

MINUTES MINUTES

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

March 1, 2017 (AMENDED: page 5)

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:

Curtis Beulah, Harford County
Gail Blazer, Worcester County – Coastal Bays (Town of Ocean City)
Virginia Clagett, Western Shore Member-at-Large
Robert Culver, Jr. – Wicomico County
Carolyn Cummins, Worcester County – Coastal Bays
Jason Dubow, Maryland Department of Planning
Brad Frome, Prince George's County
James Gesl, Charles County
Sandy Hertz, Maryland Department of Transportation
Michael Hewitt, St. Mary's County
Mark Konapelsky, Somerset County
Louise Lawrence, Department of Agriculture
James Lewis, Caroline County
Michael McCarthy, Talbot County
Gary Mangum, Queen Anne's County
David Marks, Baltimore County
Stephen Parker, Cecil County
Jennifer Rafter, Worcester County – Chesapeake Bay
Malachy Rice, Maryland Department of Commerce
Gary Setzer, Department of the Environment
Catherine Shanks, Department of Natural Resources
Don Satterfield, Dorchester County
Donald Sutton, Kent County
Chris Trumbauer, Anne Arundel County

Commission Members Not in Attendance:

Patrick Nutter, Calvert County
Suzanne Pittenger-Slear, Eastern Shore Member-at-Large

Chairman Deegan welcomed the Commissioners, staff and guests. He said he appreciates all taking the time and effort to attend the meeting today. He extended a happy birthday wish to commissioner coordinator, Shirley Bishop. She has served the Commission since 1994.

Chairman Deegan made a motion to approve the December 7, 2016 Minutes. He asked for any corrections to the Minutes. There were no corrections. Commissioner Marks made a motion to approve the Minutes. Commissioner Dubow seconded the motion. The December 7, 2016 Minutes were approved as presented.

Shady Side Elementary School Addition – Anne Arundel County

Charlotte Shearin presented for Vote as Conditional Approval the Anne Arundel County Shady Side Elementary School Addition.

Ms. Shearin provided a PowerPoint presentation with maps. She reviewed the staff report, which is incorporated into and made a part of these minutes. She described the relation of the project to the requirements for conditional approval. She introduced Nick Wilson, representing Anne Arundel County Public Schools. He is also available to answer questions.

Anne Arundel County Public Schools (AACPS) is seeking approval for an addition to the Shady Side Elementary School, located at 4859 Atwell Road, Shady Side, Anne Arundel County, Maryland. The project consists of constructing a new kindergarten classroom addition approximately 7,280 square feet in size, and routing a sidewalk around the perimeter of the addition to maintain access. Other site improvements will include stormwater management to meet environmental site design (ESD) and 10% pollutant removal requirements. The site is 7.11 acres and designated as a Limited Development Area (LDA). Current lot coverage is 3.31 acres (19.4%), and proposed lot coverage is 3.51 acres (20.5%). The project requires approval conditional approval by the Commission because it is over the lot coverage limit for the site and lot coverage is increasing.

A mitigation planting plan was provided that proposes 26 canopy trees, 331 shrubs, and 2,800 herbaceous. Stormwater management and sediment erosion control plans will be approved by Anne Arundel County as part of the grading permit.

In accordance with COMAR 27.03.01.03, notice of the proposed project was published in The Baltimore Sun on February 10, 2017. A sign with information about the project was posted on the site as well. No comments were received during the public comment period.

On behalf of the Project Subcommittee, Chair Gary Setzer made a motion that the Commission approves the addition to the Shady Side Elementary School proposed by the Anne Arundel Public Schools. This motion was offered in accordance with the staff report and presentation. As required by Code of Maryland Regulations, this motion was based on the following considerations:

- Except for exceeding the 15% lot coverage limit established for Limited Development Areas in the Critical Area, the proposed project is in compliance with the relevant chapters of this subtitle.
- Disturbances to the Critical Area will be mitigated as provided in a planting plan approved by Commission staff.

- The proposed project offers public benefits to the Critical Area Program by selecting a design that minimizes impacts to the Critical Area and avoids encroaching on the adjacent forest. The project also includes stormwater management practices and plantings that will not only improve water quality, but also enhance learning by incorporating those aspects of the project into the school's environmental curriculum.

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

Department of Natural Resources (DNR) Assateague State Park - Campground Relocation/Dune Supplementation

Claudia Jones presented for Vote the DNR Assateague State Park Campground Relocation/Dune Supplementation.

Ms. Jones provided a PowerPoint presentation with maps. She reviewed the staff report, which is incorporated into and made a part of these minutes.

The Maryland Department of Natural Resources (DNR) proposes to remove and relocate numerous existing camp sites and roadways in Assateague State Park. The project also includes supplementing the existing dune with sand, installation and replacement of clay crossovers to the beach, new walkways to meet the requirements of Americans with Disabilities Act (ADA), and new parking for tent campsites.

Assateague State Park is an 855-acre park in Worcester County within the Atlantic Coastal Bays. It is the only oceanfront state park in Maryland. It is mapped as a Resource Conservation Area (RCA).

The proposed project has the following components:

- The relocation of numerous campsites and portions of the campground loop roads, which is necessary due to impacts after Hurricane Sandy damaged the area in 2012.
- The supplementation of the dune in its current location with additional sand, filling in areas where damage has more recently occurred, and planting the inward side of the dune with dune grasses.
- The replacement of clay crossovers, repair of crossover railings, and installation of directional fencing to guide visitors away from the dunes where dune vegetation is to be planted. The existing clay crossovers and railings were also damaged by storms.
- The construction of several new asphalt walkways connecting several camping pads to bathhouses to meet ADA standards.
- The installation of a gravel parking lot and access area for walk-in tent camping sites.

The limits of disturbance (LOD) for the project area is 15.57 acres and encompasses the campground area. There are currently 10.21 acres of existing lot coverage in this area. There will be a net increase of lot coverage of 0.42 acres within the LOD. There are no proposed impacts within the 100-foot Buffer.

DNR is required to provide stormwater management in accordance with Maryland Department of Environment (MDE) requirements for Environmental Site Design (ESD) and to meet the Critical Area 10% pollutant reduction rule for State projects. The soils on this site are sandy and water is able to infiltrate and drain well throughout most of the developed portion of the site. For this reason, in part,

MDE has indicated that it will grant a waiver to the Environmental Site Design (ESD) standards generally required for projects that exceed 5,000 square feet of disturbance. The Critical Area 10% pollutant reduction requirement is 3.37 lbs of phosphorus/year. This will be met onsite through nonrooftop disconnects, which results in a pollutant removal of 7.42 lbs of phosphorus, more than double the requirement.

The total square footage of vegetation clearing for the project is approximately 4,800 sq. ft. DNR will be planting 29,090 square feet of plantings, including native tree, shrub, and herbaceous species that can tolerate salty, windy, and sandy conditions. This will also benefit stormwater management on the site.

No potential concerns with the project came up during an internal DNR review, including DNR Wildlife and Heritage and the Maryland Historical Trust.

Permits/waivers have not been received from MDE for stormwater management or sediment and erosion control.

As required under COMAR 27.02.05.03, State agencies who are proposing development activities on State-owned lands shall demonstrate that the agency has considered the likelihood of inundation by sea level rise over the course of the design life of the project, and to demonstrate that the development identifies and incorporates climate resilient practices in order to avoid or minimize environmental or structural damage associated with a coastal hazard, an extreme weather event, sea level rise, and other coastal impacts.

DNR has provided the following information to demonstrate that they have reviewed these coastal resilient factors:

- Assateague State Park, being located on a coastal barrier island, is subject to coastal hazards including extreme weather events.
- The campground already exists and the purpose of the project is to move roads westward, away from the primary dune system to minimize storm impacts.
- No new structures are being built. Instead, the roads are being reconfigured to allow the campground to continue to be used but minimizing maintenance and repair in the future.
- The most vulnerable areas of the island (the landside tidal marshes) are not within the project site.
- The Maryland Park Service views this project as the small first step in retreating from the coast. Further costly infrastructure improvements are being avoided wherever possible while also providing the recreational experience millions of visitors expect each year.

The property was posted and a notice placed in *Ocean City Today* on February 9, 2017. One positive public comment was received.

On behalf of the Project Subcommittee, Chair Gary Setzer made a motion that the Commission approve the improvements at Assateague State Park proposed by the Department of Natural Resources, including the removal and relocation of numerous campsites and roadways; supplementation of the existing dune with sand; the installation and replacement of clay crossovers to the beach; the construction of new walkways to meet the requirements of the Americans with Disabilities Act; and the construction of new

parking for tent campsites. This motion was offered in accordance with the staff report and presentation and the following condition:

- 1) Prior to the start of construction, the Department of Natural Resources shall notify Commission staff that approvals have been received from the Maryland Department of the Environment for stormwater management and erosion and sediment control.

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

Caroline County – Town of Federalsburg Critical Area Map Update

Lisa Hoerger presented for concurrence with the Chair's determination of Refinement the Town of Federalsburg Critical Area Map Update.

Ms. Hoerger provided a PowerPoint presentation with maps. She reviewed the staff report, which is incorporated into and made a part of these 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. In July 2012, the Commission adopted regulations that address the types of source documents used, the process for updating the maps, and the procedures for classifying newly added lands. Subsequently, each local jurisdiction is undergoing a Critical Area mapping update.

Commission staff worked with the Town of Federalsburg, the Maryland Department of Natural Resources, the Maryland Department of the Environment, and Salisbury University to develop updated Critical Area maps for the town. These draft maps were vetted by the aforementioned agencies, were presented at public meetings, and lastly, were delivered to the town for public comment and local approval. The Mayor and Town Council approved Ordinance #2016-04, an action which constituted local adoption of the updated maps.

Program Subcommittee Chair Carolyn Cummins said the Subcommittee concurs with the Chairman's determination that the Town of Federalsburg Critical Area Map Update can be reviewed as a refinement to the **Town's** Critical Area Program, as the proposed changes are consistent with the Critical Area Law and its regulations.

Chairman Deegan said as the refinement stands he approves the text amendment recommended by the Program Subcommittee.

Queen Anne's County – Town of Queenstown Critical Area Map Update

Lisa Hoerger presented for concurrence with the Chairman's determination of Refinement the Town of Queenstown Critical Area Map Update.

Ms. Hoerger provided a PowerPoint presentation. She reviewed the staff report, which is incorporated into and made a part of these 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.

In July 2012, the Commission adopted regulations that address the types of source documents used, the process for updating the maps, and the procedures for classifying newly added lands. Subsequently, each local jurisdiction is undergoing a Critical Area mapping update.

Commission staff worked with the Town of Queenstown, the Maryland Department of Natural Resources, the Maryland Department of the Environment, and Salisbury University to develop updated Critical Area maps for the town. These draft maps were vetted by the aforementioned agencies, were presented at public meetings, and lastly, were delivered to the town for public comment and local approval. The Mayor and Town Council approved Ordinance #16-03, an action which constituted local adoption of the updated maps.

Program Subcommittee Chair Carolyn Cummins said the Subcommittee concurs with the Chairman's determination that the Town of Queenstown Critical Area Map Update can be reviewed as a refinement to the Town's Critical Area Program.

Chairman Deegan said the Subcommittee recommendation stands as his final decision.

Talbot County – Town of Oxford, Text Amendment Coastal Resilience

Alex DeWeese presented for concurrence with the Chair's determination of Refinement the Town of Oxford Text Amendment Coastal Resilience.

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

On November 8, 2016, the Town of Oxford Commissioners adopted Ordinance #1616, amending four sections of the Town's Zoning Ordinance to allow for additional flexibility in stormwater management, tree replacement, and Buffer Management Area mitigation requirements so that the Town can enhance coastal resiliency practices and alleviate nuisance flooding issues that frequently plague the municipality. A copy of the text amendment is attached to the staff report.

In 2015, the Critical Area Commission was awarded a grant through the Maryland Department of Natural Resource's Chesapeake and Coastal Service and the National Oceanic and Atmospheric Administration's Office of Ocean and Coastal Resource Management. The grant allowed Commission staff to pilot a program during which a test community and a Critical Area planner would complete a series of assessments, identify coastal risks and hazards, and create solutions for those hazards using the existing local Critical Area program. Ordinance #1616 is a result of this pilot program.

The proposed text amendments make the following changes to the Critical Area section of the Town of Oxford's Zoning Ordinance:

- §19.01 (Definitions) is amended to include definitions for permanent disturbance and temporary disturbance, which are taken from the Critical Area Commission's regulations (COMAR 27.01.09.01.01);
- §33.01.E (Implementation of the Critical Area Program Purpose and Goals, General Requirements) is amended to require stormwater management practices to mitigate for

permanent disturbance associated with a development or redevelopment activity less than 5,000 square feet in all Critical Area designations.

Currently, stormwater management within the Town of Oxford is required only in the Intensely Developed Area (IDA) for disturbance greater than 250 square feet, and this requirement is typically met with tree plantings. This amendment specifies more effective forms of stormwater best management practices that not only improve water quality but reduce stormwater quantity as well, and requires stormwater management to occur in all Critical Area designations in order to minimize flooding issues onsite. The intent of this requirement is to increase the Town's capacity overall to manage minor nuisance flooding events;

- §33.02.A (Intensely Developed Areas, Development Standards) is amended to include tree replacement standards and new lot coverage calculations for permeable surfaces.

Tree replacement is currently limited to the Limited Development Area and the Resource Conservation Area. This addition to the Zoning Ordinance acknowledges that increasing tree canopy throughout the community can provide a variety of benefits related to stormwater quality and regulating temperatures. Fee-in-lieu is permitted as a first option within the IDA.

Additionally, this section is amended to allow for new lot coverage composed of permeable surfaces to be calculated at 75% of the total area covered. Currently, underlying zoning in the IDA limits lot coverage to 40%. The proposed amendment provides flexibility for permeable surfaces in order to encourages their use and lessen on site nuisance flooding; and

- §33.14 (Buffer Management Area (BMA) Provisions) is amended to provide flexible Buffer mitigation options by increasing the allowance of native grasses and shrubs, as opposed to trees, that may reduce shore erosion and provide coastal resiliency.

The Town of Oxford Planning Department will use a document created by Critical Area Commission staff, entitled *Oxford Buffer Management Areas Approved Species List*, for planting options within the designated BMAs. These species were specifically selected for Oxford in order to withstand saltwater intrusion from sea level rise and storm surge, as well as for their deep and broad root systems that stabilize the shore and prevent erosion. This list will be used in conjunction with the Commission's *The Green Book for the Buffer* and the U.S. Fish and Wildlife Service's *Native Plants for Wildlife Habitat and Conservation Landscaping – Chesapeake Bay Watershed* document.

Commissioner Dubow raised a question regarding the stormwater management table and the threshold for the requirement at 5,000 square feet. There was a brief discussion between Commissioner Jason Dubow, Commissioner Carolyn Cummins, Kate Charbonneau and Ms. DeWeese regarding whether MDE requirements apply at 5,000 square feet or at 5,001 square feet. The conclusion was made that a minor text amendment would needed in two places to ensure consistency with State requirements.

Program Subcommittee Chair Carolyn Cummins said the Subcommittee concurs with the Chairman's determination that the Town of Oxford Text Amendment Coastal Resilience can be reviewed as a refinement to the Town's Critical Area Program with the following condition:

- Ordinance #1616 shall be revised on page 4, section 2 in the text and in the Table to clarify the Town requirements for stormwater apply up to and including 5,000 square feet and State ESD requirements apply over 5,000 square feet.

Chairman Deegan said the Chair accepts that condition, and the Subcommittee recommendation stands as his final decision.

Talbot County – Text Amendment, Solar Energy

Jennifer Anderson presented for concurrence with the Chair’s determination of Refinement the Talbot County Text Amendment, Solar Energy, Bill #1352.

Ms. Anderson provided a PowerPoint presentation. She reviewed the staff report, which is incorporated into and made a part of these minutes. She introduced Mary Kay Verdery, the Planning Director from Talbot County, as also able to answer any questions.

The Talbot County Council has approved an amendment (Bill #1352) to Talbot County’s Zoning Ordinance to include provisions for permitting solar energy systems within the County. The ordinance will permit small and medium scale solar energy systems (SES) as accessory uses in all zones of the Critical Area. Further, this bill allows large scale energy systems to be permitted as a special exception in the County’s zoning districts that are equivalent to the Limited Development Area (LDA) and the Intensely Developed Area (IDA). Large scale SES’s are not permitted as a use in the Resource Conservation Area (RCA). A copy of the bill is attached to the staff report.

Amendments to §190.208 (Terms Defined) includes pertinent definitions that relate to SES’s.

- Small Scale Solar Energy Systems produce less than two hundred kilowatts (200kW) of power and utilizes one acre or less. Small scale SES’s includes Rooftop Solar Energy Systems of any size.
- Medium Scale Solar Energy Systems produce at least 200kW but less than two megawatts (2MW) of power. Medium scale SES’s may utilize more than one acre but not more than 10 acres.
- Large Scale Solar Energy Systems produce at least 2 MW of power or utilize ten acres or more.

Critical Area development requirements will apply for all SES’s within the Critical Area such as Buffers, habitat protection areas, forest clearing standards, etc. Bill #1352 also prescribes that SES’s within the Critical Area are subject to lot coverage requirements and stormwater management regulations. Small and medium scale SES’s are allowed in all zones (RCA, LDA, and IDA) within the Critical Area as an accessory use to a principle use or structure. Large scale SES’s are not permitted in the RCA, but are permitted in the County’s zoning districts that are equivalent to the LDA and IDA as a special exception. Special exception uses require approval by the Talbot County Board of Appeals and require standards and conditions to ensure that the use is suitable on a particular site.

Section 190.93.1 (Solar Energy Systems) applies approval standards for solar energy systems. Small scale SES’s require a building permit and planting plan for screening. Medium scale SES’s requires a major site plan in addition to the building permit and planting plan. Finally, large scale SES’s require a special exception, a Reservation of Development Rights Agreement, and mitigation in addition to the site plan, building permit, and planting plan.

The bill also imposes general siting requirements for SES's, such as locating solar systems on existing lot coverage when possible and avoiding prime agricultural lands, habitat protection areas, forests, wetlands, and other natural resources to the maximum extent practicable. Moreover, the bill goes into specific requirements for medium and large scale SES's including setbacks, screening, fencing, site abandonment, public notice, decommissioning, and financial assurance standards.

Medium and Large Scale SES's are limited to not exceed one half percent (0.5%) of the total combined aggregate acreage in the agricultural and resource conservation districts (which includes the RCA), or not more than 726 acres within the County.

An approved large scale SES is required to utilize the development rights equal to the number of rights attributable to the project area with a minimum reservation of one development right. The property owner is required to set aside the requisite number of development rights through a Reservation of Development Rights (RDR) Agreement. The number of rights that are required to be placed under the agreement is calculated using the base density multiplied by the total area of land encumbered by the SES. In addition to utilization of development rights for the area encumbered by a large scale SES, Bill #1352 requires mitigation in the form of an additional equal area within the County's agricultural and resource conservation districts that must be placed in an RDR Agreement. The required mitigation through the Reservation of Development Rights Agreement shall remain in place and shall be extended as necessary until the SES is abandoned or discontinued.

While land within the RCA may not be developed by large scale SES uses, land within the RCA may be used as receiving mitigation in the form of reservation of development rights. The Reservation of Development Right Agreement restricts development and density rights on the balance of the development rights on the property.

Program Subcommittee Chair Carolyn Cummins said the Commission concurs with the Chairman's determination that this text amendment can be reviewed as a refinement to the County's Critical Area Program as the proposed changes to the Zoning Ordinance is consistent with the Critical Law and its Regulations.

Chairman Deegan said the Subcommittee recommendation stands as his final decision.

Commission Carolyn Cummins asked whether legal counsel could explain the process under which the Chairman makes a determination for refinement and what options the Commission has if they disagree with the Chairman's decision. She stated that many of the members are new and most items they have seen have been refinement. Commission Counsel Ms. Rachel Eisenhauer agreed. Ms. Eisenhauer said, that when a local jurisdiction makes a change to its Critical Area program they can ask the Chairman whether to handle it as a refinement or as an amendment. The Chairman gets to make the decision, but the law provides a framework. The law allows the Chairman to make that initial determination based on whether the particular change to the Program is consistent with the law and regulations. If it is consistent he could decide to make it a refinement. The law provides examples of changes that fit a refinement. Sometimes other things go into that decision to tweak a refinement into an amendment and so that determination is made.

Once the decision for refinement is made it is then presented as a staff report to the Subcommittee. They may have questions but the decision before the Subcommittee is to whether or not to concur with the Chairman that it can be handled as a refinement. If they do not concur then that would come to a vote before the full Commission. If the Commission votes to not concur, then the program change becomes an amendment. That means the Chairman would appoint a panel of five Commissioners. They will hold a public meeting to review materials and hear public comment. They will then vote on a recommendation to be made to the full Commission. The full Commission will then hear the program change and will vote and make a decision. The process takes a long time.

Ms. Charbonneau said if the Chair makes a determination of an amendment initially, the law provides 130 days from that determination to bring the project to a final vote in front of the full Commission for a decision. If the Commission overrides the determination of a refinement, the Commission has 60 days to make a decision.

LEGAL UPDATE: There are no legal updates at this time.

NEW BUSINESS: Chairman Deegan said most likely we are going to have a workgroup regarding the whole solar issue. The workgroup will be made up of several Commission members. He said staff has been working on it along with some other people. We should have a recommendation in the coming months.

He reminded the Commission members to fill out and submit the Ethics forms that are due by April 30, 2017.

OLD BUSINESS: Kate Charbonneau said Talbot County came through with a bill regarding golf courses. We had a condition about the definition of “in play area”. The County has developed that definition of “in play area”. They are bringing it to their Planning Commission. The CAC staff and Council have seen it. We believe it meets the requirement of a condition, so that should be adopted by the end of April.

There being no further business to come before the Commission, the meeting adjourned at 2:00 p.m.

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