

Maryland Coast Smart Council

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

Meeting Minutes - Approved

March 17, 2015

The Coast Smart Council met at the Maryland Department of Natural Resources, 580 Taylor Ave., C-1, Annapolis, Maryland on March 17, 2015.

Council Members in Attendance:

Mark Belton, Acting Secretary of Department of Natural Resources
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
The Honorable Dennis Dare, Town of Ocean City
Jenn Aiosa, Maryland Dept. of Planning
David Costello, Maryland Dept. of Environment
Fiona Burns, Office of Capital Budgeting, Maryland Department of Budget and Management
Don Halligan, Maryland Dept. of Transportation
Kate Charbonneau, Critical Area Commission
Mark James, Preparedness Directorate, Maryland Emergency Management Agency
Dr. Donald Boesch, University of Maryland, Center for Environmental Science

Council Members Not in Attendance:

Mostafa Izadi, P.E., Department of General Services
Keith A. Holmes, Department of Business and Economic Development (by phone)

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
Ashish Solanki, MDOT/MD Aviation Administration
Jennifer Sparenberg, MHT
Olivia

Welcome/Meeting Objectives

DNR Acting Secretary Mark Belton called the meeting to order and welcomed Council members. The first order of business was the approval of the Coast Smart Council November 20, 2014 meeting minutes. With one change, the minutes were approved.

Zoe Johnson presented a meeting recap of November 20, 2014.

2016 General Assembly Proposed Legislation Senate Bill 256

Zoe Johnson presented a summary of the status of Senate Bill 256 and what implications it would have on the Coast Smart Council.

- SB 256 is still in committee. It would mandate that the MD Department of Agriculture work with the Coast Smart Council on siting and design in light of climate change.
- The bill would also mandate that MD Department of the Environment to work with CSC to evaluate climate change impacts on major cities and towns.
- The bill would mandate sea level rise projections to take place every five years.

Presentation: Federal Flood Risk Management Standards

Renee Orenstein of DNR provided a summary of EO 13690 and the accompanying guidelines issued by FEMA. The guidelines are open for public comment, which are due by April 6, 2015.

- President Obama signed an executive order on January 30th, 2015 directing federal agencies to adopt new flood elevation standards for the siting, design, and construction of federal actions.
- FEMA has issued draft revised guidelines for implementing the Executive Order.
- The EO sets up a NEPA-like review for proposed federal actions that are located in the floodplain, in order to curb development in these areas to prevent loss. Federal actions include:
 - (1) acquiring, managing, and disposing of Federal lands and facilities;
 - (2) providing Federally undertaken, financed, or assisted construction and improvements; and
 - (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities
- The new rules hope to better ensure that flooding from climate change will be taken into account in the development of federal projects and are expected to save taxpayers money in the long run by reducing federal disaster assistance spending following extreme weather events.
- The EO redefines the floodplain by using a higher elevation standard, instead of current base flood levels, in order to address current as well as future flood risks. The EO establishes three ways for federal agencies to determine whether a federal action is located in a floodplain, which triggers a review process (this replaces the 100-year flood standard from 1977):
 1. Best-available data and methods that integrate current and future changes in flooding based on climate science
 - Preferred method; Guidelines state that the agency determines the location of the floodplain “in a manner appropriate to agency policies, practices, criticality, and consequences”
 - May or may not correspond to the projected 1-percent-annual-chance flood
 - FEMA maps serve as a guide for this approach
 - May result in a higher floodplain than FEMA’s FIRMs and FIS
 - Critical or non-critical action taken into account
 2. Freeboard value – reached by adding an additional two feet to the base flood elevation for non-critical actions and an additional three feet to base flood elevation for critical actions
 - Non-Critical Actions: freeboard determined by adding 2 feet to BFE
 - Critical Actions: freeboard determined by adding 3 feet to BFE
 - Base flood elevation can be determined using FEMA’s FIRMs and FIS, which use a 1-percent-annual-chance flood elevation

- Guidelines go into very little explanation of this approach
3. 500-year flood – 0.2 percent annual chance of flood
- Guidelines state that agencies may use FEMA maps, agency calculations, or other calculations to determine 500-year flood
 - Used for both critical and non critical actions
 - Guidelines go into very little explanation of this approach
- Critical vs. non-critical actions: this determination is mainly left to agency discretion. The EO defines critical actions as “any activity for which even a slight chance of flooding is too great.” The guidelines define critical action as “concern that the impacts of flooding on human safety, health, and welfare for many activities could not be minimized unless a higher degree of resilience was provided.” The guidelines provide some examples of categorizing an action as critical, but the list is not comprehensive
 - If the proposed action is determined to be in the floodplain, the federal agency taking the action must: Issue an early public review, identify and evaluate alternatives (which must include nature based approaches when possible), identify impacts of the proposed action, minimize harm and restore/preserve natural and beneficial values, reevaluate alternatives, and publish an explanation as to why the action is being taken
 - Exceptions to the floodplain review requirement are actions for national security, emergency actions, work essential to save lives, protect property, and protect public health and safety, or if not siting in the floodplain would be demonstrably inappropriate.
 - If the agency head determines that there are no practicable alternatives to locating the action in the floodplain, the agency MUST modify or design the action to “minimize harm” by using all practicable means and measures determined by the agency. The guidelines state that “practicable” alternatives depend on the situation, including pertinent factors such as environment, cost or technology. “Minimize harm” is not defined in the EO, and the guidelines state that it requires the agency to reduce harm to the smallest possible degree, thus establishing a far more rigorous standard than other terms, such as alleviate or mitigate.

Useful Links:

- EO 11988 - <http://www.archives.gov/federal-register/codification/executive-order/11988.html>
- EO 13690 - <http://www.regulations.gov/#!documentDetail;D=FEMA-2015-0006-0004>
- Revised Guidelines for Implementing Executive Order 11988 - <http://www.regulations.gov/#!documentDetail;D=FEMA-2015-0006-0003>
- FEMA Webinar on March 25, 2015 - <https://www.fema.gov/federal-flood-risk-management-standard-ffrms>
- Comments on FEMA Guidelines must be received by April 6, 2015

Comments:

- Secretary Belton raised the issue of whether we would like to submit a comment as the State on the draft guidelines. We will tentatively begin to draft a comment, which may change as we move through the process.

Draft Coast Smart Siting & Design Criteria

Zoe Johnson went through the Siting & Design Criteria with the group and asked for any comments or concerns. She changed the template of the Criteria to mirror the Green Building Council’s framework.

- The CSC needs to decide how, if at all, it wants to encompass the new Federal EO 13690 into its Siting & Design Criteria. CSC already uses a 2 foot freeboard standard.

- The Criteria is Set to wrap up in June, but CSC work will continue either quarterly or biannually to look at new issues.
- Members have commented on the Criteria section, and those changes will be put into the document. This section provides definition for “structure” and “substantial damages”
- Siting Criteria Section:
 - o A commission member suggested that we change Item B requirement to *practicable*, instead of *possible*.
 - o V zones sections were added to the Criteria to reflect the federal executive order.
 - o Councilmember suggested that on page 3, #4 be changed from *shall* to *should* be protected and maintained to the maximum extent practicable.
 - o The council flagged mitigation through ecological features as a broader discussion to take place at a later date, possibly in a subgroup. A Councilmember commented that the CSC may want to tie in hard and soft shoreline protection measures. He referenced MDE shoreline protections and living shoreline projects, and the need for any proposed protection to fall in line with COMAR. Shoreline projects may come into play for actions that fall under exceptions or development that already exists in certain vulnerable areas. Zoe proposed to meet about ecological features in April for anyone who wants to be involved.
 - o A Councilmember asked whether “substantially damaged” included historic structures. Zoe said that there is a waiver in the exceptions sections for historical structures.
- Design Criteria Section:
 - o Zoe explained the critical 3 foot freeboard and non critical 2 foot freeboard approaches. The CSC has already defined “essential structures” in another document and may want to include all the definitions that CSC already has in the Siting & Design Criteria. CSC already used the 500 year chance flood, but does the Council want to adopt the extra 2 and 3 feet in the federal Executive Order? Are people interested in bringing our siting in line with the federal standards? Council members commented that it makes sense to do so, because certain projects are already under the federal standards.
 - o CSC may want to revisit its definition of “critical facility” because it is very broad.
 - o The question was posed as to whether CSC wants to stay with NFIP maps for our freeboard standard or adopt some language consistent with the federal standards. Additionally, MDE is developing new flood maps for Maryland that will factor in sea level rise that will be useful in the future.
 - o To help integrate the federal EO, we should wait to hear the FEMA webinar and read through the federal guidelines. Once members become more familiar with this, the Council can talk more about what standard(s) we want to integrate into our Siting & Design Criteria.
 - o A council member suggested that maybe CSC should stick to NFIP maps because we have to have these Criteria done by June. Zoe said the other option is to regulate to the 500 year floodplain.
 - o There was discussion of building more flexibility into CSC criteria, as was done in the federal EO, to give agencies more discretion. One council member commented that

- maybe CSC could use the options in the federal EO, but rearrange the order to put the freeboard option first.
- Reporting and Review:
 - o The council discussed how agencies will use these Siting & Design guidelines in their day-to-day decision making and how the CSC will review these actions.
 - o The Coast Smart Construction Screening Checklist can be used to answer questions about making smart investments in the 100-year floodplain.
 - o To what extent with CSC be involved with the reporting and review process? Will CSC meet and review documentation of all proposed projects or will the CSC act as the body that only issues a waiver?
 - o A councilmember stated that it would be helpful to integrate this Siting & Design process with the Capital Budgeting process, rather than creating something additional that agencies have to adhere to.
 - o The CSC needs to decide whether it wants or needs to see reporting on all projects, or just the ones that need waivers. Documentation or waivers and possibly all projects is a good way to create annual reporting. CSC may need to designate a “reviewer” on the council whose job is to review the waivers or reports. The best role for the council may not be a project by project review, but it needs reporting in some form. CSC still needs clarity as to how often, to whom, and to what end reporting should be done.
- Waiver Considerations: Zoe went through the proposed waivers and added in emergency uses that were listed in the federal EO.
 - o design waiver considerations – all listed in NFIP - on item M., the council discussed need to reserve the right for the CSC to provide comments, along with MDE and NFIP coordinator
- The next sections of the Siting & Design are about how we are going to incorporate these criteria. CSC can add in some language about early notice and consultations.
- The council also discussed that these Siting & Design regulations probably have to be incorporated only in two places.

Wrap Up

- The next official meetings are set for May 19, June 16, and July 14.
- Zoe proposed a meeting on April 21 for a subgroup for ecological features and shoreline protection.
- Zoe will send out FEMA webinar information about the federal Executive Order and will follow up on the preparation of state comments on the guidelines.
- All meeting materials will be posted to the Council website:
<http://www.dnr.state.md.us/climatechange/CSCouncil/index.asp>