

DECEMBER 1, 1999

AGENDA MISSING

D. Cooksey - no

Jim Stasz - flounder 1

Chesapeake Bay Critical Area Commission
Department of Housing and Community Development
People's Resource Center
Crownsville, Maryland 21401
November 3, 1999

301-952
3653

McLean #1

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:

- | | |
|---|--|
| Gary Setzer, for Hearn, J.L. Dept. Environ. | Samorajczyk, Barbara, A.A. Co. |
| Barker, Philip J., Harford County | Van Luven, Heidi, Md. Dept. Transportation |
| Corkran, Bill, Talbot County | Branch, Shirley, for Wynkoop, Sam, Prince George's Co. |
| Wilde, Jinhee, Western Shore MAL | Foor, Dr. James, Queen Anne's Co. |
| Wenzel, Lauren, DNR | Graves, Charles, Balt. City |
| Giese, William, Jr., Dorchester Co. | McLean, James H., DBED |
| Duket, Larry, Md. Office Planning | Cooksey, David, Charles County |
| Jackson, Joseph, III, Worcester Co. | Goodman, Bob, DHCD |
| Lawrence, Louise, Md. Dept. Ag. | Myers, Andrew, Caroline County |

Ceil - 8103

Don's Cohen
410 - also
887 office
917 4

Deborah Cain

The Minutes of October 6, 1999 were approved as read.

Meredith Lathbury, Planner, CBCAC presented for Concurrence with the Chairman's determination of Refinement, the Town of Secretary's request for mapping amendment to rectify mapping mistakes that designated parcels as LDA when they should have been designated IDA. Ms. Lathbury explained the reasons for the mistakes and told the Commission that the owners of affected properties were sent a letter of explanation and described how the change would impact these properties regarding impervious surfaces and stormwater management in particular. Tracey Greene, Circuit Rider, presented the technical details of the amendment request. The Town Planning Commission recommended that the mapping amendment be approved by the Town Council which they subsequently approved unanimously. The Commission supported the Chairman's determination of Refinement.

Roby Hurley, Circuit Rider, CBCAC presented for VOTE the Greensboro four-year Comprehensive Review which includes the town's zoning ordinance, Critical Area maps and revised subdivision regulations. A model ordinance was given to Mr. Galloway, a private consultant, by Commission staff to be used at the Town's discretion to replace the existing Critical Area section of the zoning ordinance and the Town's Critical Area Program document. He also drafted a new zoning ordinance and prepared a new map with the assistance of the Maryland Office of Planning. Sections of the Town's program document were incorporated into the zoning ordinance eliminating the separate Program document. Mr. Hurley gave the details of the significant changes to Town's ordinance and maps. Andrew Myers moved to approve the Comprehensive Review for Greensboro. The motion was seconded by James McLean and carried unanimously.

Susan Zankel, Planner, CBCAC presented for concurrence with the Chairman's determination of Refinement, the proposed growth allocation for the "The Anchorage" subdivision which seeks to change the designation of a 20.159 acre parcel of land in the Critical Area designated as RCA to IDA. This redesignation is requested to facilitate the development of the subject property with 44 residential lots, public roads and

community open space and a boat and RV storage area with recreational amenities. It was approved by the Planning Commission on September 9, 1999 with a favorable recommendation to the County Commissioners on Growth allocation subject to nine conditions which Ms. Zankel described. On September 21, 1999 the County Commissioners granted conceptual approval 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, Lot One of the Fair Prospect subdivision, was identified in the Stevensville Community Plan and pre-mapped for growth allocation. Ms. Zankel said that a Buffer Management Plan is required as well as a survey of mean high water on the property to determine the proper acreage for growth allocation. The calculation of slips for a proposed community pier in the IDA will be determined after verifying the length of shoreline. The Chairman has determined that these changes constitute refinements to the Queen Anne's County Program but 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. The Commission supported the Chairman's determination of Refinement with the above conditions.

Meredith Lathbury, Planner, CBCAC presented for VOTE the proposal by the Department of Natural Resources to replace and repair two bridges in Gunpowder Falls State Park in the Muskrat Trail - Hammerman Area adjacent to Cunninghill Creek. One of the bridges crosses tidal waters and is located in the 100-foot Buffer to Cunninghill Creek. The park would like to build a replacement bridge to prevent future degradation from the water movement. She described the details of the proposal. Ms. Lathbury explained that the other bridge crosses non-tidal wetlands and is also located in the 100-foot Buffer. The park proposes to rebuild the piling in the center and install a new railing system. This project has been approved through DNR and there are no threatened and endangered species on the site. The bridge to Cunninghill Creek requires an approval from MDE. Staff recommendation is for approval with 3:1 mitigation for Buffer disturbances. Bob Goodman moved to approve as proposed the Gunpowder Falls State Park Muskrat Trail Bridge Replacement project as proposed. The motion was seconded by Bill Giese and carried unanimously.

Ren Serey, Executive Director, CBCAC presented for VOTE the proposed reclassification of Commission policies to the status of procedures. He told the Commission that there are approximately 12 -13 policies in the Commission manual and that several of them should be called procedures. Mr. Serey stated that some of these documents entitled "Policies" are actually "Operating Procedures" and that some need to be modified and some should be retired. The Chairman of the House Environmental Matters Committee, Del. Ron Guns, has requested that the Policies of the Commission be submitted to him for review. Mr. Serey said that he would like to send him only policies that actually describe Policies and not the procedures. He described the documents to the Commission.

The first document entitled **Policy for Reconsideration**, approved in 1993 by the Commission is a tool for jurisdictions to submit a request for growth allocation which has been denied so that it may be reconsidered. This document resulted from the fact that there was a growth allocation request in St. Mary's County which was not consistent with the Criteria and resulted in the Commission turning down the requests for six growth allocations. The County asked the Commission to reconsider and thus it evolved in procedural fashion. This policy has four elements, fraud, mistake, irregularity, or newly discovered evidence. Mr. Serey stated that this document should be called an Internal Operating Procedure.

The second document entitled **Subcommittee, Panel and Commission Meeting Procedures** document is called procedures, but was approved as a policy. He said that the Staff recommendation is that this document should be called an Internal Operating Procedure.

The third document is entitled **Program Amendment/Refinement Submittal Policy**. This authorizes the Commission to work with the local government in approving amendments. The Staff believes that this is also procedural and can be handled as an operating procedure.

The fourth is entitled **Policy on Distinguishing Between Amendments & Refinements** and defines Program Amendments and Program Refinements from the Critical Area Act and describes specific types of changes and how the Commission reviews them. He said that this document is a streamlining tool. Again, he said that this should be classified as an internal procedure.

The fifth entitled **Program Review Polices Map Development & Panels** concerns the submittal of the original Critical Area Programs by the local governments. He said that this document only restates the obvious and is not necessary for any guidance and that it should be referred to an internal operating procedure and not a formal statement of policy.

The final one is entitled **Final Policy on Shared Facilities for the Limited Development Area and Resource Conservation Area** regarding septic systems and lots that perk and don't perk. Mr. Serey believes that this is of limited value, somewhat outside the Commission's authority, and recommended that this document be withdrawn as policy and incorporated into other policies.

There was much discussion regarding the Polices, Procedures and the staff recommendations, and after comments from Commission Counsel Marianne Mason, Larry Duket moved that, in reference to the Executive Director's Memorandum titled "Redesignation of Commission Policies," policies number 2,3,4 and 5 be withdrawn as Policies and re-classified as internal operating procedures, procedures, or some similar title, and that Policy number six (6) be withdrawn as a policy and retired. The motion was seconded by Dr. Foor and carried unanimously.

Susan Zankel introduced Bill Jenkins, DNR who gave a special presentation on DNR's planning efforts with Local Governments for the restoration and protection of the remaining ecological land within the State known as Maryland's Green Infrastructure. Mr. Jenkins said that Baltimore County was instrumental in laying the groundwork to formulate the methodology for developing a Greenway Plan as part of their Comprehensive Plan. DNR's Program Open Space adopted the information generated by Baltimore and created a database with a GIS system which produced a computer generated model. He described the processes wherein Program Open Space is involved in identifying, classifying, and delineating areas for protection. This information was sent to all local governments who will be commenting and when that data is returned, an analysis of the new data will result in published revised maps and a new greenways atlas will be formed. Ms. Zankel noted that the Critical Area Commission is putting together a new guidance paper on FIDS at this time which is very timely for coordinating with DNR on this greenway effort with the local governments. Mr. Jenkins said that there is a lot of interest at the national level for the protection of greenways.

Old Business

Marianne Mason, Commission Counsel reported said that the Eastern Shore Properties case in Dorchester County has been dismissed. She explained that the case had involved a variance for a new house entirely in the Buffer for which the Board granted a variance. The Commission appealed the decision and had been consulting with the developer for locating out of the Buffer. There was substantial opposition to this application and the applicant decided to relinquish the variance and will build in a location out of the Buffer.

Ms. Mason stated that she has been working with the Commission Staff on the structure of letters that they are writing in review of variance applications in several jurisdictions. These comments are being provided to some Boards of Appeals on variance applications after the staff has visited the sites and reviewed the plans, and in all but one case there has been a recommendation for a more environmentally appropriate location for a structure to be built which would have much less impact to the Buffer. In one case, testimony was given before the Anne Arundel County Board of Appeals regarding a new house on a grandfathered lot to be located in the

Buffer on steep slopes in which there was an alternate location further back away from the water. The Board recessed some three hours before hearing all the testimony and this case will be continued in the spring. She said that the Commission would have provided testimony for an alternative location with less disturbance to the steep slopes and no impact to the Buffer. Ms. Mason stated that she and the Staff have been trying to determine how the White and Belvoir decisions are going to play out at the Board of Appeals. In so doing, they are looking at each case individually and working with the applicants to see how the projects can be modified to minimize its impacts.

New Business

Mr. Serey announced that the FIDS working group is meeting after the Commission meeting.

Chairman North told the Commission that Senator Baker has written a letter to him commending the Commission Staff for their professional and skillful negotiations in resolving most of the issues at the Wapiti Golf Course project in Cambridge. This project had such magnitude to have substantial economic consequences to the County.

Chairman North announced that the December meeting of the Commission will be held at the Officer's Club at the Naval Academy in Annapolis, Maryland at which time the Commission Staff and Members will lunch together in recognition of the beginning of the Holiday Season.

The first meeting in the new Millennium for the Commission will be held at the Quiet Waters Park in Hillsmere in January. Chairman North said that Maryland Public Television will air a program involving some parts of the Chesapeake Bay and activities therein (with a familiar face) on November 24th at 8:00 p.m.

Heidi Van Luven requested an overview to the Commission on the new Bay Agreement at the December meeting. Chairman North agreed that the Commission would benefit from such a presentation.

There being no further business, the meeting was adjourned.

Minutes submitted by: Peggy Mickler
Commission Coordinator

World impact Eagle Cone sees the only purpose as "access" issue
Chesapeake Bay Critical Area Commission

*Wants public education opportunity
asserts laws being changed to accommodate*

*#1 Bonnie Donnell
Shing Apesker*

*Known
Huntingtown Md.
2029 Hillis Rd.*

*will be residential
Area
opposes named
agency's proposal
i.e. Sierra Club*

**STAFF REPORT
December 1, 1999**

APPLICANT: Prince George's County

PROPOSAL: Refinement - National Harbor Proposed Growth Allocation

COMMISSION ACTION: Concurrence

STAFF: Lisa Hoerger

Concur

**APPLICABLE LAW/
REGULATIONS:** Natural Resources Article §8-1809 (p) (3) (i)

DISCUSSION:

Prince George's County has requested the Commission to consider a growth allocation request for two parcels that are part of the National Harbor development project. This development project is located on the east shore of the Potomac River, just south of the Woodrow Wilson Bridge. The proposed refinement has been reviewed by Commission staff and is consistent with the County's Critical Area Program, and the Critical Area Act and criteria. The growth allocation will change one parcel from a Limited Development Area to an Intensely Developed Area and the other parcel from a Resource Conservation Area to a Intensely Developed Area. The Chairman seeks your concurrence with his determination of a refinement.

Background

This site has a history that spans at least fifteen years. The former owner and developer of this land called the project PortAmerica. The PortAmerica project was 474.41 acres. In 1988, the proposal included a mixed-use project consisting of office and retail space, a hotel, a 500-slip marina, a high rise, and a townhouse and single family residential area. This concept, including variances for structures within the 100-foot Buffer, was approved by the County; however, the project was never constructed due to the economic slowdown of the early 1990's. Because the project design was underway when the County adopted its Critical Area Program, the project was considered "grandfathered" with respect to the activities in the Buffer. In 1988, the Commission approved a growth allocation request on the property to accommodate the proposed development which changed the designation of 98 acres from LDA to IDA.

Since then, the property was purchased by The Peterson Companies, L.C. and renamed National Harbor. The project site now includes 533.9 acres. The current project includes up to 3,750 hotel rooms, 3,750,000 square feet of entertainment and retail uses including restaurants, up to 1,327,000 square feet of office use, parking garages and other various facilities. In sum, the project will serve as a shopping and entertainment complex. Both projects have generated a considerable amount of public comment.

The Growth Allocation Request

In Prince George's County the Intensely Developed Area (IDA) and the Limited Development Area (LDA) are referred to as the Intense Development Overlay Zone (IDO) and the Limited Development Overlay Zone (LDO) respectively. The growth allocation request is to change one 5.1 acre parcel known as "Area 1" from LDO to IDO, and the 8.7 acre parcel known as "Area 2" from RCO to IDO. Currently, the County has a total allocation of 328 acres. Of that, 66.2 acres are available for change from LDO and 117.5 acres are available for change from RCO. The approval of the current request will result in 61.1 acres remaining for conversion to LDO and 108.8 acres remaining for conversion to RCO.

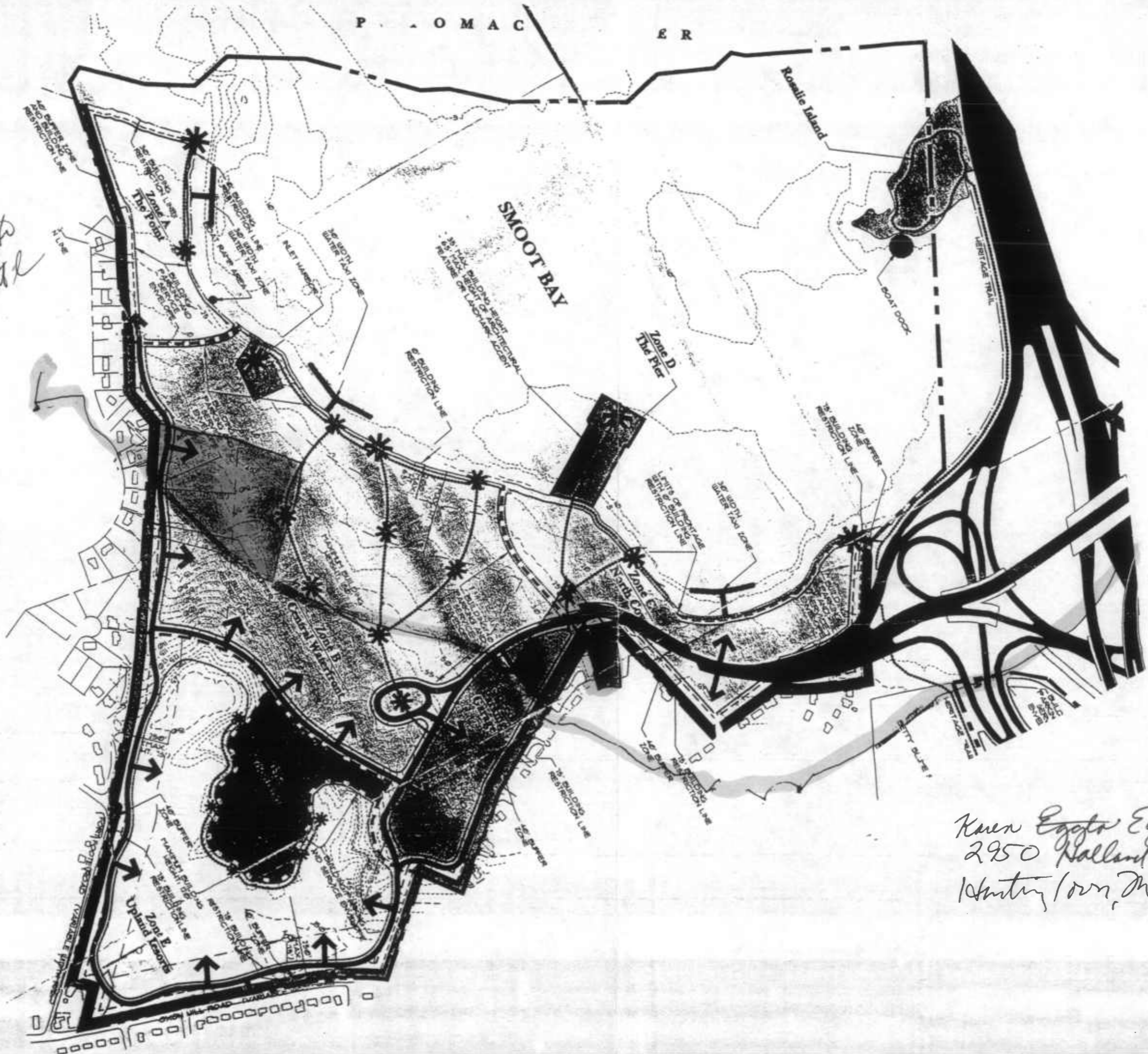
Growth allocation is being requested for these parcels in order to provide flexibility with respect to the impervious surface requirements and provide continuity with the overall design of this project.

Section 27-213.13 of the Prince George's County Zoning Ordinance provides the criteria that are required to be met by the applicant when requesting a growth allocation. For the IDO it states:

- (i) New Intense Development Overlay Zones shall:
 - (aa) Be located in existing Limited Development Overlay Zones or contiguous to existing Intense Development Overlay Zones;
 - (bb) Be located at least three hundred feet (300) from tidal waters or tidal wetlands if the land was originally designated in the Resource Conservation Overlay Zone except for Water-Dependent Uses; and
 - (cc) Minimize impacts on Habitat Protection Areas and on land in the Resource Conservation Overlay Zones in proximity to an expanded Intense Development Overlay Zone.

Both parcels, "Area 1" and "Area 2" meet the above criteria and the requests for growth allocation are consistent with the Commission's policy regarding the deduction of growth allocation. Each parcel will be deducted in its entirety; therefore, a total of 13.8 acres will be deducted. The resulting growth allocation reserve for Prince George's County will become 314.2 acres.

The County has reviewed the sites for impacts to Habitat Protection Areas (HPAs) and determined that there will be no impacts to HPAs. We are aware that a Bald Eagle nest exists nearby, however the nest is greater than 2,000 feet away from the parcels proposed for growth allocation. Also, Smoot Bay and the Potomac River support anadromous fish populations, however these parcels do not directly abut the shoreline.



*Ken opposite to
D.A. Johnson*

*Boone Bick,
7401 Oxon Hill,
O.N. Rd. 20745*

*Ken Eggo Egloff
2950 Holland Cliff Rd.
Winter Town, Md. 20639*

*Handout from
Kwame Ebo*

Alternative Visions for Woodrow Wilson Crossing and National Harbor

Lisa Warren

The Woodrow Wilson Bridge, part of one of the most congested road networks in the country, has finally reached a point where it cannot handle all the traffic traveling between Alexandria, Virginia, and Oxon Hill in Prince George's County. This bridge, built 35 years ago, was intended to take only one-third of the traffic it carries today.

Every day more and more commuters try to make their way through this strip of highway and it won't work any longer. One of the proposals to deal with this problem is a twelve-lane drawbridge, supported by the Board of Trade and the regional congressional delegation. This proposal would create the widest bridge in the world and includes no rail element.

On one side of the bridge is Eagle Cove, named so for the nesting eagles that inhabit the area. The plans for this area are as follows: "a 24-hour, 7.25 million-sq. feet commercial entertainment destination". Some 12 million visitors are expected each year, generating up to 91,000 car trips a day. The project also limits public access to the waterfront. They call it "National Harbor". If National Harbor is created

customers and resources will be drawn away from the businesses already in older established business communities such as Oxon Hill.

One big problem with each of these two planned developments (though there are many) is that they are being looked at

The two projects function in close relation to each other. The construction of National Harbor would increase traffic over the Woodrow Wilson Bridge immensely.

independently. What appears to be hard for many to grasp is that the two function in close relation to each other. If National Harbor is built it will increase traffic over the Woodrow Wilson Bridge immensely. Both of these would result in far worse traffic problems than we have now, as well as more air pollution and the destruction of Eagle Cove.

We support relieving the pressures of the traffic on the Woodrow Wilson Bridge but believe the plan should come in a different form. 1000 Friends would like to see an eight-lane bridge to match the eight-lane Beltway, as well as mass transit, which would cut down on commuting time, air pollution, and damage to the surrounding land.

(Alternative Vision continued on page 11)

(Alternative Vision continued from page 3)

As for National Harbor, we would like to see improvements to existing infrastructure and additions to the facilities already in downtown Oxon Hill, rather than destroying Eagle Cove. The suggestion is to put a public natural park at Eagle Cove and to reinvest in businesses (restaurants, offices, retail) around a new metro station in the heart of Oxon Hill rather than in outlying areas. That way we will keep everything centrally located and provide people with a quick and easy way to get to these businesses.

1000 Friends of Maryland and the groups with which we work are working hard to keep all these proposals in accordance with federal regulations as well as redevelop the commercial areas in Oxon Hill and preserve beautiful riverfront places like Eagle Cove. We do not want to see these communities turned into parking lots for National Harbor and nobody wants the hassle on the Woodrow Wilson Bridge to continue.

Lisa Warren is an intern with 1000 Friends of Maryland. She will attend Dickinson College in the Fall.

(Choice continued from page 2)

congestion and improve Maryland's quality of life.

1000 Friends don't let friends drive solo. Share the news about the Commuter Choice Tax Credits with your friends, co-workers and supervisors. If you are a member of other organizations that have newsletters, ask them to share the information in their next issue. For more information call the MTA Rideshare office at 1-800-543-9809. You can also view the Federal Transit Administration website at www.fta.dot.gov or call Scot Spencer at the Environmental Defense Fund 202-387-3500.

Scot T. Spencer is a transportation specialist for the Environmental Defense Fund and a member of the board of 1000 Friends of Maryland.

(ICC continued from page 5)

By rejecting the proposed ICC and supporting better land use, more transit, and fully embracing the objective of reducing vehicle miles traveled, Governor Glendening has the opportunity to leave a legacy of Smart Transportation to accompany Smart Growth. Please write, call, or e-mail the Governor to oppose the ICC and to support transportation investments, such as transit projects, that protect the environment and communities while reducing traffic congestion.

The Honorable Parris N. Glendening
State House
100 State Circle
Annapolis, MD 21404
410-974-3901
governor@gov.state.md.us

Neal Fitzpatrick is the Director of the Audubon Naturalist Society.

2
on agenda

Chesapeake Bay Critical Area Commission

STAFF REPORT
December 1, 1999

— McLean - ^{note}
Corkin sec
1/21

APPLICANT: Maryland Department of Natural Resources

PROPOSAL: Mini-Cabins in Hammerman Area of Gunpowder Falls State Park

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 State Forest and Park Service placed several mini-cabins at various sites throughout Gunpowder Falls State Park in Spring 1998 as part of a DNR/Forest and Park Service project. Two of these cabins were placed on sites within the Critical Area adjacent to Cunningham Cove, but not within the 100-foot Buffer. This part of Gunpowder Falls State Park has been designated Intensely Developed Area (IDA).

Each cabin is 10' x 15' in size with underground electric lines serving the cabins. Cabin #1 is just inside the edge of a wooded area off of the main park road. Cabin #2 is located on a grass lawn next to an existing access road. No vegetation or trees were removed or disturbed. The combined impervious surface of both cabins totals 300 square feet.

There are no tidal or non-tidal wetlands in the project area. There are no rare, threatened or endangered species in the project area. The project area does not include any colonial bird nesting sites, historic waterfowl staging and concentration areas, riparian forests, forest interior dwelling bird habitat, natural heritage areas, or areas of state or local significance.

ATTACHMENT #2
GUNPOWDER FALLS STATE PARK Hammerman Area
100-Foot Buffer



3
X

Chesapeake Bay Critical Area Commission

CFM
See back

STAFF REPORT
December 1, 1999

APPLICANT: Department of Transportation, State Highway Administration

PROPOSAL: MD 2 Widening from Virginia Avenue to South of Pike Ridge Road

JURISDICTION: Anne Arundel County

COMMISSION ACTION: Vote

STAFF RECOMMENDATION: **Conditional Approval**

STAFF: Lisa Hoerger

**APPLICABLE LAW/
REGULATIONS:** **Conditional Approval** of State or Local Agency Programs in the Critical Area - Code of Maryland Regulations 27.02.06

DISCUSSION:

The State Highway Administration (SHA) is proposing to widen Maryland Route 2 from Virginia Avenue to south of Pike Ridge Road in the Edgewater area of Anne Arundel County. The proposed work includes grading, drainage, and paving for the widening and reconstruction of approximately 1.2 miles of MD 2 to provide additional lanes. The project will improve safety and capacity, and will reduce current traffic congestion along MD 2.

The scope of this project also includes similar improvements to occur along 700 feet of Mayo Road, 500 feet of Maryland Avenue, 230 feet of Southdown Road, 500 feet of Pike Ridge Road, and a new service road (approximately 1500 feet long) connecting MD 2 and Maryland Avenue. Two stormwater management facilities will be constructed, and one existing stormwater facility will be retrofitted to provide stormwater management for the pavement surfaces. New water lines and sanitary lines along MD 2 will also be installed. **One stormwater management facility and two outfalls will impact the 100-foot Buffer to tidal waters; therefore, this project will require Conditional Approval by the Commission. Justification for this disturbance will follow later in this report.**

Approximately **9.26** acres of the project site are within the Chesapeake Bay Critical Area. Staff made a determination based on County mapping and field observation that the area to be impacted can be considered an area of Intense Development. In that regard, the applicant has completed the 10% Pollutant Reduction Worksheet that is required of all projects occurring in areas of Intense Development. Based on the calculations, the removal requirement for this project is 17.7 pounds of phosphorus per year. One dry extended detention pond and one wet pond will be utilized as Best Management Practices (BMPs) for the pollutant removal requirement. An off-site drainage area will also be used to address the removal requirement. **This combination of BMPs will remove 19.34 pounds per year.**

The proposed extended detention pond is almost completely outside the Critical Area portion of the project area **with the exception of 2,710 square feet**. It is located west of MD 2 and north of the service road. The wet pond is completely in the Critical Area portion of the site and is located north of Mayo Road. The right-of-way (ROW) area for this pond is 1.4 acres. The limit of cut and fill for the pond is 1.1 acres. **The limits of disturbance for this pond in the 100-foot Buffer are 680 square feet**, however no grading will occur. A note has been added to the plan that states:

The contractor shall use care not to grade in the Critical Area Buffer in the vicinity of baseline station 16+00, RT. Care shall be used when constructing the principal spillway (outfall pipe) from this facility to minimize grading and impacts to vegetation where it is in the Critical Area Buffer.

The area disturbed for the access road to this pond is .17 acres. The area of cut and fill for the access road is .12 acres. The outfalls for both ponds are within the Critical Area and the 100-foot Buffer. Stormwater will be addressed through the use of the stormwater management ponds that will provide storage and quality improvement for the first inch of runoff.

Plantings

The State Highway Administration has agreed to mitigate all clearing associated with this project on a 1:1 basis with native plantings. Any clearing inside the 100-foot Buffer will be mitigated for at a 3:1 ratio. Two planting sites have been identified to accommodate this mitigation. One occurs on-site at the location of the proposed wet pond, and the other is at an off-site location. The mitigation figures are being adjusted and will be provided to the Commission at its meeting on December 1, 1999. Mitigation above what is required is also being provided for future projects.

Agency Comments

The Maryland Department of the Environment has not issued final approval for the wetland impacts, sediment and erosion control plans or stormwater management plans. At the time of writing this report, these permit issues were in their final stages. The joint permit application concerning impacts to nontidal wetlands and the water quality certification is also pending. The Commission will be updated at its meeting on December 1, 1999.

The Department of Natural Resources (DNR), Heritage and Biodiversity Division has indicated there are no Habitat Protection Areas (HPAs) within the project site with the exception of the nontidal wetlands and the 100-foot Buffer to tidal waters, tidal wetlands or streams. Another second review was requested since the last comment letter was dated 1992. **In a letter dated November 29, 1999, DNR stated no known rare, threatened or endangered plants or animals were within the project site. A letter from the Environmental Review Unit of DNR mentioned that no in-stream work is permitted from March 1, through June 15.** The Maryland Historical Trust has also reviewed the plans and commented that the field adjacent to the proposed wet pond off of Mayo Road contains several archaeological sites. The ROW for this pond was purposefully located so it does not impact these archaeological sites.

In a letter dated November 23, 1999, Anne Arundel County Department of Planning and Code Enforcement (PACE) provided comments for this project. The County expressed concerns regarding the proposed reforestation site that is off-site, and mentioned that for private property owners, a time of year restriction would be required for all in-stream work. In a previous letter dated November 23, 1999, PACE stated the stormwater management calculations and plans were consistent with County design standards.

Conditional Approval Process

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 SHA from providing water quality and quantity without impacting the expanded Buffer. The impacts in the Buffer are proposed in order to provide for a stormwater management pond. Alternative locations were explored as well as alternative designs. However, the

high water table, topography and historical resources in the area precluded pond from being sized and sited elsewhere. The alternative designs were determined not suitable.

Special circumstances include the high water table, topography, and the archaeological sites near the ROW. The SHA was not permitted to disturb these areas and the drainage pattern is directed toward the area of the wet pond.

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

The proposal includes BMPs that will result in providing water quality and quantity control for the stormwater from the site area and offsite drainage areas that previously were not treated. Also, the widening of MD Route 2 and associated improvements to nearby roads will improve safety and traffic flow through this area.

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

Except for the proposed disturbance to the 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;

The SHA is required to include a BMP to address water quality. The proposed pond, although requiring impacts in the Buffer, does provide for the storage of the first inch of runoff, serve water quality functions, and will provide for additional plantings that may not be associated with other types of BMPs. A literal enforcement would prevent SHA from providing appropriate and necessary BMPs for this project that provides public benefits.

(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 to the 100-foot Buffer will be minimized and the proposed plantings will result in improved habitat value and 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 proposed plantings within the Buffer and around the stormwater management pond will result in increased water quality benefits and improved habitat protection. Additional mitigation plantings will be accommodated off-site to provide additional water quality and habitat benefits.

mitigation will occur outside Buffer

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 quality measures for the first inch of runoff for the impervious areas based on the site plan submitted;*
- 2) *No in-stream work is permitted between March 1 and June 15.*
- 3) *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*
- 4) *The applicant will work with Commission staff regarding mitigation for all clearing and/or impacts that will result both inside and outside the Buffer, and will coordinate follow-up site visits to monitor the survivability of the planting areas.*

Alternatives to off-site mitigation

~~Q. 711~~ Goodman - approx. 1 acre

X4 - 1, 3, 4 in haulout

+ SHA will 1.32 acres N
f.m.

1 in 1 yr. - planted
When funding allocated

2nd by ~~Oliver~~ McLean

more criteria

Vote -
C. U.

Chesapeake Bay Critical Area Commission

STAFF REPORT
December 1, 1999

Concur

APPLICANT: Town of St. Michaels

PROPOSAL: Refinement - East Chew Avenue Annexation

COMMISSION ACTION: Concurrence

STAFF RECOMMENDATION: Concur with Chairman's determination

STAFF: Lisa Hoerger

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

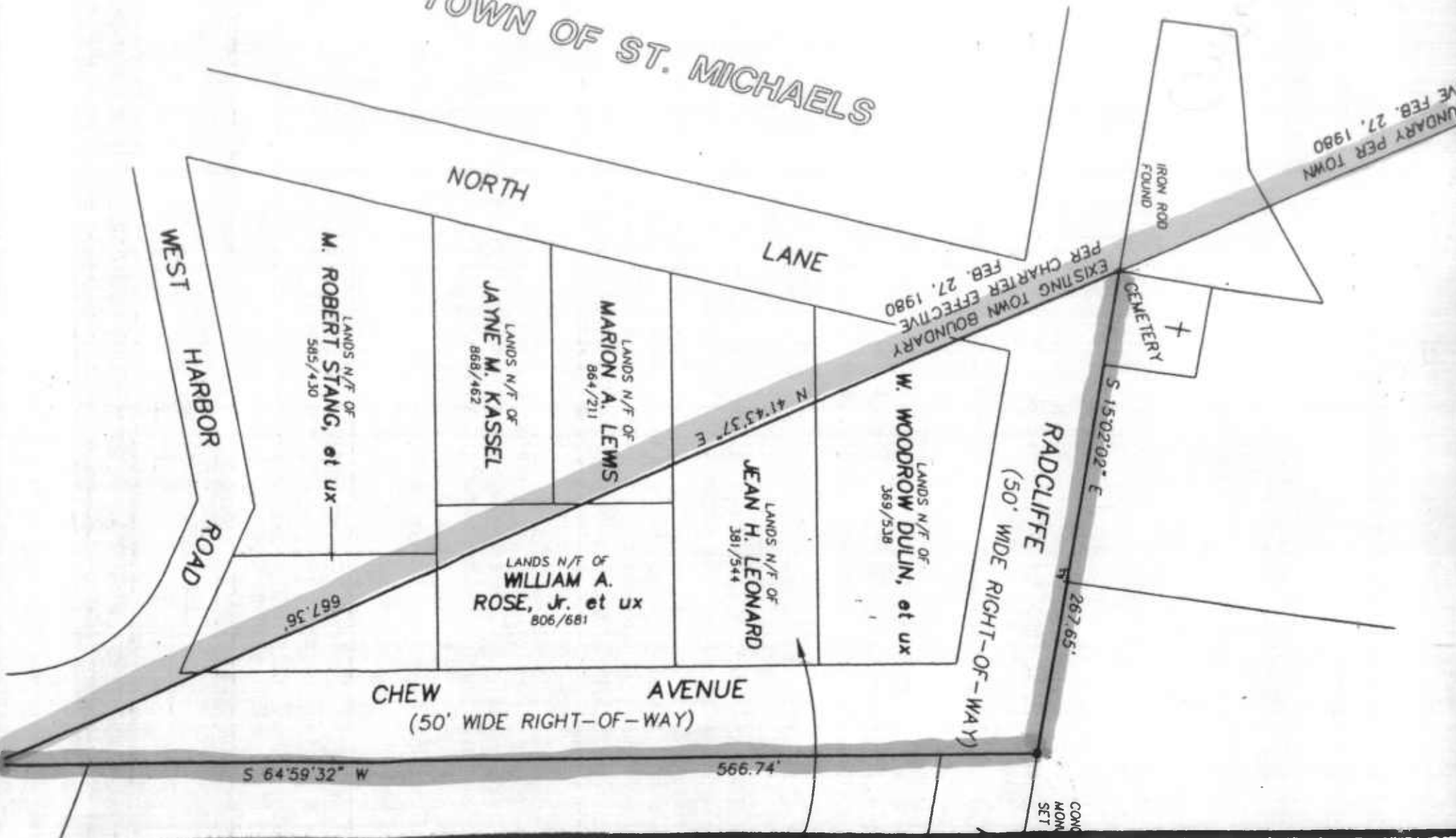
DISCUSSION:

The Town of St. Michaels has annexed 1.715 acres of land that lies in the Critical Area. The land that was annexed consists of portions of five lots located on the northern side of East Chew Avenue, between Radcliffe Avenue and West Harbor Road. These parcels are identified in the Town of St. Michaels' Comprehensive Plan as a low density residential area. The area is zoned R1 and is currently in a residential use. Upon annexation the Town assigned an R1 zoning classification. Since R1 was the same as the County's zoning designation, there was no change in the zoning.

The portion of the properties inside the Town have a Critical Area designation of Intensely Developed Area (IDA). The portions of the properties in the County had a Critical Area designation of Limited Development Area (LDA). However, the Critical Area designation was not reconciled on these properties at the time of annexation. Upon advice from staff, the Town will be pursuing a change to the Critical Area designation of those portions of the properties that are LDA to IDA.

The annexation, Resolution No.99-04, became effective on October 30, 1999 following a public hearing and approval by the Town Council. There was no opposition to this specific annexation request. Chairman North seeks your concurrence with his determination that this annexation request is a refinement to the Town of St. Michaels' Critical Area Program.

TOWN OF ST. MICHAELS



Chesapeake Bay Critical Area Commission

**STAFF REPORT
December 1, 1999**

Concur

APPLICANT: Town of St. Michaels

PROPOSAL: Refinement: Local Growth Allocation Process

JURISDICTION: St. Michaels (Talbot County)

COMMISSION ACTION: Concurrence with Chairman's Determination of Refinement

STAFF RECOMMENDATION: Approval

STAFF: Ren Serey

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

DISCUSSION:

The Town of St. Michaels has amended its process for consideration of requests for the use of growth allocation. The process contained in the Town's original Critical Area program provided that the Critical Area Commission would receive growth allocation requests after a decision by the Town Planning Commission, but before a final decision by the Town Commissioners.

Chairman North notified the Town that under the Critical Area Act, the Commission must receive program amendments and refinements only from the local body authorized to make such changes. The Town Commissioners are the local legislative body for St. Michaels.

The Town Commissioners have approved the necessary language and forwarded it to the Commission. See attachment. Chairman North has determined this change to the local Critical Area program to be a refinement to that program.

Allocation District ("GA")), Subparagraph 2) (Procedure for Processing GA District Applications), item 1), shall be amended as follows:

- 1) Within ninety (90) days after the Town Commissioners begin their public hearing as provided in this subsection 11 (Growth Allocation District - GA), paragraph a. (Growth Allocation District ("GA")), subparagraph 2) (Procedure for Processing GA District Applications), part h) hereof, the Town Commissioners shall make the final decision on awarding Growth Allocation, and may grant the request for the award of Growth Allocation as a floating zone, subject to the final review and decision of the Critical Area Commission. In considering an application for award of Growth Allocation the Town Commissioners shall make findings of fact in each application for award of Growth Allocation with regard to the proposed development of the land for which the award of Growth Allocation is sought, including, but not limited to, the following matters: change in the Town's population, availability of public facilities, affect on present and future transportation patterns, compatibility with existing and proposed development for the area, the recommendation of the Planning Commission, and the compatibility with the Town's comprehensive plan; and may award, but shall not be required to award, Growth Allocation based upon a finding that all express criteria of this Zoning Ordinance and the Town's Local Critical Area Program for the award of Growth Allocation will be satisfied. The Town Commissioners may award Growth Allocation based upon their finding that all of the criteria required by law are satisfied, and upon their finding that the award of such Growth Allocation is in the public interest. The Town Commissioners may also establish conditions of approval to accompany the "GA" district classification, including a time limitation for completion of the proposed project. A complete record of the hearing and the votes of all members of the Town Commissioners shall be kept.

*
 a. Section 5 (Zone Regulations), Subsection 11 (Growth Allocation District - GA), Paragraph a. (Growth Allocation District ("GA")), Subparagraph 2) (Procedure for

Dr. Form suggests we clarify site-specific

Chesapeake Bay Critical Area Commission

STAFF REPORT

December 1, 1999

CS

APPLICANT: Wicomico County

PROPOSAL: Refinement - Cooper Landing Growth Allocation

COMMISSION ACTION: Concurrence

STAFF RECOMMENDATION: Approval with conditions

STAFF: LeeAnne Chandler

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

*Refinement approved
understanding that
this is a site-specific
ref. —*

DISCUSSION:

Wicomico County is proposing to use 24.59 acres of growth allocation to change the Critical Area designation on Tax Map 46, Parcel 21 from RCA to LDA. The property is currently forested with loblolly pine and some hardwoods and it was previously owned by Chesapeake Corporation. The proposed use is a residential subdivision with approximately 25 lots in the Critical Area portion of the site.

The property includes the 100-foot Buffer to "My Lord's Creek" and the Buffer is completely forested. A number of lots are platted partially within the Buffer. Notes included on the site plan state that disturbance of the Buffer is not permitted, though Commission staff has raised the issue regarding the difficulty of enforcement. There are no other habitat protection areas that would be impacted by this development. The developer is proposing to clear 37% of the forest on the site. Three to one mitigation is required by the County's Zoning Ordinance when over 30% of the forest on site is cleared. Off-site mitigation is necessary because the site is entirely forested.

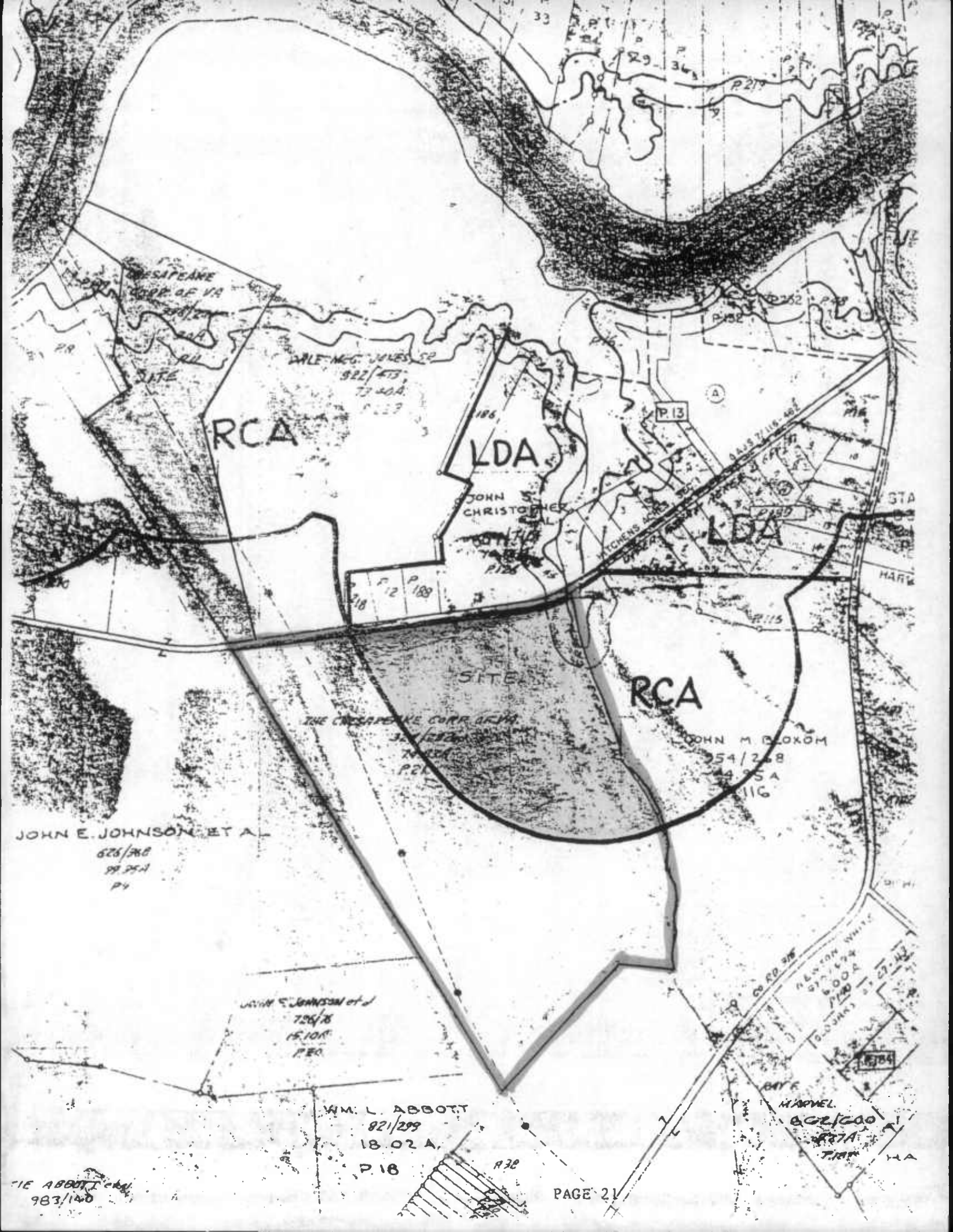
Land use surrounding the parcel is partially LDA (a residential area directly across the street) and partially RCA (agricultural and forested lands). The entire acreage of the parcel within the Critical Area is being deducted from the County's growth allocation total.

Wicomico County's process for awarding growth allocation incorporates the site plan approval process. The County's Planning Commission has already reviewed and approved this project and it will not be forwarded to the Commission for subdivision review after the growth allocation is approved. Staff comments and questions on the subdivision have been addressed by the County, with the exception of forest mitigation.

With appropriate mitigation for forest clearing, the proposed project meets the requirements for growth allocation as stated in the Wicomico County ordinance and will be consistent with COMAR 27.01.02.06 and the Commission's policy on growth allocation.

In Wicomico County, a Critical Area Certificate of Compliance is issued for all projects within the Critical Area. In order to ensure that the forest mitigation requirements are properly addressed, staff recommends approval of this refinement with the following condition:

The Critical Area Certificate of Compliance will not be issued to the developer until a copy of the final plat for the subdivision and a copy of the mitigation plan is provided to the Commission. The plat must include notes clearly stating that forest mitigation is required at three times the area cleared.



RCA

LDA

LDA

RCA

DALE MCG. JONES, SR
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JOHN CHRISTOPHER

JOHN M. BLOOM
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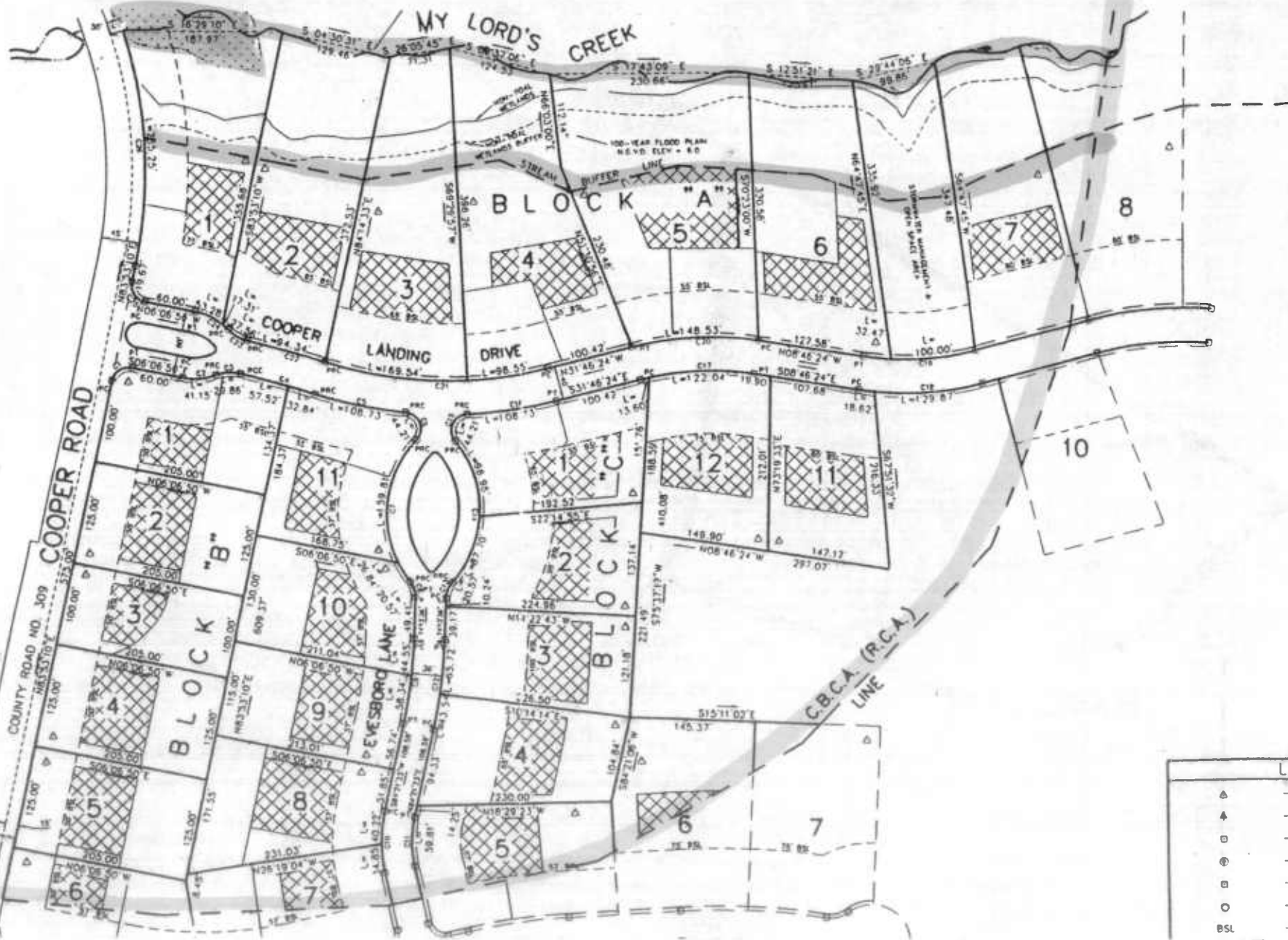
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WM. L. ABBOTT
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P. 18

H. ROVEL
602/600
P. 7A
P. 7B

W. L. ABBOTT
983/140



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BSL	- F

Chesapeake Bay Critical Area Commission

STAFF REPORT
December 1, 1999

APPLICANT: City of Cambridge

PROPOSAL: Refinement - Restoration of growth allocation resulting from mapping change

JURISDICTION: Dorchester County

COMMISSION ACTION: Concurrence

STAFF RECOMMENDATION: Approval

STAFF: Roby Hurley, Meredith Lathbury

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

Carver

*Ref.
See her for
outline of
Recommendation*

DISCUSSION:

In September, the Commission approved a proposed mapping amendment that changed the Critical Area line based on MDE's determination that the field identified limit of tidal wetlands was different from the line indicated on the 1972 wetland maps. The mapping change altered the Critical Area line such that an adjacent property that was previously in the Critical Area is now mostly outside of the Critical Area. In 1994, this adjacent property received 21.15 acres of growth allocation for the development of a Wal-Mart. Because of the recent mapping change to the tidal wetlands line, the Wal-Mart property is now almost totally outside of the Critical Area. As a result of this change, the actual amount of growth allocation needed for the Wal-Mart project can be reduced to 1.37 acres. On October 25, 1999, the City of Cambridge Mayor and Commissioners voted to restore the growth allocation acres previously granted to the Wal-Mart property to the City's growth allocation reserve. This change restored 19.78 acres to the City's growth allocation reserve, leaving a balance of 23.77 acres.

Much discussion re: this report. ? was asked about process to delay this ref. decision until whether or not to give land back. No precedent has set yet -



Wants to get this on web page

MEMORANDUM

*Welcomed ?'s
& comments*

TO: Critical Area Commission Members
FROM: Tracy Batchelder, Natural Resources Planner
RE: Draft Forest Mitigation Guidance Paper
DATE: November 17, 1999

Attached you will find a copy of the draft of the Forest Mitigation Guidance Paper which I have researched and written over the past several months. I brought the paper to the Project Subcommittee in October for discussion and their input. This paper is the result of recognition on the part of Commission staff that:

- Some local jurisdictions find the mitigation requirements as written in the Criteria to be unclear and they, therefore, apply the regulations inconsistently or interpret them differently than what was intended in the Criteria;
- The actual mitigation in the field is often inadequate, unenforced or not maintained largely due to lack of local staff and available technical assistance;
- Mitigation can be difficult to carry out due to small lots and a lack of mitigation sites: but
- There are counties that have been successful in addressing problems associated with the mitigation requirements and there are state programs that can assist local jurisdictions and property owners in carrying out the mitigation requirements.

I have tried to clarify the mitigation requirements as well as offer case studies of counties that have successfully addressed some of the issues. My hope is that local jurisdictions and property owners will find this a useful resource to not only meet the requirements in the Criteria, but also consider the importance of mitigation in terms of the health of the Bay, its surrounding environs and wildlife.

I am presenting the guidance paper at the December Commission meeting for information and discussion. I welcome your feedback either at the meeting or on paper.

DRAFT

FOREST MITIGATION GUIDANCE PAPER
Revised 11/10/99

Purpose of Guidance Paper

Forests provide a range of important environmental, economic and aesthetic benefits. This paper is meant to provide guidance to local jurisdictions on the forest mitigation requirements under the Critical Area regulations and discuss some of the challenges jurisdictions face in implementing the mitigation requirements. Case studies of counties that are taking an innovative approach to addressing some of these issues are offered as well as other approaches that local jurisdictions might find useful to fulfill the forest mitigation requirements.

Background

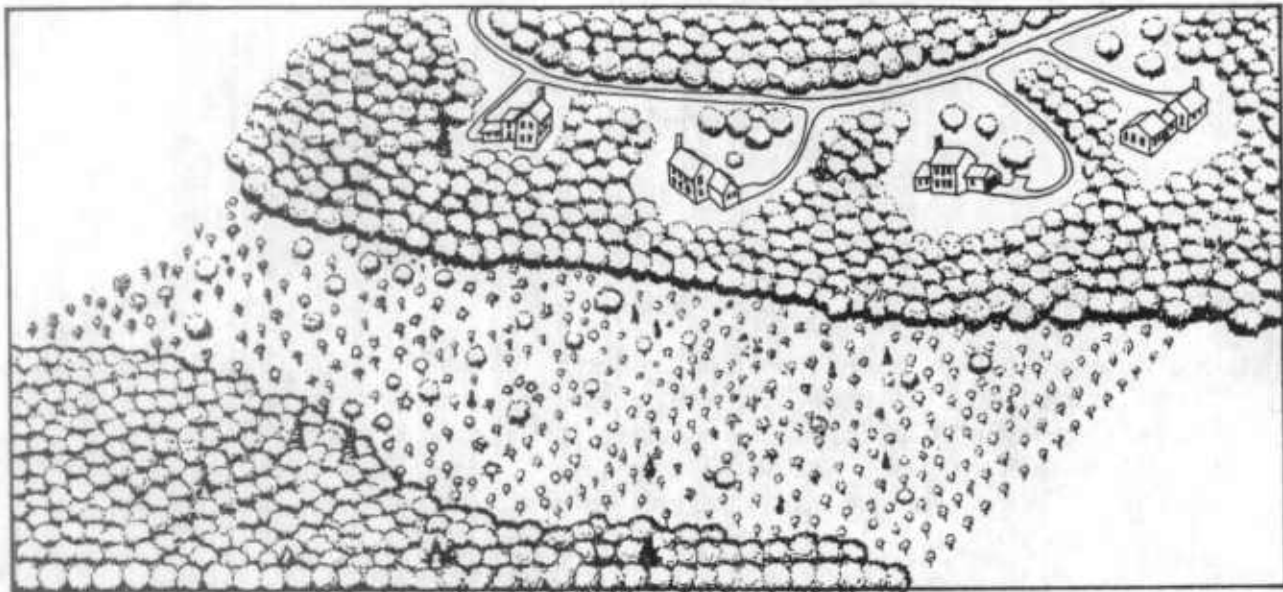
Forest and developed woodland protection and replacement is one of the main goals of the Critical Area Act. As stated in the Criteria:

The total acreage in forest coverage within a jurisdiction in the Critical Area shall be maintained or, preferably, increased (COMAR 27.01.02.04).

All forests that are allowed to be cleared or developed shall be replaced in the Critical Area on not less than an equal area basis (COMAR 27.01.02.04).

Two of the three goals of the Critical Area Act are to “minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands” and “to conserve fish, wildlife, and plant habitat” (Nat. Res. Art. §8-1808). Forests and developed woodlands not only provide habitat for wildlife, but are also important in maintaining water quality by trapping sediments, taking up nutrients, and immobilizing toxic substances (Chesapeake Bay Program, 1995). The maintenance of forest cover is, therefore, crucial to achieve the goals of the Act. Forests and developed woodlands can also enhance the aesthetic beauty of an area and provide other benefits to landowners such as reducing heating and cooling costs by acting as an insulator around homes.

By itself, maintenance of the area of forest cover will not be enough to maintain functioning forest ecosystems if the quality of the forest or developed woodland is not maintained or, preferably, improved in some cases. It is simply not enough to plant trees. Careful thought and planning should be given to what type of trees and what location will be optimal for maintaining or enhancing the functions of that forest ecosystem.



This forest mitigation area (center of drawing) is located in order to link an existing forest with an existing developed woodland.

Forest Mitigation Requirements for Clearing

The Critical Area Criteria specify when a property owner is required to replace trees (Table I). According to the Criteria, up to 20% of a forest or developed woodland can be cleared on a site designated as a Limited Development Area (LDA) or Resource Conservation Area (RCA) as long as the forest is replaced on *not less than an equal basis* or 1:1 mitigation. If more than 20%, but less than 30% is cleared, then the *total surface acreage of the disturbed forest* must be replaced on 1.5:1 basis. These mitigation ratios are based on the percentage of the on-site forest cleared, not the total acreage of the property. In addition, clearing violations “shall be replanted at three times the areal extent of the cleared forest” in lieu of the usual planting ratio required for the same amount of clearing for an approved purpose (COMAR 27.01.02.04). Jurisdictions have the option to impose additional requirements and penalties for clearing violations.

TABLE 1	
Ratios for Forest Cleared	
Amount of Clearing	Mitigation
0% - 20%	1:1
20% - 30%	1.5: 1
Clearing Violation	3:1

There are no reforestation provisions for sites designated as Intensely Developed Areas (IDA). However, the Critical Area Criteria specify that permeable areas in the IDA shall be established in vegetation when practicable, development activities shall minimize destruction of forest and woodland vegetation, and programs should be established to enhance urban forests to improve water quality and benefit urban wildlife. The Criteria clearly intended to ensure that any trees removed in the Critical Area would be replaced and that the total acreage of forest or developed woodland would either be conserved or increased in order to maintain or improve water quality and habitat. Table 2 provides examples of how the mitigation requirements are applied and Table 3 summarizes the recommended credit for trees and shrubs planted in the Critical Area.

TABLE 2
Examples of How the Mitigation Requirements are Applied
<i>There is 80,000 square feet of forest on a seven acre property. A developer clears 20,000 square feet for a minor subdivision which is 25% of the existing forest coverage on the property. Therefore, the developer is required to mitigate at a 1.5:1 ratio equal to planting 30,000 square feet of forest. A combination of trees and shrubs can be planted to enhance the structural diversity of the forest.</i>
<i>There are 20 trees on a quarter-acre grandfathered lot. The landowner takes out 3 trees which is 15% of the existing forest coverage on the property. The landowner is therefore required to mitigate at a 1:1 ratio equal to planting three trees.</i>

TABLE 3		
Recommended Credits for Forest Mitigation		
Recommended Credit (Local jurisdictions can determine planting credits)	Plant Size	Plant Spacing
100 sq. ft.	1 tree (2-inch caliper)	10-foot center
400 sq. ft.	1 tree (minimum: 2-inch caliper and either balled and burlapped or container grown) <u>and</u> understory vegetation (minimum: 2 small trees or 3 shrubs)	tree: 20-foot center understory: 10- foot center
50 sq. ft.	1 tree (seedlings)	7-foot center
50 sq. ft.	1 shrub	3 to 7-foot center

The General Assembly recognized the importance of including a 100-foot vegetated Buffer in the regulations as a habitat protection area in order to accomplish water quality and habitat objectives. Mitigation is also required for clearing vegetation in the Buffer. However, because the Buffer is a habitat protection area, the Commission has recommended different mitigation ratios depending on the

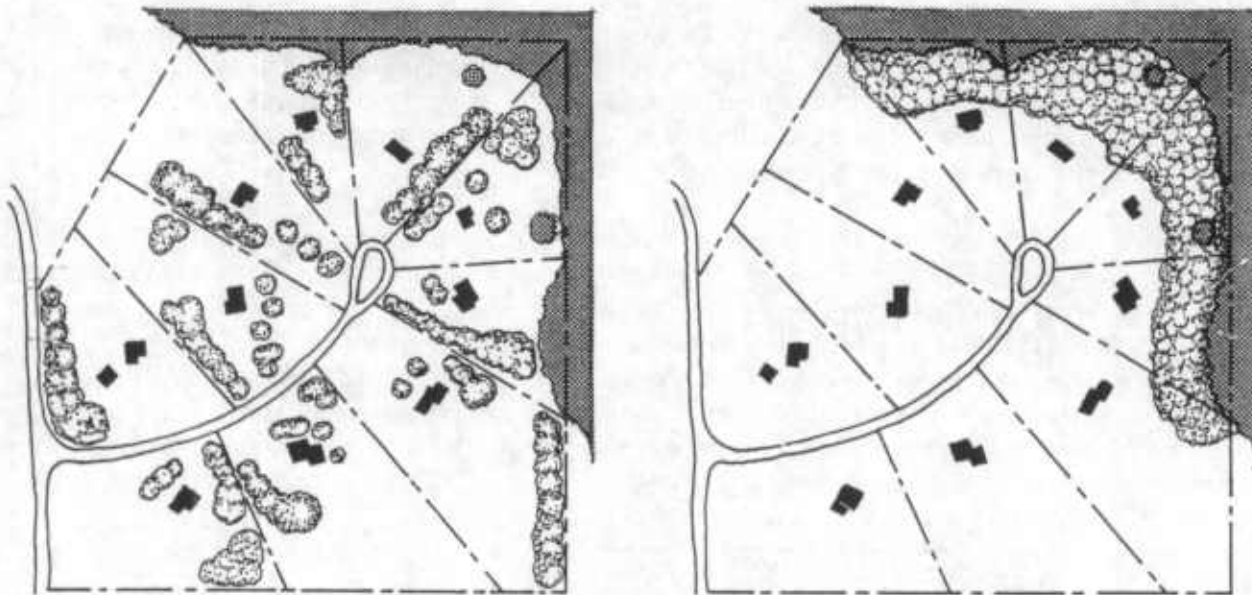
development activity for which the vegetation is cleared. In recognition of the importance of the Buffer in protecting the resources of the Bay and its shorelines, trees or vegetation cleared in the Buffer for an approved purpose, other than access and shore erosion control, should be mitigated on a 3:1 basis. Table 4 outlines Commission recommendations regarding mitigation for clearing in the Buffer and is not meant to endorse development activity in the Buffer. Any proposed disturbance in the Buffer requires the applicant to go through the local variance process. However, if a variance for disturbance in the Buffer is approved, at a minimum, mitigation should be required at the ratios outlined in Table 4.

TABLE 4	
Minimum Mitigation Ratios for Clearing in the Buffer	
Clearing in the Buffer	Mitigation
Clearing for new development/ redevelopment in Buffer if a variance has been granted	3:1
Clearing for new development/ redevelopment in Buffer Exemption Areas (BEA) which meets the criteria in the BEA policy	2:1
Shore Erosion Control	1:1
Shoreline Access in Buffer	2:1

Afforestation Requirements

In addition to the mitigation requirements for clearing, the Criteria specify that “if no forest is established on proposed development sites, these sites shall be planted to provide a forest or developed woodland cover of at least 15 percent” (COMAR 27.01.02.04). The following are examples of how this requirement is implemented in practice:

- A vacant grandfathered lot is going to be developed. The property owner is required to afforest the property so that 15% of the lot is established in forest.
- A grandfathered property has a dwelling on it and the rest of the property is in agriculture. The owner wishes to construct a 10x10 porch addition to the house. The property owner is required to afforest 15% of the residential site of the property, excluding the area in agricultural production as this is a separate use of the land.
- A new subdivision is being developed on a vacant farm that is largely unforested. The developer can choose to afforest 15% of each lot or provide 15% afforestation for the entire subdivision in one area of the property. Afforestation of one area of the property may help to create or maintain a forest that will support a diversity of wildlife, particularly if it is located adjacent to an existing forest.



A developer may choose to afforest 15% of each lot as shown on the left or may choose to afforest 15% of the entire subdivision as shown on the right. Afforesting in one area rather than on individual lots is generally a more effective way to create wildlife habitat.

Property owners can be given credit towards the afforestation requirement for existing vegetation on the property. Once a property owner meets the 15% afforestation requirement, no additional planting is necessary for any development on the site. However, if any trees are removed during future development activities, the trees must be replaced as required by the Criteria and outlined in Table 1.

Lack of Mitigation Sites

In several local jurisdictions, the size of the average property in the Critical Area is too small to reasonably accommodate the amount of mitigation required by the regulations. The Criteria provide that local jurisdictions can create a fee in lieu program "*if the fee is adequate to ensure the restoration or establishment of an equivalent forest area*" (COMAR 27.01.02.04). This may put more burden on the local jurisdiction by having to collect and spend the fees. However, off-site mitigation can be more ecologically beneficial for smaller lots in densely populated areas where on-site plantings may turn into landscaping rather than creating or contributing to a forest. Small landscaped areas lose many of the important benefits of a functioning forest ecosystem. The lack of mitigation sites is a problem that several counties are faced with now and one that rapidly developing counties will face in the future. Some counties have found innovative ways of addressing this issue (see case studies 1 and 2).

Case Study #1: Mitigation Banking in Anne Arundel County

Anne Arundel County is highly urbanized and many of the lots in the Critical Area are small in size. Due to the size of the lots, there is little room for on-site forest mitigation thus property owners often pay a fee-in-lieu to the County. Subsequently, the County has a large fees-in-lieu fund and has had difficulty in spending the monies due to the lack of mitigation sites in the County's Critical Area. Another option for landowners is to plant trees off-site on private property in the Critical Area through a mitigation banking scheme. Mitigation banking enables the County to avoid collecting fees-in-lieu while ensuring that trees are being planted in the Critical Area.

There are five mitigation banking sites in the County. A property owner that is required to reforest can contact the landowners of these sites and pay them to plant trees on their property. The fees to plant on these sites are lower than the County's fees-in-lieu thus there is an incentive to buy into the mitigation banking scheme. The County requires a landowner choosing to use mitigation banking to submit a planting plan to the County, post a two-year bond to guarantee the planting, and put the planting site into a perpetual conservation easement. County staff go out on-site to approve the site and then re-visit the site after it has been planted to ensure consistency with the planting plan. Staff return to the site after two years to ensure that the plantings are surviving. For more information, contact the Anne Arundel Office of Planning and Code Enforcement at (410) 222-7441.

Case Study #2: Advertising for Mitigation Sites in Calvert County

Calvert County has a fee-in-lieu fund and has had difficulty finding mitigation sites in the past, particularly large tracts of land to reforest. The County has been proactively locating mitigation sites through newspaper advertisements that offer free trees to landowners in the Critical Area. Fees-in-lieu are used to buy the trees and pay for all the related expenses to prepare and plant a site. The Calvert County Board of Commissioners established a Critical Area Reforestation Evaluation Committee (CARE) to develop the guidelines for the replanting program and to review and approve requests for tree plantings. CARE gives priority to reforestation sites greater than five acres and/or sites within 100-feet of tidal waters. The County consistently receives applications from property owners requesting trees on their property. For more information, contact the Calvert County Department of Planning and Zoning at (410) 535-2348.

Critical Area Forest Mitigation and the Conservation Reserve Enhancement Program

In some counties, fees-in-lieu could be used to plant trees and purchase easements in conjunction with the U.S. Department of Agriculture's Conservation Reserve Enhancement Program (CREP). CREP promotes the planting of buffers along waterbodies (i.e. streams, the Bay) in the Chesapeake Bay watershed and the restoration of wetlands on agricultural land by offering incentives to landowners to take a portion of their land out of production. CREP will only pay for planting the first 150 feet adjacent to a waterbody. An area planted with fee-in-lieu monies would be located landward of the 150-foot CREP forested buffer. Some landowners may opt to put an easement on the planted buffer and fee-in-lieu monies above the 1:1 mitigation ratio could be used to purchase easements on forested areas in the Critical Area that are contiguous or near a CREP site. A local land trust or soil conservation district will be charged with monitoring and enforcing the planted sites to ensure that the trees survive and the easement is upheld. For more information on this opportunity, contact the Critical Area Commission at (410) 260-7516.

The Landowner Stewardship Referral Service

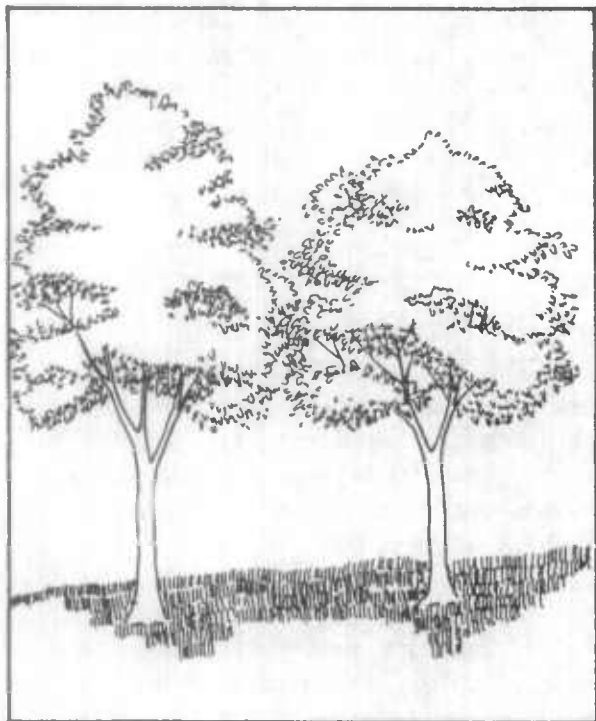
The Landowner Stewardship Referral Service was developed by the Watershed Restoration Division at the Department of Natural Resources (DNR). The service is designed to help interested property owners enhance the natural resources on their property, create new habitats and protect existing ones. The DNR developed a guide that can assist resource professionals and private property owners in determining which programs are available and best-suited to meet their specific objectives. The programs listed in the guide include federal, state, and private, non-profit programs. Local jurisdictions can use this service to facilitate the identification of potential forest mitigation sites on private properties to meet the Critical Area Program requirements of no net loss of forest. Jurisdictions that have collected fees-in-lieu over the 1:1 mitigation ratio could also use the service to identify and fund creative programs and projects that contribute to water quality protection and habitat creation (i.e. wetland restoration). In addition, the service can provide technical assistance to landowners in the Critical Area seeking help in planting and enhancing habitat on their property. For more information and to obtain the Landowner Stewardship Referral Service Guide for Funding and Assistance call the Maryland Department of Natural Resources at (800) 989-8852.

Technical Assistance and Education

Technical assistance and education are important factors in ensuring that property owners are informed about the Critical Area and that mitigation is completed in a way that restores or enhances the forest resource. The use of native tree and shrub species should be emphasized since their chance of survival is greater as they are naturally adapted to their environment. Native species will also maximize the diversity of native wildlife that depend on the forest. In some instances, natural regeneration may be the most appropriate form of mitigation. Because natural regeneration comes from the local bank of plant material, it assures the growth of vegetation adapted to site conditions and climate, a diversity of species and habitat for local wildlife, and typically higher survival rates (Sternberg & Wilson, 1995).

Plantings should be strategically located to enhance existing forest resources on the property. Planting adjacent to a forest or developed woodland, when possible, will help to create wildlife corridors. Creating an understory and leaving branches and leaves on the ground will enhance the structural diversity of the

forest which is also important to plants and animals that depend on that forest for their survival (Lynch & Whigham, 1984; Marinelli, 1998; and Stein, 1993). An understory might include native shrubs and small trees such as mapleleaf viburnum, witch hazel or mountain laurel. The intent of the Critical Area Act was not only to maintain or increase forest cover, but to ensure that the quality of the forest or developed woodland is maintained in order to improve water quality and conserve plant and wildlife habitat. Commission staff are on hand to provide technical assistance with planting plans and to provide clarification on the mitigation requirements.



Although planting individual trees has some environmental benefits, forest mitigation is more effective when plantings mimic the structural and species diversity found in natural forests.

Case Study #3: Educating Waterfront Property Owners in Anne Arundel County

Anne Arundel County has taken a proactive approach to educating property owners about the Critical Area Act and Regulations by developing a welcome package that is sent out to all new waterfront property owners located in the Critical Area. The welcome package includes a letter from the County Executive welcoming the property owner and informing them that they have bought a property in the Critical Area and that there are special requirements for these properties which are outlined in enclosed pamphlets. One pamphlet focuses on ways waterfront property owners can protect the 100-foot Buffer and the importance of a functioning Buffer. The other booklet provides some background on the Critical Area Act and requirements to be met when developing a property in the Critical Area, including impervious surface limits, afforestation and reforestation requirements, a sample Critical Area worksheet to be submitted with building permit applications, sample site plans, and an explanation of how and why the Buffer should be protected and expanded. For more information contact the Anne Arundel Office of Planning and Code Enforcement at (410) 222-7441.

Technical Assistance through the Maryland Department of Natural Resources

Foresters with the Forest Service at Maryland's Department of Natural Resources (DNR) can provide technical assistance to landowners on tree planting and maintenance. Phone numbers of DNR Forest Service staff in each county can be obtained by calling headquarters at (410) 260-8531 or through the online forester at DNR's website at www.dnr.state.md.us/forests/. In addition, landowners can buy seedlings at discounted prices from the John S. Ayton state tree nursery in Preston, Maryland. Call (410) 673-2467 for more information. In addition, the Landowner Stewardship Referral Service (see case study #3) can assist counties and landowners in identifying programs run by state agencies and private organizations that can provide technical assistance on different aspects of reforestation and habitat creation. Call (800) 989-8852 for more information.

Generating Funds for Outreach and Educational Activities

Local jurisdictions can apply for funds from organizations and foundations to support the development of outreach and educational materials and activities. For example, the Chesapeake Bay Trust is a nonprofit organization whose mission is to promote public awareness and participation in the restoration and protection of the Chesapeake Bay. The Trust offers grants for activities that support its mission. For more information on their grants program, call (410) 974-2941.

Monitoring and Enforcement

It is not only important to ensure that mitigation requirements are carried out, but that the plantings survive once they are in the ground. Most local jurisdictions have enforcement mechanisms and survival requirements for plantings to ensure that the intent of the Critical Area Act is met. Case Study #5 illustrates how Baltimore County has found an effective way of enforcing and monitoring forest mitigation requirements. Counties with less resources may want to consider teaming with established reforestation programs that have their own monitoring and enforcement component (see the section on *Critical Area Forest Mitigation and the Conservation Reserve Enhancement Program*).

Case Study #4: Monitoring for Compliance and Maintenance in Baltimore County

Baltimore County has developed an effective system for monitoring and enforcing the County's forest mitigation requirements. Property owners are required to develop a Chesapeake Bay Critical Area Management plan, enter into an environmental agreement and post a security before they can receive approval of a project plan, minor subdivision plan, grading permit, or building permit. The County performs four inspections over three years and if the plantings are acceptable they release the securities according to a specific schedule. A large portion of the security is held until the final inspection to ensure that the County has enough money to hire a contractor, if necessary, to do the plantings at the end of the three years. The minimum survival rate shall be seventy-five percent of the total number of plants per acre at the end of the three-year maintenance agreement. For more information on the County's program contact Baltimore County's Department of Environmental Protection and Resource Management at (410) 887-3980.

Bibliography

Annotated Code of Maryland, Natural Resources Article, Title 8, Subtitle 18 (1995).

Chesapeake Bay Program, Nutrient Subcommittee. (August, 1995). Water Quality Functions of Riparian Forest Buffer Systems in the Chesapeake Bay Watershed. U.S. Environmental Protection Agency.

Code of Maryland Regulations (COMAR). Title 27. Chapters 2, 5 & 9 (1992).

Lynch, James F. & Whigham, Dennis F. (1984). Effects of Forest Fragmentation on Breeding Bird Communities in Maryland, USA. *Biological Conservation*, 28. 287-324.

Marinelli, Janet. (1998). *Stalking the Wild Amaranth: Gardening in the Age of Extinction*. Henry Holt & Company.

Stein, Sara. (1993). *Noah's Garden. Restoring the Ecology of Our Own Backyards*. Houghton Mifflin.

Sternberg, Guy & Wilson, Jim. (1995). *Landscaping with Native Trees*. Chapters Publishing Ltd., Shelburne, Vermont.



The Chesapeake Bay Program
invites you to a
Citizens & Press Briefing

Wednesday, December 8
at 11:00 a.m.
at the Arlington Echo Outdoor Education Center
975 Indian Landing Road
Millersville, Maryland

At the briefing, the Chesapeake Executive Council will preview
the draft *Chesapeake 2000 Agreement* for citizens and the press.

1999 Chesapeake Executive Council

Parris N. Glendening, Chair
Governor, Maryland

James S. Gilmore, III
Governor, Virginia

Tom Ridge
Governor, Pennsylvania

Anthony A. Williams
Mayor, District of Columbia

Representative Arthur D. Hershey
Chair, Chesapeake Bay Commission

Carol M. Browner
Administrator,
U.S. Environmental Protection Agency

*For more information contact the Chesapeake Bay Program Office,
1-800-YOUR BAY*

**Directions To:
Arlington Echo Outdoor Education Center
975 Indian Landing Road
Millersville, Maryland**

- From Route 50, in the Annapolis area take MD-450, exit number 23B, toward CROWNSVILLE.
- At the light at the bottom of the ramp, turn LEFT onto MD-450.
- Stay straight on 450. That turns into GENERALS HIGHWAY, also known as Route 178.
- Near Crownsville, General's Highway/178 splits, with an exit for Route 97-North on the left. STAY RIGHT on General's Highway. DO NOT TAKE 97 North.
- Proceed on General's Highway and turn RIGHT onto INDIAN LANDING RD.

****please arrive early to be shuttled from the parking area to the event****

A Renewed Chesapeake Bay Agreement

December 1999

Public Process:

- Alliance for the Chesapeake Bay solicited input through Bay Journal questionnaire, personal interviews, and focus groups
- Produced a summary of public concerns and comments entitled "Listening to the People" in August 1999. Top concerns (of 12 listed) were:
 - Managing Growth
 - Communication & Education to Promote Changes in Individual Behavior
 - Nutrient and Sediment Reduction
- Draft Agreement will be released on December 8 for public comment (3 month period)

Key Areas for New Goals and Commitments:

- Living Resource Protection and Restoration
- Vital Habitat Protection and Restoration
- Water Quality Restoration and Protection
- Sound Land Use
- Individual Responsibility and Community Engagement