

MINUTES

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

March 20, 2024

CALL TO ORDER: Chair Erik Fisher called the meeting to order at 12:15 p.m.

Commission Members in Attendance:

Steve Bunker, Charles County
Jenelle Gerthoffer, Worcester County – Coastal/Town of Ocean City
Rosa Hance, At Large
Sandy Hertz, Department of Transportation (for Kiernan)
Debbie Herr-Cornwell, Department of Planning
Mike Hewitt, St. Mary's County
Catherine McCall, Department of Natural Resources
Travis Marion, Cecil County
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
Pat Young, Baltimore County

Commission Members Not in Attendance:

Tim Adams, Prince George's County
Mark Conway, Baltimore City
Anita Grant, At Large
Earl Hance, Calvert County
Shawn Kiernan, MDOT
Michael McCarthy, Talbot County
Larry Porter, Caroline County
Lisa Rodvien, Anne Arundel County
Christie Stephens, Harford County

OPENING REMARKS: Chair Fisher welcomed everyone to the virtual meeting and explained the procedures. Ms. Kate Charbonneau confirmed a quorum with a roll call.

APPROVAL OF MINUTES: Commissioner Marion moved to approve the minutes from the February meeting. Commissioner Rosa Hance seconded. Motion passed unanimously, with two abstentions (Commissioner Roberson and Commissioner Gerthoffer, who were not at the meeting).

STAFF PRESENTATIONS

REGULATIONS:

Information Only: Comprehensive Regulatory Clean-Up of COMAR Title 27, Subtitles 01, 02 and 03.

Presented by Lisa Hoerger and Kate Durant.

Ms. Hoerger started by presenting an overview of the history behind the drafting of COMAR Title 27. Over the years the Commission has approved updates to various chapters in the Code of Maryland Regulations Title 27, the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays. The first comprehensive update to Title 27, Subtitle 01 and Subtitle 02 was done in 2012. Specific chapters were also targeted for updating and included chapter 3, Water-Dependent Facilities, chapter 4, Shoreline Stabilization Measures, chapter 6, Agriculture, and chapter 7, Surface Mining. All these updates were focused on modernizing text and complying with current Division of State Documents standards.

Ms. Hoerger recognized Ms. Durant, who provided a summary of the proposed regulatory package which is intended to modernize all of Title 27. Ms. Durant stated that despite prior efforts, this final comprehensive update is required to capture and modernize all of the text. The purpose of these most recent updates is to accomplish the following:

- Repeal outdated provisions or definitions that are not used in the text (the original provisions were enacted in 1986).
- Perform stylistic changes (bring text up to current Division of State Documents standards).
- Add new definitions.
- Clarify or make corrective changes. These changes are summarized in the memorandum.

Following this, Ms. Hoerger outlined the next steps for the regulations. If the Commission votes to approve the regulations at the May 1 meeting, they will be submitted to the AELR committee. Then the regulations would be published in the Maryland Register. After publication and the 30 day public comment period, the Commission would again vote on the Final regulations. The regulations would then be published as Final, and would become effective 10 days later. The earliest date would be September 2, 2024.

Chair Fisher thanked Ms. Hoerger and Ms. Durant for their work. He stated that the changes are not substantive but designed to make the Commission's work, and the work of its partners and stakeholders, more efficient and clearer. Because this is the first such regulation work that many Commissioners have dealt with, he wants everyone to feel comfortable with the process, and that if any issues come up at the May meeting, a vote can be delayed until everyone is satisfied. He then opened the floor to questions. Hearing none, he concluded by thanking Margaret McHale, Ren Serey, and Gary Setzer for all their hard work on this project.

CONSENT CALENDAR:

Chair Fisher explained the process of the Consent Calendar as this was the first time the full Commission meeting had been done using this process. All three of the items from the subcommittee meetings were passed through to be voted on via the Consent Agenda. However, Chair Fisher had requested a Summary Review of the Somers Cove Project, so that will be discussed in more detail.

PROJECT SUBCOMMITTEE: MD Department of Natural Resources – Sandy Point State Park – South Beach Area Restoration Project (Anne Arundel County)

Recommendation: Approve with Condition consistent with Staff Report

PROGRAM SUBCOMMITTEE: Refinement – Non-water dependent structures on piers Text Amendment (Queen Anne’s County)

Recommendation: Concur with Refinement and Approve

Chair Fisher explained that the above projects were to be voted on as a batch, unless any Commissioner present requested a summary. Hearing no objections, he stated the Consent Agenda would stand, and entertained a motion from the floor. Commissioner Bunker moved the Agenda be approved. Commissioner Hertz seconded. Chair Fisher asked if there were questions, and Commissioner Rosa Hance asked for clarification on the text amendment, noting that in the staff report it stated that it was being pushed through before the County’s Comprehensive Review, wondering why. Ms. Charbonneau answered there is a proposed project in the works, and the text amendment is needed to proceed. Commissioner Hance asked if this meant the project would not be coming before the Commission, and Ms. Charbonneau confirmed, provided the project has the necessary permits. Following this, Chair Fisher asked for the vote. All voted in favor, with Commissioner Rosa Hance abstaining. Consent items passed.

SUMMARY REPORT AS REQUESTED BY CHAIR FISHER: MD Department of Natural Resources – Somers Cove Marina – Updates on Conditions of Approval – Mitigation Plan (Somerset County)

Presented by Charlotte Shearin

At the September 2023 Critical Area Commission meeting, the Commission voted to approve the Department of Natural Resources (DNR) Somers Cove Marina project with four conditions. Condition #1 has been completed. DNR has provided a proposal to address Conditions #2 and #3, listed below. Based on the overall mitigation package proposed, Commission staff are bringing the plans back to the Commission for formal review.

2. Within 6 months of Commission approval, Maryland DNR shall provide Commission staff, and the full Commission, if necessary, a mitigation plan for both the 10% pollutant reduction requirement of 0.64 lbs and the 15,648 square feet of mitigation for the boat ramp replacement for review and approval. The mitigation requirement may be met through a combination of on-site mitigation projects, including, but not limited to, permeable pavers, rain gardens, removal of impervious surface, a living shoreline project, and plantings.
3. Within 6 months of Commission approval, Maryland DNR shall provide Commission staff, and the full Commission, if necessary, a plan to address the 2.75 acres of Buffer mitigation for review and approval. The Buffer mitigation may be met through a combination of onsite or offsite measures, as well as offsets such as a living shoreline project or other natural and nature-based features that enhance the resiliency of Somers Cove marina and/or Crisfield.

Following Ms. Shearin’s presentation, Chair Fisher recognized Project Subcommittee Co-Chair Roberson, who opened the floor to questions. She recognized Commissioner Rosa Hance, who asked for more information about the planting plan. She referred to a BMP in a gravel area in the corner and asked if there were plans to plant that area. Ms. Shearin responded that there is a plan to convert an asphalt parking area to a planted submerged gravel wetland. Ms. Hance asked about other opportunities for plantings, and said it seemed weird to give mitigation credit for tide valves, but Ms. Shearin replied that the offsets were coming from the SWM, not

the tide gauge. Commissioner Richards asked if monitoring is required, and Ms. Shearin responded that there are no monitoring requirements tied to our approval, but that MDE may have requirements. She will look into it. Hearing no further questions, Subcommittee Co-Chair Roberson asked for a motion. Commissioner Patel motioned to approve. Commissioner Marion seconded. **Motion carried unanimously.**

OLD BUSINESS:

Armored Storage Approval of Mitigation – Overview by Nick Kelly.

Mr. Kelly reported that the 60-day mitigation planting plan submittal requirement was met. The updated plan met all conditions for approval.

Cecil County Map Update Condition of Approval – Overview by Charlotte Shearin.

A condition of approval to update definitions associated with the mapping update has been met.

WORKGROUP UPDATES:

Diversity, Equity, Inclusion, and Justice Policy – Overview by Charlotte Shearin.

Ms. Shearin thanked the workgroup members (Commissioner Grant, Commissioner Rodvien, Commissioner Mulkey, and Commissioner Herr-Cornwell), and stated the group has met twice. They hope to finalize the purpose and vision statements at the next meeting and start working on the guiding principles.

SHA Regional Mitigation Banking Proposal – Overview by Nick Kelly.

Mr. Kelly thanked the workgroup members (Commissioners Roberson, Hance, Hewitt Kiernan, and McCall) and stated the workgroup met in February, covering basics of banking and SHA's goals. The second meeting will be in April with SHA and MDTA. Also hoping to do some field trips in the future.

NEW BUSINESS:

Chair Fisher announced that the new legislation has been filed, both bills made it across chamber. The next upcoming Commission meeting is May 1, and the retreat will be on May 15. He thanked the people that have responded and said he is looking forward to seeing as many people as possible there.

Meeting adjourned 2:13 p.m.

Lynette Fullerton, Commission Secretary

Date of Approval