

**THE SUMMARY OF THE MEETING OF THE  
REGIONAL ENVIRONMENTAL COMMITTEE  
July 2, 2015**

**1. Summary of the June 4, 2015 meeting of the Hampton Roads Regional Environmental Committee**

The summary of the June 4, 2015 meeting of the Hampton Roads Regional Environmental Committee was approved as distributed.

**2. Public Comments**

There were no public comments.

**3. Norfolk RE:Invest Initiative**

The RE:invest Initiative is collaboration among eight cities and engineering, law, and finance firms to create new public-private partnerships for resilient infrastructure. In 2013, Norfolk was selected to receive technical assistance for efforts to improve the City's stormwater infrastructure. Mr. Ron Williams, Norfolk Deputy City Manager, gave a presentation to the Committee on the progress of the initiative.

The initiative encourages municipalities to think differently about infrastructure as needs increase and resources decline. The goals of the initiative are to:

- Lessen the burdens of government
- Mobilize private capital to protect communities
- Increase resilience of vulnerable systems
- Improve integrated planning capacity at the municipal level

Two portions of Norfolk were selected as study areas – The Hague and the Downtown Arts District. After evaluating the flooding challenges in The Hague, a flood barrier system was proposed that would not provide protection from the 100-year flooding but would provide protection from more frequent smaller nuisance flooding events. In the Arts District, various types of green infrastructure were proposed including blue roofs, green alleyways, and tree trenches.

Mr. Williams explained that the biggest challenge of the program for Norfolk is to provide businesses an incentive to be part of the solution. Some suggestions are to provide stormwater utility fee reductions or tax breaks to businesses that support resilient infrastructure. Another challenge is estimating the costs of avoided losses and potential savings due to reduced chronic flooding. Mr. Williams encouraged the Committee members interested in additional information to visit the website ([www.reinvestinitiative.org](http://www.reinvestinitiative.org)).

Ms. Whitney Katchmark asked Mr. Williams to elaborate on the aspect of private investments. He replied that the idea is to alleviate risk so that a private utility, for example, would see an advantage.

Ms. Katchmark asked how to calculate avoided losses. Mr. Williams said that FEMA only captures a portion of the costs of flooding. For example, in the Arts District, flooding not only causes damage to buildings but it also creates a lapse in operations and a subsequent loss in revenue. It also includes tracking events that are not FEMA disasters. For instance, after several days of rain in a row, there is likely damage to cars. These costs factor into avoided losses.

One of the objectives of the initiative is to improve municipal planning. Ms. Katchmark asked about municipal utility projects and how various departments could better coordinate scheduled roadway work. Mr. Williams said that it is to the City's advantage to do complete street projects and include bike lanes and green infrastructure during other street improvements. This coordination requires a new policy vision, and the recent Dutch Dialogues workshop helped to flush out ideas.

Ms. Katchmark asked Mr. Justin Shafer if he could explain more about blue roofs. Mr. Shafer said a blue roof is designed to reduce the volume of stormwater runoff and release it slowly. They provide minor improvement to stormwater quality.

#### **4. Final Waters of the U.S. Rule**

Mr. Dave Mergen, with the City of Chesapeake, has been following the development of the Waters of the U.S. Rule and provided an overview of the changes that were incorporated as the Rule was finalized. The EPA and the US Army Corps of Engineers received over a million comments on the Rule.

Mr. Mergen listed the following as the most significant impacts of the Final Rule to localities:

- Will not impact existing valid jurisdictional determinations or permits.
- Additional time and money will be needed to work through cumbersome regulatory permitting.
- There will be too much reliance on best professional judgment and decisions could vary between Corps staff.
- Corps staffing level already limited so expect additional delays for jurisdictional determinations.
- Stormwater outfalls or "lead" ditches regulated by MS4 permits may increase because each connection to a jurisdictional ditch or *tributary* could be considered an MS4 facility under the new Rule.
- Many more features may become regulated like stormwater ponds, ditches, and isolated wetlands but will have to be evaluated on a case-specific basis providing less certainty and resulting in more cost for the regulated public.
- By Rule, all *tributaries* and *adjacent waters* are now regulated.

- *Neighboring* includes features within the 100-year floodplain and within 1,500 feet of the OHWM; therefore, many stormwater ponds may now be regulated.
- Ditches with perennial *flow* are now jurisdictional.
- If not exempted, MS4 maintenance activities on ditches and ponds may be delayed by lengthy jurisdictional determinations and wetlands permitting.
- If not exempted, retrofitting stormwater management facilities to comply with VSMP and TMDL requirements could be severely limited.

The preamble of the Rule contains language to indicate that stormwater control features are not intended to be considered Waters of the U.S., as long as they were constructed in *dry land*. There is no specific definition for *dry land*; however, Mr. Mergen explained that it is usually taken to be mean non-wetland. Mr. Mergen recommends documenting whether a BMP was installed in dry land during the construction process.

Another concern with stormwater ponds is conducting maintenance activities. Currently, as long as the stormwater pond does not connect to a traditional navigable waterway, maintenance efforts are coordinated with DEQ. The Final Rule may also require coordination with COE.

Mr. Mergen has contacted the COE with questions, particularly in regards to interpretation of the exclusions in the Rule. The COE has not yet presented an official position. During construction projects, it is now taking approximately 4 months to get jurisdictional determinations of Waters of the U.S. It is anticipated that this will increase, though the COE did recently hire two full-time staff.

Mr. Mergen said that the Final Rule will impact localities, but another document may have had an even larger impact. The “Regional Supplement to the COE Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region” was published in November 2010 and it broadened and extended wetlands, limited the growing season, and adjusted the keystone growing plants. It can be downloaded here: [http://www.usace.army.mil/Portals/2/docs/civilworks/regulatory/reg\\_supp/AGCP\\_reg\\_supV2.pdf](http://www.usace.army.mil/Portals/2/docs/civilworks/regulatory/reg_supp/AGCP_reg_supV2.pdf)

### **Protected Bats**

The U.S. Fish and Wildlife Service (FWS) is protecting the northern long-eared bat as a threatened species under the Endangered Species Act (ESA), primarily due to the threat posed by white-nose syndrome, a fungal disease that has devastated many bat populations. The interim 4(d) Rule is designed to protect northern long-eared bats when they are most vulnerable, including when they are hibernating and during the two-month pup-rearing season from June through July.

Mr. Mergen discussed the implications of the 4(d) Rule to localities when conducting designated activities. Construction activities involving tree removal, earth moving, and

blasting that occur within 0.5 miles of known hibernation areas must be coordinated with FWS environmental staff. If bats are found during or after hazard tree removal, coordination with VDOT staff is required. All other tree removal (>3" diameter breast height), must be conducted outside of the active season (April 15 - September 15), must be within 100 feet of existing road surface, and has to be coordinated with FWS. Lastly, structure and bridge maintenance activities likely require bat inventories prior to beginning work.

For areas of the country affected by white-nose syndrome, the measures provided in the interim 4(d) rule exempt "take" (a term under the ESA that includes harming, harassing or killing a listed species) resulting from certain activities. These activities include forest management practices, maintenance and limited expansion of transportation and utility rights-of-way, removal of trees and brush to maintain prairie habitat, and limited tree-removal projects, provided these activities protect known maternity roosts and hibernation caves. The interim 4(d) rule also exempts take resulting from removal of hazardous trees, removal of northern long-eared bats from human dwellings, and research-related activities. The following exemptions apply to non-federal projects:

- Expansion of a transmission corridor or right-of-way by up to 100-feet from the edge of an existing cleared corridor or right-of-way
- Minimal tree removal of one acre of contiguous habitat or one acre in total within a larger tract that would not significantly change the overall nature and function of the local forested habitat
- Activity occurs more than 0.25 miles from a known, occupied hibernacula
- Activity avoids cutting or destroying known, occupied roost trees during pup season (June 1 to July 31)

Mr. Shafer asked how to determine whether the trees on your site have bats or whether the project is located in a hibernation area. Mr. Mergen said that specific conditions have to be met to determine that an area is a hibernation area. He said that Fentress Airfield, Dismal Swamp, and other local areas have been designated. In other local areas, he recommends coordinating with FWS.

Ms. Erin Rountree asked if these restrictions apply to private property. Mr. Mergen indicated that bona fide silviculture is exempt, but otherwise coordinate with FWS is required.

Mr. Shafer requested that the HRPDC staff evaluate some scenarios to further determine the impact of this rule to localities.

## **5. NOAA Coastal Resilience Grant Opportunity**

Three research groups are seeking letters of support from the HRPDC for their proposals for the Coastal Resilience grant: a partnership including ODU, VIMS, and W&M, VIMS independently, and the City of VB, along with consultants.

- i. Dr. Joshua Behr, ODU, briefed the Committee on their proposal, which is a joint effort with VIMS and W&M. Dr. Behr's group intends to take NOAA and behavioral data and generate actionable information. It is their goal to determine current and estimated future economic impacts of flooding, including decreased earnings and loss of personal property, and use the information to inform municipal comprehensive planning. They propose conducting surveys across the region, modeled after Portsmouth's program, to evaluate the true cost of flooding to residents. There will be a particular focus on disadvantaged populations.

Ms. Katchmark made note that the project seems ambitious. Her concern is the interview process and surveying residents throughout the region when flooding is so area-specific. Dr. Behr said the responses would be geocoded, along with a series of hotspot maps, which they would then compare to a sea level rise overlay.

Mr. McFarlane asked how the localities are involved with the project. Though the Committee will appreciate updates on the project, the locality planners responsible for updating the comprehensive plans do not regularly meet. Mr. McFarlane emphasized the importance of involving the locality planners in order for the study to generate actionable results.

- ii. Dr. Carl Hershner (VIMS) presented their proposal to build on the ongoing TideWatch project. The project is designed to predict short term water levels incorporating anticipated storm surge. The water elevations are transferred to land features, such as roads and well known structures. The information is then crowd-sourced for validation and calibration using a smart phone app. The goal of the proposal is to enhance TideWatch and increase the lead time for forecasters. Currently, the forecasts are based on conditions at the tide gauges using the SLOSH model. The VIMS model is a much finer scale and can provide more specific information to local governments.

Ms. Katchmark asked if the model could predict street by street flooding. Dr. Hershner said they are linking the information to road infrastructure and landmarks but are cautious to go to a street by street scale.

Currently, ferryman and aqua culturists are the primary users of TideWatch. The goal is to expand the capabilities and the number of users, which will validate that the model is working. The information will be shared with localities and the media outlets.

- iii. Mr. Greg Johnson briefly described the proposal Virginia Beach is submitting with Dewberry and CDM. They are evaluating the impacts of sea level rise on the Lynnhaven River, Eastern Shore, Elizabeth River, and the oceanfront. They propose to develop pattern strategies with the Georgetown Climate Center that would be applicable to surrounding localities. Mr. Johnson expressed their willingness to partner with their neighboring localities.

Mr. McFarlane asked the Committee whether the HRPDC should draft letters of support to be signed by Mr. Bob Crum, Executive Director of the HRPDC, or by Mayor Kenneth Wright, Chair of the HRPDC. By voice vote, the Committee agreed to have the letters of support signed by the Commission.

#### **6. Coastal Zone Program Update**

Mr. McFarlane provided a brief update indicating that the Sea Level Rise Advisory Committee is meeting on July 31, 2015 at the HRPDC. He also mentioned that the Constance Warf public access project in Suffolk, which was funded by a CZM grant, is under construction.

#### **7. Dutch Dialogues**

In the interest of time, HRPDC staff recommended moving the Dutch Dialogues debriefing to the August meeting. Mr. McFarlane stated he would distribute the links to the Dutch Dialogues presentation and video from Tuesday, June 23, 2015.

#### **8. Other Matters**

Ms. Katchmark announced that the letter from the Manufactured Treatment Devices (MTD) Sizing Coalition was submitted, and a meeting is scheduled for July 8, 2015 with Mr. David Paylor.

Ms. Katchmark asked if the Committee had any recommendations for speakers for REC meetings. She will follow-up with Mr. James Davis-Martin to see if he will come speak to the Committee regarding the Phase 6 Chesapeake Bay model updates.

Mr. Bill Johnston said that VB had provided input to Ms. Jaime Bauer regarding numbers in their draft Phase I MS4 permit. He expressed frustration that DEQ intends to issue a second draft permit in mid-July and have not yet responded to the HRPDC or permittee comment letters. Ms. Katchmark said that she will contact Mr. Dale Mullen to get a more formal response. Ms. Gayle Hicks said that HA met with Ms. Bauer last week and she got the impression that DEQ is working on details but avoiding big picture issues. Ms. Hicks does not believe they will back down on the outfall requirements, but they do seem to want to give credit for the activities the localities are already doing, such as BMP effectiveness studies. Ms. Allison Watts said that NN has a face-to-face meeting scheduled with DEQ.

Mr. Clay Bernick announced that the Virginia Beach Planning Director is retiring and the position will soon be advertised. He also announced that the Green Sea Blueway and Greenway Management Plan has been approved by Council, and he'll provide an overview of the Plan at the August REC meeting.

Mr. Drew Scott mentioned that VDOT formed a sub-committee for developing their Bay TMDL Action Plan.

The next meeting of the Regional Environmental Committee is scheduled for August 6, 2015 at the Brock Environmental Center in Virginia Beach, VA. Materials will be sent in advance for review.