

## **Maryland Coast Smart Council**

Maryland Dept. of Natural Resources  
580 Taylor Ave., C-1  
Annapolis, MD 21401

### **Final Meeting Minutes**

May 28, 2015

The Coast Smart Council met at the Maryland Department of Natural Resources, 580 Taylor Ave., C-1, Annapolis, Maryland on May 28, 2015.

#### **Council Members in Attendance:**

Chris Elcock, GWWO Inc., Architects  
Dr. Gerry E. Galloway, Jr., University of Maryland, College Park  
Sepehr Baharlou, P.E., BayLand Consultants & Designers, Inc.  
Thomas J. Lawton, Somerset County  
La Verne Gray, Maryland Dept. of Planning  
Don Halligan, Maryland Dept. of Transportation  
Mostafa Izadi, P.E., Department of General Services  
Mark James, Preparedness Directorate, Maryland Emergency Management Agency (by phone)

#### **Council Members Not in Attendance:**

Chair Mark Belton, Secretary of Department of Natural Resources  
Keith A. Holmes, Department of Business and Economic Development (by phone)  
The Honorable Dennis Dare, Town of Ocean City  
Fiona Burns, Office of Capital Budgeting, Maryland Department of Budget and Management  
David Costello, Maryland Dept. of Environment  
Kate Charbonneau, Critical Area Commission  
Dr. Donald Boesch, University of Maryland, Center for Environmental Science

#### **Council Staff in Attendance:**

Zoë Johnson, Maryland Dept. of Natural Resources  
Renee Orenstein, Maryland Dept. of Natural Resources

#### **Guests in Attendance:**

Ren Serey, Critical Area Commission  
Cristen Flynn, Department of Legislative Services (by Phone)  
Meg Andrews, MDOT  
Carissa Ralbovsky, DBM (by Phone)  
Walid Saffouri, MDE (by Phone)

### **Welcome/Meeting Objectives**

DNR Staff Zoe Johnson called the meeting to order and welcomed Council members. The majority of this meeting will be focused on the Siting and Design Criteria. Zoe gave a recap of the March 17, 2015 CSC meeting and the April 21, 2015 Natural Resource Subgroup meeting.

MDOT submitted comments on the Federal Executive Order 13690. MDOT can make the comments available to interested parties, upon request. The comments were mainly asking for more clarity in the guidelines.

The first order of business was the approval of the Coast Smart Council March 17, 2015 meeting minutes. Minutes were approved with no changes. Zoe also went over the Coast Smart Council April 21, 2015 Natural Resources Subgroup notes.

The approved minutes and subgroup meeting notes will be posted on the Council's webpage:  
<http://www.dnr.state.md.us/climatechange/CSCouncil/index.asp>

## **Categorical Exception and Coast Smart Waiver Criteria and Process Discussion**

Zoe Johnson presented the categorical exception process and waiver considerations in the draft Siting and Design Coast Smart Construction Criteria document.

- The Council discussed the Smart Growth Coordinating Committee and Sub Cabinet assuming the authority to grant or deny Coast Smart Waiver Considerations. Zoe presented a request on behalf of the Council to the Coordinating Committee on May 6, 2015 and the proposal was heard by the Smart Growth Sub Cabinet on May 13, 2015. The Sub Cabinet approved the request of the Coast Smart Council's to assume authority to review and grant waivers.
- The proposed Criteria makes two types of waiver processes available: 1) categorical exceptions and 2) Coast Smart Criteria Waivers. Both are discussed below:

### *1) Categorical Exceptions*

- The categorical exceptions include broad uses that can be excluded by the agencies themselves.
- The Council noted that the Criteria language needs to be changed from "exclusions" to "exceptions."
- The Council will review these categorical exceptions annually and/or assess what types of projects are qualifying as categorical exceptions within agencies.
- Zoe proposed that the Council could meet 3 or 4 times each year to review these projects. These meetings would not all be used for approval or review of projects.
- DNR would not be the body that approves the exception. That would be left up to the agency proposing the project.
- There was concern from the Council that there is not enough oversight to stop agencies from building projects that do not comply with the Siting and Design Criteria. Other members responded that there are other means to make DNR's view of the project known, outside of categorical exceptions, such as the Project Screening Checklist through the Capital Budget process. The agencies should act in the spirit of the Criteria. The Cover Sheet can also be used to ensure the agency is implementing the Criteria.
- MDOT asked whether the attached checklist needs to be filled out, because there is another checklist that MDOT uses. The Council felt it would be simpler if everyone filled out the same Criteria checklist.
- The Council was also concerned about who would have the authority to determine if a project is within the floodplain, if the agency wanted a consultation. Who would provide this guidance? The agency would most likely have to figure this out on its own or consult with MDE. Under special circumstances, the Council may want to provide consultation,

before the next scheduled Council meeting. The agency could also bring the project to the Smart Growth Committee for guidance.

- At what point does repair and maintenance become a new project? Issue with section *f. Maintenance, repair, renovation and rehabilitation of existing projects*. Does this create a loophole in the process? The Council decided to take maintenance out of this section.

## 2) *Coast Smart Construction Criteria Waivers*

- In early May, the Smart Growth Coordinating Committee decided to present the issue of Coast Smart Construction Criteria Waivers to the Smart Growth Subcabinet. The Subcabinet took on this responsibility to oversee this waiver process for projects that wish to be considered. The Subcabinet is proposing to meet between 4 to 6 times per year. The Coordinating Committee will meet once a month, and could also review waiver considerations. Most projects will go in front of the Coordinating Committee.
- The Coast Smart Construction Waiver Considerations Cover sheet is also included at the end of the packet.
- Zoe went through the waiver considerations listed in the Criteria.
- The Council voiced concern about *vii. External grant funding* category. This would allow the Council to consider this external grant funding for a possible waiver. The solution may be to include in the language that this waiver is not meant to circumvent other requirements. The category could also be changed to include “governmental” or “federal” external grant funding.
- MDOT showed concern that the process for obtaining a waiver is too long. From the way it is written now, it will take five months to get a waiver. MDOT suggested that an agency have the same requirements for waivers as for categorical exceptions, so it does not have to go to a separate body to review the waivers. There was disagreement amongst the Council about whether there needs to be another body reviewing the waiver considerations. Would the MEPA and NEPA processes be enough oversight for MDOT projects? Zoe suggested that we will delete the “3 month” language in the Process section. Projects probably only need one month.
- Zoe invited MDOT to propose other waiver considerations to include in program document and to present the proposed changes to the Council in advance of its June 16, 2015 meeting.
- The Council agreed that a section about consultation with the Council outside of the quarterly meetings will be added to the Criteria’s text.

## **Review of Draft Coast Smart Construction Program Document**

Zoe led a discussion of the 5.8.15 draft document. Comments from council are noted below:

- State Disaster Recovery Plan section:
  - MEMA to add language here.
- Annual Reporting to Council section:
  - Agencies should submit a yearly report even if they did not have any projects that year.
- Annual Review and Analysis section:

- There was a discussion about how many times the Council needs to meet each year. One meeting each year could focus on new standards and another meeting could focus on reviewing project reports.
- There was a suggestion that the project review meeting should either be held after the legislative session and after the budget is set or before the legislative session in the fall. The Council decided that October 1 of each year would be the submittal date. October 1, 2016 will be the first project submittal date. The Council will meet quarterly, at least for the next year.

### **Wrap Up & Next Steps**

- The next official meetings are set for June 16, and June 30, 2015. The Criteria go into effect on July 1, 2015.
- The time of the July 16, 2015 meeting was changed to 1:30 pm.
- Zoe called for changes to the Criteria to be emailed at least a week and a half before the next meeting date.
- All meeting materials will be posted to the Council website:  
<http://www.dnr.state.md.us/climatechange/CSCouncil/index.asp>