

**Virginia Soil and Water Conservation Board
Thursday, September 17, 2009, 9:30 a.m.**

**VCU MCV Molecular Medicine Research Center
1220 E. Broad Street, 1st Floor Multipurpose Room
Richmond, Virginia 23219**

Soil and Water Conservation Board Members Present

Linda S. Campbell, Chairman	Granville M. Maitland, Vice Chair
Darlene Dalbec	Susan Taylor Hansen
Gary Hornbaker	Joseph H. Maroon, DCR Director
Jean R. Packard	Michael J. Russell
Raymond L. Simms	John A. Bricker, NRCS, Ex Officio

DCR Staff Present

Russell W. Baxter	Robert Bennett
Ryan J. Brown	William G. Browning
Eric Capps	Nissa Dean
David C. Dowling	Michael R. Fletcher
Doug Fritz	Jack E. Frye
Lee Hill	John McCutcheon
Mark B. Meador	Jim Robinson
Christine S. Watlington	Gary Waugh
Elizabeth Andrews, Office of the Attorney General	

Others Present

Phil Abraham, VACRE
Dave Anderson, Roseland
David Anderson, Advantus Strategies
Charlie Armstrong, BRHBA
Randy Bartlett, Fairfax County
David Benard, Sierra Club
Paul Bernard, Carson, Ashley & Associates
Scott Blossom, Williamsburg Environmental Group
Curt Bradley
Barbara Brumbaugh, City of Chesapeake
Kristin Carter, University of Virginia
Joe Caterino, Angler Environmental
Tom Carr, City of Roanoke
Whitt Clement, Hunton and Williams
Jeff Collins, TSE
Tyler Craddock, Virginia Chamber of Commerce

Gwynn Crichton, The Nature Conservancy
Rob Davenport
Joseph DuRant, City of Newport News
John Easter, Williams Mullen
Lorne Field, Chesterfield County
Mike Flagg, Hanover County
Scott Flannigan, Chesterfield County
Spencer Francis, Bowman Consulting
Katie Frazier, Virginia Agribusiness Council
Patrick Felling, Potomac Conservancy
Mike Gerel, Chesapeake Bay Foundation
Andrew Gould, Timmons Group
Barrett Hardiman, Home Builders Association of Virginia
Steve Herzog, Hanover County
Travis Hill, Williams Mullen
Julia B. Hillegass, Hampton Roads PDC
Barrett Jenkins
Ann Jennings, Chesapeake Bay Foundation
David Johnson, Adventus Strategies
Greg Johnson, PHR&A
Bill Johnston, City of Virginia Beach
Donna Pugh Johnson, Virginia Agribusiness Council
Steve Kindy, VDOT
Hans Kliger, HHHunt
Larry Land, VACO
Joe Lerch, Virginia Municipal League
Cindy Linkenhoker, City of Portsmouth
Stuart R. Lynde, Environmental Services Construction
John H. Matthews, VDOT
John Matusik, ASCE
Dick McElfish, Chesterfield County
Karl Mertig, Kimley Horn & Associates
Ted Miller, Kimley-Horn & Associates
Roy Mills, VDOT
Leslie Mitchell-Watson, Friends of the North Fork of the Shenandoah River
Doug Moseley, GYK and Associates
David Nunnally, Caroline County
Diana Parker, Sierra Club
Rick Parrish, Southern Environmental Law Center
Sherman Patrick, NoVa Building Industries Association
Glen Payton, Filtterra
Ron Peaks, Gloucester County
Chris Pomeroy, VAMSA
Jeff Perry, Henrico County
David Powers, Michael Baker

Melissa Pritchard, Timmons Group
Pat Quante, Bowman
Mike Rolband, Wetlands Solutions
James Shelton, Hands Across the Lake
David Sligh, James River Association
David Slutzkey, Charlottesville
Andy Scherzer, Balzer & Associates
Stuart Stein, GKY
Ingrid Stenbjorn, Town of Ashland
Bill Street, James River Association
Jeff Stuchel, Walter Phillips
Jennifer Tribo, Hampton Roads PDC
Kendall Tyree, Virginia Association of Soil and Water Conservation Districts
Ivan Ulu, Timmons Group
Amy Welker, New Kent County
Jess Wenger, University of Virginia
Keith White, Henrico County
Joe Wilder, Frederick County
Jonathan Winks, VHB

Call to Order and Introductions

Chairman Campbell called the meeting to order and declared a quorum present.

Approval of Minutes from July 23, 2009

Mr. Dowling noted that in member packets substitute language was provided for a section of the DRAFT minutes regarding the Caroline County Erosion and Sediment Control program.

MOTION: Ms. Packard moved that the minutes of the July 23, 2009 meeting of the Virginia Soil and Water Conservation Board be approved as submitted by staff with the inclusion of revised language as noted.

SECOND: Ms. Dalbec

DISCUSSION: Ms. Hansen noted that she was not at the July meeting and would abstain from voting.

VOTE: Motion carried with Ms. Hansen abstaining.

Director's Report

Mr. Maroon said that he would give the majority of his remarks later in the meeting. He noted the size of the crowd and apologized noting that a scheduling conflict in the Patrick Henry Building required moving the meeting to this location.

Mr. Maroon said that DCR staff appeared before the Joint Commission on Administrative Rules the previous day to discuss the proposed changes in the stormwater regulations. He distributed a news article regarding that appearance. The article is available at the following address:

<http://www.richmondbizsense.com/2009/09/17/storm-water-debate-washes-up-on-capitol-square/>

Mr. Maroon said that the purpose of the morning's presentation would be to more fully brief the Board on the recommended changes and to allow the Board to hear directly from the public regarding the changes.

Mr. Maroon said that he would provide additional comments later in the meeting.

Changes to the Board's Proposed Virginia Stormwater Management Program Permit Regulations

Mr. Dowling gave the following review of the proposed changes.

This morning, I want to provide you with a general update on the over 3,400 public comments we received on the proposed regulations and discuss with you potential amendments that we are recommending for the Board's consideration to address key issues raised during the public comment period and in conversations with a broad spectrum of stakeholders. No official action by the Board is being requested today.

All of you have received extensive correspondence on these regulations during the comment period and are aware of the key issues that are being raised. However, we have also provided you with a complete set of comments that we received for your review and consideration in advance of the next Board meeting.

Since the Board proposed the regulations, Department staff have also attended over 50 meetings with key stakeholder groups and individuals to gain additional insight into areas of concern and to discuss potential solutions as well as we held five public hearings during the public comment period.

Additionally, over the course of the last several weeks, the Director convened two special meetings (August 25 and September 3) of an informal "sounding board" composed of a diverse set of key stakeholders to discuss possible revisions to several key issues in the proposed regulations.

At the conclusion of my presentation, the agenda also provides an additional opportunity for the public to comment to the Board regarding the amendments outlined in the discussion document.

Regulatory Process Update for Parts I, II, and III (Local program and Water Quality and Water Quantity Criteria) and Part XIII (fees)

- Proposed regulations were approved by the Board at the September 24, 2008 meeting.
- DCR submitted the proposed regulations for review to the Administration on March 26, 2009; review completed on May 28, 2009.
- 60-day public comment period began on June 22, 2009 and closed on August 21, 2009.

- Public hearings/informational meetings were held as follows:

June 30 th	Hungry Mother State Park	8 in attendance and 3 spoke
July 1 st	Augusta County Government Center	48 in attendance and 22 spoke
July 7 th	City of Manassas	59 in attendance and 28 spoke
July 9 th	City of Hampton	62 in attendance and 22 spoke
July 14 th	Virginia General Assembly Building	~165 in attendance and 60 spoke
		342 135

- During the comment period a total 3,421 public comments were received. These included:
 - 2,032 from a door to door campaign
 - 135 from the public hearings
 - 443 from the Regulatory TownHall
 - 171 individualized stakeholder letters
 - 639 action alerts (3 groups – CBF, VCN, Realtors)
 - 1 EPA
- A majority of the comments received were supportive of the proposed regulations.
- However, we suggest that key issues raised also need to be taken into consideration and are reflected in the discussion draft.

Key Issues Raised in the Comments

- The Department is advancing to the Board for consideration and discussion potential amendments to address the following key areas:

- One of the primary areas of concern raised during the public comment period was that the regulations were going to result in a greater potential for sprawl.
 - The argument was made that the new stormwater standards for water quality and quantity were going to be more difficult to achieve in urban areas (both redevelopment areas and Urban Development Areas or UDAs) and on small parcels and would result in development moving to more rural locations to build, where it was suggested that the standards might be easier to achieve.
 - Some commenters also suggested that as development density was increased, that achieving the standards would be more difficult thus resulting in less dense development, stale zoning, and a more diffuse growth pattern.

- Secondly, several commenters raised concern that the regulations should not apply the same stormwater quality standard in the non-Chesapeake Bay portions as in the Bay Watershed.
 - This concern was raised as the 0.28 phosphorus water quality standard was derived utilizing Chesapeake Bay modeling and science and was not applicable to the southern rivers.

- A third area that received considerable public comment related to the provision of additional offsite options should the necessary reductions not be fully achievable onsite.
 - Developers wanted to ensure that an offsite strategy would exist should they not be able to meet their necessary reductions on site.

- A fourth area of concern involved a desire by developers for the inclusion of grandfathering provisions that would exclude their multi-phase/ long-term projects from the need for redesign to address the new stormwater quality and quantity standards.

- Finally, a fifth area involved concerns raised by local governments over the inspection requirements for stormwater BMPs in the proposed regulations.
 - As the new regulations are expected to result in an increase in the use of small LID practices on individual lots (such as rain barrels, rain gardens, etc.), localities were concerned that they would not be able to inspect all of these practices on the 5-year schedule outlined in the regulations.

Department Response to Comments

- The Department is recommending revisions be made to the regulations to address the key issues in the following areas.
 - 1) Water Quality standards for new development and redevelopment
 - 2) Water Quantity standards for channel protection and flood protection

- 3) Offsite compliance options
 - 4) Grandfathering
 - 5) Inspections
- Some additional changes beyond these key issues will be recommended at the next meeting.

Ms. Packard noted that Mr. Dowling did not comment regarding fees. She asked if that was already determined.

Mr. Dowling said that fees were open for discussion but that the five areas he identified were the primary areas of discussion.

Review of the Discussion Document

Mr. Dowling said that he would lead the Board through a review of the document.

For each issue, the attached discussion document provides a bulleted summary of the language as it currently exists in the regulation approved for public comment by the Board in September 2008; a bulleted summary of language that the Department is advancing to the Board for consideration to address these issues; and actual draft language that would be incorporated into the regulations. In the actual draft language sections, changes from the proposed language to the recommended language are highlighted in grey and bracketed so that you can clearly follow where changes are being recommended.

Mr. Dowling reviewed the section entitled, “Water Quality Standards for New Development and Redevelopment.”

1. Water Quality Standards for New Development and Redevelopment

Summary of Board Proposed Language and Recommended Amendments

Applying same standards to Chesapeake Bay and the Southern Rivers

As Proposed at the September 2008 Meeting:

- All parts of the state are covered under 0.28 phosphorus standard.
- No exceptions to this uniform standard exist for different portions of the state, small sites, redevelopment areas, or Urban Development Areas.

Recommended for change:

- 0.28 standard applies in the Chesapeake Bay for new development; 0.45 for non-Bay areas.
- Localities which have lands that drain into both the Bay watershed and non-Bay watersheds may choose which standard to apply to non-Bay areas.

- Localities statewide may always elect to use a stricter standard. (ex: Swift Creek Reservoir; 0.22 phosphorus standard)

Applying 0.28 standard on small sites (less than 1 acre; small infill and commercial sites)

As Proposed at the September 2008 Meeting:

- Land disturbance between 2500 sq. ft. and 1 acre in the Bay Act area would be subject to the statewide 0.28 standard.
- The threshold for regulation is an acre or greater outside of the Bay Act area.

Recommended for change:

- Land disturbance between 2500 sq. ft. and 1 acre in the Bay Act area would be held to the statewide 0.45 standard. (unless they are part of a “common plan of development” in which case, the “common plan of development” standard applies)

Applying the redevelopment standard of 20% on small sites

As Proposed at the September 2008 Meeting:

- The proposed regulations establish a redevelopment standard that requires 20% reduction in phosphorus below the predevelopment load.

Recommended for change:

- 10% for redevelopment sites disturbing less than 1 acre.
- 20% for redevelopment sites disturbing greater than or equal to 1 acre.

Applying the water quality standards in Urban Development Areas

As Proposed at the September 2008 Meeting:

- Not addressed.

Recommended for change:

- Within a UDA in the Bay watershed (greater than or equal to 1 acre), a qualifying local program may establish a standard between 0.28 and 0.45.
- The rationale for the standard(s) selected shall be provided to the Board (for approval) and shall discuss a series of factors utilized to make the determination.

Actual Recommended Language

4VAC50-60-63. Water quality [design]criteria requirements.

In order to protect the quality of state waters and to control [nonpoint source pollution stormwater pollutants], the following minimum technical criteria and statewide standards for stormwater management shall be applied to the site of a land-disturbing activity. [The local program shall have discretion to allow for application of the criteria to each drainage area of the site. However, where a site drains to more than one HUC, the pollutant load reduction requirements shall be applied independently within each HUC

~~unless reductions are achieved in accordance with a comprehensive watershed stormwater management plan in accordance with 4VAC50-60-96.]~~

1. New development. The total phosphorus load of new development projects shall not exceed ~~[0.28 0.45]~~ pounds per acre per year, as calculated pursuant to 4VAC50-60-65~~], except:~~

a. The total phosphorus load of a new development project disturbing greater than or equal to 1 acre in the Chesapeake Bay Watershed shall not exceed 0.28 pounds per acre per year, as calculated pursuant to 4VAC50-60-65.

b. Within Urban Development Areas designated pursuant to §15.2-2223.1 in the Chesapeake Bay Watershed a qualifying local program may establish a phosphorus reduction requirement between 0.28 and 0.45 pounds per acre per year in order to encourage smarter growth. The qualifying local program shall provide to the board (for approval) a justification for any standards established if greater than 0.28. The standard shall be based upon factors including, but not limited to, number of housing units per acre for residential development, floor area ratio for non-residential development, level of imperviousness, brownfield remediation potential, mixed-use and transit oriented development potential, proximity to the Chesapeake Bay or local waters of concern, and the presence of impaired waters. This provision shall not apply to department administered local programs.

c. Localities that have lands that drain to both the Chesapeake Bay Watershed and other non-Chesapeake Bay watersheds may choose to apply the 0.28 pounds per acre per year phosphorus standard to land disturbing activities that discharge to watersheds other than the Chesapeake Bay Watershed.]

2. Development on prior developed lands.

[a.] The total phosphorus load of [~~projects a project~~] occurring on prior developed lands [~~and disturbing greater than or equal to 1 acre~~] shall be reduced to an amount at least 20% below the predevelopment total phosphorus load.

[b. The total phosphorus load of a project occurring on prior developed lands and disturbing less than 1 acre shall be reduced to an amount at least 10% below the predevelopment total phosphorus load.]

[c.] [~~However, the~~ The] total phosphorus load shall not be required to be reduced to below [~~0.28 pounds per acre per year~~ the applicable standard for new development] unless a more stringent standard has been established by a qualifying local program.

3. Compliance with [subdivisions 1 and 2 shall be determined in accordance with] 4VAC50-60-65 [~~shall constitute compliance with subdivisions 1 and 2 of this section~~].

4. TMDL. In addition to the above requirements, if a specific WLA for a pollutant has been established in a TMDL and is assigned to stormwater discharges from a construction activity, necessary control measures must be implemented by the operator to meet the WLA in accordance with the requirements established in the General Permit for Discharges of Stormwater from Construction Activities or an

individual permit, which address both construction and post construction discharges.

[5. Nothing in this section shall prohibit a qualifying local program from establishing a more stringent standard.]

Ms. Campbell asked, on the 10% for redevelopment for sites less than 1-acre, if the Board would review that on a case by case basis.

Mr. Dowling said that the locality would have the authority to address those situations as a part of their Board approved local qualifying program if they felt a more stringent standard was necessary.

Mr. Maroon said that the Board would not be involved with approving individual projects but would have a broad overview.

Mr. Dowling continued with the section on Water Quantity.

2. Water Quantity Standards for Channel Protection and Flood Protection

Summary of Board Proposed Language and Recommended Amendments

Channel protection

As Proposed at the September 2008 Meeting:

- Stormwater discharged from a site to an unstable channel must be released at or below a “forested” peak flow rate condition.
- No exceptions to the standard are provided.

Recommended for change:

- Stormwater discharged from a site to an unstable channel must be released at or below a “good pasture” peak flow rate condition unless the pre-developed condition for the site is forest, in which case, the runoff from shall be held to the forested condition.
- Exceptions to the “good pasture” standard are provided to a land disturbing activity that is:
 - less than 5 acres on prior developed lands; or
 - less than 1 acre for new development.
- Under the exception, the sites are expected to improve upon the pre-developed runoff condition.

Flood Protection

As Proposed at the September 2008 Meeting:

- Where localized flooding exists during the 10-year 24-hour storm, the post-development peak flow rate must not exceed the predevelopment peak flow rate based on “forested” conditions.
- No exceptions to the standard are provided.

Recommended for change:

- Where localized flooding exists during the 10-year 24-hour storm, the post-development peak flow rate must not exceed the predevelopment peak flow rate based on “good pasture” conditions unless the pre-developed condition for the site is forest, in which case, the peak flow rate shall be held to the forested condition.
- Same as above, exceptions to this standard are provided to a land disturbing activity:
 - less than 5 acres on prior developed lands.
 - less than 1 acre for new development.
- Under the exception, post development peak flow rate for the 10-year 24-hour storm must be less than the predevelopment peak flow rate from the 10-year 24-hour storm.

Actual Recommended Language

4VAC50-60-66. Water quantity.

A. Channel protection and flood protection shall be addressed in accordance with the minimum standards set out in this section, which are established pursuant to the requirements of subdivision 7 of § 10.1-603.4 of the Code of Virginia.

B. Channel protection. Concentrated stormwater flow from the site and offsite contributing areas shall be released into a stormwater conveyance system and shall meet one of the following criteria as demonstrated by use of accepted hydrologic and hydraulic methodologies:

1. Concentrated stormwater flow to manmade stormwater conveyance systems. The point of discharge releases stormwater into a manmade stormwater conveyance system that, following the land-disturbing activity, conveys the post development peak flow rate from the two-year 24-hour storm without causing erosion of the system.

2. Concentrated stormwater flow to restored stormwater conveyance systems. The point of discharge releases stormwater into a stormwater conveyance system that (i) has been restored and is functioning as designed or (ii) will be restored. The applicant must demonstrate that the runoff following the land-disturbing activity, in combination with other existing stormwater runoff, will not exceed the design of the restored stormwater conveyance system nor result in instability of the system.

3. Concentrated stormwater flow to stable natural stormwater conveyance systems. The point of discharge releases stormwater into a natural stormwater

conveyance system that is stable and, following the land-disturbing activity, (i) will not become unstable as a result of the discharge from the one-year 24-hour storm, and (ii) provides a peak flow rate from the one-year 24-hour storm calculated as follows or in accordance with another methodology that is demonstrated by the local program to achieve equivalent results and is approved by the board:

$Q_{\text{Developed}} * RV_{\text{Developed}} \leq Q_{\text{Pre-Developed}} * RV_{\text{Pre-Developed}}$, where

$Q_{\text{Developed}}$ = The allowable peak flow rate of runoff from the developed site.

$Q_{\text{Pre-Developed}}$ = The peak flow rate of runoff from the site in the predeveloped condition.

$RV_{\text{Pre-Developed}}$ = The volume of runoff from the site in the predeveloped condition.

$RV_{\text{Developed}}$ = The volume of runoff from the developed site.

4. [a. Except as set out in subdivision b, concentrated ~~Concentrated~~] stormwater flow to unstable natural stormwater conveyance systems. Where the point of discharge releases stormwater into a natural stormwater conveyance system that is unstable, stormwater runoff following a land-disturbing activity shall be released into a channel at or below a peak flow rate ($Q_{\text{Developed}}$) based on the one-year 24-hour storm, calculated as follows or in accordance with another methodology that is demonstrated by the local program to achieve equivalent or more stringent results and is approved by the board:

$Q_{\text{Developed}} * RV_{\text{Developed}} \leq Q_{\text{[Forested Good Pasture]}} * RV_{\text{[Forested Good Pasture]}}$, where

$Q_{\text{Developed}}$ = The allowable peak flow rate from the developed site.

$Q_{\text{[Forested Good Pasture]}}$ = The peak flow rate from the site in a [~~forested good pasture~~] condition.

$RV_{\text{[Forested Good Pasture]}}$ = The volume of runoff from the site in a [~~forested good pasture~~] condition.

$RV_{\text{Developed}}$ = The volume of runoff from the developed site.

[unless the pre-developed condition is forested, in which case, both the peak flow rate and the volume of runoff from the developed site shall be held to the forested condition.

b. This subsection shall apply to concentrated stormwater flow to unstable natural stormwater conveyance systems from: i) a land disturbing activity less than 5 acres on prior developed lands, or ii) a regulated land disturbing activity less than 1 acre for new development. Where the point of discharge releases stormwater into a natural stormwater conveyance system that is unstable, stormwater runoff following a land-disturbing activity shall provide a peak flow rate from the one-year 24-hour storm, calculated as follows or in accordance with another methodology that is demonstrated by the local program to achieve equivalent or more stringent results and is approved by the board:

$Q_{\text{Developed}} * RV_{\text{Developed}} \leq Q_{\text{Pre-Developed}} * RV_{\text{Pre-Developed}}$, where

$Q_{\text{Developed}}$ = The allowable peak flow rate from the developed site. Such peak flow rate must be less than $Q_{\text{Pre-Developed}}$.

$Q_{\text{Pre-Developed}}$ = The peak flow rate from the site in pre-development condition.

$RV_{\text{Pre-Developed}}$ = The volume of runoff from the site in pre-development condition.

$RV_{\text{Developed}}$ = The volume of runoff from the developed site. Such volume must be less than $RV_{\text{Pre-Developed}}$.]

C. Flood protection. Concentrated stormwater flow shall be released into a stormwater conveyance system and shall meet one of the following criteria as demonstrated by use of accepted hydrologic and hydraulic methodologies:

1. Concentrated stormwater flow to manmade stormwater conveyance systems. The point of discharge releases stormwater into a manmade stormwater conveyance system that, following the land-disturbing activity, confines the post development peak flow rate from the 10-year 24-hour storm within the manmade stormwater conveyance system.

2. Concentrated stormwater flow to restored stormwater conveyance systems. The point of discharge releases stormwater into a stormwater conveyance system that (i) has been restored and is functioning as designed or (ii) will be restored. The applicant must demonstrate that the peak flow rate from the 10-year 24-hour storm following the land-disturbing activity will be confined within the system.

3. Concentrated stormwater flow to natural stormwater conveyance systems. The point of discharge releases stormwater into a natural stormwater conveyance system that currently does not flood during the 10-year 24-hour storm and, following the land-disturbing activity, confines the post development peak flow rate from the 10-year 24-hour storm within the system.

4. [a.] Concentrated stormwater flow to natural stormwater conveyance systems where localized flooding exists during the 10-year 24-hour storm. The point of discharge releases a post development peak flow rate for the 10-year 24-hour storm that shall not exceed the predevelopment peak flow rate from the 10-year 24-hour storm based on [forested good pasture] conditions [, unless the pre-developed condition is forested, in which case the peak flow rate from the developed site shall be held to the forested condition] .

[b. Subsection (B)(4)(a) notwithstanding, this subsection shall apply to concentrated stormwater flow to natural stormwater conveyance systems where localized flooding exists during the 10-year 24-hour storm from: i) a land disturbing activity less than 5 acres on prior developed lands, or ii) a regulated land disturbing activity less than 1 acre for new development. The point of discharge releases a post development peak flow rate for the 10-year 24-hour storm that is less than the predevelopment peak flow rate from the 10-year 24-hour storm.]

5. A local program may adopt alternate flood protection design criteria that (i) achieve equivalent or more stringent results, (ii) are based upon geographic, land

use, topographic, geologic, or other downstream conveyance factors, and (iii) are approved by the board.

D. One percent rule. If either of the following criteria are met, subsections A and B of this section do not apply:

1. Based on area. Prior to any land disturbance, the site's contributing drainage area to a point of discharge from the site is less than or equal to 1.0% of the total watershed area draining to that point of discharge; or

2. Based on peak flow rate. Based on the post development land cover conditions prior to the implementation of any stormwater quantity control measures, the development of the site results in an increase in the peak flow rate from the one-year 24-hour storm that is less than 1.0% of the existing peak flow rate from the one-year 24-hour storm generated by the total watershed area draining to that point of discharge.

E. Increased volumes of sheet flow resulting from pervious or disconnected impervious areas, or from physical spreading of concentrated flow through level spreaders, must be identified and evaluated for potential impacts on down gradient properties or resources. Increased volumes of sheet flow that will cause or contribute to erosion, sedimentation, or flooding of down gradient properties or resources shall be diverted to a [~~detention facility~~, stormwater management facility] or a stormwater conveyance system that conveys the runoff without causing down gradient erosion, sedimentation, or flooding. If all runoff from the site is sheet flow and the conditions of this subsection are met, no further water quantity controls are required.

F. For purposes of computing predevelopment runoff from prior developed sites, all pervious lands on the site shall be assumed to be in good hydrologic condition in accordance with the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) standards, regardless of conditions existing at the time of computation. Predevelopment runoff calculations utilizing other hydrologic conditions may be utilized provided that it is demonstrated to and approved by the local program that actual site conditions warrant such considerations.

G. Predevelopment runoff characteristics and site hydrology shall be verified by site inspections, topographic surveys, available soil mapping or studies, and calculations consistent with good engineering practices in accordance with guidance provided in the Virginia Stormwater Management Handbook and by the qualifying local program.

H. Except where the compliance options under subdivisions B 4 and C 4 of this section are utilized, flooding and channel erosion impacts to stormwater conveyance systems shall be analyzed for each point of discharge in accordance with channel analysis guidance provided in Technical Bulletin # 1, Stream Channel Erosion Control, or in accordance with more stringent channel analysis guidance established by the qualifying local program and provided to the department. Such analysis shall include estimates of runoff from the developed site and the entire upstream watershed that contributes to that point of discharge. Good engineering practices and calculations in accordance with department guidance shall be used to evaluate post development runoff characteristics and site hydrology, and flooding and channel erosion impacts.

If the downstream owner or owners refuse to give permission to access the property for the collection of data, evidence of this refusal shall be given and arrangements made satisfactory to the local program to provide an alternative method for the collection of data to complete the analysis, such as through the use of photos, aerial surveys, "as built" plans, topographic maps, soils maps, and any other relevant information.

Ms. Packard said that her understanding was that in the law forested areas and good pasture are different.

Mr. Dowling said that the Stormwater law did not speak directly to either.

Ms. Packard read from the letter from Fairfax County (a copy of this letter is available from DCR), the letter read as follows:

4VAC50-60-66.B Water quantity. Channel protection. Paragraph 4.a which sets out the requirements for discharges from a site to an unstable channel has replaced the use of "forested" conditions with "good pasture" conditions. The use of "good pasture" is inconsistent with the requirement for the use of "good forested" conditions in the detention methodology in §10.1-561 of the Erosion and Sediment Control Law and represents a very small change for soils classified as hydrologic groups "C" and "D". What is the rationale behind the proposed change?

Mr. Brown said that the language quoted by Fairfax was from the Erosion and Sediment Control statute. He said that the stormwater law refers to predevelopment condition or to replicating existing runoff conditions, but does not reference forested conditions.

Mr. Dowling continued with the section about Offsite Compliance.

3. Offsite Compliance Options

Summary of Board Proposed Language and Recommended Amendments

As Proposed at the September 2008 Meeting:

- The existing proposed regulations contained three provisions for offsite compliance.
 - COMPREHENSIVE PLAN: If a local comprehensive watershed stormwater management plan has been adopted for the area within which a project is located, then the development may be able to use offsite options to achieve all or part of the water quality and quantity technical criteria.
 - DEVELOPER SITE: Where no such plan exists, a development project may use offsite options to meet water quality technical criteria if they control or own property within the same HUC or the adjacent downstream HUC to the land-disturbing site.

- LOCAL PRO-RATA: A pro-rata fee payment option also exists that is tied to the local comprehensive watershed management plan option.
- Each offsite option is at the discretion of the locality.

Recommended for change:

- Create a new section that contains all of the offsite compliance options (numbered 4VAC50-60-69).
- 5 offsite options are provided:
 - COMPREHENSIVE PLAN: Same as above.
 - DEVELOPER SITE: The option was modified to specify that controls must be located within the same HUC or within the upstream HUCs in the local watershed that the land disturbing activity directly discharges to.
 - LOCAL PRO-RATA: Expand use of this option. Specify that a locality may use a pro rata fee in accordance with § 15.2-2243 or similar funding mechanism to achieve offsite the water quality and quantity reductions required. Participants will pay a locally established fee sufficient to fund improvements necessary to adequately achieve those requirements.
 - NUTRIENT OFFSET: Incorporate the new offset option passed by the 2009 General Assembly (HB2168) (for water quality and is according to stipulations in the legislation.)
 - BUY-DOWN: Add a new section to allow the developer at his discretion to meet the 0.28 onsite water quality standard (where applicable) or pay the difference at a set fee per acre/per pound into a state fund.
- The conditions that apply to the new BUY DOWN option are as follows:
 - This option may be utilized where the other 4 options are not available for use, or where a locality otherwise elects to allow the use.
 - The payment shall be \$15,000 per pound of phosphorus not treated on site.
 - In an Urban Development Area the poundage reduction multiplier ratio is 1:1 (pounds not treated: pounds purchased).
 - In all other cases the ratio shall be 1:1.5.
 - Payments will be deposited to the Virginia Stormwater Management Fund.
 - The board shall establish priorities for the use of these payments by September 1 of each year (a list of preferences are provided).
 - At least 50% of the payments shall be utilized for projects to address local urban stormwater quality issues.
 - The remaining payments shall be utilized to fund long-term agricultural best management or to purchase offsets in accordance with §10.1-603.8:1.
 - The department shall track the monies received and expended and the reductions needed and achieved.

- The department may annually utilize up to 6% of the payments to administer the stormwater management program.
- The board shall periodically review the payment amount, at least every five years or in conjunction with the development of a new construction general permit.
- Use of the buy down option is in accordance with the following limitations:
 - A new development project disturbing greater than or equal to 1 acre in the Chesapeake Bay Watershed must achieve at least 0.45 pounds per acre per year of phosphorus on site and then may achieve all or a portion of the remaining required phosphorus reductions through a payment.
 - A new development project disturbing less than 1 acre in the Chesapeake Bay Watershed may achieve all necessary phosphorus reductions through a payment.
 - Development on prior developed lands disturbing greater than or equal to 1 acre must achieve at least a 10% reduction from the predevelopment total phosphorus load on site and then may achieve the remaining required phosphorus reductions through a payment.
 - Development on prior developed lands disturbing less than 1 acre may achieve all necessary phosphorus reductions through a payment.
- Where the department is administering a local program, only the DEVELOPER SITE, NUTRIENT OFFSET, and BUY-DOWN offsite options shall be available

Actual Recommended Language

[4VAC50-60-69. Offsite compliance options

A. A qualifying local program shall have the authority to consider the use of the following offsite compliance options:

1. If a comprehensive watershed stormwater management plan has been adopted pursuant to 4VAC50-60-92 for the local watershed within which a project is located, then the qualifying local program may allow offsite controls in accordance with the plan to achieve the water quality and quantity reductions required for a site by this chapter. Such offsite controls shall achieve the required reductions either completely offsite in accordance with the plan or in a combination of onsite and offsite controls.

2. If the qualifying local program allows for a pro rata fee in accordance with § 15.2-2243 of the Code of Virginia or similar funding mechanism, then the water quality and quantity reductions required for a site by this chapter may be achieved by the payment of a fee sufficient to fund improvements necessary to adequately achieve those requirements.

3. If the qualifying local program allows, a land disturbing activity may achieve compliance with water quality reductions required for a site by this chapter pursuant to the nonpoint nutrient offset program established by §10.1-603.8:1.

4. Where no comprehensive watershed stormwater management plan exists, offsite controls may be used to meet the water quality reductions required for a site by this chapter provided:

a. The applicant demonstrates to the satisfaction of the local program that offsite reductions equal to or greater than those that would otherwise be required for the site are achieved;

b. The applicant demonstrates to the satisfaction of the local program that the development's runoff and the runoff from any offsite treatment area shall be controlled in accordance with 4VAC50-60-66;

c. Offsite controls must be located within the same HUC or within the upstream HUCs in the local watershed that the land disturbing activity directly discharges to; and

d. The applicant demonstrates to the satisfaction of the local program that the right to utilize the offsite control area and any necessary easements have been obtained and maintenance agreements for the stormwater management facilities have been established pursuant to 4VAC50-60-124.

B. Where the offsite options of subsection A are not available for use, or where a qualifying local program otherwise elects to allow the use of this subsection, offsite compliance may be achieved through a payment in accordance with the following:

1. The payment shall be \$15,000 per pound of phosphorus and shall be calculated based on the poundage not treated on site. When the land disturbing activity is in an Urban Development Area the poundage reduction multiplier shall be at a 1:1 (pounds not treated: pounds purchased) ratio, in all other cases the ratio shall be 1:1.5. Payment amounts shall be determined based upon the nearest 0.01 of a pound phosphorus.

2. All payments shall be deposited and utilized in accordance with the following:

a. Payments received shall be deposited to the Virginia Stormwater Management Fund and held in a subaccount.

b. The board shall establish priorities for the use of these payments by September 1 of each year. Payments held in the fund shall be promptly applied to ensure that nutrient reduction practices are being implemented.

c. Priorities shall be established in accordance with the following:

i. At least 50% of the payments shall be utilized for projects to address local stormwater quality issues related to the impacts of development activities including but not limited to urban retrofits, urban stream restorations, and reduction of impervious areas.

ii. The remaining payments received shall be utilized to fund long-term contracts for agricultural best management practices no less than 20 years in duration or long-term best management practices including but not limited to stream fencing, alternative water supplies, and riparian buffers in accordance with the Virginia Agricultural BMP Cost

Share Program. Such payments may additionally be used to purchase offsets in accordance with §10.1-603.8:1.

iii. Preference will be given to: purchasing existing credits; targeting equivalent reductions in the same local watershed as where the payment came from; implementing urban practices/retrofits that address TMDLs.; securing permanent practices; and achieving measurable reductions. When purchasing agricultural best management practices, the board shall consider purchasing practices beyond the baseline established under the Chesapeake Bay Watershed Nutrient Credit Exchange Program in accordance with §62.1-44.19:12 et seq.

d. The department shall track the payment amount, the associated poundage of phosphorus purchased, and the HUC for the land disturbing activity. The department shall additionally track the annual expenditure of the funds including where the monies are expended and the cost per pound for phosphorus reductions associated with the nutrient reduction practices.

e. The department may annually utilize up to 6% of the payments to administer the stormwater management program.

f. The board shall periodically review the payment amount, at least every five years or in conjunction with the development of a new construction general permit.

3. Utilization of a payment to achieve compliance with the water quality technical criteria shall be subject to the following limitations:

a. A new development project disturbing greater than or equal to 1 acre in the Chesapeake Bay Watershed must achieve at least 0.45 pounds per acre per year of phosphorus on site and then may achieve all or a portion of the remaining required phosphorus reductions through a payment.

b. A new development project disturbing less than 1 acre in the Chesapeake Bay Watershed may achieve all necessary phosphorus reductions through a payment.

c. A new development project outside of the Chesapeake Bay Watershed must achieve all necessary phosphorus reductions on site.

d. Development on prior developed lands disturbing greater than or equal to 1 acre must achieve at least a 10% reduction from the predevelopment total phosphorus load on site and then may achieve the remaining required phosphorus reductions through a payment.

e. Development on prior developed lands disturbing less than 1 acre may achieve all necessary phosphorus reductions through a payment.

C. Where the department is administering a local program, only offsite options set out in Subsections A3, A4, and B shall be available.]

Mr. Maroon noted that this payment would be part of the fee that is collect.

Ms. Packard asked if the \$15,000 per pound was agreed upon. She said that was too low for urbanizing areas. She noted that Fairfax County established a fee of \$600 per foot to rehabilitate a stream for phosphorus removal.

Mr. Dowling said that the value was arrived at based on what was believed to be a reasonable starting point. He said that some states are as low as \$8,000, some as high as \$28,000. He said that the intent was for the Board to review this number periodically once there is a track record.

Ms. Packard asked if there was a restriction on raising the fee due to the cost of living index.

Mr. Dowling indicated that we do not have the statutory authority to do that.

Mr. Dowling reviewed the section regarding Grandfathering.

4. Grandfathering

Summary of Board Proposed Language and Recommended Amendments

As Proposed at the September 2008 Meeting:

- Does not contain grandfathering language.
- NOTE: The new Construction General Permit that became effective on July 1, 2009 does contain language to ensure that those projects which have received General Permit coverage would be held to this standard until at least the end of the General Permit cycle on June 30, 2014.

Recommended for change:

- Establishes a new section on Grandfathering numbered 4VAC50-60-48.
- Establishes a Part II B that contains today's existing stormwater standards and labels the new water quality and quantity provisions as Part II A.
- Grandfather multiple-phase projects that:
 - File with or obtain approval from a local government of their plan of development by January 1, 2010; and
 - Obtain VSMP general permit coverage by July 1, 2010.
- Where these two conditions are met the project is grandfathered to June 30, 2014.
- If permit coverage is continuously maintained, the project will remain subject to today's existing criteria until June 30, 2019.
- Should permit coverage not be maintained or if project construction continues beyond June 30, 2019, portions of those projects not completed shall be subject to the new Technical Criteria.
- Grandfathers a project that is part of a common plan of development or sale that received VSMP general permit coverage prior to July 1, 2010. In those cases, the same standard that applied to the common plan of development will apply to the land disturbing activity within it.

Actual Recommended Language

[4VAC50-60-48. Grandfathering.

A. Where a plan of development for a multiple phase project, as determined by a local government, has been filed or approved with a local government by January 1, 2010, and VSMP general permit coverage has been obtained from the department prior to July 1, 2010, the land disturbing activity associated with the project is grandfathered and shall remain subject to the Part II B Technical Criteria until June 30, 2014. If permit coverage is continuously maintained for the land disturbing activity within the entire project area, then the project shall remain subject to the Part II B Technical Criteria until June 30, 2019. Should permit coverage not be maintained or if project construction continues beyond June 30, 2019, portions of those projects not completed shall be subject to the Part II A Technical Criteria.

B. Where a land disturbing activity is part of a common plan of development or sale that has obtained VSMP general permit coverage from the department prior to July 1, 2010, the land disturbing activity will be subject to the technical criteria of Part II B. The registration statement shall include the permit coverage number for the common plan of development or sale for which association is being claimed.]

Mr. Dowling reviewed the section regarding Inspections.

5. Inspections

Summary of Board Proposed Language and Recommended Amendments

As Proposed at the September 2008 Meeting:

- Inspection required by an owner's engineer or the qualifying local program of all BMPs within a 5-year period.
- Maintenance agreements also required for all BMPs.

Recommended for change:

- Amend Section 124 (Stormwater Management Facility Maintenance) so that maintenance agreements shall not be required for stormwater management facilities located on an individual residential lot, provided it is demonstrated to the satisfaction of the qualifying local program that future maintenance of such a facility will be addressed through a deed restriction or other mechanisms.
- Amend Section 114 (Inspections) to limit owner inspections to only those for which a maintenance agreement is required.
- Localities would not be required to inspect stormwater BMPs on individual lots every 5 years.

- Authorizes a qualifying local program to develop a strategy for addressing maintenance of stormwater management facilities located on and designed to treat stormwater runoff from an individual residential lot. Such a strategy may include periodic inspections, public outreach and education, or other method targeted at promoting the long-term maintenance of such facilities.

Actual Recommended Language

4VAC50-60-114. Inspections.

A. The qualifying local program or its designee shall inspect the land-disturbing activity during construction for compliance with the VSMP General Permit for Discharges of Stormwater from Construction Activities.

B. The person responsible for the development project or their designated agent shall submit to a qualifying local program a construction record drawing for permanent stormwater management facilities, appropriately sealed, and signed by a professional in accordance with all minimum standards and requirements pertaining to the practice of that profession pursuant to Chapter 4 (§ 54.1-400 et seq.) of Title 54.1 of the Code of Virginia and attendant regulations, certifying that the stormwater management facilities have been constructed in accordance with the approved plan. The qualifying local program shall have the construction record drawing and certification on file prior to the release of the portion of the performance bond or surety associated with the stormwater management facility.

C. The [owners owner] of [a] stormwater management [facilities facility for which a maintenance agreement is required pursuant to 4VAC50-60-124] shall be required to conduct inspections in accordance with an inspection schedule in [a the] recorded maintenance agreement, and shall submit written inspection and maintenance reports to the qualifying local program [upon request]. Such reports, if consistent with a board-approved inspection program established in subsection [D E] of this section, may be utilized by the qualifying local program if the inspection is conducted by a person who is licensed as a professional engineer, architect, [certified] landscape architect, or land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 or who holds a certificate of competence from the board. The reports, if so utilized, must be kept on file with the qualifying local program

D. [A qualifying local program shall develop a strategy for addressing maintenance of stormwater management facilities located on and designed to treat stormwater runoff from an individual residential lot. Such a strategy may include periodic inspections, public outreach and education, or other method targeted at promoting the long term maintenance of such facilities. Such facilities shall not be subject to the requirement for an inspection to be conducted by the qualifying local program every 5 years contained within subsection E of this section.

E.] A qualifying local program shall establish an inspection program that ensures that the stormwater management facilities are being maintained as designed. Any inspection program shall be:

1. Approved by the board prior to implementation;

2. Established in writing;

3. Based on a system of priorities that takes into consideration the purpose and type of the facility, ownership and the existence of a recorded maintenance agreement and inspection schedule, the contributing drainage area, and downstream conditions;

4. Demonstrated to be an enforceable inspection program that meets the intent of the regulations and ensures that each stormwater management facility is inspected by the qualifying local program or its designee, not to include the owner, except as provided in [subsection subsections] C [and D] of this section, at least every five years; and

5. Documented by inspection records.

[E. F.] Inspection reports shall be generated and kept on file in accordance with 4VAC50-60-126 for all stormwater management facilities inspected by the qualifying local program.

4VAC50-60-124. Qualifying local program stormwater management facility maintenance.

A. Responsibility for the operation and maintenance of stormwater management facilities in accordance with this chapter, unless assumed by a governmental agency, shall remain with the property owner or other legally established entity and shall pass to any successor.

[1.] The government entity implementing the qualifying local program shall be a party to [each a] maintenance agreement [for each stormwater management facility except as provided in subdivision 2]. Such maintenance agreement shall include a schedule for inspections by the owner, and, in addition to ensuring that each facility is maintained as designed, shall ensure that the designed flow and drainage patterns from the site to a permanent facility are maintained. Such agreements may also contain provisions specifying that, where maintenance or repair of a stormwater management facility located on the owner's property is neglected, or the stormwater management facility becomes a public health or safety concern and the owner has failed to perform the necessary maintenance and repairs after receiving notice from the locality, the qualifying local program may perform the necessary maintenance and repairs and recover the costs from the owner. In the specific case of a public health or safety danger, the agreement may provide that the written notice may be waived by the locality.

[2. Maintenance agreements shall not be required for stormwater management facilities located on and designed to treat stormwater runoff from an individual residential lot, provided it is demonstrated to the satisfaction of the qualifying local program that future maintenance of such a facility will be addressed through a deed restriction or other mechanism enforceable by the qualifying local program.]

B. [The Where a maintenance agreement is required for a stormwater management facility, the] qualifying local program shall be notified of any transfer or conveyance of ownership or responsibility for maintenance of a stormwater management facility.

C. [The Where a maintenance agreement is required for a stormwater management facility, the] qualifying local program shall require right-of-entry agreements or easements from the property owner for purposes of inspection and maintenance.

Mr. Dowling said that concluded his presentation.

Ms. Hansen expressed a concern that EPA had not commented on the current draft. She said that she had strong concerns with regard to where EPA is moving at the federal level and that she was not certain how EPA would address these particular accommodations. She asked the mechanism for soliciting a response from EPA.

Mr. Dowling said that EPA was exposed to this version of the document at the prior day's meeting with JCAR. He said that EPA will look at the regulations as a whole, taking into account the President's Executive Order and other items.

Ms. Hansen asked when DCR might have the EPA response.

Mr. Dowling said that he did not have a timetable for the EPA response.

Mr. Maroon said that the EPA representative at the JCAR meeting made some strong statements with regard to what EPA would be looking for. He said that the indication was that if the regulations were not stringent enough there could be more requirements placed on MS4 permits. There could be a need for those to move toward individual permits.

Ms. Hansen asked if DCR expected the EPA response prior to the October meeting.

Mr. Maroon said that normally EPA would comment once the regulations are adopted, but that staff could ask for a preliminary opinion.

Mr. Simms asked under Offsite Compliance regarding the 50% of payments being utilized for local stormwater quality issues if the remaining payments could be utilized for long term agriculture best management practices. He asked if that would be going back to Soil and Water Conservation Districts to fund BMPs.

Mr. Dowling said that the best mechanism for putting that on the ground needed to be discussed.

Mr. Maroon said that one of the advantages of the Board being involved in both programs was the ability to look at both areas.

Ms. Packard asked if a locality would get credit for an offsite credit purchased in a different locality.

Mr. Dowling said that the locality would still be responsible for local water quality issues.

Mr. Maroon said that the locality had the right to not allow for offsets out of the jurisdiction.

At this time, Chairman Campbell opened the floor for public comment. She instructed attendees that they would have three minutes to give their remarks.

David Sligh

My name is David Sligh and I work for the James River Association as the Upper James Riverkeeper. Thank you for the chance to speak today. I'd like to express my respect and thanks for DCR staff's dedication and hard work throughout this project.

I support many aspects of these proposals with a few exceptions. I will focus today on quantity controls for runoff. Controlling the amounts and also the force and frequency with which streams are assaulted by unnatural flows will prevent the physical damage to stream channels and habitats and stop further destruction in many streams across the state.

While we necessarily focus on pollution effects to the Chesapeake Bay and large rivers, we must be just as vigilant in protecting tributaries and headwaters streams. Those are locally important to citizens and communities and vital ecological components of the larger stream systems.

The simple fact is that current stormwater regulations do not adequately control storm runoff quantity. While the existing regulations have been enforced, many streams have continually worsening conditions. Stream banks are eaten away with huge quantities of soil from those banks blanketing stream beds, choking out aquatic life and cheapening these streams' value for public uses.

New development has very often been accompanied by newly damaged streams through habitat destruction caused by excess flow. Even if we prevented every particle of new sediment from entering the streams by controlling the quality of runoff, damage will continue due to the flooding of large storm events.

Because of these serious problems we strongly support adoption of quantity controls contained in section 4VAC-50-60 to 63. Without these improvements physical and biological integrity of many water bodies will be destroyed in violation of Virginia's water quality standards and the objectives of the Clean Water Act.

I do object to the change DCR staff has proposed changing quantity of discharge to already unstable stream channels to reflect conditions attributed to good pasture. We urge that you close in these damaged streams and sites to forested conditions instead.

Such flows are proven by many studies to be the best protection available and greater discharges contribute to further degradation of the impaired streams.

Thank you again.

David Slutzky

Good morning. I handed out two pieces of paper which you can perhaps look at later. One is some proposed language and the other is a brief summary of my comments.

I come to you today as a local government official and also as an environmentalist and a planning professional. I see your challenges. This is enormously complicated.

I think that if you get it right there is a possibility that Virginia's regulation will actually stand and will be able to have a nice balance of the competing interests.

There are two refinements to the most recent version that I would like to encourage you to consider however.

One of them is with respect to the offsite credits. The \$15,000 price tag on the UDA and then the \$22,500 on the non-UDA credits seems to be adequate for a number of folks. But the development community has expressed concern that if localities choose to price their local offsets far in excess of that and the developer doesn't have the default or safety valve of paying money into a fund, then this isn't going to work. So my suggestion would be to refine that language on the offsite credits to allow that in the event the locality prices above the \$15,000, even though they have an offset program, that the developers' could have the discretion to utilize an opt-in fund.

The other refinement I have is with respect to the grandfathering provisions. The development community reasonably wants to see certainty in the definitions. Certainty helps them a lot. And there's great confusion as to what kind of activity would actually be grandfathered or not. What I've handed out is some language from the Virginia Code § 15.2-2307.

Mr. Slutzky's handout contained the following Code reference:

§ 15.2-2307. Vested rights not impaired; nonconforming uses.

Nothing in this article shall be construed to authorize the impairment of any vested right. Without limiting the time when rights might otherwise vest, a landowner's rights shall be deemed vested in a land use and such vesting shall not be affected by a subsequent amendment to a zoning ordinance when the landowner (i) obtains or is the beneficiary of a significant affirmative governmental act which remains in effect allowing development of a specific

project, (ii) relies in good faith on the significant affirmative governmental act, and (iii) incurs extensive obligations or substantial expenses in diligent pursuit of the specific project in reliance on the significant affirmative governmental act.

For purposes of this section and without limitation, the following are deemed to be significant affirmative governmental acts allowing development of a specific project: (i) the governing body has accepted proffers or proffered conditions which specify use related to a zoning amendment; (ii) the governing body has approved an application for a rezoning for a specific use or density; (iii) the governing body or board of zoning appeals has granted a special exception or use permit with conditions; (iv) the board of zoning appeals has approved a variance; (v) the governing body or its designated agent has approved a preliminary subdivision plat, site plan or plan of development for the landowner's property and the applicant diligently pursues approval of the final plat or plan within a reasonable period of time under the circumstances; or (vi) the governing body or its designated agent has approved a final subdivision plat, site plan or plan of development for the landowner's property.

Mr. Slutzky continued:

In the first two paragraphs of that Code language, there is excellent language that defines the kinds of activities and the circumstances under which I think you would have intended the grandfathering to apply. And I would encourage you to use that language in your ultimate regulations.

My last remark is simply that I want to say thank you to Joe Maroon and the staff of DCR. I think they have done an extraordinary job of reaching out to the stakeholder communities. It's not just the number of comments that were received but it's the rigor of discourse in this exercise. It's been extraordinary. And I think it's needed in this case.

So I commend DCR for trying to get this right. If you end up coming up with a stormwater regulation that EPA would be willing to see play out, I think you will have done something remarkable. If you come out with a regulation that the General Assembly feels compelled to squash in January I think that everyone is going to be very frustrated.

So, thank you very much for your consideration of these comments.

Mr. Maroon asked Mr. Slutzky regarding the second hand out if he was asking that the Board to adopt that specific language, or if other language with a similar meaning would be acceptable.

Mr. Slutzky said he was saying that the Board should use it as a model for looking at how to grandfather with respect to stormwater. It was not necessarily this language, but that

this would be used as a model.

Barbara Brumbaugh

Good morning everyone. My name is Barbara Brumbaugh. I'm speaking on behalf of the City of Chesapeake.

I've been involved with this process since the beginning and I was here before you last year. I somewhat regret that I'm back again. I did submit a comment letter. I'd like to make four points today.

First, we strongly feel that the post construction technical criteria need to be separated from the administration of the VSMP general permit for discharge during construction.

We believe that the VSMP permit was intended to regulate during the construction phase only and not post construction discharges. And that the intent of the 2004 legislation was to streamline stormwater permits, streamline construction general permits with our existing Erosion and Sediment control programs.

Currently in Chesapeake, our post construction water quality and quantity criteria are implemented through our development review process. We would like to keep it that way. The way the regulations are structured now we would have to revamp our entire development review program. And we don't feel this is an efficient way to run this process. This would also allow a statewide fee to be developed for the permit process only. The development and review fees could be set at the local level at an appropriate level.

My second point is that the new offsite option that is being offered, the state buy down program, as well as all the other offset options, needs further development, discussion and refinement prior to being put into a regulation, including the dollar amount associated with those offsets.

My third point is that we believe that the science and the modeling behind the proposed technical criteria is flawed. We're concerned that many of the recommended practices in the runoff reduction method may not work in the coastal plain area where we have high water tables.

My fourth point is that in this current economic condition our development applications are down. The funds needed to administer this program as currently proposed simply won't be generated at the state or local level. As an example, our development applications are down 70% for residential development since 2005.

In conclusion, while we do support improving water quality and improving our design criteria, we cannot support the regulation as currently drafted and we recommend that

you separate the technical criteria and allow us to go forward with administering the general permit under the current fee structure, while the technical criteria and fee structure are further refined.

Thank you very much for the opportunity to comment.

Jeff Collins

Good morning. I'll apologize in advance for being a less than subtle speaker.

I am the President of a local civil engineering firm that does business in the Richmond area. We've been in business for over 35 years. I've been there the entire time. I'm very familiar with stormwater regulations, quality, quantity, etc. I have a lot of concerns about these new regulations.

The Board has heard significant input on why these regulations will be detrimental to the Commonwealth. Economic issues. Sprawl. Standing development is a problem due to that sprawl. Lack of ways to deal with the increase in regulations. The list just goes on and on.

The present advantage to the regulations, shows the initial regulations were excessive. I submit to you that the existing regulations are more than effective and enforcement is what needs to be focused on.

The areas of innovative, economic and technical ways to deal with quantitative and qualitative discharges should be the focus, not creating more stringent regulations and then trying to figure out how to deal with them.

In my thirty-five years I've gotten to know a lot of local municipality directors who have to deal with these regulations. My firm deals with the private side, private development. I've spoken to several directors about these regulations. They are baffled. They are totally confused as to how they are going to put this into effect and work within their system.

You folks have large responsibility with what we do and everything we do. These regulations are some of the biggest regulations that have come out of this Board or out of the state to be looked at by this Board.

Some of the items that came to mind when I was listening to the staff presentation. The cash payment option, the .45 which is the present regulation is okay as long as you give more money to the government. That tells me that .45 is okay. Why do we have to spend money to get past the .45?

I served for five years on the watershed committee in Chesterfield County in the upper Swift Creek area that drains into the reservoir. I learned a lot about the quality of discharge, .45 works.

Inspection is an area that you really need to look hard at. Don't give up your inspections of BMPs. A lot can be 50 acres in size and have a huge BMP on it. If you don't inspect it you have problems.

Chairman Campbell: Thank you very much.

Mr. Collins: In closing let me just say one thing. The Board can do what a lot of legislatures call the sexy thing. and approve these regulations and send them on to the Governor for signing and think they are doing the greater good. I think the Board has a responsibility to look at all the facts you've heard over the last few months and either send this thing back to staff for another look/see and see where those regulations can go or just stick with the regulations you have and enforce them. Thank you.

David Bernard

Hi, my name is David Bernard. I am the water quality chair for the Virginia Chapter of the Sierra Club.

We are recommending that we keep the .28 phosphorus standard for southern and western watersheds. I will point out that down stream we have a national park, the New River Gorge National River in West Virginia.

I was told by a park service official that they have no authority to regulate water quality coming into the park boundaries. So protecting that unique environment is really up to you.

We recommend that the 2500 sq. ft. be the maximum unregulated disturbed area throughout the state. Anything less would encourage sprawl, sloppy construction and discourage professionalism in excavation contracting, provide an additional burden to those developers who do properly engineer their projects, and of course add to water coming in.

We do want to encourage quality redevelopment. That quality needs to include at least some restoration of urban streams that the projects customers would surely want.

We want to keep the 20% phosphorus reduction for redevelopment projects that are less than an acre. Developers should not have the opportunity to change phosphorus standards from .28 to .45 in urban redevelopment areas.

Development discharging to an unstable channel needs to be held to a water quantity discharge level at or below the forested peak flow conditions. Only then can we expect to restore and regenerate the channel. If that channel is not a creek it ought to be a creek.

Similarly we need to protect against localized flooding by requiring discharge above such an area to be protected by the forested standards.

We oppose additional offset options. I was hearing there that the problem with paying another part of the state to allow you to destroy an urban stream.

We oppose grandfathering of projects, at least enabling new grandfathering by these regulations. All new construction should be held to high standards of environmental protection. There's no basis in science for such grandfathering.

We oppose weakening of inspection requirements. We've all seen clogs in broken stormwater construction. They need to be repaired or rebuilt.

Thank you.

Tom Carr

My name is Tom Carr. I'm the Director of the Planning, Building and Development for the City of Roanoke. I appreciate the comments Mr. Dowling made, many of them are a response to the City's concerns. But we still have areas of concern with the proposed revisions to the regulations.

Three points and one recommendation:

First, the proposed regulations do not coordinate well with the other MS4 requirements placed on MS4 communities in the state. We are outside the Chesapeake Bay area. Phosphorous is not the primary pollutant in our environment and focusing on phosphorus in instead of others, or TMDL pollutants is an inefficient approach to stormwater water quality improvement.

Second we believe the regulations will inhibit beneficial redevelopment. Our community is almost completely built out. Most of the development is infill development largely dealing with impervious sites, often brownfield sites. A prescriptive system of BMP application to the sites is costly and inefficient way of improving water quality. There are obstacles on these sites which will render the technical criteria through all of these applications just not doable.

We also deal with brownfields. Cleaning brownfields and eliminating pollution that comes from brownfields should be a primary focus of stormwater regulations, but instead this would apply the same standards to brownfields as you do to greenfield development.

Redevelopment of brownfields is already costly. Adding an additional burden of increasing the stormwater phosphorus reduction to 20% is going to inhibit the beneficial reuse of brownfield and promote sprawl in the greenfield areas of the community.

There are a couple of specific things, the way you define redevelopment in the proposed regulations is problematic. Currently we allow a five year window for redevelopment because we want people to....[unintelligible] This regulation would eliminate that possibility.

Fees are also a problem. We don't think they provide the full fee recovery. We believe that sharing the 28% of those fees with the state is inappropriate. You double charge some properties at the time of subdivision and development plan approval and later at the time of individual lot development.

The increase in the city zone by 560 percent is an excessive increase in the cities' fees. We respectfully request that you continue the current stormwater regulations in the areas outside the Chesapeake Bay.

Barrett Hardiman

My name is Barrett Hardiman, I'm here on behalf of the Home Builders Association of Virginia. I just want to take this opportunity to thank DCR for the work they have been doing since the end of the public comment period to try to resolve some of the issues that we have had with the regulations.

However, HBAV still feels that we're not addressing the real problem with this regulation. The real problems with the regulation lie in the underlying data that was used to create the technical standards for the .28, also for the use of one half inch for treatment volume and/or putting managed turf rather than just impervious surfaces.

That changes the way we look at stormwater management from how we do it now. The .45 under this new regulation is not the same thing as .45 under the current regulation. It is much stricter.

Even under today's regulations there are times when developers might purchase credits elsewhere or do offsite mitigation to comply with the .45. So having a flat .45 actually is going to be a large constraint on the ability to sell property.

So HBAV would renew its request that Part II of the regulations be separated, Parts I and III be passed and that we continue to work on these regulations. We're committed to working on regulations that will do good for the environment. We know that there is the opportunity to come up with something that would be very beneficial to the Bay and will also protect the fragile economic environment that we're working in today.

We're willing to sit down at the table and really go back and look at this data and come up with the right information. We think the urban phosphorus load has been significantly over estimated in the Tributary Strategies used to create the .28 standard.

I just want to finish up. I'm not sure the summary you were handed of the JCAR meeting included the statement that Senator Wagner made yesterday. What Senator Wagner said at the meeting was that if this regulation were in effect right now, and JCAR had been voting on this he had polled the members, the bipartisan overwhelming majority would vote to suspend this regulation in its current form and including these changes that DCR proposed.

Thank you.

Phil Abraham

Thank you Madame Chairman, members of the Board. My name is Phil Abraham. I'm here today representing the Virginia Association for Commercial Real Estate (VACRE). Our members represent commercial and industrial developers in Northern Virginia, Hampton Roads and Richmond areas.

We do appreciate the efforts of the Department to address some of the concerns we've expressed previously about those regulations. A number of our experts have advised and participated in the stakeholder meetings. They see that some definite progress has been made. But we still have some concern in a couple of areas given the current state of the economy and the lag that we see in any recovery in commercial development, which present data indicates will come later than residential development. Many believe it will be 3-5 years before we really start any significant new development in the commercial segment.

Our concerns are in two primary areas. Our number one concern remains the proposed .28 phosphorus standard. While the proposed statewide trust fund helps mitigate the impact of this requirement, the members of VACRE continue to believe this standard is too strict and based on a model that fails to give adequate consideration to the BMPs that have been built in the Chesapeake Bay Watershed over the last 20 years.

We feel that this .28 standard should be deferred and further studied.

The second area we are concerned about is in the area of grandfathering. We've gotten conflicting interpretations of the impact of the grandfathering provision on single phase developments and the impact of the new general permit on the ability to use the old provisions.

The vast majority of projects are single phase. Given the current state of the market, the delays in the development of those projects make them very similar to multiphase projects and we think they should be treated very similar to multiphase projects.

Thank you very much.

Chris Pomeroy

Good morning Madame Chair, Members of the Board. Thank you for this opportunity. I represent the Virginia Municipal Stormwater Association (VAMSA). I have a couple of short points, most of which relate to MS4 permitting and the connection with this regulation that were touched on in your general discussion earlier.

We have two sets of legal requirements in those permits. The MS4 permits and the regulations are linked together. The ability of a local government to comply with its permit depends also on compliance with this regulation which leads to the very simple proposition that the two need to be consistent.

I sat in meetings with EPA management this summer, four of them, where they were proposing something different for the eleven phase I communities.

They're asking for something different. Now, beside the fact that I think their authority in this area is somewhat overstated by them, let's set that aside for a moment. But I think it leads to the point that we do need to make these programs work together. Otherwise, we do one thing in development but have a separate requirement for an MS4 permit. The localities will unavoidably end up in non-compliance.

So I'd ask you to issue consistent requirements to them under permits, and this regulation that we're talking about today.

I have a couple of specific suggestions on how to deal with it.

Mr. Pomeroy referenced a handout distributed to members of the Board. A copy of this handout is available from DCR.

Mr. Pomeroy continued.

Under item one on the paper, allow for local fees that are adequate for success.

We suggest, and that's because there are disparities, and that was touched on earlier. It was certainly discussed extensively at the JCAR hearing at the General Assembly yesterday. There are different costs in different parts of the state. We have to use this program wisely.

Please let us raise, not excessively, but sufficient revenues.

The second point was in item five on the handout, the proposed buy down. This is an area where permits and regulations need to come together. If we have an MS4 permit from you, do what you can with the buy down to keep the credit in that program and the investments in that program close to the MS4 permit.

I've given you specific recommendations on how to do that.

Adequate costs, local investment, investment in urban BMPs and a credit price that is adequate to do that. Lastly an accounting mechanism that relates the buy down back to the localities responsible.

Thank you for the opportunity to speak to you today.

Gwen Crichton

Good morning Madame Chair, Members of the Board. My name is Gwen Crichton, I'm with The Nature Conservancy and I work out of Charlottesville.

I want to thank the Soil and Water Conservation Board for this opportunity to speak.

As you might know, The Nature Conservancy strongly supports the proposed amendments as they stand without the proposed changes to the Virginia Stormwater Management Program.

The Nature Conservancy is concerned that some, not all, of DCR's proposed changes are not supported by solid science and do not remain true to the conclusions of its own staff, technical committees, outside experts, and the Board over the nearly four years the amendments have been under development.

With our comments, I want to focus specifically on our opposition to DCR's recommendation to change the proposed .28 statewide phosphorus standard to .45 for non-Bay watersheds. The Nature Conservancy sees this change as a significant weakening of the water quality criteria and a policy that will lead to the otherwise largely avoidable decline and degradation of water quality and aquatic habitats throughout the so called Southern Rivers that cover almost half of the Commonwealth.

When Mr. Dowling spoke to this Board on September 24, 2008 he addressed this issue of applying a .28 phosphorus standard statewide. And I'd like to reiterate a couple of Mr. Dowling's arguments.

First, and I quote, "stormwater quantity and quality is a recognized problem state-wide. Impaired waters are not just prevalent in the Chesapeake Bay but have been identified

throughout the state. TMDLs have been established on stream segments throughout the state, including non-Bay watersheds, to address these impairments. Additionally, studies have shown that nutrient loadings to Virginia's rivers draining to the Ohio and Mississippi basins may contribute to those basin's hypoxia episodes.”

The second point Mr. Dowling made is, “While the 0.28 lbs/acre/year phosphorus standard was established to meet specified Bay goals, it was established as the target level necessary to minimize nutrient impacts on Virginia's aquatic systems and to maintain the health of the aquatic communities.”

The Conservancy respectively submits that the reasons Mr. Dowling provided for applying the .28 phosphorus standard statewide were accurate then and they still hold true a year later.

The primary argument for two different standards appears to be that since .28 was derived largely from Bay calculations, there is no scientific basis for applying same standard outside the Bay. So then we ask the question, where is the evidence that .45 standard will sufficiently prevent impairment and degradation of water quality in non Bay waters? If we know that the .45 standard is demonstrably insufficient to protect water quality in the Bay watershed, why would we not conclude the same for watersheds outside of the Bay? What is the logic of applying a standard known to be inadequate if the primary goal is to prevent degradation in the first place?

I just have one last little point I'd like to make. It's that the two different standards for different watersheds also raise legitimate equity issues. Are waters outside the Chesapeake Bay watershed inherently less valuable than those of the Bay? I don't think that people who get their drinking water or fish in non-Bay waters such as the Clinch and Blackwater think so. And while it is true that we have had different water quality protection scores for localities such as the Chesapeake Bay Preservation Act, the proposed stormwater regulations are designed to minimize stormwater impacts for all Virginians.

So, we would just like to conclude by saying that The Nature Conservancy believes that the .28 phosphorous standard represents a tremendous opportunity for Virginia to pro-actively invest in the ecological and economic health of all its streams and rivers.

We ask the Board to seriously review the proposed changes on this front and when you reconvene in October we ask that you reject DCR's proposal for higher phosphorus loads outside the Bay watershed.

Thank you very much.

Spencer Francis

Good morning. Thank you for having us all here today.

My name is a Spencer Francis. I'm a professional engineer with Bowman Consulting. Our clients consist of developers, home builders, retailers and other commercial business as well as various jurisdictions throughout Virginia.

Everyone would agree that the Chesapeake Bay is one of our greatest treasures and we need to be smart in how we protect it so that we don't cause other problems.

I'm here today to speak against the current proposed regulations and to voice support for the Home Builders Association of Virginia's ideas.

The current proposed regulations will require a huge amount of effort and provide minimal benefit to water quality. Due to the added costs, which are about twenty times over, sprawl will be encouraged and redevelopment will be discouraged.

The DCR plan will cost taxpayers money by making all of our schools, fire stations and other public properties hugely expensive to develop. Virginia would miss out on potential new commercial and economic development of business.

Considering our fragile economy this is not a direction in which we should be heading.

The technical criteria in the current plan are not economically viable and will render many sites undevelopable. Particularly commercial sites.

I reviewed the recently revised DCR language and I think some progress has been made. But I still think we have a long way to go.

The engineers at Bowman, including myself and others, would be more than happy to assist in this effort in anyway that we can.

The technical advisory committee should be reconvened, and the ideas supported by the Home Builders Association need to be considered. The HBAV plan would allow economic development to still occur.

Thank you.

Mike Gerel

Madame Chairman and members of the board, thanks for the opportunity to speak to you today. My name is Mike Gerel; I'm the staff scientist with the Chesapeake Bay Foundation (CBF) here in Richmond and I have been our technical lead on this project since it began, almost four years ago.

Our fundamental belief from the outset of this project has been that Virginia's water quality cannot be restored or sustained without a stormwater program that provides a means for future development to continue without discharging pollution that harms others—whether the others are public drinking water supplies, MS4s, neighboring property owners, or the next generation. For Virginia to have healthy and productive waters, future development, all development, all pollution sources, all of them, must take full responsibility for their own pollution now.

CBF is not alone in this position. As Mr. Dowling mentioned during his presentation, there were many, many comments in support of this. One that I'd like to note is these are not just from the conservation community. There was a letter that was submitted during the comment period from 62 organizations that wanted to speak out. These were conservation groups, wildlife advocates, fly fishermen, green builders, and stormwater engineers supporting this regulation.

Secondly EPA declared in a letter during the comment period and at the meeting of the Joint Committee on Administrative Rules (JCAR) yesterday that the technical criteria as proposed, the .28, meets water quality standards and is protective of water quality. My point is that I don't want this overwhelming support for these regulations that was received during the comment period to be lost in the deliberations over the final regulations.

So what I'd like to is make three comments to that end on the revisions that we think will help maintain protection of water quality, and maintain EPA's authorization to use the general permit approach to the general construction permit and for the MS4s.

First, CBF remains concerned about any reduction in the proposed water quality criteria for small sites, redevelopment projects, or projects within Urban Development Areas. We think a robust buy down program has been discussed and resolved that issue. And when it comes to a buy down we very much support a buy down program. But there are several pieces we think need to be fixed.

Reductions need to be added, they need to be on the ground already, they need to be in the same tributary. We're concerned that the proposed payment may not be enough to get agriculture or urban retrofit on the ground. Any nitrogen reduction must be retired, it cannot be sold to another program.

Our third and last comment is that we question any relaxation of the water quantity requirements outside the UDA. We have heard from smart growth advocates, local governments, and development community that UDA is the principal tool in the Commonwealth. So we don't think there should be any quantity relaxation outside the UDA.

I'd like to echo some of the discussion about having EPA review and it needs to endorse formally these regulations before they come to the Board on October 5. I think that's

important for Virginia to be able to continue. We've spent four years developing this in the Commonwealth. We don't want EPA to come in and change it or change the way we've been doing things through the streamlined general permit program.

Finally, we maintain our very strong support and appreciation to DCR staff and everyone in this room and everyone who has gotten engaged on this issue. We think a strong regulation approved this fall will allow an equitable balance between long term environmental and economic goals.

Thank you.

John Matusik

Good morning, Madame Chair, my name is John Matusik. With me is David Powers, we're here on behalf of the Virginia section of the American Society of Civil Engineers Stormwater Technical Committee. I thank you for this opportunity to offer our brief perspective on the proposed stormwater management regulations.

Very briefly, the Virginia section of the ASCE includes about 1700 members from a broad cross section of private consultants, government agencies, academia and other engineering careers. This diverse cross section is reflected in the membership of the stormwater technical committee. Virginia chapter of the ASCE represents seven branches across the state. We are a grass roots organization of engineers focused on working together to promote the public health, safety and welfare.

Most engineers, as well as many people, will agree that pollution and erosion effects of stormwater runoff have a continuing negative impact on our environment. And the use of environmentally sensitive design techniques will be an improvement over current practices.

While the anticipated improvements justify the development and adoption of more effective stormwater regulations that promote environmental site design, we the committee believe an openness to continue public discussion and refining of these proposed regulations is necessary to further protect the environment.

We continue to have concerns regarding the technical basis for some portions of the proposed regulations and even the lack of technical basis in some cases.

Some of the concerns have already been stated by some of the previous speakers. The methodology for determining that 0.28 lbs. per acre per year load limit. The water quality compliance tied solely to the runoff reduction method. Use of infiltration practices in areas of high groundwater tables, tidal influence and impermeable soils. Restrictions on redevelopment projects which could result in encouraging urban sprawl. And the list goes on.

Some of these items have been addressed in the recently distributed document “Potential Key Changes to Address Public Comments”

But, as stated in the document the key changes are for discussion purposes. These key changes, if adopted, are an improvement to the current regulations. Yet we feel that further evaluation and refinement is necessary.

Most importantly, these and other technical issues in the new regulations will require continued discussion and research to effectively control erosion and sediment, meet establish load limits, and reverse the pollution effects in the Bay.

To this end, we request an addition to the new regulations to set aside dedicated funding for research. The funding will not only improve the approach to minimizing water quality of new and redevelopment, but even more importantly will assist in developing effective strategies for addressing water quality problems cause by existing land uses which these proposed regulations do not adequately address.

Many stand at the ready to help and assist DCR and the Board in any way we can to revise the language or do any kind of further evaluation.

Thank you again for this opportunity.

Roy Mills

Good morning Madame Chair and members of the Board. My name is Roy Mills and I’m here representing the Virginia Department of Transportation.

I’ve been involved with the regulatory process since the first Stormwater Technical Advisory Committee meeting several years ago. I attended most all the meetings of the TAC and other various related meetings.

I’ve seen the good, I’ve seen the bad, and I’ve seen the ugly. If the truth be known I’ve been a part of each of those.

DCR’s task appears to be “Mission Impossible.” I wanted to ask Lee Hill if he got his instructions from Jack Frye on a tape that self destructed after two minutes. So I applaud DCR on their efforts. At this point it appears that they made “Mission Impossible” almost possible.

During the meetings and the public comment periods, I’ve let it be known VDOT’s concerns both in verbal comments and written communication.

The proposed regulations even with the most recent changes that are being proposed will have an impact on VDOT's design, construction and maintenance budgets from both a manpower and financial standpoint.

The requirements in the new regulations will be difficult to meet on linear projects constructed in a narrow band of right of way, especially those in urbanized areas where the roadside is pretty well fully developed and on rural secondary roadways where we often ask for a donated right of way.

Farmer Joe is willing to give a ten foot strip of right of way, but when we ask for an additional acre of land for a stormwater facility he is less cooperative at that point.

We are glad to see the provisions in the proposed regulations for the grandfathering and the offsite mitigation. We are especially interested in programs like Henrico County's stream restoration program. That may be the only way VDOT can meet the water quality requirement on these urban and small rural projects without major impacts to property owners.

If I might digress a minute and input a personal opinion, I heard someone say before I'm not sure we need more regulations. Maybe we just need to enforce the ones we have. Whether they use a spread sheet, a software program, a calculator or back of a napkin, engineers can make numbers say anything they want to in order to meet compliance.

As they say, I've been there, done that, I've got the t-shirt to prove it.

To coin a phrase that we use around VDOT, where the rubber meets the road is in performance. The best design and construction can be done, but if we have zero maintenance we get zero performance. So we might as well be flushing money down the toilet.

Money is limited, it doesn't grow on trees. At least not the ones at my house. Let's put it where we get the best bang for the buck. We've learned at VDOT, some of us the hard way, our first priority is to maintain what we have, then we improve the system with the additional monies left over. I believe the same principal could be applied to our stormwater systems.

Thank you for the opportunity to speak today.

Joe Wilder

Good morning Madame Chair, and thank you for letting me speak and members of the Board as well as DCR.

Frederick County has been well documented in our opposition to this regulation. You all received numerous things.

Today I just want to reiterate one thing. Frederick County's situation represents that of many localities in the state. We don't have any stormwater program at all. We have an E&S program.

The burden that this regulation is going to have on us as we prepare it is going to be tremendous.

I just want to reiterate to the Board that we don't have lots of funding to help develop programs like this. We're going to need help.

I just lost an E&S person last month due to the economy. I was hoping to use that person when this regulation gets adopted at some point. But we can't reiterate enough that so many localities in here might already have a program to build upon, or change a little bit. We have nothing, and so many don't.

I think part of this is that a lot of localities have no idea of the impact this will have. I've been on the TAC, I served on it all last summer. It's interesting some of the revisions that have been made recently were comments made last summer by the TAC and we were told they were off limits. That they were going to stay. And now, all of a sudden, it's changing.

How far we've come...I just want to reiterate that also in the regulations you have put forth a lot of BMPs but in our locality in the top of Virginia we have a lot of karst, a lot of sinkholes, and a lot of ground that doesn't infiltrate water at all.

A lot of the practices that are in there we can't use. I think it's going to hurt engineers as they try to comp up with programs to find options to use in these types of developments.

Right now the economy is very slow. We have a lot of infrastructure that's just sitting there waiting for development. The grandfathering issue has been brought up. It's very interesting, one question I have is how long do we have to make comments to the DCR about the current revisions? I'd like to know that.

And finally, it's very important that the Board understands that even localities like Frederick County, we care about the environment. We want water quality to be improved. One of the recommendations that I made is about enforcement. One of the options that is out there, is for the current standard to be applied across the state, and allow us to develop a program and change it down the road.

Thank you very much.

Mike Flagg

Good afternoon, Madame Chair and members of the Board. My name is Mike Flagg and I'm Director of Public Works for Hanover County.

I want to compliment DCR for an inclusive process. I would stand here and say that it has been an extraordinary process for all involved. Many folks beyond DCR participated in this process. We believe the net result has been an improvement.

I'd also like to thank you. You are volunteer servants and you have a tremendous burden on your shoulders. Unquestionably you are dedicated to the world of conservation.

Locally, Hanover County, my department is responsible for not only the urban provisions of MS4 and Erosion and Sediment Control, but we work closely with the conservation department and the Soil and Water districts, within forestry to implement the regulatory provisions. We've had a great partnership in that regard.

I'd ask you in this regard to take a deep breath. Step back and think about these proposed regulations.

The things brought before you, we have a tough time at the state and local government level. We're seeing unprecedented cuts that need to be imposed. Our organization, the Virginia Municipal Stormwater Association has proposed a very pragmatic approach to allow us to progress in the name of conservation. That is to bifurcate these regulations and implement local programs.

When times are tough I also would charge to go back to the root and fundamental mandate and in this case it was the legislation that was going to implement local programs and consolidate stormwater functions. Let's focus on meeting that track.

We are very concerned that this will actually have a negative impact on conservation.

With my multiple nightly meetings that I have with organizations like our local churches. Monday night I spent until 9:00 meeting with a local church community who is very concerned, in fact I would use the term panicked, over what this will do to their community. One of our most fundamental organizations charged with educating our youth in terms of moral standards. But just their ability to proceed with their program locally will be significantly impaired. That kind of community impact doesn't go unheard when we're trying to protect the environment.

Focus on the core mandates. Consider closely the recommendations of VAMSA. We come to you as conservation partners. We're here to work with you and improve these regulations. Whatever we need to do.

Thank you for the opportunity and in particular thank you for your volunteer service to our communities.

Shannon Varner

Madame Chair and members of the Board, I'm Shannon Varner here on behalf of the Chesapeake Bay Nutrient Land Trust. You may recall CBNLT was very active in the development and passage of HB 2168 that authorized the use of nonpoint nutrient offsets to achieve stormwater compliance,.

It's from that background that CBNLT is experienced with market based systems and I want to provide some comments on the buy down program and the Code language that was distributed last week.

As demonstrated by the unanimous adoption by the General Assembly of HB 2168, the General Assembly has been very supportive of a market based approach to environmental compliance. In fact there are several other state programs that use market based approaches in sister agencies. In each one of those programs the policies have been that private offset providers, private detention providers have a priority over government fee programs. There are several reasons for this.

One is to prevent government from competing with the private sector. Two is to prevent government from impacting market forces. And third, I think there is also some government savings in allowing the private sector to address these issues.

One of the problems with the proposed language is that it doesn't quite meet those types of priorities. It is not consistent with the priorities set. For example, within the buy down language in subsection B, there is language that would allow the use of a buy down regardless of whether there is a local offset available, or a local program to provide those environmental benefits.

That's not consistent with subsection I of HB 2168 and the priorities set there for offsite uses. I also think that it would create significant market barriers and would really impair and maybe inhibit the introduction of entrepreneurs into the private market.

With regard to the priorities and uses of the funds, one of the things I think you need to realize is that the utilization of those funds set out in this document does not meet the same requirement that is being required in offset buy down. If for no other reason the offset should be given priority.

The final provision I want to address is that last provision in the draft language that allows a default use of a buy down program in certain circumstances. We support that type of use and in fact during the offset TAC we had looked at some different programs but never addressed this particular one.

I would encourage you to adopt, but also I would encourage you to go back to your guidance that allows the use of offsets in these types of situations. By doing so you would immediately remove some regulatory burden for the development community and at the same time foster the offset market.

Just to be clear, we're not opposed to a buy down program that deals with construction credits.

Thank you.

David Nunnally

I'm David Nunnally from Caroline County. I appreciate the effort to make these changes to the stormwater regulations and I agree with the intent to try to make these regulations a better fit and more appropriate for our use.

But as you've heard from a number of people, a number of speakers today, these regulations are extremely complicated and complex, detailed. And as this Board knows in our discussions over the past almost year about our Erosion and Sediment Control program and MS19, those regulations have been in place 20 years. We can debate this thing endlessly.

This proposed regulation is extremely complicated, extremely complex and all these categories and nuances, and some of the changes are arbitrary categorization, Chesapeake Bay, non-Ches Bay, 2500 sq. ft., less than one acre, larger than one acre, unless it's part of a common plan of development, whatever that is. Redevelopment, whatever that is. UDAs, offsets.

When I look back on the discussions we've had over MS19 and I think about the issues I'm going to have trying to administer this program as is, I'm not looking forward to it at all.

I'm looking back at this, as Mike Flagg said, at the very fundamentals. What is the definition of land disturbing activity? I'm dealing with one for stormwater, one for erosion and sediment control, the Chesapeake Bay Act.

Again, what is agricultural activity? There's no definition. Everybody has their zone. If we did a better job of working with the fundamentals, I think we could achieve better results in a much less complicated regulation that I would encourage or recommend to our Board that we adopt right away.

On the water quality standard, I would just simplify it down. I like the new technology. It seems like a good thing to put forward. But we need to use this and see how it works

and get familiar with it. As the gentleman from Frederick County said, we're a small locality. We don't have the staff and resources to hire engineers and implement some of this, or fully understand it.

If we simplified it down to implement the runoff reduction methodology, that's 0.45 lbs. per acre, I'd be in favor of that. But with all these details, all the caveats, they make it impossible.

Imagine the arguments. For the sake of time I'll keep my comments brief.

I would ask you to revisit this proposed regulation. Simplify it down to the bare basics. Let the localities implement the program and get established, and let's move forward from there.

Thank you.

Diana Parker

I'm Diana Parker, I'm involved with the James Group Sierra Club and I associate my remarks with Mr. Bernard, who is our water quality chair, and with Mr. Mike Gerel of the Chesapeake Bay Foundation.

Before I start I would like to read a quick article from today. It says "Stimulus money set for forest projects in the Shenandoah Valley." More than a million dollars in federal stimulus money was awarded for forestry products in the Shenandoah Valley and Southside Virginia. \$897,000 for the Shenandoah Valley Watershed Community Ecosystem Restoration and Enhancement Project. Southside Virginia Community tree planting initiative received \$179,000. So it would appear that if we don't disturb or destroy our environment we may not have to pay to restore it with additional dollars.

I'm with the Falls of the James Group, this is the localities right around Hanover, Chesterfield, and Henrico. This locality of Chesterfield that I reside in has not been consistent with the Chesapeake Bay Local Assistant directives nor has it been consistent with your Soil and Water Conservation Board. So, it's no surprise to me that they do not approve of these regulations and that they've been working against them with Hanover and Henrico.

I've been attending the CBLAB hearings where Chesterfield was found inconsistent. Chesterfield has a policy now of cutting off the nontidal wetlands at 500 ft. I have provided you with documentation and I provide it again to you that they cut off their nontidal wetlands at 500 ft. and to do not protect the environment.

I also would like to note that Chesterfield County in 2005 had the Committee on the Future which indicated that we needed green infrastructure, we needed to protect it as one

of our finer resources. And they indicated that Chesterfield County lacked the strategic planning advantage network which would protect the environment. I included that package for you today.

They were very concerned about the impact that the current planning for Chesterfield County will more than double the dwelling and business base and they included a copy of the impaired waters in Chesterfield and I'd appreciate your taking a look at those.

Tyler Craddock

Good morning, Madame Chair, members of the Board. I'm Tyler Craddock representing the Virginia Chamber of Commerce. We appreciate the spirit in which some of the changes have been offered and the work of the DCR staff; what Joe and others have done to try and ameliorate some of the concerns raised during the public hearing process.

Like others have expressed, we don't believe, at least there are certain parts of these regulations that are not yet ready for prime time.

Certainly there are parts that are ready to move forward. Some of those parts would be the ones that go most to the original intent of the legislation that brings us all here today. Such as the moving of stormwater management from DEQ to DCR. A lot parts of the regulation that go to that, set up the local programs, set up process. A lot of that we believe is something that the Board can and should move forward on, with a lot of the logistical concerns to be worked out.

But like a lot of others, we still have concerns with the technical regulations due to the proposed changes. Specifically the underlying standard that brings us to the .28 from which everything else comes.

So again like others, we would renew our call that the Board set aside the technical regulations and go forward with some of the other areas that have been proposed. Set those aside, bring the TAC back together so that from a scientific and engineering standpoint some of the other concerns that have been raised can be re-examined.

With that said, we do appreciate the opportunity to speak today. We appreciate the spirit in which the proposed changes have been offered and the manner in which staff has reached out to the business community.

Thank you.

Kurt Bradley

Good morning, my name is Kurt Bradley. I'm a resident of Northern Virginia. I would

like to commend the Commonwealth, DCR and the Board for its thorough review of the stormwater management program over the course of four years which has resulted in the proposed amended regulations published in June of this year.

The need and justification for the regulations essentially as published was established beyond any reasonable doubt.

I am concerned that the Board appears to be backing off its conclusions reached last June and is considering a series of exceptions and reduced standards which will blunt the effectiveness of the regulations and contravene their intent. Four years of study should not be compromised.

The Board is intended to be the steward of the Commonwealth's waterways and is charged with protecting the common good against the more parochial interests of individual land owners, developers and local governments.

I would like to draw an analogy to the federal Environmental Protection Agency. The states of New York and Pennsylvania contribute significantly to the degradation of the Chesapeake Bay but they do not receive direct benefits from the Bay and are reluctant to contribute meaningfully to its cleanup. Virginia and Maryland rely on the EPA to ensure that these states take their proper responsibility for their actions much as I rely on this Board to protect my right to clean rivers and the Chesapeake Bay.

This Board should be cognizant of how EPA will react to these regulations. I urge you to pass what was published on June of this year.

Thank you.

Leslie Mitchell Watson

My name is Leslie Mitchell-Watson and I am the Executive Director of Friends of the North Fork of the Shenandoah River. Friends is celebrating our 21st year of working to protect the quality and flow of the North Fork of the Shenandoah. I represent more than 450 members and lovers of the North Fork who are concerned about the continued degradation of our watershed.

I would like to thank you for the opportunity to appear before the Board in order to comment on the proposed stormwater regulations and on the potential key changes to the regulations that DCR has recently submitted. I would also like to commend DCR for their thorough review and initial revision of the prior regulations. This has been a long and tedious process for those involved but importantly it has been an open, inclusive and scientifically based process, which resulted in a fair and considered revision of the regulations.

The draft regulations, while not perfect, are a necessary and bold step forward towards better water quality protection and erosion control in Virginia. Across the board, municipalities and industries have faced regulation; farmers, in large part, have stepped forward to improve agricultural practices related to water quality, and water pollution related to these activities is down. Overall, the development community has done very little to mitigate their contribution to pollution of the Chesapeake Bay and its tributaries. This point has been raised time and again but one further mention is worthwhile. Water pollution related to urban and suburban stormwater runoff is the only source of nitrogen, phosphorous and sediment pollution that is increasing in the Bay watershed. Gains being made in reducing pollution from sewage treatment plants and farmland are being negated by runoff resulting from the land disturbances and increases in the amount of paved surface in the watershed that occur through development. Strong stormwater management regulation is essential to reversing this trend.

Multiple municipalities and residents in the North Fork watershed are faced with charging and paying greatly increased rates for their water and sewer privileges due to stronger regulations requiring greater removal of nutrients from treated water. Farmers in the watershed are asked to share the cost of installing best management practices to improve water quality in the Valley and the available funding for these BMPs is not adequate to address the amount of interest in volunteering for these practices. New rules for the management of poultry waste are about to be adopted. Industrial dischargers are required to meet tough nutrient restrictions for their effluents. In other words, we are tackling the other major sources of water pollution in our Commonwealth, and effectively addressing stormwater management is the next step in improving water quality and controlling erosion.

We are pleased with the proposed regulations for the most part. The draft regulations effectively address water quality and erosion issues, and with revisions suggested by the Southern Environmental Law Center regarding incentives for smart growth development strategies that would provide incentives for redevelopment and retrofits, these regulations are strong. However, recent key changes to address public comments that have been submitted by DCR are troubling, overall for their significant change regarding different phosphorous limits for Bay and non-Bay areas and specifically in at least two major areas. Setting the phosphorous restrictions for small sites of less than 1 acre that are located within the Bay watershed at the 0.45 standard is unproductive and unnecessary. The main goal of these regulations is to effectively control stormwater pollution onsite at every building site. Further, no exception for small sites is needed because if controlling water flow on site is impossible or too costly, DCR has provided five alternatives to help with these situations.

Again I'd just like to thank you for the time. DCR has worked long and hard to produce fair and balanced stormwater regulations that prioritize water quality improvement and stream bank protection in the Commonwealth. Virginia's waterways and stream banks are suffering and the Chesapeake Bay is ailing as well. DCR has provided the Soil and Water Conservation Board with draft regulations that will protect our impaired waters from further

degradation and destruction. Please approve these regulations without weakening their strong defense of our Commonwealth's waters.

David Anderson

Thank you Madame Chair. My name is David Anderson. I'm a principle with the Government Relations firm of Advantus Strategies and represent a number of business entities that will be adversely affected by these regulations.

To begin with I'd like to compliment Director Maroon and his staff for their efforts to try to build a consensus on something good for our waters. I think we all wish that consensus had emerged and also personally like thank them for all the courtesies shown me and my colleagues at Advantus Strategies.

I'd like to focus on the phosphorus standards as it applies to the southern rivers. I think whether you adopt a .28 standard or a .45 standard, this Board does not have a rational basis for either standard. The record before you is simply devoid of any demonstration that there is a nutrient problem with the southern rivers. Absent that showing, you don't know whether .28 or .45 or some other standard will be efficacious, will do the job or do no job at all. Without that I don't think you can move forward.

Should you decide to move forward on a .45 standard, I'd point out that would be the first time that standard is encased in regulations and has the full force and effect of the law. Currently that standard is being applied as a matter of best practice, history, staff interpretation and location.

The scientific basis for that standard is murky at best, and seems to be acknowledged by the department itself as old, antiquated and no longer relevant to current conditions. I'd like to see the basis upon which to elevate the interpretation to the full force of the law.

With respect to the .28 standard, I think more work needs to be done there as well. My understanding is that standard was derived from the tributary strategies, part of the voluntary Bay program. The scientific work that's done on behalf of voluntary programs I submit is not as rigorous as it needs to be if you are adopting standards that has the full force of effect of the law as these measures would have.

So I would urge you to take a measure. Do the work that's necessary to develop a full scientific record and basis for regulatory action. If you do that, you'll have more success in developing a consensus.

Again thank you for your time. I appreciate your being here.

Rick Parrish

Thank you Madame Chair, members of the Board. My name is Rick Parrish, I'm with the Southern Environmental Law Center in Charlottesville.

We appreciate the opportunity to comment on the proposed stormwater criteria before the Board today. We also appreciate the lengthy and tireless efforts of DCR and many other interested parties over the past several years to put this proposal together. We believe there is a clear need for stronger stormwater regulations to protect and restore water quality throughout the Commonwealth and especially in the Chesapeake Bay.

Of the various changes DCR is proposing to the regulations, we would like to focus on those changes that relate to potential impacts on land development patterns. While land use patterns primarily reflect local zoning decisions, or lack thereof, we agree that these stormwater criteria should not promote sprawl. And we agree that some of the changes DCR has proposed here today will work to reduce the likelihood that any of these regulations would promote sprawl.

But in those changes we believe DCR has gone a good deal further than we had proposed. We did in fact propose weakening the standards somewhat for stormwater quantity flowing off of urban redevelopment sites into damaged streams. We did that because we thought it was an acceptable tradeoff to reduce the changes of driving such development out into the suburban and rural areas. But we do believe DCR has gone a little bit beyond what we had proposed on both water quality and water quantity provisions while also expanding offsite compliance options. Some of these additional changes seem harmless enough, some are even beneficial, but others strike us as going too far and unnecessarily compromising the proposed regulations.

First, one of the proposed changes to the water quality section would allow localities in the Bay watershed to adopt a relaxed phosphorus removal requirement for projects located inside any UDA. However, we feel the proposed language should be tightened up so that localities may only provide the break to projects meeting specific and measurable goals. Those goals might include, but need not be limited to, density, degree of impervious cover, proximity to mass transit, and perhaps most importantly the likelihood of discharging to impaired waters. Waters impaired for nutrients and sediment especially that would be further damaged by runoff these regulations are intended to address.

Second, turning to the water quantity section, we had proposed relaxing that somewhat towards UDAs. DCR has proposed relaxing the standard for any redevelopment, whether it's in the UDA or not, as long as it's less than 5 acres. We believe that needs to be strengthened, especially with regard to the definition of prior developed lands, which elsewhere are defined as lands previously utilized for any of a variety of purposes with some facility or structure on site.

Finally, one suggestion on the buy-down compliance alternative for offsite mitigation. We believe additional standards and guidelines need to be built into that program as well along the lines that have been previously mentioned relating to the need to achieve those reductions before the increase runoff from a redevelopment project as allowed for a development project.

And finally, I'd just like to also repeat what has already been stated about the importance, the vital importance, of verifying that these off-site reductions are in fact achieved and maintained.

I would also like to repeat the need for serious enforcement of these provisions if and when they are finalized.

Thank you for your consideration and we look forward to stronger stormwater controls protecting water quality in the Commonwealth.

John Easter

Madame Chair, members of the Board, my name is John Easter. I'm Chairman of the Chesterfield Business Council, which has adopted a position because of their concern about the adverse economic impact of these regulations on business development and also on local government.

We totally agree with the objective of the regulations: protection of the Bay.

My personal concern is what I consider to be the very blunt instrument that is being proposed to achieve that goal. The regulations propose a one size fits all phosphorus standard of .28 that would apply throughout the state.

The problem of course is that a pound of phosphorus in stormwater has very different impact on the Bay depending on what part of the state it comes from. The extreme example of course is a portion of rain making its way down the James that would have applied the .28 standard to half of the state that doesn't even drain to the Bay and therefore has zero impact on the Bay, showing the regulations strongly overreach in that specific.

Fortunately, DCR is proposing an amendment to that and I think recognizing the complete lack of what we lawyers call a rational nexus between that position and the change and the impact on the Bay.

However, the one size fits all approach is still being applied in the remaining 50% of the state. It is proposed for the James River and York Watersheds which make up another 25% beyond that 50% of the state. Yet the tributary strategies recognized that the James has only "very slight influence on the Chesapeake Bay" and has "virtually no close effect

on the part of the Bay most affected by load dissolved oxygen,” the part of the Bay north of the Potomac river.

The one size fits all approach also fails to recognize that [unintelligible] in the upper reaches of the tributaries of the Bay has far less impact on the Bay than that entering downstream.

So I believe the standard that you are proposing is really not tailored to the problem you are trying to address.

There have been questions earlier today about EPA and their current position. Interesting to note that EPA has just initiated at DEQ a TMDL process that will take a much more specific look at the Bay as a whole, but also at specific tributaries of the Bay. The preliminary implications are that they will not be taking a one size fits all approach. So that is much more, I believe, scientifically based than the approach in the current regulations before you.

So I ask you not to adopt regulations that I believe will have serious adverse economic consequences when they are not narrowly tailored to actually achieve the objective of cleaning the Bay.

Thank you very much.

Ted Miller

My name is Ted Miller. I appreciate the opportunity to be here today. I think it's safe to say we're all here to support the objective which is ultimately cleaning the Bay. Everybody is pro-environment.

My issue from the beginning has always been that if we're going to enact regulations making sure we are in fact keeping with the goal and getting the most bang for the buck.

I support the changes in that I think the buyout option is critical to establishing an objective that is achievable. The idea of a developer implementing small BMPs on a parcel of land that is less than an acre and spending hundreds of thousands of dollars to remove fractions of pounds of phosphorus, to me is ludicrous.

As a resident of the Commonwealth, I would ask that we keep the provisions of the buyout, making sure that we have a revenue source to do some of these other things.

The options with farmers, and Farmer Joe wants to apply a conservation area on his land, there's no money to fund this. The goals are there, but there's no money to fund them.

For a developer to be asked to spend hundreds of thousands of dollars to achieve a small fraction of this phosphorus removal to me is a wasted opportunity as a state when really there are better ways to spend money.

So, I would commend DCR on including that provision and ask that you keep it.

Thank you.

Chairman Campbell called a recess for Board members to obtain lunch.

Following lunch the public comment period resumed.

Kristen Carter

Hello, my name is Kristen Carter. I am an environmental engineer with the facilities management department at the University of Virginia.

I want to start by saying that we appreciate and support the recommended modifications to water quality and quantity criteria. There are challenges in developing small sites and redevelopment sites which is what we have at UVA.

I mainly want to focus on the grandfathering provisions and two main points on that.

The proposed language primarily protects projects that have VSMP permits issued by July 1, 2010. The design process for large construction projects at UVA usually takes as long a year. Currently our projects are designed according to the University of Virginia Higher Education Capital Outlay Manual and the Commonwealth of Virginia Construction and Professional Services Manual. These documents specify projects that have an approved preliminary design and are subject to the Code in effect during that preliminary design. Period.

I would argue that the stormwater regulations are essentially Code for site design. So compliance with these new proposed regulations will not be successfully achieved when the concepts are focused on project inception. Especially during site development concepts.

We recommend that the grandfathering provision be expanded to specifically address state agency projects. The grandfathering of those with approved preliminary designs by the finalization date of the regulations would satisfy the existing regulations.

My second point on grandfathering is that we have two DCR approved regional stormwater management master plans that govern development at UVA. We've installed regional stormwater management facilities and we track, they were oversized, and we

basically have an accounting system of the excess water quality and quantity capacity in facilities and what is available for future projects and growth.

These plans were prepared in accordance with the existing regulation. So we're concerned about the impact of these proposed regulations on our master plan.

We look forward to working with DCR to come up with a mutually beneficial solution.

Jess Wenger

My name is Jess Wenger and I'm also from UVA. I'm with the Environmental Health and Safety Office where I deal more directly with MS4 permits.

I'd like to talk about something that's not a topic of what everyone else has been talking about. Part XIII, the fee schedule.

Right now the annual permit fee for MS4 general permit, which UVA is part of is \$600 for a five year period. I think we can all pretty much assume that is probably an inadequate amount to actually fund this program.

When this new iteration came out it was first proposed the was a \$2500 permit fee with \$1300 maintenance fee. That's more but okay and reasonable and we can work with it.

But while everyone else has been focusing on phosphorus and things like that, the fees have now been raised to a total of \$20,000 over the five year period. This is a 3333% increase in our fees.

We're a state agency. Our budgets are tight. But we feel like this is an unreasonable amount of increase when everyone from localities to state agencies are really strapped for funding.

At the very least, we would love to see it go back to the original \$7500. But it might also be reasonable to consider a sliding scale of fees.

We're an educational partnership with other higher learning institutions and the community colleges. Each of us would be expected to pay \$20,000 over the five year period. We have a varied size of MS4s. We're about a fifth the size of the City of Charlottesville.

For everyone to pay the same flat fee is a little unreasonable. We would request that the Board reconsider and consider not placing such a burden on the fee on the schedule.

Thank you very much.

Julia Hillegass

Thank you Madame Chair, my name is Julia Hillegass, I come before you today representing the Hampton Roads Planning District Commission as well as local governments in the Hampton Roads area.

Six of those localities are Phase I and six are Phase II.

We first want to commend all the agencies and stakeholders who have remained engaged in this lengthy process. Because of their commitment we will surely arrive at a better program for handling stormwater issues in Virginia.

The leadership and staff of the Department of Conservation and Recreation and other agencies through the entire process were available, inclusive and responsive. For that we are most appreciative.

The draft discussion language here today for consideration contains concerns that have already been raised by the PDC. But several important issues remain unresolved.

Chief among them are the significant fee increases, consideration for [unintelligible], applying best management practices and a lingering issue of completing technical findings, including the stormwater management manual.

These issues warrant further discussion with sound science behind the conclusions.

New language in the discussion draft raises even more problematic potential issues that require additional work to fully flesh out how to implement and administer the concept such as buy down off offsets, and watershed management plans.

The devil is indeed in the details.

Other technical guidance remains either incomplete or untested for effectiveness.

Much testimony has been given by citizens, environmental groups during public hearings across the state urging immediate action without regard to sound science, economic impact or realistic implementation expectations for localities. Additional regulations and requirements without sustainable capacity, staffing and funding will not improve water quality in any meaningful way.

Certainly no one involved with this process is opposed to making improvements to water quality, however, as with most extremely complex issues such as this, rushing to finalize these regulations based on an arbitrary timeline at this point sets up both localities and the Commonwealth for failure that could also lead to some model of federal enforcement action.

Currently limitations and budgets at capacity at the state and local level almost certainly ensure that.

At its Executive Committee Meeting on September 16, the Hampton Roads Planning District Commission discussed this matter at length. The PDC is concerned that insufficient public review of the proposed regulations has been provided, that technical issues remain outstanding, and that not all technical supporting materials have been completed and that the economic impact of the proposed revisions have not been analyzed.

The HRPDC requests that prior to the adoption of the regulations the following steps be taken:

Address the remaining concerns raised during the public comment period.

Complete the various supporting technical documents, and

Complete an economic analysis of the regulations incorporating the revisions being considered.

Following completion of this work additional public review should be provided. They would like for the regulatory process to be extended to provide for an additional minimum of 45 days of additional public review.

Thank you.

Katie Frazier

Good afternoon, my name is Katie Frazier with the Virginia Agribusiness Council. The Virginia Agribusiness Council represents farmers, foresters, processors, manufacturers, and suppliers of agricultural and forestall products, as well as approximately 40 commodity associations, including the turfgrass and golf course industry.

Prior to the close of the public comment period, we met with DCR staff to better determine the impacts and issues stemming from this regulation that may impact our membership. These discussions centered on two issues:

The first was the impact of alternative proposals that had been proposed by some stakeholders for a "buy down" option, which, while not included in the proposed regulations distributed for public comment, we now see has been included in the proposed changes before you.

We also worked to determine the impacts to our members in the green industry, particularly golf courses, managed turf, and landscaping sectors.

I like to comment first on the off-site compliance options and the "State Buy-Down Program."

We have just begun to assess what the impacts to our industry may be from this proposed language, as we were not part of the stakeholder discussions that apparently occurred over the past several weeks and resulted in crafting of this proposal in front of you.

The Council has participated in other offset or trading program discussions in other regulatory measures, particularly DEQ's Chesapeake Bay Watershed Nutrient Credit Exchange Program, as well as the Stormwater Nutrient Offset guidance that your Board approved during your last meeting. Generally, our members are interested in participating in that trading program, whether it be for nutrients, carbon, or ecosystem services, provided that there are necessary protections for landowners contained in these programs to ensure that they are voluntary participation.

Over the past few days as we have reviewed this new "buy down" proposal several questions and concerns have come to mind. We strongly encourage the board to consider our comments and instruct staff to take more time to develop this proposal and consult with all impacted stakeholders, particularly the landowners, farmers, and foresters who would be participants.

The language in the proposal is confusing, does not appear to create a clear process or program for providing these offsets, and leaves us with many uncertainties as to what the impacts may be.

We are unsure that the two paragraphs devoted to this option in the proposal in front of you actually provide necessary guidance and protection for landowners. Other nutrient offset programs, providing similar opportunities for farmers have been developed to ensure that there are adequate guidelines, processes, and protections for both parties involved in the offset purchase. That is the purchaser and the provider of the offset.

We are unsure as to what "long term practice" refers to, and unsure as to the difference between "long-term contracts for agricultural best management practices no less than 20 years in duration" and "long-term best management practices including or not including, etc."

In general, we are unsure as to how this impacts current funding, spending and statutory requirements.

I will close by saying that our industry has many questions and would urge the Board to come to our industry to participate in these discussions for further refinement prior to approval.

Thank you.

Andrew Gould

Good afternoon Madame Chair, members of the Board and representatives of DCR. My name is Andrew Gould. I'm a stormwater services manager for Timmons Group. We are a consulting engineering firm that does public infrastructure and land development projects across the Commonwealth.

I want to specifically address the technical criteria presented in Part II of the regulations. We have taken those technical criteria both in the proposed regulations and then reevaluated them with some of the proposed changes to several ongoing development projects.

The impact of the proposed technical criteria is significant and in some cases overwhelming.

When you look at the reduction of the .28 standard, the energy balance requirement for retention and channel protection. When you look at the managed turf requirement as well as increasing the treatment volume from half an inch to a full inch, any one of those by itself is a significant change. Taken in an aggregate the impacts are overwhelming.

There are some projects that can no longer be designed in the footprint of the land by today's standards. We think this will result in sprawl.

We also see it as a significant disincentive to economic development in Virginia.

While we think that the proposed changes are significantly better, we still think they are far short of what is truly necessary.

Ultimately we ask that you reconsider the technical criteria.

If you must move forward with implementing revisions to the stormwater regulations, I suggest that you move forward with Parts I and III but reserve Part II for further refinement.

Thank you very much.

Patrick Felling

Good afternoon, Madame Chair. My name is Patrick Felling, I'm with the Potomac Conservancy.

The Potomac Conservancy commends the Virginia Soil and Water Conservation Board and the Department of Conservation and Recreation for the extensive and open process used to develop the amendments to 4VAC50-60. Unfortunately, several recent changes to the proposal threaten to compromise the sound scientific basis and the water quality values of the original amendments.

We recognize that some revisions are needed to remove any incentive for sprawl, and to provide reasonable offsite compliance options. The Potomac Conservancy offers the following comments and recommendations for the Board's consideration as you approve robust regulations to reign in stormwater runoff.

First, for removing incentives for sprawl. As previously recommended by Potomac Conservancy and others, the rules should be revised to avoid penalizing redevelopment in a UDA, specifically redevelopment in a UDA that discharges into an unstable or flooding natural channel should be required to only reduce runoff to below pre-developed quantities. The case studies commissioned by Potomac Conservancy confirm that such a change would ensure redevelopment in a UDA is not hampered by water quantity requirements. I would be happy to provide additional details of those engineering analyses.

For offsite compliance options, given the many variations in development site characteristics, it is appropriate to provide flexibility to allow developers to pay for pollution reduction elsewhere in the watershed when site conditions are not conducive to available BMPs.

The Potomac Conservancy generally agrees with DCR's proposal for five offsite compliance options. We are concerned, however, that the "Buy-Down" option, as proposed, offers no assurance of actual water quality improvements in the watershed, or elsewhere in the state. This option should be tightened to become a true option of last resort, one that provides assurance of measurable water quality improvements and with a fee that is high enough to discourage excessive use. Doubly so outside the UDA.

For water quality exemptions and varying phosphorus standards, with so many offsite compliance options, the small site exemptions are gratuitous. The goal of these amendments is to curb pollution to local and downstream watersheds; that goal is not accomplished by having numerous exceptions to the rule. Similarly, using the old phosphorous standard of 0.45 for certain areas also fails to address the growing problem of urban stormwater runoff. The scientifically-based 0.28 standard should be held firm inside and outside the UDA, with offsite options available where needed.

In conclusion, while some revisions are called for, the pending package offers excessive exemptions to projects outside of the UDA and/or on new development sites. The offsite compliance options require tightening to ensure their effectiveness. The new phosphorous standard of 0.28 is the minimum required to stem the growing problem of stormwater runoff. Potomac Conservancy urges you to trim from the proposal all elements that are

contrary to the spirit of this regulation, and pass a final rule that accomplishes the goals originally set forth four years ago, and so laboriously sought by so many in the intervening months.

Thank you for the opportunity to offer my comments today.

Bill Johnston

Good afternoon, Madame Chair, members of the Board. My name is Bill Johnston. I am an engineer. I work for a municipality and I'm also the stormwater permit administrator for that municipality and I want to reiterate that I share the concerns of all those who have preceded me. I do not feel that I need to reiterate what they have already said.

I thought I would take this time to ask you to step back a bit from these regulations and keep in mind the overall perspective that we are trying to deal with. We are trying to deal with better water quality in our receiving streams, and improving those impaired waters.

Those waters that are impaired are impaired by existing development. These regulations only address the small increment that would come from future development.

If you ask yourself who is going to do the measures that are going to improve the existing impaired waters, including the Chesapeake Bay you are looking at one of those people who is going to have to do that.

We have limited resources. All areas have limited resources as far as addressing water quality.

I have an intent to put most of my resources into retrofits. With these regulations, I will be forced to put a significant amount of our resources into development of UDAs, offset programs. I could never afford to have the water quality improvements leave the City when I'm facing the TMDLs that are coming down the pike.

Intensified inspection and review programs. Intensified enforcement. All of this is going to take a drain on the resources. The fees will not cover this. In our municipality the proposed fees will actually result in a reduction in revenue based on what we have for certain size projects.

EPA has already said that they are probably going to object to these regulations. They didn't exactly come out and say those words, but it's pretty clear from the entities I've been dealing with.

I would urge the Board to not throw all of this out. I believe that great efficiencies can be attained by having the existing regulations enforced at the local level. But the existing technical criteria and the impacts that they are going to have need more work.

This is a huge job. DCR has done their best in the time they have been given. But it takes more.

If we proceed headlong into the night we're going to hurt ourselves. The unintended consequences of these regulations could very well be a step backwards.

Thank you.

Bill Street

Madame Chair, thank you very much for the opportunity to comment today. It's been a long, long process and I've been in front of you on multiple occasions in the past.

More people have joined our discussion recently. But we know how much time the Soil and Water Conservation Board and DCR staff have put in on this issue, and we greatly appreciate it.

This issue deserves and requires nothing less.

I'd like to say in general as far as the proposed changes that have been discussed today we think DCR has gone above and beyond the call of duty to respond to public comment that they have heard and they have crafted some solutions that I think do make significant improvements.

They probably go beyond what we would deem as necessary and cause some concern for us. But we do think it is very important that they make changes that provide additional opportunities to reduce the costs, particularly in those sites where there are particular constraints or it becomes very expensive, as well as addressing the potential to incentivize sprawl. You've heard a lot about that and that's something that I think everyone has agreed upon is not a goal we that we wish to share.

And so I think DCR has put forward some recommendations that really do help address that.

First and foremost, I think probably the most important change is the addition of the offsite buy-down provision. In my discussion with many stakeholders it became apparent that it's important that there be some sort of off-site compliance available. The recommendations that are going forward today ensure that is to be the case. We are encouraged that option is available, but we think that there needs to be additional discussion on how those funds are used and that should go forward. I think that is something that EPA will want to weigh in on as well.

We do have two specific recommendations that we will send around for you to consider and for the staff to consider.

One having to do with the proposal for urban development areas, making sure that is focused on projects that really do achieve a greater environmental benefit when viewed in a greater context. As well as the offsite program to ensure that has accountability for getting the reductions we need over time.

Finally, I'd like to say in closing that I believe it's time to move these regulations forward. With the changes that DCR has proposed today the regulations address the various concerns voiced during the public comment period. I suggest that the differences that remain are largely a question of policy. And many of them are diametrically opposed.

We've heard that some folks want to make sure that every tool is available to them to meet these requirements, but at the same time that needs to be balanced against localities concerned about whether BMPs are appropriate in their own region.

I think it's up to you as policymakers and DCR to implement or strike that balance and move forward.

One last point I'd like to make is in my discussions, I've heard a lot of misinformation about the regulations. I think continued discussion on them will just continue to make them a moving target contributing to that ongoing misinformation.

I think it is important that we accept these and then get about the business of really the additional work and discussion that needs to take place to make sure they are implemented and that will take place over the next two years that is provided for local programs and DCR to adopt the programs.

I think Virginia has an opportunity to set its own course before other factors play a larger role. So I encourage you to move forward with this process.

Thank you very much.

Joe Lerch

Thank you Madame Chair. I'm Joe Lerch representing the Virginia Municipal League. The comments that I have today have also been authorized on behalf of the Virginia Association of Counties. Larry Land was here earlier but had to leave for another meeting.

There are two issue I want to stress in the recommendations.

The first is the cost to local government. We have 207 member governments in VML. Roughly a third of those will be required under the 2004 law to administer local programs or have that option to do so.

You've heard some discussion about the cost of the local program. Just the other night, I was given information from the City of Richmond as to how much it would cost them, outside of what they would collect in fees, to administer the local program. They projected it out over five years. They estimated roughly \$245,000 per year. If you understand the local and state government tax structure your going to have to real estate taxes to raise that kind of money.

As a caveat, those were based on the regulations as a proposed, not on the recent revisions before you today. There may be some cost savings in there.

The second issue is flexibility. Allowing local governments as much flexibility in as possible.

The two specific recommendations that we have to address those issues.

One is to separate administration of the general permit for construction activities from the technical requirements from the discharge of construction stormwater runoff.

As earlier stated by the City of Chesapeake, we believe that the general permit is for construction activity only. It was also the intent of the 2004 law was that the permit be combined with the Erosion and Sediment Control permit at the local level, creating an economy of scale.

Lastly developers are aware of the design standards now on site for post construction runoff and they plan accordingly.

I think also it's important to point out that this would also address the issue of grandfathering. If you have that separating it from the general construction permit then what Mr. Slutzkey referred to earlier would then apply.

I would say that currently this program works in that those localities that have to administer the Chesapeake Bay Preservation Act, due to the development review process have to show they are meeting certain standards for phosphorus.

Lastly to strengthen state and local financial commitments to achieve water quality goals, we ask that locals be allowed to adopt their own fee schedule for reviewing, accepting and maintaining stormwater permits for stormwater construction.

Thank you.

Charlie Armstrong

Good afternoon. Thank you for the opportunity to speak. My name is Charlie Armstrong. I chair the Blue Ridge Homeowners Association. I also am the chair of the City of Charlottesville Housing Advisory Committee and served on one of DCR's Technical Advisory Committees.

We all appreciate that this is an exceptionally difficult issue. I appreciate the positive direction of the proposed amendments to the initial version.

But they don't go far enough. They still have far too many unintended consequences.

The regulations would be contradictory to a lot of goals. They would encourage sprawl. They would discourage well planned walkable transit areas. They would far increase the cost of new housing, when new housing costs keep rising.

I would make any affordable housing nearly impossible to provide. Most of the sustainable affordable housing is within the UDAs.

You've heard from advocates who want to improve water quality. I expect that most, if not all of us, in this room want to improve water quality.

You've heard different perspectives from County official, planners, engineers and other technical experts. I still have a great deal of concern over the technical implementation of the regulations as proposed.

I respectfully ask that the Board pay special attention to the comments of the technical experts. Please continue working on these regulations so they achieve the stated goals without the negative consequences.

Thank you for the opportunity to speak. And thank you to DCR for all your hard work on this issue.

James Shelton

Madame Chairman, members of the Board. My name is James Shelton. I'm a resident of Chesterfield County. I'm also a member of Hands Across the Lake, an all volunteer organization that protects the Swift Creek Watershed and the Swift Creek Reservoir as a drinking water sources.

We have a mixed use community in the Swift Creek Watershed. It has restaurants, churches and houses. That watershed within that community has been measured by Chesterfield at 0.12 lbs. of phosphorus per acre per year. So, I've heard that people can't

meet a 0.28 standard. It's clear that the development met a 0.12 standard. That's very attainable.

The Swift Creek Watershed currently has a clean drinking water sources that's 20% of Chesterfield's water. Without that it's a big loss for Chesterfield.

There are proposed and already approved communities that they are saying they have trouble meeting the 0.28 lbs. per acre standards and they need a .45 lbs. per acre standard. But Chesterfield's model shows that would pollute the drinking water source and make it unusable.

We've already lost Falling Creek's watershed nearby. They had a reservoir that's now unusable because of sediment.

So I think that the 0.28 standard is necessary for drinking water sources. Also we have the James River that is impaired and the Chesapeake Bay is impaired.

As far as grandfathering in all the projects, if all the projects on the books are already allowed to not meet the standard, we can have enough development to end the use of Swift Creek Reservoir.

As one last point I'd like to say that Pennsylvania is a very good neighbor. They have measures in place to protect the Chesapeake Bay Watershed which is not in their state. We need to protect Albemarle Sound and the Roanoke River.

The Roanoke River Association has stated that sediment and nutrient pollution are a problem in the Roanoke River. It is increasing. That flows into Albemarle Sound.

The Fish and Wildlife Service has said that sediment and runoff will damage Albemarle Sound. The Environmental Defense Fund has said 70% of the fish, commercial and recreationally caught in the Atlantic seaboard depend on the Albemarle Sound for part of their life cycle.

So this means that Virginia commercial fishing will be affected by polluting the Albemarle Sound if we ignore any kind of standard for the Roanoke River Watershed.

Thank you very much. Thank you for your hard work and four years of working on this.

Dave Anderson

Members of the Board, my name is Dave Anderson. I'm a professional engineer, developer and resident and I believe an environmental advocate for Virginia.

I've spent the last 21 years of my professional life in the land development industry. I've been a proponent for smart growth and new urbanism for the last fifteen years.

I understand that these regulations now before you have been in the works for over four years. I understand that those in favor of these regulations believe that they are ready.

I also believe very deeply that the intent of these regulations will fail because of the way they are currently written.

What I want for Virginia are regulations that work for the Bay and its tributaries. But, like many others I have specific concerns that to date have not been sufficiently addressed.

I am concerned that the localities will be able to pick and choose stormwater controls that they will allow under local programs. Something that might severely hinder our ability to create smart growth projects in the future.

I'm concerned that we have equations written into the technical regulations that make little scientific sense.

I'm concerned that these managed turf elements of the runoff reduction method, while perhaps aimed at curbing sprawl, will only exacerbate it.

I worry about the economic impact statement by the state that these regulations will add to localities, taxpayers and businesses what are deemed to be significant yet unquantifiable costs.

I'm concerned that many want these regulations passed now for fear of what the federal government might do if we delay passage by several months to continue working on improvements that make these regulations tolerable if not significantly better.

I'm concerned that we have perhaps so missed the mark for making the regulations work for urban development and redevelopment patterns that we need to have five means of offset and buy-down to overcome the adverse affects of regulations as written in achieving density.

By the way, none of these offset programs will work smoothly. They have too many caveats. They will add many months to projects at a minimum and still might not be enough to allow provisions of smart growth to be fully achieved.

For the last few weeks I have been privileged to participate in the continue dialogue of stakeholders working together with DCR to try to make these regulations better.

I am extremely appreciative to DCR for my inclusion in the process thus far.

The problem is, because of what I guess can be best described as schedule constraints, we've not dealt with many of the issues that make these regulations not ready for responsible enactment.

All I have been asking is that instead of making these regulations only as good as time will allow this year, let's make them better for all the years that will follow.

The legacy that will be created with these regulations, you as a Board will be connected to that legacy.

What that legacy looks like depends on whether you think the race to a 2009 finish line is more important to our Commonwealth than doing the hard work of crafting regulations that won't just benefit the Bay in theory, but will also not hurt our state's economy in reality.

In conclusion I would like to recommend passage of Part III and continue the hard work that we've really done in the last few weeks.

Thank you.

Joseph DuRant

Madame Chair, members of the Board. My name is Joseph DuRant. I'm Deputy City Attorney for the City of Newport News.

First of all, I'd like to point out that the City of Newport News has the largest municipal park east of the Mississippi, the vast majority of that is forest. We own many hundreds of acres of land. Not only in Newport News but in other localities for the specific purpose of watershed protection.

When it comes to the issue of water quality, Newport News has voted yes with its wallet for years.

However, the rest of Newport News is 95% built out. New development is not really an issue for us. The issue is redevelopment.

Redevelopment is a hard sell to begin with. You have an old site, you are trying to get a developer to come in and improve the site. When that happens they would fall under the various regulations we have locally. They would have to have green areas. The ultimate result would be that there would be a reduction on that site. However if we set it at 20% not only would the developer have a concern that they may be buying what turns out to be a brownfield to begin with, but they are buying one where they have a mandated amount that they have to go over which makes such a strong disincentive that they are going to pass on the property.

If they pass on the property, it remains where it is now. The runoff will remain where it is now. It won't be improved. So ultimately I think that this is very short sighted to require a 20% reduction from a redevelopment site. Any improvement is better than what you are going to get if you have a mandated reduction.

Thank you.

Chairman Campbell asked if there were other speakers.

Chairman Campbell closed the public comment section. She thanked attendees for their participation and for bringing the information forward.

Chairman Campbell said that it was unusual to add the step of an additional meeting in this process but that the Board wanted to provide an additional comment opportunity.,

Chairman Campbell asked if Board members had comments or questions. She reminded the Board and the audience that no action would be taken at this meeting.

Mr. Maroon said that if Board members had questions regarding speaker comments prior to the next meeting to inform staff and staff would make those available.

Ms. Hansen said that the Board knew how hard everyone had worked. She said her question was whether the process had gone far enough. She expressed a concern about the decision to not apply the new standard to the Southern Rivers. She said that she would like to know more regarding the impact of that decision.

Ms. Hansen said that she agreed with the speaker that said Virginia needed to be a good neighbor to downstream localities. She also expressed concern regarding the grandfathering issue.

Ms. Packard said Ms. Hansen's points were well taken. She said that she had a concern with the change from the .28 standard to the .45 standard for the non-Bay areas. She said that phosphorus should be removed regardless of where it came from.

Mr. Maitland said that the agricultural community had reduced quite a bit of phosphorus.

Ms. Packard said that her concern was with the urban areas.

Mr. Hornbaker said that it would be helpful to have a detailed, written timeline of the action. He asked if, once adopted, if the Board had the authority to go back and make revisions.

Ms. Campbell said that revisions could be made through the regulatory process.

Mr. Maroon said that 18 months to two years was the typical timeline for the process.

Ms. Packard said that the EPA approval was a concern.

Mr. Maroon said that the EPA made a very strong statement at the preceding day's meeting. He said their intent is to take a holistic look at Virginia's stormwater management.

Mr. Maroon said that, as DCR Director, he would abstain from voting on this action.

Mr. Maroon said that the fee issue had been recently raised. He noted that some local governments had been expressing that concern for a while.

Ms. Hansen said that she would not be comfortable with delaying this action.

Mr. Simms said that he would like clarification from the agribusiness community with regard to the affect on long term BMPs.

Mr. Maroon said that the issue with how the money spent would need to be worked out over the next year. He said built into the draft is that now 50% of those funds would go to the urban improvements. That would not exclude agricultural BMPs.

Mr. Russell expressed concerns regarding the parameters set by the Tributary Strategies. He said that he would like to see that addressed with regard to how other states along the east coast address these issues.

Mr. Russell also said that he would like to see how stormwater management programs would be combined with erosion and sediment control programs.

Mr. Maroon said that every local government is responsible for erosion and sediment control. He said that the two programs would be somewhat intertwined. He said the intent of the 2004 legislation was that localities would have the ability to try to implement these programs together.

Mr. Maroon noted that Virginia had to receive permission from the EPA to be able to delegate stormwater management programs to the localities.

Ms. Campbell asked Mr. Dowling to outline the process should the regulations be approved by the Board at the October meeting.

Mr. Dowling said that following the October meeting there would be a short time for staff to pull together the paperwork for filing. The regulations would then be filed for DPB and Administration review. Provided that they concur with the recommendation there would be a final 30 day public adoption period and the regulations would become effective on July 1, 2010.

Mr. Maroon noted that upon approval by the Board and the Governor there would still be two more years for localities to put the program into place.

Ms. Hansen said that she would like to hear comments from the EPA prior to the Board voting on the regulations. She said that she understood they were looking at the big picture but would appreciate knowing if they would stop the regulations due to a particular section.

Chairman Campbell thanked staff and members of the public for bringing for the recommendation and the comments. She said that the Board would potentially act on the proposed amendments at the October meeting.

Mr. Maroon noted that the October meeting might be moved from October 6 to October 5 and that the Board would discuss this later in the agenda.

At the conclusion of the discussion regarding the proposed amendments to the stormwater regulations, the Board recessed for a short break.

Following the break, the Board returned to the agenda as scheduled.

Erosion and Sediment Control

Mr. McCutcheon presented the Erosion and Sediment Control Issues. He noted that the program was coming to the end of the five-year review cycle.

Final Approval of Alternative Inspection Program: Warren County

MOTION: Ms. Packard moved that the Virginia Soil and Water Conservation Board approve the proposed Alternative Inspection Program for Warren County as being consistent with the requirements of the Erosion and Sediment Control Law and Regulations and that the Board request the Department of Conservation and Recreation staff to monitor the implementation of the alternative inspection program by the County to ensure compliance with the approved program.

SECOND: Ms. Hansen

DISCUSSION: None

VOTE: Motion carried unanimously

Local Programs recommended to be found consistent following completion of Corrective Action Agreement (CAA)

Mr. McCutcheon said that action on the programs for the City of Lexington, and the Counties of Brunswick, Campbell and Prince William could be taken as a block.

MOTION: Ms. Packard moved that the Virginia Soil and Water Conservation Board commend the City of Lexington and the Counties of Brunswick, Campbell and Prince William for successfully improving their respective Erosion and Sediment Control Program to become fully consistent with the requirements of the Virginia Erosion and Sediment Control Law and Regulations, thereby providing better protection for Virginia's soil and water resources.

SECOND: Mr. Simms

DISCUSSION: None

VOTE: Motion carried unanimously

Local Programs recommended to be found inconsistent based on Initial Review and request for Board approval of Corrective Action Agreement (CAA)

Mr. McCutcheon presented the background for Gloucester County.

DCR staff completed the initial program review for Gloucester County's Erosion and Sediment Control Program and the scores for the individual components were as follows: Administration – 85; Plan Review – 65; Inspection – 80; and Enforcement 80. As all program components did not receive a score of 70 or greater, the staff recommendation was that the Virginia Soil and Water Conservation Board find the County's Erosion and Sediment Control Program inconsistent with the Virginia Erosion and Sediment Control Law and Regulations and approve the draft CAA for the County.

MOTION: Ms. Dalbec moved that the Virginia Soil and Water Conservation Board accept the staff recommendations and find Gloucester County's Erosion and Sediment Control Program inconsistent with the Virginia Erosion and Sediment Control Law and Regulations and approve the County's CAA. Further that the Board direct DCR staff to monitor the implementation of the CAA by the County to ensure compliance.

SECOND: Ms Packard

DISCUSSION: Mr. Ron Peaks, Director of Codes Compliance said that the County would like to request that the Board table the action until the next meeting. He said that the County would like the opportunity to review the program with DCR staff.

He said that part of the issue was that the County Administrator wants to take the program to the Board of Supervisors. The timing of the Board of Supervisors meeting is the first Tuesday of the month. He said that the County was requesting that the Board either table the motion or extend the deadline and allow the County 60 days to return the signed CAA.

Ms. Dalbec amended the motion to state that the CAA shall be signed by Gloucester County on or before November 17, 2009. Ms. Packard concurred.

VOTE: Motion carried unanimously

Local Programs previously found inconsistent and request for Board to extend Corrective Action Agreement (CAA)

Mr. McCutcheon gave the background for the City of Covington.

The Virginia Soil and Water Conservation Board approved the City of Covington's Corrective Action Agreement (CAA) with a completion date of July 29, 2009. At the direction provided by the Board, Department of Conservation and Recreation staff reviewed the City of Covington's progress on implementing the CAA. Based on the results of the review, the staff determined that the City had not achieved compliance with the CAA. DCR staff recommendation was that the City be given until March 18, 2010 to comply with the outstanding CAA.

MOTION: Ms. Packard moved that the Virginia Soil and Water Conservation Board accept the staff recommendation and grant the City of Covington an extension until March 18, 2010 to fully comply with the outstanding CAA. Further that the Board request that the Director of DCR and his staff evaluate the City's compliance with the outstanding CAA and provide a report at the May 2010 Board meeting.

SECOND: Ms. Dalbec

DISCUSSION: None

VOTE: Motion carried unanimously

Mr. McCutcheon presented the background for Chesterfield and Greensville Counties.

The Virginia Soil and Water Conservation Board approved Chesterfield County's Corrective Action Agreement with a completion date of July 16, 2009. At the direction provided by the Board, Department of Conservation and Recreation staff reviewed Chesterfield County's progress on implementing the CAA. Based on the results of the review, the staff determined that the County had not achieved compliance with the CAA. DCR staff recommended that the County be given until March 18, 2010 to comply with the outstanding CAA.

The Virginia Soil and Water Conservation Board approved Greensville County's Corrective Action Agreement with a completion date of July 16, 2009. At the direction provided by the Board, Department of Conservation and Recreation staff reviewed Greensville County's progress on implementing the CAA. Based on the results of the review, the staff has determined that the County has not achieved compliance with the CAA. DCR staff recommended that the County be given until March 18, 2010 to comply with the outstanding CAA.

MOTION: Ms. Packard moved that the Virginia Soil and Water Conservation Board accept the staff recommendations and grant Chesterfield and Greensville Counties' extensions until March 18, 2010 to fully comply with their respective outstanding CAAs. Further that the Board requests that the Director of DCR and his staff evaluate each County's program with the outstanding CAA and provide a report at the May 2010 Board meeting.

SECOND: Ms. Hansen

DISCUSSION: None

VOTE: Motion carried unanimously

Mr. McCutcheon gave an update regarding Spotsylvania County. He said that staff had been working with the County regarding information received just prior to Labor Day. He said that staff had not yet been able to review the information to provide the County adequate notice for this meeting. He said that staff expects to bring the Spotsylvania program to the Board at the November meeting.

Timeline for Revisions to Local Program Erosion and Sediment Control Program Review

Mr. Hill presented the proposed timeline.

**Erosion and Sediment Control Program
Local Program Review (LPR)
Proposed Schedule for Revising Review Documents**

Tasks	Time	Date
Establish goals for LPR	1.5 weeks	Sept. 21-30, 2009
Select DCR Staff LPR Revision Committee	1 week	Sept. 21-25, 2009
Convene DCR Staff LPR Revision Committee – Revise procedures and documents	2 months	October 1 – November 30, 2009
Select Local Government LPR Revision Committee	2 weeks	November 9-20, 2009
Review revised LPR with Local Government Committee – Revise as required	2 months	December 1, 2009 – January 29, 2010
Submit revised documents to Director’s Office – Revise as directed	2 months	February 1 – March 31, 2010
Submit revised documents to AG’s Office – Revise as directed	1 month	April 1-30, 2010
Present to SWCB for initial review		May 2010 meeting
Prepare list of local programs for review in FY 2011	1 month	May 1-31, 2010
SWCB final approval of LPR package		July 2010 meeting
SWCB approval of 32 LPR for FY2011		July 2010 meeting
DCR Staff begins local program reviews for FY2011		August 1, 2010

Chairman Campbell asked if there would be value in a short survey to localities.

Mr. Baxter said that DCR would be convening a group of local governments.

Mr. Hill said that staff could distribute a questionnaire.

Mr. Baxter said that there would be an opportunity for public comment at the May 2010 Board meeting.

No action was needed on this item.

Dam Safety Certificates and Permits

Mr. Browning presented the Dam Safety Certificate and Permit recommendations.

Mr. Browning presented an update regarding enforcement actions. He said that the letters regarding Upper Wallace Dam, Inventory #01516 and Pruitts Dam, Inventory #07507 are being drafted.

Mr. Browning said that, regarding Mellott Dam, Inventory #06119, that the Board needed to convene an Executive Session to address the issue.

Mr. Browning said that staff had met with the owner's attorney regarding Jolly Pond Dam, Inventory #09509 and that the attorney will be discussing options with the owner and work towards submitting the required documents to obtain a Conditional Operation and Maintenance Certificate.

Mr. Browning said there had been no movement with regard to Little Lake Arrowhead Dam, Inventory #17907 and Lake Arrowhead Dam, Inventory #17908.

Conditional Certificate Recommendations

Mr. Browning presented the recommendations for Conditional Certificates. He said that the dams on this list were for dam owners who had a regular certificate, but are now out of compliance due to the need for an inundation map. This is a new requirement.

3	Kingstowne Dam	05932	FAIRFAX	1 Year Conditional
4	Springhill Farm Dam	06111	FAUQUIER	1 Year Conditional
5	Fye Dam	08320	HALIFAX	1 Year Conditional
6	Lake Idylwild Dam	08520	HANOVER	1 Year Conditional
7	Ponde Roachea Dam	10920	LOUISA	1 Year Conditional
8	Beautiful Run Dam #5	11304	MADISON	1 Year Conditional
9	Beautiful Run Dam #11	11308	MADISION	1 Year Conditional
10	Black Fox Hills Dam	12513	NELSON	1 Year Conditional
11	Wilderness Dam	17707	SPOTSYLVANIA	1 Year Conditional
12	Grant Lake Dam	17711	SPOTSYLVANIA	1 Year Conditional
13	Bens Branch Dam	19509	WISE	1 Year Conditional

MOTION: Ms. Packard moved that the Virginia Soil and Water Conservation Board approve rows 4, 6, 7 & 10 as listed above contingent upon the receipt of the fees and the remaining Conditional Operation and Maintenance Certificates and further that the Board direct DCR staff to communicate the Board's actions to the affected dam owners.

SECOND: Ms. Hansen

DISCUSSION: None

VOTE: Motion carried unanimously

Construction and Alteration Permits

Lower Byers Dam	14506	POWHATAN	1 Year Alteration
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MOTION: Ms. Packard moved that the Virginia Soil and Water Conservation Board approve the Permit Recommendation for Lower Byers Dam, Inventory #14506 and that staff be directed to communicate the Board action to the affected dam owner.

SECOND: Ms. Dalbec

DISCUSSION: None

VOTE: Motion carried unanimously

Extensions

Mr. Browning presented the list of Extension recommendations.

4	Rainbow Forest Dam	02303	BOTETOURT	Four Month Extension
5	Pohick Creek Dam #8	05907	FAIRFAX	1 Year Extension
6	Pohick Creek Dam #2	05923	FAIRFAX	1 Year Extension
7	Pohick Creek Dam #3	05928	FAIRFAX	1 Year Extension
8	Cove Lake Dam #1	06905	FREDERICK	1 Year Extension
9	Cove Lake Dam #2	06911	FREDERICK	1 Year Extension
10	Daley Dam	10709	LOUDOUN	1 Year Extension
11	Willow Ridge Dam	10939	LOUISA	1 Year Extension
12	Spring Vale Dam	13714	ORANGE	1 Year Extension
13	Squall Creek Dam	14104	PATRICK	1 Year Extension
14	Omisol Dam	15307	PRINCE WILLIAM	1 Year Extension
15	Upper Clinch River Dam #8	18501	TAZEWELL	1 Year Extension
16	Lee Hall Reservoir Dam	70001	NEWPORT NEWS	2 Year Extension
17	Lee Hall Upper Dam	70006	NEWPORT NEWS	2 Year Extension
18	Western Branch Dam	80011	FAUQUIER	2 Year Extension

Mr. Browning said that with regard to Rainbow Forest Dam, Inventory #02303 the recommended staff action listed on the Agenda Item #6d was justified because staff had been working with the dam owner to no avail on trying to move them forward with necessary repairs. He said that the dam is a high hazard dam that has never had a regular certificate, that a conditional certificate had been issued and had received seven extensions. One of the conditions was the lowering of the water level. The owners indicated that they were trying to market the land for sale and asked the Board to remove that condition. The Board honored the request by rescinding the condition of lowering the normal pool elevation at its March 17, 2005 meeting. Mr. Browning said it would be important for the Board to hear directly from the dam owner as to why there are

continued delays in meeting the conditions of the Conditional Operation and Maintenance Certificate.

MOTION: Ms. Dalbec moved that the Virginia Soil and Water Conservation Board deny the dam owner's one-year extension request because of their concern over the continued lack of progress on correcting the conditions identified in the Certificate and the potential impact that this impounding structure poses to live and property downstream of the dam, issue a four month extension to the Certificate and instruct the Director of the Department of Conservation and Recreation to notify the Rainbow Forest Recreation Association, Inc. that it is necessary for an official representative of the Association to appear before the Board at its November 19 meeting for the purpose of presenting a schedule of planned actions to correct the identified deficiencies to bring Rainbow Forest Dam into compliance with Virginia Code and the Virginia Impounding Structure Regulations.

SECOND: Mr. Simms

DISCUSSION: None

VOTE: Motion carried unanimously.

MOTION: Mr. Simms moved that the Virginia Soil and Water Conservation Board approve items 13 and 15 as listed above contingent upon the receipt of the fee and that the action be communicated to the respective dam owners.

SECOND: Mr. Hornbaker

DISCUSSION: None

VOTE: Motion carried unanimously.

MOTION: Mr. Hornbaker moved that the Virginia Soil and Water Conservation Board approve the remaining extension recommendations as presented by staff and that staff be directed to communicate the Board Action to the affected dam owners.

SECOND: Ms. Packard

DISCUSSION: None

VOTE: Motion carried unanimously

Update on the Dam Safety, Flood Prevention and Protection Assistance Fund

Mr. Brown gave an update about the Dam Safety, Flood Prevention and Protection Assistance Fund.

Mr. Brown said that the grant round closed on August 14, 2009. Sixteen applications were received, all for grant funds. Fifteen of the sixteen were for dam break inundation zone mapping or incremental damage assessment. There are limited funds available, but DCR will be awarding some grants. He said that he anticipated that four or five projects would be funded.

Local Soil and Water Conservation District Operations

Recommended Procedure for Filling Soil & Water Conservation District Director Vacancies on District Boards

Mr. Meador noted that the Board had discussed this procedure at previous meetings and presented the revised recommended procedure. A copy of the revised draft is available from DCR. Mr. Meador noted that this policy would not apply to extension agent appointments.

Mr. Russell asked about bond requirements.

Mr. Meador said that any bond requirements would be addressed through the surety blanket bond and the liability protection through Virginia's Risk Management plan.

Chairman Campbell noted some technical revisions to the document.

MOTION: Ms. Hansen moved that the Recommended Procedure for Filling Soil and Water Conservation District Director Vacancies on District Boards be approved as submitted by staff and amended by Board discussion.

SECOND: Ms. Packard

DISCUSSION: None

VOTE: Motion carried unanimously

District Director Resignations and Appointments

Mr. Meador presented the recommended District Director Resignations and Appointments.

Halifax

Resignation of R. Kenneth Cassada, Halifax County, effective 8/31/09, elected director position (term of office expires 1/1/12).

Recommendation of Larry W. Layman, Halifax County, to fill unexpired elected term of R. Kenneth Cassada (term of office to begin on or before 10/17/20 – 1/1/12).

Lord Fairfax

Resignation of Jeffrey White, Warren County, effective 5/12/09, elected director position (term of office expires 1/1/12).

Recommendation of Jane A. Whitney, Warren County, to fill unexpired elected term of Jeffrey White (term of office to begin on or before 10/17/09 – 1/1/12).

Natural Bridge

Resignation of Peter H. Barlow, City of Lexington, effective 7/22/09, elected director position (term of office expires 1/1/12).

Recommendation of Arthur A. Bartenstein, City of Lexington, to fill unexpired elected term of Peter H. Barlow (term of office to begin on or before 10/17/09 – 1/1/12).

MOTION: Mr. Hornbaker moved that the list of District Director Resignations and Appointments be approved as submitted by staff.

SECOND: Mr. Russell

DISCUSSION: None

VOTE: Motion carried unanimously

Mr. Meador said that in a follow up item from the last meeting, he had drafted a letter for the Chairman's signature to be sent to Districts regarding registering for eVA.

Chairman Campbell said that she would like to make modifications to the draft.

MOTION: Ms. Packard moved that the Virginia Soil and Water Conservation Board approve the draft letter, to be amended by the Chair, to be sent to Districts regarding registering for eVA.

SECOND: Ms. Hansen

DISCUSSION: None

VOTE: Motion carried unanimously

Partner Reports

Department of Conservation and Recreation

Mr. Frye gave the report for the Department of Conservation and Recreation. A copy is included as Attachment # 1.

Virginia Association of Soil and Water Conservation Districts

Mr. Chaffin gave remarks for the Virginia Association of Soil and Water Conservation Districts Directors. He said that the Association has been discussing how the latest round of budget reductions should be handled among the districts.

Mr. Chaffin thanked the Board for approving the Association funding request.

Mr. Chaffin distributed a copy of the latest Association newsletter.

Natural Resources Conservation Service

Mr. Bricker gave the report for the Natural Resources Conservation Service. A copy is included as Attachment # 2.

Election of Officers

Ms. Packard moved that Linda Campbell remain as Chair and that Susan Hansen be named Vice Chair of the Board. There were no other nominations. Mr. Hornbaker seconded and the motion carried by a unanimous vote.

Director's Report

Mr. Maroon returned to the Director's Report.

Mr. Maroon said that in terms of budget cuts the DCR reductions were \$4.4 million which is approximately 10.5% of the agency budget. He said that most of the reductions were actually taken at the 15% level.

DCR will lose a total of 26 positions, including 13 layoffs. This does not include part-time staff or non general fund staff.

The next round of cuts will be announced by the Governor when he announces his proposed budget plan in December.

Mr. Maroon said that he had been contacted by the Lake of the Woods community. They have provided a petition with over 1,000 signatures opposing the requirement for upgrading the Lake of the Woods dam. The Lake of the Woods Association has made it clear that these individuals do not speak on behalf of the Association.

Public Comment

There was no further public comment.

Upcoming Meetings

October 5, 2009, 10:30 a.m.

Special Called Meeting for the Purpose of Considering Adoption of Final Stormwater Management Regulations
East Reading Room, The Patrick Henry Building
Richmond, Virginia

November 17, 2009

West Reading Room, The Patrick Henry Building
Richmond, Virginia

Adjourn

There was no further business and the meeting was adjourned.

Respectfully submitted,

Linda S. Campbell
Chairman

Joseph H. Maroon
Director

Attachment #1

Department of Conservation and Recreation

Report to the Virginia Soil and Water Conservation Board
September 17, 2009

1. DCR/SWCD Operational Funding:

All 47 SWCDs were issued a grant agreement with DCR in June, 2009 for Operational funding this fiscal year (FY10). Each has returned a fully endorsed agreement to their CDC and each has been issued 25% of the approved operational funding for FY10. At the outset of this fiscal year (FY10), operational funding for all districts totals \$3,536,535. This amount reflects a decrease below the peak funding level experienced by districts in FY01 (\$4,301,000). However, over two thirds of the 47 districts are also receiving this fiscal year, funds that total \$1,800,000 to employ conservation specialists for the implementation of agricultural BMPs. On Sept. 8 Governor Kaine announced reductions which included a 10% reduction in SWCD funding for FY10. DCR will reduce future distributions accordingly. Further specific funding for staff is provided in state law that directs 8% of the amount deposited in the Virginia Natural Resources Commitment Fund (for FY10, \$20 million was deposited) to support technical staff of SWCDs that are performing assistance with implementation of agricultural BMPs. These additional funds for FY10 total \$1.6million and are not reduced.

2. Conservation Partner Employee Development

The conservation partners continue to work through the “JED” –Joint Employee Development system which relies on 4 regional teams (coordinated through a separate state level JED team) to address training and development of SWCD and other partner agency field staff. The last quarterly meeting of the state JED group was held as a conference call on August 12th, 2009.

The state level JED team is focusing on the delivery of 3 “core courses”. The short course “Conservation Selling Skills” has been held at least annually for the past 8 years. The course is scheduled to be offered again on November 4th and 5th, 2009 at the Central Virginia Community College in Lynchburg. NRCS is supporting delivery of the EP&I (Effective Presentation and Instruction) short course. Teams of trainers to deliver the course have been established with 4 newly trained teams, each consisting of 3 individuals. Two of the 4 teams have delivered the course within their region of the state. The other 2 teams will deliver the course in their regions during the months to come. The third “core course” –Conservation Orientation for New Employees is delivered regionally when sufficient need exists to justify the sessions. Broader training needs of the staff of the conservation partners are being addressed regionally through the 4 regional JED teams.

3. SWCD Dams:

The SWCD dam owner work group comprised of representatives from the 12 SWCDs that own dams, DCR, NRCS and others continue to meet approximately every 3 months (a quarterly annual schedule). Of the roughly 4 meetings per year, one session is focused on Emergency Action Plans (EAPs), another addresses routine annual maintenance of district dams and the remaining two meetings address the priority topics identified by the group. The group last met on July 23rd, 2009 and focused primarily on annual dam maintenance. The next meeting of the SWCD dam owners is scheduled October 15th in Charlottesville at the DOF state office. The focus of the next meeting will be on the Break Inundation Studies (BIS) and Mapping that are being completed through

DCR's Design and Construction staff. The group wishes to receive instruction on the interpretation and use of the completed BIS documents and ultimately how localities may incorporate the information in their planning processes.

4. Agricultural BMP Cost-Share Program:

The Cost Share Program Technical Advisory Committee (TAC) held its last meeting on August 13th, 2009. The group developed a list of areas of focus that will serve in coming months as a "plan of work" to explore refinements and revisions to the program and to specific BMPs that may be recommended for the next, 2011 Agricultural BMP Cost Share Program. Subcommittees of the TAC are working on specific topics and practices. They will report their findings and recommendations during upcoming meetings of the full TAC. The next scheduled meeting of the TAC is October 28th in Charlottesville.

DCR staff in partnership with representatives from SWCDs, the VASWCD and NRCS continue to advance work towards "modernizing" the automated Ag BMP Tracking Program. The initial phase of the completely revised program is now available for district use. In addition to the 6 regional training programs for SWCD staff that are program users (held during June, 2009), there are 4 additional training sessions scheduled as follows: September 10th in Williamsburg, 13th in Culpeper, 14th in Danville and 18th in Wytheville. A webinar for program users unable to attend one of these sessions will be conducted in coming weeks. Discussion and planning are fully underway to resolve priorities for use of an additional \$500,000 that will support expenses for the second phase of the modernized program. A short survey has been developed by the project partners that will be posted on the internet during October so that SWCD program users can provide needed input on their priorities for program improvements and enhancements during the second phase of program development.

5. Conservation Reserve Enhancement Program (CREP):

SWCDs in the Chesapeake Bay basin have in place a new Agricultural BMP Cost Share Program practice that became available on July 1, 2009 with the requirement that the new practice may only be implemented in conjunction with a CREP Riparian Forest Buffer practices. The new SL-7 Cost Share Program practice complements CREP and is offered to advance remaining acreage in the Bay basin towards achieving the 25,000 acre goal of riparian buffers. The BMP provides a means for extending a livestock watering systems installed through CREP, into non-eligible CREP fields. Of the 25,000 acre goal authorized for the Chesapeake Bay basin in Virginia, approximately 10,200 acres remain to be enrolled.

In addition, districts within the Bay basin can receive monies for recruiting CREP participants and performing conservation planning for CREP contracts. Since 2004, Bay SWCDs have been eligible to receive \$50 for each applicant they recruit that signs a CREP contract, and \$10/acre for CREP contracts that utilize a Farm Conservation Plan developed by and approved by the SWCD. These incentive rates have now been doubled to \$100 per CREP contract recruited and approved by the SWCD, and \$20/acre for CREP Farm Conservation Plans developed by the SWCD.

6. Erosion and Sediment Control & Stormwater Management Programs: As of the June 23 Soil & Water Conservation Board meeting 162 local programs reviews were completed and 142 or 88% found consistent with state law. On July 1, 2009 the construction general permit was reissued by DCR and 2,933 construction activities renewed coverage under the construction general permit. A total of 3,610 construction activities have registered for coverage under the construction general permits from July 1, 2009 through September 14, 2009.

7. Chesapeake Bay TMDL: The U.S. Environmental Protection Agency is developing a Chesapeake Bay Total Maximum Daily Load (TMDL) for nutrient and sediment impaired segments in the watershed. EPA likens the TMDL to putting the Bay on a "pollution diet." In the Commonwealth, the Virginia Department of Environmental Quality and the Virginia Department of Conservation and Recreation will have to develop a Watershed Implementation Plan to detail how the reductions will be achieved. While this is similar in some respects to the past voluntary tributary strategy efforts, the development of the TMDL and associated watershed implementation plans is required by EPA, not voluntary. An EPA led meeting/webinar will be held October 2 at 1:00 PM to help kickoff the TMDL process here in Virginia. Meetings will be held at each DEQ regional office within the Bay watershed. For those that prefer to participate in the meeting through a webinar, the registration information will be available a few days prior to October 2 at the following EPA website: www.epa.gov/chesapeakebaytmdl/

8. Nutrient Management: DCR is implementing a new optional category of nutrient management planner certification. The category, known as "Turf and Landscape," is targeted to persons involved in developing nutrient management plans for urban and suburban land use areas such as golf courses, office parks, and residential areas. This new category has been requested by the Virginia Turfgrass Council and others. For information concerning program requirements or to register for training or the exam, contact susan.townsend@dcr.virginia.gov or david.kindig@dcr.virginia.gov.

Attachment #2

NRCS REPORT
VA Soil & Water Conservation Board Meeting
September 17, 2009
VCU/MCV Molecular Medicine Research Center
Richmond, VA

FARM BILL PROGRAMS

Stewardship:

Conservation Stewardship Program (CSP). Statewide sign-up is underway and will close September 30, 2009 for the new CSP Program. Applications can be submitted for Cropland and Pastureland combined, or for Forestland. Virginia will receive an allocation for approving the highest ranked applications.

Easement Programs:

Farm and Ranchland Protection (FRPP). NRCS is currently executing Cooperative Agreements with eight different entities to obligate approximately 1.7 million dollars in farmland easements for 2009. Funding will secure easements on nine different tracts of approximately 970 acres of farmland. Staff is currently working to close one prior-year easement in Clarke County for a total of 216 acres. Staff has closed four prior-year easements in Clarke, Northampton and Frederick Counties for a total of 618 acres.

Grassland Reserve Program (GRP). NRCS has approved two applications for permanent easements on 158 acres of grassland and one rental agreement for a 10-year rental contract on 25 acres to protect grassland from development. Total funding will be approximately \$568,000. Staff has closed one easement for 40 acres in Rockingham County.

Wetland Reserve Program (WRP). NRCS has closed three wetland easements for a total of 49 acres and has eight additional easements for a total of 94 acres currently being reviewed by the attorneys from the federal government's Office of the General Council (OGC). These easements are slated to be closed this fall. Two new additional applications have been approved for a total of 102 acres.

Financial Assistance Programs:

Environmental Quality Incentive Program (EQIP). NRCS has approved applications for approximately 10.2 million in EQIP funding for FY 2009. Field offices have developed 320 EQIP contracts. NRCS received about 1,035

applications. This is our largest program year-to-date, with approximately 14.7 million dollars of un-funded applications remaining. Most of the backlog will roll over to the FY 2010 program. NRCS has received some input for the FY 2010 programs from stakeholders through Local Working Group meetings by SWCD and FSA County Committees and sub-committees, of the State Technical Committee.

Wildlife Habitat Incentive Program (WHIP). NRCS received 126 applications for \$1,007,841 on 6,809 acres. We have completed 76 contracts for \$597,989 on 4,289 acres. This is the first year we have had surplus remaining in our allocation due to Farm Bill rule changes that now prohibit funding projects on state or locally owned lands. In previous years, private lands were the highest priority for funding and any surplus funds went to habitat projects on state or municipal lands.

Chesapeake Bay Watershed Initiative (CBWI). NRCS has approved applications for approximately 99% of the allocated \$5.6 million for this new initiative. Field staff received 308 applications and has developed 236 CBWI contracts with landowners. Sign-up was relatively slow due to the limited practice offerings in support of partnership efforts to emphasize "Core 5" conservation practices. Plans are to expand CBWI practice offerings in FY 2010 to more closely align with the EQIP program.

DAM REHABILITATION:

Pohick Creek Site 3 (Woodglen Lake) in Fairfax County – NRCS is assisting Fairfax County with the design of this project. Final design will be completed by the end of September 2009. Funding has been received from the American Recovery and Reinvestment Act (ARRA) for the construction of this project. Construction is expected to start early next calendar year.

Pohick Creek Site 2 (Lake Barton) in Fairfax County – A final plan has been developed for this dam rehabilitation project. The plan has been authorized for implementation by the Chief of NRCS. The project is sponsored by the Fairfax County Board of Supervisors and the Northern Virginia SWCD. ARRA funding for the completion of the plan, design, and construction has been received. Design has begun with construction starting in 2010.

South River Site 25 (Toms Branch) in Augusta County – Construction is ongoing on Toms Branch. The contract was awarded to Adams Contracting Company from Robbinsville, NC in the amount of \$1,098,917. The project should be complete by December 2009. Project sponsors include Augusta County, the City of Waynesboro, and the Headwaters SWCD.

South River Site 10A (Mills Creek) in Augusta County – NRCS has received funding to assist Augusta County to initiate development of a dam rehabilitation plan. The planning process is ongoing with a final plan expected by September 2010.

Assessments for High Hazard Dams – NRCS has completed an assessment of Upper North River Watershed Site 10 - Todd Lake in Augusta County and copies will be distributed soon. This dam is now classified as a “High” hazard structure.

NRCS has received \$210,000 from NHQ to assess nine dams in Virginia. URS Corporation has been hired to conduct the assessments.

WATERSHED OPERATIONS

Buena Vista Flood Control Project – NRCS is assisting the City of Buena Vista with the acquisition of environmental permits for the channel modification of Chalk Mine Run

NRCS has hired an A&E firm to design the channel modification project for Chalk Mine Run. The design will be completed in 2010.

NRCS and the City of Buena Vista have signed a cooperative agreement for \$42,000 to acquire and demolish one home that is located in the floodplain on the Chalk Mine Run tributary in Buena Vista. The City is completing the legal work necessary to complete this project.

North Fork Powell River Watershed – ARRA funding has been received to design and construct five abandoned mine land sites in this watershed. This project will address water quality problems from abandoned mines in this watershed. The project is sponsored by the Lee County Board of Supervisors, the Daniel Boone SWCD, and the Virginia Department of Mines, Minerals and Energy. The five sites will be designed and constructed in 2010.

Chestnut Creek Watershed - \$220,000 in financial assistance dollars from ARRA funding have been received to develop new long-term contracts with landowners in this watershed in Carroll and Grayson Counties. This project will address water quality problems caused by grazing in the watershed. Two new contracts totaling \$139,046 have been signed and the funds obligated.

Little Reed Island Creek Watershed - \$120,000 in financial assistance dollars from ARRA funding has been received for new long-term contracts with landowners in this watershed in Carroll, Pulaski and Wythe Counties. This project will address water quality problems caused by grazing in the watershed. One new contract for \$82,065 has been signed and the funds obligated.

Lower Shenandoah River – NRCS staff in Virginia and West Virginia are completing the final draft of a watershed assessment of the Lower Shenandoah River Watershed. The assessment will be completed by September 30, 2009. This is the third watershed assessment completed in VA. The South Fork Shenandoah River Watershed was completed in 2007 and the North Fork Shenandoah in 2008. The completion of the Lower Shenandoah in 2009 will finish the entire Shenandoah River basin in VA and WV.