

MINUTES MINUTES

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

April 4, 2018

The full Critical Area Commission met 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
John Deniston, Maryland Department of Transportation
Brad Frome, Prince George's County
Michael Hewitt, St. Mary's County
Louise Lawrence, Department of Agriculture
James Lewis, Caroline County
Gary Mangum, Queen Anne's County
Catherine McCall, Department of Natural Resources
Suzanne Pittenger-Slear, Eastern Shore Member-at-Large
Donald Satterfield, Dorchester County
Gary Setzer, Department of the Environment
Karen Stokes, Baltimore City
Chris Trumbauer, Anne Arundel County
Caroline Varney-Alvarado, Department of Housing and Community Development

Commission Members Not in Attendance:

Carolyn Cummins, Worcester County – Coastal Bays
Mark Konapelsky, Somerset County
David Marks, Baltimore County
Michael McCarthy, Talbot County
Jennifer Merritt, Worcester County – Chesapeake Bay
Patrick Nutter, Calvert County
Stephen Parker, Cecil County
Malachy Rice, Department of Commerce
Donald Sutton, Kent County

Chairman Deegan greeted the Commissioners, staff and guests and began the meeting by announcing that Commissioner Jim Gesl from Charles County had resigned his position and that the Governor's Appointments Office had selected Susan Greer to complete his term. Ms. Greer is an attorney in Charles County and she will join us for the next meeting. Chairman Deegan also announced that Commission staff is working on setting up tours of Conowingo Dam and Poplar Island for Commission members who are interested. Next, Chairman Deegan made a call for a motion to approve the Minutes of February 7, 2018. A motion was made by Commissioner Varney Alvarado and seconded by Commissioner Hewitt, all approved.

PROJECTS:

Maryland National Capitol Park and Planning Commission, Prince Georges County, Cedar Haven Shore Erosion Control

Chairman Deegan introduced Mr. Authur Crum to present for vote the Prince Georges County, Cedar Haven Shore Erosion Control project. Mr. Crum presented a PowerPoint presentation and reviewed the staff report, which is incorporated into and made part of these minutes.

Mr. Crum reported that the Prince George's County Department of the Environment (DOE) is currently pursuing a number of shoreline stabilization projects to earn credits towards the Total Maximum Daily Load (TMDL) goals mandated by the County's Municipal Separate Storm Sewer System (MS4) National Pollutant Discharge Elimination System (NPDES) permit. As part of this initiative, the applicant is proposing shore erosion control work at the Cedar Haven Fishing Area site located on Maryland-National Capital Park and Planning Commission (M-NCPPC) property on the western bank of the Patuxent River.

The entire project is located within the Critical Area on lands designated as Resource Conservation Area (RCA). Due to the size of this shore erosion control project (which exceeds 500 linear feet) and due to the amount and type of Buffer impacts proposed (bank grading and tree clearing), this project requires review by the Critical Area Commission under COMAR 27.02.05.

Mr. Crum reviewed the project design and impacts, agency review and comments, coastal resiliency information and noted that staff recommended approval subject to specific conditions. Chairman Deegan asked when the project was going before the Board of Public Works, which was noted to be June 4th.

Mr. Setzer moved on behalf of the Project Subcommittee, that the Commission approve the shoreline stabilization project proposed by Prince George's County at the Cedar Haven Fishing Area. Mr. Setzer offered the motion in accordance with the staff report and presentation and the following condition:

- Prior to the start of construction, Prince George's County Department of the Environment shall notify Commission staff that it has received a Tidal Wetlands License and an Erosion and Sediment Control authorization for the proposed shoreline stabilization project.

The motion was seconded by Commissioner Beulah and unanimously approved.

Maryland Department of Natural Resources, Worcester County, Assateague Island Shoreline Restoration

Chairman Deegan once again introduced Mr. Authur Crum to present for vote a shoreline restoration project by Maryland Department of Natural Resources at Assateague Island State Park. Mr. Crum reviewed the staff report, which is incorporated into and made part of these minutes.

The Chesapeake and Coastal Services (CCS) division of the Maryland Department of Natural Resources (DNR), along with DNR's Maryland Park Service (MPS), is proposing a shoreline restoration project on Sinepuxent Bay at Assateague Island State Park in Worcester County. The intent of this project is to stabilize the shoreline with offshore sills and breakwaters, as well as creating a pocket of non-tidal wetlands surrounded by a dune-like berm in an upland grassed area.

Assateague State Park is approximately 900 acres in size. The entire park is designated as a Resource Conservation Area (RCA). Typically, a project of this nature would be submitted for review under the "Special Projects" category of the Memorandum of Understanding between the Critical Area Commission and DNR. However, because this particular shore erosion control practice will extend more than 500 linear feet, this project will exceed the criteria set forth within the MOU. DNR is a state agency, and projects that do not meet the criteria of the MOU are required to be reviewed by the full Critical Area Commission.

Mr. Crum reviewed the project design including a dune restoration and non-tidal wetland enhancement. The project included impacts to the Buffer, which will be mitigated by planting on site as noted in a Buffer Management Plan and Planting Agreement. Finally, the project is intended to help reduce impacts of coastal storm events and treat stormwater runoff from a nearby parking lot. DNR has obtained all necessary authorizations from the Board of Public Works and Maryland Department of Environment.

Mr. Setzer moved on behalf of the Project Subcommittee, that the Commission approve the shoreline restoration project proposed by the Maryland Department of Natural Resources for Assateague Island. Mr. Setzer offered the motion in accordance with the staff report and presentation.

The motion was seconded by Commissioner Culver and unanimously approved.

Washington Suburban Sanitary Commission – Piscataway Wastewater Treatment Plant

Chairman Deegan introduced Ms. Julie Roberts to present for vote upgrades to the Piscataway Wastewater Treatment Plant by the Washington Suburban Sanitary Commission (WSSC) in Prince George's County. Ms. Roberts reviewed the staff report, which is incorporated into and made part of these minutes.

The project purpose is to upgrade the electrical power distribution on site, including a new substation. The majority of the impacts are located outside the Critical Area, but the portion inside the Critical Area does not meet the memorandum of understanding the Commission has with WSSC. The Critical Area portion of the project is designated as Resource Conservation Area and includes the construction of one new substation, paving, and temporary disturbance for buried electrical duct banks and manholes. The one tree removed will be replaced on site. No other impacts are proposed. All agency reviews have been completed and public notice was met.

Mr. Setzer moved on behalf of the Project Subcommittee, that the Commission approve the electrical upgrades to the Piscataway Wastewater Treatment Plant proposed by the Washington Suburban Sanitary Commission. Mr. Setzer offered the motion in accordance with the staff report and presentation and the following condition:

- Prior to the start of construction, the Washington Suburban Sanitary Commission shall notify Commission staff that approvals have been received from the Maryland Department of the Environment for stormwater management and erosion and sediment control.

The motion was seconded by Commissioner Frome and unanimously approved.

State Highway Administration – Maryland Route 5 Upgrades at Point Lookout State Park

Chairman Deegan introduced Ms. Julie Roberts to present for vote improvements to Maryland Route 5 near Point Lookout State Park in St. Mary's County. Ms. Roberts reviewed the staff report, which is incorporated into and made part of these minutes.

The purpose of the project is to widen portions of Route 5 as it leads in to the park due to safety concerns including large recreational vehicles, pedestrian access and traffic backups. The linear right of way is considered Intensely Developed Area even though the park itself and nearby lands are designated Resource Conservation Area. Project impacts include disturbance to the Buffer, nontidal wetlands, and forest that is considered Forest Interior Dwelling (FIDS) bird habitat. Mitigation for these impacts will be located offsite at a site called Piney Point. The area will be planted and result in the minimum 50-acre forest requirement for FIDS.

All agency reviews are nearly complete and SHA is waiting on final authorizations from MDE and the Army Corps of Engineers. Public notice requirements have been met. SHA recognizes that Route 5 is in a vulnerable area, but due to the current safety needs they are moving forward with the project to provide a safer environment.

Mr. Setzer moved on behalf of the Project Subcommittee that the Commission approve the improvements to Maryland Route 5 in St. Mary's County proposed by the Maryland State Highway Administration. Mr. Setzer offered the motion in accordance with the staff report and presentation and the following condition:

- Prior to the start of construction, the Maryland State Highway Administration shall notify Commission staff that it has received the following approvals or authorizations: Erosion and Sediment Control and Stormwater Management approvals from the State Highway

Administration's Plan Review Division; a Private Tidal Wetlands Permit and a Nontidal Wetlands and Waterways Permit from the Maryland Department of the Environment and federal Section 404 Permit from the U.S. Army Corps of Engineers.

The motion was seconded by John Denniston of MDOT and unanimously approved.

Commissioner Blazer asked about the wetland mitigation. Ms. Roberts responded that the nontidal wetland mitigation will be provided at an upland wetland creation site called Tennyson Farm.

Chairman Deegan updated the Commission that staff is currently working with MDOT and SHA to update our existing Memorandum of Understanding.

LEGAL UPDATES:

Chairman Deegan asked Assistant Attorney General Emily Vainieri to report any legal updates on any of the cases that the Commission is involved in.

Ms. Vainieri provided updated on three cases:

Hubert Bishop – This case involved a denial of an after-the-fact variance for accessory structures in the Buffer in Anne Arundel County. This case started as an enforcement case whereby Mr. Bishop built a number of accessory structures in his Buffer years ago. Mr. Bishop was told to apply for variances for what was approvable. The Administrative Hearing Office denied the variances and Mr. Bishop appealed to the Board of Appeals. The Board also denied the variances and Mr. Bishop filed a petition for judicial review to Circuit Court. The Commission entered the case at this point. Mr. Bishop was required to produce the testimony transcripts from the Board of Appeals. Mr. Bishop did not meet this requirement so the Circuit Court dismissed his appeal. Now the enforcement proceedings may continue and Mr. Bishop will be required to remove the accessory structures he did not have authorization for.

Joyce and Thomas Cowfer – Here the County denied after-the-fact variances for a large riding arena built by Mr. and Mrs. Cowfer in Anne Arundel County. The arena is located in a very sensitive area; it is in a buffer to a bog and a nontidal wetland of special state concern buffer. There was significant clearing for the riding arena and the construction exceeded the lot coverage limit for the property and violated a side yard setback. The Administrative Hearing Officer denied the requested variances and the Cowfer's appealed to the Board of Appeals. The Commission participated as a party at the Board of Appeals. The Board denied those variances and a further appeal was not filed. The Cowfers will be required to remove the riding arena.

Prettyman Wastewater Treatment Plant – This case has to do with a wastewater treatment plant that serves a mobile home park in Caroline County. The WWTP was required to be built by Maryland Department of the Environment under a consent decree to serve the mobile home park and fix an ongoing sewage disposal issue. The problem is that was built in the wrong location, the Resource Conservation Area. Commission staff had no issue with building the plant but

repeatedly told the County it could not be located in the RCA. There is no dispute by any of the parties that the location is wrong.

The County issued a notice of violation citing Critical Area violations and zoning violations. The Prettyman's and the engineers appealed the notice of violation to the County Board of Appeals. The County BOA upheld the notice of violations. At this point the Prettyman's and their engineer have filed a petition to circuit court. The Commission is participating as a party to ensure that the notice of violation is upheld. There are also some very involved neighbors who are participating in the Circuit Court case. These neighbors have also separately challenged an NPDES permit issued by MDE, which is currently under review by the Court of Appeals.

NEW BUSINESS:

No new business came before the Commission.

Chairman Deegan adjourned the meeting.

Minutes respectfully submitted by Katherine Charbonneau.