

**Chesapeake Bay Local Assistance Board
Monday, March 21, 2011
Patrick Henry Building
Richmond, Virginia**

Chesapeake Bay Local Assistance Board Members Present

William E. Duncanson, Chairman

Gregory C. Evans, Vice Chairman

James N. Belote

Peter Farrell

Barry L. Marten

Rebecca Reed

Charles B. Whitehurst

Chesapeake Bay Local Assistance Board Members Not Present

None. There were two vacancies on the Board at the time of this meeting.

DCR Staff Present

David A. Johnson, Director

Jeb Wilkinson, Chief Deputy Director

David C. Dowling, Policy and Planning Director

Joan Salvati, Division Director, Chesapeake Bay Local Assistance

David Sacks, Assistant Division Director, Chesapeake Bay Local Assistance

Michael R. Fletcher, Board and Constituent Services Liaison

Melissa Doss, Senior Environmental Planner

Daniel Moore, Principal Environmental Planner

Elizabeth Andrews, Office of the Attorney General

Others Present

Joe Hatch, City of Petersburg

Jay Lindsey, VCU

Frederick Molter, VCU

Alissa Smith, Virginia Statehouse News

Denise Stanton, VCU

Adam Thompson, VCU

Call to Order

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

He welcomed new members James Belote and Peter Farrell

Consideration of the Minutes

MOTION: Mr. Evans moved that the minutes from the September 20, 2010 and December 13, 2010 meetings of the Chesapeake Bay Local Assistance Board be approved as submitted by staff.

SECOND: Ms. Reed

DISCUSSION: None

VOTE: Motion carried unanimously

Director's Report and Division Director's Report

Mr. Johnson gave the Director's report.

Mr. Johnson said that legislation (HB1830) passed in the 2011 Session would require golf courses to have nutrient management plans by 2017.

Mr. Johnson said that the agency had moved head with Stormwater Regulations. He said that there had been two Regulatory Advisory Panel meetings since the last Board meeting and that there seemed to be a general consensus regarding approval of the regulations. There will be a public comment period from March 28 through April 27. The Soil and Water Conservation Board is expected to act regarding the Regulations on May 24.

Mr. Johnson said that a comprehensive management organizational study of the agency had been completed. He said that management changes would be announced in the near future.

Mr. Johnson asked Mr. Dowling to give an update regarding key legislation.

Mr. Dowling gave an overview of key legislation and budget actions. He noted that none of the bills were specific to the Bay Act or the Board but that a number did affect water quality and certain issues of potential interest to the Board.

A copy of Mr. Dowling's "Legislative and Budget Status Report for the 2011 General Assembly Session" is available from DCR.

Mrs. Salvati gave the Division Director's report.

Mrs. Salvati noted that SB964 mentioned in Mr. Dowling's report requires the Marine Resources Commission to establish and implement a general permit regulation that

authorizes and encourages the use of living shorelines as the preferred alternative for stabilizing tidal shorelines. She said that the Agency had been asked to participate in an advisory group to develop the general permit.

Mrs. Salvati said that the Board had given staff direction to seek as much grant money as possible. She indicated that staff under one such grant had received a total of 11 proposals in response to a recent RFP for projects related to septic pump outs, agricultural soil and water quality conservation assessments and phase III code and ordinance work. Those proposals are being reviewed now.

Mrs. Salvati said that the interviews had been completed regarding the Agricultural Program Coordinator Position. The hope was to be able to make an offer soon.

Finally, Mrs. Salvati stated that the Division is taking a lead role in the development of the Phase II Watershed Implementation Plan.

Mr. Evans said that Phase II of the TMDL notes the need for technical expertise. He said the latest federal Continuing Resolution stripped \$37 million from the NRCS program. He asked if the state would have to cover that program.

Mr. Johnson said that the state had been counting on those funds for implementation. He said that the obligation from the EPA is clear.

Mr. Evans asked about the consolidation of Boards and Commissions.

Mr. Johnson said that those were minor adjustments and that none affected DCR.

Local Program Compliance Evaluations

Mr. Sacks gave an overview of the Locality Compliance Evaluation Process.

- Staff's Evaluation Process:
 1. Formal notification to Chief Administrative Officer
 2. Initial meeting with locality staff to collect information and discuss program
 3. Review select sample of approved plans
 4. Site visits of developments in-progress and recently completed
 5. Preparation of draft evaluation report; provide locality opportunity to review
 6. Preparation of final report and recommendations for CBLAB action
- Board conducts initial compliance evaluation; determines "compliant" or identifies conditions necessary for compliance
- Board conducts compliance evaluation condition review

City of Petersburg

Ms. Doss gave the report for the City of Petersburg. She noted that Mr. Hatch, the City Zoning Administrator was present.

The City of Petersburg's initial compliance evaluation occurred in March of 2009 and resulted in 9 conditions, 7 of which were to be addressed by the following day, 1 was given a deadline of 12 months, and 1 was in accordance with the Virginia Soil and Water Conservation Board. At the June 2010 meeting, the Board found that the City had addressed 5 conditions and granted a deadline extension to December 31, 2010 for the 4 remaining conditions.

Technical assistance has been provided to the City through monthly meetings and reviews of building permit files and plans. The City of Petersburg has drafted a Development Guide which outlines the development review process and submittal requirements. Department staff provided the City with comments which have been incorporated into the Development Guide.

The first of the remaining conditions requires Chesapeake Bay Preservation Areas to be properly depicted on all development plans. Department staff has noted consistent documentation within the City's files showing CBPAs properly depicted on all development plans. The City's draft version of the Development Guide also states City staff should be contacted before any land disturbance occurs on property that is or might be in the Chesapeake Bay Protection Area, and requires an environmental site assessment. This indicates that City staff should be aware of any possible CBPAs near the development and can check that they are properly depicted. It is for these reasons staff recommends the Board find this condition has been met.

The second condition states the City must consistently require site-specific evaluations to identify water bodies with perennial flow and ensure that the boundaries of RPAs are adjusted as necessary. The City's draft version of the Development Guide clarifies the site plan review process and applicable Chesapeake Bay Preservation Ordinance requirements. During reviews of the City's building permit files and site plan files, Department staff noted the plan review process has been modified and the files contain proper documentation regarding RPA locations. It is staff's opinion this condition has been met.

Condition three requires the City to ensure that all development and redevelopment within CBPAs properly addresses the water quality provisions of the Virginia Stormwater Management Regulations. Since the March 23, 2009 compliance evaluation, the City has not had the opportunity to review any stormwater calculations because there have been no projects submitted that would require them. Monthly reviews of the City's files have revealed that the City is consistently reviewing site plans and building permit applications for Bay Act compliance. Again, the draft version of the City's Development Guide clarifies the review process and Chesapeake Bay Preservation Ordinance requirements. It is staff's opinion this condition has been met.

The 4th condition requires the City to address issues within the Virginia Soil and Water Conservation Board's corrective action agreement. Since 2007 the City of Petersburg's Erosion and Sediment Control program has had the status of inconsistent, pending addressing issues identified in the Corrective Action Agreement. The CAA has been extended multiple times by the Virginia Soil and Water Conservation Board, most recently on September 16, 2010 when it was extended to March 17, 2011. Soil and Water staff last met with the City on March 7, 2011 to review the items that need to be completed in order to become consistent. Soil and Water staff will return to Petersburg April 1, 2011 to complete the final Corrective Action Agreement review. The City is confident they will have these items complete and documented at that time. Findings of the April 1 meeting will be reported to the Virginia Soil and Water Conservation Board on May 24, 2011. It is for this reason staff recommends the deadline for addressing this condition be extended to June 10, 2011.

The City of Petersburg continues to demonstrate progress and has worked cooperatively with Department staff to meet the conditions set by the Board. It is staff's opinion the City has been successful in addressing 3 of the 4 conditions remaining from the June 21, 2010 meeting. Staff recommends a finding of not fully compliant with one remaining condition and a deadline of June 10, 2011.

Mr. Hatch said that he had no additional comments.

MOTION: Mr. Marten moved that the Chesapeake Bay Local Assistance Board find that the implementation of a certain aspect of the City of Petersburg'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 the City of Petersburg to undertake and complete the one recommended condition contained in the staff report no later than June 10, 2011.

SECOND: Mr. Belote

DISCUSSION: None

VOTE: Motion carried unanimously

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

March 21, 2011

RESOLUTION

LOCAL PROGRAM COMPLIANCE EVALUATION
CITY OF PETERSBURG

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 Fall 2008, the Department of Conservation and Recreation conducted a compliance evaluation of the City of Petersburg's Phase I program in accordance with the adopted compliance evaluation process; and

WHEREAS on March 23, 2009, the Chesapeake Bay Local Assistance Board found that implementation of certain aspects of the City of Petersburg's Phase I program did not fully comply with the Act and Regulations and further that the City address conditions 1, 2, 3, 4, 5, 6, and 9 no later than March 24, 2009; condition 7 in accordance with the deadlines and requirements established by the Virginia Soil and Water Conservation Board; and condition 8 no later than March 31, 2010; and

WHEREAS on June 21, 2010 the Chesapeake Bay Local Assistance Board conducted a condition review and found that implementation of certain aspects of the City of Petersburg's Phase I program did not fully comply with the Act and Regulations and further that the City address the four remaining conditions recommended in the staff report no later than December 31, 2010; 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 that the implementation of a certain aspect of the City of Petersburg'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 the City of Petersburg to undertake and complete the one recommended condition contained in the staff report no later than June 10, 2011.

1. For consistency with § 9 VAC 10-20-120 6 of the Regulations, the City's erosion and sediment control program must address the issues identified in the 2008 Corrective Action Agreement.

BE IT FINALLY RESOLVED that failure by the City of Petersburg to meet the above established compliance date of June 10, 2011 will result in the local program becoming noncompliant with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations and subject the City of Petersburg 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 21, 2011 by the Chesapeake Bay Local Assistance Board.

David A. Johnson
Director
Department of Conservation and Recreation

Advisory Review Update

Mr. Sacks gave the following Advisory Review Update.

Phase III Advisory Review of Local Government Ordinances

- Reviews completed: 52
(23 towns, 12 cities, 17 counties)
- Reviews in progress: 10
- Completion of Remainder expected in Fall 2011
- Web-based inventory of ordinance provisions updated as reviews are completed

Early Findings from 52 reviews

- Required Plan/Plat provisions
 - 6 localities have all required provisions
 - Remainder will need to add provisions to be found Compliant
 - Plat notations for pump-out requirement, reserve drain field, and buffer requirements are most common deficiencies
- Provisions for Limiting Land Disturbance
 - Almost all have provisions addressing development clearing limits

- Provisions for Preserving Indigenous Vegetation
 - Most localities have ordinances that protect trees outside construction areas
- Provisions for Minimizing Impervious Cover
 - 13 localities have parking space maximums in one or more districts

New Business

There was no additional new business

Public Comment

There was no additional public comment.

Adjourn

There was no further business and the meeting was adjourned.

Respectfully submitted,

William E. Duncanson
Chairman

David A. Johnson
DCR Director