

MINUTES

**Critical Area Commission for the
Chesapeake and Atlantic Coastal Bays
1804 West Street, Suite 100
Annapolis, Maryland**

October 5, 2022

CALL TO ORDER: Chairman Charles C. Deegan called the meeting to order at 1:00 p.m.

Commission Members in Attendance:

Nicole Acle, Wicomico County
Curtis Beulah, Harford County
Gail Blazer, Worcester County – Coastal Bays (Town of Ocean City)
Sean Eames, Baltimore City
Sue Greer, Charles County
Deborah Herr Cornwell, Department of Planning
Sandy Hertz, Department of Transportation
Michael Hewitt, St. Mary’s County
James Lewis, Caroline County
Pat Mahoney, Calvert County
Chad Malkus, Dorchester County
David Marks, Baltimore County
Jennifer Merritt, Worcester County – Chesapeake Bay
Alisha Mulkey, Department of Agriculture
Catherine McCall, Department of Natural Resources
Michael McCarthy, Talbot County
Ewing McDowell, Department of Commerce
Steven Parker, Cecil County
Lori Rhodes, Anne Arundel County
Tammy Roberson, Department of Environment
Steven Taylor, Worcester County – Coastal
Caroline Varney-Alvarado, Department of Housing and Community Development

Commission Members Not in Attendance:

Tim Adams, Prince George’s County
Jeffrey Ferguson, Eastern Shore at Large
Anita Grant, Western Shore at Large
Dawn Jacobs, Kent County
Charles Laird, Somerset County
Gary Mangum, Queen Anne’s County

APPROVAL OF MINUTES: Commissioner Hertz moved to approve the minutes from the September meeting, with one correction (move Commissioner Varney-Alvarado from “In Attendance” to “Not in Attendance”). Her colleague John Papagni attended in her place. Commissioner Mahoney seconded. Motion passed unanimously.

STAFF PRESENTATIONS

PROJECT SUBCOMMITTEE:

Maryland Department of Transportation Maryland Port Administration – Masonville Dredged Material Containment Facility (Baltimore City)

Ms. Jen Esposito presented for vote the proposal by the Maryland Department of Transportation – Maryland Port Administration to raise the perimeter dike of the Masonville Dredge Material Containment Facility from an elevation of +18 feet above Mean Lower Low Water (MLLW) to an elevation of + 30 feet above MLLW in order to provide additional capacity for dredge material from the Baltimore Harbor. She presented the staff report, the contents of which have been incorporated into and made part of the minutes.

Once the dike elevation is raised there will be a two-foot high concrete perimeter wall and an access road on the top of the dike which will vary in width from 12-feet to 20-feet. The project will impact 1.92 acres of Critical Area Buffer which will be mitigated at a 2:1 ratio. Additional mitigation at a ratio of 1:1 will be provided for the new impervious surface outside the Buffer. The mitigation will be converted to a fee-in-lieu totaling \$336,586 which may be transferred to the Chesapeake Bay Trust per the approved fee-in-lieu memorandum of understanding.

Hearing no questions, Chairman Deegan recognized Project Subcommittee Chair Hertz, who moved on behalf of the Project Subcommittee that the Commission approve the proposed Dike Raising Project with the following condition:

- Prior to the start of construction, the Maryland Department of Transportation Maryland Port Administration shall submit to Commission staff copies of authorizations issued by the Maryland Department of the Environment for erosion and sediment control and stormwater management, and for dam safety review.

Commissioner Eames seconded the motion. All voted in favor. **Motion passed unanimously.**

Maryland Department of Natural Resources; Maryland Environmental Service – Elk Neck State Park Wastewater Treatment Plant (Cecil County)

Ms. Charlotte Shearin presented for vote the proposal by the Maryland Department of Natural Resources (DNR) and Maryland Environmental Service (MES) to construct a new wastewater treatment plant (WWTP) in Elk Neck State Park on Thackery Point Road. Ms. Shearin presented the staff report, the contents of which are incorporated into and made part of these minutes.

The purpose of the new wastewater treatment plant is to accommodate demand within the park, as well as meet current wastewater treatment regulations. The proposed development consists of an Enhanced Nutrient Removal (ENR) control building, ENR tanks enclosed in a steel frame building, clarifier tanks enclosed in a pole barn style building, UV/filter enclosed in a pole barn style building, an access road and parking area, a sludge truck loading station, and associated underground utilities. A portion of the development is proposed within the Buffer that has been expanded for steep slopes. This location is necessary due to its proximity to the existing WWTP infrastructure, as well as to avoid additional impacts to forested areas and steep slopes. The

disturbance to the Buffer necessitates Conditional Approval by the Commission under COMAR 27.02.06.

Mitigation for the 0.118 acres of permanent disturbance within the Buffer will be provided at a 3:1 ratio for a total of 0.354 acres of planting. Tree planting is proposed onsite, entirely outside the Buffer. Commission staff recommended DNR/MES re-evaluate the site to determine whether some of the required plantings could be accommodated within the Buffer.

Hearing no questions, Chairman Deegan recognized Project Subcommittee Chair Hertz, who moved on behalf of the Project Subcommittee that the Commission vote to approve the proposed construction of a new wastewater treatment plant in Elk Neck State Park, with the following conditions:

1. Within 30 days of Commission approval, MES and DNR shall coordinate a site visit with Commission staff to identify potential alternative planting sites within or adjacent to the Buffer or forested areas. If an appropriate alternative site is located, MES will provide a revised planting plan and planting agreement form within an additional 60 days from the site visit.
2. Prior to the start of construction, DNR and MES shall submit a copy of all final plans, permits, and approvals, including stormwater management plans and MDE stormwater and erosion and sediment control authorizations, to Commission staff.

Because DNR and MES propose non-water dependent impacts to the Critical Area Buffer this motion to approve was based on the following considerations as required under COMAR 27.02.06.01:

- (1) With the exception of impacts to the buffer due to the existing location of the wastewater treatment plant, the proposed project is in compliance with COMAR 27.02.05.
- (2) There will be no clearing of forest or disturbance to other important habitat areas. DNR and MES will be providing 3:1 mitigation on-site for all non-water dependent Critical Area Buffer impacts.
- (3) The proposed project offers public benefits to the Critical Area Program by providing better treatment of sewage effluent before it is discharged into the Elk River. Additionally, stormwater runoff is currently untreated at the site. The proposed microbioretention facility and dry wells meet the 10% requirement and will further improve water quality in the bay.

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

St. Mary's College of Maryland (SMCM) – SMCM Memorandum of Understanding (MOU)

Ms. Susan Makhoulf presented for vote a proposal by the St. Mary's College of Maryland (SMCM) to update the existing Memorandum of Understanding (MOU) between SMCM and the Critical Area Commission. The purpose of the MOU is to provide a streamlined process for the review of specific maintenance and redevelopment actions by allowing Commission staff to conduct necessary project review and approvals in lieu of a Commission vote. Ms. Makhoulf

presented the staff report, the contents of which are incorporated into and made part of these minutes.

The current MOU between the two agencies was signed in 2011. The goal for the updated MOU between SMCM and the Commission is to incorporate new requirements and improve the review process for SMCM projects. To that end, the updates will encompass additional project types and will be more in line with other State Agency MOUs.

Hearing no questions, Chairman Deegan recognized Project Subcommittee Chair Hertz, who moved on behalf of the subcommittee that the Commission vote to approve the updates to the MOU. Commissioner Greer seconded the motion. **Motion passed unanimously.**

PROGRAM SUBCOMMITTEE:

Refinement – Harford County – Comprehensive Review

Ms. Tay Harris presented a refinement to the Harford County Critical Area Program. Ms. Harris reviewed her staff report, which is incorporated into and made a part of these minutes.

On June 21, 2022, the Harford County Council completed a comprehensive review of its Critical Area Program through the approval of Bill Nos. 22-011, 22-012, and 22-013. The three ordinances repealed and re-enacted with amendments the following Chapters of the Harford County Code:

- Bill 22-011: Chapter 267 ‘Zoning Ordinance’ (Definitions, Administration and Enforcement, and Chesapeake Bay Critical Area Overlay District)
- Bill 22-012: Chapter 169 ‘Master Plan’, which includes the Harford County Critical Area Program.
- Bill 22-013: Chapter 268 ‘Subdivision Regulations’

Commissioner Hertz noted that on page three of the staff report, the year the MBA maps were originally adopted by the County is missing. Ms. Harris and Mr. Gallihue responded that they would have to get that information and update the staff report. Commissioner McDowell asked whether Forest Management Plans are required on all properties or just for timber harvest operations. Mr. Gallihue responded that the Forestry Board was consulted and they recommended the changes which were included in the update. Commissioner Greer noted that Harford County’s rules are stricter than COMAR requires. Commissioner Eames asked about the definition of ‘hazardous trees’ and Ms. Charbonneau responded that it is not defined by species but by location with regards to threats to structures due to tree health or other concerns.

Chairman Deegan recognized Program Subcommittee Chair Greer, who stated that the Program Subcommittee concurs with the Chairman’s determination that this comprehensive review, including the designation of the 12 new parcels as Modified Buffer Areas, be processed as a refinement to the Harford County Critical Area Program, as the proposed changes are consistent with the Critical Area Law, criteria, and regulations.

She further recommended approval of the refinement which consists of Ordinances 22-011 (updates to the County Zoning Ordinance), 22-012 (updates to the Critical Area Program Manual

and updates to the Modified Buffer Area designations), and 22-013 (updates to the County subdivision regulations) with the following conditions:

1. By July 1, 2023, Harford County will amend §267.63.9 of its Zoning Ordinance to reference the Natural Resources Inventory and maps that were completed by the Maryland Department of Natural Resources Wildlife and Heritage Service in August 2022 by incorporating the following text: “Maps identifying these specific Habitat Protection Areas are maintained by the Department of Natural Resources Wildlife and Heritage Division. The most recent updated Natural Resources Inventory was completed in August 2022 and recommendations contained in Appendix I of the Harford County Critical Area Program, entitled “Habitat Protection Areas for the Harford County Critical Area,” and are hereby incorporated into this Ordinance.”
2. By July 1, 2023, Harford County will amend Appendix I of the Harford County Critical Area Program to include the attached Natural Resources Inventory Report and maps that were completed by the Maryland Department of Natural Resources Wildlife and Heritage Service in August 2022.

Hearing no further questions, Chairman Deegan said that he accepted the recommendation, and this would be his final decision.

Refinement: Harford County – Critical Area Boundary Map Update

Ms. Lisa Hoerger presented a refinement to the Critical Area Program for Harford County for the purposes of updating the County’s Critical Area boundary line. Ms. Hoerger reviewed her staff report, the contents of which are incorporated into and made a part of these minutes.

Commission staff worked with Harford County, 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 county. The update resulted in a gain of 735 acres and a loss of 1,273 acres, with a net loss of 538 acres within Harford County’s Critical Area. Most of the loss is attributed to removing the Critical Area acreage of Aberdeen Proving Ground. Aberdeen Proving Ground, a federal installation, was originally shown on the County’s Critical Area map. As part of this mapping project, the areas within Aberdeen Proving Ground are not counted since staff was not able to map the shoreline and wetlands inside the installation; therefore, these areas are calculated as a loss of Critical Area. There is also an area that the County mapped as tidal wetlands on their current maps and included in their acreage figures, but these areas are now open water and are therefore not included in the proposed acreage. Finally, there was a 1,600-foot gain due to a natural increase to the tidal extent of the channel. This large gain was confirmed by a site visit.

Chairman Deegan recognized Program Subcommittee Chair Greer, who stated that because the mapping update was completed in accordance with State Law and COMAR 27.01.11, the Program Subcommittee recommends this request be reviewed as a refinement to Harford County’s Critical Area program. Further, she recommended that the Chairman approve the mapping update as proposed.

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

Town of North East – Critical Area Boundary and Special Buffer Areas Map Update (Cecil County)

Ms. Hoerger presented a refinement to the Town of North East’s Critical Area program. Ms. Hoerger reviewed her staff report, the contents of which are incorporated into and made a part of these minutes.

Commission staff worked with Harford County, 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. The update resulted in a gain of 8 acres and a loss of 36 acres, with a net loss of 28 acres. There were 267 acres that remained the same. In addition, the update also included a correction to the Town’s Special Buffer Areas (SBA) maps. A portion of six lots located within the Town of North East was inadvertently left unmapped as SBA despite being within the Buffer and adjacent to a mapped SBA. The Mayor and Commissioners of the Town of North East passed Ordinance No. 2022-07-01 on July 27, 2022. This action constituted local adoption of the updated Critical Area map of the Town, as well as the corrected SBA map.

Hearing no questions, Chairman Deegan recognized Program Subcommittee Chair Greer, who stated that the Program Subcommittee concurs with the Chairman’s determination that the Boundary Map and SBA Map Update can be reviewed as a refinement to the Town of North East’s Critical Area Program. She further recommended that the Chairman approve the map as proposed.

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

Refinement: Anne Arundel County – Nurseries with Landscaping and Plant Sales Text Amendment

Ms. Jen Esposito presented for vote a refinement to the Critical Area Program for Anne Arundel County. She presented her staff report, the contents of which have been incorporated into and made a part of these minutes.

Anne Arundel County has submitted a text amendment to their Critical Area Program for approval by the Critical Area Commission. Bill No. 57-22 amends sections of the County’s Zoning Code relating to the Nurseries with Landscaping and Plant Sales use which is currently a permitted use in the Resource Conservation Area (RCA). The intent of the bill is to provide greater flexibility for nurseries to also sell and store items related to nursery and landscaping uses. The bill was passed by the County Council on July 18, 2022, and was approved by the County Executive on July 29, 2022.

Anne Arundel County Bill No. 57-22 modifies the definition of “Nurseries with Landscaping and Plant Sales” to include the sale of products related to landscaping and the cultivation of plants, bushes, trees, and other nursery items. Additionally, the bill amends the conditions under which the use is permitted. For example, the amended text outright permits accessory retail and

wholesale uses on a lot whereas the original language limited such uses to 1% of the lot. Moreover, it allows for storage and display areas for materials and products used and sold for landscaping and nursery plants, such as stone and mulch, and limits these storage and display areas to 30% of the lot.

Hearing no questions, Chairman Deegan recognized Program Subcommittee Chair Greer, who stated that the Program Subcommittee agrees with the Chairman's determination that the text amendment be processed as a refinement to Anne Arundel County's Critical Area Program. Further, she recommended the Chairman approve the text amendment with the condition that the Section 18-13-206(25) of the Anne Arundel County Code be amended as outlined in the staff report and below:

Amend Section 18-13-206. RCA Uses. By adding the language in **bold**:
*(25) nurseries with landscaping and plant sales, **provided the nursery is the primary use and the lot coverage associated with all other commercial uses is limited to the lesser of 15% of the lot or 20,000 square feet;***

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

LEGAL UPDATES:

Ms. Emily Vainieri had no updates to report.

OLD BUSINESS:

Ms. Charbonneau stated that there was a clerical error in the Chesapeake City Mapping staff report from the previous meeting. The maps that were included with the staff report were not the ones that were approved by the Town of Chesapeake City. The staff report has been amended with the approved map.

NEW BUSINESS:

Commissioner Marks announced that he was resigning his position on the Commission. His district has been redrawn and is largely waterfront, so he's resigning to avoid conflicts of interest. Chairman Deegan thanked him for his service.



Lynette Fullerton, Commission Secretary

1/4/23

Date of Approval