

## House Bill 1774 Stormwater September 6, 2017 Subcommittee 2 Meeting

### Minutes

The House Bill 1774 Stormwater Workgroup Subcommittee 2 met at 3:30pm on September 6<sup>th</sup>, 2017 at the Chesapeake Bay Foundation office in Richmond to review and consider alternative methods of managing stormwater in rural localities pursuant to HB 1774. Present at the meeting were Subcommittee 2 members Melanie Davenport (DEQ), Ann Jennings (Chesapeake Bay Commission), Peggy Sanner (CBF), Patrick Fanning (Troutman Sanders), Scott Crafton (VDOT), Sandy Williams (ATCS), Tom Swartzwelder (King and Queen County), David Nunnally (Caroline County), Phil Abraham (Vectre/VACRE), and Andrew Clark (Home Builders Assoc. of Va.).

Also in attendance were Brandon Bull (DEQ), Jaime Bauer (DEQ), Xixi Wang (ODU), Mujde Erten-Unal (ODU), Doug Moseley (GKY and Associates), Mike Rolband (Wetlands Solutions), Carl Hershner (VIMS), Kristin McCarthy (VCPC), Angela King (VCPC), and Amber Leasure-Earnhardt (VCPC). Attending by telephone was Shannon Alexander, ANPDC. The meeting was facilitated by Elizabeth Andrews (Va. Coastal Policy Center) and minutes were taken by Jamie Huffman (VCPC).

The subcommittee 2 minutes from the Aug. 1, 2017 meeting were approved without comment.

### **PRESENTATION ON TIERED APPROACH IN RURAL LOCALITIES AND DISCHARGES DIRECTLY TO TIDAL WATERS**

Mike Rolband and Scott Crafton presented a strawman that detailed their research on the tiered approach for stormwater quantity control requirements. Mike stated that after establishing tiers, the next step is to establish maps for the application of the tiered requirements. These maps would be incorporated into comprehensive plans that would combine the existing Impervious Cover percentage (IC%) with local knowledge to determine where the three tiers apply. The strawman accounted for situations in which localities have yet to incorporate the map into their comprehensive plans, or the event that an approved construction project exceeds the watershed IC% as set out in the comprehensive plan. The IC% maps would then be brought up to date with each five-year update to the comprehensive plans, with some exceptions as detailed in the strawman. Mike also presented a proposed definition for tidal waters; in developing it, he and Scott took into consideration a document by Brandon Bull already circulated to the subcommittee.

The strawman also included an exemption from stormwater quantity requirements for stormwater discharges from a site directly to tidal waters. Carl suggested that the subcommittee consider removing tidal waters from the equation for the sake of simplicity; essentially this suggested exemption would be eliminated from the proposal. Carl stated that including wetlands would simply create more regulatory problems than it would solve. David Nunnally stated that there must still be a stable outlet and outlet protection, regardless of whether the discharge is to tidal waters. Tom asked whether and Mike confirmed that MS19 produces the same outcome as the proposed exemption. Elizabeth confirmed with the group that they wanted the proposed exemption removed as an option; the language of the strawman was updated such that it was

removed. The other exemption listed in the strawman already exists in the stormwater management regulations, so it was also removed from the language of the strawman in order to avoid further confusion. Elizabeth suggested that a note be put into the report that this exemption already exists. Jaime noted that it is important to clarify if this is an exemption or exception, because legally this may make a difference with regard to the regulations; she will verify and let the group know.

Mike then discussed outfall analysis under the strawman. Mike stated that this section provides some flexibility to localities in exceptional circumstances. Peggy asked if local authorities would have the technical know how to be able to determine that they have satisfied the outfall analysis under Section V. Peggy recommended that this Section be deleted. Tom stated that his locality does not, as of now, have the technical knowledge to conduct this analysis, but that this could be done individually by engineers at specific sites. Mike confirmed that if this section is deleted, this means that if a locality is over 10% IC, they must default to energy balance, without exception. Ultimately, Section V was deleted for the sake of simplicity and ease of interpreting the regulations. The strawman now incorporates 3 tiers with 3 different levels of quantity control, hinging on IC% in a watershed.

Ann Jennings asked about the definition to be used for “impervious cover.” Mike stated that site plans would provide the definition of IC%, but Ann also pointed out that these often vary, and there are different definitions used by various programs. Elizabeth asked Carl to research the best definition of IC for the Workgroup to use. Tom suggested that they use the definition of IC from the Chesapeake Bay Preservation Act regulations and allow DEQ to continue to interpret it in new ways as technology develops. Melanie pointed out that the stormwater regulations have a different definition. The group decided to recommend that the stormwater regulations’ definition of IC be amended to reflect the CBPA regulations’ definition.

Peggy pointed out the importance of including in the final report the fact that the 10% number may be too high to use in flatter, non-coastal parts of Virginia. Tom suggested that it could be included in the introduction, perhaps, to the final report that the proposal applies only to a specific part of Virginia. Tom suggested that it could be possible to expand the proposal to other parts of the state if they prove that they could meet certain requirements. Phil proposed a limit on population size or to apply it to planning districts. Elizabeth pointed out that HB1774’s focus is limited to Tidewater Virginia, however. Tom stated that the intention behind the bill was not to refer to all of Tidewater Virginia, but to the Northern Neck, Middle Peninsula, and Eastern Shore; Peggy suggested the proposal could simply apply to just those areas. Tom pointed out that it is problematic to base this upon PDCs, because localities can be members of more than one PDC. The group circled back to Phil’s suggestion of tying the proposal to population. Tom pointed out that there is a definition that is already in the Code that they could perhaps incorporate, instead, established by Chapter 388 of the 2017 Acts of Assembly. Citation to the locality membership set forth in that chapter would obviate the need to tie the proposal to Tidewater localities of a certain population.

Tom expressed concern over tabling the issue of 7.5 or 10% IC as a threshold between tiers, and also creating a different definition of IC. The strawman was changed such that the 10% IC was modified to 7.5% IC in terms of the tiered approach. Phil stated that this would knock out the ability of Gloucester to be covered under the proposal if we drop down to 7.5%. Phil stated

that the proposal is fine, however, if the more rural part of Gloucester is still able to benefit under the proposal.

Elizabeth presented Shannon Alexander's data on Eastern Shore commercial land disturbance of less than an acre from 2012-2016, and Lewie Lawrence's data for the Middle Peninsula from the same period. The data demonstrated that there were very few such projects in each locality

Phil stated that requiring localities to incorporate a map into their comprehensive plans pursuant to section II of the strawman is somewhat complex and that they should be able to simply adopt a map. Tom and Mike stated that the concern with this is that localities would never go back to look at their maps. Peggy stated that comprehensive plans are live documents and change on a predictable schedule but they are not enforceable. Tom suggested maybe tying this to something other than a comprehensive plan, such as an ordinance, to make this requirement mandatory.

Elizabeth stated that the subcommittee will probably need to have another meeting in September in order to be able to discuss everything still assigned to them before the next full Workgroup meeting. Elizabeth also presented the data from Allyson Monsour concerning potential expansion of the Agreement in Lieu of a Plan approach. The subcommittee agreed it would not pursue the proposal to revert back to the former CBPA stormwater water quality requirements instead of today's water quality regulations in the stormwater management regulations. VCPC will send out a doodle poll for another meeting in September before the full Workgroup meeting, to cover the potential expansion in use of the Agreement in Lieu of a Plan and David Nunnally's and Sarah Carter's proposed tiered approach to water quantity regulation based on the type of development project.

Elizabeth asked for public comment. Hearing none, the meeting was adjourned at 5:15p.m.