

Chesapeake Bay Local Assistance Board  
Monday, June 16, 2003  
James Monroe Building  
101 N. 14<sup>th</sup> Street, Conference Room C  
Richmond, Virginia

Members Present:

Mr. Frank L. Benser  
Mr. Robert J. Bannach  
Mr. Colin D. Cowling  
Mr. Donald W. Davis  
Mr. David C. Froggatt, Jr.  
Mr. Stuart Mendelsohn  
Mr. Daniel B. Nice

Members Absent:

Ms. Anna Lee Bamforth  
Ms. Sue H. Fitz-Hugh

Staff Present:

Acting Executive Director, C. Scott Crafton  
Administrative Assistant, Carolyn J. Elliott  
Chief of Environmental Planning, Martha Little  
Principal Environmental Planner, Shawn Smith  
Principal Environmental Planner, Doug Wetmore  
Senior Environmental Planner, Robbie D. Rhur  
Senior Environmental Planner, Beth Baldwin  
Senior Environmental Planner, Alex Adams

Mr. Benser called the meeting to order at 10:04 a.m. He welcomed guests and encouraged them to sign the sign in sheet. He called the roll, noting that there was a quorum.

Mr. Benser called for the approval of the March 24, 2003 Board meeting minutes. Mr. Bannach motioned and Mr. Froggatt seconded. Mr. Benser called for further comments. There were none. Mr. Benser called for the vote. All members voted aye. Mr. Benser stated that the motion carried unanimously.

Mr. Benser asked Mr. Crafton to present the Director's Report.

Mr. Crafton began his comments by noting that the last several months have been very busy for him and staff. He said that besides routine agency activities that the agency has been involved in the support of the Governor's Natural Resource Leadership Summit, the Natural Resource Partnership Agency and the Natural Resources Partnership. He went on to say that in the near future, the agency would be participating in a Low Impact Development Task Force that was created by the General Assembly. He also noted that he was preparing for the next round of strategic planning and biennium budget preparation that could include plans for the next two years and extended plans for up to six years.

Mr. Crafton advised that 18 of the 84 Tidewater localities have decided to move forward with the adoption of their Bay Act ordinance amendments, although he said it was fair to say that most decided to delay adoption. He went on to say that three local compliance evaluation reviews were being conducted for the City of Richmond, Gloucester County, and the Town of Cape Charles. He noted that the newer planners would begin conducting one compliance evaluation each in the near future, and explained that since staff is involved in reviewing local ordinance amendments for consistency with the regulation amendments that the pace of compliance evaluations would be slower.

Mr. Crafton advised that Principle Planners, David Kovacs and Doug Wetmore, had resigned their positions to accept positions outside of state government. He also advised that Margie Reynolds, Grants Coordinator, had decided to take early retirement at the end of June. He went on to announce that Brad Belo had accepted the position of Senior Planner and began work on May 23, 2003. He briefly discussed the possibility of reallocating the Grants Coordinator position and reminded everyone that two of the three positions that were eliminated during the budget reduction process would be reinstated July 1, 2003.

Mr. Crafton explained that Russ Baxter, Assistant Secretary of Natural Resources, had facilitated two meetings of the ad hoc work group Secretary Murphy established to resolve outstanding concerns about a definition of “perennial stream” and “contiguous” nontidal wetlands, the unfinished perennial stream identification protocol, and questions pertaining to local RPA maps. He advised that the Committee consisted of an excellent group of participants and that Mr. Davis represented the Board on the Committee. He went on to say that staff provided the draft guidance addressing the key issues and the group reviewed the final drafts. He said that he hoped to incorporate the final comments and provide this information to the Secretary by July 1, 2003.

Mr. Crafton said that he was interested in fast tracking the approval of the guidance once it was finalized and asked to call a special meeting of the Policy Committee in July and a special meeting of the Board in either July or August. He said this would provide local governments more lead time in evaluating the effects of the guidance on their local ordinance amendments and should enable localities to proceed with adoption of their amendments before the December 31, 2003 deadline.

Mr. Crafton advised that staff was busy making arrangements and planning the agenda for the next local government workshop that is scheduled to be held on September 17, 2003 at the Holiday Inn.

Mr. Crafton said that he would be bringing two guidance documents to the Board later in the agenda, one was a modification of the Silvicultural Guidance that was approved in December and the other a Buffer Manual that had been developed for local governments use in dealing with issues associated with landowner management of the RPA buffers. He noted that neither of these documents had been through the traditional vetting process, and that he would explain why in each of the presentations.

Mr. Crafton closed his comments noting that he had discussed with the Board the interest in finding a way to streamline the process for getting guidance approved. He said that he would like to lead a discussion of ideas on how to do this and at the same time improve the opportunity for stakeholder input.

Mr. Crafton concluded his report by asking if there were any questions. There were none.

Mr. Benser asked Mr. Davis if he would like to share with the Board information regarding his participation on the Ad Hoc Committee. Mr. Davis advised that the last meeting of the Committee had been held on May 27, 2003 and to his knowledge no other meetings were planned, although he would have an opportunity to make final comments regarding the document prior to its submission to the Secretary of Natural Resources. He said that he was pleased that members concurred about the discussions as well as the information that needed to be included. He said that even though he did not necessarily agree with everything that was said, he believed the Committee was fair in their comments. He suggested that it could be a good idea to create an Ad Hoc Committee from the members of the Board to address guidance documents and advise the full Board of their conclusions. He said he believed that having this committee would help the process move forward.

Mr. Benser thanked Mr. Crafton for his report and Mr. Davis for his comments.

Mr. Benser called for the presentation of Consent Items and recognized Ms. Shawn Smith for staff's presentation for the City of Chesapeake.

Ms. Smith explained that as a Consent Item there would be no presentation. The Board established the Consent Agenda items for deadline extension requests that were unanimously approved so the Board need only to adopt the Resolution.

Mr. Benser called for a motion. Mr. Nice motioned to approve the City of Chesapeake's request for an extension to December 31, 2004.

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD**  
**June 16, 2003**  
**RESOLUTION**  
**LOCAL PROGRAM, PHASE II**  
**CITY OF CHESAPEAKE - #63**  
**Extension of Phase II Compliance Date to December 31, 2004**

WHEREAS § 10.1-2109 of the Chesapeake Bay Preservation Area states that counties, cities, and towns in Tidewater Virginia shall incorporate protection of the quality of state waters into each locality's comprehensive plan; and

WHEREAS § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsection 3 shall be adopted by local governments; and

WHEREAS § 10.1-2103.10 of the Chesapeake Bay Preservation Act authorizes the Board to take administrative and legal actions to ensure compliance by counties, cities, and towns with the provisions of the Act; and

WHEREAS the City made substantial progress in development of amendments to its comprehensive plan, but due to extenuating circumstances, the City requested an extension to December 31, 2004; and

WHEREAS on May 13, 2003 the Local Program Review Committee for the Southern Area reviewed the circumstances of the City, the comments of staff and recommended that the deadline be extended to December 31, 2004; and

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

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board extends the date for the City of Chesapeake's compliance with § 10.1-2109 of the Act and § 9VAC10-20-60.3 of the Regulations to December 31, 2004.

BE IT FURTHER RESOLVED that the conditions previously imposed and still applicable for a finding of consistency are as follows:

1. That the City shall conduct a Public and Private Waterfront Access Study that shall comply with the *Checklist for Evaluation of Comprehensive Plans* by September 30, 2001 with resulting background information, policies, and implementation strategies contained in the major Plan update.
2. That the City shall provide an assessment of the reasons for shoreline hardening and, as appropriate, provide policy guidance and an implementation strategy in the Comprehensive Plan with resulting background information, policies, and implementation strategies contained in the major Plan update.
3. That the City shall address the issue of protection of water supply by reference and highlighting of the HRPDC Water Supply Watershed Management in Hampton Roads report and, as appropriate, provide policy guidance and an implementation as apart of the major Plan update.
4. The issue of septic systems and groundwater pollution threats should be reexamined, in light of the comments contained in the February 9, 1999 Preliminary Review Report, with resulting background information, policies, and implementation strategies contained in the major Plan update.
5. Information pertaining to agricultural land use, the creation of farm plans and farm nutrient management plans, and implementation of those plans, as required by the

Regulations, should be obtained and analyzed with resulting background information, policies, and implementation strategies contained in the major Plan update.

6. That the City shall conduct an assessment of opportunities for water quality enhancement commensurate with redevelopment and revitalization in the South Norfolk Area and similarly developed areas of the City and that it be completed by June 30, 2002 with resulting background information, policies, and implementation strategies contained in the major Plan update.
7. That the graphic presentations of the Chesapeake Bay watershed and the City's Chesapeake Bay Protection Area (CBPA) be revisited, taking into consideration agricultural and drainage ditches that extend from existing RPA features and revise them accordingly when found to be, or create, perennial streams or flow.

BE IT FINALLY RESOLVED that failure by the City of Chesapeake to meet the above established compliance date of December 31, 2004 will result in the local program becoming inconsistent with § 10.1-2109 of the Act and § 9VAC10-20-60.3 of the Regulations and the City subject to the compliance provisions as set forth in § 10.1-2103.10 of the Act and § 9VAC10-20-250 of the Regulations.

The Director of the Chesapeake Bay Local Assistance Department certifies that this resolution was accepted in open session on June 16, 2003 by the Chesapeake Bay Local Assistance Board.

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C. Scott Crafton  
Executive Director  
Chesapeake Bay Local Assistance Department

Mr. Mendelsohn seconded the motion.

Mr. Benser called for further comments. There were none.

Mr. Benser called for the vote. All members voted aye. Mr. Benser noted that the motion carried.

Mr. Benser called for the presentation of Local Program Reviews for Phase I and recognized Ms. Shawn Smith for staff's presentation for the Town of Vienna.

Ms. Smith stated that the Town of Vienna adopted their revised Phase I program on February 24, 2003. She said that the Department had three recommendations for consistency, and a recommended deadline of December 31, 2003.

She said that the Northern Area Review Committee concurred with staff's recommendation at their May 13, 2003 meeting. She explained that two of the recommendations

were fairly minor in scope. One condition related to the RPA designation criteria requiring the 100-foot buffer component to be adjacent to all components of the RPA not just along water bodies with perennial flow. She continued by saying that while it is unlikely that the Town would have extensive nontidal wetlands associated with water bodies with perennial flow, the Town's Bay Act ordinance must be consistent with the Regulations. She said the second minor recommendation makes it clear that exceptions to the general performance criteria must be considered using the same findings as a formal exception request.

Ms. Smith said the final recommendation related to the Town's CBPA map. The Town had mapped Wolftrap Creek as a RPA as well as a very small portion of Piney Branch, however, staff had noted that a larger portion of Piney Branch flowing through the Town in the northeast quadrant may be perennial given observed flows during drought conditions. She noted that that Fairfax County has completed stream assessments in the Town and once these assessments are in, the Town had indicated its willingness to revise its maps and include additional RPAs as warranted.

Ms. Smith concluded by saying there was no one from the Town and she would be happy to answer any questions. Mr. Benser asked if there were any questions. There were none.

Mr. Benser called for a motion. Mr. Mendelsohn motioned to find the Town of Vienna's amended Phase I program with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations, subject to the condition that the Town undertake and complete the three recommendations contained in the staff report no later than December 31, 2003.

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD  
June 16, 2003**

RESOLUTION

LOCAL PROGRAM, PHASE I  
TOWN OF VIENNA #52

**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 § 9VAC10-20-60 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 Town adopted a local Phase I program on January 6, 1992 and adopted amendments to this local program on April 5, 1993, and

WHEREAS on June 25, 1993, the Town's revised Phase I program was found consistent by the Chesapeake Bay Local Assistance Board, and

WHEREAS on December 10, 2001, the Chesapeake Bay Local Assistance Board adopted revisions to the Chesapeake Bay Preservation Area Designation and Management Regulations and set March 1, 2003 as the deadline for local governments to adopt revisions to their local ordinances; and

WHEREAS on February 18, 2003, the Chesapeake Bay Local Assistance Board extended the compliance deadline from March 1, 2003 to December 31, 2003, and

WHEREAS Town of Vienna adopted a revised local program to comply with § 9VAC10-20-60.1 and 2 of the Regulations on February 24, 2003; 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 Town of Vienna's revised program for consistency with the Act and Regulations; and

WHEREAS on May 13, 2003 the Local Program Review Committee for the Northern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and,

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

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds Town of Vienna's revised Phase I program consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations subject to the following condition that the Town undertake and complete the following three recommendations no later than December 31, 2003:

1. The Town shall amend its CBPA map to include an RPA along additional portions of Piney Branch that are found to be perennial as determined by data prepared and provided by Fairfax County.
2. Amend the definition of Resource Protection Area in Section 18-216 to read as follows: "C. Buffer areas having widths of not less than 100 feet, landward of the components listed in A and B above, and adjacent to and landward from each side of any water body with perennial flow."
3. Amend Section 18-216.1.5.E.5 by adding a new subsection 3 which reads: "Exceptions to §18-216.1.5.A may be made provided that the findings noted in §18-216.1.5.E.3 are made."

BE IT FINALLY RESOLVED that failure by the Town of Vienna to meet the above established compliance date of December 31, 2003 will result in the local program becoming inconsistent with § 10.1-2109 of the Act and §§ 9VAC10-20-60.1 and 2 of the Regulations and subject Town of Vienna to the compliance provisions as set forth in §10.1-2103.10 of the Act and §9VAC10-20-250 of the Regulations.

The Director of the Chesapeake Bay Local Assistance Department certifies that this resolution was adopted in open session on June 16, 2003 by the Chesapeake Bay Local Assistance Board.

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C. Scott Crafton  
Executive Director  
Chesapeake Bay Local Assistance Department

Mr. Bannach seconded the motion.

Mr. Benser called for further discussion. There was none.

Mr. Benser called for the vote. All members voted aye. Mr. Benser noted that the motion carried.

Mr. Benser asked Ms. Smith to continue with staff's presentation for Arlington County.

Ms. Smith explained that Arlington County adopted their revised Phase I program on February 8, 2003 after undergoing an extensive process in revising their program that began in the 1990s. She said that staff had no recommendations for consistency and the Northern Area Review Committee concurred with staff's recommendation at their May 13, 2003 meeting. She also noted that the County had several unique approaches that warranted highlighting and introduced Mr. Jeff Harn and Mr. Jacob Papacasma to present the County's program.

Mr. Harn provided a copy of the presentation to each member, and noted that Arlington's New Chesapeake Bay Ordinance was originally adopted in 1992 and that their Board approved the comprehensive amendments to the ordinance on February 8, 2003. He said the ordinance became effective immediately upon their approval.

Mr. Harn explained that Arlington was required to revise its Chesapeake Bay ordinance to comply with new State regulations and that the amendments included recommendations of the Chesapeake Bay Preservation Task Force, and to reflect findings in the Watershed Management Plan. He provided an overview of the key changes that had been made to include the expansion of Resource Protection Areas, new development review procedures and policies, and increased opportunity for public review of exception requests and additional enforcement options.



Mr. Benser thanked Mr. Harn for the County's presentation and stated that he appreciated Arlington County taking a leadership role and adopting their changes early and that he found them commendable for their actions.

Mr. Benser called for a motion. Mr. Mendelsohn motioned to find Arlington County's amended Phase I program consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations.

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD**  
**June 16, 2003**

RESOLUTION

LOCAL PROGRAM, PHASE I  
ARLINGTON COUNTY - #51

**Modification – Consistent**

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 § 9VAC10-20-60 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 Arlington County adopted a local Phase I program on May 16, 1992, and

WHEREAS on December 2, 1993, the County's Phase I program was found consistent by the Chesapeake Bay Local Assistance Board, and

WHEREAS on December 10, 2001, the Chesapeake Bay Local Assistance Board adopted revisions to the Chesapeake Bay Preservation Area Designation and Management Regulations and set March 1, 2003 as the deadline for local governments to adopt revisions to their local ordinances; and

WHEREAS on February 18, 2003, the Chesapeake Bay Local Assistance Board extended the compliance deadline from March 1, 2003 to December 31, 2003, and

WHEREAS Arlington County adopted a revised local program to comply with §§ 9VAC10-20-60 1 and 2 of the Regulations on February 8, 2003; 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 Arlington County's revised program for consistency with the Act and Regulations; and

WHEREAS on May 13, 2003 the Local Program Review Committee for the Northern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and,

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

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds Arlington County's revised Phase I program consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations.

The Director of the Chesapeake Bay Local Assistance Department certifies that this resolution was adopted in open session on June 16, 2003 by the Chesapeake Bay Local Assistance Board.

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C. Scott Crafton  
Executive Director  
Chesapeake Bay Local Assistance Department

Mr. Bannach seconded the motion.

Mr. Benser called for further discussion. There was none.

Mr. Benser called for the vote. All members voted aye. Mr. Benser commented that the motion carried.

Mr. Benser advised that the next item on the agenda was the presentation for the Town of Bowling Green, and advised that as the Mayor for the Town of Bowling Green he would have Vice Chairman, Mr. Donald Davis, assume the chair for the presentation and vote.

Mr. Davis thanked Mr. Benser and recognized Mr. Alex Adams for the Town's presentation. Mr. Adams advised that he had met with the Town of Bowling Green and King George County and that both had agreed to staff's recommendation, and agreed to go forward to revise their plans and have the recommendations in place before the September 2003 Board meeting. He said that he was confident that this would be taking place and it would be advantageous to delay the presentation of both localities until the September Board Meeting when they can be fully consistent.

Mr. Crafton explained that some localities did adopt before the deadline was extended to December 31, 2003 and consequently, after staff's review, they each have one or more conditions that would have to be met. He went on to say that the localities have asked that they be given enough time to address these conditions and come back at the September meeting. Ms. Smith asked that the Board defer any action on the two localities until the September meeting and a letter would be sent to each locality advising them of this action.

Mr. Davis called for a motion to defer the Town of Bowling Green and the County of King George until the September 2003 Board meeting.

Mr. Mendelsohn motioned. Mr. Bannach seconded. Mr. Davis called for further comment. There was none. Mr. Davis called for the vote. All members voted aye except for Mr. Benser who abstained.

Mr. Benser recognized Ms. Shawn Smith for staff's presentation for the Town of Painter.

Ms. Smith said that the Town of Painter adopted its revised Phase I program on February 10, 2003, and the Department had worked with the Town in developing the revised ordinance. She said that there was one recommendation for consistency and a recommended deadline of June 30 2006.

Ms. Smith said the Southern Area Review Committee concurred with the recommendation at their May 13, 2003 meeting. She explained that the recommendation is relatively minor and has to be made for consistency sake, and that it relates to administrative waivers for the general performance criteria and the need for those waivers to be considered through an administrative process using the same findings as a formal exception request.

Ms. Smith went on to explain that because the Town of Painter is small, with minor development opportunities, because the recommendation is minor, staff recommends that they be given until 2006 to make the one required change. She noted that staff did not believe that the one recommendation would affect the implementation of the Town's Bay Act program because very little development would likely occur.

Mr. Benser asked if anyone was present from the Town. Ms. Smith responded negatively.

Mr. Benser asked if there were any questions. There were none.

Mr. Benser called for a motion. Mr. Cowling motioned to find the Town of Painter's amended Phase I program consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations, subject to the condition that the Town undertake and complete the recommendation contained in the staff report no later than June 30, 2006.

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD**  
**June 16, 2003**

RESOLUTION

LOCAL PROGRAM, PHASE I  
TOWN OF PAINTER #75

**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 § 9VAC10-20-60 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 Town adopted a local Phase I program on June 13, 1994, and

WHEREAS on September 15, 1994, the Town's Phase I program was found consistent by the Chesapeake Bay Local Assistance Board, and

WHEREAS on December 10, 2001, the Chesapeake Bay Local Assistance Board adopted revisions to the Chesapeake Bay Preservation Area Designation and Management Regulations and set March 1, 2003 as the deadline for local governments to adopt revisions to their local ordinances; and

WHEREAS on February 18, 2003, the Chesapeake Bay Local Assistance Board extended the compliance deadline from March 1, 2003 to December 31, 2003, and

WHEREAS Town of Painter adopted a revised local program to comply with § 9VAC10-20-60.1 and 2 of the Regulations on February 10, 2003; 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 Town of Painter's revised program for consistency with the Act and Regulations; and

WHEREAS on May 13, 2003 the Local Program Review Committee for the Southern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and,

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

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds Town of Painter's revised Phase I program consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations subject to the following condition that the Town undertake and complete the following recommendation no later than June 30, 2006:

1. Amend Section III-15.D by adding a new subsection 3 which reads: "Exceptions to §III-12.B may be made provided that the findings noted in §III-15.C are made."

BE IT FINALLY RESOLVED that failure by the Town of Painter to meet the above established compliance date of June 30, 2006 will result in the local program becoming inconsistent with § 10.1-2109 of the Act and §§ 9VAC10-20-60.1 and 2 of the Regulations and subject Town of Painter to the compliance provisions as set forth in §10.1-2103.10 of the Act and §9VAC10-20-250 of the Regulations.

The Director of the Chesapeake Bay Local Assistance Department certifies that this resolution was adopted in open session on June 16, 2003 by the Chesapeake Bay Local Assistance Board.

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C. Scott Crafton  
Executive Director  
Chesapeake Bay Local Assistance Department

Mr. Froggatt seconded.

Mr. Benser called for further comments. There were none.

Mr. Benser called for the vote. All members voted aye. Mr. Benser noted that the motion passed.

Mr. Benser called for Local Program Reviews, Phase II and recognized Ms. Nancy Miller for staff's presentation for Spotsylvania County. Ms. Miller introduced Mr. John Taylor, Long Range Planner from Spotsylvania County, and noted that he was present to help answer any questions.

Ms. Miller explained that to address the seven conditions set by the Board, the County adopted a revised comprehensive plan on February 12, 2002. The Board reviewed this Plan, found it consistent with two conditions, and set a new deadline of December 31, 2002. She said that amendments to address the conditions; requiring water quality improvement strategies related to forestry streamside management zones and redevelopment opportunities, were adopted on February 11, 2003.

Ms. Miller said that the Northern Area Review Committee reviewed the amendments on May 13, 2003 and recommended that the County's Phase II program be found consistent.

Mr. Benser called for a motion. Mr. Davis made a motion that Spotsylvania County's amended Phase II program be found consistent with § 10.1-2109 of the Act and §§ 9VAC10-20 - 60.3 of the Regulations.

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD  
June 16, 2003**

**RESOLUTION**

**LOCAL PROGRAM - PHASE II  
SPOTSYLVANIA COUNTY - # 20**

**Determination of Consistency - Consistent**

WHEREAS § 10.1-2109 of the Chesapeake Bay Preservation Act states that counties, cities, and towns in Tidewater Virginia shall incorporate protection of the quality of state waters into each locality's comprehensive plan; and

WHEREAS § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the element in subsection 3 shall be adopted by local governments; and

WHEREAS § 10.1-2103.10 of the Chesapeake Bay Preservation Act authorizes the Board to take administrative and legal actions to ensure compliance by counties, cities, and towns with the provisions of the Act; and

WHEREAS Spotsylvania County adopted a Comprehensive Plan in 2002; and

WHEREAS on June 17, 2002 the Chesapeake Bay Local Assistance Board found Spotsylvania County's plan consistent with two recommendations for consistency that were to be addressed by the County and set a compliance date of December 31, 2002; and

WHEREAS the Board of Supervisors for Spotsylvania County adopted a comprehensive plan on February 11, 2003; and

WHEREAS staff has reviewed Spotsylvania County's comprehensive plan for consistency with the previous consistency recommendations and the Act and Regulations; and

WHEREAS on May 13, 2003 the Local Program Review Committee for the Northern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and

WHEREAS after considering and evaluating the information presented on this date, the

Board agrees with the recommendations in the staff report and of the Review Committee; now

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds Spotsylvania County's comprehensive plan consistent with § 10.1-2109 of the Act and § 9VAC10-20-60.3 of the Regulations.

The Director of the Chesapeake Bay Local Assistance Department certifies that the Chesapeake Bay Local Assistance Board adopted this resolution in open session on June 16, 2003.

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C. Scott Crafton  
Executive Director  
Chesapeake Bay Local Assistance Department

Mr. Bannach seconded the motion.

Mr. Benser called for further comments. There were none.

Mr. Benser called for the vote. All members voted aye. Mr. Benser noted that the motion had carried unanimously

Mr. Benser called for the Review of Board Sponsored Activities and recognized Mr. Scott Crafton for the presentation of the Guidance Document Review Process.

Mr. Crafton provided members with a copy of the revised Silviculture document that was approved in December 2002. He said the document was based on the interpretation of the definition of silviculture that was included in the Regulations. The definition was based on two sections of the state code that applied to state forestry's authority over silviculture activities. He said that one of the provisions of state code said that an activity or land area be declared silvicultural, the tract had to be at least 20 acres in size. He said that staff had tried to address the many issues, and local government questions about what acreage is to be deemed silvicultural. He went on to say that after the guidance was approved, the Department of Forestry staff expressed the opinion that one of the code sections had been misinterpreted. Fortunately, their legal counsel and that of CBLAD are the same person. Mr. Crafton contacted Mr. Chaffe after discussions with both agencies, it was his opinion that CBLAD had misinterpreted the section, and the 20 acre threshold was intended for local governments consideration for agricultural and forestall district designation and associated tax reductions, not for conservation purposes.

Mr. Crafton also said that guidance had said earlier that if a logging site is 20 acres or bigger, the lands would be eligible for silviculture exemption and if it is below that the local government should ask the Department of Forestry for an opinion. He went on explain that the essential change in the guidance document is ...if a local government has any question about whether a property qualifies for silviculture, they should ask their county forester and have him look at the site and provide an opinion.

He said the other part of the definition which still applies for clarification is that silvicultural lands are essentially lands that are being managed for timber production on an ongoing basis. If someone clearcuts or partially clearcuts, then they would have to allow regeneration of hardwoods or plant pine trees to legitimately be considered a silvicultural activity.

Mr. Crafton asked the Board to approve the modifications of the guidance. Mr. Davis confirmed that the changes that were being asked for approval were just those that had been highlighted. Mr. Crafton responded positively.

Mr. Cowling asked if there is the possibility that the Board would have the authority to determine a time limit conversion clause under the Bay Act, and use it for tax purposes. He went on to ask if he used the lands for silviculture, then later in some time frame convert the land after having used the exemption, can you effectively cause the lands to be returned to the earlier classification and require payment of the tax differential.

Mr. Crafton commented that he did not believe the Board had that authority under the current Regulations. He also reminded everyone that review of the Regulations would be August 2004.

Mr. Davis commented that he thought that the current laws say that a minimum of three years is required after a roll back on taxes has taken place on a property. Mr. Cowling thought there was a 5 year taxation rollback, and the issue is taking tax law and trying to apply it to environmental purposes. He also said that he believed that if it worked for taxes, it would probably work for environmental reasons too and is not a new concept.

Ms. Little commented that when land use changes from silvicultural to development there is the requirement that they have to reestablish the 100 foot buffer.

Mr. Mendelsohn asked about the legality of making changes to the silvicultural guidance without public participation. Mr. Crafton explained that public participation was not required by law when adopting amendments to the guidance documents.

Mr. Benser asked if there were any further questions. Mr. Bannach asked if decisions made regarding the silvicultural guidance could be changed in the future. Mr. Crafton responded positively.

Mr. Benser called for a motion. Mr. Froggatt motioned to accept the changes that had been presented in the Draft Silvicultural Operations and the Chesapeake Bay Preservation Act guidance be adopted.

Mr. Mendelsohn seconded.

Mr. Benser called for the vote. All members voted aye. Mr. Benser commented that the motion was adopted.



Mr. Crafton went on to discuss the Draft Riparian Buffers Guidance Manual that has been in development for about two years. He said the intent of the document was to provide guidance to local governments for working with homeowners who have buffers in their backyards and who wish to cut a sight line or some other activity in the buffer. He said that the document is currently on the web site and there have been some comments. He noted that the comments that have been received have been positive. He expressed concern that individuals have said that this document was sprung on them, and specifically there were comments from the portions of the building industry. He also noted that he had spoken with Mike Toalson who said he had looked over the document and did not have any big concerns from the building industry prospective.

Mr. Crafton explained that the document was associated with the grant process and time was running out to meet the grant deliverable. Mr. Crafton noted that he had spoken with several members recently about creating an ad hoc committee of sorts whose responsibility would be to review this type of document and make edits/changes were necessary rather than waiting until the end of the process only to discover that it may be necessary to start over.

Mr. Crafton asked Ms. Little to present. Ms. Little noted that Doug Wetmore had been project manager on the project and Ali Baird had assisted him in the document's creation. She said that Ms. Baird was also available to answer questions. Ms. Little explained the purpose was to assist local Bay Act program administrators when working with riparian landowners on buffer establishment, management and restoration issues.

She said the need for the buffer project came about when it was found that there were many existing buffers that were not providing the necessary water quality functions, inconsistent buffer management was being applied at the local level, and technical research was needed on buffer functions, values and establishment. She said the project was the culmination of trying to answer questions localities have had for years, and they wanted the answers to be in a scientifically-based technical document. She said the guidance was not dealing with new development or construction, but existing buffers. It also reflects thirteen years of guidance that CBLAD has given to localities. She went on to provide examples of impacted and poorly managed RPA buffer areas.

Mr. Davis asked Ms. Little if staff had actually looked at the sites she was showing for any structural BMPs that are not showing in the film. Ms. Little responded that staff did not know whether mitigating BMPs were present because the pictures were taken from a boat. Ms. Smith responded that typically when people would use the equivalency Stormwater calculations, the end result for a lot this size may be a French drain or two. She went on to explain that the water quality calculations for a buffer encroachment or clearing were so minor that it resulted in very little additional pollutant removal requirement. In view of that, the French drain under the downspouts is generally the BMP.

Mr. Davis asked if he understood that, to avoid the complete loss of the buffer, the only thing necessary is a French drain. Ms. Smith responded that they are very typical. The Department has rescinded that particular bulletin, and this problem is one of the reasons the

manual came about. The number crunching activity did not adequately mitigate for all the various functions of a buffer.

Ms. Little commented that if individuals are doing a shoreline erosion control structure, they may incorrectly assume that the project is exempt and therefore would not actually be using any calculations.

Mr. Davis commented that it still did not remove the requirement for buffer restoration.

Ms. Little responded that Mr. Davis was correct, but there has been a misconception.

Mr. Crafton commented that the agency was working with the VMRC, the Corp of Engineers and DCR. He said an improved Joint Permit Application is in place in order to prevent total clearing and at least if massive clearing does take place, the reviewing agencies will have been convinced it is truly justified technically and not just the arbitrary choice of the landowner.

Ms. Little explained that the Department had received a grant from the U.S. Forest Service in July 2001 in order to hire Ali Baird to assist with the project. A buffer issues and a technical committee was also established. A series of meetings were held and the issues were discussed. The primary goal was a comprehensive technical assistance document on buffer management for use by local governments. Ms. Little went on to briefly describe the chapters in the manual noting that it was not limited to information in the Regulations but what the benefits are for buffers. She said that the first draft was reviewed internally in May and has been on the web site since May 30, 2003. She said that the draft was also sent to localities for their review and the deadline for comments was Friday, June 13, 2003. She said that the comments would be incorporated and a copy would be provided to the Board.

Mr. Mendelsohn asked how many comments were received. Ms. Little said that they did not receive as many as they wanted. Mr. Mendelsohn asked how many. Ms. Baird said that 8 to 10 comments had been received. Ms. Little responded that there may have been only a few comments because the committee members had been getting copies of the chapters throughout the process and providing input.

Mr. Crafton explained that the project has been in preparation for a long time. He said that if you were not on the committee, you could lose sight of the project.

Mr. Davis asked Ms. Little if she thought that the small number of comments could have been because it has only been on the web site since May 30<sup>th</sup>. Ms. Little responded that is possible, and that local government staff may have been too busy to review it.

Ms. Little said that the project was on schedule to be completed by July 23, 2003, the end of the grant period. She said that the agency is to distribute the manual to all 84 localities. She said that another deliverable coming out of the project is a brochure which will help localities get the word out to homeowners explaining the technical benefits of the buffer. She said that staff is also required, by the grant agreement, to give presentations to localities and PDCs on the project.

Mr. Crafton commented that the dilemma is that even though it is not unusual for projects like this to run up to the end of timeframe, time was running out. He said that the issue is how to include comments and get Board approval of this document so that copies can be made and wrap it up by July 23, 2003. He asked Ms. Little if that was correct. Ms. Little responded that it was and that all of the information had been on the website including the minutes from the meetings and all the information about the project.

Mr. Davis commented that he had spoken to Mr. Crafton and that the suggestion was because of the deadlines involved with the grant programs that perhaps the Board may consider appointing 3 members to get together at least by telephone and have the authority from the Board to refine the document, if necessary, and have it formally approved by the Board.

There was discussion about three members meeting and whether their meeting needed to be noticed.

Mr. Bannach suggested that the Board approve the document subject to changes.

Mr. Benser commented that none of the Board members had actually read the document.

Mr. Cowling commented that his package did not include a Table of Contents and Index and that he needed a copy. Ms. Baird provided a copy for all members.

Mr. Benser suggested that the document be approved tentatively, subject to the final review of the committee who will discuss all the input prior to the deadline.

Mr. Cowling commented that there are a lot of loose ends. He said that a guidance document is being discussed when they are not quite straight on what a perennial stream or contiguous is. He commented that he is afraid that the Board and staff are getting ahead of themselves.

Mr. Davis did not believe that the subject of the document would have an impact on any other issues under consideration.

Mr. Nice commented that he would agree to having members advise one another if they had objections to the document.

Mr. Davis suggested that if they do notify each other, then a deadline needed to be set to get this information back to staff. He asked how the deadline would be handled. Ms. Little suggested that they extend the deadline for 1 week. Mr. Mendelsohn suggested that the Board members read the document, make comments to the committee that would be appointed and complete this by June 23, 2003. Mr. Davis suggested that no additional comments be accepted after that date and a meeting of the committee could be held on July 3, 2003.

There was discussion between Mr. Crafton and members of the Board regarding the noticing of a meeting on July 3, 2003 and what is required.

Mr. Cowling commented that he believed that the subject was important enough to warrant full Board participation and time will just have to be given for the members to read the information.

Mr. Crafton explained that a special meeting of the Board was going to be called to review information from the Secretary of Natural's Ad Hoc Workgroup working on the Perennial Stream Guidance.

Ms. Little suggested that two people be selected to review all of the comments and if they see any red flags, then the document would be presented to the full Board for them to make a decision. She suggested that in the meantime, the Board could approve the document today contingent upon the edits.

Mr. Davis asked about the July 23 deadline. Ms. Little responded that date was correct. Mr. Davis commented that the Board should heed Mr. Cowling's comment in that the issue needed to be addressed by the full Board.

Mr. Mendelsohn suggested that the document be printed and later if there are any revisions, then they could be made. He noted that he was sensitive to the idea that this is being rushed through.

Mr. Crafton commented that he understood that it would be okay to go ahead and approve the document subject to final edits. Mr. Mendelsohn responded affirmatively.

Mr. Crafton asked Ms. Little if they had to have the document printed and distributed by July 23, 2003 or just printed. Ms. Little responded that it had to be printed. Mr. Crafton suggested the possibility of printing just the pages that may be changed, if later corrections are needed.

Mr. Cowling commented that he had a problem with the entire process. He said that staff was asking him to vote on many pages of a document that will affect a lot of people's lives that he had never seen before. He said that copies of comments had been distributed to the Board were about how wonderful the document is. So someone has been reading it, but not the Board, and he wanted to know why.

He said that on principle he would vote against it. He went on to say that he would not vote for something he had never seen and did not sign contracts without reading them either.

Mr. Benser asked when the version of the document became available. Mr. Crafton stated that this was the first draft for public comment. He went on to explain that timing was the issue. The effort was to try to get it into the best shape possible until the final draft can be completed.

Mr. Mendelsohn asked Ms. Little how expensive it was to copy the document. She responded that they needed to be sent to each Tidewater locality and PDC. Mr. Mendelsohn asked if there would be 200 at most. Ms. Little responded that was probably correct.

Mr. Davis commented that he thought there was a bigger problem, and that it was not just the printing if they didn't meet the July 23<sup>rd</sup> date. Ms. Little responded that the problem was not the printing but the grant money for the project. She said that the agency was funding the printing and the match requirement. She explained that they had to have the deliverable in order to receive the grant funds for the entire project by July.

Members asked Ms. Little how much the grant amount was. Ms. Little responded that she didn't have it with her but it is over \$40,000.00. She went on to explain that the draft they were looking at was rough and did not include the comments that had been received.

Mr. Nice commented that in view of all that he heard he was persuaded to go along with Mr. Cowling. Mr. Nice then commented that whatever the Board members decided, he would go along with.

Mr. Crafton apologized to the Board for not getting the information to them sooner.

Mr. Mendelsohn commented that the Board should have gotten a copy of the draft, but then questioned whether the grant could be given an extension. Mr. Crafton said that he was not confident at that moment that an extension could be obtained. He said that Federal Grants in the past have come through either DEQ or DCR and have had a fair amount of flexibility in their extensions. This grant came from the Chesapeake Bay Program and is not a Bay Program, EPA grant, but a U.S. Forest Services Grant.

Mr. Crafton said that staff will call to find out if there is flexibility and whether they will work with the agency. Mr. Davis commented that unfortunately the issue of the meeting was that the July 23<sup>rd</sup> date is coming up and the Board will not meet prior to that date.

Mr. Cowling asked how much money the Department is actually talking about. Conversation between the members and staff indicated that the money included payment of salary for Ms. Baird and the agency stood to potentially lose thirty or forty thousand dollars.

Mr. Cowling asked whether a Committee would constitute a quorum of the members. Mr. Mendelsohn asked if the draft could be used as the grant deliverable or do they need as a deliverable a final version. Could the middle ground for the deliverable be the grant, providing enough time for the Board to bless the document.

Mr. Crafton commented that the Forest Service could use a copy of the final manual. Ms. Little agreed and did not know whether funds would be available for printing it twice. Mr. Benser commented that a tentative copy would be given to the Forest Service pending approval by the full Board. Ms. Little said that she will find out if they can delay the component and whether the July 23<sup>rd</sup> date can be extended.

Mr. Crafton asked if the Board would consider approving the document contingent upon the final changes and with the condition that if something shows up that is a major concern, it will be brought back to the full Board. He said that staff would do an investigation into extensions of grant deadline and what kind of flexibility they can offer. He said that staff would let everyone know within a few days.

Mr. Benser asked for a motion to establish an ad hoc committee to review the document and to give the committee the authority to approve it subject to the review of the Board and their final approval. Mr. Nice asked if every member on the Board could call a committee member and give them their opinion, and so moved the motion. Mr. Bannach seconded. Mr. Benser responded that they could either call staff or a member of the committee. Mr. Davis offered an amendment to the motion to include extending the public comment period to June 23, 2003 and that the committee make their final recommendation by July 3, 2003, that this document be on the agenda at the next scheduled meeting of the Board.

Mr. Crafton suggested that an update can be printed at a special Policy Committee meeting to be held on July 16, 2003 .

Mr. Benser called for further discussion. Mr. Bannach asked if he understood that the Board would not be giving final approval today. Mr. Benser responded that they would be voting for tentative approval subject to review by the ad hoc committee and the Board. Mr. Benser went on to say that approval was being given so that staff could meet the grant deadline of July 23, 2003. Mr. Bannach seconded the motion.

Mr. Benser asked if there were any further comments. There were none.

Mr. Benser called for the vote. All members voted aye except for Mr. Cowling who voted nay. Mr. Benser noted that the vote was 6 to 1 with Mr. Cowling voting nay.

Mr. Benser then appointed committee members asking for volunteers first. Those volunteering were Donald Davis, Frank Benser and Colin Cowling.

Meetings were scheduled for July 3, 2003 for the Special Ad Hoc Guidance Subcommittee, July 16, 2003 for a special Policy Committee Meeting, and August 4, 2003 for a special Board meeting. Mr. Davis commented that he was embarrassed when someone called him to advise him that the Board would be approving the guidance at this meeting and he had never seen it. Mr. Crafton apologized again to the Board that they had not seen the document and promised to work on a process that this would never happen again.

Mr. Crafton confirmed with staff their presence or not at the planned meetings.

Mr. Benser called for a motion to adjourn the meeting.

Mr. Benser called for New Business.

Mr. Benser called for Public Comment. There was none.

Mr. Benser called for a motion to adjourn the meeting. Mr. Bannach motioned, Mr. Cowling seconded. The meeting was adjourned at 12:15 p.m.