

MINUTES MINUTES

**Critical Area Commission for the
Chesapeake and Atlantic Coastal Bays
Maryland Department of Agriculture
Annapolis, Maryland**

September 7, 2016

The full Critical Area Commission met at the Maryland Department of Agriculture Headquarters, 50 Harry S. Truman Parkway, Annapolis, MD. Chairman Charles C. Deegan called the meeting to order.

Commission Members in Attendance:

Curtis Beulah, Harford County
Gail Blazer, Worcester County – Coastal Bays (Town of Ocean City)
Robert Culver, Jr. – Wicomico County
Carolyn Cummins, Worcester County – Coastal Bays
Jason Dubow, Maryland Department of Planning
Brad Frome, Prince George’s County
James Gesl, Charles County
Sandy Hertz, Maryland Department of Transportation
Mark Konapelsky, Somerset County
Louise Lawrence, Department of Agriculture
James Lewis, Caroline County
Michael McCarthy, Talbot County
Gary Mangum, Queen Anne’s County
David Marks, Baltimore County
Patrick Nutter, Calvert County
James Palma, Department of Commerce
Stephen Parker, Cecil County
Suzanne Pittenger-Slear, Eastern Shore Member-at-Large
Jennifer Rafter, Worcester County – Chesapeake Bay
Don Satterfield, Dorchester County
Gary Setzer, Department of the Environment
Catherine Shanks, Department of Natural Resources
Donald Sutton, Kent County
Chris Trumbauer, Anne Arundel County
Caroline Varney-Alvarado, Dept. of Housing and Community Development

Commission Members Not in Attendance:

Virginia Clagett, Western Shore Member-at-Large
Michael Hewitt, St. Mary’s County

Chairman Deegan welcomed the Commissioners, staff and guests. He introduced new members, starting with Gail Blazer. Mayor Meehan of Ocean City designated Ms. Blazer as his representative on the Commission as a result of a legislative change last year (Senate Bill 132). Additionally, Mike McCarthy (Talbot County), Gary Mangum (Queen Anne's County), Don Satterfield (Dorchester County), and James Lewis (Caroline County), were introduced and welcomed to the Commission. The Chairman announced the re-appointment of Virginia Clagett (Western Shore At-Large) and Chris Trumbauer (Anne Arundel County). Lastly, he introduced Sandy Hertz, who will represent the Department of Transportation.

Chairman Deegan made a motion to approve the June 1, 2016 Minutes. The Chairman asked for any corrections to the Minutes. There were no corrections. Commissioner Pittenger-Slear made a motion to approve the June 1, 2016 Minutes. Commissioner Cummins seconded the motion. The June 1, 2016 Minutes were approved as presented.

Maryland Transportation Authority Memorandum of Understanding for Banking

Nick Kelly presented, for informational purposes only, the Maryland Transportation Authority Mitigation Banking Memorandum of Understanding (MOU). Dr. Kelly reviewed the staff memorandum and provided a PowerPoint presentation. He stated that the Commission has established various MOUs with other State agencies to expedite the review of projects.

Over the past fourteen months, staff from the Commission, the Maryland Transportation Authority (MDTA), and MDTA's consultants have worked together to develop a draft MOU that will permit MDTA to create mitigation banks. The MOU will recognize that establishment of these mitigation banks are an acceptable option for addressing impacts to the Critical Area for MDTA's development and maintenance projects. The intent is to use these mitigation banks when onsite mitigation practices are either not practicable or not environmentally preferable.

The Commission recently approved an MOU with MDTA on August 14, 2015. This MOU allows MDTA to perform minor maintenance and development activities that qualify for general approval without requiring review and approval by the full Critical Area Commission. A provision was included within the MOU between MDTA and the Commission, charging both groups to develop a separate banking agreement to provide MDTA alternative options for mitigation. Dr. Kelly stated that it can be hard sometimes to locate mitigation for stormwater, buffer impacts or forest clearing on site in many locations. The purpose of this current MOU is to create such a banking agreement. Dr. Kelly provided an overview of the structure of the MOU and the proposed accompanying Technical Manual and accounting spreadsheet. The objective is to have this MOU finalized by the end of December 2016.

Dr. Kelly then summarized a meeting held on August 8, 2016, between a group of Commission members and staff from the Commission and MDTA to discuss the draft of the MOU. An overview of the MOU, Technical Manual, accounting spreadsheet, and potential resources to identify mitigation sites (specifically the Watershed Resources Registry and GreenPrint) were presented to the group. The group also discussed where mitigation banks could be located relative to impacts. Dr. Kelly said the workgroup would convene again in either September or October to further discuss the details of the MOU as it evolves.

Dr. Kelly asked if there were any questions from the Commission. Sandy Hertz commented that she was a member of the Water Resources Registry project team for ten years. She explained how the rankings of

the sites work so that the higher the ranking, the more restoration opportunities are present on a site. She offered to give a presentation to the subcommittee or full Commission on the Water Resources Registry.

Historic Saint Mary’s City, Brent Pavilion – Saint Mary’s County

Claudia Jones presented for Vote the Historic Saint Mary’s City Brent Pavilion.

Ms. Jones provided a PowerPoint presentation. She reviewed the staff report, which is incorporated into and made a part of these minutes.

Historic St. Mary’s City (HSMC) is the location of Maryland’s first capital. It is operated as an archeological research site and outdoor museum. The state-owned property encompasses 850 acres and is mapped Resource Conservation Area (RCA).

The proposed project is the construction of a timber frame open pavilion (Brent Pavilion) to provide permanent covered space for additional programs, museum fundraisers, a resting place, and a rental space for weddings and other community gatherings. The area where the proposed development is to occur includes numerous historic and restored structures, roads, walkways, and parking facilities. HSMC will meet all Critical Area development requirements including stormwater management.

In accordance with COMAR 27.03.01.03, notice of the proposed project was published in *The Enterprise* newspaper on March 25, 2016. A sign with information about the project was posted on the site as well. No comments were received.

On behalf of the Project Subcommittee, Chair Gary Setzer made a motion that the Commission approve the construction of the Brent Pavilion proposed by Historic St. Mary’s City.

Commissioner Mangum seconded the motion. The motion was put to a vote and approved unanimously.

Baltimore County Board of Education Sparrows Point High School Artificial Turf Field – Baltimore County

Claudia Jones presented for Vote the Baltimore County Board of Education’s Sparrows Point High School Artificial Turf Field.

Ms. Jones provided to the Commission a PowerPoint presentation. She reviewed the staff report, which is incorporated into and made a part of these minutes.

The Baltimore County Board of Education proposes to convert a natural turf field within an existing track to an artificial turf field at the Sparrows Point High School in Edgemere. The high school shares a 34.32-acre parcel with Sparrows Point Middle School. The majority of the parcel (31.79 acres) is within the Critical Area and is mapped as a Limited Development Area (LDA). The parcel is currently developed with the two schools, parking lots, driveways, an accessory building, a concession stand, and track. The existing turf field is currently used for lacrosse, soccer, field hockey and football by both schools and has deteriorated due to overuse.

Within the LDA, lot coverage is limited to 15%. The site currently exceeds this limit at 26% total lot coverage. Artificial turf is considered lot coverage under the definition included in Natural Resources

Article 8-1802(a)(17). As a result, the proposed project will increase lot coverage from approximately 26% to 32%. Since the lot coverage amount will even further exceed the 15% lot coverage limit, a Conditional Approval from the Commission is required.

Ms. Jones summarized how the project will otherwise meet all other Critical Area development requirements.

The site was posted and notice was published in *The Dundalk Eagle* on August 8, 2016. No public comments have been received.

On behalf of the Project Subcommittee, Chair Gary Setzer made a motion that the Commission approve the installation of the artificial turf field at Sparrows Point High School proposed by the Baltimore County Board of Education. This motion is offered in accordance with the staff report and presentation and the following condition:

- Prior to the start of construction, the Baltimore County Board of Education shall notify Commission staff that it has obtained the necessary erosion and sediment control and stormwater management approvals from Baltimore County.

As required by Code of Maryland Regulations, this motion is based on the following considerations:

- Except for exceeding the 15% lot coverage limit established for Limited Development Areas in the Critical Area, the proposed project is in compliance with the relevant chapters of this subtitle.
- Disturbances to the Critical Area will be mitigated through a payment into Baltimore County's water quality fund based on an in-lieu fee schedule approved by the Commission.
- The proposed project offers public benefits to the Critical Area Program by minimizing impacts to the Critical Area. The Baltimore County Board of Education has selected a design that redevelops an existing area of the Sparrows Point High School campus, instead of encroaching on the forested buffer that currently protects a tidal gut to Back River.
- The project will also support water quality improvements through a payment to Baltimore County's water quality fee-in-lieu fund, which will be used to construct stormwater best management practices in the area.

Commissioner Marks seconded the motion. The motion was put to a vote and approved unanimously.

Commissioner David Marks told the Commission that his colleague on the Baltimore County Council that represents this area, Todd Crandell, strongly supports the installation of the artificial turf field and further noted that these fields capture rainwater.

Department of Natural Resources (DNR), Memorandum of Understanding for General Approval
Kate Charbonneau presented for Vote the Department of Natural Resources' (DNR) Memorandum of Understanding for General Approval.

Ms. Charbonneau provided to the Commission a PowerPoint presentation. She reviewed for the Commissioners the staff report, which is incorporated into and made a part of these minutes.

The Maryland Department of Natural Resources (DNR) seeks Commission approval of a Memorandum of Understanding governing certain activities on DNR lands within the Critical Area. The purpose of the MOU is to provide a streamlined process for review of specific types of maintenance and redevelopment actions by permitting DNR and Critical Area Commission (CAC) staff to conduct necessary project review and approvals.

COMAR 27.02.03 provides the Commission the authority to enter into these types of agreements provided that the MOU describes a process by which the classes of activities will be conducted so as to conform with Critical Area requirements.

Ms. Charbonneau reviewed how development activities are coordinated within DNR. Under the MOU, the Office of the Secretary is responsible for ensuring all units coordinate and submit qualifying activities covered by the MOU to Commission staff for the required review. Should an activity exceed the parameters outlined in the MOU, Commission staff shall direct DNR to submit projects for full review and approval by the Commission under COMAR 27.02.05.

Ms. Charbonneau then reviewed the structure of the MOU, including the option to pursue a future mitigation banking agreement, provisions for emergency activities and annual reporting requirements. The MOU and its Exhibits may be amended as necessary, but DNR shall comprehensively review the MOU by September 30, 2018 to make any necessary updates or changes.

Ms. Charbonneau then reviewed the two exhibits attached to the MOU. Exhibit A outlines the types of activities that DNR can perform under the MOU, as well as how DNR must meet certain Critical Area requirements. Exhibit B outlines the necessary information DNR shall provide with project review requests for all Category II projects. This includes information regarding coastal resiliency in order to demonstrate compliance with the resiliency provisions in COMAR 27.02.05.

The Project Subcommittee reviewed a draft of the MOU in April of this year. The most significant changes requested by the Subcommittee were to include the annual reporting requirement for the Minor Exceedance Projects and Special Projects and to provide for a 2-year comprehensive review.

Commissioner Lawrence asked how new facilities would be treated under the MOU. Ms. Charbonneau said that if the new facility fits in the parameters of less than 1,000 square feet of disturbance, the facility would qualify under the MOU.

On behalf of the Project Subcommittee, Chair Gary Setzer made a motion that the Commission approve the Memorandum of Understanding between the Critical Area Commission and the Maryland Department of Natural Resources.

Commissioner Cummins seconded the motion. The motion was put to a vote and approved unanimously.

Anne Arundel County – Ginger Cove Growth Allocation

Charlotte Shearin presented for concurrence with the Chairman's determination of Refinement the Anne Arundel County Ginger Cove Growth Allocation.

Ms. Shearin presented a PowerPoint presentation. She reviewed the staff report, which is incorporated into and made a part of these minutes.

Anne Arundel County requests growth allocation to change 29.38 acres of Limited Development Area (LDA) to Intensely Developed Area (IDA). The property is located at 4000 River Crescent Drive, Annapolis, MD and is owned by Annapolis Life Care, Inc. The entire waterfront parcel is 30.02 acres, with 29.38 acres located within the Critical Area and designated as an LDA. The site is currently improved with a continuing care retirement community, Ginger Cove, and includes residences, a nursing home, associated parking, and recreational amenities.

The request is necessary to permit the expansion of the existing nursing home facility to include a proposed memory care/assisted living addition. The 15% lot coverage limit in the LDA would otherwise prohibit the construction of this addition.

On June 6, 2016, the Anne Arundel County Council approved Bill No. 43-16 in which they found the growth allocation request met the standards of the growth allocation requirements set forth in Anne Arundel County Code 18-13-401 through 18-13-405 and COMAR Title 27.

Ms. Shearin reviewed the proposed project and described how development will meet all Critical Area development standards, including stormwater management.

Natural Resources Article §8-1808.1(c) requires the Critical Area Commission to ensure that the standards for growth allocation have been applied in a manner that is consistent with the purposes, policies, goals, and provisions of the Critical Area Law and Regulations. In 2014, the Commission adopted regulations that organized the statutory requirements for growth allocation under COMAR 27.01.02.06-3. Ms. Shearin summarized those statutory requirements and referred Commission members to review the staff report where each requirement is outlined in detail. Additionally, in accordance with Natural Resources Article 8-1808.1(c)(4) and COMAR 27.01.02.06-3(G), the Commission shall consider certain factors when reviewing a map amendment or refinement involving the use of growth allocation. Ms. Shearin summarized those factors and referred Commission members to review the staff report where each factor is considered in detail.

Ms. Shearin then noted that she provided preliminary plans and information to the other State agencies that are members of the Commission (Transportation, Natural Resources, Planning, Agriculture, Business and Economic Development, Environment, and Housing and Community Development) for comment. She summarized the comments provided by the following agencies:

- The Maryland Department of Environment (MDE) stated that the proposed growth allocation and development appears to be consistent with both State and County Critical Area requirements.
- The Maryland Department of Planning stated that the proposed growth allocation is generally consistent with the County's General Development Plan (GDP). However, MDP noted that the information provided in the submittal references the 1997 GDP, which was updated in 2009. MDP

also noted that Chapter 7, Table 7.2 of the County's GDP lists policies applicable to the managed growth area, some of which seem contrary to the stated application to increase lot coverage from 28.6% to 32.7%.

- The Maryland Department of Natural Resources noted that the site is not within an identified area vulnerable to coastal hazard or sea level rise.

The proposed project as shown on the conceptual site plan dated December 2015 and as documented in the Environmental Report and supplemental information is consistent with the purposes, policies, and goals of the Critical Area Law and Regulations. Because this proposed Growth Allocation meets the requirements for new LDAs and IDAs under §8-1808.1(c) and COMAR 27.01.02.06-3, Commission staff recommends the Chairman handle this as a refinement.

Program Subcommittee Chair Carolyn Cummins said the Subcommittee concurs with the Chairman's determination that the Anne Arundel County Ginger Cove Growth Allocation can be reviewed as a refinement to the Critical Area Program, as the proposed changes are consistent with the Critical Area Law and its regulations and recommends the Chairman approve the growth allocation with the following condition:

- Prior to final site plan approval, the County shall forward a final stormwater management plan to Commission staff for review and approval to ensure compliance with the 10% pollutant reduction rule.

Chairman Deegan said as the refinement stands he approves the growth allocation with the condition recommended by the Program Subcommittee.

Dorchester County – RCA Use Text Amendment

Nick Kelly presented for concurrence with the Chair's determination of Refinement the Dorchester County – RCA Use Text Amendment.

Dr. Kelly reviewed his staff report, which is incorporated into and made a part of these minutes.

On July 19, 2016, the Dorchester County Council approved a text amendment to update the County's Table of Permitted Uses to allow the following use within the Rural Residential – Resource Conservation Area (RR-RCA) Zoning District as a special exception: "Cemeteries, commercial human or animal including chapels, mausoleums, and crematoriums."

The subject property that necessitated this legislation, Greenlawn Cemetery, is located within the RCA and existed prior to the enactment of the Critical Area Law. Current lot coverage is approximately 24,958 square feet (5%). The property owner wishes to replace an existing crematorium on the cemetery grounds with a larger crematorium that exceeds the County's current limits for expansion of a legal nonconforming use. The proposal will increase total lot coverage on the site to 30,790 square feet (6.4%). As the current Dorchester County Code does not allow cemeteries as a permitted a use in the RR-RCA, a text amendment is required in order to allow the property owner to construct the larger crematorium.

Dr. Kelly reviewed the zoning requirements for this new special exception and stated that the cemetery must also comply with all RCA development regulations, including lot coverage and clearing limits. Dr.

Kelly also provided the Commission with additional information regarding how other jurisdictions address cemeteries, mausoleums, and crematoriums as a use within the RCA.

Program Subcommittee Chair Carolyn Cummins said the Subcommittee concurs with the Chairman's determination that this text amendment can be reviewed as a refinement and recommends that the Chairman approve the growth allocation with the following condition:

1. The proposed text language shall be amended to include the following language in **BOLD** and deletions shown with a ~~strikethrough~~:

“A new cemetery in **the RC or in the RR-RCA** ~~must~~ **shall** receive growth allocation.”

Chairman Deegan said that as the refinement stands he approves the text amendment with the condition recommended by the Program Subcommittee.

LEGAL UPDATE: Rachel Eisenhauer informed the Commission that there are no legal updates at this time. Currently, the Commission is not appealing any new cases. In addition, she noted that a few hearings for cases in which the Commission is participating have had hearings postponed.

OLD BUSINESS: St. Michaels Growth Allocation Updates on Conditions

Jennifer Anderson presented to the Commission an update on the conditions related to the Inn at Perry Cabin, LLC Growth Allocation, which was awarded by the Commission in 2015. The site is located within the Town of St. Michaels in Talbot County.

Ms. Anderson presented a PowerPoint presentation. She reviewed the staff memorandum, which is incorporated into and made a part of these minutes.

On November 4, 2015, the Critical Area Commission approved 13.42 acres of growth allocation (11.54 acres of Resource Conservation Area (RCA) and 1.88 acres of Limited Development Area (LDA)) for the lands of RDC Inn at Perry Cabin, LLC. As a result, the entire 24.33-acre parcel is now designated as an Intensely Developed Area (IDA).

Per Natural Resources Article, Section 8-1808.1(c)(2) (iv) growth allocation in the RCA is required to provide a 300-foot setback from tidal waters, unless the applicant proposes and the Commission approves alternative measures for enhancement of water quality and habitat that provide greater benefits to the resources. In the case of this growth allocation the applicant proposed several on- and offsite enhancements to achieve the habitat and water quality benefits in lieu of a 300-foot setback.

The offsets proposed were as follows:

- Remove an additional 2.64 pounds of phosphorus per year beyond the 10% phosphorus removal onsite for IDA development;
- Provide 15% afforestation onsite;
- Provide 3,049 square feet of offsite habitat enhancement on the Talbot County-owned Perry Cabin Ballfields;
- Provide 1.43 acres of off-site habitat enhancement on the Town-owned Canton Farm; and
- Provide offsite water quality enhancement at the end of Thompson Street, Tilden Street, and

W. Chestnut Street by creating submerged gravel wetlands.

On June 10, 2016, the Town notified via letter to the Commission that the additional requirement of 2.64 pounds of phosphorus removal that was offered as an offset to the 300-foot setback requirement cannot be met onsite. Prior to receiving this letter, Commission staff met with the Town and the property owner's agents to discuss if additional best management practices (BMPs) could be used to treat additional stormwater on-site. This meeting included a visit to the site, as well as a conference call with a member of the Maryland Department of the Environment's Stormwater Management Program to discuss potential modifications to the design of proposed BMPs that would increase overall treatment for the site. Based on that meeting, and based on review of revised stormwater management plans subsequent to those discussions, it appears that achieving additional stormwater management beyond the minimum 10% phosphorus reduction required IDAs will be difficult.

The Town of St. Michaels believes that the other offsets proposed are sufficient and provide the necessary habitat and water quality benefits to meet the alternative of providing a 300-foot setback. However, given that the additional phosphorus removal on site was offered as a component of the offset package, any change to the original growth allocation submittal requires additional review by the Program Subcommittee.

The Program Subcommittee was asked to consider the proposed change and offer guidance to the Chairman based on the following questions:

1. Given that the additional 2.64 pounds of phosphorus per year offered as an offset to the 300-foot setback cannot be provided, the Chairman is seeking guidance from the Subcommittee as to whether the revised package still meets the 300-foot offset requirements for growth allocation.
2. Should the Town be required to provide an additional offset in exchange for not providing the originally proposed offset to treat additional stormwater management onsite? Or, is the current package sufficient to meet the alternative to a 300-foot setback as required without providing additional offsets?

Program Subcommittee Chair Carolyn Cummins updated the Commission on the St. Michaels Growth Allocation conditions. She said it took the Program Subcommittee an hour to discuss and modify the conditions.

Chairman Deegan asked whether there was a date for completion for the project. Ms. Anderson explained how the project would be constructed in phases. Sarah Abel, the St. Michaels Planning Zoning Inspector and Codes Enforcement Officer, said the Planning Commission requested a basic concept plan to see how long it will take to construct the phases. She said that Phase I includes the amenities building and construction would begin by November 1. Construction of the Fogg Cove Site, which is the last phase of the entire project, will begin in three years. She added that the overall timing would be the start of construction in two months with a project completion date in four years.

Program Subcommittee Chair Carolyn Cummins recommended to the Chairman that the applicant's offset package proposed to achieve the habitat and water quality benefits in lieu of the 300-foot setback in the RCA be modified to remove one of the items provided as part of the original package and to

replace it with another. Specifically, the Subcommittee recommends that the requirement to remove an additional 2.64 pounds of phosphorus per year beyond the 10% phosphorous removal onsite for IDA development be removed from the package. In its place, the Subcommittee recommends that the applicant provide water quality enhancement by implementing the following practices, which are shown on the final site plans approved by the St. Michaels Planning Commission on August 25, 2016:

1. Semi-pervious surfaces on the walking paths, the parking lots, and the helipad based on material lists; and
2. Garden plantings between buildings at the Fogg Cove site.

Following the construction of each practice, CAC staff and Town staff will conduct a site inspection and ensure completion. The remaining requirements of the offset package as well as the conditions of the Growth Allocation remain unchanged.

Chairman Deegan accepted the Program Subcommittee's changes as read into the record by Carolyn Cummins.

NEW BUSINESS:

Chairman Deegan said the MDTA Workgroup will likely meet again in late September or early October.

He reminded the Commission of the upcoming Poplar Island site visit on September 21, 2016.

Chairman Deegan stated that there most likely will not be an October 5, 2016 Commission meeting. If the October 5th meeting is cancelled, the next meeting of the Commission will be held on Wednesday, November 2, 2016.

There being no further business to come before the Commission, the meeting adjourned at 3 p.m.

Minutes respectfully submitted by Shirley M. Bishop, Commission Coordinator.