

MINUTES

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

June 3, 2020

CALL TO ORDER: Chairman Charles C. Deegan called the meeting to order at 1:00 p.m. Chairman Deegan announced that the meeting was being held remotely on Microsoft Teams due to the current public health emergency. He shared that the meeting was being recorded and streamed live to the public and that a copy of the recording would be made available on the Commission's website. Executive Director Kate Charbonneau did a roll call to confirm the Commission members in attendance.

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
Gary Mangum, Queen Anne's County
David Marks, Baltimore County
Jennifer Merritt, Worcester County – Chesapeake Bay
Catherine McCall, Department of Natural Resources
Michael McCarthy, Talbot County
Ewing McDowell, Department of Commerce
Marianne Navarro, Baltimore City
Julie Oberg, Department of Agriculture
Steven Parker, Cecil County
Tammy Roberson, Department of Environment
Caroline Varney-Alvarado, Department of Housing and Community Development

Commission Members Not in Attendance:

Robert Culver, Wicomico County
Charles Laird, Somerset County
Donald Sutton, Kent County

APPROVAL OF MINUTES: A motion was made by Commissioner Mahoney and seconded by Commissioner Hewitt, to approve the minutes of the March 4, 2020 Commission meeting, with one correction, which was to move Commissioner Merritt's name from "In Attendance" to "Not in Attendance." **Motion carried.**

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

Regulations – Surface Mining Chapter and Development Chapter Updates – Permission to Publish as Final

Ms. Hoerger presented for a vote to approve as final the proposed changes to the Surface Mining Chapter and Development Chapter updates to the Critical Area regulations. Ms. Hoerger reviewed her staff report and attached regulatory proposal, the contents of which are incorporated into and made a part of these minutes.

At the March 4, 2020 meeting the Commission voted to publish as proposed the proposed changes to the surface mining chapter in COMAR, Title 27. The purpose of these regulations is to modernize the drafting style, update, and where necessary, delete certain outdated provisions. The proposal also included a clarification to the development regulations concerning variances and the Resource Conservation Area (RCA). The regulations were published in the April 10th edition of the Maryland Register and the public comment period ran through May 11, 2020. No comments were received during the official public comment period. Ms. Hoerger requested the Commission vote to authorize the staff to publish these regulations as final regulations in the Maryland Register. If permission is granted, the final notice would appear in the June 19, 2020 edition of the Maryland Register with a final effective date of June 29, 2020.

Commissioner Cummins moved to authorize final publication of the proposed regulatory changes as attached to the staff report and Commissioner Marks seconded. **Motion carried.**

Information Only – Solar Regulations

Ms. Hoerger presented a memorandum for information only, the contents of which are incorporated into and made a part of these minutes. At the direction of Chairman Deegan, Commission staff and a Commission workgroup are drafting proposed regulations for development of community, commercial, industrial and utility-scale solar generating systems in the Critical Area. Rooftop solar would not be regulated and, for the most part, ground-based solar for private use would be regulated only to protect the Critical Area Buffer and other Habitat Protection Areas. A workgroup of Commissioners is assisting Commission staff with this proposal and staff hope to present a draft of the proposal to the Commission by late summer or early fall.

Information Only – Proposed Water-Dependent Facility Regulations

Ms. Hoerger presented a memorandum for information only, the contents of which are incorporated into and made a part of these minutes. Commission staff are continuing to make updates to various chapters in the Critical Area regulations. The latest updates are to the water-dependent facilities chapter in Subtitle 01 and related provisions throughout the rest of the regulations. As with all previous updates, the revisions will modernize the drafting style by updating, and where necessary, deleting certain outdated provisions. This proposal will also contain a new regulation, which will allow a local jurisdiction to adopt opt-in provisions to authorize certain water-dependent activities in the RCA for the purpose of water-borne transport

of agricultural and forestry related products. Staff hope to present a draft regulatory proposal to the Commission by late summer for a vote.

PROJECTS

VOTE: Maryland Transportation Authority – William Preston Lane Jr Memorial (Bay) Bridge All Electronic Tolling (Anne Arundel County)

Ms. Durant presented for vote the All Electronic Tolling services conversion project at the William Preston Lane Jr (Route 50) Memorial Bridge. Ms. Durant reviewed her staff report, the contents of which are incorporated into and made a part of these minutes.

The Maryland Transportation Authority (MDTA) is proposing to convert to All Electronic Tolling (AET) services at the William Preston Lane Jr Memorial (Bay) Bridge to facilitate more immediate relief of traffic congestion at the Bay Bridge. The toll plaza is located along eastbound and westbound US 50/301 in Anne Arundel County on lands designated as an Intensely Developed Area (IDA).

Chairman Deegan turned the meeting over to the Project Subcommittee Chair Commissioner Hertz, who moved on behalf of the project subcommittee to approve the project with the following condition:

- Prior to the start of construction, all final authorizations, including stormwater management and sediment and erosion control, shall be submitted to Commission staff.

Commissioner Mahoney seconded the motion. **Motion passed.**

PROGRAMS

Refinement – Anne Arundel County Buffer Modification Area Map Update

Ms. Durant presented a proposed refinement to the Anne Arundel County Buffer Modification Area maps. Ms. Durant presented her staff report, the contents of which are incorporated into and made a part of the minutes.

On March 9, 2020, the Anne Arundel County Planning and Zoning Officer approved a Buffer Modification Area (BMA) request for 301 West Haven Drive in Severna Park and has since submitted the request for review and approval. Chairman Deegan determined that this request could be reviewed as a refinement to the County's Critical Area Program.

This request was originally presented to the Commission on October 2, 2019. At that time, there was a variance regarding this property pending before the Anne Arundel County Board of Appeals (BOA). The Commission recommended, and the Chairman accepted, to return the proposed program refinement to Anne Arundel County with the requirement that the variance case be completed prior to the County resubmitting the BMA application to the Commission for a decision. At the County BOA meeting on January 7, 2020, the pending variance appeal was withdrawn.

Chairman Deegan recognized Commissioner Cummins, Chair of the Program Subcommittee. She stated that the Program Subcommittee recommends concurrence with the Chairman's determination of a refinement, as it addresses the standards for map amendments under Anne Arundel County Code Article §18-13-301 – §18-13-304 and meets the criteria and goals of the State Critical Area statute. Staff also recommends that the Chairman approve this map amendment as proposed.

There were no questions. Chairman Deegan stated he accepted this motion and this would be his final decision.

Refinement – Kent County Growth Allocation Policy Update

Ms. Alex DeWeese presented a proposed refinement to the Kent County Critical Area program to update its policy for the location of growth allocation. Ms. DeWeese reviewed her staff report, the contents of which are incorporated into and made a part of the minutes.

The Kent County Commissioners approved a text amendment to the County's Growth Allocation Policy on March 3, 2020. The amendment revises the Policy to include alternative adjacency standards for new Intensely Developed Areas (IDA) that receive growth allocation, as well as appropriate references to COMAR for growth allocation requirements. Resolution 2020-03 also makes minor revisions to previously adopted language regarding new IDAs less than 20 acres in size. The proposed Growth Allocation Policy change is necessary in order for the County to proceed with a growth allocation proposal at an existing campground.

Chairman Deegan recognized Program Subcommittee Chair Cummins, who stated that the subcommittee recommends concurrence with the Chairman's determination that this text amendment to the Growth Allocation Policy be handled as a refinement to Kent County's Critical Area Program. Further, in order to ensure consistency with Critical Area law and regulations, the Program Subcommittee recommended that the Chairman approve the refinement with the condition that the County amend the Growth Allocation Policy Section 2.2.g and 2.2.h by reformatting and adding the additional language as described in the staff report.

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

Refinement – Kent County Land Use Ordinance – Campgrounds in the RCA and IDA

Ms. Alex DeWeese presented a proposed refinement to the Kent County Critical Area program to update its land use ordinance provisions for campgrounds in the Resource Conservation Area (RCA) and Intensely Developed Area (IDA). Ms. DeWeese reviewed her staff report, the contents of which are incorporated into and made a part of the minutes.

The Kent County Board of County Commissioners approved a zoning text amendment to the County's Land Use Ordinance on March 3, 2020. Code Home Rule Bill 1-2020 revises the Ordinance to permit campgrounds in the IDA and RCA. It also amends the definition of campground to add recreational vehicles as an allowable accommodation at a campground. Kent County requests Critical Area Commission review and approval of the zoning text amendment as described.

Executive Director, Kate Charbonneau, read a comment letter from a citizen in opposition to the refinement.

Following this, Chairman Deegan recognized Program Subcommittee Chair Cummins, who stated that the subcommittee, with the exception of one abstention (Commissioner Merritt), recommends concurrence with the Chairman's determination that these text amendments be processed as a refinement to the County's Critical Area Program. Further, in order to ensure consistency with Critical Area law and regulations, the Subcommittee recommends that the Chairman approve the refinement with the condition that the County amend the Land Use Ordinance Section 2.2.17 and add Sections 2.2.18 and 2.7.A.7 as described in the staff report.

Commissioner Claggett spoke up in regards to the public comment letter and stated that she no longer supported the proposed refinement.

Hearing no other comments, Chairman Deegan accepted the Subcommittee's recommendation as stated by Commissioner Cummins with the stated conditions as his final decision.

Refinement – Town of Chestertown – Critical Area Ordinance Update – Mapping (Kent County)

Ms. Alex DeWeese presented a proposed refinement to the Town of Chestertown's Critical Area Ordinance. Ms. DeWeese reviewed her staff report, the contents of which are incorporated into and made a part of the minutes.

On March 2, 2020, the Mayor and Town Council of the Town of Chestertown voted to update Critical Area Ordinance 01-2019 through the adoption of Ordinance 02-2020. Ordinance 02-2020 amends Chapter 170 Zoning Article XIII to revise the definition of "Critical Area" and update Part 1D "Critical Area Overlay District Map." These text changes are needed to reflect the Town's Critical Area map update, adopted by Ordinance 03-2020, which is required per Natural Resources Article 8-1807 and COMAR 27.01.11.

Chairman Deegan recognized Program Subcommittee Chair, Commissioner Cummins, who stated that the Program Subcommittee recommends concurrence with the Chairman's determination that this text amendment be processed as a refinement to the Town's Critical Area Program, as the proposed changes to the Zoning Ordinance are consistent with the Critical Area Law and its regulations and have been drafted to reflect the Town's map update. The Subcommittee also recommended that the Chairman approve this text amendment as proposed.

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

Refinement – Town of Chestertown – Critical Area Map Update (Kent County)

Ms. Alex DeWeese presented a proposed refinement to the Town of Chestertown's Critical Area map to update the 1,000-foot boundary. Ms. DeWeese reviewed her staff report, the contents of which are incorporated into and made a part of the minutes.

On March 2, 2020 the Mayor and Town Council of the Town of Chestertown approved Ordinance 03-2020 finalizing local adoption of the updated Critical Area 1,000-foot boundary

map. This effort was undertaken in accordance with COMAR 27.01.11 and in coordination with Critical Area Commission staff, the Town of Chestertown, the Maryland Department of Natural Resources, the Maryland Department of the Environment, and the Eastern Shore Regional GIS Cooperative (ESRGC).

Chairman Deegan recognized Program Subcommittee Chair, Commissioner Cummins, who stated that the Program Subcommittee concurs with the Chairman's determination that the Town of Chestertown mapping update can be reviewed as a refinement to the Town's Critical Area Program and recommends that the Chairman approve this map amendment as proposed.

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

Refinement – City of Salisbury Critical Area Ordinance Update (Wicomico County)

Ms. Tay Harris presented a proposed refinement to the City of Salisbury's Critical Area Ordinance. Ms. Harris reviewed her staff report, the contents of which are incorporated into and made a part of the minutes.

On February 24, 2020, the City of Salisbury Council approved a text amendment to the City's Code of Ordinances, Title 12, Chapter 12.20 Chesapeake Bay Critical Area Natural Resources Program. Ordinance No. 2578 codified the City of Salisbury's Department of Infrastructure and Development as administrator of the City's Chesapeake Bay Critical Area Program; established a dedicated fee-in-lieu fund (FIL); and established a fee schedule. Commission staff found an incorrect reference to COMAR on Page 2 of the Ordinance, Section 12.20.010.A. Due to revisions made to COMAR effective November 4, 2019, COMAR 27.01.10.01.G should be replaced with COMAR 27.01.10.01.F.

Chairman Deegan recognized Program Subcommittee Chair, Commissioner Cummins, who stated that, as the proposal is consistent with Critical Area law and regulations, the Program Subcommittee recommends that the Commission concur with the Chairman's determination that this text amendment be handled as a refinement to the City of Salisbury's Chesapeake Bay Critical Area Program. Further, the Program Subcommittee recommended the Chairman approve the text amendment with the condition that the COMAR reference in Section 12.20.010.A, "COMAR 27.01.10.01.G," be revised to cite the correct COMAR citation, "COMAR 27.01.10.01.F."

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

OLD BUSINESS

Washington Suburban Sanitary Commission, Anacostia Trunk Sewer Rehabilitation, Phase II

Mr. Michael Grassmann presented a memorandum requesting approval from the Commission to update a condition of approval related to the Washington Suburban Sanitary Commission,

Anacostia Trunk Sewer Rehabilitation, Phase II. The contents of Mr. Grassmann's memo are incorporated into and made a part of these minutes.

At its meeting on December 4, 2019, the Critical Area Commission unanimously approved the Phase II rehabilitation to the Washington Suburban Sanitary Commission's (WSSC) Anacostia Trunk Sewer Line with the following condition:

1. Within 90 days of the date of the Critical Area Commission's approval, the WSSC shall submit to Commission staff for review and approval a Planting Agreement Form and planting plan that provides mitigation of 1:1 for clearing and disturbance in the nontidal wetlands and Critical Area associated with this project.

During this 90-day window, WSSC was unable to secure an appropriate offsite location. Therefore, WSSC is seeking to pay into Prince George's County Critical Area fee in lieu account to satisfy the required mitigation. Commission staff recommended approval and stated they would continue to work with WSSC to facilitate the payment and ensure the funds are spent on tree plantings within the Critical Area.

Chairman Deegan asked for a motion to approve the request. Commissioner Mahoney so moved, and Commissioner Parker seconded. There were no questions and the motion was approved.

Update – State Highway Administration – Route 40 – Gunpowder Bridge

Executive Director, Kate Charbonneau stated that Commissioners had received notice in May that the State Highway Administration had found it necessary to increase impacts to the Buffer for the Gunpowder Bridge replacement project on Route 40 in order to safely access a segment of the bridge. This project had been previously authorized by the Commission. Per COMAR 27.02.07.04.D, Chairman Deegan authorized the increased impacts and the Commissioners were notified accordingly.

LEGAL UPDATES:

Assistant Attorney General Emily Vainieri had no legal updates to report.

Chairman Deegan adjourned the meeting at 2:45 p.m.



Lynette Fullerton, Commission Secretary

8/5/2020

Date of Approval