

Suggestions for EPA as it Develops the Section 202(a) Report of the Chesapeake Bay Executive Order
National Association of Home Builders
August 10, 2009

The National Association of Home Builders (NAHB) appreciates the efforts taken by EPA to hold today's meeting with developers and home builders to discuss the May 12, 2009 Executive Order on Chesapeake Bay Protection and Restoration. In response to the EPA notice that the purpose of today's meeting is to "solicit comments on what EPA should or should not include in its Section 202(a) Report," NAHB wishes to provide you with our written suggestions below. NAHB supports the Chesapeake Bay Restoration Program and looks forward to other opportunities to provide input to the restoration process.

NAHB is a Washington, D.C.-based trade association whose mission is to enhance the climate for housing and the building industry. Founded in 1942, NAHB represents roughly 200,000 members involved in home building, remodeling, multifamily construction, property management, subcontracting, design, housing finance, building product manufacturing and other aspects of residential and light commercial construction. NAHB is affiliated with more than 800 state and local home builders associations around the country. Known as "the voice of the housing industry," NAHB promotes policies that provide and expand opportunities for all consumers to have safe, decent and affordable housing, and keep housing a national priority. NAHB's builder members construct about 80 percent of the new homes constructed each year in the United States.

NAHB is interested in the activities surrounding the Bay restoration because, in addition to our local members being directly affected, we understand that many are looking at the Bay Program as a model for use in other areas as they face similar nutrient enrichment problems.

NAHB members are regulated at the federal, state and local levels for their stormwater discharges. The large number of current federal and state stormwater initiatives makes the Chesapeake Bay watershed a very dynamic area of changing regulatory requirements for home building. In addition, there are three new initiatives that will further impact how development in the Bay's watershed will be allowed to occur. These initiatives are:

- Evolving stormwater management requirements at the state and local level for development around the Chesapeake Bay which mandate or encourage the use of Low Impact Development (LID) in place of traditional stormwater BMPs,
- The Construction and Development Effluent Limitation Guidelines, a technology-based standard, that will be issued by EPA in December and must be meshed with existing requirements and any new requirements generated for construction permits,
- The Chesapeake Bay TMDL which, when issued, will require all holders of water permits in the Bay's watershed to meet new, more stringent limits on their discharges of nitrogen, phosphorus and sediment.

While the regulatory environment is becoming more complex, the home building industry is suffering financially and experiencing its lowest number of housing starts since 1940. Likewise, the Chesapeake Bay states have fewer resources to meet their needs, whether it be their regulatory needs or other needs. EPA must therefore ensure that new requirements are realistic and affordable to achieve and that its various offices work in concert so that new regulatory proposals, compliance initiatives, regulatory assistance and related efforts do not create regulatory conflicts for permit holders.

Suggestions for EPA's consideration as the E.O. Section 202(a) report is developed:

1. All sources of pollution contributing to the Bay's deterioration must be addressed and the greatest emphasis must be on the biggest sources of pollution. Because runoff from existing urban areas and agricultural runoff are the biggest sources of deleterious pollutants, those sources must be reduced if the restoration efforts are to meet their goals. In many cases it is more beneficial to the environment to retrofit an existing structure to better prevent runoff into the Bay rather than hold new construction projects to higher standards which may be technically excessive and even impossible to meet in urban environments.
2. Efforts must be effective, efficient and affordable. There are numerous options available to meet the stated goals. One option in particular, interstate water quality trading, is imperative in order to lessen the overall costs of reducing pollutants to the Bay while ensuring that agriculture is included as a major player in the reduction program. Related to this point:
 - a. EPA should consider drawing more on its existing trading expertise residing throughout the agency to assist and accelerate the progress of the current discussions taking place concerning the possibility of interstate water quality trading in the Bay.
 - b. The EPA Office of Water should be provided with assistance to develop language that can be included in NPDES permits as they get revised, to enable and to encourage states and localities to consider appropriate water quality trading in their areas. The federal Construction General Permit will be revised in 2010 and that affords the perfect opportunity to include water quality trading language in a federal permit.
3. Maximum flexibility, options for permit compliance, and workable outcomes are necessary. The public desires restoration of the Bay but realistic and affordable means to accomplish restoration must be identified, and adequate funding must be provided.
 - a. Immediate and broad opportunities for stakeholder input must be provided. Due to the expected impacts of the restoration effort on regulated industries, nonpoint pollutant sources, communities, and citizens, a clear commitment to include the public in the program's development and implementation is vital to the success of the restoration. Accommodations must be made so that the affected industry sectors can begin planning now to meet the demands that will come under the new regulatory regime envisioned for the Bay's watershed. EPA has largely neglected this requirement, to date. Of particular interest to home builders is that EPA Region III and the Bay Program have adopted an "aspirational" goal of "no-discharge" development and are advocating using LID as a means to achieve no-discharge or near no-discharge development. Home builders and other stakeholders however have not had an opportunity to provide input on the concept of no-discharge development even though EPA and environmental groups are actively advocating the concept to the Bay states. Had the industry been consulted, the agency would know that LID failures and related issues are now surfacing in locations struggling to comply with new LID mandates. Unfortunately, EPA has not replied to industry requests to meet. NAHB again requests a meeting with EPA to discuss this vision of no-discharge development and how best to utilize LID for stormwater management in the Bay's watershed.

To ensure smart growth principles are not affected negatively by the Chesapeake Bay restoration efforts, EPA is encouraged to:

- a. Ensure all programs and regulatory mandates are aimed at creating more environmentally sensitive, economically viable and locally appropriate development. To do so, all efforts must be consistent with the following 22 site development principles, which are designed to measurably reduce impervious cover, conserve natural areas, prevent stormwater pollution from new development, enhance the value of our neighborhoods and enrich the quality of life in our communities.¹
- Principle 1: Design residential streets for the minimum required pavement width needed to support travel lanes; on-street parking; and emergency, maintenance, and service vehicle access. These widths should be based on traffic volume.
 - Principle 2: Reduce the total length of residential streets by examining alternative street layouts to determine the best option for increasing the number of homes per unit length.
 - Principle 3: Whenever possible, residential street right-of-way widths should reflect the minimum required to accommodate the travel-way, the sidewalk, and vegetated open channels. Utilities and storm drains should be located within the pavement section of the right-of-way wherever feasible.
 - Principle 4: Maximize the number of residential street cul-de-sacs and incorporate landscaped areas to reduce their impervious cover. The radius of the cul-de-sacs should be the minimum required to accommodate emergency and maintenance vehicles. Alternative turnabouts should be considered.
 - Principle 5: Where density, topography, soils, and slope permit, vegetated open channels should be used in the street right-of-way to convey and treat stormwater runoff.
 - Principle 6: The required ratio governing a particular land use or activity should be enforced as a maximum and a minimum in order to curb excess parking space construction. Existing parking ratios should be reviewed for conformance taking into account local and national experience to see if lower ratios are warranted and feasible.
 - Principle 7: Parking codes should be revised to lower parking requirements where mass transit is available or enforceable shared parking arrangements are made.

¹These design principles were developed by the Site Planning Roundtable, a wide and diverse group of individuals involved in planning, designing and building new communities and protecting the natural environment that was convened by the Center for Watershed Protection. See *Consensus Agreement on Model Development Principles To Protect Our Streams, Lakes, and Wetlands*, Center for Watershed Protection, April 1998, available at http://www.cwp.org/Resource_Library/Center_Docs/BSD/cons.pdf.

- Principle 8: Reduce the overall imperviousness associated with parking lots by providing compact car spaces, minimizing stall dimensions, incorporating efficient parking lanes, and using pervious materials in spillover parking areas.
- Principle 9: Provide meaningful incentives to encourage structured and shared parking to make it more economically viable.
- Principle 10: Whenever possible, provide stormwater treatment for parking lot runoff using bioretention areas, filter strips, and/or other practices that can be integrated into required landscaping areas and traffic islands.
- Principle 11: Advocate open space development that incorporates smaller lot sizes to minimize impervious area, reduce total construction costs, conserve natural areas, provide community recreational space, and promote watershed protection.
- Principle 12: Relax side yard setbacks and allow narrower frontages to reduce total road length in the community and overall site imperviousness. Relax front setback requirements to minimize driveway lengths and reduce overall lot imperviousness.
- Principle 13: Promote more flexible design standards for residential subdivision sidewalks. Where practical, consider locating sidewalks on only one side of the street and providing common walkways linking pedestrian areas.
- Principle 14: Reduce overall lot imperviousness by promoting alternative driveway surfaces and shared driveways that connect two or more homes together.
- Principle 15: Clearly specify how community open space will be managed and designate a sustainable legal entity responsible for managing both natural and recreational open space.
- Principle 16: Direct rooftop runoff to pervious areas such as yards, open channels, or vegetated areas and avoid routing rooftop runoff to the roadway and the stormwater conveyance system.
- Principle 17: Create a variable width, naturally vegetated buffer system along all perennial streams that also encompasses critical environmental features, such as the 100-year floodplain, steep slopes and freshwater wetlands.
- Principle 18: The riparian stream buffer should be preserved or restored with a native vegetation that can be maintained throughout the plan review, delineation, construction, and occupancy stages of development.
- Principle 19: Clearing and grading of forests and native vegetation at a site should be limited to the minimum amount needed to build lots, allow access, and provide fire protection. A

fixed portion of any community should be managed as a protected green space in a consolidated manner.

- Principle 20: Conserve trees and other vegetation at each site by planting additional vegetation, clustering tree areas, and promoting the use of native plants. Whenever practical, manage community open space, street rights-of way, parking lot islands, and other landscaped areas to promote natural vegetation.
 - Principle 21: Incentives and flexibility in the form of density compensation, buffer averaging, property tax reduction, stormwater credits, and by-right open space development should be encouraged to promote conservation of stream buffers, forests, meadows, and other area of environmental value. In addition, off-site mitigation consistent with locally adopted watershed plans should be encouraged.
 - Principle 22: New stormwater outfalls should not discharge unmanaged stormwater into jurisdictional wetlands, sole-source aquifers or other water bodies.
- b. Work with state and local governments to identify and remove impediments to designing and completing environmentally-sensitive development. Many of the current codes and ordinances include mandates that are inconsistent with the principles outlined above. For example, requiring 40' residential streets or sidewalks on both sides of a roadway can significantly increase the amount of imperviousness and the associated stormwater discharging from a site. By identifying and removing these roadblocks, EPA can allow and facilitate the use of practices and principles that reduce environmental stresses on the watershed.
 - c. Assess the cost implications and affordability associated with the regulatory requirements it considers. The cost of the proposed new requirements on new development, and redevelopment in urban centers, for example, are likely to be significant, and must be compared to other options that may be available to meet the same goals.
 - d. Ensure that all governmental entities recognize and plan for future growth.

We thank you for your consideration of these suggestions. Please contact Glynn Rountree at 202-266-8662, grountree@nahb.com if you have any questions concerning these suggestions.