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

PANELS

9:15 a.m. – 10:30 a.m. Panel: Cambridge Comprehensive Review and Mapping Mistake
Members: McLean, Jackson, Richards, Andrews

SUBCOMMITTEES

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

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

adults			
3	2	Chesapeake Beach: Update on Forest Mitigation Master Plan	Julie LaBranche
6	2	Queen Anne's County / K. Hovnanian: Four Seasons Buffer Management Plan	LeeAnne Chandler
4	2	Maryland National Capital Park and Planning Commission: Rosalie Island / Potomac River Waterfront Park	Lisa Hoerger
2	2	Approval of November 2002 Conditions (Prince George's County)	
2	2	Maryland National Capital Park and Planning Commission: Rosalie Island / Potomac River Waterfront Park Trail Extension (Prince George's County)	Lisa Hoerger
2	2		
4	2	Department of Natural Resources / Erickson Foundation: North Bay Environmental Center Revised Staff Building (Cecil County)	Regina Esslinger
1	1		
2	2	Anne Arundel County: Department of Public Works Broadwater Wastewater Treatment Plant Upgrades	Lisa Hoerger
3	2		

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

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

Town of Queenstown: Town Center Mapping Mistake (Refinement) (Queen Anne's County)	Roby Hurley LeeAnne Chandler
Queen Anne's County: Discussion: Gibson's Grant – Growth Allocation	LeeAnne Chandler
Calvert County: Update and Discussion: Intrafamily Transfer Provisions	Mary Owens Kerrie Gallo Julie LaBranche
Dorchester County Taylor's Island Marina Growth Allocation	Wanda Cole

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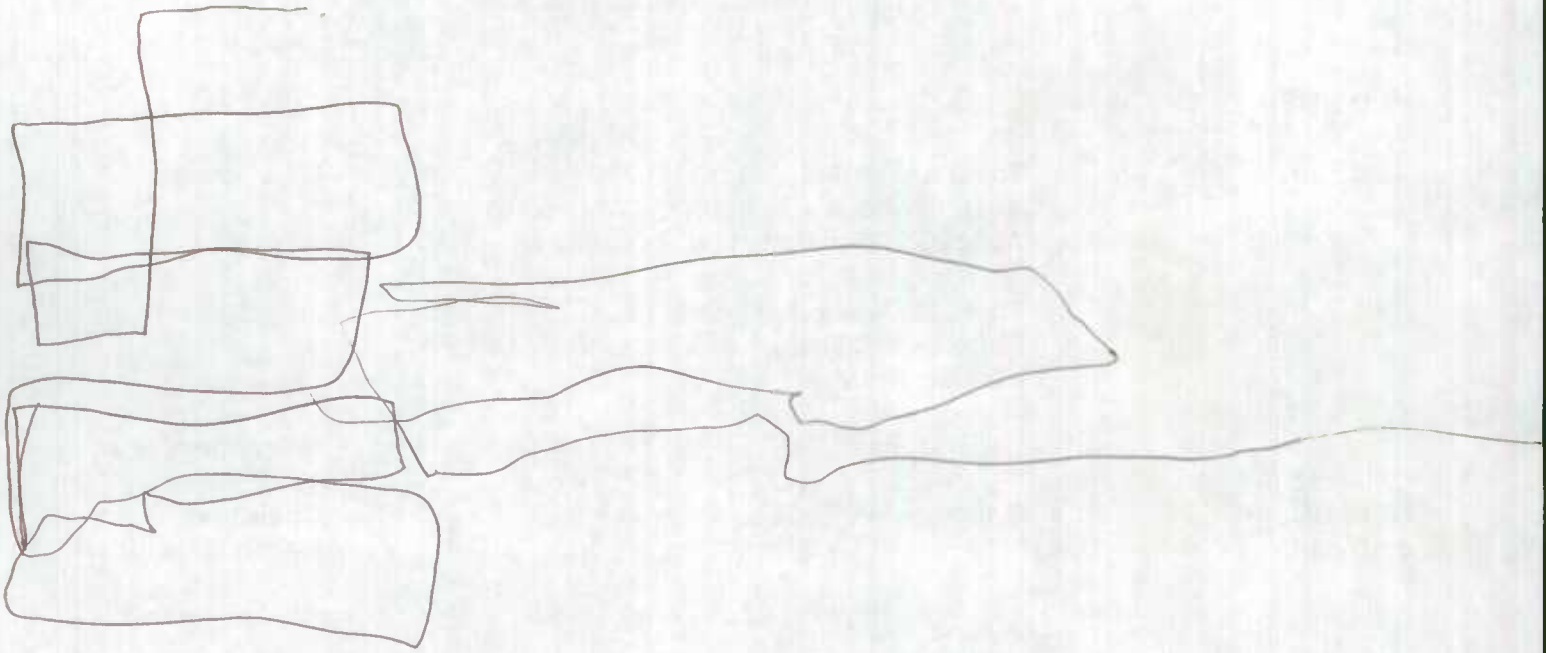
AGENDA

1:00 p.m. – 1:05 p.m.	Welcome and Remarks	Chairman Martin G. Madden
	Approval of Minutes for July 7, 2004	
PROJECTS		
1:05 p.m. – 1:15 p.m.	VOTE: Anne Arundel County: Department of Public Works: Broadwater Wastewater Treatment Plant Upgrades Conditional Approval	Lisa Hoerger
1:15 p.m. – 1:25 p.m.	VOTE: Maryland National Capital Park and Planning Commission: Rosalie Island / Potomac River Waterfront Park Approval of November 2002 Conditions (Prince George's County)	Lisa Hoerger
1:25 p.m. – 1:40 p.m.	VOTE: Maryland National Capital Park and Planning Commission: Rosalie Island / Potomac River Waterfront Park Trail Extension (Prince George's County)	Lisa Hoerger
1:40 p.m. – 1:55 p.m.	VOTE: Department of Natural Resources / Erickson Foundation: North Bay Environmental Center Revised Staff Building (Cecil County)	Regina Esslinger
PROGRAMS		
1:55 p.m. – 2:10 p.m.	VOTE: Queen Anne's County / K. Hovnanian: Four Seasons Buffer Management Plan	LeeAnne Chandler
2:10 p.m. – 2:25 p.m.	VOTE: Cambridge: Comprehensive Review of Critical Area Program (Dorchester County)	Wanda Cole Mary Owens
2:25 p.m. – 2:40 p.m.	VOTE: Cambridge: Mapping Mistake – Maple Dam Road Site (Dorchester County)	Wanda Cole Mary Owens

2:40 p.m. – 2:50 p.m.	Refinement: Queenstown: Town Center Mapping Mistake (Queen Anne's County)	Roby Hurley LeeAnne Chandler
2:50 p.m. – 3:00 p.m.	Refinement: Dorchester County: Taylor's Island Marina Growth Allocation	Wanda Cole
OLD BUSINESS		
3:00 p.m.	Town of Easton: Easton Village – Adjustment of Growth Allocation Envelope (Talbot County)	Lisa Hoerger
	Town of Chesapeake Beach: Forest and Developed Woodland Master Plan (Calvert County)	Julie LaBranche
	Legal Update	Marianne Mason
NEW BUSINESS 3:10 p.m.	Commission Retreat	Chairman Martin G. Madden



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righton plumtree and
left on garden.
house number 9453.

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Critical Area Commission
For the Chesapeake and Atlantic Coastal Bays
People's Resource Center
100 Community Place
Crownsville, Maryland
July 7, 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:

Approved

Dave Blazer, Worcester County Coastal Bays
Glenn L. Bramble, Dorchester County
Dr. Earl Chambers, Queen Anne's County
Judith Cox, Cecil County
Ella Ennis, Calvert County
Judith Evans, Western Shore Member at Large
Tracey Gordy, Department of Planning
Joseph Jackson, Worcester County, Chesapeake Bay
Gail Booker Jones, Prince George's County
Thomas McKay, St. Mary's County
Daniel Mayer, Charles County
Stevie Prettyman, Wicomico County
Cathleen Vitale, Anne Arundel County
Douglas Wilson, Harford County
Louise Lawrence, Maryland Department of Agriculture
Gary Setzer, Maryland Department of the Environment
Jim McLean, Md Dept. of Business and Economic Development
Meg Andrews, Maryland Department of Transportation
Allison Ladd, Dept. Housing and Community Development

Not In Attendance:
Margo Bailey, Kent County
Frank Dawson, Maryland Department of Natural Resources
James N. Mathias, Jr., Ocean City
William Rice, Somerset County
Edwin Richards, Caroline County
Otis Rolley, Baltimore City

Chairman Madden introduced and welcomed the Commission's three newest members: Stevie Prettyman, a member of the Wicomico County Council representing Wicomico County; Glenn L. Bramble, President of the Dorchester County Council, representing Dorchester County; and, Cathy Vitale, Anne Arundel County Council member, representing Anne Arundel County. The Chairman announced that Governor Ehrlich has reappointed to a four-year term, Judith Evans, Western Shore member-at-large; Earl Chambers, Queen Anne's County representative and Margo Bailey, Kent County representative. The Chairman also introduced and welcomed aboard Kerrie Gallo, the newest Commission staff member, a Natural Resources Planner who comes from the Buffalo area of New York where she worked on the protection and planning efforts for the Niagara River. Thanks were extended to Jim McLean who chaired the panel for Cambridge as well as Meg Andrews, Edwin Richards and Joe Jackson who also served. Shaun Fenlon,

Assistant Attorney General, attended for Marianne Mason, the Commission's counsel who is on vacation. Chairman Madden announced that Governor Ehrlich signed three Critical Area bills on May 26th, 2004. The bills took effect June 1, 2004. Letters were mailed to all the 63 jurisdictions informing them of the effects of the new laws. The Chairman told the Commission that he has begun a circuit tour to all the local jurisdictions.

The motion to approve the Minutes of May 5th, 2004 as written was made by Commissioner Mayer, seconded by Commissioner McKay and unanimously carried.

Calvert County: Julie LaBranche presented for **Vote** the request by the Maryland Department of Natural Resources to construct a parking area at Kings Landing Park, part of the Patuxent River Natural Resources Management Area (NRMA), a 1,219-acre parcel currently leased from DNR by the County and operated as a public recreational facility. The proposed parking area is part of the Phase I improvement projects within the County lease area documented in the 1995 Master Plan Update of the Kings Landing NRMA. There are 85 parking spaces proposed which will consist of 26,300 square feet of water-permeable grass pavers and 2,560 additional square feet of impervious surface coverage for the gravel aprons. The project is proposed to be constructed over an existing area of mowed grass and no tree clearing is proposed. There are no Habitat Protection Areas (HPA) impacted by this project. **Gary Setzer moved to approve the construction of a parking lot at the Kings Landing Park at the Patuxent River Natural Resources Management Area in Calvert County. The motion was seconded by Joe Jackson and carried unanimously.**

Baltimore City: Dawnn McCleary presented for **Vote**, the proposal by the Maryland Transportation Authority (MdTA) to build a 35,000 square foot Police Training Facility, with 117 parking spaces and a future outdoor training area, for the purpose of training the MdTA police cadets and officers. The site is an Intensely Developed Area (IDA) and totals 12.8 acres of which 12.2 acres are in the Critical Area and 0.6 acres are outside the Critical Area. A total of 5.15 acres of forest will be cleared. There are no HPAs or rare, threatened or endangered plant or animal species. In order to satisfy the requirement of the Criteria to reduce pollutant loadings at least 10% in the IDA, the total phosphorus removed will be 0.34 pounds. MdTA is proposing to mitigate for all forest cleared. **Gary Setzer moved to approve the construction of the Police Training Facility and outdoor training area with associated parking spaces in Baltimore City on Quarantine Road in accordance with the staff report (attached to and made a part of these minutes). The motion was seconded by Doug Wilson and carried unanimously.**

Anne Arundel County: Lisa Hoerger presented for **Vote** the proposal by the State Highway Administration to widen and resurface portions of Maryland 468 (Muddy Creek Road) and Maryland 255 (Galesville Road) to Snug Harbor Road under Phase II of the SHA plan for this area of the county. Under Phase I, no portion of the Critical Area was disturbed; however, under Phase II there will be approximately .4 acres of disturbance for which .4 acres of mitigation is required. A nearby site has been identified by SHA that is within the Critical Area. This mitigation site is located on the Franklin Point Property owned by the State and soon to be transferred to Anne Arundel County. Ms. Hoerger described the improvements. There will be no HPAs impacted. MDE and the Army Corps have issued permits to allow disturbance of 1.65 acres of nontidal wetlands; MDE also issued a Water Quality Certification for the work, as well

as approvals for Stormwater Management and Sediment and Erosion Control. The calculations for the 10% Pollutant Reduction requirement for IDAs resulted in a negative number; therefore Best Management Practices are not required for this project. **Gary Setzer moved to approve the widening and resurfacing of MD 468 and MD 255 to Snug Harbor Road in accordance with the staff report (attached to and made a part of these Minutes) based upon the following conditions: 1) 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. 2) 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. The motion was seconded by Jim McLean and carried unanimously.**

St. Mary's County: Mary Owens presented for **Vote**, St. Mary's College's request to install 8,000 linear feet of concrete encased underground ductbank and manholes to accommodate telecommunications and power cable to meet the telecommunications needs of the expansion of the facilities and the student population at the College. The design of the ductbank locates the majority of the project in previously disturbed areas. The limit of disturbance for this project is approximately 2.90 acres. Most of the installation involves the excavation of existing asphalt pavement, concrete and brick sidewalks and grass lawn areas which will be stabilized and replanted following installation of the ductbanks and replacement of the pavement and sidewalks. The campus is mostly developed and is considered IDA. Because the project involves an underground utility and does not represent a development activity involving more than 250 square feet of new impervious area, compliance with the 10% Rule for pollutant reductions in stormwater is not required. MDE has indicated that they will be able to issue a waiver for stormwater management. Approximately 56 trees will be removed that are within the Buffer and 12 trees located outside the Buffer. On this site, forest replacement will be provided at a 1:1 ratio for all trees removed except for those in the Buffer, where the ratio will be 3:1. The total mitigation is 180 trees. Ms. Owens explained how this project meets the conditional approval standards of the Commission's regulations for projects that do not initially comply. She said that the staff recommended approval conditioned upon a Planting Agreement that must be executed with Commission staff prior to initiating construction on this project. **Gary Setzer moved that the Commission conditionally approve the installation of 8,000 linear feet of concrete encased underground ductbank and manholes to accommodate telecommunications and power cable, provided that a planting agreement is executed with Commission staff prior to initiating construction of the project. As required by Code of Maryland Regulations, this motion is based on the following factors:**

The extent to which the project is in compliance with the requirements of the relevant chapters of this subtitle:

Other than impacts to the 100-foot buffer, the project is otherwise in compliance with the requirements set forth in COMAR 27.02.05. 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, however, 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. There are no anticipated impacts to Habitat Protection Areas, other than the 100-foot Buffer. In

addition, stormwater management is not required since the project does not involve a development activity resulting in 250 square feet of impervious area.

The adequacy of any mitigation proposed to address the requirements of this subtitle that cannot be met by the project:
Although the ductbank is an underground structure and most of the Buffer impacts will be temporary, mitigation will be provided for the removal of existing trees and shrubs. Forest replacement at a 1:1 ratio will be provided for all trees removed by the project, except for those in the Buffer, where the replacement ratio will be 3:1. The total mitigation required is 180 trees.

The extent to which the project, including any mitigation measures, provides substantial public benefits to the overall Critical Area Program:
St. Mary's College enjoys a unique status in public higher education as Maryland's Public Honors College. The proposed project accommodates the expansion of the College's facilities, including the public safety office, the library, and student housing buildings and improves telecommunication capabilities necessary to serve an increasing student population. The motion was seconded by Judith Cox and carried unanimously.

Baltimore County: Wanda Cole presented for **Vote** the Parking improvements for Mobility Storage Building 4010 and Relocated Access Road: Lynbrook Road to Hercules Blvd. Proposed by the Maryland Aviation Administration on behalf of the Maryland Air National Guard, the Tenant. Ms. Cole described the design details of the improvements. She said that the property is an Area of Intense Development and that there will be additional impervious surface as a result of these combined projects. Compliance with the 10% rule is required. Stormwater management practices (sandfilter and dry swale) have been provided for pollutant removal. An additional 0.462 pounds of pollutants will be removed from the combined projects, more than is required. 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. There are no proposed impacts in the Buffer. There are no other HPAs on the site. **Gary Setzer moved that the Commission approve the proposed road relocation between Lynbrook Road and Hercules Boulevard and the parking lot improvements around Mobility Storage Building 4010 in accordance with the staff report (attached to and made a part of these Minutes.) The motion was seconded by Jim Mclean and carried unanimously.**

Town of Greensboro (Caroline County): Dawnn McCleary presented for **Vote** the Conditional Approval for a pavilion proposed by the Town of Greensboro as part of its plan to develop its Choptank River Park. The site is IDA and the project will be located in the 100-foot Buffer. This property and several others along the Choptank River were obtained through buyouts from the Federal Emergency Management Administration. Ms. McCleary explained how the characteristics of the project and the site satisfy the requirements for Conditional Approval under the Commission's review process.
Gary Setzer moved that the Commission conditionally approve the Town of Greensboro's proposal to construct a pavilion in the 100-foot Critical Area Buffer as part of its plan to develop its Choptank River Park. As required by COMAR 27.02.06, this motion is based on the following factors:

The extent to which the project is in compliance with the requirements of the relevant chapters of this subtitle:
Other than impacts to the 100-foot Critical Area Buffer, the project is in compliance with the requirements set forth in COMAR 27.02.05. Furthermore, since the 70-foot wide site is

located entirely within the Buffer, it is impossible to avoid these impacts and accomplish the proposed project. There are no other impacts to Habitat Protection Areas and all other existing vegetation will be maintained by the Town. Impervious surfaces, including the gazebo, comprise 9% of the site.

The adequacy of any mitigation proposed to address the requirements of this subtitle that cannot be met by the project:
Mitigation will be provided within the Choptank River Park by planting trees and/or shrubs at a 3:1 ratio in the Critical Area Buffer.

The extent to which the project, including any mitigation measures, provides substantial public benefits to the overall Chesapeake Bay Critical Area Program:
According to the Critical Area Law, local programs must designate shoreline areas that are suitable for parks, public access or assembly. As a result, the Town of Greensboro is developing the Choptank River Park and the gazebo is being constructed as a park amenity to provide shelter for users of the park. The motion was seconded by Joe Jackson and carried unanimously.

Town of Hillsboro (Caroline County): Dawnn McCleary presented for **Vote** the Town of Hillsboro's six-year Comprehensive Review. A revised Critical Area Ordinance and Map were approved by the Planning Commission of Hillsboro on April 5, 2004. There was no public comment. 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 and maps. Ms. McCleary said that there were substantive changes to clarify the land use classifications and standards for development; clarifications of the provision 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. Also added were sections on growth allocation, structures on piers, and the Critical Area Program amendment process. Several paragraphs were amended in the model program used by Hillsboro, to be more consistent with the Town's new Ordinance. Ms. McCleary explained those recommended amendments. She said that the Town's new map includes more detailed parcel information and updated information on Habitat Protection Areas. She stated that the Town of Hillsboro has not requested the use any of its 54.45 acres of growth allocation. **Louise Lawrence (in the absence of Margo Bailey, the panel chair) moved to approve with a conditions for amended language as presented by staff and contained in the staff report (attached to and made a part of these Minutes) for the Hillsboro Comprehensive Review six-year plan. The motion was seconded by Jim McLean and carried unanimously.**
The Chairman recognized Ron Stafford, President of the Town Commissioners of Hillsboro, and Town Commissioner Bill Cooper, and announced that Hillsboro is the first jurisdiction to have an approved Program under the new state laws that were passed by the General Assembly and signed by Governor Ehrlich in May 2004.

Town of Elkton (Cecil County): Julie LaBranche presented for Concurrence with the Chairman's determination of **Refinement the Town of Elkton's changes to its Critical Area maps showing annexation of Parcels 91, 454 and 79 on Tax Map 33 in Cecil County (within the Critical Area).** During a review of the Town's quarterly grant report, the Commission staff discovered that the Town of Elkton adopted a resolution to annex several parcels of land from Cecil County, effective July 20, 2002, and subsequently notified the Town that the Critical Area

map change for the annexation had to be submitted to the Commission for approval. The Town subsequently submitted the request on April 19, 2004. The total annexed land is 83.22 acres, 43 of which are in the Critical Area. Three of the RCA designated parcels are undeveloped, mostly forested and have many sensitive features, such as FIDS habitat. Two other parcels contain non-tidal Wetlands of Special State Concern and Listed Species Habitat Protection Areas within the Critical Area. Should there be development proposed, it must comply with the criteria for these designations as required by COMAR. Commissioner Mayer asked about the future use for this property since it has been annexed without development planned for it, stated that annexed property must retain its zoning designation for 5 years unless the County agrees to a change in the designation. The Commission supported the Chairman's determination of Refinement.

OLD BUSINESS

Legal Update:

Wicomico County: Shaun Fenlon, Assistant Attorney General attending for Commission Counsel Marianne Mason, updated the Commission on legal matters. He told the Commission that the Lewis vs. DNR case had been remanded from the Court of Appeals to the Wicomico County Board of Zoning Appeals, and that on remand, the Board denied the variance. The Board listened to six hours of extensive argument in February and March, and deliberated four hours in April. Mr. Lewis has until July 25th to file an appeal to the Circuit Court. Copies of the decision are available to the Commission members through Marianne's office.

Talbot County: A suit was filed by Talbot County vs. DNR and the CAC on June 14th in Circuit Court alleging that the Commission had committed various errors of law in its decision on May 5th to deny approval of Talbot County Bill #933 regarding retraction of unused growth allocation by the Towns of St. Michaels and Oxford. The suit alleges that the Commission exceeded its authority, misinterpreted the standards and criteria applicable to program amendments, and abused its discretion in failing to approve Bill #933. The Attorney General's office is preparing a responsive pleading and will file that within the next week.

St. Michaels (Talbot County): On June 4th the Midland Company filed suit in Circuit Court (Miles Point Property and Perry Cabin Associates vs. the Critical Area Commission). The suite alleges that the Commission's decision to approve the growth allocation for Miles Point in St. Michaels was unlawful for several reasons: Midland alleged that the Commission does not have authority to impose conditions on a program amendment approval and that the Commission acted improperly overruling the findings of the Town of St. Michaels regarding the imposition of the 300-foot setback from the water, and that the Commission's decision was arbitrary and capricious. Last week a citizens group filed a motion to intervene in the case. The Attorney General's office is preparing a response.
The Chairman clarified that in the lawsuit, Midlands asked that the project be approved but that the conditions be declared unlawful.

There being no further business, the meeting adjourned

Critical Area Commission Minutes
July 7, 2004
Minutes submitted by: Peggy Campbell, Commission Coordinator

New Business

Commissioner McKay suggested that when a project is submitted to the Commission for approval that any outstanding mitigation be included in the staff report. Chairman Madden commented that "any" outstanding issues could be included for consideration.

Commissioner Mayer inquired what type of regulation Virginia has for shoreline development to which Commissioner Vitale replied that it was her understanding that their process is very difficult. The Chairman asked that some research be done on this topic in Virginia and the surrounding counties and to report on it the fall.

The Chairman announced that a retreat was being explored for the near future such as was held last year at the Wye Institute. He suggested the same location, meeting during the week in either September or October. He asked the Commission members to give some thought and consideration to the topics that they would like discussed.

Commissioner Ennis asked whether there exists a report on the major contributors of Bay pollution including any progress that has been made. The Chairman said that he would have a synopsis prepared on that subject.

There being no further business, the meeting adjourned.

Critical Area Commission

STAFF REPORT
August 4, 2004

APPLICANT:	Queen Anne's County/K. Hovnanian
PROPOSAL:	Buffer Management Plan for Four Seasons At Kent Island
COMMISSION ACTION:	Vote
STAFF RECOMMENDATION:	Approval
STAFF:	LeeAnne Chandler
APPLICABLE LAW/ REGULATIONS:	COMAR 27.01.02.06 – Location and Extent of Future Intensely Developed and Limited Development Areas

DISCUSSION:

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." Below, please find a background summary of the project, followed by a description of the Buffer Management Plan.

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.

Buffer Management Plan

The project will be developed in five phases over 12 years. The Four Seasons site contains approximately 5 miles of shoreline. Existing conditions of the setback areas have been assessed on a phase-by-phase basis. Many of the areas have been left out of agricultural production the past few years and natural regeneration has begun in some locations. The existing conditions were used in dividing the Buffers into three "management units."

1. The **"forested management unit"** represents portions of the site containing mature trees. The applicant will control invasive and exotic species where needed but no planting will be required in these areas.
2. The **"natural regeneration management unit"** represents those areas where natural regeneration has begun and appears viable. Management measures will include control of invasive or exotic species and monitoring to ensure the areas are progressing to an early successional forest.
3. The **"planted management units"** are those areas that will be planted in accordance with specific landscape schedules prepared for each phase. A biannual inspection will occur and will include a count of the number of thriving plants per acre. Planted materials will be maintained through control of competing vegetation, maintenance of tree shelters and watering as necessary.

All areas will be considered "fully forested" when 440 woody stems per acre are established.

Phase 1 – This phase includes construction of 106 single-family homes, 56 condominium units, a water tower, pump station, associated stormwater facilities and a non-tidal wetland mitigation project. It includes the 300-foot setback along Macum Creek (totaling 15.6 acres) and about 420 linear feet of the 300-foot setback along Cox Creek (5.4 acres). The Macum Creek setback includes all three management units. The existing forested fringe along the shoreline will remain and will serve as a seed source for natural regeneration on portions of Phase 1. The remaining area will be divided – approximately 5.3 acres will be left to naturally regenerate while the other 5.5 acres will be cleared of existing vegetation and will be planted with native tree and shrub species. Invasive species will be controlled in all areas through appropriate means. The 5.4-acre area along Cox Creek will be used to create a non-tidal wetland serving as mitigation for the project's non-tidal and tidal wetland impacts as well as a means to increase the floodplain capacity. It will be re-graded and vegetated with non-tidal and upland native species.

Phase 2 – This phase includes construction of an additional 238 residential units, the main entrance road and the clubhouse facilities. Approximately 5,000 linear feet of shoreline along

Cox Creek and 1,840 linear feet of shoreline along the Chester River will be addressed in Phase 2. The 300-foot setback along Cox Creek will be split into two management units. Approximately 14 acres are already forested while the remaining 18.5 will be managed as natural regeneration. The setback area along the Chester River included in Phase 2 includes the two existing dredge disposal areas on the site. The areas are dominated by *Phragmites* and appear as sandy dunes and low drainage basins. Grading is proposed in these areas to create more natural topography and a viable planting surface. The area waterward of the proposed clubhouse will be planted with a wildflower/grass mix along with a "Bayscape" shrub mix. This area extends 360 linear feet and is approximately 0.3 acres in size. It will be the primary point of access to the shoreline for the community. It represents 0.3% of the acreage of the project's Buffer. The remaining area in Phase 2 will be planted with native trees and shrubs to create a multi-layered forest.

Phase 3 – This phase includes the 100-foot Buffer from the landward edge of the shore erosion control structure along the Chester River as well as the 150-foot setback from the edge of non-tidal wetlands around the tidal pond. It comprises 19.25 acres. Much of the area is overrun with *Phragmites*. The first step in this phase will be intensive *Phragmites* eradication through the application of approved herbicides followed by cutting. The upland areas will be planted with native trees and shrubs while the non-tidal and tidal wetland portions will be planted with wetland vegetation.

Phase 4 – This phase includes the 300-foot setback along 1200 feet of Cox Creek and the 100-foot Buffer along 700 linear feet of the Chester River. The Cox Creek setback has begun to naturally regenerate, although some areas have been invaded by *Phragmites*. The Chester River setback contains some mature forest. Both of these areas will be left to continue regenerating but will be monitored for invasive species. Invasive species will be controlled by appropriate means.

Phase 5 – This phase includes the 300-foot setback along the western bank of Cox Creek. The area has been left fallow for the past few years and some limited natural regeneration is occurring. The area will be left to continue regenerating but will be monitored for invasive species. Invasives will be controlled by appropriate means to encourage the growth of desirable woody species.

All Buffer and setback areas will be placed under a restrictive covenant recorded in the land records of Queen Anne's County. The applicant is proposing inspections of both the natural regeneration sites and the planted areas on a biannual basis with reports sent to County and Commission staff every May and October. Inspections and reporting will begin for a five year period once planting of an area is completed or, if natural regeneration is proposed, from the time each phase is started and Commission staff determines whether supplemental planting is necessary in that phase.

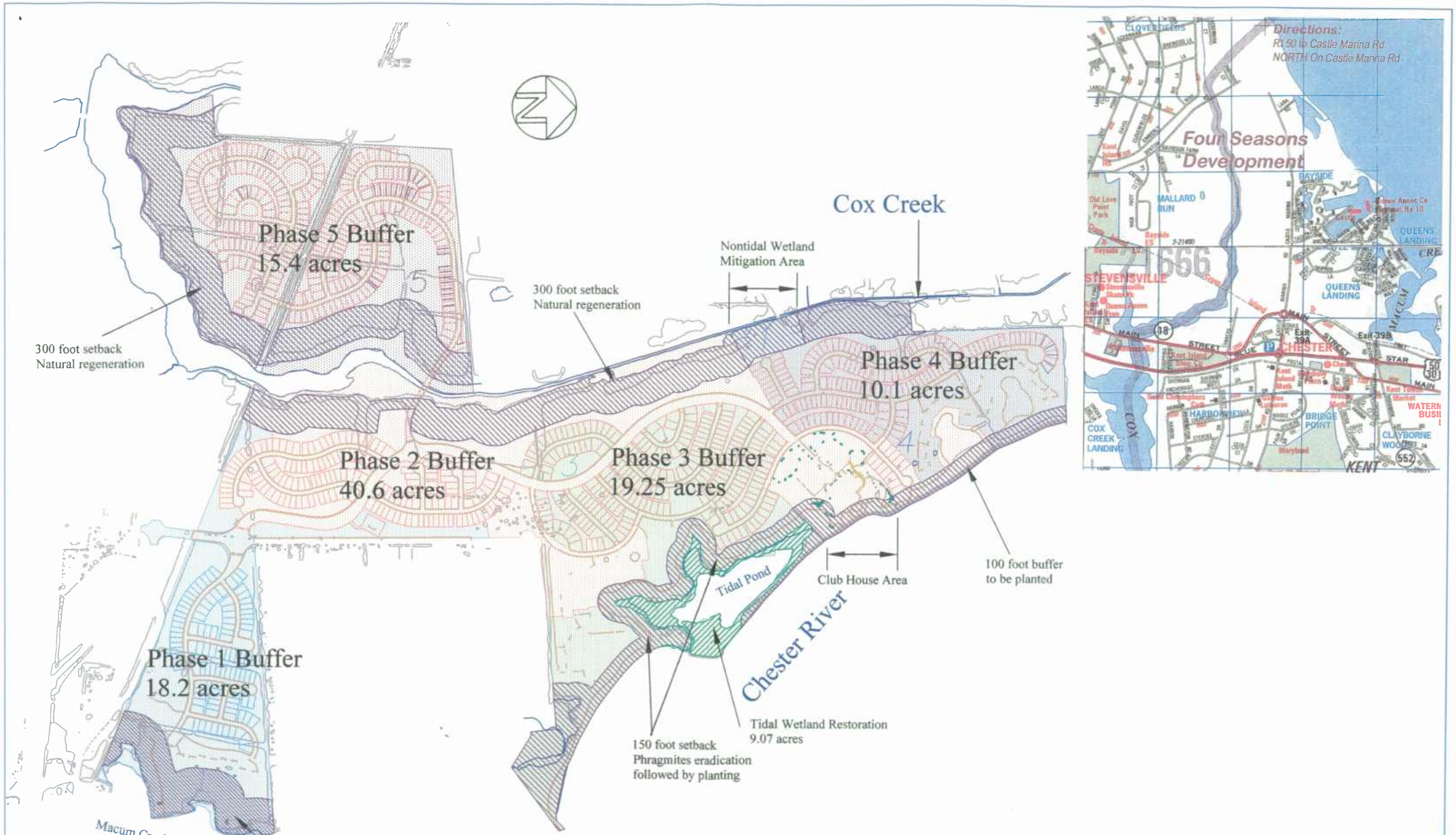


PLATE 1
Four Seasons Project Development Phases
Buffer Management Plan

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

Four Seasons
Kent Island, MD

July 2004
not to scale

Critical Area Commission

STAFF REPORT
August 4, 2004

APPLICANT:	Anne Arundel County Department of Public Works
PROPOSAL:	Broadwater Reclamation Facility Dewatering Project
JURISDICTION:	Anne Arundel County
COMMISSION ACTION:	Vote
STAFF RECOMMENDATION:	Approval
STAFF:	Lisa A. Hoerger
APPLICABLE LAW/ REGULATIONS:	COMAR 27.02.06 Conditional Approval of State or Local Agency Programs in the Critical Area

DISCUSSION:

Anne Arundel County Department of Public Works (DPW) proposes to replace deteriorating sludge dewatering equipment and expand the odor control capabilities of the Broadwater Reclamation facility. These upgrades will consist of replacing and relocating the existing sludge dewatering equipment and replacing and relocating the lime stabilization equipment. The modifications will serve to upgrade the equipment, increase the operational efficiency, and construct an odor control system to treat the dewatering facility off-gasses. These improvements are all located within the expanded Buffer for hydric soils; therefore, the project must be reviewed through the Commission's conditional approval process.

The Broadwater Reclamation Facility is an existing facility located in Churchton on Deep Cove Road in southern Anne Arundel County. The site is 21.8 acres with 18 acres inside the Critical Area. There are 9.3 acres in the Resource Conservation Area and 8.7 acres in the Limited Development Area. The facility was constructed in 1971 and was upgraded in 1996 to achieve biological nutrient removal to reduce nitrogen and phosphorus in its effluent. The more recent upgrades of the existing equipment with more modern facilities will improve the overall performance and efficiency of the facility.

In December 2002, the DPW was granted a conditional approval by the Commission to install new measures that would increase plant efficiency and safety, and enhance the treatment process. No clearing or increase in impervious area resulted from these plant upgrades.

The current proposal will occur within the press building, where the existing equipment will be removed and replaced. An addition to the existing building will be constructed to provide an enclosed area for storage of the stabilized biosolids. New soil odor filters will be constructed to provide treatment of odorous air generated as part of the dewatering and stabilization processes.

There are no known Habitat Protection Areas on this site except for the expanded Buffer. No clearing is proposed. An existing 780 square foot building will be removed and a new 750 square foot building will be constructed in the Critical Area. Overall, there will be a net decrease of 30 square feet in the Critical Area (existing 780 - proposed 750 = 30), and a net increase of 1,260 square feet of impervious surface outside the Critical Area.

The applicant has an approved sediment and erosion control plan and stormwater management plan. No permits are required from the Maryland Department of the Environment since no wetlands will be impacted. The Administrative Hearing Officer of Anne Arundel County has heard and approved the variance to allow this disturbance in the expanded Buffer with the following conditions:

1. There shall be no net increase in impervious coverage.
2. The applicant shall provide landscaping, mitigation and best stormwater management practices as determined by the Permit Application Center.
3. The project is subject to conditional approval by the Chesapeake Bay Critical Area Commission.

Conditional Approval Process

B. In order to qualify for consideration by the Commission for conditional approval, Anne Arundel County Department of Public Works must show that the project or program has the following characteristics: (the responses are that of DPW staff)

(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 County Soil Survey map shows Elkton and Othello soils present over the entire site area including those areas where disturbance is proposed. As such, there is no practical manner of constructing any of the planned modifications outside of these areas of hydric soils in order to be in strict compliance with the expanded Buffer requirements.

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

The public benefits of this project include improved processing of the plant solids, enhanced equipment reliability, increased operational flexibility, and a reduction in the odors leaving the site.

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

The project conforms in all other ways to the Critical Area Program.

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

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

Literal enforcement of the provisions of this subtitle will prevent construction of <u>any</u> of the planned modifications. The planned improvements are engineered to be part of the sludge dewatering and stabilization unit processes and cannot reasonably be located remotely from the existing building where this processing occurs.

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

The disturbance is the minimum necessary for the proposed upgrades and will conform, insofar as possible, with the Anne Arundel County Critical Area Program.

(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.

Although the design of the project includes an overall net decrease of 30 square feet of impervious area in the Critical Area, the DPW proposes mitigation at a 3:1 ratio for the new area of impervious surface in the Critical Area.

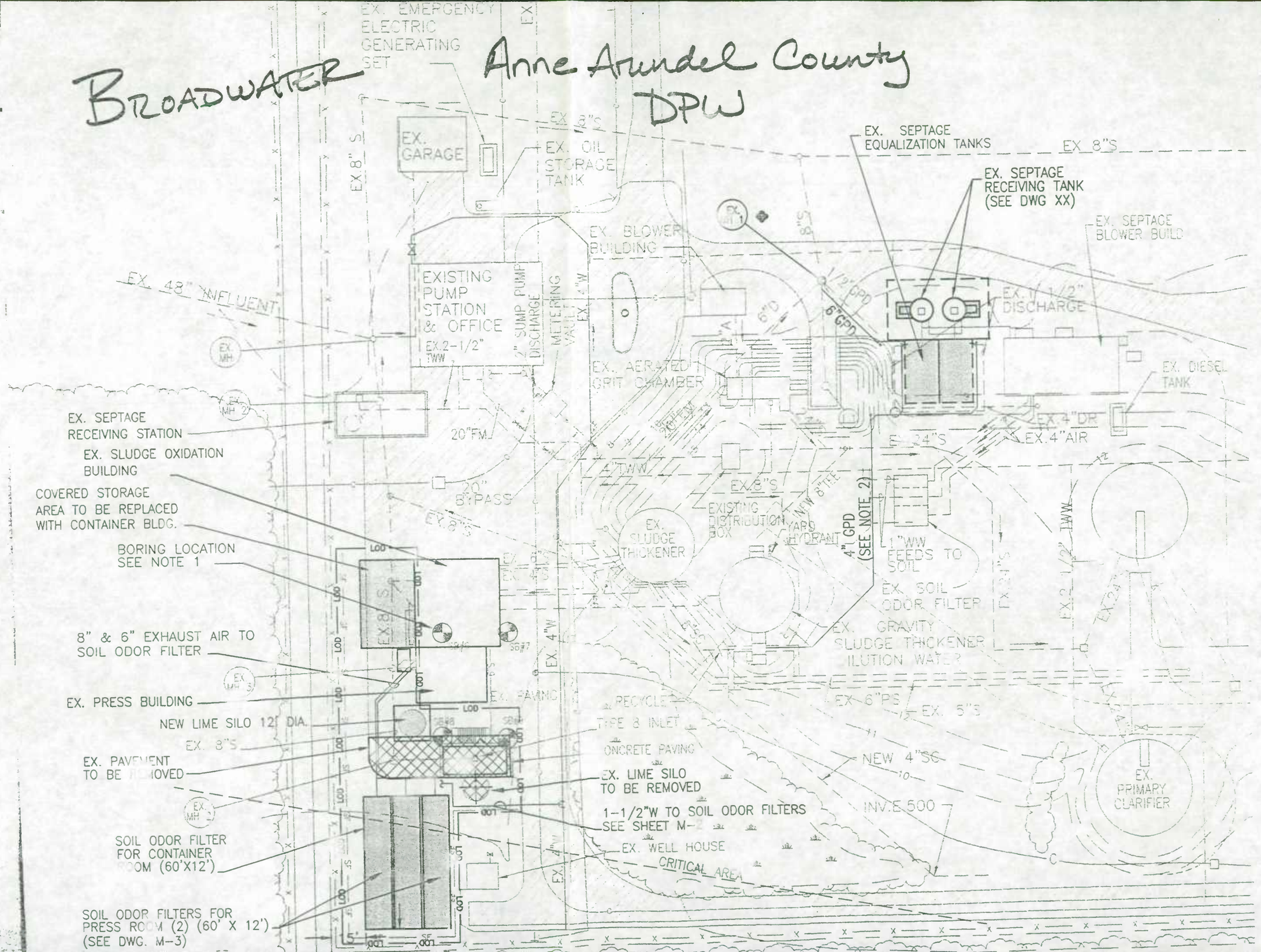
Commission staff recommends the following conditions:

1. The Department of Public Works perform 3:1 mitigation for the new areas of impervious surface in the expanded Buffer with a mix of native trees and shrubs.

2. The Department of Public Works install appropriate stormwater best management practices to treat runoff from the new and modified structures to provide additional water quality benefits to the site.

BROADWATER

Anne Arundel County DPW



Existing Building

Area of Proposed Addition

Existing Equipment

Existing Lime Stabilization Equipment

Area for Proposed Odor Filter 1

Area of Proposed Odor Filter 2

ANNE ARUNDEL COUNTY
MARYLAND

Anne Arundel County
Department Of Public Works
Technical Engineering
Modeling & Geographic Information

Map Title: Broadwater WRF

Scale: 400 0 400 Feet

Date: December 3, 2002

Filename:

N

Anne Arundel County Inset Map

Critical Area Commission

STAFF REPORT
August 4, 2004

APPLICANT:	Department of Natural Resources/Erickson Foundation
PROPOSAL:	North Bay Environmental Education Camp
JURISDICTION:	Cecil County
COMMISSION ACTION:	Vote
RECOMMENDATION:	Approval
STAFF:	Regina Esslinger
APPLICABLE LAW/ REGULATIONS:	COMAR 27.02.05 State Agency Actions Resulting in Development on State-Owned Land

DISCUSSION:

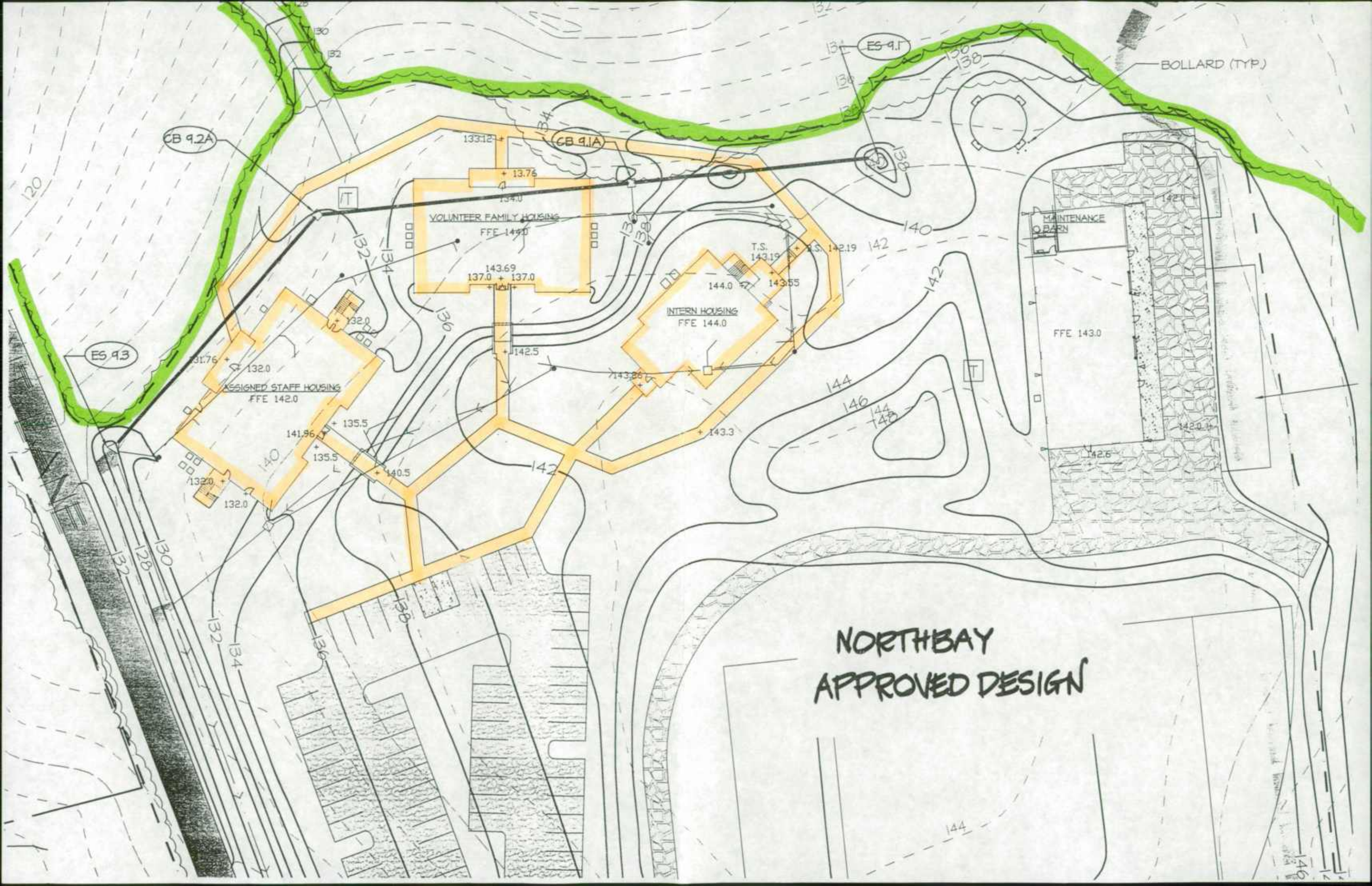
At the Commission's April 7, 2004 meeting, the Commission granted final conditional approval for the North Bay Environmental Education Camp, a camp for children at Elk Neck State Park built in partnership with the Department of Natural Resources and the Erickson Foundation. The camp will serve public and private schools, religious groups, Boys Scouts, Cub Scouts, Girl Scouts, Young Life, and athletic associations. The camp will have up to 500 people between campers and staff. The Erickson Foundation, with input from and in coordination with DNR, is developing a program that will provide experience and training in environmental awareness, natural resources conservation, team and confidence building, and leadership training.

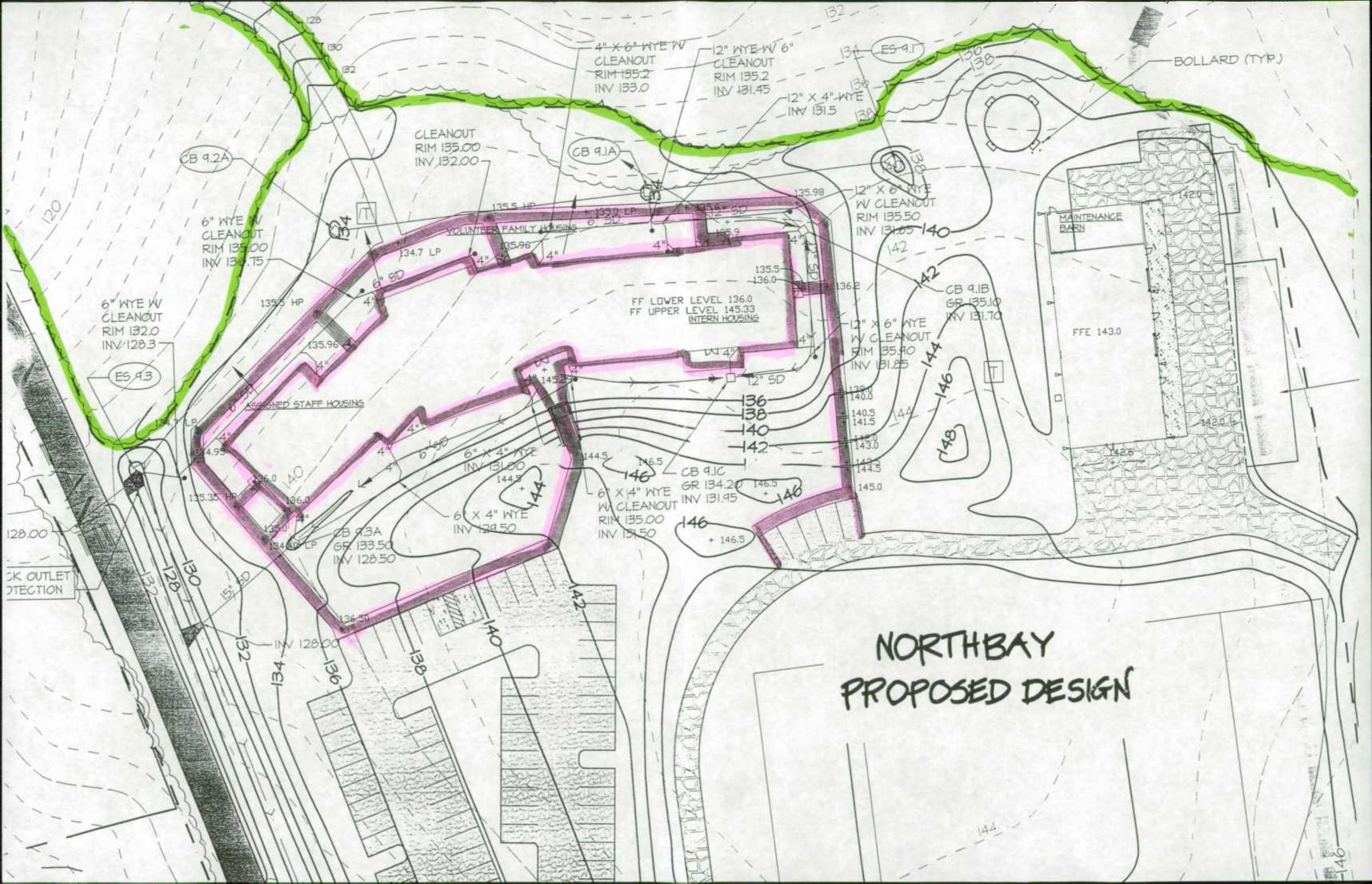
Further development of the site design has now resulted in the consolidation of three staff housing buildings into one building, the elimination of one supervisor's house, and minor reconfiguration of some parking spaces. As originally proposed, none of these structures were in the expanded Buffer or on steep slopes. The new building is in the same area as the three staff buildings, and therefore has no impacts to the Buffer or steep slopes. As previously approved, impervious surface on the site was to be 12.76%. Impervious surface will be increased 633 square feet, bringing the total impervious surface on the site to 12.8%. No additional clearing is necessary, and no changes are needed to the MDE permits.

The Commission approved the conditional approval on July 3, 2003 with the following conditions:

1. There shall be 17.00 acres of mitigation for impacts to steep slopes and Buffer provided on the lease site and on DNR land adjacent to the site.
2. There shall be no additional buildings with impacts to steep slopes and Buffer.
3. There shall be no runoff from any impervious areas allowed to flow over any slope greater than 15% on the northern side of the camp.
4. The approval of all stormwater management plans shall be concurrent with MDE approval.

The Commission determined on April 7, 2004 that these conditions had been met with the final design. The proposed changes do not adversely affect the fulfillment of these conditions.


BOLLARD (TYP.)
ES 9.1
CB 9.2A
CB 9.1A
ES 9.3
VOLUNTEER FAMILY HOUSING
FFE 144.0
INTERN HOUSING
FFE 144.0
ASSIGNED STAFF HOUSING
FFE 142.0
MAINTENANCE BARN
FFE 143.0
NORTHBAY
APPROVED DESIGN


NORTHBAY
PROPOSED DESIGN
4" X 6" WYE W/ CLEANOUT RIM 135.2 INV 133.0
12" WYE W/ 6" CLEANOUT RIM 135.2 INV 131.45
12" X 4" WYE INV 131.5
ES 9.1
BOLLARD (TYP.)
CLEANOUT RIM 135.00 INV 132.00
CB 9.1A
CB 9.2A
6" WYE W/ CLEANOUT RIM 135.00 INV 130.75
6" WYE W/ CLEANOUT RIM 132.0 INV 128.3
ES 9.3
VOLUNTEER FAMILY HOUSING
ASSIGNED STAFF HOUSING
FF LOWER LEVEL 136.0
FF UPPER LEVEL 145.33
INTERN HOUSING
12" X 6" WYE W/ CLEANOUT RIM 135.50 INV 131.65
CB 9.1B GR 135.10 INV 131.70
12" X 6" WYE W/ CLEANOUT RIM 135.90 INV 131.85
MAINTENANCE BARN
FFE 143.0
6" X 4" WYE INV 131.00
6" X 4" WYE INV 129.50
CB 9.3A GR 133.50 INV 128.50
6" X 4" WYE W/ CLEANOUT RIM 135.00 INV 131.50
CB 9.1C GR 134.20 INV 131.95
INV 128.00
CK OUTLET
OTECTION

Critical Area Commission

STAFF REPORT

August 4, 2004

APPLICANT:	City of Cambridge
PROPOSAL:	City of Cambridge Comprehensive Review
JURISDICTION:	City of Cambridge
COMMISSION ACTION:	Vote
COMMISSION PANEL:	Jim McLean, Chair, Meg Andrews, Joe Jackson, and Ed Richards
PANEL RECOMMENDATION:	Pending Panel Discussion
STAFF:	Wanda Diane Cole and Mary Owens
APPLICABLE LAW/ REGULATIONS:	Natural Resources Article § 8-1809(g)

DISCUSSION:

The City of Cambridge had submitted a request for approval of amendments to Article IX, Part VII of the Cambridge Zoning Ordinance The proposed changes to the zoning ordinance serve to correct typographical errors, eliminate redundancy, clarify provisions to ensure consistency with the State Criteria, add new provisions for growth allocation and eliminate sections that would preclude long-term build-out and phased-in projects. The City of Cambridge Planning Commission unanimously approved the original amendment on October 7, 2003, and the Mayor and Council approved it on November 24, 2003 after a public hearing.

The City of Cambridge adopted its original Critical Area Program in October 1988. The original Program provided for the exclusion from the Critical Area of a large portion of the City of Cambridge as set forth in §8-1806 of the Critical Area Law because it was part of a developed, urban area that in view of applicable laws and restrictions, the imposition of a Critical Area Program would not substantially improve protection of tidal water quality or conservation of fish, wildlife, or plant habitats. The City's Program document was comprehensively reviewed and amended in November 1998; however, the zoning ordinance was not amended at that time.

In reviewing the changes proposed by the City, staff determined that the City's six-year comprehensive review was due in 2004 and that while the City's proposed changes were comprehensive in nature, they did not include all of the changes that would be recommended as

part of this effort. In addition, recent changes to the Critical Area Law had resulted in the need for local governments to amend their Critical Area Programs to include a definition of dwelling unit, clarify the variance language, provide for protection of the Buffer, and add provisions for increased enforcement penalties. City staff had also informed Commission staff that the City of Cambridge was reviewing several annexations and associated development projects. One of the proposed annexations will more than double the City's size. Most of these annexations will require the use of growth allocation to accommodate the proposed development.

In considering the amendments proposed by the City and the need for other amendments to ensure consistency of the City's Program with the State law and criteria, Commission staff expedited a full comprehensive review of the City's Program and developed a list of necessary amendments that included specific language that could be used to address them. This list of amendments was submitted for review by the Panel as potential conditions of approval. Completion of the review will provide the City with updated Critical Area regulations that will be necessary to appropriately and effectively implement the Critical Area regulations as the City faces increased development pressure.

The Chairman determined that the City's changes were to be processed as an amendment, and a panel of Commission members held a public hearing in Cambridge on June 30, 2004. The panel met following the hearing to discuss all of the proposed changes. Staff has since met with the City's Planning staff, City Counsel, and the Critical Area Circuit Rider to discuss the proposed changes, as described below. These changes are proposed as conditions to the Commission's approval. The language shown in bold indicates new language to be added and the language shown as ~~strikethrough~~ indicates language to be deleted. Page numbers in brackets, i.e. [Page 10], refer to the pages in the original document submitted to the Commission for review.

ZONING ORDINANCE CHANGES: Article IX, Part VII of the City of Cambridge Zoning Ordinance

General Comments

1. Change all references to the Wildlife and Heritage Service and Forest Service to "Maryland Department of Natural Resources".

2. Change all references to the Chesapeake Bay Critical Area Commission to "Critical Area Commission for the Chesapeake and Atlantic Coastal Bays" or "Critical Area Commission."

3. Part I – Definitions. Add the following definition for "Dwelling Unit" that will apply within the Critical Area:

Dwelling Unit - 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.

4. Part I – Definitions. Add the following definition for "excluded area":

   Excluded Area – That area that is part of the City's "initial planning area" for purposes of mapping the Critical Area, but that has been excluded from the City's Critical Area on the basis that the City found the area to be part of a developed urban area in which, in view of applicable public facilities and applicable laws and restrictions, the imposition of a Critical Area Program would not substantially improve tidal water quality or fish, wildlife, and plant habitat. The exclusion of the area was approved by the Critical Area Commission as part of the City's Critical Area Program.

5. Include provisions for Intrafamily Transfers within the RCA. See Attachment A for appropriate language.

6. Include provisions for Structures on Piers. See Attachment A for appropriate language.

7. Include provisions for Shore Erosion Protection Works. See Attachment A for appropriate language.

8. Include provisions for Agriculture. See Attachment A for appropriate language.

9. Include provisions for Natural Parks. See Attachment A for appropriate language.

10. Include provisions for Forest and Woodland Protection and Commercial Timber Harvesting. See Attachment A for appropriate language.

11. Include provisions for Enforcement. See Attachment A for appropriate language.

12. Provide a section for Surface Mining. If surface mining is not a permitted use within the City, include the following provisions:

    1. **<u>Definition</u>. Surface mining is defined as the breaking of the surface soil in order to extract or remove minerals in the Critical Area. Surface mining includes any**

activity or process constituting all or part of a process for the extraction or removal of minerals from their original location in the Critical Area and the extraction of sand, gravel, rock, stone, earth or fill from borrow pits for highway construction purposes or for other facilities. For the purpose of this section, surface mining is also defined as operations engaged in processing minerals at the site of extraction; removal of overburden and mining of limited amounts of any mineral when done for the purpose of prospecting and to the extent necessary to determine the location, quantity or quality of any natural deposit; and mining operations, if the affected land exceeds one acre or more in area.

2. **<u>Surface mining is not a permitted use in the City</u>. Should the City amend its Zoning Ordinance to allow surface mining in any zone within the Critical Area, the City shall amend its Critical Area Ordinance to include appropriate language.**

13. Provide information on the City's Excluded Areas. A summary of the information included in Section K on pages 42 – 44 of the City's Critical Area Program and information on the location and extent of the excluded areas would be appropriate.

14. Add the following language (may be added to Part I Definitions or Section 202 Variances) regarding unwarranted hardship:

    "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."

15. Add the following language (may be added to Section 202 or may be a new section) regarding reasonable accommodations for those with disabilities:

    <u>Reasonable accommodations for the needs of disabled citizens.</u> 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 City's ability to restore the property should the applicant fail to do so.

Section 197. Intent

16. [Page 1] Revise the beginning of the first sentence to read, **"The City of Cambridge has certain areas within its corporate limits that lie within the Critical Area as defined pursuant to…"** Delete the following language, "~~The City recognizes that at the present time the intent of these laws is to minimize damage to water quality and natural habitat~~." Add the following language regarding the purpose, intent, and goals of the Critical Area regulations:

(a) Intent. In 1984, the Maryland General Assembly passed the Chesapeake Bay Critical Area Act in response to growing concern over the decline of the quality and productivity of the waters of the Chesapeake Bay and its tributaries. The decline was found to have resulted, in part, from the cumulative effects of human activity that caused increased levels of pollutants, nutrients, and

toxins, and also from declines in protective land uses such as forest land and agricultural land in the Bay region.

(b) Purpose. The General Assembly enacted the Critical Area Act for the following purposes:

(1) To establish a resource protection program for the Chesapeake Bay and its tributaries by fostering more sensitive development activity for certain shoreline areas so as to minimize impacts to water quality and natural habitats; and

(2) To implement a resource protection program on a cooperative basis between the State and affected local governments, with local governments establishing and implementing their programs in a consistent and uniform manner subject to State Criteria and oversight.

(c) Goals. The goals of the Critical Area Program are to accomplish the following:

(1) Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or run off from surrounding lands;

(2) Conserve fish, wildlife, and plant habitat; and

(3) Establish land use policies for development in the Chesapeake Bay Critical Area which accommodate growth as well as address the environmental impacts that the number, movement, and activities of people may have on the area.

Section 198. Land Use Area

17. [Page 1] Revise the second paragraph to read as follows:

The City, with approval of the Critical Area Commission (CAC)**, has** ~~may declare certain lands in the City to be~~ designated **land within the Critical Area** as **I**ntensely **D**eveloped **A**reas (IDA), **L**imited **D**evelopment **A**reas (LDA), and **R**esource **C**onservation **A**reas (RCA), as hereinafter defined. ~~In designated~~ **On** land **within** ~~in~~ **these classifications,** ~~the City~~ **any land use activities or development** shall conform to the directives and regulations contained in COMAR 27.01.02 ~~for any utilization or development of land in the Chesapeake Bay~~ Critical Area ~~("Critical Area"), and~~ in addition to zoning regulations affecting said land. The

land shall also be subject to the provisions set forth below for each designation. In the case of conflicting provisions, the stricter provisions shall apply."

18. [Page 1] In Paragraph 1, and insert the following language pertaining to the IDA mapping standards.

At the time of the initial mapping, these areas shall have had <u>at least one</u> of the following features:

(1) Housing density equal to or greater than four dwelling units per acre;

(2) Industrial, institutional or commercial uses are concentrated in the area; or

(3) Public sewer and water collection and distribution systems are currently serving the area and housing density is greater than three dwelling units per acre;

(4) In addition, these features shall be concentrated in an area of at least 20 adjacent acres or that entire upland portion of the Critical Area within the boundary of a municipality, whichever is less.

19. [Page 1] In Paragraph 1,add the following policies for IDA:

<u>General policies.</u> The Critical Area ordinance for the City of Cambridge hereby incorporates the following policies for Intensely Developed Areas. New or expanded development or redevelopment shall take place in such a way as to:

(1) Improve the quality of runoff from developed areas that enters the Chesapeake Bay or its tributary streams;

(2) Accommodate additional development of the type and intensity designated by the City in this Program provided that water quality is not impaired;

(3) Minimize the expansion of Intensely Developed Areas into portions of the Critical Area designated as Habitat Protection Areas and Resource Conservation Areas under this Program;

(4) Conserve and enhance fish, wildlife, and plant habitats, as identified in Section 1-521, to the extent possible within Intensely Developed Areas; and

(5) Encourage the use of retrofitting measures to address existing stormwater

management problems.

20. [Page 1] Add the following provisions regarding uses not permitted in the Critical Area:

<u>Activities not permitted.</u> Certain new development activities or facilities, or the expansion of certain existing facilities, because of their intrinsic nature or because of their potential for adversely affecting habitat and water quality, may not be permitted in the Critical Area unless no environmentally acceptable alternative exists outside the Critical Area, and these development activities or facilities are needed in order to correct an existing water quality or wastewater management problem. These include:

(1) Solid or hazardous waste collection or disposal facilities, including transfer stations; or

(2) Sanitary landfills.

21. [Page 1] In Paragraph 1, add the following provisions regarding uses not permitted in the Critical Area except in the IDA.

<u>Activities not permitted except in IDA.</u> Certain new development, redevelopment or expanded activities or facilities, because of their intrinsic nature or because of their potential for adversely affecting habitats or water quality, may not be permitted in the Critical Area except in Intensely Developed Areas under regulations of this section and only after the activity or facility has demonstrated to all appropriate local and State permitting agencies that there will be a net improvement in water quality to the adjacent body of water. These activities include the following:

(1) Non-maritime heavy industry;

(2) Transportation facilities and utility transmission facilities, except those necessary to serve permitted uses, or where regional or interstate facilities must cross tidal waters (utility transmission facilities do not include power plants); or

(3) Permanent sludge handling, storage and disposal facilities, other than those associated with wastewater treatment facilities. However, agricultural or horticultural use of sludge under appropriate approvals when applied by an approved method at approved application rates may be permitted in the Critical Area, except in the 100 foot-Buffer;

(4) **The City may preclude additional development activities that it considers detrimental to water quality or fish, wildlife, or plant habitats within the Critical Area.**

22. [Page 1] In Paragraph 1.b (2), revise as follows, "Development plans should be altered to **avoid, minimize or** mitigate any negative impacts."

23. [Page 2] In Paragraph 1.c (2) and (3), add the following reference to the Commission's 10% Rule guidance: **Guidance for compliance with the 10% pollutant reduction requirement is provided in the manual prepared for the Commission entitled, *Critical Area 10% Rule Guidance*, dated Fall 2003, and as may be subsequently revised or amended.**

24. [Page 2] In Paragraph 1.h (1), revise the first sentence to read, "Establishment of programs by the **City** ~~applicant~~ for the enhancement …"

25. [Page 2] In Paragraph 2, insert the following language pertaining to the LDA mapping standards:

At the time of the initial mapping, these areas shall have had <u>at least one</u> of the following features:

(1) **Housing density ranging from one dwelling unit per 5 acres up to four dwelling units per acre;**

(2) **Areas not dominated by agricultural, wetland, forest, barren land, surface water, or open space;**

(3) **Areas meeting the conditions of Intensely Developed Area but comprising less than 20 acres;**

(4) **Areas having public sewer or public water, or both.**

26. [Page 2] Insert the following policies for LDA:

<u>General policies.</u> The City's Critical Area ordinance hereby incorporates the following policies for Limited Development Areas. New or expanded development or redevelopment shall take place in such a way as to:

(1) **Maintain, or, if possible, improve the quality of runoff and groundwater**

entering the Chesapeake Bay and its tributaries;

(2) Maintain, to the extent practicable, existing areas of natural habitat; and

(3) Accommodate additional low or moderate intensity development if:

A. This development conforms to the water quality and habitat protection criteria in paragraph (c) below; and

B. The overall intensity of development within the Limited Development Area is not increased beyond the level established in a particular area so as to change its prevailing character as identified by density and land use currently established in the area.

27. [Page 3] In Paragraph 2.d., revise the first sentence to read, " … connects the largest undeveloped, or most ~~vegetative~~ **vegetated** tracts within and adjacent …"

28. [Page 4] In Paragraph 2.h (1), revise to read, "**The City may require a surety to be provided by owners or developers in an acceptable amount to ensure satisfactory replacement as required by (f) above, and** ~~If the City deems necessary it~~ **the City shall require …**"

29. [Page 4] In Paragraph 2.h (4), revise the last sentence to read, "Alternative provisions may include fees-in-lieu provisions if the fee is adequate to ensure the restoration or establishment of **an** equivalent forest area. ~~and is established by resolution to specifically conform with federal and state judicial guidelines.~~".

30. [Page 6] In Paragraph 2.k (6)(f), revise to read, "The City may grant a variance from the provisions of this section in accordance with **Section 202 of this ordinance**~~, regulations adopted by the CAC~~ concerning variances, **the provisions for variances** as ~~part of local program development~~ set forth in COMAR 27.01.11 **and provisions for** notification of project applications set forth in COMAR 27.03.01."

31. [Page 7] Add the following language pertaining to RCA mapping standards.

At the time of the initial mapping, these areas shall have had <u>at least one</u> of the following features:

(1) Existing density is less than one dwelling unit per five acres; or

(2) Dominant land use is in agriculture, wetland, forest, barren land, surface

water or open space.

32. [Page 7] Insert the following policies for RCA:

<u>General policies.</u> The City's Critical Area ordinance hereby incorporates the following policies for Resource Conservation Areas. New or expanded development or redevelopment in these areas shall take place in such a way as to:

(1) Conserve, protect and enhance the overall ecological values of the Critical Area, its biological productivity and its diversity;

(2) Provide adequate breeding, feeding and wintering habitats for those wildlife populations that require the Chesapeake Bay, its tributaries or coastal habitats in order to sustain populations of those species.

(3) Conserve the land and water resource base that is necessary to maintain and support land uses such as agriculture, forestry, fisheries activities and aquaculture.

(4) Conserve the existing developed woodlands and forests for the water quality benefits that they provide.

33. [Page 7] In Paragraph 3.b (1), revise the first sentence to read "… protection areas in COMAR 27.01.09 ~~of this chapter~~, the policies and criteria …"

34. [Page 7] Add a list of permissible uses in the RCA. The following list has been approved by the Commission in other jurisdictions:

<u>Land use in the RCA.</u> In addition to the uses specified above, certain nonresidential uses may be permitted in Resource Conservation Areas if it is determined by the City Office of Planning, Permits, and Inspections that the proposed use is one of the following:

(1) A home occupation as an accessory use on a residential property and as provided for in the City's zoning ordinance;

(2) A golf course, excluding main buildings and/or structures such as the clubhouse, pro-shop, parking lot, etc.;

(3) A cemetery that is an accessory use to an existing church; provided impervious surfaces are limited to 15 percent of the site or 20,000 square

feet, whichever is less;

(4) A bed and breakfast facility located in an existing residential structure and where meals are prepared only for resident operators and guests staying at the facility;

(5) A gun club or skeet shooting range or similar use, excluding main buildings and/or structures, such as a clubhouse, snack bar, etc.;

(6) A day care facility in a dwelling where the operators live on the premises and there are no more than eight children;

(7) A group home or assisted living facility with no more than eight residents;

(8) Other uses determined by the City and the Critical Area Commission to be similar to those listed above.

Section 199. Habitat Protection Areas (HPA)

35. [Page 7] In Paragraphs 1.a. through c, replace with the following language.

a. **Description. The Habitat Protection Section of the City's Critical Area ordinance addresses protection of the following four habitats: the 100-foot Buffer; Threatened and Endangered Species and Species in Need of Conservation; Plant and Wildlife Habitat Protection Areas including non-tidal wetlands; and Anadromous Fish Propagation Waters**

b. **Identification. Maps illustrating the general location, extent and configuration of Habitat Protection Areas in the City are on file with the Planning, Permits and Inspections Office. They will be used as a "flagging" device to assist property owners, developers, any person proposing development activity, Planning Department, Planning Commission and other agencies of the City government when reviewing development plans. While these maps give a general indication of the area, they do not excuse any property owner or operator from establishing to the satisfaction of the City Planning Commission, whether or not the property or activity will affect the element of habitat to be protected. At the time of development the applicant will be responsible for providing an on-site analysis and inventory.**

c. **The 100-foot Buffer.**

(1) Definition. The Buffer is an existing, naturally vegetated area or an area established in native vegetation and managed to protect aquatic, wetlands, shoreline and terrestrial environments from man-made disturbances.

(2) Identification of the Buffer. The establishment of a minimum 100-foot Buffer from the mean high water line of tidal waters, the edge of tributary streams, and the landward extent of tidal wetlands shall be required on a site by site basis as part of the environmental review and site analysis process.

(3) General policies. The City adopts the following policies with regard to the functions of the Buffer:

(a) Provide for the removal or reduction of sediments, nutrients and potentially harmful or toxic substances in runoff entering the Bay and its tributaries;

(b) Minimize the adverse effects of human activities on wetlands, shoreline, stream banks, tidal waters and aquatic resources;

(c) Maintain an area of transitional habitat between aquatic and upland communities;

(d) Maintain the natural environment of streams; and

(e) Protect riparian wildlife habitat.

(4) Standards. The following criteria apply to land use activities within the Buffer:

(a) The Buffer shall be established at a minimum distance of 100 feet landward from the mean high water line of tidal waters, the edge of tributary streams and the landward edge of tidal wetlands within the Critical Area.

(b) The Buffer shall be expanded beyond 100 feet to include contiguous sensitive areas such as steep slopes, hydric soils or highly erodible soils whose development or disturbance may impact streams, wetlands or other aquatic environments. In the case of contiguous slopes of 15

percent or greater the Buffer shall be expanded 4 feet for every one percent of slope or to the top of the slope, whichever is greater in extent.

(c) New development activities including structures, roads, parking areas and other impervious surfaces, mining and related facilities or septic tanks may not be allowed in the Buffer except for those necessarily associated with Water-Dependent Facilities approved under the applicable sections of this ordinance.

(d) The Buffer shall be maintained in natural vegetation, but may include planted vegetation where necessary to protect, stabilize, or enhance the shoreline. When lands are proposed to be developed or converted to new uses, the Buffer shall be established. In establishing the Buffer, management measures, including planting, shall be undertaken to provide forest vegetation that assures the Buffer functions as set forth in this section.

(5) <u>Agriculture in the Buffer</u>. Agricultural activities are permitted in the Buffer, if, as a minimum best management practice, a 25-foot vegetated filter strip measured landward from the mean high water line of tidal waters, from the edge of tidal wetlands, and from the edge of tributary streams, whichever is further inland, is established and further provided that:

(a) The filter strip shall be composed of either trees with a dense ground cover or a thick sod of grass and shall be so managed as to provide water quality benefits and habitat protection consistent with the policies stated above. Noxious weeds which occur in the filter strip, may be controlled by authorized means;

(b) The filter strip shall be expanded by a distance of 4 feet for every 1 percent of slope, for slopes greater than 6 percent;

(c) The 25-foot vegetated filter strip shall be maintained until such time as the landowner is implementing, under an approved Soil Conservation and Water Quality Plan, a program of best management practices for the specific purposes of improving water quality and protecting plant and wildlife habitat; and provided that the portion of the Soil Conservation and Water Quality Plan being implemented achieves the water quality and habitat protection

objectives of the 25-foot vegetated filter strip;

(d) The best management practices shall include a requirement for the implementation of a grassland and manure management program where appropriate and that the feeding or watering of livestock, may not be permitted within 50 feet of the mean high water line of tidal water, the edge of tributary streams and the landward edge of tidal wetlands, whichever is further inland;

(e) Clearing of existing natural vegetation in the Buffer is not allowed; and

(f) Farming activities, including the grazing of livestock, do not disturb stream banks, tidal shorelines or other Habitat Protection Areas as described in this ordinance.

(g) Where agricultural use of lands within the Buffer ceases and the lands are proposed to be converted to other uses, the 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 this section of the ordinance.

(6) <u>Timber harvests in the Buffer</u>. The Buffer shall be managed to achieve or enhance the policies stated in this section. Cutting or clearing of trees within the Buffer shall be prohibited except that:

(a) Commercial harvesting of trees by selection or by the clearcutting of loblolly pine and tulip poplar may be permitted to within 50 feet of the landward edge of the mean high water line of tidal waters and perennial tributary streams, or the edge of tidal wetlands, provided that this cutting is conducted in conformity with the forest and developed woodland and commercial timber harvest provisions of this ordinance and in conformance with a Timber Harvest Plan and/or Buffer Management Plan prepared by a registered, professional forester and approved by the Maryland Department of Natural Resources.

(b) A Buffer Management Plan and/or Timber Harvest Plan shall be required for all commercial harvests within the Buffer, regardless of the size of the area to be cut, and shall comply with the following

minimum requirements:

A. Disturbance to stream banks and shorelines shall be avoided;

B. Areas disturbed or cut shall be replanted or allowed to regenerate in a manner that assures the availability of cover and breeding sites for wildlife and re-establishes the wildlife corridor function of the Buffer;

C. The cutting does not involve the creation of logging roads and skid trails within the Buffer; and

D. **Commercial harvesting practices shall be conducted to protect and conserve the Habitat Protection Areas in accordance with the applicable sections of this ordinance.**

(c) Commercial harvesting of trees, by any method, may be permitted to the edge of intermittent streams provided that the cutting is conducted pursuant to the requirements of regarding Habitat Protection Areas.

(7) <u>Tree cutting in the Buffer.</u> The Buffer shall be managed to achieve or enhance the policies for the Buffer stated in this section. Individual trees may be cut for personal use provided the cutting does not impair water quality or existing habitat value or other functions of the Buffer. Any cutting in compliance with the provisions specified herein shall require a Buffer Management Plan approved by the Planning Commission or their designee. Cutting of trees or clearing of vegetation within the Buffer shall be prohibited except that:

(a) Cutting of trees or removal of natural vegetation may be permitted where necessary to provide access to private piers, or to install or construct a shore erosion protection device or measure, or a water-dependent facility, providing the device, measure or facility has received all necessary State and Federal permits.

(b) Individual trees may be cut for personal use providing that this cutting does not impair the water quality or existing habitat value or other functions of the buffer as set forth in the policies of this plan and provided that the trees are replaced on an equal basis for each tree cut.

(c) Individual trees may be removed which are in danger of falling and causing damage to dwellings or other structures, or which are in danger of falling and therefore causing the blockage of streams, or resulting in accelerated shore erosion.

(d) Horticultural practices may be used to maintain the health of individual trees.

(e) Other cutting techniques may be undertaken within the Buffer and under the advice and guidance of the State Departments of Agriculture and Natural Resources, if necessary to preserve the forest from extensive pest or disease infestation or threat from fire.

36. [Page 9] In Paragraph d, revise the last sentence to read, "Any future areas designated as buffer exemption areas **will be approved by the City as an amendment to its Critical Area Program and will be submitted to the Critical Area Commission for approval. Provisions for development and redevelopment within buffer exemption areas will be adopted by the City along with the map amendments and will be submitted to the Commission for approval. The City will not issue any permits for development or redevelopment on the designated propcrties until the buffer exemption area provisions and maps have been approved by the Critical Area Commission."** ~~and associated development or redevelopment shall comply with all City and state programs, laws and policies.~~

37. [Page 9] Revise Paragraph 2.b. to read, "The following areas of significant natural value are ~~classified~~ **defined as** Habitat Protection Areas, and are ~~so~~ **generally** designated on the City Critical Area Map or ~~herein defined~~ **on maps or within an inventory maintaincd by the Department of Natural Resources**

38. [Page 9] In Paragraph 2.b (2) or in Part I – Definitions, add the following definitions:

    (1) "Plant habitat" means a community of plants commonly identifiable by thc composition of its vegetation and its physiographic characteristics.

    (2) "Wildlife habitat" means those plant communities and physiographic features that provide food, water and cover, nesting, and foraging or fceding conditions necessary to maintain populations of animals in the Critical Area.

39. [Page 10] In Paragraph 2.b (3) or in Part I – Definitions, add the following definition:

"Anadromous fish propagation waters are those streams that are tributary to the Chesapeake Bay where spawning of anadromous species (e.g., rockfish or striped bass, yellow perch, white perch, shad and river herring) occurs or has occurred."

40. [Page 10] In Paragraph 2.c (3). The following statement needs to be added: **"The Plan shall be reviewed, with specific comments, by the Department of Natural Resources."**

41. [Page 10] Add a paragraph 2.c.(4) to state, **"When proposing development activities within riparian forests or forest areas utilized as breeding areas by forest interior dwelling birds, applicants are advised to review and utilize the guidance found in the Critical Area Commission guidance document, *A Guide to the Conservation of Forest Interior Dwelling Birds in the Chesapeake Bay Critical Area, June 2000* ."**

42. [Page 10] Revise paragraph 2.d.(1) as follows, " … review of a site-specific Habitat Protection Plan ~~prepares~~ **prepared** in consultation with the Department of Natural Resources."

43. [Page 10] Add the following as paragraph 2.d (3), **"A portion of the Little Blackwater River Habitat Protection Area which supports a rare plant species and is designated as a Nontidal Wetlands of Special State Concern is located within the southern boundaries of the City of Cambridge. The species was formerly designated as a State threatened species but has since been demoted to State rare. This area is now designated as a Habitat Protection Area – Locally Significant Habitat in accordance with the Department of Natural Resources recommendations. Additional information about the species and appropriate protection and conservation measures may be obtained from the Department of Natural Resources."**

44. [Page 10] Add the following as paragraph 2.e (7) **"A heron rookery is located within the eastern boundaries of the City of Cambridge on the site of the existing Hyatt Regency Chesapeake Bay Resort and Golf Course. Additional information about the species and appropriate protection and conservation measures may be obtained from the Department of Natural Resources."**

45. [Page 10] In Paragraph 2.e (1 through 6), replace with the following language:

    <u>General policies</u>. The policies of the City regarding plant and wildlife habitat in the Critical Area shall be to:

    1. **Conserve wildlife habitat in the Critical Area;**

    2. **Protect those wildlife habitats that tend to be least abundant or which may**

become so in the future if current land-use trends continue;

3. **Protect those wildlife habitat types which are required to support the continued presence of various species;**

4. **Protect those wildlife habitat types and plant communities which are determined by the City to be of local significance;**

5. **Protect Natural Heritage Areas.**

Standards. The City's Critical Area Program and ordinance will serve to accomplish the goals of the Critical Area Program to protect water quality and wildlife habitat. In addition to the standards set forth in this ordinance for the protection of the Buffer, the following standards shall apply to new development and re-development within the Critical Area:

1. **Any development or significant land use change of property located within the Critical Area of the City will require a site specific survey to determine the presence of any plant and wildlife habitat areas. The survey shall be submitted along with design plans and a written description of the measures the property owner proposes to take to protect the habitats identified. This information concerning habitats will be incorporated onto the Resource Inventory Maps for future reference.**

2. **The City may seek additional information and comments from the Department of Natural Resources and other appropriate agencies.**

3. **For development activities in RCA and LDA, wildlife corridors shall be established and used to connect areas left in forest cover with any large forest tracts, which are located outside of the area of the property being developed or subdivided. The area left in forest cover shall be adjacent to larger forest, not left as an isolated island of trees. Planting required as a mitigation measure shall also be adjacent to other habitat.**

4. **Buffer areas for colonial water bird (heron, egret, tern, and glossy ibis) nesting sites shall be established (if such birds are found to exist in the Critical Area) so that these sites are protected from the adverse impacts of development activities and from disturbance during the breeding season.**

5. **New water-dependent facilities shall be located to prevent disturbance to sites of significance to wildlife such as historic, aquatic staging and**

concentration areas for waterfowl.

6. **Protection measures, including a buffer area, shall be established where appropriate, for other plant and wildlife habitat sites identified in this ordinance.**

7. **Forested areas required to support wildlife species identified as threatened and endangered, or in need of conservation, shall be protected and conserved by developing management programs which have as their objective, conserving the wildlife that inhabit or use the areas. Development activities, or the clearing or cutting of trees, which might occur in the areas, shall be conducted so as to conserve riparian habitat, forest interior wildlife species and their habitat. Management measures may include incorporating appropriate wildlife protection elements into Timber Harvest Plans, Forest Management Plans, cluster zoning or other site design criteria, which provide for the conservation of wildlife habitat. Measures may also include Soil Conservation Plans, which have wildlife habitat protection provisions appropriate to the areas defined above, and incentive programs, which use the acquisition of easements and other similar techniques.**

8. **When development activities, or the cutting or clearing of trees, occurs in forested areas, to the extent practical, corridors of existing forest or woodland vegetation shall be maintained to provide effective connections between wildlife habitat areas.**

9. **Those plant and wildlife habitats considered to be of local significance by the City shall be protected. Examples of these are those whose habitat values may not be of statewide significance, but are of importance locally or regionally because they contain species uncommon or of limited occurrence in the jurisdiction, or because the species are found in unusually high concentrations.**

10. **Natural Heritage Areas shall be protected from alterations due to development activities or cutting or clearing so that the structure and species composition of the areas are maintained.**

11. **The determination of the existence and extent of these plant and wildlife habitats, and the development of appropriate protection measures shall result from a cooperative effort between the local jurisdiction and appropriate public or private agencies. If the Secretary of the Department of Natural Resources designates additional species by regulation in the future,**

local 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.

46. [Page 12] In Paragraph 2.f.(3) change the time of year restriction to "… be prohibited between March 1 and ~~May~~ **June** 15."

47. [Page 12] In Paragraph 2.g, correct the COMAR citations for nontidal wetlands to **26.23.01 through 26.23.06**.

Section 200. Water Dependent Facilities

48. Delete existing Section 200 and replace with provisions for Water Dependent Facilities included in Attachment A.

Section 201. Maps

49. [Page 14] In Section 201, add, **"Any changes to the City's Critical Area Maps shall be submitted to the Critical Area Commission for review and approval."**

Section 202. Variances

50. [Page 15] In Section 202, Paragraph 1, add the following language at the end of the paragraph, "**In considering an application for a variance, the City 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 City's Critical Area Program.**"

51. [Page 15] Paragraph 2.d, revise as follows, "That the variance request is not based upon conditions or circumstances 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 any conditions conforming, on any neighboring property."

52. [Page 15] Paragraph 3, add the following language, **"The Board of Zoning 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 (1) above. The City shall notify the Critical Area Commission of their decision."**

53. [Page 15] Add a Paragraph 4 and include the following language:

(4) 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:

(a) The applicant;
(b) The City or any other government agency; or
(c) Any other person deemed appropriate by the City.

Section 203. Nonconforming Uses and Lots in the Critical Area

54. [Page 15] Replace Paragraphs 1 through 4 with the following language:

Grandfathering.

(1) Continuation of existing uses. The City shall permit the continuation, but not necessarily the intensification or expansion, of any use in existence on the date of Program approval, unless the use has been abandoned for more than one year or is otherwise restricted by existing local ordinances. If any existing use does not conform to the provisions of the Program, its intensification or expansion may be permitted only in accordance with the variance procedures set forth in this ordinance.

(2) Residential density. Except as otherwise provided, the City shall permit the types of land described in the following subsections to be developed in accordance with density requirements in effect prior to the adoption of the Critical Area Program notwithstanding the density provisions of the Program. The City shall permit a single lot or parcel of land that was legally of record on the date of Program approval to be developed with a single-family dwelling if a dwelling is not already placed there (not withstanding that such development may be inconsistent with the density provisions of this ordinance) provided that:

(a) It is on land where development activity has progressed to the point of the pouring of foundation footings or the installation of structural members.

(b) It is a legal parcel of land, not being part of a recorded or approved subdivision, that was recorded as of December 1, 1985 and land that was subdivided into recorded, legally buildable lots, where the subdivision received the City's final approval prior to June 1, 1984 if:

i. At the time of development, the land is brought into conformance with the Critical Area Program insofar as possible, including the consolidation or configuration of lots not individually owned and these procedures are approved by the Critical Areas Commission; or

ii. The land has received a building permit subsequent to December 1, 1985, but prior to local Program approval.

(c) It is on land that was subdivided into recorded, legally buildable lots, where the subdivision received the City's final approval between June 1, 1984 and December 1, 1985; and

(d) It is on land that was subdivided into recorded, legally buildable lots, where the subdivision received the final approval after December 1, 1985 and provided that either development of any such land conforms to the IDA, LDA OR RCA requirements in this chapter or the area of the land is counted against the Growth Allocation permitted under this ordinance.

(3) <u>Consistency.</u> Nothing in this section may be interpreted as altering any requirements for development activities set out in the Water-Dependent Facilities Section or the Habitat Protection Section of this ordinance.

<u>Section 204. Amendments</u>

55. [Page 16] Replace Section 204 with the following provisions:

<u>Program amendments.</u> The City Commissioners may from time to time amend the City Critical Area Program. All such amendments shall also be approved by the Critical Area Commission as established in Section 8-1809 of the Critical Area Law. No such amendment shall be granted without approval of the Critical Area Commission. Standards and procedures for Critical Area Commission approval of proposed amendments are as set forth in the Critical Area Law Section 8-1809(i) and Section 8-1809(d), respectively. In addition, the City Commissioners shall

comprehensively review their entire Critical Area Program and propose any necessary amendments as required at least every six (6) years.

Process. When an amendment is requested, the applicant shall submit the amendment to the Planning Commission for review and research. Upon completing Findings of Fact, these documents shall be forwarded to the City Commissioners. The City Commissioners shall hold a public hearing at which parties of interest and citizens shall have an opportunity to be heard. At least fourteen (14) days notice of the time and place of such hearing shall be published in a newspaper of general circulation in the City. After the City Commissioners approve an amendment, they shall forward their decision and applicable ordinances and resolutions along with the amendment request to the Critical Area Commission for final approval.

Zoning Map Amendments. Except for program amendments or program refinements developed during a comprehensive review, a zoning map amendment may only be granted by the City Commissioners upon proof of a mistake in the existing zoning. This requirement does not apply to proposed changes to a zoning map that are wholly consistent with the land classifications in the adopted Program or propose the use of growth allocation as set forth in this ordinance.

Section 205. Site Plan Review

56. [Page 16] In Section 205.1, revise as follows, "... site plans wholly or partially within the Critical Area to the CAC **for review and comment. In addition, all special exceptions, conditional uses, variances, and rezonings shall be forwarded to the CAC for review and comment."**

57. [Page 17] In Paragraph 1.f, revise to read, "Development in **the IDA and LDA** in which the land disturbance does not exceed 15,000 square feet."

58. [Page 17] In Paragraph 2.c, revise to read, "Parcel/lot lines **and acreage**."

59. [Page 17] In Paragraph 2.e, revise to read, "Percentage area of parcel/lot covered by forest vegetation **and percentage of existing forest area to be cleared**."

60. [Page 17] In Paragraph 2.f, add **"and appropriate topographic information at the City's discretion."**

Section 206. Growth Allocation

61. [Page 17] In Paragraph 1, last sentence, revise as follows, "The purpose is to designate areas of the Critical Area where the Planning Commission and City Commissioners may approve a change in the current land management classification on specific sites, **so** that they may be developed to the extent permitted by this chapter and the new land use management classification."

62. [Page 18] In Paragraph 2, revise the first sentence to read, "Locating growth allocation in the City of Cambridge **shall be** ~~is~~ consistent with the **City's** ~~County's~~ Growth Allocation guidelines."

63. [Page 18] In Paragraph 2, add the following two additional guidelines: **"New IDAs should be located where they minimize their impacts to the defined land uses of the RCA;" and "New IDAs and LDAs in the RCA should be located at least 300 feet beyond the landward edge of tidal wetlands or tidal waters."**

64. [Page 18] Add to section 3, **"The evaluation of growth allocation applications relative to the acreage deducted shall be based upon a parcel's configuration as of December 1, 1985."**

65. [Page 18] Revise Paragraph 3.b to read, "If any portion of a lot or parcel located in the RCA is not awarded Growth Allocation, **this portion** ~~the remainder~~ of the lot or parcel shall contain at least twenty (20) contiguous acres or the Critical Area acreage of the entire parcel not in **State** tidal wetlands shall be deducted from the City's Growth Allocation."

66. [Page 18] Delete Paragraph 3.c.

67. [Page 18] Insert the following language as Paragraph 3.d regarding development envelopes:

    In order to allow some flexibility in the use of growth allocation when development is only proposed on a portion of the property, the following methodology may be used for parcels designated as RCA. On a parcel proposed for the use of growth allocation, a single development envelope may be specified, and the acreage of the development envelope rather than the acreage of the entire parcel shall be deducted from the City's growth allocation if the development envelope meets the following criteria:

    A. The development envelope shall include individually owned lots, required buffers, impervious surfaces, roads, utilities, stormwater management measures, on-site sewage disposal measures, any areas subject to human use such as active recreation areas, and any additional acreage needed to meet

the development requirements of the criteria. The required buffers refer to the minimum 100-foot Buffer and the 25-foot nontidal wetlands buffer.

B. Only one development envelope shall be established per parcel of land.

C. If a development envelope is proposed in the RCA, a minimum of 20 acres must remain outside of the development envelope or the acreage of the entire parcel must be deducted. If the original parcel in the RCA is less than 20 acres, then the acreage of the entire parcel must be deducted. If there is a permanently protected Resource Conservation Area (an area protected by easement) adjacent and contiguous to a residue that is less than 20 acres, that will result in a minimum 20-acre residue, then the entire parcel does not have to be deducted.

D. The minimum 20-acre residue outside of the development envelope may be developed at an RCA density unless some type of permanent protection exists that restricts development.

Critical Area Commission

STAFF REPORT
August 4, 2004

APPLICANT:	City of Cambridge
PROPOSAL:	Maple Dam Road Mapping Mistake Amendment
JURISDICTION:	City of Cambridge
COMMISSION ACTION:	Vote
COMMISSION PANEL:	Jim McLean, Chair, Meg Andrews, Joe Jackson, and Ed Richards
PANEL RECOMMENDATION:	Pending Panel Discussion
STAFF:	Mary Owens
APPLICABLE LAW/ REGULATIONS:	Natural Resources Article §8-1809(h) Proposed Program Amendments and Refinements

DISCUSSION:

The City of Cambridge has reviewed and approved a map amendment to correct a mapping mistake involving several parcels of land along Maple Dam Road in the area between the City boundary and the Critical Area boundary. The area affected by the map amendment is approximately 100 acres. The area was originally mapped by Dorchester County because they believed that the land was located within the County's jurisdiction. The City has since determined that the area is within the municipal boundaries of Cambridge and is proposing this amendment on the basis that a mistake was made at the time of the original Critical Area mapping.

When jurisdictions originally mapped the Critical Area boundary, each jurisdiction was responsible for assigning, subject to Commission review and approval, the RCA, LDA, and IDA designations in order to implement the Critical Area law and criteria. The following guidance was provided in COMAR §27.01.02.07.C: "For purposes of implementing this regulation, a local jurisdiction shall have determined, based on land uses and development in existence on December 1, 1985, which land areas fall within the three types of development areas described in this chapter." Jurisdictions made use of a variety of tools to accomplish this task including aerial photography, land use maps, and actual field visits. In some instances, a lack of complete or

accurate information resulted in some mistakes being made in the original mapping. In these cases, local governments are able to work with the Commission to correct these mistakes and amend their Critical Area maps.

The City has determined that the Resource Conservation Area (RCA) designation assigned by the County in 1988 and approved by the Critical Area Commission is incorrect, and that the area should have been designated Intensely Developed Area (IDA). The City's determination is based on the institutional development on the western side of Maple Dam Road where South Dorchester High School and Maple Elementary School are located, the existence of public water and sewer lines designed to accommodate additional growth, and residential development in the general area, although not within the Critical Area.

In evaluating map amendments that involve the correction of mistakes made during the original Critical Area mapping, local governments are guided by the Court of Special Appeals decisions in *North vs. Kent Island Joint Venture* and *August Bellanca v. County Commissioners of Kent County*. The Commission's role in reviewing these amendments is one of oversight, to determine "whether the rezoning meets the established criteria [for an IDA]."(*North v. Kent Island Joint Venture,* 106 Md. App. At 107) Thus the Commissiob does not undertake an independent evaluation of whether there was a mistake in the original mapping, but rather the Commission determines "whether the property satisfies the definition of IDA as set forth in the criteria."

In the Maple Dam Road proposal, it is the responsibility of the City of Cambridge to determine that a mistake occurred and that the property should have been designated IDA. It is then the responsibility of the Commission to determine that at the time of original mapping (1988), the area met the criteria for IDA. As required by the Critical Area Criteria at COMAR 27.01.02.03.A, at that time, the area would have had to have at least one of the following features:

1) Housing density equal to or greater than four dwellings per acre;
2) Industrial, institutional, or commercial uses were concentrated in the area; or
3) Public sewer and water collection and distribution systems were currently serving the area and housing density was greater than three dwelling units per acre.

Based on the information submitted and a review of Soil Conservation District areal photography from the late 1980s provided by Mr. Roby Hurley, it is not clear that the property had any of the features necessary to designate it as IDA. Although public water and sewer service were available in this vicinity at the time of original mapping, service had not been provided to all of the parcels that are the subject of the map amendment because they were undeveloped. In addition, the housing density in this area, within the Critical Area, was not greater than three (3) units per acre.

The panel held a public hearing on this issue on June 30, 2004. Ms. Linda Nabb, a consultant for the City, discussed the map amendment on behalf of the City and subsequently provided additional written comments to the Commission panel. In summary, Ms. Nabb stated that the schools on the western side of Maple Dam Road existed at the time of the original mapping and were served by public water and sewer. She stated that "serving an area" is usually interpreted as water and sewer transmission lines existing along a property, customarily a road right-of-way, and that these lines were in place on the eastern side of the property even though this area was undeveloped. She also stated that she believes that all of the properties proposed for reclassification should be considered in discussing whether an "area" satisfies the mapping criteria and that the Commission should not treat portions of the "area" separately because of parcel boundaries or ownership. She also stated that at the time of initial mapping, the eastern side of Maple Dam Road had been planned for future growth and appropriate zoning was in place to accommodate future residential development of greater than three dwelling units per acre.

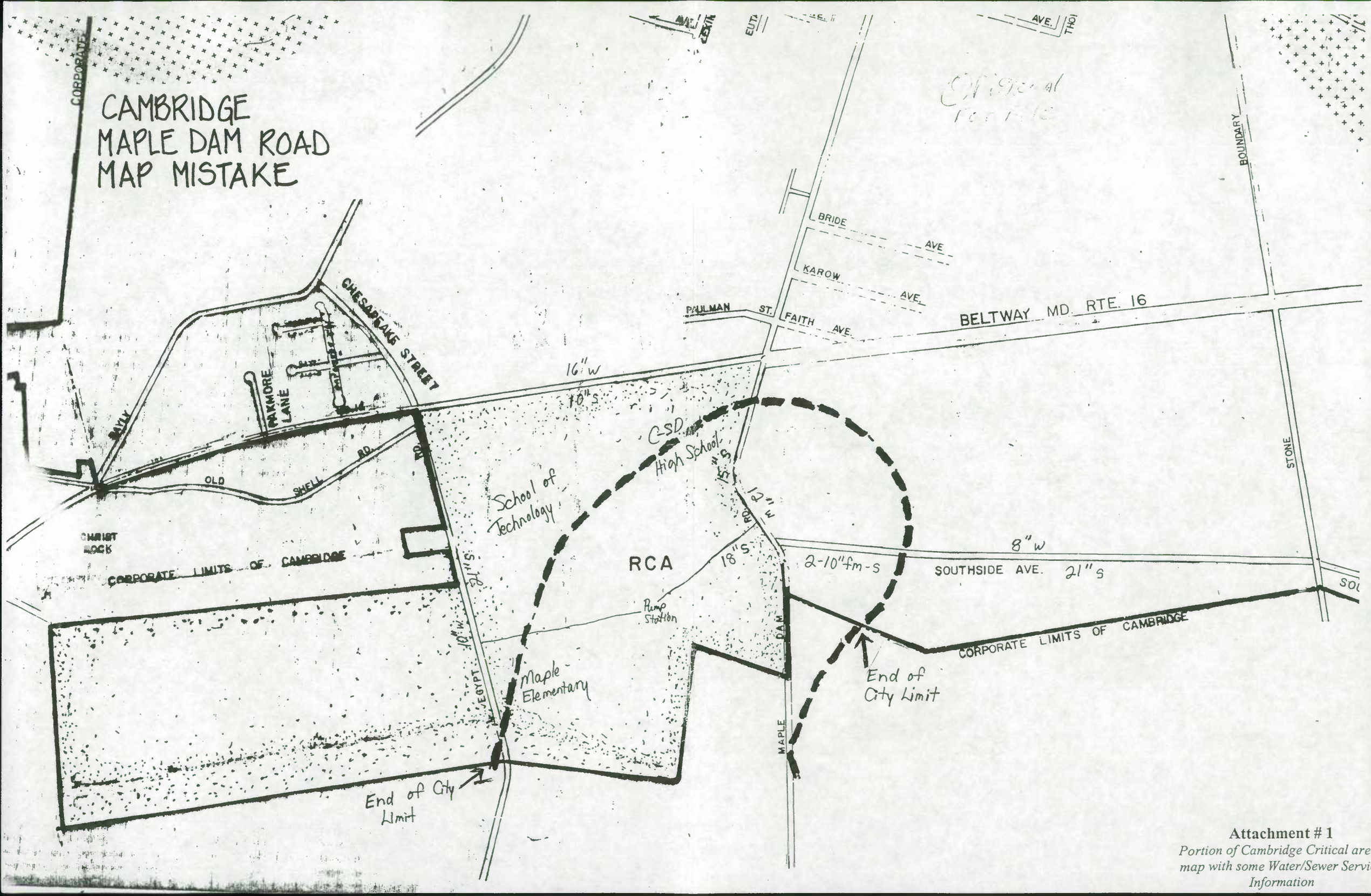
At the public hearing, there was no public comment; however, the Mayor expressed the City Council's support of the map amendment and justification as presented by Ms. Nabb. Following the public hearing, the panel met to discuss the information presented. At the panel's request Marianne Mason summarized relevant case law and responded to questions regarding the Commission's role in the map amendment process. Ms. Mason explained that the Commission's role is limited to a determination regarding whether the area met the standards set forth in the Criteria (and stated above) for designation as an Intensely Developed Area. She also stated that although there was testimony that the property could possibly have been mapped as a Limited Development Area, the nature of determinations regarding classification mistakes do not allow for the consideration of a variety of possible alternatives. Ms. Mason and Commission staff clarified that historically Critical Area mapping was based on existing "on-the-ground" development, not on existing zoning or comprehensive plans representing areas for future growth.

The panel requested additional information about the City zoning of the property and about the City's involvement in any decision-making regarding the school site. Ms. Anne Roane, City Planner for Cambridge has indicated that the zoning on the western side of Maple Dam Road where the schools are located is R-1. This zoning classification allows residential development with a minimum lot size of 10,000 square feet. The eastern side of Maple Dam Road is zoned GC and R-3. The GC or "General Commercial" zoning allows mixed commercial and residential uses, the R-3 zoning classification permits residential development at 10 dwelling units per acre. With regard to the City's role in the development of the school sites, Ms. Roane stated that the properties are controlled by the Dorchester County Board of Education, and that the City is not directly involved in land use and development decisions on the property.

Commission staff has also researched information from the Heritage Division of the Department

of Natural Resources, which indicated that the wetland areas of the site are part of the Little Blackwater River Habitat Protection Area. Historically, this site provided habitat for three State-listed plant species. In December 1999, DNR performed additional survey work and determined that the area provided habitat for a State rare species and was also recognized as a Nontidal Wetlands of Special State Concern. They recommended that the site's designation as a Habitat Protection Area remain, but that is should be amended to reflect that the species present was no longer on the state threatened list.

The panel will meet in the morning of August 4, 2004 to discuss this issue and formulate a recommendation for the full Commission.



Attachment # 1

Portion of Cambridge Critical area map with some Water/Sewer Servi Information

Critical Area Commission

STAFF REPORT
August 4, 2004

APPLICANT:	Town of Queenstown (Queen Anne's County)
PROPOSAL:	Refinement – Town Center Mapping Mistake
COMMISSION ACTION:	Concurrence
STAFF RECOMMENDATION:	Approval
STAFF:	Roby Hurley, LeeAnne Chandler
APPLICABLE LAW/ REGULATIONS:	Natural Resources Article §8-1809(h)(2)

DISCUSSION:

The Town of Queenstown is requesting a map amendment to rectify a mapping mistake that involved the designation of 11 parcels of land (totaling 3.16 acres) as a Limited Development Area (LDA) when they should have been designated as an Intensely Developed Area (IDA). Currently, the properties are privately owned and include one commercial, two institutional and eight residential uses. There are two subject areas. One area of 2.3 acres is the Del Rhodes and Melvin Avenue section adjacent to existing IDA and the Critical Area boundary. The other area of 0.86 acres is the Steamboat and Maryland Avenue section, also adjacent to an existing IDA and the Critical Area boundary.

In 1985, the areas were characterized by intense residential development and some commercial and institutional uses. Generally, development was concentrated in the center of Town, and the subject areas are in and adjacent to the center of the Town. The Town has determined that the mistake occurred because the properties were not thoroughly evaluated and were hastily included in the adjoining residential area which was mapped LDA. In 1985, the properties' sizes and uses were difficult to determine due to the following: they were not easily observed from the major streets, some lots appeared to be part of neighboring lots based on the appearance of some structures, and the varying sizes of the lots gave a false impression of the intensity of development. In 1985, residential densities were at least three units per acre and were served by public water and sewer systems. Development in these areas began in the mid 1800s up to the mid 1900s and is typical of the Eastern Shore town centers built in that era. In 1985, both areas included commercial or institutional uses (funeral home and a church, both with extensive parking).

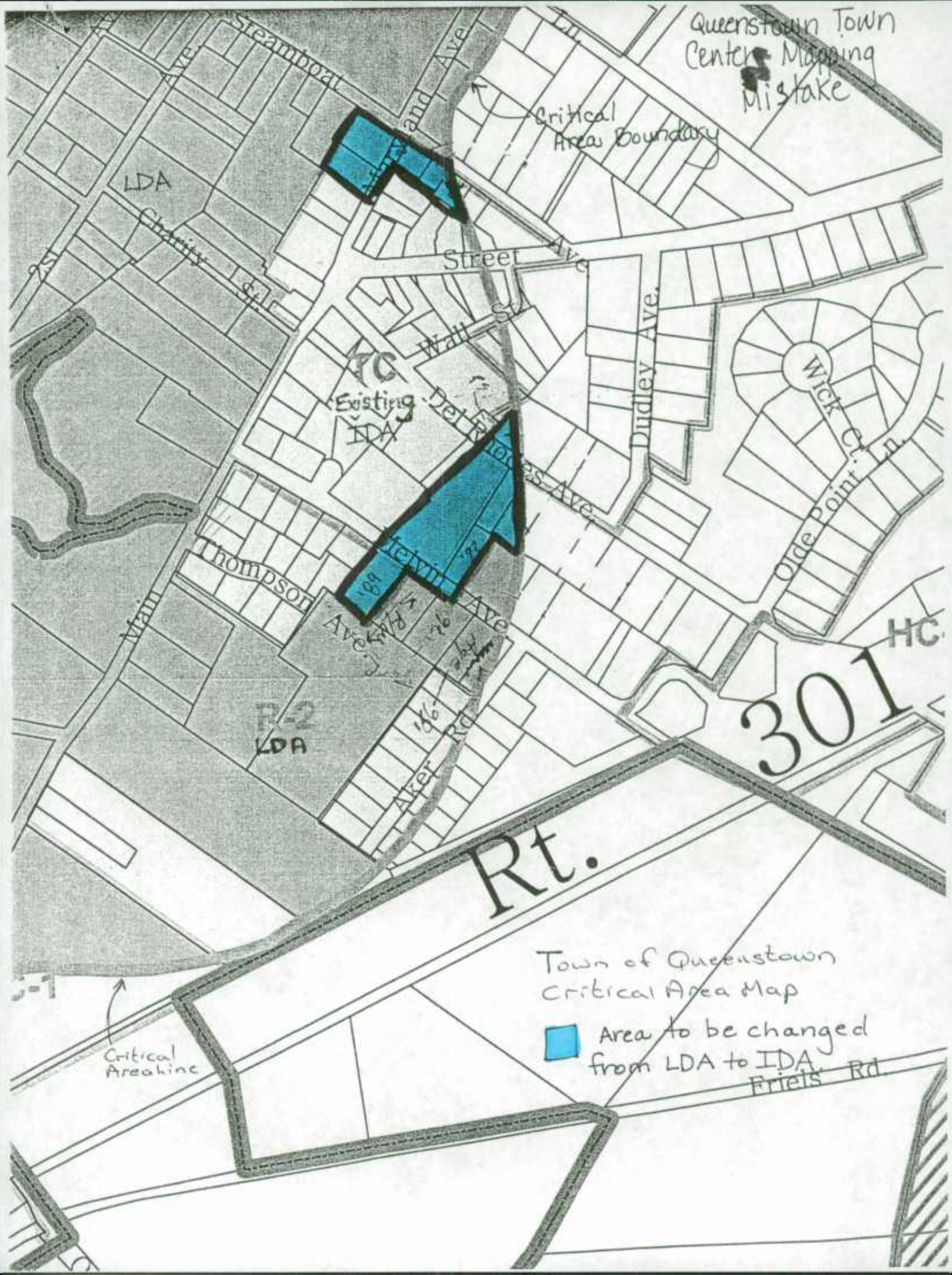
The Critical Area Criteria specify that at the time of original mapping, IDAs were those areas where residential, commercial, institutional, and/or industrial, developed land uses predominated, and where relatively little natural habitat occurred. These areas should have had at least one of the following features:

(1) Housing density equal to or greater than four dwelling units per acre;
(2) Industrial, institutional, or commercial uses are concentrated in the area; or
(3) Public sewer and water collection and distribution systems are currently serving the area and housing density is greater than three dwelling units per acre.

The Queenstown Planning Commission found that due to the evidence listed above, that in 1985 the subject areas met the mapping standards for the IDA, particularly that the residential densities exceeded three dwelling units per acre with public sewer and water, and that a mistake was made in designating them LDA.

In evaluating map amendments that involve the correction of mistakes made during the original Critical Area mapping, local governments are guided by the Court of Special Appeals decisions in *North vs. Kent Island Joint Venture* and *August Bellanca v. County Commissioners of Kent County*. The Commission's role in reviewing these amendments is one of oversight, to determine "whether the rezoning meets the established criteria [for an IDA]."(*North v. Kent Island Joint Venture,* 106 Md. App. At 107). Thus the Commission does not undertake an independent evaluation of whether there was a mistake in the original mapping, but rather the Commission determines "whether the property satisfies the definition of IDA as set forth in the criteria."

Chairman Madden has made a determination that this map amendment can be handled as a refinement to the Town's Program.


Queenstown Town Center Mapping Mistake
Critical Area Boundary
Steamboat Ave.
Land Ave.
LDA
Charity St.
Street
Ave
Wall St.
Dudley Ave.
Wick Ct.
Olde Point Ln.
FC
Existing IDA
Del Rhodes Ave.
Melvin Ave.
Thompson
Main
Avery
Aker Rd.
P-2
LDA
HC
301
Rt.
Friels Rd.
Critical Area Inc
Town of Queenstown
Critical Area Map
Area to be changed from LDA to IDA

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

MEMORANDUM

To: Program Subcommittee

From: LeeAnne Chandler

Date: July 20, 2004

Subject: Gibson' s Grant – Discussion of Growth Allocation Issues

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A neo-traditional development project called Gibson's Grant is currently working its way through the Queen Anne's County development review process. It is located on Kent Island on the north side of Route 50. When initially proposed four years ago, it included 750 mixed dwelling units. In addressing some local issues, the applicant has revised the proposal and reduced the total number of units to 280. The property is a total of 138.6 acres in size, with 103.3 acres in the Critical Area. Within the Critical Area, approximately 71 acres are designated LDA (all resulting from growth allocation granted previously) and 32 acres are designated RCA.

The property is located at the confluence of Macum Creek and the Chester River. The property contains a manor house, a caretaker's cottage, and a farm tenant house. It is currently being farmed. The current proposal would involve the following:

1. The "return" of 11.16 acres of growth allocation such that some existing LDA would revert back to RCA.
2. A request of 3.92 acres of growth allocation to change existing RCA to IDA.
3. A redesignation of approximately 60 acres from existing LDA to IDA. Growth allocation has already been deducted for this area so it would just be a map change.

The result would be a net return of growth allocation to the County of 7.24 acres and the property would contain approximately 64 acres of IDA and 38 acres of RCA. Most of the RCA and some acreage outside of the Critical Area would be placed under a perpetual land conservation easement. A public "conservation park" that includes created wetlands and mature forests would be established on a total of 55 acres, adjacent to the existing cross island trail.

A site plan and an exhibit showing the proposed development envelope will be presented and explained at the subcommittee meeting. Representatives of the developers and staff from Queen Anne's County have been invited to discuss the project and in particular the proposed "exchange" of growth allocation. If you have any questions prior to the meeting, please contact me at (410) 260-3477.

CALVERT COUNTY
DEPARTMENT OF PLANNING & ZONING

150 Main Street
Prince Frederick, Maryland 20678
Phone: (410) 535-2348 • (301) 855-1243

Director
Frank A. Jaklitsch

Board of Commissioners
Gerald W. Clark
David F. Hale
Linda L. Kelley
Wilson H. Parran
Susan Shaw

July 30, 2004

Mr. Ren Serey
Critical Area Commission
Chesapeake and Atlantic Coastal Bays
1804 West Street, Suite 100,
Annapolis, MD 21401

Re: Critical Area Intra-family Transfer Provisions

Dear Ren:

This is in response to your letter dated April 26, 2004. Sorry for the delay. We've been experiencing temporary staffing shortages, which we hope to have resolved soon.

Intra-family lots have been fairly rare. We've kept computerized records since 1994. Over the last 10 years, there have been 49 critical area subdivisions (subdivisions with at least some land in the Critical Area). A total of 12 intra-family lots have been created.

As you know, we drafted changes concerning intra-family lots, due to the Critical Area Commission's concern that these lots were being conveyed improperly to a third party. The law allows such transfers only if the lot is conveyed to a family member and then there is a "change in circumstances".

In our draft changes, all four of the conditions (4 a. – d.) would have to be met to allow conveyance of an intra-family lot to a third party. The owner of the lot would be required to establish a change in circumstances in all cases (even after seven years). These amendments have not yet been approved by the Planning Commission or Board of County Commissioners.

In your letter, you asked if the TDR requirement (for transfers to a third party in the first seven years) would be a financial burden to property owners. This is a difficult question to answer. A better question might be if it is fair and if it is achieving the intent of the law.

Waterfront lots in Calvert County are quite valuable, often well over $250,000. The intra-family transfer provisions allow a family to create more lots than they could otherwise

create. Under state law, change of circumstances is quite vague and, therefore, hard to evaluate. If the circumstances do change, should the family member reap the full financial benefits at the expense of the environment and County residential build-out goals? As proposed, if a change of circumstances occurs within seven years, then the owner would have to buy the equivalent lot density from elsewhere, but would still reap a profit. The TDR provision is similar to one we apply for intra-family lots in non-critical area subdivisions.

Under the proposed regulations, the Planning Commission, or its designee, would determine if a change in circumstances occurs. The Director of the Department of Planning and Zoning is typically the Commission's designee. For example, the Director approves minor subdivisions (five or fewer lots). Either the Planning Commission's decision or Director's decision may be appealed to the Board of Appeals.

Frank plans to attend your meeting on August 4th. If the Commission is satisfied, then we will forward the draft to the Planning Commission and Board of County Commissioners. When they are satisfied with the draft, we will schedule a public hearing in the fall.

Sincerely,

Greg

Gregory A. Bowen
Deputy Director

Cc. Board of County Commissioners

Draft

H. Intra-Family Transfers

1. Bona fide intra-family transfers may be made only from parcels of land that:
   a. Were of record on March 1, 1986; and
   b. Are seven acres or more and less than 60 acres in size.
2. A parcel of land may only be subdivided into the number of lots indicated in this subsection by means of a bona fide intra-family transfer:
   a. A parcel that is seven acres or more and less than 12 acres in size may be subdivided into two lots.
   b. A parcel that is 12 acres or more and less than 60 acres in size may be subdivided into three lots. The lots may be created at different times.
3. It is required as a condition of approval of the County that:
   a. **An intra-family transfer lot may only be created for an immediate family member and that family member shall be identified on the subdivision preliminary and final plats.**
   ~~a~~ Any deed for a lot that is created by a bona fide
   b. intra-family transfer shall **identify the member of the immediate family to receive the lot and** contain a covenant stating that the lot is created subject to the provision of this section; and
   ~~b~~ A lot created by a bona fide intra-family transfer
   c. may not be conveyed subsequently to any person other ~~that a member of the owner's immediate family~~ **than the person identified in sections 3.a&b above**, except under procedures established pursuant to subsection (~~d~~ 4) of this section.
   ~~c~~ This subsection does not prevent the conveyance
   d. of the lot to a third party as security for a mortgage or deed of trust.
   ~~d~~ The number of lots conveyed shall be limited to
   e. one per immediate family member. No more than three such lots (two intra-family lots) may be created per parcel.
4. The subsequent conveyance of lots to persons other than immediate family members is permitted if **the conditions in a-d below are met**:

a. The lot was created as part of a bona fide intra-family transfer and not with the intent of subdividing the original parcel of land for purposes of ultimate commercial sale. ~~; and~~

b. Either:

   i. a change in circumstances **including but not necessarily limited to declining health, military transfer, divorce or death, approved by the Planning Commission or their designee,** has occurred since the original transfer was made that is not inconsistent with this section and that warrants an exception; or

   ii. other circumstances that are consistent with this section and with the County's Critical Area Program to maintain land areas necessary to support the protective uses of agriculture, forestry, open space, and natural habitats in Resource Conservation Areas warrant an exception.

c. An affidavit affirming the truth of (**b.**i) and**/or** (**b.**ii) is signed by the family member who ~~originally conveyed the lot~~ **received the lot through the intra-family transfer provisions**.

d. If the legal recipient of the intra-family transfer lot wishes to convey the lot to persons other than immediate family members prior to maintaining ownership of this lot for 7 years, one Critical Area transfer development right or 20 non-Critical Area development rights must be purchased prior to the transfer consistent with Section 8-1.04.M of the Zoning Ordinance.

Commission concurs / supports

Critical Area Commission

STAFF REPORT
August 4, 2004

APPLICANT:	Dorchester County
PROPOSAL:	Taylor's Island Marina Growth Allocation
JURISDICTION:	Dorchester County
COMMISSION ACTION:	Concurrence with Chairman's Determination
STAFF RECOMMENDATION:	Approval
STAFF:	Wanda Diane Cole
APPLICABLE LAW/ REGULATIONS:	Natural Resources Article § 8-1808.1 and COMAR 27.01.02.06

DISCUSSION:

Dorchester County has requested Critical Area review and approval of a refinement to their Critical Area Program to use 18.088 acres of growth allocation to change the Critical Area Overlay designation of 10.604 acres of land on Tax Map 59, Block 9, Parcel 150 from RCA to IDA, and 7.484 acres of land on this same parcel from LDA to IDA. Parcel 150 is located in the Critical Area of Slaughter Creek, a large tributary to Choptank River. The remainder of Parcel 150 will retain its RCA designation and totals 40.007 acres. The purpose of the request is to allow an existing marina to expand its area of operations in order to meet the demands of nearby communities for boat hauling and storage service. There are very few marinas in the Cambridge area that specialize in these types of service, and this facility is the closest by water for residents of and visitors to the Cambridge area.

The County Planning Commission, held a public hearing on this matter and recommended approval of the use of growth allocation. The County Council of Dorchester County held a public hearing on May 5, 2004, and approved Resolution 392, granting the use of growth allocation for Taylor's Island Marina, on June 22, 2004.

The new IDA is adjacent to existing LDA to the south. Portions of the site are affected by the 100-foot Buffer, however, the existing LDA portion of the site has been designated a Buffer Exemption Area. The existing marina, which is located off Maryland Route 16, several miles west of Cambridge, is largely covered with crushed stone and several structures. The property has many marina/boating-related uses, including boat hauling and storage, a marina store, a restaurant, a bed and breakfast, a mobile home, storage sheds, a swimming pool, fuel pumps, a pump-out station, and a combination comfort station and laundry facility. The proposed

expansion area is currently a grass field located adjacent to the existing marina.

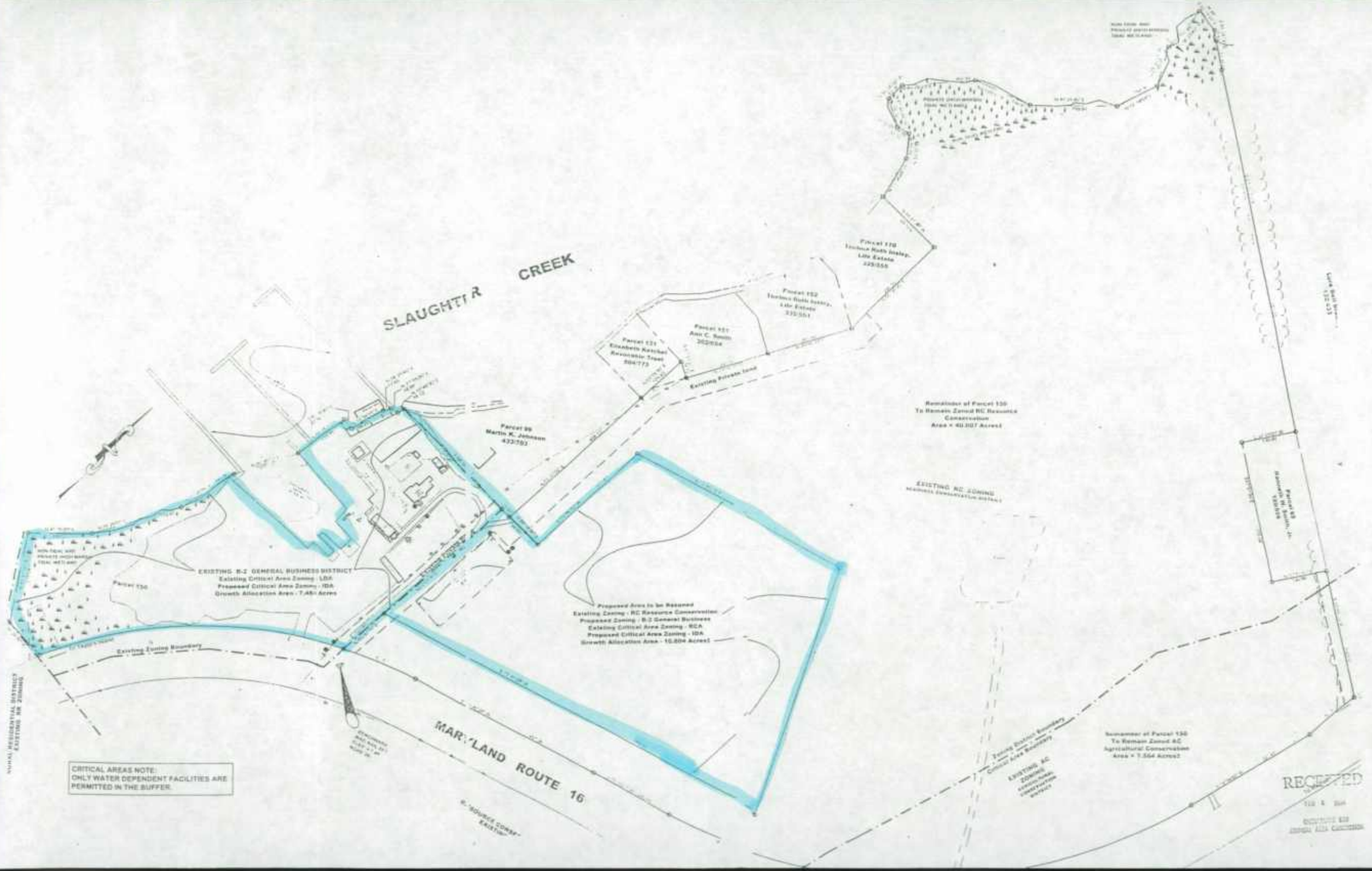
The Wildlife and Heritage Service has indicated that the Delmarva Fox Squirrel, a state and federally listed endangered species, is known to occur on, or in the immediate vicinity of, the property. Since no activities are proposed in forested areas of the site, Delmarva Fox Squirrel habitat will not be impacted.

Private tidal wetlands, or high marsh, which grows above the mean high water line is present on opposite ends of the parcel, and will not be affected by the expansion.

The marina expansion must comply with the 10% pollutant removal requirement. At the time of this staff report, design work was in progress to address this requirement.

Staff has reviewed this application for consistency with the growth allocation provisions of the Critical Area law and criteria, and the Commission's growth allocation policy. Senator Madden has determined that this use of growth allocation can be approved as a refinement to the Dorchester County Critical Area Program and seeks your concurrence.

Consistent
E G.A. &
Criteria


SLAUGHTER CREEK
Parcel 99
Martin K. Johnson
433/783
Parcel 121
Elizabeth Ketchel
Revocable Trust
504/775
Parcel 151
Ann C. Smith
302/834
Parcel 152
Thelma Ruth Insley,
Life Estate
325/354
Parcel 170
Thelma Ruth Insley,
Life Estate
325/354
Existing Private Road
Remainder of Parcel 150
To Remain Zoned RC Resource
Conservation
Area = 40.307 Acres±
EXISTING RC ZONING
Parcel 150
EXISTING B-2 GENERAL BUSINESS DISTRICT
Existing Critical Area Zoning - LDA
Proposed Critical Area Zoning - IDA
Growth Allocation Area - 7.48± Acres
Parcel 130
Existing Zoning Boundary
Proposed Area to be Rezoned
Existing Zoning - RC Resource Conservation
Proposed Zoning - B-2 General Business
Existing Critical Area Zoning - RCA
Proposed Critical Area Zoning - IDA
Growth Allocation Area - 10.804 Acres±
MARYLAND ROUTE 16
Zoning District Boundary
Critical Area Boundary
EXISTING AC
ZONING
Remainder of Parcel 130
To Remain Zoned AC
Agricultural Conservation
Area = 1.564 Acres±
Parcel 69
Raymond M. Smith, Jr.
RURAL RESIDENTIAL DISTRICT
EXISTING RR ZONING
CRITICAL AREAS NOTE:
ONLY WATER DEPENDENT FACILITIES ARE
PERMITTED IN THE BUFFER.
RECEIVED

THE STAR DEMOCRAT

News Front Stores

Conservancy obtains part of Paw Paw Cove

* *Organization raises almost $1 million in three months*

By: GREG MAKI , Staff Writer 07/29/2004

EASTON - After raising nearly $1 million in three months, the Eastern Shore Land Conservancy Friday purchased a 10-acre property on Tilghman Island's Paw Paw Cove.

The conservancy purchased property, the southernmost part of the 30-acre stretch off Black Walnut Point Road, for $975,250 raised from 25 gifts, seven pledges and one loan. Beth Jones, director of the non-profit Bay Hundred Foundation, helped coordinate the fund-raising effort.

Rob Etgen, executive director of the conservancy, said the organization is interested in purchasing the second parcel of Paw Paw Cove, which includes a house and pond. It is currently on the market for $1,195,000. Etgen said the seller is interested in working with the community to make the sale happen.

Etgen and others met with the Talbot County Council Tuesday. After giving a brief overview of the sale and their goals, they played a video of Dennis Stanford, chairman of the Department of Anthropology and director of Paleo-Indian Research at the Smithsonian Institution, talking about the archaeological importance of Paw Paw Cove.

Archaeologists believe the site is crucial to understanding the history of humans in North America. Standford believes the origins of Clovis people, the first inhabitants of North and South America, are in the Chesapeake Bay. The long-standing theory, which many mistake for proven fact, he said, is that the first Americans crossed the land bridge from Siberia to Alaska. But Stanford searched Siberia and Alaska without finding evidence of Clovis. Stanford's theory, based in part on 13,000-year-old relics Tilghman archaeologist Darrin Lowery found at Paw Paw Cove as a child, is the first Native Americans migrated to the Chesapeake Bay area from Europe during the Ice Age.

Complete story appears in the print version.

To subscribe to the print edition
click here.

Good

Md Environmental Trust
Partner →

Martin G. Madden
Chairman

STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS
1804 West Street, Suite 100, Annapolis, Maryland 21401
(410) 260-3460 Fax: (410) 974-5338
www.dnr.state.md.us/criticalarea/

Ren Serey
Executive Director

MEMORANDUM

To: Joe Jackson (Chairman), Frank Dawson, Judith Evans, Tracey Gordy, Stevie Prettyman,

From: LeeAnne Chandler, Mary Owens

Date: July 26, 2004

RE: Upcoming Panel Hearing on Bay Point Plantation Growth Allocation and Designation of Buffer Management Area Group E, Atlantic Coastal Bays Critical Area

Thank you for agreeing to serve on the panel appointed to review the Bay Point Plantation Growth Allocation and the designation of a new Buffer Management Area in the Atlantic Coastal Bays Critical Area. The public hearing is scheduled for Monday, August 2, 2004 at 6:00 p.m. in the Board Room (Room 1102) at the Worcester County Government Center at One West Market Street in Snow Hill.

The purpose of the hearing is to hear public comment on the proposed award of 38 acres of growth allocation to change the Critical Area designation on a portion of a 141-acre property from RCA to IDA as well as the designation of a portion of the same property's shoreline as a Buffer Management Area (BMA). They will be considered as two separate amendments to the County Program. County staff and the property owner will be given an opportunity at the beginning of the hearing to present the proposals and answer any questions that the panel may have.

Background

The subject property is located immediately adjacent to the southern boundary of the heavily developed community of Ocean Pines. It is a total of 141.53 acres designated RCA. The property contains approximately 65 acres of forested non-tidal wetlands and approximately 80 acres of upland. Most of the property is forested, though there are large expanses of tidal wetlands (not included in the acreage above). Historically and up until early 2003, the property was used as a commercial campground and mobile home park. Forty-three "cam per" sites and seven mobile homes were scattered in an 18-acre area of the site. In addition to the campers and mobile homes, numerous dock structures were built along the natural shoreline and manmade lagoons. Cleanup of the site began in early 2003 in response to numerous

zoning and health department violations. The current property owner has numerous photos that document the condition of the site on the effective date of the Atlantic Coastal Bays Protection Act.

Bay Point Plantation Growth Allocation

The growth allocation request would change the Critical Area designation of 38 acres of the site from RCA to IDA to accommodate a 33-lot single-family residential subdivision. The growth allocation area includes the former campground portion of the site as well as an area for a proposed community septic system. Lot sizes range from approximately 0.3 acres to 1.45 acres and 22 of the 33 lots have frontage on tidal marsh or open water. With the exception of the entrance road, all portions of the site that would be impacted by the development are included within the development envelope. The balance of the property will remain RCA.

With several thousand feet of frontage on tidal wetlands or tidal waters, the site has a significant area that falls within the 100-foot Buffer. In addition to the Buffer, the other Habitat Protection Area present on site is habitat for forest interior dwelling birds (FIDs). The extent of pre- and post-development FIDs habitat was analyzed and calculated based on the Commission's guidance paper on the conservation of FIDs in the Critical Area that was approved in June 2000. The proposal follows the site design guidelines by restricting development to the existing forest edge (within 300 feet of a canopy opening). The property owner has proposed mitigation for FIDs habitat impacts on site by allowing two existing fields to naturally regenerate.

The County's Critical Area Program sets forth a number of guidelines from the Critical Area Criteria to be considered when locating new IDAs or LDAs. The proposal meets the adjacency guideline; i.e., that new IDA should be located in existing LDAs or adjacent to existing IDAs, because the new IDA will be adjacent to the existing IDA of the community of Ocean Pines to the north. The guidelines also indicate that new IDAs should be located: to minimize impacts to Habitat Protection Areas; to optimize benefits to water quality; and to minimize their impacts to the land uses of the RCA. The County Program also indicates that new IDAs should be located at least three hundred feet landward of the limits of tidal wetlands or tidal waters.

Group E Buffer Management Area

Worcester County is proposing to designate a portion of the Bay Point Plantation shoreline as a Buffer Management Area (similar to designation of a Buffer Exemption Area in the Critical Area Criteria) with a varied setback from the water or tidal wetlands. As of June 1, 2002 (the effective date of the Atlantic Coastal Bays Protection Act), the property was in use as a commercial campground/trailer park. It contained dilapidated mobile homes and campers that had been modified to include at grade decks, carpeted "yards", and cinder block campfire pits. In association with each unit was a septic drainfield but many of the drainfields were being bypassed, with the sewage flow being directed to Turville Creek or the tidal marsh. The property also contains numerous illegal docks extended into the waters of Turville Creek.

In designating a new Buffer Management Area, Group E, the County made findings that the existing pattern of development as of June 1, 2002 prevents the Buffer from fulfilling the functions set forth in the Atlantic Coastal Bays Protection Act due to the existing campers and

mobile homes, septic disposal areas and other manmade improvements located directly adjacent to the shoreline or tidal wetlands. The County also found that the Buffer's effectiveness at minimizing the effects of human activities on the wetlands and tidal waters is limited due to the location of the existing development, existing sanitation violations and the lack of understory vegetation. These features also prevent the Buffer from acting as transitional habitat between aquatic and upland communities.

The proposed setbacks for the waterfront lots on the property range from 25 feet (on 9 lots), 50 feet (on 5 lots) and a full 100-foot Buffer (on the remaining 8 waterfront lots). In establishing Group E, the County Commissioners conditioned their approval on the stipulations that no lots within the subdivision shall have riparian rights (No individual private piers will be permitted, however a community pier is proposed.), no vegetation shall be removed within the respective buffers, no walkways or paths in or through the Buffer shall be permitted and all the restrictions shall be stipulated in the deed covenants.

The County's Buffer Management Area Program sets forth specific mitigation requirements for development of single-family dwellings in a Buffer Management Area. The property owner must submit a proposed landscaping plan showing all existing trees (those to be retained and those to be removed) and proposed planting materials. The cost of new planting materials to be utilized shall be equivalent to 1.5% of the cost of construction multiplied by the percentage of the overall project that is located within the 100-foot Buffer. Also, in addition to the 1.5%, any natural vegetation removed within the Buffer must be replaced onsite on an equal basis. The County's Buffer Management Area Program allows subdivision "if the subdivision will result in an overall environmental benefit."

<u>Outstanding issues to be addressed:</u>

1. Ensuring long term protection of FIDs Habitat
2. Viability of natural regeneration areas
3. Time-of-year restriction on clearing of existing FIDs habitat in accordance with site design guidelines
4. Limiting BMA Group E to the subject property
5. Ensuring overall mitigation for Bay Point Plantation [or development in BMA Group E] "is sufficient to offset impacts to habitat and water quality resulting from the development activity" in accordance with the County's Buffer Management Area Program.

IN THE MATTER OF	*	
THE REZONING APPLICATION OF	*	
		REZONING CASE NO. 372
JOHN H. BURBAGE, JR.	*	
BERLIN, MARYLAND	*	

****

FINDINGS OF FACT

Subsequent to a public hearing held on March 2, 2004 and after a review of the entire record, all pertinent plans and all testimony, the Worcester County Commissioners hereby adopt the findings of the Worcester County Planning Commission and also make the following additional findings of fact as the County Commissioners' complete findings of fact pursuant to the provisions of Section 1-113 of the Worcester County Zoning Ordinance.

Regarding the size of the petitioned area: The County Commissioners find that the original petition seeking a map amendment stated that the petitioned area was 145 acres in size and sought to rezone the entire petitioned property from A-1 Agricultural District to R-1 Rural Residential District, except for that portion of the subject property which was already zoned R-1 Rural Residential District. When appearing before the County Commissioners at the public hearing, the applicant's attorney, Hugh Cropper, IV, stated that the property's deed indicated that the site totaled 218.23 acres in size, including tidal wetlands, while a recent survey actually showed the site was 186 acres in size. The attorney stated that the original application was submitted for 145 acres because it was intended to exclude the tidal marsh areas as well as the approximately 10 acre portion already zoned for residential purposes. Mr. Cropper requested that the application be amended to reduce the petitioned area proposed for R-1 Rural Residential District zoning from 145 acres to 68 acres, corresponding to the area of the proposed clustered subdivision planned for the property if rezoned. He stated that the applicant wished to rezone the remainder of the subject property to C-1 Conservation District, including the portion already zoned R-1 Rural Residential District, except for approximately two acres at the entrance from Gum Point Road.

Regarding population change in the area: The County Commissioners concur with

3/25/04

the Planning Commission that there has been an increase in the population of the vicinity surrounding the petitioned area since the adoption of the comprehensive rezoning on March 10, 1992. Residential population has grown as a result of construction of many new dwelling units within Ocean Pines, particularly along the waterfront in such developments as the Point and Marina Village. Furthermore, a number of single-family homes have been built along Gum Point Road since 1992. The County Commissioners conclude that the vicinity surrounding the petitioned area displays a mixed use residential character, with single-family homes predominating but multi-family dwellings also being prevalent. As did the Planning Commission, the County Commissioners find that Ocean Pines and its environs is the most intensely developed area of Worcester County outside of Ocean City. The County Commissioners find that the neighborhood wherein the petitioned area is located is classified by the Comprehensive Plan as being within the Suburban Residential Land Use Category. Therefore, the County Commissioners conclude that this area is a designated growth area and anticipates that the population in the area will continue to grow. Based upon their review, the County Commissioners find that the residential population of the vicinity surrounding the petitioned area has grown significantly since the adoption of the comprehensive rezoning on March 10, 1992.

Regarding availability of public facilities: With regard to wastewater disposal and the provision of potable water, the County Commissioners find that the petitioned area is not within an area which receives public water or sewer service at the present time. As noted in the Planning Commission's findings of fact and recommendation, Richard L. Wells, Director of Environmental Programs, commented in writing that the petitioned area currently has approval for on-site wastewater treatment which serves the existing campground/mobile home park on the site and the capacity of the system is adequate to serve up to 33 single-family residences. Mr. Wells further stated that in order to serve 33 single-family units there must be a sanitary service area established which requires the owner to turn over the system to the County for ownership and operation and that an application had been received requesting to establish the service area. Mr. Wells also stated that the application must be reviewed by the Planning Commission for its consistency with the County's master plan prior to a public hearing being held by the County Commissioners. Mr. Wells closed his comments by stating that predicated on the approval of the service area, his office had no objection to the proposed rezoning of the subject property. The County Commissioners find that John H. Tustin, P. E., Director of Public Works, stated in his written comments to the Planning Commission that there are water and wastewater issues relative to the proposed rezoning, among which is a concern with treatment and final disposal of any additional wastewater. He further stated that

additional manpower will be needed to handle this particular project. The County Commissioners find that according to the Worcester County Soil Survey, soil types found on the petitioned area display severe limitations to on-site wastewater disposal. However, R. D. Hand testified before the Planning Commission that soil testing on the site had located an area of soils adequate to provide wastewater disposal for a 33 unit development. John Salm, an engineer acting on behalf of the applicant, testified to the County Commissioners that wastewater from the proposed lots will be brought to a common location for treatment and disposal of the wastewater. He further testified that soils have been located that will provide appropriate disposal and that this site is approximately 700 feet from the waterways. Mr. Salm stated that the proposed wastewater system will be a sand mound drainfield and will include a mechanical pretreatment system before disposal. He contended that such pretreatment extends the life of a wastewater disposal system significantly, stating that a system such as that proposed typically lasts 15 to 20 years with proper maintenance and that pretreatment could possibly extend its life another 20 years. Mr. Salm maintained that the proposed system will have a net positive effect, both in terms of water quantity and water quality, and that the system is feasible from both engineering and financial viewpoints. Mr. Salm stated that the proposed wastewater system is only sized to serve the lots on the petitioned area because it is limited to 9900 gallons of sewage flow per day and that the system will be a service area owned by the County. Relative to potable water, the County Commissioners find that the petitioned area will require on-site well and distribution systems, as approved by the Environmental Programs Department, unless public water service is extended from a system operating in the area. With respect to other public facilities and services, the County Commissioners find that educational facilities serving the petitioned area include the Showell Elementary School, Berlin Intermediate School, Stephen Decatur Middle School, and Stephen Decatur High School, all located within approximately seven miles of the petitioned area. Based upon information provided by the Worcester County Board of Education, the County Commissioners find that capacity and enrollments at these four schools as of September 2002 were as follows:

School	State Rated Capacity	Total Enrolled	Projected 10 Yr. High Enrollment
Showell Elementary	493	555	616
Berlin Intermediate	798	805	831
Stephen Decatur Middle	677	676	700
Stephen Decatur High	1518	1302	1413

Fire-fighting and ambulance services will be available from the Berlin Volunteer Fire Company's station in Berlin, located approximately seven minutes away, and from the Ocean Pines Volunteer Fire Company, located approximately three minutes away. Police protection will be provided by the Maryland State Police Barracks in Berlin, approximately ten minutes away, and the Worcester County Sheriff's Department in Snow Hill, approximately twenty-five minutes away. The County Commissioners find that the comments of the commander of the Berlin Barracks of the State Police were included in the Planning Commission's findings of fact and recommendation. Lt. Douglas Dods, Commander of Barracks V, stated that the Berlin Barrack growth in personnel has not kept pace with the growth of the County population and construction. He further stated that though the Maryland State Polices Barracks at Berlin will be able to provide services to the proposed rezoned area, the response times to the area will be increased and that currently there are no plans within the Maryland State Police to increase the staffing at the Berlin Barrack in the future to improve these response times. Lt. Dods also commented that he is concerned about the effect the increased traffic on Gum Point Road at MD Rt. 589 will have on motor vehicle collisions at the intersection. The County Commissioners find that the Planning Commission noted in its findings that Cpt. Michael Bowen commented to Charles T. Martin, Sheriff, that he didn't see any problems that the proposed project would cause the agency except that with the additional housing units it would warrant an increase in personnel to cover the increased population that the project would bring. The County Commissioners recognize, as did the Planning Commission, that several agencies cited the potential need for additional personnel and facilities in order to adequately serve the petitioned area if rezoned to R-1 Rural Residential District and that current enrollments at some of the schools serving the petitioned area exceed the state rated capacity of those schools. However, the County Commissioners concur with the Planning Commission's conclusion that given the limitation to a maximum of 33 dwelling units relative to wastewater disposal, as opposed to the 145 permitted by the requested zoning classification, the proposed rezoning will not have any greater impact on most of these public facilities and services than does the existing campground/ mobile home park or would have a minimally greater impact. In consideration of their review, the County Commissioners find that the petitioned area will be adequately served by existing public and private facilities and services if rezoned from A-1 Agricultural District to R-1 Rural Residential District with a stipulated maximum density of 33 residential units and conclude that the proposed rezoning will not have any greater adverse impact on these facilities and services than does the site's existing campground.

Regarding present and future transportation patterns: The County Commissioners

find that the property of which the petitioned area is a part has frontage on and direct access to Gum Point Road, a County-owned and -maintained roadway. The roadway terminates in a dead end adjacent to the petitioned area. Gum Point Road provides direct access to MD Rt. 589. This latter roadway is state-owned and -maintained. The petitioned area has good access to US Rt. 50 via MD Rt. 589. The intersection of MD Rt. 589 and Gum Point Road is not signalized at the present time. The County Commissioners find that the Comprehensive Plan considers Gum Point Road to be a minor local access road while it classifies MD Rt. 589 as a collector highway. The Comprehensive Plan does not make any recommendations with regard to Gum Point Road specifically. Relative to MD Rt. 589, the Comprehensive Plan states that it is already operating at a level of service "C" under average daily traffic conditions and operates well below this level in the summer months. The Plan further states that over the planning period MD Rt. 589 will have to be upgraded to a four-lane highway, that this project is perhaps the most important project for local travel needs because it provides north-south mobility between US Rt. 50, MD Rt. 90 and US Rt. 113 and that it will also continue to provide access to the residential growth at Ocean Pines and the other local communities and commercial properties which will be located within northern Worcester County. The County Commissioners find that John H. Tustin, P. E., Director of Public Works, provided written comments to the Planning Commission stating that Gum Point Road would be required to be widened to a paved width of 24 feet with stabilized shoulders of six feet to handle the additional traffic if the proposed rezoning to a classification which permits an additional 145 dwelling units were approved, in that the requested classification permits one dwelling unit per net acre of lot area which would equate to an average daily trip (ADT) count of 1,388 trips per day. However, it was noted in the Planning Commission's findings of fact that R. D. Hand testified that Mr. Tustin had told him he would not have a problem with the proposed rezoning if the residential units were limited to a maximum of 33 and that Phyllis H. Wimbrow, Deputy Director of Development Review and Permitting, testified to the Planning Commission that Mr. Tustin had made the same verbal comment to her prior to the Planning Commission's review. Robert A. Small of the State Highway Administration commented to the Planning Commission that it had been determined there would be no impacts to any State facility resulting from future development of the subject property and that the State Highway Administration therefore had no objection to approval of the proposed rezoning. R. D. Hand, a landscape architect acting on behalf of the applicant, testified to the County Commissioners that the traffic generated by a subdivision consisting of 33 single-family lots would be roughly equal to the campground use, particularly if that campground were operated as a true rental campground. No improvements other than routine maintenance are contained in the current Consolidated

Transportation Program published by the Maryland Department of Transportation for MD Rt. 589. The County Commissioners concur with the Planning Commission's conclusion that a 33 lot subdivision would have no greater impact on Gum Point Road than does the existing campground and that Gum Point Road can handle the traffic generated by such a subdivision. The County Commissioners note that Dan Stachurski, president of the Ocean Pines Board of Directors, expressed concern about road elevations within the petitioned area's anticipated subdivision being higher than the elevation of lots within the adjacent subdivision of Ocean Pines which may result in adverse drainage and lighting impacts. The County Commissioners conclude that stormwater managements regulations will require that all drainage water arising from any development on the petitioned area will be required to be retained and disposed of on the petitioned area, thus not causing flooding within Ocean Pines. Mr. Stachurski also requested that the County Commissioners reserve area within the petitioned area for a future roadway through this site, and through adjacent and nearby properties to the west as they develop, in order to provide linkage to MD Rt. 589. The County Commissioners concluded that being able to obtain linkage through all of the intervening properties was remote due to non-tidal wetlands and other development restrictions. Based upon their review, the County Commissioners find that the proposed rezoning of the petitioned area from A-1 Agricultural District to R-1 Rural Residential District will not conflict with or have an adverse impact on present and future transportation patterns provided the residential density is limited to a maximum of 33 dwelling units.

Regarding compatibility with existing and proposed development and existing environmental conditions: The County Commissioners find that the neighborhood as defined by the applicant, which the County Commissioners accept, displays a mixed use residential character. Ocean Pines, immediately to the north of the petitioned area, is zoned R-2 Suburban Residential District and R-3 Multi-Family Residential District. It is the most intensely developed area of Worcester County outside of Ocean City. The portion of Ocean Pines in closest proximity to the petitioned area is developed with single-family dwellings on small lots. However, the waterfront portion of Ocean Pines south of MD Rt. 90 is developed with a substantial number of multi-family dwelling units. The Gum Point Road corridor is zoned R-1 Rural Residential District and is a long established neighborhood of single-family dwellings. New homes have continued to be constructed along this corridor since 1992. The area to the west of the petitioned area is zoned A-1 Agricultural District. This area is primarily forested and no actual farming activities appear to occur in this area. The County Commissioners concur with the Planning Commission's conclusion that this strip of A-1 Agricultural District is in effect an island of

agricultural zoning in a sea of residential zoning, even while recognizing that not all properties which are zoned A-1 Agricultural District are intended to be tilled and utilized for annual crop production. However, this area is in the midst of Worcester County's most densely populated residential area outside of the municipality of Ocean City. The County Commissioners find that many of the uses allowed in the A-1 Agricultural District, such as poultry houses, grain elevators, manure sheds, and the like, are out of character with the neighborhood, would conflict with the residential uses and would therefore not be appropriate for this area. Additionally, timbering of the petitioned area would be unfeasible due to the required protection of FIDS habitats. The County Commissioners therefore find that the existing A-1 Agricultural District zoning classification is not the most suitable zoning for this area. The County Commissioners concur with the Planning Commission's conclusion that the existing campground on the site does not constitute a bona fide seasonal campground, as most of the units are permanently placed on the site and have had additions constructed onto them. Consequently the County Commissioners find that the site is in essence a mobile home park. In that this area is prime waterfront land, the County Commissioners conclude that such a use is not desirable. The County Commissioners observe that the petitioned area's existing use does not provide stormwater management or adequate buffers to waterways. Furthermore, the septic systems have failed. The County Commissioners concur with the applicant's assertion that use of the site for 33 single-family dwellings by virtue of a rezoning and award of growth allocation would allow environmentally sensitive development by avoidance of nontidal wetlands, protection of the FIDS habitats, provision of stormwater management, installation of functioning septic systems, and the placement of buffers to waterways. The County Commissioners find that while approval of a rezoning in order to permit redevelopment of a site in accordance with current regulations is not always a valid reason for a rezoning, it is in this case because the existing A-1 Agricultural District is not appropriate for this area and could be characterized as something of a spot zone. The County Commissioners observe that the applicant proffered to place a conservation easement over the FIDS habitats and other sensitive areas to guarantee long term protection. This easement as proposed by the applicant will cover all lands not included within the actual developed area. Additionally, the applicant proffered to remove all existing piers and replace them with a single community pier. It is the County Commissioners' understanding that the Atlantic Coastal Bays Critical Area regulations would restrict the number of slips at this community pier to a number not to exceed 75 percent of the development's lots. Dan Stachurski, representative of the Ocean Pines Association, noted that the site plan submitted as Exhibit No. 1 during the public hearing indicated that a greenbelt easement a minimum of 50 feet wide would be provided along the petitioned area's entire boundary

with Ocean Pines. Mr. Stachurski requested that this greenbelt easement be made a condition of any rezoning of the petitioned area, maintaining that it was critical to buffering and ensuring compatibility with the adjacent properties in Ocean Pines. The County Commissioners agree that this greenbelt easement is necessary for those purposes. Based upon their review, the County Commissioners find that the proposed rezoning of the petitioned area from A-1 Agricultural District to R-1 Rural District is in keeping with the character of the neighborhood and is compatible with the existing and anticipated development within the neighborhood. Furthermore, the County Commissioners conclude that the proposed rezoning will have no significantly greater impact on existing environmental conditions in the area than would development of the site in accordance with its existing A-1 Agricultural District zoning category and would probably be more protective.

Regarding compatibility with the County's Comprehensive Plan: The County Commissioners find that as indicated in the 1989 Comprehensive Plan and associated land use map, the petitioned area is located within the Suburban Residential Land Use Category. As it pertains to this land use category, the Comprehensive Plan states that the area is intended for sewered residential densities where community systems are provided and septic densities in other areas, that moderate-density residential development and suburban commercial uses are intended for these areas also with consideration for maintaining open spaces which are consistent with the predominantly suburban residential character of the area, and that planned and cluster development forms should also be encouraged in these areas. The Comprehensive Plan states that the Suburban Residential Land Use Category is characterized by a residential density of four units per acre. The County Commissioners note that the applicant maintained to the Planning Commission that the proposed rezoning is consistent with the first four of the seven visions contained in the Sensitive Areas element of the 1997 Supplement to the Comprehensive Plan, specifically that development is concentrated in suitable areas, that sensitive areas are protected, that growth is directed to existing population centers and resource areas are protected, and that stewardship of the coastal bays and the land is a universal ethic. As did the Planning Commission, the County Commissioners concur with this assertion because the petitioned area is within a major existing population center where growth is suitable and expected, the site's sensitive areas will be safeguarded, and protective measures for the coastal bays will be provided through buffering and stormwater management. Based upon their review, the County Commissioners conclude that the proposed rezoning of the petitioned area from A-1 Agricultural District to R-1 Rural Residential District is compatible with the Comprehensive Plan and in keeping with its goals and objectives.

Regarding the recommendation of the Planning Commission: The County Commissioners find that the Planning Commission gave a favorable recommendation to the rezoning of the petitioned area from A-1 Agricultural District to R-1 Rural Residential District subject to there being a maximum of 33 dwelling units, the removal of the existing piers and their replacement with one community marina with the number of slips not to exceed 75% of the number of lots, and the placement of a conservation easement over the FIDS habitat areas. Having made the above findings of fact and having developed appropriate protective conditions, the County Commissioners generally concur with the recommendation of the Planning Commission but conclude additional conditions relative to conservation and greenbelt easements are necessary to protect neighboring properties and sensitive areas on the site.

As a result of the testimony and evidence presented before the Commissioners and the findings as set forth above, the County Commissioners find that there is a mistake in the existing zoning classification of the petitioned area and that a change in zoning to R-1 Rural Residential District and C-1 Conservation District would be more desirable in terms of the objectives of the Comprehensive Plan. The County Commissioners find that the A-1 Agricultural District zoning on the petitioned area is not appropriate given the site's inclusion within the Suburban Residential Land Use Classification and thus its location within a designated growth area. Furthermore, this area is the most densely populated and intensely developed area in Worcester County outside of Ocean City. Ocean Pines is the County's largest residential population center and is immediately adjacent to the northerly perimeter of the petitioned area. Utilization of the petitioned area for many of the uses permitted by its existing A-1 Agricultural District would conflict with these residential uses. The County Commissioners conclude that the campground that had occupied the site had in essence become a mobile home park, with units becoming permanent in nature due to additions. This campground does not provide proper stormwater management nor are any buffers to the coastal waterways provided. Numerous individual piers have been constructed, many without benefit of proper permits. The septic systems are failing and would have to be replaced if the campground were to be reopened. Additionally, the County Commissioners find that extensive areas of nontidal wetlands and Forest Interior Dwelling Species (FIDS) habitats are located on the site and are basically unprotected at the present time. The County Commissioners observe that if the campground were to be removed and the petitioned area developed in accordance with the proposed R-1 Rural Residential District, current wastewater disposal limitations would restrict the

development to a maximum of 33 dwelling units and adequate stormwater management provisions and buffers to waterways would be required. It is noted by the County Commissioners that the applicant has proffered to place a conservation easement over the FIDS habitats and other areas and in fact over all lands which are not proposed for inclusion in the anticipated subdivision envelope. Additionally, the applicant proffered to remove all existing piers and replace them with a single community pier. The County Commissioners find that this area is planned for residential use and such use is consistent with existing and anticipated land uses in the area. It is the County Commissioners' conclusion that development with a maximum of 33 residential units would not overly burden public facilities and services to any significantly greater degree than does the site's prior use as a campground/mobile home park and would permit more environmentally sensitive use of the site than occurs at present at the existing campground. The County Commissioners find that the proposed rezoning is compatible with the goals and objectives of the Comprehensive Plan and is consistent with existing development in the area. Based upon their review, the County Commissioners hereby approve Rezoning Case No. 372, seeking a rezoning of the petitioned area from A-1 Agricultural District to R-1 Rural Residential District as applied for and C-1 Conservation District as proffered subject to the following conditions:

1) There shall be no more than 33 dwelling units.

2) All existing piers shall be removed and a single community marina with the number of slips not to exceed 75% of the number of lots shall be provided.

3) A conservation easement shall be placed over all lands not included within the developed area of the subdivision and shall include the FIDS habitat areas.

4) A greenbelt easement of at least 50 feet in width shall be maintained and left undisturbed adjacent to the boundary with the subdivision of Ocean Pines.

5) The rezoning from A-1 Agricultural District to R-1 Rural Residential District and C-1 Conservation District shall become effective upon the award of growth allocation, approval of the buffer management plan for the subdivision, creation of the water and/or sewer service area, and the

approval of the necessary amendment to the Water and Sewer Plan but no later than September 1, 2004.

6) A plat shall be submitted showing the metes and bounds measurements of the zoning boundary between the R-1 Rural Residential and C-1 Conservation Districts.

7) Wetlands shall be restored as shown on Exhibit #5 submitted at the public hearing and as proferred by the applicant.

Adopted as of March 2, 2004. Reduced to writing and signed March 16, 2004.

ATTEST:

Gerald T. Mason
Chief Administrative Officer

WORCESTER COUNTY COMMISSIONERS

John E. Bloxom
President

James L. Purnell, Jr.
Vice President

Judith O. Boggs

Thomas A. Cetola

James C. Church

Louise L. Gulyas

Virgil L. Shockley

ZONING RECLASSIFICATION RESOLUTION NO. 04-02

A RESOLUTION OF THE COUNTY COMMISSIONERS OF WORCESTER COUNTY, MARYLAND, PURSUANT TO SECTION 1-113 OF THE ZONING AND SUBDIVISION CONTROL ARTICLE OF THE CODE OF PUBLIC LOCAL LAWS OF WORCESTER COUNTY, MARYLAND, CHANGING THE ZONING CLASSIFICATION OF A CERTAIN PARCEL OF LAND SHOWN ON TAX MAP 21 FROM A-1 AGRICULTURAL DISTRICT TO R-1 RURAL RESIDENTIAL DISTRICT AND C-1 CONSERVATION DISTRICT.

WHEREAS, pursuant to Section 1-113 of the Zoning and Subdivision Control Article of the Code of Public Local Laws of Worcester County, Maryland, John H. Burbage, Jr., applicant, filed a petition for the rezoning of approximately 145 acres of land shown on Tax Map 21, located on the northerly side of Gum Point Road at its easterly terminus, to the east of MD Rt. 589 and bound on the north by the southerly boundary of Ocean Pines and on the east and south by Turville Creek, the Tenth Tax District of Worcester County, requesting a change in zoning classification thereof from A-1 Agricultural District to R-1 Rural Residential District; and

WHEREAS, the Worcester County Planning Commission gave the said petition a favorable recommendation subject to certain conditions during its review on December 4, 2003; and

WHEREAS, at the public hearing held on March 2, 2004 the applicant requested to amend the application to reduce the area petitioned for rezoning to R-1 Rural Residential District to 68 acres, with the remainder of the petitioned area to be rezoned C-1 Conservation District, as shown on Applicant's Exhibit No. 1 entered at the public hearing; and

WHEREAS, subsequent to the public hearing held on March 2, 2004, following due notice and all procedures as required by Sections 1-113 and 1-114 of the Zoning and Subdivision Control Article of the Code of Public Local Laws of Worcester County, Maryland, the County Commissioners made findings of fact pursuant to the provisions of Section 1-113 of the Worcester County Zoning Ordinance and found that there is a mistake in the existing zoning of the petitioned area and that a change in zoning classification would be more desirable in terms of the objectives of the County Comprehensive Plan and also made findings of fact relative to the other criteria as required by law;

NOW, THEREFORE, BE IT RESOLVED by the County Commissioners of Worcester County that the land petitioned by John H. Burbage, Jr., shown on Tax Map 21 as Parcel 257, is hereby reclassified from A-1 Agricultural District to R-1 Rural Residential District and C-1 Conservation District subject to following conditions:

1) There shall be no more than 33 dwelling units.

2) All existing piers shall be removed and a single community marina with the number of slips not to exceed 75% of the number of lots shall be provided.

3) A conservation easement shall be placed over all lands not included within the developed area of the subdivision and shall include the FIDS habitat areas.

4) A greenbelt easement of at least 50 feet in width shall be maintained and left undisturbed adjacent to the boundary with the subdivision of Ocean Pines.

5) The rezoning from A-1 Agricultural District to R-1 Rural Residential District and C-1 Conservation District shall become effective upon the award of growth allocation, approval of the buffer management plan for the subdivision, creation of the water and/or sewer service area, and the approval of the necessary amendment to the Water and Sewer Plan but no later than September 1, 2004.

6) A plat shall be submitted showing the metes and bounds measurements of the zoning boundary between the R-1 Rural Residential and C-1 Conservation Districts.

7) Wetlands shall be restored as shown on Exhibit #5 submitted at the public hearing and as proferred by the applicant.

BE IT FURTHER RESOLVED that the effective date of this Resolution shall be nunc pro tunc, March 2, 2004.

EXECUTED this 16th day of March, 2004.

ATTEST:

Gerald T. Mason
Chief Administrative Officer

WORCESTER COUNTY COMMISSIONERS

John E. Bloxom
President

James L. Purnell, Jr.
Vice President

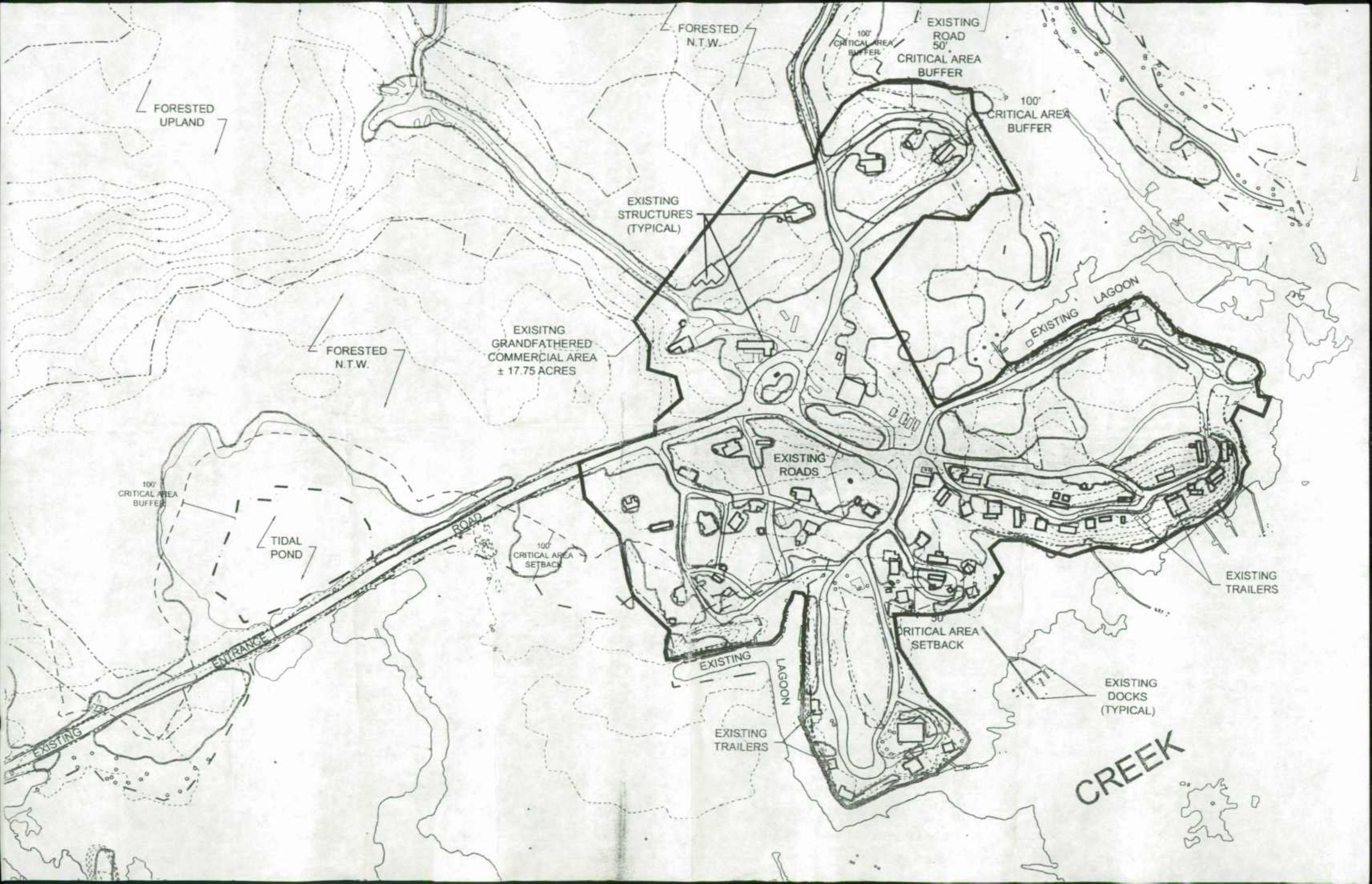
Judith O. Boggs

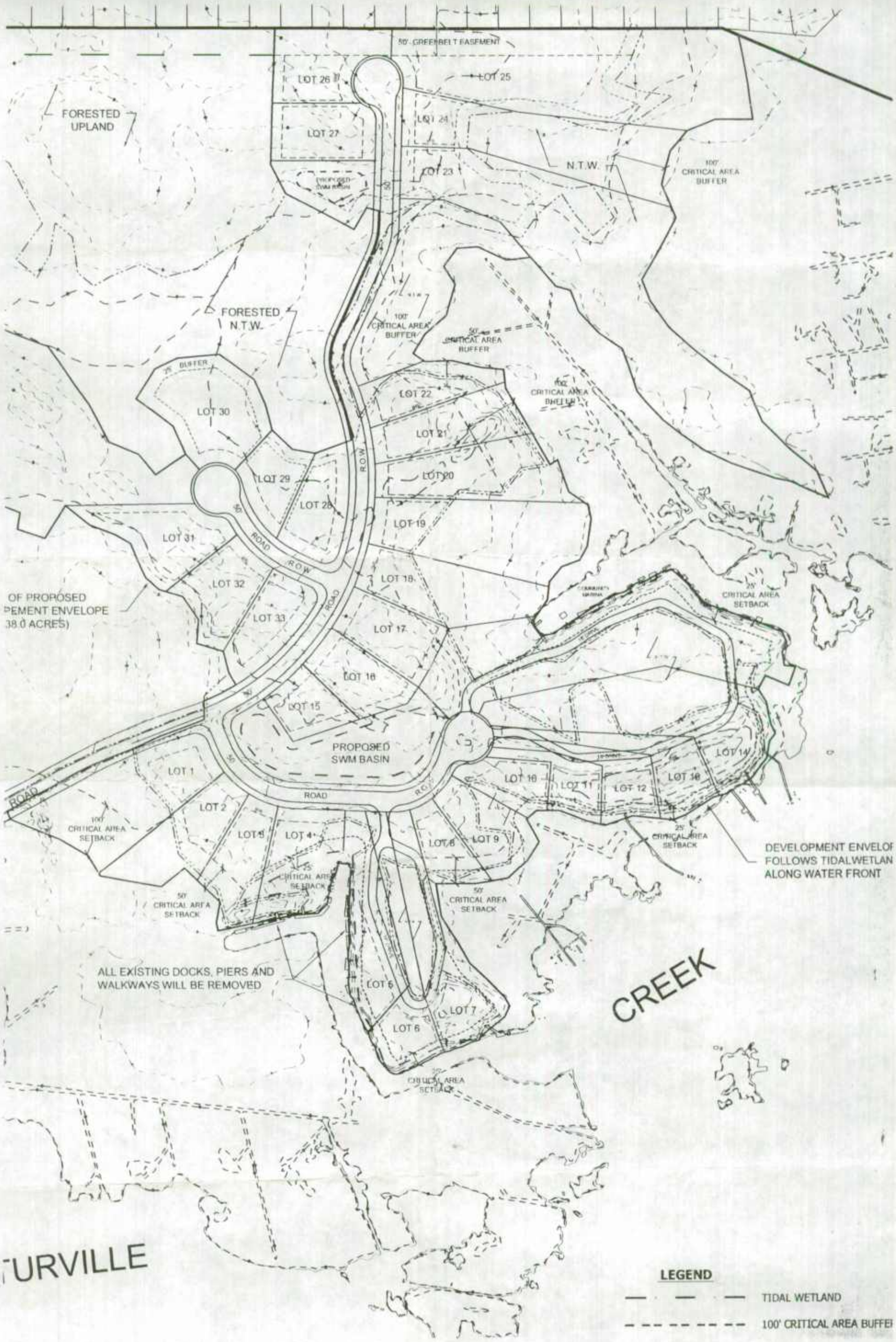
Thomas A. Cetola

James C. Church

Louise L. Gulyas

Virgil L. Shockley


FORESTED
N.T.W.
100'
CRITICAL AREA
BUFFER
EXISTING
ROAD
50'
CRITICAL AREA
BUFFER
100'
CRITICAL AREA
BUFFER
FORESTED
UPLAND
EXISTING
STRUCTURES
(TYPICAL)
EXISITNG
GRANDFATHERED
COMMERCIAL AREA
± 17.75 ACRES
FORESTED
N.T.W.
EXISTING LAGOON
EXISTING
ROADS
100'
CRITICAL AREA
BUFFER
TIDAL
POND
ROAD
100'
CRITICAL AREA
SETBACK
EXISTING
TRAILERS
50'
CRITICAL AREA
SETBACK
EXISTING
LAGOON
EXISTING
DOCKS
(TYPICAL)
EXISTING
TRAILERS
ENTRANCE
EXISTING
CREEK


50' GREENBELT EASEMENT
LOT 26
LOT 25
FORESTED UPLAND
LOT 27
LOT 24
LOT 23
N.T.W.
100' CRITICAL AREA BUFFER
FORESTED N.T.W.
100' CRITICAL AREA BUFFER
50' CRITICAL AREA BUFFER
LOT 22
100' CRITICAL AREA BUFFER
LOT 30
LOT 21
LOT 29
LOT 20
LOT 28
LOT 19
LOT 31
ROAD
R.O.W.
LOT 32
LOT 18
OF PROPOSED
PEMENT ENVELOPE
38.0 ACRES)
LOT 33
LOT 17
25' CRITICAL AREA SETBACK
LOT 16
LOT 15
PROPOSED SWM BASIN
LOT 1
LOT 14
LOT 10
LOT 11
LOT 12
LOT 13
ROAD
LOT 2
100' CRITICAL AREA SETBACK
LOT 3
LOT 4
LOT 8
LOT 9
25' CRITICAL AREA SETBACK
DEVELOPMENT ENVELOP
FOLLOWS TIDALWETLAN
ALONG WATER FRONT
50' CRITICAL AREA SETBACK
50' CRITICAL AREA SETBACK
ALL EXISTING DOCKS, PIERS AND WALKWAYS WILL BE REMOVED
LOT 5
LOT 7
LOT 6
CREEK
TURVILLE
LEGEND
TIDAL WETLAND
100' CRITICAL AREA BUFFE