

Critical Area Commission

STAFF REPORT

June 7, 2023

APPLICANT:	Charles County
PROPOSAL:	Text Amendment – Critical Area Boundary Map Update, Applicability, and Lot Coverage
COMMISSION ACTION:	Concurrence with Chair’s Determination of Refinement
STAFF RECOMMENDATION TO CHAIR:	Approve with Condition
STAFF:	Jennifer Esposito
APPLICABLE LAW/ REGULATIONS:	Natural Resources Article 8-1809(p)

Description:

Charles County has submitted a text amendment to their Critical Area Program for approval by the Critical Area Commission. Charles County Zoning Text Amendment Bill No. 21-169 amends portions of the County’s Zoning Ordinance to reflect State law requirements in how the Critical Area Boundary is remapped, clarifies the applicability of the re-mapping on certain development projects, and revises the lot coverage limits for certain affected properties in the County’s Limited Development Zone (LDZ) and Resource Conservation Zone (RCZ) – the equivalent of the Limited Development Area (LDA) and Resource Conservation Area (RCA). This text amendment is cross-referenced to Charles County Zoning Map Amendment No. 21-02 that officially amends the County’s Critical Area Boundary. Bill No. 21-169 was passed by the Charles County Commissioners on January 24, 2023. The proposed text amends three sections of the County code – Sections 297-126, 297-127.C, and 297-132.G(8).

An overview of the proposed text amendments is provided below and a copy of the bill is attached to this staff report (Attachment 1).

Section 297-126

Section 297-126 of the County code is updated to reflect State law requirements in how the Critical Area Boundary is remapped.

Section 297-127.C

Section 297-127 – “Critical Area Overlay Zone” is amended to clarify the applicability of the new Critical Area Boundary on the development plan for the “Villages of Swan Point.” This proposed language included below for ease of reference (**bolded** language to be added and words in brackets to be removed):

Section 297-127.C:

Development in accordance with the [Swan Point] General Development Plan FOR “**THE VILLAGES OF SWAN POINT**” shall be reviewed in accordance with the [g]Growth [a]Allocation [i]Indenture and Docket 250 [i]Indenture, which shall supersede any contrary language in this Article. **TO THE EXTENT THAT ANY PORTION OF THE PROPERTY SUBJECT TO THE APPROVED GROWTH ALLOCATION AND DOCKET 250 INDENTURE IS SHOWN TO BE WITHIN THE CRITICAL AREA ZONE AS AMENDED BY VIRTUE OF ZMA 21-02, THE REMAPPING SHALL NOT AFFECT THE DEVELOPMENT OF THE PROPERTY, PROVIDED THAT SUCH DEVELOPMENT IS CONSISTENT WITH THE GROWTH ALLOCATION AND DOCKET 250 INDENTURE, AS MAY BE AMENDED FROM TIME TO TIME.**

This text amendment change indicates that for any newly included Critical Area at the “Villages of Swan Point,” development in that new area will not be governed by the new Critical Area boundary. Thus, any area of land within the “Villages at Swan Point” brought into the Critical Area with the current mapping update will be regulated as though it is outside of the Critical Area.

Section 297-132.G(8)

Section 297-132.G(8) of the County Code relating to the lot coverage limitations for lots or parcels located in the LDZ and RCZ is amended as follows:

§297-132.G(8)(E):

IF ADOPTION OF THE UPDATED CHESAPEAKE BAY CRITICAL AREA ZONE LAYER INCREASES THE CRITICAL AREA LOT OF RECORD EXISTING AS OF [INSERT EFFECTIVE DATE OF ZMA # 21-02] THE FOLLOWING LOT COVERAGE LIMITATIONS SHALL APPLY TO THAT LOT:

- 1. LOTS GREATER THAN ½ ACRE, LOT COVERAGE MAY NOT EXCEED 15% OF THE TOTAL LOT AREA LOCATED WITHIN THE CRITICAL AREA.**
- 2. LOTS ½ ACRE OR LESS, LOT COVERAGE MAY NOT EXCEED 40% OF THE TOTAL LOT AREA LOCATED WITHIN THE CRITICAL AREA.**

Lots affected by the remapping that are ½-acre or less in size and of record will be allowed an increase in lot coverage up to 40% of the lot area within the Critical Area. This language is similar to a proposal by Talbot County that was approved by the Critical Area Commission in conjunction with their mapping update. Generally, lots within the LDA and RCA are limited to 15% lot coverage. The law also allows small grandfathered lots that existed prior to December 1, 1985 to have higher amounts of lot coverage. This proposal by Charles County affords similar lot coverage increases on lots that existed prior to the bill’s effective date.

DISCUSSION:

History of the “Villages of Swan Point”

The “Villages of Swan Point” is a partially built community located in southern Charles County on the Potomac River and Cuckhold Creek, totaling around 900 acres, of which nearly 600 acres are located in the Critical Area. The Charles County Commissioners approved a General Development Plan for the “Villages of Swan Point” in 2006, and later approved a growth allocation for 164.23 acres to accommodate the proposed development including 852 single-family residential units, 678 condominiums, a hotel and conference center, a commercial marina, restaurants and retail space. The growth allocation was subsequently approved by the Critical Area Commission in March and April of 2007. The growth allocation remapped 138.12 acres of the property from a Limited Development Area (LDA) to an Intensely Developed Area (IDA) and 26.11 acres from a Resource Conservation Area (RCA) to an IDA.

The Commission required the applicant and County to meet a number of conditions as a part of the growth allocation. These conditions related to the complexity of the project and the environmental impacts associated with the site, including impacts to Forest Interior Dwelling Species (FIDs) habitat. As a result of the economic downturn after the growth allocation approval, the developer proposed a phased development plan for the project. In 2015, the Commission approved revisions to the original conditions to allow for subsequent phasing of the FIDs mitigation.

In addition to the Commission’s growth allocation approval and conditions, there is a signed and recorded zoning indenture - Docket 250 - between Charles County and the Swan Point Development Company, LCC that governs the “Villages of Swan Point” (areas within and outside of the Critical Area) and lays out general requirements for the developer to follow. Docket 250 was originally signed by the County and the developers in 1986, was subsequently amended in 2010, and may be further amended in the future. With respect to Critical Area requirements, Docket 250 requires the establishment and maintenance of the 100-foot Buffer and a habitat corridor, restrictive covenants/environmental easements for habitat protection areas, and overall compliance with the Critical Area Law.

In 2012, the Charles County Planning Commission granted “The Villages of Swan Point” Preliminary Subdivision Plan approval with a valid timeline of four years. The 2012 approval was subsequently extended in 2016 and in 2020. Currently, the approval is valid until August 5, 2024 and subsequent extension requests may be made to the County Planning Commission¹. The County has informed Commission staff that all newly included areas within the Critical Area as a result of the remapping have received Preliminary Subdivision Plan approval.

Mapping Update and Pending Matters Language

Chapter 119 of the 2008 Laws of Maryland (House Bill 1253) included a provision recognizing projects, including growth allocations, approved prior to December 31, 2008, that may be affected by the remapping.² Specifically, the provision states that the mapping update may not affect the initial

¹ The County Code states “Preliminary Plans which have commenced construction and have completed substantial physical improvements for the project, and have also recorded at least 25% of the lots associated with the project, are not required to apply and obtain extensions of preliminary plans and can continue to completion without extension approvals, provided the projects are also in compliance with any other conditions of approval.”

² Chapter 119 of the 2008 Laws of Maryland, Section 9 states “That, as a result of remapping under this Act, the

construction of such a project if it met the 2008 approval deadline.

As a part of the Charles County Critical Area map update, the County Commissioners approved the text amendment to §297-127.C to specifically exclude the newly included Critical Area land located in the “Villages of Swan Point” as shown on ZMA 21-02, from Critical Area development standards. As a result of the Critical Area mapping boundary update, there are 40 acres of new Critical Area in the “Villages of Swan Point” for which this language would apply (see Attachment 2). These areas would be governed by the County’s zoning code including its ordinances for stormwater and Forest Conservation Act requirements. However, Critical Area requirements such as mitigation for clearing Forest Interior Dwelling Species habitat and Critical Area 10% pollutant reduction requirements would not apply.

Because the “Villages of Swan Point” received growth allocation prior to December 31, 2008, Chapter 119 (2008) applies to the development and vests the newly included Critical Area for initial construction. It is the position of Commission staff that because the newly included areas have received Preliminary Subdivision Plan approval, the newly included areas may be developed in accordance with the growth allocation, Docket 250, and the approved Preliminary Subdivision Plan, to the extent it remains in effect. Further, the County’s Zoning Text Amendment Bill No. 21-169 limits the period of vesting to this current remapping effort. At the time of the next remapping, Critical Area development standards may apply to the newly included areas within the Critical Area. Commission staff, therefore, recommends a minor revision to the text amendment to clarify, consistent with Chapter 119, that initial construction of the newly included areas is vested, not the entirety of the development.

STAFF RECOMMENDATION

Commission staff recommends that the Commission concur with the Chairman’s determination that this text amendment be processed as a refinement to Charles County’s Critical Area Program as the text amendment will not significantly affect the use of land in the Critical Area.

Further, to ensure consistency with Chapter 119 (2008), staff recommends that the Chairman approve the text amendment with the condition that Section 297-127.C of the Charles County Code be amended as outlined below (bolded RED text to be added, bolded BLACK strikethrough to be deleted):

§297-127. Applicability.

- C. Development in accordance with the [Swan Point] General Development Plan FOR “THE VILLAGES OF SWAN POINT” shall be reviewed in accordance with the [g]Growth [a]Allocation [i]Indenture and Docket 250 [i]Indenture, which shall supersede any contrary language in this Article. TO THE EXTENT THAT ANY PORTION OF THE PROPERTY SUBJECT TO THE APPROVED GROWTH ALLOCATION AND DOCKET 250 INDENTURE IS SHOWN TO BE WITHIN THE CRITICAL AREA ZONE AS AMENDED BY VIRTUE OF ZMA 21-02, THE

designation of an unclassified area that was not previously within the Chesapeake and Atlantic Coastal Bays Critical Area may not affect the initial construction of a development project or activity if by December 31, 2008, the development project or activity receives either growth allocation, final subdivision approval, final site plan approval, or any other final approval, or is vested.”

REMAPPING SHALL NOT AFFECT THE ~~DEVELOPMENT~~ **INITIAL CONSTRUCTION** OF THE PROPERTY **WITHIN THE NEWLY INCLUDED AREA**, PROVIDED THAT SUCH DEVELOPMENT IS CONSISTENT WITH THE GROWTH ALLOCATION AND DOCKET 250 INDENTURE, AS MAY BE AMENDED FROM TIME TO TIME.

COUNTY COMMISSIONERS OF CHARLES COUNTY, MARYLAND

2023 Legislative Session

Bill 2022-10

Zoning Text Amendment (ZTA) #21-169; cross-referenced with ZMA #21-02

Introduced by Charles County Commissioners

Amending the Zoning Ordinance to reflect a State law requirement in how the boundary of the Critical Area Overlay Zone is re-mapped, clarifying the applicability of the re-mapping, and revising lot coverage limitations in the Limited Development Zone (LDZ) and Resource Conservation Zone (RCZ) for lots of record impacted by ZMA #21-02.

Date introduced: 10 / 04 / 2022

Public Hearing: 11 / 02 / 2022 @ 6:00 p.m. Hybrid-Virtually/In-Person

Commissioners Action: 01 / 24 / 2023

Commissioner Votes: RBC: Y, GB: Y, TC: Y, AS: Y, RP: Y

Pass/Fail: Pass

Effective Date: 03 / 10 / 2023

Remarks: _____

NOTE: CAPITALS indicate matter added to existing text.
[Brackets] indicate matter deleted from existing law.

1 **COUNTY COMMISSIONERS OF CHARLES COUNTY, MARYLAND**

2
3 **2022 Legislative Session**

4
5 Bill No. 2022-10 / Zoning Text Amendment (ZTA) #21-169; cross-referenced with ZMA #21-02

6 Chapter 297

7 Introduced by Charles County Commissioners

8 Date of Introduction October 4, 2022

9
10 **BILL**

11
12 AN ACT concerning:

13
14 **UPDATING THE BOUNDARY OF THE CRITICAL AREA OVERLAY ZONE AND**
15 **REVISING LOT COVERAGE LIMITATIONS STANDARDS WITHIN THE LIMITED**
16 **DEVELOPMENT ZONE (LDZ) AND RESOURCE CONSERVATION ZONE (RCZ)**

17
18 FOR the purpose of:

19
20 Amending the Zoning Ordinance to reflect a State law requirement in how the boundary of the
21 Critical Area Overlay Zone is re-mapped, clarifying the applicability of the re-mapping, and
22 revising lot coverage limitations in the Limited Development Zone (LDZ) and Resource
23 Conservation Zone (RCZ) for lots of record impacted by ZMA #21-02.

24
25 BY Amending:

26 Chapter 297- Zoning Ordinance

27 Article IX, Critical Area Zone (Overlay Zone)

28 § 297-126. Purpose; statutory authority.

29 *Code of Charles County, Maryland*

1 Chapter 297- Zoning Ordinance
2 Article IX, Critical Area Zone (Overlay Zone)
3 § 297-127. Applicability.
4 *Code of Charles County, Maryland*

5
6 Chapter 297 – Zoning Ordinance
7 Article IX, Critical Area Zone (Overlay Zone), § 297-132.G(8), Development Standards,
8 Development Standards in Limited Development Zone (LDZ) and Resource
9 Conservation Zone (RCZ), Lot Coverage Requirements.
10 *Code of Charles County, Maryland*

11
12 **PREAMBLE**

13
14 WHEREAS, the purpose of the Critical Area Zone (Overlay Zone) is to establish regulatory
15 protection for land and water resources within 1,000 feet of tidal waters and tidal wetlands,
16 including land use development standards and requirements to reduce impacts to water quality and
17 natural habitats; and

18
19 WHEREAS, the Maryland General Assembly enacted the Chesapeake Bay Critical Area
20 Protection Program in 1984, which amongst other things, established the Critical Area
21 Commission which was responsible for creating the criteria for local jurisdictions to minimize the
22 adverse effects of human activities on water quality and natural habitats;

23
24 WHEREAS, the criteria, promulgated by the Critical Area Commission in 1985 and
25 approved by the General Assembly in 1986, included three land classifications based upon the
26 predominant land use and intensity of development at the time that the areas were first mapped on
27 State wetlands maps;

28
29 WHEREAS, Chapter 119 (House Bill 1253) (2008) required a transition from reliance
30 upon the State wetland maps to a Statewide Base Map prepared by the Maryland Department of
31 Natural Resources (DNR) that includes a State-determined shoreline and landward boundary of

1 tidal wetland and a digitally generated, georeferenced 1,000-foot Critical Area Boundary as
2 appropriate for integration into a Geographic Information System; and
3

4 WHEREAS, the County’s current Critical Area maps are being updated in accordance
5 with requirements from HB 1253 through a Zoning Map Amendment (ZMA 21-02), which has
6 been memorialized in Resolution No. 2023-02, which, together with its Attachment A and
7 “Critical Area Map Update Exhibit” are attached hereto and incorporated by reference;
8

9 WHEREAS, certain parcels and lots of record previously unclassified as being within the
10 Critical Area Zone may be affected by the remapping due to the changes along the shorelines of
11 Maryland, including Charles County; and
12

13 WHEREAS, HB 1253 did establish some flexibility for local jurisdictions if, as a result
14 of the remapping, a greater portion of a parcel or existing lot of record is included within the
15 Critical Area Zone; now therefore,
16

17 **SECTION 1. BE IT ENACTED BY THE COUNTY COMMISSIONERS OF**
18 **CHARLES COUNTY, MARYLAND, that the Laws of Charles County, Maryland read as**
19 **follows:**
20

21 *****

22 Chapter 297 – Zoning Ordinance
23 Article IX – Critical Area Zone (Overlay Zone)
24

25 § 297-126. Purpose; statutory authority.
26

27 *****

28 C. The Charles County Chesapeake Bay Critical Area Program consists of the requirements
29 contained in this chapter, other applicable requirements set forth in the Zoning Ordinance,
30 the official Critical Area Zone [maps] LAYER, the Charles County Comprehensive Plan,
31 Charles County Subdivision Regulations, and all other applicable County regulations.

Asterisks *** mean intervening code language remaining unchanged
CAPITALS mean language added to the law
[Brackets] mean language deleted from the law

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

Chapter 297 – Zoning Ordinance
Article IX – Critical Area Zone (Overlay Zone)

§ 297- 127. Applicability

A. No person shall develop, alter or use any land for residential, commercial, industrial or institutional uses; nor conduct agricultural, fishery or forestry activities in the Charles County Critical Area, except in compliance with the applicable provisions contained herein.

B. Article IX shall only apply to the Charles County Critical Area, hereafter referred to as the "Critical Area Zone." The Critical Area Zone shall include all lands and waters within 1,000 feet beyond the landward boundaries of state or private wetlands and the heads of tides designated under Title 16 of the Natural Resources Article, Annotated Code of Maryland.

C. Development in accordance with the [Swan Point] General Development Plan FOR “THE VILLAGES OF SWAN POINT” shall be reviewed in accordance with the [g]Growth [a]Allocation [i] Indenture and Docket 250 [i]Indenture, which shall supersede any contrary language in this [a]Article. TO THE EXTENT THAT ANY PORTION OF THE PROPERTY SUBJECT TO THE APPROVED GROWTH ALLOCATION AND DOCKET 250 INDENTURE IS SHOWN TO BE WITHIN THE CRITICAL AREA ZONE AS AMENDED BY VIRTUE OF ZMA 21-02, THE REMAPPING SHALL NOT AFFECT THE DEVELOPMENT OF THE PROPERTY, PROVIDED THAT SUCH DEVELOPMENT IS CONSISTENT WITH THE GROWTH ALLOCATION AND DOCKET 250 INDENTURE, AS MAY BE AMENDED FROM TIME TO TIME.

Chapter 297 – Zoning Ordinance
Article IX - Critical Area Zone (Overlay Zone)
§ 297-132 – Development Standards

Asterisks *** mean intervening code language remaining unchanged
CAPITALS mean language added to the law
[Brackets] mean language deleted from the law

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

G. Development standards in the Limited Development Zone (LDZ) and Resource Conservation Zone (RCZ). All development and redevelopment in the LDZ and RCZ shall be subject to the following development standards and/or conditions, in addition to those established elsewhere in this chapter:

(8) Lot coverage requirements.

(E) IF ADOPTION OF THE UPDATED CHESAPEAKE BAY CRITICAL AREA ZONE LAYER INCREASES THE CRITICAL AREA OF A LOT OF RECORD EXISTING AS OF [INSERT EFFECTIVE DATE OF ZMA #21-02] THE FOLLOWING LOT COVERAGE LIMITATION SHALL APPLY TO THAT LOT:

[1] LOTS GREATER THAN ½ ACRE, LOT COVERAGE MAY NOT EXCEED 15% OF THE TOTAL LOT AREA LOCATED WITHIN THE CRITICAL AREA.

[2] LOTS ½ ACRE OR LESS, LOT COVERAGE MAY NOT EXCEED 40% OF THE TOTAL LOT AREA LOCATED WITHIN THE CRITICAL AREA.

(F) [(e)] This subsection does not apply to a trailer park that was in residential use on or before December 1, 1985.

(G) [(f)] The Charles County Planning Division may allow a property owner to exceed the lot coverage limits provided above in Subsection G(8)(b) through (d) of this section, if the following conditions exist and if the following actions are taken:


(H) [(g)] When a portion of a lot or parcel is located within the Limited Development Zone or Resource Conservation Zone, lot coverage shall be limited to 15% of that portion of the lot or parcel that is designated LDZ and 15% of that portion that is designated as RCZ.

Asterisks *** mean intervening code language remaining unchanged
CAPITALS mean language added to the law
[Brackets] mean language deleted from the law

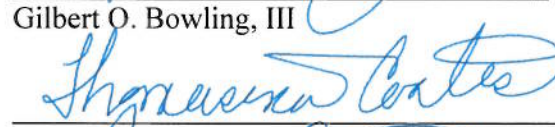
SECTION 2. BE IT FURTHER ENACTED, that this Ordinance together with Resolution No. 2023-02, which has been cross-referenced with Bill No. 2022-10 as ZMA #21-02, shall take effect forty-five (45) calendar days after it is adopted, or upon approval by the Maryland State Critical Area Commission under the authority granted by § 8-1801 *et seq.* of the Natural Resources Article of the Maryland Annotated Code, whichever is later. If approved, in whole or in part, after the forty-five (45) calendar days, the approved provisions of this Ordinance shall take effect on the date the notice of approval is received by the Department of Planning & Growth Management. If disapproved, in whole or in part, the disapproved portions of this Ordinance shall be null and void without the necessity of further action by the Board of County Commissioners.

ADOPTED this 24th day of January, 2023.

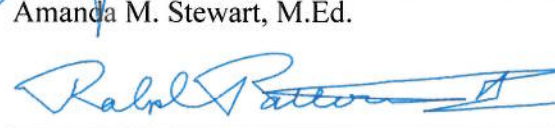
COUNTY COMMISSIONERS
CHARLES COUNTY, MARYLAND


Reuben B. Collins, II, Esq. President


Gilbert O. Bowling, III


Thomasina O. Coates, M.S.


Amanda M. Stewart, M.Ed.

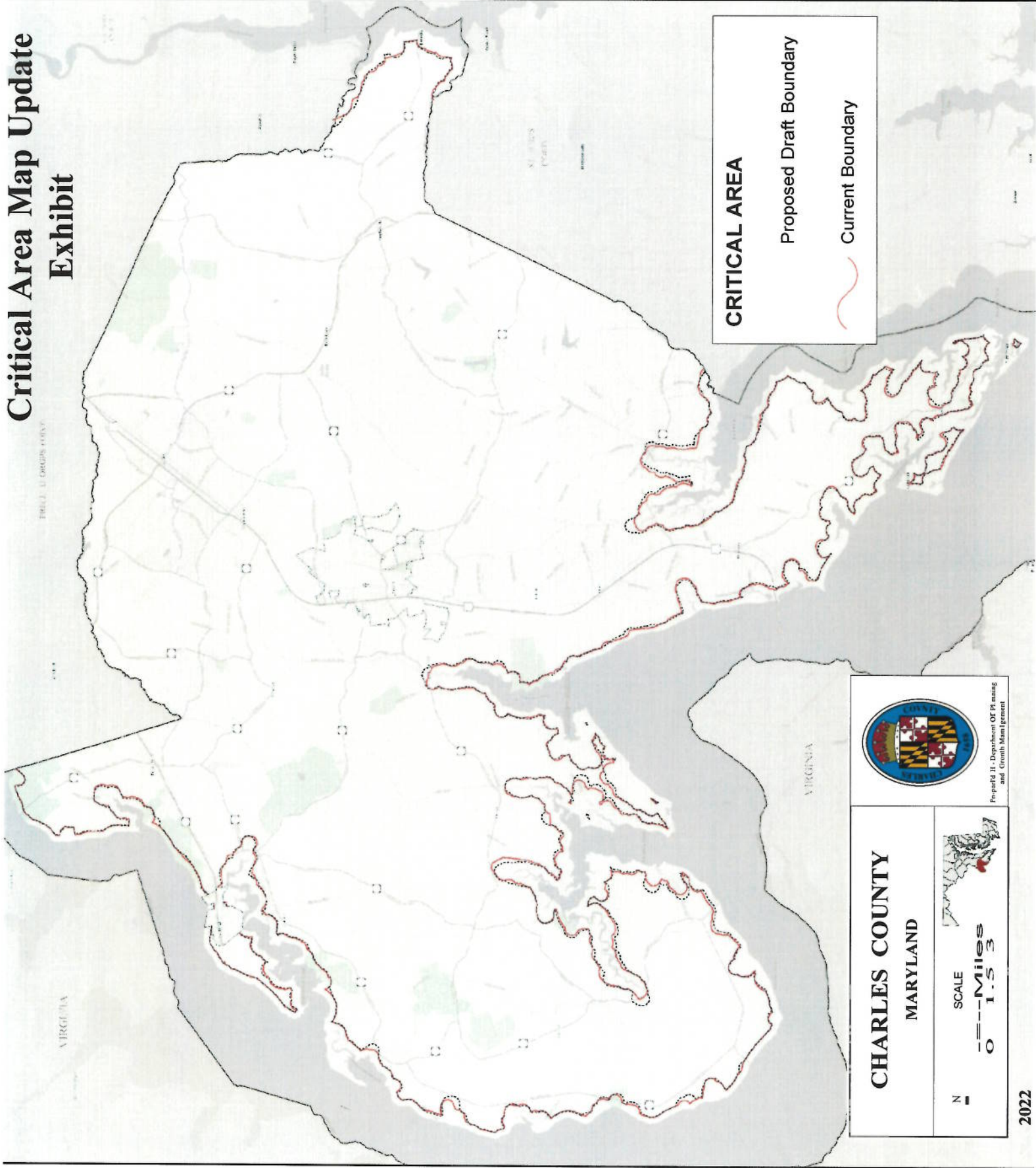

Ralph E. Patterson, II, M.A.

ATTEST:


Carol DeSoto, CAP, OM, Clerk

Asterisks *** mean intervening code language remaining unchanged
CAPITALS mean language added to the law
[Brackets] mean language deleted from the law

Critical Area Map Update Exhibit




CRITICAL AREA


Proposed Draft Boundary

Current Boundary

CHARLES COUNTY
MARYLAND

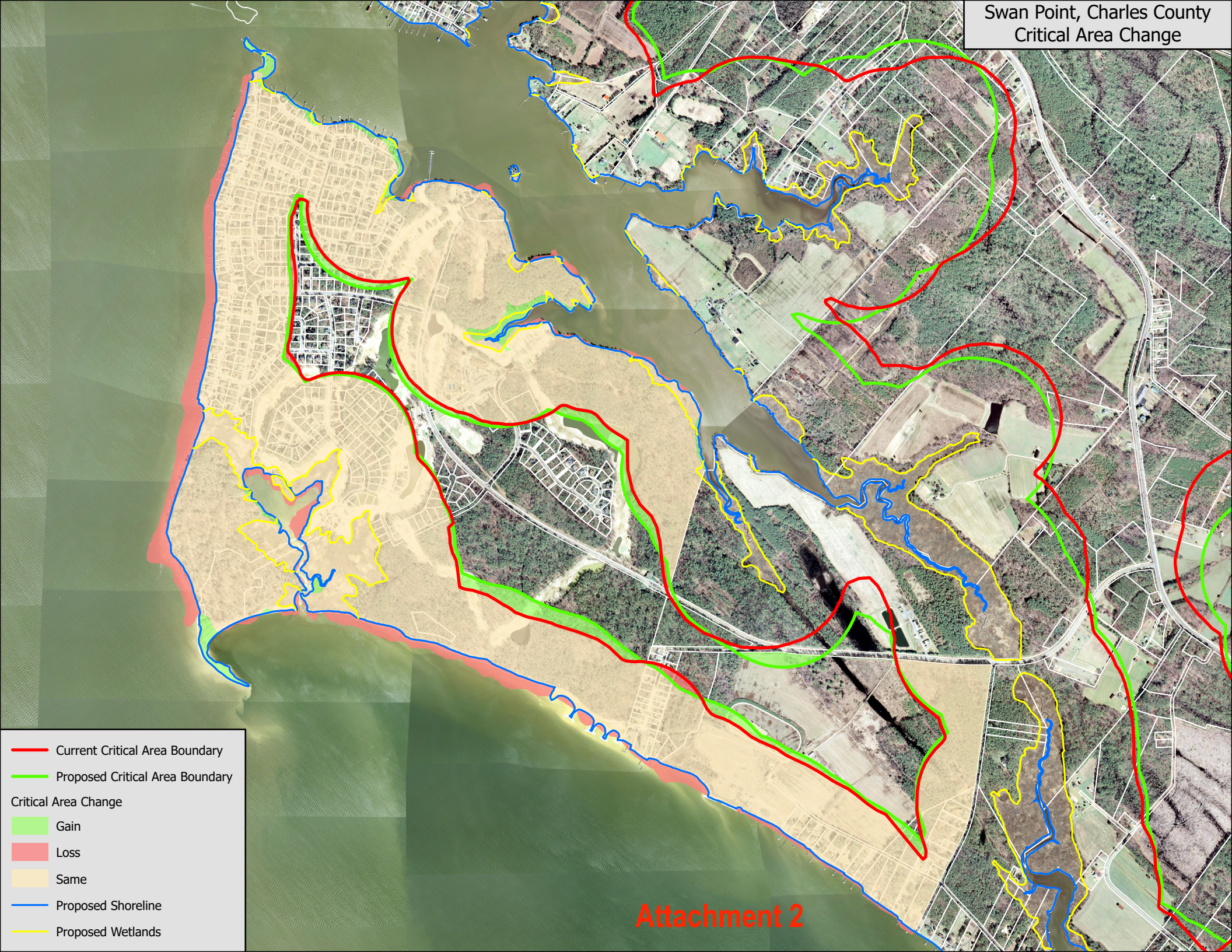


SCALE
1.5 Miles



N

Prepared by: Department of Planning and Growth Management



- Current Critical Area Boundary
- Proposed Critical Area Boundary
- Critical Area Change
 - Gain
 - Loss
 - Same
- Proposed Shoreline
- Proposed Wetlands