



April 13, 2016

**MEMORANDUM**

**SUBJECT:** Recommendations to Address BMP Expert Panel Process Challenges

**FROM:** Nicholas A. DiPasquale  
Chair, Management Board

**TO:** James Davis-Martin  
Chair, Water Quality Goal Implementation Team

Convening Best Management Practice (BMP) expert panels and crediting BMPs is an ongoing focus and priority under the Chesapeake Bay Program (CBP) partnership, given the integral role BMP implementation plays in the Bay jurisdictions' Watershed Implementation Plans and two-year milestones. The CBP partnership has approved over 200 BMPs for nutrient and sediment reduction credit in the partnership's modeling tools, and there are currently 19 BMP expert panels underway. Each of these expert panels was identified by the Water Quality Goal Implementation Team's (WQGIT) source sector workgroups as priority expert panels for inclusion in the Phase 6 suite of modeling tools. Therefore, these "Phase 6" expert panels need to be complete by October 2016 in order to meet the final Phase 6 calibration deadlines. The specific schedule for these Phase 6 BMP expert panels can be found in Appendix A.

The BMP expert panels are a partnership-driven process. There are partnership-approved BMP Panel Protocols<sup>1</sup> in place that guide the development of the BMP efficiencies, as well as the partnership's review and approval of the panels' BMP recommendations. Several revisions to these Protocols have been made in order to streamline the review and approval process; to protect the integrity of panel deliberations through closed panel meetings (while at the same time providing increased opportunities for the partnership to interact with panels); and to address ancillary benefits and unintended consequences.

Despite attempts to streamline the CBP partnership's review and comment process, the BMP expert panels are still experiencing considerable delays due to several contributing factors that violate both the BMP Panel Protocols and the WQGIT's Governance Procedures<sup>2</sup>. The Management Board directs the WQGIT and its source sector workgroups to strongly consider the following recommendations as opportunities to address these factors and to help ensure that BMP expert panel recommendations are included in the final Phase 6 model calibration.

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<sup>1</sup> [http://www.chesapeakebay.net/channel\\_files/22733/cbp\\_bmp\\_expert\\_panel\\_protocol\\_wqgit\\_approved\\_7.13.15.pdf](http://www.chesapeakebay.net/channel_files/22733/cbp_bmp_expert_panel_protocol_wqgit_approved_7.13.15.pdf)

<sup>2</sup> [http://www.chesapeakebay.net/channel\\_files/22735/water\\_quality\\_git\\_governance\\_protocols\\_v8.24.15\\_revised\\_1.12.16\\_clean.pdf](http://www.chesapeakebay.net/channel_files/22735/water_quality_git_governance_protocols_v8.24.15_revised_1.12.16_clean.pdf)

### 30-day Partnership Review and Comment Period

**Current Process and Challenges.** The BMP Panel Protocols outline a three-stage formal review process for expert panel recommendations (see Appendix B for a flow chart of this partnership review and decision making process). The 30-day partnership review and comment period occurs during the first stage of the review process, and is initiated by either a webinar or a workgroup meeting to present the draft panel report. All partnership groups, including Advisory Committees, are strongly encouraged to participate in this comment period. According to the BMP Panel Protocols:

“This meeting [webinar or workgroup meeting] will begin a 30-day open comment period...Commenters should send specific edits in track change format or more general comments in writing to the Panel Chair and Panel Coordinator during this comment period to better ensure the effective resolution of any substantive comments. Any requests for review extensions can be submitted to the Panel Chair or Panel Coordinator for consideration. Approval of the draft report will be sought from the relevant source sector Workgroup after the comment period has closed and the Panel has addressed any comments received.”

The 30-day comment period is the primary opportunity to submit comments on draft panel reports. However, “late-hit” comments are often received outside of this 30-day comment period, either right before or during a decisional meeting with no notice to the panel and workgroup chair/coordinator of an objection. Such late-hit comments have delayed approval of panel reports by up to six months.

**Recommendations.** Emphasis needs to be placed on the importance of this 30-day review period and that providing comments within this timeframe can help move the report through the approval process more smoothly. If comments are received after this 30-day review and comment period, source sector workgroup and GIT leadership should feel empowered to adhere to the BMP Panel Protocols and move the panel report forward to the next approving partnership group. It is also critical for the expert panel, the source sector workgroups, and the WQGIT to raise any issues to the partnership that may be particularly controversial or have significant policy implications prior to this 30-day review and comment period, so adequate time is provided to resolve such issues with the expert panel.

### Roles & Responsibilities of Partnership Groups in Review

**Current Process and Challenges.** Per the BMP Panel Protocols, the primary partnership groups involved in the review and approval of a panel report are the following:

- “Relevant source sector Workgroup. This group will be responsible for reviewing the scientific basis of the recommendation, ensuring that all of the pollutant(s) source loading(s) or BMP pollution reduction mechanisms have been included.
- Watershed Technical Workgroup. This group will be responsible for analyzing the technical components of the recommendation(s) and determining that the tracking and reporting data that is needed to receive credit is available in the appropriate Chesapeake Bay jurisdiction(s) thereby ensuring that no double counting is occurring.
- Water Quality Goal Implementation Team. This group will be responsible for reviewing the process used and the recommendation’s consistency with other approved BMP effectiveness estimates.

It should be noted that often times technical, policy, and management issues may have cross-Workgroup and GIT implications that cannot be addressed in isolation by one particular group. Although the definitions above serve to articulate the primary function of these groups in relation to the Expert Panel process, flexibility of those roles is allowed.”

Each workgroup and GIT serves a specific role in reviewing these reports. However, in many instances, issues are being considered that have no relevance to the roles and responsibilities of that group. For example, scientific data is being debated by a partnership group that instead should be focused on the reporting, tracking, and verification of that BMP.

**Recommendation.** Workgroups and GITs need to follow their respective charges and review the panel reports based on their roles and responsibilities– whether it be providing programmatic, modeling, or policy expertise.

### **Approval Process for Panel Reports**

**Current Process and Challenges.** Each partnership group approves a panel report separately. As reflected in Appendix B, the draft panel report first goes to the source sector workgroup, then the Watershed Technical Workgroup, and finally the WQGIT for approval. In addition, “the [source sector workgroups, Watershed Technical Workgroup and] WQGIT will be given a minimum of 10 business days for their review prior to the meeting where a decision is requested.” The purpose of that 10 business day review is to address any remaining concerns on a panel report. However, substantive comments are still being raised during this 10-day window that should have been addressed during the 30-day review and comment period. Missing this 10-day deadline should not be used as an excuse or as a means to delay a panel report, given the 30-day review and comment period available to the partnership.

**Recommendations.** Flexibility may be necessary when submitting a panel report to a partnership group (e.g. might not be submitted 10 business days prior). The approval process may need to be further streamlined due to a panel’s timeline and when a partnership group is scheduled to meet. For example, a panel report may need to be jointly submitted to the source sector workgroup and the Watershed Technical Workgroup for their approval. Therefore, it is recommended that concurrent reviews and approval are utilized in the event that deadlines for delivering the final panel recommendations to the CBP modeling team may not be met.

### **Achieving Consensus**

**Current Process and Challenges.** The WQGIT and its source sector workgroups operate under a consensus-decision making approach. Consensus is defined under the WQGIT’s Governance Procedures as “a consensus decision-making process is a group decision-making process (e.g. all parties can live with the decision) that not only seeks the agreement of most participants, but also the resolution or mitigation of minority objections.” The use of a consensus continuum (see Appendix C) has been adopted by the CBP partnership to demonstrate the spectrum between agreement and disagreement on any CBP partnership issue. If such a disagreement or objection is raised on a panel report, the dissenting party/parties are responsible for providing an alternative proposal for consideration that the dissenting parties are reasonably sure the full group can live with. However, it is often the case that no reasonable alternative proposal is brought to the table for consideration and further delays are allowed in order for the panel chair/coordinator to follow up directly with the dissenting party/parties after the decisional meeting.

**Recommendations.** To help facilitate consensus, it is highly recommended that prior to a draft report being submitted for partnership review, the chairs of the WQGIT, the expert panel, the source sector workgroup, the Watershed Technical Workgroup, and the CBPO modeling team meet to discuss the timeline and expectations for getting a panel report approved. Given the tight timelines the panels are currently operating under, decisional meetings are recommended each time a panel report is submitted to a partnership group. If no alternative proposal is submitted and consensus cannot be reached, the panel report should be elevated to the next partnership group.

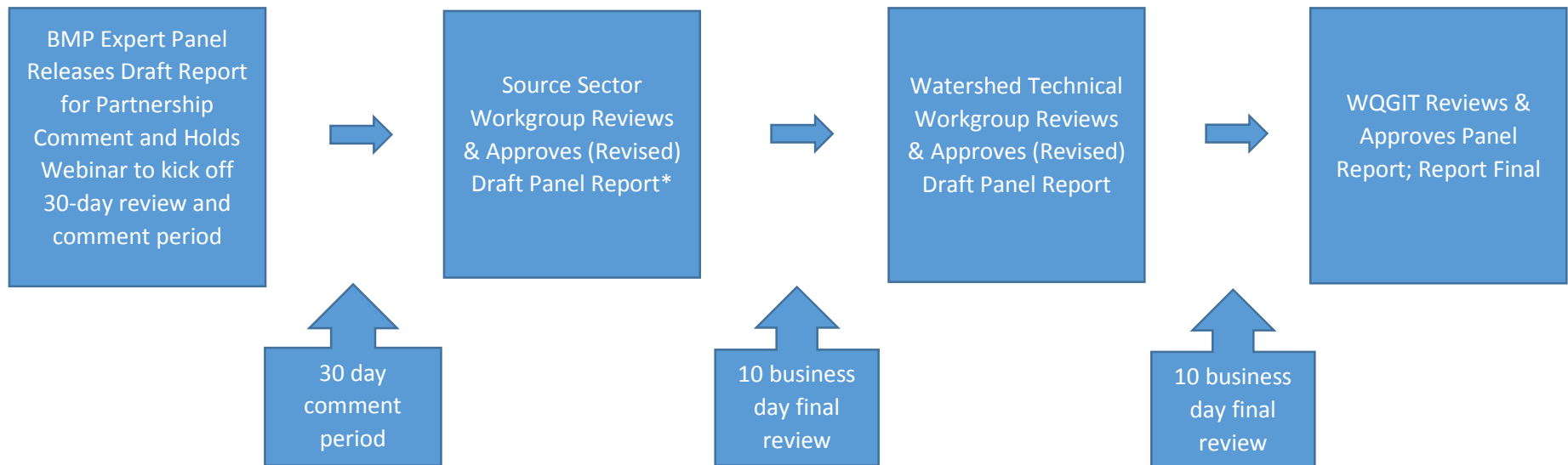
### Summary of Management Board Recommendations

<b>Management Board Recommendation</b>	<b>Impacts to Current BMP Panel Process</b>
Adhere to the 30-day partnership review and comment period.	Consistent with the current BMP Panel Protocols.
Workgroups/GITs to follow their assigned roles and responsibilities in the BMP panel review process.	Consistent with the current BMP Panel Protocols.
Support concurrent reviews of draft panel report.	Further streamlines review and approval process in the event deadlines will be missed.
10-business day review may need to be compressed.	Tightens the amount of time provided for a final review of draft report prior to a decision. However, any significant changes to a panel report will be highlighted to the approving partnership group in advance of a decision.
An alternative proposal must be submitted along with any objection to a panel report that the dissenting party is reasonably sure can be accepted by the full group.	Consistent with the current BMP Panel Protocols.
Convene meeting between leadership of partnership group and BMP panels to discuss expectations and timing of review and approval process.	Adds important step to the CBP partnership review and approval process of panel reports.
Decisional meetings are held each time a panel report is submitted to a partnership group.	Identification of comments/concerns to the approving partnership group must be done prior to a decisional meeting in order to allow for constructive discussion and resolution. This is consistent with the current BMP Panel Protocols.

## Appendix A: Phase 6 BMP Panel Schedule

BMP Panel Name	Sponsoring Workgroup	Workgroup/WTW G Approval Date	WQGIT Approval Date
Algal Flow Ways	Watershed Technical WG	January 2016	January 2016 (complete)
Street Sweeping	Urban Stormwater WG	January 2016	April 2016
Advanced Onsite Systems (Attenuation), Part 2	Wastewater WG	June 2016	July 2016
Manure Technologies	Agriculture WG	March 2016	April 2016
Oyster Restoration/Aquaculture	N/A	N/A	July 2016
Urban Tree Canopy	Forestry WG	June 2016	July 2016
Floating Wetlands	Urban Stormwater WG	July 2016	August 2016
Impervious Disconnection	Urban Stormwater WG	July 2016	August 2016
Phase 6 Cover Crops	Agriculture WG	August 2016	September 2016
Phase 6 Nutrient Management	Agriculture WG	August 2016	September 2016
Phase 6 Conservation Tillage	Agriculture WG	July 2016	August 2016
Manure Injection/Manure Incorporation	Agriculture WG	July 2016	August 2016
Cropland Irrigation Management	Agriculture WG	November 2016	December 2016
Ag Stormwater Structures	Agriculture WG	November 2016	December 2016
Boat Pump-Out	Wastewater WG	August 2016	September 2016
Advanced Onsite Systems (drip dispersal and peat treatment w/ dispersal to pad), Part III	Wastewater WG	August 2016	September 2016
Animal Waste Storage Systems	Agriculture WG	August 2016	September 2016
Agricultural Ditch (NRCS BMPs)	Agriculture WG	August 2016	September 2016
Wetlands	Wetlands GIT	August 2016	September 2016

## Appendix B: CBP Partnership Review Process for BMP Expert Panels



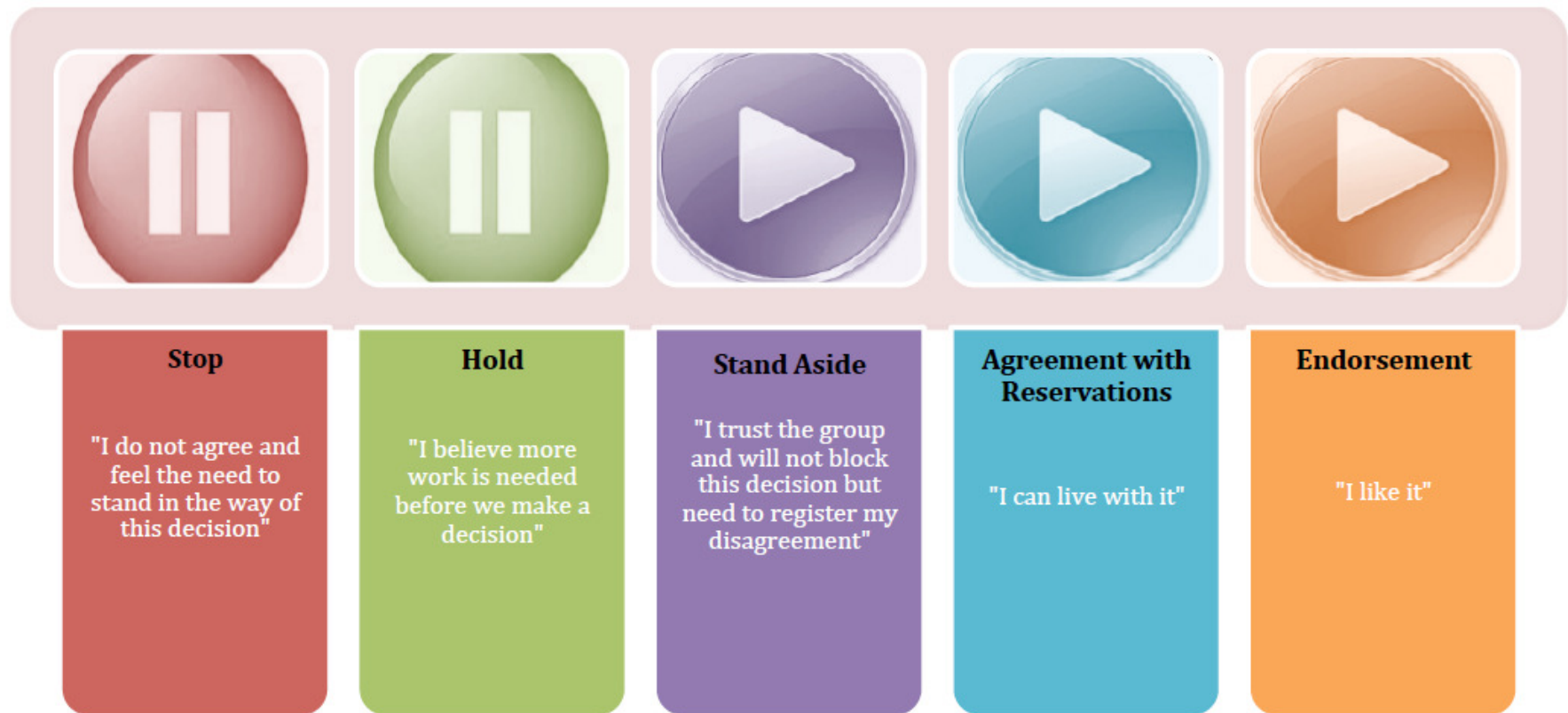
### CBP Partnership has Opportunity to Review and Comments on Draft Panel Report during Each Stage of Review Process

To better ensure effective resolution of comments, all interested partners, groups or individuals are encouraged to submit their comments during the first review and comment period. New comments at later stages will be considered, but the Panel can more effectively address substantive comments the earlier they receive them.

\*The Panel Chair and Coordinator are responsible for developing a “Response to Comments” document based on feedback received through partnership review. The “Response to Comments” document will be attached to the final Panel report.

## Appendix C: Consensus Continuum<sup>3</sup>

### Consensus Continuum



<sup>3</sup> University of Maryland, Center for Leadership & Organizational Change