

**Critical Area Commission**  
**Department of Housing and Community Development**  
**Crownsville, Maryland**  
**November 5, 2003**

**SUBCOMMITTEES**

**10:00 a.m. – 11:45 p.m. Project Evaluation Subcommittee**

**Members:** *Bourdon, Giese, Faulkner, Setzer, Jackson, McLean, Andrews, Jones, Rice, Mathias, Wilson, Cox*

**Historic St. Mary's City: Dove Bank Access Path  
(St. Mary's County)** **Mary Owens**

**Town of Leonardtown: Waterfront Park  
Concept Approval (St. Mary's County)** **Mary Owens**

**City of Annapolis: Back Creek Nature Park: Conditional  
Approval (Anne Arundel County)** **Dawnn McCleary**

**Maryland Port Administration: Dundalk Marine Terminal  
Shed 6B (Baltimore City)** **Dawnn McCleary**

**Department of Transportation: MOU/General Approval** **LeeAnne Chandler  
Regina Esslinger**

**10:45 a.m. – 11:45 p.m. Program Implementation Subcommittee**

**Members:** *Bailey, Evans, Lawrence, Samorajczyk, Stephens, Blazer, Gilliss, Richards, Dawson*

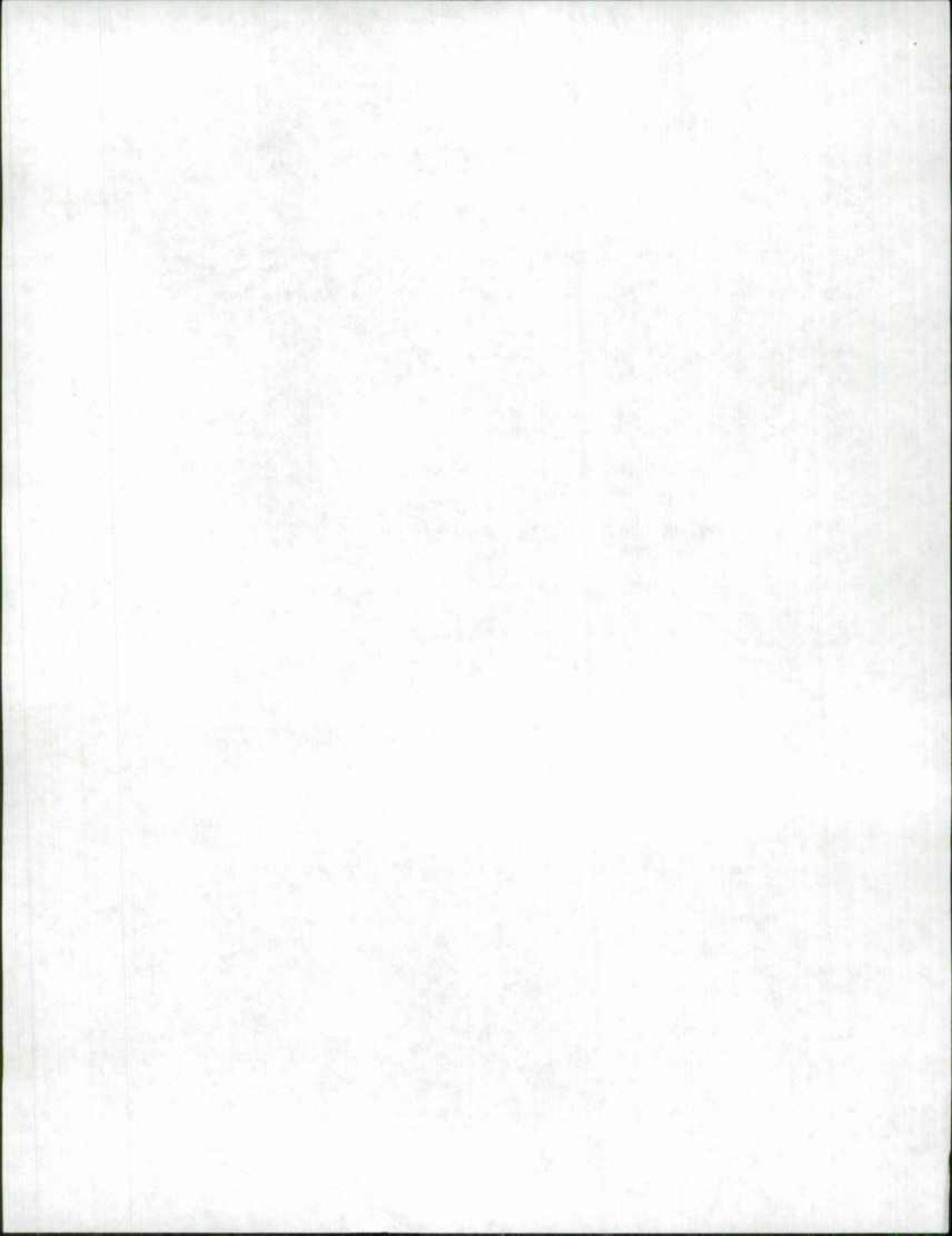
**Worcester County (Chesapeake Bay Critical Area): Revised  
Critical Area Program and Maps** **LeeAnne Chandler**

**Town of Vienna: New Critical Area Maps (Dorchester County)** **Lisa Hoerger**

**Town of Leonardtown: Leonardtown Landing Growth Allocation  
(St. Mary's County)** **Mary Owens**

**11:45 am Panel: Town of Leonardtown: Modified Buffer Area Ordinance  
and Designation (St. Mary's County)** **Mary Owens**

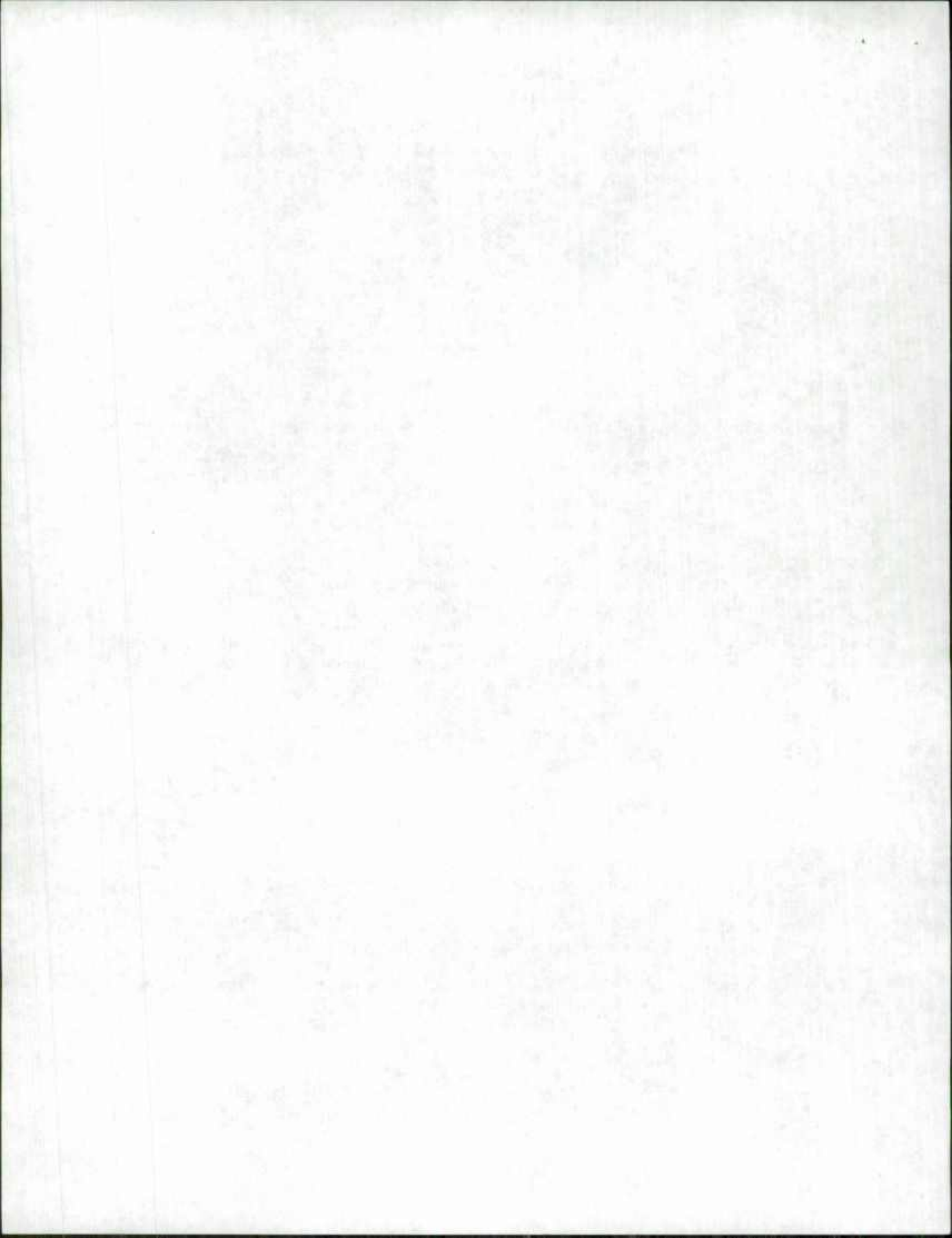
**Members:** *Setzer, McKay, Mayer, Dawson, Bourdon*



**Critical Area Commission**  
**Department of Housing and Community Development**  
**Crownsville, Maryland**  
**November 5, 2003**

**AGENDA**

1:00 p.m. – 1:05 p.m.	Welcome and Remarks	Chairman Martin G. Madden
	Approval of Minutes for October 1, 2003	
<b>PROGRAMS</b>		
1:05 p.m. – 1:15 p.m.	Refinement: Worcester County (Chesapeake Bay Critical Area): Revised Critical Area Program and Maps	LeeAnne Chandler
1:15 p.m. – 1:25 p.m.	Refinement: Town of Vienna: New Critical Area Maps (Dorchester County)	Lisa Hoerger
1:25 p.m. – 1:40 p.m.	VOTE: Town of Leonardtown: Modified Buffer Area Ordinance and Designation (St. Mary's County)	Mary Owens
1:40 p.m. – 1:45 p.m.	Refinement: Town of Leonardtown: Leonardtown Landing Growth Allocation (St. Mary's County)	Mary Owens
<b>PROJECTS</b>		
1:45 p.m. – 1:55 p.m.	VOTE: City of Annapolis: Back Creek Nature Park: Conditional Approval (Anne Arundel County)	Dawnn McCleary
1:55 p.m. – 2:05 p.m.	VOTE: Town of Leonardtown: Waterfront Park Concept Approval (St. Mary's County)	Mary Owens
2:05 p.m. – 2:15 p.m.	VOTE: Maryland Port Administration: Dundalk Marine Terminal: Shed 6B (Baltimore City)	Dawnn McCleary
2:15 p.m. – 2:25 p.m.	VOTE: Historic St. Mary's City: Dove Bank Access Path (St. Mary's County)	Mary Owens



2:25 p.m. – 2:35 p.m.

VOTE: Maryland Department of Transportation:  
MOU/General Approval

LeeAnne Chandler  
Regina Esslinger

2:35 p.m. – 2:45 p.m.

Information: 10% Rule – Revision of Guidance  
Paper

Mary Owens  
LeeAnne Chandler

2:45 p.m. – 2:55 p.m.

**OLD BUSINESS**

Update: Legislative Matters

Chairman  
Martin G. Madden

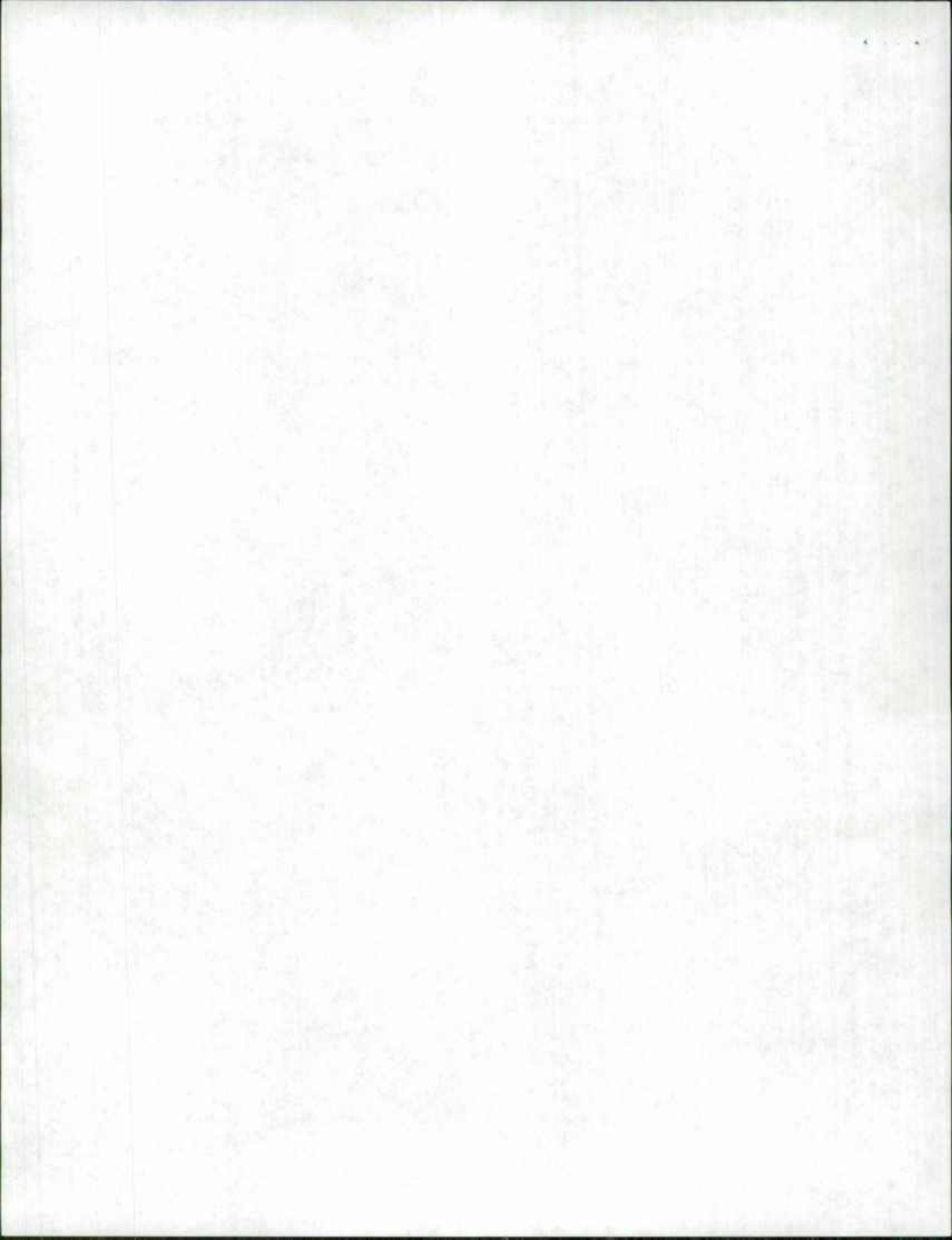
Legal Update

Marianne Mason

2:55 p.m. – 3:00 p.m.

**NEW BUSINESS**

Adjourn





*Maryland Department of Planning*

*Robert L. Ehrlich, Jr.*  
Governor

*Michael S. Steele*  
Lt. Governor

*Audrey E. Scott*  
Secretary

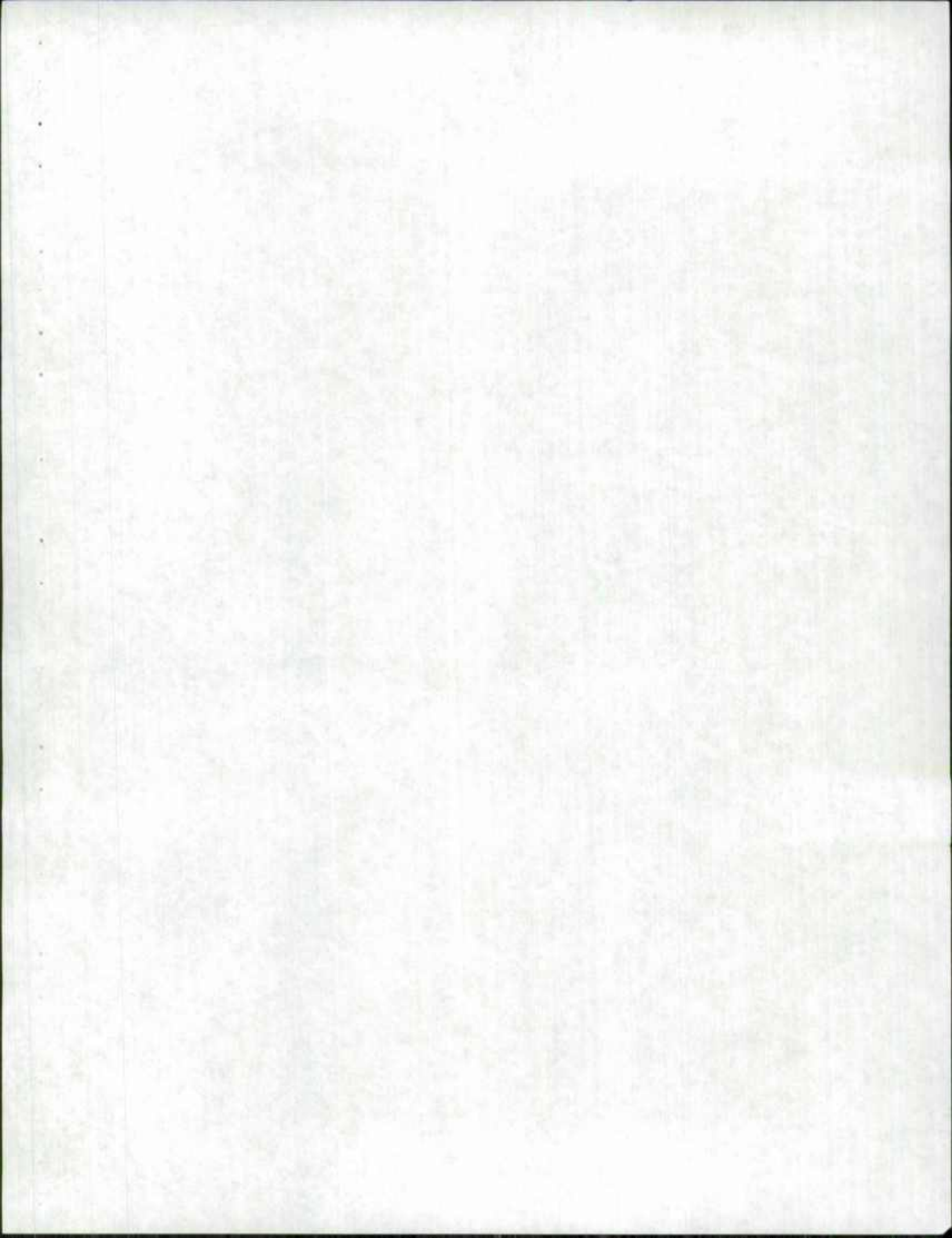
*Florence E. Burian*  
Deputy Secretary

November 5, 2003

TO: Honorable Martin Madden

FROM: Secretary Audrey E. Scott 

This is to advise you that Mike Paone will represent the Maryland Department of Planning at the Critical Areas Commission meeting today, November 5, 2003.





Critical Area Commission  
for the  
Chesapeake and Atlantic Coastal Bays  
100 Community Place  
People's Resource Center  
Department of Housing and Community Development  
Crownsville, Maryland  
October 1, 2003

*Approved  
as amended*

The full Critical Area Commission met at the People's Resource Center Crownsville, Maryland. The meeting was called to order by Chairman Martin G. Madden with the following Members in **Attendance:**

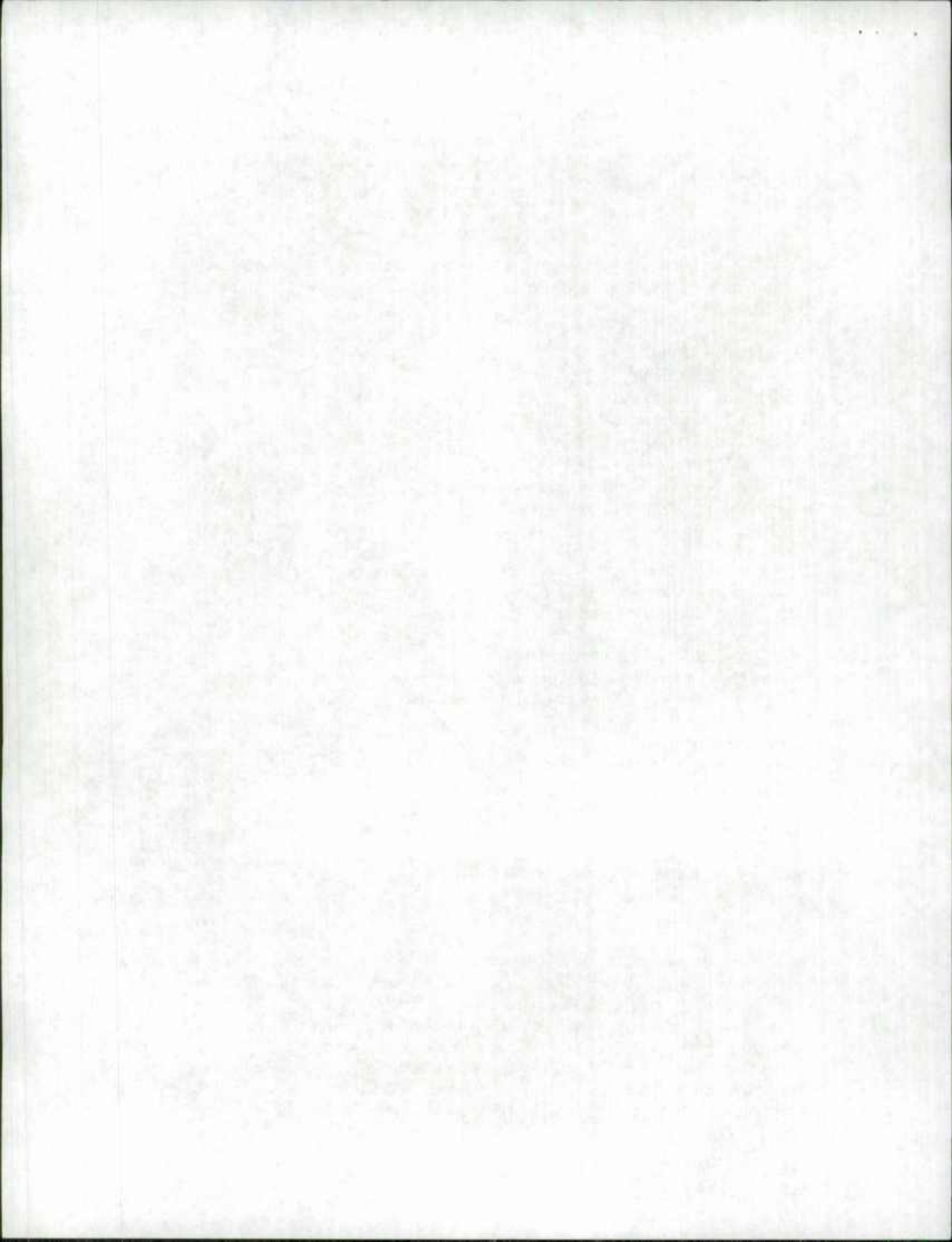
Margo Bailey, Kent County  
Judy Cox, Cecil County  
Dave Bourdon, Calvert County  
Edwin Richards, Caroline County  
Dr. Earl Chambers, Queen Anne's County  
Douglas Stephens, Wicomico County  
Ed Gilliss, Baltimore County  
Joseph Jackson, Worcester County  
James N. Mathias, Jr., Ocean City  
Thomas McKay, St. Mary's County  
Barbara Samorajczyk, Anne Arundel County  
Louise Lawrence, Maryland Department of Agriculture  
Gary Setzer, Maryland Department of the Environment  
James McLean, Maryland Department of Business and Economic Development  
Frank Dawson, Maryland Department of Natural Resources  
Pat Faulkner, Department of Housing and Community Development  
Don Halligan for Meg Andrews, Maryland Department of Transportation

*In  
Attendance*

**Not in Attendance:**

Paul Jones, Talbot County  
William Rice, Somerset County  
Larry Duket, Office of Planning  
Douglas Wilson, Harford County  
Daniel Mayer, Charles County  
Judith Evans, Western Shore Member-at-Large  
Dave Blazer, Worcester County Coastal Bays  
William Giese, Dorchester County

The Chairman recognized Don Halligan who is the representative for the Department of Transportation. Chairman Madden said that the Commission is working with the local jurisdictions as they come forward regarding expediting permitting procedures in the aftermath of Hurricane Isabel. Some counties already have an expedited permitting process in place for reconstruction. The jurisdictions are being asked to document that the work is storm related and to describe what is being done. He has recommended to local jurisdictions that they require property owners to finish any work within one year of the hurricane related damage. Thereafter they should go through the regular local permit process. Gary Setzer stated that MDE has an



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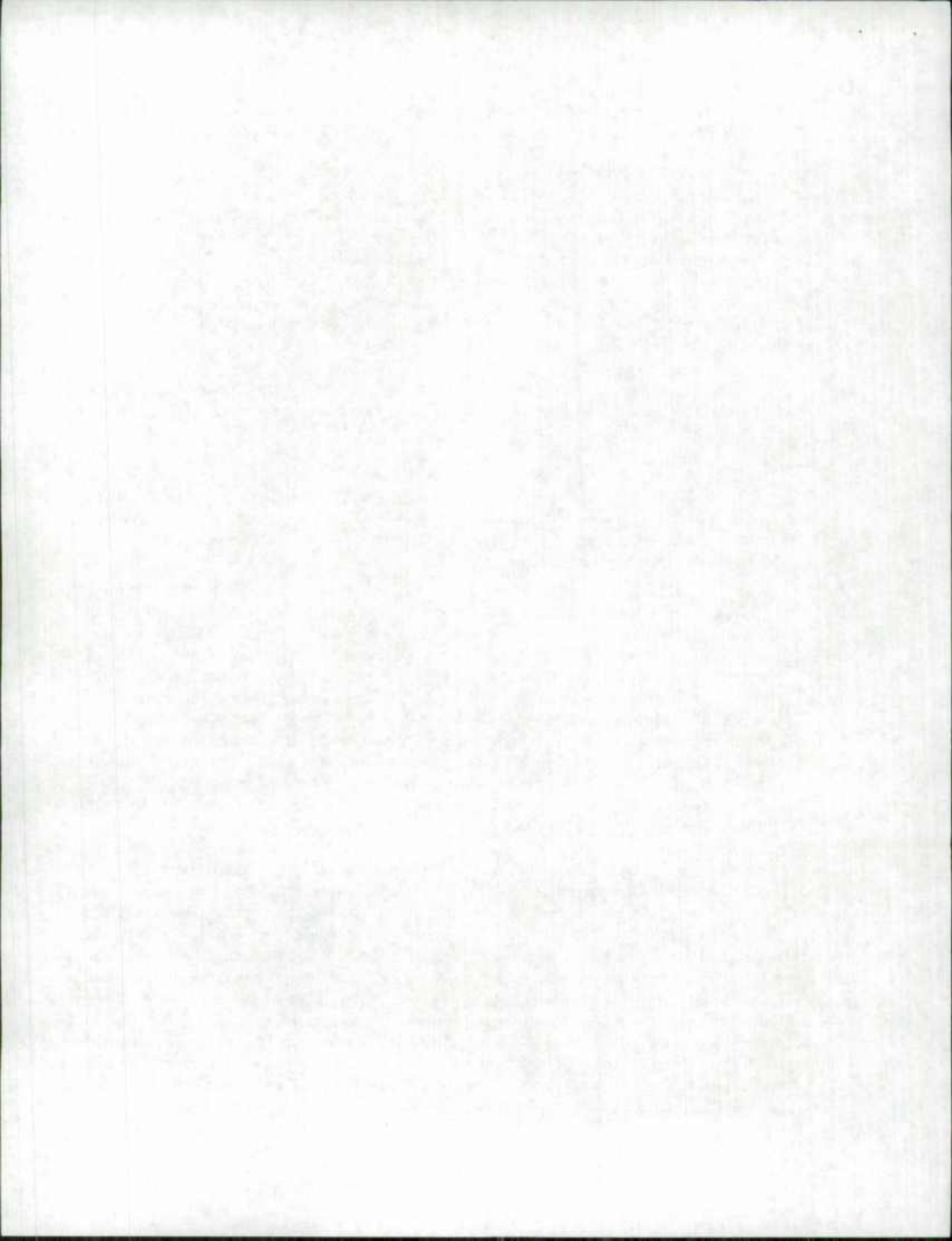
emergency approval process in place for piers and shoreline structures to rebuild. This information can be found on MDE's web page and has been mass mailed to all tidewater communities.

Chairman Madden said that he felt that the Commission workshop held at the Wye Research Center on September 23<sup>rd</sup> was very productive. The Legislative Oversight Committee, representatives of Anne Arundel County's Enforcement Personnel, the Severn Riverkeeper, Commission members Barbara Samorajczyk and Frank Dawson, the Chesapeake Bay Foundation and the Press were in attendance on the DNR's Sandusky tour of the Severn River. The tour was arranged to provide the Oversight Committee a first-hand look at some of the enforcement issues discussed at its previous meeting in July. Chairman Madden stated that this excursion yielded a lot of information.

The Chairman announced that this likely would be Dave Bourdon's last Commission meeting and he thanked him once again for his 11 years of service to the Commission. Dave will be greatly missed.

The Minutes of September 3, 2003 were amended to reflect the attendance in September of: Edwin Richards, Judy Cox and Jennifer Franks for the Department of Housing and Community Development instead of Pat Faulkner. Also correction noted that Barbara Samorajczyk abstained on the vote for the Homeport Farm Growth Allocation in September. The Minutes were approved as amended.

**Talbot County:** Lisa Hoerger presented for Vote a conditional approval request for the replacement of existing cottages at Black Walnut Point in Talbot County. Approximately six acres of the 57.51 acre area are leased to a tenant by the Department of Natural Resources. The structures proposed for removal are in the 100-foot Buffer and the replacement buildings will be set on piers in the 100-foot Buffer; however, the replacement structures will be set back further away from the shoreline and will cause no soil disturbance. A total of three cottages will be replaced in the 100-foot Buffer and four cottages and an office addition are proposed to be located outside the 100-foot Buffer. The total new impervious area will result in a net reduction of 1,082 square feet within the 100-foot Buffer as a result of removing three structures and a portion of the existing garage in the 100-foot Buffer. There is a required planting mitigation at a 3:1 ratio within the 100-foot Buffer. The mitigation for clearing outside the Buffer will be required at a 1:1 ratio. No permits for stormwater or sediment control are needed. There are no rare, threatened, or endangered species. Ms. Hoerger iterated the requisite criteria characteristics of this Conditional Approval request. She said that the new structures will result in a decrease in impervious area, and a greater setback, however, the number of people using the structures will be the same. Dave Bourdon described the Project Subcommittee's findings regarding the consistency of the proposal with the Commission's regulations and **moved to approve the Conditional Approval request for the proposed replacement of the cottages with the following conditions:** 1) The tenant shall provide mitigation at a 3:1 ratio for all disturbances to the 100-foot Buffer and 1:1 mitigation for clearing outside the expanded Buffer. 2) If the tenant fails to provide the proposed mitigation for unforeseen reasons, the Department of Natural Resources agrees to fulfill the mitigation obligation on this site. 3) The final site plans will be reviewed and approved by the Critical Area staff and

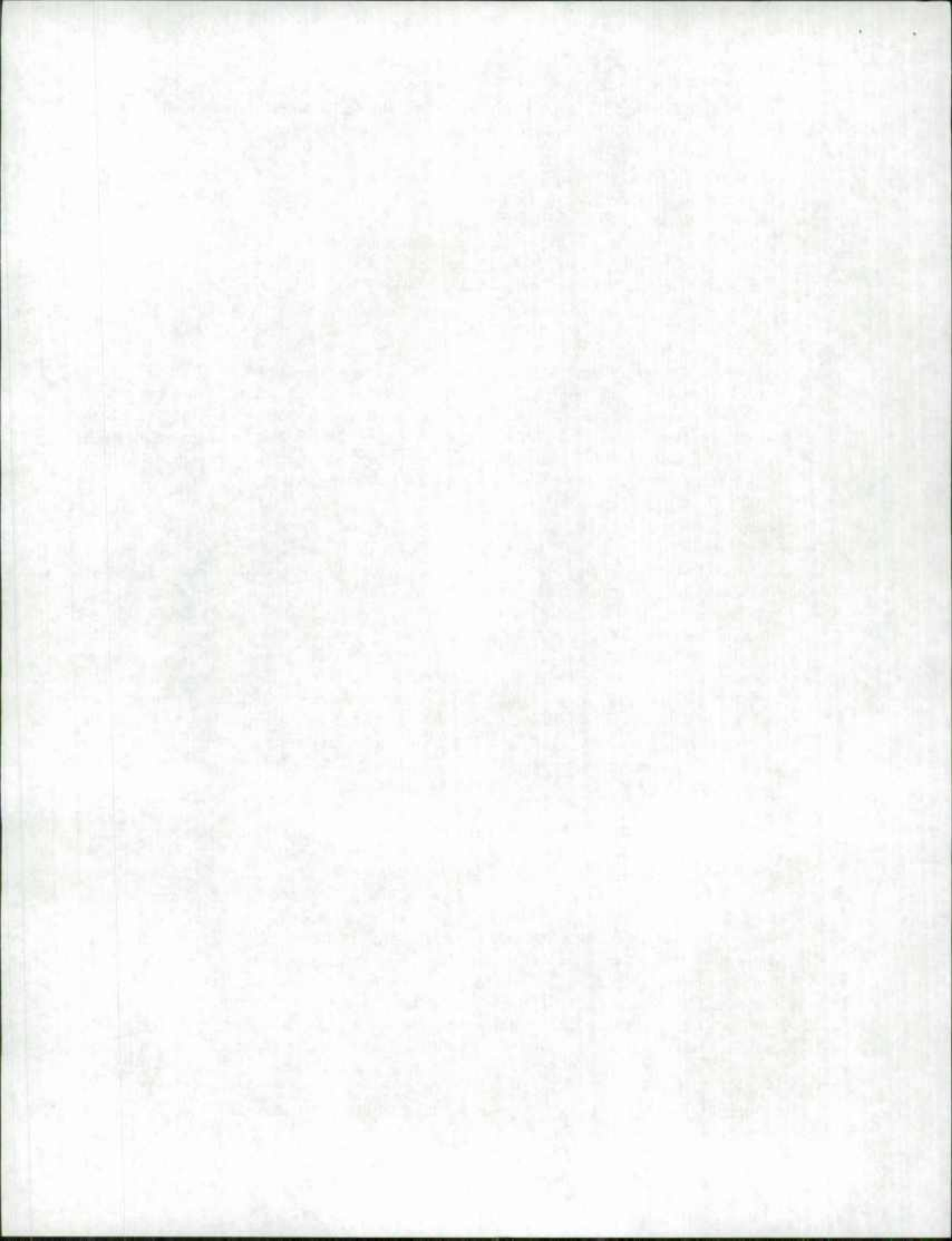


**any substantial changes must be approved by the full Commission. Frank Dawson seconded the motion. The motion carried unanimously.**

**St. Mary's County:** Mary Owens presented for Vote the proposal by St. Mary's College to construct a 355 car parking lot located almost entirely within the Critical Area. The parking lot is proposed to be constructed with a material called "GravelPave" which is partially pervious. The parking lot will support a future Student Services Building. There are no impacts to Habitat Protection Areas. There are no impervious surface limits, but compliance with the 10% Rule for pollutant removal is required. Four infiltration trenches will be constructed as Best Management Practices for stormwater quality. MDE has reviewed the design. Approximately 8,000 square feet of vegetation will be removed. St. Mary's College complies with the planting requirements by replacing all forest cleared at a 1:1 ratio or by providing 15% forest cover. The College owes over 20,000 square feet of forest mitigation for this project, and approximately two acres of mitigation overall for all previously approved projects. **Dave Bourdon moved to approve the St. Mary's College parking lot project subject to the following condition: That a Planting Agreement shall be executed with Commission staff prior to initiating construction on this project. The motion was seconded by Earl Chambers and carried unanimously.**

**Somerset County:** Claudia Jones presented for Vote the proposal by the Somerset County Sanitary District to connect the mainland area of Jane's Island State Park to the Somerset County Sanitary Sewer System with provisions for future service to other residences. The total disturbance in the 100-foot Buffer is 2,450 square feet for sewer installation; the total outside the Buffer in the Critical Area is 18,030 square feet. Additional impervious surface is 2,050 sq. ft. for a pump station. The work is being done by the County on State land and therefore requires approval by the Commission. Although the project involves some disturbance to the Buffer, a conditional approval is not necessary since the disturbance is the result of a utility. **Dave Bourdon moved to approve the project as presented with three conditions: 1) That the area disturbed is restored to predisturbance conditions. 2) That MDE approval is received. 3) That there are no threatened or endangered species that will be disturbed by this project. The motion was seconded by Jim McLean and carried unanimously.**

**Anne Arundel County/City of Annapolis:** Dawnn McCleary presented for Vote, the Conditional Approval for proposed improvements by the State Highway Administration (SHA) to the Weems Creek and College Creek bridges at MD 70/Rowe Boulevard. The project is within the Critical Area with the exception of the drainage improvements and sidewalk that extend west along MD 70 past the US 50/301 interchange. The project area is IDA with a total disturbance of 6.68 acres in the Critical Area. There will be 2.9 acres of disturbance located in the Buffer for the Weems Creek Bridge and 0.74 acres disturbances for the College Creek Bridge. There will be a slight increase in impervious area when both bridges are combined. The total proposed clearing is 1.8 acres. Mitigation will take the form of reforestation and streetseape plantings with a total mitigation for impacts in the Buffer and Critical Area of 4.44 acres. Stormwater will be handled by five bioretention facilities and one pond upgrade. Weems Creek and College Creek are documented anadromous fish spawning areas, therefore no work will take place from February 15<sup>th</sup> – June 15<sup>th</sup>. There are no endangered or threatened species. Ms. McCleary iterated the requisite criteria

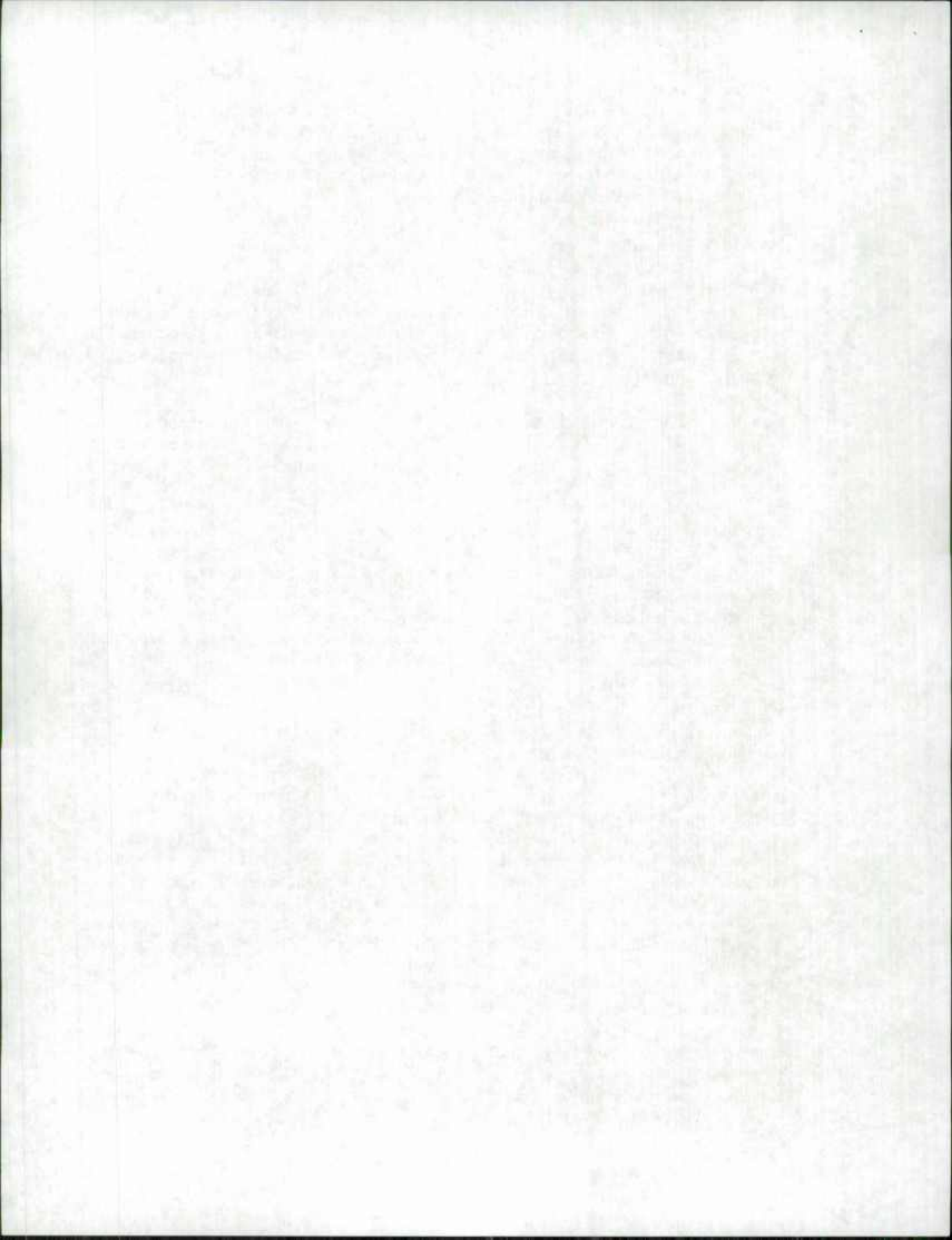


characteristics of the Conditional Approval request. Dave Bourdon described the Project Subcommittee's findings regarding the consistency of the proposal with the Commission's regulations and **moved to approve the SHA proposed project as presented based on the findings as outlined in the staff report to the Commission. The motion was seconded by Earl Chambers and carried unanimously.**

**St. Mary's County:** Wanda Cole presented for Vote the proposal by the Department of Natural Resources to replace and upgrade a playground at the Hoffman's Camping Loop at Point Lookout State Park. This project is not in the 100-foot Buffer. There is no clearing and no BMP's are proposed. There are no threatened or endangered species. There will be approximately 1000 square feet of new impervious surface. **Dave Bourdon moved to approve the DNR project as presented. The motion was seconded by Don Halligan and carried unanimously.**

**Cecil County:** Mary Ann Skilling presented for Vote the Conditional Approval request by the Town of Perryville to install a parking area at the Town owned park for canoe/kayak launching to prevent erosion and to minimize impacts within the Buffer. The parking lot cannot be located outside the Buffer because the existing road which leads to the lot is already in the Buffer. This parcel is RCA. Only one tree will be removed to construct the parking area. Approximately 11,284 square feet of impervious surface will be installed and 2,270 sq. feet is within the Buffer. There are no Habitat Protection Areas affected by this project. Ms. Skilling iterated how this project proposes to meet the requisite criteria characteristics of the Conditional Approval request. Dave Bourdon described the Project Subcommittee's findings regarding the consistency of the proposal with the Commission's regulations and **moved to approve the project proposed for the parking lot as presented. The motion was seconded by Jim McLean and carried unanimously.**

**Calvert County:** Julie LaBranche presented for concurrence with the Chairman's determination of Refinement the request by the Town of Chesapeake Beach to designate an additional portion of the Fishing Creek Landings Marina property as a Buffer Exemption Area (BEA). As part of a program refinement approval by the Commission in 1990, a portion of the property was designated BEA to capture additional highly developed properties within the Town's waterfront area. The property has a split designation of IDA and RCA, with the majority being IDA. A portion of the Buffer requested for BEA designation, between the old dredge disposal cell dike and the existing development, has no impervious areas and may contain nontidal wetlands. The Program Subcommittee recommends not including this area in the BEA. The Town Council of Chesapeake Beach made findings that the Buffer is not performing its functions in support of their approval of the property owner's request for BEA designation at their meeting of August 21, 2003. Only the developed portion of the Fishing Creek Landings Marina property (as outlined and cross hatched on the site plan revised by the Commission Staff, approved by the Subcommittee, and attached to and made a part of these minutes) is recommended by the Subcommittee for designation as a BEA with the following condition: As required by the Town's program for redevelopment within a Buffer Exemption Area and an Intensely Developed Area, the extent of the property shoreward of the redevelopment and all other permeable areas shall be established and maintained in natural vegetation. The applicant, with the support of the Town, has proposed



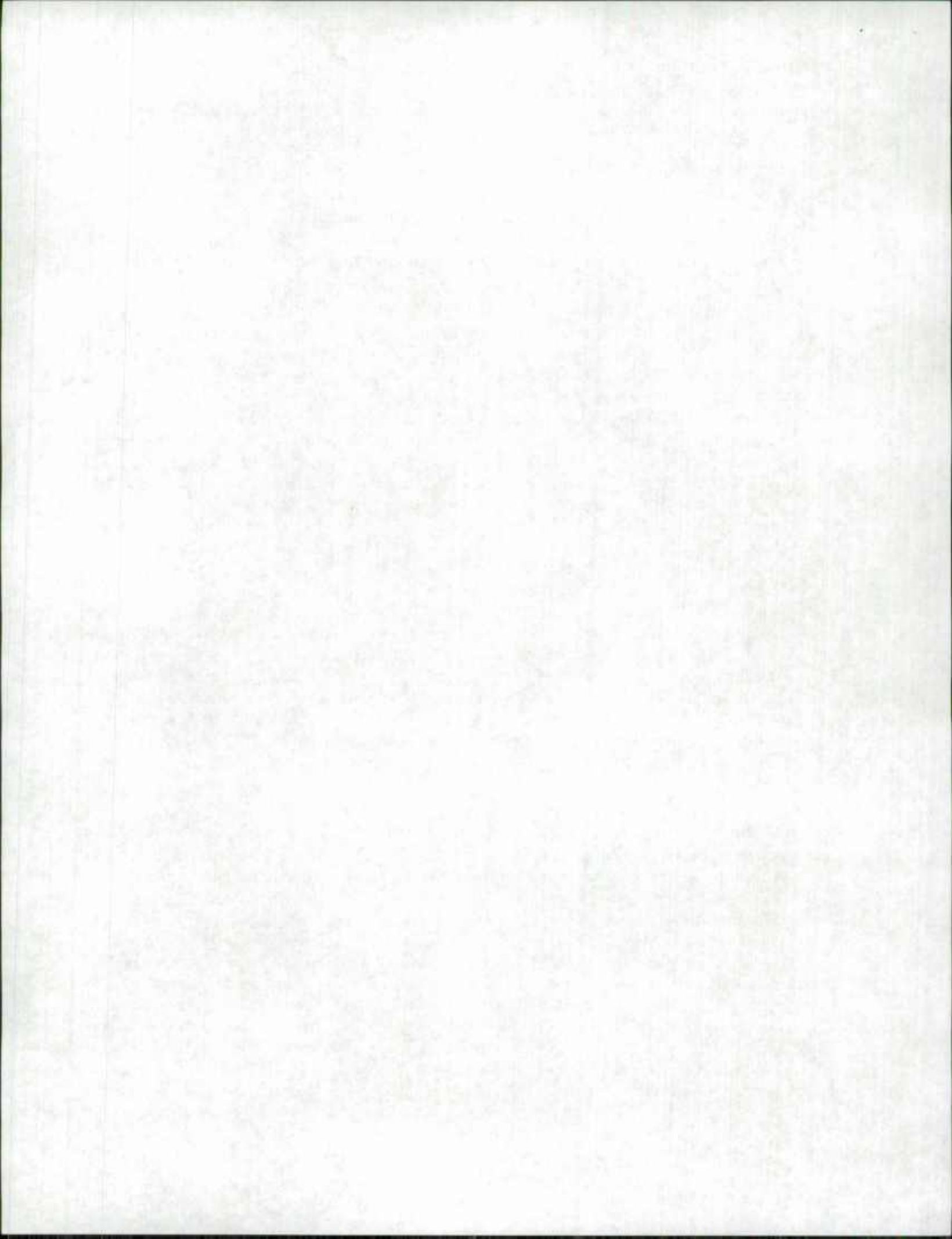


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to prepare a Buffer Management Plan for the entire site, which will include the creation of a vegetated buffer strip between the developed area and the Buffer. The buffer strip should be densely planted with a mix of native trees and shrubs. The Buffer Management *Strip Plan shall* include measures to control the *Phragmites* adjacent to the parking and boat storage area to ensure the success of plantings in these areas. The Buffer Management Plan shall be reviewed and approved by the Commission Staff. **The Commission supported the Chairman's determination of Refinement as revised with modified condition in the staff report (attached to and made a part of these minutes.)**

**Anne Arundel County:** Lisa Hoerger presented for Vote the approval of the Commission's second condition of the original growth allocation approval for Homeport Farm. At the Commission's September meeting, it approved an easement document proposed by Anne Arundel County to satisfy the first condition of the growth allocation approval. This first condition required an easement to be obtained from an adjoining property to ensure that a minimum of 20 acres would remain outside the development envelope on the Homeport Farm property. The development envelope was located in the middle of the property and the remaining RCA lands were split into two areas. The easement has been placed on RCA land to the south, which will ensure that this area is 20 acres. The other RCA area, which consists of 25.15 acres, will be deeded over to Anne Arundel County for use as a County park. The second condition of the growth allocation approval, which is before the Commission now, is that the Deed for the portion of the property to be used as a park be reviewed and approved by the Commission. The Deed limits the development of the parcel to low intensity recreational uses and restricts intensive recreational uses and commercial or industrial uses. The Deed was given to the County in exchange for growth allocation for this project. Margo Bailey moved to approve the (second condition) Deed for Homeport Farm Growth allocation and to remove the phrase from the Deed, "*No Title Examination*". Commission Counsel Marianne Mason, Esquire, stated that the property owner's attorney agreed to remove the phrase, but that the deed satisfies the condition for a growth allocation. She stated that even without the removal of the phrase, the Deed still satisfies the condition. The motion was seconded by Ed Gilliss and carried with 16 in favor. Barbara Samorajczyk abstained.

**Talbot County:** Roby Hurley presented for Concurrence with the Chairman's determination of Refinement, the Annexation of 158.27 acres and 20.1 acres of Growth Allocation to be converted from RCA to LDA, requested for the Strausburg property in St. Michaels. Additionally, the property will be proposed as a subdivision consisting of 10 lots. The site is listed as "Designated Critical Area Growth Allocation Area" and priority Funding Area in Talbot County. There are 100 acres in the Critical Area. Four lots are proposed in the RCA. Growth allocation will allow six additional lots. Seventy-five (75) acres will be placed in a permanent easement. The new area of LDA will not be directly adjacent to existing LDA. A 300-foot setback will not be provided on the new lots. There are no known Habitat Protection Areas on the site other than the Buffer. The Town commissioners approved the growth allocation on September 11, 2003. Margo Bailey moved to support the Chairman's determination of Refinement with three conditions: 1) **Buffer:** Prior to recordation of the subdivision Plat for the Strausburg property, the Town Planning



Commission shall approve a Buffer Management Plan for the property. Implementation of the Plan shall take place prior to issuance of any building permits. 2) **Conservation Easement:** Prior to recordation of the subdivision Plat for the Strausburg property, the Town shall submit to the commission staff, a conservation easement that will ensure that 76 acres adjacent to the subject growth allocation, shall be maintained in uses appropriate to the RCA, as those uses set forth in the Town Ordinance. The easement shall remain in perpetuity and be recorded. 3) **Acreage:** The amount of growth allocation shall be 20.1 acres. The Commission supported the Chairman's determination of Refinement.

## Old Business

The Critical Area Commission's Executive Director, Ren Serey, told the Commission that Talbot County has asked for another extension of time until November 4<sup>th</sup> for the submittal of their program changes. He said that they have been on schedule and Talbot County is expected to vote on their bills October 14<sup>th</sup>. Mr. Serey said that two bills and possibly three are expected to come for vote before the Commission in November. One for Buffer Management Plan, the second the definition of a tree and possibly a third on RCA Uses. Margo Bailey moved to extend the Talbot County request for extension of time until November 4<sup>th</sup>. The motion was seconded by Jim Mathias and carried unanimously.

Chairman Madden said that the different viewpoints and discussion generated from the workshop and the boat excursion have been very helpful and that he would like some feedback from the Commission by the November meeting in order to outline a Bill to submit to the legislature on Guest Houses and increased penalties for violations.

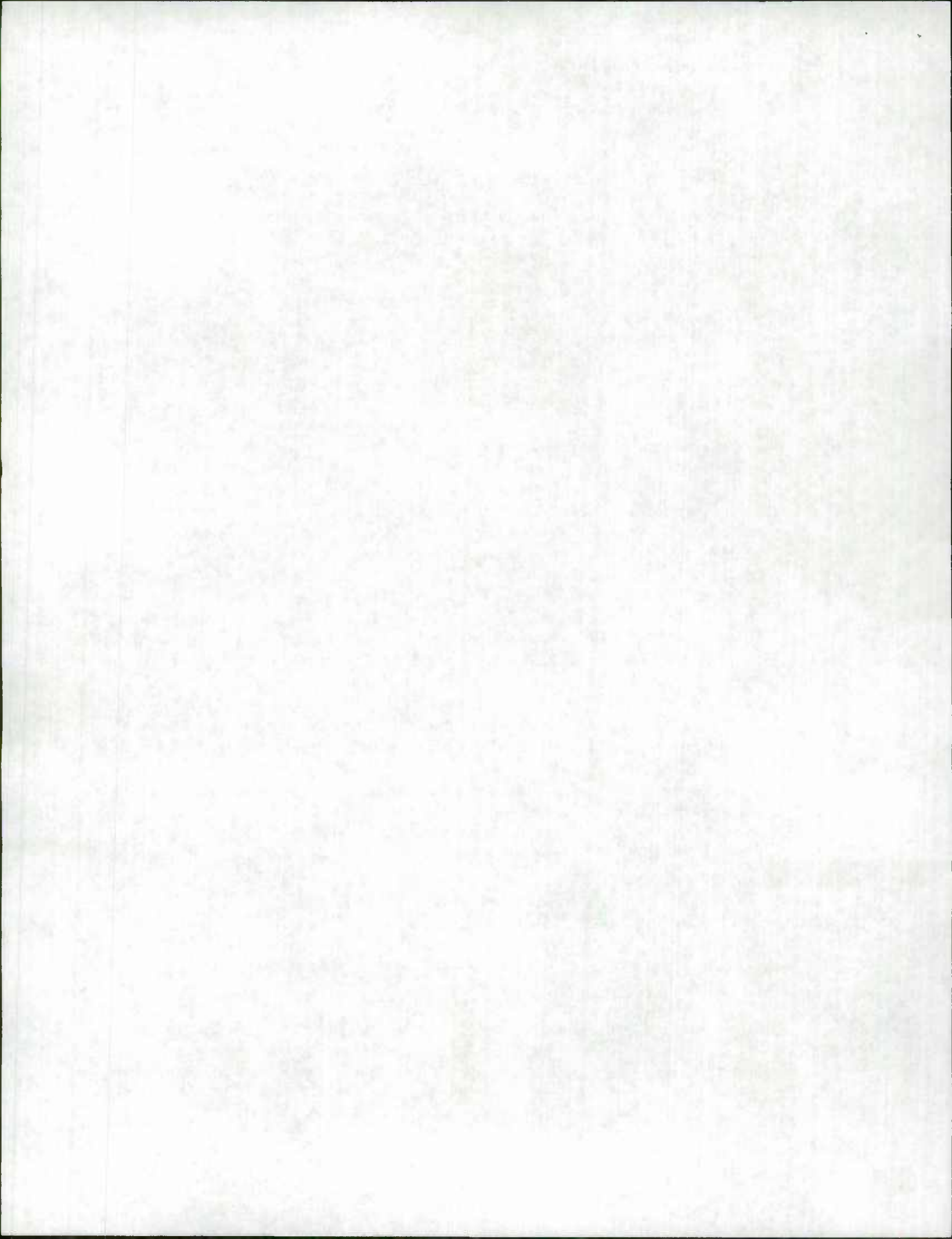
Mr. Serey said that the information presented at the workshop was mostly orientation material for new members in the morning session. In the afternoon session, issues were discussed which may result in proposed legislation on the definition of Guest Houses and the assessment of growth allocation. Commission Counsel commented that the need here is to ensure consistency in the programs. It also appears that minimal enforcement fines are not working, and additional tools are needed.

Barbara Samorajczyk asked about holding the Commission's decision on the Homeport Farms request because the Commission was unaware that there was a tenant occupying one of the cottages on the property. She thinks the Deed is not clear whether this constitutes a residency use that would be restricted by the Deed and that something should be added restricting this use. Marianne Mason said that she does not think that it matters because the restrictions in the Deed are into perpetuity, are subject to the 1-20 in the RCA and the Deed satisfies the Commission's purposes. The Chairman said that her concern is not a compelling reason to hold it since it has already passed through the process.

## Legal Update

Commission Counsel Marianne Mason updated the Commission on legal matters. She said that the briefs are filed in **Wicomico County** in the Lewis case asking for a reconsideration. There has been nothing from the Court yet.

**Harford County:** Oral argument was presented last week in the Old Trails case. The Commission supports the County. The developer appealed to the Circuit Court and attempted to introduce more evidence, which is not permitted at this stage. The Court has given him two weeks to decide if he needs the evidence.



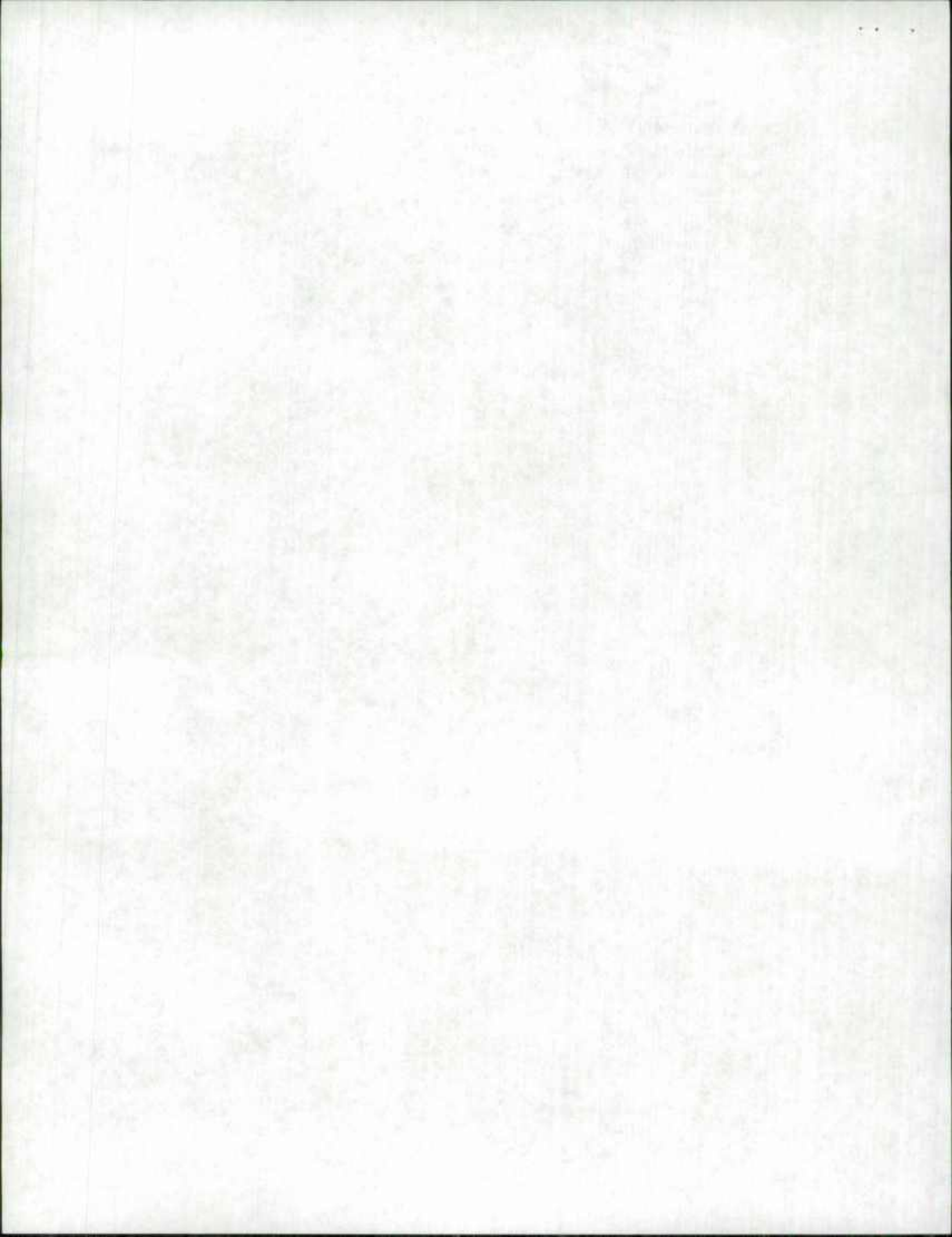
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**Cecil County:** The Board granted a variance for a pool in the Buffer last summer. The 2002 law requires fact finding and should have looked at the 10 acre property as there was room outside the Buffer to situate the pool.

**New Business**

There being no further business, the meeting adjourned at 2:50 p.m.

Minutes submitted by: Peggy Campbell, Commission Coordinator



**PROJECT EVALUATION SUBCOMMITTEE ACTIONS**  
**November 5, 2003**

**BACK CREEK RIVER NATURE PARK**

As required by Code of Maryland Regulations, the motion must be based on the following factors:

1. The extent to which the project is in compliance with the requirements of the relevant chapters of this subtitle:

The project is in conformance with all other requirements of the City's Critical Area Program. Sufficient mitigation is being provided; the impervious surface coverage has not been exceeded; and no Habitat Protection Areas are being impacted other than those proposed in the buffer.

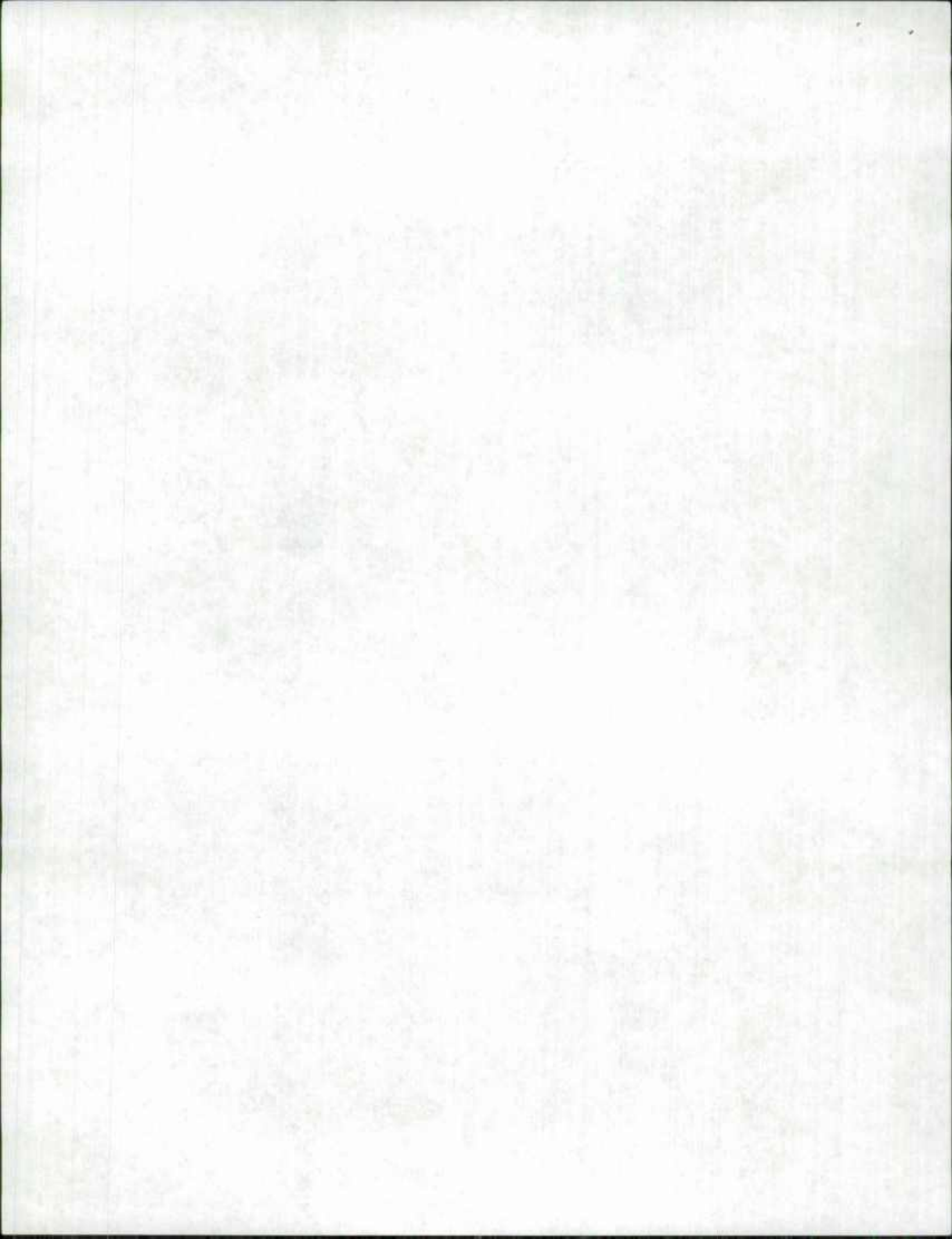
2. The adequacy of any mitigation proposed to address the requirements of this subtitle that cannot be met by the project:

The required mitigation for the project is 1,810 square feet. The City will provide 3,250 square feet of on-site mitigation, which exceeds the required amount by 1,440 square feet.

3. The extent to which the project, including any mitigation measures, provides substantial public benefits to the overall Chesapeake Bay Critical Area Program:

Back Creek Nature Park is a facility that provides passive public access to the Chesapeake Bay through nature trails, docking facilities, and scenic overlooks. The project will enhance these features while addressing erosion and sediment control problems at the park..

Accordingly, I move, on behalf of the Project Subcommittee, that the Commission approve the improvements proposed for the Back Creek River Nature Park with the condition that the City of Annapolis obtain verification from the Maryland Department of Natural Resources that there are





no threatened or endangered species on site or, if threatened or endangered species occur on site, that the City implement any necessary protection measures recommended by the Department.

**TOWN OF LEONARDTOWN WATERFRONT PARK**

I move, on behalf of the Project Subcommittee, that the Commission concur with the concept plans for the Leonardtown waterfront park as a Major Development Project on Land Owned By a Local Jurisdiction with the condition that the final plan must be approved by the Commission. The concept includes public access to Breton Bay and mitigation for buffer impacts with the goal of providing one-third of the mitigation in the park and commercial area, one-third in the residential area, and one-third at an off-site buffer location on Macintosh Run.

**SHED 6B AT DUNDALK MARINE TERMINAL**

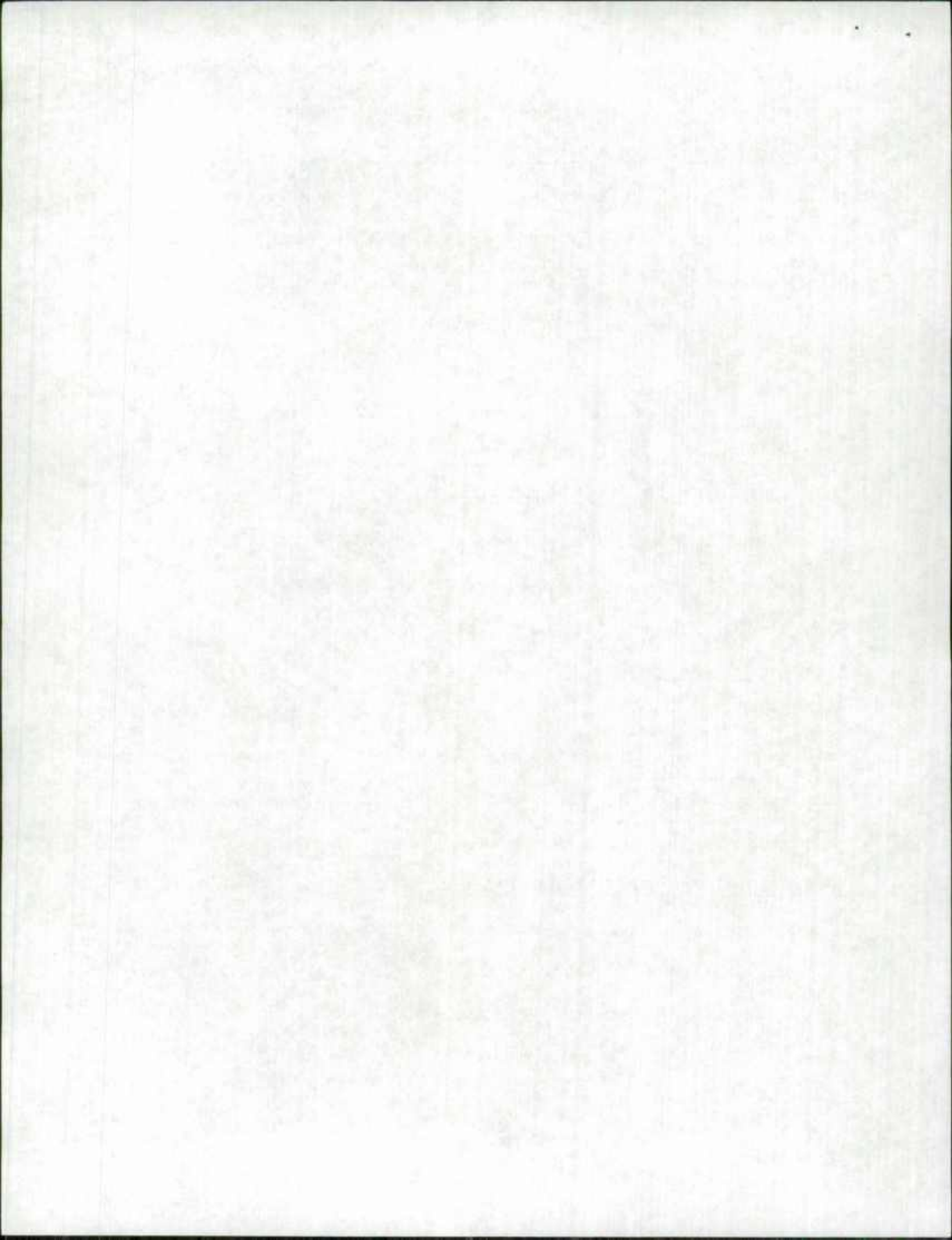
I move, on behalf of the Project Subcommittee, that the Commission approve the construction of the proposed project with the condition that the Maryland Port Administration receives stormwater management and erosion and sediment control approval from the Maryland Department of the Environment prior to construction.

**DOVE ACCESS PATH**

I move, on behalf of the Project Subcommittee, that the Commission approve the Dove access path with the conditions that a planting agreement be executed with Commission staff prior to initiating construction on the project and that the project receives stormwater and erosion and sediment control approval from the Maryland Department of the Environment.

**MDOT MEMORANDUM OF UNDERSTANDING**

I move, on behalf of the Project Subcommittee, that the Commission approve the Memorandum of Understanding between the Commission and the Maryland Department of Transportation, including Appendix A, Project Application Checklist, and Exhibit B1, Conditions for General Approval of State Highway Administration Projects.



## *Critical Area Commission*

### **STAFF REPORT November 5, 2003**

**APPLICANT:** Worcester County (Chesapeake Bay Watershed)

**PROPOSAL:** Refinement – Comprehensive Review/Codification of Critical Area Program and Digitization of Critical Area Maps

**COMMISSION ACTION:** Concurrence

**STAFF RECOMMENDATION:** Approval

**STAFF:** LeeAnne Chandler

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

#### **DISCUSSION:**

Worcester County has requested Commission review of their revised Chesapeake Bay Critical Area Program and digitization of their Chesapeake Bay Critical Area maps. The revisions are the result of a comprehensive review and codification of their original (1990) Critical Area Program. The County's Critical Area regulations have been incorporated into the Natural Resources Article of the County Code to facilitate more effective implementation and enforcement. Commission staff worked closely with County staff and provided them with a model ordinance to use. Specific text changes from the original Program are primarily stylistic with ordinance language replacing descriptive policy language.

The list below summarizes the major content changes:

1. A list of permitted uses was added to the section pertaining to development standards in the RCA. The list is consistent with others that have been approved by the Commission. It includes uses such as home occupations; golf courses (excluding structures, parking, etc.); bed and breakfasts; shooting ranges (excluding structures); and smaller scale day care or assisted living facilities. Other questionable uses will be discussed on a case-by-case basis.
2. A procedure for the award of growth allocation was added. Applications are submitted to the County Department of Development Review and Permitting. They are then forwarded to the Planning Commission for review. The Planning

Commission will make a recommendation for approval or denial to the County Commissioners. The County Commissioners will hold a public hearing and either approve or deny the request. If approved, the request will be forwarded to the Critical Area Commission for review.

3. The impervious surface limits for certain grandfathered lots were modified according to the changes approved by the General Assembly in 1996.
4. Provisions for enforcement of the forest protection requirements were added. Fines are assessed at \$500 to \$1000 per day for unauthorized clearing. Reforestation is also required at a 3:1 ratio.
5. Specific standards for Bald Eagle protection were added to the Habitat Protection Area section. If a Bald Eagle nest is on a particular property proposed for development, a series of protection zones are established. Levels of protection range from no development activity (to 330 feet from the nest) to some development activity during certain times of the year (to ¼ mile from the nest).
6. Provisions regulating structures on piers were added in accordance with §8-1808.4 of the Critical Area Law.

The new maps were created by digitizing the existing maps and then conducting an accuracy assessment based on the 1972 tidal wetland maps, aerial photos and updated wetlands maps from the Department of Natural Resources.

The County has approximately 9600 acres of land within the Chesapeake Bay Critical Area. With 130 acres designated as IDA or LDA, the majority of the area (9470 acres) is designated Resource Conservation Area. The County began with approximately 474 acres of growth allocation and has awarded 134 acres to date. Since the County's Program was first implemented, there has been very little development activity. This, in a large part, is due to the fact that the Department of Natural Resources and the Nature Conservancy own most of the undeveloped land within the County's Chesapeake Bay Critical Area.

The County's comprehensive review and new maps contain no major changes from the original Program. The changes that were included are consistent with the Critical Area law and Criteria. The County has requested that these changes be considered a refinement of their Critical Area Program.

If you have any questions or if you would like a complete copy of the revised Program, please contact me at (410) 260-3477 or [lchandler@dnr.state.md.us](mailto:lchandler@dnr.state.md.us).

## *Critical Area Commission*

### **STAFF REPORT November 5, 2003**

**APPLICANT:** Town of Vienna

**PROPOSAL:** Refinement – New Critical Area Maps

**COMMISSION ACTION:** Concurrence

**STAFF RECOMMENDATION:** Concur with Chairman's Determination of Refinement

**STAFF:** Lisa Hoerger

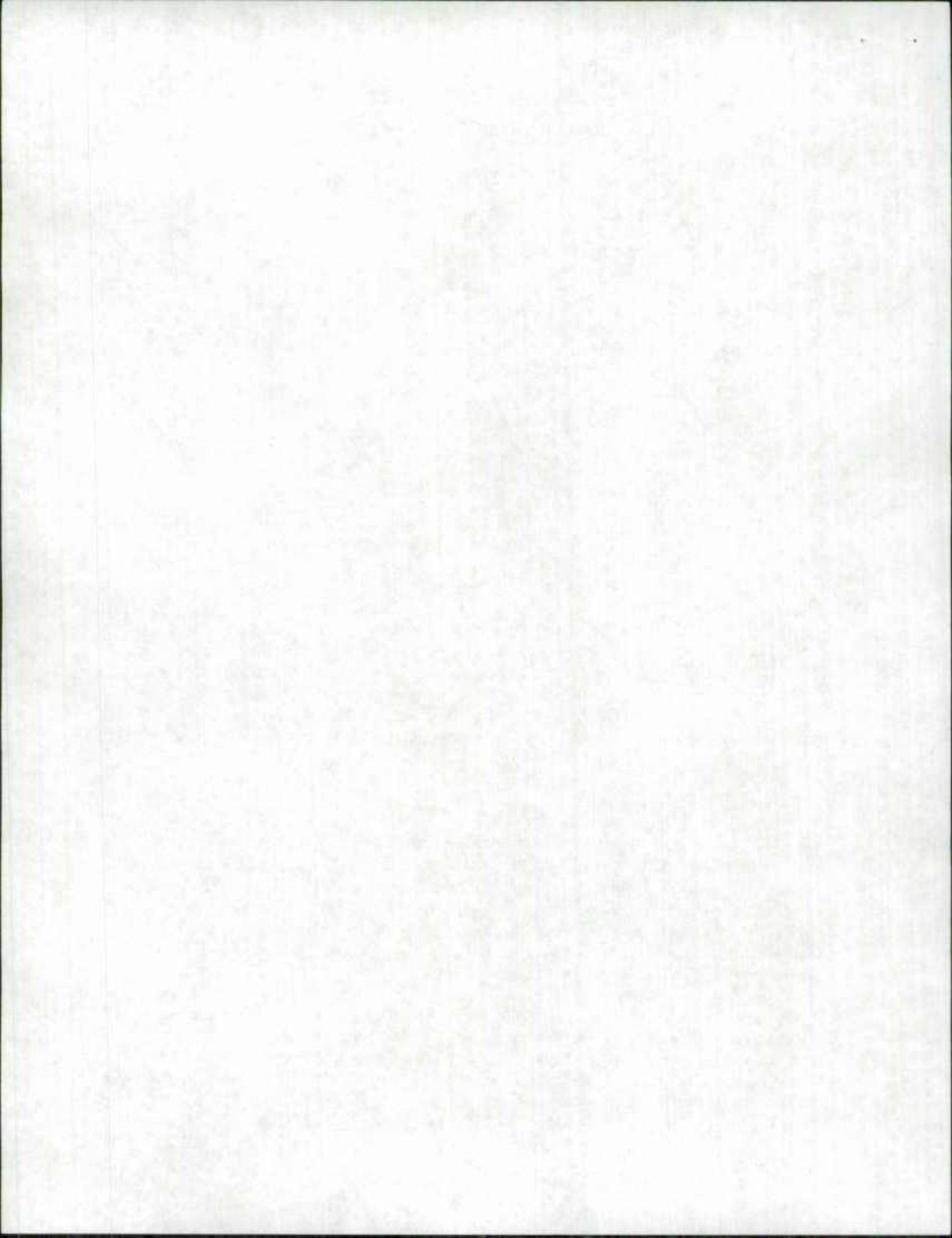
**APPLICABLE LAW/  
REGULATIONS:** Natural Resources Article §8-1809 (h) - Proposed program amendments and refinements

#### **DISCUSSION:**

In December 2002 the Critical Area Commission completed a grant-funded effort to update the Critical Area maps for 12 towns. The purpose of the update was to prepare digital, user-friendly, graphically consistent maps at a scale of 1"= 200'. The maps were prepared by a consultant, Spatial Systems Incorporated, a firm with extensive experience in preparing digital maps based on satellite imagery that include multiple layers of information. The maps were reviewed during the primary development phase by Commission staff and the Circuit Riders working with the various Towns. The final drafts of the maps were subsequently forwarded to each of the Towns for final edits and local approval.

Recently, the Vienna Town Commissioners approved the new Critical Area Maps which consist of a "Critical Area Map" and a "Habitat Protection Map." The Critical Area Map includes the Critical Area Land Use designations and Buffer Exemption Areas. The other map includes streams, forest cover, and tidal and non-tidal wetlands, and Habitat Protection Areas. The Town requested that the 100-foot Buffer be included on the maps, and notes explain that the 100-foot Buffer delineation is conceptual and an actual delineation must be performed in the field.

Generally, jurisdictions update and refine their Critical Area Maps during their required comprehensive review. In Vienna, the mapping effort was completed prior to the comprehensive review, and the Town was eager to begin using the new maps because the Town's existing maps were more than 12 years old. A hard copy and digital version of the new maps was provided to Commission staff.

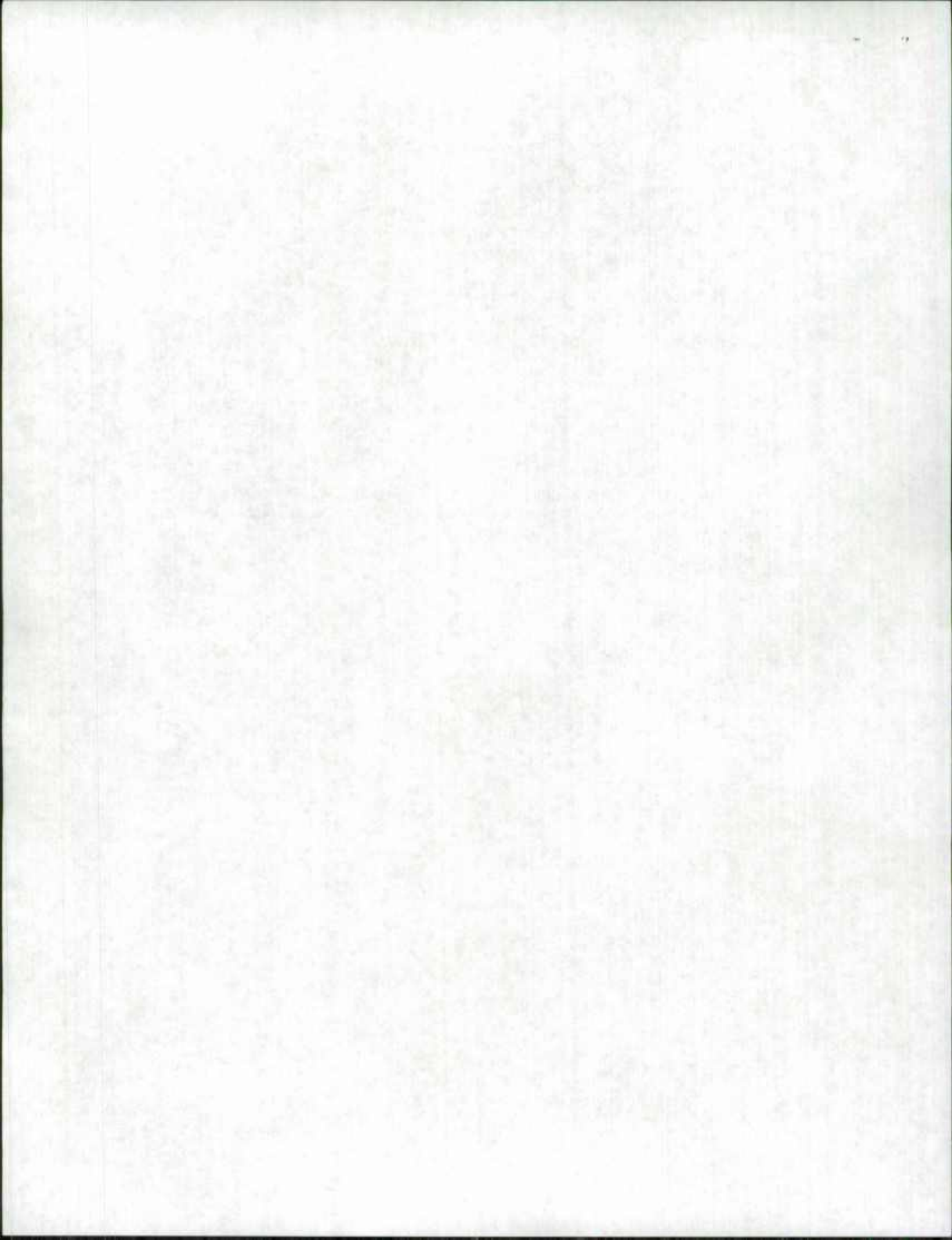


In developing the new maps, there were no substantive changes made to the 1,000-foot boundary; however, there were minor adjustments to accommodate overlaying the boundary from the hard copy of the 1972 State wetlands maps to a more accurate map of the Town based on satellite imagery. In some cases, variations in the shoreline between the 1972 maps (that were never ortho-rectified) and the satellite imagery required some interpretation by the consultant and Commission staff.

Natural Resources Article § 8-1808 requires local governments to create maps designating the Critical Area in a jurisdiction. As an element of a jurisdiction's program, these maps may be refined and modified for greater accuracy.

The Town has reviewed the maps and held a public hearing to consider the revisions on September 8, 2003. The hearing was advertised in the local newspaper. There were some questions about the maps at the hearing, but no comments affecting the substance of the maps.

Chairman Madden has determined that this action by the Town Commissioners is considered a refinement to the Town of Vienna's Critical Area program and seeks your concurrence.





## *Critical Area Commission*

### **STAFF REPORT November 5, 2003**

**APPLICANT:** Town of Leonardtown

**PROPOSAL:** Leonardtown Landing Growth Allocation

**JURISDICTION:** Town of Leonardtown

**COMMISSION ACTION:** Vote

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

**STAFF:** Mary Owens

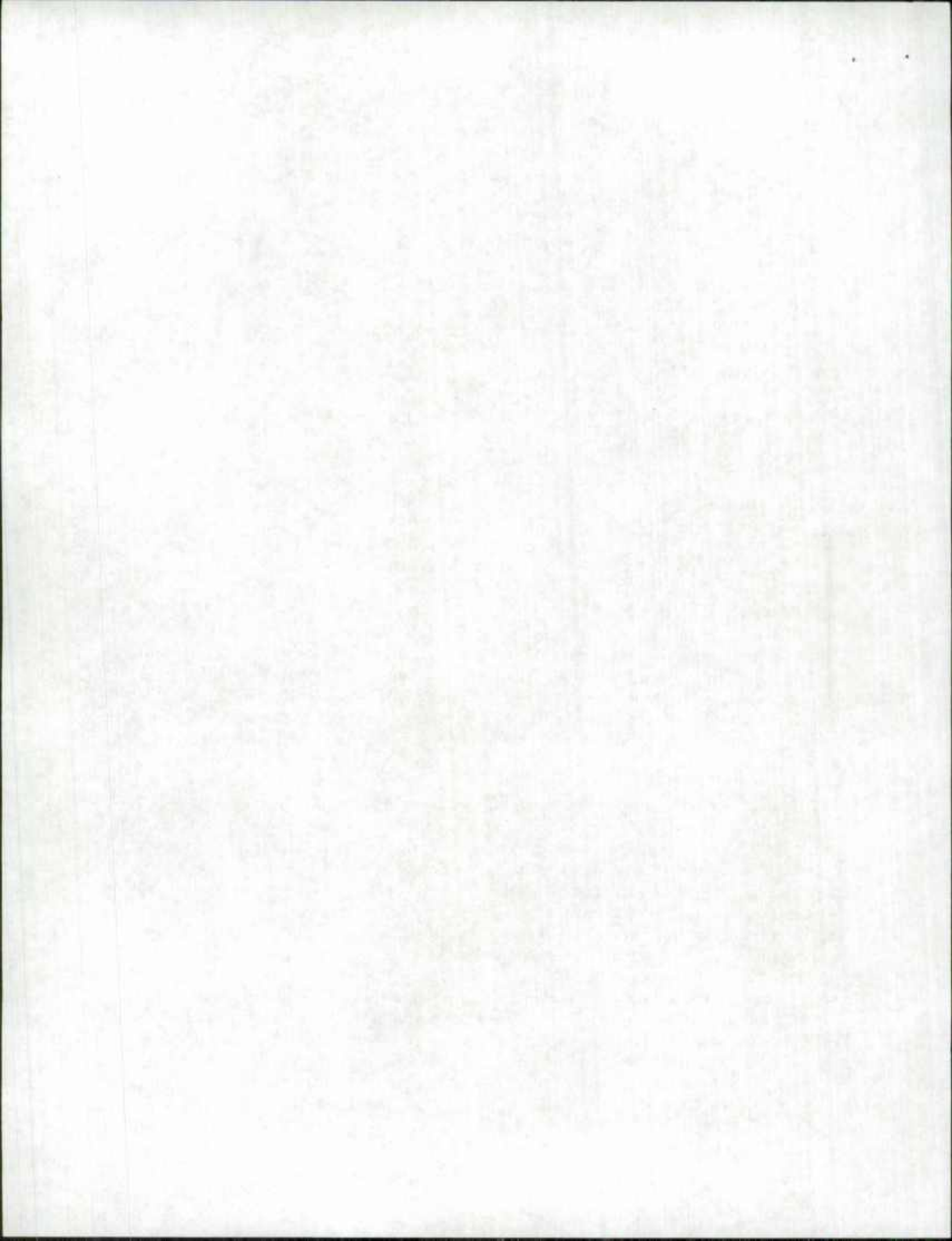
**APPLICABLE LAW/  
REGULATIONS:** COMAR 27.01.02.06 Location and Extent of Future Intensely Developed and Limited Development Areas; §8-1808.1 Growth Allocation in Resource Conservation Areas

### **DISCUSSION:**

The Town of Leonardtown is requesting approval of the use of 3.136 acres of growth allocation to change the Critical Area designation of two parcels within the Town from Limited Development Area (LDA) to Intensely Developed Area (IDA). The properties are identified as Parcels 326 and 330 and consist of 2.63 and .506 acres respectively. Both properties are located entirely within the Critical Area and the total area of both parcels is proposed to be changed to IDA.

The Town is requesting growth allocation for these parcels to accommodate a major redevelopment of the Town's waterfront that involves several other properties that are currently designated IDA. The overall redevelopment includes residential, retail, office, and restaurant uses, as well as, a waterfront park. Parcel 326, currently developed with a sewage pumping station, an abandoned outbuilding, and a gravel driveway is proposed to be redeveloped with 26 townhouses. Parcel 330, which is currently developed with a single family home, is proposed to be redeveloped with office space in the existing dwelling and parking for the office space and other elements of the overall redevelopment project.

With regard to the locational guidelines for growth allocation in the Critical Area Act and in the Commission's policy, the Town recognizes that both parcels are currently designated LDA and both are adjacent to parcels designated IDA. The use of growth allocation for these properties will not have an impact on defined land uses in the resource conservation area because the properties are not currently designated RCA, and the properties are located within the municipal boundaries of the Town where RCA lands are very limited. The guideline relating to the

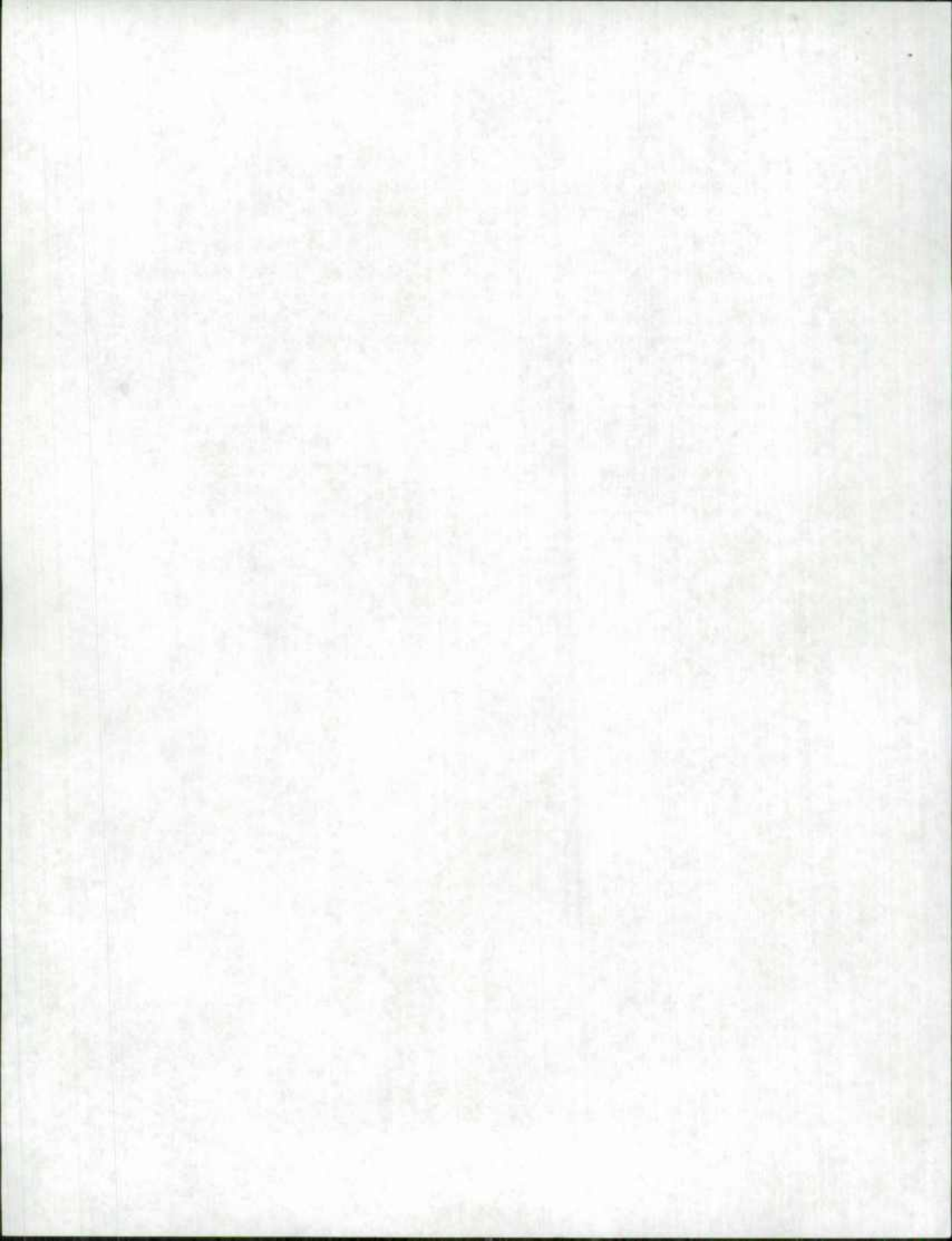


implementation of a 300-foot setback does not apply because the existing Critical Area designation is not RCA.

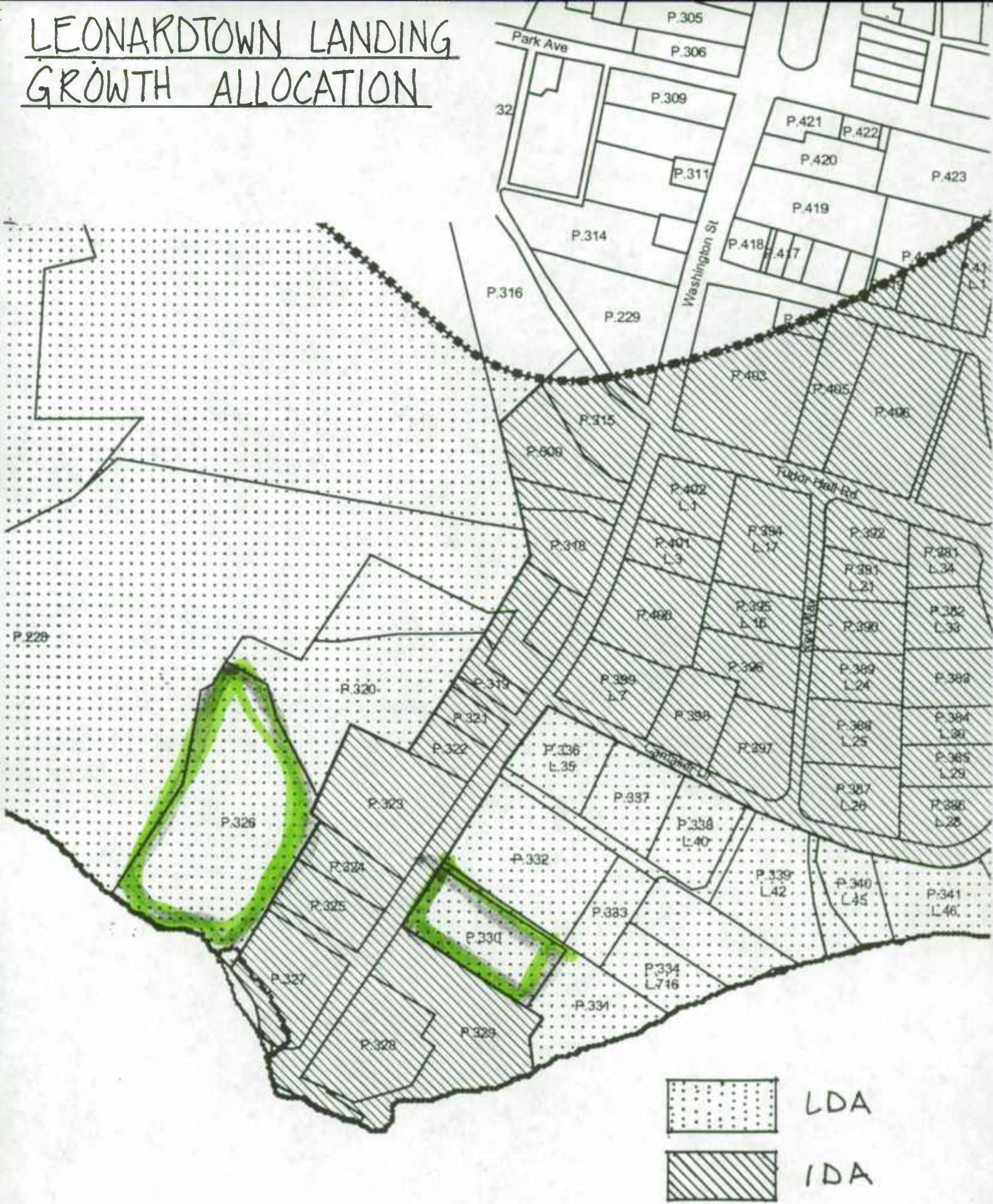
The redevelopment of these properties will comply with the 10% pollutant reduction requirement for stormwater, and Best Management Practices for the residential component of the project are in the final design phase.

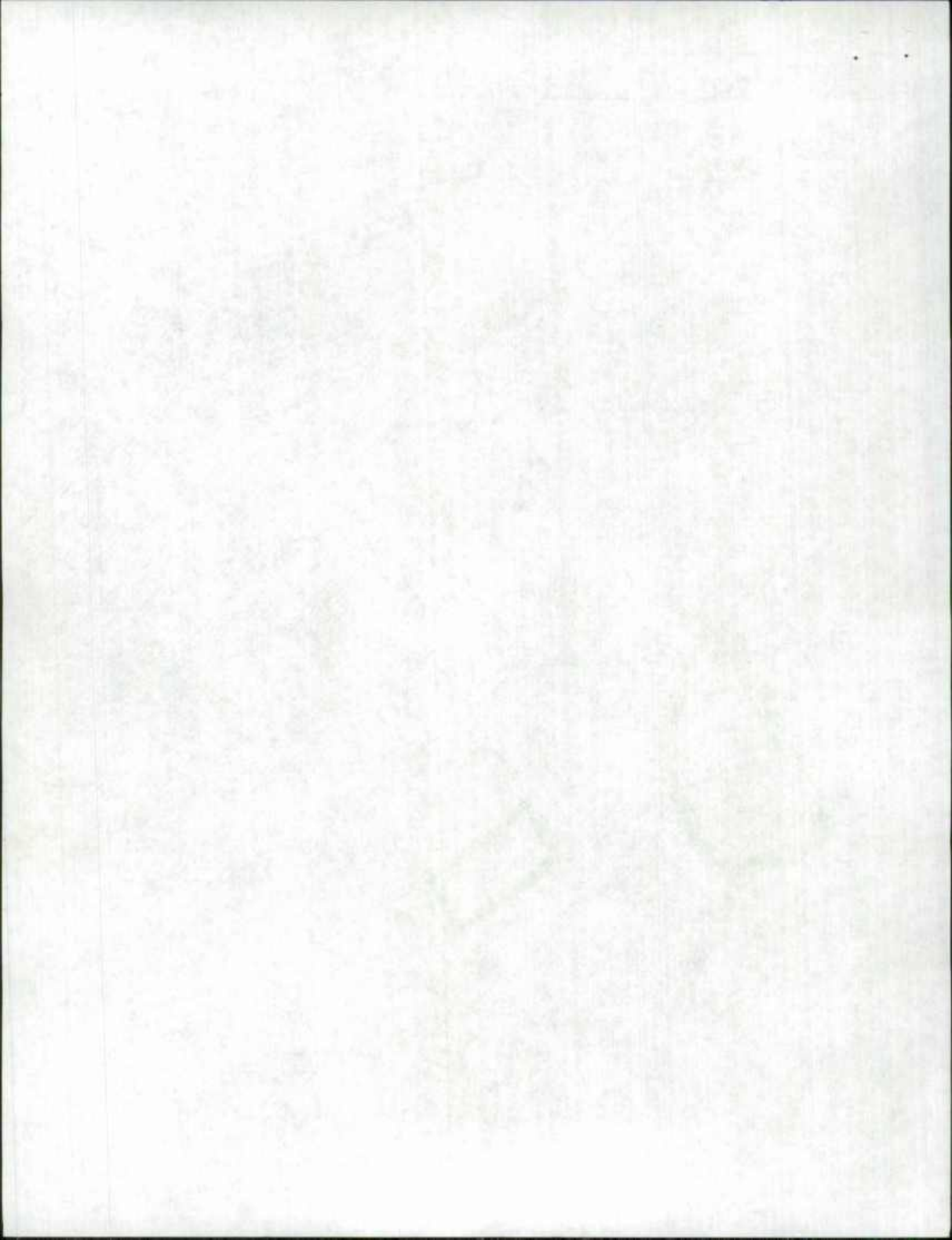
A letter dated March 11, 2003 from the Department of Natural Resources, Wildlife and Heritage Service, states that they have no records for Federal or State rare, threatened or endangered species within the project site; however, the open waters adjacent to the project site are known historic waterfowl staging and concentration areas. Construction of water-dependent facilities will not be permitted between November 15 and April 30.

The Leonardtown Council voted to approve the use of growth allocation to change the Critical Area designation of Parcels 326 and 330 on October 14, 2003. Because the Town has utilized all of the growth allocation originally assigned to them by St. Mary's County, the Town must formally request growth allocation from St. Mary's County. The St. Mary's County Commissioners held a public hearing and voted to approve the Town's request on October 21, 2003. The County's approval allows the Town to implement their earlier approval of the use of the growth allocation, pursuant to Critical Area Commission approval.



# LEONARDTOWN LANDING GROWTH ALLOCATION





## *Critical Area Commission*

### **STAFF REPORT**

**November 5, 2003**

**APPLICANT:** Town of Leonardtown

**PROPOSAL:** Leonardtown Modified Buffer Areas Ordinance and Map

**JURISDICTION:** Town of Leonardtown

**COMMISSION ACTION:** Vote

**PANEL RECOMMENDATION:** Pending Panel Discussion

**PANEL:** Gary Setzer (Chairman), Dave Bourdon, Frank Dawson, Danny Mayer, and Tom McKay

**STAFF:** Mary Owens

**APPLICABLE LAW/  
REGULATIONS:** COMAR 27.01.09.01.C(8) - Buffer

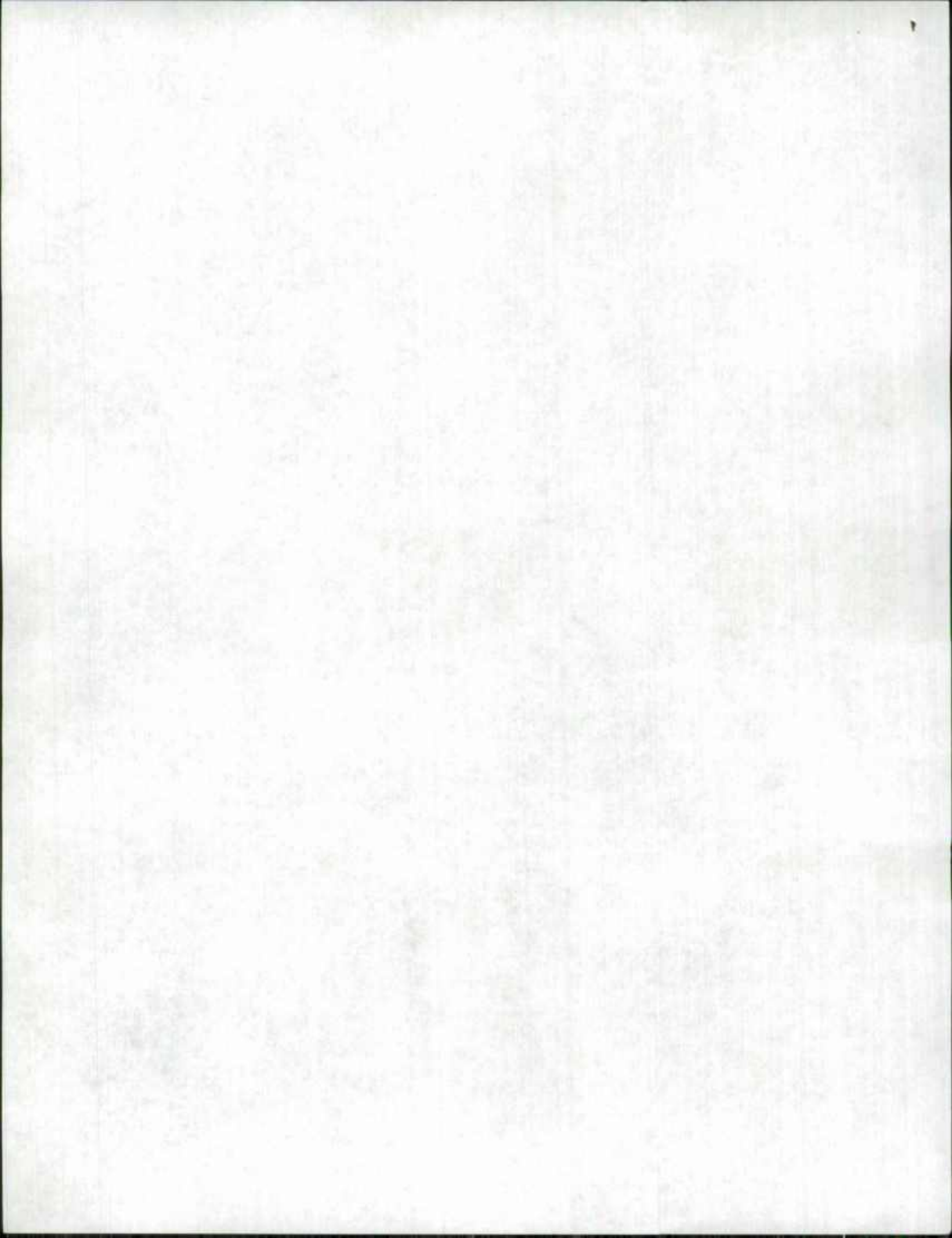
### **DISCUSSION:**

#### **Ordinance**

The Town of Leonardtown has been working with Commission staff to develop and implement a "buffer exemption area program" as outlined in COMAR 27.01.09.01.C(8). In accordance with these provisions, the Town has developed an ordinance that allows development in the Buffer on sites where it can be demonstrated that the existing pattern of residential, industrial, commercial, or recreational development prevents the Buffer from fulfilling its functions. As part of the ordinance, the Town has included provisions for mitigation, as required by COMAR, in order to achieve the water quality and habitat protection objectives of the Buffer. Using the Commission's two policies for Buffer Exemption Areas, the Town prepared an ordinance that includes specific provisions regulating new development and redevelopment in these areas, as well as, mitigation. The ordinance is included as Attachment (1).

The ordinance is similar to the Commission's policies for "buffer exemption areas," and includes the following provisions:

- The Planning Commission will be responsible for ensuring that impacts to the Buffer are minimized.
- The ordinance mandates that new development (defined as development on sites with less than 15% impervious cover) shall not be located closer than 50 feet to the water or edge





of wetlands. The ordinance allows redevelopment activities to take place anywhere within the Buffer, but requires that the redevelopment result in a 15% reduction in impervious surface area within 25 feet of the water, tidal wetlands, or streams. This differs slightly from the Commission's policies that do not permit redevelopment within 25 feet of the water. There is only one property within the Modified Buffer Area to which the new development provisions would apply.

- Mitigation requirements for development and redevelopment projects on single-family residential properties include two-to-one mitigation in the form of plantings for the footprint of development activity within the Buffer and expanded Buffer. Mitigation planting shall be located on-site in the Buffer or if planting in the Buffer is not feasible, elsewhere on the project site in the Critical Area. In addition, for all other projects (commercial, industrial, multi-family residential, etc.) a forested or landscaped bufferyard, 25 feet wide, shall be established between the development and the water. If the bufferyard is not forested, it shall be densely planted with trees and shrubs.
- The ordinance provides for alternative mitigation options or offsets that may be used instead of planting. These include the removal of an equivalent area of existing impervious surfaces within the Buffer, the construction of Best Management Practices for stormwater in addition to those required by stormwater management regulations (i.e. a 20% reduction in pollutant loadings), the creation or restoration of wetlands, the implementation of nonstructural shore erosion control measures such as marsh creation, or other measures that improve water quality or habitat.
- Only grandfathered lots are eligible to be mapped as Modified Buffer Areas; however, the Town's ordinance includes provisions allowing lots designated as MBAs to be subdivided, and maintain their MBA designation.
- The subdivision provisions require that the 25-foot bufferyard be increased to accommodate a 50-foot setback for any development activity from tidal waters, tidal wetlands, and McIntosh Run and a 30-foot setback for any development activity from tributary streams. Mitigation requirements specify that natural vegetation in these areas shall be protected, and if the areas are not naturally vegetated, they shall be planted. These provisions also specify that if erosion control measures are proposed, non-structural measures shall be used and that the 10% pollutant reduction requirement be met on-site, unless the construction of suitable BMPs is not feasible.

### **Designation**

The Town has designated several properties as "Modified Buffer Areas" (MBAs). The area to be designated is located at the end of Washington Street with frontage on Breton Bay. The area consists of Parcels 324, 325, 326 and 327 on the west side of Washington Street and Parcels 328 and 329 on the east side of Washington Street, as well as, Washington Street, itself. The Town evaluated the Buffer in this area and documented the conditions of the properties regarding the functions of the Buffer. The Town's evaluation is included as Attachment (2). The ordinance includes a map showing the properties to be designated as MBAs.



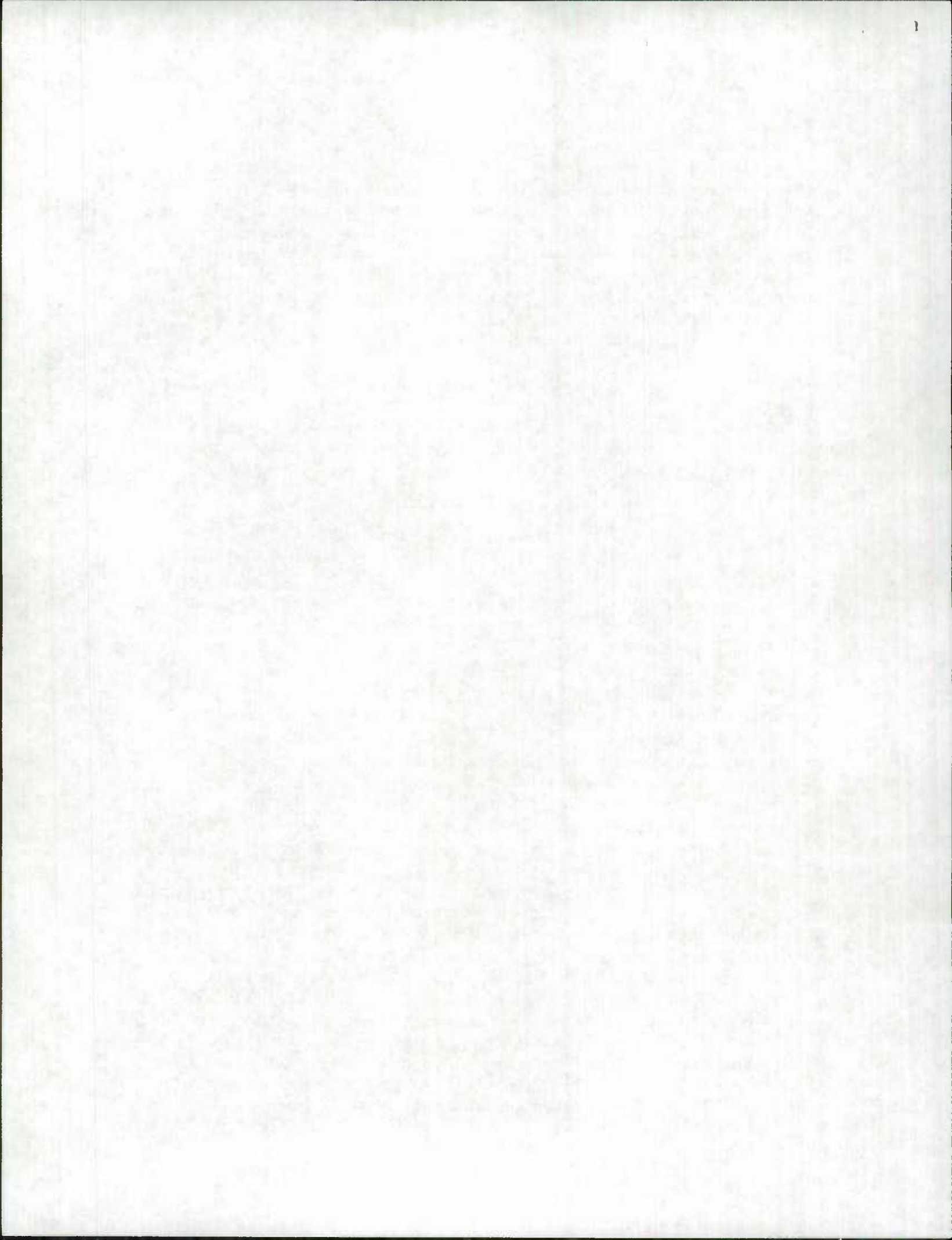
These properties represent a major portion of the Town's waterfront and one of the rather limited opportunities within the Town for public access to the water. Redevelopment of these properties, which have been vacant for several years, is considered a key element of the Town's "Smart Growth" strategy, and the proposed redevelopment of the property will have a significant impact on the Critical Area Program in Leonardtown because it involves the adoption of a new ordinance, the use of growth allocation, and intensive environmental reviews. Previously, an ice and fuel company owned the property, and approximately half of the project site was developed as an industrial use. Site investigations indicated that contamination was present in the soils and groundwater of portions of the site. A significant element of this project involves on-site containment of the contaminants and overall restoration of the property.

In developing the proposal for designation of the project site as a Modified Buffer Area and in developing a mitigation strategy, the Town is proposing that the Commission consider several separate parcels as one proposed Modified Buffer Area. The Town is approaching this designation in this way because it will allow the developer and the Town to accomplish several important environmental goals that are intrinsically related to the Modified Buffer Area Program. The Town anticipates accomplishing the following goals:

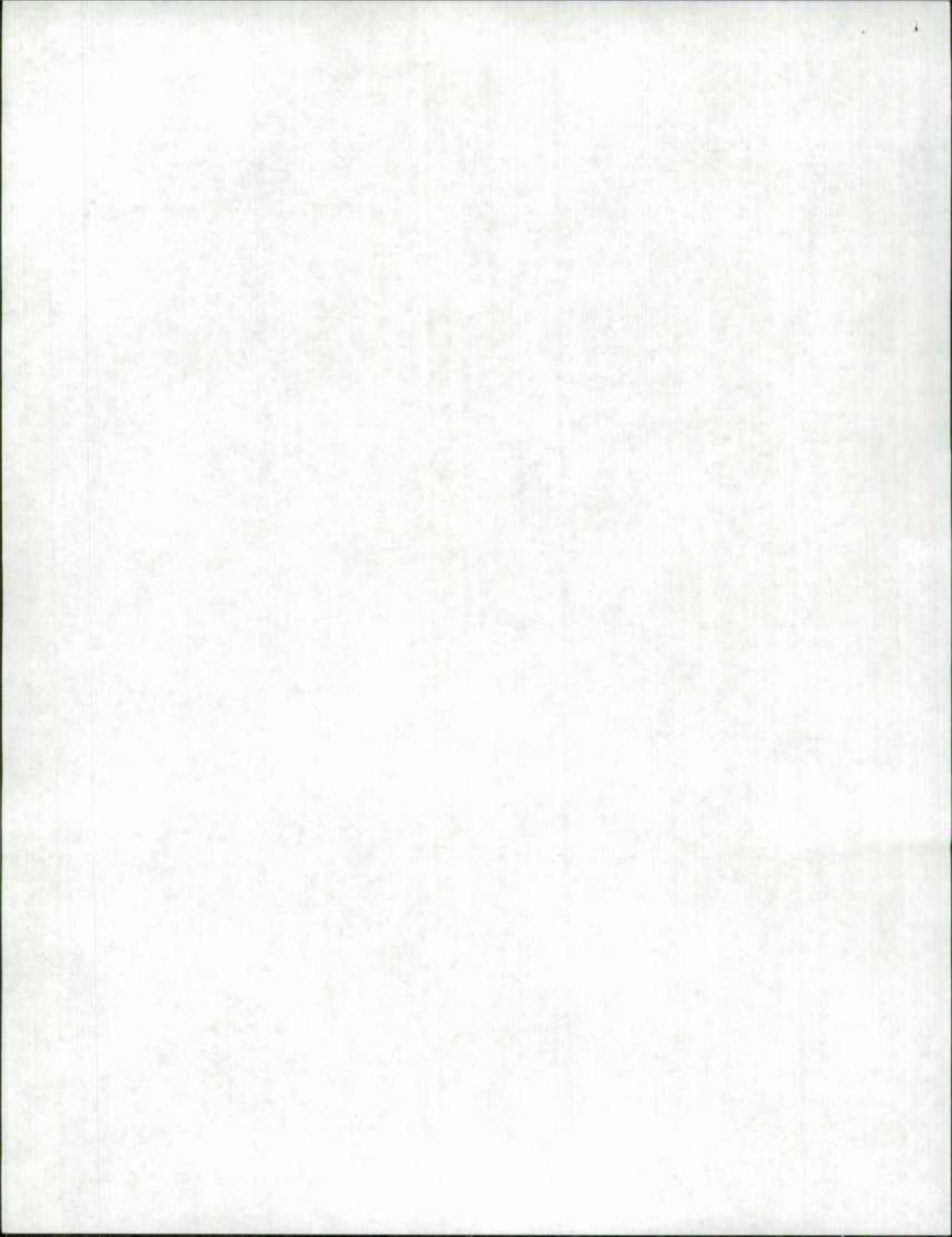
- Removal of existing dilapidated buildings (already complete)
- Clean-up of existing contaminated materials and soil and capping to prevent further contaminant leaching
- Creation of a Town Waterfront Park with a 25-foot vegetated bufferyard adjacent to the water
- Protection and enhancement of a 50-foot Buffer along a portion of Breton Bay (townhouse area)
- Protection of a 30-foot vegetated buffer along an existing wetland/drainage swale system
- Creation of a 30-foot vegetated buffer along an existing channelized stream/ditch
- Removal of extensive areas of impervious surface within the 100-foot Buffer
- Improvement and expansion of public access to the water
- Treatment of stormwater associated with the redevelopment resulting in a 10% pollutant reduction
- Implementation of a mitigation plan (landscaping with native species) or collection of fees-in-lieu for all development and redevelopment activity within the 100-foot Buffer.

The Town, the applicant, and Commission staff is working together to develop a mitigation plan that will satisfy the requirements of the proposed Modified Buffer Areas ordinance. The Town made a commitment to the Commission that the Town Waterfront Park will be the primary element of the mitigation strategy. The development of the park will involve the removal of impervious surfaces within the Buffer. The park will consist of a lawn area, landscaping, and extensive plantings within a vegetated bufferyard adjacent to the water. Pervious and semi-pervious materials will be used within the park to enhance its water quality and habitat functions.

At this time, the Town Waterfront Park design is still conceptual, and because it is a critical element of the overall project and the Modified Buffer Area designation, it is important that the design be sufficiently detailed, so that the Commission can ensure that adequate and appropriate



mitigation has been provided. A copy of the conceptual plan for the Town Waterfront Park is included as Attachment (3). In order for the Modified Buffer Areas Ordinance and designation to be approved by the Commission in November, staff recommends that the Town Waterfront Park be conceptually approved as a Major Development Project on Land Owned By a Local Jurisdiction in November with the condition that final approval by the Commission is required. This can take place when more detailed plans are available.



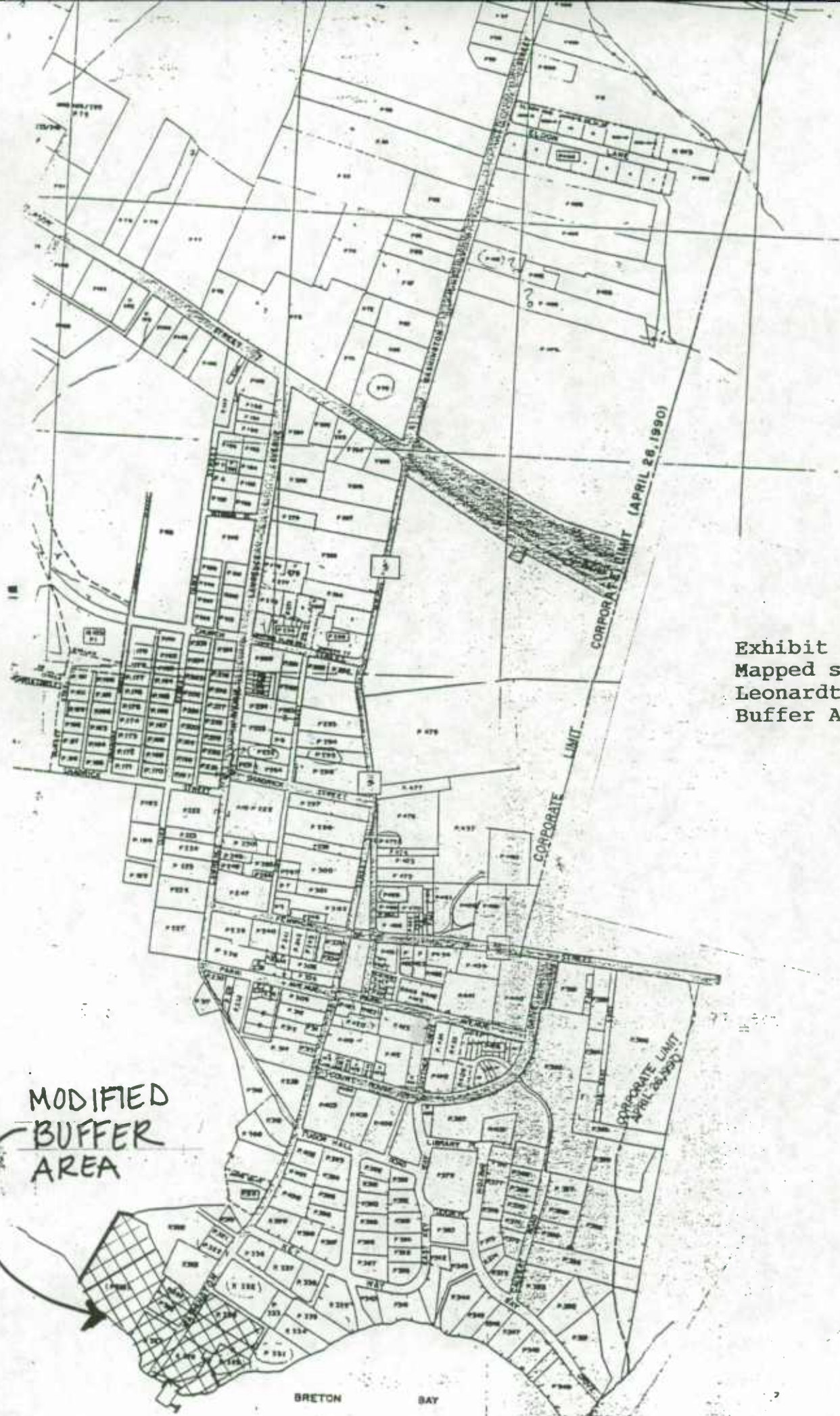
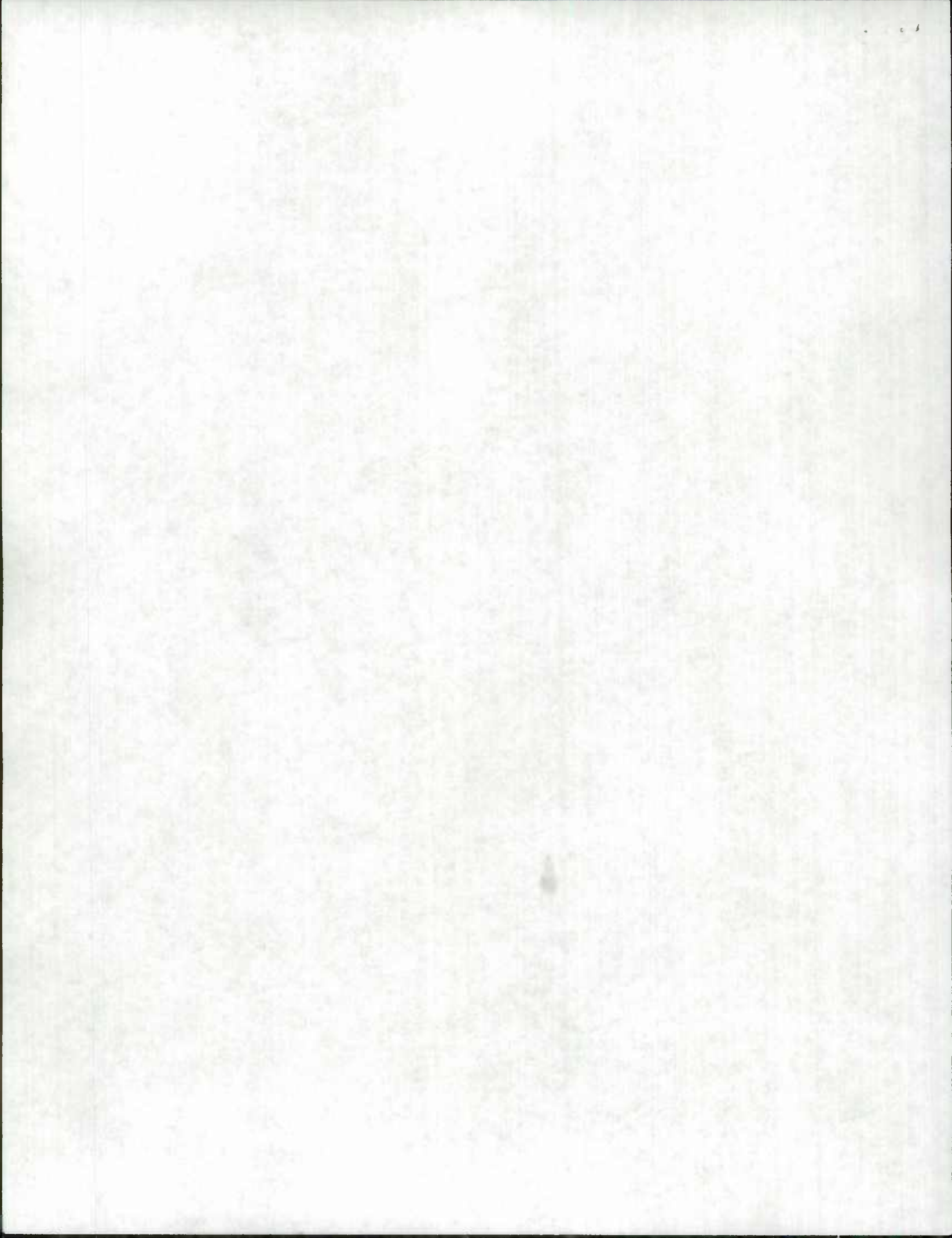


Exhibit A  
Mapped site of  
Leonardtown Modified  
Buffer Area

MODIFIED  
BUFFER  
AREA

BRETON BAY





## *Critical Area Commission*

### **STAFF REPORT**

**November 5, 2003**

**APPLICANT:** City of Annapolis Recreation and Parks

**PROPOSAL:** Back Creek River Nature Park

**JURISDICTION:** City of Annapolis

**COMMISSION ACTION:** Vote

**STAFF RECOMMENDATION:** Approval with Condition

**STAFF:** Dawnn McCleary

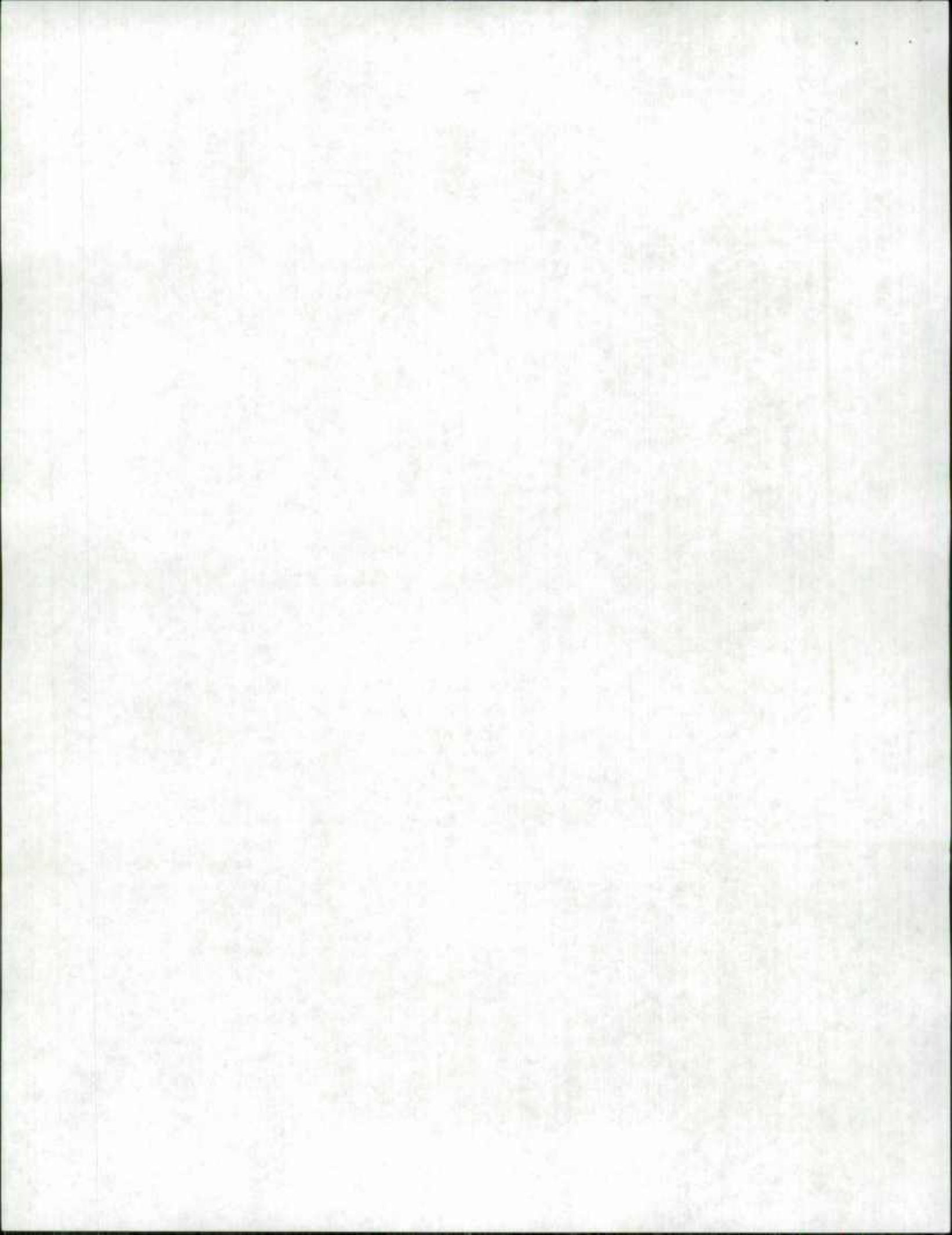
**APPLICABLE LAW/  
REGULATIONS:** COMAR 27.02.06 Conditional Approval of State or  
Local Agency Programs in the Critical Area

### **DISCUSSION:**

Back Creek River Nature Park is located on Edgewood Road, at the eastern edge of the City. The park sits on one parcel that is 8.65 acres. 8.11 acres is Resource Conservation Area (RCA), and 0.54 acres is Intensely Developed Area. In 1990, it was designated as a nature park with a floating dock, nature trails, public restrooms, several water view picnic areas, and a gazebo atop a sandstone bluff overlooking Back Creek.

The City is proposing several improvements to the park. Phase I will address erosion and compacted soils along the gazebo overlook. Improper usage and runoff from the impervious surfaces of the shelter has created considerable erosion along the shoreline. To remedy the erosion, the City plans to stabilize the slope by using a sprayed compost mulch with grasses. This technique has been successful elsewhere in the City.

To address the bare bluff face, the City is proposing to provide an elevated walkway and viewing platform in the 100-foot Buffer which will protect the soils at the top of the cliff from the heavy foot traffic it currently experiences. This disturbance in the Buffer will impact 470 square feet, along with the removal of two trees. The walkway and platform will be constructed to allow for adequate drainage as a pervious surface. The City will provide 3,250 square feet of mitigation for Buffer impacts, comprised of 2 trees, 61 shrubs, and 720 herbaceous plantings. The trees and shrubs will exceed the required mitigation by 1,440 square feet. No information is yet available as to any impacts to threatened and endangered species.



*Continued, Page Two  
Back Creek River Nature Park  
November 5, 2003*

### **Conditional Approval Process**

In order to qualify for consideration by the Commission for conditional approval, it shall be shown by the proposing or sponsoring agency that the project or program has the following characteristics:

**The following are the responses of the applicant:**

**(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.**

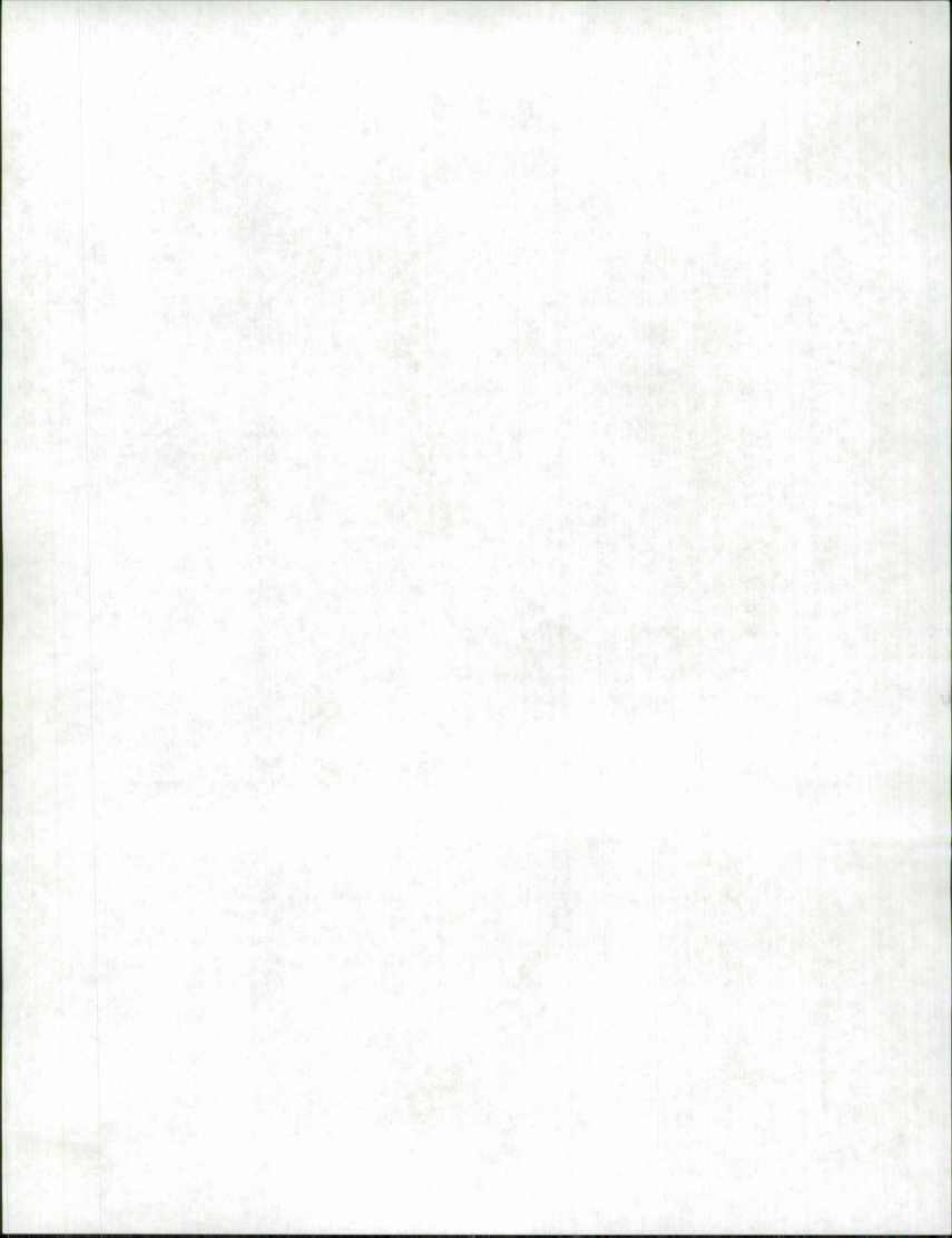
Park-users are currently walking to the existing gazebo and then heading from there down the steep slope to get a better look at the water. This form of trail-blazing is creating an upland-erosion problem. The City is hoping to cease this trail-blazing by providing a formal pathway to an observation platform, and thereby containing the problem. A literal enforcement of the City's Critical Area Program would require a variance to place structures in the Buffer. Since the City cannot grant itself a variance, a conditional approval is needed.

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

This project will initially require disturbance to the Buffer; however, it is being provided in the hopes that it will lessen the area currently being disturbed and rectify the cause of the erosion problem. Mitigation is also being provided in excess of the required amount. All the mitigation plantings are native to Maryland. These factors should show that this project will provide substantial public benefit to the Critical Area Program.

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

Besides the disturbance to the Buffer, this project is in conformance with all other requirements of the City's Critical Area Program. Sufficient mitigation is being provided; the impervious surface coverage have not been exceeded; and no other Habitat Protection Areas are being impacted.



*Continued, Page Three  
Back Creek River Nature Park  
November 5, 2003*

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

**(1) A showing that the literal enforcement of the provisions of this subtitle would prevent the conduct of an authorized State or local agency program or project.**

To not grant a conditional approval to disturb the Buffer would prevent the City from rectifying an erosion problem in an existing City park. The maintenance of this park is an authorized activity that multiple city departments are supporting. This project is also in the Department of Recreation and Parks Master Plan.

**(2) A proposed 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;**

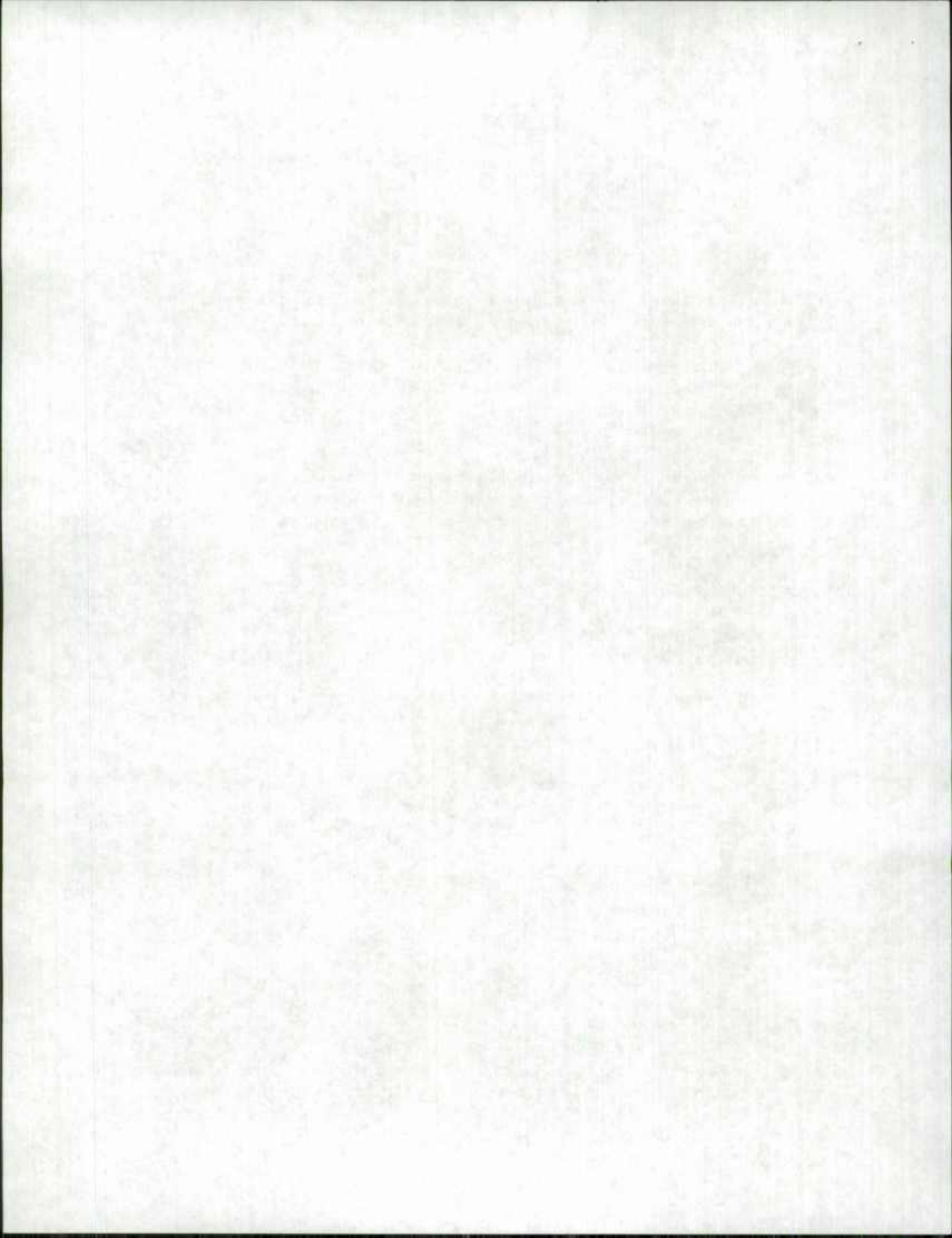
Department of Planning & Zoning staff have reviewed this project for compliance with the City's Critical Area Program. Besides the disturbance to the Buffer, this project conforms with all requirements of any project conducted in the RCA. All disturbances will be mitigated in the form of native plantings.

**(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 scope of work for the proposed project includes the planting of 2 trees, 61 shrubs, and 720 herbaceous plantings, all Maryland-native species. These plantings exceed the required amount of mitigation.

**The Commission is required to base its approval, denial or modification to this project on the following factors:**

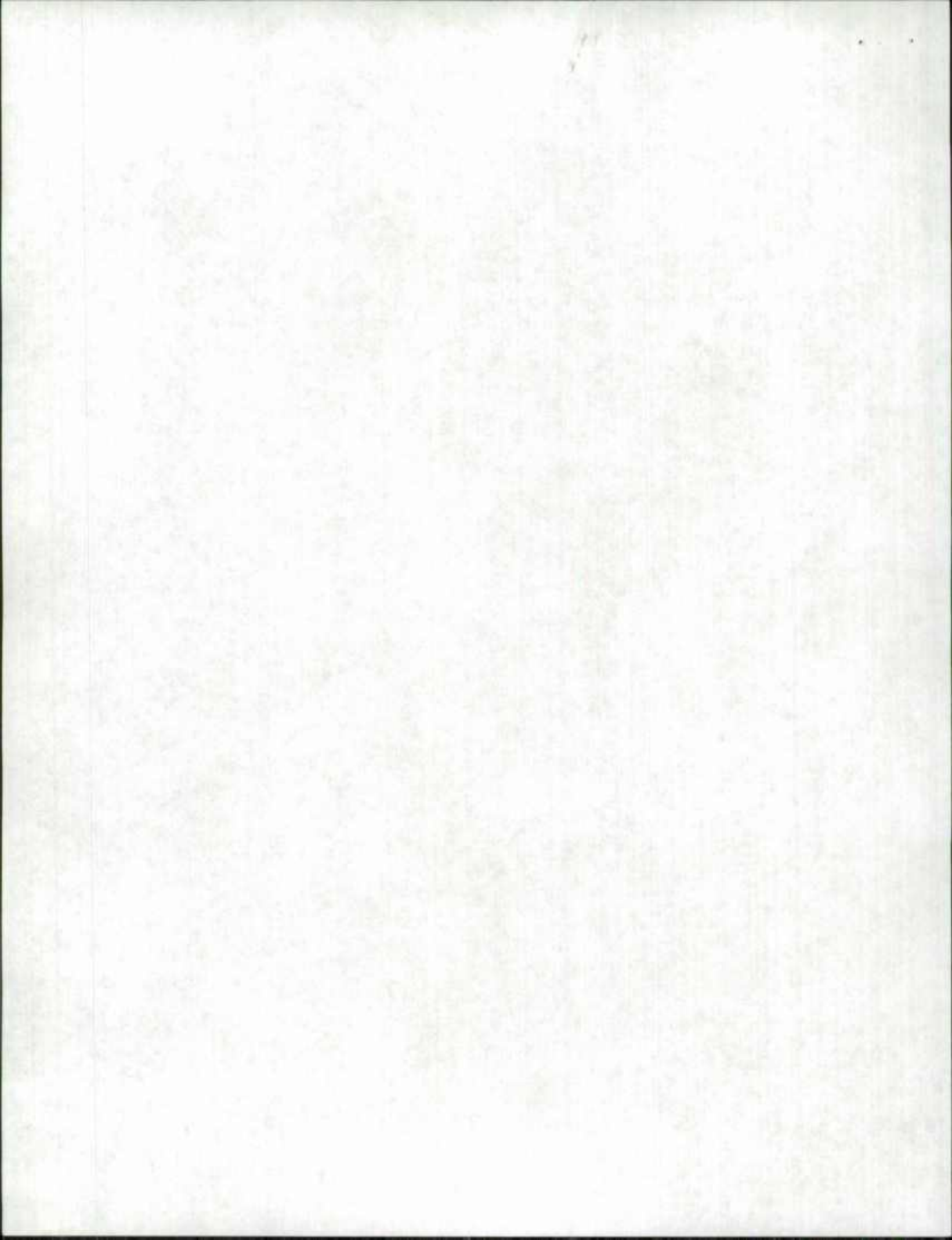
1. The extent to which the project or program is in compliance with the requirements of the relevant chapters of this subtitle;
2. The adequacy of any mitigation measures proposed to address the requirements of this subtitle that cannot be met by the project or program; and,
3. The extent to which the project or program, including any mitigation measures, provides substantial public benefits to the overall Chesapeake Bay Critical Area Program.



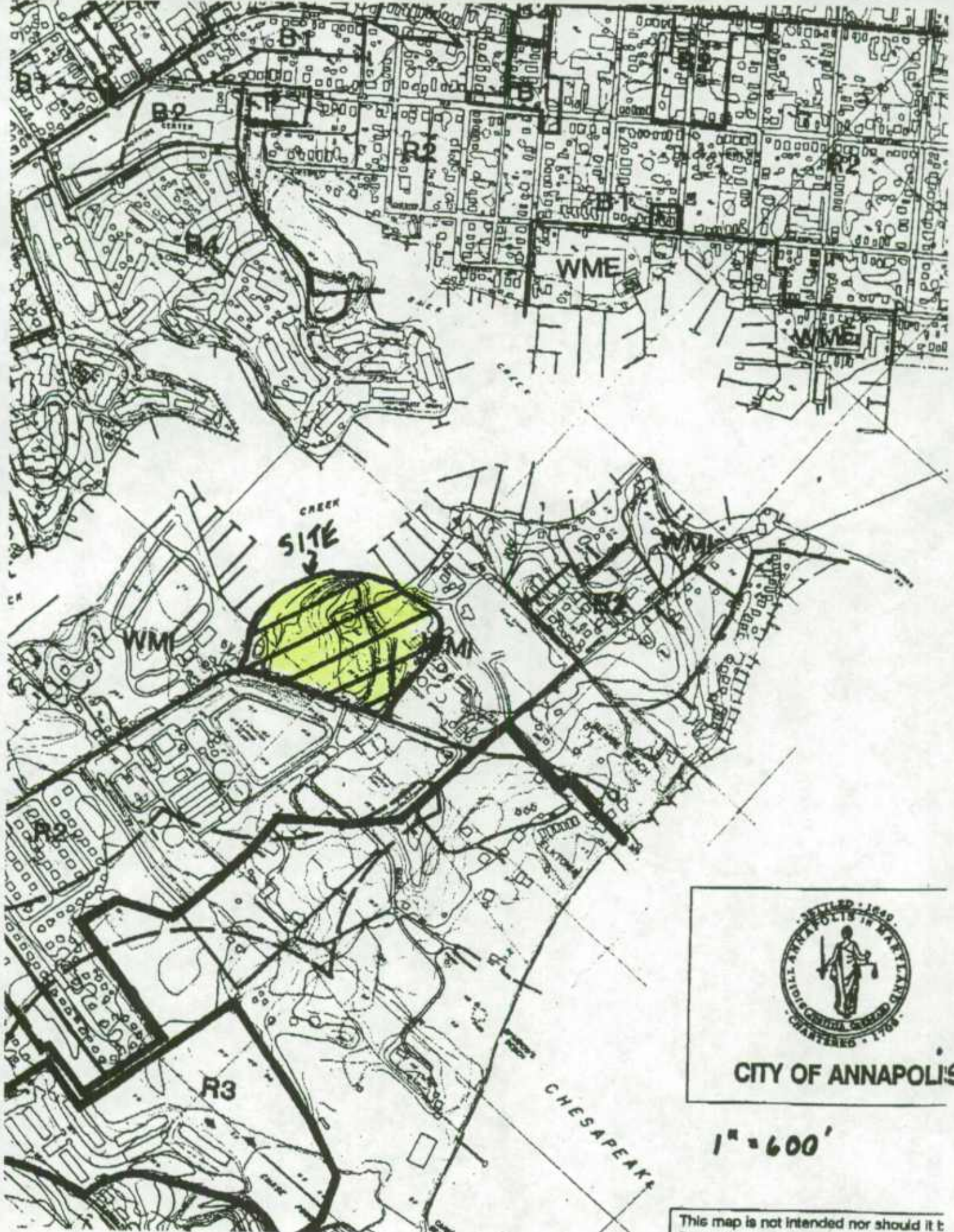
*Continued, Page Four  
Back Creek River Nature Park  
November 5, 2003*

**Recommended Condition:**

The City obtained verification from the Department of Natural Resources that there are no threatened or endangered species on site. If any are found, the City must follow the measures necessary to protect the species.



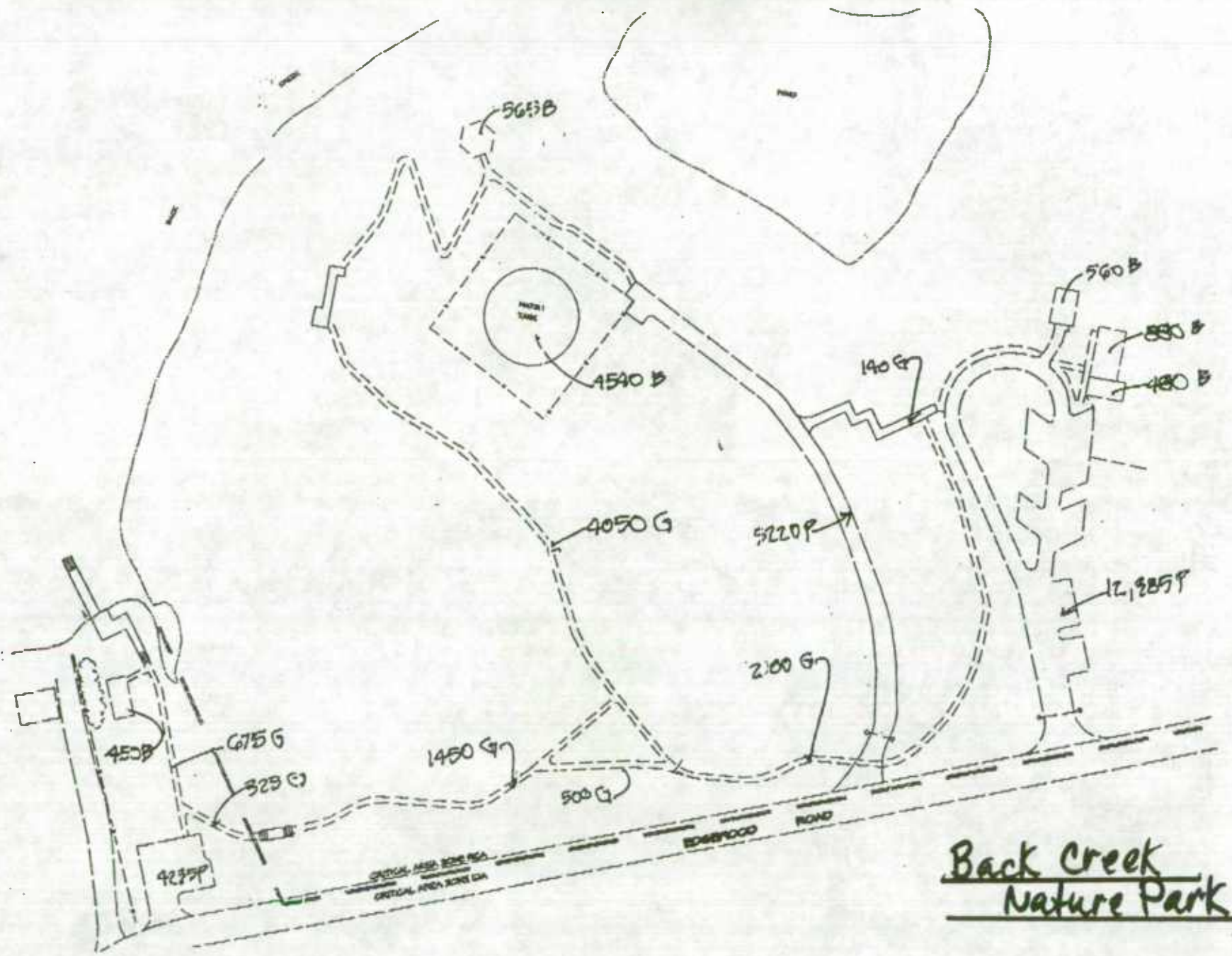




CITY OF ANNAPOLIS

1" = 600'

This map is not intended nor should it b



Back Creek  
Nature Park

B = BUILDING  
P = PARKING  
G = GRAVEL TRAIL

EXISTING IMPERVIOUS  
BACK CREEK PARK  
1" = 22'  
11" = 100'

## *Critical Area Commission*

### **STAFF REPORT**

**November 5, 2003**

**APPLICANT:** Town of Leonardtown

**PROPOSAL:** Leonardtown Waterfront Park – Concept Approval

**JURISDICTION:** Town of Leonardtown

**COMMISSION ACTION:** Concurrence with Concept Plan

**STAFF:** Mary Owens

**APPLICABLE LAW/  
REGULATIONS:** COMAR 27.02.04 – State or Local Agency Actions  
Resulting in Major Development on Private Lands or Land  
Owned By Local Jurisdictions

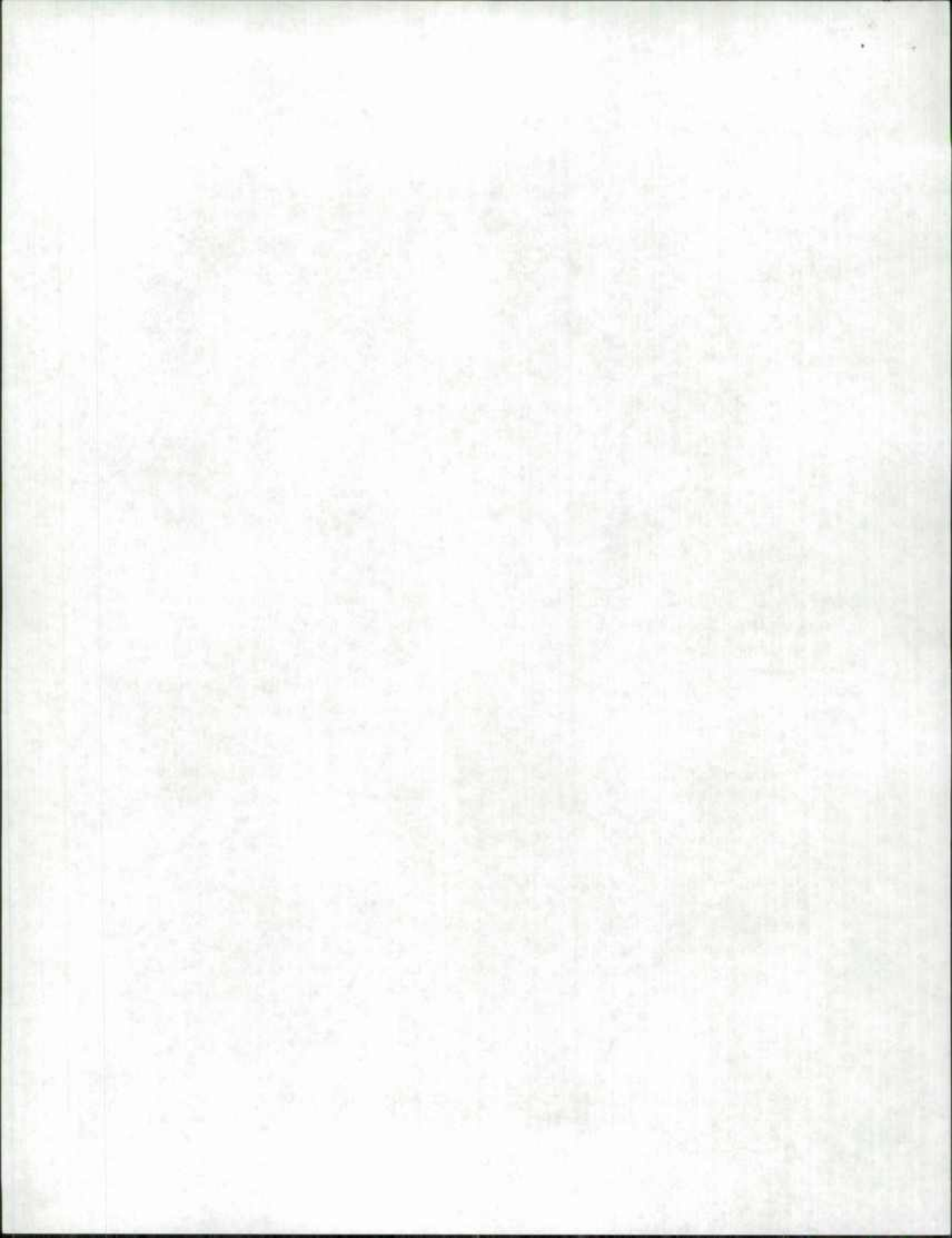
### **HISTORY:**

The Town, the property owner, and Commission staff have been working together on a major redevelopment of the Town's waterfront. The overall project involves several properties totaling 5.76 acres. Redevelopment of these properties is considered a key element of the Town's "Smart Growth" strategy and represents one of the rather limited opportunities within the Town for public access to the water. The proposed redevelopment of the property will have a significant impact on the Critical Area Program in Leonardtown because it involves the adoption of a new Modified Buffer Areas ordinance, the designation of the site as a Modified Buffer Area, and the use of growth allocation. The overall project requires extensive environmental analysis to ensure that Buffer impacts are minimized and appropriately mitigated, that stormwater is effectively managed and the 10% pollutant reduction requirement is addressed, and that impacts to other resources, including tidal and non-tidal wetlands, are minimized and mitigated as required by the Maryland Department of the Environment.

A critical component of the overall project is the creation of an approximately .90 -acre waterfront park on a portion of the site that was formerly used as an ice and fuel plant, but had been abandoned several years ago. The creation of the park is proposed as the primary mitigation for impacts associated with the overall redevelopment of the Town's waterfront, which will involve 37,733 square feet of impacts to the 100-foot Buffer and impacts to tidal and non-tidal wetlands.

### **DISCUSSION:**

The Town, in developing their Modified Buffer Area Program proposed a broad interpretation of the buffer exemption area designation in order to create an economically viable, comprehensive redevelopment of the Town's waterfront that included a public waterfront access component.



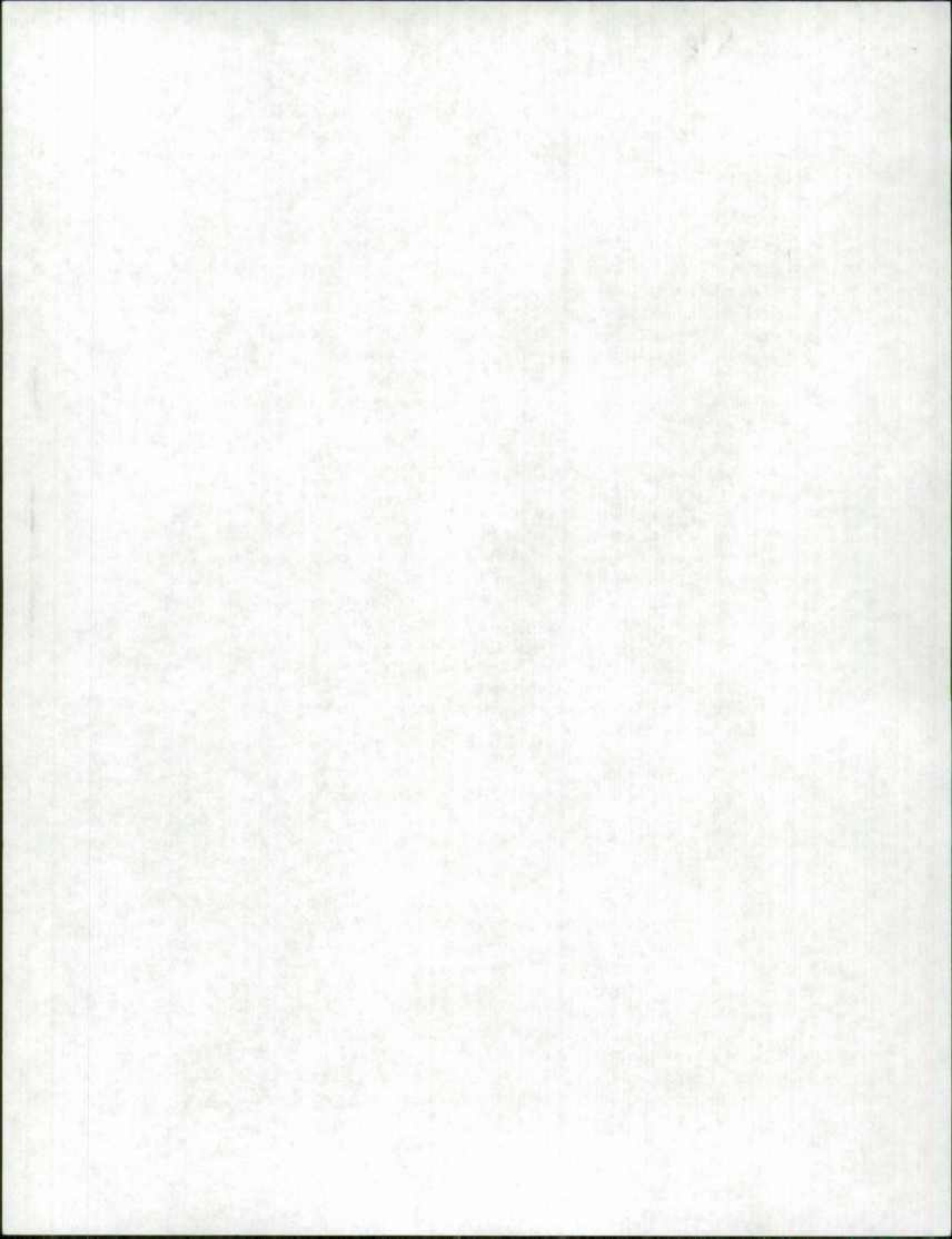
The Town's proposal included a commitment to the Commission, through meetings with staff and the Project Subcommittee, that the Town Waterfront Park would be the primary element of the mitigation strategy, and that the Park would be designed to satisfy the requirements of the proposed Modified Buffer Areas ordinance. The Town's proposal included the following elements:

- Removal of existing dilapidated buildings (already complete)
- Clean-up of existing contaminated materials and soil and capping to prevent further contaminant leaching
- Establishment of a 25-foot naturally vegetated bufferyard adjacent to the water
- Removal of extensive areas of impervious surface within the 100-foot Buffer
- Improvement and expansion of public access to the water, including canoe and kayak access
- Treatment of stormwater associated with the redevelopment resulting in a 10% pollutant reduction
- Implementation of a mitigation plan (landscaping with native species) or collection of fees-in-lieu for all development and redevelopment activity within the 100-foot Buffer.

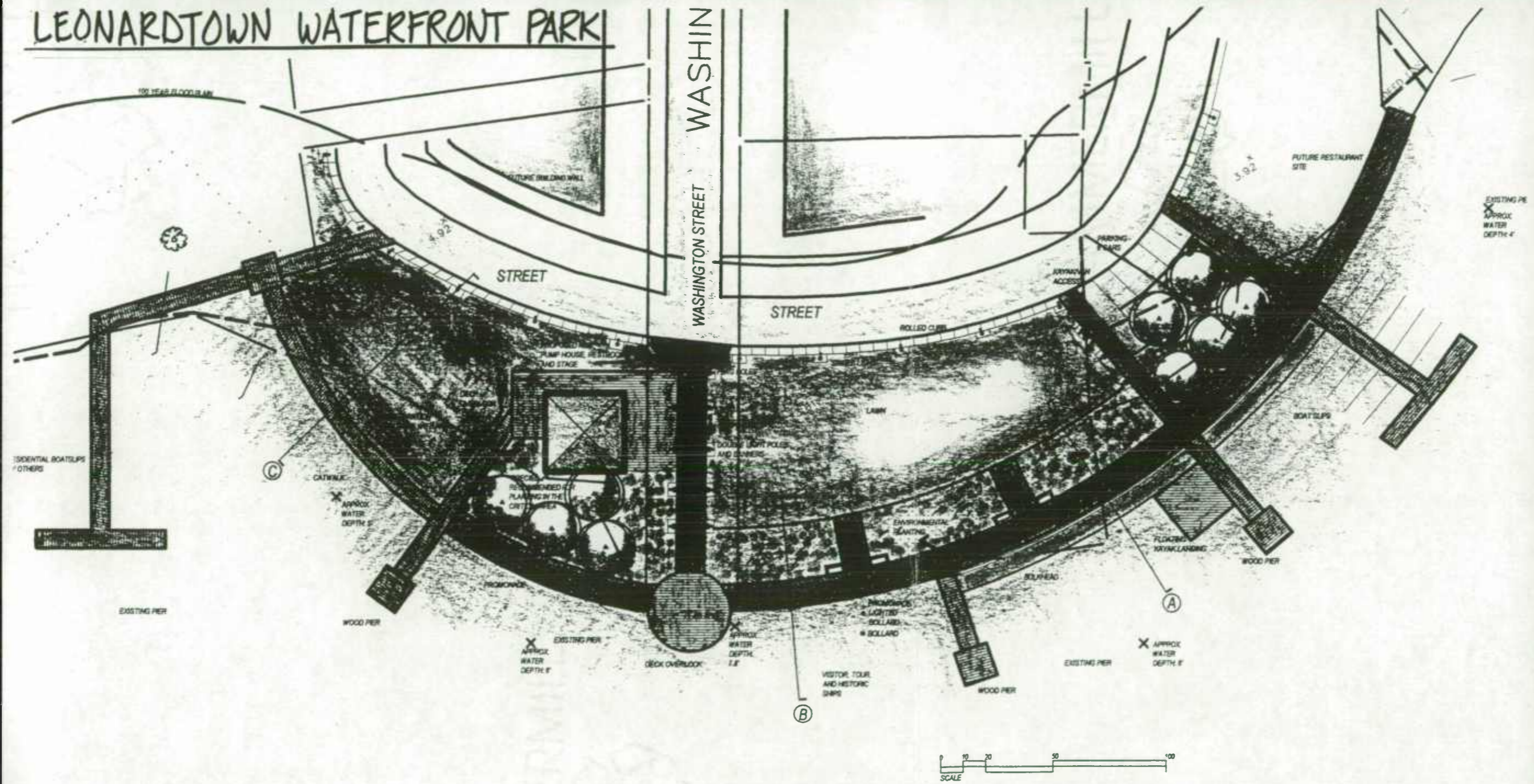
The Town has submitted a concept plan for the park that consists of an open lawn area and extensive plantings within a vegetated bufferyard close to the water. Currently, this portion of the property is paved to the water's edge. Pervious and semi-pervious materials will be used within the park to enhance its water quality and habitat functions. The park will include a relocated pumping station for the Town's sewage treatment plant. This structure will include restroom facilities for the park and a stage for events that will be held at the park. The park includes a 10-foot wide walkway adjacent to the water and an elevated catwalk over tidal wetlands. There are also three piers, a deck overlook, a floating kayak landing, and approximately 200 linear feet of canoe launching area. The park also includes six parking spaces for kayak loading and unloading. Although a public boat ramp was formerly located on the site, the ramp was closed last year, and no ramp facilities for motorized watercraft are proposed.

At this time, the Town Waterfront Park design is still conceptual, and because it is a critical element of the overall project and the Modified Buffer Area designation, it is important that the design be sufficiently detailed, so that the Commission can ensure that adequate and appropriate mitigation has been provided. A copy of the concept plan for the Town Waterfront Park is included as Attachment (1).

The Commission's concurrence with the concept plans would acknowledge that a waterfront park providing public access to the water at the proposed location is consistent with the Town's Critical Area Program and the Critical Area Act and Criteria. The concurrence confers the Commission's general acceptance of the proposed concept plans, but is not specific with regard to the placement and size of structures and walkways, the type or location of stormwater management features, impacts to tidal and non-tidal wetlands, and compliance with mitigation requirements for impacts for development within a Modified Buffer Area. Staff recommends that the Commission concur with the concept plans for the Town Waterfront Park as a Major Development Project on Land Owned By a Local Jurisdiction with the condition that final approval by the Commission is required. This can take place when more detailed plans are available.



# LEONARDTOWN WATERFRONT PARK



PLAN - SCALE 1" = 50'



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Faint, illegible text or markings in the lower left quadrant.



Faint, illegible text or markings in the lower right quadrant.



## *Critical Area Commission*

### **STAFF REPORT**

**November 5, 2003**

**APPLICANT:** Maryland Port Administration (MPA)

**PROPOSAL:** Shed 6B at Dundalk Marine Terminal

**JURISDICTION:** Baltimore City

**COMMISSION ACTION:** Vote

**STAFF RECOMMENDATION:** Approval with Condition

**STAFF:** Dawnn McCleary

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

### **DISCUSSION:**

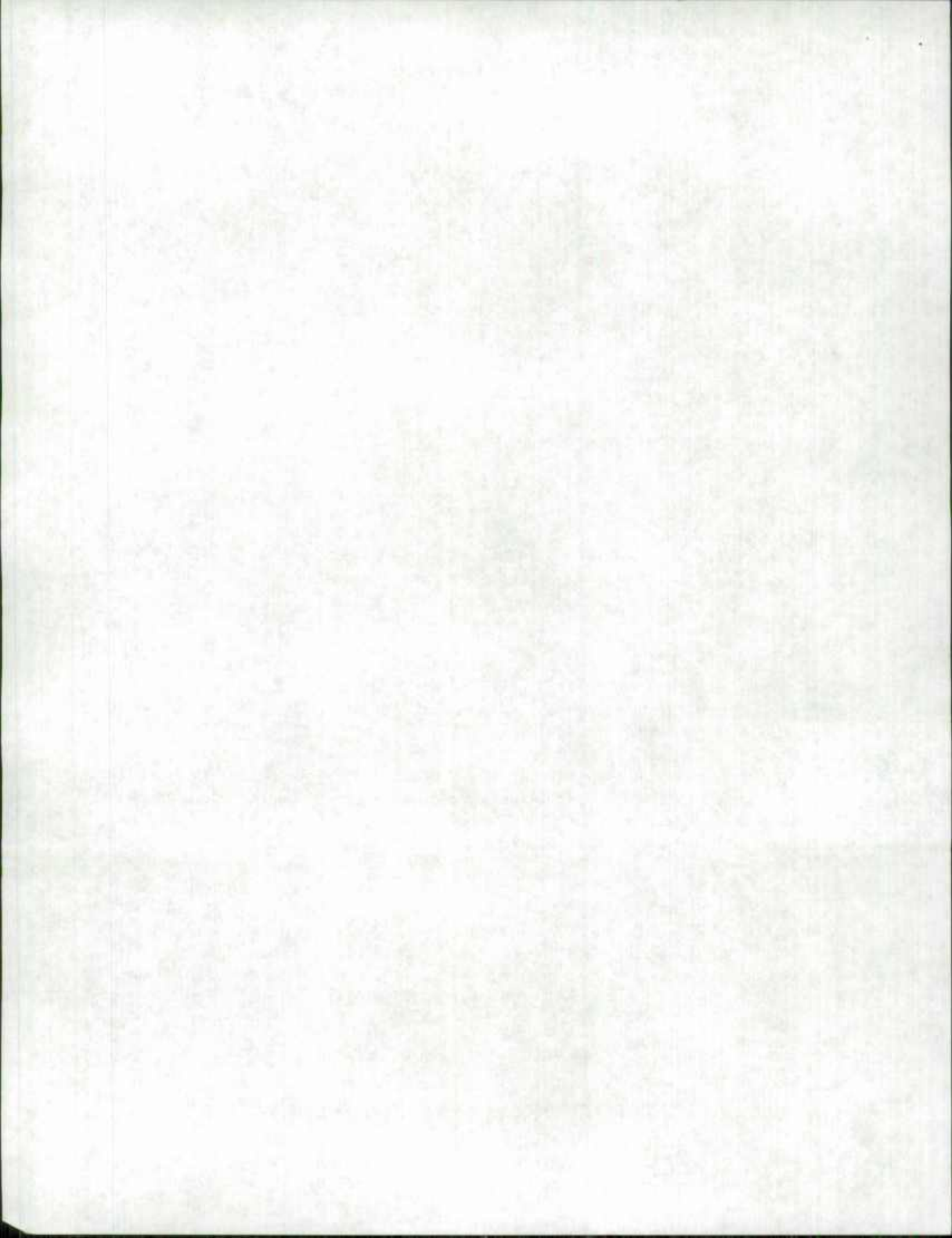
The Maryland Port Administration plans to construct a new cargo shed, Shed 6B, in Area 600 at Dundalk Marine Terminal. Shed 6B will provide storage for paper products. This project includes the construction of the new shed, a loading dock with dual, parallel railroad tracks, utility improvements and pavement resurfacing.

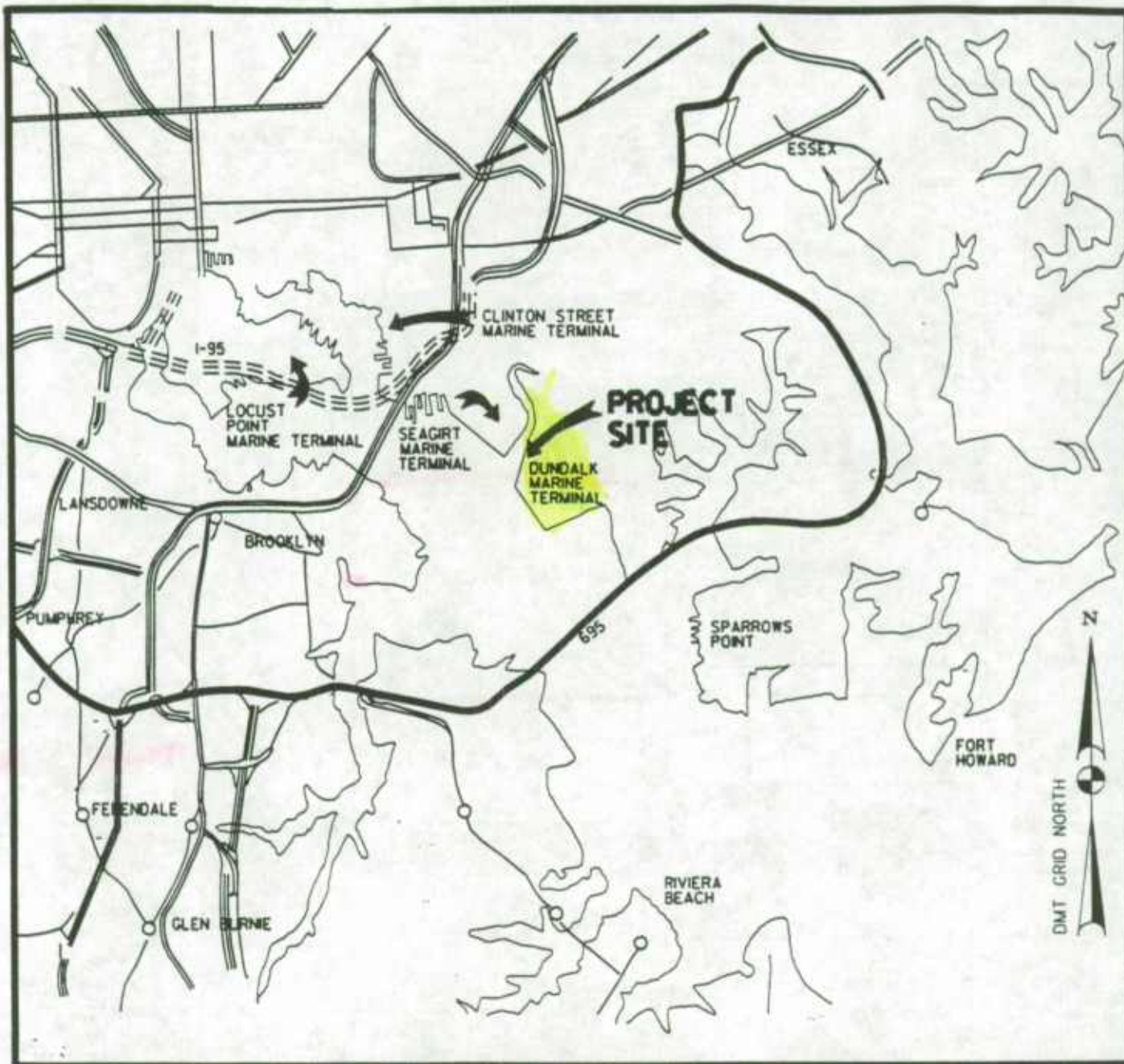
Shed 6B will be constructed on an existing parking lot that is 100% impervious. The developed conditions will also be 100% impervious. The site is located entirely within the Critical Area. No portion of this project lies within the 100-foot Buffer. The runoff from the site will be discharged into an existing storm drain system that outfalls to Colgate Creek.

There are no threatened or endangered species present on this site. MPA has submitted stormwater management plans to the Maryland Department of the Environment (MDE) and is awaiting approval. The pollutant removal requirement is 4.82 pounds of phosphorus. There are no on-site treatment options. MPA currently owes 3.24 pounds of phosphorus. If this project is approved, the total phosphorus deficit will be 8.06 pounds. MPA is working on an overall plan to treat phosphorus off-site to address the 10% pollutant reduction requirements.

### **Recommended Condition:**

That MPA receive approval from MDE for the stormwater management plans prior to construction. Any substantive changes must come back to the Commission for approval.





VICINITY MAP

5TH

6TH

7TH

ON SHED 8  
STREET

AREA 501  
 A = 4.26 AC.  
 RR = 3.57 LBS.

AREA 401  
 A = 4.45 AC.  
 RR = 3.73 LBS.

AREA 500  
 A = 4.74 AC.  
 RR = 3.97 LBS.

AREA 601  
 A = 4.16 AC.  
 RR = 3.48 LBS.

BLDG #3

BLDG #4

ED 4B

EA 400  
SERVICE ROAD

SHED 4

1000' CRITICAL AREA BOUNDARY

AREA 501  
 (shaded area)

AREA 601

NORTH SERVICE ROAD

AREA 500

AREA 600

PASSENGER TERMINAL

SHED 6

AREA 600  
 A = 5.76 AC.  
 RR = 4.82 LBS.

BERTH 4

BERTH 5

BERTH 6

BERTHS 5+6  
 A = 3.73 AC.  
 RR = 10.12 LBS.

AREA 300  
 A = 9.60 AC.  
 RR = 8.04 LBS.

NEW FACE OF WHARF

PASSENGER TERMINAL  
 A = 3.06 AC.  
 RR = 2.56 LBS.

BERTHS 3+4  
 A = 2.40 AC.  
 RR = 8.93 LBS.

DUNDALK Marine  
Terminal

Shed 6 B

## *Critical Area Commission*

### STAFF REPORT November 5, 2003

**APPLICANT:** Historic St. Mary's City

**PROPOSAL:** Dove Bank Access Path

**JURISDICTION:** St. Mary's County

**COMMISSION ACTION:** Vote

**STAFF RECOMMENDATION:** Approval with condition

**STAFF:** Mary Owens

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

#### **DISCUSSION:**

Historic St. Mary's City is requesting approval of a project involving the redevelopment of an existing pathway that provides access from the path system through Historic St. Mary's City to the waterfront and the dock where a replica of the historic ship, *The Maryland Dove*, is docked. *The Dove* is one of the most popular exhibits at Historic St. Mary's City; however, the existing trail is rather steep and the surface of the trail is uneven. These conditions prevent some visitors from seeing this part of the exhibit and accessing the waterfront. The existing trail does not meet the standards for accessibility defined in the Americans with Disabilities Act.

The project is scheduled for construction this spring and is a significant element of the Historic St. Mary's City's capital improvements program. The project site involves an area where grading and excavation should be minimized because of archaeological resources, and this has affected the location and design of the access path. The path has been designed to minimize impacts and to accommodate the steep topography.

The proposed trail will be a total of 487 feet long and eight feet wide. The first 185 feet of the trail will be constructed of asphalt on grade, and will be placed in the same general location as the existing path. This impervious portion of the path totals 1480 square feet. The maximum slope of this portion of the path is 8.33%. The remaining 302 feet of the path will consist of an elevated boardwalk with two switchbacks, which are necessary to retain the 8.33% maximum slope. At the first switchback, three stairs lead to a level grassy area that will be used as a gathering area for tours and events. The path is designed with both an ADA accessible ramp and stairs that lead from the switchback to the dock. Presently, the drawings indicate that the area between the switchback and the dock is to remain as a sandy beach, but HSMC staff plans to

install 260 square feet of decking between the stairs and the pier when additional funds become available.

The project is located entirely within the 100-foot Buffer and expanded Buffer. The project involves 4,156 square feet of disturbance in the Buffer and the removal of six trees. Historic St. Mary's City is proposing to provide mitigation at two-to-one for a total of 8,312 square feet of mitigation. The mitigation will be incorporated into the ongoing implementation of a Buffer Management Plan that was reviewed by the Project Subcommittee as mitigation for the MD Route 2 Widening Project in March 2001. Other than the location of the path within the 100-foot Buffer, there are no other impacts to Habitat Protection Areas.

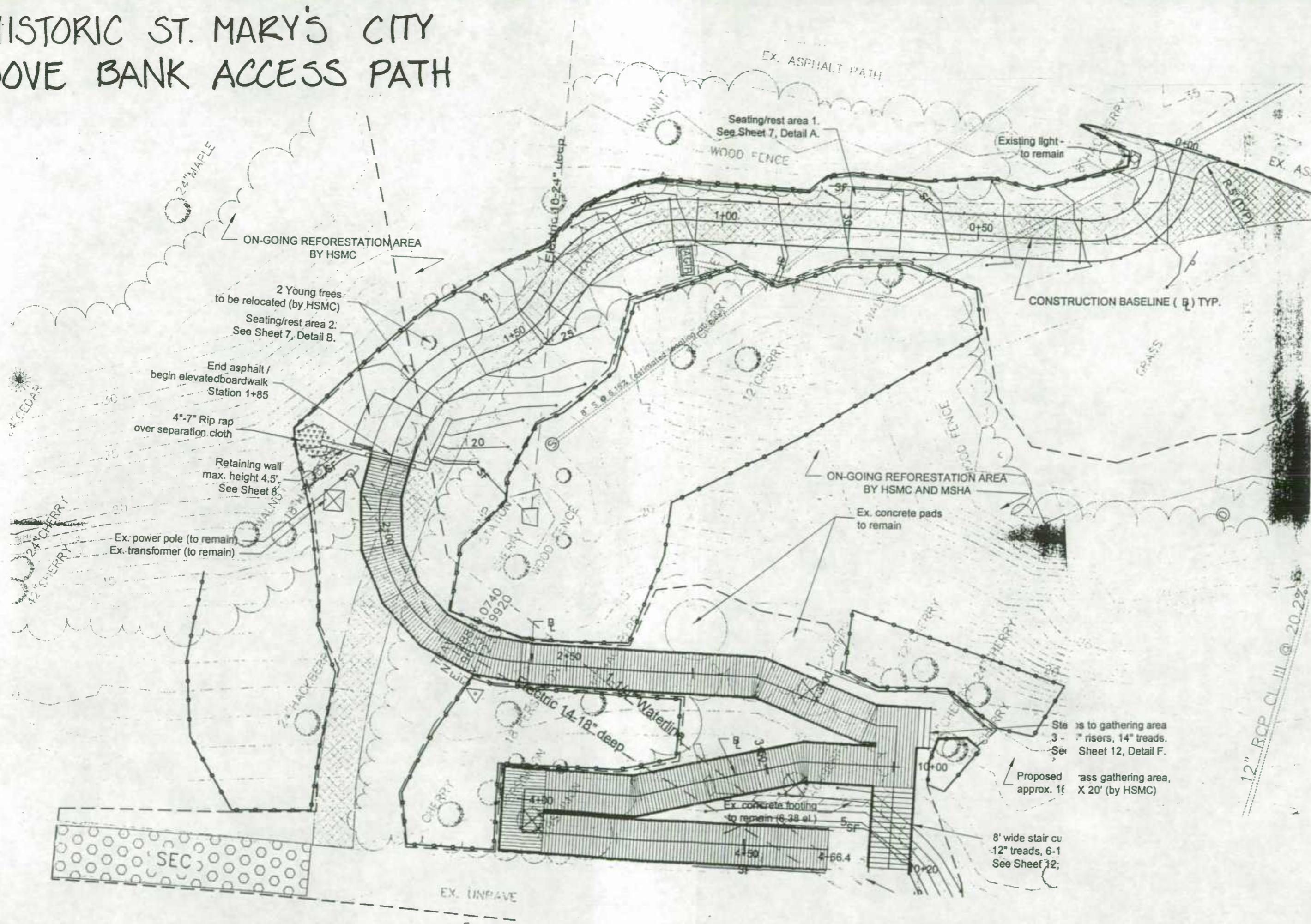
Historic St. Mary's City is not considered an area of intense development; therefore, impervious surfaces are limited to 15%. The asphalt portion of the access path replaces a portion of the existing path that is partially paved and partially constructed with concrete pavers. The elevated boardwalk portion of the path, although longer than the existing path, will be constructed with gravel underneath and appropriate plantings, so that portion of the path is considered pervious. Overall, the project will result in a net reduction in impervious surface area. Stormwater will be managed by a gravel bed placed under the elevated boardwalk and infiltration into the surrounding area. The Maryland Department of the Environment is currently reviewing the project, and it is anticipated that the reduction in impervious surface area will meet the requirements of the 2000 MDE Stormwater Manual.

#### **STAFF RECOMMENDATION:**

Commission staff recommends that this project be approved with the following condition:

**A Planting Agreement shall be executed with Commission staff prior to initiating construction on this project.**

# HISTORIC ST. MARY'S CITY DOVE BANK ACCESS PATH

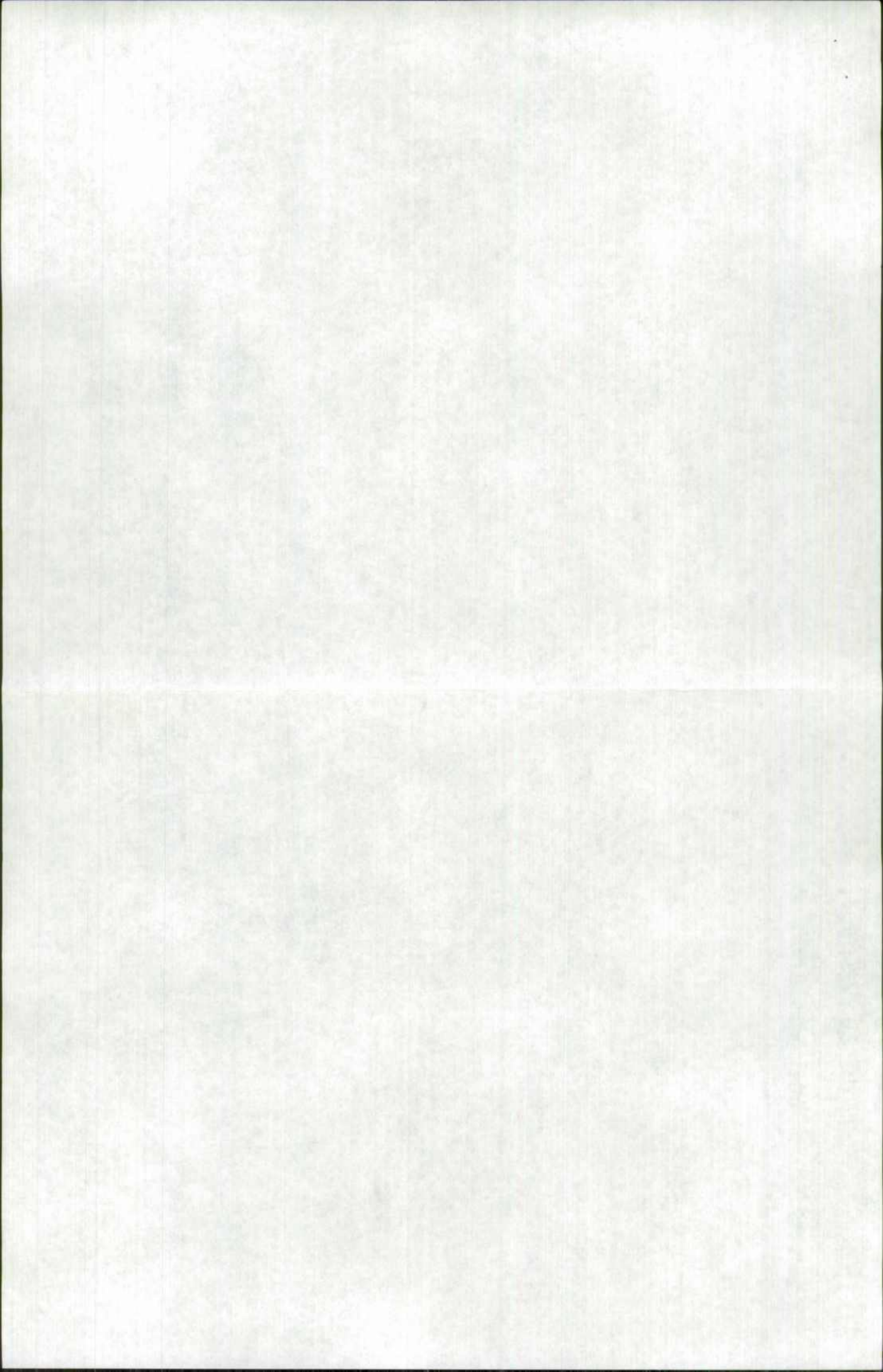


Steps to gathering area  
3 - risers, 14" treads.  
See Sheet 12, Detail F.

Proposed grass gathering area,  
approx. 16' X 20' (by HSMC)

8' wide stair cut  
12" treads, 6-1  
See Sheet 12;

12" RCP CL III @ 20.2%





## *Critical Area Commission*

### **STAFF REPORT**

**November 5, 2003**

**APPLICANT:** Department of Transportation

**PROPOSAL:** Memorandum of Understanding

**JURISDICTION:** All

**COMMISSION ACTION:** Vote

**STAFF RECOMMENDATION:** Approval

**STAFF:** LeeAnne Chandler, Regina Esslinger

**APPLICABLE LAW/  
REGULATIONS:** COMAR 27.02.05.02 State Agency Actions Resulting in  
Development on State-Owned Lands

### **DISCUSSION:**

Under COMAR 27.02.05.02, State agencies may seek a general approval from the Commission for programs or classes of activities that result in development on State-owned lands in the Critical Area. Staff from the Department of Transportation (DOT) and the Commission have been working together on revisions to the existing Memorandum of Understanding (MOU) for a number of years. The existing MOU was approved in 1992 and is in need of updating to reflect current Commission processes and standards.

The first part of the MOU is the legal contract. It reiterates the findings made by the General Assembly in passing the Critical Area Law. It sets out the process to be used for DOT projects to gain approval from the Commission and also lists the programs, activities and classes of development eligible for General Approval. The conditions for general approval will be specific to each of the five modal administrations and will be contained as appendices. Mitigation banking is also discussed, though specifics will be handled through separate agreements.

Appendix A is the Project Application Checklist. It contains a listing of all of the information that the applicant (State agency) is required to submit when a project requires Commission approval. Appendices B1 through B5 will contain the conditions for general approval for each of the modal administrations. Conditions for general approval for the State Highway Administration (SHA) are included as Appendix B1. Similar documents for the other modes will be brought to the Commission when they are completed.

In Appendix B1, permitted SHA activities that are covered by the General Approval are divided into three categories: Maintenance Projects, Minor Projects, and Routine Bridge and Culvert Replacements.

- Maintenance projects include safety and traffic management activities such as installing guardrails or traffic signals as well as more routine maintenance such as road patching or resurfacing.
- Minor projects are those that involve up to a ten percent increase in impervious area (outside of the Buffer). The 10% pollutant reduction requirement must be addressed, along with mitigation for any clearing necessary for the project. These projects will be reported to the Commission on a biannual basis. Examples of minor projects include construction of new bicycle lanes or sidewalks, intersection reconstruction, and repairs to existing truck weigh stations or maintenance facilities.
- Routine bridge and culvert replacements are those that are in the same location or immediately adjacent to the bridge or culvert being replaced with no increase in impervious area. These projects will also be reported on a biannual basis.

All projects must be consistent with the development standards contained in COMAR 27.02.05. Projects that involve disturbance to the Buffer qualify for general approval only if the project involves in-kind repair, replacement or removal of existing structures or surfaces within the Buffer. Activities which place new structures or impervious surfaces within the Buffer do not qualify for general approval.

COMAR requires the Commission to seek comments on any proposed general approval from affected local jurisdictions. The draft MOU was mailed to all Critical Area jurisdictions and comments were requested by October 21, 2003. No substantive comments were received.

The MOU and its appendices will be included in the mailing as a separate file. If anyone has questions prior to the Commission meeting, please contact LeeAnne Chandler at (410) 260-3477 or [lchandler@dnr.state.md.us](mailto:lchandler@dnr.state.md.us).

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE MARYLAND DEPARTMENT OF TRANSPORTATION AND

THE CRITICAL AREA COMMISSION FOR THE  
CHESAPEAKE AND ATLANTIC COASTAL BAYS

THIS MEMORANDUM OF UNDERSTANDING (this "Memorandum"), entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2003 memorializes the understanding reached by the **Maryland Department of Transportation** (the "Department") and the **Critical Area Commission for the Chesapeake and Atlantic Coastal Bays** (the "Commission").

RECITALS

WHEREAS, the public policy of the State of Maryland, as declared and codified by the General Assembly in §§8-1801(a) (1)-(9) of the Natural Resources Article, Annotated Code of Maryland, is as follows:

The Chesapeake and the Atlantic Coastal Bays and their tributaries are natural resources of great significance to the State and the nation;

The shoreline and adjacent lands constitute a valuable, fragile, and sensitive part of this estuarine system, where human activity can have a particularly immediate and adverse impact on water quality and natural habitats;

The capacity of these shorelines and adjacent lands to withstand the continuing demands upon them, without further degradation to water quality and natural habitats is limited;

National studies have documented that the quality and productivity of the waters of the Chesapeake Bay and its tributaries have declined due to the cumulative effects of human activity that have caused increased levels of pollutants, nutrients, and toxins in the Bay System and declines in more productive land uses such as forestland and agricultural land in the Bay region;

Those portions of the Chesapeake and the Atlantic Coastal Bays and their tributaries within Maryland are particularly stressed by the continuing population growth and development activity concentrated in the Baltimore/Washington metropolitan corridor and along the Atlantic Coast;

The quality of life for the citizens of Maryland is enhanced through the restoration of the quality and productivity of the waters of the Chesapeake and the Atlantic Coastal Bays, and their tributaries;

The restoration of the Chesapeake and the Atlantic Coastal Bays and their tributaries is dependent, in part, on minimizing further adverse impacts to the water quality and natural habitats of the shoreline and adjacent lands;

The cumulative impact of current development is inimical to these purposes; and

There is a critical and substantial State interest for the benefit of current and future generations in fostering more sensitive development activity in a consistent and uniform manner along shoreline areas of the Chesapeake and the Atlantic Coastal Bays and their tributaries so as to minimize damage to water quality and natural habitats.

**WHEREAS**, the Department is responsible for the planning, funding, and administration of the State's transportation activities pursuant to the Transportation Article, Annotated Code of Maryland;

**WHEREAS**, the Department recognizes the authority, goals, objectives and policies of the Commission's Criteria, specifically COMAR 27.02.05 governing state agency actions resulting in development on State-owned lands;

**WHEREAS**, the Annotated Code of Maryland, Natural Resources Article 8-1801 et seq. establishes the Commission and sets forth its duties and authority for implementing the State's Critical Area Protection Program for the Chesapeake and the Atlantic Coastal Bays;

**WHEREAS**, the Commission has established Criteria for development undertaken by State agencies in the Critical Area even though the development has not been approved by a local jurisdiction with an approved Critical Area Program; and

**WHEREAS**, the Commission has authority to approve, deny, or request modifications to State agency actions resulting in development on State-owned lands based on the Commission's assessment of the extent to which the project conforms with COMAR 27.02.05, and to grant general approval for certain programs or classes of such activities, pursuant to COMAR 27.02.05.02.F.

**NOW, THEREFORE**, be it resolved that the parties named above hereby mutually agree to the following:

1. **PURPOSE:**

1.1 The purpose of this Memorandum is to clarify the terms and procedures by which the Department will conduct development activities in the Critical Area, and to ensure that any such activities are consistent with the Commission's criteria, including but not limited to criteria for protecting the water quality and plant and wildlife habitat of the Chesapeake and the Atlantic Coastal Bays. This Memorandum addresses the following items:

- 1.1.1 the process to be used by both parties in order for the Department to gain approval of the Commission for projects in the Critical Area,
- 1.1.2 the programs, activities and classes of development eligible for General Approval, and
- 1.1.3 the responsibilities of both parties with regard to such General Approvals.

1.2. The Department enters into this Memorandum on behalf of the following Modal Administrations (referred to herein, individually as a "**Modal Administration**", and collectively as the "**Modal Administrations**") within the Department:

- 1.2.1 State Highway Administration

- 1.2.2 Maryland Aviation Administration
- 1.2.3 Maryland Transit Administration
- 1.2.4 Maryland Port Administration
- 1.2.5 Motor Vehicle Administration

2. **PROCESS:**

2.1 By January 31<sup>st</sup> of each calendar year, the Department shall provide the Chairman of the Commission with a copy of the Consolidated Transportation Program (the "CTP").

2.2 By March 1<sup>st</sup> of each calendar year, each Modal Administration shall provide to the Chairman of the Commission a List of its projects located in the Critical Area that are anticipated to reach the following phases before or during the first fiscal year covered by the CTP:

- Major Projects: Final project planning, after selection of an alternate
- All other projects: Final design phase

Each Modal Administration's List shall indicate for each project a) whether the project is on state, local or private land, and b) whether the Modal Administration believes that the project qualifies for General Approval.

2.3 Each Modal Administration shall update its List as projects are added or status changes. Updates shall be provided in writing to the Chairman of the Commission within thirty (30) days after a project is added or a status changes, as applicable.

2.4 Said List shall be for information only. Regardless of whether a project is included on a List or not, all projects in the Critical Area will follow the submission and approval processes outlined in this Memorandum.

2.5 The Modal Administrations shall consult with the Commission during the planning and design stages of all projects subject to Commission approval. The Modal Administrations shall include Commission staff at inter-agency review sessions and at other meetings involving siting and impacts of projects in the Critical Area. The Modal Administrations shall also promptly send the Commission all environmental reports and documents that are distributed to other state agencies for review. Commission staff retain their right to contact the Modal Administrations directly to discuss and/or request additional information.

2.6 When all information required by the Commission and/or listed in the Critical Area Report (attached hereto as Appendix A), is available, the Modal Administration shall submit to the Commission the Critical Area Report, site plans and a request for approval for a project. The Report shall include all site information and findings, which demonstrate that the development is consistent with the Critical Area criteria, and the timeframe for project design and construction. At the same time, the Modal Administration will also send site plans and a Critical Area report to the local jurisdictions impacted by the project. Commission staff will solicit comments from those jurisdictions.

2.7 The Commission shall notify the Modal Administration of its decision to approve, deny, or approve with conditions the project according to COMAR 27.02.07.

2.8 The Modal Administration shall notify the Chairman of the Commission immediately of any changes in the plans as approved or of changes that occur during construction of the project, if these changes could affect fish, wildlife, or plant habitat, habitat protection areas under COMAR 27.02, water

quality and/or run-off to the Chesapeake or the Atlantic Coastal Bays or their tidal tributaries. The Modal Administrators shall afford Commission staff the opportunity to review any such changes and make recommendations based on assessment of the extent to which the project conforms with COMAR 27.02.05.

2.9 The Modal Administration shall send a copy of the Notice to Proceed to the Chairman of the Commission at the same time it sends the Notice to the Contractor.

2.10 The Commission shall notify the appropriate Modal Administration and the Department Representative on the Commission if the Commission becomes aware of an alleged violation of local, state or federal environmental laws or regulations including erosion and sediment control and stormwater management during construction or maintenance activities of any approved project. The Modal Administration shall in turn notify the appropriate state or local enforcement agency, and Commission staff will continue to be involved until the problem is resolved.

2.11 Staff of the Commission and the Department shall meet on an as-needed basis to address issues such as the project design and review process, project construction, and enforcement, including but not limited to standards for clearing and stabilization, sequencing of construction activities, off-site options for stormwater management quality control, priorities for training, or water quality monitoring. Visits to construction sites may be a part of the process as needed.

3. **MITIGATION BANKING:** The parties agree that any or all of the Modal Administrations may create "mitigation banks" in which administrations can accumulate credits for providing environmental mitigation over and above the amount required by the Commission for a particular project. The Commission may approve mitigation banks, allowing predetermined credits for mitigation to be applied to future projects. The process, terms and conditions of such banks will be set forth in separate agreements.

4. **GENERAL APPROVALS:** The Commission will grant general approval for certain classes of development by the modal administrations. The conditions for general approval for each modal administration are attached hereto, and incorporated herein by reference, as Appendices B1 through B5, as the same may be amended from time to time.

5. **PUBLIC SAFETY:** Certain situations and conditions jeopardizing public safety and welfare may require Modal Administrations to take emergency action in the form of development in the Critical Area. The Modal Administrations may undertake the necessary remedial actions without prior Commission approval; however, the Modal Administration shall notify the Commission of the development activities as soon as possible and shall obtain Commission recommendation for any necessary actions to ensure compliance with the Commission's project approval.

6. **MODIFICATIONS TO SCOPE:** This Memorandum may be amended at any time, but no more frequently than every six months. Modifications must be made in writing and must be agreed upon by both parties.

7. **MERGER:** This memorandum embodies the whole agreement of the parties. There are no promises, terms, conditions or obligations, referring to the subject matter other than those contained herein.

IN WITNESS WHEREOF, the parties have executed this Memorandum by causing the same to be signed as of the date first set forth above.

**CRITICAL AREA COMMISSION FOR THE  
CHESAPEAKE AND ATLANTIC COASTAL  
BAYS**

\_\_\_\_\_  
Martin  
Madden, Chairman

**MARYLAND DEPARTMENT OF  
TRANSPORTATION**

\_\_\_\_\_  
Robert L.  
Flanagan, Secretary

Approved as to form and legal sufficiency by the Office of the Attorney General this \_\_\_\_\_ day of \_\_\_\_\_, 2003,  
\_\_\_\_\_, Assistant Attorney General.

Appendix A  
***Critical Area Commission  
Project Application Checklist***

State Agency Actions Resulting in Development  
on State-Owned Lands in the Critical Area  
(COMAR 27.02.05)

**General Instructions**

The following checklist contains a list of items for consideration by the Critical Area Commission during its review of each State project affecting the Critical Area. While some items will not apply to the project of concern, the responsible Agency should review and be able to discuss aspects of each relevant item. This checklist should be completed and sent, with all other completed information, to the Critical Area Commission staff contact prior to Commission review. Please be aware of the following general guidelines:

- (1) **The completed checklist, maps, and all other pertinent project materials must be submitted to Critical Area staff contact at least 1 month prior to scheduled review by the Project Subcommittee at the Critical Area Commission=s monthly meeting.**
- (2) **The sediment and erosion control plan must be finalized prior to scheduling the project for review by the Project Subcommittee.**
- (3) **All other resource/environmental permits and other release documents must be obtained or must be in their final stages (i.e., public comment period completed, permit conditions in final form) prior to scheduling the project for review by the Project Subcommittee.**

If there are any questions with any aspect of this form or with the Commission=s review process, please do not hesitate to call the Commission staff contact at (410) 260-3460.

**General Mapping Features**

Please include the following features on all site plans:

- |  |  |
|--|--|
| <input type="checkbox"/> Vicinity map              | <input type="checkbox"/> Project boundary/Limits of disturbance  |
| <input type="checkbox"/> Scale                     | <input type="checkbox"/> Orientation   |
| <input type="checkbox"/> Project Name and Location | <input type="checkbox"/> Tract or lot lines  |
| <input type="checkbox"/> Critical Area boundary    | <input type="checkbox"/> Development area boundaries<br>(Intensely Developed Areas - IDAs, Limited<br>Development Areas - LDAs, Resource |



Conservation Areas - RCAs if information is available)

- One hundred-year floodplain boundary
- Agricultural lands
- Dredging activity and spoil site
- Surface mining sites and wash plants
- Topography
- Vegetative cover:
  - Existing forest
  - Forest clearing
  - Afforestation/reforestation areas
  - Mitigation areas (Buffer impacts)
- Soil:
  - Type
  - Area of hydric soils
  - Area of highly erodible soils
- Existing and proposed structures (buildings, roads, other paved or impervious areas, parking lots, lots, storm drains, septic, stormwater management systems, shore erosion control structures).
- Natural parks

**Habitat Protection and other Sensitive Area Mapping Features**

Please show the following Habitat Protection Area features on all site plans, if relevant to the particular project site:

- Buffers:
  - Minimum 100 ft. from tidal waters, tidal wetlands and tributary streams
  - Expanded Buffer to include 15% slopes, hydric soils and highly erodible soils
  - 25 ft. from nontidal wetlands
  - Plant and Wildlife Habitat (Colonial water bird nesting sites, historic waterfowl staging and concentration areas, riparian forest, forest interior dwelling bird habitat, areas of state or local significance, and natural heritage areas)
- Tidal Wetlands
- Nontidal Wetlands
- Plant and Wildlife Habitats (same as above)
- Threatened and Endangered Species (including species in need of conservation)
- Anadromous Fish Propagation Waters

**General Project Information**

Please include the following text information, if applicable to the site, in the project application materials. This information may be included in the form of letters, reports, or site plan notes.

- Project name and location**
- State agency sponsoring project**
- Project description**  
(brief narrative including project type, i.e. industrial, port-related, etc.)
- Anticipated timeline**  
(Include project milestones, approximate start and completion dates)
- Total acreage in Critical Area**
- Whether project is on State-owned land, locally-owned land or privately-owned land**
- Total forest area cleared**
- Method of stormwater control**
- 10% calculations (Please enclose worksheet) or impervious surface information**
- Soil erosion and sediment control measures and implementation strategy**
- Mitigation required for clearing of forest area** (1:1 ratio outside the 100-foot Buffer, 1.5:1 if between 20%-30% clearing, and 3:1 ratio inside the 100-foot Buffer or if above 30% clearing)
- Afforested area** (site must have a minimum of 15% forest cover if not IDA)

**Minimum Documentation Requirements**

The following permits and documents should be secured or must be in their final stages (i.e., public comment period completed, permit conditions in final form), if applicable to the site, prior to scheduling the project for review by the Project Subcommittee:

- Maryland Department of the Environment (MDE)**
  - Stormwater Management
  - Sediment and erosion control plan \*
  - Tidal wetlands permits
  - Nontidal wetlands permits
  - Water Quality Certification

**Army Corps of Engineers (ACOE) Tidal Wetlands Permit (404)**

\* All applicants are required to obtain their sediment and erosion control plans from MDE prior to review by the CBCAC.

**State / Federal Agency Recommendations**

Review and comment from the appropriate MDE, DNR, and ACOE units shall be provided, if applicable to the site, for the following resources and habitats:

- Threatened and Endangered Species       Plant and Wildlife Habitat
- Riparian Forests       Forest Interior Dwelling Birds (FIDs)
- Natural Heritage Areas       Colonial water birds
- Submerged Aquatic Vegetation       Anadromous Fish Propagation Waters
- Other Aquatic Species (Shellfish, etc.)       Historic Waterfowl Staging and Concentration Areas

**Site Visits**

Site visits should be arranged by the responsible agency in advance of Commission review. At a minimum, the site visit should include the Commission staff contact.

**PLEASE MAIL OR FAX THE ABOVE INFORMATION TO:**

**CRITICAL AREA COMMISSION  
1804 WEST STREET, SUITE 100  
ANNAPOLIS, MARYLAND 21401  
(410) 260-3460  
Fax (410) 974-5338**

## EXHIBIT B1

### Conditions for General Approval of State Highway Administration Projects

Under COMAR 27.02.05, State Agency Actions Resulting in Development on State-Owned Lands, the Commission may grant General Approval to state agencies for programs, activities, and classes of development on state-owned lands in the Critical Area. Granting of general approval by the Commission allows implementation of the approved program, activity or projects in accordance with the policies and requirements as set forth in COMAR 27.02.05.

For the purposes of this General Approval, permitted activities within the Critical Area are divided into three classes: Maintenance Projects, Minor Projects, and Routine Bridge and Culvert Replacements. In addition to satisfying all requirements of 27.02.05, projects proposed for General Approval must meet the following conditions, according to project class:

#### A) **General Conditions** - All projects

1. All projects shall fulfill all applicable federal and state permitting requirements. Exemptions, variances and waivers granted by other agencies are separate from the requirements of the Critical Area and shall not be considered to lessen or alter the requirements of this General Approval.

2. All projects shall meet the standards of environmental protection concerning habitat protection areas in COMAR 27.02.05.09 except those necessarily associated with water-dependent facilities as set forth in COMAR 27.02.05.04. These standards include but are not necessarily limited to the following:

- a) No Habitat Protection Areas may be adversely affected, other than the 100-foot Buffer;
- b) Projects which involve disturbance to the Buffer qualify for general approval only if the project involves in-kind repair, replacement or removal of existing structures or surfaces within the Buffer. Projects which place new structures or impervious surfaces within the Buffer do not qualify for general approval.
- c) Any disturbance of the Buffer from activities or development by the Department shall be minimized (i.e., no vegetation shall be removed from the Buffer except that required by the proposed activity or development).
- d) The extent of the construction site or area disturbed shall be subject to standard sediment and erosion control requirements.

3. Maintenance Projects: Because no perceived adverse environmental impacts will be incurred, activities identified as one or more of the following qualify as maintenance projects for general approval by the Commission, and must meet only the conditions set forth in Section A of this Exhibit. Ten percent (10%) calculations are not required.

a) Installation or repair/modification/replacement of the following safety and traffic management equipment, within the road right of way, which do not increase quantity or lessen quality of runoff, and where clearing in the buffer is not anticipated:

- fencing
- signs
- pavement markings
- snow & ice detectors
- vehicle loop detectors
- pavement grooving/rumble strips
- traffic signals and monitoring equipment
- signal preemption equipment
- guardrails/ safety barriers
- railroad warning devices
- improved crossing surfaces at grade for railroads
- overhead signs & lighting
- overhead traffic detectors & cameras
- streetscaping
- permanent variable message signs on interstate highways
- Landscape planting and landscape maintenance for existing facilities and/or to fulfill objectives of a beautification program.

b) Routine Maintenance projects, within the road right of way and easements, which do not increase the quantity or lessen the quality of runoff:

- Rehabilitation of bridge parapets
- Wetland monitoring and remediation permit activities
- Stormwater management inspection and maintenance
- Conversion of existing unimproved stone/asphalt shoulder to paved shoulder
  
- Maintenance of roadways, intersections, parking lots, sidewalks and bicycle facilities including pavement replacement, patching and/or resurfacing that does not increase impervious surface.
  
- Bridge redecking, overlay and minor rehabilitation, including repair of culverts and headwalls, where clearing in the buffer is not anticipated.
  
- Minor drainage improvements, related to safety, flood control or erosion, within the existing right of way and easements, that would have no adverse

impacts on downstream habitat or hydrology, including the replacement of existing riprap slope protection, grout bags, pneumatically applied mortar or lining mortar.

- c) Modification or renovation of existing buildings or structures within the same footprint or stationary equipment which does not alter ground or at-grade surfaces or increase the quantity or lessen the quality of runoff.

**B) Additional Conditions for Minor Projects**

1. The project must meet all conditions contained in Section A of this Exhibit.
2. For all development and redevelopment projects any disturbance of the Buffer shall be mitigated by the establishment of forest vegetation of an area three times the extent of that disturbed (3:1).
3. Mitigation for Buffer disturbance shall occur on the following priority basis:
  - 1) On-site within the Buffer;
  - 2) Off-site within the Buffer in the same watershed;
  - 3) On-site outside the Buffer within the Critical Area;
  - 4) Off-site within the Critical Area in the same watershed;
  - 5) Off-site within the Buffer in a different watershed;
  - 6) Off-site within the Critical Area in a different watershed.
4. The following conditions apply to development or re-development activities on lands determined by the Commission as areas of intense development (IDA). (Areas of intense development means those areas where residential, commercial, institutional, intense recreational, or industrial developed land uses predominate, and where relatively little natural habitat occurs. Existing road rights-of-way are also considered to be intensely developed.)
  - a) The Department shall require technologies as required by applicable State laws and regulations to minimize adverse impacts to water quality caused by stormwater.
  - b) Offsets (i.e., best management practices, BMPs) shall be used to reduce pollutant loadings by at least 10 percent below the level of pollution on the site before development or re-development. Offsets may be provided according to the following priority schedule, provided that the water quality benefits are equivalent:
    - 1) on-site within the Critical Area;
    - 2) on-site outside of the Critical Area;
    - 3) off-site within the Critical Area in the same watershed;

- 4) off-site within the Critical Area in a different watershed.

In situations where priorities 3 or 4 would cause impacts to other resources, proposals to provide water quality measures off-site outside the Critical Area, but within two miles of the Critical Area boundary, may be reviewed by the Commission on a case-by-case basis. In addition, SHA may create a Water Quality Bank based on Phosphorus Load Reductions and request that the Commission approve said Bank. Credits and debits to the Bank must be approved by Commission staff.

- c) Wherever possible, permeable areas shall be established in vegetation;
- d) Development activities shall be designed and implemented to minimize destruction of forest and woodland vegetation. All trees in forests and developed woodlands which are cleared shall be replaced at a one to one (1:1) ratio in the Critical Area and a three to one (3:1) ratio in the buffer. Project design and implementation should follow the guidance in the Commission's "Guide to the Conservation of Forest Interior Dwelling Birds (FIDS) in the Critical Area, May 2000" as nearly as possible.

5. Minor projects will be reported to the Commission on a biannual basis, and will include projects initiated during the previous six months. The biannual reports will provide the following information, as appropriate: project descriptions; amount of new impervious surface; area of vegetation disturbed; method of 10% pollutant reduction (for projects in areas of intense development); area and location of vegetation replaced; and, if 10% pollutant reduction or replacement vegetation was not met on site, an explanation of why mitigation could only be met offsite. For projects that involve disturbance to the buffer, SHA shall provide evidence that the project meets the criteria described in COMAR 27.02.06.01,B. Projects shall be identified in their entirety. Projects may not be separated into component parts in order to qualify parts of a larger project as a "minor project."

6. Eligible Minor Projects: Those projects which involve up to a ten percent increase in impervious area in the Critical Area (outside of the Buffer), and which utilize stormwater quality management measures sufficient to achieve a ten percent reduction in pollutant loadings below existing levels, are authorized under this General Approval. These include:

- a) Pavement, parking lot, intersection and sidewalk reconstruction/rehabilitation including milling, base widening, and resurfacing
- b) Construction of new or widening of existing handicapped ramps, bicycle and pedestrian lanes or pathways and facilities within state transportation rights of way.

- c) Repairs to existing truck weigh stations, rest areas, and other SHA installations.

**C. Conditions for Routine Bridge and Culvert Replacement**

- 1. The project must meet all conditions contained in Sections A and B of this Exhibit, except as noted herein.
- 2. The alignment of the replacement bridge or culvert must be the same or immediately adjacent to that of the bridge or culvert being replaced, and in any event, the permanent footprint of the resulting structure will have an area of impervious surface no greater than the original bridge or culvert.
- 3. Projects for replacing culverts in areas designated IDA are exempt from the 10% pollutant reduction requirement described in B,4,b of this Exhibit, providing all other conditions are met. (NOTE: Projects for replacing bridges in areas designated IDA are subject to the 10% pollutant reduction requirement described in B,4,b of this Exhibit.)
- 4. Eligible Bridge and Culvert Replacements: Projects include only those routine bridge and culvert replacements that are not associated with highway improvements outside the scope of the General Approval.

- D. Other Minor Projects:** Other minor projects may qualify for general approval. These will be determined on a case by case through Department and Commission staff discussion and administrative review.



**CRITICAL AREA COMMISSION**  
1804 West Street, Suite 100  
Annapolis, Maryland 21401

**MEMORANDUM**

**TO:** Critical Area Commissioners

**FROM:** Mary Owens and LeeAnne Chandler

**DATE:** November 5, 2003

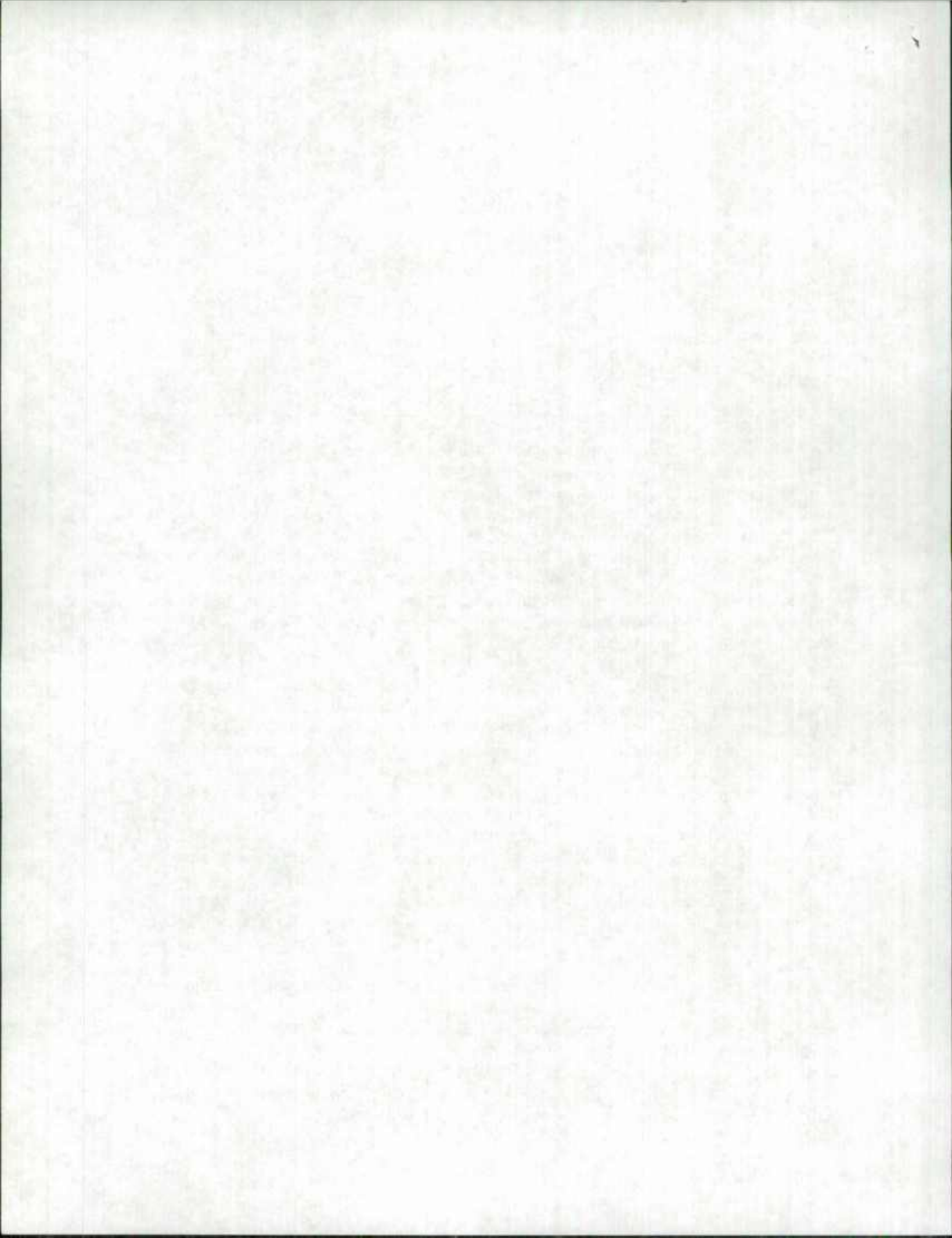
**SUBJECT:** New Critical Area 10% Rule Guidance Manual

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Critical Area Commission staff has recently completed an update of the Commission's three publications that provide guidance to applicants, plan reviewers and consultants about compliance with the 10% pollutant reduction requirement in Intensely Developed Areas. As you know, the 10% pollutant reduction requirement, or "10% Rule," is specified in COMAR Section 27.01.02.03.D(3); however, COMAR does not include a specific methodology for determining the pollutant reduction requirement and how to satisfy it. The three guidance documents, entitled *Applicant's Guide for 10% Rule Compliance*, *Plan Reviewer's Guide for 10% Rule Compliance*, and *Technical Manual for 10% Rule Compliance*, were prepared in 1993 by the Metropolitan Washington Council of Governments (COG). They replaced the Commission's original 1987 10% Rule guide, also prepared by COG.

Since that time, the science of stormwater management has evolved dramatically, particularly with regard to overall strategies for managing and treating stormwater and with regard to the type of Best Management Practices that are most effective. In 2000, the Maryland Department of the Environment (MDE) developed, promulgated, and adopted the 2000 Maryland Stormwater Design Manual. This Manual reflects the most up-to-date information on stormwater technology. The Manual includes a short chapter on the Critical Area and compliance with the 10% Rule; however it does not include all of the information in the three guidance publications. MDE's manual also does not address some inherent differences between Maryland's stormwater regulations as set forth in the Manual and the Critical Area Criteria; therefore, it was necessary that the Commission update its 10% Rule guidance manuals. It was determined that it would be beneficial to eliminate redundancy in the three guidance manual and to consolidate them into one document and to place the entire document, including downloadable worksheets on the Commission's web-site.

Using grant money provided by the Maryland's Coastal Zone Management Program through the National Oceanic and Atmospheric Administration, the Critical Area Commission obtained the services of a stormwater design consultant, the Center for Watershed Protection. Center staff has extensive experience in the areas of stormwater management, hydrology/hydraulic analysis, watershed protection and planning, and the design of innovative stormwater practices. As the nation's leading stormwater clearinghouse, the Center was able to technically review, update,



and consolidate the Commission's guidance publications in a short period of time. Last, but not least, Tom Schueler, executive director of the Center, was one of the lead authors of the original set of three 10% Rule Guides.

The draft document that is included with the mailing for your review reflects the revision and consolidation of the current guidance documents. The new manual covers the same basic information currently found in the documents and incorporates updated information on phosphorus loads, costs used to determine fees-in-lieu, and refined Best Management Practice designs. The Guidance Manual is organized as follows:

- **Sections 1 through 3** introduce the concept and selection of total phosphorus as the keystone urban pollutant and provide an overview of the methods to comply with the 10% Rule.
- **Section 4** outlines the Standard Application Process and includes sample worksheets.
- **Section 5** describes three simplified methods for complying with the 10% Rule on individual single-family lots. **Section 6** provides guidance on how to implement offsets for development sites that cannot meet the 10% Rule. **Section 7** contains a series of frequently asked questions about complying with the 10% Rule based on actual situations that have been reviewed by Commission staff over the last ten years. **Section 8** contains references and resources used to develop the Manual.
- **Appendices A through D** provide information about urban runoff pollutants, the criteria and justification for selection of a "keystone pollutant", information about the "Simple Method" for estimating pollutant loads, and the justification for the application of a single phosphorus concentration of 0.3 mg/l for all sites, regardless of pre-development impervious surface area. This is a change from the previous guidance documents that used 0.26 mg/l for sites with impervious surface area of less than 20% and 1.08 mg/l for sites with impervious surface area equal or greater than 20%.
- **Appendix E** provides descriptions, advantages, disadvantages and schematics for stormwater BMPs based on the 2000 MDE Stormwater Manual.
- **Appendices F and G** provide descriptions, advantages, disadvantages and schematics for stormwater BMPs allowed under the Residential Water Quality Plan and a technical memo that provides the basis for setting an offset fee that fully recovers the cost to remove phosphorus from one acre of impervious cover.

Commission staff and the consultant coordinated with the Maryland Department of the Environment, the Department of Planning, the Department of Natural Resources, and several local government planners to review the guidance documents and identify areas where specific content and format revisions were necessary. The consultant has responded to several rounds of comment by the various coordinating agencies, and this final draft has been sent to all local governments for review and comment. It is being presented to you today for information. It is anticipated that the Commission will be able to vote to adopt the document at the December meeting. If you have any questions about the document, please contact Mary Owens or LeeAnne Chandler.

