

MINUTES

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

November 1, 2017

The full Critical Area Commission met at the People's Resource Center, 100 Community Place, Crownsville, Maryland. Chairman Charles C. Deegan called the meeting to order.

Commission Members in Attendance:

Curtis Beulah, Harford County
Virginia Clagett, Western Shore Member-at-Large
Robert Culver, Wicomico County
Carolyn Cummins, Worcester County – Coastal Bays
Brad Frome, Prince George's County
Michael Hewitt, St. Mary's County
Mark Konapelsky, Somerset County
James Lewis, Caroline County
Michael McCarthy, Talbot County
Gary Mangum, Queen Anne's County
Patrick Nutter, Calvert County
Stephen Parker, Cecil County
Suzanne Pittenger-Slear, Eastern Shore Member-at-Large
Jennifer Rafter, Worcester County – Chesapeake Bay
Deborah Herr Cornwell, Maryland Department of Planning
Sandy Hertz, Maryland Department of Transportation
Louise Lawrence, Department of Agriculture
Malachy Rice, Maryland Department of Commerce
Catherine McCall, Department of Natural Resources
Caroline Varney-Alvarado, Department of Housing and Community Development
Gary Setzer, Department of the Environment

Commission Members Not in Attendance:

Gail Blazer, Worcester County – Coastal Bays (Town of Ocean City)
James Gesl, Charles County
David Marks, Baltimore County
Donald Satterfield, Dorchester County

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Donald Sutton, Kent County
Chris Trumbauer, Anne Arundel County

VACANT, Baltimore City

Chairman Deegan greeted the Commissioners, staff and guests and began the meeting with a call for a motion to approve the Minutes of August 2, 2017. A motion was made and seconded with all in favor.

Maryland Department of Natural Resources – Janes Island State Park Cabin Replacement

Chairman Deegan introduced Claudia Jones to present for vote the Maryland Department of Natural Resources (DNR) construction proposal at Janes Island State Park.

Ms. Jones reported that the main component of these renovations is to make Cabin #4 ADA accessible with a new parking pad, porous pavers and walkway. Cabin #4 will be reconstructed on its original site, but will be elevated above the floodplain. She stated that this project requires a conditional approval by the Commission because it exceeds the thresholds for limits of disturbance under the MOU between the Commission and DNR. Ms. Jones provided a PowerPoint presentation and reviewed the staff report, which is incorporated into and made a part of these minutes.

Janes Island State Park is located near Crisfield in Somerset County. The park includes nearly 3,000 acres of marsh, a campground, four rental cabins, a conference center, picnic areas, a boat ramp, and a marina. This project entails the total replacement of cabin #4 and construction of a new pumphouse, placement of a fire tank and installation of an underground water utility line. A large portion of the site is in the Buffer.

The limit of disturbance (LOD) for the entire project is 11,191 square feet (sf). The existing impervious surface within the LOD is 2,013 sf. The proposed impervious surface within this LOD is 2,561 sf and includes an expansion of the cabin, path, parking pad, pump house, and fire tank.

DNR proposes to plant 120 trees and 106 shrubs on site for mitigation. This mitigation amount is based on the following: 8,063 sf for temporary disturbance in the Buffer at a 1:1 ratio; 5,160 sf (2,580 sf at 2:1) for permanent impacts to the Buffer; 1,644 sf (548 sf at 3:1) for new lot coverage in the Buffer for an overall total of 14,867 sf. In addition, 33 individual trees will be cut for the project. They will be replaced at a 1:1 ratio. They have submitted a Buffer Management Plan showing where this vegetation is to be located.

The project requires approval by the Commission because it exceeds the thresholds for limits of disturbance under the Memorandum of Understanding between the Commission and the Department of Natural Resources; and it requires conditional approval because of impacts to the Buffer.

DNR is required to provide stormwater management in accordance with Maryland Department of Environment (MDE) requirements for Environmental Site Design and to meet the Critical Area 10% pollutant reduction rule. The phosphorus reduction requirement is 0.03 pounds of phosphorus. This requirement will be met on site with a submerged gravel wetland facility that is designed to remove 0.03 pounds of phosphorus.

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Ms. Jones reported that the MDE permits for stormwater and sediment and erosion control have been applied for, but not yet received; DNR Wildlife and Heritage has no records for rare, threatened, or endangered species within the site area; the Maryland Historical Trust has no issues with the proposed project; and DNR met the public notice requirements and no comments were received.

Ms. Jones covered the information provided by DNR in regards to coastal resiliency. Ms. Jones reviewed the criteria for Conditional Approval, including how DNR met the necessary standards. She recommended approval of this project with one condition:

- All final approvals, including stormwater management and sediment and erosion control, must be submitted to Commission staff prior to the start of construction.

No further discussion was made.

Mr. Setzer moved on behalf of the Project Subcommittee, that the Commission approve the improvements to Janes Island State Park proposed by the Maryland Department of Natural Resources, including the replacement of Cabin 4, construction of a new pump house, placement of a fire tank, and installation of an underground 3-inch water utility line. As required by Code of Maryland Regulations, this motion is based on the following considerations:

- Except for additional lot coverage within the Critical Area Buffer, the proposed project is in compliance with the relevant chapters of this subtitle, including requirements for pollutant reduction, mitigation, and overall lot coverage limitations.
- Disturbances to the Critical Area will be mitigated at appropriate ratios specified by the Commission.
- The proposed project offers public benefits to the Critical Area Program by selecting design and construction techniques that minimize impacts to the Critical Area and encroachment on the Park's sensitive resources. The project also includes stormwater management practices that improve water quality and plantings that not only improve water quality, but also add diversity in species and structure.
- Finally, the project allows continued public use of four cabins that provide a waterfront experience in a unique and almost pristine environment and improves accessibility by incorporating ADA requirements.

This motion was offered in accordance with the following condition:

- Prior to the start of construction, the Maryland Department of Natural Resources shall submit all final approvals to Commission staff, including stormwater management and erosion and sediment control approvals from the Maryland Department of the Environment.

The motion was seconded by Commissioner Beulah. The motion was put to a vote and approved unanimously.

St. Mary's College of Maryland – Pedestrian Walkway

Chairman Deegan then asked Ms. Jones to report on the St. Mary's College project.

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Ms. Jones reported that St. Mary's College of Maryland (SMCM) is proposing to construct a new Pedestrian Walkway/Bike Trail located next to Pt. Lookout Road (MD 5). The walkway will be 2,170 foot (ft) long and will connect the campus' northern athletic fields with an existing pedestrian footpath. The purpose of the project is to improve safety by removing pedestrians from the roadway shoulder of MD 5 and the narrow crossing over Fisherman's Creek/Wherritt's Pond where pedestrians currently walk in order to access the athletic fields. Ms. Jones provided a PowerPoint presentation and reviewed the staff report, which is incorporated into and made a part of these minutes.

The majority of the project is located within the Critical Area Buffer. There are archeological artifacts located throughout the college property that preclude digging, including for tree planting. SMCM proposes to mitigate for part of these impacts by allowing 45,696 sf of forest to naturally revegetate north of the athletic field. The college is also proposing to meet the remaining mitigation of 1,525 sf by creating a meadow of native wildflowers and grasses and/or completing *Phragmites* eradication in the Buffer.

Ms. Jones reported that the Buffer Management Plan provides a method for meadow establishment and maintenance. The Forest Mitigation Plan includes invasive species monitoring and control, a 5-year monitoring plan, and a back up plan for planting seeds if natural regeneration is unsuccessful. This meets the requirements for natural regeneration in the Commission's regulations.

SMCM also needs to provide a *Phragmites* eradication plan if it is to be a part of the mitigation package. SMCM is required to provide stormwater management in accordance with MDE requirements for Environmental Site Design (ESD) and to meet the Critical Area 10% pollutant reduction.

Impacts to tidal and nontidal wetlands and waters within the limits of disturbance were approved by the Maryland Department of the Environment (MDE) and the Board of Public Works on February 14, 2017.

The college is waiting for a final letter from Maryland Historic Trust on archaeological resources. Many of their concerns in the past were related to digging on site to plant trees. The current proposal does not include any tree planting.

The project was advertised on February 12, 2016 in *The Enterprise*, a local St. Mary's County newspaper. The public comment period extended to March 11, 2016. The site was also posted. No public comments were received.

St. Mary's College is located next to the St. Mary's River, and is subject to coastal hazards, such as flooding during extreme high tides, and other major weather events. In order to reduce the areas affected, a waiver of minimum width of the boardwalk was requested and received from the Maryland State Highway Administration resulting in a boardwalk of only 9-feet in total width. This is 3 feet narrower than the typical minimum for this type of path.

DNR Wildlife and Heritage have no record of rare, threatened or endangered species within this site and no other issues were raised during DNR review.

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Commissioner Hewitt raised a concern regarding public notice and timing of that notice for the project. He stated that the public notice occurred more than a year ago in the local paper. Ms. Jones responded that the college met the requirements for public notice as provided for in our regulations.

No further discussion was made. Chairman Deegan then recognized the Chairman of the Subcommittee, Mr. Setzer, to make a motion.

Mr. Setzer said that on behalf of the Project Subcommittee, he moved that the Commission approve the construction of a 2,170-foot long pedestrian and bicycle trail parallel to Maryland Route 5 proposed by the St. Mary's College of Maryland. This motion is offered in accordance with the staff report and presentation and the following conditions:

- (1) Prior to the start of construction, St. Mary's College of Maryland shall submit all final approvals to Commission staff, including stormwater management and erosion and sediment control approvals from the Maryland Department of the Environment;
- (2) St. Mary's College of Maryland shall submit a mitigation plan for all Critical Area impacts to Commission staff within 60 days of this approval;
- (3) Prior to the start of construction, St. Mary's College of Maryland shall submit to Commission staff a copy of the final review letter from the Maryland Historical Trust; and
- (4) St. Mary's College of Maryland shall submit any changes to the approved mitigation requirements for tidal water impacts to Commission staff for review.

Commissioner Hertz seconded the motion. All voted in favor with the exception of Commissioner Hewitt who was opposed.

Maryland Port Administration (MPA)– Cox Creek Dredge Material Containment Facility (DMCF) Expansion

Chairman Deegan then requested Jennifer Esposito to report on the MPA Cox Creek DMCF Expansion. Ms. Esposito introduced the people involved with the project and who assisted her. She reported that the MPA is proposing to expand the Cox Creek D M C F to be constructed and presented in two phases, but she will only present the first phase at this time. The first phase involves demolition of the structures on the site, excavation of a large borrow pit in upland area, widening of the DMCF perimeter dike base and construction of a spillway valve vault. The second phase will involve raising the existing DMCF perimeter dikes and construction of new dikes around the expanded upland area. Ms. Esposito provided a PowerPoint presentation and reviewed the staff report, which is incorporated into and made a part of these minutes.

Ms. Esposito explained that the site is located in Anne Arundel County on the western branch of the Patapsco River partially in the Intensely Developed Area (IDA) and the Resource Conservation Area (RCA). The containment facility is approximately 115 acres in size and operated by the Maryland Environmental Service (MES). The upland area was formerly used by the Kennecott Refining Company and then the Cox Creek Refining Company which operated a copper refining and manufacturing facility to make copper wire and rod. The former copper refining facility will be demolished and the existing DMCF will expand westward to encompass the upland industrial area in order to provide additional storage capacity for future dredged material from the Port of Baltimore's shipping channels.

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The scope of work for this phase involved three main components: site demolition activities and excavation of a borrow pit area, widening of the existing DMCF perimeter dikes, and construction of a new spillway valve vault. She said that the existing conditions are a mix of small trees, scrub, and non-vegetated land. The upland disturbance area for the site demolition and excavation of the borrow pit and sediment basin approximates to 45 acres. There are several areas of proposed clearing within these limits. One area of clearing contains sparse vegetation growing up around rubble (not full canopy coverage) that straddles the Critical Area boundary between an existing building and wetland area. Another area of proposed clearing includes 1.20 acres of isolated tree cover that is located north of Kembo Road.

She stated that previously approved MPA tree planting mitigation areas will be encompassed by the proposed DMCF expansion. Originally, 270 trees were removed from the site for an approved stormdrain renovation project (reviewed by the Commission in 1999).

Upon review of the existing DMCF and proposed expansion, the Maryland Department of the Environment (MDE) Dam Safety Division requested for all the woody vegetation to be removed from the existing DMCF perimeter dikes. MDE Dam Safety Division agreed to allow existing trees that are located below an elevation of +20 to remain (the location of the majority of large trees), as long as no new growth is allowed and unhealthy trees are removed. No mitigation is required for the removal of the woody vegetation on the dike perimeter since the removal is for safety reasons.

She said that all tree and Buffer mitigation will be fulfilled offsite at the MPA's Hawkins Point property and that no new impervious area is being created. The constructed widening area will drain into the existing DMCF. There are no tidal or nontidal impacts proposed for this project and no impacts to the existing Buffer.

Sediment and erosion control as well as stormwater management authorization is required for this project. MDE is currently reviewing these items.

MPA has requested that the Maryland Department of Natural Resources Wildlife and Heritage Service review the site for any rare, threatened, or endangered species for this specific project location. This review is pending. In addition, a request was sent to the Maryland Historic Trust to examine the site for any potential impacts to historic resources. A response regarding this specific project is pending, and approval from the MDE Dam Safety Division is pending.

She said that the property was posted on October 10, 2017 and a notice ran in *The Baltimore Sun* on October 11, 2017.

No further discussion was made.

Chairman Deegan recognized Mr. Setzer to make a motion to approve the project. Mr. Setzer replied that on behalf of the Project Subcommittee, he move that the Commission approve the Phase 1 expansion of the Cox Creek Dredge Material Containment Facility proposed by the Maryland Port Administration, including demolition of the remaining structures on the site, excavation of a large borrow pit in the upland area, widening of the existing Dredge Material Containment Facility perimeter

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dike base in preparation for future dike raising, and construction of a new spillway valve vault. This motion is offered with the following conditions:

- (1) Prior to the start of construction, the Maryland Port Administration shall submit to Commission staff copies of approvals issued by the Maryland Department of the Environment, Sediment, Stormwater and Dam Safety Program for erosion and sediment control, stormwater management, and tree removal along the perimeter dikes.
- (2) Prior to the start of construction, the Maryland Port Administration shall submit to Commission staff a copy of the review letter from the Maryland Department of Natural Resources, Wildlife and Heritage Service determining if any rare, threatened, or endangered species exist within the site's parameters. If any of these species are present, the Maryland Port Administration shall fully follow all recommendations provided by Wildlife and Heritage Service to ensure that these species are protected.
- (3) Prior to the start of construction, the Maryland Port Administration shall submit to Commission staff a copy of the review letter from the Maryland Historical Trust determining if any historic or archeological resources are present on the project vicinity. If present, the Maryland Port Administration shall fully follow all recommendations provided by Maryland Historical Trust.
- (4) Within 30 days of Commission approval, the Maryland Port Administration shall submit to Commission staff a method for tracking the amount of mitigation that has been planted on the Hawkins Point mitigation site. The tracking method shall list and calculate this project as well as all previous projects that have utilized mitigation credits at this site. Credits for each project shall be identified using both a map of the site as well as an associated spreadsheet.

Commissioner Culver seconded the motion. All were in favor.

Proposed Regulations – Nonwater-dependent Structures on Piers

Chairman Deegan called upon Lisa Hoerger to report on a set of regulations to come before the Commission for approval.

Ms. Hoerger reported that in 2013 the Maryland General Assembly, through SB 524, passed a law that allows local governments the option to enter into a program that will allow certain nonwater-dependent structures on piers. There are two categories. One is for existing commercial uses, such as restaurants and bars on existing commercial sites, in the Intensely Developed Area (IDA). The other category has to do with residential piers, and regardless of the Critical Area designation, one may have a small-scale renewable energy system which could include solar panels, wind turbines and geothermal exchangers. The Law's provision was designed to provide local governments the ability to decide whether the development is consistent with their local plans and programs. Local jurisdictions can be more strict in their selection and implementation of these provisions, but in order to allow these nonwater-dependent uses they must amend their Critical Area Programs.

Ms. Hoerger then presented the proposed draft to the Commission to explain each section. She said that the purpose of these regulations is to incorporate into the Code of Maryland Regulations (COMAR) the nonwater-dependent projects provisions found in the Environmental Article and the Natural Resources Article so that local planners and the public can find the requirements in one place in the regulations.

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Commission staff circulated the draft of the proposed regulations on September 25th to solicit any comments or questions. To date, staff received comments from Anne Arundel County concerning the allowable size of small scale renewable energy projects and a question from Prince George's County concerning their exemption status.

Ms. Hoerger said that Commission staff is requesting permission to submit this draft to the Administrative Executive Legislative and Regulatory Committee (AELR) and to be able to publish it in the Maryland Register as proposed regulations. She said that after the required time for public comment, she will again come before the Commission to have these regulations accepted as final.

Ms. Hoerger then thanked a variety of current and former staff who assisted with the development of the regulations, including Commission counsel Emily Vainieri, former Executive Director, Ren Serey, Gary Setzer, Assistant Attorney General for MDE, Jonathan May and former Chair, Margaret McHale, regarding the construction of these regulations.

Chairman Deegan asked Mr. Setzer to make the motion for approval. Mr. Setzer said that on behalf of the Project Subcommittee, he moved that the Commission take the following actions:

To approve regulations affecting the following Code of Maryland Regulations COMAR 27.01.01 entitled General Provisions, COMAR 27.01.11 entitled Directives for Updating Critical Area Maps, COMAR 27.02.01 entitled General Provisions and COMAR 27.03.01 entitled Notification of Project Applications; to approve regulations adding COMAR 27.01.13 for Nonwater-Dependent Projects; and finally, authorize Commission staff to publish these regulations as proposed regulations in the Maryland Register.

The motion was seconded by Commissioner Merritt. All were in favor.

Refinement – Caroline County Critical Area Map Update

Chairman Deegan then asked Ms. Hoerger to report on Critical Area Mapping.

Ms. Hoerger then reported that Caroline County's Commissioners approved updates to their Critical Area maps in accordance with State law and the Critical Area Commission's mapping regulations back in August. She stated that Commissioner Debbie Herr-Cornwell, formerly of the County's staff, was integral to this effort and address some of the issues encountered. Ms. Hoerger stated that when the County's Program was approved by the Commission in the 1980's, maps were approved that did not include tidal and nontidal wetlands along shorelines. Every other county had wetlands included as part of their Critical Area and shows as Resource Conservation Area. This was, for some reason, clipped out in Caroline County, and the new maps are putting them back in. Ms. Hoerger explained the actions necessary when a significant change in Critical Area boundaries occur which entail ground truthing a site. She then showed (by way of map) for example, the difference in loss and gain in the Town of Greensboro's previous Critical Area boundary and what has since been discovered to be more accurate.

She said that as part of the comprehensive overhaul of the Critical Area Law by the General Assembly in 2008, a requirement was included to remap the 1,000-foot Critical Area boundary based on recent technologies. In July 2012, the Commission adopted regulations that address the types of source documents used, the process for updating the maps, and the process for classifying newly added lands.

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Using these regulations, Commission staff worked with the Caroline County, the Maryland Department of Natural Resources, the Maryland Department of the Environment, and Salisbury University to develop updated Critical Area maps for the county. These maps were vetted by the aforementioned agencies, and a draft map was presented to the public during several public meetings. In addition to the public meetings, Commission and County staff provided assistance by answering property-specific mapping questions via phone and email.

She reported that on August 22, 2017, the Caroline County Commissioners approved Ordinance 2017-1, which updates the County's Critical Area map in accordance with State Law and the Critical Area Commission's mapping.

The Chairman then recognized the Program Subcommittee Chairman, Carolyn Cummins. Commissioner Cummins stated that since the mapping update was completed in accordance with State Law and the Commission's mapping regulations found in COMAR, the Program Subcommittee concurred with the Chairman's determination that the Caroline County map update can be viewed as a refinement.

Chairman Deegan said the Chair's determination of Refinement stands, and the Program Subcommittee's recommendation will be his final determination.

Refinement – Town of Hillsboro Critical Area Map Update

Chairman Deegan then asked Ms. Hoerger to continue with the Town of Hillsboro's mapping update.

Ms. Hoerger said that the Town of Hillsboro is in Caroline County along the western boundary on Rt. 404 and that the Town is completely in the Limited Development Area. She reported that on September 18, 2017, the Mayor and Town Council of Hillsboro approved Ordinance #70 which updates the Town's Critical Area map. Ms. Hoerger showed, by way of map, the Town's loss of one acre of Critical Area and a gain of five that resulted in the net gain of four acres of Critical Area in the Town. Like Caroline County, the update was done in accordance with State Law and the Critical Area Commission's mapping regulations.

The Chairman then recognized Ms. Carolyn Cummins. Commissioner Cummins stated that since the mapping update was completed in accordance with State Law and the Commission's mapping regulations found in COMAR, the Program Subcommittee concurs with the Chairman's determination that the Town of Hillsboro mapping update can be viewed as a refinement.

Chairman Deegan said the Chair's determination of Refinement stands, and the Program Subcommittee's recommendation will be his final determination.

Ms. Hoerger stated that with the mapping update approval of Hillsboro, the entire County and all of its municipalities will now be on the State's i-Map system within the next 30 days.

Refinement – Town of North Beach Critical Area Map Update

Ms. Hoerger continued with the Town of North Beach mapping. She reported that on September 14, 2017, the Mayor and North Beach Town Council approved Ordinance 17-12, which updates the Town's Critical Area map in accordance with State Law and the Critical Area Commission's mapping regulations. During the process, the Town lost one acre of Critical Area, but gained fifteen with a net

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gain of fourteen Critical Area acres. The majority of the Town is Intensely Developed Area with the exception of wetland areas.

The Chairman recognized Commissioner Cummins. Commissioner Cummins stated that since the mapping update was completed in accordance with State Law and the Commission's mapping regulations, found in COMAR, the Program Subcommittee concurs with the Chairman's determination that the Town of North Beach map update can be viewed as a refinement.

Chairman Deegan said the Chair's determination of Refinement stands, and the Program Subcommittee's recommendation will be his final determination.

Refinement – Queen Anne's County Text Amendment – Disposition of Pending Matters

Ms. Hoerger then reported on Queen Anne's County's text amendment. She said that in May the Commission granted Queen Anne's County a six-month extension to approve their Critical Area maps. The purpose was to clarify the language that would assist citizens who are in certain stages of an approval process acquire the necessary permits, etc., before the Critical Area maps change, which officially, if approved, would happen today.

She stated that on October 24, 2017 the Queen Anne's County Commissioners conditionally approved Ordinance No. 17-02, which allows certain applications to use the Critical Area 1,000-foot boundary line as it existed prior to November 1, 2017 and that the application must meet the conditions that the lot, subdivision, or site plan was approved on or before November 1, 2017. Permits associated with the development of the approved lot, subdivision, or site plan are issued on or before December 31, 2019 and that the construction allowed under the issued permit for the development on the approved lot, subdivision, or site plan is initiated before December 31, 2020. All pending permit applications shall be completed by December 31, 2019. Commission staff worked closely with County staff in vetting the proposed text amendment and recommends approval.

Chairman Deegan recognized Commissioner Cummins. Commissioner Cummins stated that the Program Subcommittee concurs with the Chairman that the Queen Anne's County text amendment can be viewed as a refinement to the County's Critical Area Program.

Chairman Deegan said the Chair's determination of Refinement stands, and the Program Subcommittee's recommendation will be his final determination.

Refinement – Queen Anne's County Critical Area Map Update

Ms. Hoerger then reported on Queen Anne's County's mapping update. She stated that now that Queen Anne's County's has its Pending Matters Language in place, its Critical Area map is ready for approval. She said that on October 24, 2017 the Queen Anne's County Commissioners approved County Ordinance No. 17-05, which updates the County's Critical Area map in accordance with State Law and the Critical Area Commission's mapping regulations.

The Chairman recognized Commissioner Cummins who stated that since the mapping update was completed in accordance with State Law and the Commission's mapping regulations, found in COMAR, the Program Subcommittee concurs with the Chairman's determination that the Queen Anne's County map update can be viewed as a refinement.

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Chairman Deegan said the Chair's determination of Refinement stands, and the Program Subcommittee's recommendation will be his final determination.

Amendment – Town of Queenstown Growth Allocation

Chairman Deegan thanked the panel, staff and everyone involved in the processing of the amendment for the Wheatlands growth allocation. He asked Dr. Nick Kelly to proceed with the introduction.

Dr. Kelly said that the Town of Queenstown is requesting 59.40 acres of growth allocation to reclassify part of the Critical Area designation of Resource Conservation Area (RCA) to Intensely Developed Area (IDA) within the Wheatlands property. The purpose is to allow the Town to convert this agricultural parcel to commercial and residential uses through its Growth Allocation Floating Zone District. The property is located along U.S. Route 50 within the Town's limits. The request for growth allocation is necessary in order to allow the owner to develop the site with both commercial and residential development under a Planned Regional Commercial (PRC) zoning classification.

He said that on January 11, 2017 and again on June 14, 2017, the Commissioners of Queenstown reviewed and voted unanimously to grant approval for this proposed growth allocation and found that it meets the standards and factors outlined in COMAR 27.01.02.06. Commission staff accepted the growth allocation request for processing on June 29, 2017.

On July 12, 2017 Chairman Deegan determined that this growth allocation request would be handled as an amendment. He appointed a panel of five Commission members (Gary Setzer – Panel Chairman, Deborah Herr Cornwell, Suzanne Pittenger-Slear, Michael McCarthy, and James Lewis) who held a hearing in the Town in August and a follow-up meeting in the Commission's offices in Annapolis in September to consider the request.

He said that the Waterman Family Limited Partnership owns three parcels associated with this development project (see attached site plan), however, only one parcel, Parcel 36, is subject to the growth allocation request. He then explained about the three parcels of concern. He said that Parcel 36 is approximately 80.04 acres in size, with 70.74 acres within the Critical Area and currently designated as an RCA. A proposed development envelope to change the designation of 59.40 acres to IDA is located on this parcel. The remaining 11.34 acres of RCA is located within the 300-foot setback and expanded Buffer area. The other two parcels are Parcel 35 which is approximately 61.46 acres in size and is currently designated as an RCA. Parcel 35 will remain designated as an RCA. This property cannot be developed, as the property owner utilized Queen Anne County's Transferable Development Rights provisions prior to its annexation into the Town of Queenstown. A total of three existing development rights were transferred to another RCA parcel within the County in 1996. While no growth allocation is requested on this parcel, the property owner proposes to fully plant this area and use it to partially meet the 300-foot setback requirement for growth allocation. The third parcel, 141, has development proposed and is located entirely outside of the Critical Area and is not subject to this growth allocation request.

Dr. Kelly stated that if the 59.40 acre growth allocation envelope is granted by the Critical Area Commission, the site will be developed into a mixed commercial use. The development will include office buildings, commercial buildings, residential living spaces (garden apartment or assisted living

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facilities), and parking. Various stormwater management practices will be installed to treat stormwater. All development within the growth allocation envelope will be located at least 300 feet from tidal waters and tidal wetlands.

He said that the panel held a site visit and public hearing on Thursday, August 17, 2017. He said that all five members of the panel were present at the Panel Hearing. Other than those individuals that are associated with the parties directly involved in the project or members of the Queenstown Commissioners and Queenstown Planning Commission, no one from the public attended.

The Panel held the record open until Thursday, August 24th. Other than supplemental information from the property owner no other comments were submitted before the deadline.

He reported that the Panel held a meeting on Wednesday, September 6th, 2017. All five members of the Panel were present. The Panel discussed the standards and factors for growth allocation. In addition, the Panel reviewed the proposed roadway that would impact the expanded Buffer for nontidal wetlands, as well as the property owner's request to use the 300-foot setback for stormwater management. Dr. Kelly stated that Natural Resources Article §8-1808.1(c) requires the Critical Area Commission to ensure that certain standards and factors have been applied in a manner that is consistent with the purposes, policies, goals, and provisions of the Critical Area Law and Criteria. In 2014, the Commission adopted regulations that organized the statutory requirements for growth allocation under COMAR 27.01.02.06-3, Requirements for New Intensely Developed Areas and Limited Development Areas. These requirements have been addressed by the Town and were summarized by Commission staff for the Panel. Ultimately the Panel determined that the project is consistent with the purposes, policies, and goals of the Critical Area Law and Regulations.

At the end of the meeting on September 6th, the Panel made a recommendation for approval with conditions regarding the growth allocation. The Panel reaffirmed that motion earlier today in a separate panel meeting prior.

No further discussion was made.

Chairman Deegan recognized Panel Chair, Gary Setzer. Commission Setzer made the following motion:

The proposed project, as shown on the conceptual site plan dated June 2017 and as documented in the growth allocation submittal package that was accepted by Critical Area Commission staff as complete on June 29, 2017, is consistent with the purposes, policies, and goals of the Critical Area Law and Regulations.

Because this proposed Growth Allocation meets the requirements for new IDAs under Natural Resources Article §8-1808.1(c) and COMAR 27.01.02.06-3, the Commission Panel recommends that the Critical Area Commission approve the Waterman ("Wheatlands") growth allocation subject to the following conditions:

- The proposed roadway on the western portion of the Wheatlands property that will provide access to Maryland Route 18 shall be designed and located to avoid and minimize impacts to nontidal wetlands in accordance with the Maryland Nontidal Wetlands Protection Act. If the construction of the proposed roadway does not entirely avoid regulated impacts to nontidal

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wetlands or their buffers, the Town shall provide, prior to the start of construction of the roadway, copies of all applicable state federal, and local authorizations to Commission staff to be maintained in the Commission's records. The Town shall ensure that Commission approval is obtained for any Critical Area impacts resulting from the construction of the proposed roadway in accordance with COMAR 27.02.03 and COMAR 27.02.05.

- All measures required to meet the Critical Area 10 percent pollutant reduction requirement (i.e., the 10% rule) shall be located and constructed completely within the growth allocation envelope on Parcel 36. In addition, the development shall comply with the Maryland Department of the Environment's (MDE's) stormwater requirements by implementing Environmental Site Design to the Maximum Extent Practicable. The Town shall submit the proposed and final stormwater management plans for the development – or, if applicable, for each phase of the development – to Commission staff for review and approval by Commission staff or, if necessary, the full Critical Area Commission to ensure compliance with Critical Area and MDE stormwater management requirements.
- The Buffer and 300-foot setback shall be fully forested on Parcels 35 and 36. Prior to the start of construction, the Town shall submit the final Buffer Management Plan, completed in accordance with COMAR 27.01.09.01-3, and the final Planting Plan for the 300-foot setback for review and approval by Commission staff or, if necessary, the full Critical Area Commission. If natural regeneration is utilized, a density of 400 stems per acre shall be provided.
- The requirement to fully forest the 300-foot setback does not preclude the Town from seeking other opportunities to provide water quality and habitat enhancements on Parcel 35 as long as any such opportunity is not used in lieu of the measures required to meet the 10% rule on Parcel 36 and provides enhanced nitrogen, phosphorus, and total suspended solids reduction. That it is not located within the Buffer on Parcel 35; and does not fragment the forested areas within the 300-foot setback or Buffer on Parcel 35 or Parcel 36. Any proposed plan shall require review and approval by Commission staff, or, if necessary, the full Critical Area Commission.

Commissioner Mangum seconded the motion. All voted in favor, with the exception of Commissioner Hewitt who was opposed.

LEGAL UPDATE:

Chairman Deegan asked Emily Vainieri for legal updates. Ms. Vainieri reported on some of the cases that the Commission was involved in. The first matter is in Baltimore County and involves an after-the-fact variance application to perfect a 1700 sq. ft. concrete patio that was built about nine feet from mean high water and built without permits. The property is located in Dundalk along Bear Creek. The Baltimore County Planning and Zoning Officer denied the variance. The property owner, Mr. Radtke, appealed to the Board of Appeals. The County, as well as the Commission opposed that appeal before the Board of Appeals. She said that the applicant's desired usages for this patio could be met on other areas of the property and that the applicant had space outside of the Critical Area on which to place the concrete pad in question. The Commission is awaiting the decision from the County.

She said that the next matter is an Anne Arundel County Circuit Court case originating in 2007. The property owner, Mr. Hubert Bishop, constructed some accessory structures in the Critical Area Buffer

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without the required permits. In order to remedy these violations, he applied for Critical Area variances. The County Hearing Officer denied the variances. The property owner appealed. The County Board of Appeals also denied the variances. Mr. Bishop has now appealed that to the Circuit Court in which he had to file a Petition for Judicial Review. Under the Critical Area Statute, when the Commission decides to participate in a Circuit Court action, the Commission must give notice that it is participating in the case. Again, the County is opposing the issuance of the variance and we are working with the County to, hopefully, make certain that these variances are denied and the situation can revert to the enforcement cases which have been held pending the variances involving the County and MDE.

Ms. Vainieri then informed the Commission that there were a variety of different cases in which the Critical Area Commission staff participates. The first two matters involve appeals of variance decisions. The next case is one in which the Commission did not participate as a party but worked with the County and provided expert scientific testimony in the County's enforcement case.

Several years ago in Talbot County, a homeowner, Morton Bender, was informed that he was not permitted to have a second driveway on his property, but then proceeded to clear forest, nontidal wetlands partially in the Critical Area and potential FIDs habitat without permits. We do not have the exact dimension, but were informed, by the County, that Mr. Bender had 300 tons of gravel placed and compacted on his property. The County had separated the violation from the penalties. The decision of whether or not to regard these actions by Mr. Bender, as a violation took many years and appeals by Mr. Bender. The Board of Appeals' decision that there was a violation was finally upheld, forcing Mr. Bender to complete a restoration plan which took place in 2015. The next step in the process was in regard to the penalties in which the Critical Area Commission assisted the County with its enforcement of its Critical Area Program. Six violations, with a specific penalty amount per day, were assessed. Mr. Bender appealed the decision by the County's Code Compliance Officer which was heard before the County's Board of Appeals. The Commission's Science Advisor provided expert testimony during the County's case to help explain the adverse environmental impacts that occurred from the unauthorized clearing. The Board ultimately agreed with the compliance Officer that those six penalty violations were justified. We have not yet received the written decision by the Board. She said that she assumed that there would be an appeal and staff would keep the Commission updated.

The Chairman thanked Ms. Vainieri and said that it was important to note that Critical Area Commission staff's work is not always noticeable nor obvious.

NEW BUSINESS:

Chairman Deegan reported that Governor Hogan had recently received the Champion of the Chesapeake award from the Chesapeake Conservancy. He then asked Ms. Charbonneau to report on solar energy. Ms. Charbonneau said that the Commission was researching commercial solar in the Critical Area and whether it needed to be addressed in the Critical Area regulations. It was decided that in order to present the best guidance and assistance to local governments, the Critical Area Commission needs to put forward some regulations that would provide a tool for the jurisdictions to work with. Commission staff will keep the Commission updated as this work proceeds.

Chairman Deegan reminded the Commission of the Horn Point site visit on January 10 and that more visits to Critical Area interests were to come. He reported that he will be meeting with the Joint

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Oversight Committee in December. He thanked the Commission for their attendance, today and wished them a happy holiday.

There being no further questions, the meeting was adjourned.