

**Critical Area Commission**  
**Department of Housing and Community Development**  
**Crownsville, Maryland**  
**January 7, 2004**

**SUBCOMMITTEES**

**10:30 a.m. – 12:00 p.m. Project Evaluation Subcommittee**

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

**Chesapeake Beach: Water Tower: Forest Mitigation Agreement  
(Calvert County)**

**Julie LaBranche  
Regina Esslinger**

~~**(Tentative) Maryland National Capital Park and Planning  
Commission: Betty Blume Park – Stormwater Management  
Facility (Prince George's County)**~~

**Claudia Jones**

**Maryland Air National Guard: Conceptual Development Plan at  
Martin State Airport (Baltimore County)**

**Wanda Cole**

**Maryland Aviation Administration: Conditions of General  
Approval: Addition to the Memorandum of Understanding with  
Department of Transportation**

**LeeAnne Chandler**

**Maryland Port Administration: Institutional Plan for 10%  
Pollutant Reduction**

**Dawnn McCleary  
Regina Esslinger**

**10:30 a.m. – 12:00 p.m. Program Implementation Subcommittee**

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

**City of Annapolis: Map Change: Sigma Property Annexation**

**Dawnn McCleary**

**Town of Perryville: Frenchtown Crossing Growth Allocation**

**Mary Ann Skilling**

**Information: Talbot County: Supplemental Growth Allocation to  
Town of Easton - County Council Bill #925**

**Lisa Hoerger  
Mary Owens**

**Information: Town of Easton: Ratcliffe Farm Subdivision –  
Growth Allocation (Talbot County)**

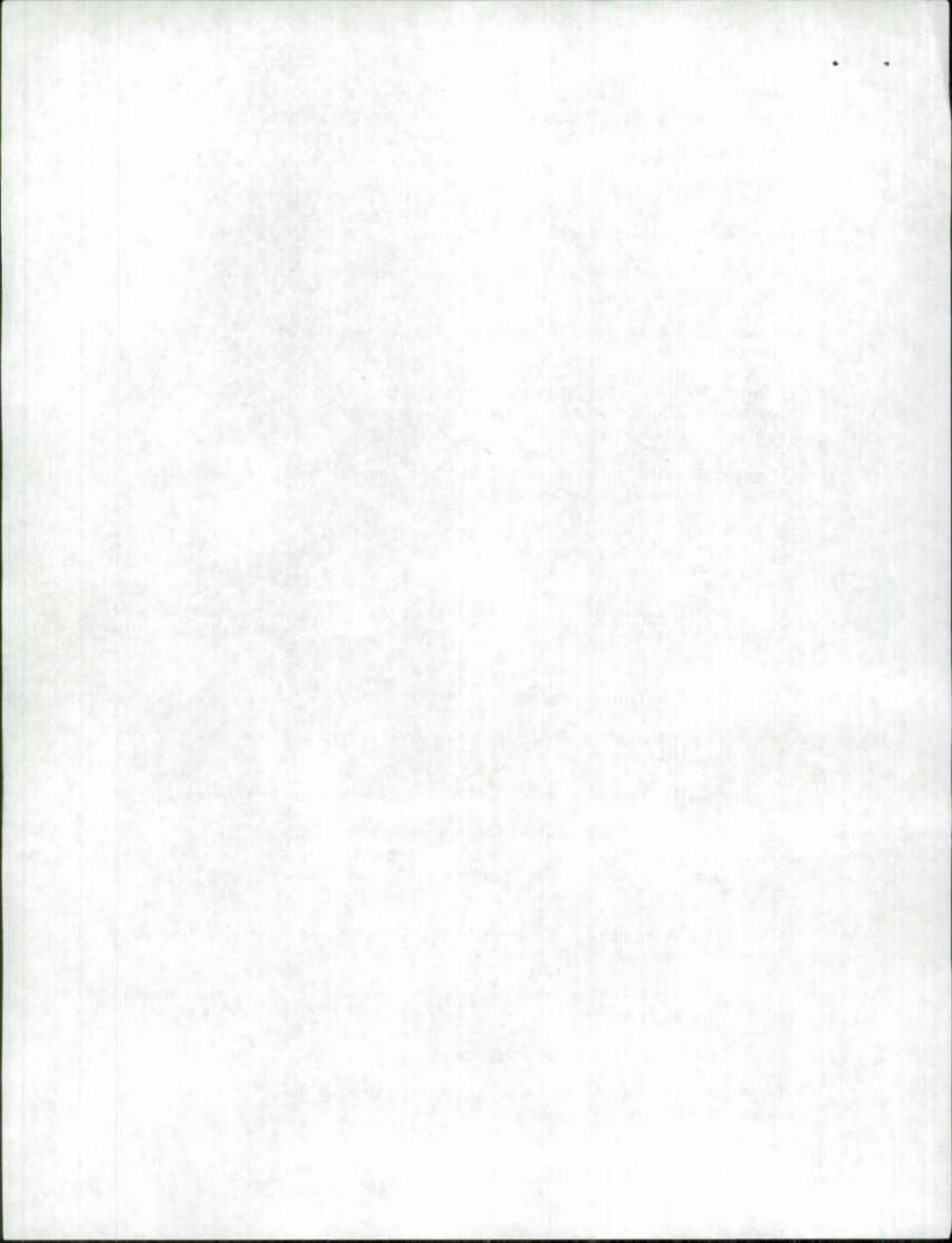
**Lisa Hoerger  
Mary Owens**

**Information: Town of Easton: Easton Village – Growth  
Allocation (Talbot County)**

**Lisa Hoerger  
Mary Owens**

**12:00 p.m. Panel: Talbot County and Town of Easton**

**Supplemental Growth Allocation; Ratcliffe Manor Growth Allocation;  
Easton Village Growth Allocation**



**Critical Area Commission**  
**Department of Housing and Community Development**  
**Crownsville, Maryland**  
**January 7, 2004**

**AGENDA**

1:00 p.m. – 1:05 p.m.	Welcome and Remarks	Chairman Martin G. Madden
	Approval of Minutes for December 3, 2003	

**PROJECTS**

1:05 p.m. – 1:15 p.m.	VOTE: Maryland Aviation Administration: Conditions of General Approval: Addition to the Memorandum of Understanding with Department of Transportation	LeeAnne Chandler
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1:15 p.m. – 1:25 p.m.	VOTE: Maryland Air National Guard: Conceptual Development Plan at Martin State Airport (Baltimore County)	Wanda Cole
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<del>1:25 p.m. – 1:35 p.m.</del>	<del>VOTE (Tentative): Maryland National Capital Park and Planning Commission: Betty Blume Park – Stormwater Management Facility (Prince George's County)</del>	Claudia Jones
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**PROGRAMS**

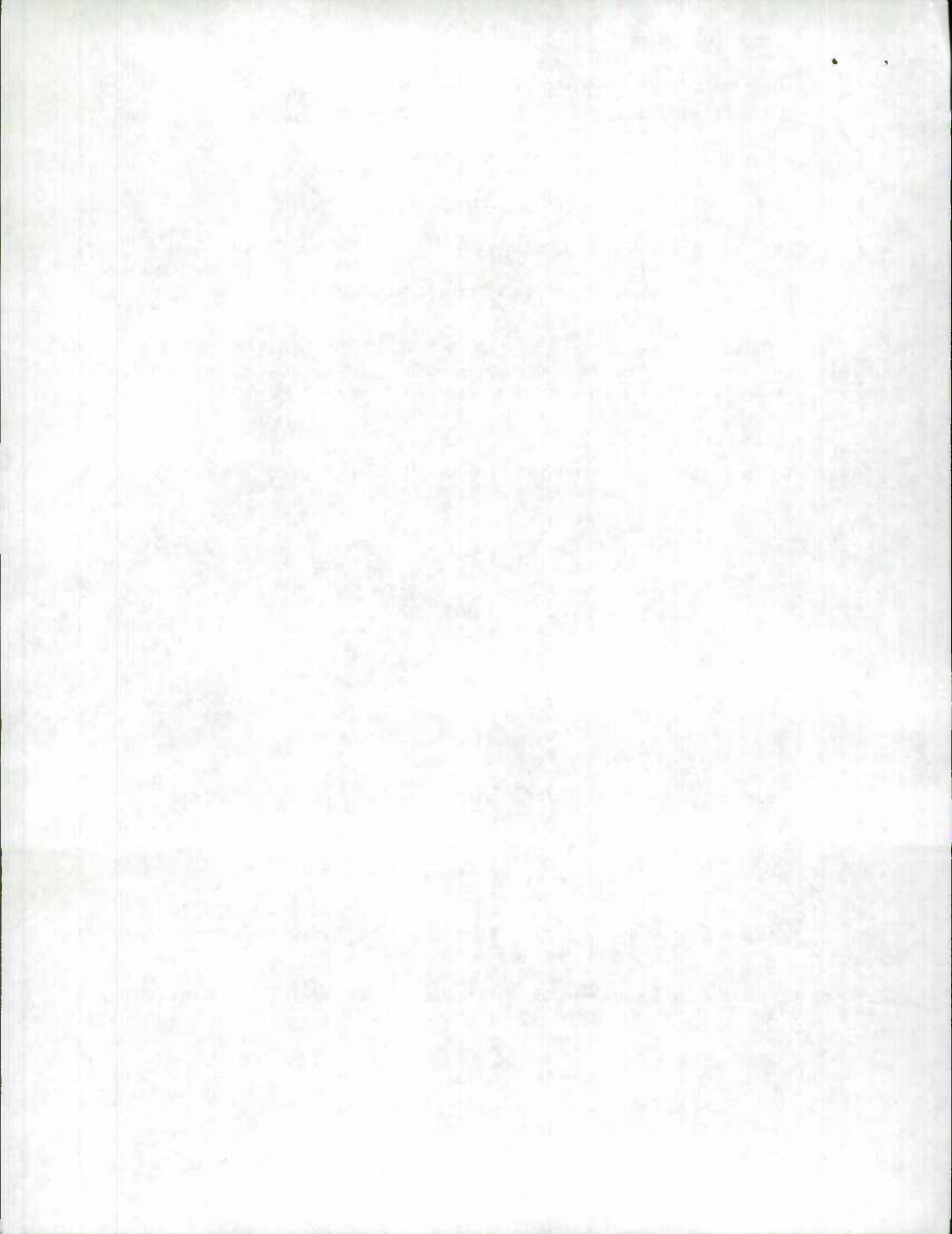
1:35 p.m. – 1:45 p.m.	VOTE: Talbot County: Supplemental Growth Allocation to Town of Easton - County Council Bill #925	Lisa Hoerger
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1:45 p.m. – 1:55 p.m.	VOTE: Town of Easton: Ratcliffe Farm Subdivision – Growth Allocation (Talbot County)	Lisa Hoerger
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1:55 p.m. – 2:05 p.m.	VOTE: Town of Easton: Easton Village – Growth Allocation (Talbot County)	Lisa Hoerger
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<del>OK</del> 2:05 p.m. – 2:15 p.m.	<del>3</del> Refinement: City of Annapolis: Map Change: Sigma Property Annexation	Dawnn McCleary
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2:15 p.m. – 2:25 p.m.	Refinement: Town of Perryville (Cecil County) Frenchtown Crossing Growth Allocation	Mary Ann Skilling
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OLD BUSINESS

2:25 p.m. – 2:35 p.m.

Update: Oversight Committee; Legislative Matters

Chairman  
Martin G. Madden

Legal Update

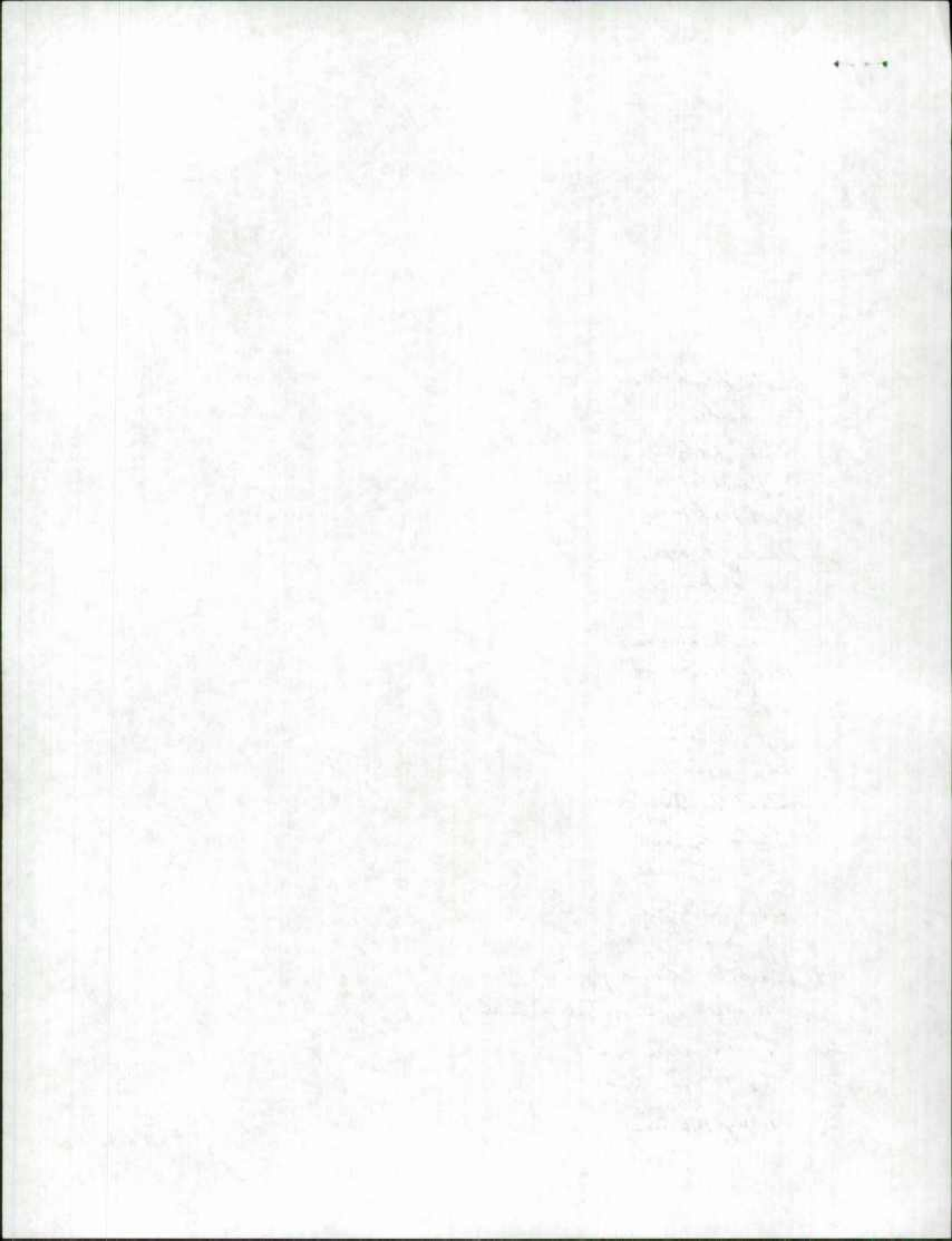
Marianne Mason

NEW BUSINESS

2:35 p.m. – 2:45 p.m.

Commission  
Members

- 1 Anator Madden
- 2 Otis Polley
- 3 Guy Setzer
- 4 Judith Col
- 5 Pat Faulkner
- 6 Danny Mayle
- 7 Joe Jackson
- 8 Bill Rice
- 9 Frank Dawson
- 10 Meg Andrews
- 11 Tom McKay
- 12 Ed Richards
- 13 Margo Bailey
- 14 Neil Booker Jones
- 15 Ella Ennis
- 16 Bill Diers
- 17 Dave Blazer
- 18 Jim McLean
- 19 Barbara Amoryjusk  
(Mike Paone for Tracey Enby)
- 20 Louise Lawrence
- 21 Earl Chambers
- 22 Marge Mathias



*approved  
as read*

**Critical Area Commission**  
**For the Chesapeake and Atlantic Coastal Bays**  
**Department of Housing and Community Development**  
**100 Community Place**  
**Crownsville, Maryland**  
**December 3, 2003**

The full Critical Area Commission met at the Department of Housing and Community Development in Crownsville, Maryland. The meeting was called to order by Chairman Martin

G. Madden with the following Members in **Attendance:**

Dave Blazer, Worcester County Coastal Bays  
Judith Cox, Cecil County  
Judith Evans, Western Shore Member at Large  
Ed Gilliss, Baltimore County  
Joseph Jackson, Worcester County  
James N. Mathias, Jr., Ocean City  
Barbara Samorajczyk, Anne Arundel County  
Thomas McKay, St. Mary's County  
Daniel Mayer, Charles County  
Douglas Stephens, Wicomico County  
Douglas Wilson, Harford County  
Louise Lawrence, Department of Agriculture  
Gary Setzer, Department of the Environment  
James McLean, Department of Business and Economic Development  
Frank Dawson, Department of Natural Resources  
Pat Faulkner, Department of Housing and Community Development  
Meg Andrews, Department of Transportation  
Tracey Gordy, Department of Planning  
Duncan Stuart, for Baltimore City

**Not in Attendance:**

Margo Bailey, Kent County  
Dr. Earl Chambers, Queen Anne's County  
William Giese, Dorchester County  
Gail Booker Jones, Prince George's County  
Paul Jones, Talbot County  
William Rice, Somerset County  
Edwin Richards, Caroline County

The Minutes of November 5, 2003 were amended to reflect Dave Blazer as Worcester County, Coastal Bay's representative. The Minutes were approved as amended.

**Town of Chesapeake Beach:** Julie LaBranche presented for Vote the Concept Approval request by the Town of Chesapeake Beach to construct a trail system to provide public access and recreational access along Fishing Creek and to the main waterfront area of the Town. Ms. LaBranche discussed the trail specifications and design. She said that the combination boardwalk and paved trail will be approximately 1.12 miles in length and will be limited to pedestrians, biking, and for wheelchair access and emergency vehicles for responding to human trauma. The Town has agreed to provide detailed engineering site plans and stormwater management plans. Mitigation requirements within the Critical Area will be calculated based on

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Critical Area Commission Minutes  
December 3, 2003

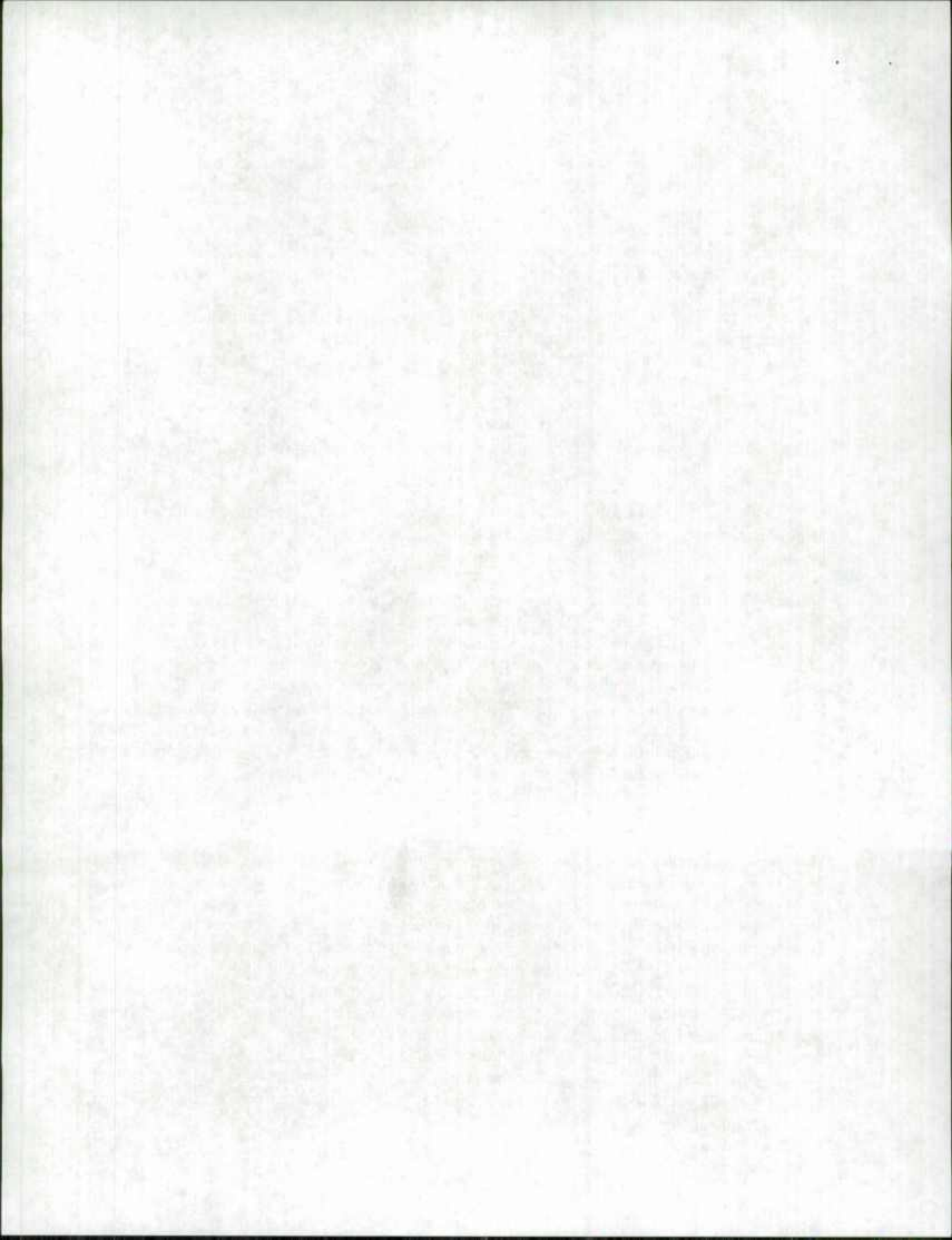
the engineered site plans and should be provided to the Commission. Revised site plans and specifications are to be submitted to MDE and the Corps of Engineers before authorizations can be issued for the project. Gary Setzer on behalf of the project subcommittee moved that the Commission approve the 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.

Jim Mathias raised the question of a wider trail for emergency fire vehicles and the engineer responded that the purpose of the wider trail is for emergency response to human trauma. The motion was seconded by Jim McLean and carried unanimously.

**Somerset County:** Claudia Jones presented for Vote the request by the Department of Natural Resources to replace a failing timber bulkhead with a steel bulkhead and to widen the existing Somer's Cove Inlet, at Jersey Island, in Crisfield. She said that the 1-acre site is partly paved with the remaining site covered in grass. Approximately 1200 square feet of land adjacent to the existing Somer's Cove Inlet will be excavated to allow more room for boats going into the Marina as well as the Coast Guard and DNR docks. 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. Gary Setzer moved on behalf of the Project Subcommittee, to approve the request by the Department of Natural Resources for the Bulkhead Replacement/Inlet Enlargement on Jersey Island, Crisfield as presented in the Staff report. The motion was seconded by Judy Cox and carried unanimously.

**10% Rule Guidance Manual:** Mary Owens presented for Vote the Adoption of the "Critical Area 10% Rule Guidance Manual" as revised in the Fall of 2003. This document was originally prepared to provide guidance to local governments regarding compliance with the 10% pollutant reduction requirement, or "10% Rule" in 1987. 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%, using a formula that estimates the phosphorus coming from a development site. The 1987 document was revised in 1993 and three guidance manuals were produced. Those three guidance publications have been merged into a single guidance manual (which will be put on the web site) that reflects the advances made in stormwater management technology and 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 (developed, promulgated and adopted





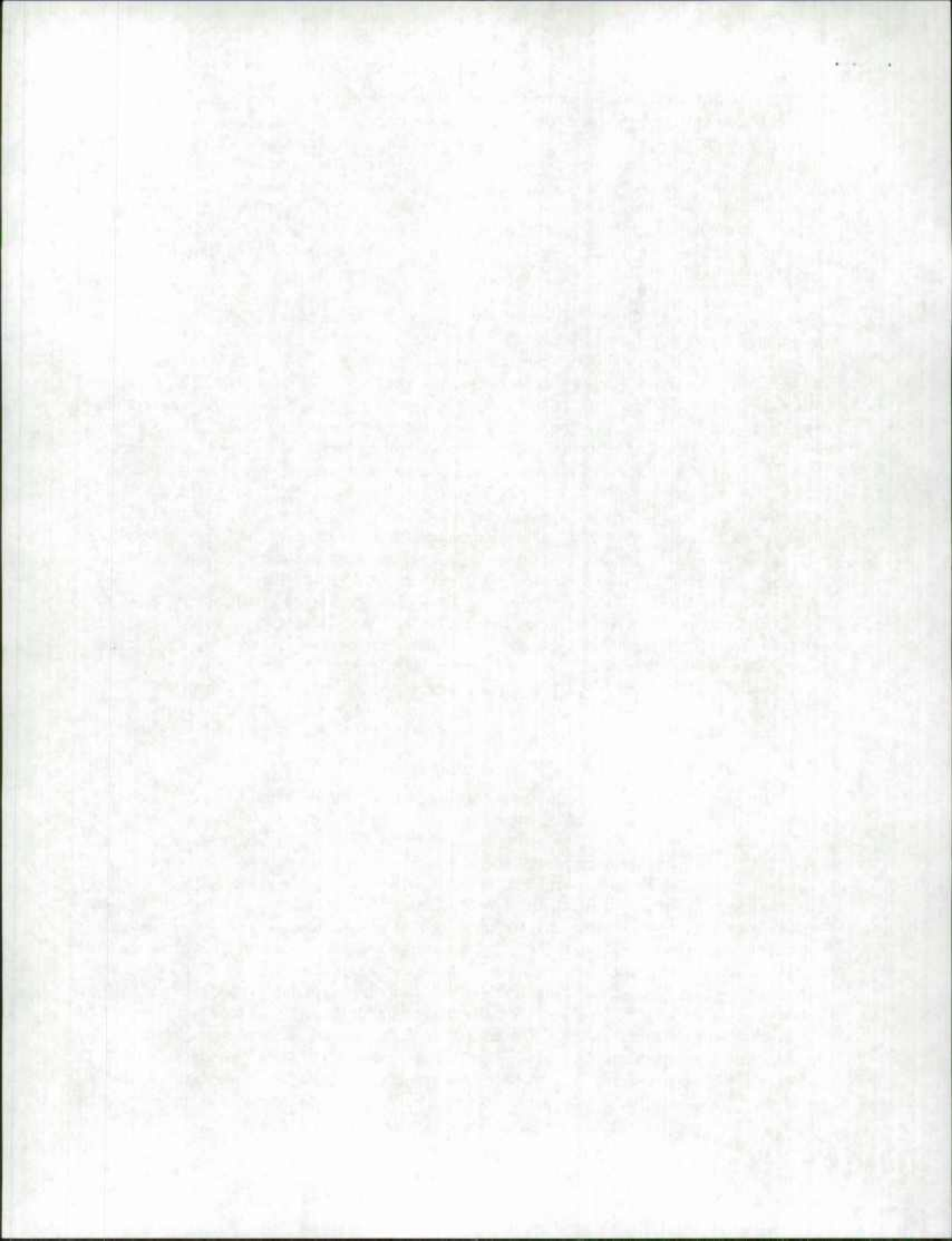
Critical Area Commission Minutes

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by MDE). Ms. Owens told the Commission about the revisions. There was a lot of discussion regarding the use of phosphorus as the best representative to measure pollutants in runoff. Ms. Owens stated that phosphorus is the best measure according to the consultant, a national leader in stormwater design, who prepared the document. Dave Bourdon said that phosphorus is much easier to measure than nitrogen. The Manual was either sent to all the local governments or their representatives. Substantive comments were incorporated. Gary Setzer moved on behalf of the Project Subcommittee, that the Commission adopt the 10% pollution reduction requirement specified in Code of Maryland 27.01.02.03D(3). The motion was seconded by Jim McLean and carried unanimously.

**Town of Perryville:** Mary Ann Skilling presented for concurrence with the Chairman's determination of Refinement, the request by the Mayor and Commissioners of the Town of Perryville in Cecil County for 2.7 acres of growth allocation. The parcel is designated LDA and the growth allocation would change the designation on the Critical Area portion of the parcel to IDA which is consistent with the Town's Critical Area Program and Ordinance and would be consistent with the Town's Comprehensive Plan. There are no Habitat Protection Arcas and currently there is pioneer forest with a heavy invasive/exotic component with an existing mowed field. Tracey Gordy said that if the density was changed then a project such as this would not require growth allocation. Ren Serey responded stating that the 3.99 units per acre in the Town program is not a State requirement in the Criteria. However, many jurisdictions have incorporated that mapping standard in their Regulations as a density cap. There is no density cap for LDA or IDA in the criteria, but there was an original mapping standard for the LDA of 4 dwelling units per acre. The only density cap in the criteria for new development is one dwelling unit per 20 acres for the RCA. Ren added that the Criteria performance standards, such as the limits on impervious surfaces and forest clearing for the LDA, could require the use of growth allocation for a project such as this. Ren said that there are some mistakes in mapping wherein LDA should have been mapped IDA. The correction of these would not require using growth allocation. Dave Blazer moved on subcommittee recommendation to approve the request. The Commission supported the Chairman's determination of Refinement and concurred with the Mayor and Commissioners approval of the request conditioned upon forest mitigation for 1.8 acres.

**Wicomico County:** Wanda Cole presented for Concurrence with the Chairman's determination of Refinement, Wicomico County's request for 0.60 acres of growth allocation to change the Critical Area overlay designation of the Richardson property, Tax Map 35, Grid 11, parcel 5, Lot 3A from RCA to LDA for the purpose of providing a 10,000 square foot sewage reserve area and a sewage pipeline to a proposed dwelling that will be located outside the Critical Area. Ms. Cole explained that in order to make this residue lot buildable, a sewage disposal area had to be located within the Critical Area and growth allocation is required. There were no passing percolation tests outside the Critical Area. Subsequent to reviews of this request by the Program Subcommittee in 2002, the County proposed the use of 0.60 acres growth allocation. The Subcommittee advised the County that if the growth allocation were approved at the local level, it would be looked at favorably subject to three recommendations involving the configuration of the development envelope, the use of enhanced septic technology, and the establishment of a development envelope consisting of 0.6 acres and precluding further development of the property. No tree clearing is proposed; there are no HPA's within the growth allocation envelope. There are no impacts to the 100-foot Buffer. The Wicomico County Planning





## Critical Area Commission Minutes

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Commission and County Council have approved this request. The Refinement determination is subject to three conditions, which were the conditions of the County Council: 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 0.06 acres. The Commission supported the Chairman's determination of Refinement.

### Old Business

**Legislative Update:** The Chairman informed the Commission that members of the Joint Legislative Oversight Committee (JLOC) will be introducing legislation in the upcoming General Assembly session. The Committee Co-chairs have asked for feedback on some of their proposals. The Chairman recapped what was discussed with the Committee:

**Lewis v. DNR** • State that it is the General Assembly's intention to overrule Lewis v. DNR  
• 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 • Enact new findings regarding the importance of the Buffer in protecting water quality and habitats throughout the Critical Area • 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." • Establish evidentiary standards that a local jurisdiction must use in evaluating variance applications. • Make it clear that illegally built structures are not a "red-herring," as the Court of Appeals described them, and should be considered in evaluating a variance application.

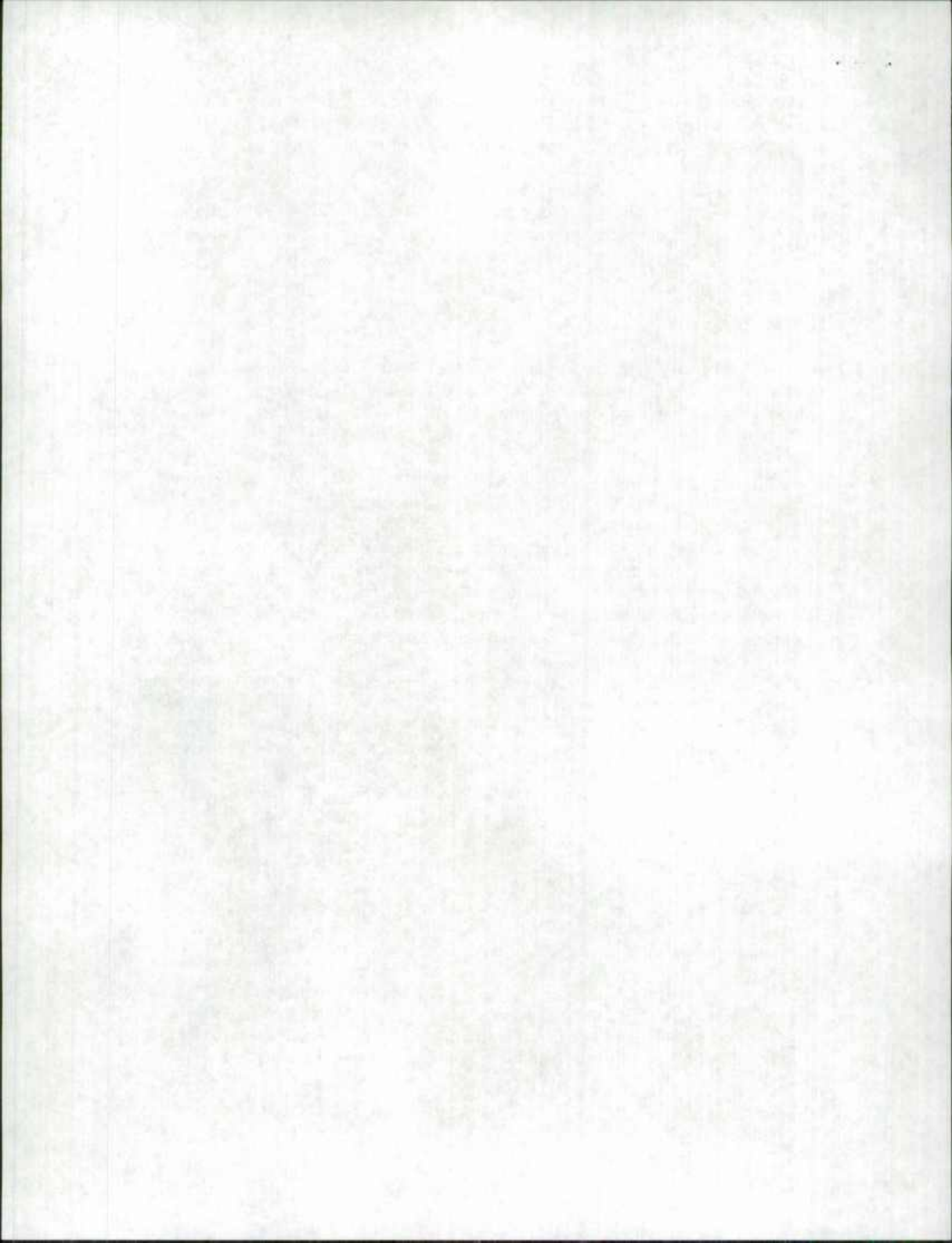
**Enforcement** • Add a provision that increases penalties for violations, possibly to \$10,000  
• Add provisions authorizing local jurisdictions to request the Commission's assistance in prosecuting Critical Area violations.

**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.

**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

**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

The Chairman told the Commission that the JLOC asked the Commission to work on some type of disclosure notice. The Chairman and Mary Owens met with the Maryland Realtors Association representatives a couple of weeks ago and came up with a statement for consideration by the Oversight Committee. The Chairman read the notice:





December 3, 2003

**Critical Area Notice:** Buyer is advised that all or a portion of the property may be located in the "Critical Area" of the Chesapeake and Atlantic Coastal Bays, and that additional zoning, land use, and resource protection regulations apply in this area. The "Critical Area" is generally defined as all land and water areas within 1,000 feet beyond the landward boundaries of State or private wetlands, the Chesapeake Bay, the Atlantic Coastal Bays, and all of their tidal tributaries. The "Critical Area" also includes the waters of and lands under the Chesapeake Bay, the Atlantic Coastal Bays, and all of their tidal tributaries to the head of tide. For information as to whether the Property is located within the Critical Area, Buyer may contact their local department of planning and zoning which maintains maps showing the extent of the Critical Area in their jurisdiction. (Allegany, Carroll, Frederick, Garrett, Howard, Montgomery and Washington Counties do not include land within the Critical Area.)

Senator Madden said that the JLOC asked for comments on a provision that would allow the State to revoke or otherwise affect the licenses of contractors who knowingly violate the provisions of the Critical Area Act or its local Critical Area Program. Commission Counsel, Marianne Mason, told the Commission that the State regulates some aspects of the home building and land modification process, not only for new homebuilders, but also contractors that do renovations, and the statutes which authorize those types of activities could be modified to include a license violation of the Critical Area law. The Chairman said that he would consult with the JLOC regarding all the information and comments on their request.

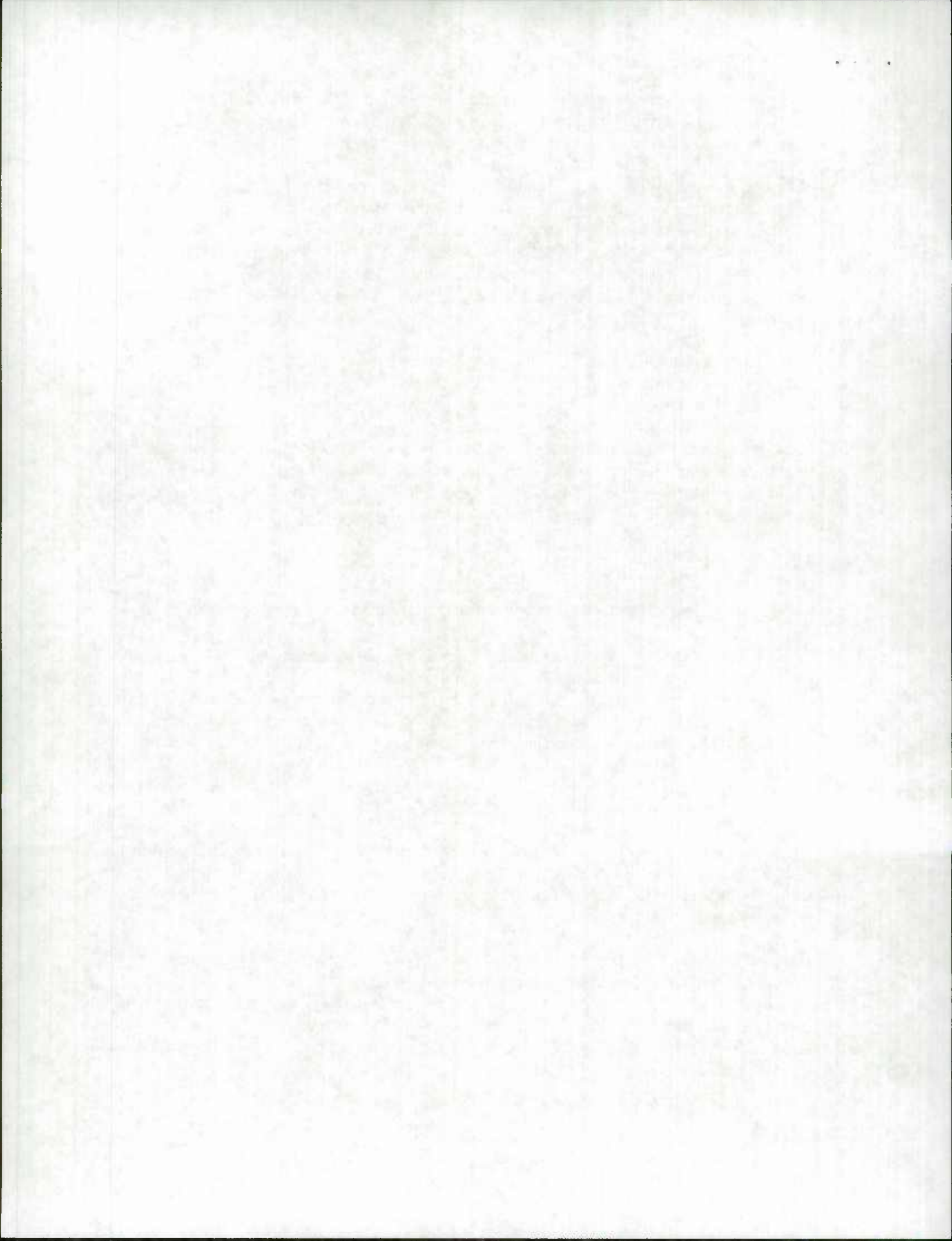
## Legal Update

Commission Counsel Marianne Mason updated the Commission on legal matters.

**Wicomico County:** Ms. Mason said that the Lewis case has wound its way back through the Court of Appeals and back to the Wicomico County Board of Appeals once again. She reported that she spoke with the Wicomico County Board of Appeals Counsel who informed her that the Board will most likely reconvene a hearing sometime in the new year, January or February at the earliest. The Board has yet to decide the scope of the proceeding, whether they will be taking new evidence or whether they will want to have their own experts to opine on whether to grant the variance for the already-constructed cabins. The Commission will be permitted to present its view to the Wicomico Board.

**Cecil County:** There will be oral arguments in the Wruble case, a case where the Board of Appeals granted a variance for a pool and pool house in the Buffer on a 10-acre property. The Commission maintained that there are other places on the 10-acre property where a pool could be situated other than in the Buffer.

**Harford County:** Oral arguments will be held before the judge in the Old Trails case on Tuesday, 9<sup>th</sup> of December. The Commission is supporting the County Council, which is the Board of Appeals in Harford County. The Board reversed a decision of the hearing examiner, who granted variances for 56 homes in a development on steep slopes in a forested area with rare plants. The Board granted modified variances, and said that it is possible to build on parts of the site with less sensitive features.





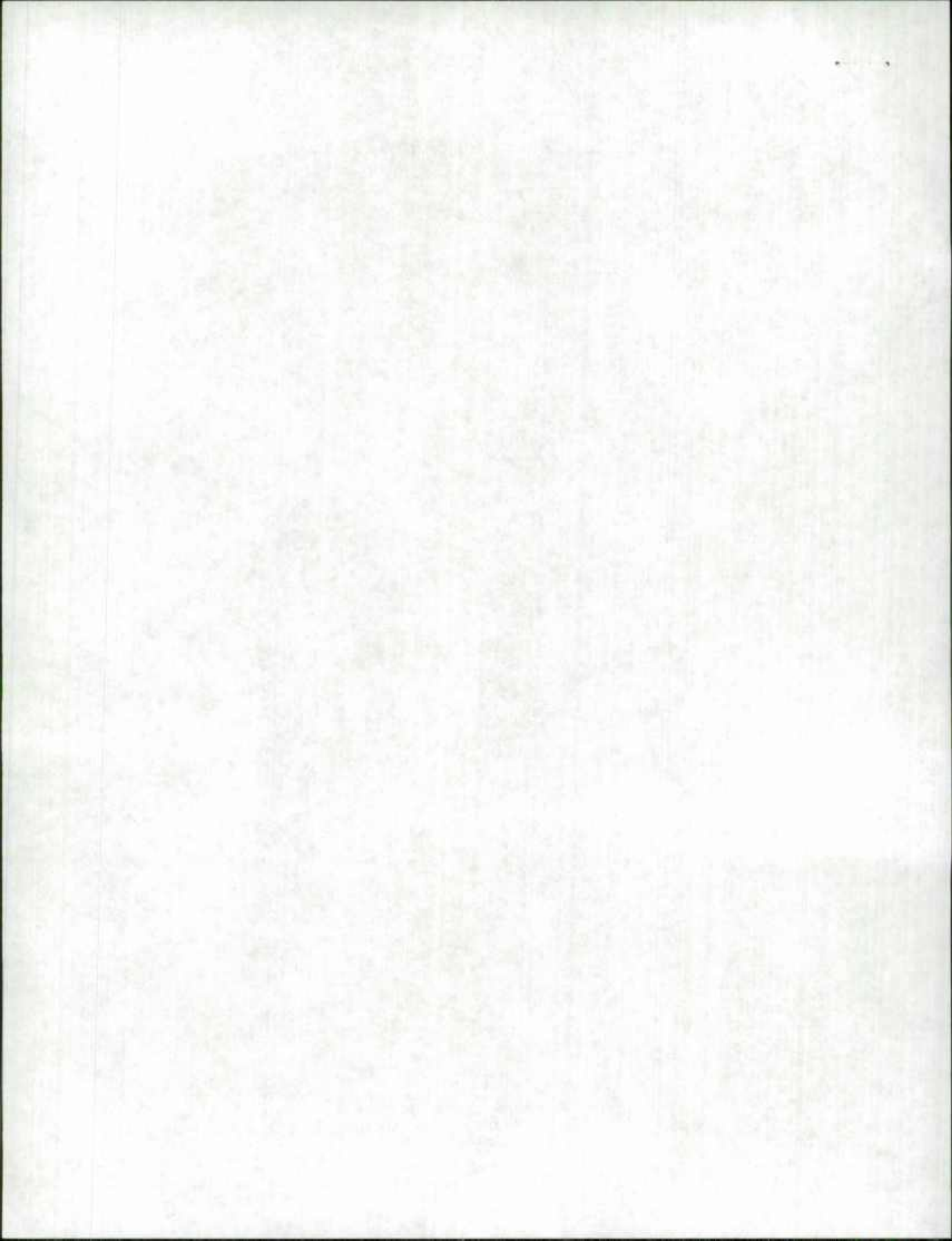
Critical Area Commission Minutes

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**New Business**

No new business was reported. The meeting adjourned at 2:30 p.m.

Minutes submitted by: Peggy Campbell, Commission Coordinator



## *Critical Area Commission*

### **STAFF REPORT**

**January 7, 2004**

**APPLICANT:** City of Annapolis Planning and Zoning

**PROPOSAL:** Sigma Family Annexation

**JURISDICTION:** City of Annapolis

**COMMISSION ACTION:** Concurrence with Chairman's Determination

**STAFF RECOMMENDATION:** Approval

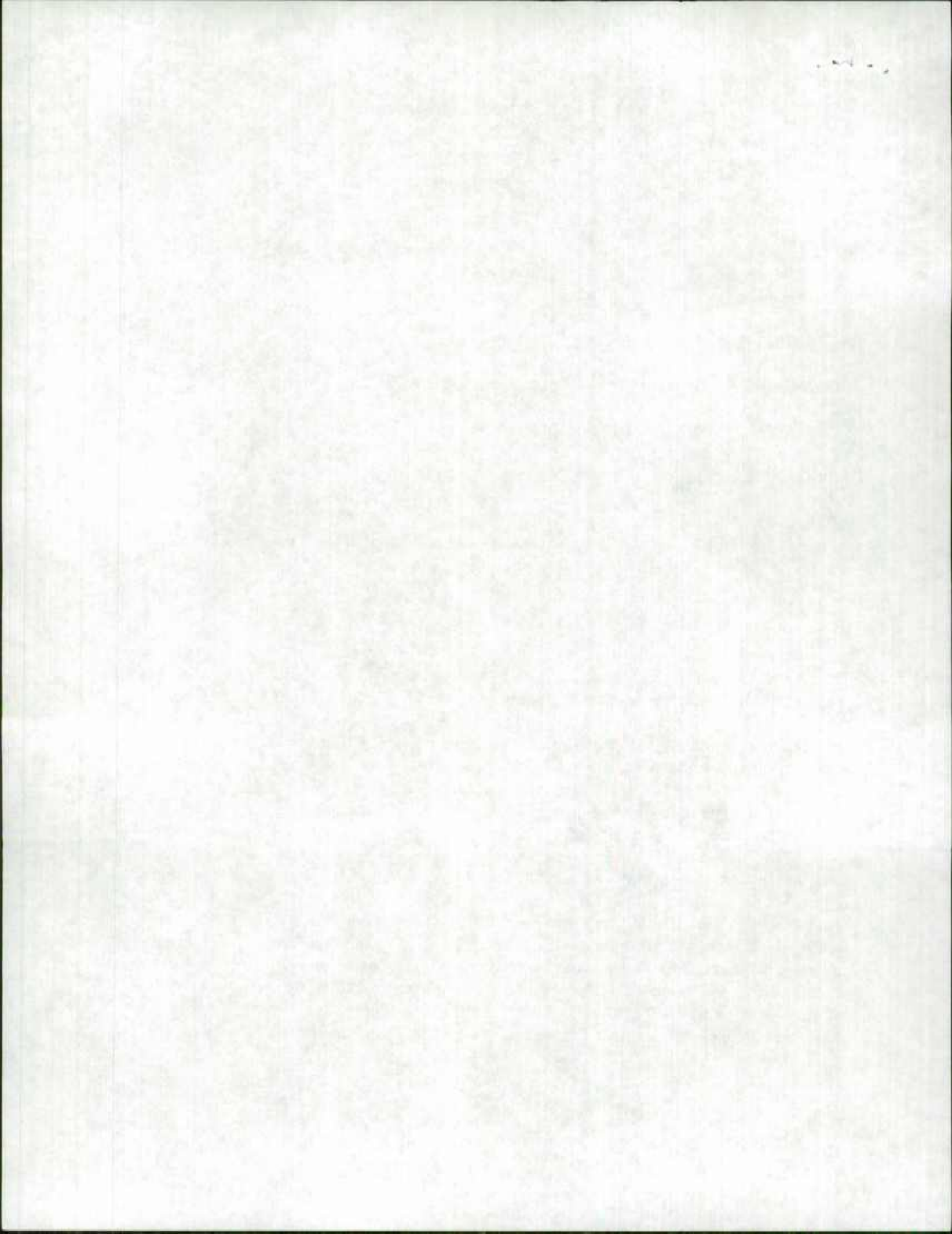
**STAFF:** Dawnn McCleary

**APPLICABLE LAW/  
REGULATIONS:** Annotated Code of Maryland, Natural Resources Article,  
Section 8-1809(h) and (I)

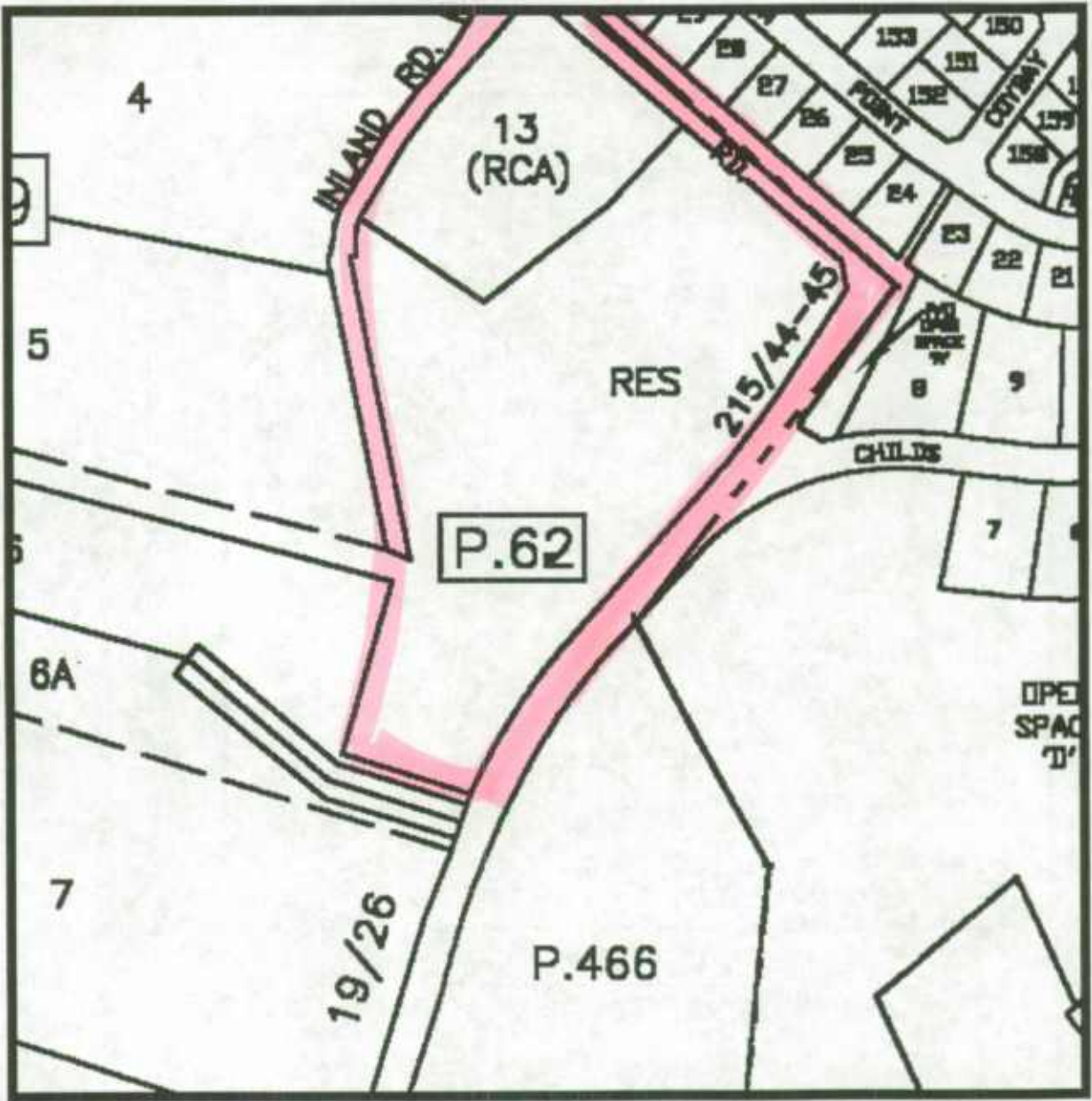
### **DISCUSSION:**

The City of Annapolis recently annexed 8.4 acres of land from Anne Arundel County. The property is identified as Anne Arundel County Tax Map 51, Block 15, Parcel 62. It is located on the corner of Wood Road and Bywater Road and has frontage on Church Creek. Access is provided from Bywater Road via the new road configuration established by the Kingsport Planned Unit Development (PUD) and its intersection with Wood Road. Approximately 4.4 acres of the property is in the Critical Area and is designated as Resource Conservation Area (RCA). The proposed annexation does not involve a change in the RCA designation. The property is currently developed with a single-family residence, which is located outside the Critical Area.

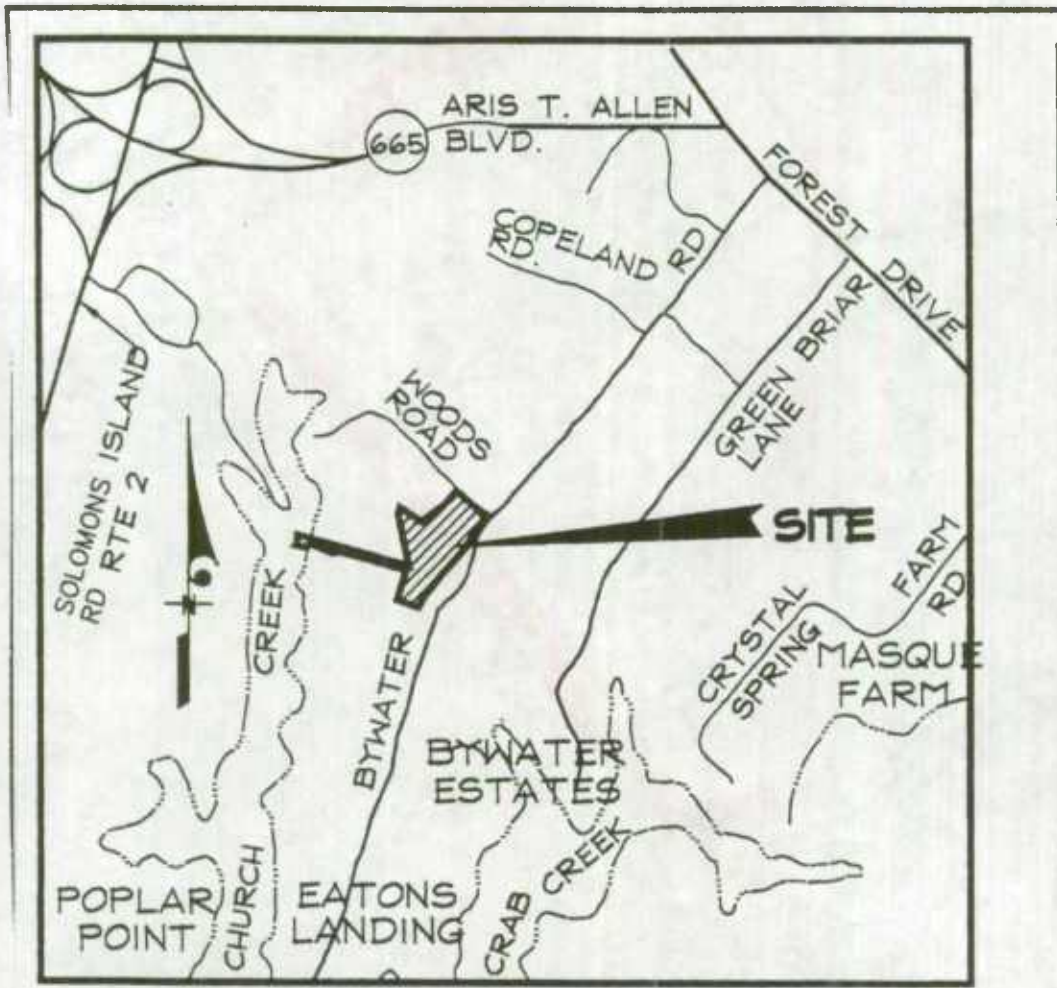
The City confirms that the property is contiguous to and adjoins the City of Annapolis corporate limits. After annexation, the subject property is proposed for subdivision into seven single-family residential lots. One of the lots will accommodate the existing house. Five of the new lots will be located outside the Critical Area, the sixth lot is within the Critical Area. Commission staff has requested additional information about the subdivision history of the property, in order to determine if there is available RCA density to permit the proposed development. Although this information is not required in order for the annexation to be approved, it will need to be submitted before Commission staff can provide comments on the subdivision proposal.







City of Annapolis  
Sigma Family Annexation



**VICINITY MAP**

SCALE: 1" = 2,000'



## CRITICAL AREA COMMISSION

### STAFF REPORT

January 7, 2004

**APPLICANT:** Town of Perryville

**PROPOSAL:** Refinement - Frenchtown Crossing Growth Allocation

**COMMISSION ACTION:** Concurrence with Chairman's Determination of Refinement

**STAFF RECOMMENDATION:** Approval

**STAFF:** Mary Ann Skilling

**APPLICABLE LAW/  
REGULATIONS:** Natural Resources Article §8-1808.1 (Growth Allocation in Resource Conservation Areas)  
Natural Resources Article §8-1809((h) (Proposed Program Amendments and Refinements)

#### DISCUSSION:

The Mayor and Commissioners of the Town of Perryville are requesting approval of the use of 15.96 acres of growth allocation to change the Critical Area designation of Parcel 527 on Tax Map 800 from Limited Development Area (LDA) to Intensely Developed Area (IDA). The growth allocation is requested to accommodate a high-density residential development that is consistent with local zoning. Growth allocation is needed to permit this type of development, which would otherwise not be possible within an LDA due to the impervious surface limitations. The property is located entirely within the Critical Area, and the designation of the entire parcel will be changed.

With regard to the locational guidelines for growth allocation in the Critical Area Act and in the Commission's policy, the parcel is adjacent to LDAs to the north, IDAs to the south, and is located between two railroad lines to the east and west. The property is within the corporate limits of the Town of Perryville and is to be served by public water and sewer. The use of growth allocation for this property will not have an impact on defined land uses in the resource conservation area because the property is not currently designated RCA, and it is 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.

Parcel 527 was previously developed as a seasonal campground with an approved stormwater management system that was designed to accommodate that use. The redevelopment of the



property 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.

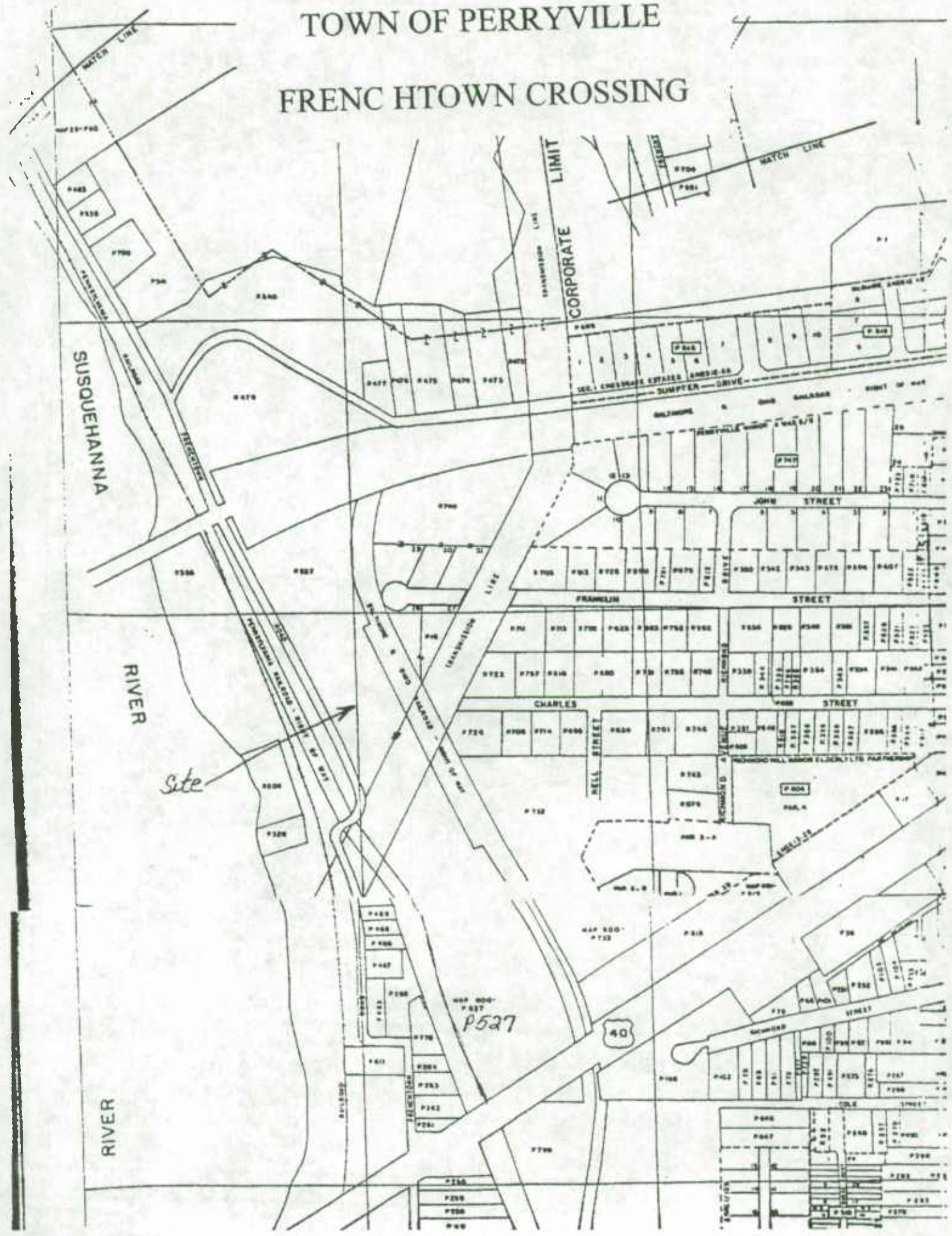
A letter dated March 11, 2003 from the Department of Natural Resources, Wildlife and Heritage Service, states that they have no records for Federal or State rare, threatened or endangered species within the project site. A non-tidal wetland has been identified on the property. At this time, no disturbance is proposed within the nontidal wetland or 25-foot nontidal wetland buffer. Based on the environmental assessment provided, the project is consistent with the Town Critical Area Program.

The Mayor and Commissioners held a public hearing on November 14, 2002 and approved the request for 15.96 acres to change the LDA designation to IDA based on the following facts:

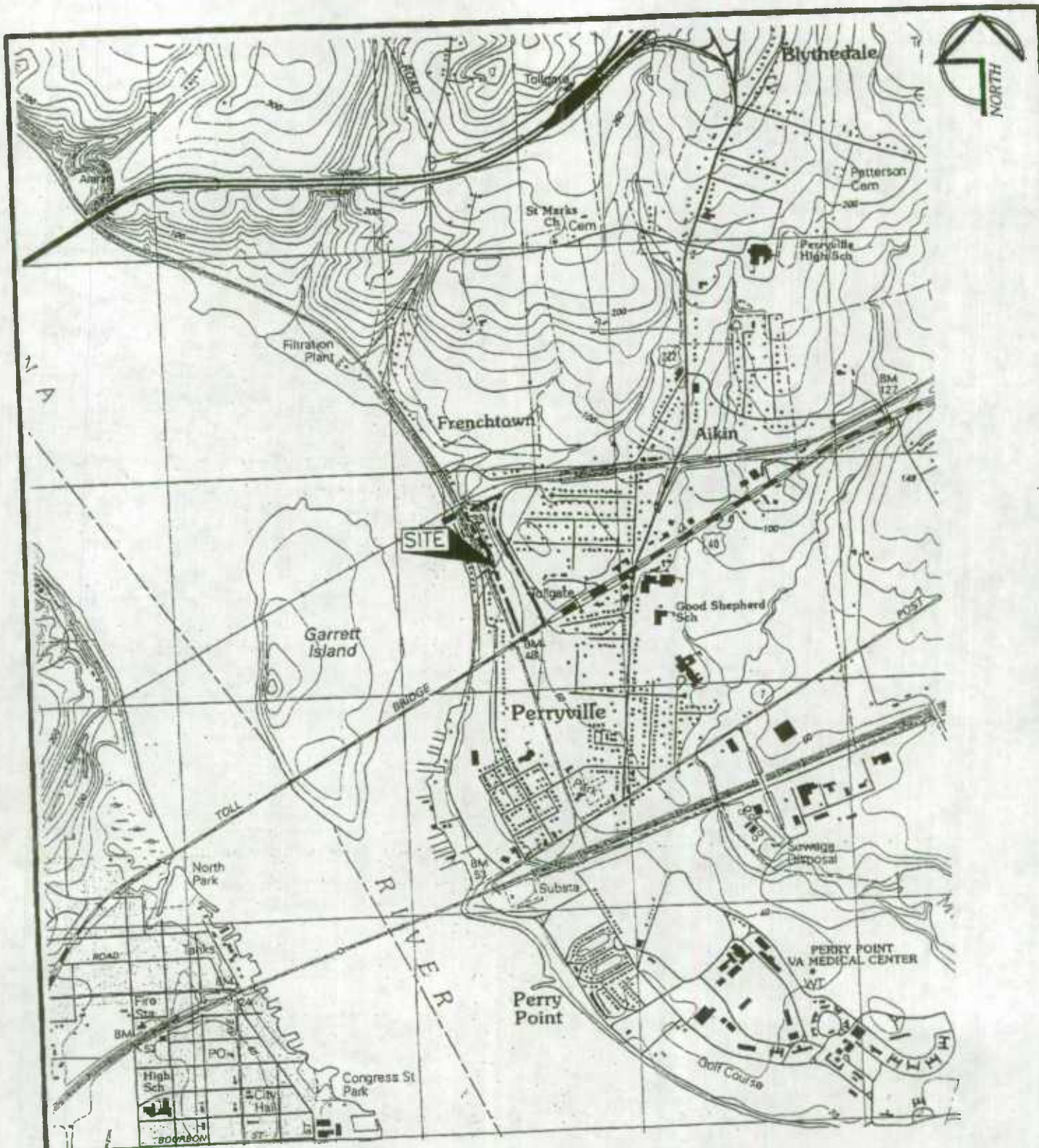
1. The parcel was located in the corporate limits of Perryville at the time that the Cecil County Critical Area Program was adopted.
2. It is the intent of the Cecil County Critical Area Program to ensure that the growth needs of the municipalities are addressed.
3. The request to change the Critical 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 and the Cecil County Urban Growth Boundary.

The Town requested the growth allocation from Cecil County on November 15, 2002. The Cecil County Commissioners approved the request from the Town on December 17, 2002.

# TOWN OF PERRYVILLE FRENCH TOWN CROSSING







SOURCE:  
 U.S. GEOLOGICAL SURVEY QUADRANGLE MAP HAVRE DE GRACE, MD. DATED 1992.



**GEO-TECHNOLOGY ASSOCIATES, INC.**  
 GEOTECHNICAL AND ENVIRONMENTAL CONSULTANTS  
 3445-A BOX HILL CORPORATE CENTER DRIVE  
 ABINGDON, MARYLAND 21009  
 410-515-9446  
 FAX: 410-515-4895

**TOPOGRAPHIC MAP  
 FRENCHTOWN CROSSING**

CECIL COUNTY, MARYLAND

JOB NO. 030080	SCALE: 1"=2000'	DATE: FEBRUARY 2003	DRAWN BY: JMW	REVIEW BY: MDR	FIGURE 2
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## *Critical Area Commission*

### **STAFF REPORT**

**January 7, 2004**

**APPLICANT:** Talbot County

**PROPOSAL:** Amendment - County Council Bill #925 –  
Supplemental Award of Growth Allocation to the  
Town of Easton

**JURISDICTION:** Talbot County

**COMMISSION ACTION:** Vote

**PANEL RECOMMENDATION:** Pending Panel discussion

**PANEL:** Chair, Margo Bailey; Dr. Earl Chambers; Bill  
Giese; Ed Richards; Gary Setzer

**STAFF:** Lisa Hoerger

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

### **DISCUSSION:**

This staff report is one of three issues relating to the use of Talbot County's growth allocation to accommodate two development projects in Easton. On December 16, 2003 the Talbot County Council passed Bill #925 which awarded 156 acres of supplemental growth allocation to the Town of Easton. The Talbot County Zoning Ordinance requires that municipalities must request additional growth allocation from the County Council when the Town's original allocation is used. Since Easton had used all of its growth allocation that it was originally allotted, the town requested additional acreage from the County.

The supplemental allocation will be used for the Ratcliffe Farm and the Easton Village Planned Unit Development. The bill restricts this award of growth allocation to be used exclusively for these projects, and requires the applicant to obtain final subdivision recordation or final site plan approval within two years of approval by the Critical Area Commission. The award of this growth allocation is also subject to certain local conditions which the County Council outlined in Bill #925.

Talbot County's original growth allocation total was 2,568.95 acres. The County's Zoning Ordinance states that not more than 1,213 acres can be reclassified from an RCA to either an LDA or IDA. Of those 1,213 acres, 155 were reserved for the Town of Easton, 195 acres were reserved for the Town of Oxford, and 245 acres were reserved for the Town of St. Michaels. After deducting these acreage figures in addition to the 156 acres granted to the Town of Easton through Bill #925, and the 300.69 acres Talbot County has granted within the County, the County will have 161.31 remaining acres of the 1,213 acres of growth allocation reserved for RCA to LDA or IDA. The panel recommendation is pending the public hearing scheduled for Monday, January 5, 2004.

Please direct any questions to Lisa Hoerger at (410) 260-3478.

Bill 925

COUNTY COUNCIL  
OF  
TALBOT COUNTY, MARYLAND

2003 Legislative Session

Date of Introduction: \_\_\_\_\_

Bill No. \_\_\_\_\_

Expiration Date: \_\_\_\_\_

Introduced by: \_\_\_\_\_

A BILL TO AWARD 156 ACRES OF SUPPLEMENTAL GROWTH ALLOCATION TO THE TOWN OF EASTON AND TO IMPOSE CERTAIN CONDITIONS, RESTRICTIONS, AND LIMITATIONS ON ITS USE.

By the Council \_\_\_\_\_

Introduced, read first time, ordered posted, and public hearing scheduled on \_\_\_\_\_ at \_\_\_\_\_ p.m. at the County Council Chambers, County Government Building, 142 North Harrison Street, Easton, Maryland 21601.

By Order \_\_\_\_\_  
Secretary



1 **A BILL TO AWARD 156 ACRES OF SUPPLEMENTAL GROWTH ALLOCATION TO**  
2 **THE TOWN OF EASTON AND TO IMPOSE CERTAIN CONDITIONS, RESTRICT-**  
3 **IONS, AND LIMITATIONS ON ITS USE.**  
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6 WHEREAS, Talbot County Code § 190-109 D. (9) (d) provides that upon request for  
7 supplemental growth allocation by any municipal corporation within the County, the  
8 County Council may transfer growth allocation to the municipal corporation and may  
9 impose such conditions, restrictions, and limitations upon the use of any such  
10 supplemental growth allocation, if any, as the Council may consider appropriate; and,  
11

12 WHEREAS, the Town of Easton has requested an award of supplemental growth  
13 allocation to increase the acreage reserved to the Town of Easton from 155 to 311 acres,  
14 which will decrease the available acreage remaining to the County from 317 to 161 acres;  
15 and,  
16

17 WHEREAS, the Town of Easton has conditionally approved a PUD application  
18 and an application for growth allocation by Elm Street Development Company, LC to  
19 utilize 156 acres of growth allocation for a project located within the Town of Easton  
20 south of Md. Rt. 33; and,  
21

22 WHEREAS, Talbot County Code § 190-109 D. (9) (d) [3] provides that the  
23 Council shall evaluate the application in accordance with § 190-109 D. (4), which  
24 provides that, after receiving the recommendation of the Planning Officer and Planning  
25 Commission and before approval or denial, the Council shall introduce a bill and hold a  
26 public hearing in order that interested parties and citizens shall have an opportunity to be  
27 heard; and,  
28

29 WHEREAS, the Council has received the recommendations of the Planning  
30 Officer and Planning Commission regarding this application.  
31

32 NOW, THEREFORE, in compliance with the requirement of Talbot County Code  
33 § 190-109 D. (4), the following bill is hereby introduced:  
34

35 SECTION ONE: BE IT ENACTED BY THE COUNTY COUNCIL OF TALBOT  
36 COUNTY, MARYLAND, that:  
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38 1. **Award.** Subject to the following conditions, restrictions, and limitations, Talbot  
39 County hereby awards 156 acres of supplemental growth allocation to the Town of Easton.  
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41 2. **Conditions, restrictions, and limitations.** This award of growth allocation is  
42 subject to the following conditions, restrictions, and limitations:

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a. **Use.** The growth allocation shall be used exclusively for the project approved by the Town of Easton by Ordinance No. 461, effective October 9, 2003 (the "Project").

b. **Contingencies.** Easton Town Ordinance No. 461 incorporated Development Plans for the Project as Exhibit "A", and Findings of Fact as Exhibit "B". This award shall be contingent upon full compliance by Elm Street Development, LC, its successors and assigns, with the Development Plans, all requirements set forth in the Findings of Fact, and each of the "Conditions of Approval" attached as Exhibit "A" to the Town of Easton's Findings of Fact.

c. **Criteria.** Talbot County Code § 190-109 D. (4) (b) provides that the Council may consider the following criteria in deciding whether to approve or disapprove an application for growth allocation, in addition to the specific requirements and purposes set forth elsewhere in Chapter 190, Zoning, of the Talbot County Code:

[1] Consistency with the purposes and intent of the Talbot County Comprehensive Plan;

[2] Compatibility with existing and proposed development and land use in the surrounding area;

[3] Availability of public facilities;

[4] The effects on present and future transportation patterns;

[5] The effect of population change within the immediate area;

[6] The past, present, and anticipated need for future growth of the county as a whole;

[7] The location, nature, and timing of the proposed growth allocation in relation to the public interest in ordered, efficient, and productive development and land use;

[8] The protection of the public health, safety and welfare.

d. **Factual findings and approval.** This award of supplemental growth allocation is specifically conditioned upon the Council's review of information provided with regard to the forgoing criteria, and upon the Council's determination and adoption of written findings of fact that the Project, either as proposed or modified to mitigate impacts from the proposed development, satisfies the criteria and is otherwise in the public interest. Notwithstanding any finding that the Project satisfies these criteria, the Council may nevertheless exercise its legislative discretion to deny the application in accordance with the provisions of Talbot County Code § 190-109 D. (4) (c).



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e. **Intersection improvements Rt. 322 – Rt. 33.** This award of supplemental growth allocation is specifically conditioned upon the County's review and approval of the proposed improvements to the Rt. 322--Rt. 33 intersection, including the applicant's proportional share of the costs for those improvements, and security for and timing of payment.

f. **Two year limit.** If the Project does not obtain final subdivision recordation or final site plan approval, as appropriate, within two years of approval by the Critical Area Commission, this supplemental award of growth allocation may revert to the County, upon recommendation of the Planning Officer and approval by the County Council in accordance with the provisions of Talbot County Code § 190-109 D. (7) (b). Upon receipt of a written request by the property owner or the applicant, a time extension may be granted to the two-year period, upon a recommendation by the Planning Officer and approval by the County Council in accordance with Talbot County Code § 190-109 D (7) (c).

g. **Project amendments.** Any amendment to the Project shall be subject to County Council review and approval for a period of five years following the date of initial approval in accordance with Talbot County Code § 190-109 D. (9) (d) [4].

3. **Reservation.** The Town of Easton annexed the subject property in 1999. Pursuant to Art. 23A § 9 (c) (1), Md. Ann. Code, no municipality annexing land may for a period of five years following annexation, place that land in a zoning classification which permits a land use substantially different from the use specified in the County master plan extant prior to annexation without the express approval of the County Council. Approval of this ordinance shall not operate to limit the Council's prerogative under that State law in the event the Project is materially changed hereafter.

4. **Non-performance or breach.** In the event of non-performance or breach of: (a) any condition, restriction, or limitation imposed in connection with the award of this supplemental growth allocation, or (b) any agreement executed by Elm Street Development LC, its successors or assigns, with Talbot County, Talbot County may, in its discretion, amend, repeal, rescind, suspend, annul or revoke this supplemental award of growth allocation by introduction and adoption of a bill for that purpose.

SECTION TWO: BE IT FURTHER ENACTED, that this ordinance shall take effect sixty (60) days from the date of its passage.



**PUBLIC HEARING**

Having been posted and Notice of time and place of hearing and Title of Bill No. \_\_\_\_\_ having been published, a public hearing was held on \_\_\_\_\_.

**BY THE COUNCIL**

Read the third time.

ENACTED \_\_\_\_\_

By Order \_\_\_\_\_  
Secretary

- Duncan - \_\_\_\_\_
- Harrington - \_\_\_\_\_
- Foster - \_\_\_\_\_
- Spence - \_\_\_\_\_
- Carroll - \_\_\_\_\_

## Exhibit "A"

**A BILL TO AWARD 156 ACRES OF SUPPLEMENTAL GROWTH ALLOCATION TO THE TOWN OF EASTON AND TO IMPOSE CERTAIN CONDITIONS, RESTRICTIONS, AND LIMITATIONS ON ITS USE.**

Bill No. \_\_\_\_\_

Date of Introduction: November 18, 2003

**Conditions**

Approval of the request for growth allocation is contingent upon performance of the following conditions in connection with the Project, and performance of the promises, representations, and undertakings set forth below voluntarily assumed by the Developer in connection with mitigation of the impacts from the project.

As used in these conditions, the term "Developer" refers to Elm Street Development Company, LC, and includes any successors, assigns, or subsequent purchasers of the Project or development rights and obligations related to the Project. Time is of the essence in connection with Developer's performance. Developer agrees to fully perform the following conditions in a timely manner to the satisfaction of the County:

1. *Mitigation of off-site impacts to County roads.* The Developer shall pay to the County of the sum of \$1,500,000 to mitigate the effects of off-site impacts to County roads. The Developer shall make payment of \$750,000 before issuance of the first building permit for the Project. Payment of the balance of \$750,000 shall be in equal annual installments of \$150,000 per year, due in full, without set-off, on each anniversary of the first payment for the ensuing 5 years. Developer shall be given a credit against (1) any building excise tax adopted by the County, and (2) any development impact fee imposed by the County. In the event the County adopts a building excise tax, and/or a development impact fee that result in an assessment greater than \$6,000 per dwelling or building unit, Developer shall pay the difference on a per unit basis from the effective date of any such building excise tax and/or development impact fee. In no event shall Developer be entitled to any refund, under any circumstance, for any amount paid in accordance with these conditions, nor excused from past or future performance based on the County's action with respect to imposition of building excise taxes or development impact fees.

2. *Construction of intersection improvements to Md. Rt. 322 and 33.* Developer shall construct, at its expense, intersection improvements to Md. Rt. 322 - 33. These improvements shall be constructed in accordance with Exhibit "A-1", which is incorporated by reference. These improvements shall be constructed in accordance with a construction schedule attached as Exhibit "A-2", which is incorporated by reference. Developer shall post a surety bond in an amount determined by the County equal to 110% of the amount projected to be sufficient to fund construction of the proposed improvements. The County shall be designated as a third-party beneficiary of the surety bond, with the ability to cause or require forfeiture of the bond in the



event of Developer's non-performance or breach. Developer's failure to diligently pursue permitting or to complete construction in accordance with the milestones set forth on Exhibit "A-2", in the absence of circumstances which, as determined by the County, are beyond the control of the Developer and are such as to justify the delay, shall authorize the County to exercise its rights with respect to the surety bond. Construction of the intersection improvements shall be completed, in any event, prior to issuance of the 50<sup>th</sup> building permit for the Project.

3. *Road frontage improvements.* Developer shall construct, at its expense, road frontage improvements along the frontage of Md. Rt. 33 as shown on Exhibit "A-3" which is incorporated by reference. These improvements shall be constructed prior to the issuance of the first occupancy permit.

4. *Conditions by the Town of Easton.* Developer shall comply with the "Conditions of Approval" (June 13, 2002) listed on Exhibit "A" to Findings of Fact for Elm Street, LC adopted by the Town of Easton in connection with Ordinance 461, which are hereby adopted as part of the conditions on which this award of growth allocation is based.

5. *Supplemental and additional documents.* At the County's request, Developer shall prepare and execute such additional documents, in a form satisfactory to the County, which may, at the County's option, be recordable among the land records of Talbot County, Maryland, and which are, in the opinion of the County, sufficient to memorialize these terms and conditions.

6. *Amendment to Comprehensive Water & Sewer Plan.* Developer has voluntarily agreed to the foregoing terms and conditions with the expectation that the Project will proceed as planned without delays caused by water and sewer classifications under the Talbot County Comprehensive Water & Sewer Plan that will prevent construction and hook-ups to the Easton Wastewater Treatment Plant when capacity becomes available, as certified by the Easton Utilities Commission and/or Town Engineer, under the existing allocation policy, whether under the existing or the proposed new Easton Wastewater Treatment Plant. The County is not binding itself to future action on any application to amend the Comprehensive Water & Sewer Plan, but recognizes that if, due to any action or inaction on the County's part regarding amendment of the Comprehensive Water & Sewer Plan, the Project is delayed by a water and sewer classification providing for other than immediate access to available water and sewer capacity from the Easton Wastewater Treatment Plant under the existing allocation policy, then Developer's obligations to construct the road frontage improvements, intersection improvements, and payment of the balance due on any unpaid installment under Paragraph 1, shall be excused until such time as the Comprehensive Water & Sewer Plan is amended to provide immediate access. This subsection shall not be construed to apply to excuse Developer's performance for any delays caused by lack of existing or future wastewater treatment capacity, delays connected with permitting or construction of the new Easton Wastewater Treatment Plant, lack of allocation under the existing or any changed allocation policy, lack of infrastructure for the collection and/or pumping systems, or any other cause whatsoever except the County's decision to not classify the subject property under the County's Comprehensive Water & Sewer Plan for a classification making it eligible for immediate sewer and water service that is otherwise immediately available and that directly results in a delay to the Project. Developer agrees to cause any such request for amendment of the Comprehensive Water & Sewer Plan to be submitted in a timely fashion, in



due form, with appropriate and sufficient information and supporting data to permit approval by the Council without causing any delay to the Project. Failure by the Developer to do so eliminates any excused performance on the Developer's part by reason of this paragraph.

## *Critical Area Commission*

### **STAFF REPORT**

**January 7, 2004**

**APPLICANT:** Town of Easton

**PROPOSAL:** Amendment – Ordinance #461  
Ratcliffe Farm Subdivision, Growth Allocation

**JURISDICTION:** Town of Easton

**COMMISSION ACTION:** Vote

**PANEL RECOMMENDATION:** Pending Panel Discussion

**PANEL:** Chair, Margo Bailey; Dr. Earl Chambers; Bill Giese; Ed Richards; Gary Setzer

**STAFF:** Lisa Hoerger

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

### **DISCUSSION:**

This staff report is one of three issues relating to the use of Talbot County's growth allocation to accommodate two development projects in Easton. The Town of Easton requests 58.80 acres of growth allocation from a Resource Conservation Area (RCA) to a Limited Development Area (LDA) for the Ratcliffe Manor Farm subdivision. The site was identified for a Planned Unit Development (PUD) and annexation in the Town of Easton's 1997 Comprehensive Plan, and is part of the Town's planned growth area.

The two parcels comprising Ratcliffe Farm contain 357 acres with 312 acres inside the Critical Area. The Ratcliffe Farm Subdivision consists of 16 residential lots with Lots 1 through 15 located on Parcel 58 and Lot 16 encompassing all of Parcel 126 and a portion of Parcel 58. Lots 1-15 range in size from 2.8 acres to 5.5 acres. The Ratcliffe Farm Subdivision was developed using the RCA density of both parcels. Lot 16 has no development rights remaining unless growth allocation is used. The Town recorded the subdivision in June of 2000.

Since that time, a proposal for a PUD was proposed for the area of lot 16. This proposal includes the use of growth allocation to change the Critical Area designation of Lot 16 from RCA to IDA. Because most of the density necessary to develop the fifteen lots in the RCA in the Ratcliffe Farm Subdivision was generated from Lot 16, a change in the Critical Area designation of Lot 16 necessitated a change on the Ratcliffe Farm

Subdivision as well. This was required because the conversion of Lot 16 from RCA to IDA resulted in a development density on the remaining property that exceeded the one dwelling unit per 20-acre density.

The subdivision was designed to allow the application of the development envelope concept, and two areas of RCA that are greater than 20 acres will remain. The Town addressed the adjacency guidelines in "Findings of Fact" made by the Easton Town Council. The project site is located immediately adjacent to an existing IDA, namely an industrial area on the east bank of the Tred Avon River known as Easton Point. The Town considers this to be adjacent although the property is separated by a narrow branch of the headwaters of the Tred Avon River. A 300-foot setback will not be provided on the new lots.

The Town Council approved Ordinance #461, which approved the use of growth allocation and the development of a PUD for the Ratcliffe Farm Subdivision and Lot 16 (to become Easton Village). As required by Section 190-109 D of the Talbot County Zoning Ordinance, the use of growth allocation was forwarded to the Talbot County Council for its consideration. The public hearing was held on December 16, 2003, and the County Council approved the growth allocation request.

The Commission panel will hold a public hearing on Monday, January 5, 2003 and will provide the full Commission its recommendation at the next Commission meeting.

Please direct any questions to Lisa Hoerger at (410) 260-3478.



ORDINANCE NO. 461

AN ORDINANCE OF THE TOWN OF EASTON GRANTING THE APPLICATIONS OF ELM STREET DEVELOPMENT, LC FOR AN AMENDMENT TO AN EXISTING PLANNED UNIT DEVELOPMENT UNDER THE PROVISIONS OF THE EASTON ZONING ORDINANCE AND FOR AN AWARD OF GROWTH ALLOCATION

INTRODUCED BY Ms. Jackson-Amis

WHEREAS, under the authority granted it by Article 66B of the Maryland Annotated Code, the Town of Easton has adopted a Comprehensive Zoning Ordinance, codified as Chapter 28 of the Easton Town Code. Section 510.3 of the Easton Zoning Ordinance authorizes the Easton Town Council to consider and to grant applications for planned unit developments in order to encourage the development of land in certain areas of the Town according to a total development concept incorporating a detailed development plan. By Ordinance No. 410, enacted on May 16, 2000, the Easton Town Council granted permission to develop the "Ratcliffe Subdivision PUD."

The Applicant wishes amend Ordinance No. 410 to allow development of Lot 16 of the Ratcliffe Subdivision PUD. The Property and the plans for the development of the Property (the "Development Plans") are shown in detail on a series of drawings entitled "SITE ANALYSIS EASTON VILLAGE ON THE TRED AVON"; "PUD DEVELOPMENT PLAN EASTON VILLAGE ON THE TRED AVON"; "PHASING PLAN EASTON VILLAGE ON THE TRED AVON" and "GROWTH ALLOCATION PLAN EASTON VILLAGE ON THE TRED AVON." All are dated May 9, 2003 and all were prepared by Lane Engineering, Inc. (A copy of the Development Plans are attached hereto as Exhibit "A" to this Ordinance.)



Conditions of Approval  
Ratcliffe Farm Growth Allocation Request

1. No permits shall be issued nor shall any development activities, as defined in COMAR 27.01 take place on any undeveloped lot in the Ratcliffe Farm Subdivision prior to development and approval of a Forest Management Plan in accordance with Section 510.2.C of the Town Zoning Ordinance, and fulfillment of the Town's requirements of the "Critical Area Buffer Development Request" process.

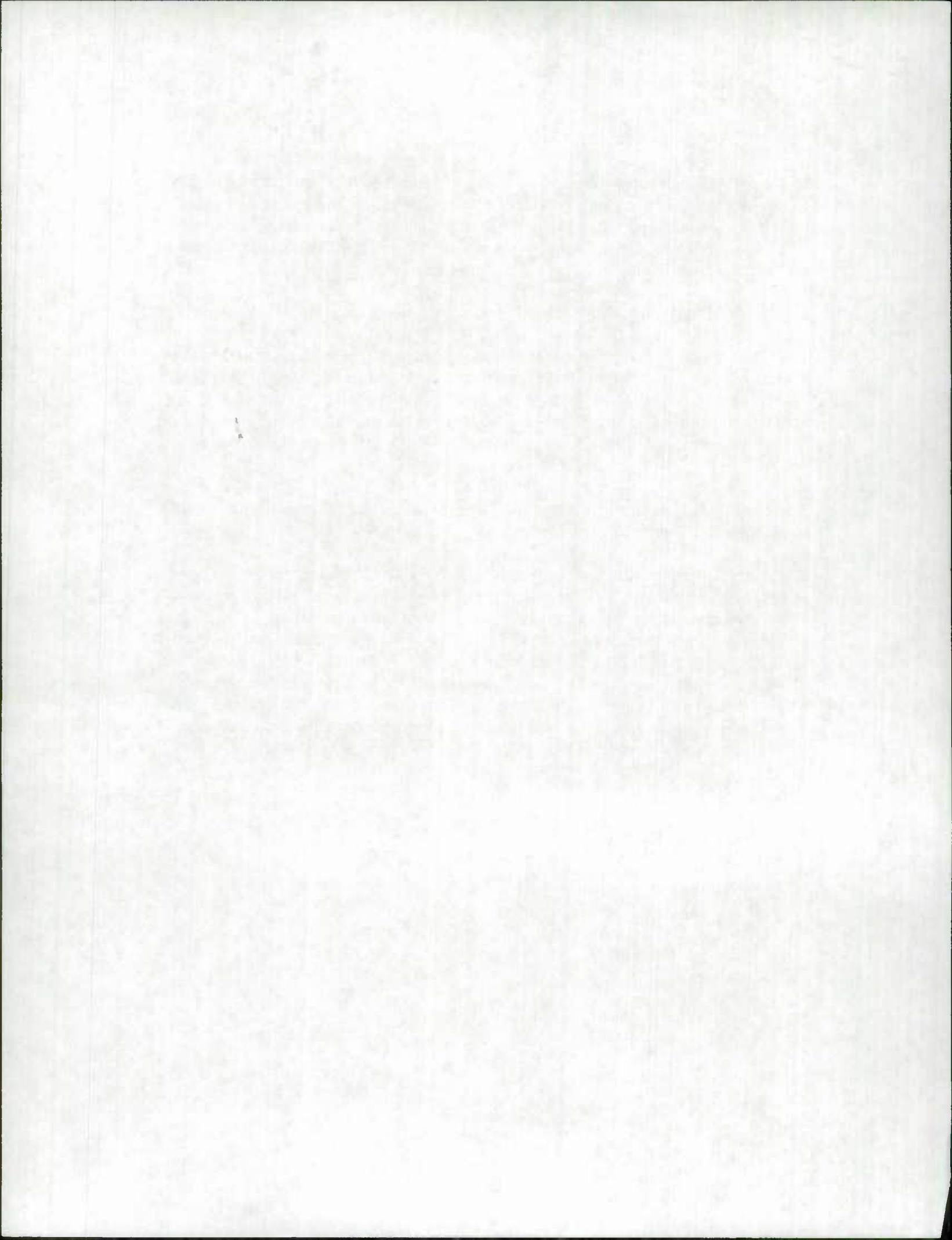
The Plan shall meet the following provision of the Town's Critical Area Program:

The Criteria, as they affect the Town of Easton, generally require the establishment of a naturally vegetated or planted buffer, established landward from the Mean High Water Line of tidal waters (or from the edge of tidal wetlands or tributary streams), having a width of no less than one hundred (100) feet." The plan shall address the conservation and enhancement of habitat for the Delmarva Fox Squirrel, a federally endangered species.

The Plans shall be reviewed and approved by the Critical Area Commission staff, or, if appropriate the Commission.

2. On any lot in the Ratcliffe Farm Subdivision on which a building permit has been issued, and where natural vegetation has been removed from the 100-foot Buffer, the Town shall immediately take appropriate enforcement action, including, but not limited to, the requirement to prepare a Forest Management Plan in accordance with Section 510.2.C of the Town Zoning Ordinance, and fulfillment of the Town's requirements of the "Critical Area Buffer Development Request" process to remedy the unauthorized activity. The Town shall report to the Critical Area Commission on the enforcement action and provide copies of the required Forest Management Plans, and other relevant documentation, at the regular Critical Area Commission meeting on March 3, 2003.





## *Critical Area Commission*

### **STAFF REPORT**

**January 7, 2004**

**APPLICANT:** Town of Easton

**PROPOSAL:** Amendment – Growth Allocation  
Easton Village Planned Unit Development

**JURISDICTION:** Town of Easton

**COMMISSION ACTION:** Vote

**PANEL RECOMMENDATION:** Pending Panel Discussion

**PANEL:** Chair, Margo Bailey, Dr. Earl Chambers, Bill Giese, Ed Richards,  
and Gary Setzer

**STAFF:** Lisa Hoerger

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

### **DISCUSSION:**

This staff report is one of three issues relating to the use of Talbot County's growth allocation to accommodate two development projects in Easton. The Town of Easton requests 97.20 acres of growth allocation to change the Critical Area designation from a Resource Conservation Area (RCA) to an Intensely Developed Area (IDA) for the Easton Village Planned Unit Development (PUD). This project is located on a portion of the Ratcliffe Manor Farm property, which was annexed into the Town boundaries in 1999. The site is located south of Maryland Route 33, and west of the Tred Avon River. The site was identified for a Planned Unit Development and annexation in the Town of Easton's 1997 Comprehensive Plan, and is part of the Town's planned growth area.

The proposed growth allocation is generally located on one of two parcels comprising Ratcliffe Manor Farm, which contain 357 acres with 312 acres inside the Critical Area. The Ratcliffe Farm Subdivision consists of 16 residential lots with Lots 1 through 15 located on Parcel 58 and Lot 16 encompassing all of Parcel 126 and a portion of Parcel 58. The Easton Village PUD is located on Lot 16. Because most of the density necessary to develop the fifteen lots in the RCA in the Ratcliffe Farm Subdivision was generated from Lot 16, a change in the Critical Area designation of Lot 16 necessitated a change on the Ratcliffe Farm Subdivision as well. This was required because the conversion of Lot 16 from RCA to IDA resulted in a development density on the remaining property that exceeded the one dwelling unit per 20-acre density.

The Town's grant of growth allocation for this project was dependent on Talbot County providing the Town with additional growth allocation acreage. The County awarded supplemental growth allocation to



the Town of Easton via County Council Bill #925 specifically for this project and the adjacent Ratcliffe Farm Subdivision.

The development envelope concept was used on this site in order to minimize the acreage of growth allocation used. A 300-foot setback will be retained along the majority of the shoreline along the Tred Avon River and will remain RCA. This area totals 59.62 acres. Two additional RCA areas of less than 20 acres adjoin approximately 50 acres of RCA land on the Ratcliffe Farm Subdivision. The areas adjacent to the acreage on the Ractcliffe Farm Subdivision will require an easement, so that no further development is allowed on that portion of the parcel and the area is maintained as a contiguous RCA parcel greater than 20 acres.

The Town addressed the adjacency guidelines in "Findings of Fact" made by the Easton Town Council. The property is located immediately adjacent to an existing IDA, namely an industrial area on the east bank of the Tred Avon River known as Easton Point. The Town considers this to be adjacent although the property is separated by a narrow branch of the headwaters of the Tred Avon River.

The Department of Natural Resources (DNR) has indicated the site supports Delmarva Fox Squirrel (DFS) habitat, and the adjacent waters support known waterfowl staging and concentration areas. The State of Maryland and the U.S. Fish and Wildlife Service (USFWS) protect the Delmarva Fox Squirrel. The DNR provided Commission staff with written comments, which stated that the afforestation and buffer protection and conservation efforts that will occur on the site satisfy the Department's concerns for the DFS conservation, and that additional mitigation will not be required provided the afforestation is implemented. The USFWS has met with Commission staff concerning the DFS habitat, but has not provided written comments at this time.

The PUD will have 250 units that will include single-family detached units and townhomes. The development will be served by public water and sewer. The design will feature Traditional Neighborhood Development (TND) which will include alleys, buildings oriented toward the street, compatible mixed uses, and village squares and green spaces. The community association or the Town of Easton will maintain all afforestation and the shoreline buffers. There are no waterfront lots.

The project will comply with the 10% pollutant reduction requirement, and the current plans show the proposed locations of several Best Management Practices (BMPs). Stormwater BMPs will be maintained by the community association. There is a planned water-dependent facility that will include a club house and community pier. The applicant proposes 30 slips at the community pier. The DNR has indicated that Canada geese are the waterfowl using the Tred Avon in this area, so the applicant will be required to contact the Department for specific recommendations concerning the construction of the pier.

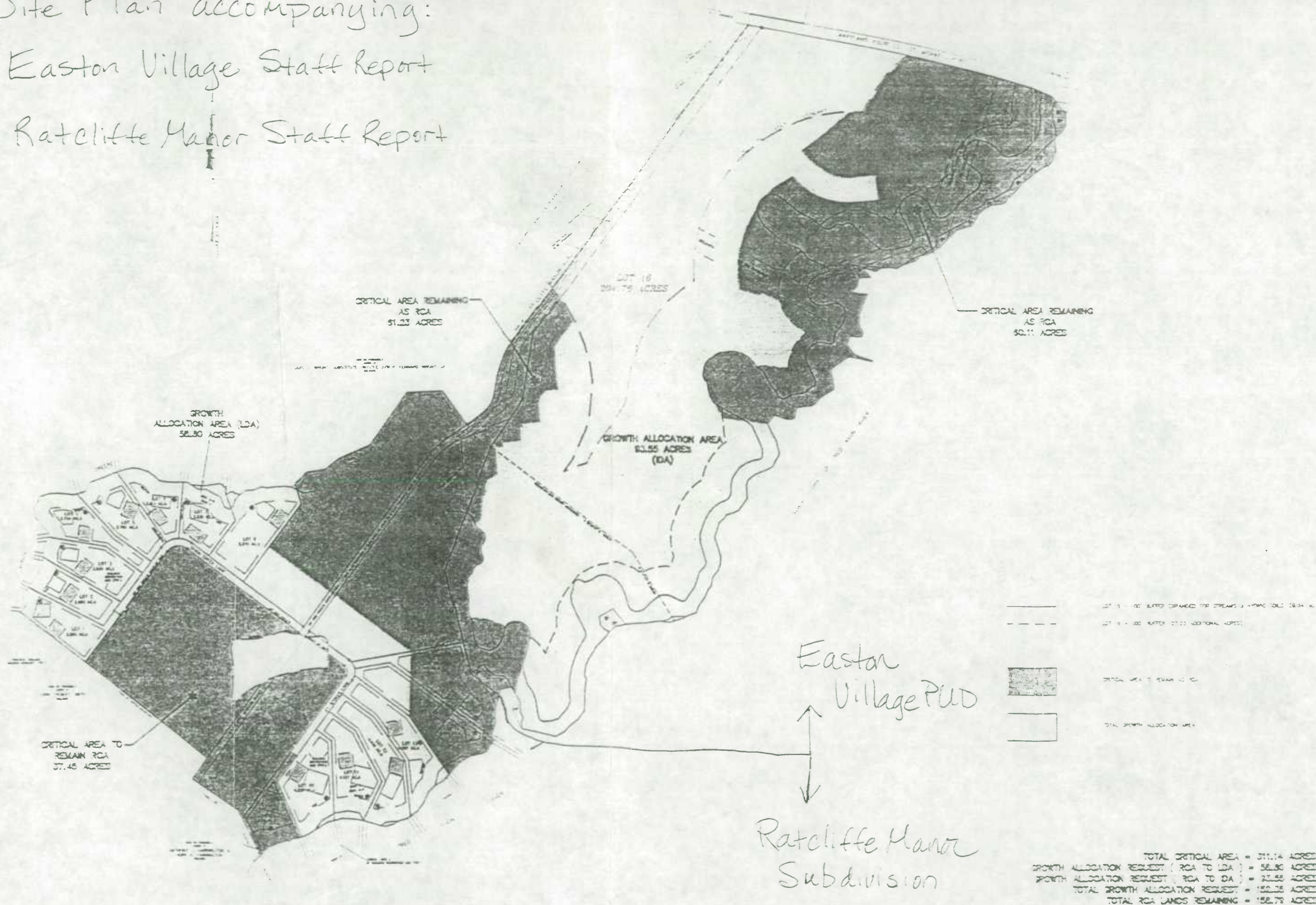
As part of its approval, the Easton Town Council required conditions of its approval which are included in the attachment to this staff report. The Commission's panel recommendation is pending the public hearing scheduled for Monday, January 5, 2004.

Please direct any questions to Lisa Hoerger at (410) 260-3478.

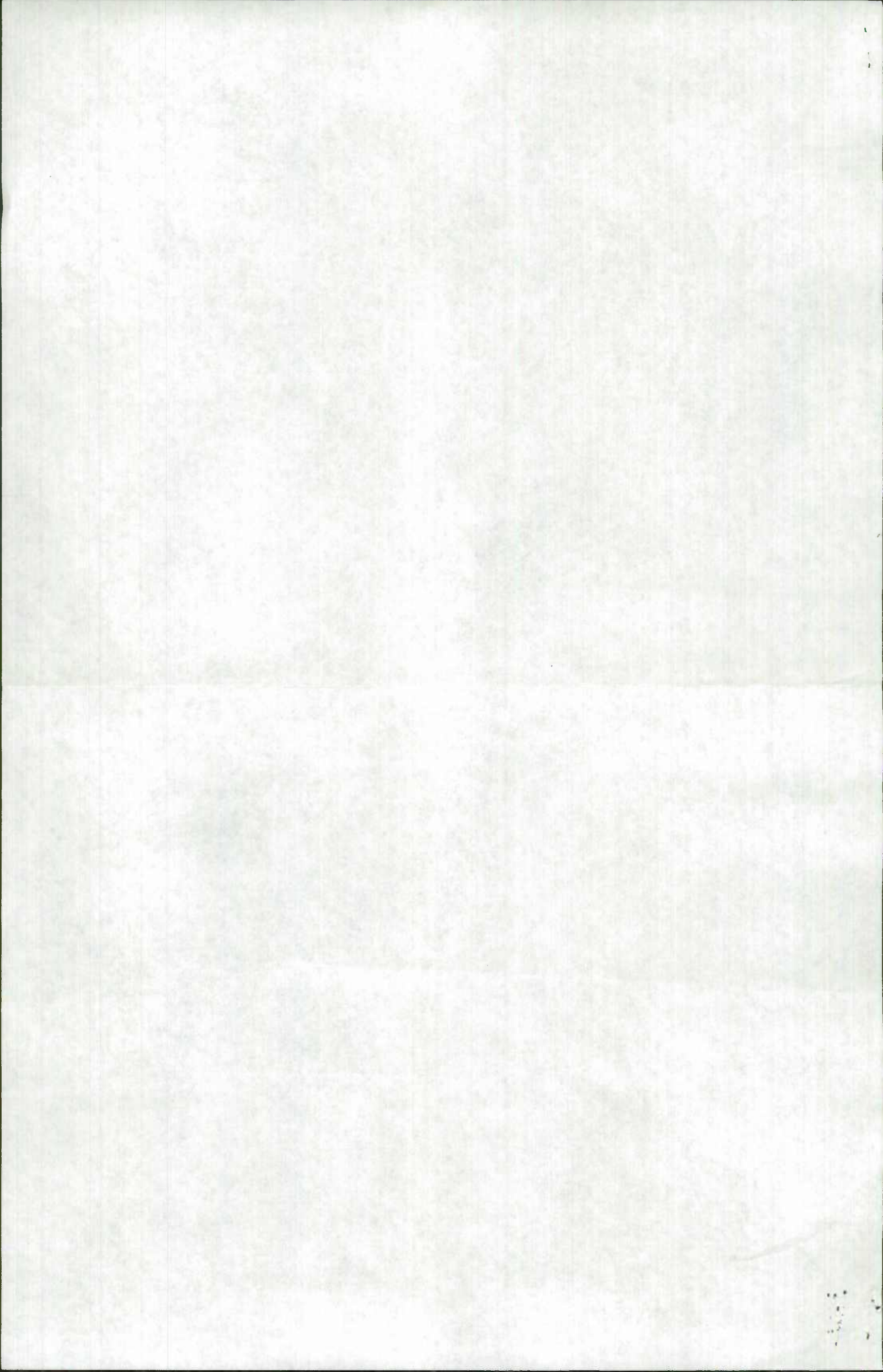


# Site Plan accompanying:

- ① Easton Village Staff Report
- ② Ratcliffe Manor Staff Report









1/ John C. North, II  
Chairman

Ren Serey  
Executive Director

STATE OF MARYLAND  
CHESAPEAKE BAY CRITICAL AREA COMMISSION

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

November 8, 2000

Mr. Joseph Stevens  
Law Offices of Joseph Stevens  
114 West Water Street  
Centreville, Maryland 21617

RE: Growth Allocation Deduction for Ratcliffe Farm  
Talbot County Maryland  
EA 486-99

Dear Mr. Stevens:

I am writing to follow up on the Critical Area Commission Program Subcommittee's discussion of the Ratcliffe Farm Project regarding the proposed deduction of growth allocation and the configuration of the development envelope. The Subcommittee had previously reviewed this project and discussed the need to ensure that the development envelope be configured such that the density on the remaining RCA would not exceed one unit per 20 acres, and that the development envelope included all of the LDA development.

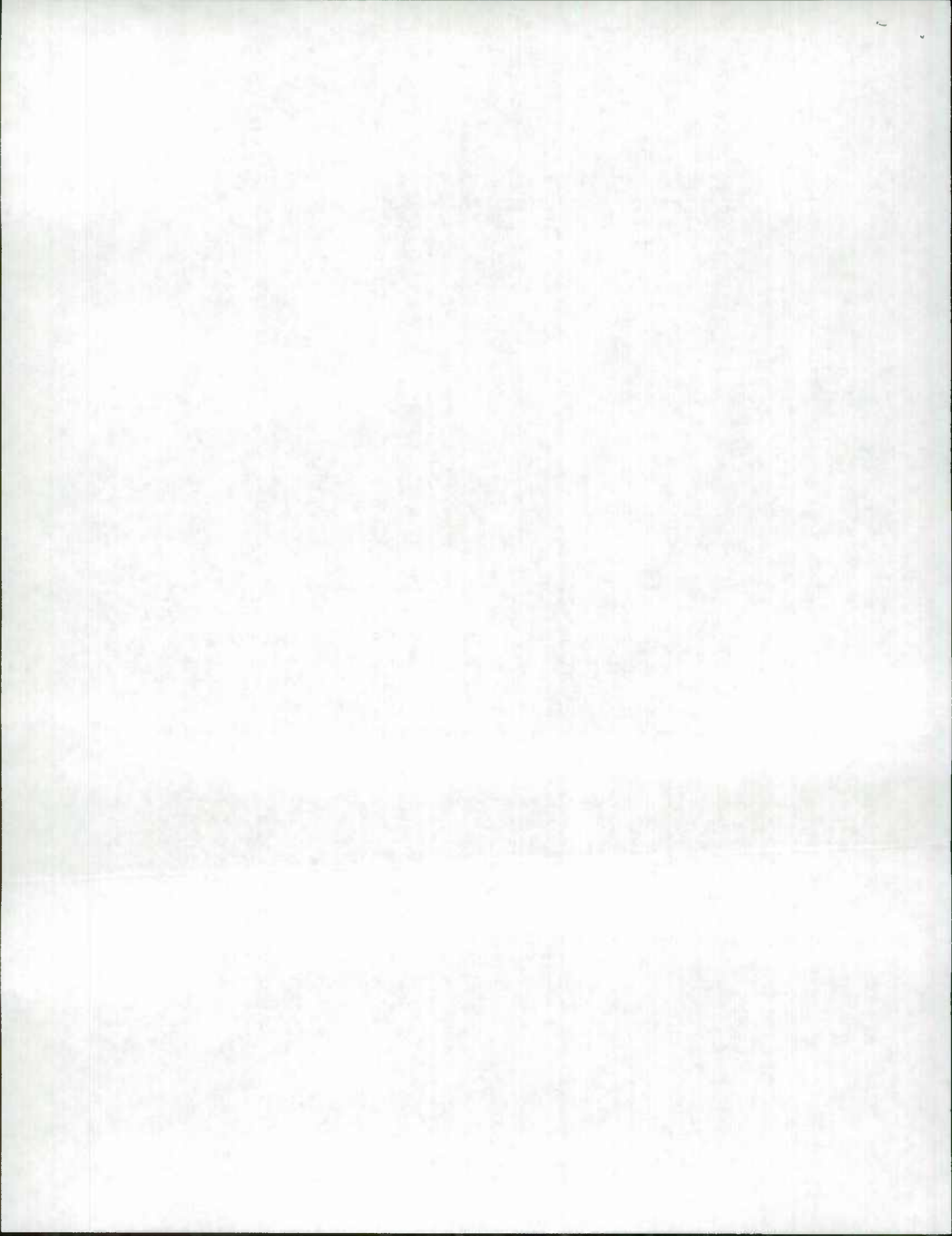
At their meeting on November 1, 2000, the Program Subcommittee generally supported the configuration of the development envelope of 58.8 acres which includes twelve lots, the new road serving the subdivision, and other portions of the property necessary to comply with the Commission's growth allocation policy. Growth allocation will not be used for two areas of the property which will retain the RCA designation. The northern portion to remain RCA includes two dwelling units and community open spaces and totals 49.51 acres. The southern portion to remain RCA includes one dwelling unit, a 10.555 acre density restriction from a prior subdivision, and community open space, and this area totals 37.45 acres. As you are aware, the growth allocation request must still be reviewed and approved by the full Commission, and the only issue addressed by the Subcommittee was the configuration of the development as it related to the Commission's growth allocation policy.

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

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



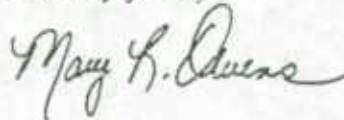




Mr. Stevens  
November 8, 2000  
Page 2

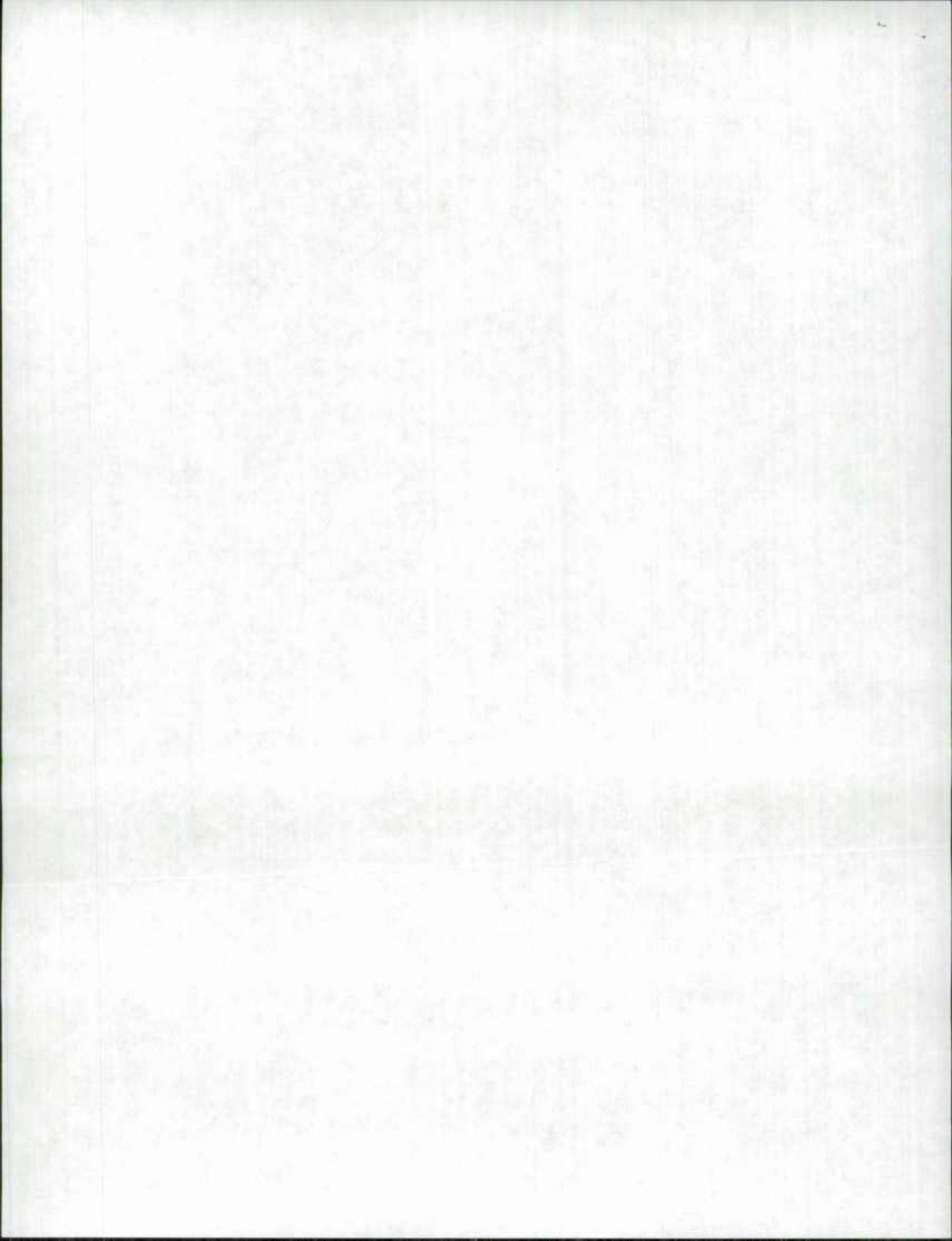
For your records, I have enclosed a copy of the plan that was presented at the Commission meeting and includes the acreage figures discussed by the Commission. If you have any questions, please feel free to call me at (410) 260-3480.

Sincerely yours,

A handwritten signature in cursive script that reads "Mary R. Owens".

Mary R. Owens, Chief  
Program Implementation Division

cc: Mr. Bill Stagg, Stagg Design  
Mr. Lynn Thomas, Town of Easton

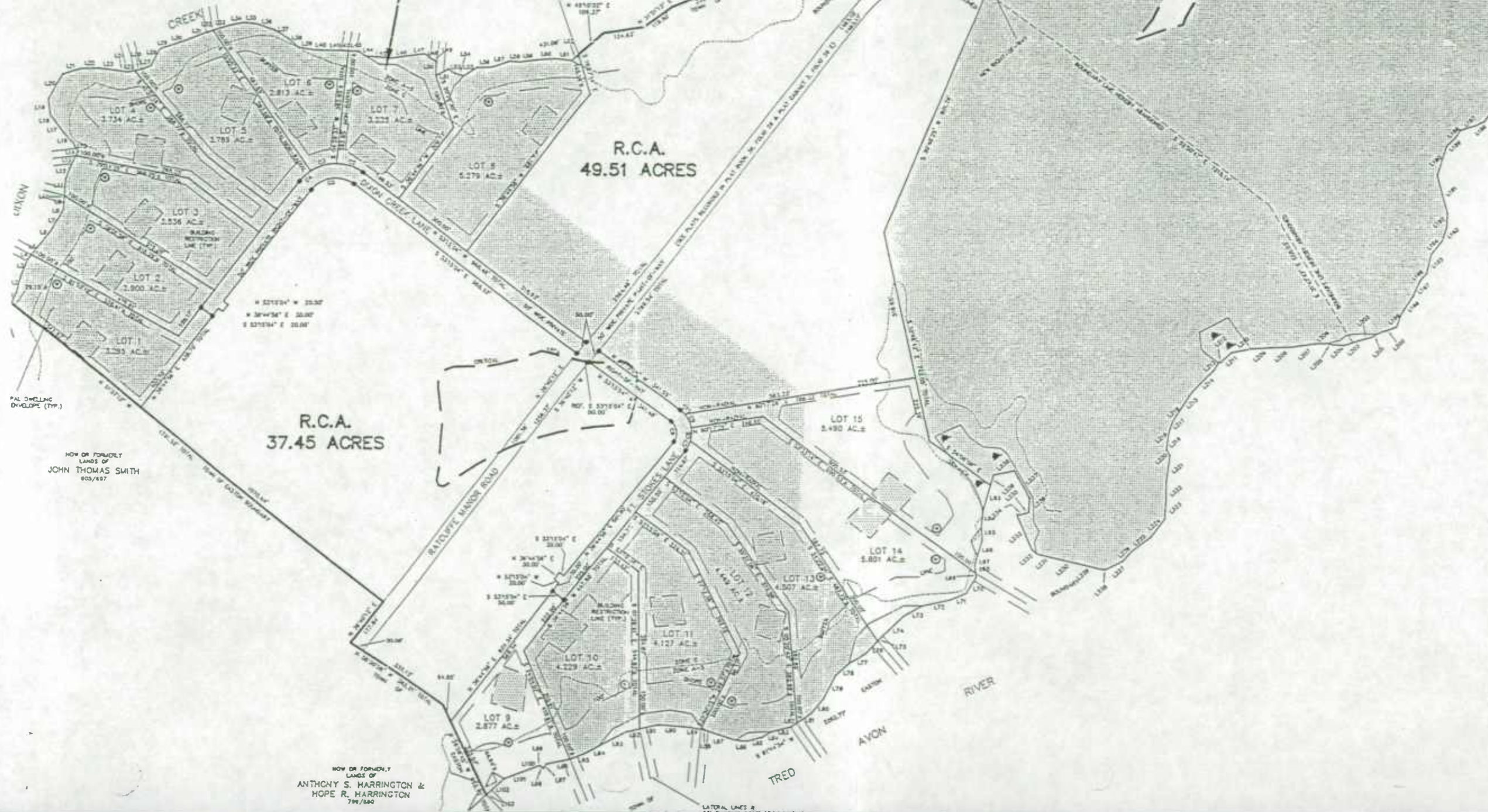




GROWTH  
ALLOCATION AREA  
58.80 ACRES

R.C.A.  
49.51 ACRES

R.C.A.  
37.45 ACRES

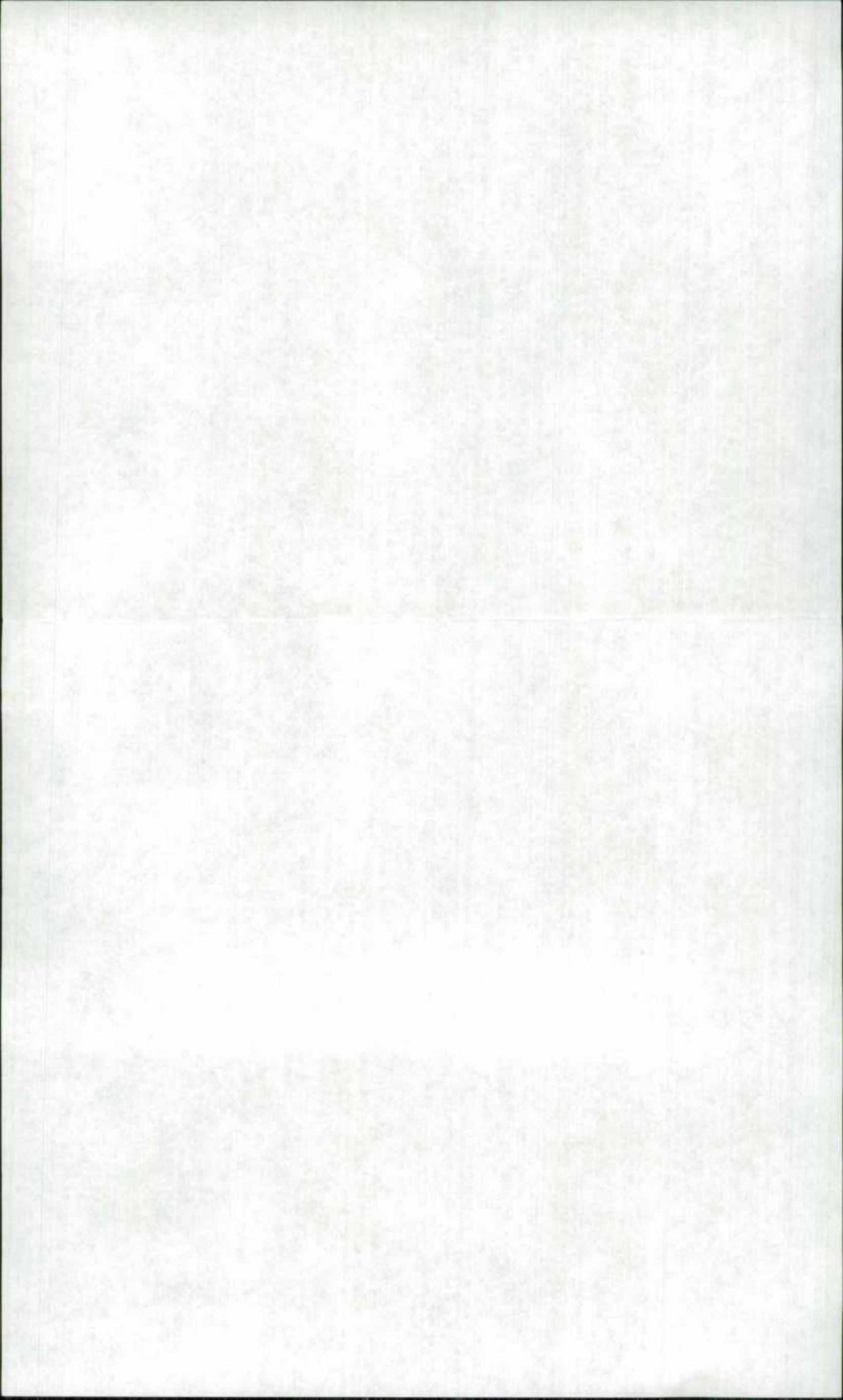


PAL DWELLING  
ENVELOPE (TYP.)

NOW OR FORMERLY  
LANDS OF  
JOHN THOMAS SMITH  
803/897

NOW OR FORMERLY  
LANDS OF  
ANTHONY S. HARRINGTON &  
HOPE R. HARRINGTON  
798/880

LATERAL LINES @





## *Critical Area Commission*

### **STAFF REPORT**

**January 7, 2004**

**APPLICANT:** Department of Transportation, Maryland Aviation Administration (MAA)

**PROPOSAL:** Conditions for General Approval of MAA Project (Exhibit B2 of MOU)

**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:**

A new Memorandum of Understanding between the Critical Area Commission and the Department of Transportation was approved by the Commission at its November meeting. At that time, it included conditions for general approval for one of the five modal administrations of DOT. As you may recall, conditions for State Highway Administration projects were included in the agreement as Exhibit B1. Exhibit B2, Conditions for General Approval of MAA Projects, is now being proposed. The Maryland Aviation Administration oversees the operation of state owned airport facilities. The only such facility within the Critical Area at this time is Martin State Airport in Baltimore County.

Permitted MAA activities that are covered by the General Approval are divided into four categories: Maintenance Projects, Minor Projects, and Routine Culvert Replacements, and Public Safety Projects.

- Maintenance projects include safety and airport management activities such as fencing, and signs, as well as more routine activities such as runway and taxiway maintenance. Also included in this category are projects involving modification or renovation of existing buildings or structures within the same footprint.
- 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 may include runway base widening, intersection reconstruction or construction of new pedestrian or handicapped ramps. Minor modifications at the existing fuel farm are also included in this category.

- Routine culvert replacements are those that are in the same location or immediately adjacent to the culvert being replaced with no increase in impervious area. These projects will also be reported on a biannual basis.
- Public safety projects are those that are required or controlled by Federal regulation to ensure the safety of the traveling public. These projects will qualify for General Approval and conform to the conditions for minor projects to the extent possible within the limits of the Federal regulations. The regulations govern issues such as approach and departure air space obstructions, hazardous wildlife attractants, and airport security.

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 MAA exhibit was sent to Baltimore County on November 26<sup>th</sup> and comments were requested by December 22, 2003. No substantive comments were received.

The MAA exhibit 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).

## EXHIBIT B2

### Conditions for General Approval of Maryland Aviation 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 four classes: Maintenance Projects, Minor Projects, Routine Culvert Replacement, and Public Safety Projects. 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 proposed by the Administration 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 airport management equipment on airport property, which do not increase quantity or lessen quality of runoff, and where clearing in the buffer is not anticipated:

- Fencing
- Signs
- Pavement markings
- Pavement grooving/rumble strips
- Pavement overlay
- Safety barriers
- Overhead signs & lighting
- Overhead traffic detectors & cameras
- Landscape planting and landscape maintenance for existing facilities and/or to fulfill objectives of a beautification program.

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

- Wetland monitoring and remediation permit activities
- Stormwater management inspection and maintenance
- Conversion of existing unimproved stone/asphalt shoulder to paved shoulder
- Maintenance of runways, taxiways, aprons, existing pavement, parking lots, sidewalks and bicycle facilities including pavement replacement, patching and/or resurfacing that does not increase impervious surface.
- 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 airport property and easements that would have no adverse impacts on downstream habitat or hydrology.

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 of impervious surface or lessen the quality of existing 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), in a location agreed to by the Commission and the Administration that will not constitute an obstruction or wildlife hazard to aviation.

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 mean those areas where residential, commercial, institutional, intense recreational, or industrial developed land uses predominate, and where relatively little natural habitat occurs. Existing airport improvements and road rights-of-way are also considered to be intensely developed.)

- a) The Administration 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, or would constitute either an obstruction or wildlife hazard to aviation, 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, a Water Quality Bank based on Phosphorus Load Reductions will be approved by the Commission. Credit and debits to the bank must be approved by the Commission staff.

- c) Wherever possible, permeable areas shall be established in vegetation;

d) Airport 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 for purposes other than removal of FAR Part 77 Obstructions [See Section (D)(1)(a.)] shall be replaced at a one-to-one (1:1) ratio for projects occurring in the Critical Area and at a three to one (3:1) ratio for projects occurring 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" to the extent 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: project descriptions; amount of new impervious surface; area of vegetation disturbed; proposed method of 10% pollutant reduction (for projects in areas of intense development); area 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 in the buffer, MAA shall provide evidence that the project meets the criteria described in COMAR 27.02.06.01, B. Projects shall be identified and reported 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 located in the Critical Area (outside of the Buffer) which involve up to a ten percent increase in impervious surface within the Project Limit of Disturbance, 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) Runway, taxiway and apron 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) Additions to the existing Martin Fuel Farm that:
  - 1. are outside the Buffer,
  - 2. add less than 1000 square feet of impervious surface,
  - 3. are fully contained within a dike structure, and
  - 4. for which all stormwater is collected and drains into the existing fuel farm containment system.

### **C. Conditions for Routine Culvert Replacement**

- 1. The project must meet all conditions contained in Sections A and B of this Exhibit, except as noted herein.



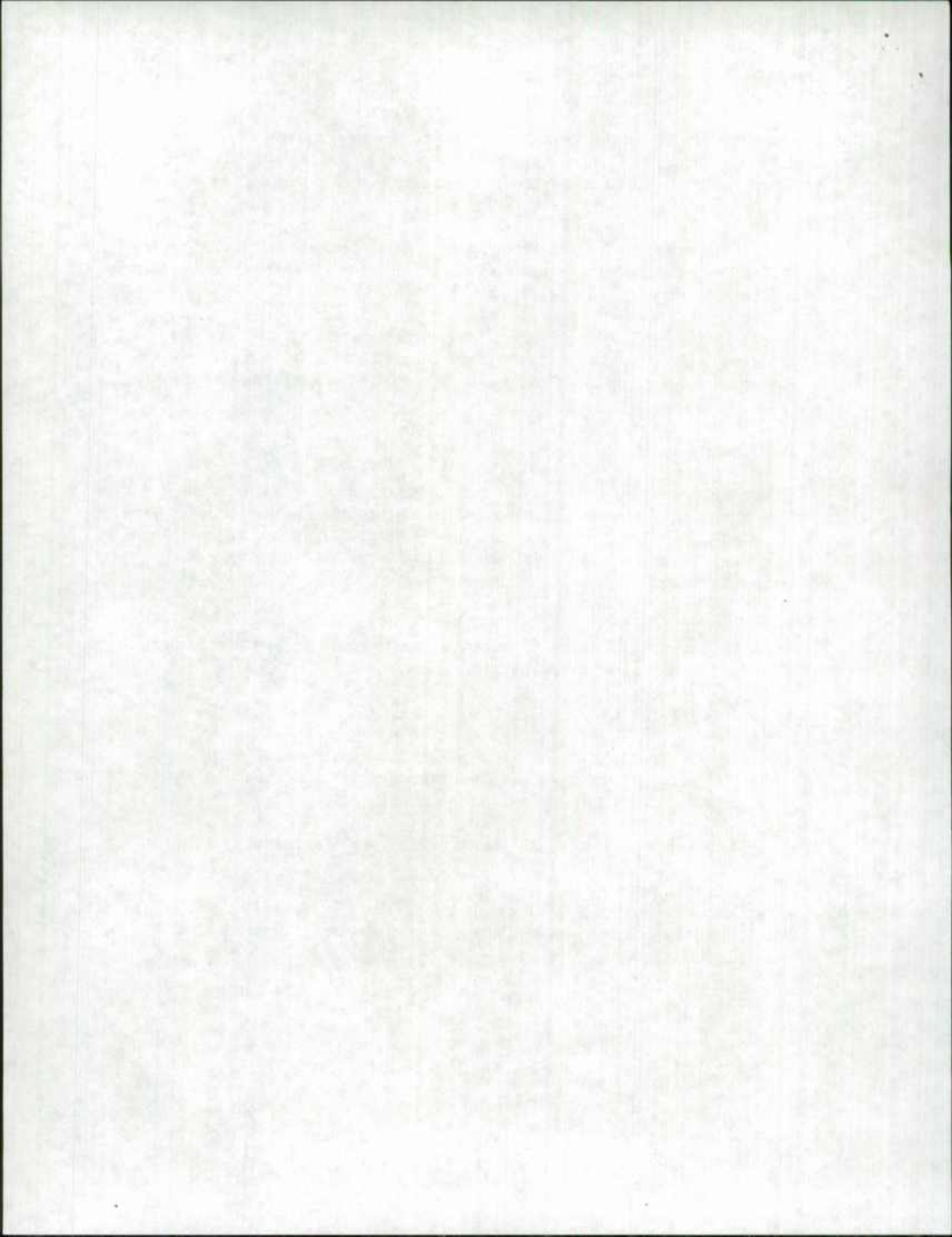
2. The alignment of the replacement culvert must be the same or immediately adjacent to that of the culvert being replaced, and in any event, the permanent footprint of the resulting structure will have an area of impervious surface no greater than the original culvert.
3. Projects for replacing culverts in areas designated IDA are exempt from the 10% pollutant reduction requirement described in (B)(5)(b). of this Exhibit, providing all other conditions are met.
4. Eligible Culvert Replacements: Projects include only those routine culvert replacements that are not associated with airport improvements outside the scope of this General Approval and that would have no adverse impacts on downstream habitat or hydrology.

**D) Public Safety**

1. Federally Regulated Projects: In certain areas of the airport, projects and conditions must comply with applicable Federal regulations to ensure the safety of the traveling public. Projects in these areas will qualify for General Approval. These projects will conform to the conditions for Minor Projects as nearly as possible within the limits of the federal regulations. Federal regulations governing these areas include but are not limited to the following:
  - a) Federal Aviation Regulation (FAR) Part 77 [49 Code of Federal Regulations(CFR), Part 77], which addresses regulated surfaces such as approach and departure airspace and object-free areas;
  - b) FAR Part 139 [14 (CFR), Part 139], which addresses airport security;
  - c) FAA Advisory Circular No. 150/5200-33, "Hazardous Wildlife Attractants on or Near Airports," which provides wildlife management strategies for airport operators during development; and
  - d) Emerging regulations regarding security as may be determined by the Department of Homeland Security.

- E. **Other Minor Projects:** Other minor projects may qualify for General Approval. These will be determined on a case-by-case through Administration and Commission staff discussion and administrative review.





## *Critical Area Commission*

### STAFF REPORT

January 7, 2004

**APPLICANT:** Maryland Air National Guard

**PROPOSAL:** Projected Site Improvements for Munitions and Storage Complex

**JURISDICTION:** Baltimore County

**COMMISSION ACTION:** Vote

**STAFF RECOMMENDATION:** Conceptual Approval with condition

**STAFF:** Wanda Cole

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

### DISCUSSION:

The Maryland Air National Guard (ANG) owns and maintains a facility contiguous to Martin State Airport in the Critical Area of Frog Mortar Creek. Many of the facilities at this site are old, obsolete, or sited in a manner that is not conducive to today's security standards. ANG is proposing development and improvement projects for FY 2005 that would include relocation of their munitions maintenance and storage complex and relocation of an access road. Future upgrades to overflow parking areas are also being considered. These projects are necessary to provide a properly sited, adequately sized, and correctly configured complex to support the munitions and training requirements for the A-10 and C-130J aircraft. The complex will encompass a 23,290 square foot (sf) area that includes:

- Administrative area- 8,050 sf
- Maintenance/equipment storage area- 4,900 sf
- Segregated storage magazine- 6,740 sf
- Storage igloos- 3,600 sf
- Relocation/consolidation of utilities
- Relocated access road, for an additional 90,000 sf

These projects are in the conceptual stage, as funding has not yet been received for project design. The National Guard Bureau will not authorize or fund these improvements, including the initial consulting and engineering costs, until ANG has shown that these projects can be

approved by the regulatory agencies. Therefore, these projected projects are being submitted for Commission review and approval with the understanding that ANG will return to the Commission for formal approval as each project is designed. This is similar to the approval the Commission granted to Maryland Aviation Administration in May 2003 for its projected development plan at Martin State Airport.

The Maryland Air National Guard property is considered an intensely developed area. Compliance with the 10% Rule will be required and pollutant removal practices will be addressed during the design phase. Stormwater management practices are also required by Maryland Department of the Environment. With the updated 10% Rule guidance manual, it is likely that a stormwater management facility can be designed to comply with both agencies' requirements.

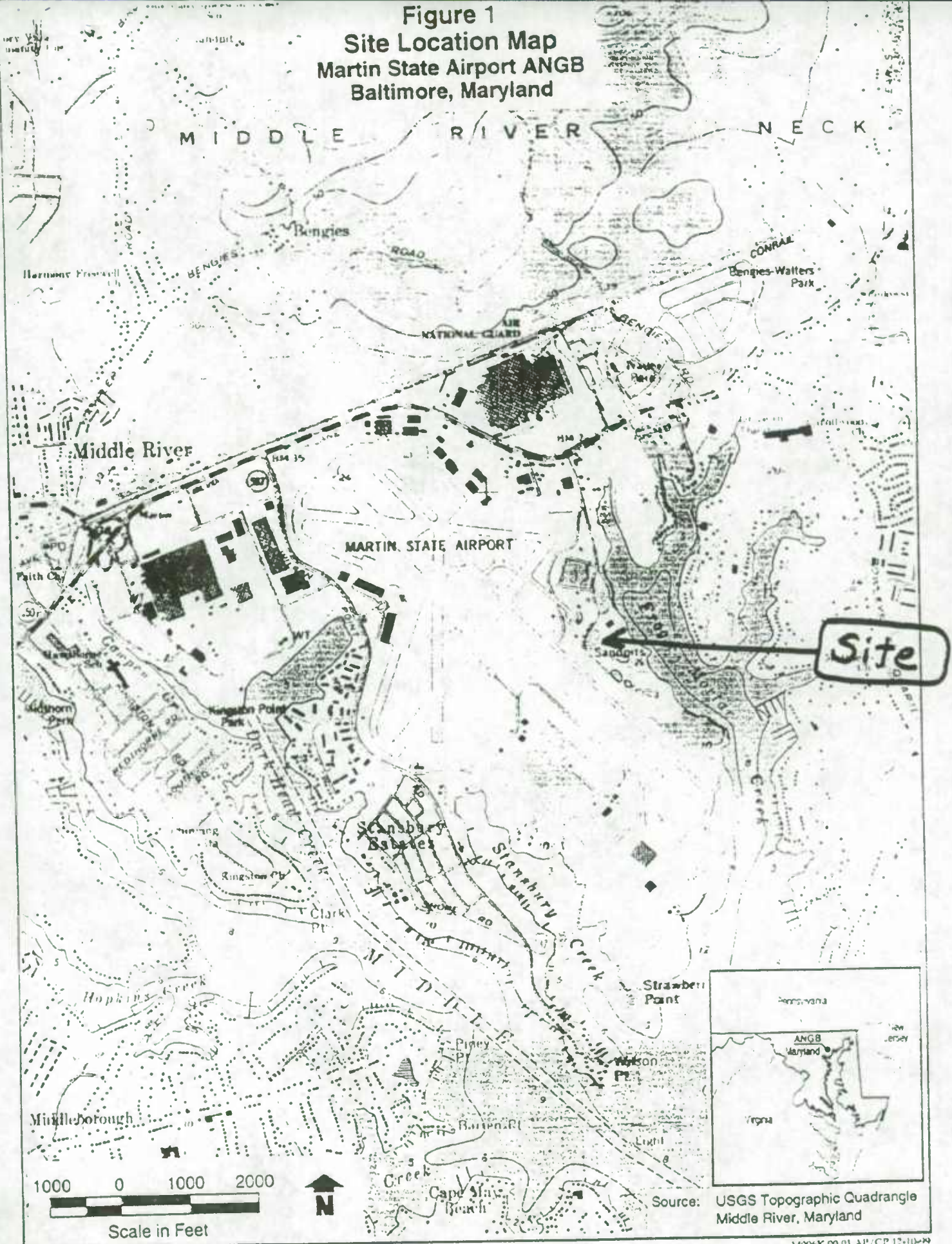
The amount of impervious surface areas in the Critical Area portion of the site is expected to increase, however, there are opportunities to remove existing impervious surface areas and provide environmental enhancements, as well. The existing storage and maintenance facilities, which are sited close to Frog Mortar Creek, will be demolished and the area restored to wildlife habitat. The relocated maintenance and storage facilities are sited adjacent to the Critical Area boundary line. The existing gravel access road will be relocated with a parallel access road that is farther from the shoreline. There is an abandoned runway, part of which can be removed. The remainder is planned as an overflow parking area.

There are no proposed impacts in the Buffer. There are no other HPAs on this site. Any forest cover lost will be mitigated at a 1:1 ratio in an area that does not represent an aviation hazard. At this time, it is expected that the restoration of the demolished complex will meet any mitigation needs.

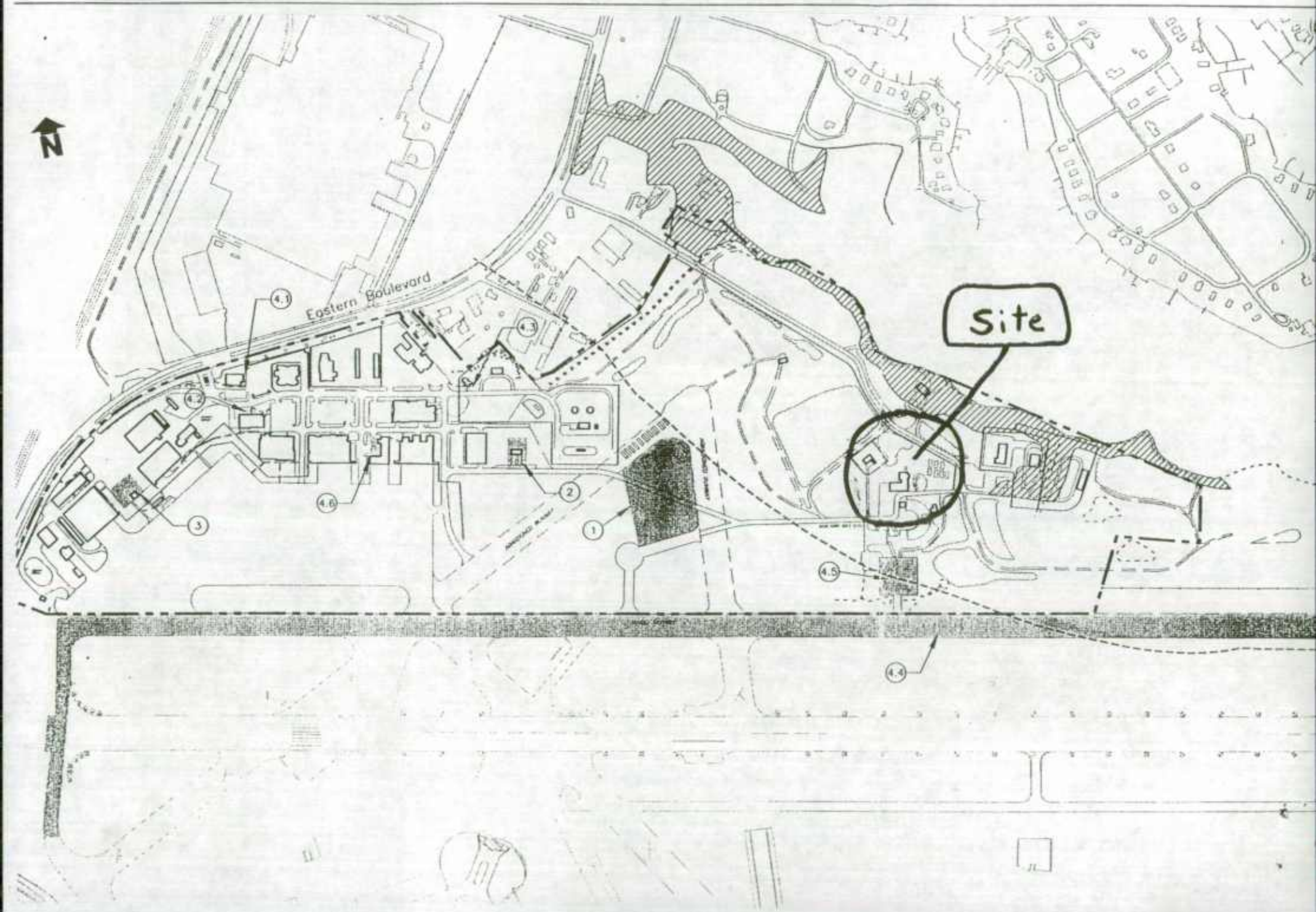
Staff recommends approval with the condition that each project must be returned to the Commission for formal approval during the final design phase.



**Figure 1**  
**Site Location Map**  
**Martin State Airport ANGB**  
**Baltimore, Maryland**







Eastern Boulevard

Site

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**MEMORANDUM**

**TO:** Project Subcommittee  
**FROM:** Dawnn McCleary, Natural Resources Planner  
**DATE:** December 18, 2003  
**RE:** Maryland Port Administration (MPA) Critical Area Institutional Plan

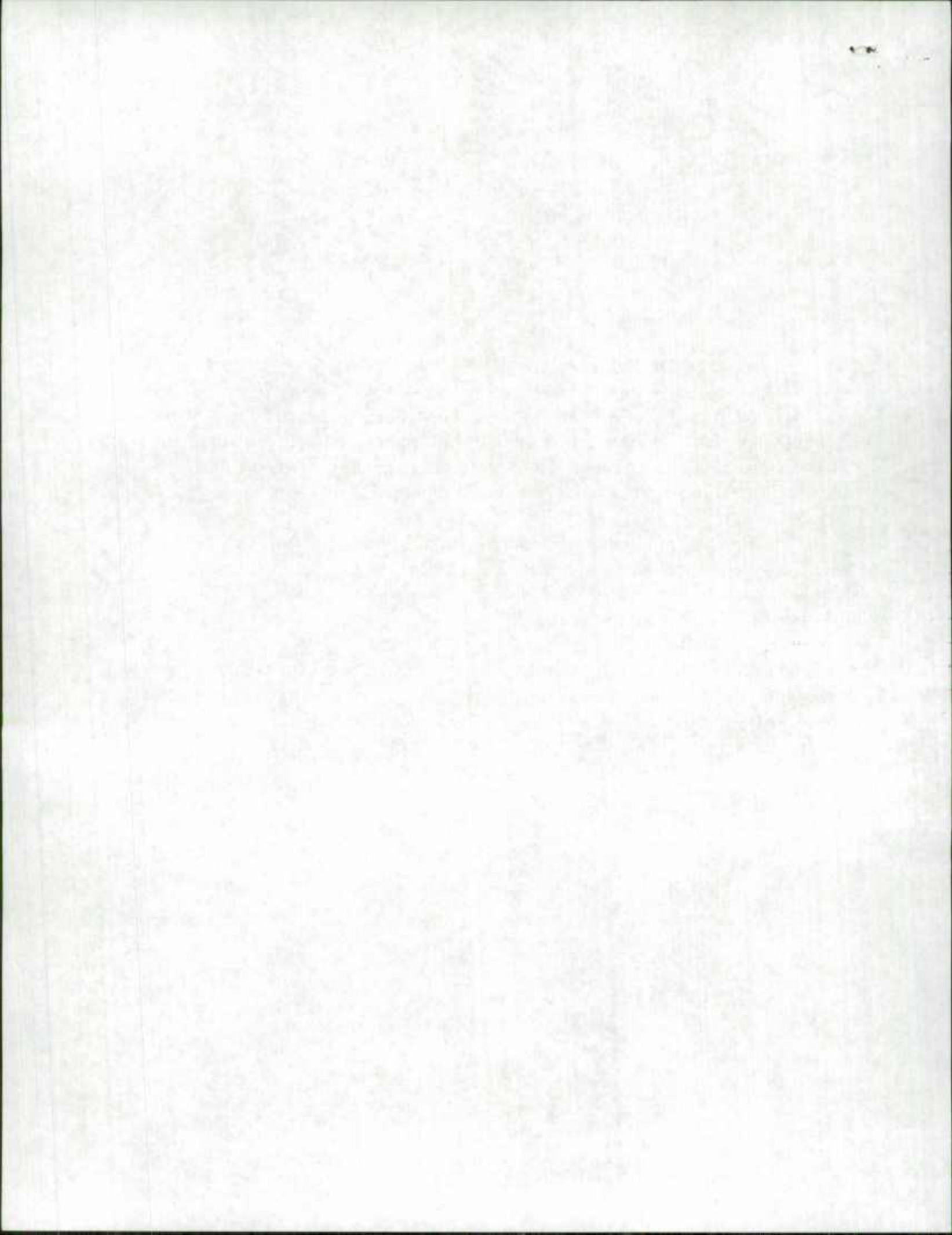
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The Maryland Port Administration has developed a plan to address the difficulty they have had in meeting the 10% phosphorus reduction requirements. They are providing us with their list of projected projects at five port sites, and showing the projected phosphorus removal requirements for each.

The Institutional Plan proposes mitigation for these five MPA properties where on-site mitigation is infeasible. MPA will provide offsite mitigation through structural or non-structural BMPs at a variety of locations. Attached is a list of possible offsite locations and BMPs.

Our subcommittee discussion will review the list of potential mitigation options the Port has explored to date, and provide feedback to move forward for Commission approval. Ultimately, the plan will include an official system for documenting phosphorus mitigation credits and debits.





# MPA

## POTENTIAL OFFSITE MITIGATION CONTACTS

STATE DEPARTMENTS/ORG.	STATUS
<b>1. Agriculture</b> Gary Felton (301) 405-8039	Identifying potential Research Farm projects for nutrient removal. Will get back to us
<b>2. Martin Airport</b> Robin Bowie (410) 859-7103	Completing Environmental Assessment by April 2003. Will identify potential MPA projects. Contact Robin in January 2004 for status.
<b>3. Towson University</b> Jack Nye (410) 704-3409	Met with Jack Nye on Oct 28, 2002. Initiating a planning project to identify storm water issues. Jack would like MPA to be a part of this process to help identify projects that would benefit both. The planning not complete, check 01/30/04
<b>4. Coppin State University</b> Damon Bridgeforth (410) 951-3775	Called 1/21/03 and left message
<b>5. UMBC</b> George Alinsod (410) 455-2281 Jim Donland (410) 455-3260 Mark Demshak (410) 455-3041	UMBC will comment on MPA potential projects from 8/26/03 meeting.
<b>6. Morgan State University</b> Peter Kiik (443) 885-3919	All paved areas are controlled. No projects available.
<b>7. DNR</b> Butch Norden (410) 260-8406	Pending meeting to discuss additional sites/projects
<b>8. Balt. City Comm. College</b> Theo Clark (410) 462-8539 Diane Moore (410) 462-8530 Bill Glenn	Met w/ BCCC and will submit to them alternative projects to be considered. Due 12/19/03

