

# MINUTES

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

**June 7, 2023**

**CALL TO ORDER:** Chair Erik Fisher called the meeting to order at 1:00 p.m.

**Commission Members in Attendance:**

Sean Eames, Baltimore City  
Jeffrey Ferguson, Eastern Shore at Large  
Jenelle Gerthoffer, Worcester County – Coastal/Town of Ocean City  
Anita Grant, Western Shore at Large  
Julia Glanz, Department of Housing and Community Development  
Deborah Herr Cornwell, Department of Planning  
Sandy Hertz, Department of Transportation  
Michael Hewitt, St. Mary's County  
Pat Mahoney, Calvert County  
Travis Marion, Cecil County  
Alisha Mulkey, Department of Agriculture  
Catherine McCall, Department of Natural Resources  
Michael McCarthy, Talbot County  
Jim Palma, Department of Commerce  
Larry Porter, Caroline County  
Tammy Roberson, Department of Environment  
Lisa Rodvien, Anne Arundel County

**Commission Members Not in Attendance:**

Tim Adams, Prince George's County  
Chad Malkus, Dorchester County  
Todd Nock, Worcester County – Chesapeake  
Pat Young, Baltimore County

**CHAIR'S REMARKS:** Chair Fisher introduced himself after calling the meeting to order. He made a few remarks about the importance of the work of the Commission and those who serve on it. He's looking forward to working with everyone over the next few years. He then introduced the newest Commissioners – Mayor Travis Marion of Rising Sun, Mayor Todd Nock of Pocomoke City, Anne Arundel County Councilwoman Lisa Rodvien, Caroline County Commissioner Larry Porter, and Baltimore County Councilman Pat Young. He also acknowledged the outgoing Commissioners.

**APPROVAL OF MINUTES:** Commissioner Mahoney moved to approve the minutes from the March meeting. Commissioner Hertz seconded. Motion passed unanimously.

## **STAFF PRESENTATIONS**

### **PROJECT SUBCOMMITTEE:**

#### **State of Maryland/Historic Annapolis – Brice House Renovations (Anne Arundel County)**

Ms. Kate Durant presented her staff report, the contents of which are incorporated into and made part of the minutes. Historic Annapolis is proposing site improvements including an underground vault and new retaining walls to support restoration work at the Brice House, a property owned by the State of Maryland. The renovations will also include demolishing most of the existing brick walkways and walls and constructing new brick walkways that are historically accurate to when the building was originally constructed. The building is located at 176 Prince George Street in Annapolis, MD. The site is approximately 17,227 square feet (0.39 acres) and is designated as an Intensely Developed Area (IDA).

After the renovations are complete, the underground vault will be used to provide temperature and humidity control for the Brice House, and the new walkways will provide ADA accessibility to the building. The exterior improvements are anticipated to be completed by 2024. This project is required to come to the Commission for approval under COMAR 27.02.05 because it is development occurring on State-owned land in the Critical Area.

Commissioner Hertz asked for clarification about the planting plan, and also about whether the mitigation sites are outside of the sea level rise and storm surge areas. Ms. Durant reviewed the proposed maps and noted most of the sites are not in vulnerable areas and one site is in an area that borders a projected sea level rise area of 10-feet. Hearing no further questions, Chair Fisher recognized the Acting Chair of the Project Subcommittee, Commissioner McCall, who moved that the Commission approve the project with the following conditions:

1. Within 60 days of the date of Commission approval, the final Mitigation and Planting plan shall be submitted to Commission staff.
2. Within 60 days of the date of Commission approval, a signed Planting Agreement Form for the mitigation shall be submitted to Commission staff for review and approval.

Commissioner Mahoney seconded the motion. Motion passed unanimously.

#### **Maryland Transportation Authority (MDTA) – Amendment to Nice Bridge Improvement Project Condition #2: Offsite Mitigation (Charles County)**

Ms. Durant presented the staff report, the contents of which are incorporated into and made a part of the minutes. In August of 2018, the Critical Area Commission unanimously approved, with five conditions, the Maryland Transportation Authority's (MDTA) Governor Harry W. Nice Bridge (Nice Bridge) Improvement Project. The newly constructed Nice Bridge was completed and opened for use on October 12, 2022.

The Commission unanimously approved an amendment to one of the previous conditions of approval (Condition #2) in August 2019 that allowed for offsite mitigation and an extended timeline to meet the required 10% pollutant reduction requirement. The amended condition noted

MDTA could locate the mitigation offsite and a proposal was required by March 2020 and construction was required by December 2022.

In March of 2020, MDTA provided an update to the Critical Area Commission regarding the status of the acceptable off-site mitigation location. At that time, an off-site location had been chosen, and a design concept plan was presented to the Commission with the goal of meeting the December 2022 deadline.

However, the construction of Nice Bridge and its associated mitigation and offsets has experienced multiple delays, including those related to the COVID-19 pandemic and concerns about property access to construct the stream restoration project. As a result, MDTA is asking for an extension to complete work associated with Condition #2 to require completion of the stormwater offset projects by November 30, 2024. The off-site mitigation location and general design plan for the project remains the same.

Chair Fisher recognized Project Subcommittee Chair Catherine McCall, who moved on behalf of the Project Subcommittee that the Commission approve the request with the following condition:

- Prior to the start of construction, MDTA shall obtain final approval from the Commission for all on-site stormwater management to meet the Critical Area 10% pollutant reduction requirement. If the Maryland Transportation Authority demonstrates that it is unable to meet its pollutant reduction requirements on-site, the Maryland Transportation Authority shall restrict its off-site search to location in the following order of priority: Charles and St. Mary's County in the Lower Potomac watershed; and Prince George's County in the Washington-Metro Potomac watershed. MDTA shall provide a progress update to the full Commission no later than March 2024, if necessary, and shall complete construction of acceptable stormwater management offsets by November 30, 2024.

Commissioner Palma seconded the motion. Motion passed unanimously.

### **University of Maryland Center for Environmental Sciences (UMCES) – Chesapeake Analytics Collaborative Building (Calvert County)**

Ms. Tay Harris presented the staff report, the contents of which are incorporated into and made a part of the minutes. The University of Maryland Center of Environmental Science (UMCES) proposes to demolish two existing buildings and construct the Chesapeake Analytics Collaborative Building and its associated amenities, at the Chesapeake Biological Lab (CBL) site located in Solomons Island at 170 Farren Avenue. The project area is located entirely in the Critical Area on land designated Intensely Developed Area (IDA), Resource Conservation Area (RCA), and Special Buffer Management Area (SBMA). The proposed improvements will exceed the 15% lot coverage limit in the RCA, therefore Conditional Approval under COMAR 27.02.06 is required. UMCES proposed to meet the 10% pollutant reduction rule, provide SBMA mitigation and tree clearing mitigation and plant at a 1:1 ratio for the additional lot coverage.

Commissioner Mahoney stated that he was excited about the project, that it's great for Calvert County. Hearing no further questions or comments, Chair Fisher recognized Acting Project Subcommittee Chair McCall, who moved on behalf of the Project Subcommittee that the Commission approve the project as proposed, with the following condition:

- Within 90 days of approval, UMCES will submit to the Commission the executed planting plan.

Commissioner Mahoney seconded the motion. Motion passed unanimously.

### **Baltimore County Recreation and Parks – Sparrows Point Park (Conditional Approval) (Baltimore County)**

Ms. Susan Makhoul presented her staff report, the contents of which are incorporated into and made part of the minutes. The Baltimore County Department of Recreation and Parks is seeking approval to construct a new park with a community building, multipurpose field, playground, pier and kayak platform, and associated infrastructure including stormwater management (SWM) facilities. The 21.78-acre project site is located at 1900 Wharf Road, Sparrows Point, Maryland. The project is located within the Critical Area on land designated as Intensely Developed Area (IDA).

The project site is enrolled in the Maryland Department of the Environment (MDE) Voluntary Cleanup Program (VCP). The goal of the program is to streamline the cleanup process while ensuring compliance with existing environmental regulations. The project site has an approved Remedial Design Work Plan (RDWP) to contain contamination within the site. The contamination on site is due to its past use as part of the larger Sparrows Point/Bethlehem Steel site and rail yard. A cap is required for the site to be used by the public. Construction is anticipated to begin in Fall 2023 and the grand opening is expected to take place in Fall/Winter 2024.

Due to the past contamination, the limited ability to use the entire site, and the remediation work that must be completed, the project will result in Buffer disturbance. The Buffer has been expanded due to steep slopes and contiguous nontidal wetlands. The capping is required to provide safe use of the site. The grading in the Buffer is necessary to tie the cap fill into existing grades. Therefore, the project requires conditional approval under COMAR 27.02.06 by the Commission because the proposed permanent disturbance in the Buffer is not water-dependent.

Commissioners asked questions regarding the capping process which was answered, and a discussion about the use of artificial turf versus sod. Chair Fisher recognized Project Subcommittee Chair McCall, who moved on behalf of the Project Subcommittee that the Commission approve the request with the following conditions:

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

2. Prior to the start of construction or 60 days, whichever comes first, the County shall submit the final MDE authorizations for impacts to both tidal wetlands and nontidal wetlands.
3. After the capping of the site, the County shall submit the MDE Voluntary Cleanup Plan (VCP) to the Commission.

Commissioner Marion seconded the motion. Motion passed unanimously.

**Maryland Department of Natural Resources and Department of General Services – Turkey Point Lighthouse Road and Parking Lot Improvements at Elk Neck State Park (Cecil County)**

Ms. Susan Makhoul presented the staff report, the contents of which are incorporated into and made part of the minutes. The Maryland Department of Natural Resources (DNR) Engineering and Construction Unit and the Department of General Services (DGS) are seeking approval to construct improvements at Turkey Point Lighthouse. Proposed improvements include: realignment of an existing access trail away from an eroding cliff; improvements to the existing entrance and removal of the existing gravel parking lot; construction of a new asphalt parking lot; improvements to the remaining length of gravel trail leading to the Turkey Point Lighthouse; improvements at the lighthouse to address ADA accessibility; installation of stormwater management (SWM) facilities; and restoration of the existing gravel trail.

This project requires review and approval by the Commission because it does not qualify for approval under the Memorandum of Understanding (MOU) between DNR and the Critical Area Commission due to the scope of the proposed improvements. In addition, the project requires conditional approval under COMAR 27.02.06 by the Commission because the proposed permanent disturbance in the Buffer are for activities which are not water-dependent. As a component of the conditional approval request, the County is proffering additional Buffer mitigation beyond State requirements totaling 5.74 acres, which exceeds the required 3.31 acres.

Commissioner Marion stated that the County is enthusiastic about this project, as current conditions at the park are very bad. Chair Fisher recognized Project Subcommittee Chair McCall, who moved on behalf of the Project Subcommittee that the Commission approve the request.

Commissioner Marion seconded the motion. Motion passed unanimously.

**Maryland-National Capital Park and Planning Commission – Jackson Landing Boating Access Facility Renovations (Prince George's County)**

Mr. Michael Grassmann presented the staff report, the contents of which are incorporated into and made a part of the minutes. The Maryland-National Capital Park and Planning Commission (M-NCPPC), Prince George's County Department of Parks and Recreation proposes to renovate

the Jackson Landing Boating Access Facility, located at the Patuxent River Park, 16000 Croom Airport Road. The Patuxent River Park is a part of the Jug Bay Natural Area and borders the western boundary of Jug Bay and the Patuxent River. The Park and Natural Area are owned by M-NCPPC and partially located on lands designated Resource Conservation Area (RCA). M-NCPPC is considered a quasi-state agency for the purposes of reviewing projects within the Critical Area.

The Jackson Landing Boating Access facility is one of only six public boat launches on the entire 115-mile Patuxent River. It is the northern most facility and located near the headquarters of Patuxent River Park. The entire Jug Bay Natural Area totals over 700 acres, with the Patuxent River Park headquarters and boat launch located on a 21.55-acre parcel, entirely within the RCA. The boat launch is heavily used, as over 35,000 vehicles visited the launch in 2020. Thus, the 25-year-old Jackson Landing Boating Access facility has reached its end-of-life cycle and is in need of complete renovation.

M-NCPPC proposes to demolish and replace the following elements: a fixed fishing pier and the associated pilings, a floating pier, a concrete boat ramp and the associated flank walls, a fixed kayak pier and an associated launch, a metal gangway and an associated floating dock, and a gravel parking lot. The gravel parking lot will be converted to an asphalt parking lot and slightly enlarged to provide a new ADA-accessible space. The boating access facility will also be ADA-accessible. Finally, the grassy areas will be restored and sections near the water will accommodate mitigation plantings upon project completion. The anticipated life of the project is 20 years. Existing lot coverage is 3,559 square feet (sf). Lot coverage proposed for removal is 65 sf; proposed new lot coverage is 479 sf, resulting in a gross lot coverage of 3,973 sf.

The project is considered water-dependent, other than for the construction of a new parking space to meet ADA-accessibility requirements. Therefore, this project is reviewed under COMAR 27.02.05 as a State agency action on State-owned lands.

Hearing no questions, Chair Fisher recognized Project Subcommittee Chair McCall, who moved that the Commission approve the project.

Commissioner Hertz seconded the motion. Motion passed unanimously.

## **PROGRAM SUBCOMMITTEE:**

### **Town of Perryville – Critical Area Map Update: Second Request for Extension to Adopt (Cecil County)**

Mr. Michael Grassmann presented a request from the Town of Perryville for an additional extension of the deadline to approve their draft Critical Area maps. He presented the staff report, the contents of which are incorporated into and made a part of the minutes. January 28, 2023 was the 24-month deadline for the Town of Perryville, located in Cecil County, to adopt their updated Critical Area Maps. On March 1, 2023, the Critical Area Commission approved a 90-day extension with a new deadline for local approval of the Critical Area Maps of April 28, 2023. However, the Town was unable to meet this deadline. The local approval process is not

anticipated to be complete until July 2023. As such, the Town requests a second 90-day extension, for a total extension of 180 days.

Hearing no questions, Chair Fisher recognized Program Subcommittee Chair Herr-Cornwell, who moved that the Commission vote to approve the requested extension. Commissioner Glanz seconded

the motion. All voted to approve. **Motion passed unanimously.**

### **Refinement: Armored Storage Growth Allocation (Queen Anne's County)**

Ms. Makhoulf presented the staff report, the contents of which were incorporated into and made part of the minutes. Queen Anne's County is requesting growth allocation to change the designation of 2.811 acres of a Limited Development Area (LDA) to an Intensely Developed Area (IDA) to allow for the construction of a storage facility and all associated improvements. The subject parcels (Tax Map 57, Parcels 287, 351, and 352) are located on Piney Creek Road and Nash Court, Chester, Maryland. In order for a new commercial use to be established at the project site in conformance with the Critical Area regulations, growth allocation is necessary.

Ms. Makhoulf reviewed the proposed impacts and mitigation for the project and also reviewed how the growth allocation meets the required adjacency standards for a new IDA. Additionally Ms. Makhoulf pointed out the information provided by the County and State agencies regarding the factors the Commission may consider when reviewing a growth allocation. Commission staff made several recommended conditions including forest mitigation at a 1:1 ratio, review and approval of the stormwater management plan, a declaration of deed restriction for the remaining undeveloped areas, and findings regarding the lot consolidation and reconfiguration.

There were several questions from Commissioners regarding the proposed forest clearing and mitigation plans as well as concerns raised by the public. Chair Fisher also had about the type of mitigation and its effectiveness given the area being considered for placement is in the flood zone. Amy Moredock, Queen Anne's County Planning Director and Stephanie Jones, Senior Planner answered the questions as did the applicant's engineer and attorney. After much discussion, Chair Fisher recognized Program Subcommittee Chair Herr-Cornwell, who moved that because the proposed growth allocation as conceptually approved by the Queen Anne's County Commissioners and as shown on the site plan and accompanying materials accepted by Commission staff on March 15, 2023, is consistent with the purposes, policies, and goals of the Critical Area Commission; and because this proposed growth allocation meets the required standards for new IDAs under Natural Resources Article 8-1808.1(c), COMAR 27.01.02.06-3, and Chapter 14:1-77 of the Queen Anne's County Code, Commission staff recommends concurrence with the Chairman's determination of refinement.

Furthermore, the Subcommittee recommended approval in accordance with the conditions outlined in the staff report, with the additional requirement that the forest mitigation proposal be brought to the Program Subcommittee within 90 days.

Chair Fisher thanked everyone for the work done on this, and said that, as evidenced by the morning's discussions and comments made this afternoon, there was a lot to consider. This could

result in the expansion of what is allowable in a flood zone. He stated he would give the project a careful review and have a decision within 10 working days as required by law.

**Refinement: Town of Ocean City – Critical Area Boundary Mapping Update (Worcester County)**

Ms. Durant presented a refinement to the Town of Ocean City's Critical Area Program in the form of a boundary mapping update. She presented the staff report, the contents of which were incorporated into and made a part of the minutes. The Mayor and City Council approved Resolution 2023-03 at their meeting on March 6, 2023. The map update was accepted by Commission staff on April 6, 2023 and Chair Fisher determined the update could be reviewed as a refinement to the Town of Ocean City's Critical Area program on May 3, 2023.

Hearing no questions, Chair Fisher recognized Program Subcommittee Chair Herr-Cornwell, who stated that the subcommittee concurred with the Chair's determination of refinement, and recommended accepting the mapping update as submitted. Chair Fisher said he accepts the Commission's recommendation and that this would be his final decision.

**Refinement: Town of Ocean City – Critical Area Text Amendment: Critical Area Statewide Base Map (Worcester County)**

Ms. Durant presented a refinement to the Town of Ocean City's Critical Area program in the form of a text amendment. As part of the comprehensive overhaul of the Critical Area Law by the General Assembly in 2008, a requirement was included to remap the 1,000-foot Critical Area boundary based on recent technologies. In July 2012, the Commission adopted regulations that address the types of source documents used, the process for updating the maps, and the procedures for classifying newly added lands. Subsequently, each local jurisdiction is undergoing a Critical Area mapping update. As part of this mapping update, a text amendment is necessary to reference the new maps. The updated language replaces the reference to the State wetlands maps with a reference to the Critical Area Statewide Base Map, and incorporates the updated Town of Ocean City Critical Area maps, dated March 2022, by reference.

The Mayor and City Council approved Ordinance 2023-06 at their meeting on March 20, 2023. The text amendment was accepted by Commission staff on April 6, 2023 and Chair Fisher determined the update could be reviewed as a refinement to the Town of Ocean City's Critical Area program on May 3, 2023.

Hearing no questions, Chair Fisher recognized Program Subcommittee Chair Herr-Cornwell, who recommended that the Chair approve the text amendment as presented. Chair Fisher stated he accepted the Commission's recommendation and that this would be his final decision.

**OLD BUSINESS:**

Ms. Charbonneau referenced a memo regarding the Somerset County and State Highway Administration MD-413 bike path project previously approved by the Commission on February



1, 2023. The purpose of the memo was to notify Commissioners of a planting delay due to stock availability.

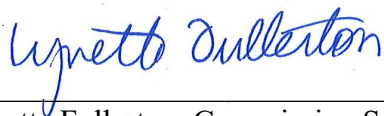
**LEGAL UPDATES:**

Ms. Emily Vainieri introduced herself and explained her role, for the benefit of the new Commissioners. She stated that the Commission had appealed three rulings in cases regarding pools in the buffer, two in St. Mary's County and one in Queen Anne's County. She will be updating Commissioners on those cases as they move forward.

**NEW BUSINESS:**

Chair Fisher thanked the Chairs Herr-Cornwell and McCall, noting this was a very hefty agenda. He also acknowledged two new Secretary designees to the Commission – Julia Glanz, with the Department of Housing and Community Development, and Jim Palma, for the Department of Commerce. Finally, he stated that it had not yet been determined whether there will be a meeting in July, but if there was it would be virtual.

Meeting adjourned at 3:45.



Lynette Fullerton, Commission Secretary

8/2/23

Date of Approval