

MINUTES MINUTES

**Critical Area Commission for the
Chesapeake and Atlantic Coastal Bays
Maryland Department of Agriculture
Annapolis, Maryland**

November 4, 2015

The full Critical Area Commission met at Maryland Department of Agriculture Headquarters, 50 Harry S. Truman Parkway, Annapolis, MD. Chairman Charles C. Deegan called the meeting to order.

Commission Members in Attendance:

Meg Andrews, Maryland Department of Transportation
Curtis Beulah, Harford County
Nick Carter, Caroline County
Virginia Clagett, Western Shore Member-at-Large
Carolyn Cummins, Worcester County – Coastal Bays
Jason Dubow, Maryland Department of Planning
James Gesl, Charles County
Charles Paul Goebel, Talbot County
Michael Hewitt, St. Mary's County
Mark Konapelsky, Somerset County
Louise Lawrence, Department of Agriculture
Theo Ngongong, Baltimore City
James Palma, Department of Commerce
Stephen C. Parker, Cecil County
Suzanne Pittenger-Slear, Eastern Shore Member-at-Large
Jennifer Rafter, Worcester County – Chesapeake Bay
Gary Setzer, Department of the Environment
Catherine Shanks, Department of Natural Resources
Donald Sutton, Kent County
Donald Sydnor, Dorchester County
Chris Trumbauer, Anne Arundel County

Commission Members Not in Attendance:

Caroline Gabel, Queen Anne's County
Matthew Holloway, Wicomico County
David S. Marks, Baltimore County
Richard W. Meehan, Ocean City
Patrick H. Nutter, Calvert County
Caroline Varney-Alvarado, Dept. of Housing and Community Development

Chairman Deegan welcomed Bradley Frome, Prince George's County, to today's meeting. The Chair said he is not yet sworn in. Mr. Frome said he is glad to be with us today and he considers it a privilege to serve on the Commission. The Chairman thanked all who were able to attend the October Workshop in Cambridge. He said he appreciated all of the follow-up notes he received afterward. He told the

Commission that we are looking at two sites to hold the monthly Commission meetings. Additional information will be forthcoming.

The Chairman made a motion to approve the August 5, 2015 Minutes by asking the full Commission if all members have read the August 5, 2015 Minutes. He asked for any corrections to the Minutes. Hearing none, the Chairman put the motion to a vote. The August 5, 2015 Minutes were approved unanimously.

Department of Natural Resources (DNR), Elk Neck State Park Improvements – Cecil County

Julie Roberts presented for Vote the Department of Natural Resources Elk Neck State Park Improvements.

Ms. Roberts provided a PowerPoint presentation, with maps of the proposed area. She said she has three projects in a row to present. She reviewed the staff report, which is incorporated into and made a part of these minutes.

The Maryland Department of Natural Resources seeks approval to make upgrades at Elk Neck State Park in Cecil County. This 2,188-acre park is located on Turkey Point in North East, between the Chesapeake Bay and the Elk River. The scope of this project includes the construction and/or expansion of the following: a play area, two comfort stations, two shelters, an improved park headquarters and camp store, new mini-cabins and rustic cabins, a nature center, and improvements to Miles Loop. This park is characterized by steep slopes and highly erodible soils, which expands the Buffer in significant portions of the park. Consequently, a conditional approval for several components of this project is required, as certain structures will be located within the expanded Buffer.

There are multiple development components involved in DNR's proposed improvements to the park. The following projects will be located outside of the Buffer:

1. Play Area: Two new parking spots, a walkway designed to standards of the Americans with Disabilities Act (ADA), and two new concrete pads for picnic tables will be added to the existing play area. There will be a net increase of 646 square feet of lot coverage in this area.
2. Day Use Comfort Stations: Improvements will be made to existing utilities and sewer lines, one building will be replaced with a prefabricated bathhouse, and five parking spaces will be added for an increase of 110 square feet of lot coverage.
3. Shelter/Pavilion 1: An amount totaling 419 square feet of new lot coverage for a parking area and sidewalks will be added to an area currently improved with a pavilion.
4. Camp Store: Parking spaces, walkways, and ADA improvements, including ramps, railings, pathways, and retrofitting of access to the laundromat, will be made to this area for a total of 1,137 square feet of new lot coverage.

The total increase in lot coverage in the Critical Area for these four projects is 2,312 square feet. There is additional ground disturbance associated with improvements to underground utilities; however, there was no increase in lot coverage for this disturbance.

The following improvements are located within the Buffer or expanded Buffer:

5. Shelter/Pavilion 2: A total of 496 square feet of parking area and ADA accessible sidewalks will be added to an area currently improved with a pavilion. As the parking and sidewalks are associated with an existing structure, these improvements could not be located outside of the Expanded Buffer.
6. Mini Cabin Loop (Tred Avon Loop): Four new mini cabins are being added to an area currently improved with other cabins. Two existing cabins will be upgraded for ADA purposes. Several new parking spots and other amenities, including a bathhouse, will be

added into this area for a total increase in lot coverage of 4,010 square feet of disturbance to the existing expanded Buffer.

7. Rustic Cabins: New sidewalks to the bathhouse and a new parking area are proposed as upgrades to this area of existing cabins. There will be a net increase of 407 square feet in the expanded Buffer.
8. Miles Loop: There will be several improvements to the existing Miles Loop which is located both within the Buffer and expanded Buffer. ADA improvements, including new sidewalks, and replacement of an existing bathhouse will be conducted in this area.

The total disturbance to the Buffer and expanded Buffer associated with these improvements is 6,733 square feet. There will be 720 square feet of canopy removal at the mini-cabin loop, plus one additional tree. Mitigation is required at a ratio of 3:1 for the 0.46 acres (20,038 square feet) of ground disturbance and for the 720 square feet of canopy removal (2,160 square feet total), plus one additional freestanding tree.

At this time, this submission does not include a mitigation plan. Approval of this project will need to be conditioned on the review and approval of this plan. This mitigation is to be located within the park; however, the exact location of the plantings will be determined at a later date.

The Department of Natural Resources' Wildlife and Heritage Service (WHS) determined that no rare, threatened or endangered species will be impacted within the project area.

Stormwater and Sediment and Erosion Control permits are pending from the Maryland Department of the Environment MDE. The applicants have undergone four reviews and are working with MDE to finalize these plans, potentially by the date of this meeting.

The Maryland Historic Trust has determined that there will be no impacts to historic sites.

Notice of the project was published on September 21, 2015 in the *Cecil Whig* newspaper. A sign with information about the project was also posted on the property as required by COMAR 27.03.01.03. No public comments were received.

On behalf of the Project Subcommittee, Chair Gary Setzer made a motion that the Commission approve the improvements to Elk Neck State Park proposed by the Maryland Department of Natural Resources. This motion is offered in accordance with the staff report and presentation and the following conditions:

- (1) Prior to the start of construction, the Department of Natural Resources shall submit to Commission staff for review and approval a mitigation plan, including a planting and monitoring schedule, required to offset impacts to the Critical Area Buffer and expanded Buffer; and
- (2) Prior to the start of construction, the Department of Natural Resources shall notify Commission staff that it has obtained the necessary erosion and sediment control and stormwater management approvals from the Maryland Department of the Environment.

As required by Code of Maryland Regulations, this motion for Conditional Approval is based on the following considerations:

- Except for disturbance to the Critical Area Buffer and expanded Buffer, there are no other impacts to Habitat Protection Areas. As a result, the proposed project is in compliance with the relevant chapters of this subtitle.
- 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 properly maintaining existing facilities and improving the recreational and educational experience for visitors to Elk Neck State Park. The Department of Natural Resources has selected a design that minimizes, to the extent possible, impacts to the Critical Area, while complying with the Americans with Disabilities Act requirements and providing greater access to Park facilities. The proposed project minimizes tree removal so that canopy coverage is maintained, improves water quality through the construction of a stormwater best management practices, and enhances habitat through its mitigation plan.

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

State Highway Administration (SHA), MD 222 Granite Avenue Drainage Improvements - Cecil County Julie Roberts presented for Vote the State Highway Administration, MD 222 Granite Avenue Drainage Improvements.

Ms. Roberts provided a PowerPoint presentation. She reviewed the staff report, which is incorporated into and made a part of these minutes.

The Maryland State Highway Administration is proposing a drainage improvement project along MD 222 from Granite Avenue to the southern Town limits in Port Deposit. The proposed work includes construction of new storm drains and inlets, stabilization of existing outfalls, construction of four new outfalls into the Susquehanna River, and resurfacing of the roadway.

The roadway is located entirely within the Critical Area on lands designated as an Intensely Developed Area (IDA). Given the linear nature of this work, the project will be reviewed under COMAR 27.02.05.03-1 (Development in an Intensely Developed Area).

MD 222 (Main Street) is part of the Lower Susquehanna Scenic Byway and passes through the historic Town of Port Deposit. Due to existing topography and aging infrastructure, the town and roadway are subject to recurrent flooding. To help alleviate the flooding issue, new inlets, manholes, endwalls, and other drainage structures have been proposed. This project is funded for construction, with advertisement scheduled for January 2016.

The project will result in impacts to the 100-foot Buffer, the Susquehanna River and Submerged Aquatic Vegetation.

The 100-foot Buffer in this area is mapped as a Buffer Exemption Area (BEA) by the Town of Port Deposit and is mostly developed with the roadway, parking areas, driveways, commercial buildings, and residential buildings.

In a letter dated May 13, 2015, DNR's Project Review Divisions, on behalf of the Department's Wildlife and Heritage Services (WHS), responded that this project would have no impact on the state-listed endangered Northern Map Turtle (*Graptemys geographica*) if SHA adheres to the designated time of year restrictions to minimize visual disturbance of turtle nesting sites. SHA anticipates constructing turtle ramps in the future as out of kind mitigation for impacts to the SAVs.

On the same date, DNR also responded that any work affecting the Susquehanna River is in Use II waters. They recommended a prohibition on any in-stream work from February 15th to June 15th and strict application of sediment and erosion controls throughout the duration of the project.

USFWS responded on September 24, 2014 that there are no proposed or federally listed species within the project limits.

On April 9, 2015, the Maryland Historical Trust concurred with SHA's determination of "No Historic Properties Affected".

In accordance with the provisions of COMAR 27.03.01.03, the site will have been posted with two informational signs. The project was advertised in the *Cecil Whig* newspaper on October 9, 2015.

Ms. Roberts told the Commission she has received notice that the final Tidal Wetlands general license has been received. Now it is just the Stormwater and Sediment Erosion Control that is outstanding.

Ms. Roberts and Commissioners Dubow and Parker discussed the effectiveness of planting mitigation for this project on private lands. Commissioner Andrews, representing the Department of Transportation, said SHA does not usually plant on private property because of the difficulty of securing easements and maintaining the properties.

On behalf of the Project Subcommittee, Chair Gary Setzer made a motion that the Commission approve the drainage improvements proposed by the State Highway Administration along Maryland Route 222 in Port Deposit in Cecil County. This motion is offered in accordance with the staff report and presentation and the following conditions:

- (1) Prior to the start of construction, the State Highway Administration shall confirm in writing that it has received the necessary erosion and sediment control and stormwater management approvals or waivers from the Maryland Department of the Environment and
- (2) the State Highway Administration shall work with Commission staff to finalize the draft mitigation plan for the proposed offsite mitigation location. If Commission staff determines that this site is not a feasible mitigation area, the State Highway Administration shall submit an alternative site to Commission staff and, if necessary, the full Commission for review and approval. SHA shall report its progress within six months of this approval.

Commissioner Buelah seconded the motion. The motion was put to a vote and approved unanimously.

State Highway Administration, MD 222 Bridge over Rock Run Replacement - Cecil County Julie Roberts presented for Vote the State Highway Administration, MD 222 Bridge over Rock Run Replacement.

Ms. Roberts provided a PowerPoint presentation with photographs of the proposed area. She said this is her last project. She reviewed the staff report, which is incorporated into and made a part of these minutes.

The Maryland State Highway Administration is proposing to replace the bridge that carries MD 222 over Rock Run in Port Deposit, Cecil County. Work will consist of replacement of the existing bridge on the same alignment adjusted slightly to avoid impacts to historic structures. In addition, there will be construction of sidewalks and ramps designed to standards of the Americans with Disabilities Act, realignment of an existing sanitary sewer line, drainage improvements, construction of stormwater management Best Management Practices and resurfacing.

The roadway at this location is entirely within the 100-foot Buffer, which was expanded for highly erodible soils. Due to the amount of disturbance within the 100-foot Buffer, this project requires approval from the Commission.

MD 222, Susquehanna River Road is a scenic byway and passes through the historic Town of Port Deposit. The existing bridge over Rock Run is a two-span reinforced concrete slab bridge built in 1930. Each Span length is 20 feet, making the total length 40 feet. The existing bridge carries two 12-foot wide lanes and has no shoulders.

The bridge is to be replaced because the substructure, superstructure, and deck elements are structurally deficient. There are several areas of deteriorating concrete on the bottom of the superstructure, abutment, and support piers. The abutments and piers have several cracks and the wing walls are showing signs of deterioration. The current Average Daily Traffic for the bridge is 2,700 vehicles, and with the existing roadway clearance width of 24 feet. Due the insufficient roadway width, the bridge is also functionally obsolete. This project is part of SHA's bridge preservation and replacement program and is funded for construction. It is anticipated that construction would start on January 11, 2016.

The site area for this bridge replacement is 0.75 acres and is completely within the Critical Area Buffer. This project is located within the Intensely Developed Area (IDA). The Critical Area Buffer in the project area is mostly developed with the roadway, parking areas, buildings, driveways, and the existing bridge.

SHA proposes to mitigate for impacts to the Critical Area Buffer at a 1:1 ratio for 18,234 square feet of full depth pavement reconstruction, and 2:1 for the net increase of impervious surfaces in the Buffer. The total Buffer mitigation required is a total of 20,846 square feet. Mitigation for impacts is not feasible at the project site due to the developed nature of the project area and limited right-of-way. The mitigation will be completed at the same site proposed for SHA's related project in Port Deposit.

Since this project is in an Intensely Developed Area, it must comply with the 10% pollutant reduction requirement. This project will remove 0.47 pounds/year of phosphorus. MDE's Stormwater Program is in the process of reviewing the stormwater and sediment and erosion control plans. SHA anticipates permit approval prior to the meeting.

The proposed project will permanently impact 160 square feet of Waters of the U.S. and temporarily impact 1,971 square feet of waterways. There will be 6,355 square feet of disturbance to the 100-year floodplain. There are no impacts to wetlands. On September 4, 2015, SHA received a Letter of Authorization from the Department of the Environment for the Maryland State Programmatic General Permit issued by the U.S. Army Corp of Engineers.

In an email dated May 5, 2015, the Department's Wildlife and Heritage Service (WHS) indicated that this project would have no impact on the state-listed endangered Northern Map Turtle, as the range of the turtle would not be within the project limits.

A preliminary review showed that the Maryland Darter, which is federally listed as endangered, and Bog Turtle that is state listed as threatened, may be present at the project location. Further coordination with DNR determined that there are no records for the Bog Turtle within the project limits. The Fish and Wildlife Service responded on March 02, 2014 that further coordination was not required regarding both species.

On April 9, 2015, the Maryland Historical Trust concurred with SHA's determination of "No Historic Properties Affected". This project will not affect historic standing structures or archeological resources.

SHA held a public informational meeting for this project on November 11, 2014 at Perryville High school. There were no substantial public comments on the project. In accordance with the provisions of COMAR 27.03.01.03, the site has been posted with two informational signs. The project was advertised in the Cecil Whig newspaper on October 9, 2015.

On behalf of the Project Subcommittee, Chair Gary Setzer made a motion that the Commission approve the replacement of Bridge Number 0702700 proposed by the State Highway Administration, which carries Maryland Route 222 over Rock Run in Port Deposit in Cecil County, Maryland. This motion is offered in accordance with the staff report and presentation and the following conditions:

- (1) Prior to the start of construction, the State Highway Administration shall confirm in writing that it has received the necessary erosion and sediment control and stormwater management approvals or waivers from the Maryland Department of the Environment; and
- (2) the State Highway Administration shall work with Commission staff to finalize the draft mitigation plan for the proposed offsite mitigation location. If Commission staff determines that this site is not a feasible mitigation area, the State Highway Administration shall submit an alternative site to Commission staff and, if necessary, the full Commission for review and approval. SHA shall report its progress within six months of this approval.

Commissioner Dubow seconded the motion. The motion was put to a vote. The motion passed unanimously.

State Highway Administration, MD 349 Windsor Creek Bridge Replacement – Wicomico County Amber Widmayer presented for Vote the State Highway Administration, MD 349 Windsor Creek Bridge Replacement.

Ms. Widmayer provided a PowerPoint presentation with location maps. She reviewed the staff report, which is incorporated into and made a part of these minutes. She introduced County representatives; they are here today to answer any questions.

The State Highway Administration is seeking approval to replace an existing MD 349 bridge over Windsor Creek in Wicomico County. The existing timber bridge will be replaced with a pre-stressed concrete slab with pre-cast concrete walls. The project's limit of disturbance is 0.38 acres and it is completely within tidal wetlands and the 100-foot Buffer. The project is reviewed under the provisions of the Intensely Developed Area as outlined in COMAR 27.02.05.03-1. The project requires approval by the Commission because it is a development activity within State lands that exceeds the scope of SHA's current Memorandum of Understanding with the Critical Area Commission.

The new bridge will be slightly wider than the existing bridge and will provide two 11-foot wide travel lanes and two five-foot wide shoulders. The total Buffer mitigation requirement is 10,886 square feet. Additionally, a 0.09 pound 10% phosphorus removal requirement will be addressed by planting 18 trees. The mitigation plantings will partially be provided on site as high marsh vegetation and partially at an offsite planting area in nearby Sharptown, Maryland. SHA has provided a planting plan showing that the mitigation requirement will be addressed with the proposed plantings.

MDE is in the process of reviewing the project's stormwater and sediment erosion control plans.

The project requires a license from the Board of Public Works for impacts to tidal wetlands. SHA has submitted the application for the license and approval is pending.

DNR Wildlife and Heritage Service (WHS) indicated in a November 21, 2013 letter that there are no State or federal records for rare, threatened or endangered species within the boundaries of the project site as delineated.

DNR's Integrated Policy & Review Unit recommended a prohibition on any in-stream work from March 1st through June 15th and strict implementation of sediment erosion controls throughout the duration of the project.

The Maryland Historical Trust confirmed on March 10, 2014 that no historic properties will be affected by the proposed project.

As required by COMAR 27.03.01.03, notice of the proposed project was published on January 1, 2015. Also, two signs with information about the project were posted on the site. SHA indicated that no substantive comments were received.

On behalf of the Project Subcommittee, Chair Gary Setzer made a motion that the Commission approve the replacement of Bridge Number No. 22015 proposed by the Maryland State Highway Administration, which carries Maryland Route 349 over Windsor Creek in Bivalve, Wicomico County, Maryland. This motion is offered in accordance with the staff report and presentation and the following conditions:

- (1) Prior to the start of construction, the State Highway Administration shall submit a copy of the Tidal Wetlands License issued by Maryland Board of Public Works to Commission staff;
- (2) Prior to the start of construction, the State Highway Administration shall confirm in writing that it has received the necessary erosion and sediment control and stormwater management approvals from the Maryland Department of the Environment.

Commissioner Sydnor seconded the motion. The motion was put to a vote and approved unanimously.

Baltimore County – Map Approval and Text Amendments

Lisa Hoerger presented for concurrence with the Chair's determination of Refinement the Baltimore County Map Approval and Text Amendments.

Ms. Hoerger presented a PowerPoint presentation, with maps of the proposed area. She reviewed the staff report, which is incorporated into and made a part of these minutes. She introduced Regina Esslinger and Pat Farr with Baltimore County. They are present to answer any questions.

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. Subsequently, each local jurisdiction is undergoing a Critical Area mapping update.

Commission staff worked with Baltimore 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 draft maps were vetted by the agencies, presented at two public meetings and delivered to the County for public comment and County Council approval.

Overall, this mapping update resulted in Baltimore County having a net gain of 1,302 acres in the Critical Area (Gain: 2,175 acres; Loss: 873 acres).

As part of the mapping update, the County passed Bill #51-15. This bill includes the repeal of the County's existing Critical Area maps and Modified Buffer Area Maps, and the adoption of the updated maps. The bill also establishes the process for updating the County's maps, including timeframes for updates. Other changes are editorial in nature.

Subsequent to delivery of the Summary Draft Maps by the Commission, on August 3, 2015, the Baltimore County Council approved Bill #51-15 which updated the County's Official Critical Area map.

The mapping update was completed in accordance with State Law and COMAR 27.01.09.01-8.

Program Subcommittee Chair Carolyn Cummins said the Subcommittee reviewed the recommendation for approval of the Baltimore County Map Approval and Text Amendments and concurs with the Chair's Determination of Refinement. The Subcommittee recommends approval consistent with the staff report and presentation.

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

Baltimore County – Modified Buffer Area Text Amendments and Maps

Lisa Hoerger presented for concurrence with the Chair's determination of Refinement the Baltimore County Modified Buffer Area Text Amendments and Maps.

Ms. Hoerger presented a PowerPoint presentation with maps. She reviewed the staff report, which is incorporated into and made a part of these minutes.

During the update of the Baltimore County Critical Area maps, the County also updated its Modified Buffer Area (MBA) program and maps. The County's original MBA program and maps were adopted in 1996. Since the new digitization of the Critical Area mapping layer, the County reviewed its MBA maps and determined some clarifications and changes were necessary. The County had to also update its MBA program language, because new areas of the shoreline were added as MBAs.

In 1996 the County initiated and approved an MBA program that consisted of the program language necessary to implement the procedures for review of development activities in MBAs. This plan focused on residential MBAs. The proposed MBAs include areas that are commercial, industrial, institutional, recreational and multi-family. The proposed MBA language provides the procedures for reviewing these types of MBAs in the case of redevelopment. The updates to the MBA language include:

- Minor editing including changing the name of "Buffer Management Areas" to "Modified Buffer Areas" to be consistent with the Commission's terminology in COMAR 27.01.09.01-8.
- Definitions which are consistent with the Commission's policies concerning Modified Buffer Areas
- A revised explanation of the County's MBA mapping process.
- Procedures for review and approval of commercial, industrial, institutional, recreational, and multi-family uses in a mapped MBA.
- Mitigation requirements for the above-mentioned uses.

The County worked closely with Commission staff when drafting the language. The minor adjustments to the maps consisted of clarifying the end points of the MBA along the shoreline by ensuring the end points of each MBA were clearly shown along property lines. The original MBA boundary lines were hand drawn, and in some cases it was difficult to distinguish the beginning and end of an MBA.

The proposed additions to the County's MBA maps include 11 areas of the shoreline. Each site was reviewed for consistency with COMAR 27.01.09.01-8, which authorizes a local jurisdiction to map areas of the shoreline where it can be sufficiently demonstrated that the existing pattern of residential, industrial,

commercial, institutional, or recreational development in the Critical Area prevents the buffer from fulfilling its functions of water quality and habitat. This means development activities that were located in the 100-foot Buffer, and pre-dated the adoption of the Critical Area regulations and the County's Critical Area program, could be mapped as MBAs and have modified setback requirements.

On August 28, 2015 the County held a public hearing on the updates to the MBA. The Baltimore County Department of Environmental Protection and Sustainability adopted the program updates on August 31, 2015.

On August 3, 2015, the Baltimore County Council approved Bill 51-15 which updated the County's MBA maps in accordance with COMAR 27.01.09.01-8 and the County program.

Program Subcommittee Chair Carolyn Cummins said the Subcommittee reviewed the request for the Baltimore County Modified Buffer Area Text Amendments and Maps and concurs with the Chair's Determination of Refinement. The Subcommittee recommends approval consistent with the staff report and presentation.

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

Town of Princess Anne (Somerset County) Map Approval

Lisa Hoerger presented for concurrence with the Chair's determination of Refinement Town of Princess Anne Map Approval.

Ms. Hoerger presented a PowerPoint presentation. She reviewed the staff report, which is incorporated into and made a part of these minutes.

As a result of the mapping update, the Town of Princess Anne had a net gain of 68.09 acres in the Critical Area (Gain: 86.59 acres; Loss: 18.50 acres).

On August 3, 2015, the President and Commissioners of the Town of Princess Anne approved Ordinance #2016-03, which updated the Town's Critical Area map in accordance with State Law (Ch. 119, Acts of 2008, §1—4) and the Critical Area Commission's mapping regulations (COMAR 27.01.11).

Program Subcommittee Chair Carolyn Cummins said the Subcommittee reviewed the request for the Town of Princess Anne Map Approval and concurs with the Chair's Determination of Refinement. The Subcommittee recommends approval consistent with the staff report and presentation.

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

Town of St. Michaels (Talbot County) Inn at Perry Cabin Growth Allocation

Jennifer Anderson presented for concurrence with the Chair's determination of Refinement the Town of St. Michaels Inn at Perry Cabin Growth Allocation.

Ms. Anderson presented a PowerPoint presentation with maps. She reviewed the staff report, which is incorporated into and made a part of these minutes.

The Town of St. Michaels, on the behalf of RDC Inn at Perry Cabin, LLC, is requesting growth allocation approval from the Critical Area Commission to reclassify 13.42 acres of land (11.54 acres of Resource Conservation Area and 1.88 acres of Limited Development Area) to an Intensely Developed Area. The

growth allocation request is necessary to permit the redevelopment and expansion of the Inn at Perry Cabin, which includes additional guest rooms, event space, parking areas, and guest amenities. The 15% lot coverage limit in the LDA and RCA, as well as the proposed use of the RCA for commercial development, would otherwise prohibit the expansion of this venue. The use of growth allocation was approved by the Commissioners of St. Michaels on August 12, 2015.

The Inn at Perry Cabin is located on the north side of the Town and is identified on Tax Map 200 as Parcel 2168. The site is a 24.33-acre waterfront parcel on Fogg Cove, located entirely within the Critical Area. The majority of the parcel is designated as IDA with some RCA and a small portion of LDA. The property is adjacent to existing mapped IDA and the requested growth allocation would result in the designation of the entire lot as IDA. The site is currently developed with guest rooms, a fitness center, a spa, dining facilities, a pool, and gardens. The existing improvements on the property were constructed prior to the Critical Area program, and were therefore constructed in closer proximity to the shoreline than would be permitted under the current Critical Area regulations.

The property is zoned by the Town as R-1 – Residential, which is a high density zoning district, and WD – Waterfront Development District. The soon to be enacted Comprehensive Plan for the Town depicts the entire property as WD which “promotes the development of the tourist trade in an area adjacent to the Town Harbor to take advantage of the unique attraction of the waterfront which is not appropriate for maritime use, while preserving historic features and protecting adjacent residential area.”

The property is served by municipal water and sewer.

The proposed improvements will be located entirely within the Critical Area. The project will increase lot coverage on the site from 4.75 acres (20%) to 8.34 acres (34%) and will include several stormwater management facilities.

The limits of the tidal wetlands and nontidal wetland have been field verified and flagged by the US Army Corps of Engineers and Maryland Department of the Environment. Further, the 100-foot Buffer has been expanded to include the adjacent nontidal wetland and hydric soils. A draft Buffer Management Plan has been provided by the property owners, in which 21,319 square feet of the Buffer and expanded Buffer will be established in an area that is currently designated RCA. This establishment requirement is in conformance with the Commission’s Buffer regulations (COMAR 27.01.09.01), which require Buffer establishment for redevelopment based on the amount of the new lot coverage that is proposed outside of the Buffer. No new development or disturbance is proposed in the Buffer or expanded Buffer as a part of the project as designed. Commission staff is currently evaluating the Buffer Management Plan.

There is a small nontidal wetland located on the northern edge of the property. The proposed development does not impact this wetland or its 25-foot buffer. Therefore, impacts to this HPA have been avoided.

The waters of Fogg Cove have been identified as a waterfowl staging and concentration area. A pier currently exists on the site and no additional work is proposed in the waters of Fogg Cove; therefore, impacts to this HPA have been avoided.

The growth allocation standards found in Natural Resources Article §8-1808.1(c) require that a 300-foot setback be provided from the edge of tidal wetlands or tidal waters when locating new development in the RCA. Under the law, this setback can be waived if the local jurisdiction proposes, and the Critical Area Commission approves, alternative measures for enhancement of water quality and habitat that provide greater benefits to the resources. Given the location of existing structures in the Buffer and the current layout of the property, a 300-foot setback is not provided for this site. Instead, the Town is proposing the following alternative enhancements:

1. Providing 15% afforestation on site, although not required in the IDA, by planting over 470 trees and shrubs
2. Proposing to remove an additional 2.64 pounds of phosphorus per year over the IDA-required 10% phosphorus removal requirements on the project site
3. Providing 3,049 square feet of off-site habitat enhancement on the Talbot County-owned Perry Cabin Ballfields.
4. Providing 1.43 acres of off-site habitat enhancement on the Town-owned Canton Farm.
5. Providing off-site water quality enhancement at the end of Thompson Street by creating a submerged gravel wetland.
6. Providing off-site water quality enhancement at the end of Tilden and W. Chestnut Streets by creating a submerged gravel wetland.

The applicant is proposing to provide off-site water quality and habitat enhancements greater than the benefits that may have been realized on the property through a 300-foot setback. The applicant's engineer, under the review of the Town's engineer, calculated the quantitative difference in the area between the existing Critical Area 100-foot and expanded Buffer and up to 300 feet from the mean high water line on the property. The values were calculated as 1.18 pounds of phosphorous removal annually and 1.5 acres of habitat enhancement. The off-site areas identified above are public lands where the Town and Talbot County both desire further enhancements to water quality and to wildlife habitat.

Mitigation for development in the IDA must be met by providing stormwater management to meet a 10% reduction in pollutant runoff from the site. The applicant has provided a conceptual stormwater plan showing the proposed locations of stormwater management facilities.

Natural Resources Article §8-1808.1(c) requires the Critical Area Commission to ensure that the locational and comprehensive planning standards of the law 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.

Ms. Anderson introduced representatives Joanne Clark, Jean Weisman and Sarah Abel from St. Michaels. Additionally, she introduced Bruce Armistead and Zach Smith from Armistead, Griswold, Lee & Rust, P.A., and Bill Stagg, Lane Engineering. She said they are here today to answer questions.

In response to a question from Commissioner Carter, Town Planner Sarah Abel described the offsite mitigation areas and the use of submerged gravel wetlands. She said that out of a concern for safety, Talbot County did not favor making the wetland deeper; therefore, it does not serve a habitat function.

Program Subcommittee Chair Carolyn Cummins said the Subcommittee reviewed the request for the Town of St. Michaels Inn at Perry Cabin Growth Allocations and concurs with the Chair's determination of refinement. The Subcommittee recommends approval with the following conditions:

1. Prior to final site plan approval, the Town shall forward final stormwater management plans demonstrating compliance with the 10% pollutant reduction requirement for review and approval by Commission staff.
2. Prior to final site plan approval, the Town shall forward the final Buffer Management Plan demonstrating compliance with the Town's Buffer establishment requirements for review and approval by Commission staff.
3. Prior to final site plan approval, the Town shall forward the planting plans for the offsite habitat creation located at the Canton Park Farm and the Perry Cabin Ballfields for review and approval by Commission staff.

4. Within two years of approval of this growth allocation proposal, the Town shall forward all offsite stormwater management plans demonstrating that the additional water quality improvements have been satisfied as part of the alternative to the 300-foot setback standard. All plans shall be submitted to Critical Area staff or, if necessary, the full Commission for review and approval within 2 years of this approval.

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

LEGAL UPDATE: Rachel Eisenhauer told the Commission that Mark Talty, former Assistant Attorney General, has taken a position with the Environmental Protection Agency. She said he was an asset to both the DNR legal office and the Critical Area Commission staff.

She said she met with Chairman Deegan, Ren Serey and Nick Kelly and informed them there are no cases to update today. Mr. Serey suggested she review the August 5, 2015 Minutes. After doing so, there are no legal updates to report on at present. Chairman Deegan said at future meetings we will have updates on past cases.

OLD BUSINESS: There are two items to come before the Commission:

Queen Anne's County: Queen Anne's County Special Events in the Resource Conservation Area Text Amendment Pilot Program Extension

Nick Kelly told the Commission that Helen Spinelli is here with us today to answer any questions you may have. He gave a summary and background information.

On April 3, 2013, the Critical Area Commission approved a two-year pilot program for Queen Anne's County that would allow special events to be permitted as a conditional use within the Resource Conservation Area.

However, no special events have been held during the two-year period.

The County has approved only two conditional use permits, but so far has issued one zoning certificate for an actual event, which is not scheduled until 2016.

Due to the fact that no special events have been held during the original pilot period, the County is requesting a two-year extension to the original pilot period. Commission staff concurs that a two-year extension would provide the time needed to effectively determine if the special events language adequately protects the habitat and water quality of the RCA while accommodating the requests for special events within Queen Anne's County.

Queen Anne's County defines a special event as follows:

“Personal or business social engagement or activities conducted at a bed-and-breakfast, single family residence, or on a farm where guests assemble for parties, wedding receptions, reunions, birthday celebrations, or similar uses for compensation, during which food and beverages may be served to guests and music and other entertainment is provided to guests. This definition shall not include places of worship.”

Under the pilot program, special events applications in the RCA are reviewed by the Queen Anne's County Board of Appeals, to determine whether to grant a conditional use permit. In addition to acquiring

a conditional use permit, property owners are required to obtain a yearly zoning certificate, issued by the Planning Director, in order to host special events on their property.

All special events are regulated through a set of standards located in §18:1-95.T of the Queen Anne's County's Zoning Ordinance. The standards include compliance with all applicable State and local laws, limits on parcel size, restrictions on location, noise limits, signage requirements, lighting restrictions, time constraints, parking requirements, and guest limits. In addition to the requirements, supplementary standards for special events that are located in the RCA were added to the County's Critical Area Program (Chapter 14), including a requirement that all RCA development standards must be met, a limit to the number of special events per site based on acreage, prohibiting the location of any new lot coverage associated with special events within the Buffer, and a requirement that scaled drawings be submitted to the County showing the layout of the special event.

Mr. Kelly said we are here today to ask for a two-year extension. He said, hopefully, in two more years there will be some events for us to look at to enable us to make a determination.

Commissioner Cummins asked Ms. Spinelli if the lack of events is due to restrictions that were put on the County or was it just the economic times.

Ms. Spinelli said it was probably both. She said that the conditions for the special events were jointly crafted by the CAC and through a special committee. We worked on them together. She said the County wrote this legislation in response to a very serious problem with so many people using their homes for large weddings and other events.

Program Subcommittee Chair Carolyn Cummins asked if all the County is asking for today is a two-year extension. Commissioner Konapelsky asked at this point if the County wouldn't like to review the standards already in place prior to asking an extension. Ms. Spinelli said she would rather not have an extension; she would prefer a final approval. The language is already adopted into their Code and it seems their process is working

Commissioner Konapelsky asked Mr. Kelly to give him some input. He asked "What is your viewpoint on this, where would you like to be in this situation?"

Mr. Kelly said we consulted with our legal staff. The thought process behind the extension was if we have nothing to review for the pilot program, then we cannot say it works or doesn't work if we have nothing to look at. Thus, the two-year extension is preferred. Mr. Kelly said our recommendation is to extend the pilot program for two years to make sure it is working.

Commissioner Konapelsky made a motion to extend the pilot program for two years. Commission Cummins seconded the motion.

The Chairman put the motion to a vote. It was approved unanimously.

Town of Centreville - Carter Farm Growth Allocation Conditions

Nick Kelly provided an update on the Carter Farm Growth Allocation.

On August 5, 2015, the Critical Area Commission concurred with the Chairman's determination that the Town of Centreville's Carter Farm Growth Allocation could be reviewed as a refinement to the Town's Critical Area Program. On August 6, 2015, Chairman Deegan approved the growth allocation request to reclassify 40.37 acres of land from a Limited Development Area to an Intensely Developed Area with two conditions. One of these two conditions required that the Town submit a conceptual plan for public access

to the Commission Chairman for approval within 120 days of the date of his approval of the growth allocation. The Town has submitted information to address this requirement.

Mr. Kelly said a few weeks ago the Town submitted a conceptual plan. A trail is going to look as it did in the actual plan that everyone saw in August. Of course, when you bring in a trail you cannot put in the actual design until you get to the final stages of planning because you are trying to avoid impact to trees and other habitat. He said the Town has submitted a letter stating that the trail will be included in their development rights and responsibilities agreement. It will be for public access and public use; it will not be restricted to just the actual homeowners. He said he will come back and report on it when he gets finalized plans.

NEW BUSINESS: The Chairman said Nick Kelly worked very hard with the Perryville Veterans Administration in Cecil County on a Memorandum of Understanding for a plan to plant buffers.

Mr. Kelly said we put together a Memorandum of Understanding with the Perryville Veterans Administration. Over the years they have submitted many projects which require Federal consistency, which requires them to comply with the Critical Area requirements to the extent practical. In many of those cases the biggest problem was trying to find locations to plant mitigation. So a couple of years ago they came up with a plan where they actually traded mitigation bank. They have identified locations on the sites where they will plant. Now when they come in for a project, they deduct mitigation from the bank. They have created a brand new banking system on the actual property to plant the Buffer areas and plant other areas adjacent to the FIDs habitat.

Chairman Deegan said it saves us a lot of time and red tape.

There being no further business to come before the Commission, the meeting adjourned at 2:20 p.m.

Chairman Deegan told the Commission we will not hold a Commission meeting in December. The next meeting of the Commission will be held on Wednesday, January 6, 2016.

Minutes respectfully submitted by Shirley M. Bishop, Commission Coordinator.