

Southern Area Review Committee Meeting
Tuesday, October 30, 2007 – 2:00 p.m.
101 N. 14th St. – James Monroe Building
Richmond, Virginia

Southern Area Review Committee Members Present

Beverly D. Harper, Chair
Richard Taylor

Charles B. Whitehurst, Sr.
John Zeugner

Southern Area Review Committee Members Not Present

Gale Abbott Roberts

DCR Staff Present

Russell W. Baxter, Deputy Director
David C. Dowling, Policy, Planning and Budget Director
Ryan J. Brown, Policy and Planning Assistant Director
Joan Salvati, Director Division of Chesapeake Bay Local Assistance
David Sacks, Assistant Director, Division of Chesapeake Bay Local Assistance
Michael R. Fletcher, Board and Constituent Services Liaison
Nathan Hughes, Watershed Specialist
Adrienne Kotula, Principal Environmental Planner
Nancy Miller, Senior Environmental Planner
Daniel Moore, Principal Environmental Planner
Shawn Smith, Principal Environmental Planner
Rob Suydam, Senior Environmental Planner

Others Present

Lee Rosenberg, City of Norfolk
William Saunders, Town of Smithfield
Scott Meyer, City of Chesapeake,
Karen Shaffer, City of Chesapeake
Kelly Miller, City of Chesapeake.
Art Dahlberg, City of Richmond
Stewart Platt, City of Richmond

Call to Order and Opening Remarks

Ms. Harper called the meeting to order. A quorum was present.

Ms. Salvati said that there had been some concerns regarding the new Non-tidal Guidance by Henrico and Hanover Counties. She said that staff had met with representatives from the localities and would give a full report at the December Board meeting.

Ms. Salvati said a workshop on the new Non-tidal guidance was scheduled for November 15 at VIMS at Gloucester Point. This will be the first of three regional workshops.

Local Program Reviews: Compliance Evaluation

Mr. Sacks gave an overview of three types of review of Local Bay Act programs and the Locality Compliance Evaluation Review Process.

“Phase I Consistent” means the required local ordinances (zoning, subdivision, maps, etc) are in place to designate CBPAs and to require that the performance criteria are met.

“Phase II Consistent” means the required comprehensive plan components have been adopted

“Compliant” means the locality is properly implementing the required Phase I components of the local Bay Act program

- Evaluation Process Steps:
 1. Initial meeting to collect information and discuss program
 2. Review select sample of approved plans
 3. Site visits of developments in-progress and completed
- Board conducts initial compliance evaluation; determines “compliant” or identifies conditions necessary for compliance
- Board conducts compliance evaluation condition review

Mr. Sacks said that 82 of 84 Chesapeake Bay Act localities are now Phase I consistent.

Ms. Harper asked why the program for the Town of Painter did not fall under the Accomack County program.

Ms. Smith said that for the compliance evaluation they did, but that the Phase I program was different. In 2003 revisions were made relative to administrative waivers for general performance criteria.

City of Norfolk - Initial Compliance Evaluation

Mr. Sacks gave the report for the City of Norfolk. He introduced Lee Rosenberg, Manager of Bureau of Environmental Services for the City. Ms. Smith is the staff liaison for Norfolk.

The Department initiated a compliance evaluation for the City of Norfolk in January 2006, with a delay in completing the evaluation due to Department staff turnover, and the evaluation was restarted in Spring 2007. The review included meetings to collect information, review project files and visit selected sites. The compliance evaluation revealed that there are program elements that require improvement.

Mr. Sacks said that the staff recommendation was that the Board find that “certain aspects of the City of Norfolk’s Phase I program do not fully comply with the Act and the regulations” and that the Board require the City to address three conditions necessary for fully compliance by December 31, 2008.

1. Provide documentation that its citywide stormwater management program implements the 10 percent pollution reduction requirement for all development and redevelopment activities in the IDA.
2. Revise the *Norfolk Storm Water Design Criteria* to include water quality calculations and BMP design standards and efficiencies consistent with the Virginia Stormwater Management Handbook.
3. Require a WQIA for any land disturbance, development or redevelopment in the RPA, even when such projects occur in the IDA overlay.

In response to a question from a committee member, Ms. Smith said the City’s stormwater program requirements do not apply to all single-family lots as some single-family lots are exempted from the City’s stormwater program.

Mr. Rosenberg said the issue of the City stormwater management program was brought before the Board several years ago and the Board found the City to be consistent. He said that the City exempts infill single-family lots and pre-existing subdivisions from the City’s onsite stormwater management requirements.

Mr. Rosenberg said the hope was that the City could show the stormwater program citywide will meet the 10% reduction even with single-family homes exempted.

MOTION: Mr. Zeugner moved that the Southern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find that certain aspects of the City of Norfolk’s Phase I program be found to not fully comply with the Act and the regulations and that the Board require the City to address the three conditions outlined in the staff report for full compliance by December 31, 2008, with an update to be provided at the June 2008 Board meeting.

SECOND: Mr. Taylor

DISCUSSION: None

VOTE: Motion carried unanimously

Mr. Zeugner asked if it would be possible to get maps of each locality when staff reports are mailed out.

Ms. Salvati said it would be possible for localities that have GIS.

Town of Smithfield - Initial Compliance Evaluation

Mr. Sacks gave the report for the Town of Smithfield. He recognized William Saunders, Town Planner. Ms. Smith is the staff liaison for the Town of Smithfield.

The Department initiated the compliance evaluation for the County in the summer of 2007 and included three meetings to collect information, review project files and visit selected sites. The compliance evaluation revealed that there are program elements that require improvement.

Mr. Sacks said that the staff recommendation was that the Board find that “certain aspects of the Town of Smithfield’s Phase I program be found to not fully comply with the Act and regulations” and that the Board require the Town to address three conditions necessary for full compliance by December 31, 2008.

Those conditions were:

1. Develop and implement a septic pump-out program.
2. Require BMP maintenance agreements for water quality BMPs and ensure BMP maintenance and tracking.
3. The Town must consider requests to encroach into the 100-foot RPA buffer on a case-by-case basis and must require as much undisturbed buffer as possible on all previously recorded lots.

Ms. Smith explained the reason for the third condition and said that Cypress Creek, a large-scale residential golf community was approved by Isle of Wight County prior to the regulations being revised. The County approved buffers of less than 50 feet in the RPA. The issue is that if there is enough room to develop the property, the Town should be requiring the 100 foot buffer.

Mr. Saunders said that Cypress Creek was approved by the County and annexed into the Town at a later time. He said that the Town was not sure that a 100 foot buffer could be required on these lots, but that the issue has been clarified. He also said that the developers are reconfiguring one

of the later phases of the subdivision and that when this phase is replatted, the lots will automatically have to have the full 100 foot buffer.

Mr. Taylor noted that the report said that 100 units were still on septic systems. He asked if these lots were so far outside the town that it was not economically feasible to connect them to the sewer system.

Mr. Saunders said that most areas of the Town have connected to the sewer system. The Town is working with public utilities to make sure the inventory of septic systems is current.

MOTION: Mr. Zeugner moved that the Southern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find that certain aspects of the Town of Smithfield's Phase I program do not fully comply with the Act and the regulations and that the Board require the Town to address the three conditions contained in the staff report necessary for full compliance by December 31, 2008, with an updated provided to the Board at the June 2008 meeting.

SECOND: Mr. Whitehurst

DISCUSSION: None

VOTE: Motion carried unanimously

City of Chesapeake - Initial Compliance Evaluation

Mr. Sacks gave the report for the City of Chesapeake. He recognized Scott Meyer, Senior Planner; Karen Shaffer, Assistant Planning Director; and Kelly Miller, Engineer with DPW for the City of Chesapeake. Ms. Smith is the staff liaison for Chesapeake.

The Department initiated the compliance evaluation for the City in the summer of 2007 and included three meetings to collect information, review project files and visit selected sites. In addition to these three meetings, Department and City staff met on October 4th to discuss the draft report and minor modifications to the report were made as a result of this meeting. The compliance evaluation revealed that there are program elements that require improvement.

The five conditions necessary for full compliance are:

1. Develop and implement a septic maintenance program
2. Require BMP maintenance agreements for water quality BMPs and ensure BMP maintenance and tracking

3. Amend its CBPA ordinance to include the requirement that the CBLAB must approve a stormwater program as a Phase I modification to the City's Bay Act program as a condition for allowing BMPs to be placed in the RPA
4. Revise its CBPA ordinance so that it is clear that principal structures are not to include any detached structures when administratively approving expansions to existing principal structures
5. Require a WQIA for any proposed land disturbance, development or redevelopment within the RPA

Ms. Smith said that after discussion, the staff recommendation was that the Board proceed with conditions 1,2,3 and 5 with the understanding that staff will continue to work with the City to modify condition number 4.

Ms. Shaffer thanked Ms. Smith and Mr. Sacks for working with the City through the process. She said that the City agrees with conditions 1,2,3 and 5 but has concerns with condition 4 because of the way the City ordinance was written and adopted. She said the City was trying to be consistent and equitable with regard to accessory structures.

MOTION: Mr. Zeugner moved that the Southern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find that certain aspects of the City's implementation of its Phase I program do not fully comply with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations and further that the Board direct staff continue to work with the City regarding the language of recommended condition number 4 and that the City complete the remaining recommended conditions contained in the staff report, as amended, no later than December 31, 2008.

SECOND: Mr. Taylor

DISCUSSION: None

VOTE: Motion carried unanimously

City of Richmond - Initial Compliance Evaluation

Mr. Sacks gave the report for the City of Richmond. He recognized Art Dahlberg, Commissioner of Buildings and Stewart Platt, Senior Engineer with the Department of Community Development. Mr. Suydam is the staff liaison for the City of Richmond.

The Department conducted a compliance review in 2004, however, because the City's Phase I program was not yet consistent, the Board tabled the compliance evaluation. The City became Phase I consistent in December 2006 and as a result the Department initiated a new compliance evaluation in May of 2007. The compliance evaluation revealed that there are program elements that require improvement.

Mr. Sacks said that staff recommended that the Board find that "certain aspects of the City of Richmond's Phase I program do not fully comply with the Act and the regulations" and that the Board require the City to address five conditions necessary for full compliance by December 31, 2008.

The eight conditions for compliance are:

1. Revise the Public Information Manual to be consistent with the City's Chesapeake Bay Preservation Area Ordinance and processes
2. Ensure all CBPAs are depicted on plats and site plans
3. Must review shoreline erosion control projects and require a water quality impact assessment (WQIA) whenever land disturbance in the RPA buffer is proposed
4. The City's erosion and sediment control program must address the issues identified in the Corrective Action Agreement
5. Adopt the 100 percent reserve drainfield requirement, or approved alternative, in the City ordinance, and further develop a mechanism to ensure this requirement
6. Require BMP maintenance agreements for water quality BMPs and ensure BMP maintenance and tracking
7. Ensure that all BMP designs, siting requirements, and allowable pollutant removal efficiencies are in accordance with the Virginia Stormwater Handbook
8. Consistently require water bodies be evaluated for perennial flow

Ms. Salvati said that the Division of Soil and Water's James River Watershed Office was currently conducting a program review for the City's Erosion and Sediment Control Program and that the City will likely be asked to sign a Corrective Action Agreement. The City Erosion and Sediment Control Program was to be reviewed by the Virginia Soil and Water Conservation Board at their November 15, 2007 meeting.

Mr. Dahlberg said that the City was undergoing a significant organizational change and would appreciate more time. He said that at deadline of December 2008 would provide the City with more of an opportunity to be successful in addressing these eight conditions than a September 2008 date.

MOTION: Mr. Zeugner moved that the Southern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find that certain aspects of the City of Richmond's Phase I program be found to not fully comply with the Act and the regulations" and that the Board require the City to address the eight conditions contained in the staff report for full compliance by December 31, 2008.

SECOND: Mr. Taylor

DISCUSSION: None

VOTE: Motion carried unanimously

Other Business

Ms. Harper asked how the revised stormwater regulations would affect the Chesapeake Bay and Erosion and Sediment control programs.

Mr. Dowling said that the stormwater regulations were very complex. He noted that staff has been working on these since December 2005, and that at its last meeting, the Soil and Water Conservation Board had elected to amend and refile the NOIRA for the action in order to cure procedural issues that had been alleged with regard to the original NOIRA.

Mr. Dowling said that while this was a reversal from a procedural perspective the work on the handbook, clearinghouse and database issues continue.

Mr. Dowling said the entire process could take up to another year.

There was no additional business.

Public Comment

There was no additional public comment.

Adjourn

There being no further business, the meeting was adjourned.

Respectfully submitted,

Beverly D. Harper, Chair

Joseph H. Maroon, Director