

# MINUTES

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

**August 7, 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:**

Gail Blazer, Worcester County – Coastal Bays (Town of Ocean City)  
Virginia Clagett, Western Shore Member-at-Large  
Carolyn Cummins, Worcester County – Coastal Bays  
Jason Dubow, Maryland Department of Planning  
Sue Greer, Charles County  
Sandy Hertz, Maryland Department of Transportation  
Michael Hewitt, St. Mary's County  
Matt Johnston, Anne Arundel County  
Charles Laird, Somerset County  
James Lewis, Caroline County  
Pat Mahoney, Calvert County  
Gary Mangum, Queen Anne's County  
David Marks, Baltimore County  
Catherine McCall, Department of Natural Resources  
Ewing McDowell, MD Department of Commerce  
Jennifer Merritt, Worcester County – Chesapeake Bay  
Marianne Navarro, Baltimore City (not voting)  
Julie Oberg, Department of Agriculture  
Suzanne Pittenger-Slear, Eastern Shore Member-at-Large  
Gary Setzer, Department of the Environment  
Donald Sutton, Kent County

**Commission Members Not in Attendance:**

Curtis Beulah, Harford County  
Dave Cannon, Dorchester County  
Deborah Herr Cornwell, Maryland Department of Planning  
Robert Culver, Wicomico County  
Michael McCarthy, Talbot County  
Steven Parker, Cecil County  
Caroline Varney-Alvarado, Department of Housing and Community Development

**APPROVAL OF MINUTES:** A motion was made by Commissioner Clagett and seconded, to approve the minutes of the May 1, 2019 Commission meeting. **Motion carried.**

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

**Nice Bridge Replacement Project: Status Update and Requested Amendment to Condition #2 – Maryland Transportation Authority**

Ms. Jennifer Esposito presented for vote revised conditions to the Nice Bridge Replacement project by the Maryland Transportation Authority (MDTA). She reviewed her staff report, the contents of which are incorporated into and made a part of these minutes.

In August of 2018, the Commission unanimously approved the Governor Harry W. Nice Bridge (Nice Bridge) Improvement Project with five conditions. Condition #5 required MDTA to provide a status update to the full Commission at its August 2019 meeting. Additionally, MDTA requested the Commission amend Condition #2, which related to the proposed offsite stormwater management. MDTA had been developing a stream restoration project to meet the remaining stormwater management requirement. The landowner of the proposed project site backed out at the last minute. MDTA is undergoing a new site search at this time. They anticipate finding a site in the next six months, but need additional time to allow for construction to begin prior to final approval; and additional time in order to meet the 10% pollutant reduction requirement for the bridge decking. At the conclusion of her presentation, there were no questions by Commission members.

Project Subcommittee Chair, Commissioner Setzer moved on behalf of the Project Subcommittee that the Commission update its August 1, 2018 of the US 301 Nice Bridge Replacement Project by amending Condition #2 and Condition #5 as follows:

- **Condition #2** shall read: Prior to the start of construction, the Maryland Transportation Authority shall obtain final approval from the Commission for all on-site stormwater management to meet the Critical Area 10% pollutant reduction requirement. If the Maryland Transportation Authority demonstrates that it is unable to meet its pollutant reduction requirement on-site, the Maryland Transportation Authority shall restrict its off-site search to locations in the following order of priority: (1) Charles or St. Mary's County in the Lower Potomac watershed; and (2) Prince George's County in the Washington-Metro Potomac watershed. The Maryland Transportation Authority shall provide an update to the full Commission on the status of identifying an acceptable off-site location by March 2020, if necessary, and shall complete construction of acceptable stormwater management offsets by December 2022.
- **Condition #5** shall read: The Maryland Transportation Authority shall update the full Commission on the status of the project as noted in its original approval, as well as revised Condition #2, by August 2020. At that time, the full Commission will determine whether the Maryland Transportation Authority must develop an alternative mitigation package for any or all required elements.

Commissioner Mahoney seconded the motion. All approved.

### **Dundalk Marine Terminal Reconstruction/Expansion of Berth 3 – Maryland Port Administration**

Ms. Annie Sekerak presented for vote the reconstruction and expansion of the Berth 3 at the Dundalk Marine Terminal by the Maryland Port Administration (MPA). Ms. Sekerak reviewed her staff report, the contents of which are incorporated into and made a part of these minutes.

The MPA proposal involves reconstructing the existing wharf and extending Berth 3 an additional thirty (30) feet seaward, to match the channelward projection of adjacent Berth 4. Reconstruction of Berth 3 represents Phase 3 of the long-term MPA program to reconstruct Berths 1- 6 at Dundalk Marine Terminal. In addition, applicable floodwalls, utilities, and rail lines will be upgraded and replaced. The purpose of this project is to provide the necessary upgrades to Dundalk Marine Terminal to handle larger container vessels and protect the terminal from large storm events and anticipated future sea level rise. The property is designated as Intensely Developed Area (IDA) and the project impacts 3.26 acres, of which 1.61 acres of disturbance is proposed within the existing Buffer and 0.45 acres is over existing open water. MPA will meet stormwater and Buffer mitigation requirements by debiting an existing approved mitigation bank. At the conclusion of her presentation, there were no questions by Commission members.

Project Subcommittee Chair, Commissioner Setzer, moved on behalf of the Project Subcommittee that the Commission approve the reconstruction and expansion of Dundalk Marine Terminal Berth 3 proposed by the Maryland Port Administration with the following condition:

- Prior to the start of construction, the Maryland Port Administration shall submit the following documentation to Commission staff: a copy of the tidal wetlands license issued by the Maryland Board of Public Works; a copy of the Section 404/Section 10 permit issued by the U.S. Army Corps of Engineers; a copy of the updated tracking document for the ME2 mitigation site that shows all debits, including the debit for this project; and a copy of the waiver issued by the Maryland Department of Natural Resources, Wildlife and Heritage Service for the time-of-year restriction for fish spawning.

The motion was seconded by Commissioner Marks, all approved.

### **Eastern Correctional Institute Wastewater Treatment Plant Expansion and Upgrade – Maryland Department of Public Safety and Correctional Services**

Ms. Kathryn Durant presented for vote the wastewater treatment plant (WWTP) upgrade at the Eastern Correctional Institute (ECI) in Somerset County. Ms. Durant reviewed her staff report, the contents of which have been incorporated into and made a part of these minutes.

The Maryland Department of Public Safety and Correctional Services (DPSCS) is proposing to expand and upgrade the existing wastewater plant due to a new discharge permit with stricter effluent limits issued by Maryland Department of the Environment (MDE). The plant is operated by the Maryland Environmental Service (MES) and they are also contracted to perform the

upgrades. The ECI property is entirely within the Critical Area and is designated as a Resource Conservation Area (RCA).

The facility is currently not in compliance with its National Pollutant Discharge Elimination System (NPDES) permit. The proposed upgrade includes demolishing existing tanks, installing new treatment systems, and the installation of stormwater management devices to meet the MDE stormwater requirements and the Critical Area 10% requirements. The project is located outside of the Buffer. At the conclusion of her presentation, there were no questions by Commission members.

Project Subcommittee Chair, Commissioner Setzer, moved on behalf of the Project Subcommittee that the Commission approve the expansion and upgrade of the Eastern Correctional Institution proposed by the Department of Public Safety and Correctional Services with the following conditions:

- Within sixty (60) days from Commission approval, the Department of Public Safety and Correctional Services shall provide copies of all final approvals, including stormwater management and erosion and sediment control, to Commission staff.
- Within sixty (60) days of Commission approval, the Department of Public Safety and Correctional Services shall provide verification of review by Maryland Historical Trust and the Department of Natural Resources, Wildlife and Heritage Service to Commission staff.

Commissioner Laird seconded the motion. All approved.

### **BGE Key Crossing Reliability Initiative – Power Plant Research Program of the Department of Natural Resources**

Ms. Alex DeWeese presented for vote the BGE Key Crossing Reliability Initiative. Ms. DeWeese reviewed her staff report, the contents of which have been incorporated into and made a part of these minutes.

Baltimore Gas and Electric Company is seeking approval of a Certificate of Public Convenience and Necessity (CPCN) from the Maryland Public Service Commission (PSC) to construct an overhead transmission line that crosses the Patapsco River at Sollers Point in Baltimore County and Hawkins Point in Baltimore City. Three monopole towers associated with this project will be constructed within the Critical Area. The Department of Natural Resources (DNR) Power Plant Research Program (PPRP) is responsible for coordinating with the Critical Area Commission to review applications for energy projects and provide recommendations to the PSC to minimize and mitigate environmental impacts. As such, PPRP has requested review of this project by the Critical Area Commission for the purpose of addressing Critical Area impacts.

Baltimore Gas and Electric Company (BGE) proposes to replace a 230 kilovolt (kV) transmission line that was installed between 1973 and 1976 and is now near the end of its design lifespan. The current transmission line crosses under the Patapsco River. It will be replaced with an above ground transmission line, based on the results of an impact analysis for both an underground and aboveground option demonstrating lesser impacts for an aboveground line.

Both the current and proposed location for the utility line is parallel to and approximately 700 feet north of the Francis Scott Key Bridge. The transmission line requires the construction of eight towers, five of which are located in the water and will have vessel collision structures, and three that will be on land within the Critical Area (one monopole tower at Hawkins Point and two at Sollers Point). The towers range in height from 165 to 397 feet. Construction of this utility line will require clearing to build the towers as well as impacts to the Critical Area Buffer. Additionally, there will be temporary impacts to decommission the existing transmission line and existing terminal station at each site, as well as restoration of these areas back to a natural pervious state.

Commissioner Merritt asked what would happen to the underground lines, whether they would be decommissioned in place. A representative from BGE explained that the oil would be removed from the lines, and then the lines would be capped. Commissioner Marks then stated that he had heard from his colleague, Councilman Crandall, that BGE had done extensive community outreach on this project.

Project Subcommittee Chair, Commissioner Setzer, moved on behalf of the Project Subcommittee that, the Commission approve the following conditions for incorporation into the Power Plant Research Program's recommended conditions to the Public Service Commission for the Key Crossing Reliability Initiative proposed by the Baltimore Gas and Electric Company:

1. Construction and operation of the Project shall comply with all applicable local and State requirements for disturbance to the Critical Area per Code of Maryland Regulations or COMAR 27.02.04 and COMAR 27.02.05.
2. Prior to the start of construction, the Baltimore Gas and Electric Company shall meet the following requirements:
  - a. Provide final Critical Area impact values and mitigation measures to Critical Area Commission staff for review and approval in conformance with Baltimore City's Critical Area Program, Baltimore County's Critical Area Program, and per COMAR 27.02.05 for any impacts to lands owned by the Maryland Port Administration;
  - b. Provide final mitigation plans, including copies of all necessary planting plans and Buffer Management Plans, demonstrating compliance with the approved impact values and mitigation requirements;
  - c. Provide copies to Critical Area Commission staff of authorizations or approvals by the Maryland Board of Public Works for tidal wetlands, by the Maryland Department of the Environment for nontidal wetlands, and by Baltimore City for erosion and sediment control, and stormwater management;
  - d. Implement all recommendations provided by the Department of Natural Resources Wildlife and Heritage Service and comply with Time of Year restrictions in order to ensure species protection;
  - e. Implement all recommendations provided by the Maryland Historic Trust regarding impacts to historic properties and structures; and

3. Baltimore Gas and Electric Company shall submit any proposal to use the banked impervious surface reduction of 2.02 acres at the Hawkins Point and 1.64 acres at Sollers Point to meet stormwater management requirements to Commission staff for review and approval.

Commissioner Marks seconded the motion, all approved.

**Text Amendment – St Mary’s County – Private Airstrips and Heliports in the RCA**

Ms. Susan Makhlouf presented a proposed refinement by St. Mary’s County to amend their local Critical Area Program in order to allow private landing strips in the Resource Conservation Area (RCA). Ms. Makhlouf reviewed her staff report, the contents of which are incorporated into and made a part of the minutes.

On June 4, 2019, the Commissioners of St. Mary’s County approved a text amendment to the St. Mary’s County Comprehensive Zoning Ordinance to replace and reenact Section 51.3.88 in order to allow private landing strips and heliports in the Resource Conservation Area (RCA). Airports, landing strips, and heliports are currently allowed in the Limited Development Area (LDA) and Intensely Developed Area (IDA). The proposed text amendment added Conditional Standards under Part (b) to the existing use provisions, outlining the specific standards to allow private landing strips and heliports in the RCA as a conditional use. The Program Subcommittee discussed the proposal in the morning and suggested a number of revisions to the Ordinance in order to clarify that the amendment does not allow any commercial operation and that the limitations apply in the same way to private heliports. Program Subcommittee Chair, Commissioner Cummins, stated that the Subcommittee concurs that the text amendment be processed as a refinement and she further recommended that the Chairman approve the Ordinance with the condition that it be revised to add the text in bold and remove the text in brackets:

88. *Airport, Landing Strip, **Helipad**, and Heliport.*

*b. Conditional Standards:*

*(1) Within the RCA, the following standards shall apply:*

*(a) Permit approval shall be required for **[non-commercial airport,]** landing strips and **[heliports] helipads**.*

*(b) **[An airport, l] Landing strips and [heliports] helipads** shall be prohibited in the Critical Area Buffer. Variances for these uses in the Critical Area Buffer shall not be granted.*

*(c) Publicly-owned airports, landing strips, **helipads**, and heliports[;], and **privately-owned airports and heliports** are not allowed.*

*(d) Private landing strips and **[heliports] helipads** are allowed.*

*(e) The minimum lot size shall be 20 acres.*

*(f) All businesses such as the sale or leasing of aircraft, maintenance, or flight school and any other type of commercial operations as defined in the Federal Aviation Administration regulations shall be prohibited.*

*(g) Shall be maintained in grass or similar low vegetation.*

There was no further discussion by the Commission. Chairman Deegan stated that he accepted the committee's recommendation and this would be his final decision.

### **Growth Allocation – Talbot County - Bill 1411: Growth Allocation Request via Comprehensive or Sectional Zoning Map Amendment**

Ms. Jennifer Esposito presented a proposed refinement by Talbot County to amend their local Critical Area Program maps by applying growth allocation through their comprehensive map amendment process. Ms. Esposito reviewed her staff report, the contents of which are incorporated into and made part of these minutes.

Talbot County is requesting approval from the Critical Area Commission to grant 35.35 acres of growth allocation to change 29 parcels from a Resource Conservation Area (RCA) to a Limited Development Area (LDA). These parcels were reviewed under the Comprehensive or Sectional Zoning Map Amendment process that was recently approved by the Critical Area Commission as part of Talbot County's comprehensive update to its Critical Area Program in February 2019. This new process allows for growth allocation to occur on multiple properties simultaneously when the purpose of the map amendment is to align Critical Area designations with a comprehensive rezoning process carried out under the County's Comprehensive Plan. The information submitted by Talbot County included zoning maps, aerial maps, and a table identifying each parcel and its Critical Area acreage and designated change. Additionally, the County provided information demonstrating that the proposed change for each parcel is consistent with the Code and with the definition for Limited Development Areas. Twenty-four of the twenty-nine parcels are currently improved with a single family residential use. One parcel is currently improved and contains a historic inn. Four are unimproved and are wooded, but are less than 20 acres in size. The County completed a review of the MERLIN resource maps and found that all of the lots, with the exception of two lots, are located outside of the Sensitive Species Project Review Area. The two lots that are located within a mapped Sensitive Species Project Review Area (Tax Map 22, Parcels 162 and 229) are less than an acre in size and are currently improved with single family dwellings. The County will require further parcel analysis by the Department of Natural Resources, Wildlife and Heritage Services to determine the sensitive species present and, if necessary, to prescribe protective measures should future development occur on the two lots.

Program Subcommittee Chair Commissioner Cummins stated that because the proposed growth allocation meets the Comprehensive or Sectional Map Amendment requirements of the County Code, and given that this submittal effectively fulfills the Commission's previous action from Bill 1376, the Program Subcommittee concurs with the Chair's determination that this text amendment can be reviewed as a refinement to the County's Critical Area Program.

Further, the proposed growth allocation meets the requirements for new LDAs under Natural Resources Article §8-1808.1(c) and COMAR 27.01.02.06-3, and is consistent with the purposes, policies and goals of the Critical Area Law and regulations. Therefore, the Program

Subcommittee recommends approval to deduct growth allocation for 35.35 acres to change the Critical Area mapping designation of twenty-nine parcels from RCA to LDA.

There was no further discussion by the Commission. Chairman Deegan stated that he accepted the committee's recommendation and this would be his final decision.

### **Modified Buffer Area Map Update and Expansion – Queen Anne's County**

Ms. Susan Makhoulf presented a proposed refinement by Queen Anne's County to expand and digitally update their Modified Buffer Area maps. Ms. Makhoulf reviewed her staff report, the contents of which have been incorporated into and made a part of these minutes.

On March 26, 2019, the Queen Anne's County Board of County Commissioners conceptually approved Map Amendment 19-05, which will replace the current Buffer Exemption Area map with an updated and expanded map that will also include the renaming of these areas to Modified Buffer Areas. The County determined that revisions were necessary to the MBA maps to ensure that all components of Queen Anne's County Critical Area digital mapping are consistent, accurate, and up-to-date. The original MBAs were based on the 1972 Maryland State Wetland maps, which are outdated in terms of identifying the locations of shorelines and wetland boundaries, and thus needed revisions. When Map Amendment 19-05 is approved, it will replace the existing MBA Mylar Maps with digitally-generated, geo-referenced MBA mapping which will include new areas of the shoreline as MBAs.

The proposed additions to the County's MBA maps include 17 areas of the shoreline. In some cases, the proposed additions ensured that the end points of each MBA extended to parcel boundaries. In other cases, the changes corrected obvious errors and inconsistencies in the original mapping of shorelines and wetlands. Finally, the County extended the BMA in new areas where the County documented that development was consistent with the BMA regulations found in COMAR 27.01.09.01-8.

Program Subcommittee Chair Commissioner Cummins stated that the Program Subcommittee concurs with the Chairman's determination that this MBA mapping update is a refinement to the Queen Anne's County's Critical Area Program since the update is in accordance with COMAR 27.01.09.01-8, the Commission's policies regarding MBAs, and the County's current Critical Area Program.

There was no further discussion by the Commission. Chairman Deegan stated that he accepted the committee's recommendation and this would be his final decision.

### **REGULATIONS:**

**Information Only – Surface Mining:** Ms. Hoerger reviewed her staff report about proposed updates to Chapter .07 Surface Mining in the Code of Maryland Regulations (COMAR) Title 27, Subtitle .01. The purpose of these regulations are to modernize the drafting style, update, and where necessary, delete certain outdated provisions. The discussion was for informational purposes only and the Commission was not asked to take any official action.



**LEGAL UPDATES:** Assistant Attorney General Emily Vainieri had the following legal updates to report:

***Radtke (Update) – Illegal construction in the Buffer – Baltimore County.*** This is the case involving a 1,700 square foot concrete patio built without permits in the Buffer, about 9 feet from the water. Mr. Radtke is a disabled veteran and he has stated that he needs to be close to the water to help treat his PTSD. The County denied an after-the-fact variance for the patio. Mr. Radtke appealed. The Board of Appeals upheld the denial of the variance. Mr. Radtke appealed. The Circuit Court upheld the denial of the variance. Mr. Radtke to the Court of Special Appeals.

**Update:** The Court of Special Appeals identified this case as one that is appropriate for Alternative Dispute Resolution. That means that the briefing and argument deadlines are stayed while the parties participate in mediation with a retired judge and a staff attorney. Staff has participated in one mediation session so far, and a second session is scheduled for September.

***Baldwin (Update) – Variance to the Buffer - Anne Arundel County.*** This is the case involving a 23 acre lot along Round Bay and Hopkins Creek, which is designated RCA and is located in the Sahlin Estates subdivision. The contract purchasers propose to demolish and remove the existing one-story dwelling and additional house foundation remnants and construct a new dwelling, a pool, a detached garage and associated facilities. The Anne Arundel County Administrative Hearing Officer granted a variance for about a half-acre of disturbance to the expanded buffer (expanded for steep slopes) for the construction of the new dwelling and associated facilities, including the pool. Three appeals have been filed opposing the issuance of this Critical Area variance. One by neighbors, one by the Chesapeake Bay Foundation, and one by the Critical Area Commission. **Update:** There were three nights of hearings before the Anne Arundel County Board of Appeals. The parties' written closing arguments are due this week and Ms. Vainieri will provide another update when a decision is made.

***Walston (New) – Illegal Construction in the Buffer – Wicomico County.*** The Walstons constructed a very large playhouse structure in the Buffer without permits. The Wicomico County Board of Zoning Appeals upheld the enforcement officer's decision that the Walstons did in fact construct an accessory structure in the Critical Area without approvals. The Walstons challenged the Board's decision before the Circuit Court for Wicomico County. The Commission, along with the County, filed to participate in the case. Shortly afterwards, the Walstons dismissed their case, meaning that this goes back to a standard enforcement matter. Staff will continue to monitor the case and assist the County should they need any help.

***Min (New) – Variance to the Buffer – Prince George's County.*** The Mins obtained a variance to the Buffer, which is expanded for steep slopes, to construct a single-family dwelling, porch, garage, and driveway on an undeveloped lot. The property is located along Broad Creek in Fort Washington, Maryland. One of the required Critical Area variance standards is the unwarranted hardship standard. Without the variance, the applicant would be deprived of a reasonable and significant use of the entire lot or parcel. Unfortunately, the Planning Board articulated that standard incorrectly and the Commission filed a petition for judicial review in the Circuit Court to challenge the Board's decision. We were able to work with the homeowners and the County to

resolve this case short of litigation. The County agreed to our revised language and will be issuing an amended/corrected decision. Once that happens, we will dismiss our case.

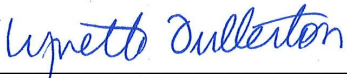
***Mt. Ararat Farm / Buck (New) – Illegal construction in the Buffer – Cecil County.*** The property owner’s son constructed a huge (4 acre) motocross racetrack without approvals at Mt. Ararat Farm in Port Deposit, Maryland. This resulted in the County citing the property owner for numerous violations including unauthorized construction in the Buffer and an unauthorized use of the Resource Conservation Area. The Board of Zoning Appeals affirmed those decisions of the Zoning Administrator. The property owner challenged the Board’s decision in Circuit Court. The Commission, along with the County, participated in the case asking the Court to affirm the Board’s decision. At the hearing in July, the judge ruled from the bench in our favor. We’re waiting for the Order to be signed and then the property owner has 30 days to decide whether to appeal the decision. If she doesn’t, it will revert to the enforcement action before the County where we would want the racetrack removed, the area restored, and mitigation.

**OLD BUSINESS:**

Kate Charbonneau gave an update on the Wagner case, including slides of preliminary demolition work done. The case has been resolved and work should be complete by November. Mr. Wagner was required to remove the patio, pool, gazebo, parts of the driveway, and do mitigation plantings.

**NEW BUSINESS:** Ms. Charbonneau reminded Commissioners to RSVP if they’re interested in going on the Poplar Island trip on September 4. Also, for reimbursement for bridge or other tolls, a paper receipt must be provided. If you have an EZpass you can go online to your account and print the record that shows the crossing on the day of the meeting, and mail it to the CAC office.

Chairman Deegan adjourned the meeting at 2:30 p.m.

  
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Lynette Fullerton, Commission Secretary

October 2, 2019  
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Date of Approval