

**Chesapeake Bay Local Assistance Board
December 15, 2008 – 2:00 p.m.
Union Station, Petersburg, Virginia**

Chesapeake Bay Local Assistance Board Members Present

Donald W. Davis, Chair
Gregory C. Evans
Barry L. Marten
Richard B. Taylor
John J. Zeugner

William E. Duncanson, Vice Chair
Beverly D. Harper
Rebecca Reed
Charles B. Whitehurst

DCR Staff Present

Joseph H. Maroon, Director
Russell W. Baxter, Deputy Director
David C. Dowling, Director of Policy, Planning and Budget
Joan Salvati, Director, Division of Chesapeake Bay Local Assistance
David Sacks, Assistant Director, Division of Chesapeake Bay Local Assistance
Shawn Smith, Principal Environmental Planner
Alice Baird, Senior Environmental Specialist
Nathan Hughes, Watershed Specialist
Adrienne Kotula, Principal Environmental Planner
Daniel Moore, Principal Environmental Planner
Amy Doss, Senior Environmental Planner
Michael R. Fletcher, Board and Constituent Services Liaison
Carolyn Elliott, Administration Specialist
Elizabeth Andrews, Office of the Attorney General

Others Present

Diane Cook, Prince George County
Michael Flagg, Hanover County
Don Gill, Lancaster County
Dick McElfish, Chesterfield County
Diana Parker, Falls of the James Sierra Club
Jeff Perry, Henrico County
Doug Pritchard, Chesterfield County
M. A. "Pete" Stith, Jr., Chesterfield County
Beverly Walkup, Isle of Wight County
Sharon Williams, Prince George County
Scott Flanigan, Chesterfield County
William Saunders, Town of Smithfield

Call to Order

Chairman Davis called the meeting to order. He noted that the agenda would be reordered and asked Mr. Dowling to proceed with the Stormwater Management Regulations update.

Stormwater Management Regulations Update

Mr. Dowling gave the update regarding the Stormwater Management Regulations. He provided four documents:

- Update on Virginia Soil and Water Conservation Board's Stormwater Regulatory Actions
- Update on Stormwater Management Regulations in Virginia
- Revised proposed Parts I, II and III of the Virginia Stormwater Management Program Permit Regulations
- Revised proposed Part XIII of the Virginia Stormwater Management Program Permit Regulations

Copies of these four documents are available from DCR.

Mr. Dowling noted that the Board had previously expressed interest with regard to what was happening with Stormwater Management. He said that the regulations also pertained to parts of the Bay Act Regulations. He gave an overview of the general framework of the Stormwater Management regulations.

Mr. Dowling discussed four regulatory actions that the Soil and Water Conservation either had underway or had recently completed. The completed action, which concerned the MS4 General Permit (Parts I and XV), were effective in July of 2008.

Mr. Dowling said that the Construction General Permit (Parts I and XIV) was taken to the Virginia Soil and Water Conservation Board at its September 25, 2008 meeting. The regulation was published in the Virginia Register of Regulations on October 27, 2008. The regulation was public noticed in accordance with federal requirements in newspapers across the state and with postcards sent to over 6,000 permittees. Three public meetings were held in Manassas, Roanoke and Williamsburg to receive public comments. The 60-day public comment closes on December 26, 2008.

Mr. Dowling said that the hope was to take the final regulation to the Soil and Water Conservation Board at its March 2009 meeting. The permit must be effective by July 1, 2009. The current permit expires on June 30, 2009.

Mr. Evans asked how many people participated in the public meetings.

Mr. Dowling said that there were about fifteen people at each of the public meetings.

Mr. Dowling said that the larger area of interest was with the proposed revisions to Parts I, II and III. He said that Part III was the local program criteria.

Mr. Dowling said that DCR began work on the water quality and quantity criteria in July 2005. He said that, to date, 45 public meetings had been held in association with these regulations.

Mr. Evans asked if the regulations would still move forward if EPA had changes or concerns.

Mr. Dowling said that EPA approval was necessary but that he did not anticipate problems.

Mr. Maroon said that staff from the EPA had been involved with the Technical Advisory Committee process.

Mr. Evans said that his understanding was that administrative level appointments from the Presidential transition would be in the May time frame.

Mr. Dowling said that he did not anticipate that having an impact on the proposed regulations.

Mr. Davis asked Mr. Dowling to describe the BMP Clearinghouse.

Mr. Dowling said that a lot of the current BMP standards were currently in the Virginia Stormwater Management Handbook. He said that DCR was moving to an online website, developed in cooperation with Virginia Tech, that will have the schematics scanned into the system. He said that would provide flexibility to update standards as necessary.

Mr. Dowling said that the hope was to have a final adopted regulation by the end of December. He said that Part XIII was on the same timeline.

Mr. Dowling said that Secretary of Natural Resources Preston Bryant met with the reassembled TAC and shared with them the importance of the regulatory action. Mr. Dowling read from a letter written by Secretary Bryant to the TAC that said:

“The work of this Committee will have statewide implications. The completion of these regulations is a high priority for this Administration, and I assure you that my office will be working closely with the Department of Conservation and Recreation and the Virginia Soil and Water Conservation Board to advance this regulatory action in an efficient manner. This regulatory action will be an important element of the Governor’s “Year of the Environment” initiative in 2009. In fact, assuming a very good work product, I certainly envision considering these regulatory improvements to be among our “signature” environmental initiatives to celebrate next year.”

Mr. Dowling provided a summary of the key provisions of the Parts I, II and III and the Part XIII regulatory actions. Those key provisions are outlined in the handout.

Mr. Maroon said that these regulations would be a statewide improvement. He noted that many localities in the western part of the state had not previously dealt with these issues.

Mr. Davis asked Mr. Dowling to review the schedule for the public hearing process.

Mr. Dowling reviewed the schedule on page 2 of the document. He outlined the following schedule:

- Review by the Administration – potentially January thru April 2009
 - Official OAG review – 3 days
 - 45 days DPB fiscal analysis review – Mid Feb. 2009
 - 14 days SNR – late Feb. 2009
 - No deadline Governor – April 2009
 - Submit to Registrar – Early April 2009
 - Registrar publication – Late April 2009
- 60-day public comment period – May-June 2009; public hearings; concurrent EPA review
- Make Regulation refinements; EPA review – by September 1, 2009
- Take final regulation to the Board at the September 2009 meeting (when we have resolved concerns to the best of our ability)
- Final Regulation Review by DPB, SNR, Governor – by November 15, 2009
- File with Registrar and publish for 30 days – Dec. 31, 2009
- EPA final approval by Dec. 31, 2009

Mr. Davis thanked Mr. Dowling for the update and returned to the meeting agenda as posted.

Consideration of the Minutes

September 15, 2008 Board Meeting

MOTION: Mr. Duncanson moved that the minutes of the September 15, 2008 meeting of the Chesapeake Bay Local Assistance Board be approve as submitted by staff.

SECOND: Ms. Reed

DISCUSSION: None

VOTE: Motion carried unanimously

October 28, 2008 Northern Area Review Committee Meeting

MOTION: Mr. Duncanson moved that the minutes of the October 28, 2008 Northern Area Review Committee meeting be approved as submitted by staff.

SECOND: Mr. Whitehurst

DISCUSSION: None

VOTE: Motion carried unanimously

October 28, 2008 Southern Area Review Committee Meeting

MOTION: Mr. Zeugner moved that the minutes of the October 28, 2008 Southern Area Review Committee meeting be approved as submitted by staff.

SECOND: Mr. Marten

DISCUSSION: None

VOTE: Motion carried unanimously

Director's Report

Mr. Maroon gave the Director's report.

Mr. Maroon provided a copy of a document entitled *State of the Chesapeake Bay Program: Summary Report to the Chesapeake Executive Council*, dated November 20, 2008. The report was distributed at a meeting of the Chesapeake Executive Council. A copy of the report is available from DCR.

Mr. Maroon said that the report acknowledges that the 2010 goals set forth for the Bay will not be met.

Mr. Maroon said that Governor Kaine will serve as Chair of the Executive Council.

Mr. Maroon said that the Governors will come together in May of 2009. He said that DCR would be involved in moving forward with the short term goals.

Mr. Maroon noted that the DCBLA staff will be moving to the Pocahontas Building on Main Street in late winter or early spring.

Mr. Maroon said that the Governor's Land Conservation Goal is on track to provide protection for an additional 400,000 acres.

Mr. Maroon said that Governor Kaine has announced that 2009 will be the "Year of Environment and Energy." The first announcement took place just before Thanksgiving.

Mr. Maroon said that staff had learned of the possibility of bills in the legislative session that might affect the Bay Act relating to requiring the maintenance of buffer vegetation in RPAs. He said that staff believed these provisions were already covered in the Bay Act regulations.

Ms. Salvati noted that Mr. Maroon and she had met with the Senator proposing the bill and explained to him that localities already had the authority that would be addressed in this legislation. Based on this input, the Senator did not propose the bill.

Mr. Maroon distributed a handout outlining the announced cuts in the agency budget. A copy of this handout is available from DCR. DCR experienced a 12 ½ % cut and lost 12 positions.

Mr. Maroon said that DCR, along with other state agencies, would be bracing for additional cuts.

Policy Committee Report

Mr. Duncanson said that the Policy Committee had met that morning and discussed the following items:

- Phase III Checklist Materials. Mr. Duncanson said that staff gave a thorough briefing on the current status of the Phase III process. He said the Policy Committee would be taking up Phase III again. Staff needs additional time to develop the checklist
- Nontidal wetlands separated by natural levees. Mr. Hughes gave this update.
- Policy work program. Ms. Smith set out seven items to take the Board into next year.

Mr. Sacks said that the Policy Committee took no formal actions, but would meet again in February.

Quarterly Performance Indicators

Mr. Sacks gave the report on Quarterly Performance Indicators.

Consistence and Compliance Review Status

As of September 15, 2008:

Localities Found Compliant: 53

Localities Addressing Compliance Conditions: 27

Expected Status as of December, 2008:

Localities Phase I Consistent: 84

Phase II Consistent: 84

Compliance Reviews Completed: 82

Localities Compliant: 57

Localities Noncompliant: 1

Localities Addressing Compliance Conditions: 24

Compliance Reviews in Progress: 2

Consent Agenda

MOTION: Mr. Taylor moved that the Chesapeake Bay Local Assistance Board approve the Consent Agenda items as presented by staff for the following localities:

Town of Dumfries – Compliance Evaluation condition review
NARC recommends a finding of compliant

Lancaster County – Compliance Evaluation condition review
NARC recommends a finding of compliant

Isle of Wight County – Compliance Evaluation condition review
SARC recommends a finding of compliant

Town of Smithfield – Compliance Evaluation condition review
SARC recommends a finding of compliant

SECOND: Mr. Zeugner

DISCUSSION: Mr. Sacks said that representatives from Lancaster County and the Town of Smithfield were present.

Mr. Gill from Lancaster County said that Lancaster County appreciated being found compliant.

Mr. Saunders from Smithfield said that he wanted to mention a couple of concerns.

Mr. Saunders noted a concern over the checklist for Phase 3 compliance. He said that the Town desired to meet the requirements while imposing as small a burden on citizens as possible. He said that the Town intended to incentivize the use of

effluent filters but found this has potential for fraud. He said that this might be something to be addressed through legislation.

Mr. Davis encouraged Mr. Saunders to work with staff to address these issues.

VOTE: Motion carried unanimously

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
December 15, 2008**

RESOLUTION

**LOCAL PROGRAM COMPLIANCE EVALUATION
TOWN OF DUMFRIES**

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 10, 2007, the Chesapeake Bay Local Assistance Board found that implementation of certain aspects of the Town of Dumfries' Phase I program did not fully comply with the Act and Regulations and further that the Town address the two recommended conditions in the staff report no later than September 30, 2008; and

WHEREAS in August 2008, the Town provided staff with information relating to the Town's actions to address the two recommended conditions which was evaluated in a staff report; and

WHEREAS on October 28, 2008, 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; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the implementation of the Town of Dumfries' 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 December 15, 2008 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
December 15, 2008**

RESOLUTION

**LOCAL PROGRAM COMPLIANCE EVALUATION
LANCASTER 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 September 17, 2007, the Chesapeake Bay Local Assistance Board found that implementation of certain aspects of Lancaster County's Phase I program did not

fully comply with the Act and Regulations and further that the County address the 5 recommended conditions in the staff report no later than September 30, 2008; and

WHEREAS in September, 2008, the County provided staff with information relating to the County's actions to address the 5 recommended conditions which was evaluated in a staff report; and

WHEREAS on October 28, 2008 the Local Program Review Committee for the Northern Area considered and evaluated the information contained in the compliance evaluation staff report and concurred with the staff recommendation as outlined in the staff report; and,

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

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the implementation of the Lancaster 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 December 15, 2008 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
December 15, 2008**

RESOLUTION

**LOCAL PROGRAM COMPLIANCE EVALUATION
ISLE OF WIGHT 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 September 17, 2007, the Chesapeake Bay Local Assistance Board found that implementation of certain aspects of Isle of Wight County's Phase I program did not fully comply with the Act and Regulations and further that the County address the three recommended conditions in the staff report no later than September 30, 2008; and

WHEREAS in September 2008, the County provided staff with information relating to the County's actions to address the three recommended conditions which was evaluated in a staff report; and

WHEREAS on October 28, 2008 the Local Program Review Committee for the Southern Area considered and evaluated the information contained in the compliance evaluation staff report and concurred with the staff recommendation as outlined in the staff report; and,

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

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the implementation of Isle of Wight 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 December 15, 2008 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
December 15, 2008**

RESOLUTION

**LOCAL PROGRAM COMPLIANCE EVALUATION
TOWN OF SMITHFIELD**

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 10, 2007, the Chesapeake Bay Local Assistance Board found that implementation of certain aspects of the Town of Smithfield's Phase I program did not fully comply with the Act and Regulations and further that the Town address the three recommended conditions in the staff report no later than December 31, 2008; and

WHEREAS in September 2008, the Town provided staff with information relating to the Town's actions to address the three recommended conditions which was evaluated in a staff report; and

WHEREAS on October 28, 2008 the Local Program Review Committee for the Southern Area considered and evaluated the information contained in the compliance evaluation staff report and concurred with the staff recommendation as outlined in the staff report; and,

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

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the implementation of the Town of Smithfield'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 December 15, 2008 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

Local Program Compliance Evaluations

Town of White Stone – Initial Compliance Evaluation

Ms. Kotula presented the report for the Town of White Stone. There was no one present from the Town.

The Town of White Stone is located in Lancaster County in the Northern Neck of Virginia. The Town is about one square mile in size, bounded by the Rappahannock River and the Chesapeake Bay. It is primarily a residential community, with a population of approximately 358 people.

The Department initiated a compliance evaluation for the Town of White Stone on April 3, 2008. The compliance evaluation revealed that, although the Town is striving to implement its Bay Act program effectively, there are four program elements that require improvement.

The first recommended condition states that all references to buffer area reduction must be removed from White Stone's Chesapeake Bay Preservation Ordinance. The Town's Bay Act ordinance includes several references to buffer area reduction. Although encroachments into the RPA may be allowed if certain findings are met, the overall width of the RPA is never reduced.

The second recommended condition requires that the Town develop and implement a five-year septic pump-out program. Although Lancaster County handles the majority of Bay Act implementation for the Town, they do not intend to manage the Town's pump-out program, so it will be the responsibility of the Town to do so. The Town's ordinance does not provide for the inspection or plastic filter options, and the Department has recommended that they should consider adopting these options.

The third recommended condition states that Section 2-4 (d) of the Town's Bay Act ordinance must be deleted because it allows buffer equivalency calculations. The Department no longer allows the use of buffer equivalency calculations and instead recommends that local governments consult the Buffer Manual to ensure that all required buffer functions are met when development projects impact the 100-foot RPA.

The fourth recommended condition states that the Town's Bay Act ordinance be amended to require an exception process based upon review by a legislative or other body as described in the Regulations. Furthermore, the six required findings must be listed in the ordinance, and it must specifically require public notice and a hearing prior to the granting of exceptions.

Ms. Kotula said that staff had also recommended that the Town consider updating its Chesapeake Bay Preservation Area map to properly reflect perennial flow determinations that have been done. This was included as a suggestion within the staff report.

Ms. Kotula said the staff recommendation was that the Board find that certain aspects of the Town of White Stone's Phase I program do not fully comply with the Act and Regulations and that the Town address the 4 conditions contained in the staff report by December 31, 2009.

Mr. Davis asked if the Town believed they could implement the conditions by the deadline.

Ms. Kotula said yes. She noted that the Town had both a part-time Town Manager and a part-time Zoning Administrator.

MOTION: Mr. Zeugner moved that the Chesapeake Bay Local Assistance Board find that the implementation of certain aspects of the Town of White Stone'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, the Town of White Stone be directed to undertake and complete four recommended conditions contained in the staff report no later than December 31, 2009.

SECOND: Ms. Harper

DISCUSSION: None

VOTE: Motion carried unanimously

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

December 15, 2008

RESOLUTION

LOCAL PROGRAM COMPLIANCE EVALUATION

Town of White Stone

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 April, 2008, the Department of Conservation and Recreation conducted a compliance evaluation of the Town of White Stone's Phase I program in accordance with the adopted compliance evaluation process; and

WHEREAS on October 28, 2008 the Local Program Review Committee for the Northern Area considered and evaluated the information contained in the compliance evaluation staff report and concurred with the staff recommendation as outlined in the staff report; and

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

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds that the implementation of certain aspects of the Town of White Stone's Phase I program do not fully comply with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations, and in order to correct these deficiencies, directs the Town of White Stone to undertake and complete four recommended conditions contained in the staff report no later than December 31, 2009.

1. For consistency with Section 9 VAC 10-20-130 3 of the Regulations, all references to buffer area width reduction must be removed from White Stone's Chesapeake Bay Preservation Ordinance.
2. For compliance with Section 9 VAC 10-20-120 7 a of the Regulations and Section 3-5 of White Stone's Chesapeake Bay Preservation Ordinance, the Town must develop and implement a five-year septic pump-out program.
3. For consistency with Section 9 VAC 10-20-130 3 of the Regulations, Section 2-4 (d) of White Stone's Chesapeake Bay Preservation Ordinance must be deleted.

4. For consistency with Section 9 VAC 10-20-150 C 1 & 2 of the Regulations, Section 7-2 of White Stone's Chesapeake Bay Preservation Ordinance must be amended to require an exception process based upon review by a legislative or other body as described in 9 VAC 10-20-150 C 2 a, to list the six required findings in the ordinance, and to require public notice and a hearing prior to the granting of exceptions.

BE IT FINALLY RESOLVED that failure by the Town of White Stone to meet the above established compliance date of December 31, 2009 will result in the local program becoming noncompliant with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations and subject the Town of White Stone 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 December 15, 2008 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

Prince George County – Initial Compliance Evaluation

Ms. Doss gave the report for Prince George County. She noted that Sharon Williams, Director of Planning and Diane Cook, Erosion and Sediment Control Specialist were present from the County.

Located 25 miles southeast of Richmond, Prince George County's estimated population is 35,886. The County's land area includes 266 square miles, approximately half of which is located in the Chesapeake Bay drainage area.

The Compliance Evaluation was conducted throughout the second half of 2008 and the process revealed six program elements that were not fully compliant with the Act and the Regulations. Since the issuance of the staff report, some of these elements have begun to be addressed.

The first condition is that the County must revise its current Resource Protection Area and Resource Management Areas Map so that it accurately depicts all RMA features as described in the County's Chesapeake Bay Preservation Area Overlay District ordinance. The County's ordinance requires a 150' RMA and whole lot provision; however the current map scaling is incorrect, only showing a 100' RMA; nor does the map include all of the required RPA and RMA features when compared with VIRGIS maps. The County

understands this major discrepancy in their map and has met with their GIS specialist on staff to determine the best possible solution to correct the map before the deadline. Until this issue is fully addressed, staff is still recommending the condition as noted within the staff report.

In December 2007, the County Board of Supervisors approved a revised ordinance which redefined the RMA, without CBLAB approval. The second condition requires that the County present the Phase I modifications to the Chesapeake Bay Local Assistance Board for review at the March of 2009 meeting. After the October SARC meeting, there was an opportunity at which it was expected the County Board of Supervisors would repeal the ordinance and the staff report was revised accordingly. Since this did not occur, Ms. Doss said that the staff recommendation was that this condition be addressed immediately. She distributed a revised resolution addressing that recommended change.

The third condition requires the County to document submission of a WQIA for any proposed land disturbance, development, or redevelopment within RPAs. Two of the files reviewed by staff did not have a WQIA in the file, when they clearly should have been required due to disturbance being proposed in the RPA. The County appears receptive to this condition and has templates given to them by staff ready to use. The County will be monitored over the next year to ensure compliance.

The fourth condition relates to BMP installation, inspection, tracking, and maintenance. During staff's review of the program, it was discovered that the County engineer does not accept BMP maintenance agreements. Furthermore, the County did not have a tracking database and inspection schedule. After discussion with the County, staff supplied the County with templates and guidance on how to implement the program. The County has agreed to require maintenance agreements and begin to track new BMPs, and will make an effort to obtain agreements on existing BMPs when discovered. The County will be monitored over the next year to ensure compliance.

The fifth condition has to do with properly showing the CBPAs on the plans submitted to the County. Plan reviews revealed that the labeling of CBPAs on plans was not being consistently required. The County acknowledges this issue and will be updating their mapping data and therefore be better equipped to require labeling for CBPAs on site plans. The County will be monitored over the next year to ensure compliance.

Condition number six requires the County to administer exceptions consistent with County code requirements. During staff's field investigation, it was determined two of the sites should have required an exception and did not. The County will be monitored over the next year to ensure compliance.

Ms. Doss said that given this information, staff recommended that Prince George County be found to not fully comply with the Act and Regulations and be given until December 31, 2009 to address five of the six conditions discussed, and submit the revised ordinance described in condition number two for March 2009 Board Review.

Mr. Evans asked about the difference between the original and the revised resolution.

Ms. Doss said that the County zoning ordinance adopted in December 2007 was excepted to be repealed at the Board of Supervisors meeting that occurred between the SARC meeting and the Board meeting. However, that action did not take place.

Ms. Williams said that the delay was because of pending litigation. She said the County attorney had ruled that the new zoning ordinances were not adopted correctly. She said that the attorney had determined that there were actually two sets of ordinances.

Ms. Williams said that it would be difficult for the County to meet the suggested March deadline.

Ms. Reed asked when the County would suggest that they could address the issues.

Ms. Williams said that the County hoped within the next six months to one year to have the zoning ordinance correctly adopted or they will have a ruling from the court.

Mr. Evans said that would be in the fourth quarter of the year, but noted that he would still like the Board to have an update at the March 2009 meeting.

Ms. Williams said that currently, everything is being reviewed under both ordinances. Where there are differences, the stricter standard is applied.

Mr. Maroon clarified that the request was to change the deadline date from March to June.

Ms. Williams said that would allow the County time to work through the pending litigation.

MOTION: Mr. Zeugner moved 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 five of the six Recommended Conditions contained in this staff report no later than December 31, 2009 and submit the revised ordinance described in condition number two for June 2009 Board Review.

SECOND: Mr. Whitehurst

VOTE: Motion carried unanimously

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

December 15, 2008

RESOLUTION

LOCAL PROGRAM COMPLIANCE EVALUATION

Prince George County

Local Compliance Evaluation - Conditional

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

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

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

WHEREAS in Summer of 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 on October 28, 2008 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 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 five of the six Recommended Conditions contained in this staff report no later than December 31, 2009 and submit the revised ordinance described in condition number two for June 2009 Board Review.

1. For consistency with 9 VAC 10-20-60 1 and 9 VAC 10-20-90 B of the Regulations and Section 90-330.8 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 90-330.8 of the County's Chesapeake Bay Preservation Area Overlay District ordinance.
2. For consistency with 9 VAC 10-20-231 1 and 9VAC 10-20-231 5 of the Regulations and Section 90-330.2 of the County's Chesapeake Bay Preservation Area Overlay District ordinance, the County must present the Phase I modifications to the Chesapeake Bay Local Assistance Board for review at the June of 2009 meeting.
 3. For compliance with Section 9 VAC 10-20-130 6 of the Regulations and Section 90-330.14 of the County's Chesapeake Bay Preservation Area Overlay District ordinance, the County must document submission of a WQIA for any proposed land disturbance, development, or redevelopment within RPAs as outlined in Section 90-330.18 of the County's Chesapeake Bay Preservation Area Overlay District ordinance.
 4. For compliance with Section 9 VAC 10-20-120 3 of the Regulations and Section 90-330.24 4 d, of the Chesapeake Bay Preservation Area Overlay District ordinance the County must require signed BMP Maintenance Agreements for all BMPs and must track BMP installation, inspection, and maintenance.
 5. For compliance with Section 9 VAC 10-20-105 of the Regulations and Section 90-330.24 of the County's Chesapeake Bay Preservation Area Overlay District ordinance, the County must require that Chesapeake Bay Preservation Areas are properly depicted on all development plans.
 6. For compliance with Section 9 VAC 10-20-150 C of the Regulations and Section 90-330.30 of the County's Chesapeake Bay Preservation Area Overlay District ordinance, the County must administer exceptions consistent with County code requirements.

BE IT FINALLY RESOLVED that failure by Prince George County to meet the above established compliance date of December 31, 2009, or to submit the revised ordinance described in condition number two for June 2009 Board Review 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 December 15, 2008 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

Chesterfield County – Compliance Evaluation condition review

Ms. Kotula gave the report for Chesterfield County. Dick McElfish (Director of Environmental Engineering), Doug Pritchard (Engineering Supervisor), Scott Flanigan (Water Quality Manager) and Pete Stith (Deputy County Administrator) were present from Chesterfield County.

Chesterfield County's initial compliance evaluation was completed in September of 2007 and resulted in eight conditions.

Ms. Kotula said that she would address Condition #1 at the end of her presentation.

Chesterfield County appealed the imposition of Condition #2, which required that the County properly impose the requirements of the Regulations on vested properties. Department and County staff were successful in reaching a settlement agreement, which was approved by the Board at its September 15, 2008. A Consent Order signed by the Chesterfield County Attorney's Office and the Office of the Attorney General was submitted to the Chesterfield Circuit Court on September 29, 2008. A term of the Consent Order was that it satisfied this condition. She said that staff believed this condition has been adequately addressed.

Condition #3 required that the County update their Engineering Reference Manual to be consistent with the Regulations. This revision has occurred and new versions of the manual have been made available to the public and therefore this condition has been addressed.

Condition #4 required that the County cease the implementation of their BMP credit program. The County has rescinded their policy allowing BMP credit and a review of County files revealed that all new requests for credits from the program have been denied.

Condition #5 required that utility exemptions be administered in accordance with the regulations. Chesterfield County has included a section within their newly revised Engineering Reference Manual that properly details the process that must occur when utilities are crossing the RPA. All new proposals will be required to comply with this policy and therefore this condition has been addressed.

Conditions #6, 7 & 8 required that the County properly administer encroachments within the RPA. A review of all encroachment requests over the last year revealed that the County is following the proper procedures, requiring WQIAs when necessary and

requiring formal exceptions when they are necessary. She said that staff believed that all three of these conditions had been addressed.

Condition #1 required that the County properly delineate RPA on all development plans and in the field. Specifically, the initial compliance evaluation found that the County properly verifies water bodies with perennial flow for protection with RPA buffers but there is no equivalent process for accurately identifying nontidal wetlands as RPA features.

In an attempt to address this condition, the County issued a policy entitled *Designation of Resource Protection Areas (RPA) Resulting from the Perenniality Flow Determination Process* on April 30, 2008. Ms. Kotula said that the County would be providing an in-depth presentation of this policy at the conclusion of this presentation. The County developed the policy to provide a balance between the CBLAB *Resource Protection Areas: Nontidal Wetlands* Guidance Document and the County's desire to balance the needs between environmental protection and economic development. The Department of Environmental Engineering's Engineering Supervisor has stated that the County recognizes the differences between their policy and the CBLAB Guidance Document and that they believe that their policy "is superior to the CBLAB Guidance in that it achieves RPAs in more extensive locations which would not be RPAs per CBLAB Guidance." The Engineering Supervisor also believes that the County Policy "will achieve a similar acreage of property within RPAs as that required by the Regulations" due to the fact that they include wetlands on the outside of upland levees as RPA features.

Ms. Kotula said that staff's position was that the County policy contains elements that do not meet the regulatory requirement of including those non-tidal wetlands that are "connected by surface flow and contiguous to water bodies with perennial flow" per Section 9 VAC 10-20-80 B 2 of the Regulations. The primary concern with the County's policy revolves around Figures 1, 2 and 5 which depict the limits of the RPA extending along nontidal wetlands for only 500 feet beyond a perennial water body. This method fails to base RPA designations upon the environmental features present on a site, which directly conflicts not only with the requirements of Section 9 VAC 10-20-80 B 2 of the Regulations, but also conflicts with Section 9 VAC 10-20-105 ii which requires that RPA boundaries be adjusted based upon the evaluation of the site.

Division staff met with the County to discuss their concerns and has also reviewed numerous development plans to determine whether the County policy would have an impact on the number of features that are included as RPA. Of the eighteen plans reviewed for the delineation of nontidal wetlands, seven contained nontidal wetlands where the RPA designation would differ between the County policy and the Regulatory requirement. The County acknowledges that there are development sites where the RPA designation may differ, but nevertheless feels that their approach accomplishes the objective of providing a balance between the protection of natural resources and the County's goal of economic development.

Ms. Kotula said that Department staff's opinion was that Chesterfield County's policy entitled *Designation of Resource Protection Areas (RPA) Resulting from the Perenniality Flow Determination Process* is not consistent with the Regulations, and that Condition #1 has not been adequately addressed. She said the staff recommendation was that Chesterfield County be found noncompliant and be given until February 13, 2009 to address the following condition:

The County must ensure that all required RPA features are consistently and properly delineated on all tentative and final construction plans, and in the field for consistency with 9 VAC 10-20-80 and 9 VAC 10-20-105 of the Regulations.

Mr. McElfish spoke on behalf of the County. He thanked DCR staff for meeting with County staff and noted that several projects had been visited.

Mr. McElfish said that the requirement within the original Board Condition #1 was based on guidance and not based on changes in the Regulations. He said that since 1991, Chesterfield County had always implemented a program that met or exceeded the requirements. He said that County opinion was that their policy, which is based on the land features that make up Chesterfield, provides a superior level of water quality protection for the state's rivers and the Chesapeake Bay.

Mr. McElfish said that the County understood the DCR staff position with regard to the guidance. He said he sees the situation as being similar to when county planning staff has to oppose a project because the proposal goes against the land use plan. He said that is why localities have a planning commission to make an educated decision if the request meets the intent of the plan. He said that in DCR's case, the question was whether the County's program met the intent of the Chesapeake Bay Act Regulations.

Mr. McElfish said that the County had adopted a program referred to as a "hybrid approach."

Mr. McElfish said that the issue that DCR staff has is that the Chesterfield policy limits the RPA to 500 feet up stream of the point of perennial flow when the wetlands are connected by surface flow. He noted that in Chesterfield, those connected wetlands beyond 500 feet are still subject to either a 25' or 35' set back.

Mr. McElfish showed a graphic depicting a perennial stream and connected wetlands. The graphic depicts the RPA extending from the point of perennial flow for 500'. A copy of Mr. McElfish's presentation, including the graphics, is available from DCR.

Mr. McElfish said that above the 500' is where the DCR guidance for connected wetlands can go on for an unlimited distance. He said Chesterfield decided to stop at 500' in order to balance the issue of environmental protection and economic development.

Mr. McElfish said the question was how the County compensated for less protection for state waters as a result of the 500 foot rule.

Mr. Mc. Elfish stated that they compensate for the loss by including those nontidal wetlands that exist within the 100 year floodplain of a perennial stream and are separated by a natural levee as RPA features and measure the 100 foot buffer from that edge.

Mr. McElfish said that Chesterfield had been taking this same approach since adopting the Chesapeake Bay Act in 1991. He said that it had served the County extremely well, not only from a water quality standpoint but also from a floodplain management standpoint.

Mr. McElfish illustrated several examples of the Chesterfield policy vs. the Board guidance.

Mr. McElfish said the question was which policy was the most environmentally friendly for the state waters and the Bay. He noted that the previous guidance was in effect prior to June 18, 2007 and that it remains in effect.

Mr. McElfish said that the County felt that their policy was superior to the state guidance and more than meets the intent of the Regulations.

Mr. Davis asked if there were questions from the Board.

Ms. Harper noted that Mr. McElfish had made a comment with regard to the protection of the environment. She said that while the Board shares that concern, there is also a process and regulations the Board must uphold.

Mr. McElfish said that the County looked at the ordinances and the intent. He said that the County was aware of the WQIA process. He said the concern was that almost every developer would be required to have some form of WQIA. He said that the County did not have the staff to do that.

Mr. McElfish said that people were looking at the land from an economic development standpoint.

Ms. Harper asked about the difference in acreage with regard to the Chesterfield County method vs. the DCR guidance method. She said that the Board had been told there was an assumption that the County was getting better water quality.

Mr. McElfish said that he did not know the answer and that the County did not have time to review that information. He said that the County was concerned about the connectivity of the wetlands.

Ms. Harper asked that, if the County was so concerned about the environment, why they would not include those extra wetlands [nontidal wetlands separated by natural levees]

under the “other lands” provisions in the Chesapeake Bay Regulations?

Mr. McElfish noted that the Board heard earlier about the process localities have to go through. He said that the County was seeking a method that was relatively easy to implement.

Ms. Harper said that the County policy could be covered under the DCR policy with the additional lands the County chose to cover.

Mr. Davis asked if there were other questions.

Mr. Davis said that, while he understood what Chesterfield was trying to do, the Board was not a variance Board. He said that the Board had been directed by the Commonwealth to ensure that localities are following the Regulations. He said that the Board is allowed to provide guidance.

Mr. Davis said that it took a six to seven year period to develop the [revised] regulations and 18 months to develop the current [DCR nontidal wetland] guidance. He said that the Board had to ensure that the guidance met the regulations. He said that the Board could not substitute personal judgment for what the Regulations say.

Ms. Harper said that at the SARC meeting the Committee had discussed that it was not a matter of agreeing with the County, but of complying with the Regulations. She noted that the County method [and its benefit to water quality] was still an assumption, but not based on fact.

Mr. Evans said that he had attended the SARC meeting and that he had the same type of questions. He said that, while he appreciated the County’s intent, he would echo the sentiment of Mr. Davis. He said the question is what the Board had the authority to do.

Mr. Evans said that he had a concern about the precedent this would set for other localities.

Mr. Whitehurst said that he agreed.

Mr. Maroon said that there did seem to be aspects of the Chesterfield program that went beyond the DCR requirements. He said that there were also case by case or property by property situations where the County requirements were more stringent. He said that he did not want to lose that point. He said that while there were some laudable aspects of the County program, there was not consistency in treating every site. He said there were other cases where the method was not providing any protection.

Mr. Zeugner said that greater levels of protection in some areas would not compensate for other areas.

Mr. Davis said that there was a minimum standard that the Board must uphold.

Mr. Stith, the Chesterfield Deputy County Administrator, said that what was being asked was for counties like Chesterfield and Henrico to have some leeway and to have the opportunity to come into compliance without the Board having to redraft the Regulations.

Mr. Davis called for additional comment.

Jeff Perry from Henrico County said that he wanted to speak in support of Chesterfield County. He said that Henrico had similar concerns with the guidance.

Mr. Marten expressed a concern about the relative lack of science that suggested that 500 ft. is an adequate length of protection. He asked how the County could verify that the upstream portion of the feature did not provide more risk.

Mr. Pritchard, Engineering Supervisor for the County, said that Chesterfield looked at any number of contiguous wetlands. He said the County had 100s of tentative plans to show wetlands and perennial streams with wetlands contiguous to those. He said that the County looked at what was a representative width that would encompass guidance the County had been using since 1991.

Mr. Marten said that he would also question whether the 25-35 ft. setback gave adequate protection.

Mr. Pritchard said that the County guidance would say that the only reason to impact those wetlands at all would be the purpose of infrastructure, not for the purpose of gaining more land area for homes. They remain untouchable. They just don't have the 100 ft. impact that can completely wipe out the economic viability of a project. The last project that the County presentation showed had an impact of over 50% of the project lost to RPAs. That would virtually eliminate the develop-ability of that project.

Michael Flagg from Hanover County said that, like Henrico, Hanover would like to express support for Chesterfield County. He said that in a similar way when the Board modified the guidance in 2007 there was no analysis to support the DCR guidance on nontidal wetlands.. He said the 2007 buffer change was substantial.

Ms. Salvati said that with respect to the 500 ft. buffer, there was nothing in the Regulations that would allow staff to recommend a finding that the County's policy establishing the 500 feet as a cutoff was compliant.

Mr. Davis said that the Board was always taking the opportunity to look at the facts presented by a locality. He said that the Committee spent 18 months looking at guidance. He said there had been ample time for localities to review the guidance.

Ms. Harper asked if there was a way to approve what the County was asking in accordance with the regulations.

Ms. Andrews said that what has occurred was that the County had imposed an arbitrary 500 ft. cutoff and that DCR staff had found that to not be consistent with the Regulations. She said that the Regulations and guidance do not allow a locality to pick and choose which requirements to meet. She said that the Chesterfield engineering manual does not meet the requirement of the Regulations. She said that the Board was charged with enforcing the Regulations.

Mr. Davis said that he was on the Board in 2001 and had voted for the Regulations. He said that this option was not approved as part of the Regulations. He said that he had not heard a reason that the Regulations needed to be rewritten.

Mr. Flagg said that it was his understanding that the 500 ft. cutoff was proposed for intermittent streams, not perennial streams. He said that along intermittent streams, that could be interpreted to be consistent with the current Regulations. He said that the Regulations say that localities will include wetlands contiguous to perennial streams. He said that no one was debating perennial streams. He said that the debate was regarding the interpretation of wetlands connected to perennial streams.

In response to Mr. Flagg's comment about the lack of analysis in support of the DCR Nontidal Guidance, Ms. Salvati clarified that the issues were evaluated and that the ad hoc committee had specific input on what demonstrated surface flow connectivity. The ad hoc committee included representatives from two wetland specialists, several localities and five consulting firms.

MOTION: Mr. Zeugner moved that the Chesapeake Bay Local Assistance Board find that implementation of Chesterfield County's Phase I program is noncompliant 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 Chesterfield County to undertake and complete the one recommended condition contained in this staff report no later than February 13, 2009.

SECOND: Mr. Whitehurst

DISCUSSION: None

VOTE: Motion carried unanimously

Mr. Davis said that if the County had recommended improvements the Board would like to hear that. He said that the Board is required to enforce the Regulations and has a limited capacity to allow variances. But he noted that the Board would be open to receiving additional information.

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
December 15, 2008**

RESOLUTION

LOCAL PROGRAM COMPLIANCE EVALUATION CHESTERFIELD COUNTY

Local Compliance Evaluation - Noncompliant

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 September 17, 2007, the Chesapeake Bay Local Assistance Board found that implementation of certain aspects of Chesterfield County's Phase I program did not fully comply with the Act and Regulations and further that the County address the Condition #4 immediately and complete the remaining seven conditions contained in the staff report no later than June 30, 2008; and

WHEREAS in Summer, 2008, County provided staff with information relating to the County's actions to address seven of the eight recommended conditions which were evaluated in a staff report; and

WHEREAS the County has not yet taken appropriate action to address one condition from the September 17, 2007 compliance evaluation; and

WHEREAS on October 28, 2008 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 implementation of Chesterfield County's Phase I program is noncompliant 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 Chesterfield County to undertake and complete the one recommended condition contained in this staff report no later than February 13, 2009.

1. The County must ensure that all required RPA features are consistently and properly delineated on all tentative and final construction plans, and in the field for consistency with 9 VAC 10-20-80 and 9 VAC 10-20-105 of the Regulations.

BE IT FINALLY RESOLVED that failure by Chesterfield County to meet the above established compliance date of February 13, 2009 will result in the local program becoming subject to the compliance provisions as set forth in § 10.1-2103 10 of the Act and § 9 VAC 10-20-250 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on December 15, 2008 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

Program Updates

Surry County

Ms. Doss gave the update for Surry County.

On September 15 2008, the CBLAB found that Surry County's implementation of its Phase I program did not fully comply with the Act and Regulations, and requested two conditions be addressed immediately.

One condition is regarding review of all development plans within the James River Watershed for compliance with the Chesapeake Bay Preservation District Ordinance, and the second condition is ensuring exceptions contain all elements sufficient to demonstrate compliance with the County's Bay Act program. Surry County has received no requests for exceptions to the RPA since September. However, Surry County has requested staff assistance in handling two violations, in addition to requesting assistance with impervious coverage calculations and questions about other developments, all of which they are correctly handling. CBLAD is assisting the County in developing a correct CBPA map of the county, which they are almost finished. The Department has also provided assistance to Ms. Mack regarding filing and proper documentation of development plans within the James River Watershed.

Ms. Doss noted a correction to the report for the compliance evaluation recently completed for Surry County. Staff inaccurately stated that the majority of development occurs along the James River. Ms. Mack has provided data clearly showing the majority of development in Surry County is occurring within the Chowan River Basin.

Town of Port Royal

Ms. Kotula gave the update for the Town of Port Royal.

On June 16, 2008, the CBLAB found that the Town of Port Royal's implementation of its Phase I program did not fully comply with the Act and Regulations, and established a deadline of June 30, 2009 for the City to address 1 condition.

The one condition required the Town to implement a septic pump-out program. Since the June Board meeting, staff has provided the town with assistance in determining the properties that are subject to the pump-out requirements, provided sample notification letters and has discussed with the Planning Commission chair the ordinance requirement for pump-out. Staff will likely be attending a Town Council meeting in the near future.

Staff will continue working with the Town to ensure that this condition is addressed by the June 30, 2009 deadline.

City of Colonial Heights

Ms. Doss gave the update for the City of Colonial Heights.

On June 16 2008, the CBLAB found that Colonial Heights' implementation of its Phase I program did not fully comply with the Act and Regulations, and established a deadline of June 30, 2009 for the City to address two conditions.

The first condition is development and implementation of a pump-out program. The City is currently attempting to identify all septic systems in the City, using Utility Department records. Once this process is completed, a sewer pump out program consistent with State guidelines will be established.

The second condition is the development of a program to ensure regular maintenance and tracking of all BMPs. As of December 3, 2008, they have inventoried all the Best Management Practices (BMPs) within its jurisdiction and have implemented a process by which inspections of all said BMPs will be ensured. A two-year inspection schedule has been employed, a form letter and maintenance guide for BMP owners has been compiled, and packets are being addressed and delivered as of the date referenced above. Subsequent BMP inspections are required to be completed within 45 calendar days of packet delivery.

City of Suffolk

Ms. Smith gave the update for the City of Suffolk.

Ms. Smith said there were 2 conditions for the City of Suffolk. She said one was related to the pump-out and the other to WQIAs. The City is currently developing pump-out program. Staff attended a City Council work session on November 19th, where the City staff laid out their pump-out program. There are around 6,453 onsite systems in the City's CBPA, and the first of 5 mailings will go out July 1, 2009, with one per year on the same date until all five areas have been notified. Each area has between 1100-1600 onsite systems. The City will give property owners 1 year to accomplish the pump-out, and will enforce the requirement as part of their zoning enforcement. The second condition is being currently being implemented by City staff.

Other Business

Annual Implementation Report results

Mr. Sacks gave the results of the Annual Implementation Report.

- *35 required to submit report for 2008; 34 submitted*
- *6 additional localities submitted reports*
- *General findings:*
 - *Few localities regularly update CBPA maps*
 - *Majority of localities can provide area of CBPA; fewer can provide RPA area; even fewer can separate our buffer component of RPA.*
 - *A significant majority of localities were able to report on: development & redevelopment requests in CBPAs, exceptions & encroachments, RPA violations.*
 - *Some gaps in reporting BMP and pump-out activity*

Mr. Davis recognized Carolyn Elliott who is retiring from the agency.

2009 Meeting Schedule

MOTION: Mr. Evans moved that the Board adopt the following meetings schedule for 2009:

Southern Area Review Committee

All meetings in the DCR-CBLA conference room

February 10, 2009	2:00 p.m.
May 12, 2009	2:00 p.m.
August 4, 2009	2:00 p.m.
November 3, 2009	2:00 p.m.

Northern Area Review Committee

All meetings in the DCR-CBLA conference room

February 10, 2009	11:00 a.m.
May 12, 2009	11:00 a.m.
August 4, 2009	11:00 a.m.
November 3, 2009	11:00 a.m.

Chesapeake Bay Local Assistance Board

All meeting locations to be determined.

March 23, 2009	10:00 a.m.
June 15, 2009	10:00 a.m.
September 14, 2009	10:00 a.m.
December 14, 2009	10:00 a.m.

SECOND: Ms. Reed

DISCUSSION: None

VOTE: Motion carried unanimously

Public Comment

Jeff Perry, Henrico County said that he came in support of Chesterfield County and also to make comments on the RPA guidance. He said that in May 2007, Henrico County was found to be compliant and in June the RPA guidance document was issued. He said the County would be very concerned if their program was found inconsistent based on the guidance and not the regulations. He said the County has had a [watershed] program in place for eight years and has doubled the amount of protection on streams.

Mr. Perry said the County had a good program in place, but that it was not based on the guidance. He said that the County would also not change their program based on the guidance.

Mr. Perry said that as a locality, Henrico restores more streams than any locality in the state. He said the County currently has projects on two miles of stream that are being restored. He said the County is very serious about protecting the environment. He said that when there is a program in place and then guidance is issued that is different from this program that is difficult to defend to the development community..

Mr. Perry said that the effect of the guidance on development is extensive. He said that Henrico and Hanover had meet with CBLA staff about development that could not be built if the guidance was implemented. He said the extent of how far you designate an RPA on wetlands up intermittent streams was a big decision. He asked how much land was to be taken out of development and made RPA buffer to be placed on perennial

streams as shown in Info Bulletin 6. He said that that Info Bulletin 6 was not wrong and the new guidance was a change in a cornerstone piece of guidance that should have gone through the public hearing process.

Mr. Perry said that these issues had been discussed with staff and thanked the Board for the opportunity to speak.

Mr. Evans said that the development of the guidance took over a year working in public sessions with individuals from various parts of the state.

Mr. Perry said that Henrico did not know about the process until he saw an email from a consultant regarding the impact of this guidance on the development community. He said that the County met with the staff before it was finalized, but that they were not aware of the committee.

Mr. Evans said that it took over a year to develop the policy and that he was surprised that three large counties would not have heard about the process. He said that the Board and staff had sought input.

Mr. Perry said that this was a major change from Info Bulletin #6.

Ms. Salvati said that it had been very helpful with Chesterfield County to make actual site visits. She said that she would offer the same type of visits to Henrico and Hanover.

Ms. Salvati said that she appreciated the meetings with Henrico County. She noted that the Home Builders of Virginia were very active on the ad hoc committee that developed the DCR Nontidal Guidance.

Mr. Maroon said that he was concerned about the suggestion that the Board had proposed guidance that was taking away land from the developer beyond what the locality may also do. He said that Chesterfield showed that in some cases they were going beyond the Board requirements. He said there were other cases where the County followed the guidance.

Mr. Maroon said that it was disingenuous to say that the regulations alone were affecting the land being built on. He said that with a different group a different parcel would be handled in another manner. He said that DCR was not always the one taking land out of production.

Mr. Perry said that since Henrico followed intermittent streams with an extra buffer in a lot of cases the County goes beyond the regulations. He said that the County did go through a public hearing process. He said that if the County is going to be found inconsistent, it should be through a public hearing process.

Mr. Flagg said that the Agriculture and Forest community had no concept of what impact this will have on their industry.

Mr. Maroon asked if anyone affected that would actually be enforcing this policy against agriculture and forestry.

Ms. Salvati said that she wanted to make it clear that the guidance does reflect the regulations. She said that it's not an expansion of the regulations. She said that what the guidance was doing was more accurately defining what contiguous actually is. She said the contiguous part was simple to answer, but the connectivity was a more difficult issue to deal with.

Mr. Flagg presented the following remarks:

Chairman, Members of the Board, my name is Mike Flagg, I am Director of Public Works for Hanover County. Unfortunately, I find myself in an awkward and ironic position of opposition to many of the Department's evolving programs and policies. Coupled with other regulations for transportation the department's emerging rules for Chesapeake Bay Preservation and Stormwater Management threaten to grid lock our Comprehensive Plans and bankrupt our local governments.

As a backdrop, I would like to advise the Board if you are not aware, that I represent a locality that has for well over 12 years run stormwater management program over our entire suburban area with out being required to by state regulation. We have long implemented more rigorous stream protection criteria and our Board also adopted more restrictive perennial stream designation criteria before your revisions in 2003. I would submit we have been one of, if not the most aggressive locality in the state with regard enforcement of our Erosion and Sediment Control Ordinance. We have had over 18 suites and collected well in excess of \$70,000 in civil fines including numerous \$10,000 maximum fines for failure to obtain permits. We have 3 additional cases pending at the moment. We have not entirely accomplished our goals but we are aggressively pursuing them.

I have handed you a picture of a very valuable accessory structure that was illegally built in Hanover in the RPA and we are now in the process of requiring this building to be demolished and the RPA reestablished. (our Planning Commission denied the applicants request for an exception) All these regulatory matters are serious and have serious and in this case devastating consequences for our citizens and landowners.

I have reliable information from sources at DCR that there have been state agency projects in the Commonwealth that have proceeded without approved plans as required by law. In Hanover this cost a violator \$10,000 to start and in at least 1 instance \$100,000 in attorney's fees to defend themselves.

The Department's emerging policies and positions for stormwater management, resource protection area designation and phase III program requirements go too

far and they go too far in many instances based on a “more is better” philosophy that does not fully account for scientific information that is available for making informed decisions and in particular the uncertainty of those decisions. Further, in many instance the science is being craftily presented to represent positions that are biased for political and not scientific reasons.

For example, the 2007 health and restoration assessment report, published by the Chesapeake Bay Program presents that there has been “negative” progress toward our Urban Chesapeake Bay Goals. In fine print it states that some localities may be underreporting urban BMP progress. The facts are that in 2003, a 16 percent reduction in urban sources had been achieved.

The 2005 Secretary of Natural Resources report on the Tributary Strategies clearly documents the progress assumptions for Virginia’s portion of the Chesapeake Bay Model. There are essentially few if any BMPs credited in the input deck.

In particular, there are no estimates for Chesapeake Bay Buffers on Urban lands. In Hanover’s case, 72 acres of BMPs are credited toward implementation. We currently approach 6000 acres.

For loads that originate outside of Tidewater localities, what is the surprise. Prior to the most recent federal permit requirements there have been no state policies to require stormwater controls beyond the long standing erosion sediment control requirements.

To put in perspective the 2007 health and restoration assessment report notes that 750,000 acres of land have been developed since the early 1980’s.. This amounts to 1.8 percent of the watershed which is 64000 sq. miles. Impervious acres grew by 249,000 acres or 0.006.

I am not suggesting that it is not important to control our urban sources and in particular stormwater, but the 2005 reported cost to implement the Urban Component of the tributary strategies in Virginia is 7.5 billion dollars. 75 percent of the total implementation cost.

Hanover County’s allocation of this cost at a 75 percent implementation level would be 165 million dollars or about \$1600 per person.

We estimate, depending on the project circumstances that the new propose stormwater management standards could increase this cost by 3 to 20 fold. This cost is inconceivable. Based on the exponential increase in cost and the likely uncertainty in the estimates it is reasonable to continue with the existing 0.45 lb standard and expand to the rest of the CBay and focus on more realistic implementation plans.

This Board's revised 2007 buffer policies significantly increase land adsorbed by RPA buffers and there have been no loading analysis justifying the expansion or contemplating the economic impacts. There has been no analysis on the impact of our agricultural and forestall resources which are similarly imposed.

Coupled with other policies, like roads we believe it will be economically prohibitive for developers to follow our comprehensive plan goals for more compact and contiguous development and it will leave us with sprawling by right development.

We would request that this Board collaborate with the Department's companion Boards and prudently advance and enforce the existing policies. Partner with localities to assist us in improving our programs within reasonably attainable funding mechanisms. Otherwise we are certain to face an environmental backlash if only due to a hierarchy of needs dilemma in this challenging and unprecedented economic downturn.

I have provided you a letter to the Richmond Regional Planning District, in response to their requested review of the CBay Model data. I invite you to read this in your leisure to "emphasize" the variability not only in the CBay Model data, but in the predictive tools also. It is important to keep these in perspective when advocating policies with such profound economic consequences. We recognize you volunteer your time to serve and we appreciate and thank you for that important service.

Diana Parker, Falls of the James Sierra Club thanked the Board for their actions. She said that the Falls of the James Sierra Club has over 1,800 members in Chesterfield, Henrico and Surry Counties. She said that the Sierra Club was very appreciative that the Board had taken these steps.

Adjourn

There was no further business and the meeting was adjourned.

Respectfully submitted,

Donald W. Davis
Chair

Joseph H. Maroon
Director