

Critical Area Commission
Department of Housing and Community Development
Crownsville, Maryland
March 5, 2003

SUBCOMMITTEES

9:00 a.m. – 10:00 a.m. NorthBay Workgroup: *Foor, Bourdon, Setzer, Giese, Cooksey*

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

Members: Bourdon, Witten, Giese, Goodman, Cooksey, Setzer, Jackson, McLean, Andrews, Jones, Rice, Mathias, Wilson

Department of Natural Resources: Alterations to Rosedale Manor House at Greenwell State Park (St. Mary's County) Mary Owens
Wanda Cole

Maryland Transportation Authority: U.S. Route 50 Widening at Bay Bridge Toll Plaza (Anne Arundel County) Lisa Hoerger

Department of Natural Resources: Maryland Forest Service Pocomoke State Forest (Worcester County) Claudia Jones

Washington Suburban Sanitary Commission: MOU/ General Approval Discussion (Prince George's County) Lisa Hoerger

Washington Suburban Sanitary Commission: Water Main Replacement Projects (Prince George's County) Tentative Lisa Hoerger

Postponed State Highway Administration: Maryland Route 450 Grade Separation (Prince George's County) Tentative Lisa Hoerger

Postponed Department of General Services: Banneker-Douglass Museum Addition (City of Annapolis) Tentative Dawnn McCleary

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

Members: Foor, Bailey, Evans, Wynkoop, Johnson, Lawrence, Duket, Samorajczyk, Wenzel, Stephens, Blazer, Gilliss, Richards

Postponed Harford County: Bush River Boat Club Growth Allocation Dawnn McCleary

Talbot County: Discussion of County Proposal For Guest Houses Ren Serey
Mary Owens
Lisa Hoerger

Legislative Issues Ren Serey

12:00 p.m. Panels: Worcester County and Ocean City LeeAnne Chandler

Members: Jackson, Evans, Stephens, Duket, Goodman Mary Owens

12:00 p.m. Lunch

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Wor. Co.
 additional time;
 extension of
 time for
 GA accounting
 motion: Joe Jackson
 2nd
 unanimous

Critical Area Commission
 Department of Housing and Community Development
 Crownsville, Maryland
 March 5, 2003

AGENDA

1:00 p.m. – 1:05 p.m.

Approval of Minutes for February 5, 2002

unanimous

PROGRAMS

1:05 p.m. – 1:25 p.m.

VOTE: Ocean City Coastal Bays Critical Area Program

LeeAnne Chandler

Joe Jackson - motion to ~~approve~~ send program back to O.C. for changes

Chair of Panel - motion recorded by Dave Blazer

1:25 p.m. – 1:45 p.m.

VOTE: Worcester County: Buffer Management Area Program

LeeAnne Chandler

- Motion to approve w/ conditions

Joe Jackson / unanimous 2nd by Dave Blazer

1:45 p.m. – 1:55 p.m.

Refinement (Tentative): Harford County: Bush River Boat Club Growth Allocation

Dawnn McCleary

1:55 p.m. – 2:15 p.m.

Talbot County (Tentative): Discussion of County Request Regarding Guest Houses

Ren Serey

PROJECTS

*Motion: Dr. Foor
 Barbara Sam. - 2nd
 approved: unanimous*

2:15 p.m. – 2:25 p.m.

VOTE: Department of Natural Resources
 Rosedale Manor House Alterations
 Greenwell State Park (St. Mary's County)

Mary Owens
 Wanda Cole

Motion: Dave Bourdan / 2nd: Bob Goodman

approved unanimous

2:25 p.m. – 2:35 p.m.

VOTE: Maryland Transportation Authority
 U.S. Route 50 Widening at Bay Bridge
 (Anne Arundel County)

Lisa Hoerger

Motion: Dave Bourdan / 2nd Bob G.

- unanimous

2:35 p.m. – 2:45 p.m.

VOTE: Washington Suburban Sanitary
 Commission: MOU/General Approval
 (Prince George's County)

Lisa Hoerger

Motion: Dave Bourdan / 2nd Bob G.

- unanimous

2:45 p.m. – 2:55 p.m.

VOTE: Department of Natural Resources
 Maryland Forest Service: Timber Harvest at
 Pocomoke State Forest (Worcester County)

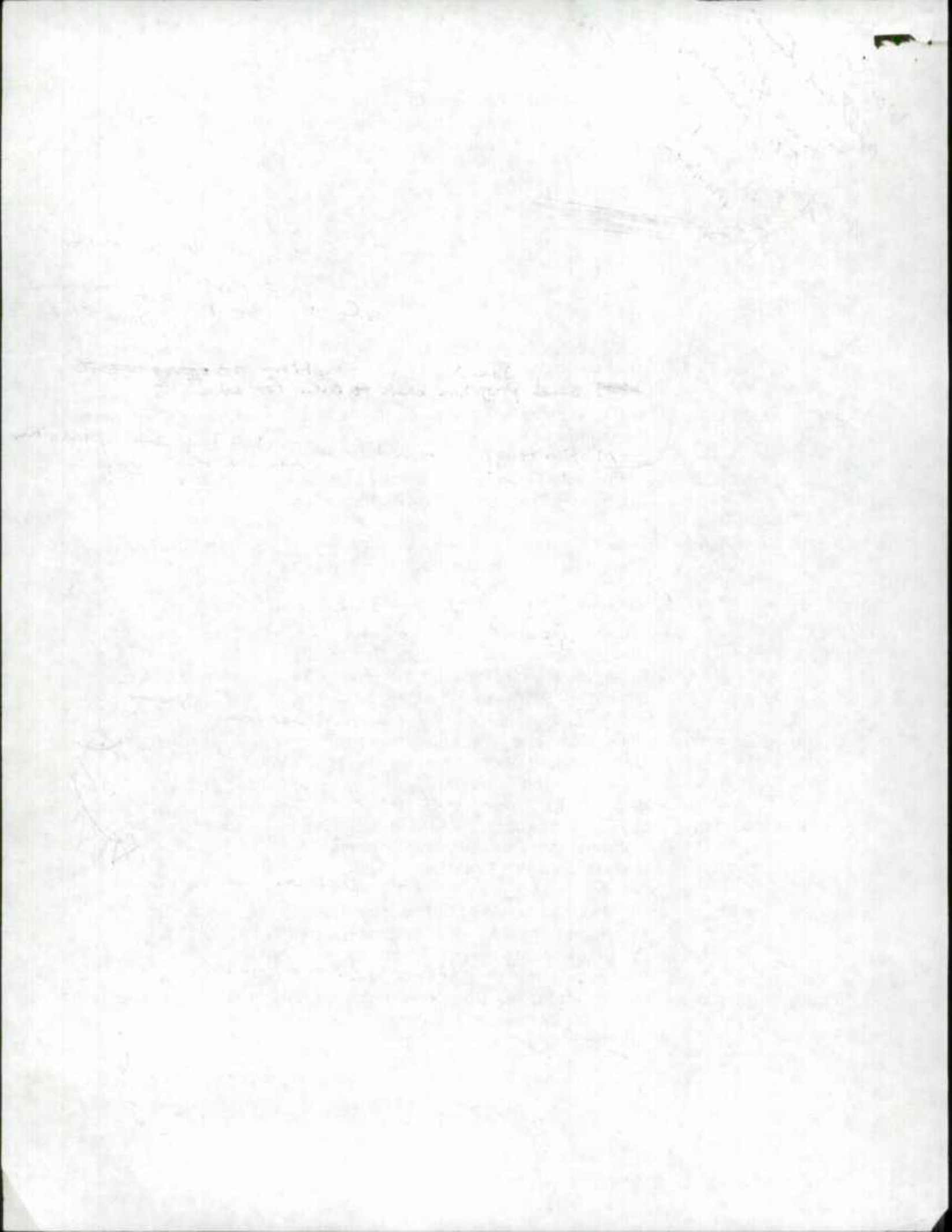
Claudia Jones

Motion: Dave Bourdan / 2nd Bob G. - unanimous

2:55 p.m. – 3:05 p.m.

VOTE (Tentative): Department of General
 Services: Banneker-Douglass Museum
 Addition (City of Annapolis)

Dawnn McCleary



3:05 p.m. - 3:15 p.m. VOTE (Tentative): Washington Suburban Sanitary Commission: Water Line Replacement Projects (Prince George's Co.) Lisa Hoerger

3:15 p.m. - 3:25 p.m. VOTE (Tentative): State Highway Administration: Maryland Route 450 Grade Separation (Prince George's County) Lisa Hoerger

Be

* Appoint Panel for Kent Co. Comp. Review
motion: Dave Bourdan / 2nd: Bob G. - unanimous
motion: Larry Duket / 2nd: Dr. Foor / unanimous
OLD BUSINESS

3:25 p.m. - 3:40 p.m. Update: DNR/Erickson Foundation: NorthBay Camp at Elk Neck State Park (Cecil County) Ren Serey Regina Esslinger

3:40 p.m. - 3:45 p.m. Legal Update Marianne Mason

NEW BUSINESS

3:45 p.m. - 3:50 p.m. Legislative Update Ren Serey

North Bay
Gene Piotrowski - Director of Resource Planning - DNR
Gues.: Barbara S. re economic impact
answer: Sandy McAllister - Atty. for Erickson

Legis. update
- Comments: Dave Blazer
- Gues.: Mayor Mathias
- rec: to have Bill sponsors come to CAC next year

Gues.: Dave Blazer re CAC comments on bills

Mayor Mathias: more comments

comment: Sherry Caway - Agree

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Critical Area Commission for the
Chesapeake and Atlantic and Coastal Bays
100 Community Place
People's Resource Center
Department of Housing and Community Development
Crownsville, Maryland
February 6, 2003

Approved

The full Critical Area Commission met at the People's Resource Center
Crownsville, Maryland. The meeting was called to order by Acting Chairman
Larry Duket with the following Members in **Attendance**:

Margo Bailey, Kent County; Dave Blazer, Worcester County Coastal Bays; 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; Ed Gilliss, Baltimore County; Joseph Jackson, Worcester County; Paul Jones, Talbot County; James N. Mathias, Jr., Ocean City; William Rice, Somerset County; Barbara Samorajczyk, Anne Arundel County; Douglas Stephens, Wicomico County; Douglas Wilson, Harford County; Samuel Wynkoop, Prince George's County; Robert Goodman, DHCD County; Gary Setzer, Maryland Department of the Environment; James McLean, Governor's Office of Business Advocacy; Meg Andrews, Maryland Department of Transportation, Lauren Wenzel, Maryland Department of Natural Resources; Karen Hilton, representing the City of Baltimore, Edwin Richards, Caroline County.

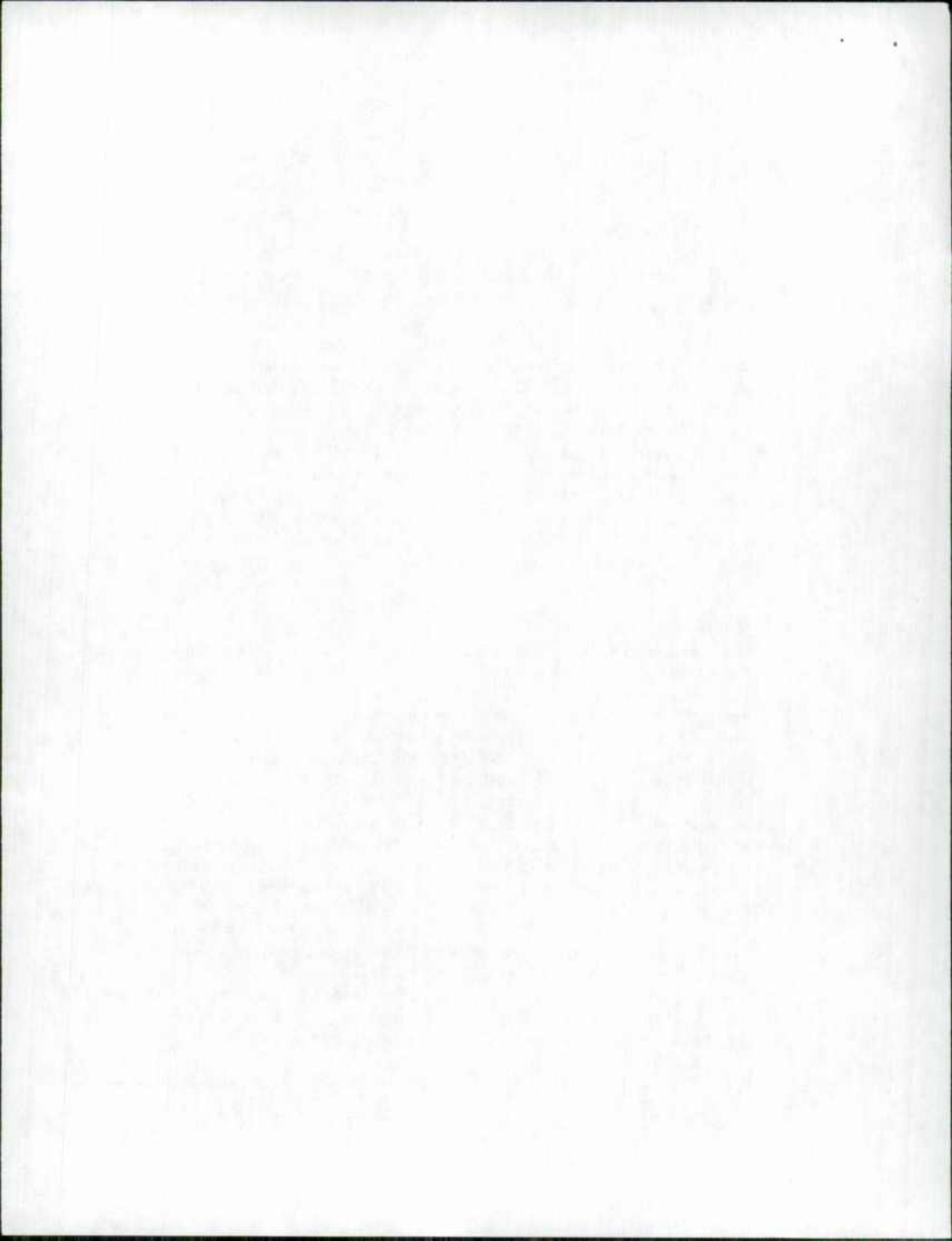
Not in Attendance:

Q. Johnson, Eastern Shore Member-at-Large; Louise Lawrence, Maryland Department of Agriculture.

Ren Serey, Executive Director, explained to the Commission that Judge North had been notified by the Governor that he would not be retained in his position as Chairman. He also told the Commission that there is no formal appointment to the position at this time; however, the Governor had written a letter to Larry Duket designating him to serve as Acting Chairman of the Commission, effective February 5 th through February 6, 2003. Mr. Serey read the letter from the Governor as well as a letter from the Secretary of the Maryland Department of Planning, Audrey Scott, to the Governor, assigning Larry Duket to the Office of the Governor from February 5 through February 6, 2003 (both letters attached to and made a part of these Minutes.) This appointment was a legal necessity as there was a refinement on the agenda.

Mr. Duket told the Commission that Judge North was not the type of person to show up for a lot of fanfare farewell and he invited each Commission member, if they were so inclined, to write a thank you to him for his guidance and leadership over the past 14 years and the confidence that he has shown to let the Commission members and staff do their work. Judge North's address: P.O. Box 479, Easton, Md. 21601.

The Minutes of December 4, 2002 were approved with the addition in attendance to include Edwin Richards.



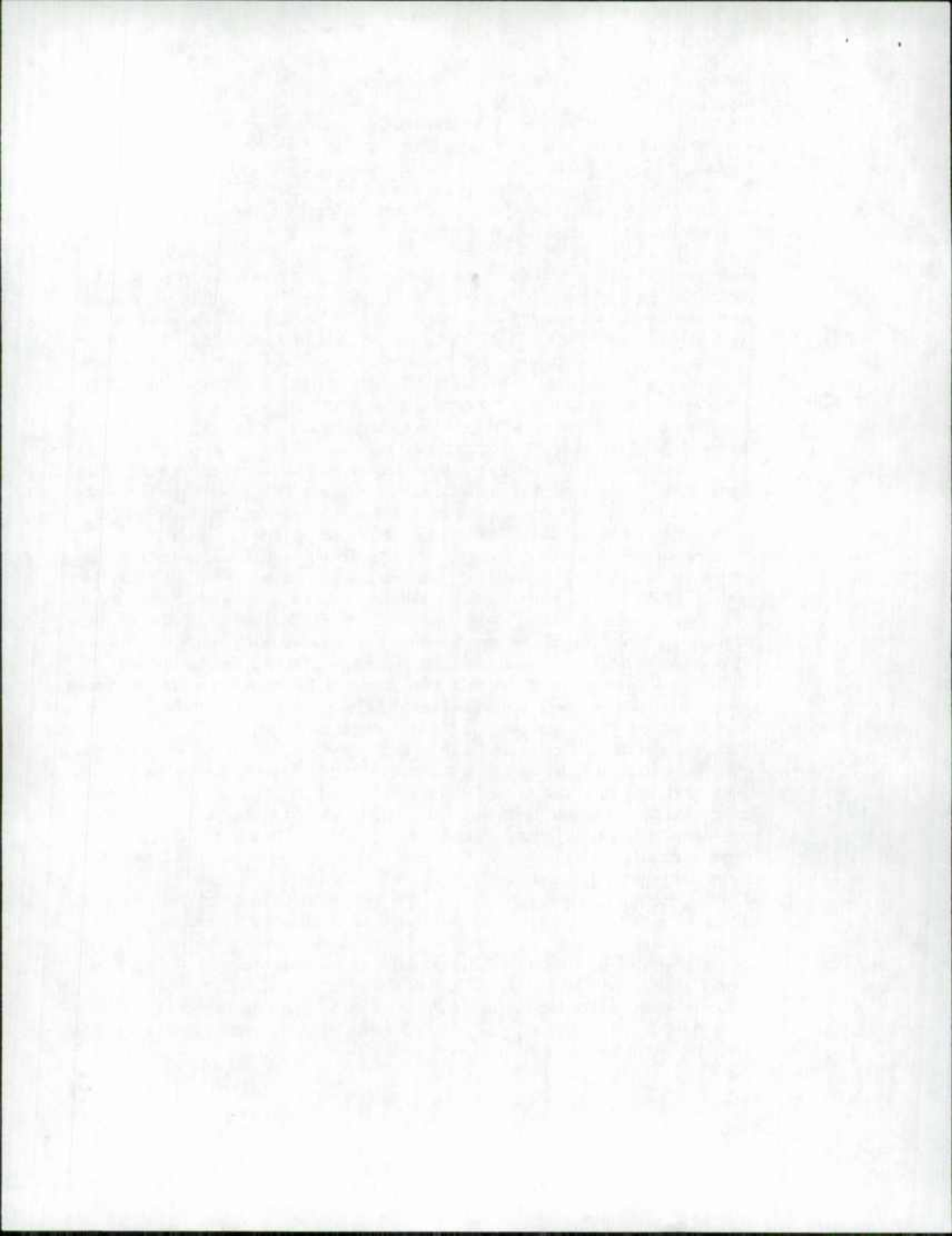
Mr. Duket asked Ren Serey and Mary Owens to lead the discussion on the Talbot County Program update. Mr. Serey introduced Hilary Spence, representing the Talbot County Council. Mr. Serey reiterated the history of the issues of deficiency in the Talbot County Program ongoing for the past 9 years. He said that last month the Commission directed that certain provisions of the Program be corrected when they were determined to be mistakes, inconsistencies or omissions.

Ms. Spence stated that the Talbot County Council is in agreement with three of the issues and is making good progress in revising its Critical Area Plan regarding afforestation, forest clearing, reforestation and clearing in the 100 foot Buffer but that there has been no solution to the Guest Houses in the RCA wherein the density calculations are not being counted. The Talbot County Council sent a letter to the Commission stating this information following a meeting with Mr. Serey, Commission Executive Director and Ms. Marianne Mason, Commission Counsel on January 28, 2003.

Mr. Serey recapped the notification to the County when they were given 90 days to correct these deficiencies and their time was scheduled to run out on December 23rd, 2002. In November, the County's Attorney came before the Commission and told the Commission about the turnover in the County Council and asked for an extension of the 90 days and the Commission granted that extension thereby giving the County 180 days to submit the corrections to the Commission. This extension would run out March 23rd, 2003 approximately. Chairman North contacted the County Council asking for a meeting to discuss the progress on these issues and the meeting was scheduled for the 27th of January. In the interim, Judge North was relieved of his position. The County Council met however, with Mr. Serey and Marianne Mason, Commission Counsel. At that meeting, upon *being asked by a member of the Council what Mr. Serey thought should be done about the Guest House issue, Mr. Serey replied that it was his opinion after consulting with Chairman North, that it was time that the legislature settled the issue. And, further that he would recommend that the Commission work with the Legislative Oversight Committee to settle the issue by amendment to the law.*

Ms. Spence asked the Commission, as stated in the Council's letter to the Commission, to take into consideration that the Council intends to draft bills and have them approved by the Council and submitted to the Commission in the time frame set out in the letter around the 23rd of March for three of the four issues and asked the Commission to consider rescinding its action regarding Guest Houses for a period of time that encompassed the remaining time of the General Assembly so that the JLOC could work on the issue and reach a resolution.

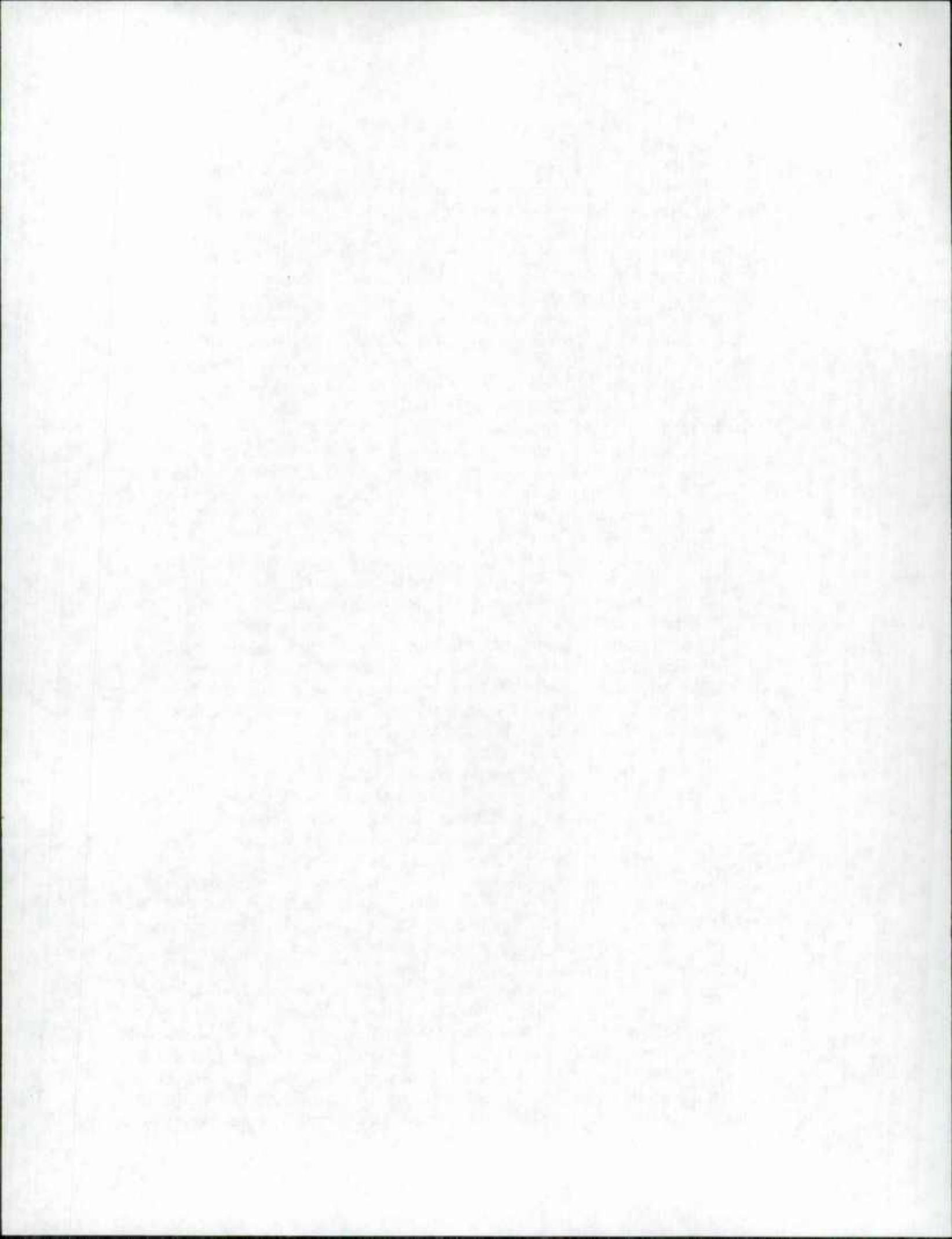
After much discussion of this issue, the general sense of the Commission clearly was that it was not in favor of rescinding the time sanctions, and that the Commission members viewed the issue of density regarding Guest Houses in the RCA in a pretty cut and dried manner, however, the Commission indicated that they would work with the legislature. Mary Owens reminded the Commission that there would be another Commission meeting before the time sanction expiration, March 23rd. Barbara Samorajcyk moved to take the letter from Talbot County Council under advisement in good faith. The motion was seconded by Jim Mathias and carried unanimously.



Julie LaBranche presented a request by the property owner of Sandy Hill Camp to correct the designation of a portion of his property from RCA to LDA in the Critical Area in Cecil County. This request is on the basis that there was a mistake in the original mapping because of the interpretative use of air photographs which were faulty and that did not represent the developed and actively used areas of the camp. This change in mapping changes the designation of approximately 9 acres of property from RCA to LDA and a small area of undetermined size from LDA to RCA. Ms. LaBranche described the physical properties of the site. The local hearing on this request was postponed because of lack of quorum but will be held after the Commission meeting on February 5th. The County Commissioners wrote a letter (read into the record, attached to and made a part of these Minutes) to the Commission asking for a Conditional Determination of Refinement based upon the final action by the Board where it is anticipated, after the Board was briefed on the request with a positive response, that the Board will approve the request. The letter also stated that the Cecil County Planning Commission unanimously recommended approval of this request.

In advising the Commission Counsel, Marianne Mason told the Commission that the Chairman's Determination of Refinement and the Commission's acceptance of that determination, would constitute a departure from past practice. She said that the Statute states that: *a local jurisdiction may propose changes to its Program - a local jurisdiction is defined in the law as a County or municipal corporation with planning and zoning powers - and in Cecil County that body is the Cecil County Commissioner.* This proposal brought forward by the applicant and by a letter from the County is an advisory proposal. Cecil County is recommending that the designation on this property be amended based on mistake. The Statute states, "A local approving authority, (this authority lies with the planning and zoning powers) may grant a map amendment on mistake only on proof of a mistake in zoning. This requires some kind of finding to be made. Ms. Mason said that although Julie referenced *findings* there is testimony before the Planning Commission and extensive documentation provided by the applicant but no *finding* made by the body with zoning power. If the Commission accepts the proposal, the local jurisdiction body with authority to make this recommendation has not yet done so although they certainly indicated that they intend to do so. Ms. Mason advised that this couldn't be a straightforward Refinement, but perhaps a Conditional approval of a Conceptual Refinement or Conceptual approval of a proposed Refinement. Although it is not officially done at the local level however, it is not an absolute legal impediment to approving this request.

Larry Duket, Acting Chairman pronounced that he has made a Determination of Refinement conditioned on the County's approval of this project as stated in the letter received and addressed to Ren Serey, and the presumption that the proposed map corrections described at today's Critical Area Commission meeting means substantially the same as the proposal that will be acted upon by the County. The owner, Greg Joseph, stated that if this is supported today, some procedural things can be accomplished and then the construction of the buildings for the Camp can begin immediately. He said that



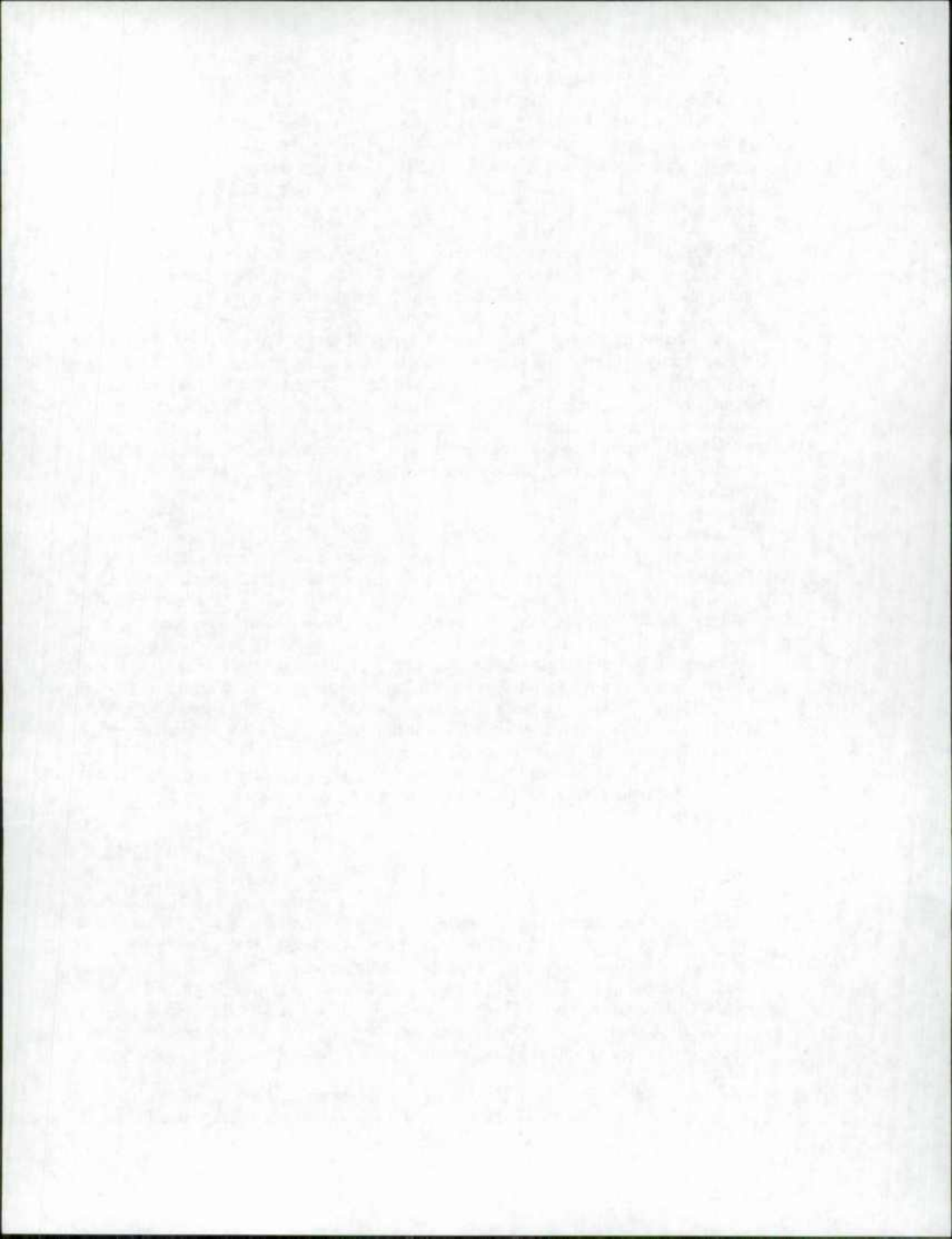
there are over 1,000 children expected to attend the camp and that there has been considerable appeal to the Governor on behalf of the parents to see that this Camp is finished. The Commission supported the Conditional Refinement, assuming that it is the same proposal that will come before the County and that they will approve it within the presumed timelines.

Julie LaBranche presented for Concurrence with the Chairman's (the previous Chairman made the determination before his departure from the Commission) Determination of Refinement, the several amendments requested by Calvert County to their Critical Area Program associated with the first phase of their four-year comprehensive review. The Calvert Board of County Commissioners approved these text and map amendments related mostly to clarification of existing language and minor changes to the Critical Area maps on December 10, 2002. Julie reviewed the 12 amendments for the Commission stating that the Commission staff had no recommended changes. The Subcommittee concurred with the Chairman's determination. The Commission concurred with the Chairman's determination of Refinement, with the conditions as outlined in the Staff Report and Addendum (attached to and made a part of these Minutes) to the Staff Report.

Wanda Cole presented for VOTE the proposal by the University of Maryland's Center for Environmental Science to construct a pre-fabricated, containerized Chemical Storage Structure at its Horn Point Environmental Laboratory facility near Cambridge in Dorchester County. It is located within the Critical Area outside the Buffer on land that is not considered to be intensely developed. Ms. Cole said that the one-story boxcar-like structure would be self-contained in the event of a spill. Because the chemicals, mild acids and low-level radioactive wastes, will be contained in this structure, the larger structure which this building will be adjacent to, will be relieved of having to be heated and cooled and can be converted into a warehouse. This structure is situated on an 875 acre property the impervious area will pose negligible environmental impacts. There are no rare, threatened or endangered species at this site, nor any other Habitat Protection Areas. No trees will be removed and compliance with the 10% rule is not required because this is not considered to be an IDA. This project is exempt from stormwater management requirements. Dave Bourdon moved to approve the project as submitted. The motion was seconded by Bill Giese and carried unanimously.

Claudia Jones presented for VOTE the proposal by DNR to replace an existing trailer that is currently used as an office for DNR Forest Service staff with a small, pre-fabricated building on a permanent foundation in the town of Princess Anne. This project location is on SHA property, which allows DNR to maintain an office through an easement. Ms. Jones told the Commission that the existing trailer covers 720 sq. ft. with impervious surface, and the new building will be 896 sq. ft. on a site immediately adjacent to an asphalt parking lot and lawn. The SHA forested Buffer will not be disturbed and will tie into the SHA sewage line. Dave Bourdon moved to approve DNR's request to replace the forestry office. The motion was seconded by Bill Giese and carried unanimously.

Mary Owens presented for VOTE the request for an extension of time from the Maryland Stadium Authority to submit a FIDS mitigation and Buffer Management Plan for the



McIntosh Golf Course, in St. Mary's County, which was due by January. The Commission did not hold a meeting in January. Dave Bourdon moved to extend the time for the implementation of the conditions to May 1st, 2003. The motion was seconded by Joe Jackson and carried unanimously.

Ren Serey updated the Commission on the Worcester County and Ocean City Programs that are moving through the process for approval. He said that County Commissioners have submitted and the Commission has approved the essential items of the Program two months ago. There was no Buffer Management element connected to the Program. The County Commissioners have approved a BMP that they intend to implement at the same time that the remainder the program is approved and they will be sending the BMP to the Commission. It will be treated as an amendment to the existing Program and a public hearing will be held later this month. This should be up for a Vote at the Commission's March meeting. He said that the Ocean City Program is moving forward as one element. The BMP and the main Program will be submitted together. The Commission will have to vote on the submittal because of the law and the time limits on it, at its March meeting. Public hearings will be held on both Programs, probably on the same day.

Joe Jackson reported that the Coastal Bays Advisory Committee met in January and reviewed the Ocean City plan and the BMP and will meet again later in the month to be prepared for the public hearing.

Old Business

Marianne Mason reported that in December she argued before the Harford County Board of Appeals on the Old Trails case (an appeal from a variance granted by the hearing examiner for a 56 home subdivision on steep slopes) . There is no decision on that yet.

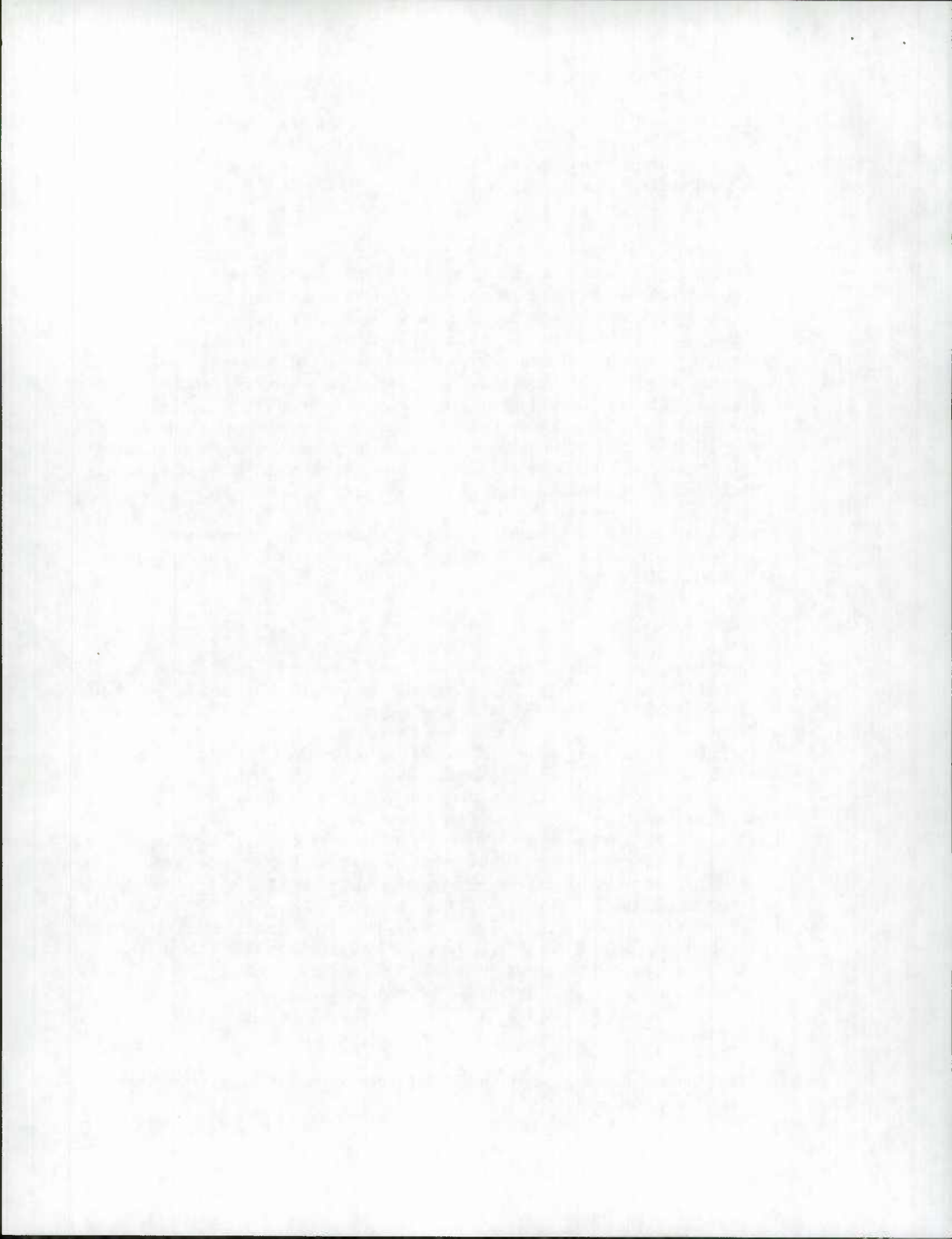
Ms. Mason said that testimony was given on a subdivision in the RCA involving a Guest House in Talbot County Ms. Mason said that she will be in Cecil County in Circuit Court supporting the Cecil Board of Appeals which turned down a variance in a new subdivision. This is an old case from August 2000 and when it turned up through transcription problems the record recently went to Circuit Court.

Ms. Mason told the Commission that in Anne Arundel County the Commission had a decision on two cases from the Board of Appeals where variances were turned down and one was granted. These were houses on steep slopes on grandfathered lots in the old subdivision of Herald Harbor.

The Court of Appeals has granted Certiorari, discretionary review, in the Lewis case, ongoing for about five years. Lewis' brief is due on 10th of February and Ms. Mason's is due on the 12th of March. It will be argued in May. This case has been to the County Court Of Appeals, Circuit Court, and the Court of Special Appeals.

New Business

Ren Serey said that there have been no bills submitted to the legislature yet regarding the Critical Area Program.



February 5, 2003

Acting Chairman Duket named a Panel for Worcester County 's Buffer Management Program and Ocean City Program hearings:

Joe Jackson, Chair

Doug Stephens

Larry Duket

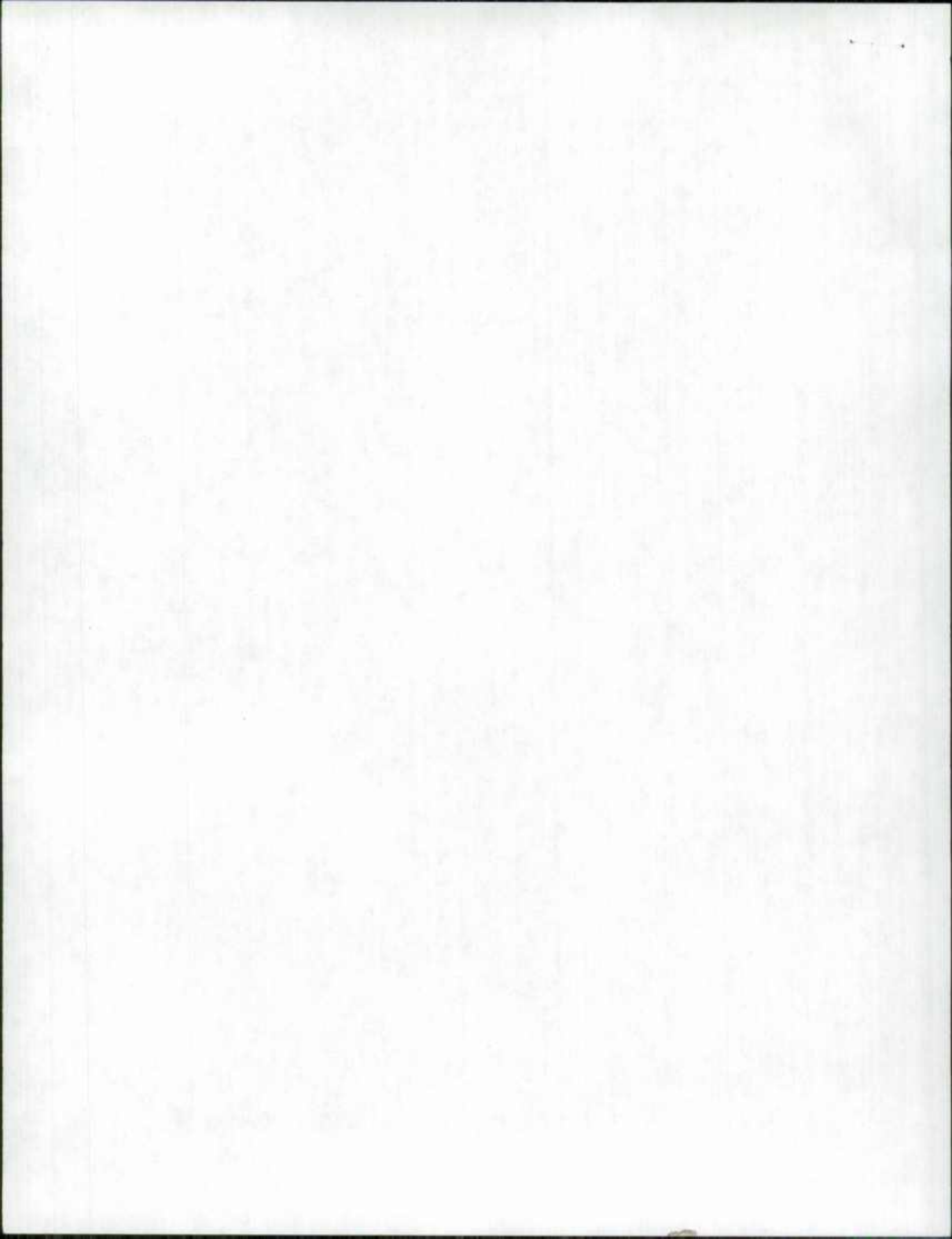
Bob Goodman

Judith Evans

There being no more business, the meeting adjourned.

Minutes submitted by:

Peggy Mickler, Commission Coordinator



Critical Area Commission
STAFF REPORT
March 5, 2003

APPLICANT: Town of Ocean City

PROPOSAL: Coastal Bays Critical Area Program Approval

COMMISSION ACTION: Vote

PANEL: Joe Jackson (Chair), Larry Duket, Judith Evans, Bob Goodman, Doug Stephens

PANEL RECOMMENDATION: Pending Panel Hearing

STAFF: LeeAnne Chandler, Mary Owens, Ren Serey

**APPLICABLE LAW/
REGULATIONS:** Natural Resources Article §8-1809(d)(2)(ii)

DISCUSSION:

The Town of Ocean City has submitted its proposed Atlantic Coastal Bays Critical Area Program in accordance with the Atlantic Coastal Bays Protection Act as passed by the General Assembly and signed by the Governor in the 2002 Legislative Session. The Mayor and City Council held a hearing on the proposed Program on January 21, 2003 and subsequently submitted it to the Commission for review.

Town staff used the Worcester County Coastal Bays Critical Area Program as a guide in preparation of their Program. They omitted sections that were not needed and modified standard language to address the developed conditions of the Town. The Atlantic Coastal Bays Protection Act included specific provisions for the Town of Ocean City and also additional provisions for only the Coastal Bays. Below is a bulleted summary of the Town's Program, followed by a list of outstanding issues.

- All of the Critical Area within the Town is designated as Intensely Developed Area. (This was actually legislated by the General Assembly through the Atlantic Coastal Bays Protection Act.) However, there are some areas of the Town that are outside of the Critical Area, i.e., more than 1000 feet from the tidal reaches of the Coastal Bays. A map showing the Critical Area line will be available at the Commission meeting.
- Development standards in the IDA are typical and center on addressing stormwater runoff

with the 10% pollutant reduction requirement. However, in accordance with a provision specific to the Coastal Bays, also included is a requirement to provide a forest or developed woodland cover of at least 15% after development or a fee-in-lieu payment. Forest or developed woodland cover may include trees, woody plants and shrubs, and landscaping under an approved landscaping plan.

- The Town proposes to designate all of its shoreline as a Buffer Management Area (a.k.a. a Buffer Exemption Area). Setbacks are established based on lot size. For lots less than 40,000 square feet (as of June 1, 2002), the setback is based on the existing zoning setback. The zoning setbacks range from 5 to 15 feet. For lots greater than 40,000 square feet, the setback will be 25 feet. No impervious surfaces are permitted in the setback.
- Mitigation in Buffer Management Areas is proposed to occur only when vegetation is removed within the Buffer. Vegetation would be replaced at a 1:1 ratio within the Buffer and at a 2:1 ratio within the setback. This mitigation would be in addition to the planting requirements of the Town's existing landscaping ordinance. For construction of single-family dwellings, the landscaping ordinance requires the property owner to spend a sum equal to two percent of the total cost of construction for landscaping for each home, at least 80 percent of which must go toward the cost of plants. For other types of site development that include parking lots, perimeter landscaping strips and landscaping "islands" are required; but the ordinance does not provide for any specific planting mitigation ratio.
- Habitat Protection is proposed to be addressed by requiring a habitat protection statement from any applicant proposing a development activity on a lot 40,000 square feet or larger (except for single-family dwellings).
- The Town proposes limits to the maximum permitted length of piers over wetlands to 50 feet. The Town's Board of Port Wardens is the local permitting authority for piers and they have had such a policy for a number of years. This is an optional provision provided for in the Atlantic Coastal Bays Protection Act.

Outstanding Items for Discussion

1. (Pages 3-7) Several definitions that have been stricken should be restored for consistency with the Criteria and the common terms used in review of Critical Area projects. These include afforestation (whose definition should match what appears in the Law in regard to the 15% forest or developed woodland required in the IDA), colonial nesting water birds, excess stormwater runoff, highly erodible soils, historic waterfowl staging and concentration area, hydric soils, natural features, Natural Heritage Area, and shoreline erosion protection works. Also, the terms of Buffer Management Area and Significantly Eroding Areas require modification to be consistent with the Criteria.

2. (Pages 8-9) For stormwater management and addressing the 10% Rule, the Program states that “offsets” may be used where best management practices (BMPs) do not achieve the necessary reduction in Phosphorus. Given the dense development pattern in the Town and the lack of open areas available for BMPs, it would be appropriate for the Town to specifically list the acceptable offsets, including a fee-in-lieu option.
3. (Page 9) For the added provision of requiring development sites to contain 15% forested or developed woodland cover, the language should match what appears in the Atlantic Coastal Bays Protection Act. Currently, it states that a 15% “vegetated cover” be provided; this may be misconstrued to mean just grass.
4. (Pages 9-10) Language regarding expansion of the Buffer for contiguous sensitive areas needs to be added to be consistent with the Criteria. While the whole Town may be a Buffer Management Area, the mitigation may be based on total Buffer impacts. An expanded Buffer would include more area and possibly need more mitigation.
5. (Page 10) The term “wetlands” is used in regard to the starting point for measuring the required setback. Clarification that this refers to tidal wetlands should be provided.
6. (Pages 10-11) The Program permits decks within the setback from the water. Some provision may be needed to avoid situations where the entire setback is a deck. One option may be to require a certain percentage of the setback to be vegetated (see Item 7 below).
7. (Page 11) The Program does require the “buffer area” to be vegetated at least 15% with native plant material. It is unclear whether this refers to the setback or the 100-foot Buffer. Preferably some vegetation will be planted between the development and the water.
8. (Page 11) Mitigation for development in the Buffer is needed (in addition to mitigation for clearing in the Buffer). For single-family dwellings, the Town’s landscaping requirements (Chapter 98 of the municipal code) may be sufficient provided that full compliance occurs, including collection of fees if plants cannot fit on a particular site. It is unclear how mitigation would be handled for residential additions or accessory structures. For other types of development (such as commercial or multi-family residential), Chapter 98 seems to provide only parking lot shade trees, rather than mitigation for new impervious surfaces. Staff and the Advisory Committee have worked with Worcester County on similar issues, including additional mitigation for development closer to the shoreline than 25 feet, to recognize the more intense uses. A square footage fee may be appropriate.
9. (Page 11) It is unclear if the fee in lieu of mitigation refers to only replacement of

vegetation or whether a fee will be collected if the landscaping requirements cannot be met.

10. (Pages 11-12) The section on Habitat Protection Areas does not include the policies and criteria for protection and conserving these areas as established in the State regulations. Necessary language can be provided to the Town.
11. (Page 14) The section on community piers is missing some language in regard to determining the number of slips permitted. It needs to be revised to reflect that the number of permitted slips at a community pier is the lesser of one slip per 50 feet of shoreline or the number permitted according to the table. Language should be similar to Natural Resources Article, §8-1808.5.
12. (Page 18) Additional clarification on enforcement may be necessary. The Program states that violations will be handled as "civil infractions." It is unclear what this means.
13. The Program does not contain a section on Shore Erosion Control as required by COMAR 27.01.04.

Natural Resources Article §8-1809(d)(2)(ii) states, "Within 60 days after the Commission receives a proposed Atlantic Coastal Bays Critical Area Program from a local jurisdiction, the Commission shall approve the proposal or notify the local jurisdiction of specific changes that must be made in order for the proposal to be approved. If the Commission does neither, the proposal shall be deemed approved." Due to the timing of the Town's submittal, the Commission must act at the March meeting.

The Panel public hearing is scheduled for February 26, 2003. After the hearing and Panel discussion, the Panel will be making a recommendation to the full Commission.

If anyone would like a full copy of the Town's proposed Program or if there are any questions prior to the meeting, please contact LeeAnne Chandler at (410) 260-3477 or via e-mail at lchandler@dnr.state.md.us.

Critical Area Commission

STAFF REPORT

March 5, 2003

APPLICANT: Worcester County

PROPOSAL: Amendment – Buffer Management Area Plan and Maps

COMMISSION ACTION: Vote

PANEL: Joe Jackson (Chair), Larry Duket, Judith Evans, Bob Goodman, Doug Stephens

PANEL RECOMMENDATION: Pending Panel Hearing

STAFF: LeeAnne Chandler, Mary Owens, Ren Serey

**APPLICABLE LAW/
REGULATIONS:** Natural Resources Article §8-1809(o)

DISCUSSION:

Worcester County proposes to amend their Coastal Bays Critical Area Program by adopting a Buffer Management Area (BMA) Plan and accompanying maps. County staff developed the BMA Plan using examples from other jurisdictions as well as the Commission's two policies on Buffer Exemption Areas. After a number of public meetings and work sessions, the County Commissioners adopted the BMA Plan and maps on February 4, 2003 and forwarded them to the Critical Area Commission for review.

The Plan has been through numerous iterations and the end product is somewhat unique, especially in regard to the mitigation requirements. Below is a bulleted summary of the BMA Plan, followed by a list of outstanding issues.

- The County used specific criteria to map its Buffer Management Areas. The criteria included: an existing pattern of subdivision into relatively small lots; a preponderance of structures within the 100-foot Buffer; an extensive area of lots having an average lot depth of 100 feet or less; and a significant number of lots with lot depths greater than 100 feet but with limitations due to septic disposal areas. The County designated groups of BMAs according to similarity in existing conditions.
- Many structures are permitted within BMAs, provided they meet specific criteria and minimum setback requirements. The minimum setback requirement for a BMA property is the zoning setback or the setback established in the BMA plan, whichever is greater.

- The Plan has two separate sections that describe the BMA development standards: one for single-family residential development and one for commercial, industrial, institutional, recreational, and multi-family residential development. For single-family development, new and replacement principal structures are permitted, along with accessory structures, and are subject to the minimum setback described above. Accessory structures are subject to a maximum coverage of 10 square feet for each foot of Buffer depth (e.g., an accessory structure located within 50 feet of the water could not exceed 500 square feet of coverage). A variance would be required if accessory structures, additions to existing structures or new principal structures are proposed closer to the shoreline than the minimum BMA setback. The development standards for commercial, industrial, institutional, recreational and multi-family residential development are similar. The County will permit redevelopment of existing impervious surface without a variance. However, any increase in impervious surface is subject to the setback requirements.
- Mitigation for commercial, industrial, institutional and multi-family projects consists of planting two times the extent of the impervious area created within the Buffer. Plantings are done according to a credit system (e.g., large tree equals 200 square feet). In addition to the 2:1 plantings, these types of projects are also required to establish a “bufferyard” between the development and the water or wetlands.
- Mitigation for construction of a single-family dwelling consists of requiring submittal of a landscaping plan. The cost of new planting materials used must be equivalent to 1.5% of the cost of construction for that portion of the dwelling and any associated impervious area located within the Buffer. If the dwelling and associated impervious area are wholly located in the Buffer, the minimum expenditure shall be \$3000. The County proposes to give credit for existing mature trees retained after construction at a rate of \$250 per tree.
- Other options for mitigation include removing existing impervious surface from within the Buffer at a one to one ratio (and revegetating the area) as well as performing shoreline enhancement such as removal of a failing bulkhead and replacing it with a “soft” shore erosion protection measure.
- If complete mitigation or bufferyard establishment cannot be achieved on any property, the property owner can apply for authorization to make a fee-in-lieu payment. The amount of the fee-in-lieu is to be based on a planting estimate from a bonafide commercial nursery and must include the cost of a one year guarantee (as if the planting could have been done). Fees will be used for projects that benefit wildlife habitat, water quality improvement or environmental education. The fees will be spent in the community from which the funds were collected or as close as possible.
- Subdivision within Buffer Management Areas may be permitted if the subdivision will result in an overall environmental benefit. Applications for subdivisions within BMAs will be reviewed and approved by the Critical Area Commission (in addition to going

through the usual subdivision review process).

- As indicated above, the County grouped and made findings for BMAs based on similarity of existing conditions. The minimum BMA setback is specified according to group. Group A, the most intensely residentially developed areas, is proposed to have a setback of 15 feet. Group B, a group of less intensely developed residential communities, is proposed to have a minimum setback of 50 feet. Group C and Group D are both in West Ocean City and are developed with a number of uses such as waterfront restaurants, charter boat fishing centers, commercial fishing processing facilities, marinas, and some high density residential development. The minimum setback in these groups is proposed to be 25 feet.

Outstanding Items for Discussion

1. (Pages 6-7) In regard to the allowance of a certain square footage of accessory structures within the Buffer, existing accessory structures are not being taken into account. This may result in significant inequity between neighbors and substantial non-conformities. It may also allow for more coverage within the Buffer than intended. When this provision appears in other jurisdiction's Programs, existing structures are counted.
2. (Page 7) Detached garages, when required by community covenants, would not be counted as an accessory structure. It is our understanding that this provision was added due to the needs of one specific community with nine waterfront lots. It seems unusual to include a provision in a County regulation to accommodate community covenants, however it may be warranted because of the limited effect of this provision.
3. (Pages 8-9) There does not appear to be any provision governing the construction of decks in the Buffer. Because they are usually pervious, it is unclear what setbacks would apply. Also, it does not appear that mitigation would be required. While many decks are pervious, they are considered a "development activity" and a variance would be necessary to construct a deck in the Buffer if it was not a BMA. Other jurisdictions require mitigation for decks equivalent to any other type of structure.
4. (Pages 8-9) The County proposes to allow some fill and grading within the Buffer to allow the maintenance of existing lawn. Replacement of vegetation, including trees and shrubs, when removed for this purpose would occur at a 1:1 ratio. This is a lower ratio than is required for other uses (e.g., clearing for access is mitigated at a 2:1 ratio). Since the activity is for aesthetic/convenience reasons, it may be appropriate to increase the ratio to 2:1 or 3:1.
5. (Pages 9-10) Mitigation for construction of single-family dwellings is based on the submittal of a landscaping plan and spending 1.5% of the cost of construction. A landscape plan, prepared on the basis of cost alone, could result in situations where

one or two very expensive trees are proposed (for example, one \$3000 rare Japanese Maple) without any benefits to habitat or water quality. It is not clear if the Plan gives discretion to County staff to reject such a landscaping plan.

6. (Pages 9-10) Mitigation for additions and accessory structures associated with single-family residential construction does not appear to be covered by the proposed mitigation requirements. It is not clear how the proposed construction cost based landscape plan might work. Decks, additions and accessory structures are often fairly inexpensive to construct, but can still result in significant impacts to the Buffer.
7. (Page 10) Credit, at \$250 per tree, is being given to retain existing mature trees. Credits would count toward the landscape plan based on the 1.5% cost of construction. There is a prohibition on clearing vegetation except for the minimum necessary for construction (and clearing in excess would be a violation). This would equate to paying people to follow the rules. However, the comparison of habitat and water quality benefits between a mature tree and a sapling is debatable.
8. (Page 10) The proposed minimum setback in Group A is 15 feet, which is less than allowed by any other jurisdiction (except for Baltimore City which requires a flat fee of \$2.50 per square foot of impact in the Buffer) and less than the 25 feet recommended in the Commission's BEA policies (after much debate in the Program Subcommittee). Previous versions of the BMA Plan included an extra mitigation requirement for impacts closer than 25 feet. For example, instead of 2:1 mitigation for all impervious within the Buffer, the plan proposed 3:1 for impacts between 15 and 25 feet and then 2:1 for impacts between 25 and 100 feet. Amendments made to the Plan deleted any "extra" mitigation for the impacts closer than 25 feet.
9. (Page 17) Originally, Group A was proposed to have a minimum setback of 25 feet. After further information was provided in regard to certain communities such as Ocean Pines and Cape Isle of Wight, the County reduced the setback for the entire group to 15 feet. However, not all of the communities are developed in the same intense pattern as Ocean Pines or Cape Isle of Wight. Specifically, five communities are developed with a setback of significantly more than 15 feet. These include Holiday Harbor, Frank Savage Subdivision, Country Club Estates, St. Martins by the Bay, and Captain's Knoll. In each of these communities, the zoning setback (from 30 to 50 feet) would control. However, zoning setbacks can change and are outside of the purview of the Critical Area Commission. An increase in the BMA setback for these communities would be consistent with existing conditions.

The Panel public hearing is scheduled for February 26, 2003. After the hearing and Panel discussion, the Panel will be making a recommendation to the full Commission.

If anyone would like a full copy of the County's proposed BMA Plan or if there are any questions prior to the meeting, please contact LeeAnne Chandler at (410) 260-3477 or via e-mail at lchandler@dnr.state.md.us.

Place in the record



rec'd
3/5/03
JD

March 5, 2003

Maryland Critical Areas Commission
1804 West St, Ste 100
Annapolis, MD 21401

Re: Buffer Management Plan for Worcester County

Dear Commissioners:

The Assateague Coastal Trust, Inc., Delmarva's oldest grass-roots environmental advocacy organization, fully supports the inclusion of the Coastal Bays in the Maryland Critical Areas Program. The protection afforded to the coastal bays by the establishment of a 1,000-foot protective Critical Area is desperately needed and long overdue. The establishment of Buffer Management Areas (BMA) within the Critical Area, while a necessary accommodation of pre-existing development, should not unduly undermine the impact or intent of the Critical Areas program. On behalf of the over 800 members of the Assateague Coastal Trust, I ask that, while you consider the BMA Plans for Ocean City and Worcester County, you keep in mind two important principles.

First, establishment of a BMA does not remove the fundamental need to protect water quality in the coastal bays in the vicinity of each BMA, nor separate waterfront landowners from their share of responsibility for that protection. Waterfront landowners enjoy great benefits from the publicly owned marshes and open waters adjoining their property, and therefore should bear a greater share of the responsibility for their protection. It is not unfair to ask waterfront landowners to maintain soft shorelines, healthy riparian vegetation, and to restrict the extent of impervious surfaces in close proximity to the water.

Second, the Critical Area Program is worthwhile only if the outcome is the improvement of water quality and ecological productivity in the state's waters. A program that does nothing more than halt or slow the steady decline in our environment does more of a disservice to the people of Worcester County, and Maryland, than would no program at all. Please ensure that, in developed areas, measures are included in the BMA Plans to provide not just for the maintenance of water quality as it now exists, but for the improvement of the water quality, habitat value, and ecological productivity of the coastal bays.

Finally, please recognize that the Ocean City and Worcester County Buffer Management Area Plans, as submitted, have many components written to comply as closely as possible with the minimum requirements of the enabling legislation. As such, I urge the Critical Area Commission and its staff subject the BMA Plans to the closest possible scrutiny to ensure its compliance with state law.

Thank you for your time and attention.

Sincerely,

Phyllis Koenings
Executive Director

ASSATEAGUE COASTAL TRUST
P.O. Box 731 • Berlin, MD 21811
(410) 629-1538 • Fax (410) 629-1059
E-Mail: act@beachin.net
www.actforbays.org

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STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS
1804 West Street, Suite 100, Annapolis, Maryland 21401
(410) 260-3460 Fax: (410) 974-5338

VIA FAX

March 10, 2003

Honorable Thomas G. Duncan, President
County Council of Talbot County
Talbot County Government Building
142 N. Harrison Street
Easton, Maryland 21601

Dear Councilman Duncan:

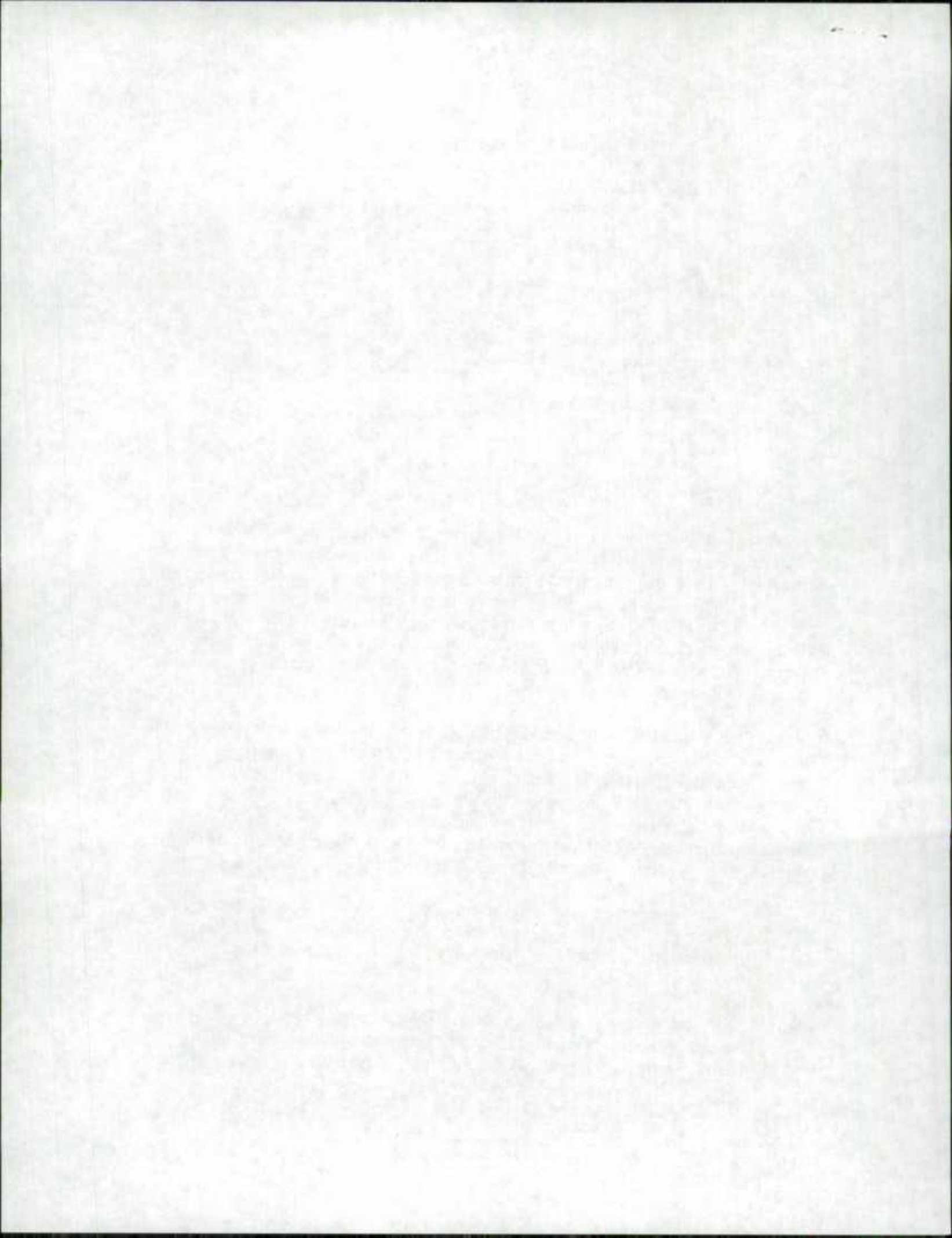
I am writing in response to your letter of February 5, 2003 concerning the Talbot County Critical Area Program. The Critical Area Commission considered the letter and the information you provided at its meeting on that date. The Commission also appreciated discussing with Council Member Hilary Spence the progress of changes to the local Critical Area Program. Ms. Spence presented the County's requests outlined in your letter including the specific request that the Commission rescind its previous decision regarding guest houses in the Resource Conservation Area. The Commission decided to take the various matters under advisement.

At its regularly scheduled meeting on March 5, 2003 the Commission again discussed the Talbot County Program. I reported that I understood the County to be making significant progress in regard to the issues of forest mitigation, Buffer management and the permitting of certain new development in the Buffer. I suggested that the County likely would need an additional period of time to finalize these measures for submittal to the Commission as changes to the local Critical Area Program. After further discussion, the Commission voted unanimously to notify the County of the following:

- 1) The time period for submitting changes to the Talbot County Critical Area Program set out in the Commission's letter of September 23, 2002, and subsequently extended to March 24, 2003, is extended an additional 90 days to June 23, 2003.
- 2) The Critical Area Commission will work with the Maryland General Assembly's Joint Legislative Oversight Committee on the Critical Area regarding legislation to clarify the definition of *dwelling unit* relative to guest

Branch Office: 31 Creamery Lane, Easton, MD 21601
(410) 822-9047 Fax: (410) 820-5093

TTY For The Deaf:
Annapolis: (410) 974- 2609 D.C. Metro: (301) 586-0450



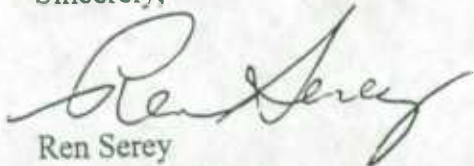
Honorable Thomas G. Duncan
March 10, 2003
Page 2

houses, accessory apartments, domestic quarters or other accessory residences.

- 3) The Critical Area Commission hopes to work with Talbot County regarding interim measures that could allow the provisions of the Commission's letter of September 23, 2002 concerning guest houses to be lifted until the General Assembly addresses the issue.

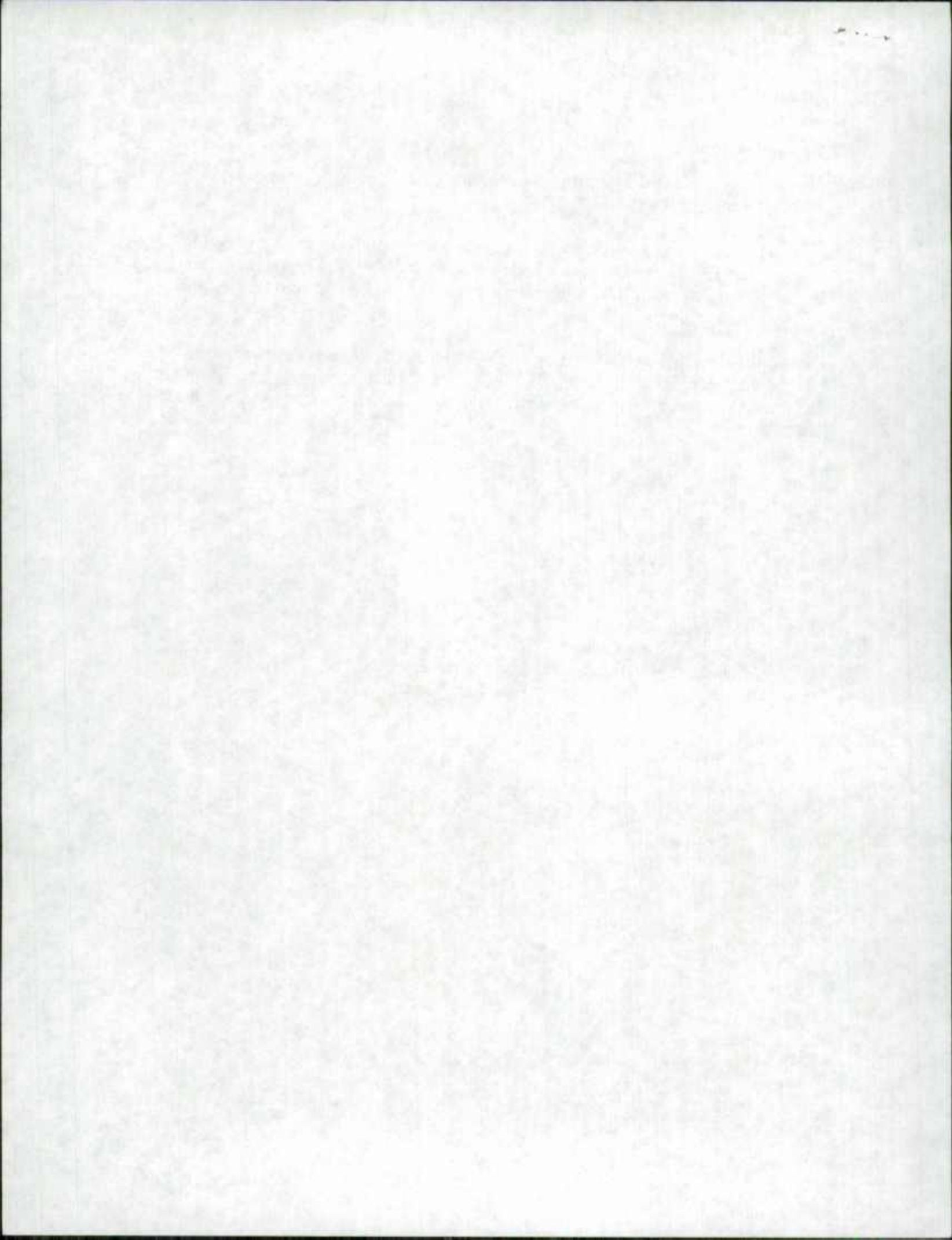
If you or the other members of the County Council have questions or need additional information, please contact me at (410) 260-3462 or by email at rserey@dnr.state.md.us. I am available to meet at your convenience and look forward to working with you and the County staff.

Sincerely,



Ren Serey
Executive Director

cc: Talbot County Council
Critical Area Commission
Marianne D. Mason, Assistant Attorney General
Michael Pullen, Talbot County Attorney



Critical Area Commission

STAFF REPORT

March 5, 2003

APPLICANT: Department of Natural Resources and the Greenwell Foundation

PROPOSAL: Rosedale Manor ADA Accessibility Improvements at Greenwell State Park

JURISDICTION: St. Mary's County

COMMISSION ACTION: Vote

STAFF RECOMMENDATION: Approval

STAFF: Mary Owens

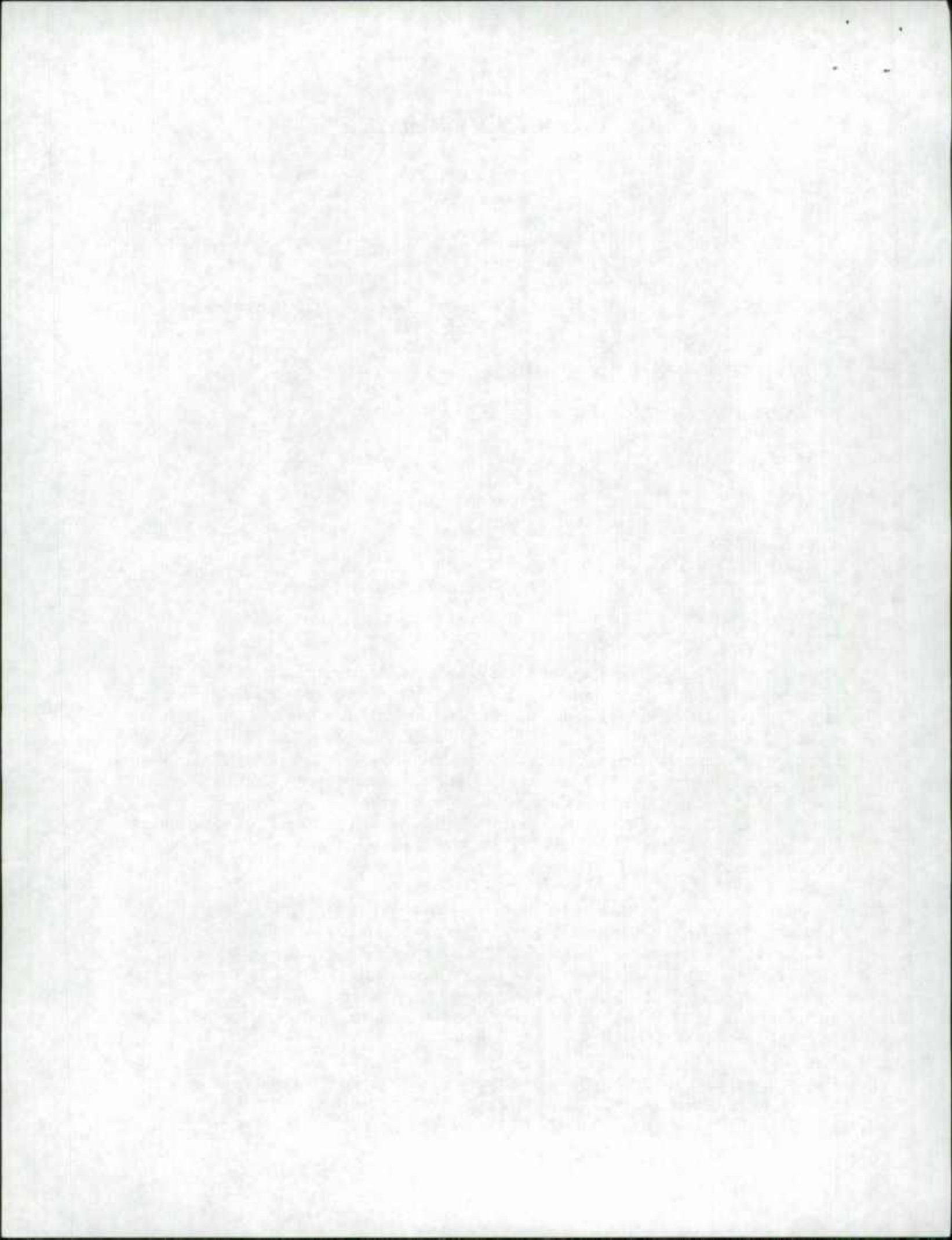
**APPLICABLE LAW/
REGULATIONS:** COMAR 27.02.05 State Agency Actions Resulting in Development on State-Owned Lands

DISCUSSION:

This project involves both modifications to the interior and the exterior of the Rosedale Manor House, which is a large dwelling with local historic significance located at Greenwell State Park in St. Mary's County. Greenwell State Park consists of approximately 600 acres, and one of the primary goals of the park is to provide gathering and meeting facilities, access to the water and recreational opportunities for those with disabilities. The Rosedale Manor House, as a focal point for the park, is frequently used for meetings, receptions, and special events; however, it is currently not ADA accessible. This situation causes inconvenience for disabled users and potentially hazardous conditions in the event of a fire or emergency. The purpose of the project is to improve overall accessibility to and within the Rosedale Manor House and surrounding lawn and garden areas.

The project includes four elements that involve development within the Critical Area. The most significant element is the construction of new entrance ramps, stairs, and walkways at the main entrance to the Manor House. This modification has been carefully designed to provide reasonable access to those with disabilities while not significantly altering the appearance of the front of the building relative to its local historic significance. The proposed design will also allow for the preservation of several large boxwoods. The Maryland Historic Trust has reviewed the proposed design and determined that it is acceptable.

The second element of the proposed project involves the construction of entrance ramps and a walkway to the eastern side entrance of the Manor House and a walkway extending to a patio



overlooking the Patuxent River. Approximately 288 square feet of new impervious area will be constructed in the expanded Buffer in order to provide access to an existing brick patio. This entrance is located in the main gathering area in the Manor House and is critical to providing safe fire egress.

The third element of the project involves the construction of a 54 square foot addition to provide for the installation of a small lift in the interior of the Manor House. The addition has been located and designed to work with the existing lay-out within the Manor House and to minimize impacts to several large existing boxwoods.

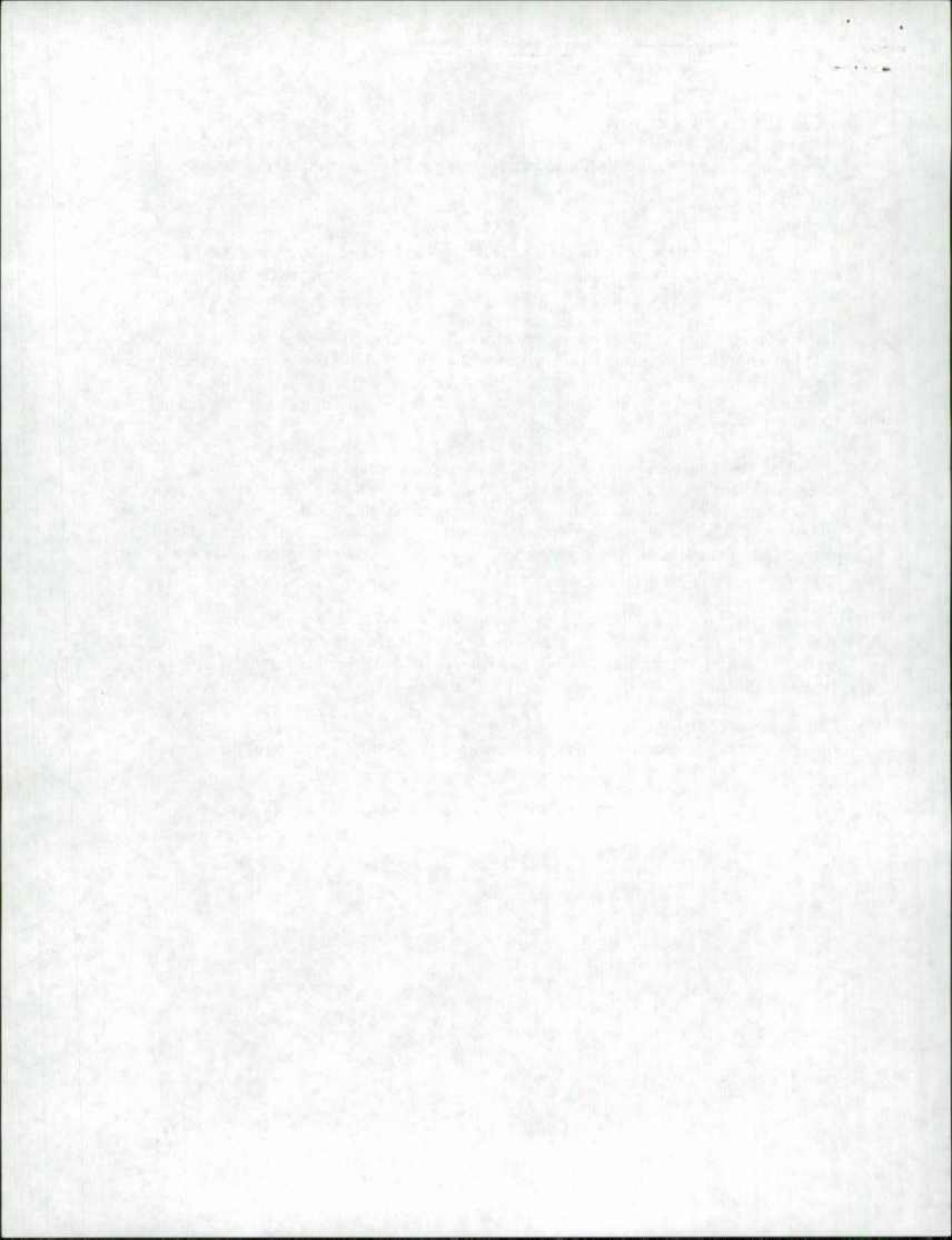
The fourth component of the project is the construction of a ramp to provide ADA access and fire egress to the western wing and porch area of the Manor House. This part of the project involves the construction of 87 square feet of new impervious area within the 100-foot Buffer. This element of the project will ensure that the entire Manor House, including the kitchen and a smaller gathering area, are ADA accessible.

Two elements of this project are located within the expanded Buffer in order to provide accommodations for those with disabilities. In the spring of 2000, the Critical Area Act (§8-1808.1 of the Annotated Code of Maryland) was amended to allow local governments to include provisions in policies and procedures to address this type of development. It is reasonable to assume that similar flexibility can be afforded to State projects; therefore, conditional approval of this project is not required.

The Department of Natural Resources is proposing to provide three-to-one mitigation in the form of plantings for the 375 square feet of impacts within the Buffer and expanded Buffer. Four trees and fifteen shrubs will be planted within the expanded Buffer in the area near the eastern side entrance to the Manor House.

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

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



CRITICAL AREA NOTES:

SIZE OF PROPERTY: 606 ACRES (345 ACRES IN THE CRITICAL AREA)

PROPOSED CLEARING: 0 sf

EXISTING IMPERVIOUS SURFACE IN THE CRITICAL AREA BUFFER IN THE VIVINITY OF THE ROSEDALE MANOR HOUSE: 550 sf

PROPOSED NEW IMPERVIOUS SURFACE IN THE CRITICAL AREA BUFFER: 375 sf

Ramp: 84 sf (15 sf over existing Impervious Surface)

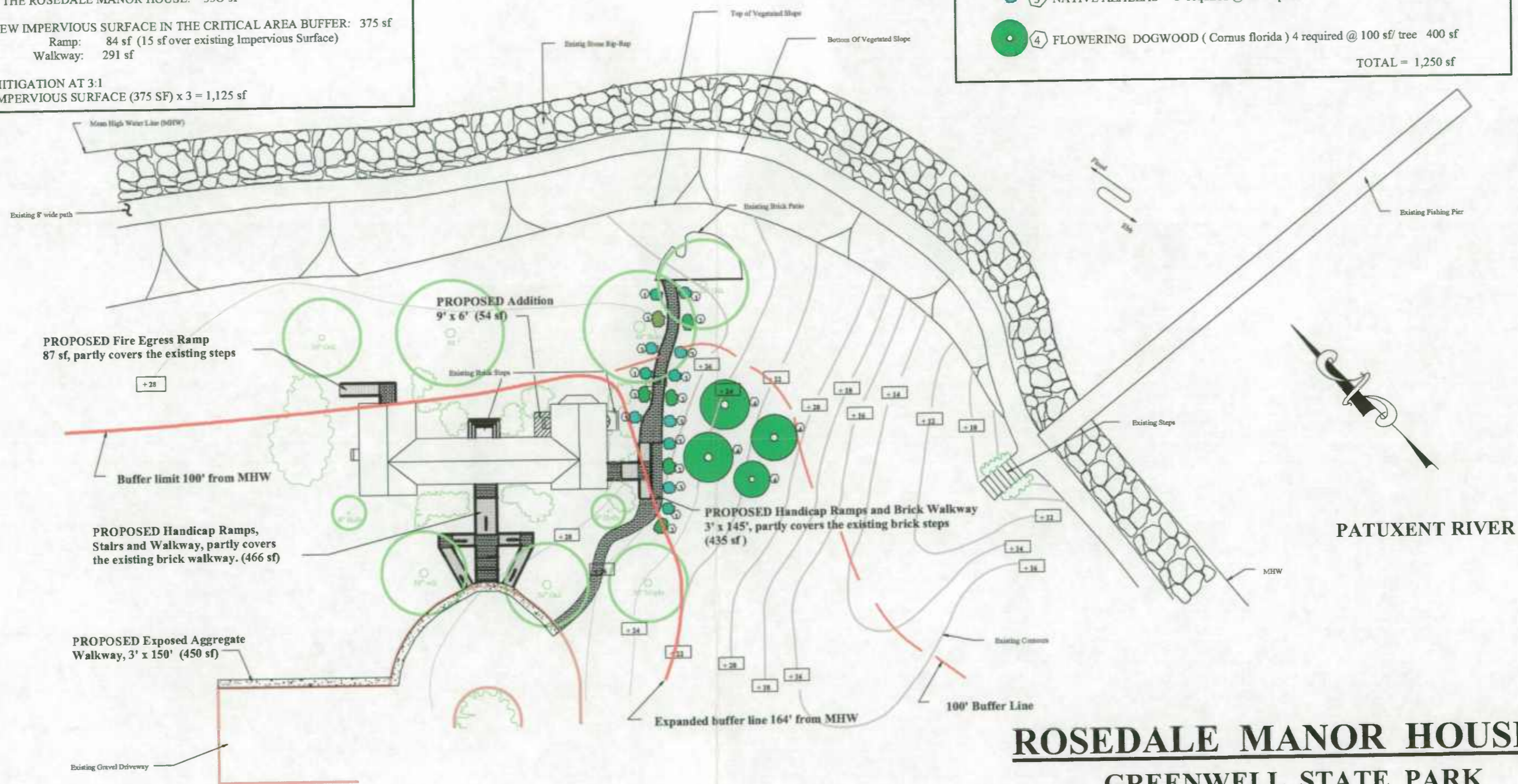
Walkway: 291 sf

REQUIRED MITIGATION AT 3:1

PROPOSED IMPERVIOUS SURFACE (375 SF) x 3 = 1,125 sf

MITIGATION PLANTING SCHEDULE

- ① RED CHOKEBERRY (*Aronia arbutifolia*) 6 required @ 50 sf/ plant 300 sf
 - ② SWEET PEPPERBUSH (*Clethra alnifolia*) 6 required @ 50 sf/ plant 300 sf
 - ③ NATIVE AZALEAS 3 required @ 50 sf/ plant 150 sf
 - ④ FLOWERING DOGWOOD (*Cornus florida*) 4 required @ 100 sf/ tree 400 sf
- TOTAL = 1,250 sf



ROSEDALE MANOR HOUSE

GREENWELL STATE PARK

(Scale: 1" = 40')



State of Maryland
Department of Natural Resources
Engineering & Construction

Greenwell State Park

Rosedale Manor House
ADA Renovations and Walkways

Project Number:
P-000-000-000

Date: January 2003

Drawing Number:

1

Sheet 1 of 1

Critical Area Commission

STAFF REPORT

March 5, 2003

APPLICANT: Department of Transportation
Maryland Transportation Authority (MdTA)

PROPOSAL: U.S. Route 50 Widening at Bay Bridge Toll Facilities

JURISDICTION: Anne Arundel County

COMMISSION ACTION: Vote

STAFF RECOMMENDATION: Approve

STAFF: Lisa Hoerger

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

DISCUSSION:

The Maryland Transportation Authority (MdTA) proposes to widen the eastbound approach of U.S. Route 50 to the toll plaza at the William Preston Lane, Jr. Memorial Bridge (Chesapeake Bay Bridge). The MdTA is expanding this area to alleviate the bottleneck that occurs between the transition from the three travel lanes to the ten toll lanes.

The site is located in Anne Arundel County on the western side of the Bay Bridge. Only the eastbound side of U.S. Route 50 is proposed for widening from the overpass of Oceanic Drive to the toll booth facilities. The area of the expansion includes a ditch and a sparsely planted area of hardwood and pine trees. The expansion will impact the 100-foot Buffer to a tributary stream. COMAR 27.02.05.03 B3 permits all roads, bridges and utilities to cross a Habitat Protection Area unless no feasible alternative exists, maximum erosion protection is provided, impacts to wildlife, aquatic life and their habitats are minimized, and hydrologic processes and water quality is maintained. The MdTA has addressed these issues.

All clearing associated with the road expansion project will be mitigated with native species on site and at a nearby location that is on MdTA property. Mitigation will be performed at a 1:1 ratio for new impervious area and clearing outside the 100-foot Buffer and at a 3:1 ratio for all new disturbances inside the 100-foot Buffer.

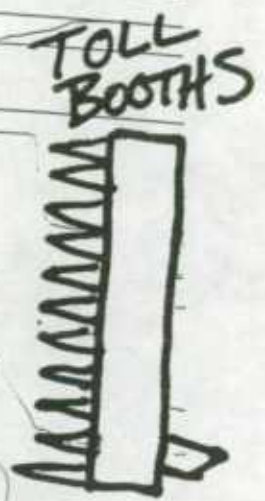
The entire project site is 4.72 acres and is in an area of intense development. The applicant performed the 10% pollutant reduction calculations and is required to remove 10.87 pounds of phosphorus. The Best Management Practices proposed to satisfy the Maryland Department of the Environment's Stormwater Management Regulations may also satisfy the 10% pollutant reduction requirement. Commission staff are working with MdTA on this issue. The MdTA will create a grass swale on site and will remove some existing paved shoulder along nearby Oceanic Drive and replace the shoulder with semi-porous pavers.

The Department of Natural Resources reported the bird species, Black Rail, may use a nearby site as habitat; however, the immediate project area will not impact the species. The stormwater management and sediment and erosion control permits are pending from the Maryland Department of the Environment.

Staff Recommendation:

Commission staff have reviewed the project plans and visited the site and recommends that approval be granted to the MdTA to widen the eastbound side of U.S. Route 50 from Oceanic Drive to the toll booth facilities.

DOT/SHA U.S. 50 at the Bay Bridge Widening Project



LEGEND:

- 2" Grinding Ex. Roadway & Shoulder & Overlay Area
- New Asphalt Roadway & Shoulder
- New 9" Concrete Pavement Mix. No. 7
- Proposed 26' Sheet Flow Buffer
- Proposed 4' Wide Grass Channel Water Quality Practice
- Existing Forest
- Forest Clearing
- Existing Trees
- Tree Clearing
- W- Waters of the U.S./Nontidal Wetland
- B- 100' Tributary Stream Buffer/ 25' Nontidal Wetland Buffer
- T- 100' Tidal Wetland Buffer
- LOD- Limit of Disturbance

SOILS:

- Tm- Tidal Marsh
- MrB2- Mattapex Silt Loam, 2-5% Slopes, Moderately Eroded

NOTE: Soils within the Project Area are designated as Mattapex Silt Loam except where otherwise noted.

NOTE: All areas within the Limit of Disturbance are designated as Intensely Developed Areas.

NOTE: All areas on plans are within the Critical Area Boundary.



Critical Area Commission

STAFF REPORT

March 5, 2003

APPLICANT: Washington Suburban Sanitary Commission

PROPOSAL: Memorandum of Understanding

JURISDICTION: Prince George's County

COMMISSION ACTION: Vote

STAFF RECOMMENDATION: Approval

STAFF: Lisa Hoerger

**APPLICABLE LAW/
REGULATIONS:** COMAR 27.02.03 General Approval of State and Local Agency Projects Which Result in Development of Local Significance on Private Lands or Lands Owned by Local Jurisdictions

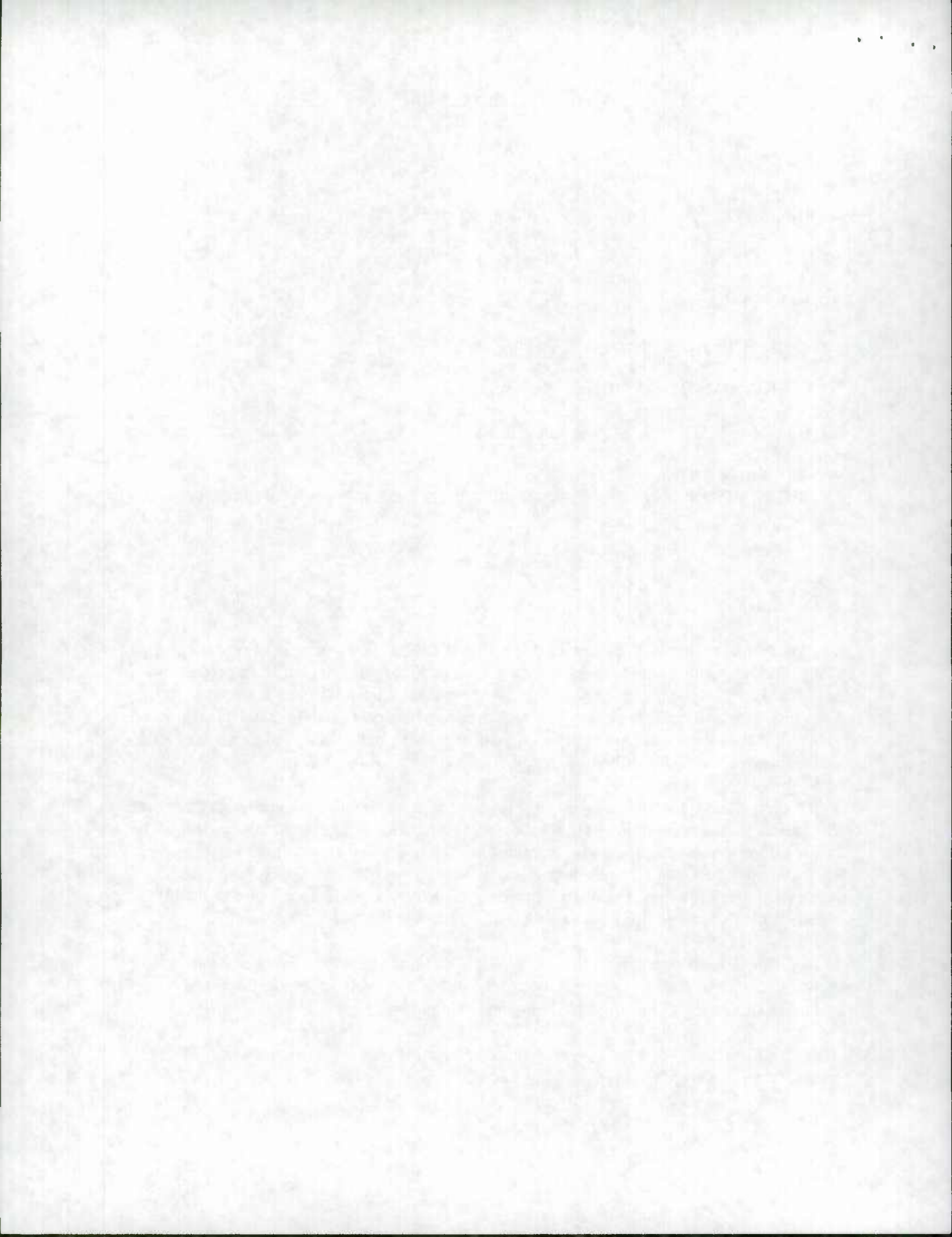
DISCUSSION:

The Washington Suburban Sanitary Commission (WSSC) is in the process of replacing aging sewer lines in existing communities in Prince George's County. Most of these projects will be less than 10,000 square feet and will meet all applicable Critical Area requirements. The Commission has never approved a draft Memorandum of Understanding (MOU) and review and approval of these upcoming projects would be greatly streamlined if an approved MOU existed between WSSC and the Commission.

The Project Subcommittee had an opportunity to provide substantive comments on the current draft and staff has revised the draft to reflect those changes. The basic premise of this MOU is to streamline the review process for pipeline and facility projects that will not permanently alter ground or at-grade surfaces, impact any Habitat Protection Areas, create additional impervious areas, increase runoff, nor impair the quality of runoff. In the case of facility repairs, land disturbance may not exceed 10,000 square feet.

The draft MOU is attached for your review. The first three pages are the legal contract. Appendix A addresses the types of projects eligible for approval, and Appendix B is a checklist of those items required for project submission to Commission staff.

Thank you for taking the time to review this document. If you have any questions, please telephone me at (410) 260-3478.



DRAFT 2/19/03

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE WASHINGTON SUBURBAN SANITARY COMMISSION
AND
THE CRITICAL AREA COMMISSION FOR THE CHESAPEAKE
AND ATLANTIC COASTAL BAYS

AUTHORITY: Natural Resources Article, Section 8-1814, Annotated Code of Maryland; COMAR 27.02.05, etc. and Article 29, Section 1-206, Annotated Code of Maryland

THIS AGREEMENT, entered into this _____ day of _____, 2003, memorializes the understanding reached by the Washington Suburban Sanitary Commission (hereafter, "the WSSC") and the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays (hereafter, "the CAC"),

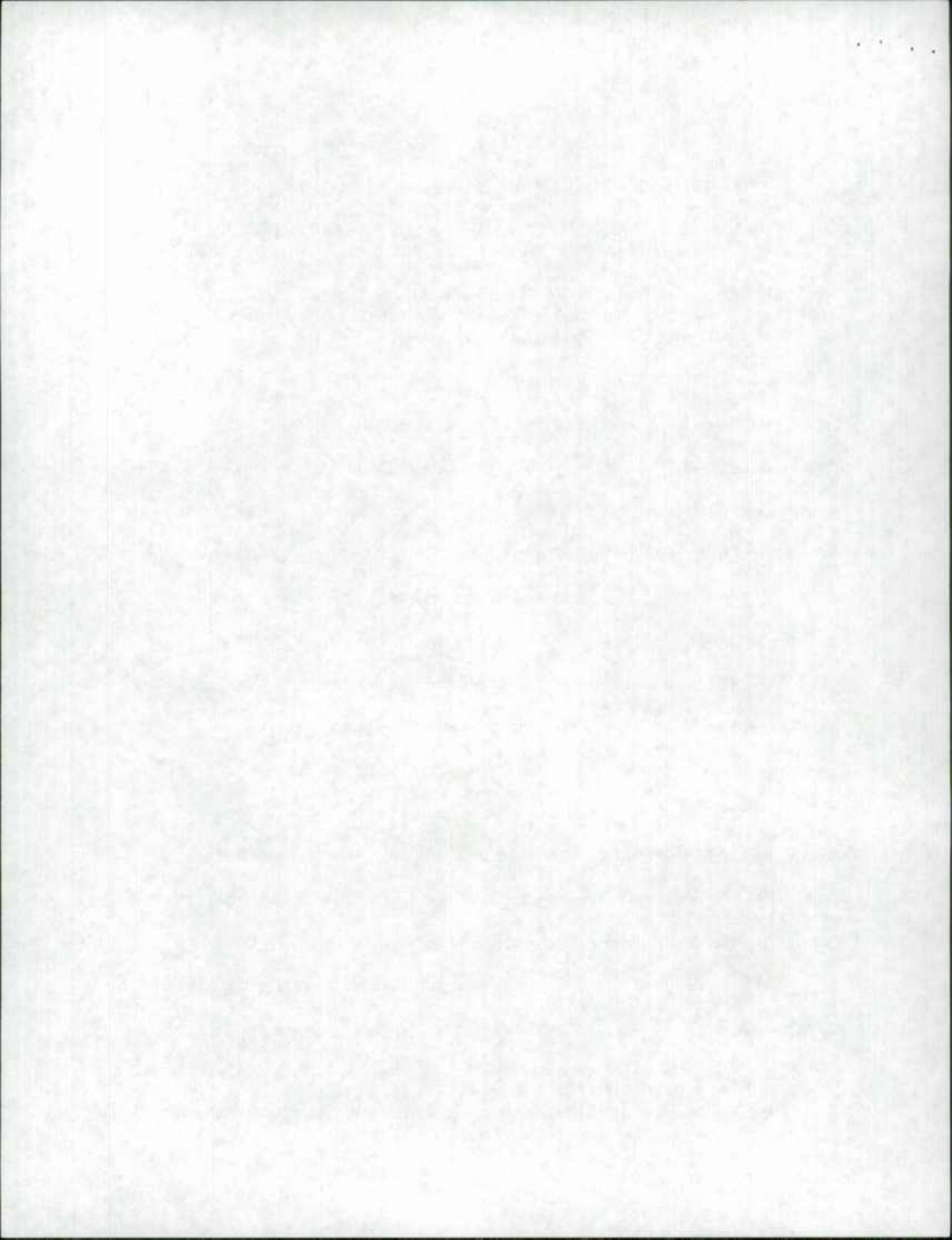
WHEREAS, the WSSC is vested with the authority, under Article 29, Annotated Code of Maryland, to provide sanitary sewerage and water supply service within the Washington Suburban Sanitary District; and

WHEREAS, the CAC has established regulations for development undertaken by State and local agencies in the Critical Area which has not been subject to approval by a local jurisdiction with an approved Critical Area Program; and

WHEREAS, the CAC is vested with the authority to approve, deny or request modifications to State agency actions resulting in development on State-owned lands based on assessment of the extent to which the project conforms with COMAR 27.02.05 and to grant General Approval for certain programs, or classes of such activities under 27.02.03.

NOW, THEREFORE, be it resolved that the parties named above here mutually agree to the following:

GENERAL OBJECTIVE: The purpose of this Memorandum of Understanding is to describe the process that the WSSC and the CAC will follow with respect to the submittal and review of



projects affecting the Critical Area. The CAC staff will assist, if necessary, WSSC in completing the application and support information for future proposed projects.

PROCESS: The Critical Area (CA) means all land and water defined in Natural Resources Article 8-1807, Annotated Code of Maryland, which includes:

a. All water of and lands under the Chesapeake Bay and its tributaries to the head of tide as indicated on the State wetlands maps and all State and private wetlands designated under Title 16 of the Environment Article; and

b. All land and water areas within 1,000 feet beyond the landward boundaries of State or private wetlands and the heads of tides designated under Title 9 of the Environment Article.

The following process is agreed to by both agencies

WSSC agrees:

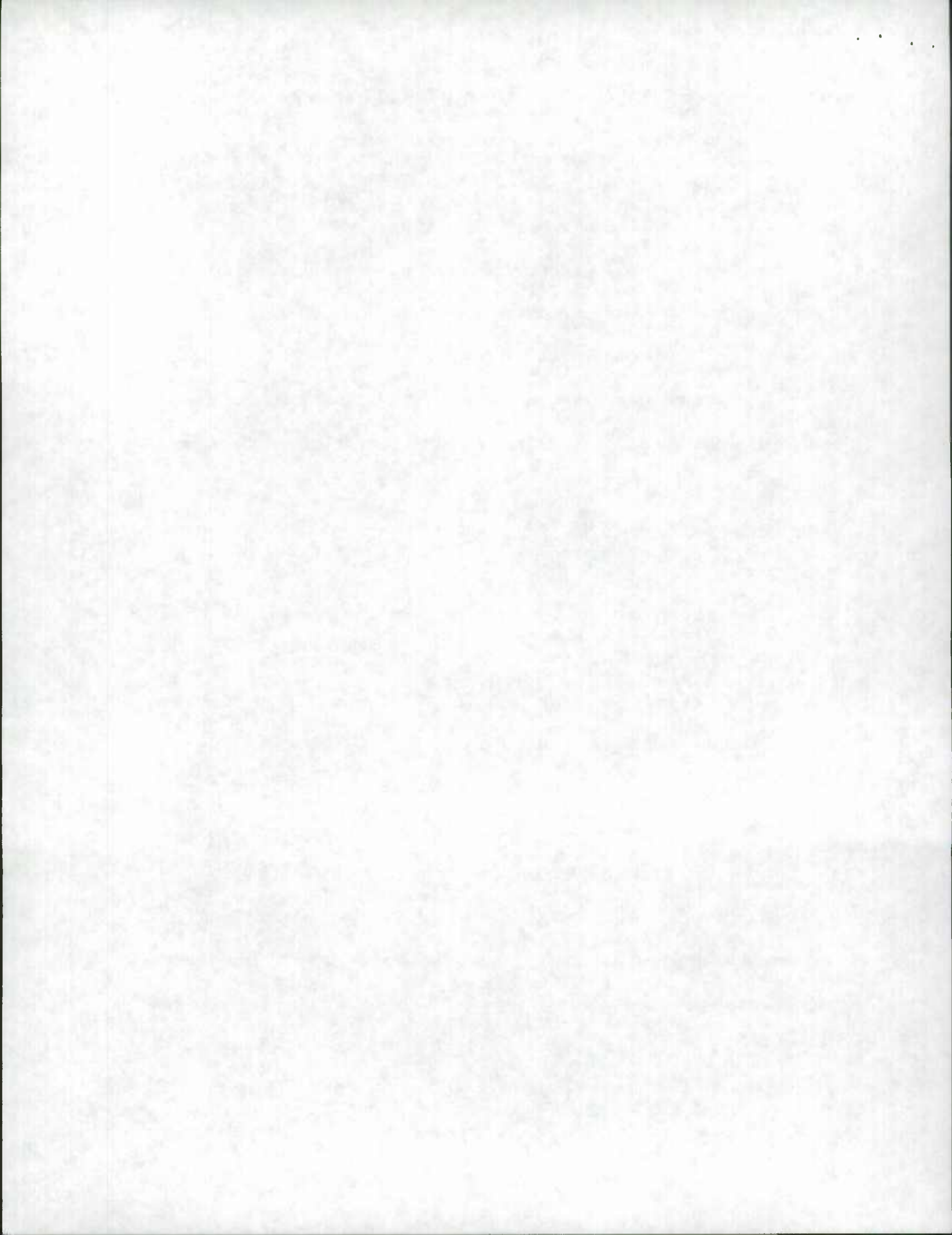
a. To submit projects affecting the CA for review and approval by the CAC under COMAR 27.01 and 27.02.;

b. To submit to the CAC (When the design is 70% completed) site plans and a request for CAC review and approval and;

c. To notify the CAC immediately of any substantive changes in the plans as approved, or of changes that occur during construction of the project.

d. To refer to Appendix A which outlines conditions and Classes of Projects eligible for General Approval. Under COMAR 27.02.05, State Agency Actions Resulting in Development on State-Owned Lands, the CAC may grant General Approval to State agencies for Programs, activities and classes of development on State-owned lands in the Critical Area.

Under COMAR 27.02.03, General Approval of State and Local Agency Programs Which Result in Development of Local Significance on Private Lands or Lands Owned by Local Jurisdictions, the CAC may grant General Approval to State agencies for Programs, activities and classes of



development on private lands or lands owned by local jurisdictions. Granting of general approval by the CAC allows implementation of the approved Program, activity, or projects in accordance with the policies and requirements as set forth in COMAR 27.02.05. (See Appendix A.)

e. To refer to Appendix B which outlines Information Required for Review of Critical Area Projects. Facility and pipeline plans prepared by the WSSC will include the following information to the extent required by the CAC to determine consistency with the Critical Area regulations COMAR 27.02.05.02.-14 for projects on State-owned lands and COMAR 27.01 for projects on private lands and lands owned by local jurisdictions. This information will be provided commensurate with the project contemplated and subject to acceptance by the CAC (See Appendix B.)

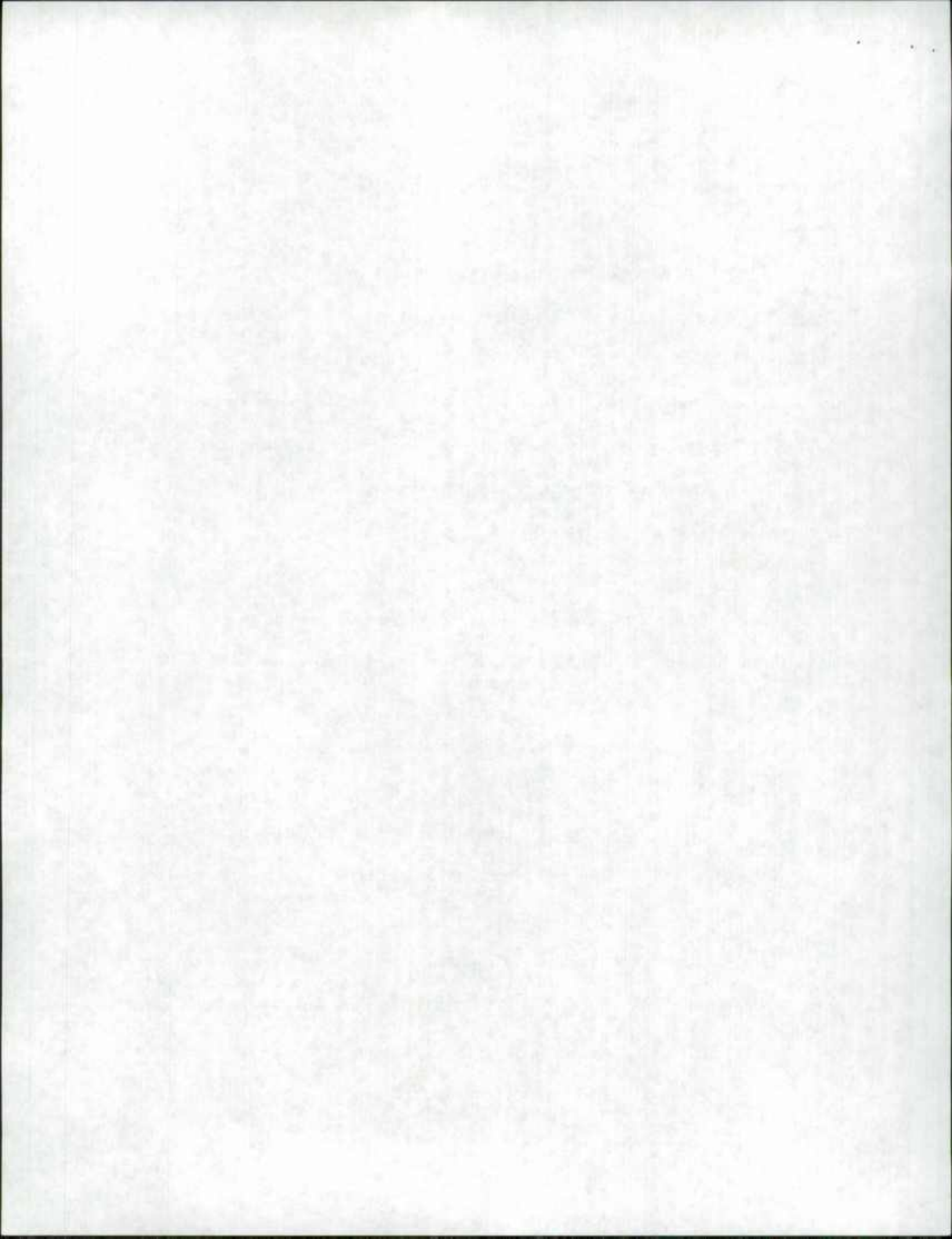
CAC agrees:

a. To coordinate the review of WSSC projects with the affected local jurisdiction to make sure that the project is consistent with the local governments' Critical Area Program.

b. To review and approve WSSC projects in a timely fashion in accordance with COMAR 27.02.07.

MODIFICATION TO MEMORANDUM: This Memorandum of Understanding may be amended at any time. Modification must be made in writing and must be agreed upon by both parties.

The Memorandum contains the entire agreement of the parties. There are no promises, terms, conditions, or obligations referring to the subject matter other than those contained herein.



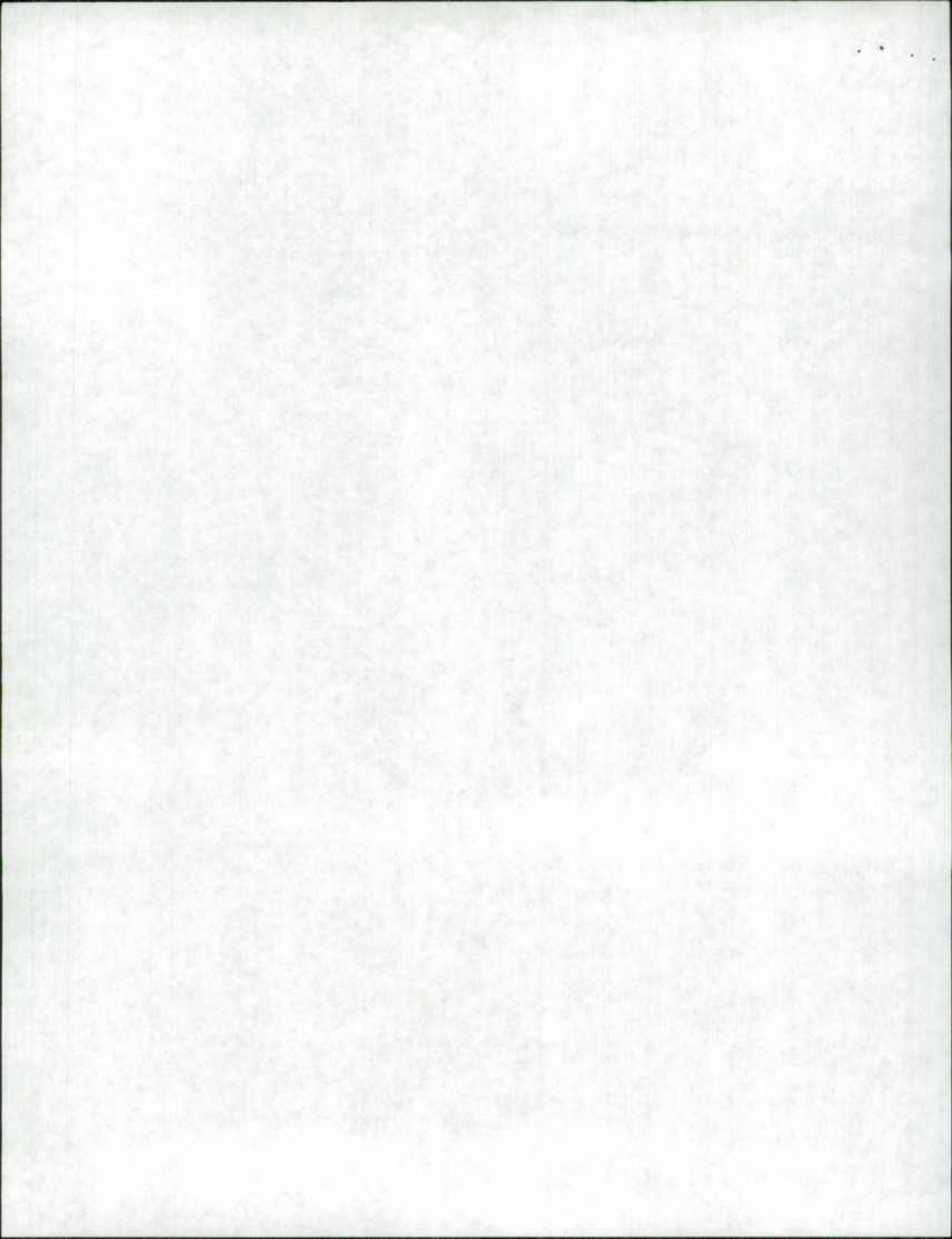
Assistant Attorney General

Chairman, Critical Area Commission

Secretary, Washington Suburban Sanitary
Commission

P. Michael Errico
Deputy General Manager, Washington
Suburban Sanitary Commission

Approved as to form and legal sufficiency on _____, 2003, by the Office of the
Attorney General. _____, Assistant Attorney General.



APPENDIX A

CONDITIONS AND CLASSES OF PROJECTS ELIGIBLE FOR GENERAL APPROVAL

This General Approval is defined as a process whereby minor projects are reviewed and approved by the CBCAC staff. These projects are determined by the CBCAC staff to have minimal impact on the Critical Area. The following activities or projects are granted general approval by the CBCAC.

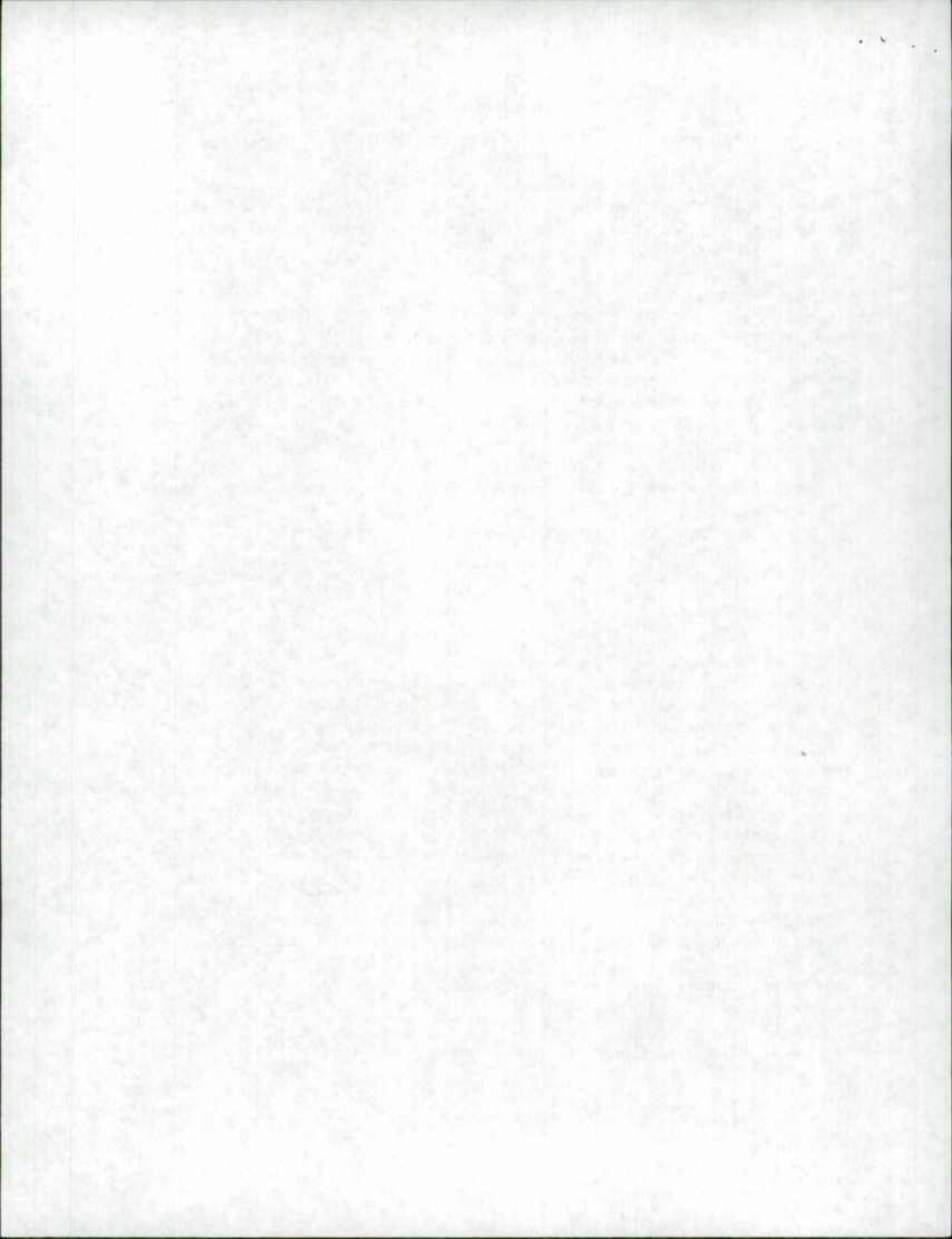
1) Maintenance Activities:

a) Any pipeline repair, maintenance, or rehabilitation project that does not permanently alter ground or at-grade surfaces, does not cause an increase in impervious surface, does not increase runoff, does not impair the quality of runoff, and does not affect any Habitat Protection Area (HPAs). Pipeline structures are defined as water and sewer pipelines, manholes, valves, fire hydrants, house connections, or other sewer or water appurtenances. Examples of these types of maintenance activities include the following items:

- i) Installation or repair of manholes, valves, fire hydrants or other sewer or water appurtenances;
- ii) Rehabilitation projects associated with repair of leaking water or sewer lines;
- iii) Work related to normal maintenance of rights-of-way including repair of damaged rip-rap or erosion.

b) Any facility repair, maintenance, or rehabilitation project that does not permanently alter ground or at-grade surfaces, does not cause an increase in impervious surfaces, does not increase runoff, does not impair the quality of runoff, does not affect any HPA and does not require land disturbance of more than 10,000 square feet. Facility structures are defined as buildings and stationary equipment such as pump stations, treatment plants, and storage tanks. Land disturbance is defined as any earth movement and land changes which may result in soil erosion from wind and water and the movement of sediment into State waters or onto State lands, including, but not limited to, tilling, clearing, excavating, trenching, stripping, filling, stockpiling or earth materials, root mat or topsoil removal, the covering of land with an impermeable material or any combination of these. Examples of these types of maintenance activities include the following items:

- i) Modifications, renovations and demolition of existing buildings or stationary equipment which do not alter ground or at-grade surfaces or increase or lessen the quality of runoff;
- ii) Normal operations of wastewater treatment or pump station facilities, except that spills of toxic substances will be reported to the CAC on the next business day;
- iii) Indigenous landscape planting and landscape maintenance.

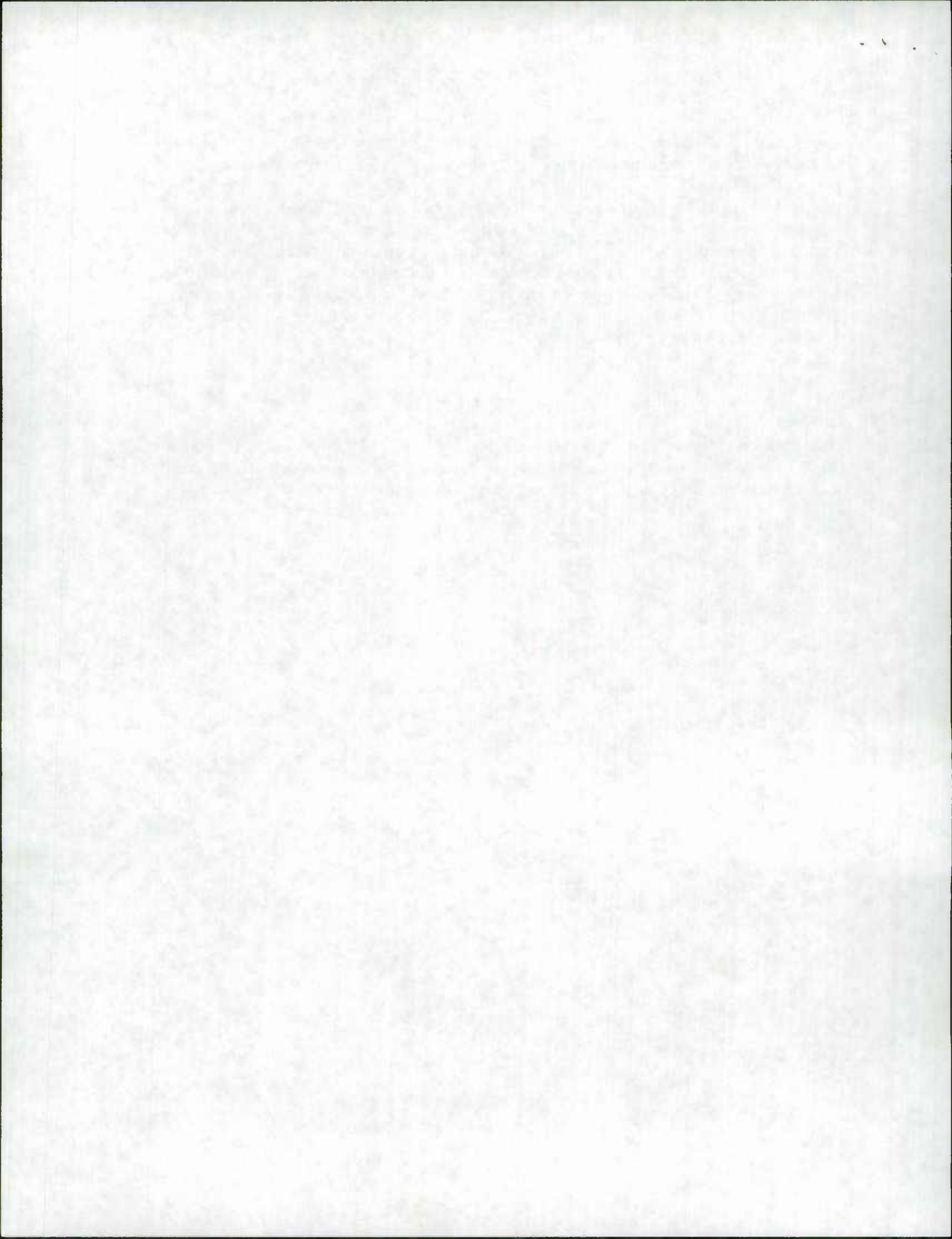


2) Emergency Situations:

Emergency situations and conditions jeopardize public safety and health and require immediate corrective action. Examples of emergency situations are water main breaks, sewer backups, pump station failures, and sewer overflows. The WSSC may undertake such emergency repairs that jeopardize public safety and health without prior CAC approval. WSSC personnel responsible for the emergency repairs shall notify the CAC of emergency activities no later than the next business day. Notification will include a description of the project and activities undertaken and the mitigation proposed. Adequate sediment controls shall be in place during the repair process and the site shall be vegetatively stabilized as called for by the Utility Erosion and Sediment Control Permit. Restoration of the site shall provide for finished grades that match pre-existing elevations and contours.

3) Other projects determined by staff to be of minor impact to the Critical Area:

New pipeline projects 500 linear feet or less that do not require land disturbance of more than 10,000 square feet, do not permanently alter ground or at grade surfaces, do not increase runoff, and do not impair the quality of runoff, and do not affect any Habitat Protection Areas.



APPENDIX B

Information Required for Review of Critical Area Projects

General Instructions

The following checklist contains a list of items for consideration by the Critical Area Commission during its review of each project affecting the Critical Area. While some items will not apply to each project of concern, the Agency should review and be able to discuss aspects of each relevant item. This checklist should be completed and sent, with all other completed information, to the Critical Area Commission staff contact. Please be aware of the following general guidelines:

- (1) The completed checklist, maps, and all other pertinent project materials must be submitted to Critical Area staff contact.
- (2) All other resource/environmental permits and other release documents must be obtained or must be in their final stages (i.e., public comment period completed, permit conditions in final form) when submitting information to Critical Area staff.

If there are any questions with any aspect of this form or with the Commission's review process, please do not hesitate to call the Commission staff contact at (410) 260-3460.

General Mapping Features

Please include the following features on all site plans:

___ Vicinity map

___ Project boundary/Limits of disturbance

___ Scale

___ Orientation

___ Project Name and Location

___ Tract or lot lines

___ Critical Area boundary

___ Development area boundaries (Intensely Developed Areas - IDAs, Limited Development Areas - LDAs, Resource Conservation Areas - RCAs)

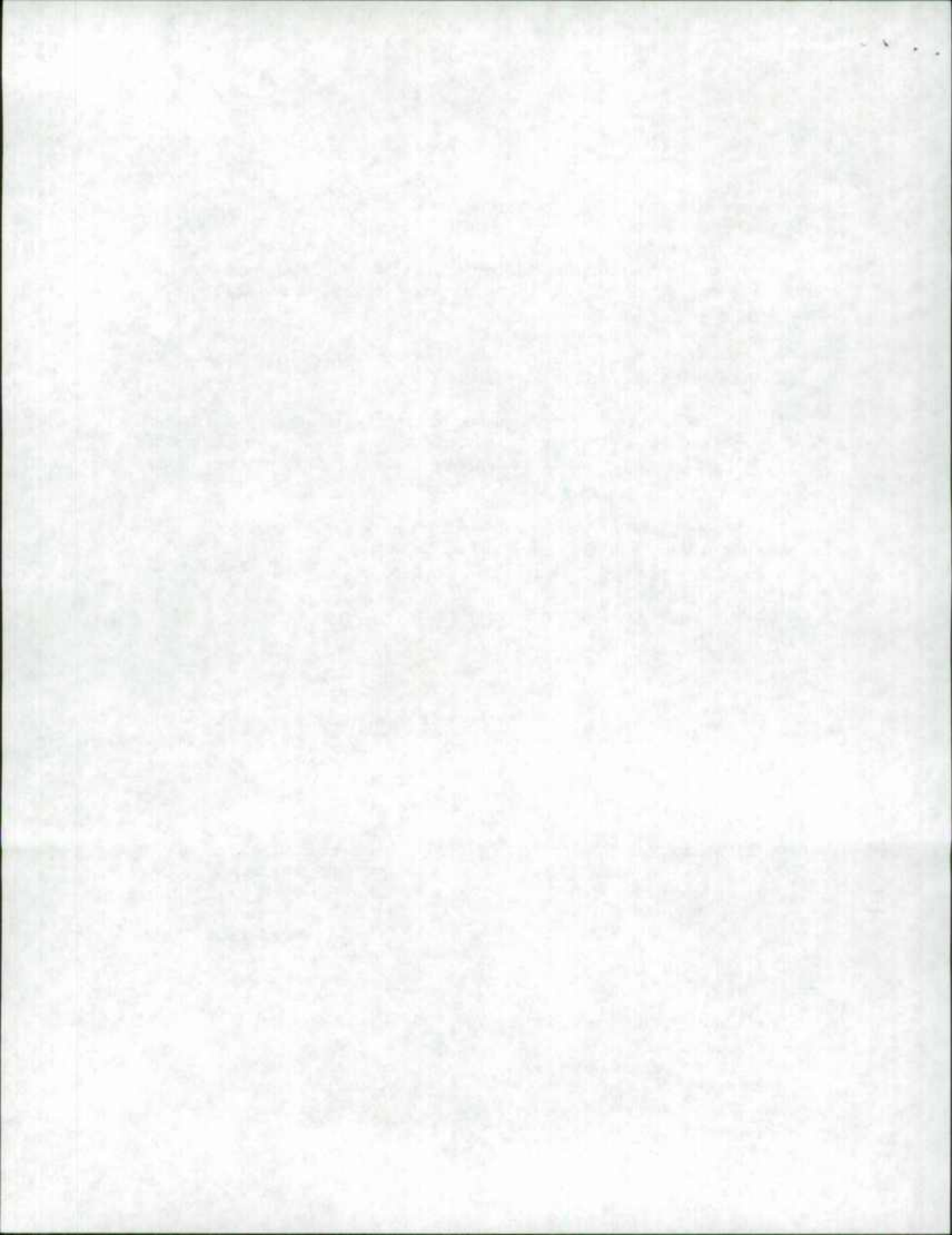
___ One hundred-year floodplain boundary

___ Agricultural lands

___ Dredging activity and spoil site

___ Surface mining sites and wash plants

___ Topography



_____ Vegetative cover:

_____ Existing forest

_____ Forest clearing

_____ Afforestation/reforestation areas

_____ Mitigation areas (Buffer impacts)

_____ Existing and proposed structures (buildings, roads, other paved or impervious areas, parking lots, lots, storm drains, septic, stormwater management systems, shore erosion control structures).

_____ Natural parks

_____ Soil:

_____ Type

_____ Area of hydric soils

_____ Area of highly erodible soils

Habitat Protection and other Sensitive Area Mapping Features

Please show the following Habitat Protection Area features on all site plans, if relevant to the particular project site:

_____ Buffers:

_____ Minimum 100 ft. from tidal waters, tidal wetlands and tributary streams

_____ Expanded Buffer to include 15% slopes, hydric soils and highly erodible soils

_____ 25 ft. from nontidal wetlands

_____ Plant and Wildlife Habitat (Colonial water bird nesting sites, historic waterfowl staging and concentration areas, riparian forest, forest interior dwelling bird habitat, areas of state or local significance, and natural heritage areas)

_____ Tidal Wetlands

_____ Nontidal Wetlands

_____ Plant and Wildlife Habitats (same as above)

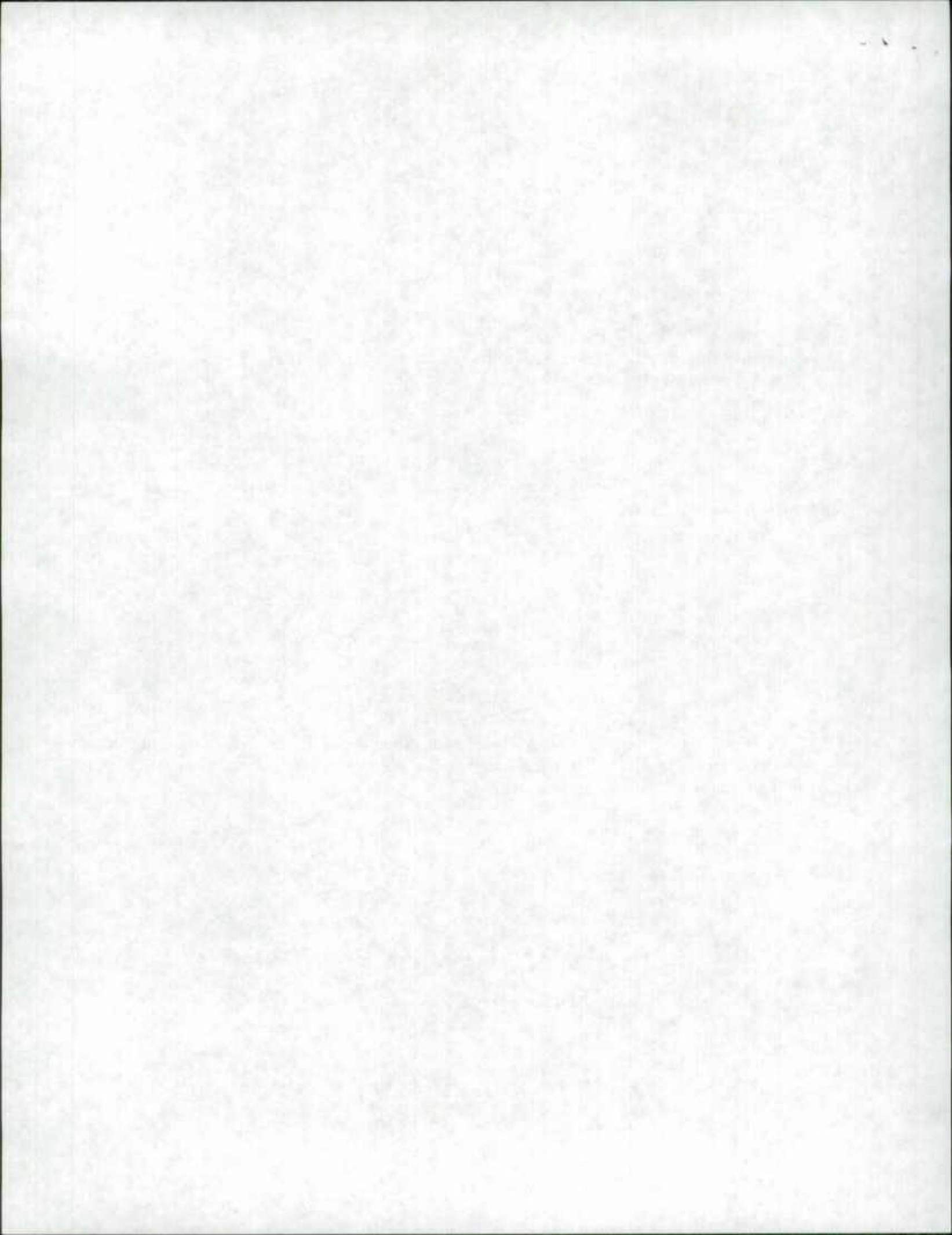
_____ Threatened and Endangered Species (including species in need of conservation)

_____ Anadromous Fish Propagation Waters

General Project Information

Please include the following text information, if applicable to the site, in the project application materials. This information may be included in the form of letters, reports, or site plan notes.

_____ Project name and location



____ Project description
(brief narrative including
type, i.e. industrial, port-related, etc.)

____ Anticipated
timeline (Include
project milestones,
approximate start
and completion
dates)

____ Total acreage in Critical Area

____ Whether project is
on State-owned
land, locally-owned
land or privately-
owned land (i.e. within a
public ROW or easement)

____ Total forest area cleared

____ Method of stormwater
control

____ 10% calculations (Please enclose worksheet)
or impervious surface information

____ Soil erosion and
sediment control *Plans*
measures and
implementation
strategy

____ Mitigation required for clearing of forest area (1:1 ratio outside the 100-foot Buffer, 1.5:1
if between 20%-30% clearing, and 3:1 ratio inside the 100-foot Buffer or if above 30%
clearing)

____ Afforested area (site must have a minimum of 15% forest cover if not IDA)

Minimum Documentation Requirements

The following permits and documents should be secured or must be in their final stages (i.e.,
public comment period completed, permit conditions in final form), if applicable to the site, prior
to scheduling the project for review by the Project Subcommittee:

____ Maryland Department of the Environment (MDE)

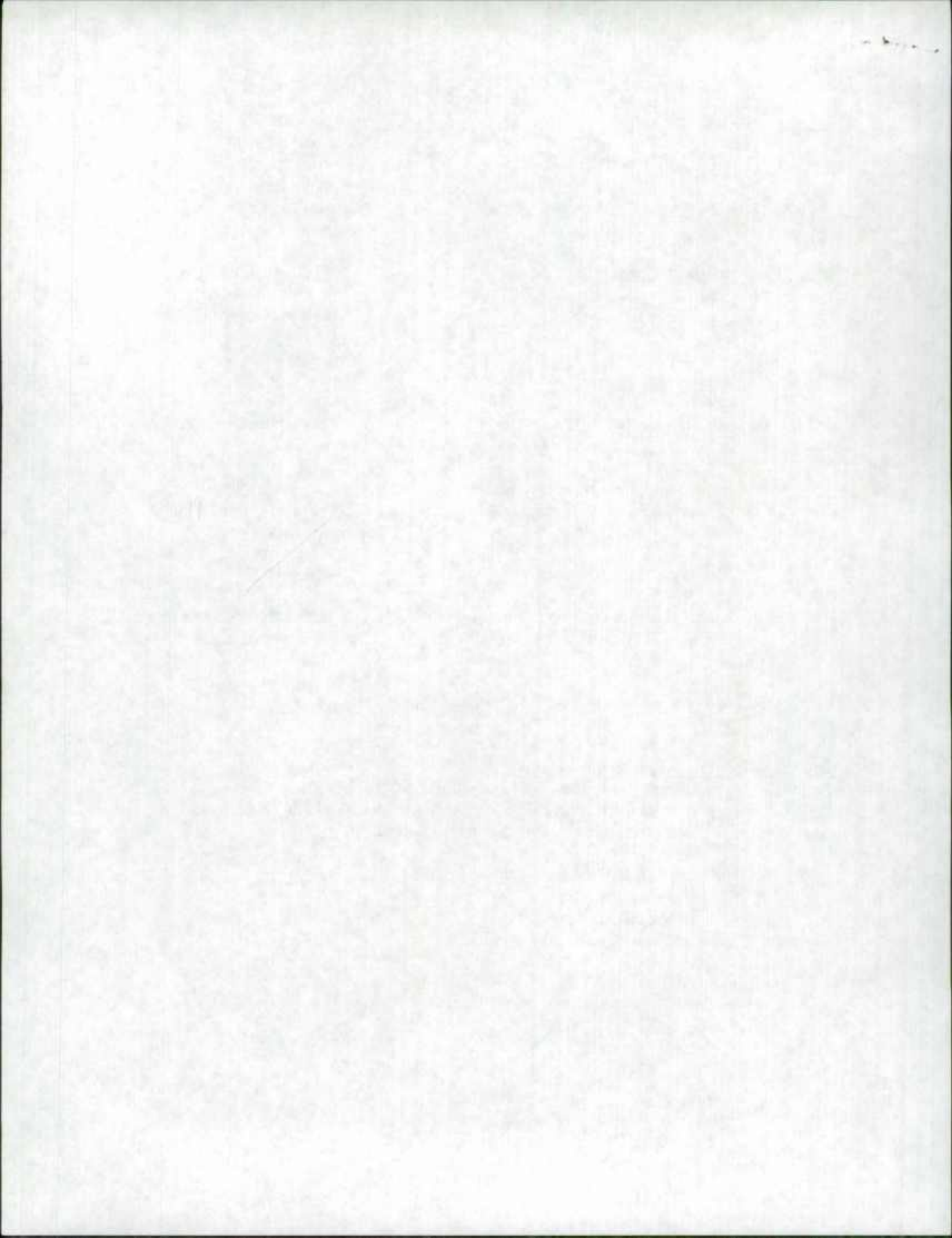
____ Tidal wetlands permits

____ Nontidal wetlands permits

____ Water Quality Certification

____ Army Corps of Engineers (ACOE)

____ Tidal Wetlands Permit (404)



Chesapeake Bay Critical Area Commission

STAFF REPORT

June 6, 2001

APPLICANT: Maryland Department of Natural Resources
Forest Service

PROPOSAL: Timber Harvest

JURISDICTION: Worcester County

COMMISSION ACTION: Vote

STAFF RECOMMENDATION: Approval

STAFF: Claudia Jones

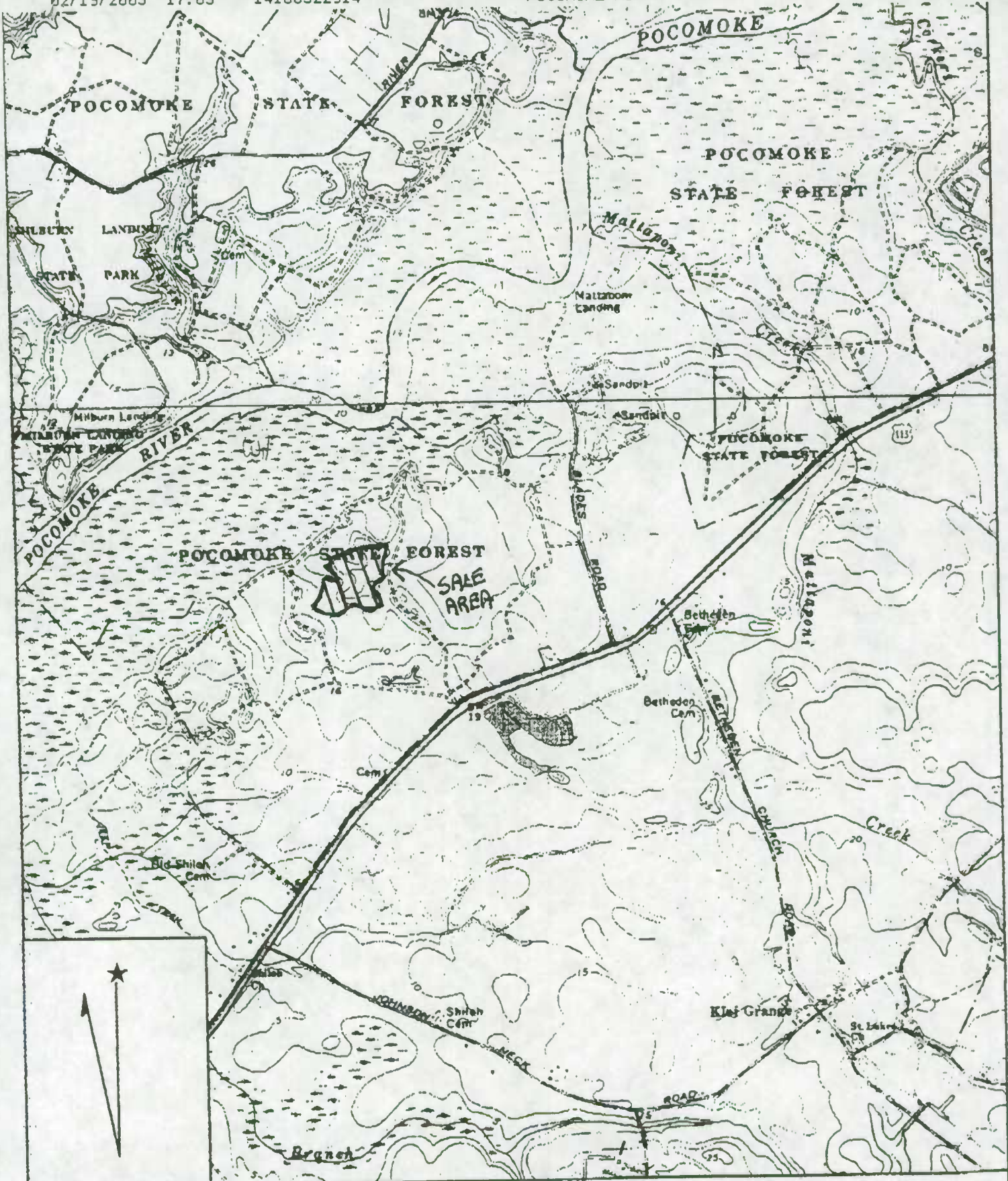
**APPLICABLE LAW/
REGULATIONS:** COMAR 27.02.05.03 – State Agency Actions Resulting in
Development of State-Owned Lands

DISCUSSION:

There is a proposed timber harvest partly in the Critical Area in Pocomoke State Forest in Worcester County. Normally, timber harvests in the Critical Area are processed through a General Approval between the Critical Area Commission and the Maryland Forest Service that was approved by the Commission in 1995. We realized with this proposal that the General Approval only covers timber harvests on private property and not State lands. We will be bringing the General Approval back to the Commission in the near future to rectify this oversight.

The 21-acre area of the proposed harvest is between Pocomoke City and Snow Hill, on the south side of the Pocomoke River. The area will be clearcut and natural regeneration will be allowed to take place. The forest is categorized as a loblolly pine forest according to the Critical Area Timber Harvest Plan Guidelines, approved by the Commission in June of 1999, since the hardwood component is less than 40% of the basal area. The hardwood component of the forest will be allowed to regenerate as well.

The Timber Harvest Plan Guidelines do not require FIDS (forest interior dwelling bird) conservation measures in this forest type. There are no other Habitat Protection Areas in the area of the proposed cut. Existing roads will be used for the harvest. There will be no new permanent openings created as a result of this harvest.



Name: GIRDLETREE
 Date: 2/12/2001
 Scale: 1 inch equals 2000 feet

Location: 038° 06' 59.9" N 075° 28' 18.2" W
 Caption: Pocomoke State Forest
 Terr Tract
 Compartment # 36

Critical Area Commission

STAFF REPORT

March 5, 2003

APPLICANT: Washington Suburban Sanitary Commission

PROPOSAL: Water Main Replacement Projects –
Fort Washington and North Brentwood

JURISDICTION: Prince George's County

COMMISSION ACTION: Vote (Tentative – Pending approval of the MOU)

STAFF RECOMMENDATION: Approval

STAFF: Lisa Hoerger

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

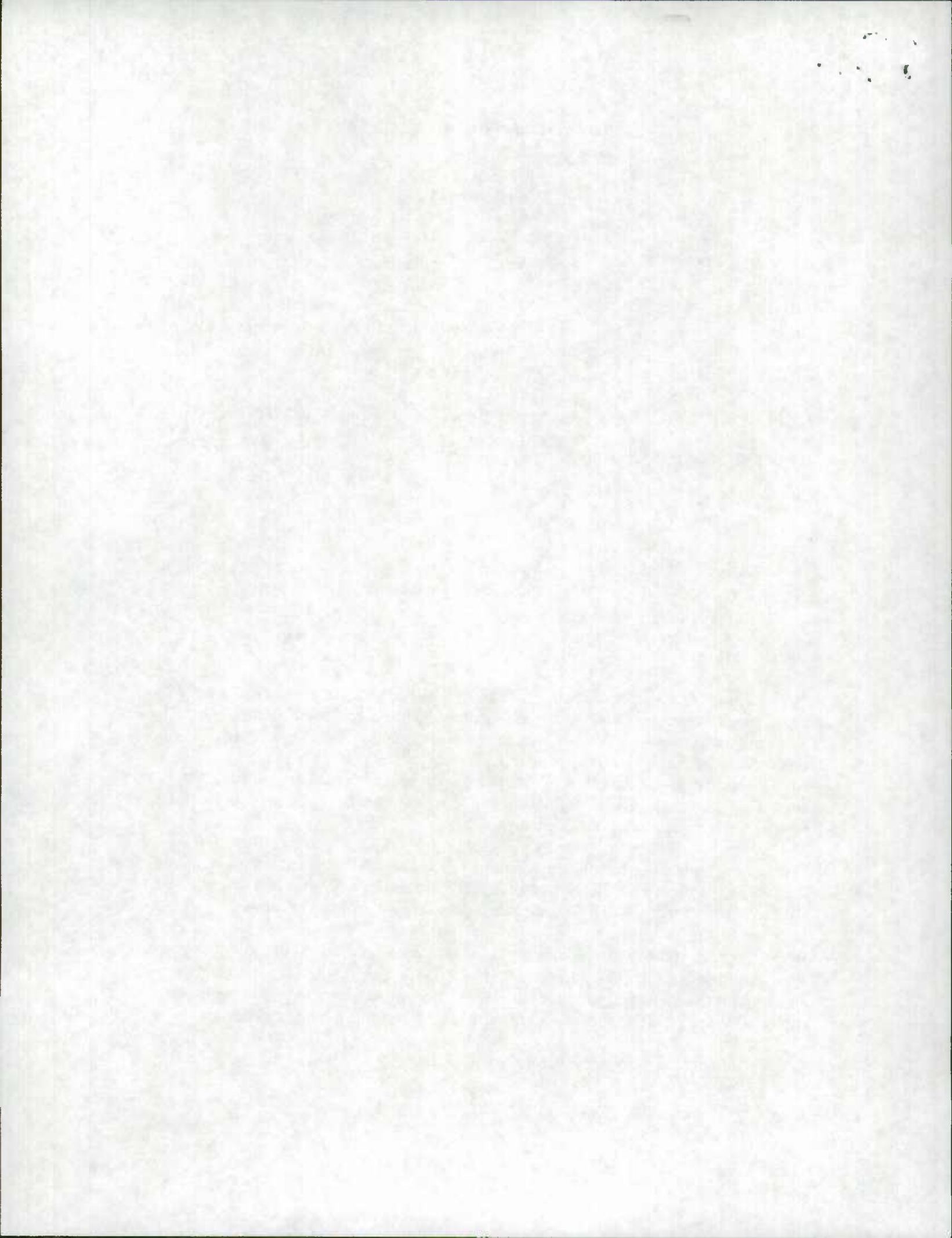
DISCUSSION:

The Washington Suburban Sanitary Commission (WSSC) proposes to replace the water mains in several streets in the Fort Washington and North Brentwood communities. The water mains are being replaced due to age and failing conditions. The water mains, valves, and fire hydrants will be removed and replaced in the same trench. Approximately 7,800 square feet of disturbance is proposed in the Fort Washington community and approximately 2,766 square feet of disturbance is proposed in the North Brentwood community for trench excavation.

In both communities there will be no impacts to any Habitat Protection Areas, including the 100-foot Buffer. The WSSC's Erosion and Sediment Control Program approved the sediment control plans. No trees are proposed for removal in either community.

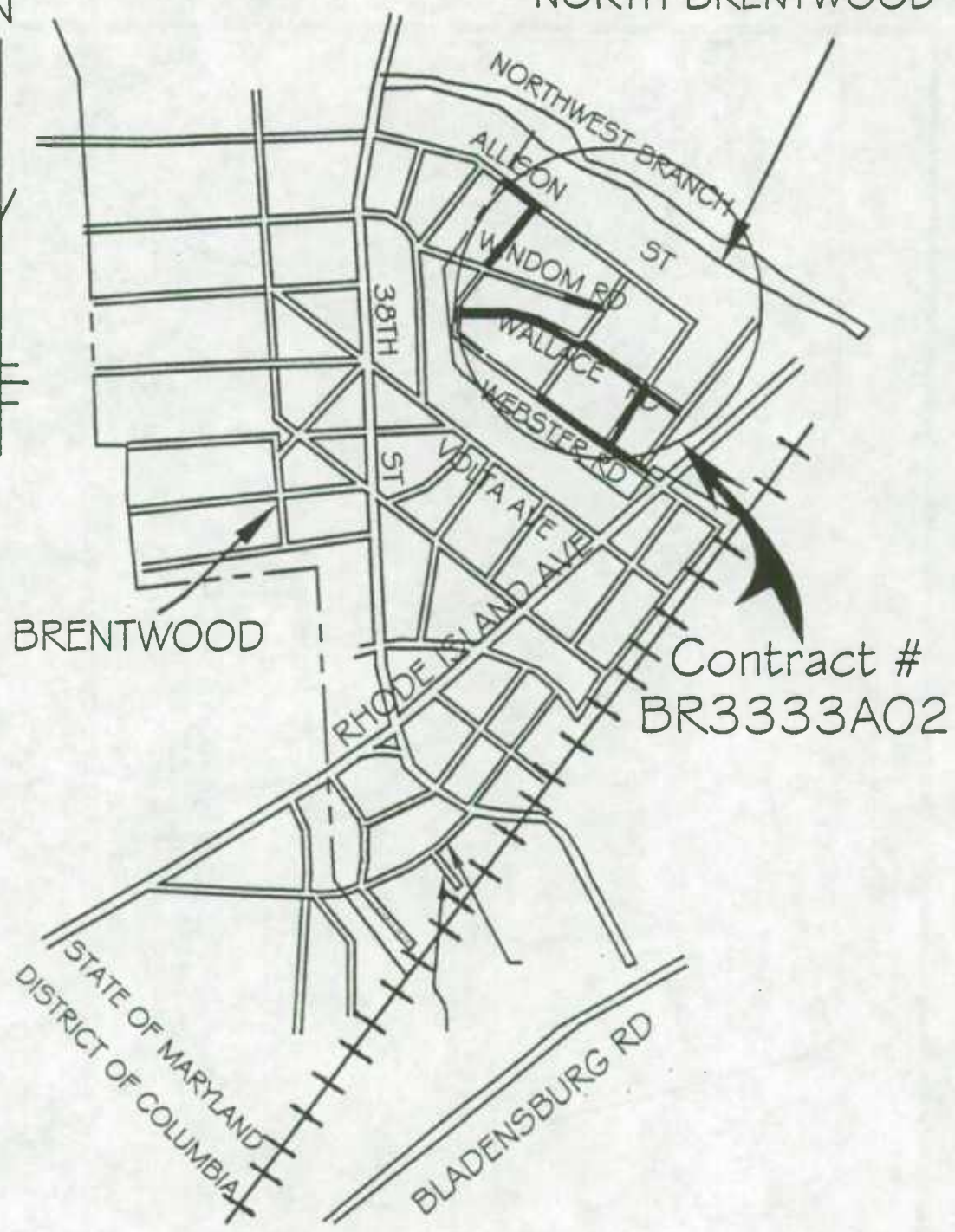
WSSC requests approval of these water main replacement projects in the absence of an approved Memorandum of Understanding (MOU). Commission staff recommends approval. If the MOU is approved at the March meeting, these projects will qualify for approval under the MOU and will not require any formal vote by the Commission.

Attached are the site plans for each project. Please telephone me at (410) 260-3478 if you have any questions.



WSSC

NORTH BRENTWOOD



BRENTWOOD

Contract #
BR3333A02

VICINITY MAP

SCALE : 1" = 2,000'

B-5

B-6

C-6

CO. P.G.

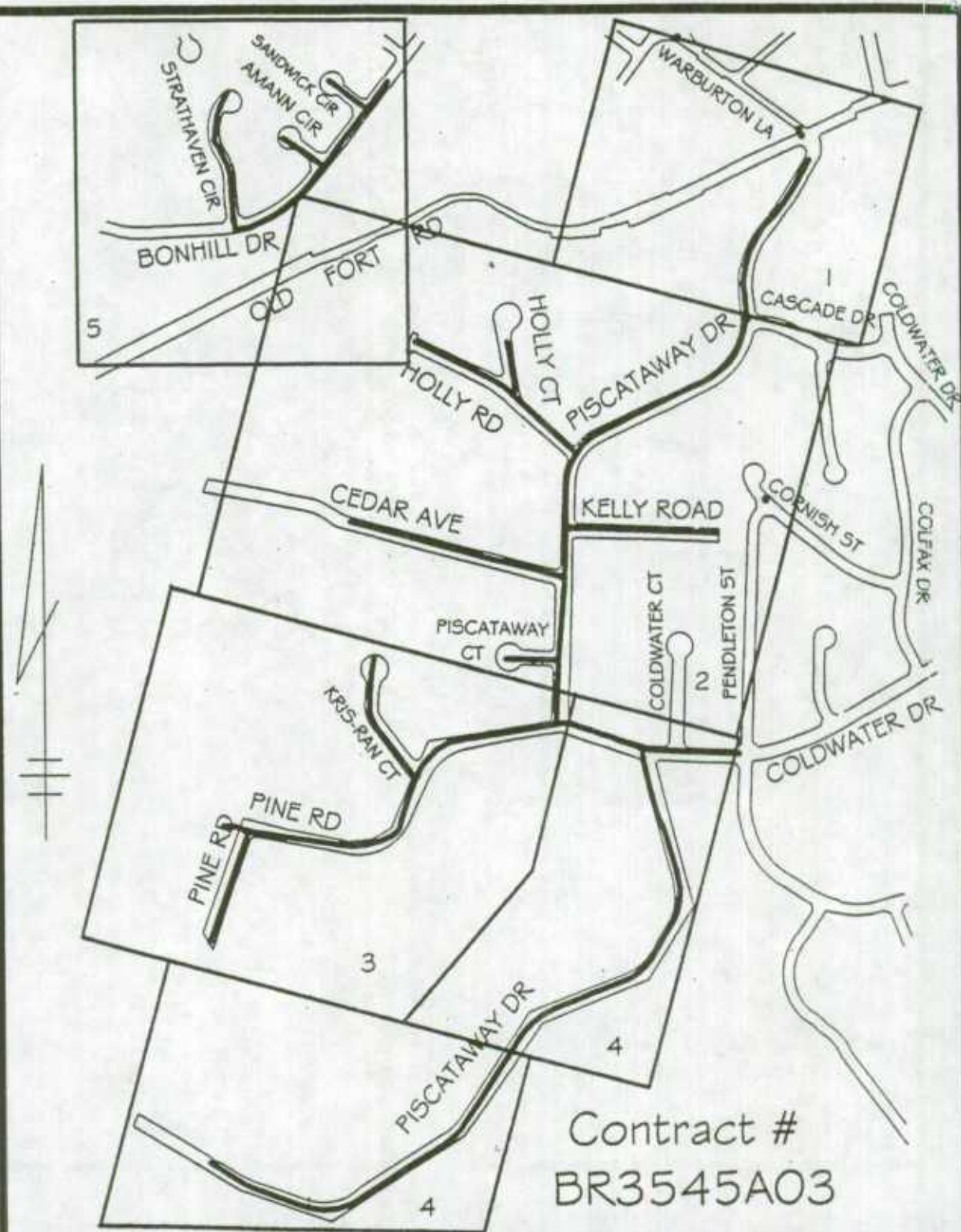
MAP PAGE 12

GRID

FOR LOCATION OF UTILITIES CALL
1-800-257-7777
48 HOURS IN ADVANCE OF ANY WORK

WSSC

FORT WASHINGTON



VICINITY MAP

SCALE : 1" = 1,000'

E-9, F-9,
E-10, F-10,
E-11, F-11

CO. PG

MAP PAGE 30

GRID

FOR LOCATION OF UTILITIES CALL
1-800-257-7777

1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
2 MARYLAND, That Section(s) 9-505(a)(14) through (19), respectively, of Article -
3 Environment of the Annotated Code of Maryland be renumbered to be Section(s)
4 9-505(a)(16) through (21), respectively.

5 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
6 read as follows:

7 Article - Environment

8 9-505.

9 (a) In addition to the other requirements of this subtitle, each county plan
10 shall:

11 (14) ALLOW FOR ONE CONNECTION BETWEEN A LOT CREATED BY A BONA
12 FIDE INTRAFAMILY TRANSFER UNDER § 8-1808.2 OF THE NATURAL RESOURCES
13 ARTICLE AND A STATE SEWER LINE BYPASSING THE LOT;

14 (15) ALLOW FOR ONE CONNECTION BETWEEN A STATE SEWER LINE
15 BYPASSING A PARCEL IF THE PARCEL EXISTED BEFORE THE CREATION OF
16 RESOURCE CONSERVATION AREAS UNDER § 8-1802.2 OF THE NATURAL RESOURCES
17 ARTICLE AND WAS EXEMPTED FROM THE 1-IN-20-ACRE DENSITY OF DEVELOPMENT
18 PERMITTED FOR PARCELS LOCATED WITHIN RESOURCE CONSERVATION AREAS;

19 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take
20 effect October 1, 2003.

5



STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS
1804 West Street, Suite 100, Annapolis, Maryland 21401
(410) 260-3460 Fax: (410) 974-5338

MEMORANDUM

To: Critical Area Commission

From: Julie V. LaBranche

Re: Panel Appointment for the Kent County Comprehensive Review

Date: March 5, 2003

The comprehensive review of the Kent County Critical Area program is nearing completion, and the County has approved program revisions and submitted them to the Critical Area Commission for review and approval. The proposed program revisions include new Critical Area provisions, amendments to existing Critical Area provisions in the Kent County Zoning Ordinance and amendments to the Kent County Critical Area Maps, including designation of Buffer Exemption Areas and changes to the Critical Area designation of specific parcels.

I have scheduled a public hearing on the proposed revisions for Wednesday, March 19, 2003 at 6:00 pm. in the Kent County Board of Commissioners meeting room, at Kent County Government Center, 400 High Street, Chestertown, Maryland.

I would like to recommend the following Commission members for the panel:

Bob Goodman (Department of Housing and Community Development), Chair
Lauren Wenzel (DNR)
Edwin Richards (Caroline County)
Margo Bailey (Kent County)

I have contacted all of the panel members, and they are all available. Pending the Commission's approval of the panel, I will move forward with advertising the hearing.

