

**Chesapeake Bay Local Assistance Board  
September 17, 2007  
Westmoreland State Park**

**Chesapeake Bay Local Assistance Board Members Present**

Donald W. Davis, Chairman  
Gregory C. Evans  
John J. Zeugner

William E. Duncanson  
Beverly D. Harper  
Rebecca L. Reed

**Chesapeake Bay Local Assistance Board Members Not Present**

Gale Abbot Roberts

Richard B. Taylor

**DCR Staff Present**

Joseph H. Maroon, Director  
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  
Nathan Hughes, Watershed Specialist  
Adrienne Kotula, Principal Environmental Planner  
V'lent Lassiter, Senior Environmental Planner  
Nancy Miller, Senior Environmental Planner  
Shawn Smith, Principal Environmental Planner  
Rob Suydam, Senior Environmental Planner  
Carolyn Elliott, Administrative Specialist  
Elizabeth Andrews, Assistant Attorney General

**Others Present**

Dick McElfish, Chesterfield County  
Scott Flanigan, Chesterfield County  
Claudia Hamblin-Katnik, City of Alexandria  
George Hayfield, Middlesex County  
Marshall Sebra, Lancaster County  
Bill Skrabak, City of Alexandria  
Elizabeth Andrews, Assistant Attorney General

**Call to Order**

Mr. Davis called the meeting to order and declared a quorum present. He welcomed Ms. Rebecca Reed as the newest Board Member.

### **Consideration of the Minutes**

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

June 18, 2007 Board Meeting

June 18, 2007 Policy Committee Meeting

August 14, 2007 Northern Area Review Committee Meeting

August 14, 2007 Southern Area Review Committee Meeting

SECOND: Mr. Duncanson

DISCUSSION: None

VOTE: Motion carried unanimously

### **Director's Report**

Mr. Maroon gave the Director's report. He welcomed Ms. Reed to the Board and noted that staff would prepare an appropriate recognition for Mr. Sheffield at the next meeting.

Mr. Maroon noted that a second new Board member had been announced, but that she is unable to serve due to health concerns. He said that he hoped the Governor would be able to announce a replacement in the near future.

Mr. Maroon welcomed members to Westmoreland State Park and to Tayloe and Helen Murphy Hall. He said a dedication is planned for the renovated center in early November. Mr. Maroon noted that former Secretary of Natural Resources Tayloe Murphy has been a longtime champion of the Chesapeake Bay and environmental matters in the Commonwealth. He noted that Westmoreland is Secretary Murphy's home county.

Mr. Maroon said that with regard to the budget announced by the Governor, there was a \$650 million shortfall in state government. This has resulted in each state agency being asked to make a 5% cut in their budget.

Mr. Maroon said that a number of organizations, including farm and conservation organizations, is promoting a major initiative regarding nonpoint source pollution and water quality. Groups involved include the Farm Bureau, the Chesapeake Bay Foundation, the James River Association and Friends of the Rappahannock.

This group is asking for an initiative that would fund nonpoint source improvements in the amount of \$100 million per year for ten years. Their approach is to dedicate 1/10<sup>th</sup> of one percent of the state sales tax for a 10-year period.

Mr. Maroon said that DCR has been discussing \$270 million to put into place five agricultural practices that would help to improve the Chesapeake Bay and the tributaries

that feed into it. There would still be a need to deal with urban issues in a statewide initiative.

Mr. Maroon addressed grant awards. He said that in response to the DCR's 2007 Virginia Water Quality Improvement Fund Request for Proposals released on February 15, 2007, DCR received 73 grant applications by the May deadline. Of these, 37 have been selected to receive a grant award for 2007 and the recommended funding amounts are now available on the DCR website. He noted that both Caroline County and Mathews County received funding to support their septic pump-out programs.

Mr. Maroon said that DCR also administers the Chesapeake Bay Implementation Grant. He said that seven localities received funding directly relating to the Bay Act, principally in the area of septic tank pump-out. He said that the hope is that this will allow progress in one of the areas where there is the most difficulty with locality compliance.

Mr. Maroon said there was also \$90,000 available in recently-approved 2007 Chesapeake Bay Implementation Grant funds. He said that staff has received and is considering a proposal from James City County to utilize a portion of these monies to refine and test the perennial flow protocol for the coastal plain area.

Mr. Maroon said that some of the other projects under consideration for funding include conducting a workshop on the new Nontidal Wetland Guidance document.

Mr. Maroon said that DCR has been involved in a series of stakeholder meetings with the Secretary of Natural Resources. Meetings have been held in Roanoke and Williamsburg. A third was scheduled for Fredericksburg. The discussion includes how the state can better work with the regulated community.

Mr. Davis asked if a letter would be sent to localities regarding the Nontidal Wetlands Guidance.

Ms. Salvati said that a letter has already been sent and a workshop is being developed for interested localities.

### **Quarterly Performance Indicators**

Mr. Sacks reviewed the quarterly performance indicators.

#### *Quarterly Performance Indicators*

##### Accomplishments for FY 2006-07

(July 1, 2006 – June 30, 2007)

- On site Technical Assistance: 35
- Education and Outreach Activities: 16
- Training Seminars and Workshops Conducted: 16
- Federal/State EIR's reviewed: 230

- Site Plans reviewed for local governments: 114

### Consistency and Compliance Review Status

Mr. Sacks reviewed the terminology applicable to the program:

**“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.

*As of June 2007*

Localities Found Compliant: 29

Localities Addressing Compliance Conditions: 10

*Expected Status as of September 30, 2007*

Localities Phase I Consistent: 82  
(2 others expect to adopt ordinances this fall)

Phase II Consistent: 84

Compliance Reviews Completed: 47

Localities Compliant: 35

Localities Noncompliant: 0

Localities Addressing Compliance Conditions: 12

Compliance Reviews in Progress: 16

### *Local Compliance Evaluation Review Process*

Mr. Sacks reviewed the steps in the Compliance Evaluation Process

1. Initial meeting to collect information and discuss program
2. Review of sample of approved plans
3. Site visits of sample of developments in progress and completed

He added that the Board, in conducting the initial compliance evaluation, determines whether the locality can be found “compliant” and if not identifies conditions necessary for compliance. This is then followed by a compliance evaluation condition review. He also noted that the Board adopted a revised review process in June 2007

Mr. Davis asked how much staff time was involved from the initial meeting with the locality through completion.

Mr. Sacks said that, while the process can range from 6 weeks to 6 months, the average time was about 5 or 6 months.

Mr. Evans said there have been Board and committee discussions regarding time schedules that have traditionally been allowed to localities. He asked if there was guidance on how long localities could remain out of compliance.

Ms. Salvati said that there is a method. She said that staff tries to work with localities when an ordinance change is involved. She said that staff must allow for processes within the locality for amending their code. She said it often depends on the complexity of changes required.

### **Consent Agenda**

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

- City of Fairfax, Review of previous Phase I condition
- Middlesex County, Review of Compliance Evaluation conditions
- King William County, Review of Compliance Evaluation condition
- Town of Herndon, Review of Compliance Evaluation conditions
- Fairfax County, Review of Compliance Evaluation conditions
- City of Alexandria, Initial Compliance Evaluation
- City of Hopewell, Review of Compliance Evaluation conditions

SECOND: Mr. Evans

DISCUSSION: None

VOTE: Motion carried unanimously

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD**

**September 17, 2007**

**RESOLUTION**

**LOCAL PROGRAM, PHASE I**

**CITY OF FAIRFAX**

**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 on December 10, 2001, the Chesapeake Bay Local Assistance Board adopted revisions to the Chesapeake Bay Preservation Area Designation and Management Regulations and set March 1, 2003 as the deadline for local governments to adopt revisions to their local ordinances; and

WHEREAS on February 18, 2003, the Chesapeake Bay Local Assistance Board extended the compliance deadline from March 1, 2003 to December 31, 2003, and

WHEREAS the City of Fairfax adopted a revised local program to comply with §§ 9 VAC 10-20-60 1 and 2 of the Regulations on November 25, 2003; and

WHEREAS the Chesapeake Bay Local Assistance Board has adopted *Procedural Policies for Local Program Review* which addresses, among other items, review of modifications to local programs; 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 June 21, 2004 the Board found the City's revised Phase I program to be consistent with §10.1-2109 of the Act and § 9 VAC 10-20-60 1 and 2 of the Regulations, pending seven (7) conditions that were to be addressed by December 31, 2004; and

WHEREAS, on December 12, 2006 City Council adopted revisions to their Chesapeake Bay Preservation Ordinance as a means to address the seven (7) conditions from the Board's June 21, 2004 resolution; and

WHEREAS, on March 26, 2007 the Board found that six of the seven original recommended conditions had been addressed and that the City of Fairfax's revised Phase I program was consistent with §10.1-2109 of the Act and §§ 9 VAC 10-20-60 1 and 2 of the Regulations, pending the City's efforts to address the remaining one (1) recommendation no later than June 30, 2007; and

WHEREAS, on July 24, 2007 City Council adopted revisions to their Chesapeake Bay Preservation Ordinance as a means to address the one (1) remaining condition from the Board's March 26, 2007 resolution; and

WHEREAS on August 14, 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.

The Director of the Department of Conservation and Recreation certifies that the Chesapeake Bay Local Assistance Board adopted this resolution in open session on September 17, 2007.

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Joseph H. Maroon  
Director  
Department of Conservation and Recreation

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD**  
**September 17, 2007**

**RESOLUTION**

**LOCAL PROGRAM COMPLIANCE EVALUATION**  
**MIDDLESEX 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 26, 2007, the Chesapeake Bay Local Assistance Board found that implementation of 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 two recommended conditions in the staff report no later than June 15, 2007; and

WHEREAS in May, June and July 2007 the County provided staff with information relating to the County's actions to address the two recommended conditions which were evaluated in a staff report; and

WHEREAS on August 14, 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 the implementation of Middlesex 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 17, 2007 by the Chesapeake Bay Local Assistance Board.

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Joseph H. Maroon  
Director  
Department of Conservation and Recreation



**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD**  
**September 17, 2007**

**RESOLUTION**

**LOCAL PROGRAM COMPLIANCE EVALUATION**  
**KING WILLIAM 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 26, 2007, the Chesapeake Bay Local Assistance Board found that implementation of 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 one recommended conditions in the staff report no later than June 15, 2007; and

WHEREAS in June 2007, 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 on August 14, 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 the implementation of King William 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 17, 2007 by the Chesapeake Bay Local Assistance Board.

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Joseph H. Maroon  
Director  
Department of Conservation and Recreation

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD**

**September 17, 2007**

**RESOLUTION**

**LOCAL PROGRAM COMPLIANCE EVALUATION**

**TOWN OF HERNDON**

**Local Compliance Evaluation - Compliant**

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

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

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

WHEREAS in November 2005, the Division of Chesapeake Bay Local Assistance conducted a compliance evaluation of the Town of Herndon's Phase I program in accordance with the adopted compliance evaluation process; and

WHEREAS on December 11, 2006 the Board found that the implementation of certain aspects of the Town of Herndon's Phase I program did not comply with the Act and the Regulations, and directed the Town to undertake and complete five (5) recommended conditions contained in the staff report no later than December 31, 2007; and

WHEREAS the Town of Herndon has provided staff with information relating to the Town's actions to address the five recommendations which was evaluated in a staff report; and

WHEREAS on August 14, 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 the Town of Herndon's Phase I program to be compliant 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 17, 2007 by the Chesapeake Bay Local Assistance Board.

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Joseph H. Maroon  
Director  
Department of Conservation and Recreation

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD  
September 17, 2007**

**RESOLUTION**

**LOCAL PROGRAM COMPLIANCE EVALUATION  
FAIRFAX 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 in March, 2005, the Chesapeake Bay Local Assistance Department began a compliance evaluation of Fairfax County's Phase I program in accordance with the adopted compliance evaluation process; and

WHEREAS on September 26, 2006 the Board found that the implementation of certain aspects of Fairfax County's Phase I program did not fully comply with the Act and the Regulations, and directed Fairfax County to undertake and complete the five (5) recommendations contained in the staff report no later than September 30, 2007; and

WHEREAS Fairfax County adopted code amendments and implemented processes to address the five recommendations identified by the Board for full compliance; and

WHEREAS on August 14, 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 report recommendation as contained 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 Fairfax County's Phase I program to be compliant 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 17, 2007 by the Chesapeake Bay Local Assistance Board.

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Joseph H. Maroon  
Director  
Department of Conservation and Recreation

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD**  
**September 17, 2007**

**RESOLUTION**

**LOCAL PROGRAM COMPLIANCE EVALUATION**  
**CITY OF ALEXANDRIA**

**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 August 14, 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 the implementation of the City of Alexandria'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 17, 2007 by the Chesapeake Bay Local Assistance Board.

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Joseph H. Maroon  
Director  
Department of Conservation and Recreation

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD**

**September 17, 2007**

**RESOLUTION**

**LOCAL PROGRAM COMPLIANCE EVALUATION**

**CITY OF HOPEWELL**

**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 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 ten (10) recommendations as outlined 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 ten (10) recommendations no later than December 31, 2006; and

WHEREAS on March 26, 2007 the Chesapeake Bay Local Assistance Board found the implementation of the City's Phase I program noncompliant and further directed the City to undertake and complete the ten (10) recommendations contained in the staff report no later than June 15, 2007; and

WHEREAS Chesapeake Bay Local Assistance staff met regularly with the City of Hopewell and based upon the new materials and procedures now being utilized by the

City, staff have determined that the ten (10) recommendations have been adequately addressed: and

WHEREAS on August 14, 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 compliant 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 17, 2007 by the Chesapeake Bay Local Assistance Board.

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Joseph H. Maroon  
Director  
Department of Conservation and Recreation

Following action on the Consent Agenda, Mr. Sacks commented that as a result of this action, the City of Alexandria became one of only four localities found compliant by the Board as a result of the initial review, and he noted that Alexandria has a very effective program and recognized Mr. William Skrabak and Ms. Claudia Hamblin-Katnik from the City of Alexandria.

### **Local Program Compliance Evaluation**

#### *Lancaster County*

Mr. Sacks gave the report for Lancaster County. He noted that Marshal Sebra, Code Compliance Officer for the County, was present and that Ms. Lassiter was the staff liaison for Lancaster County.

Mr. Sacks said that Department initiated a compliance evaluation for Lancaster County in the summer of 2006. Lancaster has adopted a county-wide resource management area. The compliance evaluation revealed that there are program elements that require improvement.

Mr. Sacks said that staff and the review committee recommend that the Board find that “certain aspects of Lancaster County’s Phase I program be found to not fully comply with the Act and Regulations” and that the Board require the county to address five conditions necessary for compliance:

1. As required by Section 9 VAC 10-20-130 6 of the Regulations and Section 5-7 of the County’s Chesapeake Bay Preservation Ordinance, the County must document submission of a WQIA for any proposed land disturbance, development, or redevelopment within RPAs.
2. For compliance with § 9 VAC 10-20-120 7 a of the Regulations and Section 4-5 of the County’s Chesapeake Bay Preservation Ordinance, the County must develop and implement a five-year septic system pump-out and/or inspection program.
3. For compliance with Section 9 VAC 10-20-120 3 of the Regulations, the County must require signed BMP Maintenance Agreements for all BMPs and must track BMP installation, inspection, and maintenance, using either the database developed by the Department or one of their own choosing.
4. For compliance with Section 9 VAC 10-20-130 3 of the Regulations and Section 3-4(a) of the County’s Chesapeake Bay Preservation Ordinance, the County must stop accepting buffer equivalency calculations for determining buffer mitigation requirements. Instead, they should consult the Riparian Buffers Modification and Mitigation Guidance Manual as the basis for determining appropriate mitigation for permitted buffer encroachments.
5. In order to ensure that any modification to vegetation in the RPA is consistent with Section 9 VAC 10-20-130 5 a of the Regulations and Section 3-4(e) of the County’s Chesapeake Bay Preservation Ordinance, the County must not continue to allow vegetation in the buffer to be removed based solely on size, and shall review and approve the removal of any vegetation in the RPA, encouraging the retention of all tropic layers that exist in a fully functioning buffer. Furthermore, the County shall revise the guidance document “Building and Land Use in Lancaster County – What You Should Know” to delete any reference to the permitted removal of trees under a certain size.

**MOTION:** Mr. Zeugner moved that the Chesapeake Bay Local Assistance Board find that the implementation of certain aspects of Lancaster 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 Lancaster County to undertake and complete five



recommended conditions contained in the staff report no later than September 30, 2008.

SECOND: Ms. Harper

DISCUSSION: None

VOTE: Motion carried unanimously

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD**  
**September 17, 2007**  
**RESOLUTION**

**LOCAL PROGRAM COMPLIANCE EVALUATION**  
**LANCASTER 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 Summer 2006 through Spring 2007 the Chesapeake Bay Local Assistance Board conducted a compliance evaluation of Lancaster County's Phase I program in accordance with the adopted compliance evaluation process; and

WHEREAS on August 14, 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 Lancaster 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 Lancaster County to undertake and complete five recommended conditions contained in the staff report no later than September 30, 2008.

1. As required by Section 9 VAC 10-20-130 6 of the Regulations and Section 5-7 of the County's Chesapeake Bay Preservation Ordinance, the County must document submission of a WQIA for any proposed land disturbance, development, or redevelopment within RPAs.
2. For compliance with § 9 VAC 10-20-120 7 a of the Regulations and Section 4-5 of the County's Chesapeake Bay Preservation Ordinance, the County must develop and implement a five-year septic system pump-out and/or inspection program.
3. For compliance with Section 9 VAC 10-20-120 3 of the Regulations, the County must require signed BMP Maintenance Agreements for all BMPs and must track BMP installation, inspection, and maintenance, using either the database developed by the Department or one of their own choosing.
4. For compliance with Section 9 VAC 10-20-130 3 of the Regulations and Section 3-4(a) of the County's Chesapeake Bay Preservation Ordinance, the County must stop accepting buffer equivalency calculations for determining buffer mitigation requirements. Instead, they should consult the Riparian Buffers Modification and Mitigation Guidance Manual as the basis for determining appropriate mitigation for permitted buffer encroachments.
5. In order to ensure that any modification to vegetation in the RPA is consistent with Section 9 VAC 10-20-130 5 a of the Regulations and Section 3-4(e) of the County's Chesapeake Bay Preservation Ordinance, the County must not continue to allow vegetation in the buffer to be removed based solely on size, and shall review and approve the removal of any vegetation in the RPA, encouraging the retention of all trophic layers that exist in a fully functioning buffer. Furthermore, the County shall revise the guidance document "Building and Land Use in Lancaster County – What You Should Know" to delete any reference to the permitted removal of trees under a certain size.

BE IT FINALLY RESOLVED that failure by Lancaster County to meet the above established compliance date of September 30, 2008 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 Lancaster 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 September 17, 2007 by the Chesapeake Bay Local Assistance Board.

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Joseph H. Maroon  
Director  
Department of Conservation and Recreation

*King and Queen County*

Mr. Sacks gave the report for King and Queen County. Ms. Miller is the staff liaison for King and Queen County. No one from the County was present.

Mr. Sacks said that the Department initiated the compliance evaluation for King and Queen County in April 2007. The compliance evaluation involved a discussion with staff and follow-up visits to review site plans and conduct field visits.

Mr. Sacks said that the compliance review determined that the County is to a large extent effectively administering its Bay Act program. The one concern that was identified was the lack of a notification and maintenance program to meet the 5-year on-site septic pump-out requirement.

Mr. Sacks said that it was the recommendation of the review committee that the Board find that “certain aspects of King and Queen County’s Phase I program be found to not fully comply with the Act and regulations” and that the Board require the County to implement a notification and maintenance program to meet the 5-year on-site septic system pump-out requirement by September 30, 2008.

MOTION: Mr. Duncanson moved that the Chesapeake Bay Local Assistance Board find that the implementation of certain aspects of King and Queen 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, King and Queen County be directed to undertake and complete one recommended condition contained in the staff report no later than September 30, 2008.

SECOND: Mr. Zeugner

DISCUSSION: None

VOTE: Motion carried unanimously

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD**  
**September 17, 2007**

**RESOLUTION**

**LOCAL PROGRAM COMPLIANCE EVALUATION**  
**KING AND QUEEN 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 Spring 2007, the Chesapeake Bay Local Assistance Board conducted a compliance evaluation of King and Queen County's Phase I program in accordance with the adopted compliance evaluation process; and

WHEREAS on August 14, 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 King and Queen 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 King and Queen County to undertake and complete one recommended condition contained in this staff report no later than September 30, 2008.

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1. For compliance with §9VAC 10-20-120 7 a of the Regulations and Section 3-270.B.(5) of the County's CBPA Overlay District, the County must develop and implement a five-year septic system pump-out and/or inspection program.

BE IT FINALLY RESOLVED that failure by King and Queen County to meet the above established compliance date of September 30, 2008 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 King and Queen 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 September 17, 2007 by the Chesapeake Bay Local Assistance Board.

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Joseph H. Maroon  
Director  
Department of Conservation and Recreation

*Chesterfield County*

Mr. Sacks gave the report for Chesterfield County. He recognized Mr. Dick McElfish, Director of Environmental Engineering and Mr. Scott Flanigan, Water Quality Manager for Chesterfield County. Mr. Suydam is the staff liaison for Chesterfield County. Mr. Sacks noted that members were provided with a revised resolution and staff report.

Mr. Sacks said that this was an initial Compliance Evaluation for Chesterfield County. The County has a population of close to 300,000 and is the most populous jurisdiction in the Richmond metropolitan area. The County issues close to 2,000 building permits for single-family homes per year. The entire County is designated as a Resource Management Area (RMA), but there are opt-out provisions for certain conditions.

Mr. Sacks said that DCR initiated this compliance evaluation of the County's Phase I program in June 2006 and that, as part of the review, staff did identify a number of issues of concern regarding the County implementation of the Bay Act program. He said that the County reviews a very large number of plans, and frequently encounters wetlands associated with both intermittent and perennial streams.

Mr. Sacks said that one of the issues was with the County's BMP credit-trading program. This is the one condition that staff and the Southern Area Review Committee

recommended that the County cease immediately. The program allows developers 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 for the project does not flow through the BMP or even is in the same watershed.

Mr. Evans asked what parameters the County used for evaluating the BMPs that were given credit.

Mr. McElfish said that the program was established in the early 1990s. He said that there have been no new large BMPs constructed for about 8 years. He said the County has already ceased the program and had no problems with this condition.

Mr. Sacks said there were eight conditions in the initial staff report. He explained that all but condition number 2 were forwarded to the Board by the Review Committee. Condition number 2, regarding vesting, was removed from the resolution by the Review Committee with the understanding that alternative condition language would be recommended by staff for consideration by the full Board. This was done in order to allow County staff and Department staff additional time to investigate this issue

Mr. Sacks reviewed the remaining seven conditions recommended by the Review Committee as outlined below.

Mr. Sacks reviewed Condition Number 2 and explained that the vesting issue was addressed on page five of the staff report. He said that the primary impact of vesting is that it resulted in the County not requiring developers to properly designate resource protection areas and therefore a developers were not being required to meet the provisions of a judicial ruling regarding vesting that the Bay Act requirements be met to the maximum extent possible

Mr. Sacks noted that staff had distributed a replacement resolution for the Board's consideration that reflects eight conditions for compliance, including the vesting concern. He added that this is the one condition on which Department staff and County do not agree. He explained that the Chesterfield County Attorney has been in touch with Ms. Andrews of the Attorney General's Office to discuss their concern..

Ms. Andrews said that she was confident that this issue could be resolved. She said that she believed the disagreement on the vesting issue was the result of a misunderstanding of the concept of vesting. She said that if a property owner has a vested right to use land at a certain date, they also have the right to develop that property in that manner. However, because there is a right to use the property doesn't mean the property is exempt from any restrictions on the property.

Mr. Davis said that to be vested an act has to occur by the locality such as an approved site plan.

Ms. Andrews said there has to be a significant act on the part of the local government.

Mr. Evans asked how the maximum extent feasible was determined and who made the determination.

Ms. Andrews said that such a determination is made by the local government. The local government should work with the Division of Chesapeake Bay Local Assistance. She said that just because there is a vested right to develop that doesn't mean that the developer should build right to the water's edge.

Mr. Sacks said if there is no delineation of the resource protection area, there is no ability to consider meeting the maximum extent practicable.

Mr. Davis asked if Ms. Andrews was comfortable with that issue based on discussions with the County Attorney.

Ms. Andrews said that there is a need to have more discussion on the issue.

Mr. Davis asked if there were comments from the County.

Mr. McElfish said that on the vesting, when that comes back to the County the County looks for compliance with the Chesapeake Bay Act first. If this is challenged there is the option of the developer requesting a vesting determination.

Mr. McElfish said that the County does negotiate. He said that the County was able to negotiate to get about 60% more land dedicated as RPA.

Mr. McElfish said that he would like the County Attorney to review this issue. He said the County had no problem with the remainder of the conditions.

The conditions addressed in the staff report were:

1. For consistency with 9 VAC 10-20-80 and 9 VAC 10-20-105 of the Regulations, the County must ensure that all required RPA features are consistently and properly delineated on all tentative and final construction plans, and in the field. Specifically, the County must accurately delineate RPA nontidal wetlands consistent with DCR's new guidance titled *Resource Protection Areas: Nontidal Wetlands*.
2. For consistency with 9 VAC 10-20-105 of the Regulations and Section 19-231 of the County CBPA ordinance, the County must require that all vested projects meet the performance criteria to the maximum extent feasible, including buffer requirements and site-specific delineations, as required in the County's Ordinance. Further, the County should develop and document a process that ensures that vesting determinations are consistent with the State laws, Attorney general opinions and judicial rulings pertaining to vesting.

3. For compliance with 9 VAC 10-20-120 8 of the Regulations, the County must revise the *Engineering Reference Manual* to be consistent with the regulations and the actual processes Chesterfield administers pursuant to the Chesapeake Bay Preservation Areas Ordinance, or issue an equivalent written policy directive that is kept with all copies of the manual.
4. For compliance with Section 9 VAC 10-20-120 8 a 1 and 2 of the Regulations, the County must immediately cease implementation of its current BMP credit program.
5. For consistency with 9 VAC 10-20-150 B 2 a, b and c of the Regulations, the County must ensure the conditions for the utility exemption are being met. Further, the limits of additional clearing necessary for utility installation in the required easements in an RPA buffer must be shown on the plan. The County must also ensure the restoration of the RPA buffer with woody vegetation where clearing occurs outside of the prescribed easement and with native grasses within the easement.
6. For consistency with 9 VAC 10-20-130 and 9 VAC 10-20-150 of the Regulations, and Section 19-232 a 1 of the County's Chesapeake Bay Preservation Areas Ordinance, the County must require the submission of a WQIA for any proposed land disturbance development or redevelopment that encroaches into the RPA.
7. For consistency with 9 VAC 10-20-130 of the Regulations, and Section 19-232 a 1 of the County's Chesapeake Bay Preservation Areas Ordinance, the County must ensure that any BMP proposed to be located in the RPA either meets the criteria in this regulatory section or is required to go through a formal exception process.
8. For consistency with 9 VAC 10-20-150 C 2 of the Regulations, the County must ensure that all requests for encroachment into the RPA be considered through the appropriate review process, either administratively as permitted under 9 VAC 10-20-130 4, or as a formal exception as required under 9 VAC 10-20-150 C of the Regulations.

MOTION: Ms. Harper moved that the Chesapeake Bay Local Assistance Board find that the implementation of certain aspects of Chesterfield 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, Chesterfield County be directed to immediately address recommended condition number 4, and after consultation between the Office of the Attorney General and the County Attorney regarding recommended condition number 2, complete the remaining seven (7) recommended conditions contained in this staff report no later than June 30, 2008.

SECOND: Mr. Zeugner

DISCUSSION: None

VOTE: Motion carried unanimously

Mr. Davis asked that Ms. Andrews provide an update at the next full Board meeting.

REVISED: 12/3/2007 10:24:07 AM



**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD  
September 17, 2007**

**RESOLUTION**

**LOCAL PROGRAM COMPLIANCE EVALUATION  
CHESTERFIELD 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 § 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 2007, the Chesapeake Bay Local Assistance Board conducted a compliance evaluation of Chesterfield County's Phase I program in accordance with the adopted compliance evaluation process; and

WHEREAS on August 14, 2007 the Local Program Review Committee for the Southern Area considered and evaluated the information contained in the compliance evaluation staff report; and

WHEREAS the Committee recommended removal of condition number 2, and requested DCR staff work with County Staff to study the issue further and present to the Board a revised condition, if appropriate; 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 Chesterfield 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 Chesterfield County to immediately address recommended condition number 4 and complete the remaining

seven (7) recommended conditions contained in this staff report no later than June 30, 2008.

1. For consistency with 9 VAC 10-20-80 and 9 VAC 10-20-105 of the Regulations, the County must ensure that all required RPA features are consistently and properly delineated on all tentative and final construction plans, and in the field. Specifically, the County must accurately delineate RPA nontidal wetlands consistent with DCR's new guidance titled *Resource Protection Areas: Nontidal Wetlands*.
2. For consistency with 9 VAC 10-20-105 of the Regulations and Section 19-231 of the County CBPA ordinance, the County must require that all vested projects meet the performance criteria to the maximum extent feasible, including buffer requirements and site-specific delineations, as required in the County's Ordinance. Further, the County should develop and document a process that ensures that vesting determinations are consistent with the State laws, Attorney General opinions and judicial rulings pertaining to vesting.
3. For compliance with 9 VAC 10-20-120 8 of the Regulations, the County must revise the *Engineering Reference Manual* to be consistent with the regulations and the actual processes Chesterfield administers pursuant to the Chesapeake Bay Preservation Areas Ordinance, or issue an equivalent written policy directive that is kept with all copies of the manual.
4. For compliance with Sections 9 VAC 10-20-120 8 a 1 and 2 of the Regulations, the County must immediately cease implementation of its current BMP credit program.
5. For consistency with 9 VAC 10-20-150 B 2 a, b, and c of the Regulations, the County must ensure the conditions for the utility exemption are being met. Further, the limits of additional clearing necessary for utility installation in the required easements in an RPA must be shown on the plan. The County must also ensure the restoration of the RPA buffer with woody vegetation where clearing occurs outside of the prescribed easement and with native grasses within the easement.
6. For consistency with 9 VAC 10-20-130 and 9 VAC 10-20-150 of the Regulations, and Section 19-232 a 1 of the County's Chesapeake Bay Preservation Areas Ordinance, the County must require the submission of a WQIA for any proposed land disturbance, development or redevelopment that encroaches into the RPA.
7. For consistency with 9 VAC 10-20-130 of the Regulations, and Section 19-232 a 1 of the County's Chesapeake Bay Preservation Areas Ordinance, the County must ensure that any BMP proposed to be located in the RPA either

meets the criteria in this regulatory section or is required to go through a formal exception process.

8. For consistency with 9 VAC 10-20-150 C 2 of the Regulations, the County must ensure that all requests for encroachment into the RPA be considered through the appropriate review process, either administratively as permitted under 9 VAC 10-20-130 4, or as a formal exception as required under 9 VAC 10-20-150 C of the Regulations.

BE IT FINALLY RESOLVED that failure by Chesterfield County to meet the above established compliance date of June 30, 2008, or to immediately cease implementation of its current BMP credit program 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 Chesterfield 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 September 17, 2007 by the Chesapeake Bay Local Assistance Board.

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Joseph H. Maroon  
Director  
Department of Conservation and Recreation

*Isle of Wight County*

Mr. Sacks gave the report for Isle of Wight County. Ms. Smith is the staff liaison for Isle of Wight County.

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

Mr. Sacks said that based on the review of the County's ordinances, plans, procedures and processes, staff and the review committee recommend that Isle of Wight County be found to not fully comply with the Act and Regulations and that the following three conditions be addressed no later than September 30, 2008.

1. Adopt and implement a septic pump-out program
2. Develop a BMP inspection and maintenance program
3. Begin the review of onsite site specific RPA delineations

MOTION: Mr. Duncanson moved that the Chesapeake Bay Local Assistance Board find that the implementation of certain aspects of the 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 in order to correct these deficiencies, Isle of Wight County be directed to undertake and complete the three recommended conditions contained in this staff report no later than September 30, 2008.

SECOND: Mr. Zeugner

DISCUSSION: None

VOTE: Motion carried unanimously

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD  
September 17, 2007**

**RESOLUTION**

**LOCAL PROGRAM COMPLIANCE EVALUATION  
ISLE OF WIGHT 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 Spring and Summer of 2007, the Chesapeake Bay Local Assistance Board conducted a compliance evaluation of the Isle of Wight County's Phase I program in accordance with the adopted compliance evaluation process; and

WHEREAS on August 14, 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 the 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 in order to correct these deficiencies, directs Isle of Wight County to undertake and complete the three recommended conditions contained in this staff report no later than September 30, 2008.

1. For consistency with Section 9 VAC 10-20-120 7 of the Regulations and as required by Section 4000.B.8 of the County's Bay Ordinance, the County must adopt and implement a 5-year pump-out notification and inspection program.
2. For compliance with Section 9 VAC 10-20-120 3 of the Regulations, the County must develop a BMP inspection and maintenance program that ensures that all water quality BMPs are inspected on a regular basis.
3. For compliance with Section 9 VAC 10-20-105 of the Regulations, the County should take steps to review onsite site-specific RPA delineations, which may include spot-checking RPA limits on sites.

BE IT FINALLY RESOLVED that failure by the Isle of Wight County to meet the above established compliance date of September 30, 2008 will result in the local program becoming noncompliant with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations and subject the Isle of Wight 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 September 17, 2007 by the Chesapeake Bay Local Assistance Board.

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Joseph H. Maroon  
Director  
Department of Conservation and Recreation

*Town of Ashland*

Mr. Sacks gave the report for the Town of Ashland.

Mr. Sacks said that DCR initiated a compliance evaluation of the Town's Phase I program in June of 2007. He said that, as a result of this review, many of the Town's Bay Act processes were found to be compliant. However, staff identified concerns with the lack of CBPAs shown on site plans and for the requirements for site-specific Chesapeake Bay Preservation Area determination.

Mr. Sacks said that the local staff revised their site plan review application and checklist to ensure that all CBPAs are accurately determined and delineated on all site plans and implemented a septic pump-out program. 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.

Mr. Sacks said that it was the recommendation of staff and the review committee that the Town of Ashland be found to not fully comply with the Act and Regulations and that the Town address the following condition no later than June 30, 2008.

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. Davis asked that staff provide an update at the March 2008 meeting.

**MOTION:** Mr. Zeugner moved that the Chesapeake Bay Local Assistance Board find that the implementation of certain aspects of the Town of Ashland'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, the Town of Ashland be directed to undertake and complete the one recommended condition contained in this staff report no later than June 30, 2008. Further staff is directed to provide an update regarding the Town of Ashland at the March 2008 meeting.

**SECOND:** Ms. Harper

**DISCUSSION:** None

**VOTE:** Motion carried unanimously

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD**  
**September 17, 2007**

REVISED: 12/3/2007 10:24:07 AM

**RESOLUTION**

**LOCAL PROGRAM COMPLIANCE EVALUATION**  
**TOWN OF ASHLAND**

**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 § 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 summer 2007, the Chesapeake Bay Local Assistance Board conducted a compliance evaluation of Town of Ashland's Phase I program in accordance with the adopted compliance evaluation process; and

WHEREAS on August 14, 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 the Town of Ashland'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 the Town of Ashland to undertake and complete the one recommended condition contained in this staff report no later than June 30, 2008.

9. 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.

BE IT FINALLY RESOLVED that failure by the Town of Ashland to meet the above established compliance date of June 30, 2008 will result in the local program becoming noncompliant with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations and subject the Town of Ashland 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 September 17, 2007 by the Chesapeake Bay Local Assistance Board.

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Joseph H. Maroon  
Director  
Department of Conservation and Recreation

### **Program Updates**

Mr. Sacks gave the following program updates.

#### *City of Virginia Beach*

##### Previous Conditions:

1. Require and ensure compliance with stormwater BMP maintenance agreements for all BMPs
2. Amend stormwater ordinance to include all required findings for reviewing and granting stormwater waivers
3. Amend stormwater ordinance to correct the pre-development phosphorus load, require a stormwater plan and all documentation and calculations
4. Ensure that all impervious surfaces, including the surface area of pools, are included in stormwater calculations
5. Require re-vegetation of the buffer for permitted tidal wetland activities
6. Require site-specific analysis of on- site water bodies and RPA boundaries
7. Provide training and staff analysis to City Bay Board Cease approving multiple variance requests unless requests clearly meet all required findings



8. Establish a formal system of long-term oversight for all mitigation required as part of Bay Act variance approvals

Mr. Sacks reported that of the above conditions, the City has initiated training for the staff and Review Board on the exception process and this training will continue and will be monitored by Department staff.

#### *Mathews County*

##### Previous Conditions:

1. Properly document conformance with all Plan of Development requirements
2. Implement a septic system pump-out program
3. Implement a BMP tracking and maintenance program
4. Require WQIAs
5. Enforce RPA Buffer modification limitations

Mr. Sacks reported that the County has taken action to adequately address all conditions except the septic system pump-out notification requirement. He added that the County applied for and is proposed to receive funding, to implement a septic system notification and maintenance program. The County plans to address the recommended condition, but will need additional time to develop and implement a program. Staff anticipates that the County will request an extension of the deadline for complying with this requirement.

#### *Caroline County*

##### Previous Condition:

1. The County must continue to implement the septic pump-out program to include:
  - Updating the pump-out database
  - Conducting additional mapping and analysis
  - Re-starting the homeowner notification process

#### *Town of West Point*

##### Previous Conditions:

1. Develop & Implement Septic Pump-out Program
2. Develop & Implement BMP Tracking and Maintenance Program
3. Require Vegetative Mitigation Plans for RPA encroachments

Mr. Sacks reported that the Town has taken action to adequately address all previous conditions except the septic system pump-out notification requirement and that the Town intends to provide notice to owners of all properties served by on-site septic systems by the September 30, 2007 deadline.

### **Election of Officers**

Mr. Davis said that the Board Bylaws call for the election of officers at the first meeting of the fiscal year. He turned the floor over to Mr. Maroon.

Mr. Maroon opened the floor for nominations.

Mr. Duncanson moved that Mr. Davis be reelected Chair. Mr. Evans seconded. There were no further nominations and the nominations were closed.

Mr. Davis abstained from voting and was reelected unanimously by the remaining members.

Mr. Maroon turned the Chair back to Mr. Davis.

Mr. Davis called for nominations for Vice Chair.

Ms. Harper moved that Mr. Duncanson be elected Vice Chair. Mr. Zeugner seconded. There were no further nominations and the nominations were closed.

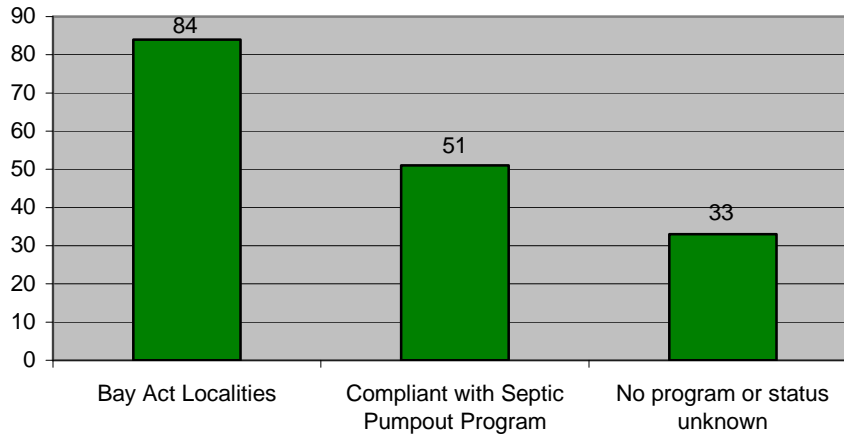
Mr. Duncanson abstained from voting and was reelected unanimously by the remaining members.

### **Other Business**

Ms. Salvati gave an update regarding the progress of the Septic Pump-out program.

#### **Septic Pump-out Status**

### Bay Locality Pumpout Status



Mrs. Salvati noted that currently, 51 of the 84 Bay Act localities have acceptable septic pumpout programs. She further noted that the estimated number of septic systems in CBPAs is between 150,000 – 180,000. Of the remaining 33 localities without programs, 13 include towns that would likely be covered by a County’s program, if operating.

Mrs. Salvati next addressed the issue raised about sewage treatment plant capacity in the Northern Neck area. She explained that an interagency work group has been established to clarify this problem and identify possible solutions. DEQ has projected septage loadings for Northern Neck – 8,000 – 10,000 lbs/day. Some of the options being considered by the work group include:

#### **Sewage Treatment Plant Capacity – Northern Neck**

- Encouraging use of plastic filter
- Use of existing or construction of new septage handling lagoons
- Identify other sewage treatment plants that may can handle septage

Mr. Duncanson said that some of the local installers recommend against the plastic filters. He said that weather conditions often become a problem for the lagoons in late fall or early winter due to the amount of rain.

#### **Phase III Program Development Process**

Ms. Salvati gave an update on the Phase III Program Development Process. . She indicated that the Local Government Advisory Committee on Phase III had been created and that the committee’s first meeting will be on September 19, 2007. The balance of the schedule for the development of the Phase III process is as follows:

**Phase III Program Development Process**

- Oct. 2007: Develop draft review procedures and review materials (checklists, etc)
- Nov. 2007: Presentation to CBLAB Policy Committee
- Dec. 2007: CBLAB adoption of Phase III review process and review materials
- March 2008: Phase III reviews begin

The Phase III Local Government Advisory Committee Membership is as follows

<b><u>Planning District</u></b>	<b><u>Locality Represented</u></b>
Northern Virginia:	Arlington County
George Washington:	Stafford County
Northern Neck:	Richmond County
Middle Peninsula:	Mathews County
Crater:	PDC Representative
Richmond:	Chesterfield
Northern Hampton Roads:	James City County
Southern Hampton Roads:	Virginia Beach
Accomack-Northampton:	Northampton County

**Public Comment**

There was no additional public comment.

**Adjourn**

There being no further business, the meeting was adjourned.

Respectfully submitted,

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Donald W. Davis  
Chairman

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Joseph H. Maroon  
Director