



WILLIAM & MARY
LAW SCHOOL
VIRGINIA COASTAL
POLICY CENTER

Coastal Zone Management Narrative “Enforceable Policies” Advisory Committee

August 30, 2018 Meeting Minutes

The Coastal Zone Management (CZM) Program Narrative Enforceable Policies Advisory Committee met at 10:00 a.m. on August 30, 2018, at the Department of Environmental Quality (DEQ) Headquarters in Richmond to continue discussion of a narrative rewrite of Virginia’s enforceable policies.

Present at the meeting were Lance Gregory (Virginia Department of Health (VDH)), Keith Skiles (VDH), Deborah DeBiasi (DEQ), Amber Foster (DEQ), Sharon Baxter (DEQ), Shep Moon (DEQ CZM), John Fisher (DEQ CZM), Larry Gavan (DEQ), Bettina Rayfield (DEQ), Joan Salvati (DEQ), Laura McKay (DEQ CZM), Jaime Robb (DEQ), Steve Begg (Virginia Department of Transportation), and Ben McFarlane (Hampton Roads Planning District Commission). Also present were Angela King (Virginia Coastal Policy Center), Deborah Murray (Southern Environmental Law Center), and Joe Wood (Chesapeake Bay Foundation).

On the phone were Kelci Block (Virginia Office of the Attorney General), John Kuriawa (National Oceanic and Atmospheric Administration), Lt. Commander John Blazek (Navy), Catherine Kilduff (Center for Biological Diversity), and John Pickelhaupt (Dominion Energy).

Elizabeth Andrews of the Virginia Coastal Policy Center facilitated the meeting. Elizabeth opened the meeting by welcoming everyone and asking the group to approve the June 7, 2018, meeting minutes. The minutes were approved with no objections.

NON-TIDAL WETLANDS NARRATIVE ENFORCEABLE POLICIES DISCUSSION

Bettina noted that, during the discussion of the Chesapeake Bay Preservation Act policies, it became apparent that there were differences in length and the amount of detail between the non-tidal wetlands policy and other policy drafts. Elizabeth explained the proposed changes made to the policy after discussing this concern with Dave Davis (DEQ). For example, the language was broadened to “non-tidal surface waters” to cover both wetlands and streams, and language regarding stream assessment methods was added.

Group discussion centered on a potential incorporation by reference issue with a sentence referring to the United State Army Corps of Engineers Wetlands Delineation Manual; whether

the approved stream assessment methods were for delineation or to quantify impacts and compensation; and whether additional examples of instream beneficial uses should be included. These questions were noted within the draft policy and VCPC will contact Dave for clarification. Additionally, “is” was corrected to “as” in the second to last sentence in the policy and the language of the Virginia Code and regulations were consulted to confirm the use of the term “offstream”.

CHESAPEAKE BAY PRESERVATION ACT NARRATIVE ENFORCEABLE POLICIES DISCUSSION

Elizabeth provided a summary of previous discussions of the Chesapeake Bay Preservation Act (CBPA) policies. Joan stated that the updated draft focused on the organic elements of the Act and took out references to local implementation language. Shep noted references to “locally designated” in some portions of the policy and that the “analogous lands” language has been removed. The group discussed the CBPA program and the fact that while Resource Protection Areas (RPAs) are defined by state law, the RPA itself is designated by localities. The group determined that remaining references to “locally designated” and “locally-adopted standards” should be removed. Ben suggested including features found in Resource Management Areas (RMAs) within the RMA definition, as was done in the RPA definition, and the group agreed.

STORMWATER MANAGEMENT AND EROSION & SEDIMENT CONTROL NARRATIVE ENFORCEABLE POLICIES DISCUSSION

Jaime outlined the format and content of the draft policy, noting that while most stormwater management and erosion & sediment control plans result from site-specific projects, that DEQ wants to encourage federal partners to adopt “annual standards and specifications”. Jaime noted that with implementation of the consolidated stormwater and erosion & sediment control program, DEQ is moving away from the use of the term “annual” for standards and specifications but that is the current title used. Ben noted that we do not want to create policies which place extra requirements on federal agencies and projects.

As the group has done with other policies, there was discussion regarding the necessary level of detail to include in the policy and whether it should be structured broadly or include very detailed requirements. Jaime asked whether the policies are meant for the state agencies to utilize during their internal review or for the federal agency or project undergoing review. The group agreed it is both. Shep asked whether the draft language made it clear that the policies applies to federally funded and permitted, as well as federal agency, projects. Larry explained that this draft was the first attempt to establish a touch point for a variety of projects, then explore different pathways from that point.

The group discussed the overall structure of the policies and whether it should start with the criteria and then explain the different ways to comply with those criteria. Ben suggested that the broad policy goal is “controlling flooding, controlling erosion and protecting the quality of state waters.” Lance noticed discussion of permitting and inspections within these policies and noted that with the shellfish sanitation policy, those references were removed. Larry said it would be possible to come up with a generalized statement of intent for the policies (i.e., avoid stream channel erosion). The group also discussed potential incorporation by reference issues. John

Kuriawa stated that while avoiding incorporation by reference is meant to be an absolute rule, in practice there is some flexibility (e.g., with threatened and endangered species).

There was further discussion regarding the level of detail necessary and how to adequately define expectations, and whether the language should be aspirational or realistic. John Kuriawa noted that aspirational language, as seen in the wetlands policy, gives the state some leverage during federal consistency review and that he anticipates there will be negotiations between state and federal parties regarding the specific details. Jaime and Larry will review the draft and provide an updated version for further discussion at the next advisory group meeting.

DISCUSSION REGARDING CONSISTENCY BETWEEN THE POLICIES

Elizabeth explained that DEQ staff had asked the VCPC to review previously discussed policies, along with these newer drafts, to determine consistency in approach and style as the project has progressed. The first item to note is that the group has moved toward starting each policy with language similar to “it is the policy of the Commonwealth”.

First Sequence. The group looked at the first sequence of policies that had been developed by the advisory group, which included Department of Game and Inland Fisheries (DGIF), Department of Conservation and Recreation (DCR), and Department of Agriculture & Consumer Services (DACS) programs. Discussion included whether that introductory “it is the policy” language is needed, whether the “it is illegal” language is appropriate, and if “unless authorized by DGIF” or “unless approved by DGIF” language should be changed. Ultimately, the group noted that these policies differ from others because of the associated criminal charges. Elizabeth stated that VCPC would reach out to DGIF, DCR, and VDACS and seek their feedback on the group’s discussion.

Second Sequence. The group turned to discussion regarding the second sequence of policies that had been developed, which included Virginia Marine Resources Commission (VMRC) programs. Ben noted a difference between what belongs in the enforceable policy itself versus what may belong in something like an implementation manual. For example, with the submerged lands language, the first paragraph seems to be the policy and the second paragraph is more the implementation manual piece. John Kuriawa noted that the Non-tidal Wetlands and Dunes & Beaches language probably would see quick approval from NOAA, while maybe the Fisheries language is structured differently. Additional discussion included adding “marine” to the “Fisheries” title and checking with VMRC regarding state-owned bottomlands on federal lands, as well as potential incorporation by reference issues. Elizabeth stated that VCPC would reach out to VMRC staff and seek their feedback on the group’s discussion.

Third Sequence. The group considered the third sequence of policies that have been discussed to this point, which included Air and Shellfish Sanitation policies. Given the earlier discussion about providing a broad policy statement, Jaime questioned why the Air policy was so specific. The group again discussed the appropriate level of detail to include. For the shellfish sanitation policy, Keith provide clarifying language regarding shellfish harvesting grounds – specifically, that the fourth point under alternative discharging systems means that there would be no effect on shellfish use now or in the foreseeable future. Elizabeth stated that VCPC would update the policies based on the group’s discussion.

PUBLIC COMMENT

Deborah weighed in on the group's discussion regarding what level of detail to include in the policies and suggested that the group not second guess itself about including details, which would provide more information during the federal consistency review process. No one on the phone provided any comments.

CONCLUSION

Elizabeth stated that VCPC will reach out to the people and agencies noted above regarding the group's discussion of their policies and will send revised drafts out to the group. After the Stormwater Management and Erosion & Sediment Control staffs have developed draft policies, the next meeting date will be determined via Doodle poll.

The meeting adjourned at 12:42 pm.