

# 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

5/1/24

Date of Approval

**Critical Area Commission  
Chesapeake and Atlantic Coastal Bays**

**March 6, 2024**

**Project Implementation Subcommittee Minutes**

**Subcommittee Members in Attendance:** *Roberson (Co-Chair), Grant, R. Hance, Hertz (for Kiernan), Marion, McCarthy, Morgan, Patel, Young*

Guests:

Department of Natural Resources: *Leanne Chandler (MPS), Anna Johnson, BayLand Consulting*

Queen Anne's County: *Steve Cohoon, Stephanie Jones*

Talbot County: *Elisa DeFlaux, Philip Logan (Bellevue Park), Joshua Mills, DBF*

**Item 1. Approval of February minutes.**

Commissioner Grant moved to approve the February minutes. Commissioner Patel seconded the motion. All voted in favor. Motion passed unanimously.

**Item 2. Information Only.**

**Queen Anne's County - Mitigation Banking Memorandum of Understanding(MOU)**

Presented by Susan Makhoulouf

Queen Anne's County is proposing an MOU between the County and the Commission regarding the establishment and use of mitigation banks in the County to meet Critical Area mitigation requirements. The County is seeking feedback on the structure and components of the MOU.

**Discussion:**

Subcommittee members asked for background on other MOUs with Counties for mitigation banking and then had some specific questions on the documents themselves. Discussion points related to long-term management measures including monitoring and project site conditions post the initial 5-year monitoring period; recorded easements to protect banks for the long-term; natural regeneration; and how equity may be considered when selecting a new mitigation bank site.

The County staff provided a summary of how the easements are recorded; how the Parks Department manages properties, including routine annual maintenance that would include invasive species management. The Science Advisor responded to concerns about natural regeneration. Finally, the County acknowledged the need to consider fair and equitable distribution of the benefits of mitigation banking. At the end of the discussion, Nick Kelly summarized that Commission staff would follow up to ensure the MOU (1) is clear regarding monitoring of sites post the 5-year initial planting period, (2) ensure the language in the MOU is clear regarding permanent protection and (3) review whether language could be added to consider an equitable geographic distribution of sites in the future.

**Item 3. Information Only.**

**Talbot County - Bellevue Passage Museum - Conditional Approval**

Presented by Annie Sekerak.

Talbot County is sponsoring a project by a local nonprofit on County-owned lands to house the Bellevue Passage Museum. The project will exceed lot coverage limits in the LDA and require Conditional Approval. The County is seeking feedback on the proposed mitigation for the Conditional Approval.

**Discussion:**

The Subcommittee discussion centered around the mitigation plan, which is deficient in planting by 400 square feet but includes other measures. Subcommittee members asked for clarification on whether additional plantings could be accommodated on the site as the aerial seems to indicate. The applicant indicated that there are more site constraints, including a basketball court and needed walking path, but agreed that additional understory and a salt-tolerant herbaceous layer may be possible. Stormwater management plans have not yet been reviewed by Talbot County so a final determination of whether there is extra stormwater provided is pending. Nick Kelly summarized that the Commission recommended the applicant use understory and herbaceous material to make up the additional needed mitigation.

**Item 4: Vote.**

**Maryland Department of Natural Resources (DNR) - Sandy Point State Park - South Beach Area Restoration Project**

Presented by Jon Coplin.

Maryland DNR is seeking approval of a project to enhance and restore the South Beach Area at Sandy Point State Park.

*Recommendation:* Approval with Condition

*Authority:* Code of Maryland Regulations 27.02.05

**Discussion:** The Subcommittee asked for clarification on whether the lot coverage installed could be made up of pervious materials. DNR staff indicated that the use of the site is too intense and unfortunately that could not be incorporated into this site design. There was an additional question about the leaning rails and DNR stated they are used to help keep visitors on the designated paths and pedestrian areas.

Commissioner Marion made a motion to approve consistent with the staff report and recommendation. Commissioner Hertz seconded. Motion passed unanimously.

**Item 5. Vote.**

**Maryland Department of Natural Resources (DNR) - Somers Cove Marina - Updates on Conditions of Approval - Mitigation Plan (Somerset County)**

Presented by Kate Durant.

Maryland DNR has submitted a mitigation planting plan for the purposes of meeting two conditions imposed on the project by the Commission in the September 2023 project approval. DNR is seeking approval of the proposed mitigation package to satisfy those conditions.

*Recommendation:* Pending Subcommittee Discussion

*Authority:* Code of Maryland Regulations 27.02.05

**Discussion:** The proposed mitigation plan included sufficient plantings for the installation of the boat ramp but additional planting is necessary to meet the remainder of the BMA impacts. However, the stormwater management greatly exceeds the necessary 10% pollutant reduction rule. Therefore, DNR is requesting approval by the Commission to meet BMA mitigation through the installation of an offset (stormwater management practice). Commission staff clarified that while stormwater requirements can be met by Buffer planting, because this site is IDA and BMA using stormwater as an offset seems acceptable.

Commissioner Patel made a motion to approve the proposed mitigation plan. Commissioner Grant seconded. Motion passed unanimously.

**Critical Area Commission**  
**Chesapeake and Atlantic Coastal Bays**  
Meeting held via Teams

**March 15, 2024**

**Program Implementation Subcommittee Minutes**

**Subcommittee Members in Attendance:** *Bunker (Chair), McCall (Co-Chair), Gerthoffer, B. Hance, Herr-Cornwell, Hewitt, Mulkey, Porter, Rodvien*

**Guests:** Gris Batchelder (Baltimore County), Regina Esslinger (Baltimore County), Stephanie Jones (Queen Anne's County)

**Item 1. Approval of February Minutes**

Commissioner Porter motioned to approve the February Program Subcommittee Minutes. Commissioner Hewitt seconded the motion. All voted in favor, with one abstention (Herr-Cornwell). Minutes approved.

**Item 2. Information Only: Text Amendment – Waterfront Marinas/Restaurants in MBA (Baltimore County)**

Presented by Susan Makhlof

At the request of the County Executive, Baltimore County staff from the Department of Environmental Protection and Sustainability have developed a proposed text amendment to address redevelopment of existing waterfront marinas and restaurants that are mapped Modified Buffer Area (MBA). Critical Area Commission staff have provided feedback and guidance throughout this process. The purpose of this Program Subcommittee discussion is to provide preliminary feedback to Baltimore County regarding the draft text amendment. The text amendment is planned to be submitted to the Project Subcommittee again on April 26<sup>th</sup> and to the full Critical Area Commission for final review and approval at the May 1<sup>st</sup> Commission meeting. Baltimore County wants to ensure that any questions from the Commission are addressed well in advance before this final review.

**Discussion:** Ms. Makhlof presented in accordance with her memo. After the presentation, she recognized Regina Esslinger from Baltimore County Department of Environmental Protection and Sustainability to review how the mitigation options would be implemented with some examples. Following the presentation, Ms. Makhlof recognized Program Subcommittee Chair Bunker, who opened the floor for discussion.

Chair Fisher led the discussion with questions related to stormwater management and asked the County to clarify if those were already existing requirements and whether Buffer practices could also count as stormwater practices. The County stated that the policy is for projects that disturb less than 5,000 square feet and are generally exempt from State regulations. Further, staff would review the policy to ensure Buffer and stormwater are addressed separately. Stormwater practices, such as green roofs, would be monitored by the County through their existing



stormwater engineering section. If practices fail, the County directs applicants on specific requirements to bring them back into compliance or identify other mitigation opportunities.

The discussion also clarified that these requirements only apply to waterfront marinas and restaurants and would not apply to existing properties that were converted to another use, such as multi-family residential. The County does not anticipate many applications each year, but the Baltimore County Marine Trades Association had expressed a lot of frustration with the current requirements and with these new provisions there may be an increase in small projects like pavilions or similar structures.

Commission staff reiterated that they would follow up with the County on the stormwater management questions and ensure requirements are met separately.

### **Item 3. Non-Water Dependent Structures on Piers (Queen Anne's County)**

Presented by Susan Makhoul

On February 13, 2024, the Queen Anne's County Commissioners conceptually approved Ordinance No. 24-01: Nonwater-Dependent Structures on Pier. The ordinance amends the Queen Anne's County Code to allow nonwater-dependent projects on piers consistent with State law. The proposed text amendment will add definitions of nonwater-dependent projects and piers to Section 14:1-11 and update Section 14:1-49 to allow nonwater-dependent projects on piers.

**Discussion:** There was a minor correction to the staff report in reference to the County not Town, but no other discussion was had. Program Subcommittee Chair Bunker motioned to concur with the Chair's determination of refinement. **Motion passed unanimously.**

### **Item 4. New Meeting Schedule**

Chair Fisher asked for feedback on the new Subcommittee meeting schedule and asked if the Subcommittee would consider moving the meetings back one week. The general consensus is not yet given calendars have already been blocked off. Chair Fisher agreed that the meetings would stay as scheduled through June, and we'll revisit later in the year.

**Meeting adjourned at 9:56 a.m.**