

MINUTES

**Critical Area Commission for the
Chesapeake and Atlantic Coastal Bays
1804 West Street, Suite 100
Annapolis, Maryland 21401**

April 7, 2021

CALL TO ORDER: Chairman Charles C. Deegan called the meeting to order at 1:00 p.m. Chairman Deegan announced that the meeting was being held remotely on Microsoft Teams due to the current public health emergency. He shared that the meeting was being recorded and streamed live to the public and that a copy of the recording would be made available on the Commission's website. Executive Director Kate Charbonneau did a roll call to confirm the Commission members in attendance.

Commission Members in Attendance:

Nicole Acle, Wicomico County
Tim Adams, Prince George's County
Gail Blazer, Worcester County – Coastal Bays (Town of Ocean City)
Andrew Bradshaw, Dorchester County
Jeffrey Ferguson, Eastern Shore at Large
Deborah Herr Cornwell, Department of Planning
Michael Hewitt, St. Mary's County
Matt Johnston, Anne Arundel County
Charles Laird, Somerset County
James Lewis, Caroline County
Pat Mahoney, Calvert County
Gary Mangum, Queen Anne's County
David Marks, Baltimore County
Catherine McCall, Department of Natural Resources
Michael McCarthy, Talbot County
Ewing McDowell, Department of Commerce
Julie Oberg, Department of Agriculture
Steven Parker, Cecil County
Tammy Roberson, Department of Environment
Donald Sutton, Kent County
Caroline Varney-Alvarado, Department of Housing and Community Development

Commission Members Not in Attendance:

Curtis Beulah, Harford County
Anita Grant, Western Shore at Large
Sue Greer, Charles County
Sandy Hertz, Department of Transportation
Jennifer Merritt, Worcester County – Chesapeake Bay

APPROVAL OF MINUTES: Commissioner Adams motioned to approve the February 3, 2021 minutes, and Commissioner Hewitt seconded. All voted to approve.

STAFF PRESENTATIONS

PROJECTS:

MDOT MAA – Maryland Aviation Administration – Update to MDOT MOU Exhibit A2

Ms. Susan Makhlouf presented for vote a proposed update to Exhibit A2 of the Memorandum of Understanding (MOU) between one of its Transportation Business Units (TBUs), the Maryland Aviation Administration (MAA), and the Critical Area Commission. Ms. Makhlouf reviewed her staff report, the contents of which are incorporated into and made a part of these minutes.

This proposal is the third exhibit updated, out of five, since the overall MDOT MOU update in 2019. A copy of the updated Exhibit A2 and the associated Technical and Process Guidance Document was provided. Ms. Makhlouf reviewed the purpose of the Exhibit, which is to provide a more streamlined process for review of minor and maintenance type activities on MAA property. Additionally, Ms. Makhlouf pointed out key differences of the MAA Exhibit from previous exhibits for other Transportation Business Units.

Chairman Deegan recognized Commissioner Catherine McCall, who chaired the Project Subcommittee in Commissioner Hertz's absence. Commissioner McCall noted that there was discussion during the Project Subcommittee of potential site contamination from Per- and polyfluoroalkyl substances (PFAS), which are legacy contaminants found in firefighting foam for airports in particular. Commissioner Mahoney stated that he opposed the update of Exhibit A2 because of the possibility of these contaminants. The subcommittee felt that PFAS should be added to the reporting requirements of the MOU. Commissioner McCall moved on behalf of the Project Subcommittee that the Commission vote in favor of the proposed update, with the condition that Commission staff: (a) work with MDOT MAA in the next 60 days to research PFAS contamination reporting requirements that could be included in the MOU, Exhibit A2, or Attachment to the Exhibit, and (b) bring an update and/or motion back to the project subcommittee. Commissioner Mahoney voted against, and all others voted in favor. **Motion carried.**

PROGRAMS:

Refinement – Town of Leonardtown – Comprehensive Review of Critical Area Program (St. Mary's County)

Ms. Annie Sekerak presented a refinement to the Critical Area Program of the Town of Leonardtown. She reviewed her staff report, which is incorporated into and made a part of these minutes.

On January 11, 2021, the Mayor and Council of Leonardtown voted to repeal and reenact the Town's Critical Area program through the adoption of Ordinance No. 204. This ordinance was drafted following a comprehensive review of the Town's Critical Area Program. Natural Resources Article §8-1809(g) requires each local jurisdiction to review its entire program at least

every six years. The Town's existing Critical Area Program was approved by the Critical Area Commission in 1988 and has not been updated since.

The Town of Leonardtown is located in St. Mary's County along Breton Bay. The Town encompasses all three Critical Area land designations; Intensely Developed Area (IDA), Limited Development Area (LDA), and Resource Conservation Area (RCA). In addition, a portion of the Town's shoreline is mapped as a Modified Buffer Area (MBA). Ms. Sekerak noted that the update follows the Commission's Model Ordinance for towns. Additionally, she noted that the Town elected to include language allowing for non-water dependent structures that are accessory to commercial projects in the IDA as well as language to allow for non-adjacent growth allocation in the RCA under certain circumstances.

Commission staff identified one area within the proposed ordinance that requires minor revisions (page 27, Chapter 60-7.A. *Growth Allocation acreage and deduction*) for clarity and accuracy. Commission staff has proposed revised, clarifying language to be amended in the final text.

Hearing no questions, Chairman Deegan recognized Commissioner Oberg, acting Chair of the Program Subcommittee in Commissioner Greer's absence, who moved that the Commission concur with the Chairman's determination that the Town of Leonardtown Comprehensive Review be processed as a refinement to the Town of Leonardtown's Critical Area Program. Further, Commissioner Oberg stated that the proposed changes are consistent with the purposes, policies, and goals of the Critical Area law and regulations and as such recommended the Chairman approve the Town of Leonardtown's Comprehensive Review with the condition set forth in the Staff Report dated April 7, 2021 and incorporated by reference.

Chairman Deegan stated he accepted this recommendation and this would be his final decision.

Refinement – Kent County – Critical Area Map Update

Ms. Alex DeWeese presented a refinement to the Kent County Critical Area map. She presented the staff report, the contents of which are incorporated into and made a part of these minutes.

Commission staff worked with Kent 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. These draft maps were vetted by the aforementioned agencies, were presented at a public meeting in Kent County, and delivered to the County as Summary Draft Maps for local adoption. The update resulted in a gain of 1,677 acres and a loss of 1,710 acres, with a net loss of 33 acres.

Kent County Commissioners adopted Code Home Rule Bill 1-2021 on February 16, 2021. This action constituted local adoption of the updated maps in the form of a temporary Critical Area Map Overlay. Bill 1-2021 also includes a zoning text amendment describing the temporary nature of the overlay, as reviewed in a separate staff report.

Hearing no questions, Chairman Deegan recognized Commissioner Oberg, who moved on behalf of the Program Subcommittee that, as the mapping update was completed in accordance with State Law and COMAR 27.01.09.01-8, the Commission concur with the Chairman's determination that the Kent County mapping update can be reviewed as a refinement to the

County's Critical Area Program. The Program Subcommittee also recommended that the Chairman approve this map amendment as proposed.

Chairman Deegan stated he accepted this recommendation and this would be his final decision.

Refinement – Kent County – Zoning Text Amendment for Temporary Critical Area Map Overlay

Ms. Alex DeWeese presented a refinement to the County's Land Use Ordinance. She presented the staff report, the contents of which are incorporated into and made a part of these minutes.

The Kent County Board of County Commissioners approved a zoning text amendment to the County's Land Use Ordinance on February 16, 2021. Code Home Rule Bill 1-2021 revises the Ordinance to adopt a temporary Critical Area overlay, along with a zoning text amendment that specifies how the temporary overlay will be applied to newly designated Critical Area lands. The overlay will remain in place until a new Comprehensive Land Use Ordinance and Zoning Map are adopted and become effective, at which point the newly adopted Critical Area boundary map will be integrated with the Zoning Map.

Kent County uses an integrated zoning code as well as an integrated zoning map to implement its Critical Area program through the County Land Use Ordinance. This means that each Critical Area designation has specific zoning districts associated with it, rather than an underlying zoning. Kent County intended to adopt the updated Critical Area map in conjunction with a new Comprehensive Zoning Ordinance and Zoning map. However, due to the pandemic, the process of comprehensively updating their Code was necessarily delayed. In order to meet the 2-year Critical Area map adoption deadline, the County proceeded with the process as described below.

Bill 1-2021 adopts an updated Critical Area Map and a zoning text amendment that recognizes the map as a temporary overlay for the purposes of regulating development within the Critical Area. The Overlay Map will remain in place until the County's new Comprehensive Land Use Ordinance and Zoning Map are updated. At that point in time, the Critical Area map will be integrated into the updated Zoning Map. The bill is attached to this staff report.

Specifically, the text amendment creates a new Section 6 of the County Code under Article III, Districts and District Maps, entitled Establishment of the Critical Area Line. The language included in this section notes that it is in effect while Kent County undertakes the comprehensive rezoning and update process, which will result in a new comprehensive land use ordinance and zoning map. The new zoning map will then incorporate the Critical Area Line Map. At that time, the Critical Area Line Map will no longer be a stand-alone map overlay, and Section 6 will be abrogated and of no further force and effect.

Additionally, the text amendment addresses land that is newly located within the Critical Area based on the map update. These lands do not yet have a specific Critical Area zoning district, although they do have a Critical Area designation. The text amendment specifies that land within the Critical Area must meet the requirements and regulations of the most similar Critical Area zoning district, and the established Critical Area designation must be followed.

Finally, the text amendment revises the definition of “Critical Area” in order to reflect the County’s Critical Area map update. This definition removes references to the State wetlands maps, as the new Critical Area maps adopted by the County no longer rely on the State wetland maps to determine the extent of the boundary of the Critical Area.

Hearing no questions, Chairman Deegan recognized Commissioner Oberg, who moved on behalf of the Program Subcommittee that the Commission concur with the Chairman’s determination that this text amendment be processed as a refinement to the County’s Critical Area Program. She further recommended that the Chairman approve the text amendment as proposed.

Chairman Deegan stated he accepted this recommendation and this would be his final decision.

VOTE: St. Mary’s County – Mapping Update: Second Request for Extension of Time

Ms. Lisa Hoerger presented the staff report, the contents of which are incorporated into and made a part of these minutes. The Commissioners of St. Mary’s County voted on March 16, 2021 to request an additional extension in time to adopt the updated Critical Area boundary maps in order to process a text amendment that would guide the approval and finalization of pending matters, including building permits.

The original 24-month deadline for St. Mary’s County to approve their draft Critical Area maps was February 2, 2021. However, at the January 6, 2021 meeting, the Commission voted to grant St. Mary’s County a 60-day extension to complete the review and approval of its updated Critical Area maps. The Commissioners of St. Mary’s County held a public hearing on March 2, 2021 to consider the proposed amendment to the official zoning maps in order to update the 1,000 foot Critical Area boundary. At that meeting, the County Commissioners delayed approval of the map update and instructed the Land Use and Growth Management Department staff to explore the potential to grandfather or exempt certain properties from the application of the updated Critical Area 1,000-foot boundary line.

At the March 16, 2021 County Commissioners meeting, the Commissioners moved to table the adoption of the new Critical Area Boundary update and allow County staff to meet with the Critical Area Commission in order to request an extension of the deadline so as to prepare a text amendment to allow qualifying projects to develop using the current Critical Area Boundary with timelines acceptable to the Critical Area Commission. The County Commissioners did not indicate a date on which they intend to adopt the new maps, but the draft legislation uses May 18, 2021 as the start date. The Commission has approved similar pending matters language for Queen Anne’s County.

Hearing no questions, Chairman Deegan recognized Commissioner Oberg, who moved on behalf of the Program Subcommittee that the Commission approve an extension for map approval to May 18, 2021, at which time the St. Mary’s County Commissioners must adopt the updated map and pending matters legislation and submit the maps and legislation to the Commission for final review and approval. If the County Commissioners fail to adopt the updated map, then the maps would be deemed approved as of May 19, 2021. Commissioner Hewitt seconded the motion.

Motion passed unanimously.


OLD BUSINESS:

Chairman Deegan said that he hoped we would be able to meet in person, maybe by June. He also suggested the possibility of a tour of Poplar Island or Masonville Cove.

Ms. Hoerger provided an update on the status of the Agricultural Regulations, which had been put on hold in order to move the Renewable Energy regulations forward. The Renewable Energy regulations will be submitted to AELR, and should be published to the MD Register on 4/23/21. If they pass the 50 day period, they will be brought back to CAC for a final vote.

LEGAL UPDATES:

Trainer (Cecil County) – The Cecil County Board of Appeals granted Mr. Trainer Critical Area variances to exceed lot coverage for the construction of a pool in the Buffer. The Commission appealed the case to the Circuit Court for Cecil County. Ms. Vainieri stated that she has filed a brief on behalf of the Commission and is now waiting for the County’s and Trainer’s briefs. Oral argument is set for June 23rd.



Lynette Fullerton, Commission Secretary

5/5/21

Date of Approval