

**Chesapeake Bay Local Assistance Board  
Policy Committee Work Session  
Monday, May 22, 2006  
Dorey Recreation Center  
Richmond, VA**

**Chesapeake Bay Local Assistance Board Policy Committee Members Present**

Donald Davis  
William Duncanson

**Chesapeake Bay Local Assistance Board Policy Committee Members Not Present**

Greg Evans  
Walter Sheffield  
Beverly Harper

**DCR Staff Present**

Joseph H. Maroon, Director  
David C. Dowling, Policy Planning and Budget Director  
Joan Salvati, Division Director, Chesapeake Bay Local Assistance  
Shawn E. Smith, Principal Environmental Planner  
Heather C.A. Mackey, Principal Environmental Planner  
Robert Suydam, Senior Environmental Planner  
Michael R. Fletcher, Director of Development  
Ryan Brown, Office of the Attorney General

**Call to Order**

Mr. Davis called the meeting to order. There was not yet a quorum present.

Mr. Davis introduced Ryan Brown with the Attorney General's office. Mr. Brown gave an overview of his background.

Mr. Davis introduced Mr. Maroon and Ms. Salvati.

**Discussion**

*Nonconforming residential lots*

Ms. Salvati said that staff would be giving presentations on each of the items noted on the work program summary document.

Staff have found that accessory structures are an issue with many localities. There are two topics associated with the issue. First the placement of accessory structures in the RPA and second the tearing down of existing structures and rebuilding them.

Staff surveyed the localities regarding this issue.

Ms. Smith gave the following presentation:

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***Accessory Structures in the RPA***

Shawn E. Smith

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**Issue Statement**

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❖ Are localities receiving large numbers of exception requests for new or expanded accessory structures in RPAs?

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**Background**

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- ❖ 2001 Amendments
  - Required new or expanded accessory structures in the RPA to be considered through a formal process
  - Formal process to include findings, public hearing and public notice

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**Background**

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- ❖ Local governments voiced concern over the burden of processing these requests
- ❖ Policy Committee considered many options to address this concern:
  - Residential IDAs
  - Buffer Exemption Areas
  - Blanket Exception provisions

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**Background**

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- ❖ CBLAB approved concept of "Blanket Exception" for accessory structures
  
- ❖ CBLAB directed staff to evaluate concept further

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**Background**

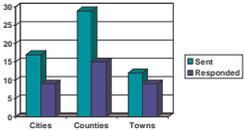
- ❖ Staff sent survey to all cities and counties and 12 towns in Spring 2006
- ❖ Survey asked 6 questions about local experiences regarding accessory structures in RPA

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**Background**

Survey Results



Category	Sent	Responded
Cities	17	10
Counties	30	15
Towns	12	10

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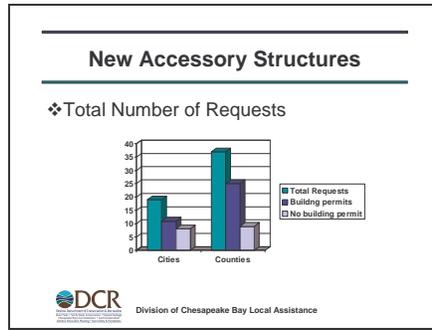
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**Survey Results**

- ❖ 15 of 31 responded that they had received no requests for new or expanded accessory structures in past 12 months
- ❖ There was a total 56 requests in the 16 localities that had received requests
- ❖ 18 of 56 were requests for which no building permit was required.

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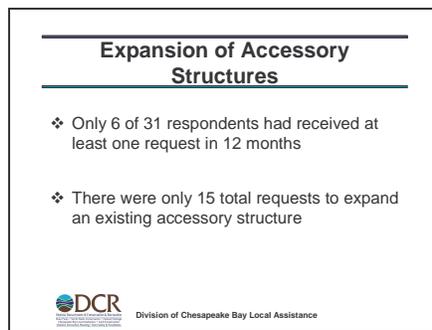
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Conclusion

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- ❖ The issue of new or expanded accessory structures does not appear to be as much of an issue as previously presented.
- ❖ Board could consider developing guidance to address accessory structures for which no building permit is necessary



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Mr. Davis asked if staff believed that, based on the number or responses, the survey data was representative with regard to accessory structure requests.

Ms. Smith said that staff has not received many requests since the regulations were amended. Responses from the survey were anonymous and staff is not certain that responses were received from some of the larger localities. In separate conversations, some of the Hampton Roads localities indicated they had not been receiving exception requests.

Ms. Salvati said that staff suspects this may not be as big an issue as previously thought.

Ms. Smith said staff was surprised to see the numbers this low.

Mr. Maroon said that it was possible that at least half of the localities did view this as a concern.

Ms. Salvati noted that Norfolk and Hampton did not respond to the survey.

Ms. Salvati said that it might be possible to provide guidance for situations where there is no land disturbance so that the landowner does not have to go through the full exception process.

Mr. Davis said that it was important to be careful not to set guidance that needed a regulatory change.

Mr. Duncanson said that local staff probably deny a number of these requests.

Mr. Davis said that consistency was important.

With regard to the conclusion statement, "Board could consider developing guidance to address accessory structures for which no building permit is necessary," Mr. Davis asked how this could be done given the current regulations regarding impervious cover.

Ms. Smith said that the issue is the application of the regulations if there is no land disturbance. If the intent is to allow sheds on skids, they are considered temporary, and their installation does not disturb land. She noted that most of the complaints from local governments about the formal exception process were related to these types of structures.

Mr. Davis asked how staff would respond to a locality if an existing house and property owner wanted to build a 10x20 deck that extends into the RPA but does not disturb land.

Ms. Smith said that the permitting process is not uniform and that with those structures there are zoning permits involved. In some cases, if the project is not above a certain size, there is no permit involved. She said that neighboring localities are treating the same structures differently.

Mr. Maroon noted that in the absence of guidance, decisions were being made that differ from locality to locality.

Ms. Salvati suggested that if the policy committee were comfortable with the approach, the Attorney General could be asked to review the regulations in preparation for an amendment to the regulations that would allow for these types of facilities to not have to go through the formal exception process.

Ms. Salvati said there might be an administrative waiver if a project did not exceed a certain size.

Mr. Duncanson expressed a concern about small buildings that are not attached. He said that Richmond County requires these structures to at least be tied down.

The committee agreed that there was no need to rush to develop a response, and that this issue should stay on the committee's agenda.

### *Alternative Treatment Systems*

Rob Suydam gave a presentation regarding Alternative Treatment Systems.

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**May 22, 2006**  
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**Alternative Treatment Systems**

Rob Suydam

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**Issue Statement**

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❖ If an alternative technology is being used and operating effectively, are current CBPA on-site sewage system reserve requirements needed?

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**Issues and Concerns**

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❖ Lack of maintenance

❖ Need for reserve area requirements

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**Background**

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- ❖ In the mid 90s advanced "alternative" treatment systems were introduced to Virginia.
- ❖ Popularity of these systems has increased due to the fact that many lots once deemed unsuitable for construction are now buildable lots.



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**Background**

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- ❖ Concerns have been raised because VDH may not require these alternative systems to have reserve drainfield areas.
- ❖ VDH does not require any maintenance to these or any of its approved systems.



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**Onsite Treatment Facts**

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- ❖ Homeowners generally do a poor job of maintaining their systems
- ❖ Home investment is largely secured by a sewage treatment system that works



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**General Concepts**

- ❖ Conventional System: septic tank and drainfield
- ❖ Sewage: Solids and Effluent
- ❖ Effluent Components: BOD SS N
- ❖ Pretreatment of Effluent

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**Conventional Systems**



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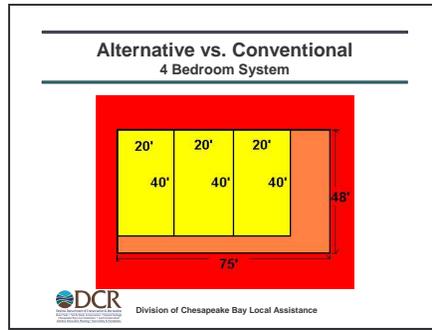
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**Puraflo and Ecoflo**



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**VDH Maintenance Requirements**

While VDH encourages regular maintenance of its systems and has requirements making routine maintenance much easier, actual regulatory maintenance requirements do not currently exist.

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**Reserve Areas**

- ❖ VDH requires a 50% reserve area only when a system with general approval is installed in a soil with a rate greater than 45 minute per inch.
- ❖ VDH requires 100% reserve on a system being "tested" that has either experimental or provisional status.

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**Bay Act Benefits**

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- ❖ The routine maintenance of pumping the solids out of the septic tank extends the life of the system
- ❖ 100% reserve area for an alternative system requires a minimal area but provides for a significant need

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Mr. Davis asked if testing was done by the private property owner or by the Virginia Department of Health (VDH).

Mr. Suydam said that testing is done by the property owner and that the owner is responsible for the system on the property. He said that the company that sells the system provides documentation regarding testing done elsewhere. The company is granted approval for a number of systems statewide that they may install on an experimental basis. VDH will give 300 permits.

If the system fails, the homeowner is responsible.

Mr. Maroon asked if any of the new systems were more efficient at treating nutrients than conventional treatments.

Mr. Suydam said that the Health Department thinks highly of these systems with regard to their ability to reduce nitrogen significantly.

Mr. Davis asked how the numbers compare to those with conventional septic systems.

Mr. Suydam said that where a conventional system can be installed in conventional soils that is the preference. The cost of an alternative system is two or three times that of a conventional system. The alternatives are most likely to be used in situations where the water table is very high and where the soil criteria are much less than for a conventional system. An alternative system may be installed with the water table as high as twelve inches from the surface.

Mr. Suydam said that the use of alternative systems helps waterfront property to increase in value.

Ms. Smith said that in the conventional system, the requirements for the soil type are much more stringent because the effluent contains more nutrients. She stated that the theory is that the drain field allows for additional treatment.

Mr. Duncanson said that in Richmond County, the alternative system was first seen as a reserve. He said that now, however, about 30% of the systems being installed were the alternative method.

Mr. Suydam noted that the cost of the alternative systems is coming down. He also noted that routine maintenance extends the life of the system regardless of the type of system.

Mr. Suydam said that Puraflow and Echoflo both use peat moss. The peat moss generally needs to be raked every year, and replaced every 5-8 years. He noted that VDH does not require maintenance contracts to be signed.

Ms. Salvati said that at the August 9<sup>th</sup> policy committee meeting, Don Alexander from VDH said that alternative systems show promise, but that VDH is not actively pursuing maintenance. He noted that his preference would still be the conventional system because it is easier to maintain and is better understood.

Mr. Maroon asked that, in the consideration of a broader policy issue to address tributary strategies and water quality, was there a reason to encourage the installation of alternative systems.

Mr. Suydam said that the treatment provided should be considered and that would include a discussion of the type of effluent going into the system. He also said that the rate of development in rural areas should be considered and noted that there is a tremendous amount of development occurring outside the commercial zone.

Ms. Salvati said that there might be an opportunity with some of the alternative BMPs in the urban setting. She noted that the seller did not have that data available.

Mr. Suydam said it would be helpful to study a subdivision with an alternative system versus a subdivision that is 100% conventional.

#### *Issues Regarding Water Bodies with Perennial Flow*

Mr. Suydam gave a presentation entitled Issues Regarding Water Bodies with Perennial Flow.

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May 22, 2006  
Policy Committee Meeting

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***Issues Regarding Water  
Bodies with Perennial Flow***

Rob Suydam



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**Issues**

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- ❖ No definition for *perennial flow* in the Regulations
- ❖ Lack of consistency in the definition for *perennial flow* among localities that have incorporated a definition into their ordinances
- ❖ Documented Observation method, also known as the "photo method" has become a concern in two localities



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**Perennial Flow Definition Issues**

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- ❖ Some localities have no definition
- ❖ Some localities have a definition, but there is no consistency
- ❖ Because of this inconsistency subsequent RPA delineations vary greatly



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**Observed Documentation Criteria**

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- ❖ Upstream/Downstream photos
- ❖ Photos required every 200'
- ❖ Must have visible date stamp or certification
- ❖ Not acceptable when conditions are wetter than -2.0 on the Palmer Drought Severity Index



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**Observed Documentation Issues**

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- ❖ Climate data difficult to find and decipher
- ❖ Other types of Palmer indices exist similar to the Palmer Drought Severity Index – this has resulted in confusion
- ❖ Dry season and the hyporheic zone



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**Training**

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- ❖ Division continues to provide training for the methods of determining perennial flow
- ❖ Specific training has recently been provided for both the NC and Fairfax methods
- ❖ If acceptable to the committee, staff will pursue a more formal certification course for perennial flow determinations.



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**Conclusions**

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- ❖ The need for a perennial flow definition in the regulations has become stronger.
  
- ❖ Clarification of the current guidance on documented observation is needed. The Ad Hoc committee will be asked for their recommendations on this issue.

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Ms. Salvati said that this issue came up in Fairfax County where a stream was initially mapped as perennial using field indicator methods. The County allowed the consultant to declassify the stream and that this caused a good amount of citizen concern. She said that the delisting using photo-documentation is not addressed in the guidance.

Mr. Davis said that the guidance causes confusion at the local level.

Ms. Salvati said that staff has serious concerns regarding the photo-documentation. She said that at a minimum, the guidance for photo documentation should be more robust. She said it might help to provide more clarity with regard to the Palmer Index.

Mr. Maroon said in the specific instance referenced, staff felt it that an enhanced version of photo documentation would be sufficient in dealing with the perennial stream issue.

Mr. Davis asked if the water table fluctuated during the time of the year.

Mr. Suydam said that yes, it did and that a layman builder or developer may look at an area and consider it dry.

Mr. Maroon said the issue was not dissimilar from wetlands.

Ms. Salvati said the Division continues to provide training for the methods of determining perennial flow. Specific training has recently been provided for both the North Carolina and Fairfax methods.

There was a discussion of certification with regard to determination of perennial flow. It was noted that it takes several years to get a certification program up and running.

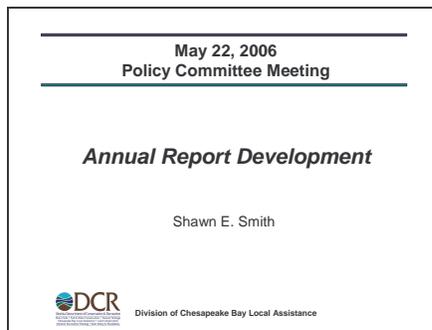
Mr. Maroon noted that having certification might help those localities that prefer to have a list of more qualified individuals to do the determinations.

Mr. Maroon said that there is a possibility that legislation would be introduced regarding this issue.

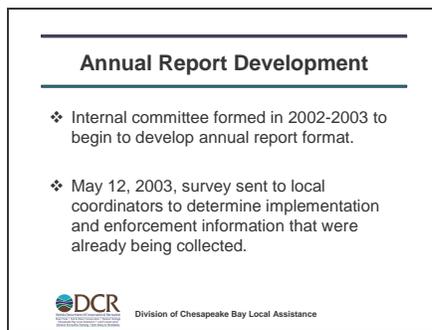
### **Consideration of Proposed Annual Reporting Document**

Ms. Smith gave the following presentation regarding the Annual Reporting Document.

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**Annual Report Development**

- ❖ November 2003, internal committee began development of annual report
  - used Regulations
  - May survey results
  - comments from stakeholders during development of the compliance evaluation process.



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**Annual Report Development**

- ❖ 2003-2005 internal committee developed draft annual report and explanatory documentation.



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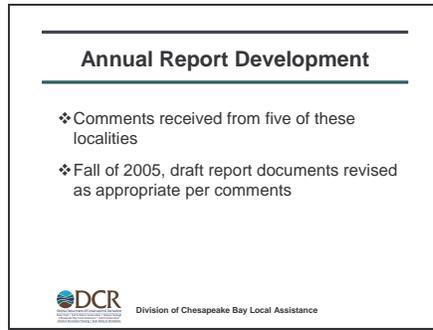
**Annual Report Development**

- ❖ March 18, 2005, copies of draft report and documents sent to the 10 localities for which an initial compliance evaluation had been completed:  
Accomack County, Town of Cape Charles, Henrico County, King William County, Northumberland County, City of Poquoson, Richmond County, Stafford County and York County.



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Ms. Smith said that one of the main comments received during the compliance evaluation process was that localities did not want data collected that was not used or that was just being collected for the purposes of gathering information.

She said that staff also attempted to come up with a mini-compliance evaluation process for the annual report, to relieve the potential burden on local staff to collect data and prepare reports.

Ms. Salvati said that staff received a lot of good feedback on this proposed approach. She noted that this annual document was the second assessment tool for localities. She said that this could be used as a means to assess the Bay Act implementation.

Mr. Maroon said that this document was a work in progress and that further review and discussion will be needed. He noted that he has an aversion to the concept of an annual report unless there is a certainty that the information will be useful.

He said that he did believe the document was moving in a good direction. He said staff would continue to refine and would either bring back to the policy committee or present to the full Board.

Mr. Davis asked the timetable for the document.

Ms. Salvati said that she would like to complete the document this year. She said it would be helpful to adopt at either the September or December Board meeting.

Mr. Maroon said that perhaps if this was a helpful tool, it might be beneficial for localities to complete the document prior to a compliance evaluation.

Mr. Davis said that this should remain in the agenda for the next meeting of the policy committee.

*Marina components as water dependent facilities*

Ms. Salvati said that staff has worked on this issue for some time. She said that recently it was in response to a letter from Mr. Sheffield with regard to bathhouses.

She said that there might need to be clarification in the guidance or some change in regulations that would deem a bathhouse to be a water dependent component of a marina.

Staff believes that most of these can be accommodated through the exceptions process.

Ms. Smith said that there is a VDH requirement that bathhouses must be within a certain number of feet from the slips so that it is another state law that specifies their location. She said that this issue was better dealt with as an exception request on a case-by-case basis.

Mr. Davis said that the issue could be kept on the back burner, but that no action may be required.

*Staff update on the Ad Hoc Committee on Connected and Contiguous Wetlands*

Ms. Salvati said that the ad hoc committee has held three meetings. At one meeting the committee looked at plans that actually identify wetlands adjacent to streams with perennial flow.

She said that if staff were to assume that wetland was both connected by surface flow and contiguous, then many acres of land in localities would have 90% RPA. That's one of the key concerns that the committee is trying to address.

Mr. Davis said the committee would have at least one more meeting. He said that in the short term, the committee is not looking at a change in the regulations.

**Briefing on Land Use and Water Quality Workshop Series**

Ms. Salvati said that staff was very excited about this workshop series.

These are three one-day workshops on land use planning and water quality. The workshop "Integrating Land Use and Watershed Planning" was scheduled for June 8 at Lewis Ginter Botanical Gardens. Ms. Salvati noted that Secretary Bryant and Deputy Director Russ Baxter would be participating.

Also presenting is Tom Schueler from the Center for Watershed Protection. Amherst County will also make a presentation.

The second workshop will focus on Low Impact Development (LID) and will be co-sponsored by DCR and the Homebuilders of Virginia.

### **Discussion of Other Potential Topics**

Mr. Davis asked if there were other potential discussion topics.

Mr. Duncanson noted a concern about the recent VMRC decision allowing gazebos on docks.

### **Next Steps**

In summary, Mr. Maroon reviewed the following:

- With regard to pre-1989 nonconforming lots, it is not as necessary to move forward with change as originally thought. It was suggested that staff members continue to talk with localities. Ms. Salvati said that staff had begun drafting a guidance document.
- Alternative Septic Systems – no recommendation at this point.
- Marinas – no recommendation at this point.
- Perennial flow definition – there may be a future regulatory change, but at this point some further guidance may be necessary. Ms. Salvati will ask the ad hoc committee to continue the issue of photo documentation and the use of determination methods during droughts.
- Non tidal wetlands – will continue this for policy committee discussion
- Annual reporting – staff will continue to refine

Mr. Davis said that he had discussed with staff the possibility of an August timetable for the next meeting of the policy committee.

The meeting adjourned at 1:04 p.m.