

Chesapeake Bay Critical Area Commission  
Department of Housing and Community Development  
Crownsville, Maryland 21401  
Conference Room 1100A  
November 3, 1999

AGENDA

1:00 p.m. - 1:05 p.m. Approval of Minutes of October 6, 1999 *Intro: Shinky Branch for Sam Waples* John C. North, II, Chair

1:05 p.m. - 1:35 p.m. Special Presentation Planning with Local Governments for Maryland's Green Infrastructure Bill Jenkins, DNR

PROGRAM AMENDMENTS and REFINEMENTS

1:35 p.m. - 1:45 p.m. REFINEMENT: Town of Secretary Mapping change Meredith Lathbury, Planner

1:45 p.m. - 2:00 p.m. VOTE: Greensboro Comprehensive Review Roby Hurley, C. Rider

2:00 p.m. - 2:10 p.m. REFINEMENT: Queen Anne's County Growth Allocation-Anchorage Susan Zankel, Planner

PROJECT EVALUATION

2:10 p.m. - 2:20 p.m. VOTE: Gunpowder Falls State Park Muskrat Trail Bridge Replacement Meredith Lathbury, Planner

2:20 p.m. - 3:05 p.m. COMMISSION POLICIES Proposed Reclassification of Certain Policies as Procedures Ren Serey, Exe. Director

3:05 p.m. - 3:15 p.m. Old Business New Business John C. North, II, Chairman

\* Next Commission Meeting: December 1, 1999 Officers Club, Naval Academy, Annapolis, Md.

Chesapeake Bay Critical Area Commission  
Department of Housing and Community Development  
Crownsville, Maryland 21401  
Conference Room 1100A  
November 3, 1999

SUBCOMMITTEES

9:30a.m. - 10:30 a.m. Project Evaluation

Members: Cain, Witten, Bourdon, Giese, Goodman, Corkran, Cooksey, Hearn, Graves, Wilde, Olszewski, Jackson, McLean

Gunpowder Falls State Park, Muskrat Trail Bridge Replacement  
Crab Creek Subdivision/Annapolis  
Discussion of RCA Issues

Meredith Lathbury, Planner  
Ren Serey, Exe. Director

10:30 a.m. - 12:00 p.m. Program Implementation

Members: Myers, Barker, Williams, Wynkoop, Foor, Johnson, Lawrence, Duket, Samorajczyk

Town of Secretary/Mapping Change  
Town of Greensboro/Greensboro Comprehensive Review  
Queen Annes County/Growth Allocation Refinement  
for Anchorage Subdivision  
Commission Policies/Discussion of Reclassification of  
Certain Policies

Meredith Lathbury, Planner  
Roby Hurley, Circuit Rider  
Susan Zankel, Planner  
Ren Serey, Exe. Director

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

*approved* 1

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

October 6, 1999

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

Bourdon, Dave, Calvert County	Setzer, Gary for Hearn, J.L. Dept. Environ.
Barker, Philip J., Harford County	Stewart, Duncan - Graves, Charles, Baltimore City
Corkran, Bill, Talbot County	Wynkoop, Samuel, P.G. Co.
Wilde, Jinhee, Western Shore MAL	Foor, Dr. James, Queen Anne's Co.
Johnson, Samuel Q., Wicomico Co.	Wenzel, Lauren, DNR
Giese, William, Jr., Dorchester Co.	McLean, James H., DBED
Olszewski, John Anthony, Baltimore County	Witten, Jack, St. Mary's County
Williams, Roger, Kent Co.	Goodman, Bob, DHCD
Lawrence, Louise, Md. Dept. Ag.	

The Minutes of September 1, 1999 were corrected on page 2, paragraph #1, second line, "Queen Anne's County" replaces "Kent County" in the 4-year Comprehensive review for Queenstown presentation.

Chairman North introduced and welcomed Ms. Lauren Wenzel from DNR who succeeds Dr. Sarah Taylor-Rogers on the Commission.

Tracy Batchelder, Planner, CBCAC presented for VOTE the proposal by St. Mary's County to construct an outdoor recreational facility at St. Mary's College. She described the technical details of the proposed league baseball field and parking lot. The portion of land in the Critical Area is 10.10 acres. Since this is an area of intense development, there are no specific reforestation provisions within the Critical Area; stormwater runoff will be controlled and treated; the proposed stormwater management BMPs meet the 10% rule requirements. The College has received permits from MDE for sediment and erosion control. There are no known historic sites, rare, threatened or endangered species present on the site in the Critical Area except that there is a record of Tobaccoweed, a species with endangered/extirpated state status, in the vicinity. Dave Bourdon moved to approve the project as presented. The motion was seconded by Mr. Corkran and carried unanimously.

Tracy Batchelder presented for VOTE DNR's proposal to construct an offshore stone breakwater and beach renourishment to prevent the continuing erosion of the westerly portion of St. Clement's Island in St. Mary's County. This project will disturb less than 5,000 sq. ft. Ms. Batchelder described the technical details of this project. DNR has obtained approval from the State of Maryland Board of Public Works and the U.S. Army Corps of Engineers. No adverse comments were received from MDE and there are no known rare, threatened or endangered species present on this site. Dave Bourdon moved to approve the project as presented. The motion was seconded by Bill Giese and carried unanimously.

Lisa Hoerger, Planner, CBCAC introduced Mr. Frank Hammons with the Maryland Port Administration who updated the Commission on Poplar Island. Phase I is now finished and Phase II begins with the process of putting in a dike to connect to Coaches Island. He said that Phase One will be in operation this fall and winter and will be ready to accept 2,000,000 yards of spoil a year, and will be comprised of 1100+ acres with 50% uplands and 50% wetlands habitat when it is completed with the wetland cells being completed first. He said that Phase II has received funding from the Federal Government and will get underway by next

spring and will take about 15 months to complete. This whole facility will be strictly for habitat, not a recreational facility. Mr. Hammons stated that this facility is set up to accept spoils from the Baltimore Harbor approach channels and possibly other sites.

Ms. Hoerger presented for Concurrence with the Chairman's determination of Refinement the Town of Easton's annexation of parts of the Glenwood Farm/Ratcliffe Manor Properties. She said that the Town of Easton has annexed 386.44 acres of land and of that 312 acres are located in the Critical Area with a designation of RCA. The parcel is identified in the Town of Easton's 1998 Comprehensive Plan as a growth area. The annexation was approved by the Town Council following a public hearing in June, 1999. Notice of subdivision for a portion of this site has been received at Commission offices. Ms. Hoerger described the property following a site visit. She said that the proposed subdivision requests fifteen dwelling units on approximately 60 acres in the RCA. The remaining land, 260 acres - proposed lot 16 - will be left undisturbed until a time that a growth allocation is requested and at that time, the entire Critical Area acreage of the parcel including lots 1-15 will be deducted. She said that the land will convert from agricultural use to residential and a 100 foot buffer has been established. The Commission supported the Chairman's determination of Refinement.

Mary Owens, Chief of Program Implementation, CBCAC, presented for Concurrence with the Chairman's determination of Refinement, St. Mary's County's request for 31.64 acres of growth allocation to change the Critical Area overlay designation of a portion of the Tudor Hall Village project site in Leonardtown from LDA and RCA to IDA as part of the development of a Planned Unit Development (PUD) project. The PUD involves a 390 acre parcel with 195.8 acres in the Critical Area. The growth allocation will provide the flexibility needed for a hotel and conference center which is part of the PUD. In 1998 the Commission approved a request by the Town of Leonardtown to use 4.05 acres of growth allocation for this project. St. Mary's County gave that amount of growth allocation acreage to the Town at the time of adoption of their Critical Area Program. However, because this acreage would not accommodate all of the development for the hotel and conference center, the Town applied to the County for 31.64 acres of growth allocation and in March, 1999 the County approved the Town's request and forwarded an amendment request to the Commission. The County's approval included several conditions regarding financing and distribution of revenues between the Town and the County and further specified that if approved by the Commission, the growth allocation request would be null and void if the Commission's approval did not contain the same conditions. Ms. Owens described the technical aspects of the project. There are no known threatened or endangered species on the site. The Town and Commission staff are currently working with the applicant's engineer on stormwater management and the 10% Rule calculations for development in the IDA will be submitted as the design is refined. Best management practices for use on this site are being evaluated. The Town has no objection to the Commission's approval of the County's growth allocation request subject to the conditions. The Commission's Counsel, Marianne Mason, recommended that the Commission recognize the County's conditions in their approval of the Refinement by including the following as a condition: "That the Commission's approval of this Refinement recognizes the conditions contained in the St. Mary's County Ordinance Z-99-01. The satisfaction and enforcement of the conditions in that Ordinance are the sole responsibility of the Town and County." The Commission supported the Chairman's determination of Refinement with the condition proposed by Ms. Mason.

Mary Anne Skilling, Circuit Rider, CBCAC presented for Concurrence with the Chairman's determination of Refinement the request for growth allocation by the Town of Chesapeake City to change 20.4 acres from LDA to IDA on the Young, et al property. This request was approved by the Town Council for Chesapeake City in May, 1999. The Board of County Commissioners of Cecil County granted the use of the

acreage to the Town for the project in June, 1999. This land is zoned as a Traditional Neighborhood District and the proposed development is consistent with the Chesapeake City Comprehensive Plan and Critical Area program. This change will allow residential development that will be consistent with the existing development in the Town and the comprehensive plan. The Commission supported the Chairman's determination of Refinement.

Meredith Lathbury, Planner, CBCAC presented information on the Conservation Reserve Enhancement Program (CREP) in the State of Maryland. She spoke about the easement element of the program and said that it was generated out of the 1997 agreement between the United States Department of Agriculture and the State of Maryland to restore habitat and water quality on the uplands throughout the Bay watershed. One of the goals is to enroll 100,000 acres in restoration practices. The program is being implemented by developing local partners with organizations such as land trusts and soil conservation districts.

Claudia Jones, Scientific Advisor, CBCAC presented information on the Revision of Critical Area FID Guidelines. She said that the original guidance document for Forest Interior Dwelling birds (FID) in the Critical Area was approved in 1986. The original document focused on how to avoid and minimize impacts to FID. She said that this document needs some updating regarding conservation methods, refinement of some definitions, adding new scientific knowledge concerning birds, and including clear guidance for evaluations on site and how to respond to requests for guidance. The document will be sent for review to local jurisdictions, scientific and technical individuals and other interested parties.

## Old Business

Marianne Mason, Esquire, Assistant Attorney General, DNR and Commission Counsel updated the Commission on legal affairs. She said that the Court of Appeals decided in September the case of Belvoir vs. North pertaining to variances for an increased number of boat slips at a community pier. In this case the Court determined a definition of "unwarranted hardship". Now, in the case of White vs. North regarding a variance granted by the local Board and overturned in the Courts for a pool in Anne Arundel County, the Court of Appeals has sent the case back to the local Board of Appeals and said that the Belvoir case should be referenced for the definition of an unwarranted hardship.

In the Order remanding the case, the Court of Appeals said that a variance requires a showing of "unwarranted hardship" and in the Courts' definition the meaning is: "a deprivation of a reasonable and substantial use of the property". The Court stated further that the determination of what constitutes "a reasonable & substantial use" is a matter of fact and that the local Zoning Boards and Boards of Appeals make those determinations of fact. She explained that the high Court sent this case back so that the local Board could apply the facts before it to the law as defined by the Court of Appeals. The Court said in addition that all the other factors existing in variance ordinances, normally 5-6 other than hardship, should be considered in totality and the whole consideration goes to whether the person has suffered an unwarranted hardship. This is a different interpretation than was believed to be required because these factors are written in the Criteria and existing local ordinances in the conjunctive using "and" between these factors. The Court of Special Appeals previously said that the statute required that you must find "hardship" AND "deprivation of rights" AND, etc.. The Court of Appeals now has said that you have to look at ALL these factors in their totality. The White case is back at the Anne Arundel Board of Appeals. Ms. Mason stated that she believes that there is now a very good Appellate definition of what a hardship is and that the Commission's cases will have to be looked at on a case-by-case basis in their totality.

**New Business**

A field trip to Hart Miller Island and to Poplar Island was suggested by the Chair.

There being no further business, the meeting was adjourned.

Minutes submitted by: Peggy Mickler  
Commission Coordinator

## *Chesapeake Bay Critical Area Commission*

**STAFF REPORT**  
November 3, 1999

*Concurrence*

**APPLICANT:** Town of Secretary

**PROPOSAL:** Refinement - Mapping Amendment due to Mapping Mistake

**JURISDICTION:** Town of Secretary, Dorchester County

**COMMISSION ACTION:** VOTE

**STAFF RECOMMENDATION:** Concurrence with Chairman's Determination

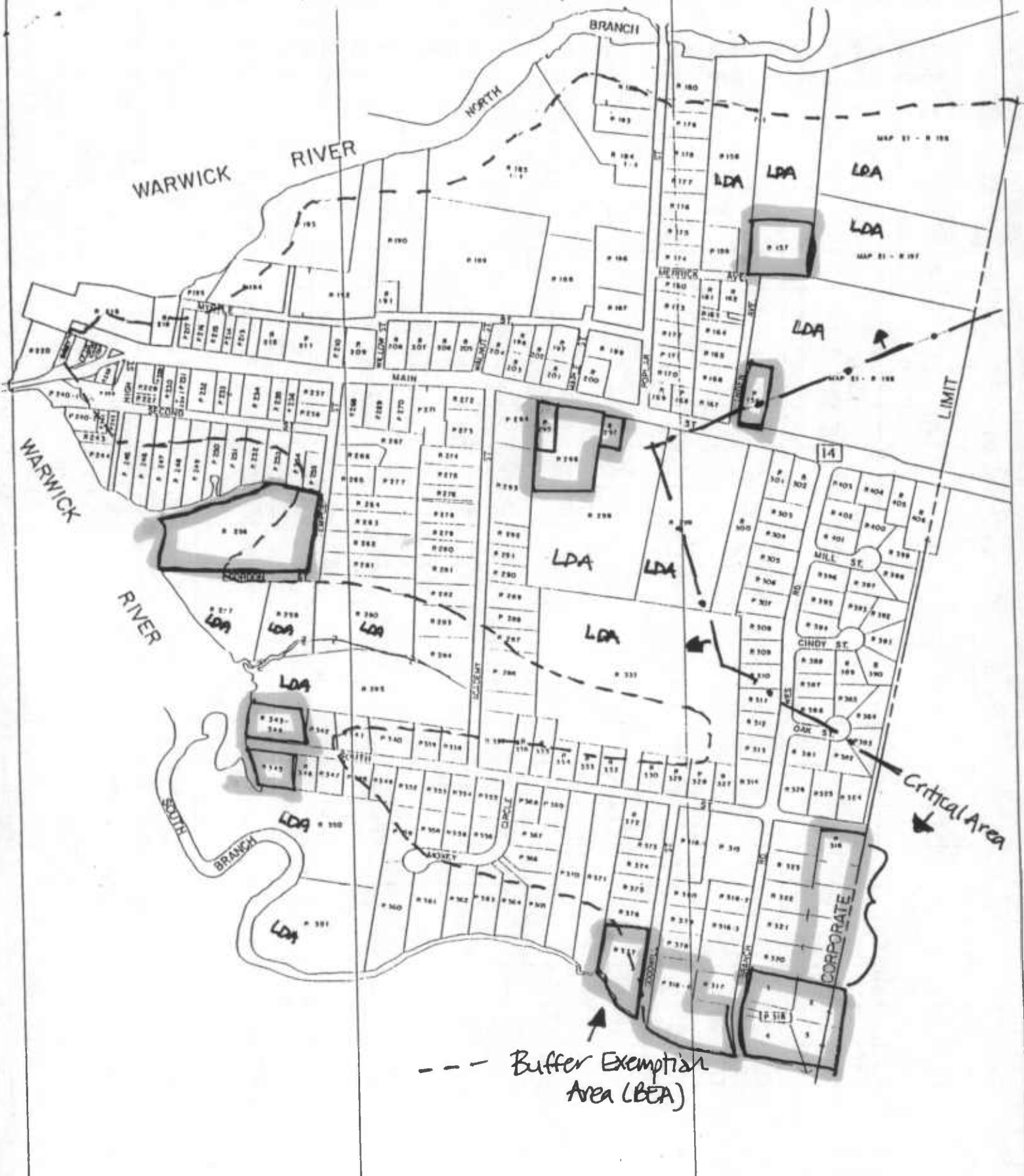
**STAFF:** Meredith Lathbury, Tracey Greene

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

### **DISCUSSION:**

The Town of Secretary is requesting a mapping amendment to rectify mapping mistakes that designated parcels as Limited Development Areas (LDA) when they should have been designated Intensely Developed Areas (IDA). It has become apparent that twenty-one properties containing 11.51 acres were mapped LDA even though they met the criteria for IDA designation and most of the surrounding parcels were designated IDA. The Town determined that many of these parcels were designated based on size rather than use because no field survey was performed at the time of the initial mapping. The Town determined that another error occurred when some annexed parcels were designated LDA even they were added onto parcels that were already designated IDA. This mapping amendment will correct these mapping mistakes to allow the identified properties to be properly designated as IDA.

All owners of property impacted by the mapping change were sent a letter explaining the mapping amendment process and how the change from LDA to IDA would impact these properties with respect to impervious surfaces and stormwater management in particular. The Town of Secretary Planning Commission proposed the mapping amendment at a town meeting on Monday, October 18, 1999. The Planning Commission recommended that the mapping amendment be approved by the Town Council. On Thursday, October 22, 1999, the Town Council held a public hearing on the mapping amendment. The Town Council unanimously approved the mapping amendment.



--- Buffer Exemption Area (BEA)

1" = 200' scale

DEPT. OF ASSESSMENTS & TAXATION PROPERTY MAP DIVISION			
<small>THIS MAP IS A REPRODUCTION OF THE ORIGINAL MAP AND IS NOT TO BE USED AS A BASIS FOR ANY LEGAL ACTION. THE ORIGINAL MAP IS KEPT IN THE OFFICE OF THE ASSESSOR AND TAX COLLECTOR. ANY CHANGES TO THIS MAP SHALL BE MADE BY THE ASSESSOR AND TAX COLLECTOR. THIS MAP IS NOT TO BE USED AS A BASIS FOR ANY LEGAL ACTION.</small>			
REVISED TO	DATE	LINEN	OF
	JULY '92	274	274
PROPERTY LINE		SUB DIVISION BOUND	
CONFIRMED OWNERS		PARCEL NUMBER - P	
SCALE: 1" = 20'			
RJD		LAST P 011	



**TOWN OF SECRETARY CRITICAL AREA MAPPING MISTAKES  
 PROPOSED RECLASSIFICATIONS FROM LDA TO IDA - AFFECTED PROPERTIES  
 (Twenty-One Properties Totaling 11.51 Acres)**

Parcel Number	Lot Number	Property Owner	Parcel Location	Parcel Size	Current Use
156	N/A	Gary & Sarah Cox	153 Main Street	16,338 sf	Dwelling
157	N/A	Roy Wells	105 Merrick Street	32,822 sf	Dwelling
256	N/A	Town of Secretary	w/side Temple Street	2.54 acres	Boat Ramp
295	N/A	Louis & Shirley Koski	144 Main Street	9,750 sf	Dwelling
296	N/A	Baynard & Gladys Taylor	s/side Main Street	43,237 sf	Dwelling
297	N/A	Walter & Emily Collins	148 Main Street	6,000 sf	Duplex
316-6	17	Harold & Krista Warfield	140 Branch Road	24,381 sf	Dwelling
316	15	James & Mary Faulkner	112 South Street	30,056 sf	Dwelling
316	16	Jean Shufelt	e/side Goodwill Street	33,105 sf	Vacant
318	1	Jeffrey & Debra Powell	111 Branch Road	14,964 sf	Dwelling
318	2	Mark Hubbard	113 Branch Road	20,790 sf	Dwelling
318	3	David Graham	115 Branch Road	22,306 sf	Dwelling
318	4	Tammy Windsor	117 Branch Road	23,387 sf	Dwelling
320	14-A*	Joseph & Nancy Hughes	109 Branch Road	14,867 sf	Dwelling
321	13-B*	Woodrow Harper, Jr.	107 Branch Road	12,777 sf	Dwelling
322	12-C*	Harry Short	105 Branch Road	12,777 sf	Dwelling
323	11-D*	Dale Hurt	103 Branch Road	10,770 sf	Dwelling
343	N/A	Louis & Josephine Wanex	n/side South Street	1,180 sf	Vacant
344	N/A	Louis & Josephine Wanex	101 South Street	20,060 sf	Dwelling
345	N/A	Lane & Sandra Corbett	102 South Street	12,277 sf	Dwelling
377	4	John & Mary Howell	110 Goodwill Avenue	28,885 sf	Dwelling

\* Corresponds only to rear portion of subject property

*Chesapeake Bay Critical Area Commission*

STAFF REPORT  
November 3, 1999

*Approved*

**APPLICANT:** Town of Greensboro

**PROPOSAL:** Greensboro Comprehensive Review

**JURISDICTION:** Town of Greensboro

**COMMISSION ACTION:** Vote

**STAFF RECOMMENDATION:** Approval

**STAFF:** Mary Owens and Roby Hurley

**PANEL RECOMMENDATION:** Pending

**PANEL MEMBERS:** Andrew Myers, Dr. Foor, Bob Goodman, Bill Giese

**APPLICABLE LAW/  
REGULATIONS:** Annotated Code of Maryland, Section 8-1809(g)

**DISCUSSION:**

The Town of Greensboro has recently completed the four year comprehensive review of their Critical Area Program. The review included the town's zoning ordinance, Critical Area maps and subdivision regulations. The current Program and zoning ordinance needed significant revisions; therefore, the Town contracted with Mr. Bruce Galloway, a private consultant to draft a new zoning ordinance and prepare a new map. Staff supplied Mr. Galloway with a model ordinance (developed by Mary Owens) which he used to replace the existing Critical Area sections of the zoning ordinance and the Town's Critical Area Program document. Sections from the Town's Program document have been incorporated into the zoning ordinance, eliminating the need for a separate Program document. Staff worked closely with the Planning Commission and Mr. Galloway on the Critical Area sections of the ordinance, customizing it for the Town of Greensboro. Maps were produced by both Mr. Galloway and the Maryland Office of Planning.

The most significant changes to the Town's ordinance and maps are as follows:

#### PROGRAM:

Because of the comprehensiveness of the zoning ordinance, a separate Program document is no longer necessary to implement the Town's Critical Area Program. Calculation of the acreage of the three land use categories and evaluation of the growth allocation status were conducted, and this information is included in the growth allocation section of the ordinance. The County grants growth allocation on a first come first served basis and to date no growth allocation acreage has been given to the Town.

#### ZONING ORDINANCE:

The Town's ordinance employs an overlay system to facilitate the application of development standards in the three Critical Area land use classifications. Language was added to reflect updated information from DNR on Habitat Protection Areas. The Non-tidal Wetlands section was reduced to a statement referencing the appropriate provisions in COMAR that require permits through the Maryland Department of the Environment. The Town wishes to map two Buffer Exemption Areas (BEAs) which are identified as the Riverside Hotel BEA and the Firehouse BEA. The ordinance references the current BEA policy.

#### SUBDIVISION REGULATIONS:

The current regulation document was revised by Mr. Galloway and changes recommended by Staff were incorporated.

#### MAPS:

The new map was produced by Bruce Galloway and the Maryland Office of Planning. Changes to the original maps included corrections of land use categories and zoning boundaries. The Town amended their Critical Area map in 1996 to incorporate their waste water treatment plant which did not have a Critical Area designation on either the Town or County maps. This amendment also included a clarification that this property is included within the Town boundaries. The resource maps were evaluated based on current information from DNR, and no major changes made.

#### BUFFER EXEMPTION AREA DESIGNATIONS:

The Town has proposed two BEAs which are referred to as the Riverside Hotel BEA and Firehouse BEA.

The **Riverside Hotel BEA** includes the hotel site. The Town is requesting that this site be designated as a BEA because the existing pattern of development prevents the Buffer from fulfilling the functions set forth in the Criteria. The following factors were considered:

- 1) The Buffer's ability to provide for the removal of sediments, nutrients, and harmful or toxic substances has been compromised because vegetation is largely disturbed and undisturbed areas consist of mowed lawn with scattered trees and shrubs. The topography within the Buffer is steep and much of the shoreline has been altered. There is an existing bulkhead and retaining wall on the site. Impervious surfaces within the Buffer include two, old small buildings and two sets of masonry stairs.

- 2) The Buffer's effectiveness at minimizing the adverse effects of human activities on wetlands, shorelines, stream banks, tidal waters, and aquatic resources is limited because human activities are taking place very close to the shoreline due to the location of existing development. Hotel guests use the Buffer for access to the water. There are minimal areas of natural vegetation within the Buffer.
- 3) The Buffer does not function optimally as an area of transitional habitat between aquatic and upland communities because this area is developed and much of the natural vegetation has been removed due to development on the site. There is no natural vegetation to provide food or cover for wildlife.
- 4) The Buffer does not function to maintain the natural environment of streams because there are no streams on the property.
- 5) The Buffer's capacity for protecting wildlife habitat on this site is severely limited because the Buffer is developed and is actively used by hotel guests for recreation and access. Human disturbance to wildlife is unavoidable because of the intensity of the development on this site.

The **Firehouse BEA** includes the site of the Volunteer Fire Company Lot and one lot to the south. The Town is requesting that this site be designated as a BEA because the existing pattern of development prevents the Buffer from fulfilling the functions set forth in the Criteria. The following factors were considered:

- 1) The Buffer's ability to provide for the removal of sediments, nutrients, and harmful or toxic substances has been compromised because vegetation on both lots is a narrow strip of shrub scrub along the river bank. The topography within the Buffer is steep and much of the shoreline has been altered. There are existing parking lots within the Buffer on both lots. Impervious surfaces also include a large cement stormwater conveyance.
- 2) The Buffer's effectiveness at minimizing the adverse effects of human activities on wetlands, shorelines, stream banks, tidal waters, and aquatic resources is limited because human activities are taking place very close to the shoreline due to the location of existing development. Parking in the Buffer is necessary for fire department functions. There are minimal areas of natural vegetation within the Buffer.
- 3) The Buffer does not function optimally as an area of transitional habitat between aquatic and upland communities because this area is developed and much of the natural vegetation has been removed due to development on the site. There is no natural vegetation to provide food or cover for wildlife.
- 4) The Buffer does not function to maintain the natural environment of streams because there are no streams on the property.

- 5) The Buffer's capacity for protecting wildlife habitat on this site is severely limited because the Buffer is developed and is actively used for parking. Human disturbance to wildlife is unavoidable because of the intensity of the development on this site.

The original Program was adopted on June 11, 1990. The Town Planning Commission held a public hearing July 20, 1999 and the Town Commissioners held a joint hearing with the Critical Area Commission and approved the Program revisions on October 7, 1999.

*Concur*

***Chesapeake Bay Critical Area Commission***

**STAFF REPORT**

**November 3, 1999**

**APPLICANT:** Queen Anne's County

**PROPOSAL:** Program Refinement - Proposed Growth Allocation for "The Anchorage" Subdivision

**COMMISSION ACTION:** Concurrence with Chairman's Determination

**STAFF RECOMMENDATION:** Approval

**STAFF:** Susan M. Zankel

**APPLICABLE LAW/  
REGULATIONS:** COMAR 27.01.02.06 - Location and Extent of Future Intensely Developed and Limited Developed Areas.

**DISCUSSION**

This Growth Allocation petition seeks to change the designation of a 20.159 acre parcel of land in the Critical Area designated as Resource Conservation Area (RCA) to Intensely Developed Area (IDA). The property is located on Thompson Creek Road and is identified as Lot One of the Fair Prospect subdivision (See attached map.). This redesignation is requested to facilitate development of the subject property with 44 residential lots, public roads, community open space, a boat and RV storage area and recreational amenities. The residential subdivision is proposed with the name of "The Anchorage."

At a public hearing on September 9, 1999, the Planning Commission approved this request by Maren Waterman for a favorable recommendation to the County Commissioners on Growth Allocation # GA-04-99-02 subject to the following conditions:

1. Adequate screening and buffering along Thompson Creek Road and on the north side of the property shall be installed.
2. All designated afforestation area, all non-tidal wetlands and all of the 100' Buffer shall be included in the community open space. None of these protected areas or features shall be located on any of the individual lots.
3. All homes constructed in the Anchorage subdivision must substantially reflect the architectural style depicted in Amended Petition Exhibit No. Two.
4. The entrance feature for the Anchorage subdivision must substantial reflect the drawing shown in Amended Petition Exhibit No. Three.

5. A well screened community recreational vehicle and boat storage area shall be provided.
6. The public facilities impact assessment must be revised to address comments issued by the Board of Education, the Planning Director, and the Finance Department Director.
7. A vehicular connection shall be established between the Anchorage development and Cox Creek Landing development
8. Restrictive covenants regulating use of the property and which establish a home owners' association shall be required.
9. The applicant will agree to participate in the cost of recommended improvements to the intersection of Route 50/301. These recommendations will be based upon a review and evaluation of improvement options, which will be jointly conducted by the State Highway Administration, the Planning Department, the Department of Public Works and the applicant's traffic consultant. Participation in the cost of recommended improvements by the developer shall be on a proportional fair share basis, and shall be in reasonable proportion to the size, scale and traffic generated by the proposed development.

On September 21, 1999, the County Commissioners granted conceptual approval to this Growth allocation petition with these conditions.

In January of 1999, the Critical Area Commission approved the growth allocation pre-mapping for Phase I of the Stevensville Community Plan. This property, Lots One of the Fair Prospect subdivision, was identified in the Stevensville Community Plan and pre-mapped for growth allocation (see attached Map 2).

The minimum 100-foot Buffer, a naturally vegetated or vegetated area established or managed to protect aquatic, wetland shoreline, and terrestrial environments from man-made disturbances [County Code 14-111], will be established on the property and maintained in natural vegetation according to a Buffer Management Plan to be submitted to the Critical Area Commission and County staff prior to the Commission's November meeting.

The concept plans as submitted appears to include state tidal wetlands in the calculation of acreage. The applicant will submit the existing survey of mean high water on the property so that the appropriate acreage on the property and therefore growth allocation amount can be verified. This information will be provided to the Commission staff and County prior to the November Commission meeting.

A community pier is proposed as one of the development's recreational amenities. According to the County Program, the calculation of slips for a proposed community pier in the IDA is the *lesser* of the following:

- a) One slip for each 50 feet of shoreline in a subdivision located in an intense or limited development area; or
- b) A density of slips to platted lots or dwellings within a subdivision in the Critical Area

in accordance with the schedule in Section 14-143 of the County's Critical Area Act.

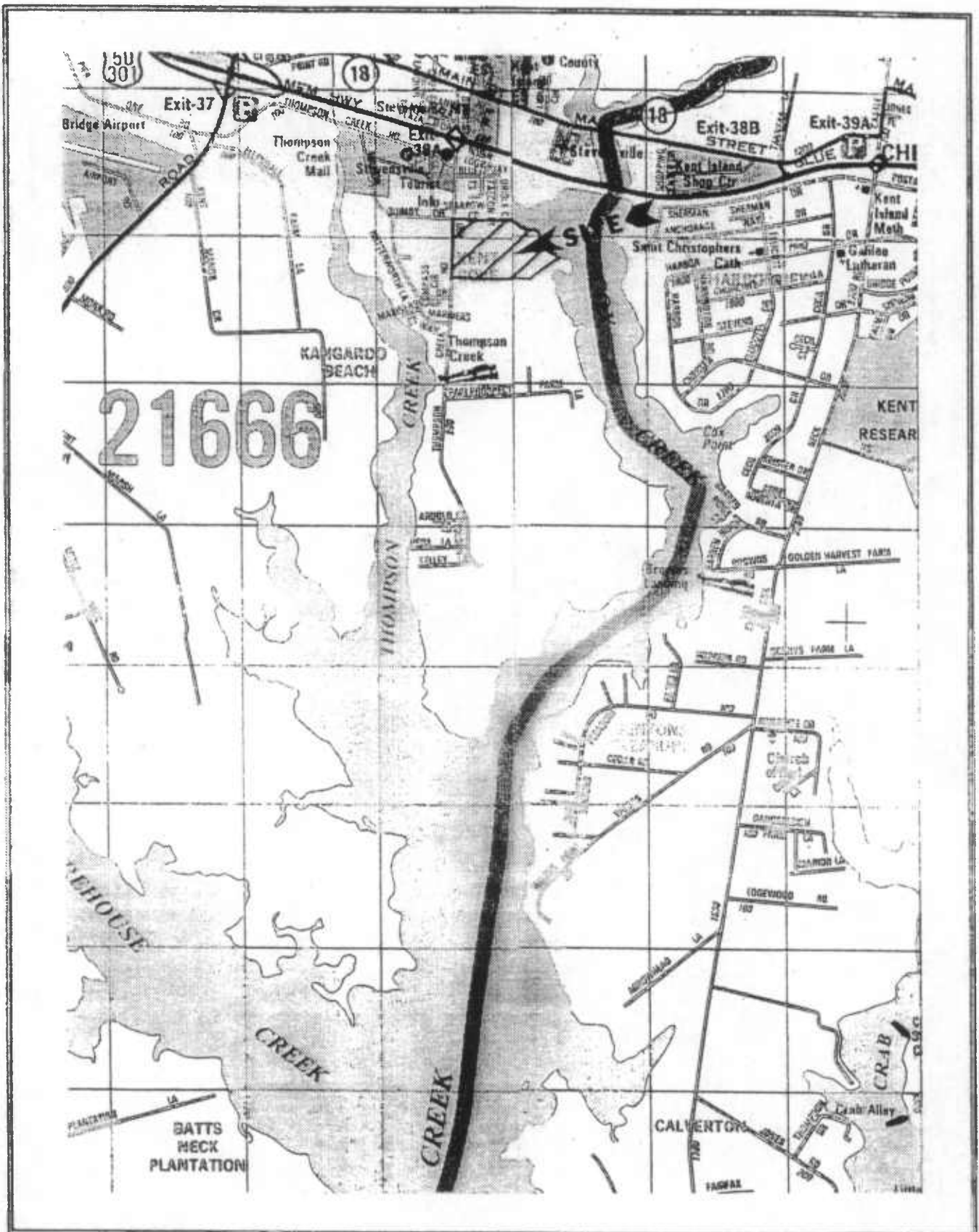
The applicant is in the process of verifying the length of the shoreline to determine the appropriate number of slips that can be permitted.

The development will be served by public water and sewer. There are no impacts proposed to habitat protection areas except those impacts to the Buffer for access to the community pier that will be proposed in the Buffer Management Plan.

The Chairman of the Critical Area Commission has determined that these changes constitute refinements to the Queen Anne's County Critical Area Program; however because the current plans do not accurately state that the entire Buffer will be vegetated and may not accurately reflect the acreage of the parcel (because state tidal wetlands are included), the following conditions are recommended:

- 1) That the plans be amended to indicate that the Buffer will be fully vegetated; and
- 2) That the growth allocation acreage deducted be revised to reflect the actual acreage of the parcel excluding state tidal wetlands.





Taken from:  
 Queen Anne's County ADC Map  
 (Scale: 1" = 2000')

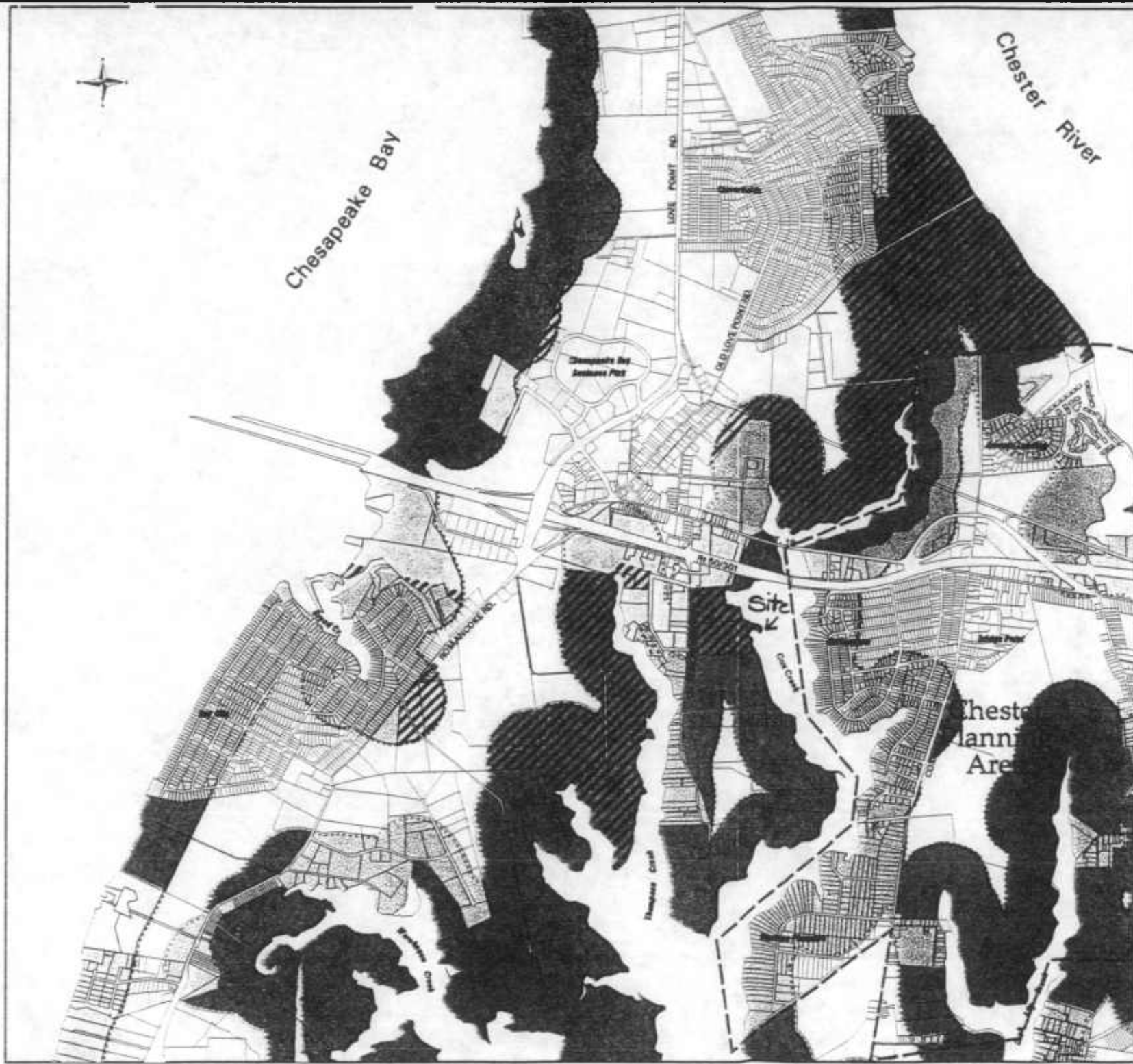
## Anchorage Subdivision







Queen Anne's County, Maryland

ENVIRONMENTAL ASSESSMENT REPORT  
 Figure 1

# Stevensville Community Plan

## Chesapeake Bay Critical Area Growth Allocation Pre-Mapping



-  CHESAPEAKE BAY CRITICAL AREA
-  RESOURCE CONSERVATION AREA
-  LIMITED DEVELOPMENT AREA
-  INTENSELY DEVELOPED AREA
-  NON-CRITICAL AREA
-  General Areas Eligible for Potential Award of Growth Allocation, Partial Site (868.13 Acres)



*Chesapeake Bay Critical Area Commission*

**STAFF REPORT**  
**November 1, 1999**

*CPM*

**APPLICANT:** Maryland Department of Natural Resources

**PROPOSAL:** Gunpowder Falls State Park - Muskrat Trail Bridge Replacement and Repair

**JURISDICTION:** Baltimore County

**COMMISSION ACTION:** VOTE

**STAFF RECOMMENDATION:** Approval

**STAFF:** Meredith Lathbury

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

**DISCUSSION:**

The Muskrat Trail is a small hiking trail in the Hammerman Area of Gunpowder Falls State Park, adjacent to Cunninghill Creek. Gunpowder Falls State Park is in a designated Resource Conservation Area (RCA). Two existing wooden pedestrian bridges are in need of repair and maintenance, Bridge A and Bridge B, as marked on the attached maps.

Bridge A spans across tidal waters and is located in the 100-foot Buffer to Cunninghill Creek. This structure is proposed for replacement. The existing bridge is 40 feet long and 4 feet wide and has been deteriorated due to influx of water. The park would like to build a replacement that is higher and longer to prevent future degradation from the water movement. The proposed bridge would be twenty (20) feet longer on the east side and ten (10) feet longer on the west side. The bridge will be 5 feet above ground at its highest point. The bridge will also be two feet wider than the existing bridge, at 6 feet wide. Temporary disturbance to the Buffer will occur on an 8 ft. x 8 ft. area at each end of the bridge where the wood will meet the trail.

Bridge B spans across non-tidal wetlands, and is also located in the 100-foot Buffer. The existing structure is 40 feet long and 4 feet wide, with a concrete and cinder block pier in the center supporting two twenty foot long segments. The park proposes to rebuild the pier in the center, placing several helical piles as a foundation, and install a new railing system. The existing boardwalk will remain.

This project has been approved through DNR's internal Environmental Review process. There are no threatened and endangered species located on the site. No vegetation will be removed. Bridge A will require approval from MDE. DNR is in the process of submitting an application for a permit.

***Recommendation:***

Approval with 3:1 mitigation for area disturbed.





327  
b

325

Muskrat Trail

Cunninghill Creek

A

B

330

326

329  
a

329  
b

GRACES

QUARTERS

328  
a

331

329

328

327  
a

327

333

332

334

335

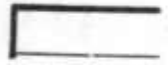
SEE DUNDEE SALTPETER CREEKS N.E.A.

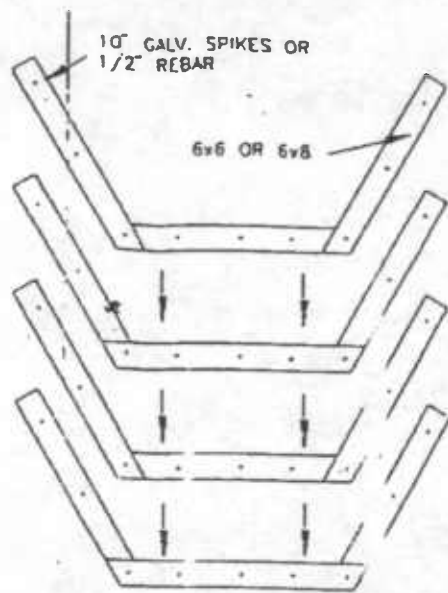
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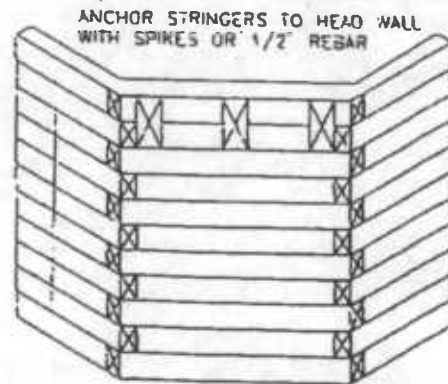
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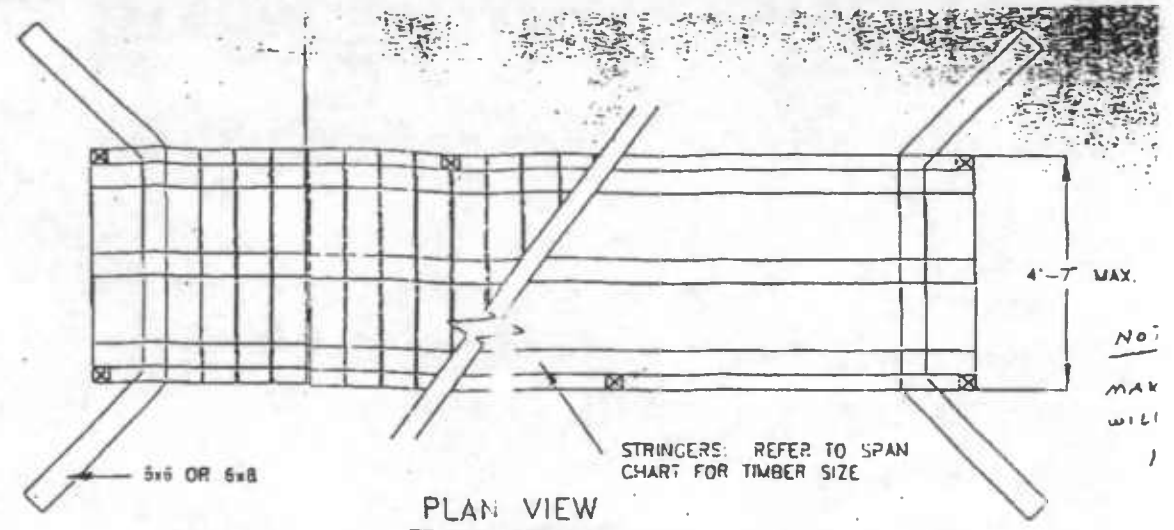
HEAD WALL LAYER DETAIL



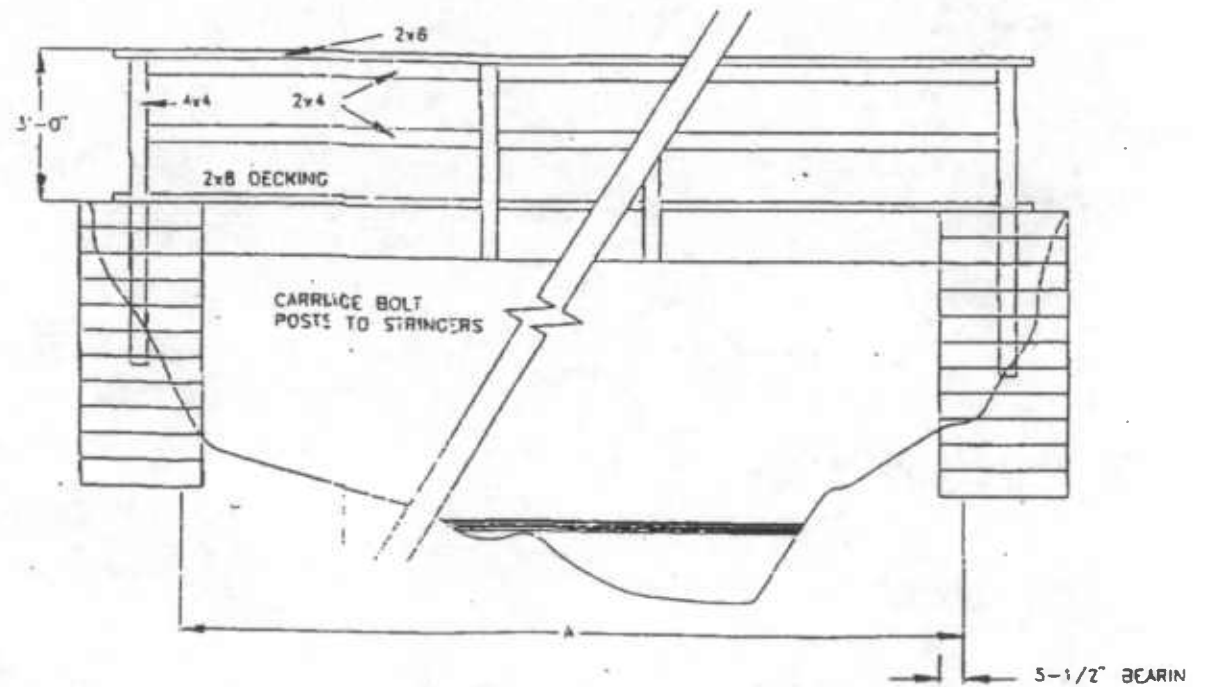
INSTALL 1ST & 2ND COURSE  
BELOW LOWEST GRADE LEVEL

HEAD WALL FRONT VIEW

SPAN CHART FOR DIMENSION "A"



PLAN VIEW



5'-1/2\"/>

October 26, 1999

0/2

TO: Critical Area Commission Members  
FROM: Ren Serey  
SUBJECT: Redesignation of Commission Policies

The Critical Area Commission has approved several policy papers since the inception of the program. These policies address a range of issues, but several papers do not deal with topics one might expect policies to cover, such as the interpretation of the Criteria or the manner in which the Commission approaches particular situations concerning land development and habitat protection. Instead, they detail internal procedures such as how a local government should submit a proposed program amendment. Several of the policies cover the same subjects and could be combined.

At the November 3<sup>rd</sup> meeting of the Program Subcommittee and at the afternoon meeting of the full Commission, I would like to discuss changing the status of the following policy papers as noted.

- 1: **Policy for Reconsideration:** This paper is procedural in nature. It should be designated as an internal procedure.
2. **Subcommittee, Panel and Commission Meeting Procedures:** This paper is procedural in nature and sets out how the Commission handles changes to local Critical Area programs. It should be designated as an internal procedure paper and considered for future combination with the numbers 3 and 4.
3. **Program Amendment/Refinement Submittal Policy:** This paper is procedural in nature; it should be designated as an internal procedure paper and considered for future combined with numbers 2 and 4.
4. **Policy on Distinguishing Between Amendments and Refinements:** This paper is procedural in nature; it should be designated as an internal procedure paper and combined with numbers 2 and 3.
5. **Program Review Policies - Map Development and Panels:** The Commission approved this paper in 1986. It describes how the Commission intended to review local programs as they were submitted. It is primarily an internal procedural



paper and should be so designated. Where mapping or review requirements are presented, the paper restates provisions from the Critical Area Act and the Criteria and offers no new information or direction.

6. **Policy on Shared Facilities for the Limited Development Area and Resource Conservation Area:** This paper restates the same principle several times; that is, when septic systems are proposed in the Resource Conservation Area to serve development outside of the RCA or outside of the Critical Area, growth allocation should be deducted for the area where the septic system is located. This principle should be stated more concisely and included in the Commission's policy on growth allocation.

The papers listed above are enclosed for your review. They also are contained, with the remaining Commission policies, in your Commission Member's Manual.

During the next few months, staff will be looking at all of the Commission's policies for opportunities to streamline the language and make the concepts clearer. We're also planning a one-day Commission retreat, probably on a Saturday after the first of the year, when we can take a more in-depth look at the policies and discuss potential changes.

J. JOSEPH CURRAN, JR.  
ATTORNEY GENERAL  
RALPH S. TYLER, III  
DEPUTY ATTORNEY GENERAL



THOMAS A. DEMING  
ASSISTANT ATTORNEY GENERAL  
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PAMELA P. QUINN  
SEAN COLEMAN  
SHARON B. BENZIL  
MEREDITH E. GIBBS  
GEORGE E.H. GAY  
OLGA M. BRUNING  
EILEEN E. POWERS  
STUART G. BUPPERT, II  
JODI R. O'DAY  
ASSISTANT  
ATTORNEYS GENERAL

RECEIVED

MAR 12 1993

CHESAPEAKE BAY  
CRITICAL AREA COMMISSION

STATE OF MARYLAND  
OFFICE OF THE ATTORNEY GENERAL

DEPARTMENT OF NATURAL RESOURCES  
TAWES STATE OFFICE BUILDING  
ANNAPOLIS, MARYLAND 21401  
(410) 974-  
2501

March 9, 1993

MEMORANDUM

TO: Sarah J. Taylor, Ph.D.  
Executive Director, CBCAC

FROM: George E. H. Gay *Gay*  
Assistant Attorney General

RE: Policy for Reconsideration

Attached please find the Commission's 3/3/93 Policy for Reconsideration. It should be sent to all local jurisdictions, CAC members, etc.

Although the Policy's Background section indicates that the Commission has amended its By-laws in accordance with the Policy, no such action has yet occurred. Would you include such an action on the agenda of the April meeting?

The second full paragraph of Article IV of the 11/30/88 By-laws should be amended as follows:

Roberts Rules of Order, current edition, shall govern the meetings and hearings of the Commission and to all other cases to which they are applicable and in which they are not inconsistent with the by-laws, [and] rules of procedure AND THE COMMISSION'S 3/3/93 POLICY FOR RECONSIDERATION.

Thank you for your anticipated assistance.

GEHG:cjw  
cc: Peggy Mickler  
Attachment (as stated)

RECON.SJT

*Leave as a Policy  
Re-Examine part of*

CHESAPEAKE BAY CRITICAL AREA COMMISSION

*By-Laws*

POLICY FOR RECONSIDERATION

(Adopted 3/3/93)

I. BACKGROUND

On several occasions, a local government, State agency or Commission member has asked the Chesapeake Bay Critical Area Commission to reconsider a decision it made on a project, a program amendment, program submittal or other matter ("Original Decision"). Traditionally, an administrative agency like the Commission has discretionary power to reconsider its decisions.

However, the Critical Area Law and Criteria do not address reconsideration, and Robert's Rules of Order, current edition, ("Roberts") which the Commission's By-laws direct it to follow, do not do so comprehensively. Consequently, the Commission has adopted the following policy and amended its By-laws accordingly.

II. CIRCUMSTANCES FOR REQUEST

The Commission will exercise its power to reconsider an Original Decision only:

A. In accordance with Robert's.

B. Contrary to Robert's, in certain instances when fraud, mistake, irregularity, or newly discovered evidence (as these terms are defined below) is alleged by a Commission member or any party to the Original Decision which is aggrieved by it.

(1) Fraud - an act of deliberate deception that was designed to secure something by taking unfair advantage. Example: The Commission's review of an application that included intentional misrepresentation.

(2) Mistake - a jurisdictional error on the part of the Commission. Example: A Commission decision concerning property located outside the Critical Area.

(3) Irregularity - an administrative process or procedure which does not conform to established rules or usual procedure. Example: Failure of the Commission to hold a panel hearing in the jurisdiction impacted by a proposed amendment.

(4) Newly Discovered Evidence - evidence that could not have been discovered in a timely fashion even if due diligence was used or which was not deemed significant by the Commission until immediately before, on or after the date on which the Original Decision occurred.

### III. TIME FRAME FOR THE REQUEST

A. A request for reconsideration ("Request") not based on fraud, mistake, irregularity and/or newly discovered evidence shall be made orally or in writing at the same meeting that the Commission rendered the Original Decision at issue.

B. Requests based on fraud, mistake, irregularity, and/or newly discovered evidence shall be made in writing within 30 days of the Original Decision at issue.

### IV. PROCESS TO BE USED BY THE COMMISSION FOR RESOLVING THE REQUEST

A. Requests not based on fraud, mistake, irregularity, or newly discovered evidence shall be resolved in accordance with Robert's.

B. Requests based on fraud, mistake, irregularity, or newly discovered evidence shall be resolved as follows:

1. Requests that are not timely made in writing to the Chairman are denied.

2. Within ten (10) days of receipt of a written, timely Request, the Chairman shall review it; determine whether it includes clear and convincing evidence that the Original Decision at issue was based upon fraud, mistake, irregularity, or newly discovered evidence ("Initial Determination"); acknowledge receipt of the Request to the Requestor; and notify each Commission member in writing that the Request has been received; what the Initial Determination is, and the date on which the Commission will consider the Request. Copies of the Request will be distributed to the Commission members at or before the specified meeting.

3. At the specified meeting, the Chairman shall present the Initial Determination. The local jurisdiction may present argument concerning the Request at the specified meeting.

a. If the Initial Determination is that the Request does not include clear and convincing evidence that the Original Decision at issue was based upon fraud, mistake, irregularity, or newly discovered evidence, and 2/3rds of the Commission members present at the specified meeting concur, the Request shall be denied. The Chairman shall notify the Requestor in writing within ten (10) days of the decision.

b. If the Initial Determination is that the Request does include clear and convincing evidence of fraud, mistake, irregularity, or newly discovered evidence, and a majority of the Commission members present at the specified meeting concur, the Request shall be approved. The Chairman shall notify the Requestor in writing within ten (10) days of the decision.

c. If 2/3rds of the Commission members present at the specified meeting do not concur with an Initial Determination that the Request does not include evidence that the Original Decision at issue was based upon fraud, mistake, irregularity, or newly discovered evidence, or if a majority of the Commission members present at the specified meeting do not concur with an Initial Determination that the Request does include evidence that the Original Decision was based upon fraud, mistake, irregularity, or newly discovered evidence, the following process applies:

(1) If a majority of Commission members present at the specified meeting agree that the Original Decision resulted primarily from a panel recommendation, the Request will be referred to the panel. Within 30 days of the specified meeting, the panel shall hold a public information meeting which is not a contested case hearing in the affected jurisdiction, and a panel recommendation will be prepared to be presented. At the next Commission meeting, the panel shall recommend to the Commission whether or not the Original Decision at issue was based upon fraud, mistake or irregularity, or newly discovered evidence and the Commission members shall vote whether or not to approve the Request. The Chairman shall notify the Requestor in writing within ten (10) days of the decision.

(2) If a majority of Commission members present at the specified meeting agree that the Original Decision did not result primarily from a panel recommendations, the Commission members shall vote whether or not to approve the Request. The Chairman shall notify the Requestor in writing within ten (10) days of the decision.

(3) There shall be no right of appeal from a resolution of a Request by the Commission.

#### V. EFFECT OF AN APPEAL

A. The filing of an appeal from an Original Decision shall not preclude the making of a Request in accordance with this Policy.

B. The making of a Request in accordance with this Policy shall not effect the time within which an appeal from an Original Decision must be filed.

C. Neither the Chairman nor the Commission shall have authority to act on a Request and the time frames contained in Section IV, Subsection B of this Policy shall be stayed while an appeal from the Original Decision is pending.

#### VI. APPROVED REQUESTS

A. The Commission shall treat an approved Request as a proposed program amendment under Natural Resources Section 8-1809(o); Annotated Code of Maryland, as amended from time to time.

B. An approved Request shall be accepted for processing on the date the Chairman notifies the Requestor that the Request was approved.

SUBCOMMITTEE, PANEL AND COMMISSION  
MEETING PROCEDURES  
(Approved by the Commission on December 7, 1994)

## INTRODUCTION

There are three types of meetings that involve Commission members, Commission staff, local governments and the public. They are: 1) subcommittee meetings of the Commission 2) panel hearings and meetings, and 3) the monthly meeting of the full Commission membership. During these meetings, the Commission may consider a myriad of items for information and for voting. These include project applications, amendments and refinements to local Critical Area programs, comprehensive reviews, policies, procedures, and the promulgation of regulations. The working relationship among all parties concerned is important.

## PURPOSE

The purpose of presenting these procedures is to describe and clarify the respective roles of all parties involved in these meetings. The procedures were requested by the local planners.

## SUBCOMMITTEE MEETINGS

There are three standing Subcommittees of the Commission: 1) project evaluation, 2) program amendment and refinement, and 3) special issues (dealing with legislation and areas not covered by the other two Subcommittees). Whether the item is a policy, a regulation, or a procedure the process will be the following for each Subcommittee:

\* Once an item is assigned to a Subcommittee, the Commission staff person handling that item in the Subcommittee will notify the appropriate local planner(s) as to when and where the Subcommittee will be meeting. Field trips will be coordinated by the staff person involving the Subcommittee members and the local planner(s). And, draft positions, reports etc. will be provided to the Subcommittee members as well as to the local planner(s) for review and comment prior to the meeting.

\* When the Subcommittee meets to develop its recommendation to the Commission, the local planner(s) will be notified and provided with the opportunity to attend to answer questions or to comment during the meeting should the occasion arise.

\* When the staff person reports on the item to the full Commission, concerns raised by the local governments as well as by the Subcommittee members will be mentioned as part of the background synopsis.

## PANEL HEARINGS

A panel of five (5) Commission members is appointed by the Chairman of the Commission for the purpose of hearing an amendment(s) to a local Critical Area program (i.e. growth allocation), or for reviewing a submitted local Critical Area program in its entirety as a result of a comprehensive review of that program by the local jurisdiction. For either item, the process will be the following:

- \* The Commission staff person who works with the local jurisdiction will be responsible for scheduling the panel hearing(s) in conjunction with the local government planner and the panel members. This will ensure that all parties who need to be at the hearing will be able to attend.

- \* The staff person will make sure that a public notice is placed in a newspaper of general circulation in the locality at least two weeks in advance of the hearing so that timely notice will have been provided to the public.

- \* The staff person will also be responsible for checking out the meeting room arrangements for adequacy and for seeing to it that the meeting is recorded and/or transcribed so that a record exists.

- \* If desired by the panel or local jurisdiction, the staff person can arrange for a pre-hearing meeting of the panel with the local planner to go over matters of importance or to conduct a site visit to a particular area.

- \* The Commission staff person will coordinate with the Panel Chair to make sure that the Chair is prepared ahead of the hearing. The staff person will also prepare and coordinate written reports and visuals with the local planner and the panel so that all parties are prepared ahead of time and are knowledgeable about the item. If the staff person prepares a report on the item, the report should contain references to the local program ordinances and to the Criteria and the Law regarding consistency of the item being considered.

- \* When the hearing is held, it is the Panel Chair's responsibility to commence the hearing, to introduce the members of the panel, and to state the purpose of the hearing. It is then the Chair's responsibility to recognize Commission staff, any local officials present and the local government planner who will present the item(s) for consideration. The Commission staff person may follow the local government presentation should additional information need to be shared with the panel. Even though a property owner or developer is not considered an applicant before the Commission, the panel Chair can provide the opportunity for

that individual to speak and comment on the application as well as answer questions. The Chair may choose to allow for questions from those in attendance prior to taking formal testimony from the public. Based on the nature and complexity of the hearing, it will be at the Chair's discretion as to how many days will be provided for public comment to be received and for the record to remain open. Discretion can be based on a request from the public to keep the record open. If circumstances such as those mentioned in the previous sentence are not evident, the record of the hearing will not be kept open after the public hearing is held and an announcement to that effect will be made by the Chair before concluding the hearing.

\* The panel will meet prior to making a recommendation to the Commission which will enable discussion of the information presented as well as evaluation of the proposed item for consistency with applicable laws and regulations. This can occur immediately after the hearing is held, between the hearing and the next Commission meeting, or during the morning of the next scheduled Commission meeting. The staff person will coordinate this meeting with the panel members and the local planner(s) so that as many individuals will be able to attend as possible.

#### COMMISSION MEETING

\* Prior to the Commission meeting, a copy of the agenda will be mailed to the interested local jurisdiction(s) to inform the planner(s) that an item is up for information or for a vote. In addition, the staff person coordinating the item will phone call the planner(s) regarding the meeting and afford the planner(s) an opportunity to attend.

\* A staff report for the Commission will be prepared by the staff person and distributed to the Commission membership prior to the meeting. A copy of the staff report will also be provided to the local planner(s) prior to the Commission meeting.

\* At the meeting, the Commission staff person will present the item(s) for information or for a vote. After the presentation, the interested local jurisdiction(s) will be given the opportunity to comment and to answer questions. As appropriate, the attending public will also be given the opportunity to speak by the Commission Chairman. Prior to the Commission meeting, individuals will be encouraged to notify the Commission that they wish to be heard as this will help the Chairman schedule ample time. Public comment should be made on the merit of the item being considered with respect to the Critical Area Law, the Criteria and the local program. The Chairman will note this requirement prior to taking public comment and will set a limit of time for comment if needed. The tape from the meeting will be kept as a record of the presentation and discussion about the item.



page 4

Note: If the local government(s) and the Commission staff agree that an item is non-controversial and uncomplicated, presentation of the information about the item as well as a vote may occur at the same Commission meeting to streamline the process. Otherwise, it will be the standard practice to first present an issue for information purposes, and at the next monthly meeting vote on the issue.

## PROGRAM AMENDMENT/REFINEMENT

### SUBMITTAL POLICY

At the July 10, 1991 meeting of the Chesapeake Bay Critical Area Commission, the Commission Counsel expressed concern over the Commission's authority to review and approve a single piece of legislation, submitted by a local governing body as a program amendment or refinement, on a piecemeal basis. Many times a single piece of legislation may address numerous changes to a Critical Area Program or local zoning ordinance. Cases often arise where the Commission may wish to approve some of these changes, but deny others. Therefore, the Commission recognized that a mechanism to allow the Commission to approve submittals in part is needed. This policy proposes the mechanism.

It is the Critical Area Commission policy that program amendments and refinements be submitted and reviewed in the following manner:

- If a single piece of legislation is submitted as a program amendment or refinement, and it addresses more than one Critical Area issue, then the local jurisdiction shall individually number or designate each respective change to a local program; and, it shall grant to the Critical Area Commission the power to approve or deny each individual change independently of all other changes.
- The granting of this authority to the Commission by the local governing body shall be done through formal notification to the Commission and shall accompany each amendment package.
- Without a formal grant of this power to the Critical Area Commission, all pieces of legislation which are submitted as a program amendment or refinement shall be voted up or down as a whole.

Adopted by Chesapeake Bay Critical Area Commission on October 2, 1991.

POLICY ON DISTINGUISHING BETWEEN AMENDMENTS & REFINEMENTS  
(Approved by the Commission on December 7, 1994)

It is the desire of the Critical Area Commission to streamline its processes and review as many Program amendments as possible as Program refinements. In order to do this, we must first understand the difference between the two.

Definitions (per NRA 8-1802):

Program Amendment: means any change to an adopted program that the Commission determines will result in a use of land or water in the Chesapeake Bay Critical Area in a manner not provided for in the adopted program. Program amendment includes a change to a zoning map that is not consistent with the method for using the growth allocation contained in an adopted program. [emphasis added]

Program Refinement: means any change to an adopted program that the Commission determines will result in a use of land or water in the Chesapeake Bay Critical Area in a manner consistent with the adopted program. Program refinement includes:  
(1) a change to a zoning map that is consistent with the development area designation of an adopted program; and  
(2) the use of the growth allocation in accordance with an adopted program. [emphasis added]

Changes to local Critical Area Programs may fall into a number of categories. The various types of amendments include: growth allocations, mapping mistakes, amendments resulting from changes to the Law, process changes, text changes to both Programs and ordinances, resource map updates, designation of Buffer exemption areas, and general clarifications. The following questions should be asked in determining whether a proposal should be reviewed as an amendment or refinement:

Does the proposed change have an effect on the use of land or water in the Critical Area? If no, then the proposed change may be reviewed as a Program refinement.

If the use of land or water is affected by the proposal, is the proposal consistent with what is currently allowed by the Program? If yes, then the proposal may be reviewed as a

Program refinement. If the proposal is inconsistent with what is currently permitted in the local Program, then the proposal must be reviewed as an amendment.

Perhaps it would be helpful to generally apply this logic to the various types of Program amendments.

**Growth Allocations:** the Law specifically refers to growth allocations. As per NRA §8-1802, if a Program includes a method for using growth allocation, and the proposal is consistent with this method, then the proposal may be reviewed as a refinement. If there is no methodology, but the proposal is consistent with the Commission policy on growth allocation, then the proposal may be reviewed as a refinement. If the proposal is inconsistent with an approved methodology, then it must be reviewed as a Program amendment.

The CAC has consistently narrowly interpreted this as meaning that only those growth allocations occurring in pre-mapped areas qualify as refinements. Now that we are undertaking the Comprehensive Reviews, and making the local growth allocation methodologies consistent with the CAC Policy, we could "loosen" our interpretation of a Program refinement to include all growth allocations consistent with a local Program (now that the Program is consistent with the CAC Policy). This would greatly reduce the number of growth allocations reviewed as amendments.

**Mapping Mistakes:** Since mapping mistakes, by definition, would result in a use of land inconsistent with that originally approved by the CAC, then in most cases, mapping mistakes would be reviewed as Program amendments. Small, non-controversial mapping mistakes may qualify as refinements if the mapping is consistent with a methodology provided for in the Program.

**Amendments Resulting from Changes to the Law:** Since these changes would be mandated by Law, in most cases they would be reviewed as Program refinements (as we have previously done for impervious surface changes, mooring language, etc.).

**Process Changes:** These types of changes most likely will be reviewed as Program refinements, since they are dealing with process instead of land or water-related criteria.

**Text Change (to Program or Ordinances):** These proposals must be reviewed carefully with regard to the two questions referred to above, in order to determine if there is a change in the way in which land or water is used in the local jurisdiction, and then whether this is consistent with the existing Program.

**Resource Maps:** If these resource maps pertain to Habitat

Protection Areas, in most cases, they would need to be reviewed as Program amendments. Other resource maps, depending on the type, would have to be reviewed individually to determine if the change would impact the potential use of the land or water in the Critical Area.

Buffer Exemption Areas: The addition of language to address Buffer Exemption Areas would need to be reviewed as a Program amendment. The original mapping of these areas would also need to be reviewed as Program amendments. If a process has been set up in the local Program and BEAs are "provided for" (per NRA §8-1802), then the designation of additional BEAs may be reviewed as a Program refinement.

General clarification: In most cases, these types of proposed changes could be reviewed as Program refinements, since the intent is already included in the Program, and the proposal is solely seeking to present a clarification.

For those Program amendment proposals which are controversial, or generate a request by citizens that the Critical Area Commission hold a public hearing, then the Commission may choose to review these proposals as amendments.

By reviewing as many amendments as possible as Program refinements, the Critical Area Commission will streamline the review process in several distinct ways. First, it will eliminate the need for a public hearing conducted by the Commission. Secondly, it will reduce the length of time necessary to review a proposal. Program amendments, per NRA §8-1809, must be reviewed within 90 days of receipt; however, Program refinements have a significantly shorter review period. Thirdly, it will limit the misunderstanding that frequently occurs when citizen opponents of a particular amendment believe the Critical Area Commission can deny approval on a broader range of issues than the Law provides. Finally, in conjunction with the previous streamlining benefit, it will eliminate the "rubber stamp" image of the Commission.

May 14, 1986

CHESAPEAKE BAY CRITICAL AREA COMMISSION

PROGRAM REVIEW POLICIES

MAP DEVELOPMENT & PANELS

Issue #1 REQUESTS TO EXCLUDE PORTIONS OF THE PRELIMINARY  
PLANNING AREA FROM THE CRITICAL AREA REQUIREMENTS AS SPECIFIED IN  
NATURAL RESOURCES ARTICLE § 8-1807

COMMISSION POLICY:

The Commission will consider requests for exclusion from the Critical Area Program at the time that a local program is submitted for approval. The Commission's decisions will be based on the procedures stated in Natural Resources Article §8-1807.

Issue #2 ADDITIONAL MAPPING RULES USED BY THE LOCAL  
JURISDICTIONS FOR CLASSIFYING INTENSELY DEVELOPED AREAS, LIMITED  
DEVELOPMENT AREAS, AND RESOURCE CONSERVATION AREAS

COMMISSION POLICY:

Local jurisdictions may develop additional mapping rules as they are needed and shall apply them consistently during their map development process. Local jurisdictions must demonstrate in their program that the additional mapping rules are consistent with the Commission's objectives and policies for the particular category (that is: Intensely Developed Area, Limited Development Area, or Resource Conservation Area) to which they apply.

Issue #3 SCALE OF MAPS OF INTENSELY DEVELOPED AREAS, LIMITED  
DEVELOPMENT AREAS AND RESOURCE CONSERVATION AREAS TO BE SUBMITTED  
TO THE COMMISSION

COMMISSION POLICY:

So that information on the maps submitted to the Commission is unambiguous, the maps must be sufficiently detailed so that landowners and agencies that implement the local program can readily identify into which classification a particular parcel falls.

Issue #4 REQUIREMENTS TO MAP THE ENTIRE ALLOCATION OF NEW INTENSELY DEVELOPED AREAS AND LIMITED DEVELOPMENT AREAS

COMMISSION POLICY:

Because each local jurisdiction may choose to manage its future development within its Critical Area using different techniques, the Commission will not insist that the entire allowable allocation of new Intensely Developed Areas and Limited Development Areas be mapped as part of the local jurisdiction's initial submittal to the Commission. However, any areas subsequently proposed in the Resource Conservation Area as new Intensely Developed Areas or Limited Development Areas must be designated on the comprehensive zoning map submitted to the Commission as part of its application for Program approval in compliance with Natural Resources Article § 8-1809 (g), and House Bill 1434.

Issue #5 REVIEW PROCEDURES FOR LOCAL CRITICAL AREA PROTECTION PROGRAMS, INCLUDING MAPS SHOWING INTENSELY DEVELOPED AREAS, LIMITED DEVELOPMENT AREAS AND RESOURCE CONSERVATION AREAS

COMMISSION POLICIES:

The Commission will provide guidance to a local jurisdiction during its program development process, if assistance is requested by that local jurisdiction.

Guidance to the local jurisdiction will be primarily through the Commission staff who will consult with the panel assigned to that jurisdiction.

The Commission will vote on the approval of a local program only after the jurisdiction has submitted its full program.

The Commission will approve a local program only by an approval of a majority of the full Commission.

Local jurisdictions will have an opportunity to present their proposed local program to the full Commission.

Issue #6 DETAIL AND SCALE OF MAPS AND INVENTORIES OF NATURAL RESOURCES USED FOR LOCAL PROGRAM DEVELOPMENT

COMMISSION POLICIES:

For purposes of development of the local Critical Area Protection Program, the local jurisdiction should use inventories and maps based on best available information from existing sources, particularly State agencies. Where information is wholly lacking, local jurisdictions should acquire sufficient information to establish a reasonable basis for resource

management decisions within their programs.

In addition, a local jurisdiction should include in its program, procedures to consider, during the review of a project, new or revised inventories of natural resources that may become available after the local jurisdiction develops its initial Critical Area Protection Program.

If comprehensive inventories of relevant natural resources are not available when a local jurisdiction develops its Critical Area Protection Program, local jurisdictions should require applicants of projects to inventory those natural resources at their project site prior to project approval.

Issue #7 REQUIREMENTS TO SUBMIT TO THE COMMISSION MAPS OR  
INVENTORIES OF RESOURCES AS REQUIRED IN COMAR 14.15.10.01 A

COMMISSION POLICY:

A local jurisdiction should submit as part of its program, maps and inventories to be used in its program implementation. Maps and inventories supplied by State agencies need not be re-submitted unless they are reformed, remapped, or revised by the local jurisdiction as part of its local program development process.





JOHN C. NORTH, II  
CHAIRMAN

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MEMORANDUM

TO: Critical Area Commission

FROM: Special Issues Subcommittee

DATE: June 27, 1989

SUBJ: Final Policy on Shared Facilities for the Limited  
Development Area and Resource Conservation Area

Situation 1: There is a non-percable lot in the Critical Area and a percable lot in the Critical Area. Is the percable lot able to be used to treat the non-percable lot's wastes?

Yes, but only if the percable lot meets the following conditions:

- a) the lot must have been legally recorded as of December 1, 1985, in compliance with 14.15.02.07 of the criteria (COMAR 14.15) which took effect on May 13, 1986;
- b) the system for the percable lot must have received Health Department approval;
- c) the treatment of wastes must not occur in floodplain soils pursuant to COMAR 26.04.02 of the Department of the Environment's Regulations;
- d) the 100-foot Buffer requirement of COMAR 14.15.09.01 is followed as a setback from open tidal waters or from the landward side of tidal wetlands;

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- e) the cutting of trees to provide for an area to treat the wastewater shall be in conformance with the applicable criteria in COMAR 14.15.02 and COMAR 14.15.09, which became effective on May 13, 1986;
- f) the percable and non-percable lots must be owned by the same person, but if there is to be a long-term easement or lease involving different parties, the percable lot must be abutting the non-percable lot;
- g) the owner is to be the one financially responsible for the maintenance, upgrading or replacement of the system under normal operational standards or in case of system failure;
- h) the county must have an approved Groundwater Protection Plan before situations of this nature can receive approval;
- i) the treatment system must comply with the Department of the Environment's current applicable regulations (§ 9-217 of the Environment Article);
- j) the land area for the treatment system on the percable lot shall be counted against the growth allocation if densities on the buildable lot exceed the prescribed density of the local Critical Area Program's designation. The excess density will require growth allocation to be used and this constitutes an amendment to a local Program which must be approved by the Critical Area Commission.

Situation 2: There is a lot in the Critical Area which does not perc. There is a lot outside of the Critical Area which does perc. Is it acceptable to the Commission to use the percable lot outside of the Critical Area to treat the wastes from the buildable lot inside the Critical Area, which is non-percable?

Yes, but under the following conditions:

- a) the lot inside the Critical Area must have been legally recorded as of December 1, 1985;
- b) the system for the percable lot outside the Critical Area must have received Health Department approval;
- c) the treatment of wastes must not occur in the floodplain soils pursuant to COMAR 26.04.02;

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- d) the criteria must be followed for the lot in the Critical Area when development takes place;
- e) the percable and non-percable lot must be owned by the same person or, if there is a long-term easement or lease allowed, the percable lot must abut the non-percable lot;
- f) the owner is to be the one financially responsible for the maintenance, upgrading or replacement of the system under normal operational standards or in case of system failure;
- g) the county must have an approved Groundwater Protection Plan before situations of this nature can receive approval;
- h) the treatment system must comply with the Department of the Environment's current applicable regulations (§9-217 of the Environment Article);
- i) densities on the buildable lot inside the Critical Area shall comply with the prescribed density of the local Critical Area Program's designation or count against the growth allocation, unless the lot is grandfathered. If density is exceeded, the situation requires the use of growth allocation and is to be considered an amendment requiring Critical Area Commission approval.

Situation 3: An applicant owns a lot inside the Critical Area which percs. The same applicant also owns land outside of the Critical Area which does not perc. The applicant wishes to handle the wastes from the area outside of the Critical Area on the lot inside the Critical Area. The applicant may or may not want to build on the lot inside the Critical Area as well. Is this acceptable to the Commission?

Yes, but only if the following conditions are met:

- a) treatment of wastes in the Critical Area is the only option a developer has;
- b) the lot inside the Critical Area must have been legally recorded as of December 1, 1985, in compliance with 14.15.02.07 of the criteria (COMAR 14.15), which took effect on May 13, 1986;

- c) the system for the percable lot must have received Health Department approval;
- d) the treatment of wastes must not occur in floodplain soils pursuant to COMAR 26.04.02 of the Department of the Environment's Regulations;
- e) the 100-foot Buffer requirement of COMAR 14.15.09.01 is followed as a setback from open tidal waters or the landward side of tidal wetlands for the treatment system;
- f) the cutting of trees to provide for an area to treat the wastewater shall be in conformance with the applicable criteria in COMAR 14.15.02 and COMAR 14.15.09 which became effective on May 13, 1986;
- g) the percable and non-percable lot must be owned by the same person, but if there is to be a long-term easement or lease involving different parties, the percable lot must abut the non-percable lot;
- h) the owner is to be the one financially responsible for the maintenance, upgrading or replacement of the system under normal operational standards or in case of system failure;
- i) the county must have an approved Groundwater Protection Plan before situations of this nature can receive approval;
- j) the treatment system must comply with the Department of the Environment's current applicable regulations (§9-217 of the Environment Article);
- k) the entire area for each treatment system on the percable lot inside of the Critical Area shall be counted against the growth allocation if the density limit, counting each individual system or the number of units served as that many treatment systems, exceeds the prescribed density of the percable land classified in the Critical Area. Exceeding the density involves the use of growth allocation which is an amendment to a local Program, requiring Commission approval.

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NOTE: In all three situations, and in addition to the other conditions so noted, if there is more than one lot involved, an agreement must be signed between the owners of the lots and the local jurisdiction specifying the following:

1. A responsible, preferably public, authority has control of the facility either through ownership or operation. This should ensure adequate operation and maintenance are performed as required and that a mechanism to collect funds for repairs exists;
2. Area equivalent to that required for sewage disposal in subdividing land for individual on-site systems, is available in the shared facility sewage disposal area (i.e., a minimum of 10,000 sq. ft. for each home to be served);
3. Existence of, and responsibility for, the shared facility is recorded in the land records;
4. Funds are available to effect facility repairs as necessary; and
5. The controlling authority ensures all facilities under its control cannot be dissolved until equivalent or better facilities are available.

/jjd