

Chesapeake Bay Local Assistance Board
Monday, March 24, 2003
James Monroe Building
101 N. 14th Street, Conference Room C
Richmond, Virginia

Members Present:

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

Members Absent:

Ms. Anna Lee Bamforth

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, David Kovacs
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 10:00 a.m., and called the role. He noted that there was a quorum. He welcomed staff and guests.

Mr. Benser called for the approval of the December 9, 2002 Board meeting minutes. Mr. Davis motioned. Mr. Mendelsohn 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.

Mr. Benser then called for the approval of the February 18, 2003 minutes. Mr. Davis 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.

Mr. Benser asked Mr. Crafton to present the Director's Report. Mr. Crafton advised that the bill introduced in the General Assembly this session to merge the Chesapeake Bay Local Assistance Department (CBLAD) into the Department of Conservation and Recreation (DCR)

failed to pass on the last day of the Assembly session. He explained that during the final week of the session, an amendment was introduced on the floor of the House proposing to delay the effective date of the merger from this July 1st to July 1st, 2004. He said that the two chambers disagreed on this amendment and a conference committee was appointed to resolve the differences, and try to achieve a compromise. In the end, the conferees could not agree, the House members specifically insisting that they wanted another intervening legislative session to provide an opportunity to further review the plan for the merger. Since no agreement could be reached, the bill died on the table.

Mr. Crafton said that Secretary Murphy had been personally involved in the discussions, and it was his understanding from his discussions with the Secretary, that in view of the failure of this legislation, there appeared to be agreement that CBLAD should remain an independent agency, at least for the foreseeable future.

Mr. Crafton said the agency had the good fortune to have the General Assembly restore two of the three staff positions that were eliminated last fall, during budget cutting exercises, along with the funding necessary to support the two positions. He said that although there were budget amendments proposed to restore at least some of the grant funds lost to budget cutting, these amendments did not pass. He said that staff is conducting discussions with the DEQ Coastal Program staff and the DCR Bay and Coastal Program staffs regarding providing some federal grant funds again next fiscal year to support local Bay Act program activities.

Mr. Crafton advised that he had met with Russ Baxter, Assistant Secretary of Natural Resources, and Secretary Murphy to discuss the final membership of the work group that will meet 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 said they did agree on a final list of participants, but Mr. Baxter has asked that he not discuss specific names at this meeting because Mr. Baxter has not yet been able to contact all the members to confirm their willingness to participate.

Mr. Crafton also said that the work group would be fairly small, with representatives of environmental organizations, the building industry, and a spectrum of local governments, including some recommended by VACO and VML. He said that certain CBLAD staff, Mr. Davis and he would function as agency and Board liaisons to the group. He noted that Secretary Murphy had asked that the work be concluded by July 1, 2003, and he is committed to this deadline.

Mr. Crafton reported that some local governments continue to move forward with adoption of their Bay Act ordinance amendments, although it is fair to say that most have decided to delay adoption, pending completion of the work group's tasks. Mr. Crafton also said that three local compliance evaluation reviews are being conducted currently: the City of Richmond, Gloucester County, and the Town of Cape Charles. As the first set of localities, these reviews provide staff the opportunity to work out any remaining "kinks" in our procedures.

Mr. Crafton expressed regret to inform the Board that another Principle Planner resigned. He said that Lee Tyson departed on March 9, 2003 and began employment in the Planning

Department of Henrico County. He went on to say that his position had been advertised and he hoped to conduct interviews for a replacement soon.

Mr. Crafton also said that he was pleased to announce that CBLAD has two new planners employed. Beth Baldwin began her employment with CBLAD on March 3, 2003 as a Senior Planner. Beth was recently employed by the private sector but has previous experience with local government environmental programs. Beth has been assigned to be the liaison to the Northern Neck localities.

Mr. Crafton also introduced Alex Adams who began employment with CBLAD on March 17, 2003. He said that Alex was recently employed as a field biologist with the J. K. Timmons consulting firm locally – notably conducting a lot of stream and wetland identifications and RPA delineations – and is pursuing a Master’s Degree in planning at VCU. Alex has been assigned to be the liaison to the RADCO localities. Mr. Crafton said that everyone was pleased to have these new staff members on board.

Mr. Crafton advised that given the continuing delicacy of the state revenue situation, the training curve for new staff, and the fact that we had originally intended our spring Local Government Workshop to focus on the stream identification protocol, he decided to delay holding the workshop until late summer or early fall, after concluding the work group process pertaining to the stream definition and field determination protocol. He said that he had notified local governments of this decision.

Mr. Crafton said that he had met individually with several Board members to help re-focus following the past, rather tumultuous year, now that some critical issues (such as the merger) have been resolved. He said that he intended to meet with the rest of the Board members during the next several. He also said that he planned, for their convenience to meet at their locations.

Mr. Crafton went on to say that he was resuming scheduling meetings with some local government administrators and managers, primarily to open up lines of communications at the Executive level, to be sure that they know what is going on with the program and answer and questions or concerns they may have. He said that he planned to meet with about a quarter of the 84 local government leaders each year, on a four-year cycle.

Mr. Crafton concluded his report by asking if there were any questions.

Mr. Davis asked about the merger legislation and why Mr. Crafton thought it worked out as it did.

Mr. Crafton responded that there were a number of actions taken during the early part of the session: budget amendments were introduced that would have restored some of the funding, there were budget amendments to try to undo the merger, and there was a lot of discussion about the merger among the key legislators. Mr. Crafton said it is probably fair to say that some legislators were not excited about the legislation to merge to begin with. He said that he thought that as the bill moved through the process and committees, perhaps the more time they were given to think about it and discuss it, the more their reservations grew. What may have tipped

the scale was the action the Board members and the Secretary took to delay the formal adoption deadline. He said that that the JLARC report pointed out reservations about CBLAD being put in a larger agency and becoming “lost” in the bureaucracy. He said JLARC also pointed out risks of reduced operational efficiency. He said that perhaps, at the last minute, the members who had been somewhat uncommitted decided that they needed more information and that the merger needed additional study.

Mr. Davis commented that he assumed that Mr. Crafton would see this as a positive thing that has happened.

Mr. Crafton responded that he believed it is a positive step. In reality, the General Assembly initiated the merger action and at the end could not agree among themselves on it.

Mr. Davis commented that he would like to believe that the legislators looked at the JLARC report and found no efficiencies or economies.

Mr. Crafton commented that some legislators felt that if there were no benefits to be achieved, they did not care to approve a merger simply for the sake of merging.

Mr. Benser thanked Mr. Crafton for his report.

Mr. Benser noted that there were no Consent Items, and recognized Ms. Shawn Smith for staff’s presentation for Prince William County’s Phase I program.

Ms. Smith provided a brief history of Prince William’s program saying that Prince William County adopted its revised Phase I program on December 3, 2002, well ahead of other localities, and they were the first to adopt revisions, many of the seven recommendations for consistency are the result of either oversight from her or County staff.

Ms. Smith said that staff did not believe that the sum of the seven recommendations will prevent the County from properly implementing its Bay Act program. The recommendations related to minor word changes for reviewing administrative waivers; the clarification of the silvicultural exemption; the inclusion of all criteria for water dependent facilities; and a minor word change for the public utility exemption.

She explained that she had a conversation with Uwe Kirste, the Environmental Services Division Chief, of the County, who was present, and he indicated that the County would like their Phase I deadline to be extended about a year beyond staff’s recommended December 31, 2004. She said that it was staff’s opinion that the extension would not be detrimental and Mr. Kirste could best explain the County’s request and help answer any questions about the County’s revised Bay Act program.

Mr. Kirste introduced himself and noted that Ms. Smith had summarized most of what he was going to say with the exception that the County is making the request for an extension primarily for the fact that this is election year in the County for the Board of Supervisors and the additional time would provide an opportunity to bring new members and allow for other actions

and activities that CBLAD is considering to be fully implemented. He said that it would also provide an opportunity to incorporate this as well as anything else as one package.

Mr. Kirste also said that their program is consistent to the extent that the rules, with the exception of the modifications that Ms. Smith talked about. He said that the county perceived that the need was additional time for the educational component of the program and make sure everyone understood the requirements.

Mr. Kirste recommended that from a locality standpoint, that they would like to assure that a perennial determination is adopted by CBLAB that is applied statewide so that every jurisdiction is using the same process and no jurisdictional inconsistencies. He also commented that the county concurred that the mapping availability not go through a regular and comprehensive update, rather that the local jurisdictions have the ability to maintain a general map and have additional technical documentation to support the changes in the Resource Protection Area on hand but not necessarily to update the maps with every change that comes along. He said the approval process for the mapping would be an administrative burden.

Mr. Kirste mentioned grandfathering on properties and that there is a delay in when certain properties were platted. He said that there are ones that were platted subsequent to 1990 but prior to the March 1, 2002 deadline. He said that those properties are now in limbo. He said they were looking forward to having this issue resolved.

Mr. Benser complimented Prince William on their program and asked why it would be necessary to ask for an extension to 2006 when it appeared that the changes would be just in the language.

Mr. Kirste responded that the County asked for a two year extension so that if current programs are to be adopted by December 31, 2003, they were looking at December 31, 2005.

Ms. Smith responded that the compliance evaluation would also be in the progress and that to dovetail the changes, with any other changes that may be recommended and provide for the time and in that regard, she provided to December 31, 2006, however, the County actually requested until December 31, 2005.

Mr. Benser asked what she was requesting. Ms. Smith responded that she asked for the date to be December 31, 2006 after considering the length of time for staff's review and other reviews by the County, however, the County had asked for two years or until December 31, 2005.

Mr. Mendelsohn motioned to change the date in the first sentence on the last page of the Resolution to read December 31, 2005, and also to correct the typographical error in the last paragraph in the Resolution from Fairfax County to Prince William County and in the last paragraph on the Resolution that the date be March 24, 2003 and with these amendments, motioned to approve Prince William County's Resolution.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
March 24, 2003

RESOLUTION

LOCAL PROGRAM, PHASE I
PRINCE WILLIAM COUNTY #28

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 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 Prince William County adopted a revised local program to comply with § 9VAC10-20-60 1 and 2 on December 3, 2002; 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 Prince William County's revised program for consistency with the Act and Regulations; and

WHEREAS on February 18, 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 Prince William County'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

County undertake and complete the following seven recommendations no later than December 31, 2005:

1. Amend Section 740.06.A(5) of the DSCM to clarify that the administrative review of the expansion of non-conforming structures applies only to principal structures, and not to any accessory structure as required under 9 VAC 10-20-150.C.4 of the Regulations.
2. Amend Section 740.06 of the DSCM by adding an additional subsection (6) which requires administrative review and approval for any requests for an exception to the requirements of 741.01 of the DSCM.
3. Amend Section 740.06(4) to read: "...or otherwise detrimental to the public welfare or water quality."
4. Amend Section 740.06.A(1)(b) to read: "Where practicable, a vegetated area that will maximize water quality protection, mitigate the effects of the buffer encroachment, and is equal to the area of encroachment into the buffer area shall be established elsewhere on the lot or parcel."
5. Amend Section 32-504 of the Overlay District to read: "Silvicultural activities are exempt from the requirements of this chapter provided that silvicultural operations adhere to water quality protection procedures prescribed by the Virginia Department of Forestry in the January 1997 edition of "Virginia's Forestry Best Management Practices For Water Quality."
6. Amend Section 740.05.A to include all criteria for a new or expanded water dependent facility as required under 9 VAC 10-20-130.1.b of the Regulations.
7. Amend Sections 32-504.14(2) of the Overlay District and Section 740.04.C of the DSCM to reflect the requirements of 9 VAC 10-20-150.B.2 of the Regulations.

BE IT FINALLY RESOLVED that failure by Prince William County to meet the above established compliance date of December 31, 2005 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 Prince William County 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 March 24, 2003 by the Chesapeake Bay Local Assistance Board.

C. Scott Crafton
Acting Executive Director
Chesapeake Bay Local Assistance Department

Mr. Davis seconded the motion.

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

Mr. Benser called for the vote. All members voted aye.

Mr. Benser thanked Ms. Smith for her staff report and recognized Ms. Robbie Rhur for staff's presentation of Chesterfield County's Phase II program.

Ms. Rhur told the members that Joan Salvati was not present at the meeting because of another engagement and that based on the work that had been done on Chesterfield's program she had suggested to Ms. Salvati that it would not be necessary for her to be present.

Ms. Rhur explained that after reviewing Chesterfield's Comp Plan, the Board found the Plan consistent with eight conditions on September 18, 2000, and established a compliance deadline of June 30, 2001. She said that on August 14, 2001 Chesterfield County requested a six-month extension for the compliance deadline to December 31, 2001, and the Southern Area Review Committee (SARC), after a brief review of the County's workload, recommended that the deadline be extended to June 30, 2002. She said that on September 17, 2001, the Board granted this one-year extension.

Ms. Rhur went on to explain that Chesterfield County's staff drafted language that addressed the eight conditions, however, due to the local need to present the new language to several stakeholders within the County, Chesterfield missed the Board's deadline of June 30, 2002, and on August 13, 2002, Department staff presented a draft staff report to SARC with a recommendation that they find the County's Phase II program inconsistent. Ms. Rhur noted that SARC deferred action to the September 16, 2002 Board meeting, and at the September meeting, after hearing a presentation from County staff saying that they expected to adopt the plan November of 2002, the Board deferred action on the County's Phase II program.

Ms. Rhur said that County staff met with the development community to address their concerns and in late August 2002, the Planning Commission voted to adopt the revised plan. She advised that on November 13, 2002, the Board of Supervisors adopted the revised plan. She said that staff reviewed the plan's new revisions and the following staff report is based on the newly adopted Plan.

Ms. Rhur also explained that the Plan expanded discussion of all physical constraints, and that while most of the physical constraint maps had been generated and included in the plan, maps for steep slopes and the soil layers are currently being generated by the County's GIS department and will be included in the plan when they are complete.

She said that the County developed a stream health and characteristic monitoring program that is allowing County staff to assess water quality and stream characteristics. The program is being used to help guide the County in their development decisions and help determine how they develop a given watershed. She also said that the stream monitoring program was created to

help document existing points of river access, and that staff suggested that when this aspect of the program is complete, points of river access be mapped and the map be include in the Plan. Ms. Rhur expressed that mapping points of river access was a suggestion, not a condition.

Ms. Rhur said that many policies were added to the Plan that promoted water quality protection and that examples of these policies are: (1) partner with the development community to create opportunities to use low impact design techniques; (2) limit the amount of land cleared, grubbed and graded during large construction projects, thereby reducing the amount of erosion leaving the site during storm events; (3) promote the use of alternative BMPs and the use of retrofits for older BMPs that predate the Chesapeake Bay Act; (4) establish a review criteria whereby environmental constraints are considered as part of the technical analysis conducted prior to the development or revision to existing area plans; and (5) develop a program to further promote the preservation of naturally vegetated riparian corridors, including wetlands and intermittent streams.

Ms. Rhur closed her comments noting that the revisions made to Chesterfield County's Water Quality Protection Plan examined the relationship between land use and water quality to a satisfactory degree. She said that based on the review of the revisions made to *the Plan*, staff believed that the eight conditions set forth by the Chesapeake Bay Local Assistance Board on September 18, 2000 have been met. Therefore, staff believed that the Chesterfield County's comprehensive plan should be found consistent with the Act and Regulations.

Mr. Benser asked if the Southern Area Review Committee had recommended approval to the full Board. Ms. Rhur said that they had at the February 18, 2003 meeting.

There being no other questions, Mr. Benser called for a motion. Mr. Cowling motioned to find the Phase I local program amendments adopted by Chesterfield County be found consistent with § 10.1-2109 of the Act and §§9VAC10-20-60.1 and 2 of the Regulations.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
March 24, 2003

RESOLUTION

LOCAL PROGRAM - PHASE II
CHESTERFIELD COUNTY - No. 72

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 Chesterfield County adopted a Comprehensive Plan in 1987; and

WHEREAS on September 18, 2000 the Chesapeake Bay Local Assistance Board found the Chesterfield County's plan consistent with eight recommendations for consistency that were to be addressed by the County and set a compliance date of June 30, 2001; and

WHEREAS on September 17, 2001, the Chesapeake Bay Local Assistance Board granted the County an extension to June 30, 2002 to revise its comprehensive plan in accordance with the recommendations set forth in the September 18, 2000 Board resolution; and

WHEREAS the Board of Supervisors for Chesterfield County adopted a comprehensive plan on November 13, 2002; and

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

WHEREAS on February 18, 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 recommendations in the staff report and of the Review Committee; now

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the Chesterfield 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 March 24, 2003.

C. Scott Crafton
Acting 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 advised that there were no Board Sponsored Activities.

Mr. Benser called for New Business. There was no new business.

Mr. Benser called for Public Comment. There was no public comment.

Mr. Benser called for a motion to adjourn the meeting. Mr. Nice motioned, Mr. Davis seconded. The meeting was adjourned at 10:30 a.m.

Frank L. Benser
Chairman

C. Scott Crafton
Acting Director