

**Northern Area Review Committee Meeting
Tuesday, August 12, 2008
Richmond, Virginia**

Northern Area Review Committee Members Present

Donald W. Davis, Board Chair
William E. Duncanson

Gregory C. Evans
Rebecca Reed

DCR Staff

Joseph H. Maroon, Director
Russell W. Baxter, Deputy Director
Joan Salvati, Director, Division of Chesapeake Bay Local Assistance
David Sacks, Assistant Director, Division of Chesapeake Bay Local Assistance
Michael R. Fletcher, Board and Constituent Services Liaison
V'lent Lassiter, Senior Environmental Planner
Nancy Miller, Senior Environmental Planner
Daniel Moore, Principal Environmental Planner
Shawn Smith, Principal Environmental Planner
Melissa Doss, Senior Environmental Planner

Others Present

Lara Burleson, Town of Kilmarnock
Barrett Hardiman, Home Builders Association of Virginia
Marshall Sebra, Town of Kilmarnock

Call to Order and Opening Remarks

Mr. Davis called the meeting to order and asked for the roll call. A quorum was declared present.

Ms. Salvati introduced Melissa Doss, new Senior Environmental Planner. Ms. Doss was previously with Montgomery County in Southwest Virginia.

Local Program Reviews

Town of Haymarket – Review of Previous Condition

Mr. Moore gave the staff report for the Town of Haymarket.

Department staff initiated the Compliance Evaluation process for the Town of Haymarket in March 2007. Haymarket is a small town covering ½ of a square mile with approximately 1,150 people in the northwest section of Prince William County. The Town has a full-time Town Manager, but no planning staff, and relies heavily on outside

assistance, including a private engineering consultant, and staff from Prince William County, and the Prince William Soil and Water Conservation District to carry out its Chesapeake Bay responsibilities.

On December 10, 2007, the Board found that implementation of one aspect of the Town's Phase I Program did not fully comply with the Act and the Regulations and, in order to correct the deficiency, gave the Town until June 30, 2008 to address the condition. The Board condition stated that:

1. The Town must consistently use standard BMP maintenance agreements, with provisions for inspection and maintenance procedures, and must develop and use a BMP tracking system to ensure BMPs are being properly maintained.

On May 29, 2008, the Town submitted to Department staff a one-page document entitled the "Town of Haymarket BMP Maintenance Facilities Tracking Method" as well as a sample Stormwater Management Facilities Maintenance Agreement. The latter document was scheduled to be reviewed and considered for formal adoption by Haymarket Town Council on August 4, 2008, but has been deferred by Council until their August 18, 2008 meeting. The Tracking Method outlines how the Town will use the BMP Facilities Maintenance Agreements, and the requirements that it will impose on property owners whose development projects will necessitate installation of a water quality BMP. The Town has undertaken a RFP process to secure the services of qualified firms to interpret all BMP Annual Inspection Reports and to perform necessary repairs to non-functioning BMPs in the event that a property owner fails to maintain the BMP facility.

Mr. Moore said that based on the developments outlined in the report it was the recommendation of staff that the Board find that implementation of the Town's Phase I program complies with 10.1-2109 and 2111 of the Act and 9 VAC 10-20-231 and 250 of the Regulations, contingent upon adoption by the Haymarket Town Council at its August 18, 2008 meeting.

MOTION: Mr. Evans moved that the Northern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find that the Town of Haymarket's Phase I program complies with 10.1-2109 and 2111 of the Act and 9 VAC 10-20-231 and 250 of the Regulations, contingent upon adoption of the Stormwater Management Facilities Maintenance Agreement by the Haymarket Town Council at its August 18, 2008 meeting.

SECOND: Ms. Reed

DISCUSSION: None

VOTE: Motion carried unanimously

Town of Kilmarnock – Initial Compliance Evaluation

Ms. Lassiter gave the report for the Town of Kilmarnock. Lara Burleson and Marshall Sebra from the Town were present.

The Town of Kilmarnock is located in Lancaster County in the Northern Neck of Virginia. The Town is about 2.7 square miles in size with a population of approximately 1,250. The Town contains a balance of commercial and residential development and faces the Chesapeake Bay, with the Rappahannock River to the west.

The Department initiated a compliance evaluation for the Town of Kilmarnock on May 23, 2007. The compliance evaluation revealed that although the Town is striving to implement its local Bay Act program effectively, there are program elements that require improvement.

The first recommended condition stipulates that all references to “reduced buffer width” must be removed from the Town’s Bay Act ordinance. In several places, the Town’s ordinance refers to “reduced buffer width”. Although encroachments to the RPA may be allowed if certain findings are met, the overall width of the buffer is never reduced.

The second recommended condition requires that the Town develop and implement a 5-year septic pump-out program. Lancaster County has indicated that they do not intend to manage the Town’s program, so it will be the responsibility of the Town to do so. The Town’s ordinance does not provide for the inspection or plastic filter options, and the Department has recommended that they should consider adopting these options.

The third recommended condition states that the Town must require signed BMP Maintenance Agreements for all BMPs. No Maintenance Agreements were found in the files during the site plan review, although the commercial development that was reviewed had a large detention basin. The Assistant Town Manager is currently customizing Lancaster County’s agreement for use by the Town.

The fourth recommended condition requires that the Town develop a methodology to determine which areas are within the RMA and create a map to accurately depict them. The Town’s current map depicts RPAs, but not RMAs, which is problematic because the Town has only designated certain features as RMA rather than applying it jurisdiction-wide.

The fifth recommended condition states that Section 54-487 (c) of the Town’s Bay Act ordinance must be deleted because it allows buffer equivalency calculations. The Department no longer allows the use of buffer equivalency calculations and instead recommends that local governments consult the Buffer Manual to ensure that all required buffer functions are met when development projects impact the 100-foot RPA.

Ms. Lassiter said the staff recommendation was that the Committee find that certain aspects of the Town of Kilmarnock's Phase I program do not fully comply with the Act and Regulations and that the Town address the 5 conditions contained in the staff report by September 30, 2009.

Mr. Evans asked if the suggestion for the Town to keep better records could be included as a condition rather than a suggestion.

Ms. Lassiter said that it was included as a suggestion since it did not tie directly to the regulations.

Ms. Salvati said that the concern was that there was no specific verbiage relating to this in the regulations. She noted that this was not the only locality with that concern.

Mr. Sacks said that often because information is not in the files does not mean that it does not exist.

Mr. Evans said that he understood that, but the concern was with staff retention rates particularly with localities in the Bay Act area. He said if the records cannot be found and there is no institutional memory it allows for an awkward situation.

Ms. Salvati said that much of this would be addressed in the annual implementation report. Staff will provide an update at the September Board meeting.

Mr. Davis suggested this issue be added to the Policy Committee agenda for further discussion.

Mr. Baxter said that it may also be possible for the Board to adopt guidance that would provide suggestions for good record keeping practices.

Mr. Sacks said that if there were required elements that cannot be found, they would appear in the staff recommendation as a condition.

Ms. Burlison said that the Town is concerned about having best management practices in place so that when files are reviewed in the future, staff can reconstruct what has been done. She noted that she had only been with the town for a year.

Mr. Sebra provided additional materials for staff to review. He said that he was working on WQIAs and other materials.

Ms. Lassiter noted that the Town had already made progress towards the conditions in the staff report.

Mr. Sebra said that he estimates that the town will have to address 200 septic systems. He said that staff would also be going back before the Planning Commission and the

Town Council with regard to conditions 1 and 5. He said that condition 3 was taken care of with the BMP agreement.

Mr. Sebra said that while it was not a condition, the Town would be implementing the Water Quality Impact Assessment for all projects in the RPA and the RMA.

Mr. Davis asked the width of the RMA.

Mr. Sebra said it was defined by the floodplains and all nontidal wetlands that are not a part of the RPA.

MOTION: Ms. Reed moved that the Northern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find that certain aspects of the Town of Kilmarnock's Phase I program do not fully comply with the Act and Regulations and that the Town address the 5 conditions contained in the staff report by September 30, 2009.

SECOND: Mr. Duncanson

DISCUSSION: None

VOTE: Motion carried unanimously

Mr. Duncanson asked Ms. Burlison to pass along to the Mayor and the Town Council the Board's appreciation.

Town of Irvington – Initial Compliance Evaluation

Ms. Lassiter gave the report for the Town of Irvington.

The Town of Irvington is located in Lancaster County in the Northern Neck of Virginia. The Town is about 2 square miles in size with a little less than 9 miles of shoreline. It sits on the shore of Carter's Creek, a tributary to the Rappahannock River, and once thrived as a steamboat town. It is primarily a residential community with a population of approximately 600 people. New development within the Town is limited, consisting mainly of redevelopment and additions or expansions to existing residential development.

The Department initiated a compliance evaluation for the Town of Irvington on April 4, 2008. Although the compliance evaluation revealed that there are program elements that require improvement, the Town has expressed eagerness to apply what they have learned during the compliance evaluation process to improve the Town's program.

The first recommended condition concerns the submission of WQIAs for any proposed land disturbance, development, or redevelopment within RPAs. Four of the projects

evaluated during the compliance evaluation process requiring a WQIA did not contain one in the file.

The second recommended condition requires that the Town develop and implement a 5-year septic pump-out notification and enforcement program. Lancaster County has indicated that they do not intend to manage the Town's program, so it will be the responsibility of the Town to do so. The Town's Bay Act ordinance allows flexibility in that the installation of a plastic filter or documentation of inspection is allowed as an alternative to the pump-out requirement.

The third recommended condition states that the Town must ensure that all development and redevelopment within Chesapeake Bay Preservation Areas properly address nonpoint source pollution in accordance with the water quality provisions of the VA SWM Regulations. During site plan review, with the exception of one application, impervious cover calculations were not included with the plans. Likewise, one site visited contained a water quality BMP, yet no documentation was provided in the file regarding this BMP.

The fourth recommended condition states that the Town must require signed BMP Maintenance Agreements for all BMPs and that they track BMP installation, inspection, and maintenance. Department staff has provided the Town with a BMP tracking database.

The fifth recommended condition requires that the Town properly depict Chesapeake Bay Preservation Areas on all development plans and WQIAs. During the evaluation, it was noted that in 3 of the 5 plans reviewed the RPA was not shown.

The sixth recommended condition concerns the administration of exceptions. One of the files reviewed involved an encroachment into the RPA but did not contain any documentation showing that the project went through the formal exception process, so it's unclear if the appropriate process was followed. The Town must administer exceptions consistent with Town code requirements and retain adequate documentation in support of its decisions on such exceptions.

Ms. Lassiter said that the staff recommendation was that the Committee find that certain aspects of the Town of Irvington's Phase I program do not fully comply with the Act and Regulations and that the Town address the 6 conditions contained in the staff report by September 30, 2009.

Mr. Davis asked at what point in the process does the Town receive the signed BMP maintenance agreements.

Ms. Lassiter said upon plan approval.

Mr. Davis said that many localities require the BMP agreement in order to get plan approval. He said that it should be obtained prior to land disturbance.

Mr. Evans asked why the Town didn't file the WQIA.

Ms. Lassiter said that Irvington has also had staff turnover.

Mr. Evans asked if on the BMP issue the town had the necessary infrastructure.

Ms. Lassiter said that currently the town is not sure if they have any and where they might be located. She has provided sample agreements.

Ms. Salvati said that staff is starting to see local jurisdictions set up processes and institutionalize the implementation of the Bay Act requirements. She said that once all 84 localities are through at least one compliance evaluation the local processes are expected to significantly improve.

MOTION: Mr. Duncanson moved that the Northern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find that certain aspects of the Town of Irvington's Phase I program do not fully comply with the Act and Regulations and that the Town address the 6 conditions contained in the staff report by September 30, 2009.

SECOND: Mr. Evans

DISCUSSION: None

VOTE: Motion carried unanimously

Other Business

Mr. Maroon noted that Mr. Evans had been appointed to a second term on the Board. He also noted that Mr. Barry Marten of Williamsburg had been appointed to replace Gale Roberts.

Public Comment

There was no further public comment.

Adjourn

There was no further business and the meeting was adjourned.

Respectfully submitted,

Donald W. Davis
Chairman

Joseph H. Maroon
Director