

**Chesapeake Bay Local Assistance Board
Monday, June 20, 2011
Conference Room 1, Patrick Henry Building
Richmond, Virginia**

Chesapeake Bay Local Assistance Board Members Present

William E. Duncanson, Chair
James N. Belote, III
Al Peschke

Gregory C. Evans, Vice Chair
Patricia W. Cowan
Rebecca Reed

Chesapeake Bay Local Assistance Board Members Not Present

Peter Farrell
Charles B. Whitehurst, Sr.

Barry L. Marten

DCR Staff Present

David Johnson, Director
Joan Salvati
David Dowling
Diane Beyer
James Davis-Martin
V'lent Lassiter
Nancy Miller
Elizabeth Andrews, Office of the Attorney General

Jeb Wilkinson, Chief Deputy Director
David Sacks
Michael Fletcher
Anne Crosier
Amy Doss
John McCutcheon
Daniel Moore

Others Present

Joe Hatch, City of Petersburg
Ron Peaks, Gloucester County
Scott Rae, Gloucester County
Wilmer Stoneman, Virginia Farm Bureau

Call to Order and Introductions

Chairman Duncanson called the meeting to order. A quorum was declared present.

Mr. Duncanson welcomed Ms. Patricia Cowan and Mr. Al Peschke as new members.

Approval of Minutes of March 21, 2011 Board Meeting

MOTION: Mr. Evans moved that the minutes of the March 21, 2011 meeting of the Chesapeake Bay Local Assistance Board be approved as submitted by staff.

SECOND: Ms. Reed

DISCUSSION: None

VOTE: Motion carried unanimously

Director and Acting Regulatory Program Manager's Report

Mr. Johnson gave the Director's report. He noted that the Department had been quite busy.

Mr. Johnson said that on May 24, 2011 the Soil and Water Conservation Board unanimously approved the revised Stormwater Regulations. He noted that both the Attorney General's office and the Department of Planning and Budget approved the regulations. They have been sent to the Secretary of Natural Resources and the Governor for final approval.

Mr. Johnson said that DCR also received authorization to go through the regulatory process of revising the MS4 small general permit.

Mr. Johnson said that he has also spoken with stakeholders regarding the consolidation of the permit process for Erosion and Sediment Control and Stormwater Management and the some of the requirements of the Chesapeake Bay Preservation Act into a single land disturbance application. (Note – This will not involve an expansion of the Bay Act.)

Mr. Johnson noted that he had appointed Mr. Wilkinson to oversee enforcement actions, including those related to stormwater and dam safety. He said that DCR is looking to enhance compliance.

Mr. Johnson said that DCR had implemented several recommendations of the recently completed management study. He noted that the Divisions of Soil and Water Conservation and Chesapeake Bay Local Assistance had been merged into the Division of Stormwater Management. Interviews were being conducted for the Director of that Division. He noted that a number of senior employees within the division were offered and accepted enhanced retirement packages.

Mr. Evans asked, with regard to the reorganization, where the Chesapeake Bay Local Assistance Board should focus considering similar functions within the Soil and Water Conservation Board.

Mr. Johnson said that the Chesapeake Bay Local Assistance Board should continue to focus on the implementation of the Chesapeake Bay Preservation Act. He noted that while the issues of the Soil and Water Conservation Board were primarily stormwater related, the Chesapeake Bay Preservation Act was more focused on the land-use planning process which is not included in the stormwater regulations.

Mr. Belote asked if there were plans for the merging of the two Boards.

Mr. Johnson said that there were efforts in the previous General Assembly Session to do Board consolidation. He said that many of the actions taken were for Boards that were duplicative or non functioning. He said that, at this time, he was unaware of plans to move forward with further consolidation.

Ms. Salvati made the following remarks. She noted that the local implementation staff had been busy working through the compliance evaluation process.

Ms. Salvati said that staff continued to provide technical assistance to the City of Petersburg on various compliance issues. She noted also that local implementation staff as well as other staff from the Division of Stormwater Management were working very hard on the Chesapeake Bay WIP Phase 2 implementation plan.

Local Program Compliance Evaluation

Mr. Sacks provided an overview of the compliance evaluation process as follows:

- Evaluates the implementation of a locality's Bay Act program
- Occur approximately every five years
- Review is based on requirements in the Regulations
- Formal Review by the Chesapeake Bay Local Assistance Board
- Initial Reviews evaluated implementation of the Phase I program
- Subsequent reviews will address Phases I, II, and III of local program implementation
- Revised compliance standards adopted by CBLAB on March 15, 2010

He also provided an explanation of the steps that staff goes through in undertaking a typical Bay Act program compliance evaluation. He reiterated that the compliance evaluations are based upon 31 review elements approved by the CBLAB in June 2010 and all are based on specific requirements in the Regulations. He described the following steps:

- Notification of upcoming evaluation provided to locality chief administrative officer
- Meeting with locality staff to discuss program, review information, and explain compliance evaluation process. Localities frequently include a large number of staff at these meetings, inviting all staff that involved in any component of the local Bay Act program. In advance of this meeting, locality staff are provided a list of information to review and/or provide
- Review of files of recently approved projects
- Site visits of sample of same projects, either recently completed or under construction

- Evaluation of information collected and preparation of a staff report; draft report is sent to locality for review
- Locality staff is asked to review draft report and provide any needed corrections and offer comments on issues identified
- DCR staff offer to review the report findings in-person with locality staff, and encourage such a meeting where there are issues identified with the Bay Act program that will result in staff recommending that the CBLAB impose conditions on the locality for compliance.

Mr. Sacks then referred to the slide that contained a flow chart of the Board's compliance review process. He explained that CBLAB, in evaluating a local program, determines if the locality can be found compliant, not fully compliant, or noncompliant. Mr. Sacks reviewed what was involved in each circumstance where CBLAB's enforcement authority is involved.

Mr. Sacks also reviewed the terminology used in referring to local reviews and consistency and compliance as follows:

“Phase I Consistent” means the required local ordinances (zoning, subdivision, maps, etc) are in place to designate CBPA's 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 components of the local Bay Act program.

Town of Cape Charles

Mr. Sacks gave the following report for the Town of Cape Charles. He noted that no one from the Town was present.

The Town of Cape Charles lies at the southern end of Northampton County and includes 3.67 square miles with a population estimated at over 1100. In the early 1990s, the Town annexed over 2000 acres of land from Northampton County. The development pattern in the town is somewhat unique in that it approved a large-scale PUD (Accomacke Plantation PUD, now known as Bay Creek) on the annexed land, with the development of two 18-hole golf courses and several residential pods complete. The remainder of Bay Creek has been platted and single-family home construction is occurring sporadically in those areas. Most new construction in recent years has occurred within Bay Creek and it is anticipated that most future development will continue to be focused in this PUD.

The Town's Chesapeake Bay Preservation Area (CBPA) includes all applicable Resource Protection Area (RPA) features, as well as a Resource Management Area (RMA) that encompasses the 100-year floodplain or 100 feet from the landward edge of the RPA, whichever is greater. The Town also has two designated Intensely Developed Areas (IDAs), one located around much of the Cape Charles Harbor and the other located over what once was the Kings Creek Marina.

The Town Planner is the principal staff person responsible for enforcing the requirements of the Town's Bay Act ordinance. The Town Planner reviews all plans and plats for compliance with the Bay Act ordinance, and coordinates with the Building Official throughout the construction process.

Department of Conservation and Recreation staff initiated the compliance evaluation for the Town of Cape Charles on September 14, 2010. Meetings between Department staff and Town staff occurred on October 13, 2010, January 13, 2011 and March 3, 2011.

Staff recommends that the Board find that the implementation of the Town of Cape Charles' Chesapeake Bay Preservation Act program complies with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations.

Plan and plat/field review notes indicate that all projects reviewed by DCR staff showed that limits on clearing and grading, were less than the lot or site boundaries. In each case, the clearing and grading activities were limited to accommodate the proposed development. Furthermore, DCR staff noted no evidence of land disturbance or grading outside of the approved clearing and grading limits during the field visits.

Plan and plat/field notes from DCR staff indicate that existing vegetation is preserved during construction as much as practicable. However, there are very few sites in the Town that are completely vegetated where no development or clearing activities have occurred. In each case, existing vegetation, particularly woody vegetation, was preserved outside of the construction area. Furthermore, DCR staff noted during the field visits that very little existing woody vegetation exists in the Town outside of the RPA buffer within Bay Creek along Plantation Creek and the Bay.

Plan and plat/field notes from DCR staff showed that impervious cover is limited to that which is approved through the plan and plat approval process. The Town has not had significant commercial, office or industrial development that would trigger many of the provisions to limit impervious cover in recent years. Therefore, the limitation of impervious cover is more likely to occur through plan review until such time as development pressure increases and larger-scale developments are approved.

There are no active agricultural lands within the Town's Chesapeake Bay Preservation Area. Therefore, this requirement is not applicable.

The Town adopted a revised comprehensive plan on May 25, 2007. Through this comprehensive plan adoption process, the Town evaluated the information and policies

from the 2000 plan. This new comprehensive plan was evaluated by DCR staff and found to include all required elements with no significant changes in the required elements from the 2000 version which CBLAB found consistent. The Town primarily addresses the environment policies from their 2007 comprehensive plan, through its Master Tree Plan. The Town uses the Master Tree Plan to preserve trees and to require the planting of additional trees.

Based on the review of the Town ordinances and policies, approved plans and plan files, and site visits, DCR staff recommends that implementation of the Town of Cape Charles Chesapeake Bay Preservation Act program be found compliant with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations.

MOTION: Mr. Belote moved that the Chesapeake Bay Local Assistance Board find the implementation of the Town of Cape Charles' Chesapeake Bay Preservation Act program to be in compliance with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations.

SECOND: Ms. Reed

DISCUSSION: None

VOTE: Motion carried unanimously

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
June 20, 2011**

RESOLUTION

**LOCAL PROGRAM COMPLIANCE EVALUATION
TOWN OF CAPE CHARLES**

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 June 18, 2008, for the purposes of reviewing local Bay Act compliance; and

WHEREAS the Chesapeake Bay Local Assistance Board approved Compliance Evaluation Review Elements on June 21, 2010; and

WHEREAS in Winter of 2010 through Spring 2011, the Department of Conservation and Recreation conducted a compliance evaluation of the Town of Cape Charles' Chesapeake Bay Preservation Act program in accordance with the adopted compliance evaluation process and approved review elements; and

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

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the implementation of the Town of Cape Charles' Chesapeake Bay Preservation Act 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 20, 2011, by the Chesapeake Bay Local Assistance Board.

David A. Johnson
Director
Department of Conservation and Recreation

Gloucester County

Ms. Miller gave the following report for Gloucester County. She noted that Ron Peaks, Gloucester County's Department of Codes Compliance Director, and Scott Rae, Gloucester County's Environmental Programs Administrator, were present to represent the County.

Gloucester County is located on the southernmost tip of the Middle Peninsula; it is bordered by the Dragon Run Swamp, the Piankatank River, Mathews County, the Mobjack Bay, the York River and King and Queen County. The County includes 217 square miles in land area, and has a population of 36,858, based on the April 1, 2010 Census. The northern portion of the County is predominantly rural, including large tracts of forest and agricultural lands. The southern-most tip, Gloucester Point, and the corridor bordering Route 17 south of Gloucester Courthouse, have developed in a pattern of higher density single family subdivisions, and a mix of multi-family and commercial development. While development has slowed with the recent economic downturn, it is still steady.

The County's Resource Protection Areas (RPAs) include all the features specified in the Regulations and Resource Management Areas (RMAs) encompass the remainder of the County. The County has not designated any "other lands" as a component of the RPA, and has not designated any areas as Intensely Developed Areas (IDAs). The County's Environmental Codes Compliance Office carries the primary responsibility for enforcement and administration of the local Bay Act program, while the County's Planning Department cooperates on subdivision and proposed development reviews, and carries primary responsibility for drafting ordinance revisions and Bay Act related comprehensive plan components.

Department staff initiated the compliance evaluation on December 9, 2010, met with County staff on January 31, reviewed plan files on February 17 and 23, and conducted site visits on February 24, 2011. County staff provided additional information via phone conversations and email exchanges, to assist in the review. At this point, I want to thank County staff for their extensive assistance; especially Scott Rae, who provided extensive help in response to our many requests for information and inquiries during the compliance evaluation.

As described in the compliance evaluation staff report, the Department conducted an advisory review of County ordinances and processes to determine the extent to which the County has adopted provisions that address the Phase III requirements contained in the Regulations. While the County has adopted provisions that satisfy four of the six plan and plat notations required by § 9 VAC 10-20-191 A 4 of the Regulations, there are two deficiencies that need to be addressed. These two provisions require notations on plats that on-site septic systems must be pumped-out every five years and that a 100% reserve drainfield is required; these required provisions are not currently addressed within the County's codes.

Recommended Condition:

1. As required by § 9 VAC 10-20-191 A 4 of the Regulations, the County must amend its local ordinances to include the requirements outlined under this section of the Regulations.

The Advisory Review, summarized in the draft Compliance Evaluation Staff Report, isolated a significant number of provisions within Gloucester County's Code that address the three key general performance criteria: minimizing land disturbance; preserving indigenous vegetation; minimizing impervious cover; and protection of water quality.

Project examples reviewed during the Compliance Evaluation that illustrate implementation of these provisions are described in the staff report, and they include the following:

- Smith project, replacement of an existing accessory structure in the RPA—The County's Chesapeake Bay Preservation and Erosion Commission reviewed the

- application through the exception process, approving replacement of the structure through a plan that reduced the nonconformity by reducing both the depth and size of the encroachment. (an example of minimizing land disturbance)
- Timberneck subdivision, shoreline erosion control and access project—County staff required the developer to limit bank grading to only that which was needed for the shoreline erosion control project and to submit a vegetative buffer mitigation plan that included additional plantings beyond what was proposed in the original WQIA to appropriately restore vegetation in the disturbed area. (an example of a project that preserved indigenous vegetation)
 - Coleman’s Crossing, a mixed commercial/residential development— The project design reduced impervious area associated with parking by providing a portion of the required spaces within single-car garages located beneath the townhomes. This strategy resulted in a reduction of impervious area associated with the required total of 379 spaces, as the County allowed the number to be reduced to 334 free-standing spaces. The final total area of impervious cover for the project will be 9.85 acres, or 55.2 percent of the site. (this project minimized impervious cover) Although the project was in the early stages of grading and construction, the BMP maintenance agreement was secured and included in the file, as the County has established a policy and a plan note requiring the agreement at this stage rather than the standard practice of securing it at project completion. (an example of a policy that addresses water quality protection)

The County was already working with the agricultural requirements in their local ordinances, and in the context of the compliance evaluation, they reinforced this. On March 30, 2011, County staff met with Tidewater SWCD staff and District Directors and NRCS staff, to review the MOU, reinforce working relationships and restore or establish cooperative practices needed to implement the agricultural requirements of County’s local Bay Act program. The implementation plan created includes steps to ensure the requirements in the Regulations related to agricultural uses are satisfied.

Gloucester County amended its comprehensive plan in 2001, replacing Section 8 of the County’s Plan adopted in 1991. The Board found it consistent with the Act and the Regulations on March 18, 2002.

The Plan addresses the requirements in the Regulations, including elements that serve as a basis for the County’s Future Land Use Map, to guide the County’s land use decisions. For the compliance evaluation County staff provided a report, noting that the Comprehensive Plan and Future Land Use Map are consulted in the development of staff reports when code amendments and applications for rezonings, conditional use permits, special exceptions, etc. are reviewed. The staff reports include a determination regarding consistency with the County’s comprehensive plan and these reports are provided to the County Planning Commission, Board of Zoning Appeals and Board of Supervisors.

The County’s Comprehensive Plan is currently under revision, with adoption of the Plan update anticipated in late 2011. The County’s contract with the Hampton Roads Planning

District Commission, providing assistance with the update, includes terms to ensure that the County's Comprehensive Plan elements adopted pursuant to Phase II requirements remain consistent and current.

The County is implementing its local Bay Act program in compliance with the Act and Regulations, with the exception of the local ordinance requirements for plat notations regarding the designation of primary and reserve drainfields and the requirement to accomplish on-site septic system pump-out at least once every five years.

Mr. Evans said that he applauded the completeness of the program. He said that he was surprised the septic pump-out requirement was not included.

Mr. Rae said that the onsite program had been found compliant. He said that the planning department was concerned regarding how many notes could be included on the plat. He said that staff would work with the ordinances to ensure that the five-year pump-out requirement is included on any recorded plat.

Mr. Evans asked if the County could meet the schedule. Mr. Rae said that would not be a problem.

MOTION: Ms. Cowan moved that the Chesapeake Bay Local Assistance Board find that the implementation of certain aspects of Gloucester County's Chesapeake Bay Preservation Act 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, direct Gloucester County to undertake and complete the recommended condition contained in the staff report no later than June 30, 2012.

SECOND: Ms. Reed

DISCUSSION: None

VOTE: Motion carried unanimously

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

June 20, 2011

RESOLUTION

LOCAL PROGRAM COMPLIANCE EVALUATION

GLOUCESTER 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 June 18, 2008, for the purposes of reviewing local Bay Act compliance; and

WHEREAS the Chesapeake Bay Local Assistance Board approved Compliance Evaluation Review Elements on June 21, 2010; and

WHEREAS in Winter 2011 through Spring 2011, the Department of Conservation and Recreation conducted a compliance evaluation of the Gloucester County Chesapeake Bay Preservation Act program in accordance with the adopted compliance evaluation process and approved review elements; and

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

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds that the implementation of certain aspects of Gloucester County's Chesapeake Bay Preservation Act 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 Gloucester County to undertake and complete the recommended condition contained in the staff report no later than June 30, 2012.

1. As required by § 9 VAC 10-20-191 A 4 of the Regulations, the County must amend its local ordinances to include the requirements outlined under this section of the Regulations.

BE IT FINALLY RESOLVED that failure by Gloucester County to meet the above established compliance date of June 30, 2012, 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 Gloucester 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 20, 2011, by the Chesapeake Bay Local Assistance Board.

David A. Johnson
Director
Department of Conservation and Recreation

James City County

Mr. Sacks gave the following report for James City County. He noted that no one from the County was present.

James City County lies in the peninsula area of Hampton Roads, approximately 40 miles east of the City of Richmond, along Interstate 64. There are 141 square miles of land, with some 39 square miles of water bordering the county. Since 1975, the population in James City County has increased over 160%, from approximately 20,000 persons to a current population of over 64,000, with growth rates between 3% and 4% in recent years. The County continues to grow both residentially and commercially.

The County's Chesapeake Bay Preservation Area (CBPA) includes Resource Protection Areas (RPAs) as required by the Chesapeake Bay Preservation Area Designation and Management Regulations. The County updated its CBPA map in 2004 to expand its mapped RPAs to include additional water bodies not previously mapped as RPAs. The County designated the remainder of its land area as a Resource Management Area when they originally adopted their Bay Act program in 1990. The County did not designate any Intensely Developed Areas.

Implementation of the County's Chesapeake Bay Preservation Act program is primarily undertaken through the County's Environmental and Planning Divisions, with the primary coordination of plan review occurring through the Environmental Division.

Department of Conservation and Recreation staff initiated the compliance evaluation for James City County on October 14, 2010. DCR staff met with James City County staff on January 28th, March 1st, 10th and 29th to gather information, review plans and plats and perform field visits.

Staff recommends that the Board find that the implementation of James City County's Chesapeake Bay Preservation Act program complies with the Act and the Regulations.

Plan and file review by DCR staff showed that approved County plans typically show approved limits of clearing and grading as an area limited to that which is required for the proposed development. DCR staff noted the application of provisions that limit land disturbance during the advisory review on applicable plans. Also, the County provided documentation showing they routinely provide comments that address minimizing land disturbance for development plans. These limits of clearing and grading are marked on

site and inspected throughout the construction process. During the field visits, DCR staff noted no evidence of clearing and grading activities occurring outside of the approved clearing and grading limits.

Plan and file review by DCR staff noted that approved County plans show the application of provisions that preserve existing vegetation that were found during the advisory review. James City County also ensures the preservation of indigenous vegetation through plan review comments that address the preserving existing vegetation on development sites. Plan and file review undertaken by DCR staff showed tree and other vegetation save areas, and these areas are physically marked on site and inspected throughout the construction process. During field visits, DCR staff noted the protection of trees and other vegetation save areas were installed as shown on approved plans.

Plan and file reviews undertaken by DCR staff showed that the County routinely implements provisions to limit impervious cover. In addition, the County ensures implementation of the provisions to limit land disturbance through plan review comments. Some specific examples of plans reviewed by DCR staff include reduced impervious cover for redevelopment projects and an approved subdivision plan that included pervious alleys.

To address the agricultural requirements, the Environmental Division developed an internal Policy and Procedure document (dated February 4, 2011) in conjunction with the Colonial Soil and Water District. This document outlines the general procedures to show consistency with ordinance requirements that would make any agriculturally zoned land (whether being used as such or not) undergo a Soil and Water Quality Conservation Assessment to be undertaken by the Colonial Soil and Water Conservation District. In addition, should any property owner approach the County with a request to create an approved agricultural use of land, they will require evidence of a Soil and Water Quality Conservation Plan. This document also outlines the County's response should a water quality issue arise from an agricultural activity.

The County adopted a revised comprehensive plan on November 24, 2009. This plan was reviewed by DCR staff and was determined to include all required elements. During the process of revising its comprehensive plan, the County undertook an evaluation of its existing policies and information base. The County developed "Implementation of the 2009 Comprehensive Plan – A Guide" within the 2009 Comprehensive Plan. This document lays out the county's implementation strategies for the plan. Furthermore, the county tracks implementation through its web based "Comprehensive Plan Implementation Schedule" which provides progress tracking on various aspects of plan implementation.

Among the innovative items in the County's Bay Act program is the County's revised perennial stream methodology which provides for the specific characteristics of the County when determining perennial flow of water bodies. The County also encourages the use of newer water quality BMP designs, such as rain gardens and bio-filtration.

Throughout the compliance evaluation process, County staff was unfailingly cooperative and helpful and this was much appreciated by DCR staff.

Based on the review of the County ordinances and policies, approved plans and plan files, and site visits, DCR staff recommends that implementation of James City County's Chesapeake Bay Preservation Act program be found compliant with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations.

MOTION: Ms. Reed moved that the Chesapeake Bay Local Assistance Board find the implementation of James City County's Chesapeake Bay Preservation Act program to be in compliance with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations.

SECOND: Mr. Evans

DISCUSSION: None

VOTE: Motion carried unanimously

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

June 20, 2011

RESOLUTION

LOCAL PROGRAM COMPLIANCE EVALUATION

JAMES CITY 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 June 18, 2008, for the purposes of reviewing local Bay Act compliance; and

WHEREAS the Chesapeake Bay Local Assistance Board approved Compliance Evaluation Review Elements on June 21, 2010; and

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WHEREAS in the Winter of 2010 through Spring of 2011, the Department of Conservation and Recreation conducted a compliance evaluation of James City County's Chesapeake Bay Preservation Act program in accordance with the adopted compliance evaluation process and approved review elements; and

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

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the implementation of James City County's Chesapeake Bay Preservation Act 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 20, 2011, by the Chesapeake Bay Local Assistance Board.

David A. Johnson
Director
Department of Conservation and Recreation

City of Petersburg

Ms. Doss gave the following report for the City of Petersburg.

The City of Petersburg's initial compliance evaluation occurred in March of 2009 and resulted in 9 conditions, 7 of which were to be addressed by the following day, 1 was given a deadline of 12 months, and 1 was in accordance with the deadlines and requirements established by the Virginia Soil and Water Conservation Board. At the June 2010 meeting, the Board found that the City had addressed 5 conditions and granted a deadline extension to December 31, 2010 for the 4 remaining conditions. Included in those 4 conditions was the requirement to have a compliant Erosion and Sediment Control program.

On March 21, 2011 the Chesapeake Bay Local Assistance Board found that the City had addressed 3 conditions and granted a deadline extension to June 10, 2011 for the 1 remaining condition. The remaining condition stated that the City must address issues with their erosion and sediment control program that are identified in the 2008 Corrective Action Agreement.

DCR's Division of Soil and Water Conservation recently conducted a review of Petersburg's Erosion and Sediment Control program. In 2008 the City's program was found, by the Soil & Water Conservation Board, to be inconsistent and a Corrective Action Agreement was entered into. After numerous reviews and deadline extensions by the Virginia Soil and Water Conservation Board, Soil and Water staff determined that continuing to provide extensions was not moving Petersburg's program toward compliance. At the May 24, 2011 meeting, the Virginia Soil and Water Conservation Board received a report from staff that the City had yet to address the remaining issues in the Corrective Action Agreement, and as a result, the Virginia Soil and Water Conservation Board voted to suspend the Corrective Action Agreement process pending the outcome of enforcement action on the City's MS-4 program.

The City must address the Corrective Action Agreement issues and be found consistent by the Virginia Soil and Water Conservation Board in order for this condition to be addressed. Staff recommends the condition remain and that the City be found noncompliant with a deadline of September 16, 2011 for the remaining condition.

Ms. Crosier, the DCR Stormwater Enforcement Manager said that DCR was in the process of negotiating terms of an administrative order to address the violations. She said that an administrative order is issued with the consent of the regulated party and is enforceable in court. She said that by using the process DCR would be able to level limited resources to take the greatest number of enforcement actions available.

Ms. Andrews noted that the City did not have a compliant Erosion and Sediment Control program.

Mr. Evans asked if the September time frame was too short a window.

Ms. Salvati said that pushing the decision to December would enable the local program staff to work on reports and resolutions.

Ms. Reed asked that if the date were changed, that the Board still be provided an update at the September meeting.

Mr. Hatch said that several things had held the City from coming into compliance. He noted that his boss was on medical leave and said that it was his understanding that the City would be hiring another engineer for plan review.

MOTION: Mr. Belote moved that (December 9)

SECOND: Mr. Evans

DISCUSSION: None

VOTE: Motion carried unanimously

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

June 20, 2011

RESOLUTION

LOCAL PROGRAM COMPLIANCE EVALUATION

CITY OF PETERSBURG

Local Compliance Evaluation – Noncompliant

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 June 18, 2008 for the purposes of reviewing local Bay Act compliance; and

WHEREAS the Chesapeake Bay Local Assistance Board approved Compliance Evaluation Review Elements on June 21, 2010; and

WHEREAS on March 23, 2009, the Chesapeake Bay Local Assistance Board found that implementation of certain aspects of the City of Petersburg's Chesapeake Bay Preservation Act program did not fully comply with the Act and Regulations and further that the City address conditions 1, 2, 3, 4, 5, 6, and 9 no later than March 24, 2009; condition 7 in accordance with the deadlines and requirements established by the Virginia Soil and Water Conservation Board; and condition 8 no later than March 31, 2010; and

WHEREAS on June 21, 2010, the Chesapeake Bay Local Assistance Board found that implementation of certain aspects of the City of Petersburg's Chesapeake Bay Preservation Act program did not fully comply with the Act and Regulations and further that the City address the four recommended condition in the staff report no later than December 31, 2010; and

WHEREAS on March 21, 2011, the Chesapeake Bay Local Assistance Board found that implementation of certain aspects of the City of Petersburg's Chesapeake Bay Preservation Act program did not fully comply with the Act and Regulations and further that the City address the one recommended condition in the staff report no later than June 10, 2011; and

WHEREAS in May 2011, the City of Petersburg provided Department of Conservation and Recreation staff with information relating to the City's actions to address the one recommended condition which was evaluated in a staff report; and

WHEREAS the City of Petersburg has not yet taken appropriate action to address one condition from the March 23, 2009 compliance evaluation; 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 implementation of the City of Petersburg's Chesapeake Bay Preservation Act program is noncompliant 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 this deficiency, directs the City of Petersburg to undertake and complete the one recommended condition contained in this staff report no later than December 9, 2011.

1. For consistency with § 9 VAC 10-20-120 6 of the Regulations, the City's erosion and sediment control program must address the issues identified in the 2008 Corrective Action Agreement.

BE IT FINALLY RESOLVED that failure by the City of Petersburg to meet the above established compliance date of December 9, 2011 will result in the local program becoming subject 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 20, 2011 by the Chesapeake Bay Local Assistance Board.

David Johnson
Director
Department of Conservation and Recreation

Mr. Duncanson noted that he had a conflict with the next issue. He provided certification that he would not participate in the discussion or the vote regarding matters affecting Richmond County. He passed the gavel to Mr. Evans.

Mr. Evans assumed the chair of the meeting.

Richmond County

Ms. Lassiter gave the following report for Richmond County. She noted that although Robin Markham, Director of Planning and Zoning, could not be present, she had reviewed the report and agreed with the findings.

Richmond County is located along the Rappahannock River in Virginia's Northern Neck. The total area of the county is 203 square miles, and the Rappahannock River and its tributaries form a 197-mile shoreline for the county. The population of the county is approximately 9,300, and Richmond is a rural county, where farming, fishing, and forestry have formed the backbone of the economy.

Richmond County has designated Chesapeake Bay Preservation Areas with Resource Protection Areas (RPA) that include all of the RPA features required by the Regulations, with the Resource Management Area (RMA) encompassing all remaining areas of the county. Staff in the County Administrator's office is responsible for the implementation of Richmond County's Bay Act program, and Richmond County is a member of the Northern Neck Planning District Commission.

Department of Conservation and Recreation staff initiated the compliance evaluation for Richmond County on January 26, 2011, and numerous meetings were held with County staff. The compliance evaluation revealed that although the county is working to implement its local Bay Act program effectively, there are two program elements that require improvement. One of these conditions relates to plat and plan requirements identified during the advisory review process. The results of the advisory review indicated that only two of the six plan and plat requirements under § 9 VAC 10-20-191 A 4 and 5 were addressed. The four remaining requirements must be addressed in order for the county to be found compliant, and the county is committed to amending its ordinances to include these requirements within the next nine months. These requirements include provisions to require the depiction of RPAs and RMAs on all submitted plats, and the notation on plats of the requirements to retain an undisturbed and vegetated 100' buffer, to pump-out on-site sewage treatment systems, and that permitted development in the RPA is limited to water dependent facilities or redevelopment. The second condition states that the county must require the submission of a water quality impact assessment for any proposed land disturbance, development, or redevelopment within RPAs and for development in RMAs when required by the Director of Planning and Zoning.

Richmond County is effectively implementing the three general performance criteria as required under the Regulations and their local Bay Act ordinance. Site plan review and field visits indicate that clearing and grading is minimized. Most development in the county occurs on previously cleared agricultural land, and county staff works with applicants to draw the limits of clearing and grading on plans submitted for small projects that do not have an engineered site plan. Plan review and field visits also confirmed that indigenous vegetation is preserved as much as practicable. While pre-Bay Act lots in the county usually did not have a lot of existing vegetation, all post-Bay Act projects appeared to retain all existing vegetation outside of the construction footprint, and the

RPA buffers were clearly untouched. All projects reviewed also minimized impervious cover; with only one commercial site exceeding the county's 16% impervious cover threshold. The county provides extensive technical assistance to guide potential applicants regarding Bay Act requirements, and this clearly pays off, as exceptions are rarely requested and the three general performance criteria are respected in the field.

Richmond County is also implementing other important components of their local Bay Act program. In order to meet the agricultural requirements, the county has executed a Memorandum of Understanding with the Northern Neck SWCD, and the county and district have developed a process to ensure that all active CBPA agricultural lands have a current Soil and Water Conservation Assessment. In addition, the county is currently revising its Comprehensive Plan and it's scheduled to be presented to the Board of Supervisors this summer. As they become available, the county is providing sections of the revised Plan to the Department for review to ensure that it remains consistent with the Regulations.

Staff recommends that the Board find that certain aspects of Richmond County's Phase I program do not fully comply with the Act and Regulations, and that the county address the 2 conditions contained in the staff report by June 30, 2012.

MOTION: Ms. Reed moved that the Chesapeake Bay Local Assistance Board find that the implementation of certain aspects of Richmond County's Chesapeake Bay Preservation Act 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, direct Richmond County to undertake and complete the two recommended conditions contained in the staff report no later than June 30, 2012.

SECOND: Mr. Peschke

DISCUSSION: None

VOTE: Motion carried unanimously. Mr. Duncanson did not participate in the discussion or the vote regarding Richmond County.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

June 20, 2011

RESOLUTION

LOCAL PROGRAM COMPLIANCE EVALUATION

RICHMOND 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 June 18, 2008 for the purposes of reviewing local Bay Act compliance; and

WHEREAS the Chesapeake Bay Local Assistance Board approved Compliance Evaluation Review Elements on June 21, 2010; and

WHEREAS in Winter 2011 through Spring 2011, the Department of Conservation and Recreation conducted a compliance evaluation of the Richmond County Chesapeake Bay Preservation Act program in accordance with the adopted compliance evaluation process and approved review elements; and

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

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds that the implementation of certain aspects of Richmond County's Chesapeake Bay Preservation Act 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 Richmond County to undertake and complete the two recommended conditions contained in the staff report no later than June 30, 2012.

1. As required by § 9 VAC 10-20-191 A 4 of the Regulations, the County must amend its local ordinances to include the requirements outlined under this section of the Regulations.
2. As required by Section 9 VAC 10-20-130 6 of the Regulations, and Section 2-13-11 of the County's Chesapeake Bay Preservation Area Overlay District Ordinance, the County must require the submission of a WQIA for any proposed land disturbance, development, or redevelopment within RPAs, and for development in RMAs when required by the Director of Planning and Zoning.

BE IT FINALLY RESOLVED that failure by Richmond County to meet the above established compliance date of June 30, 2012 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 Richmond 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 20, 2011 by the Chesapeake Bay Local Assistance Board.

David Johnson
Director
Department of Conservation and Recreation

Mr. Evans turned the chair back to Mr. Duncanson.

Advisory Review Update

Mr. Sacks gave an advisory review update. He reviewed the purpose of the Advisory Reviews and the process, and reported that there were 54 Reviews completed (22 towns, 13 cities, 19 counties) and 12 reviews in progress. Completion of all reviews is expected Fall 2011. The Web-based inventory of ordinance provisions is updated as reviews are completed

Agricultural Program Coordinator Update

Ms. Beyer gave the Agricultural Program update.

Chesapeake Bay Act Agriculture Program Coordinator

Purpose of position

Facilitate implementation of CBPA agriculture regulatory requirements by:

- Creating Guidance documentation and other educational and technical materials for use by localities, conservation districts, private planners
- Provide direct technical assistance to localities and conservation districts
- Provide education and training on regulation requirements
- Assist localities and districts in developing strong, working partnerships

Requirements of CBPA Regulations address agriculture - Two deal with specific buffer encroachment issues.

Soil and Water Quality Conservation Assessment (9 VAC 10-20-120 9)

On land where agricultural operations are being conducted, an evaluation of the effectiveness of existing practices (ESC, nutrient management, pesticide management) is required

Soil and Water Quality Conservation Plan (9 VAC 10-20-120 9 c)

When a Conservation Assessment reveals that additional practices are necessary to ensure water quality protection, a plan must be completed to ensure water quality protection is being accomplished; Results to be submitted to local SWCDB for approval.

Active Agricultural Pollution (9 VAC 10-20-130 5 b 4)

Requires that when agricultural activities are causing pollution of a nearby perennial water body or violating the performance standards of the buffer, a compliance schedule shall be developed by the local government and the SWCD for the landowner

Landowner Refusal of Assistance (9 VAC 10-20-130 5 b 5)

Requires SWCD to report farmers that refuse assistance to the locality - Local government must undertake enforcement action and develop a compliance schedule for the landowner

What's been done since May 10

- Guidance document regarding Soil & Water Quality Conservation Assessment process prepared and under review
- Initial contact made with all CBPA Conservation Districts regarding understanding of regulations & assistance to localities. Setting up meetings for further information gathering
- Contacts with localities initiated to assess levels of understanding, capacity, partnerships with CDs, status of enforcement policies, etc. Setting up meetings beginning in July
- Proceeding with training necessary to obtain Conservation Planner One status
- Regulation drafting committee for HB1830 regarding Resource Management Plans in Chesapeake Bay Watershed

Ms. Reed asked if Soil and Water Conservation District staff had the necessary resources available.

Ms. Beyer said that part of her responsibilities would be to work with Districts who had the necessary staff, but also to work with private planners and to pursue grant funding for other districts.

Chesapeake Bay TMDL WIP Phase II Update

Mr. Davis-Martin gave the Chesapeake Bay TMDL WIP Phase II Update.

The Briefing Objectives are:

- Review EPA requirements for Bay TMDL, Watershed Implementation Plans (WIP) and Milestones
- Explain Virginia's process for developing Phase II WIP
- Discuss State schedule for engaging stakeholders and receiving information from localities and PDC's
- Explain Virginia's process for developing 2012-2013 Milestones
- Consider how the Bay Act fits into the TMDL process

A full copy of Mr. Davis-Martin's presentation is available from DCR.

Mr. Evans noted that this was a very robust timeframe. He asked what the consequences were if Virginia did not meet the schedule.

Mr. Davis-Martin said that remained unclear at this time. He said that EPA had offered a range of potential consequences.

New Business

Mr. Duncanson suggested that staff review the structure of the NARC and SARC as well as the need for future meetings of the Policy Committee.

Ms. Salvati noted that in terms of guidance, those documents are now approved by the director.

Public Comment

There was no further public comment.

Adjourn

There was no further business and the meeting was adjourned.

Respectfully submitted,

William E. Duncanson
Chair

David A. Johnson
DCR Director