

**Chesapeake Bay Local Assistance Board  
Southern Area Review Committee  
May 8, 2007  
Richmond, Virginia**

**Southern Area Review Committee Members Present**

Beverly D. Harper, Chair  
Richard Taylor

Gale A. Roberts  
John Zeugner

**Southern Area Review Committee Members Not Present**

Michael Rodriguez

**DCR Staff Present**

Joseph H. Maroon, Director  
David C. Dowling, Policy Planning and Budget Director  
Joan Salvati, Director, Division of Chesapeake Bay Local Assistance  
David Sacks, Assistant Director, Division of Chesapeake Bay Local Assistance  
Shawn Smith, Principal Environmental Planner  
Rob Suydam, Senior Environmental Planner  
Nancy Miller, Senior Environmental Planner  
Adrienne Kotula, Principal Environmental Planner  
Ryan Brown, Assistant Director of Policy and Planning  
Carrie Hileman, Policy and Planning Intern  
Michael R. Fletcher, Board and Constituent Services Liaison  
Elizabeth Andrews, Office of the Attorney General

**Others Present**

Leonard Muse, City of Petersburg  
George Homewood, New Kent County  
Chris Landgraf, New Kent County  
Beverly K. Wilson, City of Virginia Beach  
H. Clayton Bernick, City of Virginia Beach  
C. McKenna, City of Virginia Beach  
James Freas, City of Hampton  
Kathy James-Webb, City of Newport News  
Everett Skipper, City of Newport News  
Brian Lewis, City of Newport News  
Erin Genest, Timmons Group

**Call to Order and Opening Remarks**

Ms. Harper called the meeting to order. A quorum was declared present.

**Local Program Reviews Phase I**

*Town of Surry*

Mr. Suydam gave the report for the Town of Surry. There was no one present from the Town.

In response to the 2001 Board revisions to the Regulations, the Town amended its zoning ordinance, but did so believing there were no RPAs within the Town limits, and excluded much of the specific RPA language.

However, this was found to be incorrect when Department staff determined there were indeed RPAs within the Town limits.

It then became apparent that significant changes to the zoning ordinance would need to be made and specific RPA language would need to be incorporated into the ordinance itself.

In April of 2006 the Board set a deadline of June 30, 2006 for the Town to address the 11 recommendations. In December of 2006 the Board granted an extension request and set a new deadline of March 31, 2007.

On March 13<sup>th</sup> of this year, the Surry Town Council approved an amendment to its zoning ordinance to incorporate the language required by the Board's resolution.

Victor Liu of the Crater PDC has assisted the Town in this matter by inserting the required language into the Town's ordinance.

Mr. Liu has provided staff with a copy of the updated work, and with this action, the Department recommends the Town of Surry's Phase I program be found consistent.

MOTION: Mr. Zeugner moved that the Southern Area Review Committee recommend the Chesapeake Bay Local Assistance Board find the zoning ordinance amended by the Town of Surry on March 13, 2007 consistent with § 10.1-2109 of the Act and § 9 VAC 10-20-60 1 and 2 of the Regulations.

SECOND: Ms. Roberts

DISCUSSION: None

VOTE: Motion carried unanimously.

### **Local Program Reviews Phase II**

#### *City of Petersburg*

Mr. Suydam gave the report for the City of Petersburg. He introduced Mr. Leonard Muse from the City and Erin Genest from the Timmons Group.

On April 3, 2006 the Board found the Phase II program for the City of Petersburg inconsistent with the Act and Regulations with four recommendations.

In an effort to become consistent, the City hired Timmons Group to address these four recommendations and subsequently the Department conducted several meetings to establish guidelines for this work to be done adequately and in a timely fashion.

Director of Planning Mr. Leonard Muse has since kept the Department and the Board apprised of the City's progress.

By the middle of March, Timmons Group and the City had provided the Department with the final version of the required text amendments to be incorporated into the City's Comprehensive Plan, as well as the required maps showing:

- Shoreline and stream bank erosion analysis
- Public and private access to waterfront areas
- Redevelopment
- Underground storage tanks, landfills, and hazardous waste sites

On April 3, 2007 Petersburg City Council adopted these amendments to the Comprehensive Plan and on April 25<sup>th</sup>, Mr. Muse personally delivered a final copy of Comprehensive Plan with all of the amendments inserted appropriately.

Mr. Suydam said that it was the staff recommendation that the Board find the Phase II program for the City of Petersburg consistent.

Ms. Salvati noted that once the full Board finds Petersburg fully consistent, all 84 localities will be Phase II consistent.

MOTION: Ms. Roberts moved that the Southern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find the comprehensive plan amended and adopted by the City of Petersburg on April 3, 2007, consistent with § 10.1-2109 of the Act and § 9 VAC 10-20-60 3 of the Regulations.

SECOND: Mr. Zeugner  
DISCUSSION: None  
VOTE: Motion carried unanimously

**Local Program Reviews Compliance Evaluation**

*New Kent County*

Mr. Suydam gave the report for New Kent County. He recognized Mr. George Homewood, Director of Planning and Chris Landgraf, Environmental Program Manager.

In December of 2006, the Board outlined one recommendation in its resolution.

- To develop the 5-year septic pump-out program.

Since that time, New Kent County's Environmental Program Manager Chris Landgraf has been routinely providing the Department with updates to the County's 5-year septic pump-out program.

UPDATES INCLUDE:

- Program description and schedule
- Example of the notification letter
- Newspaper ads
- Information regarding database development

After reviewing these materials submitted to the Department, Mr. Suydam said that staff would recommend that the Board find New Kent County's implementation of its Phase I Program Compliant.

Mr. Maroon asked Mr. Landgraf what issue the County had faced in implementing the pump-out program.

Mr. Landgraf said the main issue was being able to track the 6,000 homes that have septic systems. The County intends to refine the GIS layers next year and to upgrade the topograph.

Mr. Landgraf said the County is working to make sure notices are sent to the right individuals within the Chesapeake Bay Preservation Area. The County is also adding language that provides that if a homeowner installs a filter, the pump-out would not be required.

Mr. Landgraf said that it was his belief that the Health Department, not the local government should be monitoring the septic pumpout program.

Ms. Salvati noted that a number of localities do utilize the Health Department in this manner.

**MOTION:** Ms. Roberts moved that the Southern Area Review Committee recommend the Chesapeake Bay Local Assistance Board find that New Kent County has addressed the one (1) remaining recommendation to the 2006 compliance evaluation and further that the Board find New Kent County's implementation of its Phase I program to be compliant with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations.

**SECOND:** Mr. Taylor

**DISCUSSION:** None

**VOTE:** Motion carried unanimously

*Hanover County*

Mr. Suydam gave the report for Hanover County. No one was present from Hanover County.

The compliance condition review for Hanover County started spring 2005. In March 2007, the Board outlined 1 recommendation in its resolution.

- To develop the 5-year septic pump-out program.

Since that time, Hanover County's Assistant Director of Public Works Steven Herzog has been routinely providing the Department with updates to the County's 5-year septic pump-out program.

Local progress made:

- Program description and schedule (begins 7/07)
- Example of the notification letter
- Education and outreach brochures
- Information regarding database development

Mr. Suydam said that after reviewing these materials submitted to the Department, it was the staff recommendation that the Board find Hanover County's implementation of its Phase I program compliant.

MOTION: Mr. Zeugner moved that the Southern Area Review Committee recommend the Chesapeake Bay Local Assistance Board find that Hanover County has addressed the one (1) remaining recommendation from the 2005 compliance evaluation and find Hanover County's implementation of its Phase I program compliant with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations.

SECOND: Ms. Roberts

DISCUSSION: None

VOTE: Motion carried unanimously

*Town of Cheriton, Town of Eastville and the Town of Nassawadox*

Ms. Smith gave the report for the Towns of Cheriton, Eastville and Nassawadox.

Compliance evaluations for Cheriton, Eastville and Nassawadox were begun in February. These towns are three of the small towns in Northampton County. All three towns rely heavily on Northampton County to implement their Bay Act programs including: ESC and SWM reviews, building permits, onsite RPA delineations and the septic pump-outs. All three towns participate in a joint planning commission with the County as a way to discuss town/county issues. The joint planning commission membership includes one person from each of these three towns and six members of the County's planning commission.

A windshield survey was conducted through all three towns in March and no new development was noted in the CBPAs at this time. Both Eastville and Nassawadox also confirmed that no development had occurred in their CBPAs in the past year or so.

Based on the joint planning commission process and the amount of review and approval that Northampton County does for these towns, staff recommends that all three be found to comply with the Act and Regulations.

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

SECOND: Ms. Roberts

DISCUSSION: None

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VOTE: Motion carried unanimously

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

SECOND: Mr. Taylor

DISCUSSION: None

VOTE: Motion carried unanimously

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

SECOND: Ms. Roberts

DISCUSSION: None

VOTE: Motion carried unanimously

### *City of Virginia Beach*

Ms. Smith gave the report for the City of Virginia Beach. She recognized Clay Bernick, Kay Wilson, and C. McKenna from the City.

The compliance evaluation for Virginia Beach was largely completed during 2005 with the initial plan review and field visit meetings all occurring in calendar year 2005. However, prior to the development of a report and completion of the review, DCR staffing changes delayed completion of the review until early 2007.

During 2006-2007, DCR staff was able to perform more careful review of certain aspects of the City's Bay Act program, including the City's stormwater management program, and Bay Board activities. In particular, DCR staff reviewed all City staff reports and Bay Board minutes from January 2006-November 2006 and attended Bay Board meetings in October and November 2006.

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Ms. Smith said that, based on the review of the City's ordinances, plans, procedures, and processes, staff was offering nine (9) recommended conditions. These can be broken out into two broad areas: stormwater management requirements and RPA issues. On May 4, 2007, staff from DCR and the City discussed the recommended conditions via a conference call. Staff from the City expressed their concerns over some of the recommended conditions, and staff made a few minor edits to clarify the intent behind two recommended conditions. The revised report has been provided to the City and to the Committee members.

### **Stormwater Management**

Ms. Smith said that staff was offering four recommended conditions relating to stormwater management. These recommended conditions include: requiring BMP maintenance agreements for all structural BMP's including those on single-family lots (this was one of the recommended conditions that was clarified after the May 4<sup>th</sup> conference call); amending the Stormwater Management ordinance to add the six required findings for reviewing and approving waivers to the stormwater management requirements to correct pre-development phosphorus load for use in water quality calculations (this is another condition that had a slight revision), ensuring that stormwater management plans document water quality requirements such as engineering calculations and ensuring that all impervious surfaces, particularly the surface area of pools, are included in water quality calculations.

### **RPA Issues**

The remaining five recommended conditions all relate to RPA issues. Recommended Condition 5 would make sure that the City is requiring re-vegetation of buffer areas as part of permitted tidal wetland activities, such as shoreline erosion control projects. The City permits removal of trees and other woody vegetation as part of erosion control projects, but does not require re-vegetation beyond grass for mitigation. There was some discussion between City and DCR staff regarding this recommended condition with no consensus being reached. Staff will continue to work with the City to address this recommended condition. Recommended Condition 6 would ensure that the City is requiring appropriate site-specific analysis of onsite water bodies to determine whether or not such water bodies have perennial flow. The City mapped its RPAs in the early 1990s, based on USGS topographic mapping and stream walks. It is unclear how the City concluded whether or not a particular stream segment was perennial, but since the review took place prior to the development of the scientific methodologies, it is unlikely that the streams were evaluated scientifically.

The remaining three (3) recommended conditions all relate to the review and approval of Bay Act program exceptions by the City's Bay Board. As noted earlier, one of the areas of the City's program that underwent additional scrutiny in the intervening time between 2005 and 2006, was the City's formal Bay Act exception program. The City convened its Bay Board in the 1990s, and continues to use this body to make decisions on Bay Act program exceptions. The City's Bay Board considers requests for encroachments into



RPA features and into the first 100-feet of their RPA buffer. As noted in the report, the City chose to include an expanded RPA buffer to include steep, highly erodible slopes (those that exceed 6% which are highly erodible). However, the City has elected to implement a program that allows administrative waivers for proposed encroachments for that portion of the expanded buffer that exceeds 100-feet from the tidal wetlands, tidal shores or nontidal wetlands.

Staff reviewed the staff reports and Bay Board minutes for a 10-month period from January through October 2006. In addition, staff attended two Bay Board meetings (October and November 2006) to become more familiar with the Board proceedings. The following slides offer a summary of some of the findings from this 10 month review:

- In the 10 months, the Bay Board heard 86 cases and approved 84 cases.
- Of the 84 approved cases, 70 were for development on residential lots. Pools were approved as part of the proposed development on 37 of the 70 residential cases.
- The residential cases were broken down into 3 broad categories, to see the sizes and types of lots for which exceptions were approved. The three general categories are:
  1. Lots less than ½ acre in size (18 of 70 approved), average lot size in this category was .32 acres [roughly 14,000 square feet].
  2. Lots greater than ½ acre but less than 1 acre in size (33 of 70 approved), average lot size in this category was .73 acres [roughly 31,800 square feet].
  3. Lots greater than 1 acre in size (19 of 70 approved), average lot size in this category was 1.85 acres [roughly 80,600 square feet].
- The average impervious cover for each lot size category increased as follows:
  1. For smaller lots, [from average of 3,209 sq ft to 4,270 sq ft], an average gain of over 1000 square feet per lot.
  2. For medium size lots, from average of 6,335 sq ft to 8,088 sq ft, an average gain of 1700 square feet per lot.
  3. For larger lots, from an average of 11,949 sq ft to 14,930 sq ft, an average gain of 3000 square feet per lot.
- For smaller lots from 23 to 30 percent impervious; for medium lots, from 20-25 percent impervious, for larger lots, from 15 to 18 percent impervious.

- Of the 70 approved residential cases, 17 had previous Bay Board exception approvals; three had previous administrative waiver approval, and seven cases were for lots that were recorded after the City adopted its Bay ordinance.

Ms. Smith said that staff is concerned with several areas of the City's Bay Board program. Some of the conclusions reached through review of Bay Board minutes and staff reports and attendance at two Bay Board meetings are that the Bay Board does not appear to be making exception decisions based on the five required findings in the Regulations. In particular, discussion of pending cases centered by and large on the proposed mitigation, with very minimal discussion of the "minimum necessary to afford relief" finding, on two of the cases considered during the October and November meetings. Also, the fact that in 17 of the 84 approved cases, the Bay Board had previously approved an exception does not appear to meet several of the required findings. Two of the last three recommended conditions seek to address these concerns through additional training for the City's Bay Board and more careful consideration of multiple requests for exceptions, in particular, using the required findings to make case decisions, not simply review of the proposed mitigation.

The last recommended condition relates to City oversight for the required mitigation for approved waivers and exceptions. There is no doubt that the City requires extensive mitigation for waivers and exceptions, focusing on vegetative plantings to include trees, shrubs and ground covers and replacement of lawn area with planted, mulched beds. While the City has good oversight during the installation process, they currently do not have a formal process for ensuring that these mitigation areas remain in perpetuity, such as when properties are sold. Since the City's Bay Act program to date has relied heavily on mitigation, staff is recommending a condition that would require the City to develop a formal program for oversight on all mitigation required as part of approved exceptions.

Ms. Smith said that staff would like to thank Rick Scarper in particular for his assistance during this review, as Rick provided reports for the 10 month review, and invited her to attend the two Bay Board meetings in late 2006. The City does work hard to implement its Bay Act program that has resulted in re-vegetation of portions of the buffer area that previously had been lawn areas. The City's program needs to address some relatively minor issues with respect to stormwater management. The larger issue of Bay Board exceptions can be address through additional training and review of the City's Bay Board processes and procedures.

Ms. Wilson, Assistant City Attorney provided a packet of information from the City in response to staff evaluation. A copy of that information is available from DCR.

Ms. Wilson thanked the Board for the opportunity to bring concerns and said that the City believes it is compliant with the requirements of the Bay Act. She said that the City will work with DCR to continue to address the issues of concern.

She expressed a problem with recommendation #5, which deals with the re-vegetation of the buffer after erosion projects. She said that the City would prefer to have this requirement but noted the amount of bulkhead and riprap in the City. She said that the requirement is that the shoreline be stabilized, but that a replanting of the buffer vegetation is not required.

She said that the City would like to clarify that recommendation for erosion control projects, but noted that the City did not believe the requirement is clear enough to require citizens to replace a vegetative or wooded buffer.

Ms. Salvati said that it was staff's position that section 130 (3) of the Regulations addressed this issue as this section sets forth that the buffer vegetation should include woody vegetation capable of retarding runoff, preventing erosion and filtering nonpoint source pollution.

Ms. Salvati said that it might be helpful for staff to prepare a regulatory guidance letter to show this interpretation.

Ms. Wilson said that a letter might not be strong enough.

Mr. Bernick said that the City would envision that requirement being challenged in circuit court.

Mr. Baxter asked if Ms. Salvati was aware of any other locality with extensive shoreline being sued over this issue.

Ms. Salvati was not aware of such a case.

Ms. Smith clarified that the intent of the recommended condition is to replace trees when a shoreline erosion project removes trees. She stated that this recommended condition is not asking that a grass area that existed prior to the shoreline erosion project be turned into forestland.

Mr. Bernick said that a major issue for Virginia Beach is that so much of the shoreline is developed.

**MOTION:** Mr. Zeugner moved that the Southern Area Review Committee recommend the Chesapeake Bay Local Assistance Board find that certain aspects of the City of Virginia Beach'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 and further that the City be directed to appropriately address the nine recommended conditions contained in the staff report with particular attention paid to condition #5, noting staff and City concerns. The deadline for final review is June 30, 2008,

however the Board requests an update be provided at the December 2007 Board meeting.

SECOND: Mr. Taylor  
DISCUSSION: None  
VOTE: Motion carried unanimously

*City of Newport News*

Ms. Miller gave the report for the City of Newport News. She recognized Kathy James Webb, Brian Lewis, and Everett Skipper from the City.

The Department initiated a compliance evaluation for the City of Newport News on October 12, 2006. The compliance evaluation revealed that although the City is striving to implement its local Bay Act program effectively, there are program elements that require improvement. These include: consistent application of the City's plan of development requirements; implementation of a notification and maintenance program to meet the 5-year on-site septic system pump-out requirement; and, documentation in project files that all stormwater management requirements have been met.

The three conditions noted must be addressed by December 31, 2007 to attain full compliance and City staff are already working with the Department to make the necessary adjustments. On May 4, 2007 City staff provided the Department with a letter, responding to the findings in the staff report and noting concerns with two of the three recommended conditions.

Department and City staff conducted a telephone conference on May 7, 2007 to review the City's concerns. At the conclusion of the discussion, Department staff agreed to add language to Condition #1 to clarify that the City could address the condition through a written policy to ensure compliance with the City's existing plan of development requirements. The City's letter also noted that materials documenting stormwater management requirement compliance (Condition #3) were not all made available to DCR staff during the review, but that these items are secured by the City during the application process. Department and City staff further agreed that Condition #3 would be addressed through a follow-up review of the items noted in the staff report and a review of other examples of similar development projects, if any become available during the 6-month period prior to the December 31, 2007 deadline. (DCR staff distributed a copy of alternative Condition #1 and a copy of the City's letter to the Department. DCR staff read the suggested revision aloud, and noted that the written copy shows the revised language underscored.)

Ms. Miller said the staff recommendation was that the Board find that certain aspects of the City of Newport News' Phase I program do not fully comply with the Act and the Regulations and that the City address the three conditions in the staff report by December 31, 2007.

Ms. Miller said that based on discussion with City of Newport News staff during a phone conference on May 7, 2007 at 10:30 am, Department staff wished to suggest the following revision to the first recommendation included in the City's initial compliance evaluation staff report.

Recommended Condition:

1. For consistency with § 9 VAC 10-20-105 of the Regulations and Section 37.1-51.(b)(1)a. of the City's CBP overlay district, the City must, through a written policy document, ensure consistent compliance with all plan of development requirements and must require that on-site CBPA delineations are completed prior to the issuance of all land disturbance permits. The City must document and show proof to the Board that all projects are being processed in compliance with these requirements.

Ms. James-Webb said that with regard to the 2<sup>nd</sup> condition, which is the requirement for the City to implement a septic pumpout notification and monitoring program, the City had previously decided that the health department would monitor this requirement. The City is now trying to obtain the tracking information and to update the database.

Mr. Skipper said that the City is also trying to tie back into the GIS databases, and this includes the BMP database.

Ms. James-Webb noted that the City was deemed consistent with the Erosion and Sediment Control program.

Mr. Maroon noted that the DCR E&S staff would have looked at the entire program. He noted that a program may be conditionally deemed E&S compliant, yet have a deficiency in one area.

Ms. Salvati noted that the stormwater component of the review was completed by DCR's Division of Soil and Water.

MOTION: Mr. Zeugner moved that the Southern Area Review Committee recommend the Chesapeake Bay Local Assistance Board find that certain aspects of the City of Newport News' 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 and that the City undertake and complete the three conditions

contained in the staff report, as amended, no later than December 31, 2007.

SECOND: Ms. Roberts  
DISCUSSION: None  
VOTE: Motion carried unanimously

### **Program Updates**

#### *City of Hopewell*

Mr. Suydam gave the report regarding the Compliance Evaluation for the City of Hopewell.

He noted that the Board previously outlined 10 recommendations with June 15, 2007 set as the deadline. Mr. Suydam said that many of the ten recommendations pertain to the basic fundamentals of the Bay Act program.

The Department has been diligent in its efforts to assist the City and has initiated two meetings since the March Board meeting.

Hopewell has made progress with recommendations 1 and 2, specifically noting CBPA requirements on applications for:

- building permits
- construction site plans
- subdivision plans
- special use and conditional requests
- variance requests

However, for the changes to these applications and site plan checklists requirements to remain permanent, Hopewell City Council will be required to amend both the zoning and subdivision ordinances in June.

No other progress has been made at this time. The Board set June 15<sup>th</sup> as a final deadline for compliance.

Mr. Maroon said that at the June meeting the Board would be in the posture of potentially referring this matter to the Attorney General.

It was suggested that either the Mayor and or Vice Mayor be invited to attend the June meeting.

There was no action required regarding the City of Hopewell.

*City of Hampton*

Ms. Miller gave the report for the City of Hampton. She noted that James Freas was present from the City.

On December 11, 2006 the City presented the Board with a proposal for revisions that the Board found to be generally acceptable. Since then, DCR and City staff have worked together to develop specific program elements to implement the proposed revisions. On April 9, 2007 the City's planning commission recommended adoption of ordinance revisions based on the proposal, and Hampton City Council is expected to adopt these revisions on May 23, 2007. If so, staff will recommend that the local program amendments adopted by the City of Hampton on May 23, 2007 be found consistent with the Act and the Regulations.

Mr. Freas said that he had met with a number of council members. The City is eager to move forward.

There was no action required for the City of Hampton.

**Other business**

The Board meeting on June 19 will begin at 11:00 a.m. and not 10:00 a.m. to accommodate a meeting of the Policy Committee that morning.

**Public Comment**

There was no further public comment.

**Adjourn**

Being no further business, the meeting was adjourned.

Respectfully submitted,

Beverly D. Harper  
Chair

Joseph H. Maroon  
Director