

**Chesapeake Bay Local Assistance Board
Monday, June 18, 2007
Dorey Recreational Park
Richmond, Virginia**

Chesapeake Bay Local Assistance Board Members Present

Donald W. Davis, Chairman
William E. Duncanson
Beverly D. Harper
Richard B. Taylor

Walter J. Sheffield, Vice Chairman
Gregory C. Evans
Gale Abbott Roberts

Chesapeake Bay Local Assistance Board Members Not Present

Michael V. Rodriguez

John J. Zeugner

DCR Staff Present

Joseph H. Maroon, Director
Russell W. Baxter, Deputy Director
David C. Dowling, Director of Policy, Planning and Budget
Joan Salvati, Division Director, Chesapeake Bay Local Assistance
David Sacks, Assistant Division Director, Chesapeake Bay Local Assistance
Ryan Brown, Assistant Director of Policy, Planning and Budget
Shawn Smith, Principal Environmental Planner
Adrienne Kotula, Principal Environmental Planner
Carrie Hileman, Policy and Planning Intern
Michael R. Fletcher, Board and Constituent Services Liaison
Nathan Hughes, Watershed Specialist
Nancy Miller, Senior Environmental Planner
V'lent Lassiter, Senior Environmental Planner
Rob Suydam, Senior Environmental Planner
Elizabeth Andrews, Office of the Attorney General
Roger Chaffe, Office of the Attorney General
Carolyn Elliott, Administration Specialist

Other Present

Sally James Andrews, City of Hampton
Clay Bernick, City of Virginia Beach
Kay Wilson, City of Virginia Beach
Darryl Cook, James City County
Rebecca Draucker, Timmons Group
James Freas, City of Hampton
Dr. John Gailbraith, Virginia Tech
Tevya W. Griffin, City of Hopewell

Dr. Kirk Havens, Virginia Institute of Marine Science
George Homewood, New Kent County
Bob Kerr, Kerr Environmental
Stuart Leeth, City of Hampton
Angeline Marsh, Caroline County
David Nunnally, Caroline County
Mike Rolband, Wetland Studies
Lee Rosenburg, City of Norfolk
Kathy James Webb, City of Newport News
Sandy Williams, Blueskies

Call to Order

Mr. Davis called the meeting to order and asked for the calling of the roll. A quorum was declared present.

Consideration of the Minutes

MOTION: Mr. Sheffield moved that the minutes for the following meetings be approved as submitted:

March 26, 2007 Board Meeting
March 26, 2007 Policy Committee Meeting
May 8, 2007 Northern Area Review Committee Meeting
May 8, 2007 Southern Area Review Committee Meeting
May 8, 2007 Policy Committee Meeting

SECOND: Mr. Taylor

DISCUSSION: Mr. Duncanson noted that the minutes of the May 8 Policy Committee Meeting should reflect that he was in attendance.

Mr. Duncanson also requested that future minutes reflect those members/speakers with Ph.D.s

VOTE: Motion carried with amendments.

Director's Report

Mr. Maroon gave the Director's report.

Mr. Maroon said that DCR had \$150,000 under the 2006 EPA Chesapeake Bay Implementation Grant for the purpose of water quality improvements. There may be additional funding for 2007. A request for proposals (RFP) was sent out on May 10th to localities and the deadline for localities to submit proposals was June 1st. The RFP was

focused on septic pump-out activities and the implementation of watershed management plans.

Seven proposals were received, all of which relate to the septic pump-out issue. The total request for funding was over \$370,000. The final scoring of those proposals will take place shortly.

The RFP for the State Water Quality Improvement Fund was issued on February 15th. This has broader application. Those proposals were due back on May 15th. The focus this year was on three areas: Stormwater management, nutrient management and the development of local septic tank pump-out programs.

A total of seventy-three proposals were received, three from Bay Act localities for the development and implementation of septic tank pump-out programs. Those three localities had been deemed not fully compliant with the requirements under the Bay Act.

The General Assembly has begun to address the issue of septic pump-out, particularly in the Southern part of the state where funds were made available to the Department of Environmental Quality to work with the Department of Housing and Community Development.

The Chesapeake Bay and Virginia Waters Cleanup plan has been referred to previously. This has also been known as HB1150, passed in 2006 requiring the Commonwealth to develop and regularly update a comprehensive plan for Chesapeake Bay cleanup and TMDL Virginia water cleanup. The first edition came out in February and there have been stakeholder meetings to discuss the plan.

The Bay Act has been a big part of the overall effort along with many other things DCR is involved with, including agricultural BMPs, working with the poultry industry, and working with enhanced nutrient management. The second edition of the plan will be released in the summer.

Mr. Maroon said that, based on previous Board discussions, staff had been looking at the options for a fall Board retreat at the newly refurbished Tayloe and Helen Murphy Conservation Hall at Westmoreland State Park. November dates are being considered.

Quarterly Performance Indicators

Mr. Sacks reviewed the Quarterly Performance Indicators.

“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.

As of March 31, 2007

Localities Found Compliant: 25

Localities Found Noncompliant: 2

Localities Addressing Compliance Conditions: 8

Expected Status as of June 30, 2007

Localities Phase I Consistent: 81
(3 others have conditions and June 30 deadlines)

Localities Phase II Consistent: 84

Compliance Reviews Completed: 41

Localities Found Compliant: 30

Localities Found Noncompliant: 2

Localities Addressing Compliance Conditions: 9

Compliance Reviews in Progress: 18

Consent Agenda

MOTION: Mr. Evans moved that the Chesapeake Bay Local Assistance Board approve the Consent Agenda items as presented by staff for the following localities:

- Town of Surry, Review of previous Phase I conditions
- City of Petersburg, Review of previous Phase II conditions
- New Kent County, Review of compliance evaluation condition
- Hanover County, Review of compliance evaluation condition
- Town of Cheriton, Initial Compliance Evaluation
- Town of Eastville, Initial Compliance Evaluation
- Town of Nassawadox, Initial Compliance Evaluation
- Town of Warsaw, Review of previous Phase I conditions

SECOND: Mr. Duncanson

REVISED: 8/7/2007 9:33:22 AM

DISCUSSION: None

VOTE: Motion carried unanimously

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

June 18, 2007

RESOLUTION

LOCAL PROGRAM, PHASE I

TOWN OF SURRY

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 § 9VAC 10-20-60 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 Surry adopted a local Phase I program on June 9, 1992; and

WHEREAS on July 30, 1992, 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 Surry adopted a revised local program to comply with §§ 9 VAC 10-20-60 1 and 2 of the Regulations on February 11, 2003; and

WHEREAS on April 3, 2006 the Chesapeake Bay Local Assistance Board found the Town of Surry's revised 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 Town undertake and complete the 11 recommendations in the staff report no later than June 30, 2006; and

WHEREAS, on May 12, 2006 the Town requested an extension to the June 30, 2006 deadline; and

WHEREAS, on December 11, 2006 the Board granted an extension to the Town of Surry and established a new deadline of March 31, 2007; and

WHEREAS the Town Council for the Town of Surry adopted amendments to the Phase I program for the on March 17, 2007; and

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

WHEREAS on May 8, 2007 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

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the Town of Surry's Phase I program consistent with §§ 10.1-2109 of the Act and §§ 9 VAC 10-20-60 1 and 2 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on June 18, 2007 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

June 18, 2007

RESOLUTION

**LOCAL PROGRAM - PHASE II
CITY OF PETERSBURG**

Determination of Consistency - Consistent

WHEREAS § 10.1-2109 of the Chesapeake Bay Preservation Act states that counties, cities, and towns in Tidewater Virginia shall incorporate protection of the quality of state waters into each locality's comprehensive plan; and

WHEREAS § 9 VAC 10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the element in subsection 3 shall be adopted by local governments; and

WHEREAS § 10.1-2103 10 of the Chesapeake Bay Preservation Act authorizes the Board to take administrative and legal actions to ensure compliance by counties, cities, and towns with the provisions of the Act; and

WHEREAS staff reviewed the City of Petersburg's comprehensive plan for consistency with the Act and Regulations; and

WHEREAS the City Council for the City of Petersburg adopted a comprehensive plan on February 13, 2001; and

WHEREAS on March 19, 2001 the Chesapeake Bay Local Assistance Board found the City of Petersburg's plan consistent with four recommendations for consistency that were to be addressed by the City and set a compliance date of December 31, 2003; and

WHEREAS on April 3, 2006 the Chesapeake Bay Local Assistance Board found the City of Petersburg's comprehensive plan inconsistent with § 10.1-2109 of the Act and § 9 VAC 10-20-60 3 of the Regulations, and further required that the City of Petersburg undertake and complete the four recommendations contained in the staff report no later than October 30, 2006; and

WHEREAS the City of Petersburg adopted amendments to its comprehensive plan on April 3, 2007; and

WHEREAS staff has reviewed the City of Petersburg's comprehensive plan for consistency with the previous consistency recommendations and the Act and Regulations; and

WHEREAS on May 8, 2007 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 the City of Petersburg comprehensive plan consistent with § 10.1-2109 of the Act and § 9 VAC 10-20-60 3 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that the Chesapeake Bay Local Assistance Board adopted this resolution in open session on June 18, 2007.

Joseph H. Maroon

Director

Department of Conservation and Recreation

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

June 18, 2007

RESOLUTION

LOCAL PROGRAM COMPLIANCE EVALUATION

NEW KENT COUNTY

Local Compliance Evaluation - Compliant

WHEREAS § 10.1-2103 of the Chesapeake Bay Preservation Act states that the 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 § 9 VAC 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 2004, the Chesapeake Bay Local Assistance Department conducted a compliance evaluation of New Kent County's Phase I program in accordance with the adopted compliance evaluation process; and

WHEREAS on December 11, 2006, the Chesapeake Bay Local Assistance Board found that implementation of certain aspects of New Kent County's Phase I program did not fully comply with the Act and Regulations and further that the County address the 1 recommendation in the staff report no later than June 30, 2007; and

WHEREAS in April 2007, the County provided staff with information relating to the County's actions to address the one recommendation which were evaluated in a staff report; and

WHEREAS on May 8, 2007 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 the implementation of New Kent 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.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on June 18, 2007 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
June 18, 2007**

RESOLUTION

**LOCAL PROGRAM COMPLIANCE EVALUATION
HANOVER COUNTY**

Local Compliance Evaluation – Compliant

WHEREAS § 10.1-2103 of the Chesapeake Bay Preservation Act states that the 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 § 9 VAC 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 summer of 2005, the Department of Conservation and Recreation conducted a compliance evaluation of Hanover County's Phase I program in accordance with the adopted compliance evaluation process; and

WHEREAS on December 12, 2005, the Chesapeake Bay Local Assistance Board found that implementation of certain aspects of the County of Hanover's Phase I program did not fully comply with the Act and Regulations and further that the County address the 2 recommendations in the staff report no later than December 31, 2006; and

WHEREAS on March 26, 2007, the Chesapeake Bay Local Assistance Board conducted a compliance condition review and found that one of the two recommendations had been adequately address and further that the County address the one recommendation in the staff report no later than June 15, 2007; and

WHEREAS in April 2007, the County provided staff with information relating to the County's actions to address the one recommendation which were evaluated in a staff report; and

WHEREAS on May 8, 2007, 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 the implementation of Hanover 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.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on June 18, 2007 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

June 18, 2007

RESOLUTION

LOCAL PROGRAM COMPLIANCE EVALUATION

TOWN OF CHERITON

Local Compliance Evaluation - Compliant

WHEREAS § 10.1-2103 of the Chesapeake Bay Preservation Act states that the 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 § 9 VAC 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 Spring of 2007, the Chesapeake Bay Local Assistance Department conducted a compliance evaluation of the Town of Cheriton's Phase I program in accordance with the adopted compliance evaluation process; and

WHEREAS on May 8, 2007 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 the implementation of the Town of Cheriton's Phase I program to be compliant with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on June 18, 2007 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
June 18, 2007**

RESOLUTION

**LOCAL PROGRAM COMPLIANCE EVALUATION
TOWN OF EASTVILLE**

Local Compliance Evaluation - Compliant

WHEREAS § 10.1-2103 of the Chesapeake Bay Preservation Act states that the 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 § 9 VAC 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 Spring of 2007, the Chesapeake Bay Local Assistance Department conducted a compliance evaluation of the Town of Eastville's Phase I program in accordance with the adopted compliance evaluation process; and

WHEREAS on May 8, 2007 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 the implementation of the Town of Eastville's Phase I program to be compliant with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on June 18, 2007 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

June 18, 2007

RESOLUTION

LOCAL PROGRAM COMPLIANCE EVALUATION

TOWN OF NASSAWADOX

Local Compliance Evaluation - Compliant

WHEREAS § 10.1-2103 of the Chesapeake Bay Preservation Act states that the 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 § 9 VAC 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 Spring of 2007, the Chesapeake Bay Local Assistance Department conducted a compliance evaluation of the Town of Nassawadox's Phase I program in accordance with the adopted compliance evaluation process; and

WHEREAS on May 8, 2007 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 the implementation of the Town of Nassawadox's Phase I program to be compliant with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on June 18, 2007 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
June 18, 2007**

**RESOLUTION
LOCAL PROGRAM, PHASE I
Town of Warsaw**

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 § 9 VAC 10-20-60 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 an amended Phase I local program to comply with §§ 9 VAC 10-20-60 1 and 2 on October 9, 2003; and

WHEREAS on June 21, 2004 the Chesapeake Bay Local Assistance Board found the Town of Warsaw's Phase I program consistent with two conditions that were to be addressed by the Town and set a compliance date of December 31, 2006; and

WHEREAS the Town Council for the Town of Warsaw adopted amendments to the Phase I program on January 11, 2007; and

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

WHEREAS on May 8, 2007 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 recommendations 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 Warsaw's Phase I program consistent with § 10.1-2109 of the Act and §§ 9 VAC 10-20-60 1 and 2 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that the Chesapeake Bay Local Assistance Board adopted this resolution in open session on June 18, 2007.

Joseph H. Maroon
Director
Department of Conservation and Recreation

Local Program Ordinance Reviews

City of Hampton

Mr. Sacks presented the update for the City of Hampton. He recognized Mr. Freas, Ms. Andrews and Mr. Leeth. He noted that Nancy Miller is the division liaison for the City of Hampton.

Ms. Salvati noted that additional materials provided by the City of Hampton were provided to members.

Mr. Sacks said that it was the staff recommendation that the local program amendments adopted by the City of Hampton be found consistent with the Act and Regulations. He noted the following:

- Revisions to the IDA map and City Code are in conformance with the Plan found generally acceptable by CBLAB on December 11, 2006.
- May 23, 2007 – Hampton City Council adopted Phase I Program revisions, fully addressing two conditions set by the Board on June 20, 2005:

- Revise IDA map and designation
- Develop a water quality improvement strategy demonstrating 10% NPS reduction for development and redevelopment in IDA.

The Hampton plan includes the following requirements:

Base

- E&S/Stormwater
- 10% reduction in nonpoint source pollution load
- Retain/establish buffer vegetation where practicable
- WQIA in RPA

Plus

- Land use, development & redevelopment to be sited outside RPA whenever possible
- Encroachments will be the minimum to allow for a reasonable buildable area
- Structure encroachment permit required for impervious cover to be located in RPA/IDA
- Required green areas located to maximize protection of RPA & water quality
- Parking lots to be constructed of pervious surfaces
- No encroachment within 10 feet of RPA feature

Mr. Sacks said that staff was recommending approval. However, he noted that the plan was not heard by the review committee because of the status of the appeal.

Ms. Sally Andrews thanked the DCR staff and said that the City believes the product being adopted is excellent.

Mr. Davis said that he appreciated being able to work with the City and noted that he and Ms. Salvati had attended the City Council meeting.

Mr. Chaffe noted that action by the Board would bring an end to the longstanding litigation. He said that the City will notify the court and the appeal will be automatically dismissed.

Mr. Maroon thanked Mr. Chaffe and commended the work of the Office of the Attorney General.

MOTION: Ms. Harper moved that the Chesapeake Bay Local Assistance Board find the City of Hampton's Phase I program consistent with § 10.1-2109 of the Act and §§ 9 VAC 10-20-60 1 and 2 of the Regulations.

SECOND: Ms. Roberts

REVISED: 8/7/2007 9:33:22 AM

DISCUSSION: Mr. Davis noted that one of the major changes was the implementation of fees to begin on July 1.

Ms. Sally Andrews said that the City has not heard a lot of opposition to the fees.

VOTE: Motion carried unanimously

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

June 18, 2007

RESOLUTION

LOCAL PROGRAM, PHASE I

CITY OF HAMPTON

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 § 9 VAC 10-20-60 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 Hampton adopted an amended Phase I local program to comply with §§ 9 VAC 10-20-60 1 and 2 on May 12, 2004; and

WHEREAS on September 20, 2004 the Chesapeake Bay Local Assistance Board found the City of Hampton's Phase I program consistent with one recommendation for consistency to be addressed by the City and set a compliance date of June 30, 2006; and

WHEREAS the City Council for the City of Hampton adopted amendments to the Phase I program on September 22, 2004; and

WHEREAS on June 20, 2005 the Chesapeake Bay Local Assistance Board found the City of Hampton's Phase I program inconsistent with two recommendations for consistency to be addressed by the City and set a compliance date of September 30, 2005; and

WHEREAS on August 15, 2005 the City appealed the Board's decision and on August 22, 2005 the City agreed to stay the appeal to enable City and Department staff to work out a mutually acceptable approach; and

WHEREAS the City provided a presentation on its revised proposal to the Board on December 11, 2006 and the Board found it generally acceptable; and

WHEREAS the City of Hampton adopted amendments to its Phase I program on May 23, 2007; and

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

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

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the City of Hampton's Phase I program consistent with § 10.1-2109 of the Act and §§ 9 VAC 10-20-60 1 and 2 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that the Chesapeake Bay Local Assistance Board adopted this resolution in open session on June 18, 2007.

Joseph H. Maroon
Director
Department of Conservation and Recreation

Local Program Compliance Evaluations

Mr. Sacks reviewed the Local Program Compliance Evaluations.

City of Virginia Beach

Mr. Sacks noted that Clay Bernick and Kay Wilson were in attendance from Virginia Beach.

Mr. Sacks said that for the Initial Compliance Evaluation the recommendation of the Southern Area Review Committee for the City of Virginia Beach was as follows:

That the Board find that certain aspects of the City's implementation of its Phase I program do not fully comply with the Act and the Regulations and the City be given until June 30, 2008 to address the nine recommended conditions.

Mr. Sacks reviewed the following nine conditions:

Stormwater Management

1. Require and ensure compliance with stormwater BMP maintenance agreements for all BMPs.
2. Amend stormwater ordinance to include all required findings for reviewing and granting stormwater waivers.
3. Amend stormwater ordinance to correct the pre-developed phosphorus load, require a stormwater plan and all documentation and calculations.
4. Ensure that all impervious surfaces, including the surface area of pools, are included in stormwater calculations.

RPA Issues

5. Require re-vegetation of the buffer for permitted tidal wetland activities.
6. Require site-specific analysis of on-site water bodies and RPA boundaries.
7. Provide training and staff analysis to City Bay Board.
8. Cease approving multiple variance requests unless requests clearly meet all required findings.
9. Establish a formal system of long-term oversight for all mitigation required as part of Bay Act variance approvals.

Mr. Davis called on Mr. Bernick for comments. Mr. Bernick distributed a packet of information regarding the Virginia Beach program. A copy of this information is available from DCR.

Mr. Bernick said that he appreciated the opportunity to work with the DCR staff. He said that while there are issues of concern, the working relationship has been positive.

Mr. Bernick introduced Ms. Kay Wilson, City Attorney for comments.

Ms. Wilson noted that Virginia Beach is a waterfront community with many canal front and stream front properties. She said that the City has done all it could to ensure that the development and redevelopment of waterfront properties was a non-excessive burden to these water bodies.

Ms. Wilson said that in adopting the ordinance the City did not do only the minimum, but also included highly erodible soils in the RPA and RMA features of the Act, increasing the buffer area to 100 ft. landward.

Ms. Wilson said that the citizen board, since the inception of the Act in 1990, has tried to be fair to both the citizens of Virginia Beach as well as to the Bay. She said that the City has tried to comply with the requests of numerous staff liaisons. She said that the City could accept and work with eight of the nine recommendations.

Ms. Wilson noted that Virginia Beach is basically divided into the Chesapeake Bay watershed and the southern watershed. She noted that the Chesapeake Bay ordinance applies to the top portion of the City that is the developed portion.

Ms. Wilson said that recommendation #5 is problematic for the City. That recommendation reads: "Require re-vegetation of the buffer for permitted tidal wetlands activities."

Ms. Wilson said that the City's concern with this recommendation was not a philosophical concern, but a practical one. She noted that the City would like to comply with this recommendation but that the City perspective was that the regulations do not allow for this requirement. She said that the regulations specifically state that for shoreline erosion projects where trees and woody vegetation are removed, appropriate vegetation should be established to protect or stabilize the shoreline. She said that the regulations do not require that the area be re-vegetated to the original state.

Ms. Wilson said that the City would recommend that the regulations be amended to address this concern.

Mr. Evans asked if the City was providing suggested language.

Ms. Wilson said that she would recommend looking at the agricultural and silvicultural language and add the woody vegetative buffer requirement to the portion of the regulations applicable to the City.

Ms. Salvati said that the staff position was that Section 9VAC10-20-130 required the maintenance or establishment of a buffer that is effective in retarding runoff, preventing erosion and filtering nonpoint source pollution and that restoration of woody vegetation would enable the buffer to perform those functions.

Ms. Wilson said the concern was that the regulations were not specific with regard to the woody vegetative buffer.

Mr. Davis asked if the City was currently requiring permanent seeding rather than re-vegetation.

Ms. Wilson said that is encouraged but not required.

Mr. Bernick said that the City Wetlands Board would require stabilization with seeding.

Mr. Davis said that one of the other staff concerns was that the local Chesapeake Bay Board was not following guidelines for granting exceptions.

Ms. Wilson said that the City has scheduled quarterly training for their Chesapeake Bay Board. That training will review the exception process as well as the results from this Board meeting.

Mr. Davis asked for further comment from the staff or Board members.

Ms. Salvati said that staff believes that the requirement for the woody vegetation is reflected in the referenced section of the Administrative Code. She said that staff is willing to work with the City to develop appropriate guidelines for buffer restoration.

Ms. Smith said that staff opinion was that the vegetation removed should be replaced. She said that staff was not asking to replace an existing grass buffer with forest.

Mr. Davis asked what staff was using for the basis of this requirement.

Ms. Smith said staff used the buffer manual and the regulations and that other localities have also been given this requirement.

MOTION: Ms. Roberts moved that the Chesapeake Bay Local Assistance Board find that the implementation of certain aspects of the City of Virginia Beach'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, the City of Virginia Beach be directed to undertake and complete the nine recommended conditions contained in the staff report no later than June 30, 2008.

SECOND: Mr. Duncanson

DISCUSSION: None

VOTE: Motion carried unanimously

Mr. Davis requested that an update regarding Virginia Beach be provided at the next meeting of the Southern Area Review Committee.

Mr. Chaffe said that the Office of the Attorney General would review the section in question.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

June 18, 2007

RESOLUTION

**LOCAL PROGRAM COMPLIANCE EVALUATION
CITY OF VIRGINIA BEACH**

Local Compliance Evaluation - Conditional

WHEREAS § 10.1-2103 of the Chesapeake Bay Preservation Act states that the 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 § 9 VAC 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 Spring of 2007, the Chesapeake Bay Local Assistance Board conducted a compliance evaluation of the City of Virginia Beach's Phase I program in accordance with the adopted compliance evaluation process; and

WHEREAS on May 8, 2007 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 Virginia Beach'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 Virginia Beach to undertake and complete the nine recommended conditions contained in this staff report no later than June 30, 2008.

1. For consistency with Section 9 VAC 10-20-120 3 of the Regulations and Section 106.A(17) of the City's Chesapeake Bay Preservation Ordinance, the City must require and ensure compliance with maintenance agreements for all structural stormwater BMPs.
2. For consistency with Section 9 VAC 10-20-150 C 1 of the Regulations, the City must amend Appendix D, Section 5 (c) (Stormwater Management) to include the

six required findings that must be considered when reviewing or approving waivers to the stormwater management requirements under Section 9 VAC 10-20-120 8 of the Regulations.

3. For consistency with Section 9 VAC 10-20-120 8, the City must ensure that the stormwater runoff criteria of the City's CBP ordinance are consistent with the requirements of the Virginia Stormwater Management Law and Handbook. To accomplish this, the City should revise its CBP to correct its pre-development phosphorus load, require a stormwater plan to be submitted that provides the documentation of compliance with the stormwater quality requirements, appropriate engineering calculations, and that details the appropriate stormwater quality mitigation.
4. For consistency with Section 9 VAC 10-20-120 8, the City must ensure that all impervious surfaces are calculated for development and redevelopment projects, to include the surface area of all pools.
5. For consistency with Sections 9 VAC 10-20-130 3 and 9 VAC 10-20-130 5 (4) of the Regulations, the City must require re-vegetation of the buffer area as part of permitted tidal wetland activities.
6. For compliance with Section 9 VAC 10-20-105 of the Regulations and Section 105 of the City's Chesapeake Bay Preservation Area Ordinance, the City must require site-specific analysis of onsite water bodies to determine whether such water bodies are perennial and adjust the Resource Protection Area boundaries as necessary.
7. For consistency with Section 9 VAC 10-20-150 C of the Regulations, and Section 110 (C) of the City's ordinance, the City must work with their Bay Board to provide both training and staff analysis that addresses the required findings for approving RPA exception requests.
8. The City's Bay Board must cease approving multiple variance requests on individual properties, unless the requests clearly meet all required findings as outlined under Section 9 VAC 10-20-150 C 1 of the Regulations.
9. To fully comply with Section 9 VAC 10-20-150 C 1 c of the Regulations in order to ensure that water quality is not degraded by approved variance requests, the City should establish a system of formal oversight for required mitigation for all approved variance requests.

BE IT FINALLY RESOLVED that failure by the City of Virginia Beach to meet the above established compliance date of June 30, 2008 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 Virginia Beach to the compliance

provisions as set forth in § 10.1-2103 10 of the Act and § 9 VAC 10-20-250 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on June 18, 2007 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

City of Newport News

Mr. Sacks presented the report regarding the Initial Compliance Evaluation for the City of Newport News. He recognized Kathy James Webb from the City.

The Southern Area Review Committee recommended that the Board find that certain aspects of the City's Phase I program do not fully comply with the Act and Regulations and the City be given until December 31, 2007 to address three conditions:

1. Ensure consistent compliance with all POD requirements.
2. Develop and implement a septic pump-out program.
3. Ensure site plan documentation shows that VSMR requirements are met.

Ms. James Webb said that the City concurred with the findings. She said that following the Board meeting the City Manager would be sending an official memorandum to the City Department of Health.

Mr. Davis asked if the December deadline was a problem.

Ms. James Webb said that she did not anticipate the deadline to be problematic.

MOTION: Ms. Roberts moved that Chesapeake Bay Local Assistance Board find that the implementation of certain aspects of the City of Newport News' 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, the City be directed to undertake and complete the three recommendations contained in the staff report no later than December 31, 2007.

SECOND: Mr. Taylor

DISCUSSION: None

REVISED: 8/7/2007 9:33:22 AM

VOTE: Motion carried unanimously

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

June 18, 2007

RESOLUTION

LOCAL PROGRAM COMPLIANCE EVALUATION

CITY OF NEWPORT NEWS

Local Compliance Evaluation - Conditional

WHEREAS § 10.1-2103 of the Chesapeake Bay Preservation Act states that the 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 § 9 VAC 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 November 2006, the Chesapeake Bay Local Assistance Board conducted a compliance evaluation of the City of Newport News' Phase I program in accordance with the adopted compliance evaluation process; and

WHEREAS on May 8, 2007 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 Newport News' 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 to undertake and complete the three recommendations contained in this staff report no later than December 31, 2007.

1. For consistency with § 9 VAC 10-20-105 of the Regulations and Section 37.1-51.(b)(1)a. of the City's CBP Overlay District, the City must, through a written policy document, ensure consistent compliance with all plan of development requirements and must require that on-site CBPA delineations are completed prior to the issuance of all land disturbance permits. The City must document and show proof to the Board that all projects are being processed in compliance with these requirements.
2. For consistency with § 9 VAC 10-20-120 7 a of the Regulations and Section 33-91.1 of the City Code, the City must develop and implement a notification system and track onsite septic system compliance with the five year pump-out requirement.
3. For consistency with § 9 VAC 10-20-120 8 of the Regulations and Section 37.1-51.(b)(1)k of the City's CBP Overlay District, the City must require sufficient documentation with site plan submissions to demonstrate that the requirements of the Virginia Stormwater Management Regulations will be met and that this documentation is maintained in the project file. The City must document and show proof to the Board that all projects are being reviewed in compliance with these requirements.

BE IT FINALLY RESOLVED that failure by the City of Newport News to meet the above established compliance date of December 31, 2007 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 to the compliance provisions as set forth in § 10.1-2103 10 of the Act and § 9 VAC 10-20-250 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on June 18, 2007 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

Caroline County

Mr. Sacks addressed a Supplemental Compliance Evaluation. He noted that Adrienne Kotula was the new staff liaison for Caroline County. He also recognized David Nunnally and Angeline Marsh from the County.

Mr. Sacks said that previously, the Board had found the program consistent; however, there were problems when the initial notice requiring septic pump-out was mailed to all county residents and not just those in the CBPA area.

DCR staff met with the Caroline County administrator. It is the County's intent to make the necessary adjustments to the ordinance and mapping and then to resume the program.

Mr. Sacks said that the Northern Area Review Committee recommended that the Board find that certain aspects of the County's Phase I program do not fully comply with the Act and Regulations and that the County be given until January 31, 2008 to address the following condition:

- The County must continue to implement the septic pump-out program. This is to include:
 - Updating the pump-out database
 - Conducting additional mapping and analysis
 - Re-starting the homeowner notification process

Ms. Marsh said that the County is working to update the system and working with the specific timeline provided.

Mr. Davis asked that a report be given at the December Board meeting.

MOTION: Mr. Sheffield moved that the Chesapeake Bay Local Assistance Board find that the implementation of certain aspects of Caroline 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, Caroline County be directed to undertake and complete 1 recommended condition contained in the staff report no later than January 31, 2008. Further the Board requests an update to be provided at the December 10, 2007 meeting.

SECOND: Mr. Duncanson

DISCUSSION: None

VOTE: Motion carried unanimously

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

June 18, 2007

RESOLUTION

**LOCAL PROGRAM COMPLIANCE EVALUATION
CAROLINE COUNTY**

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 § 9 VAC 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 2004, the Chesapeake Bay Local Assistance Board conducted a compliance evaluation of Caroline County's Phase I program in accordance with the adopted compliance evaluation process; and

WHEREAS on October 31, 2006 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 on December 11, 2006 the Chesapeake Bay Local Assistance Board found Caroline County's Phase I program to comply with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20 231 and 250 of the Regulations; and

WHEREAS on February 5, 2007 Caroline County issued a letter to citizens delaying the implementation of their septic pump-out program until December 31, 2008; and

WHEREAS on May 8, 2007, the Northern Area Review Committee recommended that the County be found not fully compliant as a result of the delay in the implementation of their septic pump-out program; 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 Caroline 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 Caroline County to undertake and complete 1 recommended condition contained in this staff report no later than January 31, 2008.

1. For compliance with 9 VAC 10-20-120 7 a of the Regulations, the County must continue to implement the septic pump-out program. To ensure the program continues, the County should populate the septic tank database with information as it is made available, and complete any necessary studies to determine the relationship between the location of septic systems and the County's Chesapeake Bay Preservation Areas. Completion of this work should be done to enable the County to reestablish the notification process no later than January 31, 2008. The County should also provide for Department review of any notices sent to County residents regarding the pump-out program prior to those notices being sent out.

BE IT FINALLY RESOLVED that failure by Caroline County to meet the above established compliance date of January 31, 2008 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 Caroline County to the compliance provisions as set forth in § 10.1-2103 10 of the Act and § 9 VAC 10-20-250 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on June 18, 2007 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

Arlington County

Mr. Sacks gave the report on the Initial Compliance Evaluation for Arlington County. No one was present from the County.

Mr. Sacks said that Arlington County has been very careful in implementing the Bay Act program. The remaining issue for the County is the five-year septic pump-out.

Mr. Sacks said that the Northern Area Review Committee recommended that the Board find that certain aspects of the County's Phase I program be found to not fully comply with the Act and Regulations, and that the County be given until June 30, 2008 to address the following condition:

- Implementation of septic tank pump-out program.

MOTION: Mr. Evans moved that that the Chesapeake Bay Local Assistance Board find that the implementation of certain aspects of the Arlington 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, Arlington County be directed to undertake and complete 1 recommended condition contained in the staff report no later than June 30, 2008.

SECOND: Mr. Duncanson

DISCUSSION: None

VOTE: Motion carried unanimously

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
June 18, 2007**

RESOLUTION

**LOCAL PROGRAM COMPLIANCE EVALUATION
ARLINGTON COUNTY**

Local Compliance Evaluation - Conditional

WHEREAS § 10.1-2103 of the Chesapeake Bay Preservation Act states that the 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 § 9 VAC 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 November 2006, the Chesapeake Bay Local Assistance Board conducted a compliance evaluation of Arlington County's Phase I program in accordance with the adopted compliance evaluation process; and

WHEREAS on May 8, 2007 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 on June 18, 2007 the Chesapeake Bay Local Assistance Board 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 Arlington 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 Arlington County to undertake and complete 1 recommended condition contained in this staff report no later than June 30, 2008.

1. For compliance with 9 VAC 10-20-120 7 a of the Regulations, the County must develop and implement a 5-year septic pump-out program.

BE IT FINALLY RESOLVED that failure by the Arlington County to meet the above established compliance date of June 30, 2008 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 Arlington County to the compliance provisions as set forth in § 10.1-2103 10 of the Act and § 9 VAC 10-20-250 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on June 18, 2007 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

Onsite Nontidal Wetland Delineation Guidance

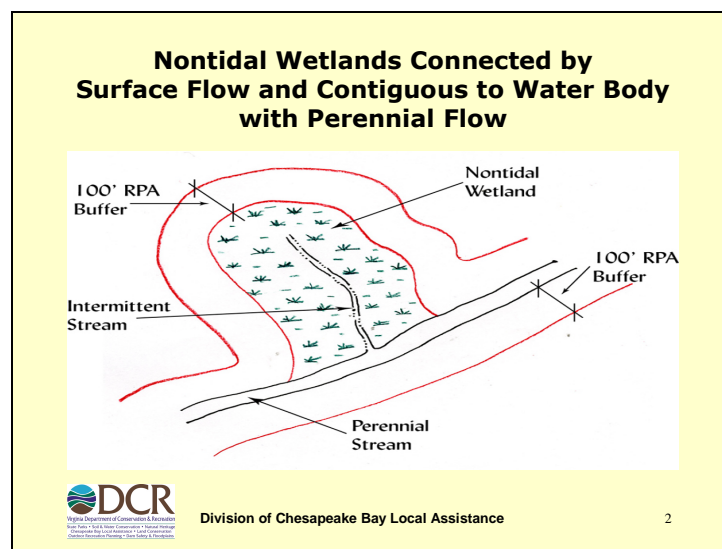
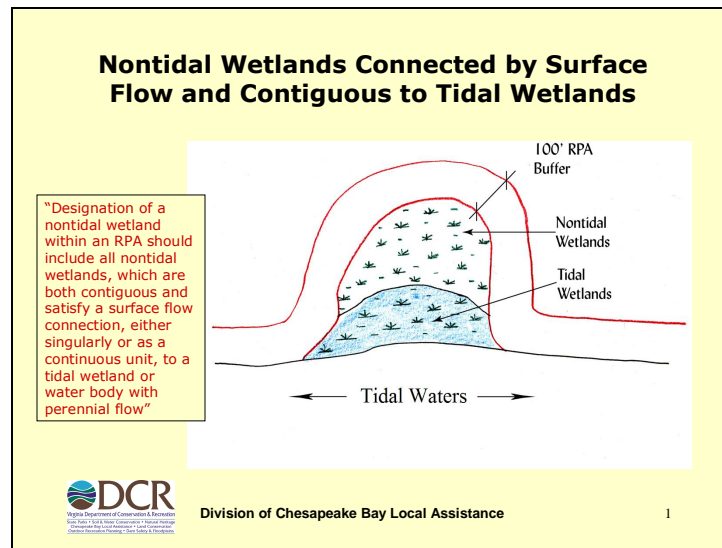
Mr. Davis said that the Policy Committee was recommending Board action on this document.

Ms. Salvati presented the document and noted edits as adopted by the Policy Committee meeting earlier in the day.

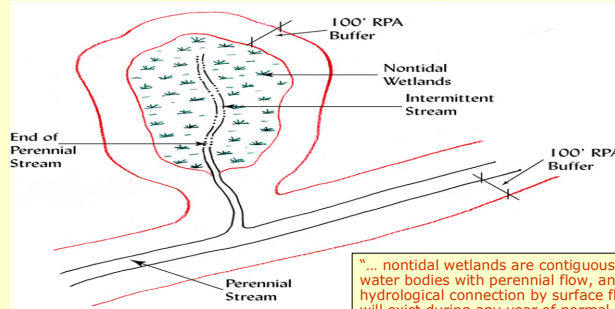
Overview of the Draft Guidance Document: *Resource Protection Areas: Nontidal Wetlands*

Policy Committee follow-up from March 26, 2007

- Committee requested pursuing “Option B”
- Specific revisions incorporated
- Discussions held with specific ad-hoc committee members
- Revised draft mailed to Policy and ad-hoc committees
- Presentation to HRPDC locality staff
- Additional comments received
- Revised draft (dated June 18, 2007) distributed



Nontidal Wetlands Connected by Surface Flow and Contiguous to Water Body with Perennial Flow



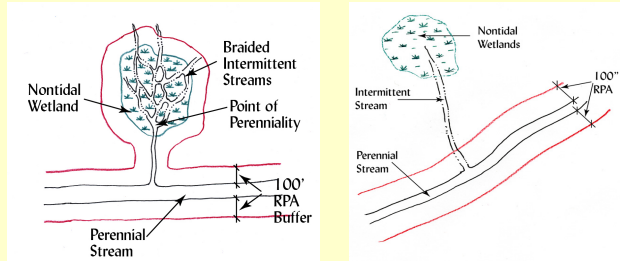
"... nontidal wetlands are contiguous to water bodies with perennial flow, and a hydrological connection by surface flow will exist during any year of normal rainfall. Such nontidal wetlands should be designated as RPAs."



Division of Chesapeake Bay Local Assistance

3

Nontidal Wetlands Connected by Surface Flow and Contiguous to Water Body with Perennial Flow



" nontidal wetlands ... contiguous and hydrologically connected to an intermittent stream yet spatially separated from the water body with perennial flow or other nontidal wetland by an intermittent stream or intermittent channel... are not required to be designated as RPAs."



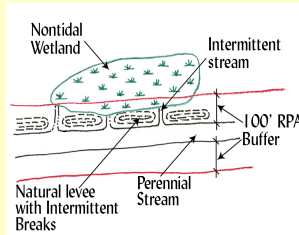
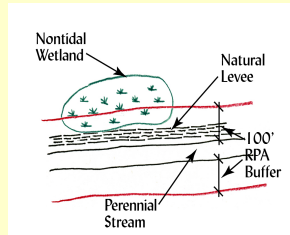
Division of Chesapeake Bay Local Assistance

4

Nontidal Wetlands Separated by a Levee

Wetland is not contiguous to perennial water body and does not require the RPA buffer.

Wetland is not connected by a water body with perennial flow, so it does not require the RPA buffer.

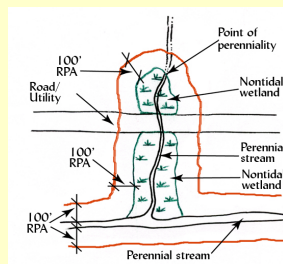
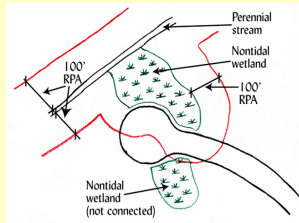


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5

Interrupted and Disconnected Nontidal Wetlands

Wetland has been interrupted, but still is connected by perennial flow and remains an RPA feature.



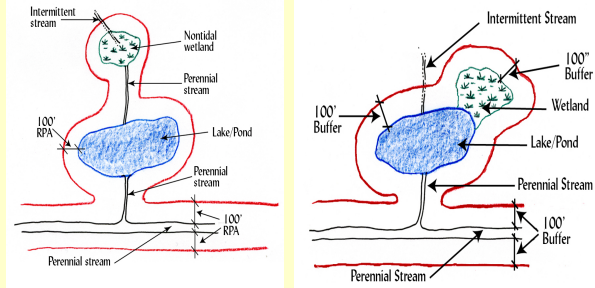
Wetland was interrupted prior to October 1, 1989 and has no surface flow connecting the two wetlands, so the disconnected wetland is not an RPA feature.



Division of Chesapeake Bay Local Assistance

6

Nontidal Wetlands Associated with Lakes, Ponds and Other Impoundments



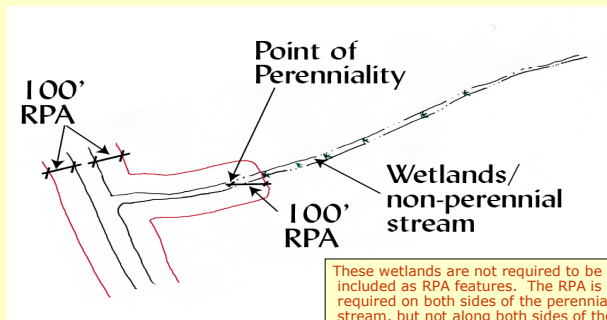
"Impoundments with perennial streams flowing either into or out of them, should be included as RPA features, requiring the 100 foot buffer. Likewise, any associated wetland...should be considered an RPA feature, and also require the 100 foot buffer."



Division of Chesapeake Bay Local Assistance

7

Nontidal Wetlands Associated with Intermittent Streams or Other Non-Perennial Conveyances



These wetlands are not required to be included as RPA features. The RPA is required on both sides of the perennial stream, but not along both sides of the intermittent stream with wetlands only within the defined bed and bank.



Division of Chesapeake Bay Local Assistance

8

Nontidal Wetlands Associated with Intermittent Streams or Other Non-Perennial Conveyances (cross-sectional view)

Cross section of an elongated nontidal wetland that is not required to be included as a RPA feature.

DCR
Virginia Department of Conservation & Recreation
 500 North 19th Street, Charlottesville, VA 22904
 Telephone: 800-368-6868 / 800-368-6869 / 434-977-7000
 Fax: 434-977-7001 / 434-977-7002

Division of Chesapeake Bay Local Assistance 9

Review of Comments Received

<u>Comment</u>	<u>Response</u>
<ul style="list-style-type: none"> • Definition of "Surface Flow": Clarify that wetland drainage can be the result of rainfall events • "Other lands" language: Clarify language relating to when a local government may include nontidal wetlands as RPA features under the other lands category • Nontidal Wetlands Separated by a Levee: add the phrase "and/or more permeable" • Interrupted and Disconnected Wetlands Replace "October 1, 1989" with "date of local Chesapeake Bay Ordinance" 	<ul style="list-style-type: none"> • Definition amended • Text amended – last paragraph on page 6 and also on page 9 • Suggestion not incorporated - additional phrase provides no additional clarification • Suggestion not incorporated – reference to "October 1, 1989" provides consistency with other guidance and policy letters

DCR
Virginia Department of Conservation & Recreation
 500 North 19th Street, Charlottesville, VA 22904
 Telephone: 800-368-6868 / 800-368-6869 / 434-977-7000
 Fax: 434-977-7001 / 434-977-7002

Division of Chesapeake Bay Local Assistance 10

Review of Comments Received cont'd

Comment

- Reference to BMP's: change reference to "stormwater management and/or Best Management Practices" or "SWM/BMPs"
- Oversized BMP's: Remove buffer requirement from ponds that exceed BMP minimum design size
- Nontidal wetlands associated with BMP's: Delete Requirement
- BMP's and Perennial flow: Guidance differs from current policy on perennial flow in and out of ponds

Response

- Reference changed to "stormwater management facilities"
- Suggestion not incorporated - ponds that provide a water quality function, but not designed specifically for water quality or quantity purposes should not be exempted from RPA requirements
- Suggestion not incorporated
- Guidance on "Determinations of Water Bodies with Perennial Flow" will be modified



Division of Chesapeake Bay Local Assistance

11

Review of Comments Received cont'd

Comment

- Nontidal wetlands associated with intermittent streams: comments received regarding:
1) changing "and" to "or"
2) deleting description of the no perennial conveyances
- Additional figure: To show an intermittent stream and wetland bulb upstream from the intermittent stream
- Delete paragraph referencing roadside ditches
- Various editorial suggestions

Response

- Suggestions not incorporated
- Suggestion not incorporated. The requested graphic is similar to Figure 2E
- Suggestion not incorporated. Inclusion of this paragraph was intended to provide consistency among adopted guidance documents.
- Most editorial suggestions incorporated



Division of Chesapeake Bay Local Assistance

12

Policy Committee Action on June 18, 2007:

Recommended adoption of Final Draft with 5 amendments. Includes amendment on page 8 to add language "as long as they are designed and installed in accordance with local requirements consistent with DCR and/or any applicable local standards, at a minimum, related to stormwater management requirements and/or the Chesapeake Bay Preservation Act in effect at the time of plan approval."

Next Steps

- Final layout and editing
- All figures to be formatted to be consistent
- Dissemination to all localities
- Workshop for local staff



Division of Chesapeake Bay Local Assistance

13

A copy of the guidance document as presented is included in hard copies of this document as Attachment #1. [NOTE: If this document is being viewed on the Internet, a copy of the guidance document is available at this address: http://www.dcr.virginia.gov/chesapeake_bay_local_assistance/documents/GuidanceDocs/FINAL_NontidalGuidanceAdopt6-18-07.pdf]

Ms. Salvati said that the staff recommendation was to adopt the guidance document with the inclusion of the recommended changes from the Policy Committee meeting.

Ms. Salvati said that on Page 3 of the guidance document, the third paragraph, the recommendation was after the word "water" to add the following "...and if they are specifically described as an RPA component in the local ordinance."

Mr. Davis noted that this allows localities to expand their requirements. The intent was to make sure localities understood this needed to specifically be in their ordinance.

Ms. Salvati noted this same change would apply to Page 6, the top paragraph.

Ms. Salvati said that on Page 8, the 2nd full paragraph, the recommendation was to delete the term beginning with "however if the size of the impoundment," through the end of the paragraph and add to that "as long as they are designed and installed in accordance with DCR standards related to stormwater management requirements and the Chesapeake Bay Preservation Act."

Mr. Evans asked if the Board needed to specify an effective date.

Mr. Davis noted that the last sentence said, “standards for stormwater management facilities at the time of plan approval.”

Mr. Evans said the intent is to say that localities may expand their programs.

Mr. Maroon said the other issue was whether the locality standards should be referenced. He said the original language deferred to locality standards.

Mr. Davis suggested the language could read, “installed in accordance with local requirements consistent with DCR standards, at a minimum.”

Mr. Chaffe said that language could read, “any applicable local requirements and DCR standards.” He suggested the requirement be made effective to apply only to future plans and not be made retroactive.

Mr. Maroon noted that the Policy Committee had discussed the removal of this paragraph.

Mr. Davis suggested that the 2nd full paragraph on page 8 be removed, but that the Policy Committee revisit the issue in the near future.

Ms. Salvati said that it could be addressed in a separate guidance document.

MOTION: Mr. Evans moved that the 2nd full paragraph on page 8 be deleted and this particular language be returned to the Policy Committee for further discussion.

SECOND: Mr. Duncanson

DISCUSSION: Mr. Maroon noted that this was a complicated document and that the Board had addressed all but this last remaining issue. He said that it would be beneficial to move the document forward.

VOTE: Motion to remove this section carried unanimously.

Mr. Davis said that the Board should have a second vote to approve the document. He asked for any further public comment.

Mike Rolband from Wetland Studies commended the Policy Committee for the document and said that having the information in the field will result in a more consistent application.

Mr. Kerr from Kerr Environmental Services said that he also would like to commend staff and the Policy Committee for their efforts. He said that this was a good compromise document.

Dr. Kirk Havens, from VIMS said that sections 1-5 of the document were a significant improvement. However, he noted that he could not endorse Section 6 as presented in the document.

Dr. Galbraith from Virginia Tech echoed the comments of Dr. Havens and said that he could endorse the document with the exception of Section 6.

Mr. Davis closed the public comment period.

MOTION: Mr. Sheffield moved that the Chesapeake Bay Local Assistance Board approve the recommendation of the Policy Committee to adopt the document with the exception of the previously removed section and with the edits addressed by the Policy Committee and the Board

SECOND: Ms. Harper

DISCUSSION: The following Policy Committee edits were reviewed:

- 1) add the text “and if they are specifically described as an RPA component in the local ordinance” on page 3;
- 2) add the text “within their local ordinances” on page 6;
- 3) replace the words “delineation difficult” with designation between stream and wetlands inconsistent depending on the time of year” on page 9;
- 4) replace the word “included” with “designated” on page 9;
- 5) add the words “within their local ordinance” on page 9.

VOTE: Motion carried unanimously

Mr. Davis thanked staff and the members of the Ad Hoc Committee. He expressed appreciation to Mr. Sheffield for chairing the Policy Committee.

At this time the Board recessed for lunch.

Program Updates

Mr. Sacks gave the following program updates:

City of Hopewell

Mr. Sacks said that staff is confident that the City will address the following conditions in the near future.

1. Ensure CBPA’s are applied uniformly throughout the City.
2. Revise site plan processes and City Code requirements to ensure proper delineation of CBPA features on submitted plans.

3. Require that the RPA remains undisturbed using visible barriers along the boundary.
4. Submittal of CAA pertaining to E&S Control program deficiencies.
5. Implement 5-year septic tank pump-out program.
6. Cease permitting the placement of BMPs of the RPA.
7. Provide documentation of administrative waivers or exceptions.
8. Ensure that a WQIA is submitted and reviewed for all land disturbances in the RPA.
9. Ensure that SWM facilities are located, designed and maintained as required by the SWM Regulations.
10. Consistently implement the stormwater runoff criteria as specified in City Code.

There were no comments from the City of Hopewell.

Middlesex County

Mr. Sacks noted the following:

1. Middlesex County has indicated intent to comply with Recommendation #1 (in March 26, 2007 staff report).
2. County Board of Supervisors will hold public hearing on CBP Overlay District revisions on May 15, 2007 to meet Recommendation #2.

Ms. Miller said that the County did indicate that the septic program will be amended to notify all individuals within CBPAs. However, she noted that the County would not make the June 15 deadline.

Ms. Salvati noted that Middlesex County would have liked to apply for a WQIF grant but could not because the actual cost of the program was lower than the minimum grant amount.

King William County

Mr. Sacks noted the following:

1. County found to not fully comply with the Act and Regulations on March 26, 2007 and given until June 15, 2007 to address one condition (septic pump-out).
2. County mailed first pump-out notices June 13, 2007 (next notices to go July 2008).
3. County has implemented database to track responses and monitor compliance.

Spotsylvania County

Mr. Sacks noted the following for Spotsylvania County.

- County found to not fully comply with the Act and Regulations. Two conditions had March 31 2007 deadline. Septic pump-out given a September 30, 2007 deadline.
- March 31 deadline has been met.
- Pump-out program is being set up. Initial notification letters scheduled to be mailed in November 2007.

Revised Board Policies & Procedures

Mr. Sacks reviewed the flow chart identifying the various steps to go through consistency review and compliance review. A copy of this flow chart is attached as Attachment #2.

Mr. Sacks summarized the recommended modifications to Board Procedural Policies:

- Consistency Review Policies and Compliance Review Policies merged into a single document.
- Language added regarding finding of “certain aspects do not fully comply”.
- Clarification of what is recommended and what is a required condition for compliance.
- Process for requesting a supplemental compliance review.

Mr. Sacks noted that the document “Chesapeake Bay Local Assistance Board Procedural Policies for Local Program Review” was provided in member Board Books. A copy of this document is attached as Attachment #3.

Board members made the following comments:

Mr. Davis said that on page 1, the 2nd paragraph under Board Program Review should read “not less than 15 days prior to the meeting.”

He noted on page 2, 3rd paragraph the phrase “if in attendance” should be stricken.

On Page 8, items 8 and 10, it was suggested to change “liaison” to “department staff.”

Mr. Evans asked about Board participation by telephone.

Mr. Dowling noted that Board members may participate by telephone, but noted that participation would not be considered as part of the quorum.

MOTION: Mr. Taylor moved that the Procedural Policies for Local Program Review be adopted with the recommended changes.

SECOND: Ms. Roberts

DISCUSSION: None

REVISED: 8/7/2007 9:33:22 AM

VOTE: Motion carried unanimously

Phase III of Bay Act Implementation

Mrs. Salvati provided an overview of Phase III of Bay Act Implementation:

Legal Authority

9 VAC 10-20-231:

“Local governments must adopt the full management program, which will consist of Phases I – III as defined in this Section.”

9 VAC 10-20-231.3:

“Phase III shall consist of local governments reviewing and revising their land development regulations and processes, which include but are not limited to zoning ordinance, subdivision ordinances, erosion and sediment control ordinances and the plan of development review process, as necessary to comply with § 10.1-2109 of the Act and to be consistent with the provisions set forth in Part VI of this chapter.”

Key Concepts of Phase III

Ensure local land development ordinances maximize water quality protection

Prioritize those measures that will have the greatest benefit to water quality

Link comprehensive plan water quality protection measures to local land development ordinances

Phase III Components

I. Land Development Ordinance Requirements

II. Evaluation of Water Quality Protection in Land Development Ordinances

III. Review for Land Development Ordinance Conflicts

IV. Comprehensive Plan Review

Projected Implementation Schedule for Phase III

July 2007: Assemble Local Government Ad-Hoc Committee

August 2007: First Ad-Hoc Committee Meeting

November 2007: Final Ad-Hoc Committee Meeting Presentation to Policy Committee

December 2007: CBLAB Adoption of Phase III

Mr. Evans asked if there would be interim reports to the Policy Committee.

Ms. Salvati said that staff could do that.

Ms. Salvati noted that two localities were already undertaking a Phase III process. She noted that a schedule for reviews has not yet been developed.

2007 Assessment Report

Mr. Sacks provided an update regarding the 2007 Assessment report:

5/25/07: Survey of Local Government Permit Activity within Chesapeake Bay Preservation Areas sent to 10 local governments previously surveyed – feedback requested.

7/01/07: Full implementation assessment to be sent to all 84 Tidewater localities.

Other Business

Mr. Davis noted that the next NARC and SARC meetings would be on August 14, 2007 in Richmond. He noted that the next Board meeting would be September 17, 2007. The location is to be determined.

Public Comment

There was no additional public comment.

Adjourn

There being no further business, Ms. Roberts moved to adjourn. Mr. Evans seconded. The motion carried and the meeting was adjourned.

Respectfully submitted,

Donald W. Davis
Chairman

Joseph H. Maroon
Director

Attachment #1

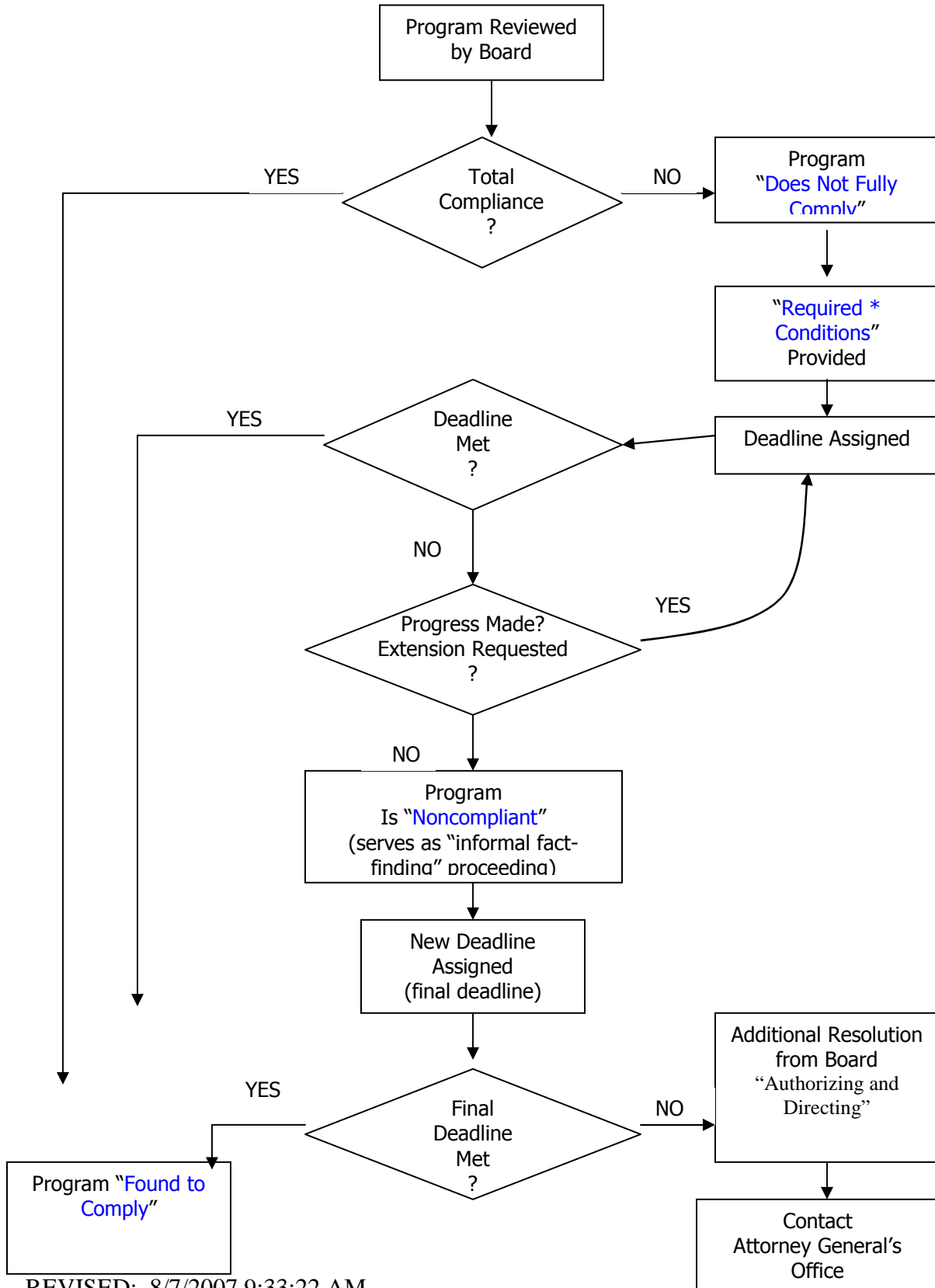
The Nontidal Wetlands Document is included as Attachment #1 on printed copies of this document.

For electronic versions, the document is available at the following URL:

http://www.dcr.virginia.gov/chesapeake_bay_local_assistance/documents/GuidanceDocs/FINAL_NontidalGuidanceAdopt6-18-07.pdf

Attachment #2

Chesapeake Bay Local Assistance Board
Compliance Review Process



REVISED: 8/7/2007 9:33:22 AM

Attachment #3

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
PROCEDURAL POLICIES FOR LOCAL PROGRAM REVIEW
(Adopted June 18, 2007)**

This document amends and repeals the Board's Local Program Compliance Evaluation Procedures and Policies, adopted September 2002 (Guidance Document No. DCR-CBLAB-008) and the Board's Procedural Policies for Local Program Reviews, adopted March 19, 2001 (Guidance Document No. DCR-CBLAB-010).

Board Program Review Committees

- ~~1. The Board Review Committees (Committees) are comprised of the Southern Area Review Committee and the Northern Area Review Committee. The Committees will set standard meeting times and establish yearly meeting calendars. The Committees may set additional meetings outside of their established schedules to facilitate timely review of local programs.~~
2. The Department staff will draft the tentative agendas for each Committee's meetings. The Department staff will provide Committee members with staff reports and pertinent supporting materials for each local program on the agenda not less than fifteen (15) days prior to meetings.
3. The Committees will hear presentations by Department staff and local governments in addition to reviewing reports and supporting materials at meetings.
4. The Committees will make recommendations to the Board based on evaluation of staff reports, supporting materials and testimony; or, if necessary, the Committees will request additional documentation from staff or the local government before making a decision and thus defer action. Department staff will record minutes for each Committee meeting.

Preliminary Consistency Reviews

1. Upon request by a local government, a preliminary consistency review will be conducted provided the local program proposal is in final draft form, having been reviewed and recommended for adoption by the local planning commission or when requested as a part of the local planning commission workshop/review process.
2. Upon receipt of: (1) a written request by the local government, and (2) all proposed documents for review, the Department staff will evaluate the local

- government program using the consistency review checklist and will prepare a draft staff report.
3. The process for preliminary review by the Board of a local program proposal will be the same as for Final Consistency Reviews.

Final Consistency Reviews

1. The Department staff will evaluate each adopted local government program using the consistency review checklist or findings of the preliminary review, where applicable, and prepare a draft staff report. The draft staff report will include a staff recommendation for either a finding of program consistency or a finding of consistent with conditions along with recommended conditions to be addressed by the locality to ensure consistency. The draft staff report will include the reasons for any recommendation. The staff report may also include suggestions which are desirable for water quality protection but not necessary for consistency. Areas where additional information or clarification of the local program are needed will also be identified.
2. The draft staff report will be sent to the appropriate Committee and the local government not less than fifteen (15) days prior to the scheduled Committee meeting. The letter will notify the local government of its opportunity to address the Committee.
3. At its meeting, the Committee will hear a presentation by Department staff and by representatives of the local government. The Committee may find it necessary to request additional documentation from Department staff or the local government before making its recommendation. In such cases, the Committee may elect to defer its finding until a later meeting. Based on the information in the draft staff report and testimony presented by Department staff and local government representatives, the Committee will make a recommendation for a finding by the Board. A final staff report for Board Review will be prepared to include the Committee's recommendation.
4. The Department staff will prepare the final staff report and the local government will be notified of the Board's upcoming consideration of the final staff report and the Committee's recommendation. This notice shall advise the locality of its right to appear, either in person or by counsel or other representative, before the Board at a time and place specified for the presentation of factual data, argument and proof in connection with the Board's review as specified by the informal fact-finding proceeding requirements of the Administrative Process Act, Code of Virginia § 2.2-4019. The final report and notice will be sent to the local government no later than twenty (20) days prior to the Board's meeting at which the local program review will be considered. To facilitate timely Board reviews, this notification period may be modified in cases where a local government agrees in writing to waive the notice period specified by 9VAC10-20-250.

5. The Board will take into consideration the staff recommendation, the recommendation of the Committee, the findings of the preliminary review, where applicable, and presentations and proof offered by the local government, both written and oral, in making a finding on local program consistency.
6. The Board may find it necessary to request additional documentation from Department staff or the local government. In such cases, the Board may elect to defer its finding until a later meeting.
- ~~7. When the Board determines that no changes are necessary for local program consistency, the Board will make a finding of consistency. The Department will notify the local government of the Board's finding in writing within the timeframe specified by Code of Virginia § 2.2-4021.~~
8. When the Board determines that changes are necessary for local program consistency, the Board may make a finding of consistent with conditions and allow the local government to complete the necessary modifications within a prescribed period of time. As part of the finding, the Board will determine what changes are necessary and set a compliance deadline for revising the local program. The Department will notify the local government of the Board's finding and the compliance deadline in writing within the timeframe specified by Code of Virginia § 2.2-4021. Such notification shall also include the locality's right to appeal the Board's action.
9. When the Board determines that a local program is inconsistent, the Board will make a finding of inconsistency. As part of the finding, the Board will determine what changes are necessary and set a final deadline for the local government to make the necessary changes. The Department will notify the local government of the finding and final deadline in writing within the timeframe specified by Code of Virginia § 2.2-4021. Such notification shall also include the locality's right to appeal the Board's action.

Review of Programs Found Consistent with Conditions and Inconsistent

- ~~1. Department staff will discuss with the local government its progress in making any program modifications identified by the Board at least ninety (90) days prior to the Board's deadline for necessary program modifications, unless a shorter time period for compliance is set by the Board.~~
2. When a local government indicates it needs additional time and provides sufficient justification and a revised schedule to accomplish the required program modifications, its request shall be considered by the appropriate Committee, which shall make a recommendation to the Board. A locality that disagrees with the Committee's recommendation may address the Board during its review of the matter.

3. Review of programs found consistent with conditions will generally follow the steps for Final Consistency Reviews. Where the local government has accomplished all necessary program modifications, the Department staff may prepare a simplified staff report for both the Committee and the Board.
4. The Committee will evaluate the local government's program, consider the Department staff's recommendation and any testimony of the local government, if present, and make a recommendation as to whether the program is consistent or inconsistent. If the local program is inconsistent, the Committee shall identify remaining items that need to be addressed for consistency and recommend a final compliance date or recommend an extension of the deadline for completion of the necessary program modifications.
5. The Board will take into consideration the Department staff's recommendations, the recommendation of the Committee, and presentations and proof offered by the local government in making a decision on local program consistency and/or extending or establishing a deadline.

6. For local programs previously found inconsistent and where the local government does not adopt the necessary program modifications or request and receive a deadline extension from the Board, the matter will be scheduled for review and action at the next meeting of the appropriate Committee and the Board. Notice regarding the meetings and recommended action will be provided to the locality in the same manner as for any Final Consistency Review. The Board may either defer action in order to consider additional information or request the Office of the Attorney General to take legal action to enforce compliance with the Act and regulations.

Review of Modifications to Local Programs Found Consistent

1. The Department staff will evaluate any modifications to local government programs found consistent. Staff evaluations will occur in a timely manner after a modification is adopted by the locality. After evaluating program modifications, the Department staff will prepare a draft staff report addressing the modification. In addition to staff recommendations relative to program consistency or inconsistency, the staff analysis will include a recommendation relative to the program modification's status as either minor or major. The Department staff will refer to the Minor Program Modifications and Major Program Modifications in making such recommendations.
2. Board review of major program modifications will generally follow the steps for Final Review, including review and recommendation by the appropriate Committee. A minor modification may be approved by the Director.

Minor Program Modifications

1. Minor modifications to a local program will generally include amendments that do not affect the application of the eleven performance criteria or the designation of Chesapeake Bay Preservation Areas and/or Intensely Developed Areas. Minor modifications would consist of any changes recommended for clarification in the Board's consistency review of a local program and any additional changes that fall under the following general categories: process, clarification, reorganization, and specification. Local adoption of the civil penalties and civil charges provisions as found in the Act is considered a minor amendment.
2. Minor modifications involving process are those that relate to a local government's process for evaluating private development projects, such as changes to the timing of submissions or to the assignment of personnel responsible for review and approvals. For example, a local government may reorganize the community development departments and replace Engineering as the administrative authority over the locality's site plan review process with Planning. Changes to the local ordinance to reflect such reassignments or other changes in the process are minor modifications. Changes to the local exception process that involve a new sequencing of review requests for exceptions will generally be considered minor modifications. However, changes to the criteria for exceptions or required findings associated with development approval or changes to the committee, board, or body that hears exceptions are considered major modifications.
3. Minor modifications involving clarification are generally "housekeeping" in character, such as correcting typographical errors and amending citations for reference materials in ordinances. Such modifications could also involve minor word changes to clarify the intent of ordinance requirements. Typically, clarifying changes are a result of the locality's experience in implementing the ordinance.
4. Minor modifications involving reorganization are those that affect the structure and numbering of an ordinance text. For example, some local governments find it beneficial to group all exemption language in the Regulations into one section.
5. Minor modifications involving specification are those that establish more information or detail for particular sections of an ordinance. For example, a local government may add specific standards to clarify how an applicant complies with the requirement to minimize impervious surface. These standards relieve the local administrator from having to interpret compliance on a case-by-case basis. Other expected modifications of this nature would involve specifying information items required to be submitted as part of a site plan.
6. The Director shall document approval of all minor modifications through a letter to the locality, with a copy to the Board, acknowledging the local action and approval. The Department shall provide a summary of all minor modifications to the Board as a staff update at each Board meeting.

Major Program Modifications

1. Major modifications to a local program are generally those that revise (i) the designation of the local Chesapeake Bay Preservation Area or an Intensely Developed Area, (ii) the application of the eleven performance criteria or, (iii) the process for granting exceptions or administrative waivers.
2. Major modifications that revise the local Chesapeake Bay Preservation Area (CBPA) designation could involve changes to either the Resource Protection Area or Resource Management Area. Similarly, modifications or additions to locally designated Intensely Developed Areas will require Board review. A change to the boundary between the RPA and the RMA based upon a site-specific delineation, as provided for in a local program ordinance that has been found consistent by the Board, is not considered a program modification and is not subject to review. However, the deletion of an RPA feature from a site or the expansion or contraction of the CBPA boundary is a major modification.
3. Major modifications that revise the application of the eleven performance criteria could involve deletion of one of the standards from the local Bay Act ordinance or the amendment of the level of performance of one of the standards. For example, if a local government removes the stormwater management criteria from its Bay Act ordinance because it has a one acre minimum lot size in its subdivision ordinance, the local program would need to be reviewed by the Board. Similarly, if a locality amends the five-year septic pump-out requirement in the Regulations to a ten-year pump-out requirement in the local ordinance, the modification would be considered major and require a consistency review by the Board.
4. Modifications that substantially revise the local exception process will be considered major in nature. For example, changes to the exception process that expand the locality's administrative exceptions to include additional buffer encroachment, on lots created prior to the effective date of the local ordinance would require a consistency review by the Board.
5. Any other modifications that do not qualify as minor will be considered major.

Local Program Compliance Review Procedures

The following review procedures are designed to take into account not only the initial phase of the Compliance Review process required under the Act and Regulations, but are also designed to be used in the ongoing review of local programs.

1. Based on a review of the information gathered by the locality, interviews with local staff, completion of the *Local Program Compliance Evaluation Checklists*, and field investigations, the locality liaison, with assistance from other Department staff, will evaluate each local government program. At the

conclusion of the local program review the Department staff will review the *Checklist* with the local government contact and provide a copy of the completed *Checklist* to the local contact.

The Department staff will prepare a draft *Initial Local Program Compliance Evaluation Staff Report* regarding the local program's compliance with the Act and Regulations. This report will include a staff recommendation as to the compliance of each element of the local program that is reviewed and a statement of the reason(s) behind these recommendations. The report will also include conditions for local program modifications that the Department staff feels are necessary for compliance and suggestions that are desirable for water quality protection but not necessary for compliance. Areas where additional information or clarifications on the local program are needed will also be identified.

2. The *Initial Local Program Compliance Evaluation Staff Report* and resolution will be forwarded to the appropriate Committee and the local government not less than fifteen (15) days prior to the scheduled Committee meeting. The transmittal letter will notify the local government of its opportunity to address the Committee and offer testimony or exhibits on its own behalf.
3. At its meeting, the Committee will hear a presentation by Department staff and by representatives of the local government, if in attendance. The Committee may find it necessary to request additional documentation or testimony from either staff or the local government prior to making a compliance determination.
4. The Department staff will prepare the final staff report and the local government will be notified of the Board's upcoming consideration of the final staff report and the Committee's recommendation. This notice shall advise the locality of its right to appear, either in person or by counsel or other representative, before the Board at a time and place specified for the presentation of factual data, argument and proof in connection with the Board's review as specified by the informal fact-finding proceeding requirements of the Administrative Process Act, Code of Virginia § 2.2-4019. The final report and notice will be sent to the local government no later than twenty (20) days prior to the Board's meeting at which the local program review will be considered. To facilitate timely Board reviews, this notification period may be modified in cases where a local government agrees in writing to waive the notice period specified by 9VAC10-20-250.
5. In making a finding on local program compliance, the Board will take into consideration the Department staff's recommended conditions and analysis, the recommended conditions of the Committees', and presentations and proof offered by the local government. The Board may find it necessary to request additional information from either the staff or local government, and may defer its finding until this information has been provided.

6. When the Board determines that no changes are needed in the local program, it will make a finding that the local program implementation complies with the Act and Regulations. The Department staff will notify the local government of the Board's findings in writing within the timeframe specified by Code of Virginia § 2.2-4021. This will conclude the initial phase of the compliance review process.
7. When the Board determines that changes are needed in the implementation of the local program, the Board may make a finding that implementation of certain aspects of a local government's Bay Act program do not fully comply and allow the local government to address the required conditions within a prescribed period of time. As part of its findings, the Board will determine what changes are necessary for compliance and will set a corrective action deadline. The Department staff will notify the local government of the Board's findings and the compliance deadline in writing within the timeframe specified by Code of Virginia § 2.2-4021. This written notice shall also set forth the locality's right to appeal the Board's action.
8. The Department staff shall provide an update to the Board at one of their regularly scheduled meetings no less than six months before any corrective action deadline. This update will outline steps taken by the local government to address any recommended condition.
9. In cases where a local government does not address the required conditions in a timely manner, or within the Board established time frame, the Board may make a finding of noncompliance. This finding will include required conditions that a local government must address as well as a final deadline by which the required conditions must be met. When the Board makes a finding of noncompliance, it shall notify the local government of the finding in writing within the timeframe specified by Code of Virginia § 2.2-4021. The notification shall also include the required conditions, the final deadline, and the possible legal actions that may be available to the Board should the final deadline not be met.
10. Upon successful completion of all recommendations for compliance, the Department staff shall prepare a memorandum to the Board informing it of the local program status and shall prepare a resolution for Board approval confirming program compliance.
11. For local programs previously found noncompliant and where the local government does not adopt the necessary program modifications or request and receive a deadline extension from the Board, the matter will be scheduled for review and action at the next meeting of the appropriate Committee and the Board. Notice regarding the meetings and recommended action will be provided to the locality in the same manner as for any Compliance Review. The Board may either defer action in order to consider additional information or request the Office of the Attorney General to take legal action to enforce compliance with the Act and regulations.

12. A finding of compliance relative to a local program element shall not be construed to mean a finding of compliance with all other elements of the local program that were not evaluated during the Compliance Evaluation process. The Chesapeake Bay Local Assistance Board may evaluate local program implementation of other program elements according to an established schedule, or as changes in policy, law, or regulation warrant. A Compliance Evaluation may also be initiated if the Board identifies potential areas of noncompliance through observations in the field, complaints or other means.
13. When circumstances indicate that a local government, previously found compliant, is no longer implementing all elements of its Bay Act program in compliance with the Act and Regulations, the Board may authorize the Department staff to initiate a compliance review of all or portions of implementation of a local Bay Act program.

This document was adopted by the Board on June 18, 2007 and may be amended or repealed as necessary by the Board.

Donald W. Davis, Board Chairman