

# MINUTES MINUTES

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

April 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  
Curtis Beulah, Harford County  
Nick Carter, Caroline County  
Virginia Clagett, Western Shore Member-at-Large  
Carolyn Cummins, Worcester County – Coastal Bays  
Jason Dubow, Maryland Department of Planning  
Bradley Frome, Prince George’s County  
James Gesl, Charles County  
Charles Paul Goebel, Talbot County  
Michael Hewitt, St. Mary’s County  
Mark Konapelsky, Somerset County  
Louise Lawrence, Department of Agriculture  
David Marks, Baltimore County  
Theo Ngongong, Baltimore City  
Patrick Nutter, Calvert County  
James Palma, Department of Commerce  
Stephen 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:**

Caroline Gabel, Queen Anne’s County  
Matthew Holloway, Wicomico County  
Richard Meehan, Ocean City  
Jennifer Rafter, Worcester County – Chesapeake Bay

Chairman Deegan welcomed the Commissioners, staff and guests. He expressed his appreciation to all for today’s attendance.

Program Subcommittee Chair Carolyn Cummins made a motion to approve the January 6, 2016 Minutes. The Chairman asked for any corrections to the Minutes; there were no corrections. Commissioner Hewitt seconded the motion. The January 6, 2016 Minutes were approved as presented.

### **Department of Natural Resources - Oyster Restoration in Maryland**

Eric Weissberger, DNR Shellfish Program, made a presentation to the Commission on oyster restoration in Maryland.

Mr. Weissberger said Maryland's oyster population has been declining for more than a century due to disease, habitat degradation, and overfishing. Oysters used to average 9-10 inches in length, but today's average is 3-5 inches. Oyster landings have been in decline since 1900 and are now just a fraction of the historic numbers. It is estimated that only 1% of historic oyster populations exist. The decline resulted from overfishing, but more importantly, the use of oyster shells for other, land-based purposes such as road building. The resulting loss of oyster reefs has meant more oysters on the Bay bottom where they are susceptible to sedimentation and diseases. The diseases are worse with warmer weather and higher salinities. The effects of land use changes have also been significant. These include runoff from forest removal, sediment, eutrophication from agriculture, urban runoff and development.

Using several approaches, DNR is attempting to increase the oyster population in the Chesapeake Bay. By establishing more and larger oyster sanctuaries to protect oysters from harvest, the number of oysters and the ecosystem services they provide should increase. Furthermore, larvae produced by oysters in sanctuaries may settle beyond sanctuary boundaries, populating areas open to the public fishery. To relieve fishing pressure on wild stocks, DNR is encouraging oyster aquaculture through a low-interest loan program operated by the Maryland Agriculture and Resource-Based Industry Development Corporation. Increased enforcement of oyster laws and regulations is underway through the use of the Maritime Law Enforcement Information Network (MLEIN), a series of cameras and radars located throughout the Bay. MLEIN allows officers to monitor more area than they could through patrols alone. Additionally, natural resources court days allow oyster cases to be presented along with other natural resource cases, leading to more convictions and stiffer penalties. Finally, the Marylanders Grow Oysters program involves citizens in oyster restoration, increasing public awareness about the benefits oysters provide and garnering support for the state's oyster restoration program. Through all these efforts, DNR hopes to increase the oyster population.

### **Salisbury University River Education Center - Wicomico County**

Amber Widmayer presented for Vote the Salisbury University River Education Center.

Ms. Widmayer provided a PowerPoint presentation. 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 Jeff Downes from Salisbury University to answer any questions.

Salisbury University is seeking approval of proposed modifications of an existing developed residential property for the purpose of creating an environmental education and research facility. The University recently acquired the 2.3 acre property. It is currently developed with a dwelling, garage, driveway and pier. The University proposes minor modifications of the site to provide access under the Americans with Disabilities Act (ADA) to the Nanticoke River and tidal creek shorelines with the installation of pathways, parking areas and benches. The property is mapped as a Limited Development Area (LDA).

The project requires approval by the Commission because it is a development activity proposed by a State entity and it requires conditional approval due to impacts within the Buffer.

There is a 100-foot Buffer that extends on the property from both the Nanticoke River along the northwest boundary and a tidal creek that runs along the northeast boundary. Within this Buffer, the University proposes to install two ADA accessible paths to provide water access to an existing pier on the Nanticoke River and to a wood platform along the tidal creek. Additionally, the University proposes an outdoor classroom seating area consisting of benches, and parking areas for two cars and a bus. The paths and parking areas will be constructed with pervious materials. As a result of these Buffer impacts, the University will provide mitigation plantings at a 2:1 ratio for the 1,102 square feet of Buffer disturbances associated with providing ADA water access, and mitigation plantings at a 3:1 ratio for the proposed 891 square feet associated with the proposed bus parking area. The University will provide a total of 4,877 square feet of mitigation plantings on-site.

In accordance with COMAR 27.02.05.03.B(8), the project will meet the Critical Area stormwater pollutant reduction requirement by constructing the proposed pathways and parking areas with pervious materials and with the installation of a 500 square foot rain garden to treat stormwater runoff from the existing dwelling.

Because the project's proposed footprint of disturbance is less than 5,000 square feet (the limit of disturbance for the proposed work is ~3,300 square feet) Maryland Department of the Environment (MDE) stormwater management and sediment erosion control approvals are not applicable.

The University has received a letter from MDE Tidal Wetlands Division stating that because the property has two points of water access (the existing pier on the Nanticoke River and the existing wood deck platform on the tidal creek) one of these must be removed. However, the letter also states that, "there have been cases where educational facilities are allowed to construct piers for specific needs that do not meet the private pier requirements." As suggested by MDE in the letter, the University will present its request to retain the tidal creek platform for educational purposes at MDE's Joint Evaluation meeting in April.

DNR's Wildlife and Heritage Service confirmed in a February 10, 2016 letter that there are no records of any State or federal rare, threatened or endangered species within the project site.

The Maryland Historical Trust confirmed on December 2, 2015 that the project will have no adverse effect on historic properties.

In accordance with COMAR 27.03.01.03, notice of the proposed project was published in *The Daily Times* newspaper on March 17, 2016. A sign with information about the project was posted on the site as well. One letter was submitted by an adjacent property owner opposed to the project. Ms. Widmayer said she provided an overview of the concerns raised in the letter in her presentation to the Project Subcommittee.

Program Subcommittee Chair Carolyn Cummins asked if there are two buildings on that parcel and if one of them is an education center. She also asked if the entire property will be used for the stated purpose.

Ms. Widmayer said that is her understanding. She then referred the question to Mr. Downes from Salisbury University. Mr. Downes said the house will be used primarily as a classroom environment and the garage for studies. There will be kayak and canoe excursions from the pier. He said the whole property will be used generally for environmental studies, which the professors are very excited about. They are now writing programs to increase courses at Salisbury University with this property in mind.

On behalf of the Project Subcommittee, Chair Gary Setzer made a motion that the Commission approve the improvements to the Nanticoke River Field Station proposed by Salisbury University. This motion is offered in accordance with the staff report and presentation and the following conditions:

- (1) Salisbury University shall comply with the final decision of the Maryland Department of the Environment regarding the University's request to retain both the existing Nanticoke River pier and the tidal creek platform; and
- (2) Prior to the start of construction, Salisbury University shall provide a planting plan showing the required 4,877 square feet of mitigation planted within the 100-foot Buffer to Commission staff for review and approval. As required by Code of Maryland Regulations, this motion is based on the following considerations:
  - Except for disturbance to the Critical Area Buffer, there are no other impacts to Habitat Protection Areas. As a result, the proposed project is in compliance with the relevant chapters of this subtitle.
  - Disturbances to the Critical Area will be mitigated at appropriate ratios specified by the Commission.

The proposed project offers public benefits to the Critical Area Program by creating an environmental education and research facility that will focus on activities to improve water quality and habitat along the Nanticoke River and the tidal creek. Salisbury University has selected a design that minimizes, to the extent possible, impacts to the Critical Area, while providing greater access to the field station's facilities and complying with the Americans with Disabilities Act requirements.

The proposed project minimizes tree removal, improves water quality through the construction of stormwater best management practices, and enhances habitat through its mitigation plan.

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

#### **Town of Centreville, Centreville Wharf – Queen Anne's County**

Julie Roberts presented for Vote the Centreville Wharf project.

Ms. Roberts provided a PowerPoint presentation. She reviewed the staff report, which is incorporated into and made a part of these minutes. She introduced Perry Otwell with McCrone Engineering. He is available to answer any questions.

The Town of Centreville seeks to fully redevelop the existing Centreville Wharf Park. Centreville is located in Queen Anne's County, north of Route 301. The wharf is designated as an Intensely Developed Area (IDA), as well as a Modified Buffer Area (MBA). The wharf is a well-used public amenity, located on Watson Road on the Corsica River. The Town seeks to redevelop this parcel to create a more attractive and useable waterfront area.

The land associated with the wharf was created over the last 100 years using fill and oyster shells. This property had historically been used as a fertilizer plant and oyster processing plant, but was converted to open space many years ago. The parcel is 2.4 acres with approximately 1.02 acres of existing impervious surface, and is adjacent to the Town's offices. There is an existing asphalt parking lot, areas of concrete slab, a playground, and a walking path to an existing boardwalk, as well as docking for small boats and a kayak launch. There is a small group of trees on a created mound of fill, but few trees or vegetation on the rest of the site. The rest of the ground can be characterized as shell, fill, and sand with areas of grass. The wharf is heavily used for boat access and car/trailer parking during several major holidays, as well as being a waterfront public amenity throughout the year.

As part of the redevelopment plan, the Town proposes to reduce the impervious surface on site from 1.02 acres to 0.58 acres. A small area of trees will be cleared, and all areas of existing impervious surface will be removed. There will be no development in the 25-foot MBA setback. The wharf will feature three picnic areas on the river side of the property. Each area includes two picnic tables located over a concrete

slab. There will be a small pavilion (512 square feet), a new or relocated playground area, a landscaped “plaza” area with an overlook, and multiple pathways to the boardwalk. The existing path is proposed to be repaved using flexible porous paving sidewalk. The area under the existing boardwalk will be reinforced with riprap to protect the existing slope. There is an existing bulkhead which will remain during and after this development. No wetland or open water impacts are proposed. There is an area to the east of the site that will remain as a living shoreline.

As this is a redevelopment project in the IDA, 10% phosphorus reduction calculations are necessary. With the substantial decrease in impervious surface on site, there is a negative pollutant removal requirement for Critical Area purposes. However, per the Maryland Department of the Environment, additional stormwater management using Environmental Site Design is required. The Town will use non-rooftop disconnects to meet these requirements. Queen Anne’s County’s Department of Public Works has reviewed the plans on behalf of MDE.

The Town has provided a landscape plan showing a mix of a meadow area, grassed area, and landscaped planting area in the plaza. This area is directly adjacent to the Corsica River within the MBA setback. Canopy trees are featured along the roadway and interspersed between the picnic areas. The plaza will include landscaping shrubs and shrubs will also ring the proposed parking lot.

At this time, only these components of the wharf redevelopment are proposed for Commission approval. Staff has had ongoing discussions with the Town regarding a potential parking area, wetlands restoration, and public access via a boardwalk and dock on the south side of the property. Additional approval will be necessary for any work performed on the south side of Watson Road.

The site plan associated with this project has been approved by the Town of Centreville and the Queen Anne’s Soil Conservation District.

Queen Anne’s County’s Department of Public Works (DPW) has reviewed these plans. Comments from DPW are minimal. The Department will authorize the proposed work following Critical Area Commission approval.

Notice of the project was published on March 23, 2016 in the *Star Democrat* newspaper. A sign with information about the project was also posted on the property as required by COMAR 27.03.01.03 on March 22, 2016.

On behalf of the Project Subcommittee, Chair Gary Setzer made a motion that the Commission approve the redevelopment of the Centreville Wharf proposed by the Town of Centreville. This motion is offered in accordance with the staff report and presentation and the following conditions:

- (1) Prior to the start of construction, the Town of Centreville shall obtain all necessary approvals from the Queen Anne’s County Department of Public Works;
- (2) Prior to the start of construction, the Town of Centreville shall contact the Maryland Historical Trust for a determination of whether the proposed project will adversely affect historical or archeological resources. Any comments provided by the Maryland Historical Trust shall be addressed prior to any on-site work; and
- (3) Prior to the start of construction, the Town of Centreville shall provide an updated planting plan for the Modified Buffer Area for review and approval by Commission staff. The plan shall use coastal resilient species as determined by Commission staff.

Commissioner Beulah seconded the motion. The motion was put to a vote. Commissioner Donald Sutton abstained from vote.

**Agenda Change** - Chairman Deegan told the Commission there is a change in today's Agenda as follows:

**Informational Item - Department of Natural Resources Proposed General Approval Memorandum of Understanding (MOU)**

Kate Charbonneau presented for information the Department of Natural Resources Proposed General Approval Memorandum of Understanding.

Ms. Charbonneau said she would like to briefly comment that at a recent meeting, there was a request from Commissioners that we give updates on conditions of approval and she wanted to let them know that the Buffer Management Plan or plantings plan from the previous project would be on that list.

In regard to the informational item, she said Commission staff requested feedback from the Project Subcommittee this morning on a draft MOU with the Department of Natural Resources. She said the Project Subcommittee discussed the draft that staff and DNR have been working on to cover projects under a general approval. These are small maintenance activities and minor development projects. The Subcommittee looked at the outline of the draft, the types of projects covered and the review process. Ms. Charbonneau said staff received feedback from the Subcommittee and will be taking that back to DNR to discuss concerns and additions to the MOU. She said once we have addressed these Subcommittee's comments, and DNR is also happy with the process, we will bring MOU to the full Commission for approval, just like the General Approval MOU with the Maryland Transportation Authority last year. The purpose of both is to further streamline the review process and allow certain types of projects, principally minor projects, to be reviewed at the staff level rather than bringing them to the full Commission.

**Talbot County – STARS Legislation**

Jennifer Anderson presented for concurrence with the Chairman's determination of Refinement the Talbot County STARS Legislation.

Ms. Anderson provided to the Commission a PowerPoint presentation. She reviewed the staff report, which is incorporated into and made a part of these minutes. She said Zachary Smith, Attorney with Armisted, Lee, Rust & Wright, P.A. is here to answer any questions. He has worked closely with the County on this legislation. She said two of the representatives from Talbot County had to leave today to attend to pressing matters.

Talbot County has submitted a text amendment (Talbot County Bill 1323) to its Critical Area Program for approval by the Commission. The purpose of the proposed amendment is to insert a new Sustainable Tourism and Reinvestment (STAR) district to promote reinvestment and redevelopment of existing tourism-related structures or uses that are subject to the restrictions in Talbot County Code Chapter 190, Article VIII (Nonconforming Lots, Uses, and Structures).

The Bill amends various sections of the Talbot County Code. First, §190-107.1 is a new section that establishes the framework for the floating zone. Within that section, the STAR district is defined and the intent of the floating zone is stated. Further, this section provides standards under which certain existing legal nonconforming structures may be considered for the STAR district. Section §190-107.1 establishes requirements for STAR district application acceptance, identifies an application process, and provides standards for review and approval of the STAR district.

Second, the Bill amends §190-170 (General Application and Review Procedures) to include the STAR district application in the requirements for a presubmission meeting with the Planning Office. Finally, the County amended §190-208 (Definitions) to include the definition of a redevelopment plan.

Ms. Anderson said a STAR district is a floating zone. Principal uses and structures in a STAR district include hotels, motels, community and cultural facilities, golf courses open to the public, inns, marinas, and restaurants. Accessory uses and structures must be incidental and subordinate to, and customarily found in connection with, the principal uses or structures mentioned above.

Critical Area requirements still will apply within a STAR district, including lot coverage limitations, location restrictions, and the use of growth allocation, if applicable.

Commissioner Palma asked if the permitted uses are only those listed in the Bill. Ms. Anderson responded yes. Mr. Palma asked if a use changes to a non-listed use, does it lose its designation? Mr. Zach Smith said the requirement for designation in the new District is that a proposed use must have been a qualifying use for five years.

Talbot County Bill 1323 received favorable backing from the public and unanimous County Council approval on December 22, 2015.

Program Subcommittee Chair Carolyn Cummins said the Subcommittee reviewed the request for the Talbot County STARS Legislation and concurs with the Chair's determination that this can be reviewed as a refinement to the County's Critical Area Program. She said the Subcommittee recommends approval, as the proposed changes to the Zoning Ordinance are consistent with the Critical Area Law and its regulations.

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

### **Chesapeake City Structures on Piers Legislation (Cecil County)**

Julie Roberts presented for concurrence with the Chairman's determination of Refinement the Chesapeake City Structures on Piers Legislation.

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

The Chesapeake City Town Council has approved an amendment to the Town's Critical Area Program to permit the approval of certain structures and uses on piers, including solar and wind energy systems. The Council approved Ordinance #2142015 on February 8, 2016.

Ms. Roberts said that in 2013 the Maryland General Assembly enacted Senate Bill 524, which amended Natural Resources Article §8-1808.4. The bill permits local governments to allow specific non-water dependent projects and small-scale energy systems on piers. The intent of the legislation is to permit small projects, which by their intrinsic nature do not require location over State or private wetlands. The law provides strict criteria and standards for these projects. Additionally, the legislation specifies that before local jurisdictions approve these uses, they must first "opt-in" by amending their programs to allow the non-water dependent uses on piers.

The provisions of the legislation state that a structure on a pier may be permitted if the following apply: the project is an accessory use to a permitted primary commercial use; the project avoids and minimizes impacts to wetlands and other aquatic resources; and it is located in an Intensely Developed Area or an

area that has been excluded from a local Critical Area Program. Typical uses in this category are restaurant decks that extend outdoor seating over tidal wetlands or tidal waters. In addition, the legislation permits local governments to approve a single small-scale energy system on a pier in all Critical Area classifications provided it complies with certain installation and safety standards. Qualifying uses are a solar panel, a wind turbine or a geothermal system on a pier when it is considered a secondary or accessory use, and when it avoids and minimizes impacts to wetlands and other aquatic resources. Recognizing the growing interest and importance of renewable energy sources, Chesapeake City also amended the local Critical Area Program to include standards for small solar and wind energy systems in addition to the pier-based uses.

Program Subcommittee Chair Carolyn Cummins said the Subcommittee concurs with the Chairman's determination that this text amendment to the Town's Critical Area Program can be reviewed as a refinement to the Town's Critical Area Program. Ms. Cummins also said the Subcommittee recommends approval of the proposal, as the proposed changes are consistent with the Critical Area Law and its regulations.

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

### **Snow Hill Amendments to Critical Area Ordinance (Worcester County)**

Claudia Jones presented for concurrence with the Chair's determination of Refinement the Town of Snow Hill's Amendments to its Critical Area Ordinance.

Ms. Jones presented a PowerPoint presentation of the proposal. She reviewed the staff report, which is incorporated into and made a part of these minutes. She said Karen Houtman from Snow Hill is available to answer questions.

The Town has submitted changes to the Zoning Ordinance as refinements to the local Critical Area Program. The Snow Hill Planning Commission held a public hearing on these changes on November 19, 2015. There was no opposition and the Town Council approved the changes unanimously.

The Town added a section to the Zoning Ordinance to allow administrative variances on grandfathered lots in the Critical Area. An administrative variance may be granted by the Code Enforcement Officer with the concurrence of the Planning Commission Chair, provided the variance standards from Natural Resources Article § 8-1808(d) are met.

The Town is also amending its mitigation requirements for development and redevelopment activities in the Buffer to be consistent with COMAR, which requires a mitigation ratio of 3:1 *plus* the square footage of the canopy removed.

The Town is adding language from Natural Resources Article § 8-1808.1(e)(2)(i) to allow one additional dwelling unit per lot as part of a primary development unit in the Resource Conservation Area. The law allows jurisdictions to permit an additional dwelling unit if it is within 100 feet of the primary dwelling; does not exceed 900 square feet in total enclosed area; is served by the same sewage disposal system; or, is located within the primary dwelling and does not increase its size.

Program Subcommittee Chair Carolyn Cummins said the Subcommittee reviewed the request for the Snow Hill Amendments to its Critical Area Ordinance and concurs with the Chair's determination that two of the text amendments can be reviewed as refinements to the Town's Critical Area Program. These two areas of text amendments are sections on Buffer Mitigation and Accessory Dwellings Units. They are consistent with the Critical Area Law and the Commission's regulations. The Administrative Variance



section was withdrawn at the morning Subcommittee meeting at the request of Snow Hill staff member Karen Houtman.

Chairman Deegan said his determination of Refinement stands regarding the two program elements in the Program Subcommittee's concurrence, and the Subcommittee's recommendation on these elements will be his final decision.

**LEGAL UPDATE:** Rachel Eisenhauer and Emily Vainieri presented the legal update to the Commission.

**Anne Arundel County** - Ms. Eisenhauer said the case she is reporting on is not the Commission's case, but instead, an Anne Arundel County enforcement action against a private homeowner for clearing in the Buffer. The County Attorney has asked Commission staff for support in terms of being a witness to help with testimony on the Critical Area law and its applications. Ms. Eisenhauer said a status hearing was held yesterday but it was just to determine dates for the proceedings. She will keep the Commission posted when the hearing comes up.

**Anne Arundel County** - Ms. Vainieri said the Critical Area Commission is participating in a matter before the Anne Arundel County Board of Appeals. The Commission and the County are opposing a variance request of the property owner. The owner constructed a structure without the necessary building and grading permits, and is now trying to get an after-the-fact approval. The variances are required due to a number of regulated resources on the property. One is a bog which is designated in the Anne Arundel County program as a habitat protection area. It is also designated a Wetland of Special State Concern by the Department of the Environment. There is also a tributary stream area regulated as a nontidal wetland by MDE. The structure is within the Critical Area Buffer Zone. The hearing before the Board of Appeals was scheduled for February. The homeowner requested a postponement and the hearing is now scheduled for August.

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

**NEW BUSINESS:** The Chairman told the Commission there are two bills before the General Assembly this year as follows:

- 1) Delegate Dana Stein (HB 122), and Senator James N. Mathias (SB 132), introduced companion bills to allow the Mayor of Ocean City to designate a member in his absence. Chairman Deegan said he has not seen Mayor Meehan in attendance since he has been with the Commission. It is his understanding that the non-attendance preceded him. The bill passed unanimously in both the Senate and House. Both bills are awaiting the Governor's signature.
- 2) Delegate Anthony O'Donnell (HB 389) introduced a bill that affects the Critical Area law's provisions for intrafamily transfers by expanding the definition of family to include siblings. The bill passed unanimously, and is awaiting the Governor's signature.

Commissioner Theo Ngongang told the Commission that this meeting will be his last. He has accepted a private sector position. He expressed his appreciation to all, saying serving the Commission has been a wonderful experience. The Chairman expressed the Commission's appreciation for his service.

Chairman Deegan said he is looking to do a future tour of the Port of Baltimore. When he has a date, he will let everyone know.

The Chairman also said we will most likely not have a Commission meeting in May. The next meeting of the Commission will be held on Wednesday, June 1, 2016.

There being no further business to come before the Commission, the meeting adjourned at 2:30 p.m.

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