

MINUTES

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

August 4, 2021

CALL TO ORDER: A meeting of the Critical Area Commission was held at the People's Resource Center, 100 Community Place, Crownsville, Maryland. Chairman Charles C. Deegan called the meeting to order at 1:00 p.m.

Commission Members in Attendance:

Nicole Acle, Wicomico County

Gail Blazer, Worcester County – Coastal Bays (Town of Ocean City)

Jeffrey Ferguson, Eastern Shore at Large

Deborah Herr Cornwell, Department of Planning

Anita Grant, Western Shore at Large

Sue Greer, Charles County

Sandy Hertz, Department of Transportation

Michael Hewitt, St. Mary's County

Matt Johnston, Anne Arundel County

James Lewis, Caroline County

Pat Mahoney, Calvert County

Gary Mangum, Queen Anne's County

David Marks, Baltimore County

Jennifer Merritt, Worcester County – Chesapeake Bay

Alisha Mulkey, Department of Agriculture (for Julie Oberg)

Catherine McCall, Department of Natural Resources

Ewing McDowell, Department of Commerce

John Papagni, DHCD (for Caroline Varney-Alvarado)

Steven Parker, Cecil County

Tammy Roberson, Department of Environment

Commission Members Not in Attendance:

Tim Adams, Prince George's County

Curtis Beulah, Harford County

Andrew Bradshaw, Dorchester County

Dawn Jacobs, Kent County

Charles Laird, Somerset County

Michael McCarthy, Talbot County

Julie Oberg, Department of Agriculture

Caroline Varney-Alvarado, Department of Housing and Community Development

APPROVAL OF MINUTES: Chairman Deegan motioned to approve the June 2, 2021 minutes. All voted to approve.

STAFF PRESENTATIONS

REGULATIONS:

Updates to Agriculture Regulations – Permission to Publish as Final Regulations

Ms. Lisa Hoerger presented for vote a request to publish updates to the agriculture provisions in Code of Maryland Regulations, Title 27, as final. Ms. Hoerger reviewed her staff report, which is incorporated into and made a part of these minutes.

This request comes after the proposed regulations were approved by the Commission for publication in August, 2020. The regulations were subsequently published as draft in the Maryland Register on April 23, 2021. The public comment period ran through May 24, 2021 and there were no comments. The primary purpose of the proposed regulations was to update Chapter .06 Agriculture and other related agriculture regulations in the regulations. The Commission staff worked closely with the Department of Agriculture to ensure all updates to the language were correct. As with previous updates, these updates corrected any outdated regulations.

The Commission was asked to vote to authorize the staff to publish these regulations as final regulations in the Maryland Register. If permission is granted, the final notice would appear in the August 27th edition of the Maryland Register with a final effective date of September 6, 2021.

Hearing no questions, Chairman Deegan recognized Program Subcommittee Chair Greer, who moved that the Commission vote to authorize the staff to publish these regulations as presented in the April 23, 2021 edition of the Maryland Register as final regulations in a future edition of the Maryland Register. Commissioner Hewitt seconded the motion. **Motion passed unanimously.**

Final Updates to Renewable Energy, Commission Review and Project Notification Regulations – Permission to Publish as Final Regulations

Ms. Hoerger presented for vote a request to publish updates to the renewable energy, commission review, and project notification provisions in Code of Maryland Regulations, Title 27, as final. Ms. Hoerger presented her staff report, which is incorporated into and made part of these minutes.

This request comes after the proposed updates to these regulations were approved by the Commission for publication as proposed at the May 5, 2021 meeting. The updates to these regulations were prompted by discussions with the Public Service Commission staff regarding application materials; therefore, Commission staff determined it would be useful to specifically include a list of information that would be required to review proposed applications for a Certificate of Public Convenience and Necessity (CPCN) in the Critical Area. This proposal was

published in the Maryland Register on June 18, 2021. The public comment period ran through July 19, 2021 and no comments were received.

The Commission was asked to vote to authorize the staff to publish these regulations as final regulations in the Maryland Register. If permission is granted, the final notice would appear in the August 27th edition of the Maryland Register with a final effective date of September 6, 2021.

Hearing no questions, Chairman Deegan recognized Project Subcommittee Chair Hertz, who moved on behalf of the Project Subcommittee to authorize Commission staff to publish these regulations as they appeared in the June 23, 2021 edition of the Maryland Register as final regulations in a future edition of the Maryland Register and further, to approve the non-substantive change in COMAR 27.03.01.04.G where the words “to a local jurisdiction” are removed. Commissioner Mahoney seconded. **Motion passed unanimously.**

Proposed Updates to Water-Dependent Facilities Regulations – Permission to Publish as Proposed Regulations

Ms. Hoerger presented for vote, proposed draft updates to the water-dependent facility provisions of the Code of Maryland Regulations, Title 27. Ms. Hoerger presented her staff report, which is incorporated into and made a part of these minutes.

At its August 5, 2020, meeting the Commission was introduced to the draft proposal to update the water-dependent facility regulations (COMAR 27.01.03). The updates to this chapter modernize the drafting style, update certain provisions, and where necessary, delete certain provisions.

These regulations specify the criteria for review and approval of a variety of facilities or activities that require location at or near the shoreline or in the Buffer. Under these criteria local jurisdictions can permit such activities without a variance to disturb the Buffer. The draft includes drafting changes to the definitions for community pier, port and structures. In addition, the definition of disturbance was clarified to include both permanent and temporary disturbance. The specific types of water-dependent facilities or activities as described in Regulations .05 through .10 remain the same. However, Regulation .10 was modified to add a new type of activity related to aquaculture and fisheries. As drafted, aquaculture and fishery activities that support water quality restoration in the Chesapeake Bay, Atlantic Bays or their watersheds are also allowed under this regulation.

The remaining changes were the same as noted in the draft that was reviewed at the August 5, 2020 meeting, except, this draft does not include Regulation .11. At the time, Regulation .11 was drafted as a new regulation that allowed for the location of agricultural and forestry-related industries to locate certain activities in the Buffer in the Limited Development Area (LDA) and in the Resource Conservation Area (RCA). Based upon stakeholder feedback, Commission staff determined this new proposed regulation required further investigation and refinement. Therefore, Regulation .11 is not part of this proposal.

Hearing no questions, Chairman Deegan recognized Project Subcommittee Chair Hertz, who moved on behalf of the subcommittee to

- 1) Approve the regulations affecting the following Code of Maryland Regulations: COMAR 27.01.01 General Provisions, COMAR 27.01.03 Water-Dependent Facilities, COMAR 27.01.09 Habitat Protection Areas in the Critical Area, COMAR 27.01.11 Directives for Updating Critical Area Maps, COMAR 27.01.13 Nonwater-Dependent Projects, COMAR 27.02.01 General Provisions, COMAR 27.02.05 State Agency Actions Resulting in Development on State-Owned Lands and COMAR 27.03.01 Notification of Project Applications;
- 2) Approve regulations that: adopt amended Regulation .01 under COMAR 27.01.01 General Provisions; adopt new regulation .01-1 and amend Regulations .01, and .02-.10 under COMAR 27.01.03 Water Dependent Facilities; amend Regulations .01 and .01-2 under COMAR 27.01.09 Habitat Protection Areas in the Critical Area; amend Regulation .04 under COMAR 27.01.11 Directives for Updating Critical Area Maps; amend Regulation .01 under COMAR 27.01.13 Nonwater-Dependent Projects; amend Regulation .01 under COMAR 27.02.01 General Provisions; amend Regulations .04, .09 and .12 and propose new Regulations .04-1, .04-2, .04-3, under COMAR 27.02.05 State Agency Actions on State-Owned Lands; and amend Regulation .01 under COMAR 27.03.01 under Notification of Project Applications; and
- 3) Authorize Commission staff to forward this draft to the Administrative, Executive & Legislative Review Committee and subsequently to publish these regulations as proposed regulations in the Maryland Register.

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

PROJECT SUBCOMMITTEE:

Historic St. Mary's City Commission (HSMCC) – Memorandum of Understanding (MOU)

Ms. Susan Makhlouf presented for vote, a new Memorandum of Understanding for General Approval under COMAR 27.02.03 with the Historic St. Mary's City Commission. Ms. Makhlouf reviewed her staff report, which has been incorporated into and made a part of these minutes.

The Historic St. Mary's City Commission (HSMCC) proposes to create a Memorandum of Understanding (MOU) between HSMCC and the Critical Area Commission. Under the authority of COMAR 27.02.03, the purpose of the MOU is to provide a streamlined process for the review of specific maintenance and redevelopment actions by allowing Critical Area Commission (CAC) staff to conduct necessary project review and approvals.

The MOU is the legal agreement between HSMCC and CAC, including each party's roles and responsibilities. Exhibit A of the MOU includes the types of projects allowed to be reviewed under this MOU. The projects are grouped into two categories: Category I: Limited Reporting Activities and Category II: Development that is Minor in Size and/or Scope. Exhibit A also lists the qualifying parameters for each category of project. Attachment 1 to Exhibit A is a mitigation guidance document, which includes stormwater management guidance and a Master Buffer Management Plan. Attachment 2 to Exhibit A is a Site-Wide Climate Resiliency Assessment, which provides a baseline tool for HSMCC staff to use when addressing Critical Area climate resiliency requirements for specific projects. Each of these attachments is discussed in more detail in the staff report.

Hearing no questions, Chairman Deegan recognized Project Subcommittee Chair Hertz, who moved on behalf of the Project Subcommittee that the Commission approve the HSMCC Memorandum of Understanding as proposed. Commissioner Hewitt seconded the motion.

Motion passed unanimously.

PROGRAM SUBCOMMITTEE:

Refinement – Town of Indian Head – Critical Area Map Update (Charles County)

Ms. Sekerak presented a refinement to the Critical Area Program of Charles County, updating the Town's Critical Area map boundary. She reviewed the staff report, which is incorporated into and made a part of these minutes.

Commission staff worked with the Town of Indian Head, the Maryland Department of Natural Resources, the Maryland Department of the Environment, and the Eastern Shore Regional GIS Cooperative (ESRGC) to develop updated Critical Area maps for the Town. These draft maps were vetted by the aforementioned agencies, and were delivered to the Town as Summary Draft Maps for local adoption. The update resulted in a gain of 18 acres and a loss of 19 acres, with a net loss of 1 acre.

The Town of Indian Head held a public meeting on June 7, 2021, and no public comments were received prior to or during the meeting. The Town Council approved Ordinance No. 04-11-21 on June 7, 2021 and this action constituted local adoption of the updated maps.

Hearing no questions, Chairman Deegan recognized Program Subcommittee Chair Greer, who moved that the Commission concur with the Chairman's determination that the Town of Indian Head mapping update be reviewed as a refinement to the County's Critical Area Program. Further, she moved that the Chairman approve the map amendment as proposed.

Chairman Deegan said that he accepted the recommendation, and this would be his final decision.

Refinement: St. Mary's County – Private Piers Text Amendment

Ms. Sekerak presented a refinement to the St. Mary's County Critical Area Program modifying provisions related to allowance of private piers. Ms. Sekerak reviewed her staff report, the contents of which are incorporated into and made a part of these minutes.

On June 8, 2021, the Commissioners of St. Mary's County approved a text amendment to the St. Mary's County Comprehensive Zoning Ordinance (SMCZO). Ordinance 2021-27 amends Section 71.9.1 of SMCZO to allow private piers in waterfront subdivisions that were platted before December 31, 1994, that have or are planned to have a community pier or boat ramp.

Section 71.9 of SMCZO currently restricts private piers in waterfront subdivisions with a community pier or community boat ramp, regardless of when the subdivisions were platted. This text amendment will serve a need within the County while remaining consistent with the Critical Area law and regulations to allow private piers in subdivisions that were platted before December 31, 1994.

Hearing no questions, Chairman Deegan recognized Program Subcommittee Chair Greer, who moved on behalf of the Program Subcommittee that the Commission concur with the Chairman's decision that this text amendment be processed as a refinement to the St. Mary's County Critical Area Program. Further, because the proposed ordinance is consistent with the purposes, policies, and goals of the Critical Area law regulations, she recommended the Chairman approve the text amendment as proposed.

Chairman Deegan said that he accepted the recommendation, and this would be his final decision.

NEW BUSINESS:

Ms. Charbonneau announced that the Village Down River Growth Allocation proposal, which was listed as tentative on the agenda, was not being brought before the full Commission at this time. Instead, she summarized the discussion from the morning's Program Subcommittee meeting. The Subcommittee passed a motion directing the County to continue to develop a site plan and stormwater management proposal to be brought before the Commission at the next meeting.

Chairman Deegan thanked Ms. Charbonneau and Ms. Vainieri and the CAC staff for all the work they have done in this project. He then reminded everyone of the upcoming trip to Poplar Island.



Lynette Fullerton, Commission Secretary

10/6/21

Date of Approval