

Commission Meetings : Corresp March 1985

MSA - 51832 - 7

CHESAPEAKE BAY CRITICAL AREA COMMISSION

AGENDA

Conference Room
Maryland Department of Agriculture Building
50 Harry S. Truman Parkway
Annapolis, Maryland

March 6, 1985

4:00 p.m.

1. Approval of the Minutes of
February 6, 1985 Solomon Liss, Chairman
2. Panel Presentation by Local
Governments covering various
approaches taken at the local
level to address the intent
of the Critical Area Act
3. Old Business Solomon Liss, Chairman
4. New Business Solomon Liss, Chairman
5. Meeting Date for
Next Meeting
6. Adjourn

MINUTES - CHESAPEAKE BAY CRITICAL AREA COMMISSION

Minutes of Public Meeting Held February 6, 1985

The Chesapeake Bay Critical Area Commission held its fifth meeting on February 6, 1985 in the Department of Natural Resources Building in Annapolis, Maryland. The meeting was called to order by Chairman Solomon Liss at 4:00 p.m.. The following commissioners were in attendance: Bill Eichbaum, Torrey Brown, Barbara O'Neill, Connie Lieder, Parris Glendening, J. Frank Raley, Jr., Robert R. Price, Shepard Krech, F. Beck Kurdle, Wayne Cawley, Jr., Albert Zahniser, Lloyd Tyler, Ardath Cade, Samuel Turner, Mary Walkup, James Gutman, John Luthey. Bill Livingston substituted for Bill Bostian, and Doug Wilson substituted for Ann Coates.

The minutes from the last meeting were approved as corrected by a memo dated February 5th from Lee Epstein to Judge Solomon Liss. The correction basically related to an error in Paragraph 3 of the second page of the minutes from January 2, in which Tom Deming was replying to a question from Mr. Price. Mr. Price asked whether there were any procedures for amendments to the criteria once they have been approved by the Legislature, i.e., once Legislature has affirmed them by joint resolution. Tom Deming's reply was slightly different than the current version of the minutes. The actual reply was that wholesale amendment of the enacted criteria would not be appropriate after the Legislature has affirmed them by Joint Resolution. Nevertheless, technical amendments to the criteria, which would not substantially change their direction or approach, would probably be permitted. These would have to go through the normal Administrative procedure through which State regulations are changed. It was also noted that Charlie Davis, staff member for the Commission, should be referred to as a former planner as opposed to an "ex-planner".

Constance Lieder, Secretary of the Department of State Planning, presented the interim findings procedures which are being used during the interim period to evaluate applications under the Critical Area Act at the local and State level. Commission members were handed a three-page memorandum which described the process. Ms. Lieder said that the Critical Area Law strengthened the Department of State Planners intervention powers. She said that an inter-departmental group had been established so that the Department of Health and Mental Hygiene, the Department of Natural Resources all had an opportunity to review land use by the local governments. The notification procedures for local government have been reviewed and strengthened in light of the Critical Area Law and each county, Secretary Lieder said, has formally agreed to comply with those notification procedures. The process for review is that the State agencies provide the Department of State Planning with comments which can then be used by the Department of State Planning as it responds to local government. To date, the log for Critical Area projects has included 83 actions. Of those, eight are for rezoning

requests, 18 are special exceptions, 24 relate to sub-divisions, four to site plans, 25 for variances and four miscellaneous.

A review of the requests indicates that there is no dramatic rush by developers for rezoning, and that the local governments are taking the critical areas law seriously and responsibly. The Department of State Planning is currently revising its handbook which will help local governments in making their findings. Ms. Lieder pointed out that the goal of the Department of State Planning is to provide assistance to local governments and not to challenge or to be obstructionist. Compromises, suggestions and modifications are often worked out in advance of any formal hearings or actions. To date, she said that she has not seen any findings that need to be challenged. Bill Livingston asked if the Department of State Planning would help local governments defend their positions and Ms. Lieder responded affirmatively. She said that the biggest case that the Department of State Planning has been involved in lately involves the Back River Neck area in Baltimore County. She pointed out that there is often not a legal basis for the Department of State Planning action and that her agency can only use the same legal grounds which anyone else can with regard to going to court. She stated that the Department's intervention power is used guardedly because after one instance of intervention, the General Assembly tried to take the power away from the Department of State Planning. Chairman Judge Liss, who realized that the Commission would eventually have intervention responsibility, said that the Commission should proceed with taking whatever action it thinks is correct and should not concern itself with legislative changes which might alter the Commission's responsibilities.

Mary Walkup raised the issue of local governments using "consultants" to aid planners in making decisions, and that it is difficult to determine the expertise of so-called consultants. Chairman Liss responded that it is up to developers to provide the local governments with information and that they must document the "expertise" used during the normal process of public hearings. Bill Eichbaum suggested that if there is time at some point, it would be helpful to see how the Department of State Planning comments and makes suggestions on a major project. Becky Kurdle pointed out that since the initiation of the Critical Area Law, state agency personnel have been making far more site visits and have been more helpful to local government. Mr. Raley asked Secretary Lieder about a project in St. Mary's County and she said that she would look into it.

Chairman Liss then introduced the substitutes for absent commissioners. Representing Ann Coates was Mr. Doug Miller, and representing Bill Bostian was Mr. Bill Livingston.

Ms. Lieder then reviewed the Patuxent River Policy Plan which was furnished to all members. In addition, she exhibited a slide show detailing some of the highlights of the plan, including amounts of non-point pollution loading rates for the major land uses, population growth by county, and discussion of the Primary Management Area which served as the forerunner for the 1,000 foot critical area. The Patuxent River Watershed Act, which was enacted in 1980, led to the preparation of the Patuxent River Policy Plan which was completed

in July, 1983. The plan, in turn, led to the development of the Patuxent River Commission which was charged to oversee development and implementation. The emphasis on the plan is for control of non-point pollution and land management. The plan is the result of a cooperative effort by state agencies and the seven local governments, and consists of ten basic policy recommendations which were adopted by the 1984 General Assembly.

Mr. Raley asked how the Commission related the goals which were established to the criteria in the plan. Ms. Lieder responded that the Critical Area Commission will have a choice of two types of criteria--performance or prescriptive criteria. On the Patuxent, there was extensive focus on detail and all of the stream valleys were examined. In order to accomplish any of the policies, willing compliance and cooperation by the local governments is essential. Wayne Cawley said that the agricultural community is using the watershed approach and Ms. Lieder responded that the agricultural cost-share program is one of their most effective tools.

After the slide show presentation, Mr. Price said that it appeared that there were a number of laws already on the books and was the issue one of lack of enforcement or the need to have additional laws? Bill Eichbaum found that some local governments are not able to carry out some of the requirements of the laws, such as the enforcement of sediment control and are therefore, delegating it to the State. He said that this is one of the purposes of the Commission--to recognize the maximum sensitivity of the critical area, and to identify the areas where there has not been adequate attention. He said that often performance standards are just not followed and even the minimum ones are not being met. Mr. Raley asked whether cumulative impacts are considered. Bill Eichbaum responded that the Health Department calculated that no matter how perfectly any one particular project (i.e. Patuxent Farms) was carried out, there would still be a contribution of nitrogen and phosphorous. Ms. Lieder suggested that one proposal for consideration might be that if: one acre is developed then two acres of forest or wetland be required as mitigation.

Old Business - None

New Buisness - Chairman Liss announced that the Cooperative Extension Service from Wicomico County had invited the Commission to tour the County. Jim Gutman responded that if the Commission tours one area, it should be put in perspective by visiting other areas. Parris Glendening then invited the Commission to visit Prince George's County. The Commission approved acceptance of the invitations.

Sarah Taylor made several announcements--travel forms were available, transcripts of the five hearings were available. As additional letters with suggestions of criteria are received, they will be submitted to the sub-committees. She has ordered binders for Commission members. The first resource subcommittee met today. She handed out the information on the 800 number for reporting sediment

pollution in Maryland to the Commission members. A listing of municipalities affected by the critical area was handed out. The Community of Willards was removed because it should not have been in the critical area.

Lee Epstein asked that Commission members respond to his request for ordinances.

Chairman Liss said that the next meeting would be held on March 6th, his 70th birthday, at the Department of Agriculture, and that everyone could expect a surprise.

There being no further business, the meeting was adjourned.

These minutes were prepared by Helene Tenner.

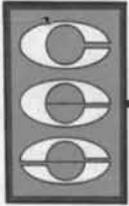
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STATE OF MARYLAND
CRITICAL AREA COMMISSION
DEPARTMENT OF NATURAL RESOURCES
TAWES STATE OFFICE BUILDING
ANNAPOLIS, 21401
(301) 269-2418

TO: *Critical Area Commission*
SUBJECT: *Agricultural Field Trip.*

FROM: *Scrub Taylor*
DATE: *3-12-85*

Attached is the itinerary for the trip. We will need to take our cars over to the site where we will meet a bus. The site is Rogers Fruit Stand. Please call me to let me know if you do plan to attend by Close of Business (4:30 pm) on the 20th of March. Thank you. 269-2418 or 2419



UNIVERSITY OF MARYLAND-COLLEGE PARK — UNIVERSITY OF MARYLAND-EASTERN SHORE
COOPERATIVE EXTENSION SERVICE

WICOMICO COUNTY OFFICE
P.O. Box 1836
Salisbury, MD 21801
Phone: 749-6141

March 11, 1985

Dr. Sarah Taylor
Executive Director
Chesapeake Bay Critical Areas Commission
Tawes State Office Building
Annapolis, Maryland 21401

Dear Dr. Taylor:

The Wicomico County Farm Bureau and Soil Conservation District members are pleased that the critical areas commission members have accepted an invitation to tour the county. We feel it's an excellent opportunity for the members to observe some best management practices that are already in existence in the 1,000 foot strip designated as the critical areas. Also, many other acceptable farm practices will be observed throughout the day.

We will meet at Royer's Fruit Stand between 9:30 - 10:00 a.m. on Friday, March 22. The tour will start exactly at 10:00 a.m. and conclude around 3:30 p.m., with lunch being served at the Rockwalkin Community Hall. Royer's Fruit Stand is located on Route 50, about 3 miles east of Vienna, Maryland. You will see a large triple decker chicken house next to the stand, located on the right side of the road as you are coming east.

Please contact me at 749-6141 if the directions are not specific enough or you need additional information.

Sincerely,

Wayne V. Shaff
Extension Agent
Agricultural Science

WVS/1b



TORREY C. BROWN, M.D.
SECRETARY

STATE OF MARYLAND
DEPARTMENT OF NATURAL RESOURCES
CHESAPEAKE BAY CRITICAL AREAS COMMISSION
TAWES STATE OFFICE BUILDING
ANNAPOLIS, MARYLAND 21401

JUDGE SOLOMON LISS
CHAIRMAN

March 3, 1985

CHESAPEAKE BAY CRITICAL AREA COMMISSION

Public Meeting

The Chesapeake Bay Critical Area Commission will meet Wednesday, April 3, 1985 at 4:00 p.m. in the first floor conference room of the Maryland Department of Agriculture Building, 50 Harry S. Truman Parkway, Annapolis, Maryland.

The meeting is open to the public. For further information, contact Dr. Sarah J. Taylor at 269-2418.

Please print in the March 29, 1984 issue of the Maryland Register.

Telephone: _____
TTY for Deaf - Annapolis - 269-2609 D.C. Metro - 565-0450

RARE AND ENDANGERED
SPECIES

Draft 3 - 3/6/85

DEFINITION

Rare and endangered species are those taxa of plants and animals which are classified by the Maryland Natural Heritage Program (MNHP) as of national, regional or State significance (i.e., categories A1, A2, A3, B1, B2 or B3).

POLICY

It is the policy of the Critical Areas Commission to:

- 1) Provide protection for rare and endangered species and their habitats which occur in the Critical Area.

CRITERIA

- 1) No development activities shall be permitted in the Critical Area within the "Buffer Area" for rare and endangered species which is designated by the MNHP.
- 2) Local jurisdictions in cooperation with the MNHP and other appropriate agencies, shall develop policies and programs for avoiding adverse impacts to rare and endangered species and their habitats.
- 3) Local policies and programs shall be submitted for approval to the CAC.

ANADROMOUS FISH
PROPAGATION WATERS

4 - 3/20/85
Draft 3 - 3/6/85

DEFINITION

Anadromous fish propagation waters are those streams tributary to the Chesapeake Bay where spawning of anadromous species of fish (e.g., rockfish, yellow perch, white perch^{shed}, and river herring) occurs or has occurred. Such streams are designated by the Maryland Tidewater Administration, Fisheries Division. For purposes of this section, "streams" refer to designated anadromous fish propagation waters within the Critical Area.

POLICIES

It is the policy of the CAC to:

- 1) Protect the instream and streambank habitat of anadromous fish propagation waters;
- 2) Develop and promote land use policies and practices in the watershed of spawning streams which will minimize the adverse impacts of development on such streams.
- 3) Provide for the unobstructed movement of spawning and larval forms of anadromous fish in streams.

CRITERIA

- 1) The construction or placement of dams or other structures that would interfere with or prevent the movement of spawning fish or larval forms in streams shall be prohibited. Where practical, the removal of existing barriers shall be effected.
- 2) The installation or introduction of concrete bottoms, riprap or other artificial surfaces onto natural streams^{beds} shall be prohibited
- 3) Channelization or other physical alterations which may change the course or circulation of a stream, shall be prohibited.

4) Construction, repair or maintenance activities associated with bridges or other stream crossings or with utilities, which involve disturbance within the 100 foot Buffer Zone or which occur instream, shall be prohibited between March 1~~5~~ and June 15.

5) Local jurisdictions shall develop policies and programs for avoiding the adverse impacts of development activities occurring on those watersheds within the Critical Area which drain into anadromous fish spawning streams. Such policies and programs shall be developed in cooperation with the Division of Fisheries, Maryland Tidewater Administration and other appropriate agencies, and submitted to the Critical Area Commission for approval. ^{as part of their overall Critical Area Program.}

6) Local jurisdictions are encouraged to adopt land use policies and programs in watersheds outside the Critical Area to minimize the impacts of development activities on anadromous fish spawning streams.



TORREY C. BROWN, M.D.
SECRETARY

STATE OF MARYLAND
DEPARTMENT OF NATURAL RESOURCES
CHESAPEAKE BAY CRITICAL AREAS COMMISSION
TAWES STATE OFFICE BUILDING
ANNAPOLIS, MARYLAND 21401

JUDGE SOLOMON LISS
CHAIRMAN

March 22, 1985

Dear Commission Member:

On April 3, 1985, the Commission will meet to begin discussion on portions of the draft criteria. At that meeting, and the several that follow, the criteria will be presented by the staff and the rationale will be provided for each criterion. Questions and discussion will follow. On April 3rd, we will be meeting in the Department of Agriculture Building, 50 Harry S. Truman Parkway, Annapolis, Maryland at 4:00 p.m. to begin this effort.

Please note on your calendar several other dates:

- April 17, 1985 - 4:00 p.m. - criteria meeting for the Commission, Dept. of Agriculture, 50 Harry S. Truman Pkwy., Annapolis
- May 1, 1985 - 10:00 a.m. - through the whole day. Criteria meeting for the Commission, Dept. of Agriculture, 50 Harry S. Truman Pkwy., Annapolis
- May 2, 1985 - 10:00 a.m. - through the whole day. Criteria meeting for the Commission, Dept. of Agriculture, 50 Harry S. Truman Pkwy., Annapolis

The May dates have been established so that agreement can be reached on the entire criteria package for publication in the June 7th Maryland Register. To meet that deadline, the proposed criteria will need to be submitted May 22nd, 1985. May 2nd through May 21st provides the staff with 12 working days to organize the criteria in regulation form.

Commission Member
Page Two

To begin the process, the following items are enclosed for your review for the April 3rd meeting:

- 1) Rare, Threatened and Endangered Species Criteria
- 2) Anadromous Fisheries Criteria
- 3) Forest Practices Criteria

I would call your attention to the fact that these are proposed criteria and have not been submitted to the Commission for their discussion and approval.

Enclosed is an option paper on "grandfathering" which must be dealt with as a criterion. The May session will be an appropriate time to address that issue.

An agenda and the minutes from the March 6th meeting for your approval are also enclosed.

Looking forward to our meeting on April 3rd.

Sincerely,


Solomon Liss,
Chairman

SL/jjd



TORREY C. BROWN, M.D.
SECRETARY

STATE OF MARYLAND
DEPARTMENT OF NATURAL RESOURCES
CHESAPEAKE BAY CRITICAL AREAS COMMISSION
TAWES STATE OFFICE BUILDING
ANNAPOLIS, MARYLAND 21401

JUDGE SOLOMON LISS
CHAIRMAN

February 27, 1985

Dear Commission Member:

The sixth meeting of the Chesapeake Bay Critical Area Commission will be on March 6, 1985 at 4:00 p.m. in the conference room of the Maryland Department of Agriculture Building, 50 Harry S. Truman Parkway, Annapolis, Maryland. The conference room is on the ground floor of the building and it is the same place where the Commission met in January.

Items enclosed with this letter are:

- 1) An agenda for the March meeting
- 2) The minutes of February 6, 1985 for your approval
- 3) A copy of The Severn River Plan which presents watershed planning policies that may be used for criteria development and
- 4) A copy of Maryland's Chesapeake Bay Program which provides a status of the Bay Initiatives, to date

I look forward to meeting with you.

Sincerely,

A handwritten signature in cursive script that reads "Solomon Liss".

Judge Solomon Liss
Chairman, Critical Areas
Commission

JL/jjd