



VIRGINIA SOIL AND WATER CONSERVATION BOARD GUIDANCE DOCUMENT ON STORMWATER NONPOINT NUTRIENT OFFSETS

DRAFT

(Approved July XX, 2009)
[May 28, 2009 working version]

Summary:

This document provides guidance for implementing the stormwater nonpoint nutrient offset program authorized pursuant to §10.1-603.8:1 of the Code of Virginia which was enacted by the 2009 session of the General Assembly. [See Attachment 1 for copy of legislation: Chapter 364 of the 2009 Virginia Acts of Assembly (HB2168)].

This guidance document provides:

- Procedures for generating and selling stormwater nonpoint nutrient offsets in Virginia's Bay watershed tributaries;
- Procedures for seeking authority to purchase offsets for use in relation to a regulated construction activity;
- Methods by which the Department of Conservation and Recreation (DCR), as the permit issuing authority, will determine whether an offset is allowed (including that onsite practices have been considered to the maximum extent practicable and that full compliance with postdevelopment water quality requirements cannot practicably be met on site);
- Definitions of terms used in this document;
- The various application and reporting requirements for this program; and
- The roles and responsibilities for the various entities that may participate in stormwater nutrient offset transaction including buyers, sellers, brokers, local governments, and the regulatory agencies, DCR and DEQ.

The Department of Conservation and Recreation will implement this program in the Chesapeake Bay Watershed in coordination with the Department of Environmental Quality.

Electronic Copy:

An electronic copy of this guidance in PDF format is available on the Regulatory TownHall under the Virginia Soil and Water Conservation Board at <http://townhall.virginia.gov/L/GDocs.cfm>.

Contact Information:

Please contact the Department of Conservation and Recreation's Division of Soil and Water Conservation at xxxxx or by calling 804-xxx-xxxx with any questions regarding the application of this guidance.

Questions specifically regarding the certification of offsets should be referred to the Department of Environmental Quality's Division of Water Quality Programs at xxxxx or by calling 804-xxx-xxxx.

Disclaimer:

This document is provided as guidance and, as such, sets forth standard operating procedures for the Virginia Soil and Water Conservation Board, the Department of Conservation and Recreation, regulated entities, offset generators and brokers, local governments, and the general public regarding implementation of the stormwater nonpoint nutrient offset program. This guidance provides a general interpretation of the applicable Code and Regulations but is not meant to be exhaustive in nature. Each situation may differ and may require additional interpretation. Additionally, nonconventional offsets not directly discussed in this guidance document and applicable DEQ guidance documents may still be eligible for consideration. Interested parties should contact the appropriate DEQ and DCR personnel to discuss.

Nonpoint Nutrient Offset Program

I. Background:

Addressing stormwater management is a key component (along with controlling impacts from agriculture, air deposition, and sewage treatment plants) to improving water quality in the Chesapeake Bay and in Virginia's rivers, streams, lakes and impaired waters statewide. The on-site attainment of water quality requirements by a regulated construction activity is sometimes challenging. In proven situations where required reductions may not practicably be met on-site, a stormwater nutrient offset program may assist a developer in achieving the necessary nutrient reductions through acquiring off-site offsets for remaining pollutant reductions after on-site options have been thoroughly considered to the maximum extent practicable.

Specific conditions and exceptions for this program include:

- The permit issuing authority is not required to allow the use of offsets to meet the necessary water quality control requirements. The permit issuing authority is granted discretion as to whether or not to allow the use of offsets.
- Offsets cannot be utilized to address water quantity control requirements.
- Offsets may not be utilized in contravention of local water quality-based limitations:
 - consistent with determinations made pursuant to subsection B of §62.1-44.19:7 related to the development and implementation of plans to restore water quality in impaired waters;
 - contained in a municipal separate storm sewer system (MS4) program plan approved by DCR; or
 - as otherwise may be established or approved by the Virginia Soil and Water Conservation Board.

- Stormwater nonpoint nutrient offsets may not be attained in a different tributary than the tributary the project is located in. (See definition of “tributary”)
- All offsets must be protected in perpetuity prior to commencement of the construction activity.
- No permit issuing authority may grant an exception to, or waiver of, postdevelopment water quality requirements in accordance with 4VAC50-60-140 unless off-site options (including offsets) have been considered and found not available.
- Upon authorization for a construction activity to acquire stormwater nonpoint nutrient offsets by the permit issuing authority, offsets may be only be obtained from those certified under the Chesapeake Bay Watershed Nutrient Exchange Program by DEQ.

II. Definitions:

For the purposes of implementing stormwater nonpoint nutrient offsets under the authority of §10.1-603.8:1 of the Code of Virginia, the following terms used in this guidance are defined below:

“Broker” or “Offset Broker” means an entity that facilitates the exchange of nutrient offset credits between an authorized buyer and a certified offset generating facility owner.

“Buyer” means an individual that is considering purchasing offset credits and that is seeking authority from the permit issuing authority for use of a nonpoint nutrient offset to satisfy the water quality requirements associated with a VSMP Construction General Permit or for a VSMP Construction Individual Permit that he will obtain prior to commencing a construction activity.

“Chesapeake Bay Watershed Nutrient Exchange Program” means the program administered by DEQ under which the nutrient reductions of an offset generating facility are certified as eligible nonpoint nutrient offsets that may be purchased upon approval of the permit issuing authority.

“DCR” means the Virginia Department of Conservation and Recreation.

“DEQ” mean the Virginia Department of Environmental Quality.

“Direct discharge” means....

“Eight digit hydrologic unit code” means a watershed unit established in the most recent version of Virginia's 4th Order National Watershed Boundary Dataset. Boundaries for such watershed units may be found on DCR’s website at [xxxxx](#).

“ESD” or “environmental site design” means those techniques, such as conserving open space and natural areas and reducing the amount of imperviousness and infrastructure on lots, in residential streets, and in parking areas, used to significantly reduce imperviousness and overall development costs while maximizing vegetative cover and providing greater protection of natural systems and processes.

“Impaired water” means a water contained in the current 303(d) Report on Impaired Waters in Virginia published by DEQ that does not meet water quality standards and is impaired by one or more pollutants.

“LID” or “low impact development” means a suite of BMPs aimed at reducing the volume of stormwater runoff leaving the development site, and therefore, mimicking the hydrologic patterns that existed at a site before it was developed. These practices include, but are not limited to, Green Roofs, Bioretention, Rain Gardens, Rooftop Disconnection, Dry Swales, and Wet Swales.

“Maximum extent practicable” or “MEP”, for the purposes of this guidance document, means thoroughly considering site design alternatives, including ESD techniques, considering available conventional/ traditional BMPs, and considering available LID BMPs in order to demonstrate to the permit issuing authority that an offset should be allowed for the construction activity. To fully meet this standard, there is an expectation for alternative plan designs and calculations to be provided to the permit issuing authority, as well as narrative discussing the options considered.

“Nonpoint nutrient offset” means nutrient reductions certified as nonpoint nutrient offsets under the Chesapeake Bay Watershed Nutrient Exchange Program (§62.1-44.19:12 et seq.) by DEQ. An offset approved as available for a stormwater nonpoint nutrient offset under this program shall be secured in perpetuity.

“Offset generating facility” means a property that has generated nutrient credits which DEQ has certified under the Chesapeake Bay Watershed Nutrient Exchange Program as eligible perpetual stormwater nonpoint nutrient offsets that may be purchased by buyers upon approval by the permit issuing authority.

"Permit issuing authority" pursuant to §10.1-603.2 means the Virginia Soil and Water Conservation Board, DCR, or a locality that is delegated authority by the Board to issue, deny, revoke, terminate, or amend stormwater permits under the provisions of the Virginia Stormwater Act. Until authorization of qualifying local stormwater programs has occurred by the Virginia Soil and Water Conservation Board, DCR shall remain the permit issuing authority and shall have discretion to consider allowing compliance with stormwater water quality requirements through the use of the permit applicant’s acquisition of nonpoint nutrient offsets.

“Post-development nonpoint nutrient runoff compliance” means that a construction activity, utilizing BMP’s, has developed and implemented a design that will meet the appropriate phosphorus reduction limits required by state law and regulations in order to protect water quality.

“Practicable” means....

“Tributary” or "Tributaries" means the Potomac/Shenandoah, Rappahannock, York, and James River Basins, and the Eastern Coastal Basin, which encompasses the creeks and rivers of the Eastern Shore of Virginia that drain into the Chesapeake Bay.

"Virginia Stormwater Management Program (VSMP)" means the Virginia program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing requirements pursuant to the federal Clean Water Act, the Virginia Stormwater Management Act, this chapter, and associated guidance documents.

"Virginia Stormwater Management Program (VSMP) permit" means a document issued by the permit-issuing authority pursuant to the Virginia Stormwater Management Act and this chapter authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters. Under the approved state program, a VSMP permit is equivalent to a NPDES permit.

III. Discussion: How to Gain Approval for Use of Nutrient Offsets under the VSMP program

1. Determining Availability of Offsets

Nonpoint nutrient offsets must be certified under DEQ's Chesapeake Bay Watershed Nutrient Exchange Program [10.1-603.8:1(A)]. For the purposes of developing stormwater nonpoint nutrient offsets in the Chesapeake Bay Watershed, the Department of Environmental Quality's February 2005 guidance document entitled *Trading Nutrient Reductions from Nonpoint Source Best Management Practices in the Chesapeake Bay Watershed: Guidance for Agricultural Landowners and Your Potential Trading Partners* (http://www.deq.virginia.gov/export/sites/default/vpdes/pdf/VANPSTradingManual_2-5-08.pdf) shall be used. All calculations shall be performed in accordance with the procedures and nutrient removal rate tables outlined in that guidance. In addition to the options outlined in DEQ's guidance, §10.1-603.8:1(G) specifies that nonpoint nutrient offsets must be secured in perpetuity. In accordance with this requirement, an eligible stormwater nonpoint nutrient offset would need to be capable of being assured in perpetuity—for example, through the recording of a conservation easement, open space easement, or appropriate restrictive covenants.

Although varying offset strategies may emerge in the future, today, one of the primary stormwater nonpoint nutrient offsets that may be generated in perpetuity is an offset created as a result of land conversion. Land conversions generally allowed include the following:

- a. Cropland to Forest
- b. Cropland to Hay
- c. Cropland to Mixed Open (fallow)
- d. Hay to Forest
- e. Hay to Mixed Open (fallow)
- f. Pasture to Forest

Under land conversion, an offset seller converts several types of agricultural land uses to a land use of a lesser nutrient load by converting portions of land. The conversion of lands will begin to generate offsets on January 1 of the calendar year following planting. To be eligible for offset generation, the land conversion must occur on or after July 1, 2005. This date also serves as the reference point for the condition of the land prior to conversion from which you can claim nutrient reductions. For example, if a tract of land had been fallow (mixed open) as of July 1, 2005, and subsequently converted to cropland, a land owner could not decide at a later date to plant trees and claim nutrient reduction from a land conversion of cropland to forest. The land owner could, however, claim a land conversion from mixed open to forest. It is additionally of

note that land that is within the approved boundaries of a wetlands mitigation bank is not eligible for generating nonpoint nutrient offsets.

All stormwater nonpoint nutrient offsets shall use a 1:1 ratio of nonpoint nutrient offsets to attain the construction activity's remaining post development nonpoint nutrient runoff compliance requirement pursuant to §10.1-603.8:1(G). Although a buyer will be authorized to purchase a specific amount of phosphorus off-site to meet the stormwater nutrient reduction requirements, §10.1-603.8:1(E) specifies that in addition to the phosphorus nonpoint nutrient offsets acquired, the associated ratio of nitrogen nutrient offsets at the offset generating facility shall also be retired.

2. Procedures for certification for use by offset broker

The offset broker should use the following procedures during the process of offset generation and certification. The resulting documentation shall be provided to DEQ for approval in consultation with DCR.

- a. **Site Specific Implementation Plan:** The offset provider will develop a site specific implementation plan that will be approved under the DEQ program with additional review provided by DCR. At a minimum, a site implementation plan shall contain the information found in Appendix C of DEQ's guidance document. As an example, a copy of the approved Wildwood Farm Nutrient Reduction Implementation Plan may be found on DCR's website at [XXXXXXXXXXXX](#).
- b. **Offset Certificate:** Once the Plan is approved by DEQ/DCR, the agencies will sign the nutrient reduction certificate that specifies the offset generation activities, the total offsets at the site, and a running ledger of available and debited offsets along with other information. This form is found in Appendix B of DEQ's guidance document. An example of a completed form is provided as Attachment 2 of this document.
- c. **Authorization Letter:** Along with a signed Offset Certificate, DEQ will provide an authorization letter stating that the provider has developed offsets that meet the requirements of the DEQ nutrient credit exchange program. The letter will also state that the site will reach final "operational status" and become enabled to transfer offsets once the necessary protections and financial assurances are put in place and documentation is provided to DEQ and DCR. An example of DEQ's Nonpoint Nutrient Offset Generation Certification letter is provided as Attachment 3 to this document.
- d. **Protection in Perpetuity:** All offset generating land must be placed under an easement or restrictive covenant to ensure that the nutrient reducing and offset generating activities will remain in place in perpetuity. An example of the restrictive covenants for Wildwood Farm is provided as Attachment 4 to this document.

3. Obtaining Approval for the Purchase of an Offset by a Buyer

Prior to commencement of any VSMP regulated construction activity, a potential offset buyer that wishes to be authorized to purchase of stormwater nonpoint nutrient offsets for a construction activity shall submit a request package that will be utilized by DCR to determine eligibility. It should be noted that the purchase of an off-site offset will be considered only after on-site options have been thoroughly considered to the maximum extent practicable as defined herein and described below.

Section 10.1-603.8:1(D) specifies that a permit issuing authority may only allow the use of nonpoint nutrient offsets when the buyer demonstrates to the satisfaction of the permit issuing authority that:

- (i) alternative site designs have been considered that may accommodate on-site best management practices,
- (ii) on-site best management practices have been considered in alternative site designs to the maximum extent practicable,
- (iii) appropriate on-site best management practices will be implemented, and
- (iv) full compliance with postdevelopment nonpoint nutrient runoff compliance requirements cannot practicably be met on site.

In accordance with this section, to be eligible for consideration by DCR to purchase a stormwater nutrient offset, the applicant must demonstrate compliance with the elements outlined in Figure 1 and the procedures described herein to the satisfaction of DCR. Failure to satisfy these items may result in DCR's denial of the request for authorization to purchase a stormwater nutrient offset.

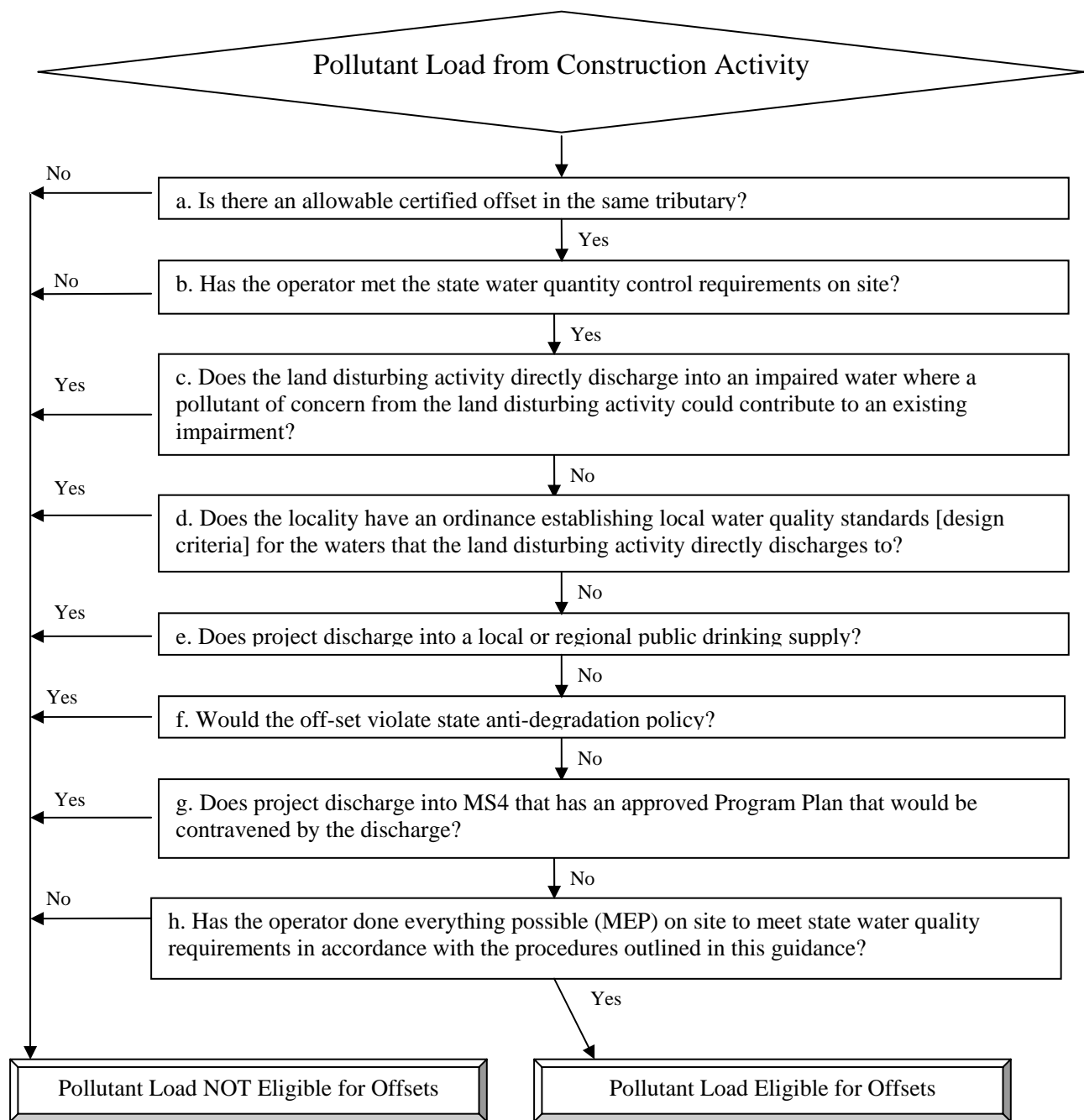


Figure 1: Offset Approval Decision Elements

Step a: Determine availability of offsets. Before seeking authorization to acquire a nonpoint nutrient offset, the buyer should verify that offsets are available in the same tributary as the construction activity and within allowable hydrologic unit codes. Nonpoint nutrient offsets for construction activities shall be generated in the same or adjacent eight digit hydrologic unit code as defined by the United States Geological Survey as the permitted site [§10.1-603.8:1(F)]. A map of these eight digit hydrologic unit codes may be found on DCR's website at **xxxxx**. Nonpoint nutrient offsets outside the same or adjacent eight digit hydrologic unit code may only be used if it is determined by the permit issuing authority that no nonpoint nutrient offsets are available within the same or adjacent eight digit hydrologic unit code when the permit issuing authority accepts the final site design. In such cases, nonpoint nutrient offsets generated within the same tributary may be used. In no case shall nonpoint nutrient offsets from another tributary be used. DEQ maintains a listing of available stormwater nonpoint nutrient offsets that may be found at **xxxxxxx**.

Step b: Meet state water quantity control requirements on site.

Step c: Determine if receiving waters are “impaired”. The buyer should next determine if runoff from its construction activity will directly discharge to an impaired water. If determined that this would be the case, the applicant will determine the cause of the impairment and whether the nutrient runoff from the construction activity would further contribute to the impairment. Contributions to the impairment shall not be allowed and all required nutrient reductions shall be achieved on-site to address the water quality requirements.

Step d: Determine if the are applicable local waters quality standards. If the locality in which the construction activity will occur has an ordinance establishing local water quality requirements for the waters that the construction activity will directly discharge to, those requirements shall be achieved on-site. If the requirement is for phosphorus, nitrogen, or sediment, it will preclude the acquisition of an offset unless such local water quality requirement is more lenient than any state requirements.

Step e: Determine any affect on drinking water supplies. If runoff from the construction activity will affect the adequacy or safety of drinking waters that have been identified as comprising or contributing to a local or regional public water supply as identified in a local or regional water supply plans prepared and submitted to the Department of Environmental Quality in accordance with criteria and guidelines developed by the State Water Control Board, all nutrient reductions shall be achieved on-site to protect the public water supply.

Step f. Determine if state anti-degradation policy would be violated. If authorizing acquisition of an offsite nutrient offset would violate state anti-degradation policy, all required nutrient reductions shall be achieved on-site.

Step g: Determine if runoff would discharge to an MS4. If the runoff from the construction activity would discharge to a municipal separate storm sewer system (MS4), offsets would not be allowed unless such transaction was within the confines of the MS4, supported by the MS4's Implementation Plan, and recommended by the MS4 to DCR. The approved Plan cannot be contravened by the discharge.

Step h: Demonstrate Maximum Extent Practicable.

Providing that suitable offsets are available, and that other local conditions and standards have not prohibited consideration of off-site options, a buyer must demonstrate to DCR that they cannot satisfy water quantity controls on-site to the **maximum extent practicable**. The applicant shall demonstrate to DCR that they have considered each of the following:

- a. Site design alterations including ESD techniques that minimize impervious cover and maximize vegetative cover;
- b. Conventional/ traditional BMPs (such as Extended Detention Ponds, Wet Ponds, Constructed Wetlands, Soil Compost Amendments); and
- c. LID BMPs aimed at reducing the volume of stormwater runoff leaving the development site, and therefore, mimicking the hydrologic patterns that existed at a site before it was developed (such as Green Roofs, Bioretention, Rain Gardens, Rooftop Disconnection, Dry Swales and Wet Swales).

To fully meet this standard there will be an expectation for alternative plan designs and water quality and engineering calculations to be provided, as well as a narrative discussing the options considered and why the options are not a suitable alternative. BMPs shall be designed in accordance with standards and specifications provided on the Virginia Stormwater BMP Clearinghouse (<http://www.vwrrc.vt.edu/swc/index.html>). Additional information regarding Virginia's uniform sizing criteria can be found in the Virginia Stormwater Management Handbook. Other innovative BMP strategies to address water quality may be advanced to DCR for consideration.

4. Prepare Offset Nutrient Submittal Package

The buyer must provide the following documentation in order to receive review for offset use for a portion of the water quality requirement of the project.

- a. Site Plans: Alternative site plans will be provided that show that design and engineering have been considered to the MEP (see discussion above) and are unable to completely account on-site for a portion of the water quality requirement according to the following sequencing stipulated in §10.1-603.8:1(D).
 - o alternative site designs have been considered that may accommodate on-site best management practices,
 - o on-site best management practices have been considered in alternative site designs to the maximum extent practicable,
 - o appropriate on-site best management practices will be implemented, and
 - o full compliance with postdevelopment nonpoint nutrient runoff compliance requirements cannot practicably be met on site.
- b. Water quality and engineering calculation sheets and narrative discussing all options considered.
- c. Certification by the buyer that the construction activity does not directly discharge to:
 - o An impaired water
 - o A local or regional public drinking supply
 - o An MS4
- d. Certification by the buyer that:
 - o The offset will not violate state anti-degradation policy

- o The locality does not have an ordinance establishing local water quality standards for the waters that the construction activity directly discharges to
- e. Offset Availability Letter: The applicant should provide a current offset availability letter from a certified offset provider that documents the ability of the provider to supply the necessary number of offsets in the appropriate service area pursuant to §10.1-603.8:1(F). An example of a completed form is provided as Attachment 5 of this document.
- f. Permit issuing authority satisfaction: Documentation of DCR's satisfaction of permit applicant demonstration pursuant to §10.1-603.8:1(D).
- g. Proof of Perpetuity of the Offset: All perpetual instruments (e.g., deed restrictions, restrictive covenants, or easements) must be recorded for the offset property prior to the permitted construction activity commencing. The operator's stormwater pollution prevention plan must contain a copy of the recorded instrument verifying the stormwater nutrient offsets that have been acquired to meet the construction activity's required nutrient reductions.

Complete packages shall be submitted to DCR's Richmond Central Office at:

Virginia Department of Conservation and Recreation
 c/o Stormwater Nutrient Credit Review
 203 Governor Street
 Room X, 2nd Floor
 Richmond, Virginia 23xxx

Upon receipt by DCR, the package will be reviewed for completeness. A complete package will be routed to the appropriate regional office for review. The regional office shall notify the locality of the offset application and request information that may be necessary to help the regional staff properly assess the application. Upon submittal of a complete package, DCR shall have 60 days to make a credit determination.

Upon approval of a credit, a letter will be sent to the buyer indicating the number of pounds of phosphorus approved for purchase and any specific requirements concerning the purchase (such as geographic location constraints). Similarly, should an approval be denied, DCR will submit a letter to the buyer outlining the reasons for such denial. An individual aggrieved by DCR's decision may appeal the decision to the Virginia Soil and Water Conservation Board.

5. Offset Transfer Documentation to be Provided by the Buyer

Before a construction activity that has acquired an offset may commence, the following information shall be available. These documents must also be incorporated into the buyer's stormwater pollution prevention plan.

- a. Letter of Authorization: A letter from DCR to the buyer indicating the number of pounds of phosphorus approved for purchase and any specific requirements concerning the purchase (such as geographic location constraints).
- b. Purchase and Sale Agreement

- c. Bill of Sale: Provided to the Purchaser. An example of the bill of sale for Wildwood Farm is provided as Attachment 6 to this document.
- d. Affidavit of Offset Sale: The Affidavit will be notarized and provided to DCR in addition to the buyer. An example of the Affidavit of Nutrient Offset Sale for Wildwood Farm is provided as Attachment 7 to this document.
- e. Offset Ledger: The offset broker will maintain a ledger of all offsets created and debited from each site and provide this information to DCR. An example of an Offset Ledger is provided as Attachment 8 to this document.
- f. Proof of Perpetuity of the Offset: The operator's stormwater pollution prevention plan must contain a copy of the recorded covenants, restrictions, easement, etc. verifying the stormwater nutrient offsets that have been acquired to meet the construction activity's required nutrient reductions will be protected in perpetuity. See Attachment 4 for an example of covenant restrictions.

In addition to these documents, the broker is also obligated to pay DCR a water quality enhancement fee equal to six percent of the amount paid by the permit applicant for the nonpoint nutrient offsets prior to commencement of the construction activity. Such funds shall be deposited to the Virginia Stormwater Management Fund. The buyer will be contacted by DCR with payment details.

4. Annual monitoring and reporting requirements

The restrictive covenants shall provide DEQ and DCR and their authorized agents, with advance notice, the right to enter and go on the offset generating facility to inspect and take actions necessary to verify compliance. The covenants shall be enforceable by DEQ and DCR.

Additionally, the offset broker shall provide an annual report to DEQ and DCR that includes the current ledger and photographs fully documenting the status of the site.

Should a purchase occur from the offset bank, an updated ledger shall be provided to DEQ and DCR within 3 business days of the transaction.

(INSERT ADDRESS AND OTHER PROCEDURES FOR SUBMISSION OF THIS INFORMATION)

V Adoption, Amendments, and Repeals:

This document was adopted by the Board on **July XX, 2009** and may be amended or repealed as necessary by the Board.

Appendix I

Authority: The Virginia Soil and Water Conservation Board and DCR derive their authority to regulate stormwater and to administer the Virginia Stormwater Management Program (VSMP) from the Stormwater Management Act (Code of Virginia §10.1-603.1 et seq.). The Act contains the following authorities applicable to this guidance and the implementation of a stormwater nonpoint nutrient offset program:

§10.1-603.8:1. Stormwater nonpoint nutrient offsets. (Chapter 364 of the 2009 Virginia Acts of Assembly [HB2168]) (See Attachment 1). This section authorizes a permit issuing authority to allow compliance with stormwater nonpoint nutrient runoff water quality criteria established pursuant to §10.1-603.4, in whole or in part, through the use of the permittee's acquisition of nonpoint nutrient offsets in the same tributary. Such nonpoint nutrient offsets are to be certified under the Chesapeake Bay Watershed Nutrient Exchange Program (§62.1-44.19:12 et seq.).

§10.1-603.4. Development of regulations.

...The regulations shall:

2. Establish minimum design criteria for measures to control nonpoint source pollution and localized flooding...;
3. Require the provision of long-term responsibility for and maintenance of stormwater management control devices and other techniques specified to manage the quality and quantity of runoff;...;
6. Establish statewide standards for stormwater management from land disturbing [construction] activities of one acre or greater, except as specified otherwise within this article, and allow for the consolidation in the permit of a comprehensive approach to addressing stormwater management and erosion and sediment control, consistent with the provisions of the Erosion and Sediment Control Law (§ 10.1-560 et seq.) and this article. However, such standards shall also apply to land disturbing [construction] activity exceeding an area of 2500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations (9 VAC 10-20 et seq.) adopted pursuant to the Chesapeake Bay Preservation Act (§ 10.1-2100 et seq.);
7. Require that stormwater management programs maintain after-development runoff rate of flow and characteristics that replicate, as nearly as practicable, the existing predevelopment runoff characteristics and site hydrology, or improve upon the contributing share of the existing predevelopment runoff characteristics and site hydrology if stream channel erosion or localized flooding is an existing predevelopment condition....;
8. Encourage low impact development designs, regional and watershed approaches, and nonstructural means for controlling stormwater;
9. Promote the reclamation and reuse of stormwater for uses other than potable water in order to protect state waters and the public health and to minimize the direct discharge of pollutants into state waters;...

Authority for the Virginia Department of Environmental Quality to establish the Chesapeake Bay Watershed Nutrient Credit Exchange Program in Virginia's portion of the Bay is found in §62.1-44.19:12 et seq. Applicable authorities are as follows:

§ 62.1-44.19:12. Legislative findings and purposes.

.... The General Assembly finds and determines that adoption and utilization of a watershed general permit and market-based point source nutrient credit trading program will assist in (a) meeting these cap load allocations cost-effectively and as soon as possible in keeping with the

2010 timeline and objectives of the Chesapeake 2000 Agreement, (b) accommodating continued growth and economic development in the Chesapeake Bay watershed, and (c) providing a foundation for establishing market-based incentives to help achieve the Chesapeake Bay Program's nonpoint source reduction goals.

§ 62.1-44.19:15 . New or expanded facilities.

B. Waste load allocations required by this section to offset new or increased delivered total nitrogen and delivered total phosphorus loads shall be acquired in accordance with this subsection.

1. Such allocations may be acquired from one or a combination of the following:

...b. Acquisition of nonpoint source load allocations through the use of best management practices acquired through a public or private entity acting on behalf of the land owner. Such best management practices shall achieve reductions beyond those already required by or funded under federal or state law, or the Virginia tributaries strategies plans, and shall be installed in the same tributary in which the new or expanded facility is located and included as conditions of the facility's individual Virginia Pollutant Discharge Elimination System permit; or

c. Acquisition of allocations in accordance with the terms of the general permit or through such other means as may be approved by the Department on a case-by-case basis.

The Department of Environmental Quality's February 2005 guidance document entitled *Trading Nutrient Reductions from Nonpoint Source Best Management Practices in the Chesapeake Bay Watershed: Guidance for Agricultural Landowners and Your Potential Trading Partners* (http://www.deq.virginia.gov/export/sites/default/vpdes/pdf/VANPSTradingManual_2-5-08.pdf) is a detailed source of information regarding how nutrient trading works and how the offsets may be developed and approved in the Chesapeake Bay Watershed. This guidance was developed in accordance with § 62.1-44.19:15(B)(1)(b). This document shall serve as the foundation for certifying nonpoint nutrient offsets that an authorized buyer may acquire.

Attachment 1: 2009 Legislation authorizing stormwater nonpoint nutrient offsets.

**VIRGINIA ACTS OF ASSEMBLY -- 2009 SESSION
CHAPTER 364**

An Act to amend the Code of Virginia by adding a section numbered 10.1-603.8:1, relating to stormwater nonpoint nutrient runoff offsets.

[H 2168]

Approved March 27, 2009

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 10.1-603.8:1 as follows:

§ 10.1-603.8:1. Stormwater nonpoint nutrient offsets.

A. As used in this section:

"Nonpoint nutrient offset" means nutrient reductions certified as nonpoint nutrient offsets under the Chesapeake Bay Watershed Nutrient Exchange Program (§ 62.1-44.19:12 et seq.).

"Permit issuing authority" has the same meaning as in § 10.1-603.2 and includes any locality that has adopted a local stormwater management program.

"Tributary" has the same meaning as in § 62.1-44.19:13.

B. A permit issuing authority may allow compliance with stormwater nonpoint nutrient runoff water quality criteria established pursuant to § 10.1-603.4, in whole or in part, through the use of the permittee's acquisition of nonpoint nutrient offsets in the same tributary.

C. No permit issuing authority shall allow the use of nonpoint nutrient offsets to address water quantity control requirements. No permit issuing authority shall allow the use of nonpoint nutrient offsets in contravention of local water quality-based limitations: (i) consistent with determinations made pursuant to subsection B of § 62.1-44.19:7, (ii) contained in a municipal separate storm sewer system (MS4) program plan approved by the Department, or (iii) as otherwise may be established or approved by the Board.

D. A permit issuing authority may only allow the use of nonpoint nutrient offsets when the permit applicant demonstrates to the satisfaction of the permit issuing authority that (i) alternative site designs have been considered that may accommodate on-site best management practices, (ii) on-site best management practices have been considered in alternative site designs to the maximum extent practicable, (iii) appropriate on-site best management practices will be implemented, and (iv) full compliance with postdevelopment nonpoint nutrient runoff compliance requirements cannot practicably be met on site.

E. Documentation of the permittee's acquisition of nonpoint nutrient offsets shall be provided to the permit issuing authority in a certification from an offset broker documenting the number of phosphorus nonpoint nutrient offsets acquired and the associated ratio of nitrogen nonpoint nutrient offsets at the offset generating facility. The offset broker shall pay the permit issuing authority a water quality enhancement fee equal to six percent of the amount paid by the permittee for the nonpoint nutrient offsets. If a locality is not the permit issuing authority, such fee shall be deposited into the Virginia Stormwater Management Fund established by § 10.1-603.4:1. If the permit issuing authority is a locality, such fees shall be used solely in the locality where the associated stormwater permit applies for inspection and maintenance of stormwater best management practices, stormwater educational programs, or programs designed to protect or improve local water quality.

F. Nonpoint nutrient offsets used pursuant to subsection B shall be generated in the same or adjacent eight digit hydrologic unit code as defined by the United States Geological Survey as the permitted site. Nonpoint nutrient offsets outside the same or adjacent eight digit hydrologic unit code may only be used if it is determined by the permit issuing authority that no nonpoint nutrient offsets are available within the same or adjacent eight digit hydrologic unit code when the permit issuing authority

accepts the final site design. In such cases, and subject to other limitations imposed in this section, nonpoint nutrient offsets generated within the same tributary may be used. In no case shall nonpoint nutrient offsets from another tributary be used.

G. For that portion of a site's compliance with stormwater nonpoint nutrient runoff water quality criteria being obtained through nonpoint nutrient offsets, a permit issuing authority shall (i) use a 1:1 ratio of the nonpoint nutrient offsets to the site's remaining postdevelopment nonpoint nutrient runoff compliance requirement and (ii) assure that the nonpoint nutrient offsets are secured in perpetuity.

H. No permit issuing authority may grant an exception to, or waiver of, postdevelopment nonpoint nutrient runoff compliance requirements unless off-site options have been considered and found not available.

I. In considering off-site options, the permit issuing authority shall give priority to the use of nonpoint nutrient offsets unless a local fee-in-lieu-of, pro-rata share, or similar program has been approved by the Board as being substantially equivalent in nutrient reduction benefits. However, prior to approval by the Board, there shall be a rebuttable presumption that any local government fee-in-lieuof,

pro-rata share, or similar program is substantially equivalent in nutrient reduction benefits. The Board shall establish criteria for determining whether any such local program is substantially equivalent, which shall be used during the local stormwater management program approval process in § 10.1-603.3.

J. The Board may establish by regulation a stormwater nutrient program for portions of the Commonwealth that do not drain into the Chesapeake Bay.

2. That no Virginia Soil and Water Conservation Board regulatory action, nor any local government ordinance or regional (watershedwide) stormwater management plan amendment, is necessary prior to implementation of this act; however, the Virginia Soil and Water Conservation Board may conform its regulations to this act through an exempt action and may adopt regulations through a nonexempt action.

Attachment 2: Example of completed and approved Nutrient Reduction Certificate for Wildwood Farm.

CHESAPEAKE BAY TRIBUTARY NUTRIENT REDUCTION CERTIFICATE, NUMBER _____, CALENDAR YEAR 2008							
PART A – IDENTIFICATION OF BMP ENHANCEMENTS OR LAND CONVERSION AND CALCULATION OF NUTRIENT REDUCTIONS ACHIEVED							
NAME AND PHONE NUMBER OF LAND OWNER: Wildwood Properties, LLC.						TRIBUTARY James River	
NAME AND PHONE NUMBER OF AUTHORIZED REPRESENTATIVE: Chesapeake Bay Nutrient Land Trust, LLC. – (804) 222-5114							
ADDRESS: 5735 S. Laburnum Ave. Richmond Va. 23231							
ARE ANY BMPs ON THESE FIELDS FUNDED BY STATE OR FEDERAL GRANTS? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> UNKNOWN <input type="checkbox"/>							
CALCULATION OF MARKETABLE LOAD REDUCTIONS: ATTACH WORKSHEETS OR COMPUTER PRINTOUTS WITH CALCULATIONS DEMONSTRATING REDUCTIONS BEYOND THOSE ACHIEVED BY BASELINE IMPLEMENTATION, FEDERAL OR STATE FUNDING REQUIREMENTS AND TMDL IMPLEMENTATION PLANS, IF APPLICABLE							
FSA TRACT NUMBER	FIELD IDENTIFIER	No. OF ACRES	LATITUDE	LONGITUDE	BEST MANAGEMENT PRACTICE ENHANCEMENTS OR LAND CONVERSION IMPLEMENTED	TOTAL NITROGEN REDUCTIONS (DELIVERED LBS/YR)	TOTAL PHOSPHORUS REDUCTIONS (DELIVERED LBS/YR)
FSN# 78 Tract# 70	1, 4, 8, 9, 11, 15, WISB	110.24	N 37 26' 33"	W 078 56' 00"	Land conversion of hay production to forest and cropland (corn) to hay.	376.24	100.80
TOTAL FROM ADDENDA SHEETS (AS NECESSARY)							
TOTAL						376.24	100.80
CERTIFICATION: This form has been prepared for the purpose of submitting the information contained in it to the Virginia Department of Environmental Quality (DEQ) and the Virginia Department of Conservation and Recreation (DCR). I certify under penalty of law that I have personally examined and am familiar with the information submitted herein. Based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the submitted information is true, accurate and complete, and that no other certificate for nutrient reduction has been submitted for the above sites for the above calendar year. I further certify that I am authorized to bind the party on behalf of which I am signing to the terms of this document. I further certify that the BMP, the monitoring, and the load reduction calculation described above satisfies the requirements for that type of BMP as set forth in the BMP list. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. I hereby grant permission to access the BMP described above at reasonable times to DEQ and/or DCR or their representative for the exclusive purpose of verifying the information contained in this document and not for any other purpose whatsoever.							
SIGNATURE OF LAND OWNER OR AUTHORIZED REPRESENTATIVE					DATE		
PART B - ASSIGNMENT OF REDUCTIONS TO OFFSET BROKER							
NAME AND PHONE NUMBER OF OFFSET BROKER: Chesapeake Bay Nutrient Land Trust, LLC. – (804) 222-5114							
ADDRESS: 5735 S. Laburnum Ave. Richmond Va. 23231							
CERTIFICATION: I certify under penalty of law that I have personally examined and am familiar with the information submitted herein; and based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. I hereby grant permission to access any records held by me that are associated with the BMP described above, or the Offset Purchaser described below.							
SIGNATURE OF OFFSET BROKER OR AUTHORIZED REPRESENTATIVE					DATE		
PART C - ASSIGNMENT OF REDUCTIONS TO OFFSET PURCHASER							
NAME OF OFFSET PURCHASER:					TRANSFER AMOUNT:		
PERMIT/PROJECT NUMBER AND/OR DESCRIPTION:					TRANSFER DURATION:		
NAME AND PHONE NUMBER OF PURCHASER OR AUTHORIZED REPRESENTATIVE:					TRANSFER DATE:		
CERTIFICATION: I certify under penalty of law that I have personally examined and am familiar with the information submitted herein; and based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. In the event that the nutrient reductions represented on this certificate cannot be substantiated in the time frame dictated by the conditions of the applicable state, local or federal permit, I acknowledge that I remain responsible for acquiring the load allocations necessary to comply with those permit conditions including, if applicable, the individual VPDES permit in accordance with § 62.1-44.19:15 of the Code of Virginia.							
SIGNATURE OF PURCHASER OR AUTHORIZED REPRESENTATIVE					DATE		

CHESAPEAKE BAY TRIBUTARY NUTRIENT REDUCTION CERTIFICATE, NUMBER _____, CALENDAR YEAR 2008							
ADDENDUM TO PART A – IDENTIFICATION OF BMP ENHANCEMENTS OR LAND CONVERSION AND CALCULATION OF NUTRIENT REDUCTIONS ACHIEVED (SHEET 2 OF 2)							
NAME AND PHONE NUMBER OF LAND OWNER: Wildwood Properties, LLC.							TRIBUTARY James River
NAME AND PHONE NUMBER OF AUTHORIZED REPRESENTATIVE: Chesapeake Bay Nutrient Land Trust, LLC. – (804) 222-5114							
ADDRESS: ADDRESS: 5735 S. Laburnum Ave. Richmond Va. 23231							
ARE ANY BMPs ON THESE FIELDS FUNDED BY STATE OR FEDERAL GRANTS? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> UNKNOWN <input type="checkbox"/>							
CALCULATION OF MARKETABLE LOAD REDUCTIONS: ATTACH WORKSHEETS OR COMPUTER PRINTOUTS WITH CALCULATIONS DEMONSTRATING REDUCTIONS BEYOND THOSE ACHIEVED BY BASELINE IMPLEMENTATION, FEDERAL OR STATE FUNDING REQUIREMENTS AND TMDL IMPLEMENTATION PLANS, IF APPLICABLE.							
FSA TRACT NUMBER	FIELD IDENTIFIER	No. OF ACRES	LATITUDE (UTM):	LONGITUDE (UTM):	BEST MANAGEMENT PRACTICE ENHANCEMENTS OR LAND CONVERSION IMPLEMENTED	TOTAL NITROGEN REDUCTIONS (DELIVERED LBS/YR)	TOTAL PHOSPHORUS REDUCTIONS (DELIVERED LBS/YR)
FSN # 78 Tract # 70	All or Part of Fields 1,4,9,11,15	91.21	N 37 26' 33"	W 078 56' 00"	Hay to Forest	299.17	89.39
FSN # 78 Tract # 70	Part of field 8	19.03	N 37 26' 33"	W 078 56' 00"	Crop to Hay	77.07	11.42
* See attached Exhibit 1 for areas undergoing Land Conversion activities / See attached Exhibit 2 for map depicting FSN, Tract and Field Identifier Numbers							
TOTALS						376.24	100.80

Wildwood Farm: 2008 Offset Ledger									
PERMIT/ PROJECT #	PURCHASER NAME	PROJECT NAME / LOCALITY	PERMIT/ PROJECT TYPE	DATE OF TRANSFER	TN TRANSFERRED	TP TRANSFERRED	TN BALANCE	TP BALANCE	PROJECT HUC
TOTALS									

Upon authorization of this nutrient reduction certificate, DEQ and DCR agree to the terms set forth in the Wildwood Farm Nutrient Reduction Implementation Plan dated May 16, 2008.

DIRECTOR OF DEQ OR DESIGNEE

DIRECTOR OF DCR OR DESIGNEE

DATE

DATE

Attachment 3: Example of DEQ's Nonpoint Nutrient Offset Generation Certification for Wildwood Farm.



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Street address: 629 East Main Street, Richmond, Virginia 23219

Mailing address: P.O. Box 1105, Richmond, Virginia 23218

Fax (804) 698-4500 TDD (804) 698-4021

www.deq.virginia.gov

L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

(804) 698-4000
1-800-592-5482

August 25, 2008

NONPOINT NUTRIENT OFFSET GENERATION CERTIFICATION

1. Landowner: Wildwood Properties, LLC
P.O. Box 754
Appomattox, VA 24522
2. Authorized Representative and Nutrient Offset Broker: Chesapeake Bay Nutrient Land Trust, LLC (CBNLT)
5735 S. Laburnum Ave.
Richmond, VA 23231
3. Location of Project Site: 1085 Falling Creek Road (Route 667)
Appomattox, Virginia 24221
Lat N 37 26' 33" Long W 078 56' 00"

4. Project Description:

The Landowner and its Authorized Representative (CBNLT) have initiated land use conversions on 110.24 acres within the 904± acre property in accordance with the Wildwood Farm Nutrient Reduction Implementation Plan dated May 16, 2008 (the "Plan"). These conversions consist of 91.21 acres of hay to forest and 19.03 acres of corn to hay. The nutrient reductions resulting from these conversions generate nonpoint offsets transferable to those regulated entities requiring nutrient offsets in accordance with the Chesapeake Bay Watershed Nutrient Credit Exchange Program (Va Code § 62.1-44.19:14 et seq) and applicable DEQ regulations.

5. Findings:

DEQ and DCR have completed review and approval of the Plan. As a result of this review and site inspection performed on July 23, 2008 by DEQ and DCR staff, it has been determined that the Wildwood Farm project satisfies the terms of DEQ regulations and guidance for the generation of nutrient offsets.

In order to provide for the long term viability of the offsets, CBNLT has agreed to provide financial assurance in the form of a letter of credit with a base amount of \$100,000.00 (One Hundred Thousand Dollars) per Tributary (as defined in 9 VAC 25-820-10) for up to 200 acres of offset generating lands plus \$200.00 per acre for any additional land generating offsets in the same Tributary. In addition, DEQ requires land conversion activities to be protected through some form of enforceable land use restriction during the life of an offset transfer.

NONPOINT NUTRIENT OFFSET GENERATION CERTIFICATION

Wildwood Properties, LLC

August 25, 2008

Page 2 of 2

Accordingly, the Wildwood Farm project is granted operational status, and CBNLT is authorized to transfer 376 pounds of nitrogen and 101 pounds of phosphorus once DEQ is provided proof of (i) a \$100,000.00 letter of credit and (ii) finalized restrictive covenants consistent with the terms of the Plan. DEQ has provided a signed copy of the Nutrient Reduction Certificate for your records; however, offsets may not be transferred until documentation of the financial assurance and restrictive covenant have been provided to DEQ.

6. Agency Contacts:

DEQ: Allan Brockenbrough

DCR: Russ Perkinson

7. Approval by:

Signature

Ellen Gilinsky, Ph.D., Director
Water Division

Date

Attachment 4: Example of Declaration of Restrictions for Wildwood Farm.

DECLARATION OF RESTRICTIONS

THIS DECLARATION OF RESTRICTIVE COVENANTS, is made this ____ day of _____, 2008, by Wildwood Properties, LLC, a Virginia limited liability company.

WHEREAS, Wildwood Properties, LLC (the “Owner”) is the owner in fee simple of certain property consisting of 904.01 acres located in the County of Appomattox, Virginia, represented as two (2) parcels in Tax Map #25 (A) page 13 (420.91 acres) and Tax Map #25 (A) page 17 (483.10 acres), and recorded as Instrument 2004/1864 (the “Property”). The Property is more commonly known as Wildwood Farm.

WHEREAS, Owner desires to be party to and comply with the respective conditions and terms of the Chesapeake Bay Nutrient Land Trust, LLC. (“CBNLT”) – Wildwood Farm Nutrient Reduction Implementation Plan (the “Nutrient Reduction Implementation Plan”) dated May 16, 2008 and approved by the Virginia Department of Environmental Quality (“DEQ”) and the Virginia Department of Conservation and Recreation (“DCR”) on August 25, 2008, by imposing this Declaration of Restrictions upon those areas of the Property shown in the Nutrient Reduction Implementation Plan as “Land Conversion Areas” currently consisting of agricultural lands converted to forested and hay conditions for the purpose of generating and transferring nutrient offsets.

WHEREAS, Owner desires to impose on said Land Conversion Areas a Declaration of Restrictions expressing Wildwood Properties, LLC's intent to preserve the Land Conversion Areas, consisting of 110.24± acres, and as shown in the Nutrient Reduction Implementation Plan for such period of time as to match the duration of nutrient offset generation and transfer by CBNLT on behalf of the Owner within the Property. The Owner desires to comply with the respective conditions and terms of the Nutrient Reduction Implementation Plan by imposing this Declaration of Restrictions on the Land Conversion Areas located on the Property. These Restrictions are imposed by the Owner freely and voluntarily.

NOW THEREFORE THIS DECLARATION WITNESSETH: That for and in consideration of One Dollar (\$1.00) cash in hand paid and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Owner does hereby declare, covenant and agree, for itself and its successors and assigns, that the Land Conversion Areas as shown in the Nutrient Reduction Implementation Plan and in any future amendments to the Plan shall be hereafter held, leased, transferred, and sold subject to the following conditions and restrictions which shall run with the land and be binding on all parties and persons claiming under them for any and all years nutrient offsets are generated or transferred by CBNLT.

Covenants and Restrictions:

A. The Land Conversion Areas shall be preserved for a length of time to match the duration of nutrient offset generation and transfer according to the terms of the Nutrient Reduction Implementation Plan by prohibiting the following activities:

1. Destruction or alteration of the Land Conversion Areas except:

- (a) Alteration necessary to complete the land conversion activities and associated improvements proposed to be built by CBNLT or its successors, and/or assigns;
- (b) Alteration necessary to implement the terms of the Nutrient Reduction Implementation Plan and ensure the success of the planned nutrient reductions and associated nutrient offsets and in conjunction with the construction, reconstruction, enhancement or maintenance of the Land Conversion Areas;
- (c) Alteration to construct structures such as walkways, boardwalks, foot trails, wildlife observation or management structures, benches, observation decks, picnic tables, fence posts and, ecological, biological, hydrological or chemical monitoring, observation or management equipment including, without limitation, monitoring wells, water control weirs or interpretive stations, or other structures provided that such facilities are constructed and maintained in accordance with all applicable federal and states laws;
- (d) Addition of signs constructed in public right of ways by or on behalf of the Virginia Department of Transportation or other governmental agencies;
- (e) Removal of vegetation (where not precluded by federal or state law) when conducted for
 - (i) removal of noxious or invasive plants or
 - (ii) limited aesthetic modifications not involving clearing or removal of trees or limbs
greater than three (3) inches in caliber unless dead, dying or diseased;
- (f) Planting of native species of plants by hand for aesthetic landscaping or screening purposes;
- (g) Alteration authorized by the Nutrient Reduction Implementation Plan and other activities pursuant to all applicable laws, regulations and guidance governing the generation and trading of nutrient offsets within the Commonwealth of Virginia;
- (h) Alteration as reasonably necessary to comply with state or federal law or appropriate court order;
- (i) Maintenance and use of existing trails and access roads crossing the Land Conversion Areas as long as activities do not negatively affect the associated nutrient reductions;
- (j) Subsistence livestock for personal use will be limited to domestically raised animals on privately held portions of the Property outside the Land Conversion Areas (i.e., the areas within the Declaration of Restrictions). Any domestic livestock will be fenced from the Land Conversion

Areas and access to stream watering locations or paddock crossing will be restricted to limited access points.

2. Construction, maintenance or placement of any structures or fills including but not limited to buildings, and mobile homes, other than those, which currently exist;
3. Ditching, draining, diking, damming, filling, excavating, grading, plowing, flooding/ponding, mining, drilling, placing of trash and yard debris or removing/adding topsoil, sand, or other materials (except as may be necessary on a case-by-case basis) other than any authorized under the Nutrient Reduction Implementation Plan;
4. Permitting livestock to graze, inhabit or otherwise enter the Land Conversion Areas placed into this declaration of restrictions;
5. Harvesting, cutting, logging, and pruning of trees and plants, or using fertilizers and spraying with biocides other than what is authorized by the Nutrient Reduction Implementation Plan (except as may be necessary on a case-by-case basis).

B. Wildwood Properties hereby grants operational and nutrient offset transfer rights for the Land Conversion Areas under the terms of the Nutrient Reduction Implementation Plan to CBNLT. CBNLT agrees to manage said Land Conversion Areas according to the terms of this Declaration of Restrictions and the Wildwood Farm Nutrient Reduction Implementation Plan.

Amendment:

The covenants contained herein shall not hereafter be altered in any respect without the express written approval and consent of the Owner or its successor in interest and CBNLT. After recording, the Owner or its successor may vacate or modify this declaration by providing a document signed by CBNLT and the Owner or its successor in interest. For portions of the Land Conversion Areas for which nutrient offsets are not currently being generated and transferred: the Owner or its successor in interest may amend or vacate this declaration by providing a document signed by the Owner or its successor and CBNLT provided the amendment or vacation of this declaration does not negatively affect the areas within the Land Conversion Areas that continue to generate and transfer nutrient offsets.

Compliance Inspections and Enforcement:

DEQ and DCR and their authorized agents shall have the right to enter and go on the Land Conversion Areas to inspect and take actions necessary to verify compliance with this declaration of restrictions. For safety reasons, DEQ and DCR shall notify CBNLT in advance of on-site inspections. Each request for access by non-DEQ and DCR private parties will be evaluated on a case by case basis by CBNLT and Owner. The restrictive covenants herein shall be enforceable by any proceeding at law or in equity or administrative proceeding by the DEQ and DCR. Failure by the DEQ, DCR or Owner to enforce any covenant or restriction contained herein shall in no event be deemed a waiver of the right to do so thereafter.

Separability Provision:

The provisions hereof shall be deemed individual and severable and the invalidity or partial invalidity or unenforceability of any one provision or any portion thereof shall not affect the validity or enforceability of any other provision thereof.

Consent of Lender and Trustee: (Not Applicable)

No Lien Held

Referenced Document:

Terms and Conditions of the Wildwood Farm Nutrient Reduction Implementation Plan dated May 16, 2008 between: Chesapeake Bay Nutrient Land Trust, LLC, the Virginia Department of Environmental Quality and the Virginia Department of Conservation and Recreation are available upon written request.

Document copies may be obtained with CBNLT or Owner permission from:

Chesapeake Bay Nutrient Land Trust, LLC.
P.O. Box 38226
Richmond, Virginia 23231

WITNESS the following signature the day and year first above written.

BY: _____
Officer \ General Partner

BY: _____

TITLE: _____

Commonwealth of Virginia, County of _____, to wit:

I, _____, a notary public for the state and city aforesaid, do certify that _____, whose name was signed on _____, 2009 in his capacity on that date to the foregoing document has acknowledged said document and signature before me in the city aforesaid.

Given under my hand and notarial seal this _____ day of _____, 2008.

Notary Public

My commission expires _____.

Attachment 5: Example of Offset Availability Letter for Wildwood Farm.

Permit Applicant _____

**RE: CBNLT/Wildwood Farm – Nutrient Offset Availability
Chesapeake Bay Nutrient Land Trust, LLC**

May 22, 2009

Project Reference: “ _____ ”

Attention: Mr(s) _____:

This letter is to confirm the availability of authorized nonpoint nutrient offsets at our Wildwood Farm project located in Appomattox County. Chesapeake Bay Nutrient Land Trust, LLC currently has _____ pounds of phosphorus offsets and _____ pounds of nitrogen offsets available for transfer in the approved service area in the James River watershed.

These offsets were certified pursuant to the Chesapeake Bay Watershed Nutrient Exchange Program (Virginia Code § 62.1-44.19:12 et seq.) by the Virginia Department of Environmental Quality (“DEQ”) and the Virginia Department of Conservation and Recreation (“DCR”) to be used as compensation for state or local permit water quality requirements. These offsets have been generated and are transferable according to § 10.1-603.8:1 of the Code of Virginia.

If we can provide further assistance please feel free to contact our office.

Sincerely,

Brent L. Fults, LA
Managing Partner
EarthSource Solutions Inc.

Attachment 6: Example of Bill of Sale for Wildwood Farm.

CHESAPEAKE BAY NUTRIENT LAND TRUST, LLC – WILDWOOD FARM

BILL OF SALE

BILL OF SALE, made as of _____, 2009, by **CHESAPEAKE BAY NUTRIENT LAND TRUST, LLC**, a Virginia limited liability company (“Seller”), and _____ (“Purchaser”).

WHEREAS, Seller and Purchaser have entered into that certain Purchase and Sale Agreement as of _____, 2009 (the “Purchase Agreement”), with respect to the sale by the Seller and purchase by the Purchaser of Nonpoint Nutrient Offsets generated within the Wildwood Farm Property in Appomattox County, Virginia.

NOW, THEREFORE, for and in consideration of the payment of the Purchase Price (as defined in the Purchase Agreement) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller hereby sells, transfers, assigns, conveys, delivers and sets over to Purchaser, its successors and assigns, _____pounds of phosphorus offsets and _____pounds of nitrogen (representing the ratio of nitrogen offsets to the phosphorous offsets at the offset generating facility) offsets as such are described in the Purchase Agreement.

TO HAVE AND TO HOLD all such Nonpoint Nutrient Offsets hereby sold and transferred to Buyer and its successors and assigns forever.

IN WITNESS WHEREOF, Seller has caused this Bill of Sale to be executed by its duly authorized representative as of the date first above written.

CHESAPEAKE BAY NUTRIENT LAND TRUST, LLC
a Virginia Limited Liability Company

By: _____

Manager

Attachment 7: Example of Affidavit of Nutrient Offset Sale for Wildwood Farm.

CHESAPEAKE BAY NUTRIENT LAND TRUST, LLC – WILDWOOD FARM

AFFIDAVIT OF NUTRIENT OFFSET SALE

CHESAPEAKE BAY NUTRIENT LAND TRUST, LLC, a Virginia limited liability company (the “Company”), hereby certifies the following:

1. Pursuant to that certain Purchase and Sale Agreement dated _____, 2009 (the “Agreement”), between the Company (as Seller) and _____ (“Purchaser”), the Company, for the benefit of the Purchaser, agreed to sell _____ pounds of phosphorus offsets and _____ pounds of nitrogen (representing the ratio of nitrogen offsets to the phosphorous offsets at the offset generating facility) offsets to Purchaser;

2. The Company and the Purchaser, as of the date hereof, have closed the transaction contemplated by the Agreement and the Company has sold to Purchaser phosphorus offsets and _____ pounds of nitrogen (representing the ratio of nitrogen offsets to the phosphorous offsets at the offset generating facility) offsets.

WITNESS the following signature:

CHESAPEAKE BAY NUTRIENT LAND TRUST, LLC,
a Virginia limited liability company

By: _____
Manager

Date: _____

Sworn to and subscribed before me this _____ day of _____, 2009, by _____, Manager, on behalf of Chesapeake Bay Nutrient Land Trust, LLC, a Virginia limited liability company.

My commission expires:

Notary Public

Permit Issuing Authority Permit # _____

Permittee: _____

Phosphorus Offsets: _____ pounds

Nitrogen Offsets: _____ pounds

Attachment 8: Example of Offset Ledger.

Example to be created and inserted