

Chesapeake Bay Local Assistance Board  
Local Program Review Committee for the Northern Area  
Chesapeake Bay Local Assistance Department  
101 N. 14th Street, 17th Floor, James Monroe Building  
Richmond, Virginia  
Tuesday, February 18, 2003

MINUTES

Members Present:

The Honorable Robert J. Bannach  
The Honorable Frank L. Benser

Members Absent:

The Honorable Donald W. Davis  
The Honorable Stuart Mendelsohn

Staff Present:

Mr. C. Scott Crafton, Acting Executive Director  
Ms. Martha Little, Chief of Environmental Planning  
Ms. Shawn Smith, Principal Environmental Planner

Local Government Officials Present:

Mr. Benser called to order the Northern Area Review Committee Meeting. He welcomed staff and guests. He called the roll, noting that there was quorum.

Mr. Benser asked Mr. Crafton if he had any comments. Mr. Crafton noted that the a series of meetings were planned for the day and each of the members had received a letter from Secretary Murphy explaining his request to extend the Board's March 1, 2003 deadline to December 31, 2003, and therefore a special meeting had been called for the full Board to consider the request. Mr. Crafton thanked members and guests for braving the weather to attend the meeting.

Mr. Benser called for the Phase I Local Program Reviews, and recognized Ms. Shawn Smith for staff's presentation for Prince William County.

Ms. Smith noted that Prince William County had wanted to attend the meeting, however, it appeared that they would not be able to attend. She noted that the County had reviewed the staff report and had no questions about the recommendations that staff had made.

She advised that the County had adopted revisions to their Bay Act Program to address revised regulations on December 3, 2002 and that these changes became effective on February 3,

2003. She noted that because the County had adopted first and had begun work on preparing the revisions early in the process, that there were a couple of items that should have been addressed in the revised ordinance that were not addressed. She said that the Department had decided to address the recommendations from the revised Bay ordinance in conjunction with a compliance evaluation process for the County and that this decision led to the Department's recommendation for a longer timeframe for addressing the recommendations outlined in the staff report. She said the recommended deadline to complete the seven recommendations items is December 31, 2004.

Ms. Smith explained that the deficiencies noted in the recommendations should not have any impact on the County's Bay Act program implementation. She noted that the County had included a definition of perennial water body and had included in their Design Standards Construction Manual a drainage area threshold of 100 acres for determining water bodies with perennial flow, meaning that if a stream has a drainage area over a 100 acres, then it would be considered to be perennial, and that if the drainage is under 100 acres, an evaluation should be undertaken to determine if it is perennial. She stated that the County had kept the existing requirement for preservation area site assessments, which will continue to be used to determine on-site delineations of RPA boundaries.

Ms. Smith said that the County had developed a good Bay Act program and that they were moving forward in implementation of the revised program. The County had previously had an issue regarding buffer reductions, but had addressed the buffer issues through the revisions. She also noted that the County had been proactive in drafting program changes, and staff recommends the County's revised Bay Act program be found consistent with the stated recommendations.

Mr. Benser asked if anyone would like to address the Committee.

Mr. Michael Rolband commented that he had four issues with respect to Prince William County's Bay Act ordinance and that he was speaking on behalf of the National Association of Industrial and Office Parks. He stated that the first issue dealt with the CBPA map. It is their opinion that the Regulations require the CBPA map to reflect the new definition of RPAs. He said that the definition was a substantial change and that the local CBPA map should be modified to reflect the change. Mr. Rolband asked that the ordinance not be approved until an appropriate CBPA map has been prepared. He noted that the County's GIS system could make these changes very easily.

Mr. Rolband said the second issue is the "other lands" provision, and that the County added a Section 32-504.05 2F in the County code that adds "other lands with sensitive environmental features that have the potential to significantly affect water quality, as determined by the Director of Public Works." He said that in 1991 and 1993 the "other lands" issue was discussed relative to Fairfax County and a decision was made that the County had to add more specificity as to what "other lands" would be and what criteria would be used to identify them. He said that Fairfax County did this when they added flood plains to its types of land areas considered as "other lands." He suggested that Prince William County do the same thing, and that if a locality is going to include other lands in its ordinance, then this policy should apply to many ordinances. He said that the public needed to be aware of what these features are so that

they can be mapped and located and know that you have them. He said if it is a totally discretionary, subjective decision, there is no way for people to know what they have and they can be added arbitrarily. Mr. Rolband commented that in the early 90's it was required that these lands be quantifiably identified.

Mr. Rolband's third issue regarded a perennial stream definition. He stated that he believed it to be critical to have a specific protocol referenced in this ordinance. He stated that earlier, Prince William County said that they would use the Fairfax County protocol, and that is fine, but they need to have one in their ordinance. He said that the reason is that DEQ wrestled with the definition of what is a perennial stream, and noted what the scientific value is of the stream.

Mr. Rolband noted that the fourth issue is the County's vested lots that were recorded between 1989 and March 1, 2002. He said it was not fair for the County to end lot vesting by March 1, 2002 because there is no way most people could know what the details were of this ordinance between last March and now. He said that it is the opinion of the association that all vesting should be relative to the effective date of the ordinance in the locality. He also noted that the Attorney General's Office had issued an opinion in 1990 and suggested that the locality follow this opinion.

Mr. Rolband asked if there were any questions.

Mr. Crafton asked if Mr. Rolband believed that the issues could be added to those stated by Ms. Smith and provide that the County could work on these issues could be worked out over the next year and a half.

Mr. Rolband replied that if these issues were added to the recommendations by staff and presented to the full Board, then that would be fine. He said that some of these issues were reflected in Secretary Murphy's letter and the Board will have policies in flux for a while.

Mr. Crafton reminded the Board that there was an extensive discussion about "tweener" clause, the additional grandfathering provision in the revised Regulations to address lots recorded from the adoption of the original local ordinances until March 1, 2002. He said that the March 1, 2002 date came from the Board, which clearly articulated that they believed the local governments already had language in their ordinances, specifically the original buffer area requirements, that allowed them to interpret the 100-foot buffer area as a requirement for new development. He further noted that there was a recognition on the part of the Board that up to the adoption of the revised Regulations, some localities had been approving subdivisions with 50-foot buffer areas as RPAs, and that the Board decided to originally include December 10, 2001 Regulation adoption date as the date for the "tweener" clause. However, Roger Chaffe, the Board's Attorney General counsel, believed that the date in this clause could not sooner than effective date of the revised Regulations. He said that based on advice by the agency's attorney, the Board believed that the March 1, 2002 date was sufficient notice for local governments not to approve any additional lots with "reduced" buffers. Finally, Mr. Crafton stated that this date was set forth in the Regulations.

Ms. Smith addressed Mr. Rolband's concerns regarding the mapping of RPAs, other lands, and a definition of perennial stream. She stated that the Preservation Area mapping issue was addressed in the Regulations themselves and had been discussed at length during the public comment portion of the regulatory revision process. She noted that Section 9 VAC 10-20-80.D of the Regulations addresses the mapping issue, and that the CBPA maps are intended, as noted in the Regulations, to be general in nature and are not required to be specific.

Ms. Smith also provided a summary of the "other lands" issue as outlined in the Board guidance on RPA designations adopted in 1992. She said that Fairfax County's program included floodplains in an expanded buffer area, not as "other lands" as indicated by Mr. Rolband, and further that the guidance did not require local governments to specifically indicate which other lands to be included under this provision. She further noted that between 70 –80 percent of local Bay Act ordinances included this general placeholder language, and that these ordinances had been reviewed and approved by the Board.

She finally noted that Prince William County had included a definition of perennial water body, and had, as he had noted, indicated which methodology it would be using to determine water bodies with perennial flow on a given site. She stated that the placement of a specific methodology in an ordinance is not standard practice for any other scientific methodologies and that neither the Department nor the Board had ever indicated that specificity of this type was to be included in Bay Act ordinances. She also confirmed Mr. Crafton's discussion of the "tweener" provision, noting that it was similar to the original language in the Regulations pertaining to lots recorded before October 1, 1989, and again, that this issue had been discussed at length during the regulatory revision process and addressed according to the Board's attorney's opinion. She finished by stating that staff did not believe any of the issues raised by Mr. Rolband should be included as conditions for consistency.

Mr. Bannach expressed his concern about citizens coming forward and not being knowledgeable about the issues expressed by Mr. Rolband.

Mr. Benser asked if anyone else would like to address the floor regarding Prince William County's Resolution, and stated that the Committee wanted to remain considerate in not requiring one locality to do what another locality is doing, in this case, having Prince William do what Fairfax County is doing. Mr. Benser questioned adding Mr. Rolband's four issues to the staff recommendations for Prince William.

Mr. Crafton advised that a workgroup could address Mr. Rolband's issues rather than have them added to Prince William's Resolution. Mr. Crafton also noted that the Regulations have traditionally provided for a certain amount of flexibility and customization in local ordinances.

Mr. Benser called for a motion. On a motion by Mr. Bannach, seconded by Mr. Benser, the Committee voted 2-0 for the following:

**The Northern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that the Phase I local program amendments adopted by Prince**

**William County be found consistent with 10.1-2109 of the Act and 9VAC10-20-60.1 and 2 of the Regulations subject to the condition that Prince William County undertake and complete the seven recommendations contained in the staff report no later than December 31, 2004.**

Mr. Benser recognized Ms. Shawn Smith's for staff's presentation for Fairfax County.

Ms. Smith advised that Fairfax County began their public comment process and that this process was taking longer than anticipated. She continued by noting that the County had formally requested a deadline from March 1, 2003 to May 1, 2003, and that given the progress the County had made that staff believed it was appropriate for Fairfax County's request to be granted. No one from Fairfax County government was present.

Mr. Benser asked for comments from the public regarding Fairfax County. There were none.

Mr. Benser called for a motion. On a motion by Mr. Bannach, seconded by Mr. Benser, the Committee voted 2-0 for the following:

**The Northern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that Fairfax County's request for a deadline extension from March 1, 2003 to May 1, 2003 for the purpose of adopting amendments to its Phase I program for consistency with the revised Regulations be approved.**

Mr. Benser called for Other Business.

Mr. Benser called for a motion to adjourn the meeting. Mr. Bannach motioned. The meeting adjourned at 10:29 a.m.