



**CHESAPEAKE BAY LOCAL ASSISTANCE
BOARD
PROCEDURAL POLICIES FOR LOCAL
PROGRAM REVIEW
(Amended June 16, 2008)**

This document amends and repeals the Board's Procedural Policies for Local Program Review dated June 18, 2007 (Guidance Document No. DCR-CBLAB-085).

Board Program Review Committees

1. In accordance with the Bylaws of the Chesapeake Bay Local Assistance Board, the Board has established two review committees (Committees), the Southern Area Review Committee and the Northern Area Review Committee. The purpose of the Committees is to provide recommendations to the Board on issues of local compliance with the Act and Regulations. 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, and where appropriate also recommend the Board defer action. Department staff will record minutes for each Committee meeting.
5. A recommendation by a Committee is not required for consideration by the Board of a local program review.

Consistency Reviews - Generally

Consistency reviews are undertaken pursuant to the authority granted to the Board in 9 VAC 10-20-231

5. A consistency review is a determination that a locality's program is consistent with the requirements of the Chesapeake Bay Preservation Act and the Chesapeake Bay Preservation Area Designation and Management Regulations. Consistency reviews are undertaken for Phases I, II, and III of local programs. The Phase I review evaluates the local government ordinances for inclusion of the management program and the mapping of Chesapeake Bay Preservation Areas. The Phase II review evaluates the local comprehensive plan for inclusion of the required elements. The Phase III review evaluates local ordinances for the inclusion of specific provisions to address the general performance criteria in the regulations and water quality protection based upon a checklist and minimum threshold established by the Board.

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 checklists and materials approved by the Board and will prepare a staff report for the Board containing recommendations for the Board's consideration.
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 staff report. The staff report will include a recommendation for either a finding of program consistency or a finding of not fully consistent along with recommendations for conditions to be addressed by the locality to ensure consistency. The staff report will include the reasons for any recommendation. The staff report may also include suggestions that are desirable for water quality protection but not necessary for consistency. Areas where additional information or clarifications of the local program are needed will also be identified.
2. The 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 (if present). 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 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 staff report for Board Review will be prepared that includes the Committee's recommendation.
4. The local government will be notified of the Board's upcoming consideration of the 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 9 VAC 10-20-250.

5. The Board will take into consideration the staff recommendation, the recommendation of the Committee (when provided), the findings of the preliminary review, if any, 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 “consistent”. 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 “not fully consistent” 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 “inconsistent”. As part of the finding, the Board will determine what changes are necessary and set a deadline for the local government to make the necessary changes. The Department will notify the local government of the finding and 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.
10. Notifications to a local government of pending Board consideration or results of Board actions will be sent to the highest appointed official in the locality (City Manager, Town Manager, County Administrator, etc.). For localities without such an official, notification will be sent to the highest local elected official.

Review of Programs Found Not Fully Consistent 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 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 not fully consistent 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 compliance deadline 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 (if any), 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 Director will make a determination that the program modification is either minor or major. The Department staff will refer to the Minor Program Modifications and Major Program Modifications sections of this document in making such evaluations.
 - a. Minor program modifications may be approved by the Director.
 - b. Major program modifications will require the development of a staff report describing the program modifications along with a recommendation of the program's consistency, and require approval by the Board.
2. Ordinance amendments that contain both major and minor modifications, will be reviewed by the Board rather than separating the components into separate Director and Board Reviews.
3. Board review of major program modifications will generally follow the steps for Final Review, including review and recommendation by the appropriate Committee.

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 include changes implemented as a result of the Board's consistency review of a local program and any 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.
 - a. Ordinance changes that are administrative in nature and address a local government's process for reviewing development projects and plans, may include changes to the timing of submissions or to the assignment of personnel responsible for review and approvals.

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 or appeals 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.

- b. Ordinance changes 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, clarification changes are a result of the locality's experience in implementing the ordinance.
 - c. Minor modifications involving reorganization or recodification are those that affect the structure and numbering of an ordinance text.
 - d. Minor modifications involving specifications 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.
2. 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 approved minor modifications to the Board as a staff update at each Board meeting.

Major Program Modifications

1. Major modifications to a local program must be approved by the Board and 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 include ordinance changes to the components or description of either the Resource Protection Area, Resource Management Area, or Intensely Developed Area. . A change to the locality's Chesapeake Bay Preservation Area map that modifies the boundaries or location of the RPA, RMA, or IDA other than those that are clarifications based upon site-specific delineation, as provided for in a local program ordinance are considered major program modifications and subject to review by the Board.
3. Major modifications include any revision to the eleven performance criteria in the local Bay Act ordinance or the amendment of the level of performance of one of the standards.
4. Modifications that substantially revise the local exception process will be considered major in nature. 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, 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 and subject to review by the Board.

5. Any other modifications that do not qualify as minor will be considered major.
6. Modifications to a local Comprehensive Plan that eliminate any of the required Phase II components will be considered major program modifications.

Local Program Compliance Review Procedures

The following review procedures are designed to take into account the initial phase of the Compliance Review process required under the Act and Regulations, and the ongoing review of local programs.

Initial Compliance Evaluation Report Development Process

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 Department staff, will evaluate each local government program and prepare an *Initial Compliance Evaluation Report* regarding the local program's compliance with the Act and Regulations. This report will include an evaluation of each element of the local program that is reviewed. The report will also include recommendations for conditions to be considered by the Board for local program modifications that the Department staff feels are necessary for compliance and a statement of the reason(s) behind the recommendations. The report may include suggestions that are desirable for water quality protection or more effective implementation of the local government program, but not necessary for compliance. .

Review Committee Review Process

2. The *Initial Compliance Evaluation Report* and resolution, that may include conditions for compliance for consideration by the Board, will be forwarded to the appropriate Committee (or the Board if no Committee meeting is found necessary) 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.

Board Review Process

4. The local government will be notified of the Board's upcoming consideration of the final staff report and the Committee's recommendation (if any). 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 staff 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 9 VAC 10-20-250.
5. In making a finding on local program compliance, the Board will take into consideration the Department staff's analysis and recommended conditions for compliance, the recommendations 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 is compliant 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.
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 compliance 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.

Board Update Requirement

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 compliance deadline. This update will outline steps taken by the local government to address any conditions necessary for compliance.

Board Review of Conditions – Noncompliant Local Programs

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 compliance 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 for compliance, the compliance deadline, and the possible legal actions that may be available to the Board should the deadline not be met.

Board Review of Conditions – Compliant Local Programs

10. Upon a locality's successful completion of all conditions for compliance, the Department staff shall prepare a report to the Board recommending a finding of "compliant and shall prepare a resolution for Board adoption confirming program compliance.

Board Action on Noncompliant Programs

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/or 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.

Supplemental Compliance Evaluations

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, regulation or circumstances in the locality warrant. A Compliance Evaluation may also be initiated if the Board or Department staff 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 or Director 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 16, 2008 and may be amended or repealed as necessary by the Board.

Chesapeake Bay Local Assistance Board Compliance Review Process

