

MEMORANDUM

TO: Critical Area Commission

FROM: Ren Serey

SUBJECT: Anne Arundel County Program Implementation Issues

DATE: December 6, 2006

Two recent issues involving Anne Arundel County's Critical Area Program have raised concern regarding whether the County is properly implementing the Program.

The first issue involves the County's remapping of parcels to change their Critical Area designation based on perceived mistakes in the original 1988 mapping. At last month's Commission meeting, the Program Subcommittee asked staff to review and report back on the way the County considers and approves corrections to its Critical Area maps.

The second issue involves the County's interpretation of its Critical Area ordinance in regard to subdivisions in the Resource Conservation Area (RCA) and the location of septic systems in the RCA for non-RCA dwellings. Following a staff briefing during the New Business portion of last month's agenda, Chairman Madden asked staff to report at the upcoming meeting on the County's interpretation of its ordinance in this regard.

The issues are discussed below.

The Correction of Mapping Mistakes in Anne Arundel County

At its November 2006 meeting the Commission considered two Critical Area Program amendments from Anne Arundel County intended to redesignate RCA parcels as Limited Development Areas (LDA). The proposed redesignations were for the Daras and Magenau properties. The County submitted these map changes following determinations by the Administrative Hearing Officer that the County Council 1) incorrectly mapped the properties RCA in its original 1988 mapping and, 2) should have mapped the properties LDA.

As staff reported last month:

"The County has determined that these areas should have been designated as Limited Development Area (LDA) based on the aerial photographs showing the existing land uses as of December 1, 1985, and that the land was within 2,000 feet of a public sewer. The proximity to sewer is a mapping standard found in the Anne Arundel County Program document."

The Commission, following a report by the Panel that conducted public hearings on both proposed map corrections, voted:

“to send the map amendment(s) back to the County to provide additional information. The additional information shall include a clear explanation of all of the mapping rules and procedures included on pages 12-16 of the Anne Arundel Program document, dated August 1988 and how they were applied, and a comprehensive analysis of how the mapping rules were applied consistently and systematically on all Critical Area maps throughout the County. This information shall be sufficient for the Commission to determine if the correction of the map associated with the Daras (and the Magenau) property is consistent with the purposes, policies, goals and provisions of the Critical Area law and Criteria.”

The matter of public sewer lines was central to the County's determination of mistake in the designation of the Daras (14.73 acres) and Magenau (2.27 acres) properties. County staff testified at the Panel's public hearings that there is a significant potential for numerous additional determinations of mistake in the original RCA mapping based on the location of RCA properties near existing or proposed public sewer lines.

The following description of Anne Arundel County's mapping process in regard to properties near public sewer lines is from the County's 1988 Critical Area Program document. (Emphasis added.)

“Most of the changes to the land use classification maps in September [1987] included shifts from Resource Conservation to Limited due to the availability of water or sewer service. The Criteria state that areas having public water or sewer qualify as Limited Development Areas. Existing County Law, Article 26, Section 3-305 and 3-312, requires that public water or sewer service must be extended to the property in the “6 – 10 year sewer service area” ... which is within 2000 feet of an existing line. This is imposed on an application for development as a condition of subdivision approval. Therefore, properties within these distances and timings are considered to have water or sewer service within the context of the definition of Limited Development Area and the Criteria. Property beyond these distances and timings is not required to extend and construct utility lines and therefore is deemed not to have water or sewer and remains in the Resource Conservation designation. Wetlands on public property were left in the Resource Conservation Area (RCA) category and wetlands originally mapped as Limited were placed in Resource Conservation classification. **In November [1987], the property that was changed to Limited Development in September that did not abut a water or sewer line was reclassified to Resource Conservation.”**

The County's mapping standards were approved by the Commission as consistent with COMAR 27.01.02.04A. This section of the Criteria provides that in order for an area to be mapped LDA, it must have "at least one of the following features:

1. Housing density ranging from one dwelling unit per 5 acres up to four dwelling units per acre;
2. Areas not dominated by agriculture, wetland, forest, barren land, surface water, or open space;
3. Areas meeting the conditions of Regulations .03A (Intensely Developed Areas), but not .03B (minimum of 20 acres), of this regulation;
4. Areas have public sewer or public water, or both."¹

Standards for Review of Amendments to Local Critical Area Programs

As staff reported last month:

When a local government considers an amendment to its Critical Area Program, including a map amendment, it must determine, by compelling evidence, that a mistake was made at the time of the original mapping. The local government is guided by the standards announced by the Court of Special appeals in *Bellanca v. County Commissioners*. The Commission then reviews the local government's proposed change to the local Critical Area Program under the standards of Natural Resources Article 8-1801 et seq., and pursuant to Section 8-1809, the Commission must determine that the proposed amendment/refinement is consistent with the purposes, policies, goals, and provisions of the Critical Area law and all criteria of the Commission.

¹The reference to Regulation .03A is to the IDA mapping standards which include the following: (1) Housing density equal to or greater than four dwelling units per acre; (2) Industrial, institutional, or commercial uses are concentrated in the area; or (3) Public sewer and water collection and distribution systems are currently serving the area and housing density is greater than three dwelling units per acre. The reference to Regulation .03B is the IDA standard that IDAs shall be at least 20 adjacent acres.

Possible Considerations for the Commission

The Commission approved the original local Critical Area Programs during the period from late 1987 to mid 1990. Since that time, the Commission has corrected mapping mistakes in several jurisdictions. Most corrections involved clear examples of information overlooked by a jurisdiction at the time of the original approval, or basic drafting errors such as failure to extend a line from one map to another. Anne Arundel County's recent corrections, and the extensive corrections the County anticipates, presume that a different type of mistake occurred.

In 1988 both the Anne Arundel County Council and the Critical Area Commission approved the County's maps and its mapping standards. The presumption in both instances was that the County's Program and maps were consistent with the State law and Criteria. The presumption apparent now through the piecemeal submittal of mapping mistakes is that the 1988 maps were fundamentally flawed and did not accurately represent the County's intentions. Accepting this position, however, will significantly alter the Critical Area in Anne Arundel County. The increase in LDA lands will allow subdivision of the parcels in question, thereby increasing density and impervious surfaces, and decreasing forest and habitat. The changes from RCA to LDA also will affect the base acreage from which the County's growth allocation is calculated. Anne Arundel County has approximately 30 acres of growth allocation remaining that can be used in the RCA.

Last month, the Panel included the following question in its Report to the Commission on the Daras and Magenau mapping mistakes:

If numerous properties were incorrectly mapped, could that indicate that one or more mapping standards were improperly applied and as a result, the maps did not accurately reflect the application of the standard?

Another way to consider the Panel's question is to rephrase it:

If the County's original mapping standard was properly approved, could the recent requests for redesignation, and the anticipated future requests for redesignation, indicate that the County is improperly applying its mapping standard for LDAs?

The Commission at times has exercised its authority to require changes in local Critical Area Programs. Section 8-1809 (l) of the Critical Area Act authorizes the Commission to take certain actions if it determines that a local Critical Area Program contains a mistake, omission or conflict with the law or Criteria. The section reads as follows:

- (l) (1) If the Commission determines that an adopted program contains a clear mistake, omission, or conflict with the criteria or law, the Commission may:

- (i) Notify the local jurisdiction of the specific deficiency; and
 - (ii) Request that the jurisdiction submit a proposed program amendment or program refinement to correct the deficiency.
- (2) Within 90 days after being notified of any deficiency under paragraph (1) of this subsection, the local jurisdiction shall submit to the Commission, as program amendments or program refinements, any proposed changes that are necessary to correct those deficiencies.
- (3) Local project approvals granted under a part of a program that the Commission has determined to be deficient shall be null and void after notice of the deficiency.

The Commission should consider the following:

- Was there a mistake, omission, or conflict in Anne Arundel County's Program regarding the scope of the original mapping standard for LDAs and the approved County Critical Area maps?
- Has the County created a conflict by improperly applying an otherwise appropriate mapping standard?
- If the Commission determines that a mistake, omission, or conflict exists in either the mapping standard itself, or in the application of the mapping standard, should the County be directed to make specific changes to its program or maps, or comprehensively address the mistake, omission, or conflict?
- Should the County be directed to withhold submittal of further mapping redesignations based on the subject provision until it complies with specific requirements of the Commission?

Subdivision and the Location of Septic Systems in the Resource Conservation Area

In 2000 the Commission approved amendments to the Anne Arundel County Critical Area Program (Council Bill 12-00) which listed uses permitted in the County's RCA without the use of growth allocation. The Commission has approved similar county-specific RCA use lists in many local programs. Anne Arundel County's list of permitted RCA uses includes, as do all similar lists, dwelling units at a density of one-per-20-acres, as established in State law.

The Anne Arundel County list of permitted RCA uses does not specifically include individual residential septic systems because these systems are considered accessory to

permitted RCA dwellings at the permitted density. The County's language, in Title 1-A-103 (H) states:

Uses within the Resource Conservation Area are limited to the following, provided that each use is allowed in the underlying zone and meets all conditions and approvals set forth in the underlying zone and any additional restrictions set forth in this section:

(46) Single-family detached dwellings;

Recently, however, the County determined for the first time that private septic systems are a permitted use in the RCA regardless if they serve RCA dwellings, or development outside the RCA, or outside the Critical Area. In the example that brought this matter to the attention of Commission staff, the County allowed three LDA lots to be resubdivided and extended into the RCA in order to locate new septic systems for these lots in the RCA. The RCA parcel at issue was 21 acres and included an existing dwelling and its septic system. The resulting expansion of the LDA lots placed the new septic systems in the RCA and reduced the existing RCA parcel to less than 20 acres. No growth allocation was proposed. Before the County approved the subdivision, Commission staff advised the County that staff disagreed with the County's proposed approval.

Possible Considerations for the Commission

The Commission should consider the following:

- Does the County Program contain a mistake, omission or conflict with the Critical Area law and Criteria relative to septic systems in its list of RCA uses?
- Has the County created a conflict through its current interpretation of an otherwise acceptable provision of its Program?
- Has the County, through its actions, effectively awarded growth allocation to the subject subdivision and, if so, should the County be directed to make a formal deduction through the County Council?

Robert L. Ehrlich, Jr.
Governor

Michael S. Steele
Lt. Governor



Martin G. Madden
Chairman

Ren Serey
Executive Director

STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS

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www.dnr.state.md.us/criticalarea/

December 19, 2006

Dear Critical Area Commission Members:

Today I informed Governor Ehrlich's office that I will be leaving my position as Chairman of the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays effective January 17, 2007.

Since I was appointed Chairman on May 1, 2003, I have been honored to serve with you. As I told Governor Ehrlich in my letter to him, "The dedication and professionalism of the members and staff of the Critical Area Commission is unsurpassed and I will always appreciate their hard work and support. They have my lasting gratitude."

I have appreciated every day of my service as Chairman. Nevertheless, the desire to explore other areas of service that led to my decision to leave the Maryland Senate in 2002 still exists and, thus, my decision.

I hope you and your families enjoy a wonderful Holiday season and I look forward to seeing you on January 3rd.

Sincerely,

A handwritten signature in cursive script that reads "Martin G. Madden".

Martin G. Madden
Chairman

TTY for the Deaf

Annapolis: (410) 974-2609 D.C. Metro: (301) 586-0450

Robert L. Ehrlich, Jr.
Governor

Michael S. Steele
Lt. Governor



Martin G. Madden
Chairman

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December 18, 2006

Mr. David Kibler
Commissioners of Greensboro
P O Box 340, 118 N. Main Street
Greensboro, MD 21639

Dear Mr. Kibler:

As you may know, during the Maryland General Assembly's 2006 legislative session, identical bills sponsored by Senator Roy Dyson and Delegate Barbara Frush passed the House and the Senate. The bills covered several important matters related to implementation of local Critical Area programs, as explained below. The new legislation results from concerns raised by the Critical Area Commission and the Joint Legislative Oversight Committee on the Critical Area, co-chaired by Senator Dyson and Delegate Frush. Governor Robert L. Ehrlich, Jr. signed Senate Bill 751 into law, effective June 1, 2006.

I have included some background information on the new legislation, and the necessary language the General Assembly approved for incorporation into your local Critical Area program.

Senate Bill 751: Chapter 55 of the 2006 Laws of Maryland: "Chesapeake and Atlantic Coastal Bays Critical Area Protection Program – Critical Area Commission -Authority"

The primary intent of Chapter 55 is to clarify the authority of the Critical Area Commission and the Chairman regarding program amendments and refinements in response to a circuit court decision that curtailed the Commission's statutory responsibility for oversight of approved local programs, and created a unique standard for Commission review of proposed amendments in Talbot County. The new legislation confirms the Commission's practice with regard to review of program amendments and refinements, to ensure that the amendment or refinement is consistent with the purposes, policies, goals, and provisions of the Critical Area law and all Criteria of the Commission. The law also now expressly states the Commission's responsibility to ensure that growth allocation guidelines are applied consistent with the law and criteria. I have summarized the provisions of Chapter 55 below and set out in capital letters the necessary amendments to your local Critical Area program.

Definitions

The General Assembly defined the term "developer" as a person who undertakes a development activity both as defined by the local government and by the State Critical Area Criteria. The General Assembly also defined "program amendment" and "program refinement." The definition of "program refinement" more explicitly states the Chairman's discretion to consider a proposed change as a refinement and provides specific examples. The definition of "program amendment" provides that an amendment determination is made by the Chairman. Generally, a program amendment is any change or proposed change to a local program that the Chairman does not determine to be a refinement.

The definitions from Chapter 55 are to be incorporated into the definitions section of your local Critical Area Program.

"DEVELOPER" MEANS A PERSON WHO UNDERTAKES DEVELOPMENT ACTIVITY AS DEFINED IN THIS ORDINANCE; OR A PERSON WHO UNDERTAKES DEVELOPMENT AS DEFINED IN THE CRITERIA OF THE COMMISSION.

(Note: This definition should replace any other definition for "developer" that applies within the Critical Area.)

"PROGRAM AMENDMENT" MEANS ANY CHANGE OR PROPOSED CHANGE TO AN ADOPTED PROGRAM THAT IS NOT DETERMINED BY THE CHAIRMAN OF THE CRITICAL AREA COMMISSION TO BE A PROGRAM REFINEMENT.

"PROGRAM REFINEMENT" MEANS ANY CHANGE OR PROPOSED CHANGE TO AN ADOPTED PROGRAM THAT THE CHAIRMAN OF THE CRITICAL AREA COMMISSION DETERMINES WILL RESULT IN A USE OF LAND OR WATER IN THE CHESAPEAKE BAY CRITICAL AREA OR ATLANTIC COASTAL BAYS CRITICAL AREA IN A MANNER CONSISTENT WITH THE ADOPTED PROGRAM, OR THAT WILL NOT SIGNIFICANTLY AFFECT THE USE OF LAND OR WATER IN THE CRITICAL AREA. PROGRAM REFINEMENT MAY INCLUDE:

1. A CHANGE TO AN ADOPTED PROGRAM THAT RESULTS FROM STATE LAW;
2. A CHANGE TO AN ADOPTED PROGRAM THAT AFFECTS LOCAL PROCESSES AND PROCEDURES;
3. A CHANGE TO A LOCAL ORDINANCE OR CODE THAT CLARIFIES AN EXISTING PROVISION; AND

4. A MINOR CHANGE TO AN ELEMENT OF AN ADOPTED PROGRAM THAT IS CLEARLY CONSISTENT WITH THE PROVISIONS OF STATE CRITICAL AREA LAW AND ALL THE CRITERIA OF THE COMMISSION.

Growth Allocation

The General Assembly clarified the guidelines that local governments shall apply when reviewing requests for growth allocation. The restructuring of these provisions clarifies that local governments are required to apply these provisions and must address their application.

The language from Chapter 55 is to be incorporated into the growth allocation section of your local Critical Area Program and should replace the existing corresponding provisions that use the terminology "should be located."

WHEN LOCATING NEW INTENSELY DEVELOPED OR LIMITED DEVELOPMENT AREAS, THE COUNTY SHALL USE THE FOLLOWING GUIDELINES:

1. LOCATE A NEW INTENSELY DEVELOPED AREA IN A LIMITED DEVELOPMENT AREA OR ADJACENT TO AN EXISTING INTENSELY DEVELOPED AREA;
2. LOCATE A NEW LIMITED DEVELOPMENT AREA ADJACENT TO AN EXISTING LIMITED DEVELOPMENT AREA OR AN INTENSELY DEVELOPED AREA;
3. LOCATE A NEW LIMITED DEVELOPMENT AREA OR AN INTENSELY DEVELOPED AREA IN A MANNER THAT MINIMIZES IMPACTS TO A HABITAT PROTECTION AREA AS DEFINED IN COMAR 27.01.09 AND IN AN AREA AND MANNER THAT OPTIMIZES BENEFITS TO WATER QUALITY; AND
4. LOCATE A NEW INTENSELY DEVELOPED AREA OR A LIMITED DEVELOPMENT AREA IN A RESOURCE CONSERVATION AREA AT LEAST 300 FEET BEYOND THE LANDWARD EDGE OF TIDAL WETLANDS OR TIDAL WATERS

It should be noted that the Critical Area Criteria include another guideline for growth allocation and this guideline should also be included in your local ordinance as follows:

5. A NEW INTENSELY DEVELOPED AREA SHOULD BE LOCATED WHERE IT WILL MINIMIZE IMPACTS TO THE DEFINED LAND USES OF THE RESOURCE CONSERVATION AREA.

There are several other provisions that relate to growth allocation included in Section 8-1808.1 of the Natural Resources Article of the Annotated Code of Maryland and COMAR 27.01.02.06.B, which may be applicable to your jurisdiction. It is important that you review all

of your growth allocation provisions to ensure that they are consistent with the Criteria and the law as amended.

In addition to the changes regarding how local governments are to review growth allocation applications, the General Assembly directly stated the Commission's role in reviewing growth allocation requests and the Commission's responsibility to determine that the growth allocation guidelines have been applied in a manner consistent with the purposes, policies, goals, and provisions of the Critical Area law and all criteria of the Commission. The following language should be added to your local program:

WHEN THE COUNTY SUBMITS A REQUEST FOR THE COMMISSION TO REVIEW AND APPROVE THE USE OF GROWTH ALLOCATION, THE REQUEST SHALL STATE HOW THE LOCAL JURISDICTION HAS APPLIED THE PRECEDING GUIDELINES. THE COMMISSION SHALL ENSURE THAT THE GUIDELINES SET FORTH IN THIS SECTION HAVE BEEN APPLIED IN A MANNER THAT IS CONSISTENT WITH THE PURPOSES, POLICIES, GOALS, AND PROVISIONS OF THE CRITICAL AREA LAW AND ALL CRITERIA OF THE COMMISSION.

Review of Program Amendments and Refinements

The General Assembly also addressed how the Commission reviews all proposed program amendments and refinements. Chapter 55 specifically provides that the Commission shall review amendments and refinements and determine that the amendment or refinement is consistent with the Critical Area law and criteria. The law sets forth the various actions that the Commission may take on proposed Critical Area Program changes submitted by local governments.

Local governments should add the following language to the section of their Critical Area ordinance that addresses Critical Area Program amendments and refinements:

WHEN THE *COUNTY* SUBMITS A REQUEST FOR REVIEW AND APPROVAL OF CHANGES TO ANY ELEMENT OF THE *COUNTY'S* CRITICAL AREA PROGRAM INCLUDING, BUT NOT LIMITED TO, THE ZONING ORDINANCE, SUBDIVISION REGULATIONS, OR CRITICAL AREA MAPS, THE REQUEST SHALL INCLUDE ALL RELEVANT INFORMATION NECESSARY FOR THE CHAIRMAN, AND AS APPROPRIATE, THE COMMISSION, TO EVALUATE THE CHANGES. THE CHAIRMAN, AND AS APPROPRIATE, THE COMMISSION, SHALL DETERMINE IF THE REQUESTS FOR PROGRAM CHANGES ARE CONSISTENT WITH THE PURPOSES, POLICIES, GOALS, AND PROVISIONS OF THE CRITICAL AREA LAW AND ALL CRITERIA OF THE COMMISSION.

IN ACCORDANCE WITH THE DETERMINATION OF CONSISTENCY AS OUTLINED ABOVE, THE CHAIRMAN, OR AS APPROPRIATE, THE COMMISSION SHALL:

December 18, 2006

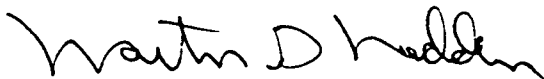
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1. APPROVE THE PROPOSED PROGRAM REFINEMENT OR AMENDMENT AND NOTIFY THE LOCAL JURISDICTION;
2. DENY THE PROPOSED PROGRAM REFINEMENT OR AMENDMENT ;
3. APPROVE THE PROPOSED PROGRAM REFINEMENT OR AMENDMENT SUBJECT TO ONE OR MORE CONDITIONS; OR
4. RETURN THE PROPOSED PROGRAM REFINEMENT OR AMENDMENT TO THE LOCAL JURISDICTION WITH A LIST OF CHANGES TO BE MADE.

If you have questions or would like an electronic version of the language included in this letter, please contact Commission staff at (410) 260-3460. If you have specific legal questions about the necessary changes, please contact Ms. Marianne Dise at (410) 260-3466.

In conclusion, I hope that this summary of the 2006 State legislation and the local ordinance language will facilitate your adoption of the necessary provisions in a timely and efficient manner. Please note that the new state laws became effective on June 1, 2006. I expect that we will be able to process the required changes to your ordinances on an expedited basis as refinements to your Program. The Commission staff and the Assistant Attorney General are available to assist you.

Sincerely yours,



Martin G. Madden
Chairman

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Ms. Cook-MacKenzie	Ms. Melissa B. Cook-MacKenzie P O Box 528, 106 S Main Street North East, MD 21901-0528
President Hale	The Honorable Henry Hale 100 North Morris Street P O Box 339 Oxford, MD 21654
Ms. Lord	Ms. Lillian Lord 100 North Morris Street P O Box 339 Oxford, MD 21654
Mayor Meehan	The Honorable Richard W. Meehan P O Box 158 Ocean City, MD 21843-0158
Ms. Blazer	Ms. Gail Blazer Town of Ocean City Engineering Department P O Box 158 Ocean City, MD 21843-0158
Mayor Eberhart	The Honorable James Eberhart 515 Broad Street P O Box 773 Perryville, MD 21903-0513
Ms. Breder	Ms. Denise Breder P O Box 773 Perryville, MD 21903-0513
Mayor Flayhart	The Honorable Robert Flayhart Town Hall 64 S Main Street Port Deposit, MD 21904
Mr. Berry	Mr. Eric Berry 64 S Main Street Port Deposit, MD 21904
County Executive Johnson	The Honorable Jack B. Johnson, Esq.

	14741 Governor Oden Bowie Drive Upper Marlboro, MD 20772
Mr. Whitacre	David Whitacre, Esq. Office of Law 14741 Governor Oden Bowie Drive Upper Marlboro, MD 20772
Mr. Brown	Mr. Jackie Brown Planning, Zoning & Economic Development Committee, County Council 14741 Governor Oden Bowie Drive Upper Marlboro, MD 20772
Mr. Thompson	Mr. Richard Thompson Dept. of Environmental Resources 9400 Peppercorn Place, Suite 600 Largo, MD 20774
President White	The Honorable Frank White 30489 Broad Street Princess Anne, MD 21853
Mr. Wink	Mr. Robert Wink Princess Anne Police Department 11780 Beckford Avenue Princess Anne, MD 21853
Mayor Esty	The Honorable Randolph Esty P O Box 365 Queen Anne, MD 21657-0365
Ms. Kohn	Ms. Juanita Kohn P O Box 365 Queen Anne, MD 21657-0365
President Wargotz	The Honorable Eric Wargotz Queen Anne's County Commissioners Liberty Building 107 N Liberty Street Centreville, MD 21617
Mr. Thompson	Patrick E. Thompson, Esq. Office of the County Attorney 107 N Liberty Street Centreville, MD 21617
Ms Elliott-Rossing	Ms Faith Elliott-Rossing Department of Planning & Zoning 160 Coursevall Drive Centreville, MD 21617
President Keiler	The Honorable Mitchell A. Keiler P O Box 4 Queenstown, MD 21658
Ms. Moore	Ms. Amy Moore P O Box 4 Queenstown, MD 21658
Mayor Jacobs	The Honorable Jay Jacobs P O Box 367 Rock Hall, MD 21661
Ms. Grussing	Ms. Pat Grussing

	P O Box 367 Rock Hall, MD 21661
President Russell	The Honorable Francis "Jack" Russell Board of County Commissioners 213115 Leonardtown Hall Road P O Box 653 Leonardtown, MD 20650
Mr. Norris	John B. Norris, III, Esq. Office of the County Attorney 213115 Leonardtown Hall Road P O Box 653 Leonardtown, MD 20650
Ms. Veith	Ms. Sue Veith Department of Planning and Zoning 23150 Leonard Hall Drive Leonardtown, MD 20650
President Snyder	The Honorable Robert Snyder P O Box 206 St. Michaels, MD 21663-0206
Ms. Weisman	Ms. Jean Weisman P O Box 206 300 Mill Street St. Michaels, MD 21663-0206
Mayor Dukes	The Honorable Susan Dukes P O Box 248 Secretary, MD 21664
Ms. Pritchett	Ms. Yvonne Pritchett P O Box 248 Secretary, MD 21664
President Gosnell	The Honorable Phillip Gosnell P O Box 338 Sharptown, MD 21861
Ms. Schneider	Ms. Judy Schneider P O Box 338 Sharptown, MD 21861
Mayor Matthews	The Honorable Stephen R. Matthews P O Box 348 Snow Hill, MD 21863
Ms. Brewington	Ms. Kelly Brewington Mayor and Council Office Municipal Building P O Box 348 Snow Hill, MD 21863
President Boston	The Honorable Sam Boston Board of County Commissioners 11916 Somerset Avenue Princess Anne, MD 21853
Mr. Simpkins	Kirk G. Simpkins, Esq. Office of the County Attorney 11916 Somerset Avenue Princess Anne, MD 21853

Mr. Lawton	Mr. Tom Lawton Dept. of Technical & Community Services 11916 Somerset Ave, Room 102 Princess Anne, MD 21853
President Bartlett	The Honorable Dirck K. Bartlett Courthouse, 11 North Washington Street Easton, MD 21601-3178
Mr. Pullen	Michael L. Pullen, Esq. Office of the County Attorney Courthouse, 11 North Washington Street Easton, MD 21601-3178
Mr. Kinney	Mr. George Kinney Office of Planning and Zoning Courthouse, 11 North Washington Street Easton, MD 21601-3178
Mayor Brinsfield	The Honorable Russell Brinsfield P O Box 86 Vienna, MD 21869
Mr. Sharp	Mr. Jim Sharp 1125 N Division Street Salisbury, MD 21803
Mr. McKenzie	Mr. Frank McKenzie 1125 N Division Street Salisbury, MD 21803
Mr. Lennox	Mr. Jack Lennox 1125 N Division Street Salisbury, MD 21803
Mayor Tilghman	The Honorable Barrie P. Tilghman 1125 N Division Street Salisbury, MD 21803
Mr. Hammond	Edward Hammond, Esq Government Center One W Market Street, Room 1103 Snow Hill, MD 21863
Mr. Tudor	Mr. Edward Tudor Development Review and Permitting One W Market Street, Room 1201 Snow Hill, MD 21863
Mr. McGrory	Mr. Robert McGrory 101 Lawyers Row P O Box 100 Centreville, MD 21617
Ms. Villmaire	Ms. Lois Villemaire Office of Planning and Zoning 2664 Riva Rd Annapolis, MD 21401
Mr. Manlove	Mr. William C. Manlove Board of County Commissioners County Administration Building

	107 North Street Elkton, MD 21921
Mr. Hodgson	Jonathan Hodgson, Esq. Office of the County Attorney 2660 Riva Road Annapolis, MD 21401
Ms. Chesser	Christy Holt Chesser, Esq. Office of the County Attorney 23115 Leonardtown Hall Road PO Box 653 Leonardtown, MD 20650-0653
Mr. Beall	Mr. Melvin C. (Chuck) Beall, Jr. Charles Co. Dept. of Planning and Growth Management PO Box 2150 La Plata, MD 20646
Ms. Crouch	Ms. Joyce Crouch 401 E. Main Street PO Box F Fruitland, MD 21826-0120
Mr. Gutwald	Mr. C. Pete Gutwald Harford County Planning and Zoning 220 S Main Street Bel Air, MD 21014-3865
Ms. Seger	Ms. Susan Seger Town of Hillsboro PO Box 128 Hillsboro, MD 21641
Ms. Miller	Ms. Laschelle E. Miller Town of Leonardtown PO Box 1 Leonardtown, MD 20650
Dr. Piret	Dr. Fern Piret Prince George's County Department of Planning 14741 Governor Oden Bowie Drive Upper Marlboro, MD 20772

Robert L. Ehrlich, Jr.
Governor

Michael S. Steele
Lt. Governor



Martin G. Madden
Chairman

Ren Serey
Executive Director

**STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS**

1804 West Street, Suite 100, Annapolis, Maryland 21401
(410) 260-3460 Fax: (410) 974-5338
www.dnr.state.md.us/criticalarea/

MEMORANDUM

December 1, 2006

TO: Department of Budget and Management

FROM: Martin G. Madden, Chairman
Critical Area Commission for the Chesapeake and Atlantic Coastal Bays

SUBJECT: Commission Staffing

As Chairman of the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, I propose to add two new staff functions that are necessary for proper implementation of the Critical Area Law.

The Commission has a pressing need for a Coordinator of Conservation Planning and Education and a Technical Assistant. I have outlined the responsibilities of the positions below. A Detailed Funding Request for each position is attached.

There are 15 authorized employees of the Critical Area Commission including my position as the full-time Chairman of the 29 member Commission.

Several years ago, before the General Assembly added the Atlantic Coastal Bays to the State's Critical Area, the Commission had 21 employees. The General Assembly's inclusion of the Atlantic Coastal Bays as part of Maryland's Critical Area in 2002 and the rapid growth in the Coastal Bays region has brought significant new responsibilities to the Commission, adding 15% to the workload with no corresponding staff increase for project reviews, coordination with local landowners, or travel time. Since then, positions have been lost over the years due to budget cuts and staff consolidations at the Department of Natural Resources. We frequently have two or three vacant positions at the same time, as the surrounding jurisdictions pay 30-40% higher salaries than the State for comparable experience and education.

We have an extremely hard-working and dedicated staff. As a measure of the dedication of the current staff, please refer to the attached sheet which shows that five of our employees will lose between 67-111 hours each of annual leave due to the workload and the detailed technical nature of the work. In other words, these five employees have accrued from 67-111 hours of overtime and because of their dedication to their jobs, they don't want to take the time off to which they are entitled and thus will forfeit this time at the end of this month. These requests I am making are the minimum necessary to assure that the Critical Area Commission can perform its functions the way the public expects.

Coordinator of Conservation Planning & Education - Grade 18 Step 8

I. Public Education Activities

Maryland's Critical Area includes the Chesapeake Bay, the Atlantic Coastal Bays, all tidal tributary rivers and their wetlands, and approximately 10% of the state's land area in 16 counties, Baltimore City and 46 municipalities. The Commission's Conservation Planning and Education Coordinator will be responsible for all of the Commission's public education activities including managing training events and workshops; making presentations to citizens and community groups; participating in conferences and symposiums; responding to citizen requests for information; and developing publications and web-based content.

One of the primary efforts of the Coordinator will be to identify enforcement issues that result from a lack of information or knowledge about the Critical Area. Often, Critical Area violations take place because homeowners, maintenance workers, and contractors are unaware of, or are unclear on, local Critical Area regulations. The Coordinator will develop and implement appropriate training materials and forums to address the most common enforcement problems.

II. Public and Private Conservation Partnerships

The Coordinator will work with various public and private organizations to facilitate conservation of significant habitat areas within the Chesapeake Bay and the Atlantic Coastal Bays watersheds. Conservation of these habitats will address mitigation requirements for development within the Critical Area, including mitigation for large-scale growth allocation projects, which involve Commission approval of amendments to local Critical Area programs.

The Coordinator will work with organizations such as the Maryland Environmental Trust, the Nature Conservancy, the Eastern Shore Land Conservancy, and other locally-managed land trusts to identify partnership opportunities that advance the goals of the Critical Area Law relating to the protection of water quality and the conservation of fish, wildlife, and plant habitat.

III. Local Government Assistance

The Coordinator will work with local governments to collect development related fees-in-lieu of mitigation when on-site or alternative mitigation is not practical. The position will develop training and management programs for the collection and expenditure of these local funds. The Coordinator will assist local governments in the development of appropriate regulatory and fiscal mechanisms to collect and track fees-in-lieu for stormwater management, reforestation, Buffer impacts, and variances. Local governments may also request assistance from the Coordinator to identify appropriate projects and programs financed fully or partially with fees-in-lieu to mitigate the adverse impacts of development and promote the goals of the Critical Area Program.

Technical Assistant - Grade 11/ Step 9

I. Mapping Assistance & Analysis

The Technical Assistant will collect, input, extract and arrange data for Commission reports and planning staff use; coordinate with the Department of Natural Resources and other agencies' Geographic Information Systems (GIS) Divisions; train planning staff in scanning maps, photographs and exhibits; and create maps of Commission related data in support of planning staff and official Commission actions. The position will also assist planning staff with GIS questions and train planners in basic GIS usage.

II. Database Management

The Assistant will input and extract data from Commission databases; provide Unit support, project tracking, reporting, and integration with GIS data; provide interpretation, retrieval, and printout of data analysis and reports; instruct employees in specific database tasks and techniques for data entry and as a resource tool; continue development of database structure and reporting by designing new data analysis formats and reports to support planning staff.

III. Records Management

Manage records for most efficient use of office space by developing and maintaining a records retention schedule in order to ensure prompt and orderly transfer or disposal of records not required by the day-to-day operations; analyze and determine files to be purged or archived; coordinate the transfer of files to Maryland State Archives and the Records Management Division of the Department of General Services.

Reasons for the Positions

When the Chesapeake Bay Critical Area law was enacted in 1984, it established a new partnership between the State and local jurisdictions that bordered the Chesapeake Bay and its

tidal tributaries. The law called for local implementation of State criteria for the protection of water quality and wildlife habitats along Maryland's tidal shorelines. The law has become a cornerstone of environmental protection in Maryland, and in 2002 the General Assembly expanded the State's Critical Area to include the Atlantic Coastal Bays in Ocean City and Worcester County.

Recent events have created the need for the State to rededicate itself to the partnership with local governments and to emphasize education, enforcement and long-range planning.

- Court rulings in 2005 challenged the Commission's ability to effectively implement the Critical Area law by restricting the Commission's review authority regarding proposed amendments to local Critical Area programs. In the 2006 legislative session, the General Assembly unanimously enacted SB 751, directing that "the Commission shall ensure that...the purposes, policies, goals and provisions" of the Critical Area law and Criteria are applied in a uniform and consistent manner in the review of local program amendments.
- In May 2006 the University of Maryland's Environmental Law Clinic completed its study of local enforcement of the Critical Area law. Among its findings, the law school concluded that local jurisdictions do not have sufficient resources to 1) enforce the law properly against willful violators, and 2) educate landowners, developers and citizen groups on the specific requirements of the law.
- In 2006 the Commission's review of the proposed Blackwater Resort Communities project in Cambridge highlighted the significant public interest in large-scale development projects in the Critical Area. More than 140 people attended the Commission's public hearing on the proposal, and more than 6,000 commented by email. Following the Commission's official decision denying the project, more than 600 people sent emails thanking the Commission for its decision and the thoroughness of its review.

Additional large-scale project submittals are expected in 2007. For example, the Charles County Commissioners have submitted a growth allocation proposal to the Commission for a major redesign and intensification of the Swan Point project on the Potomac River. New development at Swan Point includes several hundred residences, a hotel, conference center and marina. The proposal has generated considerable public interest in Charles County. An important component of the project is a 400-acre mitigation requirement for impacts to the habitat of Forest Interior Dwelling Birds.

- The General Assembly's inclusion of the Atlantic Coastal Bays as part of Maryland's Critical Area in 2002 strengthened the State's commitment to the protection of tidal waters and the important habitats of adjacent shorelines. This expansion of Critical Area protections acknowledged the ecological significance of the Coastal Bays and the difficulty of balancing the demand for new homes and businesses in this area with the limited capability of the shoreline to absorb the expected development. Rapid growth in

Department of Budget and Management

December 1, 2006

Page 5 of 5

the Coastal Bays region has brought significant new responsibilities to the Commission, adding 15% to the workload with no corresponding staff increase for project reviews, coordination with local landowners, or travel time.

Thank you for your consideration of this proposal. I look forward to discussing it with you. Please let me know if you have questions or need additional information.

Robert L. Ehrlich, Jr.
Governor

Michael S. Steele
Lt. Governor



Martin G. Madden
Chairman

Ren Serey
Executive Director

**STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS**

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www.dnr.state.md.us/criticalarea/

August 4, 2006

Honorable Glenn L. Bramble
Dorchester County Office Building
501 Court Lane
Cambridge, Maryland 21613

Honorable Cleveland L. Rippons
City Hall
307 Gay Street
P.O. Box 255
Cambridge, Maryland 21613

Dear Council President Bramble and Mayor Rippons:

As you know, the Critical Area Commission is currently reviewing a growth allocation request for the Blackwater Resort Communities project submitted jointly by the Dorchester County Council and the Mayor and Commissioners of Cambridge.

On August 20, 2006 a Panel of Commission members conducted a public hearing on the proposal. Approximately 140 people attended the hearing, many of whom presented testimony. Written comments were accepted until July 28th and there now exists an extensive official public record for this matter.

Under the procedural requirements of the Critical Area Act, the Commission has 90 days to review and act upon a proposed amendment. The review period for the Blackwater Resort amendment began on June 14, 2006. Due to the volume of material in the public record, and the technical and scientific nature of many of the exhibits, the Panel has requested an additional 90-day period for completion of its review and action by the full Commission. The additional time period would extend until December 11, 2006.

I believe that an additional 90-day period will enable the Commission to ensure a thorough review of the issues before it and I greatly appreciate your consideration of this request. Please advise me of your decision at your earliest convenience. If you have

Honorable Glenn L. Bramble
Honorable Cleveland L. Rippons
August 4, 2006
Page 2

questions concerning this request, please contact me at (410) 260-3467, or Ren Serey, the Commission's Executive Director, at (410) 260-3462.

Sincerely,

A handwritten signature in black ink that reads "Martin G. Madden". The signature is written in a cursive style with a large initial "M".

Martin G. Madden
Chairman

Robert L. Ehrlich, Jr.
Governor

Michael S. Steele
Lt. Governor



Martin G. Madden
Chairman

Ren Serey
Executive Director

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www.dnr.state.md.us/criticalarea/

May 22, 2006

Honorable James Brochin
221 James Senate Office Building
Annapolis, Maryland 21401

Dear Senator Brochin:

Thank you for your letter of May 9, 2006 regarding the golf course at the Blackwater Resort Communities project in Cambridge. In your letter, you expressed concern that the design of the course and the application of chemicals could cause harm to local water quality and the Chesapeake Bay.

The Critical Area law requires that when land is developed as an Intensely Developed Area (IDA), pollutants resulting from present stormwater runoff must be reduced a minimum of 10% below existing levels. An additional protection in the case of golf course development is the required Water Quality Certification issued by the Maryland Department of the Environment (MDE). In order to obtain this certification, an Integrated Pest Management plan must address the types of fertilizers to be used on the course and their application rates. Further information on the specifications of an Integrated Pest Management plan may be obtained from Mr. Gary Setzer at MDE. Mr. Setzer is the Director of the Wetlands and Waterways Program and represents the Department on the Critical Area Commission. His contact information is:

Mr. Gary Setzer, Director
Wetlands and Waterways Program
Maryland Department of the Environment
1800 Washington Blvd.
Baltimore, MD 21230
(410) 537-3744

You also asked the Critical Area Commission to mandate that the design of the Blackwater Resort golf course meet the standards of the Commission's policy for golf courses in the Resource Conservation Area. Our policy provides guidance to the local jurisdictions concerning golf courses developed with or without growth allocation. Over

Honorable James Brochin

May 22, 2006

Page 2

the years, the Commission has approved four courses in the Critical Area. Three of these were incorporated into large residential and commercial projects which required deduction of growth allocation; the fourth was a stand-alone course that did not need growth allocation. The proposed golf course at the Blackwater Resort, as part of a larger project that includes a hotel and conference center, would, if approved, require growth allocation and be required to meet the standards for new development in the Intensely Developed Area. In addition to reducing pollutants from stormwater 10% below current levels, the IDA standards require that permeable areas are planted to the extent practical, and that all sensitive habitats are protected. Please be assured, however, that all golf courses require the establishment of a minimum 100-foot forested Buffer. Therefore, the Blackwater Resort project, if approved, would include the establishment of Buffers along the shoreline of the Little Blackwater River and on each side of the streams that run through the property to the river.

The forested Buffers required are modeled after the Department of Natural Resources' guidelines for riparian forests. These Buffers consist of three tiers of vegetation including a shrub layer, understory and canopy layers. The plants provide for nutrient uptake to help improve water quality, as well as a diversity of wildlife habitats.

I hope this information is helpful. If you have questions or need additional information, please contact me at (410) 260-3467 or Ren Serey at (410) 260-3462.

Sincerely,

A handwritten signature in cursive script, appearing to read "Martin G. Madden".

Martin G. Madden
Chairman

Robert L. Ehrlich, Jr.
Governor

Michael S. Steele
Lt. Governor



Martin G. Madden
Chairman

Ren Serey
Executive Director

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April 14, 2006

Honorable Frank White, President
Town Commissioners
Town of Princess Anne
30489 Broad Street
Princess Anne, Maryland 21853

Dear President White:

Thank you for your letter of April 11, 2006 providing information on the status of the Beckford Manor and St. Stephen's Corner subdivisions. You and the other Town Commissioners have taken important steps to assure that these, and future, projects are consistent with State law and the Town's local Critical Area Program.

I am encouraged that the Town has formally requested growth allocation for these projects from the Somerset County Commissioners. The joint hearing process that you propose for the Town Commissioners and the Planning Commission should help streamline the local approval process. And the new tracking procedures you have instituted for correspondence and project reviews will ensure that project-specific issues identified by plan reviewers will be addressed in a timely manner.

In light of the Town's actions, I believe it is appropriate for you to release those permits for Beckford Manor and St. Stephens Corner that you requested in your letter. Specifically, the permits for Beckford Manor are Occupancy Permits for the Tawes and McCready units. For St. Stephens Corner, the permits are Occupancy Permits for Lots 23, 24, and 25; and Building Permits for Lots 21 and 22 subject to the additional requirements you have instituted.

I appreciate the seriousness with which the Town has responded to these matters. I look forward to continuing to work with you as these projects progress through the approval process. If you have questions or need additional information, please contact me at (410) 260-3467 or Ren Serey at (410) 260-3462.

Sincerely,

A handwritten signature in black ink that reads "Martin G. Madden".

Martin G. Madden
Chairman

Robert L. Ehrlich, Jr.
Governor

Michael S. Steele
Lt. Governor



Martin G. Madden
Chairman

Ren Serey
Executive Director

**STATE OF MARYLAND
CRITICAL AREA COMMISSION
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www.dnr.state.md.us/criticalarea/

March 16, 2006

The Honorable Robert L. Flanagan, Secretary
Maryland Department of Transportation
P. O. Box 548
7201 Corporate Center Drive
Hanover, Maryland 21076

Dear Secretary Flanagan:

I am writing to express my sincere appreciation to you and the Department for providing assistance to the Critical Area Commission for the past eight months through the loan of Gary Green. As you are aware, the Commission had had three vacant positions for an extended period of time, and without assistance from your agency, I was concerned about the Commission's ability to continue to provide landowners and local governments with the level of service that is necessary and appropriate for the Commission to ensure effective implementation of the Critical Area Program.

Gary did an excellent job for the Commission, learning quickly and showing initiative with regard to researching and responding to technical questions. His positive attitude and willingness to perform any task made him a wonderful asset to the Commission. Gary's easygoing personality and thoughtfulness was greatly appreciated by all of the staff.

As you are aware, the success of the work of any State agency is largely a function of the employees of the agency and their commitment to providing outstanding customer service and professional work products. Thanks to the efforts of Gary Green, the Commission was able to continue to provide the services and perform the work that is essential to the success of the Critical Area Program.

Thank very much for your responsiveness to the Commission's request and the support of the Critical Area Program by you and your staff.

Sincerely,

A handwritten signature in black ink, appearing to read "Martin G. Madden".

Martin G. Madden
Chairman

cc: Mr. Darrell Sacks, SHA

Robert L. Ehrlich, Jr.
Governor

Michael S. Steele
Lt. Governor



Martin G. Madden
Chairman

Ren Serey
Executive Director

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January 12, 2006

Honorable Frank White
Town Commissioners
Town of Princess Anne
30489 Broad Street
Princess Anne, Maryland 21853

Dear President White and Town Commissioners:

I am writing to follow-up on the meeting we had on October 12, 2005 with Mr. Jay Parker, Robbie Wink, and Ed Baker. I left with the impression that the meeting was very productive and am aware through our Circuit Rider, Tracey Gordy, that several positive things have happened since the meeting.

Affirmative measures undertaken by the Town include:

- 1) Working diligently to resolve and close out several outstanding Critical Area violations in Hayman's Purchase subdivision;
- 2) Hiring a qualified professional to review stormwater management plans and work with the Critical Area staff on 10% Rule compliance;
- 3) Agreeing to deny building permit or occupancy permit requests for Beckford Manor and St. Stephen's Corner subdivisions until these subdivisions are brought into compliance; and,
- 4) Improving communication and coordination with the Critical Area Circuit Rider and Commission staff.

Although these actions are highly commendable, we still have two serious outstanding Critical Area violations that need to be addressed. These violations involve Beckford Manor and St. Stephen's Corner subdivisions. As we discussed with Town officials in October, these projects are in violation of the Town's Critical Area Ordinance and will need growth allocation in order to bring them into compliance.

Honorable Frank White
Town Commissioners
January 12, 2006
Page 2

It is my understanding that some progress has been made on St. Stephen's Corner, however Critical Area staff has yet to receive any submission for Beckford Manor. This is particularly troubling since this development has been in violation since March of 2004. The Town needs to take immediate action to ensure that this matter is moving towards compliance and needs to do so in a timely manner.

I want to thank you for your cooperation and let you know that I am encouraged by the positive response thus far to many of our concerns. Please let me hear from you soon regarding steps the Town has taken towards resolving the Beckford Manor and St. Stephen's violations.

Please feel free to contact me at (410) 260-3467 or Ren Serey at (410) 260-3462 if you have any questions or need further assistance.

Sincerely,



Martin G. Madden
Chairman

cc: Garland Hayward, Town Commissioner
Steve Goldston, Town Commissioner
Bob McCready, Town Commissioner
Don Price, Town Commissioner
Robbie Wink, Town of Princess Anne
Tracey Gordy, MDP
Marianne D. Mason, Assistant Attorney General