

MINUTES MINUTES

**Critical Area Commission for the
Chesapeake and Atlantic Coastal Bays
Maryland Department of Agriculture
Annapolis, Maryland**

January 6, 2016

The full Critical Area Commission met at Maryland Department of Agriculture Headquarters, 50 Harry S. Truman Parkway, Annapolis, MD. Chairman Charles C. Deegan called the meeting to order.

Commission Members in Attendance:

Meg Andrews, Maryland Department of Transportation
Nick Carter, Caroline County
Carolyn Cummins, Worcester County – Coastal Bays
Jason Dubow, Maryland Department of Planning
Bradley Frome, Prince George’s County
Caroline Gabel, Queen Anne’s County
Charles Paul Goebel, Talbot County
Michael Hewitt, St. Mary’s County
Louise Lawrence, Department of Agriculture
David S. Marks, Baltimore County
Theo Ngongong, Baltimore City
James Palma, Department of Commerce
Stephen C. Parker, Cecil County
Suzanne Pittenger-Slear, Eastern Shore Member-at-Large
Gary Setzer, Department of the Environment
Catherine Shanks, Department of Natural Resources
Donald Sutton, Kent County
Donald Sydnor, Dorchester County
Chris Trumbauer, Anne Arundel County
Caroline Varney-Alvarado, Dept. of Housing and Community Development

Commission Members Not in Attendance:

Curtis Beulah, Harford County
Virginia Clagett, Western Shore Member-at-Large
James Gesl, Charles County
Matthew Holloway, Wicomico County
Mark Konapelsky, Somerset County
Richard W. Meehan, Ocean City
Patrick H. Nutter, Calvert County
Jennifer Rafter, Worcester County – Chesapeake Bay

Chairman Deegan welcomed the Commissioners, staff and guests. He wished all a Happy New Year and expressed his appreciation for their attendance today.

Program Subcommittee Chair Carolyn Cummins made a motion to approve the November 4, 2015 Minutes. The Chair asked for any corrections to the Minutes; there were none. Commissioner Jason Dubow seconded the motion. The November 4, 2015 Minutes were approved as presented.

Maryland State Highway Administration (SHA) – Thomas Johnson Bridge, Route 4 - Calvert and St. Mary’s Counties

Adriene Metzbower, SHA, gave a presentation on the replacement plans for the Thomas Johnson Bridge.

Ren Serey gave a brief introduction of Ms. Metzbower. He said she has served as a Commission member, representing the Department of Transportation, during an absence of Commissioner Meg Andrews. Ms. Metzbower has graciously accepted our invitation to talk about the replacement of the Thomas Johnson Bridge in St. Mary’s and Calvert counties. This is a State project that will eventually come to the Commission for approval. He said Ms. Metzbower will talk about the background of the plans and outline the construction schedule for the future bridge.

Ms. Metzbower provided a PowerPoint presentation with maps of the proposed project. She said this project is different from some projects the Commission sees. She gave an overview of project planning, a comparison of the process used in other projects, specifics of the bridge and moving to the next steps. She said the purpose of the project is to increase both capacity and safety. The new bridge will be built alongside the old bridge, then the old bridge will be removed. At this time, SHA is conducting a project planning study, which is funded for design. However, the project has not yet entered the official design stage.

Ms. Metzbower said that the preliminary analysis shows 44 acres of Critical Area impacts affecting all three Critical Area land designations as well as some federal land. She said further review will likely show a lower impact figure. At this stage of the planning process, SHA has identified 2.6 acres of effects on tidal waters and tidal wetlands. She said SHA has conducted two site visits so far with Critical Area Commission staff and will continue to work with the staff as the planning moves forward. Mitigation for the bridge may be combined with mitigation from other SHA projects.

In response to questions from Commissioner Nick Carter about the need to remove the old bridge, Ms. Metzbower said that leaving the old pilings in place can affect water circulation and maintenance. She also said a total of four lanes should be sufficient; the existing bridge has two lanes.

Commissioner Michael Hewitt asked when to expect construction to begin. Ms. Metzbower said the funding and construction schedule are not yet established. Mr. Hewitt said he has heard it might be 20 years before the bridge is started.

Maryland Port Administration (MPA) – Paul S. Sarbanes Ecosystem Restoration Project at Poplar Island – Talbot County

LeeAnne Chandler presented for Vote the Maryland Port Administration’s Paul S. Sarbanes Ecosystem Restoration Project at Poplar Island.

Ms. Chandler provided a PowerPoint presentation. She reviewed the staff report, which is incorporated into and made a part of these minutes. She introduced Holly Miller, Maryland Port Administration, and Kenna Osheroff with Maryland Environmental Service. She said they are available to answer any questions. She noted that many of the Commission members visited the island with Chairman Deegan and Commission staff last fall.

Ms. Chandler said the Maryland Port Administration is proposing to expand the Restoration Project at Poplar Island, located in the Chesapeake Bay approximately 1.2 miles offshore of Talbot County. For the past 15 years, MPA has utilized Poplar Island as a “beneficial use” dredged material placement site.

In the early to mid 1800’s, Poplar Island was approximately 1,140 acres and was populated and actually farmed. By 1993, it had eroded to only five acres on four small remnant islands. In the 1990’s, the Maryland Port Administration and the Army Corps of Engineers proposed to rebuild the island to its historic footprint by constructing stone and sand dikes, creating containment cells and filling them with material dredged from the Bay navigation channels leading to the Port of Baltimore. In 1996, the project was authorized with the intent to rebuild the 1,140 acres into 50% upland habitat and 50% wetland habitat with 38 million cubic yards of dredged material to be placed at the site. The Critical Area Commission approved the original island rebuilding as a State project. By 2001, dike construction was complete and the site began accepting spoils.

In addition to serving as a location for dredged material placement, Poplar Island has provided unique opportunities for research in habitat restoration and beneficial use of dredged material. As most Commission members are aware, public tours are given regularly and educational outings are provided for students of all ages. Volunteer groups participate in events such as planting marsh vegetation, cataloging numbers and species of birds utilizing the island, or fostering diamondback terrapin hatchlings for release. The Poplar Island project has been considered a success in providing valuable habitat as well as a needed repository for dredged material; however, the current project site is quickly reaching maximum capacity.

The proposed project will expand the existing footprint to 1,715 acres. The expansion will include a 110-acre open-water embayment, 206 acres of wetland habitat, and 259 acres of upland habitat. This will allow placement of an additional 28 million cubic yards of dredged material. In addition to the lateral expansion of the island, the existing dikes on the western edge of the two upland cells will be raised five feet to accommodate an additional six million cubic yards of dredged material.

The final design and location of the project was determined after exploring other alternatives which included restoration of other eroding islands and finding an upland disposal site. However, Poplar Island is located closer to the channel dredging activities and, consequently, it was chosen as the preferred option. The expansion is located between three Natural Oyster Bars and the alignment was adjusted to minimize intrusion into a 1,500-foot protective zone around the oyster bars. Dredging within the 1,500-foot zone will be prohibited during certain times of the year to protect the adjacent bars from impacts.

Construction of the project will take advantage of the experiences gained during construction of the first two phases, especially in regard to dike construction methodology and overall adaptive management. Monitoring of the site will continue and will be overseen by the Poplar Island Working Group, which meets regularly to receive updates and provide input regarding the work being done on the island. A discharge monitoring plan has been developed for the site and it is updated and submitted for review on a yearly basis.

Soil Erosion and Sediment Control - The project’s final soil erosion and sediment control plans are being reviewed by MDE’s Sediment, Stormwater & Dam Safety Program. A Stormwater Management Waiver is being sought by the Port.

Tidal Wetland License & Water Quality Certification – The project’s wetland license is being considered by the Board of Public Works. MDE Tidal Wetlands Division recommends approval of the license and will be issuing the water quality certification following Board approval of the license.

Concerns of the Department of Natural Resources focused on the aforementioned Natural Oyster Bars that are close to the expansion site. The recommended time-of-year restrictions will be conditions placed on the Tidal Wetlands License, if approved.

Maryland Historical Trust's review occurred during the review of the wetlands license application. They had no concerns regarding the proposal.

In accordance with MDE regulations, a public notice was published in multiple newspapers and notice was provided directly to adjacent property owners. Two public hearings were held, one at the Talbot County Library in Easton and one in Millersville. Comments were received during the public hearings and the during the public comment period and generally focused on water quality, sedimentation, impact to boaters, and noise and view concerns from nearby residents, habitat impacts, questions about construction and long term management of the site.

Commissioner Dubow asked about coordination with other agencies and whether the Commission's decision would extend beyond MDE's jurisdiction. Ms. Chandler said the Commission approved the original Poplar Island project in the mid 1990's and at that time, like the present, many other resource agencies had similar concerns and comments. She said this is typical of large construction or restoration projects.

Project Subcommittee Chair Gary Setzer said the Subcommittee had an extensive discussion regarding the original design of Poplar Island and how the proposed expansion may affect some of the environmental components of the original project. He said the discussion focused on:

- (1) The rock islands that were constructed to enhance habitat and induce micro-currents; and
- (2) The alternatives for the placement of dredged material, which is an ongoing concern for the Maryland Port Administration. While the Maryland Port Administration conducted an alternatives analysis as part of the National Environmental Policy Act and the permitting process, there was a question regarding consideration of Site 192 near the mouth of the Patapsco River. With that introduction, Subcommittee Chair Setzer said he would like to offer the following motion:

That the Commission approve the expansion of the Paul S. Sarbanes Ecosystem Restoration Project at Poplar Island proposed by the Maryland Port Administration. This motion is offered in accordance with the staff report and presentation and the following conditions:

- (1) Prior to the start of construction, the Maryland Port Administration shall confirm in writing that it has received the necessary erosion and sediment control and stormwater management approvals, waivers or variances from the Maryland Department of the Environment;
- (2) Prior to the start of construction, the Maryland Port Administration shall submit a copy of the Tidal Wetlands License issued by Maryland Board of Public Works, with supporting documentation, to Commission staff; and
- (3) Within 10 days of Commission approval, the Maryland Port Administration shall provide information to the Chairman regarding the preservation of the 12 previously constructed submerged rock islands in the northeast corner of Poplar Island and the status of Site 192 as an alternative site for the placement of dredged material. The Chairman shall forward the information to the Board of Public Works for its consideration.

Commissioner Marks seconded the motion. The motion was put to a vote and approved unanimously.

Queen Anne's County - Town of Centreville Comprehensive Program Review

Julie Roberts presented for concurrence with the Chair's determination of Refinement the Town of Centreville Comprehensive Program Review.

Ms. Roberts reviewed the staff report, which is incorporated into and made a part of these minutes. She is presenting three refinements this afternoon.

On July 16, 2015, the Town Council of Centreville voted to ratify a comprehensive update to the Town's Critical Area Program. Natural Resources Article §8-1809(g) requires each local jurisdiction to review its entire Critical Area program at least every six years.

The Town of Centreville is located in Queen Anne's County along the Corsica River. The majority of the Town is designated as either an Intensely Developed Area (IDA) or a Limited Development Area (LDA). A small portion of the Town is designated as a Resource Conservation Area (RCA).

The comprehensive update of the Town's Critical Area program brings its zoning ordinance into conformance with the requirements of the Critical Area Law and its regulations. Town staff worked closely with Critical Area staff to update the Town's program using the Commission's model ordinance. The use of our model ordinance allows small towns to be brought into conformance with all Critical Area regulations with relative ease and allows for consistency across programs. The use of the model is particularly helpful by referencing COMAR, rather than including the entirety of Critical Area regulations within the ordinance, as these are subject to change and provide additional work for limited Town staff.

The update repealed and replaced all of the elements of the zoning ordinance related to development in the Critical Area, including development standards, density and use standards, amendment procedures, variances and enforcement, and lot consolidation procedures. The language provided in this comprehensive update brings the Town Ordinance entirely into conformance with current Critical Area law and regulations. Some additional provisions, which are allowable under Critical Area Law and regulations, included nonwater-dependent structures on piers in the IDA at commercial sites.

The Queen Anne's County Critical Area map (which includes Centreville's maps) is being updated at this time as part of the Critical Area Commission's comprehensive remapping process. The Town's mapping update will therefore be submitted at a later date.

Program Subcommittee Chair Carolyn Cummins said the Subcommittee reviewed the request for the Town of Centreville Comprehensive Program Review and concurs with the Chair's determination that this comprehensive review be a refinement to the Town's Critical Area Program as proposed changes to the zoning code that are consistent with Critical Area law and regulations.

Chairman Deegan said his determination of Refinement stands, and the Program Subcommittee's recommendation will be his final decision.

Queen Anne's County – Growth Allocation, KRM Development Corporation

Julie Roberts presented for concurrence with the Chair's determination of Refinement the Queen Anne's County Growth Allocation, KRM Development Corporation.

Ms. Roberts presented a PowerPoint presentation, with aerial maps of the proposed area. She reviewed the staff report, which is incorporated into and made a part of these minutes.

Queen Anne's County is requesting growth allocation for 2.9 acres of land on behalf of the applicant, KRM Development Corporation, pursuant to Section 14:1-77 of the Code of Public Local Laws of Queen Anne's County, in order to re-designate this acreage from a Limited Development Area to an Intensely Developed Area. The Queen Anne's County Board of County Commissioners voted unanimously to grant conceptual approval for this proposed growth allocation on July 28, 2015. The County has 478.997 acres of growth allocation available to award.

Granting growth allocation for this small acreage is consistent with the County Code, as the County promulgated regulations (Ordinance No. 13-16, approved in December 2013 by the Critical Area Commission) for alternative size and adjacency standards as provided in the law. The County allows small areas of IDA less than 20 acres to receive growth allocation if specific location, economic, and sizing parameters are met. Our review of the submitted material shows that these alternative size and adjacency standards have been met.

The purpose of this growth allocation request is to allow the developer to construct two industrial buildings and associated parking areas for a total of 96,600 square feet, or 2.21 acres, on a vacant lot in Stevensville, MD. The parcel is 10.55 acres, of which only the requested area of growth allocation (2.9 acres) is located within the Critical Area and is currently designated as LDA. A total of 1.73 acres of impervious surface will be located within the Critical Area.

This property is part of Chesapeake Bay Business Park in Stevensville. The surrounding area can be characterized as an existing business park with much of the property owned by the developers of this proposed project. This site is one of the last remaining vacant parcels in the business park. The western portion of the site is within the Critical Area and is adjacent to the Queen Anne's County Terrapin Beach Park, a forested area with wetlands. There are several nontidal wetlands on the developer's site that the applicant has received authorization from Maryland Department of the Environment to disturb. There are no other resources on site.

Since this project will result in a designation of IDA for the property, Critical Area 10% phosphorus reduction requirements must be met. In addition, due to the fact that total disturbance exceeds 5,000 square feet, MDE's Environmental Site Design requirements must be met. The applicant's consultant submitted a Conceptual Stormwater Management Plan to the County and to the Commission. The applicant proposes to meet both Commission and MDE requirements through the use of a submerged gravel wetland and several bioretention areas. The County and Commission staff will provide further review at a later stage of development.

Natural Resources Article 8-1808.1(c) requires the Critical Area Commission to ensure that growth allocation will be consistent with locational provisions and that the Commission consider certain factors including consistency with the local Comprehensive Plan; impacts on water quality from stormwater runoff; the effects, if any, from location in a coastal hazard zone; and the impacts from increased flooding. Ms. Roberts referred to sections of her staff report that addressed these points.

Program Subcommittee Chair Carolyn Cummins said because this Growth Allocation meets the required adjacency standards, including the County's alternative adjacency standards, and is consistent with the purposes, policies, goals and provisions of the Critical Area law and regulations, the Subcommittee concurs with the Chair's determination that this growth allocation proposal can be handled as a refinement to the Queen Anne's Critical Area Program, The Subcommittee recommends approval with one condition:

1. The County is required to send all preliminary and final development plans, including the stormwater management 10% and Environmental Site Design final report, to this office for review. Any changes to the proposed plans may be subject to additional review by Commission staff or the full Critical Area Commission.

Chairman Deegan said his determination of Refinement stands, and the Program Subcommittee's recommendation will be his final decision.

Cecil County – Growth Allocation, Recovery Centers of America Earlville

Julie Roberts presented for concurrence with the Chair's determination of Refinement the Cecil County Growth Allocation, Recovery Centers of America Earlville.

Ms. Roberts presented a PowerPoint presentation of the proposal. She reviewed the staff report, which is incorporated into and made a part of these minutes.

Cecil County is requesting growth allocation for 40 acres of land on behalf of the applicant, Recovery Centers of America, in order to redesignate this acreage from a Resource Conservation Area to a Limited Development Area. On November 17, 2015, the Cecil County Council approved Resolution No. 54-2015 to allow for this change in land designation. The purpose of this growth allocation is to authorize the development and operation of a drug and alcohol rehabilitation facility on land owned by the applicant at 314 Grove Neck Road, Earlville, Maryland (Tax Map 61, Parcel 12).

The entire property is 532.2 acres, with 278.2 acres located in the Critical Area and designated as RCA. A previously approved 106-lot subdivision plat from 2007 entitled "Bracebridge Estates" created 12 lots in the Critical Area. Lot 41 of this previously approved plat, which is the subject of this growth allocation request, is 204.13 acres, with 145.69 acres in the Critical Area. The lot is currently improved with an existing 38,000 square-foot Manor House, two gate houses, several outbuildings, and a paved road with a small parking area associated with an existing pier. Only the Manor House, parking area, pier, and portions of the roadway are in the Critical Area. The property is zoned as a Southern Agricultural District ("SAR").

In 2009, the County received approval from the Critical Area Commission for a 40-acre RCA to LDA growth allocation development envelopment on this property in connection with a golf course and residential development known as "Bracebridge Hall." Under this proposal, 12 lots and a clubhouse would be constructed within the development envelope, while the remaining portions of the RCA would be a part of the golf course. This project was never developed, and the property has since been sold to Recovery Centers of America. The original growth allocation has been revised to address this new development plan.

Recovery Centers of America is requesting growth allocation in the area surrounding the existing Manor House and extending to the pier on Back Creek. The remainder of the property will remain RCA. Under the Cecil County Zoning Ordinance (§91-(8)), the proposed use is regulated as a "hospital," which requires both a special exception use in the SAR zoning district and growth allocation. A special exception was approved on December 30, 2014 by the Cecil County Board of Appeals to allow the site to be used as a rehabilitation and recovery center. The Commission's regulations require the use of growth allocation for most new commercial uses in the RCA, including the current proposal.

The Property will be operated as a residential treatment facility for substance abuse. Anticipated development on the site includes interior renovation of the Manor House as well as the construction of an addition. There will also be parking improvements within the Critical Area, for a total increase of

approximately 8,712 square feet, or 0.2 acres, of lot coverage. The initial development phase also includes clearing of approximately one-half acre of trees outside of the Buffer, construction of a wastewater treatment facility and minor parking improvements outside of the Critical Area. The size, timing and capacity of wastewater improvements will dictate the sequencing and operational capacity of the facility, which will accommodate up to 150 residential patients at completion. The developer also contemplates a swimming pool in the vicinity of the Manor House and a therapeutic/meditation building just outside of the County's required 110-foot Buffer near the pier.

Other than the improved areas, the property consists primarily of agricultural fields with forest cover surrounding two drainage ways to McGill Creek and Back Creek. Most of the shoreline Buffer is tilled or mowed regularly, although there are some forested areas along the shoreline and within the Buffer and expanded Buffer for steep slopes. Buffer establishment will be required for the non-forested areas.

A letter was received from the Fish and Wildlife Service indicating that there are two eagle's nests on site. The Environmental Report prepared by the applicant indicates that only one appears to be active. There will be no disturbance in the vicinity of the nest. No other impacts are proposed with this development proposal.

Staff reviewed the Preliminary Buffer Management Plan and written associated description in August 2015. The Preliminary plan shows a combination of natural regeneration and both landscape and seedling stock plantings to meet the 9.69-acre establishment requirement for the 110-foot and expanded Buffer. An additional 190-foot setback (110-feet to 300-feet from tidal waters) "will be removed from active agricultural use and will be maintained as pasture and mowed periodically for hay." There are six proposed view corridors, discussed below, to be planted with shrubs and understory only. Although the 300-foot setback is demarcated on the plans, there are no specific planting plans for this area.

The six proposed view corridors would extend from the Manor House to the shoreline. The justification presented for not fully establishing the Buffer in these areas is that the corridors have a therapeutic role in the patients' rehabilitation. In subsequent review letters, Commission staff reiterated our recommendations made in June of 2015 at a meeting with the applicant and County staff that only two view corridors be proposed, both of which could be 200 feet in linear width and 200 feet deep. These corridors could be planted in warm season grasses and shrubs. Additional planting of canopy and understory trees could be planted elsewhere on the site. We also advised the County and the developer that additional plantings within the 300-foot setback could be required by the Critical Area Commission and recommend that at a minimum, this area should be planted using warm season grasses and shrubs. This Preliminary plan was approved with the rest of the Growth Allocation package by the County on November 17, 2015. However, our comments were not addressed as of that time.

We understand that the applicant will resubmit another draft Buffer plan which addresses our comments fully. There may be additional updates provided to the Commission at the meeting regarding this revised plan.

Program Subcommittee Chair Carolyn Cummins said the Subcommittee reviewed the request for the Cecil County Growth Allocation Recovery Centers of America Earlville, and because this Growth Allocation meets the required standards and is consistent with the purposes, policies, goals and provisions of the Critical Area law and regulations, the Subcommittee concurs with the Chair's determination that this growth allocation proposal can be handled as a refinement to Cecil County's Critical Area Program and recommends approval with the following five conditions:

1. The County is required to send all preliminary and final development plans to Commission staff for review. Any changes to the proposed plans may be subject to additional review by the full Critical Area Commission.
2. Prior to the start of construction, a revised Buffer Management Plan shall be required to be submitted to Commission staff for approval, and if necessary, the full Commission, to ensure that all outstanding comments involving view corridors and planting parameters within the Buffer and 300-foot setback have been satisfied.
3. The proposed meditation building, or any non-water dependent structures that may be proposed in the future, shall be located outside of the 300-foot setback. Any request to locate future non-water dependent structures within the 300-foot setback will require additional review and approval by the Critical Area Commission. In addition, alternative measures for enhancement of water quality and habitat that provide greater benefits to the resources will be required for these structures if located within the 300-foot setback.
4. Any future onsite uses, structures or lot coverage that are similar to, associated with or in support of the project including, but not limited to, a meditation building and a swimming pool, shall be located within the development envelope or require approval of additional growth allocation acreage.
5. The developer must follow the time restrictions for planting according to Department of Natural Resources and federal guidelines for protection of the eagles' nest.

Chairman Deegan said his determination of Refinement stands, and the Program Subcommittee's recommendation will be his final decision. (Note: The Program Subcommittee added Condition #5 when it reconvened prior to the 1:00 p.m. Commission meeting. Condition #5, therefore, was heard in the full-Commission meeting with the first four proposed conditions and the Chairman accepted all conditions simultaneously.)

LEGAL UPDATE: Rachel Eisenhauer told the Commission that Emily Vianieri, currently serving as MDE Assistant Attorney General, will be starting with us next month to replace Mark Talty. She comes highly recommended and has worked with the Critical Area Commission in the past.

Ms. Eisenhower said there are no cases to update at present.

OLD BUSINESS: There are no items to come before the Commission.

NEW BUSINESS: The Chairman said we have no new business to bring before the Commission today. There were no updates on prior Commission actions or conditions to report.

There being no further business to come before the Commission, the meeting adjourned at 2:10 p.m.

Chairman Deegan told the Commission we will most likely not have a Commission meeting in February. The next meeting of the Commission will be held on Wednesday, March 2, 2016.

Minutes respectfully submitted by Shirley M. Bishop, Commission Coordinator.