

Chesapeake Bay Critical Area Commission
Department of Housing and Community Development
Crownsville, Maryland
February 2, 2000

Stapes

AGENDA

- | | | |
|---------------------|---|---|
| 10 p.m. - 1:05 p.m. | Approval of Minutes
of January 5, 2000 | John C. North, II, Chair |
| 15 p.m. - 1:25 p.m. | Special Presentation:
Amending the Tidal Wetlands and Critical
Area Lines | Claudia Jones, Science Advisor
Rick Ayella, Chief, Tidal
Wetlands Division, MDE |

PROGRAM AMENDMENTS AND REFINEMENTS

- | | | |
|---------------------|--|--|
| 25 p.m. - 1:35 p.m. | REFINEMENT: Harford County
Osborn Property Mapping Mistake | Mary Owens, Program Chief |
| 35 p.m. - 1:45 p.m. | REFINEMENT: Harford County
Osborn Property Growth Allocation | Dawnn McCleary, Planner |
| 45 p.m. - 1:50 p.m. | REFINEMENT: City of Cambridge
Public Hearing Requirements | Roby Hurley, Circuit Rider |
| 50 p.m. - 2:00 p.m. | REFINEMENT: Prince George's County
Subdivision Bill # 59 - 1999
<i>City of Annapolis</i> | Lisa Hoerger, Planner
<i>Ren Servey</i> |

PROJECT EVALUATION

- | | | |
|---------------------|--|--|
| 00 p.m. - 2:05 p.m. | VOTE: SHA, Eastern Boulevard
Enhancement Project | Meredith Lathbury, Planner |
| 05 p.m. - 2:15 p.m. | VOTE: Town of Easton
Easton Utilities Building Addition | Lisa Hoerger, Planner |
| 15 p.m. - 2:25 p.m. | Old Business
Legal Report | John C. North, II, Chairman
Marianne Mason, Counsel |

New Business

Next Commission Meeting: March 1, 2000. The meeting will be held at the Dept. of Housing and Community Development in Crownsville.

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Chesapeake Bay Critical Area Commission
Department of Housing and Community Development
Crownsville, Maryland
February 2, 2000

SUBCOMMITTEES

10:00 a.m. - 12:00 p.m. Project Evaluation

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

SHA: Eastern Boulevard Enhancement Project
Baltimore County

Meredith Lathbury, Planner

Town of Easton, Easton Utilities Building Addition

Lisa Hoerger, Planner

SHA: Woodrow Wilson Bridge
Discussion of Reforestation Requirements

Lisa Hoerger, Planner

Four Seasons Growth Allocation, Queen Anne's County
Continuation of Deduction Issues

Susan Zankel, Planner

11:00 a.m. - 12:00 p.m. Program Implementation

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

Prince George's County: Bill # 59 - 1999
Subdivision Bill, Refinement

Lisa Hoerger, Planner

Harford County: Osborn Property Mapping Mistake

Mary Owens, Program Chief

Harford County: Osborn Property Growth Allocation

Dawnn McCleary, Planner

City of Cambridge: Hearing Requirements, Refinement

Roby Hurley, Circuit Rider

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

Find attachments to Minutes

Chesapeake Bay Critical Area Commission
 Quiet Waters Park
 Hillsmere, Maryland
 January 5, 2000

The Chesapeake Bay Critical Area Commission met at Quiet Waters Park in Hillsmere, Maryland . The meeting was called to order by John C. North, II, Chairman, with the following Members in attendance:

Bourdon, Dave, Calvert County	VanLuyen, Heidi, Md. Dept. Transportation
Foor, Dr. James, C. QA Co.	Johnson, Samuel Q., Wicomico County
Corkran, Bill, Talbot County	Giese, Wm. Jr., Dorchester Co.
Cooksey, David, Charles Co.	Williams, Roger, Kent County
Bradley, Clinton, Eastern Shore MAL	Wenzel, Lauren, DNR
Wynkoop, Sam, Prince George's Co.	McLean, James H., DBED
Wilde, Jinhee, Western Shore MAL	Giese, William, Jr., Dorchester Co.
Goodman, Bob, DHCD	Myers, Andrew, Caroline County
Lawrence, Louise, Md. Dept. Ag.	
Jackson, Joseph, III, Worcester Co.	

The Minutes of December 1, 1999 were approved as read.

Chairman North introduced and welcomed the Commission's newest member, Mr. Clinton Bradley, II from St. Michael's who will serve in the capacity of Eastern Shore Member at Large.

Chairman North announced that the two concerned citizens who spoke at the December meeting on the matter pertaining to the growth allocation request for the National Harbor development project (formerly known as Port America) in Prince George's County on the east shore of the Potomac River, have returned to speak again on this issue. The Chairman asked Mr. Sam Wynkoop to give a brief overview of the situation. Mr. Wynkoop said that an incident regarding the tree cuttings at the National Harbor development site is under investigation by the U.S. Attorney's office and the U.S. Fish and Wildlife Service. This incident has been reported in the Washington Post and the tree with the active eagles nest is not the tree that was cut down. He said that 100 acres have been reserved and deeded to the National Park Service for mitigation by the developer. He also stated that the tree in question was located in the Critical Area and if in fact the tree had an eagle's nest in it, then the owner had an obligation to seek a taking permit to cut the tree down which is the issue under investigation. Ms. Bonnie Bick of Oxon Hill, Maryland and Karen Egloff, Huntingtown, Maryland spoke regarding this issue again in opposition to this project, stating that the trees were not cut accidentally and that both nests were active. Their goal was the protection of the riparian habitat and the education of the public regarding its protection and were seeking a reconsideration of the Commission's December approval for growth allocation. No motion was forthcoming from the Commission for the Reconsideration of the action taken in December. Chairman North responded to Q Johnson's question of whether the action of the Federal Government on the state of bald eagles endangerment (removal of environmental review) would impact the Critical Area Criteria, stating that there would be no substantive effect on the application and interpretation of Critical Area law.

Dawn McCleary, Planner, CBCAC introduced Ken Pencyl, MDE who gave a special presentation with a slide show on the New Stormwater Management Approaches to Urban Runoff. The whole focus of stormwater management is to find ways to minimize the degradation of the stream system to protect stream channels, provide flooding protection and to remove pollutants in runoff. In the early 80's Maryland developed a program for stormwater management. Over the years there have been some minor modifications. However, in

the last two years a new approach has been developed after a conference with various environmental communities and local governments, to gather information relevant to better protecting the streams. That information has resulted in the desire to have better guidance. Mr. Pencyl described a new design Manual (now available on MDE's website) with the key focus in trying to mimic existing natural hydrologic conditions utilizing a unified measurable criteria for stormwater management. He described the contents in the Manual, the guidance section and the technical methodologies involved. Mr. Pencyl said that the State Regulations will have to be modified and will subsequently be posted on the MDE Website and then be put into the Maryland Register. The goal is for Maryland to have this new approach to stormwater management in place by the end of the year 2000 for the better protection of streams, rivers and the Chesapeake Bay. The Commission found the presentation very informative and useful.

Lisa Hoerger, Planner, CBCAC presented for Concurrence with the Chairman's determination of Refinement, the text change in Bill # 741, recently passed by the Talbot County Council (replaces Bill #701 which was not approved by the Commission), amending the Talbot County Zoning Ordinance, section 19.14(b)(7) which makes reasonable accommodation for disabled citizens, establishes criteria for doing so, and for limiting the environmental impact of any such accommodation in the Critical Area. Bill #741 is improved over #701 in clarity, definition - requires the applicant to meet the definition of a disability as defined in the Americans With Disabilities Act; and compliance with the Criteria - provides standards that an applicant must meet in order to obtain reasonable accommodation. This text change will have no effect on the use of land or water in the Critical Area. Ren Serey added that in subcommittee there was a question regarding the process and language for reviewing applications under this Bill. He said that it appears and was confirmed by Dan Cowee, Talbot Co. Planning Director, that the County would use the variance process and it is not as clear in this new language as it should be. Mr. Serey suggested that the Commission ask Mr. Cowee to send the Commission a letter clarifying that the variance process will be used, so that the Commission will be assured of seeing the applications for review and have the opportunity to comment, to conduct a site visit and to participate in the process. The Commission supported the Chairman's determination of Refinement and agreed that a letter from Mr. Cowee should be required.

Meredith Lathbury, Planner, CBCAC presented for VOTE the Modification of Exclusion Resolution for the Town of Church Creek. On August 17, 1988 the Commission accepted a Resolution passed in August, 1988 by Church Creek that says the Town would comply with Dorchester County's Critical Area Program insofar as possible. Church Creek is one of four small towns in Dorchester County that has a population of around 100 and only five developable lots existing between them. Under the current resolution it is unclear how the Town can comply with Dorchester County's Critical Area Program "insofar as possible" with no further guidance about Critical Area designations or project review. The County's maps show the parcels in the Town designated as RCA even though there never was a formal determination of the Critical Area designation. A new resolution #2 (attached to and made a part of these minutes) that provides clarification on several issues was passed by the Town of Church Creek on December 13, 1999. Dr. Foor, on subcommittee recommendation, moved to accept Resolution #2, with an amendment to the Critical Area Requirements for the Town of Church Creek to read: A. any portion in the Town in the Critical Area shall be designated LDA; and, B. any lands in the Critical Area proposed for annexation for the Town shall be designated LDA through the growth allocation process if necessary prior to annexation. The motion was seconded by Jim McLean and carried unanimously.

Tracy Batchelder, Planner, CBCAC presented for VOTE the proposal by the State Highway Administration to construct at St. George's Island in St. Mary's County 120 linear feet of stone revetment for the purpose of stopping the severe erosion of the shoreline threatening the MD 249 roadway. She described the technical details of the project. There are no tidal wetland impacts associated with the project and no anadromous fish spawning areas, threatened or endangered plant or animal species in the vicinity of the site. Jim McLean moved to approve the project as presented. The motion was seconded by Heidi VanLuven and carried

unanimously.

Old Business

Lauren Wenzel updated the Commission on the new draft Chesapeake Bay Agreement released on December 8th. She said that public comment is being sought through March 31st. Ms. Wenzel stated that the agreement is very specific in its goals and commitments and touches on fisheries, air pollution, transportation, land use, etc., being very broad and wide ranging and affects a lot of folks. She encouraged the Commission members as stakeholders to submit their comments.

New Business

Ren Serey, Executive Director, CBCAC updated the Commission on Anne Arundel County's proposal to construct an assisted living facility in the RCA. He said that the Commission staff and Commission subcommittee have been working with the Anne Arundel County officials for almost two years regarding this proposed project and whether it is consistent with the Criteria and Critical Area Act. The County has been notified that it is not consistent. Even though the County classifies it as residential, it is a commercial facility and will need growth allocation. Mr. Serey said that the growth allocation required is only about 4-5 acres to build the facility, however, the County is reluctant to grant the growth allocation. He said that the staff has been working coincidentally with the County on a list of uses in the RCA which would for the future specifically determine which types of uses would require growth allocation. That list is in the form of a draft County Council Bill that will be submitted to the County Council possibly this month, but will not be voted on for a couple of months. In the meantime, it appears that the County may be issuing a building permit for the assisted living facility. Mr. Serey said that Chairman North is prepared, at the recommendation of the subcommittee, to send a letter to the County, under section 8-1815 of the Critical Area Act, which authorizes him to notify a jurisdiction when they are taking an action which is not consistent with the Criteria. The Chairman's letter will notify the County that if the building permit is granted the Commission would consider that a violation or inconsistent with the Critical Area Criteria and Act and that growth allocation would be necessary for the project.

Mr. Serey announced that a retreat for the Commission is set for Saturday, March 11th at the Wye Research Center, next to the Aspen Institute. Policy and review process are on the agenda.

Regina Esslinger, Chief Project Evaluation, CBCAC told the Commission that the project subcommittee is requesting that the Woodrow Wilson Bridge project be brought before the full Commission in April for information and that it return in May for a Vote. The consultants have left an executive summary and some pictures and maps for the review of the Commission and staff.

Commission Counsel Marianne Mason, Esquire, updated the Commission on the state of legal matters. She said that Susan Zankel, Planner, CBCAC handled an administrative matter in Cecil County dealing with a request for a variance for a deck to be built parallel to the shoreline. The applicant touted the deck as a shore erosion control measure wherein the applicants, in fact, had not even applied for a shore erosion control permit. The Board of Appeals for Cecil denied the variance.

A new appeal was filed in Circuit Court in Dorchester County concerning a variance for a deck and pool in the buffer. This was filed about two weeks ago and is now on the Circuit Court appeal route.

The Mastandrea case in Talbot County is pending in the Court of Appeals. The Mastandrea's appealed to the Court of Special Appeals and before that Court could consider the case, the Court on its own motion issued a Writ of Certiorari, thereby placing the appeal on its own docket. The Commission's brief is due in two

weeks. The argument is set for April.

Chairman North read a letter from the Department of General Services regarding the Hyatt Resort in Cambridge complimenting and thanking the Commission members and the Commission Executive Director, Ren Serey, and the staff for working so diligently to adapt the site plans to make the Hyatt project a model of environmentally sensitive development.

There being no further business, the meeting was adjourned.

Minutes submitted by:

Peggy Mickler, Commission Coordinator

CHESAPEAKE BAY CRITICAL AREA COMMISSION

STAFF REPORT

February 2, 2000

APPLICANT: Harford County

PROPOSAL: Osborn Property Mapping Mistake

JURISDICTION: Harford County

COMMISSION ACTION: Concurrence with Chairman's Determination

STAFF RECOMMENDATION: Approval

STAFF: Dawnn McCleary and Mary Owens

**APPLICABLE LAW/
REGULATIONS:** Annotated Code of Maryland, Natural Resources Article
§8-1809(h): Proposed Program Amendments and
Refinements

COMAR 27.01.02.04: Limited Development Areas

DISCUSSION:

Harford County is requesting consideration of a change in the Critical Area overlay designation based on a finding of mistake for the Osborn Property. At the time of program adoption, the 6.82 acre property was designated as a Resource Conservation Area (RCA) and the County has determined that it should have been designated as a Limited Development Area (LDA). When considering a request for a mapping change based on a finding of mistake, the County's role is to determine that a mistake was made in the original mapping, and the Commission's role is to establish consistency with the mapping standards in the Criteria.

The subject property is an isolated crescent of RCA totaling 6.82 acres that is surrounded by other land uses that do not support the purpose and function of the RCA. The property is located at the edge of the 1000 foot boundary of the Critical Area. Fronting on Old Post Road, the property adjoins the City of Aberdeen and is separated from other Resource Conservation Areas by Old Post Road and three other parcels which are designated as LDA. Over 400 linear feet of LDA separate the RCA on the Osborn Property from other RCA in the City or the County. There is no viable opportunity to create a connection to any existing RCA.

The County has concluded that the subject property was not mapped in a manner that was

consistent with the approach used to designate the land use management areas as specified in the Harford County Critical Area Program. The Program states, "In the case of undeveloped areas located within existing developed areas, the following methodology was used: Areas under 20 acres were designated the same as the surrounding areas except that any areas of significant natural resource value, such as tidal wetlands, contained in such areas were mapped RCA." The subject property does not contain any such resource areas and the County has determined that it should have been mapped as LDA to be consistent with the designations of surrounding areas.

At this time, the subject property is in agricultural use as it was at the time of Program adoption. It is part of a 55 acre farm located predominantly outside of the Critical Area. The area adjacent to the property, on the other side of Old Post Road is currently developed as a mobile home park. At the time of original mapping, it was developed as a mobile home park and was designated by the County as LDA, which was consistent with the Criteria. This area has since been annexed into the City of Aberdeen. The annexation further isolated the parcel, effectively disconnecting it from other areas of Harford County's Critical Area.

Chairman North has determined that this request for a mapping change based on a finding of mistake can be approved as a refinement to the County's Critical Area Program and is seeking the Commission's concurrence.

OSBORN PROPERTY



LEGEND

- Structures
- COM
 - RES
- Hydrology
- Limited Development Area
 - Resource Conservation Area
 - Municipal/Federal
 - Open Water
 - Tidal Wetland



CHESAPEAKE BAY CRITICAL AREA COMMISSION

STAFF REPORT

February 2, 2000

APPLICANT: Harford County

PROPOSAL: Osborn Property Growth Allocation

JURISDICTION: Harford County

COMMISSION ACTION: Concurrence with Chairman's Determination

STAFF RECOMMENDATION: Approval

STAFF: Dawnn McCleary and Mary Owens

**APPLICABLE LAW/
REGULATIONS:** Annotated Code of Maryland, Natural Resources Article
§8-1808.1: Growth Allocation in Resource Conservation
Areas

COMAR 27.01.02.06 : Location and Extent of Future
Intensely Developed and Limited Development Areas

DISCUSSION:

Harford County is requesting 6.82 acres of growth allocation to change the Critical Area overlay designation for the Osborn Property from Limited Development Area (LDA) to Intensely Developed Area (IDA). The proposed new IDA is adjacent to an existing LDA of approximately 30 acres located within the City of Aberdeen.

This property is also the subject of a request to change the land use management designation from RCA to LDA based on a finding of mistake which is supported in the Staff Report titled "Osborn Property Mapping Mistake". Although growth allocation can be used to change the overlay designation directly from RCA to IDA, §8-1808.1 of the Annotated Code of Maryland limits the amount of growth allocation that may be used for this type of conversion in Harford, Baltimore, Anne Arundel, and Prince Georges Counties. Harford County currently has only 6.9 acres of growth allocation remaining for this type of conversion and they would like to conserve it; therefore, the County is also requesting consideration of a mapping mistake.

Pursuant to approval of the mapping mistake, the subject property is a crescent of LDA totaling

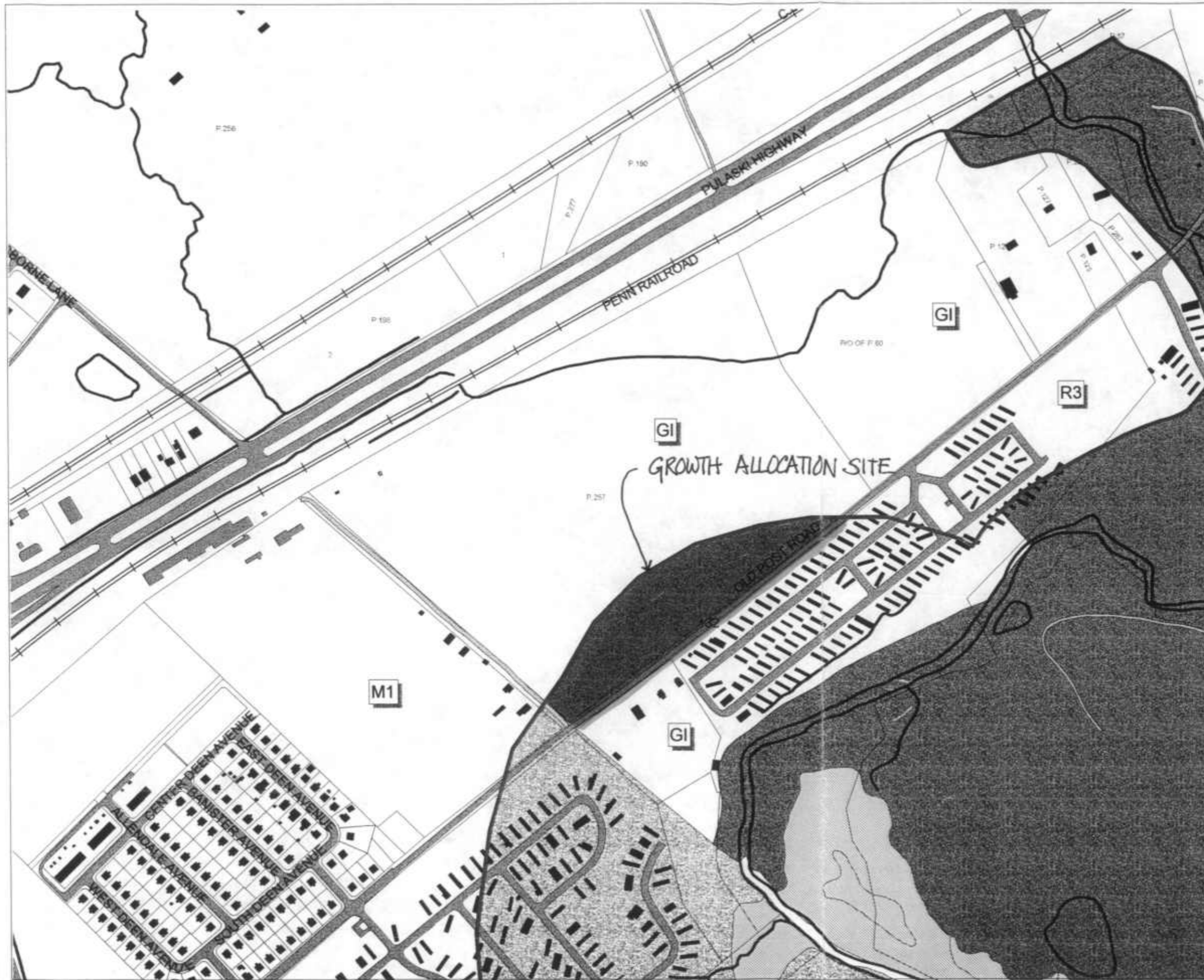
6.82 acres that is located at the edge of the 1000 foot boundary of the Critical Area. The entire parcel is 55 acres with 30 acres within Harford County and 25 acres within the City of Aberdeen. There are 6.82 acres within the County's Critical Area and approximately one half acre within the City's Critical Area. See the enclosed plan. During the processing of the mapping change and growth allocation request, County and Commission staff discovered that a portion of the City of Aberdeen was located within the Critical Area. The City of Aberdeen does not currently have a Critical Area Program. Commission staff are currently working with City staff to address this issue. It is possible that because Aberdeen has only about 50 acres within the Critical Area, and most of this area is already developed, the City may be a candidate for exclusion. At this time, growth allocation is not being requested for the portion of the property within the City because this area has not been mapped. Should additional growth allocation be needed for this portion of the property, a second request for growth allocation will be submitted.

The County is requesting growth allocation to change the designation of the property to IDA because the property owner proposes development of the site for two distribution warehouse buildings totaling 1,000,000 square feet. The proposed facility will utilize the available rail spur connection as well as access to Interstate 95 via Route 40.

The property is an open field and is not forested. There are no known threatened or endangered species located on the property, and the property does not include any areas within the 100-foot Buffer. The County and Commission staff will work with the applicant on stormwater management, and the 10% Rule calculations will be submitted as the design is refined.

Chairman North has determined that this growth allocation request can be approved as a refinement to the County's Critical Area Program and is seeking the Commission's concurrence.

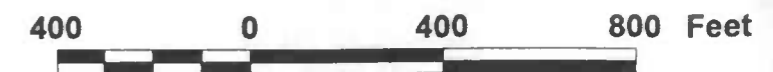
OSBORN PROPERTY



LEGEND

Structures

- COM
- RES
- Hydrology
- Limited Development Area
- Resource Conservation Area
- Municipal/Federal
- Open Water
- Tidal Wetland



Chesapeake Bay Critical Area Commission

STAFF REPORT **February 3, 2000**

APPLICANT: City of Cambridge

PROPOSAL: Refinement - City of Cambridge Amendment Process

COMMISSION ACTION: Concurrence

STAFF RECOMMENDATION: Approval

STAFF: Roby Hurley, Meredith Lathbury

**APPLICABLE LAW/
REGULATIONS:** *Natural Resources Article, §8-1809(h) Refinement*

DISCUSSION:

The City of Cambridge voted to correct the amendment procedures of its Critical Area Program on Monday, January 24, 2000. The Critical Area Program language required two public hearings. The first was held by the Planning Commission and the second was before the Mayor and City Commissioners. The Zoning Ordinance only requires one Public Hearing to be held before the Mayor and City Commissioners for amendments to the Critical Area Program. In order to make the Critical Area Program and the Zoning Ordinance consistent, the City voted to allow a single Public Hearing before the Mayor and City Commissioners for amendments to the Critical Area Program. The Planning Commission held a Public Hearing regarding this change on November 2, 1999. There was no public comment on this issue. See the attached Amendment for the specific language change. The City has requested that this change be considered a refinement.

Amendments in the Critical Area

The City Commissioners may from time to time amend the provisions of this ordinance as they relate to the Critical Area District, amend the land use management classification of properties in the Critical Area District or amend the Critical Area District Boundary.

In addition, the City Commissioners shall review and propose any necessary amendments, as required, to the land use management classifications in the Critical Area District every four (4) years.

All such amendments shall be approved by the Maryland Chesapeake Bay Critical Area Commission as established in Subsection 8-1803 of the Critical Area Law, Subtitle 27. Standards for Critical Area Commission approval of proposed amendments are as set forth in the Critical Area Law, Subtitle 18 Subsection 8-1809 (i). The Critical Area Commission process for approval of proposed amendments are as set forth in the Critical Area Law, Subtitle 18, Subsection 8-1809 (d).

Amendment Procedures

1. Any proposed amendment, supplement, modification or repeal of this ordinance, or of the official Critical Area map, shall be referred by the City Commissioners to the City of Cambridge Planning Commission.

Repeal:

~~2. For all proposed amendments the Planning Commission shall first hold a public hearing related thereto, at which parties of interest and citizens shall have an opportunity to be heard. At least fifteen (15) days notice of the time and place of such hearing shall be published in a newspaper of general circulation in the County. In addition, the Planning Commission shall post notice of their public hearing on property(s) for which amendments are requested and to the extent possible based on the best available information, notify all property owners immediately contiguous to the applicant, of the hearing date, time and place. The Planning Commission shall also furnish these property owners with a copy of the said application.~~

Enact:

2. 3. The Planning Commission shall review then forward proposed amendments with recommendations to the City Commissioners.

3. 4. After receiving the recommendations of the Planning Commission, the City Commissioners shall hold a public hearing on the proposed amendments, at which parties of interest and citizens shall have an opportunity to be heard. At least (15) days notice of the time and place of such hearing shall be published in a newspaper of general circulation in the County.

4. 5. The City Commissioners shall forward approved amendment to the Critical Area Commission for approval.

5. 6. Following Critical Area Commission approval of proposed amendment it shall become effective, after town adoption within 120 days of Critical Area Commission approval. The amending ordinance shall have a signature blank for appropriate Critical Area Commission staff approval.

Attached to Minutes

Chesapeake Bay Critical Area Commission

**STAFF REPORT
February 2, 2000**

APPLICANT: Prince George's County

PROPOSAL: Refinement - Council Bill 59-1999
Amending County's Subdivision Regulations

COMMISSION ACTION: Concurrence

STAFF: Lisa Hoerger

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

DISCUSSION:

The County Council has approved Bill 59-1999 which amends the County's Subdivision Regulations to allow certain transfers of land between family members and to public agencies outside the normal subdivision process in certain circumstances.

Bill 59-1999 is attached. On page three the proposed language to the Subdivision Regulations is highlighted. Prior to the adoption of this bill, subdivision was permitted without filing a plat as mentioned in subsection A provided subdivision occurred prior to October 30, 1989.

Subsection B and C are new additions to the County's Subdivision Regulations. Subsection B was added to provide for property owners whose parcel was both inside and outside the Critical Area, and where the intrafamily transfer of that parcel would be occurring outside the Critical Area portion of that parcel. Subsection B permits subdivision without filing a plat in these instances after October 30, 1989. Subsection C was requested by the Maryland National Capital Parks and Planning Commission as an addition to the legislation.

Since this text change is consistent with what is currently allowed in the Prince George's County Critical Area Program, Chairman North has determined this to be a refinement and seeks your concurrence.

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND

1999 Legislative Session

Bill No. CB-59-1999

Chapter No.

Proposed and Presented by Council Member Estep

Introduced by Council Member Estep

Co-Sponsors

Date of Introduction October 12, 1999

SUBDIVISION BILL

1 AN ACT concerning

2 Exemptions from Subdivision Requirements

3 For the purpose of amending Subtitle 24 to permit certain intra-family transfers of property
4 affecting the Chesapeake Bay Critical Area without filing a subdivision plat, and to amend the
5 provisions for transfer to government agencies.

6 BY repealing and reenacting with amendments:

7 SUBTITLE 24. SUBDIVISIONS.

8 Section 24-107,

9 The Prince George's County Code

10 (1995 Edition, 1998 Supplement).

11 SECTION 1. BE IT ENACTED by the County Council of Prince George's County,
12 Maryland, that Section 24-107 of the Prince George's County Code be and the same is hereby
13 repealed and reenacted with the following amendments:

14 SUBTITLE 24. SUBDIVISIONS.

15 DIVISION 1. GENERAL PROVISIONS.

16 Subdivision 2. General Requirements.

17 Sec. 24-107. Jurisdiction.

18 * * * * *

19 (c) The following shall be exempt from the requirement of filing a subdivision plat, except
20 for any portion of land within a Chesapeake Bay Critical Area Overlay Zone unless otherwise
21 noted below:

1 (1) Partition through action of a court of competent jurisdiction unless or until
 2 development of the land is proposed for any use other than single-family detached dwellings and
 3 uses accessory thereto;

4 (2) The division of land and distribution, in kind, to the heirs upon the distribution of
 5 an estate unless or until development of the land is proposed for any use other than one-family
 6 detached dwellings and uses accessory thereto;

7 (3) A conveyance of one-half (1/2) acre or more to a son or daughter or lineal
 8 descendant or antecedent of the grantor from a tract retaining five (5) or more acres, provided
 9 that any lot so created shall be used solely for a one-family detached dwelling and uses accessory
 10 thereto and is in compliance with the provisions of the Zoning Ordinance as described in Section
 11 24-107(d);

12 (4) A conveyance to a public utility for transmission line purposes;

13 (5) A conveyance to a governmental agency for public use;

14 (6) A conveyance of property used exclusively for agricultural purposes which, at the
 15 time of conveyance, is assessed as agricultural land;

16 (7) Any subdivision of land by deed of a lot prior to January 1, 1982, provided:

17 (A) The proposed use is for a single-family detached dwelling and uses
 18 accessory thereto; or

19 (B) The total development proposed for the subdivision does not exceed five
 20 thousand (5,000) square feet of gross floor area; or

21 (C) The development proposed is in addition to a development in existence prior
 22 to January 1, 1990, and does not exceed five thousand (5,000) square feet of gross floor area; or

23 (D) The development of more than five thousand (5,000) square feet of gross
 24 floor area, which constitutes at least ten percent (10%) of the total area of the site, has been
 25 constructed pursuant to a building permit issued on or before December 31, 1991[.];or

26 (E) The proposed use is for an addition to an existing school facility for which
 27 no increase in existing enrollment is proposed.

28 (8) A resubdivision to correct a drafting or engineering error for property which is not
 29 the subject of a record plat;

1 (9) The sale or exchange of land between adjoining property owners to adjust
2 common boundary lines, provided that no additional lots are created, for property which is not
3 the subject of a record plat;

4 (10) A conveyance resulting from foreclosure proceedings or trustees' sales pursuant to
5 a deed of trust or mortgage, deeds in lieu of foreclosure, trustees' deeds and final decrees of
6 foreclosure. For purposes of this Subtitle, the execution and/or recordation of a deed of trust or
7 mortgage shall not constitute a conveyance of property.

8 (11) In the Chesapeake Bay Critical Area Overlay Zone, the filing of a subdivision plat
9 shall not be required if the land was subdivided [subject to any of the provisions set forth]:

10 (A) By any method in paragraphs 1 through 10, above, prior to October 30, 1989.

11 (B) By the method in paragraph (3), provided that the land to be conveyed lies
12 outside the Critical Area Overlay Zone.

13 (C) By the method in paragraph (5), provided that the conveyance restricts use of
14 the land to public uses in perpetuity.

15 * * * * *

16 SECTION 2. BE IT FURTHER ENACTED that this Act shall take effect 30 calendar days
17 after the date of its adoption, or when approved by the Chesapeake Bay Critical Area
18 Commission, whichever later occurs.

Part of Minutes

Chesapeake Bay Critical Area Commission

**STAFF REPORT
February 2, 2000**

PROPOSAL: Buffer Expansion and Variance Standards Text
Amendments Required Under Natural Resources Article
§8-1809

JURISDICTION: City of Annapolis

COMMISSION ACTION: Vote

STAFF RECOMMENDATION: Approval

STAFF: Mary Owens

**APPLICABLE LAW/
REGULATIONS:** Annotated Code of Maryland, Natural Resources Article, Section
8-1809

DISCUSSION:

The Critical Area Act authorizes the Commission to notify a jurisdiction if its adopted program contains a clear mistake, omission, or conflict with the Criteria or Law. The Act also states that local project approvals granted under a part of the Program that the Commission has determined to be deficient shall be null and void after notice of the deficiency.

The staff believes that the City of Annapolis Critical Area Program is deficient because it does not contain the required language regarding expansion of the Buffer and the standards for granting a variance. More than a year ago, staff notified the City of these deficiencies (and others) during the comprehensive review of their program, and new language has been drafted to correct the problem. Recently, staff was informed that the changes to the City's Program will not be going forward for local approval as planned.

It is our understanding that the City has received a project in which the property is characterized by an area of steep slopes that would require expansion of the Buffer. City staff have informed us that the applicant will apply for a variance for impacts to the expanded Buffer and that it will most likely be approved. Without the proper language regarding expansion of the Buffer and the standards for granting a variance currently in the City Code, technically, a variance would not be required. If the City processes and approves a variance, it will be difficult to appeal the decision.

In accordance with Natural Resources Article Section 8-1809, staff recommends that the Commission notify the City of Annapolis of these deficiencies, and request that within 90 days,

the jurisdiction submit a program refinement adding the appropriate language to its program. The following language shall be added to Section 21.67.060 E of the City Code:

3. *The Buffer shall be expanded beyond 100 feet to include contiguous sensitive areas such as steep slopes, hydric soils, or highly erodible soils whose development or disturbance may impact streams, wetlands, or other aquatic environments. In the case of contiguous steep slopes of fifteen percent or greater, the Buffer shall be expanded four feet for every one percent of slope or to the top of the slope, whichever is greater in extent.*
4. *If the Buffer or expanded Buffer are impacted by proposed development, the applicant shall obtain a variance in accordance with the variance provisions included herein.*

With regard to the variance provisions, Section 21.67.150 A and B of the City Code shall be repealed and replaced with the following language:

- A. *Special conditions or circumstances exist that are peculiar to the land or structure involved such that a literal enforcement of the provisions and requirements of the City's Critical Area Program would result in unwarranted hardship;*
- B. *A literal interpretation of the provisions of the Critical Area Program and related ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area;*

Although the City has 90 days to enact these changes and submit a refinement request to the Commission, all subsequent approvals granted under these provisions shall be null and void following the Commission's notification to the City of the deficiencies.

Chesapeake Bay Critical Area Commission

STAFF REPORT

February 2, 2000

APPLICANT: Baltimore County/State Highway Administration

PROPOSAL: Eastern Boulevard Enhancement Project - New Storm Drain Outfalls

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 Highway Administration is proposing enhancements to Eastern Boulevard from MD Route 702 to Martin Boulevard to improve safety and relieve congested conditions. Part of this enhancement project involves moving and replacing two stormdrain outfalls (#1, #2) and re-constructing a stormdrain outfall (#3) within the 100-foot Buffer to Middle River to improve water quality. The Eastern Boulevard Enhancement Project is part of an effort to revitalize and redevelop the Essex portion of Eastern Boulevard. Two of the stormdrain outfalls are in a designated Intensely Developed Area (IDA) (#1 and #2). The third outfall (#3) is in a designated Limited Development Area (LDA). These modifications are needed because stormdrains #1 and #2 are unstable and severely eroded and stormdrain #3 is needed for additional capacity.

Stormdrain #1 is currently unstable, resulting in erosion and sedimentation in a nearby tidal marsh. The proposed outfall will include a stable flow spreader into this tidal marsh. The outfall will be lowered and the eroding area will be stabilized with vegetation. A pocket sand filter will be used. This type of stormwater management diverts 90% of the annual runoff into the ground. The remaining 10% of runoff is detained and slowly released depending on storm volume and duration. The total area of temporary disturbance in the Buffer is 1,600 square feet. Shrubs will be planted to replace any vegetation disturbed and a landscape plan is being developed to replace the existing invasive vegetation.

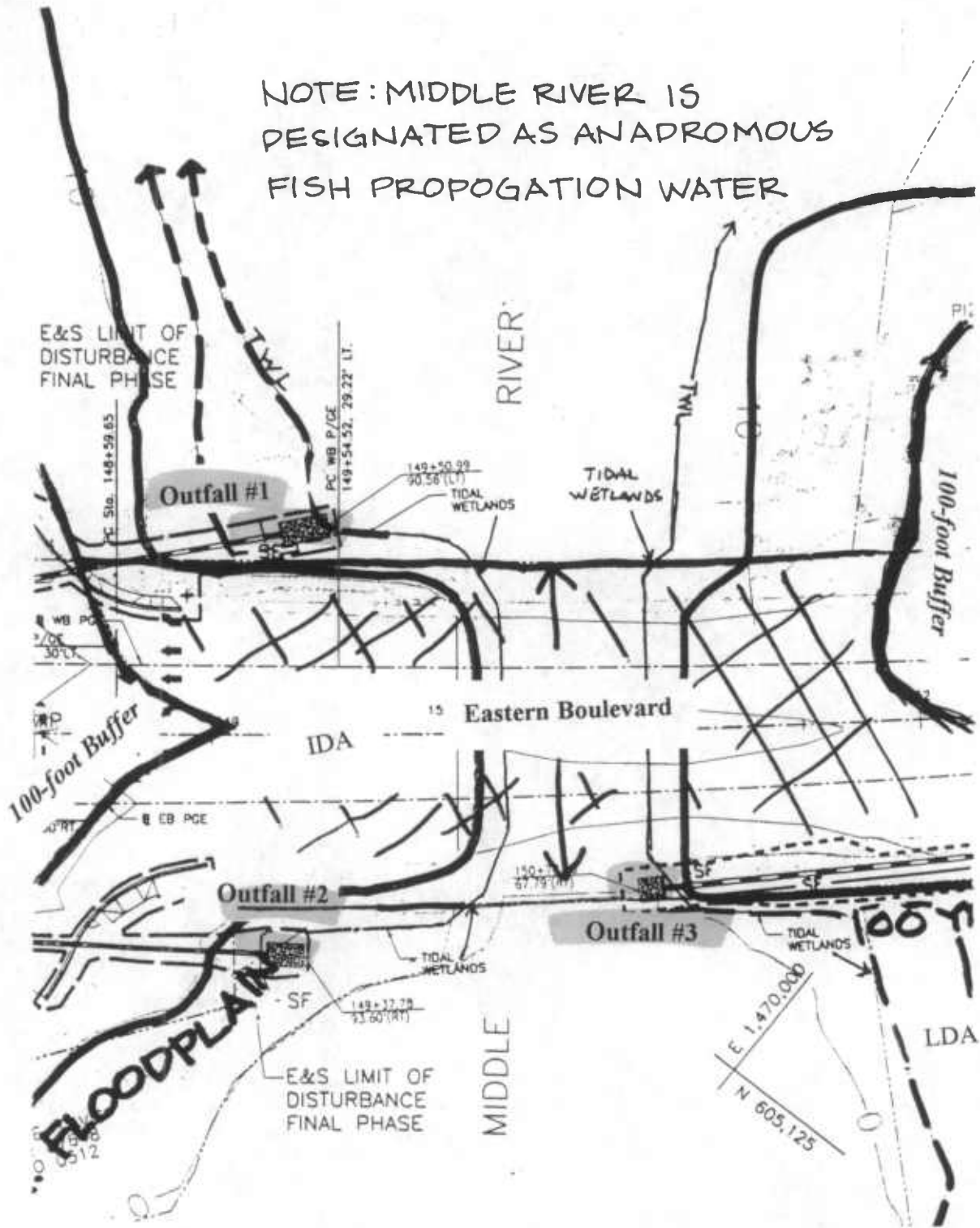
Stormdrain #2 is also unstable, resulting in erosion and sedimentation in Middle River. The outfall will be lowered and the eroding area will be stabilized with vegetation. The total area of temporary disturbance in the Buffer is 2,100 square feet. No additional structures or impervious surfaces are proposed in the Buffer.

Stormdrain outfall #3 is proposed for the southeast corner of the Middle River Bridge (Eastern Boulevard). The proposed outfall will be located in existing riprap. The storm drain will be modified to provide extra storage depth to allow trash and grit to settle before outfalling into Middle River. Like stormdrain outfall #1, a pocket sand filter design will be used. The total area of temporary disturbance is 1,200 square feet. The slope will be replanted with native vegetation to stabilize the area.

Impervious surfaces in the IDA will be reduced by 840 square feet as a result of this project. Pollution will be reduced by 21.5% as a result of the new stormwater management and the reduction in impervious surfaces. The applicant has satisfied the 10% Reduction requirements to the satisfaction of Baltimore County Department of Environmental Protection and Resource Management and Commission staff. State and Federal permits were issued on January 10, 2000 (#CNAB-OP-RW-99-62264).

Eastern Boulevard Enhancement Project

NOTE: MIDDLE RIVER IS DESIGNATED AS AN ADROMOUS FISH PROPOGATION WATER



Chesapeake Bay Critical Area Commission

STAFF REPORT

February 2, 2000

APPLICANT: Town of Easton

PROPOSAL: Easton Utilities Cable Television Headend Addition

COMMISSION ACTION: Vote

STAFF RECOMMENDATION: Approval with conditions

STAFF: Lisa Hoerger

**APPLICABLE LAW/
REGULATIONS:** COMAR 27.02.06 Conditional Approval of State or Local Agency Programs in the Critical Area

DISCUSSION:

Easton Utilities is seeking approval to build an addition to an existing Cable Headend Facility located on Bay Street in Easton, Maryland. The project is located along Tanyard Branch and is owned by the Town of Easton. It is located within an Intensely Developed Area (IDA). The site is the only location that can be utilized for the purpose of intercepting satellite transmissions as well as decoding, unscrambling and retransmitting the signals for cable television broadcasting. Since the proposed addition will impact the 100-foot Buffer to a perennial stream, this project requires a Conditional Approval by the Commission as found in Chapter 2 of the Critical Area Commission's regulations for State and local government development.

Staff met with representatives from the Town on the project site on January 7. A gravel road leads from Bay Street to the site. The existing building is approximately 20 x 20 feet. To the west of the existing building is a gravel area that supports several satellite dishes and a tower. To the east of the existing building is the site proposed for the addition. The proposed addition is a 20 x 40-foot brick structure. The majority of this addition will be built upon an existing gravel driveway. No clearing will result for the construction. Minimal grading is required since the site is very flat. Total disturbance to the site is 2,820 square feet. Also requested for approval are two sets of concrete footers that will support two satellite dishes. They also are within the 100-foot Buffer and are existing in the gravel area to the west of the existing building.

Since the site is located in an IDA, the applicant is required to demonstrate that a 10% reduction in pollutants leaving the site is achieved. Staff reviewed the 10% calculations performed by the Town and the result is that no additional pollution removal is required.

A letter from the Department of Natural Resources Heritage and Biodiversity Division indicates that no rare, threatened or endangered species are present on this site. The applicant has obtained the necessary permits from the Talbot Soil Conservation District, a Sediment and Erosion Control Permit, and the Waterway Construction permit from the Maryland Department of the Environment.

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 the Town of Easton from siting the proposed building addition outside the Buffer. The impacts to the Buffer are proposed in order to expand an existing Headend Cable Building that provides continued operation of the Easton Utilities Cable Television System. Alternative locations were explored as well as alternative designs, however the Town determined that this site is the only feasible location for expansion of these operations. The current site already provides Easton Utilities with clear satellite reception because of its location. Also, the existing equipment and operations are located on this site. The design of the building takes into consideration the projected space needs to the operations and other site setbacks. The alternative designs were determined not suitable for purposes of providing acceptable service.

Special circumstances include the relatively small project area that is almost entirely within the 100-foot Buffer.

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

The applicant will provide all downspouts to divert stormwater runoff away from Tanyard Branch and towards Bay Street. Plantings on the south side of the building will also be provided for both aesthetic purposes and further absorption of runoff.

(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 Town's Critical Area Program. Town staff have provided a thorough

review of the project, and Critical Area staff have consulted with the Town and the Town Engineer and conducted a site investigation to ensure this project is otherwise consistent with COMAR 27.02.06.

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

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

A literal enforcement would prevent the Easton Utility Company from providing cable television service which 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 Town determined the project to be consistent with the local Critical Area program. The newly proposed impacts in the Buffer are not consistent with the Town of Easton's Program; 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.

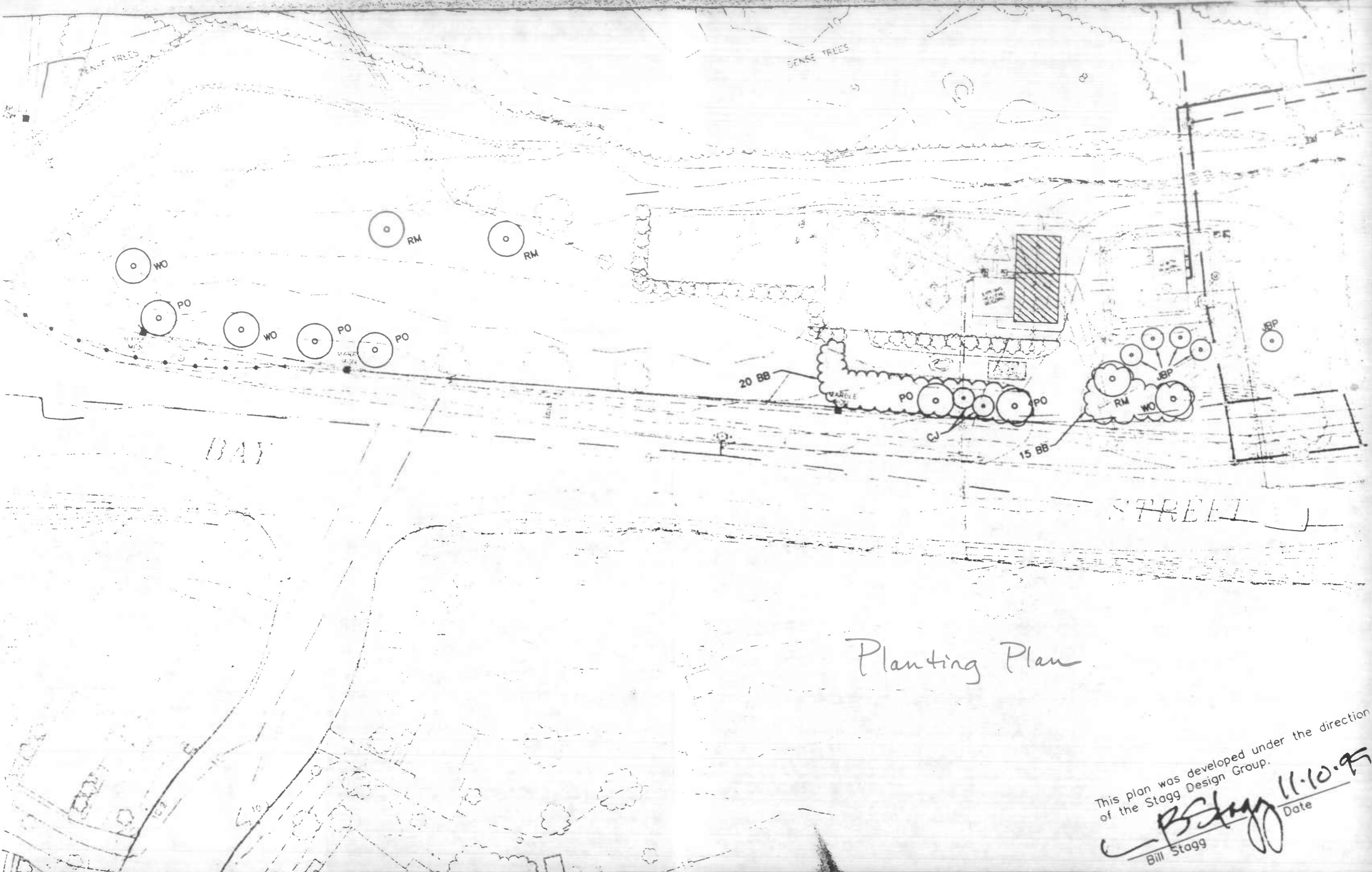
(3) Measures proposed to mitigate any adverse effects of the project or program on an approved local Critical Area program or, if on State-owned lands, on the criteria set forth in COMAR 27.02.05.

The proposed plantings will result in increased water quality benefits and improved habitat protection.

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) The applicant shall resubmit any revisions to the plan to the Commission for approval; and***
- 2) The applicant will work with Commission staff regarding mitigation for all impacts that will result to the Buffer, and will coordinate follow-up site visits to monitor the survivability of the planting areas.***



Planting Plan

This plan was developed under the direction
of the Stagg Design Group.

Bill Stagg 11.10.95
Date