

**Chesapeake Bay Local Assistance Board
Monday, September 20, 2004 – 10:00 a.m.
James Monroe Building
Conference Room C, Lobby Level
101 N. 14th Street
Richmond, Virginia**

Chesapeake Bay Local Assistance Board Members Present

Donald W. Davis, Chair
Sue H. Fitz-Hugh
Gale A. Roberts

David L. Bulova
Beverly D. Harper
Walter J. Sheffield

Chesapeake Bay Local Assistance Board Members Not Present

William E. Duncanson
Michael V. Rodriguez

David C. Froggatt, Jr.

Staff

Joseph H. Maroon, Director
C. Scott Crafton, Director, Division of Chesapeake Bay Local Assistance
David C. Dowling, Policy, Planning and Budget Director
Martha Little, Chief of Environmental Planning
Ryan Link, Principal Environmental Planner
Heather Mackey, Principal Environmental Planner
Beth Baldwin, Senior Environmental Planner
Brad Belo, Senior Environmental Planner
Nancy Miller, Senior Environmental Planner
Michael R. Fletcher, Director of Development
Carolyn Elliott, Administrative Assistant

Others

Roger Chaffe, Office of the Attorney General
Kim Hosen, Prince William Conservation Alliance
Joe Lerch, Chesapeake Bay Foundation
Jody Hollingsworth, Director of Planning and Community Development, City of Poquoson
William T. Hopkins, Planning and Zoning Administrator, Town of Smithfield

Call to Order

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

Mr. Davis welcomed the new members to the Board.

Consideration of the Minutes

MOTION: Mr. Sheffield moved that the minutes of the June 21, 2004 meeting of the Chesapeake Bay Local Assistance Board be approved as submitted.

SECOND: Mr. Davis.

DISCUSSION: None.

VOTE: Motion carried unanimously.

MOTION: Mr. Sheffield moved that the minutes of the August 10, 2004 meeting of the Northern Area Review Committee be approved as submitted.

SECOND: Mr. Bulova.

DISCUSSION: None.

VOTE: Motion carried unanimously.

MOTION: Ms. Fitz-Hugh moved that the minutes of the August 10, 2004 meeting of the Southern Area Review Committee be approved as submitted.

SECOND: Ms. Roberts.

DISCUSSION: None.

VOTE: Motion carried unanimously.

Director's Report

Mr. Maroon gave the Director's report for the Department of Conservation and Recreation.

He noted that this was the first meeting of the Board under the Department of Conservation and Recreation since the July 1, merger.

Mr. Maroon noted that he and Jack Frye, Soil and Water Conservation Division Director had the opportunity to speak to the Senate Finance Committee concerning nonpoint source pollution issues. Additionally, DCR is working with the Joint Legislative Audit and Review Committee (JLARC) on their comprehensive review and reporting on the Commonwealth's nutrient management programs that is due out in November.

DCR is currently in the regulatory review process for nutrient management regulations. DCR is also the lead agency for tributary strategies.

Mr. Maroon gave an overview of the Department. A copy of this presentation is available from the DCR offices.

Mr. Crafton presented a review of the Chesapeake Bay Preservation Act Program.

Training

Mr. Roger Chaffe, Office of the Attorney General provided a briefing for members concerning the Freedom of Information Act (FOIA) and the Conflict of Interest Act.

Mr. Bulova noted that his company currently is working with the City of Poquoson. It was deemed that this would not be a conflict of interest in Board matters and that Mr. Bulova could vote as appropriate.

Consent Agenda

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

Town of Melfa, Phase I Revisions
Town of Bloxom, Phase I Revisions
Town of Belle Haven, Phase I Revisions
Surry County, Phase I Revisions
Town of Haymarket, Phase I Revisions
Town of Urbanna, Phase I Revisions

SECOND: Mr. Bulova

DISCUSSION: None

VOTE: Motion carried unanimously.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

September 20, 2004

RESOLUTION

LOCAL PROGRAM, PHASE I

TOWN OF MELFA #74

Modification – Consistent

WHEREAS § 10.1-2109 of the Chesapeake Bay Preservation Act states that counties, cities, and towns in Tidewater Virginia shall designate Chesapeake Bay Preservation Areas and incorporate protection of the quality of state waters in Chesapeake Bay Preservation Areas into local plans and ordinances; and

WHEREAS § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1(a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS the Town of Melfa adopted a local Phase I program on March 21, 1994, and

WHEREAS on June 2, 1994, the Town's Phase I program was found consistent by the Chesapeake Bay Local Assistance Board, and

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

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

WHEREAS the Town of Melfa adopted a revised local program to comply with §§ 9VAC10-20-60 1 and 2 of the Regulations on January 21, 2004; 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 Town of Melfa's revised program for consistency with the Act and Regulations; and

WHEREAS on August 10, 2004 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 Town of Melfa's revised Phase I program consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on September 20, 2004 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
September 20, 2004
RESOLUTION
LOCAL PROGRAM, PHASE I
TOWN OF BLOXOM #47
Modification – Consistent

WHEREAS § 10.1-2109 of the Chesapeake Bay Preservation Act states that counties, cities, and towns in Tidewater Virginia shall designate Chesapeake Bay Preservation Areas and incorporate protection of the quality of state waters in Chesapeake Bay Preservation Areas into local plans and ordinances; and

WHEREAS § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1(a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS the Town of Bloxom adopted a local Phase I program on December 23, 1992, and

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

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

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

WHEREAS on March 22, 2004, the Chesapeake Bay Local Assistance Board found the Town of Bloxom to be inconsistent with § 10.1-2109 of the Act and § 9VAC10-20-60.1 and 2 of the Regulations and established May 15, 2004 as the consistency deadline, and

WHEREAS the Town of Bloxom adopted a revised local program to comply with §§ 9VAC10-20-60 1 and 2 of the Regulations on April 22, 2004; 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 Town of Bloxom's revised program for consistency with the Act and Regulations; and

WHEREAS on August 10, 2004 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 Town of Bloxom's revised Phase I program consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on September 20, 2004 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

September 20, 2004

RESOLUTION

LOCAL PROGRAM, PHASE I

TOWN OF BELLE HAVEN #47

Modification – Consistent

WHEREAS § 10.1-2109 of the Chesapeake Bay Preservation Act states that counties, cities, and towns in Tidewater Virginia shall designate Chesapeake Bay Preservation Areas and incorporate protection of the quality of state waters in Chesapeake Bay Preservation Areas into local plans and ordinances; and

WHEREAS § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1(a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS the Town of Belle Haven adopted a local Phase I program on November 3, 1992 and amendments on July 27, 1995, and

WHEREAS on May 2, 1996, the Town's Phase I program was found consistent by the Chesapeake Bay Local Assistance Board, and

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

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

WHEREAS on March 22, 2004, the Chesapeake Bay Local Assistance Board found the Town of Belle Haven to be inconsistent with § 10.1-2109 of the Act and § 9VAC10-20-60.1 and 2 of the Regulations and established May 15, 2004 as the consistency deadline, and

WHEREAS the Town of Belle Haven adopted a revised local program to comply with §§ 9VAC10-20-60 1 and 2 of the Regulations on June 1, 2004; 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 Town of Belle Haven's revised program for consistency with the Act and Regulations; and

WHEREAS on August 10, 2004 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 Town of Belle Haven's revised Phase I program consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on September 20, 2004 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

September 20, 2004

RESOLUTION

LOCAL PROGRAM, PHASE I

SURRY COUNTY - #39

Modification – Consistent

WHEREAS § 10.1-2109 of the Chesapeake Bay Preservation Act states that counties, cities, and towns in Tidewater Virginia shall designate Chesapeake Bay Preservation Areas and incorporate protection of the quality of state waters in Chesapeake Bay Preservation Areas into local plans and ordinances; and

WHEREAS § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1(a map

delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS Surry County adopted a local Phase I program on December 19, 1991, and

WHEREAS on May 6, 1992, the County's Phase I program was found consistent by the Chesapeake Bay Local Assistance Board, and

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

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

WHEREAS Surry County adopted a revised local program to comply with §§ 9VAC10-20-60 1 and 2 of the Regulations on May 6, 2004; 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 Surry County's revised program for consistency with the Act and Regulations; and

WHEREAS on August 10, 2004 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 Surry County's revised Phase I program consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on September 20, 2004 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
September 20, 2004
RESOLUTION
LOCAL PROGRAM, PHASE I
TOWN OF HAYMARKET - #70
Modification – Consistent

WHEREAS § 10.1-2109 of the Chesapeake Bay Preservation Act states that counties, cities, and towns in Tidewater Virginia shall designate Chesapeake Bay Preservation Areas and incorporate protection of the quality of state waters in Chesapeake Bay Preservation Areas into local plans and ordinances; and

WHEREAS § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1(a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS the Town of Haymarket adopted a local Phase I program on June 14, 1993, and

WHEREAS on October 21, 1993, the Town's Phase I program was found consistent by the Chesapeake Bay Local Assistance Board, and

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

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

WHEREAS the Town of Haymarket adopted a revised local program to comply with §§ 9VAC10-20-60 1 and 2 of the Regulations on January 12, 2004; 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 Town of Haymarket's revised program for consistency with the Act and Regulations; and

WHEREAS on August 10, 2004 the Local Program Review Committee for the Northern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and,

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

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

The Director of the Department of Conservation and Recreation certifies that the Chesapeake Bay Local Assistance Board adopted this resolution in open session on September 20, 2004.

Joseph H. Maroon
Director
Department of Conservation and Recreation

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
September 20, 2004
RESOLUTION
LOCAL PROGRAM, PHASE I
TOWN OF URBANNA - # 58
Modification – Consistent

WHEREAS § 10.1-2109 of the Chesapeake Bay Preservation Act states that counties, cities, and towns in Tidewater Virginia shall designate Chesapeake Bay Preservation Areas and incorporate protection of the quality of state waters in Chesapeake Bay Preservation Areas into local plans and ordinances; and

WHEREAS § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1(a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS the Town of Urbanna adopted a local Phase I program on October 16, 1991, and amended it on December 21, 1992; and

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

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

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

WHEREAS the Town of Urbanna adopted a revised local program to comply with §§ 9VAC10-20-60 1 and 2 of the Regulations on March 15, 2004; 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 Town of Urbanna revised program for consistency with the Act and Regulations; and

WHEREAS on August 10, 2004 the Local Program Review Committee for the Northern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and,

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

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

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on September 20, 2004 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

At this time Mr. Davis noted that Mr. Jack Larson from Lancaster County was present, but that he needed to depart early due to a prior commitment. Mr. Davis asked Mr. Maroon to proceed with the Lancaster County portion of the Director's Update Regarding Local Programs.

Mr. Maroon noted that DCR staff had met with County staff in early September. At this point there are 10 items of concern with the ordinance.

Mr. Larson noted that the County was in agreement with five of the items, but did not agree with the remaining five.

Mr. Davis suggested that the five items of contention be addressed in the public letter to the County.

Mr. Sheffield asked if Mr. Larson thought that DCR staff had acted appropriately and professionally. Mr. Larson said they had and thanked the Board for the opportunity to speak early to the concerns.

Local Program Reviews – Phase I

Ms. Mackey presented the summary concerning the City of Falls Church.

The City of Falls Church originally adopted its Phase I program in November 1990 and amended it a year later. The Board found the City's program consistent on December 1, 1994. Department staff provided initial comments on changes necessary for compliance with the revised Regulations in January 2002 and on numerous occasions prior to the City's final adoption of a revised Bay Act ordinance on February 9, 2004.

The City's adopted ordinance addresses most of the required changes including revisions to definitions, RPA designation language, the site-specific RPA delineation requirements, and the requirement for a formal process for all RPA exceptions; however, there is one recommendation for consistency.

Section 38-42(j)(1)d. of the City code permits placement of BMPs within the RPA upon approval by the City. The City is asked to amend their ordinance to include the language from Section 9 VAC 10-20-130.1.e of the Regulations which specifically states that stormwater management facilities may be allowed in the RPA provided that the facility is consistent with a stormwater management program that has been approved by the Chesapeake Bay Local Assistance Board as a Phase I modification to the local government's program. At this time, Falls Church's stormwater management program has not been reviewed and approved by the Board as a Phase I modification, therefore BMPs may not be permitted by-right in the RPA. Placement of BMPs in the RPA may occur if they are reviewed and approved by the City Planning Commission through the exception process, as outlined in Section 38-42(r)(5) of the City code.

In conclusion, the basic requirements of the City's Chesapeake Bay program are in place, and this change will not prohibit the City from implementing their program as intended. The Northern Area Review Committee recommended at its August meeting that the Falls Church Bay Act ordinance be found consistent provided that the City undertake and complete the recommendation identified in the staff report by December 31, 2004. Members of the City staff were present at the Northern Area Review Committee meeting and indicated that they were in the process of making the recommended change and would have no trouble meeting the December 31, 2004 deadline.

MOTION: Mr. Sheffield moved that the Chesapeake Bay Local Assistance Board find the City of Falls Church's amended 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 (1) recommendation contained in the staff report no later than December 31, 2004.

SECOND: Mr. Bulova.

DISCUSSION: None.

VOTE: Motion carried unanimously.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

September 20, 2004

RESOLUTION

LOCAL PROGRAM, PHASE I
CITY OF FALLS CHURCH - #24

Modification – Consistent with Conditions

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 City of Falls Church adopted a local Phase I program on November 12, 1990 and amended this program on November 11, 1991; and

WHEREAS on December 1, 1994, 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 the City of Falls Church adopted a revised local program to comply with §§9 VAC10-20-60 1 and 2 of the Regulations on February 9, 2004; 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 Falls Church's revised program for consistency with the Act and Regulations; and

WHEREAS on August 10, 2004 the Local Program Review Committee for the Northern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and,

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

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the City of Falls Church's revised Phase I program consistent with §10.1-2109 of the Act and §§9 VAC10-20-60 1 and 2 of the Regulations subject to the following condition that the Town undertake and complete the one (1) recommendations no later than December 31, 2004.

1. For consistency with §9 VAC 10-20-130.1.e of the Regulations, ensure that placement of BMPs in the RPA either complies with all criteria enumerated in §9 VAC 10-20-130.1.e or is reviewed and approved as an exception as outlined in Section 38-42(r)(5) of the City code.

BE IT FINALLY RESOLVED that failure by the City of Falls Church to meet the above established compliance date of December 31, 2004 will result in the local program becoming inconsistent with §10.1-2109 of the Act and §§9 VAC 10-20-60.1 and 2 of the

Regulations and subject the City of Falls Church 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 20, 2004.

Joseph H. Maroon
Director
Department of Conservation and Recreation

Ms. Mackey presented the summary concerning the Town of Occoquan.

The Town of Occoquan originally adopted its Phase I program in June 1991. The Board found it consistent in October 1991. Department staff reviewed the Town's ordinance and provided comments consistent with the revised Regulations in September 2002. The Town adopted revisions to its ordinance on February 18, 2003. Department staff reviewed and commented on the adopted ordinance in October 2003, finding several items that needed revisions in order for the amended Bay Act ordinance to be found consistent. The Town Council held a public hearing to consider the proposed changes and on February 17, 2004 adopted a final revised Bay Act ordinance.

The Town's revised ordinance addresses most of the required changes including revisions to definitions, Resource Protection Area designation language, site-specific RPA delineation requirements, and the requirements for a formal process for all RPA exception requests; however, there remain two recommendations for consistency.

The first recommendation is to include the definition of "substantial alteration," in the ordinance, consistent with the definition in the Regulations. The second recommendation concerns the Regulatory requirement that the development of new or expanded water-dependent facilities in RPAs must include the criteria that they do not conflict with the comprehensive plan, that access to the water-dependent facility will be provided with the minimum disturbance necessary, and that where practicable a single point of access will be provided as outlined under §9 VAC 10-20-130.1.b(1) and (4) of the Regulations.

In conclusion, the basic requirements of the Town's Chesapeake Bay program are in place, and these changes will not prohibit the Town from implementing their program as intended. The Northern Area Review Committee recommended at its August meeting that the Town of Occoquan's Bay Act ordinance be found consistent provided that the Town undertake and complete the two recommended revisions identified in the staff report by December 31, 2005.

MOTION: Mr. Sheffield moved that the Chesapeake Bay Local Assistance Board find the Town of Occoquan's amended 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 conditions that the Town undertake and complete the two (2) recommendations contained in the staff report no later than December 1, 2005 and that the Town provide an interim report back to the Board by June 1, 2005.

SECOND: Mr. Bulova.

DISCUSSION: None.

VOTE: Motion carried unanimously.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

September 20, 2004

RESOLUTION

LOCAL PROGRAM, PHASE I

TOWN OF OCCOQUAN - #34

Modification – Consistent with Conditions

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 Occoquan adopted a local Phase I program on June 11, 1991; and

WHEREAS on October 10, 1991, the Town's Phase I program was found consistent by the Chesapeake Bay Local Assistance Board; and

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

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

WHEREAS the Town of Occoquan adopted a revised local program to comply with §§9 VAC10-20-60 1 and 2 of the Regulations on February 17, 2004; 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 Town of Occoquan's revised program for consistency with the Act and Regulations; and

WHEREAS on August 10, 2004 the Local Program Review Committee for the Northern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and,

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

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the Town of Occoquan's revised Phase I program consistent with §10.1-2109 of the Act and §§9 VAC10-20-60 1 and 2 of the Regulations subject to the following condition that the Town undertake and complete the two (2) recommendations no later than December 31, 2005.

1. Amend Section 66-193 to include the definition for "substantial alteration" consistent with the definition set forth in §9 VAC 10-20-40 of the Regulations.
2. Amend Section 66-197(b) to include the requirements of §9 VAC 10-20-130.1.b (1) and (4) of the Regulations.

BE IT FINALLY RESOLVED that failure by the Town of Occoquan to meet the above established compliance date of December 31, 2005 will result in the local program becoming inconsistent with §10.1-2109 of the Act and §§9 VAC 10-20-60.1 and 2 of the Regulations and subject the Town of Occoquan 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 20, 2004.

Joseph H. Maroon
Director
Department of Conservation and Recreation

Ms. Little presented the summary for the Town of Port Royal.

Port Royal

Town adopted revisions on May 18, 2004 and received assistance from Department staff in drafting and reviewing ordinance revisions during 2002 to the adoption date. The Town's amended ordinance addresses all but two relatively minor, but required revisions. The first requires the town to include all the findings to be considered for the administrative review of a proposed expansion to a nonconforming principal structure, and the other would amend an incorrect citation and would require the formal exception review process for RPA exception requests as required under the Regulations. Staff and NARC recommend that the Town's Phase I program be found consistent with 2 conditions, with a deadline of September 30, 2005.

Mr. Steve Manster, of RADCO, contacted Department staff in late August to inquire about these two conditions for consistency. During this conversation, he asked if these changes could be accomplished administratively by the Town, without a public hearing. Staff responded that the second of the required changes probably could be done administratively, since it only dealt with an incorrect citation, but that staff believed that the first condition would require a formal town action. Staff also noted that the deadline was more than a year away, to ease the burden on the town.

MOTION: Mr. Sheffield moved that the Chesapeake Bay Local Assistance Board find the Town of Port Royal's amended Phase I program consistent with § 10.1-2019 of the Act and § 9VAC 10-20-60.1 and 2 of the Regulations subject to the conditions that Port Royal undertake and complete the two recommendations in the staff report no later than September 30, 2005 and further that the Town Provide an interim report to the Board by June 1, 2005.

SECOND: Bulova.

DISCUSSION: None.

VOTE: Motion carried unanimously.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
September 20, 2004
RESOLUTION
LOCAL PROGRAM, PHASE I
TOWN OF PORT ROYAL - #82
Modification – Conditional

WHEREAS § 10.1-2109 of the Chesapeake Bay Preservation Act states that counties, cities, and towns in Tidewater Virginia shall designate Chesapeake Bay Preservation Areas and incorporate protection of the quality of state waters in Chesapeake Bay Preservation Areas into local plans and ordinances; and

WHEREAS § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1(a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS the Town of Port Royal adopted a local Phase I program on October 17, 1995, and

WHEREAS on December 12, 1995, the Town's Phase I program was found consistent by the Chesapeake Bay Local Assistance Board, and

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

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

WHEREAS the Town of Port Royal adopted a revised local program to comply with § 9VAC10-20-60 1 and 2 of the Regulations on May 18, 2004; 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 Town of Port Royal's revised program for consistency with the Act and Regulations; and

WHEREAS on August 10, 2004 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 two 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 Port Royal's revised Phase I program consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations subject to the following condition that the Town undertake and complete the following two recommendations no later than September 30, 2005:

1. Staff recommends that Section 6-14.5 add the following text to the end of this section: "The administrative process must meet the requirements listed under 6-16.2.1-5. Accessory structures are not allowed through an administrative process."
2. Staff recommends that Section 6-16.1 be amended to replace the reference to 6.71 and 6.10 adding 6-8 and 6-10 respectively.

BE IT FINALLY RESOLVED that failure by the Town of Port Royal to meet the above established compliance date of September 30, 2005 will result in the local program becoming inconsistent with § 10.1-2109 of the Act and §§ 9VAC10-20-60.1 and 2 of the Regulations and subject the Town of Port Royal to the compliance provisions as set forth in §10.1-2103.10 of the Act and §9VAC10-20-250 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that the Chesapeake Bay Local Assistance Board adopted this resolution in open session on September 20, 2004.

Joseph H. Maroon
Director
Department of Conservation and Recreation

Ms. Little presented the summary for the City of Fredericksburg.

City of Fredericksburg

The City adopted its revised ordinance language on March 23, 2004. Staff had attempted to provide assistance to the City in drafting its revised ordinance, providing comments on several occasions noting what revisions would be necessary in 2002 and 2003, as well as meeting with City officials in November of 2003. While many of staff's recommended changes were addressed in the final adopted ordinance, there are significant omissions that must be addressed for consistency. Staff and NARC are both recommending that the

City's program be found inconsistent, due to the fact that there are a large number of omissions and further that these omissions would prevent the City from properly administering its Bay Act program. There are nine conditions for consistency including the following:

- include the requirement for onsite delineation of water bodies with perennial flow and RPAs; #1
- include all required conditions for water dependent facilities and flood control facilities in the RPA; #2 and #3
- include the requirements for passive recreation facilities such as boardwalks, trails and pathways in RPAs; #4
- add all required conditions for permitted encroachments on lots recorded before March 1, 2002; #5
- add requirement for administrative waivers for performance criteria including the required findings; #6
- add provisions for the administrative review for the expansion of nonconforming principal structures, including the required findings; #7
- revise exempted public activities to align with the Regulations, including the criteria necessary for the exemptions; #8 and #9

A tenth condition was previously included in the staff report, (see number 8 in the report) but the report was revised slightly after meeting with the City staff on September 1, 2004 to discuss the consistency items. Item number 8 was address by leaving boardwalks, trails and pathways as permitted activities in the RPA, but adding the required conditions as listed under § 9 VAC 10-20-130.2 of the Regulations. The City also indicated that it would be revising its Bay ordinance to add an exceptions section, since the amendments adopted on March 23rd did not include any exception provisions. City and Division staff met to discuss all recommended changes for consistency, and with the exception of the one condition that is recommended to be removed because the issue is addressed earlier in the report, the City has agreed to make all the required changes. Mr. Ray Ocel, City Planning Director, agreed to send Division staff digital copies of their ordinance for staff to make corrections to address the consistency items. The ordinance was sent on September 9th with corrections. While no one from the City is able to attend this meeting, Mr. Ocel did send a letter outlining his intent to address the revisions.

MOTION: Mr. Bulova moved that the Chesapeake Bay Local Assistance Board find the City of Fredericksburg's amended Phase I program inconsistent with § 10.1-2019 of the Act and § 9VAC 10-20-60.1 and 2 of the Regulations and further that the City of Fredericksburg undertake and complete the 10 recommendations contained in the staff report no later than March 31, 2005 and further that the City provide an interim report to the Board by December 1, 2004.

SECOND: Ms. Harper.

DISCUSSION: Mr. Sheffield noted that he would abstain from the vote.

VOTE: Motion carried with Mr. Sheffield abstaining.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

September 20, 2004

RESOLUTION

LOCAL PROGRAM, PHASE I

CITY OF FREDERICKSBURG - #05

Modification – 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 § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1(a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS the City of Fredericksburg adopted a local Phase I program on August 24, 1993; and

WHEREAS on October 5, 1993, the City of Fredericksburg'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 the City of Fredericksburg adopted a revised local program to comply with §§ 9VAC10-20-60 1 and 2 of the Regulations on March 23, 2004; 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 Fredericksburg revised program for consistency with the Act and Regulations; and

WHEREAS on August 10, 2004 the Local Program Review Committee for the Northern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and,

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

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the City of Fredericksburg's revised Phase I program inconsistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations and further requires that the City undertake and complete the 9 recommendations contained in the staff report no later than March 31, 2005.

1. For compliance with § 9VAC 10-20-105 of the Regulations, the City must amend its CPBO to include the requirement for insite delineation of water bodies with perennial flow and RPA limits.
2. For consistency with § 9 VAC 10-20-130.1.b of the Regulations, the City must include all required conditions for water dependent facilities.
3. For consistency with § 9 VAC 10-20-130.1.e, the City must amend its definition of water dependent facilities to delete "public flood control facilities" and the City must include all requirements for flood control and stormwater management facilities as outlined in the Regulations.
4. For consistency with § 9 VAC 10-20-130.2 of the Regulations, the City must amend Section 14-640 to add all applicable conditions for the placement of "passive recreation facilities such as boardwalks, trails and pathways" within RPAs.
5. For consistency with § 9 VAC 10-20-130.4.b(4) of the Regulations, the City must amend Section 14-641(e)(2) to address the requirements outlined under § 9 VAC 10-20-130.4.a.
6. For consistency with § 9 VAC 10-20-150.C of the Regulations, the City must also include provisions for administrative waivers to the general performance criteria and other requirements not related to RPA criteria.

7. For consistency with § 9 VAC 10-20-150.A and § 9 VAC 10-20-150.C.4 of the Regulations, the City must amend its CBPO ordinance to include provisions for the expansion of nonconforming structures.
8. For consistency with § 9 VAC 10-20-150.B.2 of the Regulations, the City must revise Section 14-760(6) to delete public and private stormwater management facilities as exempted activities and revise Section 14-760(6)c to address § 9 VAC 10-20-150.B.2c.
9. For consistency with the Regulations, the City must add criteria as outlined under § 9 VAC 10-20-150.B.1 to address the exemption of public roads and other public facilities.

BE IT FURTHER RESOLVED that failure by the City of Fredericksburg to meet the above established compliance date of March 31, 2005 will result in the local program remaining inconsistent with § 10.1-2109 of the Act and §§ 9VAC10-20-60.1 and 2 of the Regulations and subject the City of Fredericksburg to the compliance provisions as set forth in §10.1-2103.10 of the Act and §9VAC10-20-250 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that the Chesapeake Bay Local Assistance Board adopted this resolution in open session on September 20, 2004.

Joseph H. Maroon
Director
Department of Conservation and Recreation

Mr. Belo presented the summary for the City of Hampton.

The City of Hampton adopted revisions to its Phase I program on May 12, 2004. The City's revised Bay Act program addresses nearly all of the required Regulation changes, including revisions to definitions, Resource Protection Area (RPA) designation language, site-specific RPA delineation requirements, and the requirement for a formal exception process for all RPA exception requests.

The City of Hampton worked very closely with Staff in revising its Phase I program. Although Staff reviewed multiple drafts, the City's failure to include the definition of "substantial alteration" in its revised ordinance went unnoticed. Staff feels it is necessary to define this phrase because it is used in the definition of development. However, Staff does not feel that the missing definition will hinder the City's ability to effectively implement its Phase I program.

The Southern Area Review Committee recommends that the local program amendments adopted by City of Hampton on May 12, 2004 be found consistent with § 10.1-2109 of the Act and Regulations subject to the condition that the City of Hampton undertake and complete the one (1) recommendation contained in the staff report no later than June 30, 2006.

MOTION: Ms. Fitz-Hugh moved that the Chesapeake Bay Local Assistance Board find the City of Hampton's amended 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 conditions that the City undertake and complete the one recommendation included in the staff report no later than June 30, 2006.

SECOND: Ms. Roberts.

DISCUSSION: None.

VOTE: Motion carried unanimously.

Mr. Belo presented the summary for the City of Poquoson. He recognized Mr. J. Hollingsworth, Director of Planning and Community Development for the City.

The City of Poquoson adopted revisions to its Phase I program on May 24, 2004. The City's revised Bay Act program addresses most of the required Regulation changes, including revisions to definitions, Resource Protection Area (RPA) designation language, site-specific RPA delineation requirements, and the requirement for a formal exception process for all RPA exception requests. The Southern Area Review Committee recommends three amendments to the City's revised ordinance to ensure consistency with the Regulations.

The first recommendation requires the city to replace direct citations to the Regulations with effective enforcement language. Although local Bay Act ordinances are enabled by the Regulations, they should include all the language necessary to effectively implement and enforce the local Bay Act program without direct reference to specific sections of the Regulations. It appears that the city's ordinance substitutes code citations for regulatory language at least twice.

The second recommendation requires the deletion of unnecessary tree and shrubbery removal language. This language is overly broad, not enabled by the Regulations, and unnecessary because both the Regulations and ordinance already include language that addresses dead, diseased or dying trees and shrubbery.

The third recommendation requires the City to amend its ordinance to ensure that the expansion of nonconforming accessory structures is not allowed without a public notice and hearing, as required by the Regulations.

The Southern Area Review Committee recommends that the local program amendments adopted by City of Poquoson on May 24, 2004 be found consistent with the Act and Regulations subject to the condition that the City of Poquoson undertake and complete the three (3) recommendations contained in the staff report no later than June 30, 2005.

MOTION: Ms. Roberts moved that the Chesapeake Bay Local Assistance Board find the City of Poquoson's amended Phase I program consistent with § 10.1-2109 of the Act and §§ 9 VAC10-20-60 1 and 2 of the Regulations, subject to the condition that the City undertake and complete the three recommendations included in the staff report no later than June 30, 2005

SECOND: Ms. Fitz-Hugh.

DISCUSSION: None.

VOTE: Motion carried unanimously.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

September 20, 2004

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 § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1(a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS 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 March 22, 2004, the City's Phase I program was found inconsistent by the Chesapeake Bay Local Assistance Board; and

WHEREAS the City of Poquoson adopted a revised local program to comply with §§ 9VAC10-20-60 1 and 2 of the Regulations on May 24, 2004; 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 10, 2004 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 §§ 9VAC10-20-60 1 and 2 of the Regulations subject to the following condition that the City undertake and complete the following recommendations no later than June 30, 2005:

1. Replace Section 11.4-6.(j).(3).b with language that effectively reflects the regulatory intent and requirements of 9 VAC 10-20-120.8.2 of the Regulations; Replace Section 11.4-9.(b).(4) with language the effectively reflects the regulatory intent and requirements of 9 VAC 10-20-130.1.d.
2. Delete Section 11.4-12.d.(1).e of the City's ordinance.

3. Amend Section 11.4-13(c) to indicate that no exception for the expansion of nonconforming accessory structures will be authorized except after public notice and a hearing, as required by 9 VAC 10-20-150.2 of the Regulations.

BE IT FINALLY RESOLVED that failure by the City of Poquoson to meet the above established compliance date of June 30, 2005 will result in the local program becoming inconsistent with § 10.1-2109 of the Act and §§ 9VAC10-20-60.1 and 2 of the Regulations and subject the City of Poquoson to the compliance provisions as set forth in §10.1-2103.10 of the Act and §9VAC10-20-250 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on September 20, 2004 by the Chesapeake Bay Local Assistance Board.

Joseph Maroon
Director
Department of Conservation and Recreation

Mr. Link presented the summary for the Town of Smithfield.

The Town adopted its revised Chesapeake Bay Preservation Area Overlay District Ordinance on April 6, 2004. CBLAD staff worked with the Town in completing the necessary revisions to the Chesapeake Bay Preservation Area Overlay District Ordinance, by providing the Town with preliminary comments via correspondence on January 26, 2004 and through providing follow-up assistance throughout the revision process.

The Town's revised Chesapeake Bay Preservation Overlay District Ordinance addresses many of the required changes. There are, however, required changes that were not addressed in the revised ordinance that must be made for consistency.

- The majority of these items consist of general clarification of Town policies including those ordinance sections related to delineation of perennial water bodies, permitted flood control and BMP facilities and ordinance definitions.
- The Town must designate a specific board, body, commission or committee to consider formal exception requests. The process is in place but no body is identified for handling such requests.

Based on the above information the SARC recommended that the local program amendments adopted by the Town of Smithfield on April 6, 2004 be found consistent with the Act and the Regulations subject to the condition that the Town of Smithfield adequately address the eight recommendations contained in the staff report no later than March 31, 2005.

Since the time of the SARC meeting and drafting the resolution the Town has informed DCR that they are in the process of advertising an RFQ for services to revise their comprehensive plan and zoning ordinance simultaneously to ensure consistency. Taking that into consideration and considering that the issues at hand and the Town's intentions staff suggest the following changes to the resolution:

1. The deadline for all recommendations, with the exception of #8, is extended to December 31, 2005. The deadline of March 31, 2005 for recommendation #8 will remain.

MOTION: Ms. Roberts moved that the Chesapeake Bay Local Assistance Board find the Town of Smithfield's amended Phase I program consistent with § 9 VAC 10-20-60.1 and 2 of the Regulations subject to the condition that the Town of Smithfield adequately address the first seven recommendations contained in the staff report no later than December 31, 2005 and address the eighth recommendation no later than March 31, 2005.

SECOND: Ms. Fitz-Hugh.

DISCUSSION: None.

VOTE: Motion carried unanimously.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
September 20, 2004
RESOLUTION
LOCAL PROGRAM, PHASE I
TOWN OF SMITHFIELD - #12
Modification – Consistent with Conditions

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 Smithfield adopted a local Phase I program on October 21, 1991, and

WHEREAS on March 7, 1991, the Town's Phase I program was found consistent by the Chesapeake Bay Local Assistance Board, and

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

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

WHEREAS the Town of Smithfield adopted a revised local program to comply with §§ 9VAC10-20-60 1 and 2 of the Regulations on April 6, 2004; 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 Town of Smithfield's revised program for consistency with the Act and Regulations; and

WHEREAS on August 10, 2004 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 Town of Smithfield'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 provided the Town adequately address conditions one through seven by December 31, 2005, and the Town adequately address condition eight by March 31, 2005:

1. For consistency with § 9 VAC 10-20-130.1.e of the Regulations amend Section B.3.d of the Town's ordinance to include language that states that in order for the Town to approve stormwater management BMPs to be located within the RPA, the Town of Smithfield must have a stormwater management program that has been approved by the CBLAB as a Phase I modification.
2. For consistency with § 9 VAC 10-20-130.1.e of the Regulations the Town must include the following sentence, "It is not the intent of this subdivision to allow a

- best management practice that collects and treats runoff from only an individual lot or some portion of the lot to be located within a Resource Protection Area.”
3. Amend Section G.2.e of the Town’s ordinance to include reference to the requirement that all BMP facilities require a maintenance agreement.
 4. Amend Section G of the Town’s ordinance to include the requirement of Section 9 VAC§ 10-20-120.6 of the Regulations.
 5. Amend section I.2.a.2.b of the ordinance to read, “Wetlands delineations shall be performed consistent with the procedures specified in the Federal Manual for identifying and Delineating Jurisdictional Wetlands, ~~1983~~ **1987**.”
 6. Amend the definition of Chesapeake Bay Preservation Areas as follows: “Any land designated by the Town Council pursuant to Part III of the Chesapeake Bay Preservation Area Designation and Management Regulations, ~~VR-173-02-01~~ **§ 9 VAC 10-20-10 et seq.** and § 10.1-2107 of the Code of Virginia...”
 7. Amend the definition of public road as follows: “A publicly owned road...pursuant to (i) the Erosion and Sediment Control Law (§ 10.1-~~603.1~~ **560** et seq. of the Code of Virginia) **and (ii) the Virginia Stormwater Management Act (§ 10.1-603.1 et seq. of the Code of Virginia...**”
 8. For consistency with § 9 VAC 10-20-150.C.2.a of the Regulations, the Town must amend Section 3.P.I.4.b to designate a specific board, body, commission or committee to consider formal exception requests.

BE IT FINALLY RESOLVED that failure by the Town of Smithfield to meet the above established compliance date of March 31, 2005 for condition number eight, and the compliance date of December 31, 2005 for all other conditions will result in the local program becoming inconsistent with § 10.1-2109 of the Act and §§ 9VAC10-20-60.1 and 2 of the Regulations and subject the Town of Smithfield to the compliance provisions as set forth in § 10.1-2103.10 of the Act and §9VAC10-20-250 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on September 20, 2004 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

Mr. Helmboldt presented the summary for the Town of Ashland.

Mr. Helmboldt noted that Ms. Allyson Finchum, Director of Planning was not present for the meeting.

The Town of Ashland adopted their local program amendments on March 9, 2004. The Town's revised Chesapeake Bay Preservation Area ordinance addresses most of the required changes set forth in the revised regulations, however, as a result of a few oversights, changes that were noted in previous meetings and in marked up draft copies of their ordinance were either left out or omitted from their ordinance as it was adopted.

Ashland Planning Director, Ms. Allyson Finchum, had contacted Mr. Helmboldt prior to the SARC meeting to state that the Town intended to make recommended changes administratively. Anticipating that would happen, staff initially thought this would occur prior to today's meeting.

However, on September 7, Town Planner Tony Greulich informed Mr. Helmboldt that the changes would have to be processed formally and that the earliest that Town Council would be able to consider the changes would be October 5.

Given that fact, staff will proceed with the recommendations that the Town's Phase I program be found consistent with conditions. Staff has noted four recommended changes to the Town's Bay Act ordinance that are required for their ordinance to be found consistent and has recommended a deadline of June 30, 2005. The changes are as follows:

1. The Town failed to revise language under § 4.1-209.c.2 of the ordinance which addresses permitted encroachments on pre-1989 lots as required under § 9 VAC 10-20-130.4.a of the Regulations.

Amend § 4.1-209.c.2 to conform with the requirements outlined under § 9 VAC 10-20-130.4.a of the Regulations by replacing the wording "may modify the width of" with "may permit encroachments into" when referencing buffer encroachments.

2. The Town omitted previous revisions requiring a formal exception process when hearing exception requests. The Town Council had been designated as the body to hear such requests, however, in the final ordinance the Town Manager was designated to hear exceptions (administratively).

Amend § 4.1-214.b. – d. to reinstate the Town Council (or other body) as the designated body that hears formal exception requests, and to reinstate the Board of Zoning Appeals as the body hearing exception appeals.

3. The Town also failed to add language that requires formal exceptions to be considered in a public hearing that has been properly noticed as required under § 9 VAC 10-20-150.C.2.c of the Regulations.

Amend § 4.1-214.b. to include the requirement for both public notice and a public hearing when considering exception requests, in accordance with Virginia state law.

4. Town failed to include an administrative process, including the required conditions, for the expansion of legal principal nonconforming structures, as outlined under § 9 VAC 10-20-150.A and 9 VAC 10-20-150.C.4 of the Regulations.

Amend § 4.1-212 to include the requirement for the Town Manager to make the five findings required for expansion of non-conforming principal structures, and to stipulate that expansion does not apply to accessory structures.

Staff has noted one suggested change to the Town's Bay Act ordinance that is intended for clarification and is not required for their ordinance to be found consistent. The suggested change is as follows:

- Revise Sec. 4.1-214.a by amending the reference to Sec. 4.1-205, which refers to lot size, to properly reference Sec. 4.1-206, which outlines the required conditions for CBPAs, and to which exceptions apply.

MOTION: Ms. Fitz-Hugh moved that the Chesapeake Bay Local Assistance Board find the Town of Ashland's amended Phase I program consistent with § 10.1-2109 of the Act and § 9 VAC10-20-60.1 and 2 of the Regulations subject to the condition that the Town of Ashland undertake and complete the four recommendations in the staff report no later than June 30, 2005.

SECOND: Ms. Roberts.

DISCUSSION: None.

VOTE: Motion carried unanimously.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

September 20, 2004
RESOLUTION
LOCAL PROGRAM, PHASE I
TOWN OF ASHLAND - #16
Modification – Conditional

WHEREAS § 10.1-2109 of the Chesapeake Bay Preservation Act states that counties, cities, and towns in Tidewater Virginia shall designate Chesapeake Bay Preservation Areas and incorporate protection of the quality of state waters in Chesapeake Bay Preservation Areas into local plans and ordinances; and

WHEREAS § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1(a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS the Town of Ashland adopted a local Phase I program on September 17, 1990, and amended on November 8, 1994; and

WHEREAS on September 27, 1999, the County's Phase I program was found consistent by the Chesapeake Bay Local Assistance Board, and

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

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

WHEREAS the Town of Ashland adopted a revised local program to comply with §§ 9VAC10-20-60 1 and 2 of the Regulations on March 9, 2004; 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 Town of Ashland's revised program for consistency with the Act and Regulations; and

WHEREAS on August 10, 2004 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 Town of Ashland's revised Phase I program consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations subject to the following condition that the Town undertake and complete the following recommendations no later than June 30, 2005:

1. Amend § 4.1-209.c.2 to conform with the requirements outlined under § 9 VAC 10-20-130.4.a of the Regulations.
2. Amend § 4.1-214.b. – d. to reinstate the Town Council (or other body) as the designated body to hear formal exception requests, and to reinstate the Board of Zoning Appeals as the body hearing exception appeals.
3. Amend § 4.1-214.b. to include the requirement for both public notice and a public hearing when considering exception requests, in accordance with Virginia state law.
4. Amend § 4.1-212 to include the requirement for the Town Manager to make the five findings required for expansion of non-conforming principal structures, and to stipulate that expansion does not apply to accessory structures.

BE IT FINALLY RESOLVED that failure by the Town of Ashland to meet the above established compliance date of June 30, 2005 will result in the local program becoming inconsistent with § 10.1-2109 of the Act and §§ 9VAC10-20-60.1 and 2 of the Regulations and subject the Town of Ashland to the compliance provisions as set forth in §10.1-2103.10 of the Act and §9VAC10-20-250 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on September 20, 2004 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

Ms. Miller presented the summary for the Town of West Point.

West Point adopted its Phase I program on November 6, 1991, amended it on October 26, 1992, and February 27, 1995, and the Board found the Town's program consistent on June 22, 1995.

In response to the December 2001 Board revisions to the Regulations, Town staff and the local Planning Commission developed local CBPA Overlay District revisions. However, the Town Council did not adopt the revisions by the December 31, 2003 deadline.

On March 22, 2004 the Board found the Town inconsistent and set a final compliance deadline of May 15, 2004. The deadline was not met, and on June 21, 2004 the Board conducted an informal fact finding procedure to consider the Town's Phase I program, again finding the Town inconsistent.

Following a public hearing on June 28, 2004, the West Point Town Council adopted a revised CBPA Overlay District, effective immediately.

The Town's revised CBPA Overlay District text addresses all the required changes. The Town also revised its CBPA map and adopted the new map in conjunction with the CBPA Overlay District revisions. While the new map still includes areas designated as RPAs, RMAs and an IDA, there are changes in the boundaries of each type. Limited areas have been added to the IDA, and both the RPA and RMA areas have been significantly reduced in size. Several areas which include the RPA/RMA features and land types specified in the Regulations and depicted on the USGS West Point Quadrangle and the CBPA map published by the Town in its 2000 *Comprehensive Plan* are no longer included in the Town's June 28, 2004 CBPA Map.

The Town must either demonstrate that the new map meets the requirements specified in Part III of the Regulations or amend it to meet the requirements. As a result, the one condition included in the staff report reads as follows:

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 December 31, 2004.

Ms. Miller also provided an update since the NARC meeting on August 10. She noted that she met with West Point's Town Manager on September 1, and reviewed the Regulations, the Town's new map, and the revisions needed. The Regional PDC will be assisting the Town in addressing map revisions, and PDC staff contacted the Department on September 14 for additional guidance on the revisions.

In conclusion, the Northern Area Review Committee recommends that the local program amendments adopted by the Town of West Point on June 28, 2004 be found consistent with the Act and the Regulations subject to the condition that the Town undertake and

complete the recommendation contained in the staff report no later than December 31, 2004.

MOTION: Mr. Sheffield moved that the Chesapeake Bay Local Assistance Board find the Town of West Point's amended Phase I program consistent with § 10.1-2109 of the Act and §9 VAC 10-20-60.1 and 2 of the Regulation subject to the condition that the Town undertake and complete the recommendation contained in the staff report no later than December 31, 2004.

SECOND: Ms. Harper.

DISCUSSION: None.

VOTE: Motion carried unanimously.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
September 20, 2004
RESOLUTION
LOCAL PROGRAM, PHASE I
TOWN OF WEST POINT - #44
Modification – Conditional

WHEREAS § 10.1-2109 of the Chesapeake Bay Preservation Act states that counties, cities, and towns in Tidewater Virginia shall designate Chesapeake Bay Preservation Areas and incorporate protection of the quality of state waters in Chesapeake Bay Preservation Areas into local plans and ordinances; and

WHEREAS § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1(a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS the Town of West Point adopted a local Phase I program on November 6, 1991, and amended it on October 26, 1992, and February 27, 1995, and

WHEREAS on June 22, 1995, the Town of West Point'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 the Town of West Point adopted a revised local program to comply with § 9VAC10-20-60 1 and 2 of the Regulations on June 28, 2004; 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 Town of West Point's revised program for consistency with the Act and Regulations; and

WHEREAS on August 10, 2004 the Local Program Review Committee for the Northern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and,

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

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the Town of West Point's revised Phase I program consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations subject to the following condition that the Town undertake and complete the following recommendation no later than December 31, 2004:

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 December 31, 2004.

BE IT FINALLY RESOLVED that failure by the Town of West Point to meet the above established compliance date of December 31, 2004 will result in the local program becoming inconsistent with § 10.1-2109 of the Act and §§ 9VAC10-20-60.1 and 2 of the Regulations and subject the Town of West Point to the compliance provisions as set forth in §10.1-2103.10 of the Act and §9VAC10-20-250 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on September 20, 2004 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

Local Program Reviews – Phase II

There were no Phase II Local Program Reviews.

Local Program Reviews – Compliance Evaluation

Ms. Mackey presented the Compliance Evaluation Report for Prince William County.

The Department initiated the Prince William County compliance evaluation in a letter dated October 3, 2003. At the first meeting, which took place a month later, Department staff outlined the compliance evaluation process and went through the checklist provided to County staff as an attachment to the initial letter. Three additional meetings were held with Mr. Mohan and Ms. Dietz during February and March of 2004 to review site plans and conduct eleven site visits. A final meeting was held on the 2nd of August 2004 to review the draft staff report.

The County's plan of development process takes a team approach to the review of all plans and applications, involving staff from several departments and a computerized tracking database that serves as a single point of information for all reviewing departments. County staff works closely with the public during the pre-application process so that the majority of plans and applications brought before them are approvable and exceptions to the performance criteria are minimized.

During the compliance evaluation process, Department staff identified fourteen areas where Prince William County's implementation of their Chesapeake Bay Program did not appear to fully comply with the Act and Regulations. During the August 2, 2004 meeting, Department staff was informed of process changes the County had already made in response to compliance evaluation findings. Department staff agreed at that meeting to reduce the number of changes necessary for compliance from fourteen to nine recommendations that primarily focus on administrative and inspection procedures.

There are two recommendations concerning the minimum 100-foot RPA line that will require revisions to the Design Construction Standards Manual or DCSM, the primary implementing ordinance in the County. Staff noted several inconsistencies during the field investigation component of the compliance evaluation where the RPA line was either not present, or was shown at 50-feet. The recommendations reiterate the need for a 100-foot RPA to be shown on all plans and recorded plats and the need for that requirement to be specified in the DCSM.

There are two recommendations that concern BMPs. The first requires the County to either pursue Board approval of a Phase I modification for a stormwater management program or require formal exceptions for the placement of BMPs in the RPA. The second recommends the annual notification of those property owners responsible for BMP maintenance and inspection in order to remind them of the requirement.

Another recommendation concerns the erosion and sediment control program deficiencies identified by the Department and reiterates the importance of complying with the Corrective Action Agreement between the County and DCR. Department staff noted the impacts of inadequate E&S control on the County's Chesapeake Bay program and water quality while conducting field investigations and felt the need to reiterate the importance of compliance.

Another recommendation requires resumption of active notification of the 5-year septic pump-out requirement. At our meeting on August 2nd, the two staffs discussed further the alternatives to the septic pump-out requirement, which the County did not include when they originally amended their program. County staff said they would reconsider that decision in the near future.

Another recommendation concerns mitigation for buffer encroachments through the incorporation of revegetation practices into the DCSM. This recommendation is the result of a discovery by Department staff that the County was still using the old "Draft Buffer Equivalency" worksheet for engineering calculations used to determine mitigation measures for RPA encroachments. With the approval of the Buffer Manual by the Board last September, it is recommended that the County incorporate the revegetation practices outlined in that document as appropriate.

Another recommendation concerns the need for cross-referencing between the Chesapeake Bay requirements for utility exemptions between the DCSM and the Prince William County Service Authority utility standards manual. Currently there is no reference to the Regulatory conditions for utility exemptions in the utility standards manual, and there is a need to raise the importance of minimizing land disturbance in the RPA during utility design and construction.

Finally, Department staff recommends revision of the County vesting policy regarding Preservation Area Site Assessments (PASA) approved or in process prior to the December 2002 ordinance amendments to be consistent with the Code of Virginia vesting provisions. During the compliance evaluation process it became clear that PASAs approved prior to the new amendments did not adequately identify water bodies with perennial flow. Old PASAs used the USGS quad maps to identify tributary streams, rather than the scientific protocols approved by the Board in September 2003. Section 9 VAC 10-20-105 of the Regulations requires site-specific refinement of the CBPA boundaries at the time of development. Since 1991, the Attorney General's Office has consistently maintained that an applicant must comply to the maximum extent possible

with the Regulations, particularly with respect to the application of the 100-foot RPA buffer.

The staff report also included a number of suggested actions that should help the County improve program implementation, in addition to the nine required changes. Department staff intends to work closely with County staff to address and monitor the nine remaining compliance recommendations. Ms. Mackey thanked County staff for their assistance during the compliance evaluation process.

The Northern Area Review Committee recommended at its August meeting that the Board find certain aspects of the County's implementation of its Phase I program not fully compliant with the Act and Regulations and that the County undertake and complete the nine recommendations contained in the staff report no later than December 31, 2005, or by the date indicated in the recommendation.

Mr. Wade Hugh, Acting Watershed Manager, said the County is bringing their program into compliance. He noted that Prince William is the second largest growing county in the Commonwealth. He said that the County hopes to have a revised vesting policy by October.

Ms. Kim Hosen spoke on behalf of the Prince William Conservation Alliance. She listed a number of concerns with the County program and provided correspondence outlining these concerns. Members were provided with a copy of her letter and a copy is available in the DCR offices.

MOTION: Mr. Bulova moved that the Chesapeake Bay Local Assistance Board find that certain aspects of the Prince William 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 Committee concur with the staff recommendation that Prince William County undertake and complete the nine (9) recommendations contained in the staff report no later than either December 31, 2004 or December 31, 2005, as noted in the individual recommendations.

SECOND: Mr. Sheffield.

DISCUSSION: None.

VOTE: Motion carried unanimously.

RESOLUTION
LOCAL PROGRAM COMPLIANCE EVALUATION
PRINCE WILLIAM COUNTY - #28
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 §9VAC 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 March, 2003, the Chesapeake Bay Local Assistance Division of the Department of Conservation and Recreation conducted a compliance evaluation of Prince William County's Phase I program in accordance with the adopted compliance evaluation process; and

WHEREAS on August 10, 2004 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 Prince William 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, directs Prince William County to undertake and complete the nine (9) recommendations contained in the staff report no later than December 31, 2005, **or as indicated within the recommendation.**

1. For consistency with §9 VAC 10-20-191.A.5 of the Regulations, revise the DCSM to require that the full width of the RPA, a minimum of 100-feet, be shown on all plans and recorded plats, accompanied by a note that the Director of Public Works must approve any land disturbance within the Resource Protection Area.

2. For consistency with §9 VAC 10-20-120.6 of the Regulations, address the erosion and sediment control program deficiencies noted by the Department of Conservation and Recreation by the dates agreed upon in the Corrective Action Agreement.
3. For consistency with §9 VAC 10-20-120.7 of the Regulations, resume active notification of 5-year septic pump-out requirement.
4. For consistency with §9 VAC 10-20-130.1.e of the Regulations, by December 31, 2004 ensure that placement of BMPs in the RPA either complies with all criteria enumerated in §9 VAC 10-20-130.1.e, or is reviewed and approved as an exception under §9 VAC 10-20-150.C.
5. For consistency with §9 VAC 10-20-120.3 of the Regulations, annually notify property owners with BMPs of their responsibility to maintain and inspect the facilities.
6. Revise Vesting/Grandfathering Guidelines for the Applicability of the Amended Chesapeake Bay Regulations on Development Plans (County vesting policy) to be consistent with Sections 15.2-2261 and 2307 of the Code of Virginia by December 31, 2004.
7. For consistency with §9 VAC 10-20-130.3 of the Regulations, incorporate requirements for buffer mitigation and establishment into the DCSM that focuses on revegetation or vegetative plantings.
8. For consistency with §9 VAC 10-20-150.B of the Regulations, either cross-reference or incorporate the conditions for utility exemptions as outlined in Regulations into the PWCSA utility standards manual where appropriate.
9. For consistency with §9 VAC 10-20-80.B.5 of the Regulations, revise Section 742.02.D of the DCSM to require the minimum 100-foot RPA.

BE IT FINALLY RESOLVED that failure by Prince William County to meet the above established compliance dates of December 31, 2004 and 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 Prince William County to the compliance provisions as set forth in §10.1-2103.10 of the Act and §9VAC10-20-250 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that the Chesapeake Bay Local Assistance Board adopted this resolution in open session on September 20, 2004.

Joseph H. Maroon
Director
Department of Conservation and Recreation

Ms. Baldwin presented the Compliance Evaluation Report for Northumberland County.

She expressed the County's regrets that none of its staff could make today's meeting. Mr. Shirley, who is the Zoning Administrator and oversees the County's Bay Act program, did ask that she share with the Board a letter from the County with their comments on the recommendations listed in the staff report.

The Department initiated the compliance evaluation for Northumberland County in a letter dated November 25, 2003. Department staff met with Mr. Kenny Eades, County Administrator, Mr. Luttrell Tadlock, Assistant County Administrator, and Mr. W.H. Shirley, Zoning Administrator in February 2004. A second meeting was held later in the month, at the County offices to review site plans and discuss the County's site plan review process. At that second meeting, Department staff reviewed a total of 11 site plans. On March 26, 2004, five of the site plans reviewed were selected for site visits and three additional site plans were reviewed with one of these reviews leading to an additional site visit.

During the course of the evaluation, Department staff identified areas where Northumberland County's implementation of its program does not appear to fully comply with the Act and Regulations. Staff noted that four of the nine recommendations are similar to the ones identified during Richmond County's compliance evaluation and which have also been cited from compliance evaluations of other rural localities.

Three of the nine recommendations identified in this report pertain to wetland permits and E&S permitting for shoreline erosion control projects. First, the County must require evidence of wetland permits before issuing any of its land disturbing permits. Second, the County must require erosion and sediment control permits for shoreline erosion control projects when the area of disturbance in the RPA exceeds 2,500 square feet. Finally, the County must require a WQIA for shoreline erosion control projects and ensure that such projects meet the criteria outlined in the Regulations. This means that such projects are necessary, based on best technical advice, and appropriate vegetation is established to stabilize the shoreline and restore the buffer.

The next two recommendations concern BMP and stormwater management performance criteria. First, Northumberland County has not required maintenance agreements on any of the BMPs that have been permitted and, as with many other localities, it has not established a formal procedure such as a database for tracking and inspecting them.

Given the County's previous policy of permitting encroachments into the buffer provided that BMPs were installed to compensate for the encroachment, this lack of recordation and inspection is especially problematic. To fully comply with the Regulations, the County must begin to record all BMPs and establish a means to ensure routine maintenance and inspection. Second, in addition these deficiencies, the County has allowed and used design standards for certain BMPs that are not consistent with the Virginia Stormwater Management Handbook or other standards of good engineering practices. The County must ensure that BMP design and siting requirements are consistent with the Virginia Stormwater Management Regulations.

The next recommendation concerns septic pump out requirements. As with other localities, Northumberland County has not established its septic tank pump-out notification and enforcement program. This program is required by the County's ordinance as well as by the Regulations. Given the County's primary reliance on septic systems, implementation of this aspect of their local program is highly important.

The next two recommendations pertain to RPA development criteria. First, the Department recommends that Northumberland County begin to require Water Quality Impact Assessments for any land disturbance, development, or redevelopment in a Resource Protection Area. While the Department recognizes that many elements of a WQIA would be considered during a site plan review, the County must develop a means to document the actual WQIA. Secondly, the County has historically allowed vegetation under 6 inches DBH to be removed in the RPA and has based this practice on one subsection of the general performance criterion pertaining to indigenous vegetation. This particular section, however, is relevant to both RMA and RPA. The more stringent criterion for removal of vegetation in the RPA clearly states that vegetation may only be removed for one of four conditions, sightlines, access paths, general woodlot management, and shoreline erosion. The County must begin to ensure that when approving the removal of vegetation in the buffer, it is consistent with the Regulations and based on one of the four conditions cited.

The final recommendation is to ensure that administrative waivers are not approved for those encroachments into the RPA that require a formal exception and public hearing. Prior to its ordinance revisions, the application for placement of an accessory structure such as a pool or shed in the RPA had been processed administratively. The County must ensure that such requests will now be subject to the formal process and respective findings.

The staff report also includes some suggestions, which might assist the County with improving certain aspects of implementation of their local program. These suggestions are bulleted in the report and are not required for compliance.

The Department staff recommended that the Board find that certain aspects of the County's implementation of its Phase I program do not fully comply with the Act and

Regulations and that the County undertake and complete the nine recommendations contained in the staff report no later than September 30, 2005.

Ms. Baldwin said that as stated previously, the County has provided written comments on most of these recommendations. The County is essentially in agreement with these recommendations although with certain caveats on a few of them. With respect to the pump-out recommendation, the County commented that it would initiate the notification process once funding sources were available to retrofit the Reedville plant. With respect to maintenance agreements, the County responded that it would develop such agreements but only for BMPs that encroach into the buffer.

MOTION: Mr. Sheffield moved that the Chesapeake Bay Local Assistance Board find certain aspects of the county's implementation of its Phase I program do not fully comply with §§10.1-2019 of the Act and §§9 VAC 10-20-231 and 250 of the Regulations and that Northumberland County undertake and complete the nine recommendations contained in this staff report no later than September 30, 2005.

SECOND: Mr. Bulova.

DISCUSSION: None.

VOTE: Motion carried unanimously.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
September 20, 2004
RESOLUTION
LOCAL PROGRAM COMPLIANCE EVALUATION
NORTHUMBERLAND COUNTY - #07
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 § 9VAC 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 2004, the Chesapeake Bay Local Assistance Department conducted a compliance evaluation of Northumberland County's Phase I program in accordance with the adopted compliance evaluation process; and

WHEREAS on August 10, 2004 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 Northumberland County'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 Northumberland County to undertake and complete the nine recommendations contained in this staff report no later than September 30, 2005.

1. As required by Section 9 VAC 10-20-120.6 of the Regulations, the County must begin requiring sediment and erosion control plans and issuing land disturbing permits for any proposed shoreline erosion projects that would extend into the RPA and whose area of land disturbance would exceed 2,500 square feet.
2. For consistency with Section 9 VAC 10-20-120.7 of the Regulations and as required by Section 54-16.b (5) of the County's Bay Act ordinance, the County must develop and implement a 5-year pump-out notification and enforcement program, including any necessary tracking information.
3. To satisfy Section 9 VAC 10-20-120.3 of the Regulations, the County must complete the development of a BMP database to track type, installation date, location, inspections and maintenance of BMPs. As part of this requirement, the County must also develop a standard BMP maintenance agreement that specifies inspection and maintenance procedures. Department staff is available to assist the County in developing standard agreements.
4. The County must ensure that all 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). The County should also require BMP design details including notes on how stormwater runoff will be directed towards the BMP and site-specific soil borings for those BMPs that require such information.

5. For consistency with Section 9 VAC 10-20-120.11 of the Regulations and as required by Section 54-16.B (9) of the County's Bay Act ordinance, the County must begin ensuring that all wetland permits have been obtained before issuing any land disturbing permits.
6. In accordance with Section 9 VAC 10-20-130 (5) (a) (4) and Section 9 VAC 10-20-130 (6) of the Regulations, the County must review shoreline erosion projects and require a WQIA for such projects when they are proposed to extend into the RPA. The County must ensure that such projects are necessary and based on best technical advice and appropriate vegetation is established to stabilize the shoreline and restore the buffer.
7. Effective immediately and for consistency with 9 VAC 10-20-150.C of the Regulations, the County must ensure that administrative waivers are not approved for those encroachments into the RPA that require a formal exception and public hearing.
8. In accordance with Section 9 VAC 10-20-130.6 of the Regulations, and as required by Section 54-28 of the County's Bay Act Ordinance, the County 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.
9. As specified in Section 9 VAC 10-20-130.5 (a) of the Regulations, the County must ensure that any vegetation removed in the RPA meets one of the four criteria. It should no longer allow vegetation in the buffer to be removed based solely on size.

BE IT FINALLY RESOLVED that failure by Northumberland County to meet the above established compliance date of September 30, 2005 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 Northumberland County to the compliance provisions as set forth in §10.1-2103.10 of the Act and § 9VAC10-20-250 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on September 20, 2004 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

Mr. Helmboldt presented the Compliance Evaluation Report for the County of Henrico. He noted that no one from Henrico County was present for the meeting.

In February of 2004 staff commenced with a compliance evaluation of Henrico County's Bay Act Program Administration. Subsequent meetings to review and select site plans for field inspections were held on April 21 and 26. Field visits were conducted on May 6, 2004 and were attended by Kelly Ramsey from our Engineering staff, Keith White from Henrico County, and Mr. Helmboldt.

Staff has noted three recommendations for compliance:

1. For consistency with §§ 9 VAC 10-20-130.1.a and 9 VAC 10-20-130.6 of the Regulations, the County must revise §10-35 of their Environment ordinance to reflect the WQIA requirements to reflect the review and submittal process that the County actually uses, such that their procedures and requirements are consistent with their ordinance.
2. For consistency with § 9 VAC 10-20-120.6 of the Regulations, the County needs to take action consistently and promptly when responding to E&SC violations and in issuing stop work orders when violations occur and are not remedied in the time frame afforded by the County.
3. The County must resume their septic pump out notification process upon receipt and approval (by FEMA) of the final GIS layer that is to be used in the screening protocol for identifying properties requiring pump out under § 9 VAC 10-20-120.7 of the Regulations.

MOTION: Ms. Roberts moved that the Chesapeake Bay Local Assistance Board find that certain aspects of the Henrico County 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 Henrico County undertake and complete the three (3) recommendations contained in the staff report no later than September 30, 2005.

SECOND: Ms. Harper.

DISCUSSION: None.

VOTE: Motion carried unanimously.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

September 20, 2004

RESOLUTION

LOCAL PROGRAM COMPLIANCE EVALUATION

HENRICO COUNTY- #23

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 §9VAC 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 2004, the Chesapeake Bay Local Assistance Department conducted a compliance evaluation of Henrico County's Phase I program in accordance with the adopted compliance evaluation process; and

WHEREAS on August 10, 2004 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 that the implementation of certain aspects of Henrico County's Phase I program do not 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 Henrico County to undertake and complete the three (3) recommendations contained in this staff report no later than September 30, 2005.

1. For consistency with §§ 9 VAC 10-20-130.1.a and 9 VAC 10-20-130.6 of the Regulations, the County must revise §10-35 of their Environment ordinance to reflect the WQIA requirements to reflect the review and submittal process that the County actually uses, such that their procedures and requirements are consistent with their ordinance.

2. For consistency with § 9 VAC 10-20-120.6 of the Regulations, the County needs to take action consistently and promptly when responding to E&SC violations and in issuing stop work orders when violations occur and are not remedied in the time frame afforded by the County.
3. The County must resume their septic pump out notification process upon receipt and approval (by FEMA) of the final GIS layer that is to be used in the screening protocol for identifying properties requiring pump out under § 9 VAC 10-20-120.7 of the Regulations.

BE IT FINALLY RESOLVED that failure by Henrico County to meet the above established compliance date of September 30, 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 Henrico County to the compliance provisions as set forth in §10.1-2103.10 of the Act and §9VAC10-20-250 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on September 20, 2004 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

Informal Fact Finding Procedure Pursuant to § 9 VAC 10-20-260

Ms. Miller presented the summary concerning an Informal Fact Finding Procedure for King William County.

Department staff initiated the revision process on January 29, 2002, sending written technical assistance materials and meeting with the County staff on several occasions during 2002 and 2003 to provide advice and support in the revision process. Meetings and written communications are enumerated in the contact list.

In January 2004 the County requested an extension of the December 31, 2003 deadline to July 31, 2004. The request was accompanied by a schedule of actions and the projected adoption date. Due to the timing of the request and standard Board procedures regarding deadline extension requests, the Board reviewed the request on June 21, 2004, and found the County inconsistent-- setting a "final deadline of July 31, 2004, with the understanding that this was an absolute, final deadline, and with the request that County staff continue to work closely with Department staff. Failure to meet the deadline will

result in the Board forwarding the matter to the Office of the Attorney General for further action.”

The County did not adopt a revised CBPA Overlay District by the new deadline, and is therefore subject to a second finding of inconsistent, and, as with the Board’s handling of the other localities which have failed to adopt by their deadlines, forwarding to the Office of the Attorney General for further action.

She noted that the County is consulting with the Department and proceeding with the development of draft revisions, conducting meetings (the planning commission meets tonight on the latest draft—on which the Department provided comments on September 9), and shows strong potential for achieving adoption of draft revisions by November 22; the projected date in Mr. Yolton’s August letter to the Department.

Prior to Board action, Mr. Davis again asked if there were representatives in attendance from King William County. There were none.

MOTION: Mr. Sheffield moved that the Chesapeake Bay Local Assistance Board authorize and direct the Director of the Department of Conservation and Recreation to take appropriate administrative and legal action as outlined under second 10.1-2103.10 of the Chesapeake Bay Preservation Act and 9 of VAC 10-20-260 of the regulations to compel King William County to adopt a consistent program and report back to this Board at it’s next meeting in December, 2004.

SECOND: Mr. Bulova.

DISCUSSION: None.

VOTE: Motion carried unanimously.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

September 20, 2004

RESOLUTION

LOCAL PROGRAM, PHASE I
KING WILLIAM COUNTY #29

Authorization to Take Action Pursuant to § 9 VAC 10-20-260 of the Chesapeake Bay Preservation Area Designation and Management Regulations

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 King William County adopted a local Phase I program on March 28, 1991 and amended it on September 26, 1991, 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 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 staff provided technical assistance to King William County to help facilitate the adoption of a revised program for consistency with the Act and Regulations; and

WHEREAS despite the assistance provided by staff, King William County failed to adopt a revised local program to comply with § 9 VAC 10-20-60 1 and 2 of the Regulations by the December 31, 2003 deadline; and

WHEREAS the Chesapeake Bay Local Assistance Board has adopted *Procedural Policies for Local Program Review* which addresses, among other items, review of local programs; and

WHEREAS King William requested a further adoption deadline extension to July 31, 2004; and

WHEREAS on June 21, 2004, the Chesapeake Bay Local Assistance Board denied the request for a deadline extension, found the local program to be inconsistent, and provided a final deadline of July 31, 2004 for the County to submit to the Board a revised program for review; and

WHEREAS King William County was notified in a letter dated June 25, 2004 of the June 21, 2004 meeting of the Chesapeake Bay Local Assistance Board, the Board's decision to find the County's program inconsistent, and the Board's decision to establish

July 31, 2004 as a final deadline for the County to adopt a consistent Bay Act program,
and

WHEREAS King William County has failed to adopt a consistent Phase I
program by the established deadline of July 31, 2004; now

THEREFORE BE IT RESOLVED that King William County is subject to the
compliance provisions as set forth in §10.1-2103.10 of the Act and §§ 9 VAC 10-20-250
and 9 VAC 10-20-260 of the Regulations.

BE IT FURTHER RESOLVED that the Chesapeake Bay Local Assistance Board
authorizes and directs the Director of the Department of Conservation and Recreation to
take appropriate administrative and legal actions as outlined under §10.1-2103.10 of the
Act and § 9 VAC 10-20-260 of the Regulations to compel King William County to adopt
a consistent Phase I program and report back to the Board at subsequent meetings.

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 20, 2004.

Joseph H. Maroon
Director
Department of Conservation and Recreation

Director's Update Regarding Inconsistent Local Programs

MOTION: Mr. Sheffield moved that the meeting be recessed and the Board
immediately reconvene in a closed meeting, as permitted in
subsection A 7 of Section 2.2-3711 of the *Code of Virginia*, for the
purpose of consultation with legal counsel and briefings by staff
pertaining to actual or probable litigation, where such consultation
or briefing in open meeting would adversely affect the Board's
negotiating or litigating posture, specifically regarding:

A. The pending appeal of the Board's recent decision styled
County of Chesterfield v. Chesapeake Bay Local Assistance Board;
and

B. Probable litigation against the City of Richmond, Lancaster County, the Town of Onley, Chesterfield County and Prince George County to require the adoption and submission of revised ordinances consistent with the Board's Regulations.

SECOND: Mr. Bulova.

VOTE: Ayes – Roberts, Bulova, Harper, Sheffield, Davis.

Nays – None.

MOTION: Ms. Harper moved the following Certification of the Executive Meeting:

WHEREAS, the Chesapeake Bay Local Assistance Board has convened in a closed meeting on this date, pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3212 (D) of the Code requires a certification by this Board that such closed meeting was conducted in conformity with Virginia law;

NOW, THEREFORE BE IT RESOLVED that 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 for considered by the board.

SECOND: Mr. Bulova.

VOTE: Ayes – Roberts, Bulova, Harper, Sheffield, Davis

Nays – None

ABSENT DURING VOTE: Rodriguez, Froggatt, Duncanson, Fitz-Hugh

ABSENT DURING MEETING: Rodriguez, Froggatt, Duncanson, Fitz-Hugh

MOTION: Mr. Sheffield moved that upon the report of the Director that negotiations with Lancaster County have not proved to be successful in obtaining sufficient progress on compliance, that the Chesapeake Bay Local Assistance Board indicate its continuing support of its previous actions and direct the Director to seek legal remedies through the Office of the Attorney General pursuant to the Board Resolution of June 21, 2004.

SECOND: Mr. Bulova.

DISCUSSION: None.

VOTE: Motion carried unanimously.

Review of Board Sponsored Activities

There were no Board sponsored activities for discussion at this time.

Election of Vice-Chairman

Ms. Harper nominated Mr. Sheffield to serve as Vice Chairman of the Chesapeake Bay Local Assistance Board.

Mr. Bulova called for the nominations to be closed.

Mr. Davis called for a vote. Mr. Sheffield was elected unanimously to serve as Vice Chairman.

New Business

Mr. Maroon suggested that the Board hold a retreat at either Pocahontas State Park in Chesterfield County or Westmoreland State Park in Westmoreland County. The dates offered were Tuesday, November 16 or Thursday, November 18. Staff will confirm the details and communicate with the Board.

Mr. Davis requested that members forward items for discussion to Mr. Maroon by October 15, 2004.

Public Comment

Mr. Joe Lerch spoke on behalf of the Chesapeake Bay Foundation. He congratulated the three new board members.

He asked the status of progress on the four additional inconsistent programs. He also asked the status regarding the review of regulations.

Mr. Maroon said that progress is being made with regard to the inconsistent programs. He stated that with the merger that the Department is moving as quickly as possible with regard to establishing a policy committee and the necessary review of regulations.

Adjourn

There being no further business, Ms. Roberts moved that the meeting be adjourned.

Respectfully submitted,

Donald W. Davis
Chairman

Joseph H. Maroon
DCR Director