

MINUTES

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

August 1, 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:

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
Brad Frome, Prince George's County
Susan Greer, Charles County
Sandy Hertz, Maryland Department of Transportation
Michael Hewitt, St. Mary's County
Mark Konapelsky, Somerset County
Gary Mangum, Queen Anne's County
David Marks, Baltimore County
Jennifer Raulin, Department of Natural Resources
Michael McCarthy, Talbot County
Jennifer Merritt, Worcester County – Chesapeake Bay
Stephen Parker, Cecil County
Suzanne Pittenger-Slear, Eastern Shore Member-at-Large
Malachy Rice, Department of Commerce
Donald Satterfield, Dorchester County
Gary Setzer, Department of the Environment
Karen Stokes, Baltimore City
Donald Sutton, Kent County
Caroline Varney-Alvarado, Department of Housing and Community Development

Commission Members Not in Attendance:

Curtis Beulah, Harford County
Carolyn Cummins, Worcester County – Coastal Bays
James Lewis, Caroline County
Patrick Nutter, Calvert County
Chris Trumbauer, Anne Arundel County (present for information sessions only)

Chairman Deegan greeted the Commissioners, staff and guests and began the meeting by introducing Susan Greer, who was appointed to fill the post vacated by Jim Gesl, of Charles County. Ms. Greer is an attorney in Charles County. Chairman Deegan also introduced Lynette Fullerton, the new Commission Coordinator. Next, Chairman Deegan made a call for a motion to approve the Minutes of April 4, 2018. A motion was made by Commissioner Hewitt and seconded by Commissioner Marks, all approved.

PROJECTS:

Maryland Department of Transportation Memorandum of Understanding

Chairman Deegan introduced Ms. Charlotte Shearin to present information on the Memorandum of Understanding (MOU) with the Maryland Department of Transportation. She started with a brief explanation of what an MOU is, and then moved on to this specific MOU.

Over the past several months, staff from the Critical Area Commission and the Maryland Department of Transportation (MDOT) have worked together to update the existing Memorandum of Understanding (MOU) between MDOT and its business units and the Critical Area Commission. The existing MOU between the two agencies was signed in 2003 and includes Exhibits specific to each business unit within MDOT. It is the goal of MDOT and CAC to continue collaboration to update these Exhibits, as well.

BACKGROUND

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. This General Approval authority has commonly been implemented through the use of MOUs between the Commission and State Agencies.

Per COMAR 27.02.03, the General Approval must include a description of the program or class of activities; an assessment of the extent to which development resulting from the program or class of activities will be consistent with the criteria in COMAR 27.01; and a proposed process by which the program or class of activities could be conducted as to conform with the requirements of COMAR 27.01.

MDOT MOU

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 goal for the updated MOU between MDOT and the Commission is to streamline our existing process for review of MDOT projects. To that end, the updates to the existing Exhibits will

encompass additional projects and specify opportunities and procedures for including or adding projects as the MOU and its Exhibits are implemented.

MDOT and the Commission also hope to improve the quality of and the benefits from compensatory Critical Area mitigation for MDOT projects. To that end, the MOU includes a commitment from MDOT and the Commission to create an Ecosystem Mitigation banking program, which will create mitigation banks with mitigation credit available to all MDOT business units. Additionally, the updated MOU commits MDOT and the Commission to working together to establish guidelines for stormwater mitigation banks.

Washington Suburban Sanitary Commission – Anacostia Trunk Sewer Replacement Phase II
Chairman Deegan announced that WSSC had withdrawn their request.

Maryland Transportation Authority Nice Bridge Improvement Project

Chairman Deegan introduced Ms. Jennifer Esposito to present for vote improvements to the Governor Harry W. Nice Bridge by the Maryland Transportation Authority in Charles County. Ms. Esposito reviewed the staff report, which is incorporated into and made part of these minutes.

The Maryland Transportation Authority (MDTA) is proposing to construct a new, wider span of US Route 301 (US 301), Nice Bridge. The existing 1.9-mile structure comprises two lanes and conveys US 301 over the Potomac River connecting Newburg, Maryland in Charles County and Dahlgren, Virginia. The project is located partially within the Critical Area and is designated as an Intensely Developed Area (IDA).

The current design of the replacement includes four 12-foot lanes (two lanes in each direction), two 2-foot wide inside shoulders, two 2-foot wide outside shoulders, and a median barrier. MDTA will also be submitting an alternate plan that includes a bike/pedestrian lane.

The project also includes the replacement of the campus facilities adjacent to US 301 on the Maryland side. The campus facilities will be a design-bid-build delivery method and a separate contractor from the bridge will be conducting the facilities work. Existing conditions include an Administrative and Police Building, a Maintenance Building, a Maintenance Storage Building, and an Automotive Maintenance/Wash Bay Building. Most of the buildings are in poor conditions and are not up to ADA design standards. The new MDTA Administration and Maintenance Campus includes new toll gantries, parking, and maintenance yard reconfiguration to accommodate the new roadway alignment and facility modernization to ensure ADA compliance.

MDTA approved the implementation of the following development activities:

- New Administration and Police Building
- New Maintenance Building
- New 6-Bay Maintenance Storage Building
- Addition to the Automotive Shop/Wash Bay Facility to include new Office and Material Supply Storage
- New Fuel Island
- The existing Maintenance, Administration and Police, Equipment storage and Cash

Tolling Facilities will be demolished.

Project Impacts:

MTDA is using the largest possible footprint and proposed limits of disturbance (LOD) for the current design to determine the greatest extent of potential impacts and associated mitigation. As the design of the bridge and campus facilities, and the associated impacts, is finalized; MDTA along with the General Engineering Consultant (GEC) will work with Critical Area Commission staff to update the impact numbers and associated mitigation. MTDA expects that the impacts and associated mitigation will decrease through this process.

Within the LOD, there is a total of 1.47 acres of vegetation proposed to be removed. Further, there will be a total of 205 individual trees proposed to be removed (see Proposed Infrastructure and Existing Resources Plan attached).

There are 0.01 acres (or 435.6 square feet) of impacts to a palustrine emergent nontidal wetland. It is important to note that the Maryland Department of the Environment (MDE) did not take jurisdiction over the nontidal wetland. However, the U.S. Army Corps of Engineers (USACE) did take jurisdiction over the nontidal wetland and will require mitigation for the impacts.

Commissioner Setzer moved on behalf of the Project Subcommittee, that the Commission approve the replacement of the US Route 301 Nice Bridge over the Potomac River, realignment and reconstruction of its approaches, and replacement of its campus facilities, as proposed by the Maryland Transportation Authority. Mr. Setzer offered the motion in accordance with the staff report and presentation and the following conditions:

- Prior to the start of construction, the Maryland Transportation Authority shall provide documentation of the following authorizations and approvals to Commission staff: tidal wetlands license, nontidal wetlands and waterways permit, water quality certification, erosion and sediment control, and stormwater management.
- Prior to the start of construction, the Maryland Transportation Authority shall obtain final approval from the Commission for all on-site and off-site stormwater management, including off-sets, to meet the Critical Area 10% pollutant reduction requirement. If the stormwater management plans include an offset, including a stream restoration project, the final mitigation package submitted to Commission staff shall include a copy of the final easement plat, the restrictive covenants, and final design plans for the offset project.
- Prior to the start of construction, the Maryland Transportation Authority shall obtain final approval from the Commission for all Buffer, forest, and developed woodland mitigation plans. All mitigation plans shall consist of native plantings based on the equivalent credit to planting area and shall not be used to meet other requirements. Buffer plantings shall be consistent with the following in-order-of-priority list:
 - In the Buffer;
 - Adjacent to the Buffer; and
 - Within the Critical Area.

Non-Buffer mitigation plantings shall be consistent with the following in-order-of-priority list:

- On site;
- Off site within Charles County; and
- Off site within the 8-digit watershed.

The mitigation plantings shall be installed within two planting seasons after construction is complete.

- In recognition of the design-build project and the proposed timeframe for construction, the Maryland Transportation Authority shall report back to the full Commission by August 2019 on the status of the following:
 - Design plans showing impacts and the associated mitigation for Buffer, forest and developed woodland.
 - Stormwater management plans demonstrating that all Critical Area stormwater management requirements are met, including any out-of-kind and/or off-site projects.
 - A timeline for the construction and completion of the project, including all stormwater management and mitigation plans.

The motion was seconded by Commissioner Greer and unanimously approved.

Worcester County – Ocean City Municipal Airport Improvement

Chairman Deegan introduced Ms. Tay Harris to present for vote improvements to the Ocean City Municipal Airport. Ms. Harris reviewed the staff report, which is incorporated into and made part of these minutes.

The Town of Ocean City proposes to implement its Obstruction Removal and Safety Standards and Rehabilitation Program for the Ocean City Airport, located at 12724 Airport Road in Berlin, MD, south of Route 50 between Route 611 and the Sinepuxent Bay. These improvements are required by the Federal Aviation Administration (FAA).

The Town of Ocean City owns the airport, while the land on which it sits is located in Worcester County. Therefore, the project must comply with Worcester County's Critical Area Coastal Bays Program. The site is partially located in the Critical Area, split between the Intensely Developed Area (IDA) and Resource Conservation Area (RCA).

The project consists of two components: 1) tree removal and 2) runway safety and rehabilitation. The tree removal component of the project has been reviewed under a Consistency Report and determined to be consistent with the Critical Area Program. The runway safety and rehabilitation component of the project is under consideration for Conditional Approval by the Critical Area Commission, as impacts to the 100-foot Buffer for non-water dependent activities (new areas of runway) are proposed.

The Ocean City Airport site is 457 acres. The limits of disturbance (LOD) encompass 43.23 acres in the Critical Area, of which 39.92 acres are located in the 100-foot Buffer and expanded Buffer for nontidal wetlands. Forest and trees comprise 24.53 acres of the LOD.

The proposed rehabilitation includes:

- Shifting and rehabilitation pavement on Runway 14-32;
- Increasing the distance between Runway 14-32 and its taxiway from 200 to 300 feet;
- Demolishing direct runway access from the terminal apron to the runway;
- Providing the required wingtip clearances from the terminal apron taxi lanes to transient parking positions; and
- Constructing a three-unit clear span hangar.

The proposed rehabilitation impacts are located in the Critical Area as follows:

- Within the IDA:
 - 6.67 acres of new impervious surface,
 - 3.59 acres of impervious surface to be removed,
 - 5.76 acres of existing pervious surface to be rehabilitated, and
 - 23.9 acres of land to be graded, but remain pervious.
- Within the RCA:
 - 0.65 acre of new impervious surface,
 - 0.01 acre of impervious surface to be removed, and
 - 1.20 acres of land is proposed to be graded, but remain pervious.

The rehabilitation will increase impervious surface by 3.08 acres in the IDA, 0.64 acre in the RCA and 0.12 acre in the RCA Buffer. There is no clearing in relation to this project.

Impacts to the 100-foot Buffer

The 100-foot Buffer will be impacted in order to expand Runway 14-32, creating 0.13 acre of new impervious surface, removing 0.01 acre of impervious surface, and grading 1.31 acres that are to remain impervious. Total Buffer impacts (0.12 acres) result in 0.24 acre of mitigation, which will be met onsite by the planting of small deciduous and evergreen trees and large shrubs along Eagles Nest Road. A Buffer Management Plan has been submitted, but a planting agreement is still needed and will be required as a condition of approval. There are also impacts to nontidal wetlands, but to no other natural resources.

Stormwater Management and Sediment and Erosion Control

Given that a portion of the proposed rehabilitation is in the IDA, the project must comply with 10% Pollutant Reduction Requirement for stormwater management in the Critical Area, and the Maryland Department of the Environment's (MDE) Environmental Site Design requirement. The pollutant removal requirement is 9.33 pounds of phosphorus per year, for which compliance is proposed through grass swales, bio-swales and micro-biorentention located onsite. A conceptual 10% site plan and worksheet have been submitted by the Town.

Mr. Setzer moved on behalf of the Project Subcommittee, that the Commission approve the improvements to the Ocean City Municipal Airport proposed by the Town of Ocean City. This motion is offered in accordance with the staff report and presentation and the following conditions: 1) Prior to the start of construction, the Town of Ocean City shall provide

documentation of the following authorizations and approvals to Commission staff: stormwater management, erosion and sediment control, and wetlands and waterways permits; 2) Prior to the start of construction, the Town of Ocean City shall submit a signed Planting Agreement to Commission staff; and 3) Prior to the start of construction, the Town of Ocean City shall submit final 10% worksheets and site plans to Commission staff for review and approval. As required by Code of Maryland Regulations, this motion is based on the following considerations:

- Except for disturbance to the 100-foot Critical Area Buffer and expanded buffer, there are no other impacts to Habitat Protection Areas. As a result, the proposed project is in compliance with the relevant chapters of this subtitle.
- Disturbances to the Critical Area will be mitigated at appropriate ratios specified by the Commission.
- The proposed project offers public benefits to the Critical Area Program by selecting a design that minimizes, to the extent possible, impacts to the Critical Area, while complying with the requirements of the Federal Aviation Administration. In addition, the proposed project improves water quality through the construction of stormwater best management practices, and enhances habitat through its mitigation planting plan.

Commissioner Blazer seconded the motion, and the Commission voted unanimously to approve the project.

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 did not have anything to report.

OLD BUSINESS:

Ms. Charbonneau reported that Anne Arundel County is buying the property that was involved in the Turtle Run subdivision project. The land will be made available as part of the parks system to provide passive recreation.

NEW BUSINESS:

Ms. Charbonneau announced that she would like to set up a site visit to Masonville Cove in the fall. This is a site run by MES and was part of a Port Authority Mitigation Site.

The last update was that revisions to the Commissioner Manual could be picked up from Lynette on the way out of the meeting.

Chairman Deegan adjourned the meeting.

Minutes respectfully submitted by Lynette Fullerton.