

MINUTES MINUTES

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

December 7, 2016

The full Critical Area Commission met at the 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:

Gail Blazer, Worcester County – Coastal Bays (Town of Ocean City)
Carolyn Cummins, Worcester County – Coastal Bays
Jason Dubow, Maryland Department of Planning
Brad Frome, Prince George’s County
James Gesl, Charles County
Sandy Hertz, Maryland Department of Transportation
Mark Konapelsky, Somerset County
Louise Lawrence, Department of Agriculture
James Lewis, Caroline County
Michael McCarthy, Talbot County
Gary Mangum, Queen Anne’s County
David Marks, Baltimore County
Stephen Parker, Cecil County
Suzanne Pittenger-Slear, Eastern Shore Member-at-Large
Jennifer Rafter, Worcester County – Chesapeake Bay
Malachy Rice, Maryland Department of Commerce
Gary Setzer, Department of the Environment
Catherine Shanks, Department of Natural Resources
Donald Sutton, Kent County
Chris Trumbauer, Anne Arundel County

Commission Members Not in Attendance:

Curtis Beulah, Harford County
Virginia Clagett, Western Shore Member-at-Large
Robert Culver, Jr. – Wicomico County
Michael Hewitt, St. Mary’s County
Patrick Nutter, Calvert County
Don Satterfield, Dorchester County
Caroline Varney-Alvarado, Dept. of Housing and Community Development

Chairman Deegan welcomed the Commissioners, staff and guests. He extended holiday greetings to all. He informed the Commission that this will be our last meeting here at the Department of Agriculture. For future meetings, we will be returning to the People's Resource Center at 100 Community Place in Crownsville. Additional information will follow.

Chairman Deegan made a motion to approve the September 7, 2016 Minutes. The Chairman asked for any corrections to the Minutes. There were no corrections. Commissioner Cummins made a motion to approve the Minutes. Commissioner Dubow seconded the motion. The September 7, 2016 Minutes were approved as presented.

Maryland Port Administration, Cox Creek Operations and Maintenance Complex – Anne Arundel County

Jennifer Anderson presented for Vote the Maryland Port Administration, Cox Creek Operations and Maintenance Complex.

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

The Maryland Port Administration (MPA) is proposing to demolish and remove the existing Operations Center trailer complex that is utilized by the Maryland Environmental Service (MES) and construct a new Operations and Maintenance (O&M) complex at a different location. The project is located at the MPA's Cox Creek Dredge Material Containment Facility (DMCF) site, south of the Francis Scott Key Bridge (I-695) on the western branch of the Patapsco River. The proposed project is located within the Critical Area on lands designated as an Intensely Developed Area (IDA). Relocation of the O&M complex is needed in order to make room for a future expansion of the DMCF.

Existing conditions at the project site are a mix of sparse woods, meadow, and open area. The new operations center location was selected to accommodate the future DMCF expansion. The scope of work includes the demolition of an existing MES Operations Center trailer complex and the construction of a new building, parking, utilities, pavement, grading, and stormwater management. The project will meet all Critical Area development requirements, including stormwater management and mitigation for clearing.

On behalf of the Project Subcommittee, Chair Gary Setzer made a motion that the Commission approve the relocation of the Cox Creek Dredged Material Containment Facility Operations Center proposed by the Maryland Port Administration. This motion was offered in accordance with the staff report and presentation and the following conditions, which must be satisfied prior to the start of construction:

- (1) The Maryland Port Administration shall submit to Commission staff for review and approval stormwater management plans that include drainage area maps and environmental site design specifications;
- (2) The Maryland Port Administration shall submit to Commission staff copies of authorizations or approvals issued by the Maryland Department of the Environment for nontidal wetlands, erosion and sediment control, and stormwater management;

- (3) The Maryland Port Administration shall submit to Commission staff a copy of the 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 boundaries. If any of these species are present, the Maryland Port shall implement all recommendations provided by the Wildlife and Heritage Service to ensure species protection; and
- (4) The Maryland Port Administration shall forward to Commission staff for review and approval the total amount of mitigation that will be required onsite for the impacts associated with the storm drain outfall located within the conservation area. Once an acceptable location has been identified, MPA shall provide an updated planting plan showing the location, species, and number of trees planted to ensure that all mitigation requirements are satisfied.

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

When Ms. Anderson showed the site location for the new operations building Commissioner Trumbauer asked why MPA used a part of the parcel where there were some trees, as opposed to another area that was entirely open. Ms. Anderson replied that the open area will be part of the future expansion of the dredge material containment facility. Ms. Anderson introduced Moffatt & Nichol representative, Paul Nevenglosky. Mr. Nevenglosky elaborated on her answer stating that the DMCF expansion was constrained by both size requirements and the presence of nontidal wetlands. After taking those considerations into account, the only area left was the site selected for development.

Maryland Transportation Authority, Roadside Mitigation Bank

Nick Kelly presented for Vote the Maryland Transportation Authority Roadside Mitigation Bank.

Dr. Kelly expressed appreciation to Peter Mattejat of MDTA and Pam McNicholas of Parsons Brinckerhoff for their assistance. He also thanked members of the workgroup including Gary Setzer, Carolyn Cummins, Sandy Hertz, Cathie Shanks, Don Satterfield, and Gary Mangum. Dr. Kelly provided a PowerPoint presentation in which he showed and explained the MOU, a mitigation tracking worksheet and the accompanying technical manual for implementation. He reviewed the staff report, which is incorporated into and made a part of these minutes.

Over the past year and a half, staff and members of the Critical Area Commission, the Maryland Transportation Authority (MDTA), and MDTA's consultants have worked together to develop a draft Memorandum of Understanding (MOU) that will permit MDTA to create roadside mitigation banks that may be used in the future to meet mitigation requirements for other MDTA Projects. The MOU will recognize that establishment of a mitigation bank is an acceptable option for addressing impacts to the Critical Area for MDTA's development projects. The intent is to use these mitigation banks when onsite mitigation practices are either not practicable or not environmentally preferable.

Current Memorandum of Understanding with MDTA

The Critical Area Commission's regulations (COMAR 27.02.03.01) allow State and local agencies to seek a general approval from the Critical Area Commission for a program or classes of activities that result in development of local significance within the Critical Area. The Commission approved an MOU with MDTA on August 14, 2015 which allows MDTA to perform minor maintenance and development projects that qualify for general approval without requiring review and approval by the full Critical Area

Commission. Projects were broken into minor maintenance projects that only required reporting every six months; and projects that were minor in nature but required Commission staff review and approval.

A provision was included within the MOU between MDTA and the Commission charging both groups to develop a separate banking agreement to provide MDTA alternative options for mitigation. The purpose of this current MOU is to create such a banking agreement.

Roadside Mitigation Bank

The proposed MOU establishes the creation of what will be hereinafter termed a Roadside Bank (RB). RBs provide the opportunity for MDTA to add mitigation credit in areas where there is available space within current roadside right-of-ways or landscaped areas. RBs will be located on MDTA-owned land in areas where MDTA has the ability to plant additional trees, shrubs, and herbaceous species in addition to what is required for an outstanding mitigation project. In addition, MDTA can create an RB site by planting on public lands (street trees, schoolyard, etc.) or on MDTA-owned roadside areas outside of the Critical Area within the same County where impacts have occurred, if a written justification is submitted and approved by Commission staff.

The MOU specifies the role of each agency in implementing a mitigation banking program including accounting by a spreadsheet or database as well as reporting requirements. The specifics of the banking program such as planting requirements, crediting and debiting are outlined in the accompanying Technical Manual. Amendments may be made to the Technical Manual and spreadsheet from time to time. The Commission Chairman will report any changes to the Commission. MDTA and Commission staff will jointly present a progress report within three years to the Commission.

On August 8, 2016, a Workgroup of six Commission members (Gary Setzer, Carolyn Cummins, Sandy Hertz, Cathie Shanks, Don Satterfield, and Gary Mangum) met with staff from the Commission and MDTA to discuss the draft of the MOU. An overview of the MOU, Technical Manual, and accounting spreadsheet, were presented to the group. A follow-up meeting was held on October 5, 2016 with a small subset of workgroup members (Setzer, Cummins, and Hertz) to discuss edits to the Technical Manual. A third workgroup meeting (Setzer, Cummins, Hertz, and Shanks were present) was held on November 2, 2016 to finalize details on MOU, Technical Manual, and spreadsheet.

On behalf of the Project Subcommittee, Chair Gary Setzer made a motion that the Commission approve the Roadside Mitigation Banking Memorandum of Understanding between the Critical Area Commission and the Maryland Transportation Authority in accordance with the staff report and presentation and the following condition:

1. The final Memorandum of Understanding shall reflect the incorporation of comments provided by the Assistant Attorney Generals for the Department of Natural Resources and the Maryland Transportation Authority to insure legal sufficiency.

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

Chairman Deegan thanked Dr. Kelly for his work. The Chairman said he was recently meeting with the Lieutenant Governor and they discussed the importance of MOUs. He said he is glad to get this underway.

Talbot County – Town of Easton Ordinance No. 684, Critical Area Map Correction

Lisa Hoerger presented for concurrence with the Chairman’s determination of Refinement the Town of Easton Ordinance No. 684, Critical Area Map Correction.

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

On May 16, 2016 the Easton Town Council approved Ordinance No. 684. This ordinance amends the Town’s official Critical Area Overlay District Map. The proposed change consists of a reclassification of a portion of Lots 16 and 17 of Tax Map 25, Parcel 46 from a Resource Conservation Area (RCA) to an Intensely Developed Area (IDA). The intent of this map correction is to address a conflict between the underlying zoning and the Critical Area overlay zoning. This conflict was created when the Critical Area boundary expanded onto Lots 16 and 17 during the most recent Critical Area map update.

When the town was updating its Critical Area maps, the rules used to determine the Critical Area overlay zoning were to map newly expanded Critical Area lands the same Critical Area overlay designation as the adjoining lands that were already inside the Critical Area. This practice is consistent with COMAR 27.01.02 which are the mapping rules for assigning Critical Area designations. Over time Commission staff discovered this method was not the most efficient or practical way to map new lands, especially when those new lands had an approval in place for future development activities.

In July of 2012 the Commission adopted mapping regulations that address these types of conflicts whereby future or existing development occur next to an existing RCA. The regulations require mapping according to the existing COMAR mapping rules noted above; however the regulations also provide an alternative so that conflicts between underlying and Critical Area overlays will not occur.

Program Subcommittee Chair Carolyn Cummins said the Subcommittee concurs with the Chairman’s determination that the Town of Easton Ordinance No. 684, Critical Area Map Correction can be reviewed as a refinement to the Town’s Critical Area Program.

Chairman Deegan said the Subcommittee recommendation stands as his final decision.

Caroline County – Town of Denton Critical Area Map Update

Lisa Hoerger presented for concurrence with the Chairman’s determination of Refinement the Town of Denton Critical Area Map Update.

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

On November 3, 2016 the Denton Town Council approved Ordinance 682 to update 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).

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. Using these

regulations, Commission staff worked with the Town of Denton, the Maryland Department of Natural Resources, the Maryland Department of the Environment, and Salisbury University to develop updated Critical Area maps for the Town. These maps were vetted by the aforementioned agencies, and a draft map was presented to the public during several public meetings held on June 4, 2015 at Colonel Richardson High School and June 15, 2015 at North Caroline High School. In addition to the public meetings, Commission staff provided assistance by answering property-specific mapping questions via phone and email.

There was a loss of 20 acres and a gain of 94 acres resulting in a net gain of 74 acres of Critical Area lands in the town. Attached is the locally approved map depicting the town's updated Critical Area.

Program Subcommittee Chair Carolyn Cummins said the Subcommittee recommends concurrence with the Chairman's determination that the Town of Denton Critical Area Map Update met with the Chair's refinement to the Town's Critical Area Program as the mapping update is being completed in accordance with State Law and the Commission's mapping regulations.

Chairman Deegan said the Subcommittee recommendation stands as his final decision.

Talbot County – Bulk Density Requirements

Nick Kelly presented for concurrence with the Chairman's determination of Refinement the Talbot County Bulk Density Requirements.

Dr. Kelly reviewed the staff report, which is incorporated into and made a part of these minutes.

On September 13, 2016, the Talbot County Council approved Bill #1347, which amends portions of the Talbot County Code to establish identical density and minimum lot size requirements for parcels with and without sewer service in the Rural Conservation (RC), Rural Residential (RR), and Town Conservation Districts (TC). The intent of this legislation is to support the Tier III-C policies and objectives that are included within Talbot County's 2016 Comprehensive Plan. The RC and RR zoning is located within the Critical Area, with RC zoning located solely within the Resource Conservation Area and RR zoning located only within the Limited Development Area. The TC zoning is located outside of the Critical Area.

As a result of the changes proposed by this legislation, minimum density and lot size standards are established for lots that receive public or shared sewer service within the RC and RR.

Program Subcommittee Chair Carolyn Cummins said because this text amendment meets the definition of the Program in that it is a minor change to an element of the Talbot County Critical Area Program, it is clearly consistent with the provisions of the Critical Area law and regulations. The Subcommittee recommends that the Commission concur with the Chairman's determination that this text amendment can be reviewed as a refinement to the Talbot County Critical Area Program.

Chairman Deegan said the Subcommittee recommendation stands as his final decision.

Talbot County –Parent Parcel Language

Jennifer Anderson presented for concurrence with the Chairman’s determination of Refinement the Talbot County Parent Parcel Language.

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

Talbot County has submitted a text amendment (Talbot County Bill #1348) to their Critical Area Program for approval by the Critical Area Commission. The purpose of the proposed amendment is to define “Parent Parcel,” to exclude one Parent Parcel from the 200-foot Critical Area Buffer for new subdivisions in the Resource Conservation Area (RCA), and to require the Buffer for a qualifying Parent Parcel lot to be at least 100-feet wide.

COMAR 27.01.09.01.E(5) was amended in 2008 to require the Critical Area Buffer to be delineated at least 200 feet from tidal waters or a tidal wetland for new subdivisions in the RCA that received local approval on or after July 1, 2008. However, when this regulation is applied unilaterally on new subdivisions where an existing single-family dwelling is located at least partially within 200 feet from the mean high water (MHW) line, future improvements of the dwelling would be prohibited unless the an applicant seeks and is granted a variance through the local jurisdiction. The application of this regulation on qualifying lots for new subdivisions within the RCA creates a nonconforming circumstance for the existing dwelling. The intent of this Bill 1348 is to avoid or lessen the creation of lots with nonconforming primary residential structures that were legally constructed in compliance with required Buffer setbacks at the time of construction. Talbot County Bill #1348 received unanimous Council support and favorable backing from the public. The bill was approved by the Talbot County Council on September 13, 2016.

Program Subcommittee Chair Carolyn Cummins said the Subcommittee concurs with the Chairman’s determination that this Zoning Text Amendment to Amend Chapter 190 to Define and Create Standards for a “Parent Parcel” can be reviewed as a refinement to the County’s Critical Area Program, as the proposed changes to the Zoning Ordinance are consistent with the Critical Area Law and its regulations.

Chairman Deegan said as the refinement stands he approves the text amendment recommended by the Program Subcommittee.

Talbot County – Golf Course Expansion in the RCA

Jennifer Anderson presented for concurrence with the Chairman’s determination of Refinement the Talbot County Golf Course Expansion in the RCA.

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

Talbot County has submitted a text amendment (Talbot County Bill #1349) to the Critical Area section of the Talbot County Code for approval by the Critical Area Commission. The purpose of the proposed amendment is to allow no more than 20 percent expansion of the “in play area” of a golf course that existed prior to the County’s Critical Area Program and that is located in the Resource Conservation Area (RCA).

Talbot County has two golf courses that are considered legally nonconforming (constructed prior to the local Critical Area Program) and are located within the RC District –Harbourtowne Golf Course and Talbot Country Club. This proposed text amendment would only apply to Harbourtowne Golf Course, as the existing RCA portion of Talbot Country Club has no available areas for expansion into additional areas of RCA.

Expansion of areas of a nonconforming use not involving structures is currently limited to no more than 10 percent of the site area existing on the date that the use became nonconforming. Bill #1349 allows for a minor expansion (up to 20 percent) of new “in play areas” for qualifying golf courses in the RC District so long as certain environmental setbacks are followed. These provisions include a minimum setback of 300 feet from tidal waters or a tidal wetland and a minimum setback of 150 feet from the edge of tributary streams. If the expanded “in play area” is accessed by cart paths, these paths must be designed to minimize environmental impacts, including restrictions on the number, location, configuration and construction of crossings. These standards are reflective of the Commission’s policy for new golf courses in the RCA. Talbot County Bill #1349 received unanimous County Council support and favorable backing from the public. The bill was approved by the Talbot County Council on September 13, 2016.

Program Subcommittee Chair Carolyn Cummins said the Subcommittee concurs with the Chairman’s determination that the Talbot County Golf Course Expansion in the RCA text amendment can be reviewed as a refinement to the County’s Critical Area Program with the following condition:

- The County shall include a definition of “in play area” to the Talbot County Code as part of its update to the Critical Area section of the Talbot County Code within 120 days of approval of the refinement. The definition of “in play area” shall specify typical in-bound areas such as the driving range, fairway, tee box and greens. The definition of “in play area” shall also specify typical out-of-bound areas such as: forested areas; commercial areas and structures; maintenance areas and structures; parking areas and structures; and clubhouses, tennis courts, pool, pool houses and other similar facilities.

Chairman Deegan said as the refinement stands he approves the text amendment as recommended by the Program Subcommittee.

Talbot County – Town of Easton IDA Less than 20 Acres Amendment

Julie Roberts presented for concurrence with the Chairman’s determination of Refinement the Talbot County Town of Easton IDA Less than 20 Acres Amendment.

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

On May 16, 2016, the Easton Town Council approved Ordinance Number 683 which amended their Critical Area Growth Allocation requirements. The current ordinance provides standards for locating new Intensely Developed Areas (IDAs). Proposed language is underlined and shown below:

- (3) New Intensely Developed Areas shall be at least 20 acres in size unless:

- a. They are contiguous to an existing Intensely Developed Area or located in a Limited Development Area; or
- b. They are grandfathered commercial or industrial use, which existed as of June 26, 1988. The amount of growth allocation deducted shall be equivalent to the area of the entire parcel or parcels subject to the growth allocation; or
- c. They are (or will be) served by public sewer, the growth allocation is consistent with the goals and objectives of the Town's Comprehensive Plan, and the project has an overall economic benefit to the community.

The Critical Area Commission amended its regulations in 2009 to provide the ability for jurisdictions to allow new IDAs less than 20 adjacent acres if the Commission has approved an alternative standard for designation of an intensely developed area and the area is part of a growth allocation. The existing language is based on the Critical Area Commission approved model ordinance for municipalities, which was adopted by the Town in 2013 during their Comprehensive Review. This new language would also allow a new IDA of less than 20 acres to be located within an LDA, provided the designation can meet *all three* of noted criteria – public sewer, consistency with the Comprehensive Plan, and an economic benefit.

Program Subcommittee Chair Carolyn Cummins said the Subcommittee concurs with the Chairman's determination that this text amendment can be reviewed as a refinement to the Town's Critical Area Program, as the proposed changes to the Zoning Ordinance are consistent with the Critical Area Law and its regulations.

Chairman Deegan said the Subcommittee recommendation stands as his final decision.

Cecil County – Chesapeake City Growth Allocation

Alex DeWeese presented for concurrence with the Chairman's determination of Refinement the Cecil County Chesapeake City Growth Allocation.

Ms. DeWeese reviewed the staff report, which is incorporated into and made a part of these minutes. She introduced Sandra Edwards with the Town of Chesapeake City, and Brian Morgan with KCI Technologies.

The Town of Chesapeake City requests growth allocation for 3.0 acres of land in order to change the designation of a privately owned parcel from Resource Conservation Area (RCA) to Intensely Developed Area (IDA). The property is located along Boatyard Road and Back Creek in Chesapeake City, Cecil County and is owned by Mr. Robert J. Turner. The request for growth allocation is necessary in order to develop a portion of the site with a new wastewater treatment plant for the Town that meets enhanced standards in order to replace two existing outdated wastewater treatment plants.

The intent of this growth allocation request is to allow the Town to develop the site with a wastewater treatment plant that meets enhanced nutrient removal (ENR) and biological nutrient removal (BNR) standards. The facility in Chesapeake City is on the Maryland Department of the Environment's Bay Restoration Fund Targeted Minor Wastewater Treatment Plants list. Currently, the Town operates two

wastewater treatment plants; one on the south side of the canal and one on the north side of the canal at the location of this proposed growth allocation. Both wastewater treatment plants are outdated and do not meet current enhanced standards. This proposal will allow the Town to replace the plant on the north side of the canal with one that will handle wastewater from all of Chesapeake City and decommission the plant on the south side. In order to accommodate the increased size, the Town has entered into an agreement with the adjacent private property owner whereby an additional 1.99 acres of land are given to the Town for the expansion. In exchange, the property owner will seek subdivision approval of the remaining lands to create two residential lots. An agreement of sale between the private property owner and the Town demonstrates that the owner is transferring the remaining lands of this parcel to the Town for the wastewater treatment plant, minus the lots for the two homes. This agreement of sale is contingent upon the property being granted growth allocation.

The new plant will have a total treatment capacity of 300,000 gallons per day. It will increase lot coverage by 0.58 acres and require the clearing of 0.53 acres of developed woodland. The two residential lots will be limited to no more than 0.189 acres of clearing of developed woodland and 0.15 acres of lot coverage. The site includes both the 100-year and 500-year floodplain. The WWTP is located partially within both floodplains, and will comply with the Town's 2-foot freeboard standard. It cannot be moved further out the floodplain as the site is constrained by the existing road. The two proposed houses are located entirely out of the 100-year floodplain. A small portion of the driveway and corner of one of the homes is located in the 500-year floodplain.

The Town is not able to provide a 300-foot setback for the site, as required for growth allocation within an RCA, as the site is located entirely within the 300-foot setback. However, the proposal includes alternative offsets to the 300-foot setback which provide water quality and habitat benefits.

The property is not directly a waterfront lot but includes a portion of the Critical Area Buffer (which is expanded to 110 feet in Cecil County) to the Chesapeake and Delaware (C & D) Canal. The site also borders waterfront property owned by the U.S. Army Corps of Engineers that includes an existing gravel road and impervious surfaces in the Buffer as well as non-tidal wetlands. Within the 3.0-acre parcel for growth allocation, there will be no disturbance to the Buffer for the proposed development. Impervious surfaces within the Buffer on the adjacent property developed with the existing wastewater treatment plant will be removed as mitigation for the inability to provide a 300-foot setback. Additionally, 0.38 acres of reforestation will be planted within the Buffer.

As this project will result in a designation of IDA for the property, Critical Area 10% pollutant reduction requirements must be met. The Town consultant has submitted a Conceptual Stormwater Management Plan to the Commission in accordance with these requirements. Commission staff recommends submittal of the final stormwater management plans for staff approval prior to final site plan approval of the WWTP or issuance of building permits for the single family dwellings.

Natural Resources Article 8-1808.1(c) requires the Critical Area Commission to ensure that the following 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 are met as stated below:

1. *A new intensely developed area shall be at least 20 acres.*

The proposed growth allocation meets this requirement. The Town is requesting a growth allocation of 3.0 acres on this site. The proposed Intensely Developed Area lies adjacent to existing Intensely Developed Areas 59 acres in size.

2. *A local jurisdiction may not use more than 1/2 of its total allotted growth allocation acreage to convert a RCA into a new LDA or IDA, except in Calvert, Caroline, Cecil, Charles, Dorchester, Kent, Queen Anne's, St. Mary's, Somerset, Talbot, Wicomico, and Worcester Counties. If these counties are unable to utilize a portion of their growth allocation under this regulation then these counties may use a standard that varies from that above.*

The proposed growth allocation meets this standard. Cecil County has 61.9% of its growth allocation remaining.

3. *Locate a new Intensely Developed Area in a Limited Development Area or adjacent to an existing Intensely Developed Area.*

The proposed growth allocation meets this standard. The new Intensely Developed Area lies adjacent to existing Intensely Developed Area to the east.

4. *Locate a new Limited Development Area adjacent to an existing Limited Development Area or an Intensely Developed Area.*

This standard is not applicable.

5. *Locate a new Intensely Developed Area in a manner that minimizes impacts to habitat protection areas as defined in COMAR 27.01.09, and in an area and manner that optimized benefits to water quality and impacts to the defined land uses of the Resource Conservation Area.*

As discussed above, there are no proposed impacts to the Critical Area Buffer or nontidal wetlands onsite. The site will be improved with stormwater management practices to meet the 10% pollutant reduction requirement in the IDA. Additionally, no endangered or threatened species or other habitat protection areas have been identified by the U.S. Fish and Wildlife Service. The Environmental Report supports no adverse effect will result from the proposed project.

6. *Locate a new intensely developed area or limited development area in a resource conservation area at least 300 feet beyond the landward boundary of tidal wetlands or tidal waters, unless the local jurisdiction proposes, and the Commission approves, alternative measures for enhancement of water quality and habitat that provide greater benefits to the resources.*

The proposed location of the future wastewater treatment plant will not permit the preservation of a 300-foot setback, as the landward parcel boundary is less than 300 feet from the water. The proposed ENR/BNR upgrades to the wastewater treatment plant will provide significant water

quality enhancements. All proposed development will also meet required stormwater management for 10% pollutant reduction. Additionally per the Town's floodplain ordinance, the new structures associated with the WWTP will meet the 2' freeboard standard for construction in floodplains.

The Town of Chesapeake City proposes the following alternative measures to the 300-foot setback: 1) demolish existing encroachment into the 110-foot Buffer from the existing wastewater treatment plant, remove all associated impervious coverage from the Buffer, and revegetate the area; 2) retain 0.818 acres of forest in a dedicated easement on the two residential lots; (3) reduce lot coverage limits from 40% to 15% on the two lots to be developed with single family dwellings; and (4) all development associated with the two residential lots must be located entirely outside of the 100-year and 500-year floodplain.

In accordance with Natural Resources Article 8-1808.1(c) (4) and COMAR 27.01.02.06-3(G), the Commission shall consider the following factors when reviewing a map amendment or refinement involving the use of growth allocation:

1. *Consistency with the jurisdiction's adopted comprehensive plan and whether the growth allocation would implement the goals and objectives of the adopted plan.*

The project is located within an area identified as part of the Municipal Growth Boundary as demonstrated by the Town of Chesapeake City Comprehensive Plan Map. The Comprehensive Plan, drafted in 2009, also highlights this area for capacity improvements. The plan recognizes the need for upgrades to the wastewater treatment plant and highlights the anticipation of a system that would accommodate ENR/BNR technologies. The proposal is consistent with the criteria of the Commission and also the Town's Comprehensive Plan.

2. *For a new intensely developed area, whether the development will:*
 - (a) *Be served by a public wastewater system.*

The project is currently served by a public wastewater system. Approval of this growth allocation request will provide more efficient service with enhanced quality.

- (b) *Have an allowed average density of at least 3.5 units per acre, as calculated under State Finance and Procurement Article, §5-7B-03(h), Annotated Code of Maryland.*

The two residential lots that are proposed will be in accordance with the density allowed in the base zone.

- (c) *For a new intensely developed area that is greater than 20 acres, be located in a priority funding area.*

The proposed growth allocation request is for three acres only.

- (d) *Have a demonstrable economic benefit to the area.*

The proposed project will result in a 50% reduction of the Town's wastewater facility management obligation, resulting in an economic benefit to all Chesapeake City taxpayers.

3. *For a new limited development area, whether the development will be served by a public wastewater system or septic system that uses best available nitrogen removal technology; complete an existing subdivision, or expand an existing business;*

This standard is not applicable.

4. *The use of existing public infrastructure, where practical.*

The proposed development will be served by a public wastewater system.

5. *Consistency with State and regional environmental protection policies concerning the protection of threatened and endangered species and species in need of conservation that may be located on-site or off-site.*

Correspondence from the U.S. Fish and Wildlife Service, dated March 13, 2015, stated there are no rare, threatened, or endangered (RTE) species within the boundaries of the property.

6. *Impacts on a priority preservation area, as defined under Agriculture Article, §2-518, Annotated Code of Maryland;*

The proposed development is not located in a priority preservation area.

7. *Environmental impacts associated with wastewater and stormwater management practices and wastewater and stormwater discharges to tidal waters, tidal wetlands, and tributary streams.*

The proposed project includes upgrades to wastewater treatment and improvements to wastewater discharges; and implements several stormwater best management practices in compliance with Critical Area and MDE requirements. Additionally, limitations on development, as well as forest conservation and reforestation between proposed development and tidal waters, will reduce environmental impacts associated with proposed development.

8. *Environmental impacts associated with location in a coastal hazard area or an increased risk of severe flooding attributable to the proposed development.*

A portion of the wastewater treatment plant and parking area are within the 100-year floodplain; however the new wastewater treatment plant will be further out of the floodplain than the existing wastewater treatment plants to be removed. Additionally, the new wastewater treatment plant will be located at a higher elevation. The Town's floodplain ordinance requires a 2-foot freeboard elevation for all structures within the 100-year floodplain.

The two proposed single family dwellings are located entirely outside of the 100-year floodplain and almost entirely outside of the 500-year floodplain as well. Staff further recommends all development on the two residential lots be prohibited within the 100 and 500 year floodplains.

In addition to the Growth Allocation Standards and Growth Allocation Factors discussed above, the statute also addresses the following requirements for growth allocation:

1. *Intensely Developed or Limited Development Areas shall conform to all criteria of the Commission for Intensely Developed or Limited Development Areas and shall be designated on the comprehensive zoning map submitted by the local jurisdiction as part of its application to the Commission for program approval or at a later date in compliance with Section §8-1809(g).*

The proposed growth allocation meets the Critical Area Law and Regulations for the IDA. As conditioned below and discussed above, the applicant will meet requirements for development in the IDA by providing a 10% reduction in pollutant runoff via environmental site design stormwater management. The Town shall submit updated maps once the growth allocation has been formally accepted by the Commission.

2. *The area of expansion of Intensely Developed or Limited Development Areas, or both, may not exceed an area equal to 5 percent of the county's portion of the Resource Conservation Area lands that are not tidal wetland or federally owned.*

Cecil County originally had 996.12 acres of growth allocation. If approved, the remaining growth allocation acreage will be 616.74 acres. The total number of acres utilized for Growth Allocation in the County's municipalities is limited to 28% of the total Growth Allocation available; 40.1 acres remain and area available on a first come, first serve basis.

3. *For a growth allocation application for a residential subdivision, comply with the requirements and procedures under Environment Article, §9-206, Annotated Code of Maryland, and Land Use Article, Title 1, Subtitle 5, and §5-104, Annotated Code of Maryland.*

The growth allocation proposal is entirely within the jurisdictional boundaries of the Town. Therefore, this requirement is met.

Commission staff submitted preliminary plans and information to the other State agencies who are members of the Commission (Transportation, Natural Resources, Planning, Agriculture, Commerce, Environment, and Housing and Community Development).

Maryland Department of Planning (MDP) submitted comments stating that the proposed growth allocation and development appears to be consistent with the Town's comprehensive plan.

Maryland Department of Environment (MDE) provided comments stating that the proposal appears to be consistent with State Critical Area requirements. MDE notes that they have been assisting the Town with the proposed project; their Engineering and Capital Projects Program supports the project and will partially fund its construction. The Town's existing wastewater treatment plants utilize antiquated treatment technology; not only have they reached their treatment capacity, but they have also had issues meeting their Total Maximum Daily Load (TMDL) cap for several years. The new proposed plant will significantly improve pollutant removal capacity, as well as eliminate an existing discharge outfall into the C & D Canal. MDE recommends taking whatever steps possible to reduce the plant's vulnerability

to flooding and sea level rise. The Town should implement their floodplain ordinance, which provides a 2-foot freeboard above base flood elevation, in order to protect buildings and infrastructure.

Maryland Department of Natural Resources (DNR) provided comments that should the growth allocation be approved, the official record should recognize the potential impacts associated with location of the site in a coastal hazard area or an increased risk of severe flooding. DNR suggests that standards similar to those applied by MDE to the wastewater treatment plant, such as a 2-foot freeboard, should be applied to the houses, as well as locating them farther from the shoreline and limiting impervious surface. DNR also recommends that Coast Smart Construction guidelines be used to guide the design process, and that limitations be placed on removal of natural cover and future hardening of the shoreline.

The proposed project as shown on the conceptual site plan dated February 2016 and as documented in the Environmental Report and supplemental information 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 LDAs and IDAs under §8-1808.1(c) and COMAR 27.01.02.06-3, the Program Subcommittee Chair Carolyn Cummins said the Subcommittee concurs with the Chairman's determination that this growth allocation can be handled as a refinement with the following conditions:

1. Prior to final subdivision approval, the Town shall submit plans demonstrating the transfer of land for the wastewater treatment plant (Lot 3) and the creation of the two residential lots (Lots 1 and 2) to Critical Area Commission staff for review and approval. These plans shall include:
 - a. A note limiting clearing on the two residential lots (Lots 1 and 2) to 18.8%;
 - b. A note limiting lot coverage on the two residential lots (Lots 1 and 2) to 15%;
 - c. A forest retention easement totaling 0.818 acres over the remaining developed woodland on Lots 1 and 2; and
 - d. A note prohibiting all development within the 100-year and 500-year floodplain on Lots 1 and 2.
2. Prior to site plan approval, the Town shall submit a set of final plans for the wastewater treatment plant (Lot 3) to Critical Area Commission staff for review and approval. The final plans must demonstrate compliance with the 10% pollutant reduction requirements in the IDA. The plans must show implementation of the CoastSmart Construction Program's siting and design criteria, including 2-foot freeboard and other standards as recommended by MDE. The plans also must demonstrate the demolition of existing encroachment into the 110-foot Buffer from the existing wastewater treatment plant, the removal of all associated impervious coverage from the Buffer, and the revegetate that area.
3. Prior to issuance of building permits, the Town shall submit a set of final site plans for the two residential lots (Lots 1 and 2) to Critical Area Commission staff for review and approval. The final plans must demonstrate compliance with the 10% pollutant reduction requirements in the IDA. All development is prohibited from within the 100-year and 500-year floodplains on Lots 1 and 2.

Chairman Deegan said the Subcommittee recommendation stands as his final decision.

LEGAL UPDATE: There are no legal updates at this time.

OLD BUSINESS: There are no items to come before the Commission today.

NEW BUSINESS: Chairman Deegan introduced and welcomed new Commission member Malachy Rice. He said he has been with Maryland Department of Commerce one month now. He is replacing James Palma, who has taken a job in Baltimore County. Commissioner Rice gave a brief background report.

Chairman Deegan wished a happy holiday season to all. He said we will not meet in January 2017. He extended a special thanks to staff for their work of the past two weeks in pulling everything together for this meeting.

There being no further business to come before the Commission, the meeting adjourned at 2:10 p.m.

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