

Critical Area Commission
Chesapeake and Atlantic Coastal Bays
Meeting held at 100 Community Place, Crownsville, MD 21032

February 7, 2024

Program Implementation Subcommittee Minutes

Subcommittee Members in Attendance: *Bunker (Chair), McCall (Co-Chair), Adams, Grant (for quorum), Hewitt, Mosser (for MDP), McCarthy, Rodvien*

Guests: Handy's Point – Chris Maier (owner), Lance Young (attorney), Buck Nickerson (consultant), Carla Gerber (Kent County planner), Dan Saunders (attorney)

Item 1. Approval of December Minutes

Commissioner Hewitt motioned to approve the December Program Subcommittee Minutes. Commissioner Rodvien seconded the motion. All voted in favor. Minutes approved.

Item 2. Information Only: Kent County – Wharf at Handy's Point Growth Allocation

Presented by Nick Kelly

Kent County, on behalf of the property owners for the Wharf at Handy's Point, is requesting guidance from the Program Subcommittee regarding offsets provided in lieu of the required 300-foot setback from tidal waters and wetlands in the Resource Conservation Area (RCA) for a potential growth allocation at the site to change the land use designation to an Intensely Developed Area (IDA). The Wharf at Handy's Point is located in Worton (23153 Green Point Road; Tax Map 19, Parcels 96 and 102), adjacent to Worton Creek.

Discussion: Dr. Kelly presented his memorandum in accordance with his staff report. After the presentation, Chair Bunker opened up the discussion based on the following four questions:

1. Does the entire package of offsets provide greater habitat and water quality benefits than the 13.16-acre RCA setback to be deducted, of which 11.37 acres is forested?
2. Would the Commission accept offsite plantings outside of the Critical Area as an offset if placed into a permanent conservation easement?
3. Would the Commission accept voluntary plantings dating back to the 1990s as an offset for new impacts? Or are additional plantings still required?
4. Is the Commission comfortable with the additional offsets proposed by the property owner? Is there additional information related to these offsets required as part of the offset package?

Commissioner Hewitt asked Chris Maier (property owner of the Wharf at Handy's Point and the potential mitigation sites) if he currently still owns the previously planted areas that they would like to count towards their offsets. Mr. Maier confirmed that they owned the land.

The applicant's attorney, Dan Saunders, provided additional information about the Sandbar restoration at Wharton Creek that Handy's Point is proposing as an offset (there is a shoaling

issue that needs to be addressed). Mr. Saunders also provided information about how the family trust has been buying and planting land at these potential mitigation sites since the 1980s and that the forested areas are used by family and friends for hunting. The owners wish to put permanent easements on the forested areas that they planted on various farms.

In addition, Mr. Saunders provided insight onto the existing marinas and the need for growth allocation. Specifically, the northern marina was recently acquired, but needs updating to the docks, piers, and septic areas. The main purpose for growth allocation is to create a newer, modern septic system (Best Available Technology/BAT) for both the northern and southern marinas that will be located further away from the edge of Mean High Water (MHW).

Carla Gerber, Kent County Deputy Director of Planning and Zoning, noted that Kent County growth allocation can only be used for business purposes. Dr. Kelly added that the County has 1,201 acres of GA available. Commissioner Hewitt asked for the total acreage of the site. Buck Nickerson, consultant for the property owner, replied that it was approximately 30 acres and that the growth allocation would change the zoning of approximately 25 acres from Resource Conservation Area (RCA) to Intensely Developed Area (IDA).

Commissioner Hewitt also mentioned that it is unusual to accept offsite plantings that were planted decades ago as offsets.

Commissioner Rodvien asked the family's intent for the planted acreage on the farms. Mr. Saunders said it was for habitat creation and management. Mr. Maier added that it was planted on good agricultural land. Ms. Rodvien asked Emily Vainieri, Assistant Attorney General, what kind of mitigation would be required under the Forest Conservation Act (FCA) if the planted areas were clear cut. Chair Fisher said that it depends on why the forest is being cut and that staff can get an answer for that question if necessary. In general, mitigation could be as high as 2:1 for forest lands cleared under FCA. Mr. Saunders said that if the area is cut for timber harvesting, then it does not require mitigation. However, he does not want to lose sight of why they are asking for growth allocation, which is to update the existing septic systems with a BAT system and to relocate the boat storage outside of the 100-foot Buffer. Mr. Nickerson added that the new BAT system would be located approximately 250 feet from the edge of Mean High Water.

Commissioner Bunker brought up the sandbar restoration and does not believe it should be considered as an offset to impacting the 300-foot setback as it appears to be more of a navigational improvement and does not seem to provide water quality or habitat offsets.

Commissioner McCall asked about the potential that slips could be added to the southern portion of the property and whether dredging would require additional funding. Mr. Nickerson said that they can only dredge previously dredged areas in this channel and that they cannot dredge the southern portion of the property to add additional slips.

Commissioner McCall recommended that the applicant consider using some of the southern sites that they have designated as planting areas and provide connectivity that will help with

resilience in the future. This should include climate resilience easements. Mr. Nickerson added that all of the farms have blue line streams that flow to Mill Creek, which flows to Wharton Creek.

Commissioner Bunker asked if there was a way to determine the stormwater benefits that are provided by being a part of the Clean Marina program. Dr. Kelly stated that they could check with the Department of Natural Resources on this if necessary, and that the Commission's 10% worksheet can calculate the amount of phosphorus removed by using stormwater retrofits.

Ms. Gerber stated that in order to rezone these areas to a Marine Zoning designation, that growth allocation is required. In addition, the Kent County Commissioners determined that a mistake had been made in 2002, and that this area should be rezoned to Marine at that time.

Commissioner Hewitt reiterated his concern about using previously planted areas as mitigation. Commissioner Bunker asked the property owners if they had additional farms that they could plant instead of using existing plantings. Mr. Saunders said that there is available land but that using previous planted areas that could be put under easement was the cleanest option.

Chair Fisher thanked Kent County staff and the property owners for this discussion. Chair Fisher added that this discussion is predicated on the amount of mitigation required for deducting the entire 300-foot setback as part of the growth allocation request, even though only a small portion will be impacted. Mr. Maier replied that this is because the County approved rezoning the entire area to Marine, which necessitates growth allocation. Mr. Saunders discussed the mapping mistake from 2002 and the reason for this application being brought forth for discussion.

Chair Fisher asked Dr. Kelly what would happen if the applicant wants to develop the 300 foot setback in the future if the entire area is changed to IDA. Dr. Kelly said that the project would be reviewed and approved locally by Kent County, and that Commission staff would review and comment, but that it would not come back to the full Commission. Further, given that the entire site would be then designated IDA, the entire area of setback outside the 100-foot Buffer could be cleared. Dr. Kelly added that if the growth allocation envelope was reduced to the area needed to relocate the new BAT system, then the habitat and water quality offsets required for the area of the BAT would be reduced to 0.6 acres, as opposed to 49.06 acres that would be required under the current proposal. Commissioner Hewitt recommended that the applicant and Kent County seriously consider reducing the growth allocation request since there is no plan for development for the majority of the 300-foot Buffer. The applicant could reapply for additional growth allocation for this area in the future if development is proposed.

Cahir Fisher explained the four options available to the Commission when the growth allocation is submitted for review (approve, deny, approve with conditions, or send back). Mr. Saunders stated that they are more interested in having access to the shoreline because it is a marina and that the forested area probably won't be developed because it is also very steep. The owner does not want to be split-zoned. Maier asked about conditions - and Fisher said it would be important to continue to discuss the southern portion of the property and that the Commission determines them.

A consensus of this discussion is as follows:

1. The Program Subcommittee did not feel the entire package provided enough offsets.
2. The Program Subcommittee felt that the Critical Area Commission would accept offsite plantings, however those plantings should be targeted towards riparian Buffers or other valuable habitat, such as FIDS, or to provide coastal resiliency and connectivity to help with future resiliency. Climate resiliency easements with DNR should be a part of this.
3. The Program Subcommittee felt uncomfortable with accepting offsite plantings that were planted decades ago. It appears that they would request planting additional acreage instead of using existing voluntary plantings.
4. The Program Subcommittee did not feel comfortable with all proposed offsets. In particular, the sandbar restoration does not provide water quality or habitat benefits, but rather provides navigational access.

Item 3. Critical Area Boundary Map Update – City of Salisbury (Wicomico County)

Presented by Charlotte Shearin

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 and 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. Commission staff recommends that the Commission approve the requested time extension.

Discussion: None. Commissioner McCall motioned to approve the requested time extension. Commissioner Hewitt seconded the motion. **Motion passed unanimously.**