

# MINUTES MINUTES

**Critical Area Commission for the  
Chesapeake and Atlantic Coastal Bays  
People's Resource Center  
100 Community Place  
Crownsville, Maryland 21032**

**August 2, 2017**

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

**Commission Members in Attendance:**

Curtis Beulah, Harford County  
Gail Blazer, Worcester County – Coastal Bays (Town of Ocean City)  
Virginia Clagett, Western Shore Member-at-Large  
Deborah Herr Cornwell, Maryland Department of Planning  
Robert Culver, Jr. – Wicomico County  
Carolyn Cummins, Worcester County – Coastal Bays  
James Gesl, Charles County  
Sandy Hertz, Maryland Department of Transportation  
Michael Hewitt, St. Mary's County  
Mark Konapelsky, Somerset County  
Louise Lawrence, Department of Agriculture  
James Lewis, Caroline County  
Catherine McCall, Department of Natural Resources  
Michael McCarthy, Talbot County  
Gary Mangum, Queen Anne's County  
David Marks, Baltimore County  
Patrick Nutter, Calvert County  
John Papagni, Dept. Housing & Community Development  
Suzanne Pittenger-Slear, Eastern Shore Member-at-Large  
Jennifer Rafter, Worcester County – Chesapeake Bay  
Malachy Rice, Maryland Department of Commerce  
Don Satterfield, Dorchester County  
Gary Setzer, Department of the Environment  
Donald Sutton, Kent County  
Chris Trumbauer, Anne Arundel County

**Commission Members Not in Attendance:**

Brad Frome, Prince George's County  
Stephen Parker, Cecil County

Chairman Deegan greeted the Commissioners, staff and guests. He said he would like to thank staff for the work done over the last couple of months as a lot has been happening. In Cecil County a man built a motorcycle cross track on the Susquehanna River. Additionally, in St. Mary's County 18 acres of forest were cleared. Both counties are working on those cases, and we are working with the counties. Additionally, both cases have been sent to the Attorney General's Environmental Crimes Unit. He said he would like for the Commission to go do a tour of the oyster hatchery at Horn Point and up to the Conowingo Dam and has asked staff to set that up in the coming months.

He introduced and welcomed new Commissioner Catherine McCall. She replaces Catherine Shanks, Department of Natural Resources. John Papagni is serving as designee for Caroline Varney-Alvarado, Department of Housing and Community Development.

The Chairman showed two short videos regarding environmental initiatives in Maryland. The first related to the flush tax and upgrades at Anne Arundel County's wastewater treatment plant at Cox Creek, showing a clip from WJZ Eye Witness News. The second video related to Maryland's Chesapeake Bay Restoration efforts, in which Governor Hogan stated that Maryland is leading the nation in this field.

Chairman Deegan made a motion to approve the May 3, 2017 Minutes. He asked for any corrections to the Minutes. There were three corrections; Commissioners Michael McCarthy and Gary Mangum were inadvertently shown not in attendance at the May meeting. Both members attended late. Lastly, page 8, paragraph 2, *Queenstorn* corrected to read *Queenstown*. Commissioner Marks made a motion to approve the Minutes as amended. Commissioner Mangum seconded the motion. The amended May 3, 2017 Minutes were approved.

A motion was made that it be recorded in today's Minutes that Commissioner Gary Mangum attended the May 3, 2017 Commission Meeting, arriving late. Commissioner Mangum seconded the motion.

### **Maryland Department of Natural Resources – NorthBay Education Building**

Alexandra DeWeese presented for Vote the Department of Natural Resources NorthBay Education Building.

Ms. DeWeese provided a PowerPoint presentation with maps. She reviewed the staff report, which is incorporated into and made a part of these minutes. She introduced guests Neil Dampier, with North Bay and Tim Huddleston and Ken Usab with Morris & Ritchie and stated they are available to answer questions.

The Department of Natural Resources (DNR) in conjunction with NorthBay is seeking approval to construct a permanent educational building at the existing NorthBay facility located in Elk Neck State Park, Cecil County. The purpose of the project is to add to teaching and administrative capacity to the NorthBay facility, an environmental education camp. The project involves constructing a new 11,200 square foot educational building, concrete sidewalks, addition and expansion of an existing road, as well as stormwater management facilities to meet 10% pollutant removal requirements and environmental site design (ESD). The building will serve students, teachers and staff with the addition of multiple classrooms, study rooms and

offices as well as storage areas and a kitchen. Existing parking located adjacent to the site will serve the proposed development.

The site is 97.63 acres and is designated as a Resource Conservation Area (RCA). Existing improvements total 8.27 acres and include 36 cabins, bunk rooms, a theatre, gym, dining hall, recreation center, art room and meeting space, and a variety of outdoor activities as well as walkways, roads and parking areas. Lot coverage will increase by 0.55 acres from the proposed improvements, to a total of 8.81 acres (9.03%).

The project requires approval by the Commission because it is development by a state agency on state lands in the Critical Area. A copy of the site plan is attached to the staff report.

The area where proposed development is to occur is an existing sports field. Minimal clearing and grading will be necessary for the proposed improvements; a single tree will be removed for improvements to the existing road. Development of the project will disturb 2.53 acres and increase lot coverage by 0.55 acres. There is no Buffer disturbance associated with this project. A landscape mitigation plan for the site includes a total of 53 canopy trees, 3 flowering trees and 12 evergreen trees.

DNR is required to provide stormwater management using Environmental Site Design (ESD) to the Maximum Extent Practicable (MEP) as required by Maryland Department of the Environment (MDE) and to meet the Critical Area 10% pollutant reduction requirement for the proposed project. The 10% pollutant reduction requirement equates to 0.52 pounds of phosphorous per year. This requirement is met and exceeded through the implementation of multiple grass swales and infiltration berms for a total phosphorous reduction of 0.74 pounds per year.

In accordance with COMAR 27.03.01.03, notice of the proposed project was published in The Cecil Whig on April 21, 2017. Multiple signs with information about the project were posted on the site as well. No comments were received during the public comment period.

On behalf of the Project Subcommittee, Chair Gary Setzer made a motion that the Commission approve the construction of the NorthBay educational building at Elk Neck State Park proposed by the Maryland Department of Natural Resources. The project includes the construction of a new 11,200 square foot educational building; concrete sidewalks; addition and expansion of an existing road; as well as stormwater management facilities to meet 10% pollutant removal requirements and environmental site design. This motion is offered in accordance with the staff report and presentation and the following condition:

- Prior to the start of construction, the Department of Natural Resources and NorthBay shall notify Commission staff that approvals have been received from the Maryland Department of the Environment for stormwater management and erosion and sediment control.

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

## **Anne Arundel County – Buffer Management Area Designation for Little Island on the Magothy River**

Katherine Charbonneau presented for concurrence with the Chair's determination of Refinement the Anne Arundel County Buffer Management Area designation for Little Island on the Magothy River.

Ms. Charbonneau provided a PowerPoint presentation with maps. She distributed four handouts; two aerial images of the island from 1984 and two site plans (one showing the general location of the Buffer Management Area designation and the other showing the general location of the new house in relation to the old house). She reviewed the staff report, which is incorporated into and made a part of these minutes. To benefit the new commissioners, she gave a brief history of the property.

On January 3, 2007, the Anne Arundel County Board of Appeals approved a request to amend the county's Buffer Modification Area map to partially map the property known as Little Island in the Magothy River as Buffer Modification Area (BMA). The 1.92 acre property is identified as Tax Map 33, Parcel 96 and is designated as Limited Development Area. It is developed with a single family dwelling, riprap, pool, several accessory structures, a pier, patios and walkways.

Information provided by Anne Arundel County shows that the island was developed since 1952 with a dwelling, an accessory structure, and two smaller sheds. Around 2001, the current property owner, Mr. Daryl Wagner, razed the dwelling and constructed a larger two-story house and in-ground pool without proper permits or approvals. He also installed a new septic facility, water well, and concrete driveway extending from a newly installed boat ramp. The violations were discovered in 2004 by Anne Arundel County and cited. Subsequently, Mr. Wagner applied for the BMA designation (the subject of this refinement) as well a number of variances for disturbance to the Buffer and steep slopes.

After multiple nights of hearing testimony, the Board not only approved the BMA, but also the variances subject to a number of conditions, including the removal of lot coverage and planting of the Buffer. The Board's decisions were appealed to Circuit Court for Anne Arundel County. The BMA portion of the decision was subsequently dismissed by the Circuit Court. The Commission was a party to the variance appeal. Ultimately, the Court of Appeals reaffirmed the Board's variance decision, subject to a set of slightly revised conditions rendered by the Board on December 15, 2014. In addition, in a separate litigation the Commission unsuccessfully sought to have the Courts require retroactive enforcement provisions of the 2008 amendments to the Critical Area law regarding violations.

Anne Arundel County submitted this request for review of the BMA to the Critical Area Commission on October 18, 2013. The Commission Chair at the time returned the application to the county stating it was incomplete and requesting copies of all transcripts and exhibits related to the BMA designation. On June 13, 2017 the Commission received another request from the county for review of the BMA application, as the property owner had since provided the necessary transcripts and exhibits. Commission staff accepted the application as complete on June 26, 2017. Chairman Deegan determined that the request could be reviewed as a refinement on July 13, 2017.

## **Buffer Modification Area<sup>1</sup>**

COMAR 27.01.09.01-8 provides that local jurisdictions may develop provisions as part of their Critical Area program that modify the minimum requirements applicable in the Buffer where it can be sufficiently demonstrated that the existing pattern of development in the Buffer prevents the Buffer from fulfilling the functions identified in COMAR 27.01.09.01. Those areas of the Buffer that meet the requirements are mapped, subject to approval by the Critical Area Commission. Development within those areas must follow specific requirements as laid out in the local jurisdiction's Critical Area ordinance. For example, the ordinance may require a setback and mitigation but not a variance.

The Buffer functions identified in COMAR 27.01.09.01 are as follows:

- (1) Provide for the removal or reduction of sediments, nutrients, and potentially harmful or toxic substances in runoff entering the Bay and its tributaries;
- (2) Minimize the adverse effects of human activities on wetlands, shorelines, stream banks, tidal waters, and aquatic resources;
- (3) Maintain an area of transitional habitat between aquatic and upland communities;
- (4) Maintain the natural environment of streams; and
- (5) Protect riparian wildlife habitat.

Anne Arundel County proposed, and the Critical Area Commission approved, BMA maps and provisions as part of its local Critical Area program in 1995. Since that time the county has occasionally proposed changes to those maps on a property by property basis, provided the county could determine there was an omission in the original mapping and that the Buffer meets the standards of mapping a BMA as described in the County Code.

## **Little Island in the Magothy River BMA**

The County Board of Appeals found that the application met the standards for mapping as Buffer Modification Area and made the required findings. The standards are copied below, along with relevant portions of the Board's findings, which are in bold print:

§18-13-304

- (a) Findings. The Planning and Zoning Officer shall approve the application if the Planning and Zoning Officer finds that:

(i) The application is for a lot created on or before December 1, 1985.

**The island is a legal lot created prior to December 1, 1985. The island was created by deed in 1851 and was in existence and improved with a dwelling and several accessory structures prior to July 1, 1952.**

(ii) There was an error or omission in the original maps and the existing pattern of residential, industrial, commercial, or recreational development in the critical area prevents the buffer from fulfilling the following functions:

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<sup>1</sup> For the purposes of this staff report, the term "Buffer Modification Area" is used as it reflects the term in the Anne Arundel County Code. As provided in COMAR 27.01.01.01B(39-2)(b) "Buffer Modification Area" and "Modified Buffer Area" are synonymous:

"Modified Buffer Area" includes an area referred to by a local jurisdiction as a buffer exemption area, buffer exempted area, buffer modification area, buffer management area, buffer management overlay, buffer modified area, special buffer management area, special buffer area, or any other similar term that has the same substantive meaning as modified buffer area.

(1) Providing for removal or reduction of sediments, nutrients, and potentially harmful or toxic substances in runoff entering the bay and its tributaries;  
**The island was developed and residentially used from the 1930s to the 1980s, during which time the shoreline was permitted to erode and recede toward the principal structure on the southern side of the island. The northern portion of the shoreline was significantly impacted by the pattern of existing development and was devoid of vegetation. These patterns of development, dating back to before 1985, prevented the buffer area from removing or reducing sediments, nutrients, and potentially harmful or toxic substances in runoff from entering the bay and its tributaries.**

(2) Minimizing the adverse effects of human activities on wetlands, shorelines, stream banks, tidal waters, and aquatic resources;  
**The buffer as of 1985 could not minimize the adverse effects of human activities on wetlands, shorelines, stream banks, tidal waters and aquatic resources. The accessory structure on the northern side of the island was located at ‘ground zero’ to the Magothy and the shoreline was not vegetated. The banks on the southern side of the island were eroding into the water and the resulting siltation negatively impacting water quality. The buffer was acting to increase the adverse impacts of human activity on the island.**

(3) Maintaining an area of transitional habitat between aquatic and upland communities;  
**The buffer did not serve the function of maintaining an area of transitional habitat between aquatic and upland communities or protect riparian wildlife habitat. There was no vegetation between the accessory structure on the north side of the island and the water. The south side of the island was an unstable cliff and did not provide a transitional zone.**

(4) Maintaining the natural environment of streams; and  
**This standard does not apply. There is not a stream located on the island.**

(5) Protecting riparian wildlife habitat.  
**The island lacks a freshwater source and could not support significant wildlife. The trees on the island were dominated by invasive vines and lacked understory and shrubs. There are no sensitive or endangered species on site or Forest Interior Dwelling Birds. The eroding shoreline on the southern side of the island by the house and the lack of vegetation on the northern side of the island by the accessory structure do not protect riparian wildlife habitat.**

The Board of Appeals determined there was an omission in the original mapping of the County’s Buffer Modification Area in that it was located at the edge of two maps that were used during the evaluation process in the 1990s. The Board found that the property met the factors used by the County for mapping and should have been mapped tree line to tree line in the area of lawn and structures on the northern and southern portions of the island.

### **Staff Analysis**

The evidence and testimony relied on by the Board indicate that the property was developed with a house and lawn on the southern side of the property and accessory structure on the northern portion of the property by 1985 and at the time of the County’s original BMA program mapping. The site characteristics as provided in the exhibits admitted to the Board are similar to other properties that were part of the original BMA mapping. The Board found the developed portions

of the Buffer on the island were not providing for a fully functioning Buffer that could improve water quality and provide habitat. The Board also found that the island is entirely constrained by the Buffer, such that redevelopment could not be located outside the Buffer.

### **Goals of the Critical Area Law**

The role of the Commission is to provide oversight of local Critical Area programs to ensure those programs are meeting the goals of the Critical Area law. Those goals include minimizing impacts to water quality from stormwater runoff, conserving fish, plant, and wildlife habitat, and establishing land use policies that provide for development while recognizing the negative impacts that development has on the Chesapeake and Atlantic Coastal Bays. The purpose of providing for BMAs within a local jurisdiction's Critical Area program, is to recognize existing development in the Buffer and provide for the limited opportunity to redevelop these areas while minimizing impacts and performing mitigation in order to achieve water quality and habitat benefits.

This BMA application is unique, in that the property is the subject of major violations that have not been properly addressed after many years and undergone extensive years of litigation. Maryland's courts, including the Court of Appeals, have struggled with the legal intricacies of this case and have finally resolved them. Now, based upon guidance from the Assistant Attorney General, the Commission has the ability through the program refinement process to; (1) address the goals of the Critical Area law and (2) ensure the BMA designation not only meets the standards of the county program, but also results in redevelopment that meets the county program.

Program Subcommittee Chair Carolyn Cummins said the Subcommittee concurs with the Chairman's determination that the Anne Arundel County Buffer Modification Area designation of Little Island on the Magothy River be reviewed as a refinement to the County's Critical Area Program. The Subcommittee recommends that for the Buffer Modification Area designation to be consistent with the Critical Area law and Criteria, the Chairman approve Anne Arundel County's request subject to the following conditions as described in the staff report and presentation:

1. Within 90 days the county shall provide the Chairman for review and approval, a lot coverage removal plan and a planting plan demonstrating the following:
  - a. Lot Coverage Removal Plan – The plan will show removal of the following areas of lot coverage (per Attachment A):
    - i. The 66 square foot gazebo/duck blind;
    - ii. The 1,223 square foot pool and surrounding decking;
    - iii. 1,970 square feet of concrete driveway; and
    - iv. 152 square feet of sidewalk and the two sheds totaling 274 square feet, if the county determines that the removal of these structures is required by the Anne Arundel County Board of Appeals January 3, 2007 Memorandum of Opinion and Order and the December 15, 2014 Supplemental Memorandum of Opinion and Order.
  - b. Planting Plan – The planting plan will provide for fully replanting the Buffer on site to the extent possible, including replanting those areas where lot coverage is removed and the slopes adjoining the revetment. Mitigation shall not be less than a 3:1 ratio for 3,325 square feet of disturbance totaling 9,975 square feet.

2. Within 18 months of the date of the plan approval by the Chairman, the county shall submit documentation to the Chairman demonstrating the implementation of the approved plans in Condition #1.
3. Any requests by the county for extension of the above timeframes shall require a vote by the full Commission.
4. If the county fails to satisfy Conditions #1 or #2, the Chairman may rescind the approval of the BMA designation and shall refer the matter to the Attorney General for full enforcement.

Program Subcommittee Chair Carolyn Cummins said Commissioners Gail Blazer, Virginia Clagett, Jennifer Rafter and Suzanne Pittenger-Slear voted in opposition of this Anne Arundel County Buffer Management Area Designation for Little Island on the Magothy River as a refinement. Commissioner Clagett said although she did not agree with the decision, she respects the time staff spent on the presentation. Commissioner Pittenger-Slear agreed.

Commissioner Trumbauer asked that it be recorded in the today's Minutes that there was a robust discussion at the morning Subcommittee Meeting. This leaned very heavily on staff's consideration of the problem. Commissioner Trumbauer said he felt there was no good outcome and no good choices made here. He would like to show on record that there were presentations from John Mueller with the Chesapeake Bay Foundation who is on our side, and council for Mr. Wagner, the property owner spoke. He said this has been a very prolonged legal process at which point we have been unsuccessful. He said in condition #4, made by the Chairman that he means business, that if conditions are not met he is prepared to pursue the matter aggressively if that is fair to say. Chairman Deegan affirmed that he would pursue the action.

Commissioner Clagett said for 30 years, she has dealt with constituents about everything, not just Critical Areas. While she very much liked staff's preparation of the conditions, they were excellent and she feels it will show people who witnessed this that there is some penalty for doing the wrong thing and then asking for an okay. She said she has a problem with people getting away with things, zoning areas, etc., and nothing is done about it. She simply wants to make the statement with her vote. She said she is very pleased with the work staff put into this.

Commissioner Pittenger-Slear said she would like to agree with what Commissioner Clagett has said she really admires staff's work on pulling this together. Commissioner Rafter agreed. The Chairman said he, too, would like to thank staff and legal counsel for the time they put into this work.

Chairman Deegan said his refinement determination stands and that he approves the refinement to Anne Arundel County's Critical Area Program subject to the conditions proposed by the Program Subcommittee in order for the change to be consistent with the Critical Area law and Criteria.

#### **Town of Queen Anne (Queen Anne's and Talbot County) Critical Area Map Update**

Lisa Hoerger presented for concurrence with the Chairman's determination of Refinement the Town of Queen Anne Critical Area Map Update.

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

On June 5, 2017 the Town of Queen Anne's Commissioners approved Ordinance 17-02 which updates 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. Subsequently, each local jurisdiction is undergoing a Critical Area map update.

Using these regulations, Commission staff worked with the Town of Queen Anne, 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 public meetings

Commission staff recommends that the Commission concur with the Chairman's determination that the Town of Queen Anne's map update can be reviewed as a refinement to the Town's Critical Area Program, since the mapping update is being completed in accordance with State Law and the Commission's mapping regulations, COMAR 27.01.09.01-8.

Program Subcommittee Chair Carolyn Cummins said the Subcommittee concurs with the Chairman's determination that the Town of Queen Anne Critical Area Map Update can be reviewed as a refinement to the Town's Critical Area Program as the update is in accordance with state law and mapping regulations.

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

### **Queen Anne's County – Town of Centreville Critical Area Map Update**

Lisa Hoerger presented for concurrence with the Chair's determination of Refinement the Town of Centreville Critical Area Map Update.

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

On June 1, 2017 the Centreville Town Council approved Ordinance 02-2-17 which updates 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 Centreville, 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 public meetings.

Commission staff recommends that the Commission concur with the Chairman's determination that the Town of Centreville's map update can be reviewed as a refinement to the Town's Critical Area Program, since the mapping update is being completed in accordance with State Law and the Commission's mapping regulations, COMAR 27.01.09.01-8.

Program Subcommittee Chair Carolyn Cummins said the Subcommittee agrees that the Commission concurs with the Chairman's determination that the Town of Centreville Critical Area Map Update can be reviewed as a refinement to the Town's Critical Area Program as the update is in accordance with state law and mapping regulations.

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

### **Queen Anne's County – The Town of Church Hill Wastewater Treatment Plant Critical Area Map Designation**

Lisa Hoerger presented for concurrence with the Chair's determination of Refinement the Town of Church Hill Wastewater Treatment Plant Critical Area Map Designation.

Ms. Hoerger offered a PowerPoint presentation showing the Wastewater Treatment Plant. She reviewed the staff report, which is incorporated into and made a part of these minutes

The Town of Church Hill submitted Ordinance #163-17 that was adopted by the Town Commissioners on July 3, 2017. This ordinance assigned the Church Hill Wastewater Treatment Plant property a Critical Area designation of Intensely Developed Area for approximately 18 acres of the 27 acre site. The remainder of the site was assigned a Critical Area designation of Resource Conservation Area. A Critical Area designation was required since one was not assigned when the property was annexed into the town in January of 1990.

The Town also included 3.1 acres of State Highway right-of-way to be remapped from a Limited Development Area to an Intensely Developed Area adjacent to the wastewater treatment plant site. However, Commission staff informed the town this designation is not necessary; therefore, only the 18 acres of the wastewater treatment plant property needs the Intensely Developed Area designation and the portion in the State Highway right-of-way can remain mapped as a Limited Development Area.

Commission staff recommends that the Commission concur with the Chairman's determination that this map change is in accordance with Natural Resources Article, §8-1809 (p) and is a refinement to the Town of Church Hill's Critical Area program.

Program Subcommittee Chair Carolyn Cummins said the Subcommittee concurs with the Chairman's determination that the Town of Church Hill Wastewater Treatment Plant Critical Area Map Designation Update can be reviewed as a refinement to the Town's Critical Area Program since it is in accordance with State law and map regulations.

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

### **Queen Anne’s County – The Town of Church Hill Critical Area Map Update**

Lisa Hoerger presented for concurrence with the Chair’s determination of Refinement the Town of Church Hill Critical Area Map Update.

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

On July 3, 2017 the Church Hill Town Commissioners approved Ordinance 163-17 which updates 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 Church Hill, 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 public meetings

Program Subcommittee Chair Carolyn Cummins said the Subcommittee concurs with the Chairman’s determination that the Town of Church Hill Critical Area Map Designation Update can be reviewed as a refinement to the town’s Critical Area Program since it is in accordance with State law and mapping regulations, COMAR 27.01.09.01-8.

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

### **Dorchester County – Small Wind Energy Systems Text Amendment**

Charlotte Shearin presented for concurrence with the Chair’s determination of Refinement the Dorchester County Small Wind Energy Systems Text Amendment.

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

Dorchester County has submitted Bill No. 2009-08, “Small Wind Energy Systems as an Accessory Use,” as an amendment to their Critical Area Program and for approval by the Critical Area Commission. Small wind energy systems are typically small wind turbines producing less than 100 kilowatts of energy that can be used to supplement electricity to an existing use such as a residential dwelling unit. During the Dorchester County Comprehensive Review recently undertaken by the County and Commission staff, it was discovered that this Bill was never sent to the Commission for approval after it was passed by the County Council. Because the Bill allows a new use within the RCA, it requires Commission approval as a text amendment to the County’s Critical Area Program. Therefore, we are bringing it before the Commission now in order to legitimize small wind energy systems as an accessory use to permitted uses within the RCA.

The proposed Bill will amend Section 155-50.KK, Supplement Use Regulations, as well as the Table of Permitted Uses, of the Dorchester County Zoning Ordinance. The Bill will also add a definition of “small wind energy systems” to Section 155-13. The Bill prohibits the placement of small wind energy systems in the Chesapeake Bay Critical Area Tidewater Buffer, except in mapped Buffer Exemption Areas (BEA). It also limits one small wind energy system to lots 1 acre or smaller in size. The bill addresses height requirements and property line setbacks and requires a building and electrical permit for all small wind energy systems. The Bill was passed by the County Council on August 11, 2009.

On behalf of the Program Subcommittee Chair Carolyn Cummins said the Subcommittee concurs with the Chair’s determination that Bill No. 2009-08 can be a refinement to Dorchester County’s Critical Area Program as the proposed changes to Section 155-50.KK are consistent with Critical Area law and Criteria.

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

### **Dorchester County – Comprehensive Review**

Julie Roberts presented for concurrence with the Chair’s determination of Refinement the Dorchester County Comprehensive Review.

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

On May 2, 2017, Dorchester County Council adopted Bill No. 2017-3. This bill was an update to the County’s Critical Area Program Ordinance, unifying the Zoning Ordinance and Program into Chapter 68 of the County Code (previously Chapter 156). This ordinance brings the county into conformance with all current Critical Area regulations and tailors the program to county needs. Prior to this update, a comprehensive review was last conducted in 2001; however there have been multiple updates to the code in the interim.

This comprehensive review of the county’s Critical Area Program and Zoning Ordinance includes all required changes and updates to bring these documents into conformance with State law and the Critical Area regulations. These additions include, among others, the addition of certain family members to intra-family transfers, additional restrictions on clearing limits (capped at 30%), and the requirement of a growth allocation to be incorporated into a program within 120 days. This comprehensive review has also updated the county’s ordinance to allow the following special provisions: lot coverage exchanges on lots over their allowable lot coverage limit; allowances for certain activities such as deck and stair additions and in-kind replacements, to be exempt from the county’s administrative variance process; and a requirement that pools within the Buffer or expanded Buffer follow the Standard Variance process.

After review of the Bill passed by the Dorchester County Council, Commission staff has only minor formatting suggestions, that will increase the coherency of Chapter 68. Commission staff has discussed these changes with County staff and they are amenable to making these changes. Additionally, there were two citation errors which reference the old Chapter 156 rather than Chapter 68 and must be changed (Pg. 75. Section 68-11.J(13) and (14)).

Because this unified code is consistent with the current law and regulations, and Commission staff has worked closely on the new language tailored to the County's needs, Commission staff recommends concurrence with the Chairman's determination of a refinement.

Commission staff recommends the Chairman approve the County's Comprehensive Review with the following two conditions noted below:

**Condition 1:** Amend references to Chapter 156 to appropriate Chapter 68 citations.

Page 75, Section 68-11.J(13) and (14). Chapter 156 referenced instead of Section 68.

**Condition 2:** Make amendments to the language in accordance with ~~striketrough~~ (deletion of existing citations) and additions (additions as new citations), as well as reformatting new citations appropriately, as shown below.

Pages 47-49, 68-7.C.10(g) convert to 11(a), rest as follows

(10.g) (11)

- (a) A lot coverage exchange may be conducted on a lot that exceeds the lot coverage limits of Paragraph (e). A property owner may remove existing lot coverage in exchange for new lot coverage under the following circumstances:
  - (i) The existing lot coverage on site shall be legally grandfathered or permitted by the Planning and Zoning office;
  - (ii) No more than 500 square feet of lot coverage will be exchanged;
  - (iii) There will be no net increase in lot coverage on site;
  - (iv) The removal of lot coverage outside of the buffer will not be used to accommodate new lot coverage in the buffer;
  - (v) In no case shall redevelopment increase any nonconformity on site.
  - (vi) Mitigation is required at a ratio of 1:1 for the square footage of exchanged lot coverage.
  
- (b) In the instance where a lot exceeds its lot coverage limit, a property owner may remove existing lot coverage in the Buffer in exchange for new lot coverage in the Buffer under the following circumstances:
  - (i) The applicant receives a variance in accordance with §156-16.
  - (ii) The existing lot coverage on site shall be legally grandfathered or permitted by the Planning and Zoning office;
  - (iii) No more than 500 square feet of existing lot coverage in the Buffer or expanded Buffer shall be exchanged for new lot coverage in the

Buffer or expanded Buffer;

- (iv) Lot coverage in the expanded Buffer may not be exchanged for new lot coverage in the 100-foot Buffer.
- (v) There will be no net increase of lot coverage on site;
- (vi) There will be no net increase of lot coverage within the Buffer or expanded Buffer;
- (vii) Mitigation shall be provided for disturbance in the Buffer as required under the Variance provisions in §156-16.

- (c) A fee in lieu shall be provided to the county if the area of the site precludes the implementation of on-site mitigation. The amount of the fee shall be determined by the director or his designated representative. All moneys collected will be retained in the Critical Area Forest Replacement Fund.

*[move existing 10(h)(i) to new 10(g) below existing (f)]*

- 10(g)(i) A lot or parcel legally developed as of July 1, 2008 may be considered legally nonconforming for the purposes of lot coverage requirements. For the purpose of increasing lot coverage on these parcels, the lot coverage limitations may not be construed to apply to a development activity for which a building permit was issued before July 1, 2008 and construction was initiated and an inspection was performed before July 1, 2009.

*[renumber the rest as follows]*

- (~~12~~)(~~11~~) Lot coverage on a parcel is limited in accordance with the following maximums:
  - (a) When a site is mapped entirely as a Limited Development Area, 15 percent of the total site;
  - (b) When a portion of a lot or parcel is mapped as a limited development area, 15 percent of that portion of the lot or parcel; and
  - (c) In the case of a growth allocation award:
    - (i) 15 percent of the growth allocation development envelope; or
    - (ii) 15 percent of the acreage proposed for growth allocation deduction.
- (13)(~~12~~) Dorchester County shall allow for modifications in road standards to reduce potential impact to the site and critical area resources, where the reduced standards do not significantly affect safety.

(14)(13) Development may be allowed on soils having development constraints if it includes mitigation measures that adequately address the identified constraints and that will not have significant adverse impacts on water quality or plant, fish, or wildlife habitat.

On behalf of the Program Subcommittee Chair Carolyn Cummins said the Subcommittee concurs with the Chair's determination that the Dorchester County Comprehensive Review can be reviewed as a refinement to the county's Critical Area Program with two conditions as shown in the staff report on pages 5, 6, and 7, since it is in accordance with State law and Critical Area regulations.

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

**LEGAL UPDATE:** Assistant Attorney General Emily Vainieri told the Commission that she will give a legal update at the next meeting.

**OLD BUSINESS:** Lisa Hoerger said at the May 3, 2017 meeting the Commission approved for North Beach a 60-day extension to complete local approval of their Critical Area map update. The 60-day time limit was to commence as of the date of that meeting or beginning on May 3, 2017. The Town is now requesting a 90-day extension.

Program Subcommittee Chair Carolyn Cummins made a motion to approve the requested 90-day extension for the Town of North Beach.

Commissioner Marks seconded the motion. The motion was put to a vote and carried unanimously.

**NEW BUSINESS:** There was no new business to come before the Commission.

There being no further business to come before the Commission, the meeting adjourned at 2:40 p.m.

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