# Chesapeake Bay Critical Area Commission

Department of Housing and Community Development
People's Resource Center
Crownsville, Maryland
June 5, 2002

## SUBCOMMITTEES

**9:00 a.m. – 11:00 p.m. Project Evaluation Subcommittee**

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

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|---|---|
| St. Mary's College: Buffer Management Area Designation (St. Mary's County) | Mary Owens |
| Department of Natural Resources: State Highway Administration Mitigation Site at Indian Creek Natural Resource Management Area (Charles County) | Wanda Cole |
| Maryland Port Administration: Colgate Creek Stormwater Management Facility - Conditional Approval (Baltimore City) | Dawnn McCleary |
| Somerset County Commissioners: Tylerton Wastewater Treatment Plant Upgrade Conditional Approval | Claudia Jones |
| 10:15 a.m. City of Annapolis: Access Easement at Bloomsbury Square Townhomes - Discussion | Dawnn McCleary |

**10:00 a.m. – 12:00 p.m. Program Implementation Subcommittee**

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

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|---|---|
| Anne Arundel County: Discussion of Enforcement and Procedural Issues | Lisa Hoerger<br>Mary Owens |

**12:00 p.m. – 12:30 p.m. Panel: St. Mary's County Comprehensive Review** — Wanda Cole, Mary Owens

*Members:* *Setzer, Cooksey, Lawrence, Witten*

**12:00 p.m. – 1:00 p.m. Lunch**

more expense forms

Pointer to use with microphone

Rice Jackson

Mtg in St. Marys Co.

(19)

# Chesapeake Bay Critical Area Commission

**Department of Housing and Community Development**
**Peoples Resource Center**
**Crownsville, Maryland**
**June 5, 2002**

## AGENDA

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| 1:00 p.m. – 1:05 p.m. | Approval of Minutes for May 1, 2002 | John C. North, II<br>Chairman |

## PROJECTS

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| 1:05 p.m. – 1:20 p.m. | VOTE: St. Mary's College:<br>Buffer Management Area Designation<br>(St. Mary's County) | Mary Owens |
| 1:20 p.m. – 1:35 p.m. | VOTE: Maryland Port Administration:<br>Colgate Creek Stormwater Management<br>Facility - Conditional Approval<br>(Baltimore County) | Dawnn McCleary |
| 1:35 p.m. – 1: 45 p.m. | VOTE: Somerset County Commissioners:<br>Tylerton Wastewater Treatment Plant<br>Upgrade – Conditional Approval | Claudia Jones |
| 1:45 p.m. – 2:00 p.m. | VOTE: Department of Natural Resources:<br>State Highway Administration Mitigation<br>Site at Indian Creek Natural Resource<br>Management Area (Charles County) | Wanda Cole |

## PROGRAMS

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| 2:00 p.m. – 2:15 p.m. | Amendment: St. Mary's County<br>Comprehensive Review | Mary Owens<br>Wanda Cole<br>Panel Members |

## OLD BUSINESS

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| 2:15 p.m. – 2:25 p.m. | Legal Update | Marianne Mason,<br>Esq. |

## NEW BUSINESS

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| 2:25 p.m. – 2:35 p.m. | Coastal Bays Advisory Committee | Ren Serey |
| 2:35 p.m. | Adjourn | |

Chesapeake Bay Critical Area Commission
People's Resource Center
Department of Housing and Community Development
Annapolis, Maryland 21401
May 1, 2002

approved

The full Critical Area Commission met at the People's Resource Center, Maryland Department of Housing and Community Development in Crownsville, Maryland. The meeting was called to order by Chairman John C. North, II with the following Members in Attendance:

Margo Bailey, Kent County, Philip Barker, Harford County; Dave Bourdon, Calvert County; Dave Cooksey, Charles County, Judith Evans, Western Shore Member-at-Large; Dr. James C. Foor, Queen Anne's County; William Giese, Dorchester County; Charles Graves, Baltimore County, Joseph Jackson, Worcester County; Douglas Stephens, Wicomico County, Q. Johnson, Eastern Shore Member-at-Large; William Rice, Somerset County; Samuel Wynkoop, Prince George's County; Mike Pugh, Cecil County, Gary Setzer, Maryland Department of the Environment; Larry Duket, Maryland Department of Planning; Louise Lawrence, Maryland Department of Agriculture; Zoe Pendak for James McLean, Maryland Department of Business and Economic Development; Lauren Wenzel, Maryland Department of Natural Resources, Meg Andrews, Maryland Department of Transportation.

**Not in Attendance:**
Barbara Samorajczyk, Anne Arundel County;
Paul Jones, Talbot County
Andrew Myers, Caroline County
Jack Witten, St. Mary's County
Robert Goodman, DHCD

The Minutes of April 3rd, 2002 were approved as read.

Dawnn McCleary presented for Vote the request of the Department of General Services (DGS) to replace an existing parking lot of 360 spaces with a new 52 unit public housing townhouse development known as Bloomsbury Square, the site of which was approved in June 2001 by the Commission as a Buffer Exempt Area. She described the project and said that part of the existing parking extends into the 100-foot Buffer along Colgate Creek. Impervious surface will be reduced and there are no threatened and endangered species on site. There will be a bioretention area and stormwater will be treated. There will be mitigation for a portion of the forest that will be removed. The project meets the Critical Area mitigation requirements for the 100-foot Buffer and the BEA policy. Dave Bourdon moved to approve the projected as presented. The motion was seconded by Dave Cooksey and carried unanimously.

Lisa Hoerger presented for Concurrence with the Chairman's determination of Refinement - four properties annexed into the Town of Easton. She described the parcels of land totaling 7.926 acres of which 1.59 acres are located in the Critical Area. After unopposed

annexation requests to the Town Council, Resolution No. 5729 became effective on August 26, 2001. The Commission supported the Chairman's determination of refinement.

LeeAnne Chandler presented for Concurrence with the Chairman's determination of Refinement, Queen Anne's County's proposal of a set of text amendments that will change the County's growth allocation process. This request was the result of the Commission's concern regarding the County's process regarding the lack of a public hearing at the local level to the County Commissioners prior to submittal to the Critical Area Commission. These amendments were introduced as legislation by the County Commissioners in early March which were reviewed by the Planning Commission during a public hearing on April 11 which followed a favorable recommendation for adoption to the County Commissioners. The Commission supported the Chairman's determination of Refinement.

Mary Ann Skilling presented for Concurrence with the Chairman's determination of Refinement, the request by the Town of Chesapeake City that the Commission consider several properties designated as Limited Development Areas in the Town as a mapping mistake and review the proposed corrections as a refinement to the Town's Critical Area Program. These properties were omitted by error in a previous refinement in 1998. A correction in the mapping mistake would result in a change in designation of 3.86 acres of land from LDA to IDA and the proposed changes and the effect of the changes on the use of land and water in the Critical Area are consistent with what is currently allowed by the Critical Area Program. The Town's position is that a mistake in the original Critical Area mapping to identify the properties as LDA occurred and that an additional map drafting error omitted these properties from the local Program refinement in 1998. These subject properties in fact did not meet the LDA mapping standards but rather met the IDA mapping standards at the time of original mapping for the Town. The Commission supported the Chairman's determination of Refinement.

Roby Hurley presented for Vote the Town of Queenstown's four year Comprehensive Review which includes the Town's Critical Area program document and the Critical Area maps. Significant revisions were necessary and the Commission's model ordinance was used. He said that the Town's new Critical Area Ordinance was designed to be sufficiently comprehensive so that a separate Program document will no longer be required and the model ordinance was customized to address the specific conditions and designed to be integrated into the Town's Zoning Ordinance. A new land-use map from the Queen Anne's County's planning office was produced. Larry Duket moved on panel recommendation to adopt the Queen Anne's County's Critical Area Program four year comprehensive review update. The motion was seconded by Judith Evans and carried unanimously.

Mary Owens gave a legislative update to the Commission. She said that the Variance bill, Senate Bill 326 and companion House Bill 528 passed without the definition of "unwarranted hardship" but it does contain language regarding the review of the entire property and that all the variance standards have to be satisfied and any comparison with adjacent properties have to be made for property development since the Critical Area program 's inception. The four year comprehensive reviews are now to be six year reviews. Senate Bill 247 and companion House Bill 301 for the Coastal Bays also passed. Some of the Critical Area issues became

discretionary- stream buffers outside the 1000' boundary, limits to pier lengths over tidal wetlands and bioretention as a preferred BMP in an IDA. There will be a required 15% aforestation in the IDA. There were compromises on grandfathered PUD's. The bill also designated Ocean City and West Ocean City as IDA and requires both Ocean City and Worcester County to submit a local program. There will be two new members appointed to the Commission, one of whom shall be the Mayor of Ocean City, the other a private citizen. The Commission is authorized to appoint an advisory committee for the Coastal Bays. It is not known whether there will be funds provided to carry out this work. The reforestation will be required on parcels of more than 2 acres and alternately elsewhere in the Coastal Bays watershed. Worcester County also has the ability to move growth allocation from the Coastal Bays portion of the County to the Chesapeake Bay portion, and vice versa, at the County's discretion, up to a total of 150 acres from each watershed.

**Old Business**

Marianne Mason, Commission Counsel, told the Commission that in Harford County in the Old Trails variance for 56 houses on a very sensitive piece of land, Ren and Claudia and she continue to give testimony.

In Anne Arundel County, Lee Anne Chandler has been giving testimony on a development in Herald Harbor on Cradle Pine where there is a move to consolidate lots 25-30 foot wide which will need variances.

**New Business**

Chairman North told the Commission that the Joint Subcommittee met regarding Elk Neck State Park where a substantial presentation was made by the representatives of the Erickson Foundation and by Secretary Fox of DNR. Dave Bourdon, the Project Committee Chairman said that the result of the meeting which followed a site visit last January to the sensitive site with habitat and FIDS, was to try to get the footprint of the proposal out of the buffer and steep slopes area. Program Committee Chairman Dr. Foor told the Commission that DNR Secretary Fox thought a subcommittee of concerned commission members should meet to discuss the issues so that the processes can be moved along. The concensus is that the proposal is better than it was before. Chairman North will appoint a Committee to examine multiple problems and he asked the Commission to submit names to him through Regina Esslinger of those so inclined to serve.

There being no further business, the meeting adjourned.

Minutes submitted by: Peggy Mickler, Commission Coordinator

# *Chesapeake Bay Critical Area Commission*

**STAFF REPORT**
**June 5, 2002**

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|---|---|
| **APPLICANT:** | St. Mary's College |
| **PROPOSAL:** | Buffer Management Area Designation, St. Mary's College Waterfront |
| **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 designation of a Buffer Management Area (BMA) on the site of the existing boathouse and waterfront activity area at St. Mary's College in St. Mary's County. The area proposed for BMA designation is a stretch of the shoreline of the St. Mary's River and a portion of the tidal gut opening into St. John's Pond, totaling approximately 500 linear feet. This area is currently developed with the boathouse structure, access road and parking area, boat storage areas, and a sand volleyball court. The waterfront area functions as a focal point and gathering area at the college, and the lawn area around the boathouse is frequently set up with tents and facilities for social events.

The BMA designation is proposed at this time because the Office of Facilities is currently working on the concept design for a new boathouse and major modifications to the boat storage area. You may recall that in July 2001, conceptual plans for this project were presented to the Project Subcommittee for preliminary comment. As discussed at that time, the existing boathouse is undersized and outdated and the limited dock area and boat storage areas are inadequate to support the numerous existing and anticipated waterfront activities. Expansion of the boathouse and waterfront facilities is necessary to ensure the continued success of the College's competitive sailing and crew programs and the continued effectiveness of its biological and estuarine academic programs.

When the project was reviewed last July, Commission staff believed that the new development at the waterfront could be classified as a "public water-oriented recreation or education area" and therefore would be considered a water-dependent facility. As the design has evolved and the

various site constraints have been more accurately defined and delineated, Commission staff and St. Mary's College staff have decided that a more practical approach to the site would be to designate the site as a BMA. This designation will facilitate effective utilization of the waterfront while accommodating the various programmatic uses within the building and maintaining a 25-foot setback. The designation will also allow for the use of several small stormwater facilities that can be incorporated into the design of the project and will work physically and aesthetically with the design of the site and the building. Mitigation as specified in the Commission's Buffer Exemption Area Policy for Commercial, Industrial, Institutional, Recreational, and Multi-family Residential Development will be provided.

St. Mary's College and Commission staff believe that the area designated on the attached plan should be designated as a BMA because the existing pattern of development in the area prevents the Buffer from fulfilling the functions set forth in the Criteria. The following factors were considered:

1) The capacity of the Buffer to provide for the removal of sediments, nutrients, and harmful or toxic substances has been compromised because there are existing roadways, parking areas, an existing boathouse structure, and several boat storage areas located within the Buffer. There is an existing 1200 square foot concrete slab that functions as a boat launching area that is located at the water's edge and there is access to the water via a narrow sandy beach along the entire 500 linear feet of shoreline. Existing vegetation is scattered trees, shrubs, and lawn grass that provide a relatively minimal water quality benefit.

2) The Buffer's effectiveness at minimizing the adverse effects of human activities on wetlands, shorelines, stream banks, tidal waters, and aquatic resources is limited because the entire waterfront area is intensely used for recreation and human activities are constantly taking place at the shoreline. Many of the activities that take place at the waterfront involve small vessels that are dragged in and out of the water throughout the day; so the shoreline is both developed and is generally not an appropriate area for establishing a Buffer that would function to improve water quality of habitat.

3) The Buffer does not function as an area of transitional habitat between aquatic and upland communities because this area is developed with structures and is actively used by students and visitors. There is little natural vegetation to provide food or cover for wildlife or to provide water quality enhancement. The area is intensely used during much of the year and the use of the property requires that the Buffer be primarily an open lawn area with some landscaping. This type of environment limits the value of the site for the purpose of providing transitional habitat.

4) The Buffer on this site is adjacent to the St. Mary's River and a tidal gut that opens into the tidally influenced St. John's Pond. The Buffer does not function to maintain the natural environment of streams because there are no streams on this property.

5) The Buffer's capacity for protecting wildlife habitat on this site is severely limited because the Buffer is developed and is actively used for water sports, recreation, and social events throughout much of the year. Human disturbance to wildlife would be unavoidable because of the intense use of the property.

In evaluating the proposed Buffer Management Area designation, it is helpful to consider the mitigation that will be required to mitigate for development within the Buffer permitted by the BMA classification. Although the design for the site is still in its early stages, Commission staff and the architects have developed some preliminary mitigation figures based on the Commission's policy. Because of the use of the waterfront on this site, it is not practical to establish a 25-foot bufferyard on site; therefore, 12,500 square feet of bufferyard planting will need to be provided elsewhere on the St. Mary's College property to satisfy this requirement. In addition to the bufferyard requirement, the College will be required to provide two-to-one mitigation for the area of the development activity in the Buffer. Preliminary calculations indicate that approximately 49,318 square feet of mitigation will be needed to satisfy this requirement. Commission staff will be working with St. Mary's College staff over the next few months to identify appropriate mitigation sites, totaling 61,818 square feet, so that a planting plan can be reviewed by the Commission when the actual project is presented for approval.

St. Mary's college is considered an area of intense development, therefore best management practices for stormwater will be provided in accordance with the 10% pollutant reduction requirement. A series of pocket wetlands around the building and boat storage area are currently being evaluated to satisfy this requirement.

The BMA designation is proposed for an existing developed area, and there are no known threatened or endangered plant or animal species that will be affected by the designation. There are no other Habitat Protection Areas, other than the Buffer, that will be affected by the BMA designation.

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

# *Chesapeake Bay Critical Area Commission*

**STAFF REPORT**
**January 9, 2002**

**APPLICANT:** Maryland Department of Natural Resources
Indian Creek Natural Resource Management Area

**PROPOSAL:** Wetland Mitigation Site

**JURISDICTION:** Charles County

**COMMISSION ACTION:** Vote

**STAFF RECOMMENDATION:** Approve

**STAFF:** Wanda Cole

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

**DISCUSSION:**

State Highway Administration (SHA) is proposing the construction of an 9.5 acre nontidal wetland mitigation site, of which 3.89 acres are located in the Critical Area of Indian Creek, a tidal tributary to the Patuxent River in Benedict, Charles County, Maryland. Indian Creek is managed as a Natural Resource Management Area by the Maryland Department of Natural Resources (DNR). This property is not an intensely developed area and is characterized by primarily agricultural use and passive habitat management.

The purpose of the project is to mitigate impacts to nontidal wetlands caused by highway improvements to MD 5 at Hughesville (Charles), by MD 506 over Battle Creek (Calvert), and MD 2/4 (Calvert). These highway projects have not yet been built. SHA will build the mitigation site under a Right of Entry agreement and Temporary Construction Easement issued by DNR, and DNR will own the completed project. The wetland mitigation site provides public benefits: it is consistent with DNR wildlife habitat initiatives; provides water quality improvements for the agricultural runoff; and lends itself to environmental education programming.

The Critical Area Buffer expanded for contiguous nontidal wetlands lies just outside the limits of work for this project. A 200 linear foot stone outlet structure abuts the wetland, sitting on the regulated 25' nontidal wetland buffer. Maryland Department of the Environment (MDE) and the US Army Corps of Engineers (COE) are expected to approve this design as proposed.

There is a drainage channel that leads from the farm ponds located to the west, along the south side of the mitigation site, and east to a large, woodland pond. While the aerial image suggests this area may have tributary stream characteristics, the channel between the pond and the mitigation site was dry and covered with upland vegetation. The woodland pond was created by the formation of a very old beaver dam at the head of the tidal marsh. The dam truncates the stream's ability to function as a tributary, and a 100' Buffer need not be delineated along the drainage channel. Therefore, the mitigation site does not lie within the 100' Buffer for tributary streams.

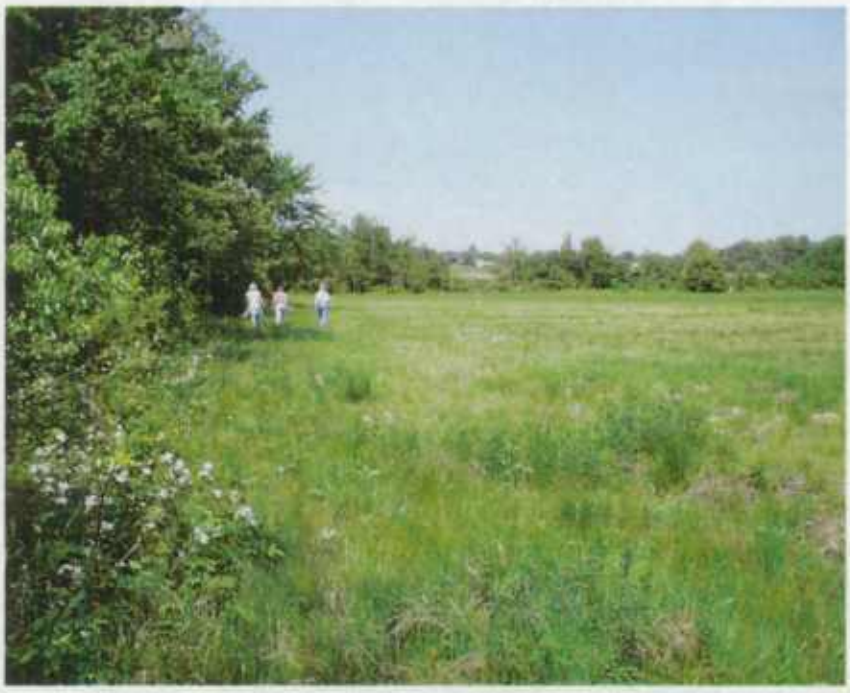
No other Habitat Protection Areas are present. No forest clearing will occur, therefore, no Critical Area mitigation plantings will be required. Plantings required for the wetland mitigation will be guaranteed via the MDE/COE/DNR agreements.

Charles County Planning and Zoning has been advised of the project.

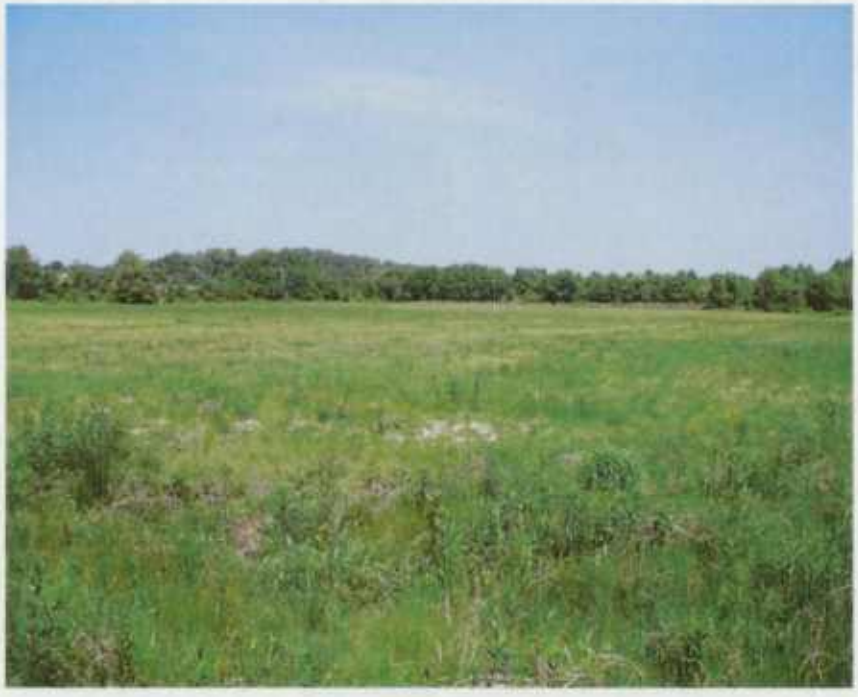
Staff recommends approval of the project with no conditions.

cc: Barbara Grey, DNR
John Stavlas, SHA
Elsa Ault, Charles County

## Wetland Mitigation Area



Looking west from south end



Looking northwest from southeast corner

**DNR's Indian Creek NRMA: SHA Mitigation Site**
**Photo of Woodland Pond Created by Old Beaver Dam**

**Beaver Dam Truncates Tributary Stream Function**

**Tidal Marsh and Nontidal Pond Interface (Beaver Dam)**

# CHESAPEAKE BAY CRITICAL AREA COMMISSION

## STAFF REPORT
**June 5, 2002**

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| **APPLICANT:** | Department of Transportation<br>Maryland Port Administration (MPA) |
| **PROPOSAL:** | Colgate Creek Slope Protection Revision<br>at Dundalk Marine Terminal |
| **COMMISSION ACTION:** | Vote |
| **STAFF RECOMMENDATION:** | Approval |
| **STAFF:** | Dawnn McCleary |
| **APPLICABLE LAW\ REGULATIONS:** | COMAR 27.02.06 Conditional Approval of State or Local Agency Programs in the Critical Area |

**DISCUSSION:**

*Project History:*

This project is located along the Colgate Creek shoreline just south of the Broening Highway Bridge in the Baltimore City. The existing shoreline is 487 feet long and adjoins the Dundalk Marine Terminal. The site is severely eroded and has trash and debris that have collected in depressions along the shore. The shoreline along the entire Marine Terminal is hardened. MPA is working on a proposed Buffer Exemption Area (BEA) designation.

On July 11, 2001, the Commission approved the Maryland Port Administration's proposal to use an articulated concrete mat revetment, vegetated filter strip and landscape plantings at the water's edge. The revetment will be approximately 930 square yards in size and will be used to stabilize the slope. Plantings will be located within open cell blocks at the waters edge. MPA also proposed a 5,600 square foot filter strip with native grasses. Now MPA proposes to replace the 5,600 square feet filter strip with a bioretention facility.

*Proposed Development Activity:*

The MPA is proposing to incorporate bioretention into the Colgate Creek Slope Protection contract. The purpose for this change is to improve water quality, show a reduction in phosphorus, increase habitat through the use of wetland plantings and enhance the entire 100-foot Buffer. The proposed bioretention facility will be in the area between Broening Highway and the Seagirt\Dundalk connector bridge. On May 13, 2002, the Maryland Department of the Environment (MDE) reviewed and approved the modification to the old contract to add the bioretention facility.

*Conditional Approval Process*

**Conditional approval is required under the Commission's regulations for State and local agency projects when proposed development activities do not satisfy all regulations in full. The conditional approval process is set out in COMAR 27.02.06. In order to quality for consideration by the Commission for conditional approval, the proposing agency must show that the project or program has the following characteristics:**

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

There exist special features and special circumstances of the site that preclude MPA from siting the bioretention outside the Buffer. The existing site currently has rubble and trash along the shoreline within the 100-foot Buffer. The Maryland Department of the Environment's Water Management group indicated that bioretention is the most effective and practical means to provide water quality improvements for the adjacent paved lot. There is no stormwater management on site now, and no other locations for such facilities.

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

The bioretention provides substantial public benefits to the Chesapeake Bay Critical Area Program because based on the efficiency of this facility, a substantial increase to phosphorous load reduction is provided. There will be 3.52 lbs. of phosphorous reduction for the bioretention area and 0.19 lbs. for the landscaped area, for a total of 3.71 lbs. The bioretention facility provides for a greater level of water quality improvement and phosphorous load reduction and continues to provide habitat through wetlands plantings. The benefits to Colgate Creek have been greatly increased.

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

The project is in conformance with the State Criteria and the City of Baltimore Critical Are Program except for impacts to the 100-foot Buffer. The proposed bioretention will be vegetated with native species. The area south of the Connector Bridge will remain the same as previously approved by the Commission. The project is otherwise consistent with COMAR 27.02.06.

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

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

A literal enforcement of the provision would prevent MPA from providing any type of water quality improvement on-site. The proposed bioretention facility will provide water quality improvements which do not currently exist.

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

The bioretention facility that will go in the 100-foot Buffer is not consistent with the City's program. However, all disturbances will be minimized and the proposed planting will result in slope stabilization, debris removal, and water quality improvements.

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

Since the Buffer does not currently function due to the debris, the bioretention facility will provide habitat through wetlands plantings. The bioretention facility will also reduce phosphorous and add native vegetation to the Buffer.

Goodman move to approval
Rice sec c/u

# *Chesapeake Bay Critical Area Commission*

## STAFF REPORT

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|---|---|
| **APPLICANT:** | **Somerset County Commissioners** |
| **PROPOSAL:** | Tylerton Wastewater Treatment Plant Upgrade Plant |
| **COMMISSION ACTION:** | Vote |
| **STAFF RECOMMENDATION:** | **Conditional Approval** |
| **STAFF:** | Claudia Jones |
| **APPLICABLE LAW/ REGULATIONS:** | **COMAR 27.02.06 Conditional Approval of State or Local Agency Programs in the Critical Area** |

**DISCUSSION:**

The Somerset County Commissioners in conjunction with the U.S. Army Corps of Engineers and the Maryland Department of Natural Resources are proposing an upgrade of the Tylerton Wastewater Treatment Plant on Smith Island. The project will rehabilitate an existing treatment plant and create a secondary treatment system. The upgrades are needed because the existing plant is outdated and not in compliance with existing water quality standards.

The project needs Conditional Approval since a portion of the created treatment wetland and associated berms will be located in the Critical Area Buffer. The treatment wetland will be constructed in a previously disturbed area that is partially surrounded by a berm. The Army Corps is considering this area as upland for regulatory purposes. Most of the area is either currently devoid of vegetation or supports common reed (*Phragmites australis).*

We have requested additional information from the County, including quantification of Buffer impacts and an analysis of how the project meets the requirements for a Conditional Approval. While we have not received this information at the time of the Commission mails, we believe that we will have it before the Commission meeting.

# Tylerton Wastewater Treatment Plant Upgrade

# Tylerton Wastewater Treatment Upgrade Conditional Approval Analysis

1) A showing that the literal enforcement of the provisions of the Critical Area Commission's criteria would prevent the conduct of an authorized State or local agency program or project.

The Smith Island Wastewater Treatment Project is designed to help treat the wastewater generated by the communities of Ewell, Rhodes Point, and Tylerton. At present, the wastewater is not being adequately treated and is contributing contaminates into the Chesapeake Bay. As a result, the Corps of Engineers, in partnership with the Maryland Department of Natural Resources, and Somerset County, has undertaken a project to rehabilitate the wastewater treatment plants and provide secondary treatment to the wastewater. However, developing secondary treatment requires the use of the critical area, as the majority of Smith Island lies within the area regulated by the Critical Area Commission. Literal enforcement would prevent the creation of secondary treatment, which is necessary to bring the treatment plants into compliance with regulations.

Because this project is expected to have a substantial beneficial impact to the ecology of the Chesapeake Bay and the local environment of Smith Island, it is believed that literal enforcement would not only prevent the conduct of the project, but would also have detrimental impacts to the Bay.

2) A proposed process by which the program or project could be conducted as to conform, insofar as possible, with the approved local Critical Area program.

There are several ways in which this project could be conducted to conform with the local Critical Area Program. The first is the restoration of the borrow site, located near the Tylerton Wastewater Treatment Plant. The borrow site will be restored to have habitat function, which includes phragmites removal, re-grading, and replanting with native vegetation. By restoring the borrow area, an additional area of the Critical Area will be restored to its historic function. The second is through the planting of the treatment cells. These cells will be planted with narrow-leaf cattail and spartina patens, both species that have high nutrient removal capacities and can provide some habitat function. Phragmites will not be planted as part of this project. All best management practices will be used during construction to avoid and minimize impacts to the Critical Area.

3) Measures proposed to mitigate any adverse effects of the project or program on an approved local Critical Area program.

Re-vegetation of the site with high quality species, including narrow-leaf cattail, or other plants with habitat benefits.

Restoration of the borrow site near the Tylerton Wastewater Treatment Plant. This site is currently an old dredged material disposal area and landfill site. Restoration will return the site to its original habitat function.

Use of construction windows, erosion-sediment control techniques, and other best-management techniques.

4) Amount of disturbance in buffer.

It is estimated that there will be approximately 4,500 square feet of disturbance in the Buffer for the secondary treatment cells.

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

**MEMORANDUM**

To: Program Subcommittee Members

From: Mary Owens, Lisa Hoerger

Date: June 5, 2002

Subject: Discussion of Anne Arundel County Comprehensive Review Issues

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County staff are working on the next comprehensive review. A citizen panel was appointed and provided the County with their list of proposed changes. Commission staff sent two letters to the Director of Planning Zoning which cover multiple issues that affect not only the Planning and Zoning Office, but the Inspections and Enforcement Division as well.

I have attached the two letters sent to the Director of Planning and Zoning, as well as three other letters sent to the County including the most recent letter to County Executive Janet Owens. In that letter, Judge North invited the County to attend the May 1 meeting of the Program Subcommittee to join in our discussion.

On Monday, April 15, staff met with the recently appointed Land Use Officer for the County, Mr. Robert Walker. Mr. Walker assured Commission staff of the County's willingness to address all issues outlined in our previous letters, including the most recent letter to the County Executive.

Mr. Walker also asked whether the Subcommittee could have its discussion about the County's Program when all of his staff could attend, which would be the June meeting. The County staff planning to attend include the following: Mr. Robert Walker, Land Use and Environment Officer; Ms. Betty Dixon, Assistant Land Use and Environment Officer; Mr. Denis Canavan, Director of Planning and Zoning; and Mr. Robert Ray, Director of Inspections and Enforcement.

Please telephone Mary Owens or myself at (410) 260-3460 if you have any questions or need clarification before our meeting.

Attachments

cc: Elinor Gawel

*Chesapeake Bay Critical Area Commission*

**STAFF REPORT**
**June 5, 2002**

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| **APPLICANT:** | St. Mary's County |
| **PROPOSAL:** | Comprehensive Review of the Saint Mary's County Critical Area Ordinance and Buffer Management Overlay |
| **JURISDICTION:** | St. Mary's County |
| **COMMISSION ACTION:** | Vote |
| **STAFF RECOMMENDATION:** | Pending Panel Discussion |
| **STAFF:** | Wanda Cole |
| **APPLICABLE LAW/ REGULATIONS:** | Natural Resources Article, § 8-1809(g) |

**DISCUSSION:**

St. Mary's County has recently completed the required four-year review of their Critical Area Program. The review included the County's Zoning Ordinance document and the Critical Area maps. St. Mary's County does not have a Critical Area Program document. Calculation of the acreage of the three land use categories and evaluation of the status of the County's growth allocation was conducted. Of the 42,994 acres within the Critical Area, 1,380.25 acres are IDA, 7,992.56 acres are LDA, and 33,621.19 acres are RCA. The County has awarded 143.05 acres of growth allocation (35.69 were used by the Town of Leonardtown), and there are 1,546.7 acres remaining. An updated resource inventory has not been provided at this time.

**PROGRAM:**
The County does not have a separate Critical Area Program document. The Critical Area Criteria are incorporated into the County's Zoning Ordinance.

**ZONING ORDINANCE:**
The County's Critical Area regulations are fully incorporated into the recently approved St. Mary's County Comprehensive Zoning Ordinance. The recently approved ordinance replaces the existing St. Mary's County Zoning Ordinance, which was adopted in August 1990. The new ordinance includes substantial revisions to the chapters pertaining to the Critical Area in order to clarify some vague language, provide a list of uses permitted in the Resource Conservation (RCA), change the County's process for the award of growth allocation, incorporate provisions

for Buffer Management Overlay areas, and outline some specific regulations for certain water-dependent facilities. The County has reorganized various provisions of the ordinance in order to facilitate more effective implementation, but the format of the document remains relatively unchanged.

**MAP CHANGES:**
The County is establishing Buffer Management Overlay (BMO) areas and has provided maps, photographs, and justifications of areas proposed as BMOs. There are a total of 21 areas, and Commission staff has visited the areas. The maps and photographs will be available for review at the Commission meeting.

**HISTORY:**
The County's original Critical Area Ordinance was adopted on March 27, 1990. No Buffer Management Overlay areas were established at that time. Although the County voluntarily made several text changes to their Critical Area Ordinance in 1992, this is the first comprehensive review of the St. Mary's County Critical Area Program that has been approved locally. The Critical Area Commission has been working with the County on this review since 1995. The St. Mary's County Planning Commission held a hearing on the proposed changes in December, 2001 and recommended approval to the County Commissioners. The Board of County Commissioners held hearings on February 26 and 27, 2002 and submitted the final ordinance to the Commission on April 18, 2002. Chairman North appointed a panel and they held a public hearing on May 23, 2002. After the public comment portion of the hearing, the Panel discussed a number of outstanding issues and questions with County staff.

**OUTSTANDING ISSUES:**
The following issues were raised with County staff and remain outstanding:

**General Text**

1. **Section 26.2.2 (d)** This paragraph will not work as it appears to allow the transfer of a grandfathered density right from one parcel in the RCA to another parcel in the RCA, creating the potential to exceed the density requirements of the RCA. There is no provision in the state Criteria to allow the transfer of development rights from grandfathered properties.

2. **Section 26.5** It is not clear how the RCA density provisions will be maintained when TDRs are transferred. Is permanent protection of the sending parcel required?

3. **Section 40.1.1** For the last sentence, strike out all wording starting with "yet regulate activities..." and add "and also address the fact that, even if pollution is controlled, the number, movement, and activities of persons in that area can create adverse environmental impacts."

4. **Section 41.2.3(a)** The last sentence should read, "Consolidation of lots in common

ownership shall not be required when impacts to steep slopes or Habitat Protection Areas would result or would increase as a result of the consolidation proposal.

5. **Section 41.3.3 (d)(4)** Delete "as program refinements."

6. **Section 41.5.3(i)(3)** Add a provision that requires proof that the impervious surfaces to be replaced existed as of March 27, 1990, said proof being in the form of a sealed survey or dated aerial photograph. In addition, the total amount of impervious surfaces in the Buffer, including surfaces to be replaced, shall not exceed 500 square feet. It appears this section applies to LDA but not IDA. Is there a reason for this?

7. **Section 41.6.4** The third sentence must be revised to read, "Private tidal wetlands and nontidal wetlands may be used for density calculations to the extent that the density of development on the upland portion of the parcel may not exceed 1 dwelling unit per 8 acres, and the area of private tidal wetlands shall be estimated on the basis of vegetative information as designated on the official State tidal wetland maps."

8. **Section 41.6.4(a)(2)(c)** In the first sentence, insert "intra-family transfer" after "lot is created subject to the" and in front of "provisions of the Critical Area program."

9. **Section 41.7.2(b)** Delete this item (lines 40 through 44). This needs to be assessed on a case by case basis as part of an overall mapping process, and the mapped areas must be approved by the Commission.

10. **Section 41.7.5(b)(1)** Add the statement, "A Planting Plan must be submitted to the Critical Area Commission for review with the site plan in accordance with the provisions of COMAR 27.03.01.03."

11. **Section 41.8.2(a)(2)** It is not clear when a 5-to-10 year site plan is required, what its standards would be, and how it would be applied. These concerns need to be clarified in order for this section to be effective.

12. **Section 41.9.2** Line 38, end the sentence after "shall use the following guidelines."

13. **Section 41.9.2(3)(e)** Delete this item as it was added to (3)(c).

14. **Section 41.9.2** Insert as 41.9.2.(e) "The location of the proposed growth allocation is consistent with the Critical Area Commission growth allocation policy."

15. **Section 41.9.2(f)** This requirement, as positioned, cannot serve its intended function. It also applies to growth allocations other than single lot subdivisions. This item should be moved out from this section to a more prominent position within Section 41.9.

16. **Section 41.9.6(b)(3)** At the end of the statement, add "and the land is permanently protected by an easement."

17. **Schedule 50.4. (#2)** "Agricultural industry, minor" appears to include relatively intensive industrial uses. These types of uses should only be permitted in the RCA if they are associated with an agricultural use on the same property.

18. **Schedule 50.4 (#6) "Farmer's market"** as described appears to be a fairly large and intensive commercial use; therefore, it cannot be permitted within the RCA without certain limits. A limit on impervious surface area of 15% of the site or 20,000 square feet would be similar to limits approved in other jurisdictions for similar types of uses.

19. **Schedule 50.4 (#19) "Burial grounds"** as described appears to include potentially large and intensive commercial uses; therefore, it cannot be permitted within the RCA without certain limits. A limit on impervious surface area (for roads and parking) of 15% of the site or 20,000 square feet would be similar to limits approved in other jurisdictions for similar types of uses.

20. **Schedule 50.4 (#38) "Animal boarding, stable"** as described states that the use shall not be considered a "bona fide agricultural use"; however, it is proposed to be permitted in the RCA. This seems contradictory and clarification is needed.

21. **Schedule 50.4 (#92) "Solid waste acceptance, processing, transfer and/or resource recovery facility"** may be only be permitted in the IDA if no environmentally acceptable alternative exists outside the Critical Area, and these facilities are needed in order to correct an existing water quality or wastewater management problem. These specific provisions must be included in the ordinance.

22. **Schedule 50.4 (#97) "Charter fishing facility"** as described seems like a use that is similar to "marinas and other water-dependent commercial maritime facilities" (as described in COMAR 27.01.03.06); therefore, new facilities may not be permitted in the RCA and expansion of existing facilities can only be permitted if the expansion will not adversely affect water quality, and will result in an overall net improvement in water quality at or leaving the site of the marina. Appropriate qualifiers should be added to Schedule 50.4 or RCA should be deleted from the Critical Area Overlay column.

23. **Schedule 50.4 (#98) "Commercial dock"** as described seems to allow on-site restaurants as a component of this use. Commercial uses, such as restaurants, are not permitted in the RCA; therefore, RCA should be deleted from the Critical Area Overlay column.

24. **Schedule 50.4 (#103) "Seafood industry"** appears to permit large industrial uses in the RCA that may not be associated with a fisheries activity. Fisheries activities means "commercial water-dependent fisheries facilities including structures for the packing, processing, canning, or freezing of finfish, crustaceans, mollusks, and amphibians and

reptiles and also including related activities such as wholesale and retail sales, product storage facilities, crab shedding, off-loading docks, shellfish culture operations, and shore-based facilities necessary for aquaculture operations." In general this definition has been interpreted to mean that the industrial activities should be incidental to a primary water-dependent fishery activity such as fishing or crabbing. The description should be revised to reflect this or this use should not be permitted in the RCA.

25. **Schedule 50.4** (#109 and #110) "Dock, ramp and or railway, private" and "Dock, ramp and/or railway" **are proposed to be permitted in RCA; however, it is not clear exactly what these facilities are and how they would relate to the provisions for water-dependent facilities in Chapter 41.8.**

26. **Schedule 50.4 (#113) "On-site workers' housing"** should be limited in some way and should be specifically associated with an agricultural uses and located on a farm property.

27. **Schedule 50.4 (#117) "Swimming pool, private, noncommercial"** describes certain types of pools that may be permitted in RCA; however it is not clear whether a community pool operated for use by residents in a subdivision (located in RCA, LDA, or IDA) would be included. In the past, the Commission has supported community pools in the RCA only if the development that is being served is also located within the RCA.

28. **Section 71.2.3(a)** The list of agencies should include the Critical Area Commission.

29. **Section 71.2** This section should include a copy of the Summary of Notification Requirements (COMAR 27.03.01.03) to list those projects which must be sent to the Commission as notification of the application.

30. **Section 71.2.4(a)(2)** Delete "if present, from adjacent slopes greater than 15 percent or from wetlands or hydric soils." Add in its place "expanded, if necessary, in accordance with the Buffer expansion provisions of 71.8.2(a)(1)."

31. **Section 71.2.4(f)(1)** Restate as, "The 100-foot Critical Area Buffer expanded, if necessary, for contiguous steep slopes, hydric and highly erodible soils, and nontidal wetlands in accordance with the provisions of 71.8.2 (a)(1)."

32. **Section 71.3** Define sensitive areas.

33. **Section 71.4.2(a)(2)** Delete all wording after "from each bank, and" and insert, "expanded, if necessary, in accordance with the provisions of 71.8.2(a)(1)."

34. **Section 71.4.2(b)** Delete all wording after "does not exist," and insert, "the buffer shall be established in native, forest vegetation."

35. **Section 71.4.2(c)** After "All development activities in the LDA", insert "and RCA".

36. **Section 71.5.2(a)** Restate as, "A 100-foot buffer shall be preserved from the landward edge of tidal wetlands and shall be expanded, if necessary, in accordance with the provisions of 71.8.2(a)(1)."

37. **Section 71.5** This section needs to clarify that a variance is required for disturbances to the 100-foot buffer and expanded buffer.

38. **Section 71.7.2(b)** Delete and restate in accordance with COMAR 27.01.02.04 C(6), "Development on slopes greater than 15 percent, as measured before development, shall be prohibited unless the project is the only effective way to maintain or improve the stability of the slope."

39. **Section 71.7.3(b)** Delete "or to prevent erosion of highly erodible soils."

40. **Section 71.7.3(b) and (e)** These two items appear to conflict regarding whether the requirements apply to areas inside or outside of the Critical Area. For steep slopes associated with the Buffer, reference needs to be made to Section 71.8 for Buffer expansion standards.

41. **Section 71.8.2** The policies for the Buffer must be included in accordance with the language found in COMAR 27.01.09.01B(1 through 5).

42. **Section 71.8.2** Change "is hereby established" to "shall be established."

43. **Section 71.8.2(a)(1)** The expansion criteria given for steep slopes is incorrect. Delete "above 15 percent" from the second sentence.

44. **Section 71.8.2(b)(1) and 71.8.2(c (5)** need to discuss what the buffer functions are.

45. **Section 71.8.3** The policies for protection of FIDS habitat need to be included in accordance with the language found in COMAR 27.01.09.04B(1 through 5).

46. **Section 71.8.3(a)(1)** Delete and restate as, "Forests at least 50 acres in size with 10 or more acres of forest interior habitat (i.e., forest width greater than 300 feet from the nearest forest edge), where the majority of the forest tract should be dominated by pole-sized or larger trees (5 inches or more in diameter at breast height), or have a closed canopy; and"

47. **Section 71.8.3(a)(2)** Delete the last sentence ("The stream within...")

48. **Section 71.8.3(d)(2)** Change "May" to "April". Add statement "This time restriction may be expanded from February to August if certain early-nesting FIDS are present.

49. **Section 71.8.3(e)(3)** Reword to read, "Areas to be thinned should utilize the canopy guidelines found in the *FIDS/Forestry Task Force Chesapeake Bay Critical Area Timber Harvest Plan Guidelines, June 2, 1999* or most current edition."

50. **Section 71.8.4** The policies for protection of rare, threatened and endangered species must be stated in accordance with the language found in COMAR 27.01.09.04B(1 through 5).

51. **Section 71.8.5** The policies for protection of colonial water bird nesting sites and waterfowl concentration areas must be stated in accordance with the language found in COMAR 27.01.09.04B(1 through 5).

52. **Section 71.8.7** The policies for the protection on anadromous fish habitat must be stated in accordance with the language found in COMAR 27.01.09.05B(1 through 3) and COMAR 27.01.09.05C(1)(c)(i through iv).

53. **Section 71.9.8(i)(1)** Change the word "small" to "smaller". (Line 45)

54. **Section 71.9.8(j)(2)** Change the word "down" to "does". (Line 30)

55. **Section 72.3.1(a)(3)** Delete the last word of line 40 ("one") and all of (a) through (c). On line 40 after "irrigation and sediment collection" insert the following statement, "the applicant and County shall ensure that the creation of new agricultural lands is not accomplished:" and then insert the policies found in COMAR 27.01.06.02C(1 through 4).

56. **Section 72.3.3(a)(2)(b) lines 17 and 19** Delete the words "basis per square foot".

57. **Section 72.3.4(b)** Delete first sentence and replace with, "Removal of invasive and noxious species can be permitted."

58. **Section 72.3.5(c) line 19** Change "Schedule 72.3.4" to "Schedule 72.3.5."

59. **Section 72.3.5 Schedule 72.3.5** Delete "hardwood seedlings" and change to "hardwood whips".

60. **Section 73.2.2** Add item (d): "Clearing of existing natural vegetation in the Buffer."

61. **Section 73.2.4** In the first sentence, delete "allowed to naturally regenerate... landowner." Replace with, "established. In establishing the Buffer, management measures shall be undertaken to provide forest vegetation that assures the Buffer functions set forth in COMAR 27.01.09."

62. **Section 74.1.1** The correct COMAR citation needs to be provided: COMAR 27.01.07.

**Definitions**

1. The definitions for **perennial and intermittent streams** need to be amended to reflect the language of tributary streams.

**General Comments**

1. The ordinance does not address Buffer Management Plans. Provisions for Buffer Management Plans are needed to regulate permitted activities in the Buffer which involve the removal of invasive and exotic species, silvicultural management practices, limbing up of trees, and the removal of vegetation for access.

2. Where will the "fees-in-lieu" of planting collected be used to offset impacts in the Critical Area? Will they be targeted for use in the Critical Area?

The fines proposed in Section 80.4 appear to be rather lenient. Are they adequate to support the enforcement of these provisions? Most jurisdictions assess fines on a violation for each day that the violation continues until the unauthorized activity is abated.

MEMORANDUM

June 5, 2002

TO: Critical Area Commission Members

FROM: John C. North, II, Chairman

SUBJECT: Atlantic Coastal Bays – Advisory Committee

Governor Glendening signed HB 301, the Atlantic Coastal Bays Protection Act, on May 16, 2002. The Act's effective date is June 1, 2002 and amends, among other things, Section 8-1804 of the Natural Resources Article, expanding the membership of the Critical Area Commission from 27 to 29 members. The two new members must be from the Atlantic Coastal Bays watershed. One new member, the Mayor of Ocean City, is legislatively designated; the other must be a resident of the Coastal Bays watershed.

In addition, Section 8-1806 (a) (4) of the Natural Resources Article provides that the Commission has the authority

> "[t]o establish an advisory committee, composed of members of the Commission and local citizens and local stakeholder groups, to make recommendations to the Commission with respect to Atlantic Coastal Bays Critical Area programs."

The law specifies that the Commission members who reside in the Atlantic Coastal Bays watershed shall serve on any advisory committee so established.

The law, however, does not provide any other information or guidance concerning an advisory committee; i.e., it does not discuss more specifically than above the membership of the committee, what types of issues it might consider or what types of recommendations it might make to the Commission.

At our meeting on June 5, 2002, Ren Serey will brief the Commission on the informal discussions he has had regarding an advisory committee with staff from Worcester County and Ocean City, and with the Implementation Committee of the Coastal Bays Program. Following the briefing, I would like to seek your comments and guidance on these matters. I look forward to seeing you on June 5th.