

Commission Meetings & corresp.

Nov 1985

MSA-51832-15

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AGENDA

Chesapeake Bay Critical Area Commission
Maryland Department of Agriculture
50 Harry S. Truman Parkway
Annapolis, Maryland

November 6, 1985

4:00 p.m. - 6:00 p.m.

- 1. Approval of the Minutes of October 16, 1985 Solomon Liss, Chairman
- 2. Approval of and tentative voting of clarification of regulations Solomon Liss, Chairman
- Old Business Solomon Liss, Chairman
- New Business Solomon Liss, Chairman

1st Wednesday of each month

1) Accept the 1st recommendation of the Legislative Oversight Committee 1du/8 acres
3+ 14-

2) Agricultural conveyances to members of the family - nothing in here shall ~~undercut~~ ^{limit} the right of a farmer under the agricultural easement program to convey property to his family provided = 16# to 0

3) Improve Grandfathering - 16 in favor to 0 against.

4) Accept the concept & language to allow for a managed buffer with respect to the clearing of trees. 17 to 0 in favor.

Remaining changes: 16 to 0 in favor

workshop for the municipalities & counties

Kent C. & Q.A. Co.

AGENDA

Chesapeake Bay Critical Area Commission
Maryland Department of Agriculture
50 Harry S. Truman Parkway
Annapolis, Maryland

Commiss
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The Commission
Oversight and the
AELR Committee
work

November 6, 1985

Update on the
4:00 p.m. - 6:00 p.m.

- | | |
|---|------------------------|
| 1. Approval of the Minutes of October 16, 1985 | Solomon Liss, Chairman |
| 2. Approval of and tentative voting of clarification of regulations | Solomon Liss, Chairman |
| 3. Old Business | Solomon Liss, Chairman |
| 4. New Business | Solomon Liss, Chairman |

To begin to receive maps, grandfathering procedures, and approaches toward

"to the extent possible"

Permission for the staff to begin looking at them and if questions of policy arise to bring the Commission in on the deliberation.

2) Purpose of tentative vote.

Nov 12th AELR
Nov 13th morning
9:00 - 11:00
Wye Lodge.

2) Establish a set day (1st ~~day~~ Wednesday for each Commission meeting thereafter).

3) Ann Coates
May Walkup

Chesapeake Bay Critical Area Commission

Minutes of Meeting Held
October 16, 1985

The Chesapeake Bay Critical Area Commission met at the Department of Agriculture in Annapolis and the meeting was called to order by Chairman Solomon Liss with the following members in attendance:

Robert Lynch
James E. Gutman
J. Frank Raley, Jr.
Albert Zahniser
Robert Price, Jr.
William Bostian
Lynn Hoot for
Wayne Cawley
Constance Lieder
Ronald Hickernell

Parris Glendening
Florence Beck Kurdle
Harry T. Stine
Barbara O'Neill
Mary Roe Walkup
John Luthy, Jr.
Ardath Cade
Torrey C. Brown
William Eichbaum

The minutes from the August 26 meeting were approved with the following corrections: a sentence was deleted in the first paragraph and a motion which had been made by Mary Walkup with regard to the statement "permanent sludge handling shall be allowed except in the 100-foot Buffer" had been deleted. Dr. Taylor then reviewed the correspondence which had been received by the Commission since the September 27th publishing of the draft criteria in the Maryland Register. Chairman Liss indicated that it would be appropriate for comments to be received until October 29th, when the AELR Committee meets. Fourteen letters of support have been received. The Homebuilders have indicated a number of concerns, specifically regarding the issue of density and "grandfathering". Two individuals have written, concerned that their property values might be reduced. The Caroline County Commissioners have also expressed concern with regard to the "grandfathering".

A total of five thousand copies of the printed tabloid criteria have been distributed and another 1,000 copies have been ordered. Chairman Liss said that the primary problem seems to be a lot of misinformation with regard to the criteria or that there is a lack of understanding as to what they mean.

Commission staff have identified four issues that seem to need clarification for the Commission. They are: Economic Impacts, Grandfathering, Variances, and the Density issue. The staff then proceeded to provide information on each of these four issues. Mr. Marcus Pollock, Commission Planner, discussed the Economic Impact and stated that at its last meeting the Commissioners had requested that the study continue to determine the extent of the economic impact of local areas. The Commission

is considering developing a baseline study of the local jurisdictions, but Mr. Pollock indicated that it is not possible to project the extent of change which may occur. Chairman Liss pointed out that there is information available on the effects of density changes on tax rates and that both Anne Arundel County and Baltimore County have had experience with this issue. William Bostian asked whether the 50-foot Buffer in which no activity could occur, should be taxed at the same rate as usable land. Ardath Cade responded that the Commission should ask the Tax and Assessment Department to address this issue. In addition, Baltimore County has experience with its Agricultural Preservation Program and land value issues. Constance Lieder said that the Department of State Planning can identify sales costs of farms in conjunction with Agricultural Preservation requirements. All of this information will be gathered in order to provide additional information and answers to the Critical Area Legislative Oversight Committee at its meeting on October 22, 1985.

Lee Epstein reviewed a number of statements to clarify the meaning and interpretation of the "grandfathering" section. Already existing uses (i.e., houses, businesses, etc.) may continue as before. Any land on which development has progressed to the point of putting in footings or framings may continue to be developed right up to the adoption of the local program without "interference" by the Critical Area's density related criteria. Individual parcels of land that are not parts of subdivisions and that were recorded by December 1, 1985, may be developed. However, local governments must try to bring these lands into conformance with the various criteria, wherever possible, if the development is to occur after local program approval. If building permits are obtained for this land before approved local Critical Area Programs are in place and the land is in a "Resource Conservation Area" it may be developed, but the local government must count it against its 2.5% growth allocation permitted in the area allowed under the criteria. Legally recorded subdivided land which had received local final approval by June 1, 1984, may also be developed. However, local government must try to bring these lands into conformance with the criteria wherever possible, if the development is to occur after local program approval. For example, local government may encourage changes in lot layout, or may encourage lot consolidation to encourage this end. If building permits are obtained for this land before local programs are in place, and the land is in a "Resource Conservation Area", it may be developed, but it must be counted by the local government against the 2.5% growth allocation permitted in that area by the

criteria. Where land has been subdivided into recorded legally buildable lots, and has received final local approval between June 1, 1984, and December 1, 1985, development may proceed (subject to the local government's making of certain findings concerning water quality and habitat impacts currently required under the law). Even land subdivided into recorded legally buildable lots and receiving final approval after December 1, 1985, may proceed toward development, but it must either conform to the criteria or be counted by the local jurisdiction against the growth allocation noted above. Finally, it should be noted that "grandfathering" is meant to apply only to density and related requirements and the rest of the criteria would still apply (e.g., Buffer, habitat, and other requirements) to development in the Critical Area.

Chairman Liss indicated that the term "legally buildable lot" is not defined so that local jurisdictions can tailor their definition to what is appropriate for their area.

There was some discussion about whether parts A and B of the "grandfathering" section (.07) were consistent with parts C and D and Chairman Liss appointed a subcommittee consisting of Florence Kurdle, William Bostian, Robert Price, Albert Zahniser, Mary Walkup, Ronald Hickernell, and Parris Glendening to develop the clarifying language which can be reviewed by the Commission at its November meeting. It was agreed that there needed to be at least one paragraph of clarification.

Discussion on "variances" was lead by Lee Epstein. He clarified that the procedures which are described in the variance section should work just as standard local government variance procedures. The Commission will review any applications and final determinations on variances, but it is ultimately up to the local governments to determine variance approvals.

Charles Davis, staff member, presented key points regarding the density issue. He pointed out that there are no density limitations in the Intensely Developed Area. There is a practical density limit in the Limited Development Areas beyond which they would be considered as Intensely Developed Areas, but the precise density level depends on existing densities in the Limited Development Area. Only in the Resource Conservation Areas are density limitations prescribed. They do not apply to that portion of parcels outside of the Critical Area. The Commission is proposing an area-based allocation of future density, and using this allocation means that the local

Critical Area Commission
Minutes - 10/16/85
Page Four

jurisdiction must use a measurement of area to determine future density of dwelling units. Mr. Davis pointed out that area-based allocation is not the same as large lot zoning. Area-based allocation has no lot size requirements. It is used only to determine the number of lots that are allowed to be subdivided from the property as it exists at the date of the adoption of the local jurisdiction's Critical Area Program.

Chairman Liss then introduced Delegate Weir from the Legislative Oversight Committee who was observing the meeting. Delegate Weir indicated that he was interested in having a number of questions answered in order to support the criteria as they have been drafted.

Members were urged to attend the October 22 meeting of the Legislative Oversight Committee and the the October 29 hearing of the AELR Committee. The next meeting of the Commission will be November 6 at 4:00 p.m., at which time it will take a vote on the criteria.

These minutes were prepared by Helene Tenner.

Proposed Changes for Clarification
(BASED ON TABLOID)

CLARIFICATION

* Changes do not reflect punctuation or spelling

14.15.01 GENERAL PROVISIONS

REASON

Add: new definition

(18) "Critical Area" means all lands and waters defined in § 8-1807 of the Natural Resources Article, Annotated Code of Maryland. They include:

- a) All waters of and lands under the Chesapeake Bay and its tributaries to the head of tide as indicated on the State wetlands maps, and all State and private wetlands designated under Title 9 of the Natural Resources Article, Annotated Code of Maryland;
- b) All land and water areas within 1,000 feet beyond the landward boundaries of State or private wetlands and the heads of tides designated under Title 9 of the Natural Resources Article, Annotated Code of Maryland; and
- c) Modifications to these AREAS through inclusions or exclusions proposed by local jurisdictions and approved by the Commission as specified in § 8-1807 of the Natural Resources Article, Annotated Code of Maryland.

Requested by the AELR Committee to complete the criteria package by including the definition here, thus eliminating the need to refer to the Act in order to understand the basic area of concern defined by the Act.

(32) "Hydrophytic vegetation" means those plants cited in "Vascular Plant Species Occurring in Maryland Wetlands" (Dawson, F. et al., 1985) which are described as growing in water on a substrate that is at least periodically deficient in oxygen as a result of excessive water content (plants typically found in water habitats).

(p.4)
add:

To be same as definition in Dawson reference.

14.15.02 Development

p. 5 4th Column:

G. Certain new development activities or facilities, ~~because of their intrinsic nature, or because of their potential for adversely affecting habitat and water quality, may not be permitted in the Critical Area unless no environmentally acceptable alternative exists outside the Critical Area, and these development activities or facilities are needed in order to correct an existing water quality or wastewater management problem.~~ These include:

- (1) Solid or hazardous waste collection or disposal facilities; or
- (2) Sanitary landfills.

H. Existing, permitted facilities of the type noted in §G(1) and (2), above, ~~or expansion of these facilities, may be permitted if no environmentally acceptable alternative exists outside of the Critical Area;~~ subject to the standards and requirements of the Maryland Department of Health and Mental Hygiene, under COMAR Title 10.

add:
or the expansion of certain existing facilities,

add:
shall be
delete

As originally proposed, would mean that existing facilities and their expansion would not necessarily be able to remain in the Critical Area.

p. 7 2nd Column:

(4) Land within the Resource Conservation Area may be developed for residential uses at a density not to exceed one dwelling unit per 20 acres. Local jurisdictions are encouraged to consider such mechanisms as cluster development, transfer of development rights, maximum lot size provisions, and/or additional means to maintain the land area necessary to support the preferred uses.

Within this limit of overall density, minimum lot sizes may be determined by the local jurisdiction.

To respond to AELR Committee's suggestion that a jurisdiction be able to create pockets of higher density in the RCA provided that overall, a density of 1 du/20 acres remains for the RCA.

p. 7 2nd Column:

(2) When planning future expansion of Intensely Developed and Limited Development Areas, counties shall establish a process to accommodate the growth needs of municipalities.

add:
in coordination with affected municipalities,

Strengthen intent. Suggested by Maryland Municipal League and City of Annapolis.

the

14.15.02 continued

¶.7 Column 3 Grandfathering
[Language sent in the mail]

B. Local jurisdictions shall establish grandfather provisions as part of their local Critical Area Programs, through which the following types of land ~~may~~ be developed in accordance with all local ~~area and~~ density requirements in effect prior to the adoption of the local critical area program, notwithstanding the provisions of this Chapter:

Except as otherwise provided, local jurisdictions shall permit

described in the following subsections

density

A local jurisdiction shall permit a single lot or parcel of land that was legally of record on the date of program approval to be developed with a single family dwelling, if a dwelling is not already placed there, notwithstanding that such development may be inconsistent with the density provisions of the approved local program.

¶.7 Column 4

(b) If any such land has received a building permit subsequent to December 1, 1985 but prior to local program approval, and is located in a Resource Conservation Area, that land shall be counted by the local jurisdiction against the growth increment permitted in that area under COMAR 14.15.02.06,

unless the Commission determines at the time of program approval that steps had been taken to conform the development to the criteria in this Subtitle insofar as possible;

D. Nothing in this regulation may be interpreted as altering any requirements for development activities set out in COMAR 14.15.03 through 14.15.09 of this Subtitle. and

To clearly state Commission's intent with regard to individual lots.

So that an automatic charge against the growth increment would not occur and to recognize local efforts to conform such lands to the criteria which is the intent of the Commission.

Chapters 4 through 8 do not address development activity affecting residential density. "D." is more accurate with this clarification.

14.15.03 Water Dependent Facilities

p. 7. Column 3 Definition

C. Excluded from this ~~definition~~ ^{- regulation} are individual private piers installed or maintained by riparian landowners, and which are not part of a subdivision which provides community piers (see Regulation, .07 below).

To clarify that individual riparian piers (which are not part of a subdivision with Community piers) are excluded from this regulation

14.15.04 Shore Erosion Protection Wks.

p. 7 Column 4

.03 Criteria.

In developing their Critical Area Programs, local jurisdictions shall use these criteria:

A. Local jurisdictions, with assistance from the State, shall designate and map the following shoreline areas:

(1) Shoreline areas where no significant shore erosion occurs.

(2) Other eroding areas where non-structural measures would be a practical and effective method of erosion control, and

(3) Eroding areas where ^{only} structural measures would provide effective and practical erosion control;

B. Local jurisdictions shall adopt policies to be reflective of shoreline characteristics to accomplish the following objectives:

(1) Provide that structural control measures only be used in areas designated in §A(3), above, where non-structural control measures would be impractical or ineffective;

(2) Provide that where structural erosion control is required, the measure that best provides for conservation of fish and plant habitat, and which is practical and effective shall be used;

(3) Provide that non-structural measures be utilized in areas of erosion as describ-

As written, A(2) and (3) are not mutually exclusive. Therefore B(1) cannot be interpreted correctly because it is qualified by the phrase "where non-structural measures would be impractical and ineffective" and A(3) does not say that. The change noted in A(3) would correct this.

14.15.05 Forest and Woodland Protect
p. 9. Column 2:

(1) A Forest Management Plan shall be required for all timber harvesting occurring within 1 year and affecting 1 or more acres in forests and developed woodland in the Critical Area. The Plans shall be prepared by a registered professional forester and be reviewed and approved by the Maryland Forest, Park and Wildlife Service through the District Forestry Boards and the project forester, and filed with an appropriate designated agency within the local jurisdiction. Plans shall include measures to protect surface and groundwater quality and identify whether the activities will disturb or affect Habitat Protection Areas as identified in COMAR 14.15.09, and incorporate protection measures for these areas as specified by the local jurisdictions. ~~Those plans are not required for the private harvesting of timber.~~ To provide for the continuity of habitat, the plans shall address mitigation through forest management techniques which include scheduling size, timing and intensity of harvest cuts, afforestation, and reforestation.

any interval

To clarify the time frame and average size for which a Forest Mgt. Plan is required.

This sentence is not needed as plans are required for all timber harvesting per (1) above. Timber harvesting is not limited to commercial harvesting which has a specific definition in the criteria. If this sentence is not deleted, then an inconsistency is created whereby commercial harvesting and timber harvesting are synonymous.

14.15.06 Agriculture
p. 9 Column 4:

(iv) Provisions ~~for~~ requiring Forest Management Plans for those farms which harvest timber to ~~address~~ the harvesting practices requirements in COMAR 14.15.05 and COMAR 14.15.09.

conform with

As it now stands, the language says that "If FMP's are required, they must address the requirements of 05 and 09. To be consistent with the criteria as a whole, the FMP's will need to conform to the criteria when being developed on farms which harvest timber.

14.15.07 Surface Mining
p. 10 Column 2:

C. Each plan and program shall consist of all of the following:

(1) An identification and mapping of the undeveloped land in the Critical Area that should be kept in its undeveloped state until the land can be used to provide or assist in providing a continuous supply of minerals pursuant to Article 66B, §3.05 Annotated Code of Maryland, as amended. Surface mining areas which include Habitat Protection Areas under COMAR 14.15.09 shall also be identified.

Ca XIXv),

clarify to cite reference.

14.15.08 Natural Parks - nothing

14.15.09 Habitat Protection Areas

14.15.09.01 Buffer ...

C. →

(5) The cutting or clearing of trees within the Buffer shall be prohibited except that:

(a) Commercial harvesting of trees by selection or by the clearcutting of Loblolly Pine and Tulip Poplar may be permitted to within 50 feet of the landward edge of the Mean High Water Line of tidal waters and perennial tributary streams, or the edge of tidal wetlands, provided that this cutting does not occur in the Habitat Protection Areas described in COMAR 14.15.09.02, .03, .04, and .05 and that the cutting is conducted pursuant to the requirements of COMAR 14.15.05 and in conformance with a buffer management plan prepared by a registered, professional forester and approved by the Maryland Forest, Park and Wildlife Service. The plan shall be required for all commercial harvests within the Buffer, regardless of the size of the area to be cut, and shall contain the following minimum requirements:

add:
"The Buffer shall be managed to achieve or enhance the functions stated in §B(1)-(5) above."

To respond to comment at AELR hearing that it wasn't clear that the Buffer could be managed for the stated policies of the Commission.

14.15.10 Directives for Progr. Dev.
p. 18 Column 1:

(12) Areas suitable for water dependent facilities, and

(13) Intensely Developed, Limited Development, and Resource Conservation Areas as defined in COMAR 14.15.02.

B. Any such mapping shall be at a scale that is relevant to local jurisdictions and of sufficient detail to assess the potential impacts of proposed land-use changes on the quality and quantity of local water resources and on local wildlife and plant habitats.

C. Each program submission shall list the specific local program objectives and an expected time schedule for implementation.

D. Local permitting and approval processes shall be coordinated so that cumulative impacts of regulated activities can be readily assessed. Local jurisdictions shall maintain records of the area of land that converts from Resource Conservation Area to Intensely Developed or Limited Development Areas and that converts from Limited Development Areas to Intensely Developed Areas.

E. The local program document shall, if applicable, include, but not be limited to:

(1) A forest and woodland protection program;

(2) A mineral resources plan;

(3) An agricultural protection plan; and

(4) A habitat protection area plan;

(5) A water-dependent facilities planning process for identifying suitable areas.

There is no requirement in Chptr. 3 for such an inventory or mapping.

14.15.11 Variances - nothing

Commiss Mtgs.

AGENDA

Local Government CZM - Chesapeake Bay Critical Area Workshop

November 14, 1985

Climat de France Hotel
(Corner of West Street & Riva Road, Annapolis, Md.)

Portico 904 Condor

- 9:00 - 9:30 Coffee and Danish
- 9:30 - 9:50 Introductory Remarks
June Cradick, NOAA
Jacob Lima, CRD, DNR
Earl Bradley, CRD, DNR
- 9:50 - 10:15 Non-Tidal Wetlands and other
and other CRD Initiatives
David Burke, CRD, DNR
- 10:15 - 10:30 New SAV/Wetlands/Critical Area
Photography
Harold Cassell,
Wetlands Division, DNR
- 10:30 - 10:45 Anadromous Fish Spawning Areas
Jay O'Dell, Tidal
Fisheries, DNR
- 10:45 - 11:00 Coffee Break
- 11:00 - 12:00 Forested Areas, Wildlife Habitat
Areas
Forest, Park and Wildlife
Service, DNR
- 12:00 - 12:30 Rare and Endangered Species,
Areas in need of conservation
Dan Boone, Natural
Heritage Program, DNR
- 12:30 - 1:30 Lunch
- 1:30 - 3:00 Panel Presentation - Approaches to
Addressing CZM Contractual and
Chesapeake Bay Critical Area Program
Requirements
Local Government,
Representatives
- 3:00 - 3:15 Coffee Break
- 3:15 - 4:45 Chesapeake Bay Critical Area Commission,
Commission Technical and Financial
Assistance for Program Development,
Criteria Update
Process
Budget - \$ asst
Incentive.
- 4:45 Adjourn
MA Co. - 22nd
Environ Matter
Legisl Committee
Budget - multi-year
due Tuesday
Development to
Implementation
Incentive Program

1 du / 20 acres
Staff Cost

Comm
mtg



JUDGE SOLOMON LISS
CHAIRMAN

STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREAS COMMISSION
DEPARTMENT OF NATURAL RESOURCES
TAWES STATE OFFICE BUILDING
ANNAPOLIS, MARYLAND 21401
301-269-2418 or 269-2426

SARAH J. TAYLOR, PhD
EXECUTIVE DIRECTOR

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November 27, 1985

Dear Commission Member:

On December 4, 1985, at 4:00 p.m. until 6:00 p.m., the Commission will meet to discuss any questions with respect to any portion of the criteria. This was requested by Commission members at the November 6th meeting and was suggested so that all members would feel comfortable in answering questions received from their constituents. In addition, we will have an open discussion as to the areas to be covered in the workshop for the local jurisdictions. The meeting is scheduled for the Maryland Department of Agriculture Building, 50 Harry S. Truman Parkway, Annapolis, Maryland. Enclosed is an agenda, and the minutes of November 6 and November 13, 1985 for your review and approval. Also, since our last meeting, the clarifying amendments to the criteria were published in the November 22nd issue of the Maryland Register. A copy is enclosed for your information.

Please make a note on your calendar that on January 16, 1985, a workshop has been scheduled for the 16 counties and 44 municipalities at the Tidewater Inn, Easton, Maryland. The purpose of the workshop is to discuss problems and solutions in mapping the Critical Area land uses, and the application of the criteria. I hope that you will be able to attend this because it will provide you with an understanding as to how the jurisdictions are working with the criteria. Coffee and donuts have been arranged for in the morning, lunch will be provided at noon. This workshop should finish around 5:00 p.m. An agenda will be sent to you. At 5:30, the Commission will reconvene for a short meeting

CABINET MEMBERS

- Torrey C. Brown, M.D.
Natural Resources
- Wayne A. Cawley, Jr.
Agriculture
- William Eichbaum
Health and Mental Hygiene
- Ardath Cade
Economic and Community Development
- Constance Lieder
Planning

Telephone: 269-2418
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Commission Members
Page Two

at which time the Governor's staff will present the hearing schedule, process, and strategy for the criteria. The resolution transmitting the criteria will also be provided for your information.

By way of announcements, on December 12, 1985, there will be tabloid copies of the final version of the criteria available for your use and distribution. Slides and a speech will be made available for your use as well. Also, if any of you need travel vouchers, please call Jennifer and she will arrange to send them to you. If you have outstanding vouchers, please mail them as soon as possible to her attention.

I look forward to your participation at both of these meetings.

Sincerely,


Solomon Liss
Chairman

SL/jjd

Enclosures:

Minutes of November 6th
Minutes of November 13th
Final Regulations
Agenda