

MINUTES

**Critical Area Commission for the
Chesapeake and Atlantic Coastal Bays
100 Community Place
Crownsville, MD 21032**

December 18, 2024

CALL TO ORDER: Chair Erik Fisher called the meeting to order at 1:00 p.m. The meeting was held in person in Crownsville.

Commission Members in Attendance:

Steve Bunker, Charles County
Dan Burris – St. Mary’s County
Mark Conway, Baltimore City
Ben Etherton, Talbot County
Rosa Hance, At Large
Debbie Herr-Cornwell, Department of Planning
Catherine McCall, Department of Natural Resources
Mira Morgan, Department of Housing and Community Development
Alisha Mulkey, Department of Agriculture
Jim Palma, Department of Commerce
Hitesh Patel, Somerset County
Annie Richards, Kent County
Tammy Roberson, Department of Environment
Brian Roche, Dorchester County
Dave Wilson, Worcester County Coastal

Commission Members Not in Attendance:

Tim Adams, Prince George’s County
David Bradford, Worcester County Chesapeake
Jenelle Gerthoffer, Worcester County – Coastal/Town of Ocean City
Anita Grant, At Large
Earl Hance, Calvert County
Travis Marion, Cecil County
Larry Porter, Caroline County
Lisa Rodvien, Anne Arundel County
Pat Young, Baltimore County

OPENING REMARKS: Chair Fisher called the meeting to order and welcomed everyone. Kate Charbonneau confirmed the presence of a quorum. Chair Fisher thanked everyone for coming and introduced the two newest planners, Jamileh Soueidan and Mike Macon, and also stated that a third new hire is in process and should be in place by January.

Regarding the items for vote at the meeting, only the first item, the request to publish as final the Comprehensive Update to Title 27, could be voted on. The second item, approval of the bylaws, could not be voted on because a supermajority was not present and, per the bylaws, a super-majority is needed to approve. Therefore, the bylaws will come to the Commission for a vote in January.

APPROVAL OF MINUTES: Commissioner Conway moved to approve the minutes from the November 6 meeting. Commissioner R. Hance seconded. Motion passed unanimously.

STAFF PRESENTATIONS

ITEMS FOR VOTE:

Comprehensive Update to COMAR Title 27 – Publish as Final

Presented by Lisa Hoerger and Kate Durant

Ms. Hoerger and Ms. Durant presented for vote a request to Publish as Final the Comprehensive Update to COMAR Title 27. They presented the staff report, the contents of which are incorporated into and made part of the minutes.

Ms. Durant first provided an overview of the changes made, which included repealing outdated provisions and definitions, adding new definitions and updating definitions, stylistic changes, and clarification and corrective changes. At the May 1, 2024 Commission meeting, the Commission approved changes and allowed staff to publish the proposal in the Maryland Register as draft regulations. The proposed draft regulations were published in the November 1, 2024 Maryland Register. No comments had been received as of December 2, 2024.

Ms. Hoerger then went over the non-substantive changes, beginning with explaining that the changes were first submitted to the Commission's Attorney General, Emily Vainieri, to affirm that the changes were non-substantive. She then summarized the changes and corrections. She stated that if the changes were approved and the vote was made to publish the regulations as final, the estimated publication date in the Maryland Register would be January 10, 2025, with an effective date of January 20, 2025. She then turned the floor over to Chair Fisher.

Chair Fisher stated there were two items that required a vote, first being the approval of the non-substantive changes, followed by the approval to publish the regulations as final in the Maryland Register. Hearing no questions, he asked for a motion to approve the changes. Commissioner R. Hance so moved. Commissioner Conway seconded. **Motion carried unanimously.** On the second item, Commissioner Palma motioned to approve the publication of the regulations as final. Commissioner Morgan seconded. **Motion carried unanimously.** Finally, Chair Fisher thanked Gary Setzer, Margaret McHale, and Ren Serey for their hard work on the changes.

DISCUSSION ITEMS:

UPDATES TO COMMISSION BY-LAWS

Presented by Ms. Kate Charbonneau

Ms. Charbonneau presented for discussion a proposal by Chair Fisher to amend the by-laws of the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays. The By-Laws were originally adopted on December 5, 1984 and amended on October 7, 1988. The proposed update is intended to reflect changes to the Critical Area Law and clarify existing procedures. As stated earlier, due to the lack of a supermajority this was not put forward for a vote but will come before the Commission for a vote in January.

Ms. Charbonneau presented the staff report, the contents of which are incorporated into and made part of the minutes. She summarized the updates in accordance with her staff report.

Chair Fisher opened the floor for discussion. Commissioner Palma asked if an amendment can get stuck at the Panel level. Nick Kelly (Commission staff) gave an example of a situation where a panel did not have a recommendation, and the Commission ultimately voted no. The Commission asked if the new Panel procedures could be amended to reflect this scenario. Commissioners asked for better definitions of groups (Panels, Workgroups, etc.). A vote will occur in January, with follow-up information added to the By-Laws to address the questions posed by the Commissioners.

UPDATES TO THE COMMISSION'S POLICY ON COMMISSION, SUBCOMMITTEE, WORKGROUP AND PANEL MEETINGS

Presented by Kate Charbonneau

Ms. Charbonneau presented a summary of the Procedures for the Commission, Committees, and Workgroups, and Procedures for Panels of the Commission, the contents of which are incorporated into and made part of the minutes. The original document, "Procedures for Subcommittee, Panel and Commission Meetings," was adopted in 1994 and is largely out of date. Commission staff drafted two new procedure documents to replace the original. Ms. Charbonneau presented the new procedures as defined in the new policies.

Commissioner Bunker asked that the policies clarify the definition of a panel versus a workgroup.

UPDATE ON THE DRAFT CRITICAL AREA COMMISSION DIVERSITY, EQUITY, INCLUSION AND JUSTICE (DEIJ) POLICY

Presented by Charlotte Shearin

Ms. Shearin provided an update on the DEIJ policy workgroup and thanked members of that group for their hard work, as well as Commission staff for their help. She then presented the Purpose and Vision statements, and the Guiding Principles. The principles include consideration of, and adaptation to, climate change; habitat and water quality impacts and mitigation; increase and improvement of public access and accessibility; meaningful public participation and engagement; local government engagement; respect for tribal concerns; anti-discrimination statement; and accountability and transparency. She also presented a timeline for completion. The goal is to bring the full document to the Commission in March for approval.

Discussion followed the presentation, with questions from Commissioners about mitigation, and the definitions for access and accessibility. There were concerns that so-called public access would not be accessible by public transport, which could hamper who would actually benefit from the amenity. These will be brought into consideration as the draft policy is revised.

LEGAL UPDATES – Emily Vainieri

Ms. Vainieri presented legal updates to the Critical Area Commission. The Commission is currently involved in three cases – two in Anne Arundel County Circuit Court and one in Worcester County Circuit Court. The two Anne Arundel County cases (Everett, Harris) are variance cases in which the Commission is challenging two decisions by the Board of Appeals. In the Worcester County case, the Critical Area Commission has been sued regarding their decision to deny a mapping mistake for the Ayres Creek Family Farm property. Ms. Vainieri is defending the Commission's decision of denial.

EVERETT (AA Co.)

The Critical Area Commission and Anne Arundel County have challenged the Anne Arundel County Board of Appeals' decision to grant an after-the-fact Critical Area variance for an unauthorized shed within the Critical Area Buffer, where there are less setbacks than required and with new lot coverage nearer to the shoreline than the closest facade of the existing principal structure. This is in Severna Park along Old Man Creek. The Critical Area Commission is requesting that the Anne Arundel County Circuit Court reverse the Board's decisions because they did not meet all seven of the Critical Area variance standards. A hearing is set for January 6, 2025.

HARRIS (AA Co.)

The Critical Area Commission and Anne Arundel County have challenged the Anne Arundel County Board of Appeals' decision to grant a Critical Area variance for the construction of pool and patio within the Critical Area Buffer. This is in Severna Park along the Severn River. The Critical Area Commission is requesting that the Anne Arundel County Circuit Court reverse the Board's decisions because they did not meet all seven of the Critical Area variance standards. The administrative record is due to the court after the holidays and then the parties will then brief the case. No hearing has been scheduled yet.

AYRES CREEK FAMILY FARM (Worcester Co.)

At the December 2023 Critical Area Commission meeting, the Commission considered a request by Worcester County to reclassify a parcel of land owned by Ayres Creek Family Farm from Resource Conservation Area to Limited Development Area on the basis of a mapping mistake. When this request first came to the Commission, the Chair determined that the County's request would be an amendment (not a refinement). This meant that a panel of five Commissioners was assigned to review and make a recommendation on the request. The panel first held a public hearing in Worcester County. Then the panel met to review and consider the request. The panel recommended that the full Commission deny the County's reclassification request. The full Commission accepted that recommendation and voted unanimously to deny the County's request to reclassify the property because the proposed reclassification did not meet the purposes, policies, and goals of the Critical Area law and regulations, including the mapping criteria for a Limited Development Area.

Based on that decision by the full Commission, the owner of Ayres Creek Family Farm filed an action against the Critical Area Commission in Worcester County Circuit Court. Ayres Creek Family Farm is arguing that the Commission's denial of the County's request to reclassify the property to Limited Development Area did not comply with the law, and the Commission is arguing that the denial was properly within the bounds of the Critical Area Commission's authority. This case has been fully briefed and the hearing is scheduled for January 23, 2025.

NEW BUSINESS – Chair Fisher: Chair Fisher went over the calendar for 2025, including meetings, a retreat in May on the western shore, and an optional field day in the fall (on the eastern shore, most likely). Finally, he announced that Kate Charbonneau had been appointed as Acting Assistant Secretary for Aquatic Resources, and that Nick Kelly would be Acting Executive Director of the Critical Area Commission. The expectation is for Ms. Charbonneau to return to her role as Executive Director in Spring 2025.

Meeting adjourned.



Lynette Fullerton, Commission Secretary

1/29/25

Date of Approval