



PATUXENT RIVER COMMISSION

301 W. Preston Street, Suite 1101
Baltimore, Maryland 21201-2305
Phone: (410) 767-4500
Fax: (410) 767-4480
Internet:

planning.maryland.gov/ourwork/patuxentrivercomminfo.shtml

☀ Please call Daniel Rosen at MDP 410-767-4577 if you have any questions or comments.

Larry Hogan, Governor
Councilman Michael Leszcz, Co-Chairman
Christopher Perry, Vice Chairman

We, the Patuxent River Commission, envision a Patuxent River ecosystem as vital and productive in 2050 as it was in the 1950s. We therefore commit to be stewards and advocates for the Patuxent River and to lead and inspire actions to protect, enhance, and restore living resources and the natural, cultural, economic, and recreational values of the Patuxent River and its watershed.

MEETING SUMMARY

September 12, 2018

Maryland Department of Agriculture

Annapolis, MD

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

Members: Michael Leszcz, Chair; Christopher Perry, Vice-Chair; Martin Chandler, Erica Hahn, Sandy Hertz, Scott Knoche, John McCoy, Erik Michelsen, Thomas Miller, Matt Rowe, Alison Santoro, Mary Kay Sigaty, Barbara Sollner-Webb, Sandy Spencer, Mark Symborski, Jackie Takacs, Fred Tutman, Al Tucker

Attendees: Paul Cucuzzella, Frank Dawson, Chad Edmondson

Staff: Chuck Boyd, Deborah Herr Cornwell, Daniel Rosen,

The Commission approved the minutes from the August meeting with a small wording change from Martin Chandler.

Overview of the County Development Review Process for Stormwater Management and Sediment and Erosion Control

Presentations were made by the Anne Arundel Soil Conservation District and the grading and sediment control unit of the Howard County Department of Planning and Zoning. A representative from Calvert County will be invited for a future meeting.

Update on the October 10 Site Visit

The event will take place at 4:00 at the Patrick Farm in Howard County, at the headwaters of the Patuxent River.

Update Patuxent River Challenge

Daniel Rosen that the Patuxent Challenge webpage is up and running. People are posting pictures of themselves at the Challenge venues, and one person finished the Challenge.

Update Local TMDL Workshop

Mr. Rosen reported that Planning staff is working on the Workshop again and hopes to have it take place in the spring. Matt Rowe noted that MDE would be interested in participating in planning the workshop.

MDE Final Sewage Spill Notification Guidance

Barbara Sollner-Webb recalled that the Guidance had two objectives: Notice of sewer overflows to downstream communities, which the Guidance addresses well, and the testing of affected waters, which the Guidance does not address. She noted that counties use various timelines before reopening access to affected waters: Anne Arundel usually takes four days based on water testing, while Prince George's takes 30 days. Ms. Sollner-Webb asked if MDE could recommend that all counties send water samples to the state for testing.

Matt Rowe replied that MDE did not want to limit county discretion by recommending just one approach. MDE provides funding through MOUs for testing waters near beaches but cannot do that for every spill. Sharing Anne Arundel's strategy with the other Patuxent Counties would be a good idea.

Mike Leszcz asked staff to set up a conference call with county health departments to share Anne Arundel's strategy. He asked Ms. Sollner-Webb to share her contacts with Jason Dubow and Daniel Rosen, who can arrange the calls.

Fred Tutman pointed out that the Guidance does not settle the question of a standard closing period. A local jurisdiction may read the Guidance and still not know when to lift a closing. Matt Rowe responded that local health departments have discretion, and MDE tried to strike a balance between routine spill effects and site-specific situations; the Guidance provides possible scenarios but not a formulaic response for all situations. For large events, a local jurisdiction can call MDE for guidance.

Mr. Tutman said that park operators would still be unable to know whether or not to close access to the water based on the Guidance. Erik Michelsen said that bacteria counts at beaches rarely remain high after three days, so that standard seems reasonable for sewage overflows elsewhere. Mr. Tutman agreed but said he could not get an answer from local health departments about when they lift restrictions.

Mary Kay Sigaty recommended that instead of a phone call, a meeting be arranged with all the Patuxent health departments to find out what their obstacles are for posting and lifting sewer spill postings and for Anne Arundel to share their experiences.

Chuck Boyd committed Planning to developing an agenda and compiling the list of initial contacts.

Advice of Counsel Memo

Paul Cucuzzella, Planning's Assistant Attorney General, led the discussion of the advisory memo that Deputy Counsel Rieyn Delony provided to Planning Secretary Robert McCord. The memo deals with two issues: (i) the scope of the Commission's ability to comment on development, and (ii) whether the Secretary of Planning has the authority to set boundaries on the PRC's actions. Mr.

Cucuzzella noted that the memo has a “rational basis” and is “a fair interpretation” of the PRC statute; he also noted that the statute is open to other interpretations. Mr. Cucuzzella informed the member that Counsel to the General Assembly has received a request for an opinion regarding these issues and is reviewing the matter.

Mr. Cucuzzella offered his thoughts on the scope of the PRC’s ability to comment on development plans. “Commenting on plans,” as the term is used in the PRC statute, could have different meanings based on context. “Plan” is a defined term in the Land Use Article, but it’s not clear that that definition would apply to “plan” as used in the State Finance and Procurement Article where the PRC statute resides. As for the Secretary’s power to limit the scope of the PRC’s comment authority, the location of the PRC in Planning’s section of the code would tend to lead to a conclusion that the Secretary has such authority. On the other hand, the PRC is somewhat unique from other commissions in how it is statutorily established: it is not part of Planning, yet it is not independent, either. Mr. Cucuzzella noted that the fact that the Secretary of Planning has no authority over the membership of the PRC could lead to a conclusion that he lacks the authority to limit the scope of what the PRC can comment on. Mr. Cucuzzella stressed that “a reasoned analysis can come to either conclusion.” He could not say when Counsel to the General Assembly will issue its opinion.

Frank Dawson asked if a legislative fix was needed. Mr. Cucuzzella replied that clarification could come from the courts, but the General Assembly could clarify for all time. Chuck Boyd noted that individual PRC members can speak for the entities they represent, but not for the PRC as a whole. Mr. Boyd also noted that it is unlikely that MACo would support legislation broadening the PRC’s authority. Christopher Perry pointed out that the Commission did vote to send a letter to Howard County and wondered how it could avoid having to consult with counsel every time it wanted to send a letter to a county. Mike Leszcz said it depends on the type of the letter, and explained that the PRC shouldn’t delve too far into local prerogatives. Erik Michelsen suggested that PRC comment letters should strike a benign tone and should focus on issues such as how a county’s process applies to the specific project in question. Mr. Cucuzzella suggested that until the matter is settled, the Commission should follow the Secretary’s guidance on what to say and what not to say; it’s one thing to make a governing body aware of a possible departure from its review and approval process, but another to take a position on a project.

Mary Kay Sigaty described a situation in Howard County that is germane to the current discussion. The County land preservation board wanted to take testimony from farmers. Since the local statute says that the duty of the land preservation board is to advise the County Council, the Department of Planning and Zoning told them no. The Council asked how the board could advise them if the board is not allowed to take testimony. A look at the County Code revealed that other boards can take testimony, but the ag preservation board was not given that authority. The county had to decide whether or not a legislative change was necessary; perhaps this is the stage at which the PRC finds itself. Ms. Sigaty said that it would be good for the PRC to offer its considered opinion on a project; when the project comes to the County Council, the Council members should be informed.

Barbara Sollner-Webb asked if a PRC workgroup could be convened to learn about the Howard County project that affects the Patuxent. Ms. Sigaty and Mr. Boyd suggested that the relevant people come to speak to the whole PRC so that everyone hears the same information and creates a

good piece of advice.