

**Chesapeake Bay Local Assistance Board  
Policy Committee  
Tuesday, November 27, 2007  
Dorey Recreational Park  
Richmond, Virginia**

**Policy Committee Members Present**

William E. Duncanson, Chair

Donald W. Davis, Board Chair

**Policy Committee Members Not Present**

Gregory C. Evans

Beverly D. Harper

**DCR Staff Present**

Joseph H. Maroon, Director

Russell W. Baxter, Deputy Director

Ryan Brown, Assistant Policy and Planning Director

Joan Salvati, Director, Division of Chesapeake Bay Local Assistance

David Sacks, Assistant Director, Division of Chesapeake Bay Local Assistance

Michael R. Fletcher, Board and Constituent Services Liaison

Adrienne Kotula, Principal Environmental Planner

V'lent Lassiter, Senior Environmental Planner

Alli Baird, Senior Environmental Specialist

Nathan Hughes, Watershed Specialist

Shawn Smith, Principal Environmental Planner

Daniel Moore, Principal Environmental Planner

**Others Present**

Robert Hicks, Virginia Department of Health

Rick Cox, Virginia Department of Health

Trapper Davis, Coastal Plains Environmental Group

Michelle Ashworth, Aqualaw

**Call to Order**

Mr. Duncanson called the meeting to order. A quorum was not present.

He asked Ms. Salvati to move ahead with the agenda.

**Discussion of Proposed Amendments to Guidance Documents**

Ms. Salvati said that at the June 18 meeting, the Policy Committee recommended adoption of the new RPA Nontidal Wetlands Guidance document.

Ms. Salvati said an issue surrounding the question of impoundments had arisen regarding buffers around RPA features. She said that staff had been asked to reconsider the issue and bring recommendations back to the Policy Committee. She said staff was prepared to make the following recommendations.

*Resource Protection Area: Nontidal Wetlands*

1. Remove the section entitled “Nontidal Wetlands Associated with Lakes, Ponds and Other Impoundments” in its entirety.
2. Add reference to Board guidance document entitled *Determinations of Water Bodies with Perennial Flow* in first paragraph on page 1.

*Determinations of Water Bodies with Perennial Flow*

1. Revise the definition of “water body with perennial flow” on page 2 to add language making it clear that lakes and ponds with perennial streams flowing into, out of, or through them are considered to be part of the perennial stream and therefore required to be protected by the RPA.
2. Add a section on page 3 entitled “Lakes, Ponds and Other Impoundments as RPAs.” This section includes verbiage that provides that stormwater quality and quantity BMPs may be exempt from the RPA requirement.

Ms. Salvati said that this language would allow a locality that chose not to exempt the BMPs to do so. The intent is that this be permissive rather than mandatory language.

Mr. Duncanson asked how the permissive language would work for localities.

Ms. Salvati said there are some localities that want not water quality and quantity BMPs to be exempt.

Mr. Davis said one of the items discussed in June was that the BMPs needed to be designed in accordance with locality standards. He said that should be indicated and that all necessary permits should be acquired.

Mr. Maroon said that in a conversation in a different context, the issue had been raised concerning land where there is perennial flow into a water body, but no outflow from the same water body. He asked staff to address the view of the benefit of buffering a perennial stream where the receiving pond or lake was the ultimate endpoint.

Ms. Salvati said the intent is to buffer the wetland associated with the BMPs. She said that, to qualify for the exemption, the BMP has to be the minimum necessary.

Mr. Baxter asked that, in the definition of a water body with perennial flow, if there is no flow out or through the body, are there also issues related to requiring buffering.

Ms. Salvati said that it would be considered a perennial stream. Any pond that is being fed in some manner by a perennial stream can be considered a perennial system. She noted that some farm ponds are depressional features with no stream in or out. She said the intent is not to protect the water body, but to protect the stream system.

Mr. Baxter asked if these situations were rare.

Mr. Davis said they were not that rare, especially in the terms of a reservoir where there is a low flow rate into the water body that over the long term has a low impact. He said this has been discussed previously, and that based on the current regulations, a perennial stream must be protected by an RPA. He said there may need to be a further rewrite of the regulations to clarify this issue.

Ms. Salvati said that historically, many localities have treated ponds as a part of the stream system

Mr. Davis said that now was not the time to try to change the regulations, but that this should be looked at in the future.

Ms. Salvati said the other item for update was that Mr. Hughes coordinated a Nontidal Wetlands Guidance Workshop and approximately 33 localities were represented. There were not a lot of issues or complaints raised. She said there were technical questions related to the document and how to apply the guidance in the field.

Ms. Salvati said that Henrico and Hanover counties still have expressed concerns about the new Nontidal Guidance document. Both localities have been asked to provide specific comments, but none have been received.

Mr. Hughes said that Henrico and Hanover had also been asked to conduct site visits so that Department staff can better understand the Counties' concerns, but that neither county has responded. Nor have the counties provided DCR with comments as to where they thought the document should be changed.

Mr. Davis expressed a concern regarding an addition to the perennial flow document on page 3. Specifically the sentence, "If the size of the impoundment exceeds that which is necessary to provide flood control, stormwater quality treatment or both, then they should be considered amenities and treated as RPA features."

Mr. Davis said he was concerned that this may be unreasonable for the localities.

Ms. Salvati said this section echoes the language in the RPA criteria and that the verbiage is the same as is in the regulations.

Mr. Davis asked what happened when a BMP was created for both water quality and water quantity purposes and was oversized on purpose. He asked if that would be considered an RPA feature.

Ms. Salvati said if the feature was designed for future development, it would qualify for the exemption. She noted that some developers are building significantly larger ponds, but not getting significant pollutant removal.

Mr. Davis said he would like staff to consider this before the next Board meeting. He noted a concern that this might bring confusion at the local level.

Ms. Smith said that as written, the language deals more with existing ponds and BMPs. She said that any future BMP or pond must adhere to the criteria in the regulations and that in the regulations, there is an automatic limitation regarding the size unless the developer goes through the exception process. She said new BMPs are not likely the ones in question.

Mr. Maroon suggested that the section refer to the size of the existing impoundment and that the last sentence could reference previously constructed facilities.

Mr. Davis asked if there needed to be a recommendation sent to the Board.

Mr. Maroon said the subcommittee could indicate the consensus of the committee.

Ms. Salvati said staff would make necessary changes to reflect the intent of the discussion.

Mr. Davis asked that Mr. Evans and Ms. Harper be copied on the revisions and asked to comment.

Mr. Maroon suggested that, as there are two new members, the staff provide a more in depth review of the guidance document at the meeting.

Ms. Salvati said that staff would provide a basic presentation framing the issue from the January 2007 Policy Committee meeting and reflect the changes that have been made.

The committee members present indicated a desire to move the document forward to the Board following staff revisions.

### **Staff Update on Phase III Review Process – Review of Proposed Schedule and Checklists**

Ms. Salvati said that Mr. Sacks, Ms. Kotula, Ms. Lassiter and Ms. Smith worked with the Phase III Advisory Committee to develop a proposed schedule and checklists.

Mr. Sacks gave the following update:

Chesapeake Bay Preservation Act Phase III Program Update

*Phases of Local Government Chesapeake Bay Program Implementation*

- Phase I: Mapping of Chesapeake Bay Preservation Areas and adoption of management program in local ordinances
- Phase II: Adoption of Comprehensive Plan components
- Phase III: Review & revision of local codes for inclusion of water quality performance criteria

*Phase III Legal Authority*

Chesapeake Bay Preservation Area Designation and Management Regulations

9 VAC 10-20-231.3:

“Phase III shall consist of local governments reviewing and revising their land development regulations and processes, which include but are not limited to zoning ordinances, subdivision ordinances, erosion and sediment control ordinances and the plan of development review process, as necessary to comply with § 10.1-2109 of the Act and to be consistent with the provisions set forth in Part VI of this chapter.”

*Phase III Advisory Committee*

- Convened in September 2007 to provide guidance on Phase III program development. Met monthly.
- Provided specific suggestions on content of Phase III review process/strategy
- Recommended opportunities/venues for CBLA staff to educate localities and seek input about Phase III
- Provided guidance on schedule

*Local Government Phase III Requirements*

1. Six specific provisions are required to be in local land development ordinances
2. Provisions to address the three general performance criteria must be incorporated into local land development ordinances

To accomplish the above, localities must:

- a. Undertake an ordinance review process to ensure that provisions are in place

- b. Revise ordinances as if such provisions are not in place

*Phase III Components*

Specific Provisions

- I. CBPA Land Development Ordinance Requirements  
Sections 9 VAC 10-20-191 A 4 & 5 of the Regulations

Ordinances must require plats and plans to have the following:

1. a depiction of the Resource Protection Area and Resource Management Area boundaries
2. a notation for the requirement to retain an undisturbed and vegetated 100-foot wide buffer area
3. a notation regarding the requirement for pump-out for on-site sewage treatment systems
4. a notation regarding the requirements for 100% reserve drainfield
5. a notation that development in the RPA is limited to water dependent facilities or redevelopment
6. a delineation of the buildable areas on each lot

- II. Evaluation of Water Quality Protection in Land Development Ordinances

Review local land development ordinances for specific development standards that implement the general performance criteria in the Regulations.

A checklist will be used to identify ordinance provisions to meet general performance criteria and a minimum threshold established.

The checklist that is continuously evolving based on comments received and staff refinement consists of approximately 140 questions. Mr. Sacks reported that the intent in developing this portion of the questionnaire was to gauge the extent to which local governments had ordinances to enable them to implement the three performance criteria. He added that each question would be worth one point and that ultimately a threshold of minimum number of points would be established to be met in each of the three areas. He referenced the full draft questionnaire provided in the Committee packet and noted that in lieu of weighting some questions that may have a more significant contribution to water quality, those issues may be represented by multiple questions, thereby having the same effect. He provided a general overview of the categories of questions and some examples of each.

*Minimize Land Disturbance* - 57 questions  
Open Space Requirements

Clearing and Grading Requirements  
Utility and Easement Requirements  
Low Impact Development Concepts  
Better Site Design Concepts

*Preserve Indigenous Vegetation* - 35 questions  
Sensitive Land Protection/Preservation  
Vegetation and Tree Protection Requirements  
Better Site Design Concepts

*Minimize Impervious Cover* - 45 questions  
Parking Requirements  
Low Impact Development Concepts  
Redevelopment and Infill Development Concepts  
Road Design Requirements  
Pedestrian Pathways and Driveways

*Phase III Proposed Schedule*

Sept. - Nov. 2007	Development of Checklist questions with Advisory Committee
November 27, 2007	Update provided to CBLAB Policy Committee
Nov./Dec. 2007	Meeting with locality staff at PDC's
Dec. 10, 2007	Update provided to CBLAB
Dec.-Feb. 2008	Test checklists on 3 local programs - modify as needed
March 2008	Policy Committee Recommendation and Board adoption of Phase III review process, review materials, and locality deadlines
April 2008	Official Notification to Localities; Initiate Advisory Reviews
January 2010	Local Program Adoption Deadline; Begin Formal Reviews
Ongoing	Local Government Outreach

*Outreach Process Elements*

Mr. Sacks explained that it was staff's intent to meet with representatives of as many of the 84 Bay Act localities as possible to provide a general overview of Phase III so that they are generally familiar with it upon receiving something in the mail. He indicated that with two exceptions, these meetings are being hosted

by the Planning District Commissions and thus far attendance has been very good. He provided a list of these meetings:

Planning District Commission Meetings with Local Gov't. Staff

- Accomack and Northampton Counties: November 29, 2007
- Crater PDC: December 14, 2007
- George Washington Regional Commission Localities: Dec. 11, 2007
- Hampton Roads PDC: June/Dec. 13, 2007
- Middle Peninsula PDC: November 28, 2007
- Northern Neck PDC: December 3, 2007
- Northern Virginia Regional Commission: November 29, 2007
- Richmond Regional PDC: October 23, 2007

Jan./Feb./March 2008:

- Continuation of locality discussions using PDC's
- VML/VACO
- VAPA and other professional organizations

Mr. Sacks also indicated that should the Board be comfortable with the approach as presented, at their December 10 meeting, staff intends to make the checklist available to local governments to review and provide comment.

Mr. Davis said that he had heard criticism of the VDOT road design standards.

Ms. Salvati said that VDOT is revising their state secondary road acceptance requirements and under new provisions must accommodate stormwater runoff and impervious cover. She noted that some localities were establishing road widths in excess of the VDOT requirements.

Mr. Sacks said the intent is not to penalize localities because of a VDOT requirement, but staff has determined that some localities require road specifications in excess of VDOT standards. He added that there is a question on the checklist to give "credit" to localities that do not do this. .

Mr. Maroon said that the key point with Phase III is for the Board to be comfortable with the timeline and review process.

Mr. Duncanson said that he saw no reason not to move forward if a locality is ready for review.

Mr. Sacks said that the City of Virginia Beach and James City County may already be ready with ordinance amendments adopted.



### **Staff Update on Septic Tank Pump Out Disposal Issues**

Ms. Salvati gave an update on the Septic Tank Pump Out issue. She said that the work group analyzed the issue and gathered information through the Health Department and the Department of Environmental Quality on sewage treatment plans.

Ms. Salvati distributed a document showing the treatment facilities that may be able to accept septage generated through septic pump outs in the Northern Neck area. She noted that Bob Hicks and Rick Cox were present from the Virginia Department of Health to address the issue. She also recognized Mr. Russ Perkinson from the DCR Division of Soil and Water Conservation.

#### *Sewage Treatment Plant Capacity - Northern Neck*

- Concern raised about ability of treatment plants in the Northern Neck to handle septage
- Interagency work group established to clarify problem and identify possible solutions
- DEQ has projected septage loadings for Northern Neck - 8,000-10,000 lbs/day
- Concern also raised about inadequate number of haulers

#### *Assessment of Issues*

- Officials from VDH feel that there are an adequate number of septic haulers
- VDH compiled a listing of all sewage treatment plants and highlighted those with potential for treating pumped septage - there are 4 such facilities in the Northern Neck area
- Several of those facilities would require funding for upgrades in order to treat the septage

#### Optional solutions currently identified

- Encouraging use of plastic filter in lieu of 5-year pump out
- Work with existing plants to build capacity to treat septage
- Build a central septage receiving and treatment facility.

#### Impediments

- Funding for central receiving and treatment facility
- Existing plants with existing nutrient caps are concerned about impacts of septage on those caps

Mr. Cox said that one of the biggest issues would be getting existing plants into the shape where they could receive the septage. He noted that the Town of Warsaw is getting ready to build another plant. The capacity is above the 100,000 threshold.

Mr. Cox said that the Town of Kilmarnock is considering this as a means of producing revenue.

Mr. Hicks said that other areas of the state also have septic pump out issues.

Mr. Maroon asked if the Health Department encouraged the use of the plastic filter.

Mr. Cox said that the Health Department was very much in favor of the use of the filters.

Ms. Salvati said that the Virginia Association of Onsite Sewage Recyclers has noted concern over the use of the plastic filters.

Mr. Hicks said that one problem with the filters is that they must be serviced annually.

Mr. Davis asked about the additional cost for use of the filter.

Mr. Hicks said the filter added approximately \$100 in additional costs.

Ms. Salvati said that the next step would be for the work group to generate a report.

Mr. Cox said if the issue could not be addressed with existing plant capacity, the building of a central septage receiving and treatment facility should be considered.

### **Set Next Meeting Date**

The next meeting of the Policy Committee will be Friday, February 15 at noon, between the NARC and SARC meetings at the CBLA offices in Richmond.

### **Adjourn**

Being no further business, the meeting was adjourned.

Respectfully submitted,

William E. Duncanson  
Committee Chair

Joseph H. Maroon  
Director