

**Chesapeake Bay Critical Area Commission
Department of Housing and Community Development
Peoples Resource Center
Crownsville, Maryland
November 1, 2000**

AGENDA

1:00 p.m. - 1:05 p.m.	Approval of Minutes Of October 4, 2000	John C. North, II, Chair
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PROGRAM AMENDMENTS and REFINEMENTS

1:05 p.m. - 1:20 p.m.	VOTE: Anne Arundel County Homeport Farm Growth Allocation	Lisa Hoerger, Planner
1:20 p.m. - 1:30.p.m.	REFINEMENT: Worcester County Snow Hill/Burbage Growth Allocation	Tracey Green, Cir. Rider LeeAnne Chandler, Planner
1:30 p.m. - 1:40 p.m.	REFINEMENT: Somerset County City of Crisfield McCready Hospital Growth Allocation	Claudia Jones, Science Adv.

PROJECT EVALUATION

1:40 p.m. - 2:10 p.m.	VOTE: MNCPPC Prince George's County Rosalie Island/Potomac River /Waterfront Community Park	Lisa Hoerger, Planner
* 2:10 p.m. - 2:25 p.m.	VOTE: MTA Charles County Gov. Harry Nice Memorial Bridge Storage Facility	LeeAnne Chandler, Plnr
2:25 p.m. - 2:45 p.m.	Old Business Legal Update	John C. North, II, Chairman Marianne Mason, Esquire Commission Counsel
2:45 p.m. - 3:00 p.m.	New Business	

**Chesapeake Bay Critical Area Commission
Department of Housing and Community Development
People's Resource Center
Crownsville, Maryland
November 1, 2000**

SUBCOMMITTEES

9:00 a.m. - Project Evaluation

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

**Update Woodrow Wilson Bridge DOT/SHA
Information - Maryland National Capital Parks &
Planning Commission/Rosalie Island/**

Lisa Hoerger, Planner

Lisa Hoerger, Planner

Potomac River Waterfront Community Park

• — LeeAnne Chandler, Planner

**★ Charles County - MTA - Gov. Harry Nice Memorial Bridge
Storage Facility**

Information-Discussion -SHA-Wicomico County

LeeAnne Chandler, Planner

MD 347, Stormwater Issues

9:30 a.m. Program Implementation

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

**Refinement/Worcester County
Burbage Growth Allocation**

Tracey Green, Circuit Rider

LeeAnne Chandler, Planner

**Refinement/City of Crisfield
McCready Hospital Growth Allocation**

Claudia Jones, Science Advisor

Tracey Green, Circuit Rider

**Discussion/Easton
Ratcliffe Development Envelope**

Mary Owens, Pgm. Chief

Update/Talbot County Comprehensive Review

Lisa Hoerger, Planner

Dan Cowee, Talbot Co., P & Z

11:00 a.m. - 12:00 p.m. PANEL: Queen Anne's County

Members: Duket, Chair; Bourdon, Jackson, Myers, Goodman

Four Season's Growth Allocation

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

Chesapeake Bay Critical Area Commission
 Maryland Department of Natural Resources
 Tawes State Office Building, Conf. Room C-1
 Annapolis, Maryland 21401
 October 4, 2000

The meeting was called to order by Chairman John C. North, II with the following **Members in attendance**:

Barker, Philip, Harford County	Bourdon, Dave, Calvert County
Bradley, Clinton, Talbot County, Eastern Shore Member At Large	
Cooksey, David, Charles County	Jones, Paul, Talbot County
Dr. Foor, James C., Q.A. County	Giese, Wm., Jr. Dorchester County
Jackson, Joseph, Worcester County	Johnson, Sam Q., Wicomico County
Myers, Andrew, Caroline County	Samorajczyk, Barbara D., Anne Arundel Co.
Witten, Jack, St. Mary's County	Appel, Sherry for Wynkoop, Sam, P.G. County
Setzer, Gary for Hearn, J.L., Md. Department of Environment	
Goodman, Robert, Md. Department of Housing and Community Development	
Lawrence, Louise, Md. Department of Agriculture	
McLean, James, Md. Department of Business and Economic Development	
Wenzel, Lauren, Md. Department of Natural Resources	

Not In Attendance:

Deborah B. Cain, Cecil County
 Graves, Charles C., Baltimore County
 Olszewski, John Anthony, Baltimore County
 Duket, Larry, Md. Department of Planning

Vacant Positions

Kent County
 Western Shore Member at Large
 Somerset County
 Md. Department of Transportation

The Minutes of August 2, 2000 were approved as read.

Commission member, Lauren Wenzel, DNR introduced Ron Gardner, DNR's Watershed Management, who gave a special presentation on a new stormwater management technique. He guided the Commission members on a site visit at periphery of the DNR parking lot where the system has been implemented. This system is called a rain garden - a bioretention system which started in Prince George's County when it was realized that there was not enough money to continue maintaining and constructing the old system of storm water management structures. This system is referred to as low-impact development and the design is less expensive and effective in preventing flooding, but less effective in protecting streams. The maintenance problem was the primary reason for developing this system. EPA and Prince George's County have published manuals as guides in implementing low-impact development systems for storm water management. The Commission found this information very useful.

The Anne Arundel County request for Growth Allocation for Homeport Farm was postponed for Vote

after the panel met for discussion. Commission member Dr. Floor, in consultation with the Critical Area Commission's Executive Director and Counsel, informed the Commission that the record on this project is very stale because of the length of time elapsed since it was first examined in March 4, 1988. He advised that pursuant to this postponement, testimony will be taken and a supplemental public hearing will be held and this project will be brought back to the Commission in November for Vote. Chairman North declared this issue to be continued.

Rob Hurley, Circuit Rider CBCAC presented for concurrence with the Chairman's determination of Refinement the Town of Denton's request for 1) an amendment to their Critical Area map for a new Buffer Exemption area; 2) an amendment to their Critical Area program to add Buffer Exemption Area language; and, 3) an amendment to the definition section of the zoning ordinance to include new buffer exemption area policy. Mr. Hurley described the technical details of the new Buffer Exemption Area site located at Crouse Park. The Town wants to incorporate the Commission's revised policies (approved in April of 1999 in the four year comprehensive review) into the Town's Zoning Ordinance and will be repealing the section of their zoning ordinance that contains the former BEA Policy, enacting the new ordinance language. The Town's Critical Area Maps showing the Crouse Park BEA was revised subsequent to the 1999 map amendments under their four year review. The Commission supported the Chairman's determination of Refinement.

Mary Owens, Program Chief, CBCAC presented for concurrence with the Chairman's determination of Refinement for growth allocation of 2.36 acres to change the Critical Area overlay designation of the Pack Rat Storage property in Dorchester County, from LDA to IDA. The property owner is proposing to expand the storage operation and the site is already over the 15% impervious surface limit. Ms. Owens described the details of the expansion. There are no known threatened or endangered species located on the property and there are no areas within the 100-foot Buffer. There is compliance with the 10% pollutant reduction requirement and the storm water pond will be expanded with a new grassed swale constructed. A row of evergreen trees with additional landscaped plantings will be provided around the storm water management pond. The expansion will comply with the IDA requirement and is generally consistent with the Commission's growth allocation policy. The Commission supported the Chairman's determination of Refinement.

Lisa Hoerger, Planner, CBCAC presented for VOTE the proposal to construct a Police Memorial for MdTA police officers by the Maryland Transportation Authority in Baltimore County. Ms. Hoerger described the details of the project proposal of 9.01 acres which is entirely within the Critical Area in an Intensely Developed Area. She told the Commission that the memorial garden will not impact the 100-foot Buffer and there will be a net reduction of impervious surface being removed from the 100-foot Buffer. A Best Management Practice is not proposed for this site as the 10% Pollutant Reduction Calculations resulted in .486 lbs. of phosphorous leaving the site. Commission Staff recommended approval of this project with the condition that the proposed plant list be amended to include native species. The sediment and erosion control permits are forthcoming from MDE. Dave Bourdon moved to approve the project with the condition that the Buffer be planted with additional native species approved by Staff. The motion was seconded by Mr. Cooksey and carried unanimously.

Regina Esslinger, Project Chief, CBCAC presented for Vote the proposal by the University of Maryland's Center for Environmental Sciences (CES) to construct an aquaculture and greenhouse facility at the Horn Point Laboratory outside Cambridge in Dorchester County. This request was approved by the Commission in November 1998 and could not go forward because CES could not secure State funding without approval from the resource agencies. The Commission approved the project conditioned upon any change in location or structural plans, the subsequent review of storm water management plans and forestry plans. Now,

CES has come back with a revised plan and seeks conceptual approval as there has been a change in location. The new location does not disturb any nontidal wetlands, will not impact any habitat protection areas and there are no threatened or endangered species within the project site. CES will be required to submit a formal site plan as it nears final approval before construction can begin. Dave Bourdon moved to approve the project with the conditions as listed in the Staff report: 1) Any significant structural or locational changes to the current design will invalidate this conceptual approval unless reviewed and approved by the Commission. Final approval is required prior to construction. 2. Storm water management plans will be developed and submitted for Commission review for final project approval. Storm water management and sediment and erosion control plans must receive MDE approval prior to Commission approval. 3. All forest impacts and associated mitigation are detailed on the final site plan for Commission approval. The motion was seconded by Mr. Cooksey and carried unanimously.

Old Business

Chairman North reported that the Day on the Bay on September 19th aboard the Maryland Independence was a great success and enjoyed by all. The 2001 outing will be held in June.

New Business

Marianne Mason, Assistant Attorney General and Commission Counsel updated the Commission on legal matters. She said that the Mastandrea case in Talbot County is still pending in the Court of Appeals. It was argued in May. Pending in the Circuit Court in Prince George's County, Bonnie Bick vs Judge North, involving Ms. Bick's challenge to the County's and Commission's approval of growth allocation for Opryland in Prince George's County has no decision yet. This case was argued in August. Ms. Mason said that she will be going to Salisbury in Wicomico County with Leeanne Chandler, CBCAC Planner, as well as an expert witness from DNR to present testimony in the Edwin Lewis case before the Board of Appeals involving the construction without a permit of six buildings on an island. The applicant has requested a variance to legalize the construction of four of the buildings and he proposes to move two of the buildings out of the 100-foot Buffer, all were built in the Buffer. There are two cases pending in Anne Arundel County - both variances - one involving a house and one involving a shed. They are in the briefing stage with arguments this fall. She said that she is preparing to intervene in a case involving an impervious surface variance in Calvert County wherein the Board of Appeals granted a variance for 75% impervious surface on an LDA lot.

There being no further business the meeting adjourned.

Minutes submitted by: Peggy Mickler, Commission Coordinator

CHESAPEAKE BAY CRITICAL AREA COMMISSION

STAFF REPORT November 1, 2000

APPLICANT: Anne Arundel County

PROPOSAL: Growth Allocation - Homeport Farm

COMMISSION ACTION: Vote

PANEL: Larry Duket (Chair)/Louise Lawrence/James Foor/Bob Goodman

PANEL RECOMMENDATION: Approval with Conditions

STAFF: Lisa Hoerger

**APPLICABLE LAW/
REGULATIONS:** Natural Resources Article 8-1808.1 and
COMAR 27.01.02.06

DISCUSSION:

Anne Arundel County is requesting growth allocation for the Homeport Farm parcel that will change 18.75 acres of RCA land to LDA. The growth allocation area, or development envelope, will include 19 residential lots (15.11 acres), road right-of-way and community open space (3.64 acres).

The entire parcel consists of 81.30 acres with 16.72 acres outside of the Critical Area and 64.58 acres inside the Critical Area. The interior is agricultural fields with forested areas lining the periphery of the site along the shoreline.

Two areas of the property will retain their RCA designation. The 31.64 acre portion of the RCA land on the northern side of the property will be divided into two parcels. One parcel will consist of 25.15 acres to be deeded to Anne Arundel County for a park. The proposed use of this park is undetermined. The County has informed us that a citizens group will be formed to develop a master plan for the area once it is deeded to the County. The remaining 6.49 acres will remain in open space and will be used as a reforestation area by the County clearing associated with development in the Critical Area. Because the future use of the park is uncertain and in order to ensure that at least 20 acres, including the 6.49 acre tract, shall retain the character of Resource Conservation Areas in the Critical Area, appropriate deed restrictions will need to be placed on 13.51 acres of the property to be donated to the County for a park.

The remaining RCA lands on the southern portion of the property will be used as community open space and one RCA lot. This area is 12.27 acres. Under the Critical Area Commission's growth allocation policy, a minimum of twenty acres is required in order to sufficiently protect the character of the Resource Conservation Area. An additional 7.73 acres will be protected under easement on the adjoining property. The twenty-acre parcel is currently developed with a single family dwelling and this development is consistent with the Critical Area Commission policy.

The County has addressed the guidelines found in both Natural Resources Article 8-1808.1 and COMAR 27.01.02.06 with regard to adjacency to other Intensely Developed Areas or Limited Development Areas, identifying habitat protection areas, minimizing impacts to the Resource Conservation Area, and the provision of a 300-foot Buffer. The County stated that the adjacency requirement is met since the community to the north is designated LDA. Although a 300-foot Buffer was not provided on this project, the 100-foot Buffer was delineated in the field and will be established as forest in accordance with COMAR 27.01.09.01. Following approval of this project, the County has 57.66 acres of growth allocation remaining that can be used to change from RCA to LDA.

In order to ensure that the growth allocation deduction methodology used for this project is consistent with the Commission's policy and that the two areas of the property to remain RCA are part of an area of at least 20 acres, staff proposes the following conditions:

1. The County shall ensure that, prior to the recordation of the subdivision plat for Homeport Farms, a conservation easement shall be properly executed and recorded that will ensure that 7.73 acres of property adjacent to the Homeport Farms property shall be maintained in uses appropriate to the Resource Conservation Area. The 7.73 acres shall be contiguous to the 12.27 acre area to remain RCA which is located at the southern portion of the property. The easement shall be written to ensure that there is a total area of 20 acres at the southern portion of the property that will retain the character of Resource Conservation Areas in the Critical Area.
2. The County shall ensure that, included within the transfer documents for the 25.15 acre tract proposed for a County park, there are appropriate deed restrictions to ensure that 13.51 acres of this tract shall be maintained in uses appropriate to the Resource Conservation Area. The 13.51 acres shall be contiguous to the 6.49 acre portion of the Homeport Farms Subdivision that is to remain RCA (and is to be used for a reforestation area by the County.) The deed restrictions shall be written to ensure that there is a total area of 20 acres at the northern portion of the property that will retain the character of Resource Conservation Areas in the Critical Area. Any plans for development of the property as a park shall be reviewed by the Critical Area Commission in order to ensure that the condition for protecting a minimum of 20 acres to maintain RCA character is met or that appropriate growth allocation is deducted.

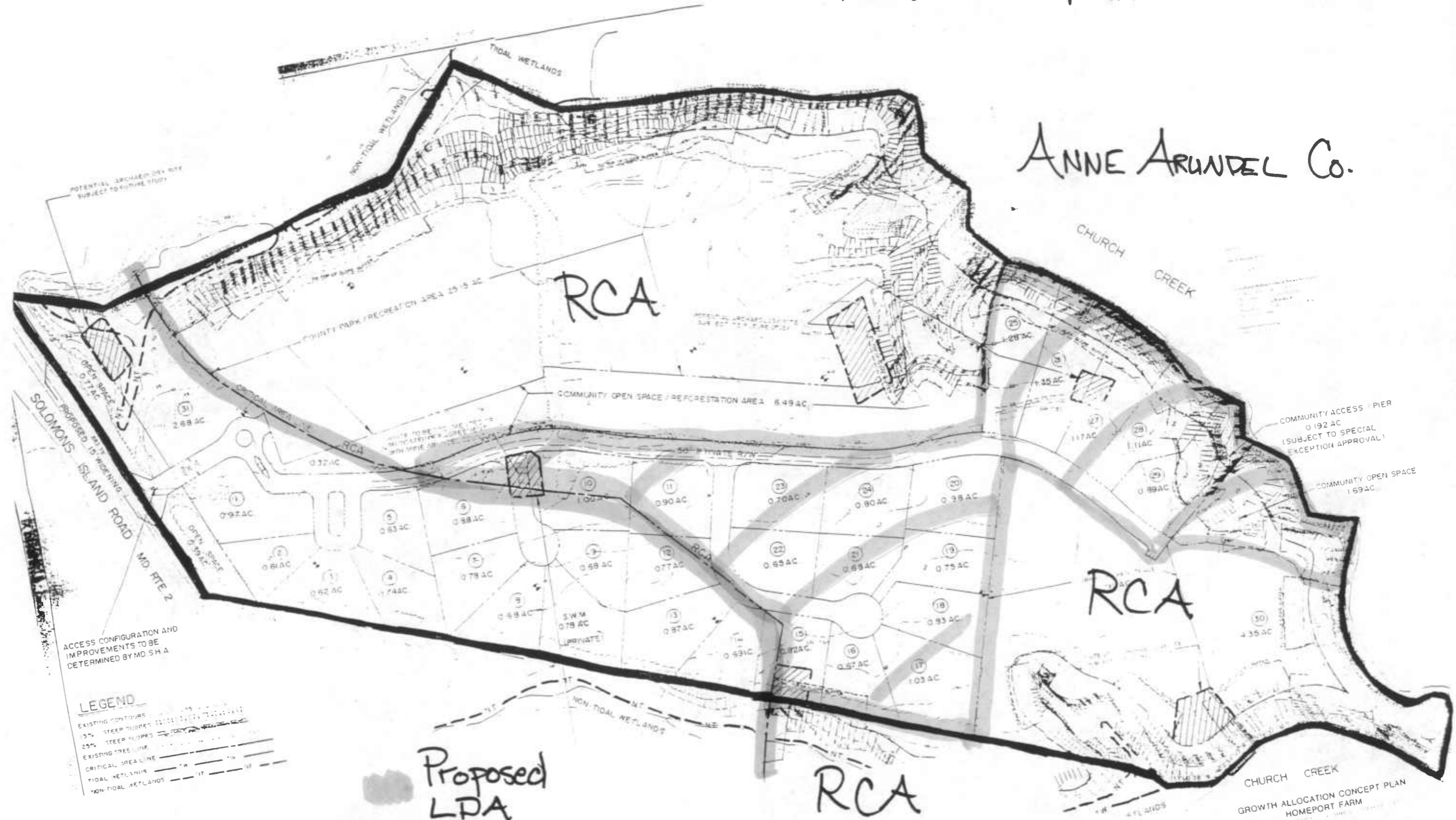
REVISION TO THE CONDITIONS IN THE
NOVEMBER 1, 2000 STAFF REPORT FOR THE
HOMEPORT FARM GROWTH ALLOCATION REQUEST

1. Prior to recordation of the subdivision plat for Homeport Farms, the County shall submit to the Commission for its approval a conservation easement that will ensure that the 7.73+/- acres of land adjacent to the Homeport Farm property shall be maintained in uses appropriate to the Resource Conservation Area (RCA), as those uses are set forth in the County Critical Area ordinance. The 7.73+/- acres shall be contiguous to the 12.27+/- acres area to remain RCA, which is located at the southern portion of the property. The easement shall ensure that a total area of 20 contiguous acres of land at the southern portion of the project will retain the character and uses of RCA. After Commission approval, and prior to recordation of the subdivision plat for Homeport Farm, the conservation easement shall be recorded.

2. The County shall submit to the Chesapeake Bay Critical Area Commission for approval proposed transfer documents for the 25.15 acre tract proposed for a County park. These transfer documents shall ensure that there are appropriate deed restrictions to ensure that 13.51+/- acres of this tract shall be maintained after transfer to the County in uses appropriate to privately-owned land in the Resource Conservation Area (RCA) as those uses are set forth in the County Critical Area ordinance. The 13.51+/- acres shall be contiguous to the 6.49+/- acre portion of the Homeport Farms Subdivision that is to remain RCA (and is to be used for a reforestation area by the County). The deed restrictions shall be written to ensure that there is a total area of 20 acres at the northern portion of the Homeport property that will retain the character of Resource Conservation Area in the Critical Area. Any plans for development of the property as a park shall be submitted for review by the Critical Area Commission in order to ensure that the condition for protecting a minimum of 20 acres to maintain RCA character is met or that appropriate growth allocation is deducted.

HOMEPORT FARM

ANNE ARUNDEL Co.



ACCESS CONFIGURATION AND IMPROVEMENTS TO BE DETERMINED BY MD SHA

LEGEND

- EXISTING CONTOURS
- 15% STEEP SLOPES
- 25% STEEP SLOPES
- EXISTING TREE LINE
- TIDAL WETLANDS
- NON-TIDAL WETLANDS

Proposed LDA

RCA

GROWTH ALLOCATION CONCEPT PLAN HOMEPORT FARM

Chesapeake Bay Critical Area Commission

STAFF REPORT

November 1, 2000

APPLICANT: Town of Snow Hill

PROPOSAL: Refinement - Burbage Funeral Home Growth Allocation

COMMISSION ACTION: Concurrence with Chairman's Determination

STAFF RECOMMENDATION: Approval

STAFF: Tracey Greene, LeeAnne Chandler

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

DISCUSSION:

The Town of Snow Hill is requesting approval of the use of 1.63 acres of growth allocation to change the Critical Area overlay designation of the Burbage Funeral Home property from Limited Development Area to Intensely Developed Area. The site is located at the corner of West Federal and Gunby Streets within Town limits and the proposed new IDA is located within an existing LDA. Only 1.63 acres out of the total property of 2.24 acres is located within the Critical Area.

The Town is requesting growth allocation to change the designation of the property to IDA because the Town gave permission to the property owner to change from a residential to commercial use. The commercial use involves improvements which increase the imperviousness to 31.15% of the site. This exceeds the permitted limits in the LDA, thus a change to IDA is being requested. The Town was not granted any of its own growth allocation acreage by the County. Therefore, the Town had to apply to Worcester County for the growth allocation for this specific project. They received approval of that request at a public hearing held September 5, 2000.

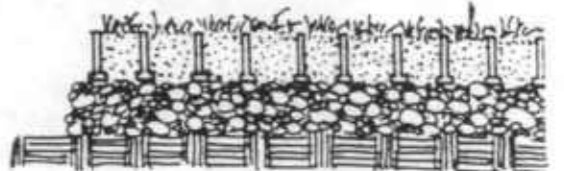
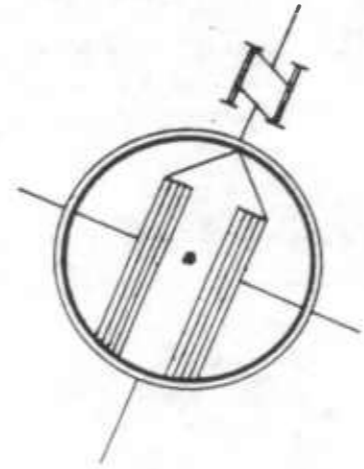
The previous use of the property was residential and included a house, two garages and a barn. Use of the property for a funeral home includes renovations to the house and garages, as well as addition of adequate parking. There are no known threatened or endangered species located on the property, and the property does not include any areas within the 100-foot Buffer. Stormwater management is addressed through 15% afforestation, the use of grass pavers, and several gravel infiltration trenches.

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

TOWN OF SNOW HILL - BURBAGE GROWTH ALLOCATION

AREA FOR STORMWATER MANAGEMENT AND/OR BIO-RETENTION LANDSCAPE

FILL VOIDS IN PAVING BLOCKS WITH TOP SOIL AND REVEGETATE WITH GRASS SEED

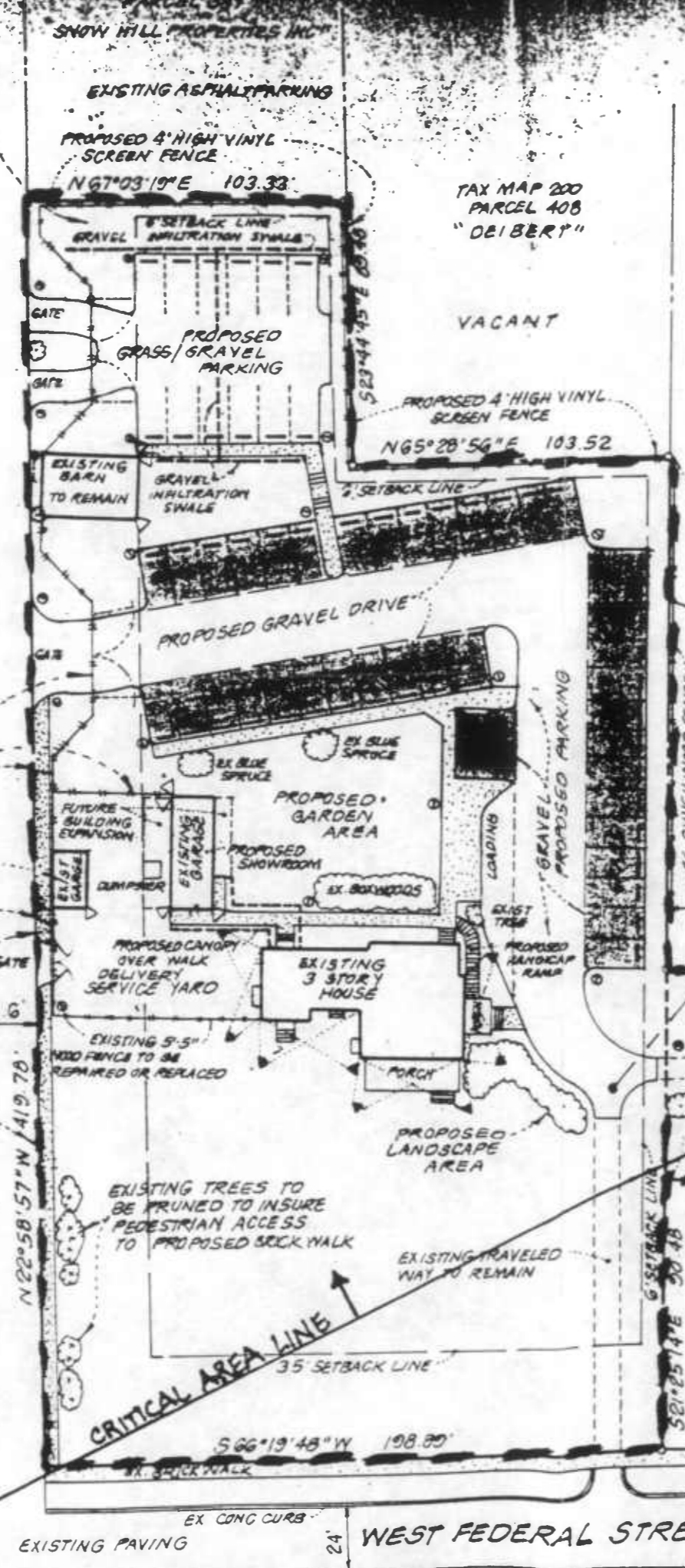
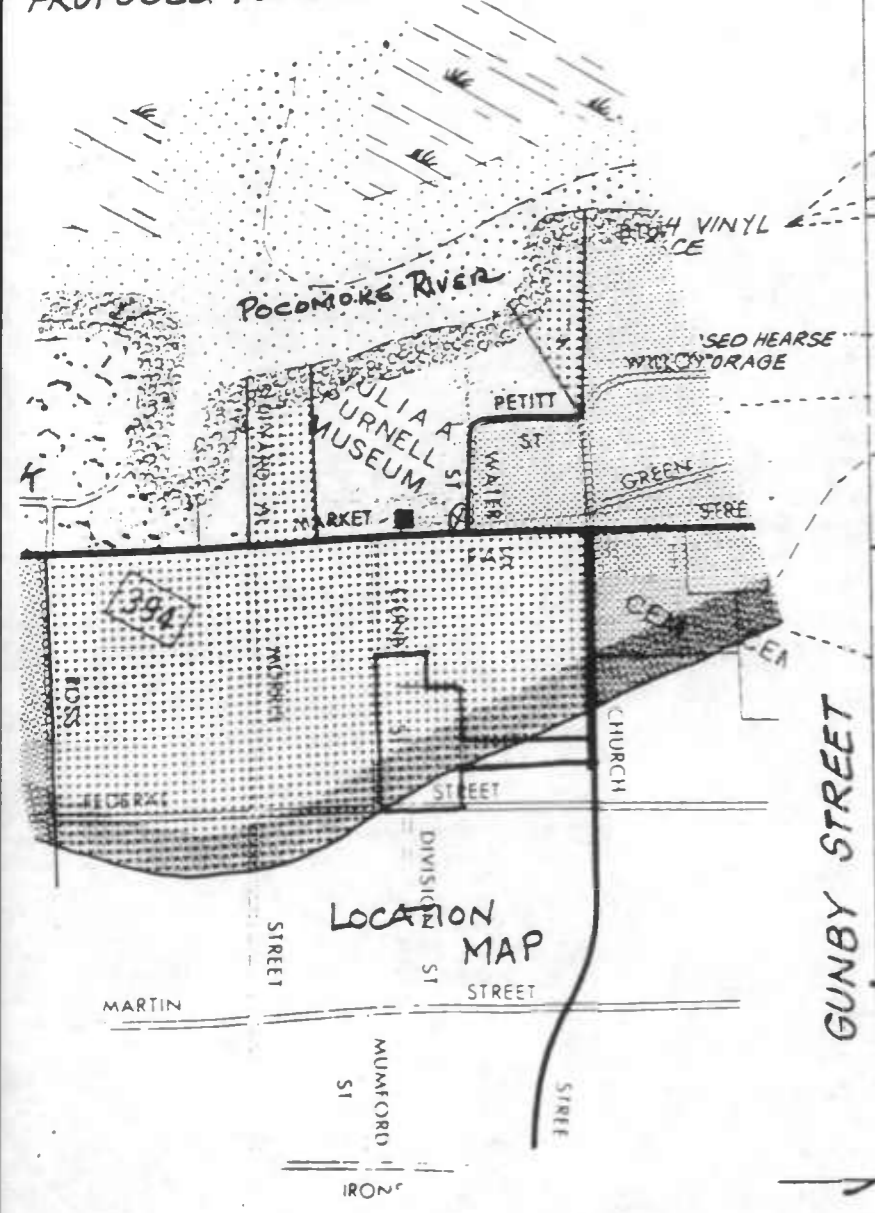


SECTION

TYPICAL ILLUSTRATIVE OF GRASS PAVING BLOCKS AT PA

NOTE: PAVING BLOCK CONFIGURATION AND MATERIALS VARY FROM CONCRETE BLOCKS TO POLYETHYLENE GRIDS.

NOTE: SEE 1"=20' SCALE ENLARGEMENT OF GUNBY STREET FOR EXISTING AND PROPOSED LANDSCAPING AND PROPOSED FENCING.



EXISTING GARDEN "PAAL" TAX MAP 200 PARCEL 416

NOTE: TEMPORARY SIGNS / BARRIERS WILL BE PLACED TO PREVENT CARS FROM EXITING FUNERAL SERVICES DIRECTLY TO CHURCH OR W. FEDERAL STREETS.

CRITICAL AREA LINE

TAX MAP 200 PARCEL 415 "WELLS"

TAX MAP 200 PARCEL 384 "STALLINGS" TAX MAP 200 PARCEL 383 "GALLAGHER" TAX MAP 200 PARCEL 382 "TRUITT" TAX MAP 200 PARCEL 417 "PAAL"

EXISTING PAVING 24' WEST FEDERAL STREET

Chesapeake Bay Critical Area Commission

STAFF REPORT

November 1, 2000

APPLICANT: City of Crisfield

PROPOSAL: McCready Memorial Hospital -Growth Allocation

COMMISSION ACTION: Concurrence

STAFF RECOMMENDATION: Approval

STAFF: Tracey Greene, Claudia Jones

**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:

The City of Crisfield is requesting approval of the use of 17.12 acres of growth allocation to reclassify the entire McCready Memorial Hospital site from a Limited Development Area (LDA) to an Intensely Developed Area (IDA). The site is located at 201 Hall Highway in Crisfield. It is adjacent to the Little Annessex River and across from Janes Island.

The property currently has 4.57 acres (26.5% of the site) of impervious surfaces. A proposed expansion of the hospital will increase impervious surfaces by 0.03 acres bringing the total impervious surface coverage to 4.6 acres or 26.7%. In the latter part of 1999, a variance was requested to the impervious surface limitations on the site for the expansion. At that time it was determined that re-designation to an IDA would allow the hospital to expand and develop in the future without needing an impervious surface variance each time.

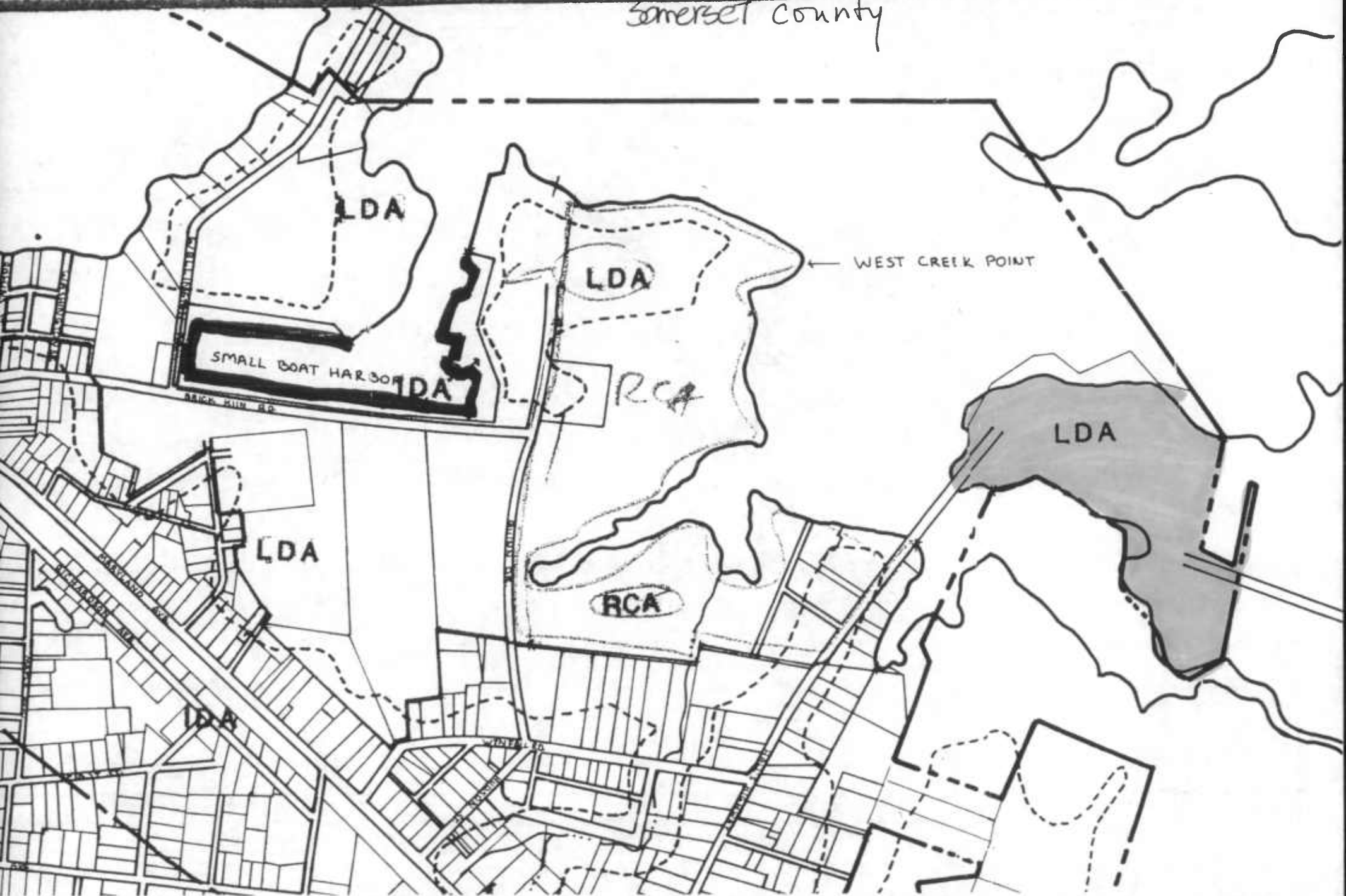
On August 18, 2000, the City of Crisfield's Planning Commission approved the request for growth allocation for 13 acres and an additional 4.12 acres from Somerset County. The City of Crisfield had the ability to regulate 13 acres of growth allocation, generated from the City's RCA lands and designated through the original Somerset County Critical Area Ordinance. The additional 4.12 acres needed for the growth allocation was awarded by the Somerset County Commissioners on October 10, 2000.

There are no known Habitat Protection Areas on the site except for the 100-foot Buffer. All new development proposed is located outside of the Buffer.

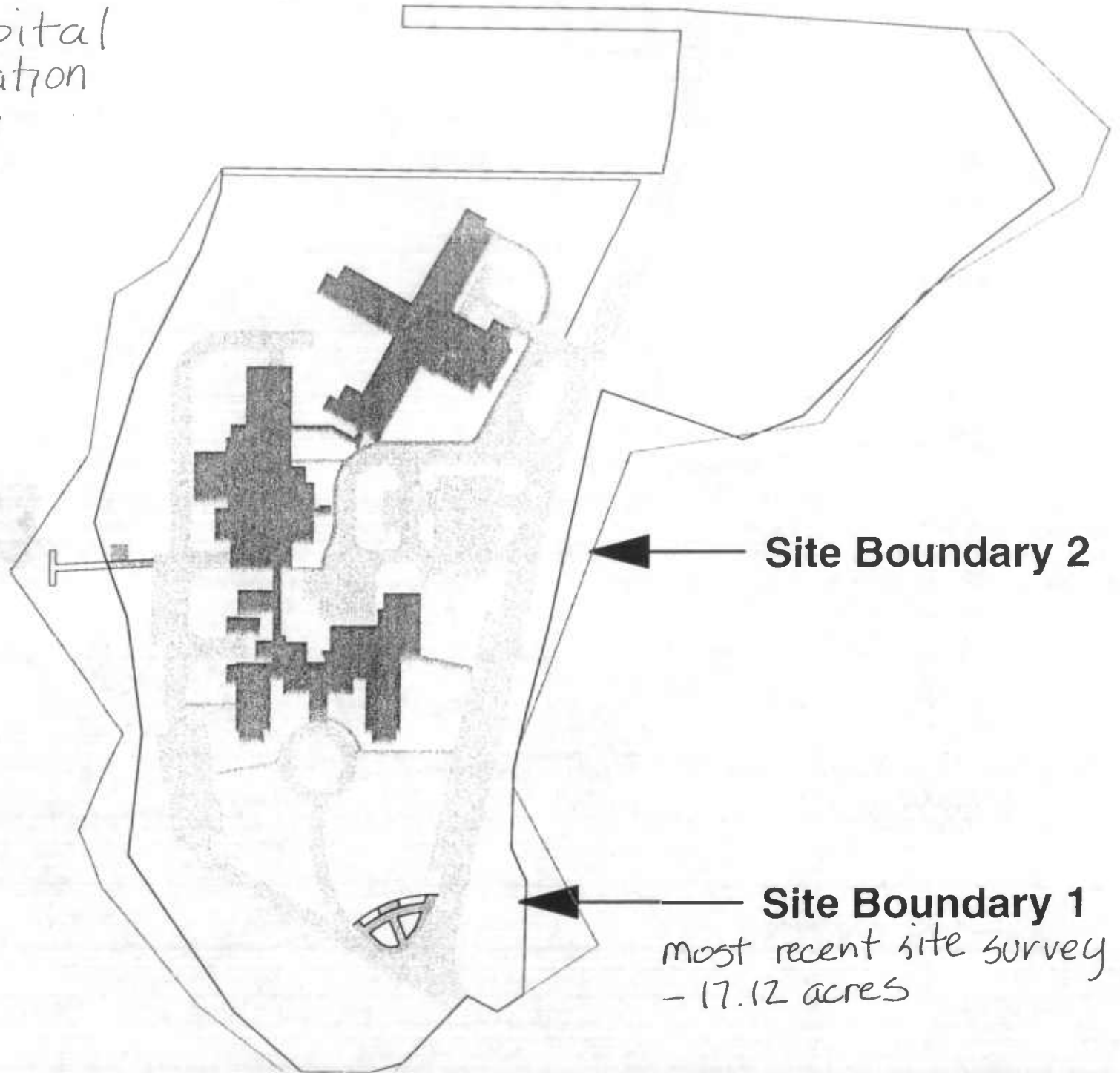
The proposed growth allocation is consistent with the Commission's growth allocation policy. The proposed new IDA is not quite 20 acres in size; however, the site is currently LDA, is located across the water from additional existing LDA, and is a grandfathered institutional use that existed as of the date of local Program approval.

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

McCreedy Hospital Growth Allocation
Somerset County



McCready Hospital
Growth Allocation
Somerset County



Site Boundary 2

Site Boundary 1
most recent site survey
- 17.12 acres

Chesapeake Bay Critical Area Commission

STAFF REPORT **November 1, 2000**

APPLICANT: Maryland National Capital Park and Planning Commission (MNCPPC)

PROPOSAL: Potomac River Waterfront Community Park – Rosalie Island

JURISDICTION: Prince George’s County

COMMISSION ACTION: Vote

STAFF RECOMMENDATION: Conditional 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:

The Maryland National Capital Park and Planning Commission (MNCPPC) proposes to construct a pedestrian path on Rosalie Island and a deck-over structure over I-495. The path will connect to the pedestrian lane provided on the northern side of the new Woodrow Wilson Bridge, and will connect to the main land of Prince George’s County on the other side of Smoots Cove via a bridge structure. The MNCPPC requests conditional approval for the pathway that will be constructed on Rosalie Island.

Since portions of the proposed pedestrian pathway will impact the 100-foot Buffer to tidal waters and tidal wetlands, 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.

The project is located on Rosalie Island in Prince George’s County. Staff and the Project Committee Chair met with representatives from MNCPPC on the project site on August 7, 2000. The island was created as a result of sand and gravel operation. It is completely forested with some areas of tidal wetlands. The Potomac River Waterfront Community Park is approximately 57 acres, however the majority of this area is submerged or being used to accommodate the Woodrow Wilson Bridge Project. Therefore, a total of 3.64 acres of land remain for use as a park and public recreational uses. National Harbor currently owns the southern most tip of the

island. This portion of the island is proposed to be conveyed to MNCPPC through dedication. The details of this transfer will be worked out at the time of subdivision for the National Harbor project.

The proposed pathway includes a pedestrian/bicycle path connection that links the pedestrian/bicycle path on the new Woodrow Wilson Bridge to the project through the use of the deck-over over I-495. The connection must be compliant with the American with Disabilities Act (ADA). To get the path to the deck-over from sea level at the required grade, there will be a 63-foot change in the grade. This requires extensive grading and the soil consolidation to support retaining walls necessary to support the path. Because of past sand and gravel operations, the site will require soil improvements to support the proposed pathway. Portions of this site will be cleared, graded and receive fill in order to consolidate the soft underlying soils.

The site is considered by staff to be an area that is not intensely developed; therefore, the applicant is required to maintain areas of impervious surface to 15% of the site. The present plan has 11.43% of impervious area. Also, appropriate means to provide stormwater management for water quality and quantity leaving the site are being addressed. The applicant will submit the sediment and erosion control plan for review by the Project Subcommittee when it becomes available.

Comments from the Department of Natural Resources Heritage and Biodiversity Division are pending. A request from Commission staff was made to the County to provide comments on the proposed project. Those comments are forthcoming and will be provided at the Commission meeting.

Conditional Approval Process

In order to qualify for consideration by the Commission for conditional approval, the proposing 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 MNCPPC from siting the proposed pedestrian pathway completely outside the Buffer. The impacts to the Buffer are proposed in order to accommodate a pathway that will require a 68-foot change in grade in order to maintain the proper grade required by the American with Disabilities Act. Alternative locations were explored as well as alternative designs, however MNCPPC determined there is not sufficient area to accommodate the path. Special circumstances include the relatively small project area that is almost entirely within the 100-foot Buffer (land area 3.63 acres, land inside the Buffer is 2.51 acres). As stated previously, the area owned by MNCPPC is approximately 57 acres, however the majority of this area is submerged or being used to accommodate the Woodrow Wilson Bridge Project. Therefore, a total of 3.64 acres of land remain for use as a park and public recreational uses.

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

The project will provide substantial public benefits to the Chesapeake Bay Critical Area Program by providing public access to the Potomac River. The clearing and subsequent reforestation of the 100-foot Buffer and portions of the interior will include removal of invasive plant species and reintroduce non-invasive, native species. The resulting reforestation plan and Buffer Management Plan will include all components of the forest structure including herbaceous, shrub, understudy and canopy species that can attract a more varied array of wildlife than what currently utilizes the island.

(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. The 15% impervious surface limitation is met. Compliance with appropriate stormwater design will be ensured, and mitigation for all proposed clearing will occur.

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 MNCPPC from providing public recreational use and access to the Potomac River shoreline. Without allowing for the soil consolidation process to take place, the project is not feasible. The project is a result of mitigation owed to the property owner (MNCPPC) by the Federal Highway Administration as a result of impacts of the new bridge project.

(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 proposed impacts in the Buffer are not consistent with COMAR 27.02.05; 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. By placing conditions on this conditional approval, the applicant will be required to submit updated plans and/or information to Commission staff for review and subsequent approval by the Project Subcommittee and the Critical Area Commission.

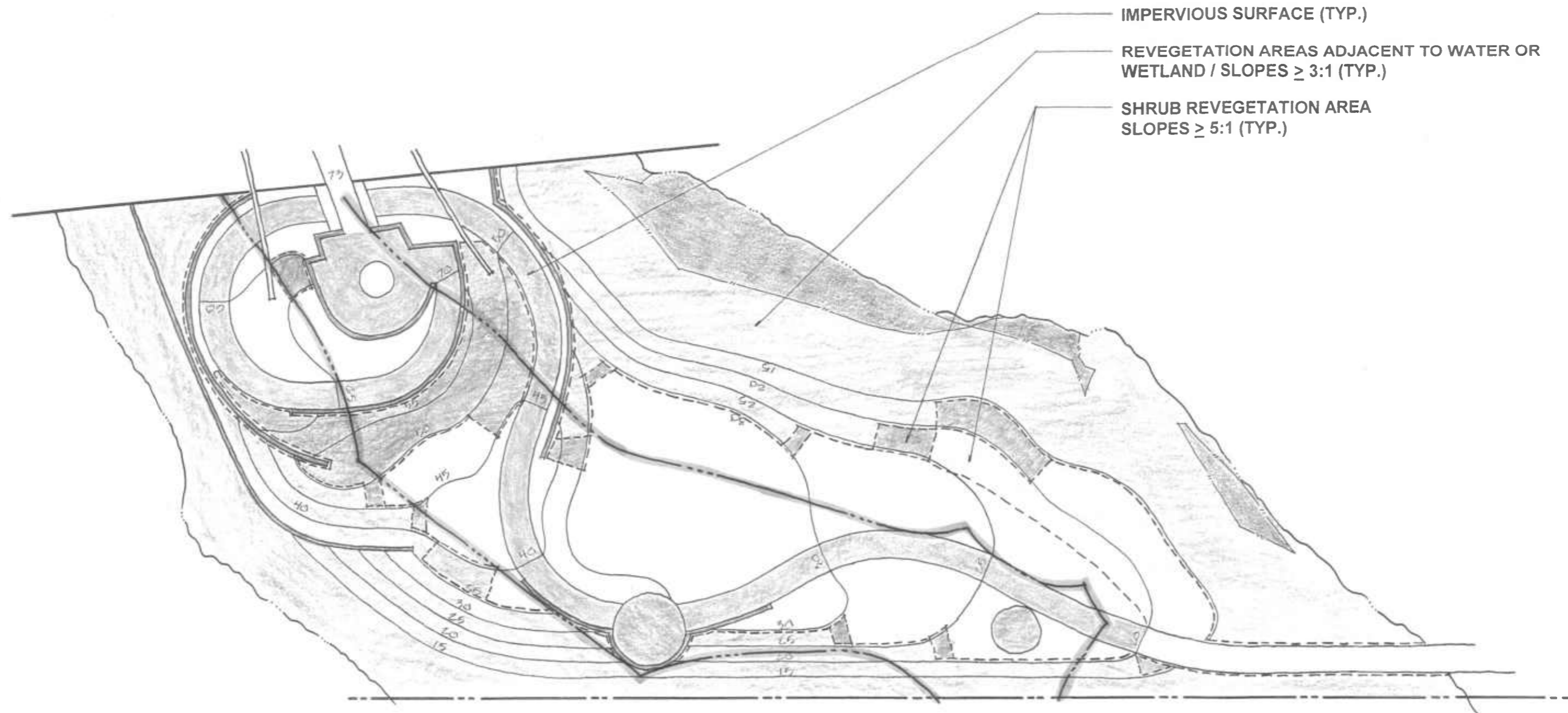
(3) Measures proposed to mitigate any adverse effects of the project or program on an approved local Critical Area program or, if on State-owned lands, on the criteria set forth in COMAR 27.02.05.

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 Buffer Management Plan proposed for this project is designed with the assistance of Critical Area Commission staff. Also, the proposed Buffer Management Plan shall be submitted for review by the Project Subcommittee and subsequent approval by the Critical Area Commission.
- 2) The proposed stormwater management shall be submitted for review by the Project Subcommittee and subsequent approval by the Critical Area Commission.
- 3) The project shall comply with all US FWS and DNR recommendations for protection of the bald eagle.



C

WOODROW WILSON BRIDGE PROJECT
 Potomac River Waterfront Community Park
 at Rosalie Island
 100' CBCAC BUFFER SUPERIMPOSED ON
 PLAN REVISED AS REQUESTED BY THE
 CBCAC SUBCOMMITTEE
 PTG/MRA - 10/12/00 - SCALE: 1" = 30'
 Revised - 10/20/00

Chesapeake Bay Critical Area Commission

STAFF REPORT

November 1, 2000

APPLICANT: Maryland Transportation Authority

PROPOSAL: Storage Building at the Governor Harry W. Nice Memorial Bridge

JURISDICTION: Charles County

COMMISSION ACTION: Vote

STAFF RECOMMENDATION: Approval with a condition

STAFF: LeeAnne Chandler

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

DISCUSSION:

The Maryland Transportation Authority is proposing to construct a storage building and associated parking lot in the vicinity of the Governor Harry W. Nice Memorial Bridge (Route 301) in Charles County. Being within the State Highway right-of-way and with a proposed level of imperviousness of 16% for the drainage area, this is considered within an area of intense development. Therefore, a 10% pollutant reduction is required.

The proposed location of the building and parking lot is currently a grass field with level topography, approximately 550 feet from the Potomac River. The building is 35 feet by 80 feet for a footprint of 2800 square feet. The parking lot is approximately 100 feet by 50 feet for a footprint of 5000 square feet. Stormwater management is being provided for the first inch of runoff via a sand filter. The sand filter will outfall into an existing drainage pipe. The pipe then outfalls into a grassed swale for approximately 300 feet. A new culvert and some new paving will be placed in the path of the grassed swale at an existing gravel parking lot entrance. After the culvert, stormwater will flow through a grassed swale with an eventual outfall in the Potomac River.

The entire property is approximately 25 acres. This project involves disturbance of 0.62 acres. There are no habitat protection areas in the vicinity of the proposed building and parking lot. A

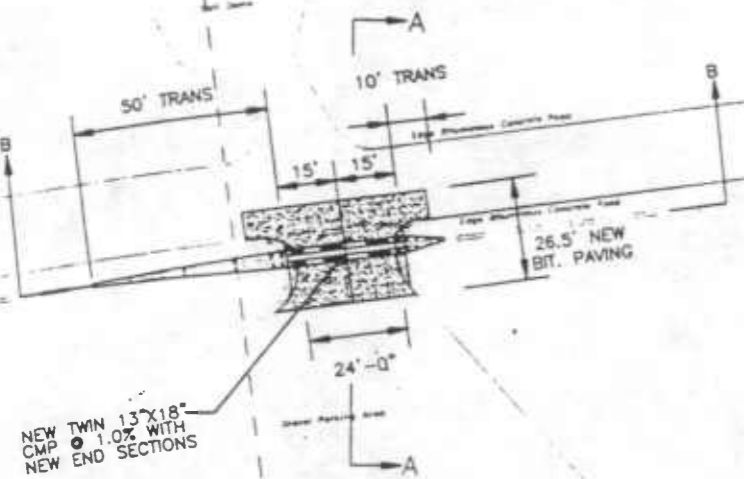
small area of non-tidal wetlands is on the property, though it will not be affected by the proposed project. No trees will be removed and subsequently no reforestation will be required. Placement of the culvert beneath the parking lot entrance and the new paving over the culvert occurs outside of the Critical Area Buffer. Minimal grading of the grassed swale will occur within the 100-foot Buffer. However, stormwater outfalls are considered water-dependent facilities that are permitted in the Buffer.

Final permit approval from the Maryland Department of the Environment has not yet been obtained. Commission staff recommends approval of this project conditioned on final MDE approval.

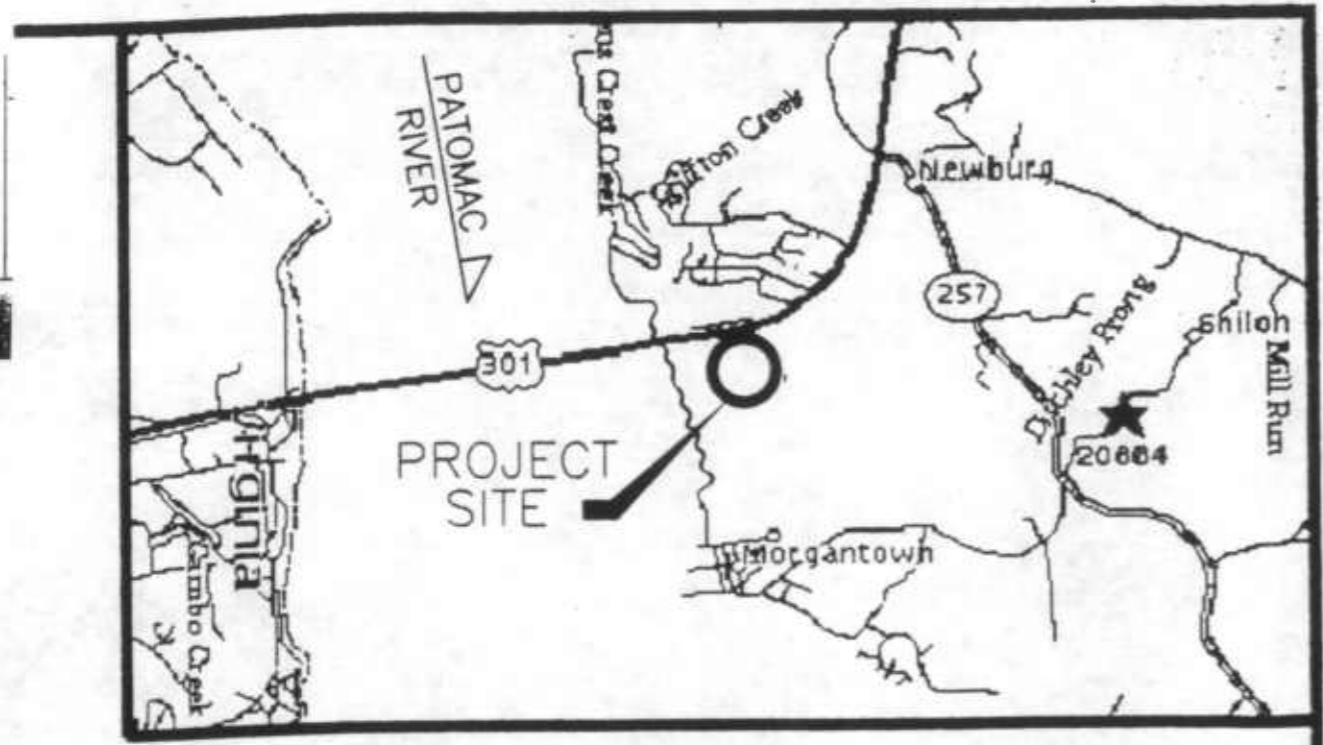
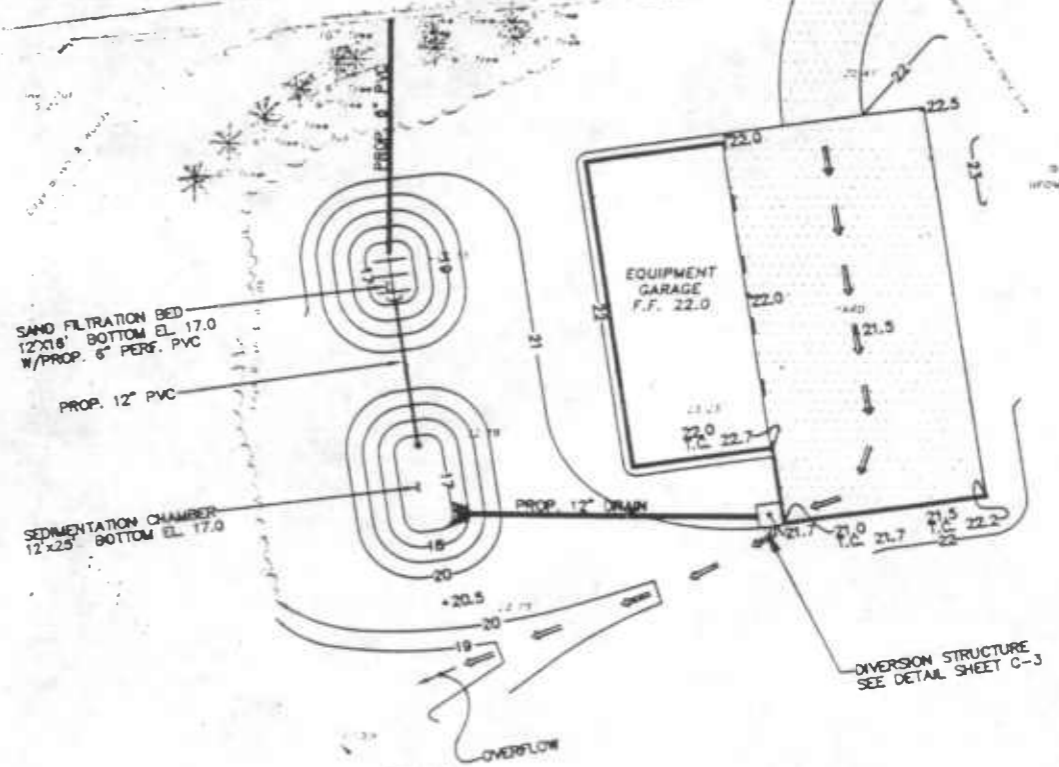
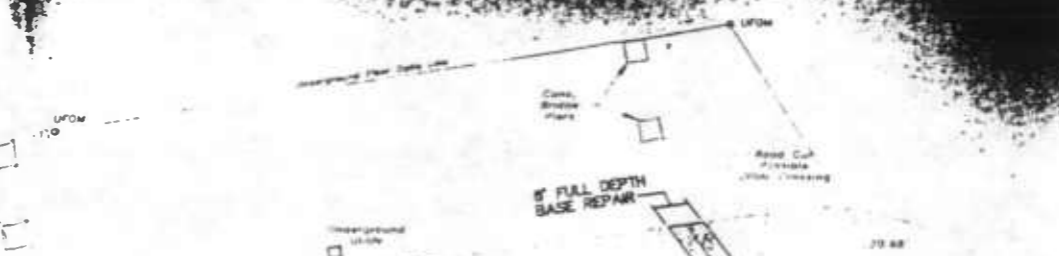
STORAGE BLDG. AT GOV. NICE MEMORIAL BRIDGE

← Approx. 100' BUFFER

POTOMAC RIVER



NEW TWIN 13"x18" CMP @ 1.0% WITH NEW END SECTIONS



VICINITY MAP
SCALE: NONE

MEMORANDUM

October 18, 2000

To: Project Subcommittee

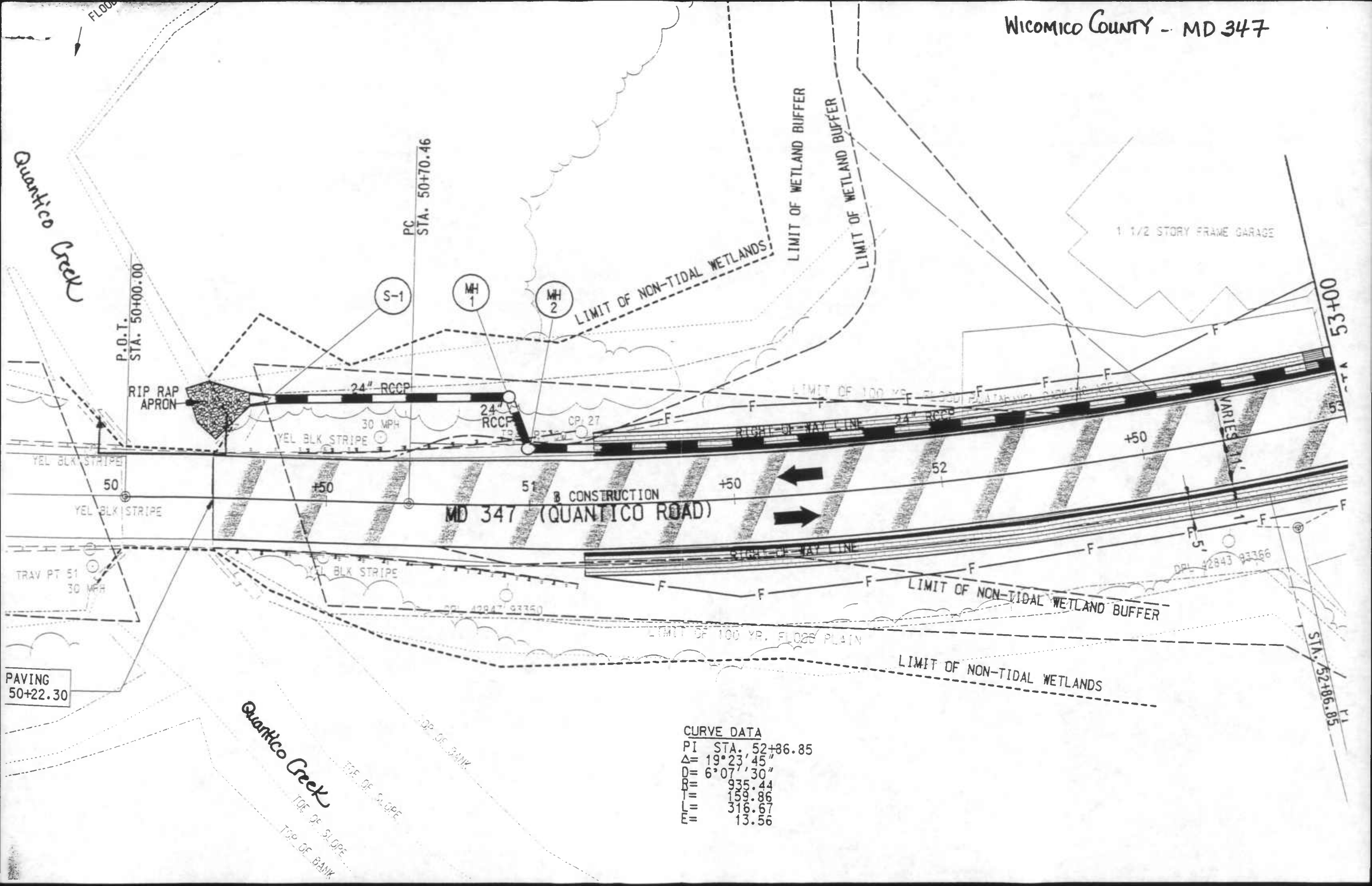
From: LeeAnne Chandler

Subject: MD 347 Stormwater Issues - Wicomico County

The State Highway Administration (SHA) is proposing improvements to MD 347 through the historic village of Quantico in western Wicomico County. Improvements include widening, resurfacing, drainage improvements and placement of curb, gutters, and sidewalks. The project is within an area of intense development and subsequently a 10% pollutant reduction is required. Calculations provided by the consultant (Wallace, Montgomery & Associates) indicate a pollutant removal requirement of 2.0 lbs. of Phosphorus. Due to a number of on-site constraints, SHA is not proposing any on-site treatment. Instead, offsets in other parts of the watershed are being considered. While offsite treatment has been used in some unique situations, Commission staff is concerned about the direct, untreated outfall of the drainage pipe into Quantico Creek.

Commission staff has invited SHA's consultant to the Project Subcommittee meeting to be held November 1, 2000 to discuss the stormwater issue on this project and to get feedback on potential alternatives. I have attached a photocopy of the site plan in the vicinity of the outfall into Quantico Creek. If you have any questions or would like to discuss this project prior to the Commission meeting please feel free to contact me at (410) 260-3477. Thank you.

cc: Rick Dwyer, Wicomico County
Glenn Marschke, Wallace, Montgomery & Assoc.
Sharon Alderton, SHA



B CONSTRUCTION
MD 347 (QUANTICO ROAD)

CURVE DATA

PI	STA. 52+86.85
Δ	19°23'45"
D	6°07'30"
B	935.44
T	159.86
E	316.67
F	13.56

PAVING
50+22.30

1 1/2 STORY FRAME GARAGE

Quantico Creek

Quantico Creek

P.O.T.
STA. 50+00.00

PC
STA. 50+70.46

STA. 53+00

STA. 52+86.85

LIMIT OF NON-TIDAL WETLANDS

LIMIT OF WETLAND BUFFER

LIMIT OF WETLAND BUFFER

LIMIT OF 100 YR. FLOOD PLAIN

RIGHT-OF-WAY LINE

RIGHT-OF-WAY LINE

LIMIT OF NON-TIDAL WETLAND BUFFER

LIMIT OF NON-TIDAL WETLANDS

YEL BLK STRIPE

YEL BLK STRIPE

YEL BLK STRIPE

YEL BLK STRIPE

YEL BLK STRIPE

YEL BLK STRIPE

YEL BLK STRIPE

YEL BLK STRIPE

YEL BLK STRIPE

+50

51

+50

52

+50

VARIES 11'

DP# 42843 93366

DP# 42847 93350

TOP OF BANK

TOE OF SLOPE

TOE OF SLOPE

TOP OF BANK

FLOOD

50

TRAV PT 51
30 MPH

MH 1

MH 2

S-1

CP 27

24" RCCP

24" RCCP

30 MPH

24" RCCP

5'

53

52

51

50

49

48

47

46

45

44

43



Judge John C. North, II
Chairman

Ren Serey
Executive Director

**STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREA COMMISSION**

1804 West Street, Suite 100, Annapolis, Maryland 21401
(410) 260-3460 Fax: (410) 974-5338

MEMORANDUM

TO: Critical Area Commission Members
FROM: Mary Owens *mo*
SUBJECT: New Buffer Exemption Area Policies
DATE: October 23, 2000

In April of this year, the Commission finalized extensive revisions to the Commission's Buffer Exemption Area Policy. The revisions resulted in the creation of two policies, one entitled "Residential Buffer Exemption Area Policy", and the second entitled, "Buffer Exemption Area Policy for Commercial, Industrial, Institutional, Recreational, and Multi-Family Residential Development." These two policies replace the current policy entitled "Buffer Exemption Areas" dated May 5, 1993. The final policies, which include illustrations, are attached, so that you may incorporate them into your "Commission Policies" binder.

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

TTY FOR DEAF ANNAPOLIS-974-2609 D.C. METRO-586-0450



**BUFFER EXEMPTION AREA (BEA) POLICY
FOR COMMERCIAL, INDUSTRIAL, INSTITUTIONAL, RECREATIONAL
AND MULTI-FAMILY RESIDENTIAL DEVELOPMENT**

**Final
April 5, 2000**

I PURPOSE

The purpose of this policy is to guide local jurisdictions in effectively implementing Buffer Exemption Area provisions for commercial, industrial, institutional, recreational and multi-family residential development that achieve the water quality and habitat protection objectives of the policies for the Buffer set forth in Section 27.01.09.01.B of the Critical Area Criteria.

II BACKGROUND

Section 27.01.09.01.C(8) of the Critical Area Criteria permits local jurisdictions to request an exemption of certain portions of the Critical Area from the Buffer requirements where it can be sufficiently demonstrated that the existing pattern of residential, industrial, commercial, and recreational development in the Critical Area prevent the Buffer from fulfilling the functions set forth in the Criteria.

III IMPLEMENTATION

A. General Policy

1. The following provisions are intended to accommodate limited use of shoreline areas in certain situations while protecting water quality and wildlife habitat to the greatest extent possible.
2. Alternative provisions regulating development and redevelopment in Buffer Exemption Areas may be adopted by local governments if the provisions are approved by the Critical Area Commission as an amendment to the jurisdiction's Critical Area Program.

B. Applicability

1. This policy applies to new commercial, industrial, institutional, recreational, and multi-family residential development or redevelopment within 100 feet of tidal waters, tidal wetlands, and tributary streams.

2. The portions of the Critical Area to be considered Buffer Exemptions Areas are those “where it can be sufficiently demonstrated that the existing pattern of residential, commercial, or recreational development in the Critical Area prevents the Buffer from fulfilling the functions” set out in COMAR 27.01.09 for water quality protection and wildlife habitat. Designation of these areas as Buffer Exemption Areas must be approved by the Critical Area Commission.
3. This policy only applies to lots of record at the time of original program approval.

C. Standards

1. New development or redevelopment activities, including structures, roads, parking areas and other impervious surfaces or septic systems will not be permitted in the Buffer unless the applicant can demonstrate that there is no feasible alternative, and the local jurisdiction finds that efforts have been made to minimize Buffer impacts based on the following guidelines:
 - a. Development and redevelopment activities shall be located as far as possible from mean high tide, the landward edge of tidal wetlands, or the edge of tributary streams.
 - b. Variances to other local setback requirements shall be considered before additional intrusion into the Buffer.
 - c. Convenience or expense shall not be factors considered when evaluating the extent of allowable impacts to the Buffer.
2. New development, including accessory structures, shall minimize the extent of intrusion into the Buffer. New development shall not be located closer to the water (or edge of tidal wetlands) than the local setback for the zoning district or 50 feet, whichever is greater. Structures on adjacent properties shall not be used to determine the setback line. The 50 foot setback shall be maintained for all subsequent development or redevelopment of the property.
3. Redevelopment, including accessory structures, shall minimize the extent of intrusion into the Buffer. Redevelopment shall not be located closer to the water (or edge of tidal wetlands) than the local setback for the zoning district or 25 feet, whichever is greater. Structures on adjacent properties shall not be used to determine the setback line. Existing structures located within the setback may remain or a new structure may be constructed on the footprint of an existing structure or impervious surface. Opportunities to establish a 25 foot setback should be maximized. See Figures 1 and 2.

2. The portions of the Critical Area to be considered Buffer Exemptions Areas are those “where it can be sufficiently demonstrated that the existing pattern of residential, commercial, or recreational development in the Critical Area prevents the Buffer from fulfilling the functions” set out in COMAR 27.01.09 for water quality protection and wildlife habitat. Designation of these areas as Buffer Exemption Areas must be approved by the Critical Area Commission.
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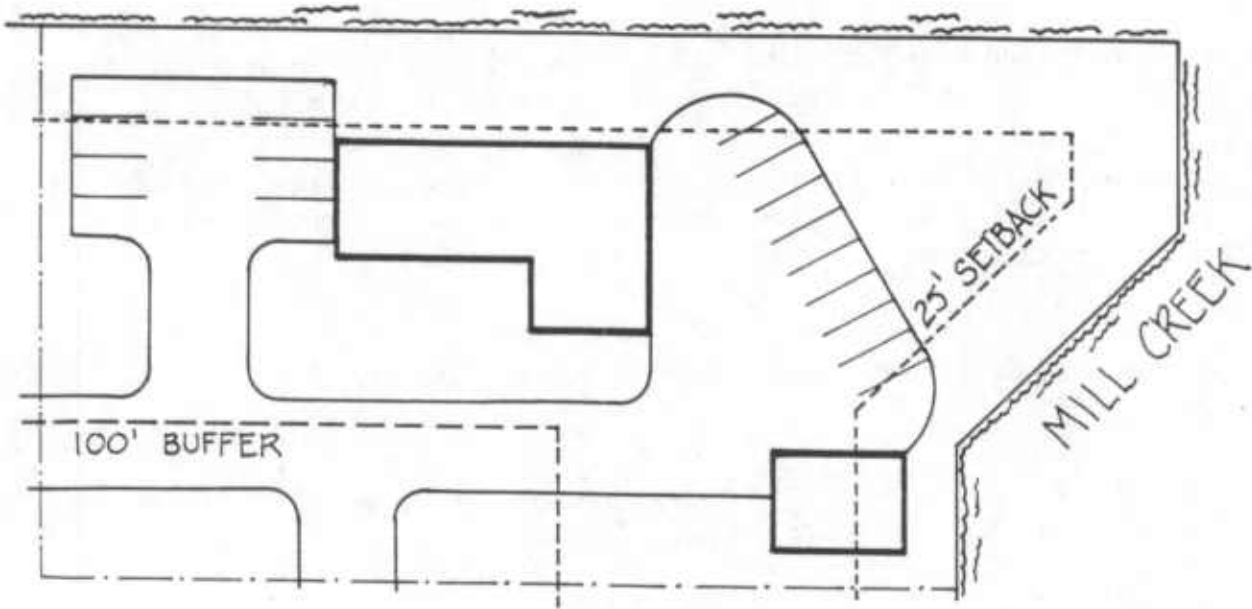


Figure 1 Marina Site - Existing Conditions

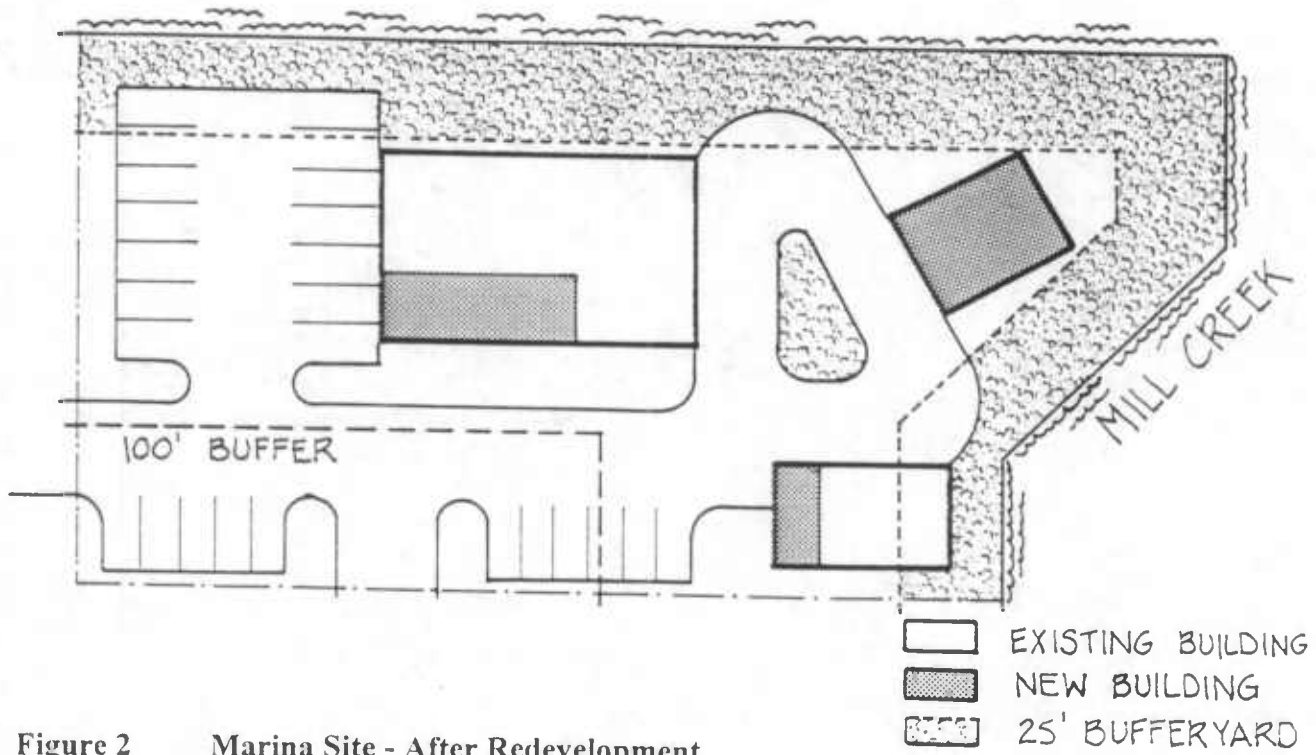


Figure 2 Marina Site - After Redevelopment

4. Development and redevelopment may not impact any HPAs other than the Buffer, including nontidal wetlands, other State or federal permits notwithstanding.
5. No natural vegetation may be removed in the Buffer except that required by the proposed construction. The applicant will be required to maintain any other existing natural vegetation in the Buffer.
6. BEA designation shall not be used to facilitate the filling of tidal wetlands that are contiguous to the Buffer or to create additional buildable land for new development or redevelopment.
7. Any development or redevelopment in the Buffer Exemption Area requires mitigation, in the form of plantings, offsets, or fees-in-lieu.

D. Mitigation

1. The following mitigation measure shall be implemented for all development and redevelopment projects:
 - a. A forested or landscaped bufferyard, 25 feet wide, shall be established on the project site between the development and the water. This bufferyard shall be densely planted with trees and shrubs in accordance with Table 1. See Figure 3.

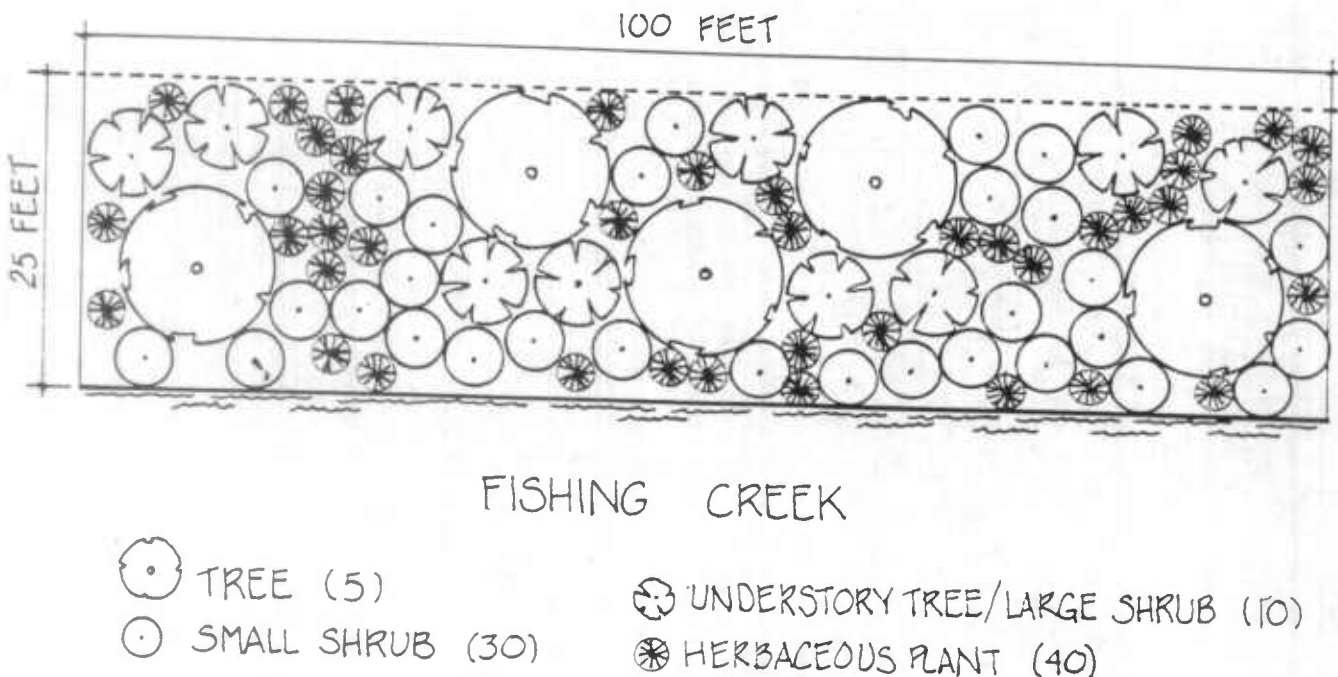


Figure 3 Buffer Planting Plan

4. Development and redevelopment may not impact any HPAs other than the Buffer, including nontidal wetlands, other State or federal permits notwithstanding.
5. No natural vegetation may be removed in the Buffer except that required by the proposed construction. The applicant will be required to maintain any other existing natural vegetation in the Buffer.
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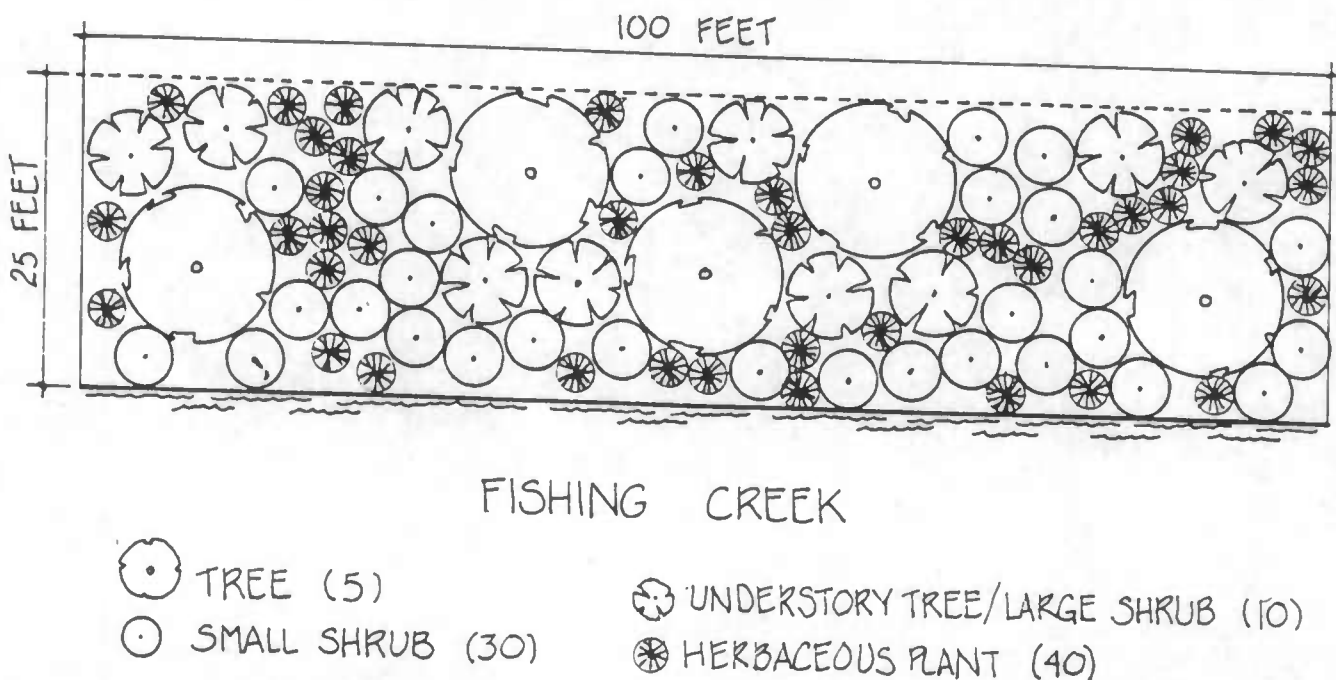


Figure 3 Buffer Planting Plan

- b. On redevelopment sites, if existing structures or those rebuilt on an existing footprint limit the area available for planting, then appropriate modifications to the width of the planted bufferyard may be made on a case by case basis.

**Table 1
Required Bufferyard Planting**

Area	Quantity and Stocking	Suggested Species
For every 100 linear feet of bufferyard	5 Trees	White or Red Oak, Pin Oak, Willow Oak, Red Maple, American Holly, Eastern Red Cedar
	and	
	10 Understory Trees/Large Shrubs,	Dogwood, Mountain Laurel, Bayberry, Shadbush, Winterberry
	and	
	30 Small Shrubs	Pepperbush, Chokeberry, Strawberry Bush, Sweetspire
	and	
	40 Herbaceous Plants, Grasses, Etc.	Wild Columbine, Butterflyweed, Common Milkweed, Asters

2. In addition to establishing a 25 foot bufferyard on site as described above, one of the following mitigation measures shall be implemented based on the following order of preference:
- a. Natural forest vegetation of an area twice the extent of the footprint of the development activity within the 100-foot Buffer shall be planted on site in the Buffer or at another location, preferably on-site, as may be determined by the local jurisdiction.
 - b. Applicants who cannot fully comply with the planting requirement in “a” above, may use offsets to meet the mitigation requirement. Offsets may include the removal of an equivalent area of existing impervious surfaces in the Buffer, the construction of Best Management Practices for stormwater, wetland creation or restoration, or other measures that improve water quality or habitat.
 - c. Applicants who cannot comply with either the planting or offset requirements in a or b above, are required to pay into a fee-in-lieu program administered by the

local jurisdiction. A jurisdiction shall establish rates that will generate adequate funds to carry out planting or offset programs and that provide a sufficient deterrent to location in the Buffer. Any fees-in-lieu collected under these provisions shall be placed in an account that will assure their use only for projects within the Critical Area for the benefit of wildlife habitat and water quality improvement. The status of these funds must be reported in the jurisdiction's quarterly reports.

- d. Alternative provisions for meeting the mitigation requirements may be proposed by a local jurisdiction and approved by the Critical Area Commission.
3. Any required mitigation/offset areas must be protected from future development through an easement, development agreement, plat notes or other instrument and recorded among the land records of the jurisdiction.

E. Notification Requirements

1. Within Buffer Exemption Areas, all new commercial, industrial, institutional, recreational, and multi-family residential development or redevelopment projects shall be submitted to the Critical Area Commission in accordance with COMAR 27.03.01.03. Mitigation plans shall be included as part of the project submission.
2. The local jurisdiction must make written findings documenting that all the Criteria in this section are met including that the disturbance to the Buffer is the least intrusion necessary. These findings must be available to the Commission upon request.
3. The reporting of development activity carried out under this provision must be included in the jurisdiction's quarterly reports.

F. Requirements for Mapping New BEAs

1. Only grandfathered lots are eligible for mapping as BEAs by a local jurisdiction.
2. For each BEA, the lots that comprise the BEA shall contain a Buffer which is, at the time of the proposal, significantly impacted by development activities that existed at the time of program approval and that prevent the Buffer from fulfilling its functions. Developed parcels or lots shall contain a Buffer intrusion, at the time of proposal, caused by the principal structures (excluding utilities or septic systems). Undeveloped or vacant parcels or lots (i.e., infill) may be designated as a BEA if development within the Buffer can not be avoided based on the size of the parcel or lot, area of the parcel or lot within the Buffer, or the surrounding pattern of development.

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2. The local jurisdiction must make written findings documenting that all the Criteria in this section are met including that the disturbance to the Buffer is the least intrusion necessary. These findings must be available to the Commission upon request.

3. The reporting of development activity carried out under this provision must be included in the jurisdiction's quarterly reports.

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3. If only part of a parcel or lot meets the criteria for designation as a BEA then only those portions of a parcel or lot shall be designated as a BEA. The portion of the parcel designated as a BEA will be subject to the BEA development restrictions. Portions of the property that are not designated as a BEA shall comply fully with the 100-foot Buffer restrictions.
4. Any proposal by a jurisdiction for designation of an area as a BEA shall include, at a minimum, the jurisdiction's written findings and supporting reasons which demonstrate the degree to which the proposed BEA does not perform each of the following Buffer functions (a) through (e):
 - a. Provide for the removal or reduction of sediments, nutrients, and potentially harmful or toxic substances in runoff entering the Bay and its tributaries;
 - b. Minimize the adverse effects of human activities on wetlands, shorelines, stream banks, and aquatic resources;
 - c. Maintain an area of transitional habitat between aquatic and upland communities;
 - d. Maintain the natural environment of streams; and
 - e. Protect riparian wildlife habitat.

IV DEFINITIONS

For the purpose of implementing this policy, the following words have the following meanings (In the case of conflicts with other definitions, the stricter provisions shall apply.):

Accessory Structure means a structure that is detached from the principal structure, located on the same lot as and clearly incidental and subordinate to the principal structure; or if there is no principal structure on the lot, a structure that is customarily incidental and subordinate to a principal structure.

Buffer Exemption Area means an area officially mapped by the local jurisdiction and approved by the Critical Area Commission as a Buffer Exemption Area, where it has been sufficiently demonstrated that the existing pattern of residential, industrial, commercial, institutional or recreational development in the Critical Area prevents the Buffer from fulfilling its intended functions for water quality protection and wildlife habitat conservation.

Bufferyard means an area, at least 25 feet wide, located between development activity

and the water (or edge of wetlands or streams), planted with vegetation consisting of native species and other appropriate plantings. This area shall be maintained primarily for the purposes of wildlife habitat and water quality and shall not be maintained in a manner that conflicts with these purposes such as by mowing or the application of herbicides.

Grandfathered Parcel/Lot means a parcel of land or lot that was subdivided into recorded, legally buildable lots where the subdivision received final approval before December 1, 1985.

Development Activity means the construction or substantial alteration of residential, commercial, industrial, institutional, recreational or transportation facilities or structures. Development activities include, among other things, structures, roads, parking areas, and other impervious surfaces, mining and related facilities, clearing, grading and septic systems. For purposes of implementing this policy, development activity does not include subdivision.

Natural Forest Vegetation means vegetation consisting of canopy trees, understory trees, shrubs, and herbaceous plants that are typically found in riparian areas in Maryland. Areas of natural forest vegetation planted to meet the mitigation requirements in this policy shall be designed to mimic the structure and species composition of natural forests.

New Development means a development activity that takes place on a property with pre-development imperviousness less than 15 percent as of December 1, 1985.

Principal Structure means, for the purpose of establishing setbacks, the primary or predominant structure on any lot or parcel. For residential parcels or lots, the principal structure is the primary dwelling, excluding utilities and the septic system.

Redevelopment means a development activity that takes place on a property with pre-development imperviousness greater than 15 percent as of December 1, 1985.

and the water (or edge of wetlands or streams), planted with vegetation consisting of native species and other appropriate plantings. This area shall be maintained primarily for the purposes of wildlife habitat and water quality and shall not be maintained in a manner that conflicts with these purposes such as by mowing or the application of herbicides.

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Principal Structure means, for the purpose of establishing setbacks, the primary or predominant structure on any lot or parcel. For residential parcels or lots, the principal structure is the primary dwelling, excluding utilities and the septic system.

Redevelopment means a development activity that takes place on a property with pre-development imperviousness greater than 15 percent as of December 1, 1985.

RESIDENTIAL BUFFER EXEMPTION AREA (BEA) POLICY

Final

April 5, 2000

I PURPOSE

The purpose of this policy is to guide local jurisdictions in effectively implementing Buffer Exemption Area provisions for single family detached residential development that achieve the water quality and habitat protection objectives of the policies for the Buffer set forth in Section 27.01.09.01.B of the Critical Area Criteria.

II BACKGROUND

Section 27.01.09.01.C(8) of the Critical Area Criteria permits local jurisdictions to request an exemption of certain portions of the Critical Area from the Buffer requirements where it can be sufficiently demonstrated that the existing pattern of residential, industrial, commercial, or recreational development in the Critical Area prevent the Buffer from fulfilling the functions set forth in the Criteria.

III IMPLEMENTATION

A. General Policy

1. The following provisions are intended to accommodate limited use of shoreline areas in certain situations while protecting water quality and wildlife habitat to the *greatest extent* possible.
2. Alternative provisions regulating development and redevelopment in Buffer Exemption Areas may be adopted by local governments if the provisions are approved by the Critical Area Commission as an amendment to the jurisdiction's Critical Area Program.

B. Applicability

1. This policy applies to new development or redevelopment on single family detached residential properties.

2. The portions of the Critical Area to be considered Buffer Exemptions Areas are those “where it can be sufficiently demonstrated that the existing pattern of residential, commercial, or recreational development in the Critical Area prevents the Buffer from fulfilling the functions” set out in COMAR 27.01.09 for water quality protection and wildlife habitat. Designation of these areas as Buffer Exemption Areas must be approved by the Critical Area Commission.
3. This policy only applies to lots of record at the time of original program approval.

C. Standards

1. New development or redevelopment activities, including structures, roads, parking areas and other impervious surfaces or septic systems will not be permitted in the Buffer unless the applicant can demonstrate that there is no feasible alternative.
2. New development or redevelopment shall minimize the shoreward extent of intrusion into the Buffer. New development and redevelopment shall not be located closer to the water (or the edge of tidal wetlands) than principal structures on adjacent properties or the local setback for the zoning district, whichever is greater. In no case shall new development or redevelopment be located less than 25 feet from the water (or the edge of tidal wetlands).
3. Existing principal or accessory structures in the Buffer may be replaced in the same location. Any increase in impervious area within the Buffer shall comply fully with the requirements of this policy.
4. New accessory structures may be permitted in the Buffer in accordance with the following setback requirements:
 - a. New accessory structures may be located closer to the water or edge of tidal wetlands than the dwelling only if there are no other locations for the accessory structures.
 - b. The area of the accessory structures within the Buffer shall be minimized and the cumulative total area of all new and existing accessory structures on the property shall not exceed 500 square feet within 50 feet of the water and 1000 square feet total. See Figure 1.
 - c. In no case shall new accessory structures be located less than 25 feet from the water (or edge of tidal wetlands).

2. The portions of the Critical Area to be considered Buffer Exemptions Areas are those “where it can be sufficiently demonstrated that the existing pattern of residential, commercial, or recreational development in the Critical Area prevents the Buffer from fulfilling the functions” set out in COMAR 27.01.09 for water quality protection and wildlife habitat. Designation of these areas as Buffer Exemption Areas must be approved by the Critical Area Commission.
3. This policy only applies to lots of record at the time of original program approval.

C. Standards

1. New development or redevelopment activities, including structures, roads, parking areas and other impervious surfaces or septic systems will not be permitted in the Buffer unless the applicant can demonstrate that there is no feasible alternative, and the local jurisdiction finds that efforts have been made to minimize Buffer impacts based on the following guidelines:
 - a. Development and redevelopment activities shall be located as far as possible from mean high tide, the landward edge of tidal wetlands, or the edge of tributary streams.
 - b. Variances to other local setback requirements shall be considered before additional intrusion into the Buffer.
 - c. Convenience or expense shall not be factors considered when evaluating the extent of allowable impacts to the Buffer.
2. New development, including accessory structures, shall minimize the extent of intrusion into the Buffer. New development shall not be located closer to the water (or edge of tidal wetlands) than the local setback for the zoning district or 50 feet, whichever is greater. Structures on adjacent properties shall not be used to determine the setback line. The 50 foot setback shall be maintained for all subsequent development or redevelopment of the property.
3. Redevelopment, including accessory structures, shall minimize the extent of intrusion into the Buffer. Redevelopment shall not be located closer to the water (or edge of tidal wetlands) than the local setback for the zoning district or 25 feet, whichever is greater. Structures on adjacent properties shall not be used to determine the setback line. Existing structures located within the setback may remain or a new structure may be constructed on the footprint of an existing structure or impervious surface. Opportunities to establish a 25 foot setback should be maximized. See Figures 1 and 2.

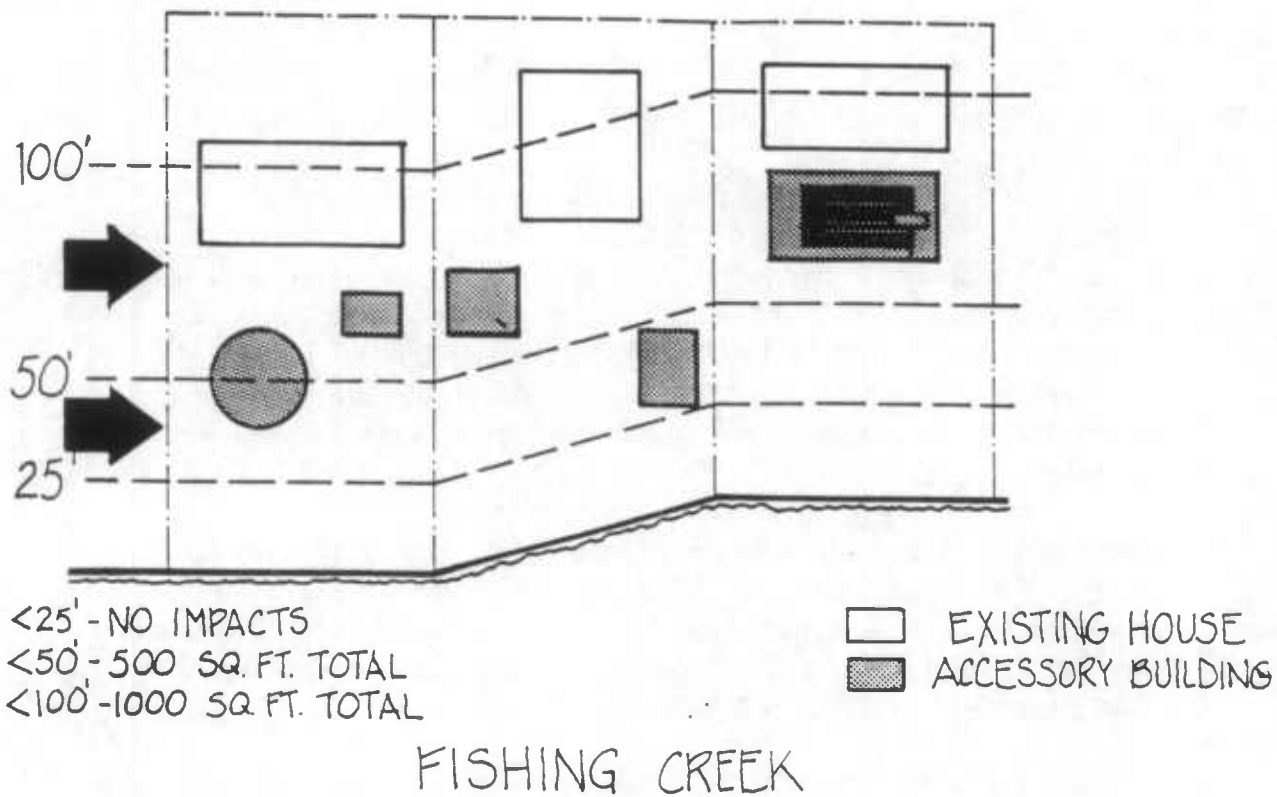


Figure 1 Allowable Cumulative Impacts of Accessory Structures

5. Variances to local setback requirements should be considered before additional intrusion into the Buffer.
6. Development may not impact any HPAs other than the Buffer, including nontidal wetlands, other State or federal permits notwithstanding.
7. No natural vegetation may be removed in the Buffer except that required by the proposed construction. The applicant will be required to maintain any other existing natural vegetation in the Buffer.
8. BEA designation shall not be used to facilitate the filling of tidal wetlands that are contiguous to the Buffer to create additional buildable land for new development or redevelopment.
9. Any development in the Buffer Exempt Area requires mitigation, in the form of plantings, offsets, or fees-in-lieu.

D. Mitigation

1. The following mitigation measures shall be implemented in the following order of preference:
 - a. Natural vegetation of an area twice the extent of the footprint of the development activity within the 100-foot Buffer shall be planted on site in the Buffer or other location as may be determined by the local jurisdiction. If it is not possible to carry out offsets or other mitigation within the Critical Area, any plantings or other habitat/water quality improvements should occur within the affected watershed.
 - b. Applicants who cannot comply with the planting requirement may use offsets to meet the mitigation requirement. Offsets may include the removal of an equivalent area of existing impervious surfaces in the Buffer, the construction of Best Management Practices for stormwater, wetland creation or restoration, or other measures that improve water quality or habitat.
 - c. Applicants who cannot comply with either the planting or offset requirements in a or b above, are required to pay into a fee-in-lieu program administered by the local jurisdiction. A jurisdiction shall establish rates that will generate adequate funds to carry out planting or offset programs. Any fees-in-lieu collected under these provisions shall be placed in an account that will assure their use only for projects within the Critical Area for the benefit of wildlife habitat and water quality improvement. The status of these funds must be reported in the jurisdiction's quarterly reports.
 - d. Alternative provisions for meeting the mitigation requirements may be proposed by a local jurisdiction and approved by the Critical Area Commission.
2. Any required reforestation/mitigation/offset areas must be designated under a development agreement or other instrument and recorded among the land records of the jurisdiction.

E. Notification Requirements

1. The local jurisdiction must make written findings documenting that all the Criteria in this section are met including that the disturbance to the Buffer is the least intrusion necessary. These findings must be available to the Commission upon request.
2. The reporting of development activity carried out under this provision must be included in the jurisdiction's quarterly reports.

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F. Requirements for Mapping New BEAs

1. Only grandfathered lots are eligible for mapping as a BEA by a local jurisdiction.
2. For each BEA, the lots that comprise the BEA shall contain a Buffer which is, at the time of the proposal, significantly impacted by development activities that existed at the time of program adoption and that prevent the Buffer from fulfilling its functions. Developed parcels or lots shall contain a Buffer intrusion, at the time of proposal, caused by the principal structures (excluding utilities or septic systems). Undeveloped or vacant residential parcels or lots (i.e., infill) may be designated as a BEA if development within the Buffer cannot be avoided based on the size of the parcel or lot, area of the parcel or lot within the Buffer, or the surrounding pattern of development.
3. Any proposal by a jurisdiction for designation of an area as a BEA shall include, at a minimum, the jurisdiction's written findings of and supporting reasons which demonstrate the degree to which the proposed BEA does not perform each of the following Buffer functions (a) through (e):
 - a. Provide for the removal or reduction of sediments, nutrients, and potentially harmful or toxic substances in runoff entering the Bay and its tributaries;
 - b. Minimize the adverse effects of human activities on wetlands, shorelines, stream banks, and aquatic resources;
 - c. Maintain an area of transitional habitat between aquatic and upland communities;
 - d. Maintain the natural environment of streams; and
 - e. Protect riparian wildlife habitat.

IV DEFINITIONS

For the purpose of implementing this policy, the following words have the following meanings (In the case of conflicts with other definitions, the stricter provisions shall apply.):

Accessory Structure means a structure that is detached from the principal structure, located on the same lot as and clearly incidental and subordinate to the principal structure; or if there is no principal structure on the lot, a structure that is customarily incidental and subordinate to a principal structure.

Buffer Exemption Area means an area officially mapped by the local jurisdiction and approved by the Critical Area Commission as a Buffer Exemption Area, where it has been sufficiently demonstrated that the existing pattern of residential, industrial, commercial, institutional or recreational development in the Critical Area prevents the Buffer from fulfilling its intended functions for water quality protection and wildlife habitat conservation.

Grandfathered Parcel/Lot means a parcel of land or lot that was subdivided into recorded, legally buildable lots where the subdivision received final approval before December 1, 1985.

Development Activity means the construction or substantial alteration of residential, commercial, industrial, institutional, recreational or transportation facilities or structures. Development activities include, among other things, structures, roads, parking areas, and other impervious surfaces, mining and related facilities, clearing, grading and septic systems. For purposes of implementing this policy, development activity does not include subdivision.

Natural Forest Vegetation means vegetation consisting of canopy trees, understory trees, shrubs, and herbaceous plants that are typically found in riparian areas in Maryland. Areas of natural forest vegetation planted to meet the mitigation requirements in this policy shall be designed to mimic the structure and species composition of natural forests.

New Development means a development activity that takes place on a property with pre-development imperviousness less than 15 percent as of December 1, 1985.

Principal Structure means, for the purpose of establishing setbacks, the primary or predominant structure on any lot or parcel. For residential parcels or lots, the principal structure is the primary dwelling, excluding utilities and the septic system.

Redevelopment means a development activity that takes place on a property with pre-development imperviousness greater than 15 percent as of December 1, 1985.

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