

MINUTES

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

November 1, 2023

CALL TO ORDER: Chair Erik Fisher called the meeting to order at 1:00 p.m. The meeting was held virtually on MSTeams and live streamed on YouTube.

Commission Members in Attendance:

Tim Adams, Prince George's County
Steve Bunker, Charles County
Mark Conway, Baltimore City
Jenelle Gerthoffer, Worcester County – Coastal/Town of Ocean City
Anita Grant, At Large
Rosa Hance, At Large
Deborah Herr Cornwell, Department of Planning
Mike Hewitt, St. Mary's County
Shawn Kiernan, MDOT (for Sandy Hertz)
Travis Marion, Cecil County
Catherine McCall, Department of Natural Resources
Michael McCarthy, Talbot County
Alisha Mulkey, Department of Agriculture
Todd Nock, Worcester County – Chesapeake
Megan Outten, Wicomico County
Jim Palma, Department of Commerce
Hitesh Patel, Somerset County
Larry Porter, Caroline County
Annie Richards, Kent County
Tammy Roberson, Department of Environment
Brian Roche, Dorchester County
Lisa Rodvien, Anne Arundel County
Theo Williams, DHCD (for Julia Glanz)
Pat Young, Baltimore County

Commission Members Not in Attendance:

Julia Glanz, Department of Housing and Community Development
Earl Hance, Calvert County
Sandy Hertz, Department of Transportation
Christie Stephens, Harford County

APPROVAL OF MINUTES: Commissioner Conway moved to approve the minutes from the September meeting. Commissioner Marion seconded. Motion passed unanimously, with three abstentions (Adams, Bunker, Hewitt).

STAFF PRESENTATIONS

PROGRAM SUBCOMMITTEE:

REFINEMENT: City of Cambridge – Critical Area Boundary Map Update (Dorchester County)

Ms. Jennifer Esposito presented a refinement to the City of Cambridge Critical Area Program in the form of a Boundary Map Update. Ms. Esposito reviewed her staff report, the contents of which are incorporated into and made part of the minutes.

Commission staff worked with the City of Cambridge, 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 City. The update resulted in a 53-acre gain, a 129-acre loss, with a net change of 76 less acres in the City's Critical Area. These changes are primarily due to the lack of refined imagery and data when the Critical Area Boundary was originally mapped.

Chair Fisher opened the floor to questions from the Commission. Commissioner Hance asked for clarification about areas of exclusion from Cambridge's CA program, and Ms. Esposito explained that when the Critical Area law was developed, jurisdictions were allowed to exclude certain areas from Critical Area designation, as long as they met certain criteria and were approved by the Commission. Hearing no further questions, Chair Fisher recognized Program Subcommittee Chair Bunker, who moved on behalf of the Program Subcommittee that because the mapping update was completed in accordance with State Law and COMAR 27.01.11, the Subcommittee concurs with the Chair's determination of refinement. Further, he moved that Chair Fisher approve the map amendment as proposed. Chair Fisher concurred and stated this would be his final decision.

PROJECT SUBCOMMITTEE:

Maryland Transportation Authority – Update to the General Approval Memorandum of Understanding

Ms. Kate Durant presented for vote a request from the Maryland Transportation Authority, an update to the General Approval Memorandum of Understanding. Ms. Durant provided a presentation and reviewed her staff report, the contents of which are incorporated into and made part of the minutes.

Over the last several months, staff from the Critical Area Commission and the Maryland Transportation Authority (MDTA) have worked together to update the existing General Approval Memorandum of Understanding (MOU) between MDTA and the Critical Area Commission. The existing MOU between the two agencies was signed in 2015. The proposed updates to the MOU are intended to more closely match the approved project types and development thresholds that the Critical Area Commission approved for the Maryland Department of Transportation's (MDOT) MOU exhibits for the State Highway Administration (SHA) and the Maryland Transit Administration (MTA) in 2019.

Under Natural Resource Article §8-1801 and COMAR 27.02, the Critical Area Commission is required to approve any action by a State agency which results in development in the Critical Area on State-owned land, private lands, or lands owned by local jurisdictions. COMAR 27.02.03 specifically gives the Commission the ability to enter into a General Approval with State agencies to seek approval for programs or classes of activities that result in development of a minor scale in the Critical Area. Per COMAR 27.02.03, the General Approval must include a description of the program or class of activities; an assessment of the extent to which development resulting from the program or class of activities will be consistent with the criteria in COMAR 27.01; and a proposed process by which the program or class of activities could be conducted as to conform with the requirements of COMAR 27.01.

Ms. Durant reviewed the structure of the MOU and provided a summary of the proposed updates. This included a provision to allow further discussion between the two agencies regarding offsite mitigation opportunities.

Chair Fisher then opened the floor to questions from the Commission. Commissioner Porter asked for clarification on who is building the wetlands, because he's concerned about homeowners moving out when they are built. Ms. Charbonneau explained that the MOU is not about building wetlands but about mitigation. Commissioner Adams asked if the various MOUs are "one size fits all", and Mr. Kelly and Ms. Charbonneau explained that every MOU has different parameters. Commissioner Hance asked about why there are no LOD limits for disturbance with linear projects. Ms. Charbonneau clarified that there are other types of impact limits such as new width, or forest clearing; and projects must still adhere to stormwater requirements and coastal resiliency standards. For example, this MOU would not allow for the addition of a new lane; that project would have to come before the Commission. Commissioner Richards asked for details about mitigation banking. Ms. Durant gave a few examples of how that would work. Mr. Kelly also mentioned that a separate MOU is going to be written to deal with that.

Hearing no further questions, Chair Fisher recognized Project Subcommittee Chair Conway, who moved on behalf of the Project Subcommittee that the Commission approve the MOU as proposed. Commissioner Grant seconded the motion. All in favor. **Motion passed unanimously.**

LEGAL UPDATES:

Ms. Emily Vainieri had two legal updates to share.

Whittles – Pool in Buffer (St. Mary's) – The Critical Area Commission is challenging the St. Mary's County Board of Appeals' decision to grant a Critical Area variance for the construction of a replacement swimming pool within the Critical Area buffer. The Commission is requesting the Court to reverse the Board's decisions because they did not meet all seven of the Critical Area variance standards. The applicants have ample opportunity to construct their swimming pool outside of the 100-foot Critical Area buffer and can thus eliminate the need for a Critical Area variance altogether. The hearing is on November 14.

Cabin John Heights – resubdivision (Cecil County) – The Critical Area Commission appealed a decision by the Cecil County Land Use and Development Services Director to approve a resubdivision plat to reconfigure two parcels within an area called Cabin John Heights. The

Critical Area Commission is asserting that the County's approval of this resubdivision improperly created an additional waterfront lot within the Resource Conservation Area, where one is not allowed to be created. The hearing is on December 8.

OLD BUSINESS: None.

NEW BUSINESS:

Chair Fisher announced the formation of two new workgroups, and outlined the ways of being named to one or both of these workgroups.

Maryland State Highway Administration Regional Mitigation Banking Proposal:

Ms. Charlotte Shearin presented the first workgroup, the SHA Regional Mitigation Banking Proposal, which would allow the creation of regional mitigation banks throughout the state for the purpose of meeting Critical Area mitigation requirements. This proposal divides the Critical Area counties into six service regions and allows compensatory mitigation to be met at one of six banks located within these regions.

Over the past twelve months, Commission staff has spent extensive time evaluating the ecological value of each site and ultimately narrowed the eligible sites down to five mitigation banks. Before proceeding any further with SHA, Commission staff would like to present this issue to the Critical Area Commission to develop an understanding of (1) whether the Commission would approve of regional mitigation banks for Critical Area mitigation; and (2) if approved, the parameters for when and how those banks may be used.

Commissioner Hewitt, Commissioner Porter, and Commissioner Richards all expressed interest in participating in the workgroup.

Diversity, Equity, Inclusion, and Justice:

Chair Fisher thanked the Commissioners and staff who were able to attend the morning's "Dimensions in Diversity" workshop that morning. He stated there are aspects of diversity, equity and inclusion that should be considered by the Critical Area Commission in its policies and programs. Therefore, he would also like to create a workgroup of Commissioners to look at those issues. There would be approximately eight meetings, all virtual, over the course of 2024. Commissioner Rodvien indicated that she would be interested.

The next meeting is scheduled for December 6. Requests for RSVPs will be sent out soon. Commissioner Porter noted that December 6 is the first day of the MACO Winter Meeting, and he would not be able to attend. Commissioner Hewitt stated that he would also be unavailable.

Commissioner Nock motioned to adjourn. Commissioner Marion seconded. All in favor. Meeting adjourned at 2:12.



Lynette Fullerton, Commission Secretary

12-13-23
Date of Approval

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

November 1, 2023

Program Implementation Subcommittee Minutes

Subcommittee Members: *Bunker (Chair), McCall, Gerthoffer, B. Hance, Herr-Cornwell, Nock, Porter, Rodvien, Mulkey, Richards*

Guests: Pat Escher, City of Cambridge

Item 1. Approval of September Minutes

Commissioner Herr-Cornwell motioned to approve the August Program Subcommittee Minutes. Commissioner Gerthoffer seconded the motion. All voted in favor, with 2 abstentions (Bunker and Hewitt, as neither was at the September meeting). Minutes approved.

Item 2. Refinement: City of Cambridge – Critical Area Boundary Map Update

Presented by Jennifer Esposito

Commission staff worked with the City of Cambridge, 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 City. These draft maps were vetted by the aforementioned agencies and delivered to the City as Summary Draft Maps for local adoption. The update resulted in a 53-acre gain, a 129-acre loss, with a net change of 76 less acres in the City's Critical Area. These changes are primarily due to the lack of refined imagery and data when the Critical Area Boundary was originally mapped.

Discussion: None. Commissioner Nock motioned to approve the map updates as proposed. Commissioner Hewitt seconded the motion. All in favor. Motion passed unanimously.

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

November 1, 2023

Project Implementation Subcommittee Minutes

***Attendees:** Conway (Chair), Adams, Grant, R. Hance, Shawn Kiernan (for Hertz), McCarthy, Patel, Roberson, Theo Williams (for Glanz), Roche, Ellen Bast (for Palma)*

***Not Present:** Glanz, Marion, Young, Hertz*

***Guests:** Amanda Atwell, Julie McCarthy*

Item 1. Approval of September minutes.

Commissioner Roberson moved to approve the September minutes. Commissioner R. Hance seconded the motion. All voted in favor. Motion passed unanimously, with one abstention (Williams).

Item 2. Maryland Transportation Authority – Update to the General Approval Memorandum of Understanding

Presented by Kate Durant.

Over the last several months, staff from the Critical Area Commission and the Maryland Transportation Authority (MDTA) have worked together to update the existing General Approval Memorandum of Understanding (MOU) between MDTA and the Critical Area Commission. The existing MOU between the two agencies was signed in 2015. The proposed updates to the MOU are intended to more closely match the approved project types and development thresholds that the Critical Area Commission approved for the Maryland Department of Transportation's (MDOT) MOU exhibits for the State Highway Administration (SHA) and the Maryland Transit Administration (MTA) in 2019.

Discussion: Commissioner Roberson asked for clarification on the phrase 'innovative mitigation opportunities' that will be allowed. Ms. Durant explained that it would be an alternative to simply replanting, and would include things like removing invasives, tree plantings, pollinator habitat creation, and stormwater management. Commissioner Roberson asked if it had to be 'on the ground' mitigation, or if outreach would be permissible? Ms. Durant confirmed that it would have to be actual mitigation, but it would not necessarily be tree-for-tree.

Commissioner Rosa Hance asked whether the language in the MOU about "no limits for clearing of woody vegetation" for stormwater management practices was standard, because it did not seem right. Mr. Kelly explained the purpose was to allow MDTA to go in and maintain practices that needed maintenance and that any clearing will require mitigation. It is the same language as found in other MOUs and is not intended to apply to new stormwater practices. Commissioner Hance still was not comfortable with the "no limit" language.

Project Subcommittee Minutes

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Project Chair Conway suggested an amendment to the original language that would establish a limit but also not create additional work for Commission staff.

Motion: Commissioner Hance motioned to strike the line “no clearing limit” in the MOU and replacing it with “20,000 sf clearing limit for SWM practices” on item #5, page 14. The motion was seconded and passed unanimously.

Commissioner Hance next made a motion to approve the MOU as amended. Commissioner Grant seconded the motion. Motion passed unanimously.

Meeting adjourned 9:31 a.m.