

MINUTES

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

May 1, 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
Bradley Frome, Prince George's County
Sue Greer, Charles County
Sandy Hertz, Maryland Department of Transportation
Matt Johnston, Anne Arundel County
Mary Kendall, Designee for Housing and Community Development
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
Suzanne Pittenger-Slear, Eastern Shore Member-at-Large
Gary Setzer, Department of the Environment

Commission Members Not in Attendance:

Michael Hewitt, St. Mary's County
David Marks, Baltimore County
Steven Parker, Cecil County
Malachy Rice, Department of Commerce
Karen Stokes, Baltimore City
Donald Sutton, Kent County
Caroline Varney-Alvarado, Department of Housing and Community Development

APPROVAL OF MINUTES: A motion was made by Commissioner Cummins and seconded, to approve the minutes of the April 3, 2019 Commission meeting. **Motion carried.**

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

Refinement – Moore’s Boat Yard Growth Allocation: Ms. Durant presented for vote the Growth Allocation Request for Moore’s Boat Yard. Ms. Durant gave a PowerPoint presentation and reviewed her staff report, which is attached to and made a part of these minutes. Worcester County requested growth allocation of 4.71 acres to change the Critical Area designation from Resource Conservation Area (RCA) to Limited Development Area (LDA) on the Moore’s Boat Yard property to allow for the expansion of an existing commercial use on the property. Upon review of the application, Chairman Deegan determined that this growth allocation request could be processed as a refinement.

The 9.34-acre property (Parcels 4, 171 and 301 on County Tax Map 10) is located at 12301 North Piney Point Road in Bishopville on a small peninsula that is surrounded by the upper reaches of the Saint Martin River, Vinas Creek, and Piney Gut. The site is currently zoned E-1, Estate District. The entire 9.34-acre property lies within the Critical Area, with 4.71 acres designated as an RCA and 4.63 acres designated as an LDA. The LDA portion of the property is currently developed with an existing single-family dwelling unit with accessory structures, an existing garage/storage building for the business, driveways and parking areas. The RCA portion of the property is currently undeveloped, although a dredge spoil disposal area and sewage reserve area currently exist on this section of the site.

Ms. Durant reviewed the standards for locating growth allocation in the RCA and reviewed the information provided by Worcester County to address the factors considered by the Commission in considering a request for growth allocation per COMAR 27.01.02.06.

Commissioner Cummins stated that because the proposed growth allocation meets the requirements for new LDAs and IDAs under Article 8-1898.1(c) and COMAR 27.01.02.06-3, the Program Subcommittee recommends concurrence that the Chairman can handle this as a refinement and approve the growth allocation with the following conditions:

1. The development shall comply with the Maryland Department of the Environment’s (MDE’s) stormwater requirements by implementing Environmental Site Design to the Maximum Extent Practicable, and all measures required to meet the Critical Area 10% pollutant reduction requirement shall be located and constructed onsite. Prior to the start of construction, the County shall submit the proposed and final stormwater management plans for the development to Commission staff for review and approval to ensure compliance with the proffer of stormwater management in excess of MDE’s requirements and 10% pollutant reduction.
2. Prior to the start of construction, Worcester County shall submit the final Planting Plan, completed in accordance with COMAR 27.01.09.01-3 for review and approval by Commission staff. The applicant shall work with Commission staff to ensure the proposed

plantings meet all required standards, including provision related to long term maintenance, and are appropriate to reflect the coastal vulnerability of the site.

3. Worcester County shall require the property owner to place conservation easements or similar restrictive covenants on the 100-foot Buffer and planted areas as shown on the final approved Planting Plan in order to provide permanent protection.
4. Worcester County shall require the property owner to retrofit all existing septic systems on the entire site with Best Available Technology (BAT) systems, and install BAT systems to serve all new construction on the entire site.
5. Due to the vulnerability of the site to a variety of coastal hazards, Worcester County shall require the applicant to avoid the 0-2 foot sea level rise area identified using the Maryland Coastal Atlas (<https://gisapps.dnr.state.md.us/coastalatlus/WAB2/>) when siting the new two-story bulk long term warehouse, driveways, parking lot, and other supporting infrastructure, as well as any future construction. If the applicant demonstrates that avoidance is not feasible, then the applicant shall document efforts to minimize impacts to these adaptation areas.
6. To the extent practicable, Worcester County shall require the property owner to designate on the approved site plan materials and waste storage either indoors or under cover, and to locate these storage areas as far from the edge of mean high water and the edge of tidal and nontidal wetlands as possible.

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

Refinement – Queen Anne's County – Matapeake Business Park Lot 7 Growth Allocation:

Ms. Makhlof presented for concurrence Queen Anne's County's growth allocation request. Ms. Makhlof reviewed her staff report, which is attached to and made part of the minutes.

Queen Anne's County requests growth allocation to change the designation of 2.122 acres of Limited Development Area (LDA) to an Intensely Developed Area (IDA). The property (Tax Map 56, Parcel 221, Lot 7) is located within the Matapeake Business Park and is owned by Sonny Schulz Blvd, LLC. Upon review of the application, Chairman Deegan determined that the project could be reviewed as a refinement.

Lot 7 contains 2.772 acres of Limited Development Area. The growth allocation request is for 2.122 acres to Intensely Developed Area in order to develop the site into a mixed commercial use. The development will include a 45,000 square-foot warehouse/storage and office building, parking, utilities, stormwater management, and landscaping. This growth allocation request meets the Commission's definition of a "development envelope," as all components of development proposed are located within the envelope, and no development is proposed in the remaining LDA.

Ms. Makhlof reviewed the standards for locating a new IDA less than 20 acres in the LDA and reviewed the information provided by Queen Anne's County to address the factors considered by the Commission in considering a request for growth allocation per COMAR 27.01.02.06.

Program Subcommittee Chair, Commissioner Cummins, stated that because this growth allocation meets the required adjacency standards for new IDAs and LDAs under Natural Resources Article 8-1808.1(c) and COMAR 27.01.02.06-3, the Program Subcommittee recommends concurrence with the Chairman's determination of refinement and approval of the use of growth allocation with the following conditions:

1. Prior to final site plan approval, the County will submit the final stormwater management plan, demonstrating compliance with the 10% pollutant requirement, to Commission staff for review and approval.
2. Prior to final site plan approval, the County will demonstrate compliance with FIDS mitigation at no less than a 1:1 ratio.
3. All remaining LDA lands on Lot 7 will be permanently protected through a conservation easement, restrictive covenant, or similarly appropriate mechanism.
4. Prior to the start of construction, the County will submit copies of all final approvals, including stormwater management, erosion and sediment control, and FIDS mitigation to Commission staff.
5. To the extent practicable, the County shall require plantings and other soft edges around the proposed structures and paved areas of the storage and business park in order to reduce sources of runoff and to provide long-term benefits to wetland migration.

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

REGULATIONS:

Draft Wildlife Regulations: Lisa Hoerger presented for vote the proposed amendments to COMAR Title 27 that address plant and wildlife habitats, as well as threatened and endangered species, and species in need of conversation in the Critical Area. Ms. Hoerger reviewed her staff report and the proposed regulation, which are attached to and made a part of these minutes. Ms. Hoerger reviewed the purpose of the changes, which is to modernize the drafting style, update, and where necessary, delete certain outdated provisions. The proposal not include any additional regulatory requirements for the affected regulated community. The Commission's Science Advisor worked closely with the staff of the Wildlife and Heritage Program of the Department of Natural Resources to ensure all updates were accurate and reflect the current state of wildlife and habitat protections.

Project Subcommittee Chair, Commissioner Setzer, made a motion on behalf of the Project Subcommittee, that the Commission authorize Commission staff to publish the following Code of Maryland Regulations in the Maryland Register as proposed regulations:

COMAR 27.01.01 entitled General Provisions

COMAR 27.01.02 entitled Development in the Critical Area

COMAR 27.01.07 entitled Surface Mining in the Critical Area

COMAR 27.01.09 entitled Habitat Protection Areas in the Critical Area

COMAR 27.01.10 entitled Directives for Local Program Development

COMAR 27.02.01 entitled General Provisions

COMAR 27.02.05 entitled State Agency Actions Resulting in Development on State-Owned Lands

Commissioner Beulah seconded motion. Motion carried.

Information Only – Draft Agriculture Regulations: Ms. Hoerger then presented the Draft Agriculture Regulations, which have been attached to and made a part of these minutes.

The focus of the updates are in Chapter .06 Agriculture. The Commission staff worked closely with the Department of Agriculture to ensure all updates to the language were correct. Also, any outdated regulations were also thoroughly screened by the Department. Note that the companion agriculture regulations in Subtitle .02 concerning agriculture were updated as well. There was a minor update to the definition of “tributary stream” in Subtitle .03 which was overlooked in a previous revision.


This discussion is for informational purposes only and the Commission will not be asked to take any official action at this time.

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

OLD BUSINESS: No old business to discuss.

NEW BUSINESS: No new business to discuss.

Chairman Deegan adjourned the meeting at 1:45 p.m.



Lynette Fullerton, Commission Secretary

August 7, 2019

Date of Approval