

MINUTES

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

September 6, 2023

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

Commission Members in Attendance:

Ellen Bast, MDC (for Jim Palma)
Mark Conway, Baltimore City
Jenelle Gerthoffer, Worcester County – Coastal/Town of Ocean City
Rosa Hance, At Large
Deborah Herr Cornwell, Department of Planning
Elizabeth Hoffman, MDA (for Alisha Mulkey)
Travis Marion, Cecil County
Catherine McCall, Department of Natural Resources
Michael McCarthy, Talbot County
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:

Tim Adams, Prince George's County
Steve Bunker, Charles County
Anita Grant, At Large
Julia Glanz, Department of Housing and Community Development
Earl Hance, Calvert County
Sandy Hertz, Department of Transportation
Alisha Mulkey, Department of Agriculture
Todd Nock, Worcester County – Chesapeake
Jim Palma, Department of Commerce
Christie Stephens, Harford County

APPROVAL OF MINUTES: Commissioner Marion moved to approve the minutes from the August meeting. Commissioner Conway seconded. Motion passed unanimously, with one abstention (Theo Williams).

CHAIR'S REMARKS: Following approval of minutes, Chair Fisher welcomed the delegated one-day Commissioners (Theo Williams for DHCD, Ellen Bast for MDC, and Elizabeth

Hoffman for MDA), and new Commissioners – Annie Richards (Kent/Queen Anne's), Brian Roche (Dorchester), and Megan Outten (Wicomico) (not present).

STAFF PRESENTATIONS

PROJECT SUBCOMMITTEE:

Somers Cove Marina Bulkhead and Utility Line Replacement - Department of Natural Resources (Somerset County)

Ms. Kate Durant presented for vote the Department of Natural Resources Somers Cove Marina bulkhead replacement project. Ms. Durant reviewed her staff report, the contents of which are incorporated into and made part of the minutes.

The Maryland Department of Natural Resources (DNR) and the Somers Cove Marina Commission propose to renovate the Somers Cove Marina facility, located at 715 Broadway in Crisfield. Somers Cove Marina is on Somers Cove off of Daugherty Creek, which is a tributary of Tangier Sound. The Marina is the largest state-owned marina in Maryland. The site is entirely located on lands designated as Intensely Developed Area (IDA) and Modified Buffer Area (MBA). The proposed project includes replacing the timber bulkhead around the entirety of the marina, replacing fixed piers with floating piers, replacing a boat ramp, and replacing underground utility lines throughout. Mitigation is required for impacts to the Buffer and for Critical Area stormwater. Public notice requirements were met.

After Ms. Durant's presentation, Chair Fisher opened the floor to questions and comments from Commissioners. Hearing no questions, Chair Fisher recognized Project Subcommittee Chair Conway, who moved on behalf of the Project Subcommittee that the Commission vote to approve the request with conditions as outlined in the staff report.

Staff recommends approval of this project with the following conditions:

1. Within 60 days of the date of Commission approval, Maryland DNR shall submit all final plans and approvals, including but not limited to, the tidal wetlands authorizations from MDE and USACE and sediment and erosion control approval, to Commission staff.
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.

4. Commission staff recommends that DNR assist Somers Cove Marina with an assessment and plan for the facility to determine long-term needs as it relates to facility footprint, flood-risk, and maintenance requirements.

Commissioner Marion seconded the motion. Commissioner Rodvien asked for clarification on the map depicting wetland areas behind the bulkhead. Ms. Durant explained that the wetland adaptation area depicted is paved right now, but if not paved would probably become a wetland. Vote was taken following this. **Motion passed unanimously.**

Todd's Inheritance Trail at North Point State Park (Baltimore County) – Maryland Department of Natural Resources and Department of General Services

Ms. Susan Makhoul presented for vote a request for approval from the Maryland Department of Natural Resources (DNR) and the Department of General Services (DGS) to construct a new trail, parking lot, and stormwater management (SWM) facilities within North Point State Park in Baltimore County. Ms. Makhoul reviewed her staff report, the contents of which are incorporated into and made part of the minutes.

The proposed 1.5-mile trail will loop around existing agricultural fields and includes a spur to the Todd's Inheritance Historic Site. The proposed parking lot is located adjacent to Todd's Inheritance and will serve both trail users and visitors to the historic site. The 9.21-acre project site is located entirely within the Critical Area on land designated as Resource Conservation Area (RCA). There is no tree clearing required for the project, however DNR will plant 1.97 acres. Critical Area stormwater management will also be met onsite with a submerged gravel wetland for the parking area. Public notice requirements were met.

Chair Fisher recognized Project Subcommittee Chair Conway, who moved on behalf of the Project Subcommittee that the Commission approve the project, with the following condition: Prior to the start of construction, DGS/DNR shall forward Commission staff a copy of the final MDE SWM and ESC approval. Commissioner Richards seconded. **Motion passed unanimously.**

Maryland Archaeological Conservation Laboratory (MAC Lab) Extension (Calvert County) – Maryland Historical Trust, Jefferson Patterson Park Museum (JPPM)

Mr. Michael Grassman presented for vote a request from the Jefferson Patterson Park and Museum (JPPM), on behalf of the Maryland Historical Trust (MHT), for approval of a renovation and addition to the Maryland Archaeological Conservation Laboratory (MAC Lab) located in Calvert County, MD. Mr. Grassmann reviewed his staff report, the contents of which are incorporated into and made part of the minutes.

The proposed improvements include the construction of a building addition at the north end of the existing MAC Lab building, the installation of a new underground storage tank on the east side of the building, and the installation of a manual lift gate at the existing loading area and a chiller pad and chiller on the south side of the building. The state-owned property encompasses land area, infrastructure, utilities, and facilities located within Maryland's Critical Area on lands

designated Resource Conservation Area (RCA). The limit of disturbance (LOD) is 0.39 acres and is entirely located in the RCA.

The project will result in an additional amount of lot coverage of 2,628 sf. The proposed project will not have any impacts on the Critical Area 100-foot Buffer or any Habitat Protection Areas (HPAs). Stormwater requirements will be met by a rain garden.

Chair Fisher recognized Project Subcommittee Chair Conway, who moved that the Commission approve the project as proposed. Commissioner Marion seconded. **Motion passed unanimously.**

Western Branch Water Resources Recovery Facility (WRRF) Warehouse – Washington Suburban Sanitation Commission (Prince George’s County)

Mr. Grassmann presented for vote a proposal from the Washington Suburban Sanitation Commission (WSSC) to construct a new warehouse facility at the Western Branch Water Resources Recovery Facility (WRRF). Mr. Grassmann reviewed his staff report, the contents of which are incorporated into and made part of the minutes.

WSSC proposes to decommission existing Substation 6 and construct a new 4,000 square foot (sf) warehouse at the WSSC’s Western Branch Water Resource Recovery Facility (WRRF), with an associated access driveway, stormwater management (SWM), and landscaping. The project is located at 6600 Crain Highway, Upper Marlboro, MD, and is located entirely within the Critical Area on lands designated Resource Conservation Area (RCA).

The project’s limit of disturbance (LOD) is approximately 1.3-acres and will result in a 0.32-acre increase in impervious surface. The project will not impact the 100-foot Buffer, any expanded Buffers or other habitat protection areas (HPAs) and is not located immediately adjacent to any tidal or nontidal wetlands. Additionally, the project will not result in any tree clearing and will remain under the 15% lot coverage threshold.

Commissioner Rosa Hance asked if the current General Approval MOU addressed the decommissioning of structures, and Mr. Grassmann noted that the MOU is original and due for significant revisions. Revisions are being discussed but he didn’t believe decommissioning was covered.

Following discussion, Chair Fisher recognized Project Subcommittee Chair Conway, who moved that the Commission approve the proposal with the following condition: Prior to the start of construction, WSSC will provide Commission staff with final authorizations or letters regarding MDE’s stormwater management, sediment and erosion control, and NEPDES approvals.

Commissioner R. Hance moved that the recommendation include a requirement to incorporate decommissioning into the updated MOU with WSSC, and request a report on that update in three months. Commissioner Conway seconded the motion. Amendment passed unanimously, with one abstention by Mr. Williams. **Motion passed unanimously.**

PROGRAM SUBCOMMITTEE:

Refinement: Town of Perryville – Critical Area Map Update

Mr. Grassmann presented a refinement to the Cecil County Critical Area Program. He presented the staff report, the contents of which are incorporated into and made part of the minutes.

Commission staff worked with the Town of Perryville, 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. The update resulted in a 12-acre gain, a 38-acre loss, with a net change of 26 less acres in the Town's Critical Area. These changes are primarily because the previously mapped Critical Area for the Town did not properly curve the 1000ft boundary.

Hearing no questions, Chair Fisher recognized Acting Program Subcommittee Chair McCall, who recommended on behalf of the Program Subcommittee that the Chair approve the map update as submitted. Chair Fisher thanked her and said he accepted the recommendation, and that would stand as his final decision.

Refinement: Town of Perryville – Comprehensive Review

Mr. Grassmann presented a refinement to the Town of Perryville's Critical Area Program. He reviewed his staff report, the contents of which are incorporated into and made a part of the minutes. On July 6, 2023, the Mayor and Town Council of Perryville voted to repeal and reenact the Town's Critical Area program through the adoption of Ordinance 2023-13, which was drafted following a comprehensive review of the Town's Critical Area Program. Natural Resources Article §8-1809(g) requires each local jurisdiction to review its entire program at least every six years. The Town's existing Critical Area Program was approved by the Critical Area Commission July 5, 2005.

Changes to the Town of Perryville's Critical Area Program were based upon the model ordinance for municipalities, which was created by Critical Area Commission staff. The update repealed and replaced all of the elements of the Chapter 84 Zoning ordinance related to development in the Critical Area, including development standards, density and use standards, amendment procedures, variances, and enforcement. The majority of the updated Program does not deviate from the model ordinance; however, the Town added greater specificity to certain sections of Chapter 84 as outlined in the staff report.

Commissioner R. Hance asked for clarification about HPAs and locally significant species, whether any of them were rare, threatened, or endangered (RTE). Mr. Grassmann responded that there were some RTE species, and special procedures would have to be followed accordingly. Hearing no further questions, Chair Fisher recognized Acting Program Subcommittee Chair McCall, who recommended on behalf of the Program Subcommittee that the Commission concur with the determination of refinement to the Town of Perryville's Critical Area Program. She further recommended that the Chair approve the comprehensive review as proposed. Chair Fisher said he accepts the Commission's recommendation and that this would be his final decision.

Refinement: Town of St. Michaels Text Amendment – Tree Removal Criteria

Ms. Annie Sekerak presented a refinement to the Town of St. Michaels Critical Area Program, in the form of a text amendment. Ms. Sekerak reviewed her staff report, the contents of which are incorporated into and made part of the minutes.

On July 12, 2023, the Commissioners of St. Michaels approved a text amendment to the zoning chapter of the Town Code. Ordinance No. 540 amends §340-15 to require mitigation for tree removal in the Critical Area Intensely Developed Area (IDA) and adds a new section (§340-182) under the Landscaping, Environmental Standards, and Lighting article that outlines the tree replacement and mitigation criteria for tree removal throughout the Town.

Currently, tree mitigation only occurs within the Limited Development Area (LDA) and Resource Conservation Area (RCA) of the Town, as required under the Town's Critical Area program and State regulation. With this text change, tree mitigation is required throughout the Town and within the IDA, and now includes greater specificity to apply in the LDA and RCA. This is consistent with COMAR 27.01.02.03.D.7, which requires local Critical Area programs to establish programs for the enhancement of forest and developed woodland plantings, such as street tree plantings, gardens, and landscaping within the IDA.

Hearing no questions, Chair Fisher recognized Acting Program Subcommittee Chair McCall, who recommended that the text amendment be approved as proposed. Chair Fisher said that he accepted the Subcommittee's recommendation and that this would be his final decision.

Refinement: Critical Area Boundary Map Update (Charles County)

Ms. Lisa Hoerger presented a refinement to the Charles County Critical Area program, in the form of a Critical Area Boundary Map update. She presented the staff report, the contents of which are incorporated into and made part of the minutes.

Commission staff worked with Charles 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 agencies, were provided to affected property owners, and lastly, were delivered to the County for public comment and local approval.

The update resulted in a gain of 2,765 acres and a loss of 3,061 acres, with a net loss of 296 acres within Charles County's Critical Area. Most of the loss is attributed to errors on the current maps and not large losses of wetlands.

Hearing no questions, Chair Fisher recognized Acting Program Subcommittee Chair McCall, who recommended on behalf of the Program Subcommittee that given the mapping update was completed in accordance with State Law and COMAR 27.01.11 the map update be approved as proposed. Chair Fisher said that he accepted the Subcommittee's recommendation and that this would be his final decision.

Refinement: Charles County - Critical Area Program Text Change

Ms. Esposito presented a refinement to the Charles County Critical Area Program in the form of a text amendment. She presented the staff report, the contents of which are incorporated into and made part of the minutes.

Charles County Zoning Text Amendment Bill No. 21-169 amends portions of the County's Zoning Ordinance to reflect State law requirements in how the Critical Area Boundary is remapped, clarifies the applicability of the re-mapping on certain development projects, and revises the lot coverage limits for certain affected properties in the County's Limited Development Zone (LDZ) and Resource Conservation Zone (RCZ) – the equivalent of the Limited Development Area (LDA) and Resource Conservation Area (RCA). This text amendment is cross-referenced to Charles County Zoning Map Amendment No. 21-02 that officially updates the County's Critical Area Boundary. Bill No. 21-169 was passed by the Charles County Commissioners on January 24, 2023. The proposed text amends three sections of the County code – Sections 297-126, 297-127.C, and 297-132.G(8).

Ms. Esposito reviewed the impacts of those amendments to the County's Critical Area program and their consistency with the Critical Area law and Criteria, including Chapter 119 of the 2008 Laws of Maryland. As a result, staff recommended a minor change to §297-127 of the County Zoning Code as outlined below (bolded RED text to be added, bolded BLACK strikethrough to be deleted):

§297-127. Applicability.

- C. Development in accordance with the [Swan Point] General Development Plan FOR “THE VILLAGES OF SWAN POINT” shall be reviewed in accordance with the [g]Growth [a]Allocation [i]Indenture and Docket 250 [i]Indenture, which shall supersede any contrary language in this Article. TO THE EXTENT THAT ANY PORTION OF THE PROPERTY SUBJECT TO THE APPROVED GROWTH ALLOCATION AND DOCKET 250 INDENTURE IS SHOWN TO BE WITHIN THE CRITICAL AREA ZONE AS AMENDED BY VIRTUE OF ZMA 21-02, THE REMAPPING SHALL NOT AFFECT THE ~~DEVELOPMENT~~ **INITIAL CONSTRUCTION** OF THE PROPERTY **WITHIN THE NEWLY INCLUDED AREA**, PROVIDED THAT SUCH DEVELOPMENT IS CONSISTENT WITH THE GROWTH ALLOCATION AND DOCKET 250 INDENTURE, AS MAY BE AMENDED FROM TIME TO TIME.

Chair Fisher opened the floor for discussion and questions. Commissioner R. Hance asked how many subdivisions are part of Swan Point, and Ms. Esposito answered 40 acres are affected. Further discussion followed. Commissioner Roche mentioned that the date on the map was 2015, and wondered if that reflected current conditions. Ms. Esposito responded yes. He asked about the process for approving a growth allocation request while making sure to mitigate the impact of loss of forest, and Ms. Esposito responded that there are conditions and standards that must be

met for any approval of growth allocation. More clarification was requested and received on mitigation requirements and related subjects.

Following discussion, Chair Fisher recognized Acting Program Subcommittee Chair McCall, who stated that after long discussion, the subcommittee voted to concur with the Chairman's determination of refinement, further the Program Subcommittee recommended approval consistent with the condition to amend Section 297-127 of the Comprehensive Zoning Ordinance as described in the staff report. Chair Fisher acknowledged that there were a lot of questions around this project, that it's been going on for a long time. Ultimately, though, he agreed that he accepted the Subcommittee's recommendation, and that this would be his final decision.

Refinement: Country Club Estates Growth Allocation (Baltimore County)

Ms. Makhoulf presented a refinement to the Baltimore County Critical Area program, in the form of a growth allocation. She presented the staff report, the contents of which were incorporated into and made part of the minutes. Baltimore County is requesting growth allocation to change the designation of 14.63 acres of a Limited Development Area (LDA) to an Intensely Developed Area (IDA) and 40.72 acres of growth allocation to convert an additional portion of the same property from Resource Conservation Area (RCA) to IDA. The subject parcel (Tax Map 104, Parcel 411) is located at 919 Wise Avenue in Dundalk. If the growth allocation is approved, the Critical Area designation will allow for the development of a Planned Unit Development (PUD), which will be named Country Club Estates.

CRD Golf, LLC is proposing to redevelop a portion of an existing golf course to construct 60 single-family units, 193 townhomes (attached), and 53 villas (attached) for a total of 306 residential units. The existing clubhouse and related amenities will remain. If the growth allocation is approved, the Critical Area designation will allow for the residential use of the site, as already allowed by the underlying zoning which is a mix of Density Residential (DR-5.5), Resource Conservation (RC-20), and Business Major (BM). The project area is located within a Priority Funding Area (PFA) and within Baltimore County's Urban-Rural Demarcation Line.

Approximately 10.91 acres of new lot coverage and 6.83 acres of forest/developed woodland clearing are proposed in the Critical Area. Proposed disturbance within the 300-foot setback from tidal waters and tidal wetlands is 6.94 acres. The total limit of disturbance (LOD) is 55.35 acres. Ms. Makhoulf reviewed the required locational standards for growth allocation and summarized how the County addressed the factors concerning growth allocation as outlined in COMAR, Title 27. The growth allocation meets all of the required locational standards and will meet the requirements for a new Intensely Developed Area (IDA) during the development process.

Hearing no questions, Chair Fisher recognized Acting Program Subcommittee Chair McCall, who stated that 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 Section 32-9-101-112 of the Baltimore County Code, the Project subcommittee recommends concurrence with the Chair's determination of refinement. Furthermore, the subcommittee recommends approval as proposed. Chair Fisher thanked Commissioner McCall for the recommendation and stated that this would be his final decision.

LEGAL UPDATES:

Ms. Emily Vainieri provided 2 legal updates.

Queen Anne's County Circuit Court – Varner – pool in Buffer. The Commission settled this case in such a way that although the Buffer variance was upheld, a more robust planting plan was provided. Additionally, the homeowners will work with CAC staff to ensure that the plants used are appropriate for the planting area.

Anne Arundel County Board of Appeals – Smith – lot coverage variance. The Commission also settled this case, in which the homeowners agreed to reduce the lot coverage to the minimum required to meet parking and access requirements for this specific site.

OLD BUSINESS: None.

NEW BUSINESS:

Chair Fisher announced that the next Commission meeting was tentatively scheduled for October 4, contingent on items needing attention. Also planning some training sessions to go over various aspects of Critical Area law and regulations. Finally he said he would like to have a discussion about structure and format of meetings and materials.

Commissioner Marion motioned to adjourn. Commissioner Conway seconded. All in favor. Meeting adjourned at 2:31.



Lynette Fullerton, Commission Secretary

11/1/23
Date of Approval