia
Alexandria Environmental Policy Commission
P. O. Box 178
Alexandria, Virginia 22313

#9-A Appeal
#9-B Rezoning 2001-0004
#9-C DSUP 2001-0013



January 29, 2002

Eric R. Wagner, Chair
Alexandria City Planning Commission
7 West Windsor Avenue
Alexandria, VA 22301

Re: Clermont Cove Development Special Use Permit with Site Plan (SDUP) #2001-0013

Dear Mr. Wagner:

On behalf of the Alexandria Environmental Policy Commission (EPC), I am writing to advise you of the EPC's position on the proposed Clermont Cove development projected for appeal and possible public hearing before the Planning Commission on February 5, 2002.

At the EPC's January 28, 2002 meeting, the EPC approved the attached resolution on this issue. Based on the information provided to the EPC by the Department of Transportation and Environmental Services and the Clermont Cove developers, the request for a Special Use Permit should be denied. The denial should be based on the following grounds, among others:

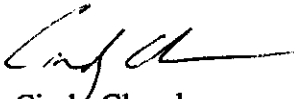
1. The proposed development does not meet the goals of the Chesapeake Bay Preservation Act and the Water Quality Management Supplement to the City's Master Plan relating to Resource Protection Areas (RPAs). As stated in these documents, RPAs are environmentally valuable due to their benefits to water quality. The City has committed to protecting RPAs.
2. The proposal appears to conflict with the concerns for preservation of open space in the City as identified in the June 1998 Quality of Life Report.
3. T&ES has repeatedly told the developers that encroachment into required buffers for Resource Protection Areas around five streams within the boundaries of the proposed project should be minimized. The amount of encroachment in the buffers has increased in some cases and has been reduced only incrementally in others, but all the encroachments are unallowable or denied by the Alexandria Zoning Ordinance (AZO). Details of the encroachments and their interpretation under the AZO are available in the December 5, 2001, letter to Cyril D. Calley from Richard J. Baier (attached).

Eric Wagner
January 29, 2002
Page 2

4. The applicant has not demonstrated why a more efficient use of land on the parcel cannot be accomplished to avoid encroachment into the RPA.
5. The exceptions requested by the developers are inconsistent with the Chesapeake Bay Preservation Act and the AZO and will be detrimental to water quality and public welfare.

The proposed development will not benefit Alexandria's environment and should be denied. I will be happy to discuss this letter with you. Thank you for your consideration.

Sincerely,



Cindy Chambers
Chair, Environmental Policy Commission

cc: Honorable Mayor Kerry Donley and Members of City Council
Phil Sunderland, City Manager
Richard Baier, Director, Department of Transportation and Environmental Services
Eileen Fogarty, Department of Planning and Zoning
William Ellen, Envirodata, Inc.
Cyril Calley, Hart, Calley, Gibbs & Karp, P.C.
EPC Members

**ENVIRONMENTAL POLICY COMMISSION (EPC) RESOLUTION
RE: CLERMONT COVE APARTMENT DEVELOPMENT
JANUARY 28, 2002**

THE FOLLOWING RESOLUTION WAS ADOPTED BY THE EPC AT THE JANUARY 28, 2002 MEETING OF THE ENVIRONMENTAL POLICY COMMISSION.

WHEREAS, the City has enacted a number of ordinances and regulations, including the City's Chesapeake Bay Preservation Ordinance (Section 13-100 of the City Code), to protect the environment and water quality from the impacts of development and human activity, and

WHEREAS, the City's Environmental Policy Commission's function is to advise and make recommendations to the City Council, and where appropriate, the Planning Commission and City Manager, on matters relating to conservation and protection of environmental conditions in the City, and

WHEREAS, the Ordinance establishes a program to protect environmentally sensitive features which, when disturbed or developed, lead to reductions in water quality, and

WHEREAS, under the Chesapeake Bay Program, Resource Protection Areas (RPAs) are established which are lands at or near the shoreline containing components which are especially sensitive because of (1) the intrinsic value of the ecological and biological processes they perform which benefit water quality or (2) the potential for impacts that may cause significant degradation to the quality of State waters, and

WHEREAS, as currently designed, the developer of the Clermont Cove Apartment development proposes to build 519 multi-family dwelling units, two parking garages plus surface parking on a 15.58 acre site that is situated between an industrial park and railroad tracks, is heavily wooded with mature trees, has five streams running through the site and is an environmentally sensitive area consisting mostly of Resource Protection Areas (RPAs) adjacent to the five streams and a wetland feature, and

WHEREAS, as currently designed and based on the November 9, 2001 application from the developer, the proposed Clermont Cove development requests a reduction in the RPA to encroach 50 feet into the 100 foot RPA buffer for 3 of the 5 streams within the project, contests the City staff's determination that 2 streams are properly categorized as RPAs and require buffer protection, and alternatively requests a reduction and waiver of the RPA buffer from 100 feet to 10 feet for one stream and to 0 feet for the second stream, and

WHEREAS, at its October 15, 2001 meeting, the EPC passed a motion stating that: (1) the proposed development does not appear to meet the goals of the Chesapeake Bay Preservation Ordinance and the Water Quality Management Supplement to the City's Master Plan relating to Resource Protection Areas; and (2) the proposal appears to conflict with the concerns for preservation of open space in the City as identified in the June 1998 Quality of Life Report, and

WHEREAS, in a letter dated December 5, 2001, the Director of Transportation and Environmental Services denied the applicant's request for encroachments into the RPAs of the five on-site streams under Sections 13-109 and 13-120 of the City Zoning Ordinance citing that the encroachments were not permissible under Section 13-109 and the hardship under 13-120 was not justified.

THEREFORE, BE IT RESOLVED that the EPC supports the denial of the exception request by the Director of Transportation and Environmental Services as outlined in the December 5, 2001 letter on the Clermont Cove development, recommends that the Planning Commission deny the appeal of the Director's decision, and authorizes the EPC chair or her designee to appear before the Planning Commission at the Public hearing on this matter, and subsequently at the City Council Meeting if the Director's decision is further appealed to City Council, and

BE IT FURTHER RESOLVED, should the Planning Commission approve the appeal, the EPC authorizes the EPC Chair or her designee, to appear at the public hearing on this matter.



Cindy Chambers

Chair, Environmental Policy Commission



City of Alexandria, Virginia
Department of
Transportation and Environmental Services
P. O. Box 178 - City Hall
Alexandria, Virginia 22313



December 5, 2001

Mr. Cyril D. Calley
Hart, Calley, Gibbs & Karp, P.C
307 North Washington Street
Alexandria, Virginia 22314-2557

Re.: Clemont Cove Apartment Development, DSUP 2001-0013
RPA Buffer Requirement Reduction and/or Exception

Dear Mr. Calley:

The Alexandria Zoning Ordinance (AZO) states that water dependent projects are allowed to encroach into Resource Protection Areas; however, this project is not a water dependent project, and encroachment into the RPAs is prohibited by Section 13-107 of the AZO. Therefore any encroachment into the RPAs on this site must be approved by the Director of T&ES as a buffer reduction under Section 13-109(B)(3)(a), or as an exception Section 13-120.

The Department of Transportation and Environmental Services, Division of Environmental Quality (DEQ) has reviewed your November 9, 2001 letter application and supporting documentation, which:

- (1) requests a reduction from 100 feet to 50 feet of the RPA buffer protecting streams 2, 3, and 5 within the project,
- (2) contests DEQ's determination that streams 1 and 4 are properly categorized as RPAs, and thus require buffer protection, and
- (3) in the alternative, requests a reduction and waiver of the RPA buffer from 100 feet to 10 feet as to stream 1, and from 100 feet to 0 feet as to stream 4.

Each of these requests is addressed below.

- Stream 1- Because Stream 1 is a wetland with surface flow to a tributary stream (Stream 5) the water feature and its buffers are considered RPAs under Section 13-105(B)(2), notwithstanding that the stream is not shown on the USGS map referenced in section 13-103(T). Encroachment

to 90 feet is not allowable under Section 13-109, and is denied under Section 13-120.

- Stream 2- Encroachment into the RPA buffer to 50 feet described by the application is incorrect. The encroachment on the most southern portion will be the entire 100-foot plus encroachment into the water feature by virtue of piping the watercourse and constructing a road on the surface. Encroachment into RPA buffer to 100 feet and piping of a tributary stream is not allowable under Section 13-109, and is denied under Section 13-120.
- Stream 3- Encroachment into the RPA buffer to 50 feet described by the application is incorrect. The encroachment on the most southern portion will be the entire 100-foot plus encroachment into the water feature by virtue of piping the watercourse and constructing a road on the surface. Encroachment into RPA buffer to 100 feet and piping of a tributary stream is not allowable under Section 13-109, and is denied under Section 13-120.
- Stream 4- Because Stream 4 is a wetland with surface flow to a tributary stream (Stream 5) the water feature and its buffers are considered RPAs under Section 13-105(B)(2), notwithstanding that the stream is not shown on the USGS map referenced in section 13-103(T). Encroachment into RPA buffer to 100 feet and destruction of 0.48 acres of the wetland is not allowable under Section 13-109, and is denied under Section 13-120.
- Stream 5- T&ES has stated consistently throughout review of this project and the previous project that it would entertain a maximum encroachment of 20-feet into required buffer, thereby easing constraints to develop this site by protecting only a minimum of existing trees on this highly vegetated site. It is possible that, even with a 20 foot reduction, the root damage done within the 20-foot encroachment will destroy many of the trees within the next 30-feet of the RPA buffer. Loss of those trees would result in a degradation of water quality and force urban wildlife to more dense confines around Stream 5 further exacerbating the degradation of Hunting Creek, which is listed on the EPA 303d degraded water bodies list. Encroachment into RPA buffer of Stream 5 beyond 20 feet pursuant to Section 13-109 is denied.

The request to encroach into the RPA is described in narration as only 50-feet or less for streams 2, 3, & 5. The plans, however, demonstrate that this is not the case for streams 2 and 3; the proposal will channel portions of both streams through pipes under a road crossing, thus encroaching extensively more than the 50-feet stated. There are also portions of the access road on the northern side of the buildings that encroach further than the 50-foot line for stream 5. An encroachment greater than 50-feet is not allowed at the discretion of the Director of T&ES under section 13-109. For this reason alone, the portions of the project shown to pipe Streams 2 and 3 and the encroachments greater than 50-feet for Stream 5 must be approved through the exception process outlined in Section 13-120.

The WQLA and your letter both state that Streams 1 and 4 are not tributary streams as defined in Section 13-103 (T) of the AZO. While this is true, these streams are wetlands connected by surface flow to Stream 5, a tributary stream as defined in Section 13-103(T). The WQLA describes Stream 1 and Stream 4 as a "Class III non-tidal with a mixture of water of the US and forested wetlands" as approved by the Army Corps of Engineers. The AZO in Section 13-105(B)(2) & -105(B)(5) defines Resource Protection Areas as both "Nontidal wetlands connected by surface flow and contiguous to tidal wetlands or tributary streams" and the 100-foot buffers adjacent to those wetlands. By this definition both Streams 1 and 4 are RPA features requiring that encroachment into these areas follow the requirements described in Article XIII of the AZO. The Chesapeake Bay Local Assistance Department (CBLAD), by both the enclosed letter addressing this particular site and the general published guidance (also enclosed), concurs with the inclusion of both streams 1 & 4 as RPA features. I hereby determine that both streams 1 & 4 are RPA features and are accorded the same protections of RPAs, and that encroachment into either the wetland or the buffer is subject to Article XIII of the AZO.

Under Section 13-109(B)(3)(a) there is no entitlement to a buffer reduction. See attached letter from CBLAD dated August 4, 1997. I find that the proposed landward BMPs and proposed 50 foot buffer adjacent to Stream 5 are inadequate under Section 13-109(B)(3)(a) and the CBLAD regulations. It is possible that, even with a 20 foot reduction, the root damage done within the 20-foot encroachment will destroy many of the trees within the next 30-feet of the RPA. Loss of those trees would result in a degradation of water quality and force urban wildlife to more dense confines around Stream 5 further exacerbating the degradation of Hunting Creek, which is listed on the EPA 303d degraded water bodies list. These adverse effects are assured with a 50 foot reduction. In addition, I note that recognition of the unique value of vegetated buffer areas in protecting the Chesapeake Bay Watershed is increasing. See Washington Post Metro Section, Monday, December 3, 2001.

With respect to the requested exceptions under Section 13-120, I find that you have failed to meet your burden of proof under the criteria listed in Sections 13-120(B)(2), -120(B)(3), -120(B)(4) and -120(B)(5).

In particular, I find that the condition is self-created and self-imposed. The existing parcel, the Norfolk Southern right-of-way, is substantially larger and the larger parcel is proposed to be subdivided to create a new parcel for this development. The act of creating a parcel the development of which requires an exception to the provisions of the Chesapeake Bay Preservation Act and AZO is directly contrary to the Act and AZO Section 13-120(B)(2). CBLAD concurs in this determination. See letter dated September 12, 2001. The fact that the resulting parcel may be elongated in shape does not negate the fact that the condition is self-created and self-imposed, and thus this resulting parcel does not qualify for relief under Section 13-120(B)(5).

In addition, I find you have failed to demonstrate by a preponderance of the evidence that the exceptions requested are the minimum necessary to afford relief, and that the

application of the regulations in question would effectively prohibit or unreasonably restrict the utilization of the property or would constitute a clearly demonstrable hardship approaching confiscation, as required under Sections 13-120(B)(3) and -120(B)(5). The property has long been utilized as railroad right-of-way. There is no evidence that such utilization is no longer suitable or economic. There is no evidence or analysis of alternative, less intrusive developments. The appraiser's evidence is vague and speculative: "reduction in developable area . . . without a waiver could so reduce density, restrict usable areas and increase the development and engineering costs." The appraiser's suggestion that a reduction in developable area "more than likely will certainly impact the highest and best use of the land" mischaracterizes the controlling law. The land is currently zoned UT/Utilities and Transportation Zone, under which the proposed use is prohibited. The proposed use requires a rezoning. By definition, the highest and best use is either permitted under the current zoning, or under a change in zoning that is reasonably probable of achievement. There is no support for the proposition that a use which requires both a rezoning and substantial waivers and modifications under the new zoning meets the applicable test.

Lastly, I find that the exceptions requested are inconsistent with the purpose and intent of the Act and AZO, and will be injurious to water quality and detrimental to the public welfare, contrary to Section 13-120(B)(4). The loss of existing trees would result in a degradation of water quality and force urban wildlife to more dense confines further exacerbating the degradation of Hunting Creek, which is listed on the EPA 303d degraded water bodies list.

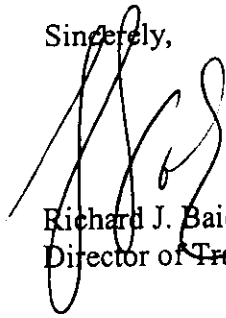
Accordingly, I conclude that the application for exceptions under Section 13-120 must be, and is, denied.

As a final matter, DEQ has noted the following errors, omissions and deficiencies in the WQIA as submitted. Collectively, these items constitute an independent grounds for denial of the present application.

- 1) DEQ has done a rough calculation to determine the extent of encroachments; those numbers were substantially greater than the 2.02 acres cited in the WQIA. See enclosed Tables.
- 2) The proposed project does not meet the requirements of Section 13-117 (B) of the AZO regarding treating 100% of the Water Quality Volume default.
- 3) On page 6 under Hydrology it is stated that 140-feet of stream will be piped; however, only 80-feet of piping is described.
- 4) On page 7 it states that there will be no disruptions to the supply of water to wetlands, etc. With respect to Stream 1, if as suggested the roof drains are to be piped to the nearest bio-retention filter any water that might have flowed westerly into the wetland will no longer do so.
- 5) The WQIA contains discrepancies regarding RPA encroachments requested and illustrated, i.e., 50-foot encroachments are requested for Streams 2, 3, and 5 whereas a much greater encroachment is depicted in the drawings.

This letter constitutes a final case decision, and may be appealed within 14 days of issuance to the Planning Commission, as provided under Section 13-121 of the AZO.

Sincerely,

A handwritten signature in black ink, appearing to be 'R. Baier', written over the printed name.

Richard J. Baier, P.E.

Director of Transportation and Environmental Services

Enclosure

Cc: I. Pessoa
E. Baker
W. Skrabak
K. Johnson
B. Hicks
G. Byrd
G. Tate
A. Morse, Bowman Consulting Group
W. Ellen, EnviroData
S. Smith, CBLAD

Clermont Cove Apartment Development
City Of Alexandria
RPA Encroachment Estimates for WQIA revised November 9, 2001

DEQ estimates the following as the encroachments illustrated in the plans included with the WQIA:

Encroachment	Length	Width	Area
	feet	feet	acre
Stream 2			
East	200	60	2.75
East-Road	25	100	0.06
West	155	45	0.16
West-Road	25	100	0.06
Stream 3			
East	195	45	0.20
East-Road	30	100	0.07
West	175	45	0.18
West-Road	30	100	0.07
Stream 5			
Bldg - East	600	45	0.62
Bldg - Middle	645	45	0.67
Bldg - West	270	45	0.28
Total			2.64

Encroachment	Length	Width	Area
	feet	Feet	acre
Stream 4			
East	140	80	0.26
East-Road	30	100	0.07
West	30	100	0.07
Stream 1			
East	240	35	0.19
Total			0.59



COMMONWEALTH of VIRGINIA
CHESAPEAKE BAY LOCAL ASSISTANCE DEPARTMENT

James S. Gilmore, III
Governor
John Paul Woodley, Jr.
Secretary of Natural Resources

James Monroe Building
101 North 14th Street, 17th Floor
Richmond, Virginia 23219
FAX: (804) 225-3447

Michael D. Clower
Executive Director
(804) 225-3440
1-800-243-7229 Voice/TDD

September 12, 2001

Mr. William D. Hicks, P.E., Watershed Program Administrator
City of Alexandria, Department of Transportation and Environmental Services
P.O. Box 178 - City Hall
Alexandria, Virginia 22313

RE: **Clermont Cove Apartments Development Project**
CBLAD Project Review No. LSPR-501-01-01

Dear Mr. Hicks: *Bill*

As you requested, we have reviewed the site plans and accompanying materials for the proposed Clermont Cove Apartments in the City of Alexandria. The following are our comments and recommendations.

The proposed development would entail the construction of 519 apartment units and two parking structures on a 15.65-acre site. The applicant has also has requested a reduction in the number of parking spaces from 1092 to 967 spaces. As currently designed, the proposed development would encroach upon the landward 50 feet of the 100-foot Resource Protection Area (RPA) buffer component for nearly the entire length of the RPA and obliterate the entire RPA along stream #3 as indicated on Sheets 9 and 10 of 24. A Water Quality Impact Assessment (WQIA) was submitted for review in conjunction with the request to encroach into the landward 50 feet of the buffer area, but does not include a request to completely obliterate the RPA adjacent to stream #3.

Note Number 1 on Plan Sheet 1 of 24 refers to the fact that this property is part of two different parcels, which raises the question as to whether the applicant is getting a re-subdivision to create one new parcel. If this is the case, the City should not approve a new lot that cannot accommodate development without encroaching into the RPA. Also, the City should not approve the rezoning of these parcels knowing at the outset that this would require encroachments into the RPA. By approving both the re-subdivision and the rezoning requests, the City will be placing itself in a position whereby it must approve the proposed development. The Chesapeake Bay Preservation Area Designation and Management Regulations and the City's current Bay Act Ordinance allow only water-dependent, redevelopment, and specifically exempted activities in RPAs. The applicant has not demonstrated why a more efficient use of land on the parcel cannot be accomplished so as to avoid the encroachment into the RPA i.e., placement of the parking lots underneath the planned buildings, heightening the buildings, or placing the swimming pool on the roof of the building.

An Agency of the Natural Resources Secretariat

Mr. Hicks
September 12, 2001
Page 2 of 2

The City's current Bay Act ordinance includes a provision that permits the director of transportation and environmental services to reduce the buffer to 50 feet under certain circumstances [see § 13-109(3)(a)]. The applicant further also requests a waiver of the stormwater criteria, required for development within Chesapeake Bay Preservation Areas (by note on Sheet 8 Of 24). The Department believes that granting such waivers would be inconsistent with the intent of the Act and Regulations and has provided the City with a letter outlining our concerns in 1997 (copy enclosed).

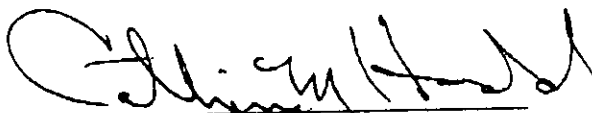
The Department concurs that the applicant should supply the City with the list of additional information requested by the City in its correspondence of July 13, 2001. The additional information is necessary to adequately evaluate the impacts of the proposed project on water quality, including impacts to the RPA. The City's Chesapeake Bay Preservation Area map indicates an RPA along stream #3 as do the site plans dated August 3, 2001. The WQIA indicates that this stream is not an RPA, but does not provide the justification for this determination. Also, the RPA buffer area as shown on the ESI Peer Review, sheet 5 of 6, is incorrectly delineated from the centerline of the stream and not the edge of the stream or stream bank as required under the Regulations and the City's Bay Act ordinance.

The sheets show clearing activities within the landward 50 feet of the buffer area, nearly the entire length of the property, yet the Buffer Equivalency worksheet on Sheet 8, shows an average undisturbed buffer area of 65 feet average. It does not appear that this average is appropriate, given the clearing limits shown on the plan sheets. It is not clear whether the buffer equivalency calculations take into account the reduction of the RPA along stream #2 and the obliteration of the entire buffer along stream #3.

The two nontidal wetland areas shown on the eastern and western portions of the project site, are eligible for inclusion as RPA components under the "other lands" provision as noted under Information Bulletin #6. While the designation of these areas as RPAs is not required under the Department's current guidance, the Department does encourage such areas to be protected through the designation of RPAs.

We appreciate the opportunity to provide our comments on this project. Please do not hesitate to contact us at 1-800-CHESBAY should you have any questions.

Sincerely,



Catherine M. Harold
Environmental Engineer



Shawn E. Smith
Principal Environmental Planner

Cc: Scott Crafton, CBLAD
Martha H. Lirtle, CBLAD



COMMONWEALTH of VIRGINIA

CHESAPEAKE BAY LOCAL ASSISTANCE DEPARTMENT

George Allen
Governor

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Fax (804) 225-3447

August 4, 1997

Michael D. Clower
Executive Director

Becky Norton Dunlop
Secretary of Natural Resources

(804) 225-3440
1-800-243-7229 Voice/TDD

Mr. Warren Bell, PE
City Engineer/Deputy Director
Transportation & Environmental Services
City Hall
Post Office Box 178
Alexandria, Virginia 22313

Dear Mr. Bell:

In the course of investigating the citizen complaint relating to the parking lot development for the First Baptist Church in the City, the Department understood that the City routinely "reduces" the width of the 100-foot buffer to 50 feet for projects that incorporate water quality Best Management Practices (BMPs) that meet the pollutant removal requirements of the full 100-foot buffer.

Section 7-6-409.B(3) of the City's Environmental Management Code allows for the buffer to be "...reduced to 50 feet if the Director determines that a combination of a smaller buffer and appropriate BMPs located landward of the buffer achieves a 75% reduction of the sediment and a 40% reduction in nutrients." This section appears to follow § 9VAC10-20-130.B of the Regulations which states in part:

Except as noted in this subsection, a combination of a buffer area not less than 50 feet in width and appropriate best management practices which collectively achieve water quality protection, pollutant removal and water resource conservation, may be employed in lieu of the 100-foot buffer.

It is the Department's position, however, that all pertinent sections of the Regulations regarding the buffer area must be taken into account to arrive at a correct interpretation of what is permitted. First and foremost, a buffer area of not less than 100 feet in width is the landward component of the RPA (§9VAC10-20-80 of the Regulations), as measured from the landward edge of other RPA components such as wetlands, shores, and streams. The actual width of the other RPA components (wetlands, shores, and streams) may be determined based on site-specific field evaluations, and as a result, the width of those components may fluctuate (§ 9VAC10-20-110.B). However, the buffer area always remains 100 feet in width as measured from any point along the edge of the wetlands, shores, or streams in delineating the landward edge of the RPA. The buffer area also remains 100 feet in width regardless of the presence of permitted uses or equivalent water quality protection measures (§ 9VAC10-20-80.B.5), as described below.

The types of development or uses which are allowed in the RPA are specified in § 9VAC10-20-130.A, which clearly states that land development may be allowed only if it (i) is water

Mr. Warren Bell
August 4, 1997
Page 2

dependent or (ii) constitutes redevelopment.

Section 9VAC10-20-130.B relates solely to the water quality function performed by the full 100-foot buffer area and not the uses described above. According to the Regulations, a 100-foot buffer area shall be retained if present and established where it does not exist. A combination of a buffer area not less than 50 feet in width and appropriate best management practices located landward of the buffer area which achieve water quality protection equivalent to the 100-foot buffer area may be employed. However, any permitted modifications to the buffer and the situations to which they apply are subsequently noted under Sections 9VAC10-20-130.B.1 through 4. [See under § 9VAC10-20-130.B: "Except as noted in this subsection, a combination of....." (emphasis added)].

Section 9VAC-10-20-130.B does not allow the buffer to be modified by right for the purposes of establishing a use, such as a new principal structure, with or without equivalent water quality measures. Furthermore, § 9VAC10-20-130.B in no way alters or modifies the permitted uses specified under § 9VAC10-20-130.A.

Section 9VAC10-20-130.B.2 specifies the primary situation where buffer modifications and equivalent measures may be applicable, which states:

"When the application of the buffer area would result in the loss of a buildable area on a lot or parcel recorded prior to October 1, 1989, modifications to the width of the buffer area may be allowed in accordance with the following criteria....."

Based on the appropriate sections of the Regulations, the Department does not believe that the City's practice of administratively allowing a reduction of the buffer to 50 feet with water quality BMPs, under § 7-6-409.B(3) of the City's Environmental Management Code is consistent with the Department's interpretation of the authority granted to localities, or with previous interpretive guidance issued by the Department. (See Information Bulletin #10 and Local Assistance Manual pp. IV-46, IV-50, and IV-51)

I hope this information clarifies CBLAD's position on this issue. If you have any questions regarding this letter, or need any additional assistance, please call either Shawn Smith or myself at 1-800-243-7229.

Sincerely,



Scott Kudlas
Chief of Planning Assistance

c: Ms. Shawn Smith, AICP
Mr. Michael Clower

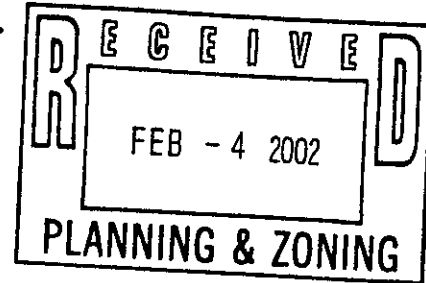
#9-A. APPEAL of DECISION of
TES DIRECTOR
Re: CLERMONT COVE

HART, CALLEY, GIBBS & KARP, P.C.

ATTORNEYS AND COUNSELLORS AT LAW

307 NORTH WASHINGTON STREET
ALEXANDRIA, VIRGINIA 22314-2557

TELEPHONE (703) 836-5757
FAX (703) 548-5443



MEMORANDUM

TO: Mr. Eric Wagner, Chairman and Members of Planning Commission
FROM: Cyril D. Calley *Cyril D. Calley*
RE: Docket Item 9-A: Appeal of RPA Buffer Reduction Request
DATE: February 4, 2002

This memorandum is written to provide the Chairman and Members of Planning Commission with the Applicant's position on its appeal of the Director of Transportation and Environmental Services' decision to deny an exception to the RPA Buffer in the Clermont Cove Apartments project from 100 feet to 50 feet. There are two main aspects of the appeal. First is an appeal of the Director of Transportation and Environmental Services' decision to classify Streams 1 and 4 as RPA features. Second is an appeal of the Director's denial of the buffer reduction itself pursuant to Section 13-120(B) of the Zoning Ordinance. As detailed below, Streams 1 and 4 are not RPA features and the applicant has satisfied the criteria within Section 13-120(B) of the Zoning Ordinance for a buffer reduction.

A. Appeal of the Classification of Streams 1 and 4 as RPA Features

The Chesapeake Bay Preservation Act (the Act) provides enabling legislation to localities for asserting jurisdiction over certain lands deemed environmentally valuable for the public welfare. The Act conveys authority to regulate these lands by ordinance in accordance with certain definitions and performance standards. The City's ordinance, found at Section 13 of the Zoning Code, defines the City's authority in this area. The City has acknowledged that Streams 1 and 4 do not appear on the USGS quadrangle map, a criterion established under Section 13-103(T) for tributary streams. Therefore, these two intermittent streams are not tributary streams entitled to RPA protection for that reason. The City, however, has interpreted the language in Section 13-105(B)(2) to mean that if non-tidal wetlands along an intermittent stream have surface-flow connection with an RPA tributary stream (Stream 5) then the entire stream and wetland area are an RPA regardless of the fact that it is not mapped. This interpretation is plainly wrong and based upon erroneous principles of law.

There is a basic premise that needs to be emphasized. It is that the definition of two streams as RPA is a misapplication of that designation in its substantive meaning. The reason why there is a process for locating RPAs at streams that are not on the map is because maps are not always complete. By physical examination, it can be discovered that the map has missed something that should have been classified as RPA from the beginning. We have

no such situation here. The applicant's position regarding these issues is detailed below.

1. *Classification:* Streams 1 and 4 do not fit any of the criteria for an RPA, specifically non-tidal wetlands, under Section 13-105(B) of the Zoning Ordinance. Section 13-105(B)(2) establishes that in order for non-tidal wetlands to be considered an RPA, they must be **both** "connected by surface flow" **and** "contiguous to tidal wetlands or tributary streams." In this case, Streams 1 and 4 do not fit within this criteria. Pursuant to a finding of Cindy Wood of the Army Corps of Engineers, the non-tidal wetlands found on this site are connected by surface flow but are **not** contiguous to a tidal wetland or a tributary stream. See attached letter from the Army Corps of Engineers dated January 24, 2002. Consequently, Streams 1 and 4 do not fall within the criteria established by the City's Zoning Ordinance for an RPA and therefore, no 100 foot buffer is required from those areas.
2. *Inconsistency:* The City is being inconsistent with prior interpretations by identifying Streams 1 and 4 on our site as RPA features. Specifically, the City ruled in 1996-97 that a non-tidal wetland that was impacted by a new car sales lot's development was not an RPA feature. That site had the same characteristics of our streams 1 and 4 - a non-tidal wetland that was connected, but not contiguous with Four Mile Run (a tributary stream.) On that site, the City properly chose not to classify that wetland as an RPA feature.

B. Appeal of the Denial of the Buffer Reduction Request Pursuant to Section 13-120(B)

The Director denied the application for a reduction of the 100 foot buffer to 50 feet because the Applicant failed to satisfy, by a preponderance of the evidence, the criteria established by Section 13-120(B)(2) through (5) for such a reduction. On the contrary, the Applicant has satisfied all of these criteria for the following reasons:

1. Section 13-120(B)(2) provides that the reduction requested cannot be self-created or self-imposed. The Director determined that the reduction request is self-created because we are requesting a re-subdivision of a larger tract, thereby creating the necessity for the reduction. A thorough review, however, of the Plat submitted with our original request belies this finding. See Plat entitled Buildable Area Outside RPA, Norfolk Southern Tract, dated October 2001, by Bowman Consulting Group. Virtually the entire balance of the property west of the site is mapped as an RPA feature, therefore, sub-dividing this tract does not create the need for a reduction. Use of any part of the Norfolk-Southern tract involved here would require a reduction in the RPA buffer. As a result, the Applicant is not creating this condition.
2. Section 13-120(B)(3) provides that the reduction must be the minimum necessary to afford relief. In this case, the Applicant is requesting the

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minimum reduction necessary as evidenced by the fact that we have completely redesigned the buildings in this project on two occasions, reduction the building foot prints and therefore, the impact on the RPA. In addition, the proposed roadway is placed where it will least impact the RPA's on this site. It has been proposed to be located along the southern boundary line, farthest away from the predominant RPA feature on the site, Stream 5.

3. Section 13-120(B)(4) provides that the reduction must not be injurious to water quality. On the contrary, this project is actually beneficial to the water quality that will flow to the Chesapeake Bay. The Director's decision totally ignored the mitigation proposed by the Applicant, both on- and off-site. We acknowledge that there are unavoidable impacts, and based on that, the Applicant proposes extensive mitigation that would improve the quality of the water in this area, including the following: a) a regional stormwater management BMP; b) bioengineering of the eroding streambanks; c) remediation and disposal of fly ash discovered on-site along an eroding streambank; and d) biofiltration of parking deck runoff. All of these mitigation proposals will provide a significant public benefit in the form of water quality enhancements for Hunting Creek. In addition, the Applicant is required to provide mitigation for impact of the wetland area. The Applicant has offered to have Staff tell them where Staff wants additional mitigation in the City so that the Applicant can provide whatever it can to enhance the environment in this City where necessary.
4. Section 13-120(B)(5) provides that the particular physical characteristics of the site must make the strict application of the buffer requirement effectively prohibit or unreasonably restrict the utilization of the property or constitute a clearly demonstrable hardship approaching confiscation. The site is unusually linear in nature, with the main RPA feature running along the north border for part of the site and then dipping to run nearly along the center of the parcel as it heads west towards the Waste-to-Energy Plant site. As a result, the site contains particular characteristics that make the strict application of the buffer requirement effectively prohibit or unreasonably restrict the utilization of the entire parcel. The undated letter from Tony Morse of Bowman Consulting group, along with the Plat dated October 2001 of the buildable area outside the RPA, submitted with our original exception request, clearly demonstrate the unusual physical characteristics of the site, including its extreme narrowness. Both Morse' letter and the Plat demonstrate how the strict application of the buffer requirements unreasonably restricts the use of the property for any development.

Further, the letter from Scott Humphrey dated November 5, 2001 clearly demonstrates that the strict enforcement of the buffer requirements approaches confiscation and unreasonably restricts the use of the property. The Director

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found that Mr. Humphrey's letter applied erroneous principles of law because it assumed the re-zoning to OCM which is not reasonably probable. On the contrary, Mr. Humphrey was justified in considering the OCM uses because it is reasonably probable that the property will be re-zoned to OCM as the City's own master plan provides for this specific zoning on the property.

5. The Director must have found that the Applicant satisfied the first element of the buffer reduction test found in Section 1A-120(B)(1) as he only refers to the Applicant's failure to satisfy Section 1A-120(B)(2) through (5). In that vein, Section 1A-120(B)(1) provides that the granting of the buffer reduction must not confer any special privileges to the applicant that are denies others in the City. On the contrary, this Applicant has been denied a buffer reduction while other projects in this City have been properly granted the same or similar reductions.

For example, the City claims that the reduction of the buffer from 100 to 50 feet will actually have a greater impact within the remaining, undisturbed 50 feet based upon their unsupported conclusion that removal of trees within the first 50 feet will kill trees in the remaining 50 feet. Other projects in the City, however, have been properly granted a fifty foot buffer reduction with similar tree removal. In those projects, however, the City did not claim that the trees in the remaining 50 feet would be destroyed. (See the Stonegate project on West Braddock Road and I A95 and the Metzger project on Duke Street.) We believe these were proper actions for buffer reductions that are indicative of the City's established practice in granting buffer reductions that are being denied to this Applicant.

C. Conclusion

Clearly, this Applicant has satisfied, by more than the required preponderance of the evidence, all of the criteria listed in Section 1A-120(B) enabling you to overturn the Director's decision and grant the buffer reductions requested.

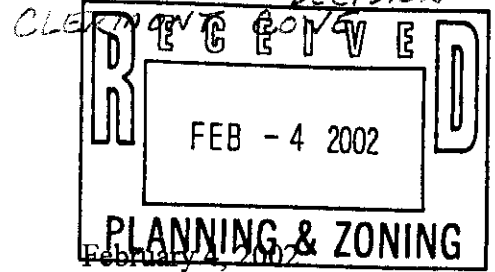


Alexandria

Sylvia Kraemer
Co-President

League of Women Voters of Alexandria

#9-A. APPEAL of TES DIRECTOR'S
DECISION



Chairman of the Planning Commission Eric Wagner
Members of the Commission
301 King Street, Room 2100
Alexandria, VA

Dear Chairman Wagner and Members of the Commission:

The League of Women Voters believes that wise stewardship of our natural resources is an important element of good public policy. In line with that, our Alexandria League members performed a study the ecology of our area several years ago and at an annual meeting voted to promote certain principles of wise management that are applicable for our local environment. One of those principles is: "The City should continue to make compliance with the Chesapeake Preservation Act a major requirement for all building and maintenance projects where the act applies."

We are very pleased that Alexandria's Director of Transportation and Environmental Services, Richard Baier, has acted exactly as we want our officials to act by refusing to waive the requirement for a 100-foot resource protection area (RPA) buffer on the site of the proposed Clermont Cove residential development. As proposed, the development would encroach on that buffer. Mr. Baier acted on his belief that to allow building on this site would harm several streams which are Chesapeake Bay tributaries. We note that in addition to Mr. Baier's opinion, officials of the Commonwealth of Virginia government have sent a letter to Mr. Baier agreeing with his decision.

In short, we would like the chairman and members of the Planning Commission to commend Mr. Baier and uphold his decision by rejecting the appeal of that decision docketed as Item 9-A for your February 5, 2002 meeting.

Sincerely,

Laura Castro

Laura Castro
Co-President

MLC

Sylvia Kraemer

Sylvia Kraemer
Co-President

MLC

#9-A APPEAL
#9-B REZ 2001-0004
#9-C DSUP 2001-0013 } CLERMONT COVE

February 1, 2002

Planning Commissioners
Alexandria, VA

Subject: February 5, 2002 meeting Docket Items 9A-9D.


Dear Commissioners,


I am writing to urge you to reject the applicant's request for the referenced appeal, rezoning and subdivision. The proposed area that would be developed is an existing urban forest that is adjacent to the Clermont Natural Park and the new Ben Brenman Park. The attached images show the location being targeted for development. As you can see from the city's recreational facilities map, the planned use of this lot for high-density apartments would be incompatible with the surrounding parks and woodlands. The photograph shows the view shed from the park and Cameron Station.

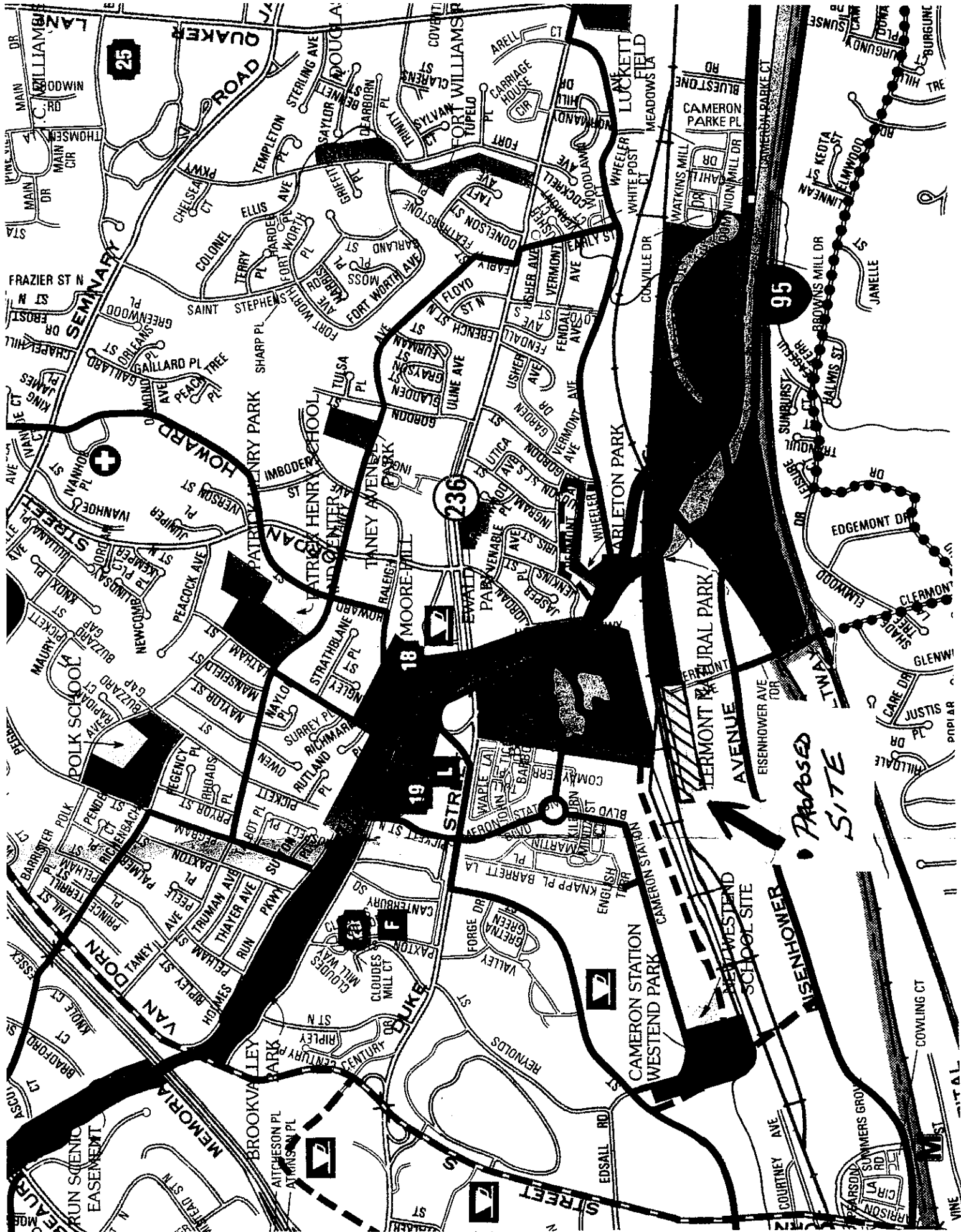
The developer's application indicates that they intend to fill in protected wetlands and remove essentially all the trees from the property. Additionally, the developer is insistent on reducing the Resource Protection Areas from 100' to 50'. Claims by the developer that this reduced buffer zone would mitigate impacts to Cameron Station are unfounded. It is clear that the development of this property would result in the destruction of nearly all trees and existing wetland. Presently, this 250' wide strip of trees IS the buffer between the park and Eisenhower Avenue & the beltway. There is no margin that can be reduced and still retain a natural environment to the north where Ben Brenman Park is located.

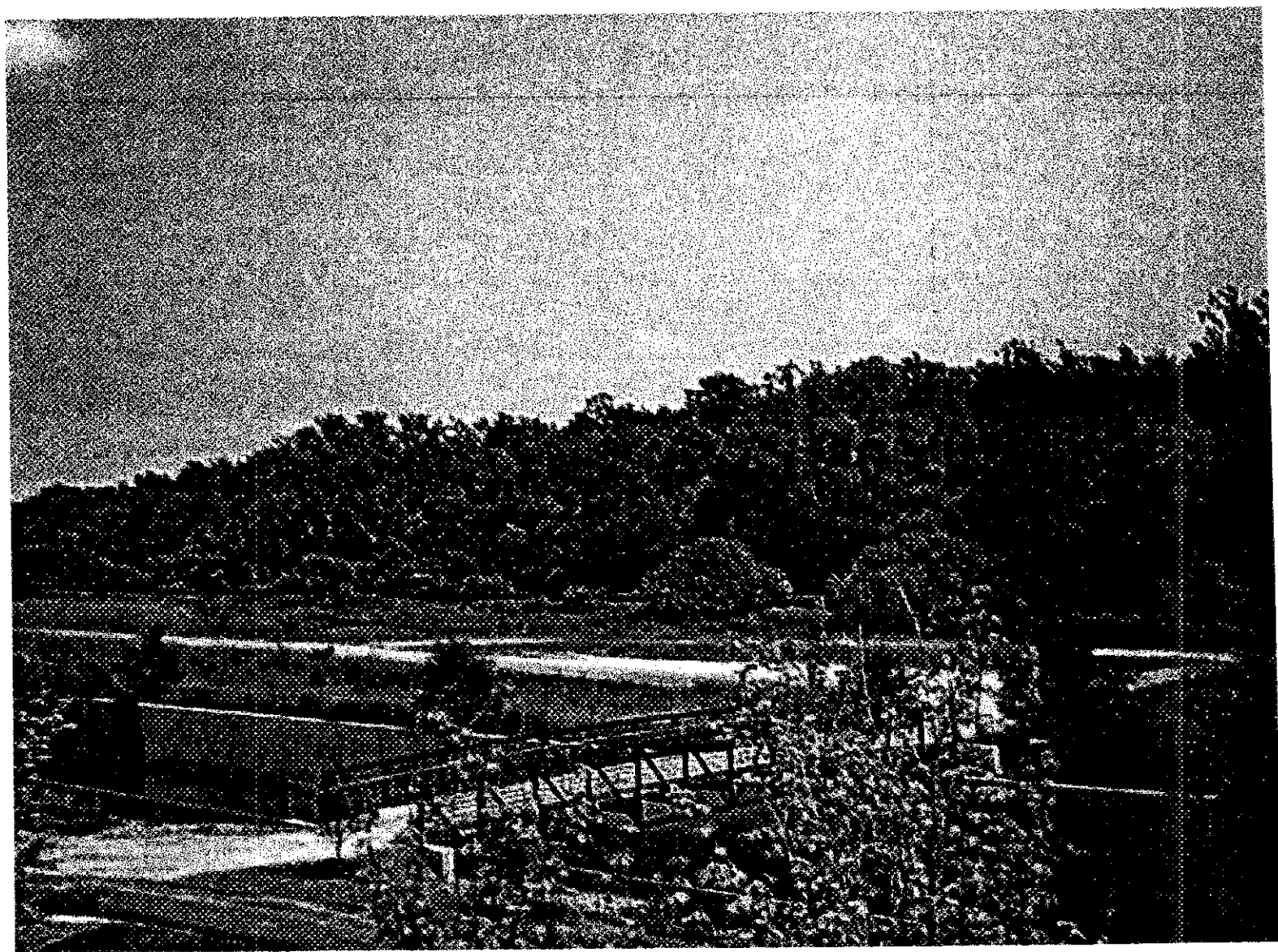
There are several other potential issues relating to the development and use of this property from an environmental perspective. This property provides a view shed for the park and surrounding neighborhoods as well as being a home for birds and small mammals. With no restriction on tree removal and encroachment on the streams, it is likely that the birds and wildlife will be displaced or destroyed. The proposed use of the land will likely have devastating impacts to the environment and surrounding communities.

There are many more potential issues related to this project, I have just mentioned the most obvious impacts to the citizens of Alexandria. I respectfully request that you consider these issues and deny the appeal and subdivision requests.

Sincerely,


Michael J. Merritt
248 Murtha Street
Alexandria, VA 22304
(703)567-3274







Norfolk District

#9-1

CLERMONT CREEK

Project Number: 01-V0880

Waterway: Trib to Backlick Run

1. Participant:

RST Development, LLC
c/o M. Scott Copeland
6011 Executive Blvd., Suite 206A
Rockville, Maryland 20852

2. Authorized Agent:

EnviroData-Wetlands
Attn: William B. Ellen
P.O. Box 1508
Gloucester, Virginia 23061

3. Address of Job Site:

The site is located on the north side of Eisenhower Avenue at the end of Clermont Avenue, in Alexandria, Virginia.

4. Project Description:

The project consists of discharge of fill material to construct a multi-family residential apartment complex. Approximately .48 acre of waters of the U.S. including wetlands will be impacted by the proposed building pads, utility infrastructure, stormwater management facilities, access roads, and parking facilities. To compensate for these impacts, the applicant has agreed to perform bioengineering of 1,200 eroding onsite stream banks and .75 acre onsite of forested riparian corridor preservation.

5. Findings

A site inspection on January 15, 2002 has verified that the wetland delineation and site plan submitted by letter dated January 4, 2002 by EnviroData-Wetlands is in accordance with the methodology described in the 1987 Corps of Engineers Wetland Delineation Manual. Specifically, the two areas in question which form the connection between the forested wetlands and the main stream on this site is a waters of the U.S. and contain no wetlands. This confirmation is valid for a period of five years from the date of this letter unless new information warrants revision before the expiration date.

Prior to commencing work you must obtain the proper authorization to perform work in wetlands and/or waters of the U.S. Please note that performing the proposed work without proper authorization would be in violation of the Clean Water Act.

6. Corps Contact: Cynthia J. Wood at (703) 221-6967

[Signature]
Bruce F. Williams
Chief, Northern Virginia Regulatory

NAO FL 13 REVISED DEC 90

EXHIBIT NO. 5

17
2-23-02



wmeuille@wdeuille.com

02/22/02 03:08 PM

To: Beverly I Jett@Alex, kdonley@vcbonline.com @ INTERNET,
billclev@comcast.net @ INTERNET, eberwein-council@home.com @
INTERNET, delpepper@aol.com @ INTERNET, dspeck@aol.com @
INTERNET, council@joycewoodson.net @ INTERNET

cc: Sandy Murphy@Alex, mbrandon99@home.com @ INTERNET, Beth
Temple@Alex, Joanne Pyle@Alex, Judy Stack@Alex,
barfonce.baldwin@verizon.net @ INTERNET,
mlynnsmith@comcast.net @ INTERNET, Michele Evans@Alex,
Valerie Moore@Alex

Subject: RE: Clermont Cove Appeal - Docket Item #17 (Saturday 02/23/02)

Subsequent to the applicant's decision on yesterday to withdraw their appeal, nevertheless, I will be offering a motion at Saturday's meeting to request the City Manager to convene an AD-HOC committee to continue to work with Clermont Industries, LLC, in an attempt to continue discussions on satisfactory modifications to which may allow for reasonable/acceptable waivers to the "RPA", which would allow for residential development at this site, if possible.

Your support would be most appreciative.

Thanks
Bill Euille
02/22/02

-----Original Message-----

From: beverly.jett@ci.alexandria.va.us
[mailto:beverly.jett@ci.alexandria.va.us]
Sent: Thursday, February 21, 2002 12:38 PM
To: kdonley@vcbonline.com; billclev@comcast.net;
eberwein-council@home.com; wmeuille@wdeuille.com; delpepper@aol.com;
dspeck@aol.com; council@joycewoodson.net
Cc: sandy.murphy@ci.alexandria.va.us; mbrandon99@home.com;
beth.temple@ci.alexandria.va.us; joanne.pyle@ci.alexandria.va.us;
judy.stack@ci.alexandria.va.us; barfonce.baldwin@verizon.net;
mlynnsmith@comcast.net; michele.evans@ci.alexandria.va.us;
valerie.moore@ci.alexandria.va.us
Subject: Clermont Cove

We have just received a withdrawal letter from Dez Calley withdrawing the Clermont Cove appeal. He indicates: "be advised that the applicant intends to resubmit its application for a buffer reduction under a modified plan that reduces the impact on the RPA buffer in the near future."

The letter will be delivered with our next docket delivery. This certainly should shorten the meeting on Saturday.

Bev



DSpeck@aol.com

02/22/02 03:57 PM

17
2-23-02

To: wmeuille@wdeuille.com @ INTERNET, Beverly I Jett@Alex,
kdonley@vcbonline.com @ INTERNET, billclev@comcast.net @
INTERNET, eberwein-council@home.com @ INTERNET,
DELPepper@aol.com @ INTERNET, council@joycewoodson.net @
INTERNET

cc: Sandy Murphy@Alex, mbrandon99@home.com @ INTERNET, Beth
Temple@Alex, Joanne Pyle@Alex, Judy Stack@Alex,
barfonce.baldwin@verizon.net @ INTERNET,
mlynnsmith@comcast.net @ INTERNET, Michele Evans@Alex,
Valerie Moore@Alex

Subject: Re: Clermont Cove Appeal - Docket Item #17 (Saturday 02/23/02)

Bill,

I support the idea of continued dialogue. The question of affordable housing vs. modifications to environmental requirements ought to be discussed in some way that doesn't make it either-or. So let's keep talking.

David

David G. Speck

703-370-1666 (h)

703-739-4501 (w)

703-370-6475 (h-fax)

703-739-4514 (w-fax)

Home:

3813 Colonel Ellis Avenue

Alexandria, VA 22304

Office:

101 N. Union Street, Suite 220

Alexandria, VA 22314



17
2-23-02

February 21, 2001

Honorable Kerry J. Donley and City Council Members
City of Alexandria
Room 2300, City Hall
301 King Street
Alexandria, VA 22314

Subject: Denial Appeal of Exception Request from Clermont Industries, Docket Item #9A

Dear Mayor Donley and City Council Members,

The Cameron Station Community Association currently represents approximately 2200 homeowners and residents of Cameron Station. We wanted to inform you of our strong support of the decision of the Director of Transportation & Environmental Services to deny the exception request from Clermont Industries for encroachments into Resource Protection Areas for a proposed residential development under Section 13-120 of the Zoning Code. We agree that the extensive encroachment will negatively impact the limited green space, wetlands and environmental areas available to the city and its residents.

I will be present at City Hall on the 23rd and look forward to seeing you. Thank you for your support in this matter.

Sincerely,

Victoria Hebert, Vice President
Cameron Station Community Association

CC: City Council Members
CSCA Board of Directors

2/22/02
202-942-3392
Tried to reach left
message on voice
mail that this
was withdrawn

17
2-23-02

- CITY SEAL -

Public Notice

**APPEAL OF A DECISION OF THE ALEXANDRIA PLANNING COMMISSION
UPHOLDING A DECISION OF THE DIRECTOR OF TRANSPORTATION AND
ENVIRONMENTAL SERVICES
CLERMONT COVE**

A Public Hearing will be held by the City Council of the City of Alexandria, Virginia, in the Council Chamber of the City of Alexandria, on Saturday, February 23, 2002, at 9:30 a.m., or an adjournment thereof, at which time an appeal from a decision of the Alexandria Planning Commission, on February 5, 2002, upholding a decision of the Director of Transportation and Environmental Services denying a request for a waiver of the Resource Protection Area (RPA) buffer requirements for a proposed residential development to be located at 201 Clermont Avenue, rear of 4601-4607 Eisenhower Avenue (Parcel Address of 801 South Van Dorn Street) will be heard. APPLICANT AND APPELLANT: Clermont Industries, LLC, by Cyril D. Calley, attorney.

This appeal is being heard pursuant to Section 13-121(C) of the Zoning Ordinance.

Beverly I. Jett, CMC
City Clerk

To be published in the:

Northern Virginia Journal on Tuesday, February 12, 2002; and
Alexandria Gazette-Packet on Thursday, February 14, 2002

17
2-23-02

- CITY SEAL -

Public Notice

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