

Martin O'Malley
Governor
Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair
Ren Serey
Executive Director

STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS

1804 West Street, Suite 100, Annapolis, Maryland 21401

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

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

July 3, 2013

Mr. Brett Ewing
Talbot County Office of Planning and Zoning
28712 Glebe Road, Suite 2
Easton, Maryland 21601

**Re: Rehobeth Farm, LLC Final Subdivision and Buffer Management Plan
M1105 (TM 31, P 139)**

Dear Mr. Ewing:

Thank you for providing revised information on the above-referenced subdivision. The applicant is proposing to create a major 8-lot subdivision. The parcel is 204.8 acres in size, with 197.0 acres located in the Critical Area and designated as Resource Conservation Area (RCA). Currently the parcel is developed with two dwelling units. Total forest cover onsite within the Critical Area is 37.1 acres (19%). The applicant proposes to clear 1.339 acres of forest cover. However, the applicant will plant 9.6 acres of forest coverage to meet Forest Interior Dwelling Bird (FIDS) mitigation requirements, and will plant an additional 14.86 acres of forest coverage to meet Buffer establishment and Buffer variance mitigation requirements.

Based on the information provided, we have no further comments.

Thank you for the opportunity to provide comments on this subdivision request. If you have any questions, please call me at (410) 260-3483.

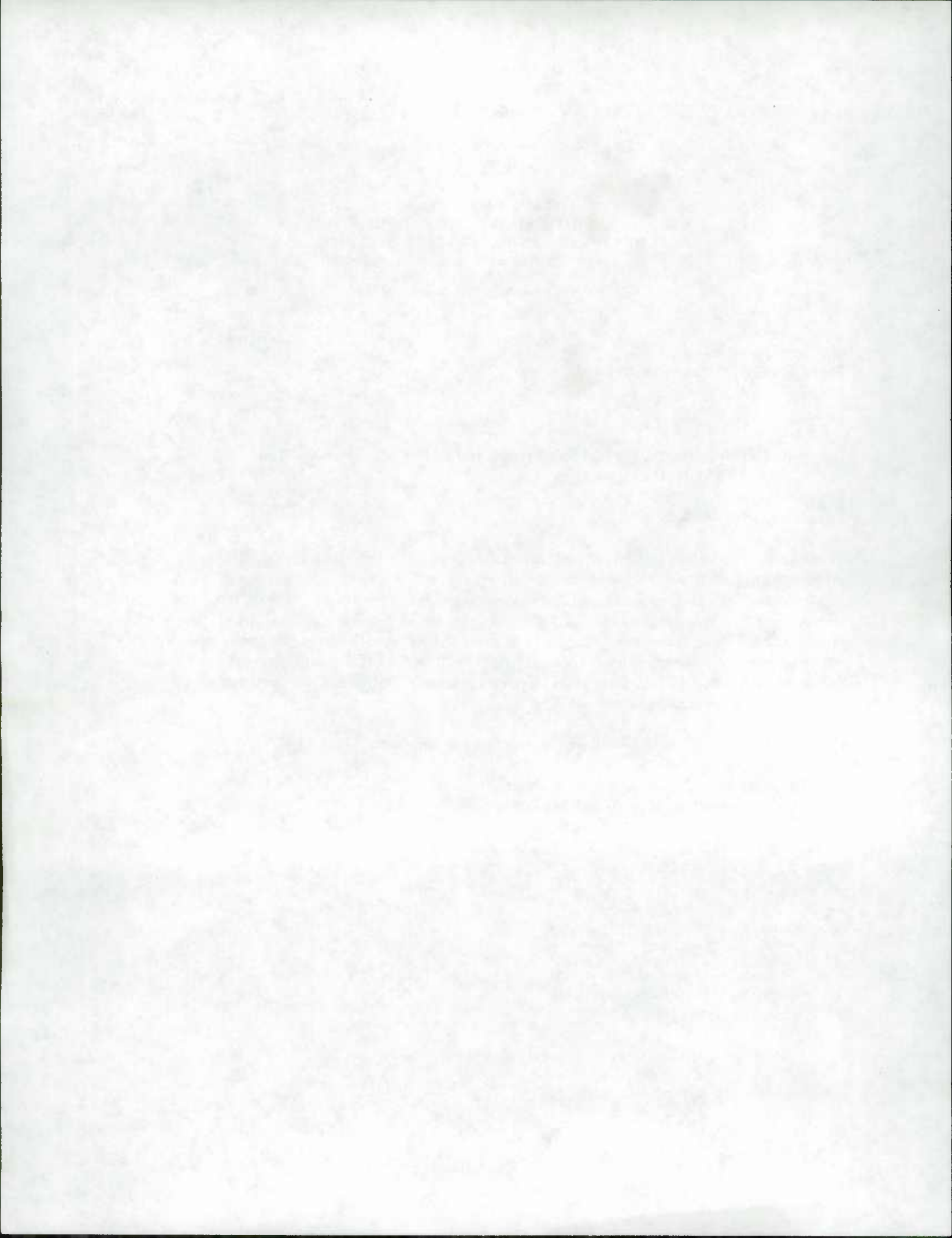
Sincerely,

A handwritten signature in cursive script that reads "Nick Kelly".

Nick Kelly
Regional Program Chief

cc: Bill Stagg, Lane Engineering, Inc.
Elisa DeFlaux, Talbot County

TC 390-08



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May 6, 2013

Mr. Brett Ewing
Talbot County Office of Planning and Zoning
28712 Glebe Road, Suite 2
Easton, Maryland 21601

**Re: Rehobeth Farm, LLC Final Subdivision and Buffer Management Plan
M1105 (TM 31, P 139)**

Dear Mr. Ewing:

Thank you for providing revised information on the above-referenced subdivision. The applicant is proposing to create a major 8-lot subdivision. The parcel is 204.8 acres in size, with 197.0 acres located in the Critical Area and designated as Resource Conservation Area (RCA). Currently the parcel is developed with two dwelling units. Total forest cover onsite within the Critical Area is 37.1 acres (19%). The applicant proposes to clear 1.339 acres of forest cover. However, the applicant will plant 9.6 acres of forest coverage to meet Forest Interior Dwelling Bird (FIDS) mitigation requirements, and will plant an additional 13.73 acres of forest coverage to meet Buffer establishment requirements. As a result, total forest coverage onsite will be 59.1 acres (30%).

Based on the information provided, we have the following comments:

1. The applicant is proposing to use the 1.15 acres of Buffer mitigation required for the previously approved variance for Rehoboth Farm Lane to meet the subdivision's full establishment requirements. Mitigation for the variance associated with Rehoboth Farm Lane cannot be used to meet the subdivision's full establishment requirements. Therefore, the applicant must find an alternative location to plant the mitigation on this site. If alternative locations on the site cannot be found to plant the mitigation, then a fee in lieu may be utilized. However, in reviewing the plans, it appears that Lot 1 has available space in the Buffer to plant the required 1.15 acres of mitigation. Please have the applicant revise the Buffer Management Plan so that both the 1.15 acres of mitigation and the subdivision's full establishment requirements are separately addressed.

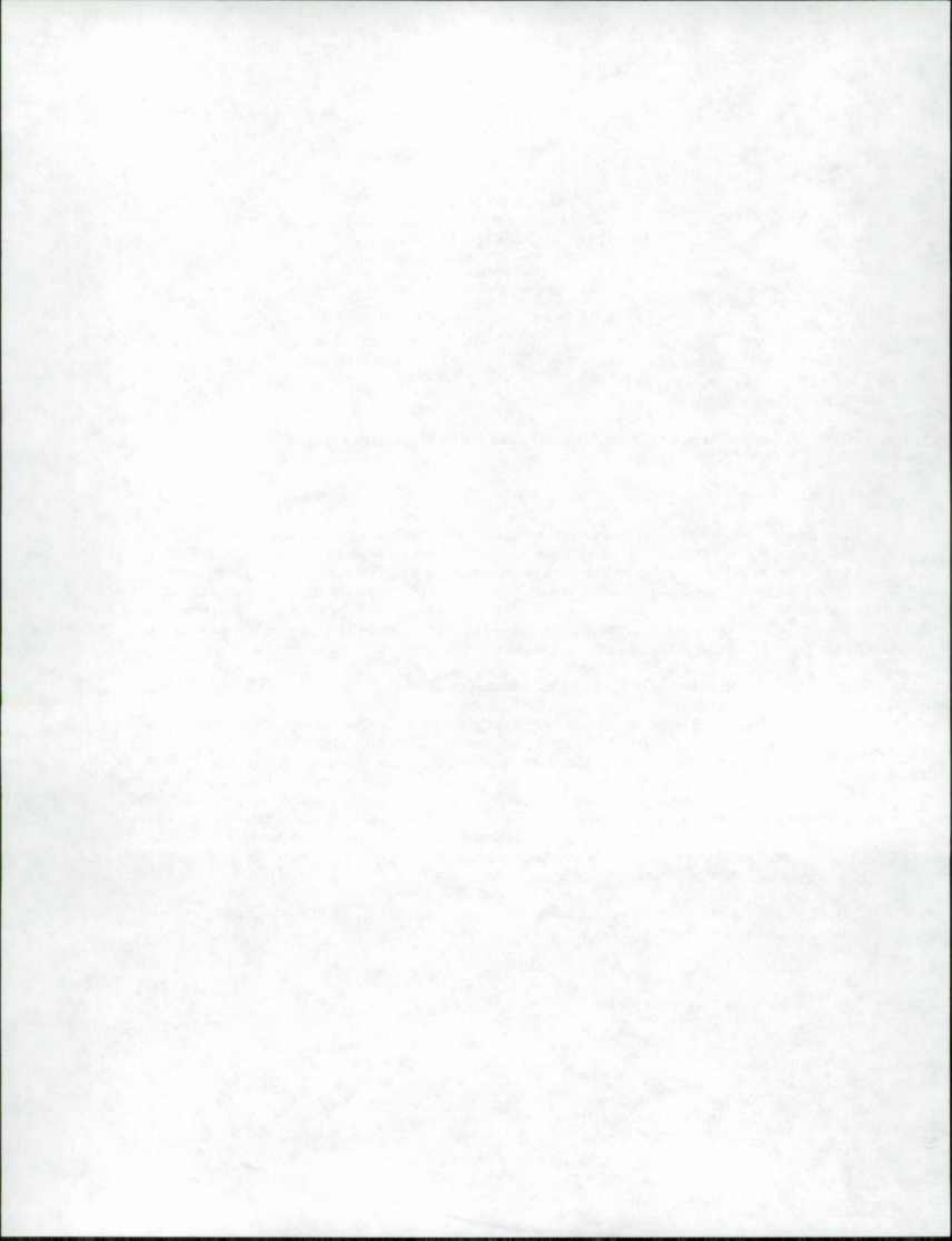
Thank you for the opportunity to provide comments on this subdivision request. If you have any questions, please call me at (410) 260-3483.

Sincerely,

A handwritten signature in cursive script that reads "Nick Kelly".

Nick Kelly
Regional Program Chief

cc: TC 390-08
Mary Kay Verdery, Talbot County
Elisa DeFlaux, Talbot County
Bill Stagg, Lane Engineering, Inc.



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January 4, 2012

Ms. Chris Corkell
Talbot County Office of Planning and Zoning
215 Bay Street, Suite 2
Easton, Maryland 21601

**Re: Rehobeth Farm, LLC Variance
12-1572 (TM 31, P 139)**

Dear Ms. Corkell:

Thank you for submitting information regarding the above-referenced variance request. The applicant is requesting nine variances in order to construct a private road right-of-way, including three variances to disturb a total of 16,759 square feet of expanded Buffer. The parcel is 204.8 acres in size, with 197.0 acres located in the Critical Area and designated as a Resource Conservation Area (RCA).

The proposed private road design is a result of coordination with our office, the Talbot County Department of Planning and Zoning, the Maryland Department of the Environment, and the United States Army Corps of Engineers to minimize disturbance to the expanded Buffer and to nontidal wetlands. This coordination included a request by the applicant to acquire rights to an existing farm lane on an adjacent property to access Beechley Road in order to avoid placing a roadway within the expanded Buffer and buffer for nontidal wetlands. Unfortunately, the applicant could not acquire the rights to access this farm lane, leading to the roadway proposed in this variance request.

Based on the information provided, we do not oppose this variance request. However, we do have the following comment:

- Consistent with COMAR 27.01.09.01, the applicant will be required to mitigate at a rate of 3:1 for any disturbance within the Buffer. A Buffer Management Plan shall be completed in accordance with COMAR 27.01.09.01. The applicant cannot receive approval to construct the proposed private road until the Buffer Management Plan has been approved by Talbot County.

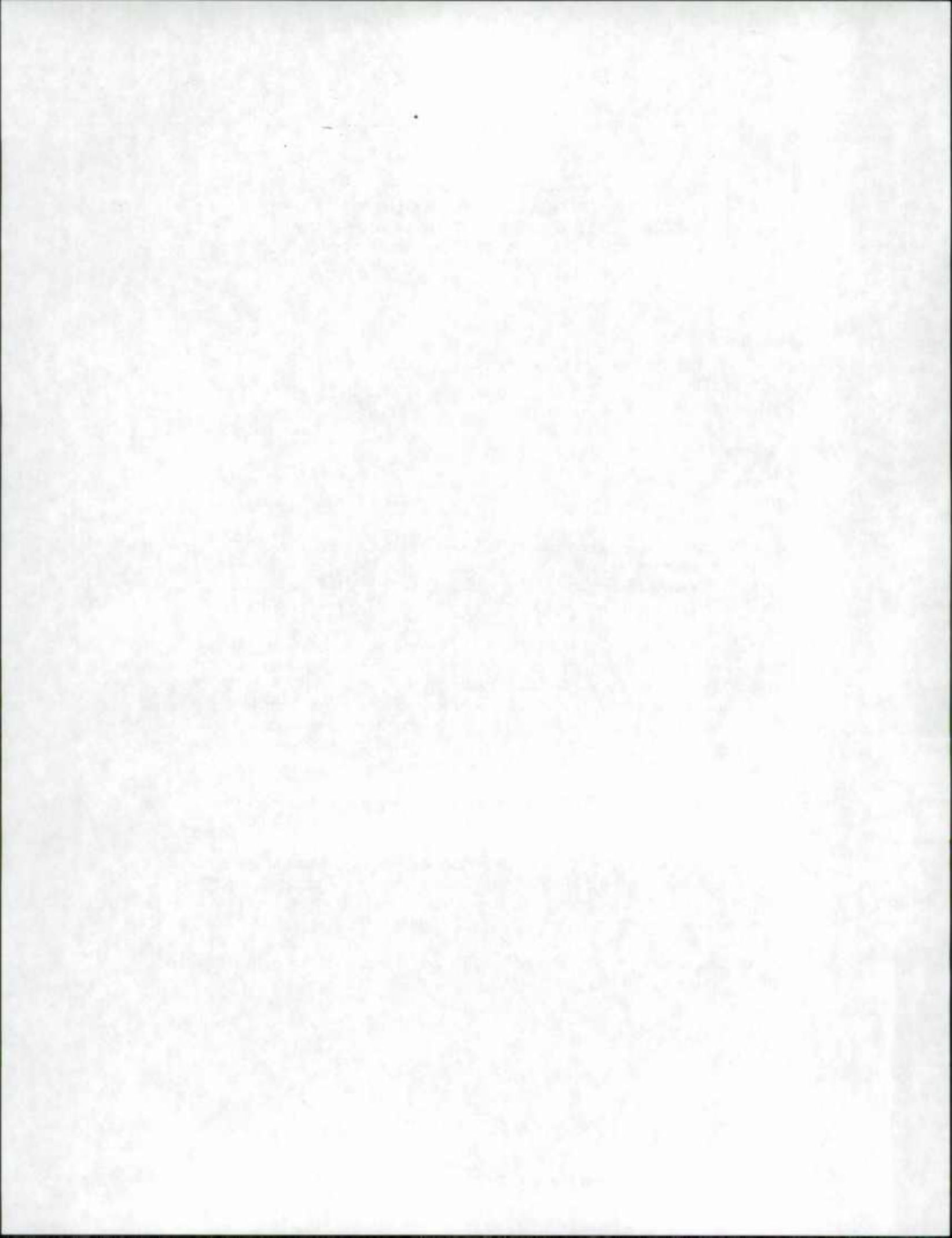
Thank you for the opportunity to provide comments on this variance request. If you have any questions, please call me at (410) 260-3483.

Sincerely,


Nick Kelly
Regional Program Chief

cc: TC 390-08

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



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

January 25, 2011

Ms. Mary Kay Verdery
Talbot County Office of Planning and Zoning
28712 Glebe Road, Suite 2
Easton, Maryland 21601

**Re: Rehobeth Farm, LLC Final Subdivision and Buffer Management Plan
M1105 (TM 31, P 139)**

Dear Ms. Verdery:

Thank you for providing revised information on the above-referenced subdivision. The applicant is proposing to create a major 8-lot subdivision. The parcel is 204.8 acres in size, with 197.0 acres located in the Critical Area and designated as Resource Conservation Area (RCA). Currently the parcel is developed with two dwelling units. Total forest cover onsite within the Critical Area is 37.1 acres (19%). The applicant proposes to clear 1.339 acres of forest cover. However, the applicant will plant 9.6 acres of forest coverage to meet Forest Interior Dwelling Bird (FIDS) mitigation requirements, and will plant an additional 13.73 acres of forest coverage to meet Buffer establishment requirements. As a result, total forest coverage onsite will be 59.1 acres (30%).

1. It is my understanding that the property will remain in agricultural use for the present time. If this is correct, than an individual Water Quality Plan for those areas to remain in agricultural use must be in effect, as stated in COMAR 27.01.09.01-1.B-C. The Water Quality Plan must be referenced on the final plat and Buffer Management Plan. We note that, upon a change in land use on the property, full establishment of the Buffer shall be required, as stated in COMAR 27.01.09.01-1.B-C.
2. Buffer establishment on Lot 1, which is currently developed, should be completed within the next planting season after recordation of the subdivision, not within "six months of completion of construction of Rehoboth Farm Lane or the sale of Lots 2, 3, 4,5,6,7 or 8."

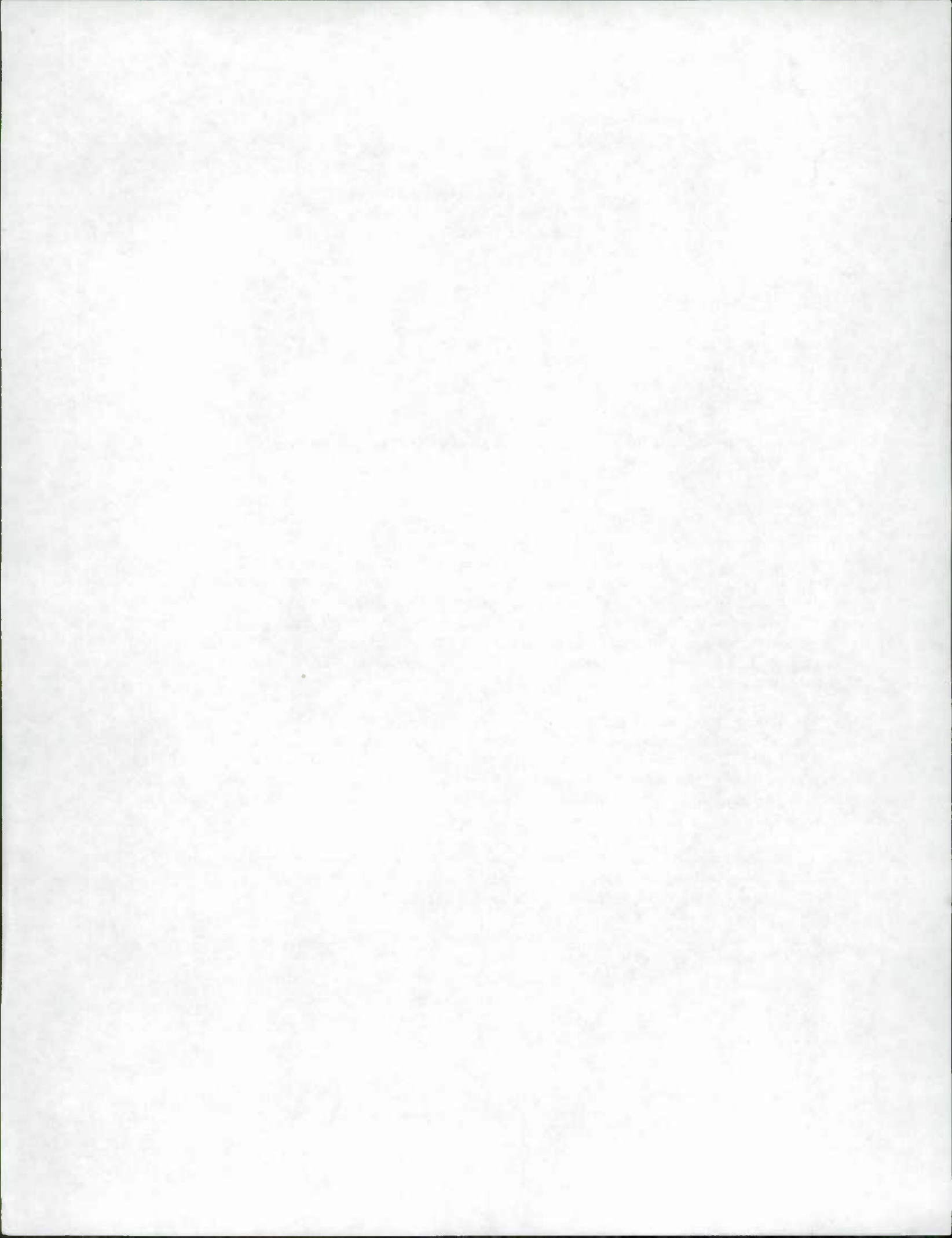
Thank you for the opportunity to provide comments on this subdivision request. If you have any questions, please call me at (410) 260-3483.

Sincerely,

A handwritten signature in cursive script that reads "Nick Kelly".

Nick Kelly
Natural Resource Planner

cc: TC 390-08
Bill Stagg, Lane Engineering, Inc.



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September 28, 2010

Ms. Mary Kay Verdery
Talbot County Office of Planning and Zoning
28712 Glebe Road, Suite 2
Easton, Maryland 21601

**Re: Rehoboth Farm, LLC FIDS Worksheet
M1105 (TM 31, P 139)**

Dear Ms. Verdery:

We are in receipt of a Forest Interior Dwelling Bird (FIDS) Habitat Analysis/Mitigation exhibit for the above-referenced project. The applicant is proposing to create a major 9-lot subdivision. The parcel is 204.8 acres in size, with 197.0 acres located in the Critical Area and designated as Resource Conservation Area (RCA). The applicant proposes to clear 1.03 acres of FIDS habitat, including the conversion of 0.4 acres of FIDS interior habitat to edge habitat. Mitigation of 1.83 acres will be provided onsite and will be planted adjacent to existing FIDS habitat.

Based on the information provided, we have the following comments:

1. The applicant is claiming that only 0.40 acres of FIDS interior habitat is being lost as a result of the proposed road construction. However, based on the maps provided, it appears that almost all existing FIDS interior within the Critical Area (3.74 acres) is being converted to edge habitat. Mitigation must be provided for the entire amount of FIDS interior cleared due to development (pink) and the area of FIDS interior converted to edge habitat (orange). Based on this, the applicant must revise both the FIDS Conservation Worksheet ("Interior Habitat Remaining" calculation) and "FIDS Mitigation (Guidelines Not Followed)" section of the plan (calculations for steps D, F, and G) with these updated numbers. Additional FIDS mitigation will be required as a result of these changes.
2. As stated in the FIDS guidance manual (*A Guide to the Conservation of Forest Interior Dwelling Birds in the Chesapeake Bay Critical Area*), we recommend the following:
 - a. Roads should be as narrow as possible, preferably less than 25 feet in width. At this time, a 40-foot roadway is proposed. It is our understanding that this width

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may be required by the County's Department of Public Works. However, we continue to recommend a reduced road width, if possible;

- b. Forest canopy closure should be maintained over roads; -
 - c. Forest habitat should remain up to the edges of the roads; mowed or grassy berms should not be permitted.
3. FIDS impacts must also be addressed in the narrative of the Habitat Protection Plan.
 4. The applicant must use a conservation easement to protect and maintain all FIDS habitat onsite.

Thank you for the opportunity to provide preliminary comments on the potential FIDS impacts of this subdivision request. If you have any questions, please call me at (410) 260-3483.

Sincerely,



Nick Kelly

Natural Resource Planner

cc: TC 390-08

Bill Stagg, Lane Engineering, Inc.

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July 23, 2010

Ms. Mary Kay Verdery
Talbot County Office of Planning and Zoning
28712 Glebe Road, Suite 2
Easton, Maryland 21601

**Re: Rehobeth Farm, LLC Sketch Subdivision
M1105, TM 31, P 139**

Dear Ms. Verdery:

Thank you for providing revised information on the above-referenced subdivision. The applicant is proposing to create a major 8-lot subdivision. The parcel is 204.8 acres in size, with 197.0 acres located in the Critical Area and designated as Resource Conservation Area (RCA). Currently the parcel is developed with two dwelling units. Total forest cover onsite within the Critical Area is 37.3 acres (19%); the applicant proposes to clear 2.718 acres of forest cover.

Based on the information provided, we have the following comments on this proposed subdivision:

1. A total of nine development rights are permitted on this parcel. If this subdivision is approved, the applicant will have exhausted all development rights, since two development rights have been utilized on Lot 1.
2. Based on my review of the environmental constraints worksheet, it does not appear that the 200-foot Buffer has been properly expanded for hydric soils. This is particularly problematic on Lot 1, in the area of the 200-foot Buffer adjacent to Lot 8. Please have the applicant revise the Environmental Constraints worksheet and the plat to include this area of hydric soils.
3. On September 28, 2010, our office provided comments on proposed mitigation associated with Forest Interior Dwelling Bird (FIDS) impacts. Based on our review of the revised FIDS worksheets and Habitat Protection Plan, it appears that our comments have been adequately addressed. However, we do maintain that the applicant use a conservation easement to protect and maintain all FIDS habitat onsite.
4. On Sheet 1 of 8, "General Notes," the second note should include a reference to the Commission's Buffer regulations (COMAR 27.01.09.01).
5. Regulations concerning the 100-foot, 200-foot, and expanded Buffer (COMAR 27.01.09.01) are now effective. Since this project is covered by the new State regulations, the project must meet the requirements found in the aforementioned sections of COMAR in order to be approved by the

County. Final subdivision approval cannot be granted without an approved Buffer Management Plan (BMP). While the abbreviated version of the BMP has been submitted and appears to be in accordance with COMAR 27.01.09.01, we request the full BMP in order to specifically review planting dates. We note that plantings must occur in the next available planting season after final subdivision recordation.

Thank you for the opportunity to provide comments on this subdivision request. If you have any questions, please call me at (410) 260-3483.

Sincerely,



Nick Kelly

Natural Resource Planner

cc: TC 390-08

Bill Stagg, Lane Engineering, Inc.

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January 30, 2009

Ms. Mary Kay Verdery
Talbot County Office of Planning and Zoning
28712 Glebe Road, Suite 2
Easton, Maryland 21601

**Re: Rehobeth Farm, LLC
M1105, TM 31, P 139**

Dear Ms. Verdery:

Thank you for providing revised information on the above-referenced subdivision. The applicant is proposing to create a major 9-lot subdivision. The parcel is 204.634 acres in size, with 197.686 acres located in the Critical Area and designated as Resource Conservation Area (RCA). Currently the lot is developed with a manor house and accessory residential structure. Total forest cover onsite within the Critical Area is 35.609 acres (18.01%); the applicant proposes to clear 1.148 acres of forest cover.

Based on the information provided, we have the following comments on this proposed subdivision:

1. The applicant should refer to Commission staff's July 23, 2008 letter for information regarding new changes the State Critical Area Law as well as requirements for forest mitigation requirements and Buffer establishment.
2. A total of nine development rights are permitted on this parcel. If this subdivision is approved, the applicant will have exhausted all development rights available.
3. The applicant proposes to construct a private road easement through a non-tidal wetland near Lot 2 and through the expanded Buffer to provide access to Lot 9. A variance would be required for each instance, which this office would not support. New lots created after the County's Critical Area Program adoption date must fully comply with all of the County's Critical Area regulations. Therefore, the applicant must reconfigure the access road and the location of Lot 9 to avoid the need for any variances. Please note that, based



on the scale of the site plan, it appears that the optional private road will also impact the expanded Buffer on Lot 1.

4. Based on the amount of wetlands onsite, and based on the proposal to impact wetlands with the proposed access road, we request a wetland delineation be performed to determine the exact location of each feature.
5. Please have the applicant provide the amount of existing lot coverage located onsite.
6. The site plan states that FIDS Habitat is located onsite. Therefore, development restrictions will apply for any construction proposed in this area. A FIDS Mitigation Analysis sheet must be submitted to this office for review and comment.
7. Due to the presence of FIDS habitat onsite, a Habitat Protection Plan (HPP) must be submitted to this office for review and comment, as required in §190-93 E(8)(d) of the Talbot County code. This HPP must be received and approved prior to preliminary plat approval.
8. The proposed project is located in a waterfowl concentration area. Therefore, time of year restrictions for shoreline work will apply between November 15 and March 1.

Thank you for the opportunity to provide comments on this subdivision request. If you have any questions, please call me at (410) 260-3483.

Sincerely,



Nick Kelly
Natural Resource Planner
cc: TC 391-08

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July 23, 2008

Ms. Mary Kay Verdery
Talbot County Office of Planning and Zoning
28712 Glebe Road, Suite 2
Easton, Maryland 21601

**Re: Rehobeth Farm, LLC
M1105**

Dear Ms. Verdery:

Thank you for providing information on the above-referenced subdivision. The applicant is proposing to create a major 8-lot subdivision. The parcel is 204.634 acres in size, with 197.686 acres located in the Critical Area and designated as Resource Conservation Area (RCA). Currently the lot is developed with a manor house and accessory residential structure. Total forest cover onsite within the Critical Area is 35.609 acres (18.01%); the applicant proposes to clear 1.148 acres of forest cover.

Based on the information provided, we have the following comments on this proposed subdivision:

1. A total of nine development rights are permitted on this parcel. The applicant claims that only one development right has been utilized onsite. However, it appears that that the applicant has utilized two development rights, as an accessory residential structure exists that does not conform to the State laws for accessory dwelling units, found in Natural Resource Code §8-1808.1(e). Consequently, only seven development rights remain. The applicant must revise the proposed subdivision request to account for this additional utilized development right.
2. Please have the applicant identify and label the nature of all existing structures on the site plan.
3. The subdivision plat must contain information regarding existing and proposed lot coverage. Section 8, Ch. 119, 2008 Laws of Maryland at 765, contains provisions in regard to the lot coverage requirements of Natural Resources Article §8-1808.3 which may be applicable to this subdivision. Under these provisions, a development project whose initial application for development that satisfies all local requirements is filed by

October 1, 2008 and whose development plan is approved (recorded) by July 1, 2010 may utilize Talbot County's approved impervious surface area limitations in effect prior to July 1, 2008 provided that:

- a) The approved development plan remains valid in accordance with Talbot County's procedures and requirements; and
- b) By July 1, 2010, the applicant prepares a detailed lot coverage plan drawn to scale and showing the amounts of impervious surface area, partially pervious area, and developed pervious surface area in the development project.

In addition to (a) and (b) above, Section 8, Ch. 119, 2008 Laws of Maryland at 765 requires the lot coverage plan to be approved by Talbot County and implemented in accordance with the approved lot coverage plan. Should the applicant intend to develop this subdivision in accordance with the County's impervious surface area limitations, please indicate that intent and ensure that the applicant is aware of the requirements of Chapter 119 of the 2008 Laws of Maryland for proceeding as such

4. The applicant is currently providing a 100-foot Buffer on the site plan. It is our understanding that the applicant submitted an application for subdivision prior to July 1, 2008. Please note that Ch. 119, 2008 Laws of Maryland at 765 contains provisions in regard to a new 200-foot Buffer which may be applicable to this subdivision. Under these provisions, a subdivision located in the RCA must provide a new 200-foot Buffer *unless* an application for subdivision was submitted before July 1, 2008 *and* is legally recorded by July 1, 2010. Should the applicant fail to have the subdivision plat recorded by the July 1, 2010 deadline, then a 200-foot Buffer will apply to this project. Please ensure that the applicant is aware of this requirement as stated in Chapter 119 of the 2008 Laws of Maryland.
5. The 100-foot Buffer must be expanded for both hydric and highly erodible soils located contiguous to the 100-foot Buffer. Currently, this has not been done.
6. The applicant must fully forest both the 100-foot and Expanded Buffer.
7. The proposed sewage disposal area for Lot 5 should be located outside of the Fallsington soils.
8. The applicant proposes to construct a private road easement through a non-tidal wetland near Lot 2 and through the expanded Buffer to provide access to Lot 9. A variance would be required for each instance. New lots created after the County's Critical Area Program adoption date must fully comply with all of the County's Critical Area regulations. Therefore, the applicant must reconfigure the access road and the lot lines to avoid the need for any variances.
9. Please have the applicant provide the amount of existing lot coverage located onsite.
10. The Maryland Department of Natural Resources wetlands maps indicate an area of non-tidal wetlands located near the Fallsington soils on Lots 1 and 2. A wetland delineation may be required to determine if this feature exists onsite.
11. The applicant must receive a letter from the Department of Natural Resources Wildlife and Heritage Division (WHS) evaluating the property for any rare, threatened, or endangered species location onsite.
12. The site plan states that FIDS Habitat is located onsite. Therefore, development restrictions will apply for any construction proposed in this area. A FIDS Mitigation Analysis sheet must be submitted to this office for review and comment.

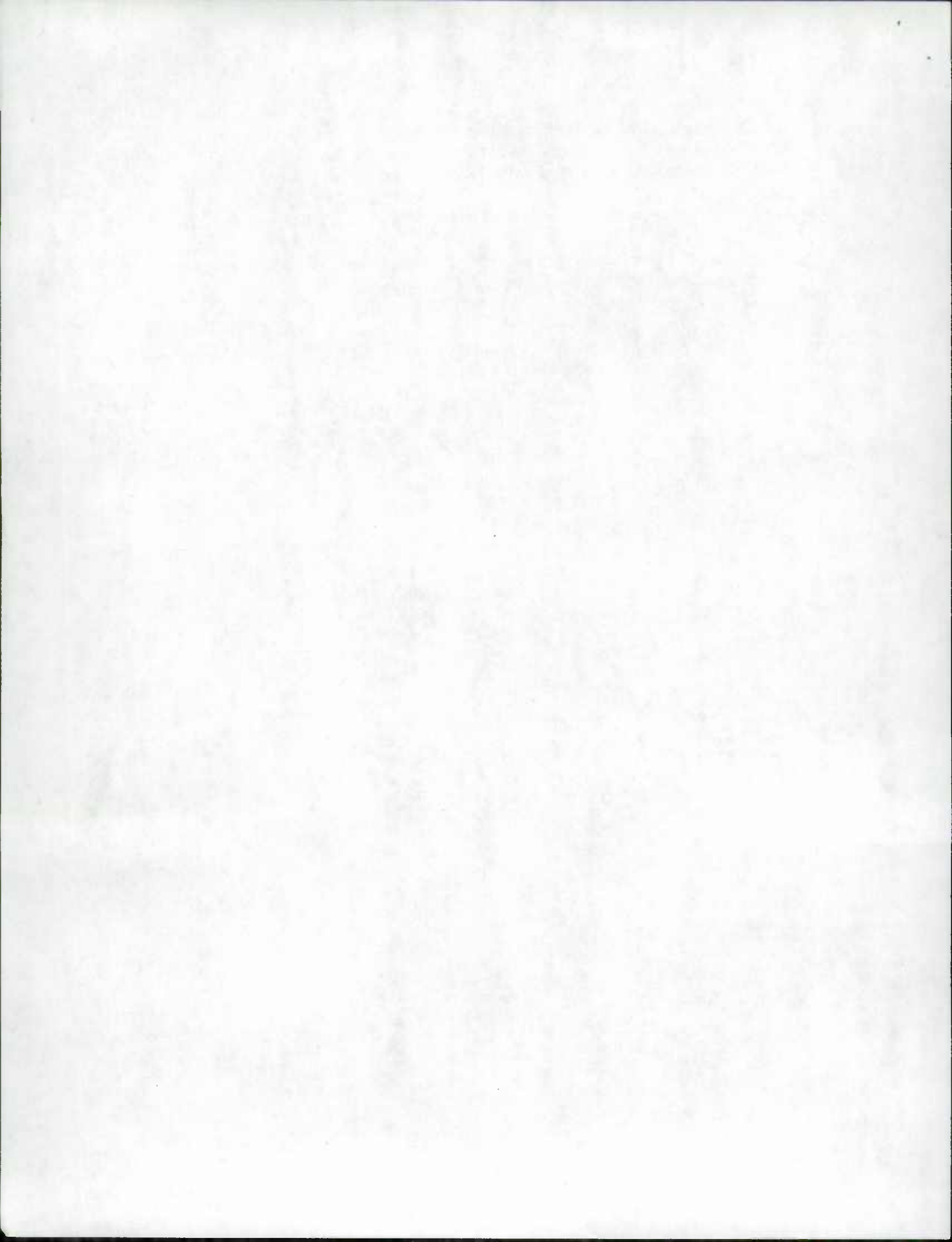
13. Due to the presence of FIDS habitat onsite, a Habitat Protection Plan (HPP) must be submitted to this office for review and comment, as required in §190-93 E(8)(d) of the Talbot County code. This HPP must be received and approved prior to preliminary plat approval.
14. Mitigation for forest clearing onsite shall be provided at a 1:1 ratio, provided it is less than 20% clearing.
15. The proposed project is located in a waterfowl concentration area. Therefore, time of year restrictions for shoreline work will apply between November 15 and March 1.

Thank you for the opportunity to provide comments on this subdivision request. If you have any questions, please call me at (410) 260-3483.

Sincerely,



Nick Kelly
Natural Resource Planner
cc: TC 390-08





Staff Report

To: Talbot County Board of Appeals
From: Brett Ewing, Planner I
Date: 12/29/11
Subject: Variance
Tax Map: 31 **Grid:** 1 **Parcel:** 139

Appeals Case #: 12-1572

BOA Meeting Date: 1/23/12

General Information:

Owners: Rehobeth Farm, LLC

Applicant: Ryan Showalter, Esq., Miles & Stockbridge P.C.

Requested Action: Variance

Applicant, Rehobeth Farm, LLC, is requesting nine variances from certain non-tidal wetland buffer, Shoreline Development Buffer, and expanded buffer requirements and floodplain fill limitations to permit the construction of a private road right-of-way to be known as "Rehobeth Farm Lane" to access an eight-lot subdivision as follows:

- (A) Five variances to permit a total disturbance of 9,149 sq. ft. of non-tidal wetland buffer located within the Critical Area;
- (B) A variance to permit disturbance of 7,497 sq. ft. of Shoreline Development Buffer, a portion of which overlaps 25' non-tidal wetland buffer;
- (C) Two variances to permit a total disturbance of 9,262 sq. ft. of Expanded Shoreline Development Buffer consisting of non-tidal wetlands located contiguous to the Shoreline Development Buffer; and
- (D) A variance to permit the placement of more than 600 cubic yards of fill within the floodplain.

The variances requested would permit construction of Rehobeth Farm Lane in accordance with the manner and alignment required by County regulations and prior approvals by the Maryland Department of the Environment and U.S. Army Corps of Engineers. The Shoreline Development Buffer variance would permit construction of road improvements within 160' of tidal wetlands and drainage or utility improvements within 145' of tidal wetlands. With respect to each of the other setback variances, portion(s) of the applicable buffer would be reduced to 0'.

Existing Zoning: RC- Rural Conservation/ WRC- Western Rural Conservation

Location: Beechley Road, Wittman, MD 21676

Property Size: 204.804 acres

Comprehensive Plan Classification: *Resource Conservation Area* – “Sensitive environmental areas shall be protected where they occur to the greatest extent possible.”

Zoning History: 10/8/08 – Sketch TAC
11/5/08 – Planning Commission disapproval, sketch
4/8/09 – Revised sketch TAC
5/6/09 – Planning Commission approval, revised sketch
5/18/10 – Notice of Project Expiration from Planning Officer
7/2/10 – Resubmitted revised project
8/11/10 – Sketch TAC
9/1/10 – Planning Commission approval, sketch
11/10/10 – Preliminary TAC
12/7/10 – Planning Commission approval, preliminary
2/9/11 – Final TAC
3/2/11 – Planning Commission approval, final with lot size waiver

General Critical Area Variance Standards:

The Planning Office staff has reviewed the standards and offers the following:

- (a) **Special conditions or circumstances exist that are peculiar to the land or structure such that a literal enforcement of the provisions of this chapter would result in unwarranted hardship**

The property has 340' of road frontage on Beechley Road north of the existing easement across Cober property. This is the only road frontage from which access to the subdivision can be developed.

- (b) **A literal interpretation of the Critical Area requirements of this chapter will deprive**

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the property owner of rights commonly enjoyed by other property owners in the same zoning district.

Strict Compliance with the Critical Area requirements would deprive the owner the right to subdivide the 200 + acre farm. The property currently has 10 development rights available.

- (c) **The granting of a variance will not confer upon the property owner any special privilege that would be denied by this chapter to other owners of lands or structures within the same zoning district.**

In accordance with County Code §190-139 C., New development activities are not permitted in buffer; the variance process is required.

- (d) **The variance request is not based on conditions or circumstances which are the result of actions by the applicant, including the commencement of development activity before an application for a variance has been filed, nor does the request arise from any condition relating to land or building use, either permitted or nonconforming, on any neighboring property.**

No development activity has occurred prior to the variance application.

- (e) **The granting of the variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat, and the granting of the variance will be in harmony with the general spirit and intent of the state Critical Area Law and the Critical Area program.**

In accordance with County Code §190-139 B., the purpose of the shoreline development buffer is to, (2) *Minimize the adverse effects of human activities on wetlands, shorelines, stream banks, tidal waters, and aquatic resources;* (3) *Maintain an area of transitional habitat between aquatic and upland ecological communities;* (5) *Protect riparian wildlife habitat;* and (6) *Maintain natural vegetation.*

- (f) **The variance shall not exceed the minimum adjustment necessary to relieve the unwarranted hardship.**

All proposed improvements have been designed to cross sensitive areas and buffer in the shortest and most direct locations to reduce disturbance.

- (g) **If the need for a variance to a Critical Area provision is due partially or entirely because the lot is a legal nonconforming lot that does not meet current area, width or location standards, the variance should not be granted if the nonconformity could be reduced or eliminated by combining the lot, in whole or in part, with an adjoining lot in common ownership.**

N/A

General Flood Plain Variance Standards:

- (1) The applicant must show good and sufficient cause for granting of the Variance.**

The only road frontage of the property to utilize for access of a new subdivision road is through the forested strip, consisting of nontidal wetlands and the floodplain zone.

- (2) The applicant must demonstrate that failure to grant a variance would result in exceptional hardship (other than economic) to the applicant; and**

The road cannot comply with code requirements without a variance, resulting in no subdivision.

- (3) The applicant must demonstrate that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud or victimization of the public, or conflict with existing local and state laws or subtitles.**

The road alignment has been coordinated with, reviewed and approved by Public Works, Planning and Zoning, Critical Area Commission, MDE and Army Corps of Engineers.

- (D) The variance action shall be the minimum necessary, considering the flood hazard, to afford relief.**

The road has been designed to accommodate 100 year flood situations.

Related Information:

The State of Maryland Department of the Environment Water Management Administration Nontidal Wetlands and Waterways issued permit no. 09-NT-2138/200963328 to clear, excavate, placement of fill, and grade for the construction of a private road (Rehobeth Farm Lane) resulting in permanent impacts to 17,214 sq. ft. of forested nontidal wetland and 9,547 sq. ft. of forested nontidal wetland buffer.

If the Board elects to approve the variance request, the Planning Office recommends the following conditions:

- 1) The applicant shall comply with all conditions described in the Maryland Department of the Environment Nontidal Wetlands and Waterways permit no. 09-NT-2138/200963328 dated July 21, 2011.
- 2) The applicant shall apply for an Erosion and Sediment Control Plan with Talbot County Soil Conservation District prior to commencing construction with the roadway.
- 3) The applicant shall commence construction on the proposed improvements within eighteen (18) months from the date of the Board of Appeals written approval.

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DECISION
TALBOT COUNTY BOARD OF APPEALS
Appeal No. 12-1572

Pursuant to due notice, a public hearing was held by the Talbot County Board of Appeals at the Bradley Meeting Room, Court House, South Wing, 11 North Washington Street, Easton, Maryland, beginning at 7:00 p.m., January 23, 2012 on the Application of **REHOBETH FARMS, LLC** (Applicant). The Applicant is seeking (A) five (5) variances to permit a total disturbance of 9,149 sq. ft. of non-tidal wetlands buffer located within the Critical Area; (B) one variance to permit disturbance of 7,492 sq. ft. of Shoreline Development Buffer, a portion of which overlaps the twenty-five (25) ft. non-tidal wetland buffer; (C) two (2) variances to permit a total disturbance of 9,262⁹²⁶⁷ sq. ft. of the Expanded Shoreline Development Buffer consisting of non-tidal wetlands lying contiguous to the Shoreline Development Buffer; and (D) one variance to permit the placement of more than six hundred (600) cubic yards of fill within the floodplain. The Applicant's request is made to permit construction of a private road "Rehobeth Farm Lane" in accordance with County regulations and in an alignment which has received prior approvals of the Maryland Department of the Environment (MDE) and the U.S. Army Corps of Engineers (the Corps). The requested variances may reduce portions of the applicable buffers to zero (0) ft. The Shoreline Development Buffer variance would permit construction of road improvements within one hundred sixty (160) ft. of tidal wetlands and drainage or utility improvements within one hundred forty-five (145) ft. of tidal wetlands.

The request is made in accordance with Chapter 7, Floodplain Management, Article V, § 70-19 and Article VII, § 70-31; Chapter 190, Zoning, Article VI, ' § 190-139, and 190-140; and Article XIV, § 190-182 of the Talbot County Code (Code). The property is located at 8411 Beechley Road, Wittman, MD in the Rural Conservation (RC) and Western Residential Conservation (WRC) Zones. The property owner is Rehobeth Farm, LLC and the property is shown on Tax Map 31 Grid 1 Parcel 139.

Present at the hearing were Board of Appeals members Paul Shortall, Jr., Chairman; Phillip Jones, Vice Chairman; Rush Moody; Betty Crothers; and John Sewell. Anne C. Ogletree was the attorney for the Board of Appeals.

It was noted for the record that all members of the Board had visited the site.



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The following exhibits were offered and admitted into evidence as Board's Exhibits as indicated:

1. Application for Critical Area and Floodplain Variance with Attachment A (4 pages).
2. Copy of tax map of subject property, highlighted
3. Notice of Public Hearing
4. Newspaper Confirmation
5. Notice of Hearing & Adjacent Property Owners List attached
6. Variance Standards for Critical Area with Attachment B, answers and Floodplain Standards with Attachment C, answers
7. Amended Staff Memo 01/07/12 and staff memo prepared 12/29/11 by Brett Ewing Planner I.
8. Sign Maintenance Agreement
9. Site Plan with Exhibits A thru I
10. Critical Area Commission Letter dated 01/4/12.
11. Letter from Maryland Department of the Environment, Kevin Wagner, CFM dated 01/17/12..
12. Independent Procedures and Acknowledgment Form
13. Aerial Photo
14. Road Plan and Profile, Job 060606, Sheet # C202 submitted by Mr. Showalter

All potential witnesses were sworn. Ryan Showalter, Esq. directed the testimony of the Applicant. The Chairman asked Mr. Showalter to give the overall background of the property and the nature of each of the variance requests and provide answers to questions Board members might have about each before addressing the specific requirements of the variances. Mr. Showalter suggested that the floodplain variance be discussed last, as it was distinct from the others.

Mr. Jones stated that the Board would have to be flexible. He felt that the Comprehensive Plan requires floodplain variance to be looked at in conjunction with the wetlands variances while discussing the appropriate criteria.

Mr. Showalter introduced himself. He stated that the Applicant's property is currently used as a farm. The LLC was created for estate planning purposes, but the property's ownership

has been in the Smith family since the 1930's -- for nearly one hundred (100) years. The property today is accessible at two points. The first is by a tree lined, half mile long driveway at the end of Beechley Road that currently serves the residences on the farm. That access is by prescriptive easement only and the width is limited to what has been maintained since the 1930's. The farm has used that lane as a sole means of ingress and egress since that time.

The farm has approximately three hundred thirty (330) feet of frontage on Beechley Road at a point that is considerably north of the existing driveway. Within that frontage, the centerline of the proposed private road has been staked.

Mr. Showalter opined that the Applicant's requested variances were similar to that heard by the Board for the Shanahan family sometime ago. The Applicant's property is a waterfront peninsula farm, and the only way to provide access that is compliant with the County's road ordinances is through the construction of a new private road. Because of the unique configuration of the property, the private road necessarily requires some impacts to non-tidal wetlands, non-tidal wetland buffers and the two hundred foot (200') Shoreline Development Buffer. In some cases, there are also non-tidal wetlands contiguous to the Shoreline Development Buffer resulting in an expanded Shoreline Development Buffer which will be also be impacted. Mr. Bill Stagg from Lane Engineering, (Lane), is able to speak to each of the requested variances.

Mr. Showalter emphasized that the property owner spent a considerable amount of time, attempting to secure the necessary legal rights to enable the Applicant to widen and improve the existing driveway for subdivision access. The existing driveway lies within an easement and is not wide enough to be able to comply with County private road requirements. Those efforts were not successful. Mr. Stagg and his team then spent a significant amount of time in close coordination with the Talbot County Planning and Zoning staff, the Talbot County Department of Public Works, (TCDPW), Critical Areas Commission, MDE, the Corps and other agencies to develop the least intrusive route through the wooded frontage of the property to the subdivided waterfront portion of the farm.

This property does not present with a single contiguous wetland that requires a crossing, but rather consists of a series of different pockets and fingers of wetlands, so the proposed road takes a circuitous route through the wetlands to avoid impacts and buffers where possible. With

the direction of the Corps and MDE the proposed road attempts to cross wetlands in the narrowest areas and with the most direct route possible.

There are requests for nine variances from the strict requirements of the Talbot County Zoning Ordinance. Most deal with impacts to wetlands, wetland buffers, Shoreline Development buffers or expanded Shoreline Development buffers, but there is also a variance to exceed the six hundred (600) cubic yards of fill that is permitted by the Code in the floodplain. This variance is necessary as portions of the road are located within the floodplain and county road design standards require the roadbed to be elevated above base flood elevation to provide ingress and egress in the event of the one hundred (100) year storm.

Mr. Jones asked a general question about the entire application. He noted that the staff report stated that the subdivision had received final approval from the Planning Commission. He asked if that statement was true.

Mr. Showalter responded in the affirmative. He noted that their approval was final and complete.

Mr. Jones then inquired if the appeal period for the subdivision decision by the Planning Commission had run.

Mr. Showalter stated that the appeal would have had to be filed by April, 2011. He added that the necessary approvals took almost as long and circuitous route through the administrative processes as the proposed road on the property took to reach the lots. There were numerous Planning Commission reviews to ensure that the final road configuration created the least impact and was approved by the necessary regulatory authorities. Sketch Plan review was in September of 2010, the final plat was approved March 2, 2011. Once the final plat was completed, Lane finished the engineering drawings for the road, submitted those plans to MDE and the Corps, and a final wetlands permit was issued in late August 2011¹. Every agency, (except the Board of Appeals), that has had a role in approval of the project has already approved it. The only action needing to be completed before recordation of the subdivision plat is the Board of Appeals approval of the variances requested.

Mr. Jones commented that he was somewhat confused because in a recent case the Board

¹ Mr. Showalter corrected the date to July 2011 in later testimony.

became aware that there was a Charter change in 2002 which stated that the Planning Commission decision on a subdivision issue was final. He felt that if the Board turned down the Applicant's requests it was, in fact, making the final decision on the subdivision. He suggested that the matter should have come before the Board at the preliminary plat stage, and queried Mr. Showalter on his opinion of the finality issue.

Mr. Showalter commented that the Planning Commission has authority with respect to subdivision including subdivision and road design, lot configuration, buffer design, lot sizes, and none of those determinations are vested in the Board. In the past the Board has required that projects not be presented to it until all final permits had been issued and all subdivision design issues had been resolved so the Board would have certainty with respect to the variance requests. While he was familiar with the Charter change, Mr. Showalter did not believe there was a conflict. If the Board turned down the variance requests it would not be making a decision on the subdivision, it would be deciding if the Applicant or a future successor had the authority to disturb a portion of a buffer that is regulated by the Zoning Ordinance. The subdivision decision was already made. The Board's decision is, however, a condition precedent to the plat being recorded. The Board did not have the authority to change the design of the subdivision or approve or disapprove the subdivision.

Mr. Jones inquired as to how the Planning Commission could approve a subdivision that did not have road access.

Mr. Showalter stated that approval was contingent upon the issuance of a wetlands permit and the variances. The wetlands permit has been granted, and, under state and federal law, MDE and the Corps cannot grant that permit unless the Applicant has demonstrated that it has avoided impacts on sensitive areas to the extent possible, and minimized any impacts to the greatest extent possible.

Mr. Jones asked if the approval was conditioned on, or contingent on, the Board's granting a variance and suggested that the Planning Commission approval might not be final until the Board granted the variance.

Mr. Showalter opined that one could state the proposition as Mr. Jones had, but he would rephrase it to say that the Planning Commission decision is final and non-appealable, but if the variance condition is not met, the Applicant will not have the authority to get signatures on the

plat or record it. He reiterated that there was no further action required of the Planning Commission.

Mr. Shortall commented that he thought he understood why the Applicant proceeded in this manner, as it is a pretty expensive process to go through, and to do all which had to be done, if the subdivision was not approved subsequently by the Planning Commission.

Mr. Jones commented that he thought the application should have come before the Board after preliminary plat approval, when the Applicant knew final plat approval would be granted. However, he also recognized that in the past the Board had requested all plats be presented to it in final form because the Board was the 'last stop'. In this case, it wasn't – on subdivisions the Board did not have the final say.

Mr. Shortall reminded the Board that it was not dealing with a subdivision but with variances for road construction.

Ms. Ogletree suggested that the real issues before the Board were the approvals requested for the construction of the road. If those approvals did not issue, the subdivision project would be 'dead'.

Mr. Moody commented that it seemed to him that the Board was having the final say on the subdivision if that were the case.

Ms. Ogletree disagreed, stating that the design and placement of the road were already approved, that being the function of the Planning Commission – the subdivision part. Giving permission to construct the road by allowing the Applicant to disturb the land is the Board's function.

Mr. Showalter called his first witness, Bill Stagg. Mr. Stagg stated he is a registered landscape architect and land planner, and is a principal of Lane Engineering, Inc., a firm headquartered at 117 Bay Street, Easton. He has performed professional services in the planning and site design field for over thirty (30) years, of which twenty-three (23) years have been in Talbot County working under the Talbot County Zoning Ordinance. He had previously testified before the Board of Appeals as an expert.

Mr. Shortall stated that the Board would accept him as an expert in those fields.

Mr. Showalter told the Board the Applicant would be using Exhibit 9 for the most part, (but not exclusively), during its testimony. Exhibits A-H depicted the requested variances and

impacted areas; the next several exhibits through exhibit K dealt with mitigation. The non-tidal wetlands permit and associated exhibits are collectively labeled exhibit L.

Mr. Stagg proceeded to orient the Board referring to exhibit A, an aerial photograph showing the entirety of the farm. Just off the top of the page one finds St Michaels Road. Beechley Road ties into St. Michaels Road and runs essentially north to south and services the property. The heavy black line on the aerial is the perimeter boundary of Rehobeth Farm. He directed the Board's attention to the eight proposed lots within the perimeter. The location of most of the variances is the wooded 'throat' of the property which runs east to west and ties to Beechley Road. The bulk of the application is within that wooded area, on Lot 1, although there are some floodplain variances further south.

Mr. Stagg informed the Board that the parcel had a total area of approximately 204 acres and lies in two (2) zoning districts. The first, the RC District, lies within the Critical Area, and requires a density of no more than one (1) dwelling unit per twenty (20) acres. One hundred ninety seven (197) acres lie within the Critical Area, which permits nine (9) development rights or lots. There is also a small portion of the property adjoining Beechley Road which is not within the Critical Area and is zoned WRC. That zoning permits three (3) houses. The application does not contemplate any non-critical area lots, but those development rights remain with Lot 1 of the property. There are currently two (2) existing houses on the property on the western waterfront. The manor house is located on the middle point (right above the designation Harris Creek on exhibit A). Just above that on a small point that projects into Harris Creek is the old farmhouse with its associated outbuildings. Both residences are currently serviced by the existing prescriptive easement.

Mr. Stagg noted that of the property's twelve (12) development rights, two (2) have been previously utilized and ten (10) remain. None of the remaining development rights may be utilized without the construction of a conforming public or private road.

Mr. Stagg next described the process of trying to design access for the proposed subdivision, the process that has spawned the variance requests. Initially the Applicant explored using the existing access which is at the end of Beechley Road and which runs east from the public road, crossing over the adjoining Cober property, and eventually becomes the tree lined driveway. Well over a year was spent exploring the acquisition of additional easement or fee

simple width to utilize this access. When it became apparent that negotiations had failed, attention turned to the wooded area on Beechley Road. Lane's team knew where the wetlands and the buffers were, as well as the issues that had to be faced to get the road approvals that were needed. The team felt it was prudent to get the regulatory agencies that were responsible for issuing the necessary permits, MDE, the Corps, TCDPW, the County's planning staff and the Critical Areas Commission involved in the process from the start.

Mr. Jones inquired about a private road waiver and recalled a determination made by TCDPW on the Charles Sharp property. He wished to know if the TCDPW had been approached with regard to this site.

Mr. Showalter responded that the waiver in that case was based solely on the fact that there was no new development. The road in question served an existing family residence which was to be subdivided from the farm. The waiver and subsequent private road maintenance agreement expressly prohibited use of the road for a future subdivision or new construction without a new conforming public or private road. The Rehobeth Farm issues are quite different.

Mr. Stagg resumed his testimony stating that he had his crew flag a proposed route through the woods. Lane believed it would minimally impact the resources on site. The road was staked out in accordance with the TCDPW's design standards. Once the area was staked a joint meeting was held. The site was walked several times with MDE, the Corps, and the Critical Areas staff, and the agencies made changes. They disagreed with Lane about the locations where maximum impacts would be occurring, and they asked that the road alignment be changed to create what they believed to be the least impact on the wetlands. The currently mapped alignment is the compromise based on their field observations and their decision as to what was needed to minimize wetland crossings and impact. TCDPW was not totally pleased with the compromise alignment, and wanted it straighter in some areas, but the Corps and MDE would not budge on those issues. Mr. Mertaugh finally agreed that it was acceptable, and it does meet all county standards, but he was looking to simplify the alignment if he could.

The road was then restaked to reflect the new alignment. Critical Areas staff and Mr. Kampmeyer of MDE as well as the Planning staff paid a second site visit and confirmed the staked alignment was what they wanted. They advised Mr. Stagg to proceed with engineering design and wetland permit applications.

There was an interplay between the wetland permit process and Mr. Mertaugh's road design, road approval and stormwater approvals. Mr. Mertaugh had safety and health concerns as his dominant objectives. He wanted the road elevated in certain areas so it would not flood in the one hundred (100) year storm; he wanted the alignment as simple as it could be so there would not be a lot of curving. He has always been worried about adequate drainage. Mr. Stagg's team worked with him to try to do away with side ditches in some locations to preserve the canopy and wildlife habitat. There was a lot of give and take between the agencies following frank discussion in the field. The Critical Area folks were not extremely vocal. They agreed with the final decisions that were made, as they do in most cases. They recognize MDE and the Corps as the experts, and know that those agencies have evidentiary findings they have to make before a permit issues. The required findings are primarily those that recognize that the final alignment avoids or minimizes impacts.

Mr. Showalter inquired if a complete copy of the wetlands permit issued in July of 2011 was attached to the application as exhibit L. Mr. Stagg acknowledged that it was and noted that the permit did not issue until the TCDPW had approved the final engineering plans. Mr. Kampmeyer of MDE required the approvals of TCDPW for road and stormwater design and the approval of Soil Conservation before the permit application was submitted.

Mr. Stagg also confirmed that the property is surrounded on three (3) sides by water – Cummings Creek on the east and south, and Harris Creek on the west and south. The property is a long narrow peninsula.

Mr. Showalter directed Mr. Stagg's attention to Exhibit B, the second page of Exhibit 9. Mr. Stagg stated that the exhibit is a diagram showing the property without the aerial background. It is designed to show the extent of the two hundred (200) foot Critical Area Shoreline Development Buffer, which is shown in green. The yellow areas are the expanded Shoreline Development Buffer, in this case for non-tidal wetlands, although there may be expanded buffers elsewhere on the farm for hydric soils or highly erodible soils. The Critical Area regulations govern the extent of the expansion, and these areas are treated just like the Shoreline Development Buffer for mitigation purposes.

Mr. Showalter next directed Mr. Stagg to Exhibit C, which illustrated variance no. 1. Mr. Stagg commented that variance 1 is for a small area of non-tidal wetland buffer impact within the

Critical Area. This is an area adjoining the forty (40) foot private road and within a fifteen (15) foot drainage and utility easement that is a county requirement. TCDPW recognizes that there are times when disturbances or cut and fill go beyond the actual forty (40) foot right-of-way and they want to have the extra area available. It may also be used for utility installation. In this case it is very possible that there will be no physical disturbance in that area, but Mr. Mertaugh insisted it be there and be permitted for 1,493 sq. ft. of possible disturbance for utility installation or road issues. The road alignment 'ducks down' under a non-tidal wetland area in this spot, and in order to hold the appropriate center line radius the design had to encroach into the non-tidal wetland buffer. Mr. Stagg noted that, in accordance with TCDPW policy, even though there might be no physical impact to the buffer during construction, the variance, once granted, would permit the installation of utilities and/or road modifications within the permitted area in the future.

Mr. Showalter asked Mr. Stagg to address exhibit C which illustrates variances nos. 2 and 3. The two (2) variances are a little further east in the project, and are also non-tidal wetlands buffer variances. The location of the disturbances is shown with squares on exhibit B. The design requires crossing this area of wetland to move the road eastward. The initial plan was to locate the road to the south of its current alignment, but because of later crossings and the angle at which they were to be crossed, the currently proposed location was designated by the regulatory authorities. The platted alignment satisfied MDE and the Corps and still enabled the road to meet TCDPW's centerline radius requirements. The variances are for 1,783 sq. ft. of non-tidal wetland buffer disturbance on the west side (variance 2) and five hundred two (502) sq. ft. of non-tidal buffer disturbance on the east side (variance 3).

Mr. Jones noted that as you approach this location from Beechley Road the grade moves down from seven (7) ft. to three (3) ft. so there is a bit of a drop. He inquired if that was to be filled in to the height of seven (7) ft. If not, he wished to know the height of the new roadbed in this area. Mr. Stagg responded that TCDPW wanted eight (8) ft., to bring the roadbed above the base flood elevation, so the area would need to be filled. He added that these two (2) variances were similar to variance no. 1, and might require disturbances both within the forty (40) ft. road easement and the fifteen (15) ft. drainage and utility easement. It is possible that the entire grey area would not be impacted, but it is there and permitted if required.

Mr. Showalter directed the Board's attention to exhibit F and variances nos. 4 and 5. Mr. Stagg explained that these variances are also for disturbances to the non-tidal wetlands buffer, and lie within the forty (40) ft. road easement or within the fifteen (15) ft. drainage and utility easement. This location is the most severe crossing area planned for the entire road. The grey areas actually go beyond the drainage and utility easement to accommodate construction.

Mr. Jones again noted that this area would require a lot of fill since the elevation was only two (2) ft. On the day he walked the road, there was a running stream in this location, and he believed that the area would be regularly flooded.

Mr. Stagg commented that it was not tidal in there, but that water would back up.

Mr. Jones stated that this could not be considered the one hundred (100) year floodplain, more likely it would be flooded annually. Mr. Jones inquired if, in this particular area, the water coming from the southwest actually connected to the wetland up on the Cober property to the west.

Mr. Stagg confirmed that it did.

Mr. Jones commented that, in the event of 'sheet flow' after a hard rain he envisioned the runoff from the wetland working its way through this area, as well as the runoff from the farm field.

Mr. Stagg responded that the farm field was drained by ditches cut some time ago, and that there was very little runoff from the farm field. He explained that the wooded area on the Cober property did drain though this area in a southwest to northeast route. He noted that the Cober woodland did not drain well, and it was classified as a non-tidal wetland for that reason. He added that this area was one of the disagreements Lane had with the agencies. Lane had wanted to take the road further south and cross a larger area which was generally flatter, but the agencies disagreed and wanted to cross in the narrowest place by putting in a large culvert in the space between the two (2) knolls.

Mr. Jones inquired if Lane had considered bridging the area.

Mr. Stagg responded that it had, but because the agencies did not consider the watercourse to be a stream, they were fine with a double culvert instead.

Mr. Showalter next directed Mr. Stagg's attention to Exhibit E and requested that he describe variances nos. 6 and 7 for the Board. Mr. Stagg informed the Board that these variances

were located to the east of the earlier variances and were to disturb wetlands within the Critical Area Shoreline Development Buffer or the expanded Shoreline Development Buffer. They are areas which had to be disturbed to get the road through and were generally within the forty (40) ft. road right-of-way and the fifteen (15) ft. drainage and utility easement. He pointed out that there is a small drainage outfall area which slightly encroaches into the buffer. He explained that this area is treated differently in the Ordinance because it is within the Critical Area Shoreline Development Buffer. Variance no. 6 is for the disturbance of 7,497 sq. ft. of Shoreline Buffer, and variance no. 7 is for the disturbance of 4,145 sq. ft. of expanded Shoreline Buffer. It is treated as a separate variance because there is a separate section in the Code dealing with the expanded buffer.

Mr. Stagg next turned to exhibit G which depicts variance no. 8. It shows the water crossing area where Mr. Jones inquired about a bridge. This is an area within the expanded Shoreline buffer and requires non-tidal wetlands impact. The variance request is to the limits of construction as per the engineering plans. It includes the culverts, a small headwall and fill to transition the grades of the roadbed.

Mr. Showalter pointed out a large area in yellow (expanded Shoreline Development Buffer) extending into the Cober property on exhibit B. He inquired if the original road design suggested by Lane would have had greater impact on the expanded buffer. Mr. Stagg commented that there would have been a greater impact on the Critical Area buffer, but the wetland impacts would have been about equal.

Mr. Showalter inquired if the Board wished him to next address the criteria of the eight (8) variances, to address mitigation or the floodplain variance.

Mr. Jones stated that he had a concern about the floodplain variance which related to the impacts. He noted that the two hundred (200) foot buffer is really an arbitrary line. The floodplain line, to the extent it is accurately depicted, is a much better indicator of where the habitat impact would be because it's not just the one hundred (100) year floodplain that is impacted, but the land below that mark which is subject to regular inundation. When he reads the Comprehensive Plan there is a recognition that in sensitive areas like the floodplain, aside from the public safety issue, there is a habitat issue as well. In this case, looking at exhibit G, it appeared to Mr. Jones to be one of the most sensitive areas on the property because it's very low

and close to Cummings Creek. There are other parts of the project which don't have a lot of impact, although they may be defined in the law as having an impact, but according to the Comprehensive Plan, the floodplain indicates the sensitivity of the area and the need to protect it. He inquired if the Applicant had a response to his concern.

Mr. Stagg replied that that the floodplain is certainly an indicator of lower lying lands that would be wetter than uplands. The one hundred (100) year floodplain is topographically controlled, and is an area that a flood will reach on the average once every hundred (100) years. It is an indicator of wetter areas which provide a home for wetland vegetation and or wetland species. On this project and others the Critical Areas folks are as equally concerned about the upland forested habitat, as they are concerned about FIDS (forest interior dwelling species) habitat. MDE and the Corps are concerned about wetlands, whether or not in the floodplain. The road alignment tries to stay out of the floodplain where possible. The floodplain disturbances also create a question as to the impact on neighboring properties and their drainage.

Mr. Jones stated that he had a question about the exhibits, and was having a hard time determining where the floodplain was. He was aware that there were two different elevations depicted, one from 1929 and one from 1988. How did one determine which one was accurate?

Mr. Stagg stated that the floodplain was shown with a 'little dotted line'. He said that the engineers and surveyors were required by law to show the FEMA line graphically as it is on the FEMA maps, whether one agrees with them or not. Those contours are scanned into the computer and placed over the property base. The elevations shown on the exhibits, if converted to the 1929 datum, would be about eight-tenths (.8) foot lower. Mr. Stagg noted that the FEMA maps are currently being revised and would be converted to the 1988 datum so there would be no need for conversion in the future.

Mr. Showalter proceeded to address the variance criteria of the ordinance. He felt that the criteria applied to each of the eight variances previously discussed. He read the first of the variance criteria, that special conditions or circumstances exist which are peculiar to the land or structure such that the enforcement of the setback and buffer provisions of the ordinance would result in unwarranted hardship. He then inquired of Mr. Stagg whether the necessity for the proposed variances was due to the shape and configuration of the parcel. Mr. Stagg responded that it was, and clarified that the Applicant would not be able to use the wetland permit it had

obtained unless the variances were granted. The Applicant would be unable to construct the road or subdivide the property. It would be prohibited from using any of the remaining ten (10) development rights belonging to the property because there would be no access and it cannot upgrade the current access to support additional lots.

Mr. Jones said that he understood that unwarranted hardship meant an Applicant would be denied all reasonable use of the property. He did not believe a subdivision was defined as a 'use' in the table of uses. A single family residence is a 'use'. This property already has two (2) residences.

Mr. Showalter stated that the standard is 'reasonable and significant' use. Reasonable and significant is a quantitative evaluation. One has to ask "reasonable in light of what?" But for the unique physical characteristics of this property, it has, under the law, the right to the use of twelve (12) development rights for residences, three (3) outside the Critical Area, nine (9) within the Critical Area. Absent the approval of the variances the Applicant is denied the ability to use any of the ten (10) remaining development rights. In regard to the two (2) residences currently located on the property, absent the requested variances the Applicant does not have the ability to transfer one of those two homes or even divide the farm in half. Mr. Showalter emphasized that 'reasonable and significant' has to take into account the rights the property would otherwise have but for its physical limitations.

Mr. Jones commented that he was disappointed that the Critical Areas Commission was not represented in the hearing, as he felt the Commission had given the Board conflicting argument on some of the variance criteria in other cases. In at least one other case they intimated that a residence and significant outbuildings were a 'reasonable and significant' use of the property.

Mr. Stagg commented that there had been a question about creating a lot 9 on the southern point of the property projecting into the confluence of Harris Creek and Cummings Creek. The Applicant gave up substantial value for that part of the property when it agreed not to develop that point. The Applicant clustered the development on the northern end of the farm, thus preserving agriculture at the same time.

Mr. Showalter agreed, noting that there was a lot of debate about that point during the technical advisory committee (TAC) meeting, which is open to the public. He listed the reasons

why the point would have been appropriate as a lot, including the fact that it is already entirely disturbed, there is a gravel road for access, and there are no existing buffers. The Commission indicated it felt development of a Lot 9 on the point was beyond reasonable and significant use, but had no objections to the proposed subdivision if Lot 9 was omitted.

Mr. Jones commented that he has repeatedly asked the Commission (when it appears) to assist him in understanding their reasoning for the determinations of 'reasonable and significant', and that he believed it was important that the explanations be made in the public forum.

Mr. Shortall added that the Commission appears to look at each parcel separately, and they have presented so many different opinions that the Board finds it difficult to determine which one to follow in a given case.

Mr. Stagg stated that the Commission shows up when it has a problem with a project.

Mr. Jones acknowledged that sometimes they do.

Mr. Moody commented that sometimes the Board had a hard time understanding the Commission's standards.

Mr. Showalter next asked Mr. Stagg to address the second criteria – that the literal interpretation of the Critical Area requirements of the Chapter would deprive the property owner of rights commonly enjoyed by other property owners in the same zoning district. Mr. Showalter stated that he felt that criteria had been addressed as literal application of the buffer provisions of the ordinance would prevent the Applicant from utilizing the ten (10) remaining development rights. Mr. Stagg concurred adding that the Applicant would be prohibited from subdividing at all, which other property owners in the zoning district are permitted to do.

The third criteria is that the granting of the variances would not confer upon Rehobeth Farm, LLC a special privilege which is denied to others under the zoning ordinance. Mr. Stagg stated that they would not gain any additional development rights or potential. They would only be able to utilize the rights that the Code permits and would thus have the same rights as any other property in the same zone of the same size. Mr. Showalter queried about mitigation. Mr. Stagg responded that it was true state law required it on a three to one (3:1) basis, and that although the Applicant would have the ability to impact some buffers if the variances are granted, the impact would be more than offset by the required mitigation.

Mr. Showalter asked if the variance request was due to any acts of the Applicant. Mr.

Stagg replied it was not. The Applicant acquired the property in its current state, has done everything it can to avoid the impacts by trying to work with adjoining property owners. He added that he had reviewed the title and surveyed the property in the subdivision process and the Applicant or its predecessors had not given up road frontage or alternative access.

The next criteria deals with adverse impacts on fish, wildlife and plant habitat. Mr. Showalter commented that the prior discussion of individual variances had not included a detailed discussion of mitigation. He directed Mr. Stagg to exhibits I, J and K and asked that Mr. Stagg provide the Board an explanation of the mitigation involved with the subdivision.

Mr. Stagg pointed out that any disturbance in the Critical Area, especially in the forested portion will require forest replacement, including trees. Because trees will be cleared for the road itself they must be replaced one to one (1:1). There are forested wetland requirements imposed under the MDE permit which requires replacement at a two to one (2:1) ratio for trees cleared in non-tidal wetlands or buffer areas. The Critical Area mitigation requirements are three to one (3:1) replacement for areas within the two hundred (200) ft. Shoreline Development buffer or the expanded buffer. All of the mitigation plantings are required to be located where they will add value to existing habitats, or will establish new habitats if there are none on the property or adjoining properties.

In the Applicant's case there is a large forested area fronting Beechley Road and continuing on the Cober property to the south. Following inspection of the site, and taking into account constraints related to the property, and the disturbances which will be caused by the improvements, the best location for mitigation is shown in orange on exhibit H. That area adjoins existing forested area and new plantings will supplement the existing habitat area in terms of width, and permit the protection of the species within those habitat areas. The wetland mitigation area specifically will adjoin a low lying area at the head of Harris Creek. It is currently farm field but will be excavated and graded and planted with wetland species so as to become a non-tidal wetland. It will be surrounded by other plantings to supply the FIDS habitat and mitigation for the areas to be disturbed by activity authorized by the variances. There will be a substantial habitat enhancement adjoining the existing creek and forested areas as a result. The plantings will also enhance the shoreline buffer around the entire property. The mitigation required is onerous, and every option which would lessen that burden was explored.

Mr. Showalter inquired if the Critical Areas Commission had seen the mitigation and buffer planting plans. Mr. Stagg stated that they had, and had approved the calculations for the FIDS area. The regulations in that area of the regulations were somewhat 'fuzzy' and the Applicant wanted to be sure the final plans, planting specifications and the related documents would be approved. He also stated that MDE required a detailed analysis of the impacts on water quality, as a study is a mandatory submission for a wetlands permit. Mr. Stagg noted that page 5 of exhibit L, is a water quality certification for non-tidal wetlands and waterways. It contains a determination by MDE that the project would not violate Maryland's water quality standards. It also imposed certain obligations on the Applicant which will be satisfied during and following construction.

Mr. Jones commented that wetlands would be eliminated on the side where the road is going. He suggested that only the mitigation allowed MDE to say there is no impact.

Mr. Stagg agreed that the mitigation is offsetting the use of the wetlands with two to one (2:1) ratio. He added that wherever wetlands are impacted the hydrologic flow will be and must be maintained. That is a condition of the permit. The overall wetland environment will remain substantially intact.

Mr. Jones stated that most of the impacts appear to be to Cummings Creek and the mitigation is at the head of Harris Creek. He asked if there were options to mitigate on the Cummings Creek side. He noted that in a prior hearing the Critical Areas Commission indicated that mitigation should occur where the damage is taking place.

Mr. Stagg stated that Lane looked at mitigation sites and the final ones were chosen and reviewed with MDE. They did look at some areas near Cummings Creek, but there were no existing wetlands to enhance in that area, and placing the mitigation there would simply be creating a fringe next to tidal waters. For this project, the planned area will expand existing habitat and adjoins a bigger area of non-tidal wetlands.

The next variance criteria requires that the variances requested be the minimum necessary to relieve the hardship. Mr. Showalter noted that the issue had been addressed by Mr. Stagg during his presentation, but asked that he expand his answer. Mr. Stagg replied that the project and road alignment had been heavily vetted by all the regulatory agencies, and that the permits were granted for disturbances which would cause the least impact to the site.

Mr. Showalter noted for the record that the Critical Areas Commission had commented, and the comments were (for them) positive. They did require the statutory mitigation which the Applicant has planned and will build. He noted that variance criteria (e) required that the grant of the variance be in accord with the intent and spirit of the Critical Area law. When one looks at the purpose statement in Md. Code, Nat. Resources Art. § 8-1801, the Critical Areas law is not intended to prohibit these types of activities, but to establish a resource protection program for the Chesapeake and the Atlantic Coastal Bays and their tributaries by fostering more sensitive development activity for certain shoreline areas, to minimize impact on water quality and habitat damage and also to implement that program consistently by cooperation between state and local governments. Mr. Showalter noted that this case is a glowing example of the coordination between state, local and federal agencies. The variances presented are the minimum necessary to offset the hardship imposed by the property's unique configuration. Approving the variances will do just what the purpose of the Critical Area law is – it will foster more sensitive development, with state oversight but local implementation, as demonstrated by the various agency approvals.

Mr. Shortall directed attention to exhibit H lots 5 and 6. He asked if those lots were buildable given the two hundred (200) ft. buffer. Mr. Stagg commented that there was sufficient area to build. Mr. Showalter responded that sheet 3 of 8 of the subdivision plats depicts both lots 5 and 6. The lots are in excess of five (5) acres. There is sufficient room for a house. He submitted the large copy of the plat as Applicant's exhibit.

Mr. Showalter next directed Mr. Stagg to sheets 11 through 14 of Exhibit L and asked that he explain the floodplain impacts to the extent they had not been discussed in the previous testimony.

Mr. Stagg noted that variance 9, the floodplain fill variance, consists of four areas on the farm where the Applicant is crossing the floodplain with the road and will be required to add fill to bring the road above the floodplain as required to meet health, safety and welfare issues. The first area is shown on sheet 11 (of exhibit L). It is the area previously discussed where there were buffer and other wetland impacts. The two dotted lines shown closest to the center of the sheet crossing either end of the grey shaded area are the mapped limits of the one hundred (100) year floodplain. The dotted lines to the left represent flood zone B lying above the one hundred (100) year floodplain and not addressed by this request. Federal and local regulations provide that one

cannot add more than six hundred (600) cubic yards of fill per parcel in the floodplain without a variance. It is also a MDE permit requirement, as that agency evaluated the impacts on the floodplain and effects on water quality with the fill. The amount of fill proposed is the absolute minimum required by engineering the road to the standards of the TCDPW. The fill for the first large area requires a total of 1,588 cubic yards. It includes the road paving, pipes, base and everything associated with the project at this location. The road has been engineered so that the fill will not back up water onto the Cober property which is the only adjoining property in that area. It will not reduce flows through (under) the road to the headwaters of Cummings Creek to the northeast. If built as designed, the road will not impact water quality in a negative way.

The second area shown on sheet 12 is not within the forested area but is out in the farm field. It is actually an area of cut to extend a drainage swale from the road on lot 3. There is no fill proposed here, but the improvement is required to be shown since it is within the floodplain. This area requires thirty four (34) cubic yards of cut to construct the drainage outfall.

Sheet 13 of exhibit L shows two (2) other floodplain areas. One can see that the floodplain sort of meanders across the road several times, and generally follows the contour and lay of the land. These two (2) areas are locations where the roadbed has to be raised above the floodplain to satisfy TCDPW. In stormwater management review Mr. Mertaugh wanted the clean water runoff from the farm field flowing to the east towards the road diverted by a berm which slightly increased the amount of fill required. The road was located in its current alignment through the floodplain in this area in part due to Talbot County's Planning Commission concerns about lot size. The engineering minimizes the fill and disturbance in the floodplain, and MDE is satisfied there will be no water quality or drainage issues as the latter three (3) areas, as they are totally within the Applicant's property, and there is direct tidal discharge for drainage. The last two (2) areas proposed require four hundred eighty-seven (487) cubic yards of fill on the northern area and two hundred forty-eight (248) yards of fill on the southern area, for a net overall impact in the floodplain for the four areas of twenty two hundred eighty-seven (2,287) cubic yards of fill, which is sixteen hundred eighty-seven (1,687) cubic yards in excess of the permitted amount.

Mr. Showalter asked Mr. Stagg to address the floodplain variance criteria, beginning with the necessity of good and sufficient cause. Mr. Stagg responded that there was a necessity to

elevate the roadbed twelve inches above the one hundred (100) year flood stage level so that the owners of properties which are served by the road would have the ability to get in their vehicles and evacuate the area in the event of the one hundred (100) year storm. He stressed that all of the regulatory agencies connected with the plans for the road had approved the alignment and construction plans as being the least invasive and creating the fewest impacts on the wetlands and water quality.

Mr. Showalter inquired if the Applicant would be able to subdivide or build the road if the eight critical area variances were granted, but the Board refused to grant the floodplain variance. Mr. Stagg replied it would not, as there would be no other way to get to the farm legally.

Mr. Stagg was also asked to comment on the stormwater management plans which were submitted and approved by the Corps and MDE. He advised the Board that the drainage culverts were sized to accommodate the ten (10) year design storm, but are also designed to accommodate the overflow that would be produced by the one hundred (100) year storm. They are designed not to detrimentally affect drainage that would otherwise be coming through the system and can carry large flows when those flows occur. He added that the improvements in the floodplain would not cause water to back up onto this property or other surrounding properties. Specifically he pointed out the improvements shown on sheet 11, and stated that the natural flow would be unaffected, and the hydrology had been maintained.

Mr. Showalter inquired if Mr. Stagg was familiar with the road maintenance agreement for Rehobeth Farm Lane. Mr. Stagg responded that he was. The road is intended to be a private road and there will be no road expenses borne by Talbot County under the road maintenance agreement. Construction will be handled by the owner or a developer and a third party inspection firm paid for by the owner or its successors will oversee construction. Mr. Mertaugh did say he certain documents recorded with the road maintenance agreement so that the design and approvals will be on record for perpetuity. Should the road later require repair or improvement, Talbot County will not bear any expense in connection with those actions.

Mr. Stagg confirmed that the road was designed in accordance with all extant regulations and that the fill requested is the minimum necessary to accomplish the project objectives and the design parameters established by the TCDPW.

Mr. Jones inquired if less fill would be required if the area where the two (2) culverts are proposed were to be bridged. Mr. Showalter rephrased the criteria and inquired if, considering the flood hazard on this property, a bridge would be necessary. Mr. Stagg replied that there would be less fill required if the space between the two knolls were to be bridged, however, the bridge option had been discussed with MDE and was rejected as not being necessary, even considering the potential flood hazards. He added that MDE did not consider the natural drainage in this area a stream. The area is simply a wetland swale which connects two wetland pockets. The proposed culverts would be enough to maintain the area's hydrology.

Following a brief recess Mr. Showalter directed the Board's attention to sheet 11 which depicts the narrow wetland crossing that concerned Mr. Jones. He pointed out that the Applicant is permitted six hundred (600) cubic yards of fill in the floodplain. He asked Mr. Stagg to hypothesize whether there would be fill or improvements required in the floodplain even if a bridge were constructed. Mr. Stagg confirmed that there would be fill required.

Mr. Showalter had exhibit 14 marked for the record. It depicts in greater detail the crossing being discussed. He asked Mr. Stagg if the permitted six hundred (600) cubic yards of fill could be attributable to this crossing, with the balance of the fill for which a variance has been sought being attributable to the three other less significant crossings. Mr. Stagg explained that from the cross sections it appeared as if this crossing (less the culverts) would require approximately five hundred (500) to six hundred (600) cubic feet of fill.

Mr. Showalter advised the Board that MDE serves as the coordinator for the federal flood insurance program in Maryland. In the record there is a letter stating that MDE does not object to the requested variance as long as it does not affect the flood storage capacity or increase flooding on the neighboring properties. He added that the Applicant would submit on the testimony taken as well as the written submissions.

Mr. Shortall asked members of the public present if they would like to comment on the application.

Aric Rosenbach, 8811 Tilghman Island Road, Wittman MD 21676 owned adjoining property. His property is abutting the area of the proposed road. He noted that ordinarily his dock was 3 feet above the water. During a period in December with a southerly wind he was unable to even see his dock. Anything elevated between 2 feet and 4 feet would have been under

water.

He noted that the area was beautiful and charming and felt that its location at the end (headwater) of the creek made it special. He was concerned that if the road was improperly constructed it would create a flood and also mud that would spill over to his property. He suggested that the lots be located elsewhere on the farm. Mr. Rosenbach offered to exchange land, if necessary, to put the road in a different location and considered the proposed construction a "disaster".

Meg Olmert was sworn and stated she lived on Creshendo Circle in Wittman right across from the property which is the subject of the variance requests. She was familiar with the area and knew just how important the landscape and the water quality of Cummings Creek were. Last year for the first time since 2004 she saw grasses return to the creek. It had been a barren moonscape for the preceding eight (8) years. She was extremely concerned that the road would impact the very fragile recovery. She resented the fact that the Critical Areas Commission was not present to answer questions. She found herself deeply confused by the "cart before the horse" questions concerning the road and the subdivision. She expressed appreciation that the regulatory agencies had been involved in the design process, but no confidence that the final design would not affect water quality.

In response to Mr. Shortall's inquiry, she responded that she had attended all of the Planning Commission hearings, and felt as if she were eavesdropping on a private conversation. She had expressed her opinion, but did not believe that the hearing process before the Planning Commission seemed like a public forum.

Mr. Showalter asked Ms. Olmert if she lived across the creek and if she knew when her lot had been subdivided. She responded that she did live across the creek and did not know when the lot was subdivided. He asked if she was aware of the planting requirements and mitigation requirements. She responded that she was. He asked if it was her testimony that the effect of those requirements and mitigation would be detrimental to the water quality in Cummings Creek. Ms. Olmert responded that she had wanted to ask those questions of the Critical Areas staff, but they were not present.

William E. Wieland, a real estate agent, was present on behalf of his son and soon to be daughter-in-law who owned property directly across the street from the proposed road. They had

received notice of the hearing in the mail. Mr. Wieland had no problem with the proposed use of the property but was concerned about a bank of clay running through the western section of Talbot County which reduces permeability. He just wanted to be sure that any runoff or water from the project stayed on the east side of the road. He also wanted to be sure that there were no culverts planned to cross Beechley Road to increase the water flow onto his son's property.

He mentioned that the proposed road is directly across from the highest point on his son's property, and was hoping something could be done to soften the impact of headlights as cars entered Beechley Road from Rehobeth Farm Lane.

Mr. Stagg addressed his concerns stating there were no culverts which would cross Beechley Road. He noted that maintaining the current hydrology is a permit requirement. He was not sure what, if anything, could be done to address the headlight issue, assuming the Wielands built on the knoll on their lot, as the road alignment was already approved by the regulatory agencies. TCDPW also wanted road improvements to Beechley Road at the entrance to Rehobeth Farm Lane to widen the road in that location. Those improvements had not yet been designed.

Mr. Shortall invited additional comments from the public. There were none.

Mr. Showalter summarized the Applicant's position by stating that the record clearly demonstrated that the Applicant meets each of the criteria or warrants for the variances requested. The physical limitations of the property do not provide the Applicant another point of access. The road was designed to satisfy state and federal regulators who have the authority to supersede Mr. Mertaugh's road design preferences. The road has been designed to minimize wetland impacts to the satisfaction of the Corps, MDE and the Critical Area Commission. Within the permitted alignment, the roadbed must be elevated so that it is safely passable in the event of a one hundred (100) year flood. Given the proposed mitigation and the plantings required in connection with the subdivision the wildlife habitat on the farm will be dramatically enhanced. Almost the entire shoreline of Cummings Creek will be established in a two hundred (200) foot forested buffer with some very narrow view corridors as permitted by the Critical Areas regulations. The farm will have more waterfront buffering than the width of some of the lots across Cummings Creek, as could be seen from exhibit A. There are lots and houses evident and closer to the shoreline than this buffer will permit. The Applicant has worked extensively with all of the regulatory agencies, including the Critical Areas Commission. That agencies'

charge is to protect water quality and wildlife habitat in the Chesapeake Bay. The Applicant has designed this project to meet those objectives, and has received approvals from all other agencies.

Mr. Shortall then opened the Board discussion by asking Mr. Sewell for his comments.

Mr. Sewell commented that the responses to the variances have been very thorough and they satisfy what's needed to meet the requirements of the ordinance to permit the requested variances. He noted that the Applicant has had to comply with the constraints of federal, state and local laws for the project, and has done so.

Ms Crothers agreed that the criteria were satisfied, and remarked that the Applicant had gone to great expense to work with all of the agencies.

Mr. Jones disagreed. From his perspective one is entitled to have a dwelling on a Critical Area parcel, and to establish a road to serve that dwelling. That was the case in Shanahan. He reiterated that it was unfortunate that the Critical Areas Commission had not been present, as he has heard them state consistently that each of the criteria must be met individually, although they are related, each stands independently. If there is a single family dwelling, that constitutes reasonable and significant use of the property. Mr. Jones observed that the question of what constitutes unwarranted hardship has not made it through the court system. He believed that the Applicant has reasonable and significant use without the road.

He also had trouble with the criteria that the application must be in harmony with the spirit and intent of the Critical Areas law. He read Md. Code, Nat. Resources Art. § 8-1801 differently than did Mr. Showalter. He believed that the intent of the provision was to mandate the protection of the buffer. While the Applicant had done a lot to minimize the disturbance, (a bridge would perhaps do more to minimize the impact at the wetland crossing), the project will still create a tremendous disturbance. It is the last place one should put a road with its ten (10) car trips per dwelling per day. The pollution from that use will go into Cummings Creek at the head of Cummings Creek. The wetlands mitigation does not deal with that at all – it is adjoining Harris Creek.

He added that Mr. Rosenbach was correct, it is a beautiful area. Although the Applicant has done its best to minimize the impact, once the road goes in the land will never be the same. It may be beautiful, but it will never be the same. The proposed mitigation on either side of the

road will create a nice little woods, but it cannot be considered FIDS habitat which requires deep forest. Extending the forest on adjacent to the Cober property makes sense. The road essentially destroys this location.

Mr. Jones added that he had no objection to the floodplain variance.

Mr. Moody commented that he really appreciated all of the effort that had gone into trying to mitigate and to cooperate with all of the various agencies, but the project creates a lot of disturbance, the area will never be the same and he did not believe that the criteria had been met.

Mr. Shortall recognized the tremendous amount of work that had been done attempting to meet all of the regulatory agencies' requirements. The farm will never be the same once developed. As a farmer, he would have liked to see the farmland remain farmland, and it is destroyed as a farm when houses are built. However, the law permits the Applicant to build up to ten (10) houses on the farm, and the Applicant has met the requirements of all the agencies dealing with the road, so it should be approved.

Mr. Moody stated that the subdivision was finally approved, and the Board needed to look at the road and what it is doing to the Critical Area.

There being no further discussion, the Chairman called for a motion.

Mr. Sewell stated that the two hundred (200) foot buffer plantings required would greatly mitigate the disturbances caused by the road and improve water quality. He moved that the application for each of the Critical Area and wetland variances necessary to construct the road be approved as well as the floodplain fill variance, as all of the variance requirements were met by a preponderance of the evidence. With respect to each of the Critical Area variances the findings requiring approval are:

- (1) Special conditions exist that are peculiar to the land involved as the property is a long narrow waterfront peninsula with very limited road frontage. All efforts to obtain additional rights of use to widen the existing prescriptive easement currently used to access the property have been unavailing. Access through a forested area fronting Beechley Road has been approved by the Corps, MDE and Critical Areas Commission as shown on the construction drawings and exhibits. A wetlands permit has been issued for the project (exhibit L). Construction of the road will require some impacts to non-tidal

wetlands, non-tidal wetlands buffers, Shoreline Development buffers and expanded Shoreline Development buffers although every effort has been made to minimize the impact.

- (2) A literal enforcement of the provisions of the ordinance would prohibit the Applicant from utilizing the ten (10) remaining development rights for the property, or even subdividing one of the two (2) existing houses on the property. The right to exercise the development rights associated with a property is a right of ownership in the zoning districts involved that will be denied to the Applicant unless the variances to permit the construction of an access road are granted;
- (3) The granting of the variances will not confer any special right or privilege on the property owner; on the contrary, it will permit the owner to utilize the property's development rights as permitted in the district;
- (4) The variance request is not based on conditions caused by the Applicant. The property has unique physical characteristics. There is very little usable road frontage which would permit the construction of an access road. The wooded area adjoining Beechley Road is the only area where an access road can be located and is riddled with pockets and fingers of non-tidal wetlands. The placement of a road necessarily requires some impact to those wetlands and their buffers despite the fact that the Applicant has attempted to minimize those impacts. All conditions requiring the variances are a result of the property's location, configuration and topography;
- (5) The regulatory agencies granting the wetlands permit have made evidentiary findings that construction of the road as designed and granting of the variances will not affect water quality or adversely impact wildlife, fish or plant habitat. Extensive mitigation will enhance existing wildlife habitat and the applicant will create a forested shoreline buffer along the perimeter of the property which will enhance water quality;
- (6) In connection with the grant of the wetlands permit, the regulatory agencies have made evidentiary findings that the proposed variances do not exceed the

minimum necessary to alleviate the hardship imposed by strict compliance with the state and federal law. There is no more suitable location for the road access, as the existing access can not be enlarged. The grant of the wetlands permit confirms that the route chosen for the road creates the least impact on the sensitive areas involved; and

- (7) The need for a variance is not due to a nonconformity in the size or shape of the property involved, and there are no other properties in common ownership.

With respect to the floodplain fill variance, the findings requiring approval are:

- (1) Special conditions exist that are peculiar to the land involved. The property is a long narrow waterfront peninsula with very limited road frontage. All efforts to obtain additional rights of use to widen the existing prescriptive easement currently used to access the property have been unavailing. Access through a forested area fronting Beechley Road has been approved by the Corps, MDE and Critical Areas Commission as shown on the construction drawings and exhibits. A wetlands permit has been issued for the project (exhibit L). Construction of the road will require four (4) areas of disturbance, three (3) requiring placement of fill, one (1) requiring a cut to provide a drainage outfall. The fill is necessary to raise the grade of the road above the base flood elevation of the one hundred (100) year floodplain for reasons related to public safety and welfare. The cut is necessary to maintain the hydrology of the area as required by the wetlands permit.
- (2) If the floodplain fill variance is not granted, the Applicant would not be permitted access to the property other than that currently existing by means of a prescriptive easement. The effect of the denial of this variance would create both practical difficulties and an unreasonable hardship for the Applicant as it would be prevented from creating a road compliant with county road standards to access the property, thus prohibiting the use of the farm's ten (10) remaining development rights.
- (3) The grant of the fill variance will not result in increased flood heights,

additional threats to public safety, create victimization of the public or conflict with existing state or local law. The Rehobeth Farm Lane, as designed, has met the approval of the TCDPW, MDE and the Corps. Flood zone impacts were examined and approved as reflected in the wetlands permit (exhibit L). TCDPW requires the roadbed be elevated to provide a safe means of vehicular egress to property owners in the event of the one hundred (100) year storm. The road is intended to be and designed to be a private road. It will be built and maintained by the property owners served by the road, and not at public expense.

- (4) The road has been designed to provide safe all weather access to the property. The amount of fill within the flood plain will not exceed that which is required by the design to achieve the design goals.

Ms. Crothers seconded the motion.

There being no further discussion, Mr. Shortall called for a vote. Ms. Crothers, Mr. Sewell and Mr. Shortall voted in favor of the motion. Mr. Jones and Mr. Moody voted against the motion. The motion carried three (3) to two (2).

HAVING MADE THE FOREGOING FINDINGS OF FACT AND LAW, IT IS, BY THE TALBOT COUNTY BOARD OF APPEALS,

RESOLVED, that the Applicant, REHOBETH FARM LLC, (Appeal No. 12-1572) IS **GRANTED** the nine requested variances consistent with the evidence presented to the Board of Appeals, subject to the conditions set out in the amended staff report, by vote as previously noted.

GIVEN OVER OUR HANDS, this 9TH day of MARCH, 2012.

TALBOT COUNTY BOARD OF APPEALS

Paul Shortall Jr.

Paul Shortall, Jr., Chairman

Phillip Jones

Phillip Jones, Vice Chairman

Rush Moody ✓

Rush Moody

Betty Crothers

Betty Crothers

John Sewell

John Sewell

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TC 390-08



TALBOT COUNTY OFFICE OF PLANNING & ZONING

215 Bay Street, Suite 2
Easton, Maryland 21601

CODE COMPLIANCE OFFICE
PHONE: 410-770-8030

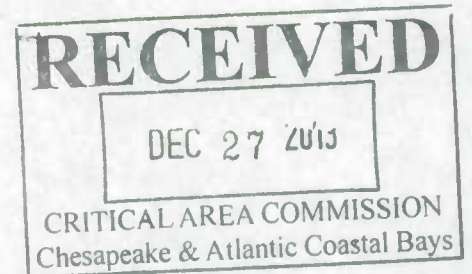
FAX: 410-770-8043
TTY: 410-822-8735

TECHNICAL ADVISORY COMMITTEE NOTICE TO PROCEED

Date: December 19, 2013
Applicant: Rehobeth Farm, LLC c/o Templeton Smith, Jr.
Agent: Lane Engineering, LLC
Project: Preliminary Major 7 Lot Subdivision
Map 31, Grid 1, Parcel 139; RC/WRC
TAC review date: December 11, 2013

Your application has been reviewed by the Technical Advisory Committee during their regularly scheduled meeting. The Technical Advisory Committee consists of representatives from the following agencies:

- Office of Planning and Permits
- Department of Public Works
- Office of Environmental Health
- Soil Conservation District
- Environmental Planner
- DNR - Regional Forester
- Permits and Inspection
- State Highway Administration
- Critical Area Commission
- Local Fire Department
- Incorporated Municipality
- Utility Company
- Other



Attached, as indicated above, are comments from reviewing agencies related to your project. Should you have any questions, please contact the appropriate department for clarification. **Upon addressing all noted comments, please submit five (5) paper copies of the revised plan, final application and a letter addressing each comment to the Office of Planning and Permits for placement on the next available Compliance Review Meeting agenda.**

If you have any further questions, please contact our office at (410) 770-8030.



TECHNICAL ADVISORY COMMITTEE COMMENTS

Date: December 18, 2013

Project Name: Major Subdivision- Rehobeth Farm, LLC

Property Owner: Rehobeth Farm, LLC

Physical Address: Beechley Road, Wittman, MD

Tax Map: 31 **Grid:** 1 **Parcel:** 139 **Zoned:** RC, WRC

Applicant Agent: Bill Stagg, Lane Engineering, LLC

1. No additional comments.

Brett Ewing, AICP

Planner I

Talbot County Office of Planning and Permits

215 Bay Street, Suite 2

Easton, MD 21601

(410) 770-8030

bewing@talbotcountymd.gov



TALBOT COUNTY DEPARTMENT OF PUBLIC WORKS

215 BAY STREET, SUITE 6
EASTON, MARYLAND 21601
PHONE 410-770-8170

MEMORANDUM

TO: Planning & Zoning

FROM: Mike Mertaugh *MM*

DATE: December 11, 2013

SUBJECT: "Subdivision Plat, FCP #2010-20 and BMP #M1152 for
Rehobeth Farm, LLC"
Tax Map 31, Grid 1, Parcel 139
Beechly Road (public - County)
Lane Engineering

RE: **Technical Advisory Committee**
Plat Review

We have reviewed the referenced plat and offer the following comments:

Plat

1. Sheet 1, Public Works notes, the note, "Building permits for lots using Rehobeth Farm Lane shall be restricted until public road improvements to Beechley Road...: It appears that this note should be expanded to also reference the "Agreement Restricting Transfer of Property" document.
2. Sheet 2, key map: For clarity remove the topography from this sheet.

Road Maintenance Agreement

3. This document is acceptable as submitted. The agreement should not be executed and recorded until the final version of attached Exhibit A is reviewed and approved by Public Works.

Agreement Restricting Transfer of Property

4. The document appears to allow for the sale of Lot 1 separate from the new Lots. Such a concept has not been previously discussed with this Office. Our preference is not separating the public road improvement obligation from Lot 1. This is particularly relevant considering that Lot 1 retains the right of subdividing additional lots (potential additional "impact" to Beechley Road).
5. Surety bond: The document appears to indicate that this guarantee is for the completion of roadway and other improvements. The surety is only necessary for successful completion of

the public road improvements (it will be based on 125% of these public road improvement costs). For clarity, the document should be modified/expanded to represent that the surety is only for public road improvements. Also, in conjunction with the surety bond, a road construction agreement prepared by Public Works and executed by the developer and County Engineer will be necessary. It may be beneficial to reference this requirement in the document.

6. Second declaration: As written it appears that the plat is intended to be recorded prior to the recordation of this agreement. The document should be revised to switch this order so that the recording reference of this agreement can be provided on the plat.
7. Third declaration, the phrase, "...recording of the **Revised** Subdivision Plat...": It appears that the word "revised" should be removed from this phrase.
8. Seventh declaration, the phrase, "...requested the County **waive** any requirements...": For clarity, the word "waived" should be replaced with "deferred" or other wording to represent that this requirement is only being delayed.

Road Construction Plans

4. Sheet CS102, Beechley Road upgrade notes: Expand notation(s) to indicate that Beechley Road improvements should occur after construction completion of Rehobeth Farm Lane. Also, add a new note (after note 2 appears appropriate) detailing that areas of pavement structural failure/distress should be repaired and/or patched as determined by the County Roads Superintendent prior to the pavement overlay.
5. Sta. $\pm 8+75$, left, pull off area: As previously requested by this Office, the pull off length has been increased to 50 feet. For clarity, the label for this feature should reflect this increased length.
6. Sta. $\pm 12+60$, Sta. $\pm 14+75$ and Sta. $\pm 17+20$, cross culvert locations: This Office previously requested that "barriers or substantial delineators be provided in these areas." Barriers have been added, but the project transmittal appears to reflect that the designer does not believe they are necessary. If this is indeed the case, post mounted delineators (see MD State Highway Administration standards) would be acceptable to Public Works.
7. Sta. $\pm 43+50$ to road end: This Office previously requested that roadside ditches should be provided to at least station 45+30 (75 feet of "normal road" frontage on Lot 8). Based upon designer concerns detailed in the project transmittal and discussions with the agent, as a compromise, these ditches are not necessary provided the road surface elevation remains 1.5 to 2.0 feet above the existing ground in this area. Such a configuration will help to ensure that the road in front of Lot 8 has adequate subsurface drainage.

Stormwater Management

8. The stormwater management concepts provided for in the proposed subdivision plat and road construction plans meet the requirements of the Talbot County Stormwater Management Code. Specifically the use of flat bottom swales and berms for the proposed road and rooftop and non-rooftop disconnection of impervious cover on individual lots. Considering that all proposed lots are two acres or larger in size, specific stormwater management for individual lot development will be addressed at the time of building permit application. Furthermore, the road maintenance agreement, which will be recorded in the land records, ensures the long term maintenance of proposed stormwater management improvements. This memorandum serves as Public Works' stormwater management "final plan" approval.

If there are any questions or if additional information is needed concerning these comments please give me a call at x8170.



**TALBOT COUNTY HEALTH DEPARTMENT
OFFICE OF ENVIRONMENTAL HEALTH**

SUITE 4
215 BAY STREET
EASTON, MARYLAND 21601
PHONE 410-770-6880

MEMORANDUM

TO: Brett Ewing
Talbot County Office of Planning & Zoning

FROM: Anne Morse, R.S. *AM*
Director of Environmental Health

DATE: December 16, 2013

SUBJECT: Subdivision Plat For Rehobeth Farm, LLC
Tax Map 31, Grid 1, Parcel 139

RE: "December" TAC Review

This office has completed its review of the above referenced project and offers the following comments:

1. A plat review fee of \$3500 is due at the time of the submission of the final plat/Mylars for Health Officer signature.

If you or the applicant has any questions regarding these comments please contact me at 410-770-6880.



Talbot Soil Conservation District

28577 Marys Ct., Easton, MD 21601-7499
Phone (410) 822-1577, Ext. 3, (410) 822-1583, Ext. 3 - Fax (410) 822-3162

December 11, 2013

Mary Kay Verdery
Talbot County Planning & Zoning
215 Bay St., Ste. 2
Easton, MD 21601

Re: Rehobeth Farm, LLC
Final Major 7 Lot Subdivision with private road

Dear Mary Kay:

Please accept the following as Talbot Soil Conservation District's (SCD) review comments for inclusion as part of the Talbot County Technical Advisory Committee review:

- 1.) Any subdivision that proposes construction activity of more than 5,000 sq. ft. of earth disturbance (road, stormwater management, grading, etc.) shall file a site specific Erosion and Sediment Control Plan for review and approval by the Talbot SCD.
- 2.) The resulting individual lots will require an erosion and sediment control plan approved by the Talbot SCD before any proposed land clearing, grading, or other earth disturbance within the unincorporated areas of Talbot County can occur.
- 3.) Currently any person planning construction activity disturbing more than one acre of earth must submit a National Pollutant Discharge Elimination System – Notice of Intent (NPDES-NOI) to the Maryland Department of the Environment (MDE) at least 48 hours prior to any land disturbance activity.

Specifically for this application by Rehobeth Farm, LLC for a Final Major 7 Lot Subdivision with private road, the Talbot SCD comments remain the same as the July 2013 TAC comments. It is expected that the construction of the proposed private road, Rehobeth Farm Lane will exceed the limits stated above and therefore will require that an Erosion and Sediment Control Plan be submitted for review and approval. If Erosion and Sediment Control is applied for the private road only, then as a subdivision, the resulting individual lots will also be required meet the earth disturbance parameters stated above and may need to submit Erosion and Sediment Control Plans for review and approval before beginning construction.

As stated in the July 2013 TAC comments, the State of Maryland General Permit for Stormwater Associated with Construction Activity (NPDES Number MDR10, State Discharge Permit Number 09GP) requires that Erosion and Sediment (E&S) Control Plans and Stormwater Management (SWM) Plans include a written explanation that eight items were considered and incorporated in E&S and SWM design.

Therefore, by regulation under the Stormwater Management Act of 2007, please make note that all plans submitted for Erosion and Sediment Control review and approval should include the following statement:

The following items have been addressed to meet the requirements of the GENERAL PERMIT FOR STORMWATER ASSOCIATED WITH CONSTRUCTION ACTIVITY (NPDES NUMBER MDR10, STATE DISCHARGE PERMIT NUMBER 09GP).

- 1.) Utilization of environmental site design**
- 2.) Maintenance of limits of disturbance to protect natural areas**
- 3.) Control of construction equipment and vehicles**
- 4.) Evaluation and appropriate limitation of site clearing**
- 5.) Evaluation and designation of site area for phasing or sequencing**
- 6.) Identification of soils at high risk for erosion and advanced stabilization techniques to be used**
- 7.) Identification of steep slopes and designation of limitations on clearing them**
- 8.) Evaluation and designation of stabilization requirements and time limits and protection measures for discharges to the Chesapeake Bay, impaired waters or waters with an established Total Maximum Daily Load (TMDL).**

Yours in conservation,



Craig S. Zinter
District Manager
Talbot SCD



TALBOT COUNTY OFFICE OF PLANNING & ZONING

215 Bay Street, Suite 2
Easton, Maryland 21601

CODE COMPLIANCE OFFICE
PHONE: 410-770-8030

FAX: 410-770-8043
TTY: 410-822-8735

Memorandum

To: Rehobeth Farms, LLC
Lane Engineering, LLC-Bill Stagg

From: Elisa Deflaux, Environmental Planner

Date: December 11, 2013

Subject: Technical Advisory Committee Comments
Major Subdivision with New Private Road

I have reviewed the site plan and have the following comments:

General Comments

1. The applicant will need to submit a check for \$200.00 with the compliance review meeting review.

Deed of Trust

1. Page 13, exhibit d-turf grass eradication needs to be same as Lots 2-8 for Lot 1 in the seedling areas.

n:\planning & zoning\environmental comments\rehobeth prelim.docx



Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

Ren Serey
Executive Director

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

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

December 5, 2013

Mr. Brett Ewing
Talbot County Office of Planning and Zoning
28712 Glebe Road, Suite 2
Easton, Maryland 21601

**Re: Rehobeth Farm, LLC Final Subdivision and Buffer Management Plan
M1105 (TM 31, P 139)**

Dear Mr. Ewing:

Thank you for providing revised information on the above-referenced subdivision. The applicant is proposing to create a major 8-lot subdivision. The parcel is 204.8 acres in size, with 197.0 acres located in the Critical Area and designated as Resource Conservation Area (RCA). Currently the parcel is developed with two dwelling units. Total forest cover onsite within the Critical Area is 37.1 acres (19%). The applicant proposes to clear 1.339 acres of forest cover. However, the applicant will plant 9.6 acres of forest coverage to meet Forest Interior Dwelling Bird (FIDS) mitigation requirements, and will plant an additional 14.86 acres of forest coverage to meet Buffer establishment and Buffer variance mitigation requirements.

Provided that the applicant meets the Buffer establishment planting standards found in COMAR 27.01.09.01, we have no further comments.

Thank you for the opportunity to provide comments on this subdivision request. If you have any questions, please call me at (410) 260-3483.

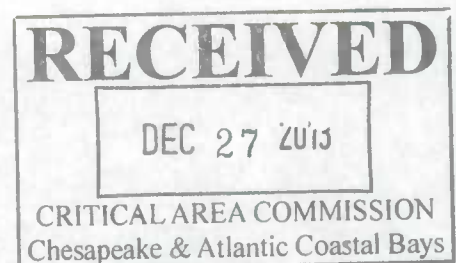
Sincerely,

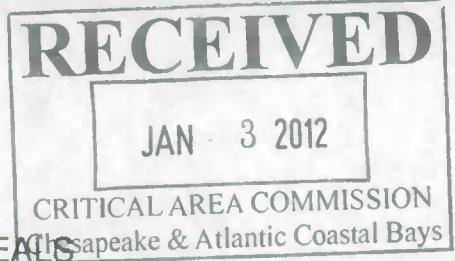
A handwritten signature in cursive script that reads "Nick Kelly".

Nick Kelly
Regional Program Chief

cc: Bill Stagg, Lane Engineering, Inc.
Elisa DeFlaux, Talbot County

TC 390-08





TALBOT COUNTY BOARD OF APPEALS

215 Bay Street, Suite 2
Easton, Maryland 21601

PHONE: 410-770-8040

FAX: 410-770-8043
TTY: 410-822-8735

APPEALS NOTICE OF PUBLIC HEARING

APPEAL # 12-1572

In accordance with Chapter 20, § 20-10 & § 20-11 of the Talbot County Code, notice is hereby given that a public hearing will be held in the **Bradley Meeting Room, Court House, South Wing, 11 North Washington Street, Easton, Maryland** on **January 23, 2012 at 7:00 p.m.** by the Talbot County Board of Appeals to hear the following petition:

Applicant, Rehobeth Farm, LLC, is requesting nine variances from certain non-tidal wetland buffer, Shoreline Development Buffer, and expanded buffer requirements and floodplain fill limitations to permit the construction of a private road right-of-way to be known as "Rehobeth Farm Lane" to access an eight-lot subdivision as follows:

- (A) Five variances to permit a total disturbance of 9,149 sq. ft. of non-tidal wetland buffer located within the Critical Area;
- (B) A variance to permit disturbance of 7,497 sq. ft. of Shoreline Development Buffer, a portion of which overlaps 25' non-tidal wetland buffer;
- (C) Two variances to permit a total disturbance of 9,262 sq. ft. of Expanded Shoreline Development Buffer consisting of non-tidal wetlands located contiguous to the Shoreline Development Buffer; and
- (D) A variance to permit the placement of more than 600 cubic yards of fill within the floodplain.

The variances requested would permit construction of Rehobeth Farm Lane in accordance with the manner and alignment required by County regulations and prior approvals by the Maryland Department of the Environment and U.S. Army Corps of Engineers. The Shoreline Development Buffer variance would permit construction of road improvements within 160' of tidal wetlands and drainage or utility improvements within 145' of tidal wetlands. With respect to each of the other setback variances, portion(s) of the applicable buffer would be reduced to 0'.

Request is made in accordance with Chapter 70 Floodplain Management, Article V, § 70-19 and Article VII, § 70-31 and Chapter 190 Zoning, Article VI, § 190-139 & § 190-140 and Article XIV, § 190-182 of the Talbot County Code. Property is located on 8411 Beechley Road, Wittman, MD in the Rural Conservation (RC) and Western Residential Conservation (WRC) Zones. Property owner is Rehobeth Farm, LLC and the property is located on Tax Map 31, Grid 1, Parcel 139. All persons are notified of said hearing and invited to attend. **The Board reserves the right to close a portion of this hearing as authorized by Section 10-508 (a) of the Maryland Annotated Code.**

A copy of said petition is available for inspection during the regular office hours of the Talbot County Board of Appeals, 215 Bay Street, Suite 2, Easton, Maryland. If you have any further questions, please contact Chris Corkell at 410-770-8040.

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WASHINGTON, D. C.



Appeal No. 12-1572

Name(s) & Addresses of the adjacent property owners. (Chapter 20, § 20-10) of the Talbot County Code.

Name and Address	Map	Grid	Parcel & Lot #
See attached.			


Applicant Signature

12/27/11
Date

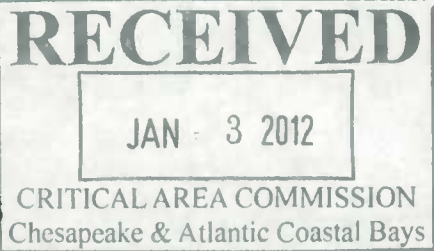
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Chesapeake & Atlantic Coastal Bays

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Name(s) & Addresses of the adjacent property owners. (Chapter 20, § 20-10) of the Talbot County Code.

	Name & Address	Map	Grid	Parcel & Lot #
1	DONALD B COBER MARY ANN MILLER 3212 GREENWAY DR ELLCOTT CITY MD 21042-2418	30	6	10
2	KATIE HOHNEY C/O RUTH DENNIS 8002 TILGHMAN ISLAND RD WITTMAN MD 21676-1403	30	6	83
3	CHRISTINA K HERRIDGE 27692 GLEBE RD EASTON MD 21601-7493	30	6	100
4	ARIC L & SANDRA L ROSENBACH PO BOX 67 WITTMAN MD 21676-0067	21	24	43 / 3
5	ARIC L ROSENBACH PO BOX 67 WITTMAN MD 21676-0067	21	24	43 / 2
6	ARIC L ROSENBACH PO BOX 67 WITTMAN MD 21676-0067	21	24	43
7	JOSEPH P TRIPPI KATHLEEN U LASH 8873 TILGHMAN ISLAND RD WITTMAN MD 21676-1330	21	24	5
8	JOSEPH P TRIPPI KATHLEEN U LASH 8873 TILGHMAN ISLAND RD WITTMAN MD 21676-1330	22	19	96 / 1
9	MARY J HOSKINS 51 FRANKLIN ST #301 ANNAPOLIS MD 21401-2726	22	19	307 / A 8
10	BRETT WARREN HAMMOND PO BOX 232 WITTMAN MD 21676-0232	22	19	307 / A 9
11	HENRY W & ELIZABETH M KILMER 735 HOLLY DR ANNAPOLIS MD 21401-5515	22	19	307 / A 10
12	ARTHUR E & DAWN S GANSS PO BOX 184 WITTMAN MD 21676-0184	22	19	307 / A 11
13	LAURENCE CONFORTI GLORIA M LIEBERMAN 388 NORTH POST RD PRINCETON JUNCTION NJ 08550-1325	22	19	307 / A 12
14	EUGENE S & MARGARET K DAY, TRUSTEES PO BOX 128 WITTMAN MD 21676-0128	22	19	307 / A 13
15	WILLIAM B & MAUREEN O HERBERT PO BOX 143 WITTMAN MD 21676-0143	22	19	307 / G 2
16	STEVEN E & CARMELA S COYLE 2902 S LAKE DR DAVIDSONVILLE MD 21035-1300	22	19	307 / G 3
17	MARGARET D OLMERT 22619 CRESCENDO CIR WITTMAN MD 21676-0119	22	19	307 / G 4
18	DAVID M SLAUGHTER BLAIR B SLAUGHTER 18 BLUELEAF CT HUNT VALLEY MD 21030-1980	22	19	307 / G 5
19	ROBERT J & KARON G SIMMONS 9400 NEW RD MCDANIEL MD 21647-9714	31	2	140
20	TRUSTEES PO BOX 236 WITTMAN MD 21676-0236	31	2	183
21	CHARLES E & ANN HARVEY YONKERS, TRUSTEES PO BOX 7 WITTMAN MD 21676-0213	31	2	182

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Chesapeake & Atlantic Coastal Bays



TALBOT COUNTY BOARD OF APPEALS
"CRITICAL AREA VARIANCE STANDARDS"

Appeal No. 12-1572

Hearing Date: January 23, 2012

Chapter 190 Zoning – Talbot County Code

Talbot County Board of Appeals – see Chapter 20
Article IX, § 190-182 - Variances

Variances: To authorize upon appeal in specific cases such variance from the terms of this Ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this ordinance shall not be granted unless and until the applicant has demonstrated that:

The applicant for a variance shall have the burden of proof which shall include the burden of going forward with the evidence and the burden of persuasion to all questions of fact, which are to be determined by the Board of Appeals.

In order to grant a variance to the Critical Area provisions of Chapter 190, the Planning Director or Board of Appeals must determine that the application meets all of the following criteria:

- (a) Special conditions or circumstances exist that are peculiar to the land or structure such that a literal enforcement of the provisions of this chapter would result in unwarranted hardship.

Applicant Response:

See Attachment B

- (b) A literal interpretation of the Critical Area requirements of this chapter will deprive the property owner of rights commonly enjoyed by other property owners in the same zoning district.

Applicant Response:

See Attachment B

- (c) The granting of a variance will not confer upon the property owner any special privilege that would be denied by this chapter to other owners of lands or structures within the same zoning district.

Applicant Response:

See Attachment B

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- (d) The variance request is not based on conditions or circumstances which are the result of actions by the applicant, including the commencement of development activity before an application for a variance has been filed, nor does the request arise from any condition relating to land or building use, either permitted or nonconforming, on any neighboring property.

Applicant Response:

See Attachment B

- (e) The granting of the variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat, and the granting of the variance will be in harmony with the general spirit and intent of the state Critical Area Law and the Critical Area Program.

Applicant Response:

See Attachment B

- (f) The variance shall not exceed the minimum adjustment necessary to relieve the unwarranted hardship.

Applicant Response:

See Attachment B

- (g) If the need for a variance to a Critical Area provision is due partially or entirely because the lot is a legal nonconforming lot that does not meet current area, width or location standards, the variance should not be granted if the nonconformity could be reduced or eliminated by combining the lot, in whole or in part, with an adjoining lot in common ownership.

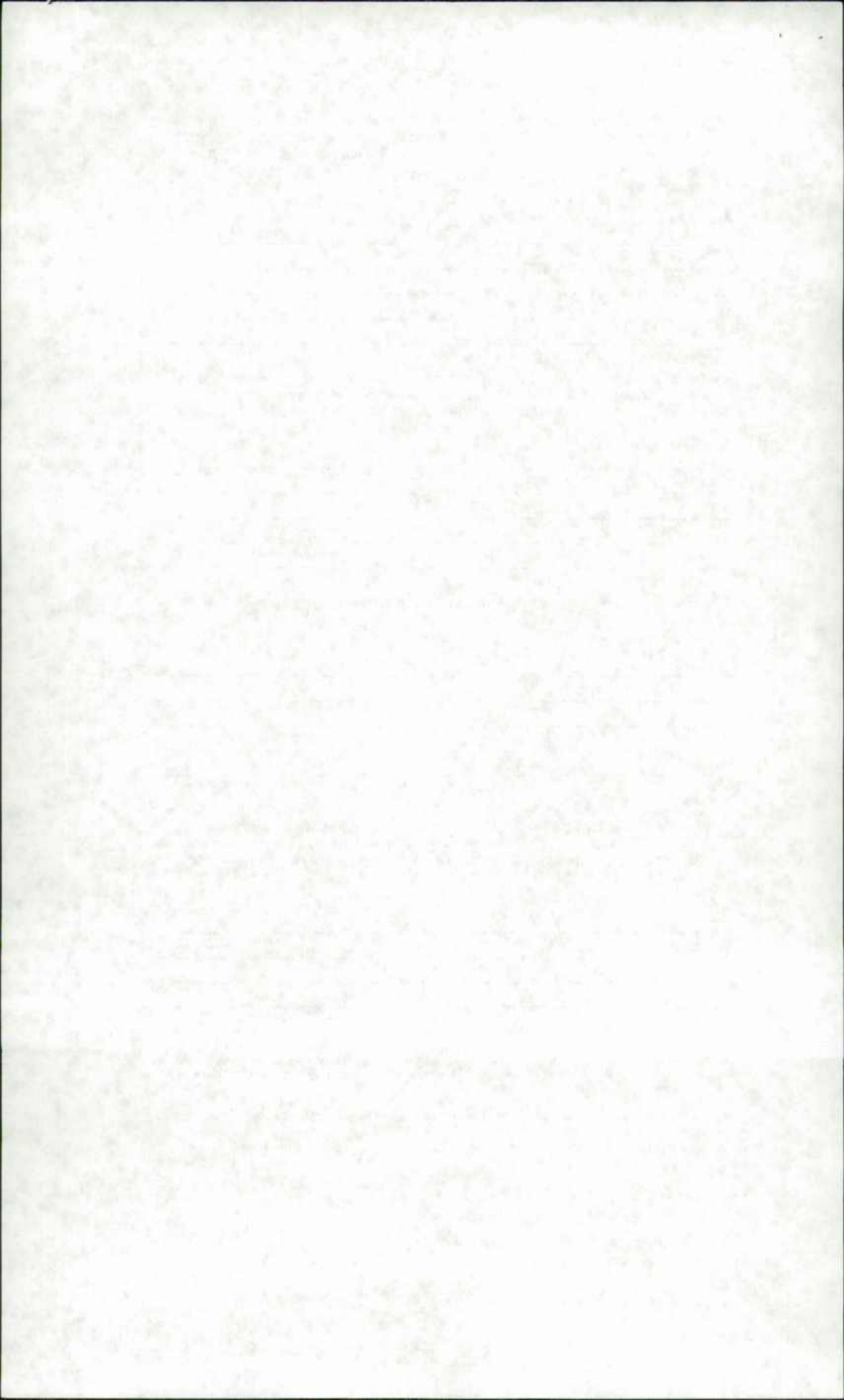
Applicant Response:

See Attachment B

Note: Within the Critical Area, if a request for a variance arises regarding nonconforming lots of record, the applicant must demonstrate and the Board of Appeals must find that criteria [a] through [g] above have been met and further that, due to the pattern of lot ownership, it is not possible to reconfigure or consolidate lots so as to permit compliance with this Ordinance.

All standards above must be addressed, do not leave any questions unanswered.

County action will be predicated upon the applicant's compliance with the above.



The Applicant shall provide evidence of compliance with Chapter 190, Article II, Regulations for specific land uses and § 190-147, as applicable.

The Applicant is responsible for providing compliance with each finding and requirement, and consistency with Chapter 190 of the Talbot County Code and the intent of the critical area law.

12/21/11
Date

[Signature]
Signature of Applicant or Designated Agent

References:

1. Talbot County Comprehensive Plan
2. Talbot County Code
3. File

All proposed structures and piers must be staked out prior to the Board's site visit.



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CRITICAL AREA VARIANCE CRITERIA

ATTACHMENT B

With respect to Variances 1 – 8, the Applicant demonstrates the following:

The Board of Appeals may authorize, upon application, a variation or modification of buffer requirements if the variances are not contrary to the public health, safety or welfare. This application for variances meets all of the criteria of the Code as follows:

(a) Special conditions or circumstances exist that are peculiar to the land or structure such that a literal enforcement of the provisions of this chapter would result in unwarranted hardship.

The Property has very unique physical characteristics. The Property is an unusually shaped peninsula, surrounded on three sides by Cummings Creek or Harris Creek. The only existing road access cannot be widened or improved to comply with applicable County standards. The only road frontage of the Property through which a new access road can be constructed consists of a relatively narrow (337' wide) strip of forested land situated in the northwest corner of the Property. This forested area is crossed by numerous pockets and fingers of non-tidal wetlands, such that there is no physical way to provide Code compliant road access to the Property without impacting non-tidal wetlands and related buffers. A majority of this road frontage strip is located within the Critical Area and a portion is also located within the 200' Shoreline Development Buffer extending south from Cummings Creek. Two-thirds of the non-tidal wetland areas that must be crossed are also located contiguous to the Shoreline Development Buffer, resulting in expansion of the Buffer to the upland limits of such wetlands.

The Applicant worked in close coordination with the County's Technical Advisory Committee, Planning Commission, Department of Public Works, Department of Planning and Zoning, Critical Area Commission, Maryland Department of the Environment and the U.S. Army Corps of Engineers to design an access road that, to the greatest extent possible, avoids and minimizes impacts to non-tidal wetlands and regulated buffers. The proposed design has been approved by each of these agencies as an acceptable means of accessing the Property and as satisfying the Applicant's legal requirements of avoidance and minimization.

Absent the requested variances, literal enforcement of the Code would result in practical difficulty and unreasonable hardship by denying the Applicant the ability to construct any road access to the Property that complies with applicable County requirements. This would prevent the Applicant from subdividing the Property, and therefore deny the Applicant reasonable and significant use of the entire Property.

(b) A literal interpretation of the Critical Area requirements of this chapter will deprive the property owner of rights commonly enjoyed by other property owners in the same zoning districts.

Landowners in the RC and WRC zoning districts typically have the right to improve and subdivide their property to create waterfront parcels in accordance with the densities permitted by the County Code. Based on current County zoning, this 204-acre Property enjoys 12 development rights. The property is currently improved by an older farm house and a modest waterfront home, leaving ten (10) additional development rights that could be exercised without difficulty if the Property had any road frontage to which a road could be constructed without impacting wetlands or related buffers. Absent approval of the requested variances, strict compliance with the County Code would deny the Applicant the right to exercise these 10 development rights and would even deny the Applicant the right to subdivide the Property solely for the purposes of creating a separate lot for each of the existing dwellings. Accordingly, literal interpretation of the buffer requirements will deprive the Applicant of the property rights commonly enjoyed by other property owners in the same zoning districts.



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(c) The granting of a variance will not confer upon the property owner any special privilege that would be denied by Chapter 190 of the Talbot County Code to other owners of lands or structures within the same zoning districts.

The requested variances convey no special privileges on the Applicant. Upon approval of the requested variances, the Applicant will obtain relief from the hardships imposed by the unique configuration of the Property but will then only be permitted to subdivide and use its Property in accordance with the RC and WRC zoning districts in a manner somewhat similar to all other property owners in the same districts. Even after approval of the variances, unlike other landowners not encumbered by the unique physical constraints of this Property, the Applicant is obligated by the approved wetland permit to construct over one acre of wetland mitigation and to further mitigate the Shoreline Development Buffer and Expanded Shoreline Development Buffer disturbances on a 3:1 ratio. Thus, it cannot be disputed that the requested variances convey no special privileges.

(d) The variance request is not based on conditions or circumstances which are the result of actions by the applicant, including the commencement of development activity before an application for a variance has been filed, nor does the request arise from any condition relating to land or building use, either permitted or nonconforming, on any neighboring property.

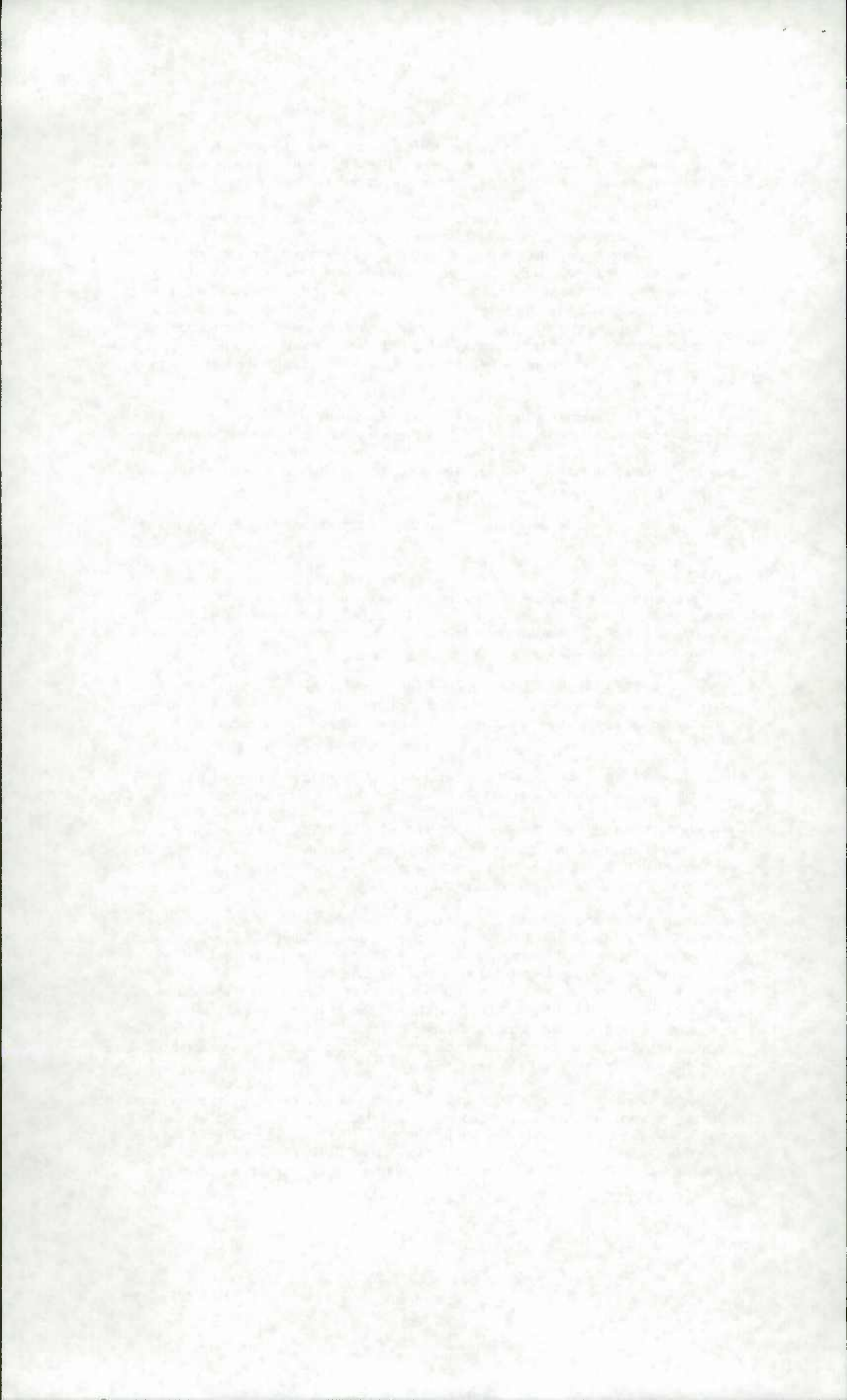
The variances are not based upon circumstances which are self-created or self-imposed. The unique conditions of the Property are natural conditions, inherent in the Property. The relationship between and configuration of the Property, the wetlands, shoreline, and the only adjacent public road were not created or influenced by the Applicant. The Applicant did not commence disturbance of the required buffers prior to the filing of this variance application. Finally, the variances requested are intended solely to address peculiar physical conditions of the Property and do not arise from any condition relating to land or building use, either permitted or nonconforming, on any neighboring property.

(e) The granting of the variances will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat, and the granting of the variance will be in harmony with the general spirit and intent of the state Critical Area Law and the Critical Area Program.

In conjunction with the issuance of the wetland authorization, all impacts to non-tidal wetlands and related buffers have been reviewed in detail and approved by Maryland Department of the Environment and U.S. Army Corps of Engineers based, in part, on the mitigation depicted by Exhibits J and K. Pursuant to Certification No. 09-NT-2138/200963328, which comprises pages 5-7 of the Wetland Permit (Exhibit L), the State agency responsible for the creation and implementation of Maryland's water quality standards has certified that "the project described above will not violate Maryland's water quality standards."

The Critical Area Commission staff participated in the Technical Advisory Committee review of the road design and subdivision plat prior to their approval by the County Planning Commission. This coordination included detailed discussion regarding plantings and protection actions deemed appropriate by the Commission to address any potential impacts to wildlife and plant habitats in a manner consistent with the Critical Area laws and program. To offset plant and wildlife habitat impacts associated with construction of Rchobeth Farm Lane, the Applicant is creating 9.6 acres of additional forest habitat for forest interior dwelling birds ("FIDS"). The variances requested hereby are necessary to construct road access to the Property that complies with County requirements.

The general spirit and intent of State and local Critical Area laws and policies focus on permitting reasonable use of land in a manner that does not adversely affect the water quality and wildlife habitat of the Chesapeake Bay and its tributaries. The proposed subdivision and road designs and requested variances balance reasonable use of the Property in a manner that is consistent with the protections of the State and County Critical Area laws and programs.



(f) The variances shall not exceed the minimum adjustment necessary to relieve the unwarranted hardship.

The requested variances do not exceed the minimum adjustments necessary to allow reasonable and significant use of the Property and to relieve the practical difficulties and unreasonable hardships imposed by strict compliance. County standards and specifications applicable to all similarly situated properties in the County establish the cross-sections, right-of-way and easement widths, and horizontal and vertical design limitations for private roads and related drainage improvements. In accordance with applicable State and Federal wetland permitting regulations, the Applicant's coordination between the County Department of Public Works, Maryland Department of the Environment and U.S. Army Corps of Engineers and issuance of the required wetland authorization confirms that the proposed design avoids, to the extent possible, and otherwise minimizes wetland and buffer impacts. All proposed improvements have been designed to cross sensitive areas and regulatory buffers in the shortest and most direct locations to reduce disturbance and therefore require the minimum variances necessary to ameliorate the hardship.

(g) If the need for a variance to a Critical Area provision is due partially or entirely because the lot is a legal nonconforming lot that does not meet current area, width or location standards, the variance should not be granted if the nonconformity could be reduced or eliminated by combining the lot, in whole or in part, with an adjoining lot in common ownership.

This standard is not applicable, because the Property meets all current minimum area, width and location standards. There are no adjacent properties in common ownership.



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Nick

**CRITICAL AREA FOREST PRESERVATION - BUFFER MANAGEMENT PLAN
PLANTING AND MAINTENANCE AGREEMENT
DEED OF TRUST AND SURETY DECLARATION
TALBOT COUNTY, MARYLAND**

THIS CRITICAL AREA FOREST PRESERVATION - BUFFER MANAGEMENT PLAN PLANTING AND MAINTENANCE AGREEMENT, DEED OF TRUST AND SURETY DECLARATION ("Agreement"), dated this ____ day of _____, 2011, by and between REHOBETH FARM, LLC, a Maryland limited liability company ("Developer") and TALBOT COUNTY, MARYLAND, a body corporate and politic of the State of Maryland acting by and through its duly authorized Planning Officer ("County").

RECITALS:

A. County has adopted Chapter 190, Zoning, Subdivision and Land Development, of the Talbot County Code ("Ordinance");

B. The State of Maryland, as authorized under Maryland Code, Natural Resources Article, § 8-1806, has adopted COMAR Title 27, Subtitle 01, Chapter 09, Habitat Protection Areas in the Critical Area ("Regulations");

C. Developer has elected to engage in a regulated activity as defined by § 190-134 B. (2) Table VI-1, item #6 of the Ordinance, and COMAR 27.01.09.01-1 on certain property located in the Fifth Election District of Talbot County, Maryland (hereinafter referred to as "Subdivision" or "Site", as appropriate), more particularly described as follows:

Property Owner: Rehobeth Farm, LLC

Property Address: Beechley Road, McDaniel, MD

Deed Reference: 1143/600 *Plat:* 82/400 *Acreage:* 204.804 acres

Tax Map: 31 *Grid:* 1 *Parcel:* 139

This Agreement is applicable to portions of the above-described property, which areas are depicted and described by the Plat (hereinafter defined) as Lots 1 through 8 (collectively, the "Lots").

D. Pursuant to the provisions of § 190-134C. (2) (d) of the Ordinance and COMAR 27.01.09.01-1, Developer has submitted and County has approved a final subdivision plat and Forest Preservation-Buffer Management Plan entitled "Subdivision Plat, FCP# 2010-20 and BMP #M1131 for Rehobeth Farm, LLC", prepared by Lane Engineering, LLC (hereafter referred to as the "Plat"), which depicts several afforestation areas designed to establish the 100' Shoreline Development Buffer and Expanded Buffer (collectively, the "Buffer") depicted thereon in natural vegetation. The Plat is intended to be recorded among the Plat Records of Talbot County, Maryland immediately hereafter and is incorporated herein by reference. The Plat and the "Summary of Regulatory Requirements and Planting, Maintenance and Inspection Specifications" attached hereto as Exhibit D are hereafter referred to collectively as the "Plan." The afforestation areas depicted by the Plan as "Critical Area Buffer Establishment Areas" total 14.724 acres and consist of the following areas: "A-1" (0.484 acres ±) on Lot 2, "B-1" (1.921 acres ±) on Lot 3, "C-1" (1.470 acres ±) on Lot 4, "D-1" (3.098 acres ±) on Lot 5, "E-1" (2.619

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acres ±) on Lot 6, "F-1" (0.180 acres ±) on Lot 7, "H-1" (1.245 acres ±) on Lot 8, and "G-1" (0.949 acres ±), "G-2" (0.579 acres ±), "I-1" (0.772 acres ±) and "J-1" (1.407 acres ±) on Lot 1 and are collectively referred to as the "Buffer Establishment Afforestation Areas";

E. When a triggering event specified herein occurs on a particular Lot, Developer or its successor-in-interest, as owner of such Lot, is required to plant and thereafter maintain, manage and monitor for a period of not less than two (2) years after the completion of the plantings (or five (5) years depending on the required plant stock size as may be more particularly specified below and in the Plan), the plantings required within the Buffer of such Lot in accordance with the Ordinance, Regulations, Plan, and the terms of this Agreement;

F. Pursuant to the provisions of § 190-134C(2)(b)(vi) and § 190-185 of the Ordinance, COMAR 27.01.09.01-3(J)(2)(d), and the terms of this Agreement, Developer is hereby providing and County is accepting security which guarantees the timely and satisfactory performance of Developer's requirements under the Plan and the terms of this Agreement;

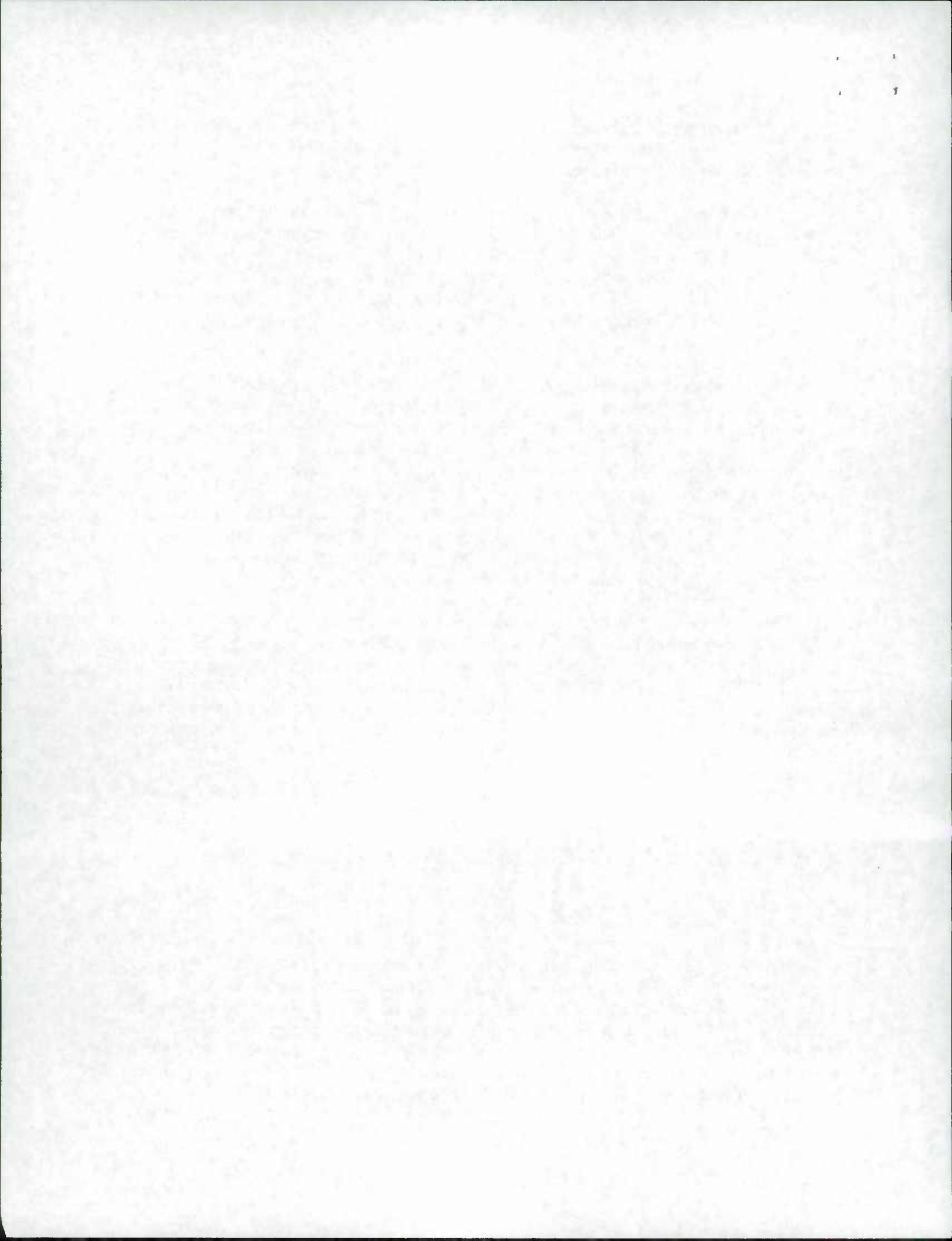
G. Developer desires to establish certain contingent charges upon the Lots in accordance with this Agreement, whereby County will recover the costs of performing Developer's obligations hereunder in the event of a default by Developer, which costs are to be paid by the owner of the defaulting Lot to County. Such costs are referred to herein as the "Remedial Costs" (hereinafter defined) and such term shall be deemed to refer to all applicable interest, costs, late fees and attorney's fees as defined herein;

H. In order to make the covenant and agreement to pay the Remedial Costs a covenant and agreement running with the land and binding upon the parties hereto, their respective heirs, personal representatives, successors and assigns, all future owners of the Lots, and each of their heirs, personal representatives, successors and assigns, Developer and County execute this Agreement whereby Developer declares that the Lots are subject to the covenants and agreements hereinafter set forth, all as part of and in furtherance of the general scheme of development of the Lots; and

I. The provisions of this Agreement are intended to run with and bind each Lot and the owners thereof. This Agreement shall apply and the performance hereof and compliance herewith shall be evaluated on a lot-by-lot basis. The term "Owner" as used herein shall include Developer and all owner(s) of a fee simple interest in a particular Lot as of the relevant time.

J. By execution of this Agreement, Developer hereby certifies its acceptance of the terms and conditions of the Plan.

NOW, THEREFORE, in consideration of the foregoing recitals which are made a material part of this Agreement, the County's approval of the subdivision plat to create the Lots, the covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Developer and the County hereby agree as follows and Developer hereby declares that the Lots are and shall be held, conveyed, hypothecated, encumbered, sold, leased, rented, occupied and used subject to the covenants, conditions, restrictions, obligations and charges set forth in this Agreement, which shall run with and bind



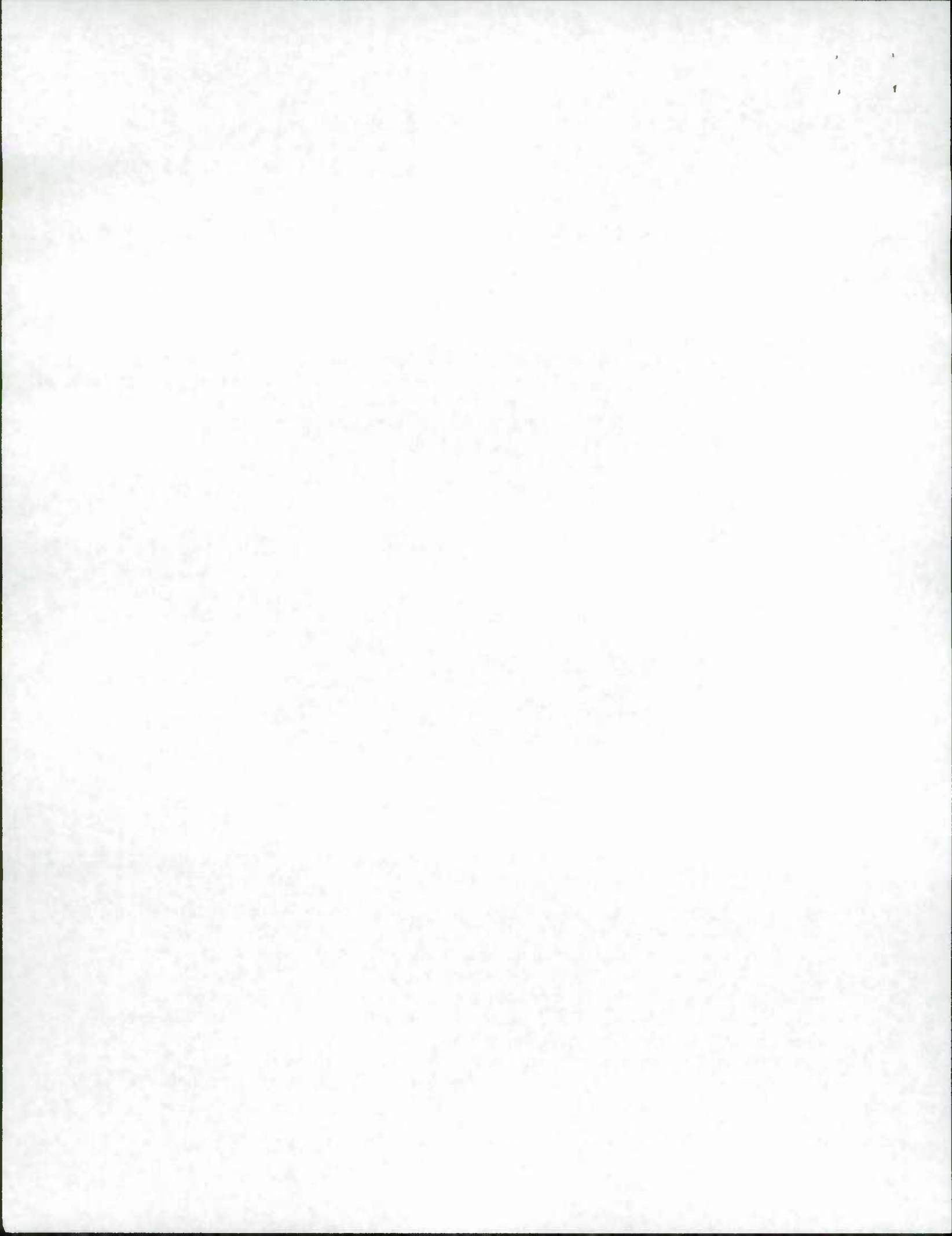
the Lots and shall be binding on all parties having any right, title or interest in all or any portion of the Lots, their respective heirs, personal representatives, successors, transferees and assigns, and shall insure to the benefit of and be enforceable by Developer and County, their successors and assigns:

1. Planting and Maintenance: Developer hereby covenants and agrees, on behalf of itself and its successors and assigns as fee simple owner(s) of the Lots, to provide, install, protect, maintain, manage, and monitor the protective devices and plantings within the Buffer Establishment Afforestation Areas (hereinafter defined) as required by the Ordinance, Regulations and Plan, as amended from time to time, and this Agreement on a lot-by-lot basis and in a manner which ensures the required establishment of the plant material and at such Developer's sole cost and expense. Developer's maintenance and monitoring of the Buffer Establishment Afforestation Area shall continue for a period of two (2) years or five (5) years after the completion of the plantings as more particularly specified below and in the Plan (which period is specified in Paragraph 2 as the "Maintenance Period"). Developer or its representative shall perform and prepare inspection report(s) and certificate(s) of completion, and notify the County as directed in the Plan and this Agreement. These foregoing obligations of the Developer are collectively referred to herein as the "Work."

2. Buffer Establishment Areas and Planting and Survival Requirements: The Buffer Establishment Afforestation Areas shall be as designated on the Plan. The specific plant species, sizes, and quantities for the Buffer Establishment Afforestation Area of each Lot are described by the Plan. The planting density (stems per acre), survivability percentage and minimum survival assurance period or "Maintenance Period" vary based upon the size of the planting stock as follows:

Stock Size of Trees Only (caliper = diameter measured at 2 inches above the root collar)	Required Number of Stems Per Acre	Survivability Requirement	Minimum Assurance Period After Planting
Bare-root seedling or whip	700	50 percent	5 years
½-inch to 1-inch container grown trees	450	75 percent	2 years
Greater than 1-inch container grown trees	350	90 percent	2 years
Landscape Stock		100 percent	2 years

3. Timing, Commencement and Completion of the Work: Developer agrees that the Work for each Lot shall be completed in accordance with all applicable federal, state and local requirements, as amended from time to time, including the Plan and this Agreement. Developer shall notify the Talbot County Department of Planning & Zoning at 410-770-8030 at least five working days prior to commencement of installation of protective devices and/or plant material on each Lot. Within thirty (30) days of completion of installation of all plantings and protective devices required by the Plan on a particular Lot, Developer shall provide County with a written certification specifying the title and number of the Plan ("Rehobeth Farm, Forest Preservation-Buffer Management Plan, BMP-#M1131"), the Lot(s) planted, the plant material installed



(species, sizes, and quantities), and the date of completion of the planting (“Initial Certificate of Completion”).

The Work on each Lot shall satisfy the following timing requirements:

A. Lot 1 – Planting of the Buffer Establishment Afforestation Area of Lot 1 shall be completed within one (1) year of the earlier of: (i) conveyance of the Lot by Rehobeth Farm, LLC, or (ii) construction of Rehobeth Farm Lane.

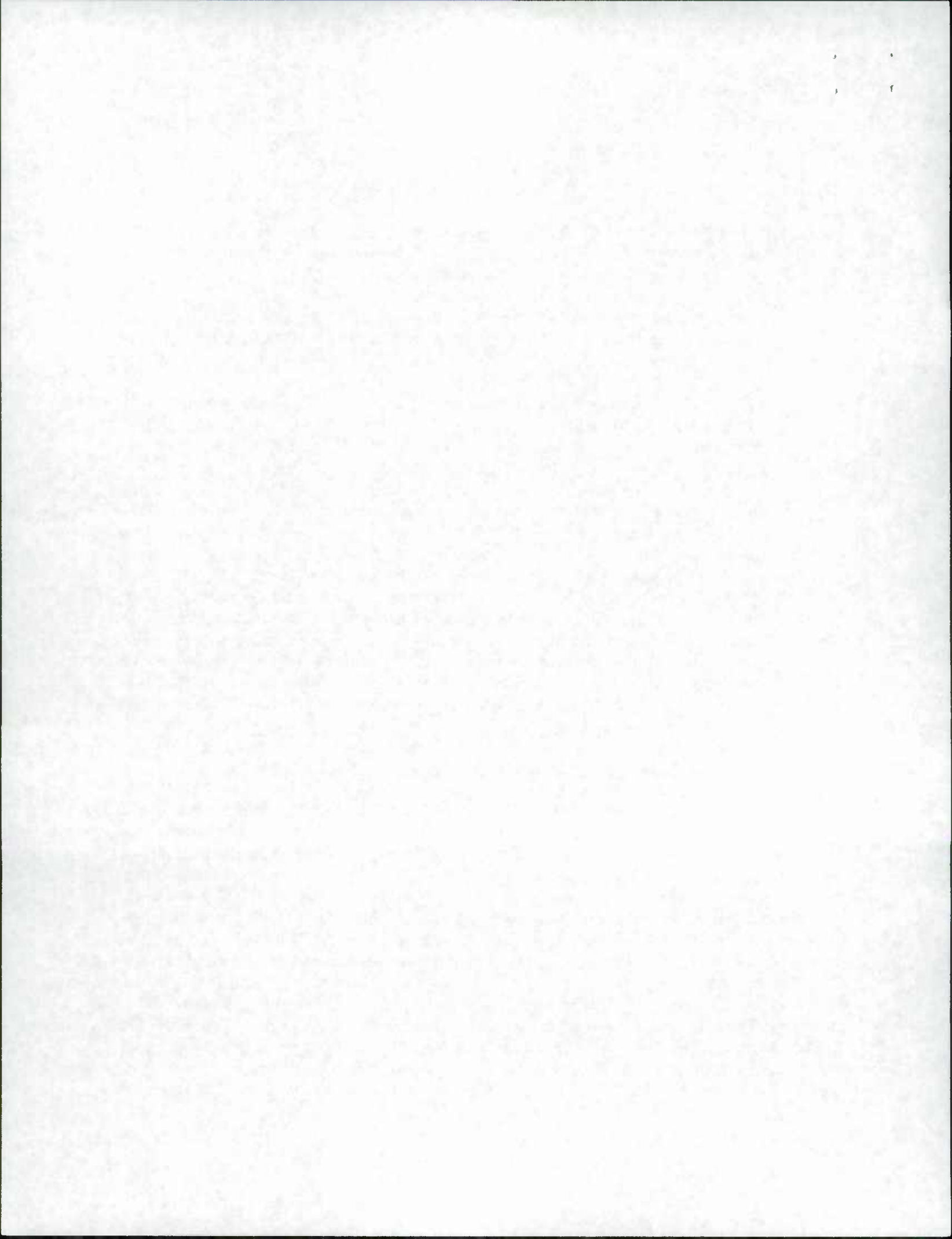
B. Lots 2 through 8 – Planting of the Buffer Establishment Afforestation Area on Lots 2 through 5 shall occur on a lot-by-lot basis prior to the earlier of the following triggering events:

i. the end of the growing season immediately following termination of agricultural use, as defined by Chapter 190 of the Talbot County Code, of all or portion(s) of the Buffer Establishment Afforestation Area located on such Lot; or

ii. the end of the growing season immediately following issuance of a building permit for a principal residence constructed on such Lot. Developer shall exercise reasonable and good faith efforts to commence planting during the appropriate planting period immediately following issuance of a building permit and to complete such planting prior to issuance of the occupancy permit. Developer and County agree that the objective of this Agreement is to ensure timely planting activity in a manner that maximizes the likelihood of plant survival and establishment of the Buffer. In the event that the timing of permit issuance and/or duration of construction render strict compliance with the foregoing deadline inconsistent with this objective, planting of the Buffer Establishment Afforestation Area on such Lot shall be completed not later than prior to the growing season immediately following issuance of the occupancy permit.

4. Maintenance Period; Inspection; Replacement: In accordance with Paragraph 2, the Maintenance Period(s) applicable to the planting material installed on each Lot shall be determined by the size of trees installed. The Maintenance Period(s) shall commence upon the date of the Initial Certificate of Completion. The Maintenance Period may be extended at County’s reasonable discretion in the event replacement plantings are to satisfy the survivability requirements of the Plan and this Agreement, but not, in any event, for a total period longer than twice the initial Maintenance Period duration. Inspections of the Buffer Establishment Afforestation Area on each Lot shall be conducted in accordance with the “Inspection Requirements” notes of Exhibit D. Inspection reports required by the Plan shall be prepared by Developer and delivered to County within thirty (30) days of performance of each inspection.

5. Expiration of Maintenance Period; Final Approval; Release of Lot: At the end of the applicable Maintenance Period and any extension thereof, Developer shall perform the inspection required by “Inspection Requirements”, Note No. 3 of Exhibit D. Developer shall issue a final inspection report and certificate of completion (“Final Certificate of Completion”) certifying compliance with the Plan, this Agreement and other applicable laws. Following the

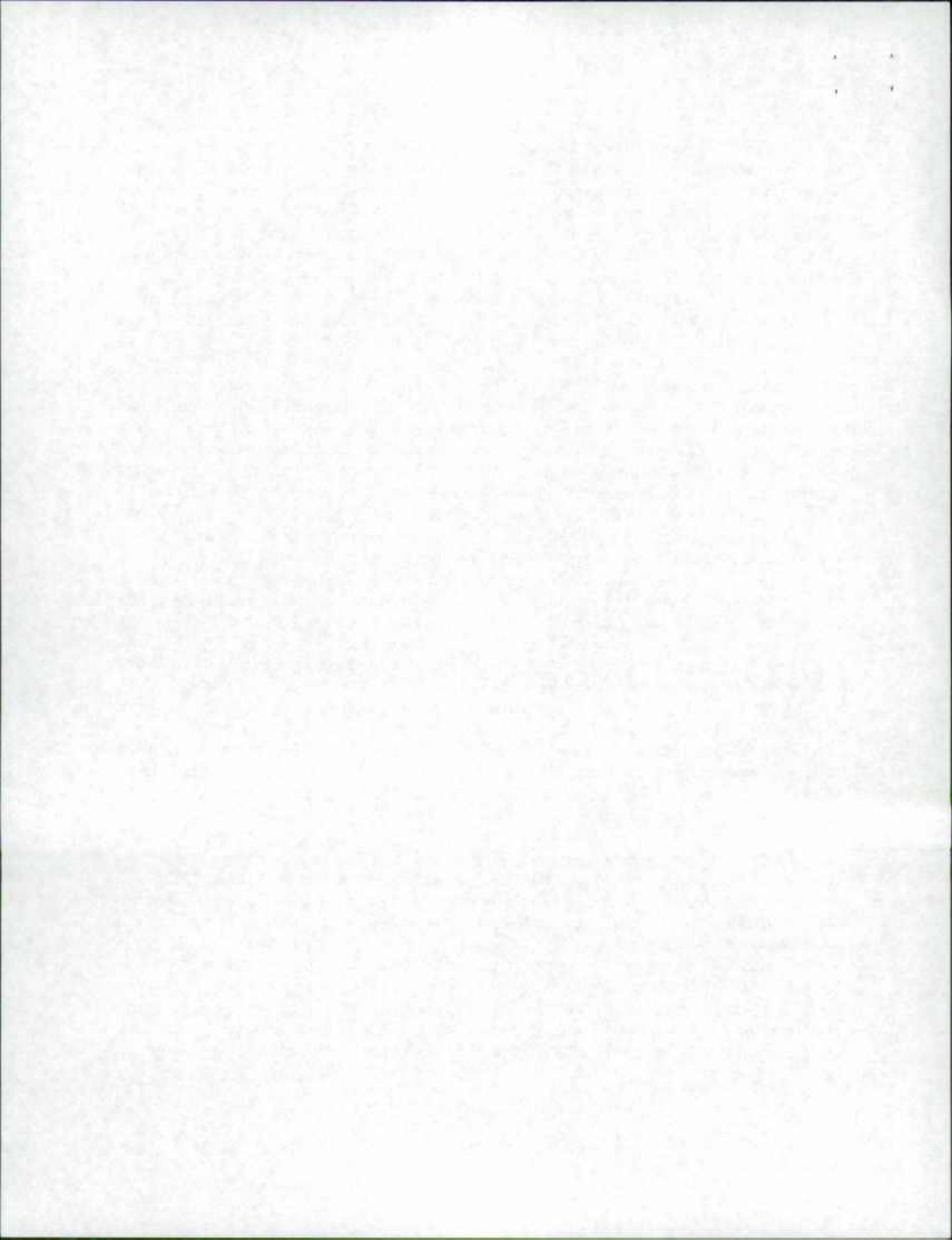


County's receipt of the Certificate of Completion, the County shall inspect the Buffer Establishment Afforestation Area on such Lot. If Developer has satisfied the terms of this Agreement and the Plan, County shall issue a written notice of final acceptance ("Release and Written Notice of Final Acceptance") and send the same to Developer. County shall not unreasonably withhold issuance of the Release and Written Notice of Final Acceptance, which shall be prepared by the County in substantially the form attached hereto as Exhibit A for recordation by Developer among the Land Records of Talbot County. Such notice shall terminate any ongoing, additional, or future liability for performance of the Plan with respect to the Lot and shall completely release such Lot from this Agreement, but shall not terminate or modify the provisions of the Critical Area Forest and Buffer Protection Agreement recorded among the Land Records of Talbot County and applicable to such Lot.

So long as the Developer is not in default of the terms of this Agreement, Developer may, at any time, obtain release of one or more Lot(s) from the provisions of Paragraph 10 and the lien established thereby by delivering to County alternative surety that provides at least equal security for performance of Developer's obligations in a form and amount acceptable to County. County shall not unreasonably withhold its approval of the alternate surety. County shall promptly execute and deliver to Developer a "Partial Release of Lien" for such Lot(s), which shall be prepared by County in substantially the form attached hereto as Exhibit B, for recordation by Developer among the Land Records of Talbot County. Such release shall terminate and release the specified Lot(s) from the lien established by this Agreement, but shall not release the Lot from performance of the Plan or the other provisions of this Agreement. Such release also shall not terminate or modify the provisions of the Critical Area Forest and Buffer Protection Agreement recorded among the Land Records of Talbot County and applicable to such Lot.

6. Damage to County Property: Developer shall, at its own expense, repair any County land, improvements and facilities damaged as a result of the performance of the Work by Developer, its agents, consultants, contractors, servants, or employees. If, in the judgment of County, the damage presents an imminent threat to the public health, safety or welfare, Developer shall repair the damage immediately upon the request of County. If Developer fails to make such repair, County shall have the right to enter the Subdivision or Site, repair the damage, and recover the cost of the repair from Developer, including, but not limited to, court costs, attorneys' fees, and direct administrative and overhead costs.

7. County Inspections: County may from time to time inspect the Work performed under the Plan and this Agreement at such intervals as it determines appropriate, and following each inspection shall prepare and provide Developer a written report of its findings if there are unfulfilled planting or maintenance requirements. County, its agents, officials, employees, and contractors shall have the right of entry onto any Lot, upon not less than twenty four (24) hours advance notice to Developer, to inspect implementation of the Plan, progress of the Work, survival of the plants, and compliance with all other terms of this Agreement. During the applicable Maintenance Period, County, at any time, may require Developer to replant all or any portion of the nursery stock or other plantings that fail to survive as required by the Plan. Developer or its authorized representative shall be entitled to be present during the period of any County inspection.



8. Indemnification: In the event of any claim against Talbot County, Maryland arising out of the performance of the Work or other activity of Developer, its agents, consultants, contractors, servants, or employees in, on or about, or impacting on, the Buffer Establishment Afforestation Areas or any easements, open space, or other property dedicated, leased or licensed to or owned or occupied by County, the owner or owners of the Lots at the time that any such claim shall be asserted shall indemnify and save Talbot County, Maryland harmless from and against any and all such claims, actions, damages, liability or expense of any nature, including reasonable attorneys' fees and costs of defense.

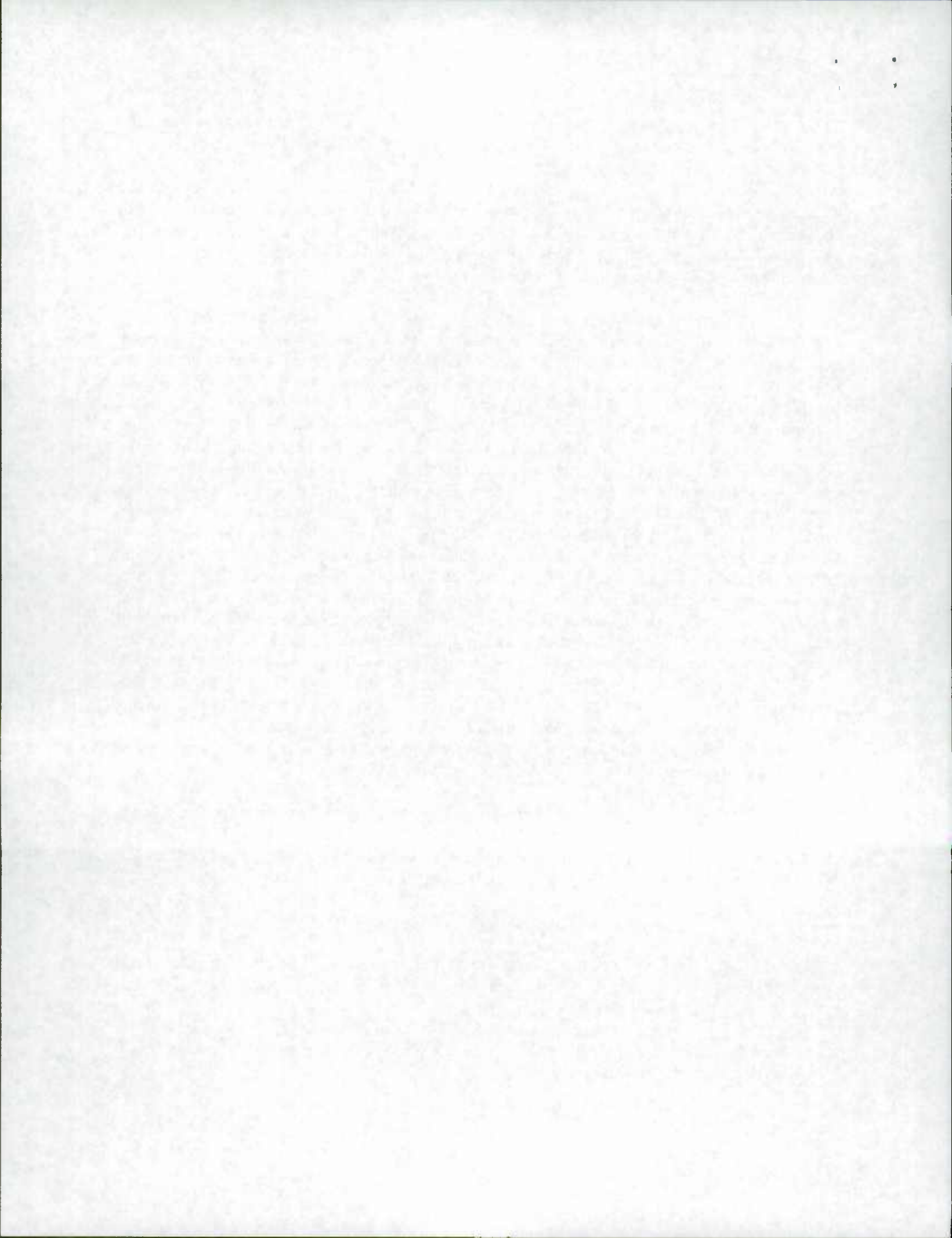
9. Default; Implementation by County. Failure by Developer to comply with the terms of the Plan or this Agreement shall be deemed an event of default ("Default"). In the event of a Default by Developer, County shall provide Developer with written notice specifying the Default, the Lot(s) in default, and the action required to cure such Default. County shall also provide written notice of the default to any party with a recorded lien or security interest in the Lot(s) in default ("Secured Party"). Developer shall have thirty (30) days or such longer time as agreed to with the County should the default be discovered outside the planting season within which to cure, unless the Default cannot reasonably be cured within thirty (30) days, in which case County may extend the period to provide a reasonable time within which Developer may cure. In the event any Default is not cured within the applicable time period, unless extended (and in that event within the time as extended), County shall immediately proceed to cure the Default and to perform or cause to be performed all or any part of the Work on such Lot(s) and provide all or any part of the nursery stock, seedlings, and other materials necessary to perform the Plan in accordance with its terms. In the event of a Default hereunder by Developer that remains uncured, County, its agents, officials, employees, and contractors shall be entitled at reasonable times with not less than twenty four (24) hours advance notice to Developer to enter upon, over, and through such defaulting Lot(s), bring equipment and materials onto such Lot(s), plant all or any portion of the nursery stock or other plantings, and perform all other acts necessary or proper for all purposes connected with the Work required by the Plan and this Agreement ("Remedial Measures"). County shall use reasonable care to not damage such Lot(s) and shall use its best efforts to leave the Lot(s) in the same condition as before the institution of the Remedial Measures.

10. County's Recovery of Costs for Remedial Measures. In the event that County shall be required to institute Remedial Measures, Developer shall be responsible for payment of all costs incurred by or on behalf of County in connection with the completion of the Remedial Measures plus County's costs of collection as more particularly described below.

A. Amount and Payment of Remedial Costs; Collection Costs.

(i) The Remedial Costs (exclusive of Default Interest, Late Fees and Attorneys' Fees) shall be comprised of the following:

(a) County's actual costs to accomplish the planting, maintenance, monitoring, reporting and, if necessary, plant replacement, obligations of Developer with respect to the Lot in Default; and



(b) All County staff time associated with supervision and implementation of the Remedial Measures at a rate of \$70 per hour, which time shall be reasonably documented in fifteen (15) minute increments with a description of the task(s) performed. Such time shall not, however, include time associated with inspections of the plantings that County would otherwise perform pursuant to the Plan and in the absence of a Default.

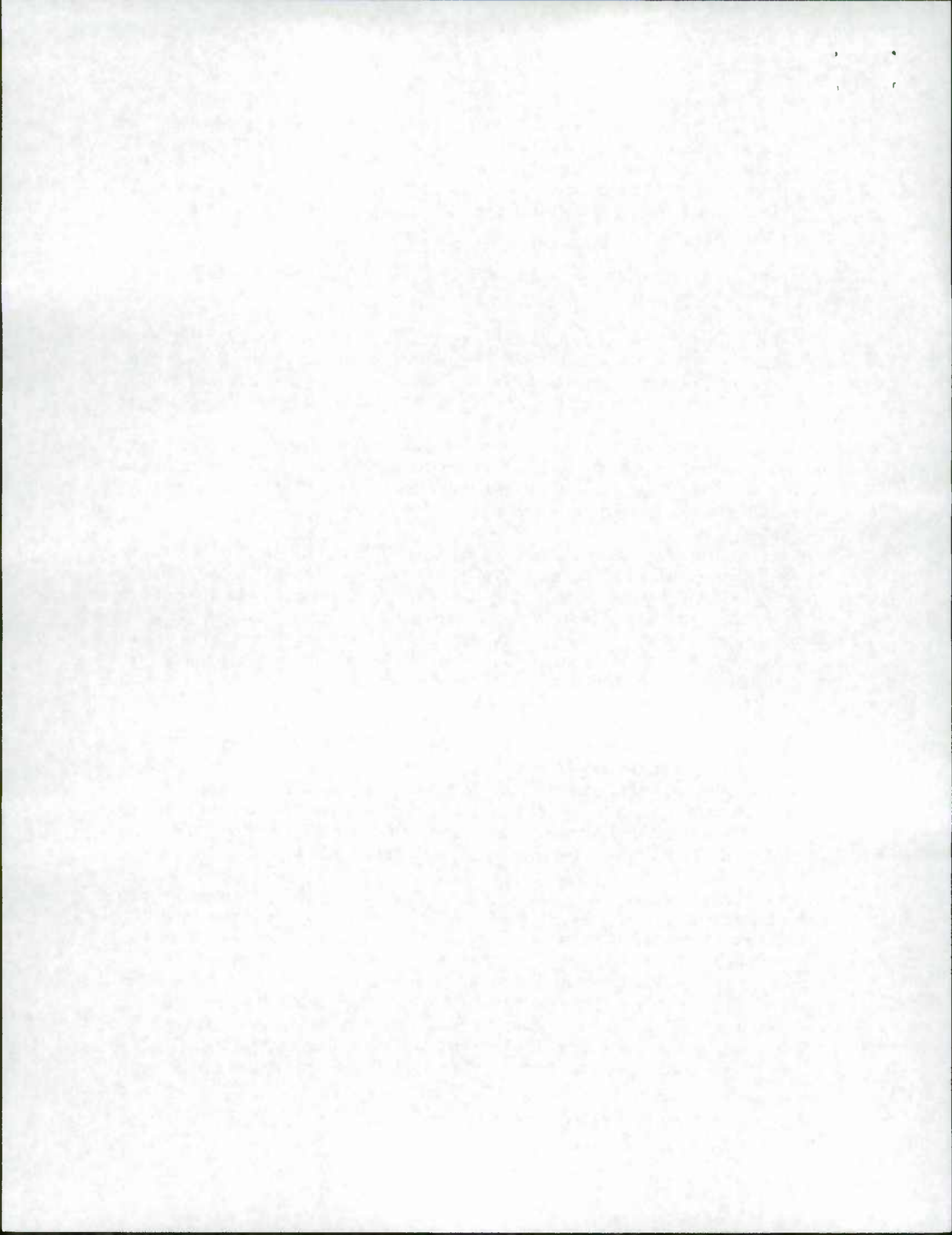
No Owner may waive or otherwise escape liability for the Remedial Costs provided for in this Agreement by abandonment of a Lot.

(ii) The County shall send Developer invoice(s) for the Remedial Costs at such time and on such frequency as determined by the County with a copy to any Secured Party. Each notice must be delivered to Developer and Secured Party via first class mail, postage prepaid and via certified mail, return receipt requested, to Developer at its address appearing in the real estate tax assessment records of the County with respect to the Lot owned by such addressee or such other address Developer may designate in writing to County, from time to time, and to Secured Party at such address as designated in the recorded document securing its interest in the Lot(s). Developer shall pay such invoice(s) in full on or before 30 days after the date of mailing, which is the date the invoice becomes due.

(iii) Any Remedial Costs not paid within fifteen (15) days after the due date shall bear interest from the due date until paid at the rate of 15% per annum ("Default Interest"). In addition to Default Interest, if any installment of Remedial Costs is not paid within fifteen (15) days after its due date, County may collect a late fee, as consideration for additional administrative costs incurred by County in dealing with the delinquent payment, in an amount equal ten percent (10%) of the amount due for each month the payment remains outstanding (up to a maximum of three (3) such late fees during any calendar year) ("Late Fee"). The Default Interest and Late Fee(s) shall constitute additional Remedial Costs.

(iv) If any Owner shall fail to pay the Remedial Costs and any Default Interest and Late Fee(s) applicable to that Owner's Lot in accordance with this Agreement, and County shall institute any legal and/or equitable proceedings to collect such delinquent debt, collection costs and reasonable attorneys' fees up to but not exceeding thirty-five percent (35%) of the sum claimed (inclusive of Default Interest and Late Fee(s)) ("Attorneys' Fees") shall be added to the amount of the Remedial Costs due and payable and shall constitute additional Remedial Costs.

B. Establishment of Lien and Personal Obligation. Developer and each Owner of a Lot in the future, by acceptance of a deed therefore, whether it is expressly set forth in such deed or not hereby: (1) grants and conveys to the County, a lien against each of the Lots held or acquired by them to pay the Remedial Costs, (2) covenants and agrees to perform all promises, undertakings, and obligations set forth in this Agreement and/or Plan, including payment to the County of all Remedial Costs (inclusive of applicable Default Interest, Late Fee(s) and Attorneys' Fees) assessed against that Owner's Lot pursuant to this Agreement, (3) grants to County, to secure payment of the Remedial Costs assessed against that Owner's Lot, a lien upon the Lot against which the Remedial Costs are assessed, and (4) grants to County a



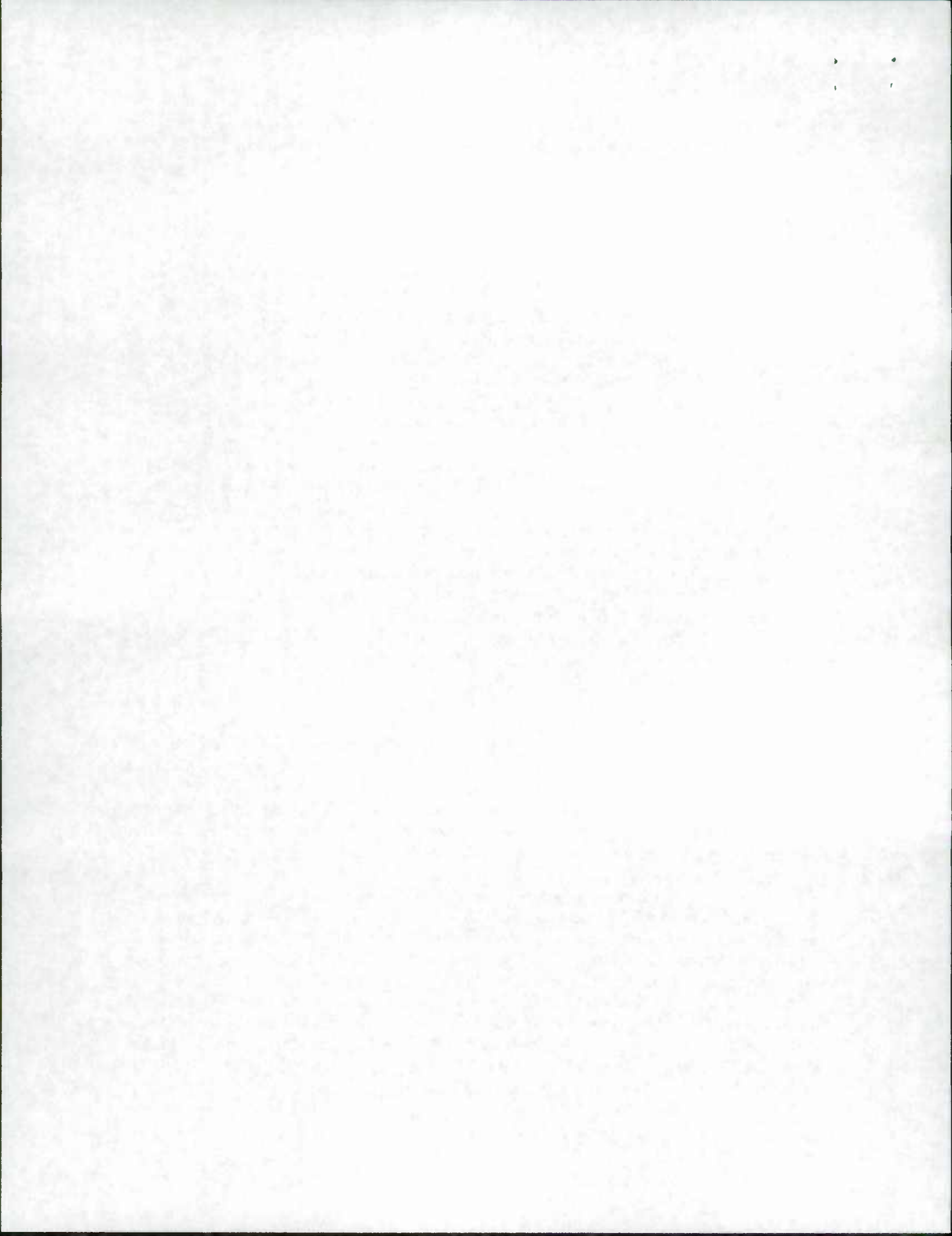
power of sale and assents to the entry of a decree and order for sale with respect to that Owner's Lot upon a default by the Owner under this Agreement to pay County the Remedial Costs.

The payment of Remedial Costs assessed against each Lot shall also be the personal obligation of the Owner of the Lot as of the time that the Remedial Costs are assessed by invoice and such personal obligation shall be joint and several between or among any multiple persons and/or entities that comprise the Owner of the Lot at any time thereafter until paid in full. Further, under no circumstances shall any Secured Party have any personal liability hereunder.

In the event that any Owner shall fail to pay the Remedial Costs applicable to that Owner's Lot in accordance with this Agreement, County shall be entitled to all legal and/or equitable relief as may be available under applicable law, including, without limitation, the right: (i) to bring an action at law against any Owner personally obligated to pay the Remedial Costs, (ii) to foreclose on the lien against the Lot in the manner now or hereafter provided for the foreclosure of mortgages, deeds of trust or other liens on real property in the State of Maryland containing a power of sale or assent to a decree, and subject to the same requirements, both substantive and procedural, or as may otherwise from time to time be provided by law, (iii) to foreclose on the lien against the Lot in the manner now or hereafter provided for pursuant to the Maryland Contract Lien Act, and/or (iv) to institute such other legal and/or equitable proceedings as may otherwise from time to time be provided by applicable law. In the event that County exercises its right to foreclose, County must provide the Secured Party notice of its intent to foreclose at least thirty (30) days prior to instituting foreclosure proceedings. In the event of a foreclosure by the County under this Agreement, proceeds of the sale shall be distributed to the County, then to holders of deeds of trust, mortgage instruments or other encumbrances duly recorded on any Lot following the recordation of this Agreement, if any, and then to Owner, as their interests may appear in the Land Records for Talbot County.

C. Right of Redemption. In the event County initiates a foreclosure or a suit for collection of the Remedial Costs, the Owner of the affected Lot, or the mortgagee thereof, shall have the right to have enforcement of this Agreement against said Lot discontinued at any time prior to the earlier of: (i) five (5) days before sale of the Lot pursuant to the power of sale contained herein, or (ii) entry of a judgment enforcing the provisions hereof, provided that the Owner or mortgagee shall have paid the County: (a) the entire Remedial Costs, and (b) all expenses, including interest, late charges and Attorneys' Fees, which the County has incurred in enforcing the provisions hereof.

D. Priority of Lien. The lien for delinquent Remedial Costs (including, without limitation, all Default Interest, Late Fee(s) and Attorneys' Fees) provided for in this Agreement shall have priority from and after the date upon which this Agreement is recorded among the Land Records of Talbot County, Maryland over the lien of any subsequently recorded deed of trust, mortgage instruments or other encumbrances duly recorded on any Lot following the recordation of this Agreement. The sale or transfer of any Lot shall not affect any lien imposed against such Lot pursuant to this Agreement. No sale or transfer of a Lot shall relieve the Owner of the Lot from liability for any Remedial Costs assessed by invoice prior to such sale or transfer or from the lien for such Remedial Costs. The purchaser of a Lot shall be jointly and severally liable with the seller for all accrued and unpaid Remedial Costs (including, without



limitation, all Default Interest, Late Fee(s) and Attorneys' Fees) against the Lot, without prejudice to the purchaser's right to recover from the seller amounts paid by the purchaser for unpaid Remedial Costs which accrued prior to the purchaser's acquisition of title.

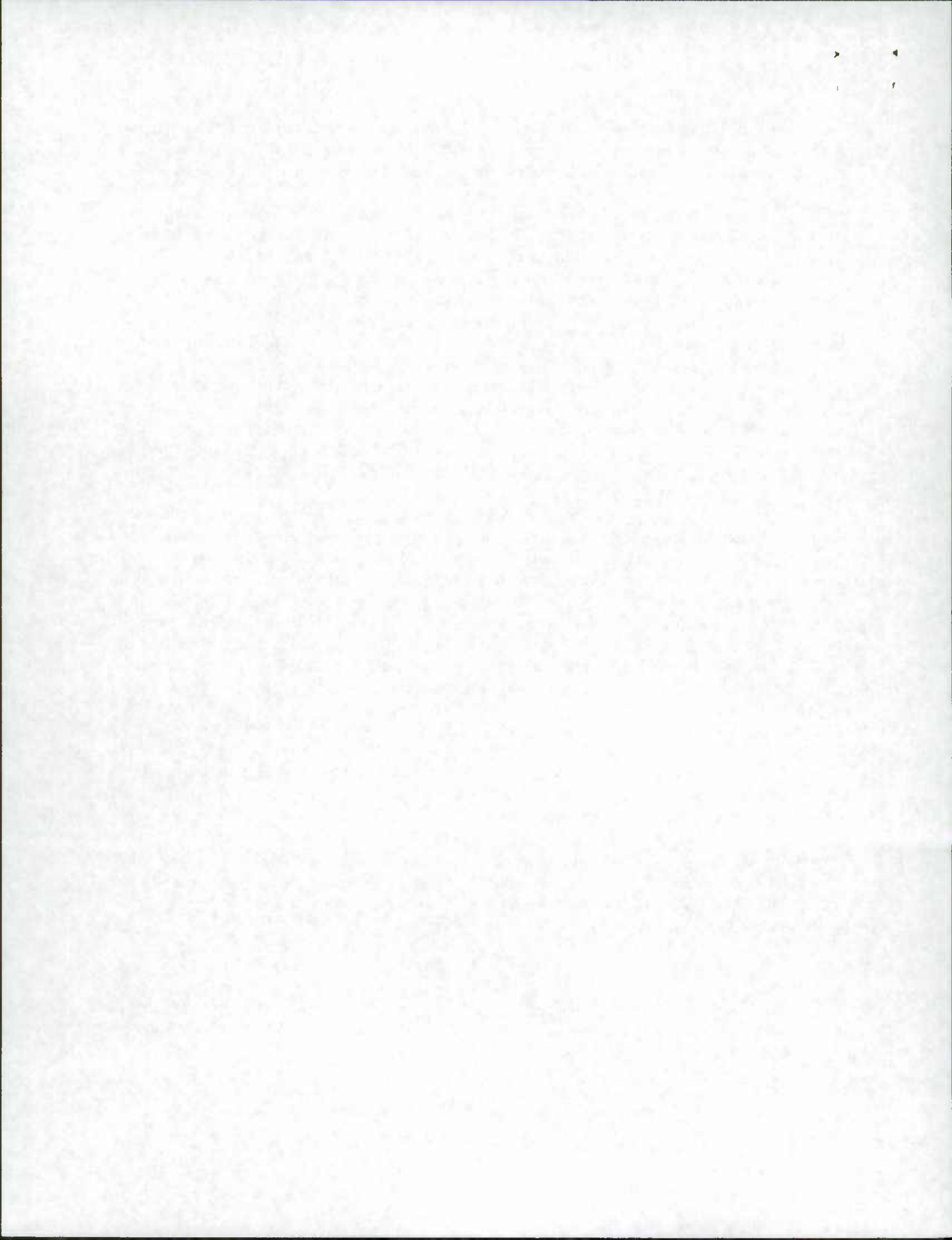
E. Power of Sale. In the event that County shall elect to collect any delinquent Remedial Costs by foreclosing its lien pursuant to the power of sale granted to it in this Agreement, County hereby designates the duly appointed County Attorney for Talbot County ("Collection Agent") as its agent for purposes of instituting and conducting the foreclosure sale. County reserves the right from time to time, in its sole discretion, to designate one or more persons as substitute Collection Agent by an instrument in writing and recorded among the Land Records of Talbot County, Maryland. If at any time more than one person is designated as the Collection Agent, any one of the persons comprising the Collection Agent may act as the Collection Agent under this Agreement. In the event the County shall designate a substitute Collection Agent, the prior Collection Agent shall thereupon be deemed to have been removed and the new Collection Agent shall thereafter have full power and authority to exercise such power of sale in accordance with this Agreement and applicable law, to the same extent as the Collection Agent originally named in this Agreement.

11. Compliance Certificate. A certificate in writing, signed by a representative of County substantially in the form attached as Exhibit C, will be given within 30 days of receipt by County of a written request for such certificate from any Owner, lender, or contract purchaser of a Lot subject to this Agreement, which certificate shall state the set forth: (i) the status of such Lot's compliance with the Agreement and, to the extent of any noncompliance, the action(s) required to bring such Lot into compliance, and (ii) the amount of any Remedial Costs, Default Interest, Late Fee(s) and Attorneys' Fees (billed or unbilled) accrued and unpaid with respect to the Lot. Such certificate shall be binding on County as of the date of issuance and may be relied upon by the party requesting such certificate, its heirs, personal representatives, successors and assigns. A charge not to exceed Two Hundred Fifty Dollars (\$250.00) may be collected by County in advance for each such certificate so issued.

12. Enforcement by the County. All rights and remedies contained in this Agreement are cumulative and County shall also have all other rights and remedies provided by law or in equity. The terms of this Agreement shall be enforceable by County pursuant to the provisions of the Ordinance and Chapter 58 of the Talbot County Code, and failure to comply with the provisions of this Agreement and/or the Plan may be subject to penalties as provided by applicable law. In the event that any such enforcement action (other than an action arising under Paragraph 10) shall become necessary, Developer shall be responsible for all attorney's fees and costs incurred by County in connection with any such enforcement action.

13. General Provisions:

A. Waiver of Appeal Rights. Developer agrees to waive all right of appeal as to the issue of the necessity and requirement for the performance of the Work that is the subject of this Agreement.



B. Binding Effect. All provisions of this Agreement, including the benefits and burdens, shall touch, concern, run with and bind the Lots, shall be binding upon Developer and its respective heirs, personal representatives, successors, transferees and assigns and shall inure to the benefit of and be enforceable by County. Remedial Costs related to a Default shall constitute personal obligations of the Owner at the time of default and all future Owner(s) of a Lot until the Remedial Costs are paid in full.

C. Captions and Gender. The captions contained in this Agreement are for convenience only and are not a part of this Agreement and are not intended in any way to limit or enlarge the terms and provisions of this Agreement. Whenever the context so requires, the male or female shall include all genders and the singular shall include the plural and vice versa.

D. Interpretation, Enforcement and Recordation. This Agreement shall be construed and enforced in accordance with the laws of the State of Maryland, excluding choice of law principles, and shall be effective upon its recordation among the Land Records of Talbot County. The failure or forbearance by County to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. All of the provisions, covenants and restrictions herein this Agreement may be enforced by County without limitation including the right to reimbursement for any and all expenses reasonably related to actions necessary to enforce the provisions of the Agreement.

E. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement under their respective hands and seals as of the day and year first above written.

APPROVED AND AGREED TO:

ATTEST:

TALBOT COUNTY, MARYLAND

_____ Date: _____

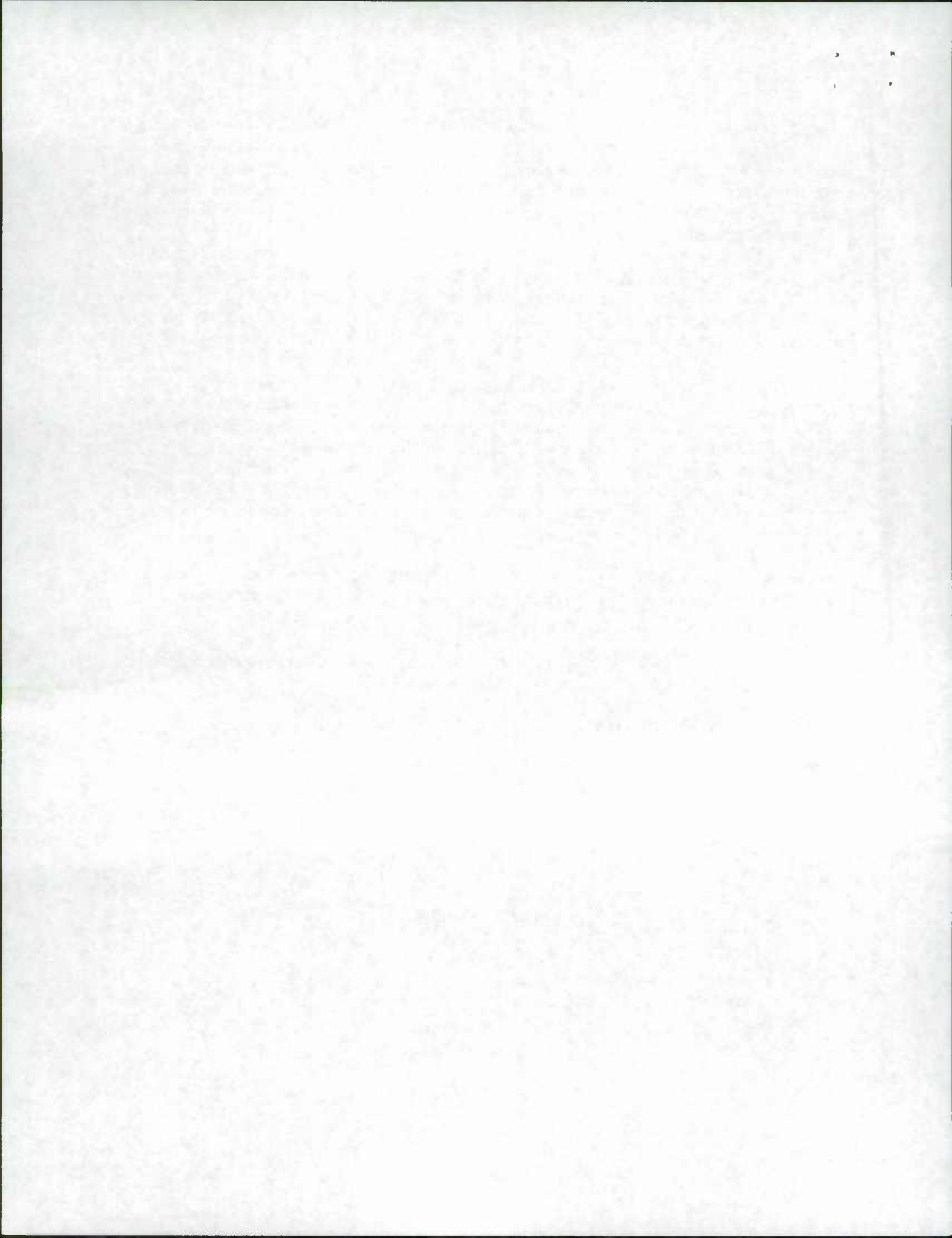
By: Sandy Coyman
Talbot County Planning Officer

ATTEST:

REHOBETH FARM, LLC

_____ Date: _____

By: Templeton Smith, Jr.
Managing Member



Approved for Legal Form and Sufficiency,

this ____ day of _____, 2011

Michael L. Pullen, County Attorney

STATE OF MARYLAND, COUNTY OF _____, TO WIT:

I HEREBY CERTIFY, that on this ____ day of _____, 2011, before me, a Notary Public of the State aforesaid, personally appeared SANDY COYMAN, who acknowledged himself to be the Planning Officer of Talbot County, Maryland, a Maryland charter county, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within Agreement, and acknowledged that he executed the same for the purposes therein contained as the fully authorized agent of said Talbot County, Maryland.

WITNESS my hand and Notarial Seal.

My Commission expires: _____

Notary Public

STATE OF _____, COUNTY OF _____, TO WIT:

I HEREBY CERTIFY, that on this ____ day of _____, 2011, before me, the undersigned Notary Public of said State, personally appeared TEMPLETON SMITH, JR., known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, who acknowledged that he executed the same for the purposes therein contained and he further acknowledged said instrument to be his act in his capacity as Managing Member of REHOBETH FARM, LLC, a Maryland limited liability company.

WITNESS my hand and Notarial Seal.

My Commission expires: _____

Notary Public

CERTIFICATION

This is to certify that the within instrument was prepared by or under the supervision of the undersigned, an Attorney duly admitted to practice before the Court of Appeals of Maryland.

Ryan D. Showalter

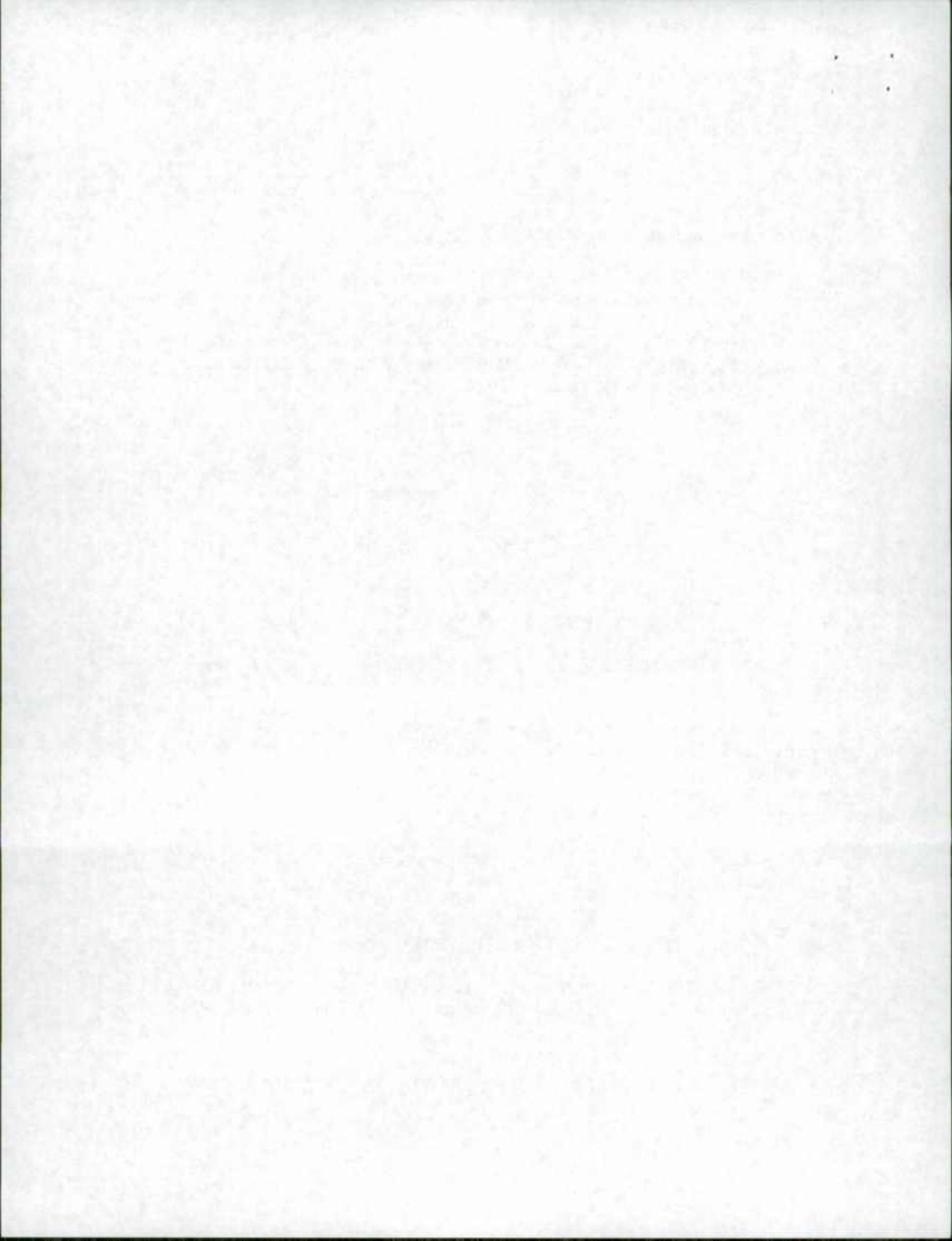


EXHIBIT A

**RELEASE AND WRITTEN NOTICE OF FINAL ACCEPTANCE
OF
CRITICAL AREA FOREST PRESERVATION - BUFFER MANAGEMENT PLAN
PLANTING AND MAINTENANCE AGREEMENT
DEED OF TRUST AND SURETY DECLARATION**

Rehobeth Farm – Lot __

THIS RELEASE AND WRITTEN NOTICE OF FINAL ACCEPTANCE is made as of the ____ day of _____, 20__ by TALBOT COUNTY, MARYLAND, a body corporate and politic of the State of Maryland acting by and through the duly authorized Planning Officer (“County”) for the benefit of _____ (“Owner”) and his/her/its/their successors and assigns:

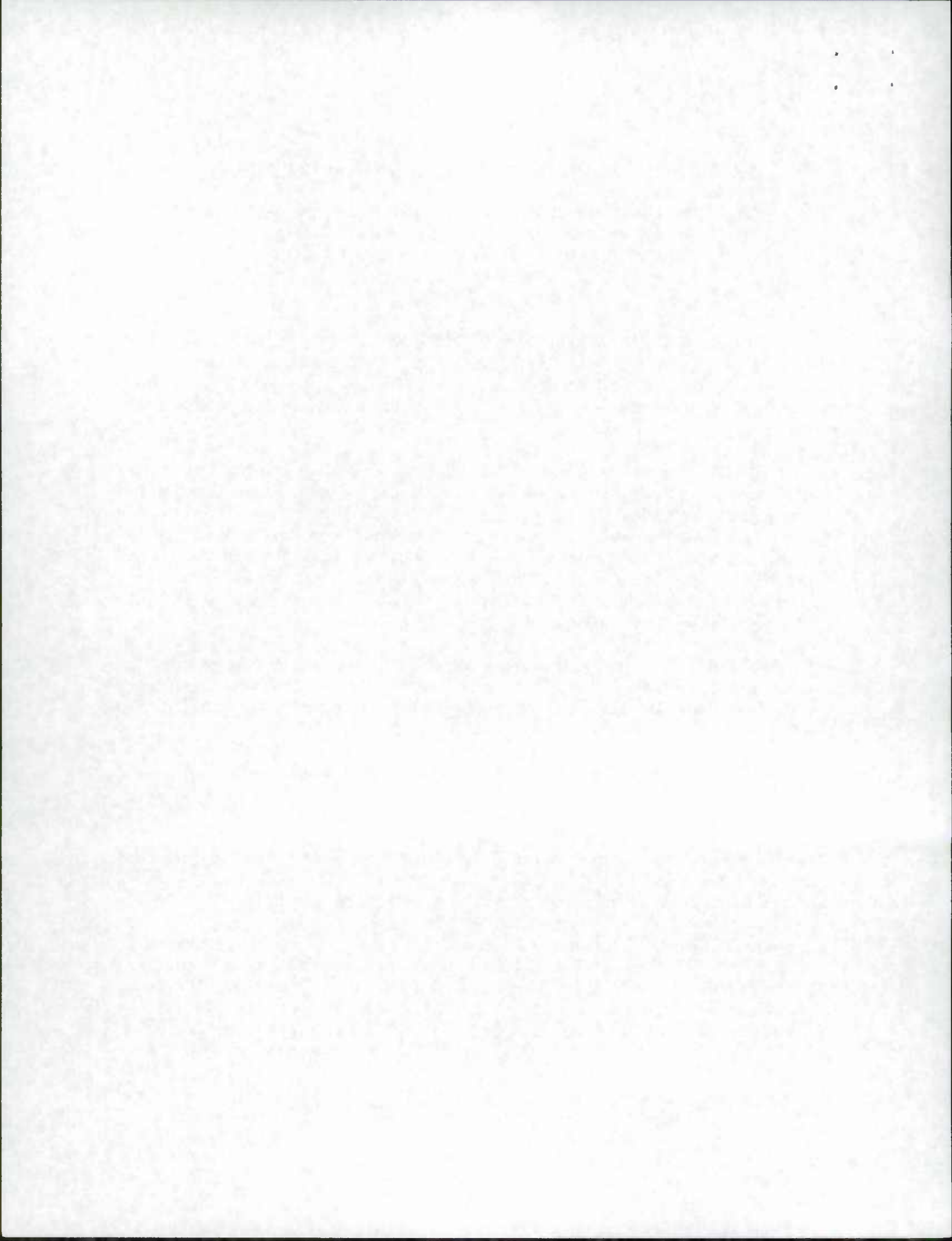
WHEREAS, County and Rehobeth Farm, LLC (“Developer”) executed a “Critical Area Forest Preservation – Buffer Management Plan Planting and Maintenance Agreement, Deed of Trust and Surety Declaration” dated _____, 2011 and recorded among the Land Records of Talbot County, Maryland in Liber __, folio _____ (“Surety Declaration”), which applies to Lots 1 through 5 (“Lots”) of a subdivision known as “Rehobeth Farm” and depicted by a plat entitled “Subdivision Plat, FCP# 2010-20 and BMP #M1131 for Rehobeth Farm, LLC”, prepared by Lane Engineering, LLC, last revised _____, 2011 and recorded among the Plat Records of Talbot County in Plat Book __, pages ____ (“Plat”);

WHEREAS, the Surety Declaration establishes certain planting, monitoring and maintenance obligations related to the establishment of the 100’ Shoreline Development Buffer and Expanded Buffer on the Lots and certain enforcement and lien rights for the benefit of the County in the event that the owner of a Lot defaults on such obligations;

WHEREAS, Owner is the owner of Lot __ (“Released Lot”) pursuant to a deed dated _____ and recorded among the Land Records of Talbot County in Liber __, folio _____, which deed is incorporated herein by reference for more particular description of the Released Lot; and

WHEREAS, County has inspected the Buffer Establishment Afforestation Area (as defined in the Surety Declaration) on such Lot and hereby confirms that all obligations arising under the Surety Declaration with respect to the Released Lot have been satisfied;

NOW THEREFORE, that in consideration of the Owner’s performance of its obligations under the Surety Declaration and other good and valuable considerations, the County does hereby confirm that the Released Lot has satisfied all obligations under the Surety Declaration and forever release, acquit, discharge and exonerate the Released Lot of and from the lien, operation, force, encumbrance and effect of the Surety Declaration, and of and from any and all process that may or can be issued in execution thereon in law, equity or otherwise howsoever.



The terms, conditions, and covenants herein shall run with the land and shall be binding upon all parties hereto and all persons or entities claiming under them.

PROVIDED, HOWEVER, that nothing herein contained shall be so constructed as to:

- (i) in any manner limit, impair or affect the lien of the Surety Declaration upon other Lots described therein and not heretofore released; or
- (ii) release the Released Lot from or terminate or modify the provisions of the Critical Area Forest and Buffer Protection Agreement recorded among the Land Records of Talbot County applicable to such Lot.

IN WITNESS WHEREOF, the County has caused this Release and Written Notice of Final Acceptance to be executed under seal as of the day and year first written above.

APPROVED AND AGREED TO:

ATTEST: TALBOT COUNTY, MARYLAND

_____ (SEAL) Date: _____
 Sandy Coyman
 Talbot County Planning Officer

Approved for Legal Form and Sufficiency,

this _____ day of _____, 20____

 Michael L. Pullen, County Attorney

STATE OF MARYLAND, COUNTY OF _____, TO WIT:

I HEREBY CERTIFY, that on this _____ day of _____, 2011, before me, a Notary Public of the State aforesaid, personally appeared SANDY COYMAN, who acknowledged himself to be the Planning Officer of Talbot County, Maryland, a Maryland charter county, known to me (or satisfactorily proven) to be the person whose name is subscribed to the foregoing Release, and acknowledged that he executed the same for the purposes therein contained as the fully authorized agent of said Talbot County, Maryland.

WITNESS my hand and Notarial Seal.

My Commission expires: _____

 Notary Public

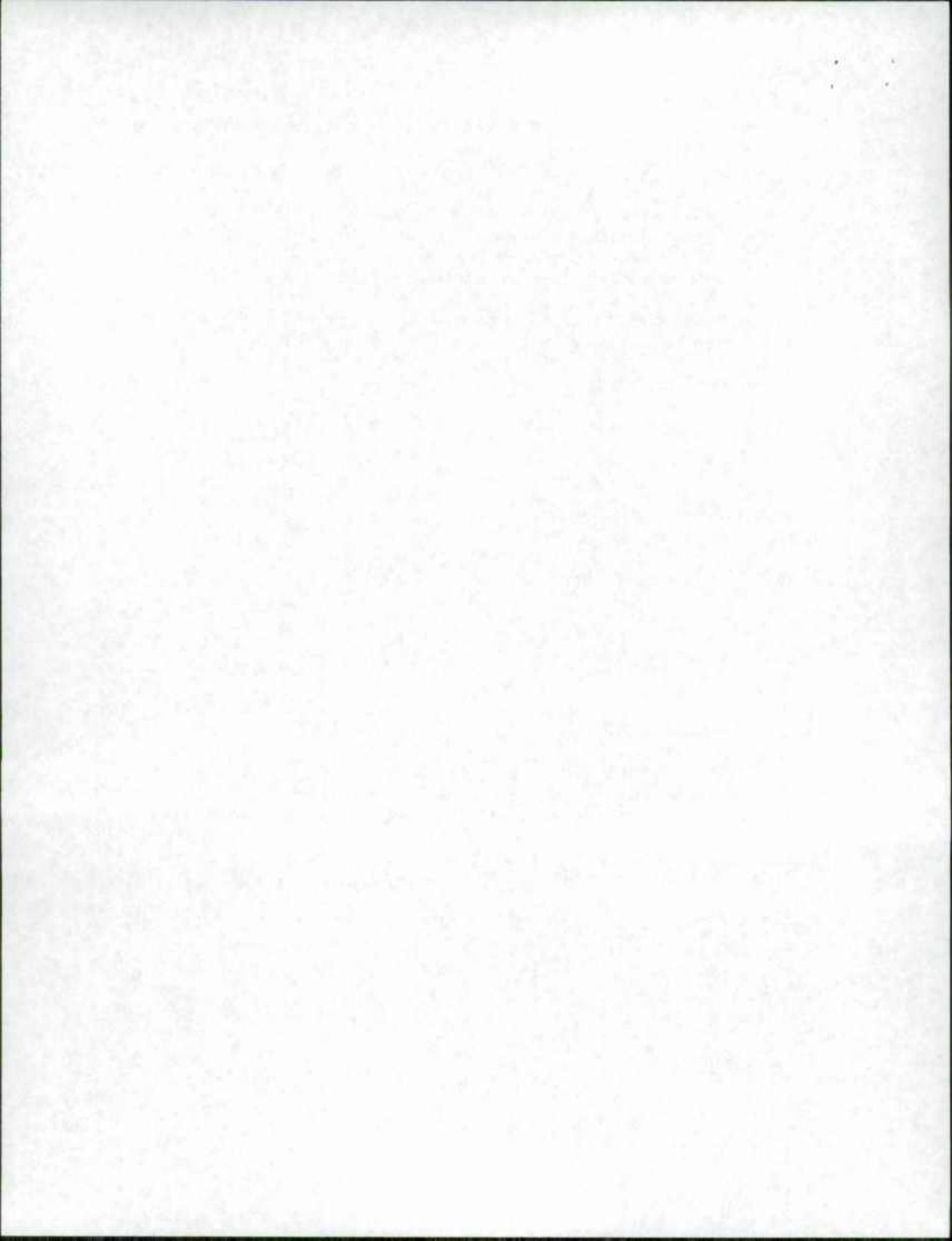


EXHIBIT B

**PARTIAL RELEASE OF LIEN
OF
CRITICAL AREA FOREST PRESERVATION - BUFFER MANAGEMENT PLAN
PLANTING AND MAINTENANCE AGREEMENT
DEED OF TRUST AND SURETY DECLARATION**

Rehobeth Farm – Lot __

THIS PARTIAL RELEASE OF LIEN is made as of the ____ day of _____, 20__ by TALBOT COUNTY, MARYLAND, a body corporate and politic of the State of Maryland acting by and through the duly authorized Planning Officer (“County”) for the benefit of _____ (“Owner”) and his/her/its/their successors and assigns:

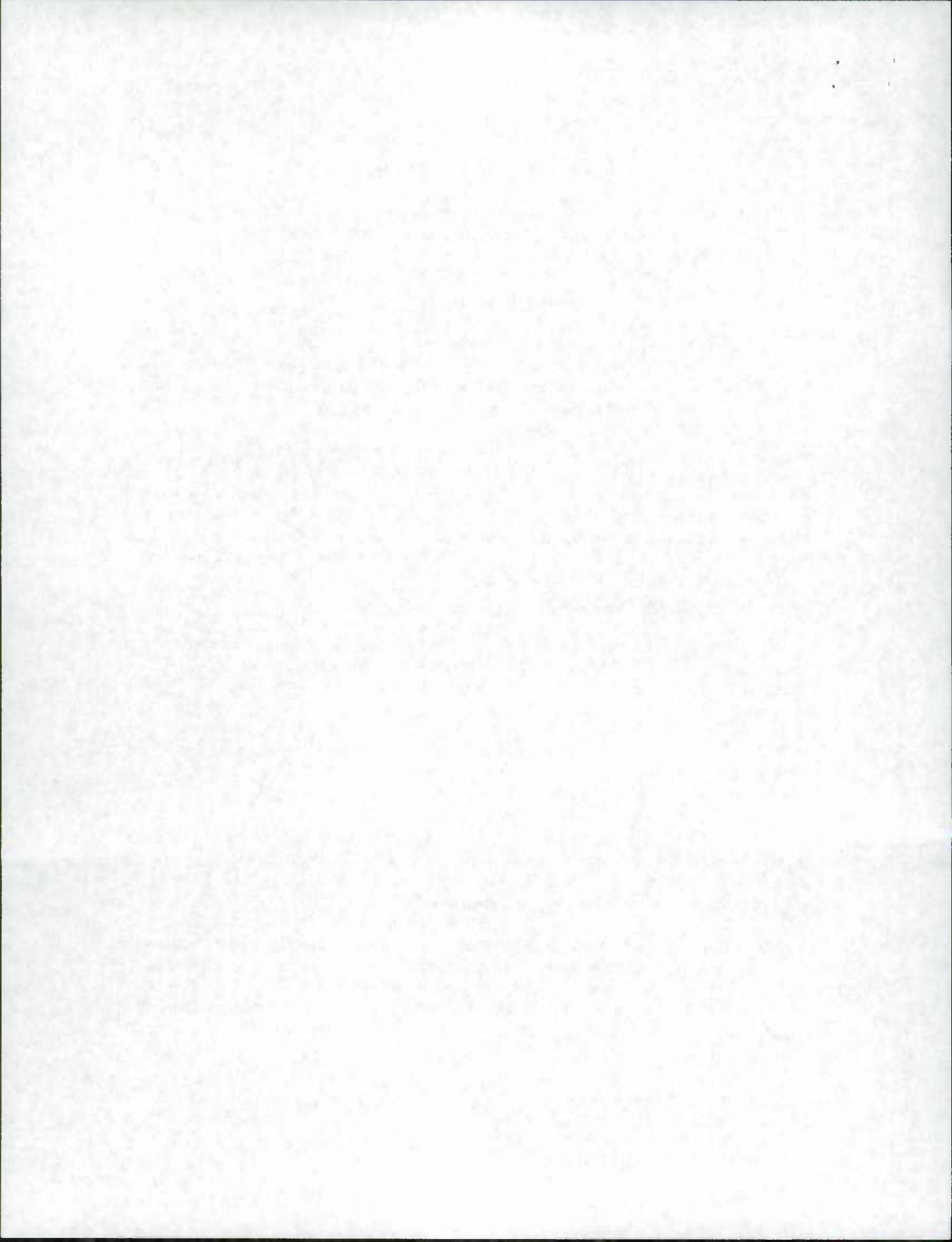
WHEREAS, County and Rehobeth Farm, LLC (“Developer”) executed a “Critical Area Forest Preservation – Buffer Management Plan Planting and Maintenance Agreement, Deed of Trust and Surety Declaration” dated _____, 2011 and recorded among the Land Records of Talbot County, Maryland in Liber __, folio _____ (“Surety Declaration”), which applies to Lots 1 through 5 (“Lots”) of a subdivision known as “Rehobeth Farm” and depicted by a plat entitled “Subdivision Plat, FCP# 2010-20 and BMP #M1131 for Rehobeth Farm, LLC”, prepared by Lane Engineering, LLC, last revised _____, 2011 and recorded among the Plat Records of Talbot County in Plat Book __, pages ____ (“Plat”);

WHEREAS, the Surety Declaration establishes certain planting, monitoring and maintenance obligations related to the establishment of the 100’ Shoreline Development Buffer and Expanded Buffer on the Lots and certain enforcement and lien rights for the benefit of the County in the event that the owner of a Lot defaults on such obligations;

WHEREAS, Owner is the owner of Lot __ (“Released Lot”) pursuant to a deed dated _____ and recorded among the Land Records of Talbot County in Liber __, folio _____, which deed is incorporated herein by reference for more particular description of the Released Lot; and

WHEREAS, pursuant to Paragraph 5 of the Surety Declaration, the Owner has delivered to the County and the County has accepted an alternative surety for the buffer obligations applicable to the Released Lot under the Surety Declaration for the purpose of releasing such lot from the provisions of Paragraph 10 and the lien established thereby;

NOW THEREFORE, that in consideration of the Owner’s provision of the alternative surety and other good and valuable considerations, the County does hereby forever release, acquit, discharge and exonerate the Released Lot of and from the lien, operation, force, encumbrance and effect of the lien and provisions of Paragraph 10 of the Surety Declaration, and of and from any and all process that may or can be issued in execution thereon in law, equity or otherwise howsoever.



The terms, conditions, and covenants herein shall run with the land and shall be binding upon all parties hereto and all persons or entities claiming under them.

PROVIDED, HOWEVER, that nothing herein contained shall be so constructed as to:

- (iii) release the Released Lot from performance of the Plan or the provisions of the Surety Declaration other than Paragraph 10;
- (iv) in any manner limit, impair or affect the lien of the Surety Declaration upon other Lots described therein and not heretofore released; or
- (v) release the Released Lot from or terminate or modify the provisions of the Critical Area Forest and Buffer Protection Agreement recorded among the Land Records of Talbot County applicable to such Lot.

IN WITNESS WHEREOF, the County has caused this Partial Deed of Release to be executed under seal as of the day and year first written above.

APPROVED AND AGREED TO:

ATTEST: TALBOT COUNTY, MARYLAND

_____ (SEAL) Date: _____
 Sandy Coyman
 Talbot County Planning Officer

Approved for Legal Form and Sufficiency,

this _____ day of _____, 201_____

 Michael L. Pullen, County Attorney

STATE OF MARYLAND, COUNTY OF _____, TO WIT:

I HEREBY CERTIFY, that on this _____ day of _____, 2011, before me, a Notary Public of the State aforesaid, personally appeared SANDY COYMAN, who acknowledged himself to be the Planning Officer of Talbot County, Maryland, a Maryland charter county, known to me (or satisfactorily proven) to be the person whose name is subscribed to the foregoing Partial Release, and acknowledged that he executed the same for the purposes therein contained as the fully authorized agent of said Talbot County, Maryland.

WITNESS my hand and Notarial Seal.

My Commission expires: _____ Notary _____ Public

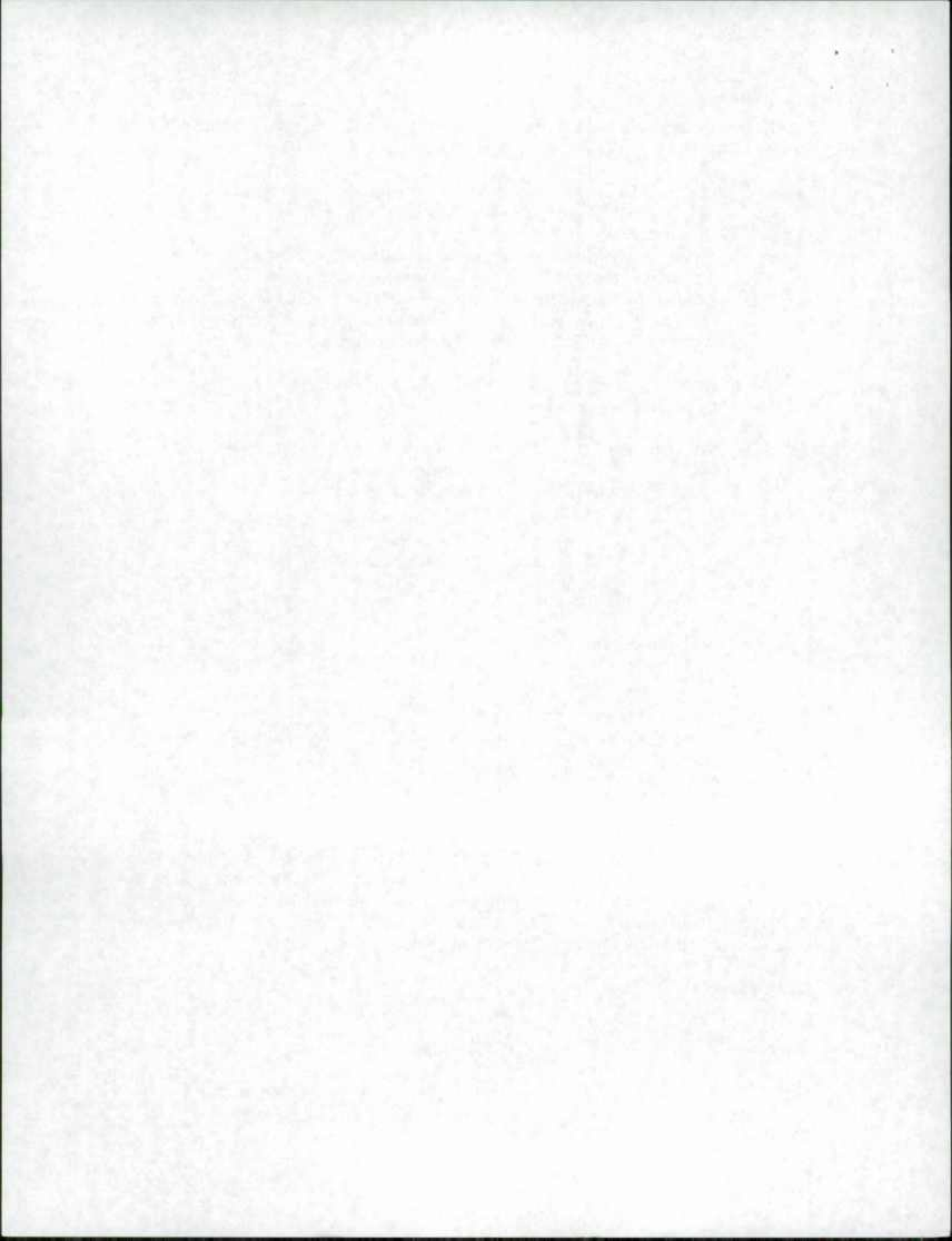


EXHIBIT C

**CERTIFICATE OF COMPLIANCE
OF
CRITICAL AREA FOREST PRESERVATION - BUFFER MANAGEMENT PLAN
PLANTING AND MAINTENANCE AGREEMENT
DEED OF TRUST AND SURETY DECLARATION**

Rehobeth Farm – Lot __

THIS CERTIFICATE OF COMPLIANCE is made as of the ____ day of _____, 20__ by TALBOT COUNTY, MARYLAND, a body corporate and politic of the State of Maryland acting by and through the duly authorized Planning Officer (“County”) for the benefit of _____ (“Requesting Party”) and his/her/its/their successors and assigns:

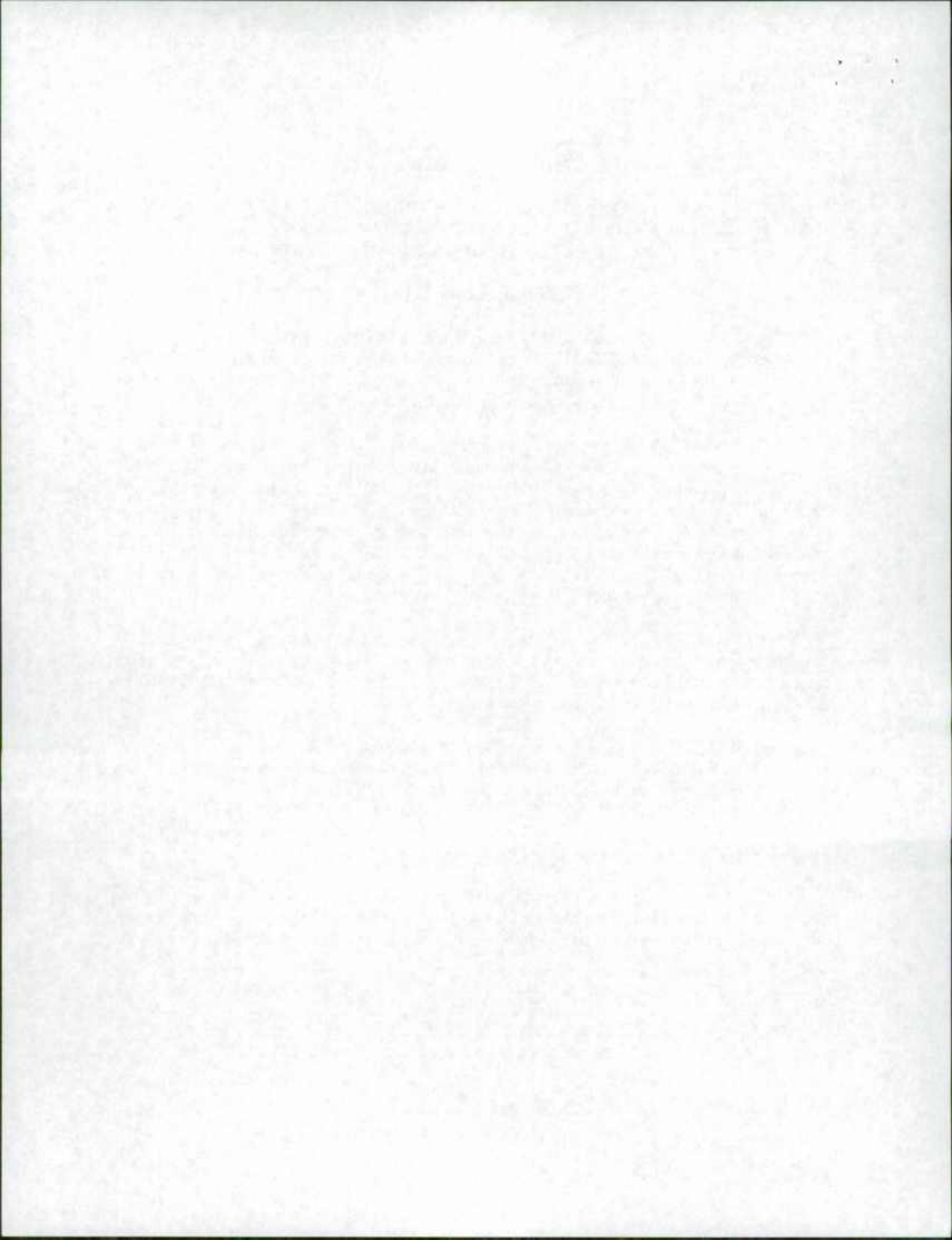
WHEREAS, County and Rehobeth Farm, LLC (“Developer”) executed a “Critical Area Forest Preservation – Buffer Management Plan Planting and Maintenance Agreement, Deed of Trust and Surety Declaration” dated _____, 2011 and recorded among the Land Records of Talbot County, Maryland in Liber __, folio _____ (“Surety Declaration”), which applies to Lots 1 through 5 (“Lots”) of a subdivision known as “Rehobeth Farm” and depicted by a plat entitled “Subdivision Plat, FCP# 2010-20 and BMP #M1131 for Rehobeth Farm, LLC”, prepared by Lane Engineering, LLC, last revised _____, 2011 and recorded among the Plat Records of Talbot County in Plat Book __, pages ____ (“Plat”);

WHEREAS, the Surety Declaration establishes certain planting, monitoring and maintenance obligations related to the establishment of the 100’ Shoreline Development Buffer and Expanded Buffer on the Lots and certain enforcement and lien rights for the benefit of the County in the event that the owner of a Lot defaults on such obligations; and

WHEREAS, the Requesting Party submitted a request to County in accordance with Paragraph 11 of the Surety Declaration for a Certificate of Compliance to confirm the status of Lot No. ____ (“Certified Lot”) with the Surety Declaration;

THE COUNTY HEREBY CERTIFIES that, as of the date hereof, the status of the Certified Lot’s compliance with the Surety Declaration is as follows:

1. The Certified Lot **IS** or **IS NOT** [*circle one*] in compliance with the Surety Declaration. In the event that the Certified Lot is not in compliance, the following actions must be completed to bring the Certified Lot into compliance [*insert additional pages, if necessary*]:



2. The amount(s), if any, of Remedial Costs, Default Interest, Late Fee(s) and Attorneys' Fees (billed or unbilled) accrued and currently unpaid with respect to the Certified Lot are as follows:

- i. Remedial Costs: \$ _____;
 - ii. Default Interest: \$ _____ (accruing since _____, 20__);
 - iii. Late Fee(s): \$ _____ (accruing since _____, 20__); and
 - iv. Attorneys' Fees: \$ _____.
- TOTAL (TO DATE):** \$ _____

In the event that the Total set forth above exceeds \$0, copies of all outstanding invoices related to the Certified Lot are attached hereto and incorporated herein by reference.

3. This Certificate of Compliance accurately indicates the state of the Certified Lot's compliance with the Surety Declaration as of the date hereof. This Certificate shall be binding on County and may be relied upon by the Requesting Party, its heirs, personal representatives, successors and assigns.

IN WITNESS WHEREOF, the County has caused this Certificate of Compliance to be executed as of the day and year first written above.

ISSUED:

ATTEST: TALBOT COUNTY, MARYLAND

_____ (SEAL) Date: _____
Sandy Coyman
Talbot County Planning Officer

STATE OF MARYLAND, COUNTY OF _____, TO WIT:

I HEREBY CERTIFY, that on this ____ day of _____, 2011, before me, a Notary Public of the State aforesaid, personally appeared SANDY COYMAN, who acknowledged himself to be the Planning Officer of Talbot County, Maryland, a Maryland charter county, known to me (or satisfactorily proven) to be the person whose name is subscribed to the foregoing Partial Release, and acknowledged that he executed the same for the purposes therein contained as the fully authorized agent of said Talbot County, Maryland.

WITNESS my hand and Notarial Seal.

My Commission expires: _____

Notary Public

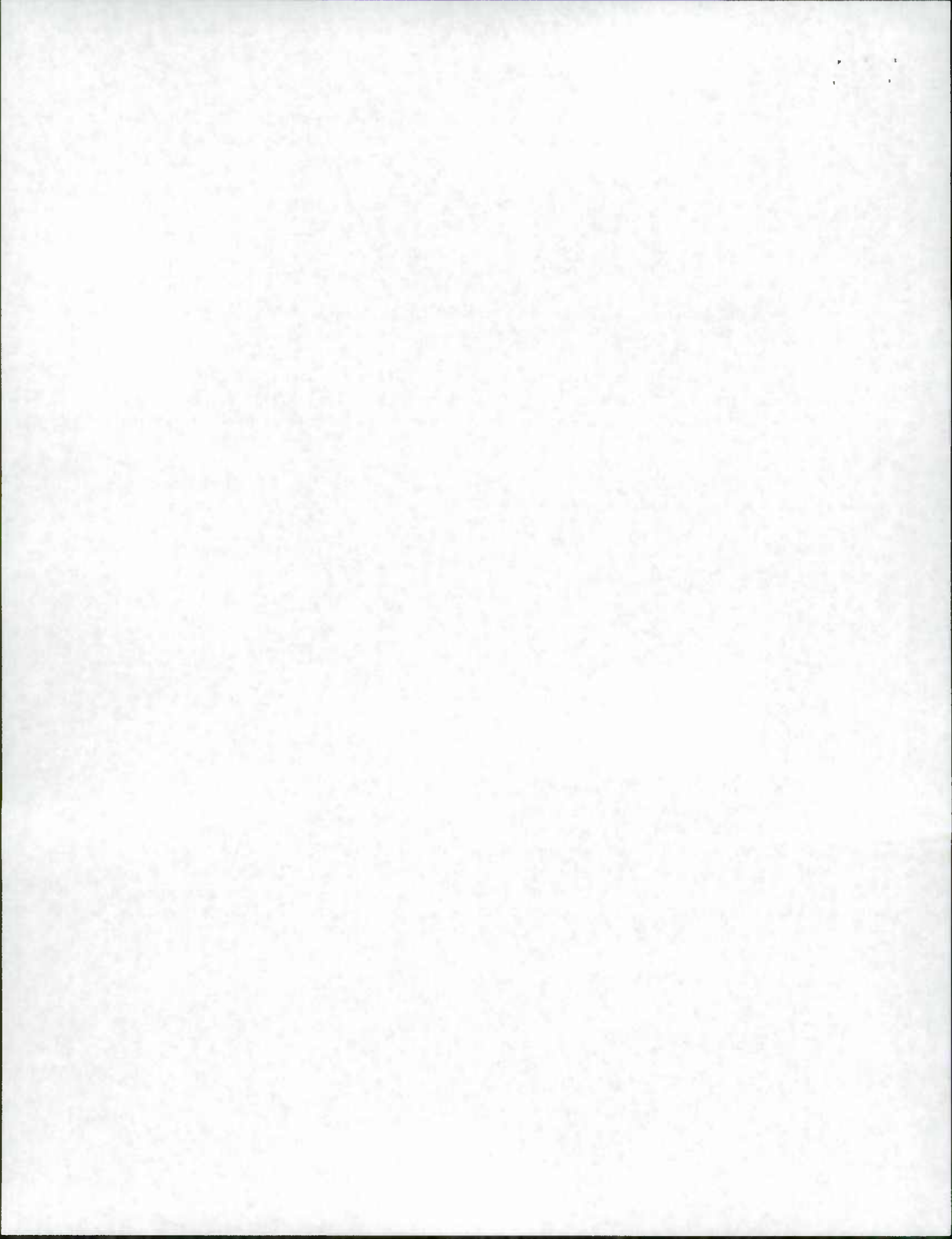


EXHIBIT D

**SUMMARY OF REGULATORY REQUIREMENTS
AND
PLANTING, MAINTENANCE AND INSPECTION SPECIFICATIONS**

OWNER: Rehobeth Farm, LLC
Deed Reference: 1143/600; Plat Reference: 82/400
Total Area To Be Subdivided: 204.804 Acres
197.032 Acres In Critical Area
7.772 Acres Outside Critical Area

SOIL AND WATER CONSERVATION PLAN: _____

EXISTING PROPERTY CONDITIONS: The property is an active farm with two residential dwellings and a few agricultural outbuildings. The property is dominated by farm fields bisected by hedgerows. Forest is present in the northern portion of the property and couple of smaller forest stands along Cummings Creek and the headwaters of a small cove off Harris Creek. The shoreline is intermittently forested with a mixed hardwood fringe. The property is gently rolling and a mixture of lowland and upland soils, geology and terrain. Existing forest species are mixed and follow the changes in geology across the site.

PROPOSED DEVELOPMENT ACTIVITY: Eight (8) Lot Critical Area Subdivision

PLAN PURPOSE: This Critical Area Forest Preservation-Buffer Management Plan is prepared to address Forest Interior Dwelling Bird Species (FIDS) Reforestation Mitigation requirements and Buffer Establishment requirements for Lot 1 based on (COMAR 27.01.09.01-1. C.- "New Lot with an Existing Dwelling Unit") and Buffer Establishment requirements for Lots 2 through 8 based on (COMAR 27.01.09.01-1. C.- "New Subdivision").

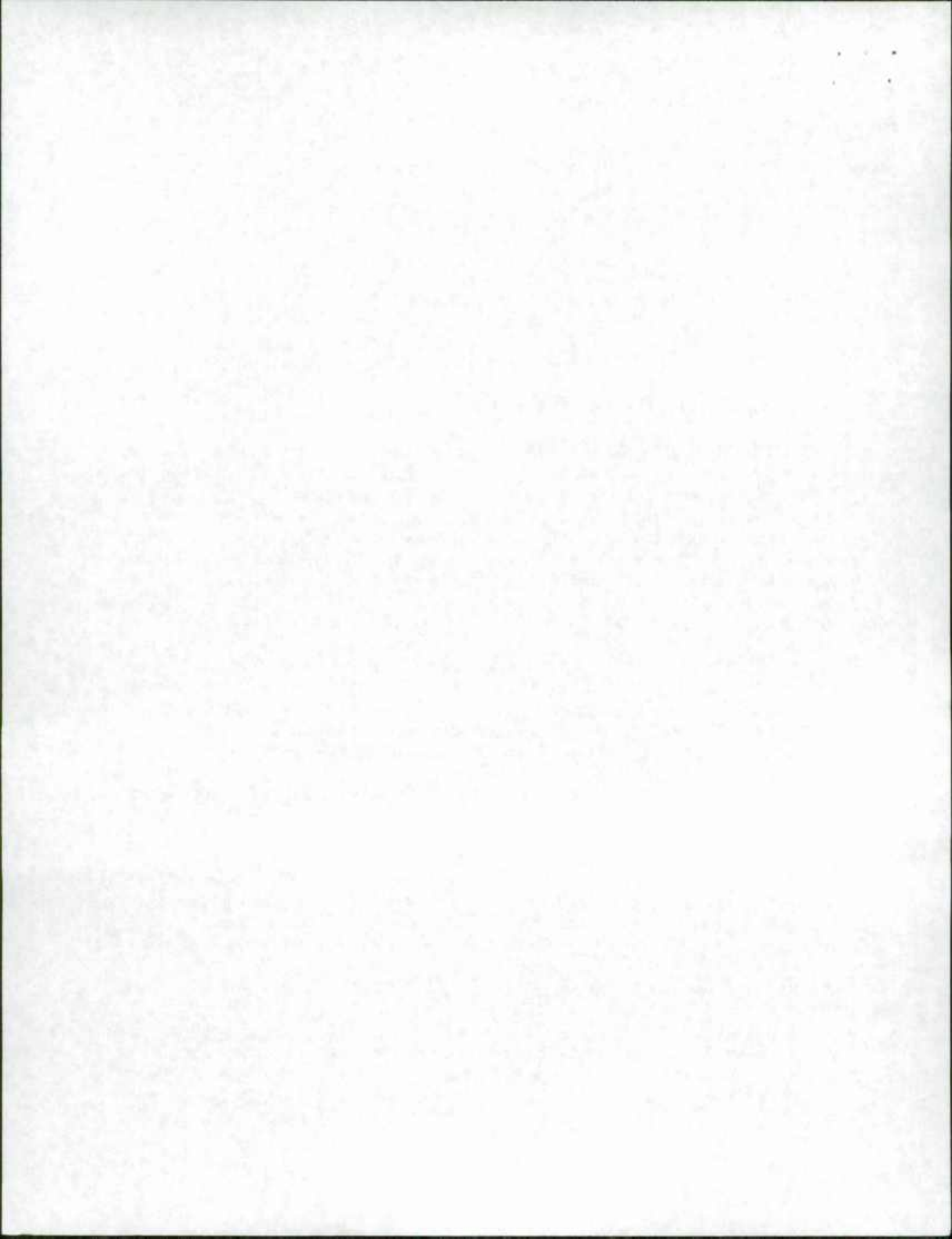
FIDS MITIGATION & BUFFER ESTABLISHMENT REQUIREMENTS

A. FIDS Mitigation:

The construction of Rehobeth Farm Lane through forested FIDS habitat areas in the northwest portion of the property obligates the property owner or their assigns to mitigate for FIDS habitat clearing and habitat impacts combined totaling 9.620 acres of mitigation reforestation to be located adjoining or in close proximity to existing FIDS habitat areas.

B. Buffer Establishment:

1. COMAR 27.01.09.01-1. C.- "New Lot with an Existing Dwelling Unit", obligates the property owner their assigns to establish an area of the Buffer over Lot 1 equaling the total of existing and proposed lot coverage on the lot. Existing lot coverage totals 1.622 acres; proposed lot coverage (Rehobeth Farm Lane- 12' wide road bed) totals 1.090 for a total lot coverage and



buffer establishment requirement of 2.712 acres. These Buffer areas shall be established within six (6) months of the completion of construction of Rehobeth Farm Lane or the sale of Lots 2, 3, 4, 5, 6, 7 or 8.

2. COMAR 27.01.09.01-1. C.- “New Subdivision”, obligates the property owner or their assigns to fully establish the upland, non-forested portions of the Buffer or Expanded Buffer (11.017 acres) on Lots 2 through 8. These Buffer areas shall be established on a lot by lot basis upon a change of land use on the subject lot.

Total Buffer Establishment Required equals 13.729 acres. Planting requirements in accordance with (COMAR 27.01.09.01-2.h): Buffer establishment, greater than 5 acres - at least 10% of the buffer establishment afforestation to be planted in landscape stock in accordance with the following table;

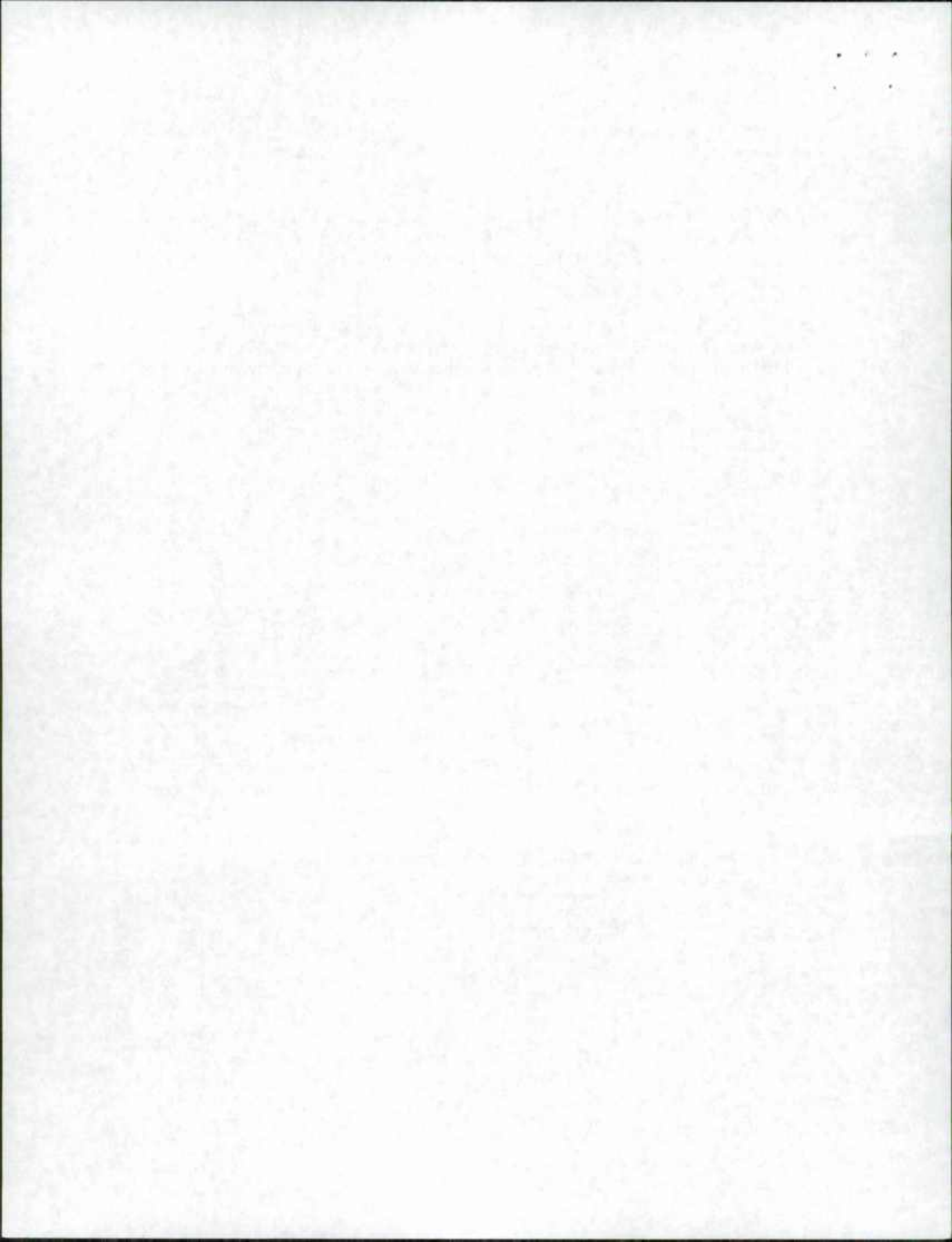
COMAR 27.01.09.01-2.I			
Vegetation Type	Minimum Size Eligible for Credit	Maximum Credit Allowed (Square Feet)	Maximum Percent of Credit
Canopy Tree	2 - inch caliper and 8 feet	200	Not Applicable
Canopy Tree	1 - inch caliper and 6 feet	100	Not Applicable
Understory Tree	1 - inch caliper and 6 feet	75	Not Applicable
Large Shrub	1 gallon and 4 feet high	50	30
Small Shrub	1 gallon and 18 inches high	25	20
Herbaceous Perennial*	1 quart	2	10
Planting Cluster 1 *	1 canopy tree; and 3 large shrubs or 6 small shrubs of sizes listed above	300	Not Applicable
Planting Cluster 2 *	2 understory trees; and 3 large shrubs or 6 small shrubs of sizes listed above	350	Not Applicable

* These options are available only for buffer establishment and buffer mitigation of less than 1 acre.

The balance of required buffer establishment afforestation plantings not installed in accordance with 27.01.09.01-2.i. above shall be provided in accordance with the following stocking rates:

COMAR 27.01.09.01-2.K			
Stock Size of Trees Only	Required Number of Stems Per Acre	Survivability Requirement	Minimum Assurance Period After Planting
Bare-root seedling or whip	700	50 percent	5 years
1/2-inch to 1-inch container grown trees	450	75 percent	2 years
More than 1-inch container grown trees	350	90 percent	2 years

COMAR 27.01.09.01-3.j. (3) (a) - a single species may not exceed 20% of the total planting requirement; and COMAR 27.01.09.01-3.j. (3) (b) - shrubs may not exceed 50% of the total planting requirement.



FIDS MITIGATION & BUFFER ESTABLISHMENT - PROPOSAL

A. FIDS Mitigation - 9.620 acres reforestation proposed in FIDS Mitigation Areas A, B, C, D, E, & F over Lot 1 as follows:

Seedling Stock planted @ 700 stems/acres = 6734 stems required, 6800 stems proposed

B. Buffer Establishment- 13.729 acres total comprised of landscape stock and seedling stock plantings equaling 10% or 1.373 acres shall be established with landscape stock and 90% or 12.356 acres shall be established with seedling stock.

Lot 1- 2.712 acres proposed in Buffer Establishment Areas G-1, G-2, I-1 and J-1 as follows:

Seedling Stock planted @ 700 stems/acres = 1898 stems required, 1900 stems proposed

Lots 2, 3, 4, 5, 6, 7 & 8- 11.017 acres proposed in Buffer Establishment Areas A-1, B-1, C-1, D-1, E-1, F-1 & H-1as follows:

Landscape Stock- 1.373 acres, or 59,808 sq ft ÷ 100 sq ft/tree = 599- 1" caliper trees proposed; and

Seedling Stock- 9.644 acres @700 stems/acre = 6751 stems required, 6750 stems proposed across the remaining Buffer Establishment areas not otherwise established in Landscape Stock.

FIDS MITIGATION & BUFFER ESTABLISHMENT STOCKING & SPECIES CHART AND ESTIMATED PLANT MATERIAL & TOTAL INSTALLATION COST- (BY LOT)

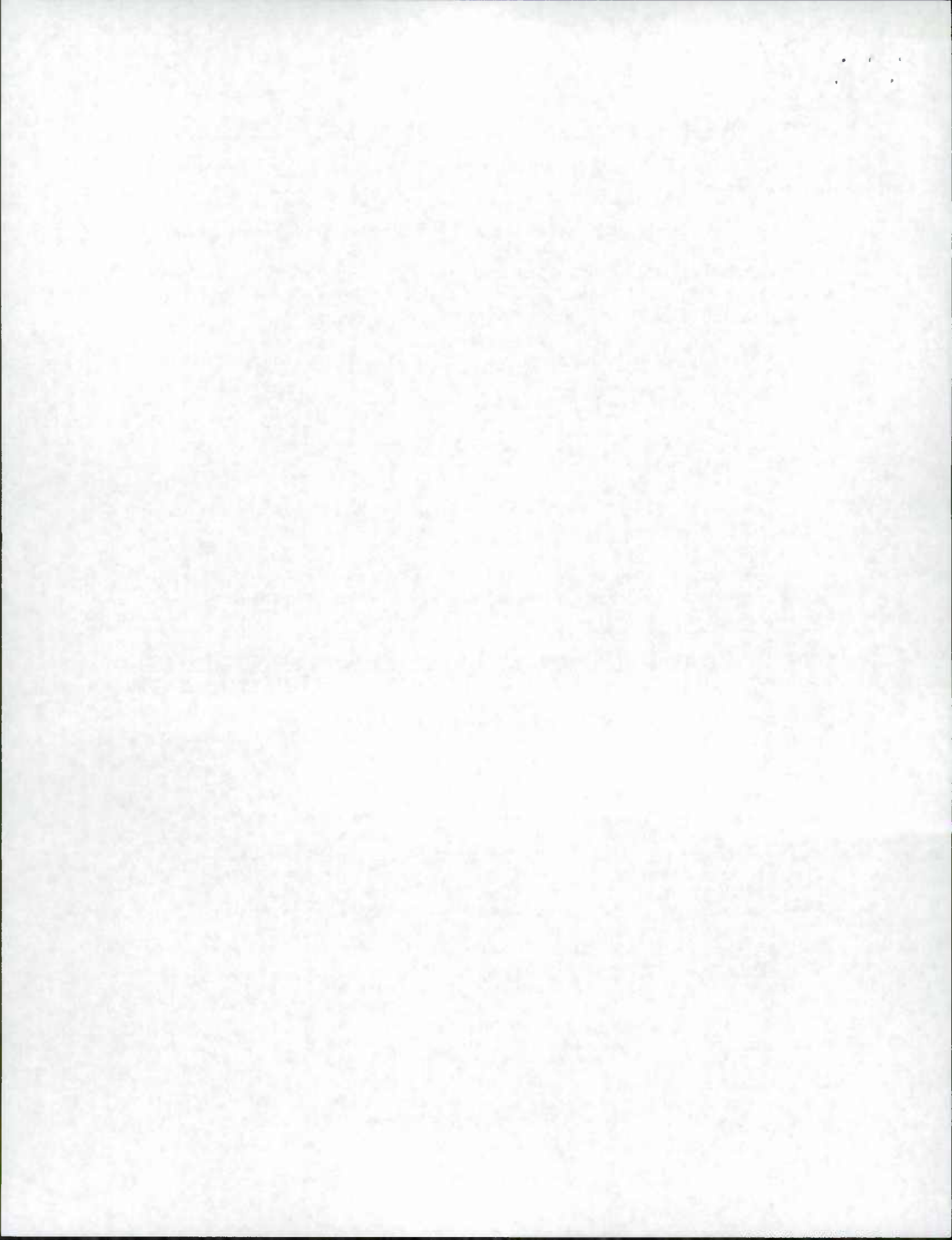
LOT 1. FIDS MITIGATION = 9.620 AC. (6800 TOTAL STEMS PROVIDED)

AREA A: SEEDLING STOCK PLANT LIST- (0.214 AC.) = 150 STEMS TOTAL

<u>SYM</u>	<u>QUAN</u>	<u>SCIENTIFIC NAME</u>	<u>COMMON NAME</u>	<u>SPEC.</u>	<u>UNIT COST</u>	<u>TOTAL COST</u>
AR	15	ACER RUBRUM	RED MAPLE	SEEDLING	\$ 0.26 EA.	\$ 3.90
CC	9	CERCIS CANADENSIS	RED BUD	SEEDLING	\$ 0.26 EA.	\$ 2.34
FP	15	FRAXINUS PENNSYLVANICA	GREEN ASH	SEEDLING	\$ 0.26 EA.	\$ 3.90
PT	30	PINUS TAEDA	LOBLOLLY PINE	SEEDLING	\$ 0.055 EA.	\$ 1.65
QB	22	QUERCUS BICOLOR	SWAMP WHITE OAK	SEEDLING	\$ 0.26 EA.	\$ 5.72
QL	15	QUERCUS LAURIFOLIA	LAUREL OAK	SEEDLING	\$ 0.26 EA.	\$ 3.90
QP	22	QUERCUS PHELLOS	WILLOW OAK	SEEDLING	\$ 0.26 EA.	\$ 5.72
QR	22	QUERCUS RUBRA	NORTHERN RED OAK	SEEDLING	\$ 0.26 EA.	\$ 5.72

AREA B: SEEDLING STOCK PLANT LIST- (2.570 AC.) = 1800 STEMS TOTAL

<u>SYM</u>	<u>QUAN</u>	<u>SCIENTIFIC NAME</u>	<u>COMMON NAME</u>	<u>SPEC.</u>	<u>UNIT COST</u>	<u>TOTAL COST</u>
AR	180	ACER RUBRUM	RED MAPLE	SEEDLING	\$ 0.26 EA.	\$ 46.80
CC	90	CERCIS CANADENSIS	RED BUD	SEEDLING	\$ 0.26 EA.	\$ 23.40
FP	180	FRAXINUS PENNSYLVANICA	GREEN ASH	SEEDLING	\$ 0.26 EA.	\$ 46.80
PT	360	PINUS TAEDA	LOBLOLLY PINE	SEEDLING	\$ 0.055 EA.	\$ 19.80
QB	270	QUERCUS BICOLOR	SWAMP WHITE OAK	SEEDLING	\$ 0.26 EA.	\$ 70.20
QL	180	QUERCUS LAURIFOLIA	LAUREL OAK	SEEDLING	\$ 0.26 EA.	\$ 46.80
QP	270	QUERCUS PHELLOS	WILLOW OAK	SEEDLING	\$ 0.26 EA.	\$ 70.20
QR	270	QUERCUS RUBRA	NORTHERN RED OAK	SEEDLING	\$ 0.26 EA.	\$ 70.20



AREA C: SEEDLING STOCK PLANT LIST- (3.202 AC.) = 2250 STEMS TOTAL

SYM	QUAN	SCIENTIFIC NAME	COMMON NAME	SPEC.	UNIT COST	TOTAL COST
AR	225	ACER RUBRUM	RED MAPLE	SEEDLING	\$ 0.26 EA.	\$ 58.50
CC	111	CERCIS CANADENSIS	RED BUD	SEEDLING	\$ 0.26 EA.	\$ 28.86
FP	225	FRAXINUS PENNSYLVANICA	GREEN ASH	SEEDLING	\$ 0.26 EA.	\$ 58.50
PT	450	PINUS TAEDA	LOBLOLLY PINE	SEEDLING	\$ 0.055 EA.	\$ 24.75
QB	338	QUERCUS BICOLOR	SWAMP WHITE OAK	SEEDLING	\$ 0.26 EA.	\$ 87.88
QL	225	QUERCUS LAURIFOLIA	LAUREL OAK	SEEDLING	\$ 0.26 EA.	\$ 58.50
QP	338	QUERCUS PHELLOS	WILLOW OAK	SEEDLING	\$ 0.26 EA.	\$ 87.88
QR	338	QUERCUS RUBRA	NORTHERN RED OAK	SEEDLING	\$ 0.26 EA.	\$ 87.88

AREA D: SEEDLING STOCK PLANT LIST- (0.626 AC.) = 450 STEMS TOTAL

SYM	QUAN	SCIENTIFIC NAME	COMMON NAME	SPEC.	UNIT COST	TOTAL COST
AR	45	ACER RUBRUM	RED MAPLE	SEEDLING	\$ 0.26 EA.	\$ 11.70
CC	21	CERCIS CANADENSIS	RED BUD	SEEDLING	\$ 0.26 EA.	\$ 5.46
FP	45	FRAXINUS PENNSYLVANICA	GREEN ASH	SEEDLING	\$ 0.26 EA.	\$ 11.70
PT	90	PINUS TAEDA	LOBLOLLY PINE	SEEDLING	\$ 0.055 EA.	\$ 49.50
QB	68	QUERCUS BICOLOR	SWAMP WHITE OAK	SEEDLING	\$ 0.26 EA.	\$ 17.68
QL	45	QUERCUS LAURIFOLIA	LAUREL OAK	SEEDLING	\$ 0.26 EA.	\$ 11.70
QP	68	QUERCUS PHELLOS	WILLOW OAK	SEEDLING	\$ 0.26 EA.	\$ 17.68
QR	68	QUERCUS RUBRA	NORTHERN RED OAK	SEEDLING	\$ 0.26 EA.	\$ 17.68

AREA E: SEEDLING STOCK PLANT LIST- (0.491 AC.) = 350 STEMS TOTAL

SYM	QUAN	SCIENTIFIC NAME	COMMON NAME	SPEC.	UNIT COST	TOTAL COST
AR	35	ACER RUBRUM	RED MAPLE	SEEDLING	\$ 0.26 EA.	\$ 9.10
CC	19	CERCIS CANADENSIS	RED BUD	SEEDLING	\$ 0.26 EA.	\$ 4.94
FP	35	FRAXINUS PENNSYLVANICA	GREEN ASH	SEEDLING	\$ 0.26 EA.	\$ 9.10
PT	70	PINUS TAEDA	LOBLOLLY PINE	SEEDLING	\$ 0.055 EA.	\$ 3.85
QB	52	QUERCUS BICOLOR	SWAMP WHITE OAK	SEEDLING	\$ 0.26 EA.	\$ 13.52
QL	35	QUERCUS LAURIFOLIA	LAUREL OAK	SEEDLING	\$ 0.26 EA.	\$ 9.10
QP	52	QUERCUS PHELLOS	WILLOW OAK	SEEDLING	\$ 0.26 EA.	\$ 13.52
QR	52	QUERCUS RUBRA	NORTHERN RED OAK	SEEDLING	\$ 0.26 EA.	\$ 13.52

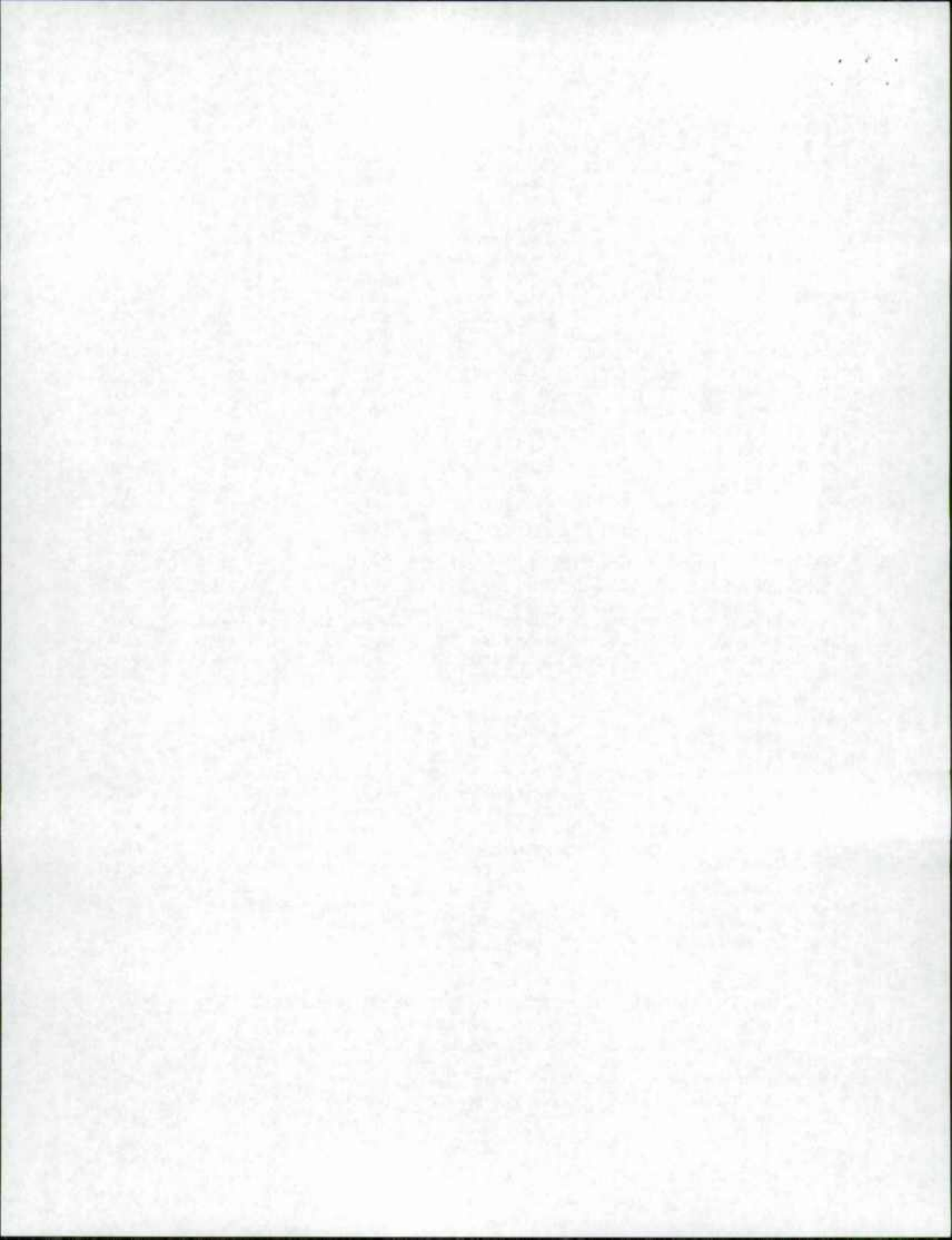
AREA F: SEEDLING STOCK PLANT LIST- (2.517 AC.) = 1800 STEMS TOTAL

SYM	QUAN	SCIENTIFIC NAME	COMMON NAME	SPEC.	UNIT COST	TOTAL COST
AR	180	ACER RUBRUM	RED MAPLE	SEEDLING	\$ 0.26 EA.	\$ 46.80
CC	90	CERCIS CANADENSIS	RED BUD	SEEDLING	\$ 0.26 EA.	\$ 23.40
FP	180	FRAXINUS PENNSYLVANICA	GREEN ASH	SEEDLING	\$ 0.26 EA.	\$ 46.80
PT	360	PINUS TAEDA	LOBLOLLY PINE	SEEDLING	\$ 0.055 EA.	\$ 19.80
QB	270	QUERCUS BICOLOR	SWAMP WHITE OAK	SEEDLING	\$ 0.26 EA.	\$ 70.20
QL	180	QUERCUS LAURIFOLIA	LAUREL OAK	SEEDLING	\$ 0.26 EA.	\$ 46.80
QP	270	QUERCUS PHELLOS	WILLOW OAK	SEEDLING	\$ 0.26 EA.	\$ 70.20
QR	270	QUERCUS RUBRA	NORTHERN RED OAK	SEEDLING	\$ 0.26 EA.	\$ 70.20
TOTAL SEEDLING STOCK PLANT COST =						\$ 1533.75

LOT 1. BUFFER ESTABLISHMENT = 2.712 AC. (1900 TOTAL STEMS PROVIDED)

AREA G-1: SEEDLING STOCK PLANT LIST- (0.949 AC.) = 665 STEMS TOTAL

SYM	QUAN	SCIENTIFIC NAME	COMMON NAME	SPEC.	UNIT COST	TOTAL COST
AR	100	ACER RUBRUM	RED MAPLE	SEEDLING	\$ 0.26 EA.	\$ 26.00
FP	67	FRAXINUS PENNSYLVANICA	GREEN ASH	SEEDLING	\$ 0.26 EA.	\$ 17.42
PT	131	PINUS TAEDA	LOBLOLLY PINE	SEEDLING	\$ 0.055 EA.	\$ 7.21
QB	100	QUERCUS BICOLOR	SWAMP WHITE OAK	SEEDLING	\$ 0.26 EA.	\$ 26.00



QL 67	QUERCUS LAURIFOLIA	LAUREL OAK	SEEDLING	\$ 0.26 EA.	\$ 17.42
QP 100	QUERCUS PHELLOS	WILLOW OAK	SEEDLING	\$ 0.26 EA.	\$ 26.00
QR 100	QUERCUS RUBRA	NORTHERN RED OAK	SEEDLING	\$ 0.26 EA.	\$ 26.00

AREA G-2: SEEDLING STOCK PLANT LIST- (0.579 AC.) = 405 STEMS TOTAL

SYM	QUAN	SCIENTIFIC NAME	COMMON NAME	SPEC.	UNIT COST	TOTAL COST
AR 61		ACER RUBRUM	RED MAPLE	SEEDLING	\$ 0.26 EA.	\$ 15.86
FP 40		FRAXINUS PENNSYLVANICA	GREEN ASH	SEEDLING	\$ 0.26 EA.	\$ 10.40
PT 81		PINUS TAEDA	LOBLOLLY PINE	SEEDLING	\$ 0.055 EA.	\$ 4.46
QB 61		QUERCUS BICOLOR	SWAMP WHITE OAK	SEEDLING	\$ 0.26 EA.	\$ 15.86
QL 40		QUERCUS LAURIFOLIA	LAUREL OAK	SEEDLING	\$ 0.26 EA.	\$ 10.40
QP 61		QUERCUS PHELLOS	WILLOW OAK	SEEDLING	\$ 0.26 EA.	\$ 15.86
QR 61		QUERCUS RUBRA	NORTHERN RED OAK	SEEDLING	\$ 0.26 EA.	\$ 15.86

AREA I-1: SEEDLING STOCK PLANT LIST- (0.772 AC.) = 540 STEMS TOTAL

SYM	QUAN	SCIENTIFIC NAME	COMMON NAME	SPEC.	UNIT COST	TOTAL COST
AR 81		ACER RUBRUM	RED MAPLE	SEEDLING	\$ 0.26 EA.	\$ 21.06
FP 53		FRAXINUS PENNSYLVANICA	GREEN ASH	SEEDLING	\$ 0.26 EA.	\$ 13.78
PT 110		PINUS TAEDA	LOBLOLLY PINE	SEEDLING	\$ 0.055 EA.	\$ 6.05
QB 81		QUERCUS BICOLOR	SWAMP WHITE OAK	SEEDLING	\$ 0.26 EA.	\$ 21.06
QL 53		QUERCUS LAURIFOLIA	LAUREL OAK	SEEDLING	\$ 0.26 EA.	\$ 13.78
QP 81		QUERCUS PHELLOS	WILLOW OAK	SEEDLING	\$ 0.26 EA.	\$ 21.06
QR 81		QUERCUS RUBRA	NORTHERN RED OAK	SEEDLING	\$ 0.26 EA.	\$ 21.06

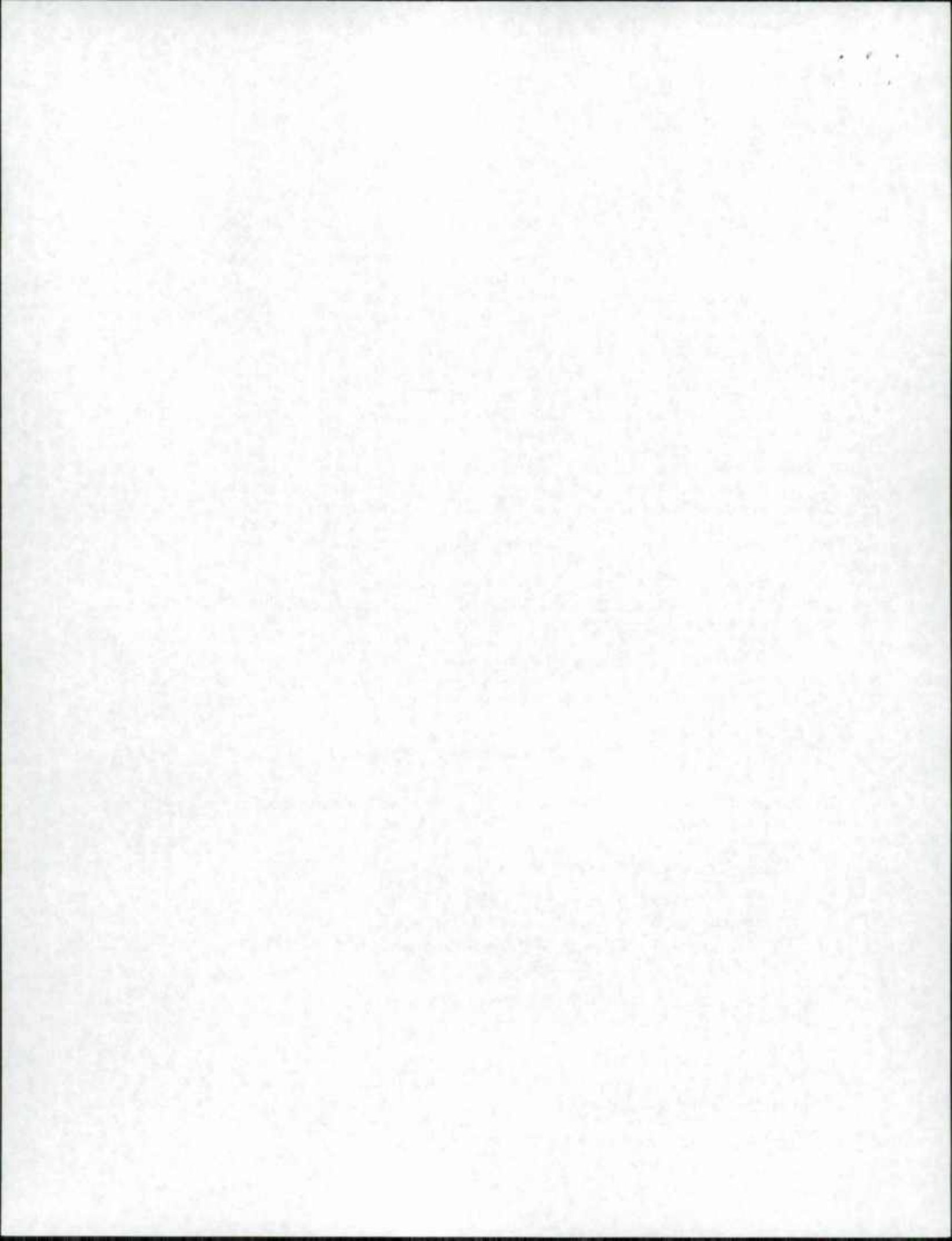
AREA J-1: SEEDLING STOCK PLANT LIST- (0.412 AC.) = 290 STEMS TOTAL

SYM	QUAN	SCIENTIFIC NAME	COMMON NAME	SPEC.	UNIT COST	TOTAL COST
AR 45		ACER RUBRUM	RED MAPLE	SEEDLING	\$ 0.26 EA.	\$ 11.70
FP 28		FRAXINUS PENNSYLVANICA	GREEN ASH	SEEDLING	\$ 0.26 EA.	\$ 7.28
PT 60		PINUS TAEDA	LOBLOLLY PINE	SEEDLING	\$ 0.055 EA.	\$ 3.30
QB 45		QUERCUS BICOLOR	SWAMP WHITE OAK	SEEDLING	\$ 0.26 EA.	\$ 11.70
QL 28		QUERCUS LAURIFOLIA	LAUREL OAK	SEEDLING	\$ 0.26 EA.	\$ 7.28
QP 42		QUERCUS PHELLOS	WILLOW OAK	SEEDLING	\$ 0.26 EA.	\$ 10.92
QR 42		QUERCUS RUBRA	NORTHERN RED OAK	SEEDLING	\$ 0.26 EA.	\$ 10.92
TOTAL SEEDLING STOCK PLANT COST =						\$ 415.70

Lot 1- FIDS Reforestation & Buffer Establishment- Total Cost Estimate for plant material and installation

Seedling Stock

Plant Material Cost:	\$ 1,949.45
Installation Costs (Machine)- 2 acre min. (\$125.00/acre x 12.332 Acres):	\$ 1,541.50
Band Spraying "Oust" - 1 acre min. (\$80.00/acre x 12.332 Acres):	\$ 986.56
4' Tree Shelters Installed with Stake for 50% of Green Ash, Maples and Oaks, @ \$ 4.00 Ea. x 3276 Shelters:	\$13,104.00
Critical Area Forest/Buffer Protection Signs & Posts (\$15.00 x 46):	\$ 690.00
Landscape Maintenance - 5 years @ \$200/year:	\$ 1,000.00
Sub-total:	\$19,271.51
10% Contingency:	\$ 1,927.15
Total Materials and Installation Cost:	\$21,198.66



LOT 2. BUFFER ESTABLISHMENT- 0.484 AC. TOTAL

AREA A-1: LANDSCAPE STOCK PLANT LIST- (0.126 AC. - 5,489 SF.) = 55 TREES TOTAL

SYM	QUAN	SCIENTIFIC NAME	COMMON NAME	SPEC.	UNIT COST	TOTAL COST
AR	9	ACER RUBRUM	RED MAPLE	1" CAL., 6' HGT.	\$ 30.00	\$ 270.00
QP	14	QUERCUS PHELLOS	WILLOW OAK	1" CAL., 6' HGT.	\$ 30.00	\$ 420.00
QR	14	QUERCUS RUBRA	NORTHERN RED OAK	1" CAL., 6' HGT.	\$ 30.00	\$ 420.00
PT	18	PINUS TAEDA	LOBLOLLY PINE	1" CAL., 6' HGT.	\$ 82.00	\$ 1476.00
(55 TREES @ 100 SF. EACH = 5,500 SF.)						
TOTAL LANDSCAPE STOCK PLANT COST =						\$2,586.00

AREA A-1: SEEDLING STOCK PLANT LIST- (0.358 AC.) = 250 STEMS TOTAL

SYM	QUAN	SCIENTIFIC NAME	COMMON NAME	SPEC.	UNIT COST	TOTAL COST
CC	35	CERCIS CANADENSIS	RED BUD	SEEDLING	\$ 0.26 EA.	\$ 9.10
FP	65	FRAXINUS PENNSYLVANICA	GREEN ASH	SEEDLING	\$ 0.26 EA.	\$ 16.90
QB	75	QUERCUS BICOLOR	SWAMP WHITE OAK	SEEDLING	\$ 0.26 EA.	\$ 19.50
QL	75	QUERCUS LAURIFOLIA	LAUREL OAK	SEEDLING	\$ 0.26 EA.	\$ 19.50
TOTAL SEEDLING STOCK PLANT COST =						\$ 65.00

Lot 2- Buffer Establishment- Total Cost Estimate for plant material and installation

Landscape Stock

Total Installed cost includes plant material costs, installation/labor costs, mulch and other installation material costs and equals

Plant Material Cost (\$ 2,586.00) x 2.0 multiplier): \$ 5,172.00

Seedling Stock

Plant Material Cost: \$ 65.00

Installation Costs (Machine)- 2 acre min. (\$125.00/acre x 0.358 Acres): \$ 250.00

Band Spraying "Oust" - 1 acre min. (\$80.00/acre x 0.358 Acres): \$ 80.00

4' Tree Shelters Installed with Stake for 50% of Green Ash and Oaks,

@ \$ 4.00 Ea. x 108 Shelters: \$ 432.00

Critical Area Forest/Buffer Protection Signs & Posts (\$15.00 x 7): \$ 105.00

Landscape Maintenance - 5 years @ \$200/year: \$ 1,000.00

Sub-total: \$ 7,104.00

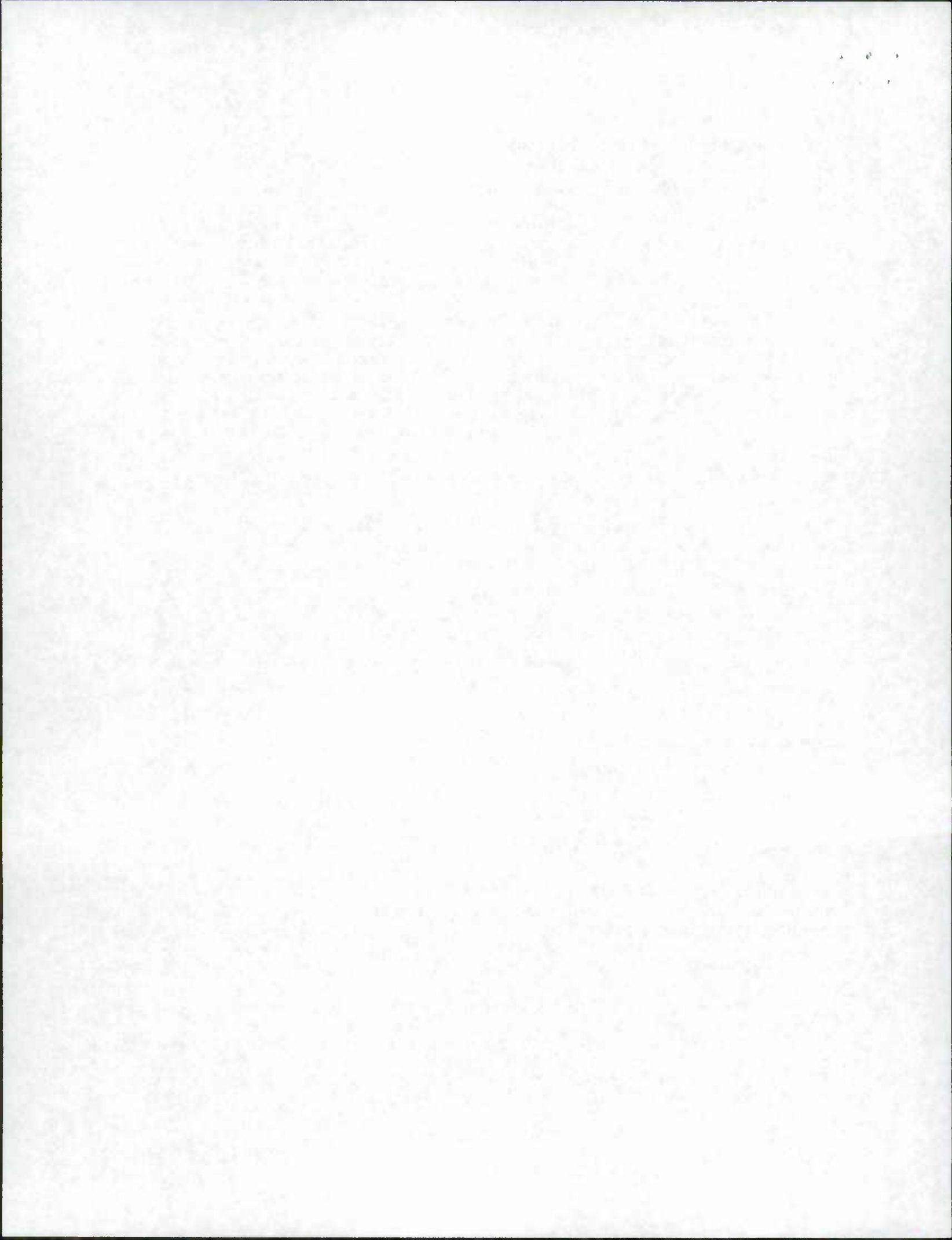
10% Contingency: \$ 710.40

Total Materials and Installation Cost: \$ 7,814.40

LOT 3. BUFFER ESTABLISHMENT- 1.921 AC. TOTAL

AREA B-1: LANDSCAPE STOCK PLANT LIST- (0.194 AC. - 8,450 SF) = 84 TREES TOTAL

SYM	QUAN	SCIENTIFIC NAME	COMMON NAME	SPEC.	UNIT COST	TOTAL COST
AR	12	ACER RUBRUM	RED MAPLE	1" CAL., 6' HGT.	\$ 30.00	\$ 360.00
QP	22	QUERCUS PHELLOS	WILLOW OAK	1" CAL., 6' HGT.	\$ 30.00	\$ 660.00
QR	22	QUERCUS RUBRA	NORTHERN RED OAK	1" CAL., 6' HGT.	\$ 30.00	\$ 660.00
PT	28	PINUS TAEDA	LOBLOLLY PINE	1" CAL., 6' HGT.	\$ 82.00	\$2,296.00
(84 TREES @ 100 SF. EACH = 8,450 SF.)						
TOTAL LANDSCAPE STOCK PLANT COST =						\$3,976.00



AREA B-1: SEEDLING STOCK PLANT LIST- (1.727 AC. - 1208 STEMS REQUIRED) = 1208 STEMS TOTAL

SYM	QUAN	SCIENTIFIC NAME	COMMON NAME	SPEC.	UNIT COST	TOTAL COST
CC	180	CERCIS CANADENSIS	RED BUD	SEEDLING	\$ 0.26 EA.	\$ 46.80
FP	308	FRAXINUS PENNSYLVANICA	GREEN ASH	SEEDLING	\$ 0.26 EA.	\$ 80.08
QB	360	QUERCUS BICOLOR	SWAMP WHITE OAK	SEEDLING	\$ 0.26 EA.	\$ 93.60
QL	360	QUERCUS LAURIFOLIA	LAUREL OAK	SEEDLING	\$ 0.26 EA.	\$ 93.60

TOTAL SEEDLING STOCK PLANT COST = \$ 314.08

Lot 3- Buffer Establishment- Total Cost Estimate for plant material and installation

Landscape Stock

Total Installed cost includes plant material costs, installation/labor costs, mulch and other installation material costs and equals

Plant Material Cost (\$ 3,976.00) x 2.0 multiplier): \$ 7,952.00

Seedling Stock

Plant Material Cost: \$ 314.08

Installation Costs (Machine)- 2 acre min. (\$125.00/acre x 1.727 Acres): \$ 250.00

Band Spraying "Oust" - 1 acre min. (\$80.00/acre x 1.727 Acres): \$ 138.16

4' Tree Shelters Installed with Stake for 50% of Green Ash and Oaks,
@ \$ 4.00 Ea. x 514 Shelters: \$ 2,056.00

Critical Area Forest/Buffer Protection Signs & Posts (\$15.00 x 4): \$ 60.00

Landscape Maintenance - 5 years @ \$200/year: \$ 1,000.00

Sub-total: \$ 11,770.24

10% Contingency: \$ 1,177.02

Total Materials and Installation Cost: \$12,947.26

LOT 4. BUFFER ESTABLISHMENT- 1.470 AC. TOTAL

C-1: LANDSCAPE STOCK PLANT LIST- (0.156 AC. - 6,795 SF.) = 68 TREES TOTAL

SYM	QUAN	SCIENTIFIC NAME	COMMON NAME	SPEC.	UNIT COST	TOTAL COST
AR	8	ACER RUBRUM	RED MAPLE	1" CAL., 6' HGT.	\$ 30.00	\$ 240.00
QP	18	QUERCUS PHELLOS	WILLOW OAK	1" CAL., 6' HGT.	\$ 30.00	\$ 540.00
QR	18	QUERCUS RUBRA	NORTHERN RED OAK	1" CAL., 6' HGT.	\$ 30.00	\$ 540.00
PT	24	PINUS TAEDA	LOBLOLLY PINE	1" CAL., 6' HGT.	\$ 82.00	\$ 1968.00

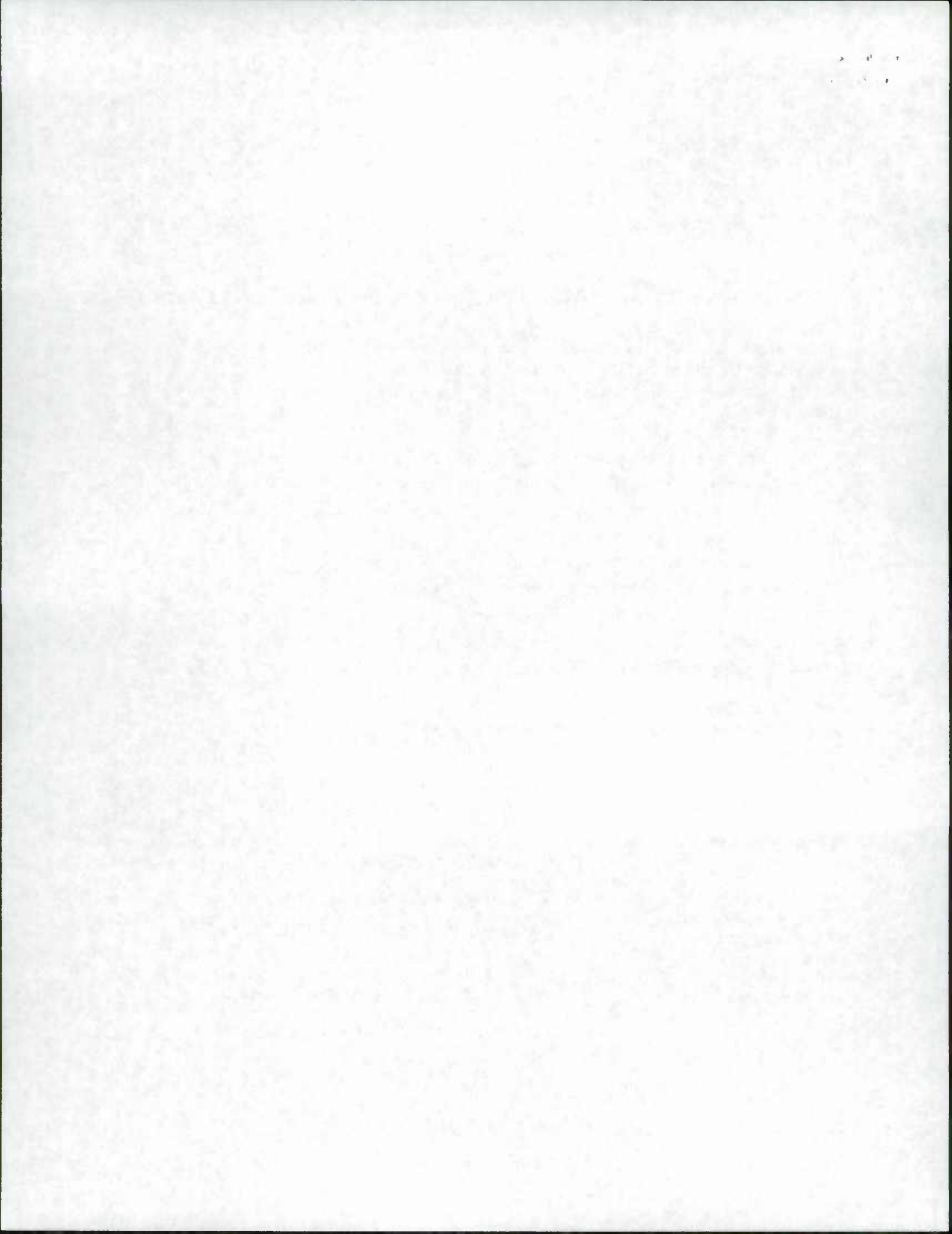
(68 TREES @ 100 SF. EACH = 6,800 SF.)

TOTAL LANDSCAPE STOCK PLANT COST = \$3,288.00

C-1: SEEDLING STOCK PLANT LIST-(1.314 AC. - 920 STEMS REQUIRED) = 920 STEMS TOTAL

SYM	QUAN	SCIENTIFIC NAME	COMMON NAME	SPEC.	UNIT COST	TOTAL COST
CC	100	CERCIS CANADENSIS	RED BUD	SEEDLING	\$ 0.26 EA.	\$ 26.00
FP	270	FRAXINUS PENNSYLVANICA	GREEN ASH	SEEDLING	\$ 0.26 EA.	\$ 70.20
QB	275	QUERCUS BICOLOR	SWAMP WHITE OAK	SEEDLING	\$ 0.26 EA.	\$ 71.50
QL	275	QUERCUS LAURIFOLIA	LAUREL OAK	SEEDLING	\$ 0.26 EA.	\$ 71.50

TOTAL SEEDLING STOCK PLANT COST = \$ 239.20



Lot 4- Buffer Establishment- Total Cost Estimate for plant material and installation

Landscape Stock

Total Installed cost includes plant material costs, installation/labor costs, mulch and other installation material costs and equals

Plant Material Cost (\$ 3,288.00) x 2.0 multiplier): \$ 6,576.00

Seedling Stock

Plant Material Cost: \$ 239.20

Installation Costs (Machine)- 2 acre min. (\$125.00/acre x 1.314 Acres): \$ 250.00

Band Spraying "Oust" – 1 acre min. (\$80.00/acre x 1.314 Acres): \$ 105.12

4' Tree Shelters Installed with Stake for 50% of Green Ash and Oaks,
@ \$ 4.00 Ea. x 410 Shelters: \$ 1,640.00

Critical Area Forest/Buffer Protection Signs & Posts (\$15.00 x 3): \$ 45.00

Landscape Maintenance - 5 years @ \$200/year: \$ 1,000.00

Sub-total: \$ 9,855.32

10% Contingency: \$ 985.53

Total Materials and Installation Cost: \$10,840.85

LOT 5. BUFFER ESTABLISHMENT- 3.098 AC. TOTAL

D-1: LANDSCAPE STOCK PLANT LIST-(0.280 AC. - 12,197 SF.) = 122 TREES TOTAL

SYM	QUAN	SCIENTIFIC NAME	COMMON NAME	SPEC.	UNIT COST	TOTAL COST
AR	22	ACER RUBRUM	RED MAPLE	1" CAL., 6' HGT.	\$ 30.00	\$ 660.00
QP	30	QUERCUS PHELLOS	WILLOW OAK	1" CAL., 6' HGT.	\$ 30.00	\$ 900.00
QR	30	QUERCUS RUBRA	NORTHERN RED OAK	1" CAL., 6' HGT.	\$ 30.00	\$ 900.00
PT	40	PINUS TAEDA	LOBLOLLY PINE	1" CAL., 6' HGT.	\$ 82.00	\$ 3280.00

(122 TREES @ 100 SF. EACH = 12,200 SF.)

TOTAL LANDSCAPE STOCK PLANT COST = \$5,740.00

D-1: SEEDLING STOCK PLANT LIST- (2.818 AC. - 1972 STEMS REQUIRED) = 1972 STEMS TOTAL

SYM	QUAN	SCIENTIFIC NAME	COMMON NAME	SPEC.	UNIT COST	TOTAL COST
CC	200	CERCIS CANADENSIS	RED BUD	SEEDLING	\$ 0.26 EA.	\$ 52.00
FP	592	FRAXINUS PENNSYLVANICA	GREEN ASH	SEEDLING	\$ 0.26 EA.	\$ 153.92
QB	590	QUERCUS BICOLOR	SWAMP WHITE OAK	SEEDLING	\$ 0.26 EA.	\$ 153.40
QL	590	QUERCUS LAURIFOLIA	LAUREL OAK	SEEDLING	\$ 0.26 EA.	\$ 153.40

TOTAL SEEDLING STOCK PLANT COST = \$ 512.72

Lot 5- Buffer Establishment- Total Cost Estimate for plant material and installation

Landscape Stock

Total Installed cost includes plant material costs, installation/labor costs, mulch and other installation material costs and equals

Plant Material Cost (\$ 5,740.00) x 2.0 multiplier): \$11,480.00

Seedling Stock

Plant Material Cost: \$ 512.72

Installation Costs (Machine)- 2 acre min. (\$125.00/acre x 2.818 Acres): \$ 352.25

Band Spraying "Oust" – 1 acre min. (\$80.00/acre x 2.818 Acres): \$ 225.44

THE HISTORY OF THE UNITED STATES

The history of the United States is a story of growth and change. From the first settlers to the present day, the nation has evolved through various stages of development. The early years were marked by exploration and the establishment of colonies. The American Revolution led to the birth of a new nation, and the subsequent years saw the expansion of territory and the growth of industry. The Civil War was a pivotal moment in the nation's history, leading to the abolition of slavery and the strengthening of the federal government. The 20th century brought significant social and economic changes, including the rise of the industrial revolution and the emergence of the United States as a global superpower. Today, the United States continues to face new challenges and opportunities, and its history remains a source of inspiration and guidance for the future.

4' Tree Shelters Installed with Stake for 50% of Green Ash and Oaks, @ \$ 4.00 Ea. x 886 Shelters:	\$ 3,544.00
Critical Area Forest/Buffer Protection Signs & Posts (\$15.00 x 4):	\$ 60.00
Landscape Maintenance - 5 years @ \$200/year:	\$ 1,000.00
Sub-total:	\$ 17,174.41
10% Contingency:	\$ 1,717.44
Total Materials and Installation Cost:	\$18,891.85

LOT 6. BUFFER ESTABLISHMENT- 2.619 AC. TOTAL

E-1: LANDSCAPE STOCK PLANT LIST- (0.290 AC. - 12,632 SF.) = 127 TREES TOTAL

SYM	QUAN	SCIENTIFIC NAME	COMMON NAME	SPEC.	UNIT COST	TOTAL COST
AR	22	ACER RUBRUM	RED MAPLE	1" CAL., 6' HGT.	\$ 30.00	\$ 660.00
QP	30	QUERCUS PHELLOS	WILLOW OAK	1" CAL., 6' HGT.	\$ 30.00	\$ 900.00
QR	30	QUERCUS RUBRA	NORTHERN RED OAK	1" CAL., 6' HGT.	\$ 30.00	\$ 900.00
PT	45	PINUS TAEDA	LOBLOLLY PINE	1" CAL., 6' HGT.	\$ 82.00	\$ 3690.00
(127 TREES @ 100 SF. EACH = 12,700 SF.)						
TOTAL LANDSCAPE STOCK PLANT COST =						\$6,150.00

E-1: SEEDLING STOCK PLANT LIST-(2.329 AC. - 1630 STEMS REQUIRED) = 1630 STEMS TOTAL

SYM	QUAN	SCIENTIFIC NAME	COMMON NAME	SPEC.	UNIT COST	TOTAL COST
CC	200	CERCIS CANADENSIS	RED BUD	SEEDLING	\$ 0.26 EA.	\$ 52.00
FP	450	FRAXINUS PENNSYLVANICA	GREEN ASH	SEEDLING	\$ 0.26 EA.	\$ 117.00
QB	490	QUERCUS BICOLOR	SWAMP WHITE OAK	SEEDLING	\$ 0.26 EA.	\$ 127.40
QL	490	QUERCUS LAURIFOLIA	LAUREL OAK	SEEDLING	\$ 0.26 EA.	\$ 127.40
TOTAL SEEDLING STOCK PLANT COST =						\$ 423.80

Lot 6- Buffer Establishment- Total Cost Estimate for plant material and installation

Landscape Stock

Total Installed cost includes plant material costs, installation/labor costs, mulch and other installation material costs and equals

Plant Material Cost (\$ 6150.00) x 2.0 multiplier): \$12,300.00

Seedling Stock

Plant Material Cost: \$ 423.80

Installation Costs (Machine)- 2 acre min. (\$125.00/acre x 2.329 Acres): \$ 291.13

Band Spraying "Oust" - 1 acre min. (\$80.00/acre x 2.329 Acres): \$ 186.32

4' Tree Shelters Installed with Stake for 50% of Green Ash and Oaks,

@ \$ 4.00 Ea. x 715 Shelters: \$ 2,860.00

Critical Area Forest/Buffer Protection Signs & Posts (\$15.00 x 4): \$ 60.00

Landscape Maintenance - 5 years @ \$200/year: \$ 1,000.00

Sub-total: \$ 17,121.25

10% Contingency: \$ 1,712.13

Total Materials and Installation Cost: \$18,833.38

LOT 7. BUFFER ESTABLISHMENT- 0.180 AC. TOTAL

F-1: LANDSCAPE STOCK PLANT LIST- (0.180 AC. - 7,854 SF.) = 79 TREES TOTAL

<u>SYM</u>	<u>QUAN</u>	<u>SCIENTIFIC NAME</u>	<u>COMMON NAME</u>	<u>SPEC.</u>	<u>UNIT COST</u>	<u>TOTAL COST</u>
AR 15		ACER RUBRUM	RED MAPLE	1" CAL., 6' HGT.	\$ 30.00	\$ 450.00
QP 20		QUERCUS PHELLOS	WILLOW OAK	1" CAL., 6' HGT.	\$ 30.00	\$ 600.00
QR 20		QUERCUS RUBRA	NORTHERN RED OAK	1" CAL., 6' HGT.	\$ 30.00	\$ 600.00
PT 24		PINUS TAEDA	LOBLOLLY PINE	1" CAL., 6' HGT.	\$ 82.00	\$ 1968.00
(79 TREES @ 100 SF. EACH = 7,900 SF.)						
TOTAL LANDSCAPE STOCK PLANT COST =						\$3,618.00

Lot 7- Buffer Establishment- Total Cost Estimate for plant material and installation

Landscape Stock

Total Installed cost includes plant material costs, installation/labor costs, mulch and other installation material costs and equals

Plant Material Cost (\$3,618.00) x 2.0 multiplier):	\$ 7,236.00
Critical Area Forest/Buffer Protection Signs & Posts (\$15.00 x 3):	\$ 45.00
Landscape Maintenance - 2 years @ \$200/year:	\$ 400.00
Sub-total:	\$ 7,681.00
10% Contingency:	\$ 768.10
Total Materials and Installation Cost:	\$ 8,449.10

LOT 8. BUFFER ESTABLISHMENT- 1.245 AC. TOTAL

H-1: LANDSCAPE STOCK PLANT LIST- (0.147 AC. - 6,403 SF.) = 64 TREES TOTAL

<u>SYM</u>	<u>QUAN</u>	<u>SCIENTIFIC NAME</u>	<u>COMMON NAME</u>	<u>SPEC.</u>	<u>UNIT COST</u>	<u>TOTAL COST</u>
AR 14		ACER RUBRUM	RED MAPLE	1" CAL., 6' HGT.	\$ 30.00	\$ 420.00
QP 15		QUERCUS PHELLOS	WILLOW OAK	1" CAL., 6' HGT.	\$ 30.00	\$ 450.00
QR 15		QUERCUS RUBRA	NORTHERN RED OAK	1" CAL., 6' HGT.	\$ 30.00	\$ 450.00
PT 20		PINUS TAEDA	LOBLOLLY PINE	1" CAL., 6' HGT.	\$ 82.00	\$ 1640.00
(64 TREES @ 100 SF. EACH = 6,400 SF.)						
TOTAL LANDSCAPE STOCK PLANT COST =						\$2,960.00

H-1: SEEDLING STOCK PLANT LIST- (1.098 AC. - 769 STEMS REQUIRED) = 770 STEMS TOTAL

<u>SYM</u>	<u>QUAN</u>	<u>SCIENTIFIC NAME</u>	<u>COMMON NAME</u>	<u>SPEC.</u>	<u>UNIT COST</u>	<u>TOTAL COST</u>
CC 80		CERCIS CANADENSIS	RED BUD	SEEDLING	\$ 0.26 EA.	\$ 20.80
FP 220		FRAXINUS PENNSYLVANICA	GREEN ASH	SEEDLING	\$ 0.26 EA.	\$ 57.20
QB 235		QUERCUS BICOLOR	SWAMP WHITE OAK	SEEDLING	\$ 0.26 EA.	\$ 61.10
QL 235		QUERCUS LAURIFOLIA	LAUREL OAK	SEEDLING	\$ 0.26 EA.	\$ 61.10
TOTAL SEEDLING STOCK PLANT COST =						\$ 200.20

Lot 8- Buffer Establishment- Total Cost Estimate for plant material and installation

Landscape Stock

Total Installed cost includes plant material costs, installation/labor costs, mulch and other installation material costs and equals

Plant Material Cost (\$2,960.00) x 2.0 multiplier):	\$ 5,920.00
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Seedling Stock	
Plant Material Cost:	\$ 200.20
Installation Costs (Machine)- 2 acre min. (\$125.00/acre x 1.098 Acres):	\$ 250.00
Band Spraying "Oust" – 1 acre min. (\$80.00/acre x 1.098 Acres):	\$ 87.84
4' Tree Shelters Installed with Stake for 50% of Green Ash and Oaks, @ \$ 4.00 Ea. x 345 Shelters:	\$ 1,380.00
Critical Area Forest/Buffer Protection Signs & Posts (\$15.00 x 4):	\$ 60.00
Landscape Maintenance - 5 years @ \$200/year:	\$ 1,000.00
Sub-total:	\$ 8,898.04
10% Contingency:	\$ 889.80
Total Materials and Installation Cost:	\$ 9,787.84

PLANT INSTALLATION SPECIFICATIONS

Overall compliance with the terms of this Forest Preservation-Buffer Management Plan including all maintenance and warranty requirements prescribed hereon is the responsibility of the owner/developer. Maintenance, warranty and plant material survival responsibilities of the landscape contractor ("contractor") shall be as specifically negotiated between owner/developer and contractor.

All work shall be accomplished with qualified personnel, utilizing industry standard practices and techniques. The contractor (contractor) is responsible for the complete installation of all landscaping shown or implied on this plan. Prior to installation the contractor shall notify the landscape architect or plan preparer if site planting conditions warrant re-design consideration.

The landscape architect or plan preparer shall reject any and all plant material that does not meet spec, is diseased, or is otherwise unhealthy.

SITE PREPARATION

Planting areas that have been in consistent agricultural production shall be planted with no other required site preparation.

Planting areas that are overgrown in weeds or noxious plants shall be sprayed with roundup and then disked after 3 weeks and then planted.

Planting areas that are vegetated and stable with minimal weeds shall be mowed to 8" or as required for planting or seedling installation.

PLANTING SPECIFICATIONS- LANDSCAPE STOCK (BALL & BURLAP AND/OR CONTAINER GROWN STOCK)

Plant Material- all plant material shall conform to the American Standard for Nursery Stock as approved by the American National Standards Institute, Inc. latest edition. All plant material

shall be nursery grown with sound horticultural practices and unless otherwise approved by the landscape architect, grown in soil and climatic conditions similar to this project site. All material shall exhibit healthy growth with good branching structure, dense foliage and a fibrous, developed root system. All material shall be free of insect infestation and disease. The owner reserves the right to have the plant material inspected and tagged at the growing site, and to reject any deficient material at the job site.

Plant Material Handling- all plant material shall arrive at the job site in a healthy condition. Cracked root balls and other damaged materials shall be rejected and replaced by contractor. The contractor shall stage delivery and plant installation to minimize stress on plant material. Material to be staged on or off the job site shall be located to maximize protection from hot sun and drying winds, and shall be watered to maintain a stress free condition. On-site water may not be available for contractor use. The lack of available water shall not relieve the contractor of adequate maintenance.

The contractor shall verify the location of all underground utilities prior to commencing work. Coordinate with other contractors on site and miss utility to verify utility locations. Any repairs to existing underground utilities required as a result of actions of the contractor and/or his assigns shall be borne by contractor.

Planting Bed/Pit Preparation- contractor shall layout beds and position plants for approval by Landscape Architect. Review any significant field adjustments prior to installation. All bed areas shall be treated with herbicide to kill weed or grass vegetation.

All tree pits and individual shrub planting pits shall be excavated to a depth so that the plant root flare shall lie at the finished grade surrounding the plant or plantings. Remove soil that may have been placed on top of root ball or settled around trunk or root flare during transport to adequately expose root flare so proper planting depth can be established. The root ball shall rest on undisturbed or stabilized soil. The contractor shall notify the Landscape Architect if this planting depth specification cannot be implemented. Tree planting pits shall be excavated to a width equaling twice the root ball diameter. Tree pits on sloped areas shall be excavated to the proper depth based on the uphill side of the slope. Shrub/perennial and mass planting beds shall be worked or excavated to the depth of the root ball providing for the root ball to rest on undisturbed soil. Excavated soils not previously compacted or otherwise degraded shall be re-used for planting pit backfill. Excavated soils unsuited for backfill shall be amended with friable topsoil to create a suitable planting soil as approved by the landscape architect. Excavated soils that cannot be restored to a reasonable planting soil shall be removed and replaced with a friable, topsoil/sub soil planting mix typical of the region. Note- for bidding purposes or unless otherwise specified hereon, the contractor shall assume excavated soils are suitable for planting backfill.

Planting beds for azaleas, rhododendrons, yews and other moisture sensitive plant material shall be mounded and amended with sand, peat or compost as necessary to provide suitable planting soil and drainage.

Contractor shall coordinate irrigation installation (if applicable to this project) to insure that preliminary irrigation work is completed or coordinated with planting efforts.

Plant Installation- remove burlap and other root ball covering to the extent possible- at a minimum the upper 1/2 of root ball wrap shall be removed. Cut and remove at least the top 1/3 of wire baskets and all root ball bindings, string ties, strapping, labels, etc. From the plant material. Cut or scarify the sides of container grown stock to eliminate bound roots and promote healthy root growth.

Plants shall be installed vertically and plumb. Plant pits shall be backfilled and compacted. All plants shall be watered during planting to minimize air pockets and to insure soil contact with roots. Let plant pits settle, and add soil to fill voids prior to mulching. Where plantings are not irrigated, utilize excavated soil to form a watering collar around the tree or shrub at the perimeter of the root ball. Feather soil grades around plantings to blend with surrounding landscape or turf areas. Excess excavated soil shall be removed from job site.

Deciduous trees over 2" caliper and evergreen trees over 7' height (unless otherwise waived by the landscape architect), shall be staked and guyed with minimum 2- 2" x 2" x 6' hardwood stakes placed in stable soils. Guy trees to stakes with protective materials typically utilized in the industry.

All planting beds and pits not otherwise contained with hard edging shall be edged with a 3" deep "V" trench and mulched to a 2" depth with double shredded, hardwood bark mulch. Mulch shall generally extend to the edge of paving or buildings, or back of curb. In open areas adjacent to turf or naturalized areas, mulch shall extend a minimum of 2.5' beyond the trunk for trees and 1.0' beyond the edge of shrub foliage. Unless otherwise specifically directed hereon, shape the mulch-bed edge conducive to ease of mowing or maintenance of the adjoining area. Do not place or mound mulch against the trunk or foliage of plants.

PLANTING SPECIFICATIONS- SEEDLING & BARE-ROOT/WHIP STOCK

Plant Material- Seedlings/Whips: all seedlings shall be species native to this physiographic region of Maryland, and grown at the John S. Ayton State Forest Nursery outside Preston, Maryland, or as otherwise approved by the Landscape Architect. All seedlings shall have healthy, intact root systems, shall be free from disease and pests and shall be delivered to the site in appropriate moisture conserving containers. All seedlings shall be utilized in planting within 24 hours of delivery and/or adequately protected from moisture loss thru healing in until they can be utilized for planting.

Hardwoods- 1/4" to 1/2" caliper with roots no less than 8" long.
Conifers- 1/8" to 1/4" caliper w/ roots no less than 8" long
Shrubs- 1/8" caliper or larger with minimum 8" root system.

Planting area preparation- contractor shall delineate planting areas. Contact landscape architect for stakeout of perimeter where limits of planting are not clearly defined. The planting area shall be left in its natural condition unless directed hereon or as otherwise approved by the landscape

architect to facilitate reasonable planting conditions. Mowing or herbicide application may be warranted and/or permitted subject to prior approval. Coordinate all planting area adjustments prior to installation.

Installation specifications- provide plantings in accordance with the standards and specifications outlined herein. Extreme care should be taken to retain moisture in the roots of the seedlings. While planting seedlings, carry extra seedlings in a protected, moist container and keep all un-used seedlings in a shaded, moist place. Firmly compress the soil around seedlings after installation to eliminate air pockets and possible root desiccation. Eliminate "j-roots", or roots that bend upward in planting hole. All plants shall be installed at the correct planting depth with root flare just above finished grade.

"RoundUp" or equal herbicide at a rate of 2 ounces/acre shall be applied near ground level over the top of seedling plantings (dormant only) following installation. Certain species may be harmed by "roundup". Contractor shall verify these constraints prior to application.

GROUND SURFACE ESTABLISHMENT REQUIREMENTS

COMAR 27.01.09.01-1 B. and as referenced therein, COMAR 27.01.09.01-2 B. (3) require the ground surface of the Buffer Establishment Areas to be covered "with mulch or ground cover until buffer plantings are established". Specific ground surface establishment shall be provided in accordance with the following:

Landscape Stock Planting Areas

a. As directed in the plant installation specifications hereon, individual landscape plants shall be mulched with 2" thick, double ground hardwood bark mulch.

Remaining ground surfaces not otherwise mulched or existing in grasses or other stable ground covers shall be covered or established by one of the following methods:

a. Forest leaf and organic matter collected from established forest areas on site, or leaf-gro compost or similar and equal product shall be spread to a 2" depth over exposed ground surface; or

b. Seeded in a short, warm season grass mix consisting of *Bouteloua curtipendula* (sideoats gramma), *Schizachyrium scoparium* (little bluestem) and *Andropogon virginicus* (broomsedge), or other approved grass mixture, at a rate of 6 lbs/acre with equal proportion of species; or

c. 2" hardwood bark mulch over bare, unplanted areas; or

d. Other cover solution approved by Talbot County.

Seedling Stock Planting Areas

a. No specific ground surface establishment plantings are required in seedling planting areas because these planting areas lie upstream from existing forest and/or vegetated shorelines that intercept potential sediment laden run-off caused by planting disturbance activities,

PROTECTIVE DEVICES

Install Critical Area Forest and Buffer protection signs as shown on the Subdivision Plat.

MAINTENANCE PROVISIONS

The property owner is responsible and shall insure adequate maintenance is provided through the installation and warranty period and final inspection by Talbot County. The contractor shall maintain all planting installation, on a lot by lot basis as necessary, through job completion and approval of initial installation by Talbot County. Additional maintenance requirements of the contractor shall be as specifically negotiated with the property owner. Maintenance shall include, but not be limited to:

- Periodic watering of larger stock during periods of drought.
- Bi-annual mowing of competing vegetation between seedling planting rows.
- Hand removal of competing woody vegetation, weeds or invasive species where ground plain in Landscape Stock planting areas is established in native grasses seed mix.
- Other spot herbicide applications for competing vegetation control.
- State of Maryland required noxious weed control (Johnson Grass and Thistle).
- Non-native invasive species removal.
- Re-mulching plant material annually. Re-establish forest organic matter or compost over bare areas previously established.
- Maintenance of tree tubes and other plant protective devices
- Removal of tree tubes after 5 years
- Removal of tree stakes/guying after 1 full growing season
- Maintenance of protective signage

INSPECTION REQUIREMENTS

1. Initial Job Completion Inspection- all work shall be inspected by the landscape architect or plan preparer and Talbot County after completion. Any deficiencies shall be corrected immediately. Property Owner shall provide Initial Certificate of Completion for County approval.

2. Year 1 Follow-Up Inspection for all plantings- all work shall be inspected by the landscape architect or plan preparer the spring following planting completion to assess leaf-out and survivability and direct re-planting as necessary. Re-planting shall be completed the following spring or earlier if normally acceptable planting practices and ground conditions permit. The inspector shall summarize the general conditions of the planting areas and plant material and any remedial action or maintenance required in writing to Talbot County.

3. Final Inspection for Landscape Stock Plantings after two (2) full years from Initial Certificate of Completion- The plantings sites shall be inspected by the landscape architect or plan preparer and Talbot County. The inspector shall determine the survival rate of the plantings and summarize the overall general characteristics of the planting area in writing to Talbot County. Deficient survival rates shall be reviewed with Talbot County to determine possible causes and to direct required remediation. If remediation is required, the warranty period and final inspection requirement for the remediation plantings shall be extended by 1 full year.

4. Final Inspection for Seedling Stock Plantings after five (5) full years from Initial Certificate of Completion- The plantings sites shall be inspected by the landscape architect or plan preparer and Talbot County. The inspector shall determine the survival rate of the plantings and summarize the overall general characteristics of the planting area in writing to Talbot County. Deficient survival rates shall be reviewed with Talbot County to determine possible causes and to direct required remediation. If remediation is required, the warranty period and final inspection requirement for the remediation plantings shall be extended by 2 years.

The property owner is strongly encouraged to inspect the plantings annually and to replant or otherwise remediate deficient planting areas.

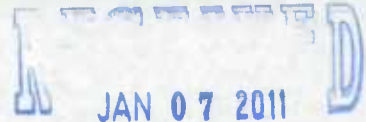
ADDITIONAL LONG-TERM BUFFER & FOREST MANAGEMENT RECOMMENDATIONS

The goal of the plantings proposed under this Forest Preservation-Buffer Management Plan is to establish the Buffer Protection Area in a moderately dense, forested character with a stable, non-eroding ground surface condition. As the plantings mature, and considering that "infill" species like black locust, red maple, sweet gum, black cherry and others will germinate, and if survival rates exceed anticipated minimum requirements, the resulting forest stand density and species mix may adversely impact healthy forest stand succession and ultimate forest maturity.

Maintenance thinning and selective pruning may be warranted to insure viable growth and forest establishment. Most of this thinning/pruning can be accomplished under the routine maintenance provisions outlined herein. However, it is recommended that the property owner consult with a qualified forestry professional to assess the planting areas beyond the inspection requirements outlined herein and direct additional and specific forest management strategies including, but not limited to, forest stand thinning and pruning, including substantial thinning or eradication of single species stands of black locust, sweet gum, pear or other emergent stands dominated by a single invasive species. Talbot County may require an "Amended" Forest Preservation-Buffer Management Plan or Forest Management Plan that outlines specific "management" practices designed to create the forest character outlined above and enhance the overall maturity of the planting areas.

The property owner may need to maintain living shorelines, rip-rap, or other shoreline stabilization features. Forest Preservation and Buffer Establishment Area plantings implemented after the completion of shoreline stabilization measures and required to be removed for, and limited to, routine shoreline stabilization maintenance may be removed with replacement mitigation requirements, if any, to be determined by Talbot County.

Nick



TAC: Feb. 9. 2011

CRITICAL AREA AND NON-CRITICAL AREA FOREST, MITIGATION AND BUFFER PROTECTION AGREEMENT

THIS CRITICAL AREA AND NON-CRITICAL AREA FOREST, MITIGATION AND BUFFER PROTECTION AGREEMENT ("Agreement") is executed this ____ day of _____, 2011, by and between by and between REHOBETH FARM, LLC ("**Grantor**") and TALBOT COUNTY, MARYLAND, a charter county and political subdivision of the State of Maryland acting by and through its duly authorized Planning Officer ("**Grantee**").

RECITALS

WHEREAS, Grantor is the owner of a certain parcel of land situate in the Fifth Election District of Talbot County, Maryland, designated on Tax Map 31, Grid 1 as Parcel 139, being the same parcel more particularly described and conveyed by Templeton Smith, Jr. to Grantor by a Deed dated April 7, 2003 and recorded among the Land Records of Talbot County, Maryland, in Liber 1143, folio 600 (the "**Property**"); and

WHEREAS, Grantor has elected to engage in "REGULATED ACTIVITIES" as defined by the Talbot County Zoning Ordinance §190-134 B, §190-139-C(6) and as defined in COMAR 27.01.09.01-1 on the Property, and Grantor has applied to the Talbot County Office of Planning & Zoning for approval of the Regulated Activities; and

WHEREAS, as a condition of the aforesaid approval, Grantor has submitted, and the Talbot County Office of Planning & Zoning has approved, a Forest Preservation-Buffer Management Plan for the Regulated Activities titled "Forest Conservation Plan #2010-20 and Buffer Management Plan #M1131", prepared by Lane Engineering, LLC, designating certain areas of forest and buffer protection, forest interior dwelling birds ("**FIDS**") mitigation, reforestation/afforestation and/or buffer establishment; and

WHEREAS, as a condition of the approval described above, and based on the Forest Preservation-Buffer Management Plan, Grantor has submitted, and the County has approved, a final subdivision plat that incorporates the Forest Preservation-Buffer Management Plan and is titled "Subdivision Plat, FCP #2010-20 and BMP #M1131 for Rehobeth Farm, LLC", prepared by Lane Engineering, LLC ("**Subdivision Plat**"), which is intended to be recorded among the Plat Records of Talbot County immediately hereafter, and which is incorporated by reference, and on which are designated certain areas of the 100' Shoreline Development Buffer, the Expanded Buffer, and the Buffer Establishment Afforestation Area located within the Property as follows:

1. Critical Area Forest and Buffer Protection Area "A" 2.684 AC.±;
2. Critical Area Forest and Buffer Protection Area "B" 2.237 AC.±;
3. Critical Area Forest and Buffer Protection Area "C" 1.770 AC.±;
4. Critical Arca Forest and Buffer Protection Area "D" 4.057 AC.±;
5. Critical Area Forest and Buffer Protection Area "E" 3.464 AC.±;
6. Critical Area Forest and Buffer Protection Area "F" 1.597 AC.±;
7. Critical Area Forest and Buffer Protection Area "G" 2.988 AC.±;
8. Critical Area Forest and Buffer Protection Area "H" 1.761 AC.±;

9. Critical Area Forest and Buffer Protection Area "I" 2.963 AC.±; and
10. Critical Area Forest and Buffer Protection Area "J" 1.962 AC.±.

All of which are referred to herein collectively as the "**Critical Area Forest and Buffer Protection Areas.**" The Critical Area Forest and Buffer Protection Areas are more particularly described by metes and bounds, courses and distances by the legal descriptions attached hereto as Exhibit A and incorporated herein by reference.

WHEREAS, the Subdivision Plat designates certain areas of afforestation as mitigation for potential impacts to FIDS habitat as follows:

1. FIDS Mitigation Area "A" 0.214 AC.±;
2. FIDS Mitigation Area "B" 3.565 AC.±;
3. FIDS Mitigation Area "C" 3.202 AC.±;
4. FIDS Mitigation Area "D" 0.626 AC.±;
5. FIDS Mitigation Area "E" 0.491 AC.±; and
6. FIDS Mitigation Area "F" 1.522 AC.±.

All of which are referred to herein collectively as the "**FIDS Mitigation Areas.**" The FIDS Mitigation Areas are more particularly described by metes and bounds, courses and distances by the legal descriptions attached hereto as Exhibit B and incorporated herein by reference.

WHEREAS, the Subdivision Plat designates certain areas of existing forest for conservation in perpetuity as follows:

1. Forest Conservation Area "1" 1.636 AC.±;
2. Forest Conservation Area "2" 1.036 AC.±; and
3. Forest Conservation Area "3" 2.157 AC.±.

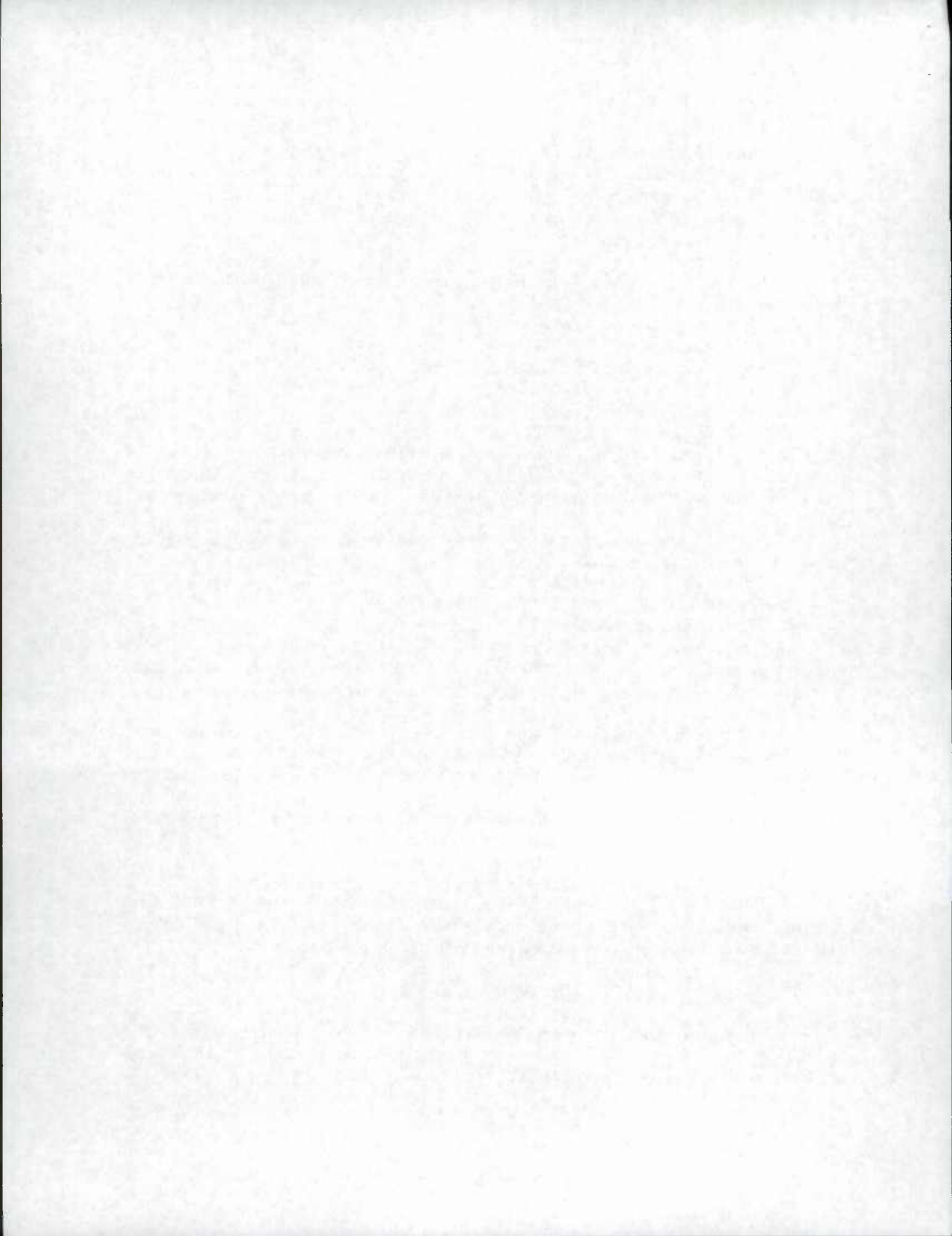
All of which are referred to herein collectively as the "**Forest Conservation Areas.**" The Forest Conservation Areas are more particularly described by metes and bounds, courses and distances by the legal descriptions attached hereto as Exhibit C and incorporated herein by reference.

WHEREAS, the Grantor and Grantee executed a "Critical Area Forest Preservation – Buffer Management Plan Planting and Maintenance Agreement, Deed of Trust and Surety Declaration" of even date herewith (the "**Surety Declaration**"), which is intended to be recorded among the Land Records of Talbot County immediately prior hereto and which establishes certain planting, monitoring and maintenance obligations related to the establishment of portions of the Critical Area Forest and Buffer Protection Areas that are designated on the Subdivision Plat as "Critical Area Buffer Establishment Afforestation Area"; and

WHEREAS, COMAR 27.01.09.01-2.N. requires the establishment of a long-term protective agreement on, over and through the Critical Area Forest and Buffer Protection Areas to ensure the permanent protection, management and inspection of said areas.

GRANT AND AGREEMENTS

NOW, THEREFORE, for and in consideration of the foregoing, the covenants and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:



1. Grantor and Grantee hereby enter into this Agreement to establish, create and declare the restrictions herein set forth in favor of and for the benefit of the Grantee, its successors and assigns, with respect to the Critical Area Forest and Buffer Protection Areas, FIDS Mitigation Areas, and Forest Conservation Areas described herein.

2. This Agreement applies to, binds, and runs with those portions of the Property more particularly described in Exhibit A (described herein as the Critical Area Forest and Buffer Protection Areas), in Exhibit B (described herein as the FIDS Mitigation Areas), and in Exhibit C (described herein as the Forest Conservation Areas), for the benefit of Grantee, its successors and assigns, forever. The Critical Area Forest and Buffer Protection Areas, FIDS Mitigation Areas, and Forest Conservation Areas are collectively referred to herein as the “**Protection Areas**”.

3. Grantor covenants and agrees with the Grantee that the Grantor, its successors or assigns, shall not destroy, damage or remove any plant material of nature which now or hereafter grows within the Protection Areas without approval of the Grantee as to manner, form, extent and any other aspects of the removal whatsoever, it being the express intention of the parties hereto that Grantor shall comply with the conditions of approval of the Subdivision Plat approved under the Talbot County Zoning Ordinance and that the Protection Areas shall be preserved in a manner which protects the forest or natural vegetation thereon, either existing as of the date of this Agreement or to be established hereafter. The foregoing notwithstanding, the Grantor may continue existing agricultural use within portions of the Critical Area Forest and Buffer Protection Areas designated by the Subdivision Plat as “Critical Area Buffer Establishment Area”, provided that such use is conducted in compliance with COMAR 27.01.09.01-5 and that such use shall cease with respect to a particular lot created by the Subdivision Plat upon the date the Critical Area Buffer Establishment Area(s) on such lot are required to be planted or established under the Surety Declaration. The Surety Declaration is incorporated herein by reference for the sole purpose of establishing the date of termination of agricultural use, as applicable to individual lots, under this Paragraph.

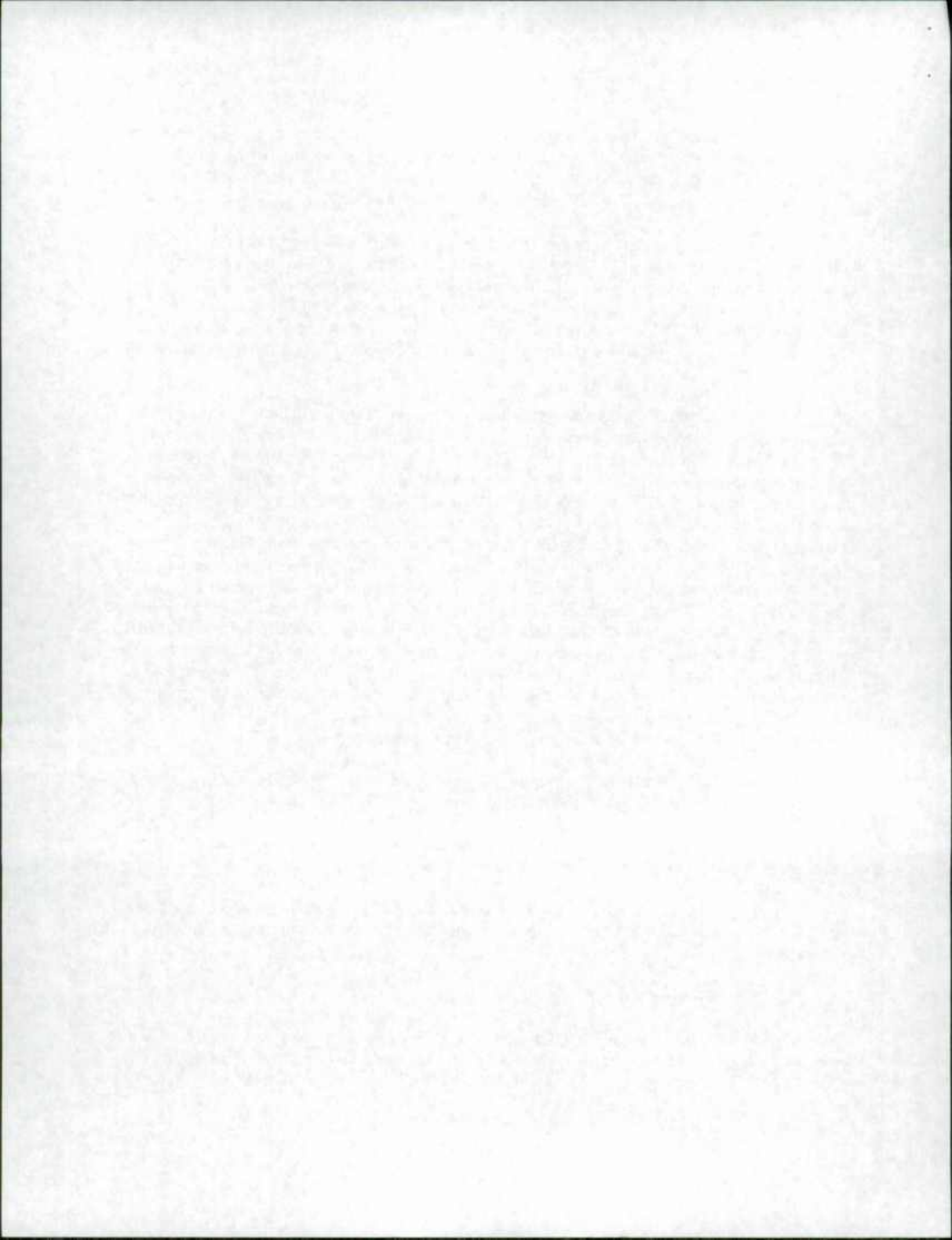
4. Grantor does hereby relinquish the right to use or develop the Protection Areas for any purpose whatsoever, except for the following uses:

A. Planting, maintenance and protection of the forest in accordance with the recorded Subdivision Plat;

B. Passive recreational activities, such as walking or hiking, and bird watching, which are consistent with and do not adversely impact forest or wetland habitats or cause harm to these resources;

C. Hunting and trapping;

D. Forest management practices with the specific purpose of preserving the forest habitats in forest, including limited harvesting of trees under an approved Timber Harvest Management Plan, subject to approval of the Maryland Department of Natural Resources,



Critical Area Commission and Talbot County Office of Planning and Zoning, and provided suitable provisions are made for the replacement of harvested trees;

E. Limited clearing and maintenance of a three (3) foot wide path or trail through the forest understory such as may be necessary to access a water dependent facility; and

F. With respect to the Critical Area Forest and Buffer Protection Area(s) on an individual lot, agricultural activities may be conducted in accordance with Paragraph 3 until the buffer establishment obligation with respect to such lot created by the Subdivision Plat is triggered under the Surety Declaration.

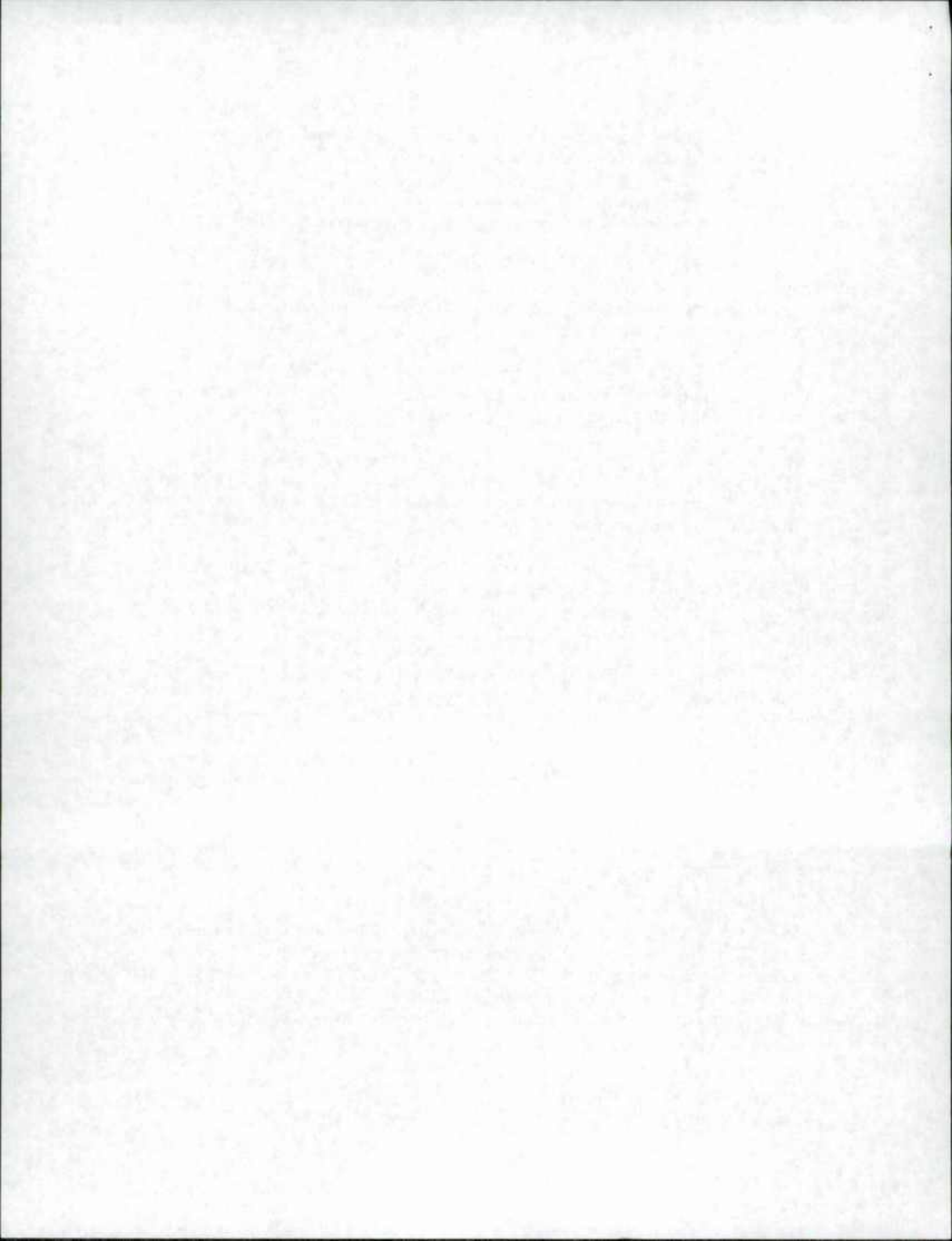
5. All rights reserved by or not prohibited to Grantor shall be exercised to prevent or minimize damage to the forest and trees, streams and water quality, plant and wildlife habitats, and the natural topographic character of the Protection Areas.

6. The Grantee, or its duly authorized representatives shall have the right, at reasonable hours, to enter the Property with reasonable notice for the sole purpose of inspecting the Protection Areas to determine whether the Grantor is complying with the terms, covenants, conditions, limitations and restrictions herein contained.

7. No failure on the part of the Grantee to enforce any covenant or provision hereof shall discharge or invalidate such covenant or any other covenant, condition, or provision hereof or affect the right of the Grantee to enforce the same in the event of a subsequent breach or default.

8. Upon any breach of the terms of this Agreement, the Grantee may exercise any or all of the remedies provided in the Talbot County Code including, but not limited to, the institution of an action in equity to enjoin, by temporary or permanent injunction, such breach, to require the restoration of the forest to its condition prior to such breach, and such other legal action as may be necessary to ensure compliance with this Agreement and the covenants, conditions, limitations and restrictions contained herein. In the event of any breach by Grantor, or Grantor's successors, or assigns, of any obligations under this Agreement, the breaching party shall reimburse the Grantee for all costs or expenses incurred to enforce the terms hereof, including but not limited to consultant's fees, court costs, reasonable attorney's fees, and any other expenses reasonably incurred by the Grantee to enforce the terms hereof or to remedy the breach.

9. In the event of any ambiguity or question concerning the scope or requirements imposed by this Agreement with respect to any particular use of the Protection Areas, Grantor may submit a written request to the Talbot County Planning Officer for interpretation or consideration and approval of such use. The Talbot County Planning Officer shall render an interpretation, decision, and response within thirty (30) days following the receipt of any such request.



10. This Agreement does not grant to the public, in general, any right of access or any right to the use of any portion of the Property and extends only to those areas designated as the Protection Areas and any necessary access thereto.

11. Grantor further covenants and agrees that the covenants and agreements contained herein shall run with and bind the Property and shall apply to and bind upon Grantor and its successors and assigns.

12. Grantor agrees to make specific reference to this Agreement in a separate paragraph of any subsequent sales contract, mortgage, deed, lease or other legal instrument by which any interest in any of the Protection Areas is conveyed.

IN WITNESS WHEREOF, the Grantor and Grantee have caused this Agreement to be properly executed and sealed as of the day and year first above written.

ATTEST:

TALBOT COUNTY, MARYLAND

(SEAL)
By: Sandy Coyman
Talbot County Planning Officer

ATTEST:

REHOBETH FARM, LLC

(SEAL)
By: Templeton Smith, Jr., Managing Member

Approved for Legal Form and Sufficiency,

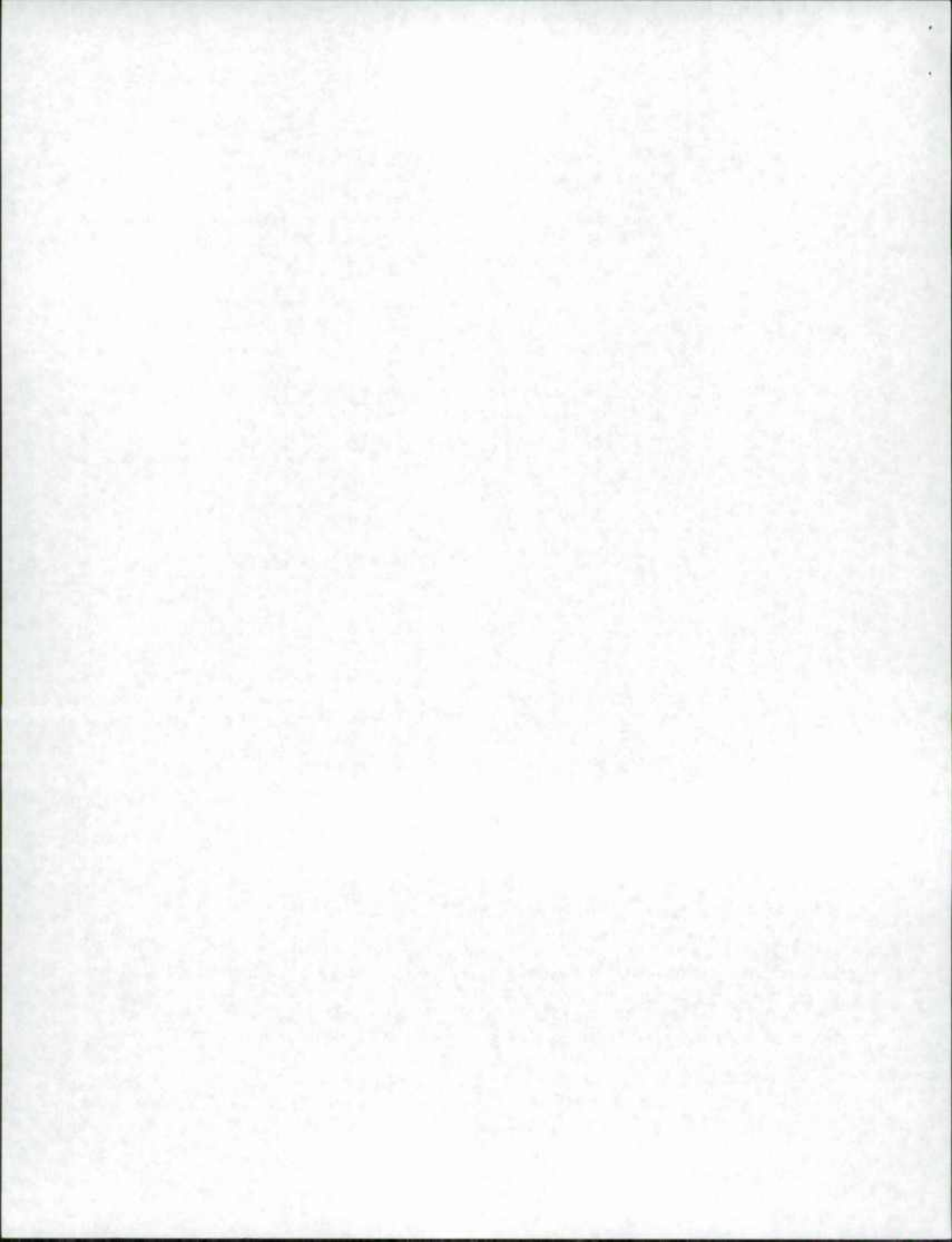
this ____ day of _____, 2011

Michael L. Pullen, County Attorney

STATE OF MARYLAND, COUNTY OF _____, TO WIT:

I HEREBY CERTIFY, that on this ____ day of _____, 2011, before me, a Notary Public of the State aforesaid, personally appeared SANDY COYMAN, who acknowledged himself to be the Planning Officer of Talbot County, Maryland, a Maryland charter county, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within Agreement, and acknowledged that he executed the same for the purposes therein contained as the fully authorized agent of said Talbot County, Maryland.

WITNESS my hand and Notarial Seal.



My Commission expires: _____

Notary Public

STATE OF _____, COUNTY OF _____, TO WIT:

I HEREBY CERTIFY, that on this _____ day of _____, 2011, before me, the undersigned Notary Public of said State, personally appeared TEMPLETON SMITH, JR., known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, who acknowledged that he executed the same for the purposes therein contained and he further acknowledged said instrument to be his act in his capacity as Managing Member of REHOBETH FARM, LLC, a Maryland limited liability company.

WITNESS my hand and Notarial Seal.

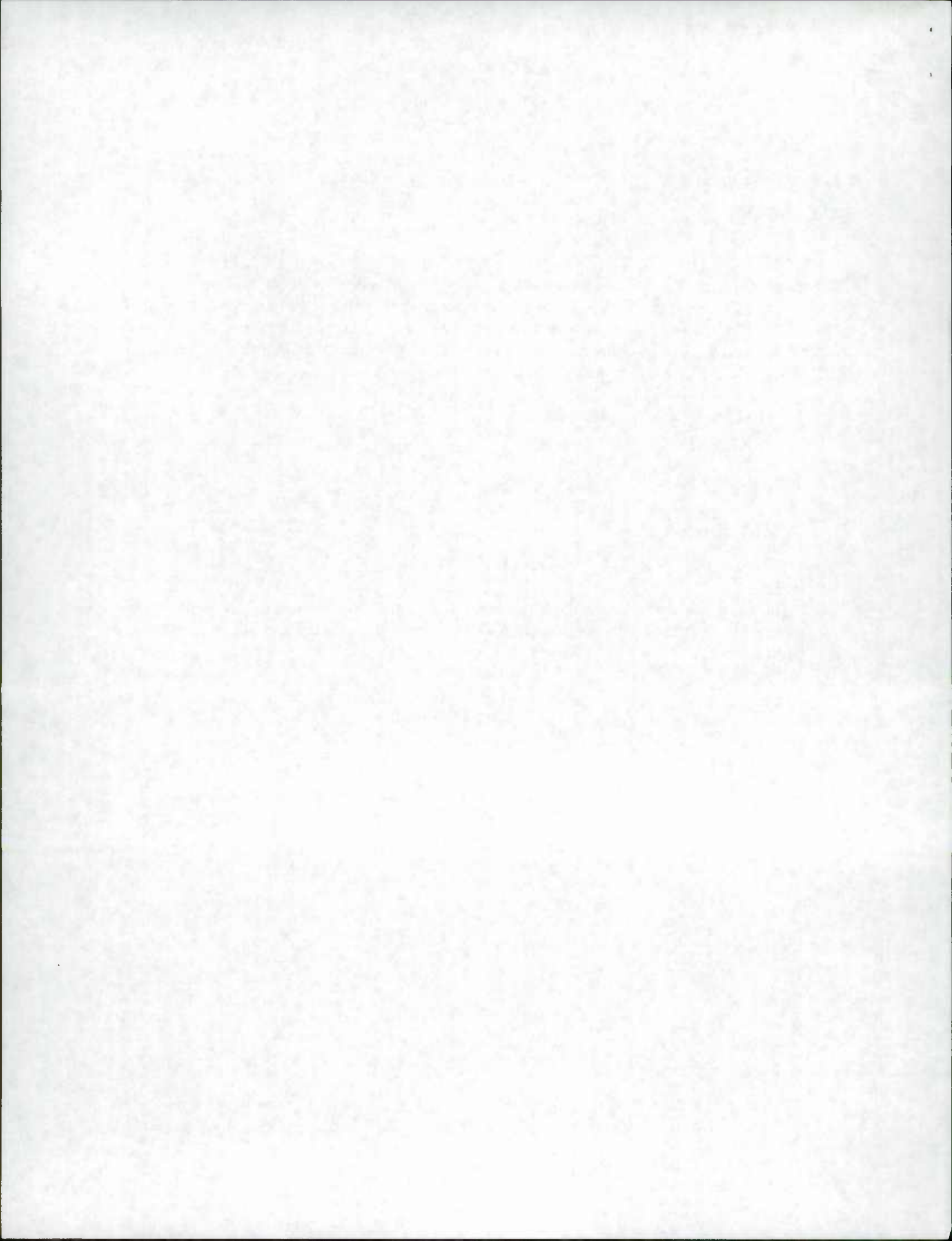
Notary Public

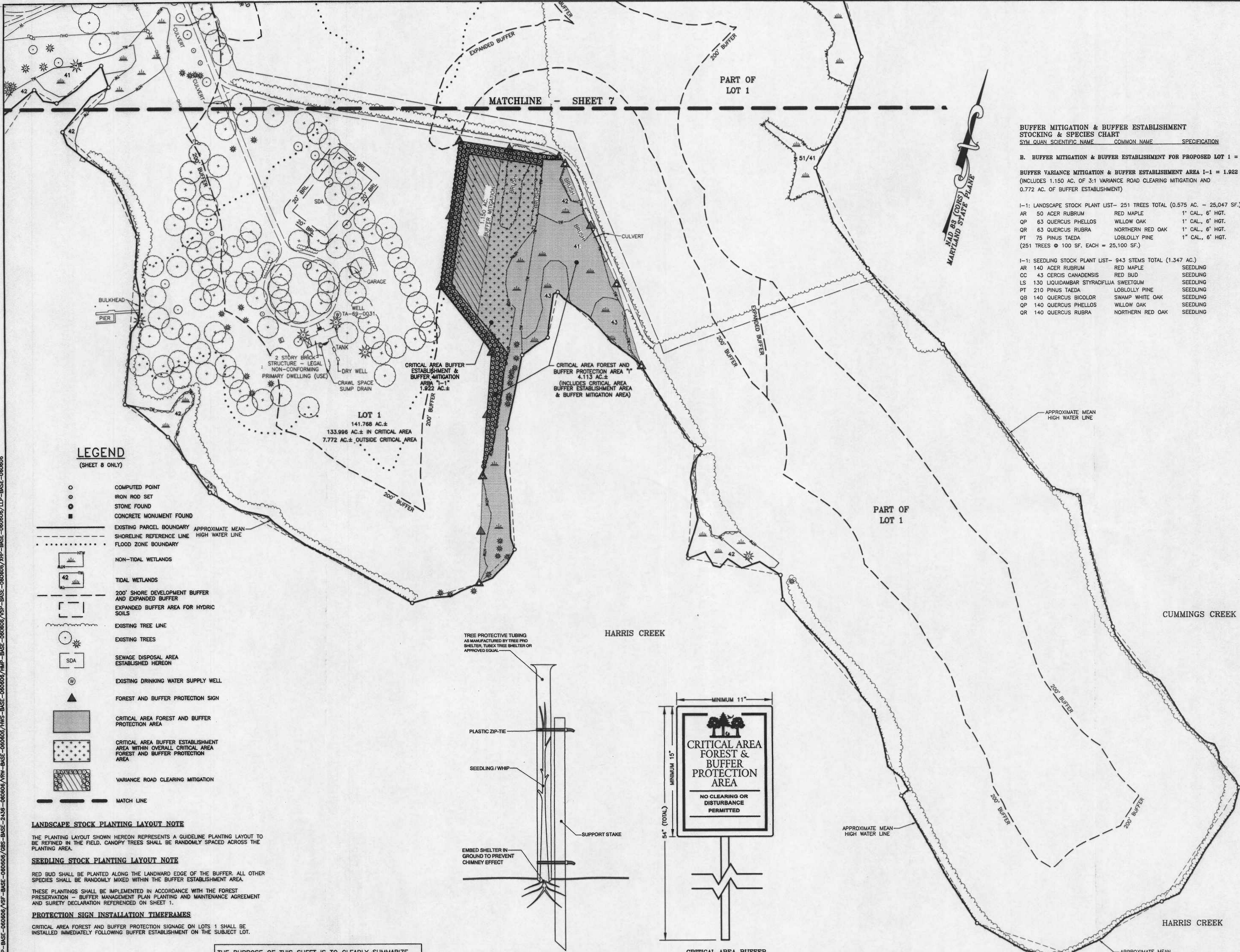
My Commission expires: _____

CERTIFICATION

This is to certify that the within instrument was prepared by or under the supervision of the undersigned, an Attorney duly admitted to practice before the Court of Appeals of Maryland.

Ryan D. Showalter





BUFFER MITIGATION & BUFFER ESTABLISHMENT STOCKING & SPECIES CHART

SYM QUAN SCIENTIFIC NAME COMMON NAME SPECIFICATION

B. BUFFER MITIGATION & BUFFER ESTABLISHMENT FOR PROPOSED LOT 1 = 3.862 AC.

BUFFER VARIANCE MITIGATION & BUFFER ESTABLISHMENT AREA I-1 = 1.922 AC. (INCLUDES 1.150 AC. OF 3:1 VARIANCE ROAD CLEARING MITIGATION AND 0.772 AC. OF BUFFER ESTABLISHMENT)

I-1: LANDSCAPE STOCK PLANT LIST- 251 TREES TOTAL (0.575 AC. - 25,047 SF.)

AR	50 ACER RUBRUM	RED MAPLE	1" CAL., 6' HGT.
QP	63 QUERCUS PHELLOS	WILLOW OAK	1" CAL., 6' HGT.
QR	63 QUERCUS RUBRA	NORTHERN RED OAK	1" CAL., 6' HGT.
PT	75 PINUS TAEDA	LOBLOLLY PINE	1" CAL., 6' HGT.

(251 TREES @ 100 SF. EACH = 25,100 SF.)

I-1: SEEDLING STOCK PLANT LIST- 943 STEMS TOTAL (1,347 AC.)

AR	140 ACER RUBRUM	RED MAPLE	SEEDLING
CC	43 CERCIS CANADENSIS	RED BUD	SEEDLING
LS	130 LIQUIDAMBAR STYRACIFLUA	SWEETGUM	SEEDLING
PT	210 PINUS TAEDA	LOBLOLLY PINE	SEEDLING
QB	140 QUERCUS BICOLOR	SWAMP WHITE OAK	SEEDLING
QP	140 QUERCUS PHELLOS	WILLOW OAK	SEEDLING
QR	140 QUERCUS RUBRA	NORTHERN RED OAK	SEEDLING

REVISIONS			
No.	DATE	DESCRIPTION	BY
1	6/12/13	PER TAC - NOTICE TO PROCEED DATED 5/17/13	WBS
2	10/9/13	PER REVISED TAC - NOTICE TO PROCEED DATED 10/13	WBS
3	12/20/13	PER TAC - NOTICE TO PROCEED DATED 12/18/13	WBS
4	1/28/14	PER CRM - NOTICE TO PROCEED DATED 1/8/14	WBS

PRELIMINARY PLAT
NOT TO BE RECORDED

Lane Engineering, LLC
Established 1986
Civil Engineers • Land Planning • Land Surveyors

117 Bay St. Eagan, MD 21601 (410) 822-8003
19 Washington St. Cambridge, MD 21613 (410) 221-0818
324 Pennsylvania Ave. Centerville, MD 21817 (410) 728-2098

NOT VALID FOR CONSTRUCTION UNLESS SIGNED AND DATED HERE:

SEAL

DATE: 2.11.14

SUBDIVISION PLAT,
FCP #2010-20 AND
BMP #M1131
FOR
REHOBETH FARM, LLC,

IN THE FIFTH ELECTION DISTRICT
TALBOT COUNTY, MARYLAND
TAX MAP 31 GRID 1 PARCEL 139

ISSUED FOR:	DATE:	BY:
SKETCH PLAN REVIEW	3/27/13	WBS
PRELIMINARY PLAN REVIEW	6/12/13	WBS
FINAL TAC REVIEW	11/14/13	WBS
CRM REVIEW	12/20/13	WBS
RECORDATION	1/28/14	WBS

SHEET No.	DATE:
8 OF 8	3/27/13
SCALE:	JOB No.
1" = 100'	060606
	FILE No.
	3523

Date: 02/12/2014 12:34pm User: rdren Drawing Path: N:\2010\060606\BMP-BASE-060606\TRM-BASE-060606\WMS-BASE-060606\WMP-BASE-060606\WHP-BASE-060606\LLP-BASE-060606
 Project Manager: WBS
 User: rdren
 Date: 02/12/2014 12:34pm
 Drawing Path: N:\2010\060606\BMP-BASE-060606\TRM-BASE-060606\WMS-BASE-060606\WMP-BASE-060606\WHP-BASE-060606\LLP-BASE-060606

THE PURPOSE OF THIS SHEET IS TO CLEARLY SUMMARIZE CRITICAL AREA BUFFER ESTABLISHMENT AFFORESTATION PLANTING REQUIREMENTS FOR LOT 1.

NOTE:
THIS PROPERTY IS SUBJECT TO A NRCS WATER QUALITY PLAN # 83295-2002

