

**Chesapeake Bay Local Assistance Board
Southern Area Review Committee
Tuesday, November 3, 2009
900 East Main Street
Richmond, Virginia**

Southern Area Review Committee Members Present

Beverly D. Harper, Chairman
Barry L. Marten
Charles B. Whitehurst, Sr.

Southern Area Review Committee Members Not Present

Richard B. Taylor
John J. Zeugner

DCR Staff Present

Joan Salvati, Director, Division of Chesapeake Bay Local Assistance
David Sacks, Assistant Director, Division of Chesapeake Bay Local Assistance
Shawn Smith, Principal Environmental Planner
Michael R. Fletcher, Board and Constituent Services Liaison
Daniel Moore, Principal Environmental Planner
Adrienne Kotula, Principal Environmental Planner
Melissa Doss, Senior Environmental Planner
Christine Watlington, Policy, Planning, and Budget Analyst
Elizabeth Andrews, Office of the Attorney General

Others Present

John Bragg, Charles City County
Diana Parker, Falls of the James Sierra Club
Stacy Porter, City of Portsmouth

Call to Order and Opening Remarks

Chairman Harper called the meeting to order. A quorum was declared present

Ms. Salvati said that due to the budget reduction process the position of Riparian Buffer Management had been eliminated. Ms. Baird was able to be reassigned to the Division of Natural Heritage.

Local Program Review

City of Portsmouth

Ms. Smith gave the report for the City of Portsmouth. She noted that Stacy Porter, Planner was present from the City.

Ms. Smith said that this was a Phase I program modification and staff's recommendation was that the program amendment be found consistent. She said that the City has been working on revising their local Bay Act ordinance and that the City Council adopted the revision on August 25 with an effective date of September 25, 2009. The revisions included changes to definitions and clarifying that the requirements of the Bay Act ordinance are initiated when land disturbance commences. The City added provisions for administrative review of the expansion of existing structures and for an administrative waiver for performance criteria. Finally, the City added the enforcement provisions that are in the Bay Act.

Ms. Smith said that the revisions were a good step and would help the City to advance their water quality program. She said that the staff recommendation was that the City be found consistent.

Ms. Porter had no additional comments.

MOTION: Mr. Marten moved that the Southern Area Review Committee recommend to the Chesapeake Bay Local Assistance Board that the City of Portsmouth's Phase I program amendments be found consistent with § 10.1-2109 of the Act and § 9 VAC 10-20-60 1 and 2 of the Regulations.

SECOND: Mr. Whitehurst

DISCUSSION: None

VOTE: Motion carried unanimously

Local Program Reviews

Charles City County

Ms. Doss gave the report for Charles City County.

On September 15, 2008, the Board found that Charles City County's implementation of its Phase I program did not fully comply with the Act and Regulations, and established a deadline of September 30, 2009 for the County to address two conditions.

The first condition is development and implementation of a septic pump-out program. The County implemented their septic tank pump out program by sending out their septic tank pump out notices last week along with property tax bills, to all 3,332 property owners in the County. The Richmond Regional Planning District Commission has developed a septic system database for Charles City County to use to track the responses. A copy of the notice has been provided to the Department of Conservation and Recreation (Department). Ms. Doss said that it was staff's opinion that this condition has been addressed.

The second condition states the County must require WQIAs for any proposed land disturbance, development, or redevelopment within the RPA. Using WQIA forms developed by the Department, Charles City County is now requiring the submission of a WQIA for all proposed land disturbance, development and redevelopment within the RPA. The County has only received four proposals for encroachment over the last year. The County provided staff with these four WQIA files, three of which went before the Wetlands Board (the encroachment approval body for the County). One permit was denied because the applicant did not submit a landscaping plan as part of the WQIA. Two of the other files were complete with all of the necessary information. The County requested a site visit and assistance with the fourth application, which has not yet been approved while changes are being made to the proposal. Ms. Doss said that based on these actions and the Department's review of the documentation provided by the County, it was the Department's opinion that the County has adequately addressed the condition.

Charles City County has requested assistance and clarification on certain cases during the past year. Given this information, Department staff recommends that Charles City County be found to comply with the Act and Regulations.

Ms. Doss said that she would like to thank the County for working with the Department throughout the process. She introduced Mr. Bragg from the County.

Mr. Bragg thanked staff work working with the County.

MOTION: Mr. Marten moved that the Southern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find that Charles City County has addressed the two conditions from the September 15, 2008 compliance evaluation and further that the Board find the implementation of the County's Phase I program complies with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations.

SECOND: Mr. Whitehurst
DISCUSSION: None
VOTE: Motion carried unanimously

Surry County

Ms. Doss gave the report for Surry County.

On September 15, 2008, the Board found that Surry County's implementation of its Phase I program did not fully comply with the Act and Regulations, and established a deadline of September 30, 2009 for the City to address 4 of the 6 conditions. Conditions #2 and #6 were recommended for attention by County staff beginning September 16, 2008.

Condition #1 states the County must revise its current Resource Protection Area and Resource Management Areas map to accurately depict the RMA. Since the compliance evaluation, the County has contracted with Worldview Consultants to correct the map. The County has received a working draft of the map from the consultant and is using this map in their review of development applications to determine whether a property is within the RPA or RMA. Department staff has reviewed the draft map and determined that it correctly depicts the RPA and RMA. Ms. Doss said that it was staff's opinion that this condition had been addressed.

The second condition states the County must review all development projects within the James River Watershed for compliance with the Chesapeake Bay Preservation District Ordinance. Surry County has revised their zoning permit application and review process to include a check system for whether or not the property lies within the Chesapeake Bay Preservation District (CBPD) of Surry County. The permit application also includes a worksheet for impervious coverage calculations when the property lies within a CBPD. A review of County files found that this new review process is functioning well. Ms. Doss said that it was staff's opinion that this condition had been addressed.

The third condition is development and implementation of a pump-out program. The County implemented their septic pump-out program on June 3, 2009 by sending out their septic tank pump-out notice letters to the 89 property owners with septic tanks located in Phase 1, which is tax blocks 10 and 11. Surry County is mailing the notice letters to the entire county in five phases. Copies of the notice, supplemental information, and database have been provided to the Department. Ms. Doss said that it was staff's opinion that this condition had been addressed.

Condition 4 is the development of a program to ensure regular maintenance and tracking of all Best Management Practices (BMPs). County staff has inventoried all the BMPs

within its jurisdiction and they have also implemented a process by which inspections of all said BMPs will be ensured. A database supporting this information has been received by the Department. Ms. Doss said that based on these actions and the Department's review of the documentation provided by the County, it was the Department's opinion that the County has adequately addressed the condition.

Condition 5 states the County must ensure WQIAs contain all elements sufficient to demonstrate compliance with the County's Bay Act program. There have been no applications for land disturbance, development, or redevelopment within RPAs within the last year. The County has the WQIA forms developed by the Department and has stated they will be using them for any future development proposed within the RPA. Ms. Doss said that it was staff's opinion that this condition had been addressed.

The sixth condition states the County must ensure that the required findings necessary for review of exceptions are adequately addressed and that exceptions are required in appropriate circumstances. There have been no applications for exceptions within the past year. Surry County has stated that when they do receive an exception request, they will review them in conformance with the required findings and will contact Department staff for assistance when reviewing future exception requests. Ms. Doss said that it was staff's opinion that this condition had been addressed.

Ms. Doss said that during the past year, Surry County has made significant changes to their Bay Act program and worked closely with CBLA staff. The County has not hesitated to ask questions and request assistance when needed. She said that given this information, staff recommended that Surry County be found to comply with the Act and Regulations.

Mr. Marten asked if there were provisions to follow up on the conditions that the County had not previously met.

Mr. Sacks said that the County would now begin submitting an annual report. The annual report will enable staff to ensure that the local program continuous to be implemented. If there are anomalies, staff will identify them and work with the County to address them.

Ms. Kotula said that the County had been very cooperative.

MOTION: Mr. Marten moved that the Southern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find that Surry County has addressed the six conditions from the September 15, 2008 compliance evaluation and further that the Board find the implementation of the County's Phase I program complies with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations.

SECOND: Mr. Whitehurst
DISCUSSION: None
VOTE: Motion carried unanimously

Town of Surry

Mr. Moore gave the report for the Town of Surry.

On September 15, 2008, the Board found that implementation of certain aspects of the Town's Phase I program did not fully comply with the Act and the Regulations. The Board gave the Town a deadline of September 30, 2009 to address three conditions:

1. develop an accurate map showing all CBPA features of the Town including RPA and the jurisdiction-wide RMA;
2. develop a standard BMP maintenance agreement with specific inspection and maintenance procedures and a BMP tracking database (or enter into a formal agreement with Surry County whereby the County can assume these responsibilities for the Town);
3. require that all water bodies with perennial flow are evaluated and site-specific RPA limits are accurately determined and mapped as necessary.

Relative to Condition #1 and as noted in the staff report, Department staff worked with staff of the Crater Planning District Commission to produce a revised map showing RPA and RMA lands in the Town. The Town adopted this updated map on October 13, 2009.

Relative to the second condition, Town staff developed and has provided Division staff with a copy of a BMP Maintenance Agreement as required. The Town does not have qualified staff to carry out BMP inspections and has agreed to seek assistance from DCR/SWCD staff as needed to address the inspections requirement. The Town has developed a system for notifying BMP owners of the requirement for regular maintenance.

Mr. Moore said that it should be noted that the Town is still in negotiations with Surry County relative to a possible Memorandum of Understanding (MOU) between the two localities that would shift some or all of the Town's Bay Act administrative responsibilities to the County.

In response to Condition #3, the Town developed three specific documents referenced in the staff report and has them available for use by applicants for any future proposed development.

Based on all the above-referenced findings, staff recommended the Town be found compliant with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations.

MOTION Mr. Marten moved that the Southern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find that the Town of Surry has addressed the three conditions from the September 15, 2008 compliance evaluation and find that implementation of the Town's Phase I program complies with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations.

SECOND: Mr. Whitehurst

DISCUSSION: None

VOTE: Motion carried unanimously

Town of Claremont

Mr. Moore gave the report for the Town of Claremont.

On September 15, 2008, the Board found that implementation of certain aspects of the Town's Phase I program did not fully comply with the Act and the Regulations. The Board gave the Town a deadline of September 30, 2009 to address three conditions:

1. develop and implement a 5-year pump-out notification and enforcement program, including any necessary tracking information;
2. ensure proper review of development proposals and maintain adequate records documenting that review. The Town can assume this responsibility itself or enter into a formal agreement with Surry County whereby the County can perform these duties for the Town;
3. require the submission of a WQIA for any proposed land disturbance, development or redevelopment within RPAs.

Relative to the septic pump-out condition, the Town has developed two public education documents. One - a letter - serves as notice to septic owners of the pump-out requirement of the Regulations and the second in a FAQ format provides the Town's 260 residents information about the Town's pump-out program. The first document was approved by Town Council on October 7, 2009. The letter and the FAQ form were mailed out to all Town residents the week of October 12, 2009, with a request that property owners fill out the bottom portion of the letter and send their information back to the Town no later than

November 16, 2009. The Town has also developed a tracking database for the pump-out notification responses. Based on the above, staff finds that Condition #1 has been adequately addressed.

Relative to the second condition, Town staff developed a document entitled *Frequently Asked Questions Regarding the Site Development Plan Review and Approval Process*. The document defines the site plan review process and includes a detailed checklist of site plan submittal requirements and copies of the document are now available for use by the public. DCR/CBLA staff also provided assistance to the Town in establishing a formal filing and record-keeping system in order to improve the administration of their Bay Act program.

In addition to developing the documents just described, and accepting technical training to the Town Council, the Town has agreed to provide Department staff copies of all development plans submitted to the Town for approval for our review. Given all of the progress mentioned staff finds that Condition #2 has been adequately addressed.

Department staff has provided the Town with sample WQIA forms that the Town has in turn revised for their use. Technical training provided to the Town by Department staff has included training about the WQIA submittal and review process. Based on the above, staff finds that Condition #3 has been adequately addressed.

Based on all the above-referenced findings, staff recommended the Town be found compliant with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations.

MOTION: Mr. Marten moved that the Southern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find that the Town of Claremont has addressed the three conditions from the September 15, 2008 compliance evaluation and that the Board find that implementation of the Town's Phase I program complies with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations.

SECOND: Mr. Whitehurst

DISCUSSION: None

VOTE: Motion carried unanimously

Public Comment

Ms. Diana Parker representing the Falls of the James Sierra Club and the Hands Across the Lake Environmental group to protect Swift Creek Reservoir said that her group was still having difficulty with the actions Chesterfield County is taking in the watershed. She said that the County was not doing adequate protection of the watershed around the reservoir.

Ms. Parker said that the neighborhood had done well implementing buffers and regrowth in areas that were bare. But she noted that there was still bad sedimentation of the reservoir.

She asked that the Board ensure that the County come into compliance.

There was no further public comment.

Closed Meeting: Consultation with Counsel Regarding Legal Matters

Mr. Whitehurst moved the following:

Mr. Chairman, I move that the Chesapeake Bay Local Assistance Board Southern Area Review Committee convene a closed meeting pursuant to §2.2-3711(A) (7) of the Code of Virginia for the purpose of consultation with legal counsel regarding specific legal matters requiring the provision of legal advice, namely the lawsuit filed by Chesterfield County against CBLAB.

This closed meeting will be attended only by members of the Southern Area Review Committee. However, pursuant to § 2.2-3712(F) of the Code, the Committee requests counsel, Christine Watlington, DCR Policy, Planning and Budget Analyst, the Director of the Division of DCR Chesapeake Bay Local Assistance, the Assistant Director of the DCR Division of Chesapeake Bay Local Assistance and Adrienne Kotula, Principal Planner to attend because it believes that their presence will reasonably aid the Board in its consideration of the topic that is the subject of this closed meeting.

SECOND: Mr. Marten

DISCUSSION: None

VOTE: Motion carried unanimously

Mr. Whitehurst moved the following:

WHEREAS, the Chesapeake Bay Local Assistance Board Southern Area Review Committee has convened a closed meeting on November 3, 2009 pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

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

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

SECOND: Mr. Marten

ROLL CALL VOTE:

Aye: Harper, Marten, Whitehurst

No: None

New Business

There was no new business.

Adjourn

There was no additional business to come before the Committee and the meeting was adjourned.

Respectfully submitted,

Beverly D. Harper
SARC Chair

Joseph H. Maroon
Director