

**Chesapeake Bay Local Assistance Board
Policy Committee
Monday, June 18, 2007
Dorey Recreational Park
Henrico, Virginia**

Policy Committee Members Present

Walter J. Sheffield, Committee Chair
William E. Duncanson
Beverly D. Harper

Donald W. Davis, Board Chair
Gregory C. Evans

DCR Staff Present

Joseph H. Maroon, Director
Russell W. Baxter, Deputy Director
David C. Dowling, Policy, Planning and Budget Director
Joan Salvati, Director, Division of Chesapeake Bay Local Assistance
David Sacks, Assistant Director, Division of Chesapeake Bay Local Assistance
Ryan Brown, Policy and Planning Assistant Director
Michael R. Fletcher, Board and Constituent Services Liaison
Nathan Hughes, Watershed Specialist
Carolyn Elliott, Administration Specialist
Carrie Hileman, Policy and Planning Intern
Roger Chaffe, Office of the Attorney General
Elizabeth Andrews, Office of the Attorney General

Others Present

Mike Rolband, Wetland Studies & Solutions
Rebecca Draucker, Timmons Group
Sandy Williams, Blueskies Environmental
Darryl Cook, James City County
Kathy James Webb, City of Newport News
Dr. John Galbraith, Virginia Tech
Dr. Kirk Havens, VIMS

Call to Order

Chairman Sheffield called the meeting to order. He recognized Ms. Salvati for a presentation.

Ms. Salvati said that the intent of the presentation was to review the revisions that had been made to the draft Nontidal Wetlands guidance document. She said that staff would be seeking the recommendation of the Policy Committee with regard to sending the document to the full Board for consideration.

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Discussion of Nontidal Wetlands Guidance Document

Ms. Salvati noted that, at the May 8 meeting of the Policy Committee, staff presented several options for Nontidal guidance. She said there was significant consensus of the Policy Committee as well as the Ad Hoc Committee that Option B was the better document.

Ms. Salvati said that based on feedback from the Policy Committee as well as the Ad Hoc Committee, staff had made several editorial and other more substantive revisions.

Mr. Davis asked if staff had received comments from the Hampton Road Planning District Commission.

Mr. Sacks said that staff had received feedback and had made modifications to some of the graphics. He said in general the HRPDC was pleased with the document coming to the Board.

Ms. Salvati gave the following presentation:

**Overview of the Draft Guidance Document:
Resource Protection Areas: Nontidal Wetlands**

Policy Committee follow-up from March 26, 2007:

- Committee requested pursuing "Option B"
- Specific revisions incorporated
- Discussions held with specific ad-hoc committee members
- Revised draft mailed to Policy and ad-hoc committees
- Presentation to HRPDC locality staff
- Additional comments received
- Revised draft (dated June 18, 2007) distributed

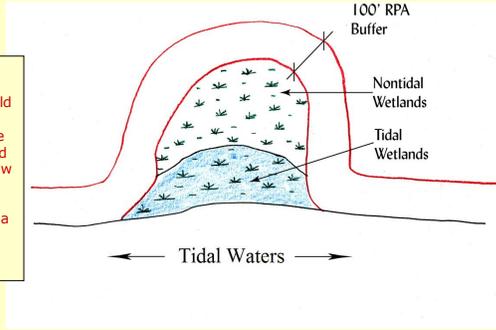


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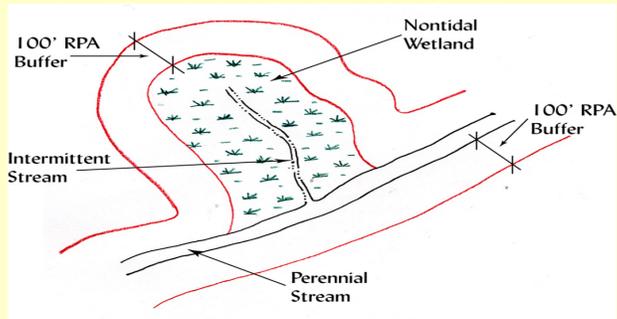
Nontidal Wetlands Connected by Surface Flow and Contiguous to Tidal Wetlands

"Designation of a nontidal wetland within an RPA should include all nontidal wetlands, which are both contiguous and satisfy a surface flow connection, either singularly or as a continuous unit, to a tidal wetland or water body with perennial flow"



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Nontidal Wetlands Connected by Surface Flow and Contiguous to Water Body with Perennial Flow



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Nontidal Wetlands Connected by Surface Flow and Contiguous to Water Body with Perennial Flow

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"... nontidal wetlands are contiguous to water bodies with perennial flow, and a hydrological connection by surface flow will exist during any year of normal rainfall. Such nontidal wetlands should be designated as RPAs."

Nontidal Wetlands Connected by Surface Flow and Contiguous to Water Body with Perennial Flow

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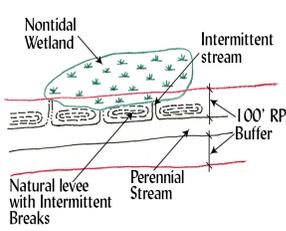
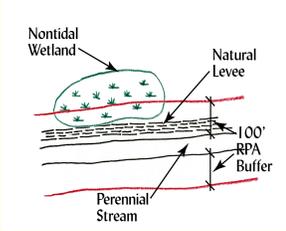
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"... nontidal wetlands ... contiguous and hydrologically connected to an intermittent stream yet spatially separated from the water body with perennial flow or other nontidal wetland by an intermittent stream or intermittent channel... are not required to be designated as RPAs.

**Nontidal Wetlands
Separated by a Levee**

Wetland is not contiguous to perennial water body and does not require the RPA buffer.

Wetland is not connected by a water body with perennial flow, so it does not require the RPA buffer.

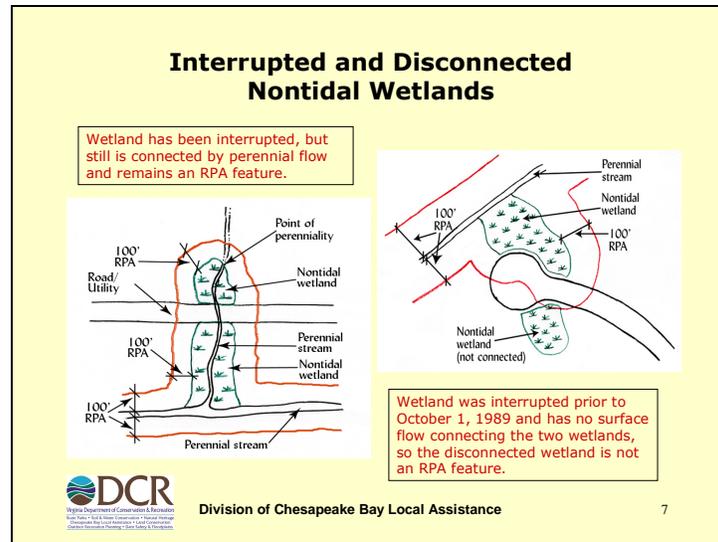


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Ms. Salvati noted that in this slide, the illustration on the right shows that the breaks are intermittent and that the 100-foot buffer is measured from the edge of the stream.

Mr. Davis asked if, assuming that that the breaks in the figure on the right were narrow bands of wetlands, would that constitute an RPA around a nontidal wetland?

Ms. Salvati said that it would because they would be jurisdictional wetlands.



Ms. Salvati said that this figure referred to a manmade interruption such as a road or a culvert. She said that in the illustration on the left, the feature conveys water from one side to the other. In these cases, the guidance would require the RPA around the entire wetland complex.

Ms. Salvati said that in the illustration on the right there is no conveyance feature going under the road. She said that the guidance would indicate that if this separation were established prior to 1989 then the 100 foot buffer is only required around the part of the feature closest to the perennial water body. After 1989, the RPA buffer would have to go around the other side of the wetland.

Nontidal Wetlands Associated with Intermittent Streams or Other Non-Perennial Conveyances

The diagram shows a stream flowing from left to right. A 'Point of Perenniality' is marked on the stream. Upstream of this point, the stream is flanked by red lines representing the '100' RPA'. Downstream of the point, the stream is flanked by black lines representing the '100' RPA'. A section of the stream between the point of perenniality and the end of the RPA is labeled 'Wetlands/ non-perennial stream'. A text box explains that these wetlands are not required to be included as RPA features.

100' RPA

Point of Perenniality

100' RPA

Wetlands/ non-perennial stream

These wetlands are not required to be included as RPA features. The RPA is required on both sides of the perennial stream, but not along both sides of the intermittent stream with wetlands only within the defined bed and bank.

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Nontidal Wetlands Associated with Intermittent Streams or Other Non-Perennial Conveyances (cross-sectional view)

The diagram shows a cross-section of a wetland. The central area is labeled 'Nontidal Wetlands' and is depicted as a depression with a blue water feature at the bottom. This depression is flanked by 'Upland' areas on both sides, shown as flat ground with a green surface line.

Nontidal Wetlands

Upland

Upland

Cross section of an elongated nontidal wetland that is not required to be included as a RPA feature.

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Review of Comments Received

Comment

Response

- | | |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> • Definition of "Surface Flow": Clarify that wetland drainage can be the result of rainfall events • "Other lands" language: Clarify language relating to when a local government may include nontidal wetlands as RPA features under the other lands category • Nontidal Wetlands Separated by a Levee: add the phrase "and/or more permeable" • Interrupted and Disconnected Wetlands
Replace "October 1, 1989" with "date of local Chesapeake Bay Ordinance" | <ul style="list-style-type: none"> • Definition amended • Text amended – last paragraph on page 6 and also on page 9 • Suggestion not incorporated - additional phrase provides no additional clarification • Suggestion not incorporated – reference to "October 1, 1989" provides consistency with other guidance and policy letters |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|



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Review of Comments Received cont'd

Comment

Response

- | | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> • Reference to BMP's: change reference to "stormwater management and/or Best Management Practices" or "SWM/BMPs" • Oversized BMP's: Remove buffer requirement from ponds that exceed BMP minimum design size • Nontidal wetlands associated with BMP's: Delete Requirement • BMP's and Perennial flow: Guidance differs from current policy on perennial flow in and out of ponds | <ul style="list-style-type: none"> • Reference changed to "stormwater management facilities" • Suggestion not incorporated - ponds that provide a water quality function, but not designed specifically for water quality or quantity purposes should not be exempted from RPA requirements • Suggestion not incorporated • Guidance on "Determinations of Water Bodies with Perennial Flow" will be modified |
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Review of Comments Received cont'd	
<u>Comment</u>	<u>Response</u>
<ul style="list-style-type: none"> • Nontidal wetlands associated with intermittent streams: comments received regarding: <ol style="list-style-type: none"> 1) changing "and" to "or" 2) deleting description of the no perennial conveyances • Additional figure: To show an intermittent stream and wetland bulb upstream from the intermittent stream • Delete paragraph referencing roadside ditches • Various editorial suggestions 	<ul style="list-style-type: none"> • Suggestions not incorporated • Suggestion not incorporated. The requested graphic is similar to Figure 2E • Suggestion not incorporated. Inclusion of this paragraph was intended to provide consistency among adopted guidance documents. • Most editorial suggestions incorporated



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Policy Committee Action on June 18, 2007:

Recommended adoption of Final Draft with 5 amendments. Includes amendment on page 8 to add language "as long as they are designed and installed in accordance with local requirements consistent with DCR and/or any applicable local standards, at a minimum, related to stormwater management requirements and/or the Chesapeake Bay Preservation Act in effect at the time of plan approval."

Next Steps

- Final layout and editing
- All figures to be formatted to be consistent
- Dissemination to all localities
- Workshop for local staff



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Ms. Salvati noted that not all comments were included verbatim, but that staff attempted to characterize the general statements. She noted also that staff had added clarifying language.

Ms. Salvati said that staff added language that states that when a locality is using the “other lands” category of 9 VAC 10-20-80 B 4 of the regulations pertaining to Resource Protection Area elements, they must identify such other lands in manner that is specifically consistent with the regulations. She further indicated this section of the regulations allows the use of the other lands category provided that the locality determines that the feature is specifically necessary for the protection of the other waters of the state.

Mr. Rolband said that the Ad Hoc committee thought it should be clear that the locality must state which other lands will be included on a programmatic rather than a case by case basis. He said that it is important that the local ordinance address this.

Mr. Maroon said that the guidance says that the other lands would not only be defined by the locality but also designated.

Mr. Rolband said that this was not always specified in some of the older ordinances.

Ms. Salvati said that is a consistency issue. The regulations call for a formal designation.

Mr. Rolband noted that in prior years, ordinances were approved that did not include that.

Mr. Maroon suggested it would be helpful for the language to read that the locality may define such wetlands and intermittent streams as other lands and designate them within their local ordinance.

Mr. Davis said that edit would be helpful.

Ms. Salvati said that with reference to required buffers around impoundments, several members of the Ad Hoc committee recommended that BMPs be exempted from the requirement.

She noted that such an exemption provision was added to the guidance using language similar to the terminology in the regulations relating to the limitations upon the placement of BMPs in RPAs, which states that those facilities that are the minimum size necessary to serve required water quality and quantity functions. Many localities refer to these facilities as SWM/BMPs (stormwater management/best management practice) with the SWM referring to quantity and BMP referring to quality requirements.

Ms. Salvati said that staff had attempted to use a more generic term for such facilities that is currently in the Stormwater Management regulations. The term stormwater management facilities is actually used to define those that are addressing both quality and quantity requirements.

Concern for using the SWM/BMP term is that while many localities use that term, some of the smaller localities do not.

Ms. Salvati noted again that the buffer exemption is not meant to apply to the oversized facilities. She said there is a provision to allow BMPs in the RPA provided they are the minimum necessary to meet the stormwater management requirements.

At the end of the presentation, Mr. Sheffield called for additional comment.

Mr. Davis said that he was concerned that the guidance may give direction that localities do not have to follow the stormwater management regulations.

Ms. Salvati expressed appreciation to the Ad Hoc committee. She said that the next step, should the Policy Committee recommend adoption by the board, would be to do the final editing and reformatting to include changes and corrections.

Staff's intent is to disseminate the guidance to all localities. In addition, staff would propose to do a workshop on the nontidal guidance, similar to the workshops that have been conducted on the perennial flow guidance. Conducting such a workshop would provide training to the consulting community as well as local staff.

Mr. Sheffield thanked Ms. Salvati and the members of the Ad Hoc Committee.

Public Comment

Mr. Sheffield called for public comment.

Darryl Cook, James City County

Mr. Cook said that with regard to the buffering of BMPs and impoundments what is proposed would be very difficult to administer.

Mr. Cook said that from an administrative standpoint exempting the BMPs made sense but noted this was a change in policy from the past.

Dr. Kirk Havens, VIMS

Dr. Havens presented a document of outlining a side-by-side comparison of the management based option and Option B. He noted that this was requested at the last meeting. This document was developed with Dr. John Galbraith at Virginia Tech. A copy of this document is available from DCR.

Dr. Havens noted that a number of the recommendations were already incorporated in the current draft. He said that he and Dr. Galbraith shared a concern regarding the issue of linear wetlands and how a narrow wetland was defined.

Dr. Havens said the concern was that no dimensions were given for a narrow wetland. He suggested that be added to the guidance.

Dr. Havens noted that in the management based option this was restricted to areas that are manmade. He said there is no scientific basis to suggest that a narrow wetland functions any differently than a regular wetland.

Dr. Havens said that there was a need for definitions. He noted that the management based document included a comparison of the definitions.

Ms. Salvati said that staff tried to avoid the use of the term "narrow wetlands." She said that the guidance uses the term elongated wetlands.

Bob Kerr, Kerr Environmental Services

Mr. Kerr expressed a concern that the issue of hydric soils was not addressed. He said as written the document would apply to every manmade ditch in Tidewater and that there would be localities wanting to install RPAs around each of these.

He said that he has one site with over 20,000 linear feet of manmade ditches.

Mr. Rolband made specific language comments.

He said that he would suggest deleting the 2nd paragraph on page 8.

Mr. Rolband said his reason was that this Board and previous Boards as far back as 1991 have said that RPA components must be included.

Mr. Rolband provided additional editorial comments.

Dr. John Galbraith, Virginia Tech

Dr. Galbraith asked to clarify comments regarding the management based approach.

Dr. Galbraith referenced the section of the document that described exemptions (figure 8, page 13). He noted the document read, "Nontidal wetlands existing in association with such human-made conveyances are exempt as long as the conveyance feature does not replace, deepen, or straighten a natural stream course and does not flow through delineations of hydric soils."

Dr. Galbraith said that the intent was not to exempt ditches or other conveyances that are wetlands. He said that a human made conveyance or ditch cut through a wetland cannot help but be a wetland and that should be covered by the RPA. He said that the management based approach does not advocate exempting any wetlands no matter how narrow or elongated they are unless they are human made conveyances that cut through uplands or non hydric soils.

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Dr. Galbraith said that the flow chart summarized the crux of the matter; that is, whether the guidance can be used across the Commonwealth and be applied consistently. Also can it be understood by a wide range of users, and is it scientifically valid or invalid?

Dr. Galbraith said that, in his opinion, neither approach was scientifically valid or invalid, but that the management based approach was the best compromise.

Mr. Evans asked Dr. Galbraith if some of the revisions since June 1st addressed these questions.

Dr. Galbraith said that he had not had a chance to review the revisions.

Ms. Salvati said that staff believed the definition of linear wetlands could be applied. She said staff was specific in saying that if the wetland feature is a non perennial conveyance that has wetlands within the bank and bed, it did not require the RPA buffer around it. She further noted that identifying such features could be done while a consultant is already in the field conducting perennial flow evaluations.

Mr. Davis said that with the reference to other lands, localities have the option of going further than is spelled out in the guidance.

Mr. Davis said that the document reflected what had been discussed over the last 18 months. He said that he believed it was a good document and met the current regulations. He said that there may be issues that still need to be addressed and that they should be addressed soon, but that he did not believe the Committee should make substantial changes at this time.

Mr. Sheffield closed the public comment period. He asked Ms. Salvati if there were suggested edits or improvements based on the conversation.

Ms. Salvati said that the amendments suggested by Mr. Maroon and Mr. Rolband regarding the issue of other lands should be included.

Ms. Salvati said that there were two significant issues with respect to whether or not the definition of the narrow wetland be broadened to include those wetlands outside the bed and bank.

Ms. Salvati said that she concurred with Mr. Davis that if a locality chose to identify other nontidal wetlands outside the bed and bank as an RPA feature using the "other lands" RPA category it is free to do so.

Ms. Salvati said that with respect to buffers around ponds, Mr. Rolband was correct. She noted that previously the Board had requirements to place buffers around ponds. She asked if the committee would like to alter the document to reflect that change.

Mr. Sheffield asked if there was specific language.

Mr. Maroon noted that specific language had been suggested for the use of the “other lands” RPA category. He noted there were references on page 3 and page 6 to that issue. He said that the original suggestion was “however, localities may define such wetlands and/or intermittent streams as other lands and designate them within their local ordinance as an RPA component at their discretion.”

Mr. Rolband’s language suggested that, within the language regarding “other lands”, add the phrase “and if they are specifically described as a component in the locally adopted ordinance.”

Mr. Maroon said that it might be best to use Mr. Rolband’s language on page 3, and his language on page 6.

Ms. Salvati read the edited sentence on page 3 as follows:

However, the regulations provide, through the “other lands” provision, that a local government has the discretion to include all nontidal wetlands as part of a resource protection area (RPA) if the locality determines that they are necessary to protect the quality of state waters and if they are specifically described as an RPA component in the local ordinance.

Mr. Sheffield said that would be inserted on page 3 and 6.

It was noted that the phrase “and are specified within the local ordinance as an RPA component” should also be included in the reference on page 9.

Ms. Smith suggested it might simplify the language to say, “other lands may be included at the direction of the local government within their local ordinance provided they do so consistent with the regulations.”

Ms. Andrews suggested “included” be changed to “designated.”

Mr. Davis noted that on page 8, Mr. Rolband had suggested the removal of the paragraph referencing stormwater management facilities. Mr. Davis suggested the first part of the paragraph be left in and read as follows:

The exception to this requirement is for those impoundments (lakes and ponds) developed as stormwater management facilities to address stormwater quality and/or quantity requirements are not required to be designated as RPAs as long as they are designed and implemented in accordance with DCR standards.

Ms. Salvati suggested, “designed and installed with DCR standards in place at the time of plan approval.”

Mr. Davis agreed to that addition.

Mr. Maroon asked Mr. Dowling to comment with regard to any concern about consistency with the stormwater management regulations that are currently under review.

Mr. Dowling said that at this time there was no concern. He said this issue has not been addressed with regard to stormwater management.

Mr. Maroon suggested the language read, "in accordance with DCR standards related to stormwater management and the Chesapeake Bay Preservation Act."

Mr. Evans asked to clarify if the word difficult was still included on page 9. He noted that Mr. Rolband had suggested language.

Mr. Maroon asked Mr. Rolband to review the suggestion.

Mr. Rolband said that he would like to replace the word "difficult" with the phrase "inconsistent as to core classification based upon the time of year of the on site delineation."

Ms. Smith said it may be difficult to determine whether an area is a stream or a wetland.

Mr. Rolband said that it is not difficult, but the results may vary depending on the time of year.

Ms. Smith suggested it say, "may make onsite delineation between streams or wetlands inconsistent depending on the time of year."

MOTION: Mr. Davis moved that the Policy Committee recommended to the full Board the adoption of this guidance document with the five suggested amendments as discussed by the Policy Committee and that staff move ahead with the final formatting and editing, dissemination to the localities and the holding of workshops and that the document be effective upon full Board approval.

SECOND: Mr. Evans

DISCUSSION: None

VOTE: Vote carried unanimously

Adjourn

As there was no further business, the meeting was adjourned.

Respectfully submitted,

Walter J. Sheffield
Policy Committee Chair

Joseph H. Maroon
DCR Director