

# MINUTES

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

**February 1, 2023**

**CALL TO ORDER:** Chairman Charles C. Deegan called the meeting to order at 1:00 p.m.

**Commission Members in Attendance:**

Sean Eames, Baltimore City  
Jeffrey Ferguson, Eastern Shore at Large  
Jenelle Gerthoffer, Worcester County – Coastal/Town of Ocean City  
Anita Grant, Western Shore at Large  
Sue Greer, Charles County  
Deborah Herr Cornwell, Department of Planning  
Sandy Hertz, Department of Transportation  
Michael Hewitt, St. Mary’s County  
Dawn Jacobs, Kent County  
Charles Laird, Somerset County  
James Lewis, Caroline County  
Chad Malkus, Dorchester County  
Gary Mangum, Queen Anne’s County  
Jennifer Merritt, Worcester County – Chesapeake Bay  
Alisha Mulkey, Department of Agriculture  
Catherine McCall, Department of Natural Resources  
Steven Parker, Cecil County  
Tammy Roberson, Department of Environment

**Commission Members Not in Attendance:**

Tim Adams, Prince George’s County  
Pat Mahoney, Calvert County  
Michael McCarthy, Talbot County  
Steven Taylor, Worcester County – Coastal

**CHAIRMAN’S REMARKS:** Chairman Deegan provided information about the virtual meeting. He then introduced Commissioner Jenelle Gerthoffer, new Commissioner for Ocean City, and invited her to say a few words. Finally, Chairman Deegan noted there was a change to the agenda and the text amendment from Talbot County related to country clubs in the RCA had been withdrawn by Talbot County.

**APPROVAL OF MINUTES:** Commissioner Hertz moved to approve the minutes from the January meeting. Commissioner Ferguson seconded. Motion passed unanimously.

## **STAFF PRESENTATIONS**

### **REGULATIONS:**

#### **Final Regulations to Amend Growth Allocation Provisions and Shore Erosion Provisions**

Ms. Lisa Hoerger presented for vote a request for permission to publish as final, updates to COMAR Title 27, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays; specifically growth allocation provisions and the shore erosion control/shoreline stabilization chapter. Ms. Hoerger reviewed her staff report and proposed changes, the contents of which have been incorporated into and made a part of the minutes.

At its September 7, 2022 meeting, the Critical Area Commission voted to approve changes to the regulations related to Chapter 2, growth allocation standards and Chapter 4, shore erosion protection. Further, the Commission authorized staff to forward the draft regulations to the Administrative, Executive, & Legislative Review Committee and subsequently to publish these regulations as proposed regulations in the Maryland Register. The updates to this chapter modernize the drafting style, update certain provisions, and where necessary, delete certain provisions. No public comments were received. The Commission is now being asked to authorize to publish these regulations as final regulations in the Maryland Register. If permission is granted, the final notice would appear in the February 24, 2023 edition of the Maryland Register with a final effective date of March 6, 2023.

Chairman Deegan thanked Ms. Hoerger, CAC staff, Emily Vainieri, as well as Margaret McHale, Ren Serey, and Gary Setzer for all their work in developing these updated regulations. He then recognized Program Subcommittee Chair Sue Greer, who moved on behalf of the Program Subcommittee to authorize to publish these regulations as final. Commissioner Hewitt seconded the motion. **Motion passed unanimously.**

### **PROJECT SUBCOMMITTEE:**

#### **Somerset County and Maryland Department of Transportation – State Highway Administration – MD 413 Rails to Trails Multi-Use Path Installation**

Ms. Kate Durant presented for a vote, a proposal by Somerset County to construct a multi-use path along a former railroad bed in the right-of-way of MD-413 in Somerset County. Ms. Durant presented the staff report, which has been incorporated into and made a part of these minutes.

Somerset County is proposing to construct a 10-foot wide multi-use path along MD-413 from north of the Big Annemessex River to South of US-13 (See Attachment #1). The path will be constructed on the bed of the historic Eastern Shore Railroad along the northbound side of MD-413 within State Highway Administrations right-of-way. This project has been divided into multiple phases, and a previous phase was approved as locally consistent under COMAR 27.02.02, in 2018. This phase of the project is approximately 3.2 miles, of which approximately 1,000 linear feet is located in the Critical Area and designated as Resource Conservation Area (RCA). The limits of disturbance (LOD) for this project are 18.96 acres, of which 3.33 acres are located in the Critical Area.

The project will be constructed and maintained by Somerset County. The Maryland Department of Transportation State Highway Administration (MDOT SHA) District 1 is funding the design, and providing oversight, with a Federal Transportation Alternatives grant. After the construction is complete, the multi-use path will extend from Crisfield to Westover in Somerset County. This project is required to come to the Commission for approval under COMAR 27.02.06 because it is a County action on State-owned land that does not meet the requirements of the Somerset County Critical Area program due to proposed non-water dependent Buffer impacts.

Commissioner Lewis asked whether pervious pavement or something similar could be used in place of asphalt. Ankur Patel responded that because of the proposed plantings adjacent to the path, falling leaf material would make maintenance difficult.

Chairman Deegan then recognized Project Subcommittee Chair Hertz, who moved on behalf of the Project Subcommittee that the Commission vote to approve the project. Commissioner Laird seconded. **Motion passed unanimously.**

#### **PROGRAM SUBCOMMITTEE:**

##### **Refinement: Talbot County – Text Amendment – Country Clubs in the RCA**

This text amendment was withdrawn by Talbot County.

##### **Refinement: Talbot County – Text Amendment – Expansion of Structures Used for Nonconforming Uses**

Ms. Jennifer Esposito presented a refinement to the Talbot County Critical Area Program in the form of a text amendment for expansion of nonconforming uses. Ms. Esposito reviewed her staff report, which is incorporated into and made a part of these minutes.

Talbot County Bill No. 1525 amends the section of the County's Zoning Code relating to the expansion of structures that contain nonconforming uses. The intent of the bill is to allow for a greater increase in the expansion of nonconforming uses within structures. Bill No. 1525 was passed by the County Council on September 27, 2022. A copy of the bill is attached to the staff report.

Hearing no questions, Chairman Deegan recognized Program Subcommittee Chair Greer, who moved that the Chairman approve the text amendment. Chairman Deegan said he accepts the Commission's recommendation and that this would be his final decision.

#### **LEGAL UPDATES:**

Ms. Emily Vainieri had no updates to report.

#### **OLD BUSINESS:**

None.

#### **NEW BUSINESS:**

No new business. Ms. Charbonneau noted that there was a good possibility that there will be a meeting in March, and that she would be in touch soon.

  

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Lynette Fullerton, Commission Secretary

3/1/23  

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Date of Approval

**Critical Area Commission  
Chesapeake and Atlantic Coastal Bays  
Meeting at 100 Community Place, Crownsville, Maryland**

**February 1, 2023**

**Program Implementation Subcommittee Minutes**

**Attendees:** *Greer (Chair), Ferguson, Gerthoffer, Grant, Herr-Cornwell, Hewitt, Lewis, Malkus, Merritt, Mulkey*

**Guests:** Zach Smith, Brennan Tarleton, Bryce Yelton

**Item 1. Approval of January, 2023 Program Subcommittee Meeting Minutes**

Commissioner Ferguson moved to approve the minutes from the January 4 Program Subcommittee meeting. Commissioner Mulkey seconded the motion. All voted in favor. **Motion passed unanimously.**

**Item 2. Talbot County – Country Clubs in the RCA Text Amendment**

Presented by Jennifer Esposito.

Subcommittee Chair Greer announced that this had been withdrawn by the County.

**Item 3. Talbot County – Expansion of Structures Used for Nonconforming Uses Text Amendment**

Presented by Jennifer Esposito.

Talbot County has submitted a text amendment to their Critical Area Program for approval by the Critical Area Commission. Bill No. 1525 amends the section of the County's Zoning Code relating to the expansion of nonconforming uses. The intent of the bill is to allow for a greater increase in the expansion of nonconforming uses within structures. Bill No. 1525 was passed by the County Council on September 27, 2022. Ms. Esposito discussed the language as it appears now and the proposed changes by Commission staff to limit the amount of expansion in the RCA.

**Discussion:**

Commissioner Taylor was not present but submitted a question prior to the meeting, and Ms. Esposito addressed his question during her presentation. Commissioner Ferguson asked about what conversations took place between the Talbot County staff and the CAC, and Ms. Esposito elaborated. Commissioner Greer asked Mr. Tarleton (Talbot County) whether the County approves of the language changes, and he confirmed that they accept it. There were no public comments. Commissioner Merritt moved to approve the amendment. Commissioner Lewis seconded. **Motion passed unanimously.**

**Item 4. Final Regulations to Amend Growth Allocation Provisions and Shore Erosion Provisions.** Presented by Lisa Hoerger.

At its September 7, 2022 meeting, the Critical Area Commission voted to approve changes to the regulations listed above that include amending and adopting certain regulations, and to authorize Commission staff to forward the draft regulations to the Administrative, Executive and Legislative Review Committee and subsequently to publish these regulations as final regulations in the Maryland Register. The updates to this chapter modernize the drafting style, update certain provisions, and where necessary, delete certain provisions. The proposal was published in the Maryland Register on December 2, 2022 and is attached to the staff report. No comments were received during the official comment period, but Ms. Hoerger stated she did hear from one Riverkeeper with questions about the development chapter and the growth allocation provisions, which she answered.

**Discussion:** Commissioner Hewitt asked for clarification on the role of riverkeepers, whether they're appointed and if they have any legal backing. Ms. Hoerger explained that there is an umbrella Riverkeeper organization but that individual riverkeepers are not political appointees. She said that they are important because of their input and their roles as liaisons between community members and the Commission.

Commissioner Ferguson moved that the Program Subcommittee approve the motion to publish the regulations as final in an upcoming edition of the Maryland Register. Commissioner Hewitt seconded the motion. Motion passed unanimously.

**Critical Area Commission  
Chesapeake and Atlantic Coastal Bays  
Meeting at 100 Community Place, Crownsville, Maryland**

**February 1, 2023**

**Project Implementation Subcommittee Minutes**

*Attendees: Hertz (Chair), Eames, Grant, Laird, Mangum, McCall, Parker, Roberson*

*Guests: Ankur Patel (consultant), Catherine Skeeter (Somerset County)*

**Item 1. January Project Subcommittee Minutes.**

Commissioner Hertz asked for a motion to approve the Project Subcommittee meeting minutes from the January meeting. Commissioner Laird so moved. Commissioner Grant seconded. **Motion passed unanimously.**

**Item 2. Somerset County and Maryland Department of Transportation – State Highway Administration – MD 413 Rails to Trails Multi-Use Path Installation**

Presented by Kate Durant

Somerset County is proposing to construct a 10-foot wide multi-use path along MD-413 from north of the Big Annemessex River to South of US-13 (See Attachment #1). The path will be constructed on the bed of the historic Eastern Shore Railroad along the northbound side of MD-413 within State Highway Administrations right-of-way. This project has been divided into multiple phases, and a previous phase was approved as locally consistent under COMAR 27.02.02, in 2018. This phase of the project is approximately 3.2 miles, of which approximately 1,000 linear feet is located in the Critical Area and designated as Resource Conservation Area (RCA). The limits of disturbance (LOD) for this project are 18.96 acres, of which 3.33 acres are located in the Critical Area.

**Discussion:** Commissioner Eames asked for clarification on mitigation in Buffer, and Ms. Durant explained the difference between the mitigation for canopy versus buffer clearing/disturbance. He also asked about tree failure rates and maintenance requirements, and Ms. Shearin explained that there is a monitoring period for tree plantings, and that the County is responsible for replacement of dead plantings.

Commissioner Laird made a motion to approve the project with conditions as noted in the staff report. Commissioner Roberson seconded. **Motion passed unanimously.**