

Committee Meetings & Correspondence September 1987

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JUDGE SOLOMON LISS
CHAIRMAN

STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREAS COMMISSION
DEPARTMENT OF NATURAL RESOURCES
TAWES STATE OFFICE BUILDING, D-4
ANNAPOLIS, MARYLAND 21401
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SARAH J. TAYLOR, PhD
EXECUTIVE DIRECTOR

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August 25, 1987

Dear Commission Member:

This is to advise you that the next Critical Area Commission meeting is scheduled for September 2, from 4:00 to 6:00 p.m. at the Department of Agriculture, 50 Harry S. Truman Parkway, Annapolis. The agenda for the meeting is enclosed as well as the Minutes from the August 5th meeting. Copies of the Forestry Management Handbook will be distributed at that meeting. A presentation on the Handbook will be given by Dr. Kevin Sullivan.

Since our meeting in August, all 10 local programs submitted have been reviewed for completeness by the staff and are now under review for content. In addition, we have received a formal submittal from the town of St. Michael's. We will need to appoint a panel for the towns of St. Michael's as well as Rock Hall.

I look forward to your attendance at the meeting as we will need to establish future meeting dates of the Commission for a submission date for discussion of approval or disapproval of Baltimore City's Program and Prince George's County's Program.

Sincerely,

Solomon Liss
Chairman

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

SL/jjd

Enclosures

comm Mtgs

AGENDA

CHESAPEAKE BAY CRITICAL AREA COMMISSION

50 Harry S. Truman Parkway
Annapolis, Maryland

- 1. Approval of Minutes of August 5th, 1987. Solomon Liss
Chairman
- 2. Announcement of New Commission Members — *Col. Martin Walsh, Jr. Dept on the Envt.* Solomon Liss
Chairman
- 3. Acknowledgement of Service of Outgoing Members — *Robert Lynch* Solomon Liss
Chairman *Dept of Employment + Economic Developm.*
- 4. Presentation of Guidebook: Conservation of Forest Resources in the Critical Area Dr. Kevin Sullivan
- 5. Update of Local Program Submittals, Hearings, and Panel Selection — *Rock Hall + St. Michael* Dr. Sarah Taylor
- 6. Update on General Assembly Hearings Solomon Liss
Chairman
- 7. Future Meetings in October for Commission Review and Decision on Local Programs Solomon Liss
Chairman
- 8. New Business Solomon Liss
- 9. Old Business Solomon Liss

October 7th, 21st.
 Nov. 4th 18th
 Dec. 2nd 16th

1:00 — evening

Chesapeake Bay Agreement

Presentation by Citizens Program for the Chesapeake Bay.

From 1:00 until early evening. dinner will be provided

CHESAPEAKE BAY CRITICAL AREA COMMISSION

Minutes of Meeting Held
August 5, 1987

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

Dr. Shepard Krech, Jr.	G. Steele Phillips
Ronald Hickernell	Samuel Bowling
Ronald Adkins	Russell Blake
Wallace Miller	Robert Price, Jr.
Albert W. Zahniser	Thomas Osborne
Kathryn Langner	James T. Gutman
Victor Butanis	Samuel Turner, Sr.
Secretary Constance Lieder	Asst. Secretary Eichbaum
Louise Lawrence for	John Griffith for
Secretary Wayne Cawley	Secretary Torrey Brown
Ronald Karasic for	Secretary Ardath Cade
Judge Brown	

The minutes of the July 1st meeting were approved as written.

UNDER OLD BUSINESS

Chairman Liss informed the Commission that the Guide for Conservation and Management of Forestry Resources in the Critical Area, Guidance Paper No.4, has been circulated to the various agencies in the Department of Natural Resources, and other State agencies. Dr. Sullivan has received comments from several agencies, and there remains only the Non-tidal Wetlands portion that has yet to be incorporated into the Guidance Paper. It was suggested that discussion of the Paper should be postponed until its completion for the Commission's September meeting. The Guidance Paper will be sent to the Commission members for their perusal prior to the next meeting.

Chairman Liss introduced Russell Blake the Administrator of Pocomoke City, as the replacement for Ann Sturgis Coates. He then asked Dr. Taylor to give a status report of the local Critical Area Program submittals.

Dr. Taylor said that the Commission staff has received, under official submittal, the Programs of Baltimore City, and Prince George's County. A review has begun of Baltimore City's Program and they will be notified of the forthcoming Panel review. Also the reviewing process is in progress for Prince George's County. The forecast is that the Commission will have 9 submittals in August. Those will be Baltimore City, Baltimore County, the Towns of Greensboro, Betterton, Millington, Rock Hall, Easton, Oxford, and Prince George's County. September CAC

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submittals will be: Anne Arundel County (also doing the Program for Highland Beach), Chesapeake Beach, Caroline County, Denton, Cecil County, Chesapeake City, Elkton, Dorchester County, Kent County, and the Towns of Church Creek, Brookview, Vienna, Secretary, and Eldorado, Harford County, Havre de Grace, Leonardtown, Rock Hall, Centreville, Church Hill, Queenstown, Worcester County, and Snow Hill. October submittals will be: the City of Annapolis, Calvert County, North Beach, Perryville, Pocomoke City, Charlestown, Port Deposit, Talbot County, and North East. Charles County and Indianhead had asked for a submittal date of November/December. The staff is encouraging them to meet an earlier deadline because the proximity of the Commission's June 1988 deadline is too close to the date of their request. Cambridge and St. Mary's County requested an October date. Somerset County, Crisfield and Princess Anne want to submit in late November. Wicomico County, which are also doing Mardella Springs, Sharptown, and Salisbury, are uncertain as to submittal time. The Commission is doing Programs for the towns of Hillsboro and Queen Anne, and has recently received a letter from Federalsburg requesting the Commission to develop their Program. Chestertown verbally informed Commission staff that it wanted more help for Program development. Mr. Wallace Miller then informed the Commission that Kent County would be submitting its Program in August. He also was concerned about the report on Chestertown and said that he would try to find out their intent.

Chairman Liss remarked that the Commission received several requests for an extension from August 6, 1987, to the middle of November, stating that those jurisdictions did not know when their Programs would be ready. He said that these requests were generally unacceptable in regard to the Law as Programs were supposed to be submitted August 6th. He did say that if the Commission decides to allow a little more time, then those "extensions" have to be reasonable and must fall within a reasonable period of time. If it becomes necessary for the Commission to take over a Program (under the Law, to put a Program into place by regulation), then the Commission must have time to do it before the June 1988 date, which is the required final date in the Law itself, when all Programs must be approved or adopted by the Commission. From all the indications, to suggest an extension beyond the middle of October is not plausible. He mentioned that there was another problem; some of the jurisdiction's consultants do not appear to be aware of the time factor involved. What the Commission staff needs is an agreement to not allow Program submittal to be later than the second week in October, and in the event that the Programs are not ready by that time, the Commission then must consider whether or not it should complete these Programs. He suggested that one alternative would be to say to the local jurisdictions that if

they did not submit their Program by August 6th, that they are in default, and as of August 10th the Commission will take over their Programs. Chairman Liss said ,however, that the Commission does not have the staff, the time, nor the monies to be able to do this. A better alternative is to meet with these late jurisdictions and discover the status of Program development, and let the consultants know that we expect them to complete their Programs, and that our assistance is in the offing. The Commission's draft correspondence to those jurisdictions requesting an extension for Program submittal were distributed to the Commission for review and comment.

Assistant Secretary Eichbaum asked if the Commission staff believed that these late Programs will be submitted? Dr. Taylor answered affirmatively, and Chairman Liss reassured that if the staff did not believe that these "late" jurisdictions were acting in good faith, an "extension" would not have been suggested. Chairman Liss then asked the Commission if they were willing to leave the decisions in the hands of the Chairman and the Commission staff and made the assurance that while the status of these Programs is being monitored, the Commission staff will be keeping the Commission informed. This was agreed to.

Secretary Lieder then suggested that since there were so many Programs submitted to the Commission, that perhaps the State Departments should review those portions of the local Programs that are particular to various Department's functions. This was agreed to by all.

Chairman Liss reported that since the Maryland Register publication of the "Regulations of Classes of Applications for Project Approval of Which the Commission Wishes to Receive Notice", there has been only one comment, and that was from Dorchester County. He stated that the AELR Committee would be receiving copies of the comments and based upon their content, would determine whether or not a hearing would be warranted.

UNDER NEW BUSINESS

Dr. Taylor reported that the Environmental Matters Committee is going to hold a series of public hearings. Letters have been sent to all of the counties, inviting them to inform the Committee of the progress that is being made on the Critical Area Program development, the problems and success of the Program, etc. The hearings are scheduled for August 11th from 1:00 - 5:00 p.m., and 12th from 10:00 - 1:00 p.m., and August 25th from 1:00 p.m. to 5:00 p.m. and from 10:00 a.m. until 1:00 p.m. on the 26th in the Environmental Matters Hearing Room.

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Dr. Taylor then informed the Commission that the Critical Area Program had been accepted by the Department of Commerce as a formal element of Maryland's Coastal Zone Management Program. As the "federal consistency" provisions in the federal Coastal Zone Management Act apply to CZMP activities, these same activities will also have to be consistent with the regulations of the Critical Area criteria. Federal Coastal Zone monies can also be used by the Critical Area Program for studies that the Program might not be able to do with State funds.

There being no further business, the meeting was adjourned.

DRAFT #3

September 2, 1987

NON-TIDAL WETLANDS

Identification: The criteria afford protection to certain kinds of non-tidal wetlands as listed in COMAR 14.15.09.02C.(3). These wetlands are further described in Guidance Paper No.3, available from the Commission.

Delineation of these wetlands on the National Wetlands Inventory (NWI) maps and an on-site survey to confirm their presence and extent are the bases for identification. In addition, non-tidal wetlands not shown on the NWI maps, but which are hydrologically connected to streams, tidal waters or tidal wetlands, or which have special importance as fish, wildlife, or plant habitat, are also to be protected. The latter types of wetlands generally require on-site identification through procedures described in Guidance Paper No. 3.

Protection Requirements: The criteria require that the habitat value, water quality, and hydrologic regime of non-tidal wetlands are to be protected. This is to be accomplished in two ways. First, development activities, including the cutting or clearing of trees, are prohibited within 25 feet of the wetland unless it can be shown that such activities would not adversely affect the wetland itself or the wildlife contained therein.

Second, land disturbances in the drainage areas must be such as to minimize alterations to the surface or subsurface flow of

water into and from the wetland and to maintain the water quality or plant and wildlife value of the wetland.

Cutting or clearing of trees directly in the wetland itself may be permitted if such activities do not significantly alter the water quality or hydrologic regime of the wetland or impair its habitat value (see discussion below). Where such adverse impacts are expected, the cutting or clearing activity may not occur unless it can be shown that the operation is of substantial economic benefit and that the wetland alteration was both necessary and unavoidable. If, using these tests, the cutting or clearing is still allowed, then mitigation of the resulting disturbance is required. Further details on these concepts and the process for preparing and reviewing mitigation plans are contained in Guidance Paper No. 3.

Cutting or clearing of trees in non-tidal wetlands located within the Buffer are prohibited altogether (14.15.09.01.C.5.a).

Protection Measures: The Forest Management Plan should include these measures for protecting non-tidal wetlands:

1. Identify and classify any non-tidal wetland directly affected, or which, if off-site, may be adversely affected by the operation because of sedimentation or alteration of the hydrologic regime;
2. Establish a minimum 25-foot buffer around the wetland within which disturbance will be avoided;
3. Establish a broader buffer where conditions of steep slopes and highly erodible soils or unique habitat features are present. Particular care should be taken if the wetland provides habitat for endangered or threatened species or species in need of conservation;

4. Minimize alterations to the hydrologic regime of the wetland by preventing disturbances in its drainage area;
5. Evaluate the habitat value of the wetland and, if warranted, adjust the seasonal occurrence of the harvest operation to avoid disturbances during the wildlife breeding season.

In addition to these general protection measures, if the cutting or clearing is proposed to take place directly in the wetland, steps should be taken to ensure that adverse impacts are avoided. (As indicated above, if such impacts are not avoided, the operation may not be allowed, or, if permitted, mitigation of the impacts would be required). In order to accomplish this purpose the Plan should address how the operation will avoid adverse impacts to water quality, the hydrologic regime of the wetland, and its habitat value. In regard to water quality and hydrology, the measures or practices contained in Appendix C should be applied.

In regard to habitat, the following guidelines should apply in addition to those described in Appendix C:

1. Wetlands dominated by loblolly pine stands comprising 50% or more of the wetland area - No limitations on harvests;
2. Wetlands with a water regime classified by the USFS as Temporarily Flooded (A) and verified in the field - No limitations unless noted below;
3. Wetlands with over 30% coverage by exotic plant species (See 8(e) for species list) - No limitations;

4. Wetlands associated with extensive forested tracts that may be habitat for forest interior dwelling birds- Breeding bird survey is necessary prior to harvest or cutting; manage harvesting according to measures contained in Guidance Paper No. 1;
5. Wetlands containing habitats of threatened or endangered species, species in need of conservation, or Natural Heritage Areas - No harvesting unless recommended by the Maryland Natural Heritage Program (MNHP) or the Non-Game Program of the FPWS;
6. Wetlands containing habitats of local significance - consult local jurisdiction for any limitations;
7. Wetlands with a water regime of "E" (seasonally flooded-saturated) or wetter - Because of the potential for extreme wetlands disturbance, harvesting should generally not occur in these areas.
8. Wetlands of special significance for fish, plant, or wildlife as noted below - These are wetland areas which have a high potential for containing rare or uncommon species or communities, or threatened and endangered species and species in need of conservation. The MNHP or the Non-Tidal Wetland Division of the Water Resources Administration should be consulted for special management recommendations for such areas;
 - a) Wetland complexes: the area contains three or more contiguous wetland types or mixed classes;

- b) Special soil type: wetlands have a high probability of being of special importance when they occur on the following soil types (excluding loblolly pine dominated areas):

Pocomoke	Peat
Elkton	Muck

- c) Seep wetland areas: these are indicated by a wetter water regime than adjacent areas, by muck or peat soils, or by at least a 70% cover of sphagnum moss. Good indicator plant species include:

skunk cabbage	(<u>Symplocarpus foetidus</u>)
follicled sedge	(<u>Carex folliculata</u>)
marsh marigold	(<u>Caltha palustris</u>)
Canada mayflower	(<u>Maianthemum canadensis</u>)
wood anemone	(<u>Anemone cinquefolia</u>)

- d) Forested wetland areas or enclaves with bald cypress (Taxodium distichum or Atlantic white cedar (Chamaecyparis thyoides).

- e) Forested wetlands dominated by large trees (greater than 24" dbh) with less than 30% herbaceous cover in exotic species. Such exotic species include:

Japanese honeysuckle	(<u>Lonicera japonica</u>)
Japanese barberry	(<u>Berberis thunbergii</u>)
Japanese knotweed	(<u>Polygonum cuspidatum</u>)
Kudzu-vine	(<u>Pueraria lobata</u>)
Asiatic knotweed	(<u>Polygonum perfoliatum</u>)
Day lily	(<u>Hemerocallis fulva</u>)

Multiflora rose	(<u>Rosa multiflora</u>)
Privet	(<u>Ligustrum</u> sp.)
Garlic mustard	(<u>Aliaria officinalis</u>)
Autumn/Russian olive	(<u>Eleagnus</u> sp.)
Purple loosestrife	(<u>Lythrum salicaria</u>)
Common reed	(<u>Phragmites australis</u>)

- f) Wetlands classified as PSS if south of Caroline County or in Anne Arundel County north of U. S. Route 50, or PSS 3 or PSS 3/other north of Calvert and Charles Counties (these are potential bogs, Sphagnum is indicator).
- g) Forested wetlands with shrub understory and herbaceous groundcover of at least 30%. (Indicates well-defined vegetation layers with high diversity - see a above).
- h) Wetlands adjacent to bayside ponds. These wetlands may be identified on NWI Maps as PSS 1E, 1R, or E2SS.
- i) Forested wetlands with vernal pools (seasonal ponds).
- j) PFO wetlands with a water regime of "C" (seasonally flooded), excluding those dominated by loblolly pine.
- k) PFO1 wetlands which occur south of the Choptank River and which do not have a hydrologic connection to perennial or intermittent streams.