

MINUTES

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

September 2, 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:

Tim Adams, Prince George's County
Curtis Beulah, Harford County
Gail Blazer, Worcester County – Coastal Bays (Town of Ocean City)
Carolyn Cummins, Worcester County – Coastal Bays
Jeffrey Ferguson, Eastern Shore at Large
Anita Grant, Western Shore at Large
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
Charles Laird, Somerset County
James Lewis, Caroline County
Pat Mahoney, Calvert County
Gary Mangum, Queen Anne's County
David Marks, Baltimore County
Catherine McCall, Department of Natural Resources
Michael McCarthy, Talbot County
Ewing McDowell, Department of Commerce
Jennifer Merritt, Worcester County – Chesapeake Bay
Marianne Navarro, Baltimore City
Julie Oberg, Department of Agriculture
Steven Parker, Cecil County
Tammy Roberson, Department of Environment
Donald Sutton, Kent County
Caroline Varney-Alvarado, Department of Housing and Community Development

APPROVAL OF MINUTES: Both the June 2020 and the August 2020 Commission meeting minutes required approval. Commissioner Marks moved to approve the June minutes, and

Commissioner Hewitt seconded. All voted to approve. Commissioner Marks voted to approve the August minutes, and Commissioner Oberg seconded. All voted to approve.

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

Regulations – Information Only – Renewable Energy Regulations

Ms. Hoerger presented for information the draft regulatory proposal addressing solar energy generation in the Critical Area. Ms. Hoerger reviewed her staff report and attached regulatory proposal, the contents of which are incorporated into and made a part of these minutes. No action is required at this time.

The draft regulations address community, commercial, industrial and utility-scale solar generating stations in the Critical Area. The proposal includes a new Chapter in Subtitle 01, regarding solar development on private lands and new regulations in Subtitle 02, regarding solar development on state and local lands.

The necessity of the regulations is based on the fact that medium and large solar projects are considered a commercial or industrial use in the Resource Conservation Area (RCA) and if allowed, those types of uses would require growth allocation. However medium and large scale solar are generally temporary and not intended to be an anchor for new growth areas in a jurisdiction, therefore growth allocation is not an appropriate means to site these projects in the RCA. The regulations will attempt to achieve a balance of supporting the State's goal of increasing renewable energy projects across the State while protecting the land, habitat and water resources in the Critical Area, but especially in the RCA which constitutes 80% of the Critical Area.

Commission staff will be seeking input and comment from a variety of stakeholders including other state agencies and the regulated community. Depending on those comments, Ms. Hoerger will provide an update to the Commission at a later meeting. There were no questions posed by the Commission for Ms. Hoerger.

PROGRAMS

Refinement – Text Amendment to Allow Nonadjacent Growth Allocation (St. Mary's County)

Ms. Annie Sekerak presented a proposed refinement to the St. Mary's County Comprehensive Zoning Ordinance. Ms. Sekerak reviewed her staff report and presentation, the contents of which are incorporated into and made a part of these minutes.

On July 21, 2020, the Commissioners of St. Mary's County approved a text amendment to the St. Mary's County Comprehensive Zoning Ordinance (SMCZO). The proposed Ordinance will update the County's growth allocation requirements to make them consistent with State law and regulations, include an alternative adjacency standard for new Intensely Developed Areas (IDAs) and new Limited Development Areas (LDAs), and allow new IDAs less than 20 acres.

Ordinance 2020-36 is a revised version of Ordinance 2019-40, which was originally presented to the Commission on March 4, 2020. At that meeting, the Chairman decided to return the text amendment to the County with the request that the proposed ordinance be officially amended by

the Commissioners of St. Mary's County in order to incorporate various corrections and edits. The resubmittal, Ordinance 2020-36, has been amended as requested.

Chairman Deegan recognized Project Subcommittee Chair Carolyn Cummins, who stated that the Program Subcommittee recommends concurrence with the determination that the text amendment be processed as a refinement to the St. Mary's County Critical Area Program. Further, because the proposed ordinance is consistent with the purposes, policies, and goals of the Critical Area law and regulations, the Program Subcommittee recommended the Chairman approve the text amendment as proposed.

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

Refinement – City of Baltimore Comprehensive Review and Critical Area Management Program (CAMP) Update

Ms. DeWeese presented a refinement to the City of Baltimore Critical Area Management Program. Ms. DeWeese reviewed her staff report and presentation, the contents of which are incorporated into and made a part of these minutes.

Natural Resources Article, §8-1809(g) requires each local jurisdiction to review its entire Critical Area program at least every six years. The purpose of the review is to comprehensively update the program and ensure conformance with the requirements of the Critical Area law and criteria. The City of Baltimore last performed a comprehensive review of its Critical Area Program in 2002. On May 20, 2020 the Baltimore City Council approved an update to the City's Critical Area Program by amending certain provisions within their Zoning Code and repealing and replacing the City's Critical Area Management Program (CAMP) Manual. The Mayor signed the ordinance on June 24, 2020, finalizing the City's approval process of the Bill.

The City's CAMP Manual includes all of the necessary provisions governing development within the Critical Area and was updated to current law and regulations. The update also included a new area designation for a shoreline conservation area, strengthened Buffer mitigation requirements, new afforestation requirements, and changes to their fee-in-lieu provisions. Ms. DeWeese finished her presentation by reviewing specific changes that were required to the CAMP Manual and City Zoning Ordinance in order to be fully consistent with Critical Area law and regulations.

Chairman Deegan recognized Program Subcommittee Chair, Commissioner Cummins, who stated that the Program Subcommittee recommends concurrence with the Chairman's determination that this comprehensive review be processed as a refinement to the City's Critical Area Program, as the proposed changes are consistent with the Critical Area Law and its regulations. Further, the Program Subcommittee recommended that the Chairman approve the City's Comprehensive update with the condition that the City amend the CAMP Manual and Zoning Code as described within the staff report and presentation.

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

Refinement – City of Baltimore Critical Area Map Update

Ms. DeWeese presented a refinement to the City of Baltimore’s Critical Area Program, updating its Critical Area boundary map. Ms. DeWeese reviewed her staff report and presentation, the contents of which are incorporated into and made a part of the minutes.

As part of the comprehensive overhaul of the Critical Area Law by the General Assembly in 2008, a requirement was included to remap the 1,000-foot Critical Area boundary based on recent technologies. The Commission delivered a draft summary map to the City of Baltimore the summer of 2018. The update resulted in a gain of 1,568 acres and a loss of 5,016 acres, with a net loss of 3,448 acres. The loss is primarily along Gwynns Falls; a site visit was performed to confirm the loss. This loss can be attributed to both inaccuracies in the 1972 tidal wetland maps, and the channel filling in with sediment and thus decreasing the tidal extent. The City Council adopted Bill 20-0506 on May 20, 2020 and the Mayor signed it on June 24, 2020. This action constituted local adoption of the updated maps.

Chairman Deegan recognized Program Subcommittee Chair, Commissioner Cummins, who stated that the mapping update was completed in accordance with State Law and COMAR 27.01.09.01-8, therefore the Program Subcommittee recommends the Commission concur with the Chairman’s determination that the City of Baltimore mapping update can be reviewed as a refinement to the City’s Critical Area Program. The Program Subcommittee also recommends that the Chairman approve this map amendment as proposed.

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

Refinement – Text Amendment to specify Buffer Establishment Exclusions (Dorchester County)

Ms. DeWeese presented a proposed refinement to Dorchester County’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 July 21, 2020, the Dorchester County Council voted to adopt Bill 2020-04 which repeals and reenacts Section 68-25(c)(2) of the County Code for the purpose of clarifying scenarios in which Buffer establishment provisions do not apply. Specifically, the Bill amends the Code to exclude in-kind replacement of a structure and land that remains in agricultural use after subdivision from the Buffer establishment requirements.

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 Dorchester County Critical Area Program. The Program Subcommittee further recommended that the Chairman approve this text amendment as proposed.

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

PROJECTS:

Sunset Elementary School Addition – Anne Arundel County Public Schools

Ms. Durant presented for vote a proposal to exceed lot coverage in order to construct an addition to the Sunset Elementary School by Anne Arundel County Public Schools. Ms. Durant reviewed her staff report, the contents of which are incorporated into and made a part of these minutes.

Anne Arundel County Public Schools (AACPS) is seeking approval to build an approximately 6,400 square foot addition to expand the kindergarten area of Sunset Elementary School located in Pasadena, Maryland. The addition is required to meet AACPS and state educational requirements. The proposed project is located on lands designated as a Limited Development Area (LDA). The total acreage of the site within the Critical Area is 14.08 acres, current lot coverage is 3.07 acres (21.8%), and proposed lot coverage is 3.21 (22.8%) acres. The project requires conditional approval by the Commission because it is currently over the allowable lot coverage and lot coverage will increase further after completion.

Chairman Deegan recognized Project Subcommittee Chair, Commissioner Sandy Hertz, who moved on behalf of the Project Subcommittee that the Commission approve AACPS plan to build an approximately 6,400 square foot addition to expand the kindergarten area of Sunset Elementary School located in Pasadena, Maryland. Site improvements will include replacing paths to the parking lot and around the building and installing a stormwater management facility. The addition is required to meet AACPS and state educational requirements. This will require a conditional approval by the Commission since the current lot coverage exceeds the 15% allowance for LDA and will increase further upon completion of the project. This motion is offered in accordance with the staff report and presentation and the following condition:

- Prior to the start of construction, Anne Arundel County Public Schools shall provide a completed Planting Agreement form and copies of all final authorizations, including stormwater management and sediment and erosion control, shall be submitted to Commission staff.

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

- While the proposed building addition does not impact Habitat Protection Areas, the project does exceed the 15% lot coverage limit established for Limited Development Areas. Noting that exception, the proposed project is in compliance with relevant chapters of this subtitle.
- The existing school building is located entirely within the Critical Area; therefore, due to site constraints, it would be impossible to build the addition outside of the Critical Area. AACPS is locating the addition in area with minimal impacts to existing trees and shrubs and near the outer edge of the Critical Area, so it is farther away from the edge of tidal water and wetlands.
- Disturbances to the Critical Area will be mitigated by providing 8,200 square feet of mixed canopy and understory trees that will be planted adjacent to Sunset Park on the northwest side of the property. The proposed mitigation provides 1:1 replacement for the trees and shrubs removed, as well as mitigation for the additional lot coverage.
- The proposed project offers public benefits to the Critical Area Program by expanding the existing 6.7 acres of forest cover, located northwest of the school and providing

water quality and habitat benefits onsite.

The motion was seconded by Commissioner Grant. Commissioner Johnston stated that as the Anne Arundel County representative, he would abstain from voting. **Motion carried.**

Maryland Department of Transportation – State Highway Administration (MDOT SHA) – Improvements at the Intersection of MD 404 and 328 (Caroline County)

Ms. Sekerak presented for vote a proposal by the MDOT State Highway Administration to improve the MD 404 and MD 238 intersection in Caroline County. Ms. Sekerak reviewed her staff report and presentation, the contents of which are incorporated into and made a part of these minutes.

The proposed work involves constructing additional turn lanes and expanded shoulders on MD 328 in both northbound and southbound directions as well as milling and resurfacing the existing roadway. The purpose of this project is to improve safety and traffic flow at the intersection. Construction is anticipated to begin in October 2020 and conclude in December 2020.

Chairman Deegan recognized Project Subcommittee Chair, Commissioner Hertz, who moved on behalf of the Project Subcommittee that the Commission approve MDOT SHA's proposed improvements to the intersection of MD 404 (Shore Highway) and MD 328 (River Road) in Caroline County. The purpose of the project is to improve safety and traffic flow at the intersection. This motion is offered in accordance with the staff report and presentation and the following condition:

- Prior to the start of construction, MDOT SHA shall submit a copy of all final plans, permits, and approvals, including stormwater management plans and MDE and USACE authorizations, to Commission staff.

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

OLD BUSINESS

Executive Director Kate Charbonneau reported that Ms. Durant gave an update in the Project Subcommittee meeting on the Nice Bridge project. They are on track with the mitigation plans, and the Project Subcommittee voted to recognize that MDTA does not need to develop alternative mitigation plans.

LEGAL UPDATES:

Assistant Attorney General Emily Vainieri provided the following legal update:

Buck vs Cecil County Board of Zoning Appeals and the Critical Area Commission – Ms. Buck constructed a motocross track on her property, which involved mass grading and about 4 acres of disturbance to the RCA, including 1.5 acres of disturbance to the Buffer. Zoning violations were issued and appealed. The oral arguments will be heard this week, and a decision can be expected in a couple months. If the Court of Special Appeals upholds the County's determination and there are no further appeals, then Ms. Buck would be required to remove the motocross track, restore it to its preconstruction grade, and then perform mitigation at a 4:1 ratio.

NEW BUSINESS:

Ms. Charbonneau noted that the November meeting date will be sometime the second week of November, and Commissioners should watch for an emailed survey from Lynette with possible dates and times.

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



Lynette Fullerton, Commission Secretary

10/7/20

Date of Approval