

Commission Meetings $\frac{1}{2}$ Corresp.

Sept 1986

MSA_51832-25

CHESAPEAKE BAY CRITICAL AREA COMMISSION

Minutes of Meeting Held
July 23, 1986

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

Harry T. Stine
Lloyd S. Tyler, III
Barbara O'Neill
Ron Hickernell
James E. Gutman
Ardath Cade
Samuel E. Turner, Jr.
Wayne Cawley, Jr.
Florence Beck Kurdle

Robert Price, Jr.
J. Frank Raley, Jr.
Albert W. Zahniser
Thomas L. Jarvis
William Eichbaum
Constance Lieder
John Luthy, Jr.
Parris N. Glendening
Torrey C. Brown

The first order of business was to approve the Minutes of the June 4th meeting. Minutes were approved as written and circulated.

Judge Liss asked Dr. Sullivan to give a review of the Guidance Paper on Forest Interior Dwelling Birds. Dr. Sullivan explained that the Paper was designed to give specific procedures for the management of site-specific surveys to determine the presence of these birds. The paper is intended to supplement information contained in the Maryland Breeding Bird Atlas. He noted further that the Paper was not a regulatory document but, is intended for guidance purposes. James Gutman asked if the committee which developed the information had any disagreement on the species list in Table 1. Dr. Sullivan said that there was no dissent among the committee members. Dr. Sullivan also noted that several minor revisions would be made to the list of persons who can provide technical assistance to local jurisdictions. Chairman Liss then asked for a vote on the Guidance Paper which was approved with 15 aye votes and 1 abstention.

Chairman Liss asked Attorney General Lee Epstein to review his advice memorandum to the Commission on the role of the Commission panels. Mr. Epstein explained that the Legislature intended the panels to hold impartial hearings on local programs, and that they were not intended to participate in the actual development of local programs. James Gutman asked what other utilization of the panels could be made by counties or municipalities. Mr. Epstein stated that a panel's function is to hold a hearing and make recommendations to the full Commission. It should generally be aware of how a program is being developed, but, it may only give suggestions if it is evident that a grave error is being made in the development of a program. James Gutman asked what will be gained by the

county/municipality through this panel function. Mr. Epstein stated that the panels should be very informed by the time development of the local program is finished, and thus, when panel hearings begin, both panel and Commission will have a good idea of the framework and intricacies of the programs.

Secretary Constance Lieder asked if Commissioners involved in local programs should be members of a panel reviewing such programs. Would there not be some partiality toward that program by that panel member, and is such membership proper? James Gutman suggested that the person be excluded from voting on that program. William Eichbaum reiterated the importance of the panel serving as impartial hearing officers and suggested that there may be a legal question here. Parris Glendening commented that the law clearly states that representatives from local jurisdictions are to be full voting members of the Commission. Ron Hickernell felt that an opinion or advice of counsel from the Attorney General was not needed, and that the only research necessary, if any, was on conflict of interest. Mr. Epstein then asked exactly what was supposed to be researched. The conclusion was that Mr. Epstein would develop an advice memorandum on possible conflicts posed by the situation, but would also have to look into related matters.

Chairman Liss asked Dr. Taylor to give a progress report on program development to date. She stated that all counties and municipalities have responded and have chosen to develop their own programs.

Chairman Liss informed the Commission that 8 counties sent letters containing "conditional acceptances". There were 8 issues raised in each letter received by the Commission and one letter contained 4 additional legal questions. Chairman Liss reported that after consideration of the issues raised by the "conditional acceptances", he had concluded they were legal matters which should be answered preliminarily by the Chairman. The correspondence was discussed with Mr. Epstein and Mr. Deming of the Attorney General's staff who agreed with the Chairman that there was nothing in the Law which permitted the acceptance of conditions by the local jurisdictions when electing to prepare their Critical Area Program.

Replies from the Commission were sent to the 8 counties/municipalities indicating that the real question raised was actually whether the Commission could guarantee funding for local programs into Fiscal Year 1988. Chairman Liss stated that the Commission could not make such guarantees, that funding for the 1987 Fiscal Year had been approved and that funding for FY 1988 had been tentatively approved.

The Commission received the afternoon of its regular meeting, a letter from the Planning Director of Dorchester County in which the complaint was made that Dorchester's letter of conditional approval was not submitted to the Commission for a

formal vote under its bylaws before a response to the conditional approval was dispatched. Chairman Liss stated that the matter had been handled as an administrative matter after consideration and advice from our legal advisers. He also pointed out that the matter had been added to the agenda of the regular meeting for informational purposes before the letter of complaint had been received from Dorchester County. After some discussion the Commission in light of the requirement that the day to day activities of the Commission not be delayed to its monthly meetings, the Commission unanimously approved the action of the Chairman and authorized the administrative handling of questions raised between meetings subject to the Commission being advised of any policy decisions and subject to the Commission's right to consider any policy matter it believes appropriate to be considered.

Chairman Liss asked Dr. Kevin Sullivan, Dawnn McCleary and Dr. Sarah Taylor to give a status report on the coordination with the various State agencies. Each gave a synopsis of work now being done to coordinate mapping and technical information and the contacts to be utilized by counties and municipalities to seek assistance from the Departments of State Planning, Agriculture, Natural Resources and Health and Mental Hygiene. Dr. Taylor added that the Departments of Economic and Community Development and Transportation will also be involved in this coordination but have not been contacted at this time.

Dr. Torrey Brown stated that the Coastal Resources Division (CRD) together with the Commission have sent a request to the U.S. Department of Commerce to have the Critical Area Program and criteria become a part of the Maryland Coastal Zone Management Program. Commerce will need to approve this. If approved, federal funds could be used for Commission work.

Chairman Liss asked Ardath Cade to give a status report on the Subcommittee for State and local agency regulations. She reviewed the provisions of Section 8-1808(b) of the Critical Areas Law which mandated the Commission to establish such regulations. The Subcommittee intends to develop draft regulations by mid-February. They will be submitted to the Commission for review and approval prior to formal promulgation.

OLD BUSINESS:

None

NEW BUSINESS:

Chairman Liss attended an Ecofunding Seminar. One aspect of the seminar was to investigate the funding of certain activities relating to the Chesapeake Bay. Chairman Liss suggested preparing an educational program for the public on the Critical

Area Law. Also mentioned was funding of the Commission's Economic Baseline Study which will evaluate the economic efforts of Critical Area Program and what impacts it will have. The Legislature has cut the allotment for this task and funds are being sought for FY 1988.

Carolyn Watson reviewed the Bay Access and Reforestation Questionnaire. Ardath Cade asked to whom the questionnaire would be sent and how many were being sent. Ms. Watson stated that 2,500 copies would be sent to targeted groups (fishermen groups, etc.), and to a random list received from a brokerage firm.

Chairman Liss stated the next Commission meeting would be on August 6, 1986 at the Department of Agriculture from 4:00 p.m. to 6:00 p.m. Ardath Cade said she would not be able to attend. Chairman Liss asked if there would be anyone else not attending. No response was received.

Chairman Liss then asked for a motion for adjournment. Motion made, seconded.

AGENDA

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

September 3, 1986

4:00 p.m. - 6:30 p.m.

4:00 - 4:10	Approval of the Minutes of July 23, 1986	Chairman Solomon Liss,
4:00 - 4:50	Presentation & Discussion on Rare Plants and Species in Need of Conservation	D. Daniel Boone, Chief Natural Heritage Environmental and Review
4:50 - 5:30	Discussion on Panel Composition	Lee Epstein, Assistant Attorney General
5:30 - 5:40	Update of State Regulations Committee	Ardath Cade, Kevin Sullivan
5:50 - 6:00	Update on Economic Baseline Study	Marcus Pollock

OLD BUSINESS

6:00 - 6:20	Discussion of University of Maryland Law School Proposal	Chairman Solomon Liss
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NEW BUSINESS

6:20 - 6:25	Selection of a Date for Meeting of Co/Municipal Subcommittee decision on letters	
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6:25 - 6:30	Real Estate Advertisement - Letter	
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Next Meeting:	October 8th - Horsehead Sanctuary, Grasonville, Maryland. Directions will be sent. To begin approximately 2:30 p.m.	
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*University of Maryland
School of Law Proposal*

THE ENVIRONMENTAL PROGRAM'S "CRITICAL AREAS" PROPOSAL

ABSTRACT

The Chesapeake Bay is a precious resource and integral part of a food chain providing nutrients for humans as well as marine life far beyond its shores. Today, the Bay's environment is threatened by an ever increasing demand for industry, food, housing and recreation. Its deterioration is slow, silent and subtle and, therefore, difficult to control. However, this environmental problem can be resolved if states and communities along its shores take quick action to control pollution and unplanned land use. Maryland has taken a bold and creative step in that direction.

In 1984, the Maryland General Assembly enacted the Chesapeake Bay Critical Areas Protection Program as the centerpiece of its comprehensive plan to save the Bay's fragile environment. Regulations to implement that Program became effective in May, 1986. They present many scientific, legal and policy options for Bay cleanup at all levels of Maryland government. Counties and municipalities must enact new ordinances and establish new land-use procedures. Local officials will have to learn and complete many complex tasks. Most importantly, implementation will require local governments' creative involvement in the process.

The Environmental Program of the University of Maryland School of Law is a recently established interdisciplinary program with the goal of resolving environmental problems affecting the Bay. It provides technical and legal assistance to Maryland's government and citizens and offers students an interdisciplinary education, research and public service oriented work experience. The Environmental Program will conduct its work in several phases. Phase I will offer services to the 16 counties and 44 municipalities affected by the Critical Areas law. Subsequent phases will address long range environmental issues affecting the Bay such as the effects of acid rain on fish populations and non-point source pollution control.

Phase I proposes four projects that involve the University community working with local governments, land owners and private interests. Each project offers valuable technical and legal assistance to communities during the implementation process.

In sum, a new science of "estuary reclamation" is emerging from this Bay cleanup campaign. Its success may encourage other states or nations to take similar action to restore their fisheries and marine sanctuaries. The Environmental Program will serve as a model for combining academic training, practical work experience, and public service to solve complete environmental problems.

THE ENVIRONMENTAL PROGRAM'S "CRITICAL AREAS" PROPOSAL

INTRODUCTION

The Chesapeake Bay is a fragile marine ecosystem and rich source of protein threatened by increasing demands for industrial, agricultural and recreational development. Slowly, public apathy is turning into action as marine scientists, watermen and government leaders identify environmental problems and remedies. The solutions may be complex and controversial, but failure to act will result in the further destruction of one of the most vital and beautiful estuaries in the world.

To protect this national resource, Maryland enacted the Critical Areas Protection Law -- a comprehensive land use and resource management law to guide economic growth along the shoreline. Primary responsibility for implementation of the law rests with county and municipal governments. However, some communities have limited technical and financial resources making compliance difficult unless assistance is provided.

THE ENVIRONMENTAL PROGRAM

The Environmental Program of the University of Maryland School of Law is an interdisciplinary, educational, research and advisory service dedicated to protecting the Chesapeake Bay. The Program will be developed in several phases. The first phase is designed to assist compliance with the Critical Areas Law. It consists of four projects providing research and education services to those local governments and citizens affected by the new Law.

The Program has neither a profit incentive nor political bias. Its ultimate "client" is the Bay. Thus, the Program can provide objective information and technical services for local officials while project managers, faculty, and students gain valuable work experience that can be replicated.

ASSESSMENT OF PROBLEMS AND NEEDS

The Critical Areas Law requires development planning and land-use inventories to guide future growth along the Bay's shoreline. Its success depends upon the cooperative participation of property owners, real estate developers, farmers and watermen with county and municipal governments. In short, there is a need for information and counsel to guide some of the tasks facing local officials and affected citizens.

SPECIFIC PHASE I PROJECT OBJECTIVES

Phase I of The Environmental Program addresses the needs of the affected local officials and citizens during the early stages of the Critical Areas implementation. The Phase I Projects offer innovative legal, analytical and technical services to local governments

in the Critical Areas. Maryland officials will benefit from the technical assistance and by attracting talented students to professional careers in environmental protection.

Project managers, faculty and students (working under close faculty supervision) will be involved in Projects designed to:

1. identify economic incentives as compliance tools;
2. create legal mechanisms for free market oriented approaches to land conservation;
3. evaluate and recommend voluntary -- not coercive -- methods of governmental enforcement;
4. encourage compliance with the law through education programs offered at the local level.

TIMING OF PHASE I OF THE ENVIRONMENTAL PROGRAM

Implementation of the Critical Areas Law is a continuous process. It will be guided by local land-use Critical Areas programs developed by the counties and municipalities. Local governments began writing these plans in May, 1986, and must present them for the State Commission's approval by August 6, 1987. Thus, the services offered through Phase I of The Environmental Program must begin quickly.

PHASE I PLAN

The four Projects of Phase I were chosen (after discussions with the Critical Areas Commission technical staff, land use planners and University faculty) to provide innovative methods to expedite compliance.

University participants will work with government officials in the 16 counties and 44 municipalities affected by the Critical Areas law. They will provide analytical and legal services upon request from the Critical Areas Commission, local government officials and property owners. Faculty-supervised students will design and recommend procedural protocols to both the Critical Areas Commission and local governments.

A summary of each project follows:

1. Identifying Economic Incentives as Compliance Tools

Good faith compliance with the law may depend more upon the use of economic incentives than coercive enforcement. State and federal agricultural easements, property tax benefits for forest management, and conservation easements are examples of the numerous incentives available to land owners, timber companies and farmers affected by the Critical Areas Program.

Project staff will research and analyze the various State, local and federal incentives that provide economic benefits to those who comply with the Critical Areas law. The benefits and legal

requirements of these incentives will be described in a comprehensive handbook to be distributed to citizens and government officials. Model forms, ordinances and laws will be developed to make these incentives effective in implementing the Critical Areas Program and readily accessible to the general public and local governments.

To illustrate the Environmental Program's services, it recently completed a review of tax laws and benefits pertaining to land conservation donations. The work was undertaken at the request of the Maryland Environmental Trust, and the information will be used extensively throughout the Critical Areas.

2. Creating Legal Mechanisms for Market Oriented Approaches to Land Conservation: Transfer of Development Rights (TDR's)

This legal mechanism authorizes the transfer of development rights, by actual sale or purchase, from areas where development is not desired (senders) to areas where development is acceptable (receivers). Project staff will evaluate the most successful TDR ordinances and laws in Maryland and other states for use in the Critical Areas Program. The research will focus on the legal procedures (embodied in ordinances) needed to create and regulate TDR's. The types of "banking systems" -- i.e., methods of coordinating and accounting for sender-receiver transactions -- will be analyzed for possible inclusion in local ordinances.

Project 2 will also suggest, survey, and evaluate other free market mechanisms to enhance compliance with the Critical Areas Program. At the conclusion of the research and evaluation, a comprehensive report will be published for State and local officials. It will include a model ordinance to regulate the creation, negotiation and execution of TDR's, and other free market compliance mechanisms.

3. Evaluating and Recommending Planning Tools of the Critical Area Law

The Critical Areas law establishes a unique hierarchical system of implementation designed to encourage cooperation between and among government officials and property owners. For example, counties and municipalities must submit their local Critical Areas program to the Critical Area Commission for approval. Thereafter, private builders are required to submit, for local government approval, specific project development plans that conform with the goals of the new law and the approved local Critical Areas programs.

This multi-jurisdictional approach to enforcement could be hampered, however, by the absence of clear enforcement methods in the law. Thus, it will be necessary to establish such methods, preferably those which are positive and voluntary. County and municipal officials must understand the range, nature and timing of these enforcement methods.

This project will examine the various positive enforcement methods used in other state and federal laws to encourage voluntary compliance. It will identify those self-implementing civil remedies that are effective and can be adapted to the Critical Areas law. Its conclusions will be reviewed by the Maryland Attorney General's Office and the Critical Areas Commission. The most useful and efficient enforcement methods will be described in detail, published and made available to State, county and municipal officials.

4. Developing an Education Program to Assist Enforcement

In conjunction with the Maryland Critical Areas Commission and the privately funded Chesapeake Bay Foundation, Project 4 will provide educational programs for county and municipal officials, citizens, farmers, watermen, land owners and developers affected by the Critical Areas law.

Seminar topics will include the subject matters of the three projects discussed above, as well as other topics requested by those attending the sessions. A continuing discussion with local government officials and the Commission may identify additional educational services the Environmental Program could provide.

PROGRESS AND EVALUATION OF PHASE I

The Projects in Phase I will be evaluated by several means. First, a questionnaire will be prepared and distributed to all Project beneficiaries. Second, an external evaluation will be conducted by a committee of representatives from the University, Maryland Municipal League and Maryland Association of Counties, the Chesapeake Bay Critical Areas Commission and the Maryland Office of the Attorney General, among others. Third, Project staff will conduct an annual self-evaluation to be summarized in a detailed report. Finally, The Environmental Program's Board of Visitors (see Appendix) will conduct an ongoing evaluation of Phase I Project activities.

Becky - doubts if the locals or Commission will benefit from it.

Connie - not sure you want to endorse the activities specifically.

Bob - wouldn't hurt to endorse

Mary - rests w/ the local govt. to decide

Let him know we don't object



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September 5, 1986

Dear Subcommittee Member:

The State and Local Regulation Subcommittee will meet on Wednesday, September 10th from 3:00 to 5:00 p.m. in the D-4 Conference Room, Department of Natural Resources, Tawes State Office Building, Annapolis.

Items to be discussed are:

- 1) Review of Chapter 4 of the draft regulations. Committee members should read this Chapter beforehand and be prepared to provide comments.
- 2) Process language for Chapter 4 describing how the Commission will receive State and local development projects for review. Sullivan will draft this.
- 3) State development projects not part of the capital budget process. Sullivan to prepare a list.

See you on the 10th.

Sincerely,

J. Kevin Sullivan, Ph.D.
Scientific Advisor

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

JKS/jjd

cc: Judge Liss
Sarah Taylor
Lee Epstein

STEPHEN H. SACHS
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September 15, 1986

Robert R. Price, Jr., Esquire
103 Lawyer's Row
Centreville, Maryland 215617

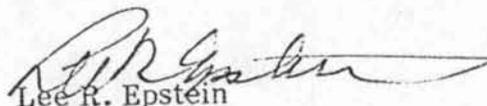
Dear ~~Mr. Price.~~ *Bob*

The Critical Areas Attorney's Group met for the first time on Tuesday evening, September 9, at Middleton's Tavern in Annapolis. For those of you who were able to attend (list enclosed), thanks for coming.

There was some general discussion about the Critical Areas law and regulations, and initial questions raised ranged from "TDR" application, to mapping issues, to the 5 percent growth allocation. The group suggested that we try for meetings one evening a month, and perhaps isolate a topic or two of interest for discussion purposes. The idea seemed to be that the meetings would give us all an opportunity to exchange views, opinions, and ideas for resolving (or at least approaching) legal problems that arise with regard to the Critical Areas law and regulations.

Pursuant to another suggestion, enclosed please find an updated version of the law, the Critical Area Criteria, and legislative changes passed during the last General Assembly. Together, this represents the current framework within which the Commission is now operating. It would be beneficial, I think, if you took some time to peruse this enclosure. The group suggested that each member jot down questions or potential discussion issues and forward them to me as soon as possible. I'll group them and, at least for October's meeting, choose an area for discussion. Please plan for our next meeting on Tuesday evening, October 14, at 6:30 p.m., location TBA. Prior to that time, I'll forward a reminder, location, and an agenda. I look forward to your issue suggestions, and to our next get-together; I think these evenings will prove time well spent.

Sincerely,


Lee R. Epstein
Assistant Attorney General

LRE/jtd
enclosures

ATTENDEES at Critical Areas Attorneys Group Meeting
September 9, 1986

<u>Name</u>	<u>Representing</u>	<u>Phone</u>
Cynthia Hitt	Chesapeake Beach	727-4507
E.H. Nabb	Dorchester County	228-5252
Allen Handen	Calvert County	535-0499
Ronald A. Karasic	Baltimore City	396-3951
Mac Spicer	Baltimore County	494-4420
Eileen Powers	Anné Arundel County	267-5585
Mike O'Connor	Talbot County	822-4951
Joe Densford	St. Mary's County	475-8111
Jim Slay	Talbot County	822-2600
Robert Lidums	Cecil County	398-6220