

Chesapeake Bay Critical Area Commission
Department of Housing and Community Development
Crownsville, Maryland 21401
Conference Room 1100A
May 6, 1998

AGENDA

SUBCOMMITTEES

9:00a.m. - 11:30 a.m. Project Evaluation

Members: Langner, Bourdon, Giese, Goodman, Corkran, Foor, Blake, Cooksey, Hearn, Deitz, Castleberry, Graves, Wilde

MPA CSX/Cox Creek Storm Drain Project
Anne Arundel County

Lisa Hoerger, Environ. Specialist

St. Mary's College

Mary Owens, Chief, Pgm. Implem.

Boathouse Road Modification

Expansion of Charles Hall

SHA Rte 18A Improvements &

Greg Schaner, Planner

Cox Creek Bridge Replacement

SHA MD 392 Bridge Replacement

SHA MD 213 Bridge Replacement

Martin St. Airport Midfield

Development - MAA

DNR North Point State Park Clearing

Susan McConville, Planner

11:30 a.m. PANEL: Members: Whitson, Cooksey, Bourdon, Foor, Duket
Chesapeake Beach - Tidewater Homes

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

PLENARY MEETING

1:00 p.m. - 1:05 p.m.

Approval of Minutes
of April 1, 1998

John C. North, II, Chair

PROGRAM AMENDMENTS and REFINEMENTS

1:05 p.m. - 1:20 p.m.

REFINEMENT: Town of Denton
Denton Mapping Mistake

Roby Hurley, C.R.

1:20 p.m. - 1:35 p.m.

Chesapeake Beach
BEA Amendment
Designation of Tidewater Homes

Mary Owens, Chief, Pgm.
Implementation

OVER OVER OVER OVER OVER

PROJECT EVALUATION

1:35 p.m. - 1:55 p.m.

VOTE Anne Arundel County
Md. Port Administration
Storm Drain Project CSX/COX

Lisa Hoerger, Planner

1:55 p.m. - 2:30 p.m.

VOTE St. Mary's College

Mary Owens, Chief,
Pgm. Implementation

Boathouse Road Modification
Expansion of Charles Hall

2:30 p.m. - 2:40 p.m.

VOTE SHA Rte 18A

Greg Schaner, Planner

2:40 p.m. - 2:50 p.m.

VOTE SHA MD 392

Greg Schaner, Planner

2:50 p.m. - 3:00 p.m.

~~VOTE SHA MD 213~~

~~Susan McConville, Planner~~

3:00 p.m. - 3:10 p.m.

VOTE MAA Martin State Airport

~~Susan McConville, Planner~~

3:10 p.m. - 3:30 p.m.

~~VOTE DNR North Point State Park~~

Susan McConville, Planner

3:30 p.m. - 3:45 p.m.

Old Business

John C. North, II, Chairman

New Business

Wisconsin Co.

Next Commission Meeting June 3, 1998 Cecil County

Wi. Co. ————— he time

Chris (Hofus) - My Director - Wi. Co.

Re: Variance in 1988 approval
"Site specific".

openly as BEA pgm
Comp. review - staff notified
Co. that this needed wk. -

Chyd -

but 4 standards: applicant only has to meet 1 standard
because of "OR" - language different in
1990 revised pgm.

MAM - spoke - advice - conflict in Criteria. (No pgm. update
since original pgm.)

Chesapeake Bay Critical Area Commission
Department of Housing and Community Development
People's Resource Center
Crownsville, Maryland 21401

Approved

April 1, 1998

The Chesapeake Bay Critical Area Commission met at the Department of Housing and Community Development, Crownsville, Maryland. The meeting was called to order by Chairman John C. North, II with the following Members in attendance:

Blake, Russell, Worcester County
Bourdon, Dave, Calvert County
Myers, Andrew, Caroline County
Cooksey, David, Charles County
Corkran, William, Talbot County
Deitz, Mary, MDOT
Evans, Diane, A.A. County
Dr. Foor, James C., Queen Anne's Co.
Giese, William, Jr., Dorchester Co.
Duket, Larry F., Office of Planning
Johnson, Samuel Q., Wicomico Co.
Langner, Kathryn, Cecil Co.
Lawrence, Louise, Md. Dept. Of Agri.

Pinto, Robert, Somerset County
Hearn, J.L., Md. Dept. Of Environ.
Rogers, Dr. Sarah Taylor-DNR
Whitson, Michael, St. Mary's County
Goodman, Robert, DHCD
Williams, Roger, Kent Co.
Appel, Sherry for Wynkoop, Samuel,
Prince George's County

The Minutes of March 4, 1998 were approved as read.

Chairman North introduced Ms. Shara Alpert, Esquire, Associate of Marianne Mason, Esquire, Commission Counsel and Assistant Attorney General for DNR. Judge North also introduced the Commission's newest Circuit Rider, Tracey Greene.

Talbot County's Growth Allocation (Spurry) request was presented by Greg Schaner, Planner, CBCAC, for Concurrence with the Chairman's determination of Refinement. Talbot County is requesting 15.863 acres to be reclassified from RCA to LDA to increase the allowable density to accommodate a subdivision to include seven (7) lots, a 40-foot private road and required septic reserve areas for each lot. The County will have 2300.1 acres of growth allocation remaining out of 2554 acres. The Chairman's determination of this mapping change as a Refinement was supported by the Commission.

St. Mary's County's request for a Growth Allocation Text Amendment to their Zoning Ordinance was presented by Mary Owens, Chief Program Implementation, CBCAC for Concurrence with the Chairman's determination of Refinement. The County currently has three categories of growth allocation. The County is proposing this change to the single lot subdivision category of growth allocation which has a provision in it that requires a parent parcel be a minimum of six acres. This provision is difficult to implement and does not really promote any of the goals of the Critical Area. This request was to change the provisional sentence under eligibility requirements "(a) The property to be subdivided includes not less than six (6) acres;" be deleted. The Commission supported the Chairman's determination of Refinement.

Guidance regarding Queen Anne's County's Transfer Development Rights Program was presented for a VOTE by Ren Serey, Executive Director, CBCAC. Mr. Serey told the Commission that two and one half years ago when Queen Anne's County presented its Transfer Development Rights (TDR) program provisions to the Commission, they asked that if the Commission ever changed its position on the minimum elements of a TDR program that the County be advised. This change being recommended by Critical Area staff and the Program Subcommittee is that the eight-acre upland provision set out in the Critical Area Act does not apply to TDR's and does not control development undertaken with TDR's. Further, it is not required by the Act or Criteria, or consistent with the goals of the Critical Area Program. The eight-acre provision in the Act applies solely to traditional development within the RCA, where density, absent other factors, is limited to one dwelling unit per 20 acres. The purpose of the TDR program is to protect large areas of tidal wetlands, forests, streams, ravines, buffers, steep slopes, nontidal wetlands another sensitive habitats. Providing local jurisdictions with a broad-based planning tool, such as the TDR program unrestricted by the eight-acre requirement, would allow them to plan comprehensively for the protection of these resources. Commission Counsel Marianne Mason provided guidance on separating local TDR programs from the eight-acre requirement based on a Supreme court case covering TDRs in the Lake Tahoe region. There was much discussion among the Commission members regarding this issue. Mike Whitson moved that the Commission advise Queen Anne's County that their request for an interpretation of their proposed Transfer Development Rights Programs with respect to the Critical Area be transmitted to the County in accordance with the Staff report (attached to and made a part of these minutes). The motion was seconded by Dr. Sarah Taylor Rogers and carried unanimously.

The Town of Princess Anne's request for approval of a storm drain rehabilitation project wetpond and outfall in the Buffer to protect Federally endangered marsh plantings was presented by Tracey Greene, Circuit Rider, CBCAC for a Vote. Tracey is the Commission's newest Circuit Rider. Regina Esslinger, Chief Project Evaluation, CBCAC stated that this proposed project is being presented as a "conditional approval" under Chapter 6 of the Commission's regulations for State and local government projects, which means that what is being proposed isn't permitted under the Criteria. Ms. Esslinger explained that the circumstances that the applicant would have to justify in order to have the approval are broadly, 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 for being implemented; 2) that the project or program otherwise provides substantial public benefits to the Chesapeake Bay Critical Area Program; 3) that the project or program is otherwise in conformance with this subtitle. Ms. Greene described the technical details of the project. The conditional approval request was found to be consistent with COMAR 27.02.06, the Commission's regulations for Conditional Approval of State or local Agency Programs in the Critical Area. Kay Langner moved for conditional approval of the stormdrain outfall project in Princess Anne with staff review of the water quality structure at the outfall. The motion was seconded by Dave Bourdon and carried unanimously.

OLD BUSINESS

Ren Serey, Executive Director, CBCAC told the Commission that Anne Arundel County asked that their growth allocation request for Homeport Farm be put on hold for an undetermined time.

Marianne Mason, Esquire, Assistant Attorney General, DNR and Commission Counsel updated the Commission on legal affairs. She said that the Citrano case (an appeal of a denial of a variance for a free-standing in the Buffer) has been reinstated by the court of Special Appeals after it was dismissed because the applicant, is attorney, Mr. Bereano, did not file his Brief. He prostrated himself and asked for mercy and the court has seen fit to grant mercy. Mr. Berieno's brief is due today and Ms. Mason's is due the end of April with an argument to be held in June.

In Wicomico County, a hearing was held in a case of North vs. Wicomico Board of Appeals involving Mr. and Mrs. Kelly who received a variance from the Wicomico Board of Appeals for a pool in the Buffer. The Critical Area Commission appealed that decision and the Court remanded the case to the Wicomico Board of Appeals for findings under their variance ordinance.

Ms. Mason reported that the most consuming legal action this past month occurred in St. Mary's County. A property owner who was subject to a 1993 Consent Decree which allowed specific development in the Buffer, and in the Commissions view, also prohibited additional development in the Buffer. The property owner and the County took a different view of the Consent Decree and the County issued a permit for additional development in the Buffer. The Commission got a temporary restraining order to stop the development and after two hearings on the merits before Judge Raley, he granted all the relief asked for by the Commission including a permanent injunction against anyone further disturbing the property. He ordered the land to be restored to its preconstruction condition and declared the permit that the County issued to be null and void and of no effect and ordered the property owner to pay the costs of enforcement.

In Dorchester County, several cases are being pursued in the Circuit Court asking for default judgements because the applicants have not responded to the Commission's appeals. These are cases in which the Board has granted variances without making any findings.

NEW BUSINESS

Chairman North invited the Commission members for a tour of the Baltimore harbor during the Whitbread festivities. Those wishing to tour the harbor will be contacted when the date of the tour is set and the details finalized.

Q. Johnson announced that on April 25th, the Shad festival will be held in Vienna.

The next Commission meeting will be held in Crownsville with upcoming out of town meetings in the spring to be announced.

There being no further business, the meeting adjourned.

Minutes submitted by Peggy Mickler, Commission Secretary.

CHESAPEAKE BAY CRITICAL AREA COMMISSION
STAFF REPORT
FINAL
May 6, 1998

APPLICANT: Town of Denton Planning and Zoning

PROPOSAL: Mapping Mistake to convert 21.88 Acres of Limited Developed Area to an Intensely Developed Area

JURISDICTION: Town of Denton

COMMISSION ACTION: Review for Concurrence

STAFF RECOMMENDATION: Concurrence with Chairman's determination

STAFF: Dawnn McCleary & Roby Hurley

APPLICABLE LAW REGULATION: Natural Resources Article 8-1802 and COMAR 27.01.02.07(A) & (C)

Concurrence

DISCUSSION:

The Town of Denton has requested that the Commission consider approximately 21.88 acres of Limited Developed Area (LDA) designated land near the downtown area of Denton as a mapping mistake and review the proposed corrections as a refinement to the Town's program. The Town contends that the LDA designation was not consistent with the LDA mapping standards included in the Criteria and used by the Town. The mapping mistake is proposed as a refinement because the proposed changes and the effect of the changes on the use of land and water in the Critical Area are consistent with what is currently allowed by the Chesapeake Bay Critical Area Program.

The Critical Area Criteria (COMAR 27.01.02.03) describe IDAs as those areas where residential, commercial, institutional and industrial, land used predominated and where little natural habitat occurs. The criteria state that these areas shall have at least one of the following features on December 1, 1985:

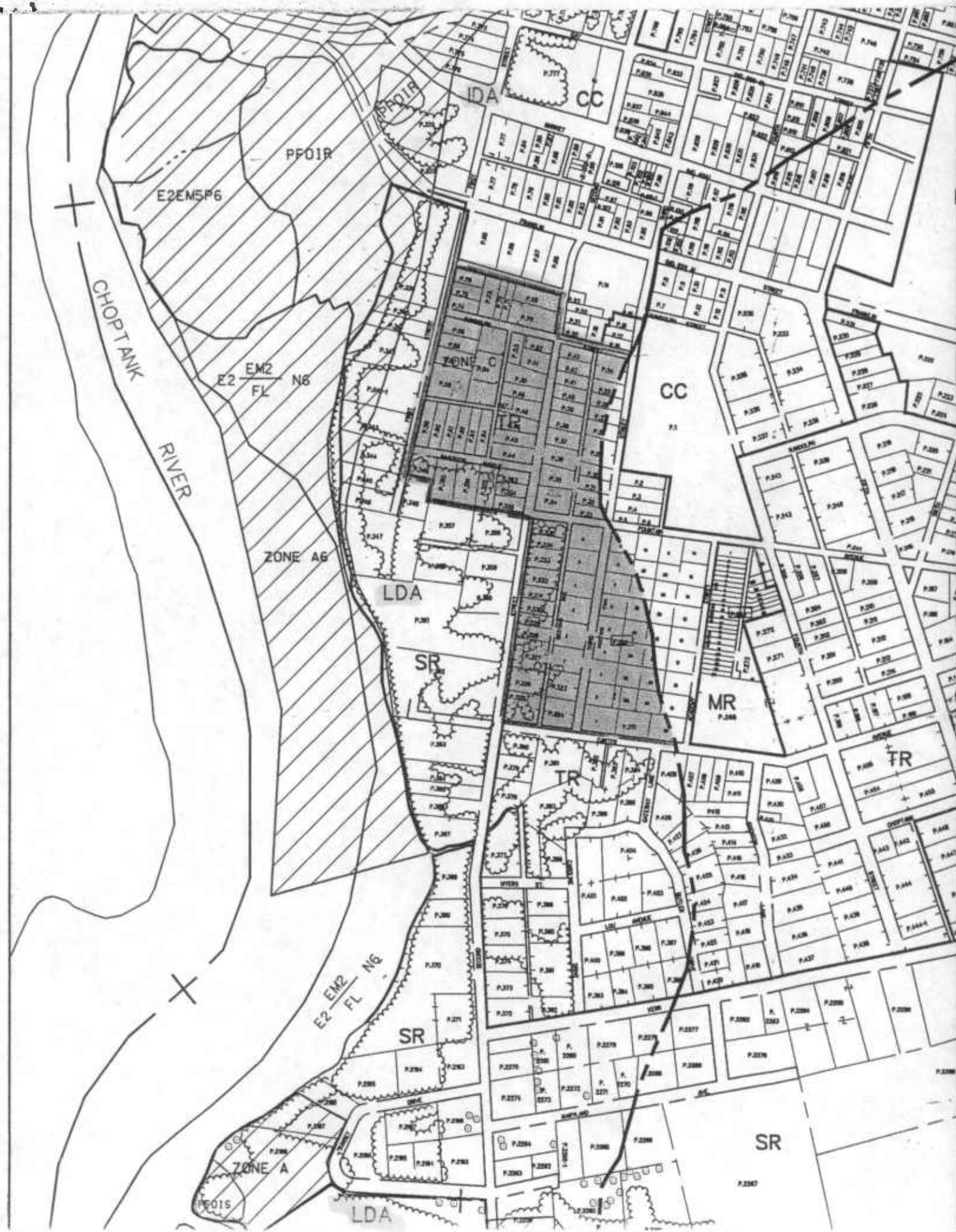
1. Housing density equal to or greater than four dwelling units per acre;
2. Industrial, institutional or commercial uses are concentrated in the area; or
3. Public Sewer and water collection and distribution systems are currently serving the area and housing density is greater than three dwelling units per acre.

Continued, Page Two
Denton Mapping Mistake
Staff Report
May 6, 1998

For the following reasons, the Town of Denton proposes that a mistake occurred in the original mapping and that the area should have been mapped as IDA for the following reasons:

1. Public sewer and water were in place as of Dec. 1, 1985;
2. Housing density was approximately 4.6 dwelling units per acres;
3. The area was part of a larger area where industrial, institutional and commercial uses were concentrated; and,
4. There was little natural habitat in the area.

On April 6, 1998, the Mayor and Town Commissioners approved an ordinance amending the Town's Critical Area maps to change the designation of 21.88 acres from LDA to IDA. A public hearing was held on April 20, 1998, and there was very little public comment on the proposed change. The new ordinance revokes the Town's existing Critical Area map and adopts a new map produced by George, Mile, and Buhr and dated March 1998.



CHOPTANK RIVER

PFO1R

E2EM5P6

E2 EM2 FL N6

ZONE AG

LDA

SR

IDA

CC

CC

MR

FR

ZONE A

LDA

SR

P.015

P.207

MD 18A Improvements and Cox Creek Bridge Replacement
Recommended Conditions

- (1) SHA is required to restore an area equivalent to 37,112 square feet with mitigation plantings. SHA must confirm that the following occurs:
 - An area equal to 37,112 square feet is maintained in a naturally-vegetated state without impervious surfaces;
 - Trees and shrubs are planted according to the following credit system: container-grown trees will be credited 100 square feet each, and seedling / shrubs will be credited 25 square feet each;
 - All plantings are native species;
 - All plantings are completed within one (1) calendar year of the CBCAC's approval of this project;
 - Progress reports are provided to the CBCAC staff contact once every three months; and
 - Confirmation of the completion of all required Buffer plantings.
- (2) SHA must avoid in-stream construction between June 1 and September 30 and between December 16 and March 14, inclusive of any year.
- (3) SHA receives final approval from MDE prior to commencing construction for:
 - All permanent and temporary wetland impacts and corresponding mitigation, and
 - Sediment & erosion control plans.

\GLS

SHA File: MD 18A Improvements /
p:\wpdata\dorchstr\state\marshy2.wpd

MD 392 - Marshyhope Creek Bridge Replacement
Recommended Conditions

- (1) SHA is required to provide mitigation funds to the Watershed Restoration Division of the Department of Natural Resources equivalent to the amount needed to plant 14,100 square feet of native forest vegetation. SHA must confirm with the CBCAC that the following occurs:
 - An area equal to 14,100 square feet exclusively in the 100-foot Buffer is maintained in a naturally-vegetated state;
 - Mitigation monies should be determined by the following credit system: container-grown trees will be credited 100 square feet each, and seedlings / shrubs will be credited 25 square feet each;
 - Cost of establishment must be factored into total mitigation monies;
 - All plantings are native species;
 - All plantings are completed within one (1) calendar year of the CBCAC's approval of this project;
 - Progress reports are provided to the CBCAC staff contact once every three months; and
 - Confirmation of the completion of all required Buffer plantings.

- (2) SHA must avoid in-stream construction between February 15 and June 15, inclusive of any year.

- (3) SHA receives final approval from MDE prior to commencing construction for:
 - All permanent and temporary wetland impacts and corresponding mitigation, and
 - Sediment & erosion control plans.

\GLS

SHA File: Replacement Bridge MD 392 on Marshyhope Creek - 10-98
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K.H. - motion as prep.
Goodman - sec. c/r

CHESAPEAKE BAY CRITICAL AREA COMMISSION

**STAFF REPORT
May 6, 1998**

APPLICANT: St. Mary's College
PROPOSAL: Expansion of Charles Hall
JURISDICTION: St. Mary's County
COMMISSION ACTION: Vote
RECOMMENDATION: Approval
STAFF: Mary Owens
**APPLICABLE LAW/
REGULATIONS:** COMAR 27.02.05, State Agency Actions Resulting in
Development on State-Owned Lands

DISCUSSION:

This project involves the expansion of the existing dining facility, Charles Hall, at St. Mary's College. The project is needed to serve the expanding student population which is anticipated to reach 1800 students in the year 2000. The project involves a two story addition (approximately 26,000 square feet) to the existing building, modifications to the existing parking lot to accommodate the new addition, alterations to an existing courtyard and exterior planters, and the installation of two best management practices for stormwater management.

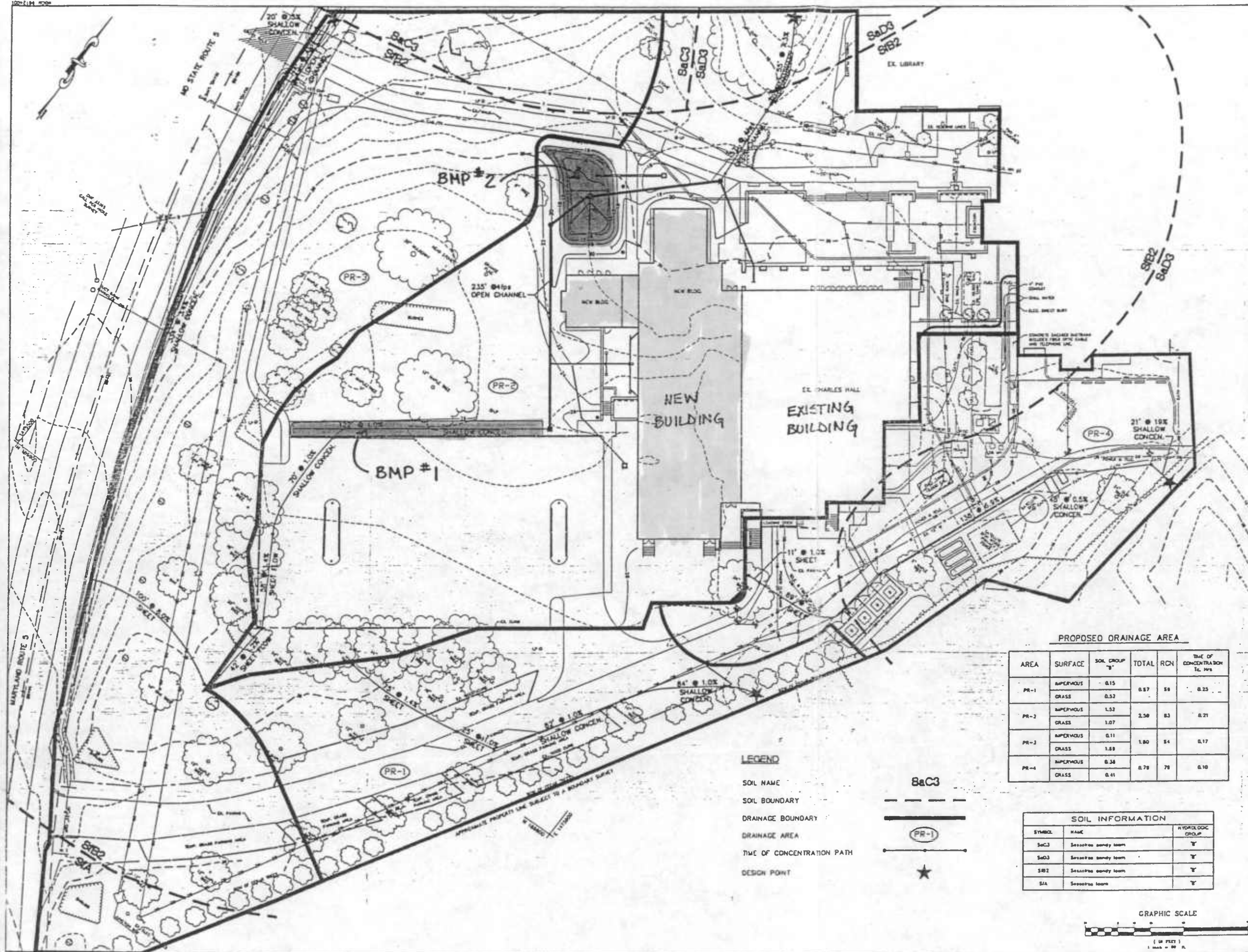
This project involves the removal of approximately 23 trees. Many of the trees are located in the existing planters and will be replaced in the new planters. Approximately eight trees are located in the area where the addition will be constructed. Mitigation planting for these trees will be installed along the surface drainageway that discharges into St. John's Pond. Additional planting will be provided in the bioretention areas proposed for stormwater management.

The applicant's engineer has provided 10% Rule calculations for the removal of the required 2.64 pounds of phosphorous. Two best management practices are proposed. The first BMP, located north of the parking lot, will function as an infiltration trench, but has been designed as a modified bioretention facility as a back-up. If the runoff is not infiltrating at a sufficient rate, a cap can be removed from the stormwater inlet, and the underdrain will convey water to the closed storm drain. It has been designed to accommodate 1.25 inches of impervious area runoff. The second BMP, located west of the building has also been designed as a modified bioretention facility. This facility can accommodate 2.01 inches of impervious area runoff. Both of these

BMPs will discharge into a surface drainage way that discharges into St. John's Pond. This project involves the reconstruction of this surface drainageway to eliminate some erosion problems and to create a nontidal wetland. The nontidal wetland will function to remove sediments from untreated stormwater running into St. John's Pond, will provide some additional nutrient removal from treated runoff, will reduce stormwater velocity, and will provide habitat and cover for wildlife and waterfowl. A permit from the Maryland Department of the Environment will be required for this component of the project which involves minor impacts to the tidal wetlands surrounding St. John's Pond.

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.

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



LEGEND

SOIL NAME

SOIL BOUNDARY

DRAINAGE BOUNDARY

DRAINAGE AREA

TIME OF CONCENTRATION PATH

DESIGN POINT

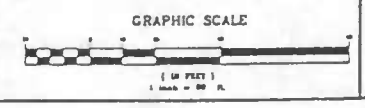


PROPOSED DRAINAGE AREA

AREA	SURFACE	SOIL GROUP	TOTAL	RCN	TIME OF CONCENTRATION (in hrs)
PR-1	IMPERVIOUS	0.15	0.67	58	0.25
	GRASS	0.52			
PR-2	IMPERVIOUS	1.52	2.50	63	0.21
	GRASS	1.07			
PR-3	IMPERVIOUS	0.11	1.80	54	0.17
	GRASS	1.69			
PR-4	IMPERVIOUS	0.38	0.78	70	0.10
	GRASS	0.41			

SOIL INFORMATION

SYMBOL	NAME	HYDROLOGIC GROUP
SaC3	Sesothus sandy loam	V
SaD3	Sesothus sandy loam	V
Sb2	Sesothus sandy loam	V
S1A	Sesothus loam	V



CHARLES HALL EXPANSION
ST. MARY'S COLLEGE OF MARYLAND

PROPOSED DRAINAGE AREA MAP

DATE: FEBRUARY 20, 1998
 SCALE: 1" = 20'
 DRAWING TITLE: C-11

SUBMITTALS
 REVISIONS
 THOMAS SICKLE ASSOCIATES
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 ANNAPOLIS, MARYLAND 21403
 TEL: 410-291-1000
 FAX: 410-291-1001
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 MICHAEL VEITCH/DRS
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 JAMES MADON CIVIL ENGINEERING
 10000 WOODBURN ROAD
 ANNAPOLIS, MARYLAND 21403
 TEL: 410-291-1000
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K.L. - approval as prop.
B. Goodman - sec.

C/M

CHESAPEAKE BAY CRITICAL AREA COMMISSION

**STAFF REPORT
May 6, 1998**

APPLICANT: St. Mary's College
PROPOSAL: Boathouse Road Modification
JURISDICTION: St. Mary's County
COMMISSION ACTION: Vote
RECOMMENDATION: Approval
STAFF: Mary Owens
**APPLICABLE LAW/
REGULATIONS:** COMAR 27.02.05, State Agency Actions Resulting in
Development on State-Owned Lands

DISCUSSION:

This project involves the relocation and reconstruction of an existing dirt driveway that provides access to the boathouse at St. Mary's College. The project is needed in order to provide improved access for the handicapped, improve access for deliveries by service vehicles, and correct an ongoing erosion problem by directing street runoff to roadside swales and restricting vehicular access to lawn areas around the Boathouse. The existing dirt driveway is located in a natural drainage swale and contributes to accelerated erosion along the shoreline and uncontrolled runoff into the St. Mary's River.

The project involves the removal of an existing split rail fence and brick gate posts, the installation of a 12 foot wide gravel access road, installation of a new guard rail structure and gate, installation of an infiltration trench, and the installation of a handicapped accessible walkway. The new access road will be located outside of the natural swale, and a portion of the driveway and a handicapped accessible parking space will be located within the 100-foot Buffer.

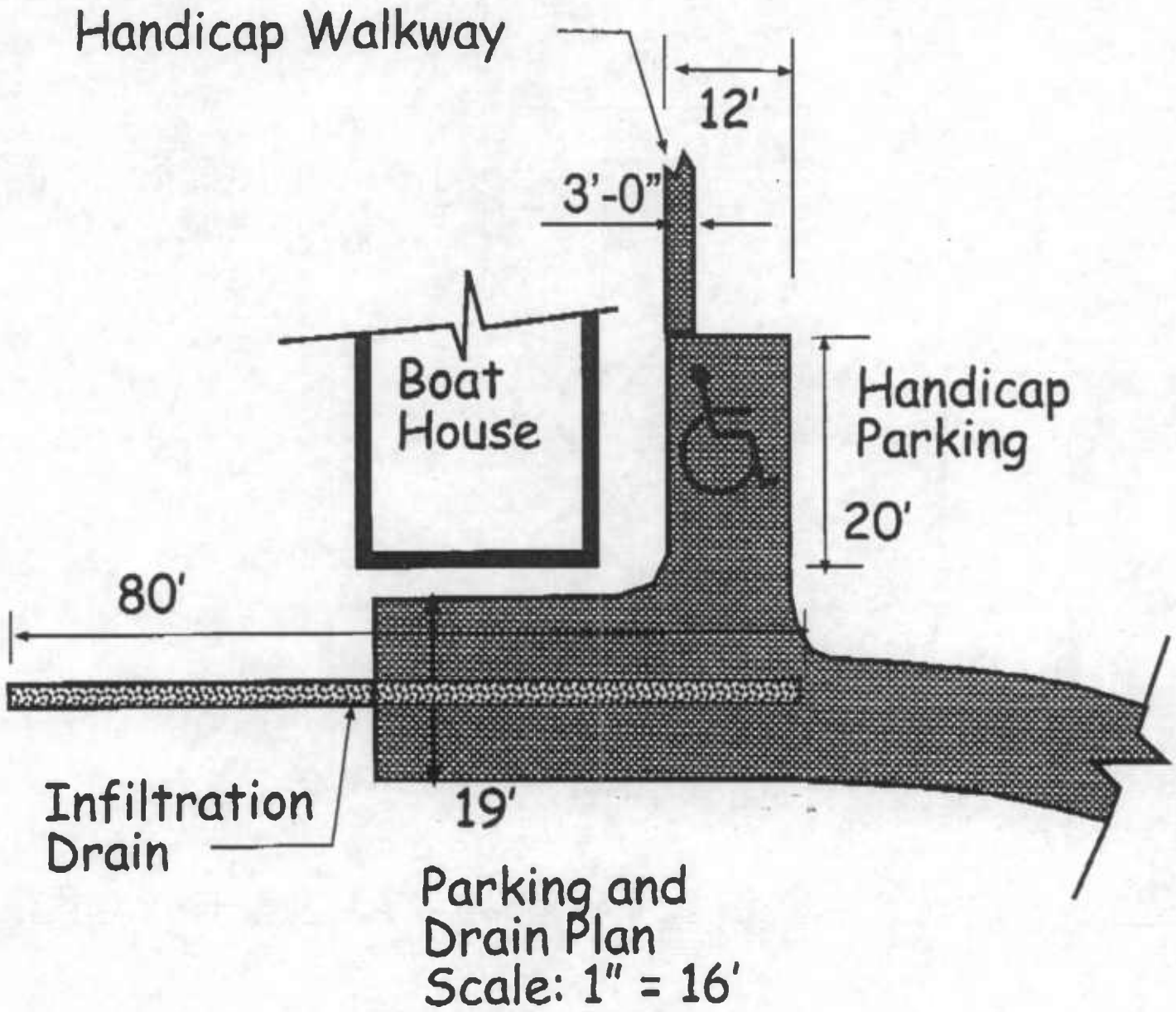
This project does not involve any forest clearing, although some impacts to the root systems of existing trees are anticipated to accommodate the installation of the infiltration trench. Efforts will be made to protect existing trees during construction.

Although the installation of best management practices is not necessary for compliance with the 10% Rule for pollutant reduction, the applicant is proposing to install a sand filter to treat stormwater run-off from the new road and parking area. The sand filter will be sized to

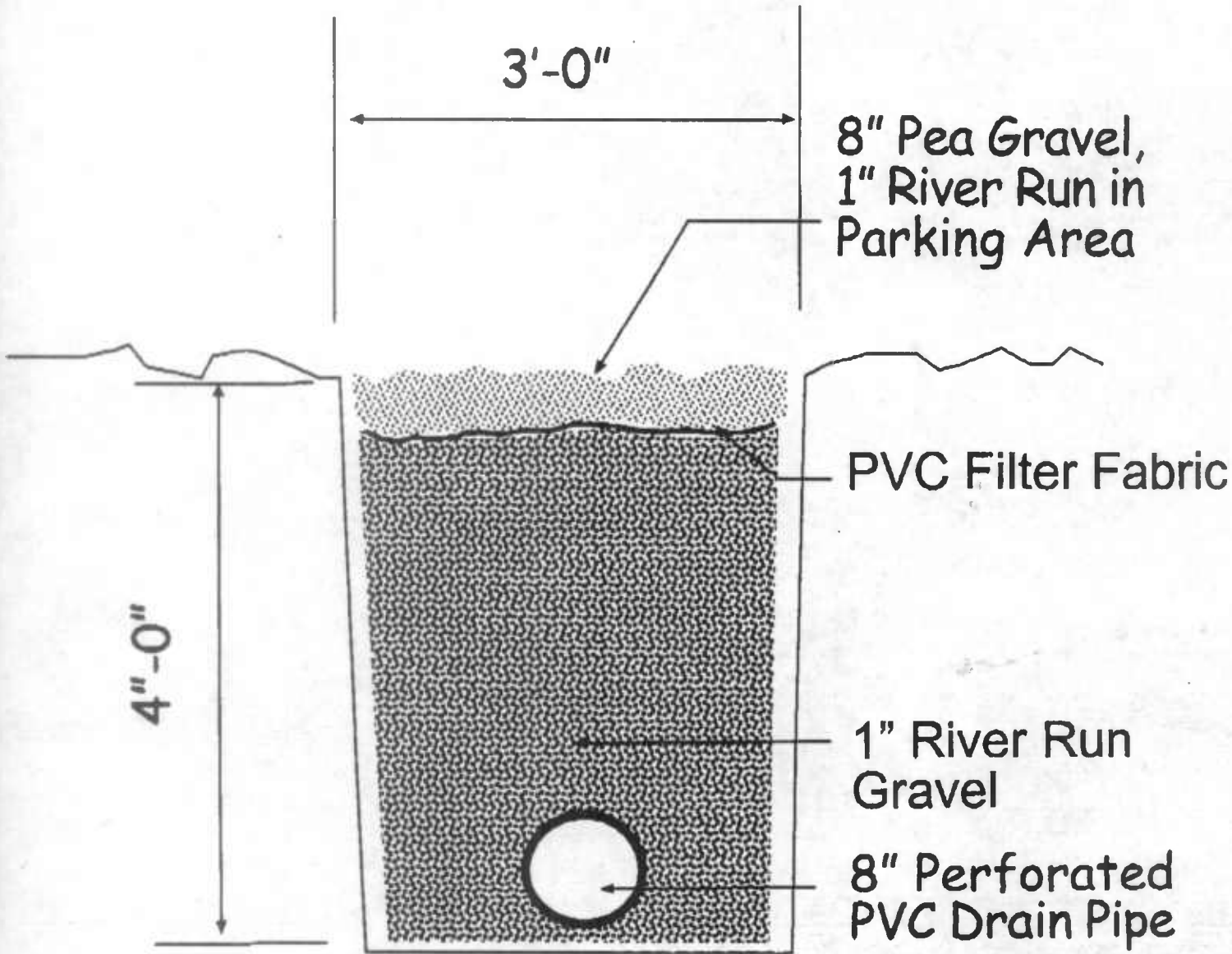
accommodate the first ½" of runoff.

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 construction. Sediment and erosion control measures will be installed and maintained during construction.

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

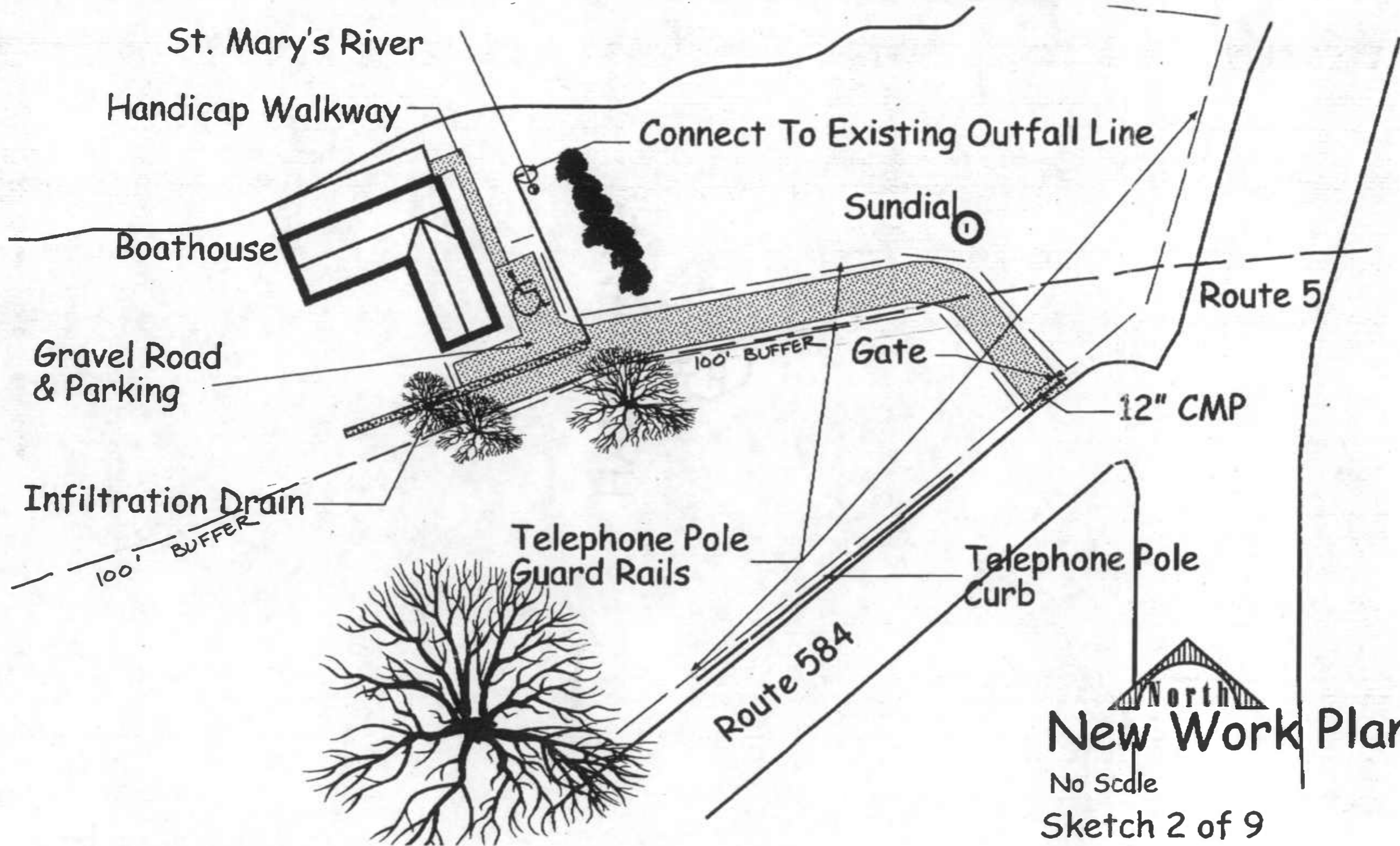


Sketch 3 of 9



Infiltration Drain
Not To Scale

Sketch 4 of 9



St. Mary's River

Handicap Walkway

Connect To Existing Outfall Line

Boathouse

Sundial

Gravel Road & Parking

Route 5

100' BUFFER

Gate

12" CMP

Infiltration Drain

100' BUFFER

Telephone Pole Guard Rails

Telephone Pole Curb

Route 584



New Work Plan

No Scale

Sketch 2 of 9

Ken M. Carter - wetlands delineation - for applicant dev's
 Mr. Ken Mueller - Spoke ~~applicant~~ developer
 Tom Deming - atty. for Ches. Beach Joint Venture - in applicant
 Sergeant to

CHESAPEAKE BAY CRITICAL AREA COMMISSION

STAFF REPORT
~~November 5, 1997~~ May 5, 1998

Contest MDE's re-designation of wetlands. - opposes project.

Contests project

APPLICANT: Town of Chesapeake Beach
PROPOSAL: Buffer Exemption Area
 Tidewater Homes
JURISDICTION: Chesapeake Beach
COMMISSION ACTION: VOTE
PANEL RECOMMENDATION: Pending
STAFF: Mary Owens
APPLICABLE LAW/REGULATIONS: COMAR 27.01.09.01

Contents that Mueller is being considered differently that prop. owners for various in the Buffer, by allowing ad hoc whittling of Buffer for parking area. Wants Commission to re-consider decision of policy for perm. amend + variance.

SUMMARY:

Legal issue - Chg. to zoning map to a mistake for legal question of variance.

The Town is requesting approval of a map amendment to designate an undeveloped 5.2 acre property within the Town of Chesapeake Beach as a Buffer Exemption Area (BEA). The site consists of 2.4 acres of upland and 2.8 acres of private tidal and nontidal wetlands. In January, 1998, the applicant requested to have the tidal wetlands on the property remapped because they did not appear to meet the regulatory definition of tidal wetlands. A survey was conducted and almost the entire area was remapped as nontidal wetlands. In accordance with the Critical Area Criteria, the Buffer must be expanded to include contiguous sensitive areas such as steep slopes, hydric soils, or highly erodible soils, whose development or disturbance may impact streams, wetlands or other aquatic environments. On this site, the Buffer was expanded to include the nontidal wetlands. Although the part of the property bordering the Chesapeake Bay had been designated as a BEA, the expanded Buffer area of the property had not been previously designated. The Town is requesting a BEA designation for that portion of the property. Approximately 1.2 acres of the property are currently developable without the additional BEA designation.

M.A.M. - legal issue - no issue

(# 2, side 2 7.9)

advice
 Coe/Koey. Approval & Conditions: Larry Duket second

The Town is requesting the BEA designation in order to accommodate the development of the property for 80 apartment units, ten thousand square feet of commercial office space, and approximately 192 parking spaces. Attachment A is a site plan for the proposed project.

The developer has also applied to the Maryland Department of the Environment for authorization to permanently impact 18,314 square feet of nontidal wetlands and 21,610 square feet of wetland buffer with fill. In addition, 28,585 square feet of emergent nontidal wetlands will be impacted for the conversion of phragmites to native vegetation. These impacts are necessary in order to construct a portion of the 108,000 square foot building (eight stories at 13,500 square feet per floor) and the 78,000 square feet of roads and parking area. Approximately 18,314 square feet of the expanded Buffer will be impacted by the filling of nontidal wetlands.

DISCUSSION:

Section 27.01.09.02 of COMAR states that local jurisdictions may request an exemption of certain portions of the Critical Area from the Buffer requirements where it can be sufficiently demonstrated that the existing pattern of residential, industrial, commercial, or recreational development in the Critical Area prevents the Buffer from fulfilling the following functions:

1. Provide for the removal or reduction of sediments, nutrients, and potentially harmful or toxic substances in runoff entering the Bay and its tributaries;
2. Minimize the adverse effects of human activities on wetlands, shorelines, stream banks, tidal waters, and aquatic resources;
3. Maintain an area of transitional habitat between aquatic and upland communities;
4. Maintain the natural environment of streams; and
5. Protect riparian wildlife habitat.

Most of the areas that the Commission has reviewed and designated as BEAs since the adoption of this policy have consisted of residential development on relatively small parcels. The Commission's policy specifically addresses areas that include lots of record with an existing single family dwelling located at least partially within the Buffer and being less than 200 feet in depth. Some larger commercial properties have been designated as BEAs; however, in most cases, these properties were already developed and were undergoing some form of redevelopment.

The subject property in Chesapeake Beach is somewhat different from the "typical"

properties that have been proposed by local governments for designation as a BEA. The property is a single, relatively large lot, and it is currently undeveloped. Traditionally, the evaluation of the “existing pattern of residential, industrial, commercial, or recreational development” and the evaluation of “Buffer function” have been confined to the site, lots, or parcels being proposed for BEA designation and those properties adjacent to it. In most cases, the majority of the area is developed and the BEA designation is proposed to accommodate reasonable expansion of existing structures or infill development of smaller vacant parcels. Although this approach has been used in the past, neither the Law or the Commission’s policy defines the scope of “existing pattern of development”, therefore allowing a broader interpretation.

The property is currently undeveloped with natural vegetation within the 100-foot Buffer and the expanded Buffer. The Buffer on the property appears to be fulfilling the functions set out in COMAR 27.01.09.01. Although Buffer functions are being performed on the site, the Town is requesting that the Commission use a broader interpretation and look at the existing pattern of residential, industrial, commercial or recreational development **in the Town as a whole** and how this pattern generally prevents the Buffer throughout the Town from fulfilling its functions.

In accordance with the intent of the Commission’s policy on BEAs, the Commission is charged with determining whether a BEA designation of the expanded Buffer of the property “accommodates limited use of the shoreline areas in certain situations while protecting water quality and wildlife habitat to the extent possible.” If the Commission determines that the property can be designated as a BEA, then the local jurisdiction shall propose other measures for achieving the water quality and habitat protection objectives of the policies.

If the property is designated as a BEA, then the following provisions of the Commission’s BEA policy must apply:

1. New development activities will not be permitted in the BEA unless the applicant can demonstrate that there is no feasible alternative;
2. New development shall minimize the shoreward extent of intrusion into the BEA;
3. Development may not impact any Habitat Protection Areas other than the Buffer;
4. No natural vegetation may be removed in the Buffer except that required by the proposed construction. The applicant will be required to maintain any other existing natural vegetation in the Buffer; and
5. Any development in the BEA requires mitigation/ enhancement/ or offsets.

The Town proposes that the Tidewater Homes project is in accordance with the Commission's policy for BEAs, regarding new development activities in the Buffer Exempt Area, because the applicant has stated that there is no feasible alternative, and this project would not be economically viable without the BEA designation. With regard to minimizing the shoreward extent of intrusion into the Buffer Exempt Area, the Town and the developer feel that reasonable efforts have been made to reduce the scale of the project in order to minimize the area of wetland filling and Buffer impacts. The developer has proposed the construction of a retaining wall to minimize fill, reduced the number of parking spaces and eliminated a portico and paved turnaround.

In developing the policy on BEAs, the Commission determined that any development in a BEA would require some type of Buffer mitigation, enhancement, or offsets in addition to the establishment of some type of Buffer on the site. The policy requires that "Natural vegetation of an area twice the extent of the impervious surface [in the Buffer Exempt Area] must be created in the Buffer Exemption offset area or other location as may be determined by the local jurisdiction." The Commission acknowledged that the designation of Buffer Exemption Areas, while accommodating development in the Buffer under certain circumstances, should result in an overall net increase in the area of forested Buffer within a jurisdiction or municipality.

The applicant's proposal will involve approximately 13,000 square feet of new impervious surface in the Buffer Exempt Areas of the site. The Town does not currently have a Buffer Exemption offset area identified, and because most of the Town's waterfront is already intensely developed, the identification of a suitable site (or sites) may present a challenge.

The Chesapeake Beach Panel, Commission staff, and MDE staff have worked closely together on this complex project in order to carefully review all of the issues, evaluate the proposed mitigation, and identify mechanisms to insure that the spirit and intent of the Critical Area Program are met. If the Panel determines that the Town's request for BEA designation should be approved, the following conditions are suggested::

Handwritten notes: A circled "22" with "9.6" written below it, and a signature "S.M." to the right.

Development on this site shall be in accordance with the final conceptual site plan prepared by Tidewater Homes and received by the Commission on April 16, 1998. Designation of this property as a Buffer Exemption Area is applicable only to the Tidewater Homes project that has been presented as part of the Town's request for this amendment. + BEA - des. is granted & shall be in effect

The developer shall work with Commission staff during the design phase of the building and site to further minimize the extent of intrusion into the BEA. Buffer mitigation shall be based on impervious surface area within the Buffer and

expanded Buffer as shown on the final design plans.

3. The developer shall provide the following mitigation:

- a. The extent of the parcel shoreward of the new development shall be required to remain, or shall be established and maintained, in natural vegetation; and
- b. Natural vegetation of an area twice the extent of the impervious surface must be created in the Buffer Exemption offset area or other location as determined by the local jurisdiction.

The location of the mitigation planting shall be identified and approved by Commission staff prior to the Town's approval of the project. Insofar as possible, mitigation plantings should be located on the project site.

4. Wetland areas of the site shall not be used for the treatment of stormwater quality; however, the discharge of treated stormwater into the wetlands may be permitted.

5. The Town, the developer, and the Critical Area Commission shall execute a binding agreement regarding the operation of the tide gate in order to ensure that it will be operated in an environmentally sound manner. The tide gate shall remain in the "open position" whenever the tide elevation is less than 2 feet above mean low water (as specified in the original U.S. Army Corps of Engineers Permit NABOP-RW [Town of Chesapeake Beach] 86-1353-3 dated Dec. 30, 1986). The "open position" is defined as the bottom of the gate located six inches above mean high tide. The binding agreement shall be executed prior to completion of the mitigation project.

CS

CMY



BLOCK 4
BAY CREST SUBDIVISION
AAH 14/231

RE-SUBDIVISION OF BLOCK 10
BAY CREST SUBDIVISION
PLAT BOOK ABE ABE 2/123

$\Delta = 057138^\circ$
 $T = 115.82$
 $OD = N 0211127^\circ W$
231.01'

$\Delta = 0550619^\circ$
 $T = 59.25'$
 $OD = N 0320241^\circ E$
138.47'

NOTES

1) TOPOGRAPHY SHOWN HEREON TAKEN FROM A 1988 PHOTO

CHESAPEAKE BAY

K.L. - Cond - appw as prog.
Pinto - secret

C/2

Chesapeake Bay Critical Area Commission

STAFF REPORT

May 6, 1998

APPLICANT: Maryland Port Administration, Office of Harbor Development

PROPOSAL: New Storm Drain Project at the Proposed CSX/Cox Creek Dredged Material Containment Facility - proposed stormwater pond in the expanded Buffer absent alternative locations

JURISDICTION: Anne Arundel County

COMMISSION ACTION: Vote

STAFF RECOMMENDATION: Conditional Approval

STAFF: Lisa Hoerger

APPLICABLE LAW/REGULATIONS: COMAR 27.02, Development in the Critical Area Resulting From State and Local Agency Programs; Chapter 06, Conditional Approval of State or Local Agency Programs in the Critical Area ; .01 Criteria

DISCUSSION:

The Maryland Port Administration (MPA) requests approval of a storm drain project at their CSX/Cox Creek Dredged Material Containment Facility in northern Anne Arundel County. The site is approximately one mile south of the Francis Scott Key Bridge off of the Patapsco River.

The CSX site was purchased by the MPA in 1993 and the Cox Creek site was purchased in 1996. The MPA intends to reconstruct and stabilize the containment cells on each property to receive dredge material from the Baltimore Harbor channels. Before reconstruction of the cells begins, the existing stormwater system, which serves an 111-acre drainage area, needs to be re-routed. Currently, the storm drain system outfalls into the Cox Creek cell.

In order to correct this problem, the MPA plans to install a storm drain interceptor pipe and related manholes and outfall structure for diversion of the stormwater. The outfall will terminate at the northern end of the property just above the Cox Creek cell. The limits of disturbance (LOD) will be 3.92 acres. Approximately .37 acres will be cleared within the LOD and 500 cubic yards of fill material will be placed near the headwall for grading. The outfall will consist of approximately 140 cubic yards of riprap and bedding stone.

Stormwater quality will be addressed by the MPA through the use of a stormwater management pond that will provide storage and quality improvement for the first half inch of runoff. The proposed location of the pond will be located in the expanded Buffer for hydric soils. Therefore, the MPA seeks conditional approval from the Commission for this project.

Mitigation will be provided for impacts to the nontidal wetlands by payment to the Maryland Department of the Environment (MDE). The Letter of Authorization for the project will be issued when payment is received. The MPA received waivers from MDE regarding stormwater management and sediment and erosion control. Permits for the proposed pond are pending.

The Heritage and Biodiversity Division of the Department of Natural Resources has reviewed the site and found no threatened or endangered species to be present. The Maryland Historical Trust has also reviewed the site and found no historical sites at the project area. Anne Arundel County's Department of Planning and Code Enforcement reviewed the project and had no comment.

Commission staff bring this project for the Commission's review and consideration under COMAR 27.02.06. Under the criteria of this chapter, if development is proposed to be undertaken or caused in the Critical Area by State or local agency actions and this development is prohibited from occurring by the criteria in this subtitle, the agency proposing the development may seek conditional approval for the project or program from the Commission.

In order to qualify for consideration by the Commission for conditional approval, the proposing local agency must show that the project or program has the following characteristics:

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

There exists both special features and special circumstances on this site that preclude MPA from providing water quality without impacting the expanded Buffer. The impacts in the expanded Buffer are proposed in order to provide for a stormwater management pond. Six alternative locations were explored as potential sites to for a water quality structure that could accommodate the first half inch of runoff from the 111 acre drainage area. All six of these alternative locations were determined to be not suitable.

Special features of this site precluded the MPA from providing adequate water quality improvement outside of the Buffer. The existing drainage pipes are an average of 20 feet below the surface and would necessitate major reconstruction in order to divert flow to the upland areas. Directing the outfall into the Patapsco River or the Swan Creek wetland would not provide adequate water quality control or storage. Construction of a retention pond inside the existing containment cell would result in a loss of containment capacity.

There are special circumstances that exist in that this project is part of the Governor's Strategic Plan for Dredged Material Management. This site is one of the few sites available and capable of receiving dredged material from the Baltimore harbor channels. Therefore, dewatering of the containment cell must occur before placement can begin.

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

No new areas of impervious surfaces are proposed with the rerouting of the existing storm drain project. The storm drain rehabilitation is proposed so that the existing containment cell can be de-watered in order to prepare it to accept dredge material. The new proposal to include a water quality Best Management Practice (BMP) will result in providing water quality for the stormwater from the 111 acre drainage area. In addition, channel maintenance will support the economic well-being of the Port of Baltimore.

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

Except for the proposed disturbance to the expanded Buffer, the project is otherwise in conformance with the state criteria and the County's Critical Area Program.

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

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

A direct outfall from the storm drain system into the Patapsco river will not be permitted by the State and federal agencies reviewing this project. The MPA is required to include a BMP to address water quality. The proposed pond, although requiring impacts in the expanded Buffer, does provide for the storage of the first half inch of runoff, serve water quality functions, and will provide for additional plantings, trees, and grasses that may not be associated with other types of BMPs.

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

The project was determined to be consistent with the Critical Area program under COMAR 27.02.02. The newly proposed impacts in the Buffer are not consistent with the Criteria; however, all disturbance will be minimized and will result in improved water quality leaving the site.

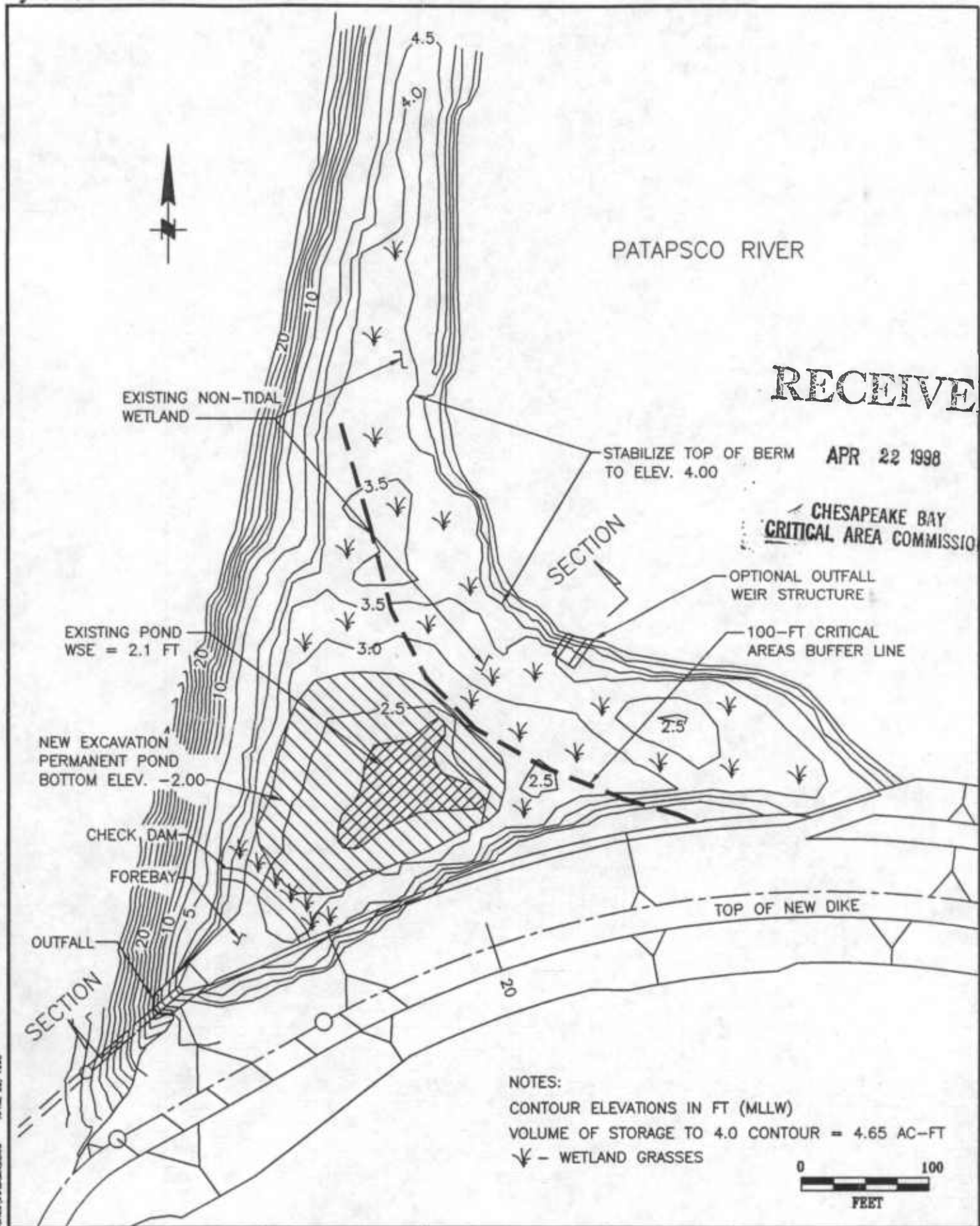
(3) Measures proposed to mitigate any adverse effects of the project or program on an approved local Critical Area program or, if on State-owned lands, on the criteria set forth in COMAR 27.02.05.

The additional plantings proposed within the expanded Buffer, around the proposed pond and along the beachhead will result in increased water quality benefits and improved habitat protection. Additional mitigation plantings will be accommodated on-site if possible to provide additional water quality and habitat benefits. If necessary, an off-site location may be selected depending on the future use of the upland site.

Along with the conditions listed below, the conditional approval request is consistent with COMAR 27.02.06, the Commission's regulations for Conditional Approval of State or Local Agency Programs in the Critical Area.

Conditions:

- 1) Recommend approval as the applicant is providing for the first half inch of storage for the impervious areas based on the site plan submitted;
- 2) If the applicant fails to receive permits from the Maryland Department of the Environment and/or the Army Corps of Engineers, or if as a result of obtaining those permits, the design changes, the applicant shall resubmit the revised plan to the Commission for approval; and
- 3) The applicant will provide Commission staff with final figures regarding mitigation for all clearing and/or impacts that will result both inside and outside the Buffer, and will coordinate an appropriate on-site or off-site area for planting.



RECEIVED

APR 22 1998

CHESAPEAKE BAY
CRITICAL AREA COMMISSION

NOTES:
 CONTOUR ELEVATIONS IN FT (MLLW)
 VOLUME OF STORAGE TO 4.0 CONTOUR = 4.65 AC-FT
 ▼ - WETLAND GRASSES



E:\3789-03\STORM_SWATCHES\MSKETCH.DWG APRIL 22, 1998

MOFFATT & NICHOL
ENGINEERS
BALTIMORE, MARYLAND

**CSX/COX CREEK
DMCF
STORM DRAIN MODIFICATIONS**

**STONE CHECK DAM WITH
PERMANENT POND**

K.L. - Approve & subj. to
Sec. Cooksey - cond.

CHESAPEAKE BAY CRITICAL AREA COMMISSION

C/2

STAFF REPORT

May 6, 1998

APPLICANT: State Highway Administration

PROPOSAL: MD Route 18 Improvements/Cox Creek Bridge Replacement

JURISDICTION: Queen Anne's County

COMMISSION ACTION: Vote

STAFF: Greg Schaner

**APPLICABLE LAW/
REGULATIONS:** COMAR 27.02.05

DISCUSSION:

The State Highway Administration is proposing to resurface MD 18A from MD 759B to Castle Marina Road, replace the MD 18A bridge over Cox Creek, and relocate MD 18A. Approximately 70 percent of the project lies within the Critical Area. Disturbances associated with the Stevensville portion of the project, including the bridge replacement, resurfacing, and placement of curbing, gutters, and sidewalks, occur within areas of intense development. The removal of certain sections of MD 18A in the areas of intense development will result in a 0.41 acre decrease in impervious surfaces. Disturbances associated with the relocation of MD 18A occur within areas which are not intensely developed. Overall, the project will involve a 2.50 acre increase in impervious surfaces, which can be attributed almost entirely to the relocation of MD 18A.

100-Foot Buffer

Impacts to the 100-foot Buffer (0.23 acres of new impervious surfaces) are all associated with the replacement of the Cox Creek Bridge and the addition of shoulders and sidewalks to the bridge approaches. A total of 3678 square feet of new impervious surfaces will be added to the eastern side of the bridge, while a total of 6154 square feet of new impervious cover will be added on the western side. Due to the location of MD 18A Cox Creek Bridge on a man-made causeway with limited right-of-way, it is not possible to further reduce impacts in the 100-foot Buffer. Mitigation for all new impervious surfaces will be provided at a ratio of 3:1. The total required mitigation is 29496 square feet.

The relocation of MD 18A will cause 7625 square feet of impact to existing shrubs and small trees. The area of impact is an agricultural hedgerow. Staff is working with the Administration on locations and specific plants to use for one-to-one replacement.

The overall required mitigation, including both new impervious surfaces within the 100-foot Buffer and vegetative clearing, is 37,112 square feet (0.85 acres). The Administration is actively pursuing mitigation on several State right-of-way sites in Queen Anne's County. An update on the final mitigation site will be presented at the Commission meeting. Native species must be used for all mitigation. Mitigation plantings will be credited as follows: one (1) tree equals 100 square feet and one (1) shrub equals 25 square feet.

Habitat Protection Areas

Cox Creek is protected as a Use II water for shellfish harvesting. The Maryland Department of the Environment (MDE) prohibits in-stream construction between June 1 and September 30 and between December 16 and March 14, inclusive of any year. The DNR Wildlife and Heritage Division have indicated that there are no federal or state listed threatened or endangered species in the project area.

Stormwater Management

The Administration is proposing an extended detention pond to treat stormwater from the relocated MD 18A. The Administration prepared calculations for the 10 percent Rule. Phosphorus reductions are not required for the project due to the overall decrease in impervious surfaces in the associated areas of intense development. Due to the removal of certain existing sections of MD 18A, there is a 0.41 acre decrease in impervious surfaces.

Wetlands Impacts

Approximately 6015 square feet of wetlands will be permanently impacted by the proposed bridge replacement, while approximately 4,008 square feet of wetlands will be temporarily impacted. The wetlands are classified as estuarine, intertidal, emergent, persistent, irregularly flooded. The Administration is currently in the process of searching mitigation sites within the same watershed and is proposing to create one mitigation site to offset the impacts from another MD 18 project in Grasonville, MD. Commission staff will continue to be involved in the site selection. The Administration will provide a Phase I mitigation proposal when the site is located.

A wetland delineation did not reveal the presence of submerged aquatic vegetation within the project study area on Cox Creek.

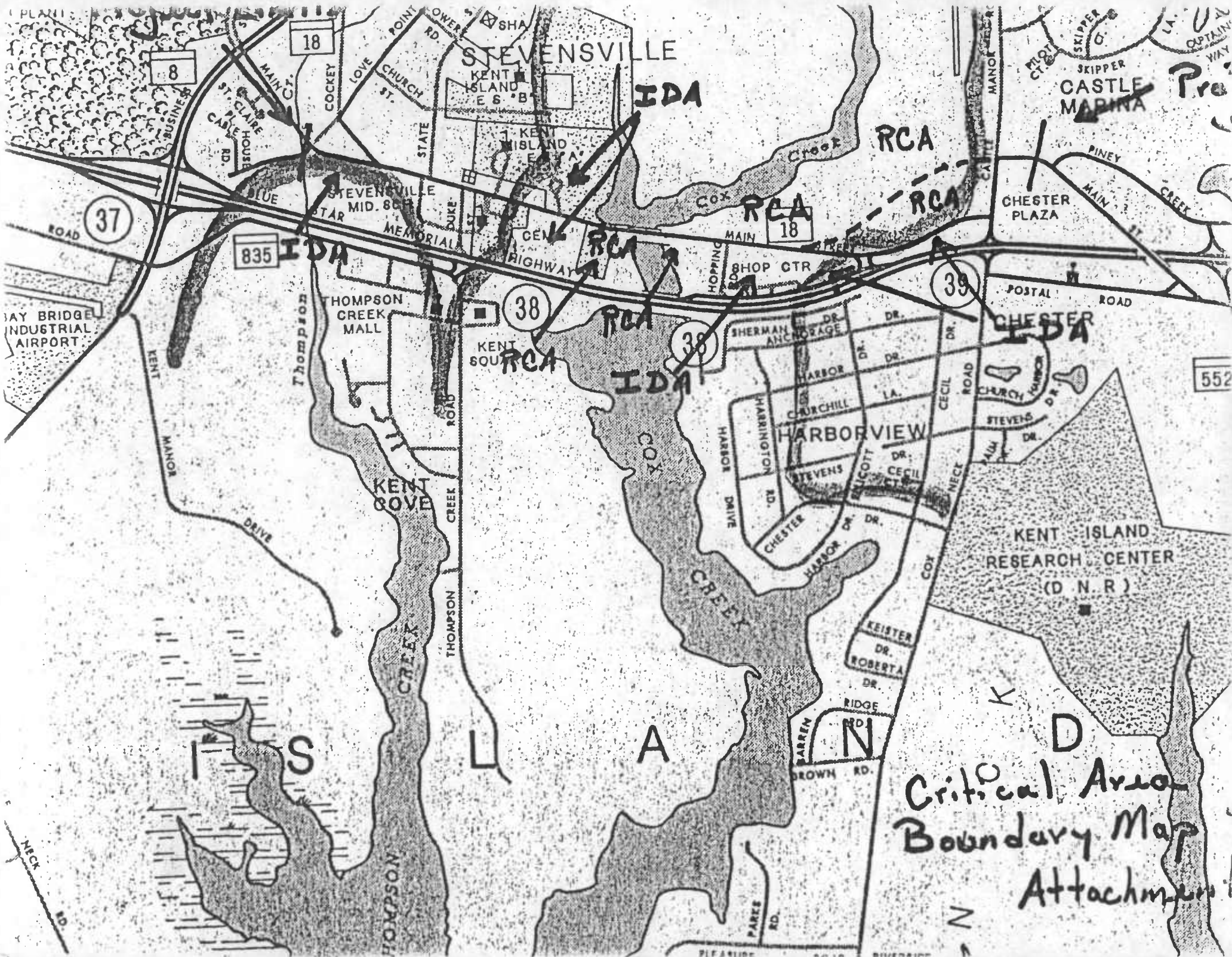
Local Critical Area Program Impacts

The County has indicated that the project is consistent with its Critical Area Program.

Sediment & Erosion Control Plans

MDE has indicated their conceptual approval of the super silt fence in the wetland areas and sloped silt fences in the upland areas. Final approval of the sediment and erosion control plan by MDE is pending.

GLS
State Highway Administration File: MD 18A Improvements/Cox Creek Bridge Replacement - 17-98
c:\wpdata\queenann\state\md18cox4.wpd



Critical Area
Boundary Map
Attachment

K. Lamm - approve
Cooksey - see

cfm

CHESAPEAKE BAY CRITICAL AREA COMMISSION

STAFF REPORT

May 6, 1998

APPLICANT: State Highway Administration

PROPOSAL: MD 392 - Marshyhope Creek Bridge Replacement (Bridge No. 9015)

JURISDICTION: Dorchester County

COMMISSION ACTION: Vote

STAFF: Greg Schaner

**APPLICABLE LAW/
REGULATIONS:** COMAR 27.02.05

DISCUSSION:

The State Highway Administration is proposing to replace Bridge No. 9015 on MD 392 over Marshyhope Creek. The project lies completely within the Critical Area within areas which are not intensely developed. The bridge is located approximately 2.8 miles east of the MD 392/MD 331 junction within the Town of Hurlock in Dorchester County. The purpose of this project is to provide a safe transportation facility by replacing the existing deteriorating bridge on site. The existing bridge is a 24-span timber bridge approximately 361 feet long and provides a 30-foot width for traffic. The structure originated in 1935 as a moveable span bridge, and was rebuilt as a fixed-span structure in 1944. It was widened by 10 feet and rehabilitated in 1970 to its current configuration. The structure has progressively deteriorated to the degree that 70 percent of the support beams and timber deck are showing signs of advanced deterioration.

The new structure will be a 6-span prestressed concrete girder bridge supported by steel piling which will measure approximately 580 feet in length. The new bridge will be 10 feet higher on the eastern end and eight (8) feet higher on the western end. The new structure will be constructed on the same alignment as the existing structure and no new impervious surfaces are being added.

100-Foot Buffer

The project will involve no new impervious surfaces within the Buffer since the bridge will be replaced on the same alignment. However, a 4700 square foot area in the Buffer containing small trees and shrubs will be impacted in order to regrade the surrounding surface. Mitigation for vegetative impacts within the Buffer is calculated using a 3:1 ratio. Total required mitigation is 14100 square feet (0.32 acres). Mitigation should occur within the 100-foot Buffer at the project site or in a similar location in the same watershed. The Administration is in the process of locating an appropriate mitigation site. Native species must be used for all mitigation. Mitigation plantings will be credited as follows: one (1) tree equals 100 square feet and one (1) shrub equals 25 square feet.

Habitat Protection Areas

Marshyhope Creek is protected as a Use I water for anadromous fish. A February 8, 1996 letter from the Environmental Review Division of the Department of Natural Resources (DNR) indicated that a Use I restriction period expanded for the presence of yellow perch would be required. The Environmental Review Division stated that the Use I restriction period would also protect important nearby spawning habitat for largemouth bass. The restriction period prohibits in-stream construction between February 15 and June 15, inclusive of any year.

The glassy darter, a species which was at one time believed to be extirpated in Maryland, has recently been documented in several Marshyhope Creek tributaries immediately upstream of Federalsburg. It has also been found in the Marshyhope Creek mainstem upstream of the Town. This species is not known to exist in the larger, tidal reaches of Marshyhope Creek, such as those at this project site. There are no other habitat issues in the project area.

Stormwater Management

MDE has indicated that the bridge replacement project qualifies for a stormwater management waiver due to the low level of impact.

Wetlands Impacts

Approximately 6050 square feet of tidal wetlands will be temporarily impacted and 1440 square feet of tidal wetlands will be permanently impacted by the proposed bridge replacement (i.e., placement of rip rap near shoreline to protect embankment and installment steel pilings). Impacts were minimized by maintaining the current road alignment. The type of wetlands impacted are riverine, tidal, open water. The Administration is currently in the process of searching for a functional replacement of the lost wetlands and for a suitable mitigation sites within the same project area. A Phase I mitigation proposal will be provided when the site is located.

Local Critical Area Program Impacts

The County supports the replacement of the MD 392 bridge. The County has indicated that the project is consistent with its Critical Area Program as long as all habitat issues are addressed.

Sediment & Erosion Control Plans

The sediment & erosion control plan involves the use of Slope Silt Fence and Super Silt Fence as well as turbidity curtains to contain any sediment that may be stirred up within the work site. The proposed plan has been submitted to MDE for review and approval. Final approval is pending.

\GLS

State Highway Administration File: Replacement Bridge MD 392 on Marshyhope Creek
c:\dorchstr\state\marshy1.wpd



*V. Receipts - desc. the mitigation plans.
proposed*

Chesapeake Bay Critical Area Commission

*motion. K.L.
approval as
Sec. = predicted
Cooksey
K.L.*

**STAFF REPORT
May 6, 1998**

APPLICANT: Maryland Aviation Administration

PROPOSAL: Martin State Airport - Midfield Hangar and Office Complex

JURISDICTION: Baltimore County

COMMISSION ACTION: Vote

RECOMMENDATION: Approval, with conditions

STAFF: Susan McConville

APPLICABLE REGULATIONS: COMAR 27.02.05, the Commission's regulations for State projects on State lands.

DISCUSSION:

The Maryland Aviation Administration (MAA) is applying for approval from the Chesapeake Bay Critical Area Commission for the development of the proposed Midfield Hangar/ Office Complex at Martin State Airport in the southeastern portion of Baltimore County. The MAA proposes to accommodate expected general aviation demand by constructing additional facilities including hangars, offices, aircraft parking and support, and access.

The area proposed for redevelopment within the Chesapeake Bay Critical Area is designated and mapped as an Intensely Developed Area by MD Department of Natural Resources. An overall disturbance area of 75 acres within the Critical Area is proposed for the redevelopment of the site (including grading and development) in two phases.

Under MAA's proposal, Phase I will involve the grading for and construction of two office/hanger buildings in the eastern portion of the development area, aprons, ramps and parking for both the land side and air side facilities, and Pond 1 and Pond 3, in the eastern portion of the site. In addition, parking and road access will be provided to the south of these buildings. Phase I, expected to be constructed within 2 years, will impact 25,533 square feet of non-tidal wetlands. The area of new impervious surface proposed for Phase I is approximately 4.95 acres resulting in a total impervious surface acreage under Phase I of 8.93 acres.

Phase II, in the western portion of the Midfield, will involve the rearranging of existing "T" hangars and construction of additional hangars, apron areas and Ponds 2A, 2B, 4A, and 4B.

Calculations to meet the 10% phosphorus reduction requirement have been reviewed and

approved. Three drainage area systems including a shallow marsh extended detention pond and shallow marsh extended detention ponds in series have been designed to treat stormwater runoff for quantity and quality under the current proposal from both onsite and offsite areas and have been sized to accommodate build out conditions at the facility. Therefore, there is a significant surplus of Phosphorus removal proposed under this proposal. The phosphorus removal requirement is 9.25 lbs. The total phosphorus removed on site under Phase I is 10.59 lbs. The offsite removal is 177.22 lbs. The total Phosphorus proposed to be removed is 182.81 lbs.

Mitigation for nontidal wetland impacts to be incurred by the proposed development under both phases has been designed and is proposed as part of Phase I. MAA, under the recommendation of MDE and the ACOE, proposes to create tidally influenced wetlands at the head of Stansbury Creek Cove as part of Phase I. Soil borings and studies by MAA of the shoreline revealed that this area of the shoreline was once a tidal marsh. MDE and the Army Corps of Engineers have approved the proposed wetland as mitigation for nontidal wetland impacts. Any trees impacted by the tidal wetland mitigation will be replaced on site within the newly measured Buffer.

The project was introduced for information to the project Subcommittee to address the concern that with the construction of the tidal marsh mitigation area, the Buffer would be measured 100-foot from the new tidal wetland limits. As a result of the new location of the Buffer limits, Pond 1 and Pond 2B as proposed, would be within 100 feet of the landward edge of the newly created tidal wetland mitigation area. The Project Subcommittee, at the April meeting, advised the applicant that the project should be reviewed by the Commission according to the existing 100-foot Buffer.

MDE has gone through several rounds of review for stormwater management and sediment and erosion control. MDE is currently reviewing for approval the final submission of the plans. Final approval is expected by May 1, 1998.

A decision letter on nontidal wetland impacts and the Joint Application Information from the Corp has been signed, authorizing MDE to issue a Category III B General Permit. We are currently seeking comments from Baltimore County DEPRM.

Pending final approvals by MDE, the project is consistent with COMAR 27.02.05, the Commission's regulations for State projects on State lands.

MARTIN STATE AIRPORT

PROPOSED MIDFIELD HANGAR/OFFICE COMPLEX

Stormwater Management Design Considerations

The water running off of the Airport and entering the Bay is not being treated. The proposed ponds and mitigation site will provide treatment for existing and proposed development.

Existing Conditions

- midfield area naturally drains to this point at .002%, which is virtually level
- existing system is surcharged with tidal water, pipes are broken and some have reverse slopes
- 2-year storm currently tops Strawberry Point Road
- buffer area has no forest cover is mowed periodically and supports few small trees along shoreline
- buffer currently supplies little habitat
- much of the shoreline is composed of sheer banks, except for a small tidal marsh constructed by MAA
- soil borings indicate that this buffer area was tidal marsh prior to filling practices

Pond and wetland mitigation location (attached)

- area set aside for stormwater management, proposed mitigation and future tidal mitigation
- constraints include minimizing tree removal in Critical Area
- wetlands and uplands in forested area to the west of Pond 2B, Strawberry Point Road to the north
- proposed mitigation sites to the east are for Phases 1 and 2, as well as possible mitigation for planned runway safety area improvements

H&H criteria

- Ponds 2A/B are designed to allow 25-year frequency storm to pass under Strawberry Point Road
- desire to maintain flow to existing vegetated swale along Strawberry Point Road to preserve its water quality treatment
- Pond 2B outfall would be level with tidal water
- pond elevation is set to intercept fluctuating groundwater to keep wetland plants alive
- ponds larger than normal due to high groundwater and tidal influence
- to move pond up slope would require excavation into groundwater
- over-excavation of groundwater may alter the holding capacity of the adjacent soil and undermine normal conditions

Landscape changes

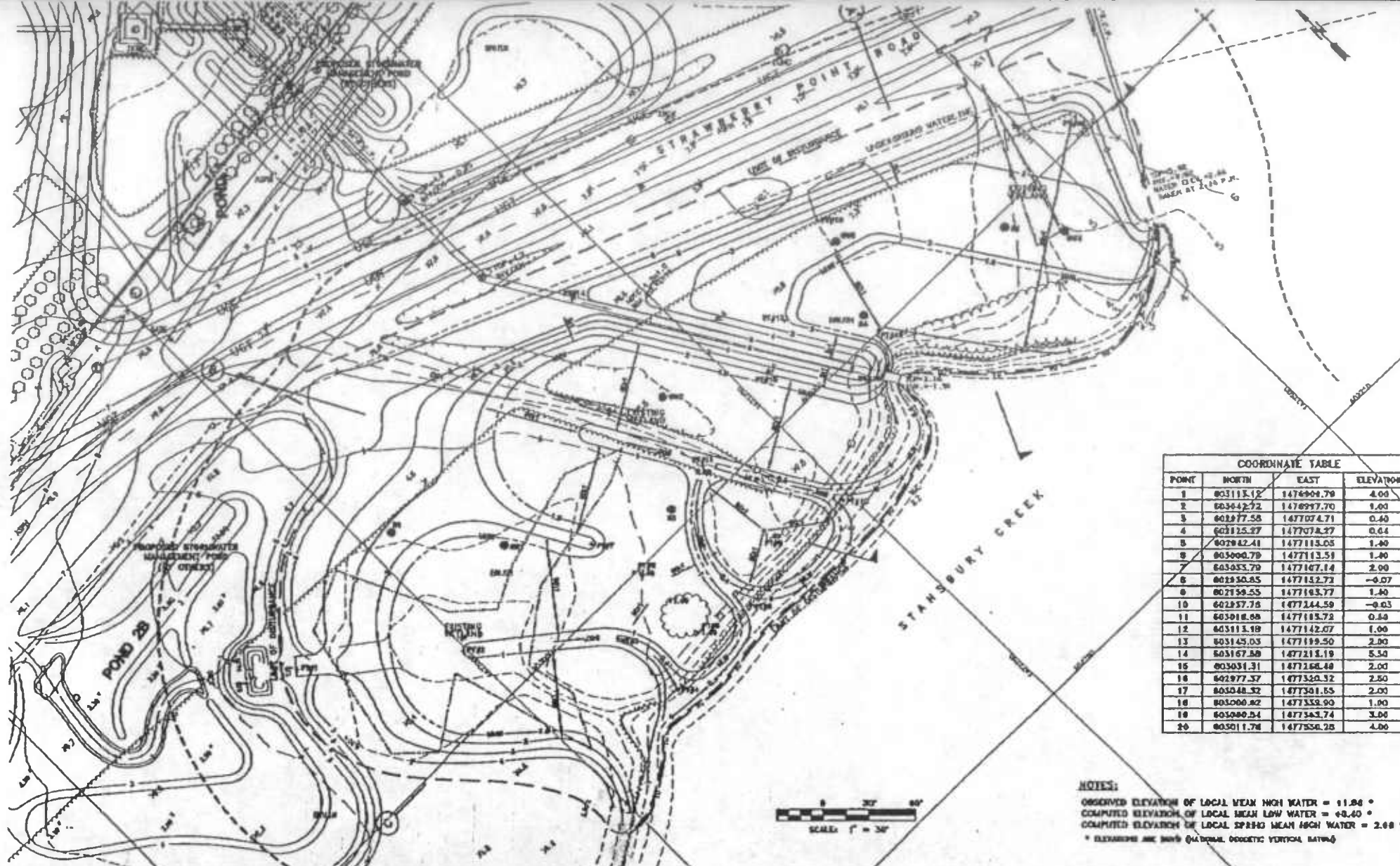
- excavated mitigation site slopes are 60:1 (1.66%)
- mitigation site and pond will appear similar with little upland between
- excavated Pond 2B also has gradual slopes with a 1-foot berm to allow for maintenance access
- ponds and wetland will be entirely vegetated with only a pilot channel that will retain 18" of water
- area adjacent to pond within buffer will be planted wherever possible

Pond plantings (attached)

- no mowing proposed in pond
- vegetation selected to reproduce quickly, have strong erosion-resistant root systems, high survivability and ability to absorb nitrates, phosphates and heavy metals
- species chosen to resist dominance by one specie (Phragmites)

Wetland mitigation plantings (attached)

- chosen to replicate existing tidal wetlands that are found in Stansbury Creek
- planted in zones that replicate tidal benchmarks on-site
- emergent plants will provide food for geese, turkey, rabbit, muskrat, shorebirds and wood ducks, Trumpeter swan and sandhill crane; nesting for bluegills and largemouth bass



COORDINATE TABLE			
POINT	NORTH	EAST	ELEVATION
1	803113.12	1478904.78	4.00
2	803642.72	1478917.70	1.00
3	803977.58	1477074.71	0.40
4	803125.27	1477078.27	0.64
5	802942.41	1477113.05	1.80
6	803600.79	1477113.51	1.80
7	803653.79	1477107.14	2.00
8	802850.85	1477132.72	-0.07
9	802158.55	1477183.77	1.40
10	802957.78	1477144.59	-0.03
11	803018.08	1477183.72	0.80
12	803113.19	1477142.07	1.00
13	803145.03	1477189.50	2.00
14	803167.88	1477213.19	3.30
15	803031.31	1477168.48	2.00
16	802977.37	1477320.32	2.50
17	803048.32	1477301.55	2.00
18	803000.82	1477332.90	1.00
19	803080.54	1477343.74	3.00
20	803011.78	1477356.28	4.00

NOTES:
 OBSERVED ELEVATION OF LOCAL MEAN HIGH WATER = 11.88'
 COMPUTED ELEVATION OF LOCAL MEAN LOW WATER = +8.40'
 COMPUTED ELEVATION OF LOCAL SPBHD MEAN HIGH WATER = 2.68'
 * ELEVATIONS ARE SHOWN @ 14 NORMAL GEODETIC VERTICAL DATUM

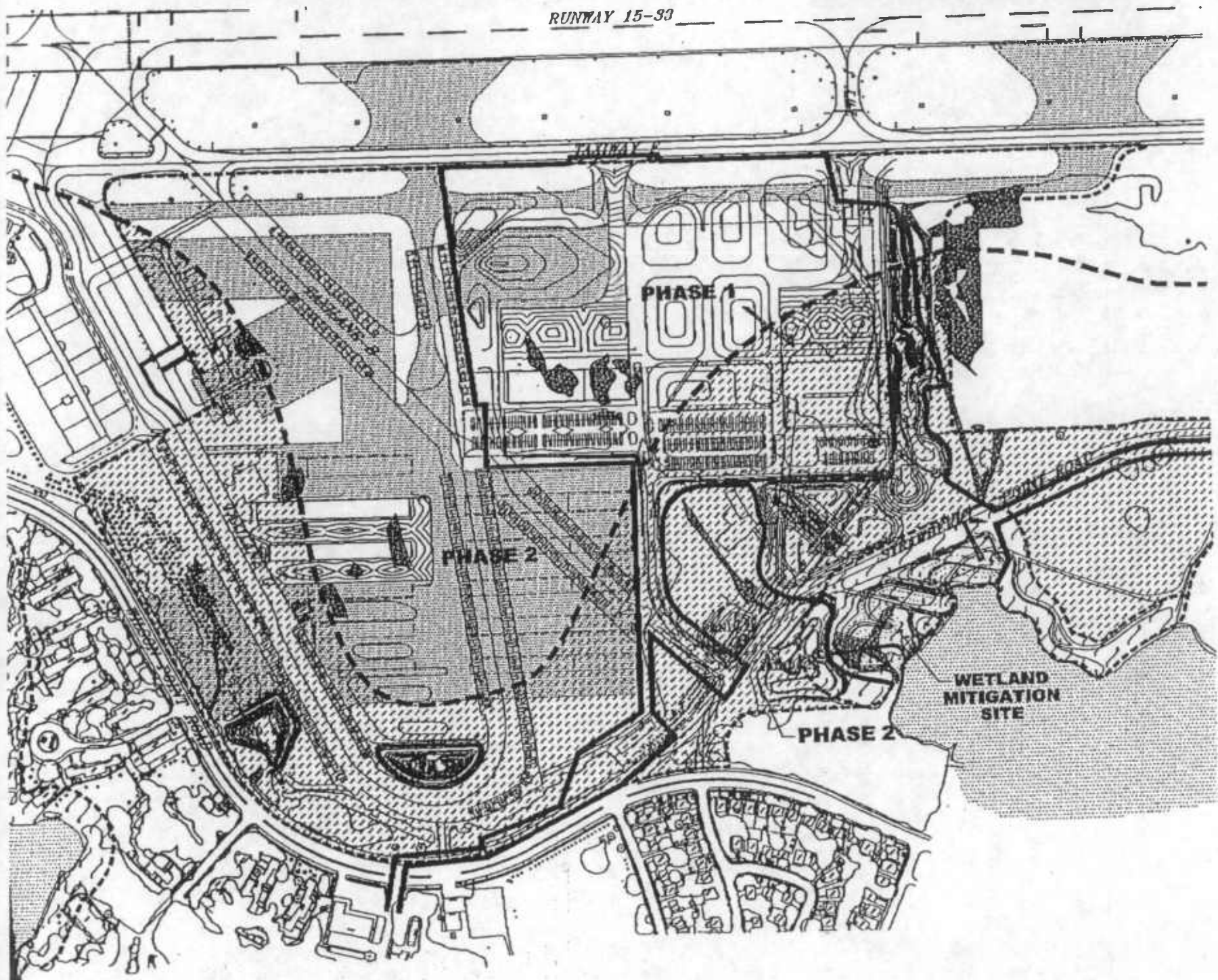


NO.	REVISION	DATE	DESCRIPTION



MARYLAND DEPARTMENT OF TRANSPORTATION
 MARYLAND AVIATION ADMINISTRATION
 OFFICE OF PLANNING AND IMPROVEMENT

PROJECT TITLE MIDFIELD TERMINAL COMPLEX SITE DEVELOPMENT PHASE I		CONTRACT NO. MAA-AE-96-
SHEET TITLE WETLAND MITIGATION GRADING PLAN		SHEET NO. WM-1
SCALE AS SHOWN	DATE MARCH, 1998	



**MARTIN STATE AIRPORT
MIDFIELD DEVELOPMENT PROJECT
CRITICAL AREA 10% RULE COMPUTATIONS***

Drainage Area Systems	P removed Onsite	P removed Off-site	Total P removed	Removal Requirement	Surplus/ Deficit	Notes
System #1	7.9	173.15	181.05	7.18	173.87	
System #2	0	0	0	0	0	0 System 2 not affected
System #3	2.69	4.07	6.76	2.07	4.69	
Totals	10.59	177.22	187.81	9.25		

Cumulative Phosphorus Removal:

178.56

Value of 0 or above indicates compliance with the 10% rule.

*Revised 3/30/97 due to modification of project.

BEFORE THE CHESAPEAKE BAY CRITICAL AREA COMMISSION

.....
IN THE MATTER OF THE CHESAPEAKE :
BAY CRITICAL AREA COMMISSION'S :
DELIBERATIONS ON THE WICOMICO :
COUNTY'S CRITICAL AREA PROGRAM :
.....

On Wednesday, May 6, 1998, a regular monthly meeting of the Chesapeake Bay Critical Area Commission occurred at the Department of Housing and Community Development, Crownsville, Maryland. The Commission discussed the above-captioned matter. A transcript of certain portions of that discussion, a related motion, and a vote follows.

COMMISSION MEMBERS:

Michael J. Whitson, Acting Vice-Chair
Philip J. Barker, Harford County
David G. Bourdon, Calvert County
William Castleberry, Maryland Department of Business and Economic Development
David Cooksey, Charles County
Mary Deitz, Maryland Department of Transportation
Larry F. Duket, Maryland Office of Planning
Dr. James C. Foor, Queen Anne's County
William Giese, Jr., Dorchester County
Robert Goodman, Maryland Department of Housing and Community Development
Charles Graves, Baltimore City
J. L. Hearn, Maryland Department of the Environment
Samuel Q. Johnson, Wicomico County
Kathryn Langner, Cecil County
Louise Lawrence, Maryland Department of Agriculture
Robert Pinto, Somerset County
Edward Robinson, Eastern Shore Member -at-Large
Dr. Sarah Taylor-Rogers, Maryland Department of Natural Resources

PROCEEDINGS:

REN SEREY: What LeeAnne has just passed out is a section from the ah, Wicomico County Critical Area Program and ah, I would like to talk to you a little bit about that today. Ah, and before I do that I want to ah, introduce representatives from Wicomico County who are here today. Seated in the back is Chris Hughes, the Planning Director, to his right is Rick Dwyer, and to his left is Frank McKinsey. They are planners in the office and both work on the Critical Area Program. The ah, discussion of the Chesapeake Beach Buffer Exemption Area and the comparison of that to ah, variances a few minutes ago was ah, I think appropriate to the ah, situation in Wicomico that I would like to describe to you. In 1988, I believe, ah, the Commission approved the Wicomico County Critical Area Program and at that time, ah, the Program had a section for Buffer variances or for variances in general and as a separate section ah, for ah, site specific buffer variances. I believe and maybe I don't know, maybe Chris or Rick or Frank was around at the time, I believe that this section "site specific buffer variances" was probably intended by the County to operate as a type of Buffer Exemption Program. That's just my feeling from reading the introduction to it, it has a lot of the same language that ah,

(UNKNOWN) Ren, if I could just interject one thing, I don't think that it was intended as a Buffer Exemption. It was intended as a type of variance.

REN SEREY: Type of variance, okay, alright

(UNKNOWN) ...it was a specific category of variance to protect.....

REN SEREY: ...fine, it used that same type language which is why I thought

(UNKNOWN)terms of legal proceeding...

REN SEREY:I, I understand. Thank you. Um, the Commission approved the

Program and ah, you know it has been operating for 9 almost 10 years now. A couple of years ago however, as staff, we recognized, we realized in reviewing some of the ah, variances that came in to us for review under this provision, that at least in our minds, it looked like it was operating as a Buffer Exemption Program and we thought that it was more appropriate that way than as a type of variance. During the comprehensive review comments that we sent to the County, which was I think about two and one half years ago, we raised the issue of this section, this "site specific" variance section and we notified the county at that time that ah, we thought this section needed some work that we thought that it needed to be changed in some ways and that we were happy to work with them in the comprehensive review context on that. Some things have happened in the interim which have, I, I think ah, have delayed the County's comprehensive review, and, and they're very unfortunate ah, Bill Livingston, the former Planning Director there was diagnosed with cancer and ah, after quite and extensive period out from the office, died last summer. Ah, the position was then vacant, Chris has taken over that position just within the last few months. Nevertheless, we have a situation that I think the Commission needs to at least take a look at. The "site specific" buffer provisions list out a couple, actually four, standards, and ah, in the Program document that we have been working with, and I will talk about some mistakes that, that obviously were made there, but in the program document we have been working for the last several years, ah, an applicant for a "site specific" buffer variance needed to meet, it seemed, all four of those standards. We appealed a case that, that went to the Board of Appeals for a swimming pool in the Buffer and in fact, it probably was the case that Q. Johnson was referencing a few minutes ago. Ah, we appealed that case to the Circuit Court and during the hearing, ah, about (INTERRUPTION CHANGE OF TAPE SIDES)

(Continued on side B)

informed us ah, that the County Code reads differently than the version of the Program we had been using and, instead of an applicant having to meet all four of these standards for site specific buffer variance, an applicant only has to meet one. There isn't an "or" that is placed in there, A,B,C, or D. We have now realized that that "or" was in the original program that the Commission approved in 1988. However, when the County revised its ordinances, changed its numbering system, moved things around, the version of the Program that we received in May of 1990 does not have that "or". Ah, Chris may, may want to address that, my feeling is, probably was a, a clerical error that the "or" disappeared. Nevertheless, we never realized that it was different from the 1988 version and since 1990 we have been using that version. So, we were quite surprised when the Judge said that we were using the wrong Program. What that did simply is, is tighten our concern because as I said, we ,we had ah, notified the County that we thought this section needed some work, nevertheless, we progressed in a very slow manner ah, to actually get the change made. Now all of a sudden the, the language is even different than we thought. Um, what I would like to do is ask Marianne sort of to comment on ah, I guess the legal aspects of, of maybe working with the , with the Program and comprehensive review and also address, if you feel that it is necessary, the Commission's authority to work with the County on changes.

MARIANNE MASON: thanks, thanks Ren. I would like to take it back a step further than Ren began and that is to turn back to the Commission's Criteria, the one approved by the General Assembly of course. Looking at the Criteria in ah, Chapter I, 11: the Criteria require local jurisdictions who wish to have an appeal of their program to provide for variances to the restrictions and provisions of the Critical Area Program. All the local programs are required to contain variances provisions which the Criteria say "at a minimum"

provide that variances may be issued only upon an applicants meeting all five delineated standards. Now the local jurisdiction in addition may have additional and more restrictive provisions for granting variances. Ah, the Wicomico County Program, as Ren mentioned, has two separate variance standard provisions. The first provision is what I would call the standard, normal provision. That is the provision that meets the Criteria, the Critical Area Commission's Criteria, it, it contains five standards for granting variance which, ah, Anne Arundel County has, Dorchester County has, the other counties in which we (unintelligible) cases have. Wicomico County also has an additional provision called "site specific Buffer variances". Ah, the Wicomico County Program on it's face allows the Board of Appeals to grant a variance um, to the Buffer restrictions of the Critical Area Program if an applicant meets the provisions of the site specific variance criteria, the four criteria that, that Ren mentioned. Um, my advice is that on it's fact, this provision is not consistent with the Critical Area Commission Criteria. My advice further is that as applied by Wicomico County, this provision is not consistent with the Critical Area Commission Criteria. I believe that it is less restrictive, ah, in addition to not being consistent, it is less restrictive and not more restrictive and so it, it does not meet the provisions of the Criteria and, ah, I would recommend that the Commission um, use its authority under 8-18-09L and at least consider the um, provision to be um, a conflict of the Criteria. That would be my recommendation..(CHAIR SQUEAKS, CAN'T UNDERSTAND LAST WORD)

MIKE WHITSON:

Thank you Marianne. Let me ask um, we will hear from the County in just a second. Dr. Foor and Dave and members of the

Program Subcommittee, do you want to comment on this.

DAVE BOURDON: No, I just had a....just this morning you talked about, you talked about one cast here today, but there were numerous cases where we have notified them of this over the year that there has been a problem that appears inconsistent.....

MARIANNE MASON: I am told that it is so, Dave, that staff has on a number of occasions, maybe Mary or Lee Anne will...

MARY OWENS: Well, will I guess we , we have given them comments on their, for their comprehensive review, two or three times I believe, and then we, we've made this comment on several variance applications that were being reviewed under this....

DR. FOOR: So, it was not only in the comments of the comprehensive review, but also was in some of the variance applications...

MARY OWENS: Yeah.

DR FOOR: ...pointing out the inconsistencies.

MARY OWENS: Right.

DR FOOR: There has not been an update of this Program yet as of this point.

MARY OWENS: Right.

DR. FOOR: ..so they are dealing with a very original...

MARY OWENS: Right.

MIKE WHITSON: Lee Anne, do you have anything to add.

LEE ANNE CHANGLER: Nothing.

MIKE WHITSON: Nothing? Our folks from Wicomico County are here as Ren introduced earlier, we would be pleased to hear from you.

CHRIS HUGHES: Mr. Chairman, thank you very much. I'm ah, Chris Hughes. I'm the Director of Planning and Zoning in (unintelligible) Development and I'm still not used to the title. Some of you may know me from my previous incarnations as MACCO Environmental lobbyist. Um, also served on the

Department of Housing and Community Development with Bob Goodman and others at early stages of the Economic and Resource Protection and Planning Act in 1992 and Smart Growth in 1997. And I look around the corner here at Sarah and I see that ah, looking around the room, I guess that me and Mr. Pinto and Sarah maybe the only three in the room ah, who are around sw..., well, Larry too maybe, since 1984 who actually worked on the original Advisory Committee to the Critical Area Law that created this law. And, it is very interesting come back ah, 1998, ah, going on almost 15 years and the original inception of this Program and see what it is we wrought and , and how it is all being interpreted and applied. And, I gotta tell you, it's ah, very different than I contemplated and it's very different than I think many of the original legislators who ah, formed this law contemplated. And you are wrestling with several of the inconsistencies than I think have emerged and grown through interpretations by your Chairman, through regulatory actions, by pract... (noise) ...cases over the years, and I welcome you to the land of land use, its, its an exciting place and ah, we have been wrestling with it for many, many years. Um, I am ah, I am now more than six months with Wicomico County and in that time, I have had an opportunity to ah, review our Critical Area Law and go through the Kelly case which is now before the Court and try to get a handle on some of the issues that have been bouncing back and forth between Critical Area staff and our staff and I have tried to make sense of them, tried to understand what is real and what is not real. I have to respectfully disagree with your Counsel on one I guess very important point and that is that she seems to think that this provision of our law is inconsistent with the original intent of the Statute and I disagree with that. Ah, I think that the original, her predecessors and the original Commission also strongly disagree with that. And, until recently, uh, when staff began to get very creative with the law, ah, we

have not had any requests to modify our law, we've not had any problems with interpreting or managing the cases that are coming before us and before the Commission. Um, one of the premises of the Critical Area law, and probably the only reason that it was successfully enacted into law in the first place, was that it was intended to preserve local land use (unintelligible) and to combine the expertise and minimum standards and restrictions imposed by the legislature mandating local programs. The big compromise that was reached which you all know is a balancing act between mandating minimum criteria statewide in 17 counties affected by the Critical Area with those powers and authorities that local governments are charged with ah, implementing locally. Mayor, yet the mayor down here who remembers well some of these ah, some of these battles that we went through (unintelligible). I guess the real question is whether or not our program with its very site specific variance provision ah, is an appropriate part of the local law now. Fortunately for us, its an approved part of our local program. It has been approved by the Commission and fortunately with no provision for the Commission to be able to come back and go against the India., Indian Giver, so to speak, not that it was this board that gave us the approval but to go back on what has been determined to be appropriate. Ah, we would welcome any opportunity to work with the Commission to improve our local Program, we would resist very strongly any effort to erode local authority that exists there. I respectfully suggest that this Commission does not have the expertise even with Counsel to understand fully whether a variance, ah, on land use contest locally is appropriate or not appropriate and I think the original legislative law ah, lays that out and does not include in the, in the chain of, of appeal for a variance the Commission. Appeals for a variances are made from the local Planning Commission to the Circuit Court and they did give the Commission, the Critical Area Commission as you have exercised very

many times appropriately, the ability to intervene and act as a party as you are doing in the Kelly case. Um, I think that is an appropriate amount of intervention, of power, I think it works to make sure that the Commission has full opportunity to make its will known to the courts and to the local programs. Uh, and it preserves appropriately the local power to operate to the local program and to in its best judgement under the law, apply variance standards. Um, and I, you know, respectfully, again, I think the Critical Area Commission has done Yeoman's work and in the last 10 years has brought this state forward in many areas, making us look at new criteria, new techniques and standards which are being adopted in our local programs around the state. In this one area, uh, would respectfully request the Commission to not, not take the advice of their Counsel and just step back and keep this request in context and focus on the real issues which are whether or not the local programs are being operated fairly and equitably when we are in fact, improving water quality on the Bay, whether the land use standards and criteria and the time that we all spend in reviewing these cases and projects is achieving the overall objective, which is to clean up the Chesapeake Bay. Uh, I am very proud to be in Wicomico County now. I am very pleased to tell you that on February 3rd, we adopted the local town comprehensive plan which incorporates, not just in the Critical Area, but it incorporates in a watershed basis throughout our entire county, ah, Buffer yard requirements and many of the environmental protection measures which were initiated by Critical Area action in the mid 80's. Um, we have struggled, it was a struggle for the local government working with all the interests you have to deal with on a daily basis, ah, but we are moving forward very quickly. In fact, ah, if you watched the news, we have a new mayor down in Salisbury now, the first woman in our area, who is very proactively smart growth and very environmentally sensitive and I suggest that we are going to see some good things come out of that

as well. Um, I want to thank the staff, uh, of the Commission, or maybe Ren, if not you, at least the Judge who brought it to our attention that we all, ah, we all have a typographical error, error that we were working off of on staff report that was introduced into our stream of review ah, about four years ago. It was an error. I wasn't there then, so I don't have to take full blame for it. But, when you go back to the original statute and our code, the way the code was approved and adopted by this Commission, by what's in your records at the Critical Area Commission staff level, all of the correct language is in place and all of the proper review could have occurred if we hadn't gotten too overburdened with too many projects on too much minutia and ignored a simple word "OR", ah, in this one little section of law. It is kind of interesting coming in after the fact that I can talk about this stuff without ah, without being too embarrassed, but ah, its really clear to me when I came in and read those, those section of our law that it's absolutely impossible to read without the "OR". Several of the criteria that are listed in that section are mutually exclusive. There is no way that you could read that, even without the "OR" to be a properly constructed section of law. I was very relieved when I found that it was a typo and uh, I trust the Commission will give it the amount of importance that it deserves. It is certainly not a basis by which you completely turn a program on its ear or require a mandate, someone to go back and redesign and reconstruct an entire Critical Area structure that has been in force since 1989 in Wicomico. So, thank you for the good staff work, ah, and I, I mean I enjoy the opportunity to work with you and look forward to future cases, hopefully not too many. And, ah, I hope to make sure that Wicomico County and its program will be a model for the State, not just in Critical Areas but for land use and environmental protection on the Bay and it's entire being.

MIKE WHITSON: Well, thank you Mr. Hughes for that interesting and enlightening presentation. Any comments?

DR. FOOR: I'd like to speak first,. First of all, I take issue with a lot of things you've said. I sit here and get upset. Now, I'm upset but ah, some of the things that you have said about this staff and this Commission and Counsel. This program has not even been updated since it's inception. Hasn't even, we got a letter from your council and basically told us to stay out of it, that it was accepted law, had been properly approved, therefore we had no say to it. We clearly have say. The Commission determines that if an adopted program contains a clear mistake of omission a conflict of the Criteria law, the Commission may notify and produce a stay or whatever legal term. If we do it this time, it will be the fourth time we've done it. We have done this several times.

Chris Hughes: Done what?

DR. FOOR: If we decide there is a clear mistake somewhere, we can selectively go in and , and cause it to be stopped and no progress until it is straightened out. The last time we did it was in Anne Arundel County. We do have the power to do it. We want the criteria to be consistent. I think its clearly inconsistent. And, to the the"OR" in makes it even more so. Ah, huh, I don't think there is any question. I think legal counsel is sound. It's a very specific part of a variance and it's not going to prevent the project from going any further. We don't have any program update, we sent comments two years ago. We haven't gotten anything, we don't know when the Critical Area ordinance, or your plan is going to be updated and I think the way to settle this is just to, to, to ah, stomp strink on this specific issue, and 30 days or whatever is mandated by law, and let's get it straightened out. And I would, after hearing that, and a letter from that attorney, I'm, I'm very comfortable with ah, ah, requesting a section 8-809-LB be inducted by the Commission and so ah,...

CHRIS HUGHES: Mr. Chairman, Mr. Chairman....

MIKE WHITSON: Mr. Hughes?

CHRIS HUGHES: Um, If I could respond to a couple of the points that Dr. Foor has just mentioned. Ah, he mentioned a letter that was sent by our attorney, ah. That letter was a very specific letter in response to a notification that we received. It basically alleged that we had acted uh, illegally. And our attorney, who is the counsel who invol, who was involved in the legislative process took great umbrage to the language and to the statement. It was a direct attack on his character as an attorney, it was a direct attack on the council for alleging that they had acted inappropriately. After calming our attorney down, eventually he did send a letter which attempted to very crisply establish the limits by which he would be comfortable in proceeding on that specific question. I, I think the message was sent back and forth, and I think ah, the parties that were involved had talked on the phone and that the ah, I had hoped that the uh, any ill will that was generated by that correspondence would have died down by now. **I see that you are still, I mean that you are a concerned member of the Commission .** Ah, we, ah, we're ah we would like to proceed with the Commission in a cooperative vein and I think that there is every basis for that to continue. Ah, we're not upset with your staff, we understand the mission the Commission says it has. We understand our charges and our mandates. Ah, we do believe that there are very clear limits as to the authority of this board and we are prepared to act or not act dependent on the nature of the way the Commission wants to approach this. Um, we'd like to do it in a cooperative fashion not in an antagonistic way or in a litigation, ah, ah, and I think that probably to the best service of the state and both the Commission and the County. Ah, so that is why I'm here today. I mean if we'd, we'd wanted to just let this thing lay and go on as it has been moved and has been supported by Mr. ah, Dr. ah Foor, ah, we wouldn't of been here. We'd let you gone ahead and roll down the tracks. We're here to try

to make sure that we are working together towards a common objective...

MIKE WHITSON: Well, we're delighted, Mr. Hughes...

CHRIS HUGHES:that's, that's why were here.

MIKE WHITSON:thank you, thank you. We're delighted with that. Is there anybody else on the Commission going to respond to

LARRY DUKET: Um, let me say a few words, um. I, it dawned on me this, what Chris was saying in terms of it is really hard to read these with an "And" and would almost have to read them with and "OR" because they really start to get mutually exclusive. I think, I think he's right, I don't think that whether its "AND" or "OR" or no word that solves the issue. I think you know, when you, Marianne Mason cited from the State criteria that variances create a local program to add a minimum standard. That's, that's the problem, what I am seeing, Chris, in the criteria for granting site specific variances, is something that is (unintelligible) .close to a very (Tape Changed).....(crosstalk -).

MIKE WHITSON: One at a time.

LARRY DUKET: I understand that it's been approved and to me it's been sometimes embarrassing and frustrating and we have to go to the counties and say, look, you know, we made a mistake. We put our **imprint** on a program and now we find out that there is something wrong and these, these discoveries happen in a variety of ways from staff looking at the criteria vs. (Unintelligible) or whatever, but there is a lot of people on this Commission who represent local governments that have participated in twisting the arms of local governments and the law, I think we probably (unintelligible) that amendment. Ah, we go back in to the program and change a mistake. I think you have to look at the criteria

CHRIS HUGHES: What mistake Larry?

LARRY DUKET: I beg your pardon?

CHRIS HUGHES: What mistake.

LARRY DUKET: That there was a variance that was approved by the Commission that does not (unintelligible) amendment with the State Criteria with variances. Um, and, and they , all I would encourage you, is you and your attorney and the council may look very carefully at that rule because there is a second kicker to it and that's when there is resistance of the County to come around and make the change that Commission is alleging is inconsistent with the law. Um, you can't issue any more permits under that sort of program. So I stand corrected that there is something like that is very tough enforcement..

MARIANNE MASON:approval, any approval, so it could be any variances granted under that type of buffer variance.....

LARRY DUKET:so, the point is being that once the Commission invokes that, any subsequent variances that might be approved, you know I think the Commission (unintelligible) void. Um, and you get the landowner caught between the....

CHRIS HUGHES: Well.....

LARRY DUKET:we're going to have it worked out rather than you...

CHRIS HUGHES:we are not going to be threatened by that, I mean , the fact is the Commission has approved our program and it is in effect.

DR FOOR: How are we going to talk if you don't even admit that we have the authority to go in and take out...

CHRIS HUGHES:you got a point.

DR. FOOR:that's right and ...

CHRIS HUGHES:(unintelligible)

MIKE WHITSON: Hold it , hold it!

SARAH TAYLOR-ROGERS: I'd like to make a motion that ah, the Commission endorse the recommendation of our attorney to evoke section 8-1809L.

LOUISE LAWRENCE: Second.

MIKE WHITSON: Discussion?

LARRY DUKET: I'd like to work it out.

SAM WYNKOOP: Mr. Chairman, I'm, you know as a relatively new Commission member I am relatively sympathetic to the arguments that are being made on behalf of the County as the County recommended and ah, absent some clear understanding, I'm going to either abstain or vote against the measure, but I am somewhat sympathetic to the issues being raised.

BOB PINTO: I'd like to to ask Mr. Hughes....

MIKE WHITSON: Yes Sir.

BOB PINTO: ..is there any other county that has such a site specific variance...

CHRIS HUGHES: I, I haven't reviewed all the ordinances. I think your staff probably could answer. I think not. I think it's one of the early ordinances. I don't know if others have contemplated it. Probably several of them wish they had it. But ah, no I am not aware of any....

BOB PINTO: You know I was a member of the, I was Chairman of the Appeals Board for about 25 - 28 years and there have been many a time when I wish I had one variance to work with, but when the Critical Area variance was (unintelligible) if we didn't have a damn good reason, Claudia Jones cut us off at the knees.

UNKNOWN: That still happens.

BOB PINTO: You had to prove four or five specific things, that you had to prove to get approval at all.

CHRIS HUGHES: That's what we do. And I, I am here only six months, ah ,if you talk to any of my board members on the City or County Council you will see that I am a pretty tough task master in fact they have started saying that "there's a new sheriff in town". I think that those of you who have worked with me over the years, except for Ren, my MACCO hat part of that, you will know me to be very proactive in terms of trying to prevent development where it should not occur. Ah, and I would ask the Commission to leave that to use

to try to do and watch and see our behaviour and give us a chance to see how we react with our existing law....

MIKE WHITSON:thank you.....

CHRIS HUGHES:to see if we are being appropriate with that

MIKE WHITSON:Will, do you have a question?

WILL CASTLEBERRY: Yeah, I, I just am not familiar with this enough at all as a new Commissioner is there some sort of way we can get a staff or legal report before we sentence this man, I mean...

MIKE WHITSON: No, it's in COMAR.

UNKNOWN: Hopefully, around four or five specific things....

CHRIS HUGHES: That's, that's what we do.....

WILL CASTLEBERRY: ...I am looking at, I guess, it's COMAR now which I never understand, uh...

MIKE WHITSON: No, it's in COMAR and that's what you're looking at,.....

MARIANNE MASON: Look in Wicomico County.

MIKE WHITSON: look in Wicomico County.

DR. FOOR: Could Counsel go over the fact , the history of the fact there have been three other times we would (unintelligible) for similar type reasons or what the deal is and tell us.

LARRY DUKET: Before we get into that, just a fuller answer to Mr. Pinto's question of whether there is any other County or Program with the site specific variance. I, I think the answer is no, but the Commission has approved other forms of variance and the most notable example is in Queen Anne's and St. Mary's with the administrative variance but even under that relaxed standard in terms of a process, in other words it is not a quasi-judicial before the Board of Appeals, it still meets the State criteria at a minimum even though it is an

administrative process. So the Commission has approved other types of variance programs but even those have been held to the State criteria at a minimum, even those, so I'm sorry to keep on.

MIKE WHITSON:

Marianne, do you want to.....

MARIANNE MASON:

I'm not sure I remember the question.

DR. FOOR:

We are, this, this whole issue of history (CROSSTALK) and using it and the fact that you think that it...

MARIANNE MASON:

Well, my understanding is that it has been invoked on at least three occasions to and the process is ah, Will to address your question, the process is if the Commission discovers a clear omission to mistake or conflict in an approved adopted local program, this is, programs that are adopted, approved and blessed. Then the Commission has the option to notify the affected jurisdiction that there is in the Commission's opinion such an omission of mistake or conflict and to require the local jurisdiction to take action within a certain number of days, I think it is 90 days....

DR. FOOR:

90 days.

MARIANNE MASON:

...to correct the ah.

CHRIS HUGHES:

If you cite that (unintelligible) , what is your cite of authority?

MARIANNE MASON:

It's the Annotated Code of Maryland, Natural Resources Article Section 8-1809L, um, which I have in front of me and I will find.

DR. FOOR:

Page 17.

CROSSTALK

(UNINTELLIGIBLE)

MARIANNE MASON:

L1 actually. If the Commission determines that an adopted program is (UNINTELLIGIBLE) contains a clear mistake or conflict with the criteria or law the Commission may notify the local jurisdiction of the specific deficiency and request that the jurisdiction submit a proposed program amendment or program

refinement to correct the deficiency. Um, within 90 days after being notified of any decision, the local jurisdiction shall submit any proposed changes that are necessary to correct the deficiency. Ah, if this doesn't happen, local projects approval granted under part of the program that the Commission has determined to be deficient shall be null and void after notice of the deficiency. So the operative action is the notice from the Commission to the local jurisdiction, formal notice. After that time, any project approval in this case, a variance granted under 125.37, the site specific provision, would be null and void. Not operative. In other words, the Commission is exercising its authority here, actually its mandate under the Statute to be sure that all the local programs that are administered in a consistent and uniform manner. That's what's happening.

UNKNOWN:(wynkoop)

So, so, like any approvals pursuant to that ah, original approval of any ordinances, stand.

CROSSTALK

MARIANNE MASON:

After , after notice.

UNKNOWN:(wynkoop)

Only those from the moment the Commission gave notice..

MARIANNE MASON:

The Formal notice.

UNKNOWN: (Wynkoop)

And when did the Commission give notice?

CROSSTALK

MIKE WHITSON:

We're discussing giving that notice.

DR. FOOR:

What we gotta do is to put the time limit and let's get it straightened out. Let's fix it.

MARIANNE MASON:

And the other emphasis, Dr. Foor, ah, because I wasn't involved with one of them had to do with Anne Arundel County and I believe it was an insofaras possible. And, I don't remember the

other.....

CROSSTALK

MIKE WHITSON: Well, one other point of clarification for Will and for Sam's benefit, Ren will you just briefly talk about some time frame in terms of the Commission letting the County know that we had an issue with this particular language experience.

REN SEREY: Well, as, as you know the first stage of the comprehensive review , from the Commission's standpoint is to ah, have staff, ah review the local program and make comments to the local government explaining all this, ah informing them that you know, we've, we've noticed certain things, we've worked with certain provisions and we think they need to be changed. That's , that's just the staff. Um, what then happens is that after you know a lot of work between the , the Commission staff and the local staff, a, a panel, of Commission members as appointed and it is that panel that does some of the , the tough negotiations if need be with the local government to develop a, a package of amendments under the heading of comprehensive review. But then it comes back to the Commission for a full vote. What we have done, ah, in Wicomico County is send that initial staff set of comments citing among other items that ah, this particular section, site specific buffer variance, ah we felt is not operating consistent with the Criteria and needed to be changed. I don't know whether, Mary can tell me, I don't know whether in that letter, we referenced a Buffer Exemption Program, did we, as a , as a possibility for dealing with some of these issues.....

LEEANNE CHANDLER: We did do that.

REN SEREY:we did do that, LEEANNE said. Ah, that's as far as it's gone and that's about 2 ½ years ago. Um, subsequent to that, when we have reviewed site specific buffer variances as they've come to the office, we have reiterated that, that staff concern, but it has not at any point been elevated to the level of panel review or to Commission review. The reason it's brought to you today, ah, two reasons. One is it's been 2 ½ years, we've, we've not been able really to ah, get any work done. Um, of course I, I think some, you know, some very important reasons that the County level which I talked about earlier and, secondly, because the Courts, the Court has brought to our attention that the language which is even different than we had thought it was. Which has just sort of heightened the issue. That's why were bringing it to you for your discussion.

MIKE WHITSON: Okay, thanks Ren. Well, as the Motion has been seconded, the question has been called. If there is no further discussion, all in favor of the motion signify.....

LARRY DUKET: A little more discussion.

MIKE WHITSON: Quickly, either we....

LARRY DUKET: Okay, fine. Judging by Chris' question asking Marianne to cite the section, you know, it maybe that what maybe Chris is holding as the County's position right now might not hold once you, the Attorney and the Commission Counsel get back and look at the details of the law. So I'm not sure what I'm asking Chris a question as to whether there's any room to go through the Commission's process

or whether you are representing the ultimate final County decision or that you have the authority....

CHRIS HUGHES:

Well, let me, let me ah, I'm here today as a, by invitation to come and field questions or whatever and I wasn't sure until I got here this afternoon what we were even really talking about. Ah, so no this is not a final decision by any stretch by the County, that would require Council action. Ah, what I'd welcome is, you say that comments had been sent 2 ½ years ago to my predecessor, ah, I'm aware of comments on cases, specific cases, which we read in the context of those cases. I'm not aware of any specific directives for us to review or modify our case. I'm hearing that this afternoon. Ah, what I would invite, and again at this point, if the Commission finds it appropriate and you want to move forward into the formal arena, we can do that too. Ah, on an informal basis if you wanted to begin the process anew with a new Planning Director, ah, give us your written comments, if they are the same or modified now that you have a new language with a typo being fixed from 2 ½ years ago. Ah, we'd be happy to take a look at those comments and to give them full consideration ah, and then to determine what we think an appropriate response is. Ah, that, you're welcome to do it that way, and I'd like to do it that way if that would be amenable with the Commission. I'm not gonna guarantee that the Council's response going to be any different from what I have said this afternoon. I certainly would be willing to run that through the mill.

WILL CASTLEBERRY:

Well, if we did that, which makes sense, could we put it as set, sunset it at a time when the discussion would have to end less we forward.

MIKE WHITSON:

You mean like less than 2 ½ years, would that be...

WILL CASTLEBERRY:

Yes, less than 2 ½ years would be applica.... what's reasonable, 2 months, a month, I mean, what, what..... Well, we'll take this and this is fine and we certain want to do that and have an objective basis, but the fear is that it will last another two years....

DR. FOOR:

The, the, the point though is that the (Unintelligible) of this issue only affects the specific nature of the site specific buffer issue. It only brings out what's ahead (unintelligible) so let's clear it up right now! We are not just talking about just a mistake of the (unintelligible) we are talking about a whole set of, a whole comprehensive review of the whole Critical Area package which is a lot of information. There have been some policy changes, a lot has happened since 1989. (Unintelligible) numerical things, a lot of things have to happen. So what this does, is very succinct when taking issue that there is only going to be and there is going to be legal regress for those people that are involved in that specific problem and we are going to get it resolved very quickly. So I think that it really is important enough that it can remain as a stand alone issue. And I think we have to got to see if the votes falls or...

MIKE WHITSON:

Sam, last word.

SAM WYNKOOP:

there is a lot of tension and a there's a lot of history which is manifesting itself ah, with the parties here, both from the Commission side and the County's point of view. I, I think that I would conclude that you know, and I think those of you that have been here and the staff can do some sort of a month or another week you know talking, but I am prepared to , cause I understand this process now, you've, I mean what this does is it requires time

constraints within which responses must be made or there are consequences so ah, (unintelligible)I mean I am sympathetic to, and I want to really emphasize that, I am sympathetic to the point of views being made by the town and how they would or by the county and how they would resolve this issue. But, by the same token, I think it is reasonable request that you start some kind of time frame...

WILL CASTLEBERRY: Could I, could....

SAM WYNKOOP: ...but I think that it is important that we that whoever is engaged in this and involved in this from this point forward have a ah,

MIKE WHITSON: Don't leave Sarah you sit down....

SARAH TAYLOR-ROGERS: I'm sorry, I've got a ,ah...

MIKE WHITSON: But, we are going , we are gonna vote,. The question has been the motion has been made and seconded and the question has been called and there has been discussion, all those in favor of the motion signify by saying aye.

COMMISSION: AYE.

MIKE WHITSON: Opposed?

LARRY DUKET: No.

MIKE WHITSON: Any abstentions?

WILL CASTLEBERRY: Abstain.

MIKE WHITSON: Motion passes unanimously with one negative vote and one abstention. Counsel will prepare an appropriate response.

CERTIFICATE

This is to certify that the foregoing transcript in the matter of the Chesapeake Bay Critical Area Commission's Deliberations on The Wicomico County's Critical Area Program held on Wednesday, May 6, 1998 occurred at the Department of Housing and Community Development, Crownsville, Maryland represents the full and complete proceedings of the aforementioned matter, as reported and reduced to typewriting.

Peggy G. Mickler

Peggy G. Mickler, Commission Secretary