

**Chesapeake Bay Local Assistance Board
Policy Committee Meeting
Union Station, Petersburg, Virginia
December 15, 2008**

Chesapeake Bay Local Assistance Board Policy Committee Members Present

William E. Duncanson, Chair
Beverly D. Harper

Donald W. Davis, Board Chair
John J. Zeugner

Chesapeake Bay Local Assistance Board Policy Committee Members Not Present

Gregory C. Evans

Other Board Members Present

Barry L. Marten

Richard B. Taylor

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
Shawn Smith, Principal Environmental Planner
Alice Baird, Senior Environmental Specialist
Nathan Hughes, Watershed Specialist
Adrienne Kotula, Principal Environmental Planner
Elizabeth Andrews, Office of the Attorney General

Others Present

Don Gill, Lancaster County
Dick McElfish, Chesterfield County
Diana Parker Falls of the James Sierra Club
Doug Pritchard, Chesterfield County

Call to Order

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

Phase III Checklist Materials – Request agreement to make documents available for public review

Ms. Salvati said that Mr. Sacks would give a detailed briefing of the Phase III process; including staff outreach efforts and the general themes that have emerged in questions from localities.

Ms. Salvati thanked the Phase III team which was overseen by Mr. Sacks. Staff members participating on the team were Shawn Smith, Adrienne Kotula and V'lent Lassiter.

Mr. Sacks gave the overview of the Phase III process and referenced the staff report that was distributed with the meeting packet. A copy of the staff report is available from DCR.

Mr. Sacks said that, over the last 18 months, both the Policy Committee and the Board have received presentations and undertaken detailed discussion regarding Phase III of the implementation of local government Bay Act programs.

Mr. Sacks said the purpose of his presentation was to update the committee on recent activity and issues regarding development of the Phase III program, to discuss in general the draft review materials developed, and to present the suggested schedule for moving forward.

Mr. Sacks said the Chesapeake Bay Preservation Area Designation and Management Regulations (Regulations) identify three “phases” of local government program implementation:

- **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 & revision of local codes for inclusion of specific standards that implement water quality performance criteria

Mr. Sacks said that the Regulations, in section 10-20-231(3), specifically require local governments to have provisions in their own ordinances to ensure, that as land development occurs, three performance criteria are addressed:

1. land disturbance is minimized
2. indigenous vegetation is preserved, and
3. impervious cover is minimized

Mr. Sacks said the development of the program for determining local government consistency with the Phase III requirements in the regulations began mid-2006 as staff reviewed alternative approaches for evaluating localities. This work resulted in a Phase III program concept that was presented to the Chesapeake Bay Local Assistance Board in June 2007. As discussed at that time, it was expected that a checklist would be used to identify provisions in local ordinances and a minimum threshold established.

As development of the Phase III program began to evolve, staff convened an advisory committee composed primarily of local government staff. As discussed with the Board in September 2007, the Advisory Committee was designed to ensure representation from each of the planning districts and from a variety of localities - cities, counties, rural, urban and suburban jurisdictions.

The Advisory Committee endorsed the concept of the checklist and suggested most of the items used in the initial draft checklist. The Advisory Committee also identified areas for staff to undertake research to identify potential other items. The result of the Advisory Committee's initial work was a Phase 3 program review checklist that contained approximately 140 questions. Each "question" represented a possible provision that could potentially be found in a local government ordinance that could be used to enable the locality to implement one or more of the general performance criteria found in the Regulations.

Mr. Sacks said that following the first two Advisory Committee meetings, the Board and Policy Committee were briefed on the development of the Phase III program and provided with copies of the draft Phase III checklist and program description at their meetings in November and December 2007. During that time, staff initiated a series of informational meetings with local government staff, the majority of which were coordinated through the planning district commissions. These meetings were held to provide planning district and local staff with an overview of Phase III requirements, materials and checklists and to elicit comments on the proposed approach for Phase III. He referenced a slide that itemized elements of the Phase III development process as follows:

- Local Government Outreach:
 - Previously met directly with staff representing 43 of 46 cities and counties primarily through group meetings at PDCs
 - Direct communication to all local staff in December 2007 and early February 2008 soliciting comment on checklists
- Conducted presentations/work sessions at 17 PDC meetings in Spring 2008
- Met and sought feedback from stakeholders including CBF, JRA, Homebuilders, CWP
- Contracted with CWP for technical review of checklist questions, propose a threshold, and provide supporting documentation for water quality nexus of questions

- Two rounds of draft checklist review and testing between November 2007- November 2008.
- Revisions to checklist occurred based on comments, both rounds of testing and CWP technical review
- Advisory Committee review and meeting held on November 18, 2008 to discuss revised checklist
- Additional revisions to checklist occurred based on Advisory Committee meeting.

Mr. Sacks explained that the resulting proposed review program is based upon the regulatory requirements for Phase III, merged with the review structure proposed and supported by the advisory committee and discussed with the Board and Policy Committee over the past 12 to 18 months.

The basic requirements are for local ordinances to contain six specific provisions, which come almost verbatim from the regulations. As well as an adequate number of provisions, of the locality's choosing, to address the three general performance criteria.

The requirement of the locality is two-fold. They must

- *Review ordinances to see if required provisions and minimum standards are in place*
- *Revise ordinances if provisions and minimum standards are not in place*

Mr. Sacks began an overview of the checklist within the current context of the requirements of the regulations. He said that the descriptions are based on the current draft Checklist dated December 3, 2008 and includes three sections:

- Section A: Local Land Development Ordinance Requirements,
- Section B: General Performance Criteria Implementation Options, and
- Section C: General Water Quality Protection and Improvement Provisions.

Section A - The Local Land Development Ordinance Requirements ensures that local government land development ordinances have incorporated six specific requirements provided for in the Bay Act regulations. It is important to note that these requirements only apply to plats and plans that are filed for properties within Chesapeake Bay Preservation Areas. The way the checklist is structured, for Section A, all responses must be affirmative, as all elements are clearly required by the Regulations.

Section A of the checklist reviews ordinances to ensure that plats and plans 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

Mr. Davis suggested that under Section A, a site specific survey be done at the time of the building development. He noted that the regulations say at the time of the application there would be a site-specific survey. He said it would be good to have that on the ordinance and on the plat.

Mr. Sacks said that there remained issues staff needed to clarify. He said staff was continuing to evaluate the checklist prior to bringing it to the Board for formal consideration.

Ms. Salvati said that if there were remaining issues of concern, those would be identified prior to bringing the document to the Board for approval.

Mr. Sacks said that Section B represented the essence of the checklist.

It is this section that evaluates the extent to which local land development ordinances applicable to Chesapeake Bay Preservation Areas include specific language.

This section has three parts, each of which is focused on one of the three general performance criteria specified in the regulations.

The regulations identify these three performance criteria as required measures to protect the quality of state waters. This section includes alternative measures that would meet the three general performance criteria that may be contained within a locality's land development ordinances. Each question is assigned a point value and each part has a minimum passing score. The Checklist is designed so that a local government must achieve a passing score in each of the three parts under Section B to be considered consistent with Phase III. There is also the opportunity within each part for localities to list and assign points for relevant ordinance provisions that are not listed on the checklist.

Mr. Sacks said Part 1 focuses on ordinances that promote minimizing land disturbance. He said the way the checklist is structured locality must meet the minimum in each of the three parts. He said that this section had 18 questions with 38 possible points and a minimum score of 22 points.

Mr. Sacks said Part 2 focuses on ordinances that maximize the protection of indigenous vegetation; and Part 3 focuses on ordinances that minimize the amount of impervious cover.

Mr. Sacks said that Section C: General Water Quality Protection Provisions was casually referred to as the "bonus section." He said that this section includes practices and programs that may not fit into a general performance criterion, but which can be important to protecting and improving water quality. The checklist is designed so that

points received in this section can be used to augment scores from one of the three parts of Section B if the minimum score was not achieved in one of the three parts.

Mr. Sacks said the passing score or “threshold” was established in order to objectively determine whether a locality has an adequate number of provisions in ordinances.

The minimum passing score for each part in Section B was developed based, in part, on the technical review by the Center for Watershed Protection (CWP). Staff developed the scoring for the questions based on two criteria:

1. keeping the scoring simple, and
2. relating the scoring to water quality protection as much as possible.

To keep the scoring simple, most questions under Section B have a value of 2 points. Some questions have a potential value of up to five points if a local ordinance addresses all potential options. A few questions that address ordinance provisions with a greater contribution to water quality protection have a value of three or more points. The CWP review included suggested scores for each question as well as a suggested threshold for passing. This suggested passing threshold equated roughly to 60 percent of the total possible points.

The draft Phase III checklist was provided in two different versions to members of the Advisory Committee, environmental and development groups, and a broad range of Tidewater local governments. Written, substantive comments were also received from over a dozen local governments: Themes of comments were generally focused on:

- the minimum threshold,
- the legal authority for a locality to require some of the proposed optional provisions, and
- whether comprehensive plan policies or other policies not embodied in a local ordinance meet Phase III requirements.

Mr. Davis asked if some localities thought the threshold was too high because they may not have cluster developments or low impact developments.

Mr. Sacks said that the concerns expressed had not been that specific. He said that not all localities had reviewed the checklist.

Ms. Salvati said that she thought a lot of localities will have the expectation that they will pass the required threshold during the initial review. She said that the reason staff was making this effort was to elevate the attention to water quality.

Mr. Davis asked if the state required cluster developments.

Ms. Salvati said that localities must provide for a local cluster ordinance.

Mr. Sacks said that there were remaining questions with regard to some of the provisions and whether or not there is sufficient authorizing legislation in support of them. Staff is continuing to review those areas of concern.

Mr. Sacks said that many local governments do implement the necessary provisions, but not always through ordinance. Many use policy or standards manuals. He said the problem remained that these are technically not ordinances. He said the Regulations typically require ordinances.

Mr. Sacks summarized the meetings and work sessions that have occurred for Phase III.

Sept - Nov. 2007:	Checklist questions and review approach developed with Advisory Committee assistance
Nov 27, 2007:	CBLAB Policy Committee update
Nov/Dec 2007:	Initial meetings with locality staff at PDC's
Dec 10, 2007:	CBLAB (Board) Update and discussion
Dec 2007:	Draft checklist available for comment
Dec-Feb 2008:	Testing of checklist on local programs – modify as needed based on testing and comment
Feb/March 2008:	CBLAB update and further discussion
Dec 07-Oct 08:	Technical review by CWP and checklist revised
Oct-Nov 2008:	Revised checklist sent to Advisory Committee and selected other local governments
Nov. 18, 2008:	Advisory Committee meeting to discuss revised checklist
Dec 15, 2008:	Detailed Policy Committee Briefing

Mr. Sacks outlined the philosophy of the local review process as follows:

1. Philosophy: A cooperative approach, with some components of a self assessment.
2. Locality will be asked to provide copies of all relevant ordinances and related documents.
3. Locality & DCR-CBLA staff will complete the checklist by reviewing local ordinances and documents.
4. An opportunity for an advisory review will be available prior to formal review.
5. If required provisions and/or minimum score is not met, locality will be given time to address the issues.
6. All components of the review process, including locality notification and formal CBLAB review, will follow the adopted Consistency Review Process.

Mr. Sacks reviewed the schedule for Phase III implementation.

Mr. Sacks said that over the past months, the general approach to Phase III had been discussed at length with potentially affected constituents, the Board and a number of interested organizations. He said that the checklist had been continually refined and during the latter part of the process a threshold suggested and commented on.

Mr. Sacks said that from this point forward, staff would like to make the program more broadly available for public review and comment, and that this would include sending the draft checklist and program description to multiple representatives of all Tidewater local governments and posting it on the DCR website. This could ultimately result in staff bringing a final Phase III program to the Policy Committee in February 2009 for review and a recommendation for adoption by the Chesapeake Bay Local Assistance Board the following March.

During this time, staff will also continue with outreach activities, particularly to local governments. A number of work sessions with local government staff over the next two months (representing over half the Tidewater localities) have already been scheduled.

Mr. Sacks said that should the Board adopt the program in March 2009, staff would suggest that a system of advisory reviews begin almost immediately, with formal reviews by the Board to begin 15 afterwards.

Advisory Reviews would allow an opportunity for localities to participate with staff in an review of ordinances prior to a formal Phase III program review by the Board. This advisory review will help local government staff identify whether there are any deficiencies in their ordinances in addressing the required provisions included in Section A of the Checklist or achieving a minimum score for Section B of the Checklist. The Department intends for these advisory reviews to provide local governments with guidance on what measures they may adopt to reach Phase III consistency. The Department anticipates that a 15-month period of advisory review will allow many local governments with enough time to address the requirements of Phase III.

Mr. Davis thanked Mr. Sacks for the presentation. He asked how the process would apply to public agencies such as VDOT.

Mr. Davis asked if VDOT was in the process of changing their regulations.

Mr. Sacks said that one of the discussions regarding the checklist was the desire not to penalize local governments because of standards being imposed upon them. He said staff did hear from localities who expressed concern about meeting any possible standard that might be contrary to VDOT requirements.

Ms. Salvati said that VDOT was in the process of amending their state secondary road standards and that VDOT staff was reviewing options to those requirements based on input from DCR.

Mr. Davis asked if VDOT was part of the process.

Ms. Salvati responded in the affirmative, adding that DCR had discussed the secondary road standards with the Assistant Secretary of Transportation as well as a representative of the Commissioner of Transportation.

Mr. Duncanson asked if staff had enough time to make changes and get the document to the localities before the February Policy Committee meeting.

Mr. Sacks said that staff's intent was to revise the document and distribute it by the end of the week. He said the intent was to meet with localities in January.

Ms. Salvati said that this had been a very transparent process.

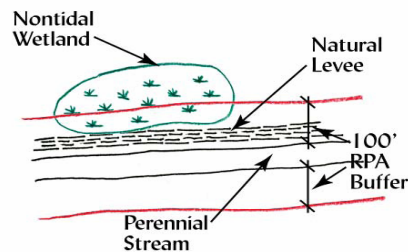
Ms. Salvati said the targeted dates would be to bring this back to the Policy Committee in February and to the full Board in March.

Discussion of nontidal wetlands separated by natural levees

Mr. Hughes led the discussion regarding nontidal wetlands separated by natural levees.

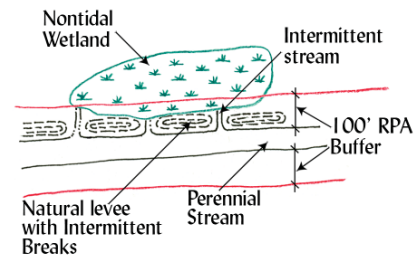
Nontidal Wetlands Separated by Natural Levees

Guidance document includes 2 figures relating to natural levees and nontidal wetlands. Figure 3A shows a non-broken levee and Figure 3B shows a levee with breaks. Neither situation requires the wetlands to be included in the RPA. Wetlands behind any levee connected by surface flow to a water body with perennial flow would be included in RPA.



The natural levee separates the nontidal wetland from the perennial stream, so it is not contiguous to a perennial water body and does not require the RPA buffer.

FIGURE 3A



This nontidal wetland is not connected by a water body with perennial flow, so it does not require the RPA buffer.

FIGURE 3B

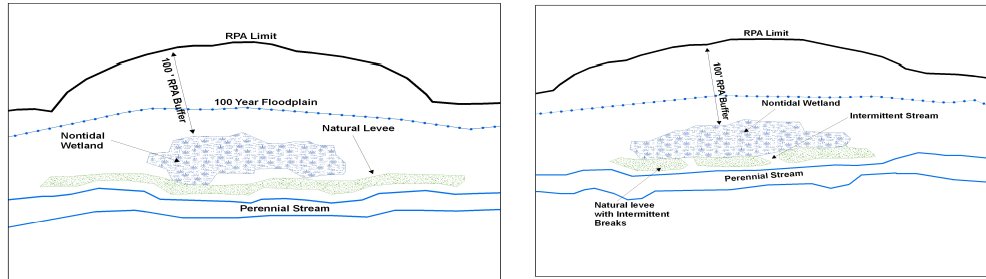
Ms. Salvati said that if the breaks on Figure 3B contained perennial flow, the nontidal wetlands depicted in the figure would be considered connected and contiguous.

Mr. Hughes addressed how the Chesterfield County Policy differs from CBLAB guidance.

Nontidal Wetlands Separated by Natural Levees

Chesterfield County has elected to include nontidal wetlands separated by natural levees to be included in the RPA.

In Chesterfield County, should wetlands exist within the stream valley system (e.g., 100 year floodplain) of the perennial stream and separated by a natural levee, the county will consider it connected and the 100-foot upland conservation buffer shall be measured from the wetlands including those that are separated by a natural levee.



Ms. Salvati said that, with respect to what Chesterfield County elected to do, if the levees had breaks in them that contained perennial flow, they would be consistent with the guidance.

Mr. Davis said that any locality would have the right to call those sensitive lands.

Ms. Salvati said the locality may be more restrictive in their guidance.

Nontidal Wetlands Separated by Natural Levees

- Recommend that Guidance Document remain unchanged.
- Chesterfield County may implement more stringent requirements than those outlined in the Guidance Document.

Mr. Hughes said that at this time, DCR did not believe the guidance document needed to be changed.

Ms. Salvati said that the staff position was that there was no amendment to the guidance necessary. She said that a component of what Chesterfield County was doing was consistent.

Mr. Davis noted that the guidance was adopted in June 2007 and amended in December 2007. He said that the process of developing the document was over an 18-month period.

Mr. Davis said that he was not in favor of changing the guidance. He said that the Board should look at it with regard to any new regulations, but not change the policy at this time.

Mr. Duncanson asked if there were other questions or comments regarding the presentation.

Mr. McElfish from Chesterfield County said that he would hold the majority of his comments for the full Board meeting. He said that Chesterfield would have a presentation at that time. He said he would like to note that a number of times in the Board discussion, there were references to making the call on a case-by-case basis. He said the Chesterfield County policy eliminated the need for questions.

Diana Parker from the Sierra Club noted that there were other areas not included in the presentation. She said there were questionable areas with regard to the levee issue.

Review of Policy Work Program

Ms. Smith reviewed the Policy Work Program.

Policy Work Plan: Revised Work Plan

1. Nontidal Wetland Guidance review
2. WQIAs for Stream Restoration
3. Compliance Evaluations – Round 2
4. Impervious Cover Calculations
5. Phase III
6. Buffer Equivalency
7. Review of Board Adopted Guidance

Ms. Smith said that with regard to the Nontidal Wetland Guidance review, Mr. Hughes had been cataloguing comments and staff would work to determine whether additional amendments were warranted.

Ms. Smith said that WQIAs for stream restoration were under review by DEQ. She said staff would make that information available as it is received.

Ms. Smith said Compliance Evaluations were required every five years. She said staff was getting ready to develop tools and a process for the second round of compliance evaluations.

Mr. Duncanson asked if staff thought the second round would go smoother.

Ms. Smith indicated that she thought it would and noted that this would be for all localities.

Mr. Davis noted that regarding the impervious cover calculations, staff was waiting on action regarding the Stormwater Management Regulations.

Ms. Salvati said that DCBLA staff had discussed this issue with the Director's Office and with Soil and Water Conservation staff and had conveyed to them the typical questions received by CBLA staff regarding how impervious cover was calculated.

Ms. Smith noted that Phase III had been previously discussed.

Regarding Buffer Equivalency, a draft Alternative Buffer Mitigation paper is under development by DCR. The document will be brought before committee in early 2009.

Regarding the review of Board-adopted guidance, Ms. Smith said that in some cases, it had been three or four years since the Board adopted certain guidance. Staff is reviewing guidance documents to make sure the approaches contained within them are still appropriate.

Mr. Davis noted that some of these areas may require changes in the regulations.

Public Comment

There was no further public comment.

Next Meeting

The Policy Committee will meet on Friday, February 20th at 10:00 a.m. in the CBLAB office in Richmond.

Adjourn

There was no further business and the meeting was adjourned.

Respectfully submitted,

William E. Duncanson
Chair

Joseph H. Maroon
Director