

Critical Area Commission
Department of Housing and Community Development
Crownsville, Maryland
December 3, 2003

SUBCOMMITTEES

10:00 a.m. – 12:00 p.m. Project Evaluation Subcommittee

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

Chesapeake Beach: Railway Trail Concept Approval (Calvert County)	Julie LaBranche Regina Esslinger
Department of Natural Resources: Jersey Island Timber Bulkhead Replacement (Crisfield, Somerset County)	Claudia Jones
10% Pollutant Reduction Rule Critical Area Commission Guidance Revisions	Mary Owens
State Highway Administration: Md. Route 70 (Annapolis) Update	Dawnn McCleary
State Highway Administration: Route 450 Mitigation Strategy Update (Prince George's County)	Lisa Hoerger
Planting Mitigation Techniques (Information)	Claudia Jones

11:00 a.m. – 12:00 p.m. Program Implementation Subcommittee

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

Planting Mitigation Techniques (Information)	Claudia Jones
Town of Perryville: Richmond Hills Growth Allocation (Cecil County)	Mary Ann Skilling
Wicomico County: Richardson Growth Allocation	Wanda Cole

12:00 p.m. Lunch

Critical Area Commission
Department of Housing and Community Development
Crownsville, Maryland
December 3, 2003

AGENDA

1:00 p.m. – 1:05 p.m.	Welcome and Remarks	Chairman Martin G. Madden
	Approval of Minutes for November 5, 2003	

PROJECTS

1:05 p.m. – 1:20 p.m.	VOTE: Chesapeake Beach: Railway Trail Concept Approval (Calvert County)	Julie LaBranche Regina Esslinger
1:20 p.m. – 1:30 p.m.	VOTE: Department of Natural Resources: Jersey Island: Timber Bulkhead Replacement (Crisfield, Somerset County)	Claudia Jones
1:30 p.m. – 1:45 p.m.	VOTE: 10% Pollutant Reduction Rule Critical Area Commission Guidance Revisions	Mary Owens

PROGRAMS

1:45 p.m. – 1:55 p.m.	Refinement: Perryville (Cecil County) Richmond Hills Growth Allocation	Mary Ann Skilling
1:55 p.m. – 2:05 p.m.	Refinement: Wicomico County Richardson Growth Allocation	Wanda Cole

2:25 p.m. – 2:35 p.m.	OLD BUSINESS	
	Update: Legislative Matters	Chairman Martin G. Madden
	Legal Update	Marianne Mason

2:35 p.m. – 2:50 p.m.	NEW BUSINESS	
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PROJECT EVALUATION SUBCOMMITTEE ACTIONS
December 3, 2003

CHESAPEAKE BEACH: RAILWAY TRAIL CONCEPT APPROVAL

I move, on behalf of the Project Subcommittee, that the Commission concur with the concept plan for the Chesapeake Beach railway trail as a Major Development Project on Private Lands or Land Owned By a Local Jurisdiction with the following conditions:

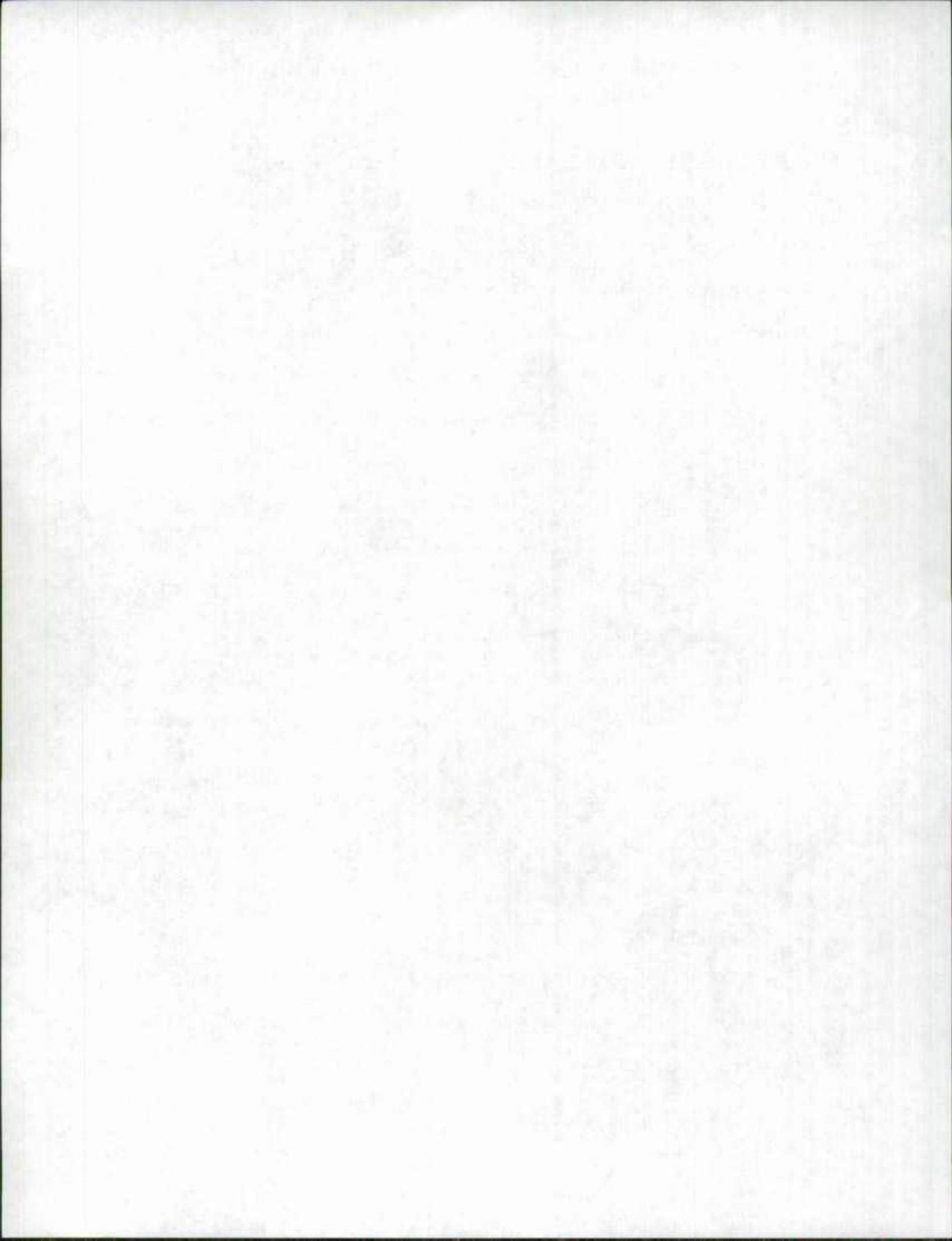
- 1) The trail is no wider than eight feet and impacts associated with overlooks and turnarounds are minimized to the maximum extent possible, while maintaining safety.
- 2) The final alignment within the right-of-way minimizes the removal of trees and stormwater management impacts.
- 3) The Town will work with Commission Staff to develop acceptable stormwater management options and incorporate Best Management Practices, where practicable.
- 4) The Town will work with Commission staff to develop educational markers highlighting environmental and cultural features along the trail.
- 5) Walkways will end prior to reaching Richfield Station, 5 feet short of the upland.
- 6) The Town will work with Commission staff to develop acceptable and/or alternative mitigation measures.

JERSEY ISLAND BULKHEAD REPLACEMENT/INLET ENLARGEMENT

I move, on behalf of the Project Subcommittee, that the Commission approve the construction of the proposed project as presented in the Staff report.

CRITICAL AREA 10% RULE

I move, on behalf of the Project Subcommittee, that the Commission adopt the revised guidance for compliance with the 10% pollution reduction requirement specified in Code of Maryland Regulation 27.01.02.03D(3).



Critical Area Commission
For the Atlantic and Coastal Bays
People's Resource Center
100 Community Place
Crownsville, Maryland
November 5, 2003

Blazer - approve
me/sec
cfu

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
Dave Blazer, Worcester County *Ches. Bay*
Dr. Earl Chambers, Queen Anne's County
Judith Cox, Cecil County
Judith Evans, Western Shore Member at Large
Ed Gilliss, Baltimore County
Gail Booker Jones, Prince George's County
James N. Mathias, Jr., Ocean City
William Rice, Somerset County
Barbara Samorajczyk, Anne Arundel County
Thomas McKay, St. Mary's County
Daniel Mayer, Charles 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
Meg Andrews, Maryland Department of Transportation
Mike Paone, Department of Planning

Not in Attendance:

Paul Jones, Talbot County
Joseph Jackson, Worcester County
Edwin Richards, Caroline County
Douglas Stephens, Wicomico County
Douglas Wilson, Harford County
William Giese, Dorchester County

The Chairman welcomed the newly appointed Commission member representing Prince George's County, Gail Booker Jones, Councilwoman, City of Bowie. He announced that the Governor has appointed Otis Rolley to represent the City of Baltimore. Mike Paone was acknowledged as the interim representative appointed by Secretary Scott for the Department of Planning. The Chairman welcomed Patricia Faulkner as the permanent representative for the Department of Housing and Community Development. The Chairman thanked Gary Setzer for agreeing to chair the Project Subcommittee and Dave Blazer who agreed to serve as Chair of the Program Subcommittee.

The Minutes of October 1, 2003 were amended to include the attendance of Daniel Mayer, Charles County. The Minutes were approved as amended.

Worcester County (Chesapeake Bay Watershed): LeeAnne Chandler presented for Concurrence with the Chairman's determination of Refinement, Worcester County's request for approval of their revised Chesapeake Bay Critical Area Program and Digitization of Critical Area Maps for their Comprehensive Review. Ms. Chandler stated that the County staff was provided with a model ordinance to use and that the text changes are primarily stylistic with ordinance language replacing descriptive policy language. Ms. Chandler said that the County's regulations have been incorporated into the Natural Resources Article of the County Code to facilitate more effective implementation and enforcement. She summarized the major content changes for the Commission as set forth in the staff report (attached to and made a part of these Minutes). She said that the new maps contain no major changes. The majority of the land within the Critical Area is designated RCA, 9470 acres. Ms. Chandler said that there has been very little development in the Chesapeake Watershed of Worcester County since the implementation of the Program largely due to the fact that DNR and the Nature Conservancy own most of the undeveloped land in the County's Chesapeake Bay Critical Area. The Commission concurred with the Chairman's determination of Refinement.

Town of Vienna: Lisa Hoerger presented for Concurrence with the Chairman's determination of Refinement the request for approval of the Town of Vienna's updated digital maps that include a Critical Area Map and a Habitat Protection Map. These maps were recently approved by the Town Commissioners. The Town's existing maps were 12 years old and this effort was grant funded. There were no substantive changes made to the 1,000 foot boundary in developing the maps. The 100 foot Buffer is included but the delineation is conceptual and there must be an actual delineation performed in the field. The Commission supported the Chairman's determination of Refinement.

Town of Leonardtown: Mary Owens presented for Concurrence with the Chairman's determination of Refinement the request for 3.136 acres of growth allocation for Leonardtown Landing which will change two parcels from LDA to IDA. Both parcels are located in the Critical Area adjacent to parcels designated IDA. This growth allocation will accommodate a major redevelopment of the Town's waterfront that involves other properties that are currently designated IDA. The redevelopment of these properties will comply with the 10% pollutant reduction requirement for stormwater and Best Management practices. There are no rare, threatened or endangered species within the project site. Construction of water-dependent facilities will not be permitted between November 15th and April 30th as there are known historic waterfowl staging and concentrations areas in the adjacent open waters to the project site. The Town has utilized all of the growth allocation originally assigned to them and formally requested growth allocation from St. Mary's County, which was approved by the County Commissioners on October 21, 2003. **The Commission supported the Chairman's determination of Refinement.**

Town of Leonardtown: Mary Owens presented for Vote the Modified Buffer Areas Ordinance and Map proposal by the Town of Leonardtown. The ordinance will allow 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. Provisions for mitigation to achieve the water quality and habitat protection objectives of the Buffer have been included. Ms. Owens outlined some of the provisions in the ordinance. She said that the Town has designated several properties as "Modified Buffer Areas" (MBAs) which

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represent a major portion of the town's waterfront and one of the limited opportunities within the Town for public access to the water. Redevelopment under the Modified Buffer Area provisions is considered a key element of the Town's Smart Growth strategy. The Town is proposing that the Commission consider several separate parcels as one proposed Modified Buffer Area which will allow the developer and the Town to accomplish several environmental goals related to the Modified Buffer Program. A mitigation plan is being developed that will satisfy the requirements of the proposed Modified Buffer Areas ordinance with the Town Waterfront Park comprising a primary element of the mitigation strategy. **Gary Setzer moved on panel recommendation to approve the Town of Leonardtown's request for a Modified Buffer Arcas Ordinance and Map as presented. The motion was seconded by Danny Mayer and carried unanimously.**

City of Annapolis: Dawnn McCleary presented for Vote the request by the City of Annapolis to make improvements to the Back Creek River Nature Park. Phase I will address erosion along the gazebo overlook. An elevated walkway and viewing platform in the 100-foot buffer is proposed to protect the soils at the top of the cliff. 470 square feet will be impacted in the Buffer along with the removal of two trees, for which the City will provide 3,250 square feet of mitigation. Ms. McCleary iterated the requisite characteristics of this project that qualify this request for a conditional approval. **Gary Setzer moved to approve the Back Creek Nature Park improvements on condition that the City obtain verification from the Department of Natural Resources that there are no threatened or endangered species on site and if found, the City must follow measures necessary to protect the species. The motion was seconded by Margo Bailey and carried unanimously.**

Town of Leonardtown: Mary Owens presented for Vote the Waterfront Park Concept Approval. The creation of this park is proposed as the primary mitigation for impacts associated with the overall redevelopment of the Town's waterfront and will be a critical element of the project and the Modified Buffer Area designation. A concept plan, designed to satisfy the mitigation requirements of the proposed Modified Buffer Areas ordinance for the Park, was submitted by the Town. Ms. Owens described the elements of the proposal and said that the design is conceptual and the Commission's concurrence would be a general acceptance of the location of the park and the provision of public access to the water. The plan is consistent with the Town's Critical Area Program and the Critical Area Act and Criteria. As a condition of the concurrence, a final approval by the Commission will be required when more detailed plans are available. Mr. McKay said that this will give the town an opportunity to control the storm water and to get close to a 40% reduction in impervious surface. He added that this is a growth area and this will be an important economic boost and public benefit. Mike Paone said that he has visited the site many times and this project lays the foundation for waterfront access around Breton Bay and walking waterfront access to the downtown area. **Gary Setzer moved to approve, on behalf of the Project Subcommittee, that the Commission approve 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. The motion was seconded by Thomas McKay and carried unanimously.**

Baltimore City: Dawnn McCleary presented for Vote the request by the Maryland Port Administration (MPA) to construct a new cargo shed, Shed 6B, in Area 600 at Dundalk Marine Terminal. The project site is located entirely within the Critical Area on an existing 100% impervious parking lot that will remain 100% impervious when developed. The runoff will be discharged into an existing storm drain system. MPA has submitted stormwater management plans to the Maryland Department of the Environment (MDE). MPA is working on an overall plan to treat phosphorus off-site to address the 10% pollutant reduction requirements. **Gary Setzer moved to approve, 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. The motion was seconded by Judith Cox and carried unanimously.**

St. Mary's City: Mary Owens presented for Vote the request by Historic St. Mary's City to redevelop an existing pathway that provides access to the waterfront at the Historic St. Mary's City and to the dock where a replica of the historic ship, The Maryland Dove, is docked. The existing trail is steep and the surface is uneven and does not meet the standards for accessibility specified by the ADA. There are archaeological resources at this site where the grading and excavation should be minimized. Ms. Owens described the technical design details of the trail. The project is located entirely within the 100-foot Buffer and expanded Buffer and will involve 4,156 square feet of disturbance in the Buffer and the removal of six trees. St. Mary's City will provide mitigation at 2:1. There are no other impacts to Habitat Protection Areas. The City is not considered an area of intense development; therefore, impervious surfaces are limited to 15% and there will be an overall reduction in impervious surface area. It is anticipated that this reduction will meet the requirements of the 2000 MDE Stormwater Manual. **Gary Setzer moved to approve Historic St. Mary's City's request to redevelop an existing pathway with the conditions that: a Planting Agreement shall be executed with Commission staff prior to initiating construction on this project and that approval of the stormwater management design be obtained from MDE. The motion was seconded by Mayor Mathias and carried unanimously.** Mr. McKay said that the Dove is part of the Governor's Fleet, is an active vessel and should be ADA accessible.

Memorandum of Understanding (MOU): LeeAnne Chandler presented the Maryland Department of Transportation's Memorandum of Understanding for Vote on General Approval. She told the Commission that the existing MOU was approved in 1992 and is in need of updating to reflect current Commission processes and standards. The MOU establishes conditions under which MDOT projects or programs qualify for general approval, pursuant to COMAR 27.02.05.02. Ms. Chandler explained the structure of the MOU and the revisions which are described in a staff report disseminated to the Commission members, (attached to and made a part of these Minutes.) Bill Rice asked how the MOU would address situations involving increases in sizes of culverts and potential impacts to down or upstream habitat. Ms. Chandler replied that projects that increased the size of culverts would not qualify for general approval. Commission Counsel Marianne Mason stated that the MOU addresses this question by limiting the general approval to only minor drainage improvements that would have no impacts on downstream habitat or hydrology. The Commission is required under COMAR to seek comments on any proposed general approval from affected local jurisdictions. No substantive

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comments were received. **Gary Setzer** moved on subcommittee recommendation to approve the MOU between the Department of Transportation and the Commission including Appendix A, the Critical Area Commission Project Application Checklist as well as Exhibit B1, Conditions for General Approval of State Highway Administration Project (attached to and made a part of these Minutes). The motion was seconded by Dave Blazer and carried unanimously.

10% Rule, Revision of Guidance Paper: Chairman Madden asked Mary Owens and LeeAnne Chandler to explain the Revised Critical Area 10% Rule Guidance Paper to the Commission. Ms. Owens said that three documents were prepared in 1993 and that they replaced the Commission's original 1987 document. The Commission obtained the services of a consultant that is a national leader in stormwater design to technically review, update, and consolidate the guidance publications into one Manual that will provide guidance to applicants, plan reviewers and consultants about compliance with the 10% pollutant reduction requirement in Intensely Developed Areas. The draft document covers the same basic information as the 1993 documents and incorporates updated information on phosphorus loads, costs used to determine fee-in-lieu, and refined Best Management Practice designs. Ms. Owens explained how the Manual is organized. She said that the 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 for the revisions. Gail Booker Jones asked whether the fee-in-lieu would be on a case-by-case basis or whether it would be a uniform amount. Mr. Serey replied that generally it is a uniform amount but may vary among jurisdictions. He further stated that in most cases whatever satisfies the State requirements for stormwater management will usually meet the 10% pollutant reduction requirements also. It is anticipated that the Commission will be able to vote to adopt the document at the December meeting.

Old Business

Talbot County: The Chairman stated that Talbot County has been given numerous deadlines to implement their Critical Area Program, most recently up until this meeting. However, he said that about three weeks ago, it became apparent to him that because of the initial public hearings and questions that the Talbot County Council members had, that they were not going to be able to meet the November deadline. He told the Commission that he and the Executive Director, Ren Serey met with the Talbot County Council President and the other Council members to clarify some issues which will help expedite their implementation. He stated that he believes that Talbot County is acting in good faith and that their deadline should be extended to something more realistic based on the County's requirements for local legislation. The Chairman moved to extend the Talbot County deadline to February 3, 2004. The motion was seconded by Ed Gilliss and carried unanimously.

Legislative Update: The Chairman informed the Commission that he and Ren as well as the Commission staff and Commission Counsel, Marianne Mason met with Senator Dyson and Delegate Frush, Co-Chairs of the Joint Legislative Oversight Committee (JLOC) for the Critical Area and shared with them the recommendations to consider for legislation. He said that the Joint Legislative Oversight Committee may go forward with legislation and has asked for feedback from the Commission by the mid December meeting of the JLOC. The Chairman

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summarized for the Commission the possible aspects of a bill and asked whether the members thought we were moving in the right direction on legislative matters. There was general consensus that the direction was proper. The Chairman said he would likely ask the Commission to make its recommendations more definitive at the December meeting.

Commission Counsel Marianne Mason told the Commission that in mid October the Court of Appeals denied the Commission's Motion for Reconsideration in the Lewis case. The Court wrote an Opinion denying the Commission's motion wherein they restated some of the problematic premises that they stated in the original Decision. She said Chairman Madden, Ren Serey and she had a discussion with Delegate Frush and Senator Dyson, the Joint Legislative Oversight Committee's (JLOC) co-chairs, about the points that could be addressed through legislation. The JLOC will likely draft legislation incorporating most of the recommendations and perhaps adding other points. Ms. Mason iterated the suggestions and recommendations for the Commission.

Ms. Mason said that in the Lewis case, the Commission suggested that the Court follow the approach that the General Assembly took in 2002, in which the General Assembly's intention that local decision makers consider alternative locations on site when reviewing a variance application. She also said that the Court used the phrase "retrospective" findings when it discussed the findings made by the General Assembly on the state of the Bay in 1984 and again in 2002. She said the Commission would suggest that the General Assembly reaffirm those legislative findings and reenact them to emphasize that the problems of the Chesapeake Bay are continuing, and that the legislative findings are forward looking and not just retrospective

- Ms. Mason said that other possible recommendations could include: enact new findings regarding the shoreline Buffer as an important element of the law; that the Buffer be afforded special protection; and that the term "unwarranted hardship" be defined. She explained that in the 2001 session of the General Assembly, there was a House bill that would have defined unwarranted hardship, but that definition did not make it into the legislation that was enacted.

Ms. Mason also said that in the meeting with the Oversight Committee Co-Chairs Commission representation recommended that the General Assembly establish evidentiary standards that a local jurisdiction would use when reviewing variance applications. Also recommended were a couple of provisions not related to the Lewis case including adding provisions authorizing local governments to request legal assistance from the Commission on enforcement issues rather than requiring that the Chairman notify a jurisdiction that it is not carrying out its enforcement obligations before the State can provide assistance; adding a tougher provision for increases in penalties for violations in the local Critical Area Program; and, adding a definition of dwelling unit - a term used in the Statute and the Criteria but not defined. Ms. Mason said that such a definition could clarify that dwelling units in the RCA should include all structures used for habitation.

The Chairman said that he and Ren met at the Chesapeake Bay Foundation offices with the House Environmental Matters Committee, chaired by Delegate Maggie McIntosh. Barbara Frush serves on this Committee as well. The Chesapeake Bay Foundation came up with legislative recommendations concerning the Commission that they have offered to the Committee in regard to the Maryland Court of Appeals Opinion on Lewis vs. Department of

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Natural Resources. CBF's recommendations include increased penalties for violations, and defining a "dwelling unit." They are going to be making other recommendations as well.

Legal Update

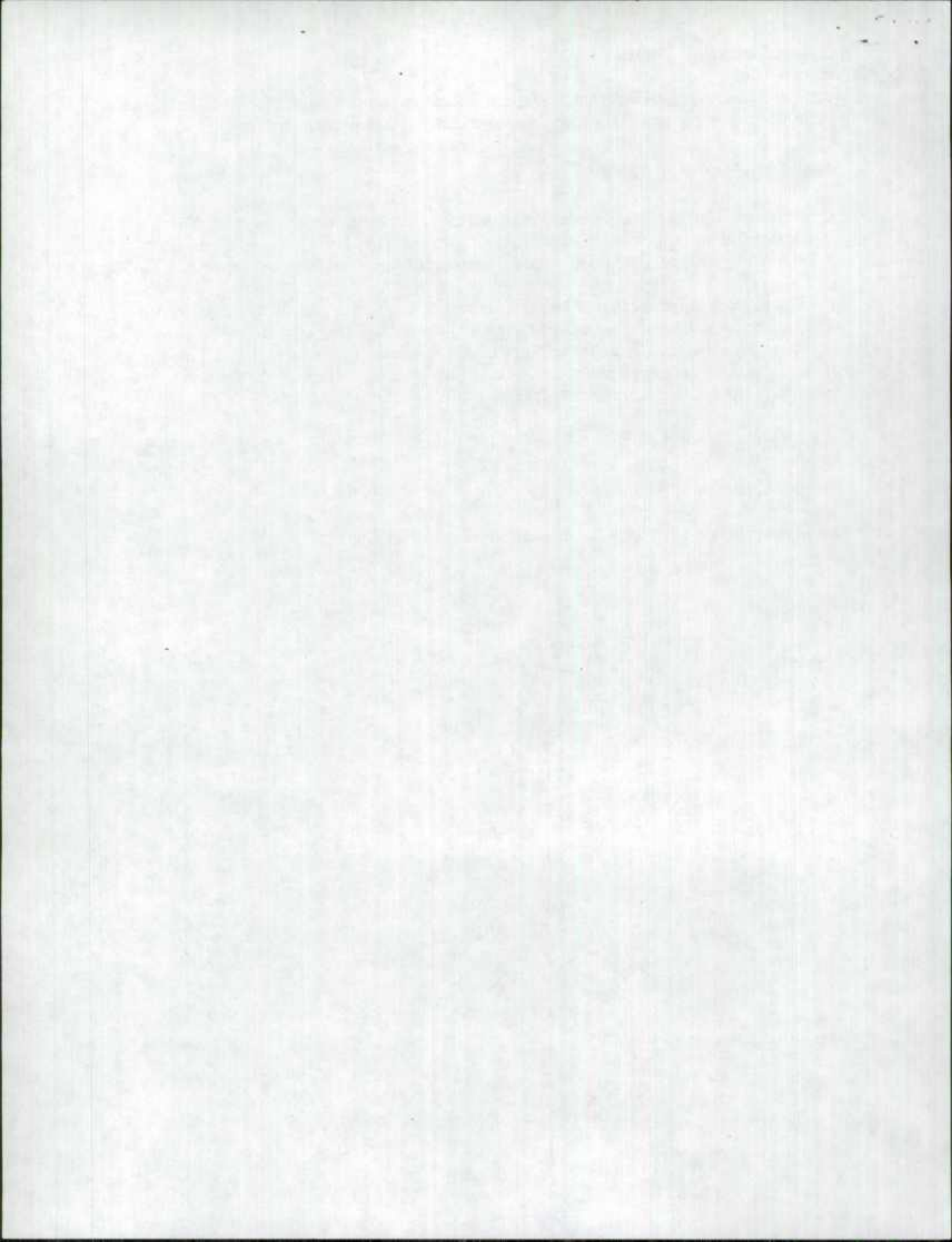
Commission Counsel Marianne Mason updated the Commission on legal matters. She said that in Harford County in the Old Trails case, argument is scheduled on December 9th on the developer's appeal of the Board of Appeals' granting of some variances and denial of others.

In Cecil County, argument is scheduled for December 5th on an appeal filed by the Commission of a variance to grant a very large pool and pool house in the Buffer on a 10 acre property. She will be arguing that the Cecil County Board of Appeals did not consider the entire property when reviewing the variance application, a violation of the 2002 amendment to the Critical Area law requiring consideration of alternative locations.

New Business

No new business was reported.

Minutes submitted by: Peggy Campbell, Commission Coordinator



Critical Area Commission

STAFF REPORT

December 3, 2003

APPLICANT: Town of Chesapeake Beach

PROPOSAL: Railway Trail

COMMISSION ACTION: Vote

STAFF RECOMMENDATION: Concept Approval

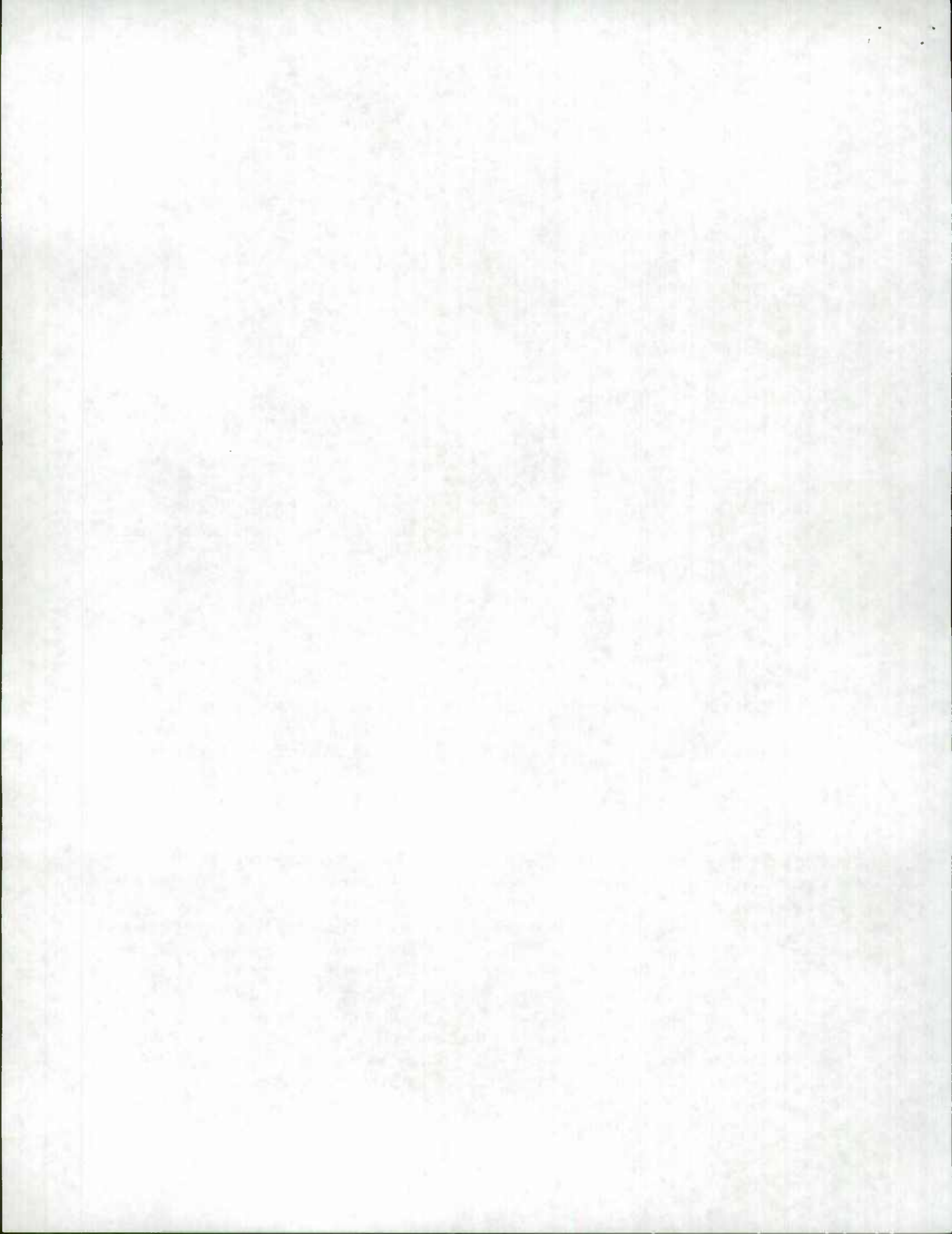
STAFF: Julie V. LaBranche and Regina Esslinger

**APPLICABLE LAW/
REGULATIONS:** COMAR 27.02.04 (State and Local Agency Actions
Resulting in Major Development on Private Lands or Lands
Owned by Local Jurisdictions)

DISCUSSION:

The Town of Chesapeake Beach has proposed a trail system for the purpose of providing public and recreational access along Fishing Creek and to the main waterfront area of the Town. (Refer to the attached map for the general location of the proposed trail.) **The Town has requested a concept approval from the Commission for the proposed trail as described below.** When finalized, the project will require a conditional approval from the Commission for impacts to the Buffer.

The trail is approximately 1.12 miles in length, consisting of an 8-foot wide paved trail within the waterfront area of the town and within the Critical Area Buffer, and an 8-foot wide wooden walkway over Fishing Creek and tidal wetlands. A portion of the paved trail will be located on the Fishing Creek Landings Marina property (north side of Fishing Creek) over an area of existing impervious surface within a Buffer Exemption Area. The remaining portions of the trail will be located within the Critical Area Buffer over an existing railroad right-of-way (south side of Fishing Creek) and within the Bayview Hills subdivision (the northern spur). Much of the railroad right-of-way is currently impervious, consisting of compacted gravel and other materials, and little or no vegetation. The trail will terminate in wetlands bordering the Richfield Station property at two locations: the first across from the Bayview Hills subdivision to the northeast, and the second along the southern boundary of the Richfield Station property (refer to map). The trail does not include the Richfield Station segment discussed by the Project Subcommittee on two previous occasions.



Town of Chesapeake Beach
Concept Approval for Proposed Trail
December 3, 2003

Trail Specifications

<i>Length of trail to Richfield Station:</i>	<i>5,905 linear feet or 1.12 miles</i>
Length of trail in Critical Area:	3,115 linear feet or 0.59 miles (53 percent of trail)
Length of trail in Buffer: (requires conditional approval)	2,365 linear feet or 0.45 miles (40 percent of trail)
Length of trail over wetlands/open water: (requires MDE permit)	2,790 linear feet or 0.52 miles (37 percent of trail)

Request for Concept Approval

The Town has submitted the following information regarding the major elements of the trail in support of their request for concept approval of the trail by the Commission.

Design

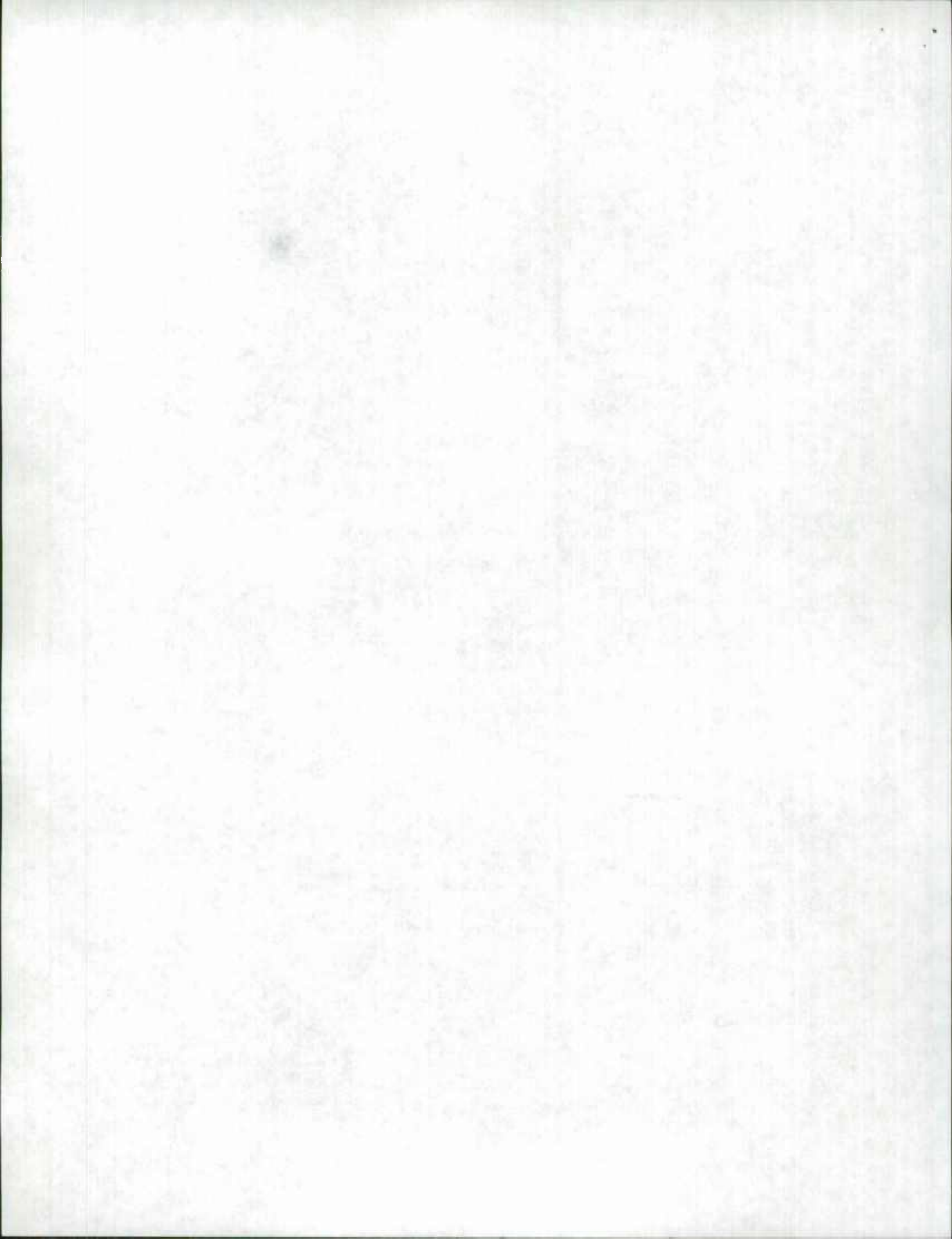
- The trail will be no wider than eight feet.
- The paved surface of the trail may be reduced to six feet in certain areas depending on the need to avoid site specific impacts provided the safety of trail users is secured to the satisfaction of the State Highway Administration.
- An alignment within the right-of-way will be chosen that minimizes the removal of trees and stormwater management impacts.
- The Town's consultant will work closely with Critical Area staff to develop acceptable storm water management options.
- The Town will use Best Management Practices.

Programming

- The Town will work in concert with the Critical Area Commission and with the Department of Natural Resources to develop educational markers. These could describe the role and function of conservation areas and especially FIDs.
- The Town will prohibit all motorized vehicles, except in cases of emergency or maintenance.

Critical Area Project Review

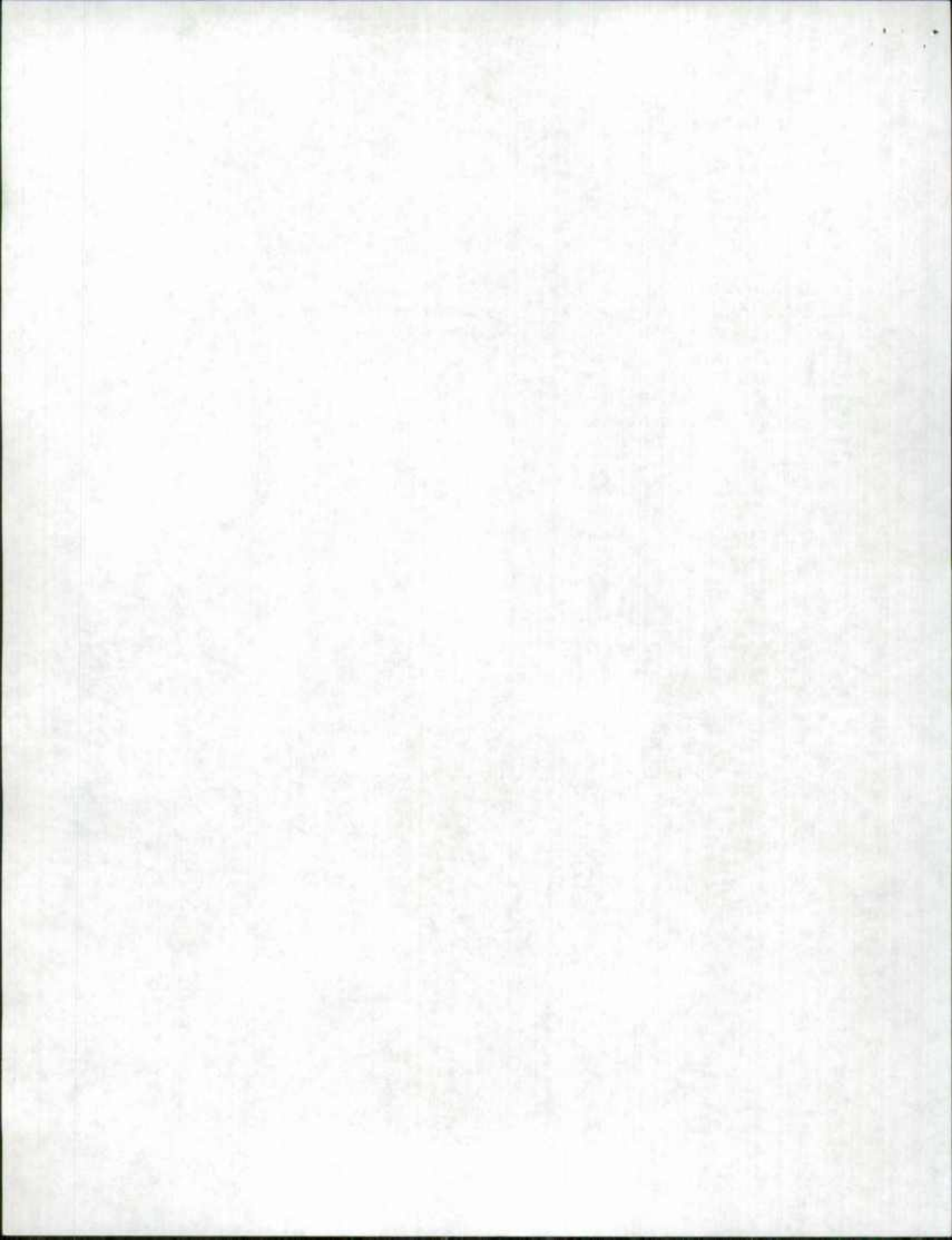
Commission staff and Town representatives continue to review the trail proposal for compliance with COMAR and the Chesapeake Beach Critical Area regulations. The Town has agreed to provide detailed engineering site plans and stormwater management plans, pending Commission



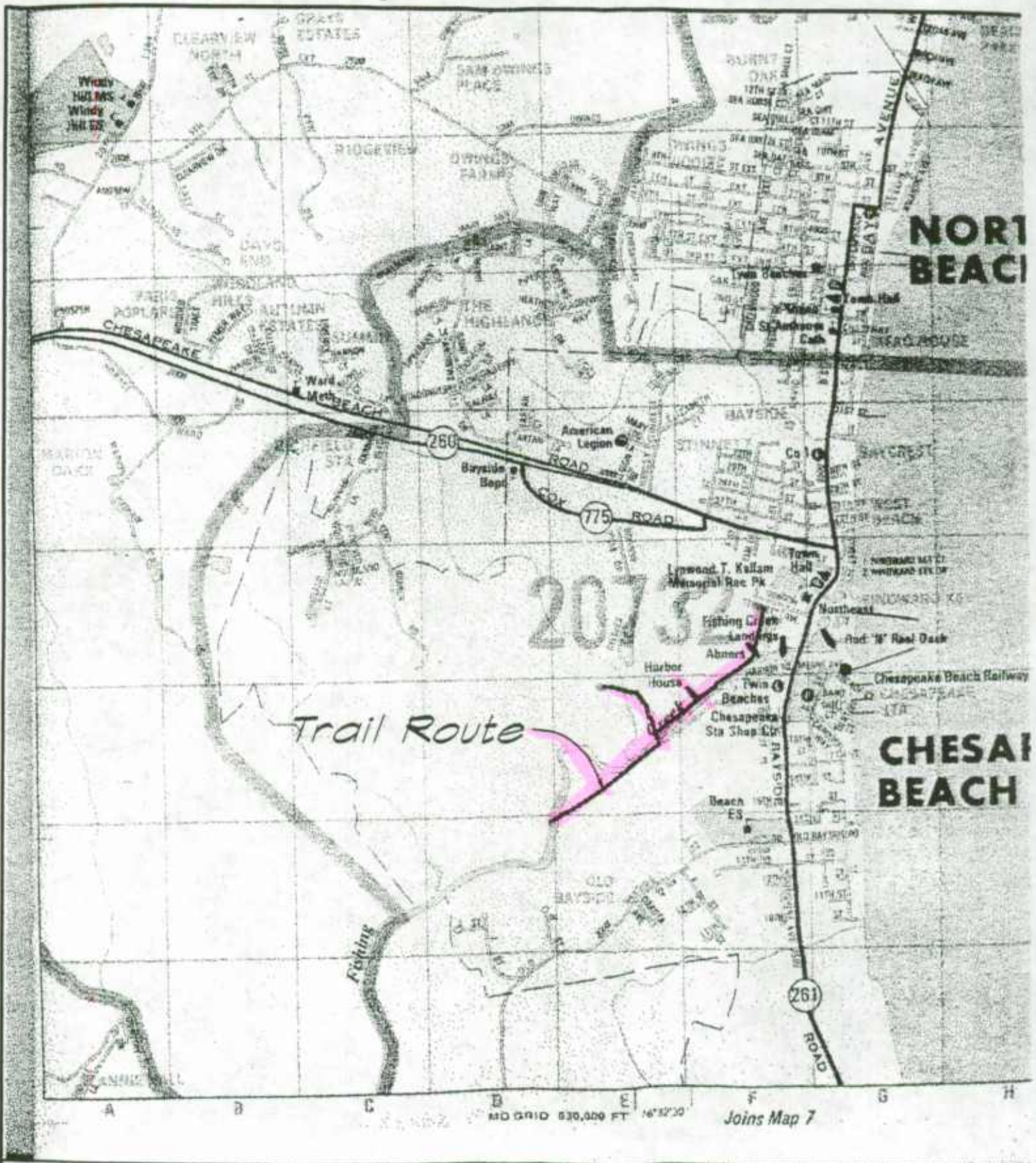
Town of Chesapeake Beach
Concept Approval for Proposed Trail
December 3, 2003

approval of the proposed concept plan for the trail. Mitigation requirements within the Critical Area will be calculated based on the engineered site plans. The Town will work with Commission staff on coming up with a variety of alternative mitigation options, due to the difficulties the Town has experienced in the past in addressing Buffer mitigation requirements. A mitigation plan should be provided to the Commission for consideration as part of the conditional approval of the project.

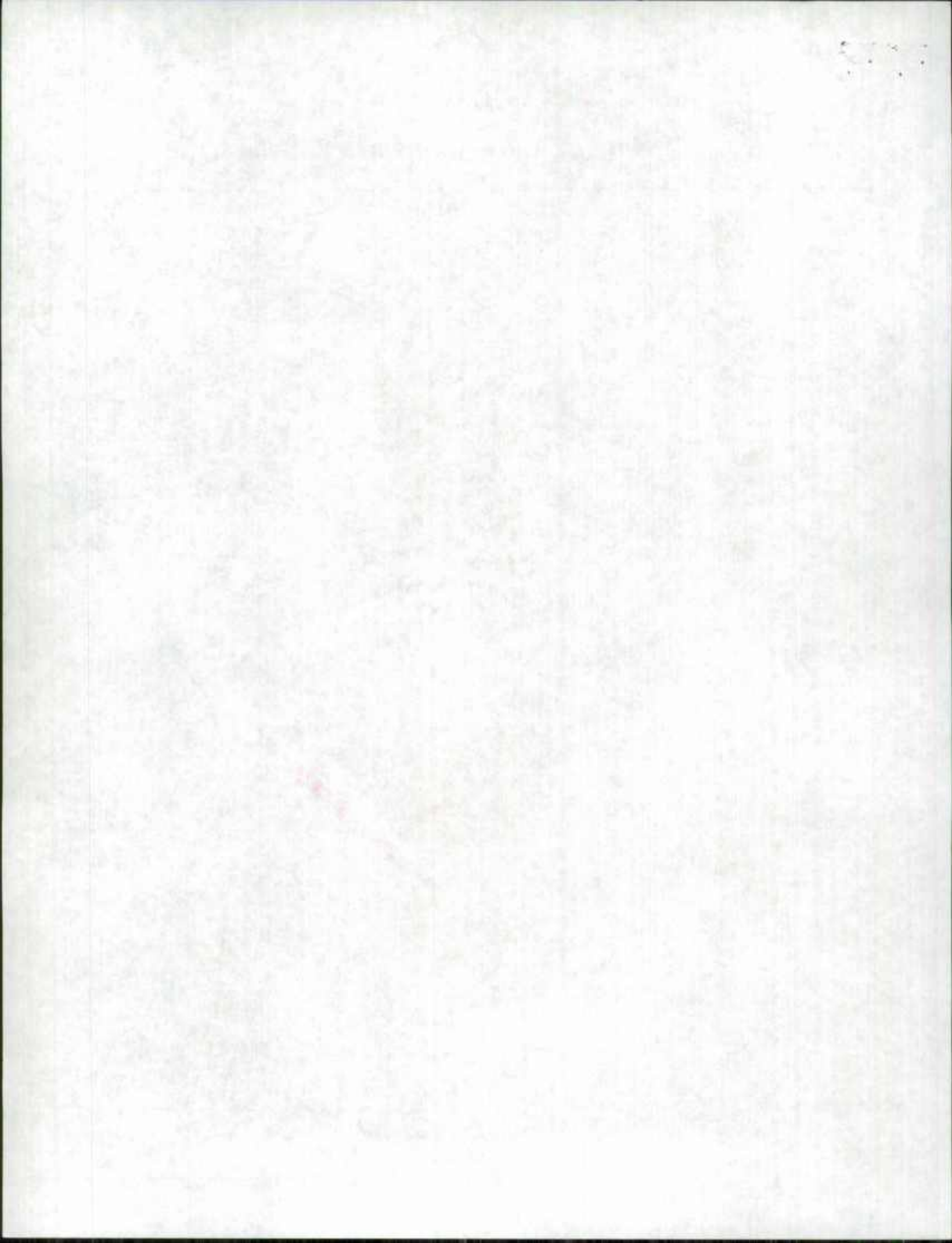
An application was submitted on May 23, 2002 to the Department of the Environment (MDE) and the Corps of Engineers for impacts to open water and wetlands associated with the trail. Because the scope of the project has been revised, MDE staff informed Commission staff that the Town should submit revised site plans and specifications to MDE and the Corps of Engineers before the project can be placed on Public Notice and authorizations can be issued for the project.



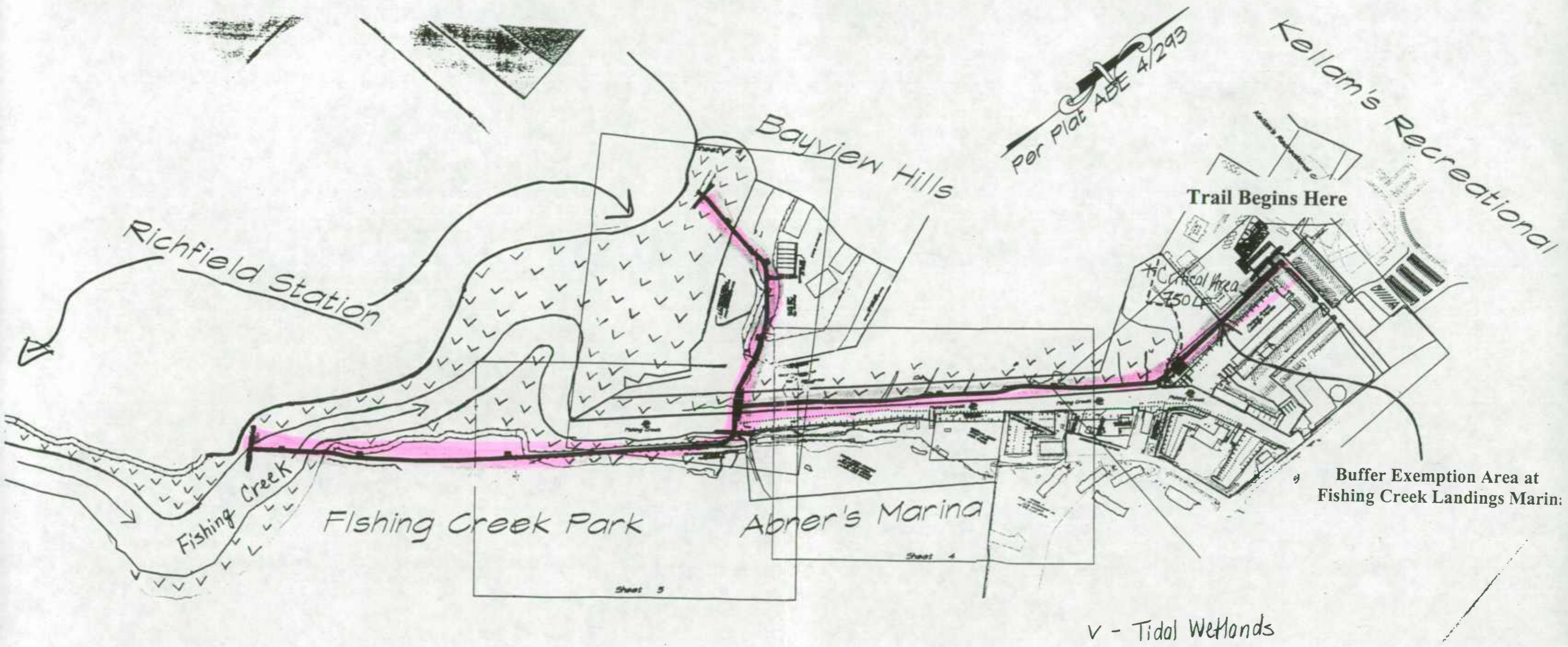
Town of Chesapeake Beach Railway Trail

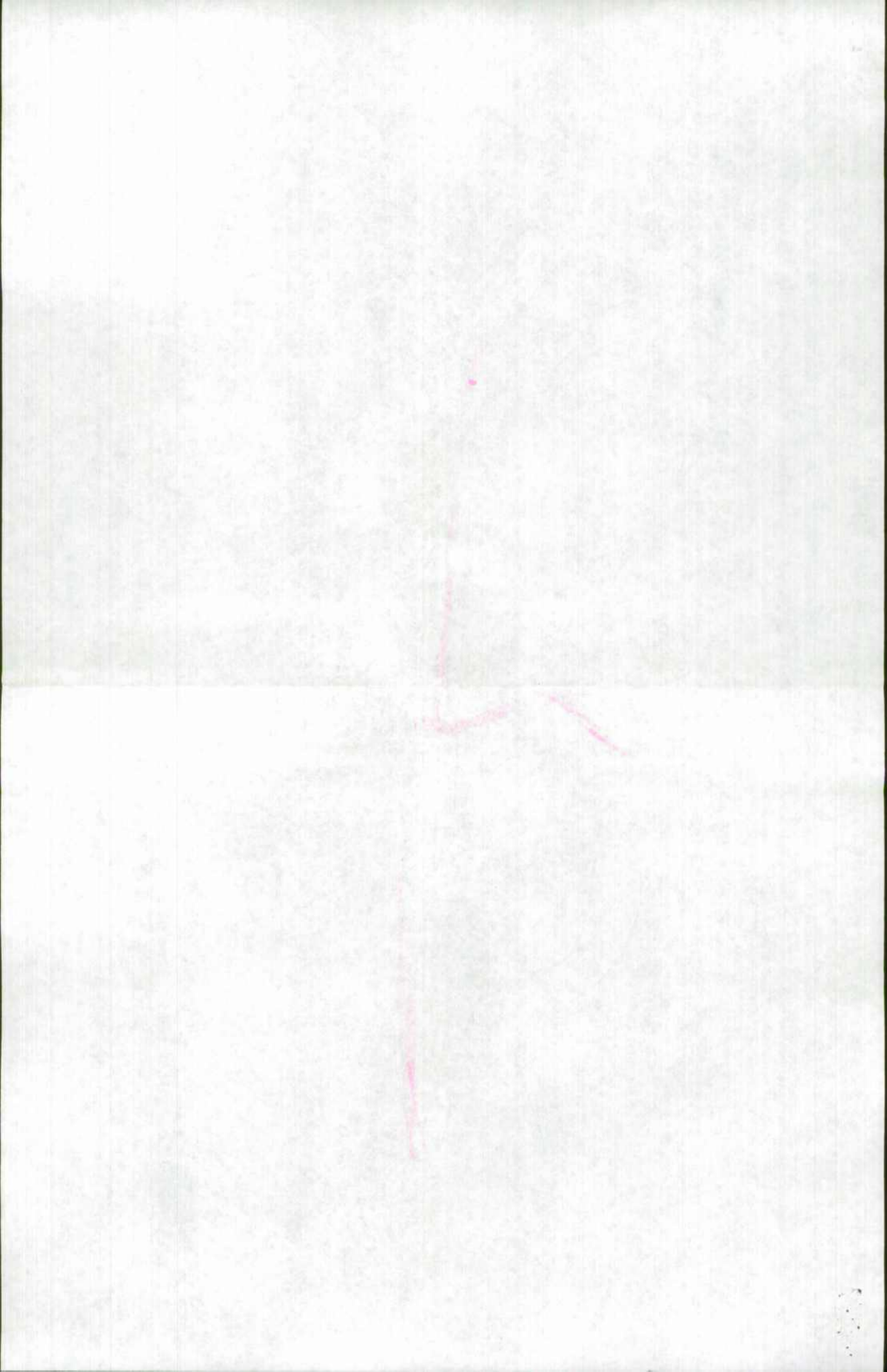


Vicinity Map



Town of Chesapeake Beach Railway Trail





Critical Area Commission

STAFF REPORT

December 3, 2003

APPLICANT: Department of Natural Resources

PROPOSAL: Bulkhead Replacement/Inlet Enlargement –
Jersey Island, Crisfield, Somerset County

JURISDICTION: Crisfield

COMMISSION ACTION: Vote

STAFF RECOMMENDATION: Approval

STAFF: Claudia Jones

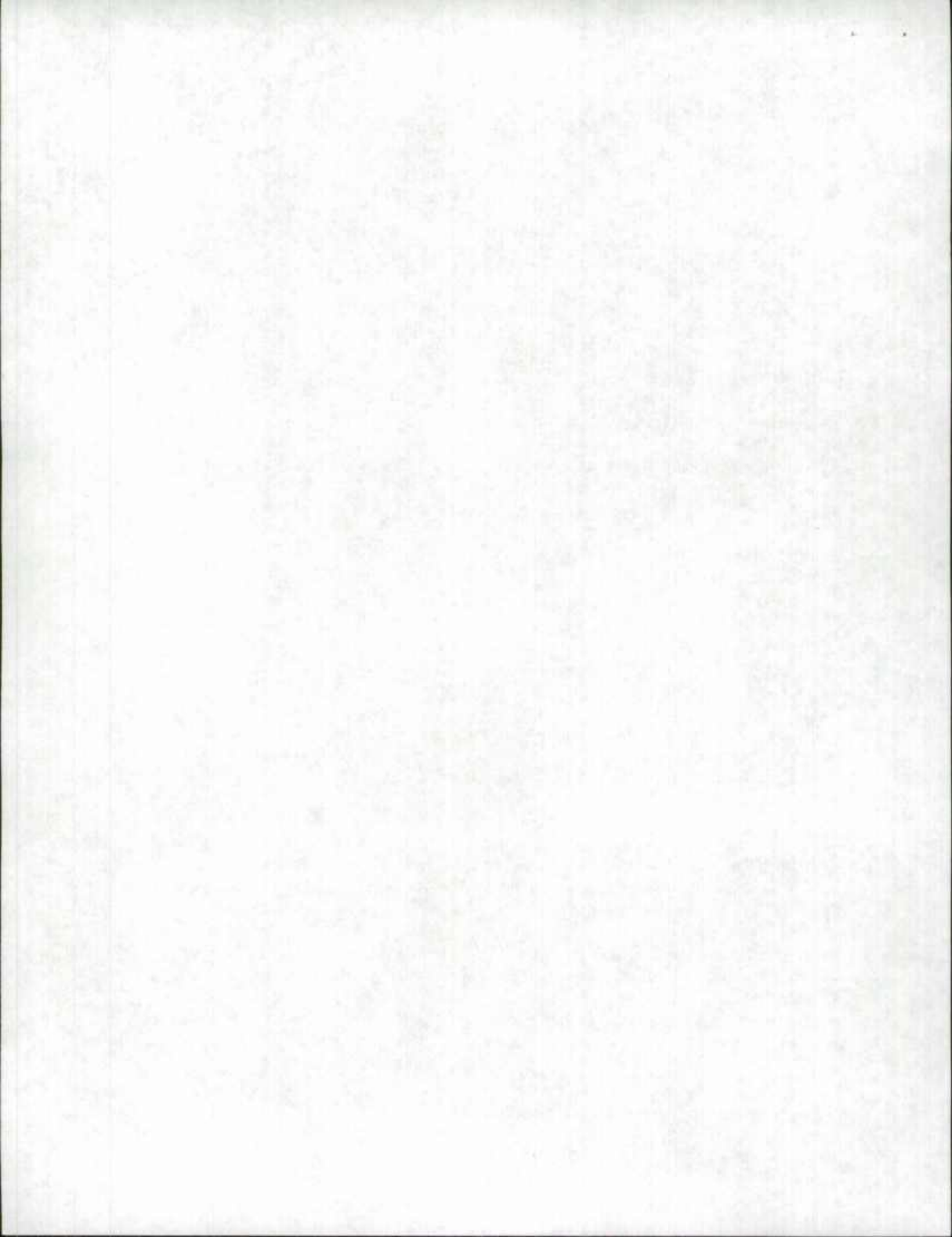
**APPLICABLE LAW/
REGULATIONS:** COMAR 27.02.05.03 – State Agency Actions Resulting in
Development of State-Owned Lands

DISCUSSION:

This project is on Department of Natural Resources land in Crisfield. This is a combination bulkhead replacement and inlet-widening project. The approximately 2-acre site is partly paved with the rest being covered in grass and scattered shrubs.

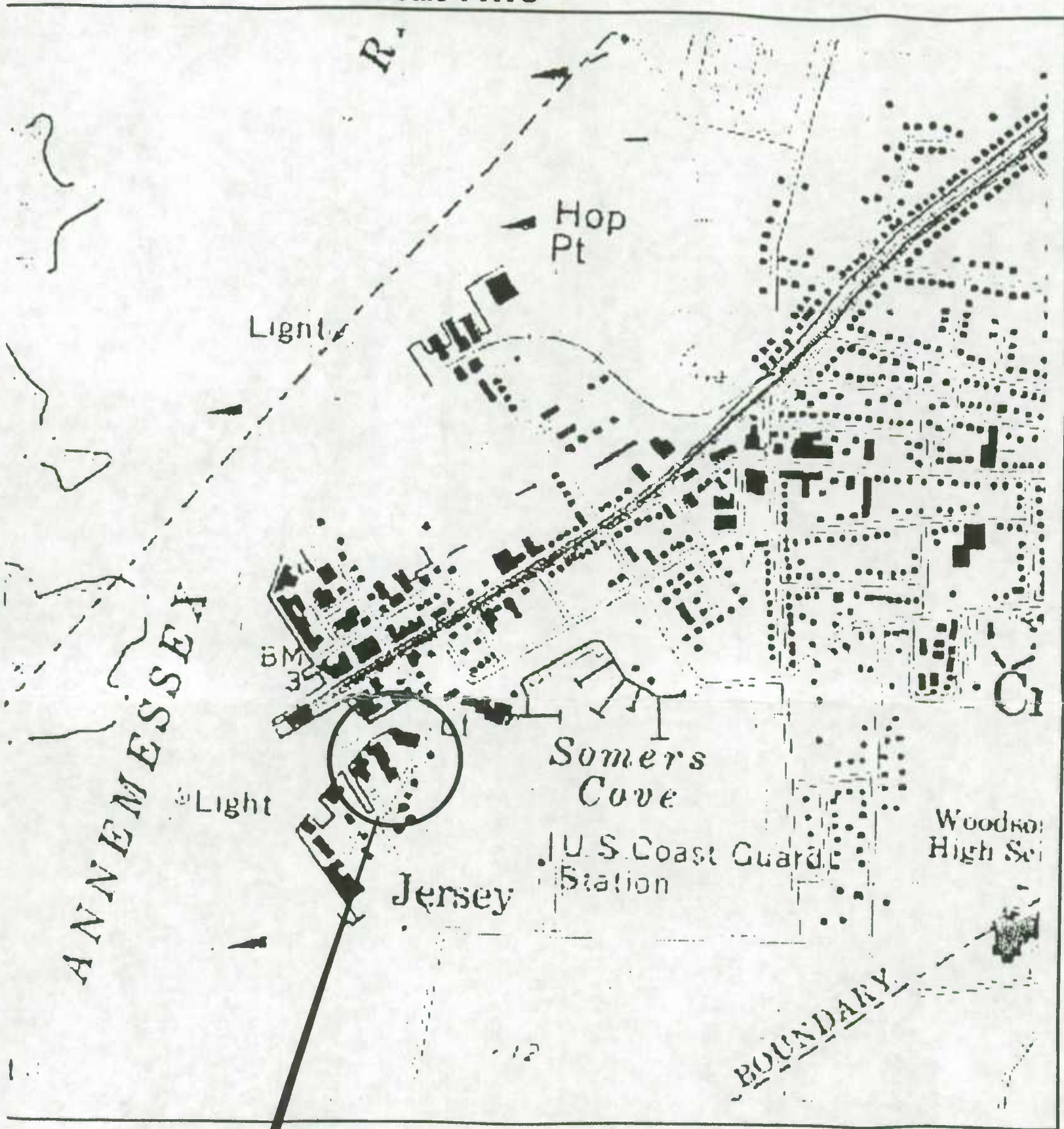
The failing timber bulkhead will be replaced with a steel bulkhead. The channel widening will occur by excavating out approximately 1200 sq. feet of land adjacent to the existing Somer's Cove Inlet. This will allow more room for boats going into Somer's Cove Marina as well as the Coast Guard and DNR docks. The area of land to be removed is 182 feet length and varies from a little under a foot to 18 feet in width.

Overall approximately 550 linear feet of existing timber bulkhead will be replaced. The new bulkhead will be channelward of the existing bulkhead with the exception of the 182-foot section. The 2-acre site will be filled up to elevation 4.75 feet for better drainage. Approximately 9400 square feet of impervious surface will be removed from the site and the site will be graded and stabilized with native grasses and wildflowers.



Location Map

Scale : NTS



SITE



Critical Area Commission

STAFF REPORT

December 3, 2003

PROPOSAL:	Adoption of "Critical Area 10% Rule Guidance Manual" as revised Fall 2003
JURISDICTION:	All
COMMISSION ACTION:	Vote
STAFF RECOMMENDATION:	Approval
STAFF:	LeeAnne Chandler, Mary Owens
APPLICABLE LAW/ REGULATIONS:	COMAR 27.01.02.03.D(3) Intensely Develop Areas

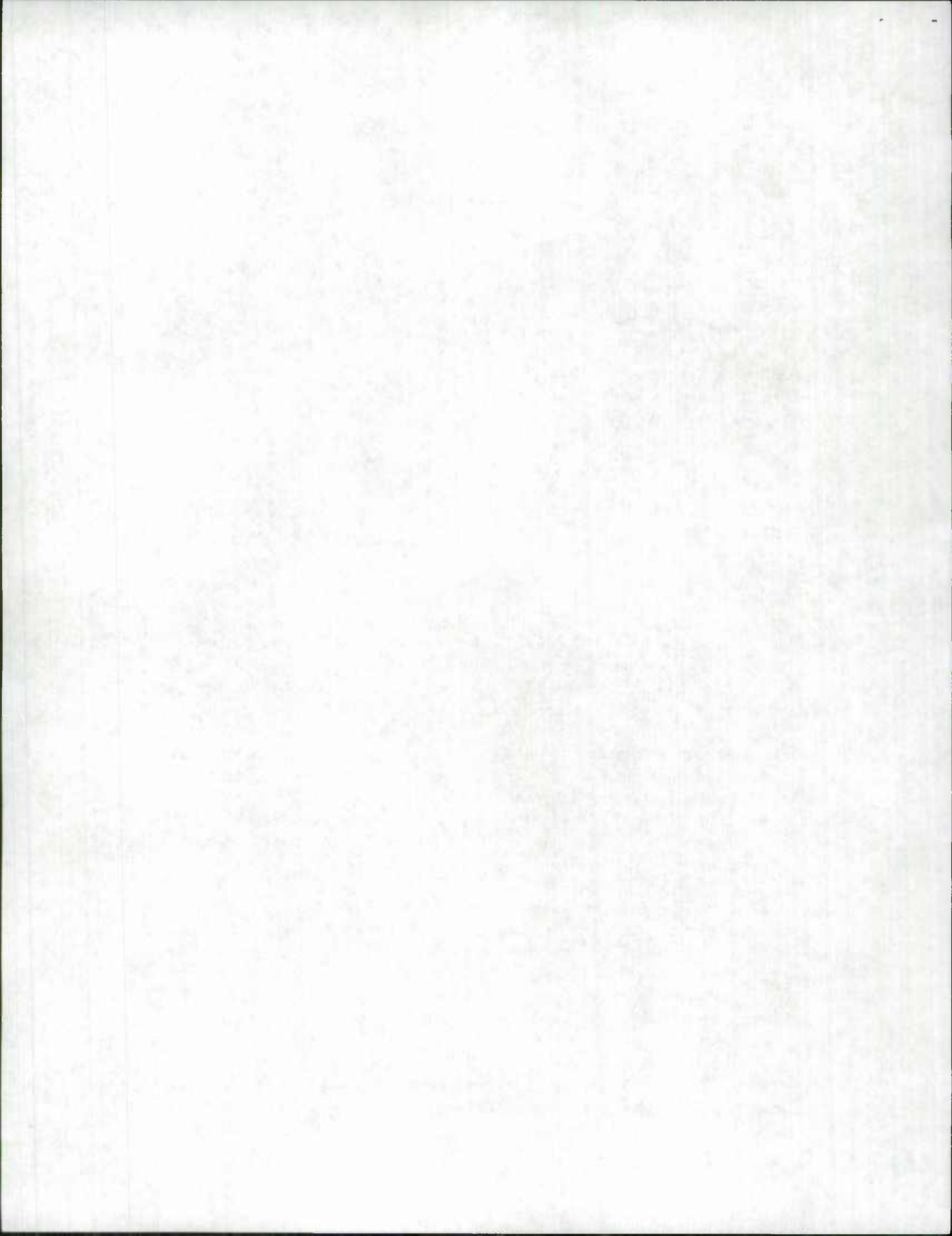
DISCUSSION:

Critical Area Commission staff has recently completed an update of the Commission's guidance regarding compliance with the 10% pollutant reduction requirement in Intensely Developed Areas (IDAs). 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.

In 1987, in order to provide guidance to local governments regarding compliance with this requirement, the Commission, working with the Metropolitan Washington Council of Governments, prepared a publication entitled, "A Framework for Evaluating Compliance with the 10% Rule in the Chesapeake Bay Critical Area." This document was revised in May 1993, and three guidance manuals were produced: an applicant's guide, a plan reviewer's guide, and a technical manual.

The "10% Rule" is a requirement, for development and redevelopment projects affecting greater than 250 square feet in IDAs, to reduce the amount of pre-development levels of pollutants in stormwater run-off by 10%. This is calculated using a formula that estimates the phosphorus coming from a development site, which is largely determined by the percentage of impervious surface area. Compliance with the requirement is evaluated by calculating the amount of phosphorus removed by Best Management Practices (BMPs) such as bioretention areas, wet ponds, and dry swales.

Since the 1993 publications, 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 developed, promulgated, and adopted the 2000 Maryland Stormwater Design Manual. MDE's Manual reflects the most up-to-date information on stormwater technology, and there was a need to update the Commission's stormwater guidance in order to provide consistency where appropriate.

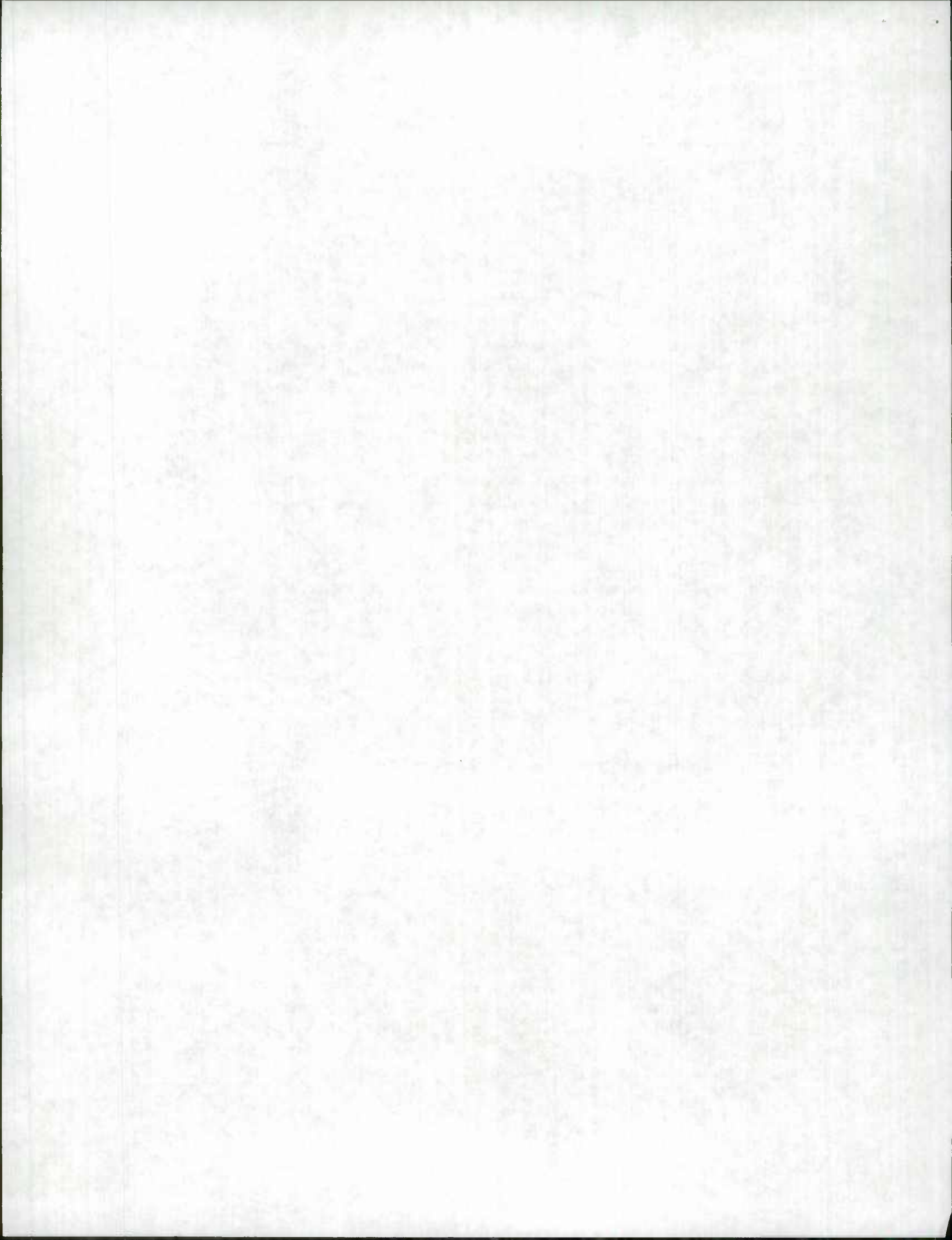
The three guidance publications have been merged into a single guidance manual that reflects the advances made in stormwater management technology, addresses new and refined Best Management Practices, and clarifies the differences between compliance with the 10% Rule and compliance with the Maryland Stormwater Design Manual. The basic concept of using phosphorus as an indicator of pollutant levels in run-off, calculating pre-development and post-development pollutant loads, and calculating the amount of phosphorus removed by various BMPs is essentially the same. The following summarizes the significant revisions:

Sections 1, 2, and 3 of the revised manual summarize information found in the introductions of the former Applicant's Guide, Plan Reviewer's Guide, and Technical Guide. These sections include a summary of the science in the selection of phosphorus as a keystone pollutant. More detailed information about phosphorus and other pollutant concentrations found in urban stormwater is now available in Appendices A and B.

Section 4 of the revised manual is similar to Part II of the Applicant's Guide providing detailed, step-by-step instructions for performing the calculations. A significant change in the methodology is the use of a single "C-value" representing pollutant concentrations for both new development and redevelopment sites. This change, which is discussed in detail in Appendix D, reflects current water quality monitoring data. Formerly a C-value of 0.26 mg/l was used for sites with pre-development imperviousness of less than 20%, and 1.08 mg/l was used for sites with pre-development imperviousness of 20% or greater. This change will greatly simplify the calculations and will lower removal requirements significantly on redevelopment sites.

Section 4 also includes specific provisions for reducing pollutant loads using non-structural Best Management Practices (BMPs) such as disconnecting rooftop runoff and using permeable pavers. This section also includes a new table defining how the MDE Manual Stormwater Credit relates to credit towards meeting the 10% pollutant removal requirement. This table will allow for consistency between MDE's regulations and the Commission's guidance. The BMP Removal Rates Table has been revised to reflect the acceptable BMPs and removal rates included in the MDE Manual. Appendix E includes detailed drawings, advantages and limitations of all of the acceptable BMPs and is an abbreviated version of the information in the MDE Manual. The schematic drawings are from the MDE Manual.

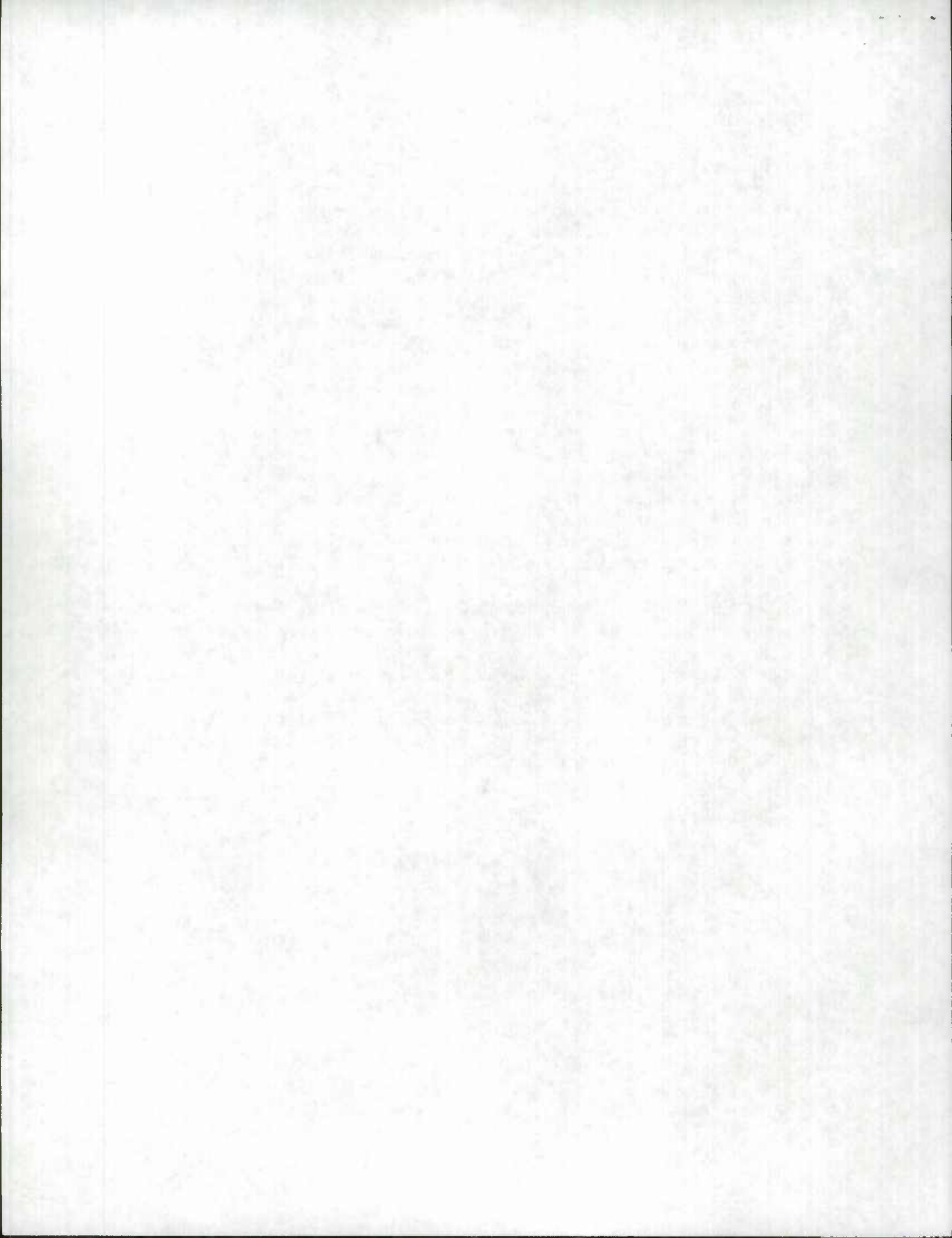
Section 5 replaces Part III of the Applicant's Guide and provides simple and flexible approaches to meeting the pollutant reduction requirements on single-family residential lots. The revisions in this section reflect practices and strategies that have been used by local governments and endorsed by the Commission as practical and effective ways of addressing stormwater on sites where traditional BMPs would be difficult to construct and possibly ineffective.



Section 6 of the revised manual is a substantial revision to Appendix B of the Technical Guide. This section describes how offsets can be used to meet the pollutant removal requirement, how local governments should develop and administer offset programs, and when the collection of offset fees may be appropriate. This section and Appendix G provide data relating to the costs associated with the construction of a BMP capable of removing one pound of phosphorus from a development site. The estimated cost of approximately \$29,000 per pound includes design, engineering, and permitting costs. Changes to the original manual relate to the Commission's intention that jurisdictions that desire to collect offset fees will need to ensure that their Critical Area regulations include provisions relating to the assessment, collection, and expenditure of offset fees. In the past, jurisdictions have collected offset fees with no specific provisions regarding the amount that should be collected and when, how and where the funds shall be expended. The updated cost information is provided so that jurisdictions will ensure that the fees assessed are based on sound construction cost data or actual construction estimates.

Section 7 of the revised manual takes "questions and answers" that are found in various places throughout the three manuals and puts them together in one place. This section also includes frequently asked questions that have been raised over the years by various local government planners, consultants, and property owners. These questions include how to determine pre-development impervious cover, whether BMPs that hold water should be considered impervious when performing calculations, and how to deal with BMPs that cannot be constructed completely in accordance with the design standards in the MDE Manual.

Staff of the Commission, Maryland Department of the Environment, the Department of Planning, the Department of Natural Resources, and several local governments has comprehensively reviewed the revised manual. This final draft has been sent to all county governments for review and comment. Municipalities without Circuit Rider assistance were also sent a copy of the draft, and municipalities with Circuit Rider assistance were notified of the revision and the Circuit Riders' involvement in the review of the document. No substantive comments have been received. Some minor typographical errors were identified and have been corrected. It is being presented to you today for adoption. If you have any questions about the document, please contact Mary Owens or LeeAnne Chandler.



CRITICAL AREA COMMISSION

STAFF REPORT

December 3, 2003

APPLICANT: Perryville (Cecil County)

PROPOSAL: Refinement - Richmond Hills Growth Allocation

COMMISSION ACTION: Concurrence with Chairman's Determination of Refinement

STAFF RECOMMENDATION: Approval

STAFF: Mary Ann Skilling

**APPLICABLE LAW/
REGULATIONS:** COMAR 27.01.02.06

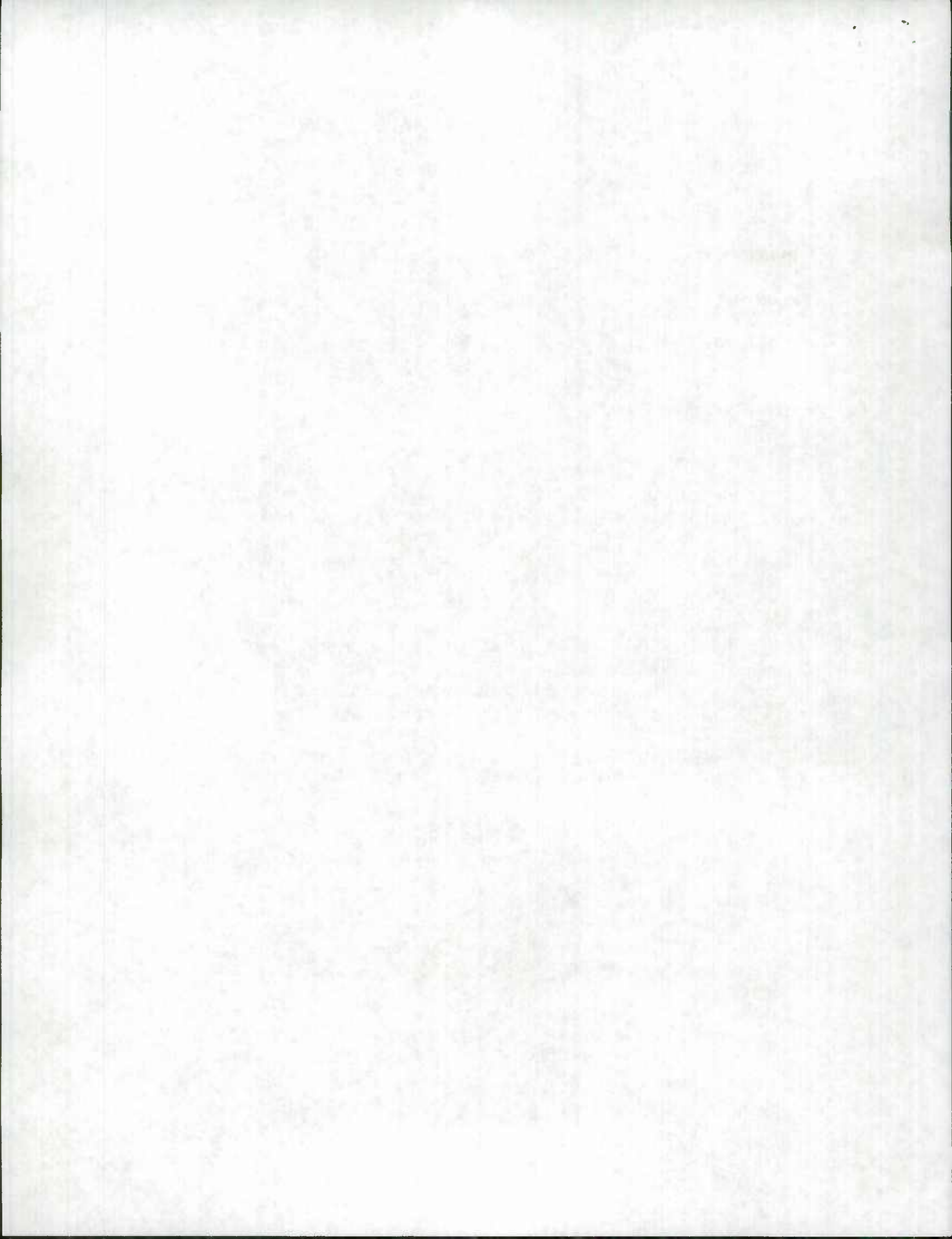
DISCUSSION:

The Mayor and Commissioners of the Town of Perryville have requested 2.7 acres of growth allocation for a portion of Parcel 732 for a higher density residential development consistent with local zoning. The parcel, which is only partially within the Critical Area, is designated as Limited Development Area (LDA). The proposal for growth allocation would change the designation of the Critical Area portion of this parcel to an Intensely Developed Area (IDA). The parcel is adjacent to LDA land to the north, containing residential development, to the west adjacent to LDA land containing a mix of commercial and residential development, and to the south IDA land containing a mix of uses. This property is within the corporate limits of the Town of Perryville and will be served by water and sewer.

No Habitat Protection Areas (HPAs) have been identified on the property. The present forested area consists of pioneer forest with a heavy invasive/exotic component with existing mowed fields. Based on the assessment provided, the project is consistent with the Town Critical Area Program.

The Mayor and Commissioners, at a Public Hearing on October 7, 2003, unanimously voted to approve the request for 2.7 acres to change the LDA designation to IDA based on the following facts:

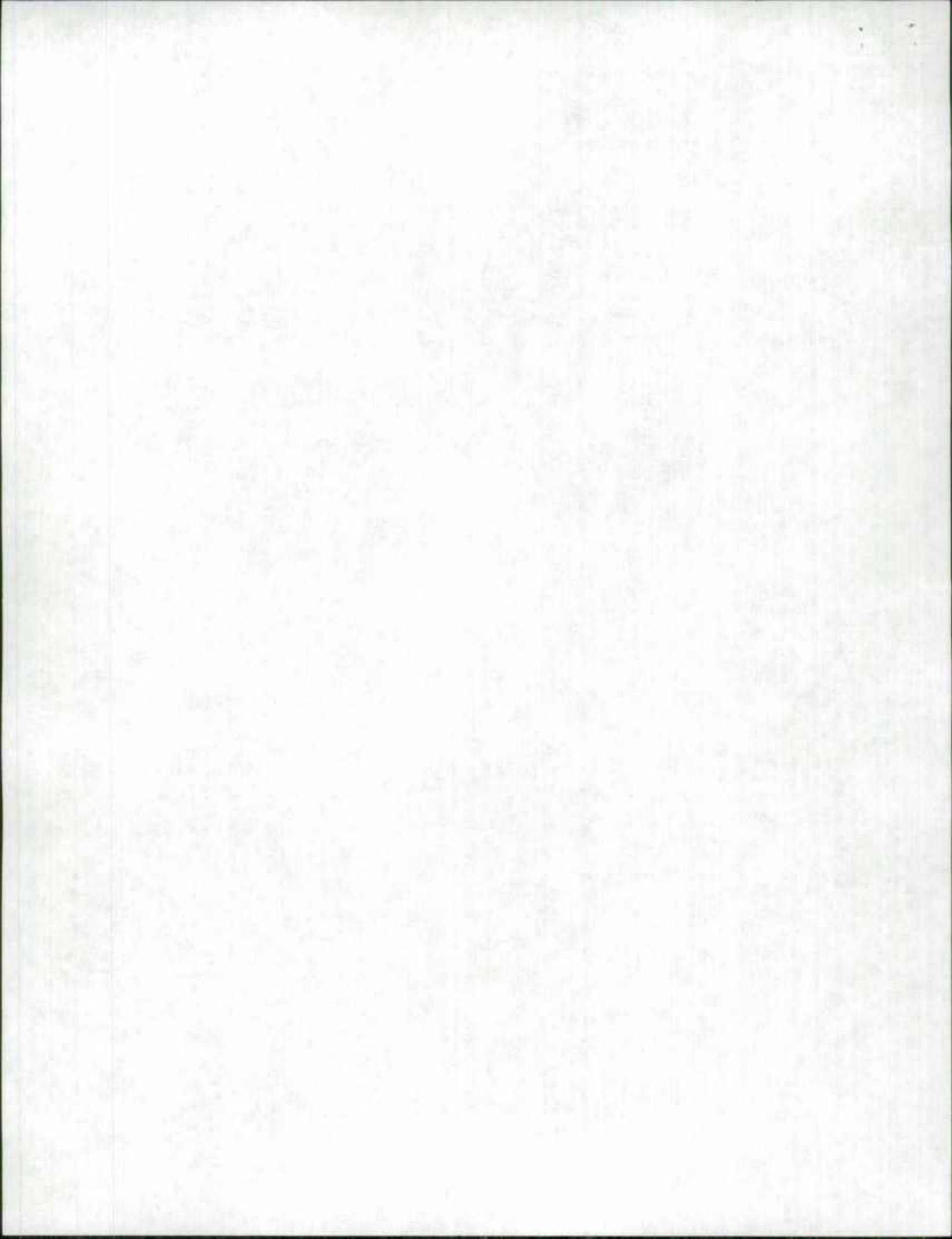
1. This parcel was located in the corporate limits of Perryville at the time that the Cecil County Critical Area Program was adopted.



2. It is the intent of the Cecil County Critical Area Program to ensure that the growth needs of the municipalities are addressed.
3. The request to change the Critical Area designation from LDA to IDA is consistent with the Town's Critical Area Program and Ordinance.
4. Designation of this parcel as an IDA would be consistent with the Town's Comprehensive Plan.

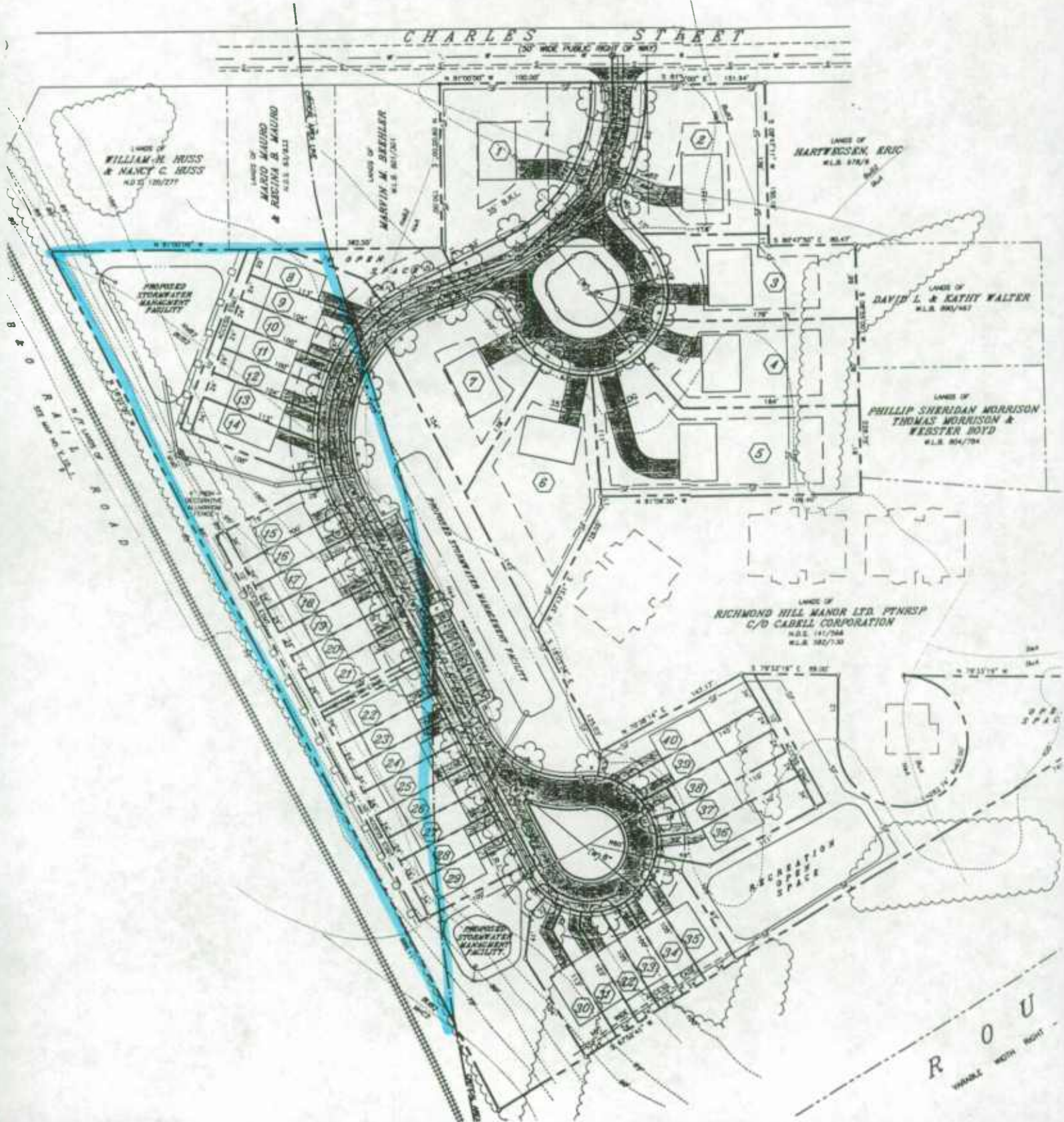
As part of the approval for this growth allocation, the Mayor and Commissioners made the following conditions:

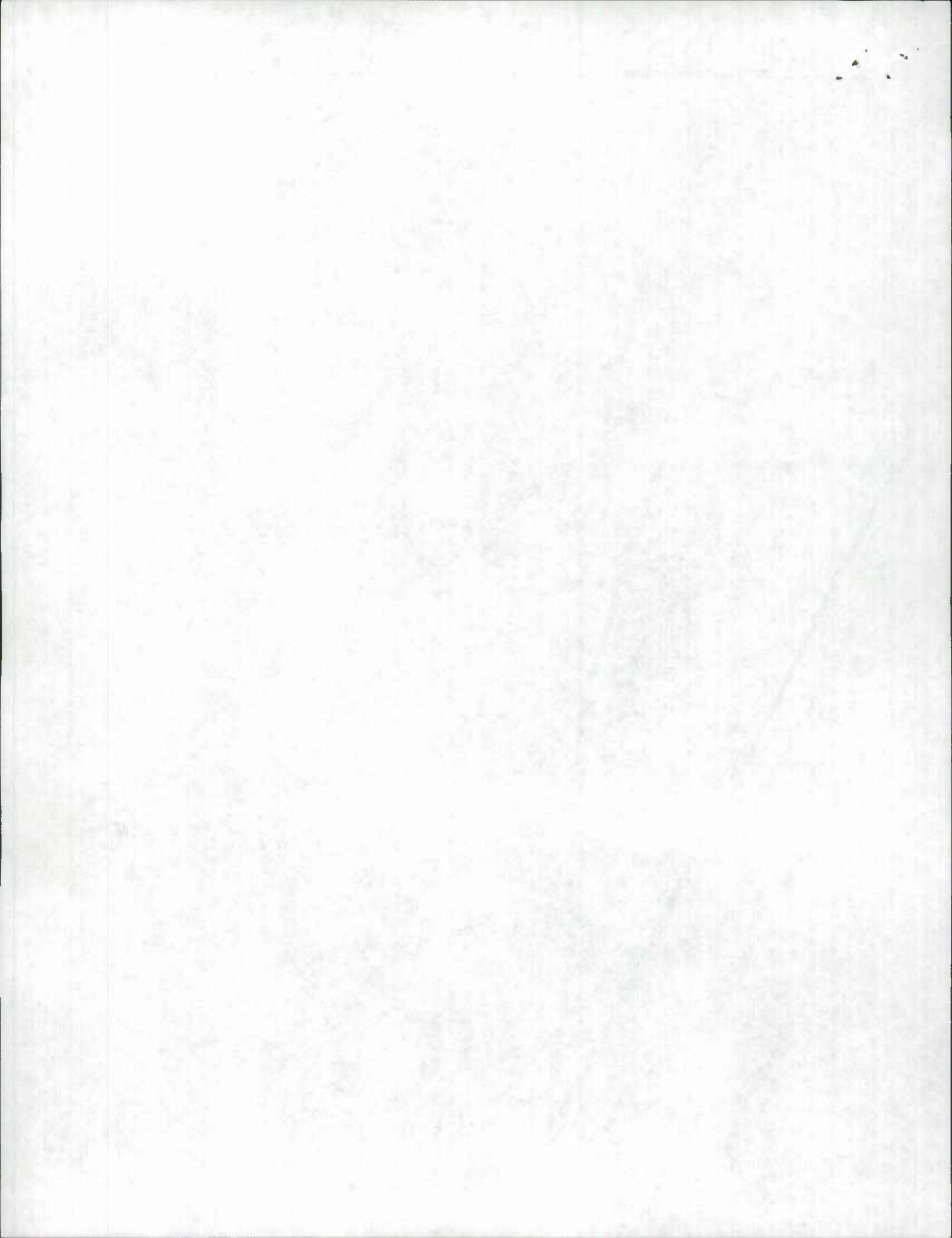
1. Mitigation for forest clearing would be required for the 1.8 acres of forest to be cleared as would have been required as an LDA; and
2. The final approval of the growth allocation had to be received by the Critical Area Commission.

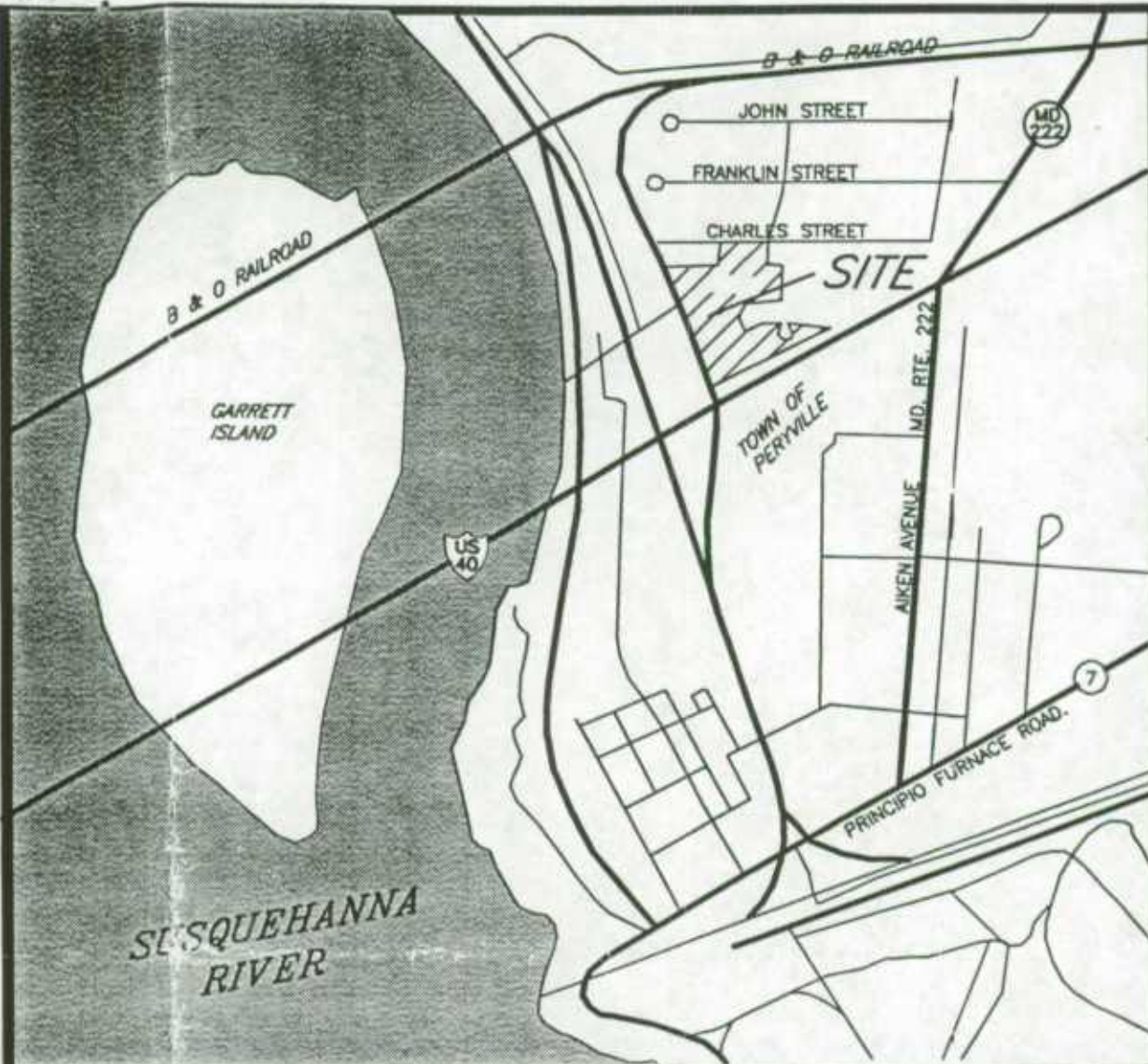


RICHMOND HILLS GROWTH ALLOCATION

SUBDIVISION OF
RICHMOND HILLS







VICINITY SKETCH TAX MAP 800
 BLOCK 14 PARCELS 634, 696, 732 & 805



NOTES

THE STREETS AND (OR) ROADS SHOWN HEREON ARE FOR THE PURPOSE OF DESCRIPTION ONLY AND THE SAME ARE NOT INTENDED TO BE DEDICATED TO PUBLIC USE. THE FEE SIMPLE TITLE TO THE BEDS THEREOF, IS EXPRESSLY RESERVED IN THE GRANTORS' OF THE DEED TO WHICH THIS PLAT IS ATTACHED; THEIR HEIRS AND ASSIGNS.

TEMPORARY CONSTRUCTION EASEMENTS EXIST ALONG ALL PROPOSED ROADS AND DRAINAGE EASEMENTS AND WILL REVERT TO LOT OWNERS UPON COMPLETION OF CONSTRUCTION.

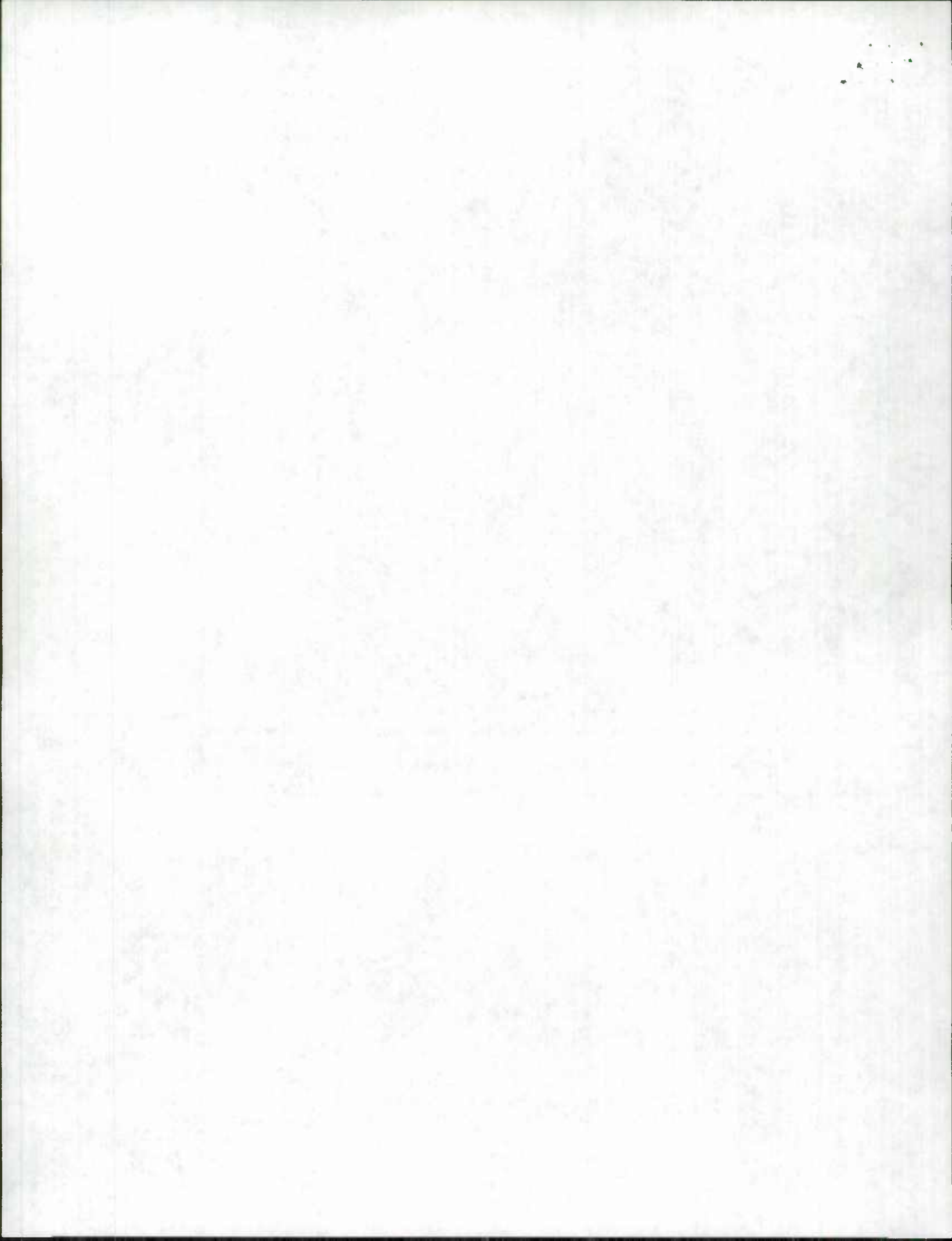
"A JOINT PERMIT APPLICATION MUST BE FILED WITH THE ARMY CORPS OF ENGINEERS AND THE MARYLAND DEPARTMENT OF THE ENVIRONMENT FOR ANY WORK PERFORMED WITHIN ANY WATERS OF THE UNITED STATES, INCLUDING JURISDICTIONAL WETLANDS, OR NON-TIDAL WETLAND BUFFERS THAT MAY BE

RECEIVED

OCT 22 2006

CHESAPEAKE BAY CRITICAL AREA COMMISSION

ONE
 MENTAL SCIENCES
 CONSTRUCTION SERVICES
 AI BUILDING



Critical Area Commission

STAFF REPORT

December 3, 2003

APPLICANT: Wicomico County

PROPOSAL: Refinement- Richardson Property Growth Allocation

COMMISSION ACTION: Concurrence with Chairman's Determination

STAFF RECOMMENDATION: Approval with Conditions

STAFF: Wanda Cole

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

DISCUSSION:

Wicomico County is requesting approval of the use of 0.60 acres of growth allocation to change the Critical Area overlay designation of Tax Map 35, Grid 11, Parcel 5, Lot 3A from Resource Conservation Area to Limited Development Area. The Wicomico County Planning Commission approved this request at its September 25, 2003 meeting. The Wicomico County Council approved this request after a public hearing was held on October 21, 2003.

This parcel is located along the south side of Cherry Walk Road in Quantico, Maryland and lies partially within the Critical Area of Quantico Creek. The County will have 703.38 acres of growth allocation remaining after this request is approved. The purpose of this growth allocation request is to provide a 10,000 square foot sewage reserve area and a sewage pipeline to a proposed dwelling that will be located outside the Critical Area. The County has shown that an additional septic area cannot be achieved on the property outside the Critical Area.

The parent parcel contains 73.41 acres, of which 40.6 lie within the Critical Area. The two available RCA density rights were used by a two-lot subdivision created in 1992. Both of these lots contain acreage both within and outside the Critical Area; however, development on both lots took place within the Critical Area using the available Critical Area density for the parcel. Lot 1 contains 13.58 acres, with 10.19 acres in the Critical Area, and Lot 2 contains 7.08 acres, with 2.65 acres within the Critical Area. The residue became Lot 3, which contains 52.75 acres, with 25.28 acres within the Critical Area, but no Critical Area density available. The applicant originally planned to develop the residue outside the Critical Area; however, there were no passing percolation tests outside the Critical Area. In order to make Lot 3 buildable, a sewage disposal area had to be located within the Critical Area and growth allocation was required.

The Program Subcommittee previously discussed this project at its April 2002 and July 2002 meetings. In April, the County requested 0.33 acres growth allocation to include the sewage reserve area and the utility line leading to it. The Subcommittee recommended the growth allocation request include more information on the environmental features on the site, and that the request include the remaining 0.6 acres of RCA that was not used for density for Lots 1 and 2. In July, the Subcommittee reviewed an amended request that included additional environmental information and proposed the use of 0.60 acres growth allocation. The Program Subcommittee advised the County that, if the growth allocation were approved at the local level, it would look at this request favorably, subject to three recommendations involving the configuration of the development envelope, the use of enhanced septic technology including system maintenance, and the establishment of a development envelope consisting of 0.6 acres and precluding further development of the property.

The 100-foot Buffer, nor any other Habitat Protection Area, occur within the growth allocation envelope. No tree clearing is proposed for implementing this project.

The County has modified its request for growth allocation in accordance with the recommendations made by the Program Subcommittee. The Chairman has determined, and is seeking your concurrence, that this growth allocation request can be approved as a refinement subject to three conditions:

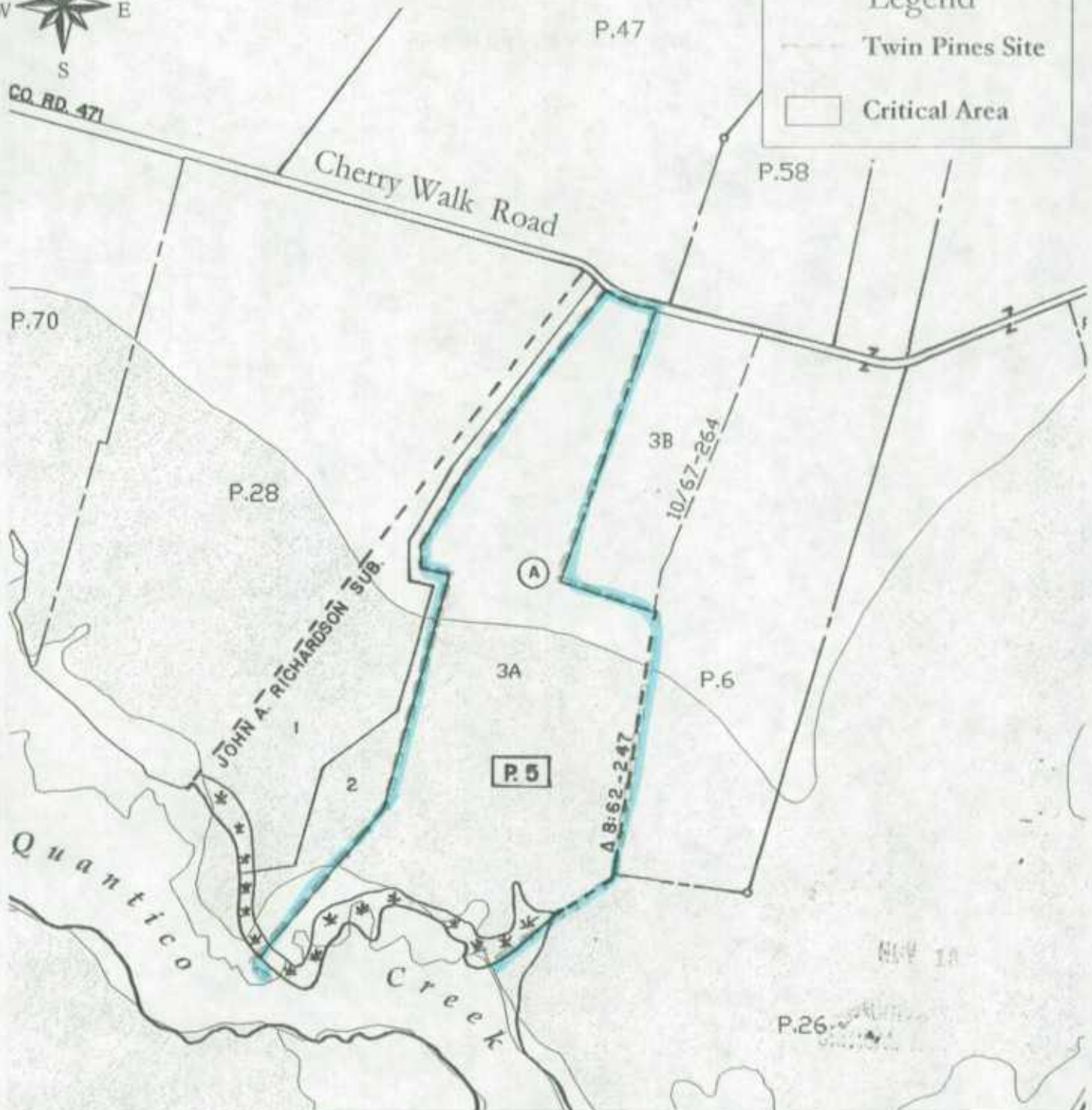
- 1) Lot 3A shall be divided into two separate lots; one which cannot be further developed and the other which is created by establishing lot lines around the sewage reserve area and utility line connecting the area to the building site outside the Critical Area;
- 2) A note shall be placed on the plat requiring the use of enhanced septic technology and the performance of requiring maintenance on the system to ensure proper functioning; and
- 3) A development envelope shall be established totaling no more than 0.60 acres.

Commission staff are still working with County staff on the configuration of the development envelope. In order to minimize the effect of creating an island of LDA in the RCA, the development envelope was originally proposed to abut the property line; however, there is an existing 20-foot wide drainage easement adjacent to the property line. It appears that some reconfiguration of the development envelope may be necessary to meet Health Department requirements, and additional information will be available at the Commission meeting.



Legend

- Twin Pines Site
- Critical Area



Richardson
**Twin Pines Subdivision
Growth Allocation Request**

WILLIAM C. GULLER
twin pines growth alloc request.apr

Growth Allocation Concept Plan

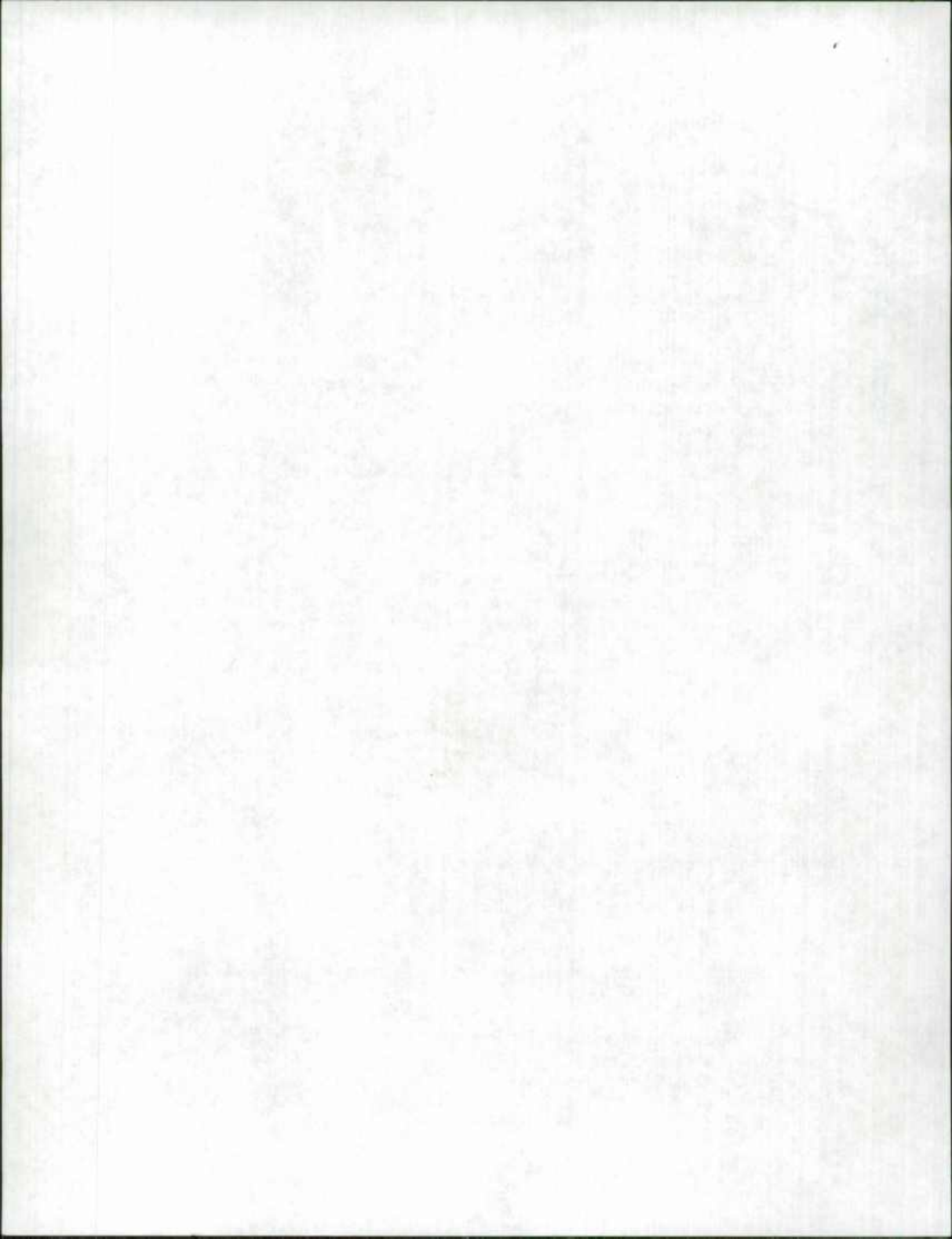


2004 Maryland General Assembly Session

Possible elements of a Critical Area bill:

Lewis v. DNR

- State that it is the General Assembly's intention to overrule Lewis v. DNR.
 - In Lewis, the Court expanded previous cases that the General Assembly overruled in 2002.
- Reaffirm the 1984 and 2002 findings of the law, and enact new forward-looking findings to make it clear that the problems facing the Chesapeake and Atlantic Coastal Bays are continuing and may be considered in reviewing a variance application.
 - The Court cast doubt on the continuing validity of the General Assembly's findings.
- Enact new findings regarding the importance of the Buffer in protecting water quality and habitats throughout the Critical Area.
 - Find that there is a presumption that new non-water-dependent structures and development in the Buffer cause adverse environmental impact.
 - Find that the cumulative impacts of new development in the Buffer may be considered by local decision-makers.
- Move the definition of "Buffer" to the definitions section of the law to make it clear that the General Assembly determined that the Buffer is a significant element of the Critical Area.
- Define "unwarranted hardship."
 - The definition would make it clear that a local Board of Appeals must look at the entire parcel to determine whether alternative locations exist, and if so, then denial of a variance does not result in unwarranted hardship.
- Establish evidentiary standards that a local jurisdiction must use in evaluating variance applications.
 - State that new non-water-dependent development in the Buffer is presumed to be harmful; and that the applicant has the burden of proof and the burden of persuasion to overcome that presumption.



- Make it clear that illegally-built structures are not a “red herring” and should be considered in evaluating a variance application.
 - Remove the incentive to build illegally and use the existence of illegal structures to argue that no adverse impacts resulted from the construction.

Enforcement

- Add a provision that increases penalties for violations, possibly to \$10,000.
- Add provisions authorizing local jurisdictions to request the Commission’s assistance in prosecuting Critical Area violations.
 - Eliminate the requirement that the Chairman must notify a local jurisdiction that it is not enforcing its program before the State can participate in local enforcement actions.

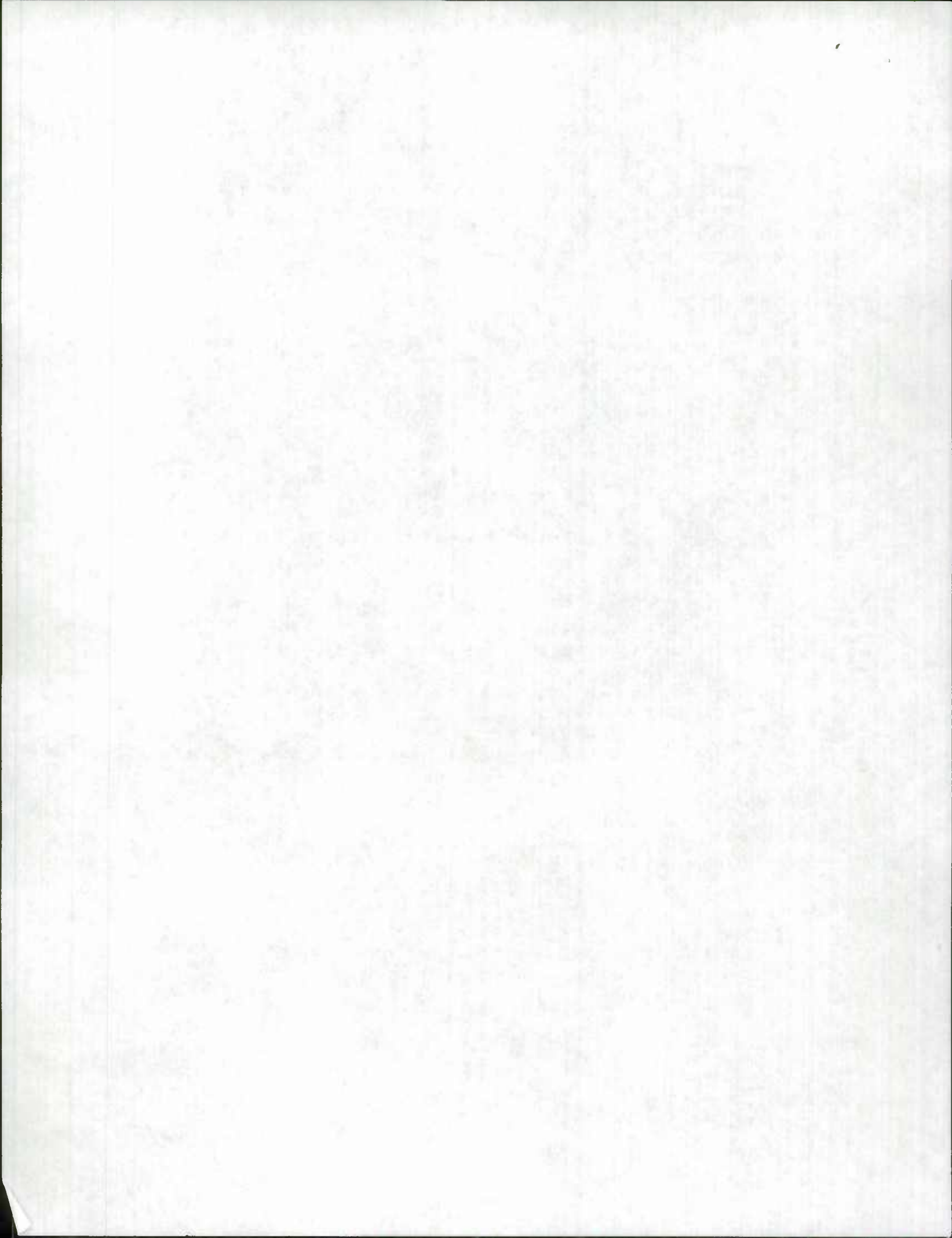
Dwelling Unit

- Add a definition of “dwelling unit” based on the BOCA (Building Officials and Code Administrators) definition of dwelling unit used by all Maryland Counties.
 - The BOCA definition of a dwelling unit is: “A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.”
 - Several local jurisdictions do not include guesthouses, caretaker houses, tenant houses and other residential uses as dwelling units.
 - Continue to work with the Joint Legislative Oversight Committee to refine the definition as necessary, possibly including examples.
 - Consider the use of growth allocation to permit additional dwelling units that exceed the density limit of one dwelling unit per 20 acres in the Resource Conservation Area.

Disclosure

- Add a provision that real estate transfers must include notice that newly acquired property may be located in the Critical Area of the Chesapeake Bay or the Atlantic Coastal Bays.

Read



State Licenses

- Add a provision that allows the State to revoke or otherwise affect the licenses of contractors who knowingly violate the provisions of the Critical Area Act or of a local Critical Area Program.

