Chesapeake Bay Local Assistance Board
Southern Area Review Committee
Tuesday, August 9, 2005– 2:00 p.m.
101 N. 14th Street – James Monroe Building
Richmond, Virginia

Southern Area Review Committee Members Present

Beverly D. Harper
Michael A. Rodriguez
Gale A. Roberts
Donald W. Davis

Southern Area Review Committee Members Not Present

Sue H. Fitz-Hugh
David C. Froggatt

DCR Staff Present

Ms. Joan Salvati, Director, Division of Chesapeake Bay Local Assistance
Ms. Martha Little, Chief of Environmental Planning
Ms. Shawn Smith, Principal Environmental Planner
Mr. Brad Belo, Senior Environmental Planner
Mr. Ryan Link, Principal Environmental Planner
Mr. Jakob Helmboldt, Senior Environmental Planner
Ms. Christine Watlington, Policy, Planning and Budget Analyst

Others Present

Hampton

Sally Andrews
Keith Cannady

New Kent County

George Homewood

James City County

Darryl Cook

City of Petersburg

Leonard Muse

Poquoson

Deborah Vest
Karen Brauer

Williamsburg

Carolyn Murphy

Call to Order and Opening Remarks

Mr. Davis called the meeting to order and declared a quorum present.

Ms. Salvati gave an update on the Hampton program. She noted that staff has had two very productive meetings with the City. She said that, while she did not have a specific date, a proposal would be developed and brought to the Board's attention in the near future.

Mr. Davis asked if this would be on the September Board meeting agenda.

Ms. Salvati said that staff would prepare a recommendation for that meeting.

Ms. Andrews from the City agreed that there was progress. There were no further comments from the City at this time.

Local Program Reviews

City of Newport News – Review of Phase I conditions

Mr. Belo gave the report for the City of Newport News.

On June 21, 2004 the Board recommended eight changes to the City of Newport News' Bay Act related ordinances to ensure consistency with the Regulations with a deadline of June 30, 2005 to address all eight recommendations. Working with Department staff, the City developed and adopted amendments to address these eight recommendations on April 12, 2005. The recommendations related to exemptions from site-specific RPA delineations and WQIAs, stormwater management criteria, definition of water-dependent facilities and silviculture, exemptions, and language relating to administrative waivers from the general performance criteria.

Staff reviewed the amended ordinance and recommends that all eight conditions have been addressed and that the City's amended ordinance be found consistent.

COMMITTEE RECOMMENDATION:

The Southern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that the City of Newport News' amended Phase I program be found consistent with § 10.1-2109 of the Act and §§ 9 VAC 10-20-60 1 and 2 of the Regulations.

James City County – Initial Compliance Evaluation

Mr. Belo gave the report for the James City County.

He recognized Darryl Cook, the County's Environmental Division Director and Chesapeake Bay Act program coordinator.

James City County has consistently implemented its Chesapeake Bay Preservation Act (CBPA) program for the last 14 years. The County's highly trained enforcement staff are effective at implementing the local CBPA program and have demonstrated a willingness to explore innovative water quality protection measures including watershed planning and innovative stormwater management.

The County's plan of development review process is coordinated through the County's Planning Division with the Environmental Division being the plan approving authority for CBPA, erosion and sediment control, and stormwater management. Plans are circulated to the Environmental Division, which reviews the plans and any subsequent re-submittals until they are approved. The County regularly updates its septic system pump-out notification program, which started in 1999. The County appears to be successfully enforcing all of the general performance criteria and all of the RPA requirements.

James City County implements a unique stormwater management BMP Point System to help protect water quality throughout the County. The point system requires all development to submit a stormwater management plan in which the development attains at least 10 BMP Points through a combination of structural BMPs and preservation of natural open space.

In addition to its strong Bay Act program and unique stormwater management program, the County has developed the "PRIDE" program, a public education initiative that provides information related to the protection of water quality, stormwater management, and the management of other sensitive environmental areas. The County also recently completed an 11-month Local Site Planning Roundtable to review existing development codes to identify regulatory barriers to environmentally sensitive residential and commercial development at the site level.

Mr. Belo said that James City County's consistent enforcement of its CBPA program and its willingness to pursue innovative stormwater management, public education, and

stakeholder involvement programs has resulted in an effective land use management based water quality protection program. He said the Department recognizes James City County as an outstanding local partner in the protection and improvement of the Chesapeake Bay and Virginia's natural environment.

Staff recommended that the James City County's Bay Act program be found consistent with the Bay Act and Regulations. He said that, should this recommendation be accepted, James City County, along with the City of Williamsburg, would be only the second community in Tidewater to be found compliant with the Bay Act.

COMMITTEE RECOMMENDATION:

The Southern Area Review Committee recommends that the Chesapeake Bay Local Assistance Board find that implementation of the James City County'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.

Mr. Davis asked staff to draft a letter congratulating the County on its successful program.

York County – Phase I – Local Program Modification

Mr. Belo gave the report for York County.

On May 17, 2005, the County adopted a stand-alone Bay Act ordinance by removing the Environmental Management Area Overlay District from the County's zoning ordinance. All Bay Act related language was transferred nearly verbatim from the zoning ordinance to the stand-alone ordinance.

The only substantial change to the County's Bay Act program is the creation of the York County Chesapeake Bay Board, comprised of the members of the York County Wetlands Board. This board will replace the York County Board of Zoning Appeals as the body responsible for reviewing and approving exceptions to the local Bay Act program that are not eligible for administrative review and approval. All other aspects of the County's Bay Act will remain unchanged.

After reviewing the changes made to York County's Bay Act program, staff opinion is that the changes constitute a minor program modification and that the changes are consistent with the Chesapeake Bay Preservation Act and Regulations.

COMMITTEE RECOMMENDATION:

The Southern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that York County's amended Phase I program be found consistent with § 10.1-2109 of the Act and §§ 9 VAC 10-20-60 1 and 2 of the Regulations.

City of Poquoson – Review of Phase I conditions

Mr. Belo gave the report for the City of Poquoson.

He introduced Deborah Vest and Karen Brauer from the City of Poquoson.

On September 20, 2004, the Board found the City of Poquoson's Bay Act ordinance consistent with three recommendations for consistency with the Regulations, all of which were to be addressed by June 30, 2005. After working with Staff, the City of Poquoson adopted an amended Bay Act ordinance on June 27, 2005.

Mr. Belo said it was staff opinion that the City's amended ordinance adequately addresses two of the Board's three recommendations. The two recommendations that were addressed relate to the addition of enforcement language to the City's ordinance, rather than references to the state Code, and the requirement for nonconforming accessory structures to be considered through the formal exception process as required by the Regulations.

The City's ordinance amendment did not address Recommendation #2 which required the City to delete language that expanded the list of permitted modifications to the buffer area by exempting from local oversight the removal of trees and shrubbery damaged by storm or other acts of nature.

Mr. Belo said that staff felt that the City's additional tree and shrubbery removal language is overly broad, not enabled by the Regulations, and unnecessary because both the Regulations and the ordinance include language that addresses dead, diseased, or dying trees and shrubbery. Therefore, in order to ensure that the City's ordinance is consistent with the Regulations, the Department retains the Board's recommendation to delete the inconsistent language in Section 11. 4-12.d(1).e of the City's ordinance.

As the City has already had 9 months to address the Board's recommendations, the Staff recommends a relatively immediate deadline of November 30, 2005.

Ms. Vest said that the City's intent for leaving the language in question was for consistency purposes and to help citizens with their understanding. City Council was more comfortable with leaving the language in place. She said that she did not have a problem with the compliance date and that she would again address the matter with City Council.

Ms. Harper asked if Mr. Belo had met with the Town Council. He indicated that he worked directly with the staff. The concerns had been presented to the Council.

COMMITTEE RECOMMENDATION:

The Southern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that the City of Poquoson's amended Phase I program be found consistent with § 10.1-2109 of the Act and § 9 VAC 10-20-60 1 and 2 of the Regulations, subject to the condition that the City address the one consistency recommendation outlined in the staff report no later than November 30, 2005

New Kent County – Review of Phase I conditions

Mr. Helmboldt presented the report for New Kent County. He recognized George Homewood, Planning Director.

On March 22, 2004 the Board found New Kent County's revised Phase I ordinance consistent with one condition with a deadline of June 30, 2005. On June 13, 2005 the New Kent County Board of Supervisors adopted amendments to their local program ordinance to revise the definition of *substantial alteration* to be consistent with the Regulations.

The County also adopted the suggested changes as well as a requirement for rear yard setbacks from the RPA, much like other counties such as Chesterfield and Henrico, thereby ensuring a usable backyard area.

Mr. Helmboldt said staff opinion was that the County has adequately addressed the single recommendation for consistency and recommends to the Committee a finding of consistency.

Mr. Davis asked Mr. Homewood if the setback requirement for the landward edge of the RPA was across the board on every lot or on newly created lots.

Mr. Homewood said the requirement does not apply to pre-1989 lots, but applies to lots created after that time.

COMMITTEE RECOMMENDATION:

The Southern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that New Kent County's amended Phase I program be found consistent with § 10.1-2109 of the Act and §§ 9 VAC 10-20-60 1 and 2 of the Regulations.

City of Petersburg – Update

Mr. Helmbolt gave the report for the City of Petersburg. He introduced Leonard Muse, Director of Planning for the City of Petersburg.

On December 13, 2004 the Board found the City of Petersburg's revised Phase I ordinance inconsistent with the Regulations, and further, required that the City address the eight recommendations by the deadline of June 30, 2005.

On June 14, 2005 Mr. Muse informed staff that they were attempting to move forward towards adoption of the revised ordinance, but stated that it would be accomplished, at the earliest, by mid-July.

Mr. Muse said that the initial reading of the revisions before City Council took place on July 19, 2005.

Petersburg City Council is now set to vote on the issue at their September 6 meeting, at which time some additional, minor changes based upon staff feedback will also be addressed.

If action is taken at the September City Council meeting, staff will prepare a staff report for the full Board's review at the September CBLAB meeting, outlining whether the changes have fulfilled the eight recommendations.

Mr. Muse said he appreciated the effort and support given by staff.

No action was required for the City of Petersburg.

Prince George County – Review of Phase I conditions

Mr. Helmbolt gave the report for Prince George County.

On December 13, 2004 the Board found Prince George County's revised Phase I ordinance inconsistent with the Regulations, and further, required that the County address the six recommendations by the deadline of June 30, 2005.

One recommendation required the designation of the minimum width of the RMA. One recommendation specified that the County specify the original program adoption date to be used in determining non-complying uses and structures.

Three recommendations addressed language changes from the previous Regulations. One recommendation pertained to the inclusion of the types of permitted development and enumeration of the performance standards required of development permitted in RPAs.

On May 24, 2005 the Prince George County Board of Supervisors adopted amendments to their local program ordinance to address all six of the recommendations in order to be consistent with the Regulations.

Mr. Helmboldt said that it was staff opinion that the County has adequately addressed all six of the recommendations and recommends to the Committee a finding of consistency.

COMMITTEE RECOMMENDATION:

The Southern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that Prince George County's amended Phase I program be found consistent with § 10.1-2109 of the Act and §§ 9 VAC 10-20-60 1 and 2 of the Regulations.

City of Chesapeake - Update

Mr. Link gave an update on the City of Chesapeake.

The City adopted its revised Chesapeake Bay Preservation Area Overlay District Ordinance along with its revised Intensely Developed Area map and program on December 9, 2003

Department staff reviewed the City's revised program and identified ten items of concern that required changes in order for the City to be found consistent and reported these items to the Southern Area Review Committee (SARC) at their August 10, 2004 meeting. At this meeting, the City requested a continuance of the Board review, which was approved by the SARC.

On September 14, 2004 Department staff met with the City of Chesapeake to discuss the required ordinance amendments as identified by the Department in its August 10, 2004 staff report as presented to the SARC. During that meeting both parties were able to reach consensus on eight of the ten recommendations. Further discussions following the September 2004 meeting resulted in agreement on the outstanding items of concern.

The City of Chesapeake adopted its revised Phase I ordinance on July 26, 2005. Due to the timing of the City's adoption staff did not have time to adequately review and prepare a formal report for the SARC. Staff did review the draft-revised ordinance and had determined that the ordinance adequately addressed all items of concern previously identified by the Department.

In addition, the City of Chesapeake has also adopted their revised comprehensive plan. The City's initial revised Comprehensive Plan was found consistent with seven conditions by the Board on December 11, 2000. Due to the City's intent to revise their entire comprehensive plan the City was granted an extension for adopting a compliant

plan. The City adopted a final revised plan on March 8, 2005. Staff did review a draft of this plan for compliance. Staff will review the final revision of the City's Plan along with the City's revised ordinance and will present the findings at the next scheduled SARC meeting.

No action was required for the City of Chesapeake.

City of Williamsburg – Initial Compliance Evaluation

Mr. Belo gave the report for the City of Williamsburg. He introduced Carolyn Murphy, the City of Williamsburg's Zoning Administrator and the City's Chesapeake Bay Act Program coordinator.

The City of Williamsburg consistently implements a strong Bay Act program that reflects both the letter and the spirit of the Chesapeake Bay Preservation Act while often exceeding the minimum requirements of the Regulations. Both the Zoning Administrator and the City Engineer are involved in the review of all plans of development and the enforcement of the City's erosion and sediment control ordinance. Because one or both of these individuals, both of whom have several years of experience with the local Bay Act program, review every development proposal, there is consistent and effective enforcement of the CBPA program requirements throughout the City.

Residential subdivisions, commercial sites, and the redevelopment of commercial sites characterize the City's current development pattern. The City appears to be successfully enforcing all of the general performance criteria and all of the RPA requirements. In some cases, the City is negotiating with developers to provide sufficient area between new principal structures and the landward edge of the RPA boundary to ensure that future expansions of principal structures or the addition of accessory structures can occur without encroaching into the RPA buffer.

In addition to the effective enforcement of its Bay Act program, the City prides itself on striking an effective balance between facilitating development and protecting open space, environmentally sensitive lands, and water quality. Over the last three decades the City has permanently protected hundreds of acres of land in order to protect open space and water quality and environmentally sensitive lands.

The City also implements an innovative regional stormwater management program, which allows developers to purchase water quality and open space credits. This program helps minimize the expense of monitoring numerous water quality best management practices on private property, ensures proper and timely maintenance of BMPs by the City's highly trained staff, protects significant amounts of habitat, and provides attractive recreational and aesthetic amenities for the community.

To summarize, the City's consistent enforcement of its Bay Act program over the past 14 years combined with its innovative water quality protection and open space preservation

initiatives marks the City of Williamsburg as an outstanding local partner in the protection and improvement of the Chesapeake Bay and Virginia's natural environment.

Mr. Belo said that staff recommended that the City of Williamsburg's Bay Act program be found consistent with the Bay Act and Regulations. He noted that should this recommendation be accepted, the City of Williamsburg, along with James City County, would be only the second community in Tidewater to be found compliant with the Bay Act.

Ms. Murphy said that the City views the Bay Act program as a tool for City development. The City views it as positive for the community. She thanked staff for their work with the City.

COMMITTEE RECOMMENDATION:

The Southern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that implementation of James City County'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.

Mr. Davis asked staff to prepare a letter congratulating the City of Williamsburg on its successful program.

Accomack County – Deadline extension request

Ms. Smith gave the report for Accomack County

Accomack County underwent a compliance evaluation in 2004, with the Board establishing a compliance deadline of June 30, 2005 to address four outstanding conditions. The County had made progress on addressing these four conditions, when staff changes (loss of staff) resulted in delays.

The County recently filled the vacant positions, but is requesting a 6-month extension in order for the new staff to come up to speed and complete the task of addressing the compliance conditions.

DCR staff has met with County staff to discuss the conditions and will continue to work with the County to assist them in addressing them. Staff anticipates that the County will be able to address the four conditions by the December 31, 2005 deadline.

COMMITTEE RECOMMENDATION:

The Southern Area Review committee recommends to the Chesapeake Bay Local Assistance Board that the compliance deadline for Accomack County be extended from June 30, 2005 to December 31, 2005 for the purpose of addressing outstanding compliance recommendations for consistency with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations.

Town of Onancock – Initial Compliance Evaluation

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

The Town of Onancock relies on Accomack County for Erosion and Sediment Control and Stormwater Management reviews, onsite RPA delineations, and the septic pump-outs. The Town Council adopted a resolution formally requesting the County's help in RPA delineations in 1998. The Town issues building permits and coordinates with the County on wetland permits for shoreline erosion and tidal wetland projects.

Ms. Smith reviewed all building permits for 2004-05 to evaluate Bay Act issues, and found that about ½ of annual permits are for rehabilitation/renovation projects. There was one new home construction on a lot with an RPA, and it was located outside of the RPA.

The Town and County work well together to ensure that Bay Act program issues are addressed, but would benefit from written policies and procedures to better outline who does what with respect to Bay Act implementation, particularly with regarding development near the RPA. Therefore, while there are no recommendations for consistency, there is a suggestion that the Town develop written policies and or provide additional training to its Town Manager or Zoning Administrator or as an alternative, since all towns in Accomack have limited staff, develop an alternative approach such as a "regional" position (at the county), to help with Bay Act implementation.

Town of Hallwood – Initial Compliance Evaluation

Ms. Smith presented the report for the Town of Hallwood.

The Town of Hallwood relies on Accomack County for Erosion and Sediment Control and Stormwater Management reviews, building permits, onsite RPA delineations, and the septic pump-outs. The Town Council adopted a resolution formally requesting the County's help in RPA delineations in 1998. Discussions with the Town Mayor indicated that there have been no activities in or near the RPA in town, and a windshield survey in July 2005 confirmed this.

As with Onancock, there are no recommendations for compliance, however, the Town would be better served by participating in an alternative approach to Bay Act

implementation, such as a shared or regional position to assist with Town Bay Act implementation, and a suggestion that this be explored is included in the report.

Town of Belle Haven – Initial Compliance Evaluation

The Town of Belle Haven relies on Accomack County for Erosion and Sediment Control and Stormwater Management reviews, building permits, onsite RPA delineations, and the septic pump-outs. The Town Council adopted a resolution formally requesting the County's help in RPA delineations in 1998.

A windshield survey in July 2005 showed very limited new development activities, although there appeared to be one house that was under construction near the RPA, but clearly outside of it.

There are no recommendations for compliance, however, as with Onancock and Hallwood, the Town would be better served by participating in an alternative approach to Bay Act implementation, such as a shared or regional position to assist with Town Bay Act implementation, and a suggestion that this be explored is included in the report.

COMMITTEE RECOMMENDATION:

The Southern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that implementation of the Phase I programs for the Towns of Onancock, Hallwood and Belle Haven be found compliant with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations. The Committee further suggests that the Towns work with Accomack County to develop a shared or regional position to assist with Bay Act implementation.

Other Business

There was no further business.

Adjourn

There being no further business, the meeting was adjourned.

Respectfully submitted,

Donald W. Davis Chair	Joseph H. Maroon Director

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