

**Chesapeake Bay Local Assistance Board
University of Mary Washington
Fredericksburg, Virginia
June 16, 2008**

Chesapeake Bay Local Assistance Board Members Present

Donald W. Davis, Chair
Rebecca Reed
John J. Zeugner
Gale Abbott Roberts

William E. Duncanson, Vice Chair
Gregory C. Evans
Richard B. Taylor
Beverly D. Harper

Chesapeake Bay Local Assistance Board Members Not Present

Charles B. Whitehurst

DCR Staff Present

Russell W. Baxter, Deputy Director
David C. Dowling, Director of Policy, Planning and Budget
Joan Salvati, Division Director, Chesapeake Bay Local Assistant
David Sacks, Assistant Director, Division of Chesapeake Bay Local Assistance
Ryan J. Brown, Policy and Planning Assistant Director
Shawn Smith, Principal Environmental Planner
Alli Baird, Senior Environmental Specialist
Adrienne Kotula, Principal Environmental Planner
Nathan Hughes, Watershed Specialist
Nancy Miller, Senior Environmental Planner
Michael R. Fletcher, Board and Constituent Services Liaison
Elizabeth Andrews, Assistant Attorney General

Others Present

James Freas, City of Hampton
Cindy Taylor, City of Suffolk
Barrett Hardiman, Home Builders Association of Virginia

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. Evans moved that the minutes of the March 17, 2008 meeting of the Chesapeake Bay Local Assistance Board be approved as submitted.

SECOND: Ms. Reed

DISCUSSION: None

VOTE: Motion carried unanimously

Director's Report

Mr. Baxter gave the Director's report. He noted that Mr. Whitehurst was recently elected to Portsmouth City Council. Mr. Whitehurst received the most votes of all candidates for an at-large seat on the Board.

Mr. Baxter said that Governor Kaine had adopted four issues for specific focus in each of his four years in office. They included health care, education, transportation and the environment. The fourth year, 2009 will be the year of environment and energy. DCR and other Natural Resources agencies are working with the Governor regarding what might be accomplished in 2009. He noted that a variety of issues may come from the Governor's Commission on Climate Change.

At the most recent meeting of the Chesapeake Executive Council in December 2007 each member of the Council, as part of the baywide effort to accelerate implementation of water quality measures, agreed to champion a particular issue. Governor Kaine agreed to focus on reducing nutrient and sediments from agricultural sources. DCR has been working with the Governor's office to develop a suite of agricultural initiatives including partnerships with the Agriculture Industry, additional funding for agricultural water quality programs, accelerating the removal of livestock from streams, increasing funding for water quality programs, and other initiatives.

Mr. Baxter said that the passage of the 2007 farm bill will mean an increase in support for conservation programs in Virginia with a special emphasis on the Chesapeake Bay watershed in Virginia and in the other 5 bay states. The bill authorizes about \$440 million in the Chesapeake Bay states through funding of existing programs (CREP, EQIP) including \$180 million for a new Chesapeake Bay watershed program. The Chesapeake Bay Commission prepared the following summary:

- Funds are made available until expended, and are available to any of the six watershed states competitively.
- This is a new program created in Section 2605 of the Conservation Title.
- This new program's purpose is to assist producers in implementing conservation activities on agricultural lands in the Chesapeake Bay watershed for the purpose of, "(1) improving water and quantity in the Chesapeake Bay watershed; and (2)

restoring, enhancing, and preserving soil, air, and related resources in the Chesapeake Bay watershed.”

- The Chesapeake Bay watershed is defined in Section 2104 of the Conservation Title as, “all tributaries, backwaters, and side channels, including their watersheds, draining into the Chesapeake Bay” and now includes the headwater states of New York, West Virginia and Delaware.
- Special priority is given to projects in four major tributaries: Susquehanna, Potomac, Shenandoah and Patuxent Rivers.
- Each state’s existing Tributary Strategies will be used by USDA in directing and implementing conservation activities.
- Conservation activities include controlling erosion and reducing sediment and nutrient levels in water, and habitat conservation on lands where there is significant ecological value.

Mr. Baxter said that DCR has been tracking progress towards the Governor’s 400,000 acre land conservation goal. Through April 2008, public and private land conservation efforts have yielded almost 243,000 acres. With additional funds provided in the last session of the General Assembly, it appears that the Governor’s goal will be reached.

Mr. Baxter said that DCR has been partnering with the Chesapeake Bay Foundation to recruit volunteers who will be trained to spot common Erosion and Sediment Control problems around the perimeter of construction sites. The intent of this program is to reduce sediment-laden runoff from leaving construction sites by having trained volunteers report problems to the proper local government staff.

Mr. Taylor suggested the Soil and Water Conservation Districts should be involved in the program.

Ms. Salvati said that in Chesterfield an amendment to the local Erosion and Sediment Control ordinance was introduced to prohibit mass grading and clearing operations on residential sites.

Mr. Baxter said that DCR had been working with Richmond County on a project funded by the National Fish and Wildlife Foundation, and supported by the EPA’s Chesapeake Bay Program Office through the Targeted Watershed Grants Program. The grant is for about \$800,000 and runs for a two-year period. The components are:

- Developing a natural resource assessment to use as a driver for implementation activities,
- Assisting with the review of county plans and codes for opportunities to strengthen the protection of water quality and determine if they are in accordance with the Chesapeake Bay Act,
- Meshing Chesapeake Bay water quality and land use modeling tools as well as other modeling sources (such as VCU) with local planning and conservation efforts,

- Developing a BMP implementation plan that meets local needs and works toward non-point sources pollution target attainment.

Mr. Duncanson said that an advisory committee has been established and the County hopes to hire a director. He said that most of the \$800,000 in funding will go toward BMPs in an agricultural and urban sense.

Ms. Salvati noted that Valent Lassiter is serving on the advisory board.

Mr. Baxter said that there had been considerable activity under the stormwater management program. In May, the Soil and Water Conservation Board adopted a revised MS4 (Municipal Separate Stormwater System) General Permit to control discharges from smaller municipally owned stormwater systems. This is the first General Permit issued by DCR, the program was previously the responsibility of DEQ.

Mr. Baxter said a number of conservation organizations were pressing the Board to do more than the Board felt it had authority to do. However, he noted that the Board adopted a very progressive, stringent permit.

Mr. Baxter said that there had been renewed activity in the overall regulatory actions for stormwater management. He said the hope is to have draft stormwater regulations to the Soil and Water Conservation Board by the fall.

Mr. Dowling said there were actions going on concerning MS4 individual permits, the MS4 general permit, and the construction general permit. There is a stormwater BMP clearinghouse as well as an established TAC for the regulations.

Mr. Dowling said that Secretary Bryant had been extremely helpful and supportive.

Mr. Evans said that with regard to the nutrient credit exchange program that there isn't a market for the credits for land conversions, or best management practices above and beyond.

Ms. Salvati said that the 2006 Chesapeake Bay implementation grant allocated about \$150,000 for septic pumpout. All of the grants have been successfully closed. As a result, 448 septic systems were pumped out.

Ms. Salvati said that staff is currently overseeing the 2007 Chesapeake Bay implementation grant. This continues assistance for low to moderate income pumpout assistance.

She noted that the funding for 2008 would be reduced.

Ms. Salvati said that Ms. Lassiter is participating in the State Health Department's sewage handling and disposal advisory committee. This committee provides advice to the Department of Health on new regulatory initiatives.

Quarterly Performance Indicators

Mr. Sacks reviewed the quarterly performance indicators.

As of March 31, 2008:

Localities Found Compliant: 46

Localities Addressing Compliance Conditions: 22

Expected Status as of June, 2008:

Localities Phase I Consistent: 83

Phase II Consistent: 84

Compliance Reviews Completed: 73

 Localities Compliant: 48

 Localities Noncompliant: 0

 Localities Addressing Compliance Conditions: 25

Compliance Reviews in Progress: 11

Ms. Salvati said that once the results of the Annual Reports start coming in staff will be able to add local data. The deadline for submission is the end of July.

Local Program Ordinance Reviews

City of Hampton

Ms. Miller gave the report for the City of Hampton. She recognized Mr. James Freas, Senior City Planner for the City of Hampton.

The City of Hampton is located on the eastern tip of the “Peninsula,” and is flanked by the Cities of Newport News and Poquoson.

Hampton’s Phase I program was reviewed and found consistent by the Chesapeake Bay Local Assistance Board on June 18, 2007. The City had adopted amendments to its Phase I program on May 12, 2004, September 22, 2004, and May 23, 2007, related to Intensely Developed Areas.

On January 9, 2008, the City amended its Chesapeake Bay Preservation District Ordinance to include within the RPA buffer federally designated Coastal Barrier Resources System lands. The additional RPA buffer areas total approximately 26 acres in six locations in the northeastern portion of the City, and are shown on an amended CBPA map. Because this action changes the components of the Resource Protection Area, it constitutes a major program modification, requiring review and approval by the Board.

The Coastal Barrier Resources Act (CoBRA) was enacted by Congress in 1982 to protect undeveloped coastal barrier island environments. These areas are highly sensitive and

fragile environments, prone to flooding and overwash, where development would place numerous pollutants in direct proximity to wetlands and water features. The Regulations under §§ 9 VAC 10-20-70 and 80 B 5 provide the authority for the City to include these barrier island upland areas within the ecological and geographic extent of the RPA buffer.

The City's Chesapeake Bay Preservation District Ordinance was also amended to include references to the RPA buffer expansion, as well as minor amendments to the City's Stormwater, Subdivision, and Site Plan Ordinances for consistency with the expanded RPA buffer language. As amended, Section 17.3-64.2.b(iii)(3) of the City's Chesapeake Bay Preservation District ordinance incorrectly limits the 100-foot RPA buffer to those areas adjacent to "...any water bodies with perennial flow connected to tidal waters...". As this could be interpreted to eliminate the required 100-foot RPA buffer on any water body that is not connected to tidal waters, the staff report includes a Recommended Condition that the City must amend the Section to delete the phrase "...connected to tidal waters..." for consistency with the Regulations.

Ms. Miller said that it was the recommendation of staff that the local program amendments adopted by the City of Hampton be found consistent with the Act and the Regulations, subject to one Recommended Condition to be addressed by September 30, 2008.

Mr. Freas thanked Ms. Miller and said that the City had already begun work on the condition. He said that a zoning ordinance amendment was scheduled to be advertised later in the week.

MOTION: Mr. Evans moved that the Chesapeake Bay Local Assistance Board find the City of Hampton's revised Phase I program consistent with §10.1-2109 of the Act and §§ 9 VAC 10-20-60 1 and 2 of the Regulations subject to the condition outlined in the staff report and that the City undertake and complete the recommended condition no later than September 30, 2008.

SECOND: Mr. Zeugner

DISCUSSION: Mr. Davis noted that he had received a letter from the City of Hampton and asked that the letter be made part of the record.

Ms. Salvati said that she had received an email letter in support of the City of Hampton's amendment. That email will also be made part of the record.

VOTE: Motion carried unanimously

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
June 16, 2008

RESOLUTION

LOCAL PROGRAM, PHASE I
CITY OF HAMPTON

Modification – Conditional

WHEREAS § 10.1-2109 of the Chesapeake Bay Preservation Act states that counties, cities, and towns in Tidewater Virginia shall designate Chesapeake Bay Preservation Areas and incorporate protection of the quality of state waters in Chesapeake Bay Preservation Areas into local plans and ordinances; and

WHEREAS § 9 VAC 10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1(a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS the City of Hampton adopted a revised local program to comply with §§ 9 VAC 10-20-60 1 and 2 of the Regulations on May 23, 2007; and

WHEREAS on June 18, 2007, the City's Phase I program was found consistent by the Chesapeake Bay Local Assistance Board; and

WHEREAS the City of Hampton adopted a revised local program on January 9, 2008; and

WHEREAS the Chesapeake Bay Local Assistance Board has adopted *Procedural Policies for Local Program Review* which addresses, among other items, review of modifications to local programs; and

WHEREAS staff reviewed the amendments made to the City of Hampton's revised program for consistency with the Act and Regulations; 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 City of Hampton's revised Phase I program consistent with §10.1-2109 of the Act and §§ 9 VAC 10-20-60 1 and 2 of the Regulations subject to the following condition that the City undertake and complete the following recommended condition no later than September 30, 2008:

1. For consistency with the Regulations, the City must amend Section 17.3-64.2.b(iii)(3) to read as follows: "...any water body with perennial flow and include any lands designated..."

BE IT FINALLY RESOLVED that failure by the City of Hampton to meet the above established compliance date of September 30, 2008 will result in the local program becoming inconsistent with § 10.1-2109 of the Act and §§ 9 VAC 10-20-60 1 and 2 of the Regulations and subject the City of Hampton 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 June 16, 2008 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

Local Program Compliance Evaluation

Town of Port Royal

Ms. Kotula gave the report for the Town of Port Royal.

The Town of Port Royal lies along the Rappahannock River, within Caroline County. The Town is approximately one tenth of one square mile in land area and has a population of approximately 170 people. Although largely residential in nature, some older commercial development exists along Route 301.

The Compliance Evaluation was started in the summer of 2007 and was not completed until the spring of 2008.

The Town largely relies upon Caroline County for the majority of the Bay Act program requirements and since Caroline County has now been found compliant, there are no issues with their administration. Unfortunately, Caroline County does not administer their septic pump out program within the town of Port Royal and therefore, there is one proposed condition for establishment of a septic pump out program.

Ms. Kotula said that the staff recommendation was that the Town of Port Royal be found to not fully comply with the Act and Regulations and be given until June 30, 2009 to address the one condition discussed.

Mr. Evans asked if the plastic filters were an alternative for Port Royal.

Ms. Kotula said that she was not aware of whether the Town had adopted that provision in their ordinance, but that the provision was available through the regulations.

Mr. Taylor asked why it would take a year for the development of a plan.

Ms. Kotula said that many of the smaller localities do not have available staff time to focus on the issues.

MOTION: Mr. Zeugner moved that that the Chesapeake Bay Local Assistance Board find that the implementation of a certain aspect of the Town of Port Royal'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 Town of Port Royal be directed to undertake and complete the one recommended condition contained in the staff report no later than June 30, 2009.

SECOND: Ms. Reed

DISCUSSION: None

VOTE: Motion carried unanimously

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
June 16, 2008**

RESOLUTION

**LOCAL PROGRAM COMPLIANCE EVALUATION
TOWN OF PORT ROYAL**

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 in the Winter of 2007 and Spring of 2008, the Chesapeake Bay Local Assistance Board conducted a compliance evaluation of the Town of Port Royal's Phase I program in accordance with the adopted compliance evaluation process; 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 that the implementation of a certain aspect of the Town of Port Royal'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, directs the Town of Port Royal to undertake and complete the one recommended condition contained in the staff report no later than June 30, 2009.

1. For compliance with Section 9 VAC 10-20-120 7 of the Regulations and as required by Section 6-9.5 of the Town's Chesapeake Bay Preservation Overlay District, the Town must develop and implement a 5-year pump-out notification program.

BE IT FINALLY RESOLVED that failure by the Town of Port Royal 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 Town of Port Royal 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 June 16, 2008 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

Mathews County

Ms. Miller gave the report for Matthews County.

Mathews is located on the end of the Middle Peninsula, and is almost entirely surrounded by water: the Piankatank River to the north; the Chesapeake Bay on the east, and the Mobjack Bay on the south and west.

The Department completed a compliance evaluation condition review of Mathews County in December 2007, which included five conditions to be addressed by September 30, 2007. All but one was adequately addressed; the requirement to implement a septic system pump-out notification and enforcement program. The Board again found the County's Phase I program not fully compliant and established a new deadline, March 31, 2008, by which the condition must be met.

The County secured a Water Quality Improvement Fund grant in the fall of 2007 to enhance its GIS capacity and to implement a septic system pump-out notification and enforcement program. All parcels within the County's designated CBPA's were identified and County staff created a database to track notices, responses and the status of the on-site septic systems on these parcels. Using this database, notices were sent to 1,000 property owners on January 9, 2008. The County used tax parcel numbers to create five such mailing groups, and will notify one group each year for five years. Each group will have one year from the time of notice to meet the requirement and document compliance to the County. Violators will be given a second notice and 30 days to comply, after which they will be turned over to the Commonwealth Attorney for further action.

The County provided the Department with a letter on January 10, 2008 documenting the implementation of its on-site septic pump-out notification and enforcement program.

Ms. Miller said that it was staff's opinion that the recommended condition has been adequately addressed, and that staff recommended that the Board find the implementation of Mathews County's Phase I program compliant with the Act and the Regulations.

MOTION: Mr. Taylor moved that that the Chesapeake Bay Local Assistance Board find the implementation of Mathews 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.

SECOND: Mr. Duncanson

DISCUSSION: None

VOTE: Motion carried unanimously

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
June 16, 2008**

RESOLUTION

**LOCAL PROGRAM COMPLIANCE EVALUATION
MATHEWS 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 Mathews County's Phase I program did not fully comply with the Act and Regulations and further that the County address the one recommended condition in the staff report no later than March 31, 2008; and

WHEREAS in January 2008, the County provided staff with information relating to the County'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 Mathews 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 June 16, 2008 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon

Director
Department of Conservation and Recreation

Arlington County

Mr. Sacks gave the report for Arlington County. Daniel Moore is the staff liaison.

Arlington County's program was initially reviewed by the board in June 2007 at which time the Board imposed one condition to be met by the County in order to be found compliant. That condition was to develop and implement a septic pump-out program. On September 28, 2007 the County's Public Health Division sent out letters to approximately 80 property owners with on-site septic systems informing them of the requirement to have their tanks pumped, and to either provide the County proof of pump-out or that their property has been hooked up to the County's public sewer system.

As of March 10, 2008, roughly 55 responses were received, and the County sent out a reminder mailing to the others. Health Department staff will attempt to make personal visits to any subsequently unresponsive property owners.

Mr. Sacks said that the staff recommendation was that the Board find the County's program compliant.

MOTION: Mr. Evans moved that that the Chesapeake Bay Local Assistance Board find the implementation of Arlington 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.

SECOND: Ms. Reed

DISCUSSION: None

VOTE: Motion carried unanimously

Mr. Davis asked if there had been any feedback from localities regarding responses to the septic pumpout notices.

Mr. Sacks said that information would be reflected in the annual reports.

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
June 16, 2008**

RESOLUTION

LOCAL PROGRAM COMPLIANCE EVALUATION
ARLINGTON 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 June 18, 2007, the Chesapeake Bay Local Assistance Board found that implementation of certain aspects of Arlington County's Phase I program did not fully comply with the Act and Regulations and further that Arlington County address the one recommended condition in the staff report no later than June 30, 2008; and

WHEREAS in March 2008, the County provided staff with information relating to the County'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 and; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the implementation of Arlington 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 June 16, 2008 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

City of Suffolk

Ms. Smith gave the report for the City of Suffolk.

The City of Suffolk lies in the southern portion of the Hampton Roads area and is bordered on the west by Isle of Wight County and the east by the City of Chesapeake. The City has land area that drains to both the Chesapeake Bay and Chowan River/Dismal Swamp Basin. The City is the state's largest city geographically with 430 square miles and it had a 2007 population of 81,209. Growth in the City is primarily concentrated in the northern portion of the City (and within the Chesapeake Bay watershed) with about 70 percent of growth occurring in the City's Chesapeake Bay Preservation Area and 30 percent occurring in the remainder of the City.

The compliance evaluation for the City of Suffolk was begun in December 2007, with the initial meeting on December 12, 2007. Project files were reviewed on January 23, 2008 and site visits to selected project sites occurred on March 6, 2008.

Based on the compliance review, there are two recommended conditions for compliance with a recommended deadline of June 30, 2008:

1. The City must develop and implement a 5-year pump-out program.
2. The City must require a WQIA for any proposed land disturbance, development or redevelopment within the RPA.

City staff have been very cooperative, and have already taken steps to address the two recommended conditions. Cindy Taylor, Acting Director of Planning is here from the City.

Ms. Taylor said that as the Board had heard, the City has had difficulties in implementing the program. The Health Department has a limited staff, but the City is working to determine the best way to implement the program.

Ms. Taylor indicated that some of the low income areas will have difficulty in complying with the pumpout requirement. She asked if there was the potential for grants to assist low income families.

Ms. Kotula said that there are no remaining funds from 2007. She said that the 2008 Chesapeake Bay implementation grant was reduced.

Ms. Salvati suggested that the Board encourage staff to work with the City to identify other funding sources and mechanism.

Mr. Davis asked if the City had plans or the means to extend the sewer system into these areas.

Ms. Taylor said that the City is extending the system, but some of the areas are outside of the suburban growth areas.

Mr. Davis also suggested that staff check to see if the Department of Housing and Community Development provided funding for septic pumpouts for low income families.

Mr. Evans noted that this is a recurring issue. He said that the state needs to develop a solution for helping localities with the problem.

MOTION: Ms. Roberts moved that that the Chesapeake Bay Local Assistance Board find that the implementation of certain aspects of the City of Suffolk'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 Suffolk to undertake and complete the 2 recommended conditions contained in the staff report no later than June 30, 2009 and further that staff work with the City and provide a report at the September 2008 Board meeting.

SECOND: Mr. Taylor

DISCUSSION: None

VOTE: Motion carried unanimously

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
June 16, 2008**

RESOLUTION

**LOCAL PROGRAM COMPLIANCE EVALUATION
CITY OF SUFFOLK**

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 in Winter 2007 through Spring 2008, the Chesapeake Bay Local Assistance Board conducted a compliance evaluation of the City of Suffolk's Phase I program in accordance with the adopted compliance evaluation process; 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 that the implementation of certain aspects of the City of Suffolk'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 Suffolk to undertake and complete the 2 recommended conditions contained in the staff report no later than June 30, 2009

1. For consistency with Section 9 VAC 10-20-120 7 a of the Regulations and Section 31-415(c)(6)A of the City of Suffolk's Bay Ordinance, the City must develop and implement a 5-year pump-out program.
2. For compliance with §§ 9 VAC 10-20-130 1 a and 9 VAC 10-20-130 6 of the Regulations and Section 31-415(d)(1)A(ii)1 and Appendix B of the City's Bay Ordinance, the City must require a WQIA for any proposed land disturbance, development or redevelopment within the RPA.

BE IT FINALLY RESOLVED that failure by the City of Suffolk 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 Suffolk 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 June 16, 2008 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

City of Colonial Heights

Ms. Kotula gave the report for the City of Colonial Heights.

The City of Colonial Heights, located about 20 miles south of the City of Richmond, covers a land area of approximately eight square miles and has a population of about 17,000 people. The City is nearly 70 percent built out with significant residential and commercial development. A significant portion of the City's border runs along the Appomattox River.

The Compliance Evaluation was started in October of 2007 and was completed in the spring of 2008. The review found that the City is largely implementing their program properly. However, there were two aspects of the program that were found to need some attention:

The first proposed condition relates to the need for a septic system pump out program. Initially, City staff was unaware that any systems still existed within the City limits, but the Comprehensive Plan mentions two neighborhoods where some still exist and the Health Department confirmed this information. The City acknowledges the need for a program and has been provided with all of the information they need in order to establish one.

The second proposed condition relates to the need for a BMP tracking and maintenance program. The City already requires BMP maintenance agreements, but has not been tracking the installation of BMPs or ensuring that they are consistently maintained. Again, the City acknowledges the need for a program and has been provided with all of the information they need in order to establish one.

Ms. Kotula said that the staff recommendation was that the City of Colonial Heights be found to not fully comply with the Act and Regulations and be given until June 30, 2009 to address the two conditions discussed.

Mr. Evans asked if there should be a condition indicating that the City should enforce the BMPs.

Ms. Kotula said that the purpose of the program is essentially to ensure enforcement.

MOTION: Ms. Reed move that the Chesapeake Bay Local Assistance Board find that the implementation of certain aspects of the City of Colonial Height'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, the City of Colonial Heights be directed to undertake and complete the two recommended conditions contained in the staff report no later than June 30, 2009.

SECOND: Mr. Duncanson
DISCUSSION: None
VOTE: Motion carried unanimously

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
June 16, 2008**

RESOLUTION

**LOCAL PROGRAM COMPLIANCE EVALUATION
CITY OF COLONIAL HEIGHTS**

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 in the Winter of 2007 and Spring of 2008, the Chesapeake Bay Local Assistance Board conducted a compliance evaluation of the City of Colonial Heights's Phase I program in accordance with the adopted compliance evaluation process; 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 that the implementation of certain aspects of the City of Colonial Height'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 Colonial Heights to undertake and complete the two recommended conditions contained in the staff report no later than June 30, 2009.

2. For compliance with Section 9 VAC 10-20-120 7 of the Regulations and as required by Section 286-292 E of the City's Chesapeake Bay Preservation Area Overlay District, the City must develop and implement a 5-year pump-out notification program.
3. For compliance with Section 9 VAC 10-20-120 3 of the Regulations, and Section 286-304 D of the City's Chesapeake Bay Preservation Area Overlay District, the City must develop a program to ensure the regular or periodic maintenance and tracking of all water quality best management practices.

BE IT FINALLY RESOLVED that failure by the City of Colonial Heights 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 Colonial Heights 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 June 16, 2008 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

Program Updates

Ms. Smith gave the following compliance evaluation updates:

City of Norfolk

Norfolk staff is working on addressing all three conditions. Condition 1 requiring documentation that shows a city-wide Stormwater Management program implementing the 10 percent reduction in stormwater runoff will be handled by Environmental Management staff, and Condition 2 requiring revisions to stormwater management calculation procedures and BMP design standards to be consistent with State stormwater management requirements will be handled by the City's staff. City staff will be working with Division staff to develop an approach for condition three, relating to ensuring that WQIAs are completed when required.

City of Chesapeake

Conditions 2 (BMP maintenance agreements) 4 (administrative waiver process change) and 5 (require WQIA for all land disturbances in RPA) are all being implemented by City staff. Revisions to the City code are being developed to address Condition 3 (BMPs in RPA condition language). Progress on Condition 1 (septic pump-out program) has been made, with a new database of onsite systems in the CBPA completed. The City Health Department intends to send out notices in the next few months.

Town of Smithfield

The Town has worked with Isle of Wight County to develop a joint septic pumpout program. The Town's draft program was on the agenda for special consideration by the Planning Commission on June 10, 2008 (approved for Town Council?). The Town has worked to address Condition 2 (BMP maintenance program) and has completed work on gathering BMP information and database development. For Condition #3 (administrative waivers for buffer encroachments on case-by-case basis) the Town has taken steps to ensure that all requests are considered on their own merits.

Towns of Bloxom, Melfa, Onley, Parksley and Saxis

All had 1 condition, to develop and adopt a formal agreement that lays out the tasks that Accomack County will perform for Bay Act compliance, in particular, the RPA delineations and septic pump-out. Division staff has developed a draft MOU for the towns which is currently under review by the County. In addition, grant monies were given to the County to undertake septic pump-out notices for the towns.

City of Richmond

The City has indicated that it has taken steps to address several of the eight conditions. Specifically, the City has developed amendments to its Public Information Manual (#1,3 and 7), developed a draft BMP maintenance agreement (#6), worked to address ESC program deficiencies (#4) and noted that the ChesBay ordinance will be amended to address the need for site specific perennial flow determinations to be made (#8).

Essex County

Ms. Miller gave the report for Essex County.

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.

The Board conducted Essex County's initial compliance evaluation and found the County's local Bay Act program not fully compliant on December 10, 2007, setting a deadline of December 31, 2008 for the County to address two Recommended 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 mailed septic pump-out notices to 1,416 property owners in the Rappahannock District on May 16, 2008, and has developed a computer-based system to track responses. The deadline to respond is June 1, 2009. Pump-out notices were included in the tax notice mailing, and 218 responses have already been returned to the County. This District is the first of three voting districts with a total of about 4,100 on-site systems County-wide.

During the compliance evaluation process, the County adapted a BMP maintenance agreement for use on projects that exceed the total post-development impervious cover threshold of 16% and require structural BMPs. On May 12, 2008 Department staff met with County staff and determined that there are no examples available yet, due to the current slow pace of development (3 building permits were issued in May) and the County's encouragement of nonstructural vegetative practices whenever possible to address stormwater management requirements.

Based on these actions, the County has made excellent progress in addressing the recommended conditions, with more than six months remaining before the December 31, 2008 deadline.

Mr. Davis asked if staff could provide an update at the September meeting.

Ms. Miller said that it was possible that the County could be on the September as an action item rather than an update.

Ms. Salvati said that there is still the issue of the Erosion and Sediment Control program and that the County had considered rescinding their ordinance. The County has been working with DCR staff and appears to be making progress.

King George County

Ms. Kotula gave the report for King George 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 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. Staff is monitoring their progress and fully expects this condition to be completely addressed by the December 31st deadline.

The second condition required that the County begin requiring Water Quality Impact Assessments for all encroachments into Resource Protection Areas. Although the County already required certain elements of WQIAs to be submitted with plans, a full WQIA was not required. The County has since developed WQIA forms and has started requiring their submission with RPA encroachments. Staff is monitoring their progress to ensure that this requirement is being properly implemented.

Other Business

Procedures for Local Program Review

Mr. Sacks said that the document was sent to members under a separate mailing. Two versions were provided with one showing staff recommended changes. This document was amended by the Board in 2007 and is intended to describe the process for reviewing local programs. Copies of both versions are available from DCR.

A summary of changes included:

- **Board Program Review Committees:** Language added to indicate that Review Committee meeting is not required for Board consideration of local programs.
- **Consistency Reviews – Generally:** New section added explaining the types of reviews undertaken by the Board.
- **Final Consistency Reviews:** Language added to clarify where official notifications to local governments are to be sent.
- **Review of Modifications to Local Programs Found Consistent:** Language added clarifying that the Director determines whether local ordinance changes are a major program modification and require Board approval.

Mr. Sacks reviewed additional changes and recommendations from the morning Policy Committee meeting. A review of those changes is provided in the minutes from that meeting.

MOTION: Mr. Evans moved that the Chesapeake Bay Local Assistance Board approve the recommendation by the Policy Committee for the document entitled Procedures for Local Program Review, along with those recommended changes made by the Board.

SECOND: Mr. Duncanson

DISCUSSION: None

VOTE: Motion carried unanimously

A copy of the document in final approved form is included as Attachment #1.

Authorization to File Final Exempt Regulatory Action

Mr. Dowling gave the following overview of necessary regulatory action.

- You should have received from me in the Board mailing a memo dated May 27, 2008 that outlines the exempt final action that is before you today. I am also circulating another copy of those materials for our discussion this afternoon.
- The Department is seeking authorization from the Board today to file an exempt final Regulatory Action that amends § 9 VAC 10-20-120.
- The need for this action was brought to the Department's attention by a locality that noted that an antiquated regulatory citation was present in the Chesapeake Bay Preservation Area Designation and Management Regulations. This reference changed in response to changes in the Virginia Stormwater Management Regulations made pursuant to Chapter 372 of the Acts of Assembly of 2004.
- Specifically, if you look in 9VAC10-20-120 entitled General performance criteria at Subsection 8 (Page 4 of the attached regulation mark-up), you will note references to 4VAC3-20. This is the number of the Stormwater regulations when they were under the Board of Conservation and Recreation. In 2004/ 2005, the regulations were amended, renumbered (4VAC50-60), and transferred to the Virginia Soil and Water Conservation Board.
- Additionally if you turn to page 5, this section contains incorrect references to the Virginia Pollution Discharge Elimination System (VPDES) that are being changed to the Virginia Stormwater Management Program (VSMP) as well as references to the Department of Environmental Quality that are being changed to the Virginia Soil and Water Conservation Board. Also note that VPDES is being changed to VSMP. These changes were also a result of the Stormwater Act and regulation changes.
- These changes have been found to be exempt by the Attorney General's Office in accordance with:
 - 1) § 2.2-4006.A.4(a) of the Administrative Process Act that allows exempt actions that are necessary to conform to changes in Virginia Statutory law where no agency discretion is allowed; as well as
 - 2) enactment clause 5 in Chapter 41 (SB1103) of the 2005 Virginia Acts of Assembly which allowed for the Chesapeake Bay Local Assistance Board to amend the stormwater management requirements within the Chesapeake Bay Preservation Area Designation and Management Regulations in order to make

them uniform with the Virginia Stormwater Management Regulation changes made pursuant to Chapter 372 of the Acts of Assembly of 2004.

- This will be our first action to make changes related to the stormwater requirements in the Bay Act regulations. Additional amendments are anticipated in the future when the next round of changes in the Stormwater Regulations under the Virginia Soil and Water Conservation Board are completed.
- A motion has been attached at the end of this document through which the Board may approve the adoption of this final exempt regulation related to § 9 VAC 10-20-120 of the Board's Chesapeake Bay Preservation Area Designation and Management Regulations, and that authorizes the Director of the Department of Conservation and Recreation and the Departmental Regulatory Coordinator to submit through an exempt action this regulation and any other required documents to the Virginia TownHall and to the Registrar of Virginia.

With that Mr. Chairman, I have completed my remarks and turn it back to you to see if there is any public comment and for Board discussion and consideration of the motion.

Language Excerpt:

9 VAC 10-20 Chesapeake Bay Preservation Area Designation and Management Regulations (Exempt - Final)

9VAC10-20-120. General performance criteria.

Subsection 8 Page 4 and 5 of the attached regulation mark-up. [Includes Subsection 8 a (2) and (3)]

8. Stormwater management criteria consistent with the water quality protection provisions ~~(4VAC3-20-71 et seq.)~~ of the Virginia Stormwater Management Regulations ~~(4VAC3-20)~~ (4VAC50-60-10 et seq.) shall be satisfied.

a. The following stormwater management options shall be considered to comply with this subsection of this chapter:

(1) Incorporation on the site of best management practices that meet the water quality protection requirements set forth in this subsection. For the purposes of this subsection, the "site" may include multiple projects or properties that are adjacent to one another or lie within the same drainage area where a single best management practice will be utilized by those projects to satisfy water quality protection requirements;

(2) Compliance with a locally adopted regional stormwater management program, which may include a ~~Virginia Pollution Discharge Elimination System (VPDES)~~ Virginia Stormwater Management Program (VSMP) permit issued by the ~~Department of Environmental Quality~~ Virginia Soil and Water Conservation Board to a local government for its municipally owned separate storm sewer system discharges, that is reviewed and found by the board to

achieve water quality protection equivalent to that required by this subsection; and

(3) Compliance with a site-specific ~~VPDES~~ VSMP permit issued by the ~~Department of Environmental Quality~~ Virginia Soil and Water Conservation Board, provided that the local government specifically determines that the permit requires measures that collectively achieve water quality protection equivalent to that required by this subsection.

b. Any maintenance, alteration, use or improvement to an existing structure that does not degrade the quality of surface water discharge, as determined by the local government, may be exempted from the requirements of this subsection.

c. Stormwater management criteria for redevelopment shall apply to any redevelopment, whether or not it is located within an Intensely Developed Area designated by a local government.

Mr. Duncanson offered the following motion:

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

June 16, 2008 Meeting
University Hall
North Building, Section B
125 University Boulevard
Fredericksburg, VA 22406

Motion to approve, authorize and direct through an exempt action the filing of a final regulation related to § 9 VAC 10-20-120 of the Board's Chesapeake Bay Preservation Area Designation and Management Regulations:

The Board approves the adoption of this final regulation related to § 9 VAC 10-20-120 of the Board's Chesapeake Bay Preservation Area Designation and Management Regulations and authorizes the Director of the Department of Conservation and Recreation and the Departmental Regulatory Coordinator to submit through an exempt action this regulation and any other required documents to the Virginia TownHall and to the Registrar of Virginia.

In implementing this authorization, the Department shall follow and conduct actions in accordance with the Administrative Process Act exemption requirements specified in § 2.2-4006, the Virginia Register Act, and other technical rulemaking protocols that may be applicable.

This authorization extends to, but is not limited to, the drafting of the documents and documentation as well as the coordination necessary to gain approvals from the Attorney General, the Administration, and the Virginia Registrar of Regulations for the final regulatory action publication.

The Board requests that the Director or the Regulatory Coordinator report to the Board on these actions at subsequent Board meetings.

Motion made by: William E. Duncanson

Motion seconded by: Richard B. Taylor

Action: Motion carried unanimously

Update on Resource Protection Areas: Nontidal Wetlands Guidance

Mr. Hughes gave the following update on the Nontidal Wetlands Guidance.

- Four training sessions were provided from November 2007 through May of 2008. Sessions were conducted in four areas of Tidewater Virginia, including Gloucester County, the Hampton Roads area, Stafford County and the Eastern Shore.
- In addition to the formal training events, staff provided an overview of Guidance on six occasions at meetings of local government staff hosted by PDC s from June through December of 2007
- The total number of localities represented at the workshops & PDC meetings was 48
- Further outreach will be provided to locality staff who have not attended Workshops
- Workshop training consisted of in-depth review of guidance and illustrations with supporting photographs

Public Comment

There was no additional public comment.

Mr. Davis reminded members that the NARC and SARC meetings were scheduled for August 12, 2008 in the Richmond CBLA offices. The Policy Committee will meet in between the NARC and SARC meetings.

Adjourn

There was no further business and the meeting was adjourned.

Respectfully submitted,

Donald W. Davis
Chairman

Joseph H. Maroon
Director



**CHESAPEAKE BAY LOCAL ASSISTANCE
BOARD
PROCEDURAL POLICIES FOR LOCAL
PROGRAM REVIEW
(Amended June 16, 2008)**

This document amends and repeals the Board's Procedural Policies for Local Program Review dated June 18, 2007 (Guidance Document No. DCR-CBLAB-010).

Board Program Review Committees

1. In accordance with the Bylaws of the Chesapeake Bay Local Assistance Board, the Board has established two review committees (Committees), the Southern Area Review Committee and the Northern Area Review Committee. The purpose of the Committees is to provide recommendations to the Board on issues of local compliance with the Act and Regulations. The Committees will set standard meeting times and establish yearly meeting calendars. The Committees may set additional meetings outside of their established schedules to facilitate timely review of local programs.
2. The Department staff will draft the tentative agendas for each Committee's meetings. The Department staff will provide Committee members with staff reports and pertinent supporting materials for each local program on the agenda not less than fifteen (15) days prior to meetings.
3. The Committees will hear presentations by Department staff and local governments in addition to reviewing reports and supporting materials at meetings.
4. The Committees will make recommendations to the Board based on evaluation of staff reports, supporting materials and testimony; or, if necessary, the Committees will request additional documentation from staff or the local government before making a decision and thus defer action, and where appropriate also recommend the Board defer action. Department staff will record minutes for each Committee meeting.
5. A recommendation by a Committee is not required for consideration by the Board of a local program review.

Consistency Reviews - Generally

Consistency reviews are undertaken pursuant to the authority granted to the Board in 9 VAC 10-20-231 5. A consistency review is a determination that a locality's program is consistent with the requirements of the Chesapeake Bay Preservation Act and the Chesapeake Bay Preservation Area Designation and Management Regulations.

Consistency reviews are undertaken for Phases I, II, and III of local programs. The Phase I review evaluates the local government ordinances for inclusion of the management program and the mapping of Chesapeake Bay Preservation Areas. The Phase II review evaluates the local comprehensive plan for inclusion of the required elements. The Phase III review evaluates local ordinances for the inclusion of specific provisions to address the general performance criteria in the regulations and water quality protection based upon a checklist and minimum threshold established by the Board.

Preliminary Consistency Reviews

1. Upon request by a local government, a preliminary consistency review will be conducted provided the local program proposal is in final draft form, having been reviewed and recommended for adoption by the local planning commission or when requested as a part of the local planning commission workshop/review process.
2. Upon receipt of: (1) a written request by the local government, and (2) all proposed documents for review, the Department staff will evaluate the local government program using the checklists and materials approved by the Board and will prepare a staff report for the Board containing recommendations for the Board's consideration.
3. The process for preliminary review by the Board of a local program proposal will be the same as for Final Consistency Reviews.

Final Consistency Reviews

1. The Department staff will evaluate each adopted local government program using the consistency review checklist or findings of the preliminary review, where applicable, and prepare a staff report. The staff report will include a recommendation for either a finding of program consistency or a finding of not fully consistent along with recommendations for conditions to be addressed by the locality to ensure consistency. The staff report will include the reasons for any recommendation. The staff report may also include suggestions that are desirable for water quality protection but not necessary for consistency. Areas where additional information or clarifications of the local program are needed will also be identified.
2. The staff report will be sent to the appropriate Committee and the local government not less than fifteen (15) days prior to the scheduled Committee meeting. The letter will notify the local government of its opportunity to address the Committee.

3. At its meeting, the Committee will hear a presentation by Department staff and by representatives of the local government (if present). The Committee may find it necessary to request additional documentation from Department staff or the local government before making its recommendation. In such cases, the Committee may elect to defer its finding until a later meeting. Based on the information in the staff report and testimony presented by Department staff and local government representatives, the Committee will make a recommendation for a finding by the Board. A staff report for Board Review will be prepared that includes the Committee's recommendation.
4. The local government will be notified of the Board's upcoming consideration of the staff report and the Committee's recommendation. This notice shall advise the locality of its right to appear, either in person or by counsel or other representative, before the Board at a time and place specified for the presentation of factual data, argument and proof in connection with the Board's review as specified by the informal fact-finding proceeding requirements of the Administrative Process Act, Code of Virginia § 2.2-4019. The final report and notice will be sent to the local government no later than twenty (20) days prior to the Board's meeting at which the local program review will be considered. To facilitate timely Board reviews, this notification period may be modified in cases where a local government agrees in writing to waive the notice period specified by 9 VAC 10-20-250.
5. The Board will take into consideration the staff recommendation, the recommendation of the Committee (when provided), the findings of the preliminary review, if any, and presentations and proof offered by the local government, both written and oral, in making a finding on local program consistency.
6. The Board may find it necessary to request additional documentation from Department staff or the local government. In such cases, the Board may elect to defer its finding until a later meeting.
7. When the Board determines that no changes are necessary for local program consistency, the Board will make a finding of "consistent". The Department will notify the local government of the Board's finding in writing within the timeframe specified by Code of Virginia § 2.2-4021.
8. When the Board determines that changes are necessary for local program consistency, the Board may make a finding of "not fully consistent" and allow the local government to complete the necessary modifications within a prescribed period of time. As part of the finding, the Board will determine what changes are necessary and set a compliance deadline for revising the local program. The Department will notify the local government of the Board's finding and the compliance deadline in writing within the timeframe specified by Code of

Virginia § 2.2-4021. Such notification shall also include the locality's right to appeal the Board's action.

9. When the Board determines that a local program is inconsistent, the Board will make a finding of "inconsistent". As part of the finding, the Board will determine what changes are necessary and set a deadline for the local government to make the necessary changes. The Department will notify the local government of the finding and compliance deadline in writing within the timeframe specified by Code of Virginia § 2.2-4021. Such notification shall also include the locality's right to appeal the Board's action.
10. Notifications to a local government of pending Board consideration or results of Board actions will be sent to the highest appointed official in the locality (City Manager, Town Manager, County Administrator, etc.). For localities without such an official, notification will be sent to the highest local elected official.

Review of Programs Found Not Fully Consistent and Inconsistent

1. Department staff will discuss with the local government its progress in making any program modifications identified by the Board at least ninety (90) days prior to the Board's deadline for necessary program modifications, unless a shorter time period is set by the Board.
2. When a local government indicates it needs additional time and provides sufficient justification and a revised schedule to accomplish the required program modifications, its request shall be considered by the appropriate Committee, which shall make a recommendation to the Board. A locality that disagrees with the Committee's recommendation may address the Board during its review of the matter.
3. Review of programs found not fully consistent will generally follow the steps for Final Consistency Reviews. Where the local government has accomplished all necessary program modifications, the Department staff may prepare a simplified staff report for both the Committee and the Board.
4. The Committee will evaluate the local government's program, consider the Department staff's recommendation and any testimony of the local government, if present, and make a recommendation as to whether the program is consistent or inconsistent. If the local program is inconsistent, the Committee shall identify remaining items that need to be addressed for consistency and recommend a compliance deadline or recommend an extension of the deadline for completion of the necessary program modifications.
5. The Board will take into consideration the Department staff's recommendations, the recommendation of the Committee (if any), and presentations and proof

offered by the local government in making a decision on local program consistency and/or extending or establishing a deadline.

6. For local programs previously found inconsistent and where the local government does not adopt the necessary program modifications or request and receive a deadline extension from the Board, the matter will be scheduled for review and action at the next meeting of the appropriate Committee and the Board. Notice regarding the meetings and recommended action will be provided to the locality in the same manner as for any Final Consistency Review. The Board may either defer action in order to consider additional information or request the Office of the Attorney General to take legal action to enforce compliance with the Act and regulations.

Review of Modifications to Local Programs Found Consistent

1. The Department staff will evaluate any modifications to local government programs found consistent. Staff evaluations will occur in a timely manner after a modification is adopted by the locality. After evaluating program modifications, the Director will make a determination that the program modification is either minor or major. The Department staff will refer to the Minor Program Modifications and Major Program Modifications sections of this document in making such evaluations.
 - a. Minor program modifications may be approved by the Director.
 - b. Major program modifications will require the development of a staff report describing the program modifications along with a recommendation of the program's consistency, and require approval by the Board.
2. Ordinance amendments that contain both major and minor modifications, will be reviewed by the Board rather than separating the components into separate Director and Board Reviews.
3. Board review of major program modifications will generally follow the steps for Final Review, including review and recommendation by the appropriate Committee.

Minor Program Modifications

1. Minor modifications to a local program will generally include amendments that do not affect the application of the eleven performance criteria or the designation of Chesapeake Bay Preservation Areas and/or Intensely Developed Areas. Minor modifications include changes implemented as a result of the Board's consistency review of a local program and any changes that fall under the following general categories: process, clarification, reorganization, and specification. Local adoption of the civil penalties and civil charges provisions as found in the Act is considered a minor amendment.
 - a. Ordinance changes that are administrative in nature and address a local government's process for reviewing development projects and plans, may include changes to the timing of submissions or to the assignment of

personnel responsible for review and approvals. . Changes to the local ordinance to reflect such reassignments or other changes in the process are minor modifications. Changes to the local exception process that involve a new sequencing of review requests for exceptions or appeals will generally be considered minor modifications. However, changes to the criteria for exceptions or required findings associated with development approval or changes to the committee, board, or body that hears exceptions are considered major modifications.

- b. Ordinance changes involving clarification are generally "housekeeping" in character, such as correcting typographical errors and amending citations for reference materials in ordinances. Such modifications could also involve minor word changes to clarify the intent of ordinance requirements. Typically, clarification changes are a result of the locality's experience in implementing the ordinance.
 - c. Minor modifications involving reorganization or recodification are those that affect the structure and numbering of an ordinance text.
 - d. Minor modifications involving specifications are those that establish more information or detail for particular sections of an ordinance. For example, a local government may add specific standards to clarify how an applicant complies with the requirement to minimize impervious surface. These standards relieve the local administrator from having to interpret compliance on a case-by-case basis. Other expected modifications of this nature would involve specifying information items required to be submitted as part of a site plan.
2. The Director shall document approval of all minor modifications through a letter to the locality, with a copy to the Board, acknowledging the local action and approval. The Department shall provide a summary of approved minor modifications to the Board as a staff update at each Board meeting.

Major Program Modifications

1. Major modifications to a local program must be approved by the Board and are generally those that revise (i) the designation of the local Chesapeake Bay Preservation Area or an Intensely Developed Area, (ii) the application of the eleven performance criteria or, (iii) the process for granting exceptions_or administrative waivers.
2. Major modifications that revise the local Chesapeake Bay Preservation Area (CBPA) designation include ordinance changes to the components or description of either the Resource Protection Area, Resource Management Area, or Intensely Developed Area. . A change to the locality's Chesapeake Bay Preservation Area map that modifies the boundaries or location of the RPA, RMA, or IDA other than those that are clarifications based upon site-specific delineation, as provided for in a local program ordinance are considered major program modifications and subject to review by the Board.

3. Major modifications include any revision to the eleven performance criteria in the local Bay Act ordinance or the amendment of the level of performance of one of the standards.
4. Modifications that substantially revise the local exception process will be considered major in nature. Changes to the exception process that expand the locality's administrative exceptions to include additional buffer encroachment, on lots created prior to the effective date of the local ordinance, changes to the criteria for exceptions or required findings associated with development approval or changes to the committee, board, or body that hears exceptions are considered major modifications and subject to review by the Board.
5. Any other modifications that do not qualify as minor will be considered major.
6. Modifications to a local Comprehensive Plan that eliminate any of the required Phase II components will be considered major program modifications.

Local Program Compliance Review Procedures

The following review procedures are designed to take into account the initial phase of the Compliance Review process required under the Act and Regulations, and the ongoing review of local programs.

Initial Compliance Evaluation Report Development Process

1. Based on a review of the information gathered by the locality, interviews with local staff, completion of the *Local Program Compliance Evaluation Checklists*, and field investigations, the Department staff, will evaluate each local government program and prepare an *Initial Compliance Evaluation Report* regarding the local program's compliance with the Act and Regulations. This report will include an evaluation of each element of the local program that is reviewed. The report will also include recommendations for conditions to be considered by the Board for local program modifications that the Department staff feels are necessary for compliance and a statement of the reason(s) behind the recommendations. The report may include suggestions that are desirable for water quality protection or more effective implementation of the local government program, but not necessary for compliance. .

Review Committee Review Process

2. The *Initial Compliance Evaluation Report* and resolution, that may include conditions for compliance for consideration by the Board, will be forwarded to the appropriate Committee (or the Board if no Committee meeting is found necessary) and the local government not less than fifteen (15) days prior to the scheduled Committee meeting. The transmittal letter will notify the local government of its opportunity to address the Committee and offer testimony or exhibits on its own behalf.

3. At its meeting, the Committee will hear a presentation by Department staff and by representatives of the local government, if in attendance. The Committee may find it necessary to request additional documentation or testimony from either staff or the local government prior to making a compliance determination.

Board Review Process

4. The local government will be notified of the Board's upcoming consideration of the final staff report and the Committee's recommendation (if any). This notice shall advise the locality of its right to appear, either in person or by counsel or other representative, before the Board at a time and place specified for the presentation of factual data, argument and proof in connection with the Board's review as specified by the informal fact-finding proceeding requirements of the Administrative Process Act, Code of Virginia § 2.2-4019. The final staff report and notice will be sent to the local government no later than twenty (20) days prior to the Board's meeting at which the local program review will be considered. To facilitate timely Board reviews, this notification period may be modified in cases where a local government agrees in writing to waive the notice period specified by 9 VAC 10-20-250.
5. In making a finding on local program compliance, the Board will take into consideration the Department staff's analysis and recommended conditions for compliance, the recommendations of the Committees, and presentations and proof offered by the local government. The Board may find it necessary to request additional information from either the staff or local government, and may defer its finding until this information has been provided.
6. When the Board determines that no changes are needed in the local program, it will make a finding that the local program implementation is compliant with the Act and Regulations. The Department staff will notify the local government of the Board's findings in writing within the timeframe specified by Code of Virginia § 2.2-4021.
7. When the Board determines that changes are needed in the implementation of the local program, the Board may make a finding that implementation of certain aspects of a local government's Bay Act program do not fully comply and allow the local government to address the required conditions within a prescribed period of time. As part of its findings, the Board will determine what changes are necessary for compliance and will set a compliance deadline. The Department staff will notify the local government of the Board's findings and the compliance deadline in writing within the timeframe specified by Code of Virginia § 2.2-4021. This written notice shall also set forth the locality's right to appeal the Board's action.

Board Update Requirement

8. The Department staff shall provide an update to the Board at one of their regularly scheduled meetings no less than six months before any compliance deadline. This update will outline steps taken by the local government to address any conditions necessary for compliance.

Board Review of Conditions – Noncompliant Local Programs

9. In cases where a local government does not address the required conditions in a timely manner, or within the Board established time frame, the Board may make a finding of noncompliance. This finding will include required conditions that a local government must address as well as a compliance deadline by which the required conditions must be met. When the Board makes a finding of noncompliance, it shall notify the local government of the finding in writing within the timeframe specified by Code of Virginia § 2.2-4021. The notification shall also include the required conditions for compliance, the compliance deadline, and the possible legal actions that may be available to the Board should the deadline not be met.

Board Review of Conditions – Compliant Local Programs

10. Upon a locality's successful completion of all conditions for compliance, the Department staff shall prepare a report to the Board recommending a finding of "compliant and shall prepare a resolution for Board adoption confirming program compliance.

Board Action on Noncompliant Programs

11. For local programs previously found noncompliant and where the local government does not adopt the necessary program modifications or request and receive a deadline extension from the Board, the matter will be scheduled for review and action at the next meeting of the appropriate Committee and/or the Board. Notice regarding the meetings and recommended action will be provided to the locality in the same manner as for any Compliance Review. The Board may either defer action in order to consider additional information or request the Office of the Attorney General to take legal action to enforce compliance with the Act and regulations.

Supplemental Compliance Evaluations

12. A finding of compliance relative to a local program element shall not be construed to mean a finding of compliance with all other elements of the local program that were not evaluated during the Compliance Evaluation process. The Chesapeake Bay Local Assistance Board may evaluate local program implementation of other program elements according to an established schedule, or as changes in policy, law, regulation or circumstances in the locality warrant. A Compliance Evaluation may also be initiated if the Board or Department staff identifies potential areas of noncompliance through observations in the field, complaints or other means.

13. When circumstances indicate that a local government, previously found compliant, is no longer implementing all elements of its Bay Act program in compliance with the Act and Regulations, the Board or Director may authorize the Department staff to initiate a compliance review of all or portions of implementation of a local Bay Act program.

This document was adopted by the Board on June 16, 2008 and may be amended or repealed as necessary by the Board.

Chesapeake Bay Local Assistance Board Compliance Review Process

