



## **House Bill 1312**

### *Program Open Space Sites – Public Access*

MACo Position: **SUPPORT**

To: Environmental Matters Committee

**WITH AMENDMENTS**

Date: March 5, 2014

From: Leslie Knapp, Jr.

The Maryland Association of Counties (MACo) **SUPPORTS** HB 1312 **WITH AMENDMENTS**. The bill would add new public access requirements for Program Open Space (POS) projects.

As introduced, HB 1312 would require the use of POS funding to provide “maximum public access” to State and local recreational facilities and lands. The bill would also require the Department of Natural Resources and participating local governing bodies to prepare and submit a plan to provide public access to proposed projects to the maximum extent feasible. Similar planning requirements are also added to the State and local governments’ land preservation and recreation plans. Finally, the bill specifies that POS acquisition funds and monies from the Bay Access Areas Fund can be used for public access projects.

MACo supports the general idea that POS funding can be used to improve public access to recreational facilities and lands. Public access should be an important consideration of any POS project. However, as written, the bill would impose significant new planning requirements on a county as part of its annual POS project submission and 5-year local land preservation and recreation plan. The bill also requires providing “maximum” public access without consideration of reasons where immediate public access may not be desirable, including public safety concerns and lands that are acquired as part of a larger unfinished open space project.

MACo has attached amendments that would address county concerns by removing the new planning processes and the vague “maximum extent feasible” requirement. Each State or local POS project would still have to consider public access while taking into account such critical concerns as public safety or project readiness. With the amendments, MACo believes the bill furthers public access to POS projects and land. Accordingly, MACo recommends the Committee give HB 1312 a report of **FAVORABLE WITH AMENDMENTS**.

## AMENDMENTS FOR HB 1312

2014-03-05 (Prepared by MACo)

5-902.

(a) The General Assembly declares that there is need for a program to make funds available to State agencies and any subdivision to:

(1) Expedite acquisition of outdoor recreation and open space areas before escalating cost of land prevents its purchase for public use and before potential areas are devoted to some other use; and

(2) Accelerate development and capital renewal of needed outdoor recreation facilities, **INCLUDING THE PROVISION OF MAXIMUM PUBLIC ACCESS TO THE FACILITIES.**

(b) This program is known as Program Open Space and carries out the recommendations of the 1968 Legislative Council committee on recreational areas. By enacting this program, the General Assembly intends to provide funds to the State and its subdivisions to enable them to acquire land for outdoor public recreation and open space use and develop **AND PROVIDE MAXIMUM PUBLIC ACCESS TO** the land for public recreation.

5-903.

(b) (1) The General Assembly shall appropriate the remaining funds not appropriated under subsection (a) of this section to assist local governing bodies in acquisition and development of land for recreation and open space purposes, **INCLUDING THE PROVISION OF MAXIMUM PUBLIC ACCESS TO THE LAND.**

(f) (1) Subject to the limitation under paragraph (2) of this subsection, the Department may use acquisition funds to:

(i) Stabilize the structural integrity of improvements existing on land at the time of acquisition;

(ii) Eliminate hazards to health and safety, including treatment and removal of hazardous materials; [and]

(iii) Protect water quality by implementing environmental improvements, including shore erosion control measures and vegetated buffers; **AND**

**(IV) PROVIDE PUBLIC ACCESS TO THE RECREATIONAL AND OPEN SPACE USES OF THE ACQUIRED LAND.**

(2) The costs to perform any of the activities described in paragraph (1) of this subsection may not exceed 10 percent of the purchase price of the land.

**(3) THE DEPARTMENT MAY USE ACQUISITION FUNDS TO ENHANCE PUBLIC ACCESS TO EXISTING RECREATIONAL AND OPEN SPACE SITES TO THE MAXIMUM EXTENT FEASIBLE.**

5-904.

(a) (1) Each year the Department, in consultation with the Department of Planning, shall prepare a list of recommended State projects for funding under this program for the next fiscal year.

(2) In preparing the list, the Department shall give priority to properties in targeted areas.

(3) Prior to submitting the list to the Department of Budget and Management for inclusion in the budget, the legislators from the district within which the Department is proposing a State acquisition project shall be given an opportunity to review and comment on the project.

(4) The list shall be submitted to the General Assembly in a manner similar to other capital projects as provided in Title 3, Subtitle 6 of the State Finance and Procurement Article.

**(5) (I) THE DEPARTMENT, FOR EACH PROJECT RECOMMENDED UNDER THIS SUBSECTION, SHALL ~~PREPARE AND SUBMIT A PLAN TO CONSIDER WHETHER IT IS FEASIBLE TO PROVIDE PUBLIC ACCESS TO THE RECREATIONAL AND OPEN SPACE SITE TO THE MAXIMUM EXTENT FEASIBLE.~~**

**(II) WHEN CONSIDERING WHETHER TO PROVIDE PUBLIC ACCESS TO A SITE UNDER THIS PARAGRAPH, THE DEPARTMENT MAY CONSIDER:**

**1. THE AVAILABILITY OF FUNDS AVAILABLE UNDER THIS PROGRAM OR FROM OTHER SOURCES TO PROVIDE PUBLIC ACCESS TO THE SITE;**

**2. PUBLIC SAFETY AND LIABILITY ISSUES IF PUBLIC ACCESS WERE PROVIDED TO THE SITE;**

**3. WHETHER THE SITE WAS ACQUIRED AS PART OF A LARGER RECREATIONAL AND OPEN SPACE PROJECT THAT IS NOT YET COMPLETED AND READY FOR PUBLIC ACCESS; AND**

**4. THE EXISTENCE OF A CONTRACTUAL COMMITMENT ON THE SITE THAT WOULD LIMIT PUBLIC ACCESS FOR A PERIOD OF TIME, INCLUDING A HOME, AGRICULTURAL, OR HUNTING LEASE.**

(c) (1) There is a Bay Access Areas Fund.

(2) A portion of the funds available under this program for State projects may be appropriated in the State budget for the Bay Access Areas Fund.

(3) The Department may use funds available in the Bay Access Areas Fund to [purchase]:

**(I) PURCHASE** sites that provide public access to a body of water; **OR**

**(II) ENHANCE PUBLIC ACCESS TO A BODY OF WATER ON AN EXISTING RECREATIONAL AND OPEN SPACE SITE.**

(4) In purchasing sites under this subsection, the Department shall give preference to sites that:

(i) 1. Are directly on the bay; or

2. Are on a tributary of the bay and are near the bay;

(ii) Are near a population center;

(iii) Are readily accessible by the public; and

(iv) Would fulfill a need for public water access identified in the Maryland Land Preservation and Recreation Plan or a local land preservation and recreation plan.

(5) (i) Before the Department makes an expenditure from the Bay Access Areas Fund, the Department shall submit the proposed expenditure with complete supporting documentation to the budget committees of the General Assembly for review and comment by those committees.

(ii) The budget committees have 45 days after receipt of the documentation to submit comments to the Board of Public Works.

(6) Any expenditure of funds from the Bay Access Areas Fund is subject to the approval of the Board of Public Works.

5-905.

(a) (1) On or before May 1 of each year, the Department shall notify each local governing body of its allocation of local acquisition and development funds for the next fiscal year within the limits imposed by the formula developed for the apportionment of the annual appropriations for Program Open Space.

(2) (i) By the first of July each year, a participating local governing body shall submit an annual program of proposed acquisition and development projects, together with a list of projects submitted by any municipal corporation to the local governing body and not included in the local governing body's annual program, to the Department of Planning for review and to the Department for approval.

(ii) A municipal corporation may submit an annual program through its local governing body.

**(III) A PARTICIPATING LOCAL GOVERNING BODYSUBDIVISION, FOR EACH PROPOSED PROJECT UNDER THIS SUBSECTION, SHALL CONSIDER WHETHER IT IS FEASIBLE TO PROVIDE PUBLIC ACCESS TO THE PROPOSED PROJECT.**

**1. FOR EACH PROPOSED PROJECT UNDER THIS SUBSECTION PREPARE AND SUBMIT FOR REVIEW AND APPROVAL A PLAN TO PROVIDE PUBLIC ACCESS TO THE RECREATIONAL AND OPEN SPACE SITE TO THE MAXIMUM EXTENT FEASIBLE; AND**

**2. PROPOSE DEVELOPMENT PROJECTS TO ENHANCE PUBLIC ACCESS TO EXISTING RECREATIONAL AND OPEN SPACE SITES TO THE MAXIMUM EXTENT FEASIBLE.**

**(IV) WHEN CONSIDERING WHETHER IT IS FESABLE TO PROVIDE PUBLIC ACCESS TO A PROPOSED PROJECT UNDER THIS PARAGRAPH, A SUBDIVISION MAY CONSIDER:**

**1. THE AVAILABILITY OF FUNDS AVAILABLE UNDER THIS PROGRAM OR FROM OTHER SOURCES TO PROVIDE PUBIC ACCESS TO THE PROPOSED PROJECT;**

**2. PUBLIC SAFETY AND LIABILITY ISSUES IF PUBLIC ACCESS WERE PROVIDED TO THE PROPOSED PROJECT;**

**3. WHETHER THE SITE FOR THE PROPOSED PROJECT WAS ACQUIRED AS PART OF A LARGER RECREATIONAL AND OPEN SPACE PROJECT THAT IS NOT YET COMPLETED AND READY FOR PUBLIC ACCESS; AND**

**4. THE EXISTENCE OF A CONTRACTUAL COMMITMENT ON THE SITE FOR A PROPOSED PROJECT THAT WOULD LIMIT PUBLIC ACCESS FOR A PERIOD OF TIME, INCLUDING A HOME, AGRICULTURAL, OR HUNTING LEASE.**

(b) (2) A local governing body shall prepare a local land preservation and recreation plan with acquisition goals based upon the most current population data available from the Department of Planning and submit it to the Department and to the Department of Planning for joint approval according to the criteria and goals set forth in guidelines prepared by the Department and the Department of Planning. ~~A LOCAL LAND PRESERVATION AND RECREATION PLAN SHALL INCLUDE A PLAN TO ENHANCE PUBLIC ACCESS TO EXISTING RECREATIONAL AND OPEN SPACE SITES TO THE MAXIMUM EXTENT FEASIBLE.~~ A local governing body shall revise its local land preservation and recreation plan at least every 5 years and submit the revised local plan to the Department and to the Department of Planning for joint approval 1 year prior to the revision of the Maryland Land Preservation and Recreation Plan. Prior to approval of a revised local plan, the Department shall provide the legislators from the district within which any part of the local jurisdiction is located the opportunity to review and comment on the revised local plan.

5-906.

(b) Every acquisition and development project funded by the State in whole or in part shall meet needs identified in the Maryland Land Preservation and Recreation Plan prepared and revised every 5 years by the Department in consultation with the Department of Planning and local governments. The document shall identify and recommend for State acquisition efforts those resource areas facing the most intense or immediate development pressure. These resource areas shall be designated as targeted areas. ~~THE MARYLAND LAND PRESERVATION AND RECREATION PLAN SHALL INCLUDE A PLAN TO ENHANCE PUBLIC ACCESS TO EXISTING RECREATIONAL AND OPEN SPACE SITES TO THE MAXIMUM EXTENT FEASIBLE.~~ The document and any changes to it shall be distributed to every local governing body.