

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
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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 Park: Conditional Approval – Buffer Disturbance | Wanda Cole |
| 1:15 p.m. – 1:25 p.m. | VOTE: Baltimore County: Chesapeake Village Park: Conditional Approval – Impervious Surface | Wanda Cole |
| 1:25 p.m. – 1:35 p.m. | VOTE: Town of Snow Hill: Julia Purnell Museum Conditional Approval (Somerset County) <i>Worcester Co.</i> | LeeAnne Chandler |
| 1:35 p.m. – 1:45 p.m. | VOTE: State Highway Administration: US 50 Bikeway (Dorchester County) | Wanda Cole |
| 1:45 p.m. – 1:55 p.m. | VOTE: Maryland National Capital Park and Planning Commission: Betty Blume Park – Stormwater Management Facility (Prince George's County) | Claudia Jones |
| PROGRAMS | | |
| 1:55 p.m. – 2:10 p.m. | Refinement: Town of Chestertown: Annexation and Buffer Exemption Area Designation (Kent County) | Claudia Jones |
| 2:10 p.m. – 2:20 p.m. | Refinement: City of Annapolis: Critical Area Program Code Changes (Anne Arundel County) | Dawnn McCleary |
| OLD BUSINESS | | |
| 2:20 p.m. – 2:30 p.m. | Town of Easton: Ratcliffe Farm Subdivision Buffer Management Plan (Talbot County) | Lisa Hoerger |
| 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
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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

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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.

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

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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 26th 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.

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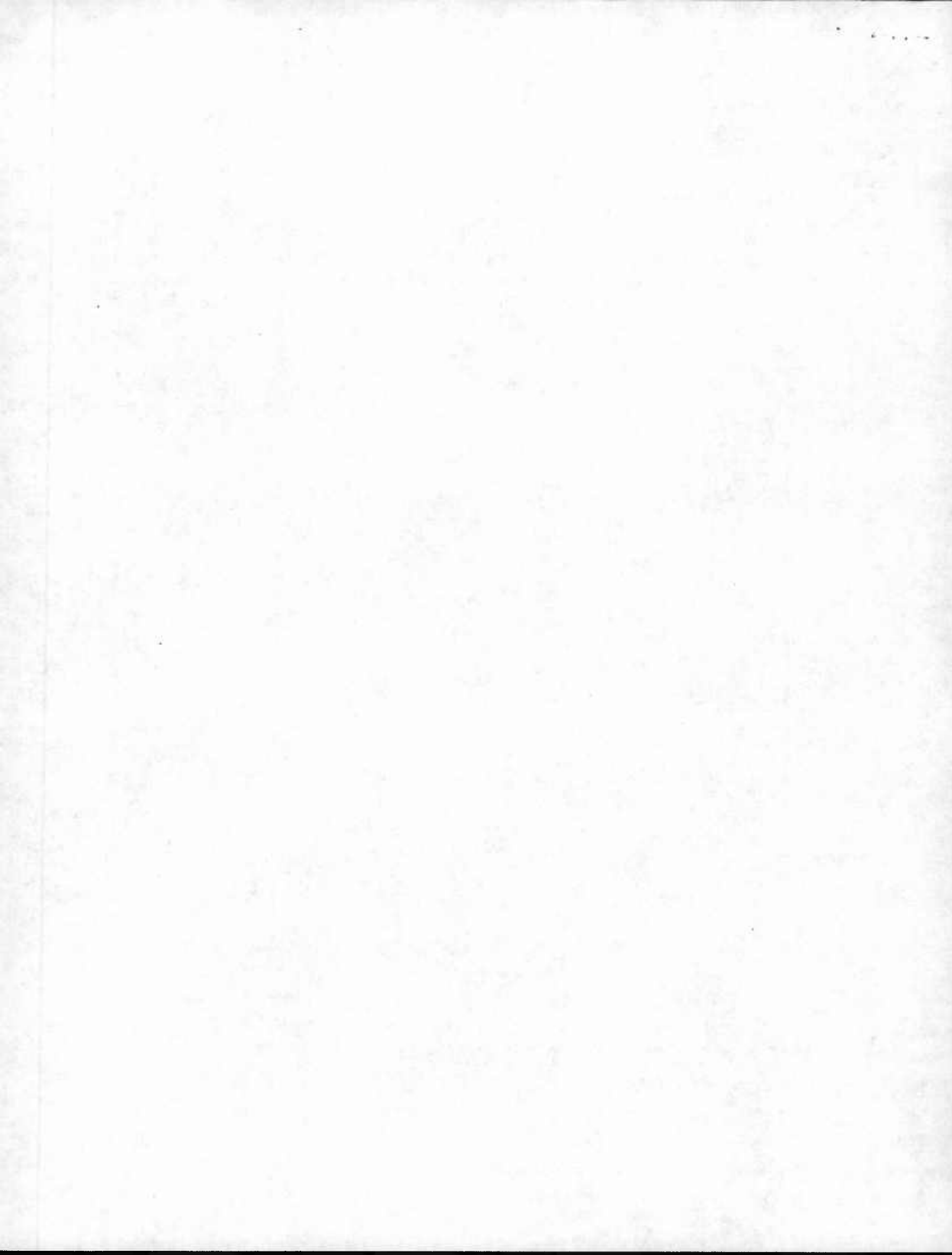
February 4, 2004

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 26th.

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.

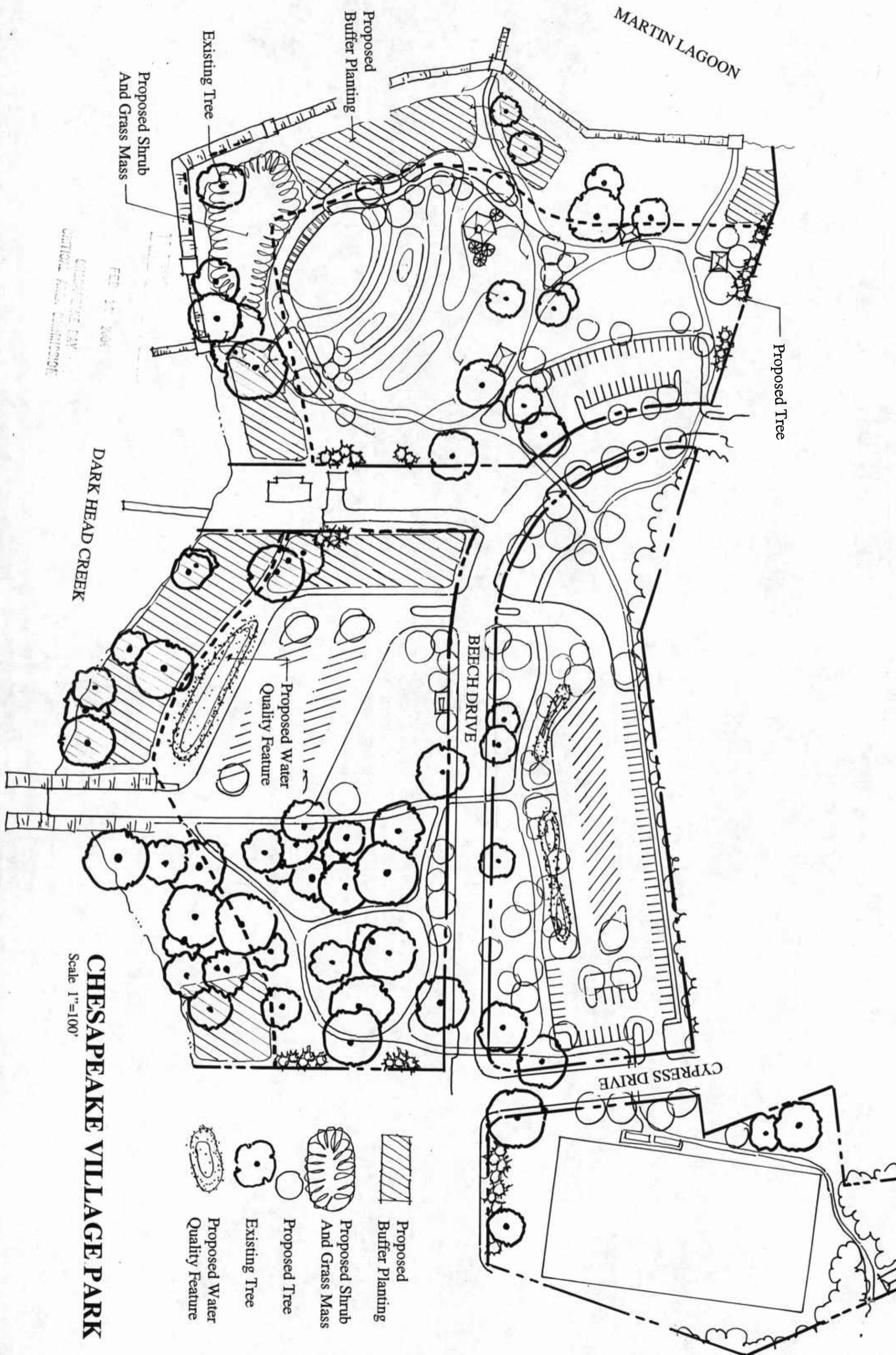
The improvements will provide substantial water quality benefit, through the dramatic decrease in impervious surfaces, even considering the proposed parking areas. Many of the impervious surfaces will be replaced with permeable material, resulting in a 47% decrease in proposed impervious surfaces. Finally, 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

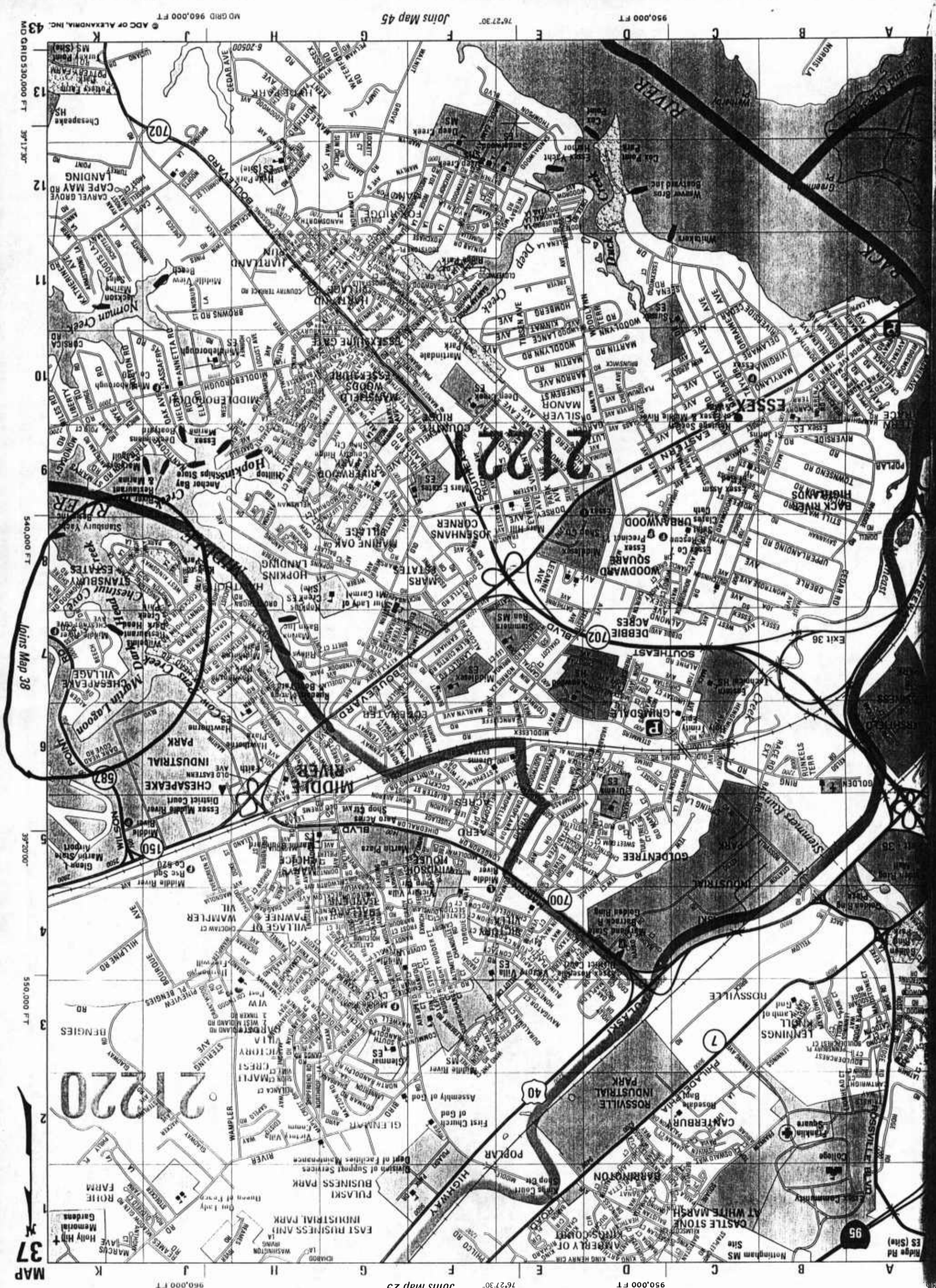
E.(3) The extent to which the project or program, including any mitigation measures, provides substantial public benefits to the overall Chesapeake Bay Critical Area Program.



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CHESAPEAKE VILLAGE PARK
 Scale 1"=100'

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

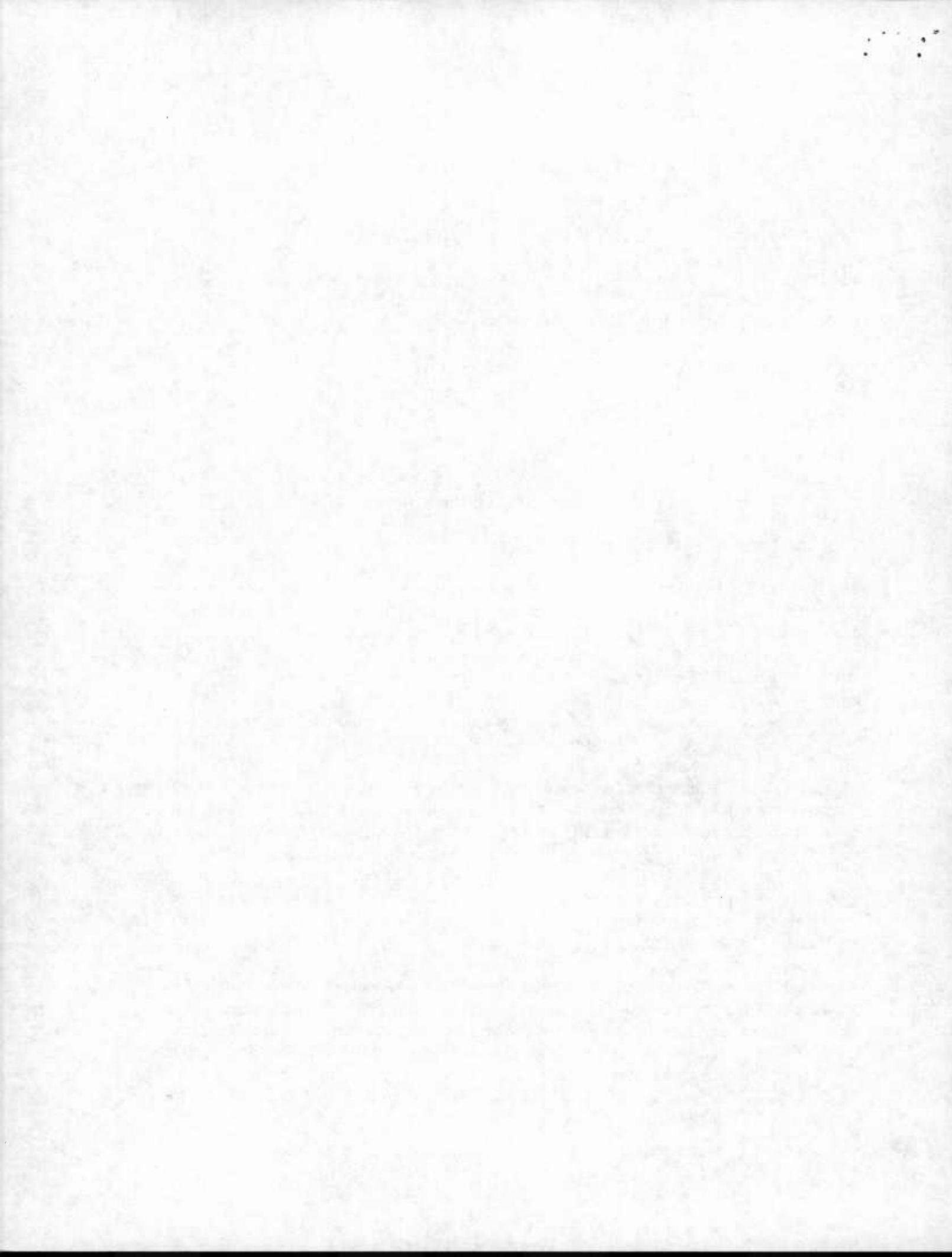
**APPLICABLE LAW/
REGULATIONS:** COMAR 27.02.06 Conditional Approval of State or Local Agency Programs in the Critical Area

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 consistutes 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.

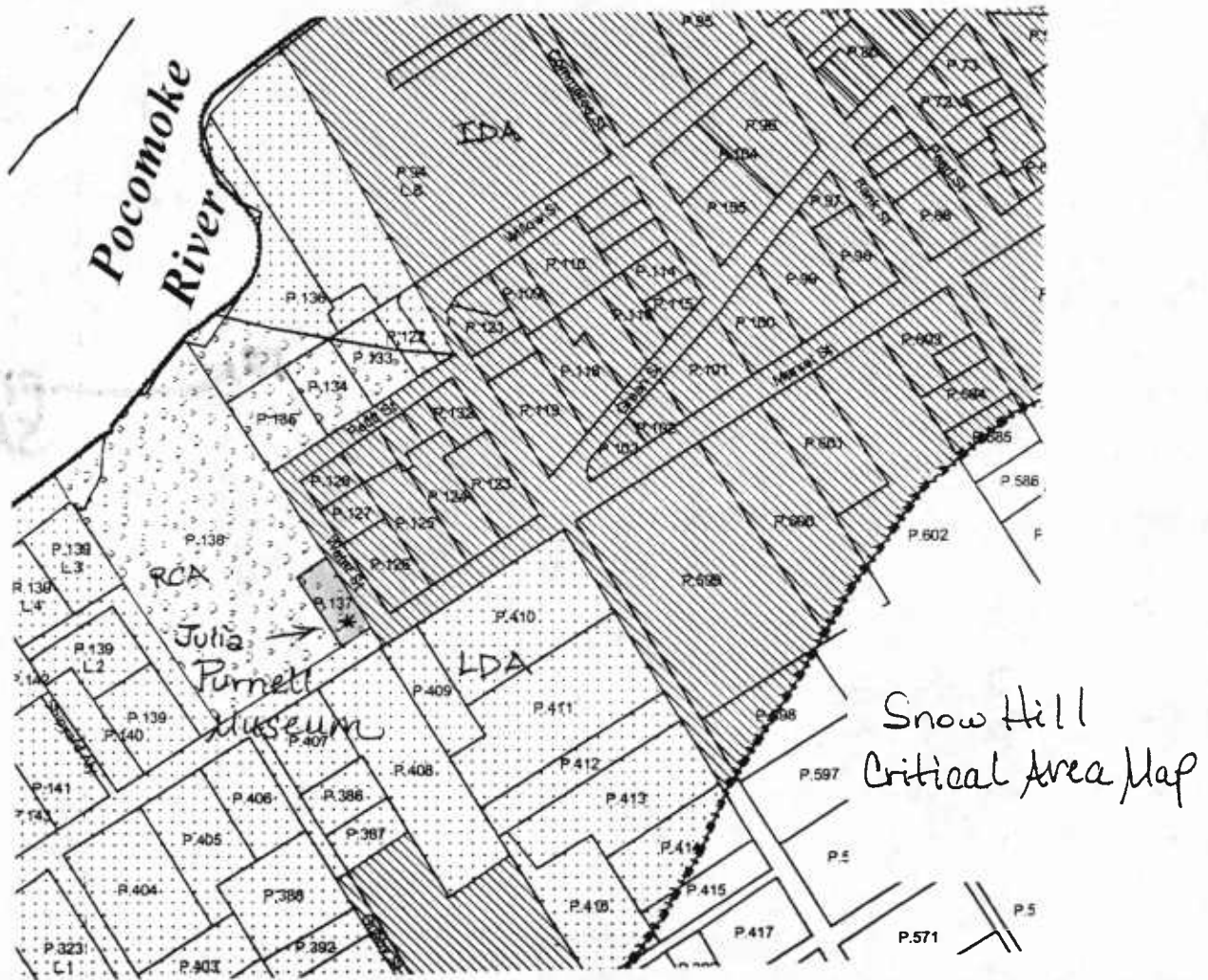
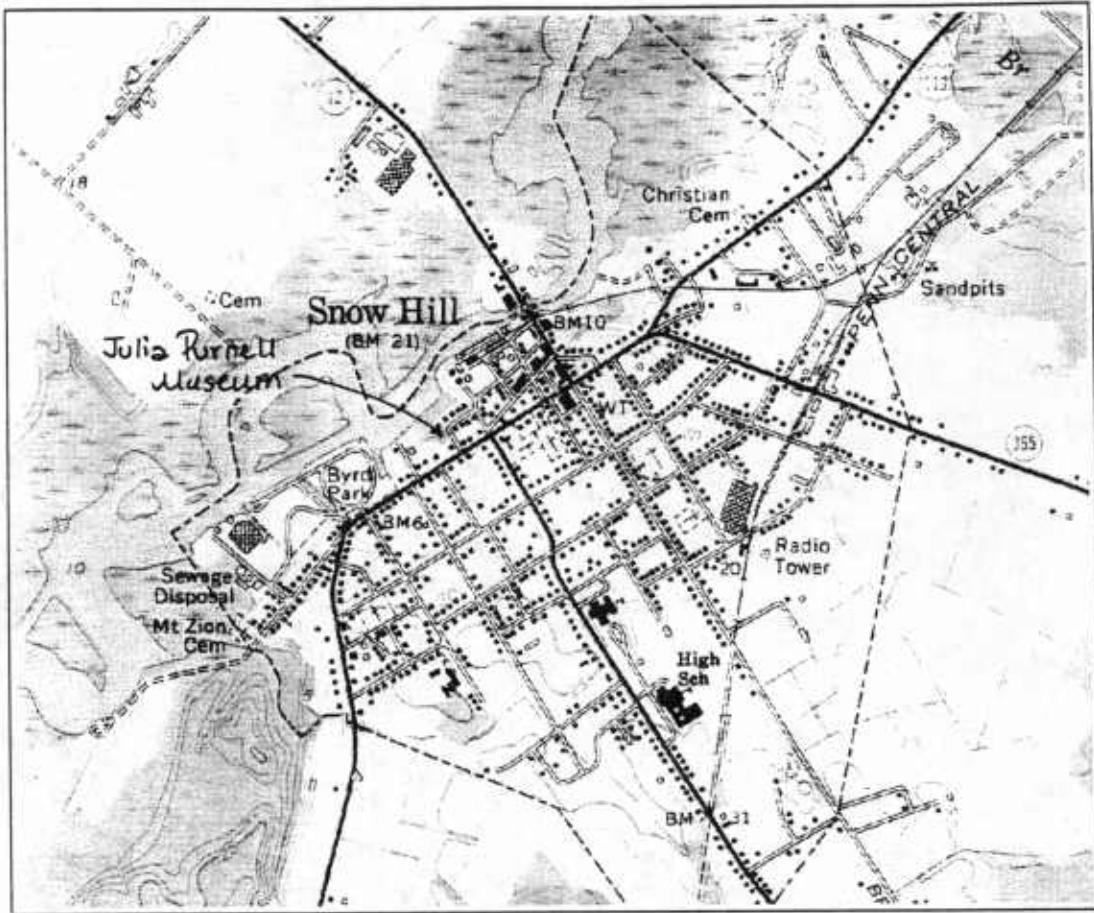
(3) Measures proposed to mitigate adverse effects of the project or program on an approved local Critical Area program or, if on State-owned lands, on the criteria set forth in COMAR 27.02.05.

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



POCOMOKE

RIVER



(TIE LINE)
S 54°18'29" W
275.96'

PARCEL 136

S 24°05'00" E
220'+/-

CRITICAL AREA BUFFER LINE

ITEM 2

PARCEL 135

N 24°05'00" W
225'+/-

SS

Sewer Manhole

20' Wide Sewer Easement

103.00'
N 66°25'00" E

2.5+/- ACRES

PARCEL 139

S 24°50'00" E
407'+/-

Fr. Garage on Concrete

ITEM 1

Parcel 137's propane tank
(Encroaches by 1.8')

53.00'
N 66°25'00" E

Parcel 137's air conditioning units
(Encroaches by 1.9')

proposed shed

5.78'

IPF

J Sty. Fr. 1210

Covered Porch

IRCS

N 24°05'00" W
126.00'

WATER STREET

Gravel Drive
(Current access to Parcel 138)

Overhead Utility Line

44.79'

N 24°05'00" W
113.50'

PARCEL 137

Existing curb cut
(Not currently used)

212.00'
N 66°25'00" E

MARKET STREET

Julia Purnell Museum
parcel 137
7,156 sq. ft.



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.

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:

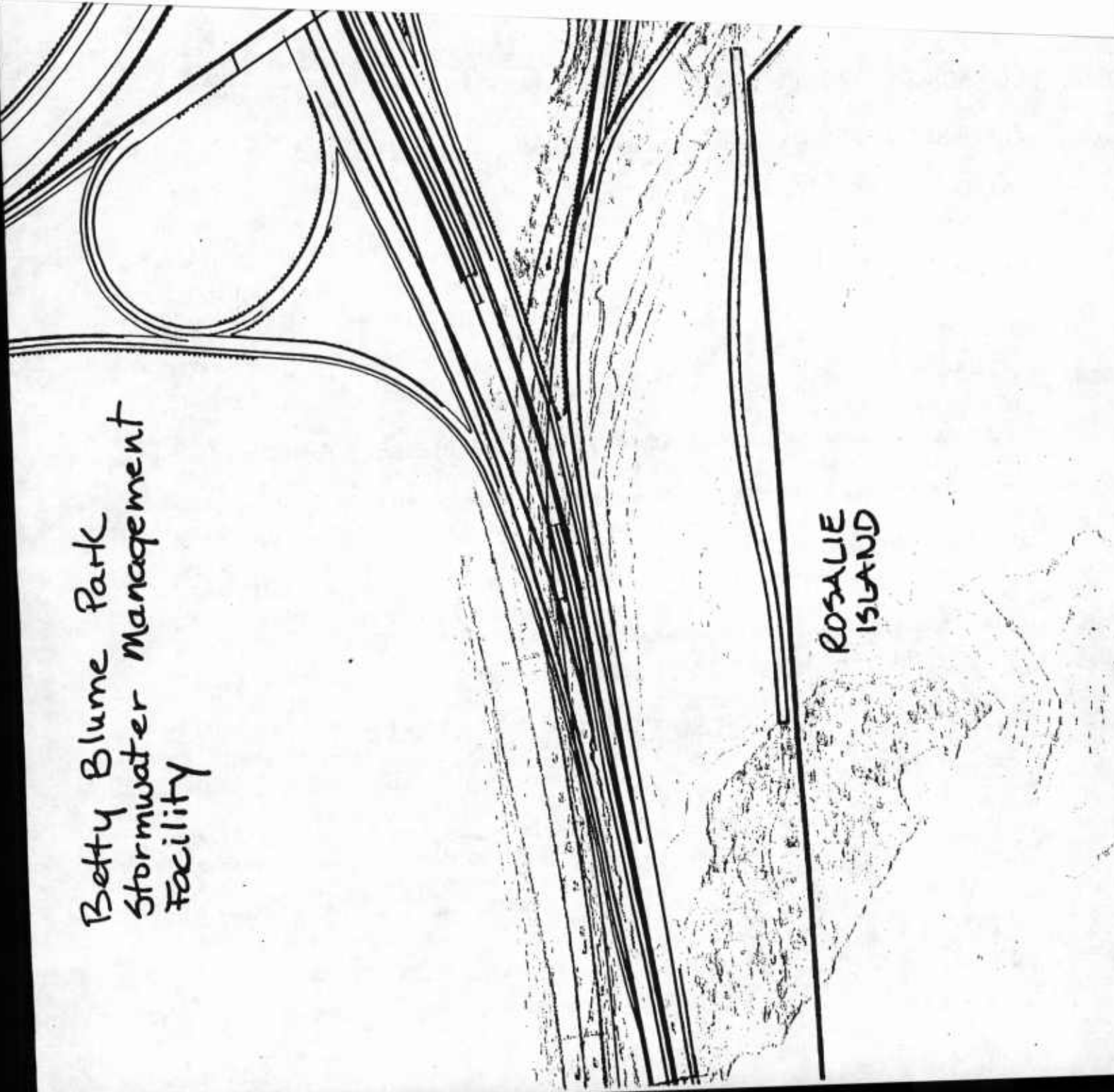
The proposed stormwater management pond to be located in Betty Blume Park is intended to provide water quality for an approximately 135 acre drainage area that includes the National Harbor Beltway Parcel (59 acres), an existing residential neighborhood known as North Potomac View (29 acres), and existing 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.

Betty Blume Park
Stormwater Management
Facility

ROSALIE
ISLAND



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

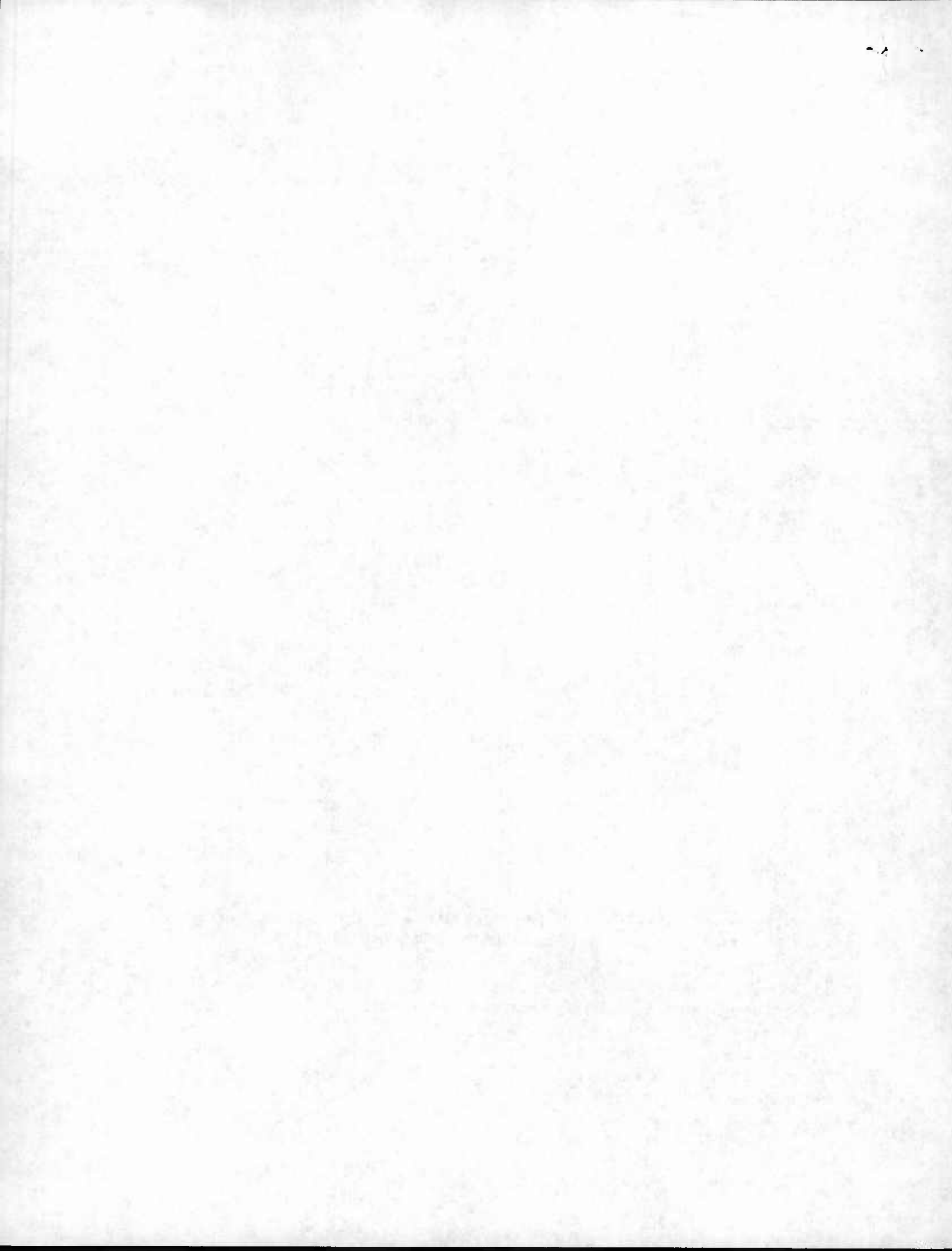
**APPLICABLE LAW/
REGULATIONS:** NR Article 8-1809 (h) – (p)
COMAR 27.01.09.01 C (8)

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”

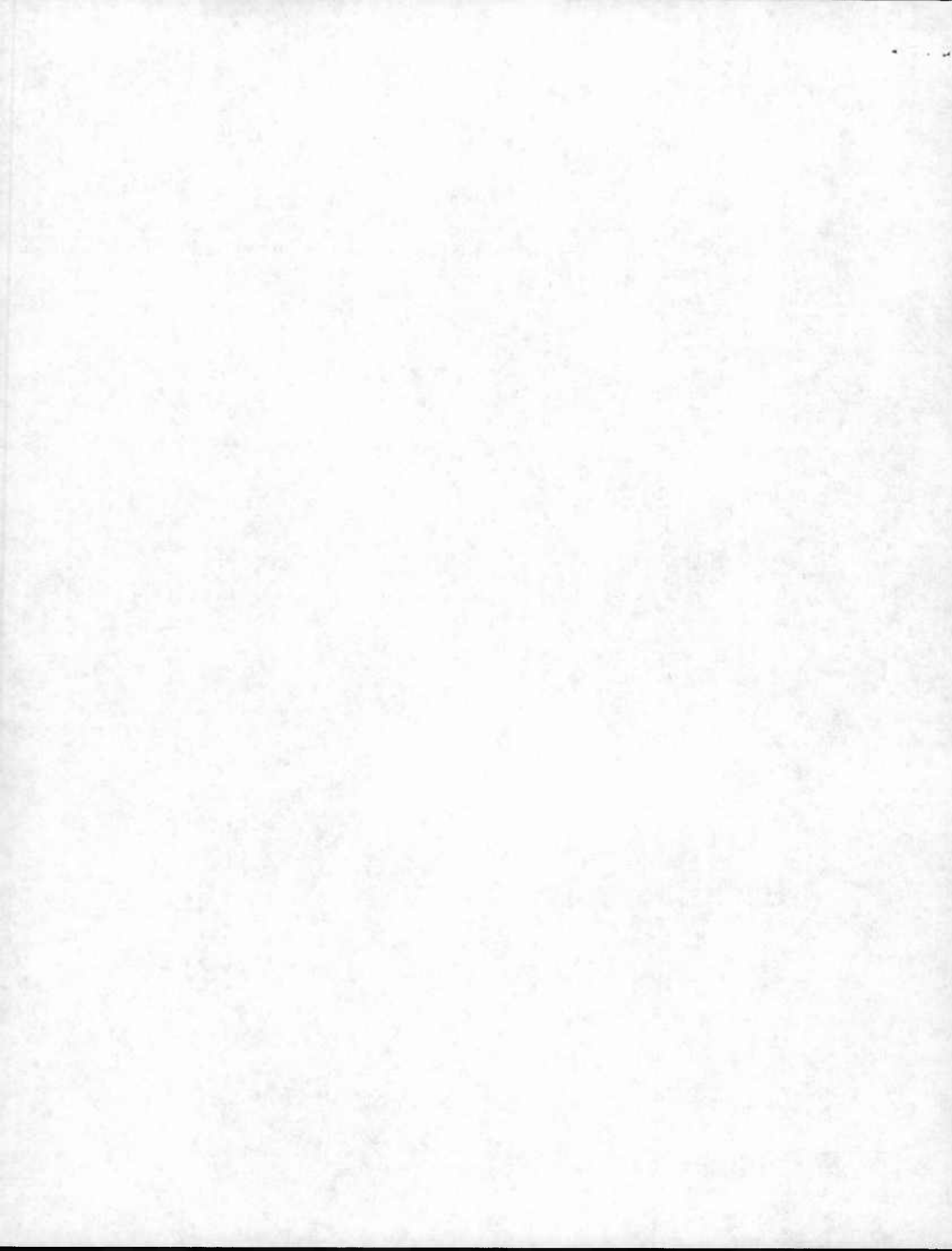
Procedures for administrative variances were amended to clarify that the Critical Area Commission will be notified twice when the City of Annapolis receives an administrative variance application. First, prior to staff action, and again, within ten days after action has been taken.

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 relieve 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

