

Chesapeake Bay Critical Area Commission
Department of Housing and Community Development
People's Resource Center
Crownsville, Maryland
October 3, 2001

SUBCOMMITTEES

10:30 a.m. – 12:00 p.m. Project Evaluation Subcommittee

Members: Bourdon, Witten, Giese, Goodman, Cooksey, Setzer, Graves, Olszewski,
Jackson, McLean, Andrews, Jones, Rice

University of Maryland/Center for Environmental Studies, Mary Owens
Horn Point: Aquaculture and Restoration Ecology Lab
Dorchester County

DOT/SHA – Woodrow Wilson Bridge: Reforestation Package Lisa Hoerger
Prince George's County

Anne Arundel County Department of Public Works Lisa Hoerger
Woodland Beach Pumping Station Expansion

11:00 a.m. – 12:00 p.m. Program Implementation Subcommittee

Members: Foor, Myers, Bailey, Evans, Barker, Wynkoop, Johnson, Lawrence, Duket,
Samorajczyk, Bradley, Wenzel

Anne Arundel County – Critical Area Extension Mary Owens
Magenau Property

12:00 p.m. - 1:00 p.m. - LUNCH

Department of Housing and Community Development
People's Review Center
Covington, Maryland
October 2, 2001

SUBCOMMITTEES

- 10:30 am - 12:00 pm Project Evaluation Subcommittee
Members: Deborah Whitehead, Barbara Clark, James Jones, Deborah
Jackson, Michael Johnson, James Lee
- 11:00 am - 12:00 pm Project Evaluation Subcommittee
Members: Deborah Whitehead, Barbara Clark, James Jones, Deborah
Jackson, Michael Johnson, James Lee
- 12:00 pm - 1:00 pm Project Evaluation Subcommittee
Members: Deborah Whitehead, Barbara Clark, James Jones, Deborah
Jackson, Michael Johnson, James Lee

12:00 pm - 1:00 pm LUNCH

Chesapeake Bay Critical Area Commission
Department of Housing and Community Development
Peoples Resource Center
Crownsville, Maryland
October 3, 2001

AGENDA

1:00 p.m. - 1:15 p.m. Introduction of The Honorable J. Charles Fox Secretary of Natural Resources John C. North, II Chairman

1:15 p.m. - 1:20 p.m. Approval of Minutes of September 5, 2001 John C. North, II Chairman

Introduction of new planner: Julie LaBranche

PROJECTS

1:20 p.m. - 2:00 p.m. VOTE - Anne Arundel County Board of Education: Appeal of Denial Of Conditional Approval for Mayo Elementary School Alternate Site LeeAnne Chandler Anne Arundel Co. Board of Education

2:00 p.m. - 2:15 p.m. VOTE - DOT/SHA: Woodrow Wilson Bridge Reforestation Package, Prince George's Co. Lisa Hoerger

2:15 p.m. - 2:30 p.m. VOTE - Anne Arundel County Department of Public Works: Woodland Beach Pumping Station Lisa Hoerger

2:30 p.m. - 2:40 p.m. VOTE - University of Maryland / Center for Environmental Science, Horn Point: Aquaculture and Restoration Ecology Lab, Dorchester County Mary Owens

~~2:40 p.m. - 3:00 p.m.~~ Special Presentation: *Next month* Conservation of Delmarva Fox Squirrel Habitat Mary Ratnaswamy U.S. Fish and Wildlife Service

3:00 p.m. - 3:10 p.m. Old Business John C. North, II Chairman

Legal Update Marianne Mason, Esq.

3:10 p.m. - 3:15 p.m. New Business John C. North, II Chairman

- Claudia: University of Maryland
- Wicomico County Panel for Comprehensive Review

Chief Scientist, U.S. Fish and Wildlife Service
 Department of the Interior, Washington
 Program Research Center
 1200 North 17th Street
 Anchorage, Alaska
 October 1, 1981

AGENDA

1:00 pm - 1:15 pm	Registration	John C. North II Chairman
1:15 pm - 1:30 pm	Approval of Minutes of September 1, 1981	John C. North II Chairman
1:30 pm - 1:45 pm	Report of the Board of Directors	John C. North II Chairman
1:45 pm - 2:00 pm	Report of the Board of Directors	John C. North II Chairman
2:00 pm - 2:15 pm	Report of the Board of Directors	John C. North II Chairman
2:15 pm - 2:30 pm	Report of the Board of Directors	John C. North II Chairman
2:30 pm - 2:45 pm	Report of the Board of Directors	John C. North II Chairman
2:45 pm - 3:00 pm	Report of the Board of Directors	John C. North II Chairman
3:00 pm - 3:15 pm	Report of the Board of Directors	John C. North II Chairman
3:15 pm - 3:30 pm	Report of the Board of Directors	John C. North II Chairman
3:30 pm - 3:45 pm	Report of the Board of Directors	John C. North II Chairman
3:45 pm - 4:00 pm	Report of the Board of Directors	John C. North II Chairman
4:00 pm - 4:15 pm	Report of the Board of Directors	John C. North II Chairman
4:15 pm - 4:30 pm	Report of the Board of Directors	John C. North II Chairman
4:30 pm - 4:45 pm	Report of the Board of Directors	John C. North II Chairman
4:45 pm - 5:00 pm	Report of the Board of Directors	John C. North II Chairman
5:00 pm - 5:15 pm	Report of the Board of Directors	John C. North II Chairman
5:15 pm - 5:30 pm	Report of the Board of Directors	John C. North II Chairman
5:30 pm - 5:45 pm	Report of the Board of Directors	John C. North II Chairman
5:45 pm - 6:00 pm	Report of the Board of Directors	John C. North II Chairman
6:00 pm - 6:15 pm	Report of the Board of Directors	John C. North II Chairman
6:15 pm - 6:30 pm	Report of the Board of Directors	John C. North II Chairman
6:30 pm - 6:45 pm	Report of the Board of Directors	John C. North II Chairman
6:45 pm - 7:00 pm	Report of the Board of Directors	John C. North II Chairman
7:00 pm - 7:15 pm	Report of the Board of Directors	John C. North II Chairman
7:15 pm - 7:30 pm	Report of the Board of Directors	John C. North II Chairman
7:30 pm - 7:45 pm	Report of the Board of Directors	John C. North II Chairman
7:45 pm - 8:00 pm	Report of the Board of Directors	John C. North II Chairman
8:00 pm - 8:15 pm	Report of the Board of Directors	John C. North II Chairman
8:15 pm - 8:30 pm	Report of the Board of Directors	John C. North II Chairman
8:30 pm - 8:45 pm	Report of the Board of Directors	John C. North II Chairman
8:45 pm - 9:00 pm	Report of the Board of Directors	John C. North II Chairman
9:00 pm - 9:15 pm	Report of the Board of Directors	John C. North II Chairman
9:15 pm - 9:30 pm	Report of the Board of Directors	John C. North II Chairman
9:30 pm - 9:45 pm	Report of the Board of Directors	John C. North II Chairman
9:45 pm - 10:00 pm	Report of the Board of Directors	John C. North II Chairman
10:00 pm - 10:15 pm	Report of the Board of Directors	John C. North II Chairman
10:15 pm - 10:30 pm	Report of the Board of Directors	John C. North II Chairman
10:30 pm - 10:45 pm	Report of the Board of Directors	John C. North II Chairman
10:45 pm - 11:00 pm	Report of the Board of Directors	John C. North II Chairman
11:00 pm - 11:15 pm	Report of the Board of Directors	John C. North II Chairman
11:15 pm - 11:30 pm	Report of the Board of Directors	John C. North II Chairman
11:30 pm - 11:45 pm	Report of the Board of Directors	John C. North II Chairman
11:45 pm - 12:00 pm	Report of the Board of Directors	John C. North II Chairman

Chesapeake Bay Critical Area Commission
People's Resource Center
Department of Housing and Community Development
Crownsville, Maryland
September 5, 2001

Approved

The Chesapeake Bay Critical Area Commission met at the Department of Housing and Community Development in Crownsville, Maryland. The meeting was called to order by John C. North, II, Chairman, with the following Members in attendance:

Barker, Philip, Harford County; Cooksey, Dave, Charles County; Bourdon, Dave, Calvert County; Evans, Judith, Western Shore Member at Large; Foor, Dr. James C., Q. A. Co.; Giese, Wm. Jr., Dorchester County; Jackson, Joseph, Worcester County; Johnson, Samuel Q., Wicomico County; Wenzel, Lauren, MD Department of Natural Resources; Andrews, Meg, MD Dept. of Transportation; Bailey, Margo, Kent County; Jones, Paul, Talbot County; Myers, Andrew, Caroline County; Rice, William, Somerset County; Witten, Jack, St. Mary's County; Setzer, Gary, MD Department of the Environment; Duket, Larry, MD Dept. of Planning; Goodman, Bob, MD Dept. of Housing and Community Dev.; McLean, Jim, Governor's Office of Business and Economic Development ; *Wynkoop Sam*

Not In Attendance:

Barbara Samorajczyk, Anne Arundel County; Clinton S. Bradley, III, Eastern Shore MAL; Louise Lawrence, Department of Agriculture

The Minutes of August 1, 2001 were approved as read.

Chairman John C. North, II introduced as a special guest Governor Parris N. Glendening. Chairman North emphasized that, as a charter member of the Commission, the Governor played a significant role in developing the Critical Area Criteria and establishing the program as an innovator in environmental protection. The Governor thanked the Chairman and Commission members for the important work they do and the often difficult decisions they must make. The Governor said that he would work again this year for passage of legislation to overturn recent decisions by the Maryland Court of Appeals that have weakened the Critical Area Law. He also said he intended to pursue regulations similar to the Critical Area for Maryland's Coastal Bays in Worcester.

Albert Goetze, Talbot Rivers Protective Association, gave a special presentation on the Hog Island Wastewater Discharge. He is a life-long Maryland resident. He is a licensed fisherman, and possesses a commercial crab license. Mr. Goetze was appointed by two former governors to the Atlantic States Marine Fisherman's Commission. He has served there for a decade. In a letter he sent to Ren Serey of the Critical Area Commission (CAC), he outlined how the important Commission work will impact the Chesapeake Bay and Chesapeake River systems. Mr. Goetze expressed his concern for the Maryland fishing industry, and its value to the economy. He noted how the stripped bass issues in 1985 devastated Maryland's economy. He distributed a Talbot County map of the spawning and nursery areas showing how the waste water treatment plant in Easton is discharging into the waters above the nursery area for stripped bass. He said a study by Horn Point Laboratory showed the plant is now discharging two million, two hundred thousand gallons of discharge per day. With two new additions in Easton, more hookups will increase to three million a day. This will put discharge in the middle of Choptank River. He urged the Commission to look at how the hookups would endanger or have a direct effect on what the CAC is agreeing to improve. Mr. Goetze said where one project is being located there is already serious question about the condition of water quality. He added that conditions have deteriorated for many years. He said Maryland Department of the Environment (MDE) testing indicates five major ingredients for making "toxic soup" exist there; "excessive chloroform, excessive nutrients, turbidity, water as thick as you can see it anywhere, organic chemicals, and heavy metals from the bottom samplings."

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He added that Critical Area legislation and action is there to protect sensitive areas but if it is already degraded to this point, then the critical areas are already lost. He expressed two final concerns as follows:

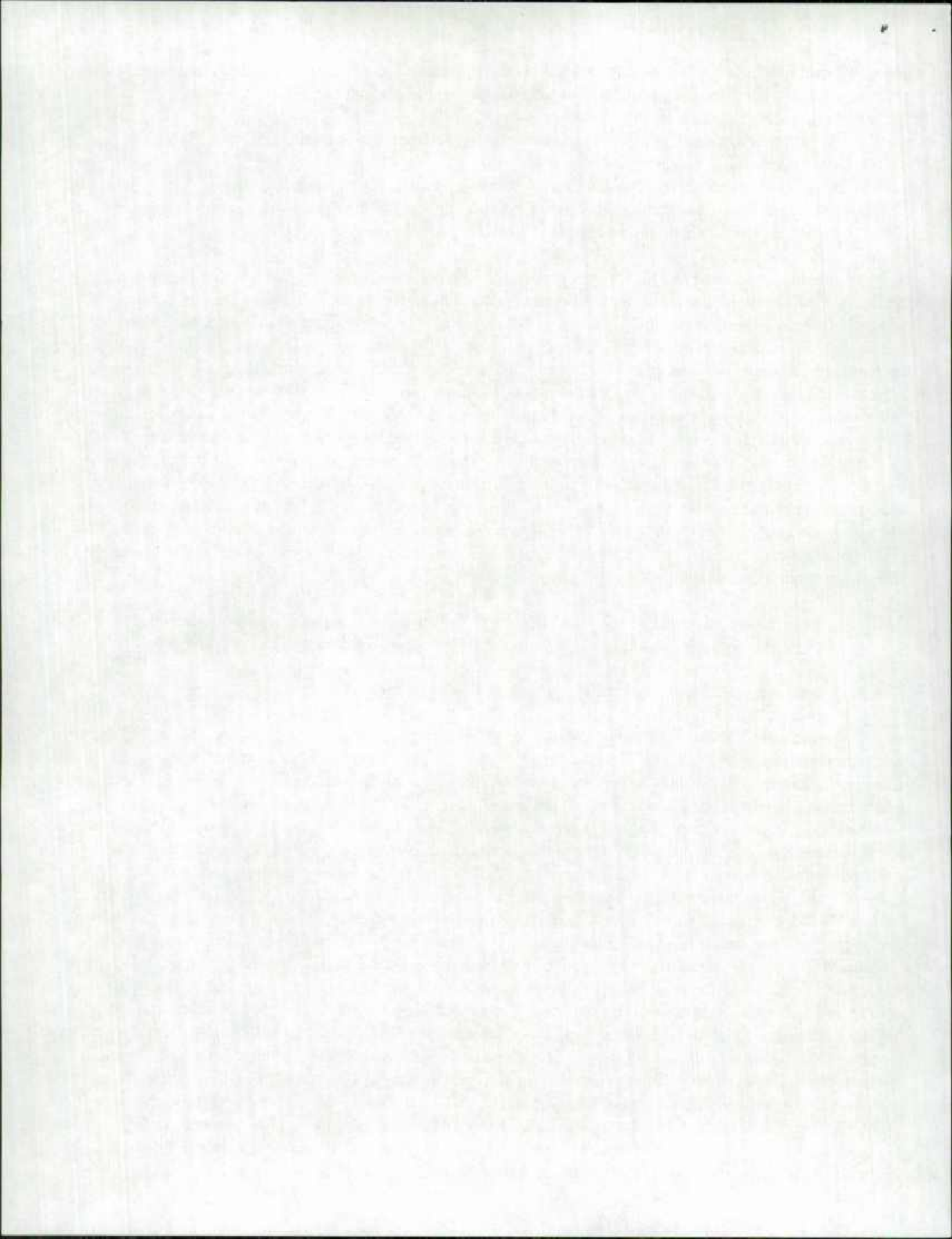
- 1) The conditions of water where the proposed growth allocation opportunities exist should be a real part of CAC review;
- 2) He said he does not see how in Maryland we can escape the fact that MDE has responsibility to review every five years to determine whether MDE permits are acceptable or not for this plant to continue or to increase. He said to increase does relate to Critical Area allocation.

LeeAnne Chandler, Planner, CBCAC, presented for VOTE a request for a Department of Natural Resources (DNR) proposal to construct a pedestrian/equestrian bridge across Tuckahoe Creek in Tuckahoe Creek State Park. The proposed bridge is six (6) feet in width and seventy (70) feet in length, with a metal frame. The decking will consist of timber planks with space in between to create a pervious surface. The supporting pilings will be placed on both shorelines but no pilings will be placed within the creek. The bridge will provide a shorter trail option to hikers and riders. It will span between Queen Anne's and Caroline counties in a vicinity currently used by horseback riders to cross the creek. This traffic has resulted in some degradation on both shorelines. The proposed bridge will provide a stable surface for riders to use and allow the previously disturbed area to be restored. With exception of the bridge pilings, no impact is proposed within the 100-foot Buffer. According to Ms. Chandler, DNR's Heritage Program is going to visit the proposed bridge location to ensure that the bridge will not impact the rare plant species or the Wetlands of Special State Concern. Ms. Chandler requested approval of the bridge construction with conditions as indicated in the September 5, 2001 Staff Report (attached to and made part of these Minutes). Dave Bourdon moved to approve the request with two conditions as follows:

- 1) That any vegetation removed within the buffer will be replaced at a two-to-one ratio;
- 2) And that Commission staff will have a chance to approve the actual location of the bridge.

The motion was seconded by Bob Goodman, DHCD, and carried unanimously.

Wanda Cole, Planner, CBCAC, presented for VOTE State Highway Administration's (SHA) MD 509 Bridge Replacement over Governor's Run in Calvert County. The Governor's Run is a tributary stream to the Chesapeake Bay and the MD 509 crossing of Governor's Run lies within the 1000-foot Critical Area Boundary. The bridge is a twenty-foot (20), single-span, concrete slab bridge constructed in 1931. It is being replaced for safety and maintenance reasons. The approach roadways will be resurfaced as part of the project. The disturbed area will be 0.08 acres. Areas of replacement will be done in such a way that it will allow continuation of slope stabilization that will act as sediment control and will reduce the potential for sedimentation impacts to Governor's Run. Ms. Cole indicated that there will be no impacts to wetlands and a negligible encroachment into the nontidal wetland buffer for installation of a short section of guardrail. This is considered a temporary impact and no mitigation is required. As outlined in the September 5, 2001 Staff Report, application has been made to MDE for a permit for the temporary impacts. Nontidal Wetland and Waterways permit 01-NT-0063 is expected to be issued. There will be no loss of forest cover. A survey of the area did not locate any state-endangered and state-rare species in the vicinity. The potential habitat for those rare and endangered species has been compromised by invasive vegetation. Ms. Cole said that SHA is seeking conditional approval for the impacts to the 100-foot Critical Area Buffer. She added that they have provided justification to the Critical Area staff for conditional approval to permit certain activities within the 100-foot Buffer. Therefore, the staff recommends approval as does the Project Subcommittee. Ms. Cole said the project meets all the Criteria of COMAR 27.02.06.01 as described in the September 5, 2001 Staff Report (attached to and made part of these Minutes). Dave Bourdon moved to approve the project subject to final MDE approval. The motion was seconded by Bob Goodman, and carried unanimously.



Dawnn McCleary, Planner, CBCAC, presented for VOTE the Tawes Daycare Center in the Tawes State Office Building. Ms. McCleary told the Commission that the Department of General Service (DGS) is proposing to remodel the existing B-wing to include a daycare facility, and grade the existing garden pond area in front of the Tawes State Office Complex for a future fenced playground area. The proposed project is outside of the 100-foot Buffer but within the 1000-foot Critical Area Boundary. The parcel of land is approximately 16 acres. Ms. McCleary said that the facility, which was initially thought to disturb 0.69 acres, will actually disturb 0.490 acres. Landscaping surrounds the pond area. DGS is proposing to backfill the existing pond according to Ms. McCleary's September 5, 2001 Staff Report (attached to and made part of these Minutes). Ms. McCleary said that the consultant will submit a revised 10% Rule worksheet to satisfy the pollutant removal requirement. There will be no impacts to the habitat within the area of the proposed plan. The area will be grass covered, with a small area covered by rubber matting that will act as a safety device. DGS is proposing to construct a Best Management Practice (BMP) device to provide water quality treatment for stormwater. They will maintain some of the existing sidewalk. There are no habitat protection areas on site, none will be affected. DGS proposed removal of 13 trees. They also proposed to grade and remove additional trees. A DGS planting agreement will be put into place to replace any trees removed. Representatives from DGS and a consulting firm were available to answer questions. Ms. McCleary recommended approval of this project with conditions. Dave Bourdon recommended approval conditions as follows:

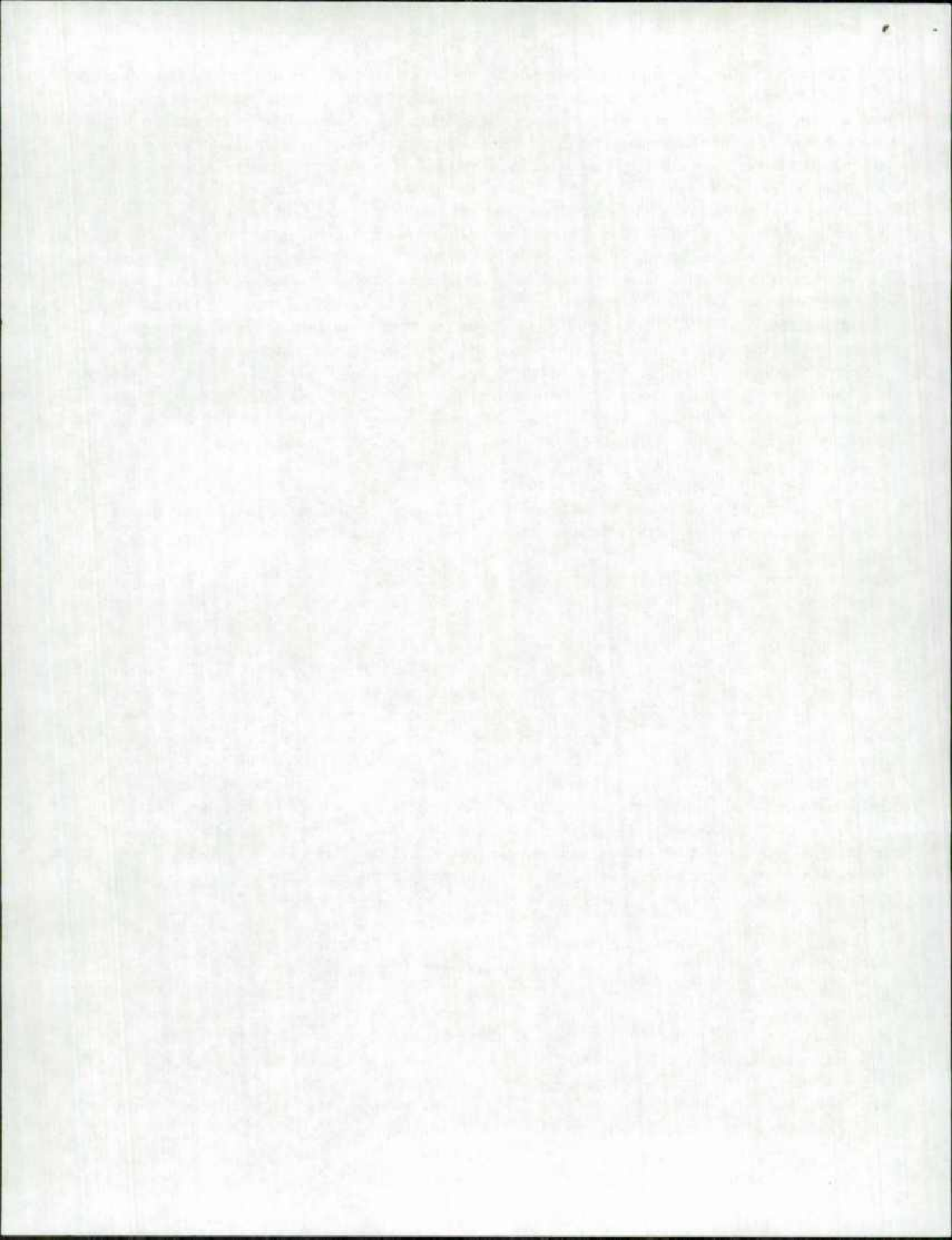
- 1) The Project is subject to final approval of the 10% Rule by Commission staff;
- 2) Final approval of stormwater management by MDE with any additional and significant change requiring approval by the Commission.

The motion was seconded by Bob Goodman, and carried unanimously.

OLD BUSINESS:

Larry Duket gave insight into Harford County Mapping - Extension of Critical Area. The last Commission meeting was a vote to approve conditions to the Harford County 4-year update Critical Area Program. One condition was thought to have not been thought through carefully enough. The County is asking for reconsideration or deletion of the condition for 100-foot Buffer. Larry said that the Panel voted to delete the condition this morning. Pat Pudelkewicz, Senior Critical Area Planner for Harford County, spoke to give the background of the condition. She said that the County intended for the expanded Critical Area to consist only of the floodplain area as indicated on revised Critical Area maps. The 100-foot Buffer, if required, would extend the regulations unnecessarily into 19 properties, and would not provide significant environmental improvements. Ms. Pudelkewicz recommended deletion of the condition. Larry Duket made a motion for deletion of the condition established last month that would require a minimum 100-foot Buffer in the expanded Critical Area. The motion was seconded by Judith Evans, and carried unanimously.

Lisa Hoerger gave an update on part of the conditions of the Commission's original approval to the Woodrow Wilson Bridge Project in Prince George's County. Ms. Hoerger said that staff will continue to update the Commission, under Old Business, of the contracts coming on line as the work progresses. She said that the first contract for dredging of the main channel of the river is completed. She said that the second contract to begin foundation work on both the VA and MD sides of the bridge is in place. Ms. Hoerger told the Commission that the old bridge will be demolished. The northbound section of the bridge will be built first. Both the north and south sections of the bridge will have six lanes. She said that portions of the new bridge cannot be built until the old bridge is demolished. Ms. Hoerger informed the Commission that they may possibly vote next month to continue to work with engineers hired by the SHA.



Marianne Mason, Esquire, Commission Counsel, reported on legal matters. She said that a decision was reached by the Town of Indian Head Board of Appeals where she and LeeAnne Chandler were answering the Town's request to help them enforce zoning laws against a violator who cleared trees on his property. The property is located near the Potomac River. The decision said that he had done this outside an authorized area. He is to restore and plant some trees in mitigation. Ms. Mason is unsure if the property owner will try to appeal the decision.

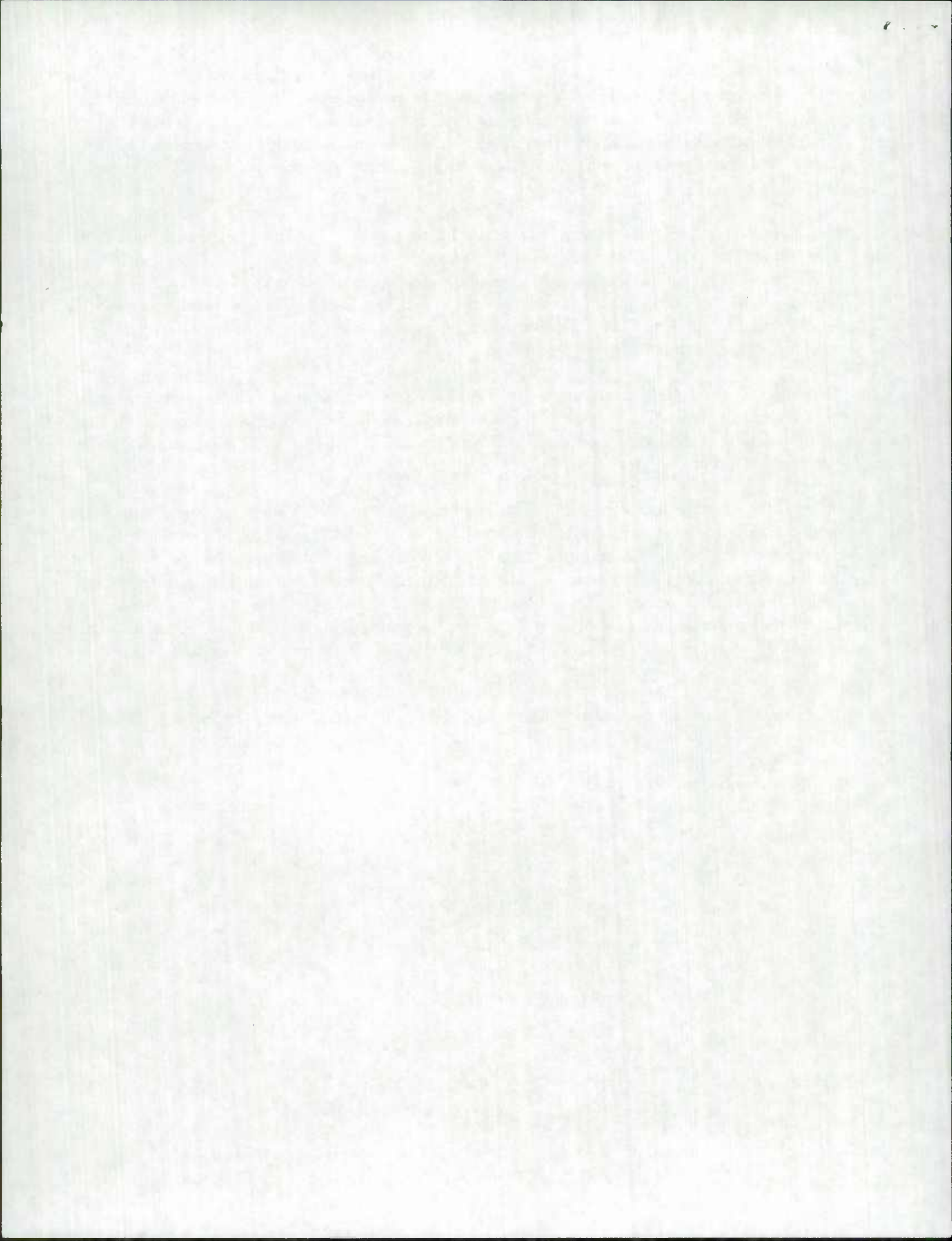
Ms. Mason said that we received appeals twice last month from the Kent Island Defense League and the Four Seasons Project. She said she previously spoke to the Commission about filing two actions in Circuit Court in Queen Anne's County. She said that both the County and developers are on the same side as us. The Kent Island Defense League is challenging both the Critical Area Commission and the County Commission's approval of Growth Allocation for the Four Seasons Project. Ms. Mason said she filed a motion to dismiss one case and probably will file another motion to dismiss the other.

Ms. Mason informed the Commission that the Board of Appeals in Wicomico County denied Ed Lewis variances for the existing seven (7) cabins he built in the Critical Area Buffer Area. He filed a petition in the Circuit Court to get the Denial overturned and he will argue the case in October. Ms. Mason said that we are trying to uphold the decision in Circuit Court.

Ms. Mason received a copy of the Anne Arundel Board of Education Petition of Reconsideration of this Commission's decision made last month to deny conditional approval of the alternate site of the Mayo Elementary School. The Board of Education decided to seek reconsideration of that decision and filed it late Friday afternoon before Labor Day weekend. Ms. Mason said that the attorney for the School Board could not come to talk to the Commission today. He has waived the 30-day time limit that exists in our Regulation. He will come and speak next month. Anne Arundel County has been notified of the Petition of Reconsideration. Ms. Mason said that it will require a refresher staff report, and that the Commission will need to vote on the issue.

There being no new business, the meeting was adjourned by Chairman North at 2:45 p.m.

Minutes respectfully submitted by:
Shirley M. Bishop, Executive Secretary
Chesapeake Bay Critical Area Commission



Part of Minutes

CHESAPEAKE BAY CRITICAL AREA COMMISSION
1804 West Street, Suite 100
Annapolis, Maryland 21401

MEMORANDUM

To: All Commission members

From: LeeAnne Chandler

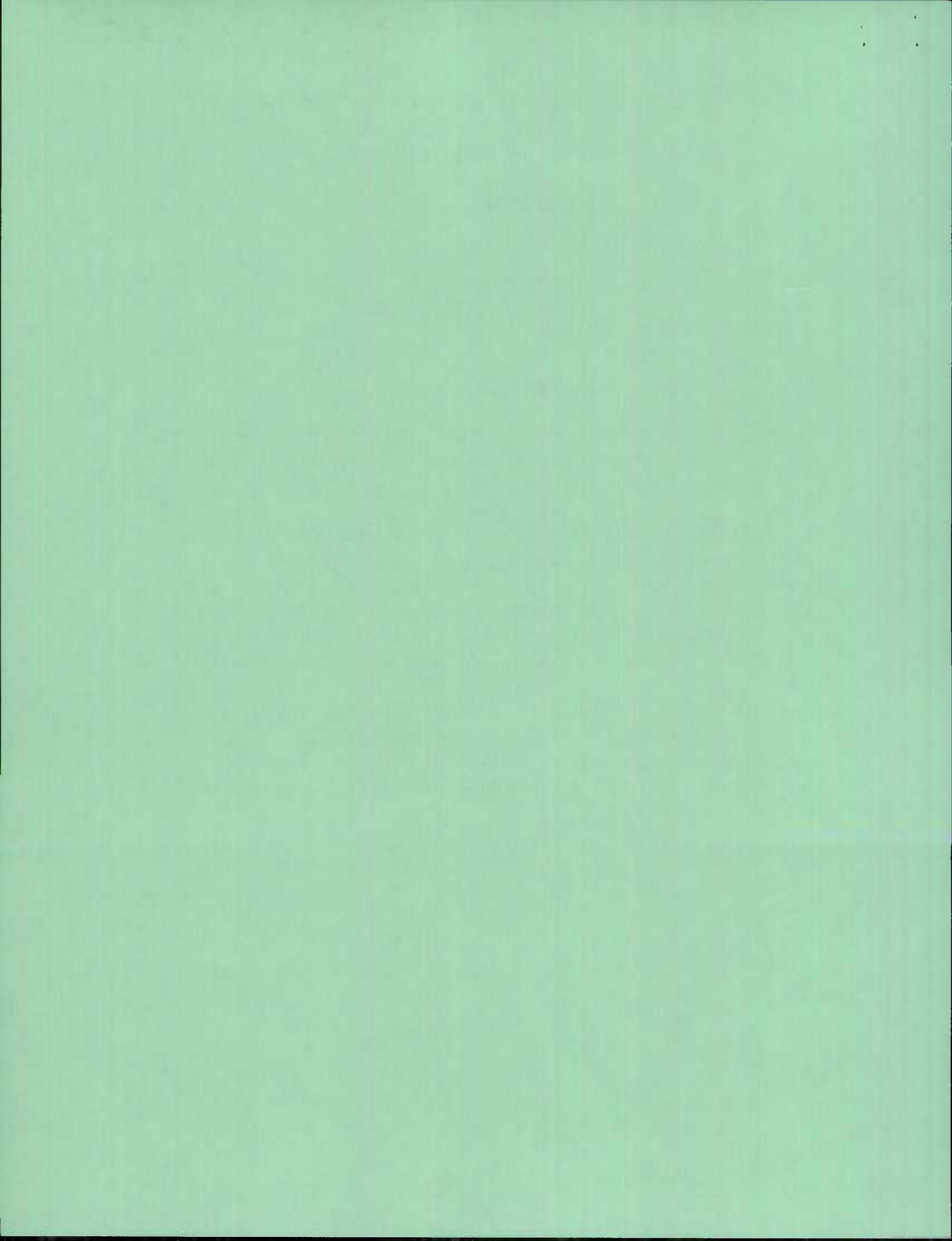
Date: September 21, 2001

Subject: Reconsideration of the request for conditional approval for the alternative Mayo Elementary School site

The School Board of Anne Arundel County has appealed the Critical Area Commission's decision to deny conditional approval for construction of a new Mayo Elementary School on the alternative site. Attached you will find the final staff report for this project (which includes the changes made at the August 1, 2001 Commission meeting), as well as the appeal notice filed by the School Board's attorneys.

At the October 3, 2001 Commission meeting, I will provide an overview of the request for conditional approval as well as the findings adopted by the Commission in making the decision. The School Board representative will then be granted an opportunity to be heard on the matter. A vote will follow.

If you have any questions prior to the Commission meeting, please contact me at (410) 260-3477.



Chesapeake Bay Critical Area Commission

STAFF REPORT

August 1, 2001

-FINAL-

APPLICANT: The Board of Education of Anne Arundel County

PROPOSAL: Mayo Elementary School – Request for Second Conditional Approval

COMMISSION ACTION: Vote

PANEL MEMBERS: Dr. Foor (Chairman), Dave Bourdon, Larry Duket, Judith Evans, Louise Lawrence

PANEL RECOMMENDATION: Denial

STAFF: LeeAnne Chandler

**APPLICABLE LAW/
REGULATIONS:** COMAR 27.02.06 – Conditional Approval of State or Local Agency Programs in the Critical Area

DISCUSSION:

In August 2000, the Board of Education for Anne Arundel (“the School Board”) requested and received conditional approval from the Critical Area Commission for a project which would exceed the impervious surface limits on the existing Mayo elementary school site. The School Board planned to demolish and rebuild the school on the existing site. Impervious surfaces were proposed to increase from 20% to 33% of the 7.28 acre site. This project involved no impacts to Habitat Protection Areas. The Commission approved the request for reasons including the following (1) the existing school already exceeded the impervious surface limits; (2) the proposal included substantial native landscaping; and (3) a stormwater management facility was proposed to offset the new impervious areas. The School Board received the conditional approval for the existing site. This approval has not been relinquished and is still valid.

Despite the existing approval on the current school site, the School Board is seeking another conditional approval from the Critical Area Commission approval for an alternative site for a new Mayo Elementary School. Commission approval is necessary for proposed impacts to a stream, the 100-foot Buffer, non-tidal wetlands (a designated Habitat Protection Area under the Anne Arundel County Critical Area Program), and to exceed the 15% impervious surface limits. The School Board proposes to construct a new school, parking lot, playgrounds, a multi-purpose

field, and stormwater management facilities on a 13.56 acre site. Approximately 6.93 acres are located within the Critical Area and are designated LDA.

The project site is owned by the Mayo Community Association and the St. Andrew the Fisherman Church and currently contains a residential structure constructed in the early 1900's (currently being used by the Mayo Community Association), a gravel driveway, tennis courts, and a basketball court. The remaining portion of the site, approximate 9.2 acres, is forested. In addition, there are approximately 1.1 acres of wetlands on the site, including a tributary stream. The wetlands and stream on the subject property are the headwaters to Cadle Creek, a tributary to the Rhode River. The surrounding area includes Maryland Route 214 to the east and residential development to the north, west and south.

The proposed development consists of the demolition of the existing residential structure and tennis/basketball courts, the clearing of 8.55 acres of forest, and the construction of the new school with a 400 student capacity. The school would be located in the middle of the site with an entrance drive from Route 214. A parking lot sized to hold 57 vehicles would be separated from the bus drop-off area. Hard and soft surface play areas are proposed at either end of the school with the grass multi-purpose field located behind the school. A stormwater management facility would be located behind the field in the western corner of the site. Design of the extended detention facility is in accordance with the new MDE stormwater regulations.

There are numerous proposed impacts to Habitat Protection Areas on this site.

- The stream will be channelized and piped.
- The 100-foot stream Buffer, now forested, will be cleared and graded. (Total Buffer impacts: 2.21 acres)
- The 1.1 acres of forested non-tidal wetlands will be filled and drainage will be directed to the on-site stormwater facility.
- The Critical Area portion of the site (6.93 acres) contains a mixture of young and mature forest. Over 89% of the Critical Area portion of the site will be cleared and graded.
- In addition, proposed impervious surfaces within the Critical Area portion of the site total 32.61%.

The County's Critical Area Program requires mitigation at a 3:1 ratio for clearing over 30% of a forest on site. Required mitigation for the Critical Area impacts would total over 18.5 acres. Presently, the County has a surplus of over a million dollars in their reforestation fund due to the lack of available land to plant. With regard to the proposed wetland impacts, a Jurisdictional Determination was completed last summer, though the School Board and their consultant have just begun the Army Corps of Engineers permitting process. According to Corps staff, it is likely that the proposal will be considered Level Four (Individual Permit) due to the significant impacts as compared to the minimal impact on the existing school site. The Corps permitting process will require an alternatives analysis to demonstrate why the proposed impacts are unavoidable.

Due to the extensive impacts associated with this request, Chairman North appointed a Panel to review the project, hold a public hearing and make a recommendation to the full Commission

concerning approval or denial of the request. The hearing was held on June 27, 2001 and was well attended by members of the community. Representatives of the School Board made a presentation to the panel outlining their justification for the request. Factors presented include:

1. The Interagency Committee on School Construction has a "guideline" of a minimum parcel size of 15 acres for new elementary schools. The existing school site is only 7.2 acres. The alternate site (the subject of this request) is closer in size (13.5 acres) to this guideline.
2. The Maryland Department of Transportation will require improvements such as a traffic light and acceleration and deceleration lanes if the alternate site is used. This will increase safety at the entrance to the school.
3. There are limited alternative sites on the Mayo peninsula. The community is nearly built-out and there are few parcels that are large enough to accommodate an elementary school.
4. There is a concern in the community about transporting the children to Annapolis Middle School during reconstruction of the school on the existing site. The trip will take 45 minutes and will include travel through the Route 2 widening project.
5. The amount of impervious surface proposed within the Critical Area on the alternate site is comparable to the amount proposed on the existing site.
6. A two-story school is proposed with less parking and sidewalks than usually approved.
7. Mitigation would be provided as required.
8. The project conforms insofar as possible with the County's Critical Area Program.

The School Board representative was asked if the School Board was abandoning the approval on the existing site. The School Board is not giving up the approval on the existing site but rather is seeking approval for the alternate site while holding onto the current approval.

COMAR 27.02.06 sets out specific criteria that must be addressed in consideration of a conditional approval.

The sponsoring agency must show that the project has the following characteristics:

1. *That there exist special features of a site or there are other special circumstances such that the literal enforcement of these regulations would prevent a project or program from being implemented;*
2. *That the project or program otherwise provides substantial public benefits to the Chesapeake Bay Critical Area Program;*

3. *That the project or program is otherwise in conformance with this subtitle.*

The conditional approval request must contain the following:

1. *A showing that a literal enforcement of the provision of this subtitle would prevent the conduct of an authorized State or local agency program or project;*
2. *A proposed process by which the project could be so conducted as to conform, insofar as possible, with the approved local Critical Area program; and*
3. *Measures proposed to mitigate any adverse effects of the project on an approved local Critical Area program.*

The Commission shall approve, deny or request modifications to the request for conditional approval based on the following factors:

1. *The extent to which the project is in compliance with the requirements of the relevant chapters of this subtitle;*
2. *The adequacy of any mitigation measures proposed to address the requirements of this subtitle that cannot be met by the project; and*
3. *The extent to which the project, including any mitigation measures, provides substantial public benefits to the overall Chesapeake Bay Critical Area Program.*

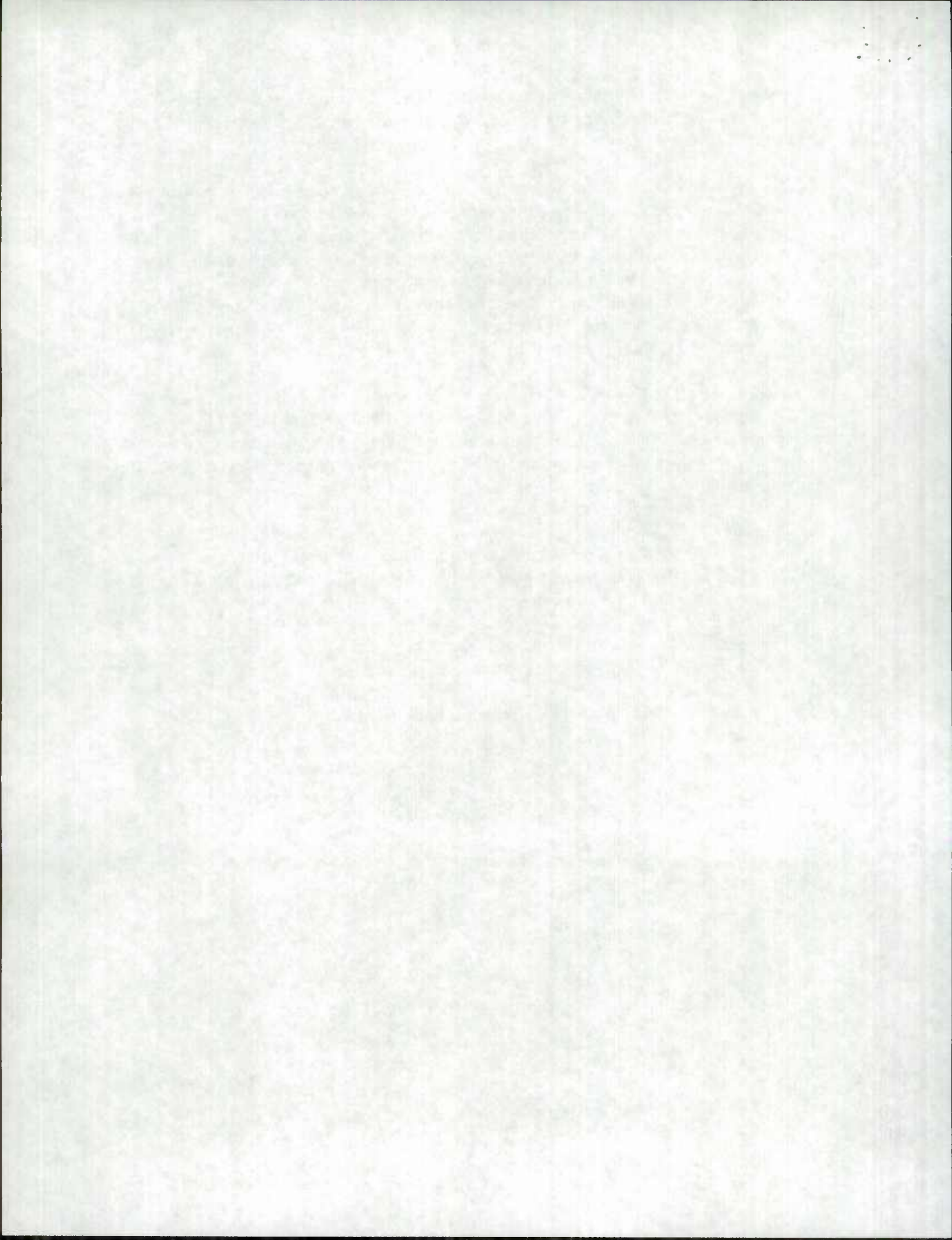
After the public hearing, review of the record and public comments, and a follow-up work session attended by all Panel members and Commission counsel, the Panel made the following draft findings in accordance with the factors listed above:

1. The Panel finds that the proposed project does not comply with the Anne Arundel County Critical Area Program or the Critical Area Criteria with regard to development standards in the Limited Development Area including the 15% impervious surface limitation, minimization of destruction of woodland vegetation, and protection of streams.
2. The Panel finds that the proposed project does not comply with the Anne Arundel County Critical Area Program or the Critical Area Criteria with regard to protection of Habitat Protection Areas including the Buffer and non-tidal wetlands.
3. The Panel finds that the project does not meet the requirements of COMAR 27.02.06. Specifically, there has not been a showing that the literal enforcement of the provisions of COMAR 27.02 would prevent the conduct of an authorized State or local agency project. Due to the Commission's conditional approval of the existing site and to the viability of rebuilding the school on the existing site, literal enforcement of the provisions would not

prevent a new school from being built. While the 15-acre minimum size "guideline" was cited as an issue, this "guideline" is not a regulation and there are no repercussions if this "guideline" is not followed.

4. The Panel finds that the School Board has not proposed a process by which the project could be conducted insofar as possible with the approved local Critical Area program. In fact, the proposed site layout places a prototype school and required accessory uses in the middle of the site, causing extensive Critical Area impacts. While other site layouts were discussed, it is not possible to eliminate the impacts without compromising the required school features or student safety. The Panel finds that, by using the existing approved site for the school, the School Board can conduct the project insofar as possible with the approved local Critical Area program.
5. The Panel finds that the School Board has not proposed adequate mitigation measures to address the Critical Area requirements. ~~The request did not include details of proposed mitigation;~~ rather **The School Board did not provide any specific information or details about proposed mitigation for the environmental impacts associated with this application.** The applicant addressed mitigation **only** in general terms and stated that the County may have a site available for planting. In addition to Critical Area forest mitigation, mitigation would also be required (by the Army Corps of Engineers) to offset impacts to the stream and non-tidal wetlands as well as the forest clearing outside of the Critical Area. (~~Strikethrough~~ and **bold** reflect changes made at the panel discussion the morning of the Commission meeting.)
6. The Panel finds that the project does not otherwise provide substantial public benefits to the Chesapeake Bay Critical Area Program.

Based on the above findings, the Panel recommends denial of the request for conditional approval.



IN THE MATTER OF THE REQUEST	*	BEFORE THE
OF THE BOARD OF EDUCATION OF	*	STATE OF MARYLAND
ANNE ARUNDEL COUNTY FOR	*	CHESAPEAKE BAY
CONDITIONAL APPROVAL OF	*	CRITICAL AREA COMMISSION
THE MAYO ELEMENTARY SCHOOL	*	
ALTERNATIVE SITE	*	APPEAL NO. _____
	*	

NOTICE OF APPEAL

The Board of Education of Anne Arundel County (hereafter referred to as "the Board"), by its attorneys, Reese and Carney, LLP, P. Tyson Bennett and B. Darren Burns, appeals the disapproval of its request for conditional approval for construction of a new Mayo Elementary School, and in support of its appeal states as follows:

1. The Board is a public agency that is vested by law with the responsibility and authority to control education matters within Anne Arundel County, and with the duty to promote the interests of the schools under its jurisdiction.
2. In carrying out these duties, the Board determined that it was necessary and desirable to construct a new Mayo Elementary School.
3. The current Mayo Elementary School is located on a 7.28 acre parcel of land that lies within the critical area. In order to consider building a new school on this site, it was necessary for the Board to seek conditional approval from the Chesapeake Bay Critical Area Commission (hereafter referred to as "the Commission"), as construction would exceed the impervious surface limits on the site. Specifically, impervious surfaces were projected to increase from 20% to 33%.
4. In August, 2000, the Commission granted conditional approval for the Board to exceed the impervious surface limits on the existing site.
5. For a number of reasons, not the least of which is the limited size of the existing site, the Board began consideration of construction of the replacement school on a site directly across the road from the existing school. This consideration was prompted by numerous concerns expressed by residents of the community served by the school.
6. In looking at the alternative site, the Board noted that it is 13.56 acres in size, much closer to the 15 acre minimum recommended by the State Interagency Committee on School

Construction. The Board also was aware that construction of the school on the alternative site would avoid the necessity of finding a temporary home for the students and staff during the construction phase.

7. With this and other factors in mind, the Board approached the Commission and sought conditional approval for construction of the replacement school on the alternative site.

8. On June 27, 2001, a five member panel of the Commission conducted a public hearing on this request. At that time, the panel received testimony and evidence from the Board's representatives, from residents of the community, and from the public at large.

9. Subsequently, the panel met on July 17, 2001, and conducted a public discussion of the issue. During this discussion, it became apparent to those observing the proceedings that members of the panel had obtained and received evidence and facts outside of the hearing process; information that had not been made known or available to the Board or the public. Specifically, one member of the panel reported that he had obtained information from the Department of State Planning and the Interagency Committee on School Construction regarding the 15 acre minimum size guidance. He advised the panel that it "shouldn't worry about" the size issue.

10. This evidence was obtained for the panel and used by the panel as part of the basis for its proposed findings as presented to the Commission. *See* Final Staff Report, adopted by the Commission on August 1, 2001, finding number 3.

11. This evidence was obtained and used outside of the public hearing process, was essentially *ex parte* information, and was not subject to cross-examination or review by the parties or the public.

12. In addition to the referenced information, a member of the Commission staff reported to the panel during the same discussion that "Anne Arundel County has millions of dollars in reforestation funds they can't spend." This evidence also was obtained outside the public hearing process and was not a part of the public record. Yet, the panel obtained this information and considered it in the context of its discussion regarding mitigation measures.

13. The use by the panel of these and perhaps other unknown items of evidence that were not a part of the public record and that were gathered outside of the public hearing process was irregular and inappropriate, and denied the Board and other parties due process of law.

14. The findings and conclusions of the panel, as adopted by the Commission, were contrary to the evidence.

15. The findings and conclusions of the panel, as adopted by the Commission, were

contrary to the weight of the evidence.

16. The findings and conclusions of the panel, as adopted by the Commission, are not supported by the facts.

17. The decision of the Commission, adopting the recommendations of the panel, is arbitrary, capricious, unreasonable and contrary to law.

18. Pursuant to COMAR 27.02.08.02A, an agency "whose proposal for development has been disapproved by the Commission may appeal the disapproval to the full Commission for reconsideration within 30 days of receipt of the Commission's decision."

19. The Board received the Commission's disapproval by facsimile transmission on August 2, 2001.

20. COMAR 27.02.08.02B further provides that the Commission "shall afford the agency another opportunity to be heard on the matter, before the full Commission, within 30 days of receipt of notice of appeal"

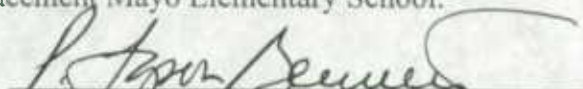
WHEREFORE, the applicant, Board of Education of Anne Arundel County, respectfully requests the following:

A. That the Commission afford the Board another opportunity to be heard on its request for conditional approval for construction of a replacement Mayo Elementary School on an alternative site.

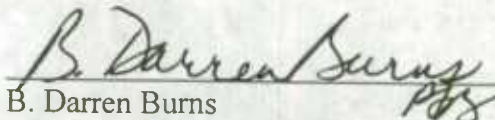
B. That the Commission give notice to those who participated in the previous public hearing process, and to the public at large, that this appeal has been filed and that further public proceedings will occur.

C. That the Commission, after taking such testimony and receiving such evidence as it deems proper, reconsider its previous action in adopting the recommendations of its panel.

D. That the Commission grant conditional approval to the Board for the use of the alternative site for the construction of a replacement Mayo Elementary School.



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Annapolis, MD 21401
(410) 573-2001


B. Darren Burns
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(410) 573-2001

Attorneys for the Board of Education of
Anne Arundel County

RECEIVED

AUG 31 2001

 CHESAPEAKE BAY
CRITICAL AREA COMMISSION

**APPEALS FROM COMMISSION DISAPPROVAL
OF PROPOSED DEVELOPMENT**

REQUEST FROM THE SCHOOL BOARD OF ANNE ARUNDEL COUNTY for reconsideration of Commission decision of August 1, 2001, denying request for conditional approval for construction of new Mayo Elementary School. Commission denial occurred on August 1, 2001. Request for Reconsideration received August 31, 2001.

For the Record:

- DATE, TIME, PLACE, PURPOSE of Today's Meeting of Full Commission
- AUTHORITY: COMAR 27.02.08.02 –Appeal from Commission Disapproval of Proposed Development

A. Available to State or local agency whose proposal for development has been disapproved.

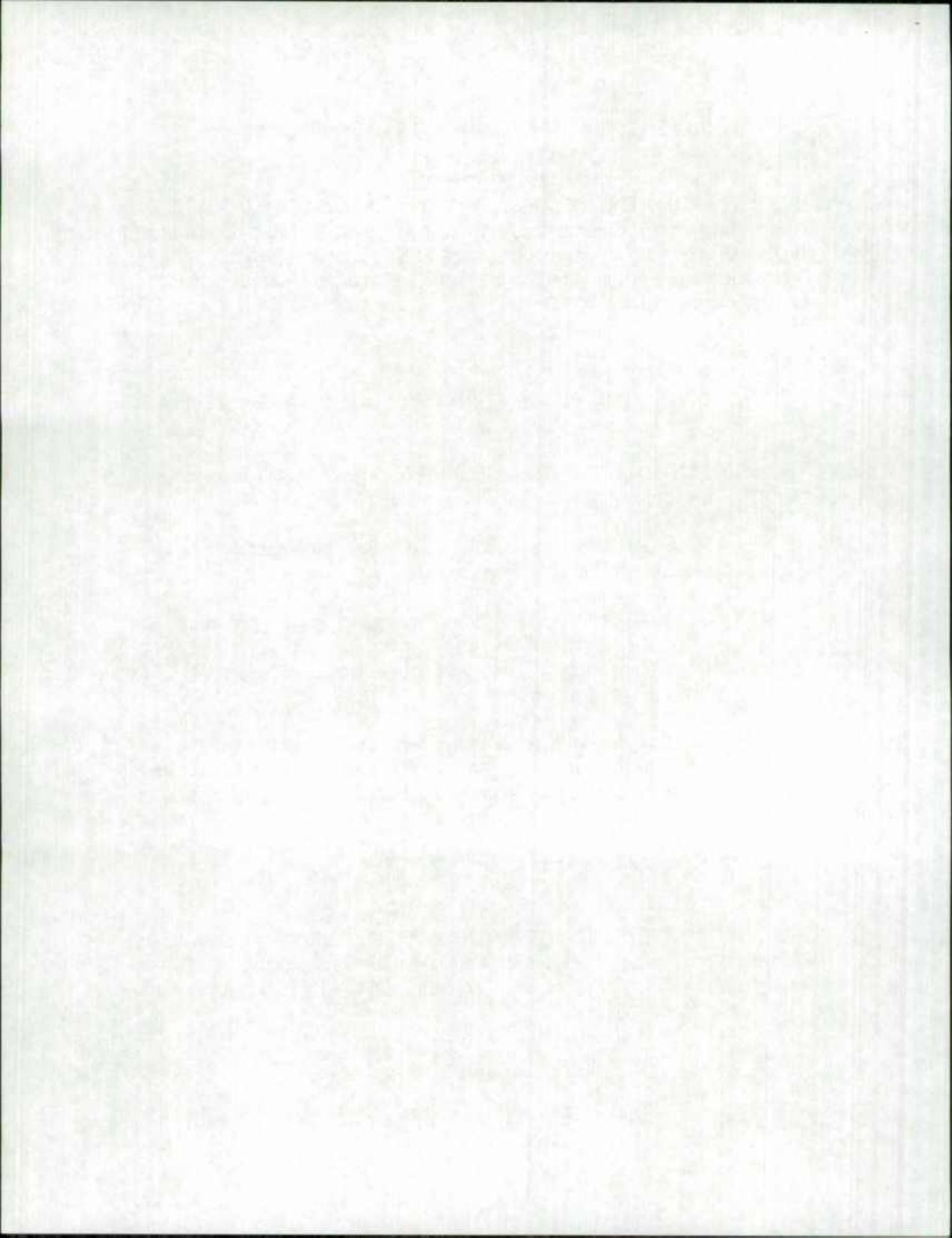
B. The Commission shall "afford the agency another opportunity to be heard on the matter."

The Commission shall issue its final decision in writing within 15 days of the reconsideration.

C. An Agency or other party aggrieved by final decision on reconsideration may bring "whatever appeal or civil action may be appropriate before the courts of this State."

COUNSEL identified for the record

TIMELINESS OF THIS PROCEEDING: COMAR 27.02.08.02 B would have required this proceeding to be conducted at Commission's September 3, 2001 meeting. Counsel for School Board waived time limit and agreed to today's date for the proceeding .



PROCEDURE

- 20-minute time limit on each Presentation (by Commission staff and by School Board)
- No additional testimony or evidence to be submitted
- Questions and Comments from Commission members are to be held for consideration at the conclusion of all presentations, and shall be directed to the Chair, not to the presenters.
- Order: Commission staff presents information about the request for conditional approval; the process the Commission followed in considering the request; the staff report of August 1, 2001; the Panel findings; and the Commission vote on August 1, 2001.
- School Board Counsel (or representative) presents argument on any and all issues the agency wishes to raise for the Commission's reconsideration of this matter.
- The Chair may entertain questions and comments from Commission members, and he may seek legal advice from Commission counsel on any legal matter arising from the presentations.
- At conclusion of presentations, any questions/comments from Commission members, and any further discussion permitted by the Chair, a vote will be taken.
- A written decision will be issued within 15 days, unless the Commission requests and receives a waiver of this time limit.

At the END:

Request waiver of 15 day written
decision time limit -

Consent to 30 days?

Amount to 30 days
Previous fine paid -
Payment amount of 15 days
to the City

Chesapeake Bay Critical Area Commission

STAFF REPORT

October 3, 2001

APPLICANT: State Highway Administration

PROPOSAL: Reforestation Package for the Woodrow Wilson Bridge

JURISDICTION: Prince George's County

COMMISSION ACTION: Vote

STAFF RECOMMENDATION: Approval with Conditions

STAFF: Lisa Hoerger

**APPLICABLE LAW/
REGULATIONS:** COMAR 27.02.05 State Agency Actions Resulting in
Development on State-Owned Lands

DISCUSSION:

At the July 5, 2000 meeting of the Commission, the replacement of the Woodrow Wilson Bridge project was approved by the full Commission with one abstention. That approval required four conditions including the following:

The Commission staff will be apprised of progress of the forest mitigation package, and will be involved in all future site visits or discussions pertaining to the forest resource package. Prior to construction, periodic updates shall be brought before the Commission's Project Subcommittee for review. The updates should include information that include efforts made to look on both public and private lands in the Critical Area, and including lands owned by land trusts. Sufficient documentation would include those alternatives examined, and justifications for selecting certain sites over others. Once the forest mitigation package is finalized, it will be brought to the Commission for review and approval.

Over the past year, SHA has complied with the above condition of the July 5, 2000 approval of the Commission by providing periodic updates to the Project Subcommittee, reviewing both public and private lands in the Critical Area for reforestation, and providing sufficient documentation and justification for selecting the proposed sites. Commission staff worked and made site visits with the Project Forester. Also, staff of Prince George's County Department of Environmental Resources (DER) and Mr. David Bourdon, Project Subcommittee Chairman provided assistance to the Project Forester by providing potential sites. Overall, the project involves a total of 44.7 acres of clearing within the Critical Area. Based on the required mitigation ratios, the project is required to replace 81.1 acres. The table below details those impacts both inside and outside of the 100-foot Buffer and in the IDO, LDO and RCO (these acronyms are used by Prince George's County and are Intense Development Overlay, Limited Development Overlay, and Resource Conservation Overlay. They translate to IDA, LDA, and RCA). The table also provides the acreage cleared and necessary for replanting to satisfy the Reforestation Law.

Impacted Area	Proposed Impact (acres)	Mitigation Rate	Reforestation Requirement (acres)
CBCA 100' forested buffer	11.1	3:1	33.3
CBCA non-forested 100' buffer	4.9	3:1	14.7
Total Buffer Disturbance	16.0		48.0
CBCA Resource Conservation Overlay	0.0	3:1	0.0
CBCA Limited Development Overlay	2.2	3:1	6.6
CBCA Intense Development Overlay	26.5	1:1	26.5
Total Non-Buffer Disturbance	28.7		33.1
Total CBCA	44.7		81.1
Reforestation Law	42.7	1:1	42.7
Total Project	87.4		123.8

Proposed Reforestation Sites

In developing the reforestation package, Commission staff met with and conducted field visits with SHA and the project forester. Staff has allowed SHA to count a 300-foot Buffer as Buffer credit, and have also allowed SHA to use natural regeneration on selected sites. See attached maps that correspond with the sites below.

PAX49A Western Branch Wastewater Treatment Plant - The Washington Suburban Sanitary Commission (WSSC) owns the property at the Western Branch Wastewater Treatment Plant. This site is currently mowed and will provide .9 acres of forested Buffer along the Patuxent River. The site has been regularly mowed in the past, however WSSC has expressed desire to cease mowing upon planting. The planting site within the Critical Area will consist of Buffer planting. Any planting within 300 feet of tidal waters or wetlands will be utilized as Buffer reforestation. Reforestation of the site will increase the forested area on the property, add to the riparian buffer and increase wildlife habitat. Long term protection of the Buffer planting will be provided through Critical Area staff review of future WSSC projects on the site. No purchase of easement or property will be required. The site could be planted in the spring or fall, however a spring 2002 installation is recommended.

OHI1A-C National Park Service (NPS), Oxon Hill Farm - This site consists of three planting areas totaling 9.9 acres that would provide 6.7 acres of Buffer and 3.2 acres of reforestation mitigation. Two areas are open fields currently vegetated with grasses and receive regular mowing. The third area at this site proposed for planting is an open area that was used as a baseball field in the past and is currently vegetated with thick fescue, other herbaceous vegetation and some scattered pioneer species of trees. The National Park Service has expressed an interest in reducing mowing requirements as well a desire to have the riparian buffer to Oxon Cove completely forested. The site is located along Oxon Cove and would provide an increased riparian buffer, wildlife habitat and improve water quality. The plantings would increase the size of a large existing forest block in a

developed area and provide additional wildlife habitat, including the increase of Forest Interior Dwelling Bird (FID) habitat. The long-term protection of the site would be provided by the National Park Service (NPS) and a Memorandum of Understanding (MOU) between the State Highway Administration (SHA) and NPS ensuring protection of the reforested areas. The site is adjacent to the project area, in the Potomac River watershed and would significantly improve the riparian buffer along Oxon Hill Cove and between the landfill on the park property and the water. No purchase of easement or property will be required. The site should be planted in the spring due to deer browse and a spring 2002 installation is recommended.

PCR8 Puterbaugh Property -The site is currently utilized as pasture and vegetated by a variety of grasses and herbaceous plants. The property is privately owned and the owners have expressed an interest in selling a portion of the property, fee simple, for use as a reforestation area. The owners are considering two options; option one would involve the sale of approximately 29 acres of land and provide 5.5 acres of Buffer credit and 9.5 acres of reforestation (non-Buffer) credit. Option two would involve the sale of approximately 79 acres of land and provide 6.8 acres of Buffer credit and 53.2 acres of reforestation credit. The site has an old tenant house and three outbuildings in the reforestation area that would require removal. These buildings could be removed, leaving foundations in place with no excavation. Acquisition of the property, and the subsequent natural regeneration would provide wildlife habitat, improve the water quality, protect any cultural resources present, enlarge surrounding FID habitat and potentially enlarge the preserved area of Piscataway National Park. The long-term protection of the site would be provided by acquisition of the property, recordation of a protective easement on the deed and deeding of the property to an appropriate agency. The site is in close proximity to the project area, in the Potomac River watershed and would significantly improve the riparian buffer along Piscataway Creek. Natural regeneration of the site could begin immediately upon acquisition.

PAX81 City of Bowie – Hohensee Property - This site consists of an open field that has been used for agricultural production. The site is surrounded by existing forest, an area used for model airplanes and rockets and an existing reforestation area. The City of Bowie has inventoried all City owned Properties and prepared a listing of areas available for reforestation by the City, other agencies and developers. Currently the City is requesting \$5,000.00 per acre for use of the property for reforestation in addition to the cost of reforestation. The site is in the Patuxent River watershed and includes approximately 4.1 acres of Buffer and the potential for 25.9 acres of additional reforestation. The site would increase the size of existing large forest blocks, add to the greenway along the Patuxent River, Buffer the tidal wetlands along the river, improve water quality and add to existing FID habitat. Long-term protection of the site would require purchasing the conservation easement as noted above. Additionally, care would need to be taken to prevent conflicts with other uses on the property including the airplane and rocket club and Boy Scouts that camp on the property. The site could be planted in the spring or fall, however a spring 2003 installation is recommended. The reforestation plan for the site would need to meet requirements of the CBCA Commission and the City of Bowie Forest Mitigation Policies.

The table below provides the acreage figures associated with the mitigation sites described above. All are within the Prince George's County Critical Area. Three sites are in the Potomac River watershed and one site is in the Patuxent River watershed.

Site Description	CBCA Non-Buffer Acres	CBCA Buffer Acres		
		100' Buffer	101' - 300' Buffer	Total Buffer
PAX49A - Western Branch Wastewater Treatment Plant	0.0	0.1	0.8	0.9
OH11A-C - National Park Service, Oxon Hill Farm	3.2	4.3	2.4	6.7
PCR8 - Puterbaugh Property	53.2	1.8	5.0	6.8
PAX81 - City of Bowie Property - Hohensee Property	25.9	0.1	4.0	4.1
Totals	82.3	6.3	12.2	18.5
Acreage Required	33.1			48.0
Reforestation "Banked" (- = shortfall)	± 49.2			(-29.5)
CBCA Acres utilized for 1:1.5 Buffer credit				* 44.3 (29.5 x 1.5)
Reforestation "Banked"	± 4.9 (49.2-44.3)			0.0

To complete CBCA Buffer reforestation obligations the Project will utilize the "Banked" CBCA receiving 1 acre of Buffer credit for every 1.5 acres of CBCA reforestation. The project requires 48 acres of Buffer plantings. Only 18.5 acres of the four sites proposed in the reforestation package could accommodate Buffer plantings. The remaining 29.5 acres owed is proposed to be provided by planting 1.5 acres for every remaining acres owed for Buffer mitigation.

Proposed Conditions:

- 1) State Highway Administration will return to the Commission for approval of new sites if any of the proposed sites are not secured due to unforeseen circumstances at this time.
- 2) A Planting Agreement and Planting Plan will be agreed upon between Commission staff and the Project. The Planting Agreement will include who will hold the easements, and the Plantings Plan will include species selection and planting methods.

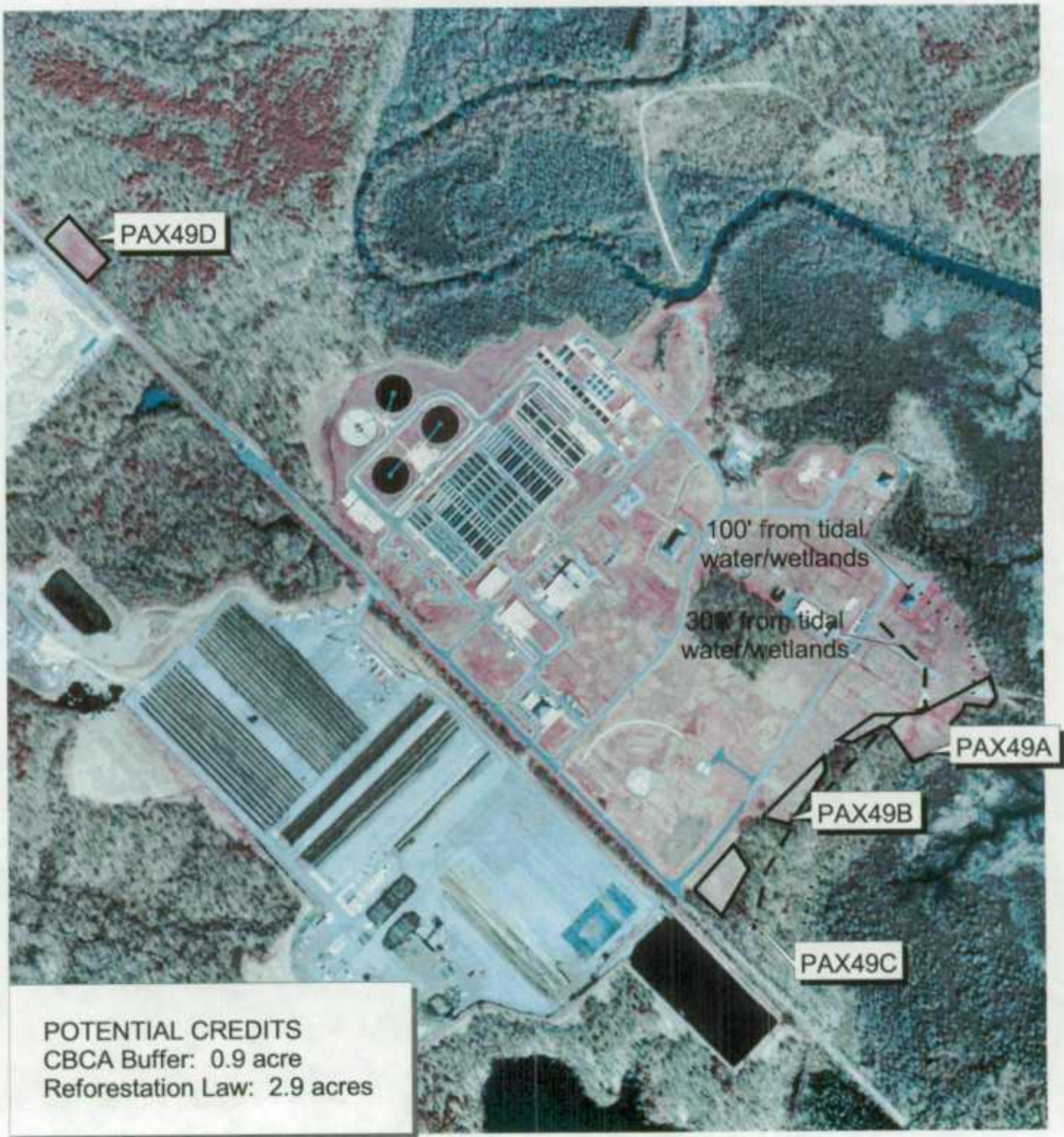
If you have any questions in the interim, please do not hesitate to contact me via telephone or email. (410) 260-3478 or lhoerger@dnr.state.md.us

Boundon - approval - 2 conditions
Wynkoop - second - / 2

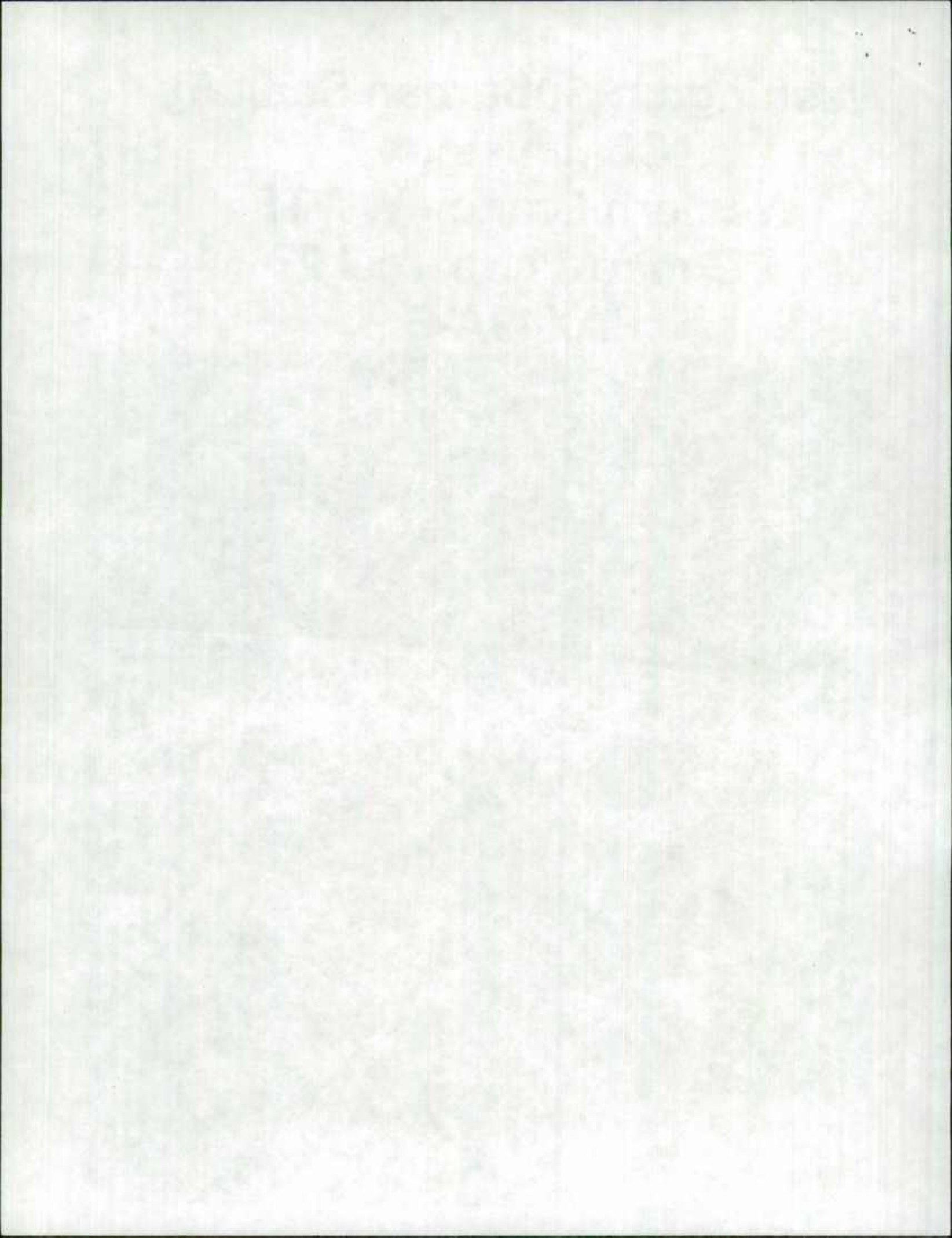
Washington Suburban Sanitary Commission Western Branch WWTP PG map 111 parcel 27 PAX49A-D



1" = 600'



POTENTIAL CREDITS
CBCA Buffer: 0.9 acre
Reforestation Law: 2.9 acres



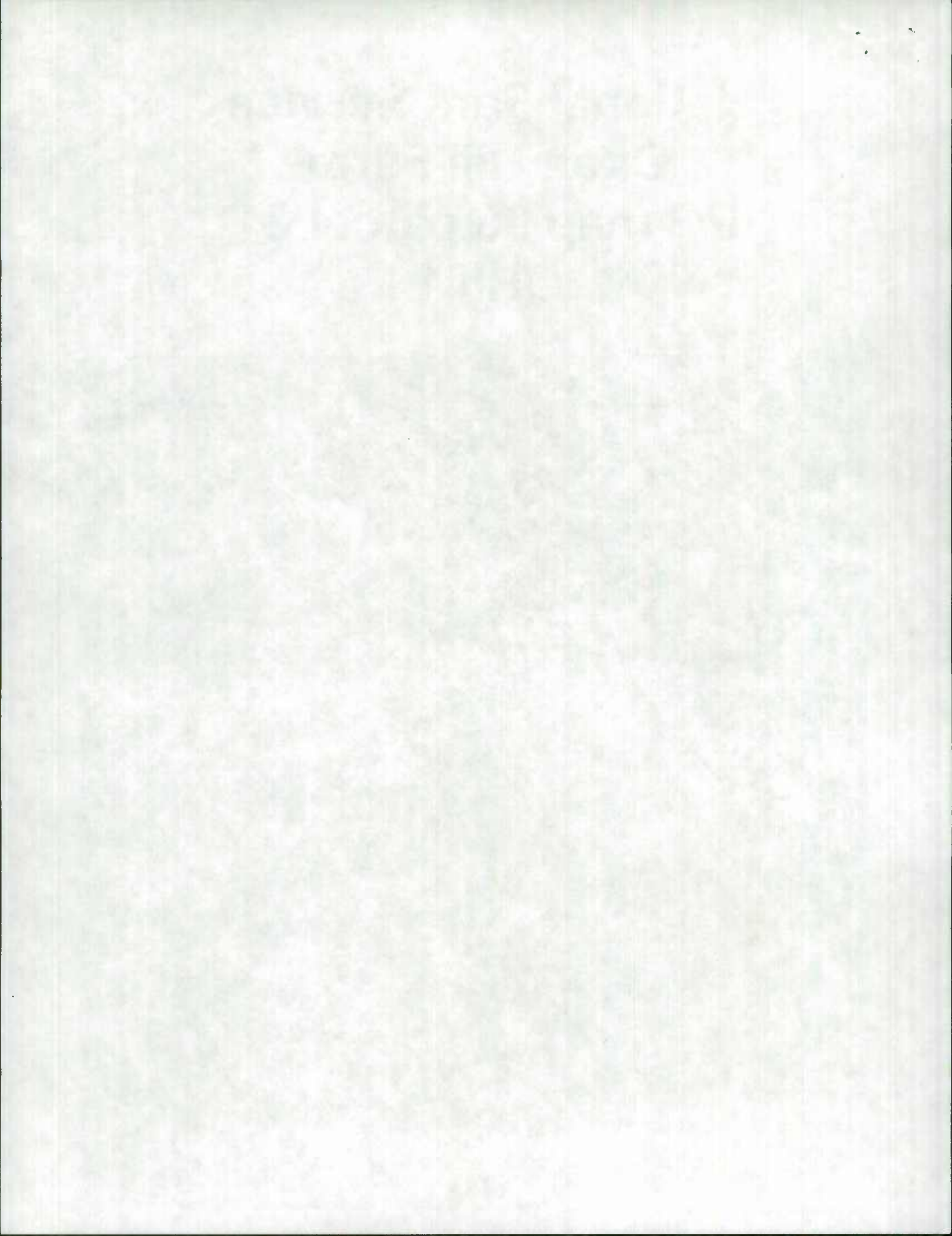
National Park Service Oxon Hill Farm PG map 95 parcel 24 OHI01

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1" = 600'

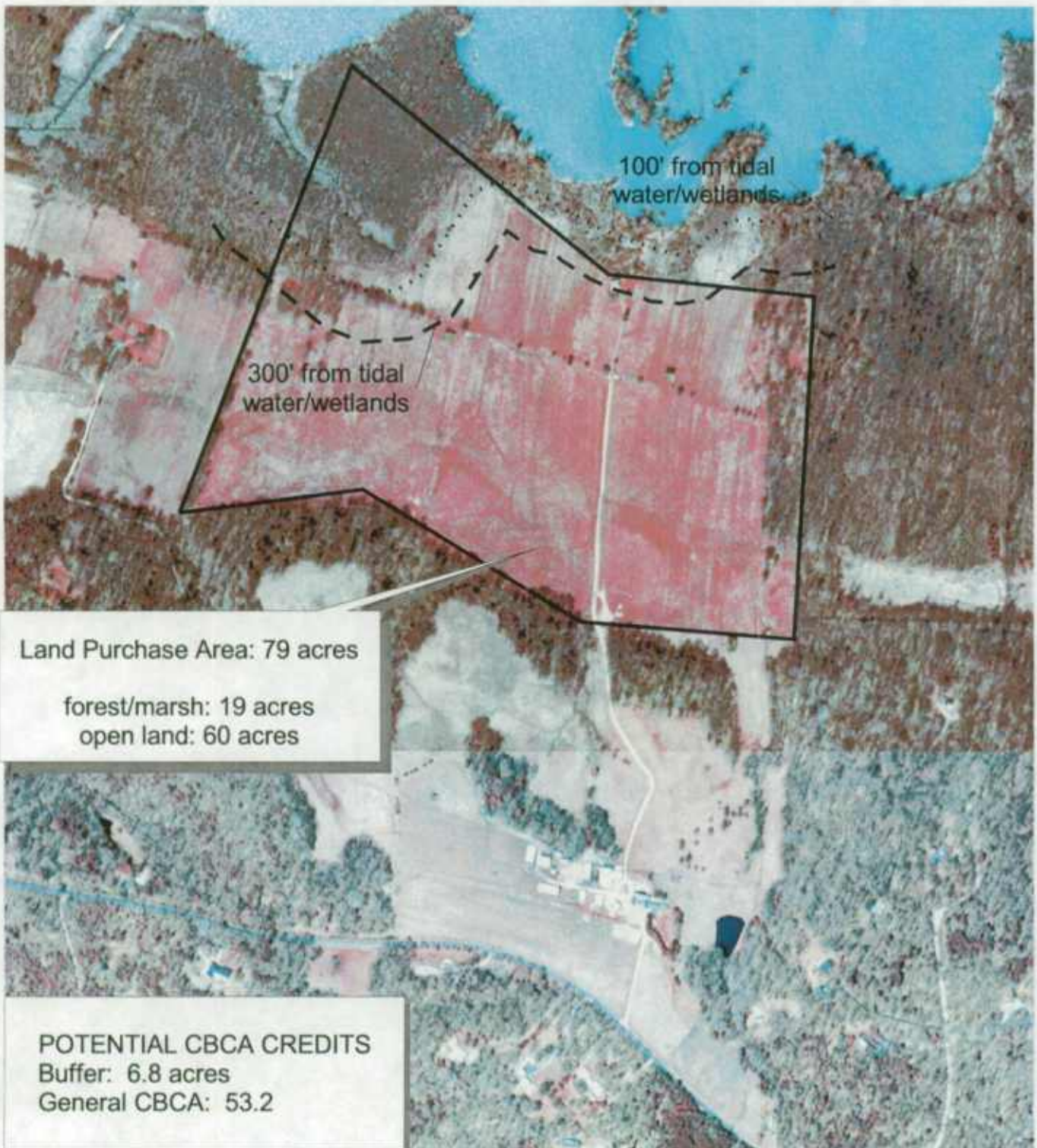


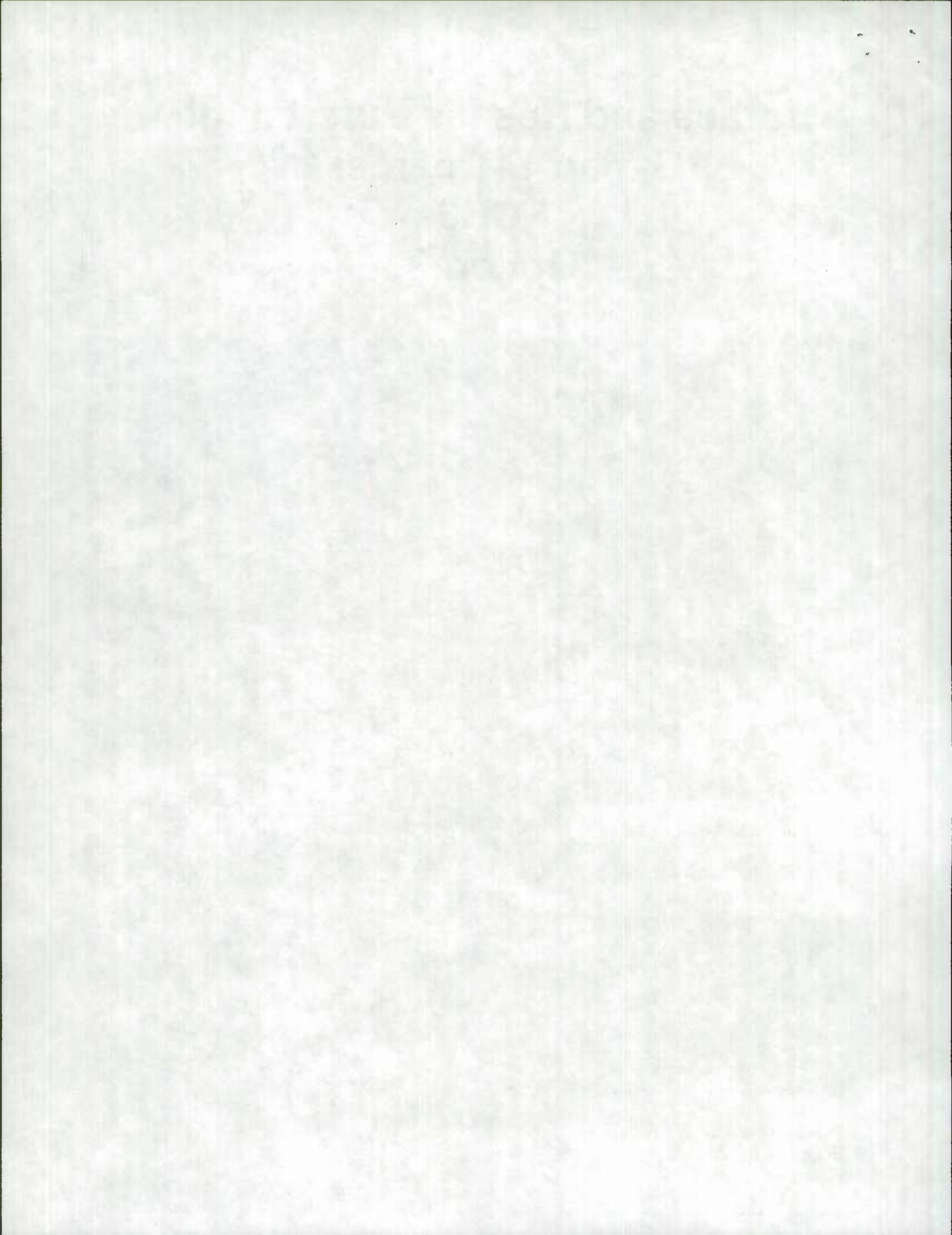


Horace and Rosalie Puterbaugh PG map 141 parcel 11 PCR8 Option 2



1" = 600'

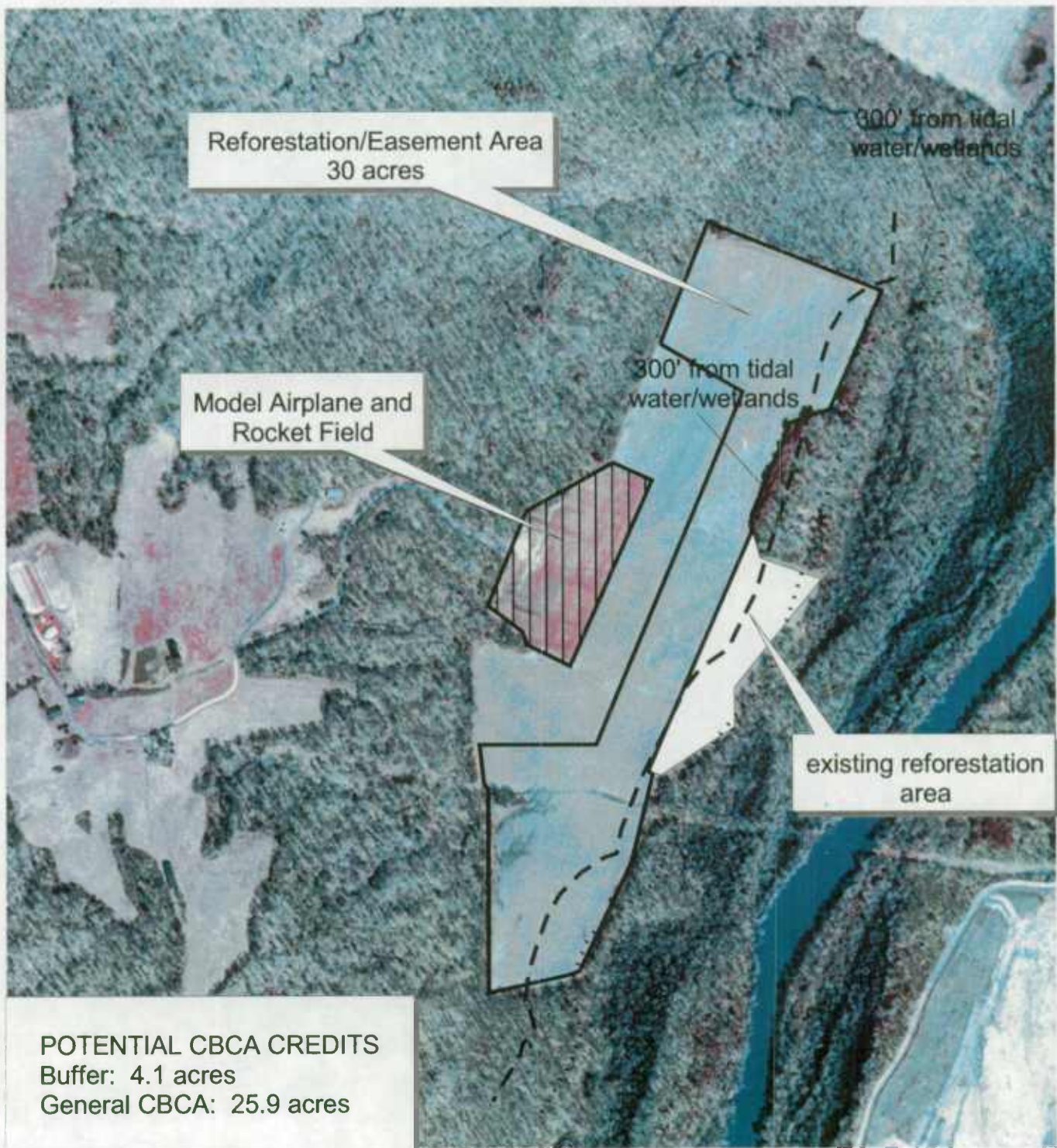


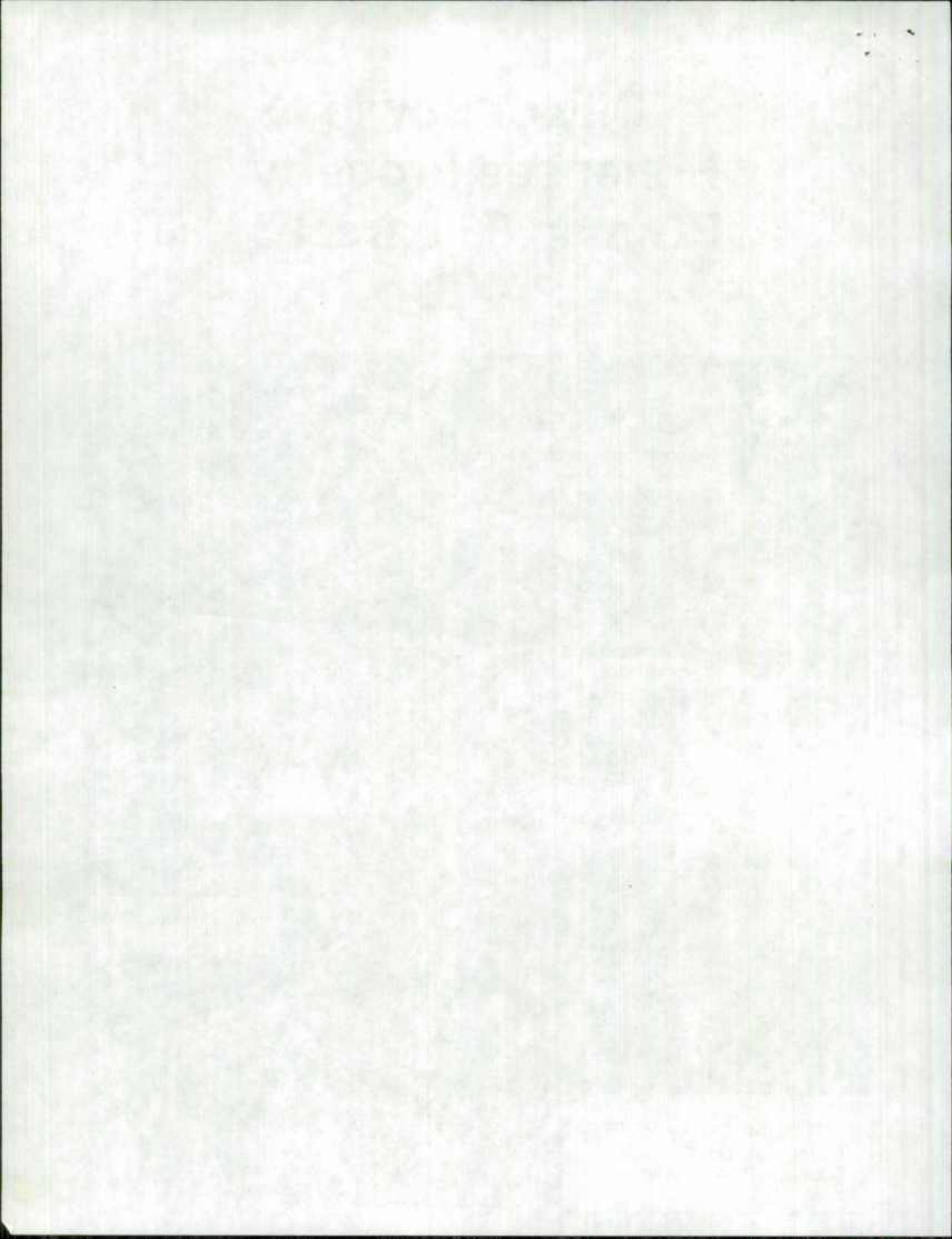


City of Bowie Hohensee Property PG map 86 parcel 3 PAX81



1" = 600'





**Woodrow Wilson Bridge Project
Maintenance and Monitoring of
Maryland Chesapeake Bay Critical Area Reforestation Sites
October 2001**

Planted Sites:

- The Project will conduct bi-annual inspections of plants for two (2) years and provide a written report to the Chesapeake Bay Critical Area Commission specifying the number of plants present per acre and the survival rate in May and October of each year. During the two year maintenance period the following survival rates will be required of the planting contractor.

1 ½" caliper material: 1st year = 90% of original number of plants acceptable.
2nd year = 80% of original number of plants acceptable.

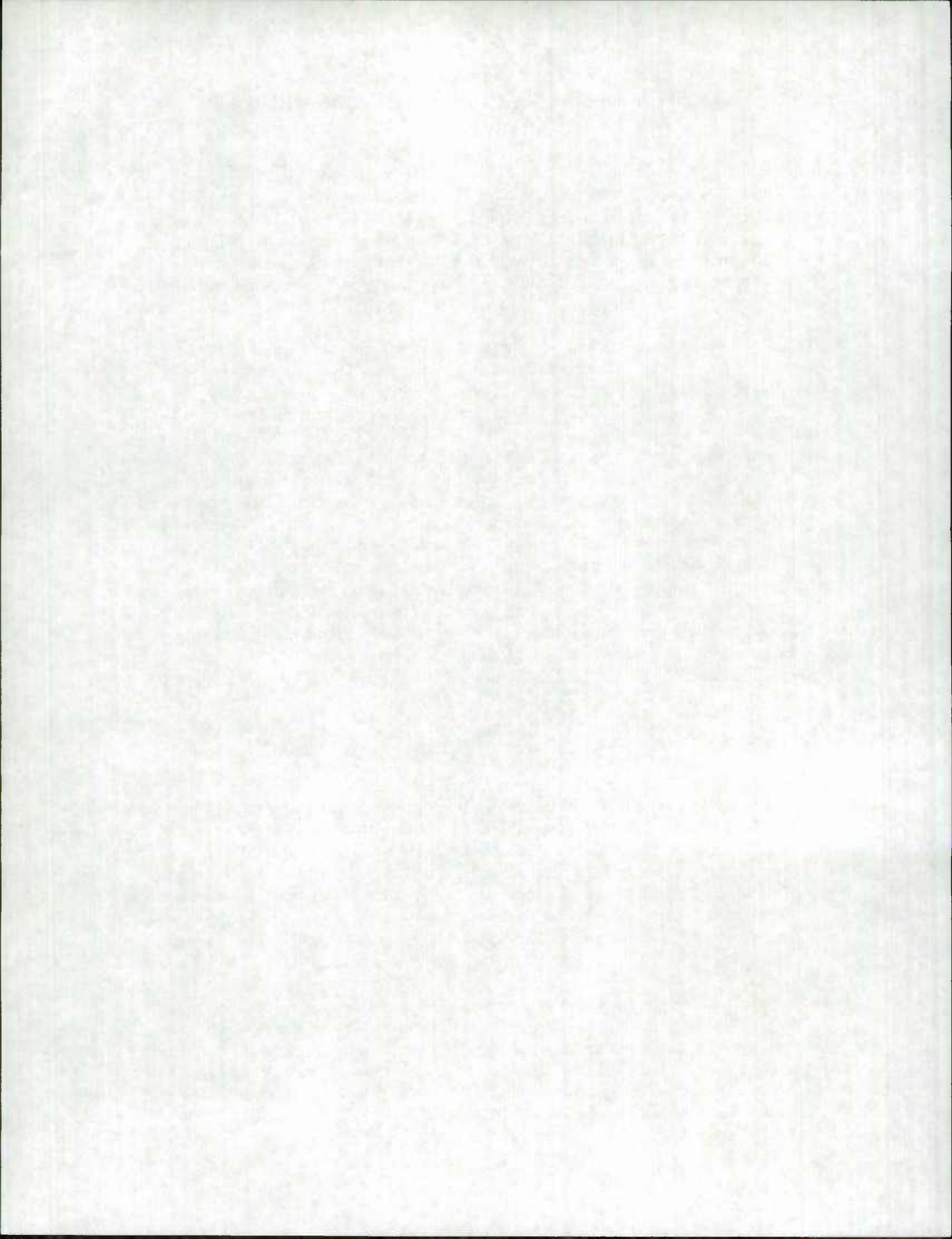
All other material: 1st year = 85% of original number of plants acceptable.
2nd year = 75% of original number of plants acceptable.

If acceptable plant survival rates fall below the specified percentage for the size material in a given year, replanting shall occur to the original specified planting number. If equivalent natural regeneration of native species are present and evenly spaced throughout the planting area, the natural regeneration may be utilized in determining the percentage of material with the exception of the 1 ½" caliper material. All replacement plantings shall be completed during the next proper planting season.

- The Project will provide, through the planting contractor, maintenance of the planted material through control of competing vegetation, maintenance of treeshelters and synthetic mulch mats through bi-annual inspections, applications of deer repellants and herbicides as required by site conditions and periodic watering during the first year of establishment.

Natural Regeneration Sites:

- The Project will conduct bi-annual inspections of plants for two (2) years and provide a written report for field conditions in May and October of each year to the Chesapeake Bay Critical Area Commission specifying the number of acceptable plants per acre, any invasive plant species present and other field observations pertinent to the success of the site naturally reverting to an early successional forest. The site will be considered forested upon establishment of a minimum of 385 acceptable, evenly distributed, native stems per acre established throughout the site.
- The two year inspection period may be extend for up to three (3) additional years if a minimum of 385 naturally occurring, native tree species have not been established on the site.
- The two year inspection period may be extend for up to three (3) additional years if it is found that significant invasive species have invaded the site and will impede the establishment of native, natural occurring tree regeneration. Remedial action to correct any invasive plant problems will not involve land disturbing activities (including tree planting) to prevent disturbance to cultural resources present, however, it may include the cutting of vegetation and the use of chemical controls.



Chesapeake Bay Critical Area Commission

STAFF REPORT

October 3, 2001

APPLICANT: Anne Arundel County Department of Public Works

PROPOSAL: Expansion of the Woodland Beach Pumping Station

COMMISSION ACTION: Vote

STAFF RECOMMENDATION: Conditional Approval

STAFF: Lisa Hoerger

**APPLICABLE LAW/
REGULATIONS:** COMAR 27.02.06 Conditional Approval of State or
Local Agency Programs in the Critical Area

DISCUSSION:

The Anne Arundel County Department of Public Works is seeking approval to build additions to the existing Woodland Beach Pumping Station. The site is located to the north of Mayo Road, Maryland Route 253 and is approximately 1100 feet east of Maryland Route 2. The parcel is located within an Intensely Developed Area and Limited Developed Area and is .644 acres. The facility provides sewer service to communities inside the Critical Area in IDAs, LDAs and RCAs.

The project is the expansion of the existing Woodland Beach Sewage Pumping Station. The project will expand the pumping capacity of this facility from 2.52 to 4.2 million gallons per day. The project is necessary to maintain public sewer service to the planned service area as the existing pumping station is at capacity, and a moratorium has been issued for the Edgewater/Woodland Beach/ Londontown Service Area.

The project is being constructed as part of the Anne Arundel County Capital Improvement Program. The construction contract will be administered by the Anne Arundel County Department of Public Works. The project was endorsed by the County by inclusion within the Capital Improvement Program and the monies have been previously appropriated for funding.

On Tuesday, September 11, 2001 I visited the site. The existing station is within the 100-foot Buffer to a tributary stream and is situated on hydric soils. The addition will also be within the Buffer and on hydric soils; therefore the project requires conditional approval. A chain link fence surrounds the existing station, and the balance of the parcel is either dedicated to gravel parking areas or mowed lawn. The perimeter of the site is densely vegetated with a variety of species. The dominant vegetation in the immediate project

area is covered with invasive vines such as multiflora rose and Japanese honeysuckle. A mix of hardwood species and shrubs dominates the remainder of the site. The land uses surrounding this parcel are commercial.

The site is the only location that can be utilized for the purpose of providing additional sewer capacity for the surrounding area. The County proposes to set aside a percentage of the proposed 4.2 million gallons per day for existing subdivisions that are on septic in the event that these septic might fail in the future.

The applicant has performed the 10% Pollutant Reduction Calculations and is required to remove .012 pounds of Phosphorous. The selected Best Management Practice is a wet pond. Sediment control will be accomplished with silt fence, and the wet pond will act as a sediment basin during construction.

The existing impervious area is 3,136 square feet (0.072 acres). The proposed impervious area is 5,575 square feet (0.128 acres). Forest clearing in the IDA is 2,309 square feet (0.053 acres), and clearing in the LDA is 436 square feet (0.010 acres). The applicant will plant 2,701 square feet on-site and has already paid a fee-in-lieu to the County's Critical Area Reforestation Fund for the remaining mitigation. The County has required that all remaining forest on-site be placed in an easement.

The Administrative Hearing Officer of Anne Arundel County has heard and approved the variance to allow this disturbance in the Critical Area subject to certain conditions. Any approval by the Commission will include his conditions.

The Department of Natural Resources Heritage and Biodiversity Division indicates that no rare, threatened or endangered species are present on this site. The applicant has obtained approval from the County Soil Conservation District for the proposed sediment and erosion control plan and the stormwater management plan. No permits are required from the Maryland Department of the Environment since no wetlands are proposed to be impacted.

Conditional Approval Process

In order to qualify for consideration by the Commission for conditional approval, the proposing local agency must show that the project or program has the following characteristics:

(1) That there exist special features of a site or there are other special circumstances such that the literal enforcement of these regulations would prevent a project or program from being implemented;

There exists both special features and special circumstances on this site that preclude the Anne Arundel County Department of Public Works from siting the proposed building additions outside of the 100-foot Buffer and on hydric soils. The building additions will house the increase in sewer service capacity needed to serve the immediate communities

and future needs. The ability to hook up existing failing septic systems and new development activities to sewer service supports the goals of the Critical Area Program by improving the water quality of the nearby waterways and ultimately the Chesapeake Bay. This site is the only feasible location for expansion of these operations. Also, it will not be necessary to construct a second, stand-alone facility that may impact other resources.

Special circumstances include the relatively small project area owned by the County, and the need for sewer services in the surrounding communities.

(2) That the project or program otherwise provides substantial public benefits to the Chesapeake Bay Critical Area Program;

The expansion to the existing pumping station will provide additional sewer service to the surrounding communities. The County has imposed a moratorium on development activities in this area due to the lack of capacity at this facility. The County has chosen not to approve new development with septic systems. Also, the stormwater management pond will reduce on-site pollutants from leaving the site, and can serve as an environmental education facility for the school children and community at large.

(3) That the project or program is otherwise in conformance with this subtitle.

Except for the proposed impacts to the 100-foot Buffer to a tributary stream and impacts to hydric soils, the project is otherwise in conformance with the state criteria and the Anne Arundel County Critical Area Program. Critical Area staff conducted a site investigation to ensure this project is otherwise consistent with COMAR 27.02.06.

The Commission must find that the conditional approval request contains the following:

(1) That a literal enforcement of the provision of this subtitle would prevent the conduct of an authorized State or local agency program or project;

A literal enforcement would prevent Anne Arundel County Department of Public Works from providing additional sewer capacity that supports the water quality goals of the Critical Area Program.

(2) There is a process by which the program or project could be so conducted as to conform, insofar as possible, with the approved local Critical Area program or, if the development is to occur on State-owned lands, with the criteria set forth in COMAR 27.02.05; and

The County determined the project to be consistent with the local Critical Area program. The impacts to the 100-foot Buffer were granted via the local variance process by the Administrative Hearing Officer. The additional impacts will be offset by the water quality benefits of the proposed stormwater management facility. This facility is designed to reduce pollutant loadings by 10% over predevelopment levels. The applicant

is also providing plantings reforestation on-site, and has paid a fee to the County's Reforestation Fund. Finally, the project will provide sewer capacity for new development occurring on this peninsula.

(3) Measures proposed to mitigate any adverse effects of the project or program on an approved local Critical Area program or, if on State-owned lands, on the criteria set forth in COMAR 27.02.05.

The proposed plantings will result in increased water quality benefits and improved habitat protection. The stormwater management facility will provide an increase in water quality and quantity protection for this site. The design will provide for a 10% pollutant reduction of pollutant loadings.

Along with the conditions listed below, the conditional approval request is consistent with COMAR 27.02.06, the Commission's regulations for Conditional Approval of State or Local Agency Programs in the Critical Area.

Conditions:

The applicant will abide by the conditions imposed by the granting of the variance by the Administrative Hearing Officer. Consequently, these conditions include those offered by Ms. LeeAnne Chandler of the Critical Area Commission staff when she provided comments to the County on this variance request. Those conditions include the following:

1. The parcels shall be consolidated at the time of the building permit.
2. The limits of disturbance shall be as close to the proposed fence behind the pumping station as possible.
3. The applicant shall provide mitigation at a 3:1 ratio for all new disturbance within the Buffer.
4. The applicant shall retain as much existing vegetation as possible and afforest the area between the fence and the stream.
5. The applicant shall coordinate with the stream stabilization project as required by the Development Division's Environmental Section.

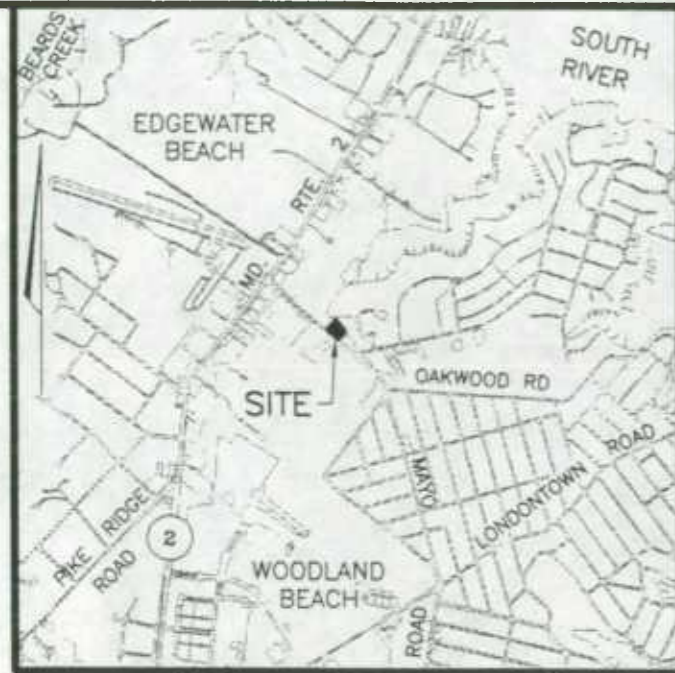
Please contact me with any questions or concerns at (410) 260-3478 or via email (lhoerger@dnr.state.md.us)

Boudon - approval of 5 conditions on pg 4 of staff report

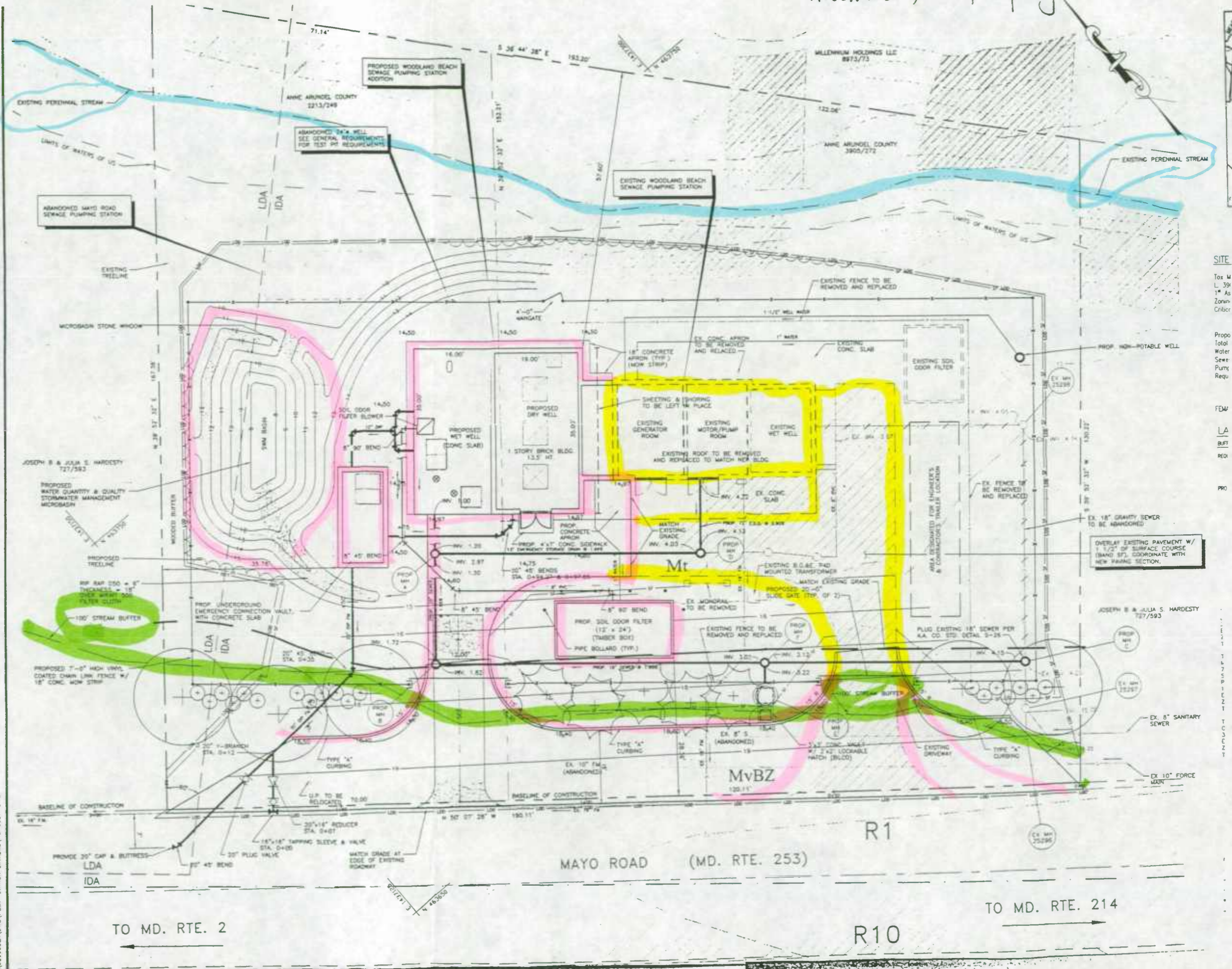
Muse - 2nd

review type

Woodland Beach Pumping Station



VICINITY MAP
SCALE: 1" = 2000'



Existing Building
Proposed Expansion

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*D. Boudon - approval as presented
Jackson recorded / CM*

Chesapeake Bay Critical Area Commission

STAFF REPORT

October 3, 2001

APPLICANT: University of Maryland – Center for Environmental Science

PROPOSAL: Horn Point Laboratory – Aquaculture and Restoration Ecology Laboratory

JURISDICTION: Dorchester County

COMMISSION ACTION: Vote

STAFF RECOMMENDATION: Pending Review of Additional Information

STAFF: Mary Owens

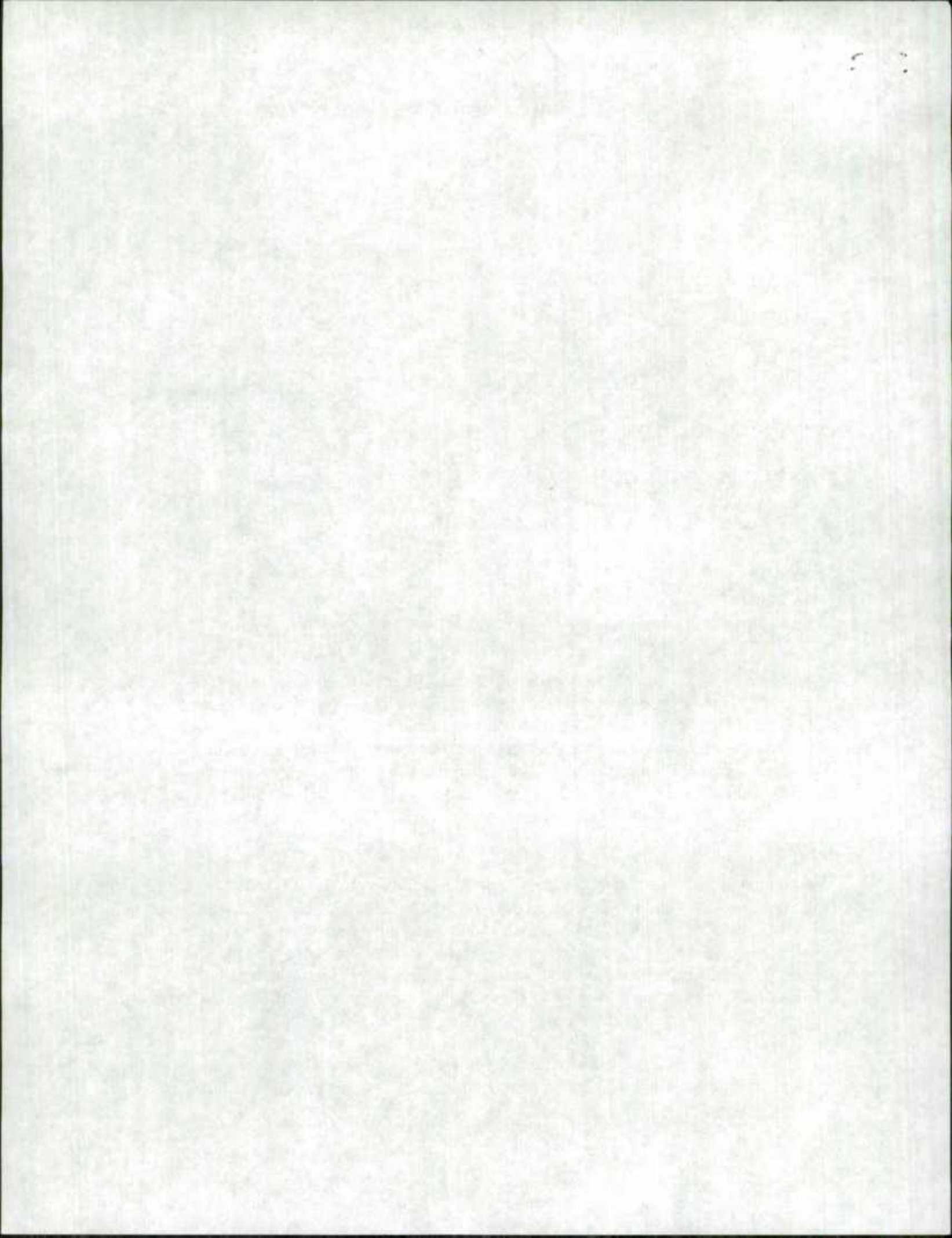
**APPLICABLE LAW/
REGULATIONS:** COMAR 27.02.05

DISCUSSION:

The University of Maryland's Center for Environmental Science (CES) proposes to construct an aquaculture and greenhouse facility at the Horn Point Laboratory outside Cambridge in Dorchester County. The proposed aquaculture and restoration ecology laboratory will serve as a research and education facility for conducting studies for shellfish and finfish aquaculture, submerged aquatic vegetation, and water quality programs. A greenhouse is also planned at the site and is required for the growth of algae for oyster studies. The single story 50,500 square foot facility is located within the Critical Area on land that is not considered to be intensely developed.

The Commission gave this project conceptual approval in November 1998 because the CES could not secure State funding without approval from the resource protection agencies. As the design plans were developed, it became apparent that the original location was not suitable for the requirements of the facility, and revised plans were submitted for conceptual approval in October 2000. The Commission conceptually approved the project as submitted with the condition that the project would require final approval by the Commission after design plans were finalized and prior to construction.

In addition to the condition pertaining to final approval by the Commission, there were two additional conditions. The first condition required that stormwater management plans be



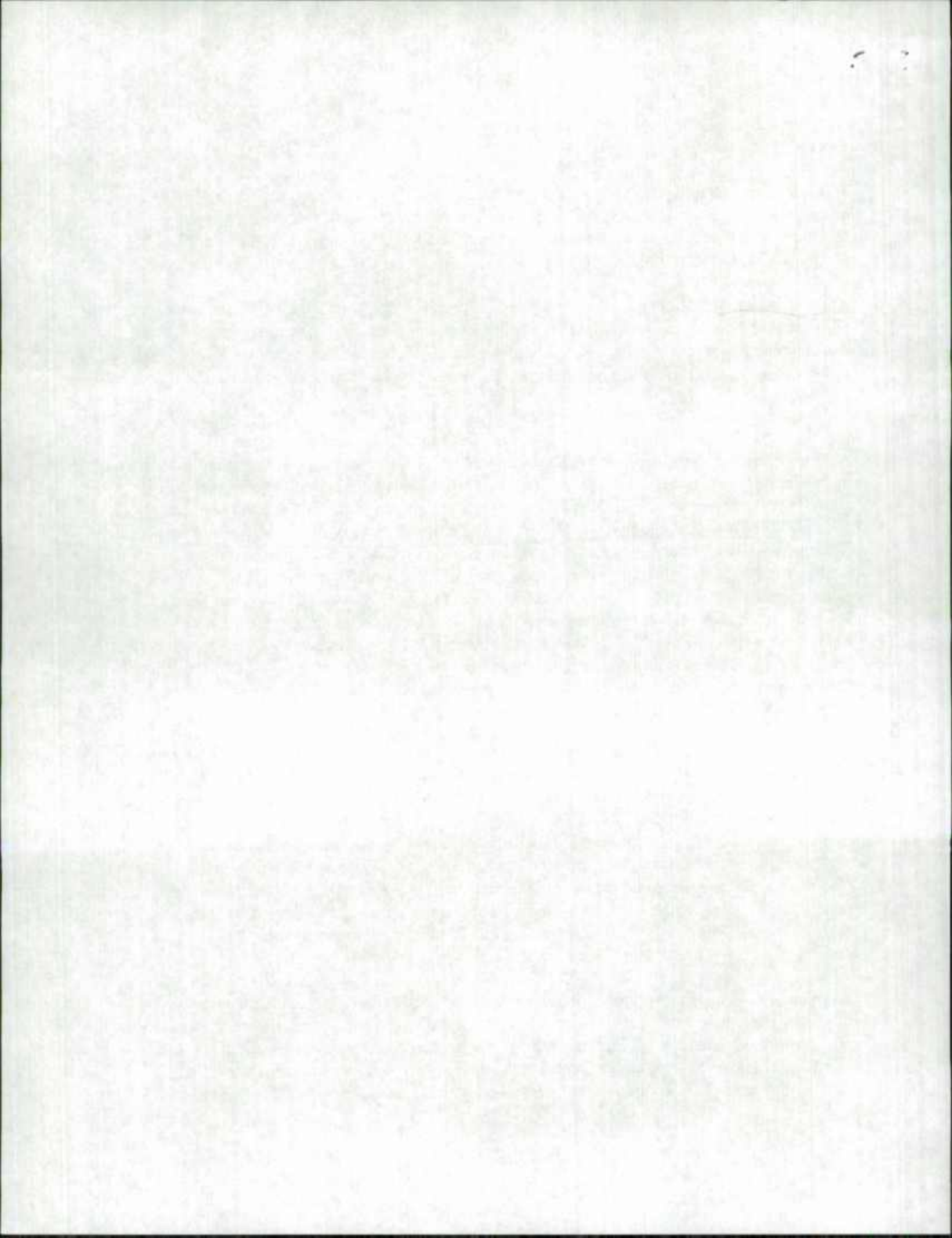
developed and submitted for Commission review and that stormwater management and sediment and erosion control plans receive MDE approval prior to Commission approval. The second condition stated that all forest impacts and associated mitigation should be detailed on the final site plan submitted for Commission approval.

At this time, the CES has submitted final plans for review and approval by the Commission. As proposed, the building will not impact any habitat protection area and there are no threatened or endangered species on site. Three fresh water wells and a water line that were originally located within the 100-foot Buffer have been relocated, and there are no proposed impacts to the Buffer.

Applications for MDE approval of the sediment and erosion control plans and stormwater management plans were submitted to MDE, and stormwater management and sediment and erosion control approval was issued on September 18, 2001. Because this project is not located in an area that is considered intensely developed, the 10% pollutant reduction requirement does not apply. The stormwater management strategy for this project has been developed in accordance with the 2000 Maryland Stormwater Management Design Manuals Volume I and II and involves nonstructural Best Management Practices. These practices include the use of disconnected roof leaders with sheet flow through buffer strips as well as level spreader devices at outlets. In all cases, stormwater will pass through a forested area before being discharged into tidal waters. In response to the Project Subcommittee's comments at the October meeting, the stormwater management system was revised. The level spreaders have been redesigned to better accept both sheet flow and concentrated flow, and they have been widened to better facilitate dissemination of stormwater through the forested buffers. The orientation and placement of the stormwater outfalls were also redesigned to optimize sheet flow through the forested buffers.

During the October Commission meeting, several questions were raised about the aquaculture operation within the building and any water quality impacts associated with the operation. The function of the three existing ponds on the site is to provide water quality treatment of water used in the aquaculture operation before it is discharged into the Choptank River. Staff from the Center for Environmental Science has provided additional information regarding the function and operation of the ponds. It is their intent that the amount of water withdrawn from the Choptank or discharged from the hatchery research areas will not change relative to existing conditions. The only change will be the location of the discharge. The Center currently has an MDE Discharge Permit of the aquaculture operation and is in compliance with the comprehensive and detailed provisions of the permit.

As requested, Center staff prepared estimates of the average daily nitrogen and phosphorus discharge from the ponds. They estimated a nutrient loading from the ponds of 2.7 pounds of nitrogen and 0.3 pounds of phosphorus per day. Center staff believes that their dilution calculations for the holding ponds show that the discharge of nitrogen and phosphorus into the cove would be trivial compared to the background nutrient concentrations. They believe that



University of Maryland/CES

October 3, 2001

Page 3

these figures are likely the maximum potential rates of export of nitrogen and phosphorus because they do not assume any uptake by the abundant plants in the ponds. This issue generated considerable discussion at the recent Commission meeting; therefore, Commission staff has requested additional information about the nutrient uptake provided by the plants in the ponds, and it will be provided at the meeting.

The project involves .79 acres of forest clearing which represents less than one percent of the existing forest cover on the 856-acre site. Reforestation is required at one-to one. The applicant has provided a forest mitigation plan indicating .80 acres of forest will be planted in the Critical Area near Dupont Cove. A mixture of native canopy, evergreen, and flowering tree species will be used.

Two drawings for this project are included in the mailing. The smaller scale drawing was provided to Commission staff on September 20, 2001 and reflects minor revisions to the stormwater system that were made prior to the issuance of the MDE permit.

