Additional Information for Centerville Properties Development
NAO-2006-5097, Tri City Properties, LLC
May 16, 2016

1. Updated Jurisdictional Determination- the jurisdictional determination for the parcels off Elbow Road, confirmed by the Corps in 2007, depict an area of approximately 90 acres of uplands on the wetland delineation map. At your request, we are working with your consultant, Matt Roth of Roth Environmental, Inc., to update the wetland delineation and jurisdictional determination for this area of the project site.

2. City Proffers for Current Development Proposal- The City of Chesapeake stated in their most recent letter dated February 8, 2016, commenting on the public notice, "Basically, in order for development of the property to proceed, several proffers that were offered by the developer and accepted by the City with the R(C)-95-08 rezoning application must be satisfied…". "Any modification of the proffers would require a new rezoning application for City Council approval." The proffers of R(C)-95-08 were for a significantly larger development site (568.3 acres total) than the currently proposed 53.8 acre site. The proffers include construction of 2 lanes of Hunningdon Woods Boulevard both east and west of Centerville Turnpike, improvements to the existing park site and a new smaller park site, a "buildable" school site, "developable" fire station, and certain other requirements. Some of the proffers may require fill in wetlands to develop the facilities, and construction of Hunningdon Woods in particular would impact a considerable amount of wetlands, per the 2007 wetland delineation. As these features are not included on your project plans, please confirm that you do not plan to fulfill the 1995 proffers and will work with the City regarding the suitability of proffers for the scaled back development. Information from the City regarding new proffer requirements is needed to evaluate if any City requirements involve construction of facilities/roads that would impact wetlands.

3. Alternatives: The current project proposes a substantial reduction in wetland impacts from the previously proposed 181.3 acres. However, the proposed loss of 47.1 acres of forested wetlands is still considerable. The level of an alternatives analysis under Section 404(b)(1) Guidelines and the National Environmental Policy Act (NEPA) is to be commensurate with the impacts/scale/cost of the project. Practicable alternatives are considered in light of the overall project purpose. Your submittal stated the overall project purpose as, "to provide a mixed-use community, consisting of a variety of residential opportunities and community related commercial services to support the housing needs generated by the rapidly expanding commerce and employment center situated in the Greenbrier section of Chesapeake". The overall project purpose used by the Norfolk District in the review of your original permit application was, "*to provide residential housing and commercial development in the Greenbrier section of Chesapeake*". The "Greenbrier section of Chesapeake" is the search

area for alternatives, and residential and commercial development are the purpose/need of the project. The "mixed-use community" statement is not part of our overall project purpose. As noted in our previous review of the project, we believe that the residential and commercial developments can be separated. The evaluation of on-site and off-site alternatives need to consider the practicability of separate parcels for these types of developments within the search area. In addition, the type of commercial development is unclear. Further information regarding alternatives is requested:

a. Various development plans for the overall site have been considered in the past, and any previously considered on-site development plans with less wetland impacts should be re-assessed. Development of the farm fields is discussed in further detail in (4) below, but alterative configurations and development plans with less wetland impacts need to be evaluated.

b. Evaluate alternatives, both on-site and off-site (within the Greenbrier area) which involve separate developments for the residential and commercial developments.

c. Provide additional details on the proposed type of commercial development and reasons for layout and design, including the need for the proposed acreage of commercial development. Information on potential anchor tenants or businesses with certain requirements for selection of a site would be useful in an alternatives analysis.

d. Detailed information on the reason several alternatives were rejected, including tables, was redacted from your submittal, as you indicated the information was not subject to Freedom of Information Requests (FOIA). Our permit application review process is a public process, and information on the practicability of alternatives must be provided in a format that can be fully documented in our final decision. The focus of the 404(b)(1) Guidelines, regarding practicable alternatives, takes into consideration, cost, existing technology and logistics, in light of the overall project purpose. While our permit decision does not need to guarantee applicants a profit, cost and/or economic viability is a consideration, and may assist in our evaluation of the project. Comparison of costs for various alternatives can be provided without the need to disclose any financial data you may consider sensitive. Please provide information that documents cost/economics that can be included in our record, such that we can complete and demonstrate an alternatives assessment.

e. EPA has requested "a detailed and expanded analysis of offsite properties". Four off-site alternatives were evaluated in Feb, 2013 (Bruce Hatfield & Associates), but only two of these sites are currently available. As several years have passed since the evaluation, additional properties

may have become available for residential and/or commercial development. A review of the Chesapeake comprehensive plan shows other properties within the Greenbrier area zoned as "business/commercial" and "residential". In addition, properties not currently zoned as commercial or residential could be re-zoned. We request an updated analysis of off-site alternatives that may meet the overall project purpose stated above, and are less environmentally damaging to the aquatic environment.

4. Farm Fields off Elbow Road: We are working with you to provide an updated wetland delineation of this area of the project site, and understand this information is needed for further evaluation of the farm fields as an alternative site for some or all of the development. However, based on the information provided to date, we are unable to conclude that an alternative involving development of the farm fields off Elbow Road is not practicable. Your stated reasons for the lack of viability of development of the farm fields include City of Chesapeake proffers, cost of improvements to Elbow Road, economic practicability, and the practicality of commercial development along Elbow Road. Additional information is needed to further evaluate this alternative location for development:

   a) Improvements to Elbow Road: As stated above, the City of Chesapeake has indicated that the 1995 proffers apply to development within the overall 428 acre parcel. Development of the land consisting primarily of farm fields (Sections 9 and 10) would require certain proffers. Your supplemental package states that "without the construction of Plantation Woods Parkway, a new rezoning would be required from Chesapeake, which is not practicable due to significant safety concerns regarding Elbow Road". The City of Chesapeake is currently constructing improvements to Elbow Road to address safety concerns in three separate segments under a USACE permit issued in February of 2014. A March 12, 2013 letter from James B. Tate, Director of the Department of Development and Permits for the City of Chesapeake to Colonel Olsen, regarding the development of the parcels located to the north of Elbow Road states, "…the City would require widening to 24-foot pavement with curb and gutter on earthen shoulders" and "the improvements would have to extend from the point where the development connects to Elbow Road, westward to its intersection with Centerville Turnpike". As some of the safety concerns associated with Elbow Road are being addressed by the City's current projects, an updated discussion with the City regarding proffers seems appropriate. Given the improvements to Elbow Road currently under construction by the City and another developer, both the extent of the improvements and the costs associated may have decreased substantially from the previous estimates of $5,000,000 to $10,620,000. Please provide an updated estimate of the costs associated with the City's required improvements to Elbow Road, and the affect that would have on the development within the farm fields.

b) Commercial Development on Elbow Road- Section 10 is currently zoned B-1, which would allow for commercial development. The supplemental package states that "the marketability of business or commercial acreage on this isolated piece is doubtful", but does not elaborate any further on the reasons this parcel could not be marketed for business or commercial development. Please expand on the reasons you believe commercial development of the farm fields off Elbow Road is not a practicable alternative. In addition, the possibility of developing the farm fields off Elbow Road for residential housing only, with commercial development in another location, needs to be considered.

c) City of Chesapeake Park off Elbow Road- According to the documents you provided, in 1997, 20 acres of land (delineated as uplands in 2007) along Elbow Road was transferred to City of Chesapeake. It appears this action was taken to fulfill the proffers of R(C)-95-08 when Phase 1 was developed. While this land is currently owned by the City, it has not been developed as a City Park. The current project drawings depict this park site as part of the overall development. The DEQ Permit drawings depict this parcel as part of the development, and depict a park site on another area of the property. Numerous alternatives reviewed by the Corps in the prior permit review also showed development within this park site. Could this parcel provide additional options for development of the farm fields off Elbow Road?

5. Mitigation:
The Least Environmentally Damaging Practicable Alternative (LEDPA) must be identified and all avoidance and minimization measures determined before mitigation is discussed. However, some advance guidance is provided:
   a) As noted above, the proposed mitigation site requires an updated jurisdictional determination.
   b) The Virginia Department of Environmental Quality (DEQ) will need to be consulted regarding any mitigation plan to ensure compliance with DEQ's VWP Number 00-1688.
   c) Page 25 of your submittal indicates, "Upon approval of the LEDPA project, the completed mitigation design will be submitted to the Corps and DEQ and permitted separately through the regulatory agencies as required by the DEQ permit." Our regulations require permittees to prepare final mitigation plans, which must be approved, prior to issuing an individual permit (33 CFR Part 332.4 (c)). For permittee-responsible mitigation, such as you have proposed, the final mitigation plan must include the items described in paragraphs (c)(2) through (c)(14) of 332.4 (c). The current scope and scale of the proposed wetland impacts, if permitted, would require a high level of detail in the final mitigation plan.

6. Cumulative Effects:
We concur with EPA's request (letter of March 11, 2016) for additional consideration of the project's secondary and cumulative impacts; this is required under NEPA. We request that you address the secondary and cumulative impacts of the project on the Stumpy Lake/Gum Swamp watershed.

7. Functional Assessment:
To characterize the wetlands on the site, you provided a narrative based on the structure of the New England District's 1999 "Highway Methodology", which was modified for the project site. Both the Norfolk District and EPA have concerns regarding the validity of the chosen methodology. EPA recommends the use of "*A regional guidebook for applying the hydrogeomorphic (HGM) approach to assessing wetland functions of wet hardwood flats on mineral soils in the Mid-Atlantic coastal plain*". Havens, K.J., Jacobs, A., Rogerson, AS. Roggero, M., Rheinhardt, R.D., Wardrop D. (2012). This HGM approach is specific to the type of wetlands on the site, and has been used for other projects with large wetland impacts. We recommend further discussions with your consultants, the Corps and EPA to work collaboratively on suitable functional assessment methodology for this site.

8. Section 106 of NHPA
The Corps must comply with Section 106 of the National Historic Preservation Act (NHPA), which requires Federal agencies to take into account the effects of their actions, including permitted actions, on historic properties. Coordination with the Virginia Department of Historic Resources (VDHR) was initiated, and VDHR responded with a letter dated February 24, 2016, which was provided to you. The letter recommends a Phase I archeological survey of all areas of ground disturbance, including utilities, within the 53.8-acre development area. VDHR has not recommended a survey within the mitigation and preservation areas. The Corps determined that the entire proposed development is within our "permit area", per 33 CFR 325 Appendix C. VDHR has provided specific reasons for the need to further investigate within the permit area, and we have determined that a Phase I archeological survey will be required. The survey should be conducted by a qualified professional archaeologist in consultation with the DHR and in accordance with their "Guidelines for Conducting Historic Resources Survey in Virginia", October 2011, as well as the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation published by the National Park Service in Volume 48, Number 190 of the Federal Register on September 29, 1983.
Reports must be prepared in accordance with the DHR Guidelines mentioned above, and provided to the Corps (one hard copy or digital copy) and the DHR (two hard copies and one digital copy in Adobe® Portable Document Format (.pdf)). All reports must contain, at a minimum, the items indicated in the DHR Guidelines as required. Reports submitted to DHR must be bound and on archivally stable paper (acid-free). Figures must be legible and photographs must be scanned or digital copies. Submitted photographs may be in either color or

black and white. Please include a cover letter that provides information on the project (i.e. applicant name, project location, Corps and DHR file numbers) so that the report is routed to the appropriate person. Should the report not meet the above referenced standards, it will be returned to you for revision. Information on the DHR Guidelines may be accessed and downloaded at the following website: http://www.dhr.virginia.gov/.
Before beginning any survey of the site, we recommend discussions with the Norfolk District and VDHR regarding the scope of the survey.

9. Endangered Species:
The Corps must comply with Section 7 of the Endangered Species Act. A search of the US Fish and Wildlife Service Information for Planning and Conservation (IPaC) online system indicated that there may be an effect to the Northern long-eared Bat (NLEB) (*Myotis septentrionalis*), a species listed as threatened under the Endangered Species Act of 1973. The Fish and Wildlife Service provided comments to the public notice in an email dated January 28, 2016, which was provided to you. Following the instructions in that email, the IPaC search was re-run, and another Official Species List was created on March 17, 2016. The updated list continues to depict the NLEB as a potentially affected species. In addition, in accordance with the current guidance from F&WS, the Virginia Department of Game and Inland Fisheries "NLEB Winter Habitat & Roost Tree Application" was researched online and the project action area is not within any buffer areas depicted on the map. As such, there are two options listed below, and we request that you advise us of which option you wish to pursue:
   a) Permit Condition: For any permits issued that involve tree clearing, agree to a permit condition which includes both of the following: a) a Time of Year Restriction (TOYR)- tree removal is not authorized from April 15 - September 15 of any given year or, b) conduct emergent surveys for potential roost trees for the trees proposed for removal following the most recent survey guidelines provided by the F&WS. In order to avoid a TOYR, the emergent survey must have negative results.
   b) Implement the formal Programmatic Biological Opinion for the final 4(d) rule: This option requires the Norfolk District to provide project-level documentation describing the activities that are excepted from incidental take prohibitions and addressed in the consultation. Written documentation must be provided to the F&WS when it is determined the action may affect (not likely to adversely affect or likely to adversely affect) the NLEB, but would not cause prohibited incidental take. The required procedures are described in further detail in the document titled, "Optional Framework to Streamline Section 7 Consultation for the NLEB". This document is located on the F&WS NLEB Section 7 Consultation website:
   http://www.fws.gov/midwest/endangered/mammals/nleb/s7.html

10. Coastal Zone Management Act (CZM):
For compliance with the Coastal Zone Management Act of 1972, as amended for projects located in Tidewater, the applicant must certify that federally licensed or

permitted activities affecting Virginia's coastal uses or resources will be conducted in a manner consistent with the Virginia Coastal Zone Management Program (VCP) and obtain concurrence from the Department of Environmental Quality (DEQ), Office of Environmental Impact Review (OEIR). It is the applicant's responsibility to submit a consistency certification to the Office of Environmental Impact Review for concurrence or objection and proof of concurrence must be submitted to the Corps prior to final permit issuance.