

# MINUTES

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

**May 4, 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  
Curtis Beulah, Harford County  
Gail Blazer, Worcester County – Coastal Bays (Town of Ocean City)  
Sean Eames, Baltimore City  
Jeffrey Ferguson, Eastern Shore at Large  
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  
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  
Steven Parker, Cecil County  
Tammy Roberson, Department of Environment  
Hans Schmidt, Department of Agriculture (for Alisha Mulkey)  
Steven Taylor, Worcester County – Coastal  
Caroline Varney-Alvarado, Department of Housing and Community Development

**Commission Members Not in Attendance:**

Tim Adams, Prince George's County  
Ewing McDowell, Department of Commerce  
Alisha Mulkey, Department of Agriculture

**APPROVAL OF MINUTES:** Commissioner Mahoney moved to approve the minutes from the April meeting. Commissioner Hewitt seconded. Motion passed unanimously.

**OPENING REMARKS:** Chairman Deegan welcomed new Commissioner, Chad Malkus, representing Dorchester County. He invited Mr. Malkus to say a few words of introduction.

### **STAFF PRESENTATIONS**

#### **PROGRAM SUBCOMMITTEE:**

##### **Refinement – Town of Denton – Critical Area Program Comprehensive Review (Caroline County)**

Ms. Annie Sekerak presented a refinement to the Critical Area Program for the Town of Denton. Ms. Sekerak reviewed her staff report, which is incorporated into and made a part of these minutes.

On March 11, 2022, the Town Council of Denton voted to repeal and reenact the Town's Critical Area program through the adoption of Ordinance No. 728. This ordinance was drafted following a comprehensive review of the Town's Critical Area Program. The Town's existing Critical Area Program was approved by the Critical Area Commission in 2013. The Town's Critical Area maps were approved in 2016 in accordance with State Law (Ch. 119, Acts of 2008, §1—4) and the Critical Area Commission's mapping regulations (COMAR 27.01.11). The Town has approved a non-substantive change to their map to be reviewed by the Commission on May 4, 2022, which is the subject of a separate staff report.

Hearing no questions, Chairman Deegan recognized Program Subcommittee Chair Sue Greer, who stated that the Program Subcommittee concurs with the Chairman's determination that the comprehensive review, Ordinance No. 728, be processed as a refinement to the Town of Denton's Critical Area Program, as the proposed changes are consistent with the Critical Area Law and its regulations. Further, she recommended that the refinement be approved with the condition that the changes are incorporated into the Town's Critical Area Program within 120 days.

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

##### **Refinement: Town of Denton – Critical Area Map Update (Caroline County)**

Ms. Sekerak presented a refinement to the Critical Area Program for the Town of Denton. Ms. Sekerak reviewed her staff report, the contents of which are incorporated into and made a part of these minutes.

The Town Council of Denton voted on March 11, 2022 to approve a minor update to the Town's Critical Area map through the adoption of Ordinance No. 729. The minor update consists of replacing the label "Buffer Exemption Area" with "Modified Buffer Area" to be consistent with the language in the updated Critical Area program (to be reviewed by the Commission on May 4, 2022). No changes to the 1,000-foot boundary or Critical Area designations are proposed.

COMAR was updated to use the term Modified Buffer Area instead of Buffer Exemption Area in 2012. Therefore, the map change is consistent with the Critical Area regulations.

Chairman Deegan recognized Program Subcommittee Chair Sue Greer, who stated that the Program Subcommittee concurs with the Chairman's decision that this map update be processed as a refinement to the Town of Denton's Critical Area Program. Further, she recommended the Chairman approve the non-substantive map update as proposed.

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

**Refinement: Text Amendment – Solar Definitions (St. Mary's County)**

Ms. Hoerger presented a refinement to the St. Mary's County Critical Area Program. Ms. Hoerger reviewed her staff report, the contents of which are incorporated into and made a part of these minutes.

On March 1, 2022, the Commissioners of St. Mary's County adopted a text amendment to the St. Mary's County Comprehensive Zoning Ordinance (SMCZO). Ordinance No. 2022-06 will accomplish the following:

- Amend Chapter 285, Schedule 50.4 to allow Solar, Major and Solar, Minor as permitted uses, including within the Critical Area.
- Add the following definitions: Farmland of Statewide Importance Soils; Solar, Commercial; Industrial, or Institutional Accessory; Solar, Community; Solar, Residential, or Agricultural Accessory; Solar, Utility-Scale;
- Delete and replace the definition of Prime Agricultural Soils.
- Amend the Parking Standards and Loading Space Group Reference by adding Solar, Major, and Solar, Minor to the table and requiring 2 off-street parking spaces and one off-street loading space for solar, major, and 1 parking space for off-street parking and no off-street loading space.

The text amendments are consistent with the relevant chapters of COMAR concerning solar development projects in the Critical Area. The updated zoning ordinance will defer to COMAR 27, Subtitle 01 for all Critical Area requirements, which includes the recently added Chapter 14, Renewable Energy Generating Stations.

Hearing no questions, Chairman Deegan recognized Program Subcommittee Chair Sue Greer, who stated that the Program Subcommittee concurs with the with the Chairman's decision that this text update be processed as a refinement to the St. Mary's County Critical Area Program. Further, she recommended the Chairman approve the text update as proposed.

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

**Refinement: Bill No. 2022-2 – Nonwater-Dependent Structures on Piers (Dorchester County)**

Ms. DeWeese presented a refinement to the Critical Area Program of Dorchester County. Ms. DeWeese reviewed her staff report, the contents of which are incorporated into and made a part of these minutes.

On March 1, 2022, the Dorchester County Council adopted Bill 2022-2. The Bill adds the definition of nonwater-dependent project in Chapter 68-1 of the Dorchester County Code, as well as language regarding such projects in Chapter 68-5 of the Dorchester County Code.

Nonwater-dependent projects in the Critical Area are allowed as an opt-in provision by local Critical Area Programs and are governed by Natural Resources Article § 8-1808.4. Pursuant to the Natural Resources Article § 8-1808.4 and COMAR 27.01.13, a local jurisdiction may not issue a building permit or any other approvals for a nonwater-dependent project until the Critical Area Commission approves an amendment to the jurisdiction's Critical Area Program which includes all of the required criteria.

Dorchester County inserted provisions to allow accessory structures or uses on a pier if it is incidental to a commercial use in the Intensely Developed Area (IDA). These provisions were incorporated into the general Critical Area requirements section of the County's Critical Area Ordinance, Chapter 68, of the County Code. The regulations match the language in State law and are therefore consistent with Natural Resources Article § 8-1808.4. The County elected to not authorize small renewable energy generating projects on piers.

Hearing no questions, Chairman Deegan recognized Program Subcommittee Chair Sue Greer, who stated that the Program Subcommittee concurs with the with the Chairman's decision that this text update be processed as a refinement to the Dorchester County Critical Area Program. Further, she recommended the Chairman approve the text update as proposed.

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

**Refinement: Town of Easton – Comprehensive Review of Critical Area Program (Talbot County)**

Mr. Nick Kelly presented a refinement to the Critical Area Program of the Town of Easton. Mr. Kelly reviewed his staff report, the contents of which are incorporated into and made a part of these minutes.

On March 2, 2022, the Town Council of Easton voted to repeal and reenact the Town's Critical Area Program through the adoption of Ordinance No. 767. 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 previous update to the Town's Critical Area Program was approved by the Critical Area Commission in 2013.

The comprehensive update of the Town of Easton's Critical Area Program brings the Critical Area portion of its zoning ordinance into conformance with the requirements of the Critical Area

Law and regulations. The update repealed and replaced all the elements of the zoning ordinance related to development in the Critical Area, including development standards, density and use standards, amendment procedures, variances, and enforcement. The Town also added provisions to allow both accessory commercial nonwater-dependent projects on piers in the IDA and small-scale renewable energy systems on piers in the Critical Area; and provisions to allow emergency communications towers in all three Critical Area designations, including the Resource Conservation Area, provided that the tower is owned by a governmental agency, meets a public need, and is not solely for the purposes of a commercial enterprise.

Hearing no questions, Chairman Deegan recognized Program Subcommittee Chair Sue Greer, who stated that the Program Subcommittee concurs with the with the Chairman's decision that this text update be processed as a refinement to the Town of Easton's Critical Area Program. Further, she recommended the Chairman approve the text update as proposed.

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

#### **PROJECT SUBCOMMITTEE:**

##### **Maryland Department of Transportation – Maryland Port Administration: Mid-Chesapeake Bay Island Ecosystem Restoration Project at Barren Island**

Ms. Annie Sekerak presented for vote the proposal by Maryland Department of Transportation Maryland Port Administration (MDOT MPA) to restore remote island habitat at Barren Island, located in the Chesapeake Bay approximately one mile west of Upper Hoopers Island in Dorchester County. Ms. Sekerak reviewed her staff report, which has been incorporated into and made a part of these minutes.

The Mid-Bay Project is a beneficial dredged material project that will restore and protect wetland, aquatic, and terrestrial island habitat for fish, reptiles, amphibians, birds, and mammals; protect existing island ecosystems to prevent further loss of island and aquatic habitat; provide dredged material placement capacity for Federal navigation channels; increase wetlands acreage in the Chesapeake Bay watershed; decrease local erosion and turbidity; promote conditions to establish and enhance submerged aquatic vegetation; and promote conditions that support oyster recolonization. The project is a joint effort between MDOT MPA and the U.S. Army Corps of Engineers (USACE). The proposal in front of the Commission is only the Barren Island restoration project phase. This project includes the modification and construction of an additional 13,023 linear feet of stone sill, the installation of a 4,620-linear-foot segmented breakwater, the installation of two bird nesting islands totaling 8.5 acres, and the creation of approximately 83 acres of tidal wetlands. No impacts above Mean High Water (MHW) are proposed..

Chairman Deegan recognized Project Subcommittee Chair Hertz, who moved on behalf of the Project Subcommittee that the Commission approve the proposed project with the following condition:

1. Prior to the start of construction, MDOT MPA shall submit a copy of the approved Tidal Wetland License to Commission staff.

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

**LEGAL UPDATES:**

Ms. Emily Vainieri had no updates to report.

**OLD BUSINESS:**

No old business.

**NEW BUSINESS:**

No new business. Meeting adjourned.



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Lynette Fullerton, Commission Secretary

7/6/22

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Date of Approval