

**Chesapeake Bay Local Assistance Board
Northern Area Review Committee
October 28, 2008
11:00 a.m.**

Northern Area Review Committee Members Present

Donald W. Davis, Chair
Gregory C. Evans
William E. Duncanson

Northern Area Review Committee Members Not Present

Rebecca Reed

DCR Staff Present

Joan Salvati, Director, Division of Chesapeake Bay Local Assistance
David Sacks, Assistant Director, Division of Chesapeake Bay Local Assistance
Daniel Moore, Principal Environmental Planner
Shawn Smith, Principal Environmental Planner
V'lent Lassiter, Senior Environmental Planner
Adrienne Kotula, Principal Environmental Planner
Nathan Hughes, Watershed Specialist
Michael Fletcher, Board and Constituent Services Liaison

Others Present

Brian Barnes, Lancaster County
Don Gill, Lancaster County

Call to Order and Opening Remarks

Mr. Davis called the meeting to order. A quorum was declared present.

Ms. Salvati said that staff would report more regarding the office move at the December meeting.

Local Program Review: Compliance Evaluation

Town of Dumfries

Mr. Moore presented the report for the Town of Dumfries.

Department staff initiated the Compliance Evaluation process for the Town of Dumfries in March 2007. Dumfries is a small town of 1.6 square miles, with a 2000 population of 4,937. It is located in the southeastern corner of Prince William County, east of I-95 and immediately north of the Marine Corps Base at Quantico. The Town is highly urbanized, with roughly 60% impervious cover. There is a fair amount of new commercial development due to the fact that VA Rte. 1 runs north-south through the Town and is a significant commercial corridor. The Town has a full-time Town Manager and a full-time Zoning Administrator.

On December 10, 2007 the Board found that implementation of certain aspects of the Town's Phase I Program did not fully comply with the Act and the Regulations and, in order to correct the deficiency, gave the Town until September 30, 2008 to address the following two conditions:

1. The Town must confirm that site-specific RPA delineations have been conducted prior to the issuance of land disturbance permits, building permits and/or the approval by the Town Zoning Administrator of all environmental site assessments and water quality impact assessments. The Town must also require that the full width of the 100-foot RPA be shown on all plans and recorded plats, accompanied by a note that the Zoning Administrator must approve any land disturbance within the RPA.
2. The Town must complete the development of a BMP database to track the type, installation date, location, inspections, and maintenance of all BMPs. As part of this requirement, the Town must also develop a standard BMP maintenance agreement that specifies inspection and maintenance procedures.

Mr. Moore indicated that the Town has developed two documents that reference the Town's requirement that the full width of the RPA be shown on all plans and recorded plats, in accordance with condition number one. He said Town staff also now require that an engineering firm or land surveyor for a developer/owner place stakes or flags on the development site that show RPA boundaries prior to the Town's issuance of all necessary permits or WQIAs. He pointed out that on August 25, 2008, the Town submitted to Department staff a draft BMP Maintenance Agreement document as well as BMP Database listing the type, location/address, owner and installation date of the 12 BMP facilities known to exist in the Town as of that date.

Mr. Moore said that based on the developments outlined above, staff was recommending that the Board find the implementation of the Town's Phase I program complies with the Act and the Regulations.

No one was present from the Town of Dumfries.

Mr. Evans said that he was happy to see that the Town had moved so quickly to address the two conditions. He noted that Dumfries is near the town of Quantico which has been identified as a receiving area under the Base Realignment and Closure Act. He said that the area, including Dumfries, will begin to experience significant development pressures within the next several years, and that improvements made now to the Town's Bay Act program will reap benefits down the road.

MOTION: Mr. Evans moved that the Northern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find that the Town of Dumfries' Phase I program complies with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations.

SECOND: Mr. Duncanson

DISCUSSION: There was brief discussion concerning the Town's requirement that an engineering firm or land surveyor delineate RPA boundaries by placement of stakes or flags. It was determined that it would be best to add the term "any qualified professionals" to the list of persons who could carry out the identification of RPA boundaries.

VOTE: Motion carried unanimously

Lancaster County

Ms. Lassiter presented the report for Lancaster County. She noted that Don Gill and Brian Barnes from the County were present.

Lancaster County is located at the southeastern tip of Virginia's Northern Neck peninsula, and is bordered by Northumberland County to the north and the Rappahannock River to the south. Its population is approximately 11,500, and the land area of the county is 133 square miles. Most development in the county is currently single-family residential.

The Department initiated a compliance evaluation for Lancaster County in May of 2006. The evaluation revealed several areas where the County's implementation of its Bay Act program did not appear to fully comply with the Act and Regulations. On September 17, 2007, the Board adopted a resolution that required the Town to undertake and complete five recommendations by September 30, 2008.

The first recommended condition states that the County document submission of a WQIA for any proposed land disturbance, development, or redevelopment within RPAs. The County now requires the submission of WQIAs for all proposed encroachments into the 100' RPA, and has created a WQIA/Landscape Plan Agreement form and database to

track projects requiring a WQIA. The database currently has fifty-five records, with 12 WQIAs approved since September 2007.

The second recommended condition requires that the County develop and implement a 5-year septic pump-out and/or inspection program. The County has developed and implemented this program, with the first cycle of notices going out to 2,243 waterfront property owners on September 30, 2008. The second cycle will be sent to the remainder of the County beginning in September 2009. Department staff has advised the County to send the second cycle of notices out in several batches over time so that the local septic haulers will not be overwhelmed, since the second cycle will include approximately 7,000 properties.

The third recommended condition states that the County must require signed BMP Maintenance Agreements for all BMPs and must track BMP installation, inspection and maintenance. The County has finalized a BMP Maintenance Agreement and requires that they are submitted for all new BMPs. They have also created a BMP tracking database, and all new BMPs are entered in this database. Previously approved BMPs will be added as time allows.

The fourth recommended condition states that the County must stop accepting buffer equivalency calculations for determining buffer mitigation requirements, and should use the Buffer Manual as the basis for determining appropriate mitigation for buffer encroachments. The County no longer accepts buffer equivalency calculations and instead works with individual property owners to develop mitigation plans, recommending the use of vegetation as mitigation when possible.

The fifth recommended condition states that the County must not allow vegetation in the buffer to be removed based solely on size, and that they review and approve the removal of any vegetation in the RPA. Furthermore, the County was required to revise one of its guidance documents to remove any reference to the permitted removal of trees under a certain size. The County now encourages the retention of all trophic layers that exist in a fully functioning buffer and has revised the guidance document as required.

Ms. Lassiter said it was important to mention that Lancaster County is currently under an Erosion and Sediment Control corrective action agreement. They have received an extension of their deadline for compliance until March 19, 2009, at which time they will be reviewed to see if they have met the outstanding conditions of the agreement.

Ms. Lassiter said that since Lancaster County has addressed all five recommended conditions, staff was recommending the Board find that the County's implementation of its Bay Act program fully complies with the Act and Regulations.

Mr. Evans commended the County for acting quickly.

Ms. Lassiter noted that was especially commendable considering the staff turnover.

Mr. Gill said that the County did bring documentation to verify that the septic pump out letters had been mailed. A buffer brochure was included in that mailing. The County now has a water quality impact assessment tracking database. The County now requires vegetative buffer mitigation as opposed to structural BMPs. Letters have been sent to all local contractors stating the change in policy. Any intent to remove vegetation within the 100 ft. RPA requires that the property owner or developer first contact the County.

Mr. Barnes said that the next challenge would be to make sure that the real estate agents understand the changes. He said that the buffer brochure was mailed to over 2,000 waterfront property owners. He said that the intent is to notify everyone of the buffer importance and that the County will be serious about enforcement.

MOTION: Mr. Duncanson moved that the Northern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find that Lancaster County's Phase I program complies with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations.

SECOND: Mr. Evans

DISCUSSION: None

VOTE: Motion carried unanimously

Town of White Stone

Ms. Lassiter presented the report for the Town of White Stone. There was no one present from the Town.

The Town of White Stone is located in Lancaster County in the Northern Neck of Virginia. The Town is about one square mile in size, bounded by the Rappahannock River and the Chesapeake Bay. It is primarily a residential community, with a population of approximately 358 people.

The Department initiated a compliance evaluation for the Town of White Stone on April 3, 2008. The compliance evaluation revealed that although the Town is striving to implement its local Bay Act program effectively, there are program elements that require improvement.

The first recommended condition states that all references to buffer area width reduction must be removed from White Stone's Chesapeake Bay Preservation Ordinance. The Town's Bay Act ordinance includes several references to buffer area reduction.

Although encroachments into the RPA may be allowed if certain findings are met, the overall width of the RPA is never reduced.

The second recommended condition requires that the Town develop and implement a five-year septic pump-out program. Although Lancaster County handles the majority of Bay Act implementation for the Town, they do not intend to manage the Town's pump-out program, so it will be the responsibility of the Town to do so. The Town's ordinance does not provide for the inspection or plastic filter options, and the Department has recommended that they should consider adopting these options.

The third recommended condition states that Section 2-4 (d) of the Town's Bay Act ordinance must be deleted because it allows buffer equivalency calculations. The Department no longer allows the use of buffer equivalency calculations and instead recommends that local governments consult the Buffer Manual to ensure that all required buffer functions are met when development projects impact the 100-foot RPA.

The fourth recommended condition states that the Town's Bay Act ordinance be amended to require an exception process based upon review by a legislative or other body as described in the Regulations. Furthermore the six required findings must be listed in the ordinance, and it must specifically require public notice and a hearing prior to the granting of exceptions.

Ms. Lassiter said that the staff recommendation was that the Committee find that certain aspects of the Town of White Stone's Phase I program do not fully comply with the Act and Regulations and that the Town address the 4 conditions contained in the staff report by December 31, 2009.

Mr. Evans asked how the Town planned to accomplish this. He said that he assumed the town manager position was part time and that there was no staff to pursue this.

Ms. Lassiter said the manager has one assistant. Estimates are that there are about 200 septic systems in the town. The first challenge is to identify them.

Mr. Davis asked if the PDC could provide assistance.

Ms. Lassiter said that was a possibility.

Mr. Sacks said that in many cases DCR staff works to help the Town meet the requirements.

Mr. Evans expressed a concern about the number of localities where that would be necessary.

Ms. Lassiter said that mainly applied to the small towns.

Mr. Sacks said that ideally the towns would enter formal agreements with the counties, although there is sometimes reluctance to do that.

Ms. Salvati said another alternative was for the localities to attempt to obtain grants. But she noted that it was becoming increasingly more difficult to obtain grants to pay for staff.

Mr. Evans said that while it may not be feasible, a staff specialist available on state contract could help in situations such as this.

Mr. Davis asked if the Health Department could be of assistance.

Ms. Lassiter said that in many cases Health Department records are not complete.

Mr. Davis said one option would be to ask residents to document that they were on the public sewer system.

Mr. Duncanson said that in most cases the assumption can be made that all are on septic systems.

Mr. Davis asked that an update be provided at the June meeting.

Ms. Lassiter noted that she was not facing resistance from the Town, that she was trying to help them determine how to become compliant. She noted that the County is trying to encourage towns to become more self sufficient.

MOTION: Mr. Duncanson moved that the Northern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find that certain aspects of the Town of White Stone's local Phase I program do not fully comply with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations and further that the Town undertake and complete the four Recommended Conditions contained in the staff report no later than December 31, 2009.

SECOND: Mr. Evans

DISUCSSION: None

VOTE: Motion carried unanimously

Other Business

Mr. Davis asked Ms. Salvati to give an update concerning the current issue before the Board regarding the Chesterfield County and Virginia Beach programs. He noted that the issues would be covered by the Southern Area Review Committee that afternoon.

Ms. Salvati said that Chesterfield County continued to apply their own internal policy with respect to the identification of nontidal wetlands. She said that County planned to come to the SARC meeting to provide their explanation of why they believe what they are implementing is consistent with the regulations.

Mr. Sacks said that thus far, staff was not convinced that the method was consistent with the regulations.

Mr. Davis said that this matter should be on the agenda for the next Board meeting.

Ms. Salvati said that another option would be to have a Policy Committee meeting the morning prior to the Board Meeting.

Ms. Salvati said that the matter before the SARC was a condition review. This remains the one condition to determine that the County is consistent with the regulations. She said that staff would recommend a finding that the County is not consistent.

Mr. Davis asked about the classification of pools in Virginia Beach.

Ms. Smith said that the City was working with an advisory committee that included builders and other representatives. She said that the belief was that the City ordinance could be revised to address this issue.

Ms. Smith said that since the original compliance evaluation, the City no longer allows pools to be built in the Chesapeake Bay Preservation Area.

Ms. Salvati said that the stormwater management regulations had been approved by the Soil and Water Conservation Board for publication. She said the targeted date for completion of the process was December 2009.

Public Comment

There was no additional public comment.

Adjourn

There was no further business and the meeting was adjourned.

Respectfully submitted,

Donald W. Davis
Chair

Joseph H. Maroon
Director