

**Northern Area Review Committee Meeting
Tuesday, February 13, 2007 – 10:00 a.m.
101 N. 14th St. – 17th Floor
James Monroe Building
Richmond, Virginia**

Northern Area Review Committee Members Present

Donald W. Davis, Chairman
Walter J. Sheffield
Gregory C. Evans, by telephone
William E. Duncanson

DCR Staff Present

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

Others Present

Scott Lucchesi, King William County Zoning Administrator
Joe Lerch, Chesapeake Bay Foundation

Call to Order and Opening Remarks

Mr. Davis called the meeting to order and declared a quorum present. Mr. Evans joined by phone.

Local Program Reviews: Phase I

Town of Colonial Beach - Review of previous condition

Ms. Lassiter gave the report for Colonial Beach.

The Town of Colonial Beach adopted its original Phase I program on November 8, 1990 and was found consistent by the Chesapeake Bay Local Assistance Board on July 24, 1991. On March 22, 2004, the Board found the Town's amended Phase I program consistent with the Act and Regulations subject to the condition that the Town undertake and complete the one

recommendation found in the staff report no later than December 31, 2006. The Board required the Town to amend section 22-4 of their Chesapeake Bay Preservation Ordinance to provide for a definition of “substantial alteration” that is consistent with the definition set forth in the Regulations.

On December 1, 2006 the Town’s Planning Commission reviewed the proposed ordinance change in a public meeting, and it was recommended that the inclusion of “substantial alteration” be added to the Town’s Bay Act ordinance. On January 4, 2007 the Town Council held another public hearing, and the amendment was adopted that evening. Based on the addition of the definition of substantial alteration that is consistent with the Regulations, staff is of the opinion that this condition has been addressed, and recommends that Colonial Beach’s revised Bay Act Ordinance be found consistent without conditions.

MOTION: Mr. Duncanson moved that the Northern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find the Town of Colonial Beach’s Chesapeake Bay Ordinance consistent with § 10.1-2109 of the Act and § 9 VAC 10-20-60 1 and 2 of the Regulations.

SECOND: Mr. Sheffield

DISCUSSION: None

VOTE: Motion carried unanimously

City of Fairfax - Review of previous condition

Mr. Moore gave the report for the City of Fairfax.

On June 21, 2004 the Board found the City’s revised Phase I program to be consistent, pending resolution of seven (7) conditions identified by the Board that were to be addressed by the City by December 31, 2006.

On December 12, 2006 City Council adopted revisions to their Chesapeake Bay Preservation Ordinance as a means to address the seven conditions from the Board’s June 21, 2004 resolution. The City has included:

- definitions for “public road” and “substantial alteration”,
- specific language prohibiting the modification of a Resource Protection Area designation unless reliable site-specific information is available,
- specific language indicating that proposed development in Resource Protection Areas shall be subject to review and approval by the city,
- specific language requiring a Water Quality Impact Assessment for any proposed land disturbance, development or redevelopment in Resource Protection Areas in accordance with §110-85 of the City ordinance and deleted the previous reference to the waiving of a Water Quality Impact Assessment,

- specific references to proposed land disturbance, development and redevelopment, and
- specific language indicating that existing vegetation in buffer areas can only be removed subject to approval of the zoning administrator.

Staff reviewed the above information and finds the changes and additions to the City's review policies and procedures adequately address six (6) of the seven (7) recommendations. Staff finds that the December 12, 2006 ordinance revisions adopted by the City and provided to Department staff (indicated as June 21, 2004 Board Recommendation #4 in the Staff Report) do not include specific language intended to address the above inconsistency. The following recommendation remains:

Amend Section 110-80 (a)(2)(d) as follows: "The plan for the road or driveway proposed in or across the RPA meets the criteria for site plan, subdivision and plan of development approvals."

Pending adoption of the above-referenced text, staff recommends the Northern Area Review Committee find the City of Fairfax's implementation of its Phase I program consistent with 10.1-2109 of the Act and 9 VAC 10-20-60 3 of the Regulations. Staff recommends a final deadline for compliance of September 30, 2007.

Mr. Davis asked why the deadline was September 30 since the matter would not return to the Board until December.

Ms. Salvati said that was due to the City's ordinance process.

Mr. Moore said that he did not anticipate a problem with the City moving forward or with changing the date to June 30, 2007.

MOTION: Mr. Evans moved that the Northern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find the City of Fairfax Chesapeake Bay Preservation Ordinance consistent with § 10.1-2109 of the Act and § 9 VAC 10-20-60 1 and 2 of the Regulations, subject to condition that the City address the one recommendation in this staff report no later than June 30, 2007.

SECOND: Mr. Sheffield

DISCUSSION: None

VOTE: Motion carried unanimously

Local Program Reviews: Phase II – Comprehensive Plans

Town of Bowling Green - Review of previous conditions

Ms. Lassiter gave the report for the Town of Bowling Green.

On June 4, 1998 the Town Council of Bowling Green adopted a revised comprehensive plan. On December 13, 1999, the Chesapeake Bay Local Assistance Board found the Town's Phase II program consistent with six conditions that it was to address by June 1, 2003. Both the Town and the Department have experienced significant staff turnover in the last few years, and in May and June of 2006 Department staff sent letters to the Town reminding them of the conditions, the lapsed deadline, and the intent to bring the matter before the Northern Area Review Committee at its August 15 meeting. Despite significant progress made by the Town, it still had not adopted a revised plan and so was found inconsistent at the August 15 meeting. In early fall of 2006, the Town provided the Department with a revised comprehensive plan for review. Department staff reviewed the plan and found that it adequately addressed all six conditions.

The first condition required the revision to contain discussion and mapping of various soil types found in the county, and mapping of the Town's Chesapeake Bay Preservation Areas. The 2006 Comprehensive Plan contains a thorough discussion of the various soil types found within the Town, and contains maps that depict them. There is also a map of the Town's Chesapeake Bay Preservation Areas and a future land use map.

The second condition concerned the Maracossic Creek aquatic system. The text of the plan contains a thorough discussion of the system and its designation as a Chesapeake Bay Preservation Area. No development will be allowed in the RPA, and any development planned for the RMA must abide by the Town's Chesapeake Bay Preservation Ordinance.

The third condition called for an estimation of the Town's future water demand in order for the Town to plan for its future water needs. An analysis was performed, and it was found that the current capacity is adequate to meet anticipated demand, however discussions are currently being held concerning the addition of another well to the Town's water system.

The fourth condition required the study of the Town's aquifer recharge areas in conjunction with Caroline County and the outlining of policies for their protection. While specific recharge areas have not been identified, the Town is seeking cooperative agreements with the County to provide for joint identification of these areas and the creation of appropriate policies to protect them.

The fifth condition called for an analysis of streambank erosion and a map of specific areas where erosion is occurring. While there are no known areas of erosion in the Town, the plan does discuss the water quality impacts associated with erosion, and Caroline County reviews all erosion control plans for development proposals.

The sixth condition required that the plan include more information on opportunities for water quality improvement through redevelopment in conjunction with the Downtown Bowling Green Revitalization Action Plan. Through the guidance of the Revitalization Action Plan, the Town will continue with its effort to provide trees downtown, require BMP maintenance agreements, upgrade or replace sewer lines, and track underground storage tanks.

Since all six conditions have been addressed, it is staff's opinion that Bowling Green's revised Comprehensive Plan be found consistent.

MOTION: Mr. Sheffield moved that the Northern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find the Town of Bowling Green's comprehensive plan consistent with § 10.1-2109 of the Act and § 9 VAC 10-20-60 3 of the Regulations.

SECOND: Mr. Duncanson

DISCUSSION: None

VOTE: Motion carried unanimously

Local Program Reviews: Compliance Evaluation

King William County - Review of previous conditions

On June 21, 2004 the Chesapeake Bay Local Assistance Board found that the County's Phase I program did not fully comply with the Act and outlined seven recommendations to be addressed by December 31, 2005. On April 3, 2006 the Board found that three of the recommendations had been adequately addressed, and set deadlines for the County to address the remaining four recommendations. At the request of the County's Director of Community Development, the Board established a deadline of September 30, 2006 for recommendation #1, and a more immediate deadline of June 30, 2006 for recommendations #2, 3 and 4.

Staff sent a written reminder of the deadlines on April 3, 2006, provided technical assistance to County staff through meetings, phone calls and written correspondence, and reviewed County documents to determine whether the four recommendations were adequately addressed. The County is tracking and inspecting BMPs to ensure that maintenance requirements are met and is ensuring that WQIAs and mitigation plans are submitted as required, satisfying three of the four recommendations. Although the County has developed materials for a program to meet the five-year on-site septic system pump-out notification and enforcement requirement, the process for notification and tracking has not been developed and no notices have been sent.

Staff recommends that the Chesapeake Bay Local Assistance Board find that implementation of King William County's Phase I program has adequately addressed three of the four recommendations included in the Board Resolution of April 3, 2006. Staff further recommends

that King William County be found noncompliant with the Act and the Regulations, based on the County's failure to complete implementation of a five-year septic pump-out notification and maintenance program as specified in recommendations included in Board Resolutions of June 21, 2004 and April 3, 2006, and that King William County undertake and complete the recommendation no later than June 30, 2007.

Ms. Salvati said that this would be the first locality for which a compliance evaluation has deemed the locality noncompliant.

Mr. Davis clarified that the issue was the 5-year septic pumpout.

Ms. Miller said that was the one remaining outstanding recommendation. She noted that there have been complicating factors, including a staff vacancy.

Mr. Evans noted that the problem was identified in 2004.

Ms. Miller said that there has been some progress, but that the issue remains unaddressed.

Mr. Lucchesi noted that the largest problem for the County was staff turnover. He noted that there were records prior to his arrival. He noted that part of the issues were political.

Mr. Lucchesi said that he had developed a database to track the information. He hopes to be able to make the June 30 deadline.

Mr. Davis acknowledged that staffing concerns were a large part of the problem.

Mr. Sheffield asked how many individuals needed to be notified.

Mr. Lucchesi said that the number was between 6,000 to 8,500. He said that the intent is to send one notice and ask that individuals notify the County if the work has been done. There will also be notices in the community paper in advance of the mailing.

Mr. Sheffield asked if there were funds to assist counties with these issues.

Ms. Salvati said that localities would be able to request funding under the Chesapeake Bay Implementation Grant Program. She noted also that there are Water Quality Improvement Funds available.

Mr. Davis expressed concern over the three-year continuance of the issue. He suggested that at a minimum the County prepare a written update for the June Board meeting.

MOTION: Mr. Sheffield moved that the Southern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find that implementation of King William County's Phase I program has adequately addressed three of the four recommendations included in the

Board Resolution of April 3, 2006. The Southern Area Review Committee further recommends that King William County be found non-compliant with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations, based on the County's failure to complete implementation of a five-year septic pump-out notification and maintenance program as specified in recommendations included in Board Resolutions of June 21, 2004 and April 3, 2006, and that King William County undertake and complete the above referenced recommendation no later than June 15, 2007. Further the Committee directs the County to provide a written progress report no later than noon on Friday, June 15 for discussion at the Monday, June 18 Board meeting.

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

Middlesex County - Review of previous conditions

Ms. Miller gave the report for Middlesex County.

In November and December 2006, and January 2007 County staff met with Department staff and provided documents and updates demonstrating progress in meeting seven recommendations in the Board's original Compliance Evaluation by the December 31, 2006 deadline. The County has taken adequate actions to address six of the seven recommendations.

Although the County developed a septic pump-out notification and tracking program and sent the first notices prior to the December 31, 2006 deadline, the County limited notification only to those properties with on-site systems installed after the County's Chesapeake Bay Preservation (CBP) District effective date of April 21, 1993. The Department has consistently advised the County that all properties within CBPAs that have on-site septic systems must be included in the program to fully satisfy the requirement.

In the first notification mailing, the County also advised on-site septic system owners of the options of installing a plastic filter or securing a qualified inspection of the system as alternatives to meet the 5-year pump-out requirement. These alternatives are permitted under the Regulations, but the County must revise its CBP District to include them, so a recommendation has been added to that effect. County staff noted that this was just an oversight on their part.

Staff recommends the Board find that certain aspects of Middlesex County's implementation of its Phase I program do not fully comply with the Act and the Regulations, and further that Middlesex County undertake and complete the two recommendations contained in this staff report no later than June 30, 2007.

Mr. Sheffield asked Ms. Miller to elaborate on her concerns.

Ms. Miller said that the County has taken a very strict interpretation of the requirements being within the zoning ordinance and has not been willing to apply those requirements on properties that pre-date the CBPA Overlay District provisions within the County's zoning ordinance.

Ms. Salvati said that the County believes they do not have the authority to apply this requirement. The DCR in-house counsel will be contacting the Middlesex County attorney to discuss this.

Mr. Davis asked if the County understood the perspective of the state.

Ms. Salvati said they understand the position, but disagree.

Mr. Evans asked why the deadline was recommended by staff to be set for June 30, 2007 rather than immediately determining the County to be non compliant.

Ms. Miller said that the deadline applies to the two recommendations. One is to adopt an ordinance revision, and the local process to develop, advertise, conduct public hearings and adopt such a revision dictates that sufficient time be allowed. She said that the deadline will also allow DCR staff time to work with the County to expand their notification program to adequately meet the requirements. The June date will allow the County enough time to address the issues and for staff to report to the Board on the County's progress.

Ms. Salvati suggested the date could be changed to prior to the June meeting.

Mr. Davis said he would like to see a full update at that meeting.

MOTION: Mr. Evans moved that the Southern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find that certain aspects of Middlesex County's implementation of its 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 further that Middlesex County undertake and complete the two recommendations contained in the staff report no later than June 15, 2007 and further that the County provide a written progress update to the Board by noon on Friday, June 15, 2007.

SECOND: Mr. Sheffield

DISCUSSION: None

VOTE: Motion carried unanimously

Ms. Miller gave an update regarding a buffer violation in West Point that was previously reported to the Board. This matter was heard in General District Court in King William in November, and the violator was found guilty on 7 charges related to E&S and zoning violations and fined approximately \$15,500.

Ms. Miller stated the Town has not yet received a restoration plan as required by the Town's CBPA Overlay District. If the restoration requirements are not met, the Town is prepared to pursue the matter in court, and the Board will be kept informed regarding the Town's progress and the status of the case.

Updates

Policy Committee issues

Ms. Salvati gave an update of where staff is with respect to three outstanding issues.

Policy Committee Meeting Summary January 26, 2007

Outstanding Issues:

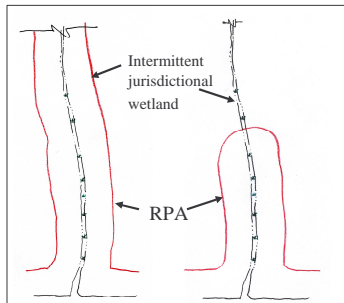
- ❖ Channelized and/or Elongated and Narrow Wetlands
- ❖ Interrupted and Disconnected Wetlands
- ❖ Definition of "Surface Flow" (Guidance Document Issue)



Division of Chesapeake Bay Local Assistance

12

Channelized and Elongated Wetlands



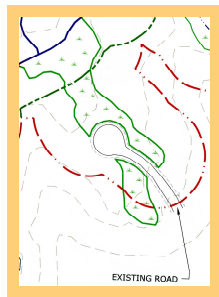
- ❖ Many of these are intermittent streams
- ❖ Strict interpretation includes them as RPA features requiring a buffer
- ❖ Intent was not to include intermittent streams in RPA



Division of Chesapeake Bay Local Assistance

13

Interrupted and Disconnected Wetlands Options



1. Guidance to exempt from RPA nontidal wetlands bisected pre-Bay Act.
2. Require inclusion in RPA of nontidal wetlands bisected by post Bay Act man-made activity
3. Develop guidance that allows for local discretion.
4. Some combination of the above



Division of Chesapeake Bay Local Assistance

14

Definition of "Surface Flow"

- ❖ Draft Guidance equates surface flow with "ground saturation or inundation" as described in 1987 Corps Wetlands Delineation Manual
- ❖ Ad-Hoc Committee members expressed concern that this definition is not supported by the Regulations
- ❖ *Options include:*
 - *Keeping original definition*
 - *Revising definition to more closely match Corps guidance*
 - *Develop new definition*



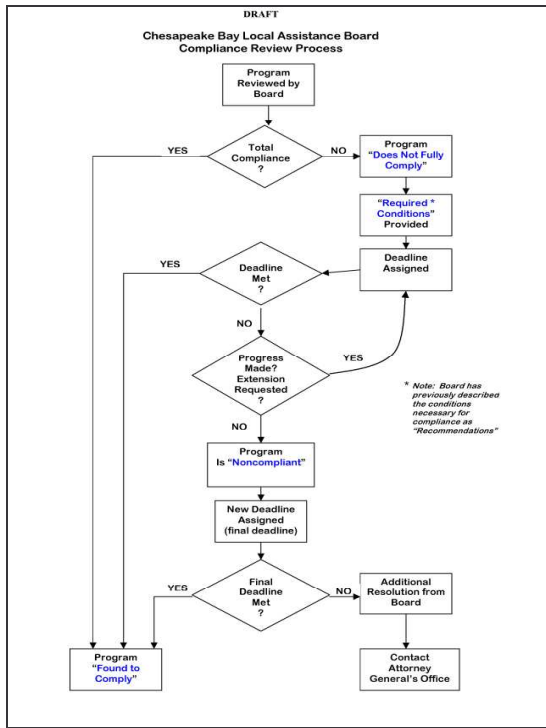
Division of Chesapeake Bay Local Assistance

15

Ms. Salvati said that the Policy Committee will meet on March 26 at 10:00 a.m.

Other Business

Mr. Sacks presented an overview of the Board finding decision flow chart. A full size copy of the chart is available from DCR.



Public Comment

There was no additional public comment.

Adjourn

Being no further business, the meeting was adjourned.

Donald W. Davis
 Chairman

Joseph H. Maroon
 Director