

Chesapeake Bay Local Assistance Board
Local Program Review Committee for the Northern Area
Chesapeake Bay Local Assistance Department
101 N. 14th Street, 17th Floor, James Monroe Building
Richmond, Virginia
Tuesday, May 4, 2004

MINUTES

Members Present:

The Honorable Donald W. Davis
The Honorable Walter J. Sheffield

Members Absent:

The Honorable William E. Duncanson
The Honorable Stuart Mendelsohn

Staff Present:

Mr. C. Scott Crafton, Executive Director
Ms. Martha Little, Chief, Environmental Planning
Ms. Shawn Smith, Principal Environmental Planner
Ms. Heather Mackey, Principal Environmental Planner
Ms. Nancy Miller, Senior Environmental Planner
Mr. Alex Adams, Senior Environmental Planner
Ms. Beth Baldwin, Senior Environmental Planner
Ms. Alice Baird, Environmental Engineer

Local Government Officials Present:

Town of Irvington
John C. Fitzpatrick, Town Manager

Spotsylvania County
Chris Edwards, County Engineer

The meeting was called to order by Mr. Davis at 10:04 a.m. Mr. Davis asked Mr. Crafton if he had any opening remarks. He had none. Mr. Davis noted that a quorum was present and that board procedures allow the Executive Director to assist with motions.

Mr. Davis then asked Ms. Mackey to present the staff report on the City of Fairfax's amended Phase I program.

Ms. Mackey explained that The City of Fairfax originally adopted its Phase I program in October 1990 and that the Board reviewed the City's program and found it to be

provisionally consistent in August 1991. She noted that the City adopted amendments to its program in July 1998 and March 1999 and on June 21, 1999 the Board found the City's program to be consistent with the Act and Regulations.

Ms. Mackey indicated that the Department staff reviewed and commented on various drafts of the City's Chesapeake Bay Preservation ordinance between February 2002 and October 2003. She stated that Department staff had requested a meeting to go over the latest set of comments in October; however, the Fairfax City Council, intent on making the December 31, 2003 deadline, adopted a revised Bay Act ordinance on November 25, 2003, without the two staffs having a chance to get together and discuss additional revisions to the ordinance. As a result, although the City's adopted ordinance addresses most of the required changes including revisions to definitions, Resource Protection Area designation language, the site-specific RPA delineation requirements, and the requirement for a formal process for all RPA exceptions, she noted that there are seven recommendations for consistency.

She finished her presentation by saying that the recommended conditions are technical in nature and address the definitions and Regulatory requirements for site-specific refinement of CBPA boundaries, local government review and approval for activities within CBPAs and Water Quality Impact Assessments.

She outlined the first recommendation for consistency which is to include the definitions of "public road" and "substantial alteration," consistent with the definitions in the Regulations.

Mr. Davis wanted to know why so many reports included the recommendation addressing the definition of public roads.

Ms. Shawn Smith explained that the definition of public roads is not important in every case but that it is necessary when local governments include roads and drives that are not public as permitted activities in RPAs. She noted that the public road exemption needs to include a definition for what a public road is, so that localities know which roads are exempted and which roads need to be approved by the locality as a permitted activity. She stated that staff tried to catch all required changes, but that the definition of public roads was one that was not focused on until several localities had already adopted their revised ordinances. She said that Ms. Mackey noted that there was an opportunity just prior to the adoption of the revisions for Department staff to meet with Fairfax, and this particular recommendation would have been brought up at that time, but the meeting never happened. Ms. Smith stated that staff is trying to ensure that all local ordinances completely address the revised Regulations in order to prevent future issues from arising. She noted that a number of issues were overlooked when local programs were first reviewed in the 1990s and that some of these overlooked issues turned out to be more problematic than staff anticipated. For that reason, staff is carefully reviewing all adopted programs this time. She also said that staff was learning as the local reviews occurred, and that some items were overlooked in earlier reviews but were caught in later ones, after the locality had adopted their revisions.

Mr. Davis asked if other consistency items were noted during subsequent reviews.

Ms. Smith stated that the definition of “substantial alteration” is another item that many localities did not include. She stated that staff has tried to address all required changes, but that in many cases, these local programs were actually adopted last year. She concluded by stating that the more recent adoptions should have fewer consistency items as staff has gotten more familiar with the necessary revisions and has had more opportunity to review draft ordinances.

Ms. Mackey stated that in Fairfax’s case, she had identified a lot of these recommendations in her October 2003 letter, but that because she didn’t get a chance to talk with the City prior to their adoption, these issues were not addressed.

Ms. Mackey outlined that the first recommendation for consistency is to include the definitions of “public road” and “substantial alteration,” consistent with the definitions in the Regulations. She explained why these two definitions are important and necessary.

She then stated that the second recommendation concerns the Regulatory requirement for site-specific refinement of the CBPA boundaries. She specifically she said that the City is to include clarifying language in its ordinance to make it clear that the RPA buffer area is not reduced in width when site-specific refinements of the RPA occur. She noted that the third and fourth recommendations concern the requirements for local government review and approval for activities within CBPAs.

Ms. Mackey said that the fifth and sixth recommendations concern the requirements for a Water Quality Impact Assessment and explained the recommendations. Finally, she outlined the seventh and final recommendation that again addresses the issue of local government review and approval for activities within CBPAs to ensure language requiring local government approval prior to the removal of vegetation in the buffer area.

Ms. Mackey concluded her presentation by noting that the recommendations are technical in nature but that they are necessary to bring Fairfax City’s ordinance into compliance with the Regulations. She stated that currently the basic requirements of the City’s Chesapeake Bay program are in place, and these items will not prohibit the City from implementing their program as intended in the interim. She said that City staff has been very cooperative throughout this process and has indicated they will be able to make the changes in advance of the deadline recommended by the Department. She finished by saying that Department staff recommends that Fairfax City’s Bay Act ordinance be found consistent provided that the City undertake and complete the seven recommendations identified in the staff report by December 31, 2006, to coincide with any recommendations which may result from the compliance evaluation of the City.

Mr. Davis asked if there were questions from the Committee members.

Mr. Sheffield stated a concern that he had heard regarding the cost of developing WQIAs. He asked if the Department had reviewed any local WQIA forms used for single-family homes that are shorter and less costly for individual property owners to use.

Ms. Smith responded that in the previous Bay ordinances, most of the localities had included requirements for minor and major WQIAs which basically were a long laundry list of things that may not have been appropriate to look at in every case. She explained that staff is in the process of trying to simplify WQIAs by creating individual ones for all different types of activities. She continued by stating that to date, staff has completed drafting WQIA forms for Shoreline Management, Redevelopment, and Roads and Driveways. One for Single-Family development is being finished now.

Mr. Davis called for a motion. On motion by Mr. Sheffield, seconded by Mr. Crafton, the Committee voted 3-0 on the following:

The Northern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that the City of Fairfax's amended Phase I program be found consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations, subject to the condition that the City undertake and complete the seven recommendations in the staff report no later than December 31, 2004.

Mr. Davis thanked Ms. Mackey for her presentation and recognized Mr. Alex Adams for staff's presentation for Spotsylvania County.

Mr. Adams provided some background of the County's Phase I program. He explained that Department staff provided comments on changes necessary to the County's existing Bay Act ordinance in November 2002 and continued to work with the County on subsequent revisions. He said that Spotsylvania County incorporated all of the required changes into its current Bay Act Ordinance and that the Board of Supervisors approved the amendments on February 10, 2004.

He stated that these changes include revisions to definitions, RPA designation language, a formal review process for water bodies with perennial flow, items available for approval by the planning director's administrative waiver and formal exceptions. He said that the Planning Commission will hear formal exceptions to the ordinance, and the County currently has a countywide RMA

He concluded his presentation by saying that staff recommends that Spotsylvania County's revised Bay Act Ordinance be found consistent without conditions and also that the Department would like to thank the County for their continued support of the Chesapeake Bay Preservation Act.

Mr. Davis asked for a motion. On a motion by Mr. Sheffield, seconded by Mr. Crafton, the Committee voted on the following:

The Northern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that Spotsylvania County's amended Phase I program

be found consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations.

Mr. Davis thanked Mr. Adams for his presentation and recognized Ms. Beth Baldwin for staff's presentation for the Town of White Stone.

Ms. Baldwin stated that The Town of White Stone adopted its original Phase I program on November 1, 1990 and was found consistent by the Board on February 27, 1992. She provided a history of staff assistance in revising the Town's ordinance beginning in July 2003 when Department staff sent a markup of revisions that would be necessary for the Town's ordinance to be consistent with the revised Regulations. She said that White Stone's Planning Commission and Town Council reviewed the proposed changes but had several objections to them. She also explained that much of the Town's Bay Act program is administered by Lancaster County, and that the Town also wanted to review the revisions that Lancaster had adopted. She said that on January 8, 2004, after considering both sets of revisions, the Town Council of White Stone elected to adopt the verbatim revisions that Lancaster County had adopted. She said that consequently, the same conditions identified in the staff report for Lancaster County's Phase I program are in this staff report on White Stone's Phase I program.

She said that the ten conditions noted in it are the same as those for Lancaster and that she would explain these conditions if the Committee wished. The Committee members indicated that an additional explanation of the conditions would not be necessary as they were explained in detail during Lancaster County's review. She said that Department staff is recommending that the Town of White Stone's revised Phase I program be found inconsistent and further that the Town be require to undertake and complete the 10 consistency items by December 31, 2004.

Ms. Baldwin then noted that through emails and voices-mails she spoke with Ms. Jewell, the town manager and that Ms. Jewell sent her regrets that she could not attend today's meeting. Ms. Baldwin stated that in Ms. Jewell's email to her, Ms. Jewell stated that since much off the town's Bay Act program is administered by Lancaster County, the town feels very strongly that it needs to follow and endorse the county's position. Ms. Jewell also stated that the town understands that it's Phase I program could be found inconsistent with the Act and Regulations and appreciates the Department staff making her aware of the Boards position and the possible outcome of the decision.

Mr. Davis asked for a motion. On a motion by Mr. Sheffield, seconded by Mr. Crafton, the Committee voted on the following:

The Northern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that the Town of White Stone's amended Phase I program be found inconsistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations and further that the Town undertake and complete the ten recommendations in the staff report no later than December 31, 2004.

Ms. Baldwin continued, providing staff's presentation for the Town of Warsaw.

She provided an overview of the Town's Phase I program, noting that staff had provided the town with recommended changes in August 2003. She said that the Town of Warsaw incorporated these changes and officially adopted its revised program on October 9, 2003.

She said that the Town's ordinance is quite similar to the model ordinance developed by the Department with the exception that it did not include tidal wetlands and tidal shores as Resource Protection Area features in its designation criteria, since no such features exist in the Town. She said that for the formal exceptions process, the Town chose its Board of Zoning Appeals as the local body to hear such requests.

She explained that while there are a few suggested clarifications the Town may want to consider, there are only two conditions for consistency and she outlined these recommendations as included in the staff report. She said that the first relates to administrative waivers on nonconforming lots and the second refers to flood control and stormwater facility development criteria in the RPA.

Ms. Baldwin said that the Town of Warsaw did commendable work in revising its ordinance to be consistent with the Regulations and that Department staff identified only two conditions that need to be addressed by the Town. She said that since neither condition should impact the Town's ability to adequately implement its local program and that the Town will be undergoing a compliance evaluation within the next year, staff recommends that the Town's program be found consistent and be given until December 31, 2006 to make the necessary revisions.

Mr. Sheffield asked about the December 2006 deadline and inquired whether that should be changed.

Ms. Baldwin reiterated that the two conditions are relatively minor and should not affect the Town's ability to properly implement its program. She also noted that the Compliance Evaluation, which might identify other ordinance revisions, would not be completed until 2005 and that once completed, the Town would still need time to incorporate any changes to its ordinance and undergo the adoption process. The December 2006 deadline will enable the town to make any necessary program changes through a single process.

Mr. Davis asked for a motion. On a motion by Mr. Sheffield, seconded by Mr. Crafton, the Committee voted on the following:

The Northern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that the Town of Warsaw's amended Phase I program be found consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations, subject to the condition that the Town undertake and complete the two recommendations in the staff report no later than December 31, 2006.

Ms. Baldwin continued, providing staff's presentation for the Town of Irvington and introduced Mr. Jack Fitzpatrick, the Town Manager.

She provided background on the Town's Phase I program, noting that beginning in August 2002, staff provided comments on changes that would be necessary to the Town's existing Bay Act ordinance. She said that in early November 2003, Department staff sent a highly detailed letter noting where changes would be required and an explanation as to why these changes were necessary. She explained that the Town of Irvington incorporated a few of these recommendations but that a substantial portion of the ordinance was not revised and that on December 11, 2003, the Town Council approved the proposed revisions in a public hearing.

She stated that there are 15 conditions for consistency that the Town must address outlined in the staff report. She said that because there are so many conditions and that some of them are quite serious, the Department is recommending a finding of inconsistent.

She explained that the 15 conditions may be categorized into five general areas and provided an overview of the general areas. The first area relates to definitions and the fact that the Town failed to delete, revise or incorporate many of the definitions as required by the Regulations. She then listed the various definitions that need to be revised or deleted.

She continued by noting that the second category concerns RPA development criteria and further stated that 8 of the 15 conditions for consistency are identified in this section. She provided an overview of all conditions relating to RPA development criteria as outlined in the staff report. She stated that the third category concerns the general performance criteria and explained the change, that must be made relating to the criteria for consistency.

She said that the fourth category concerns the administrative review and exception process and the fact that all required language relating to these two processes was not included in the revised ordinance. She completed her overview of the conditions for consistency by stating that the fifth and final category is for exemptions and that the town included some exemptions not allowed under the Regulations.

She concluded her presentation by acknowledging that Irvington did revise its program by the Board imposed deadline of December 31, 2003, but that Department staff believes that due to the number and seriousness of the conditions, it must recommend a finding of inconsistent and further recommend that the Town undertake and complete the 15 conditions for consistency identified in the staff report by December 31, 2004.

Mr. Davis recognized Mr. Fitzpatrick, Irvington's Town Manager. Mr. Fitzpatrick explained that the Town of Irvington is in agreement with the recommendations and intends to make all of the required changes by the end of the year. He further stated that the Town wants to be in compliance with the Act. Mr. Fitzpatrick said that his position with the Town is only part-time and that much of his time in the past had been spent on sewer issues and that he did not have time to carefully review or incorporate all of the proposed changes.

Finally, he commented that Department staff and in particular, Beth Baldwin, had been most helpful and the he appreciated the assistance that has been given.

Mr. Davis asked if it was possible to change the recommended finding of inconsistent since there appears to be no reluctance on the Town's part to address the recommendations.

Mr. Crafton explained that the finding of inconsistent might provide some impetus to the Town to ensure that such changes are made.

Mr. Davis asked for a motion. On a motion by Mr. Sheffield, seconded by Mr. Crafton, the Committee voted on the following:

The Northern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that the Town of Irvington's amended Phase I program be found inconsistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations and further that the Town undertake and complete the 15 recommendations in the staff report no later than December 31, 2004.

Ms. Baldwin continued by presenting the staff report on the Town of Montross.

She provided an overview of the Town's Phase I program, noting that beginning in August 2002, Department staff provided comments on changes necessary to the Town's existing Bay Act ordinance. She said that the Town Council of Montross officially adopted those revisions at its public meeting on December 16, 2003.

She said that Montross adopted its original Bay Act ordinance by referencing Westmoreland County's ordinance in Section 66-113 of the Town Code and that though unusual, the referencing of County's Bay Act program within a Town Code was determined to be consistent with the Act and Regulations based on a 1991 opinion from the Attorney General's office. She indicated that the only stipulation necessary for this approach was that the Town could not adopt by reference any future changes that a County may make to its Bay Act ordinance.

She said that since Westmoreland County continues to implement many of the Bay Act requirements on the Town's behalf, Montross has elected to continue with the abbreviated version of its Bay Act ordinance. She noted that the Town made the necessary revisions to its overlay district by changing certain code citations and updating the section numbers referencing Westmoreland's Bay Act overlay district. She continued by stating that since Westmoreland County must make several revisions to this overlay district, the Town of Montross must undergo the adoption process again since the Town may not adopt, by reference, future changes to the County's ordinance.

She said that Department staff recommends that the Town of Montross' revised Phase I program be found consistent with the Act and Regulations provided that the Town

re-adopt its local program by December 31, 2004 once Westmoreland has made the necessary revisions to its Bay Act overlay district.

Mr. Davis asked for a motion. On a motion by Mr. Sheffield, seconded by Mr. Crafton, the Committee voted on the following:

The Northern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that the Town of Montross' amended Phase I program be found consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations subject to condition that the Town undertake and complete the recommendation in the staff report no later than December 31, 2004.

Ms. Baldwin continued, providing staff's presentation for Northumberland County.

She provided an overview of Northumberland County Phase I program, noting that beginning in August 2002, Department staff provided initial comments on changes necessary to the County's existing Bay Act ordinance. She said that Department staff sent additional comments in May 2003 and that the revised ordinance was adopted by Northumberland County's Board of Supervisors at a public meeting on February 11, 2004 and given an effective date of May 1, 2004.

She indicated that Northumberland's Bay Act program is fairly typical of most rural localities and that the County has chosen its Board of Supervisors as the local body for hearing requests for exceptions that require the formal process. She said that with respect to its Bay Act ordinance, Department staff identified five consistency items. She outlined each of these recommendations, noting that in the first, the County must add a definition of substantial alteration to the ordinance. She said that the second consistency item is in the area of general performance criteria: the County needs to add the annual notification requirement for switching valves to owners of onsite systems when alternative drainfields are used.

She said that the third item concerns the administrative process for nonconforming structures and that the County's ordinance included language that may be interpreted as allowing accessory structures to be expanded through an administrative process. She noted that since the expansion of accessory structures may only be considered through a formal exception, this section must be amended by striking the language that is not consistent with the Regulations.

She completed her overview of the consistency issues by noting that Northumberland County included a section in its ordinance which declares that approved site plans shall be valid for a period of five years. She said that while this time period is consistent with the Section 15-2261 of the Code of Virginia, subsection E (iii) clearly states that such site plans are not relieved from conforming to the greatest extent possible to the local Bay Act requirements. Based on this code section, she said that Northumberland must either revise this section to be consistent with Section 15.2261 of the Code of Virginia or delete it altogether.

Ms. Baldwin explained that with respect to this last condition, she is concerned that the County may continue to allow encroachments into the 50' landward side of the buffer for lots that were recorded after 1990 and have sufficient room to build a principal structure and necessary utilities outside of the buffer. She noted that with such language, Northumberland County would still be allowing homes to be built in the buffer several years after the ordinance had been revised to prohibit such development.

Mr. Davis asked if the County was currently allowing encroachments because of lot size. Ms. Baldwin explained that while the County has done commendable work in ensuring that lots had buildable area outside of the buffer, they have used the buffer equivalency language to permit encroachments. She noted that during the site plan review of the Compliance Evaluation process, as part of the approval process, subdivisions had to show buildable area outside of the buffer for a principal structure and both a primary and reserve drainfield site. She stated that once the subdivisions were approved, the County was approving site plans submitted for individual lots in those subdivisions that showed encroachments into the landward 50' of the buffer.

Ms. Smith commented that Northumberland County's compliance evaluation would be presented to the Board during the third quarter and provide much more detail on the County's program.

Ms. Baldwin finished her presentation by stating that Department staff recommends that the County's revised Phase I program be found consistent with the Regulations provided that the County undertake and complete the five recommendations identified in the staff report by December 31, 2004.

Mr. Davis asked for a motion. On a motion by Mr. Sheffield, seconded by Mr. Crafton, the Committee voted on the following:

The Northern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that Northumberland County's amended Phase I program be found consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations, subject to the condition that the County undertake and complete the five recommendations in the staff report no later than December 31, 2004.

Ms. Baldwin completed her reports, providing staff's presentation for Westmoreland County.

She provided an overview of the County's revised ordinance, stating that Westmoreland County adopted its revised Bay Act ordinance on March 10, 2003 and that the Board reviewed the revisions at its September 2003 meeting, finding them consistent with nine conditions and a compliance deadline of December 31, 2003. She said that subsequently, the County revised its ordinance and adopted the revisions on December 8, 2003.

Ms. Baldwin noted that although the County did revise its ordinance by the established deadline, it failed to address or adequately revise 4 of the 9 conditions, as noted in the staff report. She then outlined those consistency items that were not addressed. She said that the County failed to revise the definition of Resource Protection Area to be consistent with the Regulations, although throughout the overlay district it did make the necessary terminology revisions. She noted that the County failed to include the required criteria for water-dependent uses and redevelopment in RPAs and that, while Westmoreland revised the section on exceptions, it failed to make all of the necessary changes. She concluded her briefing by stating that the County failed to include a definition of public road that is consistent with the Regulations.

She explained that since the County agreed to the recommendation in the Board Resolution from the September 15, 2003 meeting but failed to adequately address all nine conditions outlined in the Resolution, Department staff must recommend a finding of inconsistent for Westmoreland's revised Phase I program and further require the County to undertake and complete the four remaining items for consistency by August 1, 2004.

Ms. Baldwin then read a letter that Ms. Fay Dove, Acting Zoning Administrator for Westmoreland County had written to the Department concerning the staff report and recommended finding. In the letter, Ms. Dove expressed her regrets that a representative from the County could not attend today's meeting and stated that the inconsistencies in the ordinance were due to clerical error. She explained that the errors will be corrected and a public hearing will be conducted at the July meetings of the Planning Commission and Board of Supervisors to address the changes. Finally, she noted that a copy of the proposed revisions will be sent to the Department for review prior to the July meetings.

Mr. Sheffield asked why the August deadline was proposed and asked if that would provide the County sufficient time to revise its overlay district and undergo the adoption process.

Ms. Baldwin explained that the deadline was selected in order to offer review comments at the third quarter NARC and CBLAB meetings. She offered that the suggested deadline could certainly be changed.

Mr. Sheffield suggested changing the deadline to September 30, 2004. He commented that this change would provide the County sufficient time to make the required changes and adopt those revisions and still provide time for the Department to adequately review the changes and present to NARC and the Board at the fourth quarter meetings. He noted that staff could provide a brief update to the Board of the September meeting.

Mr. Davis asked for a motion. On a motion by Mr. Sheffield, seconded by Mr. Crafton, the Committee voted on the following:

The Northern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that Westmoreland County's amended Phase I program

be found inconsistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations and further that the County undertake and complete the four recommendations in the staff report no later than September 30, 2004.

Mr. Davis thanked Ms. Baldwin for her presentations, and recognized Ms. Miller for her presentation on Mathews County.

Ms. Miller provided an overview of Mathews County's Phase I program and noted that the Department assisted the County with the revision process beginning in May of 2002 by providing County staff with written guidance and staff-to-staff discussions on various drafts revisions. She said that on December 16, 2003, the County adopted revisions to its CBPA Overlay District, effective upon adoption.

She stated that the County maintained its CBPA criteria, so there is no change in the mapped areas designated as CBPAs and that other revisions made include nearly all the changes required by the Regulations, with two exceptions. She outlined the two conditions for consistency as noted in the staff report, indicating that one relates to administrative waivers for the expansion of nonconforming principal structures and the other to the exemption of public roads.

She completed by saying that staff recommends that Mathews County's revised CBPA Overlay District be found consistent with two conditions and that the two consistency items remaining should not prove to be of serious detriment in protecting the quality of state waters, if amended in a timely fashion. She said that in addition to the consistency items, the staff report includes five suggestions for clarification that would help ease administration but are not required for consistency.

Ms. Miller explained that the Department is embarking upon the compliance evaluations for all Phase I programs, and Mathews County is scheduled to undergo this review early in the 2005 calendar year. She stated that it is possible that other ordinance revision recommendations will be made in conjunction with the County's compliance evaluation, and that staff recommends that the deadline for the County to make these required ordinance changes should coincide with the compliance evaluation process, or no later than September 30, 2005.

Mr. Davis asked for a motion. On a motion by Mr. Sheffield, seconded by Mr. Crafton, the Committee voted on the following:

The Northern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that Mathew County's amended Phase I program be found consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations, subject to the condition that the County undertake and complete the two recommendations in the staff report no later than September 30, 2005.

Ms. Miller continued, presenting staff's recommendations for King William County's request for a deadline extension. She said that an update on the County's progress

provided by local staff on April 22 indicates that the County will hold the Planning Commission's public hearing on May 17, 2004.

She said that Department staff initiated the revision process with a letter to the County on January 29, 2002, including technical assistance materials, and on May 21, 2002 the Department provided County staff with a copy of the County's CBPA Overlay District and written comments noting specific changes that would be required for consistency with the Regulations. She said that Department staff met with the County's Director of Community Development on June 13, 2002 to review the Department's comments and answer questions.

She noted that County staff proceeded to draft revisions in consultation with the County Planning Commission and provided the Department with its first draft in January 2003. She stated that the Department provided comments on February 6, 2003, and on February 26, 2003 the Department sent a letter advising that the Board had extended the deadline for adoption of local CBPA Overlay District revisions to December 31, 2003.

She continued by noting that a number of written reminders and requests for drafts and a schedule of adoption were sent from the Department between March and November of 2003 and that in January of 2004 the County provided an extension request with a timeline projecting adoption as early as May 24, and as late as July 26, 2004. She said that the County had failed to adopt by the deadline, primarily due to the County Board's decision in November to defer action until newly elected Board members took office in 2004.

She explained that Department staff will continue to monitor the situation, the County is proceeding on schedule, and the Department is currently developing comments on a draft CBPA Overlay District provided by the County the previous week.

She concluded her presentation by saying that staff recommends that the County be found inconsistent due to failure to meet the December 31, 2003 deadline, and that, due to the timing of the County's extension request, Board policies, the schedule provided by the County and demonstrated progress on that schedule, a deadline of July 31, 2004 be established for the County to complete adoption of the required revisions.

She noted that this deadline is established with the understanding that July 31, 2004 is an absolute, final deadline, and with the request that County staff continue to work closely with CBLAD staff throughout the remaining time period, specifically providing CBLAD staff with draft ordinance changes for comment as they become available. She also noted that failure by the County to meet the deadline will result in the Board forwarding the matter to the Office of the Attorney General for further action.

Mr. Davis asked for a motion. On a motion by Mr. Sheffield, seconded by Mr. Crafton, the Committee voted on the following:

The Northern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that King William County be found inconsistent with

§10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations and further that the County adopt a consistent Phase I program no later than July 31, 2004.

Ms. Miller completed her presentations, providing the staff report on the compliance evaluation for King William County.

Ms. Miller gave an overview of the compliance evaluation process, noting the timing of the meetings with County staff as well as site visits that occurred. She noted that all related material is available in the file and the report.

She provided an overview of the status of King William County's Phase I and Phase II programs and outlined the structure of the County's Bay Act program, including the staff responsible for administration and enforcement, and the basic local processes for ensuring compliance.

She noted that the staff report describes several areas in which the County has initiated changes to address problems that have occurred in the past, such as subdivisions that were recorded which include lots with insufficient buildable area outside the 100-foot RPA buffer, noting that to eliminate this problem, the County now no longer allows a subdivision to be recorded until the Planning Department has signed off on its review. She explained that this is an example of a County policy implemented to address a problem area, and while there are other good examples, the remainder of her discussion would concentrate on the deficiencies noted in the report and the resultant recommendations.

She said that while the County's staff works conscientiously to implement the local Bay Act program, the staff report includes suggestions for improvements and 7 recommendations for consistency to address program deficiencies. She explained that some of the recommendations are related to information or documentation "gaps" noted during project file and site plan reviews and that the first recommendation is of this type. She said that the first recommendation relates to the development of checklists to ensure compliance with all Bay Act requirements

She outlined the second recommendation which relates to implementation of the septic pump-out provision, noting the reliance on on-site septic systems throughout the County, and stating that the County must develop and implement a 5-year pump-out notification and tracking/enforcement program, and may, if desired, revise the CBPA Overlay District to incorporate the alternative provisions to the pump-out requirement.

She then proceeded to brief the Committee on the third recommendation, saying that while stormwater management is required countywide, the County has not been adequately requiring maintenance agreements for required BMPs for stormwater management, and such agreements with follow-up inspections is critical to ensure that water quality is protected.

She outlined the file review part of the compliance evaluation, noting that sixteen project files were reviewed on February 4, and 18, 2004 and six were selected for site visits

on March 1, 2004. She explained that most of the site plans and field visits involved projects which had no BMP included as part of the plan and that several of the site plans reviewed in the office had no water quality calculations included with the plans, which means there was no way to determine whether a water quality BMP was required. She noted that inspection of the sites where a BMP was required revealed some design issues, so the fourth recommendation was for the County to require pretreatment for BMPs where needed, and to evaluate all BMP siting, design and allowable pollutant removal efficiencies against the requirements in the Virginia Stormwater Management Handbook.

Ms. Miller outlined the fifth recommendation, noting that it relates to the submission of WQIAs for all land disturbance, development or redevelopment in the RPA. She said that the sixth recommendation addresses deficiencies noted during the review wherein the County's project application files were frequently incomplete. She said that the recommendation was for the County to develop detailed checklists and a file management system to ensure that sufficient and appropriate POD information is provided by applicants and to ensure that project files are complete.

She provided an overview of the site visits, noting that the seventh recommendation related to shoreline erosion control projects and the lack of required mitigation when approving such projects.

She completed her presentation by noting that the County's Planning Department has been responsive and extremely cooperative during the compliance evaluation process, spending a significant amount of time providing assistance and information to assist the Department in its efforts. She said that the Department would like to express its gratitude for the County's assistance, especially since most of the County's Planning Department staff positions are currently vacant.

She said that staff's recommendation was that the Board find that certain aspects of the County's implementation of its Phase I program do not fully comply with the Act and the Regulations. Staff further recommends that King William County undertake and complete the seven Recommendations contained in this staff report no later than December 31, 2005.

Mr. Davis asked for a motion. On a motion by Mr. Sheffield, seconded by Mr. Crafton, the Committee voted on the following:

The Northern Area Review Committee recommends that the Board find that certain aspects of King William County's implementation of its Phase I program do not fully comply with §§10.1-2109 and 2111 of the Act and §§9 VAC 10-20-231 and 250 of the Regulations and further that King William County undertake and complete the seven recommendations contained in the staff report no later than December 31, 2005. The Northern Area Review Committee also recommended that the County provide the Board with a progress report regarding the status of its activities relative to the

recommendations, with the progress report to be filed with the Department by March 1, 2005.

There being no other business before the Committee, the meeting was adjourned.