

## **MINUTES FROM OCTOBER 13<sup>TH</sup> MEETING OF THE HB1774 WORKGROUP**

In attendance were Melanie Davenport (DEQ), Jonathan Harding (VA Agribusiness Council), Allyson Monsour (Clark Nexsen), Kate Creef (for Chris Pomeroy, AquaLaw), Ann Jennings (CBC), Adrienne Kotula (JRA), Russ Baxter (Deputy SNR), Peggy Sanner (CBF), Jeff Corbin (Restech Systems), Marcie Parker (VDOT), David Nunnally (Caroline County), Tom Swartzwelder (King and Queen County), Shannon Alexander (ANPDC), Lewie Lawrence (MPPDC), Greg Evans (DOF), Shannon Varner (Troutman Sanders), Andrew Clark (HBAV), Phil Abraham (VACRE), and Eldon James (RRBC).

Also in attendance were Mike Rolband (WSSI), Carl Hershner (VIMS), Mark Luckenbach (VIMS), KC Filippino (HRPDC), Ryan Brown (Kane Jeffries), Chris McDonald (VACo), Xixi Wang (ODU), Mujde Erten-Unal (ODU), Steve Owens (VDOT), Mike Polychrones (VML), Fred Cunningham (DEQ), Chris Swanson (VDOT) Angela King (VCPC), and Jamie Huffman (VCPC). Hannah Gill, a member of the public, was also present. The meeting was facilitated by Elizabeth Andrews (VCPC).

The meeting began at 9:00 a.m. at DEQ Headquarters in Richmond. The minutes from the last workgroup meeting were approved without comment.

Elizabeth stated that the goal for the meeting is to agree upon the Workgroup's recommendations before the final meeting on November 29<sup>th</sup>. Elizabeth reminded everyone of the Workgroup's previously agreed upon ground rules, specifically those for voting. Russ noted that he would need to recuse himself from voting on any recommendations that propose legislation. Greg noted that he had the same issue, as a DOF employee.

### **SUBCOMMITTEE 1 PROPOSALS**

#### **I. VIMS & ODU research presentation**

Carl presented information on roadside ditch location and prioritization, stating that Subcommittee 1's proposal hinges on rural ditches that could be managed to create water quality and quantity benefits. Carl explained that ditches in Maryland are targeted by considering land uses adjacent to roadside ditches, particularly those land uses that have significant nutrient and/or sediment loads. Carl followed this approach in his research. First, he analyzed land cover used in the Bay Program and gathered data on all the land cover loads. Carl then presented slides showing data on ditch drainage areas and land cover. Carl stated that VIMS has the ability to figure out where water will naturally accumulate based on current elevations. Next, the latest LIDAR was used to show where ditches were located. Carl noted that this is not a foolproof method; sometimes the LIDAR responds to bare earth and vegetation that can skew the data. He noted that there are calculations that can account for this issue. Ultimately, locating the ditches is not difficult; the trick is to match the locations with land cover to decide which portions should be prioritized for stormwater management. . Carl then presented King & Queen County as an example of an area where they were able to identify what was flowing into roadside ditches and which ditches were thus suitable for treatment, as opposed to those that flowed directly into receiving waters.

Carl stated that Maryland targets ditches using simple multiplication. Carl pointed out that not all fields flow easily into roadside ditches. He said there are some ways this can be accounted for in the data, but it remains a problem. Another question is related to refining estimates of the benefits that could occur. Therefore, VIMS took the Bay Program land cover load estimates and multiplied them by the number of acres of land in the field. This calculation yielded the potentially mobilized load, but this is not the delivered load. The delivered load is what is actually mobilized and what is effectively transported. ODU has done some work on that in order to show the workgroup that these calculations are possible.

Mujde presented ODU's analysis. The ODU researchers obtained data from Essex and King & Queen counties to determine runoff, sediment, and total phosphorous yields. This was mostly agricultural data and included acreage, slopes, and locations. The ODU stormwater calculations took into account topography, soil type, and soil drainage to determine the loads. Mujde then presented slides regarding runoff potential for the soil and drainage. ODU did calculations on two soil types, moderately low and moderately high runoff potential. Mujde said they were able to determine runoff at the edge of a field. The second Essex County cropland area had the highest runoff potential. She presented data through different time periods (5 years, 10 years, etc.), and the formula used included average annual rainfall. Mujde stated that the ODU team wanted to demonstrate that these calculations can be done and that drainage ditch yields can be calculated based on the cropland.

Carl pointed out that not all ditches that would be managed are necessarily roadside, some of the ditches are agricultural. Carl stated that the numbers that drive these calculations are subject to great uncertainty. The estimated loads are average loads derived from model calculations; essentially, the researchers worked backwards from what was actually found in the water. Carl stated that by solving multiple equations for multiple variables, one can guess the actual load estimates. Carl cautioned that there are one to two orders of magnitude of variance in these calculations, and that the volumes of runoff are also rough calculations. Therefore, at best they can target areas that are delivering significant loads that could be managed and treated. Further, there is a technical basis for doing much more refined calculations based on load. Carl said that for the purposes of these regulations, finding and targeting ditches that might be appropriate for management can be done upfront. It is therefore possible to build a map for an entire county.

Mike Rolband asked if road loading (the runoff from the roads) is miniscule compared to field loading and Carl said yes. Mike pointed out that we then do not have to worry about the roads. Carl stated that this was not a part of the calculations used because that pollutant load is so minimal, especially compared to agricultural fields. Russ asked if ODU and VIMS looked at specific types of crops. Carl said no, cropland was classified generally. However, Carl said that this can be much more refined and that different types of croplands can be calculated. Carl pointed out that they have the capability to get even more detailed in their analysis.

Ann asked if this targeting protocol could be applicable to a local soil & water conservation district that may have other practices they want to promote, such as stream fencing. Carl said yes, the calculations could analyze land cover to identify areas with the greatest potential to deliver sediment loads. And, Mujde pointed out, if there's IC, that will be taken into account.

Russ asked if you could extrapolate to factor in the distance for transmission to surface water. Carl said it is feasible to factor in an actual transmission, which is what happens in the model now. What the data does not include is what the factor would be.

Lewie asked if this includes surface and legacy nutrients that are moving through. Carl said no, this data just incorporates surface. Carl said monitoring data is lacking that would allow those kinds of calculations. If the Workgroup wants this information, someone could ask the General Assembly to fund a study. Ann asked how feasible it would be for VIMS and ODU to provide this data to localities throughout the Commonwealth. Carl said that it is not that hard, assuming that you do not want these specific calculations for each field and you can use rough calculations. Carl cautioned the group that the data generated should operate as a rebuttable presumption. Carl stated that they are not prepared to go to court to defend these calculations. Carl pointed out that this is not a no cost effort, but that it is not impossible to do in a relatively short time.

David asked if they could also look at what is running off not to a roadside ditch, but maybe to the adjacent wetlands. ODU actually did incorporate this into their data - one of the sites in their presentation was cropland adjacent to a marsh.

## **II. RDM PRACTICES PROPOSAL- SUBCOMMITTEE 1**

### **a. Option 1 – Stormwater Local Assistance Fund Subfund**

Melanie expressed confusion regarding the purpose of roadside ditch management under the proposal. She distinguished looking at RDM as a tool to address both water quality and other issues with respect to flooded and stagnant ditches, from a tool to generate credits. Melanie noted that if generating credits is still on the table that she is not sure state funds could be utilized. Shannon Varner pointed out that not every proposal has to accomplish all of our goals. Elizabeth said the main issue is that the Bay Program is looking at this practice already, so the Workgroup recommendations can state that “following Bay Program approval and determination of efficiencies, these funding options should be considered.”

Phil asked what the impact would be with respect to establishing a SLAF subfund. Phil asked if the Workgroup is making recommendations about how much money would go into the subfund, or if this Workgroup is leaving that up to the General Assembly. Phil agreed with Jeff’s point from a previous meeting that there is not enough funding as it is. Russ agreed with this as well. Russ said that the General Assembly would have to decide that some money would be moved into the subfund as they do now for WQIF appropriations. Phil also asked how the WQIF fiscal stress analysis would tie into this proposal, since 100% funding would be provided by the new subfund.

Peggy suggested adding the words “up to” before “100%.” Mike asked if the rest of the state gets 50%. Adrienne said the rest of the state is 50/50, unless the locality demonstrates fiscal stress. Russ pointed out that it varies between 30- 70% based on fiscal stress. Lewie said there is no legal mandate for localities to touch this water, so there is a need to provide a carrot, an incentive for them to participate. Mike stated that the fiscal stress indicator is meant to assist localities. Lewie pointed out that in many instances the fiscal stress indicator results in projects not being funded. Lewie used septic as an example, the locality itself may not be stressed but the

individual person is still poor, the jurisdictional stress level and the specific project do not always match; however, in this case, localities would be the recipients of the funds, not individuals. Mike said if the language provides for 100% funding, that is not fair to localities in other parts of the state that cannot use the subfund. Further, SLAF grant money cannot be used for private sector development in the current regulations. Shannon stated that he was not sure that that is what this approach is trying to accomplish. Elizabeth said that, with respect to the fairness argument, this entire effort is only focused on certain coastal localities, per the legislative mandate. Greg said part of the logic on this point was that the group is attempting to get the “biggest bang for our buck” in terms of reducing pollution loads. Phil said that he could not support a fiscal stress indicator with 100% funding. Phil asked why include the fiscal stress indicator if we are trying to identify projects with the greatest environmental impact?

Elizabeth asked the Workgroup to weigh in on the two potential changes before them: (1) Peggy’s suggestion to add the language “up to” before “100%,” and (2) Phil’s suggestion to delete the last sentence regarding fiscal stress. After a short discussion noting that the carrot for the localities is the 100% funding and clarification that the resulting report would discuss the charge of the Workgroup, the Workgroup agreed to delete the last sentence. Russ said, after looking at the code, if we’re recommending a 100% grant, it is irrelevant to have this language anyway. Melanie agreed. Melanie said that the context of why we are including this language is missing, and she asked that we clarify that this is an attempt by the state to find a funding source for load allocation (LA) reduction in non-regulated localities. Elizabeth pointed out that this would be in the background of the report, but Melanie suggested including this background information within the language of the proposal itself.

Lewie said that if we say “up to 100%” instead of just 100%, we are losing a big carrot for the localities. Lewie said this is a tradeoff, but that it is acceptable if that is the will of the Workgroup. Lewie suggested changing the language to “up to 100% with DEQ review,” so that localities would have the opportunity to negotiate for full funding. The group discussed that this is a voluntary program, and agreed to add “A locality may apply for up to” in front of “100%.”

Phil asked if RDM practices tend to be less costly than other BMPs. Melanie and Russ said it depends. Melanie said that ditch clean out is probably less expensive, but if it is with stream restoration it could be more expensive. Russ said this is very site-specific and depends on how much excavation is necessary, in addition to alterations to adjacent land, etc. Mike said on average it is significantly cheaper. Phil suggested including language to reflect this, along with the other background information in this paragraph. Phil pointed out that this language could be helpful to provide a basis as to why the Workgroup is recommending this approach. The group agreed, so Elizabeth added language to reflect Phil’s suggestion.

### **b. Option 2 – Water Quality Improvement Fund**

The Workgroup had no comments or questions on this proposed recommendation.

### **c. Option 3 – Environmental Impact / Natural Resources Bonds**

Greg said the background for this proposal is that we do not know yet what other funding sources are out there. The projects mentioned are workable examples of such programs that demonstrate there are other types of private funding out there. Phil suggested adding the

statement that the bonds have no impact on the state's debt capacity. The group agreed to this change.

Jeff asked if we would need to explain more about the example programs elsewhere in the report. Elizabeth said the report can include these examples in an appendix. Peggy said she could provide some documents and information on CBF's program. Adrienne suggested adding a sentence about inspiring private investment in order to differentiate this proposal from proposal 4, which is more about partnerships. Greg said proposal 3 is more about private sector investment and 4 is more about private sector partnerships for new development. Lewie pointed out that proposal 3 can drive proposal 4. Peggy noted that private funding would only be part of the funding, and that localities would also provide funding. Peggy said we do not want to create the impression that this is an exclusively privately funded set of projects; it should be clear that private sector funds are just one of several pots of money intended to assist localities

#### **d. Option 4 – Private Sector or State Agency Partnership with Rural Coastal Political Subdivisions**

Elizabeth noted that Subcommittee 1 had discussed changing "locality" to "political subdivision" for section a), but she asked them to clarify if "locality" in the middle of paragraph a) should be changed to political subdivision as well, because there are entities other than localities that could use those credits as well. Lewie suggested using language broader than just locality, and that political subdivision would fix that problem. The group agreed to make this change in the language.

Looking at subsection (a), Phil asked what is required to accomplish this and whether regulatory changes would be necessary. Shannon V. said that there is not currently a regulatory barrier; rather, the Workgroup is pointing out that the Workgroup supports it and wants to highlight this for the legislature. He suggested moving the sentence in the first paragraph re: potential issues down to the end of paragraph (a). Phil suggested clearly stating that no change in law or regulation is required in order to implement this proposal. The group agreed to both changes.

Looking at subsection b), Shannon V. suggested amending the language to clarify that localities can accept the participation of property owners. Phil asked if, under the variation to the proposal that concerns stormwater service charge zones, localities can currently have a different charge for different areas within their locality? Or, Phil asked, does it have to be uniform for different types of property? Phil pointed out that if they cannot do that now, given the potential for how different the charge would be based on where you are located, then should it be proposed? Tom suggested the creation of a special tax district, although this would be inherently discriminatory. Phil said that with transportation service districts, you need the consent of the majority of landowners to do that. Phil suggested not proposing a change in the law. Elizabeth pointed out that the law does not say it must be based on IC, just that it must have a rational basis, so it does not expressly answer his question. Phil said that if the proposal is not contemplating a change in the law based on these geographic areas, then that is acceptable. Phil expressed concern about the precedent of being able to charge a different stormwater fee based on location. Elizabeth pointed out that the Workgroup is unclear on whether the authority already exists to do this, so Shannon V. suggested that the Workgroup establish a service district instead. Tom said that if we want the authority to be clear, we need special legislation saying we can do a special

tax district for stormwater. Phil pointed out that the group would then have to look into the requirements for the service district because they are different depending on what the services are. Russ asked that we come back to this section later – he is unsure that we can carve out a separate district within a locality for a different fee, and that is not the way he reads the law. Elizabeth pointed out that there are two different interpretations of the code section being discussed, so perhaps instead someone could do research on service districts. Shannon V. agreed to do this research and check in with Tom about it. Phil said this could possibly be its own separate recommendation, too, apart from the current proposal.

Looking at subsection (c), Marcie said that the counties would probably have to be involved because VDOT currently has maintenance agreements with the locality, not with an HOA. Marcie suggested incorporating language somewhere about locality agreement or input. Tom said Marcie is right but it does not necessarily have to be in the recommendation – instead, it could be incorporated into VDOT’s guidance on these options. Elizabeth added language to reflect this. The Workgroup approved this subsection and these changes.

#### **e. Option 5 – Inclusion of RDM into Phase III Watershed Implementation**

##### **Plan**

Melanie said that she is not sure how Phase 3 WIP development will unfold, but during Phase 2 DEQ worked with localities to come up with laundry lists of things that could be done in non-regulated areas. Therefore, she would break this into two, so that RDM could be one of the options that a locality could consider in determining their voluntary actions under the Phase 3 WIP. But even if RDM is included in the Phase 3 WIP, Melanie said she is not sure if it would get Section 319 funds. Melanie noted that Section 319 funds are separated into two pots – one for program funding and one for project funding. The project funding pot is restricted to implementing activities in EPA-approved implementation plans, but nine key elements must be met and apparently our Phase 1 and 2 WIPs do not meet those elements. DEQ has not submitted the Phase 1 and 2 WIP activities to EPA for approval for funding under Section 319. Melanie does not know why DEQ has not yet done this. Melanie said there is no direct link to use Section 319 money to fund Phase 3 WIP projects.

Elizabeth asked if anyone has a sentence that they would like to include in lieu of what is currently in the proposed option 5. Melanie suggested doing a period and ending the sentence where there is a comma. Russ agreed, he said that it is irrelevant to link it to Section 319. Elizabeth suggested language instead saying “use of federal funds.” Russ agreed with this because he said there are a variety of federal funds available beyond just Section 319. Elizabeth removed the Section 319 language and changed it to “federal grant funds.”

#### **f. Option 6 – Inclusion of Agricultural Ditch Practices in Virginia**

##### **Agricultural Cost-Share BMP Manual**

Ann pointed out that the group needs to be clear on what the cost-share practice is, it may include agricultural ditches currently so if we are talking about something different from the roadside ditch practices we need to be clear. Russ had suggested adding the language “agricultural” in yesterday’s Subcommittee 1 meeting because some of the ditches may not be next to roads. Russ suggested just referring to it as “ditch management practices,” as we may not need to clarify that they are agricultural anyway. A representative of the HRPDC spoke up about

the Bay Program's review process and said that the term "agricultural ditches" would be acceptable, so Ann said to disregard her prior comment. Tom said right now you can put in a ditch and it is already considered a BMP; the option being proposed here is about doing more than just adding a ditch. Russ suggested the language "pollution reduction practices." KC Filippino provided background on two things going on with the Chesapeake Bay Program regarding ditches – first, there is an expert agricultural panel looking at agricultural ditches that was supposed to provide final recommendations in 2016 and second, there is an urban roadside management group (not an expert panel) whose scope does not include drainage from agricultural lands. KC clarified that in relation to the expert panel, the language "agricultural ditches for pollutant control" is sufficient. The group agreed to change the language of the option to reflect this, by adding "agricultural ditches with pollutant reduction practices."

### **g. Option 7 – Encourage Environmental Organizations or Localities to Undertake RDM Projects such as the Talbot County, Maryland Example**

Elizabeth noted that this is essentially a catch-all provision. Peggy pointed out that the last phrase in parentheses suggests that Bay TMDL is aimed at something other than better water quality and requested that "rather than by Bay TMDL compliance" be deleted. The Workgroup agreed (this was simply a semantics problem).

### **III. DISCUSSION OF RECOMMENDATIONS**

Elizabeth asked if the group wanted to consider the 6 options as written, – excluding the subsection b of option 4 for which further research regarding service districts will be done. Shannon V. asked that the title of the recommendations document omit the word "roadside," as the Workgroup discussed agricultural ditches as well. Elizabeth changed the title. Jeff said we should remove the part stating "if the Bay Program approves RDM practices," because he thinks it is highly likely they will be approved and the real issue is the establishment of efficiencies associated with the approved practices. The language was updated to say "once the Bay Program has established efficiencies" for RDM practices instead of "pending Bay Program approval." Jeff asked that this language be updated throughout the Subcommittee 1 recommendations.

There were no other comments or edits to the Subcommittee 1 recommendations. The Subcommittee 1 recommendations were approved, as revised, pending the homework on the subsection b in option 4, with no one opposed to the proposal.

### **SUBCOMMITTEE 2 PROPOSAL**

Mike Rolband presented regarding the tiered approach. First, he explained that the tiered approach stemmed from the concept that the rural coastal localities were already comfortable with using MS19, so the idea is to make it easy for localities with little development to keep doing what they have been doing, which is MS-19. Subcommittee 2 looked at stream quality versus impervious cover and somewhere between 5-10% of IC is where you start to see impact. Therefore, Tier A is defined as 0-5% IC and localities may use MS19 because, realistically, at this IC level there is not an impact on water quality. Tier B, for 5-7.5% IC, builds on Technical Bulletin 1 where MS19 is enhanced with a 1 year – 24 hour release requirement. This is very protective in low-density areas, but when you get to high-density areas it does not work as well. So Tier C, 7.5% IC and above, requires the use of the energy balance method. Generally, what

the tiered approach accomplishes is to make the calculations easy on the low end of the development spectrum and incorporate more protective calculations as the development increases.

Ann expressed concern that this might go statewide, as discussed in a previous meeting. Ann said that the localities that fall under the Workgroup's charge see only a few projects a year, so her suggestion was to further refine the language so that it would be clear that these recommendations are only for rural coastal localities that are seeing a certain rate of growth. Mike said he does not suggest using population growth since these localities are already so small as it is (and, thus, any population growth at all would appear significant), but maybe using percentage of impervious cover would work. Carl pointed out that the western part of the state may qualify under that metric. Shannon Alexander pointed out that we have already established the communities for which this recommendation applies. Lewie said that we cannot fix a problem of this complexity and also try to meet Ann's concerns about this possibly going statewide. Peggy asked if we could put in the introductory phrase a reference not just to localities that are members of the Rural Coastal Virginia Community Enhancement Authority, but also subject to the Chesapeake Bay Preservation Act. Therefore, by its terms, this would only apply to the localities under the Workgroup's charge. Ann said that this would adequately address her concerns. The group agreed, so Elizabeth added language to the introductory paragraph clarifying that the proposal applies only to localities that are subject to the provisions of the CBPA (in addition to being members of the RCVCE Authority). Elizabeth pointed out that this does not limit Del. Hodges' scope of authority to later expand membership of the RCVCE Authority. But to qualify for this, a locality would both have to be a member of the Authority and subject to the CBPA. Russ pointed out that we cannot stop the General Assembly from applying this statewide, but the Workgroup can make it clear that these recommendations apply only to these certain localities. Ann asked that the text of the report make clear the level of analysis that has been done with VIMS and ODU, so that if other parts of the state attempt to expand these recommendations, they also would have to perform this level of analysis.

Elizabeth pointed out that the proposal says the tiered approach is optional for localities, but if they do use it then they must follow the protocol laid out in the proposal. Elizabeth also explained that some members of Subcommittee 2 were concerned that the HUC 6 watershed might be too large. Mike said the 6<sup>th</sup> order watersheds are the smallest you can map digitally right now. Mike said there is no problem if localities want to carve out subsections of these watersheds in order to make even smaller watersheds. Further, if a locality adopts the tiered approach and exceeds the 7.5% IC, then that locality has to apply the energy balance method that is required by the current regulations. Therefore, growth is not limited in certain areas; it just automatically triggers a higher level of performance. Elizabeth then pointed out that if development occurs that bumps a watershed up to another tier, the locality must then update their maps to reflect this, per the proposal.

Elizabeth brought up David's concern from the Subcommittee 2 meeting regarding reverting to the energy balance in "areas of concern." Phil pointed out that this is essentially the second sentence in paragraph IIA that discusses denser development. Phil and Mike said that language added stating "or environmentally sensitive areas as determined by the locality" would address David's concern. Peggy said the Stormwater Management Act currently permits a locality to adopt more stringent standards, but doing so triggers a series of procedures to follow.



She stated that she is not sure David would want these additional procedural requirements to be triggered. Mike pointed out that the language as written will not trigger that. Peggy suggested adding language to make it clear that those additional procedural requirements do not apply if a locality opts to use the energy balance method in areas of concern. Mike pointed out that the Stormwater Management Act procedures Peggy referenced are for when a locality chooses to impose requirements that are more stringent than what the state law requires, whereas in relation to environmentally sensitive areas in the tiered approach, the locality would be applying the state's existing energy balance method required throughout the rest of the state, not something more stringent.

Peggy asked about part III of the proposal and the specific timeline it sets forth. She noted that, as she reads it, part IIB does not provide a timeframe for updating the map. Therefore, Peggy asked if we need to add a deadline into IIB. Lewie suggested it may be helpful to require localities adopting this approach to develop a tracking and updating system. Tom said that he is happy to update the maps more often than is currently required in the proposal. From the localities' perspective, since they are ultimately responsible for ensuring that they stay within the IC% of the tiers, they are going to keep updating the maps in real time since they do not want to get fined by DEQ. Mike suggested requiring updates at least annually. Phil agreed with this, saying the localities can update more frequently whenever they want. Elizabeth pointed out that, as the proposal is currently written, this would include ordinances, too. Shannon Alexander requested that the ordinances not be updated annually, but Elizabeth pointed out that the maps are a part of the ordinances, as per the first sentence of paragraph IIA. The group decided to delete "and ordinances" later in paragraph IIA, so that the only requirement is that the maps must be updated, not the ordinances. Tom said there is no value in having ordinance review each time. Since the ordinance language was removed, Mike suggested that paragraph III be deleted, however the group decided not to do so. Lewie pointed out that the language should also say "map and associated data tables." Eldon also said we should not include the language of "adopting" a map if they will not be a part of the ordinances.

Allyson Monsour pointed out that this seems like a lot of complicated work for a few small projects. Elizabeth asked for suggestions to streamline this approach. Tom said that if the Workgroup opts for a more streamlined approach of using VGIN as a baseline and updating that every "x" number of years, that localities need to know how DEQ will respond if the locality crosses a Tier threshold during that window of time. Carl said the only problem is that VGIN updates are not guaranteed. Tom asked if there is a way to meet in the middle, i.e., VGIN updates until 4 or 5% IC, and then the localities have to track and update on their own. This is a safeguard, Tom pointed out, because for the most part these localities would not get to 4-5% anyway. Melanie asked if localities that do not opt for this approach must use energy balance; Mike said yes it will be energy balance or the separate Workgroup recommendation regarding the stamp of a professional engineer. Allyson and Lewie suggested that localities rely on VGIN, and then if VGIN does not update within 3 years, the locality would be responsible for tracking and updating. Ann said she does not have the confidence that the maps will be updated as frequently we want them to be, and she is more comfortable with the language as written currently in the proposal. Tom and Peggy also asked to leave the language as it is. Lewie also suggested including "maps and supporting datasets" because the data is the most important part of the maps. Elizabeth asked if there was any confusion between the update annually and tracking language. Shannon A. suggested we keep the language to update the map annually, but

that the tracking could be done more often than annually – the group agreed to “at least annually”. Melanie and Fred said they are fine with a one-year window. Mike noted that there would not be full percentage point jumps within the annual window. The group agreed to change the wording to “as reflected in its annually updated map.” Ann asked that for the title of paragraph I the group add “for land disturbing activities of 2,500 square feet up to one acre.” The Workgroup agreed. Elizabeth asked if the Workgroup could support the proposal from Subcommittee 2, as revised. Everyone said yes, and no one voiced any concerns.

## **MISCELLANEOUS PROPOSALS**

Greg said the healthy watersheds report is not finalized yet. Elizabeth asked if in the report the group wants to reference the report and state that the group has considered it, but that it is not finalized. Shannon V. suggested that the report not reference it at all and the Workgroup agreed.

Elizabeth asked Peggy if she still wanted to advance her proposal on getting a budget amendment or Appropriation Act provision to allocate funding for DEQ administering the current stormwater management program for land disturbing activities of 2,500 sq. ft. up to an acre in these rural Tidewater localities. Peggy said Russ had told her this would never work in the General Assembly. Peggy said that the work that the Workgroup has done overall is sufficient and does not require the same level of resource use that prompted her to suggest this proposal. Therefore, Peggy was happy to take that proposal off the table.

Elizabeth asked Andrew Clark if he wished to discuss Mike Toalson’s proposal to raise the regulatory threshold to 1 acre statewide. Andrew said that the Workgroup can abandon this proposal because what the Workgroup has already decided to recommend is entirely sufficient.

The Workgroup then reviewed the final language for Tom’s proposal that the Workgroup had already adopted at its last meeting. Elizabeth explained that Tom’s previous proposal was to allow for professional engineer approval in lieu of locality review of stormwater management plans. Elizabeth asked if Tom’s proposal would apply only to rural coastal localities and only to projects under one acre. Mike said that we should simply reference the same subset of communities as is referenced in the other Workgroup recommendations. Melanie said that if professional engineer approval works for certain localities it can work everywhere. Tom agreed that this should apply to the same localities as were designated in the other recommendations already approved by the Workgroup. Melanie suggested adding language that includes some justification as to why this proposal should apply only to some localities rather than across the board. Mike asked if the language could say “sealed” instead of “stamped,” because that is how engineers refer to this. Shannon A. asked if this proposal applies to both localities that have opted in and opted out of operating a VSMP. Language was added to allow opt out localities to follow this approach as well. Melanie suggested changing the language in the title to say “sealed/stamped/certified” to track language used in other similar legislation. Allyson asked that it say “plans and calculations,” as well. Tom suggested pulling the language from the tiered approach re: applicability to localities, and add “supporting calculations” in addition to plans being required from engineers. Allyson also suggested adding that the plans and supporting calculations be stamped/sealed/certified. The group ultimately decided to not include certification, and to just state that the plans must be stamped/sealed instead.

Phil said that the first three lines of the proposal are very confusing. He said he only thought we were talking about opt out localities anyway. Tom said that some rural localities have opted in, such as Gloucester. Phil then said that we can leave it as is. Elizabeth said the report would provide additional clarification on this point, as well.

The Workgroup then turned to David's agreement in lieu of a plan (ALP) proposal. David said the problem is not with the ALP approach; rather, it is the template agreement used by DEQ. David showed the group a Caroline County site-specific plan, and said that he thinks the same can be done for stormwater. David did some sample pollutant load calculations; he analyzed data for sites ranging from 2,500 square feet to 10,000 square feet. At 2,500 square feet and 100% IC, David said the phosphorous load is 0.12 for D soils (however, for his calculations it does not matter what soil type is used because he assumed 100% IC). David said the small projects have relatively small pollutant loads. David said that now is the time to get the authorizing legislation that would allow localities to use an agreement in lieu of a stormwater plan, but only for the smallest of sites (those in the "donut hole"). David said that the Workgroup could create an ALP that is better than the current residential template. Elizabeth said that since we are already so far into the process the Workgroup could include a statement in the report supporting further research of the ALP approach for these small commercial sites. Melanie pointed out that the research Allyson did showed that the current ALP for residential projects is deficient. David said that the localities should get to decide the terms of the ALP themselves, just like the agreement in lieu of erosion control plans. Melanie pointed out that single family homes still have to have an ALP because they are under the construction general permit. Fred said currently, ALP can only be used for residences under a stormwater ALP. Elizabeth asked for the will of the Workgroup. Phil said this is way too complicated and that the Workgroup needs to complete its tasks within a certain timeframe. The Workgroup agreed to keep this proposal alive by including a statement in the recommendation supporting further research.

After asking for public comment and receiving none, Elizabeth adjourned the meeting at 1:08pm.