

# MINUTES

**Critical Area Commission for the  
Chesapeake and Atlantic Coastal Bays  
1804 West Street, Suite 100  
Annapolis, Maryland 21401**

**October 7, 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  
Charles Laird, Somerset 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  
Tammy Roberson, Department of Environment

**Commission Members Not in Attendance:**

Michael Hewitt, St. Mary's County  
Matt Johnston, Anne Arundel County  
James Lewis, Caroline County  
Steven Parker, Cecil County  
Donald Sutton, Kent County  
Caroline Varney-Alvarado, Department of Housing and Community Development

**APPROVAL OF MINUTES:** Commissioner David Marks voted to approve the August 2020 minutes, and Commissioner Adams seconded. All voted to approve.

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

## **REGULATIONS**

### **Information Only – Renewable Energy Regulations**

Ms. Lisa Hoerger provided a quick update about the status of current mapping projects (Harford County, Havre de Grace, and the Town of Port Deposit). She then discussed ongoing work on the draft regulatory proposal addressing solar energy generation in the Critical Area.

The Renewable Energy work group will be meeting between now and the November 12 meeting to establish the process for approval. Commission staff are in the process of 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.

## **PROJECTS**

### **Maryland Department of Natural Resources – Corkers Creek Trail and Bridge at Pocomoke State Park and Forest (Worcester County)**

Mr. Michael Grassmann presented for vote a proposal by the Maryland Department of Natural Resources plans to construct a new pedestrian trail and bridge at Pocomoke State Park located in Snow Hill, Maryland (Worcester County). Mr. Grassmann reviewed his staff report, which is incorporated into and made part of these minutes.

The proposed trail is located within the Critical Area on lands designated as Resource Conservation Area (RCA). It will link the Shad Landing Area at the State park with the Hudson and Tarr tract area of the State forest. The trail is approximately 1,500 linear feet and includes upgrades to two existing gravel trail areas and the construction of a boardwalk over wetlands.

This project was initially submitted for review through the Critical Area Commission's Memorandum of Understanding (MOU) with the Department of Natural Resources (DNR) as a Category II project, which allows for conversion of an unpaved trail to a paved trail and the installation of a new trail or boardwalk, provided specific conditions and mitigation requirements are met. However, the project cannot meet the MOU's Qualifying Parameters because it will impact medium or high priority sea level rise wetland adaptation areas, as shown by Maryland's Coastal Atlas. Therefore, this project requires review and approval by the Commission under COMAR 27.02.05.

There were no questions for Mr. Grassmann. Chairman Deegan recognized Project Subcommittee Chair Sandy Hertz, who moved on behalf of the Project Subcommittee that the Commission approve DNR's plan to construct a new pedestrian trail and bridge at Pocomoke State Park and State Forest. The motion was offered in accordance with the staff report and presentation and the

following condition:

- Prior to the start of construction, DNR shall provide the following:
  - 1) A Planting Plan and Planting Agreement for review and approval by Commission staff; the plan shall include required plantings for Buffer mitigation, tree clearing, and 10% phosphorus removal requirements.
  - 2) Authorizations from MDE for nontidal wetland impacts, tidal wetland impacts, and sediment and erosion control.
  - 3) Correspondence from MHT, including addressing any outlined MHT requirements.

Commissioner Anita Grant seconded the motion. **Motion carried unanimously.**

### **Maryland Port Administration – Cox Creek Dredge Material Containment Facility Expansion, Phase II (Anne Arundel County)**

Ms. Jennifer Esposito presented for vote a proposal by the Maryland Port Administration (MPA) to conduct the second phase of work to expand the Cox Creek Dredge Material Containment Facility (DMCF) in Anne Arundel County by approximately 89 acres. Ms. Esposito reviewed her staff report, which is incorporated into and made a part of these minutes

The purpose of this project is to provide additional capacity to store dredge material removed from the Port of Baltimore shipping channels. The first phase – which was presented to and approved by the Commission on November 1, 2017 – involved demolishing the remaining structures on the site, excavating a large borrow pit in the upland area, widening the existing DMCF perimeter dike base in preparation for future dike raising, and constructing a new spillway valve vault. MPA is now requesting approval of the second phase, which involves raising the existing DMCF perimeter dikes and constructing new dikes around the expanded upland area.

The project is located in Anne Arundel County, south of the Francis Scott Key Bridge (I-695) on the western branch of the Patapsco River. The proposed project is located partially within the Critical Area on lands designated as an Intensely Developed Area (IDA) and a Resource Conservation Area (RCA).

There were no questions for Ms. Esposito. Chairman Deegan recognized Project Subcommittee Chair Commissioner Hertz, who moved, on behalf of the Project Subcommittee, that the Commission approve MPA's plan to expand the Cox Creek Dredge Material Containment Facility (DMCF) by approximately 89 acres. This motion was offered in accordance with the staff report and presentation and the following condition:

- Prior to the start of construction, MPA shall submit to the Commission staff copies of authorizations issued by the Maryland Department of the Environment for the following:
  - 1) Erosion and sediment control and stormwater management
  - 2) Dam safety review;
  - 3) Tidal wetland impacts; and
  - 4) Nontidal wetland impacts

Commissioner Grant seconded the motion to approve. **Motion carried unanimously.**

**BGE Bush River Crossing Transmission Line Rebuild (Harford County)**

Ms. Tay Harris presented for vote a proposal by Baltimore Gas and Electric to rebuild a 1.3-mile section of 115-kV transmission line that crosses the Bush River in Harford County, MD. The Department of Natural Resources (DNR) Power Plant Research Program (PPRP) is responsible for coordinating with the Critical Area Commission to review applications for energy projects that require review by the PSC. As such, PPRP has requested review of this project by the Critical Area Commission to determine if the Commission has any recommended licensing conditions for the application. Ms. Harris reviewed her staff report, which is incorporated into and made part of these minutes.

The current transmission line is located south of the Perryman Road Bridge and crosses the Bush River. The proposed alignment of the new transmission line is located north of and adjacent to the existing transmission line. The transmission line requires the construction of nine steel monopole towers, four of which will be located on privately owned land in Perryman, MD, and four of which will be located in Edgewood, MD on federal land owned by Aberdeen Proving Grounds (APG). One monopole will be located in the Bush River. Construction of this transmission line will require clearing to decommission the existing towers and transmission lines and accommodate the shifted alignment of the transmission line rebuild.

There were no questions for Ms. Harris. Chairman Deegan recognized Project Subcommittee Chair Commissioner Hertz, who moved, on behalf of the Project Subcommittee, that the Commission approve the following conditions, for incorporation into the PPRP recommended licensing conditions to the Public Service Commission, for the BGE Bush River Crossing Transmission Line Rebuild:

1. Construction, operation and maintenance of the Project shall comply with all applicable local, state, and federal requirements for disturbance to the Critical Area, including COMAR 27.02.04, the Coastal Zone Management Act, and the Harford County Critical Area Program.
2. Prior to the start of construction, Baltimore Gas and Electric shall meet the following conditions for the “Perryman Project Area:”
  - a. Baltimore Gas and Electric shall obtain final approval of all mitigation plans from Harford County, demonstrating compliance with the following approved impact values and mitigation requirements:
    - i. Mitigation at a ratio of 2:1 for permanent Buffer disturbance; and
    - ii. Additional mitigation at a ratio of 1:1 for forest canopy removed in the Buffer; this mitigation shall consist of new or expanded Forest Interior Dwelling Bird Habitat (FIDS) to ensure no net loss of FIDS habitat;
    - iii. Mitigation will be planted onsite to the maximum extent feasible; and
    - iv. Copies of all approved plans shall be forwarded to the Critical Area Commission staff.
  - b. Baltimore Gas and Electric shall provide copies to Critical Area Commission staff of authorizations or waivers by Harford County for stormwater management and sediment and erosion control.

- c. Baltimore Gas and Electric shall provide copies to Critical Area Commission staff of authorizations or approvals by the Maryland Department of the Environment and the U.S. Army Corps of Engineers for nontidal and tidal wetland impacts.
- d. Baltimore Gas and Electric shall implement the recommendations provided by the Department of Natural Resources Wildlife and Heritage Service into all authorizations and plan approvals. This includes compliance with the strict implementation of sediment and erosion control measures and timber harvesting best management practices, including minimizing impacts to wetlands and/or mature forest vegetation during site preparation and construction.

Commissioner Marks seconded the motion. **Motion carried unanimously.**

## **PROGRAMS**

### **Refinement – Town of Charlestown Comprehensive Review (Cecil County)**

Mr. Michael Grassmann presented a refinement to the Town of Charlestown's Critical Area Program. Mr. Grassmann reviewed his staff report, which is incorporated into and made a part of the minutes.

On March 10, 2020 the Board of Town Commissioners for the Town of Charlestown approved a comprehensive update to the Town's Critical Area Program. The Town Commissioners repealed and replaced the Town's Critical Area program through the adoption of Ordinance 2020-02, which created Chapter 99 as a new stand-alone Critical Area Ordinance. Chapter 99 is based on the Critical Area Commission's model ordinance for municipalities.

Chairman Deegan recognized Program Subcommittee Chair Carolyn Cummins, who stated that the Program Subcommittee recommends concurrence with the determination that the comprehensive review be processed as a refinement to the Town of Charlestown's 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 comprehensive review as proposed.

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

### **Refinement – Town of St Michaels Comprehensive Review (Talbot County)**

Ms. Jennifer Esposito presented a refinement to the Town of St. Michaels' Critical Area Program. Ms. Esposito reviewed her staff report, which is incorporated into and made a part of the minutes.

On July 27, 2020, the Commissioners of St. Michaels voted to repeal and reenact Chapter 340 of the Town's Zoning Code through the adoption of Ordinance No. 512. This ordinance was drafted following a comprehensive review of the Town's Critical Area Program. Natural Resources Article, 8-1809(g) requires each local jurisdiction to review its entire program at least every six years. The previous update to the Town's Critical Area Program was approved by the Critical Area Commission in 2013.

The Town of St. Michaels is located in Talbot County along the Miles River. The Town encompasses all three Critical Area land designations; Intensely Developed Area (IDA), Limited Development Area (LDA) and Resource Conservation Area (RCA). In addition, a portion of the Town's shoreline is mapped as a Modified Buffer Area (MBA). The update is mostly consistent with the Commission's model ordinance for municipalities. The Town is also proposing alternative forest clearing provisions and included language to allow non-water dependent projects on piers consistent with Critical Area law and regulations. Additionally, the Town has proposed an alternative adjacency standard for new IDAs and to allow new IDAs less than twenty acres.

Commission staff identified minor clerical errors within the existing text and other minor revisions necessary to ensure consistency with the 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 Town'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 Town's Comprehensive Review update with the condition that the Town amend Chapter 340 in accordance with the changes outlined in the "Required Revisions" section of the staff report.

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

### **City of Annapolis Memorandum of Understanding for Using Fee-In-Lieu Monies (Anne Arundel County)**

Ms. Kate Durant presented for vote the Memorandum of Understanding for using Fee-in-Lieu Monies proposed by the City of Annapolis. Ms. Durant reviewed her staff report, which is incorporated into and made a part of these minutes.

Over the past eighteen months, staff from the Critical Area Commission and the City of Annapolis have worked together to develop a Memorandum of Understanding (MOU) that will permit the City to use fee-in-lieu funds collected as part of its Critical Area Program for specific types of water quality and habitat enhancement projects, beyond the traditional forest and developed woodland tree plantings and Buffer plantings. The proposed MOU includes provisions identifying the eligibility of specific funds and the types of projects that may be implemented through those funds without direct oversight from the Commission for each individual project. The City will be responsible for tracking and reporting on its projects to the Commission on an annual basis. The City will track all fee-in-lieu funds collected as part of this MOU. Funds collected for 1:1 mitigation that cannot be met onsite will be tracked separately and must be used for direct forest and Buffer replanting. As shown in Exhibit B, the City will also track the fee-in-lieu funds spent from each project, the administrative costs, and the role of any third-party partners.

The City will be required to submit an annual report of its fee-in-lieu fund debits and credits to the Commission by April 1 of every year. The annual report must include all of the information

from the Tracking Spreadsheet (Exhibit B), as well as a maintenance/monitoring plan for each project, and annual administrative expenses, including money spent on project maintenance and monitoring.

There were no questions for Ms. Durant. Chairman Deegan recognized Program Subcommittee Chair Commissioner Cummins, who stated that the Program Subcommittee recommended approval of the City of Annapolis Fee-in-lieu Memorandum of Understanding as proposed. Commissioner Marks seconded. **Motion carried unanimously.**

**OLD BUSINESS**

There was no old business to discuss.

**LEGAL UPDATES:**

Assistant Attorney General Emily Vainieri provided no legal updates.

**NEW BUSINESS:**

Ms. Charbonneau noted that the November meeting date will be on November 12, 2020 at 10:00 a.m.



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Lynette Fullerton, Commission Secretary

11/12/20  
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Date of Approval