

MINUTES

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

September 7, 2022

CALL TO ORDER: Chairman Charles C. Deegan called the meeting to order at 1:00 p.m.

Commission Members in Attendance:

Nicole Acle, Wicomico County
Gail Blazer, Worcester County – Coastal Bays (Town of Ocean City)
Sean Eames, Baltimore City
Jeffrey Ferguson, Eastern Shore at Large
Anita Grant, Western Shore at Large
Sue Greer, Charles County
Deborah Herr Cornwell, Department of Planning
Sandy Hertz, Department of Transportation
Michael Hewitt, St. Mary's County
Pat Mahoney, Calvert County
Alisha Mulkey, Department of Agriculture
Catherine McCall, Department of Natural Resources
Michael McCarthy, Talbot County
Ewing McDowell, Department of Commerce
John Papagni, DHCD (for Varney-Alvarado)
Steven Parker, Cecil County
Tammy Roberson, Department of Environment
Steven Taylor, Worcester County – Coastal

Commission Members Not in Attendance:

Tim Adams, Prince George's County
Curtis Beulah, Harford County
Dawn Jacobs, Kent County
Charles Laird, Somerset County
James Lewis, Caroline County
Chad Malkus, Dorchester County
Gary Mangum, Queen Anne's County
David Marks, Baltimore County
Jennifer Merritt, Worcester County – Chesapeake Bay
Lori Rhodes, Anne Arundel County
Caroline Varney-Alvarado, Department of Housing and Community Development

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

STAFF PRESENTATIONS

PROJECT SUBCOMMITTEE:

Historic St. Mary's City Commission – ADA Restrooms at the Historic State House (St. Mary's County)

Ms. Susan Makhoul presented for vote the proposal by the Historic St. Mary's City Commission (HSMCC) and the Department of General Services (DGS) to demolish an existing one-story restroom facility and construct a new two-story restroom facility. She presented the staff report, the contents of which have been incorporated into and made part of the minutes.

The existing restroom facility is located within the Buffer which has been expanded for steep slopes. The facility is accessed via brick and timber stairs down a steep hill, and is not ADA-compliant. The new accessible restroom facility has been designed and sited to meet ADA requirements and will include an accessible concrete sidewalk and footbridge to provide access to the restrooms from the State House. The project has an anticipated start date of Fall 2022 and construction is expected to be complete by Spring 2023. The 0.11-acre project site is located entirely within the Critical Area on land designated as Resource Conservation Area (RCA).

This project requires Commission approval because it does not qualify for approval under the Memorandum of Understanding (MOU) between HSMCC and the Critical Area Commission due to the new structure intruding further waterward in the Buffer than the existing structure. In addition, 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 and because the project will impact steep slopes.

Mitigation for Buffer impacts will be provided at a 3:1 ratio for permanent disturbance (1,189 sf) and at a 1:1 ratio for canopy clearing (1,440 sf) within the Buffer. The removal of existing lot coverage within the Buffer will reduce the required mitigation by 550 sf. HSMCC proposes to provide the 4,417 sf of required Buffer mitigation both onsite and offsite and a planting plan has been provided and reviewed by Commission staff. The 10% phosphorus reduction requirement will also be met by planting.

Commissioner Blazer mentioned that one of the stormwater management plans involved installation of rain barrels, and she asked if there was any plan yet for release of the collected rainwater, like a soaker hose. Joe Kangas, Facilities Manager for St. Mary's College, answered that specifics hadn't been finalized yet, but that a soaker hose was a very good idea. Commissioner Hewitt commented that he was very familiar with the site, and said that it is indeed very difficult to access by people with limited mobility.

Chairman Deegan then recognized Project Subcommittee Chair Hertz, who moved on behalf of the Project Subcommittee that the Commission approve the HSMCC and DGS proposal to demolish an existing one-story restroom facility and construct a new ADA accessible restroom facility near the State House of 1676. The existing restroom facility, which is located within the Expanded Critical Area Buffer and is accessed by brick and timber stairs down a steep hill, is not ADA-compliant. The new, two-story restroom facility has been designed and sited to meet ADA

requirements and will include an accessible concrete sidewalk and footbridge to provide access to the restrooms from the State House.

This motion was offered in accordance with the staff report and presentation, and based on the following considerations:

- 1) The proposed facility footprint will be located in the same area as the existing facility. Except for impacts to the Critical Area buffer, which has been expanded for steep slopes, there are no other impacts to Habitat Protection Areas. The project has been located to minimize potential impacts to archaeological resources. Consultation between HSMCC and the Maryland Historic Trust will be ongoing as the project moves to construction to reduce the potential adverse effect on the historic property. As a result, the proposed project is in compliance with the relevant chapters of this subtitle.
- 2) The project limit of disturbance is less than 5,000 square feet (sf); therefore, stormwater management is not required by MDE. HSMCC proposes to meet the Critical Area 10/5 phosphorus reduction requirement through onsite and offsite planting and the installation of one 50-gallon rain barrel. Mitigation for Buffer impacts will include approximately 4,000 sf of mitigation planting onsite and 3,100 sf provided offsite.
- 3) The proposed project offers public benefits to the Critical Area Program by selecting a mitigation design that incorporates the removal of existing impervious cover and the restoration and revegetation of a steep slope. The proposed native shrub species that will be used to stabilize the slope will provide both habitat and water quality benefits.

Commissioner Hewitt seconded the motion. All voted in favor. **Motion passed unanimously.**

Charles County Department of Recreation and Parks – Chapel Point State Park Improvements (Charles County)

Ms. Jennifer Esposito presented for vote a proposal by the Charles County Department of Recreation and Parks to expand and improve shoreline access at two areas (North Fishing Access and Midway Beach Access) of Chapel Point State Park. Ms. Esposito presented the staff report, which has been incorporated into and made a part of these minutes.

The park is owned by the Department of Natural Resources (DNR), Maryland Park Service, but 50 acres are managed and maintained by the County under a lease agreement. The leased areas include: park access roads and an existing boat launch located at the North Fishing Access; the Midway Beach Access which is currently used for beach access, picnicking, parking, and a kayak launch; and approximately 3,000 linear feet of shoreline. The overall goal of the project is to enhance and expand existing shoreline access to account for the increase in recreational use the park is currently experiencing. Due to impacts to the Buffer for non-water dependent activities the project requires a conditional approval by the Commission under COMAR 27.02.06.

The total mitigation required for Buffer impacts and forest clearing is 2.27 acres. The County will provide 3.29 acres both inside and outside of the Buffer with native canopy and understory

species, and the proposed mitigation will provide at least a 1:1 planting ratio back inside of the Buffer.

Commissioner Deegan then recognized Project Subcommittee Chair Hertz, who moved on behalf of the Project Subcommittee that the Commission approve the proposed improvements to Chapel Point State Park.

This motion was offered in accordance with the staff report and presentation and the following considerations:

1. With the exception of the expanded road and parking areas noted previously, the proposed project is in compliance with the relevant chapters of the subtitle.
2. The County is providing 3:1 mitigation for all non-water dependent Critical Area Buffer impacts. The total mitigation provided exceeds the required mitigation for the project by an acre.
3. The proposed project offers public benefits to the Critical Area Program by providing treatment for stormwater runoff from 3.87 acres. This includes eliminating the highly eroded runoff going down the access drives at both shorelines. In addition, the inclusion of access controls will reduce vehicular traffic at the water's edge, further providing water quality and habitat benefits.

Commissioner Greer seconded the motion. All voted in favor. **Motion passed unanimously.**

REGULATIONS:

Publish as Proposed Updates to Growth Allocation Provisions and Shore Erosion Control Chapter

Ms. Lisa Hoerger presented for vote a request for permission to publish as proposed, updates to COMAR Title 27, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays; specifically growth allocation provisions and the shore erosion Control/Shoreline Stabilization Chapter. Ms. Hoerger reviewed her staff report and proposed changes, the contents of which have been incorporated into and made a part of the minutes.

The proposal includes updates to the shore erosion control regulations in COMAR 27.01.04 and COMAR 27.02.05.05-, as well as related provisions throughout the regulations. The updates to this chapter modernize the drafting style, update certain provisions, and where necessary, delete certain provisions as noted in the staff report.

Additionally, the proposal includes a clarification to COMAR 27.01.02.06-3 which is intended to highlight that towns can take advantage of using their full allotment of growth allocation acreage to convert to a resource conservation area. Certain jurisdictions are limited to using only ½ of the allotted growth allocation for conversion from a resource conservation area to another Critical Area designation. This provision was not intended to apply to municipalities.

Commissioner Greer asked about the process of publishing the updates, and Ms. Hoerger summarized the steps. Commissioner Taylor asked for clarification about the growth allocation language and its application to Towns, which Ms. Hoerger answered.

Following the questions, Chairman Deegan recognized Program Subcommittee Chair Greer, who made the following motion:

- 1) To approve the regulations affecting the following Code of Maryland Regulations:
 - COMAR 27.01.01 General Provisions
 - COMAR 27.01.02 Development in the Critical Area
 - COMAR 27.01.04 Shore Erosion Protection Works
 - COMAR 27.01.09 Habitat Protection Areas in the Critical Area
 - COMAR 27.01.14 Renewable Energy Generating Systems
 - COMAR 27.02.01 General Provisions
 - COMAR 27.02.05 State Agency Actions Resulting in Development on State-Owned Lands

- 2) To approve regulations that:
 - Amend Regulation .01 under COMAR 27.01.01 General Provisions;
 - Amend Regulation .06-1 and .06-3 under COMAR 27.01.02 Development in the Critical Area;
 - Adopt Regulation .01-1 and amend regulations .02 and .03 under COMAR 27.01.04 Shore Erosion Protection Works;
 - Amend Regulations .01, .01-2, and .01-3 under COMAR 27.01.09 Habitat Protection Areas in the Critical Area;
 - Amend Regulation .06 under COMAR 27.01.14 Renewable Energy Generating Systems;
 - Amend Regulation .01 under COMAR 27.02.01 General Provisions;
 - Amend Regulations .05 and .15-3 under COMAR 27.02.05 State Agency Actions on State-Owned Lands; and

- (3) To authorize Commission staff to forward this draft to the Administrative, Executive & Legislative Review Committee and subsequently to publish these regulations as proposed regulations in the Maryland Register.

Commissioner Acle seconded the motion. **Motion passed unanimously.**

PROGRAM SUBCOMMITTEE:

Refinement – St. Mary’s County – Supplemental Use Standards for Residential Pools Text Amendment

Ms. Annie Sekerak presented a refinement to the St. Mary’s County Critical Area Program. Ms. Sekerak reviewed her staff report, which is incorporated into and made a part of these minutes.

On June 14, 2022, the Commissioners of St. Mary’s County approved a text amendment to the St. Mary’s County Comprehensive Zoning Ordinance (SMCZO). Ordinance No. 2022-24 will remove an existing provision from a specific Supplemental Use standard of the County code. Supplemental Use Standard #122 affects residential swimming pools across the County. Among other items, the existing standards prohibit a residential property owner in the Critical Area from

applying for a variance to disturb the Critical Area Buffer for the purpose of installing a swimming pool and associated decks. Removal of this provision will provide a property owner in the Critical Area the opportunity to apply to the County Board of Appeals for such a variance.

Chairman Deegan recognized Program Subcommittee Chair Greer, who stated that the Program Subcommittee concurs with the Chairman's determination that the proposed text amendment be processed as a refinement to the St. Mary's County Critical Area Program. Further, because there is no similar type of prohibition in State law and regulations, it is recommended that the Chairman approved the text amendment as proposed.

Chairman Deegan said that he accepted the recommendation, and this would be his final decision.

Refinement: Town of Chesapeake City – Critical Area Map Update (Cecil County)

Ms. DeWeese presented a refinement to the Critical Area Program for the Town of Chesapeake City for the purposes of updating the Town's Critical Area boundary line. Ms. DeWeese reviewed her staff report, the contents of which are incorporated into and made a part of these minutes.

Commission staff worked with the Town of Chesapeake City, the Maryland Department of Natural Resources, the Maryland Department of the Environment, and the Eastern Shore Regional GIS Cooperative to develop Critical Area maps for the town showing the accurate 1,000-foot boundary as required under COMAR 27.01.11. The update resulted in a gain of 6.8 acres and a loss of 0.7 acres, with a net gain of 6.1 acres. There were 246.5 acres that remained the same. The Mayor and Council of the Town of Chesapeake City adopted Ordinance No. 2022-002 on July 11, 2022. This action constituted local adoption of the updated Critical Area map of the Town.

Chairman Deegan recognized Program Subcommittee Chair Greer, who stated that because the mapping update was completed in accordance with State Law and COMAR 27.01.11, the Program Subcommittee recommends this request be reviewed as a refinement to the Town of Chesapeake City's Critical Area program. Further, she recommends that the Chairman approve the designation changes as proposed.

Chairman Deegan said that he accepted the recommendation, and this would be his final decision.

Town of Chesapeake City – Comprehensive Review (Cecil County)

Ms. DeWeese presented a refinement to the Town of Chesapeake City's Critical Area program. Ms. DeWeese reviewed her staff report, the contents of which are incorporated into and made a part of these minutes.

On July 11, 2022, the Town Council of the Town of Chesapeake City voted to amend the Town's Critical Area program through the adoption of Ordinance 2022-001. The ordinance was drafted following a comprehensive review of the Town's Critical Area program and was based on the Critical Area Commission's Municipal Model Ordinance.

Hearing no questions, Chairman Deegan recognized Program Subcommittee Chair Greer, who stated that the Program Subcommittee concurs with the Chairman's determination that the Chesapeake City comprehensive review can be reviewed as a refinement to the Town's Critical Area Program. Additionally, due to the nature of the changes required, she recommended approval with the following condition:

- Within 120 days, and prior to formally incorporating the ordinance into the Zoning Code, the Town of Chesapeake City shall incorporate the revisions from Attachment 1 "Recommended Changes" into the ordinance.

Chairman Deegan said that he accepted the recommendation, and that this would be his final decision.

LEGAL UPDATES:

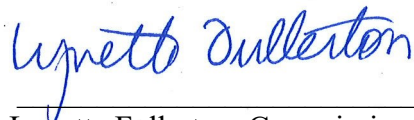
Ms. Emily Vainieri had no updates to report.

OLD BUSINESS:

Kate gave updates on the Poplar Island trip planned for September 14th.

NEW BUSINESS:

No new business.



Lynette Fullerton, Commission Secretary

10/5/22

Date of Approval

**Critical Area Commission
Chesapeake and Atlantic Coastal Bays
Meeting at 100 Community Place, Crownsville, Maryland**

September 7, 2022

Program Implementation Subcommittee

Approved October 5, 2022

Attendees: Greer (Chair), Blazer, Ferguson, Herr Cornwell, Hewitt, Mulkey, Taylor, Grant, Acle

Item 1. Town of Chesapeake City – Critical Area Map Designation Updates

Presented by Alex DeWeese

The Mayor and Council of the Town of Chesapeake City adopted Ordinance No. 2022-002 on July 11, 2022. This action constituted local adoption of the updated Critical Area map of the Town. The update resulted in a gain of 6.8 acres and a loss of 0.7 acres, with a net gain of 6.1 acres. There were 246.5 acres that remained the same.

Discussion: Commissioner Hewitt made a comment about ‘grandfathering’ language and asked for clarification about the critical area designation and landowners’ rights. Alex said it would depend on what stage the application was in, whether it would still be approved under the new designation. Lisa Hoerger also responded and explained how Commission staff works with local jurisdictions in determining which designation to apply to newly included areas.

Commissioner Ferguson moved to concur with the Chairman’s determination of a refinement and recommend the Chairman approve the Critical Area Map update as outlined in the staff report. Commissioner Hewitt seconded the motion. **Motion passed unanimously.**

Item 2. Town of Chesapeake City – Comprehensive Review

Presented by Alex DeWeese

On July 11, 2022, the Town Council of the Town of Chesapeake City voted to amend the Town’s Critical Area program through the adoption of Ordinance 2022-001. Natural Resources Article §8-1809(g) requires each local jurisdiction to review its entire program at least every six years. The Critical Area Program for the Town has not had a comprehensive review since October 3, 2012. The program was originally adopted in August of 1988. Upon review of the adopted ordinance, Commission staff noted necessary minor edits that are not substantive in nature, as well as a few minor text corrections as outlined in Attachment 1 of the staff report. There was no discussion.

Commissioner Grant moved to concur with the Chairman's determination of a refinement and also to recommend the Chairman approve the Town of Chesapeake City's comprehensive review subject to the proposed text changes as outlined in the attachment to the staff report. Commissioner Taylor seconded the motion. **Motion passed unanimously.**

Item 3. St. Mary's County – Supplemental Use Standards for Residential Pools Text Amendment

Presented by Annie Sekerak

On June 14, 2022, the Commissioners of St. Mary's County approved a text amendment to the St. Mary's County Comprehensive Zoning Ordinance. Ordinance No. 2022-24 will remove an existing provision from a specific Supplemental Use standard of the County code. Supplemental Use Standard #122 affects residential swimming pools across the County. Among other items, the existing standards prohibit a residential property owner in the Critical Area from applying for a variance to disturb the Critical Area Buffer for the purpose of installing a swimming pool and associated decks. Removal of this provision will provide a property owner in the Critical Area the opportunity to apply to the County Board of Appeals for such a variance. There is no such prohibition in State law or regulations.

Discussion: Commissioner Blazer asked staff to confirm whether the County code currently does not allow for variance applications to disturb the Buffer in order to install a pool, but with the text amendment County residents would now be able to apply. Ms. Sekerak replied that was correct. She reiterated that no other jurisdiction has provisions that prohibit applying for a variance for a pool. County Assistant Attorney John Houser came up and also spoke to the County's variance standards in the Critical Area.

Commissioner Hewitt raised concerns about the ability of a property owner in obtaining a variance to disturb the Buffer. Ms. Vainieri and Ms. Charbonneau answered that every variance application is reviewed individually and the Commission role is to provide comment based on the law, regulations, and the specifics of the case.

Commissioner Hewitt made a motion to concur with the Chairman's determination of a refinement and to recommend the Chairman approve the text amendment as proposed. Commissioner Ferguson seconded. All voted in favor. **Motion passed unanimously.**

Item 4. Proposed Regulation Updates – Growth Allocation Provisions and Shore Erosion Control Chapter

Presented by Lisa Hoerger

At its July 6, 2022 meeting the Program Subcommittee was introduced to the draft proposal to update the shore erosion control regulations found in COMAR 27.01.04 and COMAR 27.02.05.05. The updates are intended to modernize the drafting style, update certain provisions, and where necessary, delete certain provisions. The proposal also includes an update to the growth allocation provisions that specify limits on growth allocation in the RCA. The update clarifies that this limit does not apply to municipalities.

Discussion: Commissioner Hewitt asked whether it was possible for state owned properties to obtain growth allocation. Ms. Hoerger replied that that the state does not have growth allocation allotted so it is not applicable to those properties.

Commissioner Herr-Cornwell made a motion to approve the proposed updates to the regulations in accordance with the staff report and submit them to the Maryland Register as proposed. Commissioner Ferguson seconded the motion. All voted in favor. **Motion passed unanimously.**

Item 5. Approval of May and July Program Subcommittee Meeting Minutes

Commissioner Hewitt moved to approve both the May and July Program Subcommittee Meeting Minutes. Commissioner Blazer seconded the motion. Commissioner Greer abstained from voting to approve the July minutes, as she was not in attendance at that meeting. All others voted to approve. Minutes approved.

**Critical Area Commission
Chesapeake and Atlantic Coastal Bays
Meeting at 100 Community Place, Crownsville, Maryland**

September 7, 2022

Project Implementation Subcommittee

Approved October 5, 2022

Attendees: Hertz (Chair), Eames, Grant, Mahoney, McCall, McDowell, Papagni (for Varney-Alvarado), Parker, Roberson

Item 1. May Project Subcommittee Minutes.

Commissioner Hertz asked for a motion to approve the Project Subcommittee meeting minutes from the July 6 meeting, with the following corrections: add Commissioner Beulah and Commissioner Eames to the list of attendees; add correct meeting date to headers. Commissioner Eames so moved. Commissioner Roberson seconded the motion. **Motion passed unanimously.**

Item 2. Historic St. Mary's City Commission – ADA Restrooms at the Historic State House (St. Mary's County)

Presented by Susan Makhoul

Historic St. Mary's City Commission (HSMC-C) and the Department of General Services (DGS) are seeking approval to demolish an existing one-story restroom facility and construct a new, two-story, ADA-accessible restroom facility. The project requires Commission approval because it does not qualify for approval under the Memorandum of Understanding between HSMC-C and the Critical Area Commission due to the new structure intruding further waterward in the Buffer than the existing structure. In addition, the project requires conditional approval by the Commission because the proposed permanent disturbance in the Buffer is not water-dependent and because the project will impact steep slopes.

Discussion: Commissioner Eames asked for clarification about the tree replacement requirements for canopy removed within the Buffer. Staff clarified that the requirement for Buffer disturbance is 3:1, plus an additional 1:1 for any tree canopy removed.

Commissioner McCall asked if other sites were considered in order to minimize impacting the Buffer. Joe Kangas, Director of Facilities and Grounds at HSMC, explained that the location was chosen because of its proximity to the existing facility, and to the State House, and further noted that the pathway down to the facility is being built up rather than digging further down, minimizing archaeological disturbance. There will be ongoing coordination with the Maryland Historic Trust.

Commissioner Mahoney made a motion to approve the project as proposed. Commissioner McCall seconded. **Motion passed unanimously.**

Item 3. Charles County Department of Recreation and Parks – Chapel Point State Park Improvements

Presented by Jen Esposito

Charles County Department of Recreation, Parks, and Tourism is seeking approval to expand and improve shoreline access at two areas of Chapel Point State Park. The park is owned by the Department of Natural Resources, Maryland Park Service, but 50 acres are managed and maintained by the County under a lease agreement. The goal of the improvements is to enhance and expand existing shoreline access to account for the increase in recreational use the park is currently experiencing. Portions of the proposed improvements will be located within the Critical Area Buffer. The impacts and lot coverage associated with shoreline access are considered water dependent. All other improvements are considered nonwater-dependent impacts, but some are still located in the Critical Area Buffer due to existing conditions, such as expanding portions of existing roads and parking areas that are already compacted due to daily use. Because of this, the project requires conditional approval by the Commission under COMAR 27.02.06.

Discussion: Commissioner Hertz asked about the invasive species removal plans in regards to the ailanthus present, and asked how plantings would be managed so as not to be outcompeted by ailanthus or damaged by deer browse. County staff replied that the planting plan includes invasive species control and also survivability assurance for plantings.

Commissioner Roberson moved to approve the proposed improvements as outlined in the staff report. Commissioner Parker seconded the motion. All voted in favor. **Motion passed unanimously.**