

MINUTES

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

February 7, 2024

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

Commission Members in Attendance:

Tim Adams, Prince George's County
Steve Bunker, Charles County
Mark Conway, Baltimore City
Anita Grant, At Large
Rosa Hance, At Large
Mike Hewitt, St. Mary's County
Shawn Kiernan, MDOT
Catherine McCall, Department of Natural Resources
Michael McCarthy, Talbot County
Sylvia Mosser (for Herr-Cornwell)
Heather Nelson, MDE (for Roberson)
Jim Palma, Department of Commerce
Hitesh Patel, Somerset County
Annie Richards, Kent County
Brian Roche, Dorchester County
Lisa Rodvien, Anne Arundel County
Pat Young, Baltimore County

Commission Members Not in Attendance:

Jenelle Gerthoffer, Worcester County – Coastal/Town of Ocean City
Julia Glanz, Department of Housing and Community Development
Earl Hance, Calvert County
Travis Marion, Cecil County
Alisha Mulkey, Department of Agriculture
Larry Porter, Caroline County
Tammy Roberson, Department of Environment
Christie Stephens, Harford County

OPENING REMARKS: Chair Fisher confirmed a quorum and made the following announcements. He recognized two new planners have joined the staff, Jonathan Coplin and Katie Hayden. He also thanked outgoing planner Michael Grassman for his service over the last several years. Finally, he welcomed the proxies (Sylvia Mosser, for Commissioner Herr-Cornwell, and Heather Nelson, for Commissioner Roberson), and the newest permanent appointee, Shawn Kiernan, from MDOT.

APPROVAL OF MINUTES: Commissioner Adams moved to approve the minutes from the December meeting. Commissioner Bunker seconded. Motion passed unanimously, with one abstention (Nelson, who was not at the meeting).

STAFF PRESENTATIONS

PROJECT SUBCOMMITTEE:

Department of Public Works – Mariner Point Park Stormwater Management Improvements (Harford County)

Ms. Susan Makhoul presented for vote a request for Conditional Approval by the Harford County Department of Public Works to construct stormwater management best management practices (SWM BMPs) to treat runoff from an existing paved parking lot and road and assist the County in meeting its National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) permit requirements. Ms. Makhoul reviewed her staff report, the contents of which are incorporated into and made part of the minutes.

The County proposes to construct two (2) bioswales and one (1) micro-bioretenion facility to treat runoff from existing impervious surfaces including a parking lot and road. The 0.71-acre project site is located within Mariner Point Park, a 37.7-acre County-owned park located at 100 Kearney Drive, Joppa, Maryland. The project is located entirely within the Critical Area on land designated as Resource Conservation Area (RCA). The proposed micro-bioretenion facility is located partially within the Critical Area Buffer in an area that is currently a grass swale situated between a parking lot and a walking path adjacent to tidal waters. One of the bioswales is located partially within the Buffer and the other bioswale is located entirely outside the Buffer. Construction is anticipated to begin mid-to-late 2024 and last 2-3 months. Mitigation planting will take place in Spring 2025.

As a request for Conditional Approval, the project meets the following requirements:

1. Except for the impacts to the Critical Area Buffer, the project otherwise meets all of the requirements of the Harford County Critical Area Program;
2. The County is providing mitigation at a 3:1 ratio for tree clearing in the Critical Area Buffer, as required by COMAR and the Harford County Critical Area Program; and
3. By retrofitting an outdated stormwater management practice, converting approximately 17,200 square feet (sf) of existing turfgrass within the Buffer to a micro-bioretenion facility planted with native species, converting other areas to conservation plantings and native species plantings, and removing lot coverage, the project will provide substantial public benefit in the form of water quality and habitat benefits.

Hearing no questions, Chair Fisher recognized Project Subcommittee Chair Conway, who motioned to approve the Conditional Approval request, with the following condition:

1. Prior to the start of construction or 60 days, whichever comes first, the County shall submit the final stormwater management and erosion and sediment control plan approvals to Critical Area Commission staff.

Commissioner Rosa Hance seconded the motion. All in favor. **Motion passed unanimously.**

Board of Education – Grange Elementary School Parking Lot and Entry Drive Improvements (Baltimore County)

Ms. Katie Hayden presented for vote a request for Conditional Approval by the Baltimore County Board of Education to construct a new parking lot at Grange Elementary School. Ms. Hayden reviewed her staff report, the contents of which are incorporated into and made part of the minutes.

The project site is located on the grounds of Grange Elementary School, a 15-acre County-owned school located at 2000 Church Road, Dundalk, Maryland. Grange Elementary School was originally constructed in 1960 and serves grades Pre-Kindergarten through Grade 5. The project is located entirely within the Critical Area on land designated as Intensely Developed Area (IDA). The existing single bus/car loop, which is used by buses, parents, and staff, is not large enough to provide safe drop-off and pick-up for students at the start and finish of the school day. Due to limited on-site parking, many of the teachers park beneath overhead powerlines in a BGE right-of-way (ROW) located adjacent to the school. The off-site parking is not authorized by BGE and creates a potentially hazardous situation that does not comply with Baltimore County Public Schools safety protocols. The development area is 1.54 acres in size and involves a new parking lot and a new queuing lane/car loop. The new development will provide parking for teachers and create a safer process for daily drop-off and pick-up of students. Additional site improvements include the installation of four (4) stormwater management (SWM) facilities.

Due to the current configuration of the school building and existing bus/car loop and parking areas (which are located entirely within the IDA and adjacent to the expanded Critical Area Buffer), the proposed new parking will be located partially within the expanded Critical Area Buffer (6,920 square feet of Buffer disturbance). The Buffer has been expanded for steep slopes. The four (4) SWM facilities are located outside the expanded Buffer.

As a request for Conditional Approval, the projects meets the following requirements under COMAR 27.02.06;

1. Except for the impacts to the Critical Area Buffer, the project otherwise meets all of the requirements of the Baltimore County Critical Area Program;
2. The County is providing mitigation at a 3:1 ratio for permanent disturbance to the Critical Area Buffer, as required by COMAR and the Baltimore County Critical Area Program; and
3. The project provides substantial public benefit in the form of habitat and water quality improvements by planting mitigation adjacent to existing riparian forest, installing four stormwater management devices and by removing lot coverage.

Hearing no questions, Chair Fisher recognized Project Subcommittee chair Conway, who motioned on behalf of the Project Subcommittee to approve the requested improvements with the following conditions:

1. Prior to the start of construction or within 60 days, whichever comes first, the County shall submit the final stormwater management and erosion and sediment control plan approvals to Critical Area Commission staff.
2. Prior to the start of construction or within 60 days, whichever comes first, the County shall submit to Critical Area Commission staff a copy of the letter from the Maryland Department of Natural Resources Wildlife and Heritage Service evaluating the site for any rare, threatened, and endangered species present onsite. The County shall adhere to any recommendations provided by the Wildlife and Heritage Service.

Commissioner Young seconded the motion. All in favor. **Motion carried unanimously.**

PROGRAM SUBCOMMITTEE:

Critical Area Mapping Update – Request for Extension of Time (City of Salisbury – Wicomico County)

Ms. Charlotte Shearin presented for vote a request from the City of Salisbury to extend the deadline for the approval of updated maps. The Natural Resources Article, §8-1807 Annotated Code of Maryland allows a local jurisdiction 24 months to accomplish local approval of their draft Critical Area maps. February 9, 2024, is the 24-month deadline for the City of Salisbury, located in Wicomico County, to adopt their updated Critical Area Maps; however, the city is unable to meet this deadline. The City of Salisbury Planning Commission concurred with the city staff recommendation to hold a public hearing regarding the boundary update on February 15, 2024. After the public hearing, the Planning Commission will forward a recommendation regarding the maps to the City Council. As such, the City of Salisbury is requesting a 90-day extension of the Critical Area updated map adoption timeline; therefore, the new deadline for local approval of the Critical Area maps will be May 8, 2024.

Following Ms. Shearin's presentation, Chair Fisher recognized Program Subcommittee Chair Bunker, who motioned on behalf of the Program Subcommittee that the request for a 90-day extension be approved by the Commission. Commissioner Hewitt seconded the motion. **Motion passed unanimously.**

OLD BUSINESS: None.

LEGAL UPDATES:

Ms. Emily Vainieri had one legal update to share, concerning the Ayres Creek Mapping Mistake, which was presented at the December meeting. She reported that the Ayres Creek Family Farm LLC has brought action in Circuit Court challenging the Commission's decision. An amicus brief has been filed on behalf of the Critical Area Commission.

NEW BUSINESS:

Chair Fisher made an announcement concerning the new meeting schedule. In order to make better use of time, the following changes are being made. We will move to a six-week meeting schedule, which will shift from twelve meetings a year to eight. The subcommittee meetings will take place before the full meeting – Projects will be two weeks before the meeting, Programs will be the Friday before the full meeting.

There will be a simplified approval process for items that warrant it (Three stage process - (1) consent calendar: vote as a batch and Commissioners can request to remove any item, (2) summary report: items that are recommended for approval, but the Subcommittees altered from the original staff recommendation, (3) full presentation: items that don't go to a Subcommittee (panel report, policy, regs, etc.) or projects recommended for denial or return by a subcommittee).

Discussion: Commissioner Bunker asked if Commissioners will still receive the staff reports for the whole meeting, and Ms. Charbonneau confirmed they will. Commissioner Grant asked what the public facing part of the process would involve, and Ms. Charbonneau explained that the website would have the staff reports, and also that jurisdictions will be encouraged to come in for info only meetings prior to a formal vote.

Commissioner Hewitt asked why the volume of projects has decreased recently, and Ms. Charbonneau responded that a couple factors are involved, including MOUs with various state agencies, as well as decreased funding for local projects. Commissioner Hewitt said he liked the idea of a consent calendar, but when there are dissenting votes it should be handled differently. Chair Fisher acknowledged the point, and said there are a couple of ways it could be handled – mentioning the dissenting votes, or write a more detailed summary report. Commissioner R. Hance said she would prefer the summary report. Commissioner Grant asked for clarification about what a consent calendar is, and Chair Fisher explained the process. Commissioner Roche asked if anyone could remove an item from the consent calendar, and Chair Fisher said for now, yes. Commissioner Kiernan asked if the subcommittee meetings will be virtual or in person, and Ms. Charbonneau replied that they would be virtual, and that calendar invitations will be sent to subcommittees. Initially the meetings will be scheduled for 9-12noon, but won't necessarily last the full time. Eventually we could change the time if it doesn't appear the whole time is needed. Full Commission meetings will be mostly virtual, with three in person (spring, fall, winter). Also a one day retreat in May, which will be in person.

2024 Critical Area Legislation

The Critical Area Commission has filed two pieces of legislation before the General Assembly this year – SB-306/HB-233 and SB-268, which does not have a cross-file. SB-268 is about enforcement – allows jurisdictions to pursue enforcement in whatever way they need to (civil, administrative, or criminal). It also allows the Commission to step in with enforcement and eliminates the current 30-day waiting period. SB-306/HB-233 is a comprehensive update. It incorporates considerations of climate resiliency and equity. Also incorporates administrative improvements that will help the Commission, local jurisdictions, and property owners (increase lot coverage limit by 500 SF for small lots, allows for ADUs that align with the State's ADU task force, program updates every 10 years instead of every 6 years).

Briefings on the bills and hearings in the Senate last Wednesday. A hearing on the HB is this afternoon, which is why the meeting was held a little early. MACO is supportive after a few amendments.

Meeting adjourned 1:00 p.m.



Lynette Fullerton, Commission Secretary

3/20/24

Date of Approval