

**Critical Area Commission**  
**Meeting At**  
**Department of Housing and Community Development**  
**Crownsville, Maryland**  
**February 4, 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) Discussion** Julie LaBranche  
Regina Esslinger

**State Highway Administration: Weems Creek and College Creek Bridges – Construction Entrances and Staging Areas (Anne Arundel County and City of Annapolis)** Dawnn McCleary

**Maryland Port Administration: Institutional Plan for 10% Pollutant Reduction – Discussion** Dawnn McCleary  
Regina Esslinger

**Baltimore County: Chesapeake Village Park Conditional Approval – Discussion** Regina Esslinger  
Wanda Cole

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

**Maryland Transportation Authority: US 50 Lane Widening at Bay Bridge Toll Plaza (Anne Arundel County)** Lisa Hoerger

**11:15 a.m. – 12:00 p.m. Program Implementation Subcommittee**

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

**Anne Arundel County: Pennington Property/Koch Associates Mapping Mistakes – Refinement** Lisa Hoerger

**City of Annapolis: City Code Amendments Discussion** Dawnn McCleary

**City of Annapolis: Map Change Sigma Property Annexation - Update** Dawnn McCleary

**12:00 p.m. LUNCH**

**Critical Area Commission  
Meeting At  
Department of Housing and Community Development  
Crownsville, Maryland  
February 4, 2004**

**AGENDA**

1:00 p.m. – 1:05 p.m.	Welcome and Remarks	Chairman Martin G. Madden
	Approval of Minutes for January 7, 2004	

**PROJECTS**

1:05 p.m. – 1:20 p.m.	VOTE: Maryland Transportation Authority: US 50 Lane Widening at Bay Bridge Toll Plaza (Anne Arundel County)	Lisa Hoerger
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1:20 p.m. – 1:30 p.m.	VOTE: Maryland National Capital Park and Planning Commission: Betty Blume Park – Stormwater Management Facility (Prince George's County)	Claudia Jones
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1:30 p.m. – 1:40 p.m.	VOTE: State Highway Administration: Weems Creek and College Creek Bridges: Construction Entrances and Staging Areas (Anne Arundel County and City of Annapolis)	Dawnn McCleary
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**PROGRAMS**

1:40 p.m. – 1:50 p.m.	Refinement: Anne Arundel County Pennington Property/Koch Associates Mapping Mistakes	Lisa Hoerger
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**PRESENTATION**

1:50 p.m. – 2:15 p.m.	Maryland Department of Planning Priority Places and Priority Funding Areas	Jim Noonan Pat Gaucher
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**OLD BUSINESS**

2:15 p.m. – 2:25 p.m.	Update: Legislative Matters	Chairman Martin G. Madden
	Legal Update	Marianne Mason

**NEW BUSINESS**

2:25 p.m. – 2:30 p.m.		Commission Members
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**Critical Area Commission**  
**For the Chesapeake and Atlantic Coastal Bays**  
**People's Resource Center**  
**100 Community Place**  
**Crownsville, Maryland**  
**January 7, 2004**

*approved*

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 Coastal Bays  
Dr. Earl Chambers, Queen Anne's County  
Judith Cox, Cecil County  
Ella Ennis, Calvert County  
Judith Evans, Western Shore Member at Large  
William Giese, Dorchester County  
Joseph Jackson, Worcester County, Chesapeake Bay  
Gail Booker Jones, Prince George's County  
James N. Mathias, Jr., Ocean City  
Thomas McKay, St. Mary's County  
Daniel Mayer, Charles County  
William Rice, Somerset County  
Edwin Richards, Caroline County  
Otis Rolley, Baltimore City  
Barbara Samorajczyk, Anne Arundel County  
Louise Lawrence, Maryland Department of Agriculture  
Gary Setzer, Maryland Department of the Environment  
James McLean, Maryland Department of Business and Economic Development  
Frank Dawson, Maryland Department of Natural Resources  
Pat Faulkner, Department of Housing and Community Development  
Meg Andrews, Maryland Department of Transportation  
Mike Paone for Tracey Gordy, Department of Planning  
Duncan Stuart, for Baltimore City

**Not in Attendance:**

Ed Gilliss, Baltimore County  
Paul Jones, Talbot County  
Douglas Stephens, Wicomico County  
Douglas Wilson, Harford County  
Tracey Gordy, Department of Planning

Chairman Madden welcomed the newest Commission members, Otis Rolley, Director, Baltimore City Department of Planning; Ella Ennis, representing Calvert County, with the USDA, Rural Development Office of Community Development. Frank Dawson was congratulated on his appointment in DNR to Director of Watershed Services; and congratulations extended to Judith Cox on her recent election as Mayor of Rising Sun.

The Minutes of December 3, 2003 were approved as written.



**City of Annapolis:** Dawnn McCleary presented for concurrence with the Chairman's Determination of Refinement, the map amendment request by the City of Annapolis to reflect annexation of the Sigma Family property. She said that 8.4 acres of land was recently annexed from Anne Arundel County into the City of Annapolis; 4.4 acres is in the Critical Area and is designated as RCA. The annexation does not involve a change in designation. This change will be an administrative change to the Critical Area maps in the City of Annapolis and Anne Arundel County. This annexation is consistent with the City's Critical Area Program. The single-family residence currently on the property is outside the Critical Area. This property is proposed for subdivision into seven single-family residential lots. One lot will accommodate the existing house and five lots will be located outside the Critical Area. The Sixth lot is in the Critical Area. The Commission concurred with the Chairman's determination of Refinement. The Subcommittee Chair, Dave Blazer, requested a report on the status of the project as it develops.

**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 for 15.96 acres of growth allocation for Frenchtown Crossing, a high-density residential development. The Town requested the growth allocation from Cecil County; it was granted by the County Commissioners in December 2002. The approval of growth allocation would change the designation on this entire property, located entirely in the Critical Area, from LDA to IDA. The development project is consistent with local zoning, the Commission's Policy on Growth Allocation and the Critical Area Act. Previously developed as a seasonal campground with an approved stormwater management system, the redevelopment of this property will comply with the 10% pollutant reduction requirement and Best Management Practices. There are no known threatened or endangered species. The Commission supported the Chairman's determination of Refinement.

**Talbot County:** Lisa Hoerger presented for Vote the request by Talbot County for approval of an amendment - County Council Bill #925 - for Supplemental Award of Growth Allocation to the Town of Easton. As the Town's original allocation is used, the Town requested additional acreage from the County and the Talbot County Council passed Bill #925 awarding 156 acres of supplemental growth allocation to the town of Easton on December 16, 2003. This allocation will be used for the Ratcliffe Farm and the Easton Village Planned Unit Development. A panel of Commission members conducted a public hearing on the proposed amendment on January 5, 2004. The growth allocation is restricted 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. Margo Bailey, chair of the panel, moved to approve Talbot County Council Bill #925, Supplemental Growth Allocation. The motion was seconded by Dave Blazer and carried unanimously.

**Town of Easton:** Lisa Hoerger presented for Vote the requested amendment for 58.80 acres of growth allocation by the Town of Easton. The Town enacted Ordinance #461, to award the growth allocation to a portion of the Ratcliffe Farm Subdivision, which will change the designation from RCA to LDA. The site was annexed into the Town of Easton in 1997, subdivided and identified for a future Planned Unit Development (PUD). There are two parcels comprising Ratcliffe Farm. The Ratcliffe Farm Subdivision consists of 16 residential lots with



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Lots 1 through 15 located on Parcel 58 and Lot 16 encompassing all of parcel 126 and a portion of Parcel 58. The Ratcliffe Farm Subdivision was developed using the RCA density of both parcels. Since the town recorded the Ratcliffe Farm Subdivision in June of 2000, a PUD was proposed for the area of lot 16, which has no development rights remaining unless growth allocation is used. The subdivision was designed to allow the application of the development envelope concept with two areas of RCA that are greater than 20 acres remaining. The Town has addressed the adjacency guidelines in its "Findings of Fact". The Town Council approved Ordinance #461 and the Talbot County Council approved the growth allocation request in December, 2003. A panel of Commission members conducted a public hearing on the proposed amendment on January 5, 2004. Margo Bailey, chair of the panel, moved to approve the Amendment - Ordinance #461 Ratcliffe Farm Subdivision, Growth Allocation for the Town of Easton with the following conditions: 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 Delmarva Fox Squirrel, a federally endangered species. The Plan 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, 2004. Barbara Samorajczyk questioned why the growth allocation request was coming in on a parcel that is already developed, using required open space to develop a second parcel, which has never come to the Commission before. Marianne Mason stated that she doesn't know whether this is precedent setting and believes that the Town and staff are treating this appropriately by deducting growth allocation from both sites. Ren Serey stated that there is not a way to require anything other than what has been proposed, that this is not the best way to use growth allocation, but given the process that this has come through over the last three years, which cannot be changed, this is an appropriate process now. Mary Owens explained that Talbot County, unlike all the other jurisdictions, does not have a provision in their program for transferring development rights prohibiting development or preventing the subsequent capture of those development rights again once transferred. The motion was seconded by Bill Giese and carried 19-2; Barbara Samorajczyk and Otis Rolley abstained.

**Town of Easton:** Lisa Hoerger presented for Vote the request for 97.20 acres of growth allocation by the Town of Easton to change the Critical Area designation from RCA to IDA for the Easton Village Planned Unit Development (PUD), which is located on lot 16 on one of the



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two parcels comprising the Ratcliffe Farm Subdivision. Since most of the density necessary to develop the 15 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 because this conversion of Lot 16 resulted in a development density on the remaining property that exceeded the 1:20 acre density. The County awarded supplemental growth allocation to the Town of Easton via County Council Bill #925. The development envelope concept was used in order to minimize the acreage of growth allocation used. A 300-foot setback will be retained along the Tred Avon River and will remain RCA. The areas adjacent to the acreage on the Ratcliffe Farm Subdivision will require an easement, so that no further development is allowed on those portions of the parcel and that these areas are maintained as contiguous RCA parcels greater than 20 acres. The Town has addressed the adjacency guidelines in its "Findings of Fact." The site supports Delmarva Fox Squirrel habitat and the adjacent waters are known waterfowl staging and concentration areas. Afforestation must be implemented as well as shoreline buffer protection measures and conservation efforts so that additional mitigation will not be required. The development will be served by public water and sewer. This project will comply with the 10% pollutant reduction requirement. A panel of Commission members conducted a public hearing on the proposed amendment on January 5, 2004. Margo Bailey, chair of the panel, moved to approve the Town of Easton's request of growth allocation for the Easton Village Planned Unit Development with the following conditions: 1) No permits shall be issued, nor shall any lots be conveyed, nor shall any development activities as defined in COMAR, Title 27.01 take place prior to Commission review and approval of a Habitat Management Plan, conservation plan or similar mechanism for protection of Delmarva Fox Squirrel habitat. The U.S. Fish & Wildlife Service shall have approved this plan before it is submitted to the Commission. 2) No permits shall be issued, nor shall any lots be conveyed, nor shall any development activities as defined in COMAR 27.01 take place prior to Commission review and approval of a Buffer Management Plan (including provisions for maintenance) for Easton Village. The motion was seconded by Bill Giese and carried 19-2, Barbara Samorajczyk and Otis Rolley abstained. *19-2 Abstentions*

**MOU -General Approval for MAA Projects:** Lee Anne Chandler presented for Vote the Conditions for General Approval for Maryland Aviation Administration (MAA) Projects under Exhibit B2 of the Memorandum of Understanding between the Critical Area Commission and the Department of Transportation which was approved at its November, 2002 meeting. The only MAA facility within the Critical Area is Martin State Airport in Baltimore County. Permitted MAA activities covered are Maintenance Projects, Minor projects, and Routine Culvert Replacements, and Public Safety Projects. All projects must be consistent with the development standards contained in COMAR 27.02.05. Ms. Chandler reiterated the conditions for all four types of projects in the General Approval as stated in the staff report (attached to and made a part of these minutes.) Gary Setzer moved, on behalf of the Project Subcommittee, to approve Exhibit B2 of the memorandum of Understanding between the Commission and the Maryland Department of Transportation, Conditions for General Approval of Maryland Aviation Administration Projects. The motion was seconded by Jim McLean and carried unanimously.

**Baltimore County:** Wanda Cole presented for Vote a proposal for projected improvements of a Munitions Maintenance and Storage Complex and a relocated access road by the Maryland Air National Guard on Maryland Aviation Administration property. The site is in Baltimore County



and located at the Martin State Airport in the Critical Area of Frog Mortar Creek. These projects are in the conceptual stage; funding cannot be approved until it has been shown that they can be approved by the regulatory agencies. 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. This property is considered an IDA and compliance with the 10% Rule will be required. Stormwater management approval by MDE is also required. Although the amount of impervious surface areas in the Critical Area portion is expected to increase, there are opportunities to remove existing impervious surface areas and provide environmental enhancements. There are no proposed impacts in the Buffer. There are no other HPAs and any forest mitigation will be at a 1:1 ratio. The Commission staff recommendation is for concept approval with the condition that each project must be returned to the Commission for formal approval during the final design phase. Gary Setzer, on behalf of the Project Subcommittee, moved to approve the concept plans for maintenance, improvement and development projects proposed by the Maryland Aviation Administration as presented in the amended Staff Report (to reflect the applicant as the Maryland Aviation Administration rather than the Maryland Air National Guard). The motion was seconded by Judith Cox and carried unanimously.

### **Old Business**

Chairman Madden told the Commission that he had a meeting with the Joint Legislative Oversight Committee (JLOC) in December after the Commission meeting. He said that he told the JLOC what the Commission thought about the legislation that they will be drafting for the purpose of taking the Lewis v. DNR case law back to where it was before the decision came down. Additionally, he said that he gave them the Commission's general endorsement of \$10,000 fine, which is substantially up from the \$500 fines currently available to the local jurisdictions. Also, it was recommended that the local jurisdictions have the ability to self-refer individual cases for enforcement action. Chairman Madden said that the Commission staff has worked with the real estate community to develop a notice that will inform prospective property buyers that: "your property may be in the Critical Area and if you want to know for sure, call you local planning office". He also told the JLOC that the issue of Guest Houses was a concern but that there is no consensus on what should be done, however he put forth their ideas. He reported that the JLOC has drafted a bill which will undergo revisions, although they have a general consensus on raising fines.

### **Legal Update**

Commission Counsel Marianne Mason updated the Commission on legal matters.

**Cecil County:** Ms. Mason told the Commission that last month there was oral argument in Circuit Court wherein the Board of Appeals granted a variance for a new swimming pool in the Buffer on a 10-acre property. The Board of Appeals decision was considered after the 2002 law passed and did not show any consideration of the new law. Chairman Madden determined that this was an appropriate case for appeal, as the Board of Appeals didn't find that there was any right commonly enjoyed that these people would be denied if they did not put their pool in the Buffer as they had other areas to site the pool. The Court sided with the Board of Appeals and the judge ruled from the bench that the Board of Appeals decision stood. He did not specifically address the Commission's contentions that the 2002 law should have been taken into account. She said that there is no written order yet, but that the case would provide a good example should the Chairman testify before the General Assembly for the need for additional legislation.

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Because other areas for locating the pool were ignored and because the case spoke to the Lewis case and the use of the Buffer, this case could be instrumental in getting the law amended.

**Anne Arundel County:** Ms. Mason said that there was a lawsuit filed against the Commission, MDE, the City of Annapolis, and a homebuilder by a person named Rogers who lives in the City of Annapolis who alleges that the construction of a house next to him violates sediment and erosion control laws and building permits. He has asked for an injunction. She filed a motion on behalf of the Commission to dismiss the Critical Area Commission because the Commission has no jurisdiction over building permits and the types of permits he was complaining about issued by the City of Annapolis. The Commission staff is working with MDE Counsel and they have also filed a motion to dismiss. No specific relief was requested of the Commission, just that they send out an enforcement officer. The Commission has no jurisdiction or enforcement officers.

**New Business**

Chairman Madden stated that the members that are new to the Commission will be confirmed by the Senate soon.

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

Minutes submitted by: Peggy Campbell, Commission Coordinator



## *Critical Area Commission*

### **STAFF REPORT**

**February 4, 2004**

**APPLICANT:** Maryland Transportation Authority (MdTA)

**PROPOSAL:** U.S. Route 50 Widening at Bay Bridge Toll Facilities  
Widening of EZ Pass Lane & Widening of Departure Lane

**JURISDICTION:** Anne Arundel County

**COMMISSION ACTION:** Vote

**STAFF RECOMMENDATION:** Approve

**STAFF:** Lisa Hoerger

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

### **DISCUSSION:**

The Maryland Transportation Authority (MdTA) proposes to widen the eastbound approach of U.S. Route 50 prior to and beyond the toll plaza at the William Preston Lane, Jr. Memorial Bridge (Chesapeake Bay Bridge). The site is located in Anne Arundel County on the western side of the Bay Bridge.

The two proposed widening projects are red line revisions to the approved Toll Plaza Widening Contract. The Commission approved this project in March 2003. The currently proposed widening projects will ease congestion and improve safety and efficiency at the toll plaza approach and departure. The projects will include paving of existing shoulders and areas of mowed grass as well as construction of a series of sand filter Best Management Practices (BMPs). The BMPs will provide stormwater management for the new pavement and existing pavement that is currently untreated.

The EZ Pass Lane project (Red Line Revision 1) extends from approximately 1,300 feet west of the Sandy Point Interchange overpass (Oceanic Drive) to approximately 800 feet east of the overpass. The project consists of road widening on the median side of the roadway. The EZ Pass lane expansion will not impact any Habitat Protection Areas; however, it will include impacts to a nontidal wetland and its 25-foot buffer, which has been addressed through a Regional Letter of Authorization from the Army Corps and Engineers and the Maryland Department of the Environment.

The Departure Lane project (Red Line Revision 2) consists of widening the outside and median of eastbound US 50 between the toll plaza and the bridge to improve the efficiency and safety of the vehicles leaving the toll plaza. The widening will take place approximately 600 feet east of the Toll Plaza and extend 700 feet eastward along the bridge approach. No Habitat Protection Areas will be impacted.

All clearing associated with the Red Line Revisions will be mitigated with native species at a nearby location that is on MdTA property. Total clearing is 1,197 square feet. Mitigation will be performed at a 1:1 ratio for clearing. The reforestation area is north of US 50/301 and will be done within the 100-foot tidal Buffer, immediately adjacent to existing forest. The mitigation area will provide a forested buffer in an area that is currently mowed, and will expand the overall acreage of forest in the area.

The entire project site is 2.52 acres and is in an area of Intense Development. The applicant is addressing the 10% pollutant reduction calculations. The MdTA will create three sand filters on site, which satisfy the Maryland Department of the Environment's Stormwater Management Regulations.

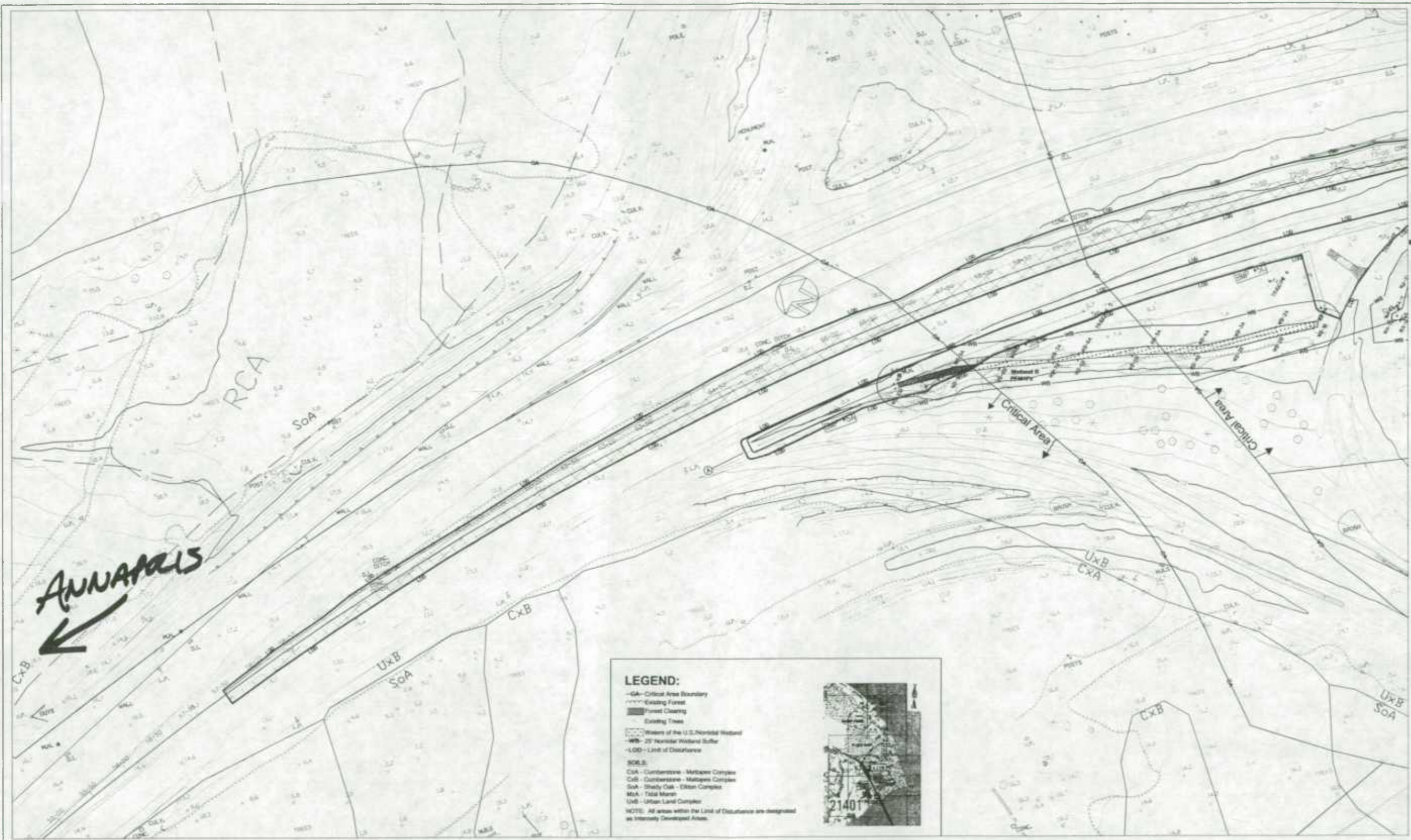
The Department of Natural Resources reported the bird species Black Rail may use a nearby site as habitat; however, the immediate project area will not impact the species. The stormwater management permits were secured for the M-Tag Lane and departure lane expansions. The sediment and erosion control permit is still pending for the departure lane expansion.

Staff Recommendation:

Commission staff have reviewed the project plans and visited the site and recommend approval be granted to the MdTA to widen the eastbound side of U.S. Route 50 prior to Oceanic Drive and beyond the toll booth facilities with the following conditions:

1. The MdTA work with Commission staff in finalizing the Planting Plan.
2. The MdTA shall complete all required 10% Pollutant Reduction Calculations. If the removal requirement cannot be met on-site, then MdTA will return to the Project Subcommittee within 30 days with an acceptable off-site location.
3. Any outstanding permits from MDE shall be secured prior to construction.





TOLL  
BRIDGE  
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ANNAPOLIS  
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**LEGEND:**

- CA- Critical Area Boundary
- EF- Existing Forest
- FC- Forest Clearing
- ET- Existing Trees
- W- Waters of the U.S./Non-tidal Wetland
- WB- 20' Non-tidal Wetland Buffer
- LD- Limit of Disturbance

**SOILS:**

- CxA - Cumbessene - Matlapen Complex
- CxB - Cumbessene - Matlapen Complex
- SoA - Shady Oak - Elkton Complex
- MxA - Tidal Marsh
- UxB - Urban Land Complex

**NOTE:** All areas within the Limit of Disturbance are designated as Intensely Developed Areas.




IMPACTS		
IMPACT TYPE	IMPACT	MITIGATION REQUIRED
Forest	1,197 sq. ft.	① 1:1 = 1,197 sq. ft.
Trees	21*	① 1:1 = 2,800 sq. ft.
100' Tidal Wetland Buffer	315 sq. ft.	① 3:1 = 945 sq. ft.

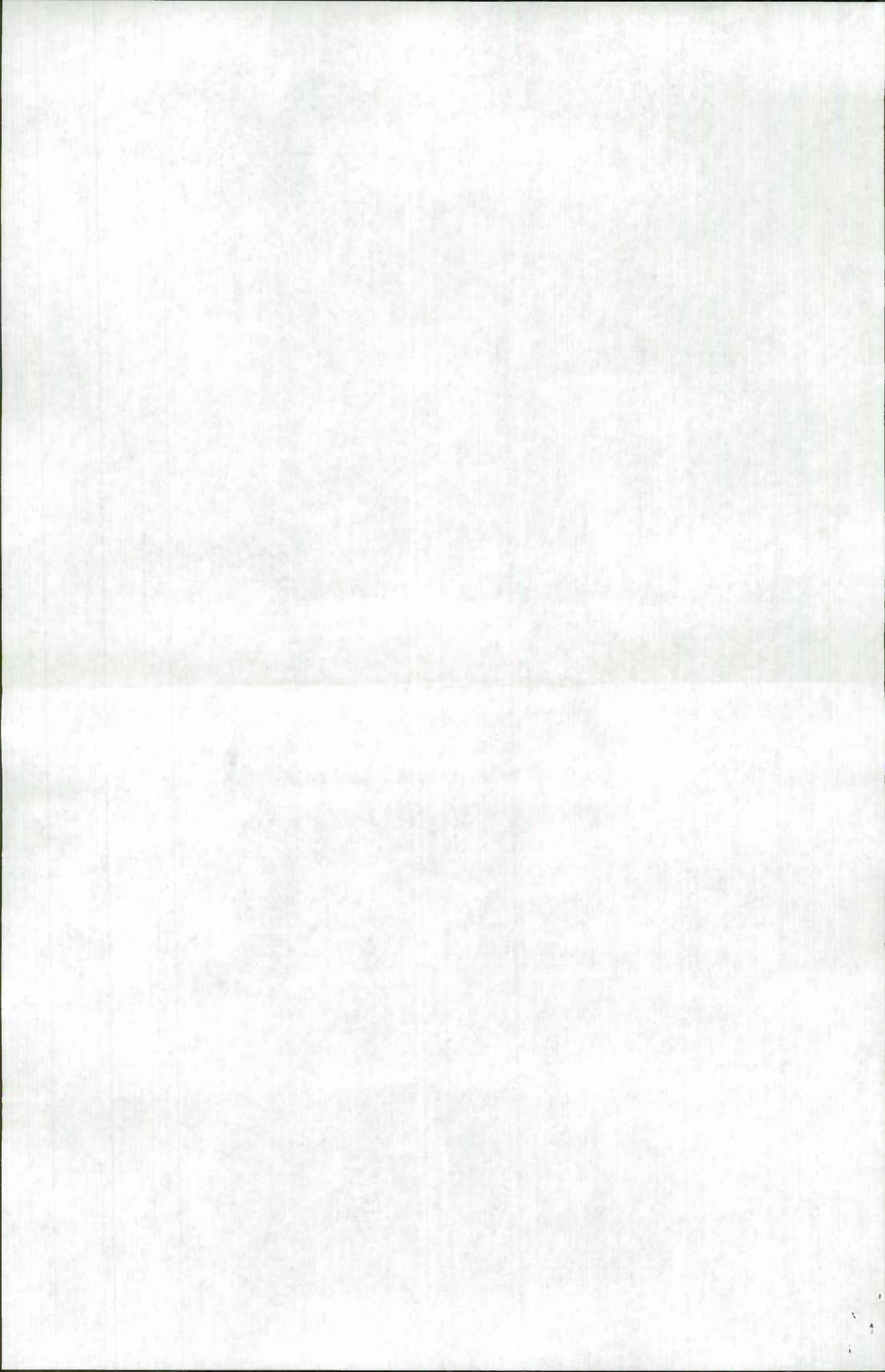
\* Includes 7 canopy trees and 14 understory trees.  
Potential Reformation Area: 4,942 sq. ft.

  
**MARYLAND TRANSPORTATION AUTHORITY**  
 Engineering Division

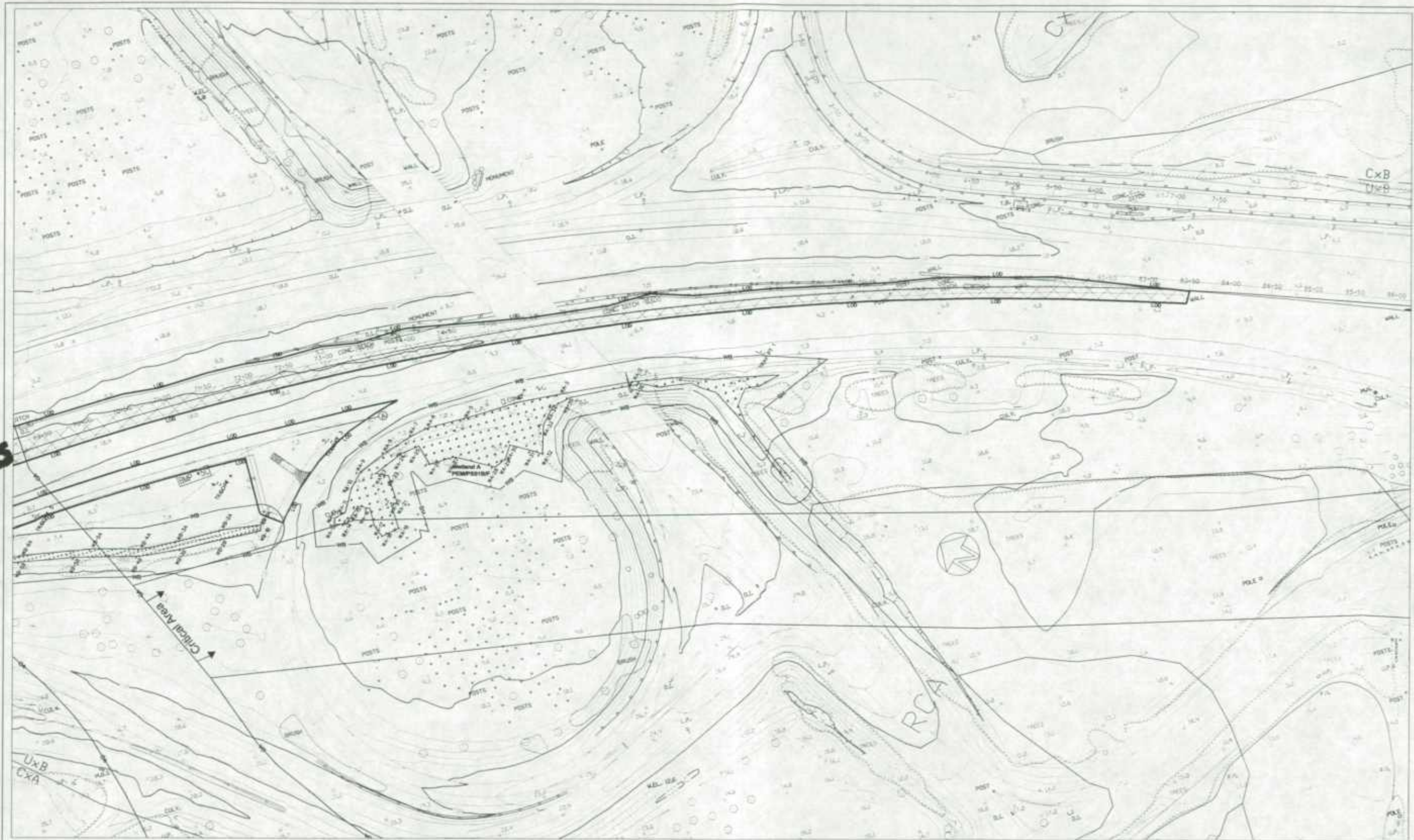
**BAY BRIDGE TOLL PLAZA WIDENING**  
**RED LINE REVISIONS**  
 for EZ Pass Lane and Departure Lane  
**CRITICAL AREA SITE PLAN**

Sheet 1 of 3  
 January 2004  
  
 SCALE: 1" = 50'









AMMABUS  
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TOLL  
BRIDGE  
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Critical Area  
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**LEGEND:**

- Existing Forest
- Reforestation
- Waters of the U.S./Nontidal Wetland
- New pavement
- WB- 25' Nontidal Wetland Buffer
- TB- 100' Tidal Wetland Buffer
- LOD- Limit of Disturbance
- Existing Tree
- Tree Removal



MARYLAND TRANSPORTATION AUTHORITY  
Engineering Division

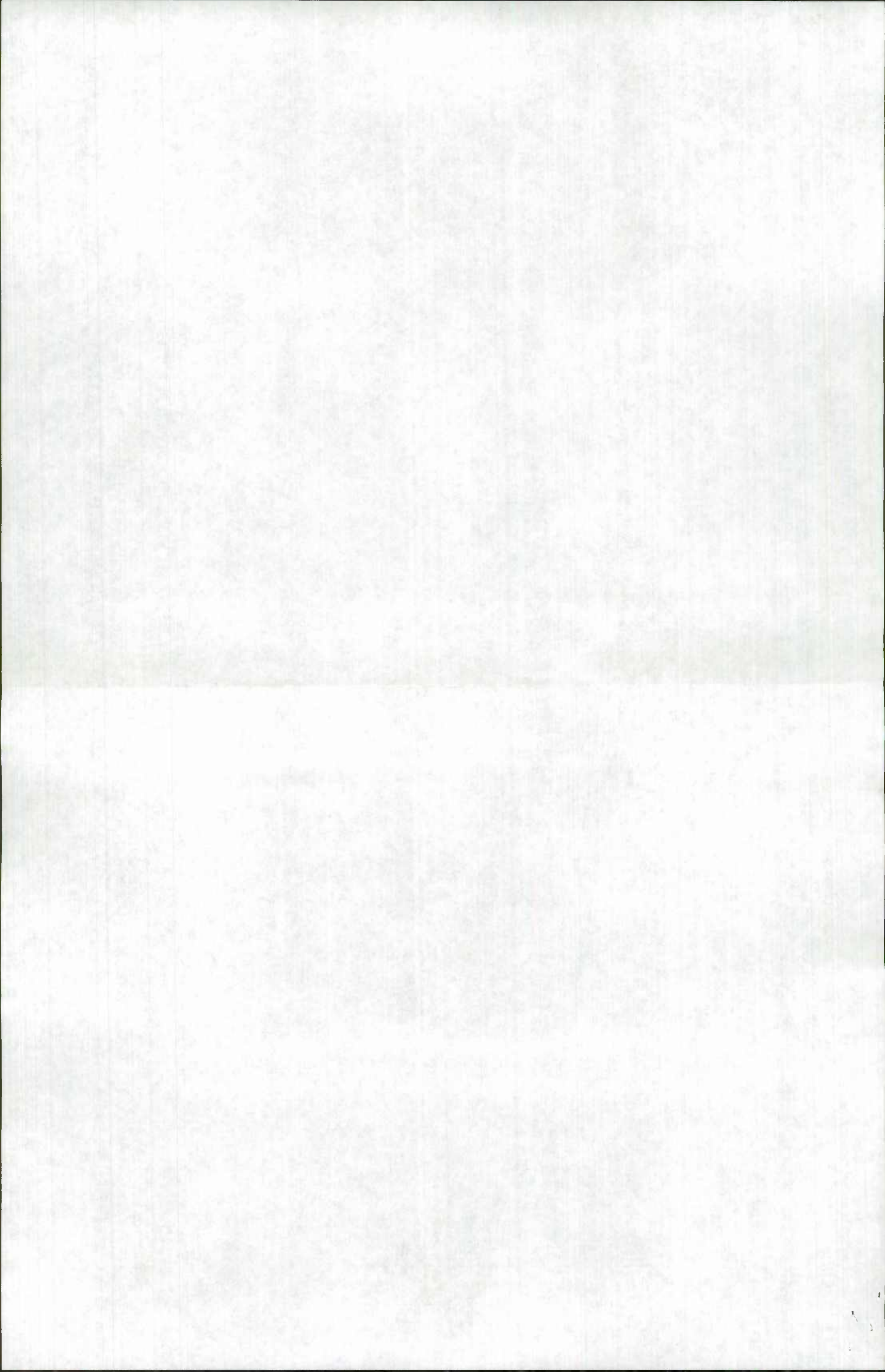
**BAY BRIDGE TOLL PLAZA WIDENING  
RED LINE REVISIONS  
for EZ Pass Lane and Departure Lane  
CRITICAL AREA SITE PLAN**

Sheet 2 of 3

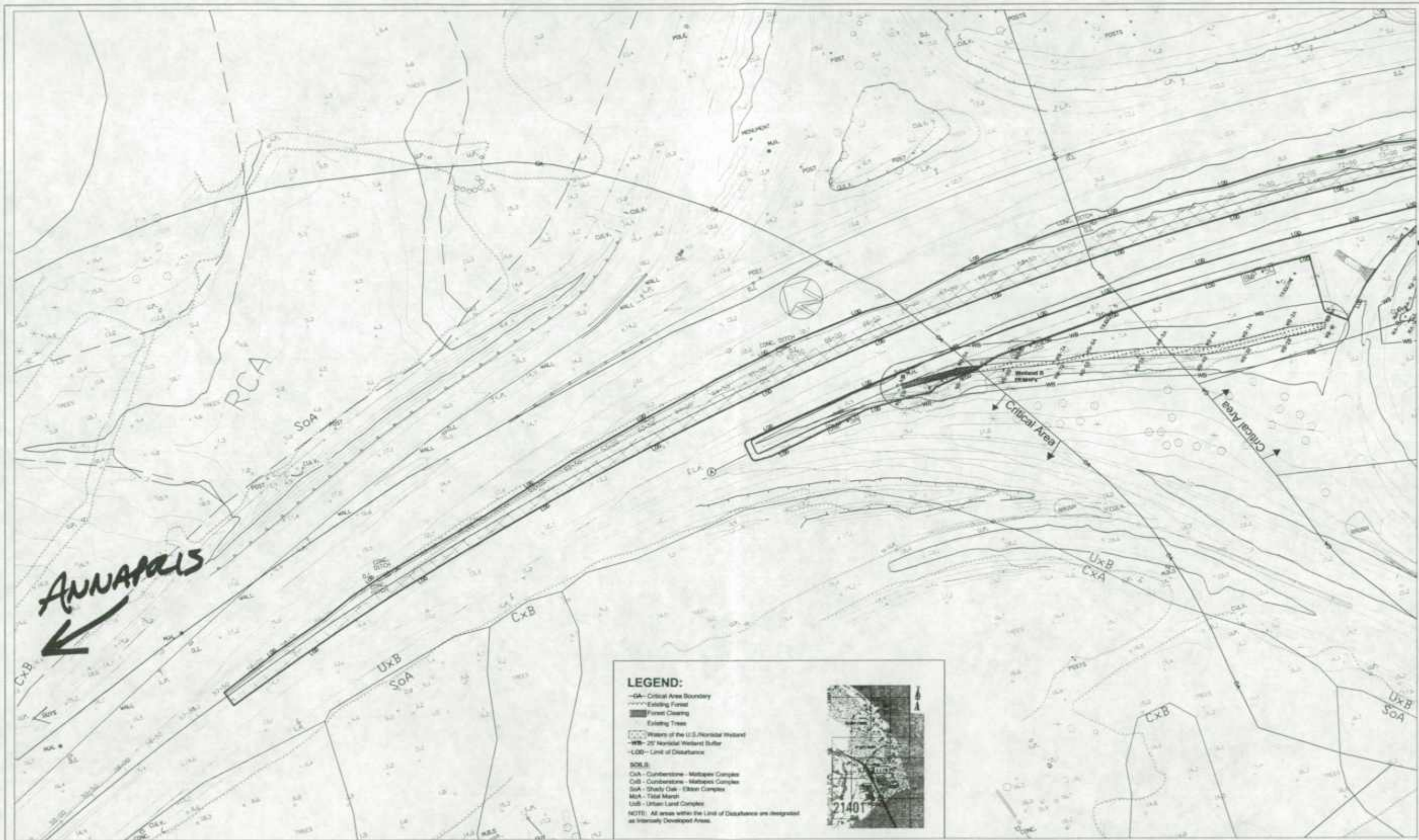
January 2004











TOLL BRIDGE  
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IMPACT TYPE	IMPACT	MITIGATION REQUIRED
Forest	1,197 sq. ft.	@ 1:1 = 1,197 sq. ft.
Trees	21*	@ 1:1 = 2,800 sq. ft.
100' Tidal Wetland Buffer	315 sq. ft.	@ 3:1 = 945 sq. ft.

\* Includes 7 canopy trees and 14 understory trees.  
Potential Reforestation Area: 4,942 sq. ft.

  
**MARYLAND TRANSPORTATION AUTHORITY**  
 Engineering Division

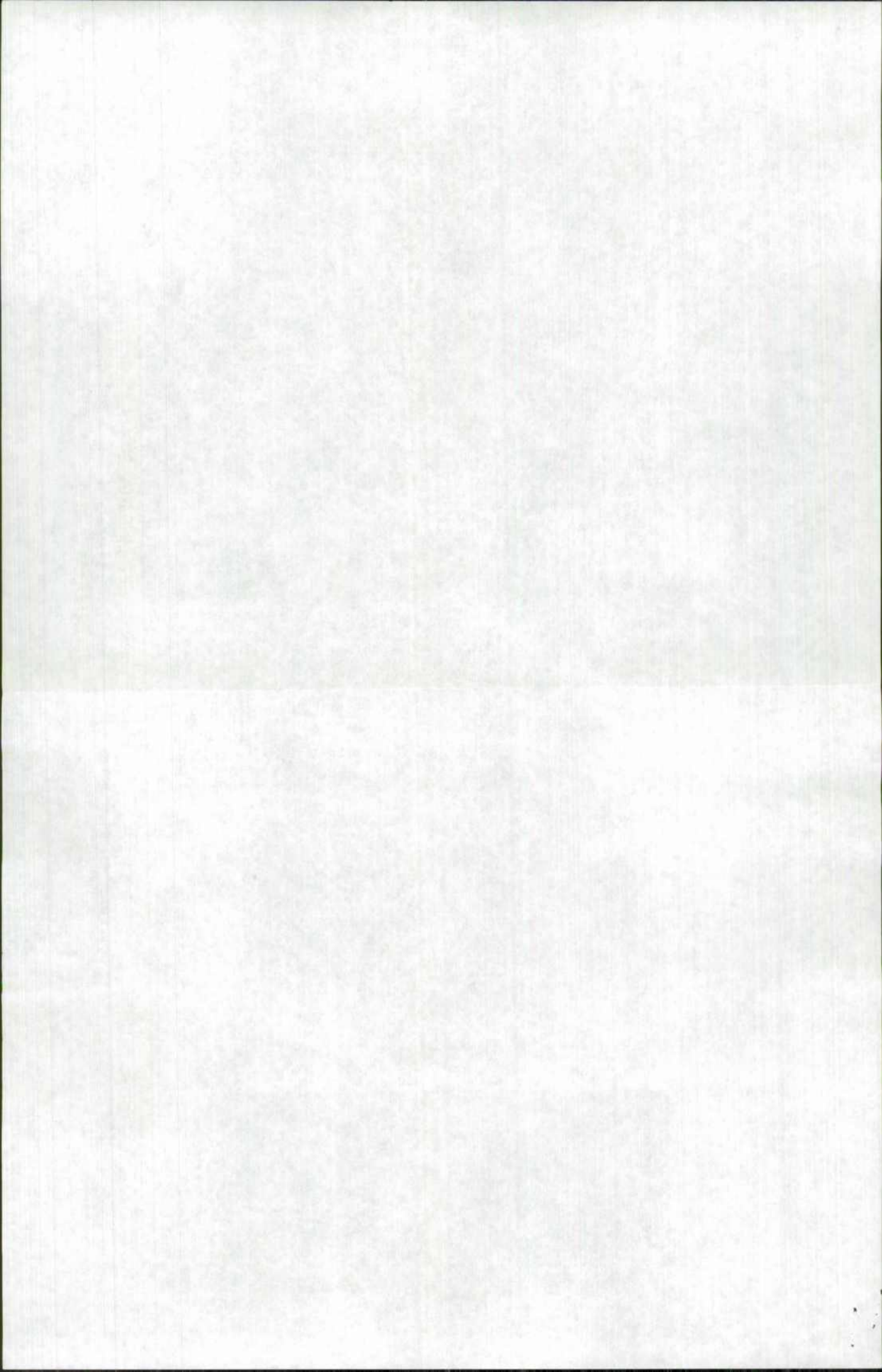
**BAY BRIDGE TOLL PLAZA WIDENING  
 RED LINE REVISIONS  
 for EZ Pass Lane and Departure Lane  
 CRITICAL AREA SITE PLAN**

Sheet 1 of 3

January 2004









## *Critical Area Commission*

### **STAFF REPORT**

**February 4, 2004**

**APPLICANT:** State Highway Administration

**PROPOSAL:** Weems Creek and College Creek  
Bridge Construction Staging Area and  
Crane Access

**JURISDICTION:** Anne Arundel County and City of Annapolis

**COMMISSION ACTION:** Vote

**STAFF RECOMMENDATION:** Approval

**STAFF:** Dawnn McCleary

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

### **DISCUSSION:**

State Highway Administration is proposing improvements to the Weems Creek and College Creek bridges at MD 70\Rowe Boulevard. The Weems Creek Bridge straddles Anne Arundel County and Annapolis; all of the College Creek bridge is located in Annapolis. On December 3, 2003, SHA updated the Subcommittee with potential sites for equipment staging areas and construction entrances.

SHA has recommended locations for the proposed stabilized construction entrances (SCE) and an equipment staging area for the project. Once construction is completed, the entrances will be removed and the land will be restored and planted. The entrances will be used by the Contractor primarily to load the cranes onto the barges and to unload the cranes from the barges when construction is completed. Two SCE, one at each creek, will be necessary. The entrance will require an additional 4,200 square feet of tree clearing inside the 100-foot Buffer, with 12,600 square feet of tree planting being required as mitigation.

The proposed College Creek SCE will require 3,065 square feet of tree clearing. This area was chosen because SHA wanted to remain within SHA right-of-way and to minimize impacts to the local community. The proposed Weems Creek SCE will require 1,133 square feet of tree clearing. All mitigation will be on sites within the bridge improvements project area.

### **Conditional Approval Process**

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

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

***(1) That there exist special features of the site or there are other special circumstances such that the literal enforcement of these regulations would prevent a project or program from being implemented;***

Due to the tight construction schedule and environmental concerns associated with the MD 70 bridges project, SHA has decided to provide the Contractor with an approved construction entrance at Weems and College Creek. The proposed entrances, which will be located immediately adjacent to both bridges, will be used by the Contractor primarily to load the cranes onto the barges and to unload the cranes from the barges when construction is complete. Site selection took into account vertical clearance, steepness of slopes, significant trees, significant cultural resources, and land use and ownership. The construction entrances will be constructed of 2 to 3 inch crushed aggregate placed on geotextile matting on the slope down to the creek and timber matting at the bottom of the slope extending into the water. These entrances will remain in place for the duration of the construction process, which is expected to last 2 years. Once construction is complete, the entrances will be removed and the land will be restored and re-forested.

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

The public would benefit from Contractor's use of the proposed stabilized entrances because the construction project would be completed sooner, safer and likely, in a more environmentally sensitive manor. If the location of these entrances were left up to the Contractor, the Contractor would be responsible for acquiring all the necessary permits, including Critical Area approval. These processes can take up to several months to complete. Furthermore, the Contractor may only consider cost in determining the locations of the entrances, whereas SHA has carefully considered cultural, environmental and community resources, as well as cost, in making the site determinations. For example, the proposed College Creek construction entrance would not be the cheapest to construct, but rather would have the least community impact. In addition, the construction entrances would allow the construction of the bridge to take place without further reducing the number of travel lanes during construction. Without these entrances, cranes would need to be broken down and lowered by a larger crane from the bridge causing further delays in the construction schedule and traffic congestion, which would create unsafe roadway conditions for the public according to SHA's traffic analysis.



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

The construction of the proposed stabilized construction entrances would result in temporary impacts. The entrances are only needed for the duration of the construction period, which is expected to last 2 years. Once construction is complete, the areas would be restored and planted with trees at a one to one ratio with no permanent impervious surfaces remaining.

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

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

SHA is required to maintain its roadways and bridges in a safe operating condition. Both bridges are in need of repair/replacement and literal enforcement of these regulations would prevent SHA from implementing bridge and minor roadway improvements, including entrances necessary for their construction that would ensure continued and safe use of the bridges leading to and from Annapolis.

***(2) A proposed process by which the program or project could be so conducted as to conform, insofar as possible, with the approved local Critical Area program or if the development is to occur on State-owned lands, with the criteria set forth in COMAR 27.02.05;***

As described earlier, locations of the proposed construction entrances were carefully selected due to the tight construction schedule and environmental concerns. The construction entrances will utilize geotextile matting on slopes and timber matting at the bottom of the slopes extending into the water to mitigate for the temporary disturbance. The use of timber matting is expected to have little, if any, effect on the current wetland and creek bottom elevations, thus minimizing, or even eliminating, the need for re-grading. Stabilization of the sites in marsh areas will be accomplished through mulching and seeding. Seeding and mulching will also be used to reduce erosion after construction activities are ceased.

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

SHA will mitigate for all tree clearing associated with the construction entrances. These access roads will clear a total of 4,200 square feet (s.f.) all of which is within the Buffer. Replacement ratios will follow the formula of 3:1 replacement for clearing in the Critical Area buffer.

*Continued, Page Four  
Weems Creek and College Creek Bridge  
February 7, 2004*

Using this approach, SHA will replant 12,600 s.f. to mitigate for tree clearing associated with the construction entrances. SHA intends to perform the mitigation on site within the bridge improvements project area. The construction entrances will be restored to original condition and reforested for a total of 4,200 s.f.

The additional 8,400 s.f. of replacement forest will be planted in the project construction staging area (post project completion). The proposed construction staging area is located off of Rowe Boulevard just west of the College Creek bridge on the lawn at the State Archives building.

SHA will expand the proposed marsh creation mitigation project by 656 s.f. (2:1 mitigation ratio required by Maryland Department of the Environment as a condition for the permit) to satisfy mitigation requirements for the additional tidal wetland impacts.

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

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



## *Critical Area Commission*

### **STAFF REPORT**

**February 4, 2003**

**APPLICANT:** Anne Arundel County

**PROPOSAL:** Refinement - Mapping Mistake  
Pennington/Koch Associates, LLC Property

**COMMISSION ACTION:** Concurrence

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

**STAFF:** Lisa Hoerger

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

### **DISCUSSION:**

Anne Arundel County submitted a map amendment to correct three mapping mistakes on the same parcel. The property is located in central Anne Arundel County north of College Parkway. The property is approximately 32.42 acres and has a split Critical Area designation of Resource Conservation Area (RCA) and Limited Development Area (LDA). The County reclassified a total of 2.04 acres of LDA to RCA, and .42 acres of RCA to LDA.

The property is currently developed with a driveway that serves two dwellings and several outbuildings. The majority of the site outside the Critical Area is dominated by hardwood forest. The Critical Area portion of the site is a mix of forest and mowed fields with steep slopes and wetlands that abut the shoreline of Deep Creek.

On the western portion of the site is 1.63 acres of LDA that includes steep slopes and tidal wetlands. The Administrative Hearing Officer approved the request to change this area to an RCA. On the eastern portion of the site is .42 acres of LDA that is on steep slopes. The Administrative Hearing Officer approved the request to change this area to an RCA. Also on the eastern portion of the site was .42 acres of RCA that was on a flat, upland plateau. This area was changed to an LDA.

Section 27.01.02.07(C) of the Critical Area criteria states that, "For purposes of implementing this regulation, a local jurisdiction shall have determined, based on land use and development in existence on December 1, 1985, which land areas fall within the three types of development areas described in this chapter."

The Criteria explain LDAs in the Code of Maryland Regulations at 27.01.02.04 A as the following:

Limited Developed Areas are those areas, which are currently developed in low, or moderate intensity uses. They also contain areas of natural plant and animal habitats, and the quality of runoff from these areas has not been substantially altered or impaired. These areas shall have at least one of the following features:

- (1) Housing density ranging from one dwelling unit per 5 acres up to four dwelling units per acre;
- (2) Areas not dominated by agriculture, wetland, forest, barren land, surface water, or open space;
- (3) Areas meeting the conditions of Regulation .03A, but not .03B, of this regulation;
- (4) Areas having public sewer or public water, or both.

The Criteria explain RCAs in the Code of Maryland Regulations at 27.01.02.05 A as the following:

Resource conservation areas are those areas characterized by nature-dominated environments (that is, wetlands, forests, abandoned fields) and resource-utilization activities (that is, agriculture, forestry, fisheries activities, or aquaculture). These areas shall have at least one of the following features:

- (1) Density less than one dwelling unit per 5 acres; or
- (2) Dominant land use in agriculture, wetland, forest, barren land, surface water, or open space.

The Anne Arundel County Critical Area Program included additional mapping standards when the County performed its original mapping of the Critical Area. On page 16 of the County's Program it list the following standard:

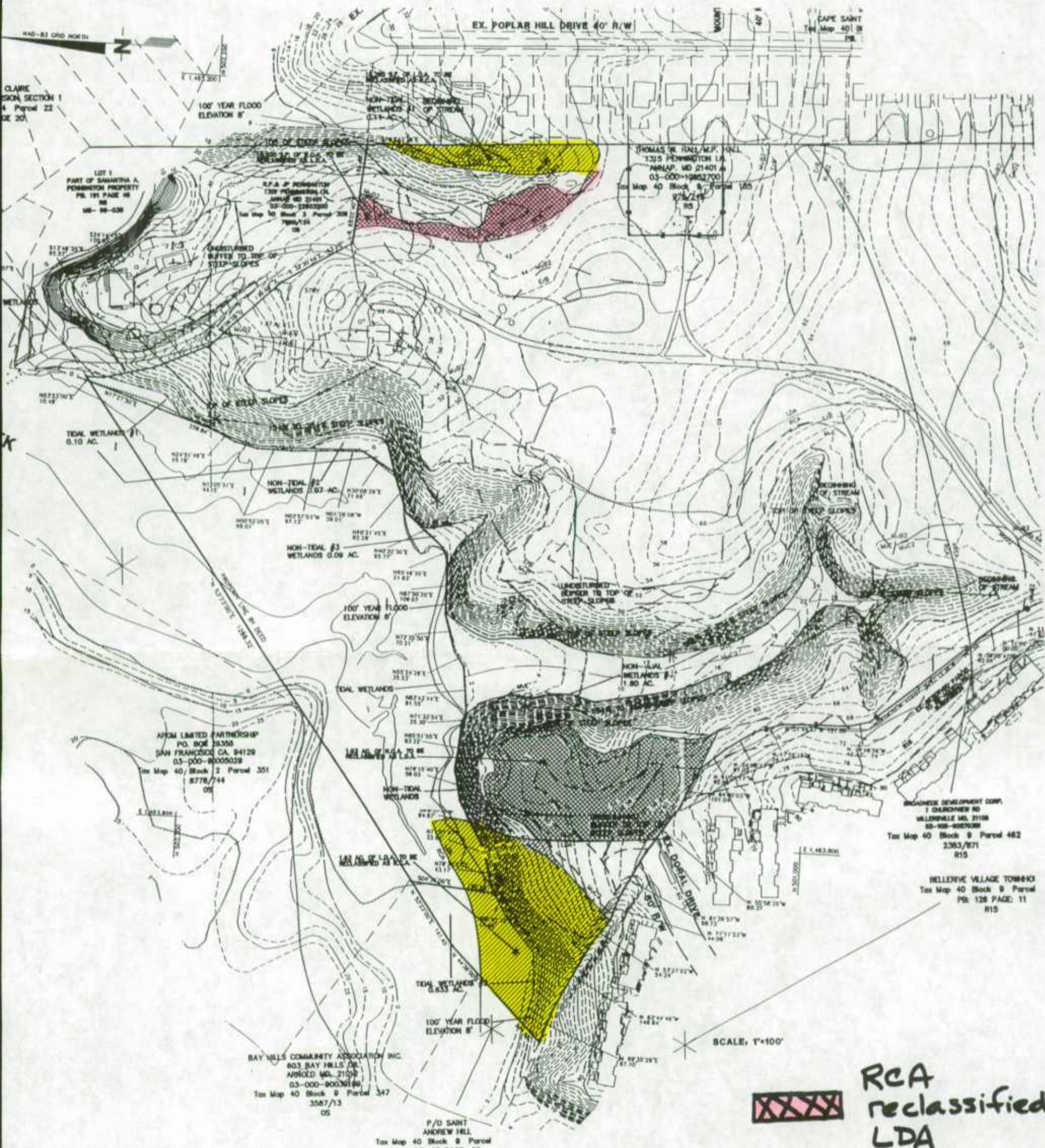
Land with environmentally sensitive features along perennial and tributary streams were reviewed and an approximately 300-foot buffer along these streams, including adjacent wetlands, went back to RCA. The few areas of Critical State Concern that were classified as LDA had increased portions going to RCA.

Based on this summary of the County's mapping efforts, the County determined that it was their intent to map these areas of wetlands and streams as RCA. Application of this standard would result in two areas of LDA being reclassified as RCA. The second change which involved changing .42 acres of RCA to LDA was evaluated, and the area mapped as RCA was determined to be a drafting error.

After reviewing the Criteria and the mapping of the subject property, the Administrative Hearing Officer approved the request to amend the zoning map on April 3, 2003. The Hearing Officer changed two areas from RCA to LDA and one area from LDA to RCA which met the requirements of the County Zoning Code, Article 28, Section 11-102.3(c) which states there must be affirmative findings that:

- 1) There was a mistake in the approved Chesapeake Bay Critical Area map based on land uses in existence on December 1, 1985;

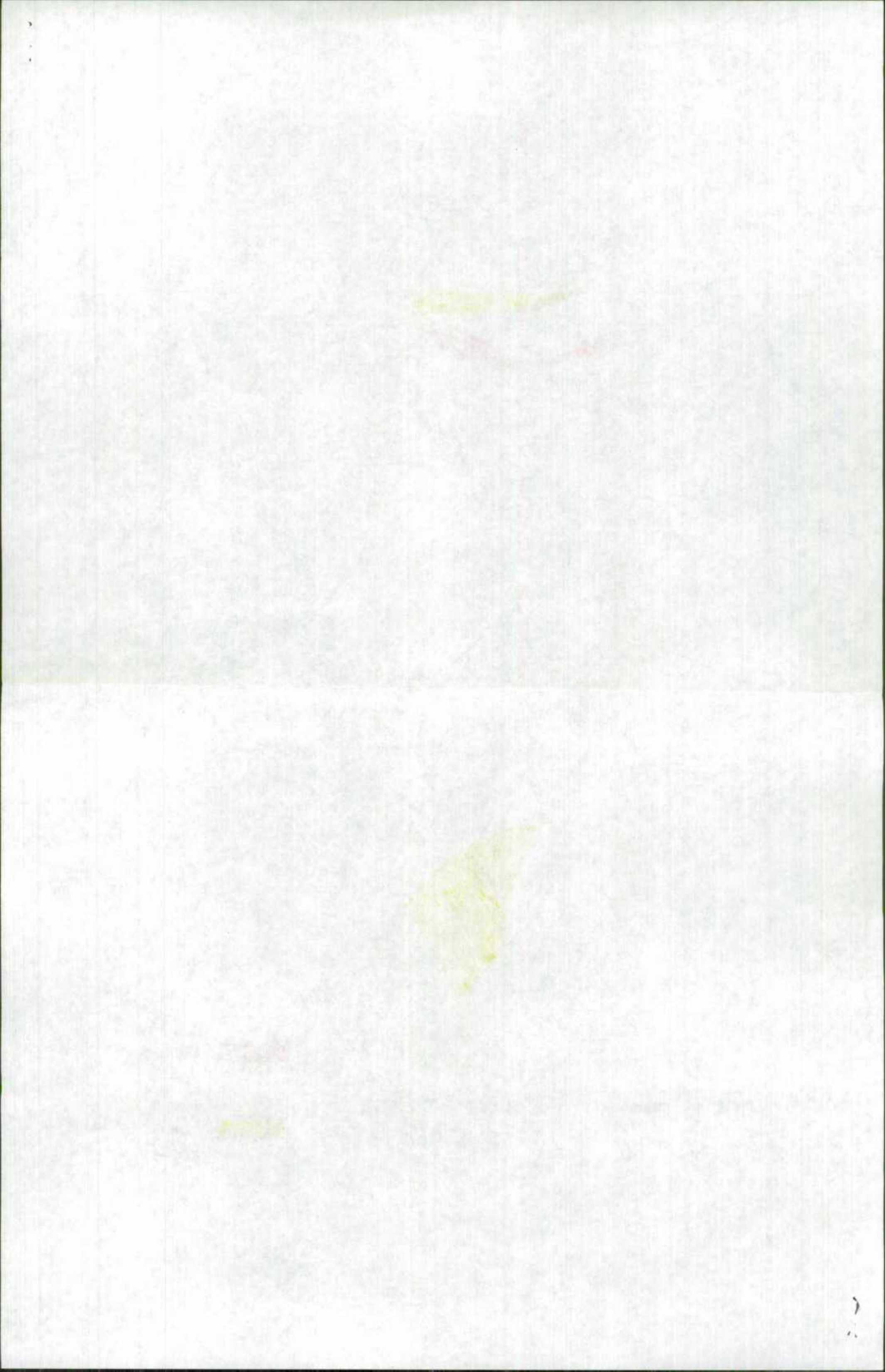




Anne Arundel County - Reclassification  
 Pennington Property | Koch Assoc, Inc.

 RCA reclassified to LDA  
 LDA reclassified to RCA







**Critical Area Commission**  
**Chesapeake and Atlantic Coastal Bays**  
Meeting At  
Department of Housing and Community Development  
Crownsville, Maryland  
March 3, 2004

**SUBCOMMITTEES**

9:30 a.m. – 12:00 p.m. Project Evaluation Subcommittee

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

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

Maryland Transportation Authority: US 50 Lane Expansion: Lisa Hoerger  
10% Rule Compliance (Anne Arundel County)

Baltimore County: Chesapeake Village Park: Wanda Cole  
Two Conditional Approvals Regina Esslinger

Town of Snow Hill: Julia Purnell Museum LeeAnne Chandler  
Conditional Approval (Somerset County)

State Highway Administration: US 50 Bikeway Wanda Cole  
(Dorchester County)

Maryland Port Administration: Institutional Plan for 10% Dawnn McCleary  
Pollutant Reduction: Discussion Regina Esslinger

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

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

Town of Chestertown: Annexation and Buffer Exemption Area Claudia Jones  
Designation

12:00 p.m. Panel: Town of Easton: Update on Ratcliffe Farm Subdivision  
Panel members: Bailey, Richards, Chambers, Giese

**Critical Area Commission**  
**Chesapeake and Atlantic Coastal Bays**  
 Meeting At  
 Department of Housing and Community Development  
 Crownsville, Maryland  
 March 3, 2004

**AGENDA**

1:00 p.m. – 1:05 p.m.      Welcome and Remarks      Chairman  
 Martin G. Madden

Approval of Minutes for February 4, 2004

**PROJECTS**

1:10 p.m. – 1:15 p.m.      VOTE: Baltimore County: Chesapeake Village      Wanda Cole  
 Park: Conditional Approval – Buffer Disturbance

1:15 p.m. – 1:25 p.m.      VOTE: Baltimore County: Chesapeake Village      Wanda Cole  
 Park: Conditional Approval – Impervious  
 Surface

1:25 p.m. – 1:35 p.m.      VOTE: Town of Snow Hill: Julia Purnell Museum      LeeAnne Chandler  
 Conditional Approval (~~Somerset County~~) *Worcester Co.*

1:35 p.m. – 1:45 p.m.      VOTE: State Highway Administration: US 50      Wanda Cole  
 Bikeway (Dorchester County)

1:45 p.m. – 1:55 p.m.      VOTE: Maryland National Capital Park and      Claudia Jones  
 Planning Commission: Betty Blume Park –  
 Stormwater Management Facility (Prince  
 George's County)

**PROGRAMS**

1:55 p.m. – 2:10 p.m.      Refinement: Town of Chestertown: Annexation      Claudia Jones  
 and Buffer Exemption Area Designation  
 (Kent County)

2:10 p.m. – 2:20 p.m.      Refinement: City of Annapolis: Critical Area      Dawnn McCleary  
 Program Code Changes (Anne Arundel County)

**OLD BUSINESS**

2:20 p.m. – 2:30 p.m.      Town of Easton: Ratcliffe Farm Subdivision      Lisa Hoerger  
 Buffer Management Plan (Talbot County)

2:30 p.m. – 2:40 p.m.      Update: Legislative Matters      Chairman  
 Martin G. Madden

Legal Update

*New Bus.*



**Critical Area Commission**  
**For the Chesapeake and Atlantic Coastal Bays**  
**People's Resource Center**  
**100 Community Place**  
**Crownsville, Maryland**  
**February 4, 2004**

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
- ✓ Dr. Earl Chambers, Queen Anne's County
- ✓ Ella Ennis, Calvert County
- ✓ Judith Evans, Western Shore Member at Large
- Ed Gilliss, Baltimore County
- ✓ Tracey Gordy, Department of Planning
- ✓ Joseph Jackson, Worcester County, Chesapeake Bay
- ✓ Gail Booker Jones, Prince George's County
- James N. Mathias, Jr., Ocean City
- Thomas McKay, St. Mary's County
- Daniel Mayer, Charles County
- William Rice, Somerset County
- ✓ Edwin Richards, Caroline County
- Otis Rolley, Baltimore City
- Barbara Samorajczyk, Anne Arundel County
- ✓ Louise Lawrence, Maryland Department of Agriculture
- ✓ Gary Setzer, Maryland Department of the Environment
- ✓ James McLean, Maryland Department of Business and Economic Development
- Frank Dawson, Maryland Department of Natural Resources
- Allison Ladd, Maryland Department of Housing and Community Development
- Meg Andrews, Maryland Department of Transportation

**Not in Attendance:**

- ✓ Dave Blazer, Worcester County Coastal Bays
- ✓ Judith Cox, Cecil County
- William Giese, Dorchester County
- Paul Jones, Talbot County
- Douglas Wilson, Harford County

me  
Chairman Madden welcomed and introduced Allison Ladd who will now represent the Maryland Department of Housing and Community Development. Pat Faulkner is now working for another agency. Jim McLean introduced Effie Reynolds who will represent Jim in his absence.

A motion was made to approve the Minutes of January 7, 2004 as written. The motion was seconded and carried unanimously.

**Anne Arundel County:** Lisa Hoerger presented for Vote the proposal by the Maryland Transportation Authority to widen the eastbound approach of U.S. Route 50 prior to Oceanic Drive and beyond the tollbooth facilities at the Chesapeake Bay Bridge. These projects are revisions to the approved Toll Plaza Widening Contract approved by the Commission in March

Critical Area Commission Minutes

February 4, 2004

2003. The EZ Pass Lane expansion project will not impact any Habitat Protection Areas; however, it will impact a nontidal wetland and its 25-foot buffer, which has been addressed with the Maryland Department of the Environment. No Habitat Protection Areas will be impacted at the Departure Lane project widening area. All associated clearing will be mitigated at a 1:1 ratio and will provide a forested buffer and expand the overall acreage of forest in the area. The entire project site is in an IDA and the 10% pollutant reduction calculations are being addressed. The applicant is required to remove 1.78 pounds of phosphorus and is only able to remove a portion of that leaving a deficit of .13 pounds of phosphorus. Three sand filters will be created on site to satisfy the Maryland Department of Environment's Stormwater Management Regulations. Gary Setzer, Chair of the Project Subcommittee, moved that the Commission approve the widening of U.S. 50 at the Bay Bridge Toll Plaza proposed by the Maryland Transportation Authority with the following conditions: (1) The Maryland Transportation Authority shall work with Commission Staff in finalizing the Planting Plan; (2) The Maryland Transportation Authority complete the required 10% Pollution Reduction Calculations. If the calculations demonstrate that the removal requirement can not be met on site, then the Maryland Transportation Authority shall return to the Project Subcommittee within 30 days with an acceptable off-site location; and (3) Any outstanding permits from the Maryland Department of the Environment shall be secured prior to construction. The motion was seconded by Jim McLean and carried unanimously.

**Anne Arundel County and City of Annapolis:** Dawnn McCleary presented for Vote the proposal by the State Highway Administration to erect stabilized construction entrances and an equipment staging area to the Weems Creek and College Creek bridges at MD 70/Rowe Boulevard. Mitigation of tree planting is required for tree clearing inside the 100-foot Buffer. All mitigation will be on site within the bridge improvements project area. Ms. McCleary iterated the requisite characteristics of this Conditional approval request. She said that MDE requires a 1:1 mitigation from the marsh creation mitigation project expansion to satisfy requirements for additional wetland impacts. Gary Setzer, Chair of Project Subcommittee, moved that the Commission approve as a Conditional Approval the Weems Creek and College Creek bridge construction staging areas proposed by the Maryland State Highway Administration. As required by Code of Maryland Regulations, this motion is based on the following factors:

1) The extent to which the project is in compliance with the requirements of the relevant chapters of this subtitle: The project is in conformance with the requirements set forth in COMAR 27.02.05. State Highway Administration analyzed a number of community, cultural and environmental resources and constraints during its selection of the proposed sites, including, steepness of slopes, significant trees, significant cultural resources, as well as land use and ownership. SHA has also selected appropriate construction techniques and proposed sufficient mitigation. Furthermore, the construction of the proposed stabilized construction entrances will result in temporary impacts, which will be restored and planted once construction is complete. Finally, other than the 100-foot buffer, no other habitat protection area will be impacted by the project. 2) The adequacy of any mitigation proposed to address the requirements of this subtitle that cannot be met by the project: The project will clear a total of 4,200 square feet of trees within the 100-foot buffer. Mitigation at a 3:1 ratio will result in 12,600 square feet of reforestation within the bridge improvement project area. Expanding a proposed marsh creation project in Weems Creek will satisfy mitigation for an additional 328 square feet of tidal wetland impacts. 3) The extent to which the project, including any mitigation measures, provides substantial public benefits to the overall Critical Area Program: The reconstruction of the



## Critical Area Commission Minutes

February 4, 2004

Weems Creek and College Creek bridges is necessary to maintain the safety of the traveling public. The selection of the construction staging areas by SHA at this time not only enhances safety during construction of the project, but also allows the project to move forward in a timely and more environmentally sensitive manner. The motion was seconded by Bill Rice and carried unanimously.

**Anne Arundel County:** Lisa Hoerger presented for concurrence with the Chairman's determination of Refinement, a map amendment to correct three mapping mistakes in central Anne Arundel County. The 32.42 acre property has a split designation of RCA and LDA. The County reclassified 2.04 acres of LDA to RCA, and .42 acres of RCA to LDA. The majority of the site outside the Critical Area is hardwood forest. The Critical Area portion is a mix of forest, mowed fields with steep slopes and wetlands abutting the shoreline of Deep Creek. Ms. Hoerger described the property use designations and cited the Criteria in implementing the regulations and also explained the designations according to the Code of Maryland Regulations. She further explained that the Anne Arundel County Program included additional mapping standards when the County performed its original mapping of the Critical Area. The County mapped wetlands and streams with environmentally sensitive features as RCA and included 300-foot buffer in these areas. The application of this County standard would have resulted in two areas of LDA being reclassified as RCA. A second drafting error of .42 acres of RCA involved changing this designation to LDA. After reviewing the Criteria and mapping of the subject property the three requests to amend the zoning map were approved on April 3, 2003 by the Hearing Officer. These changes meet the requirements of the County Zoning Code, Article 28, Section 11-102.3(c). The Commission staff believe that the site remapped LDA meets the mapping standards for LDA, and that the sites remapped RCA meet the mapping standards of RCA as set out in COMAR 27.01.02.05. Louise Lawrence, acting Chair, stated that the Program Subcommittee concurs with the Chairman's determination of Refinement. The Commission supported the Chairman's determination of Refinement.

Jim Noonan, Maryland Department of Planning, gave an overview presentation on Priority Places and Priority Funding Areas, their purpose and how they tie in with the overall State's and local governments' growth policies and implementation procedures. He said that in October of 2003 the Governor issued an executive order restating the importance of priority growth development. The executive order directs State infrastructure dollars to be spent in the areas with the highest priorities that have been established in the planning process. Efforts to streamline regulations and resources are to be directed to existing communities in an appropriate location to achieve the goals of the State planning policy and local comprehensive plans for development, economic growth and resource conservation and community revitalization in a pro-growth environment. Mr. Noonan said that all State agencies are working in a coordinated fashion to achieve these goals. He discussed the criteria for identifying Priority Funding Areas. The Commission found the presentation very informative and helpful. Mr. Noonan can be reached at 410-767-4570 or e-mail [Jnoonan@mdp.state.md.us](mailto:Jnoonan@mdp.state.md.us).

## OLD BUSINESS

In his Legislative update the Chairman said that he believes there has been considerable progress in advancing a bill to address several Critical Area concerns. The Bill is intended to take the law

## Critical Area Commission Minutes

February 4, 2004

back to where it was prior to the Lewis vs. Department of Natural Resources decision by the Court of Appeals. The Bill has been drafted and gone through a number of revisions. Chairman Madden said that he, the Executive Director, Ren Serey, Commission Counsel, Marianne Mason and a number of the Commission staff met with the Counsels for the Environmental Matters Committee and the respective Senate Committee and made some changes to the Bill. There are two main components of the changes: the first change was to remove the guest house issue from the Bill. MACCO was expressing some concerns about that issue which is a secondary issue to the main goals of this crucial piece of legislation. Secondly, a change was made to increase local fines up to \$10,000 from \$500 and to give the local governments the right to self-refer to the Commission for enforcement actions. The Chairman said that Senator Dyson and Delegate Frush have agreed to craft a bill on the Guest House issue separately. He said that the bills do not have a number yet nor have they been introduced. Additionally, he told the Commission that Senator Dyson and Delegate Frush intend to introduce legislation regarding a disclosure requirement that any real estate sold in the Critical Area will include a notification stating that "the property may be in the Critical Area and to call the local planning department to find out whether it is." Chairman Madden met with the Chesapeake Bay Commission, chaired by Senator Stoltzfus, which has reviewed some of these bills and has endorsed the \$10,000 fines.

Commission Counsel Marianne Mason stated that there is great cooperation from MAACO in working with the Commission staff on the draft and answering questions on the Bills. Chairman Madden, who will be testifying in favor of the bills, said that he would notify the Commission members when the hearings are held and invited them to join him.

### Legal Update

Commission Counsel Marianne Mason updated the Commission on legal matters.

**Wicomico County:** The Court of Special Appeals remanded the Lewis case back to the local zoning board and Ms. Mason reported that she has been discussing with the county attorney exactly what kind of proceeding they are going to have. A hearing is scheduled for February 26<sup>th</sup> and it will be an oral argument of counsel to convince the zoning board that they can do what they did before which was to deny the variance on the record that they have before them. She said that she has an intern going through the transcript to pull out important points to support the argument.

**Cecil County:** Chairman Madden authorized an Appeal last summer of the case in Cecil County wherein the court upheld the local zoning board in its granting of a pool in the 100-foot buffer located on a 10 acre parcel. The appeal noted that the zoning board had not decided the case under the 2002 amendment to the statute which requires consideration of the entire property in determining whether a variance applicant was suffering unwarranted hardship. The basis for the Commission's Appeal was that the board had not considered the 2002 law and in its decision there was nothing reflecting consideration of the entire property and where they allowed this pool to be put in the Buffer on 10-acre property. The Court agreed with the zoning board and didn't write an opinion affirming the zoning board. Ms. Mason stated that this might help the Commission in our testimony on the new legislation.



Critical Area Commission Minutes

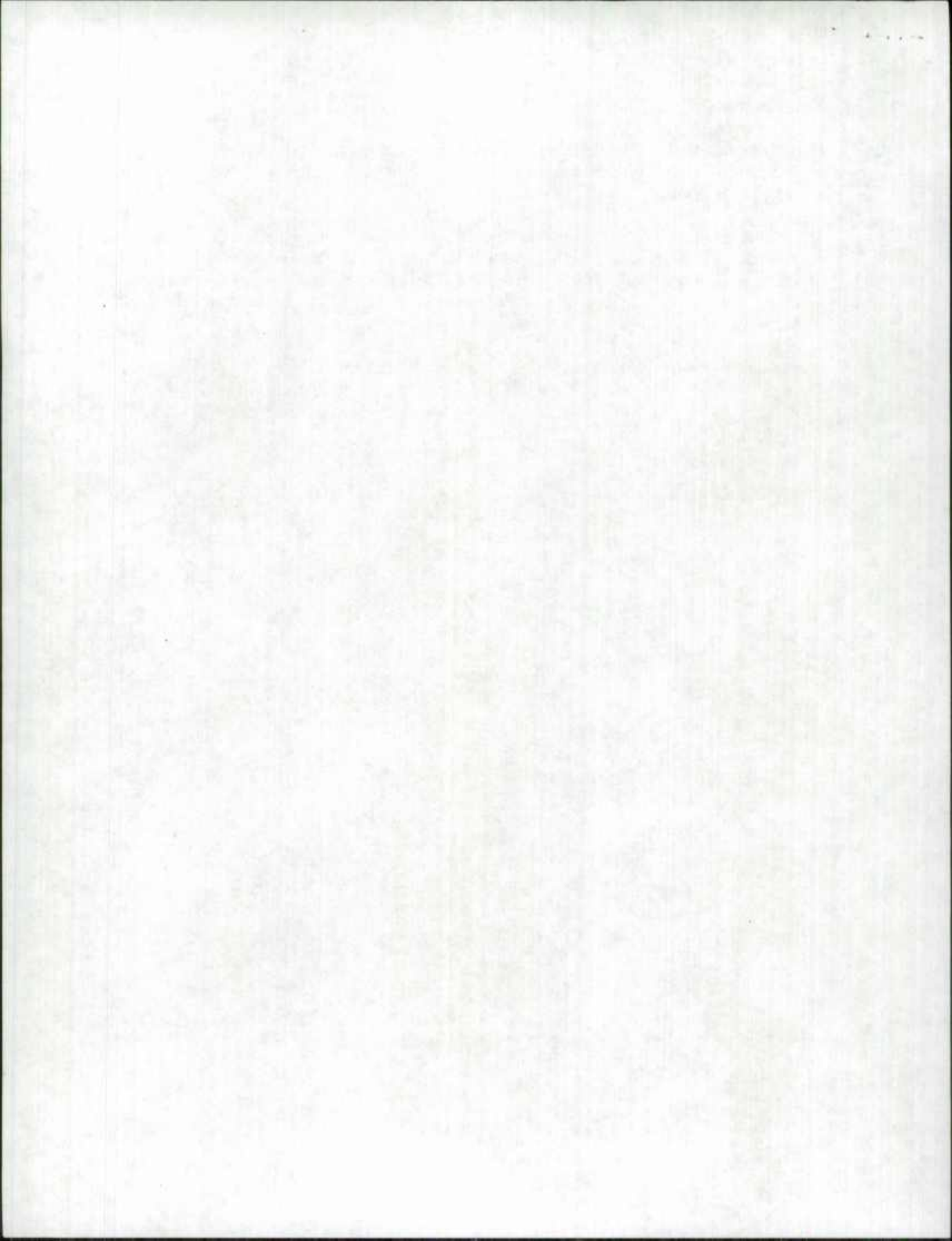
February 4, 2004

**New Business**

The Chairman invited the most recently appointed Commission members to join him for an orientation for their Senate confirmation before the Executive Nominations Committee which will take place soon.

Gary Setzer told the Commission about House Bill 495 that will establish reasonable fees to fund the wetlands and waterways program in MDE and is designed to take wetlands review and enforcement completely out of the general fund and will allow the restaffing of the program which has lost over 40% of its staff over the last decade. The Bill will be heard on February 26<sup>th</sup>.

Minutes submitted by: Peggy Campbell, Commission Coordinator





## *Critical Area Commission*

### STAFF REPORT

March 3, 2004

**APPLICANT:** Baltimore County Department of Recreation and Parks

**PROPOSAL:** Chesapeake Village Park: Buffer Disturbance

**COMMISSION ACTION:** Vote

**STAFF RECOMMENDATION:** Approval

**STAFF:** Wanda Diane Cole

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

### **DISCUSSION:**

As stated in the staff report for the 19% impervious surface Conditional Approval, Baltimore County acquired Chesapeake Village, a deteriorating Section 8 housing complex located in the Critical Area of Dark Head Creek, in the Chase area of Baltimore County near Martin State Airport. The County demolished these structures and paving in anticipation of renovating the site and providing water-associated facilities and a neighborhood park. During the demolition process, some debris was left behind in the Buffer portion of the site. This material must be removed in order to accommodate the proposed park development. Buffer disturbances will include minor excavation of embedded materials and subsequent grading to repair the roughened grade, provide controlled drainage and to set proper elevations for the pathways and proposed amenities outside the Buffer.

This site has both IDA and LDA designations and had previously been designated by the County as a Buffer Management Area, the County's equivalent to a Buffer Exemption area. This reduces the size of the Buffer area that must be maintained in natural vegetation. The County is requesting a Conditional Approval to allow grading in the Buffer. **The following responses are those of the Applicant.**

*B.(1) That there exist special features of a site or there are other special circumstances such that the literal enforcement of these regulations would prevent a project from being implemented.*

The remnants of the prior development of the property, the public ownership and use of the park, and the degraded conditions along the shoreline in the IDA are such that literal enforcement of the CBCA regulations would limit the Department of Recreation and Park's (R&P) ability to implement the proposed park programs and would limit our ability to respond to the CBCA goals.

R&P is required to comply with the Federal ADA regulations on the park property. The shoreline in the IDA is relatively steep along a majority of its frontage. R&P is proposing to replace the decayed bulkhead and boardwalk along this shoreline and would like to provide ADA accessible routes to this boardwalk wherever feasible. Because of the slope conditions, this requires some grading in the 100' Buffer of the IDA. Additionally, the shoreline is slumping in several areas where the slopes are excessive, and regrading of these areas is necessary to reduce the slope, and thereby, reduce sedimentation into the bay.

The majority of the demolition work has been completed, however some construction debris, paved walkways, and building and utility materials still remain on the surface and below grade throughout the park, including within the 100' Buffer. These materials pose a hazard to park users and maintenance staff. Additionally, no fine grading was performed following backfilling for removal of underground material (foundations, tanks, etc.), poor quality subsoil or imported, reconditioned waste soil was used to fill some of the resulting depressions, and little consideration was given to proper surface drainage. Most of this work will occur along the outermost limits of the Buffer. Approximately 9,300 sf of Buffer would be impacted by these minor grading efforts, about 13,800 sf of grading is expected to construct ADA compliant walkways connecting the main park path system to the boardwalk, and about 1,600 sf of grading is expected to address failing slope conditions in the Buffer.

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

The improvements will provide substantial water quality benefits, will provide public access to the bay's tributaries, and will provide environmental education opportunities.

The proposed improvements will dramatically reduce the amount of impervious surfaces in the park, and more particularly, from the Buffer, and will increase the forest cover, thereby reducing runoff volumes, pollutants, and sedimentation into the adjacent bay tributaries. Additionally, reconstruction of the deteriorated bulkhead and boardwalk will stabilize the shoreline, halting erosion of the shore and eliminating the associated sedimentation.

Buffer planting in the LDA and IDA will comply with the state "Buffer Exemption Area Policy," as well as the less stringent Baltimore County Buffer Management Plan. The state "Policy" requires a minimum 25' naturally vegetated buffer with 5 trees, 10 understory trees, 30 understory shrubs, and 40 herbaceous plants per 100 feet of Buffer, regardless of disturbance or impervious area, and provision of offsets for development in the Buffer.



The proposed plan includes 29,800 sf of Buffer in the IDA, planted in accordance with the "Policy," to include 60 trees, 119 understory trees, 358 shrubs, and 477 herbaceous plants. We also anticipate planting an additional 14,800 sf of IDA Buffer with small shrubs and native, ornamental grasses. The LDA Buffer, which is approximately 710 linear feet, would require 17,750 sf of Buffer planting under the State "Policy". This is a net gain of approximately 67,908 sf of woodland planting in the IDA and LDA Buffers; 25,158 sf over the amount required.

The park redevelopment project will increase the distance between the shoreline and the closest impervious improvements from a minimum of 50' in the IDA and 30' in the LDA under the previous developments, to more than 100' under the current proposal. No structures, other than the access walks and boat ramp, will be located in the 100' Buffer of the IDA or LDA. This setback is well in excess of the minimum 25' setback indicated in the state "Program."

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

Other than the requested relief, the park development project is in compliance with the CBCA program.

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

A literal enforcement of this act would prevent Baltimore County Dept of Recreation and Parks from providing ADA compliant access to several locations along the boardwalk. It would prevent the Department from addressing erosion problems associated with steep slope conditions, and it would jeopardize the proper functioning of the park and the safety of park users and staff by preventing the Department from completing demolition work, establishing proper drainage conditions, and establishing good vegetative cover.

***C.(2) A proposed process by which the program or project could be so conducted as to conform, insofar as possible, with the approved local Critical Area Program or, if the development is to occur on State-owned lands, with the criteria set forth in COMAR 27.02.05;***

The proposed grading in the 100' Buffer will be designed to comply insofar as possible with Baltimore County's Buffer Management Plan for Buffer Exemption Areas. That plan provides for minor grading in the 100' Buffer, with mitigation to offset water quality impacts.

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

The proposed improvements for Chesapeake Village Park will result in a net improvement to the quality of the adjacent waterways and enhancement of the quality of life for county citizens. It replaces a problematic dense housing complex with a verdant park, provides passive and active recreation opportunities for citizens, provides needed access to the Chesapeake Bay by both boaters and pedestrians, provides wildlife habitat, and enhances the water quality of the Bay.

*The Commission shall approve, deny, or request modifications to the request for conditional approval based on the following factors:*

*E.(1) The extent to which the project or program is in compliance with the requirements of the relevant chapters of this subtitle;*

*E.(2) The adequacy of any mitigation measures proposed to address the requirements of this subtitle that cannot be met by the project or program; and*

*E.(3) The extent to which the project or program, including any mitigation measures, provides substantial public benefits to the overall Chesapeake Bay Critical Area Program.*



## *Critical Area Commission*

### STAFF REPORT

March 3, 2004

**APPLICANT:** Baltimore County Department of Recreation and Parks

**PROPOSAL:** Chesapeake Village Park: 19% Impervious Surface Areas

**COMMISSION ACTION:** Vote

**STAFF RECOMMENDATION:** Approval

**STAFF:** Wanda Diane Cole

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

### DISCUSSION:

Baltimore County acquired Chesapeake Village, a deteriorating housing complex located in the Critical Area of Dark Head Creek, in the Chase area of Baltimore County near Martin State Airport. At the time of purchase, 11 acres of the property were fully developed with Section 8 apartment buildings, parking lots and walkways, and 5 acres contained dilapidated commercial and single-family residential properties. The County demolished these structures and paving in anticipation of renovating the site and providing water-associated facilities and a neighborhood park. Public access to the water was a priority for the Department of Recreation and Parks in designing this park, as there is almost no public access to the water in this area.

This property has both IDA and LDA designations. It is also a Buffer Management Area, the County's equivalent to a Buffer Exemption area. The LDA is limited to 15% impervious surface area. The LDA portion of this site originally contained 19% in impervious areas; the proposed impervious surface for the LDA portion of this site is 19%. The park improvements will also be 19%. These improvements are primarily in the form of parking for boat trailers and vehicles, and paved pathways. This design is a reduction in the County's original proposal of 33% impervious areas in the LDA.

To qualify for a Conditional Approval, the applicant must show that the project meets certain standards. **The following responses are those of the Applicant.**

***B.(1) That there exist special features of a site or there are other special circumstances such that the literal enforcement of these regulations would prevent a project or program from being implemented.***

Literal enforcement of the 15% impervious area maximum in the LDA would severely impact the boat ramp and other park functions and limit their implementation. The boat ramp is an extremely important component of this project. There are no other public ramps that serve the Middle River. The closest public ramps are at Cox's Point Park and Rocky Point Park, which are approximately 3 and 5 miles away and provide access to Back River and Hawk Cove. Additionally, this particular location in the park (in the LDA, along Dark Head Creek) was selected based on the previous existence of a private dock and small ramp in this approximate area. The community also suggested that this area would have fewer conflicts with jet skis, which they indicated are more prevalent in Martin Lagoon than in Dark Head Creek.

R&P evaluated placing the boating facilities along the IDA waterfront, which does not have impervious area limitations, but determined that the LDA area was far more beneficial from both a design and environmental perspective. Location of the ramp in the LDA, rather than the IDA, gives more opportunity for treatment of runoff from paved areas. The LDA Buffer currently consists of relatively flat lawn with scattered trees. R&P proposes planting the portion of the 100' Buffer in the LDA area located between the parking area and the water, (about 330 linear feet) with native material in accordance with the Critical Area Commission's 'Buffer Exemption Area Policy,' to function as a natural woodland buffer. This will provide about 33,000 sf of new Buffer plantings. An additional area of reforestation is provided along the adjacent commercial property line, with the shoreline area between forested sections left in its current state to permit waterfront views.

The IDA, in contrast, has many sections of steep slope within the 100' Buffer, which impact its water quality functions.

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

The park development will provide substantial benefits to the Chesapeake Bay Critical Area Program. The improvements will provide substantial water quality benefits, will provide public access to the bay's tributaries, and will provide environmental education opportunities.

The park site previously was heavily developed with apartment complexes, parking lots, commercial facilities, private homes, and driveways. All of these items have been removed, resulting in a dramatic decrease in impervious surfaces, even considering the proposed parking areas. The replacement of many of the impervious surfaces with permeable material, such as lawn and planting, will provide many water quality benefits. It will decrease runoff volumes and velocities and reduce sedimentation and pollutants that are carried by runoff into adjacent watercourses. The impervious surfaces in the County-owned portion of the site will be reduced from approximately 5.8 acres (1 acre of which was in the LDA) to about 3.1



acres, which is a 47% decrease in proposed impervious surfaces. Finally, as previously noted, a vegetated buffer will be established in the 100' Buffer area in portions of the LDA and IDA.

The CBCA program encourages provision of access to the bay to encourage responsible interaction between the people and their natural environments and engender a stewardship ethic in visitors. This proposal opens up previously privately owned boardwalk areas and piers along the shoreline to the general public for fishing, relaxing and other leisurely activities and provides a much-needed boat access for water-based recreation. It also provides educational opportunities. The park proposal anticipates inclusion of educational signage along the boardwalk to inform visitors about the history and ecology of the area. The adjacent out-parcel has been purchased by "Chesapeake Memories," a water-based educational foundation, and they have expressed enthusiasm about the park's design and the opportunity it provides to bring classes into the park to study the shoreline, and the ecology, wildlife and other aspects of the bay's tributaries.

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

Other than the requested relief, the park development project is in compliance with the CBCA program. Open areas will be established with grasses, trees, or shrubs. The proposed plan includes 0.9 acres of afforestation in the 100' Buffer of the LDA. In addition, approximately 0.2 acres of land outside the Buffer, between the parking lot and the adjacent residential parcel, will be revegetated as natural woodland, and the large area beside the proposed trailer parking lot will be converted from single lot residential use to natural areas with a mixture of overstory and understory trees and shrubs, and some pockets of lawn for picnicking, providing additional areas of improved vegetation. The total proposed area in forest and developed woodland in the Buffer would therefore increase from 0% to almost 14% of the LDA, with another 1.7 acres outside the Buffer (30% of the site) converted to forest, or lawn and trees. Stormwater quantity and quality for the LDA will comply with Baltimore County, State-mandated stormwater regulations.

The proposed boat ramp facility will comply with both the State and County water-dependent facility requirements. All parking will be outside the 100-foot Buffer.

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

A literal enforcement of this act would prevent Baltimore County Department of Recreation and Parks from constructing a functional boat ramp and associated parking under DNR's recommended guidelines and providing public access to the Bay, which is an important aspect of the CBCA program.

***C.(2) A proposed process by which the project could be so conducted as to conform, insofar as possible, with the approved local Critical Area Program;***

The proposed improvements will be designed insofar as possible to comply with Baltimore County's CBCA Local Protection Program. The proposed impervious area in the LDA will not exceed the amount of impervious that was present prior to demolition. Additionally, impervious paths in the LDA will be minimized to provide access between the trailer parking areas and to picnicking facilities. A water quality feature will be provided between the trailer parking areas and waterway.

***C.(3) Measures proposed to mitigate any adverse effects of the project on an approved local Critical Area program.***

The improvements will provide substantial water quality benefit, through the dramatic decrease in impervious surfaces, even considering the proposed parking areas. Many of the impervious surfaces will be replaced with permeable material, resulting in a 47% decrease in proposed impervious surfaces. Finally, as previously noted, a vegetated buffer will be established in the 100' Buffer area in portions of the LDA and IDA.

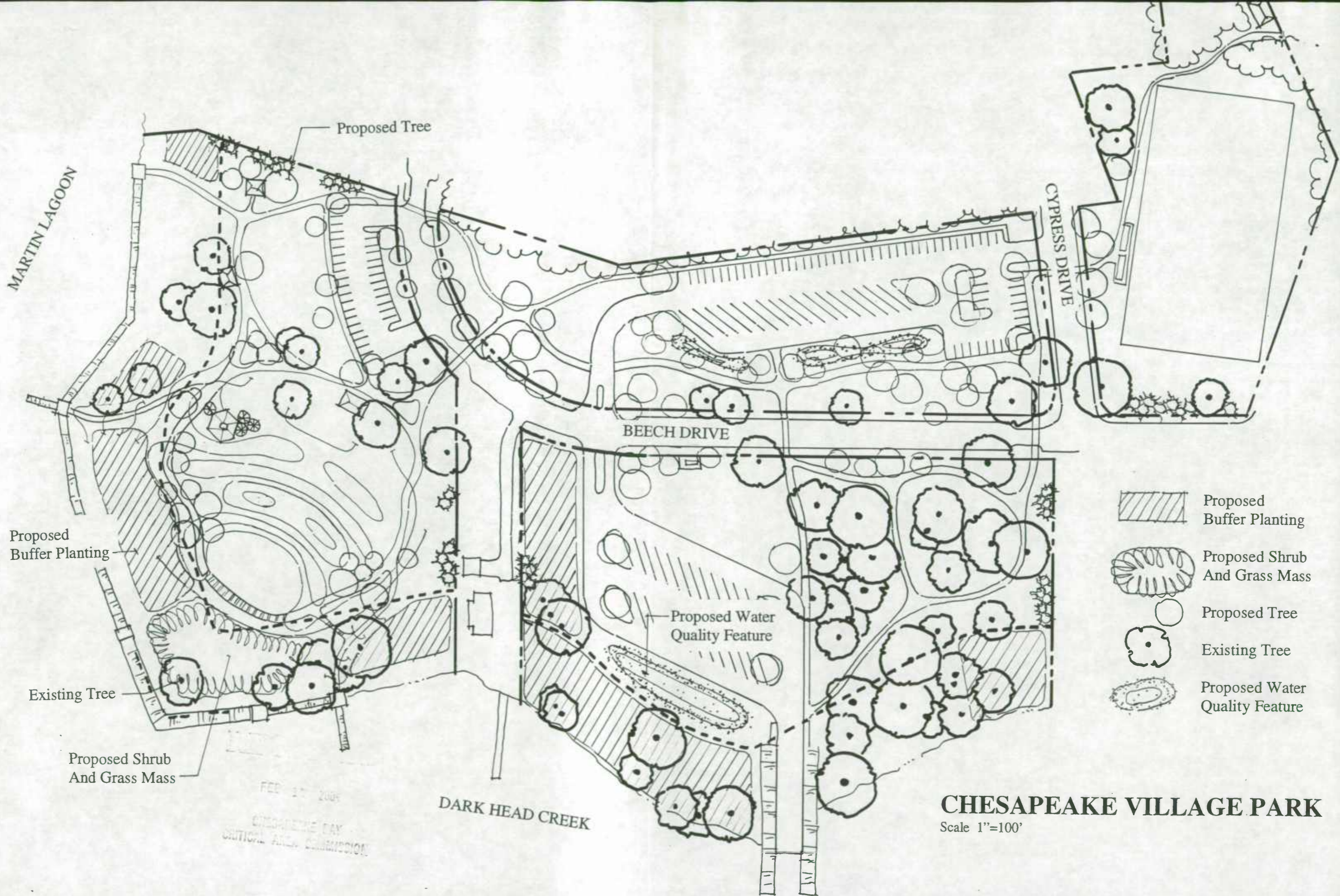
*The Commission shall approve, deny, or request modifications to the request for conditional approval based on the following factors:*

***E.(1) The extent to which the project or program is in compliance with the requirements of the relevant chapters of this subtitle;***

***E.(2) The adequacy of any mitigation measures proposed to address the requirements of this subtitle that cannot be met by the project or program; and***

***E.(3) The extent to which the project or program, including any mitigation measures, provides substantial public benefits to the overall Chesapeake Bay Critical Area Program.***





Proposed Tree

MARTIN LAGOON

CYPRESS DRIVE

BEECH DRIVE

Proposed Buffer Planting

Proposed Water Quality Feature

Existing Tree

Proposed Buffer Planting

Proposed Shrub And Grass Mass

Proposed Tree

Existing Tree

Proposed Water Quality Feature

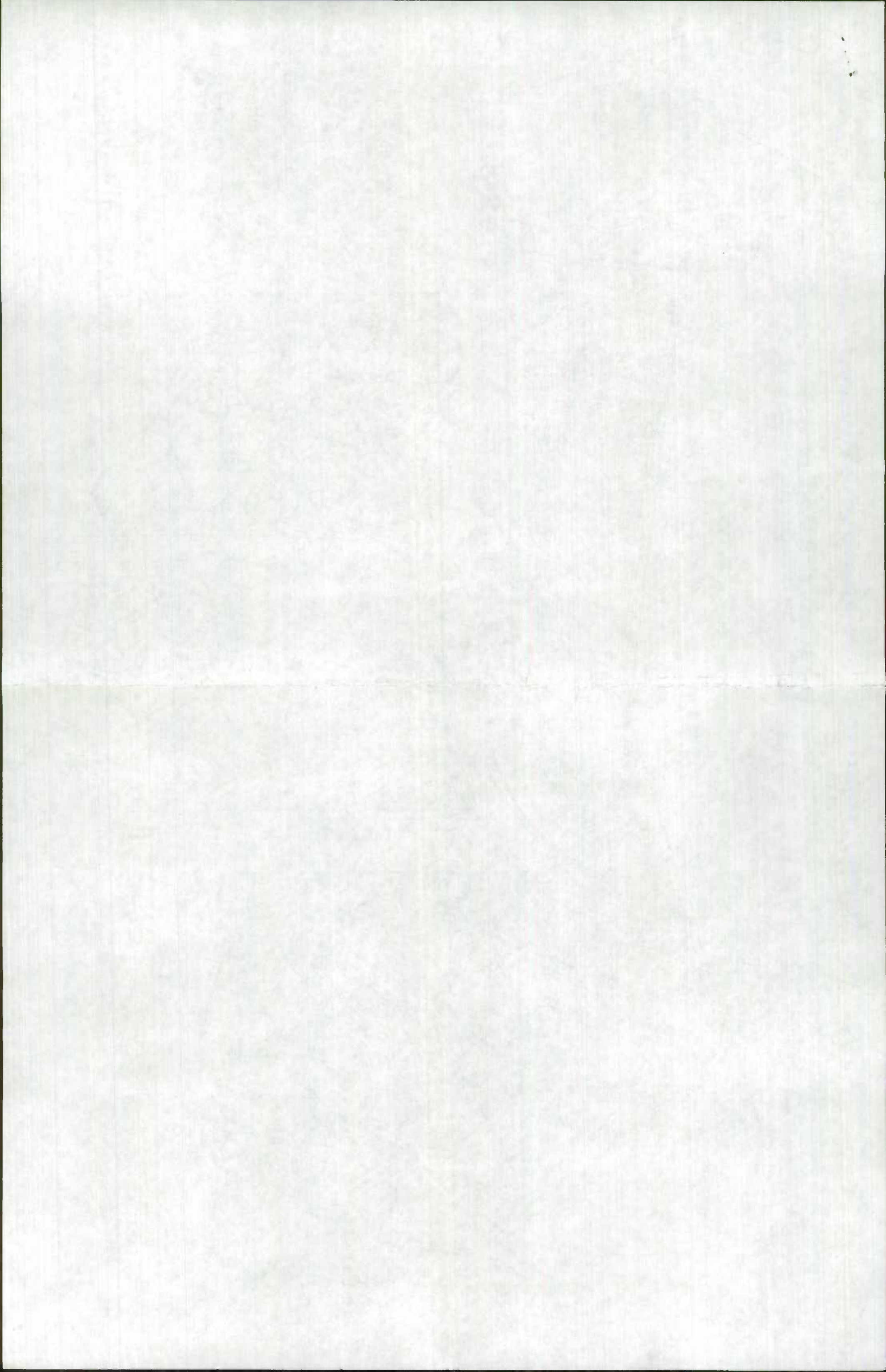
Proposed Shrub And Grass Mass

DARK HEAD CREEK

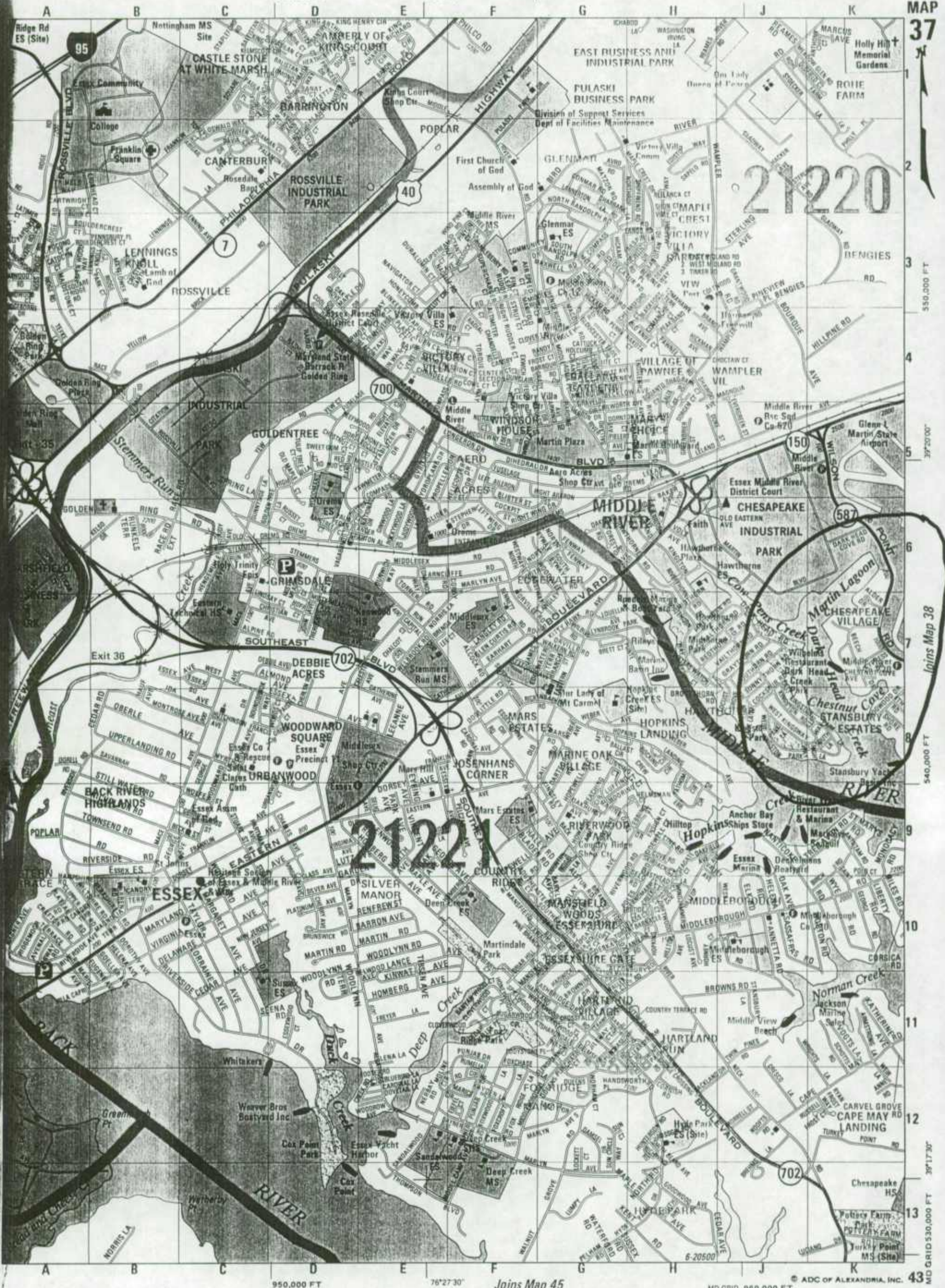
**CHESAPEAKE VILLAGE PARK**  
Scale 1"=100'

FEB 17 2005  
CITY OF THE DAY  
CRITICAL AREA COMMISSION



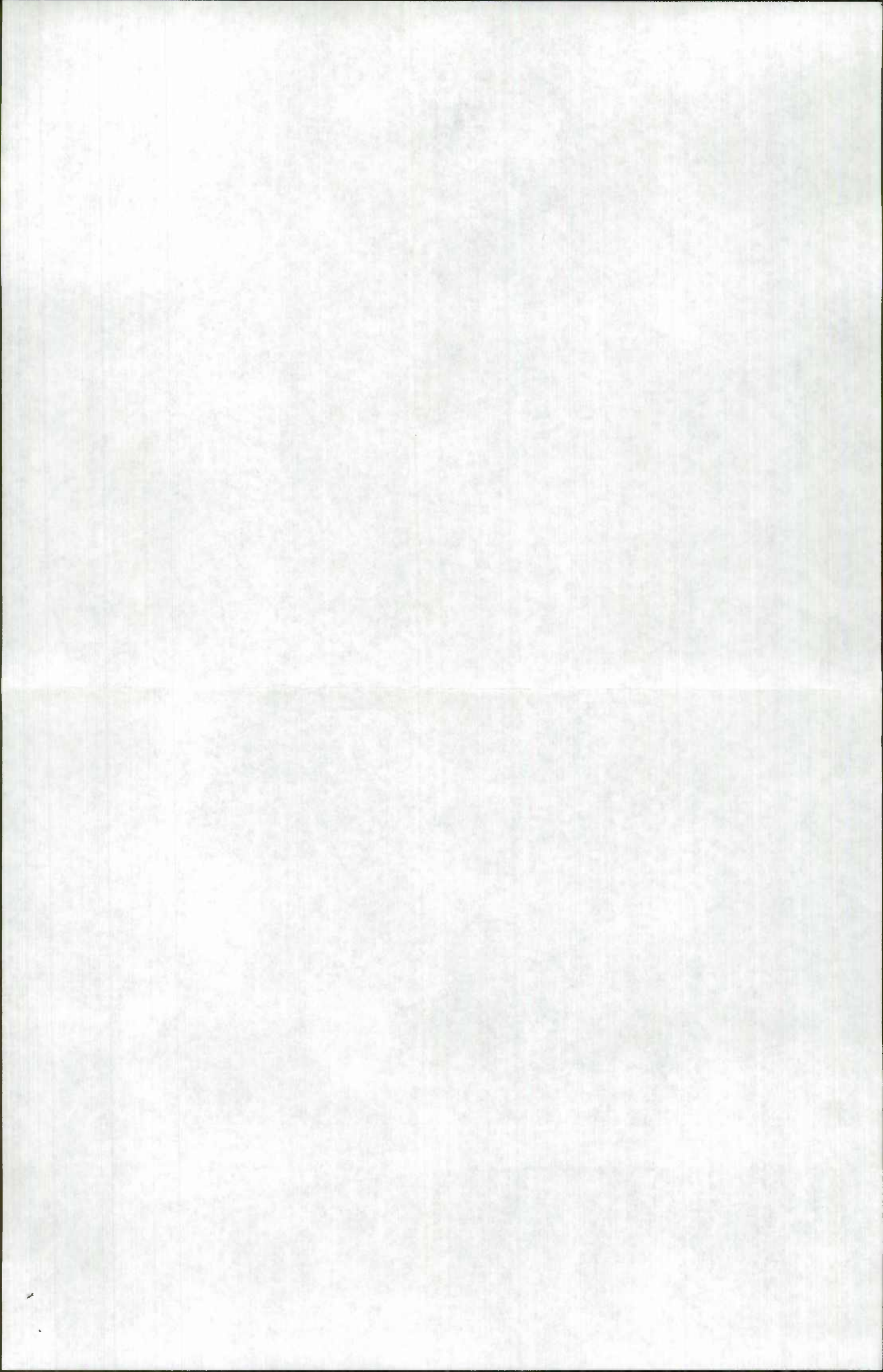






Chesapeake Village Park







## *Critical Area Commission*



### **STAFF REPORT**

**March 3, 2004**

**APPLICANT:** Town of Snow Hill

**PROPOSAL:** Placement of Storage Shed at Julia Purnell Museum

**COMMISSION ACTION:** Vote

**STAFF RECOMMENDATION:** Conditional Approval

**STAFF:** LeeAnne Chandler

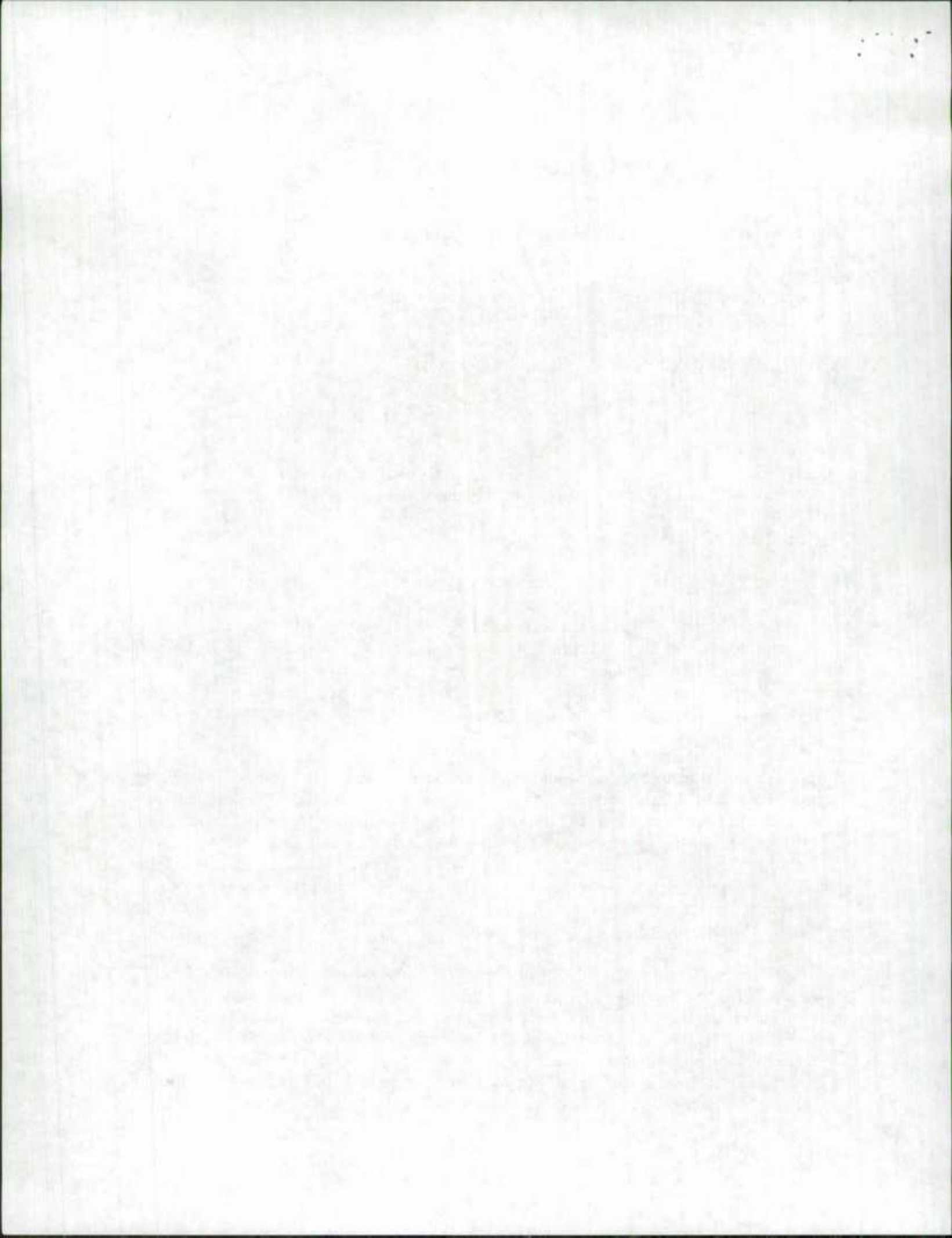
**APPLICABLE LAW/  
REGULATIONS:** COMAR 27.02.06 Conditional Approval of State or Local Agency Programs in the Critical Area

### **DISCUSSION:**

The Town of Snow Hill is requesting conditional approval to exceed the impervious surface limits at a local museum in order to place a storage shed on the property. The Julia Purnell Museum is owned and operated by the Town and is located entirely within a Resource Conservation Area of the Town's Critical Area. The property is 7,156 square feet (0.16 acres) in size and is permitted a maximum impervious coverage of 2,289 square feet. According to impervious surface measurements provided, the existing impervious coverage totals 4,070 square feet. Any additional structures on the property would require a conditional approval.

The 60-year old Museum is located in what was originally a church built in 1893. The mission of the Museum is to acquire, conserve and display artifacts to interpret the history of Worcester County, thereby promoting the cultural heritage of the region. The Museum's collection largely comes from citizen donations and after so many years, additional space is needed. Impervious surfaces on the property currently include the museum structure, parking areas, and sidewalks. The 120 square foot shed is needed to store exhibit fabrication supplies and materials used in the museum's education programs. These supplies and materials are currently occupying needed artifact storage and conservation space. Funding for the shed has been provided by a grant from the Maryland Historical Trust.

As indicated above, despite property's small size, its Critical Area designation is RCA. The Museum is located on one of the Town's thoroughfares and is surrounded by residential uses in historical buildings. It is adjacent to Critical Area lands designated IDA, LDA and RCA. No Habitat Protection Areas exist on or near the site. Since the proposal is on locally-owned lands and exceeds the permitted impervious coverage, this project requires a Conditional Approval by the Commission as found in the Code of Maryland Regulations at 27.02.06 of the Critical Area Commission's regulations for State and local government projects.





### Conditional Approval Process

In order to qualify for consideration by the Commission for conditional approval, the proposing agency must show that the project or program has the following characteristics: **(The following responses highlighted in bold text were provided by the applicant, the Town of Snow Hill):**

*(1) That there exist special features of a site or there are other special circumstances such that the literal enforcement of these regulations would prevent a project or program from being implemented;*

**The Purnell Museum exists in a historical building on a small parcel owned by the Town. The existing impervious cover already exceeds the amount permitted. The impervious surface limits prevent any other improvements on the property. It is unusual for a parcel of 7,156 square feet to be designated RCA, especially considering that the building has been on the property since the 1800's. Any new impervious structure would require a conditional approval.**

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

**Interpreting the history of Worcester County is the Museum's mission and the County's heritage is intimately connected to the Chesapeake Bay and its tributaries. Preserving the material heritage of the cultures that have inhabited Worcester County is a priority of the Purnell Museum and the collection includes many items directly related to the Pocomoke River. These items include items related to maritime heritage such as Snow Hill's history as a port and ship building center, as well as local native American artifacts. Sessions of the Museum's after-school program often teach children about the importance of the Chesapeake Bay to the region. Students learn about the Pocomoke River's role in the County's history, how the river and bay provided the Native Americans with food, transportation, clothing and medicine. By learning more about the impact natural resources have had on Worcester County's past and present, children and adults are far more likely to recognize the importance of conservation. The Purnell Museum benefits the Chesapeake Bay Critical Area Program by both educating the public about the importance of these resources and by preserving the artifacts that reflect these themes so that future generations may also learn from them.**

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

**The project is otherwise consistent with the Town's Critical Area Program. No impacts to any Habitat Protection Areas are proposed. No trees will need to be cut for the placement of the shed and the Town will mitigate to satisfy the 15% afforestation requirement.**

*C. The conditional approval request shall, at a minimum, contain the following:*

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

**The Museum is within an RCA and is situated on a very small parcel of Town-owned land (7,156 square feet). The footprint of the building, sidewalk, ADA compliant entrance ramp, and six off-street parking spaces consist of over 4,000 square feet of impervious coverage, already exceeding the 2,289 square feet permitted. With the addition of a 10' by 12' pre-constructed utility shed, impervious surfaces would exceed the limitation by approximately 1,900 square feet. Enforcement of the impervious surface limitations would prevent any further improvements on the property. Other than moving to a different location, the museum has no feasible alternative.**

*(2) A proposed process by which the program or project could be so conducted as to conform, insofar as possible, with the approved local Critical Area program or, if the development is to occur on State-owned lands, with the criteria set forth in COMAR 27.02.05;*

**The museum has attempted to comply with the impervious surface limits insofar as possible but the parcel size, parking and ADA requirements limit alternatives. Recent additions to the conservation lab and artifact storage area were made as a second story to the existing building because there was no room available for expansion at ground level. Also, the Museum has approached the last two owners of the adjacent parcel to purchase some of their land but have not been positively received. The project is otherwise in conformance with the Town Program.**

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

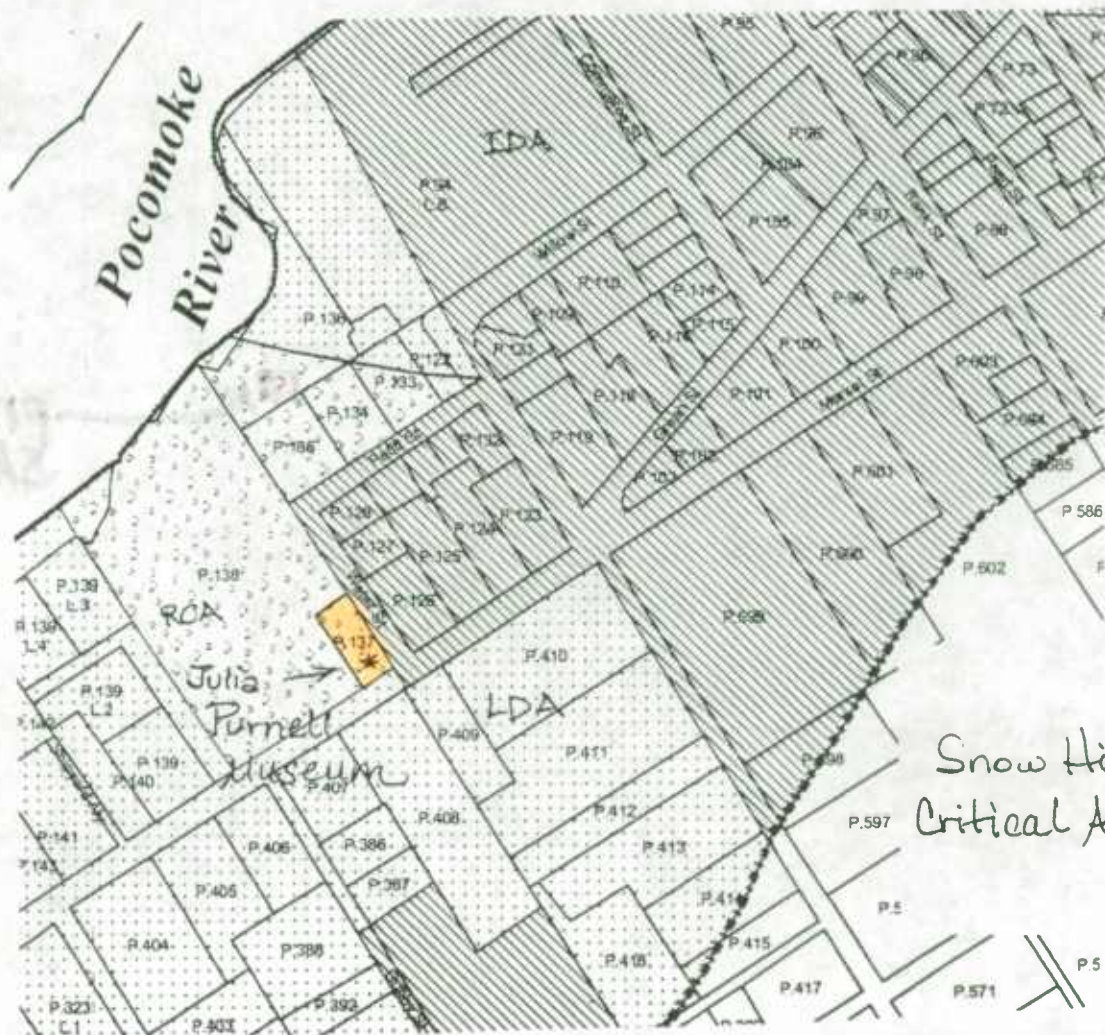
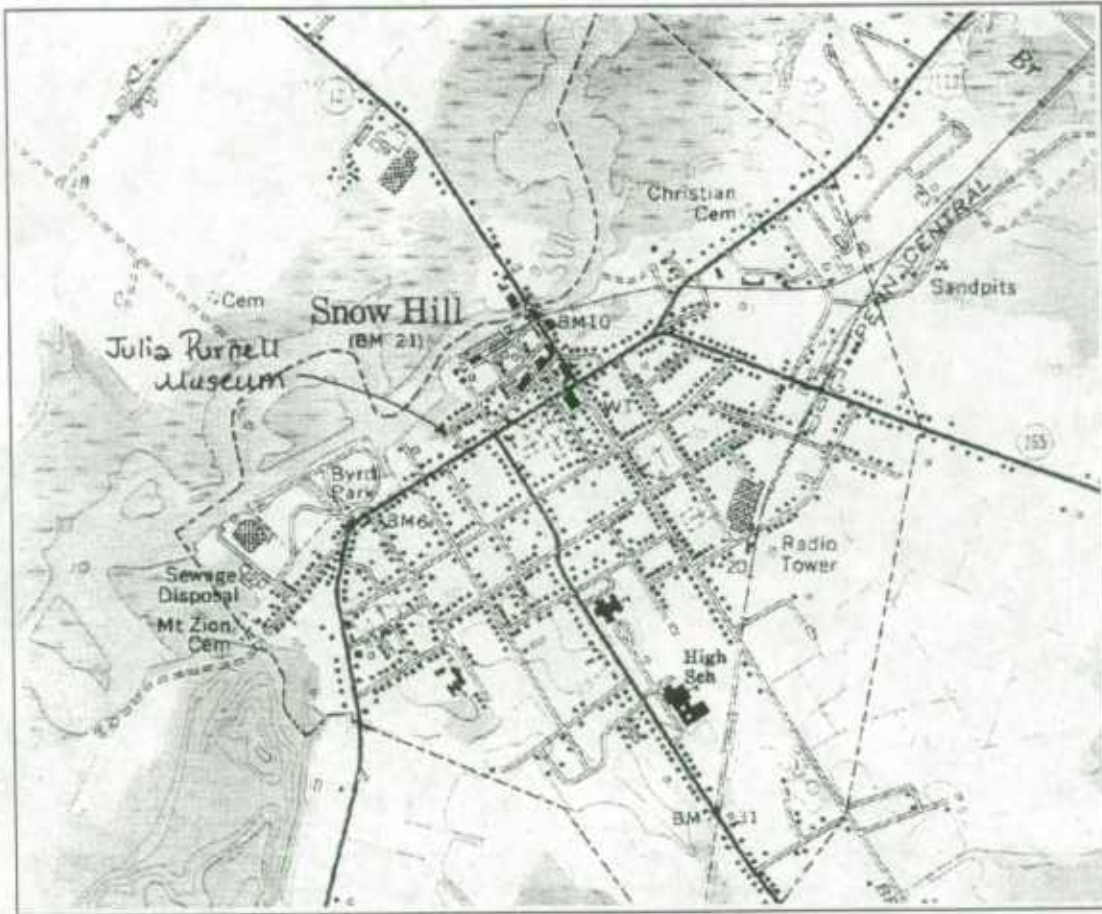
**The Town proposes to plant trees and/or shrubs at a 2:1 mitigation ratio to offset the additional impervious cover created by the proposed shed.**

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

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



# Julia Purnell Museum



Snow Hill  
Critical Area Map









*Critical Area Commission*

**STAFF REPORT**

**March 3, 2004**

**APPLICANT:** State Highway Administration

**PROPOSAL:** US 50 Bikeway

**JURISDICTION:** Dorchester County

**COMMISSION ACTION:** Vote

**STAFF RECOMMENDATION:** Approval

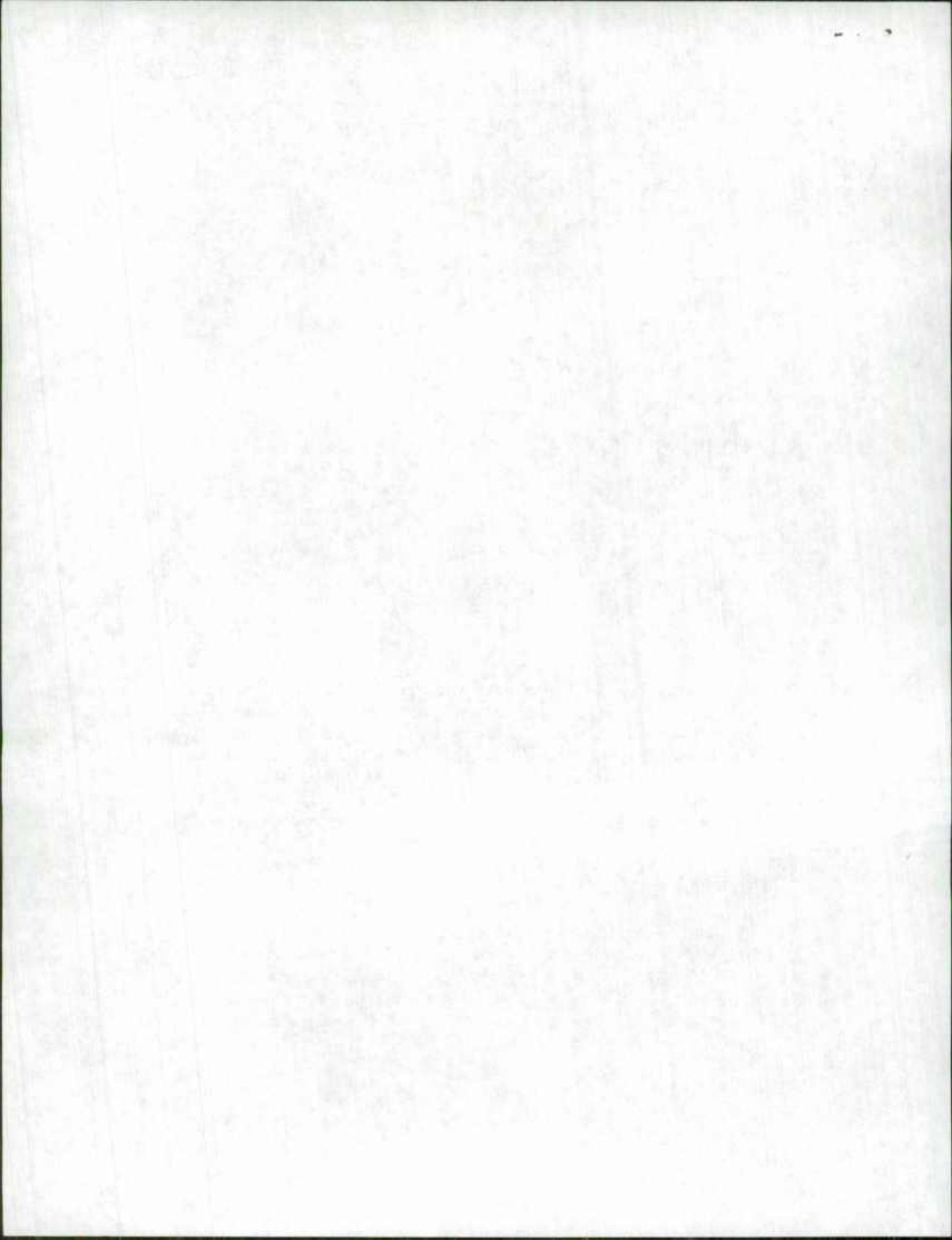
**STAFF:** Wanda Diane Cole

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

**DISCUSSION:**

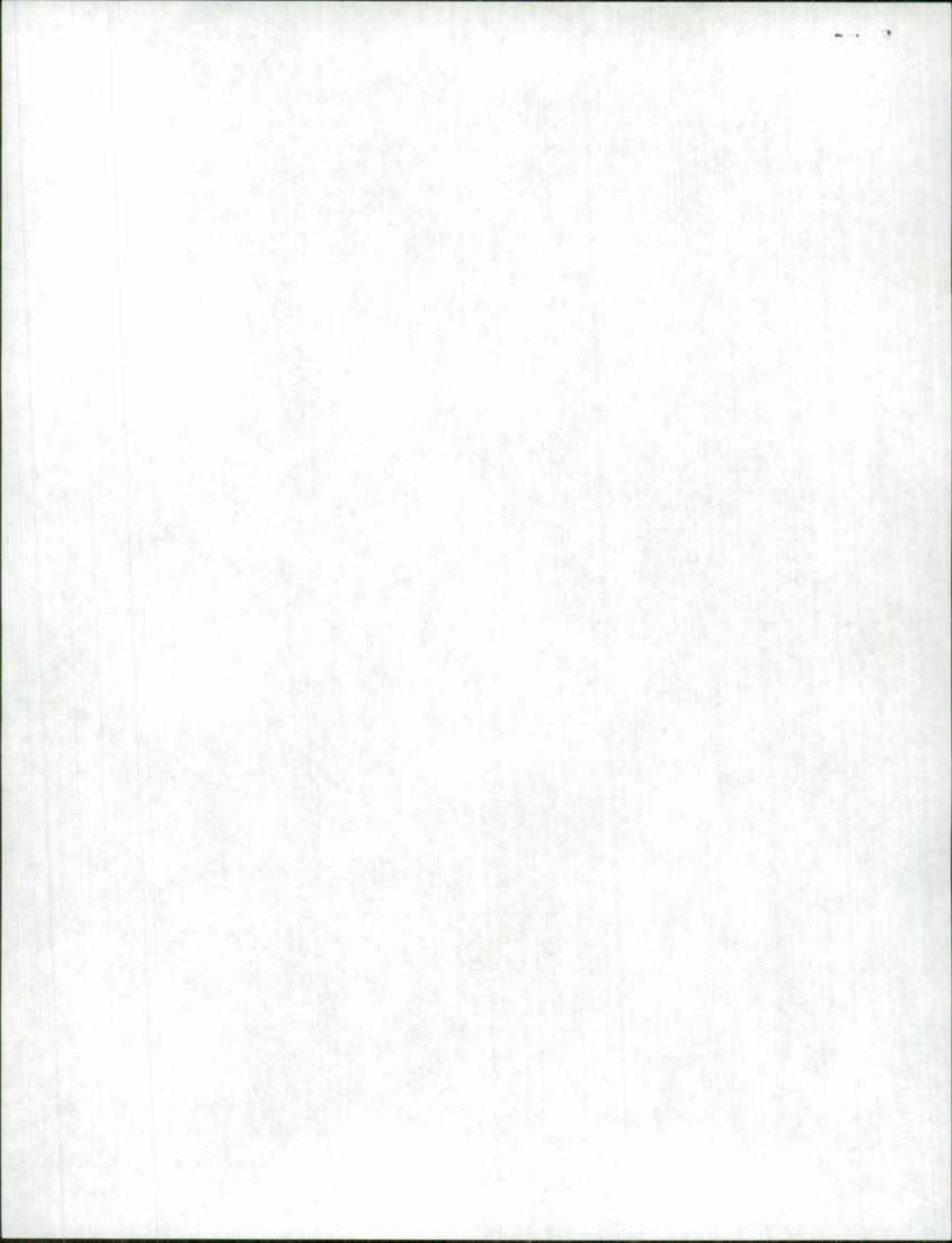
State Highway Administration (SHA) proposes to widen the shoulders of US 50 on the westbound side between Woods Road and Bucktown Road in the Cambridge area of Dorchester County in order to provide a 1.25 mile long bikeway that parallels US 50. The bikeway will be 10 feet wide, and some areas will utilize the existing paved shoulder and other areas the highway shoulder will be widened. A portion of the project is located within the Critical Area but does not include impacts to the 100-foot Buffer. No clearing of forest vegetation will occur. A total of 0.94 acres of disturbance will occur, with 0.41 acres being new impervious surface areas. There will be a small area of temporary disturbance to nontidal wetlands, which will be addressed by Maryland Department of the Environment (MDE). No other Habitat Protection Areas will be affected.

The SHA right of way is considered an area of intense development, so the 10% Rule must be met in the form of a stormwater best management practice. There is no room within the right of way to provide a stormwater facility. SHA is proposing to meet this project's 10% removal requirement with the use of an off-site practice. This off-site facility is not located within the immediate watershed for Shoal Creek, however, Shoal Creek drains to the Choptank watershed, as does the proposed stormwater facility.



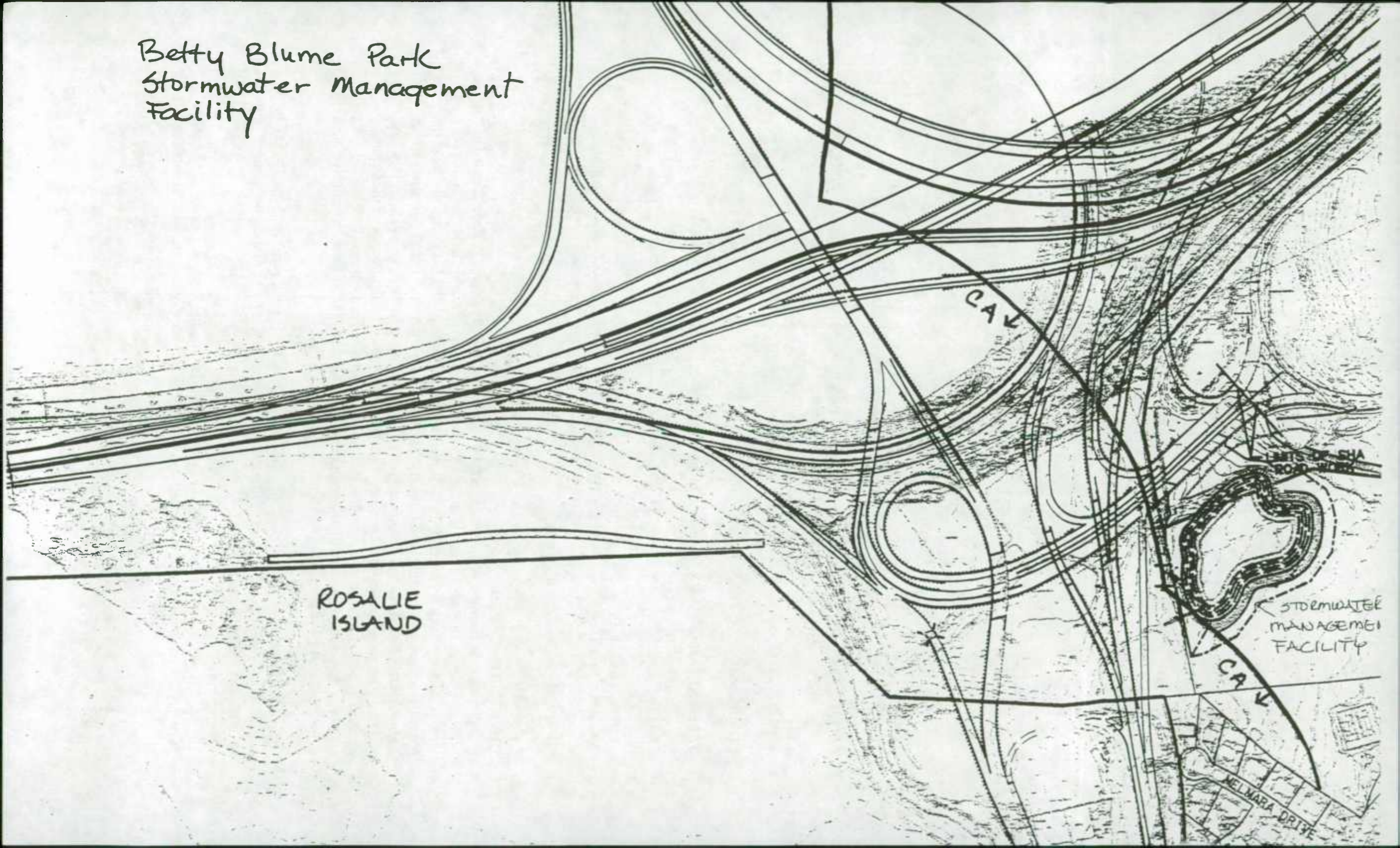


The proposed facility is a stormwater management pond approved by the Commission at its April 2, 2003 meeting as a Conditional Approval. It is partially located in the 100-foot Critical Area Buffer of Choptank River in Caroline County off the MD 404 Denton bypass. The pond was required by MDE as stormwater mitigation for the US 50 highway improvement project located between the Choptank River bridge and Bucktown Road. That project area is outside the Critical Area. The pond was required to treat 3.3 acres for MDE water quality requirements. The constructed facility will treat 17.9 acres of impervious surface. Information regarding the pond's pollutant removal capability and the pollutant removal requirement for the bikeway was not available at the time this staff report was being prepared. It will be available at the meeting.





Betty Blume Park  
Stormwater Management  
Facility





## *Critical Area Commission*

### **STAFF REPORT**

**March 3, 2004**

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

**PROPOSAL:** Betty Blume Park Stormwater Management Facility for National Harbor

**JURISDICTION:** Prince George's County

**COMMISSION ACTION:** Vote

**STAFF RECOMMENDATION:** Pending project subcommittee discussion

**STAFF:** Claudia Jones

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

#### **DISCUSSION:**

The proposed stormwater management pond to be located in Betty Blume Park is intended to provide water quality for an approximately 135 acre drainage area that includes the National Harbor Beltway Parcel (59 acres), an existing residential neighborhood known as North Potomac View (29 acres), and existing park property that is primarily woods (47 acres). The pond site is approximately four acres and is bordered on the north and west by the proposed SHA interchange and to the south and east by park property. Most of the pond is located outside of the Critical Area. The pond is designed to meet the 10% pollutant removal requirements for National Harbor, a 59-acre parcel that will be approximately 80% impervious surfaces when fully developed, as well as treat additional areas.

The site is currently wooded. The disturbance in the Critical Area will result in about 12,000 square feet of clearing and grading. Mitigation for tree clearing is being proposed elsewhere in the park at a ratio of 1:1.

The site has a County designation of RCO (Resource Conservation Area) however; the site of the development proposal is relatively small and is bordered by highway interchanges on two sides.



## *Critical Area Commission*

### **STAFF REPORT**

**March 3, 2004**

**APPLICANT:** Chestertown

**PROPOSAL:** Refinement – Annexation/BEA Designation

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

**STAFF RECOMMENDATION:** Approval with conditions

**STAFF:** Claudia Jones

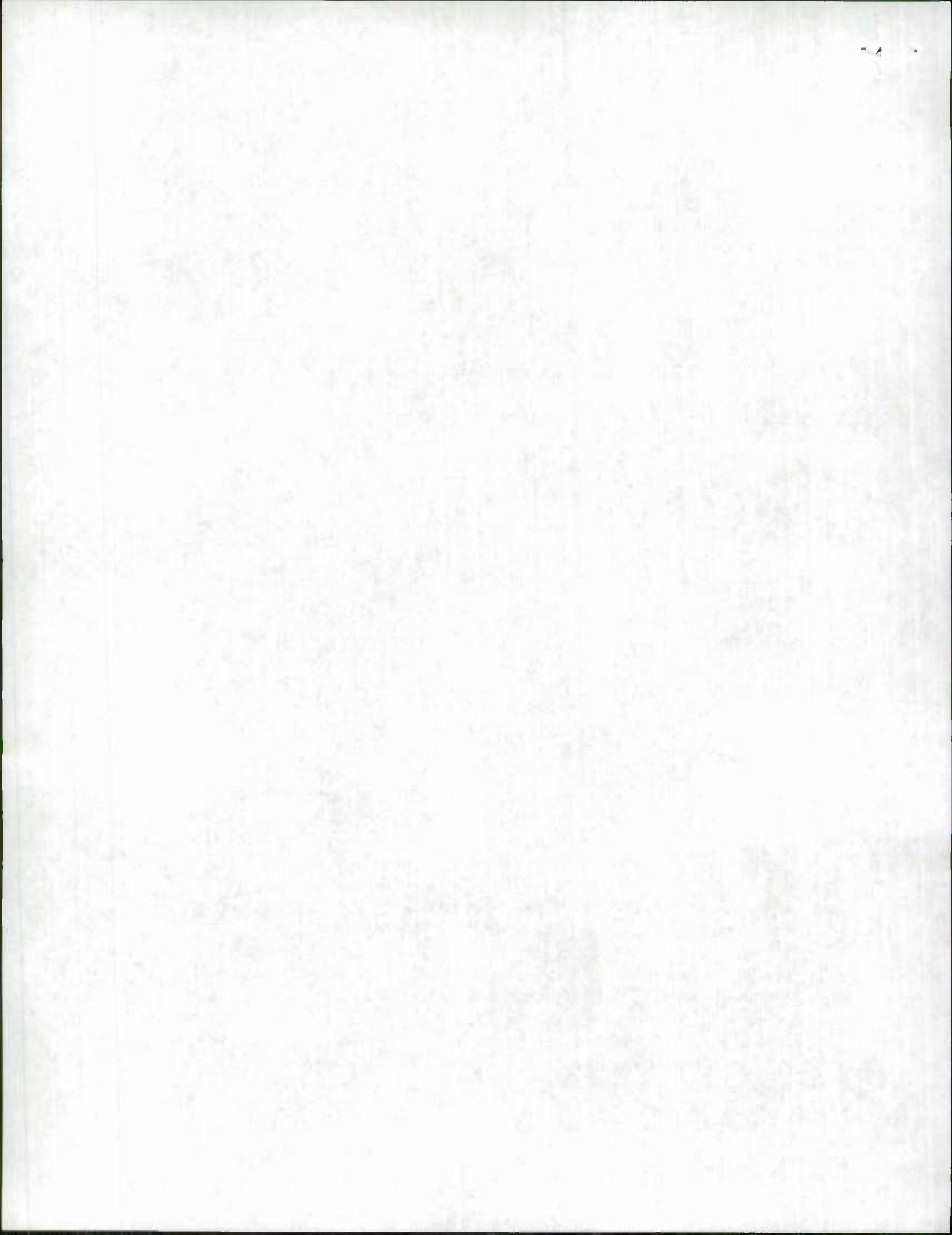
**APPLICABLE LAW/  
REGULATIONS:** NR Article 8-1809 (h) – (p)  
COMAR 27.01.09.01 C (8)

### **DISCUSSION:**

The Town of Chestertown requests that the Critical Area Commission approve an annexation known as 2002 Chestertown Annexation Resolution No. 1, which was introduced on December 16, 2002, passed on February 3, 2003 and became effective on March 27, 2003. The Town inadvertently neglected to send this annexation to the Critical Area Commission. It was discovered when Commission staff was reviewing a project proposal for one of the annexed properties.

During the comprehensive review for Kent County, twenty-four properties immediately south of the corporate limits of Chestertown were designated as Modified Buffer Areas or Buffer Exemption Areas (BEAs) by the Critical Area Commission. The seven northernmost properties were originally designated as IDAs. The remainder of the properties were originally designated LDA. During the Kent County comprehensive review two of the parcels, P74 and P72 on Tax Map 44, were changed from LDA to IDA based on a mapping mistake. These properties were used for fuel storage at the time of original Critical Area mapping in the County.

As it turned out, Chestertown had already annexed ten (10) of these properties into the Town's corporate limits effective March 27, 2003, before the Critical Area Commission approved the BEA designation and the correction of the mapping mistake on April 2, 2003. This current action by the Critical Area Commission is to approve the annexation and to rectify the mix-up of dates by confirming the BEA designations and the correction of the mapping mistake under the correct jurisdiction, Chestertown.





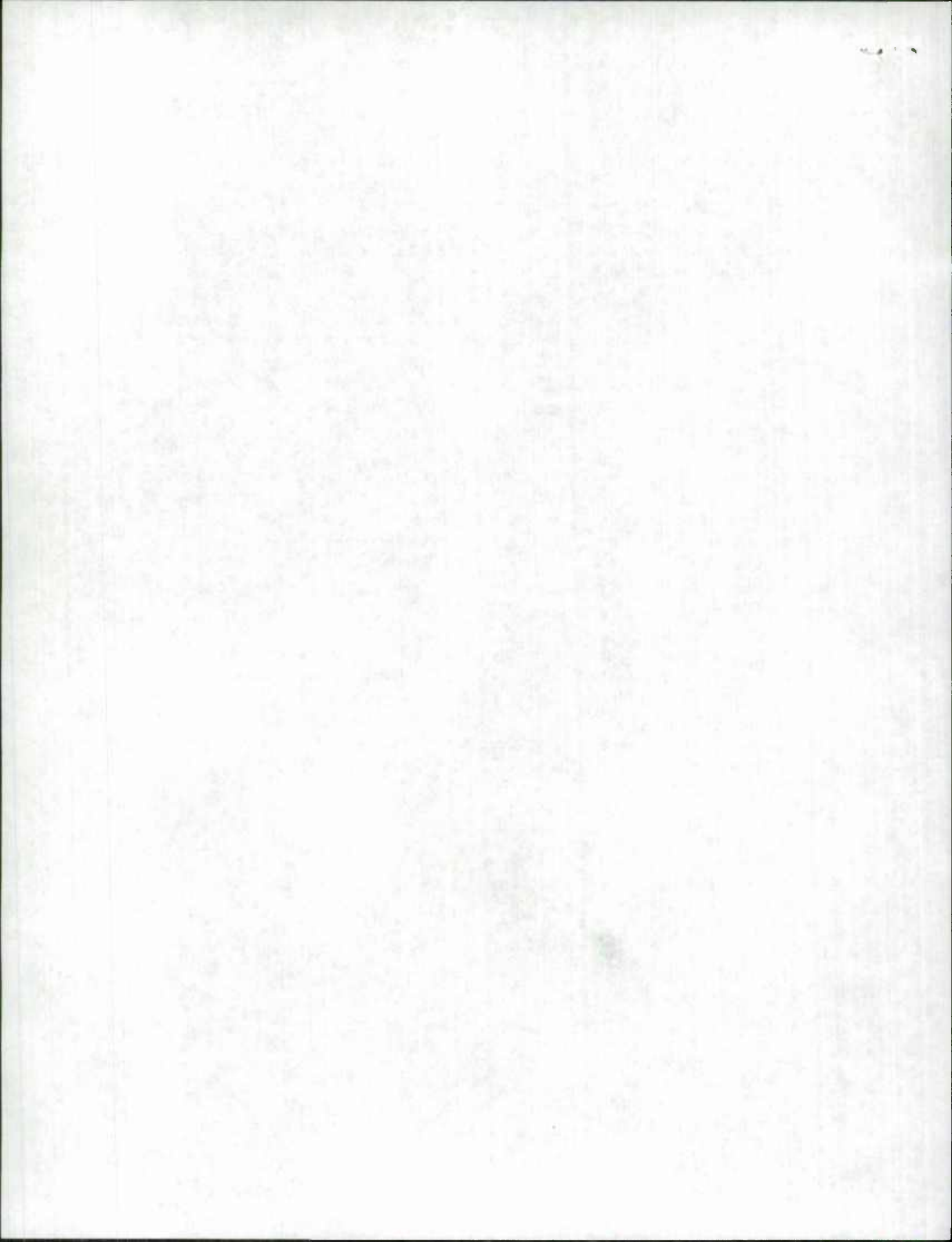
The property being annexed is zoned Commercial Marine District along the waterfront and Multiple Family Residential on non-waterfront properties that are currently established as residential. The existing land use of the properties ranges from active industrial, institutional, inactive industrial, residential and undeveloped and has been such since December 1, 1985. These properties have minimal natural vegetation and substantial areas of impervious surfaces located within the Buffer. The residential lots have numerous accessory structures and the houses are generally located less than 50 feet from the shoreline. Much of the shoreline has been altered through the installation of bulkheads and other structural erosion control measures.

A change in jurisdictions should not normally make much of a difference in the enforcement of Critical Area regulations, however, at the time of Kent County's Comprehensive Review, the County also updated their standards for development in Buffer Exemption Areas (Modified Buffer Areas under Kent County's Code). Chestertown does not currently have standards in their ordinance for the development of properties with BEA designation. This was due to the small number of properties with this designation at the time of Program approval.

One of the properties that was annexed is currently being reviewed for a development proposal of a townhouse/marina complex. Staff believes that this project can be reviewed under the County's Modified Buffer Areas language as was specified in the Town's Annexation Resolution, but that the Town needs to adopt its own BEA language for future projects.

Staff recommends concurrence with the Chairman's decision that this matter can be handled as a refinement with the following two conditions:

1. That the Town provide new language providing standards for development and redevelopment in BEAs and come back to the Commission for review and approval of that language within 90 days; and
2. That no project approvals will be granted by the Town on any BEA properties until the new language is incorporated into the Town's Critical Area Ordinance.





## *Critical Area Commission*

### STAFF REPORT

March 3, 2004

**APPLICANT:** City of Annapolis

**PROPOSAL:** Critical Area Program Code Amendments

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

**STAFF RECOMMENDATION:** Approval

**STAFF:** Dawnn McCleary

**APPLICABLE LAW/  
REGULATIONS:** Annotated Code of Maryland, Section 8-1809(h) - (p)

### **DISCUSSION:**

On October 13, 2003, the City Council of Annapolis approved Ordinance O-26-03. This ordinance amended multiple sections of the City of Annapolis Municipal Code, including those implementing the City's Critical Area Program. The changes to the Code do not substantively affect the City's Critical Area Program. A new City Department of Neighborhood and Environmental Programs (DNEP) has been created and the ordinance outlines the new Department's authority and responsibilities. The DNEP must review administrative and Board of Appeals variances to the Critical Area Program. The Department of Planning and Zoning will still process the applications; the new Department will merely be consulted for their review comments. The DNEP has also been given authority to enforce Chapter 21.67 of the City Code, "Critical Area Overlay," in addition to the Department of Planning and Zoning.

As set forth in Ordinance O-26-03, the following sections of the City's Critical Area Ordinance have been amended:

#### **Section 21.67.030 "Enforcement"**

This section has been amended so that the Director of Planning and Zoning Director must now have concurrence from the Director of Neighborhood and Environmental Programs, rather than the Director of Public Works, to issue a zoning certificate (a.k.a. use permit) for a land use in the Critical Area overlay that meets all the requirements of Chapter 21.67.

Authority to enforce Chapter 21.67 has now been specifically granted to the Directors of Planning and Zoning and Neighborhood & Environmental Programs.

**Section 21.67.050 "Definitions"**

In the Definitions Section, the definitions for "Critical Area" and "nontidal wetlands" were clarified, and several definitions that were mistakenly omitted from a previous version of the ordinance have been replaced.

**Section 21.67.060 "Development Requirements Generally"**

In Section 21.67.060(F)(2) regarding "Subdivision Access," the Director of Public Works will be involved in determining whether road standards may be modified to lessen environmental impacts to ensure that safety will not be significantly affected. Prior to adoption of O-26-03, the Director of Public Works did not need to be consulted.

**Section 21.67.065 "Buffer Exemption Areas"**

In this section, the process for the review of projects in Buffer Exemption Areas was modified to reflect that the review of projects in a BEA is not specifically limited to a review by the Department of Planning and Zoning.

**Section 21.67.070 "Development Requirements - Intensely Developed Areas"**

Development requirements in Intensely Developed Areas were clarified, and responsibilities for determining requirements for the cutting and clearing of trees were transferred from the Department of Planning and Zoning to the DNEP. Some references to other sections of the City's Code were clarified.

**Section 21.67.110 "Habitat Protection"**

A new purpose statement was added to Section 21.67.110(D). The language states that an applicant must consult with the listed entities in preparing their plant and wildlife habitat statement "for the purpose of assuring compliance with all applicable laws, rules and regulations."

**Section 21.67.160 "Administrative Variances"**

Procedures for administrative variances were amended to clarify that the Critical Area Commission will be notified twice when the City of Annapolis receives an administrative variance application. First, prior to staff action, and again, within ten days after action has been taken.

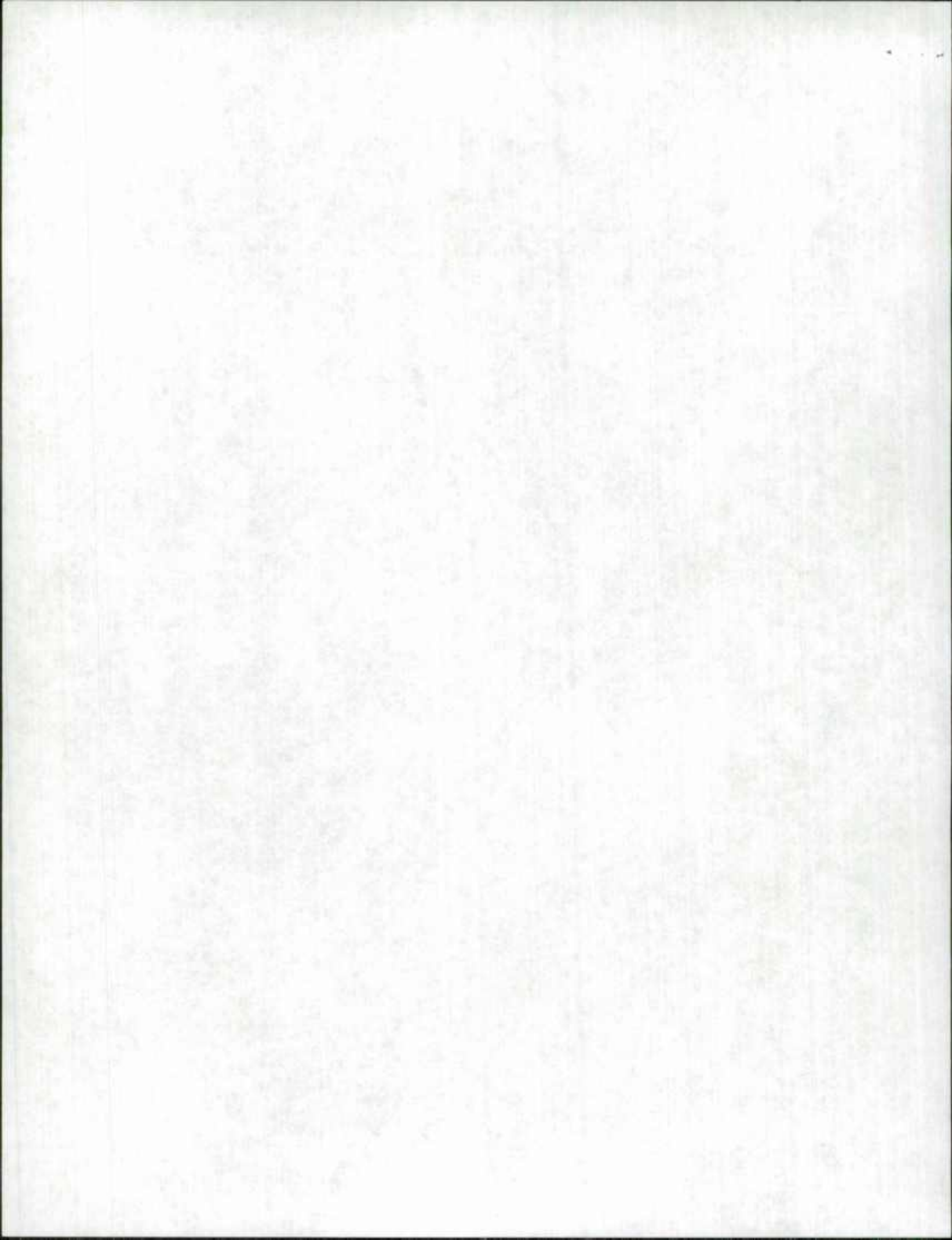


City of Annapolis Code Amendments

March 3, 2004

Page 3

A new paragraph was added as Section 21.67.160(B)(10). This paragraph has added the requirements for and process by which the Director of the Department of Neighborhood and Environmental Programs will review and comment upon administrative variance applications.







## TOWN OF EASTON

P. O. Box 520

Easton, Maryland 21601

March 1, 2004

Mr. Ren Serey, Executive Director  
Chesapeake Bay Critical Area Commission  
1804 West Street, Suite 100  
Annapolis, Maryland 21401

Dear Mr. Serey:

RE: Update on Critical Area Violations in Easton

As a condition of the Critical Area Commission's approval of the Ratcliffe Farm Subdivision Growth Allocation, I was to inform the Commission at its meeting of March 4, 2004 of the progress being made regarding illegal clearing that had occurred in the buffer elsewhere on the property. To date, the following has occurred:

- Owner(s) of the lots where the clearing occurred have been fined for violation of the Town's Critical Area Program
- All property owners in the subdivision have been informed via letter that no building permits can be issued until an approved Buffer Management Plan is created for the lots in the Ratcliffe Subdivision
- After meeting with Critical Area staff, Bill Stagg of Lane Engineering in Easton will complete and submit to staff Buffer Management Plans for each lot which has not been issued a building permit.

Per our recent conversation, I understand this letter will relive me of having to appear in person before the Critical Area Commission. We have taken an aggressive stance in correcting the violations that have occurred and believe we are working toward a solution that will be acceptable to the Commission. As always, we appreciate your assistance with the Town of Easton's Critical Area Program. Please contact me if you have any questions or require additional information.

Sincerely,

Tom Hamilton  
Town Planner

