

**Chesapeake Bay Local Assistance Board
Monday, March 26, 2007
Stratford Hall Plantation
Westmoreland County**

Chesapeake Bay Local Assistance Board Members Present

Donald W. Davis, Chairman
William E. Duncanson
John J. Zeugner

Walter J. Sheffield, Vice Chairman
Gregory C. Evans

Chesapeake Bay Local Assistance Board Members Not Present

Beverly D. Harper
Michael A. Rodriguez

Gale A. Roberts
Richard B. Taylor

DCR Staff Present

Russell Baxter, Deputy Director
Ryan Brown, Assistant Director of Policy, Planning and Budget
Joan Salvati, Division Director, Chesapeake Bay Local Assistance
David Sacks, Assistant Division Director, Chesapeake Bay Local Assistance
Alli Baird, Senior Environmental Specialist
Nathan Hughes, Watershed Specialist
Nancy Miller, Senior Environmental Planner
Daniel Moore, Principal Environmental Planner
Shawn Smith, Principal Environmental Planner
Rob Suydam, Senior Environmental Planner
Michael R. Fletcher, Board and Constituent Services Liaison
Carolyn Elliott, Administration Specialist
Carrie Hileman, Policy and Planning Intern

Others Present

City of Fairfax

John Friedman
Matt Meyers

City of Hopewell

Tevya Williams Griffin

Caroline County

Gary Mitchell

Mike Finchum

Call to Order

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

Consideration of the Minutes

MOTION: Mr. Duncanson moved that the minutes for the following meetings be approved as submitted.

*January 26, 2007 Policy Committee
February 13, 2007 Northern Area Review Committee
February 13, 2007 Southern Area Review Committee
December 11, 2006 Board Meeting*

SECOND: Mr. Evans

DISCUSSION: None

VOTE: Motion carried unanimously

Director's Report

Mr. Baxter gave the Director's report.

Mr. Baxter said that HB 2568 and SB 821 increased the penalties for Erosion and Sediment Control violations. This gives local governments more discretion in setting penalties.

The General Assembly also dealt with the prohibition of local regulation of fertilizer. The patron agreed to an amendment to exempt requirements set forth by the Chesapeake Bay Local Assistance Board.

During the last week of the session there was a bill passed to fund combined sewer upgrades for Richmond and Lynchburg. A substitute bill took half of the money from the Water Quality Improvement Fund. While the treatment is important, this bill does it at the expense of nonpoint source programs.

Mr. Baxter said that the Governor is expected to address these issues. He noted that this was the last day for the Governor to present his amendments.

Mr. Baxter said that another legislative matter that may be of interest to the Board was the regulation and use of biosolids. That program has historically been administered by the Department of Health, but has now been transferred to the Department of

Environmental Quality. DCR will have to approve nutrient management plans for some of the sites where biosolids will be applied.

Mr. Baxter said that much remained in play with the budget until the Governor made his final proposals related to transportation and the General Assembly took final action.

Mr. Baxter noted that land conservation matters were not funded as well as hoped. What remains is principally larger amounts of funding for the purchase of development rights.

Mr. Baxter gave an overview of the "Chesapeake Club." This program was piloted in Northern Virginia and is targeted to homeowners to increase awareness of nutrients applied to lawns.

Mr. Baxter said that DCR has engaged in another marketing effort outside of the Bay region. A marketing program has been implemented in the Shenandoah Valley to try to increase the number of farmers who utilize the Best Management Practices.

Ms. Salvati gave an overview of the Land Conservation and Chesapeake Bay workshop held on March 15. She said that it was very well attended. She asked Mr. Moore to provide additional detail.

Mr. Moore said the workshop was held at the Virginia Historical Society. There were close to 70 attendees. The panel discussions included representatives from the Chesapeake Bay Foundation, VIMS and others. The workshop highlighted success stories between land conservation and water quality.

Ms. Salvati introduced Nathan Hughes who was recently hired in the position of Watershed Specialist.

Mr. Baxter said that DCR had issued an RFP for WQIF funding for nonpoint source money. The applications are due on May 15.

Mr. Davis asked if any consideration had been given to reestablishing the grants committee.

Mr. Baxter said that he was not aware of an attempt and noted that the issue is getting the necessary attention for nonpoint source funds.

Quarterly Performance Indicators

Mr. Sacks provided an update regarding Quarterly Performance Indicators.

Quarterly Performance Indicators DCBLA Production

*Accomplishments for first half of FY 2006-07
(July 1, 2006 – December 31, 2006)*

- On-site Technical Assistance: 22
- Education and Outreach Activities: 7
- Training Seminars and Workshops Conducted: 6
- Federal/State EIR's reviewed: 131
- Site Plans reviewed for local governments: 42

**Quarterly Performance Indicators
Compliance Review Status**

“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 December 31, 2006:

- Localities Found Compliant: 25
- Localities Addressing Compliance Recommendations: 12
- Compliance Reviews in Progress: 7
- Reviews expected to be completed in 2007: 30

Following March 2007 meeting:

- Localities Phase I Consistent: 83
(includes some with conditions)
- Localities Phase II Consistent: 83

Locality Information

Fastest Growing Bay Act Localities (2000-2006):

Rate and amount of population increase

Prince William County:	31.5%	(88,403)
Stafford County:	30.4%	(28,065)
Spotsylvania County:	30.2%	(27,342)
King George County:	26.8%	(4,496)
City of Suffolk:	24.9%	(15,847)
James City County:	23.0%	(11,081)
New Kent County:	21.8%	(2,936)

Entire Bay Act Area: 7.8% (347,762)

Statewide: 8.0% (563,854)

Bay Act area population change 1990 – 2000: 15%

Town population is included in counties

Sources: 2006 estimates: Weldon Cooper Center; 1990 and 2000 population: US Census Bureau

Locality Information

Data Currently Being Assembled

- Total land area of RPA/RMA
- Number of septic tanks in CBPA's
- Stream miles protected by RPA
- Adjustment in stream miles from PFD
- Number of certified BMP's
- Changes in impervious cover

Mr. Evans asked about accounting for federal lands.

Mr. Baxter said federal lands are tracked in the conservation database. He said there is some controversy regarding whether lands are considered resource lands or other.

Mr. Evans said that he was surprised by how many thousands of acres were in federal lands and noted that this seemed to have a greater impact than lawns.

Mr. Baxter said the federal government is a very active participant in the Chesapeake Bay Program.

Mr. Sacks said that staff would report this information to the Board on a quarterly basis.

Consent Agenda

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

- Town of Colonial Beach
- Town of Bowling Green

SECOND: Mr. Duncanson

DISCUSSION: None

REVISED: 6/5/2007 9:33:38 AM

VOTE: Motion carried unanimously

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
March 26, 2007**

RESOLUTION

**LOCAL PROGRAM, PHASE I
TOWN OF COLONIAL BEACH - #26**

Modification – Consistent

WHEREAS § 10.1-2109 of the Chesapeake Bay Preservation Act states that counties, cities, and towns in Tidewater Virginia shall designate Chesapeake Bay Preservation Areas and incorporate protection of the quality of state waters in Chesapeake Bay Preservation Areas into local plans and ordinances; and

WHEREAS § 9 VAC 10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1 (a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS the Town of Colonial Beach adopted a revised local Phase I program on December 4, 2003, and

WHEREAS on March 22, 2004, the Chesapeake Bay Local Assistance Board found the Town of Colonial Beach's Phase I program consistent with one condition and a compliance deadline of December 31, 2006, and

WHEREAS the Town of Colonial Beach adopted a revised local program to comply with §§ 9 VAC 10-20-60 1 and 2 of the Regulations on December 4, 2003; and

WHEREAS staff reviewed the amendments made to the Town's revised program for consistency with the Act and Regulations; and

WHEREAS on February 13, 2007 the Local Program Review Committee for the Northern Area considered and evaluated the information contained in the 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 Town of Colonial Beach's revised Phase I program consistent with §10.1-2109 of the Act and §§ 9 VAC 10-20-60 1 and 2 of the Regulations.

REVISED: 6/5/2007 9:33:38 AM

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on March 26, 2007 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

March 26, 2007

RESOLUTION

LOCAL PROGRAM - PHASE II

Town of Bowling Green - #70

Determination of Consistency – Consistent

WHEREAS § 10.1-2109 of the Chesapeake Bay Preservation Act states that counties, cities, and towns in Tidewater Virginia shall incorporate protection of the quality of state waters into each locality's comprehensive plan; and

WHEREAS § 9 VAC 10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the element in subsection 3 shall be adopted by local governments; and

WHEREAS § 10.1-2103 10 of the Chesapeake Bay Preservation Act authorizes the Board to take administrative and legal actions to ensure compliance by counties, cities, and towns with the provisions of the Act; and

WHEREAS Bowling Green adopted a comprehensive plan in 1998, with amendments through December 7, 2006; and

WHEREAS staff has reviewed the Town of Bowling Green's comprehensive plan and its various components for compliance with the Act and Regulations; and

WHEREAS on February 13, 2007, the Local Review Committee of the Northern Area considered and evaluated the information contained in the staff report and supplemental information provided by the Town 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 recommendations in the staff report and of the Review Committee; now

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds Bowling Green's comprehensive plan consistent with § 10.1-2109 of the Act and § 9 VAC 10-20-60 3 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on March 26, 2007 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

Local Program Ordinance Reviews

City of Fairfax – Review of previous conditions

Mr. Moore gave the report for the City of Fairfax.

On June 21, 2004 the Board found the City's revised Phase I program to be consistent, pending resolution of seven (7) conditions identified by the Board that were to be addressed by the City by December 31, 2006.

On December 12, 2006 City Council adopted revisions to their Chesapeake Bay Preservation Ordinance as a means to address the seven recommendations from the Board's June 21, 2004 resolution. The City has included:

- *definitions for "public road" and "substantial alteration",*
- *specific language prohibiting the modification of a Resource Protection Area designation unless reliable site-specific information is available,*
- *specific language indicating that proposed development in Resource Protection Areas shall be subject to review and approval by the city,*
- *specific language requiring a Water Quality Impact Assessment for any proposed land disturbance, development or redevelopment in Resource Protection Areas in accordance with §110-85 of the City ordinance and deleted the previous reference to the waiving of a Water Quality Impact Assessment,*
- *specific references to proposed land disturbance, development and redevelopment, and*
- *specific language indicating that indigenous vegetation in buffer areas can only be removed subject to approval of the zoning administrator.*

Staff reviewed the above information and finds the changes and additions to the City's review policies and procedures adequately address six (6) of the seven (7) recommendations. Staff finds that the December 12, 2006 ordinance revisions adopted by the City and provided to Department staff (indicated as Board Recommendation #4 in the February 13, 2007 Staff Report to the Northern Area Review Committee) does not include the recommended specific language intended to address the above inconsistency. The following recommendation remains:

Amend Section 110-80 (a)(2)(d) as follows: "The plan for the road or driveway proposed in or across the RPA meets the criteria for site plan, subdivision and plan of development approvals."

At the February 13, 2007 meeting, the Northern Area Review Committee found the City of Fairfax consistent with 10.1-2109 of the Act and 9 VAC 10-20-60 1 and 2 of the Regulations, subject to the condition that the City address the above-referenced recommendation no later than June 30, 2007. Pending adoption of the above-referenced text, staff recommends the Board find the City of Fairfax's implementation of its Phase I program consistent with 10.1-2109 of the Act and 9 VAC 10-20-60 1 and 2 of the Regulations, with a final deadline for compliance of June 30, 2007.

Mr. Moore said that prior to the Board meeting he had received a fax transmission from Fairfax City asking for an explanation for the change in the compliance date deadline to June 30 from the original staff recommended date of September 30, 2007.

Mr. Davis said that the Northern Area Review Committee had expressed concern that delaying the date until September 30, 2007, would delay Board review until the December 2007 meeting.

MOTION: Mr. Evans moved that the Chesapeake Bay Local Assistance Board find the City of Fairfax's revised Phase I program consistent with §10.1-2109 of the Act and §§ 9 VAC 10-20-60 1 and 2 of the Regulations subject to the condition that the City undertake and complete the recommendation contained in the staff report no later than June 30, 2007.

SECOND: Mr. Duncanson

DISCUSSION: None

VOTE: Motion carried unanimously

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

March 26, 2007

RESOLUTION

LOCAL PROGRAM, PHASE I
CITY OF FAIRFAX

Modification – Conditional

WHEREAS § 10.1-2109 of the Chesapeake Bay Preservation Act states that counties, cities, and towns in Tidewater Virginia shall designate Chesapeake Bay Preservation Areas and incorporate protection of the quality of state waters in Chesapeake Bay Preservation Areas into local plans and ordinances; and

WHEREAS § 9 VAC 10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1 (a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS the City of Fairfax adopted a revised local Phase I program on November 25, 2003; and

WHEREAS on June 21, 2004, the Chesapeake Bay Local Assistance Board found the City of Fairfax's amended Phase I program consistent with seven conditions and a compliance date of December 31, 2006; and

WHEREAS on December 12, 2006 the City of Fairfax adopted revisions to their Chesapeake Bay Preservation Ordinance as a means to address the seven recommendations of the Board's June 21, 2004 resolution; and

WHEREAS staff reviewed the amendments made to the City of Fairfax's revised program for consistency with the Act and Regulations; and

WHEREAS on February 13, 2007 the Local Program Review Committee for the Northern Area considered and evaluated the information contained in the 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 City of Fairfax's revised Phase I program consistent with §10.1-2109 of the Act and §§ 9 VAC 10-20-60 1 and 2 of the Regulations subject to the condition that the City undertake and complete the following recommendation no later than June 30, 2007.

1. *Amend Section 110-80 (a)(2)(d) as follows: "The plan for the road or driveway proposed in or across the RPA meets the criteria for site plan, subdivision and plan of development approvals."*

BE IT FINALLY RESOLVED that failure by the City of Fairfax to meet the above established compliance date of June 30, 2007 will result in the local program becoming inconsistent with §10.1-2109 of the Act and §§9VAC10-20-60.1 and 2 of the Regulations and subject Fairfax City to the compliance provisions as set forth in §10.1-2103.10 of the Act and § 9 VAC10-20-250 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on March 26, 2007 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

Local Program Compliance Evaluations

King William County – Review of previous Compliance Evaluation conditions.

Ms. Miller gave the report for King William County. She introduced Scott Lucchesi, Acting County Planning Director & Zoning Administrator, in attendance on behalf of the County.

On June 21, 2004 the Chesapeake Bay Local Assistance Board found that the County's Phase I program did not fully comply with the Bay Act and Regulations, and established seven recommendations with a deadline of December 31, 2005. On April 3, 2006, the Board found that four recommendations remained to be addressed; three by June 30 and one by September 30, 2006.

The County is satisfying three of the four recommendations by tracking and inspecting BMPs to ensure that maintenance requirements are met and is ensuring that WQIAs and mitigation plans are submitted as required. Although the County has developed materials to meet the five-year on-site septic system pump-out notification and enforcement requirement, a program for notification and tracking has not been developed and no notices have been sent.

The Review Committee recommends that the Chesapeake Bay Local Assistance Board find that the County has adequately addressed three of the four recommendations in the Board's April 3, 2006, Resolution. The Committee further recommends that King William County be found noncompliant with the Bay Act and the Regulations, based on the County's failure to complete implementation of a five-year septic pump-out notification and maintenance program as specified in the Board's June 21, 2004, and

April 3, 2006, Resolutions, and that the County undertake and complete the recommendation to implement such a program no later than June 15, 2007.

Ms. Miller said the County has made some progress, including the following:

- County plans to mail first notices on June 1, 2007—to first district of 5; next notices to go July of '08 to the next district.
- “Community Companion”—A quarterly County news magazine, is sent to all citizens – the current issue is now at the printer for immediate mailing, and will include an article explaining the requirement and the forthcoming notice.
- CBLA to review draft notification program materials provided on March 23, 2007.
- The County staff have expressed an interest in applying for DCR funds to assist with septic pump-out program costs.

Mr. Lucchesi said that the County is prepared for the next step in the pump-out project with letters being mailed in June.

MOTION: Mr. Sheffield moved that the Chesapeake Bay Local Assistance Board find implementation of King William County’s Phase I program to be noncompliant with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations, and that the County be directed to undertake and complete the recommendation contained in the staff report no later than June 15, 2007.

SECOND: Mr. Evans

DISCUSSION: None

VOTE: Motion carried unanimously

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
March 26, 2007**

RESOLUTION

**LOCAL PROGRAM COMPLIANCE EVALUATION
KING WILLIAM 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 June 21, 2004, the Chesapeake Bay Local Assistance Board found that certain aspects of King William County's Phase I program did not fully comply with the Act and Regulations and further that the County address the seven recommendations in the staff report no later than December 31, 2005; and

WHEREAS on April 3, 2006, the Chesapeake Bay Local Assistance Board found that three of the seven recommendations had been adequately addressed but certain aspects of King William County's Phase I program did not fully comply with the Act and Regulations, and further that the County address three of the four remaining recommendations in the staff report no later than June 30, 2006 and address the fourth recommendation no later than September 30, 2006; and

WHEREAS in June and November of 2006 and in January of 2007, the County provided staff with information relating to the County's actions to address the four recommendations; and

WHEREAS on February 13, 2007 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 implementation of King William County's Phase I program to be noncompliant with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations, and directs the County to undertake and complete the recommendation contained in the staff report no later than June 15, 2007.

- 1. For compliance with § 9 VAC 10-20-120 7 a of the Regulations, the County must implement its five-year septic system pump-out notification and tracking/enforcement program.*

BE IT FINALLY RESOLVED that failure by King William County to meet the above established compliance date of June 15, 2007 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 and 260 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on March 26, 2007 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

Middlesex County – Review of previous Compliance Evaluation conditions.

Ms. Miller gave the report for Middlesex County. There was no one present from the County.

The County provided the Department with materials demonstrating progress in meeting six of the seven recommendations in the Board's December 12, 2005 Compliance Evaluation by the December 31, 2006 deadline.

Although the County developed a septic pump-out notification and tracking program and sent the first notices prior to the December 31, 2006 deadline, the County limited notification only to those properties with on-site systems installed after the County's Chesapeake Bay Preservation (CBP) District effective date of April 21, 1993. The Department has consistently advised the County that all properties within CBPAs that have on-site septic systems must be included in the program to fully satisfy the requirement.

In the first notification mailing, the County also advised on-site septic system owners of the options of installing a plastic filter or securing a qualified inspection of the system as alternatives to meet the 5-year pump-out requirement. These alternatives are permitted under the Regulations, but the County must revise its CBP District to include them, so a recommendation has been added to that effect.

The Review Committee recommends the Board find that certain aspects of the County's Phase I program do not fully comply with the Bay Act and the Regulations, and further

that Middlesex County undertake and complete the two recommendations contained in this staff report no later than June 15, 2007.

Ms. Miller also noted:

- The required CBPA Overlay District Ordinance Revisions are on the Board of Supervisor's April 17, 2007 Agenda.
- The County Planning Director will review the opportunity to apply for grant assistance with the County's septic pump-out program, as advised by CBLA staff.
- The Planning Director has advised CBLA staff that there are some concerns in the County regarding the use of the plastic filter alternative as provided in the Regulations.

MOTION: Mr. Sheffield moved that the Chesapeake Bay Local Assistance Board find that the implementation of certain aspects of Middlesex County's Phase I program do not 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, Middlesex County be directed to undertake and complete the two recommendations contained in the staff report no later than June 15, 2007. Further, the Board requests that a written update be provided to the Southern Area Review Committee at the May 8, 2007 meeting.

SECOND: Mr. Duncanson

DISCUSSION: None

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
March 26, 2007**

RESOLUTION

**LOCAL PROGRAM COMPLIANCE EVALUATION
MIDDLESEX COUNTY**

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 on December 12, 2005, the Chesapeake Bay Local Assistance Board found that certain aspects of Middlesex County's Phase I program did not fully comply with the Act and Regulations and further that the County address the seven recommendations in the staff report no later than December 31, 2006; and

WHEREAS in the period between November 2006 and January 2007 the County provided staff with information relating to the County's actions to address the seven recommendations and Department staff prepared a report; and

WHEREAS on February 13, 2007 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 Middlesex County's Phase I program do not 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 Middlesex County to undertake and complete the two recommendations contained in the staff report no later than June 15, 2007.

1. *For compliance with § 9 VAC 10-20-120 7 a of the Regulations, the County must implement its five-year septic system pump-out notification and tracking/enforcement program to include all on-site septic systems as required in the Regulations.*
2. *For compliance with § 9 VAC 10-20-120 7 a (1) and (2) the County must revise its CBP District to provide for the septic system pump-out alternatives of installing a filter or documenting inspection as allowed by the Regulations.*

BE IT FINALLY RESOLVED that failure by Middlesex County to meet the above established compliance date of June 15, 2007 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 Middlesex 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 March 26, 2007 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

Hanover County – Review of previous Compliance Evaluation conditions.

Mr. Suydam gave the report for Hanover County. There was no one present from Hanover County.

In December 2005, the Board outlined 2 recommendations in its resolution.

- Required CAA for the County's E+S Control program review
- Develop the 5-year septic pump-out program.

Soil and Water staff confirmed that the required CAA is in its final stages of approval. Based on this development, staff subsequently finds that Hanover County has adequately addressed this recommendation.

With regard to the 5-year septic pump-out program, staff has been providing assistance to Hanover County's Director and Assistant Director of Public Works in this matter.

Mr. Suydam said the County has made progress in these areas:

- Assessment of its 23,000 existing systems
- Notification options
- Review of the County's septic hauler information maintained by the DPU
- Review of other local programs already in operation.

Mr. Suydam said that Mr. Flagg had noted the following concerns:

- Budget submissions for additional operating and personnel support for this program.
- Previous director of Public Works, Rebecca Draper, resigned her position in 2006 and subsequent staff realignment also contributed to a delay in creating this program.

In January of this year the County formally requested an extension to the December 31, 2006 deadline to June 30, 2007 to provide them adequate time to complete and properly implement this one remaining recommendation of the Board.

After discussing the matter with the SARC recommendation is that the Board find the County not fully compliant with a final deadline of June 15, 2007 for the completion of the one remaining recommendation.

Mr. Evans said that staff turnover seemed to be a common theme. He asked if there was a way the Board could help in this regard.

Ms. Salvati said that this is a continued problem with the state of the economy and the unemployment rate. She said that staff vision is to help localities develop the best local process they can.

MOTION: Mr. Zeugner moved that the Chesapeake Bay Local Assistance Board find that the implementation of certain aspects of Hanover 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 in order to correct these deficiencies, Hanover County be directed to undertake and complete the one (1) recommendation contained in the staff report no later than June 15, 2007.

SECOND: Mr. Evans

DISCUSSION: None

VOTE: Motion carried unanimously

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
March 26, 2007**

RESOLUTION

**LOCAL PROGRAM COMPLIANCE EVALUATION
HANOVER COUNTY**

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 the summer of 2005, the Department of Conservation and Recreation conducted a compliance evaluation of Hanover County's Phase I program in accordance with the adopted compliance evaluation process; and

WHEREAS on December 12, 2005, the Chesapeake Bay Local Assistance Board found that implementation of certain aspects of the County of Hanover's Phase I program did not fully comply with the Act and Regulations and further that the County address the 2 recommendations in the staff report no later than December 31, 2006; and

WHEREAS in January 2007, the County provided staff with information relating to the County's actions to address the recommendations which were evaluated in a staff report; and

WHEREAS on February 13, 2007, 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 certain aspects of Hanover 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 in order to correct these deficiencies, directs Hanover County to undertake and complete the one (1) recommendation contained in the staff report no later than June 15, 2007.

- 1. For consistency with § 9 VAC 10-20-120 7 a of the Regulations and as required by Section 10-38(6) a of the County's Bay Act ordinance, the County must develop and implement a septic system maintenance program, including the five-year pump-out notification, installation of the plastic filter, and/or annual inspection, including any necessary tracking information.*

BE IT FINALLY RESOLVED that failure by Hanover County to meet the above established compliance date of June 15, 2007 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 Hanover 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 March 26, 2007 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

City of Hopewell – Review of previous Compliance Evaluation conditions.

Mr. Suydam gave the report for the City of Hopewell. He recognized Ms. Tevya Griffin from the City.

In the summer of 2005, the Board found that the implementation of the City's Phase I program did not fully comply

- Board outlined 10 recommendations and
- Set June 30, 2006 as the deadline.

Many of the 10 recommendations pertain to the basic fundamentals of a Bay Act program. The recommendations were:

1. Ensure CBPA's 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. Submit a CAA pertaining to E&S Control program deficiencies
5. Implement a 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

The Department has been diligent in its efforts to assist the City

- Sent two letters reminding them of the June 30, 2006 deadline.

In the summer of 2006, the City asked for and was granted an extension by the Board, establishing a new deadline of December 31, 2006.

Department staff met with Assistant City Manager Mr. March Altman and newly hired City Planner Tevya Griffin on January 11, 2007 to assess the City's progress.

Discussions at this meeting were productive, however it was concluded that none of the 10 recommendations had been adequately addressed at this time.

Thus, SARC recommends that the Board find the implementation of the City of Hopewell's Phase I program noncompliant.

Ms. Griffin said the site plan review process is in the City code in the zoning ordinance. The site plan does not have delineation of RMAs and RPAs. This was adopted in April 2006. The City is in the process of rewriting the zoning ordinance to require the delineation of RMAs and RPAs.

Ms. Griffin again addressed staff turnover issues with the City. She noted that she became City Planner in the same month as the latest Board deadline.

Mr. Sheffield asked if the City would be able to meet the recommendations by the June 15 deadline.

Ms. Griffin said that she believed the conditions could be met with the possible exception of the septic pump out issue.

Mr. Sheffield asked if there was some action the Board could take to get the City of Hopewell's attention regarding these matters.

Mr. Davis said that the focus of the Board is to ensure and require compliance and that the dates have passed. He said that the Board did not anticipate a positive reaction by June 15.

Ms. Griffin said that she would do what she could to meet the requirements.

Mr. Suydam noted that Ms. Griffin has been more proactive than the previous planner.

Mr. Evans asked about the possibility of giving the City until September to address the recommendations.

Mr. Davis suggested that the Board proceed with the staff recommendation but that the SARC review the progress at their May 8 meeting.

Mr. Sheffield suggested that it might be appropriate to ask the Mayor or members of the City Council to appear before the board.

MOTION: Mr. Evans moved that the Chesapeake Bay Local Assistance Board find the implementation of the City of Hopewell's Phase I program to be noncompliant with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations, and that the City of Hopewell be directed to undertake and complete the ten (10) recommendations contained in the staff report no later than June 15, 2007. Further, the Board directed that the City provide a written progress report to the Southern Area Review Committee for the May 8, 2007 meeting.

SECOND: Mr. Duncanson

DISCUSSION: None

VOTE: Motion carried unanimously

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

March 26, 2007

RESOLUTION

LOCAL PROGRAM COMPLIANCE EVALUATION

CITY OF HOPEWELL

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 § 9VAC 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 late 2004 – early 2005, the Chesapeake Bay Local Assistance Department conducted a compliance evaluation of the City of Hopewell's Phase I program in accordance with the adopted compliance evaluation process; and

WHEREAS on June 20, 2005, the Chesapeake Bay Local Assistance Board found that implementation of certain aspects of the City of Hopewell's Phase I program did not fully comply with the Act and Regulations and further that the City address the 10 recommendations in the staff report no later than June 30, 2006; and

WHEREAS on September 26, 2006 the Chesapeake Bay Local Assistance Board granted a deadline extension for the City of Hopewell to address the 10 recommendations no later than December 31, 2006; and

WHEREAS in January 11, 2007 staff met with the City of Hopewell and determined that the ten (10) recommendations had not been adequately addressed: and

WHEREAS on February 13, 2007 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 City of Hopewell's Phase I program to be noncompliant with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations, and directs the City of Hopewell to undertake and complete the ten (10) recommendations contained in the staff report no later than June 15, 2007.

1. *For consistency with §§ 9 VAC 10-20-80 and 9 VAC 10-20-130 of the Regulations, the City must ensure that their Bay Act program requirements are applied uniformly throughout the City. Exemptions to the requirements for designation of CBPAs are not allowed under the Regulations, and their exemptions do not appear to have been submitted for review by the Chesapeake Bay Local Assistance Board.*
2. *For consistency with § 9 VAC 10-20-105 of the Regulations, the City must ensure that onsite RPAs are properly delineated through their plan submittal and review process, by revising their submittal forms, and checklists to require complete and accurate delineation and designation of all RPA and RMA features on submitted site plans, including any CBPA features that are present on adjacent properties. To ensure this happens, the City must revise their Site Plan Requirements in Article XVI of the City Code to include this requirement.*
3. *To ensure that the Resource Protection Area remains undisturbed during construction as required under and for consistency with § 9 VAC 10-20-130 3 of the Regulations, the City must require the installation of safety or silt*

fencing or other visible barriers along the boundary of the RPA as deemed appropriate by City staff on parcels with RPA present.

4. *For consistency with § 9 VAC 10-20-120 6 of the Regulations, the City must address the erosion and sediment control program deficiencies noted by DCR-DSWC staff through submittal of a Corrective Action Agreement.*
5. *For consistency with § 9 VAC 10-20-120 7 a of the Regulations, the City must implement a five-year pump-out notification for any remaining septic systems that exist within the City's CBPAs.*
6. *For consistency with § 9 VAC 10-20-130 1 e of the Regulations, the City must cease permitting the placement of BMPs in the RPA through an administrative process, and must only allow them after being granted an exception following review and approval through the formal exception process.*
7. *For consistency with §§ 9 VAC 10-20-150 and 9 VAC 10-20-130 4 of the Regulations, the City must provide documentation of any administrative waiver or exception request.*
8. *For consistency with § 9 VAC 10-20-130 6 of the Regulations, the City shall ensure that a WQIA is submitted and reviewed for all land disturbances in the RPA, including shoreline erosion control projects, approved administrative waivers and exceptions and all other permitted uses and development.*
9. *For consistency with § 9 VAC 10-20-120 8, and therefore § 4VAC 3-20-71, stormwater management facilities must be located, designed and maintained to perform at the target pollutant removal efficiency specified in § 4VAC 3-20-71, Table 1.*
10. *For consistency with § 9 VAC 10-20-120 8, the City must consistently implement the stormwater runoff criteria of the City's CBPA Overlay District ordinance (Article XV-A.K.1, Article XV-A.K.2.h) and require a stormwater plan to be submitted (Article XV-A.M.4) that provides the engineering calculations and details the appropriate stormwater quality mitigation.*

BE IT FINALLY RESOLVED that failure by the City of Hopewell to meet the above established compliance date of June 15, 2007 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 and 260 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on March 26, 2007 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

Compliance Updates

City of Petersburg

Mr. Suydam said that he was pleased to report that the City of Petersburg, along with their consultants the Timmons Group has generated the text amendments and the text necessary to adequately address the four Board recommendations. The planning commission has reviewed the amendments and has made a recommendation to the City Council.

The City Council was scheduled to review the recommendations on April 3.

Mr. Suydam said that he had no reason to believe the City Council would not adopt the amendments. He said he hoped to have a consistent report for the City of Petersburg at the May 8 SARC meeting.

City of Hampton

Ms. Salvati said that at the December 11, 2006 Board meeting the City of Hampton gave a presentation and a proposal to address the issues raised by staff and the Board with regard to IDA coverage and the manner in which the City was implementing IDAs.

Ms. Salvati said she was pleased to report that the City now has ordinance amendments as well as an amendment in an educational program that deems the City generally compatible. She said staff would have the anticipated timeline once the details are finalized and that information is forwarded to the Attorney General. Mr. Chaffe and Hampton's legal counsel will file the appropriate paperwork to withdraw the Board action against the City.

Ms. Salvati said that staff hoped to bring the report to the June 18 Board meeting and to recommend that the City be deemed fully consistent.

Caroline County

Ms. Salvati said that at the December 2007 meeting the Board found Caroline County to be compliant with Phase I of the Bay Act program. That compliance determination was based in part on the fact that the County had committed to undertake the septic pump-out program.

However, the County sent out the initial notification letter, the intent of which was to gather information from all septic owners. The form was to be submitted with information to be included in the County database.

However, due to the wording of the notice a number of recipients believed they were being told they had to have their systems pumped within two weeks of the receipt of the letter.

The County held a public hearing. Mr. Sacks and Ms. Lassiter attended to provide guidance to County Staff. The Board of Supervisors determined that the program would be set aside until the latter part of 2008.

Ms. Salvati said that action means that the County is no longer compliant with the septic tank pump out program as determined at the December meeting. She said that staff intent is to provide a report at the May 8 NARC meeting to initiate a formal compliance review.

Mr. Finchum from Caroline County said that he was pleased to report that the County had actually received a 40% response to the initial letter. That was in excess of 3,800 responses.

He said that when the requirement was adopted in 1992 it related only to RMA and RPA designations. He said that this is a technical issue that the County has to work through to resolve.

Mr. Sheffield asked if, based on that response, the County estimated that more than 20% of owners had immediately had their systems pumped out.

Mr. Finchum said that he would not be able to give a percentage, but a significant number felt the requirement was immediate. He noted that a number of residents already have septic pump out on a routine basis.

Mr. Finchum said that while the requirement has been in the ordinance for the last 15 years, the County has not been tracking or requiring compliance. The issue came as a result of the compliance review.

Onsite Nontidal Wetland Dedication Guidance

It was noted that this issue was covered at the Policy Committee meeting. All Board members present at the Board meeting also participated in the Policy Committee meeting.

Review of Compliance Evaluation Decision Flow Chart

Ms. Salvati referenced a packet of information provided to members. She noted that staff has reviewed existing procedures that were last updated in March 2001. This information was provided in preparation for discussion at the June Board meeting.

Other Business

Mr. Sheffield asked Mr. Brown for an opinion regarding inviting members of local government to appear before the Board.

Mr. Brown was not aware of an instance where the Board could require a local government representative to appear before the Board if they did not wish to attend voluntarily, but said that he would review the Code and report back.

Ms. Salvati said that at the May 8 Policy Committee meeting staff would present a recommendation to address a very short list of changes that could be made to the regulations.

Mr. Davis said that he would recommend making the process as painless and as streamlined as possible.

Mr. Baxter noted that the Board and the Department were constrained by the requirements of the Administrative Process Act.

Mr. Brown said that changes in the regulations are typically a two-year process.

Mr. Davis suggested that the Board consider the scheduling of a Board retreat before the end of the year.

Public Comment

There was no further public comment.

Adjourn

There being no further business, Mr. Sheffield moved to adjourn.

Respectfully submitted,

Donald W. Davis, Chairman

Joseph H. Maroon, Director