

Chesapeake Bay Local Assistance Board
Monday, June 21, 2004
James Monroe Building
101 N. 14th Street, Conference Room B
Richmond, Virginia

Members Present:

The Honorable Colin D. Cowling
The Honorable Donald W. Davis
The Honorable William E. Duncanson
The Honorable Stuart Mendelsohn
The Honorable Daniel B. Nice
The Honorable David C. Froggatt, Jr.
The Honorable Walter J. Sheffield

Members Absent

The Honorable Sue H. Fitz-Hugh
The Honorable Michael V. Rodriguez

Staff Present:

C. Scott Crafton, Executive Director
Martha Little, Chief of Environmental Planning
Shawn Smith, Principal Environmental Planner
Ryan Link, Principal Environmental Planner
Heather Mackey, Principal Environmental Planner
Alex Adams, Senior Environmental Planner
Beth Baldwin, Senior Environmental Planner
Brad Belo, Senior Environmental Planner
Nancy Miller, Senior Environmental Planner
Jakob Helmboldt, Senior Environmental Planner
Carolyn Elliott, Administrative Assistant

Others:

Roger Chaffe, Attorney General's Office
Joe Maroon, Director, Department of Conservation & Recreation
Leon App, Chief Deputy Direction, Department of Conservation & Recreation
David Dowling, Department of Conservation & Recreation
Mike Fletcher, Department of Conservation & Recreation
Joe Lerch, Chesapeake Bay Foundation
David Kovacs, Virginia Conservation Network
Sherri Jewell, Town Manager, Town of White Stone
Jack Fitzpatrick, Town Manager, Town of Irvington
Tevya Williams, City of Hopewell
Stac Porter, Environmental Planner, City of Portsmouth
Clay Bernick, City of Virginia Beach
Pam Shaw, Isle of Wight County
Al Riutort, City of Newport News
Kathy James-Webb, City of Newport News
Charles Burgess, City Manager, City of Poquoson
Mark Strickler, City of Richmond

Debbie Byrd, City of Richmond
Steve Micas, County Attorney, Chesterfield County
Rob Robertson, Assistant County Attorney, Chesterfield County
Leon Hughes, Prince George County
Jack Larson, Planning Director, Lancaster County
Trent Funkhouser, Town Manager, Town of West Point
Claire Jones, Director of Community Development, Town of West Point

Mr. Davis called the meeting to order at 10:10 a.m. He welcomed guests and asked Ms. Elliott to call the role. Ms. Elliott called the role noting that there was quorum. Mr. Davis introduced Scott Crafton, Director of the Chesapeake Bay Local Assistance Department, and Roger Chaffe, a member of the Attorney General's Office.

Mr. Davis called for the approval of the March 22, 2004 Board meeting minutes subject to removing Acting from Mr. Crafton's title on the first page. Mr. Cowling motioned to approve the minutes. Mr. Mendelsohn seconded. Mr. Davis called for further comments. There were none. He called for the vote. All members voted aye.

Mr. Davis asked Mr. Crafton for the presentation of the Executive Director's Report.

Mr. Crafton welcomed guests and encouraged everyone to sign in. He began his comments noting that CBLAD staff had focused on several significant work efforts since the March Board meeting. He said these included (1) conducting our first perennial stream determination workshop for local governments; (2) developing an updated agency strategic plan; (3) encouraging and assisting local governments that had not adopted ordinance revisions yet to do so; and (4) addressing legislative budget language to merge CBLAD into the Department of Conservation and Recreation.

He said on April 19-23, staff conducted the first workshop to provide training pertaining to our perennial stream determination protocols. The first day's class was held at Henrico County's training facility, and then on the four succeeding days we provided field training in four different locations around Tidewater, so local staff could attend a field day in their general area. He said the trainers included Dr. Jim Gregory of North Carolina State University, Dave Penrose and Larry Eaton of the North Carolina Division of Water Quality, who have been largely responsible for the North Carolina Perennial Stream Determination Protocol that is one of your approved protocols, and others who assisted with the training were Matt Meyers and Shannon Curtis of Fairfax County, Ann Samford of Virginia Geotechnical Services, and CBLAD's own Catherine Harold and Alex Adams.

Mr. Crafton publicly thanked the DEQ Coastal Program for providing a grant for this training, which made it possible for the local government folks to receive the training at no cost. He said feedback from this training has been very positive, and plans were to hold similar training in the future, both for local government staff who could not attend this training and for those from the private sector who are interested.

Mr. Crafton explained that the agency's strategic plan had not been updated for four years and a large number of staff that have been employed within the past year. He also advised that the Administration and the General Assembly have both initiated efforts to emphasize more comprehensive agency strategic planning and the linking of agency goals and objectives to performance budgeting. Mr. Crafton noted that CBLAD has been working with Herb Hill, of the Planning unit at the Department of Planning and Budget, who has been facilitating the process that included several meetings with management and staff, including a retreat held on June 10th at VIMS. He said results from the strategic planning were being compiled.

Mr. Crafton explained that staff has continued to review local ordinance revisions and to work with those localities that, by the March meeting, had not yet adopted revised ordinances. He also noted that the agenda that had been sent listed eight localities that had not yet adopted, however, several of those have recently adopted ordinance revisions, and two others have submitted a schedule to do so within the next several weeks.

Mr. Crafton said that staff had learned about 10 days ago that the Administration decided that the merger of CBLAD into DCR, included in the budget the General Assembly finally passed, would take place as proposed on July 1st. He said that both CBLAD and DCR staff has been scrambling to take care of all the initial administrative details needed to integrate staff and systems into DCR's infrastructure and to assure that employee pay and benefits are not interrupted. He explained the plan is that CBLAD would be organized as a separate Division within DCR, and would be called the Division of Chesapeake Bay Local Assistance. He said over the next several months, staff would continue to look at the various options afforded by the merger. Mr. Crafton stated that he will serve as the Acting Division Director until further notice.

Mr. Crafton noted the presence of Mr. Joe Maroon, the Director of DCR and a friend of his for many years going back to college days at Virginia Tech. He said that Mr. Maroon had served on the original land use roundtable that created the Bay Act, this board and department and that he also served from time to time on various technical advisory committees. Mr. Crafton said that Mr. Maroon is a highly regarded environmental professional having received one of the two first-ever Environmental Leadership Awards for the private sector given out at VMI in 2000. He introduced Mr. Maroon and asked that Mr. Maroon introduce other DCR staff with him and share his thoughts about DCR and the merger.

Mr. Maroon commented that he appreciated the opportunity to address the Board and staff and was certain that he would be seeing everyone more often in days to come and looked forward to working with the Board.

Mr. Maroon said that even though neither CBLAD nor DCR sought this change, DCR is going to do their best to work with Mr. Crafton and staff to facilitate a quality merger in a positive manner that will benefit both of the agencies in the long term. He went on to say that he had high regard for Mr. Crafton and staff and looked forward to having them as a part of DCR. He assured that the Board and the program will remain intact, in spite the merger of the staff. He confirmed that he had a long personal history with the program, and the Department, and did serve on the original land use roundtable in 1986 and 87 that lead up to the creation of the Act, and on the agency's first technical committee and others as well.

Mr. Maroon said that during the last few weeks he has enjoyed the opportunity to get reacquainted with the staff and attended one of the day-long sessions of the strategic planning. He said that he has familiarized himself with the kinds of things staff and the Board have been dealing with over the last several years. He agreed with Mr. Crafton that work would be done over the next several months to achieve a closer relationship with staff to find the synergies and efficiencies that the merger will afford. He said he expected to report the progress to the Board at the September meeting, and in the meantime he welcomed the opportunity to meet with any of the Board members individually.

Mr. Maroon cautioned not to expect much to change immediately. He said that it was only a few days ago that he found out the merger was going to take place and fully expects that on July 2, 2004, things will not look much different than they do today.

Mr. Maroon said that one of the things that would change is that the unit's name will be the Division of Chesapeake Bay Local Assistance. Mr. Crafton will continue to head the Division and report to Mr. Maroon, and he will also be a part of the senior management team that includes the Directors of the other seven divisions within the Department as well as other senior members of the Director's office.

Mr. Maroon said he will give the Board a more complete briefing about the Department of Conservation and Recreation at the September meeting. He noted briefly that, by statute, DCR is the state's lead nonpoint source agency. He said the agency oversees the agriculture cost share program, nutrient management program, erosion and sediment control program and was recently given expanded responsibility for the state's storm water management program. He said staff worked closely with many partners including the soil and water conservation districts, local governments, private sector, state agencies like CBLAD and the Department of Forestry, and others and has been helping coordinate the development of the Chesapeake Bay tributary strategies under the direction of Secretary Murphy's office.

Mr. Maroon went on to say that in addition to these responsibilities DCR managed Virginia's award winning state parks and natural heritage programs, issue certificates for dam safety and works on flood plain management. He said they develop the state's outdoor recreation plan, handle several grant programs and assist with land conservation. He said they also have the responsibility of several other Boards and advisory committees including the Board of Conservation and Recreation, the Virginia Soil and Water Conservation Board and the State's Scenic River Advisory Board.

Mr. Maroon said that with the addition of CBLAD staff, the agency will have about 420 full time staff positions that will balloon over the summer as they add about 800 state park staff. Mr. Maroon introduced two of his staff, Mr. David Dowling, DCR's Policy Manager, and Michael Fletcher, Board Logistics Liaison.

Mr. Maroon commented that the structural changes are occurring at a somewhat inopportune time in light of the enforcement decisions that are on the agenda, and further that he believed in going the extra mile in solving differences. He awaits the Board's instructions and will work

within their direction to address these concerns.

Mr. Maroon closed his comments saying that he looks forward to working with the Board to see that the benefits to water quality that are afforded by the Bay Act continue, and it is his hope that over time there will be a strengthening in the relationships with all the stakeholders.

Mr. Davis asked if there were any questions for Mr. Maroon. There were none. Mr. Davis thanked Mr. Maroon for his report.

Mr. Crafton commented that his report was concluded, and asked if there were any questions. There were none.

Mr. Davis thanked Mr. Crafton for his report .

Mr. Davis called for the Consent Items. Mr. Mendelsohn motioned to approve all localities listed below as recommended in the respective staff reports.

Spotsylvania County, Phase I Revisions
City of Colonial Heights, Phase I Revisions
Hanover County, Phase I Revisions
Town of Claremont, Phase I Revisions
Henrico County, Review of previous Phase I conditions
Town of Eastville, Phase I Revisions
Town of Cheriton, Phase I Revisions
Town of Nassawadox, Phase I Revisions
Northampton County, Phase I Revisions
York County, Phase I Revisions

Mr. Duncanson seconded.

Mr. Davis called for further comments. There were none.

Mr. Davis called for the vote. All members voted aye. Mr. Davis noted that the motion carried.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

June 21, 2004

RESOLUTION

LOCAL PROGRAM, PHASE I

SPOTSYLVANIA COUNTY #20

Modification – Consistent

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

WHEREAS § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1(a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS Spotsylvania County adopted a local Phase I program on November 26, 1991 and

WHEREAS on February 25, 1993, Spotsylvania County's revised Phase I program was found consistent by the Chesapeake Bay Local Assistance Board, and

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

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

WHEREAS Spotsylvania County adopted a revised local program to comply with §§ 9VAC10-20-60 1 and 2 of the Regulations on February 10, 2004; and

WHEREAS the Chesapeake Bay Local Assistance Board has adopted *Procedural Policies for Local Program Review* which addresses, among other items, review of modifications to local programs; and

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

WHEREAS on May 4, 2004 the Local Program Review Committee for the Northern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds Spotsylvania County's revised Phase I program consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations.

The Director of the Chesapeake Bay Local Assistance Department certifies that the Chesapeake Bay Local Assistance Board adopted this resolution in open session on June 21, 2004.

C. Scott Crafton
Executive Director
Chesapeake Bay Local Assistance Department

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
June 21, 2004
RESOLUTION
LOCAL PROGRAM, PHASE I
CITY OF COLONIAL HEIGHTS - #15
Modification – Consistent

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

WHEREAS § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1(a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS the City of Colonial Heights adopted a local Phase I program on September 12, 1990, and

WHEREAS on March 25, 1993, the City's Phase I program was found consistent by the Chesapeake Bay Local Assistance Board, and

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

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

WHEREAS the City of Colonial Heights adopted a revised local program to comply with §§ 9VAC10-20-60 1 and 2 of the Regulations on December 9, 2003; and

WHEREAS the Chesapeake Bay Local Assistance Board has adopted *Procedural Policies for Local Program Review* which addresses, among other items, review of modifications to local programs; and

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

WHEREAS on May 4, 2004 the Local Program Review Committee for the Southern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the City of Colonial Heights' revised Phase I program consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations.

The Director of the Chesapeake Bay Local Assistance Department certifies that this resolution was adopted in open session on June 21, 2004 by the Chesapeake Bay Local Assistance Board.

C. Scott Crafton
Executive Director
Chesapeake Bay Local Assistance Department

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
June 21, 2004
RESOLUTION
LOCAL PROGRAM, PHASE I
HANOVER COUNTY - #16
Modification – Consistent

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

WHEREAS § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1(a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS Hanover County adopted a local Phase I program on October 24, 1990, and amended on June 25, 1997, and March 28, 2001, and

WHEREAS on September 17, 2001, the County's Phase I program was found consistent by the Chesapeake Bay Local Assistance Board, and

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

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

WHEREAS Hanover County adopted a revised local program to comply with §§ 9VAC10-20-60 1 and 2 of the Regulations on December 17, 2003; and

WHEREAS the Chesapeake Bay Local Assistance Board has adopted *Procedural Policies for Local Program Review* which addresses, among other items, review of modifications to local programs; and

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

WHEREAS on May 4, 2004 the Local Program Review Committee for the Southern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds Hanover County's revised Phase I program consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations.

The Director of the Chesapeake Bay Local Assistance Department certifies that this resolution was adopted in open session on June 21, 2004 by the Chesapeake Bay Local Assistance Board.

C. Scott Crafton
Executive Director
Chesapeake Bay Local Assistance Department

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

June 21, 2004

RESOLUTION

LOCAL PROGRAM, PHASE I

TOWN OF CLAREMONT - #61

Modification – Consistent

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

WHEREAS § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management

Regulations states that the elements in subsections 1(a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS The Town of Claremont adopted a local Phase I program on December 3, 1991, and amended on June 2, 1992, and

WHEREAS on December 2, 1993, the Town's Phase I program was found consistent by the Chesapeake Bay Local Assistance Board, and

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

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

WHEREAS the Town of Claremont adopted a revised local program to comply with §§ 9VAC10-20-60 1 and 2 of the Regulations on December 3, 2003; and

WHEREAS the Chesapeake Bay Local Assistance Board has adopted *Procedural Policies for Local Program Review* which addresses, among other items, review of modifications to local programs; and

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

WHEREAS on May 4, 2004 the Local Program Review Committee for the Southern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the Town of Claremont's revised Phase I program consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations.

The Director of the Chesapeake Bay Local Assistance Department certifies that this resolution was adopted in open session on June 21, 2004 by the Chesapeake Bay Local Assistance Board.

C. Scott Crafton
Executive Director
Chesapeake Bay Local Assistance Department

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
June 21, 2004
RESOLUTION
LOCAL PROGRAM, PHASE I
HENRICO COUNTY - #23
Determination of Consistency- Consistent

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

WHEREAS § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1 (a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS Henrico County adopted an amended Phase I local program to comply with §§ 9VAC10-20-60.1 and 2 on August 14, 2001; and

WHEREAS on December 10, 2001 the Chesapeake Bay Local Assistance Board found Henrico County's Phase I program consistent with two recommendations for consistency that were to be addressed by the County and set a compliance date of December 31, 2003; and

WHEREAS the Board of Supervisors for Henrico County adopted amendments to the Phase I program on November 12, 2003; and

WHEREAS staff has reviewed Henrico County's revised Phase I program for consistency with the previous consistency recommendations and the Act and Regulations; and

WHEREAS on May 4, 2004 the Local Program Review Committee for the Southern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendations in the staff report and of the Review Committee; now

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds Henrico County's Phase I program consistent with § 10.1-2109 of the Act and §§ 9VAC10-20-60.1 and 2 of the Regulations.

The Director of the Chesapeake Bay Local Assistance Department certifies that the Chesapeake Bay Local Assistance Board adopted this resolution in open session on June 21, 2004.

C. Scott Crafton
Executive Director
Chesapeake Bay Local Assistance Department

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
June 21, 2004
RESOLUTION
LOCAL PROGRAM, PHASE I
TOWN OF EASTVILLE #79
Modification – Consistent

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

WHEREAS § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1(a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS the Town of Eastville adopted a local Phase I program on March 14, 1995, and

WHEREAS on September 21, 1995, the Town of Eastville's Phase I program was found consistent by the

Chesapeake Bay Local Assistance Board, and

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

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

WHEREAS the Town of Eastville adopted a revised local program to comply with §§ 9VAC10-20-60 1 and 2 of the Regulations on February 4, 2004; and

WHEREAS the Chesapeake Bay Local Assistance Board has adopted *Procedural Policies for Local Program Review* which addresses, among other items, review of modifications to local programs; and

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

WHEREAS on May 4, 2004 the Local Program Review Committee for the Southern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the Town of Eastville's revised Phase I program consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations.

The Director of the Chesapeake Bay Local Assistance Department certifies that this resolution was adopted in open session on June 21, 2004 by the Chesapeake Bay Local Assistance Board.

C. Scott Crafton
Executive Director
Chesapeake Bay Local Assistance Department

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

June 21, 2004

RESOLUTION

LOCAL PROGRAM, PHASE I

TOWN OF CHERITON #78

Modification – Consistent

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

WHEREAS § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1(a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS the Town of Cheriton adopted a local Phase I program on August 18, 1994, and amended on November 6, 1995, and December 16, 1999, and

WHEREAS on May 2, 2000, the Town of Cheriton's Phase I program was found consistent by the Chesapeake Bay Local Assistance Board, and

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

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

WHEREAS the Town of Cheriton adopted a revised local program to comply with §§ 9VAC10-20-60 1 and 2 of the Regulations on February 4, 2004; and

WHEREAS the Chesapeake Bay Local Assistance Board has adopted *Procedural Policies for Local Program Review* which addresses, among other items, review of modifications to local programs; and

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

WHEREAS on May 4, 2004 the Local Program Review Committee for the Southern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the Town of Cheriton's revised Phase I program consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations.

The Director of the Chesapeake Bay Local Assistance Department certifies that this resolution was adopted in open session on June 21, 2004 by the Chesapeake Bay Local Assistance Board.

C. Scott Crafton
Executive Director
Chesapeake Bay Local Assistance Department

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
June 21, 2004
RESOLUTION
LOCAL PROGRAM, PHASE I
TOWN OF NASSAWADOX #73
Modification – Consistent

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

WHEREAS § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1(a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS the Town of Nassawadox adopted a local Phase I program on May 17, 1993 with amendments on January 17, 1994, and

WHEREAS on March 3, 1994 the Town of Nassawadox's Phase I program was found consistent by the Chesapeake Bay Local Assistance Board, and

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

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

WHEREAS the Town of Nassawadox adopted a revised local program to comply with §§ 9VAC10-20-60 1 and 2 of the Regulations on March 1, 2004; and

WHEREAS the Chesapeake Bay Local Assistance Board has adopted *Procedural Policies for Local Program Review* which addresses, among other items, review of modifications to local programs; and

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

WHEREAS on May 4, 2004 the Local Program Review Committee for the Southern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the Town of Nassawadox's revised Phase I program consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations.

The Director of the Chesapeake Bay Local Assistance Department certifies that this resolution was adopted in open session on June 21, 2004 by the Chesapeake Bay Local Assistance Board.

C. Scott Crafton
Executive Director
Chesapeake Bay Local Assistance Department

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
June 21, 2004
RESOLUTION
LOCAL PROGRAM, PHASE I
NORTHAMPTON COUNTY #21
Modification – Consistent

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

WHEREAS § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1(a map delineating Chesapeake Bay Preservation Areas) and 2

(performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS Northampton County adopted a local Phase I program in 1991 and

WHEREAS on April 4, 1991, Northampton County's Phase I program was found consistent by the Chesapeake Bay Local Assistance Board, and

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

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

WHEREAS Northampton County adopted a revised local program to comply with §§ 9VAC10-20-60 1 and 2 of the Regulations on February 9, 2004; and

WHEREAS the Chesapeake Bay Local Assistance Board has adopted *Procedural Policies for Local Program Review* which addresses, among other items, review of modifications to local programs; and

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

WHEREAS on May 4, 2004 the Local Program Review Committee for the Southern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds Northampton County's revised Phase I program consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations.

The Director of the Chesapeake Bay Local Assistance Department certifies that this resolution was adopted in open session on June 21, 2004 by the Chesapeake Bay Local Assistance Board.

C. Scott Crafton
Executive Director
Chesapeake Bay Local Assistance Department

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

June 21, 2004

RESOLUTION

LOCAL PROGRAM, PHASE I

YORK COUNTY - #3

Modification – Consistent

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

WHEREAS § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management

Regulations states that the elements in subsections 1(a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS York County adopted a local Phase I program on September 6, 1990, and

WHEREAS on December 5, 1991, York County's Phase I program was found consistent by the Chesapeake Bay Local Assistance Board, and

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

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

WHEREAS York County adopted a revised local program to comply with §§ 9VAC10-20-60 1 and 2 of the Regulations on December 16, 2003; and

WHEREAS the Chesapeake Bay Local Assistance Board has adopted *Procedural Policies for Local Program Review* which addresses, among other items, review of modifications to local programs; and

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

WHEREAS on May 4, 2004 the Local Program Review Committee for the Southern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds York County's revised Phase I program consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations.

The Director of the Chesapeake Bay Local Assistance Department certifies that this resolution was adopted in open session on June 21, 2004 by the Chesapeake Bay Local Assistance Board.

C. Scott Crafton
Executive Director
Chesapeake Bay Local Assistance Department

Mr. Davis called for the presentation of Phase I Local Program Reviews. Mr. Crafton advised that Ms. Mackey had an early morning appointment and requested that the City of Fairfax be heard last. Mr. Davis agreed and recognized Ms. Beth Baldwin for staff's presentation for the Town of Warsaw. Ms. Baldwin provided a summary of the Town's amended program noting that in August 2002, Department staff sent an initial mark up of the Town of Warsaw's Bay Act ordinance, highlighting the necessary changes. She said that the Town of Warsaw incorporated these changes and officially adopted its revised program on October 9, 2003.

She noted that while there are a few suggested clarifications the Town may want to consider, there are only two conditions for consistency. She then summarized these two conditions, noting that the first relates to administrative waivers on nonconforming lots and that the Town must change the date of adoption from October 9, 2003, the date the revisions were adopted, to the original program adoption date of September 5, 1990. She said that the Town may want to consider the suggestion noted in the staff report to accommodate structures that are made nonconforming as a result of the revisions.

She continued, saying that the second condition refers to development criteria in the RPA. She said that since the Town chose to include stormwater and flood control facilities as a permitted type of development in the RPA, it must first adopt a stormwater management plan that then must be approved by the Board as this is one of the requirements for allowing this type of development.

She completed her summary by noting that the Town of Warsaw did commendable work in revising its ordinance to be consistent with the Regulations, and Department staff identified only two conditions that need to be addressed. She said that since neither condition should impact the Town's ability to adequately implement its local program and since 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. Ms. Baldwin stated that at its meeting of May 4, 2004, NARC concurred with this recommendation.

Mr. Davis asked if there were any questions for Ms. Baldwin. There were none.

Mr. Davis called for a motion. Mr. Duncanson motioned to find the Town of Warsaw's amended Phase I program 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.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

June 21, 2004

RESOLUTION

LOCAL PROGRAM, PHASE I

TOWN OF WARSAW - #02

Modification – Conditional

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

WHEREAS § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1(a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS the Town of Warsaw adopted a local Phase I program on September 5, 1990, and

WHEREAS on January 25, 1991, the Town of Warsaw's Phase I program was found consistent by the Chesapeake Bay Local Assistance Board, and

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

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

WHEREAS the Town of Warsaw adopted a revised local program to comply with §§ 9VAC10-20-60 1 and 2 of the Regulations on October 9, 2003; and

WHEREAS the Chesapeake Bay Local Assistance Board has adopted *Procedural Policies for Local Program Review* which addresses, among other items, review of modifications to local programs; and

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

WHEREAS on May 4, 2004 the Local Program Review Committee for the Northern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the two recommendations in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds Warsaw's revised Phase I program consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations subject to the following condition that the Town undertake and complete the two recommendations no later than December 31, 2006.

1. For consistency with § 9 VAC 100-20-130.1.e of the Regulations, amend Section 3-5-1.g (1) (d) of the Town's ordinance by adding another condition that states the Town of Warsaw has a stormwater management plan that have been approved by the Board as a Phase I modification.
2. To be consistent with Section 9 VAC 10-20-150.A.1 of the Regulations, amend Section 3-5-1.m of the ordinance by changing the date from October 9, 2003 to September 5, 1990.

BE IT FINALLY RESOLVED that failure by the Town of Warsaw to meet the above established compliance date of December 31, 2006 will result in the local program becoming inconsistent with § 10.1-2109 of the Act and §§ 9VAC10-20-60.1 and 2 of the Regulations and subject the Town of Warsaw to the compliance provisions as set forth in §10.1-2103.10 of the Act and §9VAC10-20-250 of the Regulations.

The Director of the Chesapeake Bay Local Assistance Department certifies that this resolution was adopted in open session on June 21, 2004 by the Chesapeake Bay Local Assistance Board.

C. Scott Crafton
Executive Director
Chesapeake Bay Local Assistance Department

Mr. Froggett seconded the motion.

Mr. Davis called for further comments. There were none.

Mr. Davis called for the vote. All members voted aye. Mr. Davis noted the motion

carried.

Ms. Baldwin continued with staff's presentation for Montross, and provided the following summary.

Ms. Baldwin said that beginning in August 2002, Department staff provided comments on changes necessary to Montross' existing Bay Act ordinance. She said that the Montross Town Council officially adopted those revisions on December 16, 2003.

Ms. Baldwin noted that Montross had adopted its original Bay Act ordinance by referencing Westmoreland County's ordinance in its Town Code. She said 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, the only stipulation being that the Town could not adopt by reference any future changes that a County might make to its Bay Act ordinance.

She stated 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, and the Town has 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. However, since Westmoreland County must make several revisions to its overlay district, the Town of Montross must undergo the adoption process again.

She completed her summary by stating 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. The NARC agreed with this staff recommendation at its May 4, 2004 meeting.

Mr. Davis asked if there was anyone present from the Town of Montross. There were none. Mr. Davis asked if there were any questions for Ms. Baldwin. There were none.

Mr. Davis called for a motion. Mr. Cowling motioned to find the Town of Montross' amended Phase I program 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 December 31, 2004.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

June 21, 2004

RESOLUTION

LOCAL PROGRAM, PHASE I

TOWN OF MONTROSS - #39

Modification – Conditional

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

WHEREAS § 9 VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1(a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS the Town of Montross adopted a local Phase I program on March 26, 1991, and

WHEREAS on December 5, 1991, the Town of Montross' Phase I program was found consistent by the Chesapeake Bay Local Assistance Board, and

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

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

WHEREAS the Town of Montross adopted a revised local program to comply with § 9 VAC10-20-60 1 and 2 of the Regulations on December 16, 2003; and

WHEREAS the Chesapeake Bay Local Assistance Board has adopted *Procedural Policies for Local Program Review* which addresses, among other items, review of modifications to local programs; and

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

WHEREAS on May 4, 2004, the Local Program Review Committee for the Northern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the Town of Montross' revised Phase I program consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations subject to the following condition that the Town of Montross undertake and complete the following one recommendation no later than December 31, 2004:

1. The Town of Montross must re-adopt its Bay Act overlay district and, if applicable, prior to adoption, make any necessary revisions to section numbers that are referenced if such numbers are changed as a result of Westmoreland's amendments to its Bay Act.

BE IT FINALLY RESOLVED that failure by the Town of Montross to meet the above established compliance date of December 31, 2004 will result in the local program becoming inconsistent with § 10.1-2109 of the Act and §§ 9VAC10-20-60.1 and 2 of the Regulations and subject the Town of Montross to the compliance provisions as set forth in §10.1-2103.10 of the Act and §9VAC10-20-250 of the Regulations.

The Director of the Chesapeake Bay Local Assistance Department certifies that this resolution was adopted in open session on June 21, 2004 by the Chesapeake Bay Local Assistance Board.

C. Scott Crafton
Executive Director
Chesapeake Bay Local Assistance Department

Mr. Duncanson seconded the motion.

Mr. Davis called for further comments. There were none.

Mr. Davis called for the vote. All members voted aye. Mr. Davis noted that the motion carried.

Ms. Baldwin continued with staff's presentation for Northumberland County and provided the following summary of the County's revised program.

Ms. Baldwin began by stating that Department staff provided initial comments on changes necessary to the County's existing Bay Act ordinance in August 2002 and Department staff sent additional comments in May 2003. She said 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 said that Department staff identified five consistency items. She began her overview of these items, by noting first that the County must add a definition of substantial alteration. Second, in the area of general performance criteria, she noted that the County added the option of alternating drainfields in lieu of 100% reserve drainfield requirement, but did not include the requirement of annual notification to owners of such systems to remind them to switch the valves on the systems.

The third item concerns the administrative process for nonconforming structures. She said that this section of the County's ordinance includes language that may be interpreted as allowing accessory structures to be expanded through an administrative process. She stated 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 summary by noting that Northumberland County included a section in its ordinance that declares approved site plans shall be valid for a period of five years. She said that this time period is consistent with the Section 15.2-2261 of the Code of Virginia, but as stated in subsection E (iii) of this section, such a declaration does not relieve the locality from having such plans conform to the greatest extent possible to local Bay Act requirements. She explained that Northumberland should delete this section in its entirety or add that such plans must conform to the greatest extent practicable to Bay Act requirements.

She concluded her summary 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. At its May 4, 2004 meeting, the NARC concurred with this staff recommendation.

Ms. Baldwin updated the Board regarding County's response on the conditions cited in the staff report. She stated that in a letter dated May 25, sent by Mr. Kenny Eades,

Northumberland County Administrator, and in subsequent conversations with local staff, the County has indicated that it intends to make the required changes identified in the staff report. She noted that these include adding the definition of substantial alteration, deleting the section pertaining to the time period of approved site plans, and revising the section on nonconforming structures. Finally, she said that the County stated that it intends to delete the option of alternating drain fields. The County feels this option was no longer needed since there are a variety of engineered on-site systems that could serve as reserve sites the County believed that the notification process for switching valves could potentially be difficult to implement.

Mr. Davis asked if anyone was present from Northumberland County. There were none. Mr. Davis asked Ms. Baldwin if the Bay Act was under the Northumberland's zoning ordinance or if it stood alone. Ms. Baldwin responded that was a stand-alone ordinance.

Mr. Davis called for a motion. Mr. Duncanson motioned to find Northumberland County's amended Phase I program consistent with § 10.1-2109 of the Act and §§ 9 VAC 10-20-60 1 and 2 of the Regulations, subject to the condition that the County undertake and complete the two recommendations in the staff report no later than December 31, 2004.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

June 21, 2004

RESOLUTION

LOCAL PROGRAM, PHASE I

NORTHUMBERLAND COUNTY - #07

Modification – Conditional

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

WHEREAS § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1(a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS Northumberland County adopted a local Phase I program on September 13, 1990, and

WHEREAS on January 25, 1991, Northumberland County's Phase I program was found consistent by the Chesapeake Bay Local Assistance Board, and

WHEREAS on May 13, 1999 and December 9, 1998, Northumberland County amended its Phase I program in such a manner as to constitute a major program modification

WHEREAS on April 10, 2000, Northumberland County's Phase I program was found consistent by the Chesapeake Bay Local Assistance Board, and

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

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

WHEREAS Northumberland County adopted a revised local program to comply with §§ 9VAC10-20-60 1

and 2 of the Regulations on February 11, 2004; and

WHEREAS the Chesapeake Bay Local Assistance Board has adopted *Procedural Policies for Local Program Review* which addresses, among other items, review of modifications to local programs; and

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

WHEREAS on May 4, 2004 the Local Program Review Committee for the Northern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the five recommendations in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds Northumberland County's revised Phase I program consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations subject to the following condition that the County undertake and complete the five recommendations no later than December 31, 2004.

1. Amend Section 54-6 to provide for a definition of "substantial alteration" that is consistent with the definition set forth in § 9 VAC 10-20-40 of the Regulations.
2. Amend Section 54-16.B (6) to be consistent with the requirements set forth in § 9 VAC 10-20-120.7.b (3) (9) of the Regulations.
3. Amend Section 54-17.B be striking the phrase "or additions" to be consistent with Section 9 VAC 10-20-150.A.1 of the Regulations.
4. Amend Section 54-17.B (1) to be consistent with Section 9 VAC 10-20-150.A.1.a of the Regulations.
5. Amend Section 54-32 of the ordinance to be consistent § 15.2-2261 of the Code of Virginia and § 10.1-2100 et. seq. (The Chesapeake Bay Preservation Act) of the Code of Virginia.

BE IT FINALLY RESOLVED that failure by Northumberland County to meet the above established compliance date of December 31, 2004 will result in the local program becoming inconsistent with § 10.1-2109 of the Act and §§ 9VAC10-20-60.1 and 2 of the Regulations and subject Northumberland County to the compliance provisions as set forth in §10.1-2103.10 of the Act and §9VAC10-20-250 of the Regulations.

The Director of the Chesapeake Bay Local Assistance Department certifies that this resolution was adopted in open session on June 21, 2004 by the Chesapeake Bay Local Assistance Board.

C. Scott Crafton
Executive Director
Chesapeake Bay Local Assistance Department

Mr. Mendelsohn seconded the motion.

Mr. Davis called for further comments. There were none.

Mr. Davis called for the vote. All members voted aye. Mr. Davis noted that the motion carried.

Ms. Baldwin continued with staff's presentation for the Town of White Stone and introduced Ms. Sheri Jewell, Town Manager for the Town of White Stone. Ms. Baldwin provided the following summary.

Ms. Baldwin said that an initial mark up of the Town's Bay Act ordinance was sent to the newly appointed Town Manger, Sherri Jewell, in July 2003. She explained that in January 2004, the Town Council, objecting to some of the proposed changes listed in the mark up, and recognizing that Lancaster County implements much of its program, decided to adopt verbatim the ordinance revisions that Lancaster Country had adopted in October 2003.

She said that since Lancaster's local program has been recommended as inconsistent, and the Town of White Stone adopted, to the letter, Lancaster's revised Bay Act ordinance, Department staff is recommending that White Stone's program be found inconsistent as well.

Ms. Baldwin said that the ten conditions noted in the staff report are the same as those for Lancaster and that the conditions relate to development criteria in RPAs, buffer policies, septic pump-out criteria, conditions for exempted activities, and administrative waivers and exceptions. Ms. Baldwin offered to further expound upon these conditions, and she asked the Board if they would like to hear the conditions in detail. Mr. Davis also asked the Board if they needed additional detail. The Board responded that they did not need further explanation.

Ms. Baldwin went on to say that besides these consistency items, since the Town adopted Lancaster's ordinance to the letter, it did not properly identify the local administrative authority responsible for approving expansions, buffer modifications, and certain encroachments. She further stated that the Town did not identify the local body responsible for hearing formal exceptions.

As Ms. Baldwin stated previously, Department staff recommended that the Town of White Stone's revised Phase I program be found inconsistent and that the Town be required to undertake and complete the 10 consistency items by December 31, 2004. She noted that at its meeting of May 4, 2004, the NARC concurred with this staff recommendation.

Mr. Davis asked Ms. Jewell if she had any comments. Ms. Jewel came forward and introduced Mr. Jack Larson, Planning Director of Lancaster County. She said the Town of White Stone wanted to work together to resolve the consistency issues. She said the Town was a part of Lancaster County and the Town's jurisdiction is a very small area in the middle of County. She said the Town does not encroach or come into the 100 foot buffer whatsoever, and as a result, some of the conditions cited in the staff report may not be applicable. She said that as Town Manager, she works three days a week and there is no support staff. She said the septic pump-out program was the largest concern for the Town because the Town believes it is not equipped to effectively manage this particular requirement of the Regulations. She said because of these reasons the Town Council and the Mayor of White Stone supported and endorsed Lancaster County's position. She said that as far as the definitions that were needed there could be agreement on that, but regarding the other issues, the Town felt it must support Lancaster County's position.

Mr. Davis thanked Ms. Jewell for her comments, and asked if there were any questions.

Mr. Cowling asked if he understood her correctly to say that she was unaware of any perennial streams in the Town, and therefore there would be no reason to have a Resource Protected Area or a need for zoning appeals.

Ms. Jewell responded that she was unaware of any RPA streams in the Town.

Mr. Cowling responded that if there are no RPA streams, there is no reason to have a Resource Protection Area or a need for any Administrative process or a Board of Zoning Appeals.

Ms. Baldwin stated that she thought she had seen one perennial stream on a map.

Mr. Cowling asked Mr. Larson if he could make it clear whether there was a stream in the Town of White Stone.

Mr. Larson responded that to the best of his knowledge regarding the Town's limits, there is only one place where an RPA area may exist. However, in the four-and-a-half years he has been reviewing site plans for the Town, he has never reviewed one showing an encroachment into the 100-foot buffer.

He said that, to his knowledge, that area should be called a Resource Management Area, not a Resource Protected Area.

Mr. Davis asked Ms. Baldwin if she had further comments. Ms. Baldwin commented again that she thought she remembered seeing an RPA area identified in one of the Town's map, but that she would review the maps again to verify.

Mr. Davis asked Ms. Baldwin if discussing this matter with the Town of White Stone was still possible. He noted hopefully that these issues could be worked out by the end of the year, and added that staff could give the Town some support.

Mr. Cowling suggested that Lancaster County assist the Town in determining whether that stream is or isn't an RPA. Mr. Larson offered to assist in making that determination, and stated again that he did not believe the RPA existed. Mr. Cowling suggested that the Town designate an approved method to determine whether this stream is or isn't an RPA and come to agreement with staff regarding the proposed method. Ms. Baldwin offered to assist the Town in this determination. Mr. Cowling stated the Town could either use a map or an approved method to determine RPA, and that would satisfy the Regulations.

Mr. Davis called for a motion. Mr. Froggatt motioned to find the Town of White Stone's amended Phase I program 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.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

June 21, 2004

RESOLUTION

LOCAL PROGRAM, PHASE I
TOWN OF WHITE STONE - #42
Modification – Inconsistent

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

WHEREAS § 9 VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1(a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS the Town of White Stone adopted a local Phase I program on November 1, 1990, and

WHEREAS on February 27, 1992 the Town of White Stone's Phase I program was found consistent by the Chesapeake Bay Local Assistance Board, and

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

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

WHEREAS the Town of White Stone adopted a revised local program to comply with §§ 9 VAC10-20-60 1 and 2 of the Regulations on January 8, 2004; and

WHEREAS the Chesapeake Bay Local Assistance Board has adopted *Procedural Policies for Local Program Review* which addresses, among other items, review of modifications to local programs; and

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

WHEREAS on May 4, 2004 the Local Program Review Committee for the Northern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the Town of White Stone's revised Phase I program inconsistent with §10.1-2109 of the Act and §§ 9 VAC10-20-60 1 and 2 of the Regulations and further requires that the Town of White Stone undertake and complete the ten recommendations contained in the staff report no later than December 31, 2004.

1. Amend Section 1 to provide for definition of "public road" and "substantial alteration" that is consistent with the definitions set forth in § 9 VAC 10-20-40 of the Regulations.
2. Amend Section 3-3 (c) of White Stone's Bay Act ordinance to include criteria consistent with § 9 VAC 10-20-130.1.c of the Regulations.

3. Amend Section 3-4 to include buffer reestablishment when silvicultural or agricultural land use ceases to be consistent with § 9 VAC 10-20-130.3.b of the Regulations.
4. Amend Section 3-4 (d) (4) to be consistent with § 9 VAC 10-20-130.5.a (3) of the Regulations.
5. Amend Section 3-4 (e) to be consistent with § 9 VAC 10-20-130.4.a of the Regulations.
6. Amend Section 4-5 to be consistent with § 9 VAC 10-20-120.7 of the Regulations.
7. Amend Section 7-1 (a) to be consistent with § 9 VAC 10-20-150.B.1 of the Regulations.
8. Amend Section 7-1 (e) to be consistent with § 9 VAC 10-20-130.2 of the Regulations.
9. Amend Section 10-1 to be consistent with §§ 9 VAC 10-20-150.A and 9 VAC 10-20-150.C.4 of the Regulations.
10. Amend Sections 10-2 and 10-3 to be consistent with § 9 VAC 10-20-150.C of the Regulations.

BE IT FINALLY RESOLVED that failure by the Town of White Stone to meet the above established compliance date of December 31, 2004 will result in the local program becoming inconsistent with § 10.1-2109 of the Act and §§ 9VAC10-20-60.1 and 2 of the Regulations and subject the Town of White Stone to the compliance provisions as set forth in §10.1-2103.10 of the Act and § 9VAC10-20-250 of the Regulations.

The Director of the Chesapeake Bay Local Assistance Department certifies that this resolution was adopted in open session on June 21, 2004 by the Chesapeake Bay Local Assistance Board.

C. Scott Crafton
Executive Director
Chesapeake Bay Local Assistance Department

Mr. Sheffield seconded the motion.

Mr. Davis called for further comments. There were none.

Mr. Davis called for the vote. All members voted aye. Mr. Davis noted that the motion passed.

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

Ms. Baldwin stated that beginning in August 2002, Department staff provided comments on changes that would be necessary to the Town's existing Bay Act ordinance and 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 said that the Town of Irvington incorporated a few of these recommendations but a substantial portion of the ordinance was not revised. On December 11, 2003, the Town Council approved the proposed revisions in a public hearing.

As noted in the staff report, there are 15 conditions for consistency that the Town must

address. Ms. Baldwin stated that it is because there are so many conditions and the fact that some of them are quite serious, that the Department is recommending a finding of inconsistent.

Ms. Baldwin said that the 15 conditions may be categorized into five general areas and that she would try to be concise in discussing them.

She began by stating that, with respect to definitions, the Town failed to revise, delete, or add many of the definitions as required by the Regulations. She noted that among the terms that must be amended were CBPA, Highly erodible soils,” “Resource protection area,” “Redevelopment,” and “Tidal and nontidal wetlands.” She also said that the Town must add definitions for “Public roads,” “Silvicultural activities,” and “Substantial alteration,” and delete the term “Tributary stream.”

Ms. Baldwin explained that the second category, where 8 of the 15 conditions for consistency are identified, concerns RPA development criteria. She said that the Town failed to include all of the required criteria when permitting water-dependent uses and redevelopment in the RPA. She continued by noting that the Town included the construction of roads and driveways under exempt activities, but said that since these roads, as opposed to public roads, are not exempt but instead must adhere to certain RPA development criteria, this section must be relocated. She continued, saying that the Town must delete the buffer equivalency language and the language that may be interpreted as allowing lots recorded prior to the Bay Act to be exempt from buffer requirements. She said that with respect to development on lots recorded prior to the Bay Act, the ordinance includes language that states buffers may be reduced in width and noted that such language is not consistent with the Regulations, since buffers are never reduced in width. Therefore, this language must be deleted.

She explained that with respect to permitted modifications of the buffer, the Town failed to amend the language regarding removal of vegetation for general woodlot management purposes. She noted that the Town also failed to amend the language regarding agricultural buffers, so this entire section must be revised to be consistent with the Regulations, and further that the Town also did not include the requirement of re-establishing buffers when agricultural or silvicultural land uses cease.

She continued by stating that the third category concerns general performance criteria. She said that the Town did not amend the language for performance standards on agricultural lands and, for the performance standard regarding stormwater management; the Town references the Local Assistance Manual in its ordinance. She explained that since this Manual is no longer valid guidance due to the regulation changes, its reference must be deleted.

Ms. Baldwin stated that the fourth category concerns administrative review and the exception process. With respect to nonconforming structures, the Town failed to include the necessary findings when considering the expansion of a principal structure and did not clarify that this administrative process may not be used for the expansion of accessory structures. Regarding exceptions, she noted that the Town has all exceptions being handled administratively, and the Town must revise this section to include public notice and a public hearing before a locally designated body as well as to revise one of the findings to be consistent

with the Regulations.

She summarized the fifth and final category, saying that this category addresses exemptions. She said that the ordinance is written as exempting all activities of VDOT, and not just public roads as stated in the Regulations. She noted that since not all activities of VDOT are exempt, the Town must delete the phrase “activities of VDOT” and replace it with the appropriate term, public roads. She continued, noting that the Town needs to amend the section of its ordinance on public utilities and their exemptions because the Regulations have divided such utilities into two distinct categories with associated criteria. The Town of Irvington failed to make such a distinction.

In closing, Ms. Baldwin noted that Irvington did revise its program by the Board imposed deadline of December 31, 2003. However, as stated earlier, Department staff believes that due to the number and seriousness of some of the conditions, it must recommend a finding of inconsistent and further require the Town undertake and complete the 15 conditions for consistency identified in the staff report by December 31, 2004. She noted that the NARC concurred with this staff recommendation at its meeting of May 4, 2004.

Mr. Davis asked Mr. Fitzpatrick if he had comments. Mr. Fitzpatrick came forward and stated that it was the Town’s intent to work with the Department to comply with the recommendations by the December 31, 2004 deadline. He said that he had been working closely with Ms. Baldwin.

Mr. Mendelsohn asked if a locality is openly working with staff, is there any reason why the Board couldn’t defer a finding of inconsistent or employ some other method to recognize and encourage the cooperation the Board is getting.

Mr. Davis asked Mr. Crafton to answer that question, because there was substantial discussion about that same issue at the previous NARC meeting.

Mr. Crafton stated the Board had the privilege to defer that finding. However, he stated that Department staff usually discusses the proposed findings and compliance dates with the localities and that, in this case, Mr. Fitzpatrick had indicated early on that he believed this deadline could be met.

Mr. Mendelsohn commented that the date is not the issue but questioned whether the finding of inconsistent left a stigma on the locality.

Mr. Crafton said that the Board’s tradition has found such findings to be appropriate, and that no stigma is associated with the inconsistent finding if the locality follows through with its commitment. The finding of inconsistent would only matter if there had to be enforcement.

Mr. Davis commented that when a date is set with a finding of inconsistent, it precludes the necessity of holding another meeting to find the locality inconsistent if a deadline was not met. He called for a motion.

Mr. Duncanson motioned to find the Town of Irvington's amended Phase I program 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.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

June 21, 2004

RESOLUTION

LOCAL PROGRAM, PHASE I

TOWN OF IRVINGTON - #41

Modification – Inconsistent

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

WHEREAS § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1(a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS the Town of Irvington adopted a local Phase I program on October 11, 1990, and a revised program on December 11, 1992; and

WHEREAS on December 2, 1993, the Town of Irvington's Phase I program was found consistent by the Chesapeake Bay Local Assistance Board, and

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

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

WHEREAS the Town of Irvington adopted a revised local program to comply with §§ 9VAC10-20-60 1 and 2 of the Regulations on December 11, 2003; and

WHEREAS the Chesapeake Bay Local Assistance Board has adopted *Procedural Policies for Local Program Review* which addresses, among other items, review of modifications to local programs; and

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

WHEREAS on May 4, 2004 the Local Program Review Committee for the Northern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the Town of Irvington's revised Phase I program inconsistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations and further requires that the Town of Irvington undertake and complete the 15 recommendations contained in the staff report no later than December 31, 2004.

1. Amend Section 3A-3.D by revising the definitions for "Chesapeake Bay Preservation Act," "Highly

erodible soils,” “Resource protection area,” “Redevelopment,” and “Tidal and nontidal wetlands” and adding the definitions for “Public roads,” “Silvicultural activities,” and “Substantial alteration” that are consistent with the definitions set forth in § 9 VAC 10-20-40 of the Regulations. In addition, delete the term “Tributary stream” to be consistent with the Regulations.

2. Amend Section 3A-7.B (1) to be consistent with § 9 VAC 10-20-130.1.b (3) of the Regulations.
3. Amend Section 3A-7 (B) to include the criteria consistent with § 9 VAC 10-20-130.1.c of the Regulations for redevelopment within a Resource Protection Area.
4. Amend 3A-13.B by relocating this section to Section 3A-7 and assign it to an appropriate subsection.
5. Amend Section 3A-9.C by deleting all but the first sentence of the third paragraph to be consistent with § 9 VAC 10-20-130.3 of the Regulations.
6. Amend Section 3A-9.C (2) to be consistent with Section 9 VAC 10-20-130.4.a of the Regulations.
7. Amend Section 3A-9.C (1) c to be consistent with § 9 VAC 10-20-130.5.a (3) of the Regulations.
8. Amend Section 3A-9.C (3) to be consistent with 9 VAC 10-20-130.5.b of the Regulations.
9. Amend Section 3A-9.C of the ordinance to be consistent with § 9 VAC 10-20-130.3 of the Regulations.
10. Amend Section 3A-9.B (9) to be consistent with § 9 VAC 10-20-120.9 of the Regulations.
11. Amend Section 3A-11.D (3) by striking any reference to the Local Assistance Manual since it is no longer valid.
12. Amend Section 3A-12 for consistency with §§ 9 VAC 10-20-150.A and 9 VAC 10-20-150.C.4 of the Regulations.
13. Amend Section 3A-14 to be consistent with § 9 VAC 10-20-150.C of the Regulations.
14. Amend Section 3A-13.A.1 by striking the phrase “Activities of the Virginia Department of Transportation” and replacing it with the correct term, “public roads.”
15. Amend Section 3A-13 adding a new subsection that is consistent with § 9 VAC 10-20-150.B.1 of the Regulations.

BE IT FINALLY RESOLVED that failure by the Town of Irvington to meet the above established compliance date of December 31, 2004 will result in the local program becoming inconsistent with § 10.1-2109 of the Act and §§ 9VAC10-20-60.1 and 2 of the Regulations and subject the Town of Irvington to the compliance provisions as set forth in §10.1-2103.10 of the Act and §9VAC10-20-250 of the Regulations.

The Director of the Chesapeake Bay Local Assistance Department certifies that this resolution was adopted in open session on June 21, 2004 by the Chesapeake Bay Local Assistance Board.

C. Scott Crafton
Executive Director
Chesapeake Bay Local Assistance Department

Mr. Sheffield seconded the motion.

Mr. Davis called for further comments. There were none.

Mr. Davis called for the vote. All members voted aye.

Mr. Davis noted that the motion carried.

Ms. Baldwin continued with staff's presentation for Westmoreland County, and provided the following summary.

Ms. Baldwin began by noting that Westmoreland County adopted its revised Bay Act ordinance on March 10, 2003 and that the County's revised Phase I program was presented to the Board on September 15, 2003 and found consistent provided that the County complete the nine recommendations identified in the report by December 31, 2003. She said that the resolution adopted by the Board at its September 15 meeting stated that failure by the County to address these conditions by the deadline would result in the County's program being found inconsistent. She noted that subsequently, the County revised its ordinance and adopted the revisions on December 8, 2003.

She said that although the County made a good faith effort and did revise its ordinance by the established deadline, it failed to address or adequately revise four of the nine conditions, as noted in the staff report. She provided an overview of these four conditions, noting first that the County failed to revise the definition of Resource Protection Area to be consistent with the Regulations. She continued stating that the County failed to include the required criteria for water-dependent uses and redevelopment in RPAs. Third, she stated that while Westmoreland revised the section on exceptions, it failed to make all of the necessary changes to be consistent with the Regulations. She concluded the overview of the outstanding conditions by noting that the County failed to include a definition of public road that is consistent with the Regulations.

She stated 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 had no other recourse but to 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 noted that at its May 4, 2004 meeting, the NARC concurred with this staff recommendation but changed the deadline from August 1 to September 30 to provide the County with adequate time to adopt the revisions.

Ms. Baldwin said she had spoken to Fay Dove the previous week and that she sent her regrets that she could not attend today's meeting. However, Ms. Dove had sent a letter prior to the NARC meeting on May 4 stating that the conditions that were not addressed were a result of clerical error and that the County is preparing to address the conditions and adopt the needed revisions within the specified timeframe.

Mr. Davis asked if he recalled correctly, at one of the Northern Area Review Committee meetings where this issue was discussed, that Westmoreland County was proposing to adopt by late July or early August. Ms. Baldwin agreed with the recollection. Mr. Davis then asked if

that is why the date had been changed to September 30, 2004. Ms. Baldwin responded affirmatively.

Mr. Davis called for a motion. Mr. Sheffield motioned to find Westmoreland County's amended Phase I program 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.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

June 21, 2004

RESOLUTION

LOCAL PROGRAM, PHASE I

WESTMORELAND COUNTY - #04

Determination of Consistency – Inconsistent

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

WHEREAS § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1(a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS Westmoreland County adopted a local Phase I program on September 12, 1990, and

WHEREAS on January 25, 1991, Westmoreland County's Phase I program was found consistent by the Chesapeake Bay Local Assistance Board, and

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

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

WHEREAS Westmoreland County adopted a revised local program to comply with §§ 9VAC10-20-60 1 and 2 of the Regulations on March 10, 2003; and

WHEREAS on September 15, 2003, Westmoreland County's Phase I program was found consistent with conditions by the Chesapeake Bay Local Assistance Board, and

WHEREAS Westmoreland adopted revisions to its local program to address the conditions outlined in the Resolution of the Chesapeake Bay Local Assistance Board on December 4, 2003; and

WHEREAS the Chesapeake Bay Local Assistance Board has adopted *Procedural Policies for Local Program Review* which addresses, among other items, review of modifications to local programs; and

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

WHEREAS on May 4, 2004 the Local Program Review Committee for the Northern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds Westmoreland County's revised Phase I program inconsistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations and further requires that Westmoreland County undertake and complete the four remaining recommendations no later than September 30, 2004.

1. Revise Article XVI (formerly Section 7-4) to revise the definition of Resource Protection Area by striking the phrase "at or near the shoreline" and replace it with "water bodies with perennial flow."
2. Amend Section 7-8.B to be consistent with §§ 9 VAC 10-20-130.1.b and 9 VAC 10-20-130.1.c. of the Regulations.
3. Amend Section 7-16 to be consistent with § 9 VAC 10-20-150.C.1 of the Regulations.
4. Add a definition of "public roads" into Article XVI (formerly Section 7-4) that is consistent with § 9 VAC 10-20-40 of the Regulations.

BE IT FINALLY RESOLVED that failure by Westmoreland County to meet the above established compliance date of September 30, 2004 will result in the local program becoming inconsistent with § 10.1-2109 of the Act and §§ 9VAC10-20-60.1 and 2 of the Regulations and subject Westmoreland County to the compliance provisions as set forth in §10.1-2103.10 of the Act and §9VAC10-20-250 of the Regulations.

The Director of the Chesapeake Bay Local Assistance Department certifies that this resolution was adopted in open session on June 21, 2004 by the Chesapeake Bay Local Assistance Board.

C. Scott Crafton
Executive Director
Chesapeake Bay Local Assistance Department

Mr. Duncanson seconded the motion.

Mr. Davis called for further comments. There were none.

Mr. Davis called for the vote. All members voted aye. Mr. Davis noted that the motion passed.

Mr. Cowling commented that Ms. Baldwin was going to have a lot of work to do through the end of the year working with all of these communities and asked Ms. Baldwin if she believed there was adequate staff to complete this work. Ms. Baldwin responded that there was adequate staff.

Mr. Davis thanked Ms. Baldwin and recognized Ms. Nancy Miller for staff's presentation for Mathews County.

Ms. Miller advised that no one was present from the County and provided the following summary.

Ms. Miller noted that Mathews County adopted its Phase I program on November 14,

1991, and amended it on October 26, 1993 and that the Board found the County's program consistent on March 3, 1994.

She said that the Department initiated the revision process in May of 2002 by providing County staff with written guidance on revisions, met with County staff, and provided comments on several drafts during 2002 and 2003. She noted that on December 16, 2003, the County adopted revisions to its CBPA Overlay District, effective upon adoption.

She said that the County maintained its CBPA criteria, so there is no change in the mapped areas designated as CBPAs and that the other revisions adopted by the County include nearly all the changes required by the Regulations, with two exceptions. She noted the two conditions as outlined in the staff report. First, she said that the CBPA Overlay District provides for an administrative process for granting waivers to allow additions to nonconforming structures. However, she said the Regulations limit this process to the expansion of legal principal nonconforming structures, and explicitly exclude accessory structures, and that the County's CBPA Overlay District must be revised to include this limitation.

She continued, noting that the County also included provisions that list the activities and uses that may be exempted under certain conditions. She said that for consistency, the terms included in this Section must mirror the language included in the Regulations, and the required conditions must be added.

Ms. Miller also noted that the staff report included five suggestions for clarification or administrative ease not required for consistency, and that the consistency items should not prove to be of serious detriment in protecting the quality of state waters, if amended in a timely fashion.

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

Mr. Cowling asked Mr. Chaffe if there should be any concern given to staff giving dates to localities with such a broad range of time frames and some of the dates went as far out as 2007. He said there are issues for all of these localities and asked what is going to prevent them from adopting an incorrect ordinance that omits these issues and then saying that the Board is being arbitrary and capricious if it pursues further corrections before 2007.

Mr. Chaffe deferred to the staff evaluations. Mr. Cowling stated that he was concerned about extending these deadlines and giving localities an out.

Mr. Davis asked if Mr. Cowling was specifically talking about Mathews County or in general. Mr. Cowling responded that there were more than 20 plus possible issues that would cover all the localities that were going to be heard later during the informal fact finding portion

of the meeting and these same issues have already been heard.

Mr. Mendelsohn said that in reading the material he perceived the longer deadlines to be for localities with “consistent” findings. Mr. Cowling asked specifically why Tangier should have a longer deadline.

Mr. Davis stated that he believed it was extended out because there are no major issues and because of staff time at the local level.

Ms. Miller commented that giving Mathews County until September 30, 2005 was really not that far out and would provide time for the County, after their compliance evaluation, to hold their meetings and make all needed modifications at the same time.

Mr. Crafton commented that staff knows the timeframes that their localities need and make recommendations based on that knowledge. Further, Mr. Crafton was not expecting the kinds of issues to which Mr. Cowling refers to occur.

Mr. Mendelsohn commented that the Board was not giving extended deadlines for inconsistent findings, and that the extended deadlines apply to those localities that have minor conditions.

Mr. Cowling suggested that the Board not be surprised if a locality chose to take this way out.

Mr. Davis commented that he believed Mr. Cowling’s question was reasonable and suggested that it may be a good idea to keep an eye on the dates, making certain that they are reasonable. Mr. Mendelsohn agreed.

Mr. Davis called for a motion. Mr. Duncanson motioned to find Mathews County’s amended Phase I program 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.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

June 21, 2004

RESOLUTION

LOCAL PROGRAM, PHASE I

MATHEWS COUNTY- # 42

Modification – Conditional

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

WHEREAS § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1(a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS Mathews County adopted a local Phase I program on November 14, 1991 and amended it on

October 26, 1993, and

WHEREAS on March 3, 1994, Mathews County's Phase I program was found consistent by the Chesapeake Bay Local Assistance Board, and

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

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

WHEREAS Mathews County adopted a revised local program to comply with § 9VAC10-20-60 1 and 2 of the Regulations on December 16, 2003; and

WHEREAS the Chesapeake Bay Local Assistance Board has adopted *Procedural Policies for Local Program Review* which addresses, among other items, review of modifications to local programs; and

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

WHEREAS on May 4, 2004 the Local Program Review Committee for the Northern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds Mathews County's revised Phase I program consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations subject to the following condition that Mathews County undertake and complete the following recommendations no later than September 30, 2005:

1. Amend Section 22.46 to read: "The Administrator may grant a waiver from the requirements of this Article to permit an addition to a principal nonconforming structure existing at the effective date of this Article ..." And, add the following item to the end of the list included in Section 22.46, "...10. This provision shall not apply to accessory structures."
2. Amend Section 22.47.1 to read: "...telephone transmission lines; railroads; and public roads constructed by the activities of the Virginia Department of Transportation and ..." And, add the following at the end of Section 22.47.1: "The exemption of public roads is further conditioned on the following:
 - a. Optimization of the road alignment and design, consistent with other applicable requirements, to prevent or otherwise minimize (i) encroachment in the Resource Protection Area and (ii) adverse effects on water quality."

BE IT FINALLY RESOLVED that failure by Mathews County to meet the above established compliance date of September 30, 2005 will result in the local program becoming inconsistent with § 10.1-2109 of the Act and §§ 9VAC10-20-60.1 and 2 of the Regulations and subject Mathews County to the compliance provisions as set forth in §10.1-2103.10 of the Act and §9VAC10-20-250 of the Regulations.

The Director of the Chesapeake Bay Local Assistance Department certifies that this resolution was adopted in open session on June 21, 2004 by the Chesapeake Bay Local Assistance Board.

C. Scott Crafton
Executive Director
Chesapeake Bay Local Assistance Department

Mr. Nice seconded the motion.

Mr. Davis called for further comments. There were none.

Mr. Davis called for the vote. All members voted aye. Mr. Davis noted that the motion passed.

Ms. Miller continued with staff's presentation for King William County by providing the following summary.

Ms. Miller noted 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. She said that Department staff met with the County's Director of Community Development on June 13, 2002 to provide a review of the Department's comments and answer questions.

She noted that County staff provided the Department with its first draft in January 2003 and that the Department provided comments to the County on February 6, 2003. She said that 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 stated that in addition to these letters noted above, Department staff had sent four written reminders and requests for ordinance drafts and the County's planned schedule of adoption between March 3, and November 26, 2003.

She continued by saying that in January of 2004, the County submitted an extension request with a timeline projecting adoption sometime between May 24, and July 26, 2004. She said that the County had failed to adopt by the December 31, 2003 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 have monitored the situation, and further that the County is generally proceeding on the schedule they provided in November 2003. She noted that the Department provided comments on the County's most recent draft CBPA Overlay District on May 6, 2004. She also stated that an update on the County's progress was provided by the County Administrator on June 2, 2004 at 7:15 pm, via voice-mail, which advised that the County Board of Supervisors had not made sufficient progress to hold its public hearing by the end of June, 2004.

She noted that the Northern Area Review Committee 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, and based on the schedule provided by the County and demonstrated progress on that schedule, a deadline of July 31, 2004, as requested, be established for the County to complete adoption of the required revisions.

She continued by stating 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 noted that failure to meet the deadline will result in the Board pursuing appropriate enforcement action.

Mr. Davis asked Ms. Miller if the County was comfortable with the July 31, 2004 deadline. Ms. Miller responded affirmatively.

Mr. Mendelsohn commented that staff was talking about 5 to 6 weeks to meet the deadline.

Ms. Miller commented that the County has been working on this, and with the comments CBLAD has been provided to County staff, they should be in good shape. Mr. Crafton reminded the Board that July 31st is the date King William County had specified in their deadline extension request, which indicated their confidence they could comply by then.

Mr. Davis called for a motion. Mr. Sheffield motioned to find King William County inconsistent with §10.1-2109 of the Act and §§9VAC10-20-60 1 and 2 of the Regulations and that a final deadline of July 31, 2004 be established for the County to adopt a consistent Phase I program.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

June 21, 2004

RESOLUTION

LOCAL PROGRAM, PHASE I

KING WILLIAM COUNTY - #29

Determination of Consistency– Inconsistent

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

WHEREAS § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1(a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS King William County adopted a local Phase I program on March 28, 1991 and amended it on September 26, 1991, and

WHEREAS on December 5, 1991, King William County's Phase I program was found consistent by the Chesapeake Bay Local Assistance Board, and

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

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

WHEREAS staff provided technical assistance to King William County to help facilitate the adoption of a revised program for consistency with the Act and Regulations; and

WHEREAS King William County has provided a schedule that the County will adopt a revised local program to comply with § 9VAC10-20-60 1 and 2 of the Regulations by July 31, 2004; and

WHEREAS the Chesapeake Bay Local Assistance Board has adopted *Procedural Policies for Local Program Review* which addresses, among other items, review of local programs; and

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds King William County's Phase I program inconsistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations and further that King William County adopt a consistent Phase I program no later than July 31, 2004.

BE IT FINALLY RESOLVED that failure by King William County to meet the above established compliance date of July 31, 2004 will result in the local program becoming subject to the compliance provisions as set forth in §10.1-2103.10 of the Act and § 9VAC10-20-250 of the Regulations.

The Director of the Chesapeake Bay Local Assistance Department certifies that this resolution was adopted in open session on June 21, 2004 by the Chesapeake Bay Local Assistance Board.

C. Scott Crafton
Executive Director
Chesapeake Bay Local Assistance Department

Mr. Mendelsohn seconded the motion.

Mr. Davis called for the vote. All members voted aye. Mr. Davis noted that the motion passed.

Mr. Davis thanked Ms. Miller and recognized Mr. Jakob Helmboldt for staff's presentation for the City of Hopewell. Mr. Helmboldt provided the following summary. He said that beginning in May 2002, Department staff provided comments on changes necessary to the City's existing Bay Act ordinance.

He said that the City of Hopewell incorporated all but one of the required changes into its Bay Act ordinance. He noted that the City included changes to definitions, the requirement for site-specific determination of perennality, and the requirement for a formal process to be used when hearing RPA exception requests, which are heard by the City's Board of Zoning Appeals. He also stated that the City also made appropriate changes to its ordinance relating to administrative waivers for the expansion of nonconforming principal structures and new principal structures on pre-1989 lots.

He said that the City Council adopted the revised Bay Act ordinance on December 9, 2003.

He explained 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. He stated that the revised Regulations require such an allowance to 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 as a Phase I program modification. He said that Hopewell currently does not have a stormwater management program, but is considering adopting one. He noted that as it currently reads, the ordinance simply states the condition that “The facility is consistent with the City of Hopewell’s approved stormwater management program” and that it does not specify what or by whom, approval consists of. Due to this oversight, he said that staff recommends that the City revise its ordinance as follows:

Amend section G.1.d(3) to specify that a stormwater management program that is adopted by the City is approved by the Board, such that it reads: “The facility is consistent with the City of Hopewell’s stormwater management program that has been approved by the Chesapeake Bay Local Assistance Board as a Phase I modification to the local government’s program.”

Mr. Helmboldt stated that staff recommends that the City of Hopewell have until September 30, 2005 to make these changes for consistency.

Mr. Davis asked if there were any questions for Mr. Helmboldt. There were none.

Mr. Davis asked if there was anyone present from Hopewell. Mr. Helmboldt introduced Tevya Williams, Planner in the Department of Development for the City of Hopewell. Ms. Williams stated that she did not have any comments.

Mr. Davis called for a motion. Mr. Mendelsohn motioned to find the City of Hopewell’s amended Phase I program 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 recommendations in the staff report no later than September 30, 2005.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

June 21, 2004

RESOLUTION

LOCAL PROGRAM, PHASE I

CITY OF HOPEWELL - #55

Modification – Conditional

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

WHEREAS § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1(a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS the City of Hopewell adopted a local Phase I program on September 6, 1990, and

WHEREAS on June 25, 1993, the City of Hopewell’s Phase I program was found consistent by the Chesapeake Bay Local Assistance Board, and

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

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

WHEREAS the City of Hopewell adopted a revised local program to comply with §§ 9VAC10-20-60 1 and 2 of the Regulations on December 9, 2003; and

WHEREAS the Chesapeake Bay Local Assistance Board has adopted *Procedural Policies for Local Program Review* which addresses, among other items, review of modifications to local programs; and

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

WHEREAS on May 4, 2004 the Local Program Review Committee for the Southern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the City of Hopewell's revised Phase I program consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations subject to the following condition that the City of Hopewell undertake and complete the following recommendation no later than September 30, 2005:

1. Amend section G.1.d(3) to specify that a stormwater management program that is adopted by the City is approved by the Board, such that it reads: "The facility is consistent with the City of Hopewell's stormwater management program that has been approved by the Board as a Phase I modification to the local government's program."

BE IT FINALLY RESOLVED that failure by the City of Hopewell to meet the above established compliance date of September 30, 2005 will result in the local program becoming inconsistent with § 10.1-2109 of the Act and §§ 9VAC10-20-60.1 and 2 of the Regulations and subject the City of Hopewell to the compliance provisions as set forth in §10.1-2103.10 of the Act and §9VAC10-20-250 of the Regulations.

The Director of the Chesapeake Bay Local Assistance Department certifies that this resolution was adopted in open session on June 21, 2004 by the Chesapeake Bay Local Assistance Board.

C. Scott Crafton
Executive Director
Chesapeake Bay Local Assistance Department

Mr. Duncanson seconded the motion.

Mr. Davis called for further comments. There were none.

Mr. Davis called for the vote. All members voted aye. Mr. Davis noted that the motion passed.

Mr. Davis thanked Mr. Helmboldt and recognized Ms. Shawn Smith for staff's presentation for the Town of Tangier. Ms. Smith provided the following summary.

Ms. Smith noted that the Town of Tangier adopted its revised Phase I program on January 26, 2004 and that the Department worked with the Town in developing the revised ordinance. She said that there is one recommendation for consistency with a recommended compliance deadline of June 30 2007. She explained that the Town addressed all required changes, with the exception that it did not include the required conditions for a new or expanded water dependent facility as outlined under 9 VAC 10-20-130.1.b(1)-(4) of the Regulations. She noted that while these conditions are important, the likelihood of the Town developing a new or expanded water dependent facility in the near future is limited, therefore, the Department is recommending the 2007 date to coincide with the planned compliance evaluation schedule. She concluded by noting that at its May 4, 2004 meeting, SARC concurred with staff's recommendation.

Mr. Davis asked if anyone was present from the Town of Tangier. No one was present.

Mr. Davis asked if there were any questions of Ms. Smith. There were none.

Mr. Davis called for a motion. Mr. Cowling motioned to find the Town of Tangier's amended Phase I program 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.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
June 21, 2004
RESOLUTION
LOCAL PROGRAM, PHASE I
TOWN OF TANGIER #84
Modification – Conditional

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

WHEREAS § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1(a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS Town of Tangier adopted a local Phase I program on September 11, 1997, and

WHEREAS on December 15, 1997, the Town of Tangier's Phase I program was found consistent by the Chesapeake Bay Local Assistance Board, and

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

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

WHEREAS the Town of Tangier adopted a revised local program to comply with §§ 9VAC10-20-60 1 and 2 of the Regulations on January 26, 2004; and

WHEREAS the Chesapeake Bay Local Assistance Board has adopted *Procedural Policies for Local Program Review* which addresses, among other items, review of modifications to local programs; and

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

WHEREAS on May 4, 2004 the Local Program Review Committee for the Southern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the Town of Tangier's revised Phase I program consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations subject to the following condition that the Town of Tangier undertake and complete the following recommendation no later than June 30, 2007:

1. Amend §4-8.A of the Town's Zoning Ordinance by adding the requirements for water dependent facilities as outlined under § 9 VAC 10-20-130.1.b(1)-(4) of the Regulations.

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

The Director of the Chesapeake Bay Local Assistance Department certifies that this resolution was adopted in open session on June 21, 2004 by the Chesapeake Bay Local Assistance Board.

C. Scott Crafton
Executive Director
Chesapeake Bay Local Assistance Department

Mr. Nice seconded the motion.

Mr. Davis called for further comments. There were none.

Mr. Davis called for the vote. All members voted aye. Mr. Davis noted that the motion carried.

Mr. Cowling commented that he believed that counting marshes, the Town of Tangier is at least thirty to forty percent RPA. Ms. Smith responded that it was more than that and closer to sixty or seventy percent RPA. Mr. Cowling pointed out that if Tangier could do it, then other localities could.

Mr. Davis thanked Ms. Smith and recognized Mr. Ryan Link for staff's presentation for the City of Portsmouth. Mr. Link recognized Stacy Porter, Environmental Planner for the City of Portsmouth. Mr. Link provided the following summary.

Mr. Link stated that the City of Portsmouth adopted their revised Chesapeake Bay Preservation Area Ordinance on January 13, 2004. He noted 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. He explained that there are two required changes that must be addressed by the City. He then provided an overview of these two changes:

First, per the Regulations, the City must include reference to reasonable sight lines in its section addressing permitted modifications;

Second, in order to ensure consistency throughout the City's ordinance must be amended to include land disturbance as a trigger for a Water Quality Impact Analysis (WQIA).

He said that based on the above, staff recommends 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. He explained that the SARC concurred with Staff's recommendation at its May 4, 2004 meeting.

Mr. Davis asked if there were any questions of Mr. Link. There were none.

Mr. Davis asked Ms. Porter if she had any comments. Ms. Porter stated that she believed the conditions could be addressed by the December deadline.

Mr. Davis called for a motion. Mr. Nice motioned to find the City of Portsmouth's amended Phase I program 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.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

June 21, 2004

RESOLUTION

LOCAL PROGRAM, PHASE I

CITY OF PORTSMOUTH - #27

Modification – Consistent with Conditions

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

WHEREAS § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1(a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS the City of Portsmouth adopted a local Phase I program on August 28, 1990, and

WHEREAS on March 7, 1991, the City of Portsmouth's Phase I program was found consistent by the Chesapeake Bay Local Assistance Board, and

WHEREAS on December 10, 2001, the Chesapeake Bay Local Assistance Board adopted revisions to the

Chesapeake Bay Preservation Area Designation and Management Regulations and set March 1, 2003 as the deadline for local governments to adopt revisions to their local ordinances; and

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

WHEREAS the City of Portsmouth adopted a revised local program to comply with §§ 9VAC10-20-60 1 and 2 of the Regulations on January 13, 2004; and

WHEREAS the Chesapeake Bay Local Assistance Board has adopted *Procedural Policies for Local Program Review* which addresses, among other items, review of modifications to local programs; and

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

WHEREAS on May 4, 2004 the Local Program Review Committee for the Southern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the City of Portsmouth's revised Phase I program consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations.

FURTHERMORE the City is required to address the following two recommendations for consistency by December 31, 2004:

1. The Department suggests the City amend Section 9.1-10.c.5.a as follows: Trees may be pruned or removed as necessary to provide for reasonable site lines and vistas...
2. The Department suggests the City amend Section 9.1-7(c) as follows: A water quality impact assessment shall be required for any proposed land disturbance, development, or redevelopment within RPAs...

BE IT FINALLY RESOLVED that failure by the City of Portsmouth to adequately address the two recommendations for consistency by the above established compliance date of December 31, 2004 will subject the City of Portsmouth to the compliance provisions as set forth in § 10.1-2103.10 of the Act and §9VAC10-20-250 of the Regulations.

The Director of the Chesapeake Bay Local Assistance Department certifies that this resolution was adopted in open session on March 22, 2004 by the Chesapeake Bay Local Assistance Board.

C. Scott Crafton
Executive Director
Chesapeake Bay Local Assistance Department

Mr. Mendelsohn seconded the motion.

Mr. Davis called for further comments. There were none.

Mr. Davis called for the vote. All members voted aye. Mr. Davis noted that the motion passed.

Mr. Link continued with staff's presentation for the City of Virginia Beach and introduced Mr. Clay Bernick. Mr. Link provided the following summary.

Mr. Link stated that the City of Virginia Beach adopted their revised Chesapeake Bay Preservation Area Ordinance on December 9, 2003 and further that this revision addressed most of the changes required under the 2002 Regulation revisions.

He said that while the City has made progress in addressing the required revisions, numerous required changes must still be completed in order for the City to be consistent with the Regulations. He specifically noted that staff has six recommendations for consistency that the City must complete by December 31, 2004. He summarized these recommendations to include three general categories.

First he said that two areas of their ordinance that relate to stormwater management facilities must be amended to (1) revise references to CBLAD rather than State Water Control Board, and (2) revise references to CBLAB rather than DEQ.

Secondly, he said that when addressing the continued use of nonconforming structures, the City must amend section to address principal structures only when outlining the process for nonconforming uses and also must include the criteria under the Regulations for allowing the continued use of nonconforming structures.

Third, he said that the City must amend Section on public road exemptions to contain only those appurtenant structures that are related to public roads.

He said that based on the above, staff recommends that the City's ordinance be found consistent with the Regulations subject to the condition that the City adequately address the six recommendations for consistency by December 31, 2004. He concluded by stating that the SARC concurred with Staff's recommendations at its May 4, 2004 meeting.

Mr. Davis asked Mr. Bernick if he would like to make comments. Mr. Bernick said that the City is aware of the conditions for full consistency and will be making the appropriate changes by the December deadline.

Mr. Davis called for a motion. Mr. Duncanson motioned to find the City of Virginia Beach's amended Phase I program 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.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

June 21, 2004

RESOLUTION

LOCAL PROGRAM, PHASE I

CITY OF VIRGINIA BEACH - #15

Modification – Consistent with Conditions

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

WHEREAS § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1(a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS the City of Virginia Beach adopted a local Phase I program on November 6, 1992, and

WHEREAS on February 25, 1993, the City of Virginia Beach's Phase I program was found consistent by the Chesapeake Bay Local Assistance Board, and

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

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

WHEREAS the City of Virginia Beach adopted a revised local program to comply with §§ 9VAC10-20-60 1 and 2 of the Regulations on December 9, 2003; and

WHEREAS the Chesapeake Bay Local Assistance Board has adopted *Procedural Policies for Local Program Review* which addresses, among other items, review of modifications to local programs; and

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

WHEREAS on May 4, 2004 the Local Program Review Committee for the Southern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the City of Virginia Beach's revised Phase I program consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations.

FURTHERMORE the City is required to address the following six recommendations for consistency by December 31, 2004:

1. Revise Section 106.A.7.b to read: "Compliance with the stormwater...that has been reviewed and found by the ~~State Water Control~~ **Chesapeake Bay Local Assistance** Board to achieve..."
2. Revise Section 106.B.1.e.3 to read: "the facility is consistent with a stormwater management program

approved by the ~~Department of Environmental Quality~~ **Chesapeake Bay Local Assistance Board** as...”

3. Amend Section 108.A of the City’s ordinance as follows: Any use, **principal** building or structure, which lawfully existed on the date of adoption of this ordinance...
4. Section 108.A of the City’s ordinance must include the criteria, as outlined in Section 9 VAC 10-20-150.1 of the regulations for approval of expansion to nonconforming structures.
5. Amend Section 110.B.4 as follows: Section 108 for additions to nonconforming **principal** structures.
6. Section 109 A.1.b must be removed, or revised to contain only those structures that are directly related to public roads (i.e. guard rails, lighting, etc).

BE IT FINALLY RESOLVED that failure by the City of Virginia Beach to adequately address the five recommendations for consistency by the above established compliance date of December 31, 2004 will subject the City of Virginia Beach to the compliance provisions as set forth in § 10.1-2103.10 of the Act and §9VAC10-20-250 of the Regulations.

The Director of the Chesapeake Bay Local Assistance Department certifies that this resolution was adopted in open session on March 22, 2004 by the Chesapeake Bay Local Assistance Board.

C. Scott Crafton
Executive Director
Chesapeake Bay Local Assistance Department

Mr. Froggatt seconded the motion.

Mr. Davis called for further comments. There were none.

Mr. Davis called for the vote. All members voted aye. Mr. Davis noted the motion passed.

Mr. Link continued with staff’s presentation for Isle of Wight County and recognized Ms. Pam Shaw. Mr. Link provided the following summary.

Mr. Link said that Isle of Wight adopted their revised ordinance on December 18, 2003 and further that the revision addressed most of the changes required under the 2002 Regulations revisions including revisions to definitions, RPA designation language, site-specific RPA delineation requirements. He did note that there is one change that was not addressed by the County that is required for consistency.

He explained 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. He said that while reference to the requirements of E&S are included in the County’s General Performance Standards, it has been the policy of CBLAD, per the Regulations,

to also include this reference in the Development Criteria for RPAs in order to avoid any conflict or confusion.

He stated 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. He concluded by noting that the SARC concurred with Staff's recommendation at its May 4, 2004 meeting.

Mr. Davis asked Ms. Shaw if she had any comments. Ms. Shaw commented that the recommendation would be completed by the December deadline.

Mr. Davis commented that he understood that Isle of Wight has a stand-alone ordinance, and is not part of the zoning code. Mr. Link responded that was correct.

Mr. Davis called for a motion. Mr. Duncanson motioned to find the 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.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

June 21, 2004

RESOLUTION

LOCAL PROGRAM, PHASE I

ISLE OF WIGHT COUNTY - #9

Modification – Consistent with Conditions

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

WHEREAS § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1(a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS Isle of Wight County adopted a local Phase I program on November 15, 1990, and

WHEREAS on May 6, 1992, Isle of Wight County's Phase I program was found consistent by the Chesapeake Bay Local Assistance Board, and

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

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

WHEREAS Isle of Wight County adopted a revised local program to comply with §§ 9VAC10-20-60 1 and 2 of the Regulations on December 18, 2003; and

WHEREAS the Chesapeake Bay Local Assistance Board has adopted *Procedural Policies for Local Program Review* which addresses, among other items, review of modifications to local programs; and

WHEREAS staff reviewed the amendments made to Isle of Wight County's revised program for consistency with the Act and Regulations; and

WHEREAS on May 4, 2004 the Local Program Review Committee for the Southern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds Isle of Wight County's revised Phase I program consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations provided the County adequately address the following condition by December 31, 2004:

1. Amend Section 4001.A.2 to read: "Redevelopment...and it shall conform to **applicable erosion and sediment control requirements outlined under Section 4000.B.5** and ...of this ordinance."

BE IT FINALLY RESOLVED that failure by Isle of Wight County to meet the above established compliance date of December 31, 2004 will result in the local program becoming inconsistent with § 10.1-2109 of the Act and §§ 9VAC10-20-60.1 and 2 of the Regulations and subject Isle of Wight County to the compliance provisions as set forth in § 10.1-2103.10 of the Act and §9VAC10-20-250 of the Regulations.

The Director of the Chesapeake Bay Local Assistance Department certifies that this resolution was adopted in open session on March 22, 2004 by the Chesapeake Bay Local Assistance Board.

C. Scott Crafton
Executive Director
Chesapeake Bay Local Assistance Department

Mr. Nice seconded the motion.

Mr. Davis called for further comments. There were none.

Mr. Davis called for the vote. All members voted aye. Mr. Davis noted that the motion passed.

Mr. Davis thanked Mr. Link for his presentations and recognized Mr. Brad Belo for staff's presentation for the City of Newport News. Mr. Belo recognized Mr. Al Riutort, and Ms. Kathy James-Webb. Mr. Belo provided the following summary.

Mr. Belo said that the City of Newport News adopted revisions to its Phase I program on December 16, 2003 and further that the ordinance revisions became effective on April 1, 2004. He noted that the City's revised Bay Act program addresses most of the required Regulation changes, but that the Review Committee is recommending that the City address eight (8) conditions by June 30, 2005 to ensure that the local Phase I revisions are consistent with the Regulations.

He provided an overview of the conditions, noting that the first condition requires the City to amend its ordinance in a manner that ensures that reliable, site-specific evaluations are conducted to determine whether water bodies on or adjacent to a development site have perennial flow and that the CBPA boundaries are adjusted on the site based on this evaluation. He said that this condition will apply to all Intensely Developed Area, or IDAs, which the City had originally exempted from this requirement.

He said that the second condition requires the City to amend its ordinance to ensure that all land disturbances in the RPA are preceded by Water Quality Impact Assessments, as required by the Regulations. He noted that the City's original language exempted IDAs from this requirement.

He stated that the next five (5) conditions are minor text amendments to ensure consistency with Regulatory language.

He concluded by stating that the final condition requires the City's zoning ordinance to be revised to ensure that the City's administrative process for Bay Act related exceptions is consistent with the Regulations.

He explained that due to the fact that these conditions are relatively minor and that City staff are already addressing the Department's concerns, the Southern Area Review Committee recommends that the local program amendments adopted on December 16, 2003 be found consistent with the Act and Regulations subject to the condition that the City of Newport News undertake and complete the eight (8) recommendations contained in the staff report no later than June 30, 2005.

Mr. Davis asked if there were any questions for Mr. Belo. There were none.

Mr. Davis asked Mr. Riutort and Ms. James-Webb if they had any comments. Mr. Riutort thanked Brad Belo for all the assistance he had provided to City staff. He stated that the City is comfortable with the recommendations and that they can comply with the required conditions by the established deadline. Ms. James-Webb indicated that City staff had discussed earlier concerns about the conditions at the May SARC meeting. Mr. Crafton asked Mr. Riutort if CBLAD staff had provided the documentation promised them at the May SARC meeting. Mr. Riutort said the information had been provided. Mr. Davis thanked them for their comments.

Mr. Davis called for a motion. Mr. Nice motioned to find the City of Newport News amended Phase I program 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.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
June 21, 2004
RESOLUTION
LOCAL PROGRAM, PHASE I
CITY OF NEWPORT NEWS - #01
Modification – Conditional

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

WHEREAS § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1(a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS the City of Newport News adopted a local Phase I program on July 1, 1991, and

WHEREAS on September 21, 1998, the City of Newport News' Phase I program was found consistent by the Chesapeake Bay Local Assistance Board, and

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

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

WHEREAS the City of Newport News adopted a revised local program to comply with § 9VAC10-20-60 1 and 2 of the Regulations on December 16, 2003; and

WHEREAS the Chesapeake Bay Local Assistance Board has adopted *Procedural Policies for Local Program Review* which addresses, among other items, review of modifications to local programs; and

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

WHEREAS on May 4, 2004 the Local Program Review Committee for the Southern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the City of Newport News' revised Phase I program consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations subject to the following condition that the City of Newport News undertake and complete the following recommendation no later than June 30, 2005:

1. As part of the its plan-of-development review process or during its review of a water quality impact assessment, the City of Newport News will ensure or confirm that (i) a reliable, site-specific evaluation is conducted to determine whether water bodies on or adjacent to the development site have perennial flow, and (ii) Resource Protection Area boundaries are adjusted, as necessary, on the site based on this evaluation of the site.
2. Amend the ordinance to require a WQIA for any land disturbance in the RPA, including RPA designated as IDA, as required by Section 10-20-130.1.a of the Regulations.
3. Amend section 37.1-51(b)(3)a to ensure it is consistent with Section 9 VAC 10-20-120.8.
4. Amend Sec. 37.1-51(b)(3)b to include a direct reference to section 9 VAC 10-20-120.8 of the Regulations. In Sec. 37.1-51(b)(3)b.4 amend the first sentence as follows, "For any development exceeding two thousand five hundred (2,500) square feet of land disturbance..."

5. Delete the following terms in the definition of *water-dependent facilities*: (6) “~~without limitation~~”; (12) “~~and related support facilities~~”.
6. Amend Sec. 37.1-54(a) by deleting references to “steam” and “CATV” as these uses are, or should be, included under Sec. 37.1-54(b). Amend Sec. 37.1-54(b) to exempt only those utilities owned, permitted, or both by the City of Newport News or a regional service authority.
7. Amend Sec. 37.1-54(c) by replacing the term “forestry activities” with the term “silvicultural activities”. Include in Sec. 37.1-48 of the ordinance a definition of silvicultural activities consistent with the Regulations.
8. Amend Sec. 45-3205.1(d) to require that administrative exceptions to those portions of the ordinance that are based on section 9 VAC 10-20-120 (general performance criteria) of the Regulations be granted only after satisfying all six findings included in Sec. 37.1-55(c).

BE IT FINALLY RESOLVED that failure by the City of Newport News to meet the above established compliance date of June 30, 2005 will result in the local program becoming inconsistent with § 10.1-2109 of the Act and §§ 9VAC10-20-60.1 and 2 of the Regulations and subject the City of Newport News to the compliance provisions as set forth in §10.1-2103.10 of the Act and §9VAC10-20-250 of the Regulations.

The Director of the Chesapeake Bay Local Assistance Department certifies that this resolution was adopted in open session on June 21, 2004 by the Chesapeake Bay Local Assistance Board.

C. Scott Crafton
Executive Director
Chesapeake Bay Local Assistance Department

Mr. Duncanson seconded the motion.

Mr. Davis called for further comments. There were none.

Mr. Davis called for the vote. All members voted aye. Mr. Davis noted that the motion passed.

Mr. Davis thanked Mr. Belo for his presentation, and asked Ms. Mackey for staff’s presentation for the City of Fairfax. Ms. Mackey provided the following summary.

Ms. Mackey stated that the City of Fairfax originally adopted its Phase I program in October 1990 and 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. She stated that the Fairfax City Council adopted a revised Bay Act ordinance on November 25, 2003. She said that 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, there are seven recommendations for consistency. She said that while they are technical in nature, the recommendations are necessary to bring the language of the Fairfax City ordinance into compliance with the Regulations.

She outlined the recommendations for consistency, noting that the first recommendation is to include the definitions of “public road” and “substantial alteration,” consistent with the definitions in the Regulations.

She said that the second recommendation concerns the Regulatory requirement for site-specific refinement of the CBPA boundaries. She stated that, specifically, the City is asked to include the statement within the description of the RPA component section of the ordinance, that designation of the RPA shall not be subject to modification unless based upon site-specific refinement of the boundaries.

She explained that the third and fourth recommendations concern the Regulatory requirement for local government review and approval for activities within CBPAs. She said that the City ordinance does include the requirement for a plan of development process but that the Use Regulations section of the City ordinance, which contains many of the RPA development criteria, does not clearly make that connection between the requirement for local government review and approval, and development within the RPA or for roads and driveways proposed within or across the RPA.

She said that the fifth and sixth recommendations concern the requirements for a WQIA. She explained that the Department has consistently requested that local governments require that a WQIA be reviewed for all land disturbances, development and redevelopment within the RPA for consistency with the development criteria but that the City neglected to include the term “land disturbance” in its description of the WQIA and its requirements. In addition, she noted that the City inserted a statement that allows a waiver of the WQIA requirement upon determination by the Zoning Administrator that the proposed development or redevelopment would not significantly impact water quality. She said that Department staff contends that the WQIA is the vehicle by which significant water quality impacts are identified and therefore cannot be waived within the RPA.

She stated that the seventh and final recommendation again addresses the issue of local government review and approval for activities within CBPAs. In this case, she said that the City is asked to include language that requires local government review and approval for removal of existing vegetation within the Resource Protection area.

She concluded by noting that the basic requirements of the City’s Chesapeake Bay program are in place, and these changes will not prohibit the City from implementing their program as intended. She said that the Northern Area Review Committee recommended on May 4, 2004 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.

Mr. Davis asked if anyone had questions for Ms. Mackey. There were none.

Mr. Davis asked if anyone was present from the City of Fairfax. There were none.

Mr. Davis called for a motion. Mr. Duncanson motioned to find the City of Fairfax’s

amended Phase I program 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 (7) recommendations contained in the staff report no later than December 31, 2006.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

June 21, 2004

RESOLUTION

LOCAL PROGRAM, PHASE I

CITY OF FAIRFAX - #33

Modification – Consistent

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

WHEREAS § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1(a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS the City of Fairfax adopted a local Phase I program on October 9, 1990 and amended the program on July 14, 1998 and again on March 23, 1999, and

WHEREAS on June 21, 1999, the City of Fairfax's Phase I program was found consistent by the Chesapeake Bay Local Assistance Board, and

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

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

WHEREAS the City of Fairfax adopted a revised local program to comply with §§ 9VAC10-20-60 1 and 2 of the Regulations on November 25, 2003; and

WHEREAS the Chesapeake Bay Local Assistance Board has adopted *Procedural Policies for Local Program Review* which addresses, among other items, review of modifications to local programs; and

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

WHEREAS on May 4, 2004 the Local Program Review Committee for the Northern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the City of Fairfax's revised Phase I program consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations subject to the following condition that the City of Fairfax undertake and complete the seven recommendations no later than December 31, 2006.

1. Amend Section 110-4 to include definitions of "public road" and "substantial alteration" consistent with the definitions set forth in §9VAC10-20-40 of the Regulations.

2. Amend Section 110-79(a)(1) to require that Resource Protection Area designation not be subject to modification unless based upon reliable, site-specific information consistent with §9VAC10-20-80.C of the Regulations.
3. Amend Section 110-80(b) to require local government review and approval of development proposed in Resource Protection Areas consistent with §9VAC10-20-130.1 of the Regulations.
4. Amend Section 110-80(b)(2) to require local government review and approval for roads or driveways proposed in or across Resource Protection Areas consistent with §9VAC10-20-130.1.d(4) of the Regulations.
5. Amend Section 110-80(e) to require a Water Quality Impact Assessment for any proposed land disturbance, development or redevelopment within a Chesapeake Bay Preservation Area in accordance with §110-85 of the City ordinance, consistent with §9VAC10-20-130.1.a of the Regulations. Delete the reference to the waiving of a WQIA in Section 110-80(e).
6. Amend Sections 110-84(c)(2) and 110-85(a)(2) to include references to proposed land disturbance, development and redevelopment consistent with §9VAC10-20-130.1.a of the Regulations.
7. Amend Section 110-84(d)(1) to require local government review and approval for removal of existing vegetation within Resource Protection Areas, consistent with §9VAC10-20-130.5.a of the Regulations.

BE IT FINALLY RESOLVED that failure by the City of Fairfax to meet the above established compliance date of December 31, 2006 will result in the local program becoming inconsistent with §10.1-2109 of the Act and §§9VAC10-20-60.1 and 2 of the Regulations and subject the Fairfax City to the compliance provisions as set forth in §10.1-2103.10 of the Act and §9VAC10-20-250 of the Regulations.

The Director of the Chesapeake Bay Local Assistance Department certifies that the Chesapeake Bay Local Assistance Board adopted this resolution in open session on June 21, 2004.

C. Scott Crafton
Executive Director
Chesapeake Bay Local Assistance Department

Mr. Froggatt seconded the motion.

Mr. Davis called for further questions. There were none.

Mr. Davis called for the vote. All members voted aye. Mr. Davis noted that the motion passed.

Noting there were no Phase II reviews, Mr. Davis called for Local Program Compliance Evaluations and recognized Ms. Nancy Miller for staff's presentation for King William County. Ms. Miller noted that no one was present from King William County because of staff vacancies. Ms. Miller provided the following summary.

Ms. Miller noted that the Department initiated the compliance evaluation process for

King William County on July 24, 2003, and met with County staff on October 30, 2003 and that subsequent meetings were held on February 4 and 18, 2004, with site visits conducted on March 1.

She said that copies of the field notes, photographs, site plan review sheets, materials provided by the County and the completed *Checklist for Local Program Compliance Evaluation* are included in the file.

She noted that King William County's Phase I program was originally found consistent on December 5, 1991 and as reported earlier, the County has requested an extension while it completes its required Phase I revision adoption process.

She said that the County's Phase II program found consistent on December 15, 1997, was revised on June 23, 2003 and that all the Bay Act required elements included in the previous Comprehensive Plan Environmental Element were retained.

She stated that the primary responsibility for administration and enforcement of the County's Bay Act program rests with the County's Planning Department. She continued, explaining that the County's Building Inspection Office and Planning Department coordinate their application and review processes to ensure that development, clearing and subdivision activities are conducted in compliance with the County's Zoning and CBPA Overlay District requirements. She noted that land disturbance and zoning permits must be granted before an application for a building permit will be approved by the Building Inspection Office.

She said that RPAs are based on all the RPA features included in the Regulations, and the RMA encompasses the remainder of the County. She stated that the County has no IDAs. She explained that since all land within King William County is located in a CBPA, all applications for clearing, land disturbance or construction activities must be reviewed by the Planning Department for compliance with the County's CBPA Overlay District.

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

She said that the staff report includes eight suggestions for improvements and seven recommendations for consistency to address program deficiencies. She provided an overview of recommendations as including:

- (1) development and use of CBPA requirement checklists;
- (2) development and implementation of a 5-year pump-out notification and tracking/enforcement program;

- (3) development of a standard BMP maintenance agreement, with inspection and maintenance procedures attached, and development and use of a BMP tracking system;
- (4) adoption of a policy of not approving BMPs without pretreatment, and institution of a requirement that the County's reviewing consultant evaluate all BMP siting, design and allowable pollutant removal efficiencies against the requirements in the Virginia Stormwater Management Handbook;
- (5) enforcement of the requirement to submit a WQIA for any proposed land disturbance, development or redevelopment within RPAs;
- (6) development of a file management system to ensure sufficient and appropriate Plan of Development (POD) information; and
- (7) requirement of mitigation plans for projects that propose encroachments into the RPA.

Ms. Miller noted that recommendations and suggestions included in the report are designed to assist the County in isolating those requirements and tasks that must be addressed to meet the requirements in the Act and the Regulations in the following areas: file management/maintenance; application submission requirements—WQIAs, etc.; requirements for a septic system pump-out program; stormwater management requirements; BMP review/inspection/maintenance requirements; and, BMP tracking system.

She also advised that the Department would like to express its gratitude for the County's assistance during the compliance evaluation.

In closing, she stated that 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 the Act and 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. She said that the Northern Area Review Committee also recommends 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.

Mr. Davis asked if anyone had questions for Ms. Miller. Mr. Davis noted that there had been considerable discussion at the Northern Area Review Committee meeting about getting a progress report from the County well in advance of the deadline so that the Board could have some background information before the final deadline.

Mr. Davis called for a motion. Mr. Sheffield motioned to find that certain aspects of King William County's implementation of its Phase I program do not fully comply with §§10.1-2109 of the Act and §§9VAC 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.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
June 21, 2004
RESOLUTION
LOCAL PROGRAM COMPLIANCE EVALUATION
KING WILLIAM COUNTY - #29
Local Compliance Evaluation - Conditional

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

WHEREAS §9VAC 10-20-250.1.b of the Regulations required the Board to develop a compliance evaluation process for evaluating local Bay Act compliance; and

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

WHEREAS in April 2004, the Chesapeake Bay Local Assistance Department conducted a compliance evaluation of King William County's Phase I program in accordance with the adopted compliance evaluation process; and

WHEREAS on May 4, 2004 the Local Program Review Committee for the Northern Area considered and evaluated the information contained in the compliance evaluation staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds that the implementation of certain aspects of King William County's Phase I program do not comply with §§10.1-2109 and 2111 of the Act and §§9 VAC 10-20-231 and 250 of the Regulations, and in order to correct these deficiencies, directs King William County to undertake and complete seven recommendations contained in this staff report no later than December 31, 2005. The Board also directs that King William County provide 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.

1. The County must develop and use checklists based on the Performance Standards included in its CBPA Overlay District to ensure that CBPA requirements are met.
2. For compliance with the Regulations, 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.
3. The County must develop a standard BMP maintenance agreement, with specific inspection and maintenance procedures included as an attachment, and must develop and use a BMP tracking system to ensure BMPs are being properly maintained.
4. The County should institute a policy of not approving BMPs without pretreatment, and should require its consultant to evaluate all BMP siting, design and allowable pollutant removal efficiencies against the requirements in the Virginia Stormwater Management Handbook.
5. The County must require the submission of a WQIA for any proposed land disturbance, development or redevelopment within RPAs.

6. The County must develop detailed checklists and a file management system to ensure sufficient and appropriate POD information is provided by applicants and to ensure that project files are complete, including all information related to project applications and reviews such as application forms, site plans, approvals/revisions, all site visit notes, staff recommendations, Board actions/minutes, WQIA related materials when required, and all other related materials.
7. Mitigation plans must be required for projects that propose encroachments into the RPA, and these plans should specify woody vegetation replacement requirements elsewhere on the affected properties to address vegetation impacted by proposed projects.

BE IT FINALLY RESOLVED that failure by King William County to meet the above established compliance date of December 31, 2005 will result in the local program becoming noncompliant with §§10.1-2109 and 2111 of the Act and §§9 VAC 10-20-231 and 250 of the Regulations and subject King William County to the compliance provisions as set forth in §10.1-2103.10 of the Act and §9VAC10-20-250 of the Regulations.

The Director of the Chesapeake Bay Local Assistance Department certifies that this resolution was adopted in open session on June 21, 2004 by the Chesapeake Bay Local Assistance Board.

C. Scott Crafton
Executive Director
Chesapeake Bay Local Assistance Department

Mr. Mendelsohn seconded the motion.

Mr. Davis called for further comments. There were none.

Mr. Davis called for the vote. All members voted aye. Mr. Davis noted that the motion passed.

Mr. Davis thanked Ms. Miller for the presentation and recognized Mr. Belo for staff's presentation for the City of Poquoson. Mr. Belo noted that Mr. Charles Burgess, the City Manager, was present. Mr. Belo provided the following summary.

He said that the Department conducted a compliance evaluation of the City of Poquoson's Phase I program over a three-week period in January and February of this year. He noted that based on this evaluation, the Southern Area Review Committee recommends that the City address noncompliance in seven elements of the City's Phase I program.

He outlined the recommendations, noting that first, the Committee recommends that the City document the submission of all Water Quality Impact Assessments submitted for any land disturbance, development and redevelopment in Resource Protection Areas and for development in Resource Management Areas when required. He noted that an organized WQIA submission process will facilitate not only the formal exception process, which is dependant on the findings of a WQIA, but also the Department's ability to effectively assess the City's implementation of this important element of the Regulations.

He continued, stating that second, the Committee recommends the City include in its files 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. He said that the Department recommends that the City implement planting guidance equivalent to those included in the Department's *Riparian Buffers Modification & Mitigation Guidance Manual*

He explained that third, the Committee recommends that the City revise the zoning ordinance, the site plan ordinance, and/or the subdivision ordinance to ensure consistency with Section 9 VAC 10-20-191.A 4&5 of the Regulations which requires:

- (1) the clear delineation of the buildable areas allowed on each lot;
- (2) a depiction of RPA and RMA boundaries on plats and site plans, including a notation on plats of the requirement to retain an undisturbed and vegetated 100-foot wide buffer area; and
- (3) a plat notation of the permissibility of only water dependent facilities or redevelopment in the RPA.

Fourth, the Committee recommends 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.

He continued, stating that fifth, the Committee recommends that the City begin to keep more complete files on all CBPA complaints and violations including, as a minimum, the type and extent of the CBPA violations, actions and schedules required by the City to mitigate any violation, and any follow-up information indicating that the required mitigation was achieved in a timely manner.

He noted that sixth, the Committee recommends 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.

He concluded the recommendations by noting that the Committee recommends 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.

He said that in addition to these seven recommendations, the Committee is making several suggestions intended to facilitate the City's implementation of its Bay Act program.

He finished his summary, concluding, the City staff is working very hard to implement an effective and consistent Phase I Bay Act program and that City staff has often consulted the Department for guidance and assistance in implementing various aspects of the City's Phase I program. He said that 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.

He explained that despite the City's hard work, the Committee recommends that the Board find that certain aspects of the County's Phase I program do not fully comply with the Act and Regulations and recommends a deadline of June 30, 2005 for the above items to be addressed.

Mr. Davis asked Mr. Burgess if he had any comments. Mr. Burgess stated that he appreciated the assistance the City has been given by staff and understood the recommendations.

Mr. Davis thanked Mr. Burgess and pointed to Page 8 of the June 21, 2004 CBLAD staff report, under suggestions where it states: "The Department suggests that the BZA cease permitting accessory structures like swimming pools in the RPA because such structures represent a long-term impediment to the establishment of a fully vegetated 100-foot RPA buffer." He said that he was uncertain whether this was appropriate, and the suggestion that the BZA cease permitting accessory structures should be reworded.

Mr. Davis suggested that the BZA follow state guidelines for granting variances and that he had been to public hearings where there had been substantial discussion about this topic. He recommended that this suggestion be rewritten. Mr. Davis asked Mr. Chaffe for his view of this matter. There was further discussion and recognition that BZAs are appointed by the court and have their own specific guidelines, procedures and legal obligations that guide their discussions.

Mr. Davis called for a motion. Mr. Duncanson motioned to find the implementation of the City of Poquoson's Phase I program does not fully comply with §§10.1-2109 of the Act and §§9VAC10-20-231 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.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
June 21, 2004
RESOLUTION
LOCAL PROGRAM COMPLIANCE EVALUATION
CITY OF POQUOSON - #50
Local Compliance Evaluation - Conditional

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

WHEREAS §9VAC 10-20-250.1.b of the Regulations required the Board to develop a compliance evaluation process for evaluating local Bay Act compliance; and

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

WHEREAS in the Winter of 2004, the Chesapeake Bay Local Assistance Department conducted a compliance evaluation of the City of Poquoson's Phase I program in accordance with the adopted compliance evaluation process; and

WHEREAS on May 4, 2004 the Local Program Review Committee for the Southern Area considered and

evaluated the information contained in the compliance evaluation staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds that the implementation of certain aspects of the City of Poquoson's Phase I program do not comply with §§10.1-2109 and 2111 of the Act and §§9 VAC 10-20-231 and 250 of the Regulations, and in order to correct these deficiencies, directs the City of Poquoson to undertake and complete the 7 recommendations contained in this staff report no later than June 30, 2005.

1. As required by Sec. 11.4-5(b) of the City's EMA Ordinance, the City must formalize and document the WQIA submission process for any proposed land disturbance, development or redevelopment within RPAs, and for development in RMAs when required by City staff. The City should ensure that the WQIA format and documentation process is designed and organized to allow efficient auditing of all WQIAs by City and Department staffs.
2. The City must ensure that CBPA files indicate the planting of RPA buffer vegetation replacement, restoration, and establishment standards equivalent to the minimum guidance included in the Department's *Riparian Buffers Modification & Mitigation Guidance Manual* for all approved encroachments, exceptions, expansions of nonconforming structures in the RPA and to address all RPA buffer violations.
3. The City must revise the zoning ordinance, the site plan ordinance, and/or the subdivision ordinance so that the implementation of the City's program is consistent with 9 VAC 10-20-191.A 4&5.
4. Review and revise the City's 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 EMA ordinance.
5. To fully comply with 9 VAC 10-20-120.3 of the Regulations, the City will develop a program to ensure the regular or periodic maintenance of best management practices in order to ensure their continued proper functioning over the long-term. This program will include all engineered stormwater BMPs.
6. The City must begin to keep more complete files on all EMA complaints and violations including, as a minimum, the type and extent of the EMA violations, actions and schedules required by the City to mitigate any violation, and any follow-up information indicating that the required mitigation was achieved in a timely manner.
7. The City must 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.

BE IT FINALLY RESOLVED that failure by the City of Poquoson to meet the above established compliance date of June 30, 2005 will result in the local program becoming noncompliant with §§10.1-2109 and 2111 of the Act and §§9 VAC 10-20-231 and 250 of the Regulations and subject the City of Poquoson to the compliance provisions as set forth in §10.1-2103.10 of the Act and §9VAC10-20-250 of the Regulations.

The Director of the Chesapeake Bay Local Assistance Department certifies that this resolution was adopted in open session on June 21, 2004 by the Chesapeake Bay Local Assistance Board.

C. Scott Crafton
Executive Director
Chesapeake Bay Local Assistance Department

Mr. Froggatt seconded the motion.

Mr. Davis called for further comments. There were none.

Mr. Davis called for the vote. All members voted aye. Mr. Davis commented that the motion passed.

Mr. Davis thanked Mr. Belo and recognized Ms. Smith for staff's presentation for Accomack County. Ms. Smith provided the following summary.

She stated that the compliance evaluation process for Accomack County was begun late last year and 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 these meetings helped to complete the Checklist, review site plan files, and conduct site visits.

She said that the report summarizes the findings of the compliance evaluation, checklists, site plan reviews and field investigations, and further that the report notes that, in general, the County is enforcing the requirements of its Bay Act program in an appropriate manner. She said that the report outlines general development activities in the County and that single-family home development is the dominant type of development in the County, along with some public projects, such as school sites. She said that site plans and field visits were reviewed for development occurring along portions of the Bay shoreline in the County where residential development is occurring and along Route 13. She noted 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 program enforcement.

She explained that based on the compliance evaluation process, the Department has four recommendations for full compliance, one relating to development of an organized BMP tracking and maintenance method and another relating to consistent implementation and enforcement of the septic pump-out requirement. She said 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. She said that the County will be developing tracking systems to address both of these issues. She explained that the other 2 recommendations relate to permitted development activities in the RPA. She said 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 noted 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 said that the County recognizes that individually sited BMPs are difficult to track and maintain and further that mitigation is required for all permitted RPA buffer encroachments and has agreed to begin requiring revegetation plans for permitted encroachments and other waivers and exceptions, using the Buffer Manual as a guide. She stated 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 said that all recommendations for full compliance are to be addressed no later than June 30, 2005 and further that the County has indicated its willingness to address them. She noted that the SARC concurred with staff's recommendations at its May 4, 2004 meeting.

Mr. Davis thanked Ms. Smith for report and asked if anyone was present from Accomack County. Ms. Smith responded that no one was present.

Mr. Davis called for questions.

Mr. Cowling pointed out that with regard to Item 4, only half the County is under the Chesapeake Bay Act; the ocean side is not. He said that to specify "any" shoreline erosion control project is beyond the Board's jurisdiction, so the recommendation should be worded so that it represents the Board's legal authority.

Ms. Smith agreed to clarify and stated she would change it to state these activities should require WQIAs if located within Chesapeake Bay Preservation Areas.

Mr. Davis called for a motion. Mr. Cowling motioned, including his proposed modification, to find that certain aspects of Accomack County's program implementation of its Phase I program do not fully comply with §§10.1-2109 and 2111 of the Act and §§9 VAC 20-20-231-250 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.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
June 21, 2004
RESOLUTION
LOCAL PROGRAM COMPLIANCE EVALUATION
ACCOMACK COUNTY - #35
Local Compliance Evaluation - Conditional

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

WHEREAS §9VAC 10-20-250.1.b of the Regulations required the Board to develop a compliance evaluation process for evaluating local Bay Act compliance; and

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

WHEREAS in Fall of 2003, the Chesapeake Bay Local Assistance Department conducted a compliance evaluation of Accomack County's Phase I program in accordance with the adopted compliance evaluation process; and

WHEREAS on May 4, 2004 the Local Program Review Committee for the Southern Area considered and

evaluated the information contained in the compliance evaluation staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds that the implementation of certain aspects of Accomack County's Phase I program do not fully comply with §§10.1-2109 and 2111 of the Act and §§9 VAC 10-20-231 and 250 of the Regulations, and in order to correct these deficiencies, directs Accomack County to undertake and complete four recommendations contained in this staff report no later than June 30, 2005.

1. The County must require buffer revegetation plans in conjunction with permitted land disturbances in the buffer as outlined under 9 VAC 10-20-130 and for any administrative waiver or formal exception projects as outlined under 9 VAC 10-20-150.A and C of the Regulations.
2. The County must develop a database or other appropriate method of tracking BMP installation as well as regular maintenance activities as required under §9VAC 10-20-120.3 of the Regulations.
3. The County must implement and track its onsite septic system options for compliance with §9VAC 10-20-120.7.a.
4. The County must require the submission of water quality impact assessments in conjunction with any waiver, exception or permitted land disturbance, development or redevelopment request, including any shoreline erosion control project in Chesapeake Bay Preservation Areas.

BE IT FINALLY RESOLVED that failure by Accomack County to meet the above established compliance date of June 30, 2005 will result in the local program becoming noncompliant with §§10.1-2109 and 2111 of the Act and §§9 VAC 10-20-231 and 250 of the Regulations and subject Accomack County to the compliance provisions as set forth in §10.1-2103.10 of the Act and §9VAC10-20-250 of the Regulations.

The Director of the Chesapeake Bay Local Assistance Department certifies that this resolution was adopted in open session on June 21, 2004 by the Chesapeake Bay Local Assistance Board.

C. Scott Crafton
Executive Director
Chesapeake Bay Local Assistance Department

Mr. Nice seconded the motion.

Mr. Davis called for further comments. There were none.

Mr. Davis called for the vote. All members voted aye. Mr. Davis commented that the motion passed.

Mr. Davis thanked Ms. Smith for her presentation and recognized Mr. Jakob Helmboldt for staff's presentation for the City of Richmond. Mr. Helmboldt advised that he and Mr. Adams had been working as a team on the presentation for the City of Richmond.

Mr. Adams introduced Ms. Debbie Byrd, who administers the City's CBPA program, and Mr. Mark Strickler, Director of Community Development for the City.

Mr. Adams said first he would read the recommendation and proceeded to do so: “Based on the existing information presented by the City and gathered through the investigation of citizen complaints, staff recommends that the Board find the City’s implementation of their Phase I program non-compliant with §§10.1-2109 and 2111 of the Act and §§9 VAC 10-20-231 and 250 of the Regulations. Staff further recommends that the City of Richmond undertake and complete the eleven (11) recommendations contained in this staff report no later than June 30, 2005 and submit this information to be reviewed in a secondary compliance evaluation review to be conducted within one year after the adoption of the City’s revised Chesapeake Bay Preservation Ordinance.”

Mr. Adams provided an overview for Richmond, noting that the City of Richmond’s Phase I program was adopted on November 11, 1991 and found consistent by the Board on June 25, 1993. He said that the City’s Permits and Engineering Services Administration Department staff administers their Chesapeake Bay Ordinance and explained that this staff includes one plans review engineer, two permitting department inspectors and the administrator, noting that the administrator is Ms. Debra Byrd, who is here to represent the City of Richmond.

He said that the City of Richmond is in the process of revising their Chesapeake Bay Preservation Act Ordinance and that this item will be reviewed by this Board in Section VIII of today’s agenda and therefore is not included in this staff report.

Mr. Adams provided a summary of the compliance evaluation process, noting that staff initiated the compliance evaluation process for the City of Richmond in January 2003. He stated that the evaluation process was delayed by the resignation of Ms. Robbie Rhur from the Department and that in August 2003, he was assigned to continue the evaluation process. He said that on August 27, 2003, Department staff met with the City to review site plans representative of development within the City. He explained that due to the developed urban nature of the City and the limited Chesapeake Bay Preservation Areas, Department staff noted that there were fewer potential projects to review than anticipated. He said that a field day to review four of these sites was scheduled on September 29, 2003. He noted that a subsequent site visit on November 10, 2003 by staff included a review of the stormwater management facilities in the field. He said that correspondence between the Department and the City was unsuccessful in December and January. He continued, stating that staff submitted a compliance evaluation report to the City based on the information gathered at that time, and that this report was to be heard at the February SARC meeting, but that an additional conference with the City to discuss the recommendations outlined in the compliance evaluation occurred on February 17, 2004 prior to the Southern Area Review Committee meeting and at that time this agenda item was tabled to incorporate some comments and additional information the City presented. He noted that the City expressed a desire to present additional sites and explanation of their program and that the Department agreed, but that staff did not receive any responses to phone or email invitations to meet in March and April. He stated that the Department chose to proceed with the evaluation and to present the amended report at this time.

He said that the City’s written Chesapeake Bay Policies outlined in the *Public Information Manual* are very well thought out for the existing ordinance and that this document

is given to the public to assist them applying the ordinance to their project. He noted that the City's Health Department currently tracks all septic tanks and sends out notices to septic users to require pump-out provisions of the regulations. He said that most of the necessary policies appear to be in place to implement the Bay Act, however it seems that the City's resources are stretched very thin. He said that based on the information gathered at this time, this lack of resources and possible communication issues between departments appears to lead to the occasional project slipping through the process and almost no time for following-up on citizen complaints and possible site visits for violations. He said that the eleven recommendations listed in this report include stormwater management programmatic recommendations and internal processes to make sure the Bay Act Ordinance is implemented in a consistent manner.

He stated that at this time the Department has summarized its findings and believes that additional information and site evaluations need to be performed to complete a thorough and representative review of the City's Phase I Program implementation. He said that staff has produced this document with the information collected through the compliance evaluation process and citizen complaints to the Department and that staff has been unable to gather adequate information from the City to fully analyze their Bay Act program, however he noted that the Department feels the need to outline the existing recommendations and suggests that the City be given adequate time to revise their existing Chesapeake Bay Preservation Ordinance and implement the recommendations contained within this report before continuing the compliance evaluation process.

He stated that staff recommends that the City of Richmond undertake and complete the eleven (11) recommendations contained in this staff report no later than June 30, 2005 and submit this information to be reviewed in a secondary compliance evaluation review to be conducted within one year after the adoption of the City's revised Chesapeake Bay Preservation Ordinance.

Mr. Adams indicated that if the Board had any questions regarding particular recommendations or the compliance evaluation process, he or the City representatives would be glad to answer them.

Mr. Davis asked Mr. Strickler if he had any comments. Mr. Strickler commented on one of the citations that some projects may not have been reviewed. He said he did not believe there was any evidence of that. He said one particular instance was brought to their attention but, in fact, that project did go through the review process. He said he wanted to reserve any other comments for later on in the meeting when the City of Richmond would be heard again during the informal fact finding portion of the meeting.

Mr. Davis asked if there were any questions of Mr. Adams.

Mr. Cowling asked if the City had adopted a revised ordinance, how many of these recommendations would go away?

Mr. Adams asked if he meant the ordinance. He said that there are a few that would have been covered by the ordinance, but not all of them. Ms. Byrd noted that when the compliance

evaluation began, CBLAD staff was reviewing implementation of the City's original ordinance. However, at this point, she said that the evaluation has taken so long that staff is now reviewing compliance with new regulation requirements, even though they are not yet in place in the City's Code. She said the City staff believes that their revised ordinance will address most of the concerns expressed in the CBLAD staff report.

Mr. Adams commented that at least three or four of the points would have been covered by the ordinance adoption. He also said that if they were to have adopted the ordinance, all of the documents that would have been normally used would also have to be updated. He said again there is additional work that needed to be done in order to use the documents that have already been created.

Mr. Davis asked Mr. Adams how he came up with the date of June 30, 2005. Mr. Adams stated that staff wanted to give the City adequate time to adopt their ordinance, and after one year from adopting their ordinance, staff would do another compliance evaluation. He said that staff would like to do another compliance evaluation after they have adopted their ordinance.

Mr. Cowling commented that he did not know how the rest of the Board felt, but considering the action that may be taken shortly, and with regards to adoption that may impact this, the appropriate thing to do is to table this issue until after the Board has heard the other matter.

Mr. Davis commented that it was certainly appropriate to table the matter. Mr. Cowling stated he believed it to be a good idea to tie these issues together.

Mr. Helmboldt commented that part of the intention with bringing this matter to the Board at this time is because of the length of time staff has been trying to bring closure to the process. He said Ms. Rhur resigned, passing the issue on to Mr. Adams, and now he is the official liaison. He said it has been extremely difficult to bring this matter to closure. He said the intent was to allow the City time to get their new ordinance in place on the ground, and to reevaluate their program later once the City's program and ordinance was up to date.

Mr. Mendelsohn asked what the difference was between the City of Poquoson, and the City of Richmond because the two seemed to be similar.

Staff responded that they were different in that their programs are different. Ms. Byrd commented that she did not believe that staff's comments accurately reflected their program.

Mr. Mendelsohn observed that CBLAD staff expects the City of Richmond to adopt their ordinance, have some time to implement, then have the new program reevaluated. He said the deadline that staff is asking for is a year from now, which is the same time frame being given to reevaluate their ordinance. He asked when is the ordinance expected to be adopted. Mr. Adams stated that he did not know when the ordinance would be adopted.

Mr. Mendelsohn and Mr. Davis agreed that it would be a good idea to table the City of Richmond until later in the meeting. Mr. Cowling suggested that this issue be tabled until the

September Board meeting, after the Board could see the consequence of the discussion regarding the City's ordinance revisions. Mr. Davis suggested that the Board table the City of Richmond until later on in the meeting and decide at that time whether they would table the City of Richmond until the September Board meeting.

Mr. Davis called for the pleasure of the Board. The Board agreed, Mr. Cowling motioned, and Mr. Mendelsohn seconded to table further discussion regarding the City of Richmond's compliance evaluation until later in the meeting. Mr. Davis asked if everyone understood what the motion was. Mr. Cowling repeated that the Board agreed to table the City of Richmond and bring the matter up later in the meeting. Mr. Davis called for a vote. All members voted aye. Mr. Davis noted that the motion passed.

Mr. Davis called for a motion to recess the meeting. Mr. Cowling so moved. The meeting was recessed at 12:00 p.m.

Mr. Davis reconvened the meeting at 12:15 noting that this portion of the meeting would be dealing with informal fact finding procedures that dealt with the administrative process for various localities that have not adopted the required Bay Act Regulation revisions.

He asked Ms. Martha Little to provide a brief history of the Bay Act before hearing the informal fact finding.

Ms. Little explained that the agency was created in July 1988, with a mandate to adopt Regulations by July 1989. She noted that the final regulations were adopted in September 1989 and became effective on October 1, 1989. She said that the Act provided local governments twelve months from that date to create their maps of their Chesapeake Bay Preservation Areas and adopt their local ordinances to comply with the Regulations. She also noted that the Board committed to evaluate the Regulations, once local programs had been established and had been operating for a few years, in order to see what was working and what might be improved. She stated that the Regulations were amended slightly in 1991 to address definitions concerning public roads, and the bulk of the 84 localities in Tidewater had adopted their ordinances by 1992. She explained that in 1993-94 the Board met with a stakeholder committee to review the Regulations and make recommendations for improvements and that the General Assembly ordered another Regulation evaluation to be conducted in 1995 and following that evaluation, CBLAD asked the Administration to approve the undertaking of a Regulation amendment through the APA process. She said that the Secretary of Natural Resources approved the request in the spring of 1996, and the notice of intended regulatory action was filed in summer of 1996. She continued, noting that the Board established a Regulatory Advisory Committee of stakeholders that met together monthly from October 1996 until May 1997, and a consensus was reached regarding recommendations for Regulation revisions. She said that these were presented to the Board and approved at their June 1997 meeting.

She explained that the draft amendments were submitted to the Administration for their review as well as the Department of Planning and Budget for economic impact analysis and further that these processes took until the fall of 2000, when the Secretary of Natural Resources authorized CBLAD to proceed to public comment. She said that the draft Regulations were

published in the Virginia Register for public comment and public hearings were conducted. She noted that comments were reviewed over a period of months, and revisions were made that were considered appropriate, and further that some of the revisions were considered substantive, so the Regulations went out again for public comment in the fall of 2001 and final Regulations were presented to the Board and approved on December 10, 2001. She said that these Regulations became effective on March 1, 2002 and by Resolution the Board gave the Tidewater localities until March 1, 2003 to amend their local ordinance to incorporate these changes in order to be consistent with the new Regulations. She said that in early 2002, CBLAD provided markups for the Tidewater localities showing what would need to be changed in their ordinances. She said that a revised model ordinance was also developed by CBLAD staff and made available to provide guidance for all localities. She noted that staff then communicated and worked with local governments throughout 2002 to assist as needed in the modification of the ordinances. She explained that early in the 2003 General Assembly Session, questions were raised to the Secretary of Natural Resources concerning a new requirement in the Regulations to confirm whether stream channels are perennial, so the Secretary of Natural Resources asked the Board to extend the deadline for local ordinance revisions to be adopted to December 31, 2003, in order to allow stakeholders to consider this guidance and that the Board approved this deadline extension. She said that the perennial stream determination guidance was developed and submitted to localities, and CBLAD staff continued to send correspondence, make recommendations and visit localities to assist with the adoption of revised Bay Act ordinances by the December deadline.

Ms. Little noted that in the packet there is a summary for each of the localities listing contacts made by staff. She noted that by December 2003, 52 out of the 84 localities had adopted the required amendments. She said that since then, at the Board's March meeting, 15 local programs were found inconsistent due to their not having adopted required revisions by the December deadline and that the Board then gave them one final deadline of May 15, 2004 to adopt their revisions and notify CBLAD of their actions. She said that there are five localities that still have not adopted, but that the City of Petersburg, the Town of Belle Haven, and the City of Poquoson have adopted, and the City of Norfolk has requested a deadline extension. She noted that the remaining localities have been contacted and asked to attend the meeting to explain why they have not adopted the revisions. She said that there was one other locality that adopted a revised ordinance, but it was found inconsistent at the March meeting.

Mr. Davis asked if there were any questions of Ms. Little. There were none.

Mr. Davis commented that the Board would be following the Administrative Process Act that sets forth specifically what actions the Board must take. He said there were a number of actions that could be taken, i.e. vote to refer the localities that have not yet adopted to the Attorney General's Office for potential legal action, or they could table the matter and have substantial discussion.

Mr. Davis advised that the City of Richmond had asked to be the first item on the agenda because of other time constraints. The Board members agreed.

Mr. Helmboldt provided the following summary. He stated that beginning in February 2002, his predecessor, Roberta Rhur, Interim liaison Alex Adams, Scott Crafton and he had

notified City of Richmond staff of the changes to the Regulations and provided guidance on the required revisions.

He continued, noting that on at least eight occasions prior to the December 31, 2003 deadline, written correspondence was sent to the City informing them of required changes, deadlines, revisions to deadlines and requests for the City to send CBLAD staff a schedule of their adoption process.

He stated that subsequent letters and meetings have apprised the City of the process by which CBLAB has considered the City's actions regarding adoption of the revisions and any actions that would be taken by the Board if the City did not adopt revisions prior to June 21.

He said that on January 15, 2004, Scott Crafton, Martha Little and Roger Chaffe met with City staff and the City's attorney, to discuss a timeline for the City's adoption of the revisions and to discuss the nuances of a court case centered on the City's Bay Act regulations and implementation. He explained that at that time the City agreed to adopt, in the coming months, revisions to the regulations with the exception of site-specific determination, which was the central issue in the court case. He said that it was agreed that the additional revisions would take place once the case was closed.

He noted that the City, at the May SARC meeting, indicated that they still intend to proceed with adoption of the revisions to which they had previously agreed and additionally, it was noted that the litigation that was related to the implementation of their Bay Act ordinance had come to a close and that would allow them to proceed with revisions to their ordinance.

Mr. Davis thanked Mr. Helmboldt for his report and noted that there were going to be some localities that will probably adopt the Regulations in the near future and the Board needed to be aware of that and discuss how that should be handled as to what discretion the Board has.

Mr. Davis asked if there any questions for Mr. Helmboldt. There were none.

Mr. Strickler, Director of Community Development to the City of Richmond, thanked the Board and other localities for permitting him to be heard first. He said his comments would be brief and were addressed in a letter that was presented to Mr. Crafton.

He said the City of Richmond had been a leader in requiring development to be in compliance with the Chesapeake Bay Preservation Act. He said the delay in adopting ordinance revisions was due in part to the City's diligence in this area, resulting in the City being subjected to two very costly law suits over the consistent implementation of this state mandated program. He said the first litigation started in May 2001. He noted that the City's final appeal of the second lawsuit was denied a hearing by the Virginia Supreme Court in April 2004. He said they were involved in this for over three years. He said the legal fees were well in excess of \$100,000 for the City to defend its role in implementing the Chesapeake Bay Act. He said that during this court case the City spent many months trying to reach a settlement agreement with the Plaintiffs which was also unsuccessful. He stated that the litigation directly impacted the City's timely adoption of the revised Regulations to comply with CBLAD's 2003 deadline.

He said that the City has been actively working toward compliance with the 2002 amendment since its adoption and actually prepared a draft and shared it with the CBLAD staff. However, as a result of the court's ruling in the most recent case, he noted that the City has abandoned the original draft and has started with a different approach in an effort to avoid further litigation. As part of that approach, he said that the City is taking the following steps toward compliance. He explained that the City Planning Commission adopted a motion of intent on May 17, 2004 to amend its zoning ordinance pertaining to the Chesapeake Bay Preservation Act, commencing a series of steps that must be taken under state law prior to initiating amendments to a zoning ordinance. In addition, he said that the Planning Commission has assigned a team of staff to work with the City Attorney's office in preparing a draft of the new Regulations. He stated that it is anticipated that the new Regulations will be before the City Planning Commission and City Council for a formal public hearing and possible adoption in December 2004.

He stated that while the City intended to comply with the 2002 amendments, the City believes the Regulations as promulgated by CBLAB are still problematic as it relates to the most recent circuit court ruling. Mr. Strickler said they believe it is incumbent upon CBLAB to initiate revisions to the Regulations to prevent localities from having further needless and costly litigation. He mentioned several issues, referencing Section 9 VAC 10-20-80.C dealing with designation of Resource Protection Areas and Section 9 VAC 10-20-105. He suggested that the City's position in the court case was clearly harmed by this inconsistency. He noted that provisions in the Regulations are needed to permit new designations and are not limited to refinements or adjustments to existing RPA boundaries in order to correct this inconsistency.

He said that the second item is in reference to Section 9 VAC 10-20-80.D in determining whether the water bodies have perennial flow. He stated that the Regulations again refer to the same section, and the same inconsistency exists regarding refinement versus designating.

He said that the third item is in reference to Section 9 VAC 10-20-90.B.2. He noted that the term steep slopes is not defined and that CBLAD has noted that they would like the City to designate more steep slopes however, without designation criteria localities are left with no guidance as to what constitutes a steep slope and are susceptible to litigation. He said that the City has had an excellent working relationship with CBLAD, and the Executive Director and staff were very helpful to the City during the litigation. He said that Mr. Crafton appeared before City Council and before the court hearing, but nonetheless, unless the Regulations are revised to be made clear, the City may be back in litigation, and that has clearly been one of the items that has held the City up in developing Regulations. He said they were committed to putting new Regulations before the City Council by December 2004. He said he had given copies of the letter to Mr. Crafton for the Board members.

Mr. Strickler asked if there were any questions. Mr. Cowling stated that he disagreed emphatically with a couple of his statements. He said as he read the case, Pony Farms LLC vs City of Richmond, the plaintiff's contention was that the City was attempting to impose the Regulations upon a piece of property without having enacted a local ordinance that amended the RPA map, and therefore they were denying them their vested rights because they had not adopted that ordinance, and they prevailed.

Mr. Strickler did not agree with Mr. Cowling's understanding of the case. Mr. Cowling said that is how he read what the Judge wrote and, in fact, a part of the complication here is the fact that the City has not adopted the Regulations and continues to apply out-of-date rules that, in fact, invite more litigation.

Mr. Strickler disagreed with Mr. Cowling's statement in the sense that the adoption of the Regulations in 1992 allowed the City to refine RPA designations, and the City has always done so. The court ruling had to do with designating an area that was separate and apart from the existing RPA. They did not feel the City had the right to do that because it was not a refinement. It was viewed as a leap-frog designation of a new area, but they had been doing that under the Regulations since 1992.

Mr. Cowling stated that he thought the Judge was pretty clear in specifying that the failure to adopt an ordinance consistent with the new Regulations is why he found for the plaintiff in that particular case. Mr. Cowling said he had not read the most current Supreme Court finding although he understood they upheld the lower court. He said that he resented the implication that the Board somehow contributed to the City's problems.

Mr. Strickler said he never said the Board contributed to the problem. Rather, he said the Regulations could be made clearer to prevent litigation. Mr. Cowling said he would not argue that there are some problems with the Regulations. Nonetheless, he did not read Judge Johnson's words like Mr. Strickler presented them.

Mr. Davis commented that the Board needed to consider whether there were mitigating reasons why the locality has not adopted the Regulations and give that consideration in determining how this should be handled.

Mr. Davis asked if there were any further questions for Mr. Strickler. There were none. Mr. Davis thanked Mr. Strickler for his comments and asked if anyone else would like to speak for the City of Richmond.

Mr. Sheffield called for a point of order. Mr. Davis recognized Mr. Sheffield. Mr. Sheffield commented that the Board would be considering the information in the packet regarding the Resolution for the City of Richmond. He asked Mr. Chaffe if the Board passed the Resolution as presented, what happens next; and if the matter goes to court, what kind of remedies can the court provide to assist the Board in getting the City of Richmond to comply. Mr. Chaffe asked if he meant what kind of relief the Board can request. Mr. Sheffield responded affirmatively. Mr. Chaffe responded that they could essentially ask that the court enter an order to make the City of Richmond get into compliance by adopting an ordinance. He said an opinion of the Attorney General a few years ago said that in enforcing the law, the Board can seek various kinds of relief, including asking for an order to prevent a locality from issuing further building permits until they do get into compliance. He said the exact relief is something that would have to be worked out.

Mr. Sheffield went on to say that if the locality goes ahead and satisfies the requests of the Board, then there would be no reason to have litigation, and rather the matter would be brought back before the Board. Mr. Chaffe agreed and Mr. Davis noted that the Board needed to consider giving discretionary authority to Mr. Crafton and, as of July 1, 2004, to Mr. Maroon. Mr. Davis said it was issues like this that needed to be decided before the end of the day. Mr. Cowling commented that the Attorney General's office, assuming they had a case, would have the authority to stop the case at any point where the locality came into compliance and return it to the Board. Mr. Chaffe said that the Department and the Board were the Attorney General's clients.

Mr. Mendelsohn commented that in practice, staff would come to a decision where something has happened to cause us to pull back so that it would not be necessary to wait until the next meeting for that to occur, and even if the Board said go forward, staff would still be able to say that they had gotten the information or reaction needed from the locality.

Mr. Crafton commented that the Act is written such that the Executive Director has the authority of the Board when the Board is not in session. Mr. Mendelsohn agreed, and Mr. Davis suggested that a deadline or reasonable dates be set when these issues will come back to the Board if action has not occurred.

Mr. Crafton stated that this is where the agency and the Board are today. At the last meeting in March and then at the NARC and SARC meetings a deadline was given and this has been going on for two and a half years. The May 15, 2004 date was the last deadline, and that has passed.

Mr. Mendelsohn asked if there should be another motion because the motion in the packet is general. Mr. Crafton answered no, but he wanted to make sure there was ample discussion. Mr. Davis reminded the Board that the Director would have the discretion to take any action necessary if a locality came into compliance. Mr. Crafton noted that the locality would contact the agency to let staff know when the compliance has been met.

Mr. Cowling said that what is actually being said is that if a locality adopted a consistent ordinance, then at a subsequent Board meeting the locality would be heard regarding the consistency of the ordinance.

Mr. Crafton asked the Board to decide whether a locality would have up until the September Board meeting date or sometime in July or August, or give Mr. Maroon that authority.

Mr. Cowling stated that once a locality is showing their commitment to having their ordinance adopted, he would not want to see any legal action taken after that.

Mr. Davis and Mr. Cowling agreed that the Director of the agency should have the authority to do what is necessary. Mr. Maroon suggested that this is not the best time to take this kind of action, but it appeared that it was going to happen, and he believed that litigation was not always the best way and should be used only as a last resort. He said there should be an

opportunity to make one last attempt to resolve the issues up to the very last possible date or the September Board meeting date.

Mr. Mendelsohn commented that the Board normally sets 30 days prior to a meeting as the deadline for local action. But in this case, the Board is going to be taking some action and really making a final decision, so it probably isn't necessary to allow for that 30 days, and a report even on the day of the Board meeting would be okay.

Mr. Davis and Mr. Cowling agreed, and further agreed to give the Director the authority to bring these matters back to the Board.

Mr. Sheffield motioned to pass the Resolution for the City of Richmond, with a few minor changes, as follows: “. . . and be it further resolved that the Chesapeake Bay Local Assistance Board authorizes and directs the Director of the Chesapeake Bay Local Assistance Department to take appropriate administrative and legal actions as outlined under §10.1-2103.10 of the Act and § 9VAC10-20-260 of the Regulations to compel the City of Richmond to adopt a consistent Phase I program and report back to the Board at subsequent meetings.”

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
June 21, 2004
RESOLUTION
LOCAL PROGRAM, PHASE I
CITY OF RICHMOND #48

Authorization to Take Action Pursuant to § 9 VAC 10-20-260 of the Chesapeake Bay Preservation Area Designation and Management Regulations

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

WHEREAS § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1(a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS the City of Richmond adopted a local Phase I program on November 11, 1991, and

WHEREAS on June 25, 1993, the City of Richmond's Phase I program was found consistent by the Chesapeake Bay Local Assistance Board, and

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

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

WHEREAS staff provided technical assistance to the City of Richmond to help facilitate the adoption of a revised program for consistency with the Act and Regulations; and

WHEREAS despite the assistance provided by staff, the City of Richmond failed to adopt a revised local program to comply with § 9VAC10-20-60 1 and 2 of the Regulations by the December 31, 2003 deadline; and

WHEREAS the Chesapeake Bay Local Assistance Board has adopted *Procedural Policies for Local Program Review* which addresses, among other items, review of local programs; and

WHEREAS the City of Richmond was notified in a letter dated March 4, 2004 of the March 22, 2004 meeting of the Chesapeake Bay Local Assistance Board and the City of Richmond would be found inconsistent if they had not, by March 22, 2004, adopted a consistent Bay Act program, and

WHEREAS on March 22, 2004 the Chesapeake Bay Local Assistance Board found the City of Richmond inconsistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations and further that the City adopt a consistent Phase I program no later than May 15, 2004, and

WHEREAS the City of Richmond has failed to adopt a consistent Phase I program by the established deadline, now

THEREFORE BE IT RESOLVED that the City of Richmond is subject to the compliance provisions as set forth in §10.1-2103.10 of the Act and §§ 9VAC10-20-250 and 9VAC10-20-260 of the Regulations.

BE IT FURTHER RESOLVED that the Chesapeake Bay Local Assistance Board authorizes and directs the Director of the Chesapeake Bay Local Assistance Department to take appropriate administrative and legal actions as outlined under §10.1-2103.10 of the Act and §9VAC10-20-260 of the Regulations to compel the City of Richmond to adopt a consistent Phase I program and report back to the Board at subsequent meetings.

The Director of the Chesapeake Bay Local Assistance Department certifies that this resolution was adopted in open session on June 21, 2004 by the Chesapeake Bay Local Assistance Board.

C. Scott Crafton
Executive Director
Chesapeake Bay Local Assistance Department

Mr. Mendelsohn seconded the motion.

Mr. Davis called for further comments. Mr. Sheffield commented that when you look at what needs to be done, it is not all that much. Either a locality has passed an ordinance after all these years, or they have not. It is very simple: yes it has passed, or no it has not passed. He said that elected officials on the local level are supposed to do this. He said these people are required to do what the General Assembly has empowered the Board to pass on to them. He said that the Board should not lose sight of why the Board is here, and that is to preserve the Chesapeake Bay. He said that the Board is dealing with the final 8-9% of localities that have not passed the ordinance, and the message should be very clear: pass that ordinance. Mr. Sheffield questioned how the local governments would feel if they could not issue any building permits, and if that happens there are going to be lawsuits. He said that there is no question that the Board needs to take decisive action, and that this is where “the rubber meets the road.”

Mr. Davis commented that it was decided at the March Board meeting that the line had been drawn, and a deadline was set. Mr. Mendelsohn commented that the City of Richmond has said that they will adopt by the end of the year. He said that doesn't stop the Board from moving on, but if someone intends to adopt say in October, will there be legal action. Mr. Davis commented that is the case on some that are going to be heard, and a decision will have to be

made when they are heard. Mr. Mendelsohn agreed.

Mr. Cowling commented that is the purpose of the meeting today, and the number one complaint from citizens is the lack of consistency. He said the letters that had been written to local officials simply mean that if the Board doesn't act as they said they would in those letters then the Board is not keeping their oath. Hopefully, it would let localities know the Board is serious about the Bay Act and is trying to be consistent.

Mr. Davis called for the vote. All members voted aye.

Mr. Davis called for the consideration of the City of Richmond that had been tabled earlier.

Mr. Davis asked what the recommendation was from staff. Mr. Crafton said staff recommended a finding of inconsistent and wanted to bring closure to the issues. Ms. Little reminded the Board that it was staff's intent to review the ordinance approved by the City in 2005 to see if there were inconsistencies regarding implementation of their revised ordinance.

Mr. Davis asked what the benefit would be to finding them inconsistent.

Mr. Crafton responded that the finding would be consistent with what had been done in the past, and it would be for the record. Mr. Mendelsohn commented that he was troubled by the idea of finding them inconsistent and giving them until 2005 to get into compliance, and would support leaving it on the table. Mr. Davis agreed to leave the issue on the table until the September 2004 Board meeting. Mr. Mendelsohn commented that he believed there would be a much better picture then. Mr. Cowling commented that as many as 4 of the issues would disappear.

Mr. Cowling motioned to table the City of Richmond until the September Board meeting. Mr. Davis advised there was no need for a motion. Mr. Cowling withdrew his motion. Mr. Sheffield motioned to refer the City of Richmond back to staff for cleaning up and repackaging, so that it is less confusing, and for staff to advise the Board in September. Mr. Mendelsohn seconded. All members voted aye.

Mr. Davis thanked the Board for their consideration of the City of Richmond, and recognized Ms. Shawn Smith for staff's presentation for the Town of Onley.

Ms. Smith provided the following summary. She stated that beginning in February of 2002, staff, Executive Director or Board Chair have sent 10 different letters notifying the Town of the deadline for revising its local Bay Act program and offering assistance in doing so. In addition, she said that staff has had conversations with the Town Mayor, Town Attorney and Town Clerk regarding the need for revisions to occur and the time frame imposed by the Board to do so. She noted that during the latest conversation with the Town, they indicated that while the Town is planning on adopting revisions as recommended by staff, they have not yet indicated when such adoption will occur. She noted that current issues are that the Planning Commission has yet to hold its meeting to forward their recommendation to the Town Council, and that a date

for that meeting has not yet been scheduled.

Mr. Sheffield motioned to adopt the resolution for the Town of Onley.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
June 21, 2004
RESOLUTION
LOCAL PROGRAM, PHASE I
TOWN OF ONLEY #83

Authorization to Take Action Pursuant to § 9 VAC 10-20-260 of the Chesapeake Bay Preservation Area Designation and Management Regulations

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

WHEREAS § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1(a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS the Town of Onley adopted a local Phase I program on May 6, 1996, and

WHEREAS on December 16, 1996, the Town of Onley's Phase I program was found consistent by the Chesapeake Bay Local Assistance Board, and

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

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

WHEREAS staff provided technical assistance to the Town of Onley to help facilitate the adoption of a revised program for consistency with the Act and Regulations; and

WHEREAS despite the assistance provided by staff, the Town of Onley failed to adopt a revised local program to comply with § 9VAC10-20-60 1 and 2 of the Regulations by the December 31, 2003 deadline; and

WHEREAS the Chesapeake Bay Local Assistance Board has adopted *Procedural Policies for Local Program Review* which addresses, among other items, review of local programs; and

WHEREAS the Town of Onley was notified in a letter dated March 4, 2004 of the March 22, 2004 meeting of the Chesapeake Bay Local Assistance Board and the Town would be found inconsistent if they had not, by March 22, 2004, adopted a consistent Bay Act program, and

WHEREAS on March 22, 2004 the Chesapeake Bay Local Assistance Board found the Town of Onley inconsistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations and further that the Town of Onley adopt a consistent Phase I program no later than May 15, 2004, and

WHEREAS the Town of Onley has failed to adopt a consistent Phase I program by the established deadline, now

THEREFORE BE IT RESOLVED that the Town of Onley is subject to the compliance provisions as set forth in §10.1-2103.10 of the Act and §§ 9VAC10-20-250 and 9VAC10-20-260 of the Regulations.

BE IT FURTHER RESOLVED that the Chesapeake Bay Local Assistance Board authorizes and directs the Director of the Chesapeake Bay Local Assistance Department to take appropriate administrative and legal actions as outlined under §10.1-2103.10 of the Act and §9VAC10-20-260 of the Regulations to compel the Town of Onley to adopt a consistent Phase I program and report back to the Board at subsequent meetings.

The Director of the Chesapeake Bay Local Assistance Department certifies that this resolution was adopted in open session on June 21, 2004 by the Chesapeake Bay Local Assistance Board.

C. Scott Crafton
Executive Director
Chesapeake Bay Local Assistance Department

Mr. Sheffield reminded the Board that the motion includes the same verbage as is in the City of Richmond's motion.

Mr. Froggatt seconded the motion.

Mr. Davis called for further comments. There were none.

Mr. Davis called for the vote. All members voted aye. Mr. Davis commented that the motion carried.

Mr. Davis noted that no action by the Board was required for the Town of Belle Haven because they adopted on June 1, 2004, and recognized Mr. Jakob Helmboldt for staff's for the presentation for Chesterfield County.

Mr. Helmboldt provided the following summary. He stated that beginning in February 2002, his predecessor, Roberta Rhur, Interim liaison Alex Adams, Scott Crafton and he had notified Chesterfield County staff of the changes to the Regulations and provided guidance on the required revisions.

He continued, noting that on at least six occasions prior to the 12/31/03 deadline, written correspondence was sent to the County informing them of required changes, deadlines, revisions to deadlines and requests for the County to send CBLAD staff a schedule of their adoption process.

He stated that subsequent letters have apprised the County of the process by which CBLAB has considered the County's actions regarding adoption of the revisions and any actions that would be taken by the Board if the County did not adopt revisions prior to June 21.

He said that CBLAD staff has met with County staff to provide guidance and feedback regarding changes to the County's Bay Act ordinance. Staff and Scott Crafton have also attended County Board of Supervisors' (BOS) meetings and Mr. Crafton has met with County Administrator Lane Ramsey.

He also noted that despite unanimous approval from the Chesterfield Planning Commission, the BOS was reluctant to adopt the changes to the County's ordinance until their countywide RPA delineation was completed, which is projected to take until mid-2005 at the earliest.

He said that the County Board of Supervisors considered adoption of the revised Regulations at their May 26 meeting but chose to defer action for at least another six months, stating that the Board of Supervisors feels that the changes are burdensome and will result in taking of property and that there is too much uncertainty regarding the increase in the amount of RPA in the County.

Mr. Davis asked if there were any questions of Mr. Helmboldt. There were none.

Mr. Davis asked if Mr. Steve Micas, Chesterfield County's Attorney, had any comments.

Mr. Micas thanked Mr. Crafton and Mr. Chaffe for becoming actively involved in Chesterfield County's situation. He said that Chesterfield County takes water quality very seriously and is very active and has a very successful program. He explained that the County implemented their own program regarding phosphorus loading in the Swift Creek Watershed, which is in excess of anything required by state law.

He said the County was the first in the state to implement a comprehensive watershed assessment and stream protection program that requires both water quality monitoring and addresses both point and nonpoint source pollution. He said that Chesterfield County has a history of protecting water quality.

He said the County was moving toward adoption when there was a mass mailing from the Home Builders Association of Richmond (letter handed out) several days prior to the public hearing and, as the Board could read in the letter, the County Board was presented with the extreme claims in this letter. He said that at the public hearing there were a number of citizens in opposition to the ordinance including citizens, farmers, lawyers, businessmen and representatives from the homebuilders.

He said after the public hearing the Board instructed the County to move as quickly as possible to map the streams and also to come back in November to see if progress had been made in resolving some issues. He said a number of issues were raised at the public hearing, including 1) perennial stream definitions are not in the Regulations; 2) protocols go beyond the common understanding of a perennial stream; 3) concern that the new regulations could result in a uncompensated taking of property in the event that someone bought a property and relied on the USGS maps and then the new perennial stream definitions resulted in the taking of property. Mr. Micas provided an example (handed out) of a map showing a parcel with the existing RPA, and another map showing a new RPA based on the regulatory amendments. He said the second page clearly illustrates a taking of the lot. Mr. Micas went on to explain that the new regulations would lead to uncertainty, and the Board has already heard lingering interpretations or misinterpretations of the cases in the City and the City Attorneys are still questioning whether it is legal to expand RPAs beyond existing USGS maps. He said he was not present to argue the

legitimacy of the issues, but there is still an opportunity for compromise. He suggested that greater procedural protection and guidelines need to be included in their ordinances. He said that he believed this is the time to make greater improvements in the Bay Act Regulations and the County's ordinances in the next couple of months.

Mr. Micas provided the Board members with a redrafted Resolution and asked that they would instruct Department and County staff to determine whether changes could be made that would satisfy both the concerns of the agency and the County, and establish a compliance date of December 31, 2004 to come into compliance.

He said that he noted there were a number of localities heard today whose dates were set far into the future. Mr. Micas raised a procedural issue in that in order for the Board to refer this matter for legal action there has to be compliance with Section 9 VAC 10-20-250 of the Regulations that says if any deficiencies are found, then a schedule must be established for the local government to come into compliance. He said the County did receive the March 22, 2004 letter which reports to find the County not in conformance with the mandates, but the Regulations say that such a notification must "give the subject local government at least fifteen days notice of its right to appear before the Board at a time and place specified for the presentation of factual data, argument and proof." He said they received the March 4th letter advising of the March 22nd CBLAB meeting, but the letter did not advise of the right to appear to present evidence and for that reason Chesterfield did not appear in March. He said this procedural issue is illustrated by reading the March letter and the May letter. The May letter is a fact finding procedure to set a compliance schedule. He said it is the County's position that the meeting today is the meeting in which the Board will set a compliance deadline based on the letter sent in May. He said that it should be the deadline that is set today that needs to be met, and if it isn't met then action can be taken. He asked for consideration of the Resolution that he provided.

Mr. Cowling asked if the lot shown on the map was real. Mr. Micas replied that it was a real lot. Mr. Cowling asked if it was a pre-1989 lot. Mr. Micas said it was a post-March 2002 lot. Mr. Cowling said then it was platted after the 2002 Regulations that would not be subject to the new regulations. Mr. Cowling asked about the County's Board of Zoning Appeals. Mr. Micas responded that the appeal would go to the Planning Commission, and again that it is not as easy as an administrative approach that existed for lots prior to March 2002 under their original ordinance. Mr. Cowling asked if there is an allowance for some remedy at the local level to help relieve this lot owner. Mr. Micas responded that there is.

Mr. Cowling said that he personally believed that Chesterfield County had one of the best programs in the state, and one of the most knowledgeable and professional staff members that he had met, Joan Salvati. He said he was shocked to see Chesterfield County on the list of localities to be heard. However, the point is cut and dry: either you have adopted or you have not. Mr. Cowling also suggested that the County could have adopted the use of USGS mapping instead, and that would have been allowable.

Mr. Sheffield asked Mr. Chaffe about the procedural issue to which Mr. Micas had referred. Mr. Chaffe responded that it was not an issue.

Mr. Sheffield then motioned the adoption of the resolution for Chesterfield County, with the same two minor changes: “. . . be it further resolved that the Chesapeake Bay Local Assistance Board authorizes and directs the Director of the Chesapeake Bay Local Assistance Department to take appropriate administrative and legal actions as outlined under §10.1-2103.10 of the Act and §9VAC10-20-260 of the Regulations to compel Chesterfield County to adopt a consistent Phase I program and report back to the Board at subsequent meetings.”

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
June 21, 2004
RESOLUTION
LOCAL PROGRAM, PHASE I
CHESTERFIELD COUNTY #72

Authorization to Take Action Pursuant to § 9 VAC 10-20-260 of the Chesapeake Bay Preservation Area Designation and Management Regulations

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

WHEREAS § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1(a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS Chesterfield County adopted a local Phase I program on October 10, 1990, and

WHEREAS on March 27, 1997, Chesterfield County’s Phase I program was found consistent by the Chesapeake Bay Local Assistance Board, and

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

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

WHEREAS staff provided technical assistance to Chesterfield County to help facilitate the adoption of a revised program for consistency with the Act and Regulations; and

WHEREAS despite the assistance provided by staff, Chesterfield County failed to adopt a revised local program to comply with § 9VAC10-20-60 1 and 2 of the Regulations by the December 31, 2003 deadline; and

WHEREAS the Chesapeake Bay Local Assistance Board has adopted *Procedural Policies for Local Program Review* which addresses, among other items, review of local programs; and

WHEREAS Chesterfield County was notified in a letter dated March 4, 2004 of the March 22, 2004 meeting of the Chesapeake Bay Local Assistance Board and the County would be found inconsistent if they had not, by March 22, 2004, adopted a consistent Bay Act program, and

WHEREAS on March 22, 2004 the Chesapeake Bay Local Assistance Board found Chesterfield County 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 May 15, 2004, and

WHEREAS Chesterfield County has failed to adopt a consistent Phase I program by the established deadline, now

THEREFORE BE IT RESOLVED that Chesterfield County is subject to the compliance provisions as set forth in §10.1-2103.10 of the Act and §§ 9VAC10-20-250 and 9VAC10-20-260 of the Regulations.

BE IT FURTHER RESOLVED that the Chesapeake Bay Local Assistance Board authorizes and directs the Director of the Chesapeake Bay Local Assistance Department to take appropriate administrative and legal actions as outlined under §10.1-2103.10 of the Act and §9VAC10-20-260 of the Regulations to compel Chesterfield County to adopt a consistent Phase I program and report back to the Board at subsequent meetings.

The Director of the Chesapeake Bay Local Assistance Department certifies that this resolution was adopted in open session on June 21, 2004 by the Chesapeake Bay Local Assistance Board.

C. Scott Crafton
Executive Director
Chesapeake Bay Local Assistance Department

Mr. Duncanson seconded the motion.

Mr. Davis called for further comments. There were none.

Mr. Davis called for the vote. All members voted aye.

Mr. Davis thanked Mr. Helmboldt and asked him to continue with Prince George County. Mr. Helmboldt introduced Mr. Leon Hughes and provided the following summary. He stated that beginning in February 2002, his predecessor, Roberta Rhur, Scott Crafton and he had notified Prince George County staff of the changes to the Regulations and provided guidance on the required revisions.

He continued, noting that on at least four occasions prior to the 12/31/03 deadline, written correspondence was sent to the County informing them of required changes, deadlines, revisions to deadlines and requests for the County to send CBLAD staff a schedule of their adoption process.

He stated that subsequent letters have apprised the County of the process by which CBLAB has considered the County's actions regarding adoption of the revisions and any actions that would be taken by the Board if the County did not adopt revisions prior to June 21.

He stated that in November 2003 he contacted Leon Hughes with the County and was informed that their attorney was to get the re-codification of their Bay Act Ordinance from Municode Code in January 2004 and that they would likely adopt the revisions at that time.

He added that it was not until May 20, 2004 that staff received a copy of the County's ordinance with revisions, however. He said that staff prepared a marked-up ordinance and formal response outlining the required changes for consistency with the revised Regulations as well as suggested changes for clarification. He said that County staff stated that while they intended to proceed with adoption of the revisions as soon as possible, they noted that they

would not be able to do so prior to the June 21 CBLAB meeting. He said that County staff stated that it was their intent to meet the deadline, however as a result of missing the advertising deadline announcing the June Board of Supervisors meeting, consideration for adoption would now be delayed until the July 13 Board of Supervisors meeting, at which time they intend to adopt.

Mr. Davis asked if there were any questions of Mr. Helmboldt. There were none.

Mr. Davis asked Mr. Hughes if he had any comments. Mr. Hughes advised that staff was bogged down with County Code, and there had been staff turnover. He commented that it had been the County's intention to adopt the ordinance; however because of a noticing error there would not be another opportunity to adopt until July 13, 2004. He explained the notice error and asked, based on these issues, that the Board not adopt the Resolution because it is fully their intent to adopt.

Mr. Crafton asked Mr. Hughes if he got the letter and markup and if there were issues. Mr. Hughes responded that the changes were very minor.

Mr. Davis asked Mr. Hughes if he understood that if the Board adopted the Resolution and the County adopted a revised ordinance, then the Director would have the authority to stop any action. Mr. Hughes affirmed this understanding.

Mr. Davis called for a motion. Mr. Sheffield motioned with the same minor changes: “. . . be it further resolved that the Chesapeake Bay Local Assistance Board authorizes and directs the Director of the Chesapeake Bay Local Assistance Department to take appropriate administrative and legal actions as outlined under §10.1-2103.10 of the Act and §9VAC10-20-260 of the Regulations to compel Prince George County to adopt a consistent Phase I program and report back to the Board at subsequent meetings.”

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
June 21, 2004
RESOLUTION
LOCAL PROGRAM, PHASE I
PRINCE GEORGE COUNTY #31

Authorization to Take Action Pursuant to § 9 VAC 10-20-260 of the Chesapeake Bay Preservation Area Designation and Management Regulations

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

WHEREAS § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1(a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS Prince George County adopted a local Phase I program on November 19, 1991, and

WHEREAS on December 10, 2001, Prince George County's Phase I program was found consistent by the Chesapeake Bay Local Assistance Board, and

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

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

WHEREAS staff provided technical assistance to Prince George County to help facilitate the adoption of a revised program for consistency with the Act and Regulations; and

WHEREAS despite the assistance provided by staff, Prince George County failed to adopt a revised local program to comply with § 9VAC10-20-60 1 and 2 of the Regulations by the December 31, 2003 deadline; and

WHEREAS the Chesapeake Bay Local Assistance Board has adopted *Procedural Policies for Local Program Review* which addresses, among other items, review of local programs; and

WHEREAS Prince George County was notified in a letter dated March 4, 2004 of the March 22, 2004 meeting of the Chesapeake Bay Local Assistance Board and the County would be found inconsistent if they had not, by March 22, 2004, adopted a consistent Bay Act program, and

WHEREAS on March 22, 2004 the Chesapeake Bay Local Assistance Board found Prince George County 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 May 15, 2004, and

WHEREAS Prince George County has failed to adopt a consistent Phase I program by the established deadline, now

THEREFORE BE IT RESOLVED that Prince George County is subject to the compliance provisions as set forth in §10.1-2103.10 of the Act and §§ 9VAC10-20-250 and 9VAC10-20-260 of the Regulations.

BE IT FURTHER RESOLVED that the Chesapeake Bay Local Assistance Board authorizes and directs the Director of the Chesapeake Bay Local Assistance Department to take appropriate administrative and legal actions as outlined under §10.1-2103.10 of the Act and §9VAC10-20-260 of the Regulations to compel Prince George County to adopt a consistent Phase I program and report back to the Board at subsequent meetings.

The Director of the Chesapeake Bay Local Assistance Department certifies that this resolution was adopted in open session on June 21, 2004 by the Chesapeake Bay Local Assistance Board.

C. Scott Crafton
Executive Director
Chesapeake Bay Local Assistance Department

Mr. Cowling seconded the motion.

Mr. Davis called for further comments. There were none.

Mr. Davis called for the vote. All members voted aye.

Mr. Davis noted the motion carried.

Mr. Helmboldt advised that the City of Petersburg had adopted on June 15, 2004 and no

action was necessary. Mr. Davis thanked Mr. Helmboldt and recognized Ms. Baldwin for staff's presentation for Lancaster County.

Ms. Baldwin introduced Jack Larson, Planning Director for Lancaster County. She stated that prior to revisiting the conditions for consistency noted in the staff report, if the Board or the County so desires, that she would first like to summarize the considerable amount of communication between Lancaster County and Department staff regarding the County's proposed and subsequently adopted revisions to its Bay Act ordinance. She noted that it is these interactions as well as the consistency items noted in the staff report that ultimately left the Department with no other recourse but to recommend a finding of inconsistent. Both NARC at its February 21, 2004 meeting and the Board at its March 22, 2004 meeting concurred with this recommendation.

Ms. Baldwin continued and said that eight letters were sent and two meetings held with Lancaster County regarding the proposed revisions to its Bay Act ordinance. She noted that the first letter was sent to the Planning Director, Mr. Jack Larson, in May 2003 and included a mark up of the County's current ordinance and suggested revisions. In August, she said that Department staff met with Mr. Larson to discuss what Lancaster County was proposing to adopt. After this meeting, she explained that a second letter was sent to Mr. Larson as follow up and a request was made to include this letter into the legal record for the upcoming Planning Commission meeting when the Bay Act revisions would be considered. She stated that the letter outlined those sections of the Lancaster's Bay Act Ordinance that did not appear to be consistent with the revised Regulations. She said that in September, after the Planning Commission recommended the ordinance as proposed, without incorporating the changes recommended by the Department, a third letter was sent to Mr. Larson and further that this letter outlined eight conditions for consistency that would be included in a staff report should the County proceed with adopting its proposed document. She continued, stating that in October 2003, Department staff met with Mr. Larson and Mr. Simmons, then the Chair of Lancaster's Board of Supervisors to discuss the proposed revisions. She said that Mr. Pennell, the County Administrator had also intended to be present but had to attend to a more pressing matter. She said at this meeting, the more substantial consistency items were discussed and further that these issues include septic pump-out requirements, encroachments on lots recorded prior to the Bay Act, and the formal exception process required under the revised Regulations. She explained that although a lively discussion ensued, Department staff and the County were not able to come into agreement on these matters and the County proceeded to adopt its proposed revisions in October 2003.

Subsequently, she noted that a staff report on the County's ordinance was prepared and presented to the NARC on February 21, 2004. She said that, as part of the recommendation agreed to at this meeting, Department staff and the County were directed to continue to work together to try to resolve the issues of consistency. She stated that Mr. Larson presented the information that was discussed at the NARC meeting to Lancaster's Board of Supervisors at their February 26th meeting and telephoned the Department the following week to provide an update. Ms. Baldwin said that Mr. Larson stated that while the County is amenable to making some of the required changes, it were quite adamant about not making the necessary changes to three of the more substantial issues: septic pump-out, encroachments on lots recorded prior to Sept 1, 1990, and formal exception process. Finally, she said that, on March 18, 2004, Department staff

sent Mr. Larson a letter summarizing this telephone discussion.

Ms. Baldwin explained that, in addition to the above correspondence, letters were also sent from Mr. Scott Crafton to the County stating Board's finding of inconsistent for Lancaster's program and informing the County that legal action could be pursued. Finally, she noted that, in a letter dated May 20, 2004, Mr. Crafton informed the County that the Department would be initiating an informal fact finding as a first step towards legally resolving this matter.

In light of the potential action that the Board may take subsequent to this meeting, Ms. Baldwin offered to revisit the conditions for consistency noted in the staff report if the Board or Mr. Larson so desired.

Mr. Cowling asked, as a point of clarity, if the County had revised its Bay Act ordinance and adopted those changes but that the revised ordinance had glaring omissions.

Ms. Baldwin responded yes, and that of the ten items noted, a few of them were significant while others that were more minor. She stated that it is her understanding that, with respect to these less substantial items, the Board of Supervisors appears willing to make the required changes.

Mr. Cowling asked if he revised his statement to say that they adopted an ordinance they knew would not comply. Ms. Baldwin responded yes.

Ms. Baldwin said in closing, between May 2003 and June 2004, there have been at least eight letters and two meetings to discuss Lancaster's ordinance revisions and issues of consistency. She continued that while these discussions have been professional and open, they have not yielded any productive results. She closed by stating that it is the Department's understanding that the County is and has been fully aware for several months of the legal ramifications that would result, should the County fail to make the required changes to its ordinance for consistency with the Act and Regulations.

Mr. Davis asked if there were any questions of Ms. Baldwin. Mr. Cowling asked if the RMA was jurisdiction wide. Ms. Baldwin responded that it was.

Mr. Larson thanked the Board for an opportunity to speak, and apologized for not being available in March. He said that Department staff had been very professional and that there has been no communication gap between CBLAD and his Board of Supervisors. Mr. Larson went on to defend his position and pointed to the February 17, 2004 minutes and said he could not expand on these remarks any further because they were highly accurate except for two extremely minor changes. He said the minutes did accurately state Lancaster's position as well as the Department's position.

Mr. Larson stated that the locality has been fully compliant with Phase I and Phase II. He said Lancaster County has a strong history of environmental and water quality protection.

He said that he did want to note that, with respect to Page 16 of the February 17, 2004

minutes, he did not think it was Mr. Duncanson but rather Mr. Sheffield who had asked what is different about Lancaster County from other Northern Neck counties. His response was that he speaks only for Lancaster County and cannot speak for any other locality.

He said that further on down the page, the sixth paragraph states that Mr. Davis responded that earlier Mr. Larson suggested the Board of Supervisors would approve this form, referring to the language in the previous paragraph. He asked that the Board look at Page 15 of the February 17, 2004 minutes where it states that Mr. Larson made it clear that he could not speak for the Board of Supervisors. The point he wanted to make was that he was not going to guarantee the Board was going to approve something. At the same time, he agreed with Mr. Cowling where there are matters of semantics or language, he didn't see that as an issue. He said the divergence of opinion relates to the issue of encroachment into the 100-foot buffer and their policies for implementing that, and the issues dealing with formal exceptions. He said the Board of Supervisors would be burdened if the locality implemented the formal exception process as outlined in the Regulations. In the meeting that Ms. Baldwin and Ms. Little attended, Mr. Simmons indicated that if in fact the locality had all those exception requests come before the Board of Supervisors, very quickly it would simply be a matter of approving every one and moving on. Mr. Larson said that is not the case, and that many exception requests are denied now.

Mr. Larson said when the locality looks at the encroachment into the 50-foot seaward buffer area – what they call the Bay Act Waiver – that is looked at very seriously and a considerable amount of time is spent on it. He said the applicant has to come forward with a site plan, at his/her expense with a documented survey and the proposed degree of encroachment. They are also required to mitigate for the proposed encroachment. He referred to the statement that Mr. Sheffield made that this Board and CBLAD is committed to the preservation of the Bay, and he said Lancaster is too. He said so are the Towns within the County, but that is not the issue. He said Lancaster County has a long history of water quality protection. He stated that in May 12, 1988, Lancaster County implemented the Waterfront Overlay, and this was before, to the best of his knowledge, anything like that was being done at the State level. He said the overlay required a 75-foot buffer and significantly increased the size of lots for new subdivisions. When Lancaster implemented the Bay Act it rigidly enforced the 100-ft setback on lots that were created after September 1, 1990. He said he understood that the reason the Regulations were revised was to eliminate a loophole used by some localities to allow encroachments on new lots but that Lancaster County has never exploited that loophole.

He said the County was actively involved in the Rappahannock River Tributary Strategy to achieve the twenty-two goals. He said when he went to a meeting about the Rappahannock River Strategy, he asked a DCR representative about a problem with biosolids and the land application of biosolids in Lancaster. He said the different agencies of the State are still viewed as one entity by local governments and that the State is often inconsistent with its mandates. He stated that the regulations governing biosolids runs counter to Bay Act requirements of limiting phosphorus and nitrogen. He said that with respect to biosolids applications, to ensure adequate nitrogen loading, the farmers are going to be required to overload on phosphorus. Ultimately, he stated that is going to find its way into tidal waters, but at the same time localities have no option but to allow the application. Mr Larson noted that he had spoken to Mr. Crafton about this

matter at an earlier CBLAD meeting, and Mr. Crafton pointed out that biosolids was under the purview of a separate State agency and that CBLAD cannot do too much about it. Mr. Larson said by the same token, when you look at it from Lancaster's point of view, Lancaster is looking at all the different agencies of the state as a single entity, not as independent units. One state agency is encouraging the use of biosolids and yet CBLAD may see that as problematic. He said Lancaster is trying to do the right thing.

Mr. Larson noted a number of other groups the County is working with in order to protect water quality, including promoting businesses that promote wetland vegetation. In closing, Mr. Larson said that the County is at an impasse and that he is not in the position to offer anything more than was offered at the February meeting. He reiterated that there is no failure to communication but that Lancaster County simply does not agree with some of the required changes. He asked that as the Board moves ahead and takes whatever action they feel they need to take, to consider Lancaster County and all that they have done in the past and how they have been a forerunner for the program, with strict enforcement. He said the County is trying to be honest, and present the Board with what the County believes it can adequately implement and not merely go through a paper exercise then never enforce certain aspects of the ordinance. He said that what is said in their ordinance is what they are going to do. He said he would like the Board to consider that.

Mr. Cowling asked what the population was of the County. Mr. Larson said the population is 11,600 people. Mr. Cowling said that is basically the same size as Northampton County, and asked why does the County's Board feel reluctant to use the County's Board of Zoning Appeals to review exceptions. Mr. Larson responded that the same question was asked at the February meeting, and he said he could not answer the question. He said the only thing he could say is that there is a reluctance to put it before a Board of Zoning Appeals.

Mr. Duncanson pointed out that in the original ordinance, applicants for exceptions were required to go before a Board of Zoning Appeals. Mr. Larson responded that the ordinance is a stand-alone ordinance and no longer an overlay district in the zoning ordinance. Mr. Larson explained that the reason it was taken out of the zoning ordinance was because it was challenged by a citizen who wanted to cut down a number of large trees, and the zoning ordinance limited the fine for such an action to a mere \$1,000.00. He told the County to go ahead and fine him, and he cut down the trees. The Board looked at that and said this could happen again, so they took it out of the zoning ordinance in order to be able to enforce the requirements more effectively and assess larger fines. He said because it is a stand-alone ordinance, the BZA would not have authority over these decisions.

Mr. Davis asked why the County would not appoint a stand-alone body to review the exception applications. He said he could not imagine they have so many applications as to be a burden. Mr. Larson responded once again that he could not speak for his Board in that regard and could only say, and this is his opinion only, that his Board is very concerned about unfunded mandates, and directives that have come down from the state without any consideration for the resources it takes to implement these mandates. He said there is a reluctance to create another body that the County must compensate to carry out state mandates that are unfunded.

Mr. Davis asked Mr. Larson if he understood that the Board has a Regulation that they have taken an oath to uphold. Mr. Larson replied he did understand.

Mr. Cowling commented that he certainly appreciated the County's position regarding unfunded mandates and political concerns. Unfortunately, he could not turn his head on the septic pump-out issues.

Mr. Sheffield commented that he really appreciated Mr. Larson's candor and that he eloquently stated the County's position. He said that Lancaster does have a reputation for being tighter on development. Mr. Davis agreed that he also appreciated the comments, but the Board's hands are tied and there are requirements that the Board has to uphold. Mr. Davis thanked Mr. Larson for his comments and noted that the Board had to do things that were sometimes very difficult.

Mr. Davis asked if there were any other comments. There were none.

Mr. Sheffield motioned, with the modifications, that the Chesapeake Bay Local Assistance Board authorizes and directs the Director of the Chesapeake Bay Local Assistance Department to take appropriate administrative and legal actions as outlined under §10.1-2103.10 of the Act and §9VAC10-20-260 of the Regulations to compel Lancaster County to adopt a consistent Phase I program and report back to the Board at subsequent meetings.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
June 21, 2004
RESOLUTION
LOCAL PROGRAM, PHASE I
LANCASTER COUNTY #09

Authorization to Take Action Pursuant to § 9 VAC 10-20-260 of the Chesapeake Bay Preservation Area Designation and Management Regulations

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

WHEREAS § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1(a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS Lancaster County adopted a local Phase I program on September 20, 1990, and a revised program on March 28, 1991; and

WHEREAS on May 9, 1991, Lancaster County's Phase I program was found consistent by the Chesapeake Bay Local Assistance Board, and

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

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

WHEREAS Lancaster County adopted a revised local program to comply with §§ 9VAC10-20-60 1 and 2 of the Regulations on October 30, 2003; and

WHEREAS the Chesapeake Bay Local Assistance Board has adopted *Procedural Policies for Local Program Review* which addresses, among other items, review of modifications to local programs; and

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

WHEREAS on February 17, 2004 the Local Program Review Committee for the Northern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS on March 22, 2004 after considering and evaluating the information presented on this date, the Board agreed with the recommendation in the staff report and of the Review Committee; and

WHEREAS the Chesapeake Bay Local Assistance Board found Lancaster County's revised Phase I program inconsistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations and further that Lancaster County undertake and complete the ten recommendations contained in the staff report no later than May 15, 2004.

1. Amend Section 1 to provide for definition of "public road" and "substantial alteration" that is consistent with the definitions set forth in § 9 VAC 10-20-40 of the Regulations.
2. Amend Section 3-3 (c) of Lancaster's Bay Act ordinance to include criteria consistent with §9 VAC 10-20-130.1.c of the Regulations.
3. Amend Section 3-4 to include buffer reestablishment when silvicultural or agricultural land use ceases to be consistent with § 9 VAC 10-20-130.3.b of the Regulations.
4. Amend Section 3-4 (d) (4) to be consistent with § 9 VAC 10-20-130.5.a (3) of the Regulations.
5. Amend Section 3-4 (e) to be consistent with § 9 VAC 10-20-130.4.a of the Regulations.
6. Amend Section 4-5 to be consistent with § 9 VAC 10-20-120.7 of the Regulations.
7. Amend Section 7-1 (a) to be consistent with § 9 VAC 10-20-150.B.1 of the Regulations.
8. Amend Section 7-1 (e) to be consistent with § 9 VAC 10-20-130.2 of the Regulations.
9. Amend Section 10-1 to be consistent with §§ 9 VAC 10-20-150.A and 9 VAC 10-20-150.C.4 of the Regulations.
10. Amend Sections 10-2 and 10-3 to be consistent with § 9 VAC 10-20-150.C of the Regulations.

WHEREAS Lancaster County has failed to adopt revisions to address the 10 recommendations to its Phase I program to be consistent with the Act and Regulations by the established May 15, 2004 deadline, now

THEREFORE BE IT RESOLVED that Lancaster County is subject to the compliance provisions as set forth in §10.1-2103.10 of the Act and §§ 9VAC10-20-250 and 9VAC10-20-260 of the Regulations.

BE IT FURTHER RESOLVED that the Chesapeake Bay Local Assistance Board authorizes and directs the Director of the Chesapeake Bay Local Assistance Department to take appropriate administrative and legal actions as outlined under §10.1-2103.10 of the Act and §9VAC10-20-260 of the Regulations to compel Lancaster County to

adopt a consistent Phase I program and report back to the Board at subsequent meetings.

The Director of the Chesapeake Bay Local Assistance Department certifies that this resolution was adopted in open session on June 21, 2004 by the Chesapeake Bay Local Assistance Board.

C. Scott Crafton
Executive Director
Chesapeake Bay Local Assistance Department

Mr. Froggett seconded.

Mr. Davis called for further comments, and noted sometimes it can be very difficult to do what is required.

Mr. Davis called for the vote. All members voted aye.

Mr. Davis called for the presentation for the City of Poquoson. Mr. Brad Belo stated the City adopted on May 24, 2004 and he has been working them over the last several months and is now in the process of reviewing the final adopted ordinance. Mr. Davis noted that no action was required by the Board.

Mr. Davis called for the presentation of the Town of West Point. Ms. Miller introduced Mr. Trent Funkhouser, Town Manager and Claire Jones, the Director of Community Development. Ms. Miller provided the following summary.

Ms. Miller stated that from January 29, 2002, through May 20, 2004, Department letters have been sent letters on 14 occasions, providing notice and reminders of the deadlines, and, more importantly providing technical assistance regarding draft revisions transmitted by Town staff for the Department's comments. She said that in addition to regular calls throughout this period, Department staff also conducted 4 visits to the Town for meetings with Town staff, as well as presentations to the Town Planning Commission and the Town Council regarding the required revisions.

She said that Town staff have been consistently reminded and further that staff had advised the Town Planning Commission and Council regarding the December 31, 2003 deadline during this period. She stated that the Town's Planning Commission held its public hearing on December 3, 2003, and forwarded the draft CBPA revisions to the Town Council for review. She noted that in the latter part of December, with the Town Manager's position temporarily vacant, the Town Council deferred action on the revisions to allow the new Town Manager, who would begin work on February 2, 2004, to participate in the final stages of the adoption process.

She explained that Department staff met with the Town Manager on March 2, 2004, and that he had advised her that the Town Council was reviewing final changes. She said that at that time, the Town Manager provided a projected schedule indicating that adoption of the revisions by Town Council would be likely occur on April 26, 2004. She noted that the Town Council had concerns related to the boundaries of the mapped CBPAs, in particular the Town's designated

IDA, and requested that Town staff develop a new CBPA Overlay District map. She said that the IDA boundaries remained unchanged and the Town will be forwarding a copy of the map to the Department for review.

She continued, stating that on June 2, 2004, the Town's Director of Community Development contacted the Department by phone to advise that the Town Council had set June 28, 2004 as the date for its public hearing on the Town's draft CBPA Overlay District revisions.

Ms. Miller asked if Mr. Funkhouser wanted to make comments. Mr. Funkhouser stated that it was a simple procedure, and his Council is prepared to adopt the ordinance. He said he appreciated staff's assistance.

Mr. Davis thanked Mr. Funkhouser for his comments and called for further questions. There were none. Mr. Davis called for a motion.

Mr. Sheffield motioned, with the amendments, that the Chesapeake Bay Local Assistance Board authorizes and directs the Director of the Chesapeake Bay Local Assistance Department to take appropriate administrative and legal actions as outlined under §10.1-2103.10 of the Act and §9VAC10-20-260 of the Regulations to compel the Town of West Point to adopt a consistent Phase I program and report back to the Board at subsequent meetings.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
June 21, 2004
RESOLUTION
LOCAL PROGRAM, PHASE I
TOWN OF WEST POINT - #44

Authorization to Take Action Pursuant to § 9 VAC 10-20-260 of the Chesapeake Bay Preservation Area Designation and Management Regulations

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

WHEREAS § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1(a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS the Town of West Point adopted a local Phase I program on November 6, 1991, and amended it on October 26, 1992, and February 27, 1995, and

WHEREAS on June 22, 1995, the Town of West Point's Phase I program was found consistent by the Chesapeake Bay Local Assistance Board, and

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

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

WHEREAS staff provided technical assistance to the Town of West Point to help facilitate the adoption of

a revised program for consistency with the Act and Regulations; and

WHEREAS despite the assistance provided by staff, the Town of West Point failed to adopt a revised local program to comply with § 9VAC10-20-60 1 and 2 of the Regulations by the December 31, 2003 deadline; and

WHEREAS the Chesapeake Bay Local Assistance Board has adopted *Procedural Policies for Local Program Review* which addresses, among other items, review of local programs; and

WHEREAS the Town of West Point was notified in a letter dated March 4, 2004 of the March 22, 2004 meeting of the Chesapeake Bay Local Assistance Board and the Town of West Point would be found inconsistent if they had not, by March 22, 2004, adopted a consistent Bay Act program, and

WHEREAS on March 22, 2004 the Chesapeake Bay Local Assistance Board found the Town of West Point inconsistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations and further that the Town of West Point adopt a consistent Phase I program no later than May 15, 2004, and

WHEREAS the Town of West Point has failed to adopt a consistent Phase I program by the established deadline, now

THEREFORE BE IT RESOLVED that the Town of West Point is subject to the compliance provisions as set forth in §10.1-2103.10 of the Act and §§ 9VAC10-20-250 and 9VAC10-20-260 of the Regulations.

BE IT FURTHER RESOLVED that the Chesapeake Bay Local Assistance Board authorizes and directs the Director of the Chesapeake Bay Local Assistance Department to take appropriate administrative and legal actions as outlined under §10.1-2103.10 of the Act and §9VAC10-20-260 of the Regulations to compel the Town of West Point to adopt a consistent Phase I program and report back to the Board at subsequent meetings.

The Director of the Chesapeake Bay Local Assistance Department certifies that this resolution was adopted in open session on June 21, 2004 by the Chesapeake Bay Local Assistance Board.

C. Scott Crafton
Executive Director
Chesapeake Bay Local Assistance Department

Mr. Froggatt seconded.

Mr. Davis called for the vote. All members voted aye.

Mr. Davis called for further questions. There were none.

Mr. Davis thanked everyone for coming and said that he was looking forward to when all the localities had adopted their ordinances.

Mr. Davis called for Board Training. There was none.

Mr. Davis called for Review of Board Sponsored Activities. There were none.

Mr. Davis called for New Business and recognized Mr. Crafton for the discussion of upcoming review of the Regulations especially with regard to perennial stream protocols and definitions. Mr. Crafton noted that there would be more discussion with localities about IDA's,

Intensely Developed Areas, and criteria for those. He said there is an interest in moving along with the Regulation review by some of the localities and Board members, but the only caveat to that is the CBLAD-DCR merger, and there is going to be a lot going on now between CBLAD and DCR. He said he would be working directly with Mr. Maroon to clarify the Regulations, and he will be working the process through the DCR Regulatory Coordinator and learn how that works.

Mr. Maroon commented that he certainly understood the stakeholder's and Board's desire to make some adjustments to the Regulations, and he will work with CBLAD's staff. He agreed with Mr. Crafton that it may take a little longer to get the process started.

Mr. Davis commented that perhaps they could start in August at the Committee meetings to adopt some schedules.

Mr. Sheffield noted that Mr. Adams said that the City of Fredericksburg had passed their ordinance and he had not gotten a copy of it. He requested a copy of it. Mr. Adams said that he understood they adopted their ordinance during the middle of May and that he was supposed to have received a copy of it. He said he has not yet received a copy of the official ordinance that was passed. He also said staff has not reviewed anything and he has no idea what is in the ordinance.

Mr. Sheffield motioned to have the Board request a copy of the official ordinance as passed by the City of Fredericksburg. Mr. Davis reminded Mr. Sheffield that it was not necessary to make a motion to request information from the locality and that all he had to do was ask Mr. Crafton to get the information. Mr. Crafton agreed to get the information for Mr. Sheffield.

Mr. Cowling commented that he had read where some localities were changing the numbers of indicators needed to assess the perenniality of a stream, and he stated that he would like to see some consistency between localities. He also pointed out that the Board eliminated some of the biological indicators in the assessment because so many intermittent streams and mud puddles contain those indicators but should not be considered perennial.

Ms. Harold commented that localities were being encouraged to tweak the method used to determine perenniality.

Mr. Davis and Mr. Crafton agreed that the language for some biological indicators had been taken out of the definition of "water body with perennial flow" for the reason that Mr. Cowling stated. Ms. Harold agreed. Mr. Crafton reminded the board, however, that the biological indicators are still included in the North Carolina protocol and are used to help identify stream segments with perennial flow.

Mr. Cowling suggested that biological indicators should not be used as a sole indicator. Mr. Crafton and Ms. Harold agreed, but they also agreed that localities could adjust the numerical thresholds of the protocol to more accurately reflect local or regional conditions.

Mr. Davis called for Public Comment. There was none. Mr. Davis called for a motion to adjourn the meeting. Mr. Cowling motioned, Mr. Duncanson seconded. There being no further business, the meeting was adjourned at 2:30 p.m.

Donald W. Davis
Chairman

Joseph H. Maroon
Director