

Chesapeake Bay Local Assistance Board
Local Program Review Committee for the Southern 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 David C. Froggatt, Jr.
The Honorable Daniel B. Nice
The Honorable Michael V. Rodriguez

Members Absent:

The Honorable Sue H. Fitz-Hugh
The Honorable Colin D. Cowling

Staff Present:

Mr. C. Scott Crafton, Executive Director
Ms. Martha Little, Chief, Environmental Planning
Ms. Shawn Smith, Principal Environmental Planner
Mr. Ryan Link, Principal Environmental Planner
Mr. Brad Belo, Senior Environmental Planner
Mr. Jakob Helmboldt, Senior Environmental Planner
Alex Adams, Senior Environmental Planner
Ms. Alice Baird, Environmental Engineer

Local Government Officials Present:

Accomack County
Sandy Manter, County Planner

City of Newport News
Al Riutort, Director of Planning
Collie Owens, Senior Assistant City Attorney
Kathy James-Webb, Senior District Planner and Chesapeake Bay Coordinator
City of Hopewell Margaret Innocent, City Planner

Hanover County
Rebecca Draper, Director of Public Works

City of Richmond
Debra Byrd, Permits & Engineering Services Administrator

City of Portsmouth
Stacy Porter, Environmental Planner

In Mr. Cowling's absence, Mr. Crafton called the meeting to order at 2:05 p.m. Mr. Crafton called the roll and noted that a quorum was present. He updated the Board on the status of the proposed State budget language that would merge CBLAD into DCR, noting that it was still not clear what the outcome of the proposal would be. He noted that the Secretary of Natural Resources and others had been lobbying to keep this action out of the final budget.

Mr. Crafton then asked Mr. Jakob Helmboldt to present the on the City of Colonial Height's amended Phase I program.

Mr. Helmboldt stated that the City Council adopted the revised Bay Act ordinance on December 9, 2003 with the revised ordinance effective on December 19, 2003. He continued by noting that the City's revised Chesapeake Bay Preservation Areas ordinance addresses all of the required changes, including revisions to definitions, Resource Protection Area designation language, site-specific RPA delineation requirements, and the requirement for a formal exception process for all RPA exception requests. He indicated that the City of Colonial Heights retained its previous CBPA designation, but included the requirement for site-specific investigations of all RPAs as required by the Regulations.

Mr. Helmboldt outlined staff's suggested changes to the City's Bay Act ordinance that are intended for clarification and are not required for their ordinance to be found consistent. He then summarized the three suggestions noted in the staff report. Mr. Helmboldt completed his presentation by stating that the City of Colonial Heights is to be commended for adopting their revised ordinance prior to the deadline of December 31, 2003.

Mr. Crafton asked the Board members if there were any questions or discussion. Hearing none, he called for a motion. On motion by Mr. Nice, seconded by Mr. Froggatt, the Committee voted 3-0 on the following:

The Southern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that the City of Colonial Height'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. Helmboldt continued, providing staff's presentation on the City of Hopewell. He said that the City of Hopewell has incorporated changes into its Bay Act ordinance on December 9, 2003, when the City Council adopted the revised Bay Act ordinance. He said that the City's revised Chesapeake Bay Preservation Areas ordinance addresses all but one of the required changes

He outlined the one required condition, noting that the City of Hopewell chose to include in their revised ordinance an allowance for flood control and stormwater management facilities to be located in Resource Protection Areas, but that all required conditions for the placement of these facilities in the RPA were not included in the City's

ordinance. Specifically, he said that according to the revised Regulations, such an allowance must include the condition that the facility is consistent with a stormwater management program adopted by the City and approved by the Chesapeake Bay Local Assistance Board. He noted that Hopewell currently does not have a stormwater management program, but is considering adopting one and further that in order to be consistent with the Regulations, the City's ordinance must stipulate that the program is approved *by the Chesapeake Bay Local Assistance Board*.

Mr. Helmboldt also outlined several suggested changes to the City's Bay Act ordinance that are intended for clarification and are not required for their ordinance to be found consistent. He then outlined these suggestions for clarification as noted in the staff report.

He finished by stating that the City of Hopewell is scheduled to undergo their compliance evaluation in the 2005 calendar year and that staff was suggesting the September 2005 date to make it easier for the City to undertake the required revision noted above to be made in conjunction with the City's compliance evaluation. He said that it is staff's recommendation that the deadline for the City to make these required ordinance changes be amended to coincide with the compliance evaluation process, or no later than September 30, 2005. He also commended the City of Hopewell for adopting their revised ordinance prior to the deadline of December 31, 2003.

Ms. Innocent, City Planner for the City of Hopewell, was recognized and stated that she had no comments on the proceedings.

Mr. Crafton asked if there were any questions or discussion. Hearing none, he called for a motion. On motion by Mr. Froggatt, seconded by Mr. Nice, the Committee voted 3-0 on the following:

The Southern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that the City of Hopewell'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 recommendation in the staff report no later than September 30, 2005.

Mr. Helmboldt continued, providing staff's presentation on Hanover County.

He noted that Hanover County had incorporated changes into its Bay Act ordinance on December 17, 2003 and that the County's revised Chesapeake Bay Preservation Areas ordinance addresses all of the required changes set forth in the revised regulations. He continued by stating that staff has noted several suggested changes to the County's Bay Act ordinance that are intended for clarification and are not required for their ordinance to be found consistent. He then briefly outlined the suggested changes as noted in the staff report.

He completed his presentation by stating that Hanover County's amended Bay overlay district adequately addresses all required amendments and the Department has no

recommendations for consistency and he further commended Hanover County for adopting their revised ordinance prior to the deadline of December 31, 2003.

Mr. Helmboldt informed the Committee that Hanover County had recently submitted proposed language for an ordinance amendment that would address grandfathering of lots with RPA features, as a result of the County's concerns regarding site-specific determination of perennial streams. Mr. Helmboldt informed the Committee that staff, including Martha Little and Scott Crafton, had conferred with Roger Chaffe of the Attorney General's office to discuss the proposed language and its consistency with the Regulations. Mr. Helmboldt then deferred to Martha Little to outline the concerns that CBLAD had regarding the ordinance amendment as written.

Ms. Little informed the Committee that there were three primary concerns identified in reviewing the proposal: (1) that the language providing grandfathering to plans that had merely been filed was not consistent with the Virginia State Code requirement that there be some substantial governmental approval; (2) that the Regulations already have provisions addressing specific non-conforming uses and structures which would essentially be ignored as a result of the broad nature of the proposed language; and (3) that the proposed amendment does not acknowledge the previous Attorney General opinions that have expressly stated that plans must comply with the Regulations to the degree practicable. Ms. Little informed the Committee that the proposed language would result in parcels with RPA features being given blanket exemption from the Regulations as they would not even be acknowledged as having RPA features, much less required to have any degree of compliance.

Ms. Rebecca Draper responded by thanking CBLAD for staff's accessibility and for the guidance that had been provided regarding the issue of vesting and grandfathering. Ms. Draper stated that the County was attempting to take proactive steps to mitigate instances of lots being platted in such a manner that would likely result in the need for encroachments. She also stated that they are working with developers to provide input on site design or redesign to address these issues and are finding success in eliminating lots that have conditions that would result in the need for encroachment. She also informed the Committee that in most instances they are able to find solutions that minimize or prevent the need for developers to reduce their lot yields as a result of redesign.

Ms. Draper went on to say that developers wishing to retain site plans that will result in lots that have minimal yards or which include steep slopes (either as a result of RPA buffer requirements) will be required to note such constraints on the plats so that potential buyers are aware of the building area limitations that will dictate the development of those particular parcels. She noted that as a result, some developers are choosing to redesign their plans to avoid such issues altogether.

Mr. Crafton asked if there were any questions or further discussion. Hearing none, he called for a motion. On motion by Mr. Nice, seconded by Mr. Rodriguez, the Committee voted 3-0 on the following:

The Southern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that Hanover 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. Helmboldt continued, providing staff's presentation on the Town of Claremont. He stated that the Town of Claremont incorporated these changes into its Bay Act ordinance on December 3, 2003, with the revised ordinance effective upon adoption, and that the Town's revised Chesapeake Bay Preservation Areas ordinance addresses all of the required changes set forth in the revised regulations. He said that staff has noted a number of suggested changes to the Town's Bay Act ordinance that are intended for clarification and are not required for their ordinance to be found consistent. He noted that the seven suggestions for clarification are outlined in the staff report and that staff's recommendation is for the revised Bay Act Ordinance to be found consistent. He finished by commending the Town of Claremont for adopting their revised ordinance prior to the deadline of December 31, 2003.

Mr. Crafton asked if there were any questions or discussion. Hearing none, he called for a motion. On motion by Mr. Froggatt, seconded by Mr. Rodriguez, the Committee voted 3-0 on the following:

The Southern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that the Town of Claremont'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. Helmboldt continued, providing staff's presentation on Henrico County's previous Phase I conditions. He noted that Henrico County amended their Chesapeake Bay Preservation Ordinance on August 14, 2001, resulting from the adoption of the County's Stream Assessment & Watershed Management Program and which constituted a Major Program Modification.

He stated that as a result of the revisions Henrico County had made to its ordinance, the Board found the County's amended ordinance consistent with two provisions on December 10, 2001. He briefed the Committee on the conditions and outlined the actions the County undertook to address the two conditions. He said that the County had adopted revisions to its land management ordinances consistent with Chapters 2 & 3 of the Henrico County Environmental Program Manual and that the County had submitted a report to the Department evaluating the equivalency assumptions of their stormwater program.

He said that staff has determined that both provisions for consistency have been met by Henrico County. He continued by noting that the County's report has provided detailed information addressing all of the issues and requirements outlined in the conditions for consistency noted by the Board and that the County has demonstrated that the equivalency assumptions in the Watershed Management Program have adequately addressed the County's stormwater management requirements.

He completed his presentation by saying that it is staff's opinion that Henrico County has adequately addressed the recommended changes outlined in the provisional finding of consistency and that the County's revised Bay Act Ordinance be found consistent.

Mr. Crafton asked if there were questions or any further discussion. Hearing none, he called for a motion. On motion by Mr. Nice, seconded by Mr. Froggatt, the Committee voted 3-0 on the following:

The Southern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that Henrico County's Phase I program be found consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations.

Mr. Crafton then recognized Ms. Shawn Smith for her presentation on the Town of Tangier.

Ms. Smith said that the Town of Tangier amended their Chesapeake Bay Preservation Ordinance on January 26. She noted that staff worked with the town in drafting their revisions but noted that staff still had one recommendation for consistency. She said that the town had inadvertently left out the required conditions for new or expanded water dependent facilities, and that staff recommends that the Town restore those conditions in the ordinance. She stated that while these conditions are important, the likelihood of the town having new or expanded water dependent facilities is fairly limited, so the deadline for them to address this recommendation is not until 2007, which coincides with the scheduled compliance evaluation for the town.

Mr. Crafton asked if there were questions or any further discussion. Hearing none, he called for a motion. On motion by Mr. Froggatt, seconded by Mr. Rodriguez, the Committee voted 3-0 on the following:

The Southern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that the Town of Tangier 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 recommendation in the staff report no later than June 30, 2007.

Ms. Smith continued, providing staff's presentation for the Town of Eastville.

Ms. Smith stated that staff recommended that the Town's Phase I program be found consistent with no conditions. She said that the Town adopted their revised program on February 4, 2004 and that the Town made all of the required changes.

Mr. Crafton asked if there were questions or any further discussion. Hearing none, he called for a motion. On motion by Mr. Froggatt, seconded by Mr. Nice, the Committee voted 3-0 on the following:

The Southern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that the Town of Eastville'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.

Ms. Smith continued, providing staff's presentation for the Town of Cheriton.

Ms. Smith noted that the Town of Cheriton adopted its revised program on February 4, 2004. Staff worked in developing their revised ordinance and there were no recommendations for consistency.

Mr. Crafton asked if there were questions or any further discussion. Hearing none, he called for a motion. On motion by Mr. Nice, seconded by Mr. Froggatt, the Committee voted 3-0 on the following:

The Southern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that the Town of Cheriton'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.

Ms. Smith continued, providing staff's presentation for Northampton County. Ms. Smith stated that Northampton County adopted its revised Phase I program on February 9, 2004. She noted that the Department worked with the County in developing the revised ordinance and there are no recommendations for consistency. She briefly explained that the County did not revise its CBPA maps, but did include the requirement for onsite determination as required under the regulations. She also stated that the County's Board of Zoning Appeals continues to be named as the body to hear formal exception requests, and that the County decided to require exception requests to any of the Overlay District to be considered by the BZA.

Mr. Crafton asked if there were questions or any further discussion. Hearing none, he called for a motion. On motion by Mr. Froggatt, seconded by Mr. Rodriguez, the Committee voted 3-0 on the following:

The Southern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that Northampton 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.

Ms. Smith continued, providing staff's presentation for the Town of Nassawadox.

Ms. Smith stated that the Town of Nassawadox adopted its revised Phase I program on March 1, 2004 and that there are no recommendations for consistency.

Mr. Crafton asked if there were questions or any further discussion. Hearing none, he called for a motion. On motion by Mr. Nice, seconded by Mr. Rodriguez, the Committee voted 3-0 on the following:

The Southern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that the Town of Nassawadox'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. Crafton thanked Ms. Smith for her presentations, and recognized Mr. Ryan Link who provided staff's presentation for the City of Portsmouth.

Mr. Link introduced Ms. Stacy Porter, Environmental Planner for the City of Portsmouth.

Mr. Link stated that the City of Portsmouth adopted their revised Chesapeake Bay Preservation Area Ordinance on January 13, 2004 and further that this revision addressed most of the changes required under the 2002 Regulation revisions including revisions to definitions, Resource Protection Area designation language, site-specific RPA delineation requirements. However, Mr. Link identified two changes that must be made to the City's ordinance. He explained that throughout its ordinance the City must include reference to reasonable site lines in its section addressing permitted modifications, and the City must amend its ordinance to include the term "land disturbance" as a trigger for a WQIA.

He concluded by saying that based on the review as outlined in the report, staff was recommending that the City of Portsmouth be found consistent with the Regulations subject to the condition that the City address the two mentioned recommendations by December 31, 2004.

Mr. Crafton asked Ms. Porter if the city was okay with the conditions and deadline. She indicated they were. He asked if she had any comments for the Board, and she said she did not. Mr. Crafton asked the Board members if they had any questions or further discussion. Hearing none, he called for a motion. On motion by Mr. Froggatt, seconded by Mr. Rodriguez, the Committee voted 3-0 on the following:

The Southern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that the City of Portsmouth'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 two recommendations in the staff report no later than December 31, 2004.

Mr. Link continued, providing staff's presentation for the City of Virginia Beach. He noted that the City of Virginia Beach adopted their revised Chesapeake Bay Preservation Area Ordinance on December 9, 2003. He indicated that the City's revisions addressed most of the changes required under the 2002 Regulation revisions. He explained that the

City has taken the unique approach of including requirements for a variable width buffer as a component of their RPA and briefly outlined that the variable width buffer includes an area not less than 100 feet in width located adjacent to and landward of the required RPA components but also includes highly erodible soils where present and extends one hundred feet landward of the landward limit of highly erodible soils. He stated that the challenge for the City will be to enforce this buffer requirement which, in some instances, may result in a buffer that extends much further than 100 feet yet is still regulated fully as a component of the RPA.

Mr. Link continued by saying that while the City made progress in addressing the required revisions, staff has noted numerous changes that must still be completed in order for the City's program to be consistent with the Regulations. He stated that staff has six recommendations for consistency that the City must complete. He provided an overview of the six recommended consistency items, as outlined in the staff report. He explained that two recommendations relate to stormwater management facilities; three relate to nonconforming structures; and the last relates to changes in the public road exemption language.

Mr. Link concluded his presentation by noting that staff recommends that the City's ordinance be found consistent with the Regulations subject to the condition that the City adequately addresses the six recommendations for consistency by December 31, 2004.

Mr. Crafton asked if there were any questions or further discussion. Hearing none, he called for a motion. On motion by Mr. Nice, seconded by Mr. Rodriguez, the Committee voted 3-0 on the following:

The Southern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that the City of Virginia Beach'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 six recommendations in the staff report no later than December 31, 2004.

Mr. Link continued, providing staff's presentation for Isle of Wight County. He explained that Isle of Wight adopted their revised Chesapeake Bay Preservation Area Ordinance on December 18, 2003 and that this revision addressed most of the changes required under the 2002 Regulation revisions including revisions to definitions, Resource Protection Area designation language, and site-specific RPA delineation requirements. He did note that staff was recommending one required change for consistency.

He outlined the one recommendation by stating that the County did not include the requirement for erosion and sediment control under the section of their ordinance that addresses "Development Criteria for Resource Protection Areas" and that this requirement must be explicitly included. He concluded by stating that staff recommends that the local program amendments adopted by Isle of Wight County be found consistent with the

Regulations subject to the condition that the County address the E&S condition by December 31, 2004.

Mr. Crafton asked if there were questions or any further discussion. Hearing none, he called for a motion. On motion by Mr. Froggatt, seconded by Mr. Rodriguez, the Committee voted 3-0 on the following:

The Southern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that Isle of Wight 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 City undertake and complete the recommendation in the staff report no later than December 31, 2004.

Mr. Crafton thanked Mr. Link for his presentations, and recognized Mr. Belo who provided staff's presentation for the City of Newport News.

Mr. Belo introduced three representatives from the City of Newport News including Al Riutort, Director of Planning, Collie Owens, Senior Assistant City Attorney, Kathy James-Webb, Senior Planner and Chesapeake Bay Coordinator.

Mr. Belo provided an overview of the City's amended program, noting that the Newport News city council adopted revisions to the City's stormwater management ordinance on December 16, 2003 and that the ordinance revisions took affect April 1, 2004. He stated that the City's revised Chesapeake Bay Preservation ordinance, Chapter 37.1 – Stormwater Management: Article V. Chesapeake Bay Preservation, addresses the majority of the changes required by the Board, including revisions to definitions, Resource Protection Area (RPA) designation language, site-specific RPA delineation requirements, and the requirement for a formal exception process for all RPA exception requests.

Mr. Belo outlined the eight consistency issues as outlined in the staff report, noting that these conditions related to the onsite RPA determination requirement, water quality impact assessments, stormwater management requirements, the definition of water dependent facilities, exempted activities, and administrative exceptions.

Mr. Belo concluded his presentation by stating that staff was recommending that the City's amended Chesapeake Bay Preservation ordinance be found consistent with eight (8) recommendations for consistency that are to be addressed prior to June 30, 2005.

Mr. Crafton asked the representatives from the City of Newport News if they had any comments or concerns they wished to express to the SARC regarding staff's report. Mr. Riutort stated that the City of Newport News will proceed with six of the eight recommendations included in the staff's report, but would like to further discuss recommendations one and two in the staff report. He passed around an aerial photo of the City and a close-up aerial photo of the industrial waterfront. Mr. Riutort and Mr. Owens explained that they felt that the intensive nature of the development and the overwhelming amount of impervious surface found in the City's Industrial Waterfront Intensely Developed

Areas made it illogical to require an environmental site assessment in these areas. Mr. Owens was also concerned that the recommendation as written would require an environmental site assessment for all new development or redevelopment in the City, whether this new development is near a mapped CBPA or not. City staff expressed their confidence in the accuracy of the existing CBPA map.

Mr. Belo reiterated that the Regulations require a site-specific assessment to determine whether perennial water bodies exist on or adjacent to the site proposed for development and that the regulations do not exempt any land from the requirement to conduct a site specific assessment. Ms. Little pointed out that the Board had produced guidance in Administrative Procedures for the Designation and Refinement of Chesapeake Bay Preservation Area Boundaries (in Appendix A) that could be used to screen sites in order to determine if further field investigation was needed to meet the requirement for a site specific assessment. Mr. Belo agreed that the City's CBPA map is not to be used as a definitive map until the scientific basis behind the mapping is documented and approved by the Board. However, the City could use the same resources that might be used to develop a definitive map to screen properties to determine if a site specific assessment is necessary. Mr. Belo agreed to reword the first recommendation to ensure that it more clearly reflects the requirements of Section 9 VAC 10-20-105 of the Regulations.

Mr. Riutort stated that the City was also concerned with recommendation number two, which required a WQIA for any land disturbance in the RPA. City staff feels that this requirement is unnecessarily burdensome for landowners in the City's Industrial Waterfront Intensely Developed Areas. Mr. Riutort pointed out that there is no vegetation in the City's IDAs and any wetlands or sensitive streams or shorelines in the area were likely destroyed decades ago. In addition, Mr. Riutort, pointed out, these areas are covered by VPDES permits for their stormwater runoff.

Mr. Belo stated that Section 9 VAC 10-20-130.1.a of the Regulations requires a water quality impact assessment (WQIA) for any proposed land disturbance in the RPA. Section 37.1-51(b)(3) of the City's ordinance fails to indicate this requirement for IDAs and Section 37.1-52 (Plan of development) specifically exempts IDAs with NPDES or VPDES permits from the plan of development requirements, in which the WQIA requirements are listed. Staff suggested that due to the unique development patterns in the City's IDAs, City staff may find it useful to develop a new simplified WQIA form that would apply to development, redevelopment or land disturbance in IDAs. Staff has been developing WQIA models for consideration by local governments. Mr. Belo promised to share a draft IDA development/redevelopment WQIA model with City staff for their consideration in the possible design of a new City WQIA for IDAs. The City staff agreed these steps could allow them to conform to the literal language of the regulations while still recognizing some of the unique conditions they have.

Mr. Crafton asked if there were any questions or any further discussion. Hearing none, he called for a motion. On motion by Mr. Nice, seconded by Mr. Rodriguez, the Committee voted 3-0 on the following:

The Southern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that the City of Newport'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 eight recommendations in the staff report, as revised, no later than June 30, 2005.

Mr. Crafton asked Mr. Belo to provide staff's presentation for York County.

Mr. Belo stated that York County adopted revisions to its Phase I program on December 16, 2003. The County's revised Bay Act program addresses all of the required Regulation changes, including revisions to definitions, Resource Protection Area (RPA) designation language, site-specific RPA delineation requirements, and the requirement for a formal exception process for all RPA exception requests.

Mr. Belo noted that the County's board of zoning appeals handles formal exceptions to the County's Bay Act program. Further commenting that the zoning administrator approves the expansion of non-conforming structures and permitted encroachments on otherwise unbuildable lots platted prior to March 1, 2002.

Mr. Belo noted that staff recommends that the local Phase I program revisions, adopted by the York County on December 16, 2003, be found consistent with the Chesapeake Bay Preservation Act and Regulations.

Mr. Belo indicated that the morning of the meeting he had spoken with Ms. Anna Drake, the County's Chesapeake Bay Act coordinator and that Ms. Drake indicated that the County was satisfied with Department's staff report and draft resolution.

Mr. Crafton asked if there were any questions or further discussion. Hearing none, he called for a motion. On motion by Mr. Froggatt, seconded by Mr. Rodriguez, the Committee voted 3-0 on the following:

The Southern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that York 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. Crafton then recognized Ms. Smith for her presentation on Accomack County's compliance evaluation.

Ms. Smith began stating that the compliance evaluation process for Accomack County was begun late last year. She then mentioned that three meetings were held with County staff, on December 4, 2003, February 12, 2004 and finally, the site visits were held on March 24, 2004. She said that those meetings helped to complete the Checklist, review site plan files, and conduct site visits.

She continued by noting that the report summarized findings of the compliance evaluation, checklists, site plan reviews and field investigations, noted that, in general, the County is enforcing the requirements of its Bay Act program in an appropriate manner, with staff properly in erosion and sediment control requirements. She said that general development activities in the County are outlined, with single-family homes the dominant type of development occurring in the County, along with some public projects, such as school sites and that site plans and field visits were reviewed for development occurring along portions of the shoreline in the County where residential development is occurring and along Route 13. She explained that the County has very little commercial development within its CBPA because most such development occurs within the independent Towns in the County or outside of the County's CBPA, which is concentrated west of the railroad tracks. She commented that the County's amended Bay Act program was found consistent by the Board at the March meeting, and the County has always been cooperative in its Bay Act program enforcement.

Ms. Smith then explained that based on the compliance evaluation process, the Department has four recommendations for full compliance. One relates to development of an organized BMP tracking and maintenance method, and another relates to consistent implementation and enforcement of the septic pump-out requirement. She stated that the County, like the majority of other localities in Tidewater, has not been proactive about tracking and maintaining required BMPs and septic pump-outs and that the County will be developing tracking systems to address both of these issues. She further commented that the other two recommendations relate to permitted development activities in the RPA. She provided an overview of these recommendations, noting that the first one is focused on ensuring buffer revegetation plans are required in conjunction with all land disturbances, exceptions and waivers in the RPA buffer. She said that the County had previously required onsite BMPs such as French drains or infiltration trenches for some permitted encroachments, but had not required revegetation or mitigation for shoreline erosion control activities. She stated that the County now recognizes that individually sited BMPs are difficult to track and maintain and further that mitigation is required for all permitted RPA buffer encroachments. and the County has agreed to begin requiring revegetation plans for permitted encroachments and other waivers and exceptions, using the Buffer Manual as a guide. She continued, noting that the final recommendation relates to WQIAs, and the fact that WQIAs are to be required for all permitted development activities and land disturbances in the RPA. She said that the County has been requiring certain elements of WQIAs through their POD process, but has not been requiring the submission of a WQIA in every case where one is noted under the Regulations and their ordinance. She explained that all recommendations for full compliance are to be addressed no later than June 30, 2005 and the County has indicated its willingness to address them.

Ms. Smith concluded her presentation, noting that there is one minor change to the staff report, on page 4 under the Ag/Silvicultural practices section. It relates to the statement that County staff has not been attending the ESSWCD Tech committee because an appropriate staff has not been designated. In fact, staff have not been attending because the committee has not been meeting.

She introduced, Ms. Sandy Manter, County Planner and asked if there were questions from the committee.

There were no questions or further discussion, so Mr. Crafton called for a motion. On motion by Mr. Froggatt, seconded by Mr. Rodriguez, the Committee voted 3-0 on the following:

The Southern Area Review Committee recommends that the Board find that certain aspects of Accomack 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 Accomack County undertake and complete the four recommendations contained in the staff report no later than June 30, 2005.

Mr. Crafton then recognized Mr. Alex Adams and Mr. Jakob Helmboldt for staff's presentation on the City of Richmond's compliance evaluation.

Mr. Adams stated that the Department initiated the compliance evaluation process for the City of Richmond in January 2003. He stated that Department staff reviewed the City's programmatic materials and asked for additional information. This process was delayed by the resignation of Ms. Robbie Rhur from the Department. In August 2003, the Department assigned Alex Adams to continue the evaluation process. Mr. Adams informed the Committee that on August 27, 2003 staff reviewed nine representative site plans. However, due to the developed urban nature of the city and the limited Chesapeake Bay Preservation Areas, there were fewer potential projects to review than anticipated. From these site plans, a site visit was scheduled on September 29, 2003 to review four of these sites. A subsequent site visit on November 10, 2003 included staff from the Department's Engineering division to review stormwater management.

Mr. Adams stated that additional conferences with the City to discuss the recommendations outlined in the compliance evaluation occurred prior to the Southern Area Review Committee meeting on February 17, 2004 and at the Environment Virginia conference on April 30, 2004. Mr. Adams informed the Committee that at each of these meetings the City expressed a desire to present additional sites, however the Department did not receive any responses to phone or email requests for subsequent meetings.

Mr. Adams stated that at this time the Department believes that the City needs additional time to update their existing Chesapeake Bay Preservation Ordinance and implement the recommendations contained in the staff report. He stated that Staff had produced the document with the information provided and collected through the compliance evaluation process, but that Staff had been unable to gather adequate information from the City to fully analyze their Bay Act program. He further stated that the Department had concerns especially regarding three fundamental areas of the City's Bay Act Program:

(1) The City's internal process to involve the appropriate departments in the planning stages of proposed site development to ensure Bay Act issues are incorporated into the submitted

design. This is fundamental to the implementation of any land use, water quality program. The Bay Act criteria must be considered in the design and initial review in order to be implemented into the proposed development.

(2) Ensuring enforcement of the existing ordinance and Regulations takes place. Additional staffing and other resources may need to be employed to adequately enforce the existing Regulations.

(3) Response to citizen inquiries and tracking Bay Act and Erosion and Sediment Control violations must be done in a timely manner. The Department has repeatedly and unsuccessfully requested additional information for the compliance evaluation and for following up on citizen inquiries to CBLAD.

Mr. Adams said that in view of (1) the time that has passed since this Compliance Evaluation was initiated, (2) the significance of the deficiencies noted, and (3) the lack of responsiveness from City staff regarding additional site visits and information requested by CBLAD, Department staff believe it is appropriate to recommend that the City's program be found to be non-compliant at this time.

Mr. Adams introduced Debbie Byrd, the Department's program contact person on the City staff. Mr. Crafton asked if she had any comments to make. She said that she would like to comment.

Ms. Byrd indicated that City staff has had a very positive working relationship with CBLAD staff over the years and the City's program has been considered to be very positive in the past. She was troubled that the staff report did not include any references to positive aspects of the City's program. She also indicated that part of the City's difficulty in addressing some of the key issues related to litigation in which they are currently engaged regarding CBLAD regulation issues and also to recent staff vacancies. She indicated that as the litigation gets resolved, the City will complete the revisions to their Bay Act ordinance and address all the compliance issues identified in the staff report. She expressed confidence that these things can be accomplished within the deadline being recommended by Department staff.

Mr. Crafton asked if there were questions or any further discussion. Hearing none, he called for a motion. On motion by Mr. Froggatt, seconded by Mr. Rodriguez, the Committee voted 3-0 on the following:

The Southern Area Review Committee recommends that the Board find that the City of Richmond's implementation of its Phase I program to be non-compliant with §§10.1-2109 and 2111 of the Act and §§9 VAC 10-20-231 and 250 of the Regulations and further that the City of Richmond undertake and complete the eleven recommendations contained in the staff report no later than June 30, 2005 and further that a secondary compliance review be conducted within one year after the City adopts a revised Phase I program for compliance with the Regulations.

Mr. Crafton thanked Mr. Adams and Mr. Helmboldt for their presentation and recognized Mr. Belo for his presentation on the compliance evaluation for the City of Poquoson.

Mr. Belo stated that the Department met with City staff over three meetings in late January and early February of this year. More than 20 site plans were reviewed as part of the evaluation and five field sites were visited.

Mr. Belo commented that the enforcement of the City's Chesapeake Bay Preservation Act program is complicated by the extremely low elevation of the majority of the City and a very high water table both of which require numerous man-made ditches throughout the City to facilitate development. In addition, extensive stands of *phragmites*, an invasive wetland plant species that grows in dense stands and reaches heights of up to 6 meters, complicates City staff's efforts to accurately field delineate RPA features.

Mr. Belo said that despite the challenges posed by the City's topography and limited resources, the City staff is conscientiously implementing the Chesapeake Bay Preservation Act requirements. However, the Department has identified seven elements of the local program that should be amended to more fully comply with the Act and Regulations.

Mr. Belo summarized the recommendations being made in order to ensure the City's program is consistent with the Bay Act and Regulations. Recommendations require (1) the submission of Water Quality Impact Assessments for any land disturbance, development and redevelopment in Resource Protection Areas and for development in Resource Management Areas when required; (2) that the City files provide evidence of RPA buffer vegetation replacement, restoration, and establishment for all approved encroachments, exceptions, expansions of nonconforming structures in the RPA and to address all RPA buffer violations; (3) that the City revise the zoning ordinance, the site plan ordinance, and/or the subdivision ordinance to ensure consistency with section 10-20-191.A 4&5 of the Regulations;(4) that the City review and revise its subdivision ordinance, site plan ordinance and all plan of development guidance documents and checklists to ensure consistency with recent revisions to the Regulations and the City's CBPA ordinance; (5) that the City begin to keep more complete files on all CBPA complaints and violations; (6) that the City develop a program to ensure the regular or periodic maintenance of all stormwater best management practices in order to ensure their continued proper functioning over the long-term;and, (7) that the City ensure that the limits of RPAs are determined and clearly marked on both site plans and on the construction site prior to any clearing or grading.

Mr. Belo stated that, in addition to these seven recommendations the Department is making several suggestions intended to facilitate the City's implementation of its Bay Act program. Although the implementation of the Department's suggestions is voluntary, the Department staff feels that these suggestions will help further improve the City's Bay Act program.

Mr. Belo said the City staff is working very hard to implement an effective and consistent Phase I Bay Act program. City staff has often consulted the Department for guidance and assistance in implementing various aspects of the City's Phase I program. The City staff is to be commended for implementing its Bay Act program despite the topographical, hydrological, meteorological, and financial frustrations with which they are often confronted.

Mr. Belo concluded by stating that despite the City's hard work, the Department staff recommends that the Southern Area Review Committee find that certain aspects of the County's implementation of its Phase I program do not fully comply with the Act and Regulations. The Department staff recommends that the City fully address the seven recommendations included in the staff report no later than June 30, 2005.

Mr. Crafton asked if there were any questions or further discussion. Hearing none, he called for a motion. On motion by Mr. Nice, seconded by Mr. Froggatt, the Committee voted 3-0 on the following:

The Southern Area Review Committee recommends that the Board find that certain aspects of the City of Poquoson's implementation of its Phase I program do not fully comply with §§10.1-2109 and 2111 of the Act and §§9 VAC 10-20-231 and 250 of the Regulations and further that the City of Poquoson undertake and complete the seven recommendations contained in the staff report no later than June 30, 2005.

There being no further business, Mr. Crafton asked for a motion to adjourn. On a motion by Mr. Froggatt, seconded by Mr. Rodriguez, the Committee voted 3-0 to adjourn.