Critical Area Commission
Department of Housing and Community Development
Crownsville, Maryland
December 4, 2002

AGENDA

1:00 p.m. – 1:05 p.m.	Approval of Minutes for November 13, 2002	John C. North, II Chairman

PROJECTS

1:05 p.m. – 1:15 p.m.	VOTE Anne Arundel County: Department of Public Works: Broadwater Water Reclamation Facility Upgrades	Lisa Hoerger
1:15 p.m. – 1:30 p.m.	VOTE: Maryland Port Administration Offsite Phosphorous Reduction Concept Plan for Gunpowder Falls State Park at Hammerman	Dawnn McCleary

PROGRAMS

1:30 p.m. – 1:45 p.m.	Refinement: Baltimore County Recodification of County Code – Critical Area Sections	Wanda Cole
1:45 p.m. – 2:00 p.m.	Refinement: Worcester County Coastal Bays Text and Map Revisions	LeeAnne Chandler
2:00 p.m. – 2:15 p.m.	Refinement: Anne Arundel County Bog Protection Program Maps	Lisa Hoerger
	VOTE/ Ocean City - Request for Time Extension	Ren Serey

OLD BUSINESS

2:15 p.m. – 2:20 p.m.	Legal Update	Marianne Mason

2:20 p.m. – 2:30 p.m. **NEW BUSINESS**

Critical Area Commission
For the Chesapeake and Atlantic Coastal Bays
100 Community Place
People's Resource Center
Crownsville, Maryland
November 13, 2002

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 Chairman John C. North, II, with the following Members in attendance:

Meg Andrews, Maryland Department of Transportation; Margo Bailey, Kent County; Dave Blazer, Coastal Bays, Worcester County; Dave Cooksey, Charles County; Larry Duket, Maryland Department of Planning; Judith Evans, Western Shore Member-at-large; Dr. James C. Foor, Queen Anne's County; Bill Giese, Dorchester County; Ed Gilliss, Baltimore County; Robert Goodman, DHCH; Joseph Jackson, Worcester County; Q. Johnson, Eastern Shore Member-at-Large; Louise Lawrence, Maryland Department of Agriculture; James Mathias, Ocean City Coastal Bays; Mike Pugh, Cecil County; Edwin Richards, Caroline County; Barbara Samorajczyk, Anne Arundel County; Gary Setzer, Maryland Department of Environment; Douglas Stephens, Wicomico County; Duncan Stewart, Baltimore City; Jack Witten, St. Mary's County; Lauren Wenzel, Department of Natural Resources; Samuel Wynkoop, Prince George's County; Martha Yingling, Department of Business and Economic Development for James McLean

Not In Attendance: Dave Bourdon, Calvert County; Paul Jones, Talbot County; James McLean, Maryland Department of Business and Economic Development; William Rice, Somerset County; Douglas Wilson, Harford County

The Minutes of the October 2, 2002 Meeting were approved as read.

Louise Lawrence, Department of Agriculture, made a correction to the October 2, 2002 Minutes. She stated that she did attend the meeting.

Chairman North introduced Paul Cuccuzella, Assistant Attorney General. Mr. Cuccuzella will assist Marianne Mason in matters of litigation. Chairman North commented on his distinguished military background.

Ren Serey presented to the Commission the Worcester County Coastal Bays Program. The Atlantic Coastal Bays Protection Act, passed by the General Assembly and signed by the Governor in the 2002 Legislative Session, extends the Critical Area resource protection program to the Coastal Bays. It designates all waters of and lands under the Coastal Bays and their tributaries and all land and water areas within 1,000 feet beyond the landward boundaries of State or private wetlands and the heads of tides as the Atlantic Coastal Bays Critical Area. The Act gives primary responsibility for developing and implementing a program to each affected local jurisdiction. After holding a public hearing on October 1, 2002, the County Commissioners of Worcester County formally submitted their proposed Program in accordance with Natural Resources Article §8-1808.9 et seq.

Mr. Serey indicated that the Critical Area Ordinance and maps were before the Commission for approval. Mr. Serey acknowledged the hard work by the County staff to get it to the Commission. He added that

Bill before the Commission scheduled to take effect March 1, 2003, Under the Law, there must be a Critical Area Program in effect for Worcester County and Ocean City by September 29, 2003. The County proposal is to have it in effect by March 1, 2003. Mr. Serey said that meanwhile, we will see from the County another part of the program, which is the Buffer Management Program or Buffer Exemption Program. It is not a required part of the Program thus was not included in today's handouts. He indicated that it will be forthcoming.

Mr. Serey told the Commission that the Program they have is based on HB301. The County Commissioners held two hearings on this program. The CAC Panel held a Joint Hearing on November 6, 2002 with County Commissioners. The County submitted the Program, Critical Area maps and Resource maps for Vote.

Mr. Serey said that the Panel held a meeting this morning and went over the conditions to make the County's Program consistent with the Law and Criteria. Mr. Serey said that they will go through those following a presentation by County representatives Ed Tudor and Sandy Coyman. They described what they went into and what the County was looking to accomplish.

Mr. Tudor explained that the County Bill contains all program elements required under the Criteria and HB301. These elements include land use, Habitat Protection Areas, intra-family transfers, and Buffers. In addition, HB301 authorized limits on pier length, which the County has set at 100 feet and for Buffers outside of the 1,000-foot Critical Area. The provision on pier length will expire in one year unless specifically retained by the County Commissioners. The buffers, outside the Critical Area will be 25 feet and apply to nontidal wetlands for which MDE does not require mitigation. Mr. Coyman described the County's mapping procedures including the specific areas set out in HB301 for West Ocean City, the Riddle Farm, Ocean Downs Racetrack and classes of Planned Unit Developments.

Joe Jackson, Chair of the Coastal Bays Advisory Committee, read the Committee's endorsement of the program, which included the recommendation that the program move forward only in conjunction with a Buffer Management Program.

Mayor Mathias said that the Ocean City Program will be the subject of a public hearing by the mayor and council and will be submitted to the Commission by January 1, 2003.

Joe Jackson moved to adopt the Worcester County Program with the proposed amendments and maps as presented. Dave Blazer seconded the motion, and it was carried unanimously with two abstentions; Dr. Foor and Q. Johnson.

Dawnn McCleary presented for VOTE The Department of Transportation, Maryland Port Administration's (MPA) proposed Westway Liquid Terminal: Pier 9 at North Locust Point Marine Terminal. The Staff recommended Approval with Conditions. The project site is owned by the MPA and is located near the intersection of Nicholson Street and Hull Street in Locust Point, Baltimore City. The site is located in the
Patapsco River Watershed near the Northwest Branch of the Baltimore Harbor. The site is located entirely within the Critical Area, is considered an area of intense development.

Ms. McCleary stated that this project is coming before the Commission for conditional approval for two development activities in the 100-foot Buffer: the construction of a liquid storage tank and an

underground stormwater management facility. One 1,000,000- gallon liquid storage tank will be placed within the 100-foot Buffer. The tank will hold non-hazardous products such as molasses and corn syrup. An underground sandfilter is also proposed within the 100-foot Buffer. The facility will treat runoff from approximately 0.75 acres of impervious surface cover. The Maryland Department of the Environment has approved the stormwater management and sediment and erosion control plans for this project.

The Commission found that the conditional approval requests were met and again requested conditional approval of the project.

Bob Goodman made a motion for continued approval as presented in the Staff Report. Dave Cooksey seconded the motion and it was carried unanimously.

Dawnn McCleary presented for VOTE Baltimore City Department of Planning's pending Comprehensive Review, under the Annotated Code of Maryland, Section 8-1809(g). The City of Baltimore recently completed the required comprehensive review of their Critical Area Program. The review resulted in the following changes:

1) text changes to the Zoning Article and Natural Resources Article of the Baltimore City Code,
2) comprehensive revisions to and reorganization of the City's Critical Area Management Program (CAMP), and
3) minor revisions to clarify a map of the Reedbird Designated Habitat Protection Area (DHPA). The City makes extensive use of fees-in-lieu for Buffer impacts and for stormwater quality management in order to ensure that mitigation for environmental impacts can be provided. This system allows for funds to be collected and used to finance significant and effective projects that promote the purpose and intent of the Critical Area Program.

The City's Critical Area Management Plan (CAMP) was significantly revised in order to make it more useable. The document was reorganized, codified, and reviewed for consistency with the Critical Area Criteria. Some new sections were added to address redevelopment issues and mitigation.

Minor revisions were made to this section to clarify that uses are permitted generally in just disturbance greater than 5,000 square feet and to include any disturbance to a Habitat Protection Area. This clarification is necessary to ensure that a more detailed review is performed and appropriate mitigation is provided.

Larry Duket moved to approve the changes. The motion was seconded by Judith Evans, and carried unanimously.

Duncan Stewart, City of Baltimore, introduced Karen Hilton, new Acting Director for the City Planning Department, and has taken over for Charles Graves. Mr. Stewart thanked staff and panel for their ongoing assistance.

Julie LaBranche presented the Cecil County Growth Allocation located in the Resource Conservation Area.

Cecil County requested approval of the use of 1.5 acres of growth allocation to change the designation of a portion of Parcel 1 of the Mary Parker Estate from Resource Conservation Area (RCA) to a Limited Development Area (LDA). The property that is the subject of this growth allocation request is located on the west side of Center Road in Earleville, Maryland. A proposal to subdivide the Parker Property was reviewed by this office previously and comments were provided to the County, as shown in the Staff

The growth allocation is required because the proposed subdivision does not meet the density requirements of one dwelling unit per twenty acres within the RCA. The Cecil County Board of Commissioners approved this request for growth allocation on July 2, 2002. Based on the information provided to this office regarding

the growth allocation request for the Mary Parker Estate, Critical Area Commission Chairman John C. North II determined this request to be an amendment to the County's Program.

A public hearing was held on Wednesday, October 30, 2002 at 6:00 p.m. in Cecil County. The Cecil County staff offered comments regarding this request. A letter which addressed the presence of a federally threatened and State endangered species, Puritan Tiger Beetle (*Cicindela puritana*) from the Department of Natural Resources, Wildlife and Heritage Division and the U.S. Fish and Wildlife Service, were entered into the record.

The Commission panel requested that the record remain open in order to gather supplemental information as outlined in the Staff Report prior to today's Commission meeting.

The Amendment panel consisted of Mike Pugh, Margo Bailey, Ed Gillis and Lauren Wenzel, Chair.

Ms. LaBranche handed out a supplement to the Staff Report, and photographs of the property.

It was noted that at the October 30, 2002 hearing no public was in attendance except the property owner and County staff.

Lauren Wenzel explained that the resource agencies recommended a minimum 200-foot setback in order to properly protect the Tiger Beetle habitat. The County proposed that its Standard 110-foot Buffer was sufficient protection. The one additional dwelling provided for in the Growth Allocation request can still be accommodated on-site with a 200-foot setback from the cliffs. If set back 200 feet, Growth Allocation would not be necessary.

Lauren Wenzel made a motion to deny the Growth Allocation request based on the lack of habitat protection for the Puritan Tiger Beetle a federally threatened and State Endangered Species. The Motion was seconded by Margo Bailey, and carried unanimously.

Roby Hurley, Critical Area Circuit Rider, presented for concurrence with the Chairman's Determination of Refinement, Natural Resources Article §8-1809(h), the Town of Oxford's annexation of 42 acres from Talbot County. This annexation resulted in a change to the Town's Critical Area maps to be reviewed by the Commission. Chairman North determined this map change to be a refinement to the Town's Critical Area Program since it is consistent with the Town's Critical Area Program.

The annexation added two residential lots and a section of County road into the Town's Critical Area. Parcel 152 has a County zone of RC (RCA). The property is improved with a small cabin with well and septic. The
existing septic system is currently failing. The applicants propose to build a new single family home and connect to the Town sewer and water.

Lot 194 is zoned RR (LDA) by the County. The inclusion of Bachelors Point Road will improve access to Town utilities within the right of way and ease maintenance issues between the Town and the County.

The Town Commissioners held public hearings on July 9 and August 6, 2002. There was considerable public comment received that related to how this annexation might enable future annexations. The Town Commissioners approved the new Critical Area Map on August 13, 2002. There are no proposed changes in the Critical Area designations on any of the properties annexed into the Town.

Chairman North determined the matter to be a Refinement to the Town of Oxford's Critical Area Program. The Commission concurred with Chairman North's determination of Refinement.

OLD BUSINESS

Marianne Mason, Esq., Commission Counsel, gave the Legal Update.

October Minutes. Ms. Mason stated that there was a possible inconsistency in the Calvert County Program that could be interpreted to mean that a 30-foot buffer is permitted to exist in certain areas of Solomon's Town Center. The Commission voted last month on the issue and asked Ms. Mason to draft a letter, signed by Chairman North, notifying them of the deficiency under §8-1808.9. Ms. Mason stated that she did that and sent the letter. She said the County is preparing amendments to correct the deficiency.

Four Variance Cases Presented Last Month. Ms. Mason told the Commission that testimony was presented in four variances cases last month. She and Julie LaBranche appeared before the Calvert County Board of Appeals, and Ms. LaBranche testified. According to Ms. Mason they expressed appreciation for
Ms. LaBranche's discussion of the Critical Area Law. Ms. Mason said that they got good decisions in the cases, with a couple of them being deferred.

The Edwin Lewis Case. Ms. Mason reported that the Court of Special Appeals gave favorable decision in the Edwin Lewis case on October 9th. This is the case in which a person from New York purchased 275 acres in Wicomico County, of which 95% of the acreage was in the 100-foot buffer. The owner built 7 cabins in the buffer without permits then sought variances after the fact. He was turned down by the Wicomico County Board of Appeals, and the Circuit Court. The Court of Special Appeals upheld the denial of the variances. Mr. Lewis may petition the courts again. He has another week or so to appeal.

Somerset County's Covington Cove Growth Allocation Claudia Jones reported on the case of Somerset County's Covington Cove Growth Allocation that the Commission considered as a refinement in February of this year. At that time 34 acres of Growth Allocation was deducted. Part of the Growth Allocation included State Tidal Wetlands. When it was subtracted out the growth allocation was reduced to 28.7 acres. Ms. Jones said she mentioned this just for the records.

With there being no new business, Chairman North adjourned the meeting.

Minutes respectfully submitted by: Shirley M. Bishop, Executive Secretary
Critical Area Commission for the Chesapeake and Atlantic Coastal Bays

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Critical Area Commission

STAFF REPORT
December 4, 2002

APPLICANT:	Anne Arundel County Department of Public Works
PROPOSAL:	Broadwater Reclamation Facility – Plant Upgrades
JURISDICTION:	Anne Arundel County
COMMISSION ACTION:	Vote
STAFF RECOMMENDATION:	Approval
STAFF:	Lisa A. Hoerger
APPLICABLE LAW/ REGULATIONS:	COMAR 27.02.06 Conditional Approval of State or Local Agency Programs in the Critical Area

DISCUSSION:

Anne Arundel County Department of Public Works (DPW) proposes to upgrade the Broadwater Reclamation Facility in order to increase plant efficiency and the safety of operations by minimizing impacts of wastewater flow, reduce or eliminate safety hazards, and enhance the treatment process performance and operations. These upgrades will be accomplished by installing a primary clarifier bypass vault, a secondary clarifier splitter box and a sodium bisulfite storage tank. These structures are all located within the expanded Buffer for hydric soils; therefore, the project must be reviewed through the Commission's conditional approval process.

The Broadwater Reclamation Facility is an existing facility located in Churchton on Deep Cove Road in southern Anne Arundel County. The site is 21.8 acres with 18 acres inside the Critical Area. There are 9.3 acres in the Resource Conservation Area and 8.7 acres in the Limited Development Area. The facility was constructed in 1971 and was upgraded in 1996 to achieve biological nutrient removal to reduce nitrogen and phosphorus in its effluent.

Since that upgrade, the plant personnel determined that several related upgrades would be necessary to further increase the process reliability and effectiveness. The proposed improvements include: a primary clarifier bypass to improve the control of organic loading to the reactors; a secondary clarifier distribution box to allow the selection of any of the three clarifiers with either reactor and a sodium bisulfite tank to replace the chlorine gas disinfections.

The total footprint of these three structures is 172 square feet. All are within the Critical Area portion of the site and within the expanded Buffer for hydric soils. The new impervious areas will be offset by removing an equal amount of impervious areas on the site. The current impervious area is 4.066 acres and will remain at 4.066 acres after the installation of these structures. All three structures will be situated on existing grassed areas. No clearing is proposed.

The Heritage and Biodiversity Division of the Department of Natural Resources, (DNR), provided a comment letter indicating the site may contain habitat for a State-endangered Grass-like Beakrush (Rhynchospora globularis); however, after field review this species was not found to inhabit the site. DNR also indicated the forested areas may contain Forest Interior Dwelling Bird Habitat. The surrounding properties may contain these species; however, DPW proposed no clearing and the area of the plant is not suitable habitat for FIDs.

The applicant is currently seeking approval from the County Soil Conservation District for the proposed sediment and erosion control plan and the stormwater management plan. No permits are required from the Maryland Department of the Environment since no wetlands will be impacted. The Administrative Hearing Officer of Anne Arundel County has heard and approved the variance to allow this disturbance in the expanded Buffer. He did not apply any conditions or mitigation requirements as part of his approval.

Conditional Approval Process

B. In order to qualify for consideration by the Commission for conditional approval, Anne Arundel County Department of Public Works must show that the project or program has the following characteristics: (the responses are that of DPW staff)

(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;

The County Soil Survey map shows Elkton and Othello soils present over the entire site area including those areas where disturbance is proposed. As such, there is no practical manner of constructing any of the planned modifications outside of these areas of hydric soils in order to be in strict compliance with the expanded Buffer requirements.

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

The public benefits of this project include improved treatment of the wastewater (primary clarifier by-pass), enhanced equipment reliability and operational flexibility (secondary clarifier distribution box), and improved safety (replace gaseous chlorine disinfection system with sodium hypochlorite).

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

The project conforms in all other ways to the Critical Area Program.

C. The conditional approval request shall, at a minimum, contain the following:

(1) A showing that the literal enforcement of the provisions of this subtitle would prevent the conduct of an authorized State or local agency program or project;

Literal enforcement of the provisions of this subtitle will prevent construction of any of the planned modifications. The planned modifications are engineered to be part of or direct the process flow and cannot be situated remotely from the process tanks and piping.

(2) A proposed 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;

The disturbance is the minimum necessary for the proposed upgrades and will conform, insofar as possible, with the Anne Arundel County Critical Area Program.

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

Since the design of the project includes removing equal amounts of impervious surface, and because the plant has allowed areas that are wet to naturally revegetate into nontidal wetland areas, no mitigation is proposed.

Commission staff recommends approval of this conditional approval request with the condition that DPW perform 3:1 mitigation for the new areas of impervious surface in the expanded Buffer.

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CRITICAL AREA COMMISSION

STAFF REPORT
December 4, 2002

APPLICANT: Maryland Port Administration (MPA)

PROPOSAL: MPA Offsite Phosphorus Mitigation Conceptual Plan Gunpowder Falls State Park

JURISDICTION: Baltimore County

COMMISSION ACTION: Vote

STAFF RECOMMENDATION: Approval with Conditions

STAFF: Dawnn McCleary

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

BACKGROUND:

The Maryland Port Administration (MPA) has been searching for offset locations to address the 10% pollutant reduction requirements for the Dundalk Marine Terminal. The Commission approved two projects this year in which MPA was unable to treat phosphorus on site. The goal of this conceptual plan is to provide for the pollutant reduction requirements of current and future construction projects at MPA marine terminals where onsite stormwater management is not feasible.

DISCUSSION:

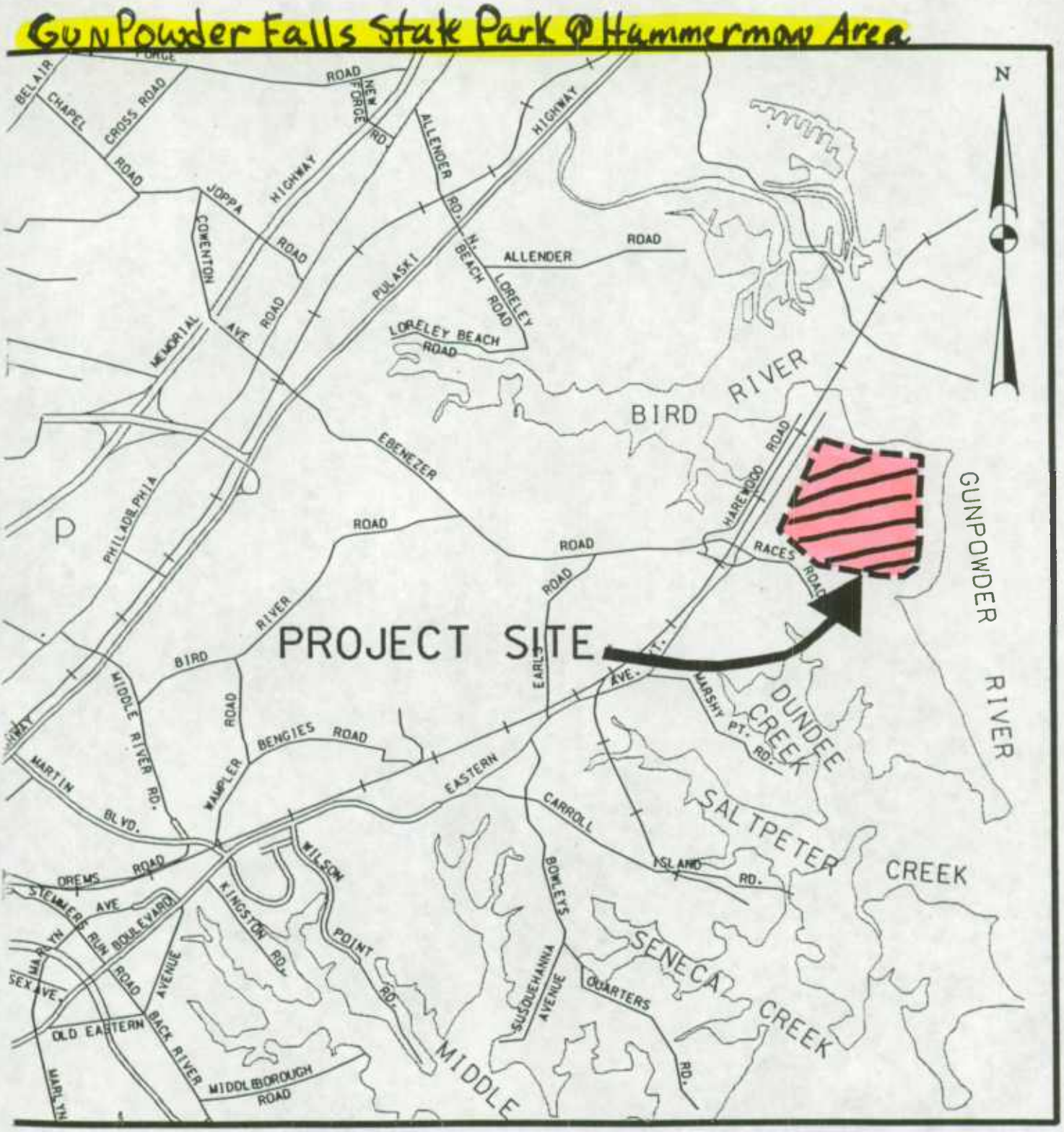
MPA has met with the Department of Natural Resources (DNR), the Maryland Department of the Environment (MDE) as well as Commission staff in formulating this plan. Currently, the proposal includes four bioretention facilities, two sandfilters, and two dry swales. MPA has submitted plans for each Best Management Practice (BMP) to MDE and is in the process of getting permits. Each BMP will be brought back to the Commission for project approval as the specifics are available.

Gunpowder Falls State Park- Hammerman Area is located near Graces Quarters Road in Chase, on the eastern side of Baltimore County. The area is intensely developed with parking lots, roads, pavilions, restrooms, and a beach facility building. BMPs are proposed for five of the currently untreated parking lots. The majority of the site is located within the Chesapeake Bay Critical Area. The site drains to the surrounding forest and beach areas that are adjacent to the Gunpowder River and wetlands. A portion of the Hammerman area is located within the Critical Area Buffer, however, none of the proposed BMPs will be located in the Critical Area Buffer.

The Port currently owes 23.42 pounds of phosphorus treatment based on past projects. This plan proposes to treat ~~25.43~~ 29.13 pounds. MPA proposes to bank excess phosphorus treated for future projects.

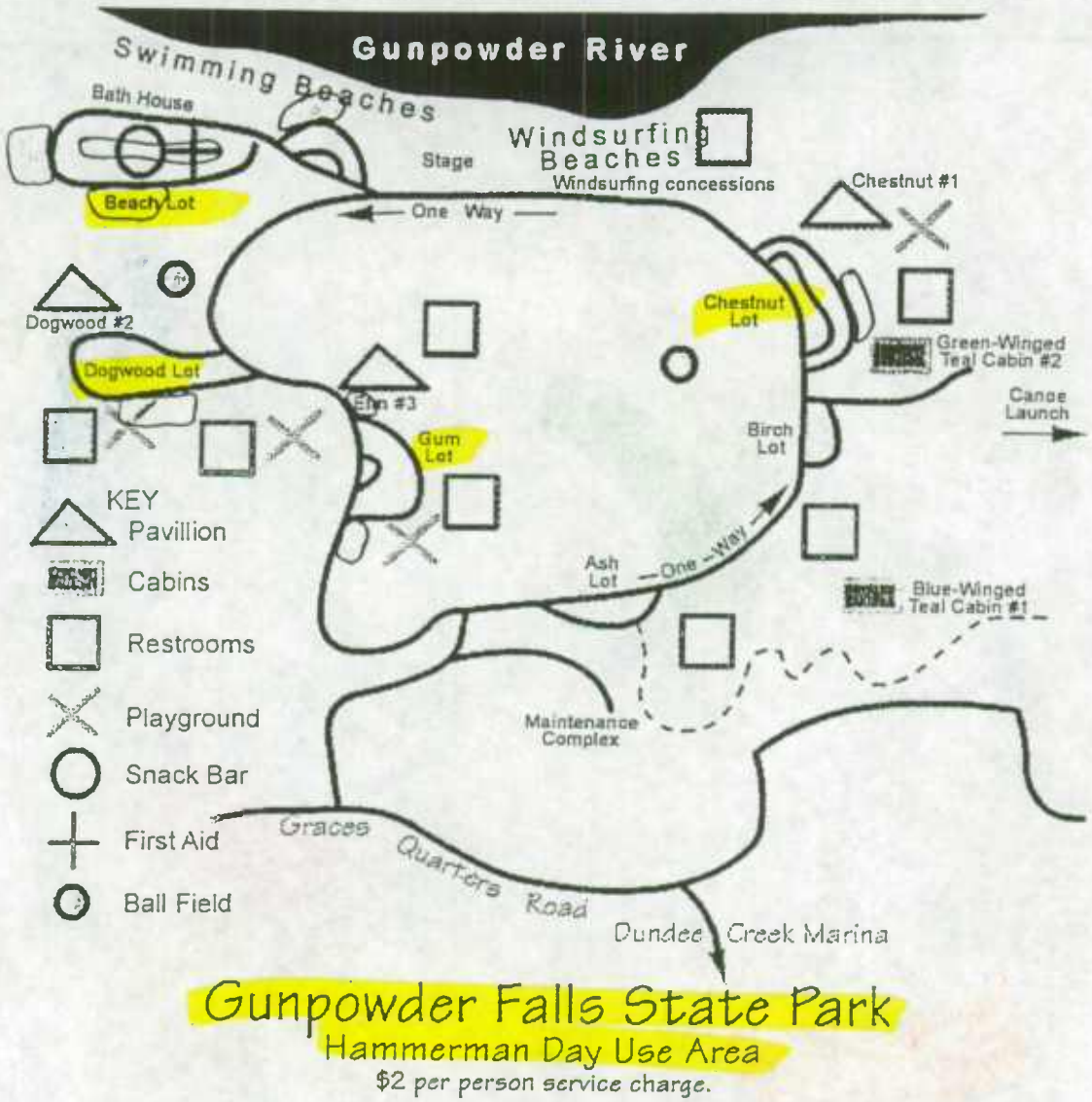
Proposed Condition:

MPA work with Commission staff to develop a formal process for tracking this phosphorus bank. This process should be finalized as part of the approval for the individual BMPs.



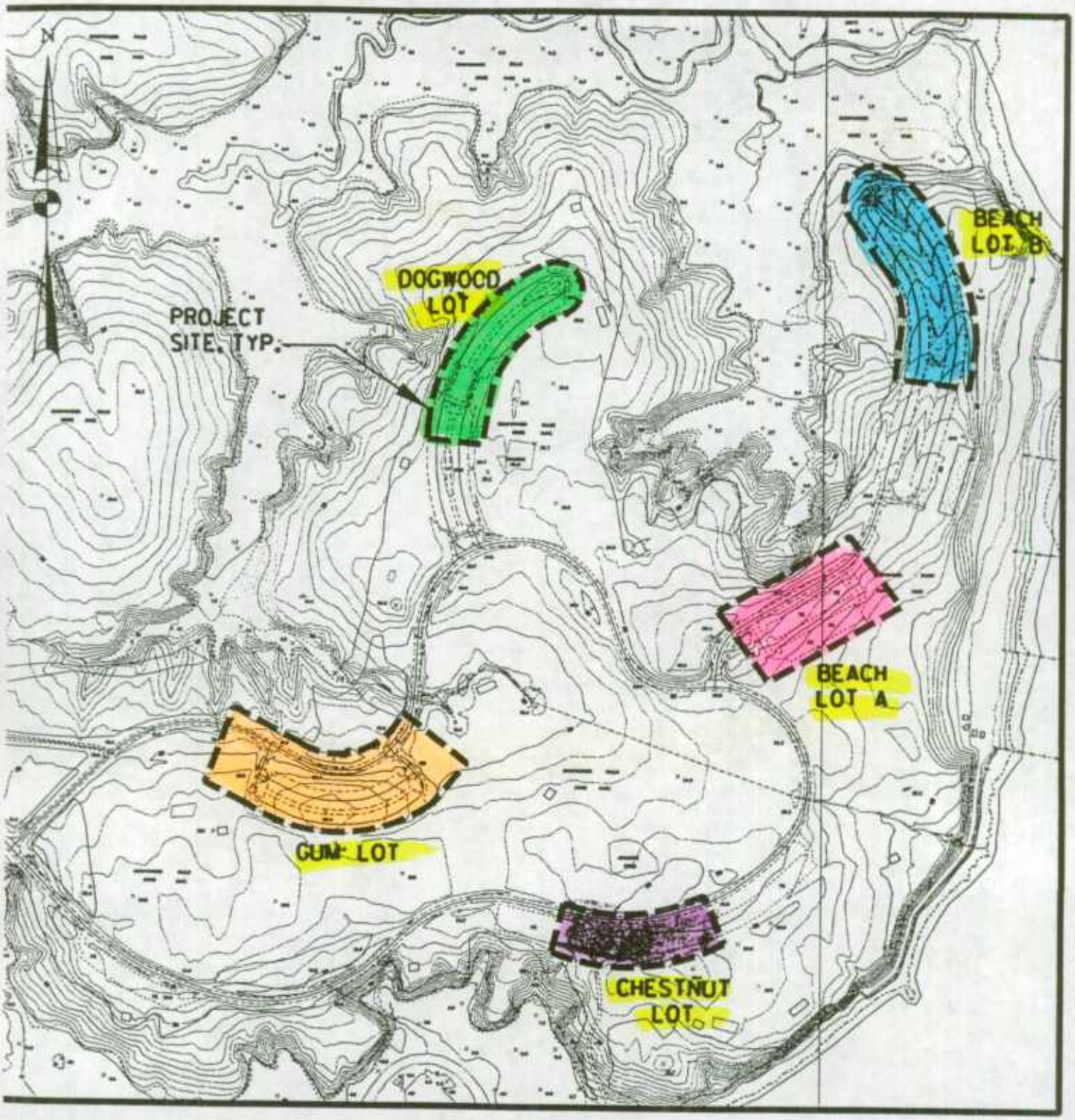
VICINITY MAP

Map of Gunpowder Falls State Park
Hammerman Area



Gunpowder Falls State Park
Hammerman Day Use Area
$2 per person service charge.

☐ = PROPOSED BMP LOCATION



LOCATION MAP

Commission Supports

Critical Area Commission

STAFF REPORT
December 4, 2002

APPLICANT: Baltimore County

PROPOSAL: Refinement –Recodification of the Baltimore County Zoning Ordinances: Bill 79-01 Development; Bill 94-02 Environmental Protection and Resource Mangement; and Stormwater Management Fund; Bill 103-02 Planning; Zoning; and Growth Allocation

JURISDICTION: Baltimore County

COMMISSION ACTION: Concurrence

STAFF RECOMMENDATION: Concurrence with Chairman's Determination of Refinement

STAFF: Wanda Cole and Mary Owens

APPLICABLE LAW/ REGULATIONS: Natural Resources Article, § 8-1809(p)

DISCUSSION:

Baltimore County has completed a comprehensive effort to revise the Baltimore County Code which is required to be updated every ten years. The recodification of the County's regulations includes changes in the style and language to make it consistent with standard State regulatory language, but these changes are generally considered nonsubstantive changes. The revisions also put like subjects together, remove redundant provisions, and amend tabulation and codification to provide for more effective references and citations. From this effort, many bills were proposed and approved. Three of these bills include references to Critical Area elements, although the bills themselves do not pertain to the Critical Area in their entirety.

Bill 79-01 revises, restates, and recodifies the laws of the County relating and pertaining to the general powers and duties of various departments and officers of the County, development plats, public and private improvements, development and concept plans, hearings, appeals, and reclamation of property. This bill repeals sections of Title 26, Planning, Zoning and Subdivision Control and incorporates them into Article 32, Title 4, Development. These changes are generally non-substantive. New language includes substitutions of references to provide clarity and consistency. This bill pertains to development activities proposed both within and outside

the Critical Area, and includes the Critical Area variance standards language.

Bill 94-02 revises, restates, and recodifies the laws of the County relating and pertaining to the following issues: 1) Chesapeake Bay Critical Area; 2) protection of water quality, streams, wetlands, and floodplains; 3) stormwater management; 4) excavations, grading, sediment control, and forest management; 5) forest conservation; and 6) storage of petroleum products and hazardous substances.

Changes to the Critical Area provisions include combining material that appeared in former Title 14, Article VIII with the Critical Area material in former Title 26, Article VIII into a single title, Title 2, in Article 33 of the Code. In some cases this meant combining material from two different sections into one section. This resulted in combining enforcement language and penalty provisions from the two former titles, which were not uniform. The resulting language is slightly different from the former text, but is generally consistent with the former provisions.

Another significant change covered by Bill 94-02 is that where possible, the Bill has combined definitions for the entire code, into a single article. The definitions have been drawn from the six former articles. In some cases, there were four slightly different definitions for the same term, which created problems with interpretation and coordination among the various County agencies.

Bill 103-02 revises, restates, and recodifies the laws of the County relating and pertaining to planning, zoning, and growth allocation. Most of the changes that will result from the bill affect the County's process for reviewing and acting on projects involving the use of growth allocation.

The recodification effort is not intended to represent the required comprehensive review of the County's Critical Area Program. Baltimore County's comprehensive review was scheduled to be accomplished in 1999, and some of the initial review efforts have been completed. The comprehensive review is now anticipated to be completed in the summer of 2003. Commission staff and County staff believe that the recodification will facilitate a more effective and efficient review because many minor style and grammatical issues have been addressed and the reorganization has resulted in a more concise document.

After holding public hearings, the Baltimore County Council approved Bill 79-01 on October 1, 2001, Bill 94-02 on October 21, 2002, and Bill 103-02 on November 18, 2002. The County has requested the Commission approve these bills as a refinement to its Critical Area Program. Chairman North has determined that this request is a refinement to the County's program and seeks the Commission's concurrence.

Commission Supports

Critical Area Commission

STAFF REPORT
December 4, 2002

APPLICANT:	Worcester County – Coastal Bays
PROPOSAL:	Refinement – Minor text amendments and mobile home park map amendments
COMMISSION ACTION:	Concurrence
STAFF RECOMMENDATION:	Approval
STAFF:	LeeAnne Chandler
APPLICABLE LAW/ REGULATIONS:	Natural Resources Article §8-1809(h)

DISCUSSION:

The County Commissioners of Worcester County held a legislative session on November 19, 2002 to formally adopt the Coastal Bays Critical Area Program and maps that were approved with conditions at the last Critical Area Commission meeting. In addition to making the changes required by the conditions placed on the approval, the County Commissioners made six minor text amendments and two map amendments. The text changes are as follows:

1. Amend the section dealing with reconstruction of structures after destruction by forces of nature or casualty by extending the allowable time to build on the same footprint from two to five years.

2. Amend the section on intrafamily transfers by the addition of specific language to address concerns with respect to third party transfers as a result of foreclosure for lots created by intrafamily transfers.

3. Amend the section on agriculture to clarify that establishment of the Buffer on agricultural lands being converted to other uses shall not preclude normal agricultural drainage ditch maintenance on agricultural lands upstream.

4. Amend the section dealing with mitigation requirements for impacts to non-tidal wetland buffers outside of the Critical Area but within the Coastal Bays watershed by applying the requirements only on lots and parcels created after June 1, 2002.

5. Amend the section referenced in (4) above by correcting a typographical error and inserting the word, "an" before "equal basis."

6. Amend the effective date of the bill and change it from 45 days from the date of passage to March 1, 2003.

Most of the text changes listed above are minor in nature and are consistent with the Critical Area Law and Criteria. The changes to the non-tidal buffer requirements and the effective date of the ordinance are at the discretion of the County. (The actual strike and replace text changes are available upon request.)

The two map changes include:

1. Tax Map 10, Parcel 32 (Bali-Hi RV Park) – The County proposes to change this parcel's classification from Resource Conservation Area (RCA) to Intensely Developed Area (IDA). The parcel is 23.63 acres and contains a substantial number (over 100) mobile and RV sites. The units remain on site year-round. Given the intensity of use, sewer service, the degree of impervious surface and the size of the parcel, the Commissioners determined this parcel should be classified as IDA.

2. Tax Map 9, Parcel 268 (Riverview Mobile Home Park) – The County proposes to change this parcel's classification from RCA to IDA. The parcel is 24.32 acres and has 62 existing mobile homes. The site has sewer and water service and a number of vacant lots. Given the intensity of use, impervious surface and size of this parcel, the Commissioners determined this parcel should be classified as IDA.

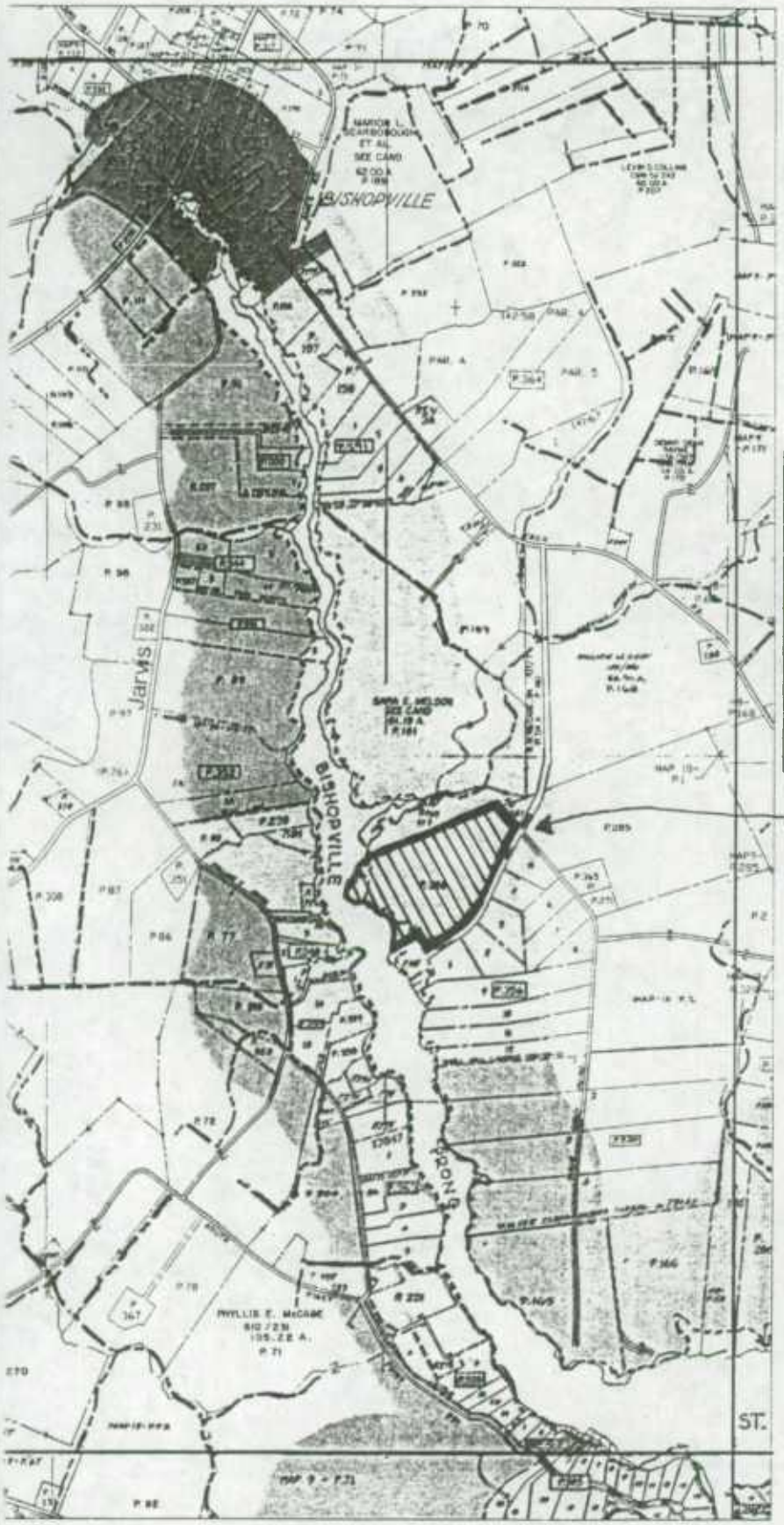
These mapping mistakes were made due to the accelerated schedule for preparation and submittal of the County Program and the reliance on aerial photos in mapping the designations. Once the properties were brought to the attention of the County, field visits were made where it was evident that these parcels should be designated IDA.

Chairman North has determined that the above changes can be handled as a refinement to the County's Coastal Bays Critical Area Program and he is seeking the Commission's concurrence.

If there are any questions prior to the Commission meeting or if you would like to review the actual text changes, please contact me at (410) 260-3477 or via e-mail at lchandler@dnr.state.md.us.

Atlantic Coastal Bays Protection Act

Tax Map 9



Legend

- IDA - Intensely Development Areas
- LDA - Limited Development Areas
- RCA - Resource Conservation Areas
- Initial Development Exempt From Program (Color under cross hatching indicates the land classification)
- Out of Program
- Tidally Influenced Areas (Open Water and Tidal Marsh)
- Streams

Riverview Mobile Home Park

RCA → IDA

Map 10

The Worcester County Critical Area Boundary was established by Worcester County in compliance with the Atlantic Coastal Bays Protection Act. This data set was reviewed, updated and converted to digital format by the Maryland Department of Natural Resources and the Worcester Regional GIS Program.

The tidal wetland boundary lines depicted on this map are for guidance purposes only. The State of Maryland does not recognize these boundaries as its official Tidal Wetlands boundaries in Worcester County. Maps depicting the State's regulatory jurisdictions may be viewed by contacting the Worcester County Department of Development Review and Permitting.

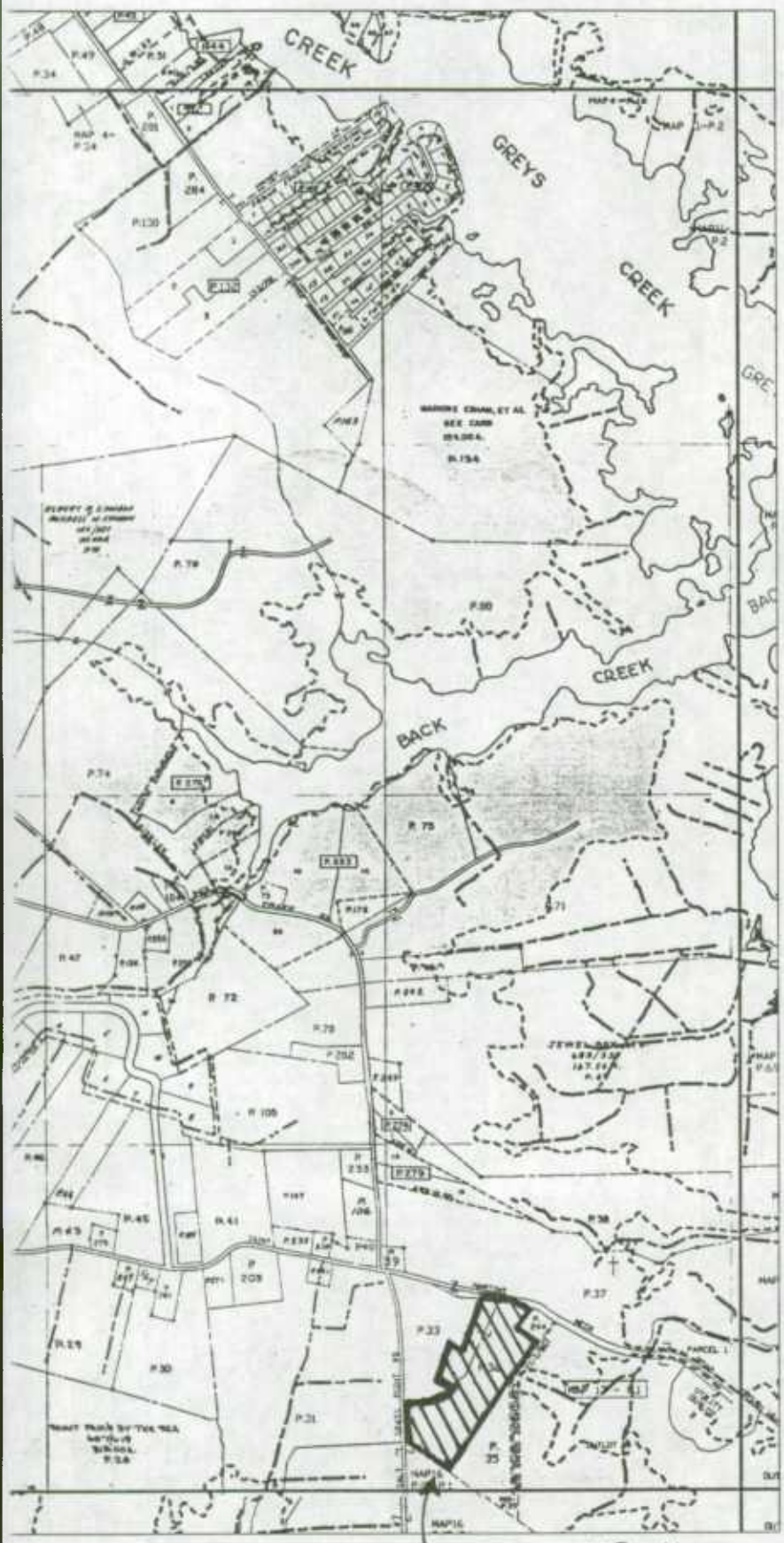
The first 100' landward measured from mean high water line to tidal waters, tidal wetlands and tributary streams is called "THE BUFFER". No alterations, vegetation removal, grading, paving or building can take the place within "THE BUFFER", without additional approvals. The line 100' landward is not mapped hereon. A field survey may be required to accurately establish this line. See program for additional information.

These maps are designed for use as a planning tool and not a primary regulatory tool. The information shown is a compilation from various information sources and maps. Field verification will be required.

Source: Worcester Regional GIS, 2002. Stream data provided by the USDA Natural Resource Conservation Service (NRCS), dated 1997

Atlantic Coastal Bays Critical Area Program

Map Sheet 10



Bali-Hi RV Park
RCA → IDA

Legend

- IDA - Intensely Development Areas
- LDA - Limited Development Areas
- RCA - Resource Conservation Areas
- Initial Development Exempt From Program (Color under cross hatching indicates the land classification)
- Out of Program
- Tidally Influenced Areas (Open Water and Tidal Marsh)
- Streams

Map 11

The Worcester County Critical Area Boundary was established by Worcester County in compliance with the Atlantic Coastal Bays Protection Act. This data set was reviewed, updated and converted to digital format by the Maryland Department of Natural Resources and the Worcester Regional GIS Program.

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These maps are designed for use as a planning tool and not a primary regulatory tool. The information shown is a compilation from various information sources and maps. Field verification will be required.

N

0 600 1200 Feet

This Box Represents Twenty Acres

Source: Worcester Regional GIS, 2002. Stream data provided by the USDA Natural Resource Conservation Service (NRCS), 1997.

Atlantic Coastal Bays Protection Act Tax Map 10

Commission Supports

Critical Area Commission

STAFF REPORT
December 4, 2002

APPLICANT:	Anne Arundel County
PROPOSAL:	Refinement - County Council Bill #60-02 Bog Protection Program - Maps
COMMISSION ACTION:	Concurrence
STAFF RECOMMENDATION:	Concur with Chairman's Determination
STAFF:	Lisa Hoerger
APPLICABLE LAW/ REGULATIONS:	Natural Resources Article § 8-1809(p) Adoption of proposed refinement

DISCUSSION:

Anne Arundel County has submitted a proposed Program refinement to Chairman North for consideration. Last summer, the Anne Arundel County Council passed Bill 60-02, titled the Bog Protection Program – Maps. The purpose of this Bill is to add the definition of a Bog Protection Area Guidance Map; provide notice to affected property owners prior to a field-verified change made by the Planning and Zoning Officer; and adopt a field-verified Bog Protection Area Guidance Map.

Last spring the Anne Arundel County Council passed Bill 105-02, titled the Bog Protection Program. This legislation established Bog Protection Areas and a Bog Protection Program by amending several of the County's Ordinances to provide additional measures to ensure the preservation and protection of these resources above those required by the Maryland Department of the Environment (MDE). Chairman North determined this County Council Bill to be a refinement and the Commission concurred with his determination at its April meeting. At that meeting, the Commission was made aware that the final maps will come to the Commission later for approval once field verification was complete.

Outline of the Bog Protection Program - Maps

The County has amended the following ordinances in order to incorporate Bill #60-02: Article 21 Floodplain Management, Sediment Control and Stormwater Management, Title 2 Grading and Sediment Control; Article 26 Subdivisions, Title 1 Definitions and General Provisions; Article 28 Zoning, Title 1 General Provisions and Title 1D Bog

Protection Program. The following sections highlight substantive amendments and summarize the significant provisions of the Bill. If you would like to review the Bill or the maps, please call Lisa Hoerger at (410) 260-3478. (CAPITALS indicate new matter added to existing law, [brackets] indicate matter stricken from existing law, underlining indicates amendments to Bill, and ~~strikeover~~ indicates matter stricken from Bill by amendment).

The following definition was added to Article 21 Floodplain Management, Sediment Control and Stormwater Management, Title 2 Grading and Sediment Control; Article 26 Subdivision, Title 1 Definitions and General Provisions; and Article 28 Zoning, Title 1 General Provisions.

"BOG PROTECTION AREA GUIDANCE MAP" MEANS A MAP THAT:

(1) SHOWS EACH BOG PROTECTION AREA IN THE COUNTY; AND

(2) CONTAINS AN INDEX DRAWN AT A SCALE OF ONE INCH EQUALIS 1700 FEET AND ACCOMPANYING SHEETS THAT ARE DRAWN AT A SCALE OF ONE INCH EQUALS TWO HUNDRED FEET.

The following was amended in Article 28 Zoning, Title 1D Bog Protection Program

1D-104. Bog Protection Area Guidance Map.

(a) Each bog protection area is:

(2) shown on the Bog Protection Area Guidance Map adopted by the County Council in Bill [105-01] 60-02; and

(c) If a field [verified] VERIFICATION [, a bog protection area plan, or a bog protection area worksheet] proves to the satisfaction of the Planning and Zoning Officer that the boundary of a classification shown on the Bog Protection Area Guidance Map is inaccurate, the Planning and Zoning Officer may modify the map to reflect the correct boundary of the classification 30 DAYS AFTER A NOTICE IS SENT TO EACH PROPERTY OWNER LISTED IN THE COUNTY'S TAX RECORDS WHOSE BOUNDARY IS AFFECTED BY THE INACCURACY.

Chairman North has determined this County Council Bill to be a refinement to the County's Critical Area Program and seeks your concurrence.

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

MEMORANDUM

To: Critical Area Commission

From: Ren Serey, LeeAnne Chandler

Date: December 4, 2002

Subject: Town of Ocean City – Request for an Extension for Program Submittal

---

The Town of Ocean City has submitted a request for a 30-day extension to the January 1, 2003 deadline for submittal of their Critical Area Program. According to the Atlantic Coastal Bays Protection Act, the Commission may extend the period for up to 30 days if the local jurisdiction submits evidence satisfactory to the Commission that the jurisdiction is making reasonable progress in the development of a program.

Summary of Progress to Date:

1. The Town is using the Worcester County Coastal Bays Critical Area Program as a guide in developing their program. However, under the Atlantic Coastal Bays Protection Act, the Town's Critical Area is designated as an Intensely Developed Area. Therefore, the Town's Program will include development standards for IDAs only.

2. A public hearing was held by the Ocean City Planning Commission to discuss the Critical Area Program in general as well as highlights of the proposed Program (e.g., the entire Town is IDA and is proposed to be designated as a Buffer Management Area).

3. The Town submitted a draft Program to Commission staff for review on November 14, 2002. Commission staff met with three members of the Town staff on November 25th to review the draft and discuss outstanding issues. For the most part, only minor changes were recommended. The main issue to be resolved is a program to manage and mitigate for development in Buffer Management Areas.

A 30-day extension to the deadline for Program submittal would allow the Town to fully develop Buffer Management Area regulations prior to Program submittal. Also, an extension would give the Mayor and City Council time to hold an additional public hearing prior to formal submission to the Critical Area Commission.

TOWN OF

OCEAN CITY

The White Marlin Capital of the World

MAYOR & CITY COUNCIL
P.O. BOX 158
OCEAN CITY,
MARYLAND 21843-0158

www.town.ocean-city.md.us

November 18, 2002

Mr. Ren Serey, Executive Director
Chesapeake Bay Critical Area Commission
1804 West Street, Suite 100
Annapolis, Md. 21401

Dear Mr. Serey:

The Town of Ocean City is in the process of preparing it's local Coastal Bays Critical Area Program as required by the Atlantic Coastal Bays Protection Act. According to the law, the local program is to be submitted to the Commission on or before January 1, 2003. However, if the local jurisdiction submits evidence satisfactory to the Commission that the local jurisdiction is making reasonable progress in the development of the program, the Commission may extend this period for up to an additional 30 days. The purpose of this letter is to request a 30-day extension to February 1, 2003.

We believe we have made reasonable progress, and that an additional 30 days will enable us to prepare a complete and effective local program. COMAR 27.01.10.01 P states that "Counties and municipalities within their political boundaries are encouraged to develop their Critical Area protection programs cooperatively so that programs can be developed more efficiently and so that common land use objectives can be realized." We have been using the Worcester County draft program as a guide in the preparation of our local program. Since the Town of Ocean City is an Intensely Developed Area, the Buffer Management Area regulations in the County program are most applicable to the needs of our program. As the County is just now developing these regulations, some additional time would allow the Town to fully develop our Buffer Management regulations.

To date, a public hearing has been held by the Ocean City Planning Commission, and a draft Program has been completed by the town staff and is under review by the State Critical Area Commission staff. An extension to February 1, 2003 would allow for completion of our local program and give the Mayor and City Council time to hold an additional public hearing prior to submission to the Commission.

Thank you for your consideration of this request. If you have any questions or comments, please contact me or Jesse Houston, Director of Planning and Community Development for the Town of Ocean City.

Sincerely,

Dennis W. Dare
City Manager

CRITICAL AREA COMMISSION
1804 West Street, Suite 100
Annapolis, Maryland 21401
(410) 260-3460

MEMORANDUM

TO: Critical Area Commission

FROM: Mary Owens

DATE: December 4, 2002

SUBJECT: **Revisions to the 300-foot Setback Provisions of the Critical Area Commission's Growth Allocation Policy**

During the last year, the Program Subcommittee has met informally with several local government staff and project applicants to discuss project proposals that involve the use of growth allocation. For several of these projects, the proposals involved the incorporation of a 300-foot "Buffer" or setback on all or a portion of the project site.

The Commission's policy with regard to this issue reads as follows:

> *Buffer*
> *For growth allocation areas proposed in the RCA, a 300' naturally vegetated Buffer is strongly encouraged, and in the case where it is provided, it shall not be deducted, even if the Buffer does not meet the 20-acre requirement.*
>
> *For waterfront projects, a minimum 100' naturally vegetated Buffer must be established and be included in any acreage deduction.*

Various questions pertaining to the Commission's interpretation of the 300-foot setback provisions of the policy have been discussed extensively. One issue involves the definition of the "300' Buffer" and what, if any, portions of a project may be located in this area. For projects reviewed over the last several years, the Commission has consistently interpreted the "300' Buffer" to mean a 300 foot wide strip of RCA land that is not included in any individually owned lots and within which, no development activities may take place. The Commission has supported the use of the 300-foot setback for passive recreation and has not opposed the construction of trails within the setback as long as forest canopy coverage can be maintained, or established, and no other Buffer functions are impaired in any other way. The Commission has also not opposed the construction of a community pier and necessary access in this setback.

The second issue that has frequently been the subject of discussion is whether an applicant can provide a 300-foot setback on a portion of the project site and still receive some credit regarding a reduced growth allocation deduction, even if the 300-foot setback does not meet the 20-acre requirement. In the past, the Commission has consistently interpreted the policy to require that the 300-foot setback must either meet the 20-acre requirement, or if the parcel is of such a size that this is not feasible, provide the 300-feet setback on the entire shoreline area of the project. This interpretation provides an incentive to an applicant to provide a 300-foot setback on a small project without allowing for a piecemeal approach to the 300-foot setback on a larger project.

Last month, the Program Subcommittee discussed these issues and much of the discussion focused on a specific conceptual subdivision plan in Prince Georges County, identified as "Florida on the Potomac." The project, which has not yet received local approval of the use of growth allocation, involves the use of growth allocation to convert a portion of the property from RCA to LDA. The County's Code requires that a 300-foot setback be maintained as RCA along the Potomac River; however, the proposed conceptual subdivision plan involves lot lines through the setback. The Program Subcommittee discussed this matter in March of this year and informed the County that the proposal did not appear to be consistent with the Commission's policy. Subsequently, County staff requested that Commission staff explore the possibility of approving the growth allocation proposal **if the 300-foot setback were deducted but still remained mapped as RCA as required by the County Code.**

Following the November meeting, Commission staff discussed this issue internally as well as with several Commission members. The discussion focused on the concept of clarifying the Commission's policy as outlined at the November meeting and adding new language describing a "300-Foot Conditional Setback" which would provide the necessary flexibility to address the requirements of the Prince Georges County Code without substantially altering the Commission's current position regarding the 300-foot setback.

The following revisions are proposed:

300-Foot Setback

> For growth allocation areas proposed in the RCA, a ~~300'~~ **300-foot** naturally vegetated ~~Buffer~~ **setback** is strongly encouraged, and in the case where it is provided, **the area of the setback** ~~it~~ shall not be deducted ~~even if that Buffer does not meet the 20-acre requirement.~~ **The following uses and development activities are not permitted within the 300-foot setback: all or a portion of an individually owned lot, structures, impervious surfaces, roads, utilities, stormwater management measures, on-site sewage disposal measures, individual private piers or areas subject to human use such as active recreation areas. The 300-foot setback is not required to be deducted if it does not total 20 acres as long as it is provided for all of the shoreline areas of the project.**

300-Foot Conditional Setback

For jurisdictions that desire flexibility regarding the location of lot lines within the 300-foot setback, a conditional setback is encouraged. The 300-foot conditional setback is required to be deducted, but may remain mapped as RCA as long as the project includes legal instruments such as easements or deed restrictions prohibiting the following uses and development activities in the conditional setback: structures, impervious surfaces, roads, utilities, stormwater management measures, on-site sewage disposal measures, individual private piers or areas subject to human use such as active recreation areas. The conditional setback may remain mapped as RCA even though growth allocation is deducted, because the RCA character of the setback will be maintained through alternative measures.