

Chesapeake Bay Local Assistance Board
March 23, 2009
The College of William and Mary, Williamsburg, Virginia
DRAFT Minutes

Chesapeake Bay Local Assistance Board Members Present

Donald W. Davis, Chairman
Gregory C. Evans
Richard B. Taylor
John J. Zeugner

William E. Duncansen, Vice Chairman
Barry L. Marten
Charles B. Whitehurst

Chesapeake Bay Local Assistance Board Members Not Present

Beverly D. Harper

Rebecca L. Reed

DCR Staff Present

Joseph H. Maroon, Director
Joan Salvati, Director, Division of Chesapeake Bay Local Assistance
David Sacks, Assistant Director, Division of Chesapeake Bay Local Assistance
Melissa Doss, Senior Environmental Planner
Adrienne Kotula, Principal Environmental Planner
Nancy Miller, Senior Environmental Planner
Shawn Smith, Principal Environmental Planner
Michael R. Fletcher, Board and Constituent Services Liaison
Elizabeth Andrews, Office of the Attorney General

Others Present

Wyn Davis, Essex County
Joseph Hatch, City of Petersburg
Diana Parker, Sierra Club
Brian Swets, City of Chesapeake
Karen Shaffer, City of Chesapeake
Peter Williams, City of Virginia Beach

Call to Order

Chairman Davis called the meeting to order and asked for the calling of the roll. A quorum was declared present.

Consideration of the Minutes

MOTION: Mr. Whitehurst moved that the minutes from the following meetings be approved as submitted by staff:

December 15, 2008 Board Meeting
December 15, 2008 Policy Committee Meeting
February 10, 2009 Southern Area Review Committee

SECOND: Mr. Zeugner

DISCUSSION: None

VOTE: Motion carried unanimously

Director's Report

Mr. Maroon noted that the Division of Chesapeake Bay Local Assistance would be moving to the Pocahontas Building at 900 East Main Street. He said that the next round of NARC and SARC meetings would be at that location.

Mr. Maroon said that Requests for Proposals (RFPs) had been released for the Chesapeake Bay Implementation Grant. He said the agency had \$50,000 to award. This is money that comes from the EPA to the primary Chesapeake Bay States. Staff worked to develop proposals to provide funding to support Phase III development and to provide funding for low to moderate income septic pumpout. Out of eleven proposals received, seven will be funded.

Mr. Maroon said that Loudoun County was giving serious consideration to the adoption of the Bay Act. This is currently outside of DCR's jurisdiction for the Bay Act. One of the issues being considered is whether agriculture requirements should be included.

Mr. Maroon said that Accomack County adopted amendments to their Bay Act ordinance in February. He said that the entire County was not required to be under the Bay Act by law; however, the County has decided to move ahead with placing the entire County under the act.

Mr. Maroon said that at the December meeting of the Policy Committee, staff provided an update on the status of Phase III. DCR is working closely with the Office of the Attorney General to ensure that the final approach for Phase III is consistent with the Act and the Regulations.

Mr. Maroon said that the EPA released the Bay Barometer at a press conference the preceding week. He said that despite an increase in restoration efforts the overall health

of the Bay did not improve in 2008. The Bay continues to have poor water quality, degraded habitats and low populations of fish and shellfish.

Mr. Maroon said that the Commonwealth was at roughly 330,000 acres towards the Governor's goal of preserving 400,000 acres of land prior to the end of his term.

Mr. Maroon said that Virginia was on track to meet the point source goals within the 2010 Chesapeake Bay Agreement. He said that DCR was the lead for the nonpoint sources. He noted that agriculture was by far the largest single source on the nonpoint side. He said that overall pollutant loadings were down with regard to agricultural and sewage treatments but rising in terms of stormwater runoff.

Mr. Maroon said that Governor Kaine has assumed the leadership role for a regional partnership to chart a new phase of Chesapeake Bay restoration. He said that the intent was to set one and two year milestones to assess progress and adjust strategies.

Mr. Evans noted that the two-year time frame would go beyond 2010. He asked if EPA was looking at regulatory options or still considering voluntary approaches.

Mr. Maroon said that all the options were on the table. He said that EPA was taking a serious look at what was needed. He said that when EPA develops a TMDL for the Bay it will require a reasonable assurance regarding the necessary reductions. He said that could mean new practices, or the ramping up of existing strategies.

Mr. Davis asked if the stormwater regulations would be statewide and not just in the Chesapeake Bay Act areas.

Mr. Maroon said that one of the big improvements in the stormwater regulations was that they apply to parts of the state that have previously not dealt with stormwater. Localities will be able to opt into the program or DCR will operate as the permitting authority.

Quarterly Performance Indicators

Mr. Sacks presented the Quarterly Performance Indicators.

As of December 15, 2008:

Localities Found Compliant: 57

Localities Addressing Compliance Conditions: 25

Expected Status as of March, 2009:

Localities Phase I Consistent: 84

Phase II Consistent: 84

Compliance Reviews Completed: 83

Localities Compliant: 62

Localities Noncompliant: 2

Localities Addressing Compliance Conditions: 19
Compliance Reviews in Progress: 1

Consent Agenda

MOTION: Mr. Evans moved that the Chesapeake Bay Local Assistance Board approve the Consent Agenda items as presented by staff for the following localities:

Town of Onley – Compliance Evaluation condition review
SARC recommends a finding of compliant

City of Chesapeake – Compliance Evaluation conditions review
SARC recommends a finding of compliant

SECOND: Mr. Taylor

DISCUSSION: None

VOTE: Motion carried unanimously

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
March 23, 2009

RESOLUTION

LOCAL PROGRAM COMPLIANCE EVALUATION
TOWN OF ONLEY

Local Compliance Evaluation - Compliant

WHEREAS § 10.1-2103 of the Chesapeake Bay Preservation Act states that the Chesapeake Bay Local Assistance Board shall take administrative and legal steps to ensure compliance by counties, cities and towns with the provisions of the Chesapeake Bay Preservation Act, including the proper enforcement and implementation of, and continual compliance with the Act; and

WHEREAS § 9 VAC 10-20-250 1 b of the Regulations required the Board to develop a compliance evaluation process for evaluating local Bay Act compliance; and

WHEREAS the Chesapeake Bay Local Assistance Board adopted a compliance evaluation process on September 16, 2002 for the purposes of reviewing local Bay Act compliance; and

WHEREAS on March 17, 2008, the Chesapeake Bay Local Assistance Board found that implementation of certain aspects of the Town of Onley's Phase I program did not fully comply with the Act and Regulations and further that the Town address the one recommended condition in the staff report no later than December 31, 2008; and

WHEREAS in December 2008, the Town provided staff with information relating to the Town's actions to address the one recommended condition which was evaluated in a staff report; and

WHEREAS on February 10, 2009 the Local Program Review Committee for the Southern Area considered and evaluated the information contained in the compliance evaluation staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the implementation of the Town of Onley's Phase I program to be in compliance with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on March 23, 2009 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

March 23, 2009

RESOLUTION

LOCAL PROGRAM COMPLIANCE EVALUATION

CITY OF CHESAPEAKE

Local Compliance Evaluation - Compliant

WHEREAS § 10.1-2103 of the Chesapeake Bay Preservation Act states that the Chesapeake Bay Local Assistance Board shall take administrative and legal steps to

ensure compliance by counties, cities and towns with the provisions of the Chesapeake Bay Preservation Act, including the proper enforcement and implementation of, and continual compliance with the Act; and

WHEREAS § 9 VAC 10-20-250 1 b of the Regulations required the Board to develop a compliance evaluation process for evaluating local Bay Act compliance; and

WHEREAS the Chesapeake Bay Local Assistance Board adopted a compliance evaluation process on September 16, 2002 for the purposes of reviewing local Bay Act compliance; and

WHEREAS on December 10, 2007, the Chesapeake Bay Local Assistance Board found that implementation of certain aspects of the City of Chesapeake's Phase I program did not fully comply with the Act and Regulations and further that the City address the five recommended conditions in the staff report no later than December 31, 2008; and

WHEREAS in November 2008, the City provided staff with information relating to the City's actions to address the five recommended conditions which was evaluated in a staff report; and

WHEREAS on February 10, 2009 the Local Program Review Committee for the Southern Area considered and evaluated the information contained in the compliance evaluation staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the implementation of the City of Chesapeake's Phase I program to be in compliance with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on March 23, 2009 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

Local Program Compliance Evaluations

Ms. Doss presented the staff report for the City of Petersburg. She noted that City Zoning Administrator Joseph Hatch was present.

Located 20 miles south of Richmond across the Appomattox River and at the junction of Interstates 95 and 85, Petersburg's estimated population is 33,740. The City's land area includes 23.2 square miles, approximately two-thirds of which is located in the Chesapeake Bay drainage area. Petersburg is a part of the Tri-cities area which also includes Colonial Heights and Hopewell. Residential and commercial development in the City is limited to primarily redevelopment and infill.

The Compliance Evaluation was conducted throughout 2008 and the process revealed nine program elements that were not fully compliant with the Act and the Regulations. During the course of the compliance evaluation, the City shared its policies and procedures. After discussing the results of the compliance evaluation with Mr. Muse (the City of Petersburg's Planning Director) and Joseph Hatch (the City's Zoning Administrator), both have expressed their willingness to improve the City's program and are here today if you have any questions.

After thorough discussion with the City of Petersburg about their Chesapeake Bay Act program, it appeared the program was not being enforced. Staff reviewed a number of permits that were approved, and visited several sites where construction had not yet begun, was underway, or complete, that did not undergo any review for Bay Act program compliance. The following conditions are what the City needs to get them back on track.

The first three conditions are generally related to the process undertaken by the City for reviewing building permit applications. The first condition is that the City must immediately begin screening all applications for whether they are in the CBPA. Of the seven files reviewed, six of them contained no documentation suggesting that any type of review for compliance with the City's Bay Act program occurred. The City is receptive to this condition and has developed a specific form to ensure every application is checked for CBPA features. Staff will be following up in the near future to ensure compliance and will provide an update at the next Board meeting.

Department staff has made a suggestion that the City should consider revising its current CBPA map to more accurately depict the RPA and RMA and avail itself of technical assistance provided by the Department for this task. The City appears very receptive to this suggestion and discussion has already begun on how we might help them revise their map.

The second condition states the City must require that Chesapeake Bay Preservation Areas are properly depicted on all development plans. The third condition states that the City must require site-specific evaluations to identify water bodies with perennial flow and ensure the boundaries of RPAs are adjusted as necessary. Development within CBPAs must be closely reviewed to determine which requirements of the City's CBPA ordinance apply in each circumstance. A proper review cannot occur without a site plan

depicting the RPA and RMA. None of the seven files reviewed contained an adequate site plan depicting the limits of the RPA or RMA. In addition to obtaining a site plan depicting the RPA and RMA, it may be necessary to visit a site to determine the specific boundaries of the RPA or RMA. In three of the projects reviewed (Myrtle Drive, King Avenue and Seventh Street), the location of the RPA/RMA was unclear from the "Environmental Factors" map and from the information submitted and thus, a site specific determination should have been made or required by the City in addition to requiring a detailed plan. The City acknowledges CBPAs are not depicted on all plans and will be updating their mapping data and therefore be better equipped to require labeling for CBPAs on site plans. The City will be monitored over the next year to ensure compliance.

The fourth condition requires the City to document submission of a WQIA for any proposed land disturbance, development, or redevelopment within RPAs. Two of the files reviewed by staff did not have a WQIA in the file, when they clearly should have been required due to disturbance being proposed in the RPA.

Condition number five states that the City must address issues with their erosion and sediment control program that are identified in the 2008 Corrective Action Agreement with the Virginia Soil and Water Conservation Board. DCR's Division of Soil and Water Conservation recently conducted a review of Petersburg's Erosion and Sediment Control program. The City's program was found, by the Soil & Water Conservation Board, to be inconsistent and a Corrective Action Agreement (CAA) was entered into. A review of the CAA was done on October 9, 2008 and the CAA completion date was extended to May 21, 2009. The City will be monitored over the next year to ensure compliance.

Condition six states the City must develop and implement a septic maintenance program, including the 5-year pump-out notification, installation of the plastic filter, and/or annual inspection, and any necessary tracking information.

Condition number seven states the City must ensure that all development and redevelopment within the Chesapeake Bay Preservation Area ordinance properly addresses nonpoint source pollution in accordance with the water quality provisions of the Virginia Stormwater Management Regulations. During the file review process, Department staff was unable to determine if the City meets the requirements for stormwater calculations because the files were not reviewed for Bay Act compliance.

The eighth condition relates to BMP installation, inspection, tracking, and maintenance. Although City staff has confirmed the presence of BMPs in the City CBPAs, they have stated that there is no system in place to ensure inspection and continued maintenance. After discussion with the City, staff supplied the City with templates and guidance on how to implement the program. The City has agreed to require maintenance agreements and to begin to track new BMPs.

Condition number nine requires the City to administer exceptions consistent with City code requirements. During staff's field investigation, it was determined at least three of the sites should have required an exception and did not.

Ms. Doss said that given this information, staff recommended that the City of Petersburg be found to not fully comply with the Act and Regulations and be given until March 31, 2010 to address eight of the nine conditions discussed, and address condition number one beginning March 24, 2009.

Ms. Doss thanked the City for working with staff and noted that Mr. Hatch wished to provide comments.

Mr. Hatch addressed the staff report. He said that it was true that there had been applications submitted for construction with no statement regarding the Bay Act status of the property. He said that the category is outlined in the steps for project review but that the policy had not been followed completely. He said that applications indicate whether the property is in the flood plain, but generally do not address the Chesapeake Bay. He said the City has begun requiring that information.

Mr. Hatch said that the City was in the process of updating the CBPA map to show streams that are in the Bay Act area.

Mr. Hatch said that the City believed there were no septic tanks in the Chesapeake Bay Preservation Area.

Mr. Hatch said that regarding nonpoint source pollution, the delineation of Chesapeake Bay Preservation Areas will be documented on plans from this point forward. He said that the City has a stormwater management agreement for new construction that is recorded with the Clerk of Court. He said projects are not permitted to go forward until that is recorded.

Mr. Davis said that there were certain items in the staff report that the City should implement immediately. He said that items 2, 3, 6, 7 and 9 should be implemented at a minimum within the next 30 days. He said that if there was a motion to approve these items should be considered.

Mr. Evans agreed and said that the process needed to move more quickly.

Mr. Davis requested that the Board receive a progress update at the June meeting.

Mr. Maroon noted that item #7 was already addressed under the Soil and Water Conservation Board regarding the City Erosion and Sediment Control program.

Mr. Sacks expressed a concern that the June meeting may not allow enough time for enough projects to be reviewed.

Mr. Davis said that staff could report to the Board regarding the number of projects.

Ms. Salvati noted that the remaining conditions would need to be addressed by March 31, 2010.

Mr. Taylor asked about the City's statement that there were no septic systems in the Bay area.

Ms. Doss said that requirement could be removed if the City could provide documentation to that effect.

Mr. Duncanson asked Mr. Hatch if he felt the provisions could be adopted by the City immediately.

Mr. Hatch said that the City could accomplish everything but the revision of the map.

Mr. Sacks said that staff did not believe the updating of the map to be necessary. He said it would be helpful but the existing map was adequate.

MOTION: Mr. Zeugner moved that the Chesapeake Bay Local Assistance Board find that the implementation of certain aspects of the City of Petersburg's Phase I program do not fully comply with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations, and in order to correct these deficiencies, directs the City of Petersburg to undertake and complete condition numbers 1, 2, 3, 4, 5, 6, and 9 as contained in the resolution no later than March 24, 2009; address condition 7 in accordance with the deadlines and requirements established by the Virginia Soil and Water Conservation Board; and address condition 8 no later than March 31, 2010 and that staff will report to the Board at the June 15, 2009 meeting on the status of compliance with the conditions.

SECOND: Mr. Whitehurst

DISCUSSION: None

VOTE: Motion carried unanimously

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
March 23, 2009**

RESOLUTION

LOCAL PROGRAM COMPLIANCE EVALUATION
City of Petersburg

Local Compliance Evaluation - Conditional

WHEREAS § 10.1-2103 of the Chesapeake Bay Preservation Act states that Chesapeake Bay Local Assistance Board shall take administrative and legal steps to ensure compliance by counties, cities and towns with the provisions of the Chesapeake Bay Preservation Act, including the proper enforcement and implementation of, and continual compliance with the Act; and

WHEREAS § 9 VAC 10-20-250 1 b of the Regulations required the Board to develop a compliance evaluation process for evaluating local Bay Act compliance; and

WHEREAS the Chesapeake Bay Local Assistance Board adopted a compliance evaluation process on September 16, 2002 for the purposes of reviewing local Bay Act compliance; and

WHEREAS in Fall of 2008, the Department of Conservation and Recreation conducted a compliance evaluation of the City of Petersburg's Phase I program in accordance with the adopted compliance evaluation process; and

WHEREAS on February 10, 2009 the Local Program Review Committee for the Southern Area considered and evaluated the information contained in the compliance evaluation staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds that the implementation of certain aspects of the City of Petersburg's Phase I program do not fully comply with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations, and in order to correct these deficiencies, directs the City of Petersburg to undertake and complete conditions 1, 2, 3, 4, 5, 6, and 9 as listed below no later than March 24, 2009; condition 7 in accordance with the deadlines and requirements established by the Virginia Soil and Water Conservation Board; and condition 8 no later than March 31, 2010.

1. For compliance with § 9 VAC 10-20-105, 10-20-120 4, and 10-20-130 6 of the Regulations and Section 122-56 of the City's CBPA ordinance, the City must begin immediate screening of all applications for whether they are in the CBPA.

2. For compliance with § 9 VAC 10-20-105 of the Regulations and Section 122-103 of the City's CBPA ordinance, the City must require that Chesapeake Bay Preservation Areas are properly depicted on all development plans.
3. For compliance with § 9 VAC 10-20-105 and Section 122-56 of the City's CBPA ordinance, the City must consistently require site-specific evaluations to identify water bodies with perennial flow and ensure that the boundaries of Resource Protection Areas are adjusted as necessary.
4. For compliance with § 9 VAC 10-20-130 6 of the Regulations and Section 122-97 of the City's CBPA ordinance, the City must require submission of a WQIA for any proposed land disturbance, development, or redevelopment within RPAs as outlined in Section 122-102 of the City's Chesapeake Bay Preservation Area ordinance.
5. For compliance with § 9 VAC 10-20-150 C of the Regulations and Section 122-123 of the City's Chesapeake Bay Preservation Area ordinance, the City must administer exceptions consistent with City code requirements.
6. For compliance with § 9 VAC 10-20-120 8 of the Regulations, and Section 122-100 of the City's CBPA ordinance, the City must ensure that all development and redevelopment within the Chesapeake Bay Preservation Area ordinance properly addresses nonpoint source pollution in accordance with the water quality provisions of the Virginia Stormwater Management Regulations.
7. For consistency with § 9 VAC 10-20-120 6 of the Regulations, the City's erosion and sediment control program must address the issues identified in the 2008 Corrective Action Agreement.
8. For consistency with § 9 VAC 10-20-120 7 of the Regulations and as required by Section 122-77 of the City's CBPA ordinance, the City must develop and implement a septic maintenance program, including the 5-year pump-out notification, installation of the plastic filter, and/or annual inspection, and any necessary tracking information.
9. For compliance with § 9 VAC 10-20-120 3 of the Regulations and Section 122-100, of the City's CBPA ordinance the City must develop a program to track BMP installation, inspection, and maintenance.

BE IT FINALLY RESOLVED that failure by the City of Petersburg to meet the above established compliance date of March 24, 2009 for conditions 1, 2, 3, 4, 5, 6, and 9; to address condition 7 in accordance with the deadlines and requirements established by the Virginia Soil and Water Conservation Board, and to address condition 8 no later than March 31, 2010 will result in the local program becoming noncompliant with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations and

subject the City of Petersburg to the compliance provisions as set forth in § 10.1-2103 10 of the Act and § 9 VAC 10-20-250 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on March 23, 2009 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

Town of Bloxom and Town of Melfa

Ms. Smith gave the report for the Towns of Bloxom and Melfa. There was no one present from either Town.

Ms. Smith said that for the Towns of Bloxom and Melfa, the staff recommendation was that the Towns be found to not fully comply and given until April 15, 2009 to address the condition imposed by the Board in March 2008.

1. *“The Town and Accomack County must develop and adopt a formal agreement that outlines the responsibilities of each party with respect to Bay Act implementation.”*

Department staff sent a draft MOU to all towns in September 2008 and again in January 2009. As a result of the recent mailing (which went to the Town Attorneys and Mayors), the Town of Melfa approved an MOU but the town and county still have some issues to work out, and until these issues are addressed, the County is not willing to sign the MOU. The Town of Bloxom has not yet signed an MOU. Therefore SARC recommended that both Bloxom and Melfa be found to not fully comply and be given until April 15, 2009 to address the one condition.

MOTION: Mr. Zeugner moved that the Chesapeake Bay Local Assistance Board find that the implementation of a certain aspect of the Town of Bloxom’s Phase I program and the Town of Melfa’s Phase I program do not fully comply with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations, and in order to correct these deficiencies, directs the Town of Bloxom and the Town of Melfa to undertake and complete the one Condition contained in the staff reports no later than April 15, 2009.

SECOND: Mr. Duncanson

DISCUSSION: None

VOTE: Motion carried unanimously

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

March 23, 2009

RESOLUTION

LOCAL PROGRAM COMPLIANCE EVALUATION

TOWN OF BLOXOM

Local Compliance Evaluation - Conditional

WHEREAS § 10.1-2103 of the Chesapeake Bay Preservation Act states that the Chesapeake Bay Local Assistance Board shall take administrative and legal steps to ensure compliance by counties, cities and towns with the provisions of the Chesapeake Bay Preservation Act, including the proper enforcement and implementation of, and continual compliance with the Act; and

WHEREAS § 9 VAC 10-20-250 1 b of the Regulations required the Board to develop a compliance evaluation process for evaluating local Bay Act compliance; and

WHEREAS the Chesapeake Bay Local Assistance Board adopted a compliance evaluation process on September 16, 2002 for the purposes of reviewing local Bay Act compliance; and

WHEREAS on March 17, 2008, the Chesapeake Bay Local Assistance Board found that implementation of a certain aspect of the Town of Bloxom's Phase I program did not fully comply with the Act and Regulations and further that the Town address the one recommended condition in the staff report no later than December 31, 2008; and

WHEREAS the Town has not yet taken action to address the condition from the March 17, 2008 compliance evaluation; and

WHEREAS on February 10, 2009 the Local Program Review Committee for the Southern Area considered and evaluated the information contained in the compliance evaluation staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds that the implementation of a certain aspect of the Town of Bloxom's Phase I

program does not comply with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations and in order to correct this deficiency, directs the Town of Bloxom to undertake and complete the one recommended condition contained in the staff report no later than April 15, 2009.

1. To ensure continued compliance with the Town of Bloxom's Bay Act requirements, the Town of Bloxom and Accomack County must develop and adopt a formal agreement that outlines the responsibilities of each party with respect to Bay Act implementation.

BE IT FINALLY RESOLVED that failure by the Town of Bloxom to meet the above established compliance date of April 15, 2009 will result in the local program becoming noncompliant with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations and subject the Town of Bloxom to the compliance provisions as set forth in § 10.1-2103 10 of the Act and § 9 VAC 10-20-250 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on March 23, 2009 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
March 23, 2009**

RESOLUTION

**LOCAL PROGRAM COMPLIANCE EVALUATION
TOWN OF MELFA**

Local Compliance Evaluation - Conditional

WHEREAS § 10.1-2103 of the Chesapeake Bay Preservation Act states that the Chesapeake Bay Local Assistance Board shall take administrative and legal steps to ensure compliance by counties, cities and towns with the provisions of the Chesapeake Bay Preservation Act, including the proper enforcement and implementation of, and continual compliance with the Act; and

WHEREAS § 9 VAC 10-20-250 1 b of the Regulations required the Board to develop a compliance evaluation process for evaluating local Bay Act compliance; and

WHEREAS the Chesapeake Bay Local Assistance Board adopted a compliance evaluation process on September 16, 2002 for the purposes of reviewing local Bay Act compliance; and

WHEREAS on March 17, 2008, the Chesapeake Bay Local Assistance Board found that implementation of a certain aspect of the Town of Melfa's Phase I program did not fully comply with the Act and Regulations and further that the Town address the one recommended condition in the staff report no later than December 31, 2008; and

WHEREAS the Town has not yet taken action to address the condition from the March 17, 2008 compliance evaluation; and

WHEREAS on February 10, 2009 the Local Program Review Committee for the Southern Area considered and evaluated the information contained in the compliance evaluation staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds that the implementation of a certain aspect of the Town of Melfa's Phase I program does not comply with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations and in order to correct this deficiency, directs the Town of Melfa to undertake and complete the one recommended condition contained in the staff report no later than April 15, 2009.

2. To ensure continued compliance with the Town of Melfa's Bay Act requirements, the Town of Melfa and Accomack County must develop and adopt a formal agreement that outlines the responsibilities of each party with respect to Bay Act implementation.

BE IT FINALLY RESOLVED that failure by the Town of Melfa to meet the above established compliance date of April 15, 2009 will result in the local program becoming noncompliant with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations and subject the Town of Melfa to the compliance provisions as set forth in § 10.1-2103 10 of the Act and § 9 VAC 10-20-250 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on March 23, 2009 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon

Director
Department of Conservation and Recreation

Town of Parksley

Ms. Smith gave the report for the Town of Parksley. There was no one present from the Town.

She noted that SARC had deferred action on the Town of Parksley as the Town of Parksley notified Department staff in early February that they signed the MOU on January 27th, however, it was not clear if it had been approved by the County. Since the SARC meeting, on Feb 18th, the County Board approved this MOU and a copy of this MOU was provided to staff. Ms. Smith said that based on these actions, the staff now recommends that the Board find the Town of Parksley compliant.

MOTION: Mr. Duncanson moved that the Chesapeake Bay Local Assistance Board find that the implementation of the Town of Parksley's Phase I program complies with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations.

SECOND: Mr. Marten

DISCUSSION: None

VOTE: Motion carried unanimously

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
March 23, 2009**

RESOLUTION

**LOCAL PROGRAM COMPLIANCE EVALUATION
TOWN OF PARKSLEY**

Local Compliance Evaluation - Compliant

WHEREAS § 10.1-2103 of the Chesapeake Bay Preservation Act states that the Chesapeake Bay Local Assistance Board shall take administrative and legal steps to ensure compliance by counties, cities and towns with the provisions of the Chesapeake Bay Preservation Act, including the proper enforcement and implementation of, and continual compliance with the Act; and

WHEREAS § 9 VAC 10-20-250 1 b of the Regulations required the Board to develop a compliance evaluation process for evaluating local Bay Act compliance; and

REVISED: 5/21/2009

WHEREAS the Chesapeake Bay Local Assistance Board adopted a compliance evaluation process on September 16, 2002 for the purposes of reviewing local Bay Act compliance; and

WHEREAS on March 17, 2008, the Chesapeake Bay Local Assistance Board found that implementation of certain aspects of the Town of Parksley's Phase I program did not fully comply with the Act and Regulations and further that the Town address the one recommended condition in the staff report no later than December 31, 2008; and

WHEREAS in February 2009, the Town provided staff with information relating to the Town's actions to address the one recommended condition which was evaluated in a staff report; and

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the implementation of the Town of Parksley's Phase I program to be in compliance with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on March 23, 2009 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

City of Norfolk

Ms. Smith gave the report for the City of Norfolk. There was no one present from the City.

The City of Norfolk's compliance evaluation was undertaken in December 2007, with the Board establishing a deadline of December 31, 2008 for the city to address 3 compliance conditions. Two of the three conditions have been addressed as follows:

- Revise the *Norfolk Storm Water Design Criteria* to include water quality calculations and BMP design standards and efficiencies consistent with the *Virginia Stormwater Management Handbook* – on January 14, 2009, the City provided documentation that they no longer use the Norfolk Storm Water

Design Criteria for calculating stormwater management requirements and BMP design, relying instead on the calculation methods and BMP designs in the Virginia Stormwater Management Handbook.

- Require a WQIA for any land disturbance, development or redevelopment in the RPA, even when such projects occur in the IDA overlay – on January 14, 2009, the City provided documentation noting that from that day forward they will use the generic WQIA form provided to them by Department staff in mid-November for all development, redevelopment and land disturbing activities in the RPA, even when those occur in the IDA. Department staff note that the City has had no development proposals submitted that would require a WQIA in the intervening weeks, and suggests that the City be required to begin submission of an annual report beginning on July 2009 so that staff can monitor implementation of this requirement.

The City had requested an extension until September 2009 for the one remaining condition. The SARC recommended an extension until June 30, 2009 to be consistent with what the Board typically approves and the City staff agreed that they believed a 6 month extension would be acceptable. The one remaining condition is as follows:

1. *“Provide documentation that its citywide Stormwater Management program implements the 10 percent pollution reduction requirement for all development and redevelopment activities in the IDA.”*

Therefore, SARC recommended that the Board find the implementation of one aspect of the City’s Phase I program does not fully comply and that the Board direct the City to address one remaining condition by June 30, 2009.

MOTION: Mr. Zeugner moved that the Chesapeake Bay Local Assistance Board find that the implementation of a certain aspect of the City of Norfolk’s Phase I program does not fully comply with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations, and in order to correct these deficiencies, the City of Norfolk undertake and complete the one Condition contained in the staff report no later than June 30, 2009.

SECOND: Mr. Whitehurst

DISCUSSION: None

VOTE: Motion carried unanimously

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
March 23, 2009

RESOLUTION

LOCAL PROGRAM COMPLIANCE EVALUATION
CITY OF NORFOLK

Local Compliance Evaluation - Conditional

WHEREAS § 10.1-2103 of the Chesapeake Bay Preservation Act states that the Chesapeake Bay Local Assistance Board shall take administrative and legal steps to ensure compliance by counties, cities and towns with the provisions of the Chesapeake Bay Preservation Act, including the proper enforcement and implementation of, and continual compliance with the Act; and

WHEREAS § 9 VAC 10-20-250 1 b of the Regulations required the Board to develop a compliance evaluation process for evaluating local Bay Act compliance; and

WHEREAS the Chesapeake Bay Local Assistance Board adopted a compliance evaluation process on September 16, 2002 for the purposes of reviewing local Bay Act compliance; and

WHEREAS on December 10, 2007, the Chesapeake Bay Local Assistance Board found that implementation of certain aspects of the City of Norfolk Phase I program did not fully comply with the Act and Regulations and further that the City address the three recommended conditions in the staff report no later than December 31, 2008; and

WHEREAS in January 2009, the City provided staff with information relating to the City's actions to address the three conditions which were evaluated in a staff report; and

WHEREAS on February 10, 2009 the Local Program Review Committee for the Southern Area considered and evaluated the information contained in the compliance evaluation staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds that the implementation of a certain aspect of the City of Norfolk's Phase I program does not fully comply with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations, and in order to correct this deficiency, directs the City of Norfolk to undertake and complete the one Recommended Condition contained in the staff report no later than June 30, 2009.

1. For compliance with §§ 9 VAC 10-20-120 A and 9 VAC 10-20-120 8 of the Regulations and Section 11.2-9 of the City's Chesapeake Bay Preservation Overlay District, the City must provide documentation that shows its citywide

Stormwater Management program implements the 10 percent nonpoint source pollution reduction requirement for development and redevelopment activities in the IDA.

BE IT FINALLY RESOLVED that failure by the City of Norfolk to meet the above established compliance date of June 30, 2009 will result in the local program becoming noncompliant with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations and subject the City of Norfolk to the compliance provisions as set forth in § 10.1-2103 10 of the Act and § 9 VAC 10-20-250 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on March 23, 2009 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

Essex County

Ms. Miller gave the report for Essex County. She recognized Wyn Davis, Environmental Codes Compliance Officer for the County. She noted that the Northern Area Review Committee did not meet and therefore she would present the staff recommendation to the full Board.

Ms. Miller thanked Mr. Davis and the County Administrator, David Whitlow, for fostering an excellent working relationship with DCR staff and expressed how much DCR staff appreciate their efforts to provide assistance and bring the County program into compliance.

Essex County is located on the Middle Peninsula, bordered by the Rappahannock River and the Dragon Run Swamp. The County is bisected by Routes 17 and 360, and includes the Town of Tappahannock at the crossroads of 17 and 360. Essex has a population of just under 10,000.

The Board found the County's local Bay Act program not fully compliant on December 10, 2007 and set a deadline of December 31, 2008 for the County to address two Conditions; 1) reestablish its 5-year on-site septic system pump-out program, and 2) require BMP maintenance agreements and ensure periodic maintenance and tracking of all water quality BMPs.

The County has three voting districts with a total of about 4,100 on-site systems County-wide. The County mailed septic pump-out notices to 1,417 property owners in the first of

these districts on May 16, 2008, and has developed a computer-based system to track responses. The pump-out notices were included in the tax notice mailing, and as of December 31, 2008, 358 responses were received by the County. The deadline to respond is June 1, 2009. County staff are following up on responses received with incomplete information, and the County will send second notices to all non-respondents on May 16, 2009, when property owners in the second district will be notified of the requirement.

The County's program currently includes the inspection alternative to the mandatory septic pump-out requirement. On February 10, 2009, the County's Bay Act ordinance was revised to reference this alternative and to include the option to install and maintain an effluent filter, as provided in the Regulations.

During the compliance evaluation process the County created a BMP maintenance agreement to use on projects that exceed the total post-development impervious cover threshold of 16% and require structural BMPs. Between December 2007 and December 31, 2008 there were no examples of such project applications processed by the County, due to the current slow pace of development and the County's encouragement of nonstructural vegetative practices whenever possible to address stormwater management requirements. The County has also developed and is using a BMP database to track the type, installation date, location, area treated, removal rates, and the dates of County inspections to confirm annual maintenance of BMPs. The database includes five existing BMPs. Inspections were performed on December 15, 2008, and the County has provided a letter stating that follow-up inspections will be performed annually and tracked in the database.

The County has now developed the appropriate materials and practices to meet the requirements in the Regulations and its CBP Overlay District. Ms. Miller said that based on these actions, the County has adequately addressed the recommended conditions, and the staff recommendation was that the Board find the County's local Bay Act program compliant with the Act and the Regulations.

Mr. Wyn Davis said that DCR had been very helpful to work with and that things were flowing smoothly.

MOTION: Mr. Zeugner moved that the Chesapeake Bay Local Assistance Board find that the implementation of Essex County's Phase I program complies with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations. And that further the Board note that a finding of compliance by the Chesapeake Bay Local Assistance Board in no way denotes compliance with state Erosion & Sediment Control Law.

SECOND: Mr. Whitehurst

DISCUSSION: None

REVISED: 5/21/2009

VOTE: Motion carried unanimously

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

March 23, 2009

RESOLUTION

LOCAL PROGRAM COMPLIANCE EVALUATION

ESSEX COUNTY

Local Compliance Evaluation - Compliant

WHEREAS § 10.1-2103 of the Chesapeake Bay Preservation Act states that the Chesapeake Bay Local Assistance Board shall take administrative and legal steps to ensure compliance by counties, cities and towns with the provisions of the Chesapeake Bay Preservation Act, including the proper enforcement and implementation of, and continual compliance with the Act; and

WHEREAS § 9 VAC 10-20-250 1 b of the Regulations required the Board to develop a compliance evaluation process for evaluating local Bay Act compliance; and

WHEREAS the Chesapeake Bay Local Assistance Board adopted a compliance evaluation process on September 16, 2002 for the purposes of reviewing local Bay Act compliance; and

WHEREAS on December 10, 2007, the Chesapeake Bay Local Assistance Board found that implementation of certain aspects of Essex County's Phase I program did not fully comply with the Act and Regulations and further that the County address the two recommended conditions in the staff report no later than December 31, 2008; and

WHEREAS in October and December of 2008, Essex County provided staff with information relating to the County's actions to address the two recommended conditions which were evaluated in a staff report; and

WHEREAS after considering and evaluating the information contained in the compliance evaluation staff report and presented on this date, the Board agrees with the recommendation in the staff report; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the implementation of Essex County's Phase I program to be in compliance with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on March 23, 2009 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

King George County

Ms. Kotula presented the staff report for King George County. There was no one present from the County.

King George County was reviewed in December 2007 and received two conditions with a deadline of December 31, 2008.

The first condition required that the County begin requiring Water Quality Impact Assessments for all encroachments into Resource Protection Areas. King George County has created, and now requires the completion of, detailed Water Quality Impact Assessments (WQIAs) for all encroachments within Resource Protection Areas (RPA). These WQIAs were created based upon the templates provided by the Department and address the various types of development that may occur within the RPA. Through the preliminary plan process, the County diligently discourages encroachments into the RPA and therefore has only received one completed WQIA within the last year. Ms. Kotula said that based on these actions, staff opinion was that this condition had been addressed.

The second condition required that the County ensure that BMP maintenance agreements were obtained for all water quality BMPs and additionally required that the County ensure regular and periodic maintenance of these BMPs. It should be noted that King George has had such procedures in place for commercial development and subdivisions for numerous years, but had not been applying the same requirements to single family residential properties. At this time, the County has started requiring single family residential properties to obtain BMP maintenance agreements when needed, has started inspecting BMPs previously installed and ensuring the BMPs' proper maintenance. The County has provided five agreements for water quality BMPs associated with single-family homes that have been recorded within the last year. Ms. Kotula said that now that the County has included these properties into their program, staff believed that this condition had been addressed.

Ms. Kotula said that due to the fact that King George County has successfully addressed the two conditions from the initial compliance evaluation, it was staff's recommendation that King George County be found compliant.

MOTION: Mr. Duncanson moved that the Chesapeake Bay Local Assistance Board find that the implementation of King George County's Phase I program complies with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations.

SECOND: Mr. Whitehurst

DISCUSSION: None

VOTE: Motion carried unanimously

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

March 23, 2009

RESOLUTION

LOCAL PROGRAM COMPLIANCE EVALUATION

KING GEORGE COUNTY

Local Compliance Evaluation - Compliant

WHEREAS § 10.1-2103 of the Chesapeake Bay Preservation Act states that the Chesapeake Bay Local Assistance Board shall take administrative and legal steps to ensure compliance by counties, cities and towns with the provisions of the Chesapeake Bay Preservation Act, including the proper enforcement and implementation of, and continual compliance with the Act; and

WHEREAS § 9 VAC 10-20-250 1 b of the Regulations required the Board to develop a compliance evaluation process for evaluating local Bay Act compliance; and

WHEREAS the Chesapeake Bay Local Assistance Board adopted a compliance evaluation process on September 16, 2002 for the purposes of reviewing local Bay Act compliance; and

WHEREAS on December 10, 2007, the Chesapeake Bay Local Assistance Board found that implementation of certain aspects of King George County's Phase I program did not fully comply with the Act and Regulations and further that the County address the two recommended conditions in the staff report no later than December 31, 2008; and

WHEREAS in the Summer and Fall of 2008, the County provided staff with information relating to the County's actions to address the two conditions which were evaluated in a staff report; and

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report; now,

REVISED: 5/21/2009

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the implementation of King George County's Phase I program to be in compliance with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on March 23, 2009 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

City of Virginia Beach

Ms. Smith gave the report for the City of Virginia Beach. She noted that Peter Williams, Planner, was present from the City.

The City's original compliance evaluation was undertaken in June 2007 and the Board established June 30, 2008 as the deadline for addressing 9 conditions. On September 15, 2007, the Board found that the city had addressed 8 of the 9 conditions, and granted an extension for this one remaining condition until December 31, 2008. The remaining condition required the City to ensure that pools were included in impervious cover calculations. On December 12, 2008, the City sent a letter requesting an additional extension until April 30, 2009. The City provided a schedule for how and when they expect to address this condition through ordinance amendments and adoption of procedural documents. Staff was provided copies of the draft ordinance revision and related documents and are satisfied that, when adopted, these documents will address the condition. However, due to the fact that the City has already received one deadline extension from the Board, SARC recommended that the Board to find the City non-compliant and with a final deadline of April 30, 2009 to address one remaining condition

1. *"The City must ensure that all impervious surfaces are calculated for development and redevelopment projects, to include the surface area of all pools"*

Mr. Williams said that he had every reason to believe this would be adopted on April 30, 2009.

Mr. Maroon said that legislation had been introduced to address this, but that based on conversations with the City the legislation was withdrawn.

MOTION: Mr. Zeugner moved that the Chesapeake Bay Local Assistance Board deny the City of Virginia Beach's request for a deadline extension from December 31, 2008 to April 30, 2009 for the purpose of addressing the remaining compliance evaluation condition and further that the Board find the City of Virginia Beach to be noncompliant with Section §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations and that the City undertake and complete the one Condition contained in the staff report and as noted in the Board's September 15, 2008 resolution no later than April 30, 2009.

SECOND: Mr. Whitehurst

DISCUSSION: None

VOTE: Motion carried unanimously

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
March 23, 2009**

RESOLUTION

**LOCAL PROGRAM COMPLIANCE EVALUATION
CITY OF VIRGINIA BEACH**

Local Compliance Evaluation - Noncompliant

WHEREAS § 10.1-2103 of the Chesapeake Bay Preservation Act states that the Chesapeake Bay Local Assistance Board shall take administrative and legal steps to ensure compliance by counties, cities and towns with the provisions of the Chesapeake Bay Preservation Act, including the proper enforcement and implementation of, and continual compliance with the Act; and

WHEREAS § 9 VAC 10-20-250 1 b of the Regulations required the Board to develop a compliance evaluation process for evaluating local Bay Act compliance; and

WHEREAS the Chesapeake Bay Local Assistance Board adopted a compliance evaluation process on September 16, 2002 for the purposes of reviewing local Bay Act compliance; and

WHEREAS on September 15, 2008, the Chesapeake Bay Local Assistance Board found that implementation of a certain aspect of the City of Virginia Beach Phase I program did not fully comply with the Act and Regulations and further that the City address the recommended condition in the staff report no later than December 31, 2008; and

WHEREAS the City failed to address the one condition by the compliance deadline of December 31, 2008; and

WHEREAS on February 10, 2009 the Local Program Review Committee for the Southern Area considered and evaluated the information contained in the compliance evaluation staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds that the implementation of the City of Virginia Beach's Phase I program is noncompliant with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations, and in order to correct the deficiency, directs the City of Virginia Beach to undertake and complete the Condition contained in the staff report no later than April 30, 2009.

1. For consistency with Section 9 VAC 10-20-120 8, the City must ensure that all impervious surfaces are calculated for development and redevelopment projects, to include the surface area of all pools.

BE IT FINALLY RESOLVED that failure by the City of Virginia Beach to meet the above established final compliance date of April 30, 2009 will subject the City of Virginia Beach to the compliance provisions as set forth in § 10.1-2103 10 of the Act and § 9 VAC 10-20-250 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on March 23, 2009 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

Program Updates

Charles City County

Ms. Doss gave the program update for Charles City County.

On September 15 2008, the CBLAB found that Charles City County's implementation of its Phase I program did not fully comply with the Act and Regulations, and requested two conditions be addressed no later than September 30, 2009.

Condition number one states that the County must develop and implement a septic tank pump out and inspection program. The County has started creating their septic tank database, is starting an educational effort to inform County residents about the pump-out requirement and has received a grant from the Division to assist low-income homeowners with the cost of pumping their tank. The County expects to mail general septic tank pump out requirement notices to homeowners by June 1, 2009.

Condition number two states that the County must require a WQIA for any proposed land disturbance, development or redevelopment within the RPA. The Department has given Charles City County WQIA forms to use. Thus far, the County has processed four WQIAs, three of which disturbance has been permitted.

Town of Claremont

Mr. Sacks gave the program update for The Town of Claremont.

The Board reviewed the Town's program September 2008.

The Board found the Town not fully compliant and required the Town to address three conditions by September 30, 2009:

- develop and implement a 5-year pump-out notification and enforcement program, including any necessary tracking information;
- ensure proper review of development proposals and maintain adequate records documenting that review. The Town can assume this responsibility itself or enter into a formal agreement with Surry County whereby the County can perform these duties for the Town;
- require the submission of a WQIA for any proposed land disturbance, development or redevelopment within RPAs.

As part of the compliance evaluation, the Board also suggested that the Town pursue a formal memorandum of understanding to clearly define the development review activities that Surry County would be willing to perform on behalf of the Town.

In October 2008, The Town Mayor sent a letter to the Surry County Administrator requesting a meeting to discuss the feasibility of executing an MOU to address this issue. In a recent communication from the Town Mayor, she reported that the County Administrator has indicated the County would be willing to undertake the requested activities on behalf of the Town. If the Town and County are able to agree on an MOU for the County to undertake these activities, that should adequately address the conditions imposed by the Board

Staff will continue to follow-up with both the Town and County to ensure this issue is addressed by the Board's deadline.

Town of Irvington

Mr. Sacks gave the update for the Town of Irvington.

On September 15, 2008, the CBLAB found that the Town of Irvington's implementation of its Phase I program did not comply with the Act and Regulations, and established a deadline of September 30, 2009 for the Town to address 6 conditions.

The first condition requires that the Town document submission of WQIAs. Department staff has modified Lancaster County's WQIA/Landscape Agreement for use by the Town, and the Town intends to use the form whenever an encroachment into the RPA is proposed.

The second condition requires the Town to develop and implement a five-year septic system pump-out program. This program is currently under development. Notification letters and related materials developed by the Town are being reviewed by Department staff, and the Town Council has invited Department staff to their next meeting on April 9 so that they can ask questions about the requirements of the pump-out program. The Town's Zoning Administrator estimates that the notices will go out to all property owners with septic systems in the Town by the end of April (approximately 330).

The third condition requires that the Town ensure that all development and redevelopment properly addresses nonpoint source pollution in accordance with the water quality provisions of the Virginia Stormwater Management Regulations. The Town has agreed to send all new plans to the Department for review to ensure that this condition is met.

The fourth condition states that the Town must require signed BMP Maintenance Agreements for all BMPs and must track BMP installation, inspection, and maintenance. Now that the Town has completed installation of their new computers, Department staff will provide the Town with a BMP Maintenance Agreement and Tracking Database, and will show the Zoning Administrator how to use these tools during the next one-on-one training session on April 9.

The fifth condition requires that the Town ensure that Chesapeake Bay Preservation Areas are properly depicted on all development plans and WQIAs. As a result of training provided by Department staff, the Zoning Administrator is aware of this requirement and staff is confident that he will not accept plans and WQIAs that do not have Chesapeake Bay Preservation Areas properly depicted.

The sixth condition states that the Town must administer exceptions consistent with Town code requirements and retain adequate documentation in support of its decisions on such exceptions. Town staff has agreed to consult Department staff upon receipt of any RPA buffer modification or encroachment requests, and Department staff will work closely with the Town to ensure that proper review and decision process is followed.

Mr. Sacks said that it was staff's opinion that Irvington is demonstrating excellent progress toward meeting the 6 conditions identified during their Compliance Evaluation, and Department staff will continue to work closely with the Town to ensure adherence to the Town's Bay Act ordinance requirements.

Town of Kilmarnock

Mr. Sacks gave the program update for the Town of Kilmarnock.

On September 15, 2008, the CBLAB found that the Town of Kilmarnock's implementation of its Phase I program did not comply with the Act and Regulations, and established a deadline of September 30, 2009 for the Town to address 5 conditions.

The first condition states that all references to "reduced buffer width" must be removed from the Town's Chesapeake Bay Preservation Overlay District ordinance. When Kilmarnock's compliance evaluation was started, the undated copy of the Town's Chesapeake Bay Preservation Overlay District Ordinance that staff had on file and the identical one provided by the Town were not the most recent versions, but neither Department nor Town staff were aware of this until the compliance evaluation was completed. On September 23, 2008 the Town's Planning Director sent the Department a revised Bay Act ordinance that had been approved by the Town Council on November 15, 2004. In this version, all references to "reduced buffer width" had been removed, so it is staff's opinion that this condition has been met.

The second condition requires that the Town develop and implement a five-year septic pump-out program. The Town has created a list of properties not connected to the Town's sewer system, and is in the process of developing notification letters and related materials. Kilmarnock's Bay Act ordinance does not include the inspection or plastic filter options, and the Town's Planning Director has requested further information about those options, which will be provided by Department staff.

The third condition states that the Town must require signed BMP Maintenance Agreements for all BMPs. The Town has created a BMP Maintenance Agreement and a tracking database, which currently has 3 BMPs entered. No new BMPs have been approved by the Town since the compliance evaluation was completed, but the Planning Director will require Agreements on any BMPs installed in the future.

The fourth condition requires the Town to develop a methodology to determine which areas are within the RMA and to create a map to accurately depict them, since the

Town's "Watershed and Chesapeake Bay Resource Protection Area" map depicts RPAs, but not RMAs. The Town is currently in the process of revising the map and Department staff is evaluating their approach and progress.

The fifth condition requires a section in the Town's Bay Act ordinance referencing buffer equivalency to be deleted and for the Town to cease accepting buffer equivalency calculations for determining buffer mitigation requirements. As mentioned earlier, the compliance evaluation was conducted using an older version of the Town's Bay Act ordinance. Section 54-487 (c) does not exist in the revised ordinance, and the Town's Planning Director has indicated that they will not accept the use of buffer equivalency calculations in the future.

Mr. Sacks said that it was staff's opinion that the Town of Kilmarnock is demonstrating excellent progress toward meeting the 5 conditions identified during their Compliance Evaluation, and the Town should be commended for their cooperation.

Town of Surry

Mr. Sacks gave the program update for the Town of Surry.

The Board reviewed the Town's program September 2008.

The Board found the Town not fully compliant and required the Town to address three conditions by September 30, 2009:

1. Develop a revised map showing all CBPA features in the Town, including RPA, and the jurisdiction-wide RMA as a basis for its plan of development review process.

Relative to this Condition, staff of the Crater Planning District Commission have provided DCR staff with a revised map showing the Town's RPA and jurisdiction-wide RMA. DCR staff has reviewed the map and find it sufficient to meet the requirements of the compliance condition.

As part of the compliance evaluation, the Board also suggested that the Town pursue a formal memorandum of understanding to clearly define the development review activities that Surry County would be willing to perform on behalf of the Town.

2. Develop a standard BMP maintenance agreement, with specific inspection and maintenance procedures, along with a tracking system to ensure BMPs are being properly maintained, or develop an agreement with the County to undertake this responsibility. The Town's part-time Zoning Administrator has been working with Surry County staff to address this condition. The County's Environmental Inspector has been involved in inspections of Town properties. There is however no formal agreement yet for any of the cooperative efforts underway.

3. Ensure that all water bodies with perennial flow are evaluated and site-specific RPA limits are accurately determined and mapped where necessary.

The Town's Zoning Administrator has indicated that he will request CBLA staff assistance with PFDs on an as-needed basis. To date, none has been requested

There are currently discussions regarding an arrangement between Town and County for implementing specific elements of the Town's program; however, it is not expected that the County will be asked to take over implementation of the entire program. The Zoning Administrator has indicated they fully expect to meet the September 30, 2009 deadline.

Public Comment

Mr. Davis called for public comment.

Diana Parker, a resident of Chesterfield County and member of the Falls of the James Chapter of the Sierra Club, spoke in regard to the non-compliance of Chesterfield County in regard to the Chesapeake Bay Act. She said that the Concerned Citizens of Chesterfield thanked the Board for their actions.

Ms. Parker said that the Chesterfield County administration had twice defied sound judgment with regard to tidal and non-tidal wetlands. She said there was no thought process to defend the County's 500 ft. rule in their regulations.

Ms. Parker provided a map of a subdivision in the County. She said that after a visit by DCR staff the developer had backed off the development plans.

Ms. Parker expressed a concern that the policies were confusing to the development community. She said that the Concerned Citizens would encourage the Board and DCR to continue to provide sound science and guidance.

Closed Meeting: Consultation with Counsel Regarding Legal Matters

MOTION: Mr. Duncan moved the following:

Mr. Chairman, I move that the Chesapeake Bay Local Assistance Board convene a closed meeting pursuant to §2.2-3711 (A)(7) of the Code of Virginia for the purpose of consultation with legal counsel regarding specific legal matters requiring the provision of legal advice, namely the lawsuit filed by Chesterfield County against CBLAB.

This closed meeting will be attended only by members of the Board. However, pursuant to §2.2-3712(F) of the Code, the Board

requests counsel, the Director of the Department of Conservation and Recreation (DCR), Joan Salvati, David Sacks and Adrienne Kotula to attend because it believes that their presence will reasonably aid the Board in its consideration of the topic that is the subject of this closed meeting.

SECOND: Mr. Whitehurst

DISCUSSION: None

VOTE: Motion carried unanimously

MOTION: Mr. Duncanson moved the following:

WHEREAS, the CBLAB has convened a closed meeting on March 23, 2009 pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

WHEREAS, § 2.2-3712(D) of the Code requires a certification by the Board that such closed meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, the Chesapeake Bay Local Assistance Board hereby certifies that, to the best of each member's knowledge, only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification applies, and only such public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Board.

SECOND: Mr. Zeugner

VOTE: Ayes: Davis, Duncanson, Evans, Zeugner, Taylor, Marten, Whitehurst

Nays: None

Not present at the meeting: Reed, Harper

Legislative and Budget Report

Mr. Maroon gave the Legislative and Budget report. A copy of the complete report is available from DCR.

Mr. Maroon noted that Natural Resources agencies combined make up less than 1% of the state budget. He said that fortunately, DCR did not sustain additional budget cuts.

Mr. Maroon said that because of the federal stimulus money, beginning July 1, DCR will again have twenty million for Ag BMPs.

Mr. Maroon said that there were a number of bills pertaining to septic systems and septic pumpout.

Mr. Davis said that at the December Board meeting, the Board asked the Attorney General's office to review the Phase III questionnaire that was going to localities.

Ms. Andrews said that she had reviewed that document. She said that with regard to Part A, those six questions were firmly based in the regulations. She said in Parts B and C there were very detailed questions that were not specifically addressed in the regulations. She said that she is discussing with staff the various options for using the document.

Ms. Salvati said that staff was pulling together an overall approach to address these concerns.

Mr. Zeugner noted that the City of Richmond had been able to place conservation easements on several parcels of the James River park system. He said that DCR had been instrumental in obtaining those easements.

Adjourn

There was no further business and the meeting was adjourned.

Respectfully submitted,

Donald W. Davis
Chair

Joseph H. Maroon
Director