

**Critical Area Commission
Meeting At
Department of Housing and Community Development
Crownsville, Maryland
July 7, 2004**

AGENDA

1:00 p.m. – 1:05 p.m.	Welcome and Remarks	Chairman Martin G. Madden
	Approval of Minutes for May 5, 2004	
PROJECTS		
1:05 p.m. – 1:15 p.m.	VOTE: Department of Natural Resources Kings Landing Parking Lot (Calvert County)	Julie LaBranche
1:15 p.m. – 1:25 p.m.	VOTE: Maryland Transportation Authority Police Training Facility (Baltimore City)	Dawnn McCleary
1:25 p.m. – 1:35 p.m.	VOTE: State Highway Administration: MD 468 Road Improvements (Anne Arundel County)	Lisa Hoerger
1:35 p.m. – 1:45 p.m.	VOTE: St. Mary's College: New Telecommunications Ductbank Conditional Approval (St. Mary's County)	Mary Owens
1:45 p.m. – 1:55 p.m.	VOTE: Maryland Aviation Administration Maryland Air National Guard: Parking Improvements and Relocated Access (Baltimore County)	Wanda Cole
1:55 p.m. – 2:05 p.m.	VOTE: Town of Greensboro: Choptank River Park: Conditional Approval (Caroline County)	Dawnn McCleary
PROGRAMS		
2:05 p.m. – 2:20 p.m.	VOTE: Town of Hillsboro: Comprehensive Review (Caroline County)	Dawnn McCleary
2:20 p.m. – 2:30 p.m.	Refinement: Town of Elkton: Annexation (Cecil County)	Julie LaBranche
OLD BUSINESS		
2:30 p.m. – 2:35 p.m.	Legal Update	Chairman Martin G. Madden Marianne Mason
NEW BUSINESS		
2:35 p.m. – 2:40 p.m.		Commission Members

Critical Area Commission
Meeting At
Department of Housing and Community Development
Crownsville, Maryland
July 7, 2004
SUBCOMMITTEES

9:45 a.m. – 12:00 p.m. Project Evaluation Subcommittee

Members: Setzer, Andrews, Booker Jones, Chambers, Cox, Jackson, Ladd, McLean, Mathias, Rice, Rolley, Wilson

Department of Natural Resources: Kings Landing Parking Lot (Calvert County) Julie LaBranche

Maryland National Capital Park and Planning Commission: Rosalie Island Park: Update/Pedestrian Bridge - Information (Prince George's County) Lisa Hoerger

St. Mary's College: New Telecommunications Ductbank Conditional Approval (St. Mary's County) Mary Owens

Queen Anne's County: Four Seasons on Kent Island Preliminary Review of Buffer Management Plan LeeAnne Chandler

Maryland Transportation Authority: Police Training Facility (Baltimore City) Dawnn McCleary

State Highway Administration: MD 468 Road Improvements (Anne Arundel County) Lisa Hoerger

Town of Greensboro: Choptank River Park Conditional Approval (Caroline County) Dawnn McCleary

Maryland Aviation Administration: Maryland Air National Guard Parking Improvements and Relocated Access (Balt. County) Wanda Cole

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

Members: Blazer, Bailey, Dawson, Evans, Ennis, Gordy, Lawrence, McKay, Mayer, Prettyman, Richards

Town of Elkton: Annexation Julie LaBranche

Status of Comprehensive Reviews Mary Owens
Kerrie Gallo
Julie LaBranche

12:00 p.m. – 12:30 a.m. Cambridge Panel (Tentative)

Members: McLean, Jackson, Richards, Andrews

Critical Area Commission
For the Chesapeake and Atlantic Coastal Bays
People's Resource Center
100 Community Place
Crownsville, Maryland
May 5, 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
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
Ed Gilliss, Baltimore County
Pat Goucher, Department of Planning
Joseph Jackson, Worcester County, Chesapeake Bay
Thomas McKay, St. Mary's County
Daniel Mayer, Charles County
Stevie Prettyman, Wicomico County
William Rice, Somerset County
Edwin Richards, Caroline County
Duncan Stuart for Otis Rolley, Baltimore City
Barbara Samorajczyk, Anne Arundel County
Douglas Wilson, Harford County
Fred Samadani for Louise Lawrence, Maryland Department of Agriculture
Gary Setzer, Maryland Department of the Environment
Jim McLean, Md Depart of Business and Economic Development
Frank Dawson, Maryland Department of Natural Resources
Meg Andrews, Maryland Department of Transportation
Allison Ladd, Dept. Housing and Community Development

Approved

NOT IN ATTENDANCE:

James N. Mathias, Jr., Ocean City
Gail Booker Jones, Prince George's County

Chairman Madden welcomed the Commission's newest member, Stevie Prettyman from Wicomico County and he acknowledged Effie Reynold's participation at last month's Commission meeting for Jim McLean, Maryland Department of Business and Economic Development. The Chairman welcomed Fred Samadani representing the Maryland Department of Agriculture in Louise Lawrence's absence, Duncan Stuart representing the City of Baltimore for Otis Rolley and Paul Cucuzzella for the Attorney General's Office with Marianne Mason. He recognized Judge North, the former Chair of the Critical Area Commission, who was in the audience for an agenda item.

Critical Area Commission Minutes

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Chairman Madden explained to the Commission the legal parameters for setting the Agenda order for the meeting as well as explaining the guidelines, with the assistance of Commission Counsel Marianne Mason, for accepting remarks from the public. (These guidelines are documented and attached to and made a part of these Minutes). A motion was made and seconded to approve the Minutes of April 7, 2004 as read. The motion carried unanimously.

St. Mary's County: Wanda Cole presented for Vote the proposal by the St. Mary's County Department of Recreation and Parks to construct an addition onto an existing metal building at the Piney Point Museum, which is located in the IDA on the Potomac River. The addition will house a boat collection from the Lundeborg School of Seamanship. The existing building and the addition will be located, in the 100-foot Critical Area Buffer. There will be no clearing required and there are no HPAs. No stormwater management or sediment and erosion control is required as this project involves less than 5,000 square feet of disturbance. The property is mapped as an IDA and the 10% Rule for reduction of pollutants must be met. Ms. Cole iterated the requisite characteristics that qualify this project for a conditional approval because the project is located in the 100-foot Buffer. **Gary Setzer moved on behalf of the project subcommittee that the Commission conditionally approve the building addition to the Piney Point Museum as required by the Code of Maryland Regulations. The motion was seconded by Thomas McKay and carried unanimously.**

Baltimore City: Dawnn McCleary presented for Vote the Maryland Port Administration's proposed MPA Critical Area Institutional Management Plan for phosphorus reduction through offsite mitigation. This plan sets out how the Port will look for offsite areas on which to meet requirements for the 10% Rule for pollutant reduction in the IDA. There are five proposed Port development project sites. The Plan discusses all the offsite mitigation sites that have been researched and will track the phosphorus removal requirements of each project and the ability to meet the requirements as the projects progress. Each development project and any offsite mitigation proposal will have to come to the Commission for approval and the approval of this Plan does not confer approval on any specific offsite mitigation option nor any specific development proposal. **Gary Setzer moved that the Commission approve the Critical Area Institutional Management Plan as prepared by the Maryland Port Administration. The motion was seconded by Jim McLean and carried unanimously.**

Worcester County: LeeAnne Chandler presented for Concurrence with the Chairman's determination of Refinement, Worcester County's request for growth allocation to change the Critical Area designation of an 8.1 acre property from RCA to LDA. The property is waterfront to Pawpaw Creek on the western outskirts of the village of Public Landing. The property is made up of two parcels and, if growth allocation is awarded, the two parcels will be combined and then re-subdivided into three single-family residential lots, one of which will be waterfront. An additional 0.61 acres of forest will be added to meet the 15% afforestation requirement when the property is subdivided. Located adjacent to existing LDA, the property meets the adjacency guidelines for growth allocation and the entire property will be deducted from the County's growth allocation reserve. There are two State threatened plant species known to occur in the vicinity of the property, though appropriate habitat is limited to the already protected Buffer. There is some possibility that the wetlands on the property are State tidal wetlands. The County is coordinating the investigation of the

acreage and will notify the Commission when the acreage is verified. If necessary, the lot boundaries will be adjusted and the growth allocation acreage deduction may decrease. This request has been approved by the County Commissioners of Worcester County. **The Commission supported the Chairman's determination of Refinement.**

Chairman Madden moved that the Commission adjourn to Executive Session: The Chairman quoted the Statutory Authority for closing meetings under State Government Article 10-508(a)(7), "to consult with counsel to obtain legal advice." He further stated that his reasons for closing the meeting were to consult with counsel to obtain legal advice 1) on the applicable sections of the Critical Area law and criteria governing the Commission's deliberations. 2) on the applicability of other State laws, policies, and regulations. 3) about whether the Commission may consider the effect of Talbot County Bill 933 on any other Critical Area Program, program amendment, or program refinement approved by the Commission. 4) on the interplay between Talbot County Bill 762 and Bill 933. 5) on the interplay between the proposed Program Amendment from Talbot County (Bill 933) and the proposed Program amendment from St. Michaels for the Miles Point III growth allocation. 6) on the scope of the Commission's authority in the context of taking action on a program amendment for growth allocation. 7) on the meaning of Commission Criteria in COMAR 27.01.02.06 A. and B. **The motion was seconded by Jim McLean and carried unanimously.**

The meeting reconvened and Chairman Madden called upon Lisa Hoerger to present St. Michaels Ordinance #304, Text Changes to Amend the Growth Allocation, Zoning, and Critical Area Map Amendment Procedures in the Town of St. Michaels.

Town of St. Michaels: Lisa Hoerger presented for Vote Ordinance #304, Text Changes to Amend the Growth Allocation, Zoning, and Critical Area Map Amendment Procedures for the Town of St. Michaels. The first change involves eliminating duplication in approval of map amendment and growth allocation requests that currently requires that a formal map amendment process be followed to amend the map after a request for growth allocation has already been approved. The Town contends that the award of growth allocation is, in and of itself, a map amendment. The second change involves the correction of the order for Town Commission and Critical Area Commission review and approval of text and map amendments affecting the Critical Area to be compatible with the review process for growth allocations. The Town amended its growth allocation review and approval process in 1999. A Commission panel hearing on Ordinance #304 was held in St. Michaels on April 1, 2004 and there was no public comment. **Gary Setzer moved on panel recommendation that Ordinance #304 as enacted by the St. Michaels Town Commissioners, which amends the Growth Allocation, Zoning, and Critical Area Map Amendment Procedures used by the Town, be approved by the Commission. The motion was seconded by Joe Jackson and carried unanimously.**

Town of St. Michaels: Lisa Hoerger presented for Vote, Resolution 2003-06, Annexation of the Miles Point, LLC Property submitted by the St. Michaels Town Commissioners. The purpose of the resolution is to annex 42.066 acres of land into the town. Approximately 17.156 acres are upland and the remaining acreage is a portion of the bed of the Miles River. The entire property is located within the Critical Area. This annexation resulted in a change

to the Town's Critical Area maps and incorporated one parcel into the Town boundaries. The current designation is RCA and the property was annexed with that designation. This property was previously included in a pending growth allocation application, but the application was withdrawn as a result of the Talbot County Council voting not to permit the rezoning of the annexed land for a period of five years. The annexed land includes 24.91 acres of submerged State land for the purpose of establishing the jurisdiction for the Town to manage that area as the Town has a Board of Port Wardens and a waterway management ordinance. **Gary Setzer moved that the Commission approve Resolution 2003-06 adopted by the St. Michael's Town Commissioners, which annexes the 42.066 acre Miles Point, LLC Property into the Town, based on the staff report as presented. The motion was seconded by Joe Jackson and carried unanimously.**

Town of St. Michaels: Mary Owens presented for Vote the request by the Town of St. Michaels for 70.863 acres of Growth Allocation for the Miles Point III project. She told the Commission that the Town Commissioners have awarded this acreage, which changes the Critical Area designation from RCA to IDA. The development is based on Traditional Neighborhood Design principles, which will include 280 new dwelling units, a commercial component, and a Town park. The property is experiencing significant erosion with only shrub scrub vegetation along portions of the shoreline. The Town Commissioners addressed the growth allocation guidelines regarding the location of new IDAs or LDAs, identifying habitat protection areas, minimizing impacts to the RCA and the provision of a 300-foot setback. The Town asserts that the adjacency guideline is met because there is an existing IDA to the south of the project site; that they have addressed the 300-foot setback which is not included in the Town's Critical Area Program and that the proposed 100-foot Buffer is sufficient. All HPA's including the 100-foot Buffer, nontidal wetlands, submerged aquatic vegetation and historic waterfowl areas in the Miles River have been identified by the Town and the developer-applicant. The Town proposes to deduct the acreage of the entire parcel so that the Commission's policies relating to deduction methodology and development are not applicable. Of the 224.9 acres of the 245 original growth allocation acres reserved for the Town in 1989 by Talbot County, only 20.10 acres has been awarded. A Commission panel held a public hearing on April 1, 2004. The hearing was well attended. Substantial public comments were received until the record closed on April 13, 2004

Ms. Owens gave a synopsis (attached to and made a part of these Minutes) of the major points discussed by the Panel who met on April 13, 2004 and again this morning. She summarized the panel considerations in analyzing this project: 1) The Standard of Review – The Panel's discussion centered on determining if a proposed amendment meets the goals of the Critical Area Program and the provisions of the Critical Area Criteria. 2) the Protection of Habitat and Water Quality - The focus was on three of the guidelines for growth allocation that specifically address the minimization of environmental impacts associated with the use of growth allocation as set out in COMAR 27.01.02.06. 3) Wildlife Habitat and Corridors - The Panel's primary concerns pertained to the lack of a 300-foot setback, the percentage of the site proposed to be developed in impervious surfaces and any opportunities to provide additional open space or habitat. COMAR 27.01.02.03.C(8) was referenced. 4) Shoreline Access and Buffer Management – This part of the discussion involved the proposed plans for establishment and planting of the Buffer and included some discussion of prior actions by the Commission. It was discussed that in the past, the Commission has required as a condition of

approval of growth allocation, that a Buffer Management Plan be submitted. 5) Stormwater Management - The preliminary concept plans for detention show that the 10% pollutant reduction requirement for IDAs is achievable through the implementation of on-site Best Management Practices (BMPs) and that certain types of BMPs provide habitat benefits. The Panel expressed an interest in exploring stormwater management options that provided habitat benefits. 6) Shore Erosion Control - The Panel was familiar with erosion problems on the site, and they discussed the viability of a marsh creation along the extensively eroded Miles River proposed by the applicant. They also discussed the conflict between establishing the Buffer in natural vegetation and providing sufficient sunlight for the marsh grasses. 7) Wastewater Treatment- The Panel had reviewed information on the wastewater treatment issues and a discharge permit from MDE was distributed for the Talbot County Region II Wastewater Treatment Plant. This is the plant that would treat wastewater from the Miles Point III project and it is proposed to be upgraded. The Town Commissioners' conditions of approval for the project address the timing of permit issuance with the planned upgrades.

Chairman Madden opened up the meeting to public comment. Eighteen citizens spoke, 7 spoke in support and 11 were in opposition of the project.

Gary Setzer moved on panel recommendation to approve the growth allocation request with the following conditions: 1) The development shall be set back from the landward edge of tidal waters at least 300 feet. Passive recreation activities may be allowed outside of the 100-foot Buffer. 2) The 100-foot Buffer shall be established. In establishing the Buffer, management measures shall be undertaken to provide forest vegetation that assures the Buffer functions set forth in the Critical Area Criteria. Before final recordation of any subdivision plats or grading of the site, a Buffer Management Plan shall be developed cooperatively with the Town and the Commission and their respective staffs. The Buffer Management Plan shall be reviewed and approved by the Commission. The Buffer Management Plan may provide for public access. 3) In measuring the 300-foot setback and the 100-foot Buffer, the measurement shall be based on the existing shoreline at the time that the Buffer Management Plan is submitted to the Commission. 4) A Stormwater Management Plan shall be developed that promotes environmentally sensitive design and explores all opportunities for infiltration and bioretention before utilizing surface water treatment measures. The Stormwater Management Plan shall be developed cooperatively with the Town and the Commission and their respective staffs. The Stormwater Management Plan shall be reviewed and approved by the Commission. The motion was seconded by Joe Jackson.

In response to a question by Meg Andrews regarding what the status of the wastewater treatment has to be before the development can go forward, Gary Setzer replied that authorizations have been issued by the Department of the Environment to increase the capacity of the treatment plant and it also requires the County to develop a plan that addresses the infiltration problems. Gary read an MDE report which requires the treatment plant expansion. Commissioner McKay, although supportive of the 300-foot setback, commented that he believes that this condition is establishing a precedent which should be left to the local governments to impose. A discussion followed during which several Commission members stated that they believed a 300-foot setback was appropriate due to the significant amount of development proposed for the site.

The Chairman called the question. The motion carried 19-1, Ella Ennis standing opposed.

Talbot County: Lisa Hoerger presented for Vote Talbot County's Comprehensive Local Program Review of County Council Bills 922, 926, 927, 929, 931, 932. Ms. Hoerger said that there are two purposes for the changes. One purpose of the current Bills is to address required changes that respond to the Commission's directive to correct mistakes, conflicts or omissions in the local Program and are related to clearing of trees and forest vegetation in the Buffer and the definition of those resources. (A Bill was enacted during the 2004 General Assembly session that addresses the only outstanding required change of the counting of dwelling units for the maximum dwelling unit density in the RCA of one per 20 acres for all Critical Area jurisdictions). Other changes are in response to the County's required update of its Critical Area Program, which address matters related to updating and streamlining the local Program. The changes include: designating first time Buffer Management Areas and providing regulations for development in these areas; listing permitted uses in the RCA; specifying which RCA uses require growth allocation; and, altering local administrative procedures including submittal requirements for applicants, and notice to adjacent property owners concerning applications for approval of site plans and major subdivision. Ms. Hoerger summarized each Bill for the Commission as outlined in her staff report (attached to and made a part of these Minutes). Ms. Hoerger said that the County is working with DNR's Heritage Division to obtain updated Habitat Protection Area maps. Also, even though new buffer Exemption Areas have been designated they have not yet been adopted by the County Council and will be reviewed by the Commission at a later time. An updated chart (attached to and made a part of these Minutes) of the growth allocation was reported by the County. A Commission panel held a public hearing on March 24, 2004. **Dave Blazer reported that the panel reviewed and discussed these County Bills and he moved for approval of the County Council bills on panel recommendation with the following conditions:**

Bill 926 - Chapter 190, Article II Definitions and Word Usage, § 190-14

Section Three, Dwelling Unit (See page 2) - Change the definition of dwelling unit to state, "Dwelling unit means a single unit providing complete, independent living facilities for at least one person, including permanent provisions for sanitation, cooking, eating, sleeping, and other activities routinely associated with daily life.

Dwelling unit includes a living quarters for domestic or other employee or tenant, an in-law or accessory apartment, a guest house, or a caretaker residence."

Section Nine, Shoreline Development Buffer (See page 4) - Amend the definition of shoreline development buffer to state, "The area at least 100 feet wide measured landward from the mean high-water line of tidal waters, tributary streams and tidal wetlands." Section One, Development Activities (CA) (See page 2) - Request deletion of the last two sentences in item "b." This is where "substantial alteration" is defined. The motion was seconded and carried unanimously.

Bill 927 - Chapter 190, Article IV Land Use Regulations by Zoning Districts, § 190-19

Section Four, Parks and Playgrounds (Public and Private - See page 3) - Add another bullet that states, "Limited to passive recreation."

Sections Eighteen, Twenty, and Twenty-One, Treated Septage Land Applications, Community Sewage Treatment Plant, Sludge Application for Agricultural and Horticultural Purposes (See page 8-9) - Add "tidal wetlands" to the bullet that restricts these uses to within 200 feet of mean high water or tributary streams or ensure that these activities are otherwise restricted within the 100-foot Buffer of tidal wetlands.

Bill 929 - Chapter 190, Article XI Critical Area Special Provisions, §190-88

190-88 B (3) [h] (See page 8) - In place of [h] insert the following language:

"The Forest Preservation Plan shall include either of the following:

- a) A time period for implementing the plan and provisions for a final inspection by the County after which the Plan will be certified complete; or**
- b) Provisions for removal of invasive/exotic species and/or maintenance of native vegetation for a period of up to 5 years including provisions for annual inspections by the County."**

190-88.1 B (6) (b) (See page 12) - Replace "Mitigation equal to an area two times the square footage of the proposed impervious surface in the Buffer area..." with "Mitigation equal to an area two times the square footage of the development activity in the Buffer area..."

Bill 931 - Chapter 190, Article XII Site Plan Review §190-92

190-93 E (9) (a) (See page 31) & 190-93 E (9) (d) [i] (See page 34) - Delete the references to parcels up to seven acres that must provide 15% afforestation. This language excludes grandfathered parcels under seven acres from the afforestation requirement. If it is the County's intent to allow certain allowances for grandfathered parcels under seven acres then the County may propose an exemption for certain classes of activities (i.e. new dwelling).

190-93 E (9) (d) [e] (See page 33) - Delete the phrase, "...additional 10%..." The motion was seconded by Joe Jackson and carried unanimously.

Talbot County: Ren Serey presented for Vote Talbot County Council Bill #933, Review and Reallocation of growth allocation for the Towns of Easton, St. Michaels and Oxford. Mr. Serey said that previously, the County had set aside a specified number of acres of growth allocation for use by the Towns with no conditions upon it. The original County Critical Area Ordinance adopted in 1989 included maps of the Towns and surrounding areas, which identified potential areas for annexation or rezoning. The original Ordinance also stated that

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there should be a review for possible reallocation at least every four years which has not been done. In 2000, when Easton had used all of its growth allocation, the County implemented a new process for "supplemental growth allocation" which involves joint hearings by the County Council and the Town of Easton and the joint approval of growth allocation. That process has been used recently for Cooke's Hope and Ratcliffe growth allocations. In St. Michael's growth allocation has been awarded to the Strausburg Subdivision by the Town and approved by the Commission. Growth allocation for the Miles Point III Project also was submitted for review and approval by the Commission.

Bill #933 repeals the existing Ordinance provisions that allocated specific numbers of growth allocation acres to the Towns and states that this withdrawal of growth allocation is part of the County's comprehensive review. In Bill# 933, Talbot County proposes to amend its zoning code to delete all provisions relating to the reservation of growth allocation acreage for the Towns, including acreage already awarded by a Town, unless it has already resulted in "actual physical commencement of some significant and visible construction pursuant to a validly issued building permit." There are two and possibly three growth allocation projects that will be affected by Bill 933: the Strausburg Subdivision in St. Michaels, the Miles Point III application and Cooke's Hope project in Easton. The Bill removes provisions pertaining to the reservation of growth allocation acreage for the Towns to obtain future growth allocation acreage, but it does not set forth a process for the County's Towns to obtain future growth allocation acreage.

The panel for this issue has discussed the applicable sections of the Critical Area Law and Criteria governing growth allocation; the effect of Bill# 933 on other approved Critical Area Programs, program amendments, or program refinements; the interpretation of the growth allocation provisions of COMAR 27.01.02.06.A, specifically the provision that states "when planning future expansion of intensely developed and limited development areas, counties, in coordination with affected municipalities, shall establish a process to accommodate the growth needs of the municipalities." Also discussed were the established municipal growth allocation processes; and, the effects of Bill 933 on prior Commission actions and current procedures.

Commission Counsel advised the Panel that the Commission's role regarding Bill 933 should be focused on the provisions of the Annotated Code of Maryland Section 8-1809(j) regarding approval of Programs and program amendments and the goals of the Critical Area Program.

Chairman Madden opened the meeting for comment by the County Attorney, who spoke in favor of Bill #933 and the Attorney for St. Michael's, who spoke in opposition to Bill #933.

Dave Blazer moved on panel recommendation to deny approval of Talbot County Bill 933 as an amendment to the County's Critical Area Program and to invite the County to work with the Commission and its staff to develop new growth allocation provisions that will be compatible with the State Critical Area Act and Criteria. The basis for the motion is as follows: Accepting Bill #933 would negate at least one previous Commission action approving a local program change. This is the refinement to the St. Michael's Program for the Strausburg growth allocation approved in October 2003. Accepting

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Bill #933 would create conflicts between the County program and several approved municipal programs. The municipal programs have their own approved growth allocation procedures premised on the growth allocation reserves provided by the County. The conflict that Bill 933 would create is contrary to the Commission's oversight responsibility to ensure that local programs are implemented in a consistent and uniform manner. The motion was seconded by Bill Giese and carried unanimously.

Old Business

Chairman Madden announced that the three Commission Bills were passed and the Governor is expected to sign them on May 26th, 2004.

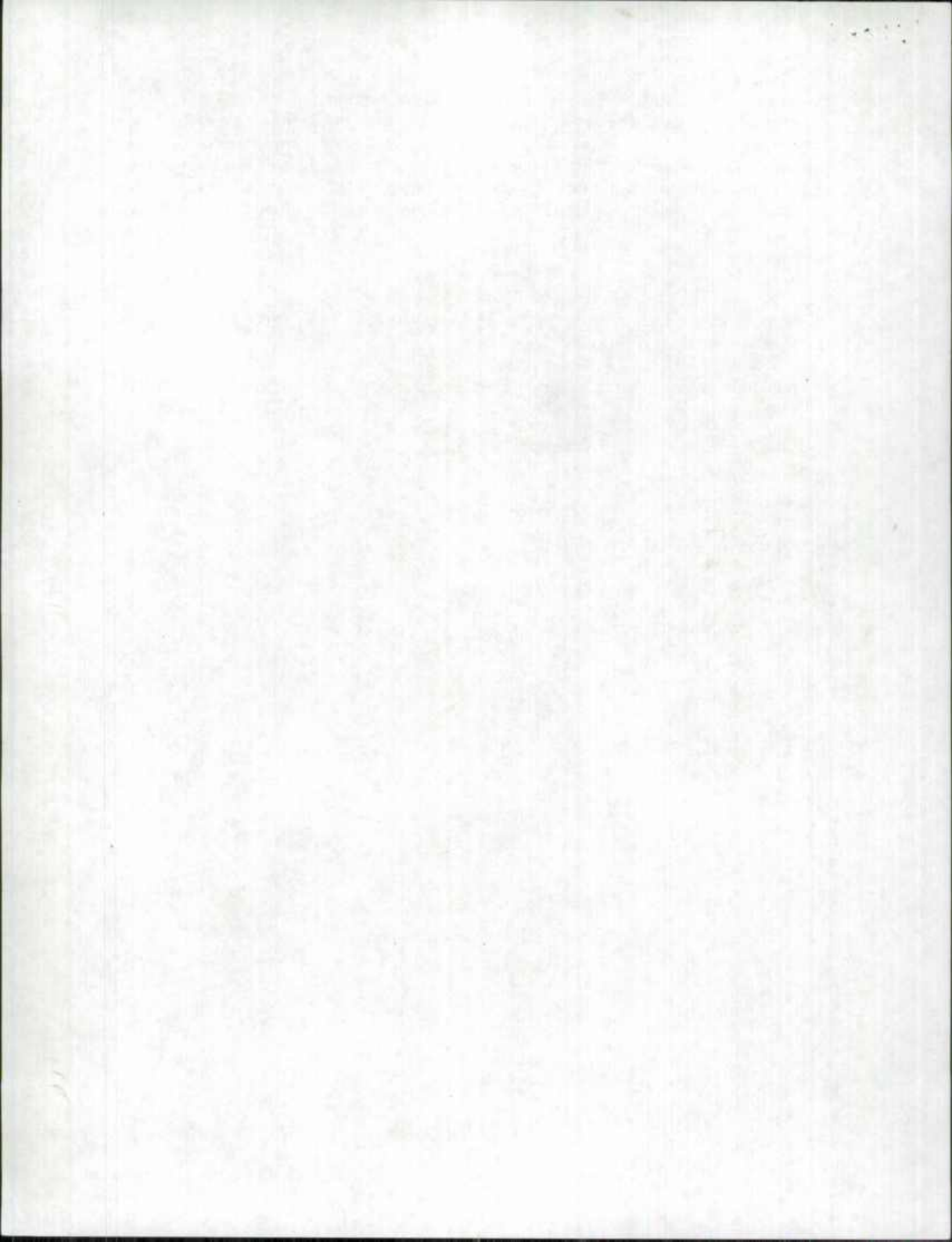
Commission Counsel, Marianne Mason, Esquire, updated the Commission on legal matters. She said that she argued before the Wicomico Zoning Board the Lewis variance case on remand, which was deliberated for six hours and then turned down.

New Business

There was no new business reported.

There being no further business the meeting adjourned at 5:05 p.m.

Minutes submitted by: Peggy Campbell, Commission Coordinator



Critical Area Commission

STAFF REPORT

July 7, 2004

APPLICANT: Department of Natural Resources

PROPOSAL: Construction of a Parking Area at Kings Landing Park

COMMISSION ACTION: Vote

STAFF RECOMMENDATION: Approval

STAFF: Julie V. LaBranche

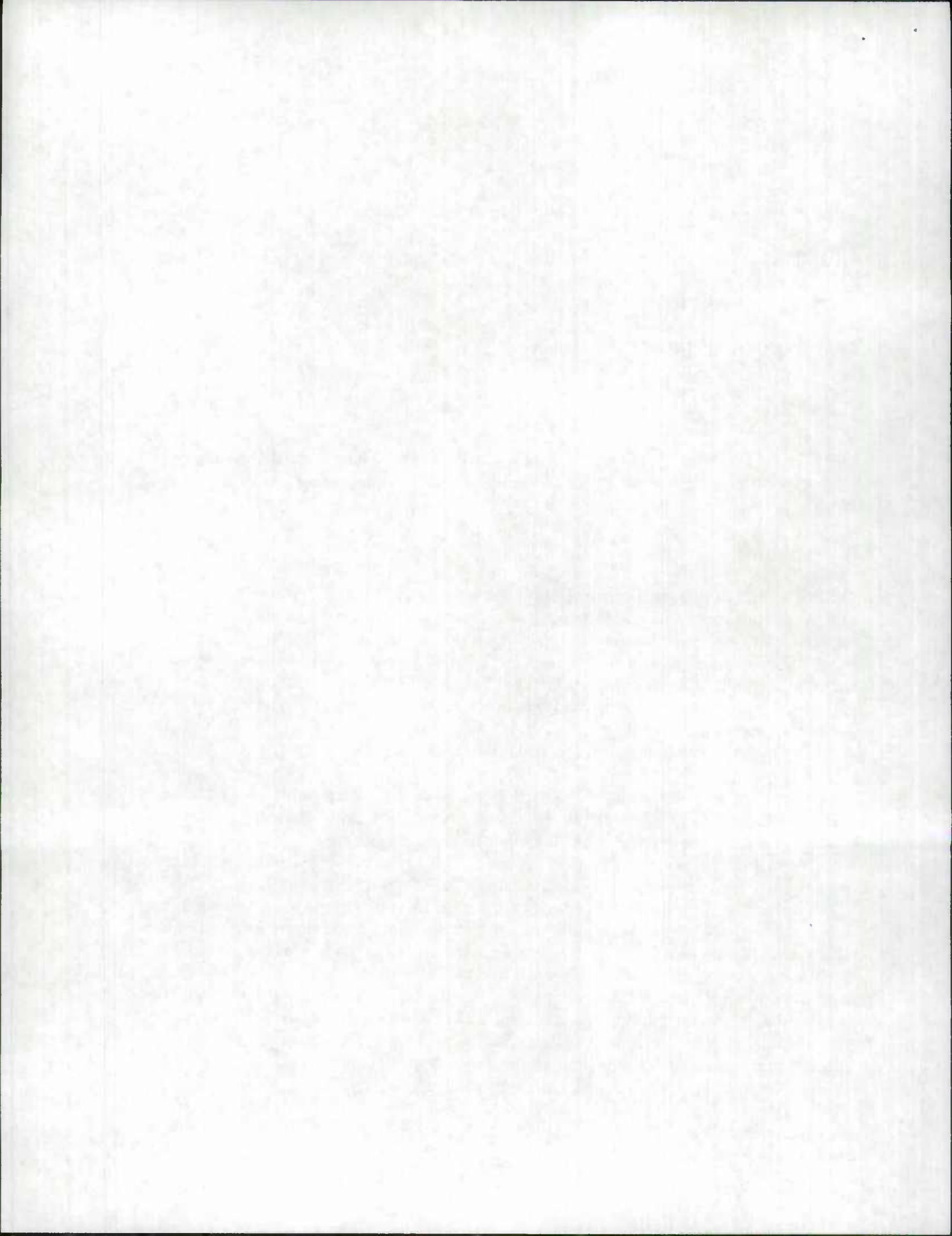
**APPLICABLE LAW/
REGULATIONS:** COMAR 27.02.05 State Agency Actions Resulting in
Development on State-Owned Lands

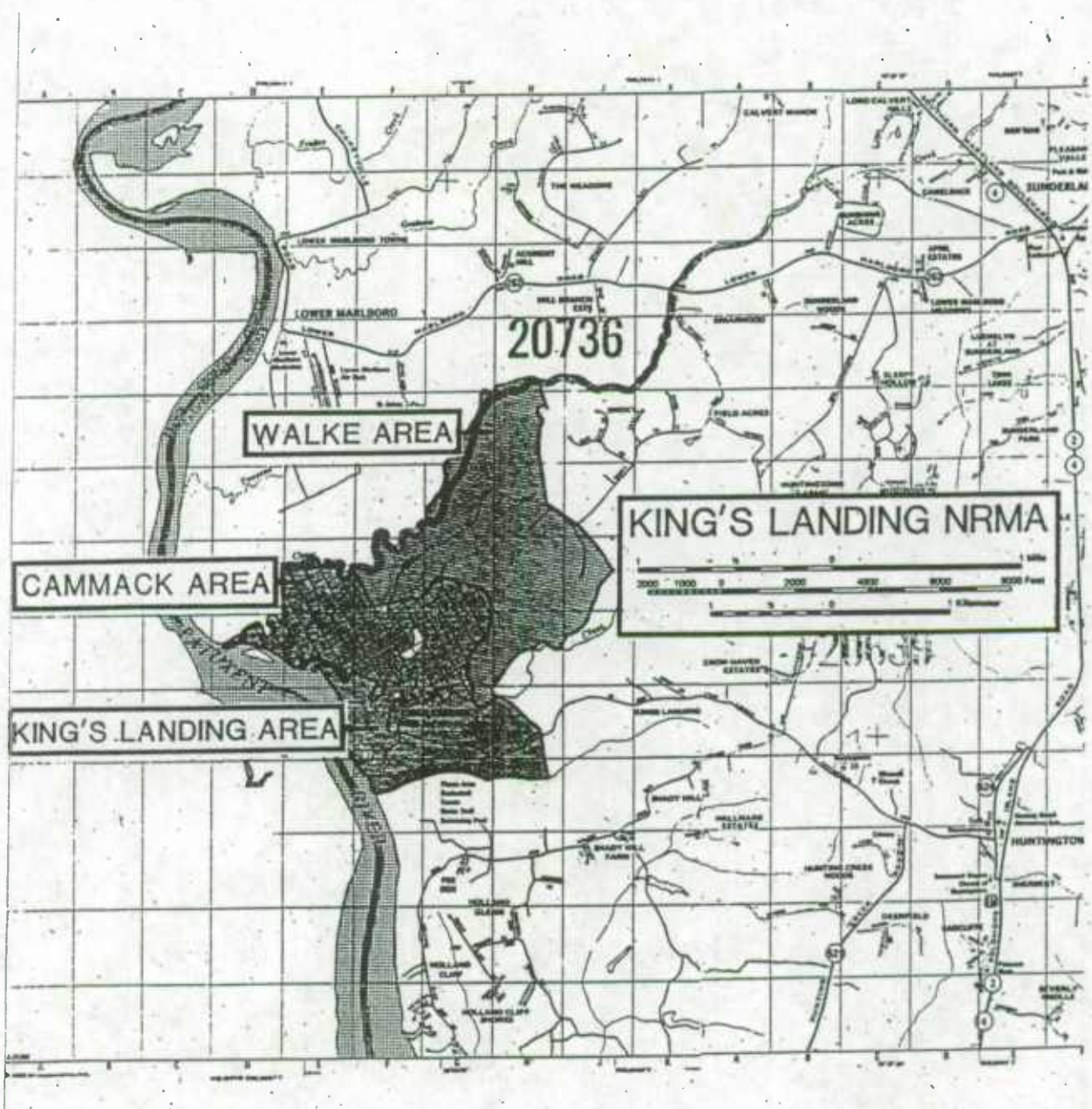
DISCUSSION:

The Department of Natural Resources has requested the Commission's approval to construct parking area at Kings Landing Park in northwest Calvert County. Kings Landing Park is part of the Patuxent River Natural Resource Management Area, which borders the Patuxent River. Kings Landing Park is currently leased from DNR by the County and is operated as a public recreational facility. Kings Landing Park is approximately 1,219 acres, consisting of a mix of open meadows, forest, recreational areas, and riparian habitat along the Patuxent River and Cocktown Creek and its tributaries. The Park provides various recreational facilities, including picnic shelters, a swimming pool, and a pier and water access for visitors.

The proposed parking area is part of the Phase I improvement projects within the County lease area documented in the 1995 Master Plan Update for the Kings Landing Natural Resources Management Area. The parking area will provide 85 parking spaces to serve visitors of the Patuxent Hall Visitor Center, where there is currently no parking for special events and other users of the facility. The parking area will consist of 26,300 square feet of grass pavers and 2,560 square feet of gravel aprons for the parking entrance and exit (refer to the site plan provided in the Commission mailing). Based on information from the manufacturer, the grass pavers are water permeable and therefore considered semi-pervious. (Additional information about the perviousness of the grass pavers will be provided at the Commission meeting.) The project will result in 2,560 square feet of additional impervious surface coverage for the gravel aprons. The parking area will be constructed over an existing area of mowed grass adjacent to Patuxent Hall and no clearing is proposed as part of this project. Runoff from the gravel aprons will flow to adjacent grass areas to facilitate infiltration and provide water quality benefits on the site. No Habitat Protection Areas will be impacted by this project.

Commission staff find that the proposed project is consistent with the requirements of COMAR 27.02.05 and recommends approval by the Commission.

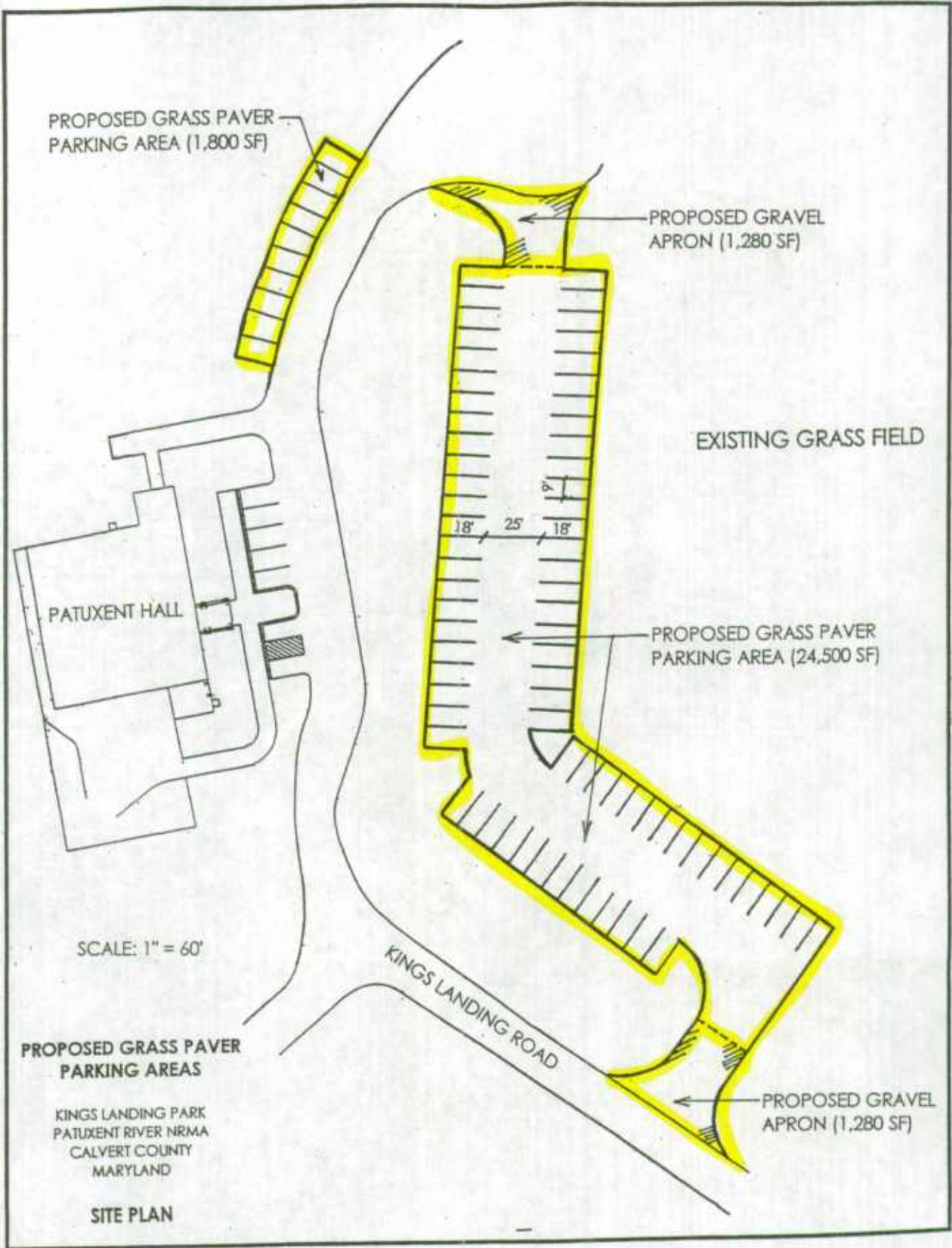




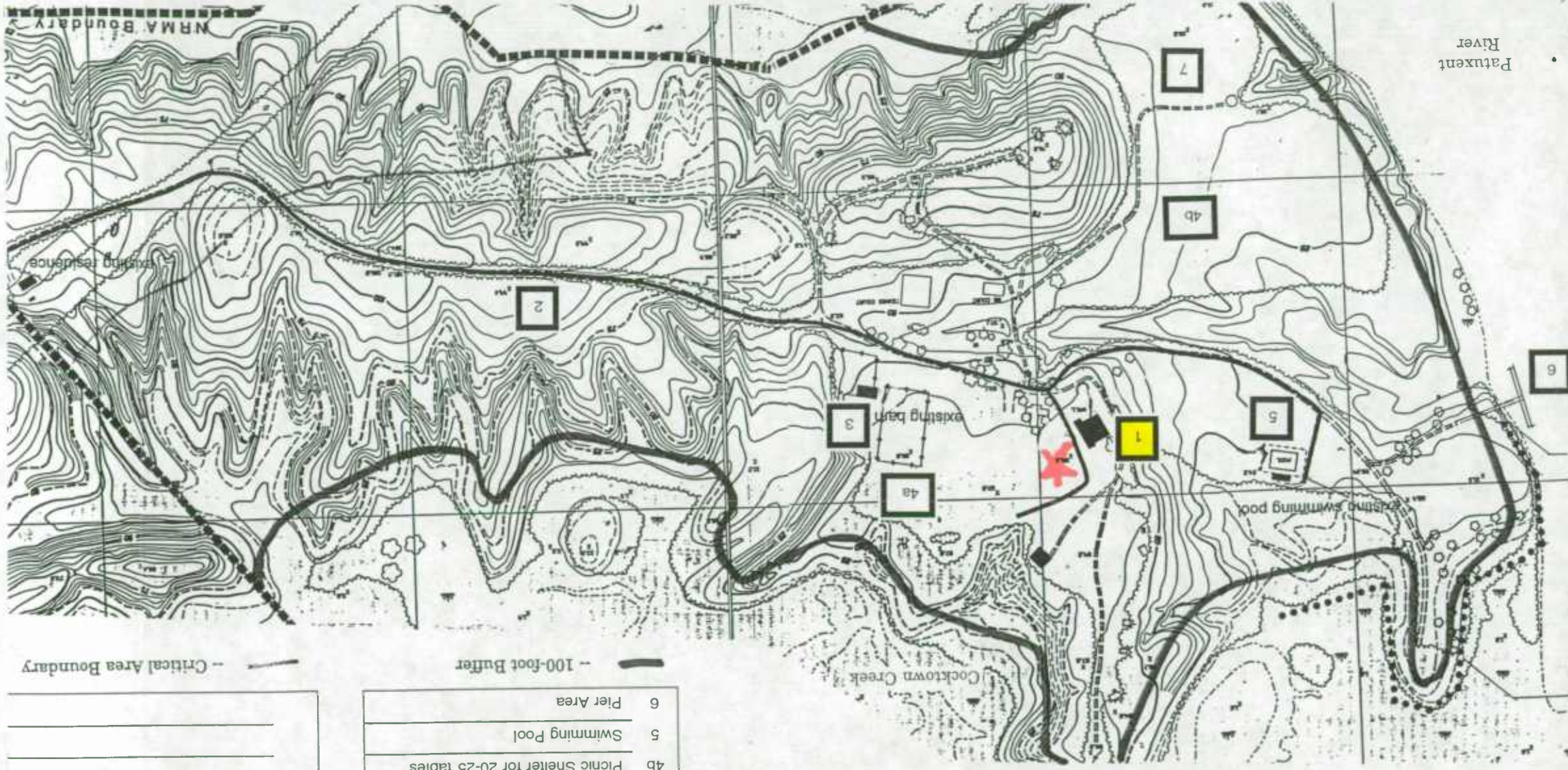
**PROPOSED GRASS PAVER
PARKING AREAS**

KINGS LANDING PARK
PATUXENT RIVER NRMA
CALVERT COUNTY
MARYLAND

VICINITY MAP



Kings Landing Natural Resources Management Area 1995 Master Plan Update



Phase 1 Development

1	Visitor Center
2	Road and Parking
3	Maintenance Shop
4a	Picnic Shelter for 15-20 tables
4b	Picnic Shelter for 20-25 tables
5	Swimming Pool
6	Pier Area

Phase 2 Development

7	Environmental Education Dormitory

-- 100-foot Buffer
 -- Critical Area Boundary

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Critical Area Commission

STAFF REPORT

July 7, 2004

APPLICANT: Maryland Transportation Authority (MdTA)

PROPOSAL: Police Training Facility

JURISDICTION: Baltimore City

COMMISSION ACTION: Vote

STAFF RECOMMENDATION: Approval

STAFF: Dawnn McCleary

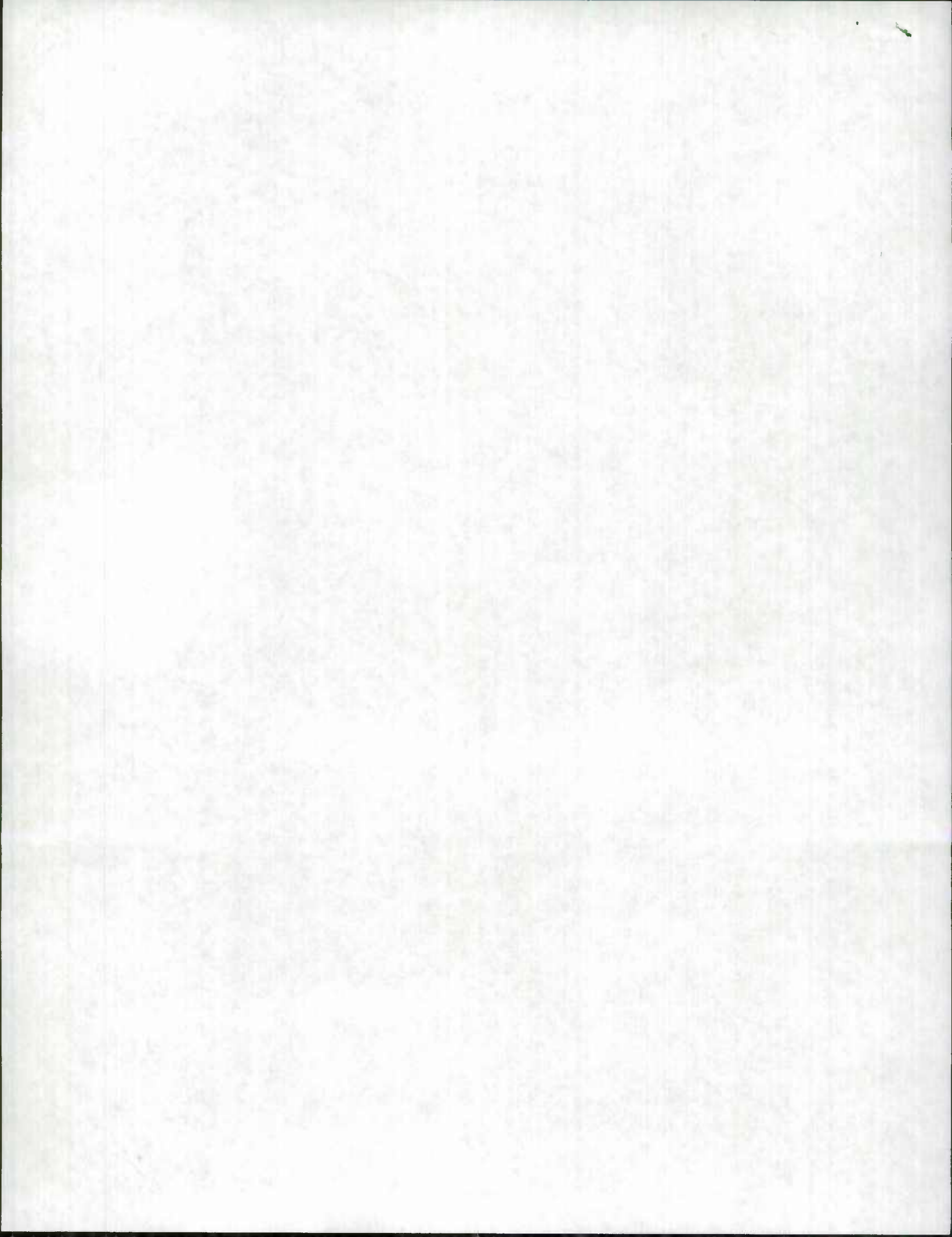
**APPLICABLE LAW/
REGULATIONS:** COMAR 27.02.05 - State Agency Actions Resulting in
Development on State-Owned Lands

DISCUSSION:

The Maryland Transportation Authority (MdTA) is proposing to build a 35,000 square foot Police Training Facility with 117 parking spaces and a future outdoor training area behind the proposed building on the site located at Quarantine Road. The purpose of the facility is for the training of MdTA police cadets and officers. The project site totals 12.8 acres, with 12.2 acres in the Critical Area and 0.6 acres outside of the Critical Area. The site is an area of intense development. The site contains an abandoned building foundation, areas of disturbed ground, and vegetated areas. There are also non-tidal wetlands. A total of 5.15 acres of forest will be cleared. There are no Federal or State records for rare, threatened or endangered plant or animal species within the project area. There are no Habitat Protection Areas that will be impacted by this proposal.

The total phosphorus removal requirement for the above project is 0.34 pounds. MdTA is proposing a pocket wetland and grass channel that will remove 0.996 pounds of phosphorus.

MdTA is proposing to mitigate for all forest cleared. Plantings will occur both on-site and adjacent to the site, for a total of 5.19 acres. 0.38 acres of the offsite plantings will occur in the Buffer. There is no clearing proposed in the Buffer.



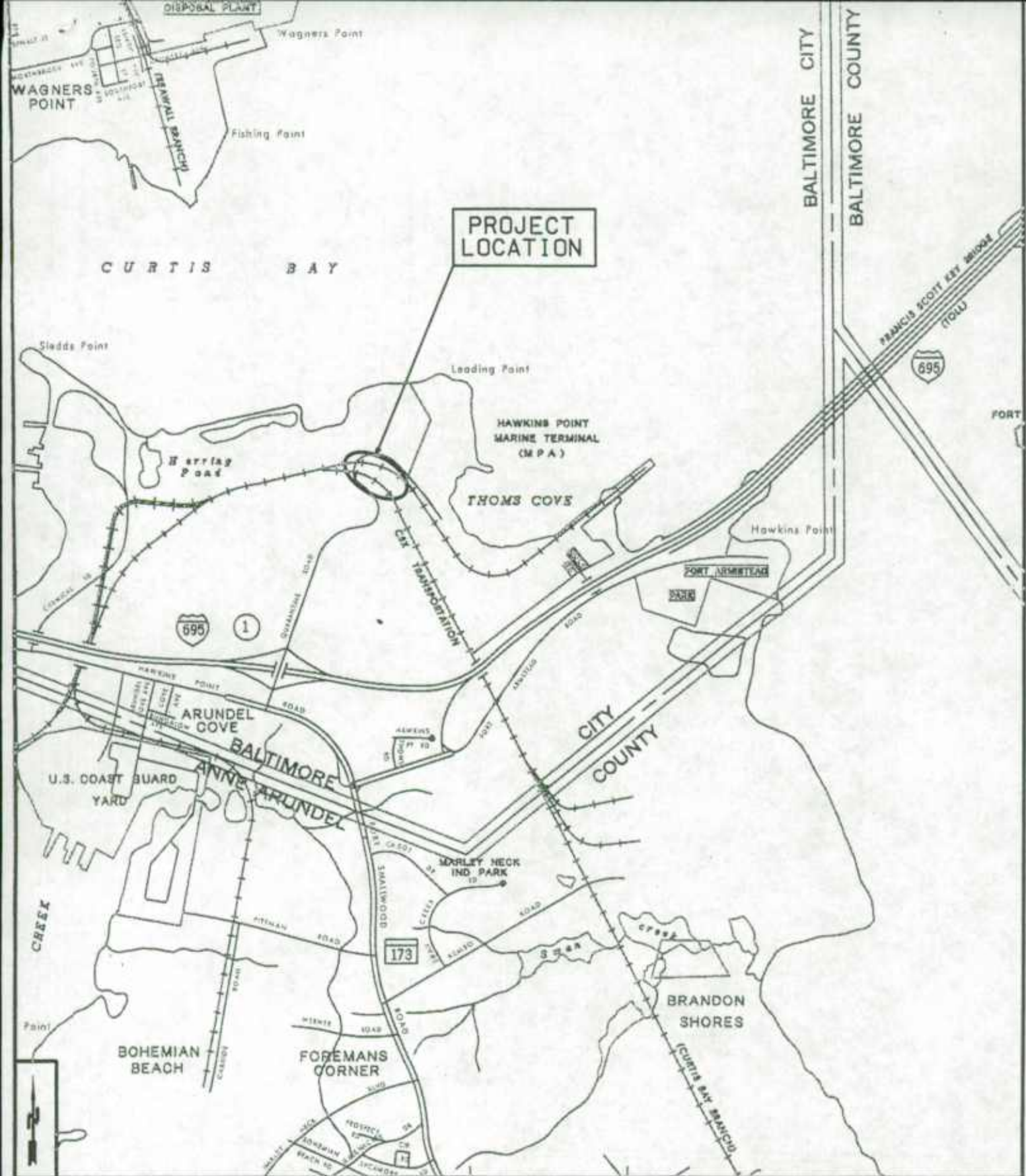


FIGURE 1

MDTA POLICE TRAINING FACILITY
HAWKINS POINT

MARYLAND TRANSPORTATION
AUTHORITY

VICINITY MAP

MD GENERAL HIGHWAYS STATEWIDE GRIDMAP
MAP No. D-13

SCALE: 1" = 2000'

DATE: OCTOBER, 2003



JOHNSON, NEUMAN & THOMPSON
Engineering A Brighter Future
72 Lumber Drive Baltimore, Maryland 21202-0649

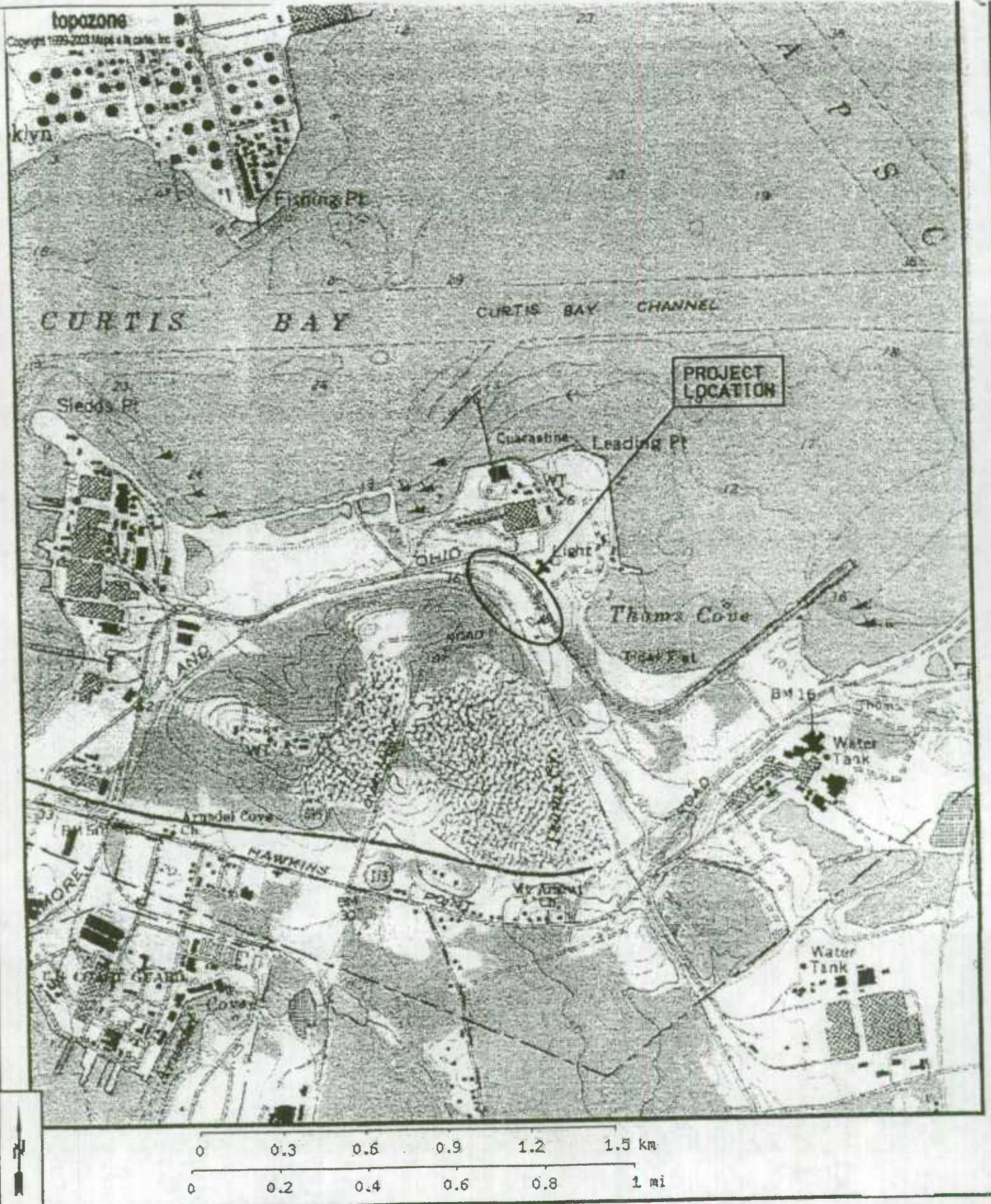


FIGURE 2

MdTA POLICE TRAINING FACILITY
HAWKINS POINT

USGS TOPOGRAPHIC MAP
CURTIS BAY, MD QUADRANGLE

MARYLAND TRANSPORTATION
AUTHORITY

Critical Area Commission

STAFF REPORT

July 7, 2004

APPLICANT: State Highway Administration

PROPOSAL: MD 468: MD 255 To Snug Harbor Road – Phase II
Widening and Resurfacing

JURISDICTION: Anne Arundel County

COMMISSION ACTION: Vote

STAFF RECOMMENDATION: Approval with Condition

STAFF: Lisa Hoerger

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

DISCUSSION:

The State Highway Administration is proposing to widen and resurface portions of MD 468 (Muddy Creek Road) between MD 255 (Galesville Road) and Snug Harbor Road. Phase I did not disturb any portion of the Critical Area; however, Phase II will require Commission approval since SHA proposes to impact approximately .40 acres of the Critical Area in the area of Deep Cove Road.

The total project length for Phase II is 6.23 miles, which includes two miles of widening between MD 256 (Cedarhurst Road) and .4 miles of widening between 500 feet east of Swamp Circle Road to 550 feet west of Chalk Point Road to provide shoulders. Resurfacing will occur from Cedarhurst Road to Snug Harbor Road, and from 500 feet east of Swamp Circle Road to MD 255. Phase II includes the improvements of two 11-foot travel lanes, two five-foot paved shoulders, two feet of safety grading and two-foot bottom ditches in each direction. Other improvements include grading, pavement rehabilitation, marking and signing.

No Habitat Protection Areas will be impacted by the widening portion of the project with the exception of nontidal wetlands. The Maryland Department of the Environment (MDE) and the Army Corps of Engineers issued permits to disturb 1.65 acres of nontidal wetlands. A Water Quality Certification was also issued by MDE.

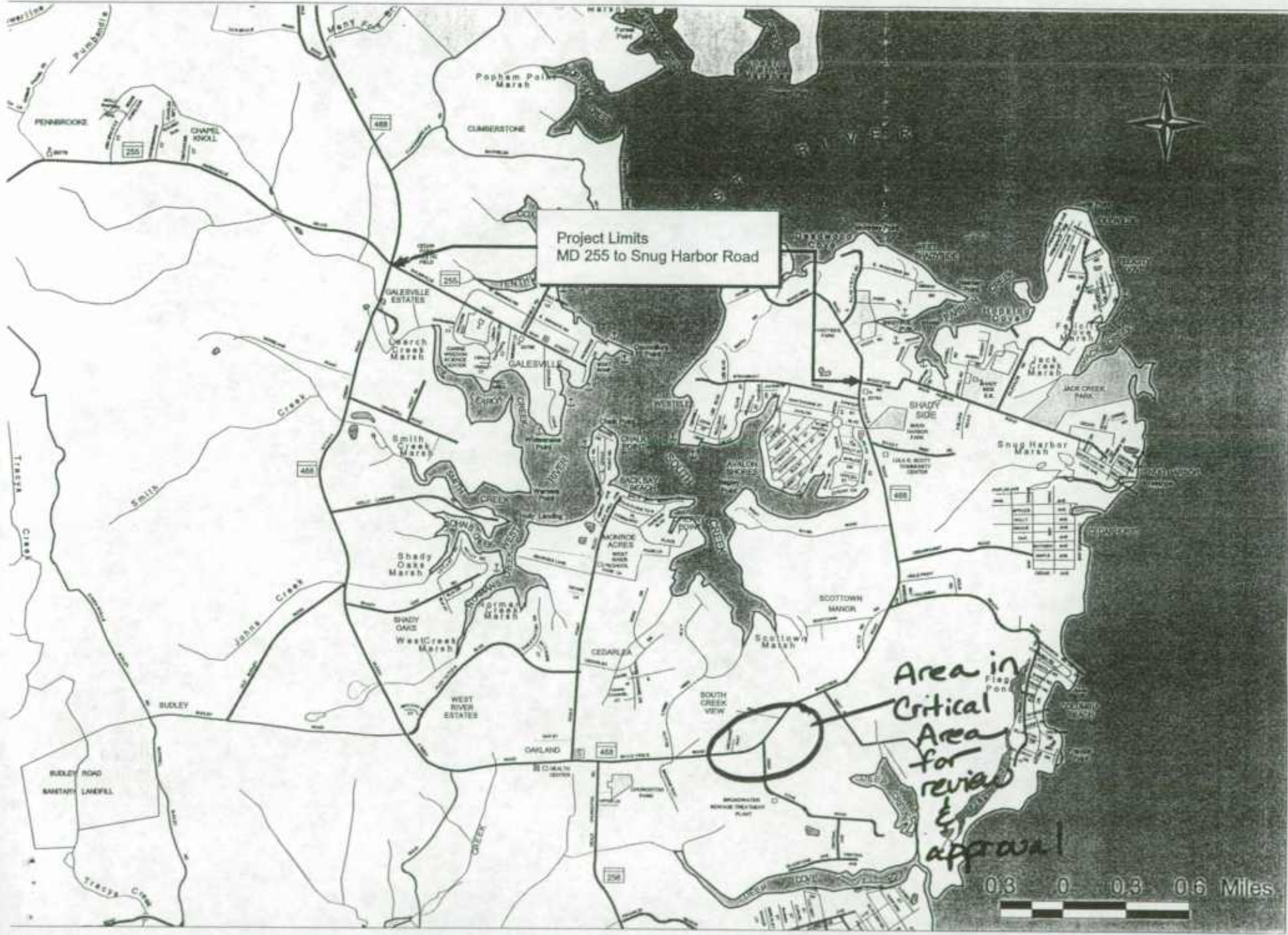
A Stormwater Management and Sediment and Erosion Control approval was issued by MDE. Since the SHA right-of-way is considered an Area of Intense Development, the 10% Pollutant

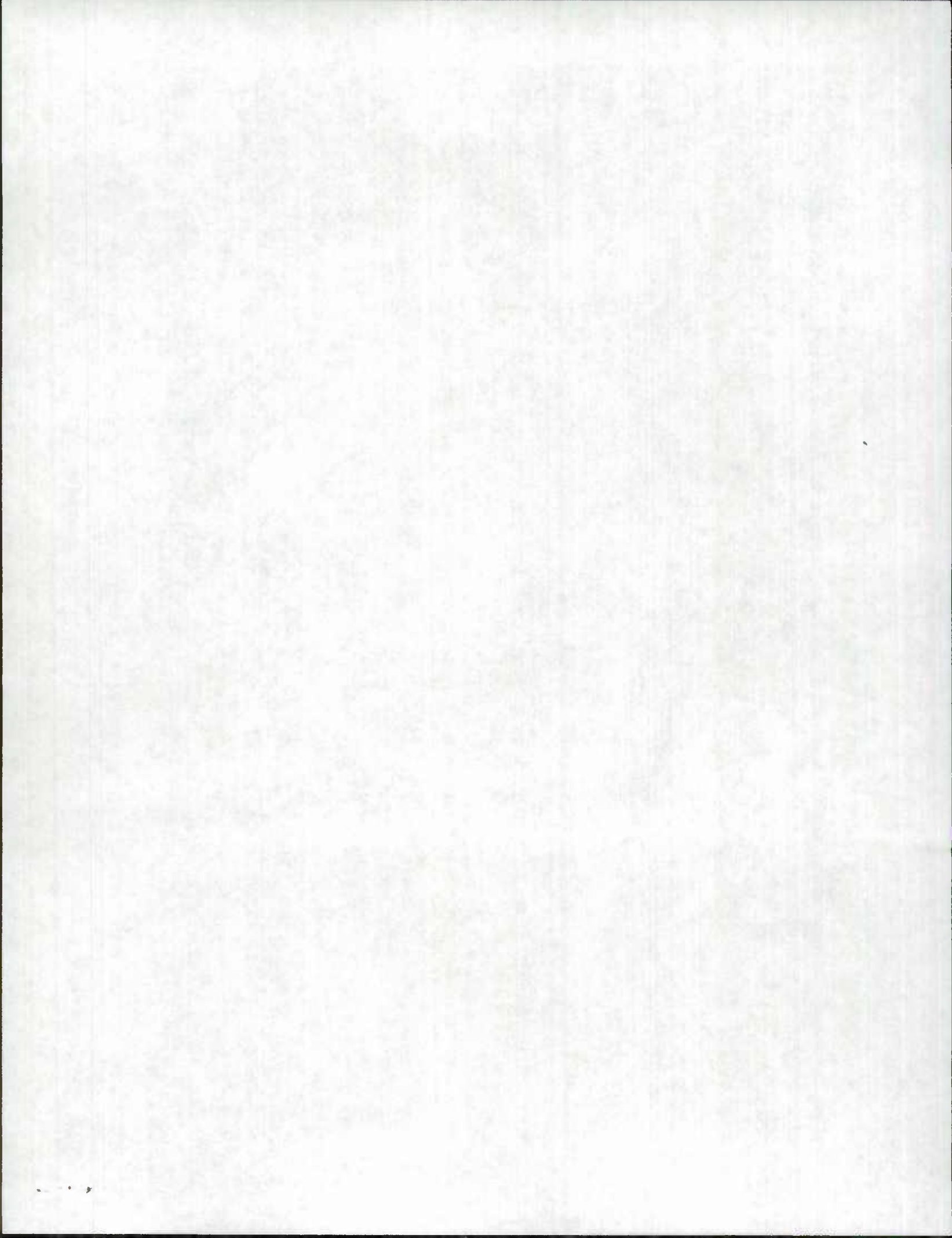
Reduction Calculations were performed. The calculations yielded a negative removal requirement; therefore, no Best Management Practices are required.

The nearby Franklin Point Property is proposed as a mitigation site. This property was purchased by the State and will be transferred to the Anne Arundel County Department of Recreation and Parks. The SHA has been working with Anne Arundel County to identify a suitable place for mitigation. This site is within the Critical Area.

Commission staff recommend this project be approved with the following condition:

- The State Highway Administration shall submit a Planting Agreement to Commission staff that includes a written agreement from the Anne Arundel County Department of Recreation and Parks indicating the location and area to be planted, and that area will remain in forest cover in perpetuity.
- If for unseen reasons the Franklin Point Property becomes unavailable for mitigation planting, the State Highway Administration shall submit an alternative site to the Commission for review and approval.





Critical Area Commission

STAFF REPORT

July 7, 2004

APPLICANT: St. Mary's College

PROPOSAL: Telecommunications Ductbank

JURISDICTION: St. Mary's County

COMMISSION ACTION: Vote

STAFF RECOMMENDATION: Conditional Approval

STAFF: Mary Owens

**APPLICABLE LAW/
REGULATIONS:** COMAR 27.02.05 State Agency Action Resulting in
Development on State-Owned Lands
COMAR 27.02.06 Conditional Approval of State or Local
Agency Programs in the Critical Area

DISCUSSION:

St. Mary's College is requesting conditional approval of a project involving the installation of 8,000 linear feet of concrete encased underground ductbank and manholes to accommodate telecommunications and power cable. The project is scheduled for construction this summer and will support the numerous ongoing and proposed construction projects. The project involves several areas on campus including the areas around Queen Anne Hall, the campus library, Montgomery Hall, Dorchester Hall, Somerset Hall and the Townhouse Crescent. There are significant archaeological resources throughout the project area, which largely dictated the proposed routing of the ductbank. The project has been designed to locate the ductbank in areas that were previously heavily disturbed.

The project has been divided into eight segments, and the contractor will only be permitted to work in one particular area at a time. The contractor will also be required to backfill and stabilize the area between manholes, which averages 300 to 400 linear feet, before excavating the trench for the next area.

Most of the installation involves existing developed areas and involves the excavation of existing asphalt pavement, concrete and brick sidewalks, and grass lawn areas. Following installation, all pavement and sidewalks will be replaced. Grass lawn areas will be stabilized and replanted. The limit of disturbance for the project is approximately 2.90 acres; however, this does not represent the actual area that will be excavated. The area to be excavated will be a trench approximately two feet wide and six feet deep. For areas adjacent to St. John's Pond and where high

groundwater can be expected, the ductbank will be incorporated into the sidewalk section to minimize the depth of excavation and disturbance. There are a few areas where ductbank excavation will reach a depth of ten feet in order to avoid utilities and other obstructions. The manholes vary in size, with the largest manhole being 6 feet in diameter and 12 feet deep. Most of the manholes will be eight feet deep.

The installation of the ductbank involves existing developed areas on campus; there are no anticipated impacts to Habitat Protection Areas, other than the 100-foot Buffer.

The campus is largely developed and is considered an area of intense development. Because the ductbank project involves a utility and does not represent a development activity involving more than 250 square feet of impervious area; compliance with the 10% Rule for pollutant removal is not required. Most of the project is located in areas that have recently been developed or redeveloped, so the College is already involved in extensive improvements to their stormwater management system through these other efforts. The Maryland Department of the Environment has indicated in writing that the project meets the criteria for a stormwater management waiver.

The project involves the removal of some natural vegetation in the form of existing trees and shrubs. Approximately 56 trees will be removed which are located within the Buffer and 12 trees will be removed which are located outside the Buffer or outside the Critical Area. In a unique arrangement with the Critical Area Commission and the Department of Natural Resources Forest Service, St. Mary's College complies with the planting requirements of the Critical Area Act and Forest Conservation Act by replacing all forest cleared on a project site at a one-to-one ratio or providing 15% forest cover on each project site, whichever is greater. On this site, forest replacement at one-to-one will be provided for all trees removed, except for those in the Buffer, where the replacement ration will be three-to-one. The total mitigation required is 180 trees.

CONDITIONAL APPROVAL EVALUATION

In order to qualify for consideration by the Commission for conditional approval, the proposing state agency must show that the program has the following characteristics:

- (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 intent of this project is to improve telecommunications throughout the campus at St. Mary's College. The project involves impacts to the 100-foot Buffer associated with the excavation of the trench for the ductbank. Because of the location of structures being served by the utilities, and the need to create a unified connection among all campus buildings, it is not feasible to locate the ductbank outside of the Buffer. The design consultant has made efforts to locate the ductbank in areas where other utilities exist or near existing sidewalks, roads, and parking lots. Efforts have also been made to minimize the removal of existing mature trees.

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

The proposed project is necessary to accommodate the expansion of facilities and the student population at St. Mary's College. The College is proposing to provide mitigation at three-to-one for all trees removed within the Buffer and one-to-one mitigation for all other trees removed. The proposed replacement planting is 180 trees. St. Mary's College staff is currently working with Commission staff on a campus-wide planting plan, which will combine the mitigation requirements for several projects. It is anticipated that the plan will be implemented in the spring of 2005.

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

Other than the impacts to the 100-foot Buffer, the project is otherwise in compliance with the Critical Area law and criteria. The project does not involve a development activity resulting in 250 square feet of impervious area; therefore, no stormwater management is required. The Maryland Department of the Environment has determined that the project is eligible for a stormwater management waiver under their regulations.

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 project is necessary to meet the telecommunications needs of St. Mary's College, which is undergoing significant expansion. In the last four years, there have been four major expansion and construction projects on the north campus. The student population has increased by 300 students in the last five years, and the number of students living on campus has increased by 500 students. The large increase in the number of campus residents has created a large demand for upgraded telecommunications infrastructure.

It would not be possible to upgrade the telecommunications system at St. Mary's College without installation of the proposed ductbank which involves some impacts to the 100-foot Buffer. Many of the structures being served by the utilities in the ductbank, including the public safety office, the college library, and Queen Anne Hall, are located within the 100-foot Buffer, so it is not feasible to totally avoid impacts to the Buffer.

- (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;*

St. Mary's College Office of Facilities staff has worked with the consultant to design a project that conforms as closely as possible with the Critical Area Law and Criteria. This project involves impacts to the 100-foot Buffer, but is otherwise in compliance with the

Criteria set forth in COMAR 27.02.05 for projects on State-owned lands that are identified as areas of intense development.

- (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.*

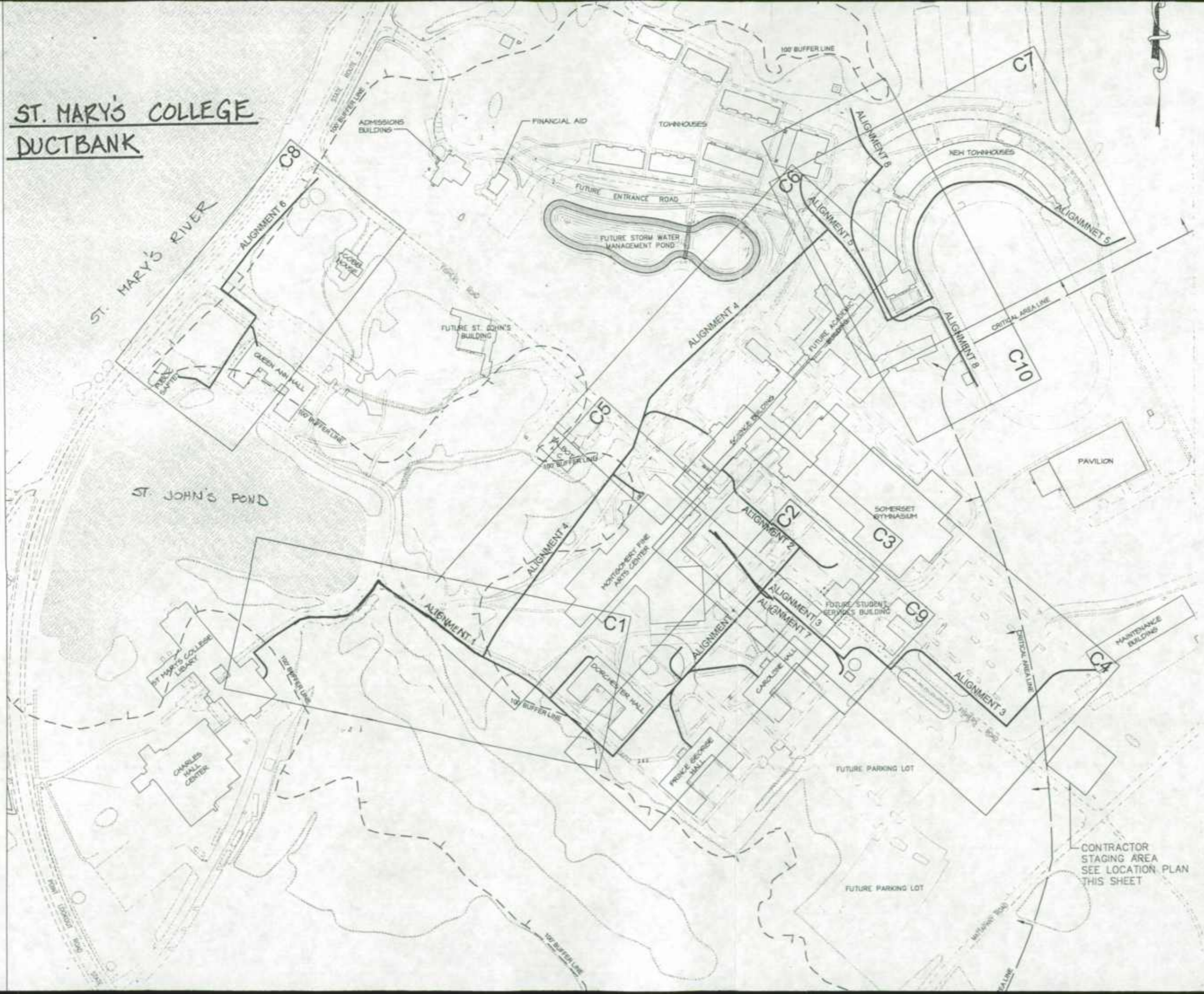
St. Mary's College has worked closely with the consultant on this project to minimize environmental impacts associated with this project. Wherever possible, the ductbank has been located near existing paths and roadways, removal of existing vegetation has been minimized, and the size of the trench has been adjusted to minimize excavation. Except for impacts to the 100-foot Buffer, the project is otherwise in compliance with COMAR 27.02.05. Most of the impacts to the Buffer will be temporary as the ductbank is an underground structure. All trees and shrubs removed in the Buffer will be replaced at three-to-one and all other trees and shrubs removed will be replaced at one-to-one.

STAFF RECOMMENDATION:

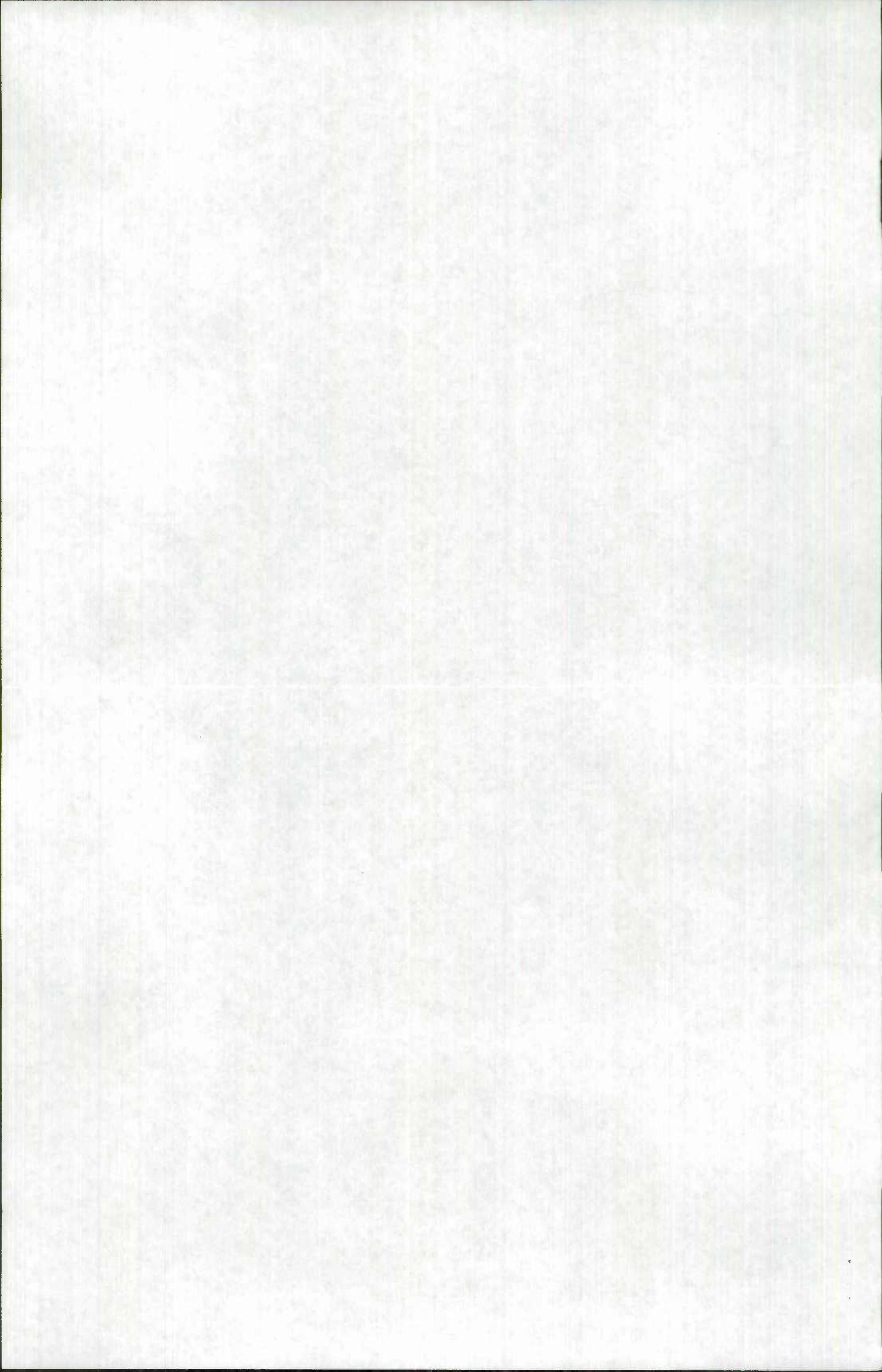
Commission staff recommends that this project be approved with the following condition:

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

ST. MARY'S COLLEGE DUCTBANK



CONTRACTOR
STAGING AREA
SEE LOCATION PLAN
THIS SHEET



Critical Area Commission

STAFF REPORT

July 7, 2004

APPLICANT: Maryland Aviation Administration on behalf of
Maryland Air National Guard, Tenant

PROPOSAL: Parking Improvements for Mobility Storage Building 4010;
Relocated Access Road: Lynbrook Road to Hercules Blvd.

JURISDICTION: Baltimore 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:

The Maryland Air National Guard (ANG) leases an area from Maryland Aviation Administration adjacent to Martin State Airport in the Critical Area of Frog Mortar Creek in Baltimore County. ANG maintains facilities on this site which are now old, obsolete, or sited in a manner that is not conducive to today's security standards. On January 7, 2004, the Commission approved a conceptual development plan that proposed several future redevelopment projects on the ANG leased area, two of which were a proposed relocated access road between Lynbrook Road and Hercules Blvd, and parking lot improvements around Mobility Storage Building 4010. The design details have been submitted for these two projects and Commission approval is being requested. The two projects are being combined as one approval, since they are adjacent to each other and stormwater from the parking area outlets into the drainage ditch for the relocated road. (See center of enclosed aerial photograph for existing conditions.)

The existing access road currently parallels the fenced property line between the ANG leased area and a Baltimore County Roads maintenance facility. A deep and steep-sided ditch lies between the fence line from this road, and conveys drainage directly to Frog Mortar Creek. The road terminates at a cul-de-sac and does not serve any facility located there. ANG wishes to abandon and restore this roadbed and construct a parallel road farther from the fence line. The new road will be on the opposite side of woods that border the existing road. The relocated road is a straight-line connection between two existing roads. Stormwater management is provided via a grassed, dry swale alongside the road, which then outlets into the existing, steep-sided ditch

that drains to Frog Mortar Creek. The steep-sided ditch is heavily vegetated with upland grasses in its channel bottom, and intermittent growth of shrubs on the slopes. Runoff from the Baltimore County Roads facility also drains to this ditch. The County's drainage is untreated, unmanaged, and drains a considerably large, non-vegetated area.

A small portion of the parking improvements around Building 4010 are located inside the Critical Area, as is a portion of the sand filter that will provide stormwater management. Building 4010 is surrounded by degraded macadam and stone pavement, and areas compacted and devoid of vegetation due to the stockpiling and storage of various materials. The sand filter will outlet into a drainage channel which will drain via a new culvert pipe under the relocated access road, and then through an existing 36" culvert into the steep-sided ditch.

The Maryland Air National Guard property is considered an intensely developed area. Compliance with the 10% Rule is required and the previously mentioned stormwater management practices have been provided for pollutant removal. The parking improvements will increase the impervious surface areas in the Critical Area by 1%, requiring the removal of 0.106 lbs. of phosphorus, which will be achieved by the sand filter, whose pollutant removal capability is 0.215 lbs. of phosphorus. The access road will increase the impervious surface areas by 4%, requiring the removal of 0.045 lbs. of phosphorus, which will be achieved by the dry swale, whose pollutant removal capability is 0.398 lbs. As a result, these combined projects will remove an additional 0.462 lbs. of pollutants than required. The stormwater management and sediment and erosion control plans have been reviewed and approved by Maryland Department of the Environment.

One acre of forest cover will be removed for the access road construction. Forest mitigation is being provided at a 1:1 ratio, and will be combined with 0.37 acres of Forest Conservation mitigation for a total of 1.5 acres of forest cover. These plantings will be utilized to restore the abandoned roadbed and areas adjacent to it. There are no proposed impacts in the Buffer. There are no other HPAs on this site.

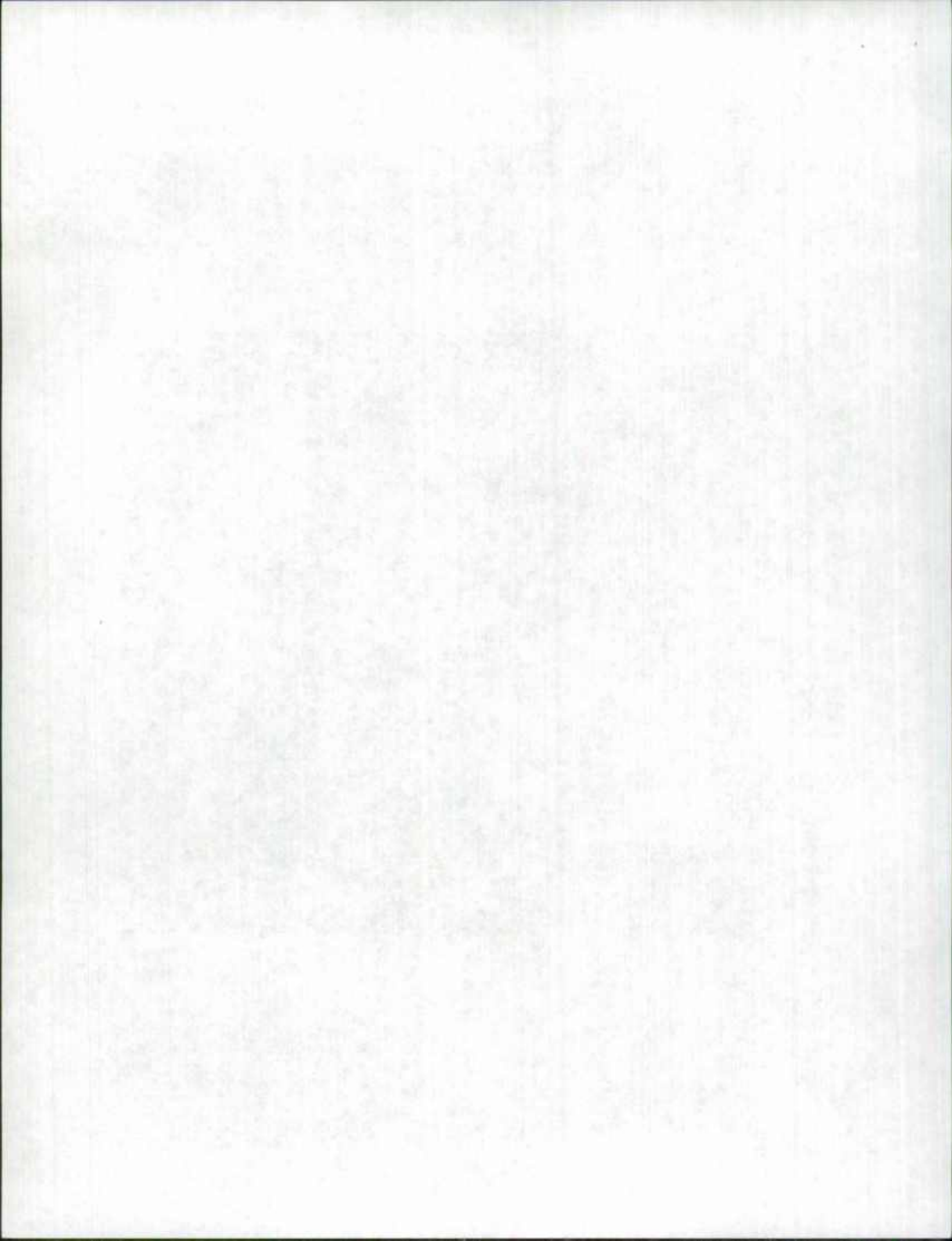
Baltimore County DEPRM was advised of these projects and had no comments.

Maryland Air National Guard
Baltimore County
Building 4010 and Existing Access Road
Existing Conditions

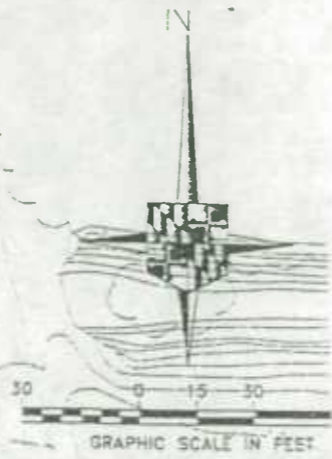


Image Created Using the MERLIN Database
Maryland Department of Natural Resources, et al.

Prepared by Wanda Diane Cole
June 2004

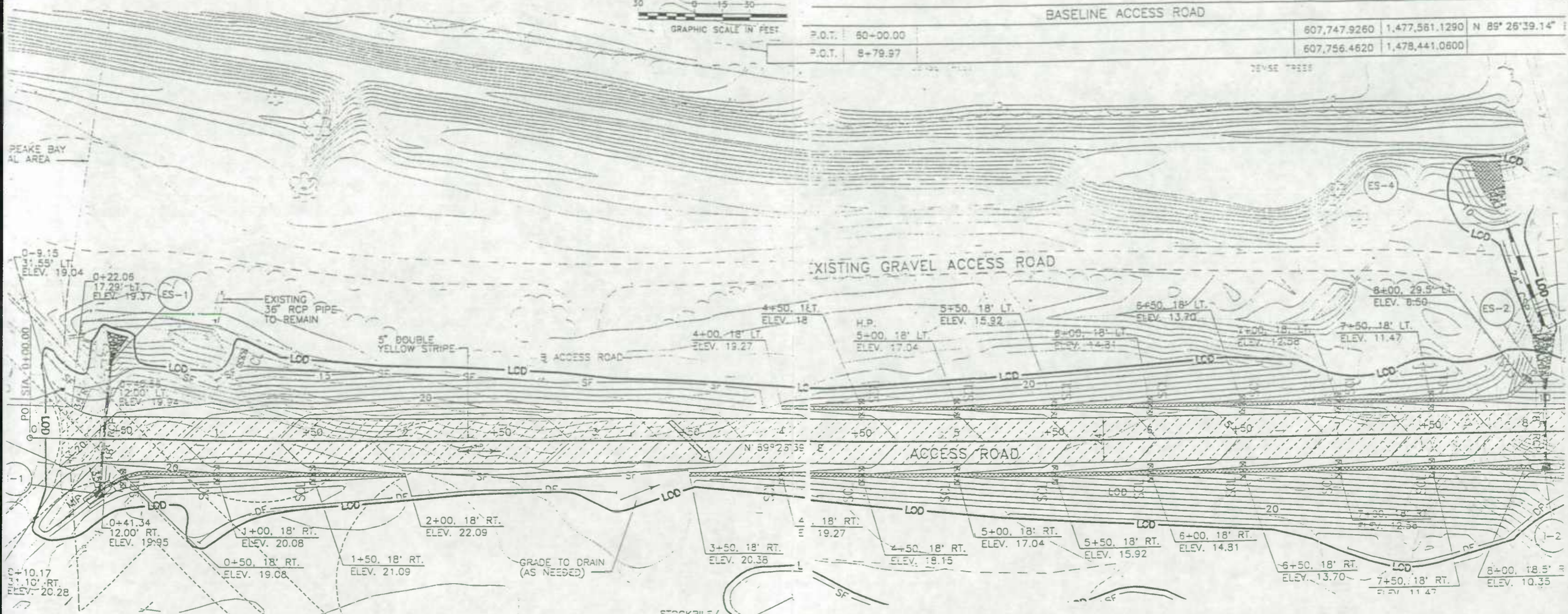


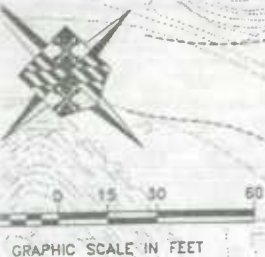
MD Air National Guard



BASELINE ACCESS ROAD

P.O.T.	50+00.00	607,747.9260	1,477,561.1290	N 89° 25' 39.14"
P.O.T.	8+79.97	607,756.4620	1,478,441.0800	





GRAPHIC SCALE IN FEET

DIVERSION FENCE (DF)	
STATION TO STATION	LF.
0, RT. TO 24+10, RT.	465
0, RT. TO 25+75, RT.	165

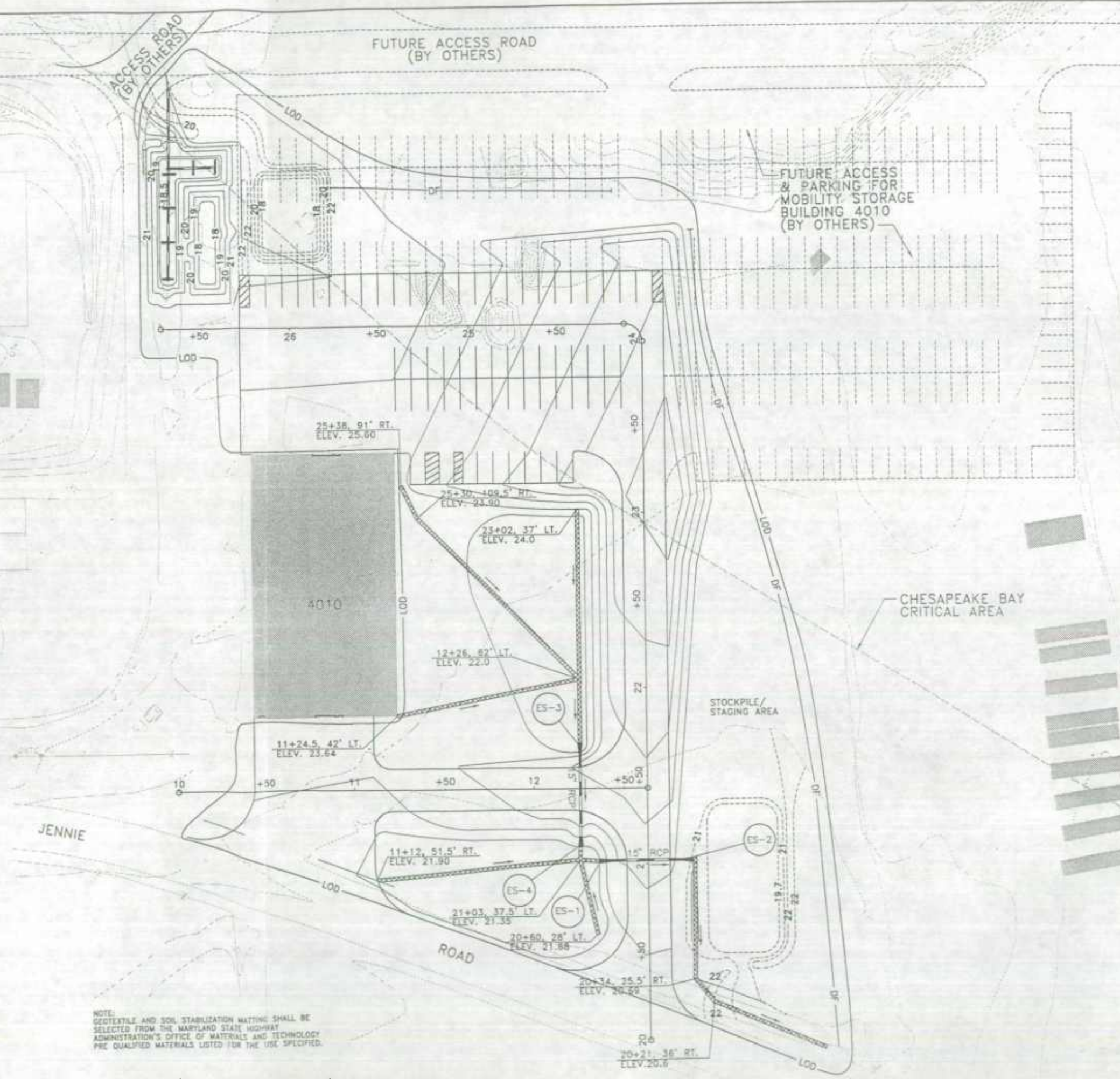
CONSTRUCT DITCH				
STATION	W	Z ₁	Z ₂	TYPE 'A' MATTING S.Y.
52' RT. TO 12+36, 42' RT.	0'	10	10	110
42' LT. TO 12+26, 62' LT.	0'	10	10	90
100' RT. TO 21+02, 26' RT.	2'	3	3	130
28' LT. TO 21+10, 37' LT.	2'	3	3	45
37' LT. TO 23+02, 37' LT.	0'	4	10	120
37' LT. TO 25+38, 91' LT.	0'	10	10	130

CONSTRUCT SURFACE SAND FILTER
STATION 26+50, RT. SEE SPECIAL DETAILS.

STABILIZED CONSTRUCTION ENTRANCE (SCE)
USE EXISTING GRAVEL ROADS AS NEEDED

STONE OUTLET SEDIMENT TRAP - STII									
CATCHER OF WEIR	DRAINAGE AREA (AC.)	BOTTOM ELEVATION	VOLUME REQ'D (C.F.)	VOLUME PROVIDED (C.F.)	CREST ELEV.	CLEAN OUT ELEV.	WEIR LENGTH (L.F.)	OUTLET ELEVATION (L.F.)	BOTTOM DIMENSION
0, 80' RT	1.8	19.7	6,480	6,588	21.4	20.1	5.8	20.5	85' X 40'
0, 92' RT	1.1	18.5	3,960	4,196	21.1	19.3	5.6	20.0	42' X 31'

WITH REMOVABLE PUMP STATION OR OTHER APPROVED DEWATERING DEVICE



NOTE:
GEOTEXTILE AND SOIL STABILIZATION MATTING SHALL BE
SELECTED FROM THE MARYLAND STATE HIGHWAY
ADMINISTRATION'S OFFICE OF MATERIALS AND TECHNOLOGY
PRE QUALIFIED MATERIALS LISTED FOR THE USE SPECIFIED.

Critical Area Commission

STAFF REPORT

July 7, 2004

APPLICANT: Town of Greensboro

PROPOSAL: Choptank River Park

JURISDICTION: Town of Greensboro

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:

The Town of Greensboro is proposing a pavilion in the Buffer as part of its plan to develop its Choptank River Park. The site is in an Intensely Developed Area (IDA) and was acquired as a result of a FEMA buyout. A single family residence was removed from the site. The proposal will need conditional approval because the entire site is located within the 100-foot Buffer.

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 has the following characteristics:

The following are the responses of the applicant:

B.(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 from being implemented;

The site contains existing special features such that the literal enforcement of the Critical Area regulations would prevent the project from being implemented. The lot is entirely within the 100-foot Buffer and in fact is only 70 feet wide.

There are many different user groups that visit the Park and enjoy this section due to its high banks. The Town does own adjacent waterfront that contains some non-Buffer land however it is much lower land and thus more prone to flooding.

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

The addition of a public gazebo provides substantial public benefit to the Critical Area Program. The Critical Area Law in "Elements of Program" includes designation of shoreline areas that are suitable for parks, public access or assembly. The gazebo benefits the various user groups that utilize the Park by providing shelter. Fisherman, bird watchers and other passive park users that benefit from being close to the River use this part of the Park. The opposite shoreline is a natural forested riverine wetland that supports many different wildlife species that can be viewed from the Park side. The Critical Area Criteria, IDA section states that areas of public access to the shoreline should be encouraged in IDAs.

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

The Park gazebo otherwise is in conformance with Chapter 2. Located in the IDA and in the Buffer, the Town will mitigate by Tree and/or shrub planting 3:1 mitigation amounting to 6 trees, 12 understory trees and/or 18 shrubs or a combination thereof will be planted in the Buffer in Choptank River Park. With the gazebo, impervious surfaces equal 9 %. All existing tree and lawn surfaces will be maintained. There are no other Habitat Protection Area issues.

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

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

Literal enforcement of the provisions of Subtitle 02 would prevent the project from being implemented because the lot is entirely within the 100-foot Buffer and in fact is only 70 ft. wide.

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;

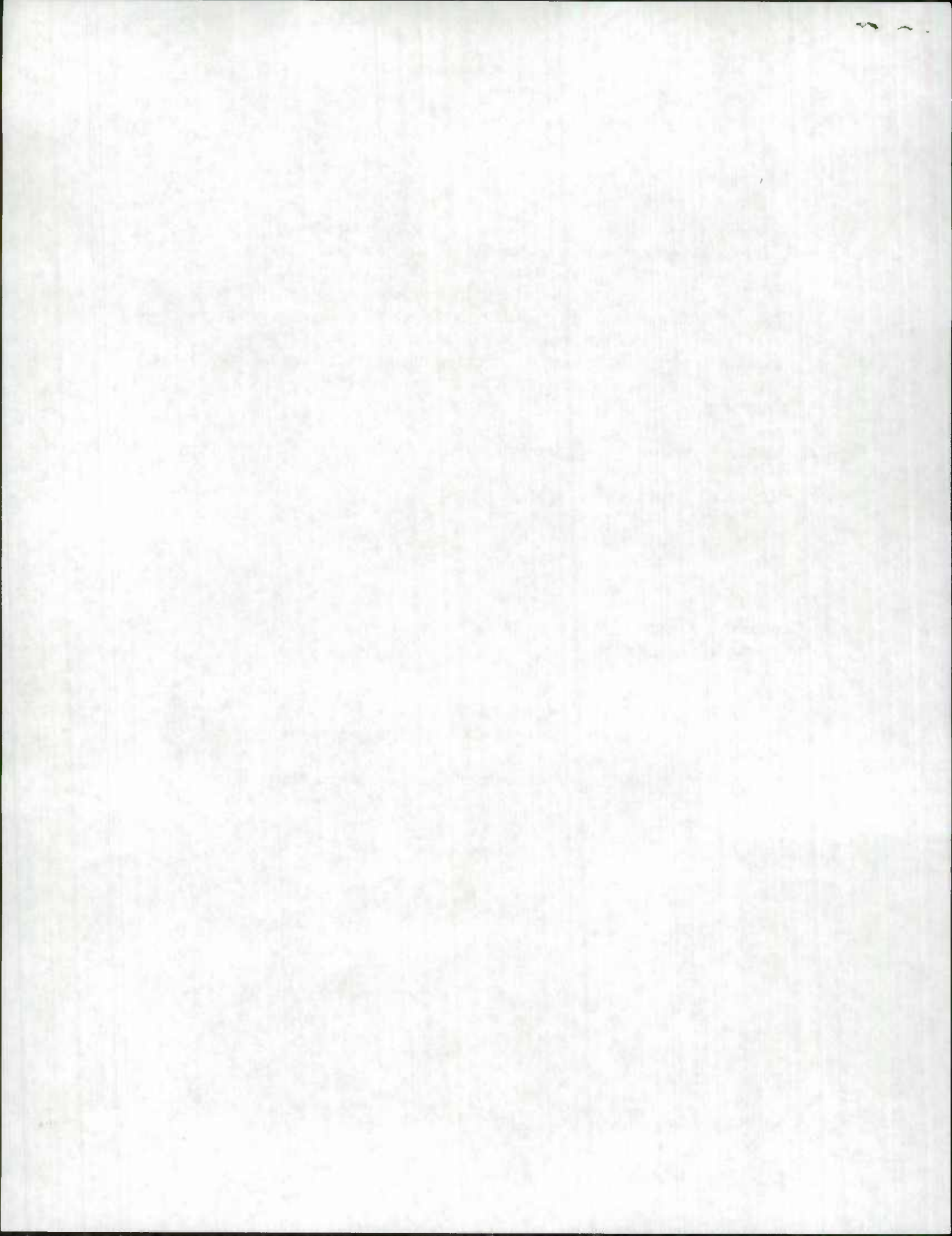
The process by which the project could conform insofar as possible with the Town's Program include the fact that this is the only structure proposed for the lot and it is the least flood prone waterfront lot owned by the Town. The gazebo actually has much less impervious surface than the single-family residence that formerly existed on the lot. Except for the Buffer impacts the proposed redevelopment otherwise is in conformance with Subtitle 02.

C.(3) Measures proposed to mitigate adverse effects of the project.

Measures proposed to mitigate adverse impacts of the project include tree and/or shrub planting at a 3:1 rate amounting to 6 trees, 12 understory trees and/or 18 shrubs or a combination thereof planted in the Buffer in Choptank River Park as detailed in the Buffer Management Plan.

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



Choptank
River Park
Town of Greensboro



Critical Area Commission

STAFF REPORT

July 7, 2004

APPLICANT: Town of Hillsboro

PROPOSAL: Six -Year Comprehensive Review for the
Town of Hillsboro

JURISDICTION: Town of Hillsboro

COMMISSION ACTION: Vote

COMMISSION PANEL: Margo Bailey, Chair, Frank Dawson, Dr. Earl Chambers,
Bill Giese, and Louise Lawrence

PANEL RECOMMENDATION: Approval with Conditions

STAFF: Dawnn McCleary

**APPLICABLE LAW/
REGULATIONS:** Natural Resources Article §8-1809(g) Review and
Proposed Amendment of Entire Program

DISCUSSION:

The Town of Hillsboro has completed the required comprehensive review of their Critical Area Program and has submitted a revised Critical Area Ordinance and Map to the Critical Area Commission for review and approval. The Critical Area Ordinance and Map were reviewed and unanimously approved by the Planning Commission on April 5, 2004. On June 8, 2004, the Critical Area Commission panel held a joint public hearing with the Hillsboro Town Commissioners. There was no public comment during the hearing.

The changes to the Program include a complete revision of the Critical Area provisions of the Town's Zoning Ordinance and its Critical Area Program, as well as, new Critical Area maps. The Heritage Division of the Department of Natural Resources was contacted regarding updated information on Habitat Protection Areas and that information has been reflected on the new map.

Town of Hillsboro

July 7, 2004

Page 2

ZONING ORDINANCE/PROGRAM CHANGES

The Town's new Critical Area Ordinance was designed to be sufficiently comprehensive so that a separate Program document would no longer be required. The new ordinance is based on the model program prepared by the Commission staff. It has been customized to address the specific conditions in the Town of Hillsboro, and it is designed as a stand-alone document. Substantive changes include clarification of the land use classifications and standards for development, clarification of provisions pertaining to the protection of Habitat Protection Areas, and reorganization of the provisions for water-dependent facilities. Other changes include the addition of required provisions for grandfathering, enforcement, and shore erosion control. Sections on growth allocation, structures on piers, and the Critical Area Program amendment process have also been added.

During the time that the Town has been working with the model ordinance, several paragraphs in the model have been amended to be more consistent with the Critical Area Criteria. These changes were evaluated and discussed by the Panel and they recommended that they be incorporated into Hillsboro's Critical Area Ordinance. Conditions 1 through 6 address these recommendations.

The Panel also discussed the passage of two pieces of legislation this spring that affect implementation of local Critical Area Programs. The Panel recommended several clarifications and minor amendments to ensure compliance with House Bill 1009 and House Bill 1345. Conditions 7 through 13 address these recommendations.

After the public hearing, the Panel voted to approve Hillsboro's Critical Area Ordinance and Map with the following conditions: (Language to be removed is shown as ~~striketrough text~~ and new language is shown as **bold text**.)

1. Section 1-105. [Page 14] – Add the following language to this section and recodify as necessary:

(g) **Reasonable accommodations for the needs of disabled citizens.** The Board of Appeals may make reasonable accommodations to avoid discrimination on the basis of a physical disability. Reasonable accommodations for the needs of disabled citizens may be permitted in accordance with the evidentiary requirements set forth in the following paragraphs.

- (1) **An applicant shall have the burden of demonstrating the following:**
 - A. **The existence of a physical disability;**
 - B. **Literal enforcement of the provisions of this ordinance would result in**

discrimination by virtue of such disability;

- C. A reasonable accommodation would reduce or eliminate the discriminatory effect of the provisions of this ordinance;**
 - D. The accommodation requested will not substantially impair the purpose, intent, or effect, of the provisions of this ordinance as applied to the property;**
 - E. Environmental impacts associated with the accommodation are the minimum necessary to address the needs resulting from the particular disability of the applicant.**
- (2) The Board of Appeals shall determine the nature and scope of any accommodation under this section and may award different or other relief than requested after giving due regard to the purpose, intent, or effect of the applicable provisions of this ordinance. The Board may also consider the size, location, and type of accommodation proposed and whether alternatives exist which accommodate the need with less adverse effect.**
- (3) The Board of Appeals may require, as a condition of approval, that upon termination of the need for accommodation, that the property be restored to comply with all applicable provisions of this ordinance. Appropriate bonds may be collected or liens placed in order to ensure the Town's ability to restore the property should the applicant fail to do so.**
2. Section 1-108.(c)(4) [Page 24] – Delete the last sentence which reads, “~~Non-industrial activities which support surface mining, agriculture, and forestry may be established or expanded provided they conform with the other requirements of this ordinance.~~” This provision is not included in the Criteria and could be interpreted in a manner that is inconsistent with other provisions in the ordinance.
 3. Section 1-109. Growth Allocation [Page 25] – Incorporate the growth allocation provisions as reviewed by the Panel and included as Attachment A.
 4. Section 1-124.(e) Public notice [Page 56] – Delete the second and third sentences, “~~Designation of habitat and protective measures may not be accomplished unless the affected public is given an adequate opportunity to be heard. If additional habitat areas are designated in the future, as desired by the local government or if the Secretary of the Department of Natural Resources designates additional species and/or habitat areas, a public hearing, as appropriate, shall be held to consider comments on these areas and protection measures proposed.~~” Add the following, “**If the Secretary of the**

Department of Natural Resources designates additional species by regulation in the future, additional local public hearings, as appropriate, shall be held to consider comments on the protection measures proposed for these species.”

5. Section 1-125. Plant and Wildlife Habitat and Nontidal Wetlands Protection [Page 60] – Add the following provisions as paragraph (f):

(f) Public notice. The determination of the existence and extent of these habitats and protection areas shall result from a cooperative effort between the Town and public agencies or private organizations. If the Secretary of the Department of Natural Resources designates additional species by regulation in the future, public hearings, as appropriate, shall be held to consider comments on these areas and the protection measures proposed for these species. The protection measures shall be adopted within 12 months of the date of the Secretary’s designation.

6. Section 1-102. Definitions [Page 2] and Section 1-123 The 100-foot Buffer [Page 53] – Replace the current definition of Buffer with the following definition: **“Buffer means an existing, naturally vegetated area, or an area established in vegetation and managed to protect aquatic, wetlands, shoreline, and terrestrial environments from man-made disturbances.”**

7. Section 1-102. Definitions [Page 2] – Add the following definition, **“Dwelling unit means a single unit providing complete, independent living facilities for at least one person, including permanent provisions for sanitation, cooking, eating, sleeping, and other activities routinely associated with daily life. Dwelling unit includes a living quarters for a domestic or other employee or tenant, an in-law or accessory apartment, a guest house, or a caretaker residence.”**

8. Section 1-102. Definitions [Page 2] – Add the following definition, **“Unwarranted hardship means that without a variance, an applicant would be denied reasonable and significant use of the entire parcel or lot for which the variance is requested.”**

9. Section 1-104. Program Enforcement [Page 12] – Add the following language to this section:

(c) Violations. In addition to any other penalty applicable under state or municipal law, a person who violates a provision of Natural Resources Article, Title 8 Subtitle 18, or the Town’s Critical Area Program, ordinance, or regulations is subject to a fine not exceeding \$10,000.

(1) In determining the amount of the penalty to be assessed under paragraph (c), the Town may consider the following:

- A. The gravity of the violation
- B. Any willfulness or negligence involved in the violation; and
- C. The environmental impact of the violation

10. Section 1-112. Variances [Page 32] – Add the following language to paragraph (a) as indicated, “ ... variance may be obtained. **In considering an application for a variance, the Town shall presume that the specific development activity in the Critical Area that is subject to the application and for which a variance is required does not conform with the general purpose and intent of Natural Resources Article, Title 8 Subtitle 18, COMAR Title 27, and the requirements of the Town’s Critical Area Program. The provisions for granting such a variance ...**”

11. Section 1-112. Variances [Page 33] – Add the following language to paragraph (b)(4) as indicated, “... which are the result of actions by the applicant, **including the commencement of development activity before an application for a variance has been filed, nor does the request arise from ...**”

12. Section 1-112. Variances [Page 33] – Add the following language to paragraph (c) as indicated, “ ... the Board of Appeals shall make **written** findings reflecting analysis of each standard. **The applicant has the burden of proof and the burden of persuasion to overcome the presumption of nonconformance established in paragraph (a) above. The Town shall notify the ...**”

13. Section 1-112. Variances [Page 33] – Add the following language to this section and recodify as necessary:

(d) **Findings.** Based on competent and substantial evidence, the Town shall make **written findings** as to whether the applicant has overcome the presumption of nonconformance as established in paragraph (a) above. With due regard for the person’s technical competence, and specialized knowledge, the written findings may be based on evidence introduced and testimony presented by:

- (1) The applicant;
- (2) The Town or any other government agency; or
- (3) Any other person deemed appropriate by the Town.

ACREAGE CALCULATIONS AND GROWTH ALLOCATION

The Town of Hillsboro has 54.45 acres of land that is regulated by its Critical Area Ordinance, with 0 acres of IDA, 25.35 acres of LDA, and 29.10 acres of RCA. The State Critical Area Law permits Caroline County to use "growth allocation" equal to 5 percent of its RCA acreage, to change the Critical Area designation of RCA and LDA lands to a more intense classification. The County has not reserved or given any "growth allocation" acreage to the Town of Hillsboro, and the Town has not requested to use any the growth allocation acreage.

MAP CHANGES

The Town's map was prepared by the Maryland Department of Planning. The new map includes more detailed parcel information than what was on the original map. The Heritage Division of the Department of Natural Resources was contacted regarding updated information on Habitat Protection Areas and that information is shown on the new map.

Attachment A

Section 1-109 Growth Allocation.

- (a) Definition. Growth allocation means the number of acres of land in the Critical Area that a local jurisdiction may use to create new Intensely Developed and new Limited Development Areas. The growth allocation shall be calculated based on five percent of the total Resource Conservation Area in the local jurisdiction at the time of the original approval of the local jurisdiction's program by the Commission, not including tidal wetlands or land owned by the federal government.
- (b) Description. The upland area of the Town within the Critical Area comprises about 54.45 acres or 67%. Within the Critical Area, 0 acres of land were classified as IDA, 25.35 acres were classified as LDA, and 29.10 acres were classified as RCA. The State Critical Area Law permits the County to allocate 5 percent of its RCA for use for future growth as either IDA or LDA. Caroline County originally had 436.22 acres of growth allocation available. Of this acreage 16.89 acres have been used. Of the County's available growth allocation acres, 0 acres have been given to the Town of Hillsboro. At the time of this ordinance, 0 acres have been used by the Town of Hillsboro.
- (c) Guidelines. The area of expansion of Intensely Developed and Limited Development Areas, or both, shall be coordinated with the Town. When locating new Intensely Developed or Limited Development Areas the Town shall use these guidelines:
- (1) New Intensely Developed Areas should be located in Limited Development Areas or adjacent to existing Intensely Developed Areas;
 - (2) New Limited Development Areas should be located adjacent to existing Limited Development Areas or Intensely Developed Areas.
 - (3) New Intensely Developed Areas (IDA) shall be at least 20 acres in size unless:
 - A. They are contiguous to an existing IDA, LDA; or
 - B. They are a grandfathered commercial or industrial uses which

existed as of the date of local Program approval. The amount of growth allocation deducted shall be the equivalent to the area of the entire parcel or parcels subject to the growth allocation request.

- (4) New Intensely Developed Areas and Limited Development Areas should be located in order to minimize impacts to Habitat Protection Areas as specified in this ordinance (Section 1-122-126) and in an area and in a manner that optimizes benefits to water quality;
 - (5) New Intensely Developed Areas should be located where they minimize their impacts to the defined land uses of the Resource Conservation Areas (Section 1-108) ;
 - (6) New Intensely Developed Areas and Limited Development Areas in the Resource Conservation Area should be located at least 300 feet beyond the landward edge of tidal wetlands or tidal waters;
 - (7) New Intensely Developed or Limited Development Areas to be located in Resource Conservation Areas shall conform to the Town Program for such areas, shall be so designated on the Town Zoning Map and shall constitute an amendment to this program subject to review and approval by the Town Commissioners, the County Commissioners and the Critical Area Commission.
- (d) Process. Applicants for growth allocation shall submit a request for growth allocation accompanied by appropriate plans and environmental reports in accordance with the following process:
- (1) All applications for growth allocation shall be submitted to the Town Commissioners and to the County Planning staff. Both the Town and the County shall review all growth allocation requests. Wherever possible hearings shall be held jointly between the County and the Town. Requests shall be accompanied by a concept plan and appropriate environmental reports and/or studies so as to provide sufficient information to permit the Planning Commission to review the application for consistency with the Town's Critical Area regulations. The subdivision history of parcels designated as RCA must be provided as part of the growth allocation application. The date of December 1, 1985, is the date used for the original Critical Area mapping and shall be used as a beginning point of analysis.
 - (2) All applications for growth allocation shall be forwarded to the Planning

Commission for review and shall include comments and recommendations from the County Planning staff. The Planning Commission shall hold a public hearing on the growth allocation request prior to making a recommendation on the proposal to the Town Commissioners.

- (3) The applicant shall address the Planning Commission's comments and recommendations and may revise the concept plan accordingly. The growth allocation request shall then be forwarded to the Town Commissioners with a recommendation for approval or denial from the Planning Commission.
- (4) The Town Commissioners shall hold a public hearing, as per Section 1-113 on the request for growth allocation.
- (5) The Town Commissioners may establish conditions of approval that are consistent with the intent of the Town's Critical Area Program.
- (6) Upon approval of the growth allocation request by the Town Commissioners and the County Commissioners, the Town shall send a request to the Critical Area Commission to award growth allocation to the project. The request shall be accompanied by pertinent plans and environmental reports and/or studies pertaining to the project and a letter from the County documenting the County's authorization of the Town's proposed use of the growth allocation. Upon receipt of the request from the Town, the Critical Area Commission shall notify the Town regarding the processing of the request as an amendment or refinement to the Town's Critical Area Program. Refinements shall be acted on within 30 days of the Commission's notification to the Town of a complete submission. Amendments shall be acted on within 90 days of the Commission's notification to the Town of a complete submission.
- (7) Following approval of the growth allocation request by the Critical Area Commission, the Town Commissioners may implement the change, and the applicant may proceed to the preparation of the final site plan or subdivision plat for recordation.
- (8) Prior to approving the final site plan or subdivision plat, the Planning Commission or their designee shall ensure that all conditions of approval are incorporated into the final plan, public works agreement, deed covenants, etc.
- (9) Final subdivision plats and site plans shall be processed in accordance

with the requirements of this ordinance and/or the Town's Subdivision Regulations.

- (10) The Town's official Critical Area maps shall be amended to reflect the new land classification, and a copy of the new map shall be provided to the Critical Area Commission.
- (11) A condition of approval shall be that Growth Allocation shall be awarded to a specific project and the projects approved for Growth Allocation be substantially completed within three (3) years of the date of approval. Substantially completed shall be determined by the Town Commission and is defined as projects in which all public improvements, such as roads, sewer and /or water facilities, etc. have been built, as required by the Town or State.

Critical Area Commission

STAFF REPORT

July 7, 2004

APPLICANT: Town of Elkton, Cecil County

PROPOSAL: Refinement – Annexation of Lands within the Critical Area

COMMISSION ACTION: Concurrence

STAFF RECOMMENDATION: Approval

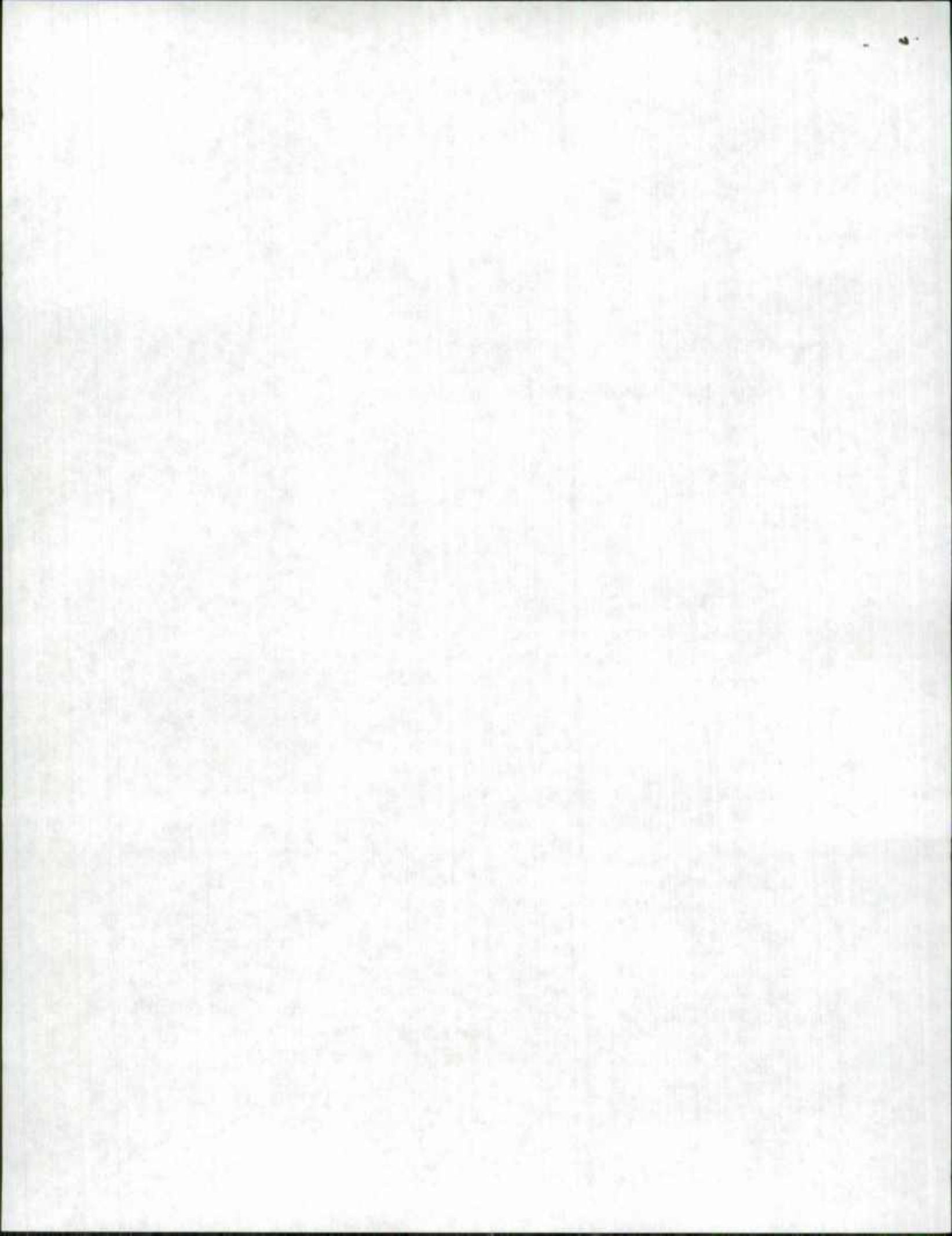
STAFF: Julie V. LaBranche and Mary Owens

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

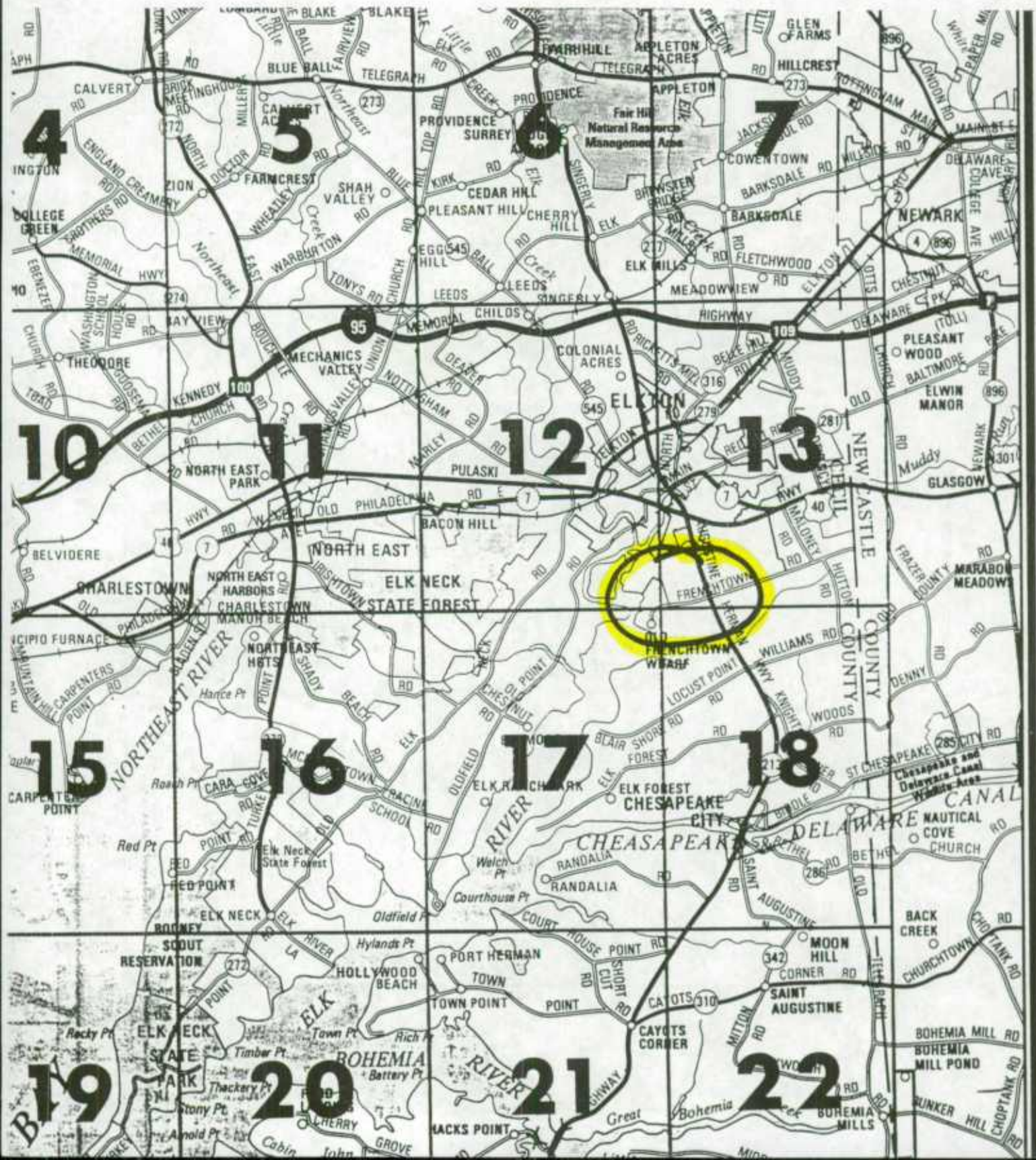
DISCUSSION:

Effective July 20, 2002, the Town of Elkton adopted a resolution to annex several parcels of land from Cecil County. They are identified as Parcels 91, 454 and 79 on Tax Map 33 and are located on the north side of Frenchtown Road and bordering the Elk River (refer to the site map in the Commission mailing). During review of the Town's quarterly grant report, Commission staff became aware of the previous action by the Town to annex these lands, and subsequently notified the Town that the Critical Area map change for the annexation must be submitted to the Commission for approval. The Town submitted the request for the Commission to approve the maps on April 19, 2004. A copy of the amended Critical Area map is included in the Commission mailing.

The lands annexed by the Town total 83.22 acres of which approximately 43 acres are within the Critical Area. Parcels 91 and 454, and a portion of Parcel 79 are designated Resource Conservation Areas under the Elkton Critical Area Program. The parcels are undeveloped, mostly forested, and because of their size, may contain Forest Interior Dwelling Bird (FID) habitat. Based on information from the Department of Natural Resources, Parcels 79 and 91 contain non-tidal Wetlands of Special State Concern and Listed Species Habitat Protection Areas within the Critical Area. Most of the Listed Species Habitat Protection Area is located within the Critical Area Buffer. Proposals to develop Parcels 79, 91 and 454 must comply with the criteria for Habitat Protection Areas and the criteria for development in a Resource Conservation Area, as required by COMAR (27.01.02.05 and 27.01.09), and the Town of Elkton Critical Area Program (Program 9) and Zoning Ordinance (Part IV).



Town of Elkton Annexation Cecil County

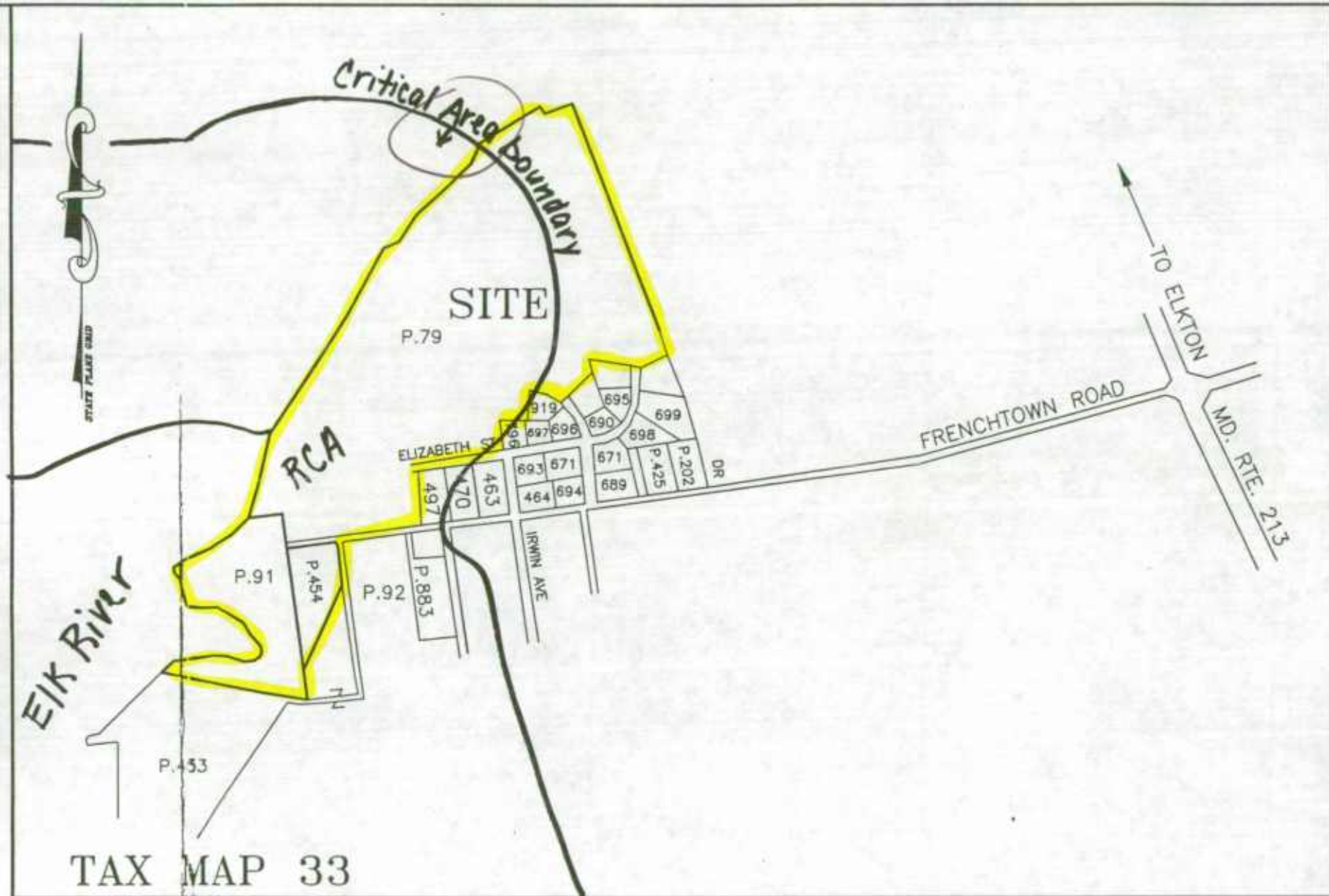


To Elsmere

To I-295

To I-295

To US 301



WICOMICO COUNTY BOARD OF ZONING APPEALS

FINDINGS OF FACT AND RESOLUTION OF DECISION

Application of Edwin H. Lewis
Case No. WA-0054-04A

Pursuant to the remand guidance found in the Maryland Court of Appeals opinion in *Lewis v. Department of Natural Resources*, 377 Md. 382, 833 A.2d 563 (2003), the Wicomico County Board of Zoning Appeals has completed its review and reconsideration of all written evidence, testimony and oral argument presented at a public hearing held on October 11, 2000, in the matter of Case # WA-0054, and for the reasons hereafter set forth, finds that the applicant, Edwin Lewis, failed to meet the burden of proof necessary to show the requested use was a reasonable and significant use sufficient to warrant a variance of statutory Critical Area Resource Protection requirements. In support therefore, the Board adopts these findings in this matter.

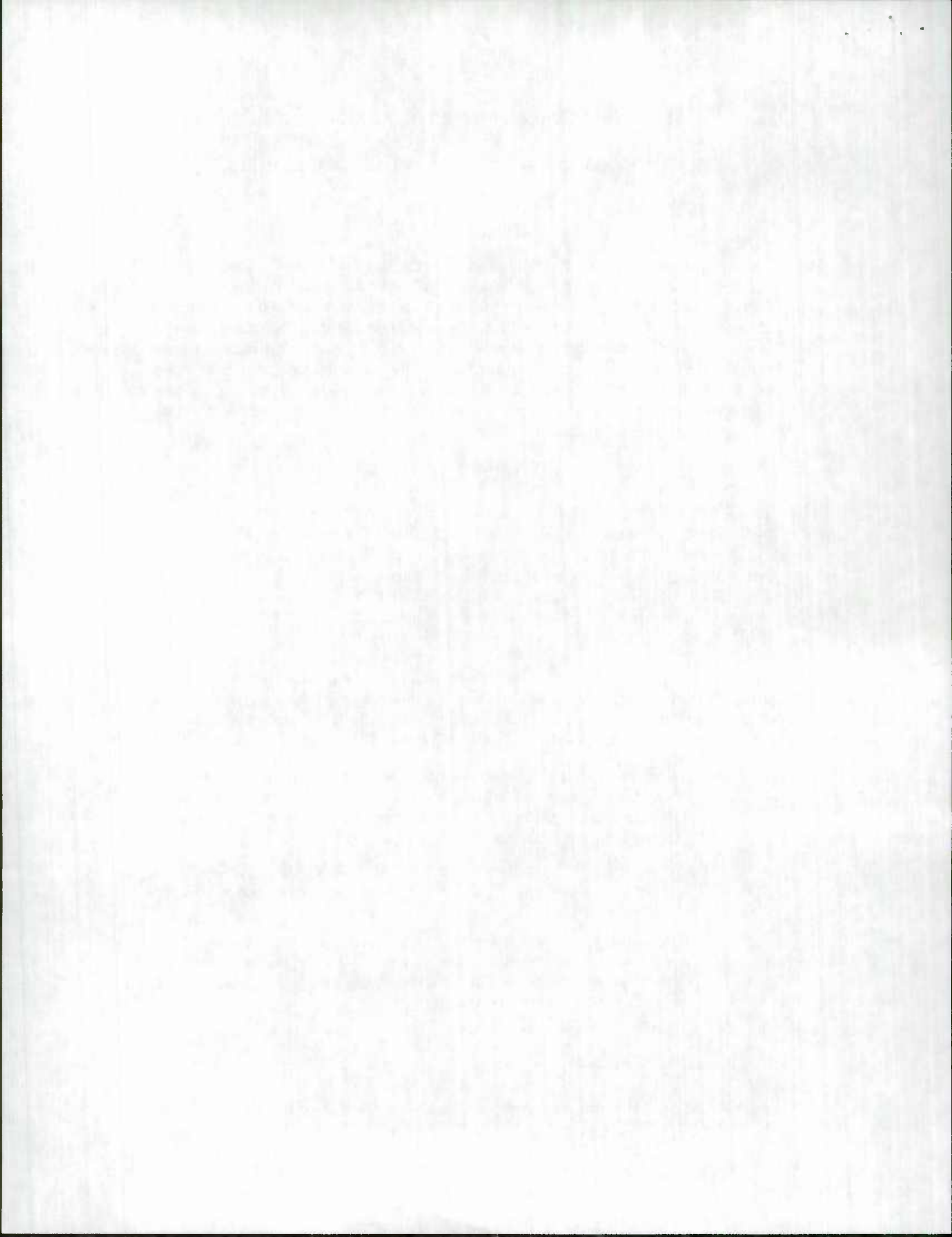
HISTORY OF THE CASE

In June, 2000, Mr. Lewis applied for a critical area buffer variance for a private hunting camp on Phillips Island located on the eastern shore of the Nanticoke River, Map # 25, Grid # 4, Parcel # 14. The Board's original denial of the variance was issued on February 13, 2001. Mr. Lewis was unsuccessful in his appeal for a judicial remand in the Circuit Court for Wicomico County and the Maryland Court of Special Appeals. He obtained a remand before the Maryland Court of Appeals in the case, *Lewis v. Department of Natural Resources*, 377 Md. 382, 833 A.2d 563 (2003).¹

The Appeals Court vacated the Board's denial by holding that several errors of law were made in the application of the Court's opinions in *Belvoir Farms*, *White* and *Mastandrea*. The Court remanded the variance request with guidelines for the Board's use in its reconsideration of the matter. 377 Md. 382 at 436, 833 A.2d at 596 which included:

- On remand, the determinative question is not whether petitioner's property is subject to any reasonable and significant use without being granted a variance, but is a question of whether *the requested variance* is reasonable in light of the general findings in relation to the criteria listed in § 125-36.
- Once that reasonableness determination is made in light of the § 125-36 criteria, the Board may then proceed in considering the conditions outlined in § 125-38.
- Therefore, if it is determined that the specific six cabin hunting camp proposed is a reasonable and significant use of Phillips Island, the Board then may consider whether that reasonable use is the minimum variance needed in light of the factors of § 125-38(B)(1) through (6).

¹
Decided on July 31, 2003, the case was a 4-3 decision with a written dissent. An opinion on reconsideration was published on October 10, 2003. The request was denied with two written dissents.



DELIBERATIONS

Upon receipt of the matter on remand, the Board reviewed the written evidence and testimony presented in October of 2000 and heard extensive argument from counsel for the applicant on February 26, 2004 and argument from counsel for the opponent and rebuttal on March 25, 2004. The Board then reconvened on April 15, 2004 for Board discussion and decision.

The Board reaffirms its "General Findings of Fact" as set forth in the "Findings of Fact and Resolution of Decision," paragraph B 1-9, issued February 13, 2001.

Following the guidance of the Court, the Board first undertook a thorough analysis of the reasonableness of Mr. Lewis' request in relation to the criteria found in Wicomico County Code §125-36.

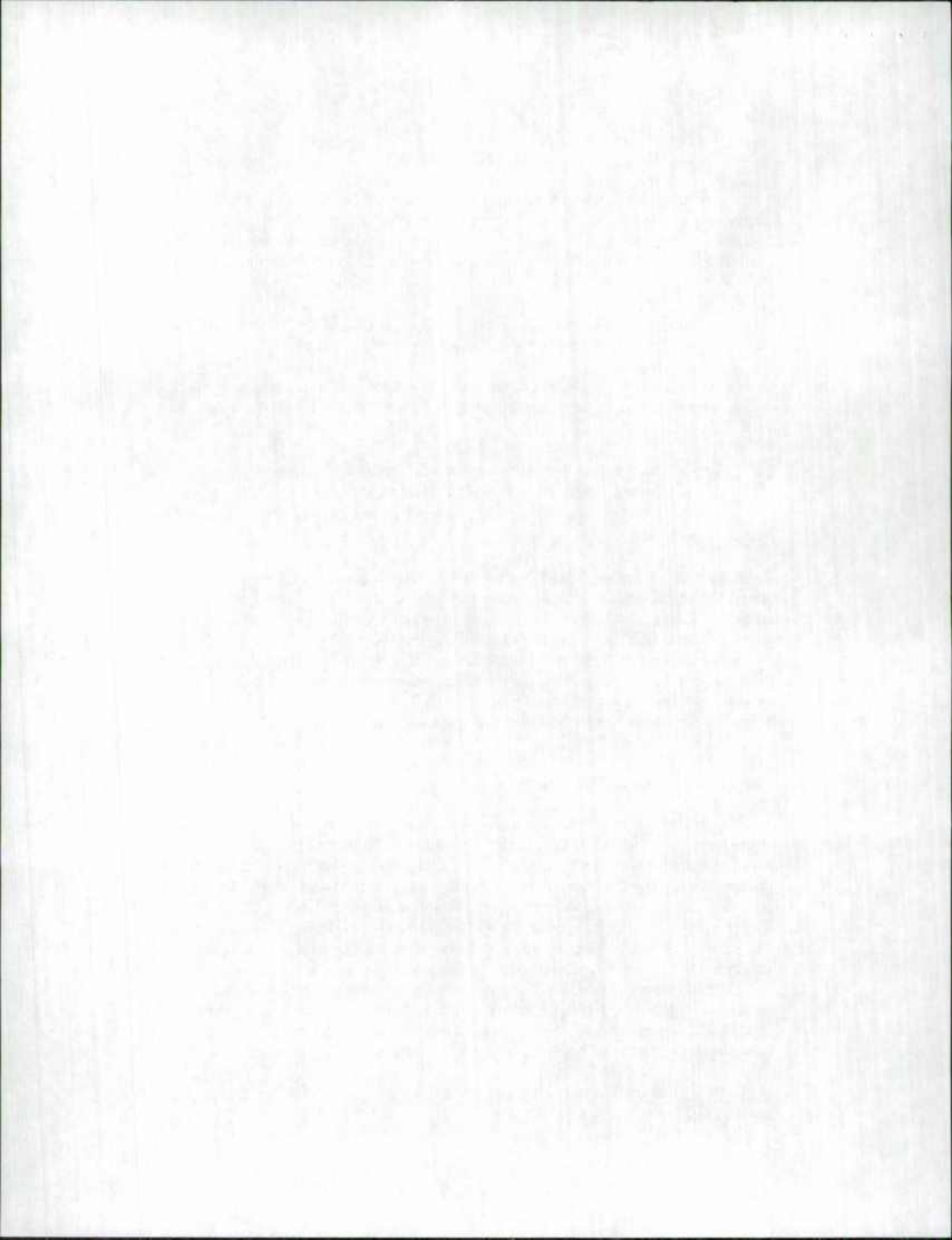
§125-36 A. Special conditions or circumstances unique to the subject property exist that would make denial of the permit result in unwarranted hardship on the particular owner which is not generally shared by owners of property in the same land use management areas.

Regarding, the "uniqueness test" the board sought an explanation of the term as to the interaction of the unique or peculiar character of the property and the application of the regulations. The Board noted that the size and shape of the Island was not unusual in the area. However when the regulations establishing the 100 foot buffer were considered the total area outside of the buffer was 10,000 square feet. The County Attorney, explained that the island could be considered unique if its topography or shape resulted in the regulations having a more severe impact on the property. In a vote of 4 for and 1 against, the Board found the island to be unique because of its shape and size.

§125-36 B. Strict enforcement would deprive the applicant of rights commonly shared by other owners of property in the same management area.

The Board noted that although the property was unique, an area existed on the Island outside of the buffer and that the property could be used for a hunting camp. It also noted that evidence had been presented that there was a cabin on another similar property south of the Phillips Island. The Board determined that there was sufficient area outside the buffer for a hunting cabin containing enough square footage to accommodate the use intended by applicant (occasional duck hunting for up to eight people). Having determined that the applicant could use the property for the use requested in the absence of a variance, the applicant was not deprived of a right other, similar land owners were availed of. Mr. Ennis made a motion that enforcement of the Buffer would not deprive the land owner of rights commonly shared. Mr. Wolfe seconded the motion. In a vote of 4 for and 1 abstention, the Board found that strict enforcement of the Buffer zone would not deprive Mr. Lewis of rights commonly shared by other owners of property in the same management area.

§125-36 C. Granting a variance will not give applicant a special privilege denied to other owners of like property.



The Board agrees with the Applicant's counsel's characterization of this criteria as the "flip side" of the previous criteria. The Board determined that the proposed use of a six building hunting camp is not of the same character as the residences presented during the applicant's testimony. The Board does not find the applicant's experts credible when they stated there would be no negative impact because of the six structures. In the Board's opinion the separation of the cabins creates additional foot traffic and consequently greater impact to the environment. With respect to the residential homes noted in Mr. Lewis' evidentiary presentation, it appears that the homes were on upland areas and even if there were some Buffer encroachment, they were not on wetland marsh. Mr. Wolfe made a motion that issuing the variance will confer a special privilege. Mr. Boggs seconded the motion. In a vote of 4 for and 1 against, the Board found that granting a variance would give the applicant a special privilege denied to other owners of like property.

§125-36 D. The variance request is not based upon conditions or circumstances which are self-created or self-imposed, nor does the request arise from conditions or circumstances either permitted or nonconforming which are related to adjacent parcels.

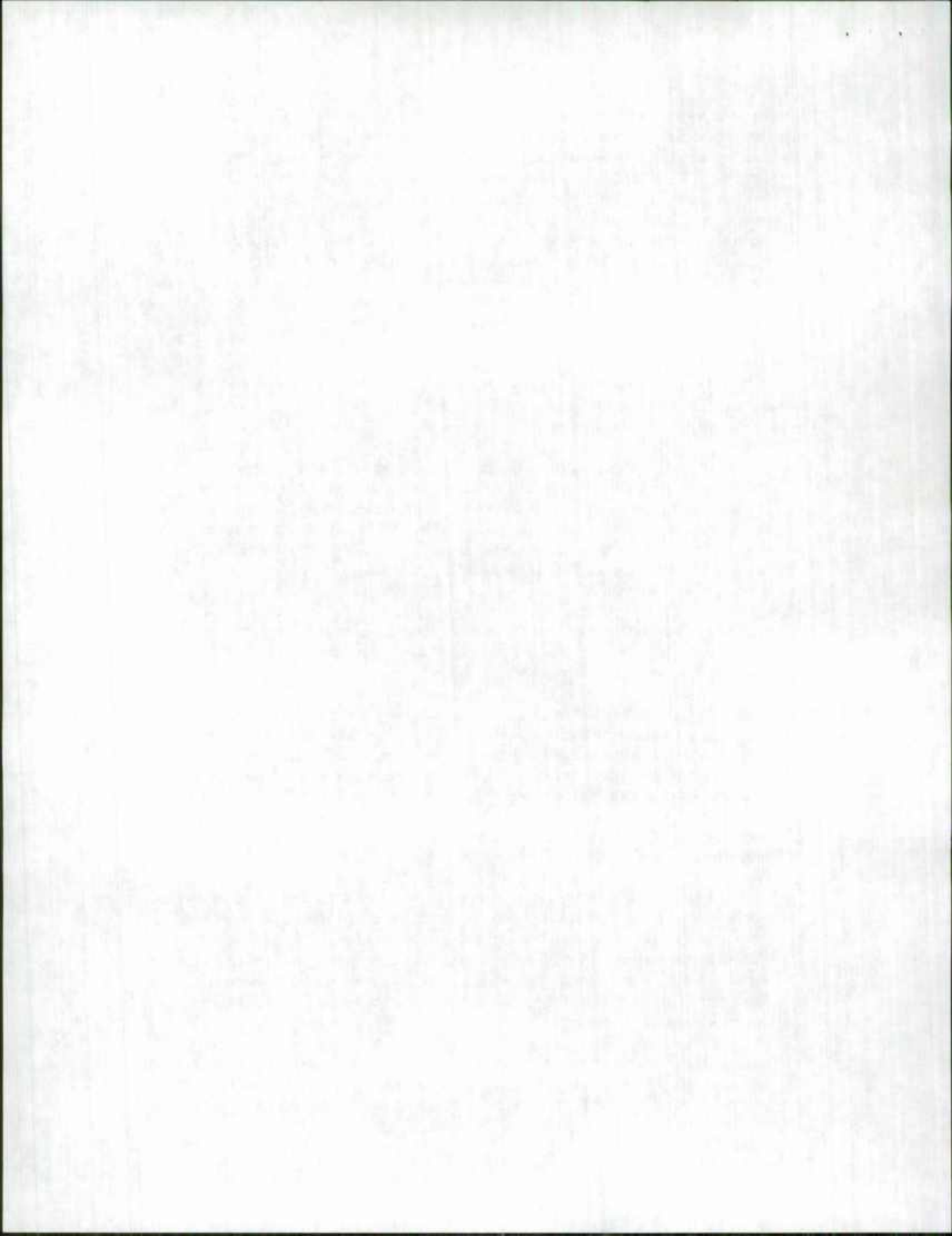
The Board, as previously stated in its earlier opinion, has evaluated the request as if the island was virgin land despite partial development that had already been accomplished. Therefore no conditions or circumstances exist which are self-created or self-imposed and the request does not arise from conditions or circumstances either permitted or nonconforming which are related to adjacent parcels. Mr. Wolfe made a motion that the Board find no evidence of a "self-created hardship." Mr. Boggs seconded the motion. The motion passed unanimously.

§125-36 E. Granting the variance will not adversely affect water quality or adversely impact fish, wildlife or plant habitat, and will be consistent with the spirit and intent of the critical area program and associated chapters.

The Board noted that extensive testimony had been presented on the issue of whether the granting of a variance would adversely affect water quality or adversely impact fish, wildlife or plant habitat, and be consistent with the spirit and intent of the critical area program and associated chapters. The testimony on this issue is summarized in part in paragraph C 9 of the Board's prior decision issued February 13, 2001. The Board further understands that the "cumulative impact" basis for the enactment of the Critical Area law is irrelevant in determining the merits of a particular application and thus does not consider such testimony in this matter.

It is the Board's understanding that it is within the purview of the Board to determine the weight, value, and credibility of the witnesses, including expert witnesses. Having had the opportunity to observe the testimony of the witnesses and to evaluate the same in the light of the Board's experience, the Board determined that the testimony of Applicant's experts that there would be no adverse impact as a result of this variance request is not credible. The Board further notes the lack of sufficient empirical data supporting the conclusions of Applicant's experts concerning harmful effects.

The Board finds that significant amounts of vegetation had been removed from the Island and that numerous trees had been cut, which would have an adverse affect on the wildlife. (testimony of R. Hill) The Board also finds the testimony of Professor Stribling convincing



with respect to the impact of the development on the ecology, and delivery of pollutants to the water through percolation.

The Board further determined that the granting of a variance as requested with the adverse impact accepted by the Board would be inconsistent with the spirit and intent of the Critical Area program. In a vote of 4 for and 1 against, the Board found that the use would adversely affect the water quality, fish, wildlife or plant habitat, and was not consistent with the spirit and intent of the critical area program and associated chapters.

§125-36 F.: That greater profitability or lack of knowledge of the restrictions shall not be considered as sufficient cause for a variance.

In a unanimous vote, the Board felt that the issue of greater profitability or lack of knowledge of the restrictions did not apply to the variance requested.

§125-36 G.: That the proposed variance is consistent with the Wicomico County Comprehensive Plan and Chapter 225, Zoning."

The Board acknowledges and so finds that the proposed use is consistent with the Wicomico County Comprehensive Plan and Zoning Code. However having determined that the development will have an adverse impact, granting of the proposed variance would be inconsistent with the expressed policies stated in the Comprehensive Plan concerning the preservation of watersheds, floodplains and wildlife habitats. Mr. Ennis moved that the variance is not consistent with the County's plan. Mr. Wolfe seconded the motion. In a vote of 4 for and 1 against, the Board found that granting a variance would be inconsistent with the Wicomico County Comprehensive Plan and Chapter 225, Zoning."

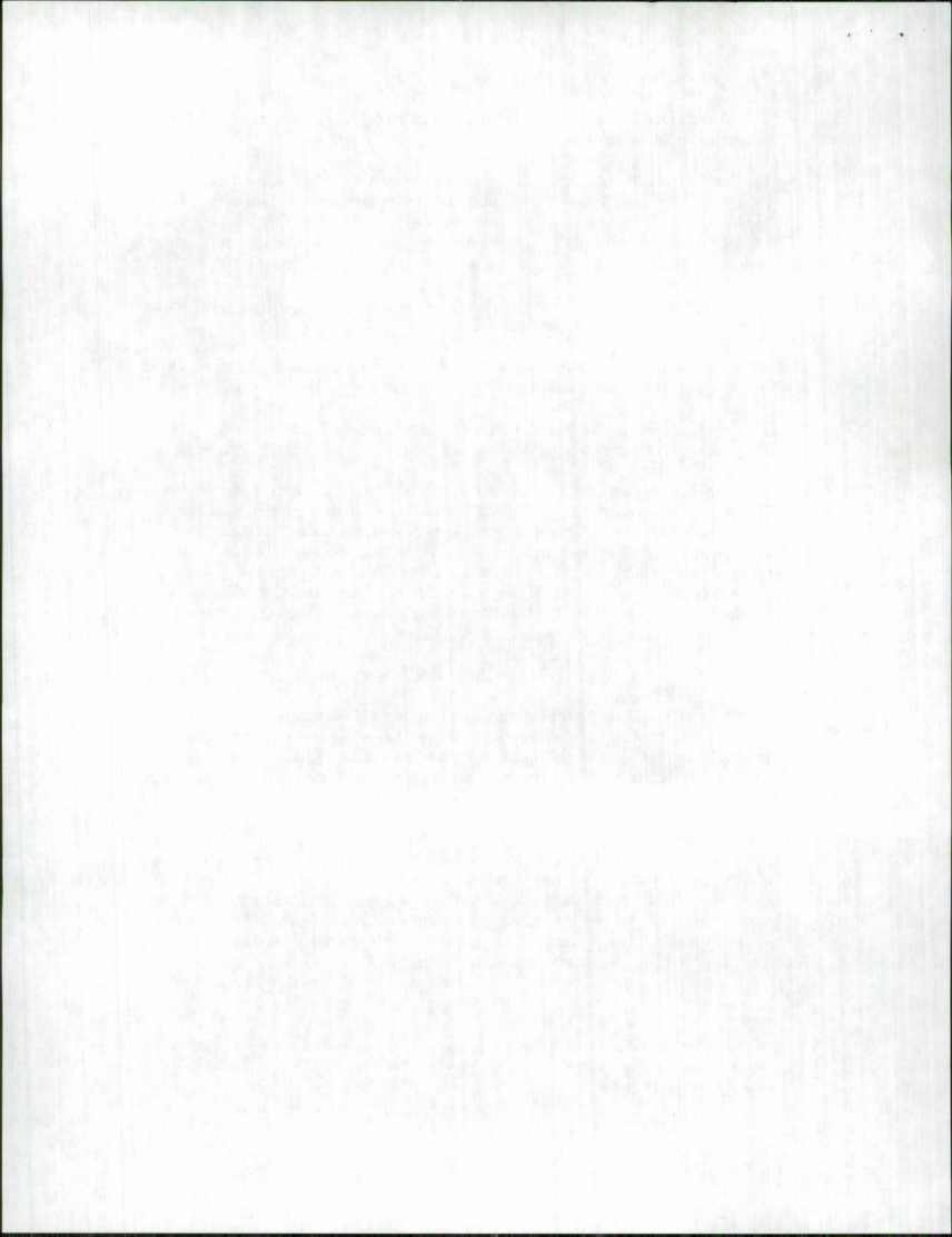
Discussion of Reasonable and Significant Use.

After the lengthy and detailed discussion concerning the §125-36 criteria, the Board took up the issue, as described by the Court, as to whether Mr. Lewis' planned use was a reasonable and significant use. Chairman Wright stated that in view of the voting, it would appear, as a whole that the conditions have not been met, and that the Board felt that the six cabins would have an adverse impact on the environment.

The Board then considered the request in light of all the criteria set forth in §125-36, noting that the Board's decision on any single criteria was not determinative. Mr. Ennis stated that after all of the evidence was considered, the proposed variance was not reasonable and significant, considering the Board's determination that: a) the enforcement of the regulations would not deprive the applicant of rights commonly shared, b) permitting the requested variance would constitute a special privilege, and c) adverse environmental concerns existed. Mr. Ennis recommended that the Board deny the request.

DECISION

After review and consideration, this Board, for the reasons stated herein renders the following decision in accordance with the provisions of Chapter 125, Critical Area of the Wicomico County Code.



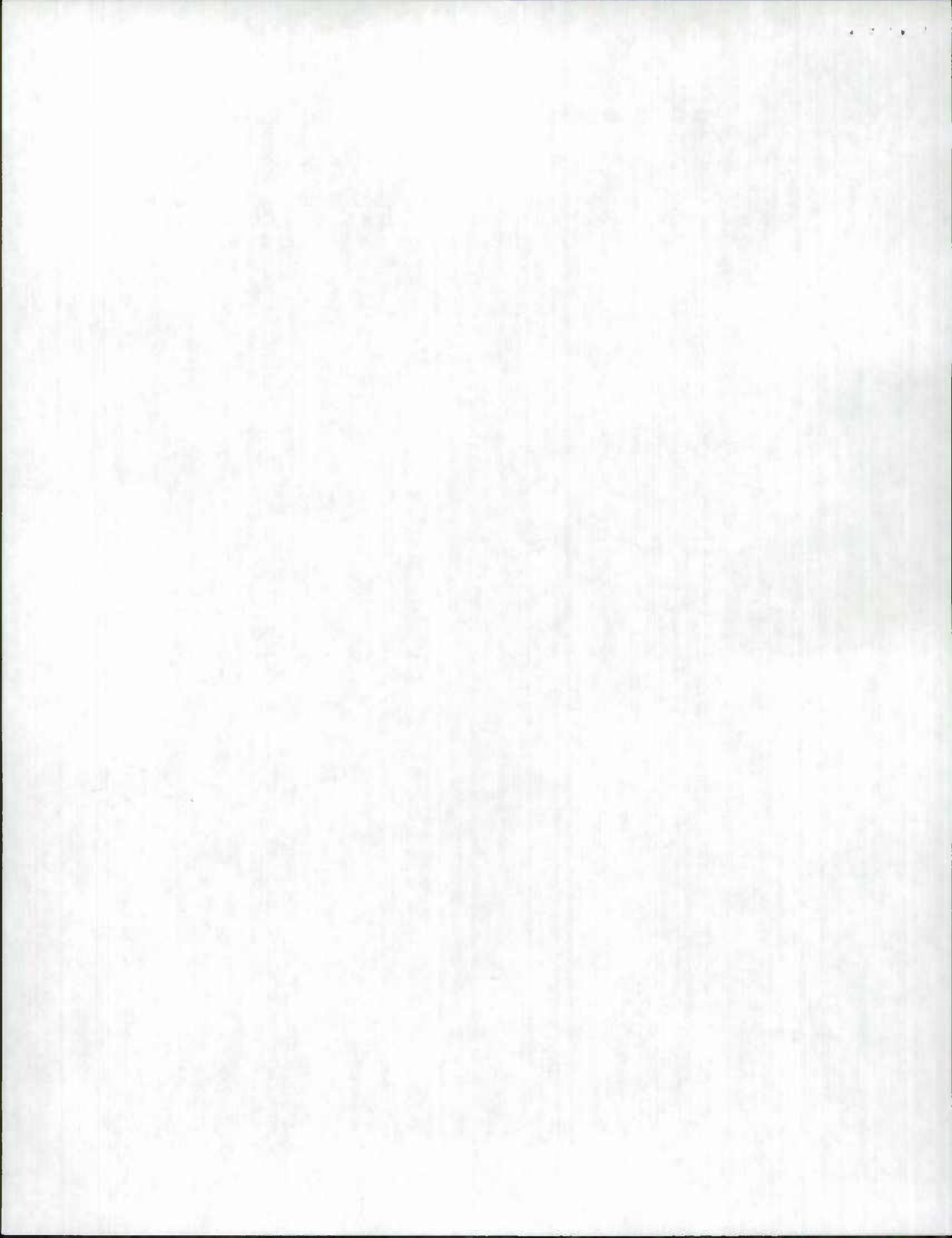
NOW THEREFORE, upon a motion by David Ennis, seconded by W. Wirt Wolfe, William H. Handy voting against the Motion, the Gary Boggs and the Chair voting aye, the Board by a majority vote **DENIED** the application for a variance as requested.

Board members serving at the Public Meeting of April 15, 2004 at which this Resolution of Decision and Findings of Fact were acted upon were: Chairman J. Phillips Wright, Jr. William H. Handy, David Ennis, W. Wirt Wolfe, and Gary Boggs.

Approved this _____ day of _____, 2004.

J. Phillips Wright, Jr., Chairman

Ola K. Meadowcroft ' Recording Secretary



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

MEMORANDUM

To: Project Subcommittee

From: LeeAnne Chandler

Date: June 24, 2004

Subject: Discussion – Draft Buffer Management Plan for Four Seasons at Kent Island

In December 2000, the Critical Area Commission approved a Queen Anne's County request to grant growth allocation to a project known as Four Seasons at Kent Island. There were ten conditions of approval, including one that stated, "Prior to recordation of any subdivision plats or final approval of any site plans, building permits or grading permits, a Buffer Management Plan for the entire Buffer and/or setback area of the project shall be reviewed and approved by the full Critical Area Commission." The applicant has submitted a draft Buffer Management Plan. Due to the large size of the project and numerous Buffer/setback issues involved, the applicant would like to discuss various aspects of the Buffer Management Plan with the subcommittee informally prior to requesting approval from the full Commission. Below, please find a background summary of the project, followed by a list of issues related to the Buffer Management Plan. Also, the December 2000 Panel Report is included as an attachment.

Background

The project is located on the north side of Route 50 on Kent Island in Queen Anne's County. It is located in the Stevensville and Chester Growth Areas on portions of the Chester River, Macum Creek and both sides of Cox Creek. The properties involved total approximately 511 acres, with approximately 454 acres within the Critical Area. There is a large tidal pond with associated wetlands along the Chester River portion of the site, and linear wetlands along both sides of Cox Creek and adjacent to Macum Creek. There are three forested areas on the site, totaling approximately 55 acres with the balance of the property in agricultural use. There is an existing farmhouse and outbuildings, a mausoleum and an airstrip on the site. There are also two dredge material disposal areas on the property. The request for growth allocation utilized 293.25 acres of growth allocation to convert RCA to IDA and to redesignate 79.55 acres of previously awarded growth allocation from LDA to IDA. Approximately 81 acres remain as RCA.

The development includes a total of 1,350 age-restricted units made up of 930 single-family homes and 420 multi-family dwelling units. It also includes a 35,000 square foot community center, an 80-bed assisted living facility (to be built by others), a community pier and a 6.5-acre

County park along Macum Creek. Also, as required by the conditions of approval, there will be 300-foot setbacks along Macum Creek and Cox Creek, a 150-foot setback around the tidal pond and a 100-foot Buffer from the landward edge of the shore erosion structure along the Chester River. As a project in the IDA, the project must also address the 10% pollutant reduction requirement.

The project will be developed in five phases over 12 years. The first phase will include 106 single-family units and 56 condominium units in four buildings, a water tower, pump station, associated stormwater ponds, and a flood management non-tidal wetland mitigation project. Phase two will include an additional 238 residential units, the main entrance road, and the clubhouse facilities. The applicant has submitted plans for preliminary plat approval for the entire project and plans for final approval of phase one to the County Planning Commission.

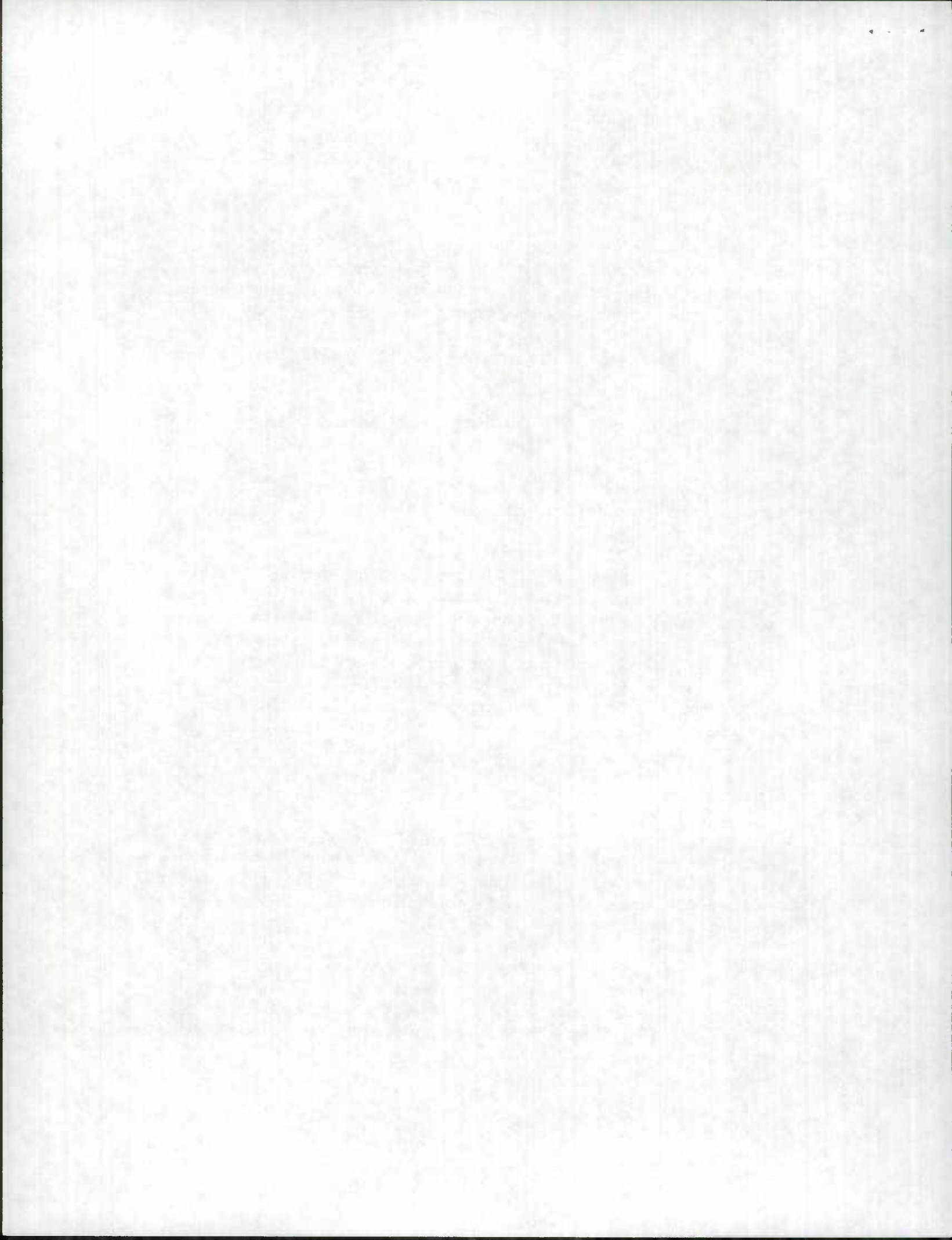
Buffer Management Plan Issues

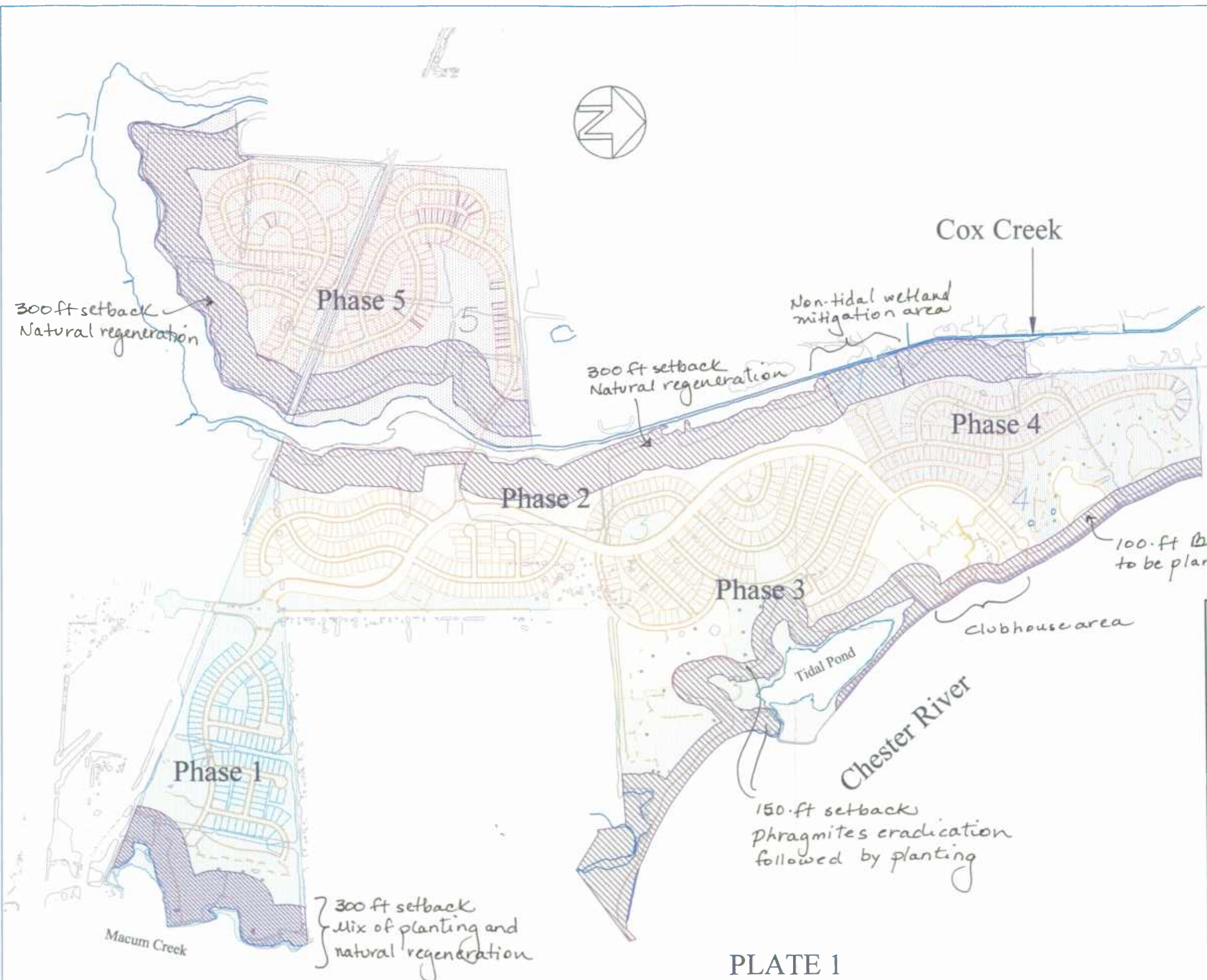
- Assessment of existing conditions - The applicants' consultants have been assessing the existing conditions in the required Buffers on a phase-by-phase basis. Many of these areas have been left fallow the past few years, allowing for some natural regeneration. Sampling plots or transects have been established and by recording the number and type of woody species within a specified area, the general viability of natural regeneration in each area can be assessed.
- Natural regeneration areas – In several areas, natural regeneration is the proposed method of reforestation. Generally, these are areas of old fields where there is a nearby seed source. The variety of species observed in the phases studied so far is somewhat limited but is reflective of the very early stages of a successional forest. Sweet gum and red maple have been observed along with some invasive species.
- Planting areas – Where natural regeneration is not viable or where existing vegetation will be removed, areas will be planted with a mix of native tree and shrub seedlings with the eventual goal of 440 woody stems per acre.
- Flood control area within the Cox Creek 300-foot setback – The upper reaches of Cox Creek have an historical problem with flooding. During the growth allocation review process, the Commission and the County Commissioners heard significant testimony related to the flooding problem. An existing farm road crosses Cox Creek and the existing culvert beneath the road is one of several reasons for the flooding. The County Department of Public Works is requiring the removal of the road to allow natural flow through this area. In addition, the applicant is proposing to create a non-tidal wetland within the 300-foot setback as a means of flood control and to mitigate for proposed wetland impacts. The wetland will be forested.
- Phragmites eradication plan – There is a 30-acre tidal pond on the property that currently is surrounded by a dense stand of *Phragmites*. One of the Critical Area Commission's conditions required the establishment of a 150-foot setback from the landward edge of tidal or non-tidal wetlands around the pond to protect its habitat as a waterfowl staging

area. The condition also required all *Phragmites* to be eradicated and the area established with appropriate native species. The eradication plan will involve mass spraying with an appropriate herbicide, followed by cutting after the plants go dormant. The areas will be reassessed and sprayed again as necessary. Planting of native species will occur as soon as the *Phragmites* is under control.

- Shoreline access – The Commission’s conditions of approval require that shoreline access within the setbacks and Buffer be designed and constructed to minimize impacts to the 100-foot Buffer. Pathway widths are limited to six feet and construction materials should be pervious or semi-pervious wherever possible. Currently, the plans show a walking path along some portions of the Chester River shoreline and around the tidal pond. Also, a path is proposed from a parking lot to the shoreline in the area of the County park.
- Grading in the Buffer – Typically, no disturbance is permitted within the 100-foot Buffer and any areas outside of the development envelope. However, there are two areas on the site that have been used for dredge spoil disposal. The areas are dominated by *Phragmites* and appear as berms and dunes, separated by lower areas. Grading in these areas is proposed to create more natural topography and a viable planting surface.
- Clubhouse area Buffer – Phase 2 includes construction of the main recreational facilities for the community including a 35,000 square foot clubhouse, indoor pool, outdoor pool, tennis courts and associated parking. These facilities are located along the Chester River, where the required Buffer is 100-feet from the landward edge of the existing shore erosion control structure. The Buffer in this area will be the primary point of access to the shoreline/water for the community. The conditions of approval require a “fully forested 100-foot Buffer” to the Chester River and a “fully forested 150-foot setback” from the tidal pond. The applicant has proposed extensive paths in this area, including one leading to a 10-slip community pier. The proposed plantings are limited to warm season grasses and wildflowers for approximately 350 linear feet, with an additional 100-150 feet on either side containing bands of warm season grasses mixed with some shrubs and trees.
- Long-term maintenance and monitoring – All Buffer areas will be placed under a restrictive covenant recorded in the land records of Queen Anne’s County. Inspections of both the natural regeneration sites as well as the planted areas will be conducted on a biannual basis, with reports sent to Commission staff every May and October. Invasive species and competing vegetation will be controlled through appropriate means.

The Buffer Management Plan will be presented to the subcommittee in more detail at the meeting. Enclosed with this memo is a plan showing the entire project with summary descriptions of each Buffer/setback area. The applicants and their consultants will be in attendance at the subcommittee meeting for an informal discussion, allowing them to address possible concerns prior to submitting the plan for formal approval in August.





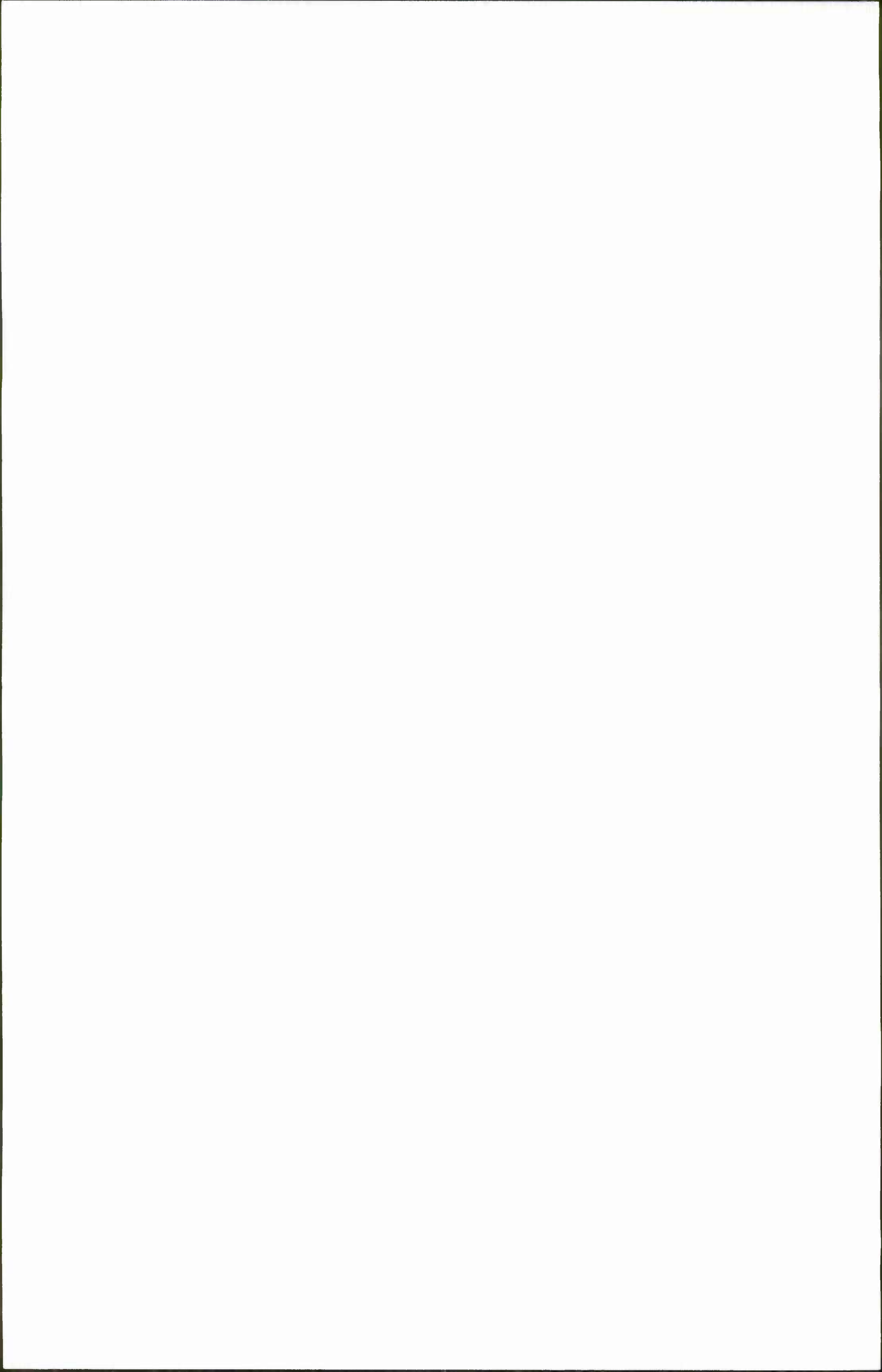
Buffer Area		sq. ft.	Acreage
Phase 1	Macum Creek	606,960	13.9
	Cox Creek	185,069	4.2
TOTAL PHASE 1			18.2
Phase 2	Chester River	346,704	8.0
	Cox Creek	1,420,547	32.6
TOTAL PHASE 2			40.6
Phase 3	Chester River		29.5
Phase 4	Chester River	115,727	2.7
	Cox Creek	324,809	7.5
TOTAL PHASE 4			10.1
Phase 5	Cox Creek		15.4
TOTAL-BUFFER MGT. AREA			113.8

PLATE 1
Four Seasons Project Development Phases
Buffer Management Plan


Environmental Concern Inc.
 P.O. Box P
 St. Michaels, MD 21663

Four Seasons
 Kent Island, MD

June 2004
 not to scale



Chesapeake Bay Critical Area Commission

PANEL REPORT December 6, 2000

APPLICANT: Queen Anne's County

PROPOSAL: Four Seasons at Kent Island Growth Allocation

JURISDICTION: Queen Anne's County

COMMISSION ACTION: Vote

PANEL MEMBERS: Larry Duket (Chairman), Dave Bourdon, Bob Goodman, Joe Jackson, and Andrew Myers

PANEL RECOMMENDATION: Approval with Conditions

STAFF: Regina Esslinger, Claudia Jones, Mary Owens, and Ren Serey

**APPLICABLE LAW/
REGULATIONS:** Annotated Code of Maryland, Natural Resources Article §8-1808.1: Growth Allocation in Resource Conservation Areas

COMAR 27.01.02.06: Location and Extent of Future Intensely Developed and Limited Development Areas

SUMMARY:

This growth allocation request involves the conversion of 293.25 acres of RCA to IDA and the redesignation of 79.55 acres of previously awarded growth allocation from LDA to IDA. The entire area of the site is approximately 562 acres, with approximately 522.2 acres within the Critical Area. The property is proposed to be developed with 1,505 dwelling units, a 35,000 square foot community center, a community pier, and a 95,000 square foot shopping center. The site is located in the Stevensville and Chester Growth Areas in Queen Anne's County on portions of the Chester River, Macum Creek, and both sides of Cox Creek. There is a large tidal pond with associated wetlands along the Chester River portion of the site, and linear wetlands along both sides of Cox Creek and adjacent to Macum Creek. There are three forested areas on the site, totaling approximately 55 acres. Most of the property is in agricultural use. There is an existing farmhouse and outbuildings, a mausoleum, and an airstrip on the site. There are also two dredge material disposal areas on the property.

The Panel held a public hearing on September 12, 2000 at the Kent Island High School in Stevensville. Approximately 500 people attended the hearing and the Panel listened to over three hours of testimony about the project. Many environmental issues that were relevant to the Commission's decision on the growth allocation request were raised during the hearing.

Following the hearing, the Panel requested that staff obtain additional information about these issues. The Panel visited the site and spent several hours with the project consultants and County staff in order to thoroughly understand the scope of the project and review actual site conditions. The Panel has held several meetings over the last two months to discuss the project in more detail and to determine appropriate conditions of approval. These meetings focused primarily around the protection of habitat and water quality; the protection of streams, the construction of a community pier; the design of best management practices for stormwater management, and the design and implementation of a buffer management plan for the project. As a result of extensive deliberations and research on these issues, the Panel formulated the following conditions:

1. *The new IDA shall be located at least 300 feet beyond the landward edge of tidal wetlands and tidal waters adjacent to Cox Creek and Macum Creek. This 300 foot setback shall not be used for structures, roads, parking, utilities, active recreation areas or stormwater management. It may be used for passive recreation. This setback shall be established in multi-layered forest vegetation.*
2. *A fully forested 100-foot Buffer shall be established from the landward boundary of the structural erosion control measure on the Chester River. The Buffer shall be established in multi-layered forest vegetation.*
3. *A fully forested 150-foot setback shall be established from the edge of tidal or nontidal wetlands around the tidal pond (adjacent to the Chester River) in order to provide habitat protection. The edge of tidal wetlands from which the 150-foot setback will be established shall be delineated in the field and approved by Commission staff. In addition, all phragmites in the area of the tidal pond shall be eradicated and established with appropriate native species. The 150-foot setback shall be established in multi-layered forest vegetation.*
4. *A fully forested 100 foot Buffer shall be established on each side of all tributary streams and the stream crossing and any development activity within the Buffer shall be eliminated.*
5. *The Commission shall coordinate with the Maryland Department of the Environment (MDE) and the Department of Natural Resources (DNR) regarding the assessment of environmental impacts associated with a community pier and compliance with the standards set forth above. The applicant agrees to ensure that the standards outlined above are met and to comply with the recommendations and/or conditions of approval of MDE and DNR regarding the community pier.*

6. *Best Management Practices for stormwater shall be located outside of the 100-year floodplain or shall be designed in such a way that a flood event would not inundate the ponds or detention structures causing pollutants to be flushed out unless staff determines after a review of detailed stormwater engineering plans that a superior water quality or habitat benefit can be achieved through other techniques.*
7. *At least half of the site area shall incorporate Best Management Practices for stormwater that provide habitat benefits in addition to water quality benefits. Best Management Practices that provide habitat benefits include bioretention, shallow marsh, extended detention wetlands, and pond/wetland systems.*
8. *Shoreline access within the approved setback and/or Buffer shall be designed and constructed to minimize impacts to the 100-foot Buffer and to maintain the "Resource Conservation Area" character of the setback and/or Buffer. Pathway widths shall be limited to six feet in width (including the path itself and associated clearing) within the setback and should be constructed of pervious or semi-pervious materials wherever possible. Tree canopy shall be maintained over pathways. Prior to recordation of any subdivision plats or final approval of any site plans, building permits, or grading permits, a Buffer Management Plan for the entire Buffer and/or setback area of the project shall be reviewed and approved by the full Critical Area Commission.*
9. *Structural shore erosion control measures shall be limited to those that currently exist on the site. If additional erosion control measures are warranted, non-structural measures shall be used.*
10. *The final plan for the Four Seasons at Kent Island growth allocation request that is approved by the Queen Anne's County Commissioners shall be submitted for review by the Critical Area Commission.*

DISCUSSION:

The Panel has reviewed this growth allocation request thoroughly over the last several months and solicited additional information from various professionals to follow up on issues identified during the site visit and at subsequent meetings. The issues of primary concern were the field delineation of several streams on the property, flooding of the property, the habitat and water quality function of the tidal pond adjacent to the Chester River, the size and location of the community marina, the waterfowl staging and concentration areas on the Chester River and Macum Creek, and location and effectiveness of proposed stormwater management ponds.

At the Panel's first meeting on September 28, 2000, an issue was raised regarding the County's "conceptual approval process" for growth allocation requests and whether this type of approval was sufficient to meet the growth allocation procedures in the Critical Area Act. The

Panel requested that Commission Counsel review this issue and brief them at the next meeting. The Panel also directed staff to further research the other issues of concern and provide additional information at the next Panel meeting.

The Panel met again on October 12, 2000 to discuss these issues further and to begin to formulate the Panel's recommendation on the growth allocation request. Ren Serey responded to the Panel's question about the County's growth allocation process. He stated that Chairman North and Commission Counsel, Marianne Mason, had determined that the process was consistent with the Law, but that the nature of the "concept approval process" did not fully comply with the purpose and intent of the process which is to ensure that growth allocation requests are not approved by the Commission and then later denied by a local government. **It was determined that this project should move forward under the current process, and that the County's growth allocation process will need to be amended before the Commission accepts any future growth allocation requests.**

On November 1, 2000, the Panel met to discuss additional information about the environmental issues of concern on the site. Many environmental issues that were relevant to the Commission's decision on the growth allocation request had been raised, and the Panel had requested that Commission staff further research these issues. The Panel discussed this information and some potential conditions that were put together by staff based on suggestions by the Panel. The Panel discussed the more detailed information provided and the proposed conditions and several revisions were made. Much of the discussion centered on the location and extent of a proposed 300 foot setback from the edge of tidal waters and tidal wetlands. It was determined that additional information about an Historic Waterfowl Staging and Concentration Area on the Chester River and a contiguous tidal pond was needed before the Panel could finalize a condition.

On November 16, 2000, the Panel met to review the revisions to the conditions made at the previous meeting and to continue their discussion of the setback issue. It was discussed that the Chester River is a viable Historic Waterfowl Staging and Concentration Area and the tidal pond is used by various species, including black ducks. The Commission's Science Advisor, Claudia Jones, presented information that benefits to certain species, such as black ducks, can be realized by minimizing the adverse impacts of human activities through the use of expanded vegetated buffers. Ms. Jones also provided information on other water quality and habitat benefits associated with expanding the Buffer beyond 100 feet.

The issues of primary concern that have been considered by the Panel and researched by staff are outlined below. The issues have been grouped into five categories. This report identifies each issue, provides relevant background information and guidance from the Critical Area Criteria and other sources, and presents the conditions proposed by the Panel.

Protection of Habitat and Water Quality of Tidal Waters, Tidal Wetlands, and Streams

The Critical Area Act states that the Commission shall approve program amendments (including growth allocation requests) that meet the goals of the Critical Area Program and the provisions of the Critical Area Criteria. The goals of the Program are:

- 1) To minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands;
- 2) To conserve fish, wildlife, and plant habitat; and
- 3) To establish land use policies for development in the Chesapeake Bay Critical Area which accommodate growth and also address the fact that, even if pollution is controlled, the number, movement, and activities of persons in that area can create adverse environmental impacts.

In COMAR 27.01.02.06, the Critical Area Criteria provide guidelines for the location of new intensely developed and limited development areas. Three of the guidelines specifically address the minimization of environmental impacts associated with the use of growth allocation. They are:

- 1) New intensely developed and limited development areas should be located in order to **minimize impacts to habitat protection areas** as specified in COMAR 27.01.09 and in an area and **in a manner that optimizes benefits to water quality;**
- 2) New intensely developed areas should be located **where they minimize their impacts to the defined land use of the resource conservation area;**
- 3) New intensely developed and limited development areas in the resource conservation area **should be located at least 300 feet beyond the landward edge of tidal wetlands or tidal waters.**

This project is a very large, very intensely developed project that will bring approximately 3,000 new residents to an area characterized by extensive stretches of sensitive shoreline. The pattern of development for the project as proposed is such that only a small portion of the site will not be developed and it will be difficult to manage the impacts to habitat protection areas (including the Buffer) and to areas of the site that are proposed to remain resource conservation areas (RCA). It is also necessary to acknowledge that the number, movement, and activities of persons in this area can have adverse environmental impacts and that virtually the entire site will be affected. Because the property will be intensely developed, with impervious surface levels in excess of 30 percent of the site, and a substantial portion of the permeable areas maintained as lawn, it appears that benefits to water quality may be minimal.

In order to address both the guidelines in COMAR and the overall goals of the Critical Area Act, it is necessary to provide some type of ecologically effective measure(s) that is scientifically proven to minimize impacts to habitat and maximize benefits to water quality.

Condition 1

The new IDA shall be located at least 300 feet beyond the landward edge of tidal wetlands and tidal waters adjacent to Cox Creek and Macum Creek. This 300 foot setback shall not be used for structures, roads, parking, utilities, active recreation areas or stormwater management. It may be used for passive recreation. This setback shall be established in multi-layered forest vegetation.

Condition 2

A fully forested 100-foot Buffer shall be established from the landward boundary of the structural erosion control measure on the Chester River. The Buffer shall be established in multi-layered forest vegetation.

Condition 3

A fully forested 150-foot setback shall be established from the edge of tidal or nontidal wetlands around the tidal pond (adjacent to the Chester River) in order to provide habitat protection. The edge of tidal wetlands from which the 150-foot setback will be established shall be delineated in the field and approved by Commission staff. In addition, all phragmites in the area of the tidal pond shall be eradicated and established with appropriate native species. The 150-foot setback shall be established in multi-layered forest vegetation.

In considering the establishment of a 300 foot setback, it is necessary to consider how best to maintain the viability of the 300 foot setback area as a resource conservation area that performs the following functions:

- 1) Provides a buffer between areas of intense human activity and pollution and sensitive aquatic resources; and
- 2) Serves as a wildlife corridor system that connects the largest undeveloped, or most vegetated tracts of land within and adjacent to the site in order to provide continuity of existing wildlife and plant habitats, and
- 3) Provides a flyway and rest area for Forest Interior Dwelling Birds; and
- 4) Provides appropriate protection to waterfowl staging and concentration areas from disturbances and human activity on the surrounding land.

Stream Protection

During the site visit on September 28, 2000, the Panel identified a portion of a stream on the northwest portion of the property that was not correctly shown on the plans. The Commission's Science Advisor has visited the site and confirmed that the area previously identified as an agricultural ditch is actually a stream. The Critical Area Criteria require that a minimum 100-foot Buffer is established from tributary streams, and development activities are prohibited within the Buffer. The project includes a stream crossing and development within the Buffers on either side of the stream. The project as proposed is not consistent with the Critical Area Criteria.

Condition 4

Provide a 100 foot Buffer on each side of all tributary streams and eliminate the stream crossing and any development activity within the Buffer.

Community Pier

This project includes a community pier which is proposed to be located on the Chester River. COMAR 27.01.03.07 addresses community piers and includes provisions that limit the number of slips that may be permitted in this type of facility. Slips are limited to the lesser of the following:

- 1) One slip for each 50 feet of shoreline in the subdivision in the IDA and LDA and one slip for each 300 feet of shoreline in the RCA; or
- 2) For projects with more than 300 dwellings in the Critical Area, either 75 slips or 15% of the number of dwelling units, whichever is greater.

For this project, the limiting criterion is (2) above. It is estimated that this project will result in approximately 1500 new dwellings within the Critical Area. The Critical Area Criteria permit community piers to have 75 slips or 15% of the number of dwelling units. The maximum number of slips would be 15% of 1500 or as many as 225 slips. This is an extremely large facility and would substantially increase the environmental impacts associated with human activity on the Chester River. Based on preliminary conversations with Mr. Stan Causey of the Maryland Department of the Environment, the tidal wetlands regulations may prohibit a facility of this size in the proposed location because of water depth and water quality impacts.

Section 27.01.03.04 of COMAR requires that local governments consider the following factors in planning for areas suitable for new or expanded water dependent facilities:

- 1) That the activities will not significantly alter existing water circulation patterns or salinity regimes;
- 2) That the water body upon which these activities are proposed has adequate flushing characteristics in the area;
- 3) That disturbance to wetlands, submerged aquatic plant beds, or other areas of important aquatic habitats will be minimized;
- 4) That adverse impacts to water quality that may occur as a result of these activities, such as non-point source runoff, sewage discharge from land activities or vessels, or from boat cleaning operations, is minimized;
- 5) That shellfish beds will not be disturbed or be made subject to discharge that will render them unsuitable for harvesting;
- 6) That dredging shall be conducted in a manner, and using a method, which causes the least disturbance to water quality and aquatic and terrestrial habitats in the areas immediately surrounding the dredging operation or within the Critical Area generally;
- 7) That dredged spoil will not be placed within the Buffer or elsewhere in that portion of the Critical Area which has been designated as a Habitat Protection Area except as necessary for:
 - a) Backfill for permitted shore erosion protection measures;
 - b) Use in approved vegetative shore erosion projects;
 - c) Placement in previously approved channel maintenance spoil areas;
 - d) Beach nourishment; and
- 8) That interference with the natural transport of sand will be minimized.

Condition 5

The Commission shall coordinate with the Maryland Department of the Environment (MDE) and the Department of Natural Resources (DNR) regarding the assessment of environmental impacts associated with a community pier and compliance with the standards set forth above. The applicant agrees to ensure that the standards outlined above are met and to comply with the recommendations and/or conditions of approval of MDE and DNR regarding the community pier.

Stormwater Management

At the public hearing, several citizens commented on flooding problems in the area and expressed concern about how stormwater would be managed on the property. The site is generally level, but slopes from the northeast and northwest boundaries to lower elevations along

Cox Creek. A significant part of the site along Cox Creek and along the Chester River, especially near the tidal pond, is within the 100-year floodplain. Based on testimony provided at the hearing, it is the panel's understanding that tidal flooding along Cox Creek happens periodically throughout the year with more severe flooding during storm events characterized by both high tides and heavy rain.

Currently, there is some development proposed in the 100-year floodplain as delineated from Flood Insurance Rate Maps prepared by the Federal Emergency Management Agency (FEMA), not actual field run topography. It is anticipated that more detailed topographic information will provide the information necessary to refine the design so that no structures will be located within the 100-year floodplain. However, there is still concern that best management practices for stormwater will be located within the floodplain. This could be problematic from a water quality standpoint because pollutants collected in the stormwater management practices could be flushed into the surrounding water courses.

Condition 6

Best Management Practices for stormwater shall be located outside of the 100-year floodplain or shall be designed in such a way that a flood event would not inundate the ponds or detention structures causing pollutants to be flushed out unless staff determines after a review of detailed stormwater engineering plans that a superior water quality or habitat benefit can be achieved through other techniques.

COMAR 27.01.02.03 states that in Intensely Developed Areas, fish, wildlife, and plant habitats as identified in COMAR 27.01.09 shall be conserved to the extent possible. In order to facilitate the conservation of these habitats, Best Management Practices for stormwater should be designed with elements that promote the conservation of habitat.

Condition 7

At least half of the site area shall incorporate Best Management Practices for stormwater that provide habitat benefits in addition to water quality benefits. Best Management Practices that provide habitat benefits include bioretention, shallow marsh, pocket marsh, extended detention wetland, and pond/wetland systems.

Shoreline Access, Erosion Control, and Buffer Management

The Critical Area Criteria require that when agricultural use of lands within the area of the Buffer ceases and the lands are proposed to be converted to other uses, the Buffer shall be established. The Criteria state that in establishing the Buffer, management measures shall be undertaken to provide forest vegetation that assures the Buffer functions for the protection of habitat and water quality. Although a preliminary Buffer Management Plan has been submitted for comment, there are several issues that still need to be addressed. The entire shoreline of the

Chester River has been protected with a "rubble revetment". The shoreline is stable in this area; however, the area is generally not safe for pedestrian access. It has been suggested that some type of walkway could be constructed over the rubble to improve its appearance and make it safer.

The shoreline adjacent to Macum Creek is not protected, but is relatively stable. It is likely that if an erosion control measure is warranted that a non-structural approach would be practical and effective.

Both shorelines of Cox Creek are not protected, but are extremely stable with extensive areas of marsh vegetation. It is unlikely that erosion control measures would be warranted along Cox Creek.

Condition 8

Shoreline access within the approved setback should be designed and constructed to minimize impacts to the 100-foot Buffer and to maintain the resource conservation area character of the setback. Pathway widths should be limited to six feet in width (including the path itself and associated clearing) within the setback and should be constructed of pervious or semi-pervious materials wherever possible. Tree canopy shall be maintained over pathways. Prior to the recordation of any subdivision plats or the start of any grading or development on the site, a Buffer Management Plan for all Buffer and setback areas on the entire site shall be reviewed and approved by the Critical Area Commission. The Buffer Management Plan shall include all existing and proposed vegetation, all public access areas, and all existing and proposed structural or nonstructural erosion control measures.

Condition 9

Structural shore erosion control measures shall be limited to those that currently exist on the site. If additional erosion control measures are warranted, non-structural measures shall be used.

Condition 10

The final plan for the Four Seasons at Kent Island growth allocation request that is approved by the Queen Anne's County Commissioners shall be submitted for review by the Critical Area Commission.