Chesapeake Bay Preservation Act Amendments - Stakeholder Meeting Process

Summary Notes from Sixth Stakeholders Meeting 12-9-10

Thursday, December 9, 2010, 6:30 p.m. – 9:30 p.m. at Board of Supervisors Meeting Room, Leesburg

1. **Welcome/Introduction of Participants & County Officials** – Facilitator opened the meeting at 6:31 p.m.

2. **Agenda Overview and Recap of Results to Date** – Facilitator reviewed the agenda, the basic process requirements set by the Board of Supervisors, and the ground rules that were affirmed by the Stakeholder Representatives.

   - established protocols and meeting schedule
   - reviewed issues and established priorities
   - resolved several minor issues
   - largely resolved two major issues (RPA map/delineations; buffer width)

   The Facilitator asked stakeholders to comment on the process to date and raise any issues they might have with how things are going. Comments included:

   - We have become sidetracked from our task of reviewing and modifying the draft amendments.
   - We've been repeating some points over and over.
   - There have been some factually incorrect statements made by members.
   - Each member needs to "step up" and participate fully in the discussions.
   - South Riding HOA is not able to attend tonight and asked that the group not vote on any matters until next week.
   - This compressed schedule has "shafted" the HOAs.
   - We shouldn't have to just "rubber stamp" the draft amendments.
   - Should we just say there is no consensus?
   - We should have an opportunity to recommend that the Board not adopt an ordinance at all.

   Regarding the issue of incorrect factual statements, the facilitator noted that disagreement about basic facts is widespread among the members and thus it would be best to simply state our views/disagreements and move on, rather than try to resolve every dispute about factual data. The stakeholders accepted this without clear objection.

3. **Continue Review Issues Matrix** – Stakeholders continued reviewing the Issues identified earlier.

   <u>Buffer Width/Exemptions/Waivers (cont'd from December 7)</u>

   A proposition was made that the group revisit the buffer decision because that discussion was not completed during the previous meeting. Discussion points on this matter included:

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- We should stick with our vote.
- We never completed our discussion of the 100-foot buffer.
- We need to understand the *actual* impacts on HOA properties and homeowner lots.
- Could we look at the exemptions that might apply to the 100-foot buffer in case the Board adopts it?
- We should take this up at the end our work.
- We should put it first on the next meeting's agenda for discussion.

The stakeholders settled on placing a discussion and listing of possible exemptions under a 100-foot buffer provision on the agenda for the beginning of the next meeting.

Stakeholders then continued with the review of the 35-foot buffer, to identify a list of possible "limited" exemptions, as agreed at the previous meeting.

Exemptions identified for consideration:

a. Agriculture and rural uses, conditioned on having a nutrient management or farm plan approved by the SWCD and the application of no-till practice.
b. Farm Ponds.
c. Residential accessory structures in the RPA up to a cumulative total of 150 square feet. Also consider more than 150 s.f. in the landward portion of the buffer.
d. Existing lots with qualifying limits such as the size of the lot or the percentage of the lot affected by RPA.
e. Private roads, wetland restoration areas, septic fields, storm drains.
f. Wet ponds.
g. No un-funded mandates within the buffer.
h. Planned/approved trail crossings of streams.
i. Existing development.
j. A reasonable amount of certain disturbances [such as required infrastructure elements].

Q: What about water quality? It was noted by a representative that if you add all these exemptions for only a 35-foot buffer, you end up with virtually no buffer at all, and may not gain anything in regard to water quality.

Extensive discussion of the pros and cons of these exemptions occurred. It was noted that the exemptions should not be based upon a situation that is the exception, as opposed to the rule, based upon the worst case scenario. Particular attention was given to the effects of item a. (agriculture, etc.) in terms of the effect of requiring the nutrient plan and whether or not that could make fencing de facto mandatory in some cases. Stakeholders chose to measure consensus for item "a". Eleven expressed support for that exemption as drafted, six opposed (20 at the table).

A proposition was offered that a more general statement about limited exemptions be provided. After further discussion, there was broad consent with no objections to report that potential exemptions within a 35-foot buffer would include items "such as" those in the list above. The proposition to support reporting the "such as" list was approved 14 to 5, with 20 members at the table.

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It was also noted that approval of disturbances in the RPA could be based upon hardship (e.g., by exception), instead of by exemption.

Grandfathering (Items 9, 10, and 36 on the matrix)

The County Attorney gave a brief presentation on the concept of grandfathering and the language proposed in the draft amendments. After substantial discussion, four major propositions were put on the table for consideration.

1. Use the phrase "to the greatest extent possible" for grandfathered projects to conform to the new requirements.

2.a. Use the phrase "to the extent possible" (same as Fairfax County)

2.b. Use the phase "to the extent practicable"

(Staff noted that the above three choices would require conformance to the new regulations).

3.a. Grandfather any approved plan

3.b. Grandfather any accepted plan

(Staff noted that the above two choices would *not* require conformance to the new regulations).

4. County Attorney's language (approved and accepted plans), with removal of the phrase "to the extent possible"

The stakeholders measured consent of #4 above; 14 were in favor, 5 opposed. (20 at the table).

Two related concerns about the preferred choice were noted:

- Timing is important
- Whether an application must have been forwarded to the Board following a Planning Commission public hearing in order to be grandfathered is a big issue for the Chamber of Commerce.

4. Review Results of Meeting and Next Steps

The facilitator asked the stakeholders about how their findings should be reported out to the Board of Supervisors. Several ideas were suggested and discussed:

1. Offer an overarching comment about how the process should move forward beyond the Stakeholders group.

2. Facilitator and/or staff will fill out the original Issues Matrix showing the findings of the Stakeholders for items that they addressed; facilitator will compile all of the meeting notes into a full summary.

3. Allow each member to submit a 50-word summary statement about their views.

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After some discussion, there were no clear objections to doing all three of the above.

An additional suggestion was made for moving forward:

- Allocate the first two-thirds of the December 14 meeting to finishing the issues discussion.
- Allocate the last third of that meeting to identifying things we didn't get to and the impact of those things.
- Meet again on Thursday the 16th to approve the notes.

After some discussion, including a comment by the facilitator that he had a prior public meeting commitment in Chesterfield County on the 16th, the stakeholders accepted December 14th as the final meeting. (As agreed, they will begin by identifying the exemptions that would be appropriate for a 100-foot buffer, even though they noted that making that list does not in and of itself change the previous decision to recommend a 35-foot buffer).

The facilitator said that the matrix and the summary notes through December 9 would be completed and distributed prior to the final meeting. The full matrix and notes through the final meeting will be completed no later than December 20 and e-mailed to the stakeholders for review.

In addition, members can submit a 50-word concluding comment (in digital form) that will be compiled verbatim and attached to the record. The final compilation of all materials for reporting out will need to be completed in a timely fashion in order for staff to meet the assigned Board of Supervisors schedule.

6. **Adjourn** – Facilitator adjourned the meeting at 9:35 pm.

Note Schedule of remaining meetings:

Tuesday, December 14 – in the BOS meeting room - 5:00 pm – Meet with state representatives to discuss WIP; final stakeholders meeting at 6:30 p.m. to 9:30 p.m.

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