

**Chesapeake Bay Local Assistance Board
Northern Area Review Committee
Tuesday, August 14, 2007
Richmond Virginia**

Northern Area Review Committee Members Present

William E. Duncanson

Gregory C. Evans

Northern Area Review Committee Members Not Present

Donald W. Davis, Chair

Rebecca L. Reed

DCR Staff Present

Russell W. Baxter, Deputy Director

Joan Salvati, Division Director, Chesapeake Bay Local Assistance

David Sacks, Assistant Division Director, Chesapeake Bay Local Assistance

Michael R. Fletcher, Board and Constituent Services Liaison

Nathan Hughes, Watershed Specialist

Adrienne Kotula, Principal Environmental Planner

V'lent Lassiter, Senior Environmental Planner

Nancy Miller, Senior Environmental Planner

Daniel Moore, Principal Environmental Planner

Carolyn Elliott, Administration Specialist

Others Present

George Hayfield, Director of Planning & Zoning, Middlesex County

Christine Breddy, Environmental Codes Compliance Officer, King and Queen County

Marshall Sebra, Code Compliance Officer, Lancaster County.

Call to Order and Opening Remarks

Mr. Duncanson chaired the meeting in the absence of Mr. Davis.

Local Program Reviews Phase I

Mr. Sacks gave a review of the three types of reviews.

The Three Types of Review of Local Bay Act Programs

“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.

City of Fairfax

Mr. Sacks gave the report for the City of Fairfax. There was no one present from the City. Mr. Moore is the staff liaison for the City of Fairfax.

On June 21, 2004 the Board found the City of Fairfax’s revised Phase I program to be consistent with the Act and Regulations, pending resolution of seven recommended conditions identified by the Board that were to be addressed by the City by December 31, 2004.

On December 12, 2006 Fairfax City Council adopted revisions to their Chesapeake Bay Preservation Ordinance as a means to address the seven recommended conditions required by the Board.

Upon reviewing these changes and additions on March 26, 2007, the Board found that six of the seven original recommended conditions had been addressed and gave the City until June 30, 2007 to address the remaining condition:

Amend Section 110-80 (a)(2)(d) as follows: “The plan for the road or driveway proposed in or across the RPA meets the criteria for site plan, subdivision and plan of development approvals.”

Mr. Sacks said that to address the remaining inconsistency issue, the City adopted an additional ordinance revision on July 24, 2007. Based on adoption of the requisite language, staff recommended the City’s amended Chesapeake Bay Preservation Ordinance be found consistent with §10.1-2109 of the Act and §9 VAC 10-20-60.1 and 2 of the Regulations.

MOTION: Mr. Evans moved that the Northern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find the City of Fairfax’s Chesapeake Bay Preservation Ordinance consistent with §10.1-2109 of the Act and §9 VAC 10-20-60.1 and 2 of the Regulations.

SECOND: Mr. Duncanson

DISCUSSION: None

VOTE: Motion carried

Ms. Salvati said that once the Board acts on this recommendation in September there would only be two localities that are not Phase I compliant.

Local Program Reviews Compliance Evaluation

Lancaster County

Mr. Sacks gave the report for Lancaster County. He recognized Marshall Sebra, Code Compliance Officer for the County. Mr. Sacks noted that Ms. Lassiter is the staff liaison for Lancaster County.

Lancaster County is located at the southeastern tip of the Northern Neck peninsula, bordering the Rappahannock River, approximately 75 miles east of Richmond. The population has remained fairly constant at 11,500. The County contains the towns of Irvington, Kilmarnock and White Stone.

The Department initiated a compliance evaluation for Lancaster County in the summer of 2006. The compliance evaluation revealed that although the County is striving to implement its local Bay Act program effectively, there are program elements that require improvement.

Mr. Sacks said that the staff recommendation was that the Board find that “certain aspects of Lancaster County’s Phase I program be found to not fully comply with the Act and Regulations” and that the Board require the county to address five conditions necessary for full compliance:

1. Ensure the submission of WQIAs for any proposed land disturbance, development, or redevelopment within RPAs.
2. Develop and implement a 5-year septic tank pump-out notification and enforcement program.
3. Require signed BMP Maintenance Agreements for all BMPs and track BMP installation, inspection and maintenance.
4. Lancaster County has also been allowing a buffer equivalency calculation that was permitted in previous Guidance that is no longer in use by the Department. This equivalency enabled encroachments into the buffer, provided that a BMP was installed to mitigate for the amount of encroachments was installed. Because buffer equivalency is no longer permitted, the County must cease this process and where there is a request to encroach into the buffer, identify appropriate mitigation as described in the Buffer Manual.

5. The County has a guidance document that states trees less than six inches are not restricted from being cut. Site visits showed properties with the understory almost completely cleared (are not retaining the 3 tropic layers). The County must cease allowing vegetation in the buffer to be removed based solely on size, and they shall review and approve the removal of any vegetation in the RPA, and revise the guidance document

Mr. Evans asked Mr. Sebra if the County was comfortable with the timeline in the staff report.

Mr. Sebra said that the County was working to meet all five conditions and did not anticipate a problem with the deadline. He said the County did not object to any of the conditions.

MOTION: Mr. Evans moved that the Northern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find that the implementation of certain aspects of Lancaster 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 Lancaster County to undertake and complete five recommended conditions contained in the staff report no later than September 30, 2008.

SECOND: Mr. Duncanson

DISCUSSION: None

VOTE: Motion carried.

King and Queen County

Mr. Sacks gave the report for King and Queen County. He noted that Christine Breddy, Environmental Codes Compliance Officer, was present from the County. Ms. Miller is the staff liaison for King and Queen County.

King and Queen County, with a population of approximately 7000 residents, has the lowest population density (21 persons per square mile) of all the Bay Act localities and has experienced a slower than average growth rate for Bay Act localities. It is located in the Middle Peninsula, bordered by the Mattaponi River, Dragon Run, and the York River with Chesapeake Bay Preservation areas limited to land features described in the County's CBPA Overlay District ordinance.

The Department initiated the compliance evaluation for the County in April 2007. The compliance evaluation involved a discussion with County staff and follow-up visits to review site plans and conduct field visits.

The compliance review determined that King and Queen County is to a large extent effectively administering its Bay Act program. The one concern that was identified was the lack of notification and maintenance program to meet the 5-year on-site septic system pump-out requirement.

The County estimates there are approximately 2700 on-site septic systems in the CBPA's. Mr. Sacks said that it was the staff recommendation that the Board find that "certain aspects of King and Queen County's Phase I program be found to not fully comply with the Act and regulations" and that the Board require the county to implement a notification and maintenance program to meet the 5-year on-site septic system pump-out requirement by September 30, 2008.

Mr. Duncanson asked if the septic pump-out was the remaining issue. He noted that while the county currently has the lowest population density in the state that increased development would likely change that.

Mr. Evans asked if that was a particular problem with notification.

Ms. Breddy said that notification for the new lot owners is not a problem. With the remainder of the County she said that there might be a need for a different, more proactive approach.

Ms. Breddy said that the County would definitely comply with the condition, but that she anticipated a need to work with the Planning Commission for the development of a program. She said there is a need for financial assistance.

Mr. Evans asked if staff was receiving support from the planning commission.

Ms. Breddy said that one of the problems is education and an understanding of the need for and purpose of the buffer.

Mr. Evans said that there might be a need to help educate local officials.

Ms. Salvati said that staff had considered the need to reach out to elected officials to discuss the issues. She said that King and Queen County could be moved to the top of the priority list.

Mr. Duncanson asked if there were other ways that staff could assist the County.

Ms. Breddy said that one of the problems, although not related to the Bay Act, is with family subdivisions. She said that developers would come into the County and comply

with the rules, but would circumvent them by further subdividing the lots through the County's subdivision ordinance's provisions for family subdivisions.

Mr. Duncanson said that the County could set conditions regarding the subdividing of lots, as other counties have done.

Russ Baxter inquired about additional discussion related to the recommended condition regarding a septic pump-out program.

Ms. Salvati said that, at the request of Delegate Whitman, meetings have been held with representatives from DCR, DEQ and the Health Department to look at the septic pump-out issue with respect to capacity for treatment plants and haulers. The group will meet again in September. Ms. Salvati said that she would provide an update to the Board.

Mr. Duncanson offered to speak directly with the County Administrator.

MOTION: Mr. Evans moved that the Northern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find that the implementation of certain aspects of King and Queen 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 King and Queen County to undertake and complete one recommended condition contained in this staff report no later than September 30, 2008.

SECOND: Mr. Duncanson

DISCUSSION: Ms. Salvati said that staff would work with the County to develop a strategy.

DISCUSSION: None

VOTE: Motion carried

Middlesex County

Mr. Sacks gave the report for Middlesex County. He recognized George Hayfield, Director of Planning and Zoning for the County. Ms. Miller is the staff liaison for Middlesex County.

The Board conducted its initial compliance evaluation for the County on December 12, 2005, and included seven recommended conditions to be addressed by December 31, 2006. On March 26, 2007, the Board found that the County had taken action to address six of the conditions and required the one remaining condition and one new condition to

be addressed by June 15, 2007. These included the requirement for a pump-out notification and maintenance program that includes all septic system owners within the County's CBPAs to meet the 5-year on-site septic system pump-out requirement (not just those installed after April 21, 1993, as stated in the County's program materials); and revision of the County's CBPA Overlay District to include the septic pump-out alternatives of inspection or filter installation, as provided in the County's septic pump-out program mailings.

On May 15, 2007, the County adopted revisions to its CBPA Overlay District to include the options of inspection and filter installation as provided in the Regulations. The County addressed the notification issue on July 20, 2007, by notifying the first of five magisterial districts owners of septic systems in CBPAs not previously notified. The county intends to provide similar notification to the remaining districts on an annual rotating basis.

Mr. Sacks said that it was the staff recommendation that the Board find Middlesex County to be in full compliance with the Act and Regulations.

Mr. Hayfield said that the first mailing to households had gone out in December. An additional notice was mailed on July 20, 2007.

Mr. Evans expressed appreciation for the County moving forward with the program.

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

SECOND: Mr. Duncanson

DISCUSSION: None

VOTE: Motion carried

King William County

Mr. Sacks gave the report for King William County. There was no one present from the County. Ms. Miller is the liaison for King William County.

The Board conducted its initial compliance evaluation for the County on June 21, 2004 and it included seven recommended conditions to be addressed by December 31, 2005. On April 3, 2006 the Board found that the County had taken action to address the recommended conditions but that four items remained to be addressed. On March 26,

2007 the Board determined that the County had addressed the remaining conditions, with the exception of one, and found the County noncompliant having not implemented the required septic system notification and maintenance program. The Board set a final deadline of June 15, 2007 for compliance.

On June 13, 2007 the County implemented its septic system notification program, providing notice of the 5-year septic pump-out requirement to owners of septic systems in the first of five supervisor districts in the County.

Mr. Sacks said that it was the staff recommendation that the Board find the County's local Bay Act program compliant with the Act and the Regulations.

MOTION: Mr. Evans moved that the Northern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find the implementation of King William County's Phase I program to be in compliance with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations.

SECOND: Mr. Duncanson

DISCUSSION: None

VOTE: Motion carried

Town of Herndon

Mr. Sacks gave the report for the Town of Herndon. There was no one present from the Town. Mr. Moore is the staff liaison for the Town of Herndon.

The Board conducted its initial compliance evaluation for the Town of Herndon on December 11, 2006, at which time the Board found that certain aspects of the Town's program did not fully comply with the Act and Regulations, and identified five recommended conditions that the Town needed to address for full compliance. These were:

1. Implementation of a complete application process;
2. A requirement that RPA lines be shown on record plats with a notation that the 100-foot buffer remain undisturbed;
3. Development of a stormwater management plan and BMP review checklist;
4. Development of a WQIA submission and review process for proposed land disturbances within the RPA, and;
5. Development of a RPA encroachment application and review process.

The Board required the Town of Herndon to undertake and complete the five recommended conditions no later than September 30, 2007.

Subsequent to the December 11, 2006, Board action, Town staff has worked closely with Division staff to address the recommended conditions. On February 27, 2007, the Herndon Town Council adopted amendments to the Town Code to address the requirement to properly delineate RPA boundaries on final subdivision plats. The Town also developed and submitted to Division staff for review plan of development forms, checklists and guidance documents, as well as stormwater management brochures and WQIA and encroachment application materials.

Mr. Sacks said that after review of the above-referenced materials, it was the finding of staff that the five recommended conditions have been adequately addressed and the staff recommendation was that the Town be found in full compliance with the Act and Regulations.

Mr. Moore said that Town staff realized after the Board's December 11, 2006 review the significance of the outstanding recommended conditions and retained a consultant to address those conditions. He said Town staff has been very helpful and responsive to CBLA staff's efforts to bring the Town into full compliance.

Mr. Evans said the Town Council appeared to be very active and supportive.

MOTION: Mr. Evans moved that the Northern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find that the Town of Herndon has addressed the five recommended conditions imposed by the Board on December 18, 2006 and that the Town's implementation of its Phase I program be found compliant with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations.

SECOND: Mr. Duncanson

DISCUSSION: None

VOTE: Motion carried

Fairfax County

Mr. Sacks gave the report for Fairfax County. No one was present from County. Mr. Moore is the staff liaison for Fairfax County.

The Board conducted its initial compliance evaluation on September 26, 2006, at which time the Board found that certain aspects of the County's Phase I program

implementation did not fully comply with Act and Regulations. The Board required Fairfax County to undertake and complete the five recommended conditions contained in the staff report no later than September 30, 2007. The requirements involved amendments to four (4) key sections of the County's Chesapeake Bay Preservation Ordinance and to develop a WQIA submission and review process for proposed land disturbances and development and/or redevelopment.

Subsequent to the Board action of September 26, 2006, County staff has worked closely with Division staff to address the recommended conditions. On May 21, 2007 the Fairfax County Board of Supervisors adopted text amendments to the Chesapeake Bay Preservation Ordinance (Chapter 118 of the County Code) to address four of the five conditions identified by the Board. County staff submitted to CBLA staff for review the above-referenced ordinance amendments, as well as forms intended to ensure that existing requirements for submission of a WQIA and exception requests for construction activities in the RPA are met. In addition, County staff developed new forms (that were made available to the public on the County's website) to address Exception Requests and WQIA requirements.

Mr. Sacks said that Fairfax County has satisfactorily addressed the five conditions set by the Board, and that the County should be found in full compliance with the Act and Regulations.

Mr. Moore said that County staff was quite helpful and proactive in moving toward full compliance with the Act and Regulations. He said the issue was a matter of scheduling time for review and approval by the Board of Supervisors.

Ms. Salvati noted that previously the County had made significant changes to the public facilities manual with respect to perennial flow determinations. She said that the County has been proactive in terms of the Bay Act.

Mr. Evans expressed appreciation from the County and the Board of Supervisors to the DCR staff.

MOTION: Mr. Evans moved that the Northern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find that Fairfax County has addressed the five recommended conditions from the Board's September 26, 2006 compliance evaluation and that Fairfax County's implementation of its Phase I program be found compliant with § 10.1-2109 and 2111 of the Act and § VAC 10-20-231 and 250 of the Regulations.

SECOND: Mr. Duncanson

DISCUSSION: None

VOTE: Motion carried

City of Alexandria

Mr. Sacks gave the report for the City of Alexandria. There was no one present from the City. Mr. Moore is the staff liaison for the City of Alexandria.

Staff conducted its initial compliance evaluation of the City of Alexandria in May and June of 2007. At almost 8,500 persons per square mile, it is the most densely populated locality in the Bay Act area. The City has adopted a citywide RMA, and consequently applies the stormwater quality requirements citywide. Alexandria has chosen not to designate any Intensely Developed Areas,

The City of Alexandria has a comprehensive Bay Act program and implements the program in a manner consistent with the Act and Regulations through its Division of Transportation and Environmental Services. Although a very urban jurisdiction, Alexandria continues to experience a significant amount of redevelopment of both small infill and large, (frequently) brownfield sites. Among the more notable aspects of the City's Bay Act program is the application citywide of the stormwater quality requirements. The City oversees a wide range of urban BMP's, and tracks and inspects them regularly. In addition, the City goes beyond the minimum regulatory requirements, and as an example requires a 50-foot buffer around all natural intermittent streams.

Mr. Sacks said that it was the staff recommendation that the Board find the City of Alexandria to be in full compliance with the Act and Regulations

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

SECOND: Mr. Duncanson

DISCUSSION: None

VOTE: Motion carried

Other Business

There was no additional business.

Public Comment

There was no additional public comment.

Mr. Duncanson expressed appreciation for staff liaisons working with localities.

Adjourn

There being no further business, the meeting was adjourned.

William E. Duncanson, Chair

Joseph H. Maroon, Director