

**Chesapeake Bay Local Assistance Board
Southern Area Review Committee
Tuesday, August 14, 2007
Richmond, Virginia**

Southern Area Review Committee Members Present

Beverly Harper, Chair
John Zeugner

Richard Taylor

Southern Area Review Committee Members Not Present

Gale A. Roberts

DCR Staff Present

Russell W. Baxter, Deputy Director
Joan Salvati, Division Director, Chesapeake Bay Local Assistance
David Sacks, Assistant Division Director, Chesapeake Bay Local Assistance
Michael R. Fletcher, Board and Constituent Services Liaison
Shawn Smith, Principal Environmental Planner
Nathan Hughes, Watershed Specialist
Adrienne Kotula, Principal Environmental Planner
Rob Suydam, Senior Environmental Planner

Others Present

Dick McElfish, Chesterfield County
Scott Flanigan, Chesterfield County
Zack Robbins, Town of Ashland
Tevya W. Griffin, City of Hopewell
Beverly Walkup, Isle of Wight County
Amy Ring, Isle of Wight County

Call to Order and Opening Remarks

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

Ms. Salvati said that there is a new board member for the Northern Area. Rebecca Reed will take Mr. Sheffield's place.

Local Program Reviews Compliance Evaluation

Mr. Sacks gave an overview of the three types of reviews:

The Three Types of Review of Local Bay Act Programs

“Phase I Consistent” means the required local ordinances (zoning, subdivision, maps, etc) are in place to designate CBPAs 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.

Chesterfield County

Mr. Sacks gave the review for Chesterfield County. He recognized Mr. McElfish and Mr. Flanigan from the County. Mr. Suydam is the staff liaison for Chesterfield County.

Mr. Sacks said that this is an initial Compliance Evaluation Review for Chesterfield County.

Chesterfield County, with a population of close to 300,000, is the most populous jurisdiction in the Richmond metro area. The County has experienced significant growth and adds approximately 5000 residents a year. Furthermore, the County issues close to 2000 building permits for new single-family homes each year. The entire County is designated as RMA, with an opt-out provision for certain conditions. The Bay Act program is administered in Chesterfield primarily through the Department of Environmental Engineering.

DCR initiated this compliance evaluation of County’s Phase I program in June of 2006. During the review it became clear that the County reviews a very large number of plans, and frequently encounters wetlands along both intermittent and perennial streams.

This review involved discussions with staff to understand the program, reviewing submitted plans, and field checking sites under development and completed.

Staff did identify several issues with the County’s implementation of their Bay Act program.

The County has a BMP credit-trading program that allows a developer to use pollutant removal credits from one of 14 BMPS in the County that have been determined to have excess pollutant removal capacity. Through this process, the development is relieved from otherwise complying with the stormwater quality requirements in the regulations. The County allows the use of BMP credits even if the stormwater from the project does not flow through the credit BMP or is even not in the same watershed.

Mr. Sacks reviewed other concerns identified by staff during the compliance review and the conditions staff is recommending as a result:

1. Require the accurate delineation of RPAs on all development plans and in the field. The new Nontidal guidance should help the County address this condition.
2. Require all vested projects to meet the performance criteria, to the maximum extent feasible.
3. Revise the *Engineering Reference Manual* to meet the regulations and be consistent with County policy
4. Ensure that the conditions for utility exemptions are met. Show additional clearing on plans and ensure restoration of extra clearing.
5. Require the submission of a WQIA for any RPA encroachment
6. Ensure that BMPs placed within the RPA meet the proper criteria or go through the formal exception process.
7. Ensure that all RPA encroachment requests follow the proper review procedure (i.e. administrative waiver or formal exception).

Mr. Sacks reported that Division staff met with County Environmental Engineering staff on August 1st. The County understands the requirements and is willing to address the concerns. Staff has indicated that the BMP credit trading will cease immediately.

As a result of this review, Mr. Sacks said that the staff recommendation was that Chesterfield County be found to not fully comply with the Act and Regulations, with the requirements that:

1. The County immediately address recommended condition number 4 and
2. The County address the remaining seven (7) recommended conditions contained in the staff report no later than June 30, 2008.

Mr. Sacks said that with regard to condition #2, the primary issue was that even though projects were vested, there is an understanding that the RPA needs to be delineated on plans for vested projects and that as projects are developed, the RPA requirements have to be met to greatest extent feasible. Mr. Sacks added that because of information that has very recently come to staff's attention, he requested that staff be allowed more time to investigate and discuss this issue with County staff, and that at this point he would recommend condition number 2 regarding vesting be removed as a recommendation to the Board. This will enable staff an opportunity to work with County staff to clearly understand the County's policy on vesting and to potentially develop refined language for the full Board to consider in a resolution at the September meeting. He recommended that condition number 2 be pulled out of the recommended resolution to the Board with the understanding that alternative condition language may be recommended by staff for consideration by the full Board.

Mr. Flanigan expressed appreciation to the DCR staff. He said that the County hopes to bring the Chesterfield program into compliance.

Mr. Zeugner said that he was delighted to hear that the BMP credit-trading program will be ended.

MOTION: Mr. Zeugner moved that the Southern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find that certain aspects of the County's implementation of its 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 further that the Board direct that Chesterfield County to immediately address recommended condition number 4 and, that staff continue discussions with the County regarding recommended condition number 2 and report back to the Board in September and that the County complete the remaining six (6) recommended conditions contained in the staff report no later than June 30, 2008.

SECOND: Mr. Taylor

DISCUSSION: Ms. Harper clarified that staff was looking for a draft written policy.

VOTE: Motion carried

Isle of Wight County

Mr. Sacks gave the review for Isle of Wight County. He recognized Beverly Walkup and Amy Ring from the County. Ms. Smith is the liaison for Isle of Wight County.

Isle of Wight County is located in south Hampton Roads along the James River between Surry County and the City of Suffolk. It contains the Towns of Smithfield and Windsor. Because only half of the County's drainage enters the Chesapeake Bay, the Resource Management Area is limited to that portion of the County, (approximately the northern half) that drains into the Chesapeake Bay. The County has experienced moderate growth (11% over 6 years)

The County is however undergoing fairly significant growth pressures, and has had some high profile violations on 2 different large-scale residential projects in the last several years: Founders Pointe and Lawnes Pointe. Both of these are large residential subdivisions that have had buffer clearing violations. Founders Pointe also had a wetlands violation, which recently resulted in a fine of \$100,000 for the developer. The County has, in both cases, worked with the appropriate state agencies to develop mitigation plans for these violations, and in both cases, mitigation is underway.

The compliance evaluation for Isle of Wight was completed during spring and summer of 2007 with the initial meeting, as well as the plan review and field visits, occurring in April and May respectively.

Based on the review of the County's ordinances, plans, procedures, and processes, staff have 3 issues that were identified with the County's program and reflected in recommended conditions for compliance:

- Requiring the implementation of a septic pump-out/maintenance program;
- Requiring the development and implementation of a BMP maintenance program; and
- The County must review onsite RPA delineations.

The County was very cooperative during the compliance evaluation process, and has already taken steps to address the three recommended conditions. They have developed a draft septic pump-out program and a BMP database that they will use to ensure BMPs are properly maintained and inspected. The County is to be commended for their quick work to initiate actions to address these three recommended conditions.

Mr. Sacks stated that it was the recommendation of staff that the Board find that certain aspects of Isle of Wight County's Phase I program do not fully comply with the Act and regulations and that the Board require the County to address the three conditions necessary for full compliance by September 2008.

Ms. Walkup thanked DCR and Ms. Smith for working with the County. She said that the County tries to be a good keeper of the Bay.

Ms. Walkup noted that the County is trying to put the septic tank program in place.

MOTION: Mr. Zeugner moved that the Southern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find that certain aspects of Isle of Wight County's Phase I program do not fully comply with §§10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations and that the Board direct the County to undertake and complete the three recommendations contained in the staff report no later than September 30, 2008.

SECOND: Mr. Taylor

DISCUSSION: None

VOTE: Motion carried

Town of Ashland

Mr. Sacks gave the review for the Town of Ashland. He recognized Zack Robbins, Senior Planner from the Town. Mr. Suydam is the staff liaison for the Town of Ashland.

The Town of Ashland is located within Hanover County just north of Richmond along Routes 1 and I-95. With a population of about 6600, the Town has recently experienced significant commercial/light industrial development.

DCR initiated a compliance evaluation of the Town's Phase I program in June of this year.

As a result of this review, many of the Town's Bay Act processes were found to be compliant. However, staff identified concerns for the lack of CBPAs shown on site plans and for the requirements for site-specific Chesapeake Bay Preservation Area determination.

As a result of discussions with the Town, local staff proactively revised their *Site Plan Review Application* and checklist to ensure that all CBPAs are accurately determined and delineated on all site plans.

In addition, Town staff has already inquired about scheduling individual technical training regarding site-specific determinations, as well as the formal training sponsored by DCR and VIMS.

In response to this cooperation, DCR will continue to assist the Town in its review of development plans to ensure compliance with this new process, as noted in the recommended condition in the staff report, that requires a follow-up plan review by DCR prior to June 30, 2008.

Mr. Sacks offered the following recommended condition:

For consistency with Sections 9 VAC 10-20-80 and 90 of the Regulations and Section 4.1-403 of the Town of Ashland's Environmental Protection Ordinance, and 9 VAC 10-20-105 of the Regulations and Section 4.1-208 a of the Town of Ashland's Environmental Protection Ordinance, the Town must demonstrate that CBPAs are properly delineated on all development plans as determined by a follow-up plan review prior to June 30, 2008.

Mr. Robbins thanked Mr. Suydam and Mr. Sacks for working with the Town. He said the Town agreed with the stated condition.

MOTION: Mr. Taylor moved that the Southern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find that certain aspects of the Town of Ashland's implementation of its 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 further that the Town be directed to undertake and complete the recommendation contained in the staff report no later than June 30, 2008.

SECOND: Mr. Zeugner

DISCUSSION: None

VOTE: Motion carried

City of Hopewell

Mr. Sacks gave the report for the City of Hopewell. He recognized Tevya Griffin, City Planner. Mr. Suydam is the staff liaison for the City of Hopewell.

This compliance evaluation was initiated by DCR in late 2004.

In June of 2005, the Board found that implementation of certain aspects of the City's Phase I program did not fully comply with the Regulations and set an original deadline date of June 30, 2006 for the City to address the 10 recommendations noted in the staff report.

In September of 2006, the Board granted a deadline extension for the City to December 31, 2006

In March of this year, the Board determined the City had not adequately addressed any of the 10 recommendations, and as a result found the implementation of the City's Phase I program noncompliant. The Board further directed the City to undertake and complete the 10 recommendations no later than June 15, 2007.

Since that time, the City has been diligent in developing new Bay Act program materials and processes that address each of the 10 recommendations. In addition, the City has agreed to submit all development plans to DCR for the next 12 months to ensure compliance with these new program requirements.

The previous conditions were:

1. Ensure CBPAs are applied uniformly throughout the City

2. Revise site plan processes and City Code requirements to ensure proper delineation of CBPA features on submitted plans
3. Require that the RPA remains undisturbed using visible barriers along the boundary
4. Submittal of CAA pertaining to E&S Control program deficiencies
5. Implement 5-year septic tank pump-out program
6. Cease permitting the placement of BMPs in the RPA
7. Provide documentation of administrative waivers or exceptions
8. Ensure that a WQIA is submitted and reviewed for all land disturbances in the RPA
9. Ensure that SWM facilities are located, designed and maintained as required by the SWM Regulations
10. Consistently implement the stormwater runoff criteria as specified in City Code

Mr. Sacks reviewed each of the ten conditions and reported on actions the City has taken to address each. He added that upon reviewing the materials and processes developed by the City of Hopewell, it is staff's belief that the ten conditions set by the Board have been adequately addressed and staff recommends that the City of Hopewell be found in full compliance with the Act and Regulations

MOTION: Mr. Taylor moved that the Southern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find the City of Hopewell's implementation of its Phase I program be found compliant 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

Other Business

There was no additional business.

Public Comment

There was no additional public comment.

Adjourn

There being no further business, the meeting was adjourned.

Beverly D. Harper, Chair

Joseph H. Maroon, Director