

# MINUTES

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

**January 5, 2022**

**CALL TO ORDER:** Chairman Charles C. Deegan called the meeting to order at 1:00 p.m. Chairman Deegan announced that the meeting was being held remotely on Microsoft Teams due to the current public health emergency. He shared that the meeting was being recorded and streamed live to the public and that a copy of the recording would be made available on the Commission's website. Executive Director Kate Charbonneau did a roll call to confirm the Commission members in attendance.

**Commission Members in Attendance:**

Nicole Acle, Wicomico County  
Tim Adams, Prince George's County  
Gail Blazer, Worcester County – Coastal Bays (Town of Ocean City)  
Jeffrey Ferguson, Eastern Shore at Large  
Deborah Herr Cornwell, Department of Planning  
Anita Grant, Western Shore at Large  
Sandy Hertz, Department of Transportation  
Michael Hewitt, St. Mary's County  
Dawn Jacobs, Kent 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  
Jennifer Merritt, Worcester County – Chesapeake Bay  
Catherine McCall, Department of Natural Resources  
Michael McCarthy, Talbot County  
Ewing McDowell, Department of Commerce  
Julie Oberg, Department of Agriculture  
Steven Parker, Cecil County  
Tammy Roberson, Department of Environment  
Steven Taylor, Worcester County – Coastal  
Caroline Varney-Alvarado, Department of Housing and Community Development

**Commission Members Not in Attendance:**

Curtis Beulah, Harford County  
Andrew Bradshaw, Dorchester County  
Sue Greer, Charles County

**APPROVAL OF MINUTES:** Commissioner Taylor stated that he had not been noted as present at the October meeting. He motioned to approve the October 26, 2021 minutes with the correction he noted. Commissioner Herr-Cornwell seconded. All voted to approve.

## **STAFF PRESENTATIONS**

### **REGULATIONS:**

#### **Updates to Water Dependent Facilities Regulations – Final**

Ms. Lisa Hoerger presented for vote final updates to the Water Dependent Facilities regulations. Ms. Hoerger reviewed her staff report, which has been incorporated into and made a part of these minutes.

At its August 8, 2021 meeting the Commission approved for publication as proposed regulations the draft proposal to update the water-dependent facility regulations (COMAR 27.01.03 and associated chapters). The updates modernize the drafting style, update certain provisions, and where necessary, delete certain provisions. Several non-substantive changes were requested by Commission staff. The Assistant Attorney General has certified that these changes do not differ substantially from the proposed text.

The proposal was published in the Maryland Register on October 22, 2021. The public comment period ran through November 22, 2021. No comments were received during the official public comment period. If permission is granted, the final notice would appear in the January 28 edition of the Maryland Register with a final effective date of February 7, 2022.

Hearing no questions, Chairman Deegan recognized Program Subcommittee Chair Hertz, who moved on behalf of the Program Subcommittee that the Commission authorize Commission staff to publish these regulations as they appeared in the October 22, 2021 edition of the Maryland Register as final regulations in a future edition of the Maryland Register. Further, she moved to approve the non-substantive changes as they appeared in the staff report and as presented. Commissioner Adams seconded the motion. **Motion passed unanimously.**

### **PROJECT SUBCOMMITTEE:**

#### **Washington Suburban Sanitary Commission – Piscataway Sewershed Rehabilitation**

Ms. Tay Harris presented for vote, Piscataway Sewershed Rehabilitation Phase II project, by the Washington Suburban Sanitary Commission (WSSC). Ms. Harris reviewed her staff report, which has been incorporated into and made a part of these minutes.

The WSSC Piscataway Sewershed Rehabilitation Phase II project consists of rehabilitating segments of the Piscataway sewershed that transverse east and west of Indian Head Highway (MD Route 201), from Old Fort Road south to Livingston Road in Oxon Hill. All work will occur within WSSC right-of-way (ROW). The limit of disturbance (LOD) within the Critical Area is 6.91 acres, of which 3.25 acres are located on land designated as Limited Development Area (LDA) and 3.66 acres are located on lands designated as Resource Conservation Area (RCA). The Buffer is expanded for steep slopes, hydric soils, highly erodible soils, nontidal wetlands and tributary streams. Other natural resources on site include tidal wetlands (non-

forested and forested), Sensitive Species Review Areas (SPPRAs), and Forest Interior Dwelling Species (FIDS) habitat.

The project will result in clearing of 5.07 acres of tree canopy, including 4.4 acres in the expanded Buffer. WSSC proposes mitigation at a 1:1 ratio that includes approximately 3.23 acres of upland and wetland reforestation areas, stabilizing and reseeding of the remaining cleared areas, and restoring the natural stormwater flow upon project completion. Impacts to tidal and nontidal wetlands will be mitigated per the Maryland Department of the Environment's authorization.

Commissioner Ferguson asked how long the project would take to complete once the approvals are in place, and Ms. Harris answered that she believed it was supposed to take about two years.

Chairman Deegan then recognized Project Subcommittee Chair Hertz, who moved on behalf of the Project Subcommittee that the Commission approve the WSSC Phase II with the following conditions:

1. Prior to the start of construction, WSSC shall submit the Maryland Department of the Environment's authorization to Critical Area Commission staff.
2. Prior to the start of construction, WSSC shall submit the Maryland Historical Trust's determination to Critical Area Commission staff.
3. Within 60 days of Critical Area Commission approval, WSSC shall submit an executed Planting Agreement to Critical Area Commission staff.

Commissioner Adams seconded the motion. **Motion passed unanimously.**

### **City of Havre de Grace – Living Shoreline and Boat Ramp Replacement Project**

Ms. Claudia Jones presented for vote the Havre de Grace Living Shoreline and Boat Ramp Replacement Project. She reviewed the staff report, which is incorporated into and made a part of these minutes.

The City of Havre de Grace is proposing a multifaceted project to redevelop a former industrial site into a city-owned waterfront park that will include a double boat ramp, soft kayak launches, vehicle parking, treatment of stormwater through a step-pool conveyance system, and a living shoreline. The Water Street Heritage Park site encompasses numerous waterfront parcels totaling 7.41 acres of land classified as Intensely Developed Area (IDA), and Modified Buffer Area (MBA). The MBA has a 25-foot setback for new development. The Park is located just north of the existing Amtrak railroad bridge. The overall project purpose is to create boating access, develop a waterfront park, provide parking, create tidal marsh and upland habitat, treat stormwater, provide climate resilient shore erosion control, provide educational opportunities, and generate EPA mandated MS4 and TMDL credits.

The City's MBA program requires that an area of twice the extent of the footprint of development activity within the 100-foot Buffer be planted with native vegetation. The total required mitigation for the boat ramp and parking lot is 27,617 square feet (sf). In addition, it is estimated that 20,893 sf of vegetation will be cleared for all construction, including the park,

stormwater conveyance, and living shoreline. Mitigation will be provided at a ratio of 1:1 for the clearing. Total mitigation required is 48,510 sf of planting. The City is proposing to plant an area of 74,461 sf with trees, shrubs, and herbaceous vegetation adjacent to the living shoreline and within and around the step-pool conveyance areas. In addition, the living shoreline itself will create 1.87 acres of vegetated high and low marsh.

Commissioner Taylor inquired about the location of the kayak launch, and the question was answered by a representative from the City. Commissioner Jacobs asked for clarification on why there's so much impervious surface proposed for the project. Ms. Jones stated that the site is already paved, with cracks throughout. Due to contamination, it was determined that the best course of action would be to cap it and repave it.

Chairman Deegan then recognized Project Subcommittee Chair Hertz, who moved that the Commission vote to approve the project with the following conditions:

1. Receipt of an updated Planting Plan and Planting agreement within 30 days for review and approval by Commission staff.
2. Prior to the start of construction, the City of Havre de Grace shall provide Commission staff with MDE and US Army Corps of Engineers authorizations for impacts to tidal wetlands.
3. Prior to the start of construction, the City shall provide Commission staff with MDE's stormwater management approval.

Commissioner Taylor seconded. **Motion passed unanimously.**

#### **PROGRAM SUBCOMMITTEE:**

##### **Refinement – City of Havre de Grace – Critical Area Program Comprehensive Review (Harford County)**

Ms. Hoerger presented a refinement to the Critical Area Program for the City of Havre de Grace. She reviewed the staff report, which is incorporated into and made a part of these minutes.

On October 4, 2021, the Mayor and City Council of Havre de Grace voted to amend and reinstate the Havre de Grace Code, Chapter 49 - Critical Areas, through the adoption of Ordinance No. 1059. This ordinance 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 originally approved by the Critical Area Commission in 1988 with a subsequent update in 2006.

The City of Havre de Grace is in Harford County along the Susquehanna River and at the head of the Chesapeake Bay. Only two of the three Critical Area designations occur inside the corporate boundaries: the Intensely Developed Area (IDA) and the Resource Conservation Area (RCA). The shoreline that is mapped as IDA is also mapped as a Modified Buffer Area (MBA).

The update repeals and replaces all the elements of the zoning ordinance related to development in the Critical Area, including development standards, density and use standards, text and mapping amendment procedures, variances, and enforcement. Most of the updated Program does not deviate

from the model ordinance; however, the city has proposed to modify the ordinance to fit its unique Critical Area Program in regard to Modified Buffer Area provisions and shore erosion control projects to now include a Buffer Management Plan.

Hearing no questions, Chairman Deegan recognized Program Subcommittee Acting Chair Herr-Cornwell, who moved that the Commission concur with the Chairman's determination that the comprehensive review, Ordinance No. 1059, be processed as a refinement to the City of Havre de Grace's Critical Area Program, as the proposed changes are consistent with the Critical Area Law and its regulations.

Chairman Deegan said that he accepted the recommendation, and this would be his final decision.

**Refinement: City of Havre de Grace – Critical Area Boundary Map Update (Harford County)**

Ms. Hoerger presented a refinement to the City of Havre de Grace Critical Area Program. Ms. Hoerger reviewed her staff report, the contents of which are incorporated into and made a part of these minutes.

Commission staff worked with the City of Havre de Grace, 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 city. These draft maps were vetted by the aforementioned agencies, were provided to affected property owners, and lastly, were delivered to the city for public comment and local approval. The update resulted in a gain of 37 acres and a loss of 53 acres, with a net loss of 16 acres and 470 acres remaining the same.

As part of the mapping update, the Havre de Grace City Council adopted Ordinance 1059 at their meeting on October 4, 2021. This action constituted local adoption and incorporation of the updated Critical Area Overlay District Map.

Hearing no questions, Chairman Deegan recognized Program Subcommittee Acting Chair Herr-Cornwell, who moved on behalf of the Program Subcommittee that the Commission concur with the Chairman's decision that this map update be processed as a refinement to the City of Havre de Grace's Critical Area Program. Further, she recommended the Chairman approve the map update as proposed.

Chairman Deegan said that he accepted the recommendation, and this would be his final decision.

**Refinement: Town of Queenstown – Comprehensive Review (Queen Anne's County)**

Mr. Michael Grassmann presented a refinement to the Queen Anne's County Critical Area Program. Mr. Grassmann reviewed the staff report, which has been incorporated into and made a part of these minutes.

The Town of Queenstown in Queen Anne's County has completed a comprehensive review of their local Critical Area Program. On July 28, 2021 the Town of Queenstown adopted Ordinance No. 21-04, amending Article IV, Part III of the Queenstown Zoning Ordinance titled, "Critical Area Overlay District". The comprehensive review incorporates recent updates to the state Critical Area Law and Criteria. Natural Resources Article, §8-1809(g) requires each local jurisdiction to review its entire

Critical Area program at least every six years. The Town previously updated its Critical Area Program in February 2013.

The Town of Queenstown is located in Queen Anne's County on Little Queenstown Creek and the Chester River. The Town includes all three land classifications: Intensely Developed Area (IDA), Limited Development Area (LDA) and Resource Conservation Area (RCA). Additionally, a portion of the Town's shoreline is mapped as a Modified Buffer Area (MBA).

The comprehensive update of the Town of Queenstown'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 Queenstown Critical Area Program are based upon the model ordinance for municipalities, created by Critical Area Commission staff. The updated Program follows the model ordinance and maintains previously approved language related to Growth Allocation non-adjacency standards. Additionally, language referencing the Critical Area Commission's renewable energy generating systems regulations (COMAR 27.01.14), was incorporated into the ordinance.

Hearing no questions, Chairman Deegan recognized Program Subcommittee Acting Chair Herr-Cornwell, who moved on behalf of the Program Subcommittee that the Commission concur with the Chairman's decision that this comprehensive review be processed as a refinement to the Town of Queenstown's Critical Area Program. Further, she recommended the Chairman approve the comprehensive review as proposed.

Chairman Deegan said that he accepted the recommendation, and this would be his final decision.

**Refinement: Town of Queen Anne – Critical Area Program Comprehensive Review (Queen Anne's County)**

Mr. Grassmann presented a refinement to the Town of Queen Anne's Critical Area Program. He presented the staff report, the contents of which are made a part of these minutes.

The Town of Queen Anne in Queen Anne's County has completed a comprehensive review of their local Critical Area Program. The comprehensive review incorporates recent updates to the state Critical Area Law and Criteria. Natural Resources Article, §8-1809(g) requires each local jurisdiction to review its entire Critical Area program at least every six years. The previous update to the Town's Critical Area Program was completed in June 2012. On September 15, 2021 the Mayor and Town Commissioners approved Ordinance No. 22-02. This Ordinance repealed and replaced Article 6 – Critical Area Overlay District Regulations and in the Town Zoning Code as well as additional Sections.

The Town of Queen Anne is located in both Queen Anne's County and Talbot County along Tuckahoe Creek, a tributary to the Choptank River. The majority of the Town is designated Intensely Developed Area (IDA), but sections of Resource Conservation Area (RCA) and Limited Development Area (LDA) are also within the Town limits.

The comprehensive update of the Town of Queen Anne'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 Queen Anne's Critical Area Program are based upon the model ordinance for municipalities, created by Critical Area Commission staff. The updated Program follows the model ordinance.

Hearing no questions, Chairman Deegan recognized Acting Program Subcommittee Chair Herr-Cornwell, who moved that the Commission concur with the Chairman's determination that the Town of Queen Anne's Comprehensive Review can be reviewed as a refinement to the Town's Critical Area Program. She also recommended that the Chairman approve this comprehensive review as proposed.

Chairman Deegan said that he accepted the recommendation, and this would be his final decision.

**LEGAL UPDATES:**

Ms. Emily Vainieri reported on one update.

*Update – Rote (Somerset County)* – Mr. Rote cleared nearly an acre of trees and shrubs in the Critical Area without approvals at his property in Mt. Vernon, Maryland. Somerset County cited a Critical Area violation, which the Rotes challenged. The Somerset County Board of Zoning Appeals affirmed the County's decision to cite a Critical Area violation for the unauthorized clearing. Mr. Rote challenged the Board's decision by filing an appeal to the Circuit Court for Somerset County. On December 10<sup>th</sup>, the court held a hearing. Because the Rotes failed to appear, the Court dismissed the case. The case now goes back to the County to resolve the underlying violation.

**NEW BUSINESS:**

Chairman Deegan announced that he would like to schedule a tour of the Port of Baltimore, hosted by the Maryland Port Administration, sometime this Spring. Ms. Charbonneau had no new business but said to keep an eye on email over the next few weeks with regards to a February meeting.

  
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Lynette Fullerton, Commission Secretary

4/6/22  
Date of Approval