

MINUTES

**Critical Area Commission for the
Chesapeake and Atlantic Coastal Bays
People's Resource Center
100 Community Place
Crownsville, Maryland**

February 6, 2019

CALL TO ORDER: A meeting of the Critical Area Commission was held at the People's Resource Center, 100 Community Place, Crownsville, Maryland. Chairman Charles C. Deegan called the meeting to order.

Commission Members in Attendance:

Curtis Beulah, Harford County
Gail Blazer, Worcester County – Coastal Bays (Town of Ocean City)
Virginia Clagett, Western Shore Member-at-Large
Deborah Herr Cornwell, Maryland Department of Planning
Robert Culver, Wicomico County
Carolyn Cummins, Worcester County – Coastal Bays
Sue Greer, Charles County
Sandy Hertz, Maryland Department of Transportation
Michael Hewitt, St. Mary's County
Mark Konapelsky, Somerset County
James Lewis, Caroline County
Gary Mangum, Queen Anne's County
David Marks, Baltimore County
Catherine McCall, Department of Natural Resources
Michael McCarthy, Talbot County
Jennifer Merritt, Worcester County – Chesapeake Bay
Julie Oberg, Department of Agriculture
Malachy Rice, Department of Commerce
Gary Setzer, Department of the Environment
Donald Sutton, Kent County
Caroline Varney-Alvarado, Department of Housing and Community Development

Commission Members Not in Attendance:

Bradley Frome, Prince George's County
Steven Parker, Cecil County
Suzanne Pittenger-Slear, Eastern Shore Member-at-Large
Karen Stokes, Baltimore City

ANNOUNCEMENTS: Chairman Deegan greeted the Commissioners, staff and guests and introduced two new Commission staff members, Kate Durant and Susan Makhoul, both of whom are working as Natural Resource Planner IV's. Chairman Deegan also announced that the office is in the process of hiring two additional staff who will be working primarily with Eastern shore Towns starting this Spring.

APPROVAL OF MINUTES: A motion was made by Commissioner McCarthy and seconded, to approve the minutes of the August 1, 2018 Commission meeting. **Motion carried.**

Commissioner Cummins asked that the record reflect that as she was not present at the August meeting, she did not vote to approve those minutes.

STAFF PRESENTATIONS: The following presentations were made by Commission staff.

Maryland Department of Transportation – General Approval Memorandum of

Understanding: Ms. Charlotte Shearin presented for vote the updated Memorandum of Understanding (MOU) with the Maryland Department of Transportation (MDOT). Ms. Shearin reviewed her staff report which is attached to and made a part of these minutes.

The updated MOU will replace the existing MOU between the two agencies that was signed in 2003 and governs the process and conditions for general approval of projects by MDOT and its business units. Under Natural Resources Article §8-1801 and COMAR 27.02, the Critical Area Commission is required to approve any action by a State agency which results in development in the Critical Area on State-owned land, private lands, or lands owned by local jurisdictions. COMAR 27.02.03 specifically gives the Commission the ability to enter into a General Approval with State agencies to seek approval for programs or classes of activities that result in development of a minor scale in the Critical Area.

The existing MOU between MDOT and the Commission addresses the process used by both parties for approval by the Commission for MDOT projects in the Critical Area; the types of projects eligible under the MOU; and the responsibilities of both parties. The original MOU included Exhibits for State Highway Administration (SHA), Maryland Aviation Administration (MAA), Maryland Transit Administration (MTA), Maryland Port Administration (MPA), and Motor Vehicle Administration (MVA). Each Exhibit detailed the specific projects that could be reviewed under the MOU from each business unit, the thresholds for disturbance/impacts for projects that could qualify under the MOU, and the necessary mitigation. The Exhibits remain in

place with the updated MOU until updated Exhibits are reviewed and approved individually by the Commission.

Project Subcommittee Chair, Commissioner Setzer moved that in accordance with the staff report and presentation, the Commission approve the Memorandum of Understanding for General Approval between the Maryland Department of Transportation and the Critical Area Commission. Commissioner Marks seconded. **Motion carried.**

Maryland Department of Transportation General Approval MOU – Exhibit A1 - State Highway Administration: Ms. Shearin presented for vote, the updated Exhibit A1 outlining the conditions governing projects proposed for general approval by the Maryland State Highway Administration. Ms. Shearin reviewed her staff report which is attached to and made a part of these minutes.

Project Subcommittee Chair, Commissioner Setzer moved that in accordance with the staff report and presentation, the Commission approve Exhibit A1 of the MDOT MOU for General Approval. Commissioner Sutton seconded. **Motion carried.**

Maryland Department of Transportation General Approval MOU – Exhibit A3 – Maryland Transit Administration: Ms. Shearin presented for vote, the updated Exhibit A3 outlining the conditions governing projects proposed for general approval by the Maryland Transit Administration. Ms. Shearin reviewed her staff report which is attached to and made a part of these minutes.

Project Subcommittee Chair, Commissioner Setzer moved that in accordance with the staff report and presentation, the Commission approve Exhibit A3 of the MDOT MOU for General Approval. Commissioner Beulah seconded. **Motion carried.**

Maryland Transportation Authority – Francis Scott Key Bridge Electronic Toll Facility (Baltimore County): Ms. Tay Harris presented for vote the All Electronic Tolling (AET) services upgrade project to the existing toll plaza at the Francis Scott Key Bridge by the Maryland Transportation Authority (MDTA). Ms. Harris presented a PowerPoint presentation and reviewed her staff report, which is attached to and made a part of these minutes.

The proposed project requires Commission approval as it exceeds the size and scope of the General Approval MOU between the Commission and MDTA. The project will meet all Critical Area Commission requirements, including Buffer mitigation and compliance with the 10% pollutant reduction rule.

Project Subcommittee Chair, Commissioner Setzer moved that the Commission approve the installation of All Electronic Tolling proposed by the Maryland Transportation Authority for the

existing Francis Scott Key Bridge toll plaza. This motion was offered in accordance with the staff report and presentation and the following conditions:

- (1) Prior to the start of construction, the Maryland Transportation Authority shall submit copies of the final approvals for stormwater management and erosion and sediment control to Commission staff; and
- (2) Prior to the start of construction, the Maryland Transportation Authority shall submit a signed Planting Agreement Form satisfying the Project's mitigation requirements to Commission staff for review and approval.

The motion was seconded by Commissioner Hertz. **Motion carried.**

Washington Suburban Sanitary Commission – Piscataway Wastewater Treatment Plant Upgrade (Prince George's County): Ms. Harris presented for a vote the request from the Washington Suburban Sanitary Commission (WSSC) to renovate the Piscataway Waste Water Treatment (WWTP) facility to address combined sewage overflows. Ms. Harris presented a PowerPoint presentation and reviewed her staff report, which is attached to and made a part of the minutes.

The proposed project requires Commission approval as it exceeds the size and scope of the General Approval MOU between the Commission and WSSC. The project will meet all Critical Area Commission requirements, including Buffer mitigation, forest mitigation and the 10% pollutant reduction rule.

Project Subcommittee Chair, Commissioner Setzer moved that the Commission approve the renovations to the Piscataway Wastewater Treatment Plant proposed by the Washington Suburban Sanitary Commission. This motion was offered in accordance with the staff report and presentation and the following conditions:

- (1) Prior to the start of construction, the Washington Suburban Sanitary Commission shall provide a copy of the Nontidal Wetlands and Waterways authorization issued by the Maryland Department of the Environment to Commission staff;
- (2) Prior to the start of construction, the Washington Suburban Sanitary Commission shall submit to Commission staff an executed planting agreement for onsite mitigation; and
- (3) Prior to the start of construction, the Washington Suburban Sanitary Commission shall submit to Commission staff a recorded conservation easement for the 4.7 acres of Forest Interior Dwelling Species habitat mitigation located at the Marlboro Meadows Mitigation Bank.

Commissioner Sutton seconded the motion. **Motion carried.**

Amendment – Talbot County Critical Area Program Comprehensive Review: Ms. Jennifer Esposito presented for vote the Talbot County Comprehensive Review of its Critical Area Program. Ms. Esposito presented a PowerPoint and reviewed her Revised Panel Report, which is attached to and made a part of these minutes.

On September 11, 2018, the Talbot County Council enacted Bill 1401 which repealed and replaced Chapter 190 of the County Code, the County's zoning, subdivision, and land development ordinance. Chapter 190 includes all regulations pertaining to the Talbot County Critical Area Program and constituted a comprehensive review of its Critical Area Program as required under Natural Resources Article 8-1809(g). Chairman Deegan determined the update could be processed as an amendment and appointed a panel of five Commissioners to hold a public hearing and make a recommendation to the full Commission on the update. The public hearing was held on November 29, 2018 and the record was kept open until December 14, 2018. The panel held two additional meetings on December 17, 2018 and January 10, 2019.

Panel Chair, Commissioner Herr-Cornwell moved that in accordance with Section 8-1808(g) of the Natural Resources Article, the Commission approve the comprehensive update to Talbot County's Critical Area Program (Bill 1401) with the conditions outlined in the Revised Staff Report dated February 6, 2019 as outlined on pages 7-11. Commissioner McCarthy seconded the motion. **Motion carried.**

Refinement – Water's Landing Growth Allocation (Baltimore County): Ms. Claudia Jones presented for concurrence the Water's Landing Growth Allocation proposal in Baltimore County. Ms. Jones presented a PowerPoint and reviewed her Staff Report, which is attached to and made a part of these minutes.

Baltimore County is requesting 52.98 acres of growth allocation to convert a waterfront property in Middle River from a Limited Development Area (LDA) to an Intensely Developed Area (IDA). The proposed Water's Landing project is a Planned Unit Development (PUD) with a mixed residential community consisting of 184 single-family attached (townhouse) and five single-family detached dwellings. Chairman Deegan determined that the proposal could be reviewed as a refinement to the County's Critical Area Program. The Staff Report and presentation reviewed the information required to be considered by the Commission including that the project will meet the standards for locating growth allocation.

Program Subcommittee Chair Commissioner Cummins stated that because the proposed growth allocation meets the requirements of the new IDA standards under the Natural Resource Article 8-1808.1(c)(4) and COMAR 27.01.02.06-3(G) and is consistent with the goals and policies of the Critical Area law and regulations, the Program Subcommittee recommends concurrence with

the Chairman's determination of a refinement and the approval of 52.98 acres of growth allocation with the following conditions:

- (1) Prior to the final approval by Baltimore County, Commission staff shall review and approve all critical area management plans for buffer, forest and wetland mitigation, protection and establishment; final mitigation shall at a minimum meet requirements under COMAR and the Baltimore County code for development in conjunction with the growth allocation in the Critical Area including all required mitigation ratios;
- (2) Prior to the final approval by Baltimore County of the Stormwater Management Plan, Commission staff shall review and approve all on-site and off-site stormwater management to ensure compliance with the 10% pollution reduction rule, and
- (3) Prior to the start of construction copies of all final approvals including stormwater management and sediment and erosion control shall be submitted to Commission staff.

Chairman Deegan accepted the Program Subcommittee's recommendations, and stated that would be his final decision.

Commissioner Marks asked that the minutes reflect there was no conflict of interest in his support of this project and he conferred with his fellow Council members.

Refinement – Town of Leonardtown Critical Area Map Update (St. Mary's County): Ms. Lisa Hoerger presented for concurrence the Town of Leonardtown Critical Area Map update. Ms. Hoerger presented a PowerPoint and reviewed her staff report which is attached to and made a part of these minutes.

The proposed new Critical Area map is the first update to the map for the Town since the 2008 legislative change. The map was approved by the Mayor and Town Commissioners as Ordinance #188 on December 10, 2018.

Program Subcommittee Chair, Commissioner Cummins, stated that because the mapping update was completed in accordance with State Law and COMAR 27.01.09.01-8, the Program Subcommittee concurs with the Chairman's determination that the Town of Leonardtown mapping update can be reviewed as a refinement to the Town's Critical Area Program.

Chairman Deegan accepted the Program Subcommittee's recommendations and stated that was his final decision.

LEGAL UPDATES: Assistant Attorney General Emily Vainieri reported on four cases in which the Commission is involved.

Prettyman Wastewater Treatment Plant – This case a wastewater treatment plant serving a mobile home park in Caroline County. The plant was built in the wrong location and was found to be in violation of the Critical Area law and also the County zoning ordinance. The County issued a notice of violation, the decision was appealed, and the Board of Appeals upheld the notice of violation; the decision was appealed and again upheld. The Prettymans did not appeal that decision to the Court of Special Appeals. In a separate case brought against the Prettymans by their bank, the Caroline County Circuit Court appointed a receiver to the property. The receiver has the authority to operate, manage, repair, improve, preserve, market, sell and transfer title of the property. The receiver may end up pursuing a lot line revision and growth allocation, which would resolve the Critical Area violations in this case.

Radtke – Illegal construction in the Buffer – Baltimore County – This case concerns a 1,700 square foot concrete patio built without permits in the Buffer, 9 feet from the waterline. The County denied an after-the-fact variance for the patio. Mr. Radtke appealed. The Board of Appeals upheld the denial of the variance. Mr. Radtke appealed. The Circuit Court upheld the denial of the variance. Mr. Radtke is appealing the decision to the Court of Special Appeals. The Commission has participated with the County at each stage opposing the variance and will continue to do so.

Hilliard – Variance to disturb steep slopes – Anne Arundel County – Anne Arundel County issued a Critical Area variance to the Hilliard's for disturbance to steep slopes to redevelop their lot and change the location of their house on the property, flipping it 90 degrees. That variance was upheld by the Board of Appeals. This case has had two rounds of litigation between Circuit Court and Anne Arundel Board of Appeals over the past several years. In the midst of that, the original property owners (the Hilliards) sold the property but variances run with the land. The new property owners have no intention of pursuing the redevelopment plan. The Commission has participated with the County in the most recent round of litigation opposing the issuance of the variance because the Board got the unwarranted hardship standard wrong. There was a hearing in Circuit Court on Monday, where the judge remanded the case back to the Board of Appeals so that the new property owners can state their intention. We anticipate that the new property owners will become a party before the Board of Appeals and withdraw the variance application, which will vacate the variance decision that was problematic for the Commission and the County.

Sahlin Estates (Baldwin) – Variance to the Buffer - Anne Arundel County – This case concerns a 23 acre lot along Round Bay and Hopkins Creek, in designated RCA in the Sahlin Estates subdivision. The contract purchasers propose to demolish and remove the existing one-story dwelling and additional house foundation remnants and construct a new dwelling, a pool, a

detached garage and associated facilities. The Anne Arundel County Administrative Hearing Officer granted a variance for about a half-acre of disturbance to the expanded buffer for the construction of the new dwelling and associated facilities, including the pool. Three appeals have been filed opposing the issuance of this Critical Area variance. One by neighbors, one by the Chesapeake Bay Foundation, and one by the Critical Area Commission. The hearing is scheduled for June 2019.

NEW BUSINESS: Ms. Katherine Charbonneau reported that Commission staff had gone to Williamsburg, VA to attend the Marsh Resilience Summit, which was sponsored by the Chesapeake Bay Sentinel Site Cooperative. The Summit brought together scientists, planners, policy-makers to discuss resiliency issues as they relate to marshes and wetlands.

Chairman Deegan adjourned the meeting.



Lynette Fullerton, Commission Secretary

April 3, 2019

Date of Approval