

CB 59-97 Tidewater Homes
Site Plan 97-WL-0524

SCHALLER & GORSKI, L.L.P.

ATTORNEYS AT LAW

182 DUKE OF GLOUCESTER STREET

ANNAPOLIS, MARYLAND 21401

**ANNAPOLIS 410-268-2209
BALTIMORE 410-269-0204
FACSIMILE 410-268-4149**

June 9, 2003

Bob Tabisz
Maryland Department of the Environment
1800 Washington Blvd.
Baltimore, Maryland 21230

RECEIVED

JUN 12 2003

TIDAL WETLANDS DIVISION
WATER MANAGEMENT ADMIN., MDE

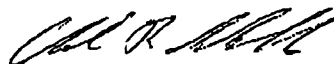
Re: Horizons On The Bay
Wetlands License No. 03-WL-0943

Dear Mr. Tabisz:

This office represents Ken Muller in connection with the above pier application. As we discussed the other day, Mr. Muller is not planning at this time to build the "boardwalk" that was shown on the plans dated November 20, 2002. Mr. Muller is also not pursuing at this time the covered structure at the end of the pier. It is my understanding that clarifying these two items, MDE can continue to process the application and issue the license.

Please call me if you have any questions.

Very truly yours,



Charles R. Schaller

cc: Kenneth Muller

File

May 20, 2003

Mr. Wes Mathau
Shoreline Design, LLC
1510 Arundel Road
Edgewater, MD 21037

RE: Environmental Review for Ken Muller, Horizons on the Bay, Boardwalk and Pier Project, North Beach, Calvert County, Maryland.

Dear Mr. Mathau:

The Wildlife and Heritage Service has no records for Federal or State rare, threatened or endangered plants or animals within this project site. This statement should not be interpreted as meaning that no rare, threatened or endangered species are present. Such species could be present but have not been documented because an adequate survey has not been conducted or because survey results have not been reported to us.

However, the open waters that are adjacent to or part of the site are known historic waterfowl concentration areas. If there is construction of any water-dependent facilities, it should not occur during the November 15 to April 30 wintering period. For technical assistance, please contact Mr. Larry Hindman, Waterfowl Project Manager, at (410) 827-8612.

Sincerely,

Lori A. Byrne
Environmental Review Coordinator,
Wildlife and Heritage Service
Maryland Department of Natural Resources

ER# 2003.0688.ct
Cc: L. Hindman, DNR
R. Esslinger, CAC
L. Gallatin, USACOE

Judge John C. North, II
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

January 10, 2003

William R. Watson
Town of Chesapeake Beach
8200 Bayside Road
Chesapeake Beach, Maryland 20732

Re: Horizons on the Bay

Dear Mr. Watson:

Based on information from the Department of the Environment Joint Public Notice, we have been made aware that Ken Muller has applied for a tidal wetlands permit for improvements to the shoreline at Horizons on the Bay located in Chesapeake Beach. We understand that the proposed improvements include a pier and a covered platform. The site plans provided for the Joint Public Notice also show an 8-foot by 500-foot boardwalk landward of the existing stone revetment. Based on this information and our records, we have the following comments regarding the current proposal.

- 1) The Commission approved the Buffer Exemption Area (BEA) designation for the Horizons on the Bay project (for the Tidewater Homes property) on May 6, 1998. One of the five conditions of the Commission's approval was that development on the site would be in accordance with the final conceptual site plan prepared by Tidewater Homes, which the Commission received on April 16, 1998. Subsequent revisions to the final conceptual site plan include a boardwalk located parallel to the shoreline. In our letter of April 14, 2000 (see attached), Commission staff conveyed concerns of the Commission panel regarding the addition of a boardwalk to the revised site plan for Horizons on the Bay. Since the waterfront walkway was not a part of the plans approved by the Commission on May 6, 1998, a Critical Area variance would be needed if the property owner wishes to proceed with the current proposal.
- 2) The Commission's approval of the Horizons on the Bay development included the condition that "the extent of the parcel shoreward of the new development shall be required to remain, or shall be established and maintained, in natural vegetation". (Refer to condition #3 in the attached letter of May 13, 1998.) The location of the proposed boardwalk is within the area, shoreward of the Horizons on the Bay development, to be maintained in natural vegetation. Therefore, the proposed structure would not be permitted, except by variance.

Branch Office: 31 Creamery Lane, Easton, MD 21601
(410) 822-9047 Fax: (410) 820-5093

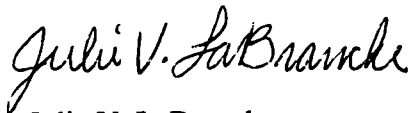
TTY For The Deaf:
Annapolis: (410) 974- 2609 D.C. Metro: (301) 586-0450

William R. Watson
Horizons on the Bay
January 10, 2003
Page 2

- 3) As required by the Chesapeake Beach Zoning Ordinance (Article IV, Section 409(C)), new development in Buffer Exempt Areas shall minimize the shoreward extent of impervious surfaces insofar as possible, taking into consideration existing Town yard setback requirements (15 feet, in this case). In no case may impervious surfaces be extended shoreward of any setback line as defined by existing structures on adjacent lots or parcels. It appears that the proposed walkway extends shoreward of the setbacks established by development on adjacent lots or parcels. To the south, structures in the Baycrest subdivision (Tax Map 8, Block 10) are located approximately 25 feet from the shoreline. The BEA provisions will need to be addressed by the applicant.

We request that the Town forward to our office any requests for authorizations or variances associated with the proposed development at Horizons on the Bay. Please contact me at (410) 260-3475 if you have any questions.

Sincerely,



Julie V. LaBranche
Natural Resource Planner

cc: Gary Setzer (Department of the Environment)

CB 59-97

Judge John C. North, II
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

January 10, 2003

Robert Tabisz
Wetlands and Waterways Program
Maryland Department of the Environment
1800 Washington Blvd.
Baltimore, Maryland 21230

Re: Project Number 200361080/03-WL-0943 Kenneth Muller-Horizons on the Bay

Dear Mr. Tabisz:

Based on information from the Department of the Environment Joint Public Notice, we have been made aware that Ken Muller has applied for a tidal wetlands permit for improvements to the shoreline at Horizons on the Bay in the Town of Chesapeake Beach. We understand that the proposed improvements include a pier and a covered platform. The site plans provided for the Joint Public Notice also show an 8-foot by 500-foot walkway, landward of the existing stone revetment and within the 100-foot Critical Area Buffer. Based on this information and our records for this project, we have the following comments regarding the current proposal.

- 1) A condition of the Commission's approval for Horizons on the Bay was that development on the site would be in accordance with the final conceptual site plan prepared by Tidewater Homes. Since the waterfront walkway was not a part of the final conceptual site plan approved by the Commission a Critical Area variance is needed if the property owner wishes to proceed with the current proposal.
- 2) The Commission's approval also included the condition that "the extent of the parcel shoreward of the new development shall be required to remain, or shall be established and maintained, in natural vegetation". The walkway is proposed within this area (shoreward of the Horizons on the Bay development), which is to be maintained in natural vegetation. Therefore, the proposed structure would not be permitted, except by variance.

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(410) 822-9047 Fax: (410) 820-5093

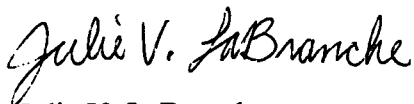
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Robert Tabisz
Project Number: 200361080/03-WL-0943
Kenneth Muller-Horizons on the Bay
January 10, 2003
Page 2

- 3) As required by the Chesapeake Beach Zoning Ordinance (Article IV, Section 409(C)), new development in Buffer Exempt Areas shall minimize the shoreward extent of impervious surfaces insofar as possible, taking into consideration existing Town yard setback requirements (15 feet, in this case). In no case may impervious surfaces be extended shoreward of any setback line as defined by existing structures on adjacent lots or parcels. It appears that the proposed walkway may not comply with the provisions for development in a Buffer Exempt Area.

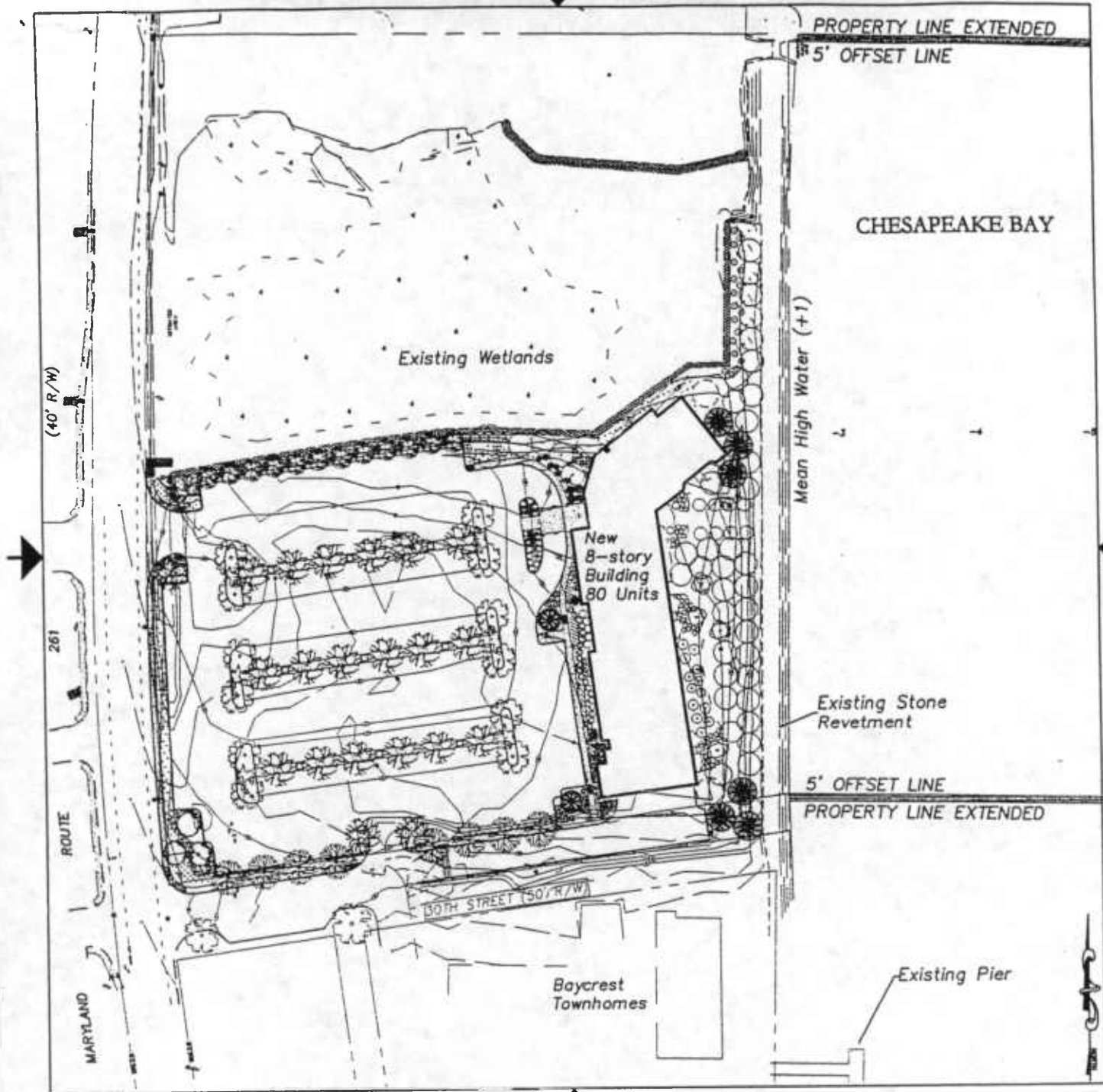
We have requested that the Town forward to our office any requests for authorizations or variances associated with the proposed development at Horizons on the Bay. We are not aware that the applicant has applied for or received a variance for the proposed walkway. Please contact me at (410) 260-3475 if you have any questions.

Sincerely,



Julie V. LaBranche
Natural Resource Planner

CB 59-97 MDE



NOTES:

- 1) Property lines and topographic information shown hereon are based on a field run completed by Collison, Oliff & Associates, 8/1/96. Location and verification of existing features is based on aerial photographs, dated 2002.
- 2) Channelward extension of property lines is perpendicular to shoreline.
- 3) Soundings are to MLW and are based on field observations.
- 4) Property lines shown hereon have been taken from available deeds and plats. This is not a boundary survey and was prepared without the benefit of a title search.

SHORELINE DESIGN LLC PLANNING, ENGINEERING & DESIGN 1510 Arundel Road Edgewater, MD 21037 Principal: Wes Mathew Tel./Fax: 410-956-4662 shorelinedesign@comcast.net MHIC#: 75879		TITLE HORIZONS ON THE BAY - Existing Conditions	
		OWNER Kenneth Muller 9845 Sea Maid Court North Beach, MD 20714	ZONING R2 LOT SIZE 5.37 AC TAX I.D. 03 503 2946 3200 TAX I.D. 301-855-6666
		WATERBODY CHESAPEAKE BAY	SCALE 1" = 100'
		DATE 11/20/2002	SHEET 2 of 10

03-WL-0943

200361080

REVDATE:

Judge John C. North, II
Chairman



Ren Serey
Executive Director

STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREA COMMISSION

1804 West Street, Suite 100, Annapolis, Maryland 21401
(410) 260-3460 Fax: (410) 974-5338

April 24, 2002

Mr. William R. Watson
Town of Chesapeake Beach
8200 Bayside Road
P O Box 400
Chesapeake Beach, Maryland 20732

Re: Horizons on the Bay
Buffer Exemption Area Mitigation

Dear Mr. Watson:

I have reviewed and discussed with Mary Owens the proposal in your January 8, 2002 letter to use the Richfield Station site as a mitigation planting site. This site is acceptable if the adjacent forest is protected from clearing and if an easement permanently protecting the mitigation is put in place. We concur with your recommendation that a sketch and specifications be put together for our approval to describe the affected area and to ensure natural regeneration.

I have also reviewed the March 21, 2002 Collinson, Oliff & Associates, Inc. revised Landscape Plan that identifies the BEA plantings on site. The plantings proposed are acceptable.

The flood gate agreement has been approved and signed by MDE, therefore this last outstanding issue has been addressed.

Thank you for your assistance in closing out this project.

Sincerely,

A handwritten signature in cursive script, appearing to read "Regina A. Esslinger".

Regina A. Esslinger, Chief
Project Evaluation Division
RAE/jjd

cc: Mr. Rick Ayella, MDE
Mr. Ren Serey
Ms. Mary Owens

Branch Office: 31 Creamery Lane, Easton, MD 21601
(410) 822-9047 Fax: (410) 820-5093

TTY FOR DEAF ANNAPOLIS-974-2609 D.C. METRO-586-0450

COPY

Item 3b Impact Areas Replanting Requirements Impervious Surfaces In BEA

BEA (bayfront, east side of site)	14,336 sq ft
BEA (mitigated area, north side of site)	11,034 sq ft
Total	<u>25,370 sq ft</u>

Plantings of area on a 2:1 basis: **50,740 sq ft**

Plantings shown on 12-21-01 drawings:

Trees	30
Shrubs	414

Planting calculation rates:

1 tree & 3 shrubs =	400 sq ft
1 shrub =	50 sq ft

<i>description</i>	<i>units</i>	<i>rate</i>	<i>total</i>
tree & 3 shrubs	30	400	12,000 sq ft
remaining shrubs	324	50	16,200 sq ft
Total Provided			<u>28,200 sq ft</u>

Additional offsite planting area required:	22,540 sq ft
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sq ft

KEU
12/21/01
1-3536

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APR 28 2002

Flood Gate Agreement

CHESAPEAKE BAY
CRITICAL AREA COMMISSION

This Flood Gate Agreement (hereinafter "Agreement") is entered into this 19 day of April, 2002, by and between Chesapeake Beach, Maryland (hereinafter "Chesapeake Beach"), a municipal corporation of the State of Maryland, and the Maryland Department of the Environment, an agency of the State of Maryland.

Recitals

WHEREAS, in 1987, Chesapeake Beach constructed a Flood Gate Structure (hereinafter the "Flood Gate") at a point where an unnamed tidal basin and the open waters of the Chesapeake Bay meet. The location is approximately 500' south of the intersection of Maryland Route 261 and 31st Street and 450' east of Route 261, in Chesapeake Beach, Maryland. The purpose of the Flood Gate was to give the Town the ability to seal off a low area of residential and commercial structures from periodic flooding caused by high tidal conditions in the Bay. The area protected by the Flood Gate is the vicinity of Maryland Route 261 and 31st Street where surface grades are as low as elevation 3.0 ft. Several times a year the tidal elevation in the Bay raises to between elevation 4.0 ft. and 5.0 ft., or higher, causing the flooding of the area, including the roadway for Maryland Route 261. When the Route 261 roadway is flooded, the State closes the road and traffic must detour around the area for a distance of about 5 miles; and

WHEREAS, the Flood Gate, which was constructed with funds from the State Flood Management Program, State Highway Administration and the Town, has allowed the Town to significantly reduce the amount of periodic tidal flooding in the low area near 31st Street; and

WHEREAS, the Flood Gate is a 6' wide by 8' high cast iron sluice gate, incorporated into a concrete structure that was built as part of the stone revetment type seawall that separates the open bay from uplands in this area. The bottom lip of the sluice gate is at elevation -2.0 ft. and the top of the 8' opening is at elevation +6.0 ft. The normal tide range in this area is between elevation 0.0 ft. and +1.1 ft.; and

WHEREAS, the Flood Gate was constructed under a U.S. Army Corps of Engineers Permit issued on December 30, 1986 and a State of Maryland Board of Public Works Wetland License dated October 8, 1986. Both the USACOE permit and the State Wetland License contained the following condition:

"The flood gate shall be maintained in the open position whenever the tide elevation is less than 2 ft. above mean low water. The 2 ft. elevation shall be clearly depicted on a fixed portion of the gate."

WHEREAS, Chesapeake Beach, as the operator of the Flood Gate, has an existing Operating Plan for the Flood Gate. In order to operate the Flood Gate in a manner that provides protection from tidal flooding, it has been necessary to open and close the gate on a periodic basis. Experience gained from the 13 years of Flood Gate operation since 1987 has shown that it is often difficult to

predict the near term tidal and climatic conditions and equate them to an action to open or close the Flood Gate. The best experience from a flood protection standpoint has shown that it is best to keep the Flood Gate in a partially open position (about 6" above the bottom of the opening) and be prepared to fully close or open it when there are pending changes in the tidal or climatic conditions that will impact flooding. Flooding can also occur if stream flow from upland areas is increased due to a storm event over the drainage area (about 100 acres) behind the Flood Gate. If this increased stream flow cannot flow into the open Bay because of either high tidal conditions or the Flood Gate is partially or fully closed, it becomes trapped and floods the low area. If tides are normal, the operator must keep the Flood Gate open during rain storms in order to keep the low areas from flooding; and

WHEREAS, in conjunction with Federal and State permitting activities for the Horizons on the Bay Project, which is an 80 unit apartment building located on a parcel just to the south of the Flood Gate, the Town has been asked to develop a new Operational Plan for the Flood Gate and to place this plan into an agreement with the permitting agencies which have jurisdiction over the subject matter. The purpose of this Plan is to increase the amount of tidal flushing that occurs in the tidal basin area on the west side of the Flood Gate. Increased tidal flushing is desired to better facilitate plant and animal aquatic resources in the tidal basin. Tidal flushing can be improved by increasing the amount of time the gate is open and/or raising the gate to a higher position during the periods it is open.

NOW, THEREFORE, in the interest of trying to achieve better tidal flushing in the basin area behind the Flood Gate, which all parties agree shall constitute the consideration for this Agreement, the parties agree that the following changes will be made in the operation of the sluice gate, hereinbefore identified as the Flood Gate:

1. The normal position of the Flood Gate will be to raise the bottom edge of the sluice gate to its maximum height. The normal position will be maintained at all times unless a flooding condition of the surrounding properties arises. Upon the occurrence of a flooding condition, Chesapeake Beach shall lower the Flood Gate to prevent further flooding or to abate current flooding, as necessary. Upon the termination of the flooding condition, Chesapeake Beach shall raise the Flood Gate to its normal position (fully open) within 24 hours of the termination of the flooding condition.
2. For purposes of this Agreement, a "flooding condition" shall mean the occurrence of standing water in areas of the surrounding properties, which hinders pedestrian or vehicular movement on or across the surrounding properties, including but not limited to Maryland Route 261.

(Signature page follows)

Witness the hand and seals of the parties, intending to bind themselves to the terms and conditions hereof, the day and year hereinabove written.

Witness:

Chesapeake Beach, Maryland

M Jenkins

Gerald W. Donovan (SEAL)
By: Gerald W. Donovan, Mayor

Approved as to form and legal
sufficiency:

[Signature]
Town Attorney

Maryland Department of the Environment,
State of Maryland

[Signature]

Mary V. Setzer (SEAL)
By:

Approved as to form and legal
sufficiency:

[Signature]



OFFICE OF THE MAYOR AND TOWN COUNCIL

March 29, 2002

Mrs. Mary R. Owens, Chief
Program Implementation Division
Chesapeake Bay Critical Area Commission
1804 West Street, Suite 100
Annapolis, MD. 21401

RECEIVED

APR 2 2002

CHESAPEAKE BAY
CRITICAL AREA COMMISSION

RE: Horizons on the Bay
Buffer Exemption Area Mitigation

Dear Mary,

Based upon our phone conversation on Wednesday March 27, 2002, it is my understanding that all issues regarding the Horizons on-the-Bay have now been resolved. Also, I understand that you have still not received a fully executed copy of the Flood Gate Agreement, even though Mr. Ayella has e-mailed you that the agreement is acceptable.

It is my understanding that the Flood Gate Agreement was an issue which was desired to be resolved as a part of gaining approval for the Horizons project. It is also my understanding that the two had no other connection. The Town has made a good faith effort, for their part, they have executed the agreement and forwarded it to the appropriate parties for subsequent actions. It has now been over two weeks since the Town forwarded the agreement.

Is there anything you can do to expedite your approval, in as much as the Flood Gate appears not to have any valid connection to the Horizons approval?

I trust this will bring the mitigation needs to a successful resolution. Should you have any questions or additional needs, please feel free to call me.

Yours truly,

William R. Watson, Planning & Zoning Administrator

cc Eric Blitz
Mayor Gerald Donovan
Tidewater Homes, Inc.

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OFFICE OF THE MAYOR AND TOWN COUNCIL

RECEIVED

January 30, 2002

Chesapeake Bay Critical Area Commission
Mrs. Mary R. Owens, Chief
Program Implementation Division
1804 West Street, Suite 100
Annapolis, Maryland 21401

FEB 4 2002

CHESAPEAKE BAY
CRITICAL AREA COMMISSION

RE: Horizons on-the-Bay

Dear Mary,

Just a brief note to re-cap our phone conversation today regarding the on-going review of the above project.

You indicated that the proposed mitigation site located in Richfield Station was an acceptable site for the mitigation needs of the Horizons project. Additionally, you indicated that there were still some plant selection issues, in that there were some species proposed which were NOT native species. Lastly, you indicated that you were awaiting a response from Mr. Rick Ayella regarding the Flood Gate operation agreement the Town has offered.

Please notify me if this is NOT in accordance with your understanding. Thank you for your continued diligence on this important project.

Yours truly,

Bill

William R. Watson, Planning & Zoning Administrator

cc: Ken Muller
Mayor Donovan
Keith Ulrich

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8200 BAYSIDE ROAD, P.O. BOX 400, CHESAPEAKE BEACH, MARYLAND 20732

(410)257-2230 • (301)855-8398

WEBB & BLITZ, L.L.C.
ATTORNEYS AT LAW
SUITE 506, HEAVER PLAZA
1301 YORK ROAD
LUTHERVILLE, MARYLAND 21093

THOMAS E. WEBB
ERIC J. BLITZ

OF COUNSEL
GERALD S. KLEIN

KATIE A. CLARK, PARALEGAL

TELEPHONE
(410) 321-1896

FAX. NO.
(410) 296-3054

January 21, 2002

Richard J. Ayella
Chief, Tidal Wetlands Division
Maryland Department of the Environment
2500 Broening Highway
Baltimore, Maryland 21224

Re: Chesapeake Beach, Maryland; Flood Gate Agreement

Dear Mr. Ayella:

I had hoped to discuss the pending Flood Gate Agreement by phone, but can explain the revised agreement in a letter instead.

I have enclosed a revised version of the Flood Gate Agreement. As you can see, I have removed the conditions previously proposed and replaced them with a very straightforward operation. The flood gate will remain in the maximum open position at all times, absent flooding. Upon flooding, the flood gate will be closed to the extent necessary to prevent further flooding or abate current flooding, and shall be returned to the fully open position within 24 hours of the termination of the flooding condition.

While this prevents the Town from preventing flooding, it removes all necessity for measuring meteorological conditions necessary to predict when a possible flood condition may arise. The simple fact is that the Town does not have the resources to regularly monitor weather conditions to obtain the objective meteorological information you had requested be used for predicting flood conditions. The Town had considered common sense as the solution, which admittedly is subjective. Rather than labor over the methodology for predicting flooding, the Town would rather simply wait until a flood condition arises and then raise the tide gate.

As to the automating the operation of the flood gate, if you know of any State funding to upgrade the flood gate to provide such automation, the Town would be interested in exploring that option. Absent state funding, the Town is not in a position to expend further funds on the flood gate.

Please let me know if the revised Flood Gate Agreement is satisfactory. The Mayor is very interested in having this issue resolved as soon as possible.

RECEIVED
JAN 22 2002
CHESAPEAKE BAY
CRITICAL AREA COMMISSION

If you have any questions or comments about the proposed agreement, please feel free to give me a call.

Very truly yours,

A handwritten signature in black ink, appearing to read "Eric J. Blitz". The signature is stylized with a large, looped initial "E" and a long, sweeping underline.

ERIC J. BLITZ

cc: Gerald W. Donovan, Mayor
Members, Town Council
Randy Barrett, Town Engineer
Mary Owens, CAC



January 8, 2002

Mrs. Mary R. Owens, Chief
Program Implementation Division
Chesapeake Bay Critical Area Commission
1804 West Street, Suite 100
Annapolis, MD. 21401

RECEIVED

JAN 8 2002

CHESAPEAKE BAY
CRITICAL AREA COMMISSION

RE: Horizons on the Bay
Buffer Exemption Area Mitigation

Dear Mary,

Enclosed, please find the following:

- Red-lined copy of the Preliminary Plan for Block "K" - Richfield Station
- Red-lined print of a plot of part of the Town Zoning Map, showing the same site in Richfield Station
- Copy of the Collinson, Oliff & Associates, Inc. (COA) worksheet setting out their replanting requirements for the above-referenced project.
- Set of the 12/21/01 revisions to the Site Plan.

Mike Rodevick has shared, with me, your letter of November 28, 2001 regarding Mitigation Planting Sites in Chesapeake Beach. Area # 5 of that letter suggests that the Richfield Station location is acceptable. This site is NOT located within the Critical Area, as evidenced by the extract of the Town Zoning Map. However this is an excellent location for buffering a wetland, which drains to the Critical Area.

Based upon the COA worksheet, 22,540 square feet of additional offsite plantings are required after their on-site areas are planted. The Richfield Station site contains 0.60 acres \pm or 26,100 square feet \pm . I have reviewed the record plat showing the adjacent portion of the subdivision. Based on that, the original developer has retained ownership of this area and made no apparent encumbrances which conflict with the use of this area for mitigation.

I recommend the following:

- That this site be considered a sufficient mitigation site for the required plantings for the Horizons on the Bay Buffer Exempt Area plantings not able to be achieved on-site.

Mrs. Mary R. Owens, Chief
Horizons on the Bay
Buffer Exemption Area Mitigation
Page 2

- That I direct Collinson, Oliff & Associates, Inc., on behalf of the developer, prepare a sketch and specifications for your approval showing the affected area, the wetlands and wetland buffer, and a narrative as to protecting the area to allow natural regeneration. The narrative shall include a description of the necessary actions to monitor and maintain the site to ensure a successful natural regeneration.

I trust this will bring the mitigation needs to a successful resolution. Should you have any questions or additional needs, please feel free to call me.

Yours truly,



William R. Watson, Planning & Zoning Administrator

enc: Listed above

cc w/o enc. Eric Blitz
Mayor Gerald Donovan
Keith Ulrich
Tidewater Homes, Inc.

59-97

SCHALLER & GORSKI, L.L.P.

ATTORNEYS AT LAW

182 DUKE OF GLOUCESTER STREET
ANNAPOLIS, MARYLAND 21401

ANNAPOLIS 410-268-2209
BALTIMORE 410-269-0204
FACSIMILE 410-268-4149

November 28, 2001

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NOV 30 2001
CHESAPEAKE BAY
CRITICAL AREA COMMISSION

Ren Serey, Executive Director
State of Maryland
Chesapeake Bay Critical Area Commission
1804 West Street
Suite 100
Annapolis, MD 21401

Re: Tidewater Homes – Chesapeake Beach

Dear Ren:

This letter follows our meeting on November 14, 2001 regarding a few remaining issues with respect to Tidewater's project in the Town of Chesapeake Beach. In attendance were Mary Owens, Keith Ulrich, you and myself.

The primary objective of the meeting was to resolve the lingering issue of mitigation planting on-site. Mr. Ulrich previously presented a September 25, 2001 site plan depicting the proposed on-site mitigation. However, the Commission objected to the additional on-site buffer plantings because it contended Tidewater was receiving credit for planting in the buffer which it is already obligated to do.¹ Mr. Ulrich agreed to revise the plan removing the additional plantings from the buffer area. After some discussion, it was agreed that in calculating the square footage for planting, one tree and three shrubs will equal 400 square feet and one shrub will equal 50 square feet. It was further agreed that Tidewater can receive credit for planting on-site outside the buffer as long as the on-site areas are not used for bio-retention.

In an effort to satisfy the mitigation requirement, Mr. Ulrich estimated that approximately 7,000-8,000 square feet of planting can be located on-site leaving approximately 45,000 square feet for off-site planting. The Commission agreed that the following areas would be acceptable for off-site mitigation: Bayview Hills, Richfield Station, Fishing Creek Dredge Spoil area, Town Hall and the area where University of Maryland stores its boats. Tidewater will investigate whether the property owners will permit mitigation on their properties. To the extent Tidewater is unable to secure authorization for mitigation plantings on these properties or these areas are inappropriate,

¹ The Commission's May 6, 1998 approval requires mitigation on a 2:1 ratio resulting in approximately 52,000 square feet of mitigation for impact to the site.

Ren Serey, Executive Director
November 28, 2001
Page 2

the Commission agreed to reevaluate whether additional plantings can be performed on-site in the buffer.

Finally, Tidewater suggested that if off-site mitigation is not feasible then it would pay a fee in-lieu as required under the Town's approved Critical Area program. The Commission, while not outright rejecting this option, voiced concern on the basis that the Commission's approval did not contemplate payment of a fee in-lieu. Moreover, the Commission asserts the Town's program is too antiquated and vague to be useful in this case. Tidewater disagrees, but will not press this issue at this time.

Mr. Ulrich will forward you a revised plan. If the above is incorrect or you have questions, please let me know.

Very truly yours,



Charles R. Schaller

cc: Ken Muller
Keith Ulrich

CB59-97

RECEIVED

NOV 30 2001

CHESAPEAKE BAY
CRITICAL AREA COMMISSION
TELEPHONE
(410) 321-1896

WEBB & BLITZ, L.L.C.
ATTORNEYS AT LAW
SUITE 506, HEAVER PLAZA
1301 YORK ROAD
LUTHERVILLE, MARYLAND 21093

THOMAS E. WEBB
ERIC J. BLITZ

OF COUNSEL
GERALD S. KLEIN

FAX NO.
(410) 296-3054

KATIE A. CLARK, PARALEGAL

November 28, 2001

Rick Ayella
Maryland Department of the Environment
Tidal Wetlands Division
2500 Broening Highway
Baltimore, Maryland 21224

Re: Chesapeake Beach, Maryland; Flood Gate Agreement

Dear Mr. Ayella:

I am the town attorney for Chesapeake Beach, Maryland and in that capacity I prepared a draft of a Flood Gate Agreement which was submitted to you for consideration in July by the Town's engineer, John Hofmann. As Mr. Hofmann is no longer acting as the Town's engineer, I am following up with you on the status of your review of the draft Flood Gate Agreement.

The Agreement contemplates the town and MDE as the parties. The Agreement mandates the method of operation of a Flood Gate constructed under a U.S. Army Corps of Engineers Permit and Maryland Public Wetland license. During a proposal to amend the Town's local Critical Area Protection Program (needed to accommodate the development of the adjacent property by a private developer) the Critical Area Commission required as a condition of their approval, that an agreement be entered into by the Town and MDE to control the operation of the Tidegate.

Therefore, it is incumbent upon the Town to complete this process so the Town can let the developer proceed (assuming all other conditions of the approval have been met). I have enclosed a copy of the proposed agreement so you aren't required to locate the first draft. No changes have been made since the first draft.

I would greatly appreciate your attention to this matter so that I can place a final version of the contract before the Mayor and Town Council for approval in the near term. The developer appears to be close to meeting the other conditions of the Critical Area Commission approval, if they have in fact not already been met. The developer's representatives are working with Mary Owens of the Critical Area Commission to finalize those remaining issues and I don't want the necessity of a Flood Gate Agreement to further delay this project should those other issues be resolved.

If you have any questions or comments about the proposed agreement, please feel free to give me a call.

Very truly yours,

A handwritten signature in black ink, appearing to read "Eric J. Blitz". The signature is stylized with a large, looped initial "E" and a long, sweeping underline.

ERIC J. BLITZ

cc: Gerald W. Donovan, Mayor
Members, Town Council
Randy Barrett, Town Engineer
Mary Owens, CAC
Charles Schaller, Esquire

Mary Reader



Judge John C. North, II
Chairman

Ren Serey
Executive Director

STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREA COMMISSION

1804 West Street, Suite 100, Annapolis, Maryland 21401
(410) 260-3460 Fax: (410) 974-5338

November 28, 2001

Mr. Mike Rodevik
R. A. Barrett and Associates
3140 West Ward Road
Dunkirk, Maryland 20714

RE: Mitigation Planting Sites in Chesapeake Beach

Dear Mr. Rodevik:

I am writing to follow up on our field visits where we evaluated several sites for their potential as mitigation planting sites for development projects in the Critical Area in Chesapeake Beach. At this time, the Town is attempting to identify 41,320 square feet of planting areas as required by the Critical Area Commission as a condition of approval of the Chesapeake Beach Sidewalk Improvement Project that was approved by the Commission in February 1998. The following site inventory and evaluation reflects our discussions in the field and my subsequent conversations with Mr. Ren Serey, Executive Director of the Critical Area Commission.

Area #1: Kellam's Field Recreational Complex

Description:

The Town has recently completed the redevelopment of Kellam's Field Recreational Complex. There is extensive landscaping associated with the project. Some of the plantings are in place, and additional plantings will be installed in the next few months. This site is an acceptable mitigation site and the square footage credit for each large tree, understory tree, and shrub can be calculated based on the credit system used by Calvert County as long as native species are used. The Town should ensure that large trees are planted in areas where there is adequate space for them to reach a natural mature size. (Generally, large trees planted in parking lot islands cannot receive the full 400 square feet of credit.) All of the plantings on this site can be used to satisfy the outstanding planting requirement and all plantings on the site that are located within the Buffer and expanded Buffer will be considered Buffer mitigation.

Required Action:

The Town engineer shall provide complete landscape plans with plant lists for the Kellam's Field Recreational Complex Project to the Critical Area Commission for review. The Critical Area Buffer and expanded Buffer should be shown on the plans. Some non-native species shown on

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Mr. Rodevik
November 28, 2001
Page 2

the preliminary plans will need to be replaced with native species. Mitigation credit will be calculated by Commission staff based on the number of trees and shrubs planted using the Calvert County system.

Area #2: Fishing Creek Landings Marina

Description:

This site is part of a dredge material disposal area used by the U.S. Army Corps of Engineers (ACOE) for the dredging of Fishing Creek. Based on our conversation, it is my understanding that this site is no longer used for this purpose and is fully stabilized and dewatered. The area consists of several dikes and shallow basins and is generally vegetated with phragmites. The mitigation proposal on this site would involve the eradication of the phragmites and the subsequent planting of salt tolerant shrubs and possibly trees. This site appears to be an acceptable mitigation site. Mitigation credit would be based on the area of the site where phragmites was eradicated and shrubs, trees, and possibly marsh grasses were established. Mitigation planting on this site would be considered Buffer mitigation because it is generally within 100-feet of tidal wetlands.

Required Action:

The Town engineer shall provide written documentation from the ACOE that this site is not proposed for future use as a dredge material disposal area, and that planting in the area would be acceptable. A phragmites eradication plan and planting plan shall be developed for the area and the Town engineer shall submit the plans to the Critical Area Commission for review. The Critical Area Buffer and expanded Buffer should be shown on the plans. Mitigation credit will be calculated by Commission staff based on the area of the site.

Area #3: Bay View Hills Boat Storage Area

Description:

This site is technically "excluded from the Critical Area" because it is located at least 1,000 feet from open water and is separated by an area of wetlands determined to be adequate to protect tidal water quality and habitat. The exclusion was officially approved by the Commission and is reflected on the Town's Critical Area maps. The proposed planting site involves an existing boat storage area located at the end of Bay View Drive. The area surrounding the boat storage area is basically a meadow with some nominal landscaping. This area could be planted with native trees and shrubs or could be allowed to naturally regenerate. If the area is allowed to fully or partially naturally regenerate, then appropriate fencing and/or signage will be necessary to ensure that mowing of the area is discontinued permanently. Mitigation planting on this site would be considered Buffer mitigation because the area is within 100-feet of the edge of tidal wetlands even though it has been "excluded" from the Critical Area.

Mr. Rodevik
November 28, 2001
Page 3

Required Action:

If the area is proposed to be planted with trees and shrubs, the town engineer shall provide complete landscape plans with plant lists for the Bay View Hills Boat Storage Area to the Critical Area Commission for review. If the area is proposed to be planted, mitigation credit will be calculated by Commission staff based on the Calvert County system. If the area is proposed to be allowed to naturally regenerate, the Town engineer shall provide a plan delineating the area and describing how the natural regeneration would be managed and monitored to ensure success. Mitigation credit will be calculated by Commission staff based on the area of the site. Commission staff is available to assist you in developing an appropriate plan.

Area #4: Bay View Hills Streetscaping

Description:

This site is also technically "excluded from the Critical Area" as outlined above. The proposal involves the planting of street trees and shrubs throughout the subdivision. Currently the streets and sidewalks are not landscaped and are stabilized with grass. This proposal is the least desirable of all those reviewed because it appears that the isolated plantings in an area that is not a public use area (like Kellam's Field Recreational Complex) will make only a nominal contribution to enhancing water quality and habitat within the Critical Area. It is my understanding that the planting is required to meet the Town's landscaping requirements and is primarily for aesthetic purposes. This site may be acceptable to meet the requirements of the Chesapeake Beach Sidewalk Improvement Project if the planting on the other sites is not sufficient to meet the mitigation requirement.

Required Action:

After documenting the need to use this site because portions of the mitigation requirement cannot be satisfied on the other sites, the Town engineer shall provide complete landscape plans with plant lists for this site. Mitigation credit will be calculated by Commission staff based on the number of trees and shrubs planted using the Calvert County system.

Area #5: Richfield Station

Description:

This site is an open field area that used to be forested, but was cleared and graded to construct streets and stormwater management measures in the Richfield Station Project. The site is not located within the Critical Area; however, it is not clear whether the site was "excluded from the Critical Area" like Bay View Hills or if it is located beyond 1,000 feet of tidal water and tidal wetlands. The open field area is proposed to be allowed to naturally regenerate.

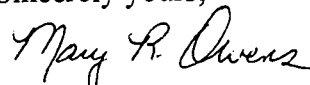
Mr. Rodevik
November 28, 2001
Page 4

Required Action:

The town engineer shall provide a site plan showing the open field area within the Richfield Station Subdivision and showing the limit of nearby tidal wetlands. The Town engineer shall provide a plan delineating the area and describing how the natural regeneration would be managed and monitored to ensure success. Mitigation credit will be calculated by Commission staff based on the area of the site. Commission staff is available to assist you in developing an appropriate plan.

I hope that this information will be helpful in finalizing the plans to implement the mitigation required for the Chesapeake Beach Sidewalk Improvement Project. If you have any questions, please feel free to contact me at (410) 260-3480.

Sincerely yours,



Mary R. Owens, Chief
Program Implementation Division

cc: The Honorable Gerald Donovan



Judge John C. North, II
Chairman

Ren Serey
Executive Director

STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREA COMMISSION

1804 West Street, Suite 100, Annapolis, Maryland 21401
(410) 260-3460 Fax: (410) 974-5338

October 17, 2001

Mr. Keith E. Ulrich
Collinson Oliff & Associates, Inc.
228 Merrimac Court, P O Box 2209
Prince Frederick, Maryland 20678

RE: Horizons on the Bay

Dear Keith:

This office has received your September 24, 2001 letter. As you discussed with Regina Esslinger, the mitigation for this project was subject to much discussion by the Commission before it issued the conditions for approval. Much of the discussion centered on the second mitigation component which involves establishing natural vegetation in an area twice the extent of the impervious surface area in the Buffer in an Buffer Exemption offset area or other location as determined by the Town of Chesapeake Beach. The Commission was well aware of how limited the planting areas were on the project site, and I believe it was understood by all of the Commission members that this part of the mitigation would be met off-site. The approval letter from the Commission to the Town dated May 15, 1998 states that the mitigation planting sites must be identified and approved by Commission staff prior to the Town's approval of the project. It also states that Commission staff is available to assist the Town and the developer in identifying mitigation sites in the Town or elsewhere in Calvert County.

To date there has been no indication that either the Town or the developer has investigated off-site mitigation locations for the BEA plantings required under Condition 3b nor have they requested any assistance from Commission staff. It does not seem possible that a determination can be made that there are no suitable mitigation locations within the Town or the adjoining jurisdictions unless we know of efforts made to identify them. Commission staff has been and continues to be available to assist the Town in finding mitigation locations, either within Town limits or in the surrounding jurisdictions. You indicated to Ms. Esslinger on the phone that there might be some area available for planting at the Burnt Oaks site. As she mentioned, at the time of project approval both the Commission and the property owner discussed this site at length as a possible mitigation site. You offered to investigate this option. We have received no further information from you, the applicant, or the Town as to whether mitigation can occur here.

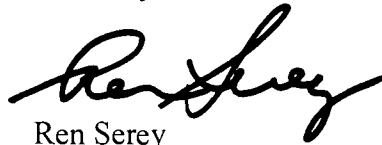
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(410) 822-9047 Fax: (410) 820-5093



Mr. Keith Ulrich
October 17, 2001
Page 2

Without further information on efforts made to locate offsite areas, Commission staff cannot accept the plantings proposed to meet this mitigation requirement and must refer your request to revisit this requirement to the full Commission. If you would like to meet with the Commission's subcommittee on November 7, 2001 to discuss these matters, please contact me at (410) 260-3462. I will need to schedule a meeting with the subcommittee by October 24th.

Sincerely,



Ren Serey
Executive Director

cc: John Hofmann
Marianne Mason
Regina Esslinger
CB 59-97

CB59-97

Collinson Oliff & Associates, Inc.

Surveyors - Engineers - Land Planners
288 Merrimac Court, P.O. Box 2209
Prince Frederick, Maryland 20678
410-535-3101 / 301-855-1599 / Fax 410-535-3103

September 21, 2001

RECEIVED

SEP 25 2001

CHESAPEAKE BAY
CRITICAL AREA COMMISSION

Regina Esslinger
Chesapeake Bay Critical Area Commission
1804 West Street
Suite 100
Annapolis MD 21401

Subject: Horizons on The Bay

Dear Regina,

I am writing this letter in response to your fax of September 20, 2001 and our phone conversation this morning. I have revised the plant types as recommended (see enclosed plan) for the shoreward plantings from Flowering Dogwood to American Holly and Red Cedar. As discussed on the phone this will satisfy item 3a.

Also, as discussed on the phone, the plantings for item 3b cannot be provided in the shoreward area onsite, or anywhere onsite. The 84 Sweet Pepper Bush plants indicated originally on the May 28, 2001 plan must be shown offsite (A combination of trees and shrubs or all trees would also be acceptable). As you indicated the 84 plants are to be planted as directed by the town or on property that Tidewater Homes has available. I will inform the town and Tidewater Homes that this offsite planting needs to be provided.

Thank you for your recommendations and your prompt attention to this matter

Sincerely,

Keith E. Ulrich

Keith E. Ulrich
Project Manager

cc: File, Tidewater Homes, and Town of Chesapeake Beach

Enclosure: print

Judge John C. North, II
Chairman



Ren Serey
Executive Director

**STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREA COMMISSION**

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(410) 260-3460 Fax: (410) 974-5338

September 20, 2001

Mr. Keith E. Ulrich
Collinson Oliff & Associates, Inc.
P O Box 2209
Prince Frederick, Maryland 20678

RE: Horizons on the Bay BEA Planting Plan

Dear Mr. Ulrich: ^{Keith}

I have received your September 14, 2001 letter and planting plan for the establishment of the Buffer on site, as required under Condition 3.a. of the Commission's May 6, 1998 approval for this project. The quantity of plantings proposed is correct. This office is concerned that the 39 flowering dogwoods proposed may be adversely affected by saltspray; we recommend that the applicant consider substituting a combination of American Holly, Red Cedar, Arrowwood, and Shadbush. Any trees or shrubs which do not survive must be replaced.

Please note that Condition 3.b. has not yet been fulfilled.

Sincerely,

A handwritten signature in cursive script that reads "Regina A. Esslinger".

Regina A. Esslinger, Chief
Project Evaluation Division

RAE/jjd

cc: Mr. John Hofmann
Mr. Ren Serey
CB59-97

Branch Office: 31 Creamery Lane, Easton, MD 21601
(410) 822-9047 Fax: (410) 820-5093



Collinson Oliff & Associates, Inc.

Surveyors - Engineers - Land Planners
288 Merrimac Court, P.O. Box 2209
Prince Frederick, Maryland 20678
410-535-3101 / 301-855-1599 / Fax 410-535-3103

September 14, 2001

RECEIVED

SEP 17 2001

Regina Esslinger
Chesapeake Bay Critical Area Commission
1804 West Street
Suite 100
Annapolis MD 21401

CHESAPEAKE BAY
CRITICAL AREA COMMISSION

Subject: Horizons on The Bay

Dear Regina,

I am writing this letter to request that the outstanding item for the Horizons on the Bay project be completed by September 21, 2001. This issue with the plantings has been dragging on since May 28, 2001 when Collinson Oliff & Associates, Inc. initially submitted, to the Town of Chesapeake Beach for review, the additional planting plan showing offsite required Buffer Exempt Area (BEA) plantings, planted onsite. I have enclosed a second revised plan showing the additional requested plantings for the shoreward areas on the bay side and marsh side of the site planted with native vegetation as requested in your September 14, 2001 fax. I have also enclosed a calculation sheet to clearly show the shoreward areas and the planting quantity calculation of plant materials added. Please call once received to verify receipt. I look forward to finalizing this project in the upcoming week. Thank you for your prompt attention to this project.

Sincerely,



Keith E. Ulrich
Project Manager

cc: File, Tidewater Homes, and Town of Chesapeake Beach

Enclosure: print & calculation sheet



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CHESAPEAKE BAY CRITICAL AREA COMMISSION**

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September 13, 2001

Mr. Keith E. Ulrich
Collinson, Oliff & Associates, Inc.
P O Box 2209
Prince Frederick, Maryland 20678

RE: Horizons on the Bay BEA Planting Plan

Dear Mr. ^{Keith} Ulrich:

I have received your August 29, 2001 fax with the BEA planting plan for Horizons on the Bay. As we discussed on September 10, this plan does not appear to fulfill the complete requirements of the Critical Area Commission's May 6, 1998 approval of this project (enclosed). Condition 3 states

The developer shall provide the following mitigation:

- a. *The extent of the parcel shoreward of the new development shall be required to remain, or shall be established and maintained, in natural vegetation; and*
- b. *Natural vegetation of an area twice the extent of the impervious surface must be created in the Buffer Exemption offset area or other location as determined by the local jurisdiction.*

As I stated in my August 2, 2001 letter to John Hofmann, it was the Commission's understanding that the first part of Condition 3 was to be met with the landscaping on site and the second part of Condition 3 was to be met offsite. It appears from your fax that the applicant is proposing to include much of the planting required under 3.b. in the Buffer on site. This planting cannot be put towards the planting requirement in 3.a.

The planting calculation rates shown on your worksheet are correct. We need the calculations and planting plan for the establishment of the Buffer shoreward of the new development as set forth in 3.a. as well as for 3.b. We are available to assist the Town in finding an appropriate offsite location for the 3.b. plantings; it was the Commission's

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Mr. Keith E. Ulrich
September 13, 2001
Page 2

understanding at the time of the approval that the Town may not be able to accommodate the mitigation within Town limits.

Please call me if you have any additional questions.

Sincerely,

A handwritten signature in cursive script, reading "Regina A. Esslinger". The signature is written in black ink and is positioned below the word "Sincerely,".

Regina A. Esslinger, Chief
Project Evaluation Division

Enclosure

cc: John Hofmann
Ren Serey
CB59-97

Judge John C. North, II
Chairman



Ren Serey
Executive Director

STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREA COMMISSION

1804 West Street, Suite 100, Annapolis, Maryland 21401
(410) 260-3460 Fax: (410) 974-5338

August 2, 2001

Mr. John A. Hofmann
Town of Chesapeake Beach
P O Box 400
Chesapeake Beach, Maryland 20732

RE: Horizons on the Bay Buffer Planting Plan

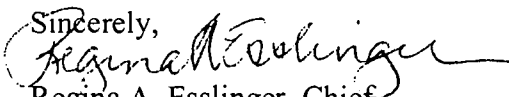
Dear Mr. Hofmann:

I have received your July 10, 2001 letter with the enclosed landscaping and Buffer planting plan for Horizons on the Bay. As required by the Critical Area Commission's May 6, 1998 approval of this project, Condition 3, the extent of the parcel shoreward of the new development shall remain or shall be established and maintained in natural vegetation and natural vegetation twice the extent of the impervious surface must be created in the Buffer Exemption offset area or other location. It is our understanding that the first part of Condition 3 was to be met with the landscaping on site and the second part of Condition 3 was to be met offsite. Please provide a breakdown of how the applicant will be meeting the two parts of the condition.

I am unable to determine from the submittal exactly how much impervious surface is proposed in the Buffer Exemption Area. Please provide this information. In addition, the many of the proposed plantings are not native species. Native species should be used to fulfill all Buffer planting requirements on site and offsite. Plantings on site used to fulfill the stormwater management requirements through bioretention cannot be counted towards the Buffer plantings.

It may be helpful to discuss these items in a meeting. I am available at your convenience.

Sincerely,


Regina A. Esslinger, Chief
Project Evaluation Division

RAE/jjd

cc: CB 59-97

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(410) 822-9047 Fax: (410) 820-5093

TTY FOR DEAF ANNAPOLIS-974-2609 D.C. METRO-586-0450



July 10, 2001

Ms. Mary Owens
Chesapeake Bay Critical Area Commission
1804 West Street – Suite 100
Annapolis, Maryland 21401

**RE: Horizons on the Bay
Tidewater Homes**

Dear Ms. Owens:

Condition No. 3 of your Commission's approval of the Buffer Exemption Area for the Subject Parcel requires that the Developer provide a mitigation plan for impervious surfaces in the BEA area.

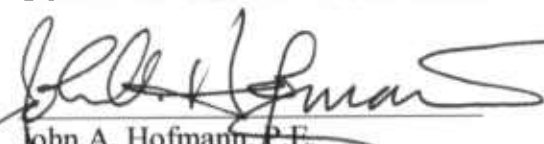
The project consultant has now provided the enclosed Landscape Plan dated revised 5/28/01 on which they have shown 84 Hollywood Junipers to be included in the onsite planting scheme. The purpose of these additional plantings is to provide for the remainder of the BEA impervious surface mitigation that originally was to be included in an offsite mitigation area.

On behalf of the Applicant, please review the enclosed plan and let me know if it satisfies Condition No. 3 of the Commission's Approval.

For your information, the Town has submitted its draft of the Flood Gate Agreement to the MDE Tidal Wetland Staff for approval.

Please give me a call if you need to discuss any of the above matters.

Very Truly Yours,
TOWN OF CHESAPEAKE BEACH


John A. Hofmann, P.E.
Public Works Administrator

cc: Ken Muller
Keith Ulrich
Eric Blitz

RECEIVED

JUL 12 2001

CHESAPEAKE BAY
CRITICAL AREA COMMISSION

Judge John C. North, II
Chairman



Ren Serey
Executive Director

**STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREA COMMISSION**

1804 West Street, Suite 100, Annapolis, Maryland 21401
(410) 260-3460 Fax: (410) 974-5338

December 8, 2000

Mr. Eric J. Blitz, Esq.
Webb & Blitz, L.L.C.
Suite 506, Heaver Plaza
1301 York Road
Lutherville, Maryland 21093

**RE: Compliance with Conditions for Tidewater Homes
Buffer Exemption Area Approval**

Dear Mr. Blitz:

I am writing in response to your letter concerning the Chesapeake Bay Critical Area Commission's review of Chesapeake Beach Ordinance 0-97-6. It is my understanding that there are motions still pending in the Circuit Court for Calvert County regarding this ordinance. When the Court's review is complete, we will determine whether Ordinance 0-97-6 must be returned to the Commission for further action. In the meantime, I wanted to remind you that the Commission's initial approval of the Buffer Exemption Area amendment on May 6, 1998 included five conditions, three of which have not been addressed.

At this time, no permits may be issued or construction activity may take place on the site until these conditions are satisfied. The following conditions still need to be addressed:

Condition #2

The developer shall work with Commission staff during the design phase of the building and site to further minimize the extent of intrusion into the BEA. Buffer mitigation shall be based on impervious surface area within the Buffer and expanded Buffer as shown on the final design plans.

Condition #3

The developer shall provide the following mitigation:

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- a. *The extent of the parcel shoreward of the new development shall be required to remain, or shall be established and maintained, in natural vegetation; and*
- b. *Natural vegetation of an area twice the extent of the impervious surface must be created in the Buffer Exemption offset area or other location as determined by the local jurisdiction.*

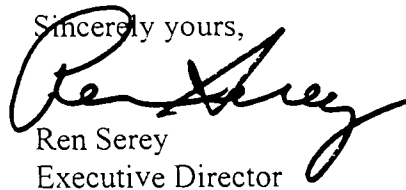
The location of the mitigation plantings shall be identified and approved by Commission staff prior to the Town's approval of the project. Insofar as possible, mitigation plantings should be located on the project site.

Condition #5

The Town and MDE shall execute a binding and enforceable agreement regarding the operation of the tide gate in order to ensure that it will be operated in an environmentally sound manner. The Commission staff shall coordinate with MDE on the development and execution of the agreement.

The Commission staff is available to meet with you and the developer at your convenience to discuss compliance with the conditions or to provide technical assistance. If you have any questions, please feel free to contact me at (410) 260-3462.

Sincerely yours,



Ren Serey
Executive Director

cc: Mr. John Hofmann
Ms. Marianne D. Mason, Assistant Attorney General
Mr. Gary Setzer

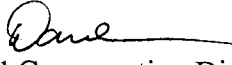


Prince George's Soil Conservation District

County Administration Bldg. - 14741 Gov. Oden Bowie Dr. - Upper Marlboro, MD 20772
Phone (301) 574-5162 - Fax (301) 574-5156

May 17, 2000

To: Regina Esslinger
CBCAC

From: David G. Bourdon 
Prince George's Soil Conservation District

Re: Sand Filter - Horizons on the Bay

The proposed filter is not designed in accordance with the proposed Design Manual. Were there any calculations submitted with the design? In any event, I have reviewed the submitted information and offer the following comments:

1. Prior to approving this or any filter design, calculations for the sedimentation basin surface area, surface area of the filter bed, and treatment system volume should be submitted for your review. For an acceptable filter design, these calculations should follow the methods outlined in the Design Manual (which is fairly standard with most published filter designs). I have attached the section (pages 3.88 to 3.41) of the Manual that covers filtering systems.
2. The most common cause of failure for filtering systems is clogging. Therefore, proper pretreatment is required for all filtering systems. The submitted design does not indicate any pretreatment area. Pretreatment must be provided. In this design, the required sedimentation basin surface area ($A_{sp} = (0.0081)(\text{Water Quality Volume})$). Because the new regulations are not in place, the water quality volume is still 0.5" over the impervious area.
3. The proposed design does not provide reasonable access to the filter media for future replacement and maintenance. As a result, the long-term performance of this system is extremely questionable. One BMP option for this site may be the perimeter sand filter ("Delaware Sand Filter"). This design is a relatively inexpensive and highly versatile surface sand filter consisting of two narrow chambers. Currently this filter type is available as precast units.

In conclusion, the proposed filter design is unacceptable by current State standards. Additionally, I do not recommend accepting modifications of this design. Alternative designs such as the perimeter sand filter meet established standards and pollutant removal targets, are simple to implement, and may be less expensive to construct and maintain. If there are any questions, please contact me.

John C. North, II
Chairman



Ren Serey
Executive Director

STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREA COMMISSION
45 Calvert Street, 2nd Floor, Annapolis, Maryland 21401
(410) 974-2426 Fax: (410) 974-5338

May 13, 1998

Mr. John Hofmann
Town of Chesapeake Beach
P O Box 400
Chesapeake Beach, Maryland 20732

RE: Buffer Exemption Area
Tidewater Homes Property

Dear Mr. Hofmann:

The purpose of this letter is to officially notify you of the Critical Area Commission's action on the referenced program amendment to the Town's Buffer Exemption Areas. On May 6, 1998, the Commission voted to approve the Buffer Exemption Area (BEA) designation of the Tidewater Homes property with the following five conditions:

1. Development on this site shall be in accordance with the final conceptual site plan prepared by Tidewater Homes and received by the Commission on April 16, 1998. Designation of this property as a BEA is applicable only to the Tidewater Homes project that has been presented as part of the Town's request for this amendment. The BEA designation is granted and shall be in effect only as long as the required Maryland Department of the Environment (MDE) and Army Corps of Engineers permits remain in full force and effect. Upon issuance of a stay or other action by a reviewing board of competent jurisdiction, declaring either permit invalid, then without further action by this Commission, the BEA designation shall be revoked.
2. The developer shall work with Commission staff during the design phase of the building and site to further minimize the extent of intrusion into the BEA. Buffer mitigation shall be based on impervious surface area within the Buffer and expanded Buffer as shown on the final design plans.

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(410) 322-7047 Fax: (410) 320-5093

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3. The developer shall provide the following mitigation:
 - a. The extent of the parcel shoreward of the new development shall be required to remain, or shall be established and maintained, in natural vegetation; and
 - b. Natural vegetation of an area twice the extent of the impervious surface must be created in the Buffer Exemption offset area or other location as determined by the local jurisdiction.

The location of the mitigation planting shall be identified and approved by Commission staff prior to the Town's approval of the project. Insofar as possible, mitigation plantings should be located on the project site.

4. Wetland areas of the site shall not be used for the treatment of stormwater quality; however, the discharge of treated stormwater into the wetlands may be permitted.
5. The Town and the MDE shall execute a binding and enforceable agreement regarding the operation of the tide gate in order to ensure that it will be operated in an environmentally sound manner. The Commission staff shall coordinate with MDE on the development and execution of the agreement.

With regard to compliance with the conditions, the following actions are proposed:

1. Condition 1 will be addressed when the Town submits the site plan to the Commission prior to approval of the project by the Planning Commission.
2. Condition 2 will be addressed by submittal of design development plans to Commission staff and possibly through one or more meetings with the project architects and engineers. Commission staff will be available to meet at the developer's convenience either in Chesapeake Beach or at the developer's offices.
3. Condition 3 will need to be addressed in two phases. The mitigation component pertaining to the area between the new development and the shoreline can be addressed during design development. The planning for the second mitigation component involving mitigation planting of an area equal to two times the area of impervious surfaces in the Buffer should begin as soon as possible. The location of the mitigation planting sites shall be identified and approved by Commission staff prior to the Town's approval of the project. Commission staff are available at your convenience to assist you and the developer in identifying sites within the

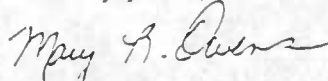
Mr. Hoffman
May 15, 1998
Page Three

Town or elsewhere in Calvert County. Mitigation for wetland impacts in the form of wetland enhancement may not be used to meet this mitigation requirement.

4. Condition 4 regarding the treatment of stormwater will be addressed during the design phase. Although preliminary "10% Rule" calculations have been submitted to the Commission, the project design, specifically site area, area of impervious surface, and depth and width of proposed sand filters, has changed substantially since the initial submittal. Revised calculations should be submitted as soon as possible.
5. Condition 5 pertaining to the development of a binding agreement for the operation of the tide gate will be coordinated between Commission staff and MDE staff.

If you have any questions about the conditions or if you would like to meet to begin identifying mitigation planting sites, please feel free to call me at (410) 974-2426.

Sincerely yours,



Mary R. Owens, Chief
Program Implementation Division

MRO/jjd

cc: Mr. Kenneth Muller, Tidewater Homes
Mr. Kevin McCarthy, McCarthy and Associates
Mr. Keith Ullrich, Collinson, Oliff & Associates, Inc.
Mr. Dolden Moore, MDE
Mr. Terry Clarke, MDE

Judge John C. North, II
Chairman



Ren Serey
Executive Director

STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREA COMMISSION

1804 West Street, Suite 100, Annapolis, Maryland 21401
(410) 260-3460 Fax: (410) 974-5338

September 13, 2000

Mr. Keith Ulrich
Collinson, Oliff & Associates, Inc.
288 Merrimac Court
P O Box 2209
Prince Frederick, Maryland 20678

RE: Horizons on the Bay Bioretention

Dear Mr. ^{Keith} Ulrich:

I have reviewed the bioretention plans for the Horizons on the Bay project and all the information appears to be correct and acceptable. This resolves the outstanding stormwater management issues. Please note that if these plans change, this office will need to review any changes.

Thank you for your hard work, cooperation, and continuing effort to come up with a solution for the stormwater management on the site.

Sincerely,

A handwritten signature in cursive script that reads "Regina A. Esslinger".

Regina A. Esslinger, Chief
Project Evaluation Division

RAE/jjd

cc: Mr. John Hofmann
CB59-97

Branch Office: 31 Creamery Lane, Easton, MD 21601
(410) 822-9047 Fax: (410) 820-5093

TTY FOR DEAF ANNAPOLIS-974-2609 D.C. METRO-586-0450

Impact Areas Replanting Requirements Impervious Surfaces In BEA

BEA (bayfront, east side of site)	14,336	sq ft
BEA (mitigated area, north side of site)	11,786	sq ft
Total	26,122	sq ft

Plantings of area on a 2:1 basis: **52,244** sq ft

Plantings shown on 8-30-00 drawings:

Trees	87
Shrubs	500

Planting calculation rates:

1 tree & 3 shrubs =	400	sq ft
1 shrub =	50	sq ft

<i>description</i>	<i>units</i>	<i>rate</i>	<i>total</i>
tree & 3 shrubs	87	400	34,800 sq ft
remaining shrubs	239	50	11,950 sq ft
Total Provided			46,750 sq ft

Additional offsite planting area required: **5,494** sq ft

<i>description</i>	<i>units</i>	<i>rate</i>	<i>total</i>
tree & 3 shrubs	14	400	5,600 sq ft



Worksheet A: Standard Application Process

Calculating Pollutant Removal Requirements *

Step 1: Project Description

A. Calculate Percent Imperviousness

- 1) Site Acreage = 2.76 acres
- 2) Site Imperviousness, existing and proposed, (See Table 1.0 for details)

	(a) Existing (acres)	(b) Post-Development (acres)
rooftop	-	<u>0.35</u>
roads	-	-
sidewalks	-	<u>0.07</u>
parking lots	-	<u>1.55</u>
pools/ponds	-	-
decks	-	<u>0.11</u>
other	-	<u>0.03</u> <u>6%</u>
Impervious Surface Area	<u>0.0 Ac</u>	<u>2.11 Ac</u>

Imperviousness (I)

Existing Impervious Surface Area/Site Area = (Step 2a)/(Step 1) = 0.0

Post-Development Impervious Surface Area/Site Area = (Step 2b)/(Step 1) = 76.4%

B. Define Development Category (circle)

- 1) Redevelopment: Existing imperviousness greater than 15% I (Go to Step 2A)
- >2) New development: Existing imperviousness less than 15% I (Go to Step 2B)
- 3) Single Lot Residential: Single lot being developed or improved; single family residential; and more than 250 square feet being disturbed. (Go to Page 27- Single Lot Residential sheet for remaining steps).

* NOTE: All acreage used in this worksheet refer to areas within the IDA of the critical area only.

Step 2: Calculate the Pre-Development Load (L_{pre})

A. Redevelopment

$$\begin{aligned}
 L_{pre} &= (R_v)(C)(A)8.16 \\
 R_v &= 0.05 + 0.009(I_{pre}) \\
 L_{pre} &= (\quad)(\quad)(\quad)8.16 \\
 &= \underline{\hspace{2cm}} \text{ lbs P/year}
 \end{aligned}$$

where:

- R_v = runoff coefficient, which expresses the fraction of rainfall which is converted into runoff.
- I_{pre} = site imperviousness (i.e., I=75 if site is 75% impervious)
- C = flow-weighted mean concentration of the pollutant in urban runoff (mg/l).
 - $C = 0.26$ if pre-development I < 20%
 - $C = 1.08$ if pre-development I \geq 20%
- A = area of the development site (acres in the Critical Area).
- 8.16 = includes regional constants and unit conversion factors.

OR

B. New Development

$$\begin{aligned}
 L_{pre} &= 0.5 \text{ lbs/year} * A \\
 &= (0.5)(2.76) \\
 &= \underline{1.38} \text{ lbs P/year}
 \end{aligned}$$

Step 3: Calculate the Post-Development Load (L_{Post})

A. New Development and Redevelopment:

$$\begin{aligned}
 L_{post} &= (R_v)(C)(A)8.16 \\
 R_v &= 0.05 + 0.009(I_{post}) \\
 &= 0.05 + 0.009(\underline{76.4}) = \underline{0.74} \\
 L_{post} &= (0.74)(0.26)(2.76)8.16 \\
 &= \underline{4.33} \text{ lbs P/year}
 \end{aligned}$$

where:

- R_v = runoff coefficient, which expresses the fraction of rainfall which is converted into runoff.
- I_{post} = site imperviousness (i.e., I=75 if site is 75% impervious)
- C = flow-weighted mean concentration of the pollutant in urban runoff (mg/l).
 - $C = 0.26$ if pre-development I < 20%

C = 1.08 if pre-development I >=20%
 A = area of the development site (acres).
 8.16 = includes regional constants and unit conversion factors.

Step 4: Calculate the Pollutant Removal Requirement (RR)

$$\begin{aligned}
 RR &= L_{\text{post}} - (0.9)(L_{\text{pre}}) \\
 &= (4.33) - (0.9)(1.38) \\
 &= \underline{3.09} \text{ lbs P}
 \end{aligned}$$

Step 5: Identify Feasible Urban BMP

Select BMP Options using the screening tools and pollutant removal rates listed in the Applicant's Guide Tables 5.0, 5.1, 5.2, and 5.4 Calculate the load removed for each option.

BMP Type	(* Removal Efficiency)	x	(Fraction of Drainage Area Served)	x	(L post)	=	Load Removed
Bio Retention	0.50	x	1.00	x	4.33	=	2.16 lbs
_____	_____	x	_____	x	_____	=	_____ lbs
_____	_____	x	_____	x	_____	=	_____ lbs
_____	_____	x	_____	x	_____	=	_____ lbs

If the Load Removed is equal to or greater than the pollutant removal requirement (RR) calculated in Step 4, then the on-site BMP option complies with the 10% Rule. (See Table 5.3, page 16) for submittal requirements for each BMP option.

* Use decimal for efficiency rating. (Example: Use 0.50 for a 50% removal efficiency rating.)

RR = 3.09 lb LOAD REMOVED = 2.16 lb

0.93 lbs SHORT OFFSET FEE = 0.93 lb x 5000 / 10 = \$4650



MARYLAND DEPARTMENT OF THE ENVIRONMENT

2500 Broening Highway • Baltimore, Maryland 21224
(410) 631-3000 • 1-800-633-6101 • http://www.mde.state.md.us

Brian - pls return!
Stew

Parris N. Glendening
Governor

Jane T. Nishida
Secretary

Fax Memorandum

To: Dave Bourdon, PGSCD
(301) 574-5156 – fax
From: Stewart Comstock, MDE/WMA
(410) 631-3543 – phone
Re: Sand Filter Design
Date: May 9, 2000

Dave,

The proposed filter is definitely not designed in accordance with the proposed Design Manual. Were there any calculations submitted with the design? In any event, I have reviewed the submitted info and offer the following comments:

1. Prior to approving this or any filter design, calculations for the sedimentation basin surface area, surface area of the filter bed, and treatment system volume should be submitted for your review. For an acceptable filter design, these calculations should follow the methods outlined in the Design Manual (which is fairly standard with most published filter designs). I have attached the section (pages 3.38 to 3.41) of the Manual that covers filtering systems.
2. The most common cause of failure for filtering systems is clogging. Therefore, proper pretreatment is required for all filtering systems. The submitted design does not indicate any pretreatment area. **Pretreatment must be provided.** In this design, the required sedimentation basin surface area ($A_{sp} = (0.0081)(\text{Water Quality Volume})$). Because the new regulations are not in place, the water quality volume is still 0.5" over the impervious area.
3. The proposed design does not provide reasonable access to the filter media for future replacement and maintenance. As a result, the long-term performance of this system is extremely questionable. One BMP option for this site may be the perimeter sand filter ("Delaware Sand Filter"). This design is a relatively inexpensive and highly versatile surface sand filter consisting of two narrow chambers. Currently this filter type is available as precast units.

In conclusion, the proposed filter design is unacceptable by current State standards. Additionally, I do not recommend accepting modifications of this design. Alternative designs such as the perimeter sand filter meet established standards and pollutant removal targets, are simple to implement, and may be less expensive to construct and maintain. Although these comments reflect my professional judgement, the Critical Areas Commission and Calvert County must approve any design at this site. If there are any questions, please contact me.....thanks!

Stew

COLLINSON, OLIFF & ASSOCIATES, INC.

SURVEYORS • ENGINEERS • LAND PLANNERS

P.O. Box 2209 • Prince Frederick, Maryland 20678
410-535-3101 • 301-855-1599 • FAX 410-535-3103

RECEIVED

MAY 16 2000

May 10, 2000

CHESAPEAKE BAY
CRITICAL AREA COMMISSION

Mr. John A. Hofmann, Town of Chesapeake Beach Engineer
P.O. Box 2542
Prince Frederick, MD 20678

Re: Horizons on the Bay Development
30th Street Chesapeake Beach, MD
COA Authorization # 1-3536

Dear John:

I am writing you this letter as a follow up to a phone conversation I had with Regina Esslinger of the Chesapeake Bay Critical Area Commission Staff on Friday May 5, 2000. During our phone conversation, we discussed the computation outlining an offset fee in addition to the construction of the sand filter, to satisfy the 10% compliance rule requirement. Regina indicated to me that the approval of this fee would be provided by the Town of Chesapeake Beach. I am requesting a written response if the offset fee is acceptable or if additional information is required.

Your prompt attention in this matter is greatly appreciated.

Sincerely,



Keith E. Ulrich
Project Manager

Cc: Regina Esslinger, Chesapeake Bay Critical Area Commission
Kim Muller, Tidewater Homes

COLLINSON, OLIFF & ASSOCIATES, INC.

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**P.O. Box 2209 • Prince Frederick, Maryland 20678
410-535-3101 • 301-855-1599 • FAX 410-535-3103**

May 4, 2000

Ms. Regina A. Esslinger, Chief
State of Maryland
Chesapeake Bay Critical Area Commission
45 Calvert Street
2nd Floor
Annapolis, MD 21401

RECEIVED

MAY 8 2000

**CHESAPEAKE BAY
CRITICAL AREA COMMISSION**

Re: Horizons on the Bay Site Plan
COA Authorization # 1-3536

Dear Regina:

During the April 26th, 2000 Chesapeake Beach Planning Commission meeting the Town Planning and Zoning Commission took action on the Horizons on the Bay site plan. As part of the action there were eleven conditions that must be met to receive zoning approval. One of the conditions is to receive written compliance from the Critical Area Commission (CAC) for the following items:

- A. Compliance with the requirements of Article IV, Section 409, Paragraph D of the Town of Chesapeake Beach Zoning Ordinance, which addresses offsets for new impervious areas in the Buffer Exempt Area (BEA).
- B. Compliance with the requirements of Article IV, Section 409, paragraph E (i)(e)(3) – 10% pollutant removal.
- C. Compliance with conditions 1 to 4 for the buffer exemption area approval as provided for in the CAC letter to the Town dated May 13th, 1998.

COA is currently addressing the conditions outlined by the Town's letter. If you could provide written concurrence as soon as possible so the Horizons on the Bay Development can apply for the zoning permit, it would be greatly appreciated.

If you have any questions or comments, please do not hesitate to call.

Sincerely,



Keith E. Ulrich
Project Manager

Cc: John A. Hofmann, Town Zoning Administrator
Eric Blitz, Town Council
Kenneth Muller, Tidewater Homes, Inc.

COLLINSON, OLIFF & ASSOCIATES, INC.

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P.O. Box 2209 • Prince Frederick, Maryland 20678
410-535-3101 • 301-855-1599 • FAX 410-535-3103

MEMORANDUM

TO: John A. Hofmann, Town Engineer/Public Works Administrator
and Town Planning Commission

FROM: Keith E. Ulrich, Project Manager

DATE: 4/24/2000
Revised 4/25/2000

RE: Horizons on the Bay
COA Authorization # 1-3536

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APR 27 2000
26

CHESAPEAKE BAY
CRITICAL AREA COMMISSION

The following comments have been addressed in accordance with the Planning Commission letter dated March 27, 2000.

1. Comment 5: Addressed comments on plans.
2. Comment 6: Boardwalk design provided.
3. Comment 8: A widening strip will be dedicated to the Maryland State Highway Administration once the desired width is provided by the Town Streetscape Committee and State Highway Administration.
4. Comment 9: Architectural plans have been provided.
5. Comment 10: The area within the extended buffer = 26,122 square feet. It is a requirement to plant twice the impervious area or 52,244 square feet at a rate of one tree or four shrubs per 400 square feet. Therefore, 131 trees are required. On site there are 72 trees and 81 shrubs planned. The shrubs equate to 20 trees for a total of 92 tree units. This will require 39 trees to be planted offsite, or at \$100.00/tree an offset fee of \$3,900.
6. Comment 11: As stated in COA's February 22, 2000 letter and attached Pollutant Removal Worksheet provided to Mary Owens of the Chesapeake Bay Critical Area Commission and copied to John Hofmann, Chesapeake Beach Town Engineer, the pollutant removal obtained by the proposed design is 2.17 lbs. The pollutant removal required for this project is 3.09 lbs. Therefore, along with the construction of the sand filter system an offset is required. I have calculated the percentage of impervious area not accounted for by the sand filter to be 17.6% with the total impervious area of 2.11 acres this yields 0.37 acres of impervious surfaces not accounted for by the proposed design. At \$8,000/ac of impervious area, the offset fee is \$2,960 (see attached computation).
7. Comment 12: The revised plans and COA's April 4, 2000 letter addressed comments 1-4 of the Critical Area Commissions letter dated May 13, 1998. Also, see attached Critical Area Commission letter dated April 14, 2000.

Boardwalk included as impervious, although probably will be pervious

Judge John C. North, II
Chairman



Ren Serey
Executive Director

STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREA COMMISSION

45 Calvert Street, 2nd Floor, Annapolis, Maryland 21401
(410) 260-7516 Fax: (410) 974-5338

April 14, 2000

Mr. John Hofmann
Town of Chesapeake Beach
P O Box 400
Chesapeake Beach, Maryland 20732

RE: Horizons on the Bay Site Plan

Dear Mr. Hofmann:

Thank you for attending the Critical Area Commission's Chesapeake Beach Panel Meeting at Oxon Hill Manor on April 5, 2000. We appreciate your cooperation in addressing the questions and concerns raised by the panel. We discussed several items at the meeting as they relate to the Commission's May 6, 1998 approval of this project.

The panel agreed that the minor reconfiguration of the building and parking lot meet the conditions of the May 1998 approval provided the increase in green space as enumerated in the March 27, 2000 letter from Collinson, Oliff & Associates remains. Any changes in this area will require the panel's review. The panel asked that a plan be provided to this office that specifically shows the setbacks from the edge of the retaining wall to the parking lot and the building.

The panel expressed concern about the proposed boardwalk. The boardwalk was not a part of the plans approved in May 1998, and will need to be reviewed by Commission staff. The boardwalk as proposed will need a Critical Area variance, and the panel did not recommend supporting such a variance. You indicated that the Town has not agreed to the boardwalk and has told the applicant it will be handled separately.

The panel recognized that Collinson, Oliff & Associates are working on a revised stormwater management plan and a Buffer planting plan which will be provided to Commission staff for review. Based on conversations with the applicant's consultants, staff anticipate those plans will be forthcoming within a few weeks.

Branch Office: 31 Creamery Lane, Easton, MD 21601
(410) 822-9047 Fax: (410) 820-5093

TTY FOR DEAF ANNAPOLIS-974-2609 D.C. METRO-586-0450



Mr. Hoffman
April 14, 2000
Page Two

Staff will be in touch with you once we receive the revised plans and information requested. If you have any questions please call me at (410) 260-7516.

Sincerely,



Regina A. Esslinger, Chief
Project Evaluation Division

RAE/jjd

cc: Mr. Charles Schaller
Mr. Keith Ulrich, COA
CB59-97

COLLINSON, OLIFF & ASSOCIATES, INC.

SURVEYORS • ENGINEERS • LAND PLANNERS

**P.O. Box 2209 • Prince Frederick, Maryland 20678
410-535-3101 • 301-855-1599 • FAX 410-535-3103**

April 4, 2000

Chesapeake Beach Planning and Zoning Commission
Town Hall
Chesapeake Beach, Maryland 20732

Re: **Horizons on the Bay Site Plan**
Baycrest Subdivision
Chesapeake Beach, Maryland

The purpose of this letter is to address item 10 of the memorandum from the Public Works Administrator / Town Engineer dated March 21, 2000. Item 10 pertains to the conditions of the Buffer Exemption Area approval letter from the Chesapeake Bay Critical Area Commission (CAC) dated May 13, 1998. Collinson, Oliff and Associates, Inc. (COA), on behalf of Tidewater Homes, Inc. (the applicant), was requested by the Chesapeake Beach Town Planning Commission to demonstrate compliance with the approval letter. The approval letter listed five conditions as part of the approval. These conditions are addressed as follows:

- 1) The final engineered site plan as submitted is in accordance with the final conceptual site plan (titled "WETLANDS IMPACT & MITIGATION PLAN" revision date 4-9-98) with some minor modifications and adjustments. The transition from the "*conceptual plan*" to the actual design drawings required solving complex site problems and details which necessitated the modifications to the original plan. In the process of going from concept to final design the project Architect made some modifications to the exterior wall lines to incorporate interior space requirements for mechanical infrastructure and interior hallways. The size of the elevator shafts created additional space requirements at the south end of the proposed building. In the conceptual design pedestrian access from the northwest corner of the building to the Bay front was envisioned via a boardwalk type structure on the exterior of the building. In the final interior building layout an interior hallway was incorporated to better facilitate pedestrian access. To facilitate more efficient vehicular traffic flow and address potential safety issues the entrance on Maryland Route 261 was moved and an upgraded access from 30th Street was added. A service road was extended eastward on 30th Street to minimize service vehicles in the main parking lot and to provide better access for emergency service vehicles to the east side of the building.
- 2) During the design process, meetings, submittals and design revisions have been performed to incorporate good design practices and comments from the CAC. In September 1999 Collinson, Oliff and Associates, Inc. (COA) staked out the overall footprint of the proposed building. The following day an onsite meeting took place with representatives of the following organizations: CAC, Tidewater Homes, Inc., Jeff Love and Associates, Inc.,

McCarthy and Associates, Inc., COA and the Town Engineer for Chesapeake Beach. In March 2000 a Best Management Practices design submittal was made to CAC for the proposed site. Also in March the final engineered site plan was submitted to the Town of Chesapeake Beach and CAC. COA attended a meeting with CAC on March 22, 2000 regarding the Best Management Practices submittal and followed with a letter addressing comments dated March 27, 2000. Due to the reduction in green area adjoining the building and the mitigation area we looked for alternative ways to reduce impacts in the extended buffer. COA shifted the entire parking lot and reduced the median island widths to gain an additional 5 feet of green area to the north of the parking lot. This resulted in a net gain of 598 square feet of green space.

- 3) a) A gabion basket retaining wall was installed and supporting slopes were stabilized prior to the mitigation plantings. No further work is proposed north of the retaining wall.

b) Required planting areas for twice the impervious areas in the extended buffers have been computed and plantings for the impacts have been incorporated into the Landscape plan for this site and will also be provided in offsite mitigation or offset fees. See Landscape Plan for table of impervious surfaces in the Buffer Exemption Area.
- 4) Wetland areas have not been used for the treatment of stormwater quality. To the maximum extent onsite discharge from the Best Management Practices sand filter system will occur at the back of the gabion basket retaining wall and will dissipate through the wall into the wetlands. The onsite Best Management Practices and offset fee will provide the required management for the project in compliance with the 10% Compliance Rule.
- 5) Agreement to be executed between the Town of Chesapeake Beach and Maryland Department of Environment.

Sincerely,



Joe Rupp III
Associate

Cc: Tidewater Homes, Inc.
John Hofmann, Public Works Administrator / Town Engineer
Regina Esslinger, Chesapeake Bay Critical Area Commission
Ren Serey, Chesapeake Bay Critical Area Commission

COLLINSON, OLIFF & ASSOCIATES, INC.

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410-535-3101 • 301-855-1599 • FAX 410-535-3103**

March 27, 2000

Chesapeake Bay Critical Area Commission
Regina A. Esslinger, AICP, Chief
Project Evaluation Division
45 Calvert Street, 2nd Floor
Annapolis, Maryland 21401

Re: **Horizons on the Bay Site Plan**
Baycrest Subdivision
Chesapeake Beach, Maryland

This letter is in reference to our meeting on March 22, 2000 at your office regarding the above mentioned project. We would like to thank you for your time and insightful comments for this project. The two issues which were discussed are as follows:

- 1) Storm water treatment in the BMP sand filter system.
- 2) Distances from the retaining wall to the north face of the building concept plan versus final engineered site plan.

Item #1 is being revised to incorporate your comments and we hope to complete the revised profiles and details this week.

Item #2 raised the question of the difference in green area between the proposed building and the retaining wall. The difference from concept plan to final engineered site plan is from the actual architectural design of the building.

The transition from a "*conceptual plan*" to the actual design drawings used for construction requires solving complex problems which may involve slight modifications to the original plan. In the process of going from concept to final design the project Architect made some modifications to the exterior wall lines to incorporate interior space requirements for mechanical infrastructure and interior hallways. The size of the elevator shafts created additional space requirements at the south end of the proposed building. In the conceptual design pedestrian access from the northwest corner of the building to the Bay front was envisioned via a boardwalk type structure on the exterior of the building. In the final interior building layout an interior hallway was incorporated to better facilitate pedestrian access.

Due to the reduction in green area adjoining the building and the mitigation area we looked for alternative ways to reduce impacts in the extended buffer. As mentioned in our meeting we shifted the entire parking lot and reduced the median island widths to gain an

additional 5 feet of green area to the north of the parking lot. This resulted in a net gain of 598 square feet of green space as shown in the table below (see Exhibit A for area definitions).

GREEN AREAS ADJOINING MITIGATION AREA

<i>description</i>	<i>concept plan</i>	<i>site plan</i>	<i>difference</i>
building	980	1,459	-479
pavement	3,450	2,373	1,077
totals	4,430	3,832	598

Note: In an effort to compare areas from the "WETLANDS IMPACT & MITIGATION PLAN" revision date 4-9-98 (also designated as final conceptual site plan by Critical Areas Commission) to the present final engineered site plan the proposed retaining wall was used. Also only green areas directly adjoining the impervious areas shown on both plans were calculated to give a more precise comparison.

Collinson, Oliff and Associates, Inc. (COA) would also like to address the concern of the distance from the retaining wall to the proposed building. The location of the retaining wall is based on a design process during the conceptual stages. Parameters for the location of the retaining wall included allowing area for a boardwalk and potential emergency vehicular access on the north side of the proposed building. During COA's involvement in this process the retaining wall was never referred to or implied to be a building setback line. It is COA's understanding that the retaining wall as constructed is the limit of site disturbance to aid in the minimization of impact into the extended buffer. A close inspection of the "WETLANDS IMPACT & MITIGATION PLAN" revision date 4-9-98 (also designated as final conceptual site plan by Critical Areas Commission) will reveal that the emphasis during that time was on determining the areas for wetlands impact and appropriate quantities and areas for mitigation. The proposed site improvements to the south of the retaining wall were shown for purposes of relaying the general concept of the site design.

Following our meeting on March 22, 2000 COA met with the developer of this project, Tidewater Homes, Inc., to relay and discuss your questions and concerns regarding our Best Management Practices submittal to your office on March 8, 2000.

Sincerely,



Joe Rupp III
Associate

cc: Tidewater Homes, Inc.

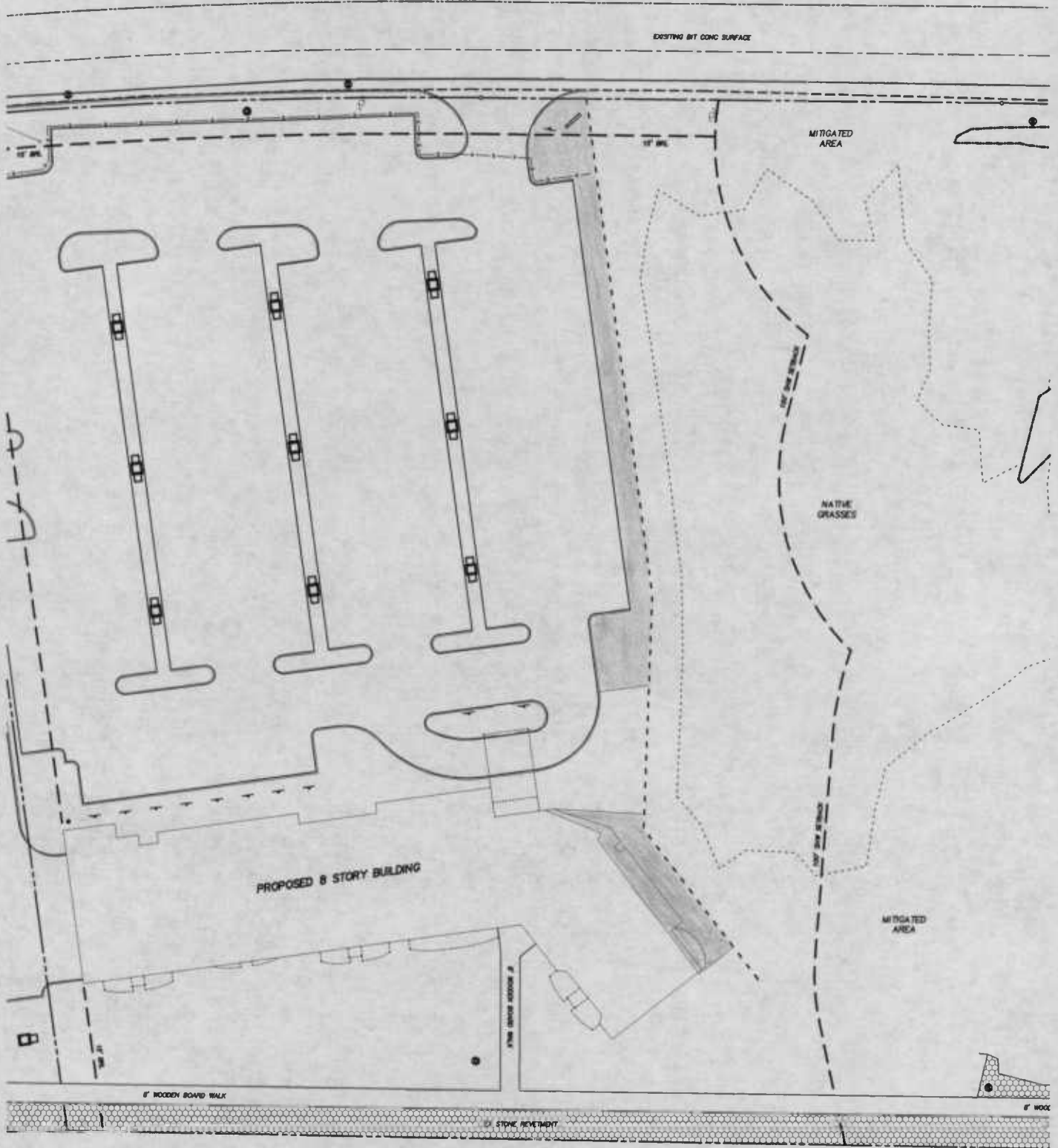
Get specific numbers on green spaces
(setbacks to lot, building)

- Letter to Hofmann references panel meeting
- boardwalk
- SWM
- landscaping

MARYLAND ROUTE 261 (40' R/W)

SEE MD S.R.C. PLAT # ADF

EXISTING BIT CONC SURFACE



CHESAPEAKE BAY

EXHIBIT A

COLLINSON, OLIFF & ASSOCIATES, INC.

CB 59-97
MO, TB

SURVEYORS • ENGINEERS • LAND PLANNERS

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410-535-3101 • 301-855-1599 • FAX 410-535-3103

February 22, 2000

State of Maryland
Chesapeake Bay Critical Area Commission
45 Calvert Street
2nd Floor
Annapolis, MD 21401

Attn: Mary R. Owens, Chief
Program Implementation Division

Re: Stormwater Management Best Management Practice (BMP)
Tidewater Homes Property
Chesapeake Beach, Maryland
COA# 1.3536

Dear Mary:

Enclosed please find a final layout plan, utility plan, sand filter cross-section and profile for the Tidewater Homes, Inc. project in Chesapeake Beach, Maryland.

The enclosed plans and profiles have been updated to show the final proposed layout and utilities for the site. The wetland areas of the site have not been utilized for the BMP calculation, as required in your May 15, 1998 letter to John Hofmann. Not allowing the rehabilitated on-site marsh to be utilized for the treatment of stormwater quality, reduced the achieved on-site rate of removal. The removal rate required on-site is 3.09 lbs., the removal rate achieved was 2.17 lbs. With these results, off-site offsets or fees in lieu will be required to comply with the 10% compliance regulation.

If you need any additional information, please contact me. We look forward to prompt attention in this matter.

Sincerely,



Keith E. Ulrich
Project Manager

KEU/den

Enclosures

Cc: John Hofmann, Town Engineer, Chesapeake Beach
Kim Muller, Tidewater Homes, Inc.

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FEB 24 2000

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CRITICAL AREA COMMISSION

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THOMAS E. WEBB
ERIC J. BLITZ

OF COUNSEL
GERALD S. KLEIN

RECEIVED

SEP 15 1999

TELEPHONE NO.
(410) 321-1896

FAX NO.
(410) 296-3054

DNR - LEGAL DIVISION September 13, 1999

Marianne Mason, Esquire
C4 Tawes Office Building
580 Taylor Avenue
Annapolis, Maryland 21401

**RE: Judicial Review of Buffer Exemption; Tidewater Homes, Inc./
Chesapeake Beach**

Dear Marianne:

As we discussed on the phone Friday, it is Chesapeake Beach's position that there is no legal authority requiring the Critical Area Commission to review its earlier determination to grant a Buffer Exemption Area designation to Chesapeake Beach for the Tidewater Homes property. Without an order from a court to do so (the Commission was not a party to the earlier appeal), the Commission should not feel compelled to undertake further proceedings. If you are aware of such an authority, I would welcome an identification so that I may advise my client. While I will not go further to argue that the Commission is without the authority to sua sponte review a prior final decision, Tidewater Homes might take a different view, and challenge such a result claiming that it has not been accorded due process under the law.

A brief review of the legal travails of Chesapeake Beach after the Commission's decision may be helpful. The only argument of Chesapeake Beach Joint Venture in its memorandum and oral argument was that the Town had failed to make a finding of mistake. The Circuit Court, Judge Lombardi presiding, agreed with the position of Chesapeake Beach and rejected the proposition that a buffer exemption required a finding of mistake. Unfortunately for Chesapeake Beach, the Judge went on to rule that the case must be remanded to the Chesapeake Beach Town Council for further review, because the record before the Judge did not disclose whether the Council had made findings as to the buffer criteria in COMAR 27.01.09.01B. Because the substance of the findings were never briefed by either of the parties, and the argument before the Judge was solely a legal argument with regard to whether the Town Council was required to make a finding of mistake, the Court had not been apprised of the fact that the Critical Area Commission had in fact reviewed the criteria in arriving in its decision.

Rather than proceed to Annapolis, Chesapeake Beach decided to simply hold a hearing and make findings. The Town Council held that hearing and made findings which were adopted by

Ordinance 0-97-6, which had been tabled since the remand by the Circuit Court. I have enclosed a copy of Ordinance 0-97-6, which has the attached findings and conclusions for your review.

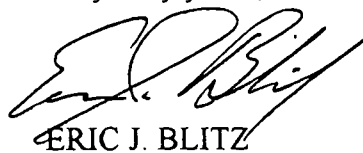
Chesapeake Beach Joint Venture has now taken the position that Chesapeake Beach must now return to the Critical Area Commission and have the Commission reconsider the buffer exemption application granted by the Commission in May of 1998. As you can see, in the second paragraph of the conclusion section on page 15 of the findings, the Town Council adopted the conditions imposed by the Critical Area Commission without modification, therefore the adoption by the Town Council of the buffer exemption is identical to that granted by the Critical Area Commission. If there had been a variance between the findings of Chesapeake Beach and the Critical Area Commission, further proceedings before the Critical Area Commission could be required (I would argue any variance from the Commission's decision would simply be without legal effect). But as the Town effectively adopted the Commission's findings and conditions, there is absolutely no reason to duplicate an identical administrative proceeding which has previously been undertaken and completed.

I am confident that when Judge Lombardi is presented with proof that the Critical Area Commission has already reviewed the proposed buffer exemption under the COMAR criteria, and has approved said exemption, he will not require us to return to the Critical Area Commission for further proceedings. What would such proceedings accomplish? Nothing in the law requires the Commission to review the findings of the local jurisdiction. The Commission certainly did not review any findings of Chesapeake Beach in its deliberations (as there were none in writing) or determine the adequacy of those findings. We both know that the Commission did apply the applicable COMAR provisions, so a subsequent review would not provide any additional substance to the regulatory oversight of this development.

I view this issue as an aberration caused by the fact that the Circuit Court Judge made a ruling on a subject matter which was not presented to him and for which he had insufficient information. Local jurisdictions make a legislative determination as to whether they want a buffer exemption, and then, as is clear in the language of COMAR 27.09.01(c)(8), the local jurisdiction acts as an advocate before the Critical Area Commission for such a buffer exemption. While local jurisdictions may do this in coordination with the developer, the Town is not required to undertake a duplicative function of that of the Critical Area Commission. To require one State agency (the local jurisdiction) to act as both an advocate and administrative body is incongruous with accepted standards of administrative law. Think of the due process complexities such a system would create. What happens when a developer appeals a denial by one agency, wins, then appeals the next agency's decision and loses, when the standard of review for both agencies (the COMAR criteria) is identical? Requiring two State agencies to apply the same criteria is at variance with the Critical Area Commission's final say on whether a buffer exemption is granted. It is the Critical Area Commission which is responsible for interpreting the COMAR provisions and making findings, not the local jurisdiction applying for a Buffer Exemption Area designation.

Please remember that Judge Lombardi has never been fully presented with these arguments and has not had the opportunity to consider these issues. He soon will. We will then have the opportunity to clarify the dicta regarding the Commission in his earlier Order.

Very truly yours,



ERIC J. BLITZ

EJB/snw

cc: Gerald W. Donovan, Mayor
John Hoffman, Town Engineer

Worksheet A: Standard Application Process

Calculating Pollutant Removal Requirements *

Step 1: Project Description

A. Calculate Percent Imperviousness

- 1) Site Acreage = 2.76 acres
- 2) Site Imperviousness, existing and proposed, (See Table 1.0 for details)

	(a) Existing (acres)	(b) Post-Development (acres)
rooftop	-	0.35
roads	-	-
sidewalks	-	0.07
parking lots	-	1.55
pools/ponds	-	-
decks	-	0.11
other	-	0.03 6+6
Impervious Surface Area	<u>0.0 Ac</u>	<u>2.11 Ac</u>

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Imperviousness (I)

Existing Impervious Surface Area/Site Area = (Step 2a)/(Step 1) = 0.0
 Post-Development Impervious Surface Area/Site Area = (Step 2b)/(Step 1) = 76.4%

B. Define Development Category (circle)

- 1) **Redevelopment:** Existing imperviousness greater than 15% I (Go to Step 2A)
- >2) **New development:** Existing imperviousness less than 15% I (Go to Step 2B)
- 3) **Single Lot Residential** Single lot being developed or improved; single family residential; and more than 250 square feet being disturbed. (Go to Page 27- Single Lot Residential sheet for remaining steps).

* **NOTE:** All acreage used in this worksheet refer to areas within the IDA of the critical area only.

Step 2: Calculate the Pre-Development Load (L pre)

A. Redevelopment

$$\begin{aligned}
 L_{pre} &= (R_v)(C)(A)8.16 \\
 R_v &= 0.05 + 0.009(I_{pre}) \\
 L_{pre} &= (\quad) (\quad) (\quad) 8.16 \\
 &= \underline{\hspace{2cm}} \text{ lbs P/year}
 \end{aligned}$$

where:

- R_v = runoff coefficient, which expresses the fraction of rainfall which is converted into runoff.
- I_{pre} = site imperviousness (i.e., $I=75$ if site is 75% impervious)
- C = flow-weighted mean concentration of the pollutant in urban runoff (mg/l).
 - $C = 0.26$ if pre-development $I < 20\%$
 - $C = 1.08$ if pre-development $I \geq 20\%$
- A = area of the development site (acres in the Critical Area).
- 8.16 = includes regional constants and unit conversion factors.

OR

B. New Development

$$\begin{aligned}
 L_{pre} &= 0.5 \text{ lbs/year} * A \\
 &= (0.5)(2.76) \\
 &= \underline{1.38} \text{ lbs P/year}
 \end{aligned}$$

Step 3: Calculate the Post-Development Load (L Post)

A. New Development and Redevelopment:

$$\begin{aligned}
 L_{post} &= (R_v)(C)(A)8.16 \\
 R_v &= 0.05 + 0.009(I_{post}) \\
 &= 0.05 + 0.009(\underline{76.4}) = \underline{0.74} \\
 L_{post} &= (\underline{0.74}) (\underline{0.26}) (\underline{2.76}) 8.16 \\
 &= \underline{4.33} \text{ lbs P/year}
 \end{aligned}$$

where:

- R_v = runoff coefficient, which expresses the fraction of rainfall which is converted into runoff.
- I_{post} = site imperviousness (i.e., $I=75$ if site is 75% impervious)
- C = flow-weighted mean concentration of the pollutant in urban runoff (mg/l).
 - $C = 0.26$ if pre-development $I < 20\%$

- C = 1.08 if pre-development I >=20%
- A = area of the development site (acres).
- 8.16 = includes regional constants and unit conversion factors.

Step 4: Calculate the Pollutant Removal Requirement (RR)

$$\begin{aligned}
 RR &= L_{\text{post}} - (0.9)(L_{\text{pre}}) \\
 &= (4.33) - (0.9)(1.38) \\
 &= \underline{3.07} \text{ lbs P}
 \end{aligned}$$

Step 5: Identify Feasible Urban BMP

Select BMP Options using the screening tools and pollutant removal rates listed in the Applicant's Guide Tables 5.0, 5.1, 5.2, and 5.4 Calculate the load removed for each option.

BMP Type	(* Removal Efficiency)	x	(Fraction of Drainage Area Served)	x	(L post)	=	Load Removed
<u>SAND FILTER #14</u>	<u>0.50</u>	x	<u>1.00</u>	x	<u>4.33</u>	=	<u>2.17</u> lbs
_____	_____	x	_____	x	_____	=	_____ lbs
_____	_____	x	_____	x	_____	=	_____ lbs
_____	_____	x	_____	x	_____	=	_____ lbs

If the Load Removed is equal to or greater than the pollutant removal requirement (RR) calculated in Step 4, then the on-site BMP option complies with the 10% Rule. (See Table 5.3, page 16) for submittal requirements for each BMP option.

* Use decimal for efficiency rating. (Example: Use 0.50 for a 50% removal efficiency rating.)

Break Even RR

- 2.17 lbs to be removed
- To break even rate of removal RR needs to be 2.17
 $RR = L_{post} - 0.9 (L_{pre}) = 2.17$
 $L_{pre} = 1.38$ solve for L_{post}
 $2.17 = L_{post} - 0.9 (1.38)$
 $2.17 = L_{post} - 1.24$
 $L_{post} = 3.41$

- Solve for RV Breakdown
 $L_{post} = RV (0.26) (2.76) (8.16)$

$$RV = \frac{L_{post}}{(0.26)(2.76)(8.16)}$$

$$= \frac{3.41}{5.86}$$
 $Breakeven\ RV = 0.58$

- I Post Breakeven
 $I\ Post = \frac{RV - 0.05}{0.009}$
 $= \frac{0.58 - 0.05}{0.009}$
 $Breakeven\ I\ Post = 58.9$

- I Breakeven = 58.9%
 I not accounted for in sand filter sizing:
 $76.4\% - 58.9\% = 17.5\%$
 17.5% of 2.11 ac = 0.37 ac
 @ \$8000.00/ac of impervious area created not accounted for in sand filter
offset fee = \$8,000.00/ac x 0.37 ac = \$2,960.00

If not \$8000/ac, then how to calculate?

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RV = .5 + .009(Ipost)
Ipost = $\frac{RV - .05}{.009}$

$\frac{2.17}{3.09}$

30% of load

$2.11 \times 30\% = .633\ ac$
\$5,067

**FINDINGS AND CONCLUSIONS ON TIDEWATER HOMES, INC.'S REQUEST
FOR A BEA DESIGNATION**

WHEREAS, after due notice, the Town Council heard testimony and accepted exhibits into the record at a public hearing held in Town Hall, on May 20, 1999 at 7:55 p.m.. The hearing was on the application of Tidewater Homes, Inc. (hereinafter "Applicant") for a Buffer Exemption Area designation (hereinafter "BEA designation") for that portion of its property, located at Blocks 5, 11, 12 and 14 of the Baycrest Subdivision, which is not already buffer exempt pursuant to the original adoption of the Critical Area program; and

WHEREAS, the BEA designation is the subject of Chesapeake Beach Ordinance 0-97-6, originally approved for passage on August 21, 1998. After the effective date of the Ordinance, Chesapeake Beach Joint Venture (hereinafter referred to as the "Petitioner") filed a Petition for Judicial Review on June 5, 1999. By an Order of the Circuit Court for Calvert County, dated March 25, 1999, the Honorable Judge Lombardi presiding, the Ordinance was remanded to the Town for further consideration of the Ordinance and the buffer exemption status granted therein, with the Town required to evaluate the BEA designation by considering the standards provided by COMAR 27.01.09.01(C)(8) and 27.01.09.01(B); and

WHEREAS, the Town Council heard testimony from Ken Muller and Milton McCarthy on behalf of the Applicant, and received 5 exhibits. Exhibit 1 was a notebook of tabbed documents provided by the Applicant. Exhibit 2 was a plat of the subject property provided by the Applicant. Exhibit 3 was a copy of §8-2101 of the Natural Resources Article of the Maryland Annotated Code, provided by the Applicant. Exhibit 4 was a letter to the Council, dated May 19, 1999, from Cheryl P. Larsen. Exhibit 5 was a 1976 aerial photograph of the Town. Testimony was provided by an attorney, Mr. Thomas Deming, on behalf of Chesapeake Beach Joint Venture. Testimony was also taken from members of the public; and

WHEREAS, after consideration of all of the evidence, the Town Council makes the following findings and conclusions:

I. General Findings:

1. Only the Applicant provided factual data about the property and surrounding locations, based upon site reviews. Parties speaking in opposition to the application principally asked questions of the Applicant and expressed their opinions concerning the development of the Applicant's property or the value in protecting the environment.

2. Milton McCarthy testified on behalf of the Applicant and was the author of several documents included in Exhibit 1. The Council accepts Mr. McCarthy's opinions

concerning the environmental assessment of the site and the application of those facts to the BEA designation criteria as having been given by an expert on environmental assessment. While the Council did not require that an individual expressing an opinion on such matters be an expert, the opinions of an expert are given greater weight when addressing matters of a technical or scientific nature. The testimony offered in opposition to the recognition of Mr. McCarthy as an expert, because he does not have a Ph.D., is rejected. Mr. McCarthy's resume demonstrates an impressive educational and experiential background on matters particularly germane to the issues to be decided. The Council notes that Mr. McCarthy has been recognized as an expert by both Federal and Maryland courts, other local jurisdictions, and the Chesapeake Bay Critical Area Commission.

3. Parties in opposition did not present testimony by an expert with regard to the environmental criteria at issue. Although this does not diminish the relevance of the opinion testimony offered by parties in opposition to the application, the Council finds that the foundation for such opinions are less defined, and therefore the opinions are given less weight on issues of a technical or scientific nature.

4. The most important fact presented at the public hearing is that the Critical Area Commission approved the Applicant's Buffer Exemption Area request. Under the law, the Critical Area Commission reviewed the BEA designation request using the identical standard that the Town Council was directed by the Circuit Court for Calvert County to apply. The Critical Area Commission gave its approval on May 6, 1998, and imposed five conditions on the Applicant which are identified in the May 13, 1998 letter to John Hofmann, included in Tab 5 of Exhibit 1. The fact that the Critical Area Commission approved the Applicant's Buffer Exemption Area request is given great weight by the Council for the following reasons:

A. The Critical Area Commission promulgates the regulations which are included in COMAR, the same regulations the Court has required the Council to review on remand. Therefore, the Critical Area Commission is in the best position to identify the meaning and scope of those criteria as well as the facts necessary to meet the criteria. Because the Critical Area Commission is given the final authority on matters of the Critical Area law, the Council concludes that great weight should be placed on the Critical Area Commission's approval of this application.

B. The Critical Area Commission has a large staff of experts on the subject of environmental regulation and science. The Critical Area Commission is in a superior position to review the application through the use of said staff and ensure that the factual assertions by the Applicant that are necessary to meet those criteria are scientifically valid. That staff is also in the best position to identify whether the opinions offered by the expert on matters of a technical or scientific nature are supportable by the evidence presented. The recognition and great weight placed upon the Critical Area Commission's approval of the BEA designation should not be considered a renunciation by the Council of its obligation to review the identical

criteria as required by the judicial remand, but merely a recognition that the Critical Area Commission has affirmatively approved the application for a BEA designation and that such approval is both necessary and important.

5. All other applications and permits required of the Applicant for the proposed development and mitigation work, which are relevant in any manner to the COMAR criteria for granting Buffer Exemption, have been approved by the respective agencies. The Council finds that the Maryland Department of Environment issued a water quality certificate of NTW96-NT-0976 and Wetland Permit 97-WP-0524, as well as Wetland and Waterways Permit 96-NT-0976-19966682. The United States Army Corps of Engineers issued permit CENAB-OP-RP 96-66569-3 under its authority under the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and the Clean Water Act (33 U.S.C. 1344). The Council finds that the approval of these permits, while not relating to the specific COMAR provisions at issue for a BEA designation, are relevant to the general policy of the Critical Areas legislation and COMAR regulations in that the issues before those agencies were an evaluation of the environmental effect of the development of this property and the current environmental status of the property. Because the Maryland Department of Environment is a Maryland agency charged with protecting the environment, and to the extent the Council should consider the general policies of protecting the environment under the Critical Area Program, it is reassuring that the Applicant has obtained approvals by the Maryland Department of Environment. A similar reassurance is provided by the United State Army Corps of Engineers permit, especially with regard to the effect on water quality.

II. Procedural Findings:

1. The Planning and Zoning Commission of Chesapeake Beach reviewed the application of Tidewater Homes, Inc., and recommended approval of the BEA designation. The review by the Planning and Zoning Commission does not impact the specific standards of COMAR and is merely a requirement of the Town's zoning process relating to other matters of compliance with the comprehensive plan and any potential implications for the subdivision of the property. This finding is not relevant to the designation of the BEA under the COMAR criteria, but remains a procedural requirement of the Town Code.

2. Md. Nat. Res. Code Ann. §8-1809(i)(1998) provides that a local jurisdiction's Critical Area Program shall not be amended without the approval of the Critical Area Commission. The Council finds that the Critical Area Commission has approved the Applicant's request for a BEA Designation as evidenced by the letter dated May 13, 1998 to John Hofmann from Mary R. Owens, Chief, Program Implementation Division, Chesapeake Bay Critical Area Commission (See Tab 5, Exhibit 1). The Council finds that the Commission imposed five conditions upon the Applicant, with five (5) corollary actions proposed to effectuate those conditions, all of which are included in the letter of

May 13, 1998. The Council finds that those conditions are reasonable and are to be complied with at the time the final site plan has been developed by the Applicant.

3. Subsequent to the hearing held on May 20, 1999, both the Applicant and the Petitioner, Chesapeake Beach Joint Venture, filed appeals from the Circuit Court's decision to remand this case for consideration of the compliance with COMAR 27.01.09.01(B)(C). The Council was advised of this fact at its executive session held on June 7, 1999. The Council finds that while the mutual appeals of the Court's decision to remand this case to the Town relieves the Council of the obligation to proceed, it does not prevent the Council from exercising its own authority to make findings and conclusions on the evidence presented at the public hearing of May 20, 1999 and render a decision accordingly. The Town Council finds that the record was closed on this matter on May 20, 1999, before either of the appeals were filed. Because the record was closed, the filing of the appeals had no effect on the extent or contents of the record, and therefore, neither the Applicant or any parties in opposition can be prejudiced by the Council proceeding with a decision. Furthermore, after May 20, 1999, neither the Applicant nor any other party had the right to take any further actions which would affect the decision of the Town Council on this matter. Finally, the Town Council finds that it is prudent to render a decision while the evidence is fresh in the minds of the Council Members and to mitigate the already considerable expense which has been incurred by the Town in undertaking this process.

4. The Applicant argued that the lack of substantial native vegetation on the subject property prior to the wetland mitigation efforts undertaken by the Applicant results in the conclusion that a large portion of the area identified as a buffer fails to meet the COMAR definition of a buffer in 27.01.01.01(8). The Council interprets this conclusion as evidence supporting the proposition that the area designated by 27.01.09.01(C)(1) and the expanded buffer (7), are not fulfilling the functions of a buffer and the Applicant is not arguing that portions of the property are not located within the buffer. The Council raises this point because the attorney for Chesapeake Beach Joint Venture, Mr. Thomas Deming, Esquire, argued at the public hearing that because of the mitigation work, a portion of the property does now have some natural vegetation and therefore is in fact a buffer. Mr. Deming argued that management is part of the definition of a buffer, to which Mr. McCarthy responded that the property had not in fact been managed as a buffer. Both of Mr. McCarthy's reports included this observation as well. The Council finds, as a matter of procedure, that while it may be true that the property is not acting like a buffer, the debate over whether it is technically a buffer is superfluous, as the location of a buffer on the property is defined not by whether the definition of a buffer is satisfied, but by COMAR 27.01.09.01(C)(1), which requires local jurisdictions to establish a minimum 100 foot buffer landward of the mean high-water line from the Chesapeake Bay and its tributaries. The area of that buffer can be expanded pursuant to subsection 7 of that COMAR section, based upon certain environmental criteria. The Council finds that the definition of what constitutes a buffer provided by COMAR 27.01.01.01(8) is helpful in

considering the environmental policies attempted to be effectuated by the buffer and for determining whether the buffer is functioning for the purposes of determining a BEA Designation pursuant to COMAR 27.01.09.01(C)(8).

5. The Council finds that because of the procedural history of this case, an argument arose between the Applicant and Mr. Deming concerning the time frame upon which the Council should base its findings as to the status of the property. After the Applicant had obtained the original BEA designation from the Town (September, 1997) and the approval of the BEA designation by the Critical Area Commission (May, 1998), both of which were in recognition of the proposed mitigation work on the wetland portion of the property to help satisfy the BEA designation requirement of "other measures" found in COMAR 27.01.09.01(C)(8), the Applicant proceeded with the wetlands mitigation work. This was pursuant to a Consent Order allowing such mitigation efforts to proceed, entered by the Circuit Court for Calvert County. Therefore, the conditions on the wetlands portion of the subject property had changed from the date of the original grant of the BEA designation and the consideration upon remand. The Council was presented with the choice of looking at the site conditions as they existed upon the application date in 1997, looking at the site as it exists at the date of the public hearing, absent the effect of the mitigation work that was done by the Applicant in reliance upon the earlier buffer exemption granted by the Town and Critical Area Commission, or looking at the site after the mitigation work which has restored a portion of the property to environmental health. The Council finds that the only fair approach is to look at the site as it exists as of the date of the hearing, but when considering that portion of the property upon which mitigation work has been completed, that the effects of the mitigation work not be considered. The Council finds that it would be fundamentally unfair to the Applicant to have approved a Buffer Exemption Area designation, for which mitigation work was a prime consideration, (and which was in compliance with permits of the Maryland Department of Environment and United States Army Corps Engineers, both of which preempt the Town's authority with regard to the management of tidal wetlands), and then allow the success of those mitigation efforts to act as a justification for denying the relief sought by the Applicant. This would be against the public policy of encouraging efforts by developers to take the necessary steps to improve the environment. Mitigation efforts are just that, work done to mitigate the effects of approved development, usually as a condition for proceeding with such development. While a majority of the Council concurred in this procedural approach to the review of the evidence, Council Member Patrick Mahoney dissented, arguing that the effect of the mitigation efforts should be considered in determining whether the Buffer Exemption criteria have been met. While the majority of the Council find that the intermediate step is the most fair to the Applicant, the Council also finds that even when considering the effect of the mitigation efforts, there is substantial evidence that the buffer is not fulfilling the functions stated in the criteria in COMAR 27.01.09.(B)(1-5), when viewed in the totality of the circumstances.

6. There was also a debate at the public hearing as to the scope of the area that the Council should review when considering whether the buffer is fulfilling the policies in

required the remand. The development on the Petitioner's property extends right up to the bulkhead which abuts the tidal basin on the subject property. The property owned by Chesapeake Beach Joint Venture was also subject to a Buffer Exemption designation (prior to Petitioner's ownership) as evidenced by the documents in Tab 12, of Exhibit 1. It is interesting that the minutes of the December 21, 1989 public hearing of the Town Council for that Buffer Exemption Area indicate that the areas requested for Buffer Exemptions were areas where "buffers never existed." That buffer exemption was approved by the Critical Area Commission as shown by Exhibit A to the 1990 Ordinance which is included at Tab 12. On the eastern border of the property, there is a stone revetment before the waters of the Chesapeake Bay. On the western border of the property, lies Route 261, the major traffic thoroughfare through the Town of Chesapeake Beach.

4. On the subject property itself, there exists a prior BEA designation running along the shoreline, one hundred (100) feet from the mean high-water line where the stone revetment is located. That one hundred (100) foot area of the previous Buffer Exemption Area designation includes, according to the testimony of the expert Mr. McCarthy, areas which are indistinguishable on an environmental basis from the areas which the Applicant now seeks a Buffer Exemption designation.

5. There is a history of development on the subject property itself, as demonstrated by the testimony of Mr. McCarthy, Mr. Ken Muller, and the site reports included in Exhibit 1. Those reports include the "Analysis of Conformance with Critical Area Commission Criteria" dated May 1999 at Tab 1 of Exhibit 1, the "Environmental Assessment Report" dated August of 1997 located at Tab 3 of Exhibit 1, the CENAB-OP-RP permit Memorandum located at Tab 3 of Exhibit 1, and the Wetlands Assessment prepared by MDE at Tab 4 of Exhibit 1.

The Council finds that in the 1930's, a tidal stream that traversed the property and lead to the Chesapeake Bay was dredged and excavated to create a marina basin on the site. The resulting basin was bulkheaded at the open water/fastland interface to contain the dredge spoil from both the basin and entrance channel connecting the basin to the Chesapeake Bay. The eastern edge of the property was bulkheaded and then later the entire eastern edge of the property was stabilized with a stone revetment to prevent erosion. This is consistent with the other properties along the waterfront. At that time, the tidal connection from the existing basin to the Chesapeake Bay was modified. A section of the revetment was replaced with a mechanical tide gate to regulate storm surges from the Chesapeake Bay to prevent flooding of the low-lying properties to the west during storm events. During the construction of the revetment and the tide gate, the fastland on the southern section of the property was used as a staging area for equipment and materials, whereupon a gravel road was built. It appears that near the south side of the tide gate, some of the road was removed, however the majority of it remains in the form of a shallow terrace that parallels the revetment on the eastern edge of the property.

Cutting through the most environmentally sensitive portion of the property, an outfall pipe from the waste water treatment plant was constructed. This structure is located approximately one hundred and twenty (120) feet south of the northern edge of the property and roughly parallels the property line. The discharge pipe is twelve inches in diameter and eight to ten feet below sea level. The placement of the sewer line at its present location resulted in additional land disturbance during the construction activities. A trench was excavated and/or dredged to establish the bed for the pipe and the excavated and dredged material was temporarily stockpiled for later use as backfill over the pipe. Furthermore, temporary access roads or mats were used to support the equipment during the placement of the pipe, thus causing additional disturbances.

In the late 1980's the southern end of the property was to be developed into an IGA shopping center. Sixty-Four (64) support pilings were driven to support the proposed structure, which still exist on the subject property. An incomplete building pad exists above the pilings and there is a mud parking lot of unknown imported materials.

In summation of the findings of this section listed above, the Council finds that this property has been the subject of substantial human disturbance since the 1930's, which is generally consistent with the existing pattern of intense residential, industrial, commercial and recreational development in the Critical Area. The Council finds that this intense pattern of development on the property is consistent with the existing pattern of development in the Critical Area, with the exception that a permanent use of the property for residential or commercial purposes does not exist on the property at this time. This completes the first step of the analysis of this BEA designation request, and the Council in the next section addresses whether this pattern of residential, industrial, commercial or recreational development on the property and in the Critical Area prevents the buffer from fulfilling the functions stated in COMAR 27.01.09.01(B).

IV. Findings Regarding COMAR 27.01.09.01(B):

1. The first criteria regarding the buffer's functionality is found in 27.01.09.01(B)(1), which states that the buffer shall: "Provide for the removal or reduction of sediments, nutrients, and potentially harmful or toxic substances in runoff entering the Bay and its tributaries". The Council finds that the subject property's benefit as a buffer is significantly reduced by the nature of the current development on the site, the status of the vegetation in the tidal wetland area, and the pattern of development in the Critical Area. Because of the current development on the subject property, specifically the mud parking lot of unknown imported materials and an incomplete building pad, along with sixty-four (64) driven pilings, surface water runoff from storm events flows unchecked into the marsh area of the property. Sediments, nutrients and urban debris are carried by this runoff into the marsh and ultimately to the Bay. The Council finds that although there was some natural vegetation in the south central portion of the expanded buffer, this area was surrounded on the south, west and east by phragmites prior to the mitigation efforts. Although that natural vegetation and phragmites would assimilate

sediments and nutrients, the phragmites were removed as part of the mitigation plan in accordance with the policy of the State of Maryland, which classifies phragmites as a nuisance as a matter of statutory law. The removal of the phragmites was accompanied by the planting of native vegetation as called for by the wetlands portion of the mitigation. While some of the mitigation has been completed, it is insufficient standing alone to allow the buffer to fulfill the first of the criteria. Most important to the Council, is the fact that the stormwater runoff is not being managed under the current status of the property. The development plan calls for the meeting of the ten percent (10%) reduction rule for managing surface water runoff of impervious services. The Council finds that the runoff from the upland portions of this site will be improved if the development plan is approved, and the water quality will increase by more than thirty percent (30%) over current conditions, far exceeding the ten percent (10%) rule. The ten percent (10%) rule calculations are found in Tab 7 of Exhibit 1. The Council accepts the calculations as presented by the Applicant, and finds that granting Buffer Exemption to allow the proposed development by the Applicant will actually increase the removal or reduction of sediments, nutrients and potentially harmful or toxic substances running off into this tributary to the Bay. The Council finds that these circumstances are somewhat unique, in that the site has been partially developed for a significant period of time, thereby creating what is in effect an unregulated impervious surface which has resulted in the further degradation of the water quality in the basin. By allowing the Buffer Exemption, and the complete development of the property, stormwater management mechanisms can be effectuated to improve the quality of the water. By allowing the removal or reduction of sediments, nutrients and potentially harmful or toxic substances in the runoff which enters the water basin, the first policy of the Critical Area Program with regard to buffers will be fulfilled by granting the Buffer Exemption designation.

The Council accepts the testimony of Mr. McCarthy on the poor water quality in the basin, and views as compelling the Memorandum attached to the letter of George Harrison, the acting Chief of the Potomac Basin Section of the Department of the United States Army Corps of Engineers. That Memorandum is included in Tab 3 of Exhibit 1 and provides a neutral third party's interpretation of the water quality that exists in the basin. The report indicates that the site is highly degraded and that the proposed mitigation would enhance or restore the area's estuarine ecology. The report points out that the marina which was built in the current water basin is no longer usable as a result of the placement of the stone revetment and the insertion of the tide gate to control flooding. Important to this criteria is the finding that there is erosion behind the old failing bulkheads of the defunct marina because there was no filter cloth placed behind them. According to the report, there is adjacent runoff in the uplands, especially in the vicinity of the abandoned boat ramp that was part of the marina. The report points out that the operation of the tide gate allows for little flushing by the Bay waters to this shallow water system with a consequent result that ultra-fine silt and detritus compromises the sediment regime, with a thickness of three to four feet. This is characterized by an anaerobic black zone immediately beneath the surface with the production of methane gas bubbles. This environmental situation results in the consequential finding that no macro infauna could be

found. The report indicates that no green algae, juvenile fish (other than a small group of *fundulus spp*) were observed, and no gastropods were observed or collected. Ultimately, this report compels the Council to the finding that the water quality in the basin is of very sub-standard environmental value. This finding, along with the Council's previous finding that granting a Buffer Exemption Area will decrease water runoff and increase the value of the water in the basin, compels the conclusion that the Applicant has not only proved that the property is failing to provide the environmental conditions required of a buffer, but also that the proposed development would increase the environmental value of the water basin portion of the property.

Even if the Council considers the beneficial effect that the completed mitigation work has had on the tidal basin (due to the extraction of phragmites and the planting of native species), the Council finds that because of the lack of stormwater management on site, along with a defacto impervious surface situation on the southern portion of the property, the property will not sufficiently fulfill the role of removing or reducing sediments, nutrients and potentially harmful or toxic substances in runoff from entering the tidal basin, and then the Bay.

Finally, when viewed in context of the entire Critical Area, the Council finds that the existing pattern of development severely impedes the buffer's function under this first criteria. The stone revetment runs the entire length of this shoreline, and the evidence established that the existence of the tide gate on this property does little to alleviate the consequence of this revetment. The tide gate, when fulfilling its role of preventing flooding, impedes proper flushing of the water basin. The pattern of residential and commercial development in the Critical Area has prevented the entire shoreline of the Town from fulfilling the functions of a buffer which is consistent with the buffer exempt status of a vast portion of the shoreline.

2. The second criteria regarding the buffer's functionality is found in COMAR 27.01.09.01(B)(2), which states that the buffer shall: "(2) minimize the adverse effects of human activities on wetlands, shorelines, stream banks, tidal waters and aquatic resources". The Council finds that the buffer and expanded buffer have been severely compromised and adversely impacted by human activities as previously described in its findings. The combination of the surrounding development, the old marina and bulkhead, the sewage pipe, the foundation and pilings for the abandoned IGA supermarket development, the stone revetment, and the tide gate, all provide a rather dramatic pattern of human activity which have had adverse effects on the wetlands, shorelines, stream banks, tidal water and aquatic resources on the site, and in the surrounding Critical Area. The Council finds that the property is presently used by uninvited and unauthorized fisherman and for overflow parking for the fire station across the street. This has led to the degradation of the remaining marsh and shoreline through the deposit of trash. The Council finds that during low tides, the bulkhead of the old marina is exposed, revealing the presence of trash and debris accumulated in the sediments. In summation, the Council

finds that the current buffer is not minimizing the adverse effects of human activities on the wetlands, shorelines, stream banks, tidal waters or aquatic resources. To the contrary, the property has been subject to extensive human activities throughout the history of the site, and the current status of the site can only contribute to the decline in the environmental quality of the tidal basin, as the site is being used by uninvited fisherman and others.

Even if the Council considers the beneficial effect that the completed mitigation work has had on the tidal basin, the property and the surrounding Critical Area are typified by intense human activities which have had adverse on wetlands, shorelines, stream banks, tidal waters and aquatic resources. This is a town with a long heritage of development along the shoreline. The cumulative effect of human impact in the Critical Area diminishes the effectiveness of the buffer on this property in mitigating the adverse effects on the environment.

3. The third criteria regarding the buffer's functionality is found in COMAR 27.01.09.01(B)(3), which states that the buffer shall: "(3) maintain an area of transitional habitat between aquatic and upland communities". The Council finds that there currently is no transitional habitat within the buffer or expanded buffer area. The property is currently heavily impacted by human development on the fastland, and immediately proceeds to non-tidal wetlands, which is an aquatic resource. A majority of the buffer and expanded buffer was dominated by a monotypic stand of phragmites, which is an invasive and non-native species which has been declared a nuisance by the State of Maryland. The Council finds that the State of Maryland has a program to remove phragmites, and notes that the Applicant was given permits by the Maryland Department of Environment and the United States Army Corps of Engineers to proceed with a mitigation/reclamation of the tidal basin which resulted in the removal of substantially all of the phragmites. The finding that there was phragmites on the property was concurred in the Memorandum in Tab 3 of Exhibit 1 prepared by George Harrison, the acting Chief of the Potomac Basin section of the United States Army Corps of Engineers. In that report, the conclusion was that if left to its own devices, the non-tidal marsh area would eventually become a monotypic culture of *phragmites australis* since it can outcompete the indigenous wetland species in such a disrupted area. In summation, the buffer does not provide an area of transitional habitat between aquatic and upland communities, because of the pattern of existing development in the upland communities and the degraded environmental value of the aquatic section of the water basin. When considered in the context of the surrounding development, this property provides a minimal transitional habitat between aquatic and upland communities. The property is in the midst of residential and commercial development and therefore the current buffer does not provide any meaningful transitional habitat.

The Council's previous findings that the stone revetment, operation of the tide gate, and the lack of stormwater management have contributed to a poor aquatic environment in the tidal basin also establishes that the buffer area on the property is not

providing a transitional habitat between aquatic and upland communities. Both the aquatic and fastland communities are severely degraded and of marginal habitat value, so any transitional habitat between these two ecosystems is of marginal value.

4. The fourth criteria regarding the buffer's functionality is found in COMAR 27.01.09.01(B)(4), which states that the buffer shall: "(4) maintain the natural environment of streams." The Council finds that no streams exist on the property. There exists a water basin which is the result of the 1930's dredging out of what used to be a stream. The Council finds that the basin is not acting as a stream now, as the water flow is controlled by the tide gate and the stone revetment. Therefore, the Council finds that the buffer is not maintaining the natural environment of any stream.

5. The final criteria regarding the buffer's functionality is found in COMAR 27.01.09.01(B)(5), which states that the buffer shall: "(5) protect the riparian wildlife habitat". The Council finds that the riparian habitat on this property is made up of disturbed land, as indicated by its prior findings. The riparian habitat is composed of the existing revetment on the east side, with the tide gate, the filled upland south of the expanded buffer, Maryland Route 261 to the west, and the basin to the north which is adjacent to a residential development which has a bulkhead as an interface to the basin. The Council finds that under the Chesapeake Beach Habitat Protection Plan, there is no wildlife habitat in the project vicinity which needs to be protected. The development surrounding the subject property, and the context in which this property is located, leads to the conclusion that there is minimal riparian wildlife that is being protected by this buffer. Although there are some bird populations that were observed, or expected to be observed, on the site, the subject property itself provides little habitat value to those water fowl. According to the Environmental Memorandum of the acting Chief of the United States Army Corps. of Engineers, there is no threatened or endangered species on the site and most of the impact on the wetlands consisted of the phragmites removal. That report points out that the impact to wildlife will be minimal since phragmites offer little food and habitat value. The report points out that because of the sediment regime, it is doubtful that blue herons feed in the open water and instead would prefer the immediate shoreline which is not subject to this BEA Designation application. The Council finds that the buffer is not protecting the riparian habitat or wildlife and therefore is not functioning as a buffer.

The existing pattern of development in the Critical Area also diminishes the ability of the buffer to protect riparian wildlife habitats. The Critical Area around the subject property is typified by intense development along the shoreline, with the stone revetment providing an abrupt interruption to the tidal exchange with the fastland. The pervasive and intense development in the surrounding Critical Area prevents the buffer from serving as a meaningful protector of riparian wildlife habitat.

V. Findings Regarding Proposed Measures to Achieve Policies (Mitigation):

1. According to COMAR 27.01.09.01(C)(8), if it has been demonstrated that the existing pattern of development prevents the buffer from fulfilling the functions of the buffer policies, then other measures to achieve the water quality and habitat protection objectives of the policies shall be proposed. This is commonly referred to as mitigation.

2. The Applicant proposes to undertake the steps described below in mitigation, and the Council finds that these steps are sufficient. The Council finds that the Critical Area Commission approved the BEA designation after consideration of the proposed mitigation steps and imposed conditions to effectuate the proper supervision and verification of compliance of said mitigation. The Council finds that the wetland and water basin portion of the mitigation work (which has already been completed) was under the permitting authority and supervision of the Maryland Department of Environment and the United States Army Corps. of Engineers. The proposed steps in mitigation include:

A. The wetlands restoration impacts approximately 28,009 square feet of federally regulated wetland. The mitigation calls for the creation of 39,966 square feet of tidal wetland, replacing approximately 20,106 square feet of phragmites with native grasses. A 200 foot long sill was to be created (wetland mitigation is complete). Steps to maintain proper hydrology were to be undertaken.

B. Stormwater management practices to meet the ten percent (10%) reduction in pre-development pollutant loads will be effectuated. The Council finds that the ten percent (10%) requirement will be exceeded with a projected reduction in excess of thirty percent (30%). This mitigation will be done as part of the development of the subject property, and will greatly enhance the water quality in the tidal basin. The stormwater will be conveyed to an infiltration system and sandfilter. Both the MDE permit and the United States Army Corps. of Engineers permit, for the wetland mitigation work, identified the yet to be accomplished stormwater management systems as elements of their projections for improved ecological site conditions after mitigation.

C. All development on the project will be in compliance (by law) with the "Development Standards in the Buffer Exemption Area", which provide the codified method of achieving the buffer functions through mitigation. Those standards include, but are not limited to, the limitation of the shoreward extent of impervious surfaces insofar as possible the planting of natural vegetation shoreward of the development, and a vegetation offset at a two to one ratio to the impervious surfaces created in the Buffer Exemption Area. See section 409(D)(1) of the Town Zoning Code.

Conclusions

Based upon the findings enumerated above, the Town Council finds that it has been sufficiently demonstrated that the existing pattern of residential, industrial, commercial or recreational development in the Critical Area prevents the buffer from fulfilling the functions stated in COMAR 27.01.09.01(B). The buffer fails to significantly provide any of the five functions described in that section, as the intense and pervasive development, both on the subject property and the surrounding Critical Area, has diminished the capacity of the buffer to fulfill those functions. This is neither a surprising or unplanned result. The subject property is in an IDA Critical Area district and Commercial High-Density zoning district. The plans for such districts call for intense development. The property is situated inside a town, a center of human habitation and economic activity. The impact of said development on the buffer's functionality leads to the conclusion that the subject property qualifies for a BEA designation. The mitigation steps, when finally completed, will improve the water quality and habitat protection objectives of the buffer policies.

Based upon the findings and conclusions above, the Council has determined that the Applicant's request for a BEA designation should be granted, contingent upon the five conditions imposed by the Critical Area Commission in its earlier approval of the BEA designation, as evidenced by the May 13, 1998 letter to the Town, a copy of which is attached hereto and incorporated herein. The Council's grant of this BEA designation is exactly coextensive as the approval by the Critical Area Commission, thereby effectuating the program amendment upon the effective date of the Ordinance.

WETLANDS DATA REFERENCE TABLE	
DESCRIPTION	DATA SOURCE
MEAN HIGH WATER - CHESAPEAKE BAY	FIELD LOCATION
OPEN WATER IN OLD HARBOR	DIGITIZED FROM COUNTY TOPO MAPS
EXISTING BULKHEAD	FIELD LOCATION
TIDAL WETLANDS	FIELD LOCATION
NON-TIDAL WETLANDS	FIELD LOCATION

MARYLAND ROUTE 261
SEE MD S.R.C. PLAT # ADF



RE-SUBDIVISION OF BLOCK 10
BAY CREST SUBDIVISION
PLAT BOOK ABE ABE 2/123

BLOCK 4
BAY CREST SUBDIVISION
AAH 14/231

SEAGATE SUBDIVISION
PLAT BOOK ABE ABE 5/46

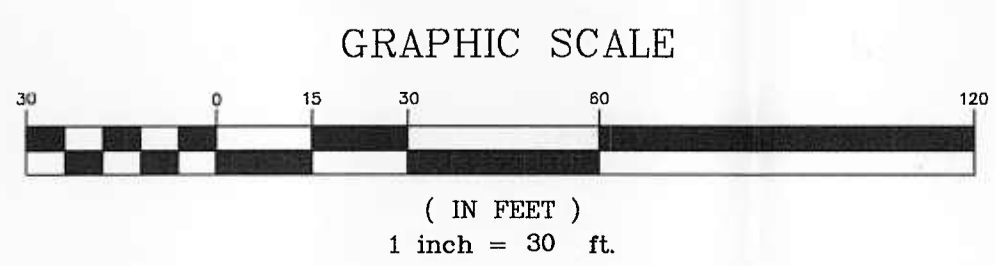
SEAGATE SUBDIVISION
PLAT BOOK ABE ABE 5/46

NOAA ELEVATION DATA REFERENCE TABLE	
DESCRIPTION	ELEVATION
MEAN SPRING HIGH WATER (SHW)	1.05
MEAN HIGH WATER (MHW)	1.00
NORTH AMERICAN VERTICAL DATUM 1988	0.76
MEAN TIDE LEVEL (MTL)	0.50
MEAN LOW WATER (MLW)	0.00
NATIONAL GEODETIC VERTICAL DATUM 1929	-0.04

NOTE: ELEVATIONS REFERENCED TO (MLW). SEE ALSO NOTE 1.

- NOTES**
- TOPOGRAPHY SHOWN HEREON TAKEN FROM A FIELD RUN SURVEY BY COLLINSON, OLIFF & ASSOCIATES, INC. IN AUGUST 1996. THE DATUM IS BASED ON PRELIMINARY TIDAL DATUMS FURNISHED BY NOAA DATED NOVEMBER 21, 1997 WITH A 1 FOOT CONTOUR INTERVAL. FOR ELEVATION CONVERSIONS SEE TABLE THIS SHEET.
 - WETLANDS SHOWN HEREON DELINEATED BY MCCARTHY & ASSOCIATES, INC. FIELD LOCATION OF WETLANDS PERFORMED BY COLLINSON, OLIFF & ASSOCIATES, INC. IN AUGUST 1996.
 - WETLANDS DELINEATION TO BE VERIFIED BY U.S. ARMY CORPS OF ENGINEERS.
 - THIS PROPERTY APPEARS TO BE IN THE FOLLOWING FLOOD PLAINS: ZONE A5 (EL 6), ZONE A5 (EL 7), ZONE V8 (EL 9), ZONE B. ZONES SHOWN HEREON TAKEN FROM FLOOD INSURANCE RATE MAP PANEL # 240100 0001 B.
 - SITE TO BE SERVICED WITH WATER AND SEWER.
 - THIS PLAN FOR PRELIMINARY USE ONLY.
 - ADDITIONAL FIELD RUN TOPOGRAPHY PERFORMED BY COLLINSON, OLIFF & ASSOCIATES, INC. ON DECEMBER 19, 1997 FOR THE DETERMINATION OF MEAN SPRING HIGH WATER (SHW) IN THE AREA OF THE WETLANDS.
 - PLAN REFLECTS 100' BUFFER EXEMPTION TO THE CHESAPEAKE BAY AS DEPICTED ON THE CURRENT TIDAL WETLAND BOUNDARY MAP.

CHESAPEAKE BAY



SUMMARY OF SITE IMPACT TO MITIGATION	
DESCRIPTION OF AREAS	SQUARE FEET
TOTAL DEVELOPMENT IMPACT	18,314
TOTAL MITIGATION REQUIRED: RATIO 1:1	18,314
TOTAL MITIGATION PROPOSED: RATIO > 1:1	18,344

MITIGATION PLAN AREAS	
DESCRIPTION OF CONVERSION AREAS	SQUARE FEET
UPLAND TO MARSH	8,381
NON-VEGETATED WATER TO MARSH	885
TOTAL	9,266
PHRAGMITES TO MARSH	28,585
RIP RAP BREAK WATER	1,072

TABLE OF AREAS PER FIELD SURVEY		
DESCRIPTION	SQUARE FEET	ACERAGE
PROPERTY	233,036	5.3498
TIDAL WETLANDS	31,047	0.7127
NON-TIDAL EMERGENT WETLANDS (TOTAL)	85,663	1.9666
PHRAGMITES	44,823	1.0290
NATIVE	40,840	0.9376
NON-TIDAL WETLANDS BUFFER	27,705	0.6360

IMPACTS TO EMERGENT NON-TIDAL WETLANDS		
DESCRIPTION	SQUARE FEET	ACERAGE
PHRAGMITES	16,238	0.4115
NATIVE	2,078	0.0477

HISTORY OF IMPACT REDUCTION			
DESCRIPTION	DATE	SQUARE FEET	ACERAGE
ORIGINAL PLAN	SEPT 1996	36,921	0.8476
MITIGATION PLAN	NOV 1997	28,009	0.6430
ALTERNATE LAYOUT	MAR 1998	20,001	0.4592
REDUCED IMPACT	APR 1998	19,407	0.4455
IMPACT & MITIGATION	APR 1998	18,314	0.4204

LEGEND

- FIELD DELINEATED WETLANDS
- 25' STATE NON-TIDAL WETLANDS BUFFER
- OPEN WATER LINE
- SHW - FIELD SURVEYED MEAN SPRING HIGH WATER (SHW) LINE
- 100' SHW SETBACK - 100' SETBACK FROM MEAN SPRING HIGH WATER (SHW) LINE

REVISION	DATE	DESCRIPTION
4-1-98	4-1-98	ALTERNATE LAYOUT
4-7-98	4-7-98	IMPACT REDUCTION
4-9-98	4-9-98	PARKING & MITI
7-17-98	7-17-98	REDUCE H ₂ O CONV

COLLINSON, OLIFF & ASSOCIATES, INC.
Surveyors • Engineers
Land Planners

288 MERRIMAC COURT
PRINCE FREDERICK, MARYLAND 20678
410-535-3101 • 301-855-1599 • FAX 410-535-3103

DATE	SCALE	SCALE	DATE
9-27-96	1" = 30'	1" = 30'	9-27-96
1-35-96			1-35-96
11-22-96			11-22-96
12-11-96			12-11-96
3-19-97			3-19-97
4-22-97			4-22-97
1-24-98			1-24-98
2-18-98			2-18-98

WETLANDS IMPACT & MITIGATION PLAN
BLOCKS 5, 11, 12, 14
BAYCREST
INTERSECTION OF 30TH STREET & MD ROUTE 261
CHESAPEAKE BEACH
THIRD DISTRICT, CALVERT COUNTY, MARYLAND
FOR: TIDEWATER HOMES, INC.

SHEET NO. 1 OF 1
FILE NO. B - 16 - 29 G

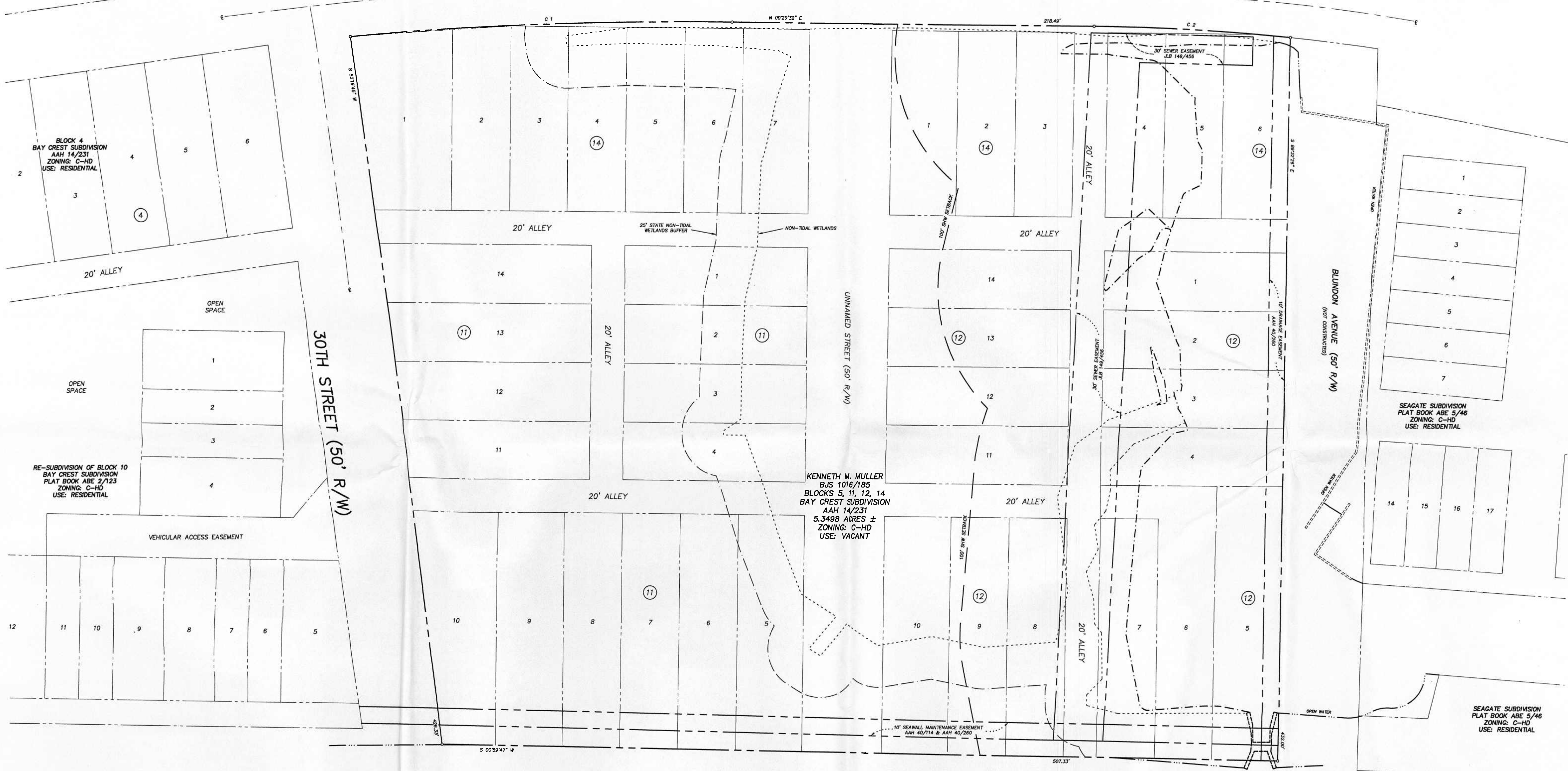
MARYLAND

ROUTE

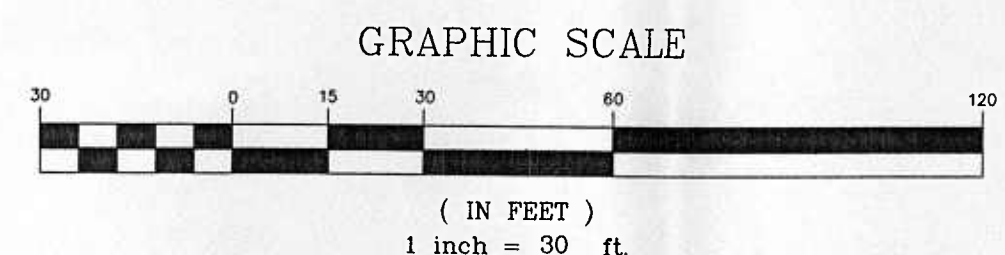
261

(40' R/W)

SEE MD S.R.C. PLAT # ADF



CURVE	LENGTH	RADIUS	DELTA	TANGENT	BEARING	CHORD
C1	231.09'	2470.00'	5°21'38"	115.63'	N 02°11'17" W	231.01'
C2	118.51'	1330.00'	5°06'19"	59.29'	N 03°02'41" E	118.47'

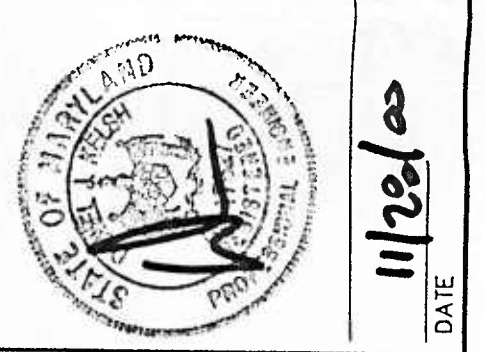


TOWN OF CHESAPEAKE BEACH
 APPROVED
 APPROVED AS NOTED _____
 COMMENTS _____
 BY JAH DATE 12/17/20

NOTES

- 1) A SIDEWALK EASEMENT IS TO BE DEDICATED TO THE TOWN OF CHESAPEAKE BEACH ALONG MD ROUTE 261 ADJACENT TO THE MSHA RIGHT-OF-WAY.
- 2) A FINAL RECORD PLAT FOR THE ABOVE SHOWN KENNETH M. MULLER PROPERTY TO BE PREPARED FOR RECORDATION UPON SITE PLAN APPROVAL.

COLLISON, OLIF & ASSOCIATES, INC.
 Surveyors • Engineers
 Land Planners
 288 MERRIMAC COURT
 PRINCE FREDERICK, MARYLAND 20678
 410-535-3101 • 301-855-1599 • FAX 410-535-3103



DATE	SCALE	DATE	SCALE
3-8-00	1" = 30'		
1-15-16			

EXISTING SUBDIVISION PLAN
HORIZONS ON THE BAY
 PROPERTY OF KENNETH M. MULLER
 BAYCREST SUBDIVISION
CHESAPEAKE BEACH
 THIRD DISTRICT, CALVERT COUNTY, MARYLAND
 FOR: TIDEWATER HOMES, INC.