

# MINUTES

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

**March 4, 2020**

**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 at 1:00 p.m.

**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  
Carolyn Cummins, Worcester County – Coastal Bays  
Sue Greer, Charles County  
Deborah Herr Cornwell, Department of Planning  
Sandy Hertz, Department of Transportation  
Michael Hewitt, St. Mary's County  
Matt Johnston, Anne Arundel County  
James Lewis, Caroline County  
Pat Mahoney, Calvert County  
Catherine McCall, Department of Natural Resources  
Marianne Navarro, Baltimore City  
Steven Parker, Cecil County  
Tammy Roberson, Department of Environment  
Suzanne Pittenger-Slear, Eastern Shore Member-at-Large  
Caroline Varney-Alvarado, Department of Housing and Community Development

**Commission Members Not in Attendance:**

Robert Culver, Wicomico County  
Charles Laird, Somerset County  
Gary Mangum, Queen Anne's County  
David Marks, Baltimore County  
Jennifer Merritt, Worcester County – Chesapeake Bay  
Michael McCarthy, Talbot County  
Ewing McDowell, Department of Commerce  
Julie Oberg, Department of Agriculture  
Donald Sutton, Kent County

**ANNOUNCEMENTS:** Chairman Deegan introduced special guest Charles Glass, Deputy Secretary of DNR, and invited him to say a few words.

**APPROVAL OF MINUTES:** A motion was made by Commissioner Mahoney and seconded, to approve the minutes of the December 4, 2019 Commission meeting. **Motion carried.**

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

### **Regulations – Surface Mining Chapter and Development Chapter Updates**

Ms. Hoerger presented the staff report, the contents of which are incorporated into and made a part of these minutes. The changes are in language only, with the purpose of modernizing the drafting style and update and, where necessary, delete certain outdated provisions. Commission staff worked closely with the Department of the Environment's Mining Program to ensure all updates to the language were consistent with the State program and any other applicable regulations. This proposal also includes updates to the companion surface mining regulations in Subtitle .02.

The action requested is approval for staff to submit the proposal to the Administrative, Executive, Legislative and Regulatory Committee for review and subsequent publication in the Maryland Register as proposed regulations.

Commissioner Cummins moved to approve, and Commissioner Clagett seconded. **Motion carried.**

### **State of Maryland - 1 Martin Street (Storage Facility Renovations) at the William Paca House - City of Annapolis**

Ms. Durant presented for vote the proposed renovations to the Paca House storage facility by the State of Maryland. Ms. Durant reviewed her staff report, the contents of which are incorporated into and made a part of these minutes.

The State of Maryland is proposing to renovate an existing storage facility that houses historic artifacts and documents related to the William Paca House. The renovations will include constructing additions to the southwest, northwest, and northeast sides of the existing building, as well as constructing a second-floor deck over an existing concrete patio, and constructing an access ramp along the northeast addition. The property is owned by the State of Maryland and managed by Historic Annapolis. The building is located at 1 Martin Street in Annapolis, MD. The site is approximately 93,384 square feet (2.15 acres) of which 92,406 square feet (2.12 acres) is designated as an Intensely Developed Area (IDA). The limits of disturbance (LOD) for this project are located entirely within the IDA portion of the site.

After the renovations are complete, the building will be used to display historic artifacts and documents, as well as host museum and educational events. The rear garden area, which adjoins to the William Paca Garden, will be used as an outdoor classroom. The renovations and additions are anticipated to take several months to complete. This project is required to come to the

Commission for approval because it is a State Agency action on State-owned land in the Critical Area.

Project Subcommittee Chair, Commissioner Hertz, moved on behalf of the Project Subcommittee that the Commission approve the renovation of the existing storage facility that houses historic artifacts and documents related to the William Paca House. The renovations will include constructing additions to the southwest, northwest, and northeast sides of the existing building, as well as constructing a second-floor deck over an existing concrete patio, and constructing an access ramp along the northeast addition. This motion was offered in accordance with the staff report and presentation.

As required by the Code of Maryland Regulations, this motion is based on the following considerations:

- Disturbances to the Critical Area will be mitigated on-site and will consist of 3 American Hornbeam trees and 10 Inkberry shrubs as provided in the planting plan approved by Commission staff. The 10% pollutant removal requirement will be met by planting 4 American Hornbeam trees and 3 Inkberry bushes.

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

### **Maryland Transportation Authority – Nice Bridge Replacement Project Amended Condition #3 – Charles County**

Ms. Sekerak presented for vote a proposal by the Maryland Transportation Authority to amend a previously required condition related to the Nice Bridge Replacement Project. Ms. Sekerak presented the staff report, the contents of which are incorporated into and made a part of the minutes.

In August of 2018, the Commission unanimously approved the Governor Harry W. Nice Bridge (Nice Bridge) Improvement Project with five conditions. MDTA is requesting that the Commission amend Condition #3 which required final approval from the Commission for all Buffer, forest, and developed woodland mitigation plans prior to the start of construction. This request was made to allow MDTA's Design-Build team the ability to begin early construction and site preparation efforts such as utility relocation and construction access while finalizing the mitigation plan. The awarded contract requires the Design-Build team to fulfill Buffer, forest, and developed woodland mitigation vegetation plantings on-site and requires justification and documentation to MDTA if it cannot be achieved.

Project Subcommittee Chair, Commissioner Hertz, moved on behalf of the Project Subcommittee that the Commission update and amend Condition #3 as follows:

- **Condition #3** shall read:
  - *Prior to the start of construction, MDTA shall obtain approval from Commission staff for all draft Buffer, forest, and developed woodland mitigation plans in accordance with COMAR 27.01.09.01-3.*
    - *The draft mitigation plan(s) will account for the largest possible footprint and proposed limits of disturbance (LOD) in order to*

*determine the greatest extent of potential impacts and associated mitigation.*

- *Prior to the completion of construction, MDTA shall obtain final approval from Commission staff for all Buffer, forest, and developed woodland mitigation plans in accordance with COMAR 27.01.09.01-3.*
  - *The final mitigation plan(s) shall be updated to reflect the final mitigation required as a result of the actual limits of disturbance (LOD), which may be less than those presented in the draft mitigation plan(s).*
- *Final mitigation plantings, as approved, must be planted within two (2) planting seasons after the completion of construction.*
- *The Maryland Transportation Authority shall provide an update to the full Commission on the status of all Buffer, forest, and developed woodland mitigation plans by December 2021.*

Commissioner Hertz abstained from voting. All others voted to approve. **Motion carried.**

**Refinement – Jones Estate LLC (Prettyman) Growth Allocation – Caroline County.**

Mr. Nick Kelly presented a proposed refinement to the Caroline County Critical Area Program in the form of a growth allocation to reclassify 0.814 acres of land from Resource Conservation Area (RCA) to Limited Development Area (LDA). Mr. Kelly presented his staff report, the contents of which are incorporated into and made a part of the minutes.

The County Commissioners of Caroline County are requesting Critical Area Commission approval of a growth allocation to reclassify 0.814 acres of land from RCA to LDA in order to bring an after-the-fact private wastewater treatment plant (WWTP) into conformance with the County's Critical Area Program. The WWTP, which is located on Tax Map 52, Parcel 94 in the RCA, serves the adjacent Prettyman Manor Mobile Home Park (Tax Map 52, Parcel 264). The mobile home park is located on lands designated as an LDA. If the growth allocation request is approved, the 0.814 acres of Parcel 94 will be re-classified from RCA to LDA and will become part of Parcel 264 through a lot line revision, thus accommodating the WWTP.

Mr. Kelly reviewed the standards for locating a proposed growth allocation in accordance with COMAR 27.01.02.06-3 and reviewed the factors to be considered by the Commission in accordance with COMAR 27.01.02.06-3.G. Mr. Kelly reviewed the recommended conditions of approval and noted a revision to those conditions as described in the Staff Report.

The proposed growth allocation as conceptually approved by the Commissioners of Caroline County, and as demonstrated through the Commissioner's adopted Findings of Fact, site plan, and accompanying materials accepted by the Commission staff on February 13, 2020, is consistent with the purposes, policies, and goals of the Critical Area Commission.

Program Subcommittee Chair, Commissioner Cummins stated that because this proposed growth allocation meets the required standards for new LDAs under Natural Resources Article 8-1808.1(c) and COMAR 27.01.02.06-3, the Program Subcommittee concurs with the Chairman's determination of refinement.

Further, Commissioner Cummins stated that the Program Subcommittee recommends that the Chairman approve the growth allocation request with the following conditions:

1. In order to meet the requirements of COMAR 27.01.02.06-4, the lot line revision plat allocating 0.814 acres of parcel 94 to parcel 264 and coinciding with the area to be mapped as LDA shall be recorded in the County land records within 45 days of Critical Area Commission approval.
2. The area to the west of the WWTP along the gravel lane where connections were stubbed for six additional mobile homes shall not be used to place additional mobile homes.
3. Within 90 days of Critical Area Commission approval, the County shall submit an executed planting agreement for the 15,717 square feet of plantings within the 300-foot setback to Commission staff for review and approval. Plantings shall be provided within one planting season and meet the requirements of COMAR 27.01.09.01 for survivability and bonding.
4. No expansion of the mobile home park is proposed or authorized in conjunction with the growth allocation application. Any additional expansion should be outside of the Critical Area and will follow the normal expansion permit process.
5. If the lot line revision in Condition #1 fails to occur within the required time limit, the Chairman may revise the growth allocation approval to deduct the acreage of the entirety of Parcel 94 (16.89 acres) in accordance with COMAR 27.01.02.06-4.
6. Within 90 days of Critical Area Commission approval, the County shall submit an executed planting agreement for 31,434 square feet of plantings to Commission staff for review and approval. Those plantings shall be located on Parcel 94 within the Critical Area to the east of the WWTP. Plantings shall be provided within one planting season and meet the requirements of COMAR 27.01.09.01 for survivability and bonding.

There were no questions. Chairman Deegan accepted the Subcommittee's recommendation with the stated conditions as his final decision.

### **Refinement – Town of Millington – Critical Area Mapping Update**

Ms. Lisa Hoerger presented a proposed refinement to the Town of Millington, in Kent County, to update their Critical Area maps. Ms. Hoerger reviewed the staff report, the contents of which have been incorporated into and made a part of the minutes.

Commission staff worked with the Town of Millington, the Maryland Department of Natural Resources, the Maryland Department of the Environment, and the Eastern Shore Regional GIS Cooperative (ESRGC) to develop updated Critical Area maps for the town. These draft maps were vetted by the aforementioned agencies, were presented at a public meeting in Kent County, and lastly, were delivered to the town for public comment and local approval. The update resulted in a gain of 19 acres and a loss of two acres, with a net gain of 17 acres. During the update a mapping mistake was discovered on parcel 0087 and the Critical Area designation was changed from a Limited Development Area (LDA) to an Intensely Developed Area (IDA) as the parcel met the standard for IDA development at the time of program approval. The Mayor and

Town Council approved Resolution #2020-02 on January 14, 2020. This action constituted local adoption of the updated maps.

Program Subcommittee Chair, Commissioner Cummins stated the mapping update was completed in accordance with State Law and COMAR 27.01.11 and recommended concurrence with the Chairman's determination that the Town of Millington mapping be reviewed as a refinement to the Town's Critical Area Program. It was further recommended that the Chairman approve Ordinance 2020-02. There were no questions. Chairman Deegan stated that would stand as his final decision.

### **Refinement – St Mary's County Growth Allocation Text Amendment**

Ms. Susan Makhoulf presented a refinement to the St. Mary's County Critical Area Program in the form of a text amendment to the growth allocation provisions of the County's zoning code. Ms. Makhoulf reviewed her staff report, the contents of which are incorporated into and made a part of the minutes.

On October 22, 2019, the Commissioners of St. Mary's County approved a text amendment to the St. Mary's County Comprehensive Zoning Ordinance (SMCZO). Ordinance No. 2019-40 repealed and replaced Section 41.9 of the SMCZO, which contains all provisions for growth allocation in the County. The proposal updates growth allocation requirements to make them consistent with State law and regulations, includes an alternative adjacency standard for new Intensely Developed Areas (IDAs) and new Limited Development Areas (LDAs) and allows new Intensely Developed Areas (IDAs) less than 20 acres.

After Ordinance 2019-40 was approved by the Commissioners of St. Mary's County, County staff noted that several references were incorrect and a few additional edits were necessary. During the review of the proposed text amendment, Critical Area staff noted that additional changes were necessary to ensure the language in the proposed text amendment was in conformance with State law and regulations. Ms. Makhoulf reviewed the necessary changes which were shown in a draft attached to the staff report.

Chairman Deegan turned the floor over to Program Subcommittee Chair Cummins, who stated that, given local jurisdictions are authorized to propose alternative adjacency standards for growth allocation, the Commission concurs with the Chairman's determination that this text amendment be handled as a refinement to the St. Mary's County Critical Area Program. Further, based on the multiple edits requested by County staff, it appears the County has more to consider regarding the proposed change. Therefore, the Program Subcommittee recommends that the Chairman return the text amendment to the County with the request that the proposed ordinance be officially amended by the St. Mary's County Commissioners as indicated in the attachment in addition to any other locally desired changes prior to resubmitting the ordinance to the Critical Area Commission.

There were no questions. Commissioner Deegan stated that would be his final decision.

**Refinement – Bill #1438: Designation of Modified Buffer Area Community #39 Village of Bellevue, Maryland**

Mr. Grassmann presented a refinement to the Talbot County Critical Area program in the form of a Modified Buffer Area map designation. Mr. Grassmann reviewed his staff report, the contents of which are incorporated into and made a part of the minutes.

On January 14, 2020, the Talbot County Council unanimously adopted Bill #1438, which formally amends the Talbot County Critical Area Overlay District on the official zoning maps to establish a new Modified Buffer Area (MBA), identified as “Community #39”. Talbot County submitted this request to the Critical Area Commission on February 7, 2020 and Chairman Deegan determined that the request could be reviewed as a refinement.

The new MBA is designated along approximately 900 linear feet of shoreline in the village of Bellevue, and includes Parcel 46 (Lot 4), Parcel 115, and certain developed portions of Parcel 148 on Tax Map 46 (see attached map). The development pattern in the Buffer in this MBA request is similar to nearby MBA Communities #32 and #33, which were previously approved by the County and the Critical Area Commission. The proposed MBA encompasses lots and parcels that are grandfathered and have an existing pattern of development (houses, driveways, parking areas, and bulkheads) located within the 100-foot Buffer that prevents the Buffer from fulfilling its function, and is absent of existing forest cover. Therefore, the Buffer cannot serve as a transitional space where vegetation removes or reduces sediments and nutrients, or serve as space for habitat. Further, the Buffer cannot protect water quality and habitat as intended by the Critical Area Law. The remaining area of Parcel 148 not included within the MBA designation is undeveloped and has a natural shoreline that contains significant wetlands which provide habitat and water quality benefits.

Program Subcommittee Chair, Commissioner Cummins stated the subcommittee concurs with the Chairman’s determination that this Modified Buffer Area map designation be processed as a refinement as the proposed map amendment is a minor map change that meets requirements of the Talbot County Code §190-15.11.H.3 as well as COMAR 27.01.09.01-8.

Further, Commissioner Cummins recommends the Chairman approve Talbot County Bill#1438 as proposed.

There were no questions. Chairman Deegan stated that would stand as his final decision.

**LEGAL UPDATES:**

Assistant Attorney General Emily Vainieri had the following legal updates to report:

***Mt Ararat Farm/Buck (Update) – Illegal Construction in the Buffer – Cecil County***

The property owner’s son constructed a huge (4 acre) motocross racetrack without approvals at Mt Ararat farm in Port Deposit, Maryland. This resulted in the County citing the property owner for numerous violations including unauthorized construction in the Buffer and an unauthorized use of the Resource Conservation Area. The Board of Zoning Appeals affirmed the decisions of the Zoning Administrator. The property owner challenged the Board’s decision in Circuit Court. The Critical Area Commission, along with the County, participated in the case. The Circuit Court affirmed the Board of Zoning Appeals decision, and the property owner filed an appeal to

the Court of Special Appeals. All of the briefs have been filed by the parties, and the oral argument is scheduled for September.

***New – Michelle Hohenhaus – Anne Arundel County***

The Anne Arundel County Administrative Hearing Officer and the Board of Appeals denied a variance for an after-the-fact accessory structure with new lot coverage nearer to the shoreline than the closest façade of the existing principal structure and with disturbance to steep slopes. Ms. Hohenhaus filed a Petition for Judicial Review in the Circuit Court for Anne Arundel County. The County and the Critical Area Commission participated in opposition to the petition. There was a hearing before Judge Harris on February 24, 2020. Judge Harris ruled in favor of Ms. Hohenhaus, remanding the case to the Board of Appeals for the Board to issue the variance. We are awaiting the written order.

**OLD BUSINESS:**

Executive Director, Kate Charbonneau, provided the Commission a brief update on the Maryland Transportation Nice Bridge replacement project. In August of 2018, the Commission unanimously approved the Governor Harry W. Nice Bridge (Nice Bridge) Improvement Project with five conditions. In August 2019, the Commission approved to amend Condition #2, which gave MDTA additional flexibility and time to identify stormwater offset projects. The amended condition also required MDTA to update the Commission by March 2020 on the status of the offset site identification. That update, which includes a potential stream restoration offset project, was given to the Project Subcommittee.

Ms. Charbonneau also informed the Commission that Ms. Kate Durant reviewed the status of an agreement the Commission made with Maryland Transportation Authority for mitigation banking at roadside right-of-ways. Staff are working with MDTA to update that agreement, which has been working as designed.

Finally, Ms. Charbonneau informed the Commission that the St. Mary's County Commissioners have approved the revisions to the proposed text amendment allowing for private airstrips in the RCA. Therefore, that program change is final.

**NEW BUSINESS:**

Chairman Deegan adjourned the meeting at 2:10 p.m.

  
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Lynette Fullerton, Commission Secretary

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June 3, 2020  
Date of Approval