

Chesapeake Bay Critical Area Commission
Department of Housing and Community Development
Peoples Resource Center
Crownsville, Maryland
March 6, 2002

AGENDA

1:00 p.m. – 1:05 p.m. Approval of Minutes for February 6, 2002 John C. North, II
Chairman

PROJECTS

1:05 p.m. – 1:15 p.m. VOTE: SHA – MD 214 over Glebe Creek Lisa Hoerger
Streambank Stabilization and Culvert Repair
Anne Arundel County

1:15 p.m. – 1:30 p.m. VOTE: St. Mary's College Mary Owens
Windsurfer Storage Structure
St. Mary's County

PROGRAMS

1:30 p.m. – 1:45 p.m. Refinement: Somerset County Claudia Jones
Growth Allocation – Scott Tawes Property

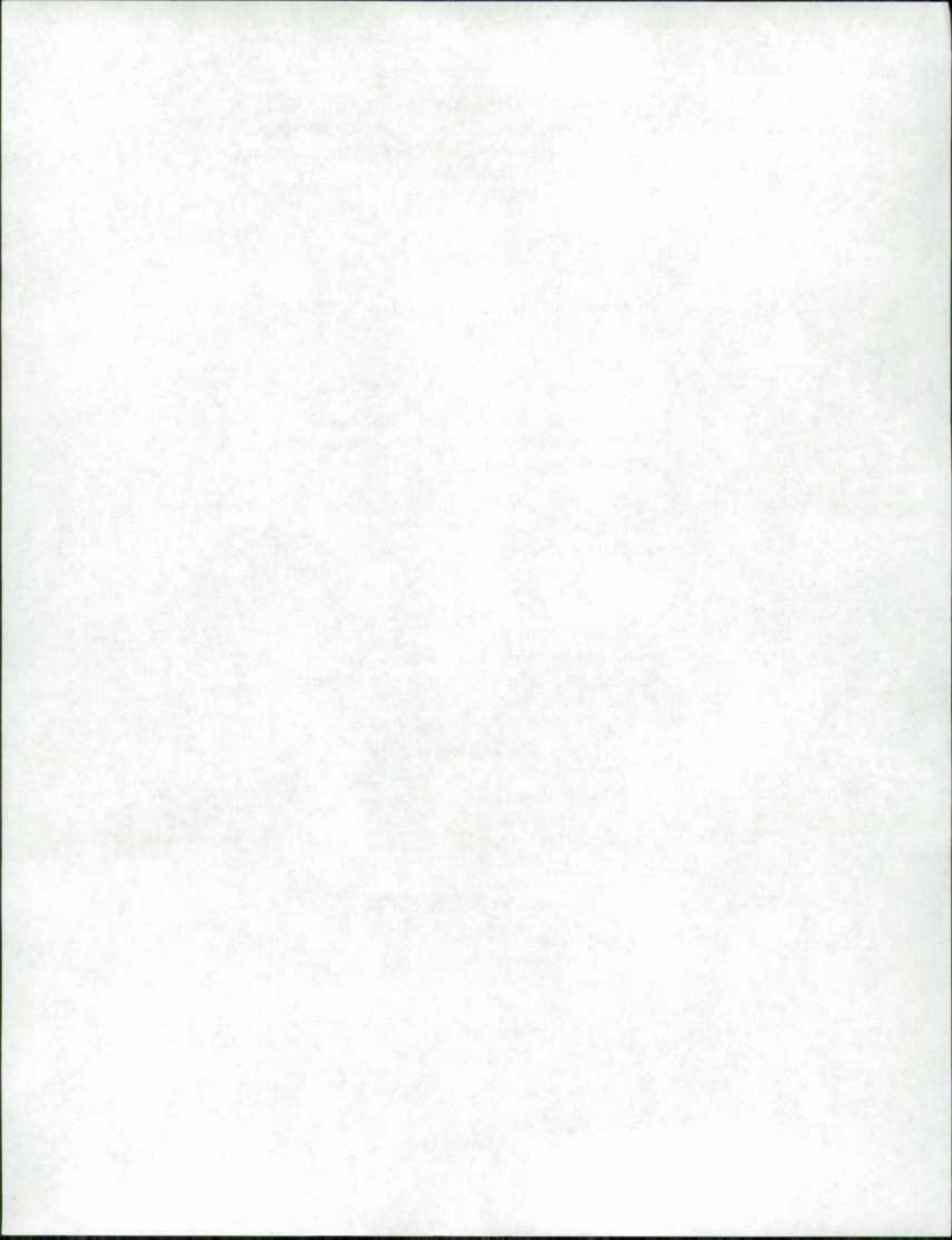
OLD BUSINESS

1:45 p.m. – 2:05 p.m. Legislative Update Ren Serey

2:05 p.m. – 2:10 p.m. Legal Update Marianne Mason,
Esq.

2:15 p.m. – 2:25 p.m. **NEW BUSINESS** John C. North, II
Chairman

2:25 p.m. Adjourn



Chesapeake Bay Critical Area Commission
People's Resource Center
Department of Housing and Community Development
Crownsville, Maryland
February 6, 2002

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, Wester Shore Member at Large
Foor, Dr. James, C. QA Co.	Giese, Wm. Jr. Dorchester County
Graves, Charles C., Baltimore County	Jackson, Joseph, Worcester County
Johnson, Samuel Q., Wicomico County	
Jones, Paul, Talbot County	Myers, Andrew, Caroline County
Rice, William, Somerset County	
Samorajczyk, Barbara, Anne Arundel Co.	Witten, Jack, St. Mary's County
Appel, Sherry for Wynkoop, Samuel, Prince George's County	
Setzer, Gary, Md. Department of the Environment	
Duket, Larry, Md. Dept. of Planning	Goodman, Bob, Md. Dept. Housing and Community Dev.
Lawrence, Louise, Md. Dept. Agriculture	McLean, Jim, Governor's Office of Business and Economic Development
Andrews, Meg, Md. Department of Transportation	
Wenzel, Lauren, Md. Department of Natural Resources	

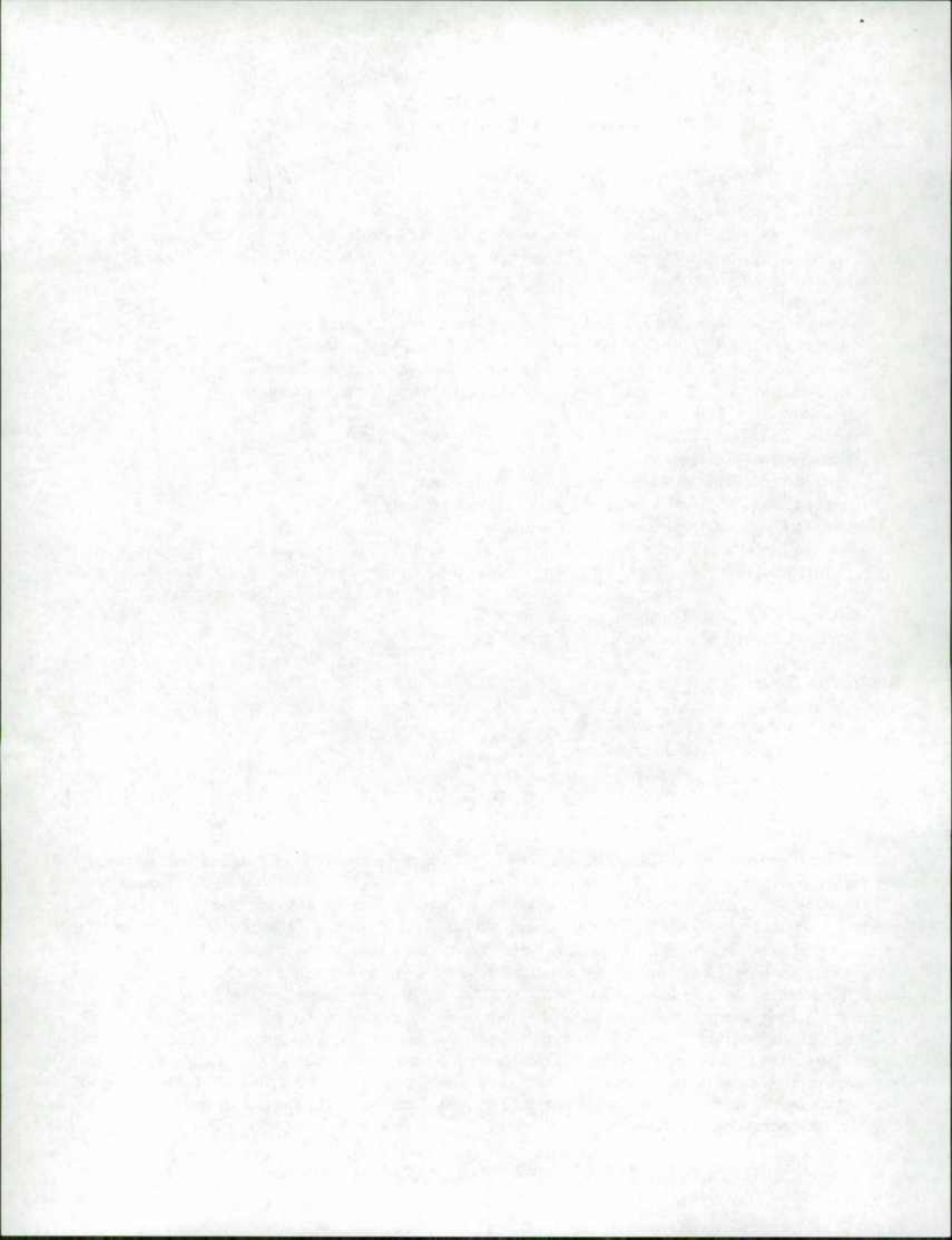
Not In Attendance:

Bailey, Margo, Kent County
 Pugh, Mike, Cecil County
 Olszewski, John A., Baltimore City

The Minutes of January 2, 2002 were approved as read.

Lisa Hoerger, Planner, CBCAC presented for VOTE the request by the Department of Transportation, State Highway Administration for a Construction Staging Area Contract BR3 at the Woodrow Wilson Bridge. (The Construction Staging Area for the foundation contract was approved by the Commission at its June 6, 2001 meeting). This staging area will provide immediate but temporary construction staging and laydown areas for the existing contractors. This will be a top priority for this superstructure project and will be used for storage of materials and for parking of equipment and construction vehicles. These temporary activities will occur outside the 100-foot buffer. In accordance with COMAR 27.02.06, justification has been provided for conditional approval to permit *certain* activities within the 100-foot Buffer. This site does not support other HPA's. The sediment and erosion control plans were submitted by SHA and are pending final approval by MDE.. Comments from Prince George's County Department of Environmental Resources are pending. Dave Bourdon moved to approve the project with the six conditions (as they were presented and approved at the June, 2001 meeting and also included in this staff report attached to and made a part of these minutes.). The motion was seconded by Bill Rice and carried unanimously.

Ms. Hoerger presented for concurrence with the Chairman's determination of Refinement, Anne Arundel



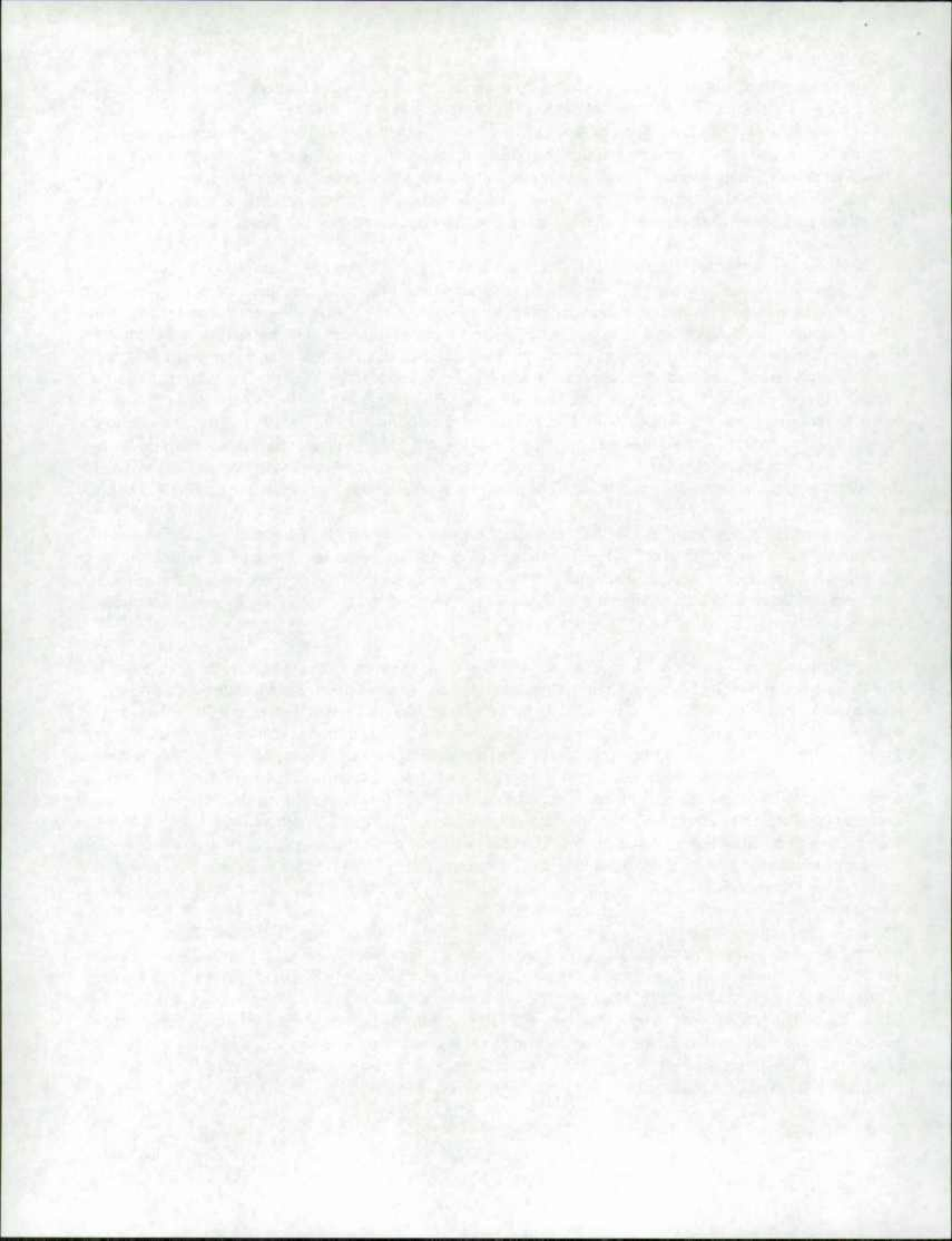
County's request to correct a mapping mistake for a property known as Clark's Landing at Shady Side, Inc. A parcel of 13.33 acres with a designation of LDA. Its western edge has an area of RCA of 1.19 acres which should have been mapped LDA. The County has found that the use that existed on the property in 1985 is compatible with an LDA designation and that there was a drafting error when the zoning line was drawn on the Critical Area map. Anne Arundel County upon completing its comprehensive zoning process for this area last year moved the zoning line between Clark's Landing and the County park to the property boundary line. The Commission supported the Chairman's determination that this mapping mistake is a Refinement.

Roby Hurley, Circuit Rider, CBCAC presented for VOTE, the Town of Centerville's four-year comprehensive review amendment. The review included the Town's program document and maps. Significant revisions were necessary. A model ordinance replaced the existing Critical Area Program document and related ordinance language. Calculation of the acreage of the three land-use categories and evaluation of the growth allocation status was conducted and the town has not used any growth allocation. There is updated information on HPA's and existing and planned land use relative to the Town and is reflected in the Parks, Agriculture and Surface Mining sections. Specific provisions for enforcement of violations were included as well as provisions of the current Commission's Growth Allocation and Buffer Exemption Area Policies. Queen Anne's County's planning office produced a new land-use map. The Town Council approved the ordinance adopting the new Critical Area Ordinance on January 17, 2002. Lauren Wenzel moved to approve the Town of Centerville's four-year comprehensive review amendment. The motion was seconded by Paul Jones and carried unanimously.

Dawnn McCleary, Planner, CBCAC presented for Concurrence with the Chairman's determination of Refinement, a revision to Bill 01-35 of Harford County's Comprehensive Review Amendment subsequent to the Commission's approval of the four year review. The language change clarifies the application of the pollutant reduction requirements in Intensely Developed Areas. The Commission supported the Chairman's determination of Refinement.

Claudia Jones, Science Advisor, CBCAC presented for Concurrence with the Chairman's determination of Refinement a request by Somerset County Commissioners for 34 acres of growth allocation for a project known as Covington Cove. Some of the lot lines extended into tidal wetlands and when the site plans were redrawn and wetlands were taken out of the calculation, the growth allocation was reduced to about 28 acres. There are already 27 lots of record on the parcel and a total of thirty-five upon completion of the subdivision and growth allocation. The total of the entire parcel both inside and outside the Critical Area is about 380 acres. It appears that all the parcel will be deducted except for 20 acres. Ms. Jones said that the Buffer needs to be shown correctly on all of the lots and the County has agreed to ensure that the Buffer is properly delineated. A 300-ft Buffer is not possible on this site since the road is already in place and the lots would not be deep enough. The 100-foot Buffer must be naturally vegetated in forest vegetation. The areas that are proposed to receive growth allocation and go from RCA to LDA are both adjacent to LDA. The Commission supported the Chairman's determination of Refinement with the Recommended Conditions to include amending recommendation #2 to include: "...and deed restrictions". : 1) A site plan needs to be provided that shows the entire parcel, clearly marking the areas that will remain as RCA. Acreage figures for each area must total the Critical Area acreage and be included on the plan. Commission staff will review the plan prior to recordation. Also needed are the existing forest cover, tidal wetlands, and the entire 100-foot Buffer as determined from the edge of tidal wetlands. 2) The Buffer needs to be established in forest vegetation. Plat notes and deed restrictions need to indicate that the Buffer will need to be established in forest vegetation and that any forest existing on a lot must be maintained or mitigation must be provided. 3) Calculations need to be provided for existing forest cover to determine if there is a minimum of 15% forest coverage on the site.

Old Business



Ren Serey, Executive Director, CBCAC updated the Commission on the Coastal Bays Bill #247 and the Variance Bill #326. He disseminated a summary sheet of Bill #247, the Governor's Bill that would put the Coastal Bays under the Critical Area Commission. The Bill includes an addition of membership to the Commission. The Governor's Bill and Senator Dyson's Bill are slightly different but the Governor's office said that the differences will be reconciled. The Variance Bill addresses the three Court of Appeals opinions that changed the way a local Board of Appeals looks at a variance application and weakens the application of the Critical Area Criteria for variances. The bill provides a preamble showing the amendments and why the bill is necessary. It has the definition of "unwarranted hardship, never defined in the Criteria or Statute, but has been defined by many cases in zoning law over the last 50 years. The Courts of Appeals changed that definition by saying that it would rise to the level of unwarranted hardship if you were denied using any portion of your property in anyway you deemed appropriate, regardless if you had alternatives on site. The Court also said that the applicant would not have to meet all of the standards for a variance for Critical Area variance but only have to meet them generally. What a Court of Appeals is looking for is to see whether the denial of an applicants' variance would result in a denial of something that everybody else has a right to, they could look at other properties for a comparison and could include everything in that analysis as if the Critical Area never existed and this Bill tries to re-enact the old law.

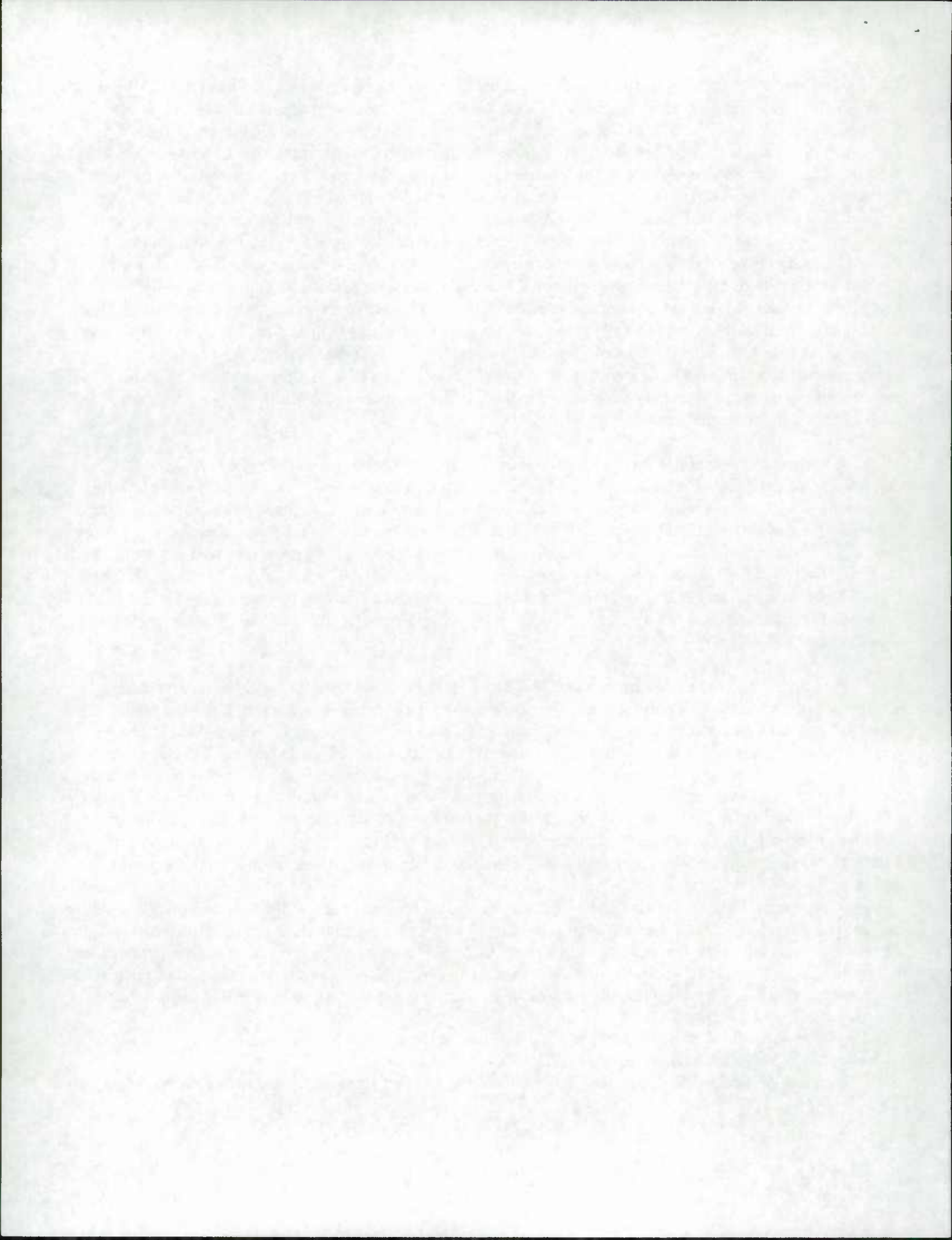
Chairman North reported on the hearing on the Variance Bill before the Senate, the Health, Education, and Environmental Affairs Committee. He said that Governor Hughes testified very effectively at the hearing and a number of witnesses testified favorably. There were only a couple who testified in opposition but their testimony seemed very weak, illogical and unpersuasive. Chairman North said that he and Ren Serey, Secretary Fox, and Marianne Mason had met with Delegate Hurson, the successor to Delegate Guns, who is more sympathetically inclined than his predecessor and believes that both Bills will be successful. Delegate Schlissler met with the Chairman and Executive Director and Marianne Mason and remains opposed to the Governor's proposal. Delegate Schlissler is a member of the law firm that represents Dr. Mastandrea. A hearing will be held next Tuesday in the House.

Ren Serey reported that he had a meeting in Snow Hill with Chuck Fox, Sec of DNR for a working session with the Worcester County Commissioners who had a lot of questions on how the Critical Area Commission works now and how it would work with the Coastal Bays. Secretary Fox handled the policy questions and the reason that this is coming into being. The County Commissioners expressed to Secretary Fox that they do not intend to oppose the Bill, but they will be offering some amendments. Ren Serey had a meeting with Secretary Fox in Ocean City to meet with the Mayor and Council who had concerns about this Bill and why this is being done. There are no issues of growth allocation, transfer of development rights and grandfathering and they are already built out on IDA. Secretary Fox stated that when redevelopment occurs then there will be benefits to water quality and buffering which will be built back into any new designs which they seemed to accept.

Commission Counsel Marianne Mason, Esquire reported on legal affairs of the Commission. She said she will argue a motion in Queen Anne's County in the Circuit Court on a motion on the Four Season's case. Everybody wants out of the case, except the citizens, and Judge Sause will take everything under advisement and inform the Commission. She hopes that the Commission can defeat this with a Motion to Dismiss or she may enter another motion of law for a Summary Judgement - stating that there are no facts in this dispute and that it is a matter of law.

Ms. Mason will be going for a hearing on Old Trails in Harford County for a variance that involved 56 houses in the Buffer with steep slopes and hydric soils.

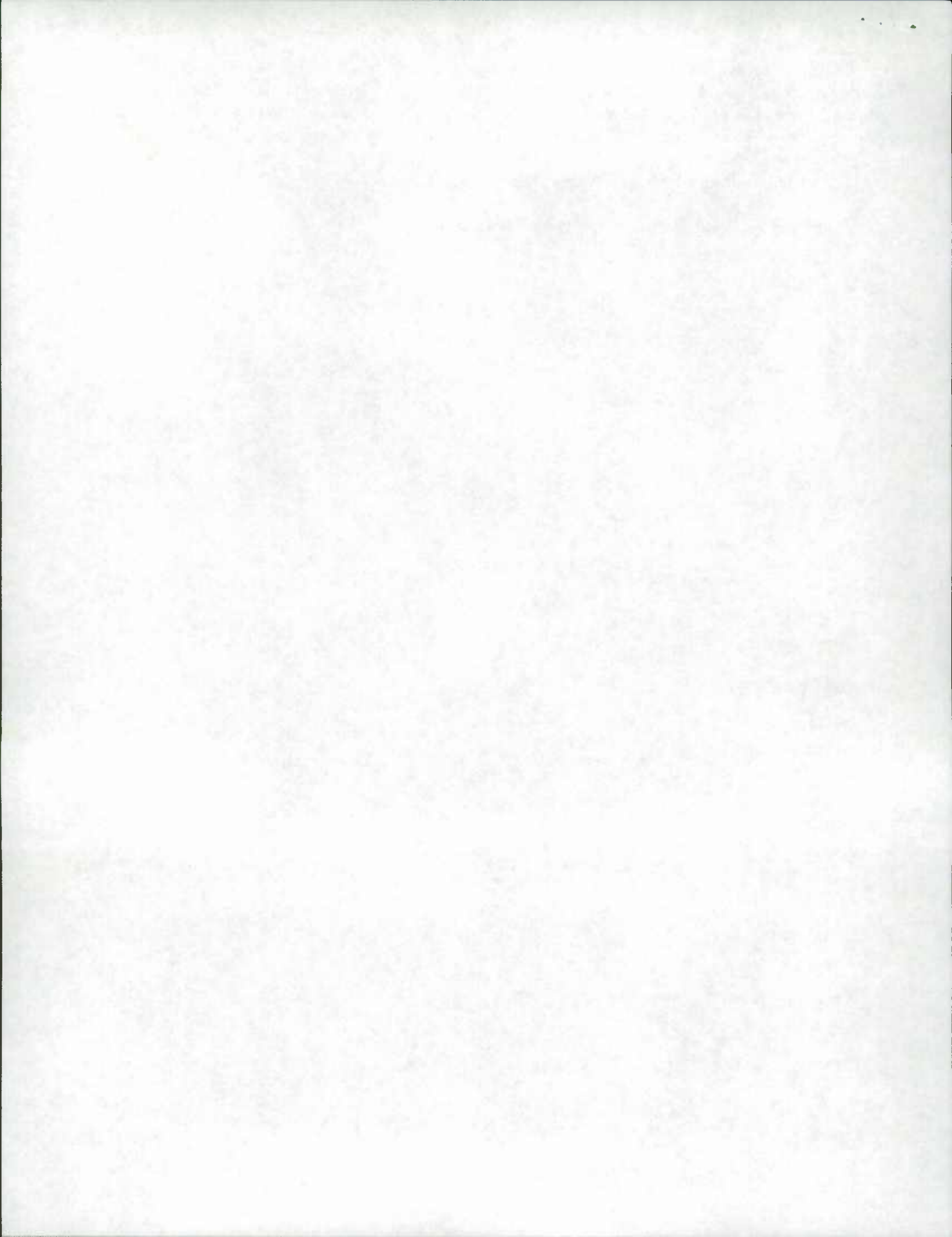
In the Court of Special Appeals in the Lewis case she said that argument is set for June with a hearing in April.



Chairman North told the Commission that Congressman Gilchrist will attend the April meeting of the Critical Area Commission to speak on the efforts to conserve agriculture land. In June, the Commission is scheduled to meet in Ocean City. A Day on the Bay on the Maryland Independence to go to Hart Miller Island, on April is planned. The Commission meeting in July will be held on July 10th, the second Wednesday in the month. Details will+ be forthcoming on all these plans.

There being no further business, the meeting adjourned.

Minutes submitted by: Peggy Mickler, Commission Coordinator



Chesapeake Bay Critical Area Commission

STAFF REPORT

March 6, 2002

APPLICANT: State Highway Administration

PROPOSAL: MD 214 over Glebe Creek – Culvert Repair

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 repair an existing culvert under MD 214 over Glebe Creek in Anne Arundel County. The site is located in the Edgewater area of Anne Arundel County, south of the South River and Glebe Bay. 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. A revised MOU with the Department of Transportation is being written which may address this class of SHA activities.

On Monday, February 11, 2002 I visited the site. The banks on the southern side of the culvert under MD 214 at Glebe Creek are densely vegetated with a variety of species. The northern side has more canopy trees with less understory. The surrounding area is heavily vegetated; however, a residential community is currently under construction on the northwest side of the creek.

The proposed remedial repairs are needed to prevent any additional loss of fill from around the existing structure, additional settlement or shifting of the box culvert sections, and continued undermining at the outlet end. This shifting is resulting in public safety issues with the roadway. The proposed scope of work will include sealing the culvert construction joints, filling the voids behind the culvert walls and the undermined area below the outlet end with grout, and placing Class III rip-rap at the downstream end of the outlet.

In order to avoid disturbance to the surrounding vegetation, all work for the proposed project will be conducted from the roadway. A temporary stream diversion will be implemented to complete the joint sealing.

SHA proposes to place rip-rap that will extend approximately 10 linear feet downstream of the outlet end of the culvert and will be approximately 14 linear feet wide. All rip-rap placement will be below the top of the bank and within the confines of the existing stream channel; therefore, there will be no disturbance to the surrounding bank, buffer, and vegetation. The total area of rip-rap placement will be approximately 140 square feet. There will be no additional impervious surface associated with the proposed repairs.

Glebe Creek and all its tributaries in the vicinity of the project area are classified as Use I streams (Water Contact Recreation and Protection of Aquatic Life) with no in-stream work permitted from March 1st to June 15th, inclusive, during any year. The U.S. Fish and Wildlife Service indicate that no federally proposed or listed endangered or threatened species are known to exist within the project's area of impact. The Department of Natural Resources has indicated that no records for Federal or State rare, threatened, or endangered plants or animals occur within the vicinity of the project site.

This project is in compliance with this subtitle, as well as with other State and federal regulations. All disturbances to the Critical Area have been minimized to the maximum extent practicable. The Critical Area 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.

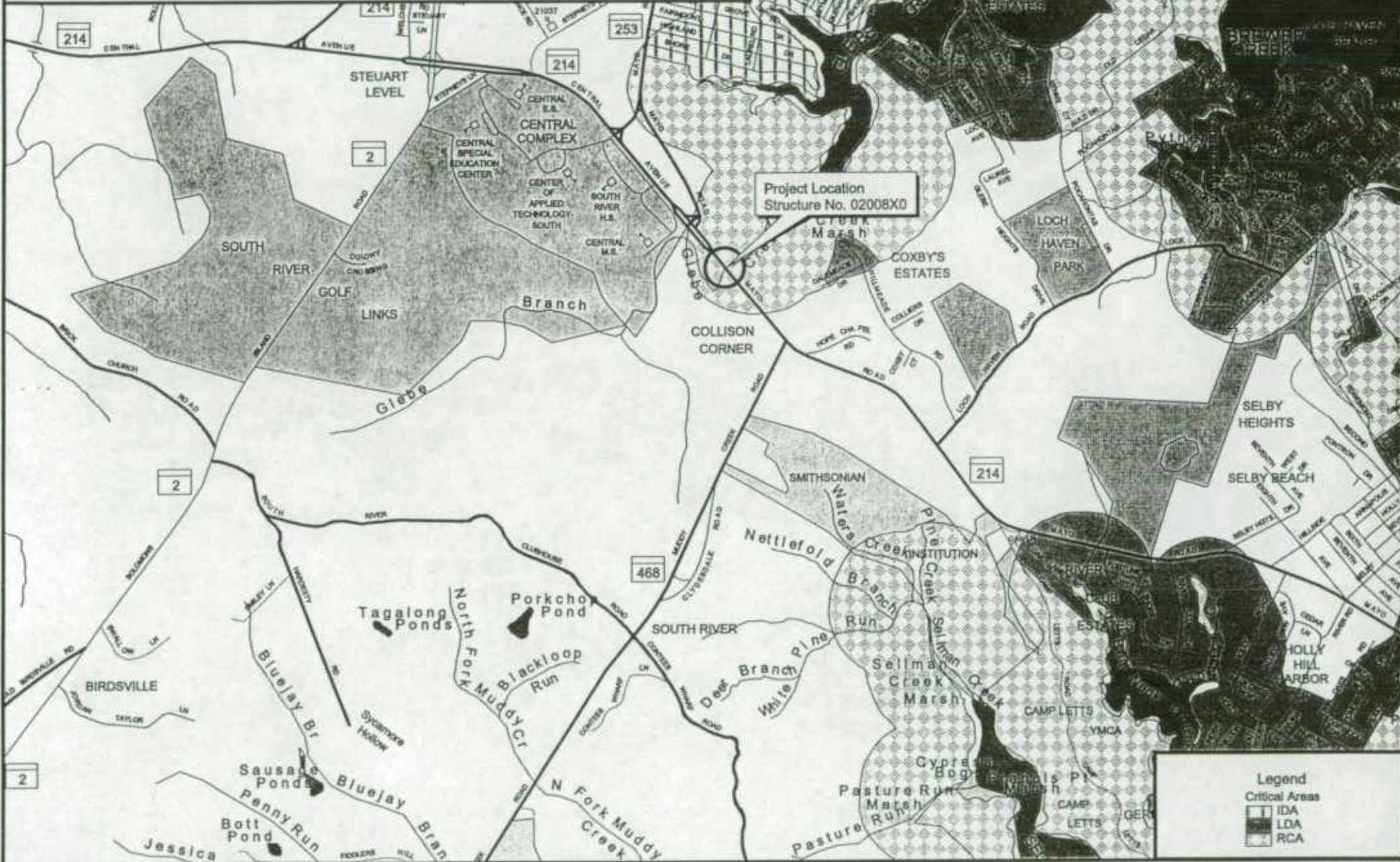
Conditions:

1. Immediately following project completion, the Critical Area staff will inspect the site with SHA staff to ensure no clearing occurred. If clearing occurs as a result of the repairs, SHA shall provide mitigation at a 1:1 ratio.
2. The applicant will subsequently 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.

Critical Areas Mapping

MD 214 over Glebe Creek

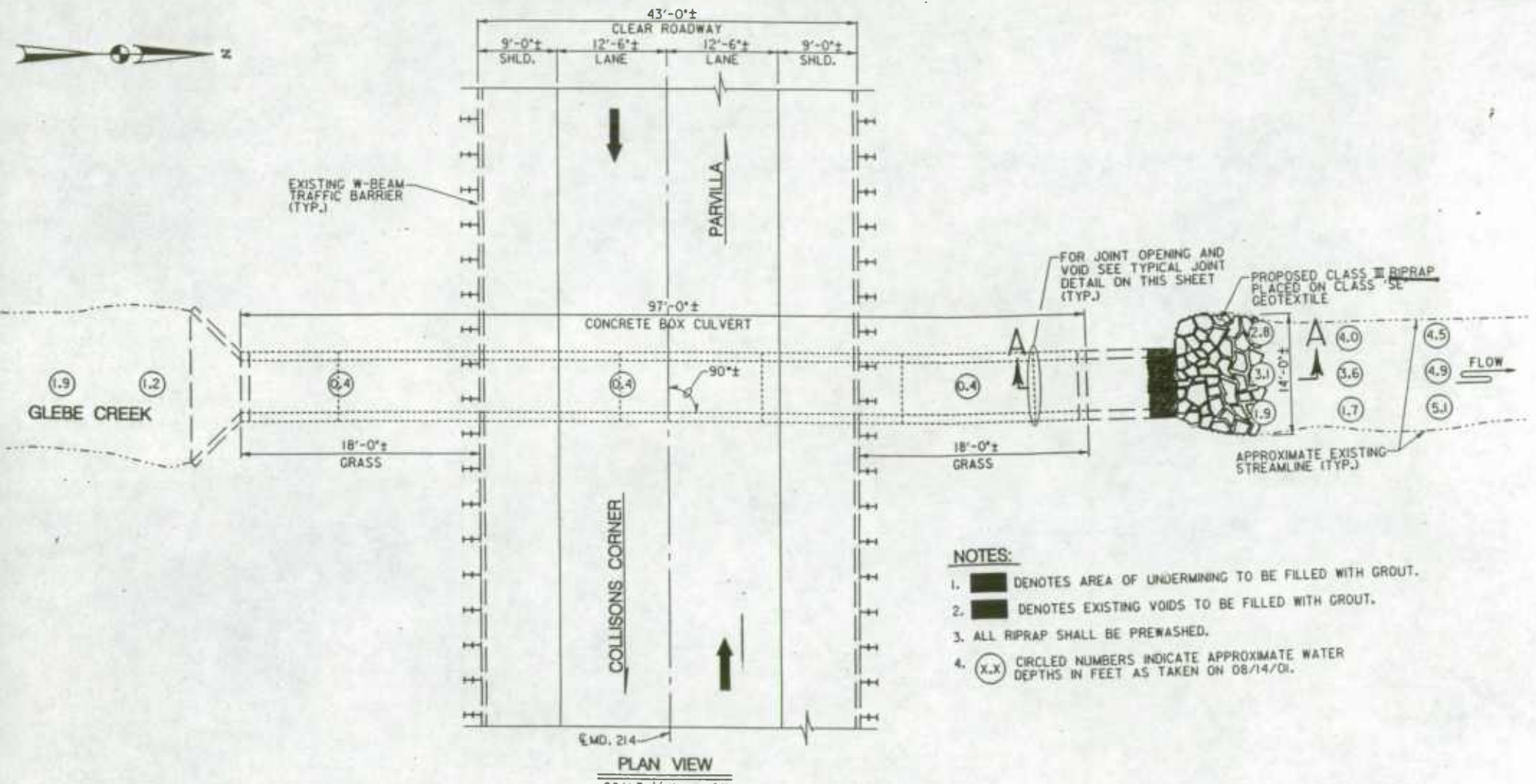


Legend
 Critical Areas
 IDA
 LDA
 RCA

2000 0 2000 Feet

Anne Arundel County
 1:24000

MD 214 OVER GLEBE CREEK



Chesapeake Bay Critical Area Commission

STAFF REPORT

March 6, 2002

APPLICANT: St. Mary's College

PROPOSAL: Windsurfer Storage Structure

JURISDICTION: St. Mary's County

COMMISSION ACTION: Vote

STAFF RECOMMENDATION: Approval

STAFF: Mary Owens

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

DISCUSSION:

This project involves the installation of a prefabricated storage shed near the existing boathouse at St. Mary's College. The 12' by 16' wooden storage shed will be located near the existing parking area at the boathouse and will be located just outside the 100-foot Buffer. The project is needed in order to provide an equipment storage area for the St. Mary's College Windsurfing Team. The existing boathouse does not have sufficient storage space to accommodate the needs of the Windsurfing Team. The shed is proposed to be placed on concrete blocks and will not require excavation for footings. The College is currently working on the design for a new, larger boathouse building, which will be constructed in 2004 and will include storage areas for all of the College's water-oriented athletic teams. The 12' by 16' storage shed will be removed when construction of the new boathouse is completed.

The project does not involve any forest clearing, and the structure will be located so as to minimize impacts to existing trees near the site. The proposed structure is small, so no gutters or downspouts will be installed on the building to concentrate stormwater run-off. Rooftop run-off will be infiltrated into the surrounding lawn area.

The project will be constructed in an existing developed area, and there are no known threatened or endangered plant or animal species that will be affected by the project. There are no tidal or nontidal wetland impacts associated with the project.

This project is consistent with COMAR 27.02.05, the Commission's regulations for State projects on State lands.

Chapman Bar Clinic and Foundation

STAFF REPORT

March 1, 1981

Subject: [Illegible]

Reference to [Illegible]

St. Mary's County

Item

Approval

John Owen

COMMITTEE TO BE FORMED TO STUDY THE
DEVELOPMENT OF A STATE-OWNED LAND

ATTORNEY GENERAL
RELATIONS

DIRECTOR'S

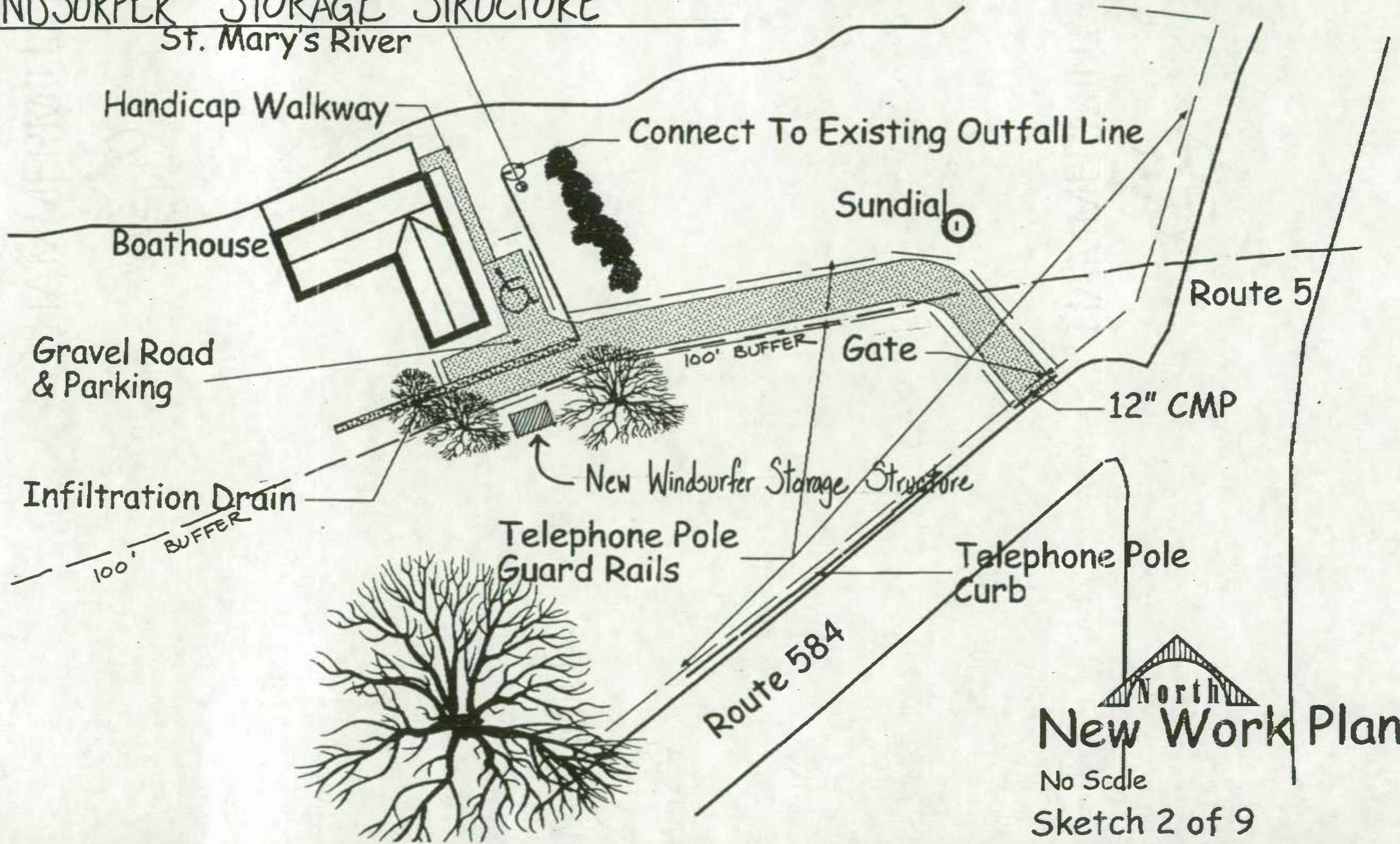
The proposed development of a professional center located near the existing business center in the City of St. Mary's County. The proposed center will be located near the existing parking area at the intersection of [Illegible] and [Illegible]. The proposed center will be located near the existing parking area at the intersection of [Illegible] and [Illegible]. The proposed center will be located near the existing parking area at the intersection of [Illegible] and [Illegible].

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WINDSURFER STORAGE STRUCTURE



North
New Work Plan
No Scale
Sketch 2 of 9

Chesapeake Bay Critical Area Commission

STAFF REPORT

APPLICANT: Somerset County

PROPOSAL: Scott Tawes Growth Allocation

COMMISSION ACTION: Concurrence with Chairman's Determination of Refinement

STAFF RECOMMENDATION: Approval

STAFF: Claudia Jones

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

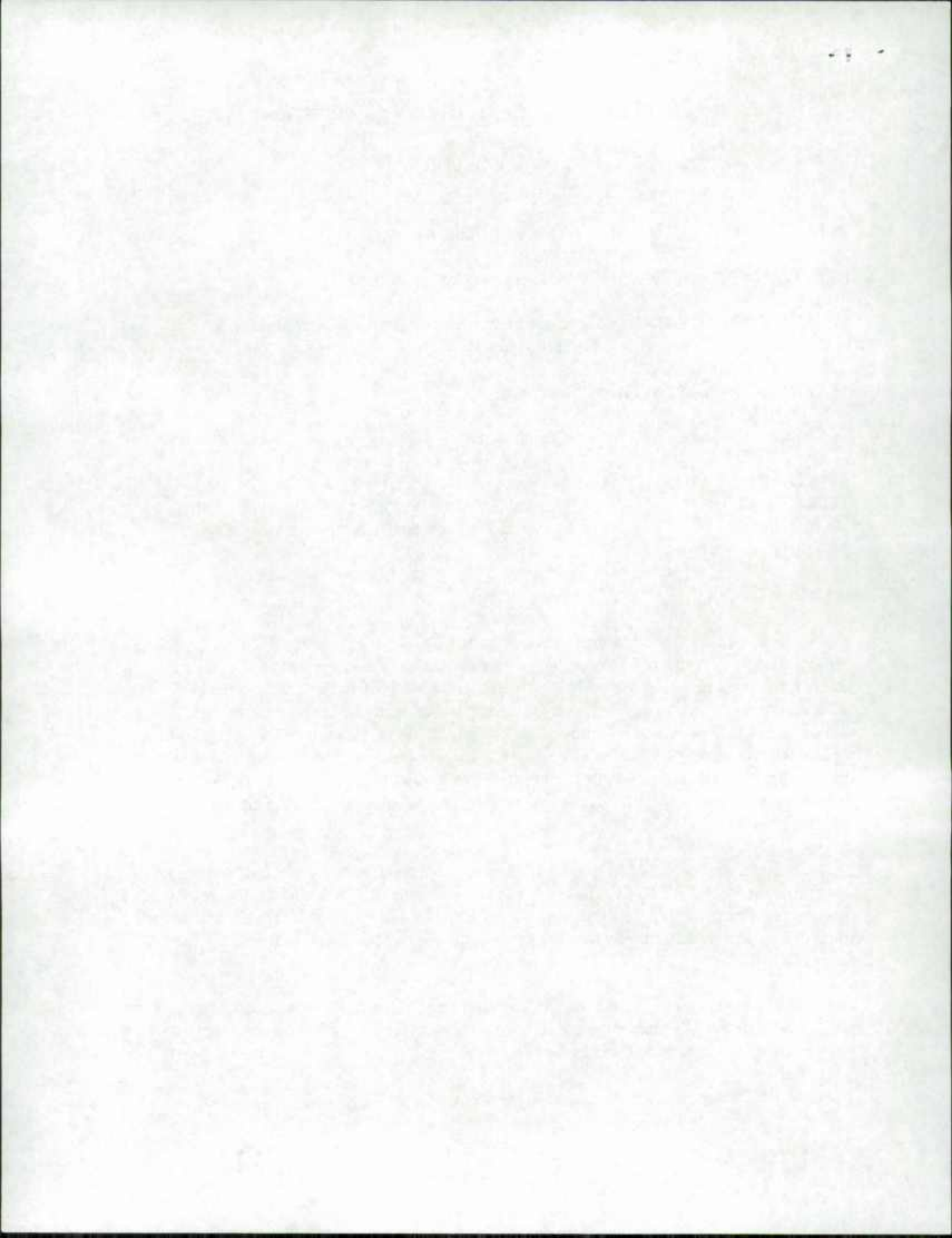
DISCUSSION:

The Somerset County Commissioners have requested 2.87 acres of growth allocation to change a portion of an RCA parcel to LDA for the purpose of creating a development envelope for a single family residence. The entire parcel is 36.10 acres, all located within the Critical Area. One residence currently exists on the property. The proposal includes the creation of two lots. Lot 1 will consist of 6.78 acres and will include the existing dwelling and outbuildings. Lot 2 will include the remaining 29.32 acres, as well as, a 2.87 acres development envelope that requires the use of growth allocation. All of the new development activities will be included within this development envelope. All of the property with the exception of the new development envelope will remain RCA.

The majority of the parcel is being farmed. There is a forested Buffer along the tidal wetlands that border the Pocomoke River. The County is proposing that the 15% afforestation for the newly created parcel be placed adjacent to the existing forested Buffer to increase its value for water quality and wildlife. This will result in 0.44 acres of tree planting adjacent to the existing forest in the Buffer.

The Wildlife and Heritage Division of the Maryland Dept of Natural Resources does not believe that the proposed subdivision will have an adverse impact on any rare plant species that may grow in the tidal wetlands adjacent to the site.

The property is adjacent to existing LDA to the north.



N/F RICHARD B. WARD

N/F MARK & HOLLY CLAUS

N/F PHILLIP ADKINS

N/F FRANCES E. WILKINS

OWNER: SCOTT TAVES
11780 SOMERSET AVENUE
PRINCESS ANNE, MD 21853

ZONED AGRICULTURAL RESIDENTIAL
SETBACKS: FRONT 40'
SIDE 10'/25' AGO
REAR 30'

COMPREHENSIVE WATER AND SEWERAGE
PLAN: W-6 S-6

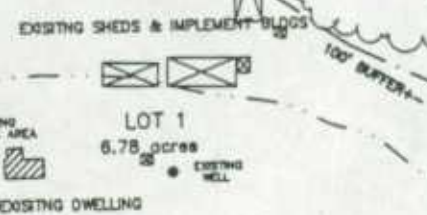
AREA OF LOT 1 = 6.78 ACRES
AREA OF LOT 2 = 29.32 ACRES
TOTAL AREA 36.10 ACRES

FLOOD ZONES AS SHOWN
(PROTRACTED FROM FIRM 240081 0300 A
EXISTING LAND USE: RESIDENTIAL & AGRICULTURAL
PROPOSED LAND USE: RESIDENTIAL & AGRICULTURAL
PARCEL IS LOCATED IN THE CHESAPEAKE BAY CRITICAL AREA
JURISDICTION RESOURCE CONSERVATION AREA
SOILS PROTRACTED FROM SOMERSET COUNTY SURVEY 7/1986

NO FURTHER DEVELOPMENT ON LOT 2 WITHOUT
ADDITIONAL GROWTH ALLOCATION

LOT 2 29.32 ACRES
AREA OF MARSH LAND = 3.28 ACRES
AREA OF WOODED LAND = 4.52 ACRES
AREA OF ARABLE LAND = 18.67 ACRES
DEVELOPMENT PAD 2.87 ACRES

0.44 ACRES OF FORESTATION
AS PER PLANTING PLAN BY
DAN RYDER IN THE OFFICE OF
SOMERSET COUNTY PLANNING &
ZONING



10' DEDICATION TO SOMERSET COUNTY
FOR FUTURE ROAD WIDENING

OLD REHOBETH ROAD
(30' R/W)

SOMERSET COUNTY
BENCHMARK

SHELTON R.

GRAPHIC SCALE



(IN FEET)
1 inch = 120 ft.

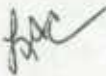
REV 11/15/01
PER LETTER BY
DATED 11/8/01

THIS SUBDIVISION IS DEEMED AS RESIDENTIAL FARM SUBDIVISION. THE
PURPOSE OF THE RESIDENTIAL FARM SUBDIVISION IS TO PLACE
ALL LOT OWNERS IN THIS DEVELOPMENT ON NOTICE THAT IT IS THE INTENT
OF SOMERSET COUNTY TO PROMOTE THE PRESERVATION OF THE COUNTRY
BY...
SOMERSET COUNTY PLANNING & ZONING DEPARTMENT

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

MEMORANDUM

To: All Commission members

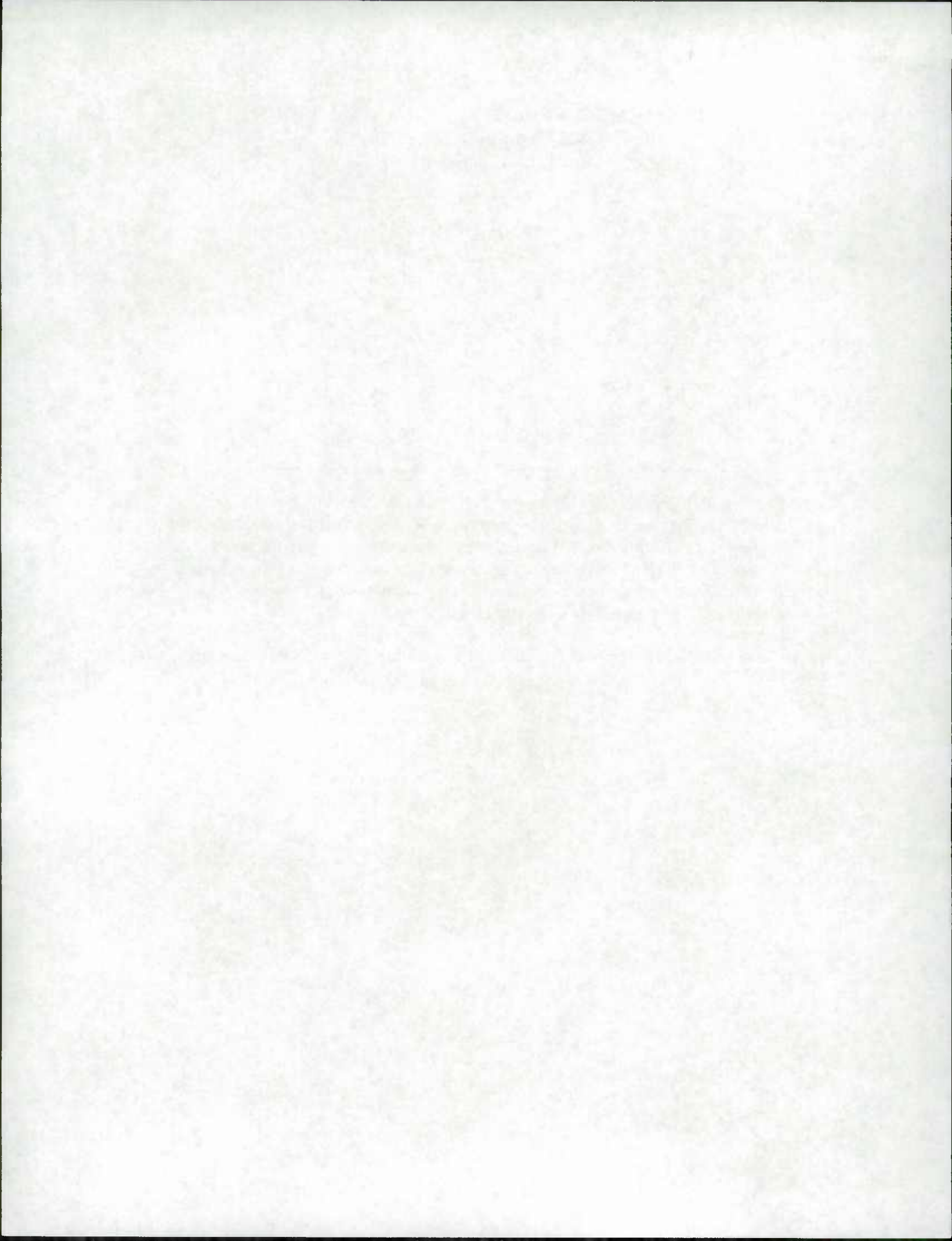
From: LeeAnne Chandler 

Date: March 1, 2002

Subject: Additional information for March 6, 2002 meeting

Enclosed with this memo, please find a staff report for the "Ellendale Growth Allocation", a refinement to be added to the meeting's agenda. Also enclosed is a copy of correspondence recently received from Queen Anne's County regarding their growth allocation process. The correspondence includes the proposed text amendments meant to address the Critical Area Commission's concerns regarding their process. The text amendments are not proposed for Commission action at this time.

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



Chesapeake Bay Critical Area Commission

STAFF REPORT

March 6, 2002

APPLICANT: Queen Anne's County

PROPOSAL: Ellendale Growth Allocation

COMMISSION ACTION: Concurrence

STAFF RECOMMENDATION: Approval with Conditions

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 25.73 acres of growth allocation to change the Critical Area overlay designation on a portion of a parcel from Resource Conservation Area (RCA) to Intensely Developed Area (IDA). The property is a total of 89.775 acres in size, with 54 acres within the Critical Area. The site is currently in agricultural production with an existing farmhouse and barns. It is located in the westernmost portion of Kent Island in close proximity to Route 50. The property is bordered by the K Mart shopping center to the north, Thompson Creek to the east, and the Kent Manor Inn to the south.

The property is located within the Stevensville growth area and it has a zoning designation of "Stevensville Master Planned Development." This designation allows for a variety of housing types with accessory commercial developments and institutional uses. The proposed use of the property is a residential development of 285 dwelling units (106 single-family homes and 179 townhomes). The proposed layout incorporates several design standards that are used in Traditional Neighborhood Design such as narrower streets, alleys and a centrally located community park. The proposed layout also provides a 300-foot setback along the Thompson Creek shoreline and leaves the northernmost section of the property as open space. This open space was provided at the request of the County, in order to avoid conflicts with the flight path to the Kent Island Airport. These areas leave 28.423 acres as RCA.



With the exception of the Buffer, no Habitat Protection Areas exist on this site. No forest clearing will be necessary for the development. The 10% pollutant reduction requirement will be addressed during the subdivision review process. The growth allocation plan shows

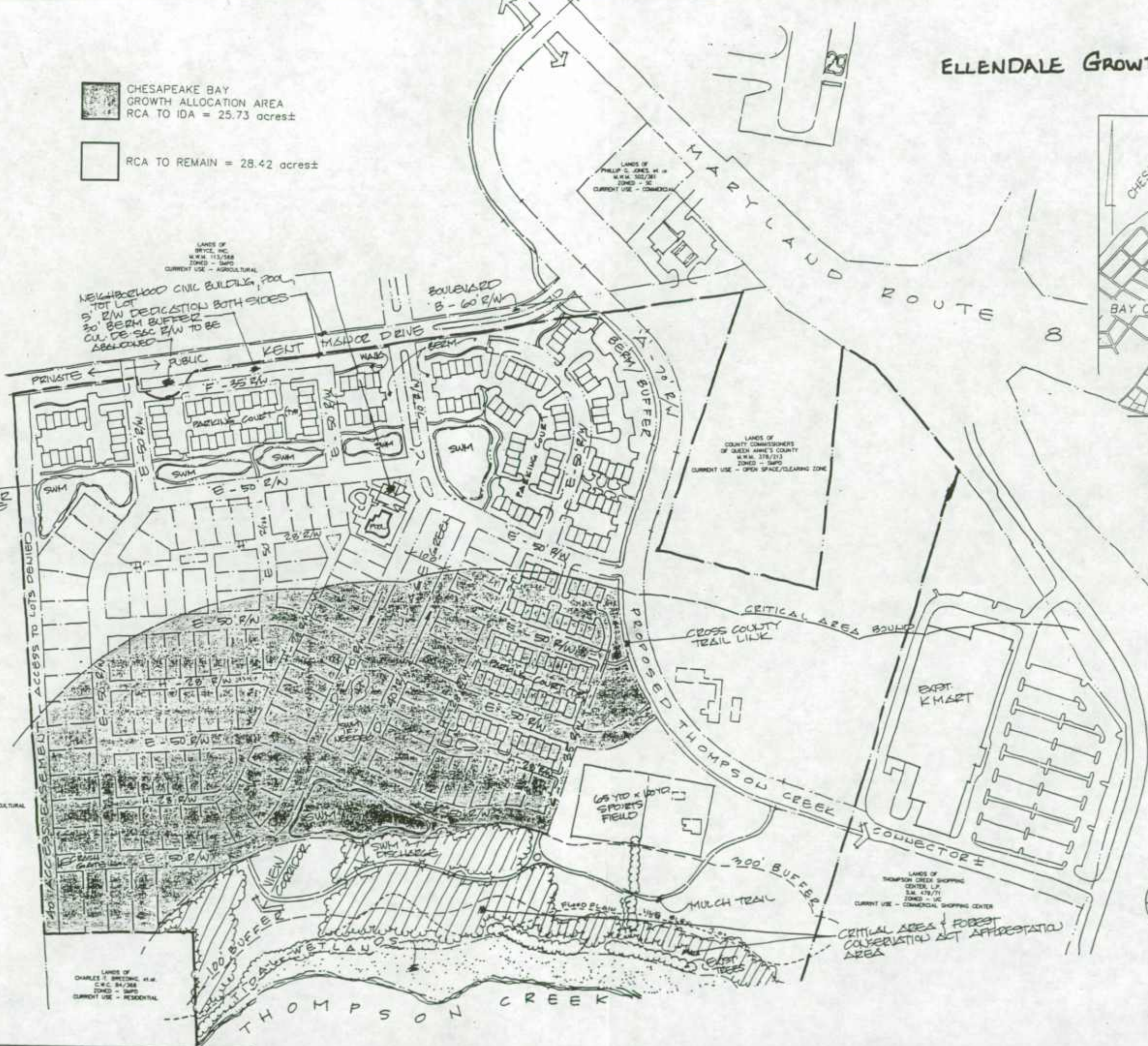
conceptual locations for the stormwater management facilities. If growth allocation is approved, the project will be served by public water and public sewer.

The project does not meet the adjacency guidelines in the Criteria. However, this is due to the 300-foot setback provided along the shoreline and the area left undeveloped on the northernmost section of the property. The property to the south is designated RCA, to the north is IDA and across Thompson Creek there is a mix of IDA and LDA. Queen Anne's County is one of those jurisdictions allowed to use greater than 50% of its growth allocation in the RCA provided that the development is clustered. Queen Anne's County has not yet used 50% of its growth allocation. Even if they had, with more than 30 acres of contiguous open space, it is the County's position that the project is a cluster development. With the exception of adjacency, the project appears consistent with the Commission policy on Growth Allocation.

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.

ELLENDALE GROWTH ALLOCATION

 CHESAPEAKE BAY
 GROWTH ALLOCATION AREA
 RCA TO IDA = 25.73 acrs±
 RCA TO REMAIN = 28.42 acrs±





DEPARTMENT OF PLANNING AND ZONING
QUEEN ANNE'S COUNTY

107 N. LIBERTY STREET
CENTREVILLE, MARYLAND 21617

410-758-4088 Permits
410-758-3972 Fax
410-758-1255 Planning
410-758-2905 Fax

February 26, 2002

Ren Serey, Executive Director
Critical Area Commission
1804 West Street, Suite 100
Annapolis, MD 21401

Re: Growth Allocation Procedures

Dear Ren,

The Queen Anne's County Commissioners and Department of Planning & Zoning are moving forward with the attached text amendments to change the Growth Allocation petition procedures as requested by the Critical Area Commission. The attached text amendment will be reviewed by the Planning Commission during a public hearing on April 11, 2002 and will be forwarded to the Critical Area Commission for review as a program refinement at their May meeting. The County Commissioner's public hearing for the legislative change will be held in late May with a final decision anticipated on June 4, 2002.

I hope that the proposed text changes address the concerns of the Critical Area Commission. Please contact me if you have any questions or if I can provide additional assistance. Thank you.

Sincerely,

J. Steven Cohoon
Development Review Chief

Cc: Steven Kaii-Ziegler

RECEIVED

FEB 27 2002

PLANNING

10:00 AM

TDD: 410-758-2126

~~DELETED TEXT IN STRIKEOUT FORMAT~~

~~ADDED TEXT IN SHADED FORMAT~~

14-177. Growth allocation petition procedures.

(a) *Initiation.*

A request for growth allocation petition may be initiated by a petition of the property owner filed with the County Commissioners. All petitions for growth allocation filed by property owners shall be accompanied by the information required in §18-1-297 of the Queen Anne's County Code and a fee prescribed by the County Commissioners.

(b) *Planning Commission – Referral, investigation and recommendation.*

All growth allocation petitions shall be referred to the Planning Commission for investigation and recommendation. The Planning Commission shall first hold a public hearing at which parties of interest and citizens shall have an opportunity to be heard. At least 14 days' notice of the time and place of such hearing shall be published in a newspaper of general circulation in the county. In addition, the Planning Commission shall post notice of its public hearing on the property for which growth allocation is requested and, to the extent possible based on the best information, notify all property owners immediately contiguous to the property of the hearing date, time and place.

(c) *Planning Commission report and recommendation.*

The Planning Commission shall forward its report and recommendations to the County Commissioners within 60 days of referral, unless an extension of time is granted by the County Commissioners. The recommendations of the Planning Commission shall include discussion of the matters required to be considered by the County Commissioners.

(d) *County Commissioner conceptual approval.*

At their regularly scheduled meeting the County Commissioners shall evaluate the growth allocation petition on the basis of the report and recommendations of the Planning Commission and either conceptually approve or disapprove the growth allocation petition.

~~(a) Within 90 days of receiving the report and recommendations of the Planning Commission, the County Commissioners shall hold a public hearing and either conceptually approve or disapprove the proposed growth allocation petition. Such hearing shall allow parties of interest and citizens an opportunity to be heard. At least 14 days prior to said hearing, notice of same, with date, time and place, shall be published in a newspaper of general circulation in the County.~~

(2) In addition to other matters pertinent to the growth allocation petition, the County Commissioners shall give specific consideration to the following matters:

(i) The purposes set forth in §8-1800 et seq. of the Natural Resources Article of the Annotated Code of Maryland, the Queen Anne's County Critical Area Program, the Comprehensive Plan and the Queen Anne's County Code;

(ii) The recommendations of the Planning Commission;

(iii) The relation of the growth allocation petition to the Queen Anne's County Critical Area Program, the Comprehensive Plan, Growth Sub-Area Plans; and

(iv) The testimony and other evidence presented at the public hearing.

(e) *Critical Area Commission approval.*

All growth allocation petitions that receive conceptual approval by the County Commissioners will be forwarded to the Critical Area Commission for review and approval. If the growth allocation petition is approved by the Critical Area Commission, it shall proceed to the County Commission for final approval. No award of Growth Allocation shall become effective until after the County Commissioners have taken final legislative action on the petition.

(f) *Final approval by the County Commissioners.*

(1) After receiving notification from the Critical Area Commission that a growth allocation petition has been approved pursuant to the provisions of §8-1809 of the Natural Resources Article of the Annotated Code of Maryland, the County Commissioners shall hold a public hearing on the growth allocation petition which shall not be more than 90 days after notification of approval by the Critical Area Commission. Such hearing shall allow parties of interest and citizens an opportunity to be heard. At least 14 days' notice of the time and place of such hearing shall be published in a newspaper of general circulation in the county.

(2) In addition to other matters pertinent to the growth allocation petition, the County Commissioners shall give specific consideration to the following matters:

(i) — ~~The purposes set forth in §8-1800 et seq. of the Natural Resources Article of the Annotated Code of Maryland, the Queen Anne's County Critical Area Program, the Comprehensive Plan and the Queen Anne's County Code;~~

(ii) — ~~The recommendations of the Planning Commission;~~

(iii) — ~~The relation of the growth allocation petition to the Queen Anne's County Critical Area Program, the Comprehensive Plan, Growth Sub-Area Plans; and~~

(iv) — ~~The testimony and other evidence presented at the public hearing.~~

~~(1) Within 120 days of receiving notification from the Critical Area Commission that the proposed growth allocation petition has been conditionally approved pursuant to the provisions of §8-1809 of the Natural Resources Article of the Annotated Code of Maryland, the County Commissioners shall introduce legislation and take final legislative action on the proposed growth allocation.~~

(3) ~~(2)~~ If the Planning Commission has recommended approval of a growth allocation petition and the County Commissioners propose to approve a an award of growth allocation petition which substantially changes or departs from those recommendations, the proposal of the County Commissioners shall be referred to the Planning Commission, in writing, for its further recommendations and to the Critical Area Commission for review and approval prior to any final legislative action. If such recommendations are not received by the County Commissioners within 90 days after the proposal has been transmitted to the Planning Commission and ~~accepted by the Critical Area Commission~~, the County Commissioners may proceed to take final action without such recommendations.

~~(4) If the County Commissioners propose to approve a growth allocation petition which is substantially different from the proposed growth allocation petition and the recommendations of the Planning Commission as described in the published notice, a new public hearing shall be held. Notice of such hearing shall include notice of the amended growth allocation petition as proposed by the County Commissioners and any recommendations of the Planning Commission, including those made after any referral required by §14-177(f)(3).~~

~~(5)~~ ~~(5)~~ A growth allocation petition shall not be effective until after it is approved by the Critical Area Commission and not until 45 days after approval by the County Commissioners.

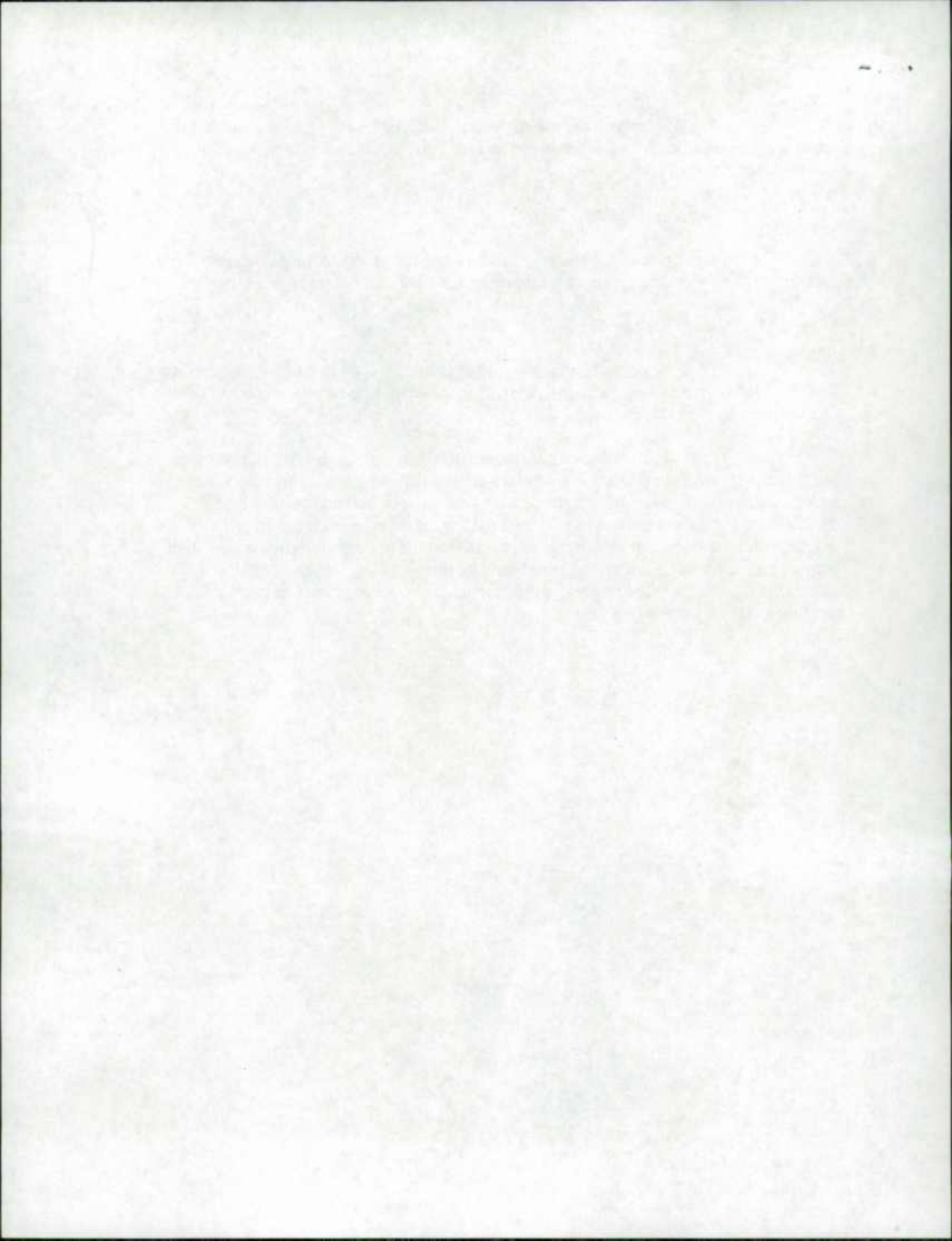
(g) *Map amendment.*

The Official Critical Area Map(s) will be amended to reflect the new development area designation when the approved growth allocation petition becomes effective.

(h) *Use of approved growth allocation.*

(1) Successful projects granted growth allocation will be submitted for final site plan or preliminary and final subdivision approval as per requirements of the Queen Anne's County Code.

(2) If all construction associated with a nonresidential project which was awarded growth allocation has not been substantially completed within 24 months of site plan approval, then the growth allocation award shall be null and void. If road dedication to the county has not been completed for a residential project within 36 months of final subdivision or site plan approval, then the growth allocation award shall become null and void. Further, the award shall be recaptured by the county unless an extension is granted by the County Commissioners. Extensions cannot be granted for more than one year at any one time.



By: Delegate Weir (Chairman, Joint Committee on the Chesapeake Bay
Critical Areas) and Delegates W. Baker, Cadden, and Owings

Introduced and read first time: January 31, 2002

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Chesapeake Bay Critical Area Protection Program**

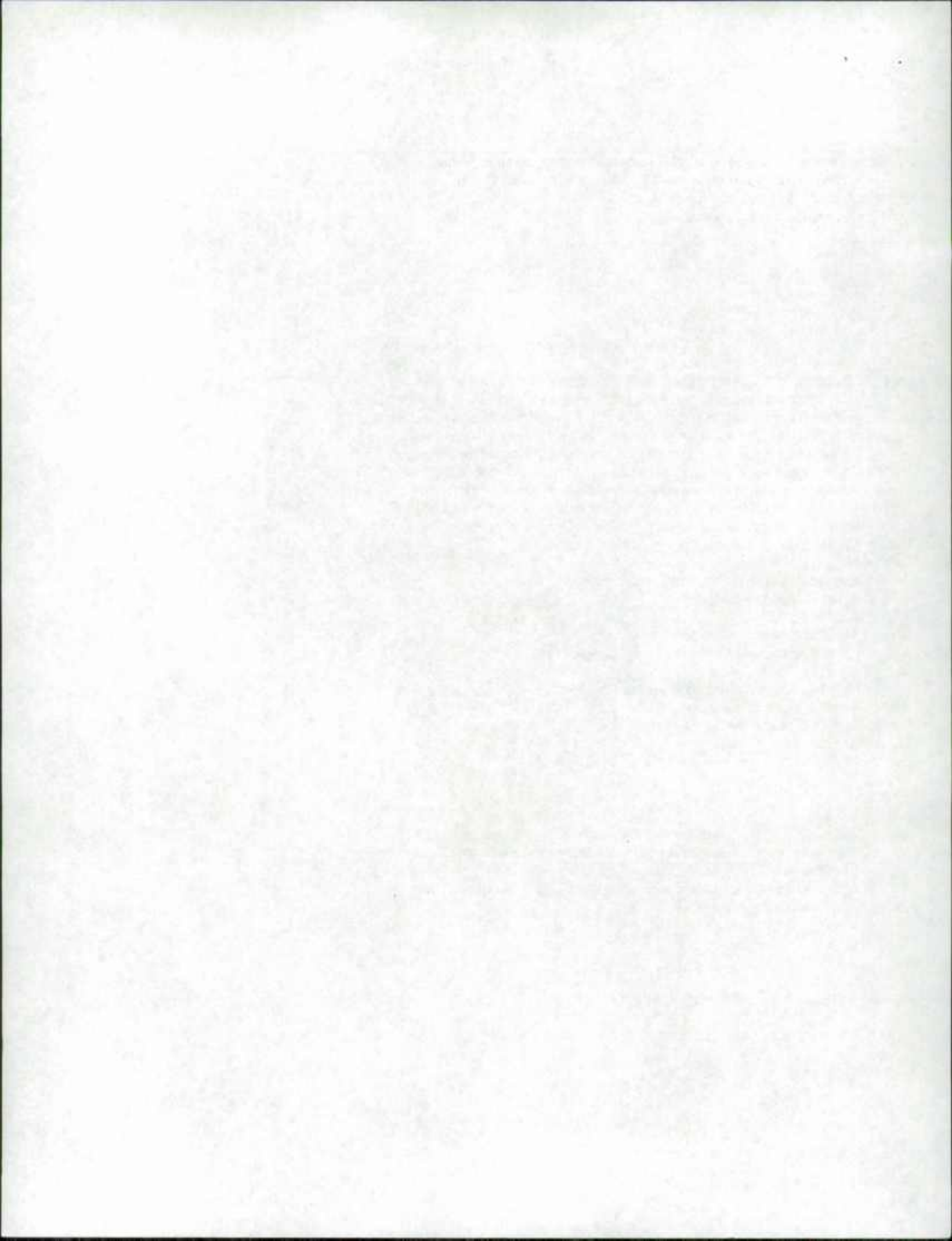
3 FOR the purpose of altering the requirements for local critical area programs to
4 include certain variance provisions; prohibiting a variance from being granted
5 unless certain conditions are met; requiring a local jurisdiction, in considering
6 an application for a variance, to consider reasonable use of the entire parcel or
7 lot for which the variance is requested; providing that certain provisions of this
8 Act do not apply to certain permits or activities which comply with certain buffer
9 exemption plans or buffer management plans; revising the period of time for the
10 review of certain critical area programs by local jurisdictions; defining a certain
11 term; removing certain obsolete language; and generally relating to the
12 Chesapeake Bay Critical Area Protection Program.

13 BY repealing and reenacting, without amendments,
14 Article - Natural Resources
15 Section 8-1801
16 Annotated Code of Maryland
17 (2000 Replacement Volume and 2001 Supplement)

18 BY repealing and reenacting, with amendments,
19 Article - Natural Resources
20 Section 8-1808 and 8-1809(g)
21 Annotated Code of Maryland
22 (2000 Replacement Volume and 2001 Supplement)

23 **Preamble**

24 WHEREAS, State lawmakers in 1984 recognized the importance of fostering
25 more sensitive development activity along the shoreline areas of the Chesapeake Bay
26 and its tributaries, from the standpoint of protecting and preserving water quality
27 and natural habitats, with the adoption of the Chesapeake Bay Critical Area
28 Protection Act; and



1 WHEREAS, The grandfathering provisions of the enabling Act and its
2 accompanying Criteria provided certain exemptions for grandfathered properties
3 from density limits, but the Criteria expressly provided that grandfathered properties
4 were not exempt from Habitat Protection Area (HPA) or water-dependent facilities
5 requirements; and

6 WHEREAS, The Criteria provide that variances to a jurisdiction's local Critical
7 Area Program may be granted in certain circumstances; and

8 WHEREAS, Recent decisions by the Maryland Court of Appeals have held that
9 a variance may be granted if the regulations would deny development on a specific
10 portion of an applicant's property rather than considering alternative locations
11 on-site; and

12 WHEREAS, The Court of Appeals has ruled that a local Board of Appeals, when
13 determining if denial of a variance would deny an applicant rights commonly enjoyed
14 by others in the Critical Area, may compare a proposal to nonconforming uses or
15 development that predated implementation of a local Critical Area Program; and

16 WHEREAS, The Court of Appeals has ruled that an applicant for a variance
17 from Critical Area requirements may generally satisfy the variance standards of a
18 local zoning ordinance, rather than satisfy all of the standards; and

19 WHEREAS, These recent rulings by the Court of Appeals are contrary to the
20 intent of the General Assembly in enacting the Chesapeake Bay Critical Area
21 Protection Act; and

22 WHEREAS, It is the intent of this Act to overrule these recent decisions of the
23 Court of Appeals regarding variances to Critical Area regulations; now, therefore,

24 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
25 MARYLAND, That the Laws of Maryland read as follows:

26 **Article - Natural Resources**

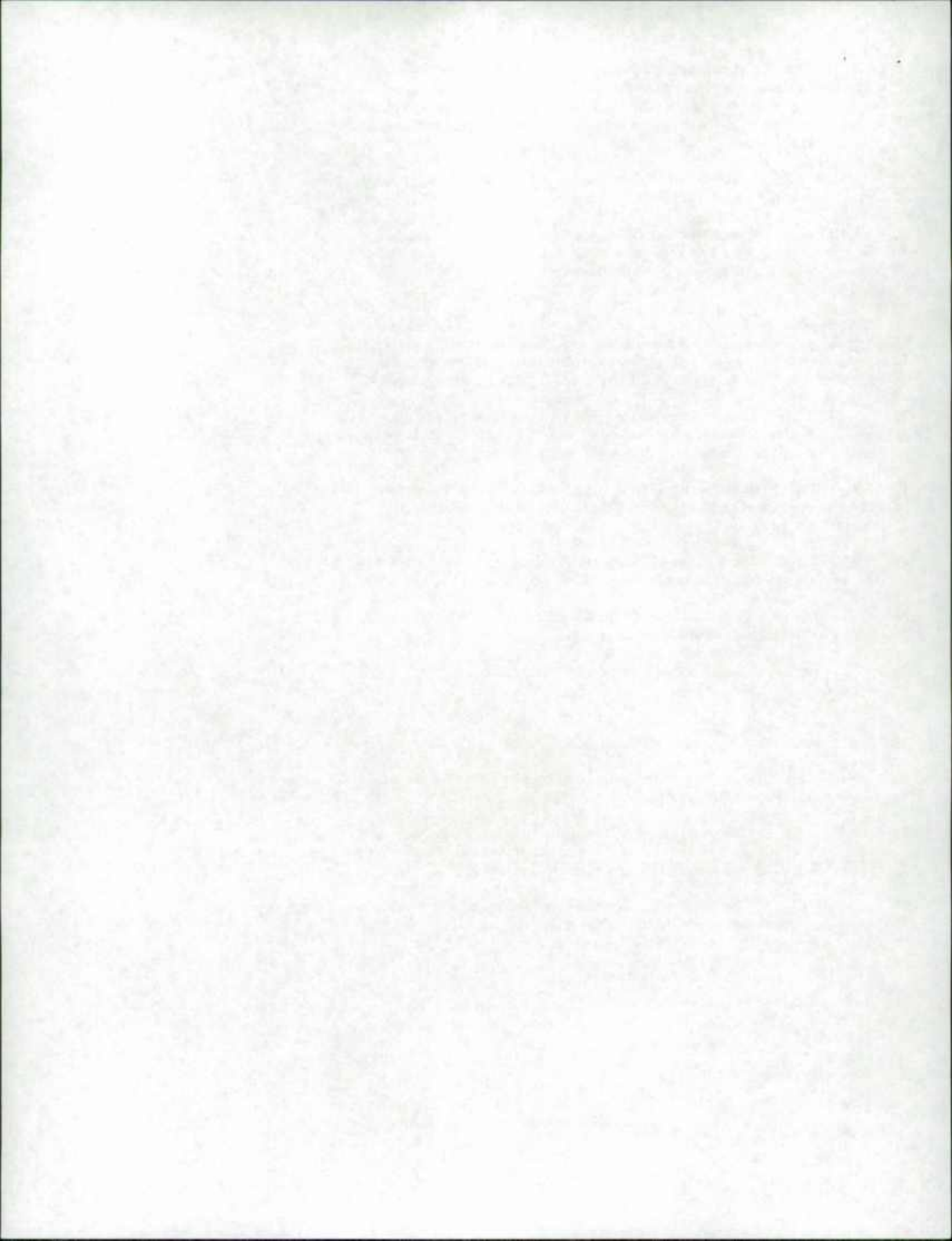
27 8-1801.

28 (a) The General Assembly finds and declares that:

29 (1) - The Chesapeake Bay and its tributaries are natural resources of
30 great significance to the State and the nation;

31 (2) The shoreline and adjacent lands constitute a valuable, fragile, and
32 sensitive part of this estuarine system, where human activity can have a particularly
33 immediate and adverse impact on water quality and natural habitats;

34 (3) The capacity of these shoreline and adjacent lands to withstand
35 continuing demands without further degradation to water quality and natural
36 habitats is limited;



1 (4) National studies have documented that the quality and productivity
2 of the waters of the Chesapeake Bay and its tributaries have declined due to the
3 cumulative effects of human activity that have caused increased levels of pollutants,
4 nutrients, and toxics in the Bay System and declines in more protective land uses
5 such as forestland and agricultural land in the Bay region;

6 (5) Those portions of the Chesapeake Bay and its tributaries within
7 Maryland are particularly stressed by the continuing population growth and
8 development activity concentrated in the Baltimore-Washington metropolitan
9 corridor;

10 (6) The quality of life for the citizens of Maryland is enhanced through
11 the restoration of the quality and productivity of the waters of the Chesapeake Bay
12 and its tributaries;

13 (7) The restoration of the Chesapeake Bay and its tributaries is
14 dependent, in part, on minimizing further adverse impacts to the water quality and
15 natural habitats of the shoreline and adjacent lands;

16 (8) The cumulative impact of current development is inimical to these
17 purposes; and

18 (9) There is a critical and substantial State interest for the benefit of
19 current and future generations in fostering more sensitive development activity in a
20 consistent and uniform manner along shoreline areas of the Chesapeake Bay and its
21 tributaries so as to minimize damage to water quality and natural habitats.

22 (b) It is the purpose of the General Assembly in enacting this subtitle:

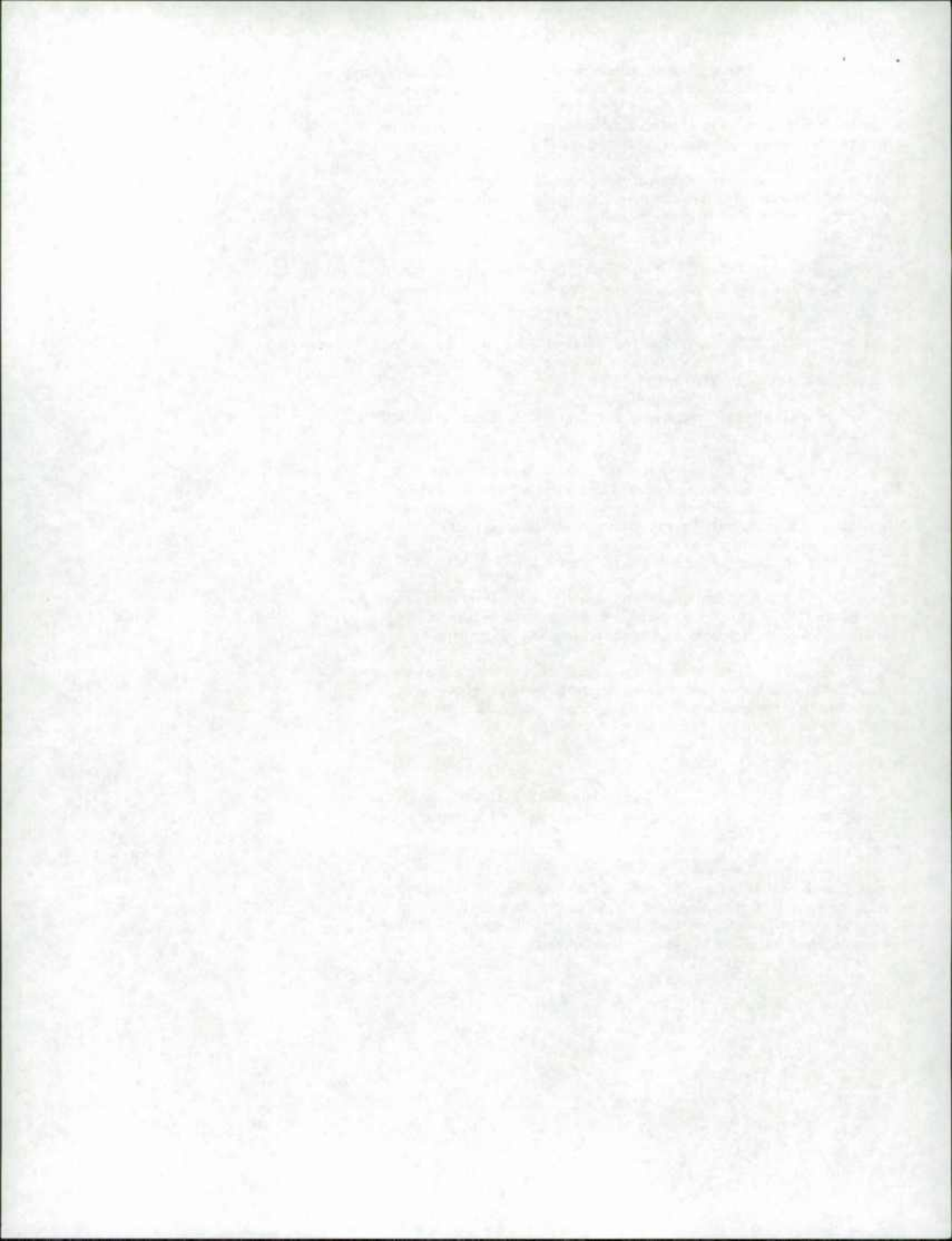
23 (1) To establish a Resource Protection Program for the Chesapeake Bay
24 and its tributaries by fostering more sensitive development activity for certain
25 shoreline areas so as to minimize damage to water quality and natural habitats; and

26 (2) To implement the Resource Protection Program on a cooperative
27 basis between the State and affected local governments, with local governments
28 establishing and implementing their programs in a consistent and uniform manner
29 subject to State criteria and oversight.

30 8-1808.

31 (a) (1) It is the intent of this subtitle that each local jurisdiction shall have
32 primary responsibility for developing and implementing a program, subject to review
33 and approval by the Commission.

34 (2) The Governor shall include in the budget a sum of money to be used
35 for grants to reimburse local jurisdictions for the reasonable costs of developing a
36 program under this section. Each local jurisdiction shall submit to the Governor [by
37 October 31, 1984] a detailed request for funds that are equivalent to the additional
38 costs incurred in developing the program under this section.



1 (3) The Governor shall include in the budget annually a sum of money to
2 be used for grants to assist local jurisdictions with the reasonable costs of
3 implementing a program under this section. Each local jurisdiction shall submit to
4 the Governor by May 1 of each year a detailed request for funds to assist in the
5 implementation of a program under this section.

6 (b) A program shall consist of those elements which are necessary or
7 appropriate:

8 (1) To minimize adverse impacts on water quality that result from
9 pollutants that are discharged from structures or conveyances or that have run off
10 from surrounding lands;

11 (2) To conserve fish, wildlife, and plant habitat; and

12 (3) To establish land use policies for development in the Chesapeake Bay
13 Critical Area which accommodate growth and also address the fact that, even if
14 pollution is controlled, the number, movement, and activities of persons in that area
15 can create adverse environmental impacts.

16 (c) At a minimum, a program sufficient to meet the goals stated in subsection
17 (b) of this section includes:

18 (1) A map designating the critical area in a local jurisdiction;

19 (2) A comprehensive zoning map for the critical area;

20 (3) As necessary, new or amended provisions of the jurisdiction's:

21 (i) Subdivision regulations;

22 (ii) Comprehensive or master plan;

23 (iii) Zoning ordinances or regulations;

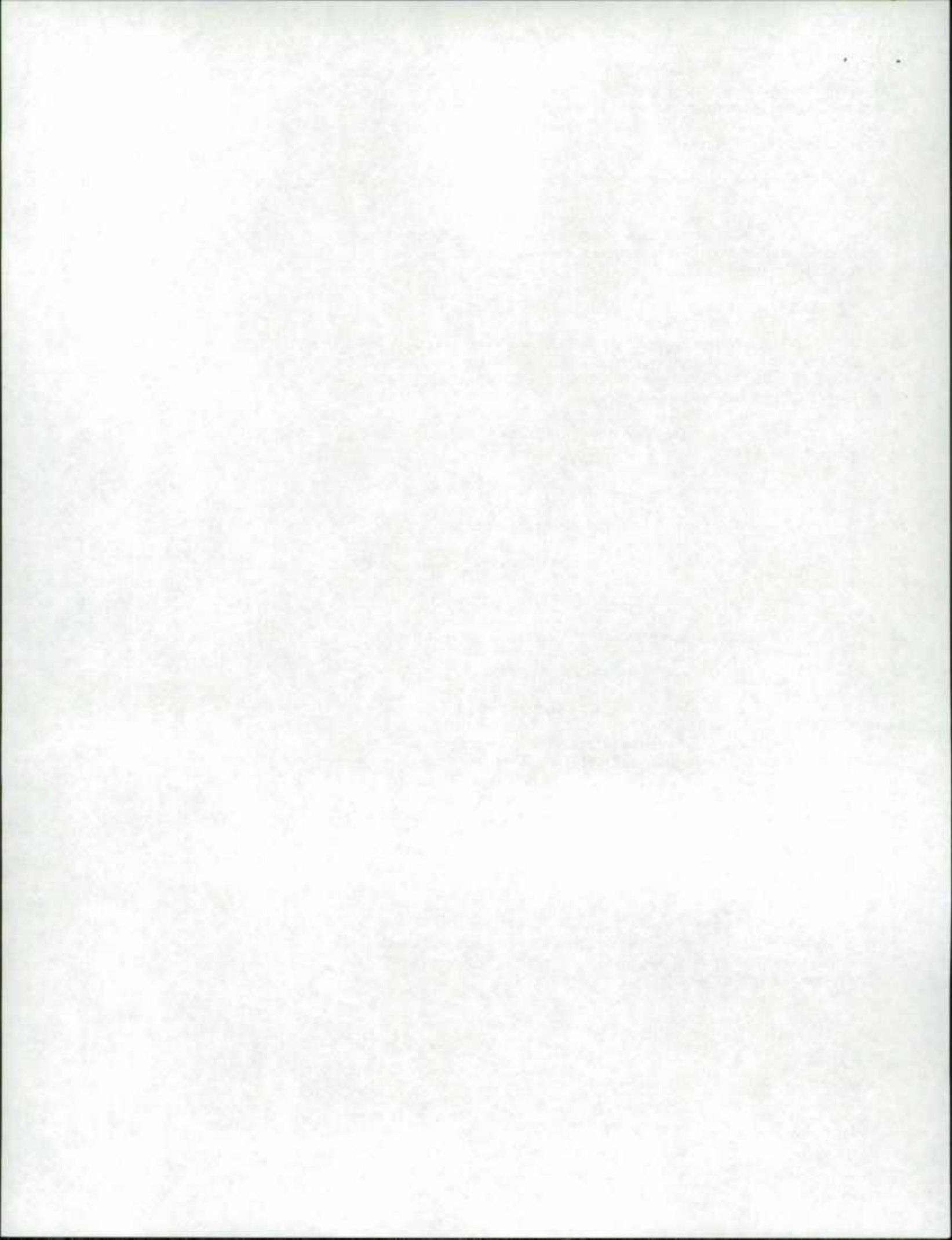
24 (iv) Provisions relating to enforcement; and

25 (v) Provisions as appropriate relating to grandfathering of
26 development at the time the program is adopted or approved by the Commission;

27 (4) Provisions requiring that project approvals shall be based on findings
28 that projects are consistent with the standards stated in subsection (b) of this section;

29 (5) Provisions to limit the amount of land covered by buildings, roads,
30 parking lots, or other impervious surfaces, and to require or encourage cluster
31 development, where necessary or appropriate;

32 (6) Establishment of buffer areas along shorelines within which
33 agriculture will be permitted only if best management practices are used, provided
34 that structures or any other use of land which is necessary for adjacent agriculture
35 shall also be permitted in any buffer area;



1 (7) Requirements for minimum setbacks for structures and septic fields
2 along shorelines;

3 (8) Designation of shoreline areas, if any, that are suitable for parks,
4 hiking, biking, wildlife refuges, scenic drives, public access or assembly, and
5 water-related recreation such as boat slips, piers, and beaches;

6 (9) Designation of shoreline areas, if any, that are suitable for ports,
7 marinas, and industries that use water for transportation or derive economic benefits
8 from shore access;

9 (10) Provisions requiring that all harvesting of timber in the Chesapeake
10 Bay Critical Area be in accordance with plans approved by the district forestry board;

11 (11) Provisions establishing that the controls in a program which are
12 designed to prevent runoff of pollutants will not be required on sites where the
13 topography prevents runoff from directly or indirectly reaching tidal waters; [and]

14 (12) Provisions for reasonable accommodations in policies or procedures
15 when the accommodations are necessary to avoid discrimination on the basis of
16 physical disability, including provisions that authorize a local jurisdiction to require
17 removal of a structure that was installed or built to accommodate a physical disability
18 and require restoration when the accommodation permitted by this paragraph is no
19 longer necessary; AND

20 (13) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION,
21 PROVISIONS FOR GRANTING A VARIANCE TO THE LOCAL JURISDICTION'S CRITICAL
22 AREA PROGRAM, IN ACCORDANCE WITH REGULATIONS ADOPTED BY THE
23 COMMISSION CONCERNING VARIANCES SET FORTH IN COMAR 27.01.11.

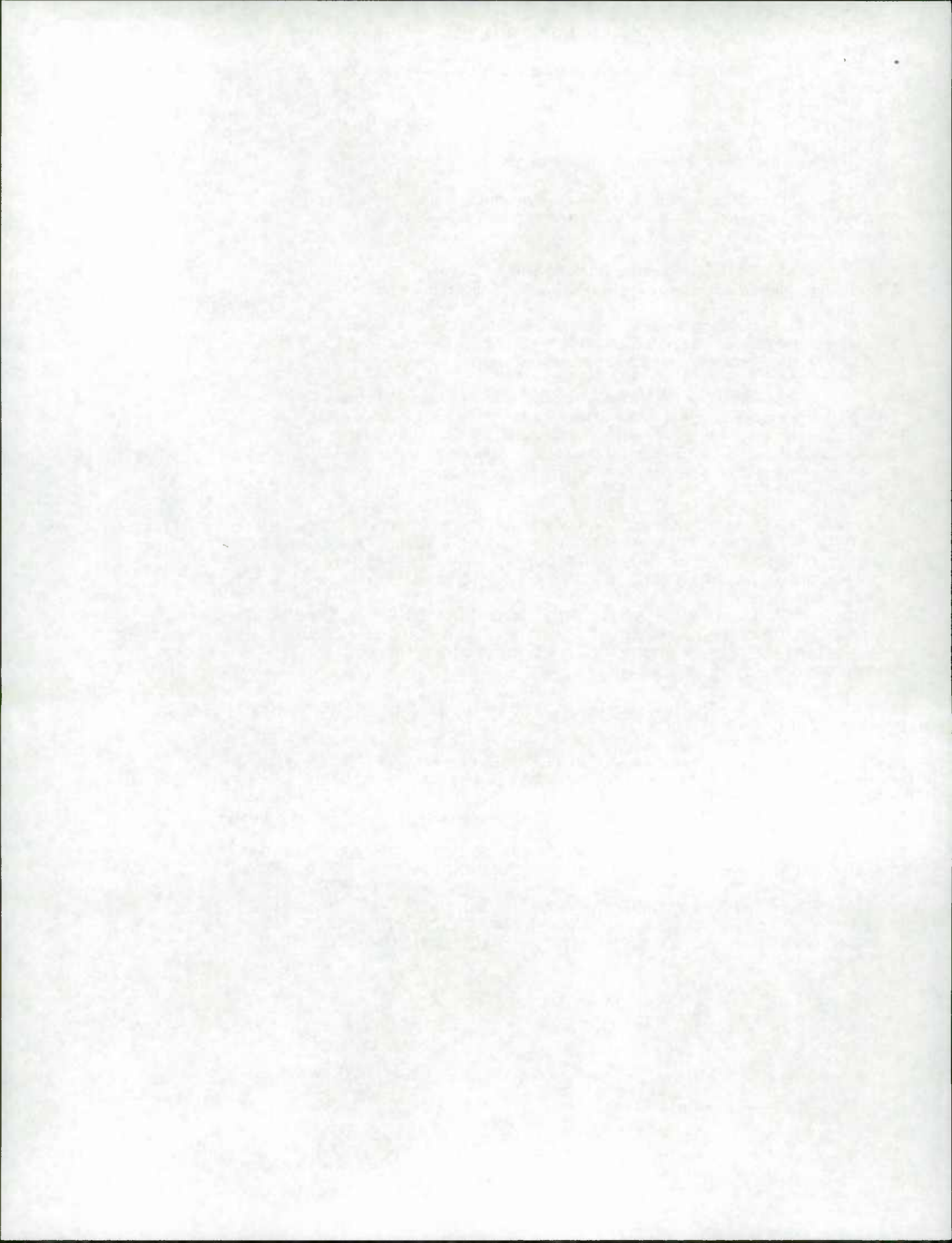
24 (D) (1) IN THIS SUBSECTION, "UNWARRANTED HARDSHIP" MEANS THAT,
25 WITHOUT A VARIANCE, AN APPLICANT WOULD BE DENIED REASONABLE AND
26 SIGNIFICANT USE OF THE ENTIRE PARCEL OR LOT FOR WHICH THE VARIANCE IS
27 REQUESTED.

28 (2) A VARIANCE TO A LOCAL JURISDICTION'S CRITICAL AREA PROGRAM
29 MAY NOT BE GRANTED UNLESS:

30 (I) DUE TO SPECIAL FEATURES OF A SITE, OR SPECIAL
31 CONDITIONS OR CIRCUMSTANCES PECULIAR TO THE APPLICANT'S LAND OR
32 STRUCTURE, A LITERAL ENFORCEMENT OF THE CRITICAL AREA PROGRAM WOULD
33 RESULT IN UNWARRANTED HARDSHIP TO THE APPLICANT;

34 (II) THE LOCAL JURISDICTION FINDS THAT THE APPLICANT HAS
35 SATISFIED EACH ONE OF THE VARIANCE PROVISIONS; AND

36 (III) WITHOUT THE VARIANCE, THE APPLICANT WOULD BE
37 DEPRIVED OF A USE OF LAND OR A STRUCTURE PERMITTED TO OTHERS IN
38 ACCORDANCE WITH THE PROVISIONS OF THE JURISDICTION'S CRITICAL AREA
39 PROGRAM.



1 (3) IN CONSIDERING AN APPLICATION FOR A VARIANCE, A LOCAL
2 JURISDICTION SHALL CONSIDER THE REASONABLE USE OF THE ENTIRE PARCEL OR
3 LOT FOR WHICH THE VARIANCE IS REQUESTED.

4 (4) THIS SUBSECTION DOES NOT APPLY TO BUILDING PERMITS OR
5 ACTIVITIES THAT COMPLY WITH A BUFFER EXEMPTION PLAN OR BUFFER
6 MANAGEMENT PLAN OF A LOCAL JURISDICTION WHICH HAS BEEN APPROVED BY
7 THE COMMISSION.

8 [(d)] (E) (1) The Commission shall adopt by regulation on or before
9 December 1, 1985 criteria for program development and approval, which are
10 necessary or appropriate to achieve the standards stated in subsection (b) of this
11 section. Prior to developing its criteria and also prior to adopting its criteria, the
12 Commission shall hold at least 6 regional public hearings, 1 in each of the following
13 areas:

- 14 (i) Harford, Cecil, and Kent counties;
- 15 (ii) Queen Anne's, Talbot, and Caroline counties;
- 16 (iii) Dorchester, Somerset, and Wicomico counties;
- 17 (iv) Baltimore City and Baltimore County;
- 18 (v) Charles, Calvert, and St. Mary's counties; and
- 19 (vi) Anne Arundel and Prince George's counties.

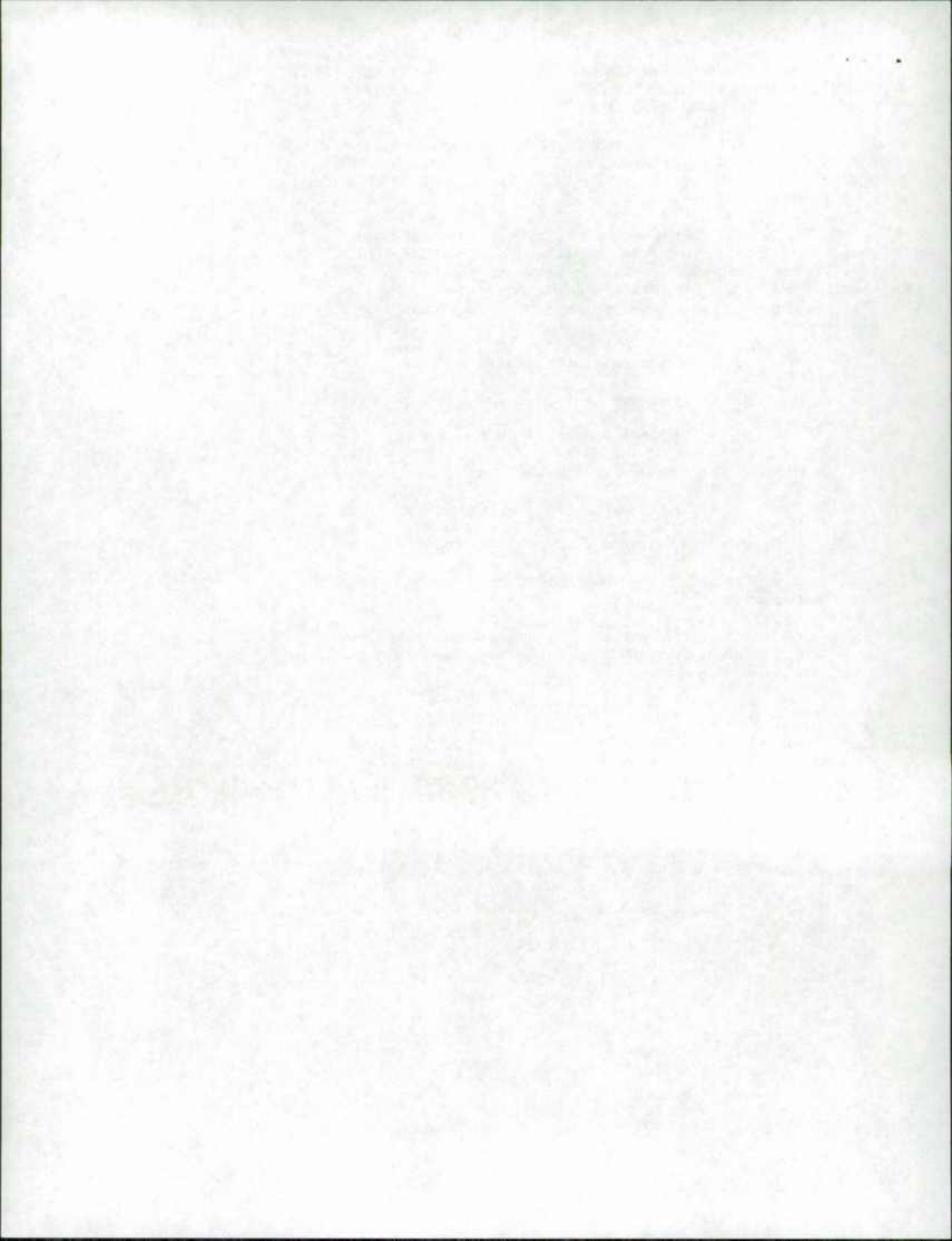
20 (2) During the hearing process, the Commission shall consult with each
21 affected local jurisdiction.

22 [(e)] (F) Nothing in this section shall impede or prevent the dredging of any
23 waterway in a critical area. However, dredging in a critical area is subject to other
24 applicable federal and State laws and regulations.

25 8-1809.

26 (g) Each local jurisdiction shall review its entire program and propose any
27 necessary amendments to its entire program, including local zoning maps, at least
28 every [4] 6 years [beginning with the 4-year anniversary of the date that the
29 program became effective and every 4 years after that date] IN COORDINATION WITH
30 THE REVIEW OF THE COMPREHENSIVE PLAN BY THE PLANNING COMMISSION AS
31 REQUIRED UNDER ARTICLE 66B, §§ 1.03(B) AND 3.05(B) OF THE CODE. Each local
32 jurisdiction shall send in writing to the Commission, within 60 days after [each
33 4-year anniversary,] THE COMPLETION OF ITS REVIEW, the following information:

34 (1) A statement certifying that the required review has been
35 accomplished;



1 (2) Any necessary requests for program amendments, program
2 refinements, or other matters that the local jurisdiction wishes the Commission to
3 consider;

4 (3) An updated resource inventory; and

5 (4) A statement quantifying acreages within each land classification, the
6 growth allocation used, and the growth allocation remaining.

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
8 June 1, 2002.

