

MINUTES FROM SEPT. 27, 2017 MEETING OF SUBCOMMITTEE 2 OF THE HB1774 WORKGROUP

In attendance: Daniel Procter (Stantec, alternate for Doug Beisch), Allyson Monsour (Clark Nexsen), Phil Abraham (VACRE), David Nunnally (Caroline County), Shannon Varner (Troutman Sanders), Tom Swartzwelder (King & Queen County), Melanie Davenport (DEQ), Peggy Sanner (CBF), Scott Crafton (VDOT, alternate for Marcie Parker), Sandy Williams (ATCS), and Shannon Alexander (ANPDC). Also in attendance were Mujde Unal (ODU), Xixi Wang (ODU), Carl Hershner (VIMS), Jaime Bauer (DEQ), Brandon Bull (DEQ), and Jamie Huffman, Chris Antoine and Angela King from VCPC. Elizabeth Andrews from VCPC facilitated the meeting.

The meeting was called to order at 10:00 a.m. The minutes for the Subcommittee 2 meeting on September 6, 2017 were approved without comment.

IC DEFINITION IN THE STRAWMAN FOR THE PROPOSED ROLBAND TIERED APPROACH TO STORMWATER MANAGEMENT

The group discussed which definition of Impervious Cover (IC) to use for the Rolband proposed approach. Elizabeth went over the existing definitions of IC from the CBPA and Stormwater Management Act regulations. Allyson expressed concern that including the list of examples in the CBPA regulation would imply a loophole (i.e., if it's not mentioned in the list, it does not count as IC). Phil pointed out that there is really no question with any of the things mentioned in the list that they count as IC so he thought they should be included. Allyson stated that it might be a good idea to include things that are not obvious in the IC definition. Phil pointed out that the CBPA regulation explicitly says the examples "include, but are not limited to," and that certain things like gravel are always going to be a point of contention. Melanie stated that she prefers the CBPA regulatory definition. Peggy pointed out that there is ongoing litigation currently as to the appropriate definition of IC, involving gravel and whether it is a pervious or impervious surface. Peggy stated that she agrees with Phil because of the "include, but not limited to" language, and she thus prefers the CBPA definition. Tom pointed out that the Tidewater localities already use the CBPA definition, so it just makes more sense and simplifies things for the localities to use the same definition in the Strawman and the CBPA. It was also suggested that it be left to the localities to determine IC on their own.

Carl pointed out that it might be a good idea to include a rebuttable presumption that if the Virginia Geographic Information Network (VGIN) Geospatial Service's most recent estimate of IC is the one used by a locality as the basis for its IC map, then the map is deemed to be accurate. Carl stated that this information is very easily accessible to the public. Allyson pointed out that USGS also has a mapping program called StreamStats that provides data about IC. StreamStats is publicly available and free. Elizabeth asked the group if they want to put in the proposal that any locality that opts to use the tiered approach must incorporate VGIN or StreamStats mapping data. Tom stated that it is important that localities maintain their own maps. He stated that these other data sources are often inaccurate, and that the localities are usually the only ones who know the actual level of impervious cover in their jurisdiction. Tom said that relying on these databases is a good start, but that localities should also maintain their own independent data on development projects and the amount of IC they add; otherwise, he was concerned that localities would be set up to fail and people in the localities would challenge the

maps from the very start. Tom suggested that the maps be adopted after a public hearing, and that there be no rebuttable presumption up front- but that each update to the map would include a rebuttable presumption of accuracy. Phil suggested identifying VGIN as “an acceptable starting point,” which is then updated with actual site plan information (as this is generally more specific and accurate). Shannon Alexander said that she would have to check with her localities about the feasibility of keeping maps updated under this approach. Daniel pointed out that there are some projects for which localities won’t have data, such as military bases (or other state and federal projects). David stated that for that, the localities could then default back to VGIN; Daniel agreed and said that updating with VGIN data (*when* it is updated) in this circumstance is a good idea.

The group agreed to four homework assignments for the next Subcommittee 2 meeting: (1) Allyson will further research StreamStats; (2) Carl will research the definition of IC used as the basis for VGIN; (3) Tom, David, and Shannon are checking with rural localities in their regions to see if they can handle tracking their projects and total IC%; and (4) Xixi will run a comparison of IC% derived using StreamStats vs. VGIN for a sample area.

USE OF METROPOLITAN PLANNING ORGANIZATION

At the 9-6-17 Subcommittee 2 meeting, the group discussed possibly adding language to the strawman to the effect that rural areas of localities outside of a Metropolitan Planning Organization area are eligible for this tiered approach. However, Marcie Parker at VDOT noted that there is no MPO for the Tappahannock or Kilmarnock area, for example; and using the designation “outside of town boundaries” does not work to address built-up areas outside of town. The group discussed and decided the addition of language re: MPOs is not necessary because a locality’s tier is based on the IC% and a locality can create multiple districts with different tiers, so the fact that they have one built-up area subject to Tier C requirements does not mean they cannot impose a district with Tier A requirements in a more rural part of the locality. Tom stated that MPOs don’t have much relevance here, other than Phil’s concern he expressed at the last meeting about Gloucester’s MPO area perhaps prohibiting the County from participating in the tiered approach. Elizabeth pointed out that Gloucester could create another target development area outside of their MPO.

SCOTT CRAFTON’S COMMENT ON PARAGRAPH IIA

The group discussed Scott’s comment re: use of the 6th Order National Watershed Boundary Dataset possibly being too large an area to be useful. Carl stated that he is looking for other alternatives; he was hoping that there would be something in the strawman enabling a locality to designate development areas so that they wouldn’t designate everything as a 6th order watershed. Tom stated that the Middle Peninsula is comfortable with the 6th order watersheds. Peggy pointed out that Mike R. was talking specifically about something smaller than the 6th order when he originally came up with the tiered proposal; he was looking at sub-watersheds. Carl stated that if Scott is all right with this, then he is. David stated that this is something they would want to look at on the locality level, but that for these purposes he is all right with it. Tom stated that this applies to a tiny number of small projects – i.e., projects in the “donut hole”. Peggy is going to check internally at CBF and will know by Friday if the 6th order watershed is acceptable; everyone else was fine with it. Peggy asked if they are getting an additional increment of protection in addition to MS19 requirements for Tier B, and the group said yes.

PARAGRAPH IIA GENERALLY

Elizabeth asked about the language in the strawman regarding the mapping update every 5 years, since the group decided to no longer tie the map updates to the Comprehensive Plan updates. Melanie pointed out that 5 years is far too long. Daniel pointed out that all projects in the watershed would require updates to the maps, not *just* projects that fall under the strawman (i.e., state and federal projects, and larger projects covered by the Construction General Permit). Other alternatives to mapping were discussed, such as pre-calculated spreadsheets in lieu of a map. Allyson suggested that, if any discrepancies arise between VGIN and a locality's data, it would be best to just go with the more stringent estimate. Elizabeth asked the group if they wanted to recommend that localities maintain a map or a spreadsheet. David and Tom stated that a map is necessary but that a spreadsheet can be helpful as a supplement, as well. There was discussion over the merits of requiring localities to "keep maps current", versus requiring annual updates. Elizabeth pointed out that requiring "current maps" would not trigger public notice, so one option would be to require a public hearing and re-adoption with every VGIN update. Tom questioned whether there was value in having a public hearing each time. Tom stated that a public hearing is not really needed after the maps are adopted anyway, because updates would simply be a mathematical exercise. Peggy pointed out that people care about what happens in their watershed and that the public has a right to discuss and make comment on the maps. Tom felt that the public comment at these meetings would not be particularly helpful anyway. David suggested that, rather than requiring localities to update the maps after a specific time period, the requirement could be for localities to track their IC% to ensure the percentage does not exceed the percentage in their tier; thus the requirement would not be temporally based, it would just be to make sure the watershed does not exceed the category to which it is assigned. And localities would be required to make that information publicly available. The group agreed to that approach.

PARAGRAPH IIIA

The IC% map sentence in IIIA was removed as this is now incorporated in paragraph IIA.

The original strawman included provisions that already exist in the stormwater management regulatory framework, except that Jaime went back and looked at the regulations and found out that the 1% exception does not exist currently in the regulations. Elizabeth pointed out that Scott, Mike and Jaime had agreed that the best approach was to delete this section from the strawman for the sake of simplicity and to avoid confusion. Since the strawman is not altering existing exemptions/exceptions in the regulations, this section was deleted as unnecessary.

Elizabeth proposed that the group not present this exact strawman to the entire HB1774 Workgroup at the next meeting that Friday, as it is not finished yet and there are pending homework assignments from the Subcommittee.

ODU'S PRESENTATION

Xixi reported that the ODU team did some analysis on the IC% thresholds in the tiers. They tried three methods to see if they would have similar or different results. They also tested to see how sensitive the thresholds are to the calculations. The group asked Xixi to add to his graph

MS19 as it was originally written, not the alternative “Rolband method” that was written into the Erosion & Sediment Control Law and recalculate the scenarios. The slides from the presentation are attached as an appendix to the minutes.

DAVID NUNNALLY’S PRESENTATION

One alternative that David and Sarah Carter developed was to allow rural localities to use certain BMPs such as stream buffers in lieu of stormwater management requirements at small sites. David said that there are no mandatory stream buffers west of 95 (outside of the required CBPA localities). David stated that another alternative that was discussed was that developers of small projects that have a difficult time achieving water quality standards would be allowed to do a retrofit or upgrade of another site that would achieve an equivalent reduction. Shannon Varner pointed out that you can already do that under current regulations as long as the parcels are owned by the same developer. This is called offsite mitigation for water quality (and not for water quantity compliance).

Elizabeth pointed out that David’s and Sarah’s proposal was written for both water quantity and quality requirements since it was prepared originally for another purpose, while the Workgroup had agreed early in the process that they would focus on water quantity alone because the rural locality representatives had said that the Energy Balance Method is the part of the regulatory requirements that causes them concern, not the Runoff Reduction Method. Elizabeth also noted that it would not be helpful to the General Assembly if the Workgroup were to present a variety of options rather than choosing a single approach to recommend. However, she pointed out that this proposal perhaps could be rolled into the Rolband approach. David said that his approach is probably only feasible for the smallest of projects.

Melanie pointed out that this is very similar to the Agreement in Lieu of a Plan approach, as it provides a suite of options for smaller sites. Melanie said that this is appealing as it is easier for everyone - DEQ, localities, and developers. Melanie suggested having LID incorporated on the front-end for smaller projects. Jaime said that to do this you have to make some worst-case scenario calculations, but the original idea was to provide relief to the rural localities from doing these calculations. David said his proposal is that calculations would be done up front so localities simply are given a menu of BMPs to use for small sites. Allyson proposed making carve outs of specific types of sites that would qualify for this approach. Peggy expressed hesitation at changing the water quality requirements in addition to the water quantity requirements. David said that with his approach he does not want it to apply to sites over an acre, unless they are very rural with a lot of available land. Elizabeth asked whether the group wanted to look at this approach from a water quantity perspective only, and not get into water quality. She also asked what type of research could be done by ODU and VIMS to demonstrate that this approach is equally protective as the current regulatory program. The group asked Xixi and Allyson to work together on calculations for this approach to present for discussion at the next Subcommittee 2 meeting.

Elizabeth stated that VCPC will send out a Doodle poll to set the date for the next Subcommittee 2 meeting, which will need to occur before the October full Workgroup meeting. After asking for additional comments and receiving none, Elizabeth adjourned the meeting at 1:00 p.m.

APPENDIX- SLIDES FROM ODU PRESENTATION

IC Thresholds in Tiered Approach: Scientific Base?

• MS-19: $Q_{developed} \leq I.F. * \frac{Q_{pre-developed} * RV_{pre-developed}}{RV_{developed}}$

Improvement factor (=0.8 for sites > 1 ac; = 0.9 for sites ≤ 1 ac)

Subject to: $\frac{Q_{pre-developed} * RV_{developed}}{RV_{pre-developed}} \leq Q_{developed} \leq Q_{pre-developed}$

Runoff outfalls into a natural channel: 2-yr 24-hr storm
 Runoff outfalls into a man-made channel: 10-yr 24-hr storm

• 1-yr 24-hr storage:

• Energy Balance: $Q_{developed} = \frac{Q_{pre-developed} * RV_{pre-developed}}{RV_{developed}}$ 1-yr 24-hr storm

- TR-55 to compute runoff volumes and peaks
- A hypothetical subcatchment (with B soils) in Mathews County
- IC and slope were varied to examine the sensitivity to the required storage

