

Chesapeake Bay Critical Area Commission
Department of Housing and Community Development
People's Resource Center
Crownsville, Maryland
November 7, 2001

SUBCOMMITTEES

9:30 a.m. – 10:15 a.m. Project Evaluation Subcommittee

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

DNR: Shoreline Restoration/ Habitat Creation at
Horsehead Wetlands Center, Queen Anne's Co.

LeeAnne Chandler

SHA/DOT: Maryland 168 over Holly Creek
Anne Arundel County

Lisa Hoerger

9:30 a.m. – 10:15 a.m. Program Implementation Subcommittee

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

Queen Anne's County: Maryland General Land Company
Growth Allocation

LeeAnne Chandler

Cecil County: Cecil County Airport
Critical Area Extension
Growth Allocation

Mary Owens

**10:15 a.m. – 12:00 p.m. Joint Meeting of Project Evaluation
and Program Implementation
Subcommittees**

Julie LaBranche
Claudia Jones
Mary Owens
Ren Serey

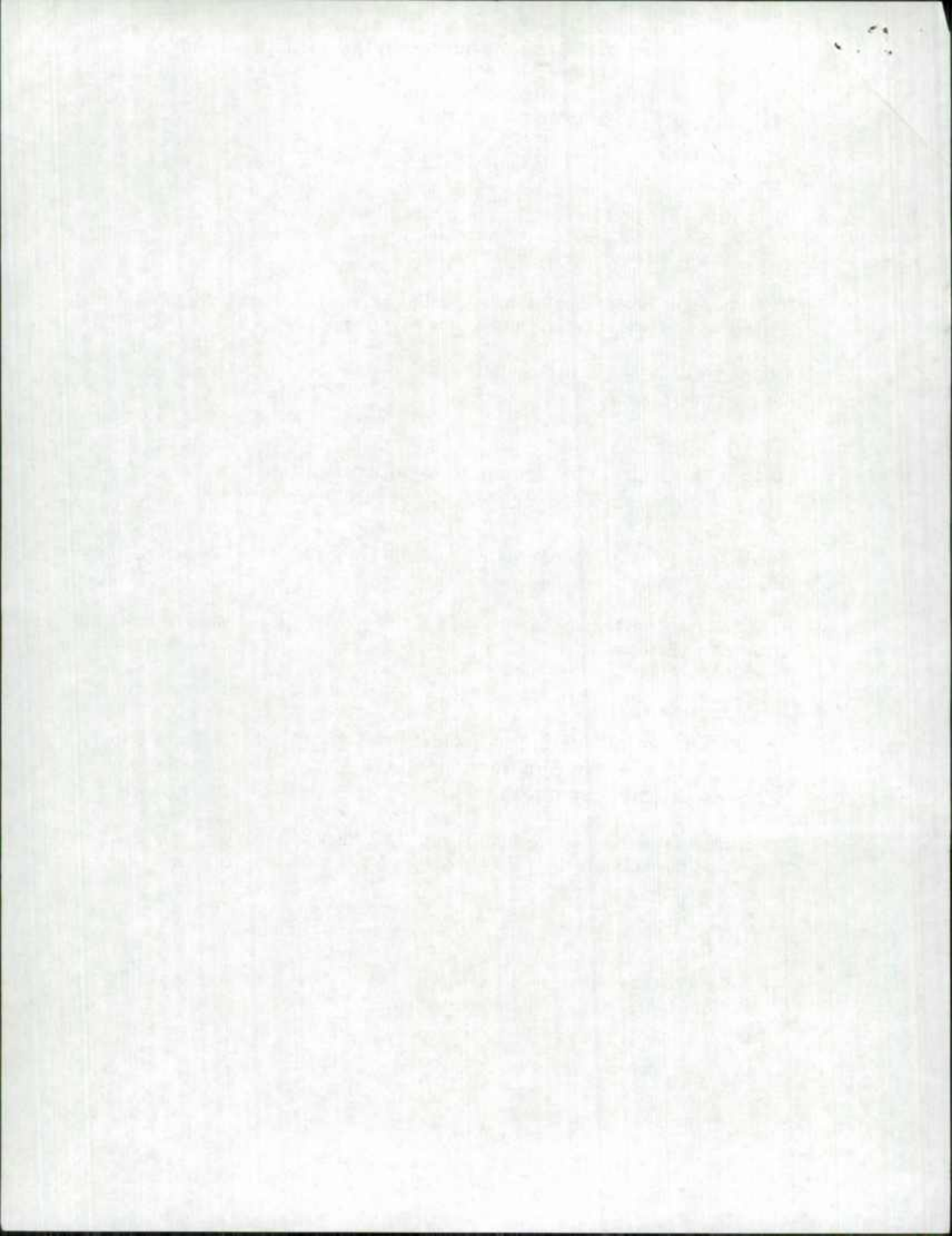
DNR/Erikson Foundation: NorthBay Camp at Elk Neck
State Park, Cecil County

12:00 p.m. – 12:15 p.m. Panel

Wicomico Co. Comprehensive Review
(Johnson, Duket, Giese, Jackson, Rice)

LeeAnne Chandler

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



Chesapeake Bay Critical Area Commission
 Department of Housing and Community Development
 Peoples Resource Center
 Crownsville, Maryland
 November 7, 2001

AGENDA

1:00 p.m. – 1:05 p.m.	Approval of Minutes of October 3, 2001	John C. North, II Chairman
1:05 p.m. – 1:25 p.m.	Special Presentation: Atlantic White Cedar Wetland Systems <i>Update Legislation</i> PROGRAMS	Keith Underwood <i>Ren Serey, Esq.</i>
1:25 p.m. - 1:45 p.m.	VOTE – Wicomico County Comprehensive Review	LeeAnne Chandler
1:45 p.m. - 2:00 p.m.	Refinement – Queen Anne’s County Maryland General Land Company Growth Allocation	LeeAnne Chandler
2:00 p.m. – 2:15 p.m.	VOTE – Cecil County: Cecil County Airport Critical Area Extension Growth Allocation	Mary Owens

PROJECTS

2:15 p.m. – 2:35 p.m.	VOTE – DNR: Shoreline Restoration/ Habitat Creation at Horsehead Wetlands Center, Queen Anne’s County	LeeAnne Chandler
2:35 p.m. – 2:50 p.m.	VOTE – SHA/DOT: Maryland 168 over Holly Creek, Anne Arundel County	Lisa Hoerger
2:50 p.m. - 3:05 p.m.	Old Business	John C. North, II Chairman
	Update – Legislation	Ren Serey
	Legal Update	Marianne Mason, Esq.
3:05 p.m. - 3:15 p.m.	New Business	John C. North, II Chairman

ten days, Feb.

update of register

Chesapeake Bay Critical Area Commission
People=s Resource Center
Department of Housing and Community Development
Crownsville, Maryland
October 3, 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. QA Co. | Giese, Wm. Jr. Dorchester County |
| Graves, Charles C., Baltimore City | Jackson, Joseph, Worcester County |
| Jones, Paul, Talbot County | Myers, Andrew, Caroline County |
| Olszewski, John A., Baltimore County | Wynkoop, Samuel, Prince George=s County |
| Samorajczyk, Barbara, Anne Arundel Co. | Witten, Jack, St. Mary=s County |
| Wynkoop, Samuel, Prince George=s County | Setzer, Gary, Md. Department of the Environment |
| Duket, Larry, Md. Dept. of Planning | Andrews, Meg, Md. Department of Transportation |
| Lawrence, Louise, Md. Dept. Agriculture | McLean, Jim, Governor=s Office of |
| Bailey, Margo, Kent County | Business and Economic |
| Wenzel, Lauren, Md. Department of Natural Resources | Development |

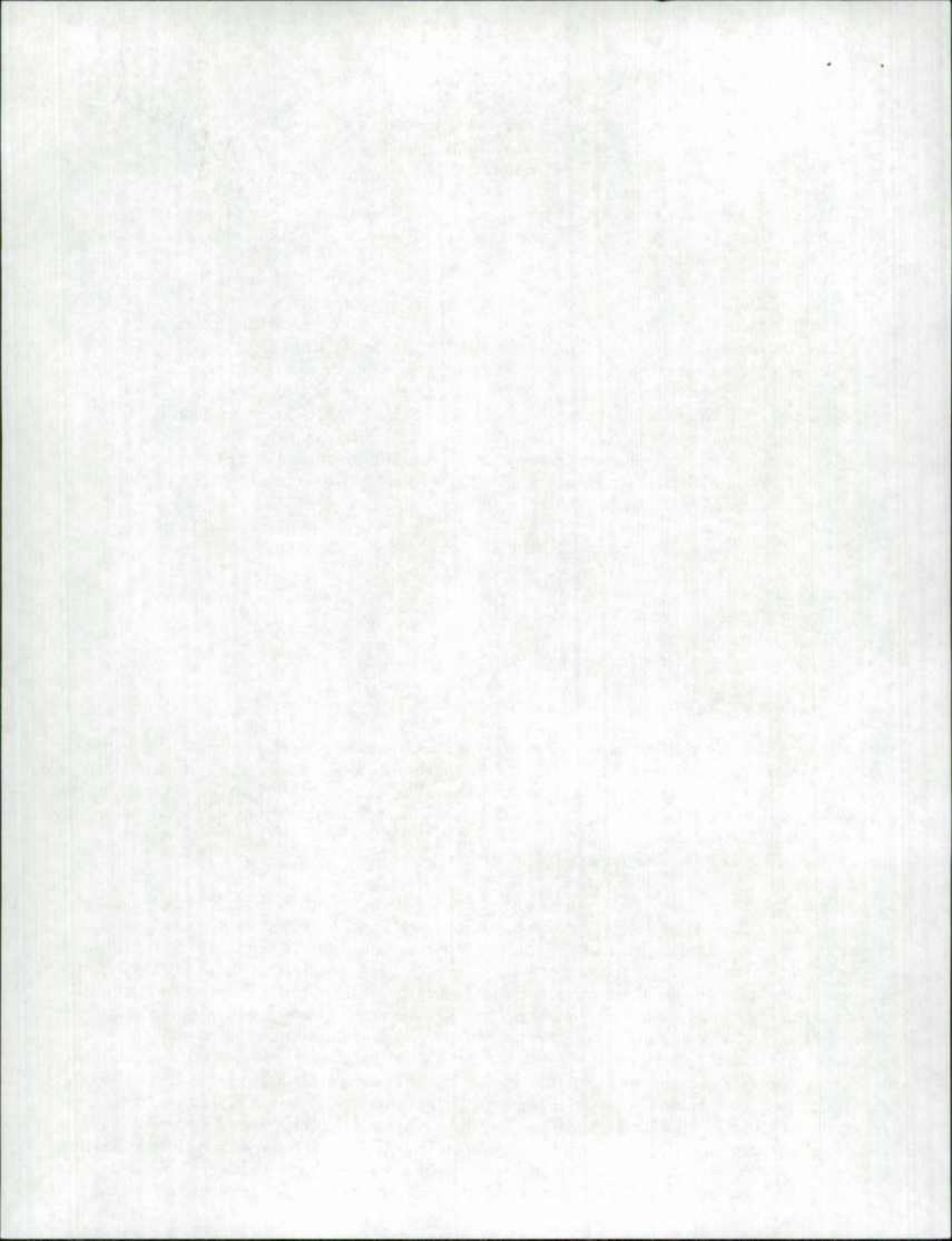
Not In Attendance:

- Bradley, Clinton, Eastern Shore Member at Large
- Rice, William, Somerset County
- Goodman, Bob, Md. Dept. Housing and Community Development

The Minutes of September 5, 2001 were approved as read.

Chairman North introduced the new Secretary of the Department of Natural Resources, the Honorable J. Charles Fox who pledged to learn more about the nationally known important work of the Critical Area Commission and to support any legislation of the Commission this year. Secretary Fox said that the Governor is interested in taking the lessons and information learned in the Chesapeake and applying it to the coastal bays in Worcester County although the form that it will take is not known at this time. The Commission=s new planner, Ms. Julie LaBranche was introduced.

Chairman North read into the record the Appeal Notice (attached to and made a part of the Minutes) filed by Anne Arundel County=s School Board=s attorneys to the Critical Area Commission=s decision to deny a conditional approval for construction of a new Mayo Elementary School on an alternative site. The Chairman also read the Procedural steps to be followed at the meeting. Ms. LeeAnne Chandler, Planner, CBCAC gave an overview of the request for conditional approval and the findings adopted by the Commission in making their decision to deny the request at the August meeting. Mr. Tyson Bennett, representing Anne Arundel County=s Board of Education agreed to waive the 15 day time limit with respect to the written decision with the understanding that it will be filed within 30 days. Mr. Bennett said that there are two reasons for seeking the alternative site for the school, one an engineering reason. In addition, every community association on the entire Mayo peninsula requested that the Board of Education explore construction of the school for this alternative site because the site is owned jointly by St. Andrews= Episcopal Church and the Community Association who came forward and agreed that their properties could be used for the school. This site is approximately twice the size of the original site. They are asking for a conditional approval for an alternative site without relinquishing last year=s conditional approval by the Commission of the original site because there is concern that there could be a

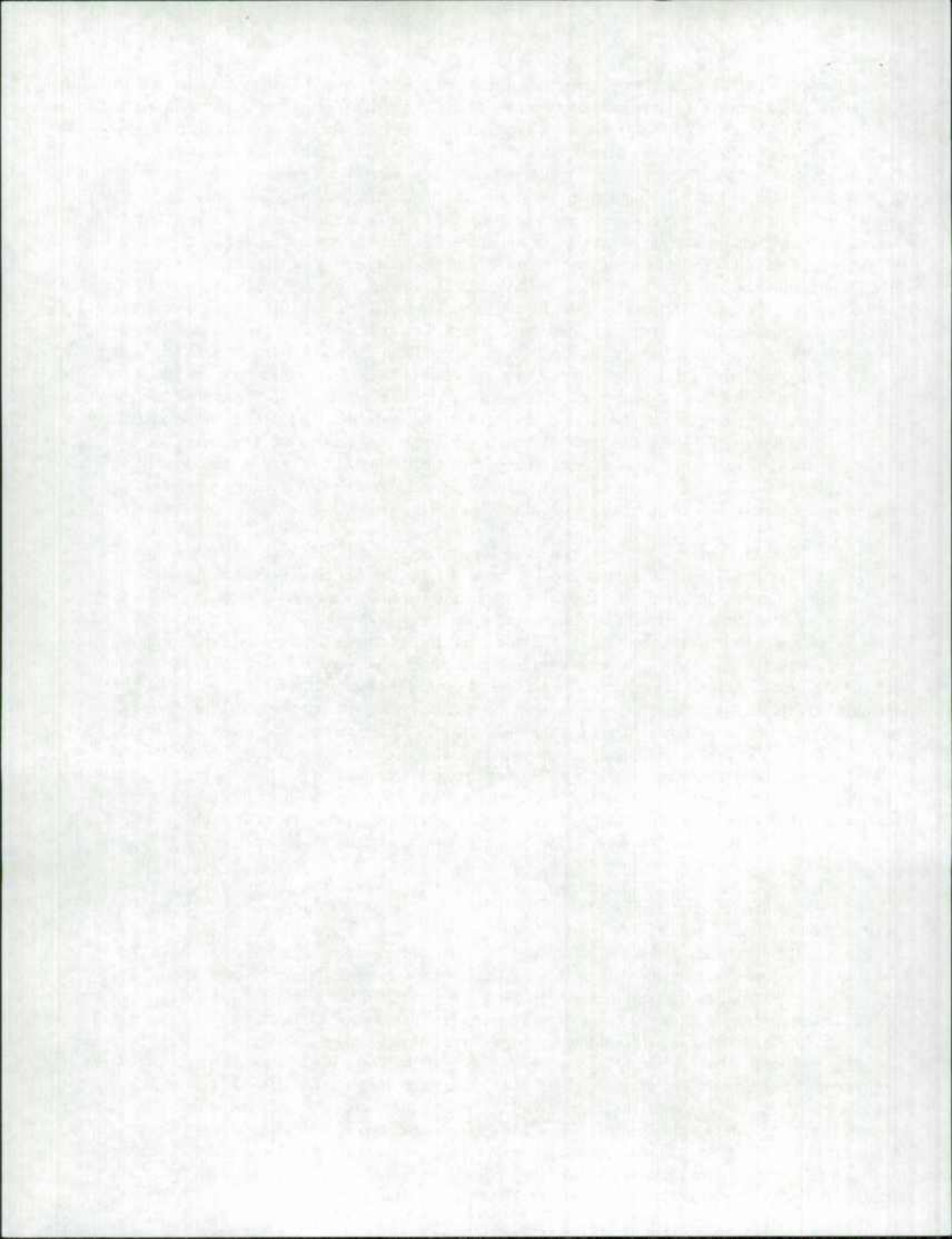


denial/denials for permits from other planning agencies on the original site and they would be left without a site. He stated that he believes that they had been deprived of an adjudicative hearing resulting in a flawed decision.

Marianne Mason, Commission Counsel, explained that the rights which the School Board claims to have to cross examine and to review all evidence that the Commission relies upon attach to an adjudicatory proceeding. She said that there is no right to an adjudicatory or contested case proceeding before a panel of the Commission or before the full Commission. Those kinds of rights, the rights to contested case hearings, are granted by statute or regulation or under the constitution. She said that she believes that the School Board has no constitutional right to an adjudicatory process and in searching the statutes and regulations under which the Commission holds these kinds of panel hearings, there is no right to a hearing in this kind of proceeding at all. Ms. Mason said that Commission regulation COMAR 27.02.07 provides that the Commission may hold a public hearing *if it wishes*. The usual practice for conditional approval is to *not hold* a public hearing except that because of the significant amount of interest in this case, the Commission held a hearing which was legislative in nature, a general fact-finding kind of hearing, similar to the kind of hearing the General Assembly might hold in considering a Bill. The Commission was looking at its Criteria, the standards for conditional approval. Her advice was that there is no obligation to provide an opportunity for cross examination or any of the other adjudicatory processes that was attached to the type of hearing that the School Board is referencing in its cases. She said that the two issues raised, the 15acre recommended site size and the reforestation issue, are both a matter of public record and would have no impact on the decision. Dave Bourdon moved to confirm the position that the Commission has already taken - to deny the conditional approval request for construction of a new Mayo Elementary School on an alternative site. The motion was seconded by Jim McLean and carried unanimously.

Lisa Hoerger, Planner, CBCAC presented for Vote the Reforestation Package for the Woodrow Wilson Bridge project as a condition to the approval of the replacement of the Woodrow Wilson Bridge at the July 5, 2001 meeting of the Commission. She said that over the past year SHA has complied with the condition 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. 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. She described the four mitigation sites which have been identified in Prince George=s County - one is in the Potomac River watershed and one in the Patuxent River watershed. Dave Bourdon moved to approve the Reforestation Package for the Woodrow Wilson Bridge with two 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 identification of who will hold the easements and the Plantings Plan will include species selection and planting methods. The motion was seconded by Sam Wynkoop and carried unanimously.

Ms. Hoerger presented for Vote the Anne Arundel County Department of Public Works proposal to expand the Woodland Beach Pumping Station. It will be located in the 100 foot Buffer to a tributary stream and is situated on hydric soils which will require a conditional approval. Ms. Hoerger described the site for this project and said that it is the only location that can be utilized for the purpose of providing additional sewer capacity for the surrounding area. She said that 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. This conditional approval request was found to be consistent with COMAR 27.02.06, the Commission=s regulations for Conditional Approval of State or Local Agency Programs in the Critical Area. Dave Bourdon moved to approve the Anne Arundel County Department of Public Works Woodland Beach Pumping Station project with the five conditions recommended by the Critical Area Commission staff: 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~~ *identify a mitigation site to the Commission staff and plant the site* 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 County



Development Division's Environmental Section. The motion was seconded by Bill Giese. Ms. Samorajczyk moved to amend condition number 3 to delete Aprovide mitigation@ and insert Aidentify a site to the Commission staff and plant the site@. Both the movant and seconder to the motion accepted the amendment. The Chair called the question. The motion carried unanimously.

Mary Owens, Program Chief, CBCAC presented for Vote the proposal by the University of Maryland's Center for Environmental Science (CES) to construct an aquaculture and greenhouse facility at the Horn Point Laboratory outside Cambridge in Dorchester County. This project was given conceptual approval in November 1998 because the CES could not secure State funding without approval from the resource protection agencies. Revised plans were submitted for conceptual approval in October 2000 when the original location was found not suitable for the facility. The Commission gave the conceptual approval in October 2000 with the condition that the project would require final approval by the Commission after design plans were finalized and prior to construction. Two other conditions were required: The first was that stormwater management plans be developed and submitted for review by the Commission and two, that stormwater management and sediment and erosion control plans receive MDE approval prior to Commission approval. Final plans have been submitted by CES for review and approval by the Commission. Applications for MDE approval of the sediment and erosion control plans and stormwater management plans were submitted to MDE and approval was issued on September 18, 2001. Dave Bourdon moved to approve University of Maryland's CES project as proposed. The motion was seconded by Joe Jackson and carried unanimously.

Old Business

No old business reported.

Legal Update

Ms. Mason gave an update on legal issues. She said in the Bay Ridge Properties case in the Bay Ridge section of Anne Arundel County (where the County was trying to limit development based on an argument by the developer that he had grandfathered rights that exempted him from the Critical Area law wherein he could create 160 lots in a relatively small area)the Commission and staff were prepared to testify in support of the County. That case was resolved successfully when the community surrounding this site bought the property. At the very moment that the contested hearing was about to start the deal was closed.

She said that in the Four Seasons at Kent Island development, the Critical Area Commission has been sued twice by local citizens who have formed the Kent Island Defense League and she will present arguments in a motion to dismiss later this month in the Circuit Court in Queen Anne's County.

On the 12th of October in Salisbury Ms. Mason will try to convince the Wicomico County Circuit Court to uphold the County Board of Appeals' denial of a variance regarding Edwin Lewis's hunting cabins in the Buffer.

New Business

Claudia Jones reported that she has been working with students in a graduate course at the University of Maryland on a methodology to assist developers and local governments in the mitigation process when Forest Interior Dwelling Bird habitat is disturbed. She said that the Commission approved a guidance document last June for the conservation of forest interior dwelling bird habitat and that an important component of that is mitigation.

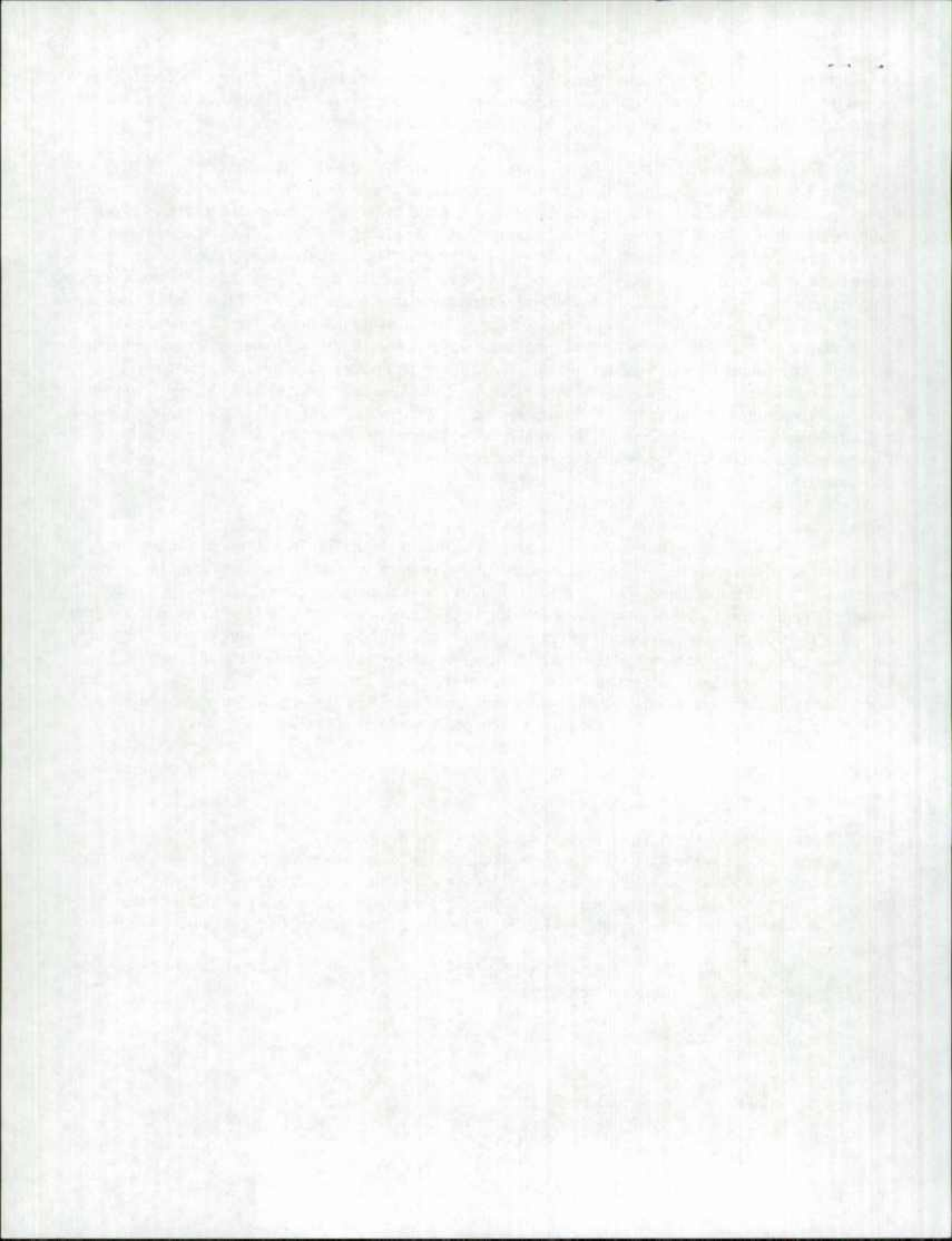
Chairman North appointed a panel for the Wicomico County Comprehensive Review, Q Johnson, Chair, Larry Duket, Bill Giese, Bill Rice, Joe Jackson.

There being no further business, the meeting adjourned.

Minutes submitted by:

Peggy Mickler

Commission Coordinator



CHESAPEAKE BAY CRITICAL AREA COMMISSION
1804 West Street, Suite100
Annapolis, Maryland 21401

MEMORANDUM

To: Project Evaluation Subcommittee (Bourdon, Witten, Giese, Goodman, Cooksey, Setzer, Graves, Olszewski, Jackson, McLean, Andrews, Jones, Rice, Pugh)
Program Implementation Subcommittee (Foor, Myers, Bailey, Evans, Barker, Wynkoop, Johnson, Lawrence, Duket, Samorajczyk, Bradley, Wenzel)

From: Julie LaBranche

Date: November 7, 2001

Subject: Northbay Camp Proposal at Elk Neck State Park, Cecil County
Department of Natural Resources and the Erickson Foundation

Introduction

The Department of Natural Resources is working with the Erickson Foundation on a lease agreement for 97 acres at Elk Neck State Park, with easements on an additional 253 acres for a camp for underprivileged youth. The camp will serve 500 children at a time, plus staff, on a year-round basis. The site is located between the Bowers Conference Center and the Boy Scout Camp on the western shore of the Park.

Due to the proposed scale of this project, which will require Commission approval, we have scheduled a joint presentation for both the Project Evaluation Subcommittee and the Program Implementation Subcommittee in order to provide guidance to the Erickson Foundation and the Department of Natural Resources.

Expanded Buffer. Along several areas of the shoreline, the presence of steep slopes requires expansion of the minimum 110-foot Buffer in Cecil County. At the request of the consultant, Commission staff delineated the expanded Buffer along the shoreline. Because the topographic characteristics vary widely across the shoreline, we applied a uniform method to expand the Buffer. Transects were located where significant changes in slope occurred across the area. At each transect, the average percent slope was calculated across a distance of 100 feet, measured perpendicularly from the zero contour landward, as specified in the Critical Area Criteria and the Cecil County Critical Area Program. The percent slope calculation was multiplied by 4 feet. This value was measured landward from the zero contour, at each transect, to establish the expanded Buffer. The consultant expanded the Buffer further to include streams, wetlands, and steep slopes contiguous to wetlands and streams. However, the expanded Buffer may need to be adjusted in some areas following additional project evaluation.

Forest Interior Dwelling Bird (FID) Habitat. The current site plan will impact a significant area of FID habitat, including areas of riparian forest and forest interior. In particular, the main access road and accessory roads will bisect a large wooded area in the center of the property, and buildings in the main camp area will impact substantial areas of FID habitat, including forest interior. Site design and mitigation will be considered under the Commission's Guide to the Conservation of FID Habitat.

Wetlands. At this time, the proposed storm water management plan and road alignment will impact wetlands and their buffers within the Critical Area. Also, a pier and dock are proposed but detailed plans for these structures have not been provided. It is unclear as to the type of activities, the amount and type of equipment, or how many persons the structures are expected to accommodate.

Commission staff evaluated National Wetlands Inventory data from MERLIN and the 1972 Tidal Wetlands maps and found that tidal wetlands may be more extensive within the Critical Area than shown on the site plans. This may effect the location of Buffers and the expanded Buffer. We recommend that a site evaluation be conducted to accurately delineate these wetlands and to further evaluate other resources including streams, buffers and FID habitat.

Impervious Surface. The applicant has not provided calculations of the impervious surface coverage within the Buffer and the expanded Buffer.

If you have any questions regarding this project, please contact me at (410) 260-3475.

GUEST HOUSING

CAMPER HOUSING

RECREATION COMPLEX
W/ INDOOR POOL

OFFICE, INFIRMARY
& LAUNDRY

DINING

DOCKS

BOAT HOUSE
& WATER LAB

VOLLEY BALL COURTS

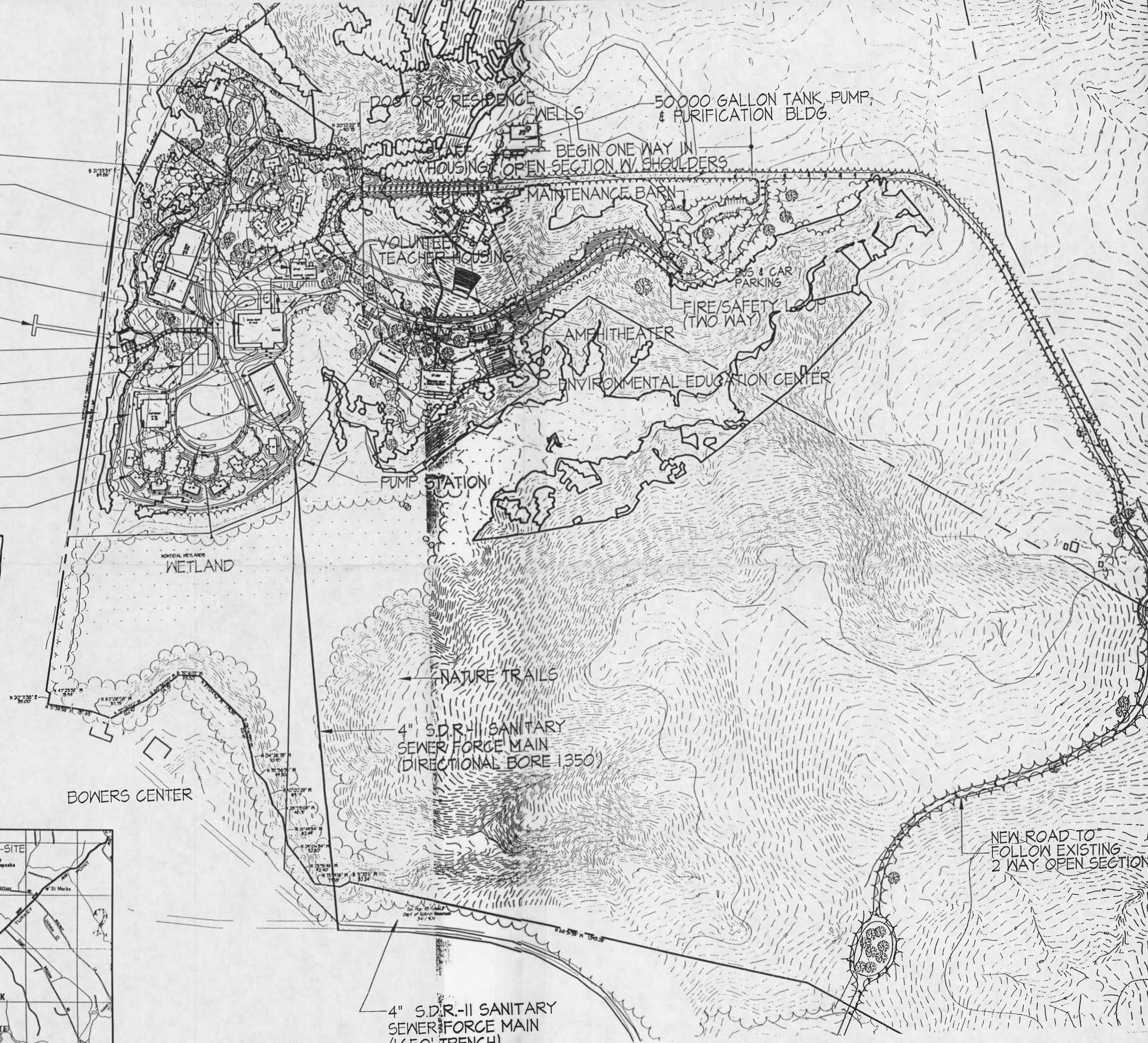
CANOE & SAIL BOATS

AUDITORIUM

GYMNASIUM

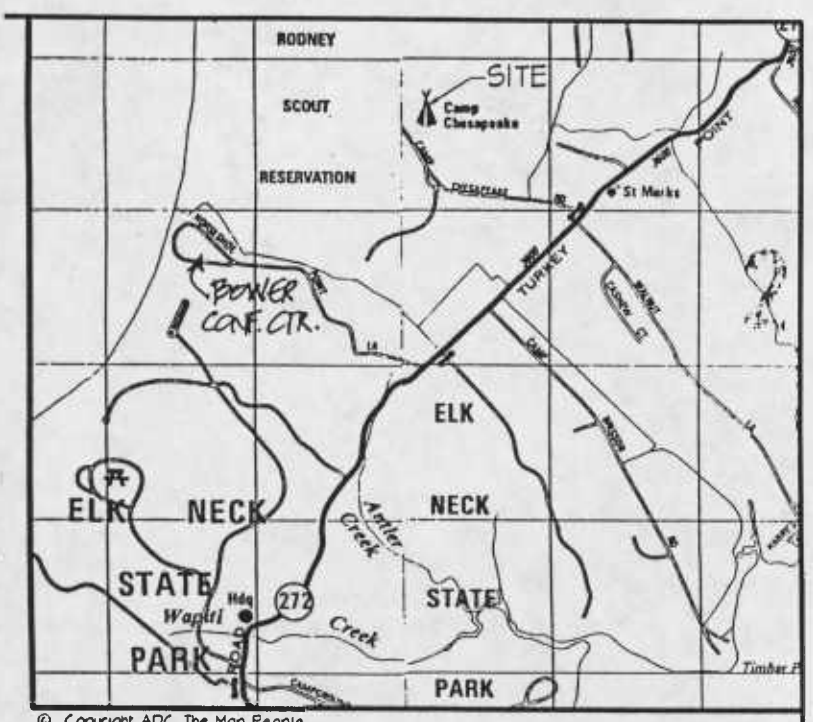
CAMPER HOUSING

Scale = 1" = 200'



BOWERS CENTER

WETLAND



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VICINITY MAP

1" = 2000'

Northbay Camp Project

Chesapeake Bay Critical Area Commission

STAFF REPORT November 7, 2001

APPLICANT: State Highway Administration

PROPOSAL: MD 168 over Holly Creek – Culvert Replacement

JURISDICTION: Anne Arundel 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:

The State Highway Administration (SHA) is proposing to replace culverts on MD 168 at Holly Creek in Anne Arundel County. The site is located in northern Anne Arundel County, just south of the Patapsco River and bounded on the west by Interstate 295 and on the east by Maryland 648. The project lies entirely within a Resource Conservation Area of the Chesapeake Bay Critical Area.

This project requires Commission approval because it does not meet the current Memorandum of Understanding between the Commission and SHA since there will be impacts to the Buffer to Holly Creek.

Project Description

The proposed work is needed to stabilize the slopes near the culverts to halt the deterioration of the roadway supporting slopes. The existing pipes are also undersized and this project will increase their capacity. The proposed project consists of replacing two 30 inch corrugated metal pipe (CMP) culverts with two 30 inch reinforced concrete pipe (RCP) culverts and one 34 inch by 53 inch elliptical RCP culvert. Cast-in-place headwalls will be constructed and rip-rap outlet protection will be placed for a distance of 12 feet from the downstream end of the culverts. The area between the top of the headwall and the shoulder of the roadway will be filled with common borrow and seeded, in an attempt to eliminate the scouring problem that currently occurs with no headwall.

The project site is 0.06 acres. The existing and proposed impervious surface at the site is 0.016 acres. There will be no additional impervious surface associated with the proposed culvert replacement other than that associated with the new headwalls.

There will be 1,350 square feet of impacts to the 100-foot Buffer, including all permanently disturbed area outside of the roadway. Commission staff recommend a 1:1 mitigation ratio since the Buffer disturbance is to provide public benefit by ensuring the structural integrity of the roadway and address the inadequacies of the existing pipes to handle the flow capacity of Holly Creek, thus, aiding in flood control.

Currently, the SHA is investigating possible mitigation within the MD 295 median, slightly west of the project site. The area proposed for mitigation would include the median of MD 295, from MD 168 north to the Anne Arundel County Line. This mitigation option would provide a significant amount of planting back into the 100-foot Buffer and also be within the same Patapsco watershed.

On Thursday, May 31, 2001 I visited the site. The banks on both sides of Holly Creek are densely vegetated with a variety of species. The surrounding area is heavily vegetated to the west and urbanized to the east, with a commercial area and parking lot adjacent to the site.

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 a Maryland State Programmatic General Permit from the Maryland Department of the Environment (MDE) for impacts to the stream. Since the total disturbance is less than 5,000 square feet of impacts it is exempt from MDE permits for stormwater management and erosion and sediment control; however, since it is in the Critical Area, some method of sediment and erosion control will be utilized. The applicant proposes to use a silt fence, a portable sediment tank and a sandbag diversion dike.

Other than the disturbance to the 100-foot Buffer of Holly Creek, this project is fully in compliance with this subtitle, as well as with other State and federal regulations. All disturbances to the CBCA have been minimized to the maximum extent practicable. The length of rip-rap was decreased from 30 feet to 12 feet to lessen stream and vegetation impacts. CBCA staff and SHA staff have reviewed and evaluated this project to ensure that it otherwise meets this subtitle, as well as all other appropriate State and federal regulations.

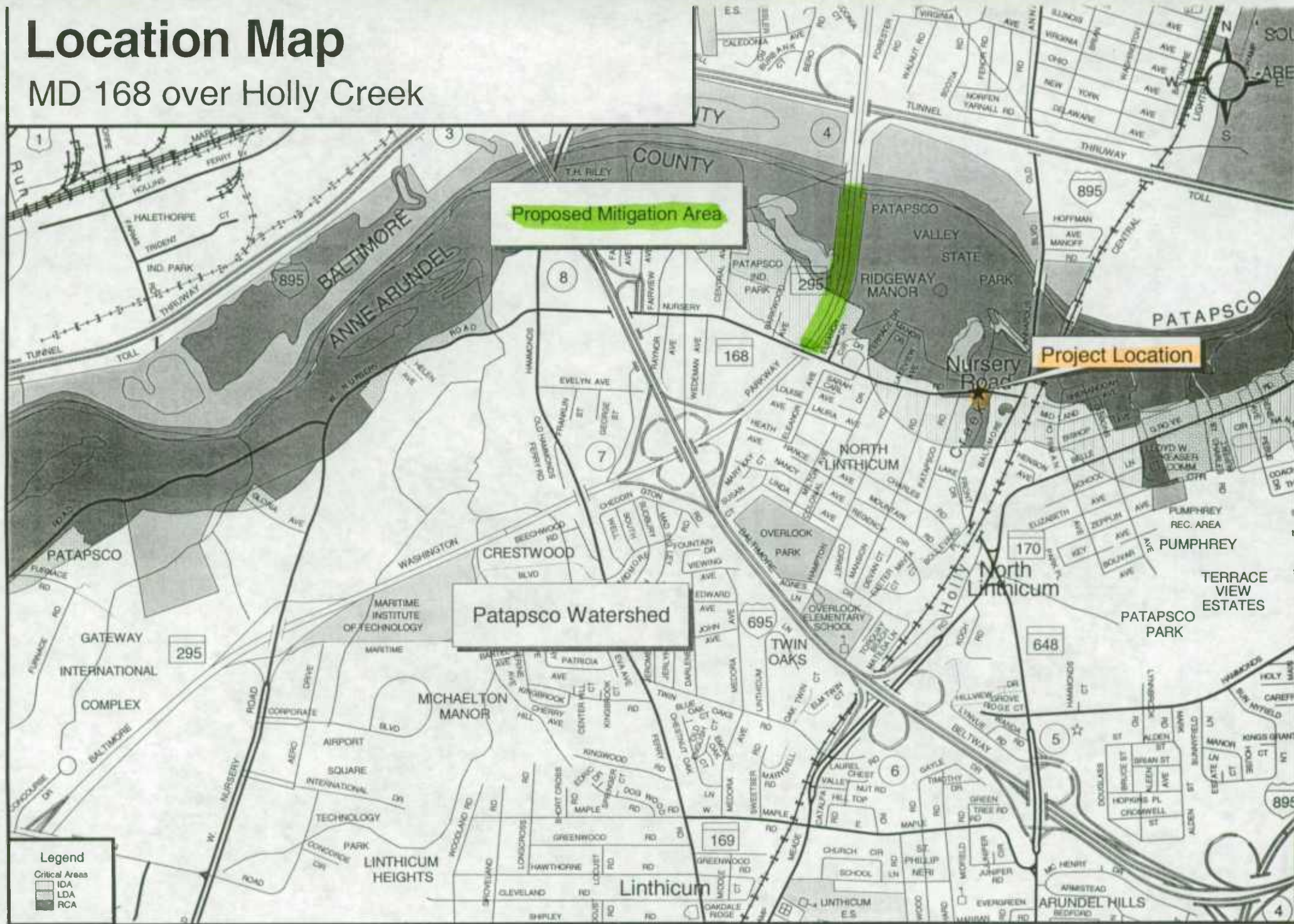
Conditions:

1. The applicant shall provide mitigation at a 1:1 ratio for all new disturbance within the Buffer.
2. The applicant shall retain as much existing vegetation as possible and afforest those areas along the stream bank to the extent possible once construction is complete.
3. The applicant will initiate a Plantings Agreement with Critical Area staff.

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

Location Map

MD 168 over Holly Creek



2000 0 2000 Feet

Anne Arundel County
1:20000
Relay Quad

MOD. B-48 HEADWALL
INV. OUT -127 (CENTER PIPE)

CLASS I RIPRAP
12" BLANKET THICKNESS

SANDBAG DIVERSION DIKE

EXISTING R/W

EXISTING 25' AND 30' CMP

PROPOSED R

SAN

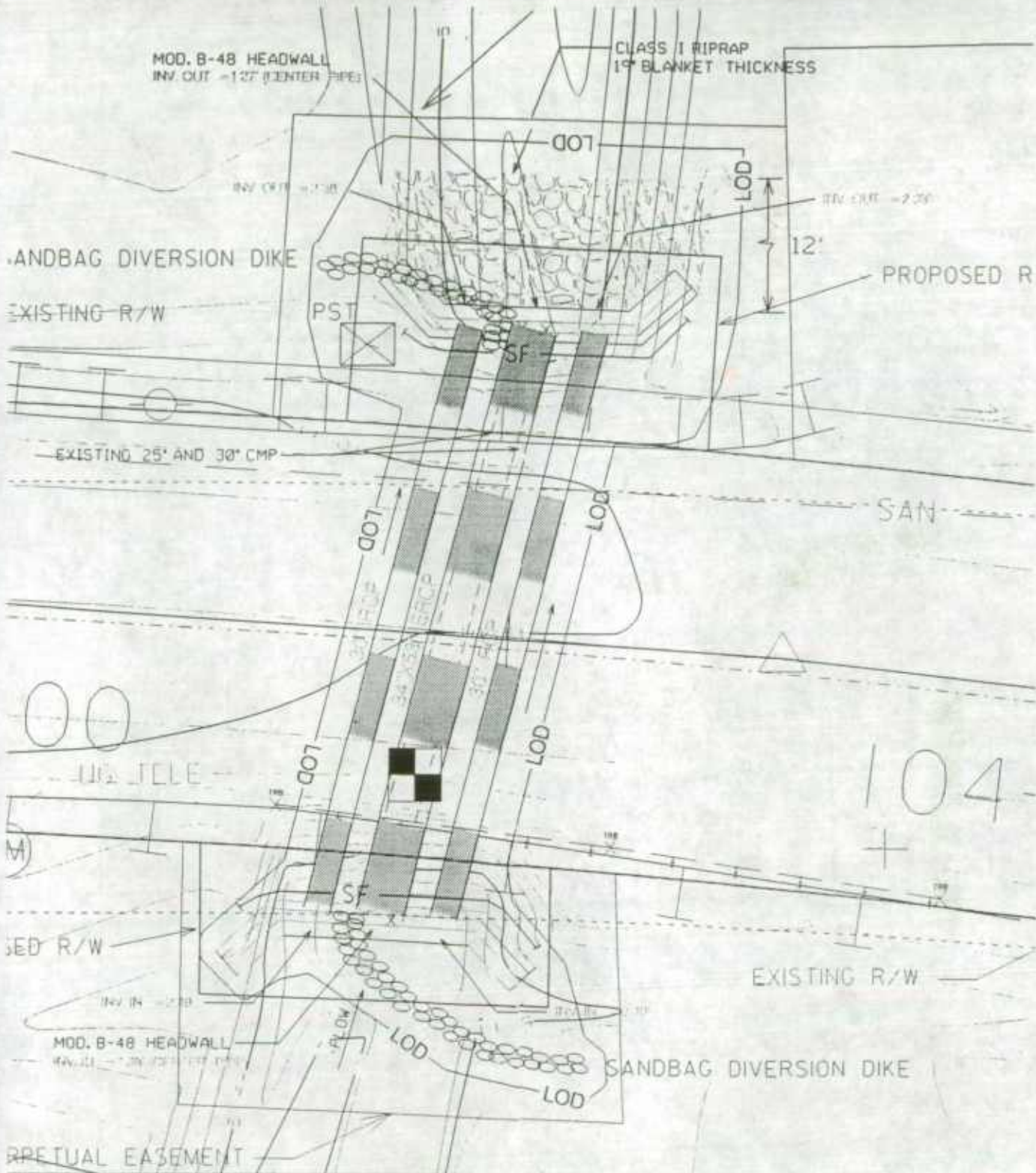
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EXISTING R/W

SANDBAG DIVERSION DIKE

PERPETUAL EASEMENT

SCALE 1"=10'



Chesapeake Bay Critical Area Commission

STAFF REPORT

November 7, 2001

APPLICANT: Cecil County

PROPOSAL: Cecil County Airport – Critical Area Boundary Extension
Cecil County Airport – Growth Allocation

JURISDICTION: Cecil County

COMMISSION ACTION: Concurrence with Chairman's Determination of Refinement

STAFF RECOMMENDATION: Approval

STAFF: Mary Owens and Julie LaBranche

**APPLICABLE LAW/
REGULATIONS:** Annotated Code of Maryland §8-1807– Chesapeake Bay Critical Area
Annotated Code of Maryland §8-1808.1 – Growth Allocation in Resource Conservation Areas

DISCUSSION:

Earlier this year, the Cecil County Commissioners awarded 18 acres of growth allocation to the Cecil County Airport located on Oldfield Point Road, south of Elkton. The airport is privately owned and is not operated or funded by the Cecil County Government. The growth allocation was awarded to change the Critical Area designation from RCA to IDA because the impervious surface area on the site exceeds the 15% limit, and the property owner is proposing some additional development on the site.

Unfortunately the Cecil County Commissioners approved the growth allocation request using the "development envelope concept" without receiving formal comments from Commission staff. The resulting development envelope was not consistent with the Commission's policy for the following reasons:

1. The development envelope did not include the stormwater management measures for the runway.
2. The development envelope fragmented the remaining RCA lands so that there were two areas of RCA separated by the new IDA area, and each RCA area was less than 20 acres.

3. The new IDA was less than 20 acres in size and was not contiguous to an existing IDA or LDA. The new IDA may have been approvable as a grandfathered commercial use existing as of the date of local Program approval; however, additional documentation was needed to verify its grandfathered status.

In order to address these issues, the County Commissioners reconsidered a revised growth allocation request and a Critical Area boundary extension on October 30, 2001 and approved both changes to the County's Critical Area Program. The development envelope has been expanded to 24 acres to include the stormwater management structure immediately south of the runway. There are no Habitat Protection Areas on the site that will be affected by the use of growth allocation. Any additional development on the site will comply fully with the 10% pollutant reduction requirements.

In order to address the fragmentation of remaining RCA lands, the property owner has acquired an additional 22.8 acres of RCA lands adjacent to the remaining RCA portion of the property to the south. He has placed an easement on the total 27.8 acres to ensure that it is not developed. The 27.8 acres will not be able to be developed for residential use because the residential density of the 22.8 acres has already been exhausted on the parent parcel.

The remaining RCA parcel to the north of the new IDA consists of 8.1 acres. In order to increase this remaining RCA to a minimum of 20 acres, the County has approved a map change to extend the Critical Area boundary to include an additional 12.13 acres of RCA lands. The area of the extension includes forested slopes, nontidal wetlands, and a perennial stream system that is currently not subject to Critical Area protection. The Critical Area extension adds 12.13 acres of RCA lands to the 8.1 acre residue bringing the total remaining RCA to the north of the IDA to 20.23 acres, and thereby satisfying the 20-acre minimum size for an RCA area outside the development envelope.

Commission staff and the County Commissioners believe that this extension would be consistent with the Commission's "Policy For Extension of the Critical Area" dated December 6, 1989. The Commission's policy states the extension of the Critical Area should result in improvement in water quality or water quality protection, improvement in plant or wildlife habitat, or reduced human impact. The policy sets forth five mandatory administrative requirements that **must be met** and then sets forth three categories of guidelines and requires that proposals meet one or more guidelines in each category.

Administrative Requirements

1. The proposal will provide additional resource protection by protecting an area that includes non-tidal wetlands, steep slopes, and riparian forests. The extension area varies in width from approximately 200 feet to 300 feet and is generally contiguous to an intermittent stream channel that borders the airport property. The extension will

significantly enhance the water quality and habitat functions of the Buffer by protecting more linear feet of the tributary stream from the adverse impacts of development.

2. The property is generally undeveloped, and the Critical Area designation will afford this area additional protection particularly through the Buffer provisions. The additional area will be designated RCA.
3. Five percent of the area that is not nontidal wetlands or publicly owned is proposed to be used to generate additional growth allocation for the County.
4. The extended area will be designated as RCA which functions as an overlay zone in Cecil County. The Critical Area overlay zone supersedes any conflicting underlying zoning.
5. This proposal will provide protection of a significant area of riparian forest that functions as an important buffer for a tributary stream. This area is part of a large riparian forest system and may also provide habitat for forest interior dwelling species (FIDS). No development is proposed in the extended area.

Habitat Protection Guidelines

1. The land in the expansion area includes an intermittent stream, areas of non-tidal wetlands, steep slopes and riparian forests. The extension will significantly enhance the water quality and habitat functions of a tributary stream buffer by extending the buffer outside the original Critical Area.
2. The land in the expansion area is completely forested and is part of a significant network of forested lands located on the Elk Neck Peninsula. This large rural land mass located between the Elk River to the east and the Northeast River to the west is believed to be excellent stopover and potentially good nesting habitat for FIDS.
3. The forested areas will be permanently protected by easements. A forest conservation easement for the extension area and some adjacent forested lands has already been approved by the Cecil County Commissioners. The easement prohibits the construction of structures that are not associated with agricultural and/or equestrian use and prohibits the removal of vegetation except to alleviate a hazard or as required by the Federal Aviation Administration.

Water Quality Guidelines

1. The extension will protect a steeply sloping area and land bordering a tributary to the Bay. Hydrologic characteristics in this area make it vulnerable to soil erosion from runoff which would likely be accelerated if the area were cleared and developed.

Guidelines Minimizing Impacts from the Number and Movement of People in the Critical Area

1. The extension will prevent substantial development adjacent to the original Critical Area and will serve to maintain an area of land designated RCA that will function as a buffer for the Cecil County Airport. Although the Cecil County Airport is proposed to be designated IDA through the use of growth allocation, the growth allocation is being used to accommodate expansion of a use that existed prior to adoption of the Critical Area regulations. The surrounding lands will maintain their current RCA designation thereby limiting undesirable growth and development that would be inconsistent with the State's Smart Growth programs and policies.
2. The extension area will be used to increase the Critical Area acreage to the north of the Cecil County Airport so that this portion of the property can remain RCA, and growth allocation can be used to change the Critical Area designation of the airport to IDA. The extension area is not proposed to be developed, and it is already protected by a forest conservation easement.
3. The extension of the Critical Area as proposed includes developable land; however, the extension area is not proposed for development and is generally restricted from development by a forest conservation easement. The change will not increase the intensity of development adjacent to the Critical Area or allow an increase in dwelling units within the Critical Area.

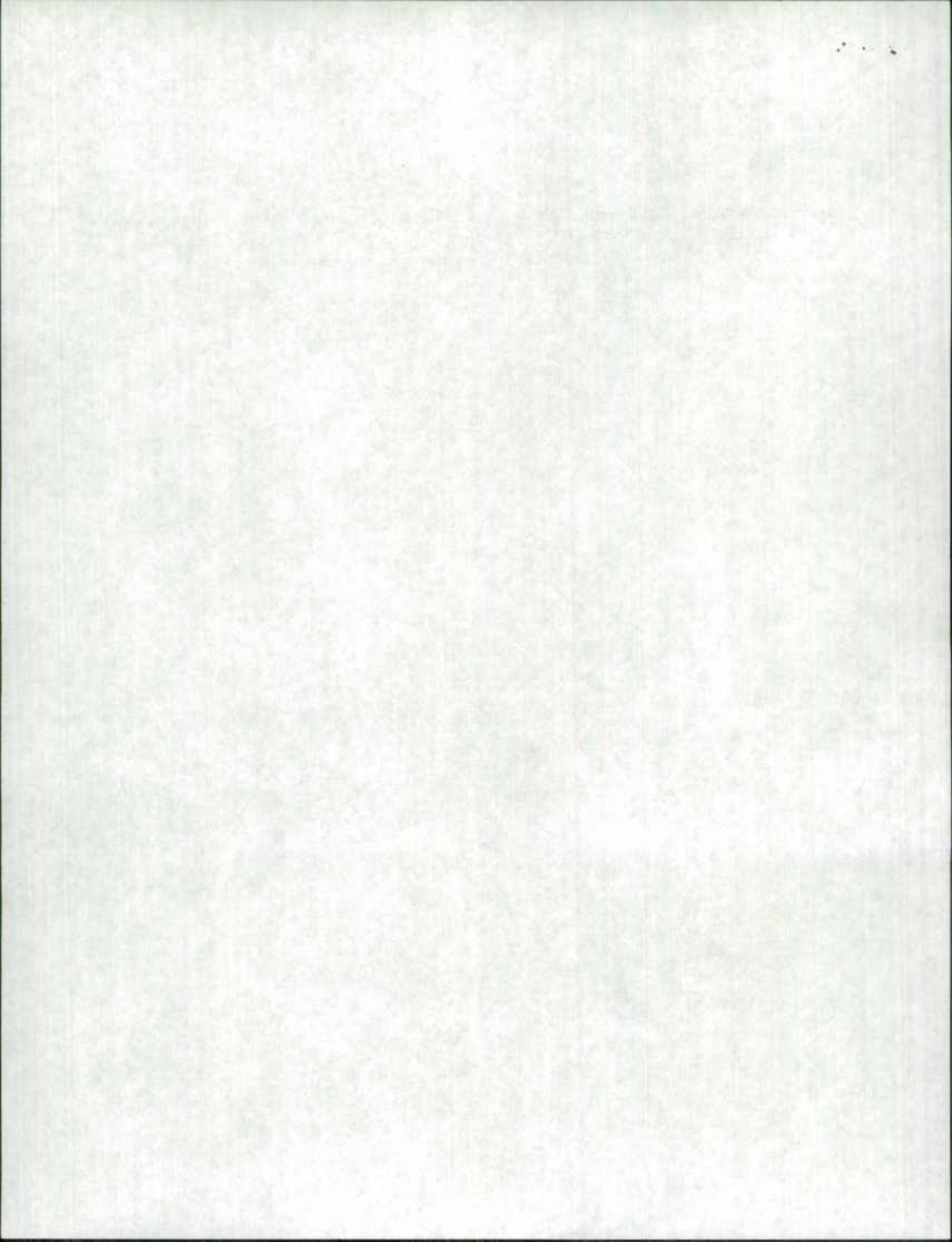
Supporting Reasons for Extending the Critical Area

1. The proposed extension is located partly between two arcs of the Critical Area and the extension will expand the Critical Area to include undeveloped portions of the Cecil County Airport property adjacent to a stream.
2. The Maryland Economic Growth, Resource Protection, and Planning Act of 1992 identified streams and their buffers as sensitive areas that should be protected by local plans and ordinances. Protection of streams and their buffers helps maintain water quality, protects fisheries, provides habitat and natural corridors for wildlife, and enhances recreational activities such as bird-watching, fishing, and hunting. Extending the Critical Area to include this stream and its forested buffer is consistent with the 1992 Planning Act and the spirit and intent of the Critical Area Act and Criteria.

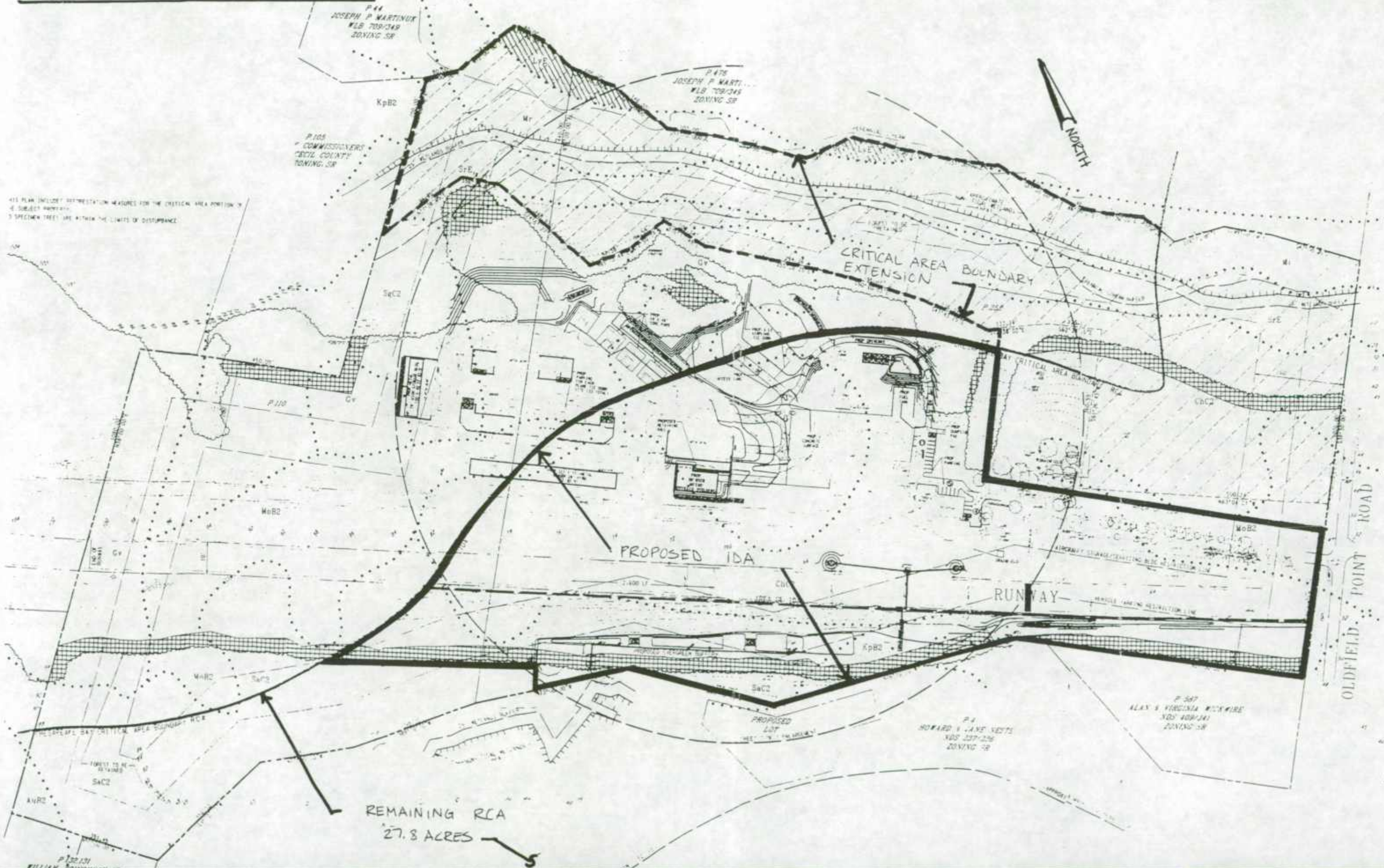
Chairman North has determined that the Critical Area boundary extension can be approved as a refinement to Cecil County's Critical Area Program and is seeking the Commission's concurrence.

Cecil County Airport
November 7, 2001
Page 5

Chairman North has also determined that the use of 24 acres of growth allocation to change the Critical Area designation of the Cecil County Airport from RCA to IDA can be approved as a refinement to Cecil County's Critical Area Program and is seeking the Commission's concurrence.



CECIL COUNTY AIRPORT



THIS PLAN INCLUDES DISTURBANCE MEASURES FOR THE CRITICAL AREA PORTION OF
4. SUBJECT PROPERTY.
5. SPECIFIC TREES ARE WITHIN THE LIMITS OF DISTURBANCE.

P 2
CHESAPEAKE WAH
PROPERTIES, INC.
NDS 184/554
ZONING MB 5B

P 347
ALEX & VIRGINIA WICKWIRE
NDS 408/341
ZONING 5B

P 4
HOWARD & JANE VESTE
NDS 237-236
ZONING 5B

REMAINING RCA
27.8 ACRES

PROPOSED IDA

CRITICAL AREA BOUNDARY
EXTENSION

RUNWAY

OLDFIELD POINT ROAD

Chesapeake Bay Critical Area Commission

STAFF REPORT

November 7, 2001

APPLICANT: Wicomico County

PROPOSAL: Amendment – Four-Year Comprehensive Review

COMMISSION ACTION: Vote

PANEL: Q Johnson, Larry Duket, Bill Giese, Joe Jackson, Bill Rice

PANEL RECOMMENDATION: Pending

STAFF RECOMMENDATION: Approval

STAFF: LeeAnne Chandler

**APPLICABLE LAW/
REGULATIONS:** Natural Resources Article §8-1809(g) *Review and proposed amendment of entire program*

DISCUSSION:

Wicomico County has recently completed the required four-year review of their Critical Area implementing ordinance, Chapter 125 of the Wicomico County Code. They are proposing a number of text changes as well as a County-wide set of "Special Buffer Area" maps. County Council approved the proposed text changes in their June 2001 legislative session and the Special Buffer Area maps in their October 2001 legislative session.

Calculation of the acreage of the three land use categories and evaluation of the growth allocation status was conducted. Of Wicomico County's 21,315 acres within the Critical Area, 282 acres are IDA, 3,339 acres are LDA and 17,694 acres are RCA. The County has awarded 190 acres of growth allocation and has a growth allocation reserve of 704 acres. Habitat protection area maps are continually updated on the County's GIS system as new information is provided by the Department of Natural Resources.

The most significant changes to the County's Ordinance are as follows:

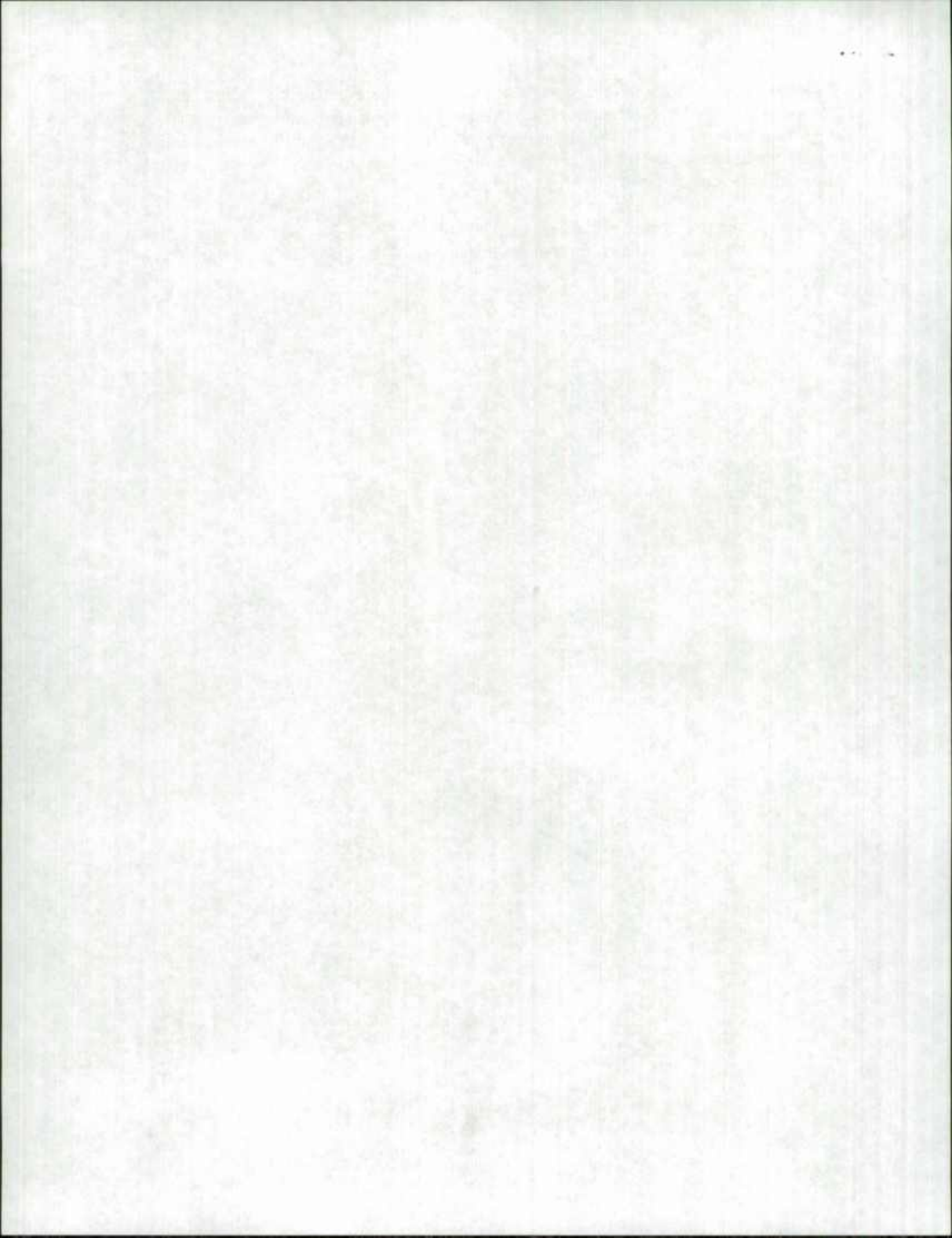
1. References to various sections of the Code of Maryland Regulations were updated in accordance with the recodification that occurred a number of years ago.

2. Definitions were added and /or changed in accordance with the definitions that are listed in the state criteria.
3. The county's existing buffer exemption area provisions were deleted in their entirety and replaced with a new section entitled "Special Buffer Areas." This section adopts the Commission's two Buffer Exemption Area policies, one for residential and one for multi-family, commercial, industrial and institutional.
4. Language was added which clarifies the prohibition of removing natural vegetation within the Buffer.
5. The allowed uses within the RCA were clarified. It is made clear that new commercial, industrial, and institutional uses are not permitted in the RCA without the use of growth allocation. It also adds a list of allowed uses in the RCA that are pseudo-commercial such as home occupations, recreational uses such as golf courses and gun clubs and small institutional uses such as day care facilities with less than 9 children.
6. Language was added which specifies that development on grandfathered lots must fully comply with the development standards for each land use designation or a variance shall be required.
7. The impervious surface language was updated according to the 1996 legislation.
8. An entirely new section was added which provides for the transfer of development rights within the Critical Area. Twenty acres is to be preserved for each development right lifted from a property within the RCA. Density on the receiving parcel may not exceed the density allowed in the parcel's zoning district.
9. Changes were made to streamline and shorten the County's growth allocation process. Applicants will submit applications and supporting documentation to the County Planning Office. The applications will be forwarded to the Planning Commission for review, a public hearing and recommendation. The applicant must address the Planning Commission's concerns and then the application is forwarded to the County Council for review. The Council holds a public hearing and if approved, forwards the request to the Critical Area Commission for review and approval.
10. Enforcement language has been added which allows a fine of \$1000 per violation. In addition, the violator may be required to restore the area disturbed and provide for a 6:1 mitigation for the area disturbed. It also gives the planning director the authority to issue citations and stop work orders.

The Special Buffer Area maps are the result of a careful analysis of all of the County's tidal shorelines. County and Commission staff traveled throughout the County and visited all of the

developed areas. A review of on-site conditions was made wherever possible. Where an on-site review was not possible, the County's GIS system with its recent aerial photography was used to verify the conditions of the Buffer. Properties were designated as Special Buffer Areas where existing conditions prevent the Buffer from fulfilling its intended function. Approximately 316 properties have been designated as a Special Buffer Area.

The Commission panel held a public hearing on October 10, 2001. No comments were received from the public. Commission staff recommends approval of the proposed text amendments and Special Buffer Area maps as submitted.



Chesapeake Bay Critical Area Commission

STAFF REPORT

November 7, 2001

APPLICANT: Queen Anne's County

PROPOSAL: Maryland General Land Co. Growth Allocation

COMMISSION ACTION: Concurrence

STAFF RECOMMENDATION: Approval

STAFF: LeeAnne Chandler

**APPLICABLE LAW/
REGULATIONS:** COMAR 27.01.02.06 - Location and Extent of Future Intensely Developed and Limited Development Areas

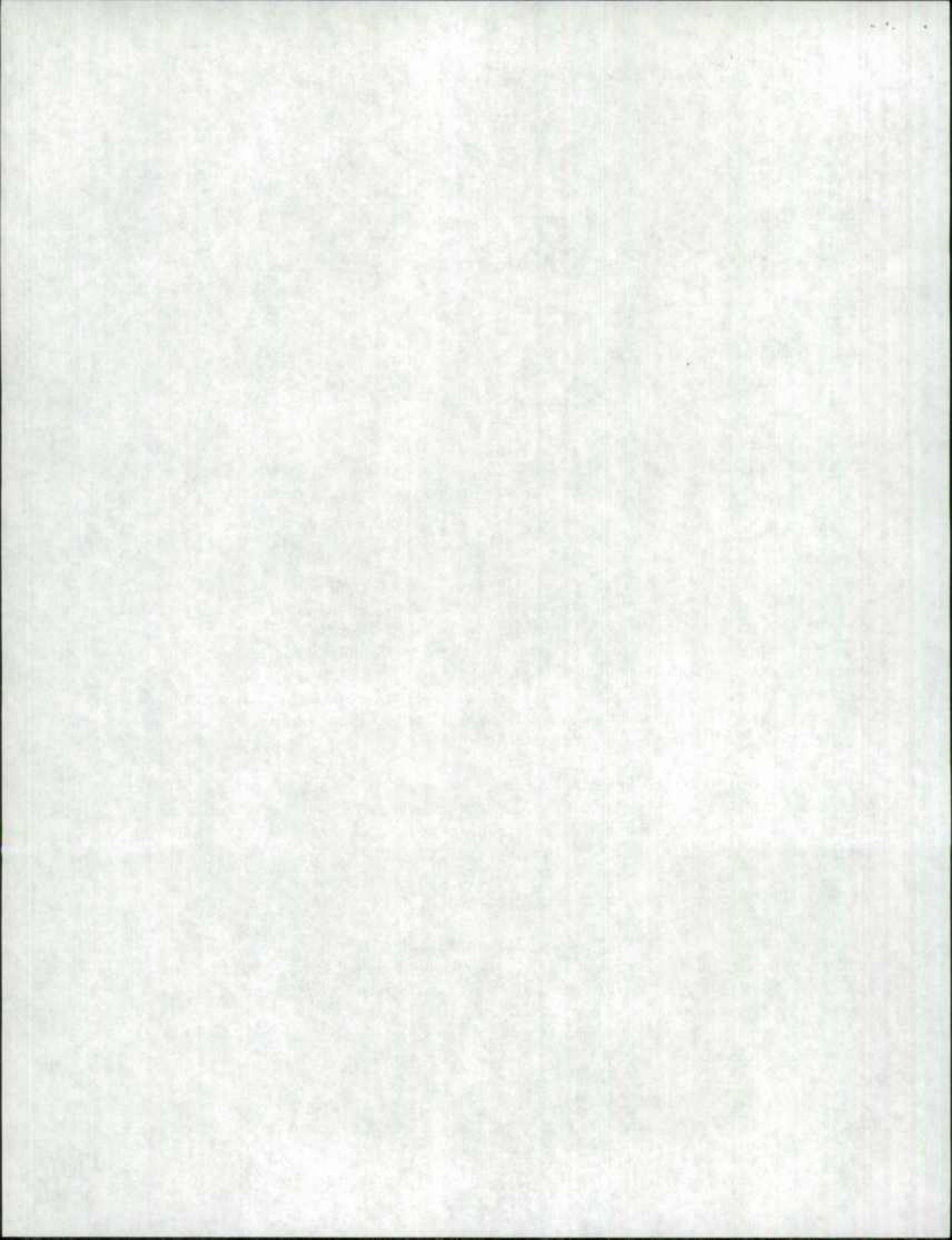
DISCUSSION:

Queen Anne's County is requesting approval of the use of 2.124 acres of growth allocation to change the Critical Area overlay designation on a portion of a parcel from Limited Development Area (LDA) to Intensely Developed Area (IDA). The property is a total of 14.801 acres and is currently divided into three commercial lots. One of the three lots is proposed to be further subdivided into five commercial lots. This request is for one of the five new lots and the stormwater management facility necessary to serve the development. The proposed use of the subject lot is for an office/warehouse for a marine component distribution business. The change to IDA will allow construction of the proposed building, parking lot and stormwater management facility.

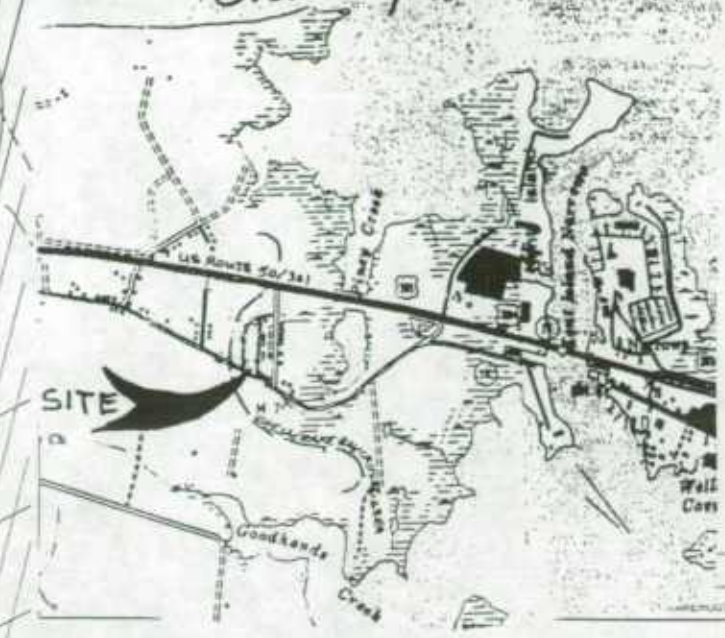
The subject property is located within the Chester Growth Area and is zoned Town Center. The property is located between U.S. Route 50/301 and Maryland Route 18. It is located at the outer limits of the Critical Area with the closest tidal water being Piney Creek, a tributary to the Chester River. The area proposed to be designated IDA is adjacent to existing LDA and was pre-mapped for growth allocation. The subject lot is currently covered in herbaceous vegetation. When developed, the property will be served by public sewer and a private well.

No Habitat Protection Areas exist on this site. Stormwater will be addressed via construction of a wet pond within the Critical Area portion of the site. The 10% pollutant reduction calculations have been provided and the requirement has been met through treatment of runoff from the entire site. This request meets the adjacency guidelines of the Criteria and is consistent with the Commission's policy on the use of growth allocation. The entire acreage of the Critical Area portion of the property is included in the request.

Chairman North has determined that this growth allocation request can be approved as a refinement to the Queen Anne's County Critical Area Program and he is seeking the Commission's concurrence.



U.S. ROUTE 50/301
VARIABLE WIDTH R/W

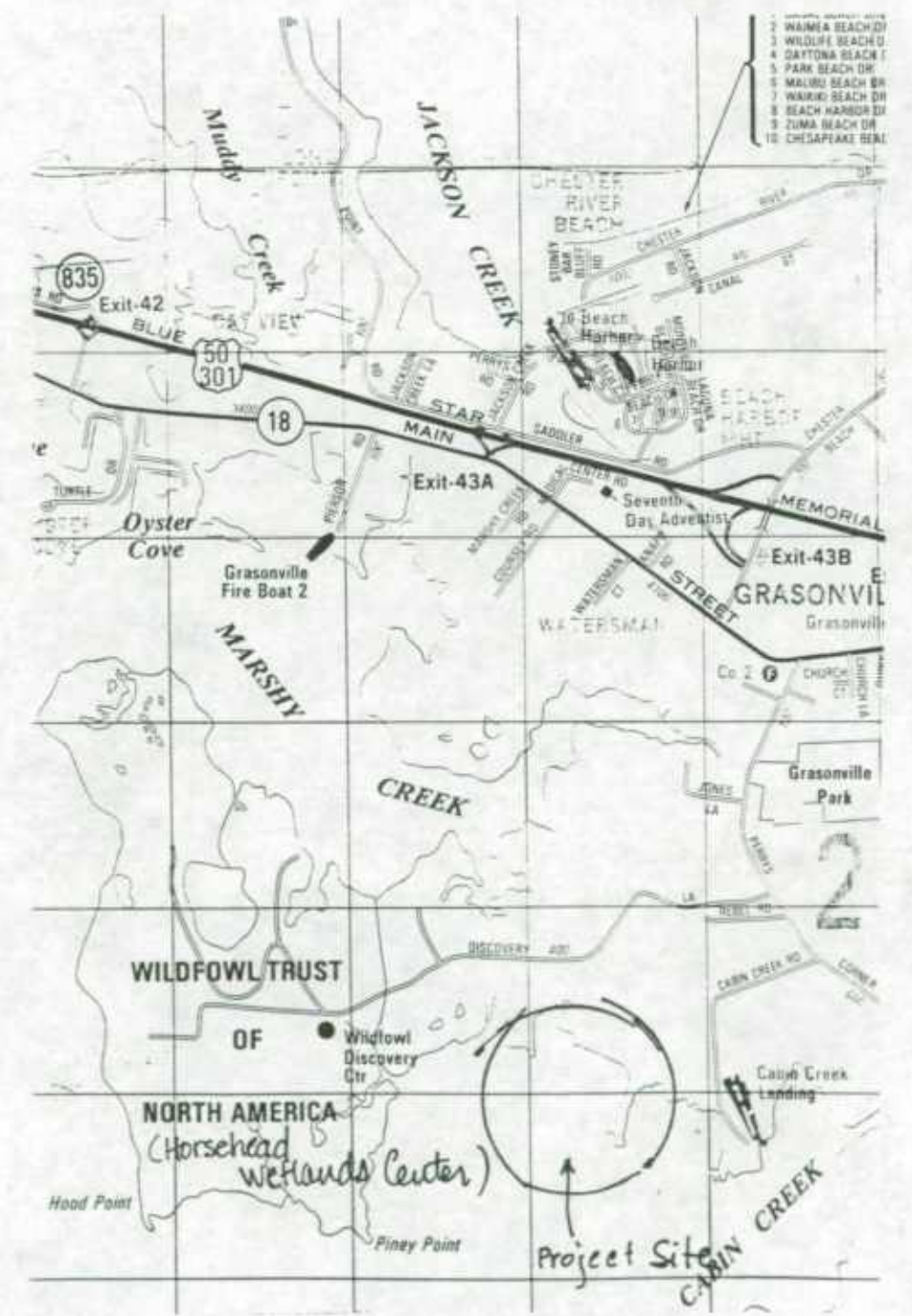


LEGEND

-  AREA OUTSIDE THE CRITICAL AREA
-  AREA OF CRITICAL AREA DESIGNATED (DA) TO BE REDESIGNATED (DA) - 2,124 ACRES
-  AREA OF CRITICAL AREA CURRENTLY DESIGNATED (DA) AND TO REMAIN (DA)

Associated Platbook
Exhibit No. 3

Horseshoe Wetlands Center -
Shoreline Restoration & Habitat Creation



Chesapeake Bay Critical Area Commission

STAFF REPORT

November 7, 2001

APPLICANT: Department of Natural Resources

PROPOSAL: Horsehead Wetlands Center shoreline restoration and fisheries habitat enhancement

JURISDICTION: Queen Anne's County

COMMISSION ACTION: Vote

STAFF RECOMMENDATION: Approval with conditions

STAFF: LeeAnne Chandler

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

DISCUSSION:

Together with the Chesapeake Bay Foundation, the Department of Natural Resources is proposing a shoreline restoration and fisheries habitat enhancement project at the Horsehead Wetlands Center in Grasonville, Queen Anne's County. The Center is operated by the Waterfowl Trust of North America and the property is under a conservation easement held by the Maryland Environmental Trust. It is designated as Resource Conservation Area under the County's Critical Area Program. The project goals are to stabilize the eroding shoreline, enhance fish and wildlife habitat, and provide a variety of ecologically sound restoration techniques that can be used for erosion control through the Chesapeake Bay. There are several parts to the project:

1. Shoreline restoration – This will involve removal of an existing, failing concrete bulkhead and restoring the shoreline to a beach strand and intertidal marsh. Two contoured wetland jetties will be installed using fiber logs (held in place by boulder footers) and clean fill. The jetties will be graded to two distinct elevations and will include both low marsh and high marsh plantings. This part of the project is for the purpose of providing habitat for beach nesting animals such as the terrapin and horseshoe crabs.

2. Restoration of the eroded peninsula – This will involve stabilizing the remaining pieces of the peninsula through placement of boulders at mean low water; installing fiber logs adjacent to the boulders, and placing sand fill and wetland plantings between them.
3. Creation of two marsh islands to protect the beach from wave energy – In order to protect the restored shoreline, two wetland islands will be constructed 100 to 180 feet off shore. Each island will be approximately 49,000 square feet. They will be constructed with a border of boulder footers. The open water side will be reinforced with additional stone and the shoreline side will be lined with fiber logs. Fill will be placed within the borders and planted to create the islands.

An oyster reef will also be installed approximately 600 feet offshore of the property to help dissipate the wave energy. Half of the reef will be constructed with typical crushed concrete material while the other half will be constructed with manufactured “fish havens.” Hatchery produced oyster spat on shell will be placed over the entire reef area.

With the exception of a single access point, no disturbance is proposed within the Buffer. There are scattered trees within the Buffer, as well as an existing house. No trees are proposed to be removed. There are no records for Federal or State rare, threatened or endangered species within the project vicinity. The open water within the site is an historic waterfowl concentration area. DNR’s Waterfowl Project Manager has been contacted for recommendations for reducing impact from construction. In addition, there is submerged aquatic vegetation (SAV) in the vicinity of the proposed wetland islands. The islands will be located to minimize impacts on existing SAV. The project manager applied for a tidal wetlands permit in July. The project was discussed at a Joint Evaluation meeting and it was generally supported by the agencies. The permit application went on public notice and the public comment period ends November 1, 2001. An update on the status of the wetland permit will be provided at the Commission meeting.

Commission staff recommends approval of the proposed project subject to the following conditions:

1. All permits will be acquired from MDE prior to any construction.
2. Once MDE permits are in hand, the applicant will provide necessary information to the Queen Anne’s County Soil Conservation District.
3. Project design will incorporate recommendations from the Waterfowl Project Manager to minimize impact to waterfowl.
4. The area of the Buffer disturbed for shoreline access will be restored and any trees removed will be replaced at a 1:1 ratio.