

Chesapeake Bay Local Assistance Board  
Local Program Review Committee for the Northern Area  
Chesapeake Bay Local Assistance Department  
101 N. 14<sup>th</sup> Street, 17<sup>th</sup> Floor, James Monroe Building  
Richmond, Virginia  
Tuesday, February 17, 2004

MINUTES

Members Present:

The Honorable Donald W. Davis  
The Honorable William E. Duncanson  
The Honorable Stuart Mendelsohn  
The Honorable Walter J. Sheffield

Members Absent:

Staff Present:

Mr. C. Scott Crafton, Executive Director  
Ms. Martha Little, Chief, Environmental Planning  
Ms. Shawn Smith, Principal Environmental Planner  
Ms. Heather Mackey, Principal Environmental Planner  
Ms. Nancy Miller, Senior Environmental Planner  
Mr. Alex Adams, Senior Environmental Planner  
Ms. Beth Baldwin, Senior Environmental Planner  
Ms. Carolyn J. Elliott, Administrative Assistant

Local Government Officials Present:

City of Alexandria  
Mr. William Skrabak, Chief, Division of Environmental Quality

*Fairfax County*

Mr. Noel Kaplan, Senior Environmental Planner  
Mr. John Friedman, Chief of Water Quality Section  
Mr. Fred Selden

*Stafford County*

Mr. Mike Zuraf, Environmental Planner  
Ms. Elizabeth Blackwell, Environmental Planner

*Gloucester County*

Mr. Scott Rae, Environmental Programs Manager

*Lancaster County*

Mr. Jack Larson, Director of Planning

*Essex County*

Mr. R. Gary Allen, County Administrator

*Middlesex County*

Mr. Matthew Higgins, Planning Director

*Others*

Mr. Joe Lerch, Chesapeake Bay Foundation

Mr. David Bulova

Mr. Davis called to order the Northern Area Review Committee Meeting at 10:00 a.m., and welcomed everyone. He called the role, noting that there was quorum.

Mr. Davis asked Mr. Crafton to provide comments. Mr. Crafton commented that the legislative activity included two actions that would have affected the Department. One, Senator Frank Wagner, Virginia Beach, introduced a bill that would have expanded the Bay Act to the full Bay watershed in Virginia. He said the bill was passed by indefinitely by the Senate Agriculture Committee. He said there were two companion bills, one in the house and one in the Senate that were introduced at the request of the Town of Vienna. He explained that at the time the Town of Vienna was adopting their ordinance revisions, residents were complaining and threatened to bring suit against the Town. These bills would have required the Attorney General's Office to provide legal council for a local government if they were subject to a private law suit pursuant to the Bay Act requirements. He said that one bill was killed from lack of a motion and the other was carried over. He said that he subsequently met with Delegate Steve Shannon, (Vienna), to discuss issues his constituents are concerned about.

Mr. Crafton went on to explain Soil and Water Conservation Districts had budget amendments introduced in both houses to add back \$500,000 for grants to the Districts for conservation plan development in CBPAs. He said the Senate amendment is still alive and hopefully will be approved.

Mr. Crafton advised that the Secretary of Natural Resources has arranged for an agency head meeting in Southwest Virginia on May 11, 2004, the date of the next Northern and Southern Area Review Committee Meetings. He asked members to consider meeting on May 18<sup>th</sup> instead.

Mr. Davis asked the date of the next Board meeting. Ms. Elliott responded the meeting date was June 21, 2004. Mr. Davis asked the members to check their calendars and get back in touch with Mr. Crafton by the end of the week.

Mr. Davis asked if Mr. Crafton had any information regarding grants. Mr. Crafton responded that to his knowledge there would be no new grant funding at this time.

Mr. Davis called for Phase I Local Program Reviews and recognized Mr. Alex Adams for staff's presentation for the Town of Bowling Green.

Mr. Adams explained that the Town of Bowling Green adopted their revised Phase I program on February 6, 2003. He said the Department initially worked with Mr. Dennis Donachy and is currently working with Mr. Frank Benser on the development of the ordinance. He noted that the ordinance was brought before the Committee on May 13, 2003, at which time staff recommended one item for consistency, and at the June 2003 Board meeting, members voted to table action regarding the Town of Bowling Green's ordinance amendments in order to provide the Town time to finalize this item before the December deadline.

He reported that on October 2, 2003, the Town revised their ordinance to address the one recommendation for consistency. Mr. Adams explained the recommendation was for the Town to notify all residents with septic tanks about the pump out or inspection every five years.

Mr. Adams advised that staff recommends that the Town of Bowling Green be found consistent without conditions. Mr. Adams noted his appreciation to the Town for their efforts, and the Town was one of the first localities to originally adopt a revised ordinance before the December deadline.

Mr. Davis called for questions. There were none.

Mr. Davis called for a motion. On a motion by Mr. Sheffield, seconded by Mr. Duncanson, the Committee voted 4-0 for the following:

**The Northern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that the Town of Bowling Green's amended Phase I program be found consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations.**

Mr. Davis asked Mr. Adams to continue with the presentation for Stafford County.

Mr. Adams said that Stafford County had been one of the earlier adoptions, and had originally adopted their Phase I program on May 21, 1991, with amendments on October 15, 1991 and again on January 5, 1993. He said their Phase I program was consistent with two conditions on June 21, 1994. Subsequently, the program was found fully consistent on March 18, 2002. He said that staff had formerly been working with Mr. Steven Hubble and is currently working with Ms. Elizabeth Blackwell. He said the County continues to use their CBPA Maps for guidance even though they have recently begun requiring site-specific assessments. He noted that the County identified their Board of Zoning Appeals to hear formal exceptions. He thanked Stafford for adopting their revisions in a timely manner and noted staff's recommendation that they be found consistent without conditions.

Mr. Davis asked if Stafford County had any comments. Ms. Blackwell said that since she was new to the position she would defer to Mr. Michael Zuraf, who commented that he would be glad to answer any questions.

Mr. Davis called for questions. There were none.

Mr. Davis called for a motion. On a motion by Mr. Mendelsohn, seconded by Mr. Duncanson, the Committee voted 4-0 for the following.

**The Northern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that Stafford County's amended Phase I program be found consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations.**

Mr. Adams continued with staff's presentation for Caroline County noting that the County adopted their revised Phase I program on December 9, 2003 and staff had been working with Mr. Matt Stafford, Community Development Planning Director. He explained the County continues to use their CBPA maps as general maps and has recently been requiring site-specific assessments. He went on to say their Planning Commission was named as the County's body to hear all formal exceptions.

Mr. Adams explained that during the review of the County's ordinance, staff found two administrative changes that need to be made. He noted that the County had misquoted a few ordinance citations. He stated that he believes these minor errors are clerical in nature and can be changed without the County's Board of Supervisors readopting the ordinance. He explained that at this time, staff was recommending that Caroline County's amended Bay Act program be found consistent without conditions.

Mr. Davis asked Mr. Adams how these erroneous citations were going to be revised and whether the Board of Supervisors could take care of them administratively or whether they would have to be revised through a public hearing process?

Mr. Adams asked if Mr. Davis was referring to the suggestions that staff had made. After an affirmative response from Mr. Davis, Mr. Adams responded that he had spoken with Mr. Stafford, who was certain there would not have to be a public hearing.

Mr. Crafton explained that at the state level, these kinds of changes are considered technical changes and since they are clerical with no substantive impact, they can be made outside the normal public process.

Mr. Adams noted the only reason staff listed the suggested clerical revisions in the staff report is so that the County would know exactly which revisions they should be making.

Mr. Davis asked Mr. Adams if the County was in agreement with making these minor revisions. Mr. Adams responded affirmatively.

Mr. Davis asked if anyone was present from Caroline County. No one was present.

Mr. Davis called for a motion. Mr. Sheffield noted that he was requesting the County provide the Department with a copy of the revised ordinance once the revisions are made. Mr. Adams concurred with Mr. Sheffield's request for a copy of the corrected document.

On a motion by Mr. Sheffield, seconded by Mr. Mendelsohn, the Committee voted 4-0 for the following.

**The Northern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that Caroline County's amended Phase I program be found consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations. Mr. Sheffield requested that the County provide the Department with a copy of the revised ordinance once the revisions are made.**

Mr. Davis thanked Mr. Adams for his presentation and recognized Ms. Beth Baldwin for staff's presentation for Richmond County.

Ms. Baldwin reported that Richmond County adopted its original Phase I program on September 20, 1990 and was found consistent by the Board on January 25, 1991. She said that for its revised program beginning in August 2002, staff provided initial comments on changes necessary for the County's existing Bay Act Ordinance. She said staff sent additional comments in July 2003 and provided a final review in September 2003. She noted the revised Ordinance was presented to Richmond County's Planning Commission on September 8 and October 6, and adopted by the Board of Supervisors on November 13, 2003.

Ms. Baldwin went on to explain that Richmond County incorporated all the required revisions to its Phase I program, and as part of the revision process, the County changed its Chesapeake Bay Preservation Ordinance from stand alone to an overlay district. She said that when the County first adopted its Bay Act ordinance, it did not have zoning. However, in the 1990s the County was required to adopt a zoning ordinance and now the County believes an overlay district is a more appropriate vehicle for implementing its local Bay Act program.

Ms. Baldwin noted that under the exceptions process, the County has designated its Board of Zoning Appeals as the local body responsible for considering all formal exception requests, and its land use administrator for processing others. She added that the same formal findings are required regardless of whether the exception requests are processed formally or handled administratively.

Ms. Baldwin complimented the County for revising its Ordinance in such a manner that no conditions for consistency with the Regulations were required or identified. She also said it is anticipated that Richmond County will be one of the few localities that will not have to revise its Ordinance and undergo the time consuming task of re-adoption.

Ms. Baldwin closed her comments stating that it was staff's recommendation that Richmond County's Phase I program be found consistent with the Regulations.

Mr. Davis asked if there were any questions. There were none.

Mr. Sheffield requested that the County provide the Department with a copy of the revised ordinance once the revisions were made.

On a motion by Mr. Sheffield, seconded by Mr. Mendelsohn, the Committee voted 3-0 with Mr. Duncanson abstaining for the following:

**The Northern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that Richmond County's amended Phase I program be found consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations.**

Ms. Baldwin acknowledged Mr. Sheffield's motion request and agreed to follow up with the County once they make the revisions.

Mr. Davis asked Ms. Baldwin about the reference to local gas lines in Richmond County's ordinance. Ms. Baldwin responded that it was probably a typo that should have been caught, but she did not know why it had been written in that manner. Mr. Mendelsohn stated that there are no local gas lines; they are all natural gas lines. Mr. Duncanson added there are no natural or local gas lines in Richmond County.

Ms. Baldwin requested that the presentation of Lancaster County's staff report be deferred until Mr. Jack Larson had arrived. The Committee agreed.

Ms. Baldwin continued with the staff report for the Town of Kilmarnock, noting the Town adopted their original Phase I program October 15, 1990 and was found consistent by the Board on April 27, 1994. Regarding their revised program, Ms. Baldwin noted after receiving two markups from the Department and meeting with staff to review proposed changes, as well as hold a Planning Commission meeting, the Town Council of Kilmarnock officially adopted its revised Bay Act Ordinance on March 3, 2003.

Ms. Baldwin said the Town's overlay district is similar to the model ordinance with a notable exception: the overlay district has designated an administrative committee composed of Planning Commission members to assist the Town Manager in performing site plan reviews, including the determination of site specific boundaries of Resource Protection Areas. She also said the administrative committee, if it so desired, may waive this responsibility and defer its authority to the Town Manager. She said the reviewing official, either the committee or the Town Manager will then sign the site plans. She also explained that, when administering its requests for exceptions, the Town has elected to process all requests formally and has designated its administrative committee to review such requests and forward their findings to the Town's Planning Commission, which ultimately makes the final decision.

Ms. Baldwin advised that in reviewing the adopted Ordinance staff identified five conditions for consistency with the Regulations and that these conditions are relatively self explanatory. She commented that the first four include adding the criteria for redevelopment, adding definitions of substantial alterations and public roads, adding the phrase "mitigating the

effects of,” and including an additional finding when considering exception requests. She said the last condition is to ensure that a site-specific determination is conducted either in accordance with the plan of development process or water quality impact assessment.

Ms. Baldwin noted that the Town of Kilmarnock was the first local government in the Northern Neck region to amend its Bay Act Ordinance to be consistent with the Regulations. She also noted that while there are several items for clarification, the Town did admirable work in revising its ordinance and addressing most items for consistency, despite adopting the revisions as a separate action not incorporated into the entire ordinance.

Ms. Baldwin closed her comments saying that staff recommends that Kilmarnock’s Chesapeake Bay Preservation Overlay District be found consistent with the Regulations provided that the Town undertakes and completes the five recommendations by December 31, 2004.

Mr. Davis asked if there were any questions.

Mr. Davis asked Ms. Baldwin if the date of December 31, 2004 was acceptable to the Town. Ms. Baldwin responded that it was as far as she knew, though she had not actually spoken with the Town Manager, but that they obviously received the documents with the recommended date and are aware of it.

Ms. Baldwin went on to say the Town adopted components so when they combined the components, some typos were made as well as some other minor errors that need to be corrected.

Mr. Mendelsohn asked Ms. Baldwin if the Town understood that. She responded that she didn’t know for sure. Ms. Baldwin also responded that staff had asked that before they reviewed these components, they should be incorporated into the ordinance and that is what she reviewed- the whole document. Ms. Baldwin pointed out that the information that had been adopted was not in agreement with the structure or the format of the ordinance. She said they understood that but would review it very carefully to make sure all the inconsistencies and typos are addressed.

Mr. Davis called for further comments. There were none.

Mr. Davis called for a motion. On a motion by Mr. Duncanson, seconded by Mr. Mendelsohn, the Committee voted 4-0 for the following.

**The Northern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that the Town of Kilmarnock’s amended Phase I program be found consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations subject to the condition that the Town undertake and complete the five recommendations contained in the staff report no later than December 31, 2004.**

Ms. Baldwin continued with staff’s report for the Town of Colonial Beach, noting that Mr. Brian Hooten had planned to attend the meeting but was unavoidably detained. She went on

to explain the Town of Colonial Beach adopted their Phase I program November 8, 1990, and was found consistent by the Board July 24, 1991.

Ms. Baldwin explained after the Regulations were revised, staff sent an initial markup of proposed revisions to the Town in August 2002 and then a more complete markup in April 2003. She said the Town's Planning Commission reviewed the proposed ordinance changes in a public meeting and on December 4, 2003, the Town Council adopted its revised Bay Act Overlay District.

Ms. Baldwin explained that when the Town of Colonial Beach was revising its Ordinance to be consistent with the Regulations, the Town had to address the question of percent of impervious cover for the undeveloped land it had annexed from Westmoreland County in 1994. She said the Town elected to apply the watershed wide average of 16% to annexed property and also to any property that may be annexed or obtained in the future. She said for this reason, the Ordinance includes both a 36% impervious cover, which was the original average land cover for the Town of Colonial Beach when the Act was passed, and a 16% impervious cover for any land acquired during the 1994 annexation and for any land they may acquire in the future.

Ms. Baldwin noted in regard to the exception process, Colonial Beach has designated its Planning Commission as the local body to review and decide upon requests. She went on to note that while there were several items suggested for clarification, staff identified only one item for consistency: a definition of substantial alteration must be added. She said this deficiency should not prohibit the Town from proper implementation of its Bay Act program. She said staff recommended that the Town of Colonial Beach's Chesapeake Bay Preservation Overlay District be found consistent with the Regulations, provided they undertake and complete the one recommendation by December 31, 2006.

Mr. Davis called for further comments.

Mr. Mendelsohn asked why staff is giving Colonial Beach until 2006 to complete this one recommendation, when most other localities must address their conditions for consistency in 2004.

Ms. Baldwin responded that staff would be doing a compliance evaluation of the Town's program during 2005, and other issues may be identified that could require revisions to their ordinance. She stated that rather than having them potentially go through the adoption process twice, staff recommends waiting until the compliance evaluation is completed.

Mr. Duncanson asked whether all landowners or others looking to develop were aware that the annexed land had been assigned a 16% average land cover, whereas the original Town limits has a 36% average land cover.

Ms. Baldwin responded that she was not sure about that. She said she knew the Town intended to use the annexed land as planned unit of development and they have several projects in line that are aware of the 16% standard.

Mr. Davis asked whether the 36% was developed from a watershed analysis prior to 1994, and if it was approved by the state.

Ms. Baldwin responded that it was approved by the Department. Ms. Smith responded that several localities when they originally adopted their Bay Act programs in the early 1990's, had wanted to use their own percent impervious cover based on town or citywide watershed boundaries, and they submitted information to the agency's engineering department which reviewed it and approved it based on the combination of zoning and existing land use information that was provided. Ms. Smith also said that when these localities had their initial Phase I approval, the average land cover was approved at that time.

Mr. Sheffield asked what problems it would cause, if the Committee voted to make the date December 31, 2005. Ms. Smith responded that staff was trying to provide the localities some flexibility with these minor revisions and allow them to be completed during a timeframe when other potential revisions to their ordinances might be identified, since this would save the locality some money. She said staff had given other localities the same opportunity to do these revisions in conjunction with other adjustments during their compliance evaluation reviews.

Mr. Sheffield asked Mr. Crafton how he felt about the date. Mr. Crafton responded that he did not have a problem with the date staff had proposed; however, if the Committee wanted to move the date forward, he could agree to moving the date up six months. He said that without knowing exactly when the compliance evaluation would be completed, it would be difficult to say which date would be better.

Mr. Davis pointed out that in August 2004, the Regulations would be reviewed so there are a number of overlapping functions.

Mr. Crafton said that in this particular case, a longer time frame was not going to be a problem.

Mr. Davis called for further comments. There were none.

Mr. Davis called for the vote. On a motion by Mr. Duncanson, seconded by Mr. Mendelsohn, the Committee voted 4-0 for the following.

**The Northern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that the Town of Colonial Beach's amended Phase I program be found consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations subject to the condition that the Town undertake and complete the recommendation contained in the staff report no later than December 31, 2006.**

Mr. Davis thanked Ms. Baldwin for her reports and recognized Ms. Heather Mackey for the staff report for the Town of Dumfries.

Ms. Mackey said the Town of Dumfries originally adopted its Phase I program in November 1991 and the Board found it consistent in January 2002. Staff reviewed the Town's

ordinance and provided comments consistent with the revised Regulations in January 2003 and again in October 2003.

Ms. Mackey went on to say the Town adopted a revised ordinance on January 6, 2004 that addressed all of the required changes, including revisions to the definitions, Resource Protection Area designation language, site-specific RPA delineation requirements, and the requirement for a formal exception process for all RPA exception requests.

Ms. Mackey closed her comments noting the Town of Dumfries Board of Zoning Appeals will review and hear all exception requests, and staff recommended that the local program amendments adopted by the Town of Dumfries on January 6, 2004 be found consistent with the requirements of the Act and the Regulations.

Mr. Davis asked if anyone was present from the Town of Dumfries. Ms. Mackey responded that no one was present and the local program contact had resigned the position.

Mr. Davis called for further comments. There were none.

Mr. Davis called for the vote. On a motion by Mr. Duncanson, seconded by Mr. Mendelsohn, the Committee voted 4-0 for the following.

**The Northern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that the Town of Dumfries' amended Phase I program be found consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations.**

Ms. Mackey continued with staff's report for the Town of Vienna, noting the Town of Vienna originally adopted its revised Phase I program in February 2003 and the Board found it provisionally consistent with three conditions in June 2003.

Ms. Mackey went on to say the Town had a deadline of December 31, 2003 to meet the three conditions which were (1) to adopt a revised CBPA map to include an RPA designation along additional portions of Piney Branch that were found to be perennial; (2) to amend new RPA definition language and (3) to amend the exceptions process language to be consistent with the revised Regulations. Other than these three conditions, all of the required changes, including revisions to the other definitions, Resource Protection Area designation language, site-specific RPA delineation requirements, and the requirement for a formal exception process for all RPA exception requests, were made in February.

Ms. Mackey closed her comments by saying the Town of Vienna Board of Zoning Appeals will review and hear all exception requests, and staff has worked very closely with Town staff throughout the revision process and has reviewed the draft ordinance and map on numerous occasions. On December 15, 2003 the Town adopted ordinance and map revisions that met the conditions for consistency. Finally, staff recommended that the local program amendments adopted by the Town of Vienna on December 15, 2003 be found consistent with the requirements of the Act and Regulations.

Mr. Davis noted that the Town is amending their CBPA map to expand the RPA along Piney Branch, which was done in response to a perennality delineation done by Fairfax County, and he asked if the Town agreed with the delineation. Ms. Mackey responded the Town did agree with the delineation.

Mr. Davis called for the vote. On a motion by Mr. Sheffield, seconded by Mr. Mendelsohn, the Committee voted 4-0 for the following.

**The Northern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that the Town of Vienna's amended Phase I program be found consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations.**

Ms. Mackey continued with staff's report for Fairfax County, saying the County originally adopted its Phase I program in March 1993 and the Board found it consistent in August of that year. She said staff provided comments on changes necessary to the County's Bay Act Program for compliance in October 2002 and the County Board of Supervisors adopted amendments to the program on July 7, 2003, but delayed implementation of the revised ordinance until November 17, 2003 in order to coincide with adoption of an amended Chesapeake Bay Preservation Areas map. She went on to say the new map locates Resource Protection Areas as defined under the amended ordinance and is based on detailed field studies performed by the Department of Public Works and Environmental Services to identify perennial streams throughout the County. She explained the county's revised program addresses all of the required changes, including revisions to definitions, RPA designation language, countywide site-specific RPA delineation, and the requirement for a formal exception process for all exception requests.

Ms. Mackey closed her comments by noting that the County Exception Review Committee reviews and approves all exception requests, and she recommended the local program amendments adopted by the County of Fairfax on July 7, 2003 and effective on November 17, 2003 be found consistent with the requirements of the Act and Regulations.

Ms. Mackey introduced John Friedman, Noel Kaplan and Fred Selden from Fairfax County to answer any questions.

Mr. Davis asked Mr. Friedman if they had any comments. Mr. Friedman responded that since full consistency had been recommended, he would waive comment.

Mr. Davis called for further comments. Mr. Sheffield inquired about the staff recommendation for a deadline for consistency to 2004. Ms. Mackey responded the reference was made to the County's Phase II program deadline extension request, which was a later agenda item.

Mr. Davis suggested that Ms. Mackey give the staff's report for Fairfax County's Phase II program next, rather than wait until later in the meeting.

Mr. Davis called for the vote. On a motion by Mr. Duncanson, seconded by Mr. Sheffield, the Committee voted 4-0 for the following.

**The Northern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that Fairfax County's amended Phase I program be found consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations.**

Ms. Mackey continued with staff's report regarding Fairfax County's Phase II program compliance deadline extension request.

Ms. Mackey reported that Fairfax County adopted its Phase II, Comprehensive Plan component, in August 1990 and made periodic amendments through November 2000. She noted the Board reviewed the County's Phase II program in March 2001. At that time, the Board found it to be consistent with four conditions, and established a compliance deadline of December 31, 2003 for the County to address the four consistency recommendations. She said the consistency items included incorporation of an updated CBPA map, policy recommendations in the areas of shoreline erosion, waterfront access and redevelopment, and inclusion of a discussion concerning the appropriate approach to water quality improvement into the Comprehensive Plan. She said some progress has been made toward the four consistency items; for example, on November 17, 2003, the County Board of Supervisors adopted a revised Chesapeake Bay Preservation Areas Map which can easily be incorporated into the County's Comprehensive Plan mapping as required by the first condition. In addition, much of the data collection has been completed for the remaining three items; however mapping and policy analysis tasks remain.

Ms. Mackey explained that since 2001 the County has suffered a reduction of local staff resources and an increase in responsibilities and expectations. She said many of the projects that have diverted the County's attention from the four consistency items in the past two years support water quality planning goals throughout the County, and the experience gained will assist in meeting the requested deadline extension.

Ms. Mackey closed her comments saying that staff recommended approval of Fairfax County's request for an extension of the compliance deadline from December 31, 2003 to December 31, 2004 for the purpose of meeting the four original recommendations for consistency.

Mr. Davis called for further comments.

Mr. Mendelsohn added that one of the projects the staff had been working on was the mapping of all streams within the County. He noted that all available staff resources had been put into this project. He said, even so, they had difficulty meeting the deadline.

Mr. Davis noted staff's concluding remarks in the staff report, that this be an absolute, final deadline, and stated that these are very strong words.

Mr. Mendelsohn asked Mr. Kaplan how he felt about those words. Mr. Kaplan responded that he was disappointed that the County had to ask for the extension. He explained the County has been involved in a number of studies and other projects besides the stream mapping study, including Stormwater management studies. He said even though the County was large with a small staff, they intended to get this element done. He expected a draft to be completed in the spring, public comment in the fall, and that the December 31, 2004 deadline would leave sufficient time for everyone to review and adopt the recommended revisions. He thanked the members for considering approval of their extension.

Mr. Mendelsohn suggested that the words absolute, final deadline be removed.

Ms. Smith responded that these words are pro-forma and were initiated earlier by the Board to prevent multiple deadline extensions for localities.

Mr. Mendelsohn asked Mr. Kaplan if the language were to stay in, would that help to get the work completed on time. Mr. Kaplan responded that he did not believe it would matter one way or the other. Mr. Selden expressed his belief that the wording would be helpful because the Fairfax County Board of Supervisors had fewer than usual meetings scheduled for the fall of 2004, and that the language would help staff get the attention of the Board when it came time for public hearings.

Mr. Davis called for further comments. There were none.

Mr. Davis called for the vote. On a motion by Mr. Sheffield, seconded by Mr. Duncanson, the Committee voted 4-0 for the following.

**The Northern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that Fairfax County's request for a deadline extension from December 31, 2003 to December 31, 2004 for the purpose of adopting a comprehensive plan consistent with the Act and Regulations be approved.**

Ms. Mackey continued with staff's report for the City of Alexandria, explaining the City of Alexandria originally adopted its Phase I program in December 1992 and the Board found it consistent in August 1993. Alexandria began the process of revising its program to meet the requirements of the revised Regulations soon after they were adopted in December 2001. The original locality deadline of March 2003 for Phase I compliance was extended to December 31, 2003 in part for the purpose of developing guidance on several issues relating to the revised Regulations, including how to determine water bodies with perennial flow and appropriate stream mapping protocols. The City of Alexandria was concerned about this issue in particular and felt that several critical policy decisions hinged on the mapping of water bodies with perennial flow and corresponding changes in the extent of the Resource Protection Area.

Ms. Mackey went on to explain the City hired a consultant in August 2003 to map its entire stream network in order to identify all water bodies with perennial flow. She noted that a draft map was completed in November 2003 and that a public review process to consider the

draft Chesapeake Bay Preservation Areas map and its policy implications was begun in September 2003 and included presentations to the City's Environmental Policy Commission, the Planning Commission and an internal staff review committee. Comments were incorporated into a finalized draft ordinance and CBPA map, which will be reviewed a second time by the Environmental Policy Commission later this month and by the industrial community in March. A Planning Commission work session has tentatively been scheduled for March 2, 2004, and City staff anticipates adoption of the revised ordinance and map by the end of May.

Ms. Mackey closed her comments recommending approval of the City of Alexandria's request for an extension of the compliance deadline from December 31, 2003 to June 30, 2004 for the purpose of completing a stream classification project in order to identify all water bodies with perennial flow within the jurisdiction.

Mr. Davis asked if anyone was present from the City of Alexandria. Ms. Mackey introduced Mr. David Bulova and Mr. William Skrabak. Mr. Bulova commented that he was there to answer questions.

Mr. Mendelsohn asked if the City was comfortable with the deadline. Mr. Skrabak commented that he was not as comfortable with the date as the County of Fairfax was with their deadline. He said the City had a very environmentally proactive city council and one of the reasons they needed to do the mapping was the consideration of "other lands". The council may want to go above and beyond staff's recommendation and protect intermittent streams as other lands. He said they wanted to have the answers to the question of the location of intermittent streams in the City. He said in any case it would be because they want to protect other lands, and issues such as underground water and streams.

Mr. Skrabak commented that the City has a very nice foundation for going into the review process because they began development of the ordinance language last year and had discussed the language with CBLAD staff several times. He said he felt very comfortable they were on solid ground with the revised ordinance. He said the mapping tool will be used to make policy decisions concerning the appropriate review body for RPA exceptions, how and whether the City will protect other lands, and also would help to better articulate to the citizenry what kind of impacts these policies will have on their property, particularly on older lots and homes. He said the policy decision-making process is all that is left to occur.

Mr. Davis expressed his concern again regarding the June 30, 2004 deadline. Mr. Skrabak responded that he believed the deadline could be met.

Mr. Davis called for further comments. There were none.

Mr. Davis called for the vote. On a motion by Mr. Mendelsohn, seconded by Mr. Duncanson, the Committee voted 4-0 for the following.

**The Northern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that the City of Alexandria's request for a deadline extension from**

**December 31, 2003 to June 30, 2004 for the purpose of adopting a Phase I program consistent with the Act and Regulations be approved.**

Mr. Davis thanked Ms. Mackey for staff's reports and recognized Ms. Nancy Miller for staff's report for Essex County.

Ms. Miller commented that the three localities about which she was reporting, were very cooperative in providing multiple drafts of their ordinances and had incorporated written comments from the Department that showed the benefits of their extra efforts in the final results. She explained it is the Department's goal to help the localities eliminate the need for any later revisions if they can possibly do so, as well as eliminate the costs associated with the public hearings required for additional revisions. She also said the localities had been very patient and conscientious in incorporating written comments from staff.

Ms. Miller introduced Mr. Gary Allen, County Administrator, who was present and would be available to answer questions. She said on September 16, 2003, Essex County adopted a revised CBPA Overlay District, and all required revisions were addressed including: revised definitions; terms used in RPA designation; limits on land disturbance, impervious cover and vegetation removal; site-specific RPA delineation requirements, and conditions required for permitting buffer modifications as listed in the Regulations.

Ms. Miller also explained that the County retained requirements for septic system pump-out, designation of 100 percent reserve drainfield sites, and soil and water conservation assessments on agricultural lands, and included the requirement that when agriculture or silviculture uses within the buffer cease and are converted to other uses, the full 100 foot buffer must be reestablished.

Ms. Miller noted that the County's CBPA Overlay District provides for an administrative review process to expand legal principal nonconforming structures, and a formal review process to address requests for exceptions to the RPA requirements. The formal process requires public notice, two public hearings before the Board of Zoning Appeals, and the findings required by the Regulations. Exceptions to the general performance criteria are reviewed through an administrative process.

Ms. Miller closed her comments, noting it is staff's recommendation that the County's amended Phase I program be found consistent with the Act and Regulations.

Mr. Davis called for further comments. There were none.

Mr. Davis called for the vote. On a motion by Mr. Duncanson, seconded by Mr. Sheffield, the Committee voted 4-0 for the following.

**The Northern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that Essex County's amended Phase I program be found consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations.**

Ms. Miller asked the Committee if they would like to hear Essex County's Phase II Condition Review. The Committee agreed.

Ms. Miller opened her comments advising that on September 16, 2003, Essex County adopted amendments to its Comprehensive Plan to address a Board recommendation that had a December 31, 2003 deadline.

She said the revisions incorporated additional shoreline and streambank erosion information, analysis and strategies, based on the VIMS Shoreline Situation Report completed in June of 2001.

Ms. Miller noted that with the addition of this material, it is staff's opinion that the Board recommendation has been fully addressed, and staff recommends that the amended Comprehensive Plan be found consistent with the Act and Regulations.

Mr. Davis asked Mr. Allen if he had any comments. Mr. Allen responded he would be glad to answer any questions.

Mr. Davis called for further comments. There were none.

Mr. Davis called for the vote. On a motion by Mr. Duncanson, seconded by Mr. Sheffield, the Committee voted 4-0 for the following.

**The Northern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that Essex County's amended Phase II program be found consistent with §10.1-2109 of the Act and § 9VAC10-20-60.3 of the Regulations.**

Ms. Miller continued with staff's presentation for Middlesex County, introducing Mr. Matt Higgins, Director of Planning & Zoning, who would be available to answer any questions.

Ms. Miller advised that Middlesex County adopted revisions to its CBPA Overlay District on December 17, 2002 and November 18, 2003, and the County's revised CBPA Overlay District addressed all required changes, including the standard revisions, the same as those noted earlier in the Essex County report.

She advised that other noteworthy revisions included the following items: the County added roads and driveways and the required conditions to the list of uses permitted in the RPA, retained the requirements regarding development of lots recorded prior to October 1, 1989, and added provisions to address the development of lots recorded between October 1, 1989 and March 1, 2002. She commented that as the Regulations were revised, those became referred to as "tweeners" and Board members may remember them by their nickname.

She went on to say the conditions required for permitting buffer modifications are included, and the County added requirements that specify a two-to-one replacement ratio for all trees removed without the approval of the Zoning Administrator. Ms. Miller commented that

this requirement, above and beyond the minimum provisions in the Regulations, will help the County meet the requirement to maintain vegetated buffers.

She said the County retained requirements for septic system pump-out and designation of 100 percent reserve drainfield sites, and adopted amendments that allow for the option of installing an alternating drainfield system as an alternative to the pump-out requirement. She explained the County will provide annual notices to property owners who install such systems regarding the requirement to switch drainfields each year, and will require that owners of alternating drainfield systems notify the local Health Department that annual switching has been done.

She said the expansion of legal principal nonconforming structures is subject to an administrative review and approval process, and a formal review process with public notice and a public hearing before the BZA is required to address RPA exception requests. Also, exceptions to the general performance criteria may be granted through an administrative process.

She said there was one suggestion regarding the Definitions and although all references to “tributary streams” have been correctly removed and replaced with the term “water bodies with perennial flow” throughout the CBPA Overlay District, the definition of “Tributary Stream” was not deleted from the Definitions Article in the County’s Zoning Ordinance. She said since the term is not used in the CBPA Overlay District, the Department has only included the removal of this item as a suggestion for clarification.

Ms. Miller closed her comments, saying the County adopted revisions in a timely manner and made a concerted effort to be thorough. She concluded by stating that its amended Phase I program adequately addresses all required revisions, and staff recommended that the local program amendments adopted by Middlesex County be found consistent with the Act and the Regulations.

Mr. Davis asked if the issue about the tributary streams was a housekeeping measure. Ms. Miller responded affirmatively and that the term, as it is included only in the definitions, does not have a function anymore.

Mr. Higgins responded that it was actually a clerical error and in the future would be removed.

Mr. Sheffield commented that he understood there was a significant problem with the sewage treatment plant at Christ Church and asked if he was wrong regarding the falsifying of records.

Mr. Higgins responded that he was correct, but the issue happened before his tenure began.

Mr. Sheffield asked Ms. Miller to follow up on this matter and report to him.

Mr. Davis called for the vote. On a motion by Mr. Sheffield, seconded by Mr. Mendelsohn, the Committee voted 4-0 for the following.

**The Northern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that Middlesex County's amended Phase I program be found consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations.**

Ms. Miller continued with the staff report for Gloucester County, introducing Mr. Scott Rae, Environmental Programs Administrator, and advising that on December 2, 2003 Gloucester County adopted revisions to its CBP Ordinance to address requirements in the Regulations.

She explained the County employs a "stand-alone" CBP Ordinance, that is part of the County's Code but is separate from the County's zoning ordinance. She advised that, with one exception, revisions to address the changes required by the Regulations have been made, and they include the standard items.

She said significant changes include: requirements for site plans and subdivision plats to identify RPA boundaries and to include notes stating that buffer vegetation must be maintained in its natural state, and advising that land disturbance in the buffer is not permitted without County review and approval.

She also said the County retained requirements for septic system pump-out and designation of 100 percent reserve drainfield sites, and adopted amendments to allow septic system owners to obtain inspections certifying that their systems do not need pump-out, as an alternative to the pump-out requirement.

She went on to say that, regarding the Administrative Review and Formal Exception Review Processes, there is one recommendation for consistency. Gloucester County's CBP Ordinance includes provisions for administrative reviews, which are conducted by an Administrative Board, and a formal hearing process for exception requests within the RPA, which are conducted by the County's Chesapeake Bay Preservation and Erosion Commission. The formal hearing process includes public notice requirements, a public hearing, and the findings required by the Regulations. She explained that the Administrative review process should include the same findings as the formal review process. She stated that the final version of the CBP Ordinance adopted by the County omitted the phrase that made this requirement explicit. As a result, language specifying that the findings must be made as part of the administrative process must be restored, for consistency with the Regulations.

Ms. Miller noted that the County has provided the Department with a revised administrative review form that includes the findings in a checklist on the face of the form, to ensure that all items on the checklist are addressed.

She said that although there is one recommendation for consistency, it is staff's opinion that the County will be applying its CBP Ordinance in a manner consistent with the Regulations. She said the condition can be addressed with little additional investment of County staff time and

can be deferred until such time as other ordinance revisions are being made, subject to a recommended deadline of March 31, 2006. She explained that the reason for setting this deadline was to allow the County flexibility in timing the adoption of the revision, thereby saving the County time and money, since they are, in fact, instituting a practice now that will ensure that those findings are made.

Ms. Miller said staff recommends that the local program amendments adopted by Gloucester County be found consistent with the Act and the Regulations subject to this condition.

Mr. Davis asked if the checklist to which she referred was the one used by the Commission or Board that reviews the exception process or is it also used by the zoning administrator?

Ms. Miller responded the checklist was used by staff as they develop background for the Board's review of an exception or waiver request. She said that it is a part of their paper work that is in the file and is also used by the Board when they review the applications.

Mr. Davis asked if this information became a part of the public record.

Mr. Mendelsohn asked if the omission of the requirement from the actual ordinance would create legal issues even if the findings are included in the checklist on the form.

Ms. Miller responded that she thought that, although technically it is not embedded in the ordinance, because it is in their form and a part of their policy, they are treating everyone uniformly and making sure they are doing this with each one, and that the form ensures making the findings is a part of their standard practice. She said she did not think it would cause a problem and deferred to Ms. Smith.

Ms. Smith commented that the reason for the recommendation was that, while having it on a form was good, since it is not in their ordinance, the County could change personnel or the form and neither the Department nor the Board would be aware that such a change had occurred. She noted that the recommendation would force the County to follow through.

Mr. Mendelsohn responded that if a landowner decided he doesn't want to follow the requirements on the form, then he can point to the fact that the requirements are not in the ordinance, and not be required to comply.

Ms. Little responded that localities were implementing those findings before they were in the Regulations because it was in the Local Assistance Manual as guidance. She said it has never come up as a problem even though most localities were doing it before. Also, it is typical zoning waiver language, the same as required for any waiver for a setback.

Mr. Mendelsohn responded that he understood the process but questioned whether this condition is as minor as some of the others presented. He went on to say that even though it may never come up, this one is significant. Ms. Miller responded that this isn't a checklist that you

would give to an applicant and ask if he has met the conditions, rather, it is a set of conditions that a reviewing body would use, but it is not embedded in the enabling code section. She offered as an example, the way that a BZA might establish its review processes and procedures, establishing similar findings in similar forms. She said this body works the same way, these are findings they make as a standard practice and, just like for the BZA, these are not embedded in the code.

Mr. Mendelsohn commented that if he were the applicant he wouldn't care how they did it; he would care whether he disagreed and if it is not in the ordinance, then he has legal recourse to question it. He said the only reason you would turn it down is if that aspect has not been dealt with.

Mr. Davis commented he believed it appropriate that, if in this case the zoning administrator and the state code says "may", it would be appropriate to send it to the Commission, if the applicant desired to have it reviewed.

Mr. Rae commented that if there was an appeal to a decision by the Administrative Board, then it goes before the Commission and the findings are in the specific language for the Commission's review. Mr. Davis inquired whether the Board would have an opportunity to send any that they did not feel comfortable with to the Commission. Mr. Rae responded that that was correct.

Ms. Miller commented that in their process, things like this automatically go before their administrative board.

Mr. Mendelsohn commented that giving them until 2006 was too long.

Mr. Rae suggested that if the County's Board was required to look at this one aspect, then they might decide to take a closer look at the whole ordinance; he said that he is comfortable with 2006.

Mr. Duncanson commented that he saw this ordinance as a little different in that it stood alone and was not part of the zoning code.

Mr. Davis asked Mr. Mendelsohn if he was okay with the answers. Mr. Mendelsohn responded that he was still concerned about it. Mr. Duncanson suggested that the date of compliance be changed to December 31, 2005.

Mr. Crafton suggested that the nature of the change could be represented to the public as a technical change and, as discussed, as it goes through reviews since it is already referenced by the BZA, then one could say it was overlooked further down and the public should not be alarmed.

Mr. Davis called for further comments. There were none.

Mr. Davis called for the vote. On a motion by Mr. Duncanson, seconded by Mr. Sheffield, the Committee voted 4-0 for the following.

**The Northern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that Gloucester County's amended Phase I program be found consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations subject to the condition that the County undertake and complete the recommendation contained in the staff report no later than December 31, 2005.**

Mr. Davis called for staff's presentation for Lancaster County.

Ms. Baldwin introduced Mr. Jack Larson, Planning Director for Lancaster County. Ms. Baldwin went on to note that staff recommends that Lancaster County's revised Bay Act Ordinance be found inconsistent with the Regulations. She explained this recommendation is based on the number and seriousness of conditions for consistency identified in the report.

Ms. Baldwin said Lancaster County adopted its Bay Act Ordinance on September 20, 1990 and a revised program on March 28, 1991. She said the program was found consistent by the Board on May 9, 1991. She went on to say for its revised program, Lancaster County's Planning Commission met on August 21, 2003 to discuss the proposed revisions. She said that on October 30, 2003, the Board of Supervisors adopted its revised Bay Act Ordinance in a public hearing.

Ms. Baldwin commented that there has been considerable communication between Lancaster County and staff regarding the proposed revisions to the County's Bay Act Ordinance. She first summarized those exchanges before she began discussing the details of the proposed finding of inconsistent.

Ms. Baldwin said three letters were sent and two meetings were held with Lancaster County regarding the proposed revisions to its Bay Act Ordinance. The first letter was sent in May 2003, and included suggested revisions and a markup of the County's current ordinance. In August, staff met with Mr. Larson to discuss what Lancaster County was proposing to present at its Planning Commission meeting on August 21. After this meeting, a second letter was sent to Mr. Larson as a follow-up, and a request was made to include the letter as part of the legal record for the Planning Commission meeting. Ms. Baldwin explained that the letter outlined those sections of the County's ordinance that did not appear to be consistent with the revised Regulations. In September, after the Planning Commission recommended the Ordinance as proposed, without incorporating the changes recommended by CBLAD staff, a third letter was sent to Mr. Larson. She said this letter outlined the eight conditions for consistency that would be included in the staff report should the County proceed to adopt its proposed Ordinance and also noted that other conditions might be identified after a more formal review. She said in October staff met with Mr. Larson and Mr. Simmons, then the Chair of Lancaster's Board of Supervisors. Mr. Pennell, the County's Administrator, was supposed to attend the meeting but was unavoidably detained.

Ms. Baldwin explained that at this meeting the more substantial consistency items were discussed and, although there was a lively exchange of concerns and issues, ultimately the County and the Department reached a stalemate. She said the County proceeded to adopt its own set of proposed revisions.

She noted that with respect to encroachments on lots recorded after September 1, 1990, Lancaster County does appear to implement its Bay Act Ordinance in a manner that staff finds consistent with the Regulations. She said the more substantial consistency issues appear to be in four areas: (1) development criteria and resource protection areas, (2) the septic pump-out requirement, (3) exemptions, and (4) the County's exception process. She said it is the nature of these conditions that primarily prompted the Department to recommend that Lancaster's program be found inconsistent. With respect to Development Criteria and Resource Protection Areas, she stated that Lancaster County did not include criteria for redevelopment as outlined in the Regulations. Besides compliance with storm water and erosion control, these criteria included no increase in the area of impervious cover and no further encroachment into the RPA.

Ms. Baldwin went on to say Lancaster County also did not include the requirement that buffers must be reestablished when agriculture or silvicultural land uses cease and the lands are proposed to be converted to other uses.

Ms. Baldwin stated Lancaster County chose to retain its buffer policies for lots recorded prior to September 1<sup>st</sup>, 1990, and these buffer policies are not consistent with the Regulations. She noted they were described in detail in the staff report.

She said with respect to the second category, Lancaster County did not include the septic tank pump-out requirement. Though staff noted several times that the County's ordinance did not include this requirement, the County chose not to incorporate this recommendation.

She then mentioned that with regard to the third category, exemptions, that Lancaster County did not include the sediment and control requirement for exempt activities such as boardwalks, when the area of land disturbance exceeds 2,500 square feet. She also noted that when exempting public roads, Lancaster County chose to use the phrase "all activities of the Virginia Department of Transportation" in place of public roads. However, not all of these activities of VDOT are exempt. She said, for example, construction of storm water facilities is not exempt from the Regulations.

She said the fourth category concerned Administrative waivers for non-conforming structures and exceptions process. She said for waivers, the County did not include the required findings for permitting an expansion of a non-conforming structure nor did they make clear that this administrative process only applies to the expanding of a principal structure and not an accessory one. She said, finally, the County chose to retain its previous exception policy that is not consistent with the revised Regulations. She explained that the County's ordinance only requires the formal process when considering a request that would impact the seaward fifty feet and not the entire one hundred foot buffer. In addition, the County did not include the required findings when considering such requests.

Ms. Baldwin stated that because of these conditions, staff cannot recommend that the County's revised Bay Act program be found consistent with the Regulations or even consistent with conditions. She said staff believed that no other recourse exists at this time but to recommend that the program be found inconsistent. She closed her comments noting that the Department has received three letters from Lancaster County residents who are concerned the County's Bay Act Ordinance is not consistent with the Bay Act and its Regulations. She said these residents are primarily concerned with the County's buffer policies that allow encroachments onto lots that appear to have sufficient area outside of the buffer in order to build a principal structure and necessary utilities.

Mr. Davis thanked Ms. Baldwin for her report and asked if anyone had questions of Ms. Baldwin before hearing from Mr. Larson. Mr. Davis asked to include in this record that he also received at least three letters from citizens who are questioning the Bay Act and how it is implemented in the County.

Ms. Baldwin stated she wanted to note that all the dealings with Lancaster County have been very professional, and Mr. Larson had been extremely courteous in his behavior, but as she said earlier they had reached a stalemate.

Mr. Davis asked again for questions for Ms. Baldwin.

Mr. Sheffield asked Mr. Crafton what happens next if the Committee finds the County's Bay Act ordinance inconsistent.

Mr. Crafton responded that the recommendation would go before the full Board at the March meeting, and the next step would be for the Board to direct the Department to write a letter to the County and give them a deadline to correct the deficiency. He noted that a finding of inconsistent is rare and that the Board had only received this recommendation a few times.

Ms. Smith added that the Board at their March meeting would give the County a final deadline, which has typically been around three months to make the required changes for consistency .

Mr. Crafton said if they do not meet that deadline then the Department would turn the matter over to the Attorney General's Office for appropriate enforcement action which is generally filing a law suit against the County in circuit court and asking the judge to order them to become compliant.

Mr. Sheffield asked Mr. Crafton if the Board had found other local programs inconsistent.

Mr. Crafton responded that a suit was filed many years ago against Charles City County, and the County decided to settle. Later the Board threatened to file a suit against Prince George County but did not have to because the County made the changes required for consistency. He said the Department had also recommended that the Board take enforcement action against a few of the Hampton Roads localities, but that subsequent changes to these programs were made so

the finding of inconsistency was never adopted by the Board. Mr. Crafton said the Department has never gone to trial, but has shown the resolve to do so. He advised that he had spoken with Secretary Murphy about the issue, and he said to do what the Department legally needs to do.

Mr. Davis followed up with the comment that it is extremely rare when the Board has to take that position, but that is one of the reasons the Board is in place. He noted the Board's interests in hearing Mr. Larson's position regarding the issues that had been discussed, and said the Board would like to try to work the issues out.

Mr. Larson said there had been a meeting with the Chair of the Board of Supervisors to address the concerns of staff. He said Ms. Baldwin accurately stated that a stalemate had been reached after much discussion and the County trying to make the point that their Ordinance as drafted does comply with the spirit and intent of the Act. He went on to say that Lancaster County has consistently denied any encroachment into the 100 foot protected buffer for lots created after the Bay Act because those lots, in terms of area and water frontage were of sufficient size such that there is no basis for encroachment. He explained there are a large number of lots in Lancaster County that were created in the 70s that are small, poorly configured, and do not lend themselves to the types of houses that individuals are trying to build today and that Lancaster had to devise a policy to accommodate development on these properties.

Mr. Larson noted that he was attempting to articulate the comments that Mr. Simmons had made in the meeting to the Board. Mr. Larson advised that one of Mr. Simmons major concerns was the number of cases the Board of Supervisors would have to hear on a formal exception basis. He cited that just for accessory structures alone, such as swimming pools the number of exception requests would be far greater than Mr. Simmons felt the Board could accommodate, considering their current workload.

Mr. Larson asked Ms. Baldwin if she agreed that Mr. Simmons had made that point. Ms. Baldwin responded that was correct.

Mr. Larson went on to say that the very earliest discussions with Ms. Smith, Ms. Little and Ms. Baldwin had centered on the fact that the County wanted to have an Ordinance they believed they could honestly implement. He went on to say that the County could write an ordinance that would meet staff's requirements, but then the issue would be whether it could be implemented given the resources they have and the decisions that the County would have to make

Mr. Larson said one case in point, as the County has discussed with staff, is defining a reasonable building area and minimum necessary for encroachment and to implement such conditions in a consistent manner. He cited an example that the County has subdivisions where you may have two lots that are similar. One homeowner would like to put in a 2,000 square foot footprint. He said there would be no problem achieving the necessary setbacks for this homeowner even though that person may wish to have a better view or access to the water. However, another homeowner on the next lot, with the same size lot and configuration, wants to put in a 8,000 or 9,000 square foot footprint. He stated homes of this size were not unreasonable in Lancaster County anymore for waterfront property, and this is in large measure because of the

value of the property itself. He said that in this respect, the County would have to allow this person to encroach to whatever was necessary to accommodate the footprint. He said the County would then be facing a law suit trying to explain why they did not allow the individual with the 2,000 footprint to encroach whereas they allowed the individual with the 9,000 to encroach. He asked exactly what is a reasonable building area? Is it 3,000 square feet or 4,000; frankly the County did not know the answer. He said from this point of view it would be impossible to implement and could have opened the County to considerable litigation. He said the County does not try to make the reasonable building area determination and that this is the key to the issues that Ms. Baldwin outlined with respect to the encroachment policies in the Ordinance.

Mr. Larson stated that the County is trying to be honest about the issues. He said they could put the language in the Ordinance and simply make a determination in each case that the individual could go into the 100-foot buffer because the building site is such that you cannot put a house anywhere else. He said this position creates a situation where CBLAD staff will then be questioning the County's judgment as to why the County allowed the encroachment. He went on to say that the County requires mitigation before they allow individuals to encroach. He said site plans are reviewed and all other aspects are adhered to.

Mr. Larson said that with respect to the septic pump-out, as Ms. Baldwin stated this issue is not being enforced. He said to be honest, the reason it was taken out was because it was not being enforced. He said at the public hearing the question was asked if it was being enforced, and his answer was that the County did not enforce it, and the decision was made by the Board of Supervisors to take it out.

Mr. Larson explained that he has tried to provide to the Committee the thinking of the Board of Supervisors when they considered removing the pump-out requirement. He said they understood exactly what they were considering when they agreed to take it out.

Mr. Davis asked Mr. Larson about the issue of Virginia Department of Transportation versus public roads. Mr. Larson commented that he believed this item could be changed because it was relatively small, and he would be happy to carry that back to the Board of Supervisors. He went on to say to say that regarding agricultural and silviculture activities converting to other uses, certainly agricultural is required to restore the buffer and with respect to forestry areas that would be more difficult to implement because it was his understanding that when these types of activities occur, others are responsible for restoring the buffer anyway. He said that these two activities are not as difficult to overcome as others that staff indicated.

Mr. Davis asked if the discussion centered around pre-Bay Act lots.

Ms. Baldwin said yes as well as exception requests and pump-out requirements.

Ms. Smith asked Mr. Larson to identify which of the ten recommendations for consistency he believed the County would be willing to make.

Mr. Larson responded that he wished to make it clear he could not speak for the Board of Supervisors. He said he believed the one dealing with agriculture and silviculture activities was

one that could be carried back and should not have a problem being revised. He said the recommendation regarding VDOT and public roads he would take back and the Board would probably not take issue with that recommended change.

Ms. Baldwin asked if he believed he could get the erosion and sediment control issue revised according to the Department's recommendation. Mr. Larson said he would take that one back to the Board and that issue too should not present a problem

Mr. Davis requested that the Committee start at the beginning of the recommendations and go through them to discern where there are potential problems.

Before proceeding with the list, Mr. Duncanson asked Mr. Larson whether the two new board members that took their seats in January are fully up-to-date on the ramifications stated in this report. Mr. Larson responded that he could not say for certain one way or the other. He said that he had not had any opportunity to talk to them.

Mr. Duncanson went on to ask what is different about Lancaster County from Northumberland and the other localities in the Northern Neck, because they too have plenty of pre-Act subdivisions.

Mr. Larson said that he could not answer the question other than to point out that the Board of Supervisors can only speak for themselves and what the County is trying to do is put forth an ordinance that they believe they can implement.

Mr. Davis advised that there is a State Regulation that the Board has been empowered to enforce, and the Committee is not to decide the validity of the Regulation; it is the law. Mr. Larson responded that he understood that.

Mr. Davis asked to review each of the ten recommendations. Mr. Larson agreed.

Ms. Baldwin began reading the first recommendation: "Amend Section I to provide for definition of "public road" and "substantial alteration" that is consistent with the definitions set forth in § 9 VAC 10-20-40 of the Regulations."

Mr. Davis responded that earlier Mr. Larson suggested that the Board of Supervisors would approve this one.

Ms. Baldwin read the second recommendation: " Amend Section 3-3 (c) of Lancaster's Bay Act ordinance to include criteria consistent with § 9 VAC 10-20-130.1.c of the Regulations."

Mr. Davis commented that portion of the Regulation has not changed since the original Regulation went into effect.

Ms. Smith responded that there had been a clarification in the revised Regulations regarding redevelopment outside IDAs that limited such development to the existing footprint

and existing location. She continued by noting that the revised language in the Regulations had always been the Department's policy, as noted in the old information bulletin #4. She stated that the revisions to the Regulations were in part to make it clear that both development and redevelopment were permitted in IDAs, but that redevelopment activities outside of IDA were to meet the Department's original policy.

Mr. Larson had already agreed the third recommendation regarding agricultural and silvicultural activities could probably be accepted.

Ms. Baldwin went on to Page 6 of the report and read recommendation 4. "Amend Section 3-4(d) (4) to be consistent with § 9 VAC 10-20-130.5.a (3) of the Regulations." She said the previous language in the Regulations referred to silvicultural thinning and that the revised Regulations state that such thinning be based on sound horticultural practices. She said this change was made to correct different interpretations of what silvicultural thinning is versus thinning of trees based on sound horticultural practices.

Mr. Larson responded that he would carry the first three recommendations contained on Page 5 of the report back to the Board of Supervisors and believed they could work through these recommended changes for consistency.

Ms. Baldwin went on to read the next recommendation for consistency: "Amend §3-4(e) to be consistent with § 9 VAC 10-20-130.4.a of the Regulations dealing with encroachments into the landward 50 feet of the buffer only when the application of the buffer area would result in the loss of a buildable area for lots recorded prior to October 1, 1989."

Mr. Davis commented that he had heard earlier that Lancaster County was currently doing this and had been.

Ms. Baldwin responded they were not, and Ms. Smith commented that the County has had a policy whereby if you have a lot recorded prior to 1989, the County would approve a 50-foot encroachment. Ms. Smith continued by noting that the County has consistently required formal exceptions for proposed encroachments into the seaward 50 feet, but that the County has a policy that approves any encroachment into the landward 50 feet if the lot was recorded before the County's Bay Act program, regardless of the size of the proposed footprint or type of proposed structure. She concluded that this is one of the sticking points.

Ms. Baldwin asked Mr. Larson if she was correct in saying that accessory structures are also permitted in the landward 50 feet of the RPA buffer area. Mr. Larson said she was correct.

Ms. Baldwin went on to read on the recommendation on Page 7 that recommends amending Section 4-5 to be consistent with § 9 VAC 10-20-120.7 of the Regulations pertaining to septic systems.

Ms. Smith asked Mr. Larson whether there was any assistance that could be provided to the County so they would implement this recommendation.

Mr. Larson responded that the County has over 11,000 septic sites in Lancaster County and that he was aware of alternatives to the five-year pump-out requirement. He asserted that if the County were to take and create any type of pump-out program, whatever it may be, it would be impossible to monitor. He said that Ms. Baldwin suggested creating a database and that could be achieved, and she also mentioned how much money CBLAD has already spent in having the Northern Neck Planning District to create such a database, but that the database is only one part of the problem. He said the other part of the problem is getting notification out to people, following up when property owners do not respond and taking whatever action is necessary. He continued by noting that yet another issue, which is not just with Lancaster but throughout the Northern Neck area, is there is no place within a reasonable distance from Lancaster County that will accept the waste that comes from this pump-out. He said it was getting more difficult to find sites in Gloucester County to accept the septage and that Gloucester County is where the such septage has been taken. He noted that there is no desire on the part of the County to set up a treatment lagoon or system within the County.

Mr. Larson commented again that the County is trying to be honest about what they are and have been doing, and they are not going to put something in the ordinance that they believe they cannot implement.

Mr. Davis asked staff if the Planning District Commission had been approached about Mr. Larson's issues.

Mr. Duncanson commented that the Northern Neck Planning District Commission is creating a septic system database and has completed Richmond County, but he did not know the schedule for Lancaster.

Ms. Smith commented that the Department has given Lancaster and the PDC money to set up septic pump-out programs, and it appears that part of the problem is that the County does not have the money to implement the program. Mr. Larson agreed and advised that the information that is available is dated because it is constantly changing, which requires updates.

Ms. Smith asked if Mr. Larson believed the Board of Supervisors would be willing to put the inspection and plastic filter option in the ordinance, so that at least all new systems would be required to have a plastic filter. She continued by noting that if this was a requirement, then the homeowner would have the system pumped only when it was necessary. She commented that by making this change, it would at least get the County part of the way towards compliance with this requirement. She also noted that she had heard the same complaints regarding limited lagoons that would accept septage from other Northern Neck localities for many years and yet they have the proper language and are making efforts to implement it.

Mr. Larson agreed to take the idea of the plastic filter back to the Board of Supervisors. Ms. Smith asked that if money could be obtained, would the County agree to send out notifications to at least have septic systems inspected, which would also be a step towards compliance. She commented that staff wanted to work with the County as much as possible to resolve the issues.

Mr. Duncanson commented that the inspection aspect would assist with the implementation problem because so many homeowners are summer only residents and actual pump-outs probably are not required.

Mr. Larson agreed that the alternatives to pump-out provided in the revisions would be of benefit to the County since a very large number of homeowners who use septic are not permanent residents. He mentioned that the County works closely with the Health Department in identifying problem sites and is trying to increase the number of homes on public sewage systems since that is the long-term answer.

Ms. Baldwin commented that they had already discussed the exemption recommendations and putting the words “public roads” in place of VDOT activities, and adding erosion and sediment control requirements.

She pointed out Section 9 VAC 10-20-150.A and 9 VAC 10-20-150.C.4 of the Regulations which concerns the expansion of existing nonconforming structure and required findings, and noted that Lancaster did not include those findings such as the minimum necessary, and that the hardship is not self-created. She said that the expansions could still be done administratively but there are a set of conditions that must be applied.

Ms. Baldwin asked about the final recommendation, which calls for amending Section 10-2 and 10-3 of Lancaster’s ordinance to be consistent with Section 9 VAC 10-20-150.C of the Regulations, which addresses the exceptions process. She said Lancaster’s procedure does not include the required findings.

Mr. Larson commented that the Board of Supervisors had focused on the requests for swimming pools because it is the main one. He said it is the one structure that homeowners want most and try to build as close to the water as possible. He also said that, in many cases, there were no other places to site the pool, especially on the older lots that are small with a limited amount of buildable area. He said that once a primary and reserve drain field are sited, the setback for a well is applied, and a road is constructed, little other area outside of the buffer is available. He pointed out to the Committee that he didn’t want them to believe that exception requests are being handed out freely, and mitigation is always required.. He said that for accessory structures such as sheds or garages there are many occasions where he requested that the structures be moved because there was sufficient area outside of the 100 foot buffer to build.

Mr. Larson advised that his former Board chair, Mr. Simmons, wanted to limit the number of exception requests that would come before the Board and believed that most other supervisors held the same opinion.

Mr. Mendelsohn asked if it were possible to have another local committee hear the formal exceptions. Mr. Larson responded that is possible. Mr. Mendelsohn went on to say that a number of localities have designated other committees for review such requests.

Mr. Larson said that certainly that was a possibility and noted that Board meetings typically last until 1:00 p.m. Mr. Mendelsohn said that is exactly why he is not suggesting that they hear the requests, but rather consider some of the alternatives other localities have taken.

Mr. Davis asked if it was a stand-alone ordinance. Mr. Larson responded that it was. Mr. Davis then suggested that it would be appropriate to consider finding another committee.

Mr. Crafton asked Mr. Larson if the pre-1989 lots that are being discussed are typically in neighborhoods or are they isolated. Mr. Larson responded they are considered neighborhoods. Mr. Crafton suggested that they may be interested in the IDA guidance that is being proposed for these types of neighborhoods and it sounded as though these might qualify.

Mr. Crafton went on to say that the issue before the Committee was such that their decision could set a precedent for other localities. He said the Attorney General's Office has always urged the Department to assist localities in achieving compliance and will continue to do so.

Mr. Davis called for a motion. Mr. Sheffield put forth the following motion.

**The Northern Area Review Committee recommends that the Board find that Lancaster County's revised Bay Act Ordinance to be inconsistent with the Act and Regulations as identified in the staff report.**

Mr. Duncanson commented that he believed Mr. Larson raised some good points and Ms. Baldwin's approach has also been very good, but he also believed a recommendation for inconsistency was necessary and should give them from this date to March 22, 2004. He said he believed it is the Committee's responsibility to set the goals and the time limit to reach these goals, and furthermore that a task force be sent to help them.

Mr. Mendelsohn asked Mr. Sheffield if he would consider an amendment to his motion that staff be directed to work with Lancaster County between now and March 22, 2004 and show that there have been best efforts made before the Board's March meeting.

Mr. Sheffield agreed to accept Mr. Mendelsohn's suggestion. Mr. Duncanson agreed to make the recommendation a part of the motion.

Mr. Davis said that he needed either a vote on the amendment or have Mr. Sheffield withdraw the motion and have the full motion including Mr. Mendelsohn's suggestion.

Mr. Sheffield withdrew his motion and then moved for the following:

**The Northern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that Lancaster County's amended Phase I program be found inconsistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations. The Northern Area Review Committee further recommends that the**

**County undertake and complete the ten recommendations for consistency no later than June 30, 2004. The Northern Area Review Committee further directs staff to continue to work with Lancaster County with regard to the ten recommendations for consistency prior to the March 22, 2004 Board meeting.**

Mr. Duncanson seconded.

Mr. Davis suggested to Mr. Larson to have all Board of Supervisor members available at the March 22, 2004 Board meeting so that the full Board could hear the County's Board of Supervisor's concerns.

Mr. Mendelsohn said the message the Committee is trying to send is that these requests are not optional and the Committee cannot treat Lancaster differently from all other Tidewater localities.

Mr. Larson requested a copy of the letters that have been received by staff from residents of Lancaster County. Mr. Crafton agreed to make the copies available.

Mr. Cowling asked if consideration had been given to all property setbacks.

Mr. Larson responded that consideration had been given.

Mr. Davis advised that there was a motion on the floor and called for the vote.

The vote was 4-0.

Mr. Davis called for Other Business

Ms. Little commented that 22 localities had not adopted, however, most had scheduled adoption dates. Mr. Davis asked that these localities be put on the March agenda so that the Board could take a position.

Mr. Sheffield asked for a copy of the letter that Ms. Little sends to the localities regarding their adoption efforts.

Mr. Mendelsohn suggested that the list should be annotated before it is sent to all the localities.

Mr. Crafton noted that James City County is in the process of mapping their streams using the North Carolina protocol, and has advised CBLAD that they would like to present to the Board a modified version of the protocol. He said that after testing the protocol, they have found that they need to change that target number of points.

Mr. Crafton explained that the guidance says that this information can be submitted to the Department for review and, if satisfied, the Department could approve it. He said the guidance does not say it has to go to the Board. The Act allows for Mr. Crafton to act on the Board's

behalf when they are not in session, and the idea that was raised, in order to get an answer back quickly without having to wait 3 months, would be to allow Scott as the Director to approve the staff report and report later to the Board.

Mr. Davis commented that he preferred that the information be given to the Policy Committee for review before it is provided to the Board. All members agreed.

He said regarding the IDA guidance that the Policy Committee has been working on, another meeting has not been scheduled. In fact, he spoke with several members who felt that the staff proposal was so well received that probably there was no need to have another meeting; the Policy Committee could develop this into guidance language and have it circulated to the Board, to fast track this in order to get it before them at the March Board meeting, where it may be adopted as guidance. The information would be circulated to the stakeholders with a short turnaround for further comments and then it would be mailed to all Board members. He also advised that he had spoken with Secretary Murphy and Mr. Roger Chaffe, the Departments legal council regarding the language of the guidance.

Mr. Crafton reminded the members that Mr. Roger Chaffe would be providing training at the March 22, 2004 Board meeting, and the first training module for Perennial Stream Determinations would be offered on April 19, 2004 to all localities, and space was limited. He noted that an RFP was out to have the training filmed and offered to localities later

Mr. Sheffield advised the Committee that the Embry dam in Fredericksburg was going to be blown up on Monday, February 23, 2004 in order to allow fish passage for shad and other spawning species.

Mr. Davis called for a motion to adjourn the meeting. Mr. Duncanson motioned. There being no further business, the meeting was adjourned at 12:15 p.m.