

MINUTES

**Critical Area Commission for the
Chesapeake and Atlantic Coastal Bays
People's Resource Center
100 Community Place
Crownsville, Maryland**

April 3, 2019

CALL TO ORDER: A meeting of the Critical Area Commission was held at the People's Resource Center, 100 Community Place, Crownsville, Maryland. Chairman Charles C. Deegan called the meeting to order at 1:00 p.m.

Commission Members in Attendance:

Curtis Beulah, Harford County
Gail Blazer, Worcester County – Coastal Bays (Town of Ocean City)
Virginia Clagett, Western Shore Member-at-Large
Deborah Herr Cornwell, Maryland Department of Planning
Robert Culver, Wicomico County
Carolyn Cummins, Worcester County – Coastal Bays
Sue Greer, Charles County
Sandy Hertz, Maryland Department of Transportation
Michael Hewitt, St. Mary's County
Mark Konapelsky, Somerset County
James Lewis, Caroline County
Gary Mangum, Queen Anne's County
Catherine McCall, Department of Natural Resources
Michael McCarthy, Talbot County
Jennifer Merritt, Worcester County – Chesapeake Bay
Julie Oberg, Department of Agriculture
Steven Parker, Cecil County
Suzanne Pittenger-Slear, Eastern Shore Member-at-Large
Malachy Rice, Department of Commerce
Gary Setzer, Department of the Environment
Caroline Varney-Alvarado, Department of Housing and Community Development

Commission Members Not in Attendance:

Bradley Frome, Prince George's County
David Marks, Baltimore County
Karen Stokes, Baltimore City
Donald Sutton, Kent County

ANNOUNCEMENTS: The information only presentation made by Lisa Hoerger on forthcoming changes to the wildlife related provisions of the Critical Area regulations was made over the lunch hour and is removed from the agenda.

APPROVAL OF MINUTES: A motion was made by Commissioner Beulah and seconded, to approve the minutes of the February 6, 2019 Commission meeting. **Motion carried.**

STAFF PRESENTATIONS: The following presentations were made by Commission staff.

Washington Suburban Sanitary Commission – Piscataway Wastewater Treatment Plant Water Resources Recovery Facility – Phase I (Bio-energy) Improvements: Ms. Harris presented for vote the first phase of the Piscataway Wastewater Treatment Plant upgrade. Ms. Harris gave a PowerPoint presentation and reviewed her staff report, which is attached to and made a part of these minutes.

The Washington Suburban Sanitary Commission (WSSC) is proposing to renovate its Piscataway Waste Water Treatment (WWTP) facility by replacing the old operating systems with new a Water Resources Recovery Facility (WRRF), referred to as a bio-energy facility. The Piscataway WWTP is located at 11 Farmington Road in Accokeek, MD and the project area consists of Tax Map 142, Parcels 45 and 157; Tax Map 151, Parcels 7 and 233; and Tax Map 152, Parcel 1. The project will be conducted in two phases. Phase I, which is the subject of this presentation, consists of the construction of an access road (“Access Road B”) and the preparation of foundations. The estimated timeframe for Phase I’s completion is 10 months. Access Road B is temporary, but will remain in place for the duration of the bio-energy facility construction and commissioning, which has an estimated timeframe of four to five years.

Project Subcommittee Chair, Commissioner Setzer moved that, in accordance with the staff report and presentation, the Commission approve the Phase I renovations proposed by the Washington Suburban Sanitary Commission (WSSC) for the Piscataway Wastewater Treatment Facility in Accokeek, Maryland, with the following conditions:

- (1) Prior to the start of construction, the WSSC shall submit its final 10% pollutant removal strategy to Critical Area Commission staff for review and approval;
- (2) Prior to the start of construction, the WSSC shall submit copies of the final approvals for stormwater management and erosion and sediment control to Critical Area Commission staff;
- (3) Prior to the start of construction, the WSSC shall submit a Planting Plan satisfying the Project’s mitigation requirements to Critical Area Commission staff for review and approval, including an executed planning agreement; and
- (4) Prior to the start of construction, the WSSC shall provide Commission staff verification of final review by the Maryland Historic Trust.

The motion was seconded by Commissioner Beulah. **Motion carried.**

City of Annapolis – Truxtun Park Pool Replacement: Ms. Durant presented for Conditional Approval due to impacts to the Buffer the replacement of Truxtun Park pool in the City of Annapolis. Ms. Durant gave a PowerPoint presentation and reviewed her staff report, which is attached to and made a part of the minutes.

The City of Annapolis is seeking approval to remove and replace the existing public swimming pool at Truxtun Park. The current pool was built in 1967 and consists of a lap pool, a wading pool, and a bath house which does not meet ADA standards and needs to be updated. The pool went through minor renovations in 1992; however, the pool needs to be replaced because it has been leaking for several years due to age and its deteriorating aluminum bottom. The proposed project will include a new lap pool, baby pool, family leisure pool with two slides, shaded patio areas, and pool house in a similar footprint to the existing pool and facilities. The proposed project is entirely within the Resource Conservation Area (RCA) and partially located in the Critical Area Buffer to a tributary stream. The area surrounding the existing pool facility is forested and the canopy cover comes to the edge of the existing fence on the southern side of the site.

Project Subcommittee Chair, Commissioner Setzer moved that in accordance with the staff report and presentation, the Commission approve the replacement of the Truxtun Park pool proposed by the City of Annapolis, with the following conditions:

- (1) Prior to the start of construction, the City of Annapolis shall submit a final Buffer Management Plan, which identifies areas for invasive species removal, to Critical Area Commission staff for review and approval; and
- (2) Prior to the start of construction, the City of Annapolis shall submit copies of all final approvals, including stormwater management and erosion and sediment control plans, to Commission staff.

As required by Code of Maryland Regulations, this motion was based on the following considerations: (1) 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. (2) Disturbances to the Critical Area will be mitigated at appropriate ratios specified by the Commission. Mitigation for tree clearing will occur along the edge of the existing forest, and mitigation for permanent Buffer disturbance will occur within the expanded Buffer. (3) The proposed project offers public benefits to the Critical Area Program by selecting a design that redevelops the existing Truxtun Park campus, while minimizing, to the extent possible, impacts to the Critical Area buffer and adjacent forest. Additionally, the selected design reduces lot coverage in the Critical Area, which will promote greater stormwater infiltration on the site. The proposed project also improves water quality through the construction of a stormwater best management practices, and enhances habitat through its mitigation plan, which includes the removal of invasive species, as well as an invasive species management plan.

The motion was seconded by Commissioner Hertz. **Motion carried.**

Anne Arundel County Department of Public Works – Marley Pump Station Generator: Ms. Shearin presented for Conditional Approval due to exceeding lot coverage limitations the

installation of an emergency generator at the Marley Pump Station. Ms. Shearin gave a PowerPoint presentation and reviewed her staff report which is attached to and made a part of these minutes.

Anne Arundel County Department of Public Works (AADPW) is seeking approval to install a generator at the existing Marley Sewage Pumping Station, located in Glen Burnie. Site improvements include a new pad-mounted generator on a platform, with associated facilities. The site is just over an acre and is designated as Limited Development Area (LDA) (0.91 acres) and Resource Conservation Area (RCA) (0.15 acres). All proposed work is within the LDA. Existing lot coverage is 0.35 acres; total proposed lot coverage is 0.37 acres. The site is entirely within the Critical Area Buffer to a tributary stream.

Project Subcommittee Chair, Commissioner Setzer moved that in accordance with the staff report and presentation, the Commission approve the installation of a generator at the existing Marley Sewage Pumping Station located in Glen Burnie, Maryland as proposed by the Anne Arundel County Department of Public Works, with the following condition: Prior to the start of construction, the Department of Public Works shall submit a copy of the approved erosion and sediment control plan to Commission staff.

As required by Code of Maryland Regulations, this motion is based on the following considerations: (1) Except for impacting the Critical Area buffer, which has been expanded for steep slopes, and exceeding the allowable lot coverage, the proposed project is in compliance with the relevant chapters of this subtitle. (2) Disturbances to the Critical Area will be mitigated at appropriate ratios specified by the Commission. Due to site constraints, mitigation will be met by a fee-in-lieu payment of \$7,962 for 5,308 square feet of impacts associated with Buffer disturbance and additional lot coverage. (3) The proposed project offers public benefits to the Critical Area Program by adding an emergency generator that will provide uninterrupted power to the Marley Sewage Pumping Station. In the event of a power interruption, this system redundancy will help to avoid sewage spills and protect the water quality of the Chesapeake Bay and its tributaries.

The motion was seconded by Commissioner Clagett. **Motion carried.**

Refinement – Town of Chestertown (Kent County) – Comprehensive Review: Ms. Makhlof presented for concurrence the comprehensive review of the Town of Chestertown's Critical Area Program. Ms. Makhlof reviewed her staff report, which is attached to and made part of the minutes.

On March 6, 2019, the Mayor and Town Council of the Town of Chestertown voted to repeal and replace the Town's Critical Area program through the adoption of Ordinance 01-2019, An Ordinance to Repeal Chapter 170 Zoning Article XIII Critical Area Plan and Amendments. The Critical Area Program for the Town has not had a comprehensive review since its adoption in February of 1989.

The Town of Chestertown is located in Kent County along the Chester River. The majority of the waterfront portion of the Town is designated as Intensely Developed Area (IDA) and is mapped as a Buffer Modification Area, with small portions of the Town designated as Limited Development Area (LDA) and Resource Conservation Area (RCA).

The comprehensive update of the Town of Chestertown's Critical Area program brings its zoning ordinance into conformance with the requirements of the Critical Area Law and Criteria. Changes to the Town of Chestertown 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 zoning ordinance related to development in the Critical Area, including development standards, density and use standards, amendment procedures, variances, and enforcement. There were no deviations from the model ordinance.

Program Subcommittee Chair, Commissioner Cummins, stated that the Program Subcommittee recommends concurrence with the Chairman's determination that this comprehensive review be processed as a refinement to the Town's Critical Area Program, as the proposed changes to the Zoning Ordinance are consistent with the Critical Area Law and its regulations.

Chairman Deegan accepted the Program Subcommittee's recommendations and stated that was his final decision.

Refinement – Anne Arundel County – Lot Consolidation and Reconfiguration Bill: Ms. Charbonneau presented for concurrence Anne Arundel County Ordinance 9-19, lot consolidation and reconfiguration requirements to the County Critical Area Program. Ms. Charbonneau reviewed her staff report, which is attached to and made part of the minutes.

Anne Arundel County Ordinance 9-19 is in response to action taken by the Critical Area Commission on February 7, 2018 in which it determined a deficiency in the Anne Arundel County Critical Area Program. Specifically, the Commission determined that the County's use of its subdivision requirements in lieu of lot consolidation and reconfiguration requirements that are at least as strict as those provided under COMAR 27.01.02.08, including the County's use and application of the definition of "site" under Maryland Department of the Environment's stormwater regulations (COMAR 26.17.02.02B(33)); lacked the necessary limits to meet the requirements of the Critical Area lot consolidation and reconfiguration standards (COMAR 27.01.02.08).

In response, Anne Arundel County Council approved Bill No. 9-19 on March 18, 2019 to amend the County Critical Area Program, specifically by adding new Subtitle 10. Consolidation and Reconfiguration of Lots in the Critical Area, to Article 17. Subdivision and Development, Title 8. Critical Area Overlay. The proposed Bill provides definitions related to Lot Consolidation and Reconfiguration and requires compliance with COMAR Title 27. It specifically does not allow the consolidation or reconfiguration of noncontiguous lots or parcels, and further prohibits the consolidation **or** reconfiguration of lots from the LDA or IDA into the RCA, and from outside the Critical Area into the Critical Area. Bill No. 9-19 requires notification of the final written decision granting or denying an application for consolidation or reconfiguration to the Critical Area Commission within five days of the date of the decision. It also prohibits approval of a sketch plan or preliminary plan that includes lot consolidation or reconfiguration until thirty days after the Critical Area Commission receives notice of the final written decision.

Program Subcommittee Chair, Commissioner Cummins, stated that the Program Subcommittee recommends concurrence with the Chair's determination that Bill No. 9-19 can be a refinement to Anne Arundel County's Critical Area Program as the proposed changes are consistent with Critical Area Law and Criteria.

Chairman Deegan accepted the Program Subcommittee's recommendations and stated that was his final decision.

Refinement – Text Amendment (Dorchester County): Ms. DeWeese presented for concurrence the text amendments proposed to clarify certain provisions of the Dorchester County Critical Area Program. Ms. DeWeese presented a PowerPoint and reviewed her staff report which is attached to and made a part of these minutes.

On March 5, 2019, the Dorchester County Council voted to adopt Bill 2019-2, clarifying language to two specific sections of the program: Section 68.18(e)(1) – Administrative Variances – involves the administrative variance process for replacement or expansion of a structure within the 100-foot Buffer; and 68.25(b)(4)(a) – Private Tidal Wetlands – describes how activities are permitted in the expanded portion of an expanded Buffer without a variance, if a lot was created before January 1, 2010, where the buffer is expanded for highly erodible soil on a slope less than 15% or for a hydric soil and the expanded buffer occupies at least 75% of the lot or parcel.

Program Subcommittee Chair, Commissioner Cummins, stated that the Program Subcommittee recommends concurrence with the Chair's determination that the text amendments be processed as a refinement to the County's Critical Area Program, as the proposed changes to the Zoning Ordinance are consistent with the Critical Area Law and its regulations and have been drafted to provide clarity to existing program components.

Chairman Deegan accepted the Program Subcommittee's recommendations and stated that was his final decision.

LEGAL UPDATES: Assistant Attorney General Emily Vainieri had no legal updates to report.

OLD BUSINESS: Mr. Nick Kelly explained that in 2011 Calvert County came before the Commission for approval to reduce the fee-in-lieu collected for impacts to the Buffer from \$1.50/square foot to \$0.50. This was done in accordance with COMAR 27.01.09.01-5. Due to changing economic conditions, in November 2018, Calvert County Commissioners approved a bill to reinstate the \$1.50/sf FIL.

NEW BUSINESS: Commissioner Setzer shared that in the Project Subcommittee meeting that morning, the Washington Suburban Sanitary Commission had proposed a project in phases. Phase 1 was voted on; Phase 2 would be a redevelopment within the existing footprint and will be presented at a later date. Commissioner Setzer stated that while he understood that the second phase in this case would be minor, the Subcommittee had expressed concerns about making a decision on Phase 1 of a future project when Phase 2 impacts are unknown. Therefore, the Project Subcommittee expressed that, in the future, WSSC must bring the entire project to the full Commission. If WSSC wishes to proceed on a phased approach, then they should pursue an expansion of the existing MOU (which currently handles only linear pipeline projects) to handle new facilities.

Chairman Deegan adjourned the meeting at 1:36 pm.



Lynette Fullerton, Commission Secretary

May 1, 2019

Date of Approval