

**Chesapeake Bay Local Assistance Board  
Monday, September 19, 2005  
York Hall  
301 Main Street  
Yorktown, Virginia**

**Chesapeake Bay Local Assistance Board Members Present**

Donald W. Davis, Chair  
William E. Duncanson  
Gale A. Roberts

Walter J. Sheffield, Vice Chair  
Beverly Harper  
Michael A. Rodriguez

**Chesapeake Bay Local Assistance Board Members Not Present**

David L. Bulova  
David C. Froggatt, Jr.

Sue H. Fitz-Hugh

**DCR Staff Present**

Joseph H. Maroon, Director  
Russ Baxter, Assistant Secretary of Natural Resources  
C. Scott Crafton, Assistant Director  
Joan Salvati, Director, Division of Chesapeake Bay Local Assistance  
Roger Chaffe, Office of the Attorney General  
Martha Little, Chief of Environmental Planning  
Shawn Smith, Principal Environmental Planner  
Brad Belo, Senior Environmental Planner  
Beth Baldwin, Senior Environmental Planner  
Nancy Miller, Senior Environmental Planner  
David C. Dowling, Director of Policy, Planning and Budget  
Michael R. Fletcher, Director of Development

**Local Government Representatives Present**

*Gloucester County*  
Ron Peaks  
Bill Whitley

*City of Hampton*  
Keith Cannady

*James City County*  
Darryl Cook

*Lancaster County*

Jack Larson

*Richmond County*

Chris Jett

*Town of West Point*

Josh Bateman

*City of Williamsburg*

Carolyn Murphy

Reed Nester

*York County*

James S. Burgett

### **Call to Order**

Mr. Davis called the meeting to order and recognized James S. Burgett, Chairman Board of Supervisors for York County.

Mr. Burgett welcomed the Board and staff to York County. He noted that Yorktown has been the seat of County government since 1634 and at this specific location since 1637. Mr. Burgett also noted the importance of Yorktown 225 years ago when George Washington defeated Cornwallis, bringing the Revolutionary War to an end.

Mr. Burgett talked about the revitalization of the Yorktown Riverfront and invited members and staff to visit. The redevelopment has been funded by at 5% lodging tax devoted to tourism and tourism related items. That provides the County with approximately \$2 million in annual revenue.

Mr. Burgett expressed his appreciation to the Board for the work they and staff do with local programs.

Mr. Davis thanked Mr. Burgett for the County's hospitality.

### **Consideration of the Minutes**

MOTION: Ms. Roberts moved that the minutes for the following meetings be approved as submitted:

*June 20, 2005 Board Meeting*

*July 25, 2005 Policy Committee Meeting*

*August 9, 2005 Policy Committee Meeting*

*August 9, 2005 Northern Area Review Committee Meeting*

*August 9, 2005 Southern Area Review Committee Meeting*

SECOND: Mr. Duncanson

DISCUSSION: None

VOTE: Motion carried unanimously

### **Director's Report**

Mr. Maroon gave the Director's report. He thanked the County for the warm welcome.

Mr. Maroon said that Virginia state government has been working to help with Hurricane Katrina relief. DCR offered state parks cabins as housing possibilities, but they were not needed at this time. DCR has also offered the use of the people mover from False Cape state park, law enforcement offers and flood plain management experts.

Mr. Maroon said that staff was working to schedule a joint meeting with the Chesapeake Bay Local Assistance Board, the Soil and Water Conservation Board and the State Water Control Board to discuss water quality issues and coordination.

The intent of this meeting is to develop a paper that will provide for the next administration an overview of water quality issues and priorities. This will give the new administration the benefit of knowing the priority in water quality issues and bay cleanup efforts.

Mr. Maroon said staff has been conducting a survey of all localities that fall under the Chesapeake Bay Preservation Act. The purpose is to determine the training needs as well as to inform the localities of the grants process as funds are available.

Responses were received from 50 localities. Principally the respondents were DCR contacts within the localities. He noted that the most critical need appears to be the need for training in the area of buffer management.

The annual workshop for local government staff will be held on November 3, 2005 at the Holiday Inn in Richmond. Secretary of Natural Resources Tayloe Murphy will speak. Board members are welcome to participate.

## **Overview of the Commonwealth's Water Quality Initiatives**

Mr. Maroon introduced Russ Baxter, Assistant Secretary of Natural Resources. Mr. Baxter previously worked for the Chesapeake Bay Foundation and the Chesapeake Bay Commission. Governor Warner appointed him to work with the Secretary of Natural Resources as Assistant Secretary for Chesapeake Bay Implementation.

Mr. Baxter gave the following presentation:

**Virginia's Tributary Strategies  
September 19, 2005  
Chesapeake Bay Local Assistance Board  
Russ Baxter, Asst. Secretary of Natural Resources**

**Tributary Strategies: Past Actions**

- March 2003 – Allocations Agreed to by CBP Partners
- April 2003 - Water Quality Criteria Published (EPA)
- June 2003- March 2004 – VA Tributary Team activity
- April 2004 Public Comment Drafts Released for Comment Period

**Tributary Strategies: Past Actions**

- August 27, 2004 Point Source Revisions Announced by Secretary Murphy
  - James and York allocation awaiting final WQ standards
  - Use of Capacity with Stringent Treatment
- January - February 2005 – Statewide document released, Basin Documents released.
- Regulatory Proposals: Point Source Water Quality Standards
  - updated, site specific use categories
  - criteria for dissolved oxygen, water clarity/SAV & chlorophyll  
ADOPTED 3/15/2005 except numerical chlorophyll criteria for James River and dissolved oxygen for Mattaponi and Pamunkey Rivers
- Regulation for Nutrient Dischargers
  - sets technology-based nutrient concentration limits for certain discharges Regulation Adopted and Suspended June 28 for further comment
- Water Quality Planning Regulation
  - allocates nutrient loads for significant discharges within each river basin as identified through Tributary Strategies
  - establishes trading and offsets program Regulation Adopted and Suspended June 28 for further comment

- General Assembly Actions Affecting Tributary Strategies
  - Nutrient Credit Trading
  - Amendments to the Water Quality Improvement Act
  - House Joint Resolution 640
  - Amended Biennial Budget
  
- Nutrient Credit Exchange - HB 2862 SB 1275
  - SWCB to develop “Watershed General Permit” that contains “WLA” for each facility
  - Point Source Loads Capped
  - Allows technology limits
  - Allows trading within basins for those facilities covered by the permit
  - Authorizes Establishment of Nutrient Credit Exchange Association
  
- Trading and Other Provisions
  - Trading allowed between point sources in a river basin to achieve watershed WLA in accordance with General Permit
  - No inter-basin trading
  - Trading allowed to achieve annual compliance under certain circumstances
  - Nonpoint “offsets” for new and expanding plants
  
- WQIA Amendments HB 2777 SB 1235 SB 810
  - Statement of Policy “It shall be the be the policy of the General Assembly to provide annual its share of support ....”
  - Requires DEQ to sign grant agreements with significant dischargers
  - Requires recommendations on “sufficient and predictable” funding by November 2005
  - “Sliding Scale” for point source grants from 35% to 75% based on a ratio
  - Funding distribution between point and nonpoint sources
  - Additional “priorities” – Agricultural Practices, Pounds of Reduction
  
- House Joint Resolution 640
  - “study options to provide a long-term funding source to clean up Virginia’s polluted waters, including the Chesapeake Bay and its tributaries.”
  - 8 members = 4 House, 2 Senate (including Money Committee Chairs) plus Secretaries of Natural Resources and Agriculture and Forestry
  - Next Meeting: September 29, 2005

- 2005 – 2007 NPS Initiatives - DCR – Lead Agency
  1. Accelerate agricultural BMP usage
  2. Expand Nutrient Management Planning and Implementation
  3. Expanded Stormwater Management Law
  4. Strengthen Erosion & Sediment Control Implementation
  5. Strengthen Chesapeake Bay Act Implementation
  6. Enhance NPS Tracking system
  7. Target Public Outreach efforts

WQIF \$ : How Does It Add Up?

\$15,000,000

\$32,000,000

\$50,000,000

\$97,000,000\*

\*in the second year of the beinnium, beginning July 1, 2005

Point/Nonpoint Split

Point Source:  $\$50 + \$9.7 + \$7.5$  less reserve =  $\$65.7$   
(+ \$4 million for CSO)

Nonpoint:  $\$22.7 + \$7.5$  less reserve =  $\$26.4$  (60% BAY 40% S.R.)

Key Tributary Strategy Practices All Basins

- Point Source Reductions
- Nonpoint Source Practices:
  - Nutrient Management Planning (Ag., Urban and Mixed Open)
  - Cover Crops
  - Conservation Tillage
  - Pasture Grazing BMPs

KEY TRIBUTARY STRATEGY PRACTICES (NPS reductions)

- Cover Crops 10% TN
- Conservation Tillage 6% TN 18% TP
- Pasture Grazing BMPs 9% TN 14% TP
- Nutrient Management (NM)
  - Ag 20% TN 13% TP
  - Urban 2% TN 2% TP
  - Mixed Open 2% TN 3% TP
  - Overall NM 24% TN 18% TP

“Evolution” of Cost Estimates

- Initial cost estimates developed for the Chesapeake Bay Program (CBP). These estimates served as the basis for the initial Virginia estimate of \$3.2 billion and Blue Ribbon Panel.
- Point Source Cost estimates remain the same
- Nonpoint estimates used CBP as a starting point adjusted estimates using program experience and best professional judgement by DCR

“State Costs” vs “Other Costs”

- “State Costs” are those cost that would be reasonably borne by the Commonwealth based on existing programs and past practice.  
ESTIMATED \$1.8 BILLION
- “Other Costs” include private/local share of state cost share programs, regulatory requirements, voluntary efforts, etc.  
ESTIMATED: \$7.2 BILLION

Estimated Virginia State Government Tributary Strategy Cost

“Bottom Line”

Calculated for point and nonpoint Tributary Strategy Implementation by 2010:  
\$1.8 BILLION

Tributary Strategies: What’s Next??

- Complete water quality standards adoption
- Establish final allocations for York and James
- Publish WQIF grant guidance
- Promulgate Watershed General Permit
- Implement, Implement, Implement

Mr. Davis thanked Mr. Baxter and asked the time frame for the programs.

Mr. Baxter said that the Chesapeake Bay 2000 agreement is the driving force for the programs. The best efforts will be made to remove bay and tidal tributaries from danger by 2010.

Mr. Maroon said this gave a sense of the magnitude of the work underway. He said that the agencies are on the cusp of doing something historical in terms of participation, funding and service delivery.

**Consent Agenda**

MOTION: Mr. Duncanson moved that the Chesapeake Bay Local Assistance Board approve the following consent items as recommended by the respective staff reports:

*Lancaster County*

Review of Ordinance Revisions (Phase I) Conditions

*Town of White Stone*

Review of Ordinance Revisions (Phase I) Conditions

*City of Newport News*

Review of Ordinance Revisions

*York County*

Minor Program and Ordinance Revisions (Phase I)

*New Kent County*

Review of Ordinance Revisions (Phase I) amendment

*Prince George County*

Review of Ordinance Revisions (Phase I) Conditions

*Accomack County*

Compliance evaluation deadline extension request

SECOND: Ms. Roberts

DISCUSSION: None

VOTE: Motion carried unanimously

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD**

**September 19, 2005**

**RESOLUTION**

**LOCAL PROGRAM, PHASE I**

**LANCASTER COUNTY - #09**

**Determination of Consistency – 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 § 9 VAC 10-20-60 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 Lancaster County adopted an amended Phase I local program to comply with §§ 9 VAC 10-20-60 1 and 2 on October 30, 2003; and

WHEREAS on March 22, 2004 the Chesapeake Bay Local Assistance Board found the Lancaster County's Phase I program inconsistent with ten recommendations for consistency that were to be addressed by the County and set a compliance date of May 15, 2004; and

WHEREAS the Board of Supervisors for Lancaster County failed to adopt a consistent program by the Board established deadline of May 15, 2004, and

WHEREAS on June 21, 2004, the Chesapeake Bay Local Assistance Board conducted an informal fact finding procedure regarding compliance of Lancaster County with the Act and Regulations; and

WHEREAS on September 20, 2004, the Chesapeake Bay Local Assistance Board authorized the Director to undertake any administrative and legal action to compel Lancaster County to adopt a consistent Phase I program; and

WHEREAS the Board of Supervisors for Lancaster County adopted amendments to the Phase I program on May 26, 2005; and

WHEREAS staff has reviewed Lancaster County's revised Phase I program for consistency with the previous consistency recommendations and the Act and Regulations; and

WHEREAS on August 9, 2005 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 Lancaster County's Phase I program consistent with § 10.1-2109 of the Act and §§ 9 VAC 10-20-60 1 and 2 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that the Chesapeake Bay Local Assistance Board adopted this resolution in open session on September 19, 2005.

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Joseph H. Maroon  
Director  
Department of Conservation and Recreation

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD**  
**September 19, 2005**

**RESOLUTION**  
**LOCAL PROGRAM, PHASE I**  
**TOWN OF WHITE STONE - #42**

**Determination of Consistency – 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 § 9 VAC 10-20-60 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 the Town of White Stone adopted an amended Phase I local program to comply with §§ 9 VAC 10-20-60 1 and 2 on January 8, 2004; and

WHEREAS on June 21, 2004 the Chesapeake Bay Local Assistance Board found the Town of White Stone's Phase I program inconsistent with ten recommendations for consistency that were to be addressed by the Town and set a compliance date of December 31, 2004; and

WHEREAS the Town Council of White Stone failed to adopt a consistent program by the Board established deadline of December 31, 2004, and

WHEREAS on March 21, 2005, the Chesapeake Bay Local Assistance Board conducted an informal fact finding procedure regarding compliance of the Town of White Stone with the Act and Regulations and authorized the Director to undertake any administrative and legal action to compel the Town of White Stone to adopt a consistent Phase I program; and

WHEREAS the Town Council of White Stone adopted amendments to the Phase I program on June 2, 2005; and

WHEREAS staff has reviewed the Town of White Stone's revised Phase I program for consistency with the previous consistency recommendations and the Act and Regulations; and

WHEREAS on August 9, 2005 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 the Town of White Stone's Phase I program consistent with § 10.1-2109 of the Act and §§ 9 VAC 10-20-60 1 and 2 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that the Chesapeake Bay Local Assistance Board adopted this resolution in open session on September 19, 2005.

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Joseph H. Maroon  
Director  
Department of Conservation and Recreation

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD**  
**September 19, 2005**

**RESOLUTION**  
**LOCAL PROGRAM, PHASE I**  
**CITY OF NEWPORT NEWS - #01**

**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 § 9 VAC10-20-60 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 the City adopted a local Phase I program on July 1, 1991, and

WHEREAS on September 21, 1998, the City'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 on December 16, 2003, the City of Newport News adopted a revised local program to comply with § 9VAC10-20-60 1 and 2 of the Regulations; 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 the City of Newport News's revised program for consistency with the Act and Regulations; and

WHEREAS on June 21, 2004, the Board found the City of Newport News's revised program consistent with eight conditions and set a deadline of June 30, 2005 by which the City was to address these eight conditions; and

WHEREAS on April 12, 2005, the City of Newport News adopted a revised local program to comply with § 9VAC10-20-60 1 and 2 of the Regulations; and

WHEREAS staff reviewed the amendments made to the City of Newport News's revised program for consistency with the Act and Regulations; and

WHEREAS on August 9, 2005 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 the City of Newport News's revised Phase I program consistent with § 10.1-2109 of the Act and §§ 9 VAC 10-20-60 1 and 2 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on September 19, 2005 by the Chesapeake Bay Local Assistance Board.

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Joseph H. Maroon  
Director  
Department of Conservation and Recreation

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD**  
**September 19, 2005**

**RESOLUTION**  
**LOCAL PROGRAM, PHASE I**  
**YORK COUNTY - #3**

**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 § 9 VAC 10-20-60 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 the County adopted a local Phase I program on September 6, 1990, and

WHEREAS on December 5, 1991, 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

WHEREAS on June 21, 2004, the County's revised Phase I program was found consistent by the Chesapeake Bay Local Assistance Board, and

WHEREAS on May 17, 2005, York County made a minor program modification to its Phase I program; 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 minor program modification made to York County's Phase I program for consistency with the Act and Regulations; and

WHEREAS on August 9, 2005 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 the minor program modification made to York County's Phase I program consistent with § 10.1-2109 of the Act and §§ 9 VAC 10-20-60 1 and 2 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on September 19, 2005 by the Chesapeake Bay Local Assistance Board.

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Joseph H. Maroon  
Director  
Department of Conservation and Recreation

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD  
September 19, 2005**

**RESOLUTION  
LOCAL PROGRAM, PHASE I  
NEW KENT COUNTY - #60**

**Determination of Consistency– 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 § 9 VAC 10-20-60 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 New Kent County adopted an amended Phase I local program to comply with §§ 9 VAC 10-20-60 1 and 2 on March 10, 2003; and

WHEREAS on March 22, 2004 the Chesapeake Bay Local Assistance Board found New Kent County's Phase I program consistent with one recommendation for consistency that was to be addressed by the County and set a compliance date of June 30, 2005; and

WHEREAS the Board of Supervisors for New Kent County adopted amendments to the Phase I program on June 13, 2005; and

WHEREAS staff has reviewed New Kent County's revised Phase I program for consistency with the previous consistency recommendations and the Act and Regulations; and

WHEREAS on August 9, 2005 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 New Kent County's Phase I program consistent with § 10.1-2109 of the Act and §§ 9 VAC 10-20-60 1 and 2 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on September 19, 2005 by the Chesapeake Bay Local Assistance Board.

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Joseph H. Maroon  
Director  
Department of Conservation and Recreation

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD**  
**September 19, 2005**

**RESOLUTION**  
**LOCAL PROGRAM, PHASE I**  
**PRINCE GEORGE COUNTY - #53**

**Determination of Consistency– 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 § 9 VAC 10-20-60 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 Prince George County adopted an amended Phase I local program to comply with §§ 9 VAC 10-20-60 1 and 2 on August 10, 2004; and

WHEREAS on December 13, 2004 the Chesapeake Bay Local Assistance Board found Prince George County's Phase I program inconsistent with six recommendations for consistency that were to be addressed by the County and set a compliance date of June 30, 2005; and

WHEREAS the Board of Supervisors for Prince George County adopted amendments to the Phase I program on May 24, 2005; and

WHEREAS staff has reviewed Prince George County's revised Phase I program for consistency with the previous consistency recommendations and the Act and Regulations; and

WHEREAS on August 9, 2005 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 Prince George County's Phase I program consistent with § 10.1-2109 of the Act and §§ 9 VAC 10-20-60 1 and 2 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on September 19, 2005 by the Chesapeake Bay Local Assistance Board.

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Joseph H. Maroon  
Director  
Department of Conservation and Recreation

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD  
September 19, 2005**

**RESOLUTION  
LOCAL PROGRAM, COMPLIANCE EVALUATION  
ACCOMACK COUNTY #35**

**Extension of Compliance Deadline – To December 31, 2005**

WHEREAS § 10.1-2103 of the Chesapeake Bay Preservation Act states that Chesapeake Bay Local Assistance Board shall take administrative and legal steps to ensure compliance by counties, cities and towns with the provisions of the Chesapeake Bay Preservation Act, including the proper enforcement and implementation of, and continual compliance with the Act; and

WHEREAS § 9 VAC 10-20-250 1 b of the Regulations required the Board to develop a compliance evaluation process for evaluating local Bay Act compliance; and

WHEREAS the Chesapeake Bay Local Assistance Board adopted a compliance evaluation process on September 16, 2002 for the purposes of reviewing local Bay Act compliance; and

WHEREAS on June 21, 2004, the Chesapeake Bay Local Assistance Board found that certain aspects of Accomack 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 the County undertake and complete the four recommendations for compliance by June 31, 2005; and

WHEREAS, Accomack County began work to come into full compliance with the Act and its Regulations but due to extenuating circumstances, the County requested an extension to December 31, 2005; and

WHEREAS on August 9, 2005 the Local Program Review Committee for the Southern Area reviewed the circumstances of the County, the comments of the staff, and recommended that the deadline be extended to December 31, 2005; 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 Accomack County to come into compliance with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations from June 30, 2005 to December 31, 2005.

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

1. The County must require buffer revegetation plans in conjunction with permitted land disturbances in the buffer as outlined under 9 VAC 10-20-130 and for any administrative waiver or formal exception projects as outlined under 9 VAC 10-20-150 A and C of the Regulations.
2. The County must develop a database or other appropriate method of tracking BMP installation as well as regular maintenance activities as required under § 9 VAC 10-20-120 3 of the Regulations.
3. The County must implement and track its onsite septic system options for compliance with § 9 VAC 10-20-120 7 a.
4. The County must require the submission of water quality impact assessments in conjunction with any waiver, exception or permitted land disturbance, development or redevelopment request, including any shoreline erosion control project in Chesapeake Bay Preservation Areas.

BE IT FINALLY RESOLVED that failure by Accomack County to meet the above established compliance date of December 31, 2005 will result in the local program becoming noncompliant with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations and subject Accomack County to the compliance provisions as set forth in § 10.1-2103.10 of the Act and § 9 VAC 10-20-250 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on September 19, 2005 by the Chesapeake Bay Local Assistance Board.

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Joseph H. Maroon  
Director  
Department of Conservation and Recreation

### **Local Program Ordinance Reviews**

*City of Poquoson*  
Review of Ordinance Revisions (Phase I)

REVISED: 1/18/2006 1:22:39 PM

Mr. Belo made the following presentation.

On September 20, 2004, the Board found the City of Poquoson's Bay Act ordinance consistent with three recommendations for consistency with the Regulations, all of which were to be addressed by June 30, 2005. The City of Poquoson adopted an amended Bay Act ordinance on June 27, 2005.

Mr. Belo said that staff opinion is that the City's amended ordinance adequately addresses two of the Board's three recommendations. However, the City's ordinance amendment did not address a third recommendation which required the City to delete tree and shrubbery removal language that staff believes is overly broad, not enabled by the Regulations and unnecessary because both the Regulations and the ordinance include language that addresses dead, diseased or dying trees and shrubbery.

As the City has had ample time to address the Board's recommendations, the Staff recommends a relatively immediate deadline of November 30, 2005. The City staff has indicated that they can make the necessary changes by the November deadline by deleting the problematic language in the ordinance and developing related educational materials for the public.

Mr. Belo noted that there was no one present from Poquoson.

MOTION: Ms. Roberts moved that the Chesapeake Bay Local Assistance Board find the City of Poquoson's revised Phase I program consistent with § 10.1-2109 of the Act and §§ 9 VAC 10-20-60 1 and 2 of the Regulations, subject to the condition that the City undertake and complete the one recommendation included in the staff report no later than November 30, 2005

SECOND: Ms. Harper

DISCUSSION: None

VOTE: Motion carried unanimously

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD**  
**September 19, 2005**

**RESOLUTION**  
**LOCAL PROGRAM, PHASE I**  
**CITY OF POQUOSON - #50**

**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 § 9 VAC10-20-60 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 the City of Poquoson adopted a local Phase I program on November 15, 1991; and

WHEREAS on February 25, 1993, the City'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 on September 20, 2004, the City's Phase I program was found consistent with one condition by the Chesapeake Bay Local Assistance Board, with a compliance deadline of June 30, 2005; and

WHEREAS the City of Poquoson adopted a revised local program to comply with §§ 9 VAC 10-20-60 1 and 2 of the Regulations on June 27, 2005; 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 the City of Poquoson's revised program for consistency with the Act and Regulations; and

WHEREAS on August 9, 2005 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 the City of Poquoson's revised Phase I program consistent with § 10.1-2109 of the Act and §§ 9 VAC 10-20-60 1 and 2 of the Regulations subject to the following condition that the City undertake and complete the following recommendations no later than November 30, 2005:

1. Delete Section 11.4-12.d.(1).e of the City's ordinance.

BE IT FINALLY RESOLVED that failure by the City of Poquoson to meet the above established compliance date of November 30, 2005 will result in the local program becoming inconsistent with § 10.1-2109 of the Act and §§ 9 VAC10-20-60.1 and 2 of the Regulations and subject the City of Poquoson to the compliance provisions as set forth in § 10.1-2103 10 of the Act and § 9 VAC 10-20-250 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on September 19, 2005 by the Chesapeake Bay Local Assistance Board.

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Joseph Maroon  
Director  
Department of Conservation and Recreation

*Town of West Point*  
Map Revisions (Phase I)

Ms. Miller gave the presentation for the Town of West Point.

On September 20, 2004 the Board found the Town's revised Phase I program consistent, subject to the condition that the Town revise the CBPA Map to be consistent with the Regulations and established December 31, 2004 as the deadline.

The Town adopted a revised map on February 28, 2005, but this map included significant errors and omissions. The Town requested and on June 20<sup>th</sup>, received a deadline extension to June 30, 2005 to correct the CBPA Map. The Town Council was to adopt the revised map on July 25<sup>th</sup>, but did not do so. The Board's June 20<sup>th</sup> resolution specifically notes that failure by the town to address the consistency item by the extended deadline will result in the Town's program becoming inconsistent.

At its meeting of August 9, 2005, NARC recommended that the Town of West Point be found inconsistent with the Act and the Regulations and further be given a final compliance deadline of September 30, 2005 to complete the recommendation contained in the staff report. The town has begun the process of adopting the corrected map, but adoption is not expected until November at the earliest.

Josh Bateman, West Point Director of Planning and Community Development said that the Planning Commission will make a recommendation at their November meeting. He said that by the time the Town Council meets, the map should be acceptable to DCR.

Mr. Davis clarified that DCR has approved the map and that it was a matter of final town approval.

MOTION: Mr. Sheffield moved that the Chesapeake Bay Local Assistance Board find the Town of West Point's amended Phase I program inconsistent with § 10.1-2109 of the Act and §§ 9 VAC 10-20-60 1 and 2 of the Regulations, and further that the Town undertake and complete the one recommendation no later than September 30, 2005.

SECOND: Mr. Duncanson

DISCUSSION: None

VOTE: Motion carried unanimously

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD  
September 19, 2005**

**RESOLUTION  
LOCAL PROGRAM, PHASE I  
TOWN OF WEST POINT - #44**

**Determination of Consistency– Inconsistent**

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 § 9 VAC 10-20-60 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 the Town of West Point adopted an amended Phase I local program to comply with §§ 9 VAC 10-20-60 1 and 2 on June 28, 2004; and

WHEREAS on September 20, 2004 the Chesapeake Bay Local Assistance Board found the Town of West Point's Phase I program consistent with one recommendation for consistency that was to be addressed by the Town and set a compliance date of December 31, 2004; and

WHEREAS the Town Council for the Town of West Point adopted amendments to a Phase I program on February 28, 2005, but failed to fully address the consistency condition; and

WHEREAS on June 20, 2005 the Chesapeake Bay Local Assistance Board granted a deadline extension from December 31, 2004 to June 30, 2005; and

WHEREAS the Town Council for the Town of West Point failed to adopt an amended CBPA Overlay District map by the Board established deadline of June 30, 2005; and

WHEREAS on August 9, 2005 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 the Town of West Point's Phase I program to be inconsistent with § 10.1-2109 of the Act and §§ 9 VAC 10-20-60 1 and 2 of the Regulations, and further that the Town undertake and complete the following recommendation no later than September 30, 2005.

1. Amend the CBPA Overlay District Map to meet the requirements of the Regulations, Part III Chesapeake Bay Preservation Area Designation Criteria, no later than September 30, 2005.

BE IT FINALLY RESOLVED that failure by the Town of West Point to meet the above established compliance date of September 30, 2005 will result in the local program becoming subject to the compliance provisions as set forth in § 10.1-2103 10 of the Act and § 9 VAC 10-20-250 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that the Chesapeake Bay Local Assistance Board adopted this resolution in open session on September 19, 2005.

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Joseph H. Maroon  
Director  
Department of Conservation and Recreation

### **Local Program Compliance Evaluations**

Mr. Davis said that, with the exception of the matters concerning Urbanna and Warsaw, the Local Program Compliance Evaluation actions could be taken as a group. He noted that the NARC and SARC had respectively recommended approval for the following programs:

*Gloucester County*  
Review of previous condition

*James City County*  
Initial Compliance Evaluation

*City of Williamsburg*  
Initial Compliance Evaluation

*Town of Belle Haven*  
Initial Compliance Evaluation

*Town of Hallwood*  
Initial Compliance Evaluation

*Town of Onancock*  
Initial Compliance Evaluation

Mr. Davis recognized the local officials from the localities with programs under consideration.

Mr. Belo said that the programs for James City County and the City of Williamsburg were model programs.

Darryl Cook of James City said that he appreciated the process and the findings. He said that the James City County program is the result of teamwork at the local level in the development community and the environmental community. He said that the County felt very well supported by the DCR staff.

Carolyn Murphy of Williamsburg thanked the Board for the program. She said that since 1990 the City has taken the view that the Chesapeake Bay Act is an effective tool for localities. She thanked the Board and staff for their assistance.

Mr. Davis requested that a letter of commendation be drafted for James City County and the City of Williamsburg.

Mr. Bill Whitley of Gloucester County thanked the Board for their consideration. He recognized Ron Peaks for his coordination of the program. He said that the County sent out 14,000 letters of notice and has received a wide range of responses.

MOTION: Mr. Duncanson move that the Chesapeake Bay Local Assistance Board find that the implementation of the Phase I program for the following localities be found compliant with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations:

Gloucester County  
James City County  
City of Williamsburg  
Town of Belle Haven  
Town of Hallwood  
Town of Onancock

SECOND: Ms. Roberts

DISCUSSION: None

VOTE: Motion carried unanimously

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD**  
**September 19, 2005**

**RESOLUTION**  
**LOCAL PROGRAM COMPLIANCE EVALUATION**  
**GLOUCESTER COUNTY - #38**

**Local Compliance Evaluation - Compliant**

WHEREAS § 10.1-2103 of the Chesapeake Bay Preservation Act states that Chesapeake Bay Local Assistance Board shall take administrative and legal steps to ensure compliance by counties, cities and towns with the provisions of the Chesapeake Bay Preservation Act, including the proper enforcement and implementation of, and continual compliance with the Act; and

WHEREAS § 9 VAC 10-20-250 1 b of the Regulations required the Board to develop a compliance evaluation process for evaluating local Bay Act compliance; and

WHEREAS the Chesapeake Bay Local Assistance Board adopted a compliance evaluation process on September 16, 2002 for the purposes of reviewing local Bay Act compliance; and

WHEREAS on September 15, 2003, the Chesapeake Bay Local Assistance Board found that implementation of certain aspects of the County's Phase I program did not fully comply with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations and set a compliance deadline of September 30, 2004 for the County to address the five recommendations; and

WHEREAS on December 13, 2004, the Chesapeake Bay Local Assistance Board found that the County had addressed four of the five compliance recommendations, and established June 30, 2005 as the deadline for the County to address the one remaining compliance recommendation; and

WHEREAS on August 9, 2005 the Local Program Review Committee for the Northern Area considered and evaluated the information contained in the compliance evaluation 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 the implementation of Gloucester County's Phase I program to be in compliance with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on September 19, 2005 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon  
Director  
Department of Conservation and Recreation

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD**  
**September 19, 2005**

**RESOLUTION**  
**LOCAL PROGRAM COMPLIANCE EVALUATION**  
**JAMES CITY COUNTY - #1**

**Local Compliance Evaluation - Compliant**

WHEREAS § 10.1-2103 of the Chesapeake Bay Preservation Act states that Chesapeake Bay Local Assistance Board shall take administrative and legal steps to ensure compliance by counties, cities and towns with the provisions of the Chesapeake Bay Preservation Act, including the proper enforcement and implementation of, and continual compliance with the Act; and

WHEREAS § 9 VAC 10-20-250 1 b of the Regulations required the Board to develop a compliance evaluation process for evaluating local Bay Act compliance; and

WHEREAS the Chesapeake Bay Local Assistance Board adopted a compliance evaluation process on September 16, 2002 for the purposes of reviewing local Bay Act compliance; and

WHEREAS in the Spring of 2005, the Division of Chesapeake Bay Local Assistance, a Division of the Department of Conservation and Recreation, conducted a compliance evaluation of the James City County's Phase I program in accordance with the adopted compliance evaluation process; and

WHEREAS on August 9, 2005 the Local Program Review Committee for the Southern Area considered and evaluated the information contained in the compliance evaluation 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 the implementation of the James City County's Phase I program is compliant with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on September 19, 2005 by the Chesapeake Bay Local Assistance Board.

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Joseph H. Maroon  
Director  
Department of Conservation and Recreation

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD**  
**September 19, 2005**

**RESOLUTION**  
**LOCAL PROGRAM COMPLIANCE EVALUATION**  
**CITY OF WILLIAMSBURG - #5**

**Local Compliance Evaluation - Compliant**

WHEREAS § 10.1-2103 of the Chesapeake Bay Preservation Act states that Chesapeake Bay Local Assistance Board shall take administrative and legal steps to ensure compliance by counties, cities and towns with the provisions of the Chesapeake Bay Preservation Act, including the proper enforcement and implementation of, and continual compliance with the Act; and

WHEREAS § 9 VAC 10-20-250 1 b of the Regulations required the Board to develop a compliance evaluation process for evaluating local Bay Act compliance; and

WHEREAS the Chesapeake Bay Local Assistance Board adopted a compliance evaluation process on September 16, 2002 for the purposes of reviewing local Bay Act compliance; and

WHEREAS in the Spring of 2005, the Division of Chesapeake Bay Local Assistance, a Division of the Department of Conservation and Recreation, conducted a compliance evaluation of the City of Williamsburg's Phase I program in accordance with the adopted compliance evaluation process; and

WHEREAS on August 9, 2005 the Local Program Review Committee for the Southern Area considered and evaluated the information contained in the compliance evaluation 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 the implementation of the City of Williamsburg's Phase I program is compliant with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on September 19, 2005 by the Chesapeake Bay Local Assistance Board.

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Joseph H. Maroon  
Director  
Department of Conservation and Recreation

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD**  
**September 19, 2005**

**RESOLUTION**  
**LOCAL PROGRAM COMPLIANCE EVALUATION**  
**TOWN OF BELLE HAVEN - #68**

**Local Compliance Evaluation - Compliant**

WHEREAS § 10.1-2103 of the Chesapeake Bay Preservation Act states that Chesapeake Bay Local Assistance Board shall take administrative and legal steps to ensure compliance by counties, cities and towns with the provisions of the Chesapeake Bay Preservation Act, including the proper enforcement and implementation of, and continual compliance with the Act; and

WHEREAS § 9 VAC 10-20-250 1 b of the Regulations required the Board to develop a compliance evaluation process for evaluating local Bay Act compliance; and

WHEREAS the Chesapeake Bay Local Assistance Board adopted a compliance evaluation process on September 16, 2002 for the purposes of reviewing local Bay Act compliance; and

WHEREAS in Spring of 2005, the Chesapeake Bay Local Assistance Department conducted a compliance evaluation of the Town of Belle Haven's Phase I program in accordance with the adopted compliance evaluation process; and

WHEREAS on August 9, 2005 the Local Program Review Committee for the Southern Area considered and evaluated the information contained in the compliance evaluation 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 the implementation of the Town of Belle Haven's Phase I program to be compliant with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on September 19, 2005 by the Chesapeake Bay Local Assistance Board.

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Joseph H. Maroon  
Director  
Department of Conservation and Recreation

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD  
September 19, 2005**

**RESOLUTION  
LOCAL PROGRAM COMPLIANCE EVALUATION  
TOWN OF ONANCOCK - #69**

**Local Compliance Evaluation - Complaint**

WHEREAS § 10.1-2103 of the Chesapeake Bay Preservation Act states that Chesapeake Bay Local Assistance Board shall take administrative and legal steps to ensure compliance by counties, cities and towns with the provisions of the Chesapeake Bay Preservation Act, including the proper enforcement and implementation of, and continual compliance with the Act; and

WHEREAS § 9 VAC 10-20-250 1 b of the Regulations required the Board to develop a compliance evaluation process for evaluating local Bay Act compliance; and

WHEREAS the Chesapeake Bay Local Assistance Board adopted a compliance evaluation process on September 16, 2002 for the purposes of reviewing local Bay Act compliance; and

WHEREAS in Spring of 2005, the Chesapeake Bay Local Assistance Department conducted a compliance evaluation of the Town of Onancock' Phase I program in accordance with the adopted compliance evaluation process; and

WHEREAS on August 9, 2005 the Local Program Review Committee for the Southern Area considered and evaluated the information contained in the compliance evaluation 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 the implementation of the Town of Onancock's Phase I program to be compliant with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on September 19, 2005 by the Chesapeake Bay Local Assistance Board.

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Joseph H. Maroon  
Director  
Department of Conservation and Recreation

*Town of Urbanna*  
Initial Compliance Evaluation

Ms. Miller gave the report for the Town of Urbanna. No one was present from the Town.

Beginning in December 2004, the Department conducted a compliance evaluation of the Town of Urbanna's implementation of it's Phase I program, meeting with Town staff on a number of occasions, completing the required checklists, site plan file reviews and site

visits. Six projects were reviewed; including new single-family lot development; residential and waterfront commercial redevelopment; water dependent facility; new commercial; and an RPA exception request.

Urbanna is a small colonial-era town on the Rappahanock River with little developable land left. The Town has a mixture of residential, commercial, waterfront and marina oriented uses. While the evaluation revealed that the Town is conscientious in its implementation of its Bay Act program, there are 3 recommendations that must be addressed for compliance. The Town must ensure that all development plans meet stormwater management requirements in the Regulations; track BMP installation and maintenance activities, and record the required BMP maintenance agreements; and, document submission of all required WQIAs. At its meeting of August 9, 2005, the NARC recommended that certain aspects of the Town's implementation of its Phase I program do not fully comply and further that Urbanna undertake and complete the three recommendations in the staff report no later than September 30, 2006.

**MOTION:** Ms. Roberts moved that the Chesapeake Bay Local Assistance Board find that the implementation of certain aspects of the Town of Urbanna'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, directs the Town to undertake and complete the three recommendations contained in this staff report no later than September 30, 2006.

**SECOND:** Mr. Sheffield

**DISCUSSION:** Mr. Davis requested that staff provide an update at the June 2006 Board meeting.

**VOTE:** By unanimous vote, the motion carried as amended.

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD  
September 19, 2005**

**RESOLUTION  
LOCAL PROGRAM COMPLIANCE EVALUATION  
TOWN OF URBANNA - #58**

**Local Compliance Evaluation - Conditional**

WHEREAS § 10.1-2103 of the Chesapeake Bay Preservation Act states that Chesapeake Bay Local Assistance Board shall take administrative and legal steps to ensure compliance by counties, cities and towns with the provisions of the Chesapeake Bay

Preservation Act, including the proper enforcement and implementation of, and continual compliance with the Act; and

WHEREAS § 9 VAC 10-20-250 1 b of the Regulations required the Board to develop a compliance evaluation process for evaluating local Bay Act compliance; and

WHEREAS the Chesapeake Bay Local Assistance Board adopted a compliance evaluation process on September 16, 2002 for the purposes of reviewing local Bay Act compliance; and

WHEREAS in June 2005, the Chesapeake Bay Local Assistance Department conducted a compliance evaluation of the Town of Urbanna's Phase I program in accordance with the adopted compliance evaluation process; and

WHEREAS on August 9, 2005 the Local Program Review Committee for the Northern Area considered and evaluated the information contained in the compliance evaluation 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 that the implementation of certain aspects of the Town of Urbanna'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, directs the Town to undertake and complete the three recommendations contained in this staff report no later than September 30, 2006.

1. For consistency with § 9 VAC 10-20-120 8 of the Regulations, the Town must perform or secure assistance in performing application reviews and inspections of development activities to ensure compliance with the stormwater management requirements in the General Performance Criteria.
2. The Town should develop a database or other appropriate method of tracking BMP installation as well as regular maintenance activities as required under § 9 VAC 10-20-120 3 of the Regulations. As part of this requirement, the Town must also develop a standard BMP maintenance agreement that specifies inspection and maintenance procedures, and enforce the requirement to execute and record the agreements.
3. In accordance with § 9 VAC 10-20-130 6 of the Regulations the Town must document submission of a WQIA for any proposed land disturbance, development

or redevelopment within RPAs, and for development in RMAs when required by the Zoning Administrator.

BE IT FINALLY RESOLVED that failure by the Town of Urbanna to meet the above established compliance date of September 30, 2006 will result in the local program becoming noncompliant with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations and subject the Town of Urbanna to the compliance provisions as set forth in § 10.1-2103 10 of the Act and § 9 VAC 10-20-250 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on September 19, 2005 by the Chesapeake Bay Local Assistance Board.

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Joseph H. Maroon  
Director  
Department of Conservation and Recreation

*Town of Warsaw*  
Initial Compliance Evaluation

Ms. Baldwin gave the presentation for the Town of Warsaw. She introduced Chris Jett from Richmond County. Richmond County implements a significant portion of the Town of Warsaw's program.

The Department initiated the compliance evaluation in March 2005. A first meeting was held in April with the Town Manager of Warsaw, Richmond County Planning Director, and Department staff in attendance. A second meeting was held in June 2004, to review site plans and visit a few of the sites selected from the plan review. With the exception of one multi-family apartment unit, all other plans were for single-family home construction.

While the initial compliance evaluation staff report submitted to the NARC for consideration did not contain any recommendations but only suggestions, after discussions during the August meeting, it was felt that some of the suggestions would be more appropriate as recommendations especially in terms of maintaining consistency between suggestions and recommendations among compliance evaluations of other localities. As a result, there are now two recommendations that the Town of Warsaw must address.

The first is that the Town must document that all stormwater management requirements are being met. While the plans that were reviewed were in compliance with stormwater

management requirements, documentation showing that compliance was met was not indicated anywhere in the file.

The second recommendation is for the Town of Warsaw to execute some type of formal agreement with Richmond County or any other designated party specifying the responsibilities of each regarding the administration and enforcement of the Town's Bay Act ordinance. Such an agreement will help to ensure continued and proper implementation of Warsaw's Bay Act overlay district.

Ms. Baldwin said that staff recommended that the Board find that certain aspects of the Town of Warsaw's Phase I do not fully comply with the Act and the Regulations and require the Town to address these recommendations by September 30, 2006.

Chris Jett from Richmond County said that the County implements the Stormwater and Erosion and Sediment Control programs that cover the Town of Warsaw. He said that neither the Town nor County had a problem with the Stormwater recommendation.

Mr. Jett said that the County does treat multi-family residential units the same as commercial units. He said the County and Town need to consider how they treat single family residential units.

Mr. Jett said the County and Town would appreciate assistance from DCR staff regarding the appropriate documentation.

**MOTION:** Mr. Sheffield moved that the Chesapeake Bay Local Assistance Board find that certain aspects of the Town of Warsaw's Phase I program implementation do not fully comply with §§ 10.1-2109 and 10.1-2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations, and that the Town of Warsaw undertake and complete the two recommendations in the staff report no later than September 30, 2006 and further that staff provide an update at the second regular Board meeting in 2006.

**SECOND:** Ms. Roberts

**DISCUSSION:** None

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

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD  
September 19, 2005**

**RESOLUTION**

**LOCAL PROGRAM COMPLIANCE EVALUATION**  
**TOWN OF WARSAW - #02**

**Local Compliance Evaluation - Conditional**

WHEREAS § 10.1-2103 of the Chesapeake Bay Preservation Act states that Chesapeake Bay Local Assistance Board shall take administrative and legal steps to ensure compliance by counties, cities and towns with the provisions of the Chesapeake Bay Preservation Act, including the proper enforcement and implementation of, and continual compliance with the Act; and

WHEREAS § 9 VAC 10-20-250 1 b of the Regulations required the Board to develop a compliance evaluation process for evaluating local Bay Act compliance; and

WHEREAS the Chesapeake Bay Local Assistance Board adopted a compliance evaluation process on September 16, 2002 for the purposes of reviewing local Bay Act compliance; and

WHEREAS in the summer of 2005, the Chesapeake Bay Local Assistance Department conducted a compliance evaluation of the Town of Warsaw's Phase I program in accordance with the adopted compliance evaluation process; and

WHEREAS on August 9, 2005, the Local Program Review Committee for the Northern Area considered and evaluated the information contained in the compliance evaluation 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 that the implementation of certain aspects of the Town of Warsaw's Phase I program do not fully comply with §§ 10.1-2109 and 2111 of the Act and §§ 9VAC 10-20-231 and 250 of the Regulations, and in order to correct these deficiencies, directs the Town of Warsaw to undertake and complete the two recommendations contained in this staff report no later than September 30, 2006.

1. To ensure consistency with Section 9 VAC 10-20-120 8, the Town must document that all stormwater management requirements are being met, including stormwater management calculations and submittal of stormwater management plan.
2. To ensure consistent and proper implementation of its Bay Act program, most notably Section 9 VAC 10-20-120 8 of the Regulations, the Town of Warsaw

should execute some type of formal agreement with Richmond County or any other designated party specifying the responsibilities of each party regarding the administration and enforcement of the Town's Bay Act ordinance.

BE IT FINALLY RESOLVED that failure by the Town of Warsaw to meet the above established compliance date of September 30, 2006 will result in the local program becoming noncompliant with §§ 10.1-2109 and 2111 of the Act and §§ 9VAC 10-20-231 and 250 of the Regulations and subject the Town of Warsaw to the compliance provisions as set forth in § 10.1-2103 10 of the Act and § 9 VAC10-20-250 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on September 19, 2005 by the Chesapeake Bay Local Assistance Board.

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Joseph H. Maroon  
Director  
Department of Conservation and Recreation

**Informal Fact Finding: City of Petersburg**

Ms. Little gave the report for the City of Petersburg. She said that the intent had been to request that the Board approve an informal fact finding. However, the City adopted their revised program in early September.

Mr. Davis asked if staff had received the appropriate documentation.

Ms. Little said that staff has reviewed the ordinance, but that DCR has not yet received the required certified copy.

MOTION: Ms. Roberts moved that the Chesapeake Bay Local Assistance Board table any action on the City of Petersburg program until the December meetings.

SECOND: Ms. Harper

DISCUSSION: None

VOTE: Motion carried unanimously

## **Policy Committee Business**

### *Guidance Document:*

#### *Resource Protection Area: Buffer Area Encroachments*

Ms. Salvati presented a revised version of the “Guidance on the Chesapeake Bay Preservation Area Designation and Management Regulations.” A copy of this document is available from DCR.

Ms. Salvati noted that this issue had been discussed at previous meeting of the Policy Committee and that the Committee and later the Board had recommended that voluntary stream restoration and wetland restoration projects be categorized as water dependent activities.

Mr. Sheffield asked if there was any discussion of bathhouses.

Ms. Salvati said that was not contained in this document, but that the issue was on the agenda for discussion at the next meeting of the Policy Committee.

MOTION: Mr. Sheffield moved that the Chesapeake Bay Local Assistance Board approve the revised Guidance Document entitled “ Resource Protection Areas: Permitted Development Activities” as presented by DCR staff.

SECOND: Mr. Duncanson

DISCUSSION: None

VOTE: Motion carried unanimously

### *Presentation*

#### *Residential Nonconforming Lots/Exceptions Issues*

Ms. Little gave the following presentation:

### **Residential Nonconforming Lots Exceptions Issues**

#### Issues: Concerns expressed by local governments

- The number of anticipated exceptions is overly burdensome for small structures that may not have significant impacts on water quality.
- The formal exception process may hamper redevelopment efforts.
- The previously developed areas existing buffer is not fully functional.

- The home is only 25, 35, 45 feet from the water currently.
- Other stormwater management programs provide enough water quality protection in urban areas.
- Growth should be targeted towards urban areas and away from rural areas.
- Exceptions Criteria are too stringent for accessory structures.

#### Exceptions Criteria

- Minimum necessary to afford relief
- Granting Exception will not confer special privileges denied to others
- Exception is in harmony with purpose and intent of Regulations
- Request is not based on self-created or self imposed conditions
- Reasonable and appropriate conditions are imposed to prevent water quality degradation
- Based on requirements to be met for an exception approval, accessory structures by their nature do not usually meet the test
- Many local governments do not allow applicants to put forth exception requests for accessory structures alone

#### Widespread Problem?

- There has been no evidence to document whether or not there is an undue burden on staff at the local level
- Since the implementation of the revised local programs very few localities have continued to express concerns
- Different localities with similar development history and redevelopment pressures express different views on issues

#### Potential Solutions

##### *Proposed Regulatory Changes:*

- Develop a Buffer Exemption Area program
- Allow administrative review and approvals for principle and accessory structure encroachments on Pre-Bay Act lots

##### *Current Regulations:*

- Localities conduct exceptions review and approval of “general category” of pre-Bay Act lot encroachments for accessory structures (standard sized structures with standard mitigation requirement)

#### Buffer Exemption Areas

- BEA would be added to address the specific issues related to pre-Bay Act urbanized, residential areas
- Specific conditions would be required for designation of BEAs

- Specific mitigation measures would be required for residential BEAs

#### Administrative Reviews

- Allow administrative review and approval of encroachments into the seaward 50-feet of the buffer area through the “permitted encroachments into the buffer area” (10-20-130 4) for the construction or expansion of principal and accessory structures on developed pre-Bay Act lots
- Allow an administrative review and approval process through a new exceptions process (10-20-150) for the placement of accessory structures in the RPA on developed pre-Bay Act lots.

#### “Blanket Exception Approach”

- Local Government would design a process to give a “blanket approval” for exceptions on a particular category of pre-Bay Lots
- Notice and formal hearing requirements would be met
- Standard encroachments would be approved
- Standard mitigation would be required

#### Purpose

- Reduce the number of exception requests processed individually for accessory structures
- Create mitigation that is reliable, maintainable and consistent within similar areas
- Streamline the process/reduce processing costs

#### Process

- Designate areas (neighborhoods, sub-watersheds, etc)  
9 VAC 10-20-150 C 2.
- Public Notice of designated areas  
9 VAC 10-20-150 C 2.
- Conduct Public Hearing by local body  
9 VAC 10-20-150 C 2 a.
- Approve “blanket exceptions” based on five findings  
9 VAC 10-20-150 C 1.

#### Criteria for Approvals

- Pre-89 Lots only
- Maximum threshold (size of structures) for accessory structures
- Apply standard mitigation
- Minimum encroachment into buffer area

Conclusion

- No need for regulatory change
- No action necessary by the Board for concept
- Board action will be taken on individual programs
- Implementation evaluated through compliance evaluation process

Mr. Davis asked about the inclusion of the post-1989 “tweener” lots.

Ms. Little said that staff would give consideration to those lots.

MOTION: Mr. Sheffield moved that the Chesapeake Bay Local Assistance Board approve in concept the Residential Nonconforming lots Exceptions Issues as presented by staff.

SECOND: Mr. Duncanson

DISCUSSION: None

VOTE: Motion carried unanimously

**Closed Meeting: Consultation with Council Regarding legal matters.**

MOTION: Mr. Sheffield moved that the Board convene a closed meeting pursuant to § 2.2-3711(A)(7) of the *Code of Virginia* for the purpose of consultation with legal counsel and staff regarding specific legal matters requiring the provision of legal advice, namely the pending litigation against the Board by the City of Hampton, styled *City of Hampton v. Commonwealth of Virginia ex rel. Chesapeake Bay Local Assistance Board*, Circuit Court of Hampton, Chancery No. 65CH05000731-00.

This closed meeting will be attended only by members of the Board. However, pursuant to § 2.2-3712(F) of the *Code*, the Board requests counsel, The Director of the Department of Conservation and Recreation (DCR), the Director of the Division of Chesapeake Bay Local Assistance of DCR and the following staff, C. Scott Crafton, David C. Dowling; Martha Little and Brad Belo to attend because it believes that their presence will reasonably aid the Board in its consideration of the topic that is subject of this closed meeting.

SECOND: Ms. Roberts

ROLL CALL VOTE: *Aye*

Donald W. Davis  
William E. Duncanson  
Beverly D. Harper  
Gale A. Roberts  
Michael V. Rodriguez  
Walter J. Sheffield

*Nay*

None

Motion carried

**Certification after voting to go back into Open Meeting**

MOTION: Ms. Roberts moved the following certification:

WHEREAS, the Board has convened a closed meeting on September 19, 2005 pursuant to and affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

WHEREAS, § 2.2-3712 (D) of the *Code* requires a certification by the Board that such closed meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, THE Chesapeake Bay Local Assistance Board hereby certifies that, to the best of each member's knowledge, only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification applies, and only such public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Board.

SECOND: Mr. Duncanson

ROLL CALL VOTE: *Aye*

Donald W. Davis

William E. Duncanson  
Beverly D. Harper  
Gale A. Roberts  
Michael V. Rodriguez  
Walter J. Sheffield

*Nay*

None

Motion carried

### **Election of Officers**

Mr. Maroon noted that, in keeping with the Bylaws, it was necessary for the Board to elect officers at this time.

Mr. Sheffield nominated Mr. Donald W. Davis to serve as Chairman.

There were no other nominations and Mr. Maroon declared the nominations closed. Mr. Davis was confirmed by acclamation.

Mr. Davis opened nominations for Vice Chairman.

Mr. Duncanson nominated Mr. Walter J. Sheffield to serve as Vice Chairman.

There were no other nominations and Mr. Davis declared the nominations closed. Mr. Sheffield was confirmed by acclamation.

### **Public Comment**

There was no further public comment.

### **Other Business**

Mr. Maroon gave an update on the issue of concern to the City of Hampton.

Mr. Maroon said that what has transpired has been an appeal by the City of the decision that the Board made at their last meeting relative to the City's program.

The City filed a notice of appeal, and later issued a petition of appeal to the Circuit Court of Hampton. There was a joint order submitted on behalf of DCR by the Attorney General. Hampton then stayed the pending suit for the time being.

The decision now is not technically before the Board but is in the Court. There are ongoing settlement negotiations with the Attorney General and staff.

We were notified of an informal opinion that had been issued by one of the Attorney General's assistants to Senator Marty Williams of Hampton.

It is an informal opinion and not binding on the Department or the Board.

Mr. Maroon said that DCR believes that negotiations are going well.

Mr. Davis said that there would be no further discussion of the issue at this time.

Mr. Davis noted that staff was suggesting changing the date of the December meeting from Monday, December 5<sup>th</sup> to Monday, December 12<sup>th</sup>.

Mr. Maroon noted that the December 5<sup>th</sup> date presents a conflict with the meeting of the Virginia Association of Soil and Water Conservation District Directors.

Mr. Davis suggested that future meetings schedules take such conflicts into consideration.

MOTION: Ms. Harper moved that the Chesapeake Bay Local Assistance Board change the date of their December meeting from Monday, December 5<sup>th</sup> to Monday, December 12<sup>th</sup>. A location will be determined at a later date.

SECOND: Mr. Duncanson

DISCUSSION: None

VOTE: Motion carried unanimously

### **Adjourn**

MOTION: Mr. Duncanson moved that the meeting be adjourned.

SECOND: Ms. Harper

VOTE: Motion carried unanimously and the meeting was adjourned.

Respectfully submitted,

REVISED: 1/18/2006 1:22:39 PM

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Donald W. Davis  
Chairman

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Joseph H. Maroon  
Director