

MINUTES

**Critical Area Commission for the
Chesapeake and Atlantic Coastal Bays
1804 West Street, Suite 100
Annapolis, Maryland 21401**

June 2, 2021

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:

Tim Adams, Prince George's County
Gail Blazer, Worcester County – Coastal Bays (Town of Ocean City)
Andrew Bradshaw, Dorchester County
Jeffrey Ferguson, Eastern Shore at Large
Deborah Herr Cornwell, Department of Planning
Anita Grant, Western Shore at Large
Sue Greer, Charles County
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
Caroline Varney-Alvarado, Department of Housing and Community Development

Commission Members Not in Attendance:

Nicole Acle, Wicomico County
Curtis Beulah, Harford County

APPROVAL OF MINUTES: Commissioner Ferguson motioned to approve the May 5, 2021 minutes, and Commissioner Hertz seconded. All voted to approve.

STAFF PRESENTATIONS

PROGRAM SUBCOMMITTEE:

Refinement – Critical Area Program Text Amendment – Ordinance 2021-22 Pending Matters (St. Mary’s County)

Ms. Annie Sekerak presented a refinement to the Critical Area Program of St. Mary’s County. She reviewed her staff report, which is incorporated into and made a part of these minutes.

The Commissioners of St. Mary’s County are requesting approval of a text amendment to their Critical Area program that addresses pending applications and the Critical Area boundary line update. The Commissioners voted on May 18, 2021 to adopt Ordinance 2021-22, which included the pending matters legislation associated with the 1,000-foot Critical Area Boundary map update. Recall that at the April 7, 2021 meeting the Commission approved the following:

An extension for map approval to May 18, 2021, at which time the St. Mary’s County Commissioners must adopt the updated map and pending matters legislation and submit the maps and legislation to the Commission for final review and approval. If the County Commissioners fail to adopt the updated map, then the maps would be deemed approved as of May 19, 2021.

Ordinance No. 2021-22, amends Chapter 27 ‘Vested Rights and Authority to Continue Nonconforming Projects’ of the Comprehensive Zoning Ordinance. The proposed text allows certain permit applications to be governed by the Critical Area 1,000-foot boundary line as it existed on or before May 18, 2021 for a certain limited period of time. The text is similar to the language that was approved by the Commission in 2017 for Queen Anne’s County. Since the St. Mary’s County Commissioners met the above approval requirements for the time extension request, the Chairman determined that this matter could be handled as a refinement to the County’s Critical Area program.

No public comments were received. Hearing no questions, Chairman Deegan recognized Program Subcommittee Chair, Commissioner Greer, who moved on behalf of the subcommittee that the Commission concur with the Chairman’s determination of refinement. Further, the subcommittee recommends approving the text amendment as proposed.

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

Refinement – Critical Area Map Boundary Line Update (St. Mary’s County)

Ms. Sekerak presented a refinement to the Critical Area Program of St. Mary’s County. She reviewed her staff report, which is incorporated into and made a part of these minutes.

The Commissioners of St. Mary’s County are requesting approval of the updated 1,000-foot Critical Area boundary map they adopted on May 18, 2021. Recall that at the April 7, 2021 meeting the Commission approved the following:

An extension for map approval to May 18, 2021, at which time the St. Mary's County Commissioners must adopt the updated map and pending matters legislation and submit the maps and legislation to the Commission for final review and approval. If the County Commissioners fail to adopt the updated map, then the maps would be deemed approved as of May 19, 2021.

Since the St. Mary's County Commissioners met the above approval requirements for the time extension request, Chairman Deegan determined that this matter could be handled as a refinement to the County's Critical Area program.

No public comments were received. Hearing no questions, Chairman Deegan recognized Program Subcommittee Chair Greer, who moved that the Commission concur with the Chairman's determination that the St. Mary's County map update be reviewed as a refinement to the County's Critical Area Program. Further, she moved that the Chairman approve the map update as proposed.

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

PROJECT SUBCOMMITTEE:

Eastern Correctional Institute High Temperature Hot Water and Security Fence Upgrades (Somerset County)

Ms. Kate Durant presented for vote a proposal by the Maryland Department of Public Safety and Correctional Services (DPSCS) to replace and elevate the existing High Temperature Hot Water (HTHW) and steam distribution at the Eastern Correctional Institute (ECI) in Somerset County. Ms. Durant reviewed her staff report, the contents of which are incorporated into and made a part of these minutes.

The purpose of the proposed system replacement is to improve the longevity and reduce potential corrosion of the steam distribution pipes. DPSCS is also proposing to replace the existing security fences to provide increased security. The entire site is approximately 237.9 acres and is designated as a Resource Conservation Area (RCA). The proposed upgrade includes constructing 7,829 linear feet of piping for the new high temperature hot water system mostly above grade, replacing the security fence, and replacing the security gates. The project, which DPSCS has contracted to the Maryland Environmental Service (MES), will take two years to construct.

The project will meet the lot coverage limitations and will not impact any Habitat Protection Areas, including the Buffer. The project does require a reduction in phosphorus of 0.85 pounds/year, which will be met by planting 20 trees (a mix of red oak, sweet gum, and white swamp oak) and installing rooftop disconnects.

No public comments were received. Hearing no questions, Chairman Deegan recognized Project Subcommittee Chair Hertz, who moved on behalf of the Project Subcommittee that the Commission approve the project with the following conditions:

- 1) MES shall provide a signed planting agreement to Commission staff within 60 days of completion of the project.

- 2) Before the start of construction, MES shall provide copies of all final approvals, including stormwater management and sediment and erosion control plans, to Commission staff.

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

Maryland Department of Transportation, Maryland Port Administration – MDOT MOU Exhibit A4: Maryland Port Administration

Ms. Jennifer Esposito presented for vote, the update to Exhibit A4 of the Maryland Department of Transportation (MDOT) Memorandum of Understanding (MOU) with the Critical Area Commission. Ms. Esposito reviewed her staff report, the contents of which are incorporated into and made a part of the minutes.

Exhibit A4 contains the requirements that apply to the Maryland Port Administration (MPA), one of the Transportation Business Units (TBU) at MDOT. The update to Exhibit A4 will incorporate new streamlined review procedures and other changes intended to bring this exhibit into similar conformance with recent updates to other TBU exhibits. Exhibit A4 includes three Attachments; Attachment 1 – Definitions, Attachment 2 – Designated Restoration Area Sites, and Attachment 3 – Vegetation Management Activities.

- MDOT MPA is the state agency responsible for increasing waterborne commerce through Maryland ports and much of the operations on MDOT MPA property are water-dependent. Many MDOT MPA facilities are highly developed and industrial in nature, with mostly paved surfaces within the Critical Area Buffer and up to the mean high water line. MDOT MPA and its commercial tenants perform a multitude of activities within the Buffer that are commerce and maritime related. In recognition of these factors, Exhibit A4 is made up of four sections: Section A designates MPA property as either Waterfront Industrial Area (WIA) or as Designated Restoration Area (DRA). The purpose is to recognize the unique nature and uses on each type of area and adjust development standards and mitigation requirements accordingly.
- Section B designates the categories of projects that qualify for review under this Exhibit or require review and approval by the full Commission.
- Section C establishes the water quality and habitat mitigation standards for projects within a WIA or a DRA and allows for those impacts to be met through a Fee-In-Lieu for use by MPA.
- Section D lays out the Annual Reporting requirements for both development activities and the Fee-In-Lieu program.

No public comments were received. Hearing no questions, Chairman Deegan recognized Project Subcommittee Chair Hertz, who moved on behalf of the Project Subcommittee that the Commission approve the MDOT MPA Exhibit A4 and its attachments. Commissioner Marks seconded the motion. Commissioner Hertz abstained from voting. All others voted in favor.

Motion passed.

Maryland Department of Transportation – Maryland Port Administration – Three-Party Memorandum of Understanding to Spend Critical Area Fee in Lieu Monies

Ms. Annie Sekerak presented for vote a proposed new stand-alone three-party Memorandum of Understanding (MOU) between Maryland Department of Transportation’s Maryland Port Administration (MDOT MPA), the Critical Area Commission (Commission), and the Chesapeake Bay Trust (Trust). Ms. Sekerak reviewed her staff report, the contents of which are incorporated into and made part of these minutes.

The purpose of this new MOU between MDOT MPA, the Commission, and the Trust is to enable transfer of MDOT MPA Critical Area fee-in-lieu money that has been collected to address impacts of MDOT MPA projects in the Critical Area, to the Trust so that they may solicit and fund applicable habitat and water quality projects through its established grant programs. The Chesapeake Bay Trust is a nonprofit grant-making organization created by the Maryland General Assembly in 1985 to support locally based environmental restoration projects. The Trust has a long, successful history managing grants and obtaining desired restoration outcomes. As a result, they possess the technical, financial, and managerial capacity to assist the Commission and MDOT MPA with the timely and appropriate commitment and expenditure of funds to expedite the implementation of environmental restoration projects to fulfill habitat and water quality mitigation for MDOT MPA’s impacts in the Critical Area. The Trust will use their existing Community Engagement and Restoration mini-grant program, the existing Outreach and Restoration grant program, or similar programs to solicit and fund environmental restoration, outreach, and/or engagement projects, in accordance with the process outlined in Appendix A to the MOU.

No public comments were received. Hearing no questions, Chairman Deegan recognized Project Subcommittee Chair Hertz, who moved that the Commission approve the three-party Memorandum of Understanding between MDOT MPA, the Commission, and the Trust as proposed. Commissioner Johnston seconded the motion. Commissioner Hertz abstained from voting. All others voted in favor. **Motion passed.**

Maryland Historical Trust and Jefferson Patterson Park Museum – Memorandum of Understanding General Approval

Mr. Mike Grassmann presented for vote the new proposed Memorandum of Understanding (MOU) for General Approval of projects between the Jefferson Patterson Park and Museum (JPPM) and the Critical Area Commission (CAC). Mr. Grassmann reviewed his staff report, the contents of which are incorporated into and made a part of these minutes.

The proposed MOU will govern certain activities on JPPM lands within the Critical Area as outlined. The purpose of the MOU is to provide a streamlined process for the review of specific types of maintenance and redevelopment actions by allowing Critical Area Commission (CAC) staff to conduct necessary project review and approvals.

COMAR 27.02.03 provides the Commission the authority to enter these types of agreements, provided the MOU describes a process by which the classes of activities will be conducted so as to conform with Critical Area requirements. The proposed MOU, including Exhibit A and Attachments 1 and 2 will cover a variety of activities within JPPM. The MOU and its Exhibits may not be amended or modified except with written consent of both Parties. Any changes to the

MOU itself will require full Commission approval. The Exhibits and their Attachments may be amended periodically with written consent of the Points of Contact listed in the MOU. The Commission Chairman will update the Commission on any amendments or modifications to the Exhibits and their Attachments at the meeting following the agreed upon changes. Once approved, the MOU shall remain in full force and effect for a period of five years, unless otherwise terminated in accordance with the provisions stipulated in the MOU.

No public comments were received. Hearing no questions, Chairman Deegan recognized Project Subcommittee Chair Hertz, who moved that the Commission approve this Memorandum of Understanding as proposed. Commissioner Greer seconded the motion. **Motion passed unanimously.**

OLD BUSINESS:

LEGAL UPDATES:

Rote – Illegal Tree Clearing (Somerset County) – Commissioners were notified of this new case by email. Mr. Rote cleared nearly an acre of trees without approval at his property in Mt. Vernon, Maryland. The Somerset County Board of Zoning Appeals affirmed the County’s decision to cite a Critical Area violation for that clearing. Mr. Rote filed a challenge to the Board’s decision in the Circuit Court for Somerset County. The Commission is participating in the case along with the County. So far, the administrative record has been filed. The next step is for Mr. Rote to file his brief.

MDOT MAA MOU Update – Mr. Nick Kelly provided an update on the issue of per- and polyfluoroalkyl substances (PFAS) that was one of the conditions of approval requested by the Project Subcommittee at the April Commission meeting. PFAS contamination is found especially around airports, as they were a common ingredient in fire retardants. Mr. Kelly reported that CAC staff have met with the Maryland Department of the Environment, Maryland Department of Natural Resources, MDOT Secretary’s office and MAA in May. They learned that any project in the Critical Area would be subject to approval and that any presence of PFAS contamination is covered by the approval process. Draft language will be added to the MDOT-wide MOU that will ensure that any MDOT project covered by the MOU will have to comply with all Federal, State and Local requirements as it relates to PFAS and any controlled hazardous substances.

NEW BUSINESS: There will not be a meeting in July. The August meeting is anticipated to occur. Chairman Deegan said that he has reached out to MES about a possible July or August tour of Poplar Island and will notify the Commissioners when he has more information.



Lynette Fullerton, Commission Secretary

8/4/21

Date of Approval