

**Chesapeake Bay Local Assistance Board
Policy Committee
June 15, 2009
The State Capitol, Richmond, Virginia**

Policy Committee Members Present

William E. Duncanson, Policy Committee Chair
Donald W. Davis, Board Chair
Gregory C. Evans
Beverly D. Harper

Policy Committee Members Not Present

John J. Zeugner

Additional Board Members Present

Barry L. Marten
Rebecca Reed

DCR Staff Present

Joseph H. Maroon, Director
Joan Salvati, Director, Division of Chesapeake Bay Local Assistance
David Sacks, Assistant Director, Division of Chesapeake Bay Local Assistance
Shawn Smith, Principal Environmental Planner
Daniel Moore, Senior Environmental Planner
Nathan Hughes, Watershed Specialist
Michael R. Fletcher, Board and Constituent Services Liaison
Ryan J. Brown, Assistant Director of Policy and Planning
Adrienne Kotula, Principal Environmental Planner
David C. Dowling, Director of Policy Planning and Budget
Alice Baird, Senior Environmental Specialist
Elizabeth Andrews, Office of the Attorney General
Pam Denholm, Office of the Attorney General

Others Present

Barrett Hardiman, Homebuilders Association of Virginia

Call to Order

Mr. Duncanson called the meeting to order. A quorum was declared present.

Discussion of Policy Items

Mr. Duncanson turned to Ms. Salvati to present the policy discussion items. She noted that there were two items on the work program. The first was the Phase III approach.

Phase III Approach

Mr. Sacks gave an overview of the Phase III approach. He said that staff had been working for a little over 18 months to develop the approach. He said that he wanted to present a revised approach to what was previously presented and that staff would be asking the Board to take action on that approach.

Mr. Sacks noted there was a staff report included in the package mailed to the Committee that describes the newly recommended approach. A copy of that document is available from DCR upon request.

Mr. Sacks addressed the following:

Phases of Local Government Chesapeake Bay Program Implementation

Phase III Terminology

- **Phase I:** Mapping of Chesapeake Bay Preservation Areas and adoption of management program in local ordinances
- **Phase II:** Adoption of Comprehensive Plan components
- **Phase III:** Review and revision of local codes for inclusion of specific standards that implement water quality performance criteria

Phase III Legal Authority

Chesapeake Bay Preservation Area Designation and Management Regulations

9 VAC 10-20-231.3:

“Phase III shall consist of **local governments reviewing and revising their land development regulations and processes**, which include but are not limited to zoning ordinances, subdivision ordinances, erosion and sediment control ordinances and the plan of development review process, as necessary to comply with § 10.1-2109 of the Act and to be consistent with the provisions set forth in Part VI of this chapter.”

Phase III Requirements

Requirements apply to Chesapeake Bay Preservation Areas

- Six required provisions applicable to approved plats and plans must exist in local land development ordinances
(9 VAC 10-20-191 A 4 & 5)
- Specific development standards (as determined by the locality) to address three general performance criteria must exist in local land development ordinances
(9 VAC 10-20-191 A 2)
- Localities must evaluate relationships between their requirements to identify “obstacles to achieving the water quality goals of the Act” and identify and resolve any conflicts among program components
(9 VAC 10-20-191 B 1 & 2)

Previous Phase III Program Approach

- Require six plan and plat requirements to be in ordinances
- Review of locality land development ordinances and processes using a Board approved checklist of possible development standards
- Phase III Consistency based on achieving a minimum score on the checklist
- Local ordinance amendments would be required as needed to achieve required minimum score on the checklist

Revised Phase III Program Approach

1. Local Ordinance Reviews
 - Require six plan and plat requirements to be in ordinances
 - Advisory review of local development ordinances and processes using a Board approved checklist
2. Incorporate a review of the implementation of Phase III components into locality compliance evaluations

Revised Phase III Local Review Approach

- Over an 18 month period, DCR staff will undertake advisory reviews of all locality ordinances using plan and plat checklist and general performance criteria checklist
- Localities will be encouraged to include plan and plat requirements as needed and encouraged to add ordinance provisions to assist in implementing general performance criteria
- Staff will provide assistance in adding ordinance provisions
- Formal Board review of Phase III ordinance requirements will be incorporated into the compliance evaluations and will include an enhanced review of performance criteria implementation

Mr. Davis asked if plat and plan could be defined before moving further.

Mr. Sacks said that typically plats relate to subdivisions and are recorded. He said that staff had noted the need to clearly define the terms.

Ms. Salvati said that plats were not limited to residential properties.

Mr. Davis asked about plats done for the closing of a loan.

Mr. Sacks said there were issues of concern in that there are a variety of circumstances that may dictate the need for a plat approval, and concern had been expressed that certain loan closings and refinancings require that a new plat be created.

Mr. Evans said that he understood that staff wanted to change the approach, but was unclear as to why. He said after 18 months of work staff was now looking at a shift from a compliance oriented approach back to more of an advisory approach. He asked if staff had taken this issue back to the stakeholders.

Ms. Salvati said that the change was as a result of further internal conversations regarding DCR's ability to enforce some of the provisions. She said that the advisory component Mr. Sacks was addressing is only the initial piece. She said when staff proceeds with the second round of compliance evaluation, staff will be looking specifically at development plans approved by localities to determine if the development complies with the Phase III requirements.

Mr. Evans asked if this would be a surprise to the stakeholders.

Mr. Sacks said that discussions had been held with about a third of the stakeholders. He said that some had concerns regarding the use of the checklist. Discussions have been held with stakeholders representing local governments from three planning districts.

Ms. Salvati said that the change also reflected feedback from some of the stakeholders.

Mr. Evans asked that if DCR and the Board had the authority to make the change.

Mr. Sacks said that the stakeholders like the checklist but were concerned about the minimum threshold and having that used by the Board to determine consistency with Phase III.

Mr. Sacks continued with the presentation:

1. Local Ordinance Reviews

- **Plan and Plat Requirements**

Local ordinances must require approved plats and plans to have the following:

1. a depiction of RPA and RMA boundaries
2. a notation for the requirement to retain an undisturbed and vegetated 100-foot wide buffer area
3. a notation regarding the requirement for pump-out for on-site sewage treatment systems
4. a notation regarding the requirement for 100% reserve drainfield
5. a notation that development in the RPA is limited to water dependent facilities or redevelopment
6. a delineation of the buildable areas on each lot

- **Advisory Review of Development Ordinances Using Approved Checklist**

Review local land development ordinances for “specific development standards” that implement three general performance criteria in the Regulations

General Performance Criteria checklist includes 3 parts:

Part 1 – minimize land disturbance (9 VAC 10-20-120 1)

Part 2 - preserve existing vegetation (9 VAC 10-20-120 2)

Part 3 – minimize impervious cover (9 VAC 10-20-120 5)

Includes an opportunity to look for other development standards that achieve water quality protection

Code and Ordinance Review Process

- Department staff will review ordinances from all 84 localities
- Review will identify:
 - The extent to which the plan and plat requirements exist in local ordinances
 - The extent to which the local ordinances contain specific provisions to enable implementation of the three general performance criteria
 - Potential conflicts among local requirements
- Department staff will provide technical assistance to facilitate adoption of ordinance provisions

2. Compliance Evaluations

Compliance evaluations review the implementation of the locality’s Bay Act program

Local implementation of the Phase III program requirements will be reviewed through the Compliance Evaluation
Compliance evaluations will include:

- a formal review of ordinances for plan and plat requirements
- a review of approved development plans and files to assess implementation of the three general performance criteria and local code provisions

Where the combination of ordinances and approved plans do not address the plan and plat requirements and the three general performance criteria, conditions may be imposed by the Board

Ms. Salvati said that this may actually work out better than the previous approach. She said that the previous approach was ordinance-based. She said this is a shift from looking for specific wording in local code to looking at locality development plans. She said that this provides flexibility for a locality that does not have specific code provisions, but has specific requirements in a manual, a check list or other formal policies and procedures that ensure the three general performance criteria are implemented.

Mr. Evans asked if there would be a baseline standard for the three criteria.

Mr. Sacks explained that staff intends to develop guidelines for use in reviewing approved development plans to help evaluate the extent to which the criteria are being met. For example, staff in reviewing development plans would need to make a determination if impervious cover had been minimized based on existing ordinances and other requirements available in the locality. .

He said that staff would look for something in the ordinance tool or for specific guidelines provided by the locality.

Mr. Evans noted that there was less emphasis on Low Impact Development (LID).

Mr. Sacks said that part of the discussion was the difficulty in mandating a single specific requirement. He said that LID was not specifically required in the regulations.

Mr. Davis said that the stormwater regulations would be addressing this. He said that some things will continue to need to be worked out. He said that what is minimizing impervious cover in one locality may maximize it in another. He said that this could potentially be addressed in the new stormwater law and manual.

Mr. Sacks continued with the presentation.

Compliance Evaluations Schedule

As of June 2009, 83 of 84 localities have completed an initial compliance evaluation

- Compliance Evaluations are conducted for a locality every five years
- First locality to be reviewed for the second time will be the Town of Cape Charles – compliance anniversary is December 2009 – nine others to follow in next 12 months
- Compliance Evaluation program elements will be reviewed in summer and fall of 2009
- Anticipate Board review and approval by December 2009

Phase III Consistency

A Board finding of Phase III Consistency will be determined by:

1. Existence of required plan and plat provisions in the local ordinances
2. Demonstrated ability to implement the three general performance criteria as determined by a compliance evaluation plan review
3. Implementation of the three general performance criteria must be based at least in-part on specific ordinance provisions or written administrative processes

Phase III Implementation Schedule

June 15, 2009:	CBLAB authorization to proceed
July 15, 2009:	Formal notification to localities of Phase III program structure and requirements
Aug. – Oct. 2009: August 2009-	Discussions and information sessions with locality staff
January 2011:	Advisory review of ordinances for all 84 localities
December 2009:	CBLAB approval of revised compliance evaluation program
March 2010:	First compliance evaluation under revised process (Town of Cape Charles)
Ongoing:	Local government outreach and technical assistance

Mr. Sacks said that the Department was asking the Board to take action to authorize the Department of Conservation and Recreation to proceed with the Phase III approach as described and outlined in the staff report and to use the two Checklists as tools for advisory reviews of local ordinances

Mr. Davis asked if other agencies, including VDOT, had been involved in the revised approach.

Mr. Sacks said that DCR had developed an advisory committee that included representation from local governments in each of the PDCs. This was the group that initially suggested the concept of using the checklist and reviewing the ordinances. In addition staff met with nearly all of the 84 localities that have staff.

Mr. Sacks said that staff did receive a lot of feedback. He said that urban counties were concerned and felt that their ordinances covered requirements through the rezoning and the proffer process.

Mr. Sacks said staff also met with the Home Builders Association of Virginia, the Center for Watershed Protection, Virginia Association of Counties, the James River Association and others.

Mr. Davis said that VDOT had new standards going into effect on July 1st. He said that many more miles of roadway would increase impervious cover.

Ms. Salvati said that staff participated in several of VDOT's advisory committee meeting and provided feedback. She said DCR indicated some level of concern about the increases in impervious cover. There were some amendments to their regulations that lessened the impact of these requirements. She said, as an example, that VDOT was initially requiring sidewalks on both sides of the street. That was later changed to allow for alternative sidewalk surfaces on one side of the street. She said that they also made it clear that in areas where there were impediments to connectivity such as resource protection areas, some of the criteria would be waived. VDOT did make amendments based on comments from DCR and the development community.

Mr. Davis said that current subdivision standards require a minimum amount of paved area unless the locality has a more stringent standard.

Mr. Sacks said that many of the localities had addressed this. He said that localities were concerned that DCR would hold them accountable for following a VDOT requirement. He said that DCR is trying to work with VDOT, and cited a sample question in the checklist that asks if the locality requires more pavement than outlined by VDOT.

Mr. Davis said that at the December meeting concerns had been addressed to Ms. Andrews regarding legal opinions.

Mr. Maroon said that internal reviews had included the Attorney General's office. He said that DCR and the OAG looked closely at the authority issues and what could be done in an advisory capacity.

Mr. Maroon said that the point regarding VDOT was well taken and suggested that a representative from VDOT be asked to come to the next policy committee meeting.

Ms. Salvati said that staff was quite specific in asking how this would result in a reduction of impervious cover.

Mr. Evans said that he was concerned about the continued reliance on internal discussions. He said that VDOT may be exercising its mission but appeared to be oblivious to the impact. He said that the problem on relying on internal discussions was that the process ended up with inconsistencies.

Mr. Duncanson asked if in the years in dealing with VDOT Mr. Maroon had seen a shift in approach.

Mr. Maroon said that DCR has first struggled with the need to be guided by the statute and regulations. He said that he did think the new Chesapeake Bay Milestone approach that will be taking place will drive some additional reconsideration. However, he said that the collective agencies still must operate under the authority that they have. Mr. Maroon said that the involvement of the Attorney General's office had been invaluable.

Mr. Davis said that he would prefer to invite a VDOT representative to the full Board meeting to ensure that there was sufficient time.

Ms. Salvati said that she wanted to make it clear that moving Phase III to this revised approach was not in any way loosening the commitment in terms of the implementation of Phase III.

Mr. Davis said that it appeared that the revised approach was superior to what was presented previously. He said it more clearly addressed the section of the Code that are necessary and that it gives a good snapshot of what localities must look at.

Mr. Davis asked if the approach was approved, what is the Department's deadline for notifying the localities.

Mr. Sacks said that the target date was July 15, 2009.

Mr. Davis said that he still had concerns with the plans of development and noted that plans could take many forms. He said that the terms need to be clearly defined.

Mr. Evans asked for clarification on Section 2b regarding vegetation and tree protection requirements if trees were considered as indigenous vegetation.

Mr. Sacks said that the term indigenous was different than existing.

Ms. Smith noted that some localities include a specific tree protection standard.

Mr. Evans asked on Section 3b. if low impact development included better site design standards?

Ms. Smith said that while it may not be specifically listed, the other standards were a fairly broad category. She said that staff acknowledged that there may be individual localities that have specific ordinances staff had not considered.

Mr. Sacks said that the intent was not for this to be an all-inclusive list. He said that a question could be added regarding whether the locality promoted LID.

Mr. Davis asked how many localities currently had LID in their ordinances.

Ms. Harper said that the problem was that LID does not pay for itself.

Ms. Salvati said that DCR did not know the actual number of localities that address LID. She said that at least one does require that LID be evaluated. She noted that other localities have started to allow for certain LID practices.

Mr. Davis asked if there were additional questions regarding the draft.

Under Section 1B, 9, Ms. Harper said that rather than saying the RPA should remain undisturbed, that the language should say "healthy RPA". She said that undisturbed is not necessarily healthy.

Ms. Harper asked how the permanent marking of RPA boundaries protected sensitive lands.

Ms. Salvati said that many localities require this and have found it helpful in preventing unauthorized encroachments into RPAs. She said that it is more of a problem in subdivisions than on commercial sites.

Ms. Harper said that there was more of a need for education than for signage.

Mr. Duncanson commended staff for this revised approach and called for committee action.

MOTION: Mr. Davis moved that the Policy Committee recommend that the Chesapeake Bay Local Assistance Board authorize the Department of Conservation and Recreation to proceed with the Phase III approach as described and outlined in the staff report, and amended by committee discussions, and to use the two Checklists as tools for advisory reviews of local ordinances

SECOND: Mr. Evans

DISCUSSION: None

VOTE: Motion carried unanimously

At this time the committee recessed for lunch.

Following lunch, Ms. Smith gave a presentation regarding recommended guidance document updates.

Guidance Document Amendments

- Ms. Smith provided the following summary of proposed revisions to several of the Board adopted guidance documents.
- Currently there are 11 Board adopted documents, with most adopted in 2002, and with most having little review since adoption
- Four guidance documents need minor formatting revisions, but no substantive changes:
 - RPAs: Permitted Development Activities
 - RPAs: Buffer Area Encroachments
 - RPAs: Onsite Buffer Area Delineation
 - Exceptions
- *RPAs: Permitted Development Activities*
 - On pages 1, 2 and 5, spaces were added and periods deleted in 7 regulatory citations. Example: 9VAC10-20-130.1.a was revised to 9 VAC 10-20-130 1 a
 - On page 4 and 5, the citation for the Stormwater Regulations was updated from 4 VAC 3-20010 to 4 VAC 50-60.
- *RPAs: Buffer Area Encroachments*
 - On pages 1 and 2, spaces were added and periods deleted in 5 regulatory citations. Example: 9VAC10-20-80.B.5 was revised to 9 VAC 10-20-80 B 5.
 - On page 2, all but the first sentence in the last paragraph on this page was updated from “information from 1996” to “information from 2002.” The updated information relates to riparian buffers and the Chesapeake Bay Program initiatives.
- *RPAs: Buffer Area Encroachments – Page 2 existing*

“In 1996 the Riparian Forested Buffer Initiative was adopted by the signatories of the Chesapeake Bay Agreement with the goal of restoring 2010 miles of riparian-forested buffers in the signatory states by the year 2010. In the time since that initiative began, Virginia has agreed to partner with the USDA to implement the Conservation Reserve Enhancement Program (CREP). This program seeks to provide financial assistance to farmers for the purpose of setting aside additional land area

for vegetated buffers. CREP and the Riparian Forest Buffer Initiative, are just two large-scale programs designed to promote and increase the amount of vegetated buffers for water quality improvement. In conjunction with these programs, the Bay Act program seeks to preserve existing vegetated buffers for water quality protection.”

- *RPA: Buffer Area Encroachments – Page 2 proposed*

“In 2002, signatories of the Chesapeake Bay Agreement met the goal of 2010 miles of restored riparian buffers by 2010, set forth in the 1996 Riparian Forested Buffer Initiative, eight years ahead of schedule primarily by partnering with the USDA to implement the Conservation Reserve Enhancement Program (CREP). In 2002 the goal was extended to 10,000 miles of additional buffers by 2010. To achieve the 2007 Chesapeake Bay Program’s Forest Land Protection Goal of 695,000 by 2020, the Virginia Department of Forestry developed a Forest Conservation Plan identifying strategies that will result in permanent protection of 135,000 forested acres within Virginia’s Bay watershed by 2012 and 315,000 acres by 2020.”

- *RPA: Onsite Buffer Area Delineation*
 - On pages 1 and 3, spaces were added and periods deleted in 4 regulatory citations. Example: 9VAC10-20-80.B.5 was revised to 9 VAC 10-20-80 B 5.

 - On page 1 under Purpose, the last sentence in the second paragraph was revised to delete references to nonexistent guidance documents and to reference the nontidal wetlands guidance document.

- *RPA: Onsite Buffer Area Delineation – Page 1 existing*

“For guidance on how to determine the onsite limits of RPA nontidal wetlands, tidal wetlands, and tidal shores, see *Onsite Delineation of Tidal Wetlands*; *Onsite Delineation of Nontidal Wetlands*; and *Onsite Delineation of Tidal Shores*.”

- *RPA: Onsite Buffer Area Delineation – Page 1 proposed*

“For guidance on how to determine the onsite limits of RPA nontidal wetlands see *Resource Protection Areas: Nontidal Wetlands*.”

- *Exceptions*
 - On pages 1, 2, 4 and 5, spaces were added and periods deleted in 8 regulatory citations. Example: 9 VAC 10-20-130.1.a was revised to 9 VAC 10-20-130 1 a.

 - On page 4 deleted the following sentence: “*For those localities that used administrative processes prior to March 2002, they must change their*

processes to meet the requirements of 9 VAC 10-20-150 C 2 by March 1, 2003.” This sentence is no longer necessary as all 84 localities have adopted proper review processes.

- *Exceptions*
 - On page 4, the last paragraph was revised as follows: “For those localities that incorporate the Regulations into their local Zoning Ordinances, Chesapeake Bay *preservation provision* Preservation Act program exceptions may be considered ...”
 - On page 4 the following sentence was revised: “*Several localities use their planning commission which considers the exception request as part of the plan of development review process.*” This sentence now reads: “Localities may also use a special board or the planning commission to consider the exception request as part of the plan of development review process.”
- *Exceptions*
 - On page 5, revised CBLAD to DCBLA in 2 instances
 - On pages 4 and 5, added several subheadings to provide better organization of the information. Subheadings are: Process for Reviewing Exceptions; Local Exception Review Body Options; and, Exception Tracking.
 - On page 5, revised paragraph relating to appeals of exception requests for clarification and to include information related to the 2008 Bay Act revision. Last sentence which read “The CBLAD staff is available to help localities examine this matter and arrive at the best solution for them” was deleted as all 84 local governments have adopted an exception process which has been reviewed by the Board.
- *Exceptions*
 - On page 5, the following sentence was revised: “*The decision as to how to best accommodate the review, action, and appeal of exceptions is truly dependent upon the circumstances of each locality.*” This sentence now reads: “The decision...circumstances of each locality, however, a 2008 revision to the Act requires a minimum 30 day period for an appeal when the appeal process is codified in a local ordinance.”

Mr. Sacks said that the staff was asking the Policy Committee to recommend that the Board accept the changes as presented.

Mr. Davis noted that this was mostly a housekeeping process.

MOTION: Mr. Evans moved that the Policy Committee recommend that the Chesapeake Bay Local Assistance Board adopt revisions to the four guidance documents as presented.

SECOND: Mr. Davis

DISCUSSION: None

VOTE: Motion carried unanimously

Mr. Duncanson said that with the concurrence of Mr. Davis, the update items would be moved to the end of the Board agenda.

Public Comment

There was no public comment.

Set Next Meeting Date

The next meeting of the Policy Committee will be Tuesday, August 4th at the Division offices. The time will be announced at later date.

Adjourn

There was no further business and Mr. Davis moved to adjourn. Ms. Harper seconded and the meeting was adjourned.

Respectfully submitted,

William E. Duncanson
Chair

Joseph H. Maroon
Director