

**Chesapeake Bay Local Assistance Board Policy Committee**

**August 12, 2008**

**Richmond, Virginia**

**Policy Committee Members Present**

William E. Duncanson, Chair  
Gregory C. Evans  
John J. Zeugner

Donald W. Davis, Board Chair  
Beverly D. Harper

**Additional Board Members Present**

Rebecca Reed

Charles B. Whitehurst, Sr.

**DCR Staff Present**

Joseph H. Maroon, Director  
Russell W. Baxter, Deputy Director  
David C. Dowling, Director of Policy, Planning and Budget  
Joan Salvati, Director, Division of Chesapeake Bay Local Assistance  
David Sacks, Assistant Director, Division of Chesapeake Bay Local Assistance  
Alli Baird, Senior Environmental Specialist  
Ryan J. Brown, Policy and Planning Assistant Director  
Melissa Doss, Senior Environmental Planner  
Michael R. Fletcher, Board and Constituent Services Liaison  
Nathan Hughes, Watershed Specialist  
Adriene Kotula, Principal Environmental Planner  
Shawn Smith, Principal Environmental Planner  
Elizabeth Andrews, Assistant Attorney General

**Others Present**

Tyler Craddock, Virginia Chamber of Commerce  
Scott Flanigan, Chesterfield County  
Barrett Hardiman, Home Builders Association of Virginia  
Betty Hunter-Clapp, Hands Across the Lake  
Heather Mackey, McGuireWoods  
Dick McElfish, Chesterfield County  
Diana Parker, Sierra Club  
Zach Robbins, Town of Ashland  
Brandon Searcy, Draper-Aden Associates  
Kay Wilson, City of Virginia Beach

**Call to Order**

Mr. Duncanson called the meeting to order. He asked Mr. Maroon for comments.

Mr. Maroon said that he appreciated the strong participation by the Board. He said that staff was hoping to arrange for the September 15 meeting to be at the Department of Forestry Facility in New Kent.

### **Discussion of Policy Issues**

Ms. Salvati said that at the June 16 Policy Committee meeting, when the Committee work program was reviewed, the Committee discussed WQIAs for stream restoration projects. She said this was an issue raised by stakeholders during meetings conducted by the Secretary of Natural Resources. She said that consultants had indicated a concern about the need to do a separate water quality impact assessments for restoration projects that are subject to very comprehensive environmental reviews as part of the State and Federal regulatory processes..

Ms. Salvati said that at the previous Policy Committee it was explained that there were two options for addressing this issue:

- 1) Amending the regulations to remove the requirement
- 2) Developing a template water quality impact assessment for stream restoration projects

Ms. Salvati said that staff developed a template WQIA to address the stakeholders' concerns. The template WQIA will be made available to local governments for their use. The template WQIA requests limited information regarding the project and notes that information can be used from the USCOE and/or DEQ permit application.

Ms. Salvati said that the draft has been shared with the consultants who raised the issue as well as DEQ.

Ms. Salvati said that the draft was set up in such a manner that the information typically necessary for a WQIA can be taken from the joint permit application that is submitted to DEQ.

She noted that the WQIA draws a distinction between the two different kinds of stream restoration projects. One is done on a voluntary basis, the other for the compensatory mitigation of impacts to streams.

Ms. Salvati said that the Army Corps of Engineers and DEQ have developed a unified stream method that quantifies what kind of credit should be given in conjunction with stream restoration done as mitigation for stream impacts. The stream restoration involves buffer enhancement. Draft language has been included that prompts the local jurisdiction to look mostly at the buffer.

Ms. Salvati said that this issue required no action on the part of the Policy Committee or the Board.

Mr. Davis asked if the consultants were finding in the joint permit application the same basic information that was required within the WQIA.

Ms. Salvati said a substantial amount of the information was the same. She said two issues were raised. One is that the information that would be required in a WQIA to a very large extent duplicates what is already provided in the joint permit application. The second issue raised was that localities are requiring a separate WQIA approval process. She said that the concern was why did this have to be done a second time.

Mr. Evans asked if the proposed template addressed the second issue.

Ms. Salvati said that it did not really address the second issue. She said that one of the consultants that raised this issue was able to work with Fairfax County to allow this to run concurrent with the joint permit application process. She said that once the WQIA is finalized there may be a need to provide guidance.

Mr. Davis asked if members of the public wanted to comment on this issue.

Mr. Searcy from Draper Aden said that his firm did not have a lot of experience with restoration in Chesapeake Bay areas. He said that he was not familiar with any conflicts between this and what they did for DEQ and the U.S. Army Corps of Engineers. He said from Draper Aden's standpoint it made sense to make the process as cohesive as possible and to limit redundancy.

Mr. Flanigan from Chesterfield said that he was looking forward to reviewing the template.

Mr. McElfish said that the County wanted to be involved in stream restoration and buffer enhancement and that the template WQIA would be helpful.

Ms. Salvati said that part of the unified stream methodology does require buffer enhancement. DCR provided DEQ with copies of the buffer manual. DEQ intends to use the manual to provide applicants with specific guidance on the buffer enhancement component of stream restoration projects.

Mr. Searcy said that his company did work on the Rice Center and used the buffer manual. He said the manual was useful and straightforward.

Mr. Maroon said that in a related issue, the Soil and Water Conservation Board was given the authority in the 2006 General Assembly session to deal specially with wetland mitigation banks in the Erosion and Sediment Control law. Similar authority for stream restoration banks was added during this past session.

Mr. Duncanson noted that this issue relates to Erosion and Sediment Control. He said that staff should ask locality liaisons for feedback.

Ms. Salvati thanked Ms. Smith for developing the template. No action was needed.

Ms. Salvati said that the issue of site specific RPA delineations would require action by the Committee. She said the intent is to amend an existing guidance document on this subject rather than amending the Regulations. She summarized the conversation from the June 16, 2008 Policy Committee meeting:

- Regulatory requirement conflicts with Board-adopted guidance and recent compliance review conditions pertaining to when site-specific evaluations for RPA features, particularly perennial flow determinations, are required.
- Regulations require PFDs and other site specific RPA evaluations only in CBPAs.
- Guidance Document, *Administrative Procedures for the Designation and Refinement of Chesapeake Bay Preservation Area Boundaries*, Appendix A, suggests that all sites outside the CBPA's should be evaluated.
- A recent compliance condition for a Richmond area locality stated that: "[The locality] must consistently require any development be evaluated for the potential of there being water bodies with perennial flow on-site, regardless of its proximity to any known CBPA"

Ms. Salvati noted the following:

- Revisions to *Administrative Procedures for the Designation and Refinement of Chesapeake Bay Preservation Area Boundaries* have been drafted.
- These include minor changes to clarify that Section 9 VAC-10-20-105 applies to areas within CBPAs, as the plan of development review and WQIA processes are specifically applied within CBPAs.
- These revisions will affect only those few localities with linear width RMAs.
- Clarifies how to evaluate sites within CBPAs which have water bodies, but which are not mapped as RPAs.

A copy of the draft document is available from DCR.

MOTION: Mr. Evans moved that the Policy Committee accept the draft as presented and forward it to the full Board for consideration at the September 15, 2008 Board meeting.

SECOND: Mr. Zeugner

DISCUSSION: None

VOTE: Motion carried unanimously

Mr. Davis asked that the same presentation be given to the Board.

Mr. Evans noted that most of the localities affected will be SARC localities.

### Updates

Ms. Salvati gave the following updates:

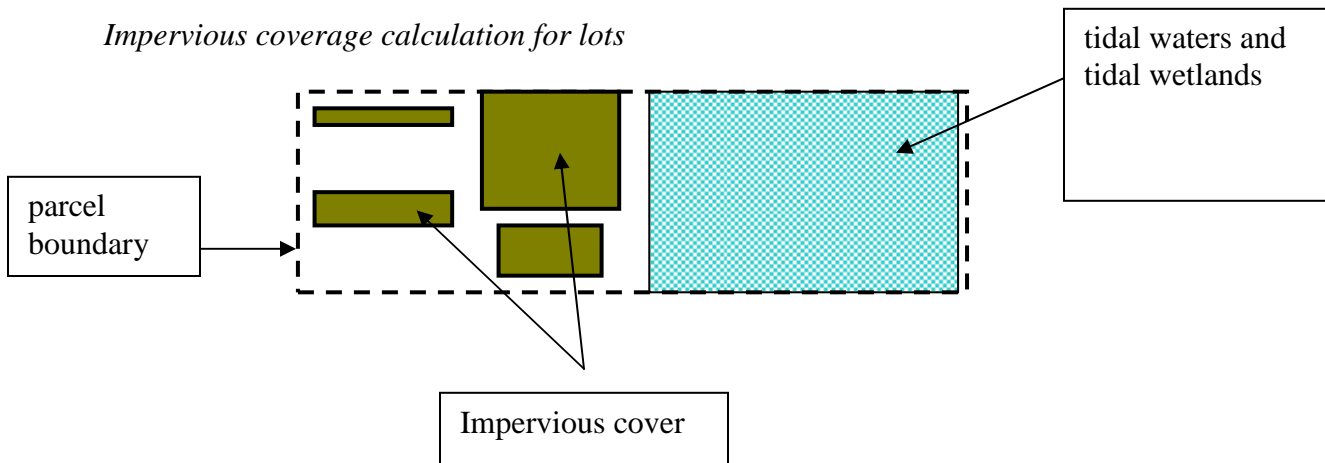
#### *Impervious cover definition*

- Questions have been raised regarding what constitutes impervious cover for stormwater quality calculations and what constitutes the “site” when developing stormwater calculations for properties containing tidal wetlands and open water.
- Local governments approach the issue differently.
- No specific guidance on this issue is provided in the current stormwater or Bay Act regulations, or any guidance or handbooks.
- Differing approaches can result in a significant difference in pollutant removal requirements.
- Best solution: Address this issue in revised stormwater regulations and/or stormwater management handbook.

Mr. Dowling said that DCR’s divisions have been considering this and proposed language will be taken to the Stormwater Management Technical Advisory Committee.

Mr. Davis asked that the Board be kept informed of the progress.

#### *Impervious coverage calculation for lots*



If the entire parcel is considered to be the “site,” then the percentage of impervious cover is approximately 20%. If only the area outside the open water or wetlands is considered the site, then the percentage of impervious cover rises to 38%. This issue is also impacted by what is defined as “impervious” cover.

*Nontidal wetlands guidance*

Ms. Salvati said that at its June meeting, the Board was informed that three jurisdictions were not implementing the June 2007 nontidal wetlands guidance. Staff has met with these jurisdictions and in one case has provided training.

What has been conveyed to Department staff by staff from the three jurisdictions is the belief that the new guidance will have an impact on development. In two cases, the localities are using *Info Bulletin 6* which ceased to be official guidance several years ago.

Staff is continuing to meet with the localities. The hope is that they learn how the guidance should be applied and that they understand the impact of the new guidance. She said that one jurisdiction may approach the Board with a request to use criteria that is not consistent. She said the jurisdiction either needs to adopt the guidance or demonstrate that what they are doing is consistent with the regulations.

For these localities, the issue is primarily with the designation of nontidal wetlands associated with an intermittent stream.

Mr. Davis said that the process to develop the guidance was a long process with a number of stakeholders representing a wide array of interests having the opportunity to participate. He said that the localities had the opportunity on many occasions to review the guidance. He noted that the document was adopted with the understanding that it could be revisited at any time.

Mr. Duncanson asked if staff anticipated that any of the three jurisdictions wanted to be on the agenda for the September Board meeting.

Mr. Davis said that it would be appropriate if anyone in attendance at the Policy Committee meeting wished to speak to the issue.

Diana Parker said she was representing the Sierra Club members who reside in Chesterfield County and who are not comfortable with the recently adopted policy of Chesterfield County pertaining to non-tidal wetlands. She noted that the CBLAB directed Chesterfield to address the RPA issue outlined in the compliance evaluation. On June 12<sup>th</sup> the County posted their RPA wetlands policy .

Ms. Parker said that the citizens she represented did not believe Chesterfield's policy was in accordance with DCR guidance. She said that she was present to ask the Board to direct Chesterfield County to come into compliance with current guidance and also that the citizens believe the County should stand down from the guidance they issued.

Ms. Parker said that the County was not scheduled for review until December. She stated that the citizens believed that was too long. She said that she hoped the County would be directed to come into compliance sooner.

Ms. Parker provided additional information to Board members. Copies of that information is available from DCR.

Mr. McElfish said that Chesterfield County is the hybrid that Ms. Salvati referred to. He said that the County cuts off nontidal wetlands at 500 feet from perennial streams, but that the County includes wetlands that have alluvial deposits adjacent to a perennial stream, even though the guidance would allow these to be excluded. He noted that DCR staff was meeting with the County the following day. He said that the County has been implementing the same practice since 1991.

Mr. Duncanson said that the Policy Committee was not a hearings board and could not act other than to make recommendations on how to proceed. He said that the committee was just gathering information at this meeting. He asked staff to continue to look at this issue and consider moving Chesterfield's review forward.

Ms. Salvati said this was identified as a concern through the compliance evaluation process. She said this relates to a condition imposed upon the County and staff will be reporting progress at the December Board meeting. She said that staff has had two meetings with the County and is continuing to work with them.

Mr. Zeugner asked that an update be given at the September meeting.

Mr. Searcy said that from a consultants standpoint, it was confusing to work with Chesterfield because they have deviated from the guidance. He said that with the hybrid method that Chesterfield has in place, his company is not sure where they stand with developers.

Mr. Duncanson said that the Board takes that matter seriously and is concerned with the impacts not just with the localities but also with the private sector.

Mr. Maroon suggested that the issue be brought back to the Policy Committee before going to the full Board in December.

Mr. Duncanson said that would be appropriate.

Mr. Evans said that he would like to have some understanding from the locality as to the logic of their approach.

Mr. McElfish said that their program was basically a hybrid. He said that the County considers the streams to be critical. He said the County still has buffers and setbacks from wetlands.

Ms. Hunter-Clapp said that in the case of Hands Across the Lake, they were located in a section of the County that was targeted for intense development but that same section is located within the watershed of a drinking water source. She said this policy will have a direct bearing on the protection of that resource.

Mr. Davis said that this should remain on the Policy Committee agenda.

Mr. Duncanson suggested that the next meeting of the Policy Committee be the same day as the Board meeting, September 15<sup>th</sup>.

Mr. Zeugner said that he would like to meet with staff to review the differences and perhaps have a site visit to review the areas where the program is not compliant.

Mr. Maroon noted that the agenda for the SARC committee was fairly extensive. He suggested that it might be preferable to schedule the Policy Committee meeting following the Board meeting.

Mr. Duncanson said that, based on the deliberation of the SARC, the next Policy Committee meeting would be immediately following the September CBLAB meeting or sometime in early October. Staff will work with Mr. Davis and Mr. Duncanson to confirm.

### *Phase III Review Process*

Ms. Salvati reviewed the revised Phase III schedule.

August - Nov. 08:	Refinement of Checklist and review by Advisory Committee
Dec. 15, 2008:	CBLAB Policy Committee and Board consider authorizing Checklist for public comment
Dec.- Feb. 2009	Revised Checklist available for public comment
Feb. 16, 2009:	CBLAB Policy Committee considers recommending approval to CBLAB
March 23, 2009:	CBLAB considers adoption of Phase III review process, review materials, and locality deadlines
April 2009:	Official Notification to Localities and beginning of Advisory Reviews of Programs
June 2010:	Begin Formal (CBLAB) Review of Programs

### *Buffer equivalency*

- Questions have been raised regarding when or where the efficiency of the buffer in removing pollutants should be considered.
- Buffer equivalency was removed from the Regulations in 2001.



- If onsite re-vegetation is not possible, what options does a property owner have to mitigate for a permitted buffer encroachment?

Mr. Davis said he raised this issue of concern. He noted that at least a couple of localities were told not to use buffer equivalency. He said that on a pre-Bay Act lot that is fully within the buffer, but the principal structure is outside of the RPA, there is no area to compensate for buffer encroachment. He said the question was whether you go over the allowable impervious percentage or provide buffer restoration for that encroachment.

Ms. Salvati said the question is to what extent can there be encroachment and under what circumstance is it appropriate not to require re-vegetation to the maximum extent possible?

Mr. Davis said that the issue is if the lot is fully within the 100-foot buffer, there needs to be something to mitigate for the loss of buffer function regardless of the size of the encroachment.

Ms. Salvati said that it may be appropriate to develop guidance.

Mr. Davis said that in some cases buffer equivalency may be more practicable than just doing nothing.

Mr. Duncanson asked if there were ways to address this from an engineering standpoint.

Ms. Salvati said methods are infiltration, bioretention, and sand filters. She said that any encroachment, even in a BMP, would have to get a formal exception. She said that pre-Bay Act lots can do this through the administrative process.

Mr. Evans said that a concern is that many BMPs do not get maintained.

Mr. Davis said that any situation that has a BMP installed must have a BMP agreement. He said that he believed it should be recorded.

Ms. Smith said that the calculations from Information Bulletin 3 resulted in pollutant removals for buffer encroachments that were extremely small even if the entire portion of the buffer is impacted. She said that one of the reasons to focus on the re-vegetation of the buffer area and not on structural BMPs for mitigation was not to burden the homeowners or the localities with the requirement for a BMP maintenance agreement and continued tracking of the BMP maintenance.

Ms. Salvati said these types of things would be identified through the administrative review process.

Mr. Maroon said that if the Board was going to entertain any changes to the buffer equivalency, then staff needed to do more preparatory work. He said that staff can review this issue and come back to the Board.

Mr. Duncanson said that the Policy Committee would defer to the staff regarding the appropriate time to bring this back to the Board.

Ms. Salvati said that the only other item that she had was that at the June meeting staff had reported that an interagency work group had been addressing the Northern Neck septage issue. The report is now complete and has been forwarded to the members of the General Assembly. The only recommendation that affects the Board is the suggestion that DCR work with Bay Act localities to optimize the use of the effluent filters.

### **Public Comment**

Ms. Parker said that the issue regarding buffers would come up before Chesterfield County at their next Board of Supervisors meetings. She said that the County is losing wetlands.

Mr. Duncanson asked that staff provide additional information regarding the public hearing.

Ms. Kotula will follow up with Chesterfield County.

### **Closed Session**

MOTION: Mr. Davis moved the following:

Mr. Chairman, I move that the Policy Committee of the Chesapeake Bay Local Assistance Board convene a closed meeting pursuant to §2.2-3711(A) (7) of the Code of Virginia for the purpose of consultation with legal counsel regarding specific legal matters requiring the provision of legal advice, namely the lawsuit filed by Chesterfield County against CBLAB.

This closed meeting will be attended only by members of the Committee and Board members present. However, pursuant to § 2.2-3712(F) of the Code, the Committee requests counsel, the Director of the Department of Conservation and Recreation (DCR), the Director of the Division of Chesapeake Bay Local Assistance of DCR, David Sacks and Adrienne Kotula to attend because it believes that their presence will reasonably aid the Committee in its consideration of the topic that is the subject of this closed meeting.

SECOND: Mr. Evans

DISCUSSION: None

REVISED: 11/19/2008 10:54:50 AM

VOTE: Aye: Davis, Duncanson, Evans, Harper, Zeugner

MOTION: Following the executive session, Mr. Davis moved the following:

WHEREAS, the CBLAB Policy Committee has convened a closed meeting on August 12, 2008 pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

WHEREAS, § 2.2-3712(D) of the Code requires a certification by the Committee that such closed meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, the Policy Committee of the Chesapeake Bay Local Assistance Board hereby certifies that, to the best of each member's knowledge, only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification applies, and only such public business matters as were identified in the motion convening the close meeting were heard, discussed or considered by the Committee.

SECOND: Mr. Evans

DISCUSSION: None

VOTE: Aye: Davis, Duncanson, Evans, Harper, Zeugner

MOTION: Mr. Evans moved the following:

The CBLAB Policy Committee having been briefed in closed session on August 12, 2008 on the matter of Chesterfield County's proposed settlement of Chesterfield County v. CBLAB, acknowledges that considerable movement has occurred in addressing these issues, and notes general agreement on seven of the eight items in the County's proposed settlement agreement. However the Committee does not have sufficient understanding of the issues surrounding the implications of item 3 and therefore directs DCR staff to request a meeting as soon as possible with technical staff in Chesterfield County to obtain a better understanding of the County's proposed implementation approach

regarding item 3 prior to making a recommendation to CBLAB on the settlement.

The Policy Committee also asks the CBLAB to be apprised of the outcome of the meeting prior to acting on the County's proposal.

SECOND: Mr. Zeugner  
DISCUSSION: None  
VOTE: Motion carried unanimously

**Adjourn**

There was no further business and the meeting was adjourned.

Respectfully submitted,

William E. Duncanson  
Chair

Joseph H. Maroon  
Director