

**Chesapeake Bay Local Assistance Board  
Northern Area Review Committee Meeting  
Tuesday, May 03, 2005 – 10:00 a.m.  
101 N. 14<sup>th</sup> Street – James Monroe Building  
Richmond, Virginia**

**Northern Area Review Committee Members Present**

Mr. Donald W. Davis, Chair  
Mr. William E. Duncanson

Mr. David L. Bulova

**Northern Area Review Committee Members Not Present**

Mr. Walter J. Sheffield

**DCR Staff Present**

Mr. C. Scott Crafton, Acting Division Director for Chesapeake Bay Local Assistance  
Mr. David C. Dowling, Policy Planning and Budget Manager  
Ms. Martha Little, Chief of Environmental Planning  
Ms. Shawn Smith, Principal Environmental Planner  
Ms. Heather C.A. Mackey, Principal Environmental Planner  
Ms. Beth Baldwin, Senior Environmental Planner  
Mr. Daniel Ben-Yisrael, DCR, Senior Environmental Planner  
Ms. Nancy Miller, Senior Environmental Planner  
Ms. Kelly Ramsey, Urban Program Engineer  
Ms. Christine Watlington, Policy, Planning and Budget Analyst  
Mr. Michael R. Fletcher, Director of Development

**Local Government Officials Present**

*Gloucester County*  
Scott Rae

*Richmond County*  
Christopher H. Jett

*Stafford County*  
Elizabeth Blackwell  
Michael Zuraf

**Call to Order and Opening Remarks**

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

Mr. Davis introduced Mr. Crafton for comments.

Mr. Crafton noted that a contract has been signed with Virginia Tech to dismantle the Pole Cat Creek Project. A website will be created by Virginia Tech for those interested to review data.

Mr. Duncanson asked about the status of the **Nomini Creek project**. Mr. Crafton said he did not know specifically, but that he expected DCR to have a final report on file.

Mr. Davis noted some discussion regarding perennial streams certification and training. Mr. Crafton said that staff continues to review the issue and will provide information at the policy committee meeting.

Mr. Davis asked if this would require action by the General Assembly.

Mr. Crafton said that was the method for the Erosion and Sediment certification, but that it would have to be reviewed.

### **Local Program Reviews: Phase I**

Ms. Baldwin gave two updates regarding programs not on the printed agenda.

She noted that she had received a letter from the Town of White Stone. The Town program had been found inconsistent because they had adopted Lancaster County's Bay Act ordinance language, which had been found inconsistent by the Board. The letter stated that it was the Town's unanimous intention to bring their ordinance into compliance with the revised Lancaster ordinance and state mandates.

Mr. Crafton asked about the status of the Lancaster program. Ms. Baldwin said that Lancaster is working to make all of the required changes. Last week the County's Planning Commission had approved all of the proposed revisions and these revisions would be forwarded to Lancaster's Board of Supervisors for final approval.

Mr. Davis asked if a timetable had been indicated.

Ms. Baldwin said that both localities were trying to comply as quickly as possible.

Mr. Bulova asked for further clarification.

Mr. Crafton noted that Mr. Chaffe from the Office of the Attorney General had been in contact with the Attorney from Lancaster County. The Board of Supervisors has indicated that they do not wish to take this matter to court.

Mr. Crafton also noted that the Town of White Stone relies on Lancaster County for much of their program. Since the County now intends to fully comply, the Town has indicated similar intentions.

*Town of Irvington*

Ms. Baldwin presented the report for the Town of Irvington.

The Town Council of Irvington adopted its amended Phase I program in December 2003. Because the amended program failed to incorporate many of the significant changes of the revised Regulations, it was found inconsistent by the Board at the June 21, 2004 meeting and a deadline of December 31, 2004 was established for the Town to address and complete the 15 recommendations listed in the Board Resolution.

In late fall of 2004, the Town Council revised its Bay Act overlay district to address these recommendations. The Planning Commission and Town Council reviewed the proposed revisions and on March 10, 2005, the Town Council adopted all of the proposed amendments.

Ms. Baldwin said that the 15 recommendations could be loosely categorized into four sections: RPA development criteria, buffer performance standards, exceptions and administrative waivers, and others. With respect to the first category, RPA development criteria, the Town made several revisions to this section of its overlay district. These changes included adding the required criteria when permitting new or expanded water-dependent activities or redevelopment in the RPA, and relocating the provision on private roads and driveways in RPA from the section of the overlay district that pertained to exempt activities.

The Town also significantly revised the section of its overlay district concerning buffer performance standards. These revisions included deleting the buffer equivalency language, adding the requirement for buffer re-establishment as a result of change in land use, and updating the language for buffer encroachments and modifications including management of buffers on agricultural lands to be consistent with the revised Regulations.

For the exceptions section of the overlay district, the Town designated its Planning Commission as the local body to hear formal exception requests and added all of the required findings when granting a formal exception. And for the section pertaining to administrative waivers, the Town added all of the required findings for permitting the expansion of a nonconforming principal structure and clarified that accessory structures could not be expanded through this administrative process.

The Town made several changes throughout its ordinance to address the remaining recommendations. These revisions included significantly revising the definition section of its overlay district, replacing the term "activities of VDOT" with the more appropriate term "public roads" when specifying activities that are exempt from Bay Act requirements, and updating the language on agricultural performance standards to be consistent with the revised Regulations. They also included distinguishing between the two scales of public utilities that are exempt from

Bay Act requirements provided that certain criteria are met. Finally, the town deleted the reference to the Local Assistance Manual, since it is no longer a valid source for stormwater management procedures and calculations.

With respect to numerous clarifications cited in the staff report, the town addressed all but one of these suggestions. These changes are not required for consistency with the Regulations, but were suggested to improve overall program administration.

Since the Town has made all of the required revisions to its overlay district and there are not any outstanding conditions for consistency with the Regulations, staff recommended that the Town of Irvington's amended Phase I program be found consistent with the Act and Regulations.

Ms. Baldwin noted that no one was present from the Town of Irvington.

MOTION: Mr. Duncanson moved that the Northern Area Review Committee recommend to the Chesapeake Bay Local Assistance Board that the Town of Irvington's amended Phase I program be found consistent with § 10.1-2109 of the Act and § 9 VAC 10-20-60 1 and 2 of the Regulations.

SECOND: Mr. Bulova

DISCUSSION: None

VOTE: Motion carried unanimously.

### *City of Fredericksburg*

Mr. Ben-Yisrael presented the report for the City of Fredericksburg.

On September 20, 2004, the Board found the City's amended Bay Act program inconsistent and set a deadline of March 31, 2005 for the City to address the nine consistency items. Division staff provided local staff with roughly edited copies of the City's ordinance to assist them in making the required changes.

On February 22, 2005 the Fredericksburg City Council adopted amendments to its Chesapeake Bay Preservation Overlay (CBPO) to address the consistency conditions in the Board's September 20, 2004 resolution.

The City revised its ordinance to include the requirements for onsite delineation of water bodies with perennial flow as well as all of the requirements for the development of water dependent, flood control, stormwater management and "passive recreation facilities within RPAs. The City deleted the terms "public flood control facilities" from its definition of water dependent facilities, removed public and private stormwater management facilities as exempted activities, and added all conditions for encroachments on pre-1989 lots.

The ordinance now includes criteria for the exemption of public roads and other public facilities, criteria for the expansion of nonconforming structures, and provisions for administrative waivers to the general performance criteria. Mr. Ben-Yisrael commended the City on its efforts to address all the consistency items. Staff recommended that the City's revised program be found consistent.

Mr. Ben-Yisrael noted that no one was present from the City of Fredericksburg.

Mr. Bulova said that the city and staff were to be congratulated, as this took a lot of effort.

**MOTION:** Mr. Bulova moved that the Northern Area Review Committee recommend to the Chesapeake Bay Local Assistance Board that the City of Fredericksburg's revised Phase I program be found consistent with § 10.1-2099 of the Act and §§ 9 VAC10-20-60 1 and 2 of the Regulations.

**SECOND:** Mr. Duncanson

**DISCUSSION:** None

**VOTE:** Motion carried unanimously.

#### *Town of West Point*

Ms. Miller presented the report for the Town of West Point. She distributed a copy of the Town's deadline extension request letter, dated April 5, 2005.

On June 28, 2004, the West Point Town Council adopted a revised CBPA Overlay District and map, and on September 20, 2004 the Board found the Town's Phase I program consistent, subject to the condition that the Town revise the CBPA Overlay District Map by December 31, 2004.

On February 28, 2005 the Town amended the CBPA Overlay District Map; however, some areas depicted as perennial on the USGS Quadrangle map were not included. The Town recognizes the deficiencies in the map and has established a schedule to adopt appropriate corrections.

Ms. Miller said that, based on a review of the amended map and the Town's request for an extension to June 30, 2005, staff recommended that this request be approved.

Mr. Duncanson noted that there were staffing issues with the Town and that they were attempting to comply.

**MOTION:** Mr. Duncanson moved that the Northern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board extend the date for the Town of West Point to comply with § 10.1-2109 of the Act

and § 9 VAC 10-20-60 1 and 2 of the Regulations from December 31, 2004 to June 30, 2005.

SECOND: Mr. Bulova  
DISCUSSION: None  
VOTE: Motion carries unanimously.

### **Local Program Reviews: Phase II – Comprehensive Plans**

There were no Phase II Comprehensive Plans on the agenda.

### **Local Program Reviews: Compliance Evaluation**

#### *Richmond County*

Ms. Baldwin presented the following report for Richmond County. She recognized Mr. Chris Jett, Director of Planning for Richmond County.

On December 8, 2003, the Board conducted a compliance evaluation of Richmond County's adopted Phase I program for consistency with the Act and Regulations. The Board found that the County's program was not fully compliant and required the County to undertake and complete four recommendations noted in the staff report by December 31, 2004.

As of the meeting date, the County had addressed two of the four conditions. For its septic pump-out notification program, the County drafted information packets that include a verification and compliance form for property owners to complete and return to the County's Building and Zoning Office. The County mailed the first set of these packets to residents living in the Farnham magisterial district. After reviewing the information that the County submitted, staff recommended that this condition has been fully addressed.

For the condition concerning monitoring of BMPs, the County has developed a database for tracking and inspecting them. Although the data has not yet been entered, there are only a handful of BMPs throughout the County. Ms. Baldwin indicated that it is staff's opinion that this condition has been adequately addressed.

However, Ms. Baldwin noted that the County had not yet started to require submission of water quality impact assessments and because this condition had not been met, the County cannot fully satisfy the condition of ensuring that files are complete and contain all necessary paperwork.

While the County is in the midst of tailoring WQIAs to better reflect local conditions and anticipates that they will soon be ready for use, Ms. Baldwin said that staff opinion was that a July 15<sup>th</sup> deadline should be established to facilitate the County's movement towards completion

of this requirement. She said that this deadline appears to be a reasonable one, especially since the County has already been given additional months to meet this condition. Once the WQIA forms have been completed, it is anticipated that the County will easily meet the requirement of maintaining complete files.

Ms. Baldwin said the County is to be commended on implementing the septic pump-out notification requirement since this condition is, by far, the most difficult of the four recommendations to implement. While it is anticipated that the WQIAs the County is currently drafting will be more than adequate, the Board resolution clearly established a December 31, 2004 deadline for meeting all conditions. Since this deadline has not been met, Ms. Baldwin said that it is staff's opinion that the County be found not fully compliant with the Act and Regulations and directs Richmond County to undertake and complete the two recommendations contained in this staff report no later than July 15, 2005.

Mr. Davis asked if the County had forms for the WQIA applications.

Ms. Baldwin said that staff provided a template, but the County wanted to adapt those forms to be more compatible with Richmond County requirements.

Mr. Bulova noted a concern that there was not a formal WQIA form.

Mr. Jett said that the County is reviewing most, if not all, elements of a WQIA through the site plan review process.

Mr. Bulova asked how developers were made aware of the WQIA requirements.

Mr. Jett said that most developers have an idea of local requirements, since they are similar to site plan review criteria, and he noted that staff reviewed the submitted plans for these criteria as well as relying on their personal expertise and judgment. He said that there currently is little formal documentation provided to the developers with regard to what should be submitted. He said that the County believes, in hindsight, that it would have been beneficial to ask for an extension. He said that the County is reviewing the elements and could use the generic form if necessary. The County does not have a problem with the July deadline.

Mr. Bulova said that it did not need to be incorporated formally, but it would be helpful to use a generic checklist.

Mr. Davis asked if the County is requiring the DCR worksheet be completed for impervious cover.

Mr. Duncanson said that the zoning ordinance has a detailed and extensive checklist.

Mr. Crafton clarified with Mr. Jett that if something was missing from a plan, the County would require that information to be submitted.

Mr. Jett said the County was looking at the details, but just not requiring formal paperwork.

**MOTION:** Mr. Bulova moved that the Northern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find that the implementation of certain aspects of Richmond County's Phase I program do not fully comply with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations, and in order to correct these deficiencies, that Richmond County be directed to undertake and complete the recommendations no later than July 15, 2005.

**SECOND:** Mr. Davis

**DISCUSSION:** Mr. Duncanson noted that he would abstain from voting. Mr. Crafton said that he would vote in order to complete the quorum.

**VOTE:** Motion carried with Mr. Duncanson abstaining.

*Stafford County*

Mr. Ben-Yisrael presented the report for Stafford County. He recognized Elizabeth Blackwell and Michael Zuraf from Stafford County.

The County underwent an initial compliance evaluation review in the summer and fall of 2003. The Board, at their December 8, 2003 meeting, found that certain aspects of the County's implementation of its Bay Act program did not fully comply with the Act and Regulations and required three recommendations to be addressed no later than December 31, 2004.

On January 24, 2005, the Department received a letter from the County relating to actions taken by the County to address the three recommendations for compliance. The County has proactively addressed the three required compliance issues and should be commended for their prompt response.

However, during this most recent review period, a number of issues have surfaced in the County that warrant further review by the Department staff. Several complaints regarding unauthorized buffer disturbances, procedural omissions and inadequate perennial flow determinations have been made and are under investigation. In light of these developments, Mr. Ben-Yisrael said that staff recommends that final review of the county's implementation of its Phase I program be deferred until September 19, 2005. Mr. Ben-Yisrael said that staff would continue to investigate these issues and will present additional compliance recommendations to the Northern Area Review Committee in August.

Mr. Bulova asked, since the County had complied with three conditions previously, if the Board could provide more time for a response to the remaining conditions. He noted that he would not like to again declare the County inconsistent.

Mr. Davis noted that there was no resolution on the agenda.

Ms. Little said that this report was provided as an update, and the recommendation was to defer action until the September meeting.

Ms. Smith noted that staff was not ready to declare the County fully compliant. She said that the existing resolution would remain in place until the final determination of compliance.

Mr. Davis asked if representatives from Stafford County had comments.

Ms. Blackwell said that she had previously addressed a matter with Mr. Ben-Yisrael. She noted that the County has been approached by a representative from the Army Corps of Engineers. The County has been informed that King George County, which is downstream and closer to the Bay is apparently not being told by DCR staff that King George County staff needs to require proof of all required wetlands permits prior to the issuance of grading permits.

Mr. Davis asked Mr. Crafton to direct the appropriate staff person to review this situation and to report back to the Board.

Mr. Crafton noted that he assumed the King George ordinance would have the appropriate performance criteria, because it has been approved by the Board, and that he felt this may be a matter where the ordinance is not being followed.

No action was needed on the Stafford County program.

#### *Town of Vienna*

Ms. Mackey presented the report for the Town of Vienna

The first meeting with Town staff occurred in early October 2004. At that meeting, Department staff outlined the compliance evaluation process and went through the checklist provided to Town staff as an attachment to the initiation letter. A second meeting was held later that month to discuss the site plan review process and implementation policies with the directors of Planning and Zoning and Public Works. Three site plans were reviewed for completeness and compliance with local program requirements and field investigations were performed on those sites.

Vienna is located west of Washington, DC, and has an urbanized core and suburban residential neighborhoods. Vienna's designated CBPAs include all of the RPA features required by the Regulations and a limited RMA. The Town chose to base its RMA designation on existing environmentally sensitive areas rather than designating all non-RPA areas as Resource Management Areas. Areas designated as RMAs include the 100-year floodplain, highly erodible soils and/or slopes in excess of 15%, highly permeable soils, non-tidal wetlands not classified as RPA, and other lands identified by the Town to be necessary to protect the quality of state waters. This final category is not defined by the ordinance, but is left to the discretion of the

Zoning Administrator. While the Town is facing redevelopment pressure in several areas , there are few development applications that require review for their impacts on CBPAs.

Town staff, though limited, appears to be stable, experienced and highly capable. They carefully review each development plan and document its progress through the plan of development process. As a result, there are only two recommendations for compliance. The first requires buffer mitigation with revegetation or vegetative plantings for all permitted encroachments or modifications. The second requires that the Town formalize and document the WQIA submission process for development within CBPAs.

In addition to these two recommendations, several suggestions were made to assist the Town with program implementation. Department staff will be available to assist Town staff with their efforts to address the recommendations and suggestions before the deadline. Ms. Mackey noted that Town staff indicated they had no problem with the recommendations and would work with Department staff to implement them in a timely manner.

Ms. Mackey said that Department staff recommended that the Board find certain aspects of the Town of Vienna's implementation of their Chesapeake Bay Preservation program not fully compliant with the Act and Regulations and that the Town undertake and complete the two recommendations contained in the staff report no later than June 30, 2006.

**MOTION:** Mr. Bulova moved that the Northern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find that certain aspects of the Town of Vienna's implementation of its Phase I program do not fully comply with §§ 10.1-2109 and 2111 of the Act and §§ VAC 10-20-231 and 250 of the Regulations and that further the Town of Vienna be required to undertake and complete the two (2) recommendations contained in the staff report no later than June 30, 2006.

**SECOND:** Mr. Duncanson

**DISCUSSION:** None

**VOTE:** Motion carried unanimously.

Mr. Duncanson asked if the 25 percent impervious cover was Town-wide. Ms. Mackey said it was.

Mr. Davis asked if there were any IDAs in the Town.

Ms. Mackey said there were none. A legislator asked the Department to review the possibility of IDAs in the Town. As a result of this request, DCR staff met with the Town, the legislator, citizens and the Town Council. It was determined that the establishment of an IDA would not address the stormwater management issues that were the main concern of the citizens.

*Gloucester County*

Ms. Miller presented the report for Gloucester County. She introduced Scott Rae, Environmental Programs Administrator for the County.

Ms. Miller stated that Gloucester County has made progress in addressing the remaining condition in the Board's December 13, 2004 Resolution, and should complete work by the June 30, 2005 deadline.

The remaining condition related to the requirement for localities to develop and maintain a septic pump-out notification program. The County has completed work on a database to track the status of all on-site septic systems, and a brochure is in the final draft stage, ready for mailing with the required notices. The mailing is scheduled to take place within the next few weeks.

Mr. Rae expressed appreciation for Ms. Miller and her work with the County. He noted that the County is taking action to inform citizens of the septic pump-out program. Information will be included in tax bills and printed in the local newspapers. Supervisors are being briefed on this issue.

Mr. Rae said that the County is comfortable that this will be completed by the deadline.

No action was needed on the Gloucester County program.

*King William County*

Ms. Miller presented the report for King William County.

King William County provided an interim report on March 1, 2005 regarding progress on the seven recommendations in the Board's June 21, 2004 Resolution.

Department staff anticipates that appropriate local program revisions will be implemented by the December 31, 2005 deadline. The recommendations included: Performance Standards Checklists; 5-year septic pump-out program; BMPs and stormwater management; WQIAs; Plan of Development process; and mitigation plans.

Remedies are either under development or have been addressed through revisions in the County's CBPA Overlay District, adopted on November 22, 2004 and found consistent by the Board on March 21, 2005.

Mr. Duncanson noted that the County has had several staffing changes.

Ms. Miller said the County hired a planning director last July. He has been working on the revised ordinance but has not been able to hire additional staff at this time.

Mr. Davis noted that staffing appears to be an issue for many localities. He asked if there were any possible grant programs for dealing with this.

Mr. Crafton said that staff has been considering proposals for funding, but that none have been designated for grants for staffing purposes at this time.

Mr. Crafton noted that, while there has been a significant increase in funding, those funds are earmarked for specific purposes.

No action was needed for King William County.

#### *Northumberland County*

Ms. Baldwin presented an update on the progress Northumberland County has made towards addressing the nine recommendations identified during the compliance evaluation.

On September 20, 2004, the Board conducted a compliance evaluation of Northumberland County's adopted Phase I program for consistency with the Act and Regulations. The Board found that the County's program was not fully compliant and required the County to undertake and complete nine recommendations contained in the staff report.

With respect to the nine conditions, two were implemented immediately. The County is no longer permitting outright removal of all vegetation under six inches in the RPA and is using the appropriate process for exceptions.

The County has also begun to address some of the remaining conditions. The County hired a full-time Erosion and Sediment Control inspector who is now working to ensure the Erosion and Sediment plans are being submitted where required and will be working to ensure that erosion controls are being installed for shoreline erosion projects when the land disturbance extends into the RPA. The E&S Inspector is also working with the Wetlands Secretary and Zoning Administrator to ensure that land disturbing permits are not issued until all wetland permits have been received.

With respect to stormwater management, the County has not yet initiated any action to develop a standard BMP maintenance agreement or develop a database for tracking and monitoring BMPs. However, the County is no longer allowing installation of BMPs (except for those previously approved) under the buffer equivalency clause. Since this practice is no longer permitted, the number of BMPs being installed has greatly diminished.

Finally, the County has not yet addressed the pump-out notification program or started to require submission of WQIAs for proposed encroachments into the RPA.

Department and County staff will be meeting within the month to more thoroughly review the conditions that have not been addressed. The Department also intends to review a few selected site plans within the next two months to evaluate the County's compliance with the

recommendation that BMP designs, siting requirements, and allowable pollutant removal efficiencies are in accordance with those prescribed in the Minimum Standards of the Virginia Stormwater Management Handbook (VSWMH).

There was no action needed on the Northumberland County program.

**Other Business**

There was no other business.

**Public Comment**

There was no additional public comment.

**Adjourn**

There being no further business, Mr. Duncanson moved to adjourn. Mr. Bulova seconded.

The meeting was adjourned.

Respectfully Submitted,

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Donald W. Davis  
Chairman

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Joseph H. Maroon  
DCR Director