

Critical Area Commission

STAFF REPORT

September 2, 2020

APPLICANT:	Maryland Department of Transportation State Highway Administration
JURISDICTION:	Caroline County
PROPOSAL:	Improvements at the Intersection of MD 404 & 328
COMMISSION ACTION:	Vote
STAFF RECOMMENDATION:	Approval with conditions
STAFF:	Annie Sekerak
APPLICABLE LAW/ REGULATIONS:	COMAR 27.02.05 State Agency Actions Resulting in Development on State-Owned Lands

DISCUSSION

The Maryland Department of Transportation State Highway Administration (MDOT SHA) is proposing improvements to the intersection of MD 404 (Shore Highway) and MD 328 (River Road) in Caroline County. The proposed work involves constructing additional turn lanes and expanded shoulders on MD 328 in both northbound and southbound directions as well as milling and resurfacing the existing roadway. The purpose of this project is to improve safety and traffic flow at the intersection. Construction is anticipated to begin in October 2020 and conclude in December 2020.

Due to the proposed Buffer impacts as well as the general size and scope of the proposed improvements, this project exceeds the parameters of the Memorandum of Understanding (MOU) between MDOT SHA and the Critical Area Commission. Therefore, review and approval by the Critical Area Commission is required.

Project Impacts and Mitigation

Under COMAR 27.02.05.03-1, linear projects may be reviewed by the Commission in accordance with the requirements of an Intensely Developed Area (IDA). The total limit of proposed disturbance is 1.79 acres, with 1.21 acres located within the Critical Area, including 0.95 acres within the Critical Area Buffer. No trees will be removed. All work will take place within the existing MDOT SHA right-of-way.

Buffer Impacts

A total of 0.95 acres or 41,205 square feet of Buffer will be disturbed as a result of the construction of the new turn lanes. Of the total Buffer disturbance, 11,123 square feet will be temporary disturbance, which will be stabilized, seeded, and returned to previous conditions after construction is complete, and 30,082 square feet will be permanent disturbance within the existing right-of-way. Mitigation is required for permanent disturbance in the Buffer within the right-of-way at a 1:1 ratio; thus, the total mitigation requirement for this project is 30,082 square feet. Due to the limited available planting area onsite, the mitigation requirement will be fulfilled offsite by debiting plantings at the Koubek Critical Area Mitigation Site. The Koubek site is located north of Tuckahoe Creek, southeast of MD 328 and southwest of Tuckahoe Springs Drive in Caroline County and was originally created to meet the mitigation needs of the MD Route 404 widening project as well as other regional bridge projects. Commission staff conducted a site visit on March 5, 2020 and observed that the mitigation plantings were successful and that mitigation credit remained at the site. Therefore, it was agreed that the required mitigation for this project could be met using the Koubek site. An updated ledger and plat for the Koubek site showing the debit for this project has been provided and reviewed by Commission staff.

10% Phosphorus Reduction/Stormwater Management

The proposed project is required to meet the Critical Area Commission's 10% phosphorus reduction requirements. The pollutant reduction requirement is 0.37 lbs P/yr and a total load reduction of 0.54 lbs of P/yr is achieved through an onsite grass swale and wet swale. There is an excess of 0.17 lbs P/yr pollutant reduction provided.

In addition to the Critical Area 10% requirement, internal stormwater management and sediment and erosion control approval is required from the MDOT SHA Plan Review Division (PRD).

Tidal and Nontidal Wetlands

The proposed work will result in approximately 6,861 square feet of temporary disturbance to the 25-foot nontidal wetland buffer and 1,080 square feet of temporary disturbance to nontidal wetlands. Final review and approval from MDE is pending.

Permits and Review by Other Agencies

Maryland Department of the Environment (MDE)

The Joint Permit Application (JPA) for impacts to nontidal wetlands and their buffers was submitted to MDE on May 25, 2020. As noted above, final approval is pending.

U.S. Army Corps of Engineers (USACE)

A Maryland State Programmatic General Permit-5 (MDSPGP-5) from USACE is pending.

Maryland Department of Natural Resources (DNR)

The Department's Wildlife and Heritage Service (WHS) indicated in a letter dated June 1, 2020 that there is no record of rare, threatened, or endangered species existing onsite. However, the DNR Environmental Review Program notes that the project may impact an unnamed tributary to

the Choptank River, which is classified as a Use I stream with records of Yellow Perch, American Eel, and other anadromous fish in the vicinity. Generally, there are time-of-year restrictions for Use I streams to protect spawning fish. DNR requests that MDOT SHA adhere to the instream work restrictions, stringent sediment and erosion control measures, and other applicable Best Management Practices during all construction activities. We note that construction is proposed to occur outside of the annual period of instream work restrictions.

U.S. Fish and Wildlife Service (USFWS)

A Trust Resources List search on the USFWS website, conducted on May 11, 2020, indicated that there is no record of endangered species, refuges, or fish hatcheries within the vicinity of the project.

Maryland Historical Trust (MHT)

Per correspondence dated May 18, 2020, MDOT SHA's Cultural Resources Division has determined that there are no historic properties affected by this project. Furthermore, in accordance with the agreement between MDOT SHA, the Federal Highway Administration, and MHT, this project is approved under the condition that an Inadvertent Discovery Plan (IDP) be adopted for the proposed construction activities within the project area. The IDP requires onsite MDOT SHA personnel and contractors to stop work immediately and contact an MDOT SHA Cultural Resources Professional in the event of a potential archaeological discovery.

Climate Resiliency

MDOT SHA completed a climate impact and coastal resiliency analysis for this project. Based on this analysis, the majority of the project site is located in an area vulnerable to sea level rise and storm surges. Both of the proposed turn lanes (north and south of the intersection) are within the 0-2 foot sea level rise inundation zone. Furthermore, the proposed turn lane to the north of the intersection is within the 100-year floodplain and is susceptible to storm surge from a Category 3 hurricane. There are no wetland migration areas within the proposed project limits.

MDOT SHA notes that the proposed project has been designed in accordance with current American Association of State Highway and Transportation Officials (AASHTO) standards and the resurfaced pavement has an anticipated service life of 25 years.

Public Notice

In accordance with the provisions of COMAR 27.03.01.03, signs were posted at the project site and notice of the project was posted in the Caroline County *Times-Record* newspaper on August 12, 2020 and the *Star Democrat* newspaper on August 13, 2020. As of the writing of this staff report, no public comments have been received. Any comments received will be noted at the Commission meeting.

STAFF RECOMMENDATION

Staff recommends approval of the proposed project with the following condition:

1. Prior to the start of construction, MDOT SHA shall submit a copy of all final plans, permits, and approvals, including stormwater management plans and MDE and USACE authorizations, to Commission staff.