

**Chesapeake Bay Local Assistance Board
September 20, 2010
Patrick Henry Building, Conference Room 3
Richmond, Virginia**

MINUTES

Chesapeake Bay Local Assistance Board Members Present

William E. Duncanson, Chair

Barry L. Marten

Charles B. Whitehurst

Donald W. Davis

Rebecca Reed

John J. Zeugner

Chesapeake Bay Local Assistance Board Members Not Present

Gregory C. Evans, Vice Chair

DCR Staff Present

David A. Johnson, Director

Jeb Wilkinson, Chief 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

Michael R. Fletcher, Board and Constituent Services Liaison

Melissa Doss, Senior Environmental Planner

Adrienne Kotula, Principal Environmental Planner

V'lent Lassiter, Senior Environmental Planner

Nancy Miller, Senior Environmental Planner

Daniel Moore, Principal Environmental Planner

Shawn Smith, Principal Environmental Planner

Elizabeth Andrews, Office of the Attorney General

Others Present

Joe Hatch, Zoning Administrator, City of Petersburg

Call to Order

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

Election of Officers

Mr. Davis noted that his term had expired and that he would be stepping down from the Board once appointments were made by the Governor. He said that the Board needed to elect a new Chairman.

Mr. Davis called for nominations for Chairman. Mr. Zeugner nominated Mr. Duncanson to serve as Chairman. Ms. Reed seconded. There were no further nominations and the motion to elect Mr. Duncanson carried with Mr. Duncanson abstaining.

Mr. Zeugner nominated Ms. Reed to serve as Vice Chairman. Ms. Reed said that she would prefer to withdraw her name and nominated Mr. Evans to serve as Vice Chairman. Mr. Zeugner amended his nomination replacing Ms. Reed's name with that of Mr. Evans. Mr. Evans was elected unanimously.

Consideration of the Minutes

MOTION: Mr. Marten moved that the minutes from the June 21, 2010 meeting be approved as submitted.

SECOND: Ms. Reed

DISCUSSION: None

VOTE: Motion carried unanimously

Director's Report

Mr. Johnson gave the Director's report. He congratulated Mr. Duncanson on being named chair.

Mr. Johnson said that the staff had been extremely busy since the last meeting. He said that the work on the Chesapeake Bay TMDL had been time consuming. The nutrient allocations were received from the EPA on July 1 and were not as anticipated. He said that the allocation numbers for the James were much lower than expected.

Mr. Johnson said that DCR and DEQ worked together on the Watershed Improvement Plan (WIP) that was submitted in early September. DCR handled urban stormwater and agriculture. DEQ handled wastewater treatment plans and onsite septic. A fifth component, forestry, was included but standards and procedures are already in place.

Division Director's Report

Mrs. Salvati gave the Division Director's Report.

Mrs. Salvati said that her first item was to update the Board regarding funds the Division has been seeking. In June the Board had been advised of grants being sought.

Mrs. Salvati said that DCR has secured agricultural technical assistance funds through the Chesapeake Bay Regulatory and Accountability Program (CBRAP). These funds will allow the agency to immediately recruit and hire an Agricultural Program Coordinator. That program coordinator will be responsible for identification of agricultural lands, development of guidance for clarifying the extent to which existing practices or plans could be deemed to meet the assessment requirement; and the provision of technical assistance to localities and Soil and Water Conservation Districts for program administration.

Mrs. Salvati said that there were unexpended funds in the last cycle of the Water Quality Improvement Fund. A grant round has made these funds available for localities to apply for to address Bay Act practices, including mapping, code and ordinance provisions and septic pump-out.

Mrs. Salvati said that with regard to the next round of compliance evaluations, staff was completing the development of documented procedures used for reviews.

Mrs. Salvati said that Division staff has been actively involved with the Chesapeake Bay TMDL process.

Annual Performance Indicators

Mrs. Salvati reviewed the annual performance indicators.

“Phase I Consistent” means the required local ordinances (zoning, subdivision, maps, etc) are in place to designate CBPA’s and to require that the performance criteria are met.

“Phase II Consistent” means the required comprehensive plan components have been adopted.

“Compliant” means the locality is properly implementing the required Phase I components of the local Bay Act program.

As of June 21, 2010:

Localities Found Compliant: 82

Localities Addressing Compliance Conditions: 2

Expected Status as of September 2010:

Localities Phase I Consistent: 84

Phase II Consistent: 83

Compliance Reviews Completed: 84

Localities Compliant: 83

Localities Addressing Compliance Conditions: 1

Compliance Reviews in Progress (Second Round): 1

FY 2009-10 Compliance Evaluations

- Localities Determined Compliant prior to FY 2010: **68**
- Determined Compliant during FY 2010: **14**

Cities

Colonial Heights

Norfolk

Suffolk

Counties

Charles City

Chesterfield

Surry

Westmoreland

Towns

Port Royal

Claremont

Irvington

Kilmarnock

Surry

White Stone

Montross

- Determined by the Board to “not fully comply” and given conditions necessary for full compliance: **2**

Performance Indicators 2009-10

On-site Technical Assistance: 34

Education and Outreach Activities: 26

Training Seminars and Workshops: 6

Federal/State EIR's reviewed: 284

Site Plans reviewed for local gov'ts: 38

2010 Annual Implementation Report

- 72 localities required to submit:
 - 30 towns, 26 counties, 16 cities
- 68 required localities submitted; 2 others

Septic Pump-Outs 2009-10

- 50,061 notices were mailed for 56 localities
- 28,963 systems pumped, inspected or had plastic filter installed
- Pump-out total (for 56 localities, FY 2008-FY 2010): 211,483 systems;
117,844 pump-outs
(does not include localities not yet required to report)

Based on the Bay Model assigned reduction of ½ lb. nitrogen per 1,000 gallons pumped, a reduction of 13,166 pounds of Nitrogen is achieved (does not apply to filters or inspections).

Water Quality BMPs

- 37 local governments reported installation of 795 new water quality BMPs
- 8,139 acres of development were treated by new water quality BMPs
- 3-year total: 2,166 new BMPs; 26,013 new acres treated

Bay Act Practices and the Chesapeake Bay Watershed Model

Practices currently being reported:

- Water quality BMPs
- Septic tank pump outs

Other practices not currently reported but which the model accepts:

- Buffer restoration projects, particularly for currently unvegetated areas
- Nutrient management plans completed in compliance with Conservation Assessments or agricultural buffer encroachments
- Erosion and sediment control at the reduced threshold (2,500 sq. ft.)

Phase III Advisory Review of Local Government Ordinances

- Reviews completed: 32
(14 towns, 5 cities, 13 counties)
- Reviews in progress: 17
- Completion of Remainder expected in Spring 2011
- *Web-based inventory of ordinance provisions updated as reviews are completed*

Early Findings from 32 reviews

- Required Plan/Plat provisions
 - 4 localities have all required provisions
 - Remainder will need to add provisions to be found Compliant
 - Plat notation for pump-out requirement most common deficiency
- Provisions for Limiting Land Disturbance

- All have at least one provisions
- Provisions for Preserving Indigenous Vegetation
 - All but one town have at least one provision
- Provisions for Minimizing Impervious Cover
 - All but one town have at least one provision

Advisory Review Update

Mr. Sacks gave the Advisory Review Update.

Mr. Sacks noted that in June 2009, the Board authorized staff to evaluate the local ordinances of 84 local governments.

Items of Particular Interest (from review of 32 localities)

- 9 Localities have parking space maximums for some or all zoning districts
- Number of provisions found ranges from 2 to 53
- Most common provisions:
 - Cluster zoning provisions (required for some localities)
 - Vegetation protection on construction sites
 - Allowance for alternative paving for overflow parking
 - Allowances for shared parking
 - Minimum parking requirements in line with industry standards
 - Required depiction on plans of construction footprint and limiting disturbance to construction footprint

2011 Board Work Plan

Mrs. Salvati addressed the key items that the Board will face through 2011.

Local Government Compliance Evaluations

Anticipated Schedule for second round

- December 2010: Town of Cape Charles
- March 2011: Portsmouth, James City County
- June 2011: Williamsburg, Gloucester, 3 Eastern Shore Towns
- September 2011: Vienna, York, Northampton, Stafford
- December 2011: Windsor, Occoquan, Poquoson, Colonial Beach

Regulatory Amendments (Fast Track Action)

- Delete reference to “pest management” as a required component of conservation assessments/plans
- Include licensed operators as professionals able to certify septic systems are functioning properly

- Delete requirement for local governments to notify CBLAB of certain development projects

Guidance Reviews

- Rescinding *Agricultural Operations: Soil and Water Quality Conservation Assessment/Plan*, Sept. 20, 2010
- Continue Review of Other CBLAB-adopted Guidance Documents for corrections/minor modifications as needed

Locality Compliance Evaluation Review Process

- Evaluation Process Steps:
 1. Initial meeting to collect information and discuss program
 2. Review select sample of approved plans
 3. Site visits of developments in-progress and completed
- Board conducts initial compliance evaluation; determines “compliant” or identifies conditions necessary for compliance
- Board conducts compliance evaluation condition review

Local Programs Compliance Evaluations

Prince George County

Ms. Doss presented the condition review for Prince George County.

Prince George County’s initial compliance evaluation took place in the fall of 2008 and resulted in six conditions. At the March 15, 2010 meeting, the Board concluded five conditions had been satisfied and a deadline extension was granted for condition #1. The Board also directed County staff in the resolution to disregard Articles XIII and XIV of the Zoning Ordinance due to their inconsistency with State Regulations and repeal those Articles at the time of the next Zoning Ordinance amendment.

The first condition required that the County revise its current CBPA Map to accurately depict all RMA features as described in the County’s ordinance. The County has worked diligently to develop a new high quality map based on the FEMA floodplain maps in order to produce an accurate CBPA map. Staff was given a draft to review prior to the County’s BOS meeting and found the map to be accurate and reflective of the County’s RPA and RMA designations. The staff recommendation was that the Board find this condition had been addressed in advance of the September 30, 2010 deadline.

The County Clerk to the Board of Supervisors has confirmed that resolution O09 P-5 was adopted at the BOS meeting on August 17, 2010, repealing Zoning Articles XIII and

XIV. The adoption of this resolution addresses direction of the Board to disregard these articles at the Board meeting on March 15, 2010.

There was no one present from Prince George County.

MOTION: Mr. Marten moved the Chesapeake Bay Local Assistance Board finds the implementation of Prince George County's Phase I program to be in compliance with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations.

SECOND: Mr. Zeugner

DISCUSSION: None

VOTE: Motion carried unanimously

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
September 20, 2010**

RESOLUTION

**LOCAL PROGRAM COMPLIANCE EVALUATION
PRINCE GEORGE COUNTY**

Local Compliance Evaluation - Compliant

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

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

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

WHEREAS on March 15, 2010, the Chesapeake Bay Local Assistance Board found that implementation of certain aspects of Prince George County's Phase I program did not fully comply with the Act and Regulations and further that the County address one recommended condition contained in the staff report no later than September 30, 2010; and

WHEREAS in the Summer of 2010, the County provided staff with information relating to the County's actions to address the one recommended condition which was evaluated in a staff report; and

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

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the implementation of Prince George 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 September 20, 2010 by the Chesapeake Bay Local Assistance Board.

David A. Johnson
Director
Department of Conservation and Recreation

Program Update – City of Petersburg

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

The City of Petersburg's initial compliance evaluation took place in the spring of 2009 and resulted in nine conditions. At the June 2010 meeting, the Board found that the City had addressed five conditions and granted a deadline extension to December 31, 2010 for the four remaining conditions.

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

Three of the remaining conditions require the depiction of CBPAs on plans, site specific evaluations when necessary, and ensuring development properly addresses non point source pollution. It was previously mentioned that the City was working to complete a manual for instruction on submitting plans, which is expected to clarify the review process and applicable Chesapeake Bay Act requirements. At this time, a draft of the manual is being circulated for internal review at the City. Department staff have been informed it will be available for review in the near future. The City received a set of plans for a landfill expansion and have requested comments from the Department.

The 4th condition requires the City to address issues within the corrective action agreement. On September 16, the Soil and Water Conservation Board extended the Corrective Action Agreement deadline to March 17, 2011.

Ms. Doss said that it was staff opinion that the City is making progress toward meeting the four conditions.

Ms. Doss noted that Joe Hatch, City Zoning Administrator was present.

Mr. Davis asked Mr. Hatch if he believed the City would be able to meet the deadline.

Mr. Hatch responded that the City could meet the deadline.

Proposed Amendments to Guidance Document

Agricultural Operations: Soil and Water Quality Conservation Assessment/Plan

Mrs. Salvati said that this guidance had been in place since 2003. She said that in review DCR staff and the Office of the Attorney General identified several areas of inconsistency.

Mrs. Salvati said that addressing this issue would be one of the responsibilities of the Agriculture Program Coordinator.

MOTION: Mr. Whitehurst moved that the Chesapeake Bay Local Assistance Board rescind the Board-adopted guidance entitled: *Agricultural Operations: Soil and Water Conservation Assessment/Plan*.

SECOND: Mr. Marten

DISCUSSION: None

VOTE: Motion carried unanimously

New Business

There was no new business.

Public Comment

There was no further public comment.

Adjourn

There was no further business and the meeting was adjourned.

Respectfully submitted,

William E. Duncanson
Chairman

David A. Johnson
Director