



**THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION**

6611 Kenilworth Avenue • Riverdale, Maryland 20737

Commission Meeting  
Open Session Minutes  
May 1, 2019  
For Combined April/May 2019 Meetings

The Maryland-National Capital Park and Planning Commission met at the Prince George's Parks and Recreation Administration Office Auditorium in Riverdale, Maryland.

PRESENT

Prince George's County Commissioners

Elizabeth M. Hewlett, Chair  
Dorothy Bailey  
William Doerner  
Manuel Geraldo

Montgomery County Commissioners

Casey Anderson, Vice-Chair  
Gerald Cichy  
Norman Dreyfuss  
Natali Fani-Gonzalez  
Tina Patterson

NOT PRESENT

A. Shuanise Washington

Chair Hewlett convened the meeting at 11:09 a.m.

ITEM 1      APPROVAL OF COMMISSION AGENDA  
ACTION: Motion of Commissioner Geraldo to approve the amended Commission agenda  
            Seconded by Commissioner Doerner  
            9 approved the motion

ITEM 2      APPROVAL OF COMMISSION MINUTES  
Open Session – March 13, 2019  
ACTION: Motion of Commissioner Geraldo to approve the Commission minutes  
            Seconded by Commissioner Doerner  
            9 approved the motion

ITEM 3      GENERAL ANNOUNCEMENTS  
a) Military Appreciation Month  
b) Asian Pacific American Heritage Month  
c) Jewish-American Heritage Month  
d) National Fitness Month/Fitness Days in May – Commission Fitness week, May 12-18  
e) National Prevention Week (mental and/or Substance Use Disorders), May 12-18

Chair Hewlett also noted it was Older Americans month, and acknowledged May 1 as May Day and Law Day.

ITEM 4      COMMITTEE MINUTES/BOARD REPORTS (For Information Only)  
a) Executive Committee – Open Session – April 8, 2019  
b) Employees' Retirement System Board of Trustees Meeting – December 4, 2018

ITEM 5

ACTION AND PRESENTATION ITEMS

- a) Resolution #19-02, In Recognition and Appreciation of Hogan Lovells US LLP and Neal Kumar Katyal for Distinguished Public Service (Gardner)  
Approved without discussion.  
ACTION: Motion of Geraldo to approve Resolution #19-02  
          Seconded by Fani-Gonzalez  
          9 approved the motion
- b) Resolution #19-03, Refunds to M-NCPPC’s Appropriate Non-Departmental Accounts for Fiscal Year 2019 Overpayments to M-NCPPC’s Group Insurance Fund (Zimmerman)  
Approved without discussion.  
ACTION: Motion of Bailey to approve Resolution #19-03  
          Seconded by Geraldo  
          9 approved the motion
- c) Budget Reductions to meet County Executive’s Budget (Kroll)  
Corporate Budget Director Kroll briefed Commissioners on the status of the proposed budget reductions for bi-county operations and departments as presented to the Montgomery County Planning, Housing and Economic Development (PHED) Committee. These proposed reductions will be addressed on Monday May 6 at the Montgomery County Council meeting, and again on May 9 at the Joint Council meeting at WSSC.
- d) Commission-Wide IT Budget Adjustment – NeoGov Onboarding Project (Kroll)  
Mr. Kroll requested Commissioners approve a budgetary adjustment of \$92,600 to fund the implementation of NeoGov software which will be used by the bi-county offices to automate the agency’s recruitment efforts. The project is supported by the M-NCPPC’s IT Council and funded by the Prince George’s County Parks and Recreation Department, as they are the largest beneficiary of an automated hiring process. In addition to authorizing the budget adjustment, the Commission must authorize funds coming from Prince George’s operations to fund a bi-county project.  
ACTION: Motion of Geraldo to approve the adjustment.  
          Seconded by Fani-Gonzalez  
          9 approved the motion
- e) Request for Use of Salary Savings  
a. Department of Human Resources and Management (DHRM) (Bennett)  
Acting Executive Director Bennett has personnel savings due to unexpected retirements and unanticipated position turnover. The Department is requesting a transfer of \$375,000 to address priorities identified during discussions with both Planning Boards.  
ACTION: Motion of Fani-Gonzalez to approve  
          Seconded by Geraldo  
          9 approved the motion

b. Office of the General Counsel (Gardner)

General Counsel Gardner stated the Legal Department has personnel savings for FY19 due to a variety of staffing changes. The Department is requesting \$627,500 to fund temporary services, project studies, and issue rebates on legal fees paid by the Montgomery County Parks Department and Prince George's County Department of Parks and Recreation.

ACTION: Motion of Geraldo to approve  
Seconded by Patterson  
9 approved the motion

c. Department of Finance (Zimmerman)

Secretary Treasurer Zimmerman stated the Finance Department has projected approximately \$200,000 in personnel savings for FY19 due to delays in filling critical positions. The Finance Department would use the savings to fund the Lawson Budgeting and Planning (LBP) Replacement and a transfer of funds to the IT unit.

ACTION: Motion of Geraldo to approve  
Seconded by Bailey  
9 approved the motion

d. Office of the Inspector General (Kenney)

Inspector General Kenney requested to transfer personnel savings of \$10,000 to cover identified expenses in the OIG work program.

ACTION: Motion of Bailey to approve  
Seconded by Geraldo  
9 approved the motion

f) Revisions to Practice 1-40, Organization and Functions of the Legal Department (Gardner)

General Counsel Gardner asked Commissioners to approve amendments to the Practice to reflect current operations. The Practice established the authority of the General Counsel to appoint a Deputy General Counsel. Commissioner Patterson asked about the timing of hiring a Deputy General Counsel. General Counsel Gardner indicated hiring in FY19 is conceivable, particularly considering the salary lapse.

ACTION: Motion of Geraldo to approve  
Seconded by Bailey  
9 approved the motion

g) Acknowledge Elaine Stookey as the Bi-County Open Trustee to the Employees' Retirement System Board of Trustees for the term ending June 30, 2021 (Rose)

Approved without discussion.

ACTION: Motion of Geraldo to approve  
Seconded by Bailey  
9 approved the motion

h) I-495/I-270 Managed Lanes Study Update (Rubin/Borden)

Special Project Manager Carol Rubin from Montgomery County Planning and Principal Counsel Debra Borden from the Office of the General Counsel's Land Use Team in Prince George's County were introduced to provide a briefing on the Maryland State Highway Administration's (SHA) proposal on the I-495/I-270 Managed Lanes Study in anticipation of the deadline for agency comments to the recommended alternatives retained for detailed study (ARDS). Of the 15 Preliminary Alternatives, SHA recommended 7 move forward with all the build alternatives including only managed (toll) lanes without any elements of transportation demand management or transit. Ms. Rubin also introduced other members of the team, including Maria Martin (Prince George's Planning), Matt Harper (Montgomery Parks), and Steve Aldridge (Montgomery Planning).

Ms. Borden said the SHA had been holding public hearings in both counties to describe and discuss the seven ARDS and shared the interactive map the SHA developed to illustrate the impacts from each. Except for the National Environmental Policy Act (NEPA)-required no-build option, 6 ARDS involve only toll lanes. Ms. Rubin described differences between the remaining alternatives, mostly based on their proposed operations. The ARDS do not significantly differ in footprint and would not have a significant difference in impact to the environment.

Ms. Rubin and Ms. Borden demonstrated the interactive map, which shows the impact for the different ARDS in a satellite view-style map, which is a planning-level engineering study. Without consideration of land use or transportations planning and other design issues, there is no way to know the actual parkland impacts.

SHA will be selecting a private partner to design the project but will be required to complete the Final Environmental Impact Statement (FEIS) before they do so. The private partner would be required to follow the limits of the EIS, or the EIS would have to be reopened. The design has not taken into account overall planning factors such as land use planning, economic development, or social justice review. Ms. Rubin asked for authority to communicate these concerns to the SHA as early as possible.

Ms. Rubin laid out critical issues she wished Commissioners to consider, including:

- Proposed Managed Lanes access decisions appear to be based entirely on geographic impact without consideration of the relationship to existing and future origin-destination patterns, planned land use, economic development considerations social equity or safe and efficient accesses to transit facilities.
- The ARDS recommendations do not include a social justice analysis as required by NEPA.
- Impacts to parkland along I-495 and I-270 have likely been underestimated due to discrepancies in ownership/control along and including portions of highway.
- Public transportation must be considered as an integral element in design of the preferred alternative.

- Relocations on I-495 and property impacts should include evaluation of whether partial takings result in nonconforming properties under current environmental and zoning laws.
- The benefits and impacts from any of the alternatives will be incomplete without a local road system/interchange analyses, particularly given the selection of limited access to the managed lanes.

Commissioners and staff discussed specific issues based on interchanges in the design. Commissioner Dreyfuss said it is hard to raise questions about the impact until proposals from the partner are reviewed. Ms. Rubin said dealing with issues at an earlier stage can be useful, so the outside limits of the project are clear. The state will not want to re-open and have a supplemental EIS. M-NCPPC's comments will provide some certainty to the communities that are impacted by the project. Chair Hewlett agreed, saying issues should be flagged in advance so the partner can take them into their design beforehand, rather than need to go back and change their design.

Commissioner Cichy suggested defining where the interchanges would be and let the engineering firms provide the innovation to execute the plan within the parameters of the EIS.

Ms. Rubin described issues with right of way in specific areas in each county in that SHA asserts that it owns that they do not. General Counsel Gardner discussed the Capper-Crampton Act, which in the 1930s tasked M-NCPPC to acquire parklands and protect certain watersheds. Commissioner Cichy noted that these areas can be developed, but extensive mediation and approval is required. Ms. Rubin agreed, and said the National Capital Parks Commission is the approving body to change or expand the current use.

Ms. Rubin explained that the SHA is underestimating the impact on private property and parkland. Ms. Rubin said that 34 homes and four businesses within the study area are marked as "displacements" by SHA. The team believes the number of properties that the SHA has put forth publicly as displaced will grow substantially. Ms. Rubin said that while 34 homes are on the total take list, many more homes and businesses would be impacted. Commissioner Doerner asked about the limit or scope of what the M-NCPPC is doing, saying whether SHA attempts a partial or full taking would need to be settled in a court of law. Ms. Rubin replied the M-NCPPC's involvement would be concerning parkland; she was listing those as examples to illustrate the scope of the impact. General Counsel Gardner noted the M-NCPPC also has a responsibility not only as a property owner, but as a planning advisor.

Ms. Rubin said the impact to parkland has been substantially underestimated, based on discrepancies of ownership along, and including, portions of the highways. We do not agree on what is under the SHA's ownership and control versus the M-NCPPC's and there are limited resources to do the research. Mr. Harper agreed staff have seen clear discrepancies between what SHA is identifying as theirs.

Ms. Rubin said NEPA suggests cooperating agencies assist in reaching conclusions on the EIS record of decision. The SHA has only brought the M-NCPPC in as a cooperative agency

because the agency owns so much parkland. She said the SHA has said it does not have any interest in the agency's input on Transportation or Land Use planning and does not care that the M-NCPPC are the local experts. Ms. Rubin read from the SHA statement supporting this assertion. The M-NCPPC is not being compensated for any planning consultation.

Commissioner Dreyfuss noted that every government agency has an objective and it is the SHA's job to get the highway built. He said it should not be a surprise that the SHA wants to get this done quickly and efficiently and avoid bringing other agencies in that will slow the process down by bring up objections and problems. Ms. Rubin replied that it is the Commission's responsibility to advise on local land use and this project is relevant to the growth of Montgomery and Prince George's Counties. The SHA is making decisions that completely disregard land use decisions and analyses approved by the County Councils and M-NCPPC.

Ms. Rubin and Ms. Borden described several more examples of how SHA's current designs do not consider major local planned expansions that will be under way soon and their impact to transportation planning, safety issues, economic development and social equity. Ms. Borden spoke about the SHA's design to end the project in Prince George's County a half mile west of Branch Avenue which would exclude the last five miles of I-495 in Maryland, including exits for St. Barnabas Road, Oxon Hill Road, National Harbor, the interchange with MD-295, and the Woodrow Wilson Bridge from the project. When asked about this, the SHA responded that this portion of I-495 would be part of a future project that the Commonwealth of Virginia will design and build. There are currently no plans for merging the highways after the conclusion of the managed lanes construction and there is no guarantee or expectation that the Commonwealth will build on Maryland property. Stopping the project at Branch Avenue also ignores the county's (and one of the state's) largest economic engines, National Harbor.

Chair Hewlett verified with Ms. Rubin that despite bringing these issues to the SHA's attention, they were dismissive. Ms. Rubin agreed, saying the SHA did not make the process iterative when they looked at planning. They did not consider how to address it, and when M-NCPPC staff brought it up, they ignored them. Ms. Rubin said staff thought the project would be better planned if the Public Private Partnership (P3) knew about those land use issues in advance of their design. Commissioner Doerner noted managed lanes access cannot be everywhere. Designers will have to pick and choose and there are going to be winners and losers. He suggested changing the way we talk about it and use language they are using. By changing the pitch, such as framing it as a safety concern, rather than a planning concern, we might have the same desired outcome.

Commissioner Patterson asked if, in the M-NCPPC's communication with the SHA, we are proposing alternative plans, or are we simply saying, "you can't do this"? Ms. Rubin replied that staff comments have been solution-oriented from a planning perspective. Commissioner Patterson advised to take the emotion out of any responses, and lay out clearly, this is what we anticipate will happen if we continue with these alternatives, and these are ways we suggest mitigating them. Ms. Rubin agreed.

Vice Chair Anderson stated he had been approached by Montgomery County Councilmembers and staff and other stakeholders to assert the M-NCPPC's position as a property owner to refuse to hand over land at all. Vice Chair Anderson noted it was his position, that it is not appropriate for the M-NCPPC to make a judgment but must have the County Council support or oppose the project. We should use that power only if the county councils direct us to. It is entirely appropriate for, and he expects that, the County Councils will ask the M-NCPPC's advice on the project, as the local transportation and land use authority, and we should bring any recommendations or modifications to them. The County Councils will then make their decision, and it would then be the Commission's responsibility to carry them out.

Ms. Rubin also said none of the ARDS recommendations include a social justice analysis as required under NEPA. Ms. Rubin said staff are pushing this particular issue forward. Commissioner Doerner noted there were plenty of places where the SHA could have examined that. Commissioner Geraldo agreed that Commissioners made those suggestions at length. Ms. Rubin reported the SHA's response is that they have not really studied the tolls. Commissioner Bailey asked about the process to present a recommendation. By presenting the recommendation in writing and within their deadlines, Ms. Rubin stated. The recommendation would be followed up in discussion among the cooperating agencies. Ms. Rubin noted the discussions have not been consensus-based, but more a matter of them telling us what they are doing, and M-NCPPC staff commenting.

Ms. Rubin said the SHA has eliminated public transit options from all ARDS. Excluding transportation as an integral part of any plan is giving the wrong message to the P3. She said the initial planning and message must include public transportation as an element. Just allowing buses to use the managed lanes is not sufficient. Staff continues to push those transit opportunities.

She said there needs to be an analysis of the benefits and impacts on local road systems and access. The difficulty is that M-NCPPC does not model interstate highways and the state does not integrate with local road systems. State planners and M-NCPPC planners need to resolve this on a system-wide basis to mitigate the impact on our communities. Staff response is to ask the SHA to let us assist as the local experts.

Chair Hewlett thanked Ms. Rubin, Ms. Borden and the team for their comprehensive work on this project and bringing the various issues to Commissioners' attention, adding they wouldn't have known about them without the team's extensive analysis and pushback. Commissioner Geraldo also thanked the team and added his concern regarding stopping the managed lanes project at Branch Avenue. He said ignoring MGM and National Harbor economic zone was senseless and expecting Virginia to finish it is unrealistic.

## ITEM 6

### OFFICERS' REPORTS

- a) Executive Director's Report (For information only)  
Employee Evaluations Not Completed by Due Date (March 2019)

- b) Secretary Treasurer (For information only).  
Investment Report, October 2018 - March 2019
- c) General Counsel (For information only)  
Litigation Report, February-March 2019

Chair Hewlett asked for a motion to enter closed session at 12:55 p.m. Commissioner Geraldo moved, Commissioner Patterson seconded. 9 approved the motion.

*Pursuant to Maryland General Provisions Article of the Annotated Code of Maryland, Section 3-305(b) (7) & (9), a closed session is proposed to consult with counsel for legal advice, conduct collective bargaining discussions, and consider matters that relate to negotiation.*

Open session resumed at 2:00 p.m. There being no further business to discuss, the meeting ended at 2:00 p.m.

  
James F. Adams, Senior Administrative Specialist

  
Anju A. Bennett, Acting Executive Director