

# MINUTES

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

**October 6, 2021**

**CALL TO ORDER:** Chairman Charles C. Deegan called the meeting to order at 1:00 p.m. Chairman Deegan announced that the meeting was being held remotely on Microsoft Teams due to the current public health emergency. He shared that the meeting was being recorded and streamed live to the public and that a copy of the recording would be made available on the Commission's website. Executive Director Kate Charbonneau did a roll call to confirm the Commission members in attendance.

**Commission Members in Attendance:**

Nicole Acle, Wicomico County  
Tim Adams, Prince George's County  
Gail Blazer, Worcester County – Coastal Bays (Town of Ocean City)  
Andrew Bradshaw, Dorchester County  
Jeffrey Ferguson, Eastern Shore at Large  
Deborah Herr Cornwell, Department of Planning  
Anita Grant, Western Shore at Large  
Sue Greer, Charles County  
Dawn Jacobs, Kent County  
Matt Johnston, Anne Arundel County  
Charles Laird, Somerset County  
Gary Mangum, Queen Anne's County  
David Marks, Baltimore County  
Jennifer Merritt, Worcester County – Chesapeake Bay  
Catherine McCall, Department of Natural Resources  
Michael McCarthy, Talbot County  
Ewing McDowell, Department of Commerce  
Julie Oberg, Department of Agriculture  
Steven Parker, Cecil County  
Tammy Roberson, Department of Environment  
Steven Taylor, Kent County

**Commission Members Not in Attendance:**

Curtis Beulah, Harford County  
Sandy Hertz, Department of Transportation  
Michael Hewitt, St. Mary's County  
James Lewis, Caroline County  
Pat Mahoney, Calvert County  
Caroline Varney-Alvarado, Department of Housing and Community Development

**APPROVAL OF MINUTES:** Commissioner Marks motioned to approve the August 4, 2021 minutes. Commissioner Ferguson seconded. All voted to approve.

## **STAFF PRESENTATIONS**

### **PROJECT SUBCOMMITTEE:**

#### **Maryland Department of Transportation (MDOT) – Update to General Approval Memorandum of Understanding (MOU)**

Ms. Susan Makhlouf presented for vote, an update to the Memorandum of Understanding (MOU) with the Maryland Department of Transportation (MDOT). Ms. Makhlouf reviewed her staff report, which has been incorporated into and made a part of these minutes.

At its April 7, 2021 meeting, the Critical Area Commission (CAC) voted to approve the Maryland Aviation Administration (MAA) Exhibit (Exhibit A2) to the MOU between CAC and MDOT. Exhibit A2 was approved with a condition requested by the Project Subcommittee that CAC work with MAA to determine how per- and polyfluoroalkyl substances (PFAS) contamination reporting requirements could be incorporated into either Exhibit A2 or into the MDOT MOU in order to cover all individual Transportation Business Units (TBU). This text amendment, which will amend the MDOT MOU, is now before the full CAC for review and approval.

Hearing no questions, Chairman Deegan recognized Acting Project Subcommittee Chair McCall, who moved on behalf of the Project Subcommittee that the Commission approve the Maryland Department of Transportation Memorandum of Understanding as proposed. Commissioner Adams seconded the motion. **Motion passed unanimously.**

#### **Maryland Department of Natural Resources (DNR) – Smallwood State Park Campground Loop Updates**

Ms. Tay Harris presented for vote proposed improvements by Maryland Department of Natural Resources (DNR) at Smallwood State Park Campground. Ms. Harris reviewed her staff report, which has been incorporated into and made a part of these minutes.

DNR is proposing to upgrade the existing campground and associated roadway, bathhouse, and septic drainage field at Smallwood State Park, located in Charles County, MD. The Smallwood State Park is 628 acres in size and partially located in the Critical Area on lands designated as Resource Conservation Area (RCA). The area proposed for upgrades is currently developed with 21 campsites comprising a variety of mini-cabins and traditional RV/tent camping pads, a bathhouse, overflow parking, an access road, and a septic drainage field. Portions of the work will occur within the Buffer, necessitating a Conditional Approval by the Commission under COMAR 27.02.06.

Hearing no questions, Chairman Deegan recognized Acting Project Subcommittee Chair McCall, who moved on behalf of the Project Subcommittee that the Commission approve the project with the following condition:

Prior to the start of construction, DNR shall provide Commission staff with MDE's approval of stormwater management and sediment and erosion control plans.

Ms. McCall also stated that as required by Code of Maryland Regulations, this motion is based on the following considerations. One, the proposed improvements are to existing facilities and mostly in-kind. Except for impacts to the Critical Area buffer, which has been expanded for steep slopes, there are no other impacts to Habitat Protection Areas. As a result, the proposed project is in compliance with the relevant chapters of this subtitle. Two, DNR will use permeable pavement in order to exceed stormwater management requirements and disturbances to Buffer and edge FIDS habitat is being mitigated at ratios in accordance with Critical Area regulations. The proposed mitigation, while outside the Critical Area, will expand existing FIDS habitat. And three, the proposed project offers public benefits to the Critical Area Program by selecting a design that redevelops the camping loop at Smallwood State Park, while minimizing, to the extent possible, impacts to the Critical Area buffer and adjacent forest. Additionally, the new bath house will be connected to a new septic system and reserve area based on Enhanced Nutrient Removal technology, thereby improving water quality impacts.

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

#### **PROGRAM SUBCOMMITTEE:**

##### **Refinement – Anne Arundel County – Forest Conservation Easements Text Amendment**

Ms. Durant presented a refinement to the Critical Area Program of Anne Arundel County. She reviewed the staff report, which is incorporated into and made a part of these minutes.

The Anne Arundel County Council approved Bill No. 62-21 on July 6, 2021 to amend the County Critical Area Program, specifically by adding a new section *(B) Reconveyance of Forest Conservation Easement*, to Article 17. Subdivision and Development, Title 8. Critical Area Overlay, Subtitle 9. Agreements.

Anne Arundel County requires that all remaining forest on a lot or parcel proposed for development be placed into conservation easement and permanently protected. The proposed Bill will allow property owners to extinguish a Forest Conservation Easement in the Critical Area if the project for which the easement was entered into has not progressed to development and cannot proceed due to all permits, plan applications, and approvals having expired, been terminated, or been otherwise deemed null and void. The County currently allows Forest Conservation Easements outside of the Critical Area to be extinguished for these same reasons.

Hearing no questions, Chairman Deegan recognized Program Subcommittee Chair Greer, who moved that the Commission concur with the Chairman's determination that the Anne Arundel County Text Amendment be reviewed as a refinement to the County's Critical Area Program. Further, she moved that the Chairman approve the text amendment as proposed.

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

**Refinement: Anne Arundel County – Critical Area Mapping Pending Matters Text Amendment**

Ms. Durant presented a refinement to the Anne Arundel County Critical Area Program. Ms. Durant reviewed her staff report, the contents of which are incorporated into and made a part of these minutes.

The Anne Arundel County Council voted on July 19, 2021 to approve Bill 63-21, which included pending matters language associated with the 1,000-foot Critical Area Boundary map update. The proposed text allows for any application for development or a variance made prior to the effective date of the Bill to proceed using the old boundary, provided all permits are issued before December 1, 2021.

The Commission has previously approved language in other jurisdictions allowing pending applications to proceed up to a certain date, including in 2017 for Queen Anne’s County and in 2021 for St. Mary’s County.

Hearing no questions, Chairman Deegan recognized Program Subcommittee Chair Greer, who moved on behalf of the Program Subcommittee that the Commission concur with the Chairman’s decision that this text amendment be processed as a refinement to Anne Arundel County’s Critical Area Program. Further, because the proposed ordinance is consistent with the purposes, policies, and goals of the Critical Area law and regulations, she recommended the Chairman approve the text amendment as proposed.

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

**Refinement: Anne Arundel County – Critical Area Map Update**

Ms. Durant presented a refinement to the Anne Arundel County Critical Area Program. Ms. Durant reviewed the staff report, the contents of which are made a part of these minutes.

Commission staff worked with Anne Arundel County, the Maryland Department of Natural Resources, the Maryland Department of the Environment, and the Eastern Shore Regional GIS Cooperative (ESRGC) to develop updated Critical Area maps for the county. These draft maps were vetted by the aforementioned agencies, were presented at several public meetings throughout the county, and lastly, were delivered to the county for public comment and local approval. The update resulted in a gain of 1,757 acres and a loss of 2,532 acres, with a net loss of 775 acres.

As part of the mapping update, the County Council approved Bill 63-21 at their meeting on July 19, 2021.

Hearing no questions, Chairman Deegan recognized Program Subcommittee Chair Greer, who moved on behalf of the Program Subcommittee that the Commission concur with the Chairman’s decision that this text amendment be processed as a refinement to Anne Arundel County’s Critical Area Program. Further, she recommended the Chairman approve the map update as proposed.

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

**Refinement: Town of Charlestown – Critical Area Map Update (Cecil County)**

Ms. Alex DeWeese presented a refinement to the Town of Charlestown’s Critical Area Program. She presented the staff report, the contents of which are made a part of these minutes.

Commission staff worked with the Town of Charlestown, the Maryland Department of Natural Resources, the Maryland Department of the Environment, and the Eastern Shore Regional GIS Cooperative (ESRGC) to develop updated Critical Area maps for the town. These draft maps were vetted by the aforementioned agencies, were presented at a public meeting in Cecil County, and lastly, were delivered to the town for public comment and local approval. The update resulted in a gain of 19 acres and a loss of 13 acres, with a net gain of 6 acres and 175 acres remaining the same.

As part of the mapping update, the Commissioners of the Town of Charlestown amended Ordinance 2020-02 at their meeting on August 10, 2021. This action constituted local adoption and incorporation of the updated Critical Area Overlay District Map.

Hearing no questions, Chairman Deegan recognized Program Subcommittee Chair Greer, who moved that the Commission concur with the Chairman’s determination that the Town of Charlestown mapping update can be reviewed as a refinement to the Town’s Critical Area Program. She also recommended that the Chairman approve this map amendment as proposed.

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

**Refinement: Town of Port Deposit – Critical Area Map Update (Cecil County)**

Ms. DeWeese presented a refinement to the Town of Port Deposit’s Critical Area Program. She presented the staff report, the contents of which are made a part of these minutes. Commission staff worked with the Town of Port Deposit, the Maryland Department of Natural Resources, the Maryland Department of the Environment, and the Eastern Shore Regional GIS Cooperative (ESRGC) to develop updated Critical Area maps for the town. These draft maps were vetted by the aforementioned agencies, and were delivered to the town for public comment and local approval. The update resulted in a gain of 13 acres and a loss of 14 acres, with a net loss of 1 acre.

As part of the mapping update, the Mayor and Council of the Town of Port Deposit adopted Ordinance No. 2021-05 at their meeting on August 17, 2021. This action constituted local adoption of the updated maps.

Hearing no questions, Chairman Deegan recognized Program Subcommittee Chair Greer, who moved that the Commission concur with the Chairman’s determination that the Town of Port Deposit mapping update can be reviewed as a refinement to the Town’s Critical Area Program. She also recommended that the Chairman approve this map amendment as proposed.

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

**Village Down River Growth Allocation Site Plan Amendment (Wicomico County)**

Ms. Charlotte Shearin presented for vote the Site Plan Amendment to the Village Down River Growth Allocation. She presented the staff report, the contents of which are made a part of these minutes.

Ms. Shearin began her presentation by reviewing the Village Down River growth allocation project that was approved by the Commission in 2007. This approval included a condition that the County submit development plans to Commission staff for review and approval in compliance with the growth allocation itself. She discussed the standards applied to the project, including the various proffers that were attached to the approval related to habitat and water quality offsets. As a result, the subdivision was recorded with specific lot coverage limitations assigned to each lot. Ms. Shearin then outlined for the Commission how many lots were developed in exceedance of those limitations and contrary to Commission approved site plans. Based on the build-out to date, Wicomico County determined that they would not be able to issue all remaining building permits and approached Commission staff to identify potential solutions.

This matter was brought to the August 4, 2021 Critical Area Commission meeting for review and discussion by the Program Subcommittee. As a result of that discussion, the Program Subcommittee directed Wicomico County take the following actions:

1. The County will work with the Commission to develop a revised lot coverage table detailing the lot coverage limits for each unit, for the IDA overall, and for the LDA overall that is consistent with the approved Growth Allocation and Critical Area law and regulations. The County will use its maximum efforts to reduce the maximum lot coverage limits as provided by Commission staff's proposed table, dated July 30, 2021.
2. The County shall develop a stormwater management plan based on the lot coverage limits in Number 1 that shows compliance with the 10% stormwater phosphorus reduction for the additional lot coverage in the IDA. The County is directed to use its maximum efforts to ensure that stormwater management is provided onsite.
3. The County shall return to the next Critical Area Commission meeting with the lot coverage table, the revised site plan (prior to recordation), and the County's plan for meeting the 10% stormwater management calculations. The County's proposal will include accountability and metrics for moving this matter forward and ensuring that the development does not exceed the maximum lot coverage limits on the site plan for each unit, or the lot coverage limits in the IDA and the LDA.

Based on those directives, Wicomico County worked with the developer and submitted a revised lot coverage table for the entire subdivision and a potential offsite planting area that would meet the required 10% pollutant reduction. Ms. Shearin presented both of those items to the Commission.

Chairman Deegan recognized Program Subcommittee Chair Greer, who moved to approve a revision to the site plan as authorized under Condition #3 of the 2007 growth allocation approval.

She recommended approval of the County's proposed lot coverage table and stormwater offset proposal with the following conditions:

Revised Lot Coverage Schedule & Site Plan

1. By December 31, 2021, the County shall record a revised site plan with the Commission-approved lot coverage allocation. This shall be accomplished by updating the following on Sheet 3 of MSA 1256-6253-3 (recorded August 21, 2008):
  - i. Replace the existing "Impervious Surface Schedule" on sheet 3 the site plan with the revised table "VDR - Lot Coverage Schedule by Unit" provided in Attachment 5 of this staff report;
  - ii. Revise all necessary references to impervious surface and lot coverage in the IDA, LDA, and overall, as shown in Attachment 5; and
  - iii. Update unit areas to reflect the revised plats for units 8A, 10B, 11B, and 12A.
2. The County shall provide a copy of the newly recorded Sheet 3, within 10 days of recordation.
3. If the County fails to record the revised site plan with the approved lot coverage table (as required by Condition #1) by December 31, 2021, or if the County records a site plan with a lot coverage table other than what was approved by the Commission, the County will be deemed to be in conflict with Critical Area law and regulations under Natural Resources Article §8-1809(l). Commission staff will notify Wicomico County of this conflict and the need to correct such conflict. From the date of the Commission's notification, Wicomico County shall not issue any additional building permits or other approvals in the Village Down River subdivision until the conflict is corrected.
4. In order to show compliance with the 10% stormwater phosphorus reduction for the additional lot coverage in the IDA, by December 31, 2021, the County shall complete and return the Planting Agreement Form (Attachment 6) and include the following information:
  - i. A site plan that shows the proposed 1.06-acre planting area;
  - ii. A landscape schedule that shows the proposed species type (both canopy and understory trees/shrubs should be included with a maximum of 3 species of each), the quantity of plants (the plantings should result in approximately 400 woody stems/acre), the size of plants to be installed, and a planting date;
  - iii. A maintenance plan for the control of invasive species, pests, and predation that shows invasive species and pest control practices, if tree tubes are used, removal of the tubes needs to be addressed, the provisions of at least 5 years of monitoring, and a reinforcement planting provision if survival rates fall below the standards in COMAR 27.01.09.01-2 M and N; and
  - iv. The signature of the party/department responsible for the maintenance and survival of the plantings, including a schedule for at least annual inspections for 5 years. The County shall provide copies of the monitoring reports to Commission staff within 30 days of completion, annually.

5. In addition to the plantings required in Condition #4, the County shall allow 1.06 acres of land adjacent to the proposed planting area, or another nearby area that does not conflict with the Pirate's Wharf Master Plan or the Open Space grant funds, to become revegetated through natural regeneration. The County shall provide a map of the area with the planting plan by December 31, 2021, to Commission staff.
6. If the County fails to provide the required information in Condition #4 and Condition #5, or if the County fails to submit the required annual inspection reports, the County will be required to appear before the Program Subcommittee at its next scheduled meeting.
7. The County shall ensure that any future development proposal does not exceed the lot coverage limits on the recorded site plan for each unit or the lot coverage limits in the IDA (4.71 acres, 18.61%) and the LDA (5.30 acres, 8.64%) as a whole by requiring as-built surveys and documenting this lot coverage information on each individual Critical Area Certificate of Compliance.
8. Within 10 days of building or site plan permit approval for any unit, the County shall send copies of all Critical Area Certificates of Compliance associated with The Village Down River subdivision to Commission staff for review.
9. Wicomico County may not amend the newly recorded Sheet 3 (as required in Condition #1) without the prior approval of the Critical Area Commission.

Wicomico County shall provide an update to the Program Subcommittee at the first Commission meeting after the December 31, 2021, deadline.

Commissioner Acle seconded the motion. Commissioner Merritt abstained from voting. All others voted in favor. **Motion passed.**

#### **LEGAL UPDATES:**

Ms. Emily Vainieri reported on two updates.

**Update – Trainer (Cecil County)** – Cecil County Board of Appeals issued a variance for Mr. Trainer to construct a pool in the Critical Area Buffer. The Commission opposed this variance with a formal letter, and participated in a hearing. After the permit was granted, the Commission filed an appeal through the Circuit Court. The Circuit Court case has concluded, and the Court agreed with the Commission's finding that the Board of Appeals had applied the incorrect law to the variance application, and specifically that the Board applied general variance criteria rather than Critical Area criteria. The Circuit Court vacated the original decision and sent it back to the Board of Appeals for a new hearing. The hearing will be at the end of the month, and the Commission will once again appear.


**New – The Matter of Mert Onal (Anne Arundel County)** – Mr. Onal filed a petition for judicial review in the Circuit Court for Anne Arundel County, challenging the Board of Appeal's



decision to deny a Critical Area variance to build a new single family dwelling that would disturb steep slopes. The property is located along the Magothy River. The Commission is participating to request that the decision be affirmed.

**NEW BUSINESS:**

Ms. Charbonneau stated that she did not have any new business. She further said that it was unclear whether there would be a November meeting or not. She said that updates would be provided at a later time.

  
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Lynette Fullerton, Commission Secretary

1/5/22  
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Date of Approval