

**Chesapeake Bay Local Assistance Board
Southern Area Review Committee
August 12, 2008
Richmond, Virginia**

Southern Area Review Committee Members Present

Beverly D. Harper, Chair
Richard Taylor

Charles B. Whitehurst, Sr.
John J. Zeugner

Southern Area Review Committee Members Not Present

Barry Marten

DCR Staff Present

Joseph H. Maroon, Director
Russell W. Baxter, Deputy Director
David C. Dowling, Director of Policy, Planning and Budget
Joan Salvati, Director, Division of Chesapeake Bay Local Assistance
David Sacks, Assistant Director, Division of Chesapeake Bay Local Assistance
Ryan J. Brown, Assistant Policy and Planning Director
Amy Doss, Senior Environmental Planner
Michael R. Fletcher, Board and Constituent Services Liaison
Nathan Hughes, Watershed Specialist
Nancy Miller, Senior Environmental Planner
Daniel Moore, Principal Environmental Planner
Shawn Smith, Principal Environmental Planner
Elizabeth Andrews, Assistant Attorney General

Others Present

John Bragg, Charles City County
James Freas, City of Hampton
Rhonda Russell Mack, Surry County *yes, this is correct.*
Zack Robbins, Town of Ashland
Robert Smallwood, Town of Surry
William Sutherland, Town of Surry
Kay Wilson, City of Virginia Beach

Call to Order

Ms. Harper called the meeting to order and declared a quorum present.

Mr. Maroon stated that Mr. Barry Marten of Williamsburg had been appointed to replace Gale Roberts. Mr. Marten will serve on the Southern Area Review Committee.

Local Program Reviews

Town of Painter

Ms. Smith gave the report for the Town of Painter.

The Town of Painter is a small town located in Accomack County, along Route 13. It has a land area of .63 square miles, and a population of 250 persons. New development in the Town has been very limited over the last 19 years. The Town has commercial development along Route 13, and scattered residential development along its few streets. About one-half of the Town is in the Chesapeake Bay watershed, with less than 1 quarter of the Bay watershed within the town designated as the Town's CBPA. The town's CBPA is limited to the area south of Wayside Drive, and east of US Route 13.

The Town amended its zoning ordinance in 2003. On June 16, 2003, the Board reviewed the revised ordinance and found that the Town's zoning ordinance was consistent with one exception. The single condition required the Town to amend the Bay Act overlay district to add language that allows the Town to grant waivers to the performance criteria provided the same findings are applied as are required for formal RPA exception requests. The ordinance already includes the provision that allows administrative waivers to the performance criteria, but does not specifically refer to the requirement that waivers to the performance criteria need to be considered using the same findings as a formal RPA exception.

The deadline set by the Board was June 30, 2006. Department staff have endeavored to contact the Town to assist them in addressing the single condition, sending several letters in 2007 reminding them of the condition and the deadline and also providing a copy of the required change for the Town to adopt. Staff also requested assistance from the ANPDC staff to help the town address the single condition. However, the Town remains the only locality that is not fully Phase I consistent.

On December 12, 2005, the Board found the Town of Painter to be implementing its Phase I program in compliance with the Act and Regulations. The Board made this finding in large part due to the list of services that Accomack County provides to the Town and due to the limited development activity that occurs in the Town. The County issues building permits, applies its erosion and sediment control program, administers a septic pump-out program and would perform onsite RPA delineations, should this need arise. The Town and the County have a formal agreement for this service.

Ms. Smith said that the staff was requesting the Board revisit the single condition and revise its June 13, 2003 resolution to find the Town fully consistent, based on the facts

stated below. The Town of Painter is the last locality that is not yet fully Phase I consistent.

- there has been no development in the Town's CBPA in the 19 years of the program,
- the Town has a small RMA,
- the County implements the Town's Bay Act program, and
- the Board found the Town's implementation of its Phase I program to be compliant.

MOTION: Mr. Zeugner moved that the Southern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find that the zoning ordinance adopted by the Town of Painter on February 13, 2003 be found consistent.

SECOND: Mr. Taylor

DISCUSSION: None

VOTE: Motion carried unanimously

City of Hampton

Ms. Miller gave the report for the City of Hampton. She noted that James Freas, Senior City Planner for the City of Hampton was in attendance.

The City of Hampton adopted revisions to its Phase I program on January 9, 2008, amending its Bay Act Ordinance to include lands designated as part of the Coastal Barrier Resources System under the Coastal Barrier Resources Act, as part of an expanded RPA buffer. As part of these amendments, the City revised its Bay Act Ordinance text in a manner which could limit RPA buffers to tidal water bodies, which is inconsistent with the Regulations.

On June 16, 2008 the Board found the City's Phase I program consistent with one condition to be addressed by September 30, 2008. On September 10, 2008 the Hampton City Council is expected to adopt a revision to correct the inconsistent reference and address the condition.

Ms. Miller said that the staff recommendation was that the City's Bay Act Ordinance be found consistent with the Act and the Regulations, contingent upon City Council adoption of the proposed ordinance amendment as scheduled on September 10, 2008.

Ms. Miller said that staff would know the City Council's action prior to the September 15 Board meeting.

Mr. Taylor asked if the Planning Commission had approved the ordinance amendment.

Mr. Freas said that the Planning Commission had recommended approval of the ordinance change. He said that he anticipated that the City Council would approve the amendment.

Mr. Davis asked if the item was on the consent agenda or if there would be a public hearing.

Mr. Freas said the City of Hampton requires two public hearings.

MOTION: Mr. Zeugner moved that the Southern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find the City of Hampton's revised Phase I program to be consistent with § 10.1-2109 of the Act and § 9 VAC 10-20-60 1 and 2 of the Regulations, contingent upon City Council adoption of an ordinance amendment as scheduled on September 10, 2008.

SECOND: Mr. Whitehurst

DISCUSSION: None

VOTE: Motion carried unanimously

Local Program Reviews – Compliance Evaluation

Surry County

Mr. Moore gave the report for Surry County.

Department staff initiated the Compliance Evaluation process for Surry County in January 2008. Surry County is a rural locality of 310 square miles located in the South Hampton Roads region of the state. It is a member of the Crater Planning District Commission and is affiliated with the Hampton Roads Planning District Commission as well. It is bound to the north by the James River, by Isle of Wight County to the east, Prince George County to the west, and Sussex County to the south. The 2000 census lists the County's population at 6,829, with a density of 23 persons per square mile. New development in the County is generally limited to single family homes on large lots in select areas on or near the James River, or along tributary streams of the James. Approximately 25 percent of the County's land mass is located in the Chesapeake Bay (James River) watershed. The remaining land area of the County is located in the Chowan River Watershed, which generally includes all areas south of Route 10.

Mr. Moore said that the staff report recommended that the Committee find that certain aspects of the County's implementation of its Phase I program do not fully comply with

§§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations. He noted that, subsequent to the time that Committee members received their packets for today's meeting, Department staff received documentation from DCR/Soil and Water Conservation staff indicating that issues related to the County's Corrective Action Agreement with the Suffolk Regional Office have been addressed and that SWCD staff will recommend that the SWCD Board, at its September 18, 2008 meeting, find the County's Erosion and Sediment Control program consistent with the requirements of the Erosion and Sediment Control Law and Regulations. Accordingly, Mr. Moore said that Department staff was requesting that the Board consider a revised resolution with seven recommended conditions, rather than the eight listed in the resolution and in the staff report included in the packet packet. In order to address the seven recommended conditions, the County must:

1. revise the current Resource Protection Area and Resource Management Areas map to accurately depict the RMA as described in Section 10.3.2 of the County's Chesapeake Bay Preservation District Ordinance;

Mr. Moore noted that this condition results from the fact that the County's current CBPA map shows RMA as a 100-foot strip along the inland boundary of the RMA and does not graphically depict the RMA as defined in the County's Bay Act Ordinance. The RMA is designated in the County's Ordinance as "... all remaining areas of Surry County within the James River Watershed."

2. begin reviewing all development projects within the James River Watershed for compliance with the Chesapeake Bay Preservation District Ordinance, as of September 16, 2008;

Mr. Moore noted that this condition directly relates to Recommended Condition #1; because of the inaccuracies of the County's CBPA map, the County is not reviewing all plans for development activities beyond the currently mapped 100-foot RMA for conformance with the Bay Act Ordinance, and they must begin doing so immediately.

3. ensure that all applications for development activities on properties within the County's CBPA evaluate any water body present on site for perennial flow and to depict the site specific delineations of RPAs based on actual field conditions;

Mr. Moore noted that this condition stems from the file and site plan review for the Mantura Manor project described in the Field Investigation section of the staff report. The project files reviewed did not include any documentation relative to a PFD, even though the project resulted in the crossing of a stream located in the middle of the subdivision. The staff report text in support of this condition states that "...there was no documentation demonstrating that perennial flow determinations were conducted..." The staff report text was originally based on two project files. One of those project files was for a project since withdrawn by the applicant. The staff report should have referenced

the fact that the lack of PFD documentation was an issue in one case, and not multiple cases. However, the Recommended Condition still stands.

4. develop and implement a 5-year septic system pump-out and/or inspection program;
5. develop and implement a BMP database to track the type, installation date, location, and the inspections and maintenance records of all BMPs within those areas of the County subject to Chesapeake Bay regulations;
6. ensure WQIAs contain all elements sufficient to demonstrate compliance with the County's Bay Act program;

Mr. Moore noted that this condition stems from:

- the lack of any documentation in support of a perennial flow determination (which is part of the WQIA requirements [per 10.6.6 f & g of the County Ordinance]) for Mantura Manor;
 - the fact that a WQIA site drawing for the Hamner project did not include the location of on-site septic drainfields or the location of all impervious cover associated with the development.
7. ensure that the required findings are adequately addressed and that RPA exceptions are required only when necessary.

Mr. Moore noted that Recommended Condition #7 results from two separate cases where formal exception requests were made to the County Planning Commission (and processed by County Planning staff with a staff report provided to the Planning Commission) for properties where the proposed development was in the RMA. Each staff report developed by County Planning staff begins by defining the CBPD Exception Request "...to permit an encroachment...in the required Chesapeake Bay Area Preservation District Resource Protection Area..." but goes on to specifically reference three times an encroachment into the RMA.

Ms. Mack from Surry County said the County had reviewed the eight recommended conditions in the staff report and had prepared a written response dated August 11, 2008. The letter signed by the County Administrator stated that the County was in agreement with only two of the eight recommended conditions. Mr. Sacks provided a copy of the letter from Surry County for inclusion into the record. A copy of that letter is available from DCR.

Ms. Mack said the County was in agreement with conditions four and five. She said she would like to ask the Board for a 30-day deferral to allow for continued discussions between the County and DCR staff.

Ms. Harper said that it was her understanding that all RMAs in the County are located in the James River Watershed.

Mr. Moore said that in regards to Recommended Condition #2, staff was asking the Board to require the County to immediately start the process of reviewing development activities in areas that should have been considered subject to the Bay Act requirements all along. He said staff is asking that the County begin plan of development review on September 16, 2008, and not that the County be required to revise its CBPA map by that date.

Mr. Davis said that he was concerned that the County had not been given sufficient time to review all of the recommended conditions in the staff report and discuss with Department staff those conditions the County currently was not willing to accept..

Ms. Salvati said that she would recommend continued discussion, but that there was no need for the Review Committee to defer action prior to the September Board meeting. She said that if the Review Committee elected to forward the recommendation of not fully compliant to the Board, it would not preclude DCR and County staff from continuing to meet and discuss the issues outlined in the staff report.

Ms. Mack said that County staff would not be able to share the findings listed in the staff report with the County Board of Supervisors prior to the September CBLAB meeting.

Mr. Sacks said that the issue with the map was different than the issue discussed with the policy committee. He said that staff investigation revealed that there are development projects that are not being reviewed by County Planning Department staff.

Mr. Maroon noted that the recommendation from staff was that the eight conditions be addressed by September 30, 2009. He noted that Surry County had been proactive in addressing deficiencies in the County's erosion and sediment control program. He said the County will have a year to come into compliance with the Bay Act requirements.

Mr. Davis suggested that Department staff prepare a progress report to be given at the March 2009 meeting. He said that he would recommend that the Department and County staffs continue to work together and that the County Administrator be invited to participate in the September 15, 2008 Board meeting in order to hear all relevant discussions relative to the compliance evaluation staff report. He said the Board would make a determination about the recommended conditions at that time.

MOTION: Mr. Zeugner moved that the Southern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find that certain aspects of Surry County's Phase I program do not fully comply and that the County be required to address the seven conditions contained in the staff report by September 30, 2009 and directed DCR staff to work with County staff and, if necessary,

bring an updated staff report and recommendation to the September 15, 2008 Board meeting for consideration.

SECOND: Mr. Whitehurst

DICUSSION: Mr. Zeugner said that he hoped that staff and the County would be able to come to some understanding in order to make the program fully compliant by September 2009.

VOTE: Motion carried unanimously

City of Hampton

Ms. Miller gave the report for the City of Hampton.

Ms. Miller noted that the Hampton agenda items are linked. The Phase I amendment must be adopted by the City Council and reviewed and confirmed consistent by the Board prior to any Board action on the City's compliance evaluation.

The City of Hampton is located on the eastern tip of the Peninsula, and is flanked by the Cities of Newport News and Poquoson. Hampton has a population over 146,000 and includes 53 square miles. The City is bordered by the waters of the Chesapeake Bay, Hampton Roads and their associated tributaries.

Department staff initiated the compliance evaluation for Hampton on January 30, 2008. Elements of the City's local Bay Act program reviewed include implementation of zoning/stormwater/erosion and sediment control/site plan and wetlands ordinances, and the City's plan of development review process. In addition, the following aspects of the City's program merit special note.

- While most of the City's development is served by a central sewage treatment system, there are approximately 234 on-site septic systems remaining in the City's CBPAs. The City's septic tracking and notification program, which satisfies the 5-year on-site septic pump-out requirement, has been administered by the City Health Department since adoption of the City's Bay Act Ordinance in November 1990.
- The City's Municipal Separate Storm Sewer System (or MS4) program was reviewed by the Department in 2005 and found consistent. Projects reviewed during the compliance evaluation either included calculations demonstrating that post-development impervious cover would be under 34% (the City's impervious cover threshold) or, if over 34%, the plans included stormwater management measures that were reviewed, approved and installed consistent with the Virginia Stormwater Management Handbook requirements. The City's program also includes BMP tracking

and inspection practices that ensure proper maintenance to meet stormwater management requirements.

- The City's IDA revisions, found consistent by the Board in June 2007, designated an IDA overlay covering approximately 60% of the City's RPA, included requirements to avoid or minimize encroachments into the 100-foot RPA buffer when locating structures in the IDA, and created a structure encroachment permit fee. Five of the seven field visits conducted during the compliance evaluation were to IDA projects, documenting compliance with these requirements. Structure encroachment permit fees are being collected, and will be used to install new vegetated buffer areas on City owned property; these fees have already funded 8,000 square feet of vegetative mitigation to restore the RPA buffer in the City's Grundland Park facility.
- The City has also created an education and outreach program to raise awareness regarding the importance of protecting the RPA buffer and to ensure stringent application and enforcement of the IDA requirements. The first of several anticipated joint training sessions will be conducted by City and DCR staff on August 21, 2008 for City staff and members of the Hampton Clean City Commission.

As demonstrated by these examples, the City of Hampton is working in a creative manner to implement its Bay Act program effectively, and to integrate the City's water quality protection and improvement strategies with existing City programs. Ms. Miller said that based on the information in the staff report, staff recommends that the implementation of Hampton's Phase I program be found compliant with the Act and the Regulations.

Mr. Freas thanked DCR staff for working with the City and being flexible.

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

SECOND: Mr. Whitehurst

DISCUSSION: None

VOTE: Motion carried unanimously

City of Virginia Beach

Ms. Smith gave the report for the City of Virginia Beach. She noted that Kay Wilson, from the City Attorney's Office was present.

On June 18, 2007, the Board found that certain aspects of the City's implementation of its Phase I program did not fully comply, and that the City should address 9 conditions for compliance. The deadline was set as June 30, 2008. The conditions can be organized into two broad categories: Stormwater Management and RPA Issues

On June 24, 2008, the City Council adopted ordinance revisions to address the three of the four stormwater management related conditions:

- Maintenance agreements for all BMPs
- Require findings for reviewing and granting stormwater waivers
- Correct the pre-development phosphorus load

For the five RPA related conditions, the City has addressed all of them.

- Require buffer re-vegetation for permitted tidal wetland activities
 - Developed approach that at a minimum will replace any trees removed for shoreline erosion projects
- Require on-site evaluation of water bodies and RPA boundaries
 - Provided written documentation of their evaluation of water bodies and onsite RPA delineation
- Provide training and staff analysis to City Bay Board
 - Undertook a number of training sessions beginning in June of 2007 to review various aspects of the Bay Board's responsibilities
- Cease approving multiple variance requests
 - City's Bay Board has begun adding a condition that reads "It is the opinion of the Board that the approval granted is the maximum impervious cover the site can support" to notify owners that the Board feels that the site cannot support additional development
- Establish a formal system of long-term oversight for all mitigation
 - provided additional clarification on its current building permit, site plan, wetlands project and/or zoning permit review process that includes review by the City's CBPA staff to ensure that all prior variance conditions have been met on a given site

The City has not yet addressed the condition related to:

- Include the surface area of pools in stormwater calculations

The City drafted language to require the surface area of swimming pools to be considered as impervious cover when calculating pollutant removal requirements. However, the City's Planning Commission twice voted not to forward this revision to the City Council for adoption, due to public opposition. The City Council is scheduled to consider this amendment at their August 26, 2008 meeting.

Ms. Smith said that because this condition has not yet been addressed, staff recommended a final deadline of October 10, 2008 for this condition to be addressed. She noted that should the City Council adopt the revision on August 26, 2008, the staff

report will be amended to reflect that all conditions have been met for consideration by the Board. Ms. Smith said that the City Council is scheduled to consider an amendment that would require the surface area of pools to include be included as impervious surfaces on that date.

Ms. Wilson said that the City Council feels that swimming pools are not clearly impervious because they are holding water.

Ms. Smith said that most Hampton Roads localities consider the surface area of pools to be impervious.

Ms. Smith noted that the City had addressed eight of the nine compliance conditions.

MOTION: Mr. Zeugner moved that Southern Area Review Committee recommends that the Chesapeake Bay Local Assistance Board find that the City of Virginia Beach has addressed eight of the nine conditions from the June 18, 2007 compliance evaluation and recommends that the Board find implementation of one aspect of the City of Virginia Beach's Phase I program does not fully comply with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations. The Southern Area Review Committee further recommends that the City of Virginia Beach address the one remaining Recommended Condition no later than October 10, 2008.

SECOND: Mr. Whitehurst

DISCUSSION: None

VOTE: Motion carried unanimously

Town of Ashland

Ms. Miller gave the report for the Town of Ashland. She noted that Zack Robbins, Acting Director of the Town's Department of Planning and Community Development was in attendance.

Affectionately known by its residents as the "Center of the Universe" for its central location within the state, Ashland is located in the center of Hanover County.

In September 2007 the Board found that implementation of the Town's Phase I program did not fully comply with the Act and required one condition to be addressed by the Town no later than June 30, 2008. For consistency with the Regulations and the Town's Environmental Protection Ordinance, the Town must demonstrate that CBPA's are properly delineated on all development plans.

To ensure that Chesapeake Bay Preservation Areas (CBPAs) would be shown on development plans based on site-specific CBPA delineations and perennial flow determinations, Town staff revised their *Site Plan Review Application* form and review checklist during the initial compliance evaluation. Subsequent to the Board's finding in September 2007, DCR staff reviewed several site plans in consultation with Town staff, providing guidance in securing appropriate CBPA delineations. Town staff have provided applicants with written comments requiring correct delineations of CBPAs as a condition to be satisfied prior to approval of site plans. The staff report includes a suggestion that the Town continue to provide Department staff with all site plans in CBPAs for Department comment prior to Town approval.

Ms. Miller said that based on these actions, it was staff's opinion that the condition has been adequately addressed, and that staff therefore recommended the implementation of the Town's Phase I program be found compliant with the Act and the Regulations.

Mr. Robbins said that it was the Town's intent to comply with the suggestion.

MOTION: Mr. Zeugner moved that the Southern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find that the implementation of the Town of Ashland's Phase I program be found compliant with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations.

SECOND: Mr. Taylor

DISCUSSION: None

VOTE: Motion carried unanimously

Charles City County

Ms. Smith gave the report for Charles City County. She noted that John Bragg, Environmental/Development Planner, was in attendance for the County.

Charles City County lies just west of Henrico and Chesterfield counties, south of New Kent County and east of James City County. It is bordered by the James River to the south and the Pamunkey and Chickahominy rivers to the north. It has a rich history with a number of preserved plantations along the James River. The County remains rural in nature, with an estimated population of just under 7,000 persons and a land area of 204 square miles. The County continues to grow slowly, with a grow rate of around 2.8 percent a year. Growth in the County is scattered around the existing road network.

The compliance evaluation for Charles City County was begun in the fall of 2007, with staff changes delaying its completion until summer of 2008. The initial meeting was held

on September 26, 2007. Project files were reviewed on February 27, 2008 and site visits to selected project sites occurred on June 9, 2008.

Based on the compliance review, there are three recommended conditions for compliance with a recommended deadline of September 30, 2008:

1. The County must develop and implement a 5-year pump-out/inspection program.
 - a. The County has taken steps to begin program development, working with RRPDC to develop a septic database.
2. The County must develop a BMP inspection and maintenance program that ensures that all water quality BMPs are inspected on a regular basis.
 - a. There are three water quality BMPs in the county at this time, all are located at the courthouse complex: two bio-retention basins and one grassed swale. The County has included these three in a new database and will work to ensure they are properly maintained.
3. The County must require a WQIA for any proposed land disturbance, development or redevelopment within the RPA.

Mr. Bragg said that he appreciated the opportunity to satisfy the paper requirement. He said that the County has made progress on condition three.

MOTION: Mr. Zeugner moved that Southern Area Review Committee recommends that the Chesapeake Bay Local Assistance Board find that implementation of certain aspects of Charles City 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. The Committee further recommends that Charles City County complete the two Recommended Conditions contained in the staff report no later than September 30, 2009.

SECOND: Mr. Whitehurst

DISCUSSION: None

VOTE: Motion carried unanimously

Town of Surry

Mr. Moore gave the report for the Town of Surry. He recognized Robert Smallwood, Zoning Administrator, and William Sutherland, Mayor, from the Town.

Department staff initiated the Compliance Evaluation process for the Town of Surry in January 2008. Surry is a small town with a population of about 260 people over 4/5ths of a square mile located at the intersection of Routes 10 and 31 in the north central part of

Surry County. The Town serves as the County seat for Surry County as is a member of the Crater Planning District Commission.

In 2007, Surry County began providing limited assistance to the Town in the implementation of its Bay Act program. The County issues building permits for development projects in the Town and inspects sites during construction for erosion and sediment control requirements. The Town has only two paid part-time staff members, a Town Clerk and a Zoning Administrator.

Mr. Moore said that department staff recommended that the Committee find that certain aspects of the Town's implementation of its Phase I program do not fully comply with of the Act and the Regulations and that the Town addresses the following three recommended conditions no later than September 30, 2009:

- develop an revised map showing all CBPA features in the Town, including RPA, and the jurisdiction-wide RMA as a basis for its plan of development review process;
- develop a standard BMP maintenance agreement, with specific inspection and maintenance procedures, and develop and use a BMP tracking system to ensure BMPs are being properly maintained, or develop an agreement with the Town to undertake this responsibility;
- ensure that all water bodies with perennial flow are evaluated and site-specific RPA limits are accurately determined and mapped where necessary.

Relative to Recommended Condition #1, Department staff are working with staff of the Crater Planning District Commission to develop an updated map to show the Town's RPA and jurisdiction-wide RMA. Relative to Recommended Condition #3, Department staff is available to assist the Town in meeting these requirements as well.

Mr. Moore noted that, during the compliance evaluation, Department staff identified the need for the development of a memorandum of understanding that would serve to clearly define those development review processes that Surry County would be willing to perform on behalf of the Town. Accordingly, the staff report includes the following suggestion:

- The Town should develop, in collaboration with Surry County, a formal agreement specifically setting forth the plan of development review elements that the County is willing to perform on behalf of the Town.

Mr. Smallwood said that the Town had no issues with staff's recommendations and did not anticipate a problem with achieving compliance by the recommended date.

Mr. Zeugner asked if a Memorandum of Understanding with the County was needed.

Mr. Moore said that it was suggested in the staff report but not something DCR could impose.

MOTION Mr. Zeugner moved that the Southern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find that certain aspects of the Town's implementation of its Phase I program do not fully comply with of the Act and the Regulations and that the Town addresses the three recommended conditions no later than September 30, 2009.

SECOND: Mr. Taylor

DISCUSSION: None

VOTE: Motion carried unanimously

Town of Tangier

Ms. Smith gave the report for the Town of Tangier.

The Town is an island in the middle of the Chesapeake Bay. The island is bisected by West Ridge Creek and Canton Creek, and has extensive tidal wetlands along its perimeter. Its land area includes roughly one-quarter of a square mile, with an estimated population of around 550 persons.

The Town of Tangier relies heavily on Accomack County for implementation of its Bay Act program. Based on a September 26, 2007 meeting with Accomack County staff, confirmed by the Town Manager in a June 13, 2008 letter and during a meeting of June 27, 2008, Accomack County does the following for the Town of Tangier:

- reviews for Erosion and Sediment Control requirements
- the County issues building permits for the Town.
- County staff reviews development plans for Bay Act stormwater management requirements, if necessary, and inspects the installation of any required BMPs.
- The Town has no water bodies with perennial flow that are not tidal, so the onsite evaluation of RPA limits is much easier to determine.
- there are no onsite septic systems in the Town. The Town is served by its own sewage treatment plant.

Given the extent of tidal wetlands, marsh and tidal creeks in and through the Town and the lack of buildable vacant parcels remaining in the Town, new development on

previously undeveloped land simply does not occur. The typical project is a replacement of an existing structure with a structure of similar size and location or the elevation of structures for hazard mitigation. This was confirmed by a walking survey of the Town on June 27th.

Ms. Smith said that the Town and the County are working together to appropriately implement the Bay Act requirements and that the staff recommendation was that implementation of the Town's Phase I program be found to comply.

MOTION: Mr. Taylor moved that Southern Area Review Committee recommends that the Chesapeake Bay Local Assistance Board find that implementation of the Town of Tangier's Phase I program complies with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations

SECOND: Zeugner

DISCUSSION: None

VOTE: Motion carried unanimously

Town of Exmore

Ms. Smith gave the report for the Town of Exmore.

The Town of Exmore is located in northern Northampton County, at the border between Northampton and Accomack counties along Route 13. The Town has an area of 2.5 square miles, and a population of approximately 1400 persons. The Town's land area grew in size in 2000 when it nearly doubled in land area through a boundary adjustment. The Town has been developing in particular along Route 13 in recent years, adding a number of food and clothing stores, fast-food restaurants in an area clustered along Route 13 and Broadwater Road.

The Town of Exmore relies on Northampton County for implementation of much of its Bay Act program. Department staff corresponded with Northampton County staff on June 23, 2008 to discuss the types of activities undertaken by the County in providing assistance to Exmore, as well as the other towns in Northampton County. On May 1st, the Town's Zoning Administrator replied via email and confirmed the activities undertaken by the County.

The following is a list of Bay Act implementation activities undertaken by Northampton County staff for the Town of Exmore:

- The County implements Erosion and Sediment Control requirements (which require land disturbances that exceed 2500 square feet to comply, Town-wide).
- Building Permits –the County issues building permits for the Town.
- County staff reviews development plans for Bay Act stormwater management requirements, if necessary, and inspects the installation of any required BMPs.
- County staff reviews development plans for many Bay Act requirements including RPA delineations.

The Town's CBPA includes an RPA landward of two branches of Eyrehall Creek and with an RMA limited to an area adjacent to the RPA, approximately 1500 feet in width, but limited to the land area of Broadwater Academy, a private school. In conjunction with the limited RMA, the Town applies the enhanced erosion and sediment control requirements and general performance criteria to the entire town through review of site plans and subdivision plats.

Staff undertook a windshield survey on July 11, 2008, noting that there has been no new development in the Town's CBPA but that there are some ongoing and pending projects elsewhere in the Town along Route 13 and within the Bay watershed of the Town. These projects include a hotel currently under construction. The Town sent plans for this hotel to the County for review as well as to Department staff for review.

The Town sent a pump-out notice to Broadwater Academy in July, and since this is the only property in the CBPA, that action effectively implemented this requirement.

Ms. Smith said that the Town and the County are working together to appropriately implement the Bay Act requirements and that the staff recommendation was that implementation of the Town's Phase I program be found to comply.

MOTION: Mr. Zeugner moved that Southern Area Review Committee recommends that the Chesapeake Bay Local Assistance Board find that implementation of the Town of Exmore's Phase I program complies with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations

SECOND: Mr. Whitehurst

DISCUSSION: None

VOTE: Motion carried unanimously

Town of Claremont

REVISED: 11/19/2008 10:58:37 AM

Mr. Moore gave the report for the Town of Claremont.

Department staff initiated the Compliance Evaluation process for the Town of Claremont in January 2008. Claremont is a small town with a population of about 390 people over 2.5 square miles along the James River in the northwest corner of Surry County.

Recent development in Claremont has been extremely limited, with only one pending development with implications for Chesapeake Bay regulations. The Town's RPA includes shoreline along the James River and lands adjacent to waterbodies on the west and east sides of Town. The Town's RMA is contiguous to the entire inland boundary of the RPA, with the provision that when RMA features are present on a property the whole lot is subject to the RMA requirements. RMA features include floodplains, highly erodible soils, highly permeable soils, steep slopes and nontidal wetlands not included in the RPA designation.

Surry County provides limited assistance to the Town in the implementation of its Bay Act program. The County issues building permits for development projects in the Town and inspects sites during construction for erosion and sediment control requirements. The Town has only two paid part-time staff members, a Town Clerk and a Zoning Administrator.

Mr. Moore said that the staff recommendation was that the Committee find that certain aspects of the Town's implementation of its Phase I program do not fully comply with the Act and the Regulations and that the Town address no later than September 30, 2009 the following three recommended conditions:

- develop and implement a 5-year pump-out notification and enforcement program, including any necessary tracking information;
- ensure proper review of development proposals and maintain adequate records documenting that review. The Town can assume this responsibility itself or enter into a formal agreement with Surry County whereby the County can perform these duties for the Town;
- require the submission of a WQIA for any proposed land disturbance, development or redevelopment within RPAs.

Mr. Moore said that, during the compliance evaluation, Department staff identified the need for the development of a memorandum of understanding or a similar formal agreement (referenced in Recommended Condition #2) that would serve to clearly define those development review processes that Surry County is willing to perform on behalf of the Town. Accordingly, the staff report includes the following suggestion:

- The Town should develop, in collaboration with Surry County, a formal agreement specifically setting forth the plan of development review elements that the County is willing to perform on behalf of the Town.

MOTION: Mr. Zeugner moved that the Southern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find that certain aspects of the Town of Claremont's program do not fully comply and that the Town be required to address the three conditions contained in the staff report by September 30, 2009.

SECOND: Mr. Whitehurst

DISCUSSION: None

VOTE: Motion carried unanimously

Other Business

City of Hopewell

Ms. Doss gave an update for the City of Hopewell.

Hopewell was found compliant on September 17, 2007 after successfully addressing ten (10) conditions. As part of being found compliant, the City agreed to three (3) requirements for continued monitoring for the next twelve (12) months.

Requirement number one (1) states that the City was to submit all development plans, within the Chesapeake Bay Preservation Areas, to the Division. In response to this requirement, the City submitted to us for review the only two (2) sets of plans they received during this time period. The City then required the applicants to address all of the concerns raised by the Division.

Requirement number two (2) states the City was to submit any exception requests to review the new exception process the City had developed, to the Division. There were no exception requests submitted to the City or the Department during the past year.

Requirement number three (3) states the City was to submit stormwater quality calculations to the Department for review. The City received one set of plans with stormwater calculations which were deemed insufficient by the Department. The City required the applicant to adequately address the concerns we raised.

Staff is of the opinion the City of Hopewell has adequately addressed the three (3) requirements and the City has agreed to continue working with the Division on any development projects that are proposed within Chesapeake Bay Preservation Areas.

Adjourn

There was no further business and the meeting was adjourned.

Respectfully submitted,

Beverly D. Harper
Chair

Joseph H. Maroon
Director