

**Chesapeake Bay Local Assistance Board
Monday, March 15, 2010
Conference Room Three, Patrick Henry Building**

Chesapeake Bay Local Assistance Board Members Present

Donald W. Davis, Chairman

William E. Duncanson, Vice Chairman

Gregory C. Evans

Barry L. Marten

John J. Zeugner

Rebecca Reed

Richard B. Taylor

Chesapeake Bay Local Assistance Board Members Not Present

Beverly. D. Harper

Charles B. Whitehurst

DCR Staff Present

Ryan Brown, Assistant Director of Policy and Planning

Melissa Doss, Senior Environmental Planner

David C. Dowling, Director of Policy, Planning and Budget

Michael R. Fletcher, Board and Constituent Services Liaison

Jack E. Frye, Director, Division of Soil and Water Conservation

Adrienne Kotula, Principal Environmental Planner

V'lent Lassiter, Senior Environmental Planner

Nancy Miller, Senior Environmental Planner

Daniel Moore, Principal Environmental Planner

Joan Salvati, Director, Division of Chesapeake Bay Local Assistance

Bill Price, Director of Administration

David Sacks, Assistant Director, Division of Chesapeake Bay Local Assistance

Shawn Smith, Principal Environmental Planner

Elizabeth Andrews, Office of the Attorney General

Others Present

Wilmer Stoneman, Virginia Farm Bureau Federation

Amy Walker, New Kent County

Sharon Williams, Prince George County

Call to Order

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

Consideration of the Minutes

MOTION: Mr. Evans moved that the Minutes of the December 14, 2009 meeting be approved as submitted by staff.

SECOND: Ms. Reed

DISCUSSION: None

VOTE: Motion carried unanimously

Director and Division Director's Report

Mr. Dowling gave the Director's report.

Mr. Dowling noted that no appointments had been made for DCR. He said that Mr. Baxter was still serving as Acting Director and noted that Mr. Baxter was currently out on medical leave.

Mr. Dowling introduced Bill Price, Director of Administration and Jack Frye, Director of the Division of Soil and Water Conservation. Mr. Frye was available to address questions regarding Agricultural issues or TMDL issues.

Mr. Dowling said that he would like to take a few minutes to share information regarding the Chesapeake Bay TMDL, legislation and the budget, and stormwater.

In the 2000 Bay Agreement the signatories committed to improving water quality so that the Bay could be removed from the Clean Water Act impaired waters list by 2010 (built on 1987 and 1992 agreements). The Virginia Tributary Strategies were issued as the Commonwealth's plan to reduce the input of nutrients and sediments in the Chesapeake Bay Watershed. The strategies outlined allocations for point and nonpoint sources and implementation plans for controls. EPA and the jurisdictions have admitted that the 2010 goal will not be met.

The EPA is now applying section 303(d) of the Clean Water Act to require development of a Total Maximum Daily Load for the Bay and its tidal tributaries. The Bay TMDL will satisfy the requirements of both the 1999 Virginia and 2000 District of Columbia consent decrees as well as Maryland's request that EPA develop TMDLs by May 1, 2011 for Bay and tidal tributary waters listed on the Virginia, District of Columbia and Maryland 303(d) lists due to impairments cause by nutrients and sediment.

The TMDL – actually a combination of 92 smaller TMDLs for individual Chesapeake Bay tidal segments – has been characterized as a “pollution diet” for the Bay and its tidal waters and will establish how much nitrogen, phosphorus and sediment can flow into the Bay and its tributaries while maintaining state water quality standards for dissolved oxygen, water clarity and algae. [40 Virginia segment-sheds]

EPA is currently updating the water quality and watershed models to establish the pollution caps viewed as necessary to restore the Bay. This will update the target loads shared with jurisdictions on October 23, 2009. EPA must allocate loads among sources with a “reasonable assurance” that allocations can be achieved.

- Update Bay models (March 15)
- Revised nutrients target loads (April 30)
- Initial sediment target loads (April 30)
- Initial air target loads (April 30)

Watershed Implementation Plans are required to be developed and will provide a roadmap for how the states and the District, in partnership with the federal and local governments will achieve and maintain the Bay TMDL nitrogen, phosphorus, and sediment allocations necessary to meet the State’s and the District’s water quality standards. EPA expects Plans to include dates for enhancing programs and implementing key actions to achieve the required reductions, with all such actions to be implemented as soon as possible and no later than 2025.

As part of the Plans’ development Virginia will assess the existing Tributary Strategies to see which ones can be carried forward into the Plans.

The Plans will be supported by a series of two-year milestones for achieving specific near-term pollution reduction actions and targets needed to keep pace with commitments. In December 2009 EPA sent to the jurisdictions an Accountability and Consequences memo that spells out consequences if two-year milestones are not met.

The schedule for the TMDL process is as follows:

- June 1, 2010: States and D.C. submit preliminary Phase I Watershed Implementation Plans to EPA.
- August 1, 2010: States and D.C. submit revised draft Phase I Watershed Implementation Plans to EPA.
- August 15 – October 15, 2010: Bay TMDL public review and comment period and second round of public meetings.
- November 1, 2010: Final Phase I Watershed Implementation Plans to EPA.
- June 1, 2011: draft Phase II Plans that incorporate local targets in the Plans are due to EPA.
- November 1, 2011: Final Phase II plans are due to EPA.
- 2017: Phase III Plans with refined action and controls that will be implemented between 2018 and 2025 are due to EPA.

DCR and DEQ in coordination with the Secretary of Natural Resources Office are working with stakeholders to develop this TMDL and a Watershed Implementation Plan.

EPA will carefully review the Phase I, II and III Watershed Implementation Plans to assure that they are consistent with EPA’s November 4, 2009 expectations letter.

EPA plans to credit only that portion of pollutant removals for which States can provide verifications that reported practices and/or controls are being appropriately installed and maintained.

Mr. Davis asked how the pollutant removals would be tracked in the western part of the state.

Mr. Frye said that DCR was working with localities to develop a process to gather the same type of information that is gathered in the Bay areas. He noted that the stormwater regulations would also address this requirement.

Legislative and Budget Update

Mr. Dowling gave the Legislative and Budget update. He highlighted the following legislation.

Two bills that advanced regarding stormwater were: HB 1220 (Delegate Hugo) and SB 395 (Senator Wagner). These bills delayed the effective date of the Virginia Soil and Water Conservation Board's stormwater regulations that establish local program criteria and delegation procedures and the water quality and quantity criteria. The regulation shall be adopted within 280 days after the establishment of the U.S. Environmental Protection Agency's Chesapeake Bay – wide TMDL, but no later than December 1, 2011. The bill also directs the Virginia Soil and Water Conservation Board to establish an advisory panel to review the regulation and make recommendations on possible revisions to the regulations. HB 1220 has already been signed by the Governor.

Mr. Evans asked how the advisory panel would be established.

Mr. Dowling said that DCR would most likely reconstitute the previous Technical Advisory Committee and add members as needed. He said that the agency would first need to see the preliminary TMDL and watershed implementation plan.

Mr. Dowling gave an update regarding Stormwater Regulations.

- Stormwater Regulatory Status
 - October 5, 2009 – Board adopted and suspended final regulations to allow for additional 3-day public comment on changes.
 - October 29 to November 25, 2009 – Additional comment period on Board adopted changes.
 - December 9, 2009 – Board adopted final regulations; Governor soon thereafter approved.
 - January 14, 2010 – Board responds to 25 petitioners and voted to suspend the regulations and hold an additional 30-day public comment period on the changes adopted on December 9, 2009.

- February 15 – March 17, 2010 – Additional comment period on Board adopted changes.
- Locality adoption 15 to 21 months after statutory effective date.

Mr. Davis said that one of the issues the Board had discussed was the calculation process to determine pollutant loading. He said that the Board was currently using the calculation process in the DCR manual. He said that one of the items with the new stormwater regulations was the new calculations. He asked if there would be further discussions or if the Board would wait until the regulations were finalized.

Ms. Salvati said there are localities that still use the Bay Act process. She said that as the stormwater regulations are not in place, that DCR would use the same process as the localities.

Mr. Dowling reviewed additional stormwater related bills, including:

- **HB 1221 – Water Facilities Revolving Fund; loans for stormwater runoff control best management practices.** Provides that loans may be made from the Virginia Water Facilities Revolving Fund, at the state Water Control Board's discretion, to a local government for construction of facilities or structures or implementation of best management practices that reduce or prevent pollution of state waters caused by stormwater runoff from impervious surfaces. However, under the bill wastewater treatment facilities will have the first priority in obtaining financing from the Fund. *Passed House and Senate.*
- **SB 627 - Nutrient reduction credits; nonpoint nutrient offsets to be credited against a nutrient allocation.** Clarifies who receives credit for the nutrient reductions associated with a stormwater nonpoint nutrient offset. Offsets are used to achieve compliance with construction site stormwater nutrient discharge requirements. The nonpoint nutrient offsets system works very similar to wetland banks. These offsets are only available when capturing all nutrients is too difficult on a development site. If the land disturbing activity using a nonpoint nutrient offset discharges to an MS4, the locality receives credit toward its nutrient allocation. If the discharge is not to an MS4 then the reductions are applied toward compliance with the nutrient allocation applicable to that area. *Signed by Speaker and President*

Mr. Dowling addressed Dam Safety legislation.

He said this was a key area for the agency during the Session. Delegate Toscano's bill allowed DCR to reduce the incremental analysis in terms of spillway design. This was an attempt to right size the incremental analysis. He also discussed Senate Bill 276 (Houck), which affects the spillway requirements for high hazard dams, and Senate Bill 244 (Watkins), which addresses limited use roadways.

Mr. Dowling noted that other legislation regarding State Parks, Land Use and Erosion and Sediment Control were outlined in the handout.

Ms. Salvati gave the Division Director's report.

Ms. Salvati said that the Division had received \$50,000 from the overall Chesapeake Bay Implementation Grand Fund that comes to the agency. DCR is funding three local governments and three Planning District Commissions, four are for low-to-moderate income septic tank pumpouts and two are for local ordinance reviews to implement of the Phase III programs. The localities were selected through an RFP process.

Mr. Dowling gave an overview of budget issues. A copy of Mr. Dowling's presentation is available from DCR.

Local Program Compliance Evaluations

Westmoreland County

Ms. Lassiter gave the report for Westmoreland County.

The Department initiated a compliance evaluation for Westmoreland County early in 2008. On March 17, 2008, the Chesapeake Bay Local Assistance Board found that the County's implementation of its Phase I program did not comply with the Act and Regulations, and established a deadline of March 31, 2009 for the County to address 5 conditions. On June 15, 2009, the Board conducted a condition review and found that 4 of the 5 conditions had been met. However, at that time, the County was still under a Corrective Action Agreement with the Virginia Soil and Water Conservation Board to address specific deficiencies in their Erosion and Sediment Control program. As a result, the Chesapeake Bay Local Assistance Board required the County to undertake and complete the outstanding conditions specified in the Corrective Action Agreement. On January 14, 2010, the Soil and Water Conservation Board found that the County had addressed all of the issues identified within the Corrective Action Agreement, and the County was found compliant.

Ms. Lassiter said that since Westmoreland County had undertaken and completed the outstanding issues in their Corrective Action Agreement, the staff recommendation was that the Board find that the County's implementation of its Bay Act program fully complies with the Act and Regulations.

MOTION: Mr. Duncanson move that the Chesapeake Bay Local Assistance Board find the implementation of Westmoreland County's Phase I program to be in compliance with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations.

SECOND: Ms. Reed

DISCUSSION: None

REVISED: 6/4/2010 2:05:28 PM6/4/2010

VOTE: Motion carried unanimously.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

March 15, 2010

RESOLUTION

LOCAL PROGRAM COMPLIANCE EVALUATION
WESTMORELAND COUNTY

Local Compliance Evaluation - Compliant

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

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

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

WHEREAS on March 17, 2008, the Chesapeake Bay Local Assistance Board found that implementation of certain aspects of Westmoreland County's Phase I program did not fully comply with the Act and Regulations and further that the County address the five recommended conditions in the staff report no later than March 31, 2009; and

WHEREAS in January 2010, the County provided staff with information relating to the County's actions to address the five recommended conditions which were evaluated in a staff report; and

WHEREAS after considering and evaluating the information presented, the Board agrees with the recommendation in the staff report; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the implementation of Westmoreland County's Phase I program to be in compliance with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on March 15, 2010, by the Chesapeake Bay Local Assistance Board.

Russell W. Baxter
Acting Director
Department of Conservation and Recreation

Town of White Stone

Ms. Lassiter gave the report for the Town of White Stone.

The Department initiated a compliance evaluation for the Town of White Stone on April 3, 2008. On December 15, 2008, the Chesapeake Bay Local Assistance Board adopted a Resolution that required the Town to undertake and complete four recommendations by December 31, 2009.

The first, third and fourth conditions are related to the Town's Chesapeake Bay Preservation Ordinance. Condition #1 states that all references to buffer area width reduction must be removed. Condition #3 states that Section 2-4 (d) of the Town's Bay Act ordinance must be deleted because it allows buffer equivalency calculations. Condition #4 requires that the Town's Bay Act ordinance be amended to require an exception process based upon review by a legislative or other body. Furthermore, the six required findings must be listed in their ordinance, and it must specifically require public notice and a hearing prior to the granting of exceptions. Department staff worked with Town staff in amending its ordinance to be consistent with the Regulations, and the revised ordinance was adopted by the Town Council at a public hearing on August 6, 2009.

The second recommended condition requires that the Town develop and implement a five-year septic pump-out program. The Town initiated their septic pump-out program in June 2009, and Town staff has provided Department staff with copies of all notification materials. In addition, as suggested by the Department, the Town has now adopted the inspection and filter options.

Ms. Lassiter said that since the Town of White Stone had addressed all four conditions, the staff recommendation was that the Board find that the Town's implementation of its Bay Act program fully complies with the Act and Regulations.

MOTION: Mr. Zeugner moved that the Chesapeake Bay Local Assistance Board find the implementation of the Town of White Stone's

Phase I program to be in compliance with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations.

SECOND: Mr. Taylor

DISCUSSION: None

VOTE: Motion carried unanimously.

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
March 15, 2010**

RESOLUTION

**LOCAL PROGRAM COMPLIANCE EVALUATION
TOWN OF WHITE STONE**

Local Compliance Evaluation - Compliant

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

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

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

WHEREAS on December 15, 2008, the Chesapeake Bay Local Assistance Board found that implementation of certain aspects of the Town of White Stone’s Phase I program did not fully comply with the Act and Regulations and further that the Town address the four recommended conditions in the staff report no later than December 31, 2009; and

WHEREAS in September, 2009, the Town provided staff with information relating to the Town’s actions to address the four recommended conditions which were evaluated in a staff report; and

WHEREAS after considering and evaluating the information presented, the Board agrees with the recommendation in the staff report; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the implementation of the Town of White Stone's Phase I program to be in compliance with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on March 15, 2010, by the Chesapeake Bay Local Assistance Board.

Russell W. Baxter
Acting Director
Department of Conservation and Recreation

Town of Montross

Ms. Lassiter gave the report for the Town of Montross.

The Town of Montross is located in Westmoreland County in the Northern Neck of Virginia. The Town is approximately one square mile in size, and is the County seat of Westmoreland. It is primarily a residential community, with a population of approximately 300 people.

The Department initiated a compliance evaluation for the Town of Montross on March 4, 2009. The Town relies heavily on Westmoreland County for the implementation of its Bay Act program, and on July 24, 1990, the Town passed a resolution requesting that the County administer its Bay Act program. On June 23, 2009, the Town and County formally established their working agreement with respect to Bay Act implementation by executing a Memorandum of Understanding. In addition, after the Town issues a zoning permit, the County reviews all site plans, issues building permits, conducts inspections for erosion and sediment control, and ensures compliance with stormwater management requirements. Westmoreland County will also administer the pump-out program to the 15% of Town residents who are not connected to public sewer.

The Town of Montross and Westmoreland County work cooperatively together to implement the Town's Bay Act program. Ms. Lassiter said that the staff recommendation was that the Board find that the Town's implementation of its Bay Act program fully complies with the Act and Regulations.

Mr. Evans noted that from a legal standpoint, the motion is worded that the Town is compliant, but the MOU delegates most responsibility for Bay Act implementation to the County.

Ms. Smith responded that the phrasing is consistent with how other Towns have been handled during previous compliance evaluations.

MOTION: Mr. Duncanson moved that the Chesapeake Bay Local Assistance Board find the implementation of the Town of Montross' Phase I program to be in compliance with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations.

SECOND: Mr. Zeugner

DISCUSSION: None

VOTE: Motion carried unanimously

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

March 15, 2010

RESOLUTION

LOCAL PROGRAM COMPLIANCE EVALUATION

TOWN OF MONTROSS

Local Compliance Evaluation - Compliant

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

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

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

WHEREAS in March 2009, the Department of Conservation and Recreation conducted a compliance evaluation of the Town of Montross' Phase I program in accordance with the adopted compliance evaluation process; and

WHEREAS after considering and evaluating the information presented, the Board agrees with the recommendation in the staff report; now

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the implementation of the Town of Montross' Phase I program to be in compliance with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on March 15, 2010, by the Chesapeake Bay Local Assistance Board.

Russell W. Baxter
Acting Director
Department of Conservation and Recreation

Prince George County

Ms. Kotula gave the report for Prince George County. She introduced Sharon Williams, Planning Director for the County.

Prince George County's initial compliance evaluation took place in the fall of 2008 and resulted in six conditions. Since that time, Department and County staff have held numerous meetings and technical assistance has been provided for a number of projects within the County.

Ms. Kotula discussed conditions three, five and six, which required the County to revise their application review procedures to ensure that CBPAs are shown on plans and to require WQIAs and exceptions when necessary. A review of County files revealed that the proper review procedures have been put into place to address these conditions, but deficiencies were still noted within the WQIA and exception applications received. The County has since corrected the deficiencies associated with these applications and, rather than undergoing file review by Department staff for 18 months as suggested by the staff report, has agreed to periodic visits from the Department to discuss on-going projects. Ms. Kotula said that staff believed that these conditions have been addressed.

The fourth condition relates to properly requiring BMP maintenance agreements. The Department has assisted the County by giving them a sample BMP database and sample standard maintenance agreement. Using these tools, the County has now implemented a program of requiring maintenance agreements for all newly installed BMPs in CBPAs and is tracking all of them within the database. Given these actions by the County, Ms. Kotula said staff was of the opinion this condition has been adequately addressed.

Ms. Kotula said that the first condition required that the County revise its current CBPA Map to accurately depict all RMA features as described in the County's ordinance. The County has undertaken significant work in order to develop a new high quality map, but is currently awaiting the arrival of updated FEMA floodplain maps in order to produce an accurate CBPA map. It is anticipated that the updated maps will arrive within the next few months and therefore the County has requested that the deadline for this condition be extended. Ms. Kotula said that staff supported this request and therefore was recommending an extension to September 30, 2010.

The second condition required that the County present Phase I modifications to the Board for review. While staff has received documentation that shows the County repealed the ordinance containing the unapproved Phase I modifications, the Condition Review process revealed that the County's ordinance also contains two Articles which are inconsistent with the Regulations. The original staff report which was mailed to the Board recommended a condition requiring that the County remove these inconsistent sections; however, Department staff recently held a meeting with County officials and developed an alternate strategy to address this issue.

The County is currently in the process of a zoning ordinance re-write and, at the instruction of the Board of Supervisors, will not be amending their ordinance until such time that the entire ordinance is prepared. Since this will not occur for some time, the County has proposed to issue a memo, to be inserted into all hard copies of the zoning ordinance, which states that Articles 13 and 14 should not be used in the administration of their CBPA program due to their inconsistency with state regulations and that the repeal of these sections is pending. The sections will be removed from electronic versions of the ordinance. Ms. Kotula said that provided that the County completes these actions immediately and that the repeal of the ordinance occurs within two years, staff was comfortable with this approach.

Ms. Kotula said the staff recommendation was that the Board consider Conditions #2 thru #6 to be addressed and grant a deadline extension for Condition #1 until September 30, 2010.

Ms. Williams said that, as the Board might remember, at a previous meeting she had explained that the County had two sets of ordinances. She said that the County had asked to be given time to correct the situation. After a review and a repeal of existing ordinances, the County reviewed the two ordinances. One of the factors in the decision was that the 2005 ordinance provisions had been deemed consistent by the Board. The County went back to that ordinance.

Ms. Williams said that a few months prior it was determined that there was one obsolete provision in the ordinance. She said that since that time the County has been without a County Attorney. Because of that the governing body has requested that no ordinance provisions be brought forward at this time. Once someone is hired the new County Attorney will be asked to review all ordinances. At that point staff would be given authorization to advertise for Code amendments. She said that internally staff was

working on a zoning ordinance but that no official action could move forward until a new County Attorney is on board.

MOTION: Mr. Zeugner that the Chesapeake Bay Local Assistance Board find that the implementation of a certain aspect of Prince George County's Phase I program does 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 this deficiency, directs Prince George County to undertake and complete the one recommended condition contained in the staff report no later than September 30, 2010.

SECOND: Ms. Reed

DISCUSSION: None

VOTE: Motion carried unanimously

MOTION: Mr. Zeugner moved that, for the purpose of clarification the previous motion be amended and that the Chesapeake Bay Local Assistance Board find that the implementation of certain aspects of Prince George 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 George County to undertake and complete two recommended conditions contained in the staff report no later than September 30, 2010.

SECOND: Mr. Evans

DISCUSSION: None

* Due to subsequent action the Resolution for Prince George County is included later in the document.

Program Update

Ms. Doss gave the update for the City of Petersburg.

On March 23 2009, the Board found that Petersburg's implementation of its Phase I program did not fully comply with the Act and Regulations, and established a deadline for condition 7 in accordance with the deadlines and requirements established by the Virginia Soil and Water Conservation Board; a deadline of March 31 2010 for the City to address condition number 8, and a deadline of March 24, 2009 for the City to address the remaining seven conditions.

The City of Petersburg has continually updated Staff with the progress of their program. Technical assistance is provided to the City through monthly meetings and reviews of building permit files and plans.

The first three conditions are generally related to the process undertaken by the City for reviewing building permit applications. These conditions require the City to screen applications for whether they are in CBPAs, ensure CBPAs are shown on plans, and consistently require site specific evaluations when necessary. Since the compliance evaluation, Staff has reviewed building permits and additional files on nine occasions. The zoning administrator has revised the City's development review procedures to include a review for whether or not CBPAs are present on-site, requires the depiction of CBPAs on plans when necessary, and has performed site specific evaluations when necessary. Ms. Doss said that it was the opinion of staff that the City is making progress with these three conditions.

The fourth condition requires the City to document submission of a WQIA for any proposed land disturbance, development, or redevelopment within RPAs. Conditions five and six require the City administer exceptions properly, and ensure all development and redevelopment properly addresses nonpoint source pollution. The City has not had the opportunity to review any exception requests, WQIAs, or stormwater calculations for developments within CBPAs. Evidence of these conditions being met requires the City demonstrate the proper tools and procedures are in place to review WQIAs, stormwater calculations and exception requests.

Condition number seven requires the City to address the issues identified in the 2008 Corrective Action Agreement (CAA). The SWCB conducted a review of the City's CAA on October 9, 2008 and the CAA completion date was extended to May 21, 2009. The SWCB re-reviewed the CAA on June 25, 2009 and the deadline was again extended to January 21, 2010. The City of Petersburg has not been back to the SWCB for the conditions to be reviewed since the last deadline has passed. The City must address the CAA issues and be found compliant by the SWCB in order for this condition to be addressed.

Condition number eight requires the City to develop and implement a septic pumpout and inspection program. Thus far, the City has developed a septic maintenance letter that was sent to property owners with septic tanks on January 8, 2010. In order to fully address this condition, a tracking mechanism must be in place to document responses.

Condition nine states the City must develop a program to track BMP installation, inspection, and maintenance. The City's Department of Public Works has developed a BMP tracking program which is meant to track BMP installation, inspection and maintenance on the City's website, however, a system for inspections has not been determined and not all inspection information has been included in the database. In order to address this condition, the correct information from the BMP files needs to be added to the electronic database and a system for regular inspection and maintenance must be

developed. Ms. Doss said that staff opinion was that the City is making progress with this condition.

Ms. Doss said that the City is demonstrating progress toward meeting the conditions, however staff feels that not enough time has elapsed to determine if all of the conditions are being met. Staff will continue to assist the City with monthly visits.

Round 2 of Compliance Evaluation

Mr. Sacks provided a presentation of the compliance evaluation process, referencing PowerPoint slides in his presentation. A copy of the presentation slides is available from DCR. He also referenced the staff report that was provided in the Board mailing and a supplemental packet distributed. He noted that the supplemental packet contained a more current version of the Compliance Evaluation Review Elements, dated March 15, 2010 .

The following 14 slides were shown to accompany the presentation and discussion.

Local Program Compliance Evaluations

- An evaluation of the implementation of the locality's Bay Act program
- Occur approximately every five years
- Review is based on requirements in the Regulations
- Formal Review by the Chesapeake Bay Local Assistance Board
- Initial Reviews evaluated implementation of the Phase I program
- Subsequent reviews will address Phases I, II, and III of local program implementation

Board and Policy Committee Recent Reviews and Actions

- June 2008: CBLAB most recent revision to *Procedures for Local Program Review*.
- June 2009: CBLAB direction to conduct advisory reviews of local ordinances and to incorporate other elements of Phase III program review into local compliance evaluations
- November 2009: Policy Committee review and recommendation to CBLAB to include 31 review elements
- December 2009: CBLAB approval of review elements; direct staff to develop remaining compliance standards and bring full program to Committee and Board for approval in Feb/March 2010.

Summary of Changes From First Round

- Review of Implementation of all three Program Phases
 - Phase I: Review of all Performance Criteria

- Phase II: Comprehensive Plan Components
- Phase III: Review of Ordinances for inclusion of plan and plat requirements; Review for implementation of ordinance provisions and performance criteria
- Some changes to existing standards for being found compliant
- Details of Review strategy and requirements summarized in *Recommended Compliance Evaluation Review Elements*

Activities Since December 14, 2009 Meeting

- Meeting with SWCDs
- Additional meetings with local governments
- Comments received from local governments
- Development of recommended compliance standards for agricultural requirements and comprehensive plan requirements
- Meeting with agricultural stakeholders

Summary of Comments and Concerns

- Four general categories:
 - Plan and Plat requirements
 - Comprehensive Plan requirements
 - Evaluation of implementation of Phase III performance criteria
 - Agricultural requirements

Concerns - Plan and Plat Requirements

- Delineation of RPA on plats of new large parcels can be excessively expensive, requiring a survey, PFD, and/or wetlands delineation. *Staff Response - Accepting labeling of “approximate location of RPA” to enable use of existing mapping resources rather than expensive on-site surveys.*
- Notation requirement is excessive. *Staff Response - Accepting general notation regarding adherence to local ordinance requirements; labeling acceptable in lieu of notation.*
- Drainfield and buildable area delineations on plats impractical. *Staff Response - Clarified those requirements that are applied to both plans and plats, and those that are applied to only plats or plans.*

Concerns - Comprehensive Plan requirements

- Implementation of comprehensive plan not required by state code. *Staff Response – Section 10-20-171 of the regulations requires implementation of certain*

components of the Phase II criteria. The revised standard requires a report outlining local actions that implement Phase II program elements.

Concerns - Implementation of Phase III Criteria

- Standards that CLBA will use to determine if the three performance criteria (minimize impervious cover, minimize land disturbance, preserve indigenous vegetation) are being met are not yet outlined.
- *Staff Response – Not appropriate to establish a single numeric standard. Review will determine appropriateness based on use, local requirements and adherence to existing ordinances and standards.*

Concerns - Agricultural Requirements

SWCD meeting comments:

- Concern that pressure placed on localities will trickle down to SWCDs - are currently not able to provide additional services and unlikely to get additional funding to do assessments *Staff response - Compliance standard requires the locality to develop a plan to accomplish the required notification. This will allow the locality to work within the current financial and technical limitations but still make progress.*
- Conservation Assessments – None have been completed and no one knows the standards for an assessment *Staff response - Staff will work with other DCR divisions to address this concern.*
- Proprietary information on specific farm tracts cannot be given out
- Farmers may not cooperate with additional requirement for assessment if no financial assistance is provided

Local government comments

- Excessive financial and staff burden for localities. *Staff response: Compliance standard requires the locality develop a plan to accomplish the required notification. This will allow the locality to work within the current financial and technical limitations and still make progress. However, CBLA recognizes that there are currently limited technical or financial resources to provide needed assistance.*
- Localities unable to identify all agricultural lands
- Localities unable to match known farm tracts with tax map information
- District staff have undertaken the agricultural requirement in the past, why now are the localities being held responsible?

Mr. Sacks said that the way the compliance standard is currently proposed, in item number 13, localities would not be required to ensure that the assessment had occurred, rather that they have a process for notification.

Compliance Evaluation Schedule

June 15, 2009	CBLAB authorization to include elements of Phase III review into compliance evaluations
June – Oct. 2009	Survey and discussion with local governments
November 3, 2009	Policy Committee
November 2009	Posting of review components document for locality review
December 14, 2009	Board discussion/Action
Dec. 09-Feb. 2010	Discussions with Localities
February 2010	Posting of Recommended Compliance Evaluation Review Elements and locality notification
March 2010	CBLAB Adoption
June 2010	CBLAB Compliance Evaluation of Town of Cape Charles

Outreach Summary

Local Governments	Discussions with all cities and counties; 6 of 36 towns
Soil and Water	Discussions with representatives of all 12 Cons. Districts districts in the Bay Act Area.
June – Oct.2009	Survey and discussion with local governments
November 3, 2009	Policy Committee
November 2009	Posting of review components document for locality review
February 2010	Posting of revised review components document and Notification to Localities and SWCDs

Mr. Sacks said that staff was requesting the following action from the Board:

Adopt resolution approving the compliance evaluation review elements and corresponding review strategies and compliance standards as provided in the document entitled *Recommended Compliance Evaluation Review Elements – March 15, 2010*.

Mr. Davis called for discussion. He noted that he could call for public comment following the Board discussion.

At this time the Board recessed for lunch.

Following lunch, Mr. Davis asked if Board members had any questions. He noted that while the Policy Committee did not meet in February, the document had been reviewed on at least two occasions.

Ms. Reed said that regarding the agricultural activities it would be difficult to see this accomplished since there was no funding and since the Soil and Water Conservation Districts were not required to provide the assessment. She said the localities would also say they did not have the funding or the technical expertise. She asked if staff had discussed how localities should accomplish this.

Ms. Salvati said that staff was proposing a compliance standard that required the submittal of a plan for implementing the soil & water conservation assessments, but the standard has no timeframe for localities for implementation. She said that the expectation was that localities and SWCDs would work together.

Mr. Evans said that, as a former District Director and President of the Virginia Association of Soil and Water Conservation Districts, he shared Ms. Reed's concern. He noted that similar concerns had been expressed at the time the septic tank pump out requirement was added.

Mr. Marten asked about the discussion at that time.

Mr. Davis said that the current regulations became effective in 2001. He noted that the septic tank pump out requirement became more of an issue around 2004. He said that there was a concern about the burden placed on the localities.

Ms. Salvati said that staff had worked with localities to provide technical assistance and resources where possible.

Mr. Taylor expressed a concern that the standard be included. He noted that while it may be difficult to attain, there needed to be a starting point and a goal. He said that the plan was good and it was important to get on the books.

Mr. Davis said that when the septic pump out came to the forefront the Board turned to the Health Department for information. He noted that, at the time, the localities said they did not have the funding to comply with the standard. He said that the discussion was good, but that he felt the Board should make a decision.

Mr. Taylor asked if any of the federal funds could be transferred into funding for this standard.

Ms. Salvati said that it might be possible to use some of the federal dollars to develop a model program similar to the Chesapeake Bay Implementation grant and that the funds could be set up as pass through funds.

Ms. Walker from New Kent County said that there would be difficulties from a locality standpoint in identifying the properties in question.

Mr. Dowling noted that while the agency would work to find funding the current budget situation could not be ignored.

Ms. Salvati said that none of the sources staff was looking at would be state sources. She said staff was seeking alternate sources of federal funding.

Mr. Zeugner said that it seemed clear that funding was not available for these plans. He said he would like to see localities develop a list of those properties involved in agricultural properties. He said he would also suggest that a definition of what constitutes an agricultural property be addressed. He said he would like to see localities develop the list even with the understanding that funding would not be readily available.

Ms. Salvati said that the regulations do not have a definition of agricultural activities because the workgroup at the time could not develop a sufficient definition. She said at the time the Board deferred the definition of agricultural activities to the localities.

Mr. Duncanson said that he felt that localities could work with Soil and Water Conservation Districts to obtain the information. He said that he did not believe it would take two or three years to get that information.

Ms. Reed said that the information could likely be obtained through the Commissioner of Revenue and the land use taxation program.

Public Comment

Wilmer Stoneman, Farm Bureau Federation

Mr. Stoneman thanked the staff for reaching out to the Farm Bureau Federation to discuss these issues. He said that the Farm Bureau had concerns but thought the goals were achievable. He said that further guidance was needed on certain operational aspects related to the implementation of the agricultural requirements. He said that neither the localities or SWCDs were at fault, but that there was not sufficient staffing to do the work.

Mr. Davis said that the document should reflect goals that are achievable. He said that there was no reason for the Board to adopt the document as a whole.

Mr. Evans said that, at this time, he was comfortable with the entire document with the exception of the agricultural requirements. He indicated that there were both operational

and resource issues related to the agricultural requirements and stated that he wanted staff to look into these issues and identify ways to address them.

MOTION: Mr. Evans moved that the Chesapeake Bay Local Assistance Board approve the compliance evaluation review elements and corresponding review strategies and compliance standards as provided in the document entitled *Recommended Compliance Evaluation Review Elements* with the exception of items 13 and 21 and for items 13 and 21 to ask staff to pursue some of the operational and financing issues and report back to the Policy Committee to report back to the Board at the June meeting.

SECOND: Mr. Zeugner

DISCUSSION: None

VOTE: Motion carried unanimously.

Ms. Salvati thanked Mr. Sacks and staff for the development and research associated with the document.

Mr. Sacks said that the revised document would be posted on the DCR website within a week and that localities would be notified for further comment.

Mr. Davis asked that the Board be kept apprised of the progress and comments.

Mr. Dowling said that staff had done an exemplary job.

Mr. Duncanson said that it would be helpful for the Policy Committee to address this issue prior to the June Board meeting.

Mr. Davis suggested that staff work with Policy Committee members to schedule a meeting date prior to the Board meeting.

Other Business

Review of Grant Funds

Ms. Salvati provided a presentation regarding the requirements for and status of funding for Chesapeake Bay Preservation Act implementation. She stated that the §10.1-2103.3 of the Chesapeake Bay Act states that part of the duties and power of the Board was to “Provide financial and technical assistance and advice to local governments.”

Ms. Salvati said that previously the CBLAB and now DCR had endeavored to provide funding. She said that going back to 1992 there were significant resources for Districts for the agricultural requirements. She said that the last fiscal year that funds were provided was FY03.

Ms. Salvati noted that the funding has been dwindling significantly. She further noted that much of the allocation of the Chesapeake Bay Implementation grant was now going to Soil and Water efforts to address water quality issues.

Ms. Salvati noted that potential funding sources were:

- Enhanced Chesapeake Bay Implementation Grant (EPA)
- Chesapeake Bay Stewardship Fund: Innovative Nutrient & Sediment Reduction (NFWF)
- Conservation Innovation Grants (USDA/NRCS)

Ms. Salvati said that these were the primary sources staff would be considering. She said that it was her understanding that there would be consideration of other sources of funding for dealing with actions related to the Chesapeake Bay TMDL.

Mr. Zeugner said that following consultation with counsel, he needed to clarify the motion pertaining to Prince George County.

MOTION: Mr. Zeugner moved that, as a new motion, the Chesapeake Bay Local Assistance Board find that the implementation of a certain aspect of Prince George County's Phase I program does 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 this deficiency, directs Prince George County to undertake and complete one recommended condition as presented no later than September 30, 2010.

SECOND: Mr. Evans

DISCUSSION: Mr. Davis noted that this was a clarification of Board action earlier in the meeting.

VOTE: Motion carried unanimously.

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
March 15, 2010**

RESOLUTION**LOCAL PROGRAM COMPLIANCE EVALUATION**
PRINCE GEORGE COUNTY**Local Compliance Evaluation - Conditional**

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

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

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

WHEREAS in Winter 2008, the Department of Conservation and Recreation conducted a compliance evaluation of Prince George County's Phase I program in accordance with the adopted compliance evaluation process; and

WHEREAS after considering and evaluating the information presented, including the County's commitment to add a memorandum within the County Code that directs staff to disregard Articles XIII and XIV of the Zoning Ordinance due to their inconsistency with State Regulations and that those Articles will be repealed at the time of the next Zoning Ordinance amendment, the Board agrees with the recommendation of the staff; now

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds that the implementation of a certain aspect of Prince George County's Phase I program does 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 this deficiency, directs Prince George County to undertake and complete the one recommended condition contained in the staff report no later than September 30, 2010.

1. For consistency with §§ 9 VAC 10-20-60 1 and 9 VAC 10-20-90 B of the Regulations and Section 90-664 (a) (2) of the County's Chesapeake Bay Preservation District ordinance, the County must revise its current Resource Protection Area and Resource Management Areas map to accurately depict all RMA features as described in Section 90-664 (a) (2) of the County's Chesapeake Bay Preservation Area Overlay District ordinance.

BE IT FINALLY RESOLVED that failure by Prince George County to meet the above established compliance date of September 30, 2010 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 George County to the compliance provisions as set forth in § 10.1-2103 10 of the Act and § 9 VAC 10-20-250 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on March 15, 2010 by the Chesapeake Bay Local Assistance Board.

Russell W. Baxter
Acting Director
Department of Conservation and Recreation

Public Comment

There was no further public comment.

Adjourn

There was no further business and the meeting was adjourned.

Respectfully submitted,

Donald W. Davis
Chairman

David A. Johnson
Director