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

PANELS

9:30 a.m. – 10:15 a.m. **Dorchester County: Longboat Growth Allocation**
City of Cambridge: Annexation

Panel Members: **Judith Evans, Chair; Dave Blazer; Ed Richards; Margo Bailey; Meg Andrews**

SUBCOMMITTEES

11:00 a.m. – 12:00 p.m. Project Evaluation Subcommittee

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

State Highway Administration: Shoreline Erosion Control on **Kerrie Gallo**
Route 5 (St. Mary's County)

St. Mary's College: Cobb House Parking Lot **Ren Serey**

✓ **10:15 a.m. – 12:00 p.m. Program Implementation Subcommittee**

Members: *Blazer, Agbede, Bailey, Bramble, Dawson, Ennis, Evans, Gordy, Ladd, McKay, Mayer, Prager, Prettyman, Richards, Vitale*

Dorchester County: Growth Allocation Procedures and Program **Mary Owens**
Text Changes

Town of Greensboro: Buffer Exemption Area Additions **Roby Hurley**

Kent County: Program Text Changes **Lisa Hoerger**

Anne Arundel County: Mapping Mistake – Sorrell Property **Lisa Hoerger**

(Tentative) Town of Indian Head: River Watch Growth Allocation **Mary Owens**
(Charles County) **Ren Serey**

12:00 p.m. Lunch: Commission Meeting Room

Lunch Discussion: Habitat Protection Areas in the Critical Area Criteria –
A continuation of last month's discussion
(Project Subcommittee Meeting Room)

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

AGENDA

1:00 p.m. – 1:05 p.m.	Welcome and Remarks	Chairman Martin G. Madden
	Approval of Minutes for October 6, 2004	

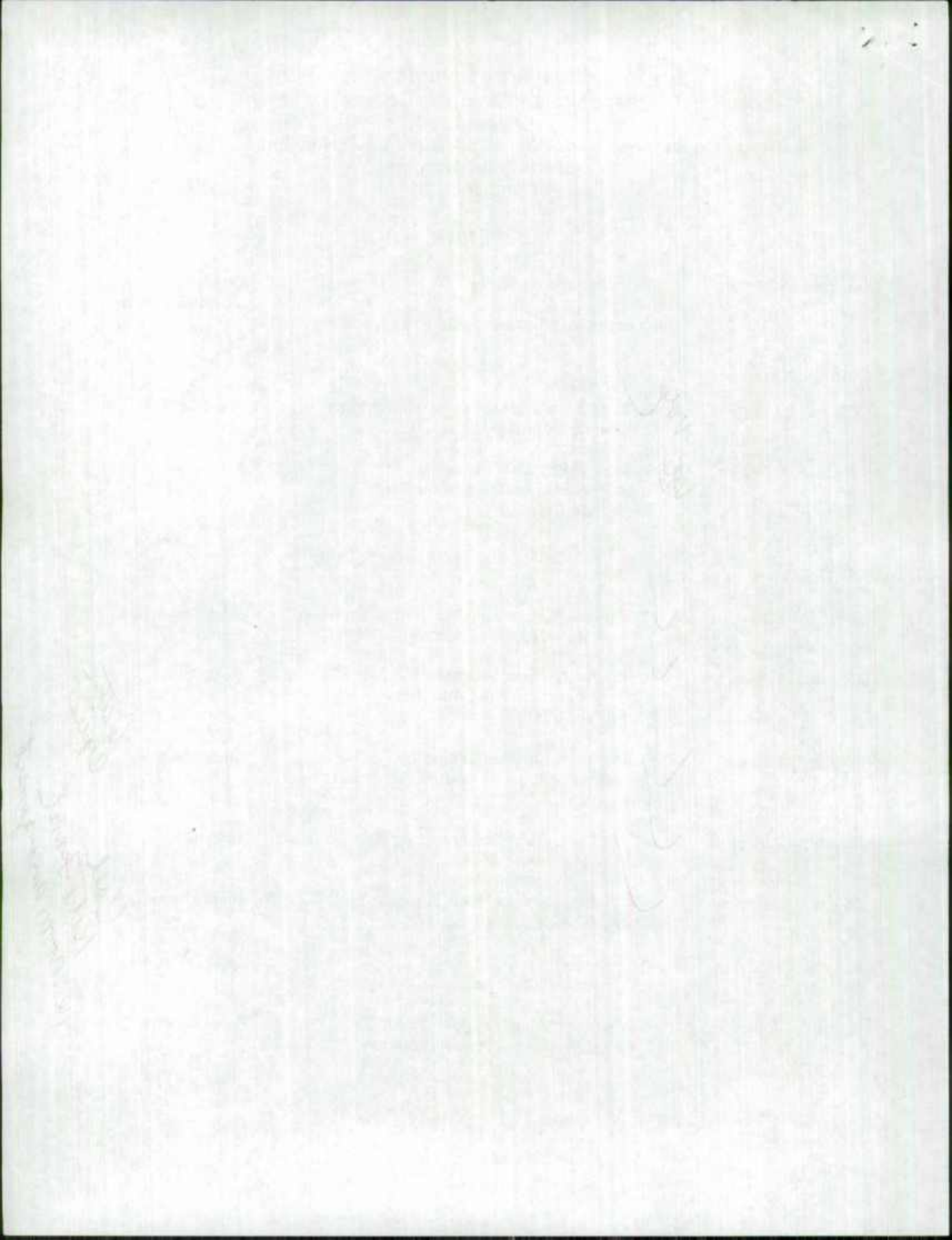
PROJECTS

1:05 p.m. – 1:15 p.m.	<i>Vote</i> St. Mary's College: Cobb House Parking Lot (St. Mary's County)	Mary Owens
1:15 p.m. – 1:20 p.m.	<i>Vote</i> State Highway Administration: Shoreline Erosion Control on Route 5 (St. Mary's County)	Kerrie Gallo

PROGRAMS

1:20 p.m. – 1:35 p.m.	<input checked="" type="checkbox"/> (Tentative) Refinement: Town of Indian Head River Watch Growth Allocation	Mary Owens Ren Serey
1:35 p.m. – 1:40 p.m.	<input checked="" type="checkbox"/> Refinement: Town of Greensboro Buffer Exemption Area Additions (Caroline County)	Roby Hurley
1:40 p.m. – 1:50 p.m.	<input checked="" type="checkbox"/> Refinement: Dorchester County Growth Allocation Procedures and Text Changes	Mary Owens
1:50 p.m. – 2:00 p.m.	<input checked="" type="checkbox"/> VOTE: Dorchester County: Longboat Growth Allocation	Mary Owens
2:00 p.m. – 2:10 p.m.	<input checked="" type="checkbox"/> VOTE: City of Cambridge: Annexation Changes to Critical Area Maps	Mary Owens
2:10 p.m. – 2:20 p.m.	Refinement: Kent County Program Text Changes	Lisa Hoerger
2:20 p.m. – 2:30 p.m.	Refinement: Anne Arundel County Mapping Mistake – Sorrell Property	Lisa Hoerger

*Call
Katie Jernel
re: room arrangement*



OLD BUSINESS

2:30 p.m. – 2:35 p.m.

Legal Update

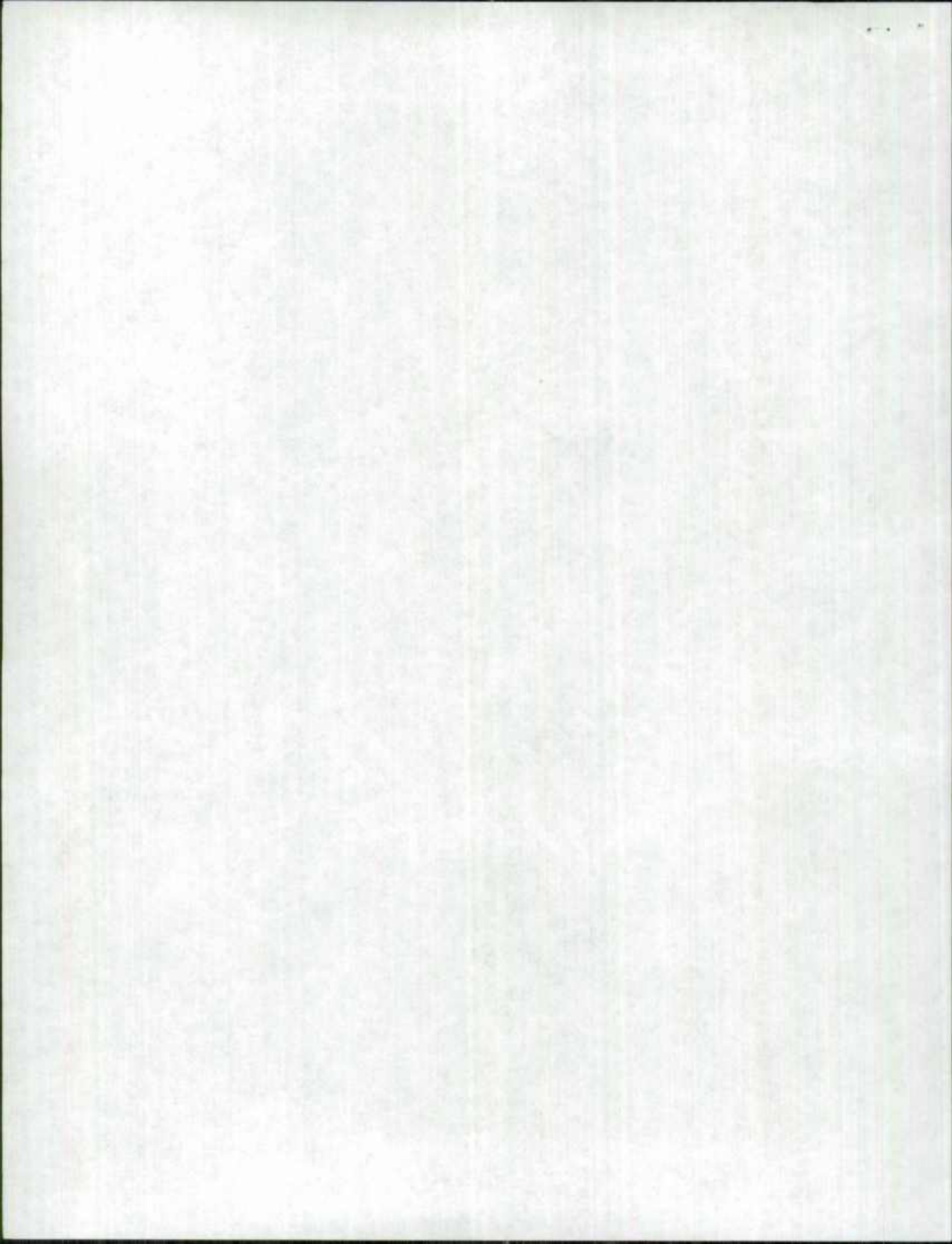
Marianne Mason

NEW BUSINESS

2:35 p.m. – 2:40 p.m.

Chairman
Martin G. Madden

Adjourn



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Correction
pg. 6

Critical Area Commission
For the Chesapeake and Atlantic Coastal Bays
People's Resource Center
100 Community Place
Crownsville, Maryland
October 6, 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:

Glenn L. Bramble, Dorchester County
David Blazer, Coastal Bays
Margo Bailey, Kent 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
S. Michael Mielke, Talbot Co.
Cathleen Vitale, Anne Arundel County
C. Edward Prager, Eastern Shore Member at Large
Edwin Richards, Caroline County
Douglas Wilson, Harford County
Frank Dawson, Maryland Department of Natural Resources
Rowland Agbede, Maryland Department of Agriculture
Gary Setzer, Maryland Department of the Environment
Jim McLean, Md. Depart of Business and Economic Development
Meg Andrews, Maryland Department of Transportation
Allison Ladd, Md. Dept. Housing and Community Development
Thomas McKay, St. Mary's County

NOT IN ATTENDANCE:

Gail Booker Jones, Prince George's County
James N. Mathias, Jr., Ocean City
Daniel Mayer, Charles County
Otis Rolley, Baltimore City
Howard K. Anderson
Stevie Prettyman, Wicomico County

Chairman Madden thanked the Commission staff for their good efforts for the recent workshop held at the Wye Research Institute and he said that the first lunch seminar held prior to the full Commission meeting was very successful with a lot of information shared. He thanked the Commission members who attended the Cambridge panel meeting.

Judith Evans moved to approve the Minutes of September 1, 2004 as written. The motion was seconded by Thomas McKay and unanimously carried.

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Prince George's County: Lisa Hoerger presented for VOTE a request for conditional approval by the Maryland National Capital Park and Planning Commission (MNCPPC) to construct a pedestrian trail that will connect the new Woodrow Wilson Bridge to the Prince George's shoreline via Rosalie Island. Portions of the trail will impact the 100-foot Buffer to tidal waters and tidal wetlands and will require a conditional approval. (A portion of this trail was approved by the Commission at its November 1, 2000 meeting.) The trail is part of the Potomac River Waterfront Community Park. Impervious surface is limited to 15% of the site as this is not an intensely developed area. Stormwater management and sediment and erosion control are being addressed. Ms. Hoerger summarized the characteristics of this project that qualify it for conditional approval. She said that the request is consistent with COMAR 27.02.06, the Commission's regulations for Conditional Approval of State Projects in the Critical Area. The Critical Area staff recommended conditional approval of the project with two conditions: 1) The project shall comply with all US Fish and Wildlife Service and DNR recommendations for protection of the bald eagle. 2) Any changes to either the Buffer Management Plan or the Stormwater and Sediment and Erosion Control Plans must be resubmitted to the Commission staff for review. Gary Setzer moved that the Commission conditionally approve the construction of the pedestrian trail connecting the new Woodrow Wilson Bridge to the Prince George's County shoreline via Rosalie Island in accordance with the staff report (attached to and made a part of these Minutes) including the following conditions: 1) The project shall comply with all recommendations of the U.S. Fish and Wildlife Service and the Department of Natural Resources to protect bald eagles; and 2) Any changes to either the Buffer Management Plan, the Stormwater Management Plan, or the Erosion and Sediment Control Plan must be resubmitted to the Commission staff for review. As required by Code of Maryland Regulations, this motion is based on the following factors:

1. The extent to which the project is in compliance with the requirements of the relevant chapters of this subtitle: Except for the proposed disturbance to the 100-foot Buffer, the project is otherwise in conformance with State criteria. Although impacts to the Buffer are necessary to accommodate a pathway that complies with the American with Disabilities Act and other environmental regulations, alternative locations were explored as well as alternative designs in an attempt to minimize impacts. In addition, since the site is not considered to be intensely developed, impervious surfaces must be limited 15%. The proposed project limits impervious surfaces to 9.9%.
2. The adequacy of any mitigation proposed to address the requirements of this subtitle that cannot be met by the project: All disturbances to the 100-foot Buffer will be minimized and the proposed plantings will result in improved habitat value and water quality leaving the site.
3. The extent to which the project, including any mitigation measures, provides substantial public benefits to the overall Critical Area Program: The project will provide substantial public benefits to the Critical Area Program by providing public access to the Potomac River, as well as creating wildlife habitat and improving water quality through reforestation of the 100-foot Buffer and interior portions of Rosalie Island. In addition, a component of the Buffer Management Plan will require the eradication of invasive species and restoration of the site with native species. The motion was seconded by Jim McLean and carried unanimously.

Prince George's County: Lisa Hoerger presented for VOTE the Approval of Conditions for Potomac River Waterfront Park at Rosalie Island. Ms. Hoerger said that the Commission granted

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conditional approval with conditions to the Maryland National Capital Park and Planning Commission (MNCPPC) at its meeting on November 1, 2000 to construct a pedestrian path on Rosalie Island and a deck structure over I-495. There were three conditions. Ms. Hoerger summarized two of the conditions and how they have been met by MNCPPC as stated in the staff report (attached to and made a part of these Minutes.) Ms. Hoerger told the Commission that the first condition, preparation of a Buffer Management Plan, is recommended for approval provided MNCPPC submits a Planting Agreement to Commission staff that includes the initial planting date. The standard two-year monitoring period was recommended. She said staff recommends approval of the second condition, the stormwater and sediment and erosion control plans, provided MNCPPC receives final approval from MDE and if the plans change, the MNCPPC must return to the Commission. **Gary Setzer moved to approve the Buffer Management Plan, the Stormwater Management Plan, and the Erosion and Sediment Control Plan in accordance with the staff report (attached to and made a part of these Minutes) and the following conditions: 1) Maryland National Capital Park and Planning Commission must submit a planting agreement to Commission staff that includes an initial planting date and a two-year monitoring requirement; and 2) The Stormwater Management Plan and the Erosion and Sediment Control Plan must receive final approval from the Maryland Department of the Environment. Maryland National Capital Park and Planning Commission must submit any changes to these plans to Commission staff for review and, if necessary, approval by the Commission. The motion was seconded by Judith Cox and unanimously carried.**

Cecil County: Julie LaBranche presented for **VOTE** the proposal by the Department of Natural Resources to construct a new miniature golf course at Elk Neck State Park. The new miniature golf course will be located on a grassed area next to the camp store. The existing miniature golf course will be removed and the area will be planted in grass. No trees will be removed and there will be no impacts to any habitat Protection Areas as a result of this project. The project is consistent with COMAR, State Agency Actions Resulting in Development on State-Owned Lands. **Gary Setzer moved to approve the construction of a Miniature Golf Course at the Elk Neck State Park in accordance with the Staff Report (attached to and made a part of these Minutes). The motion was seconded by Dr. Chambers and unanimously carried.**

Baltimore County: Kerrie Gallo presented for **VOTE** the proposal by Baltimore County to construct a hangar building for shelter and security at the leased area at Glenn L. Martin State Airport where the County maintains and parks its police department helicopters. This is considered an intensely developed area in the Critical Area of Martin Lagoon off Dark Head Creek but not within the 100-foot Buffer. The 10% pollutant reduction is required for this project and will be accomplished by an underground sand filter facility and dry swale. There are no steep slopes, hydric soils, wetlands, rare, threatened or endangered species. A landscaping plan has been submitted which includes native loblolly pine trees as canopy cover and multiple understory and shrub plantings, all native to Maryland. As a component of the required mitigation, these plans have received approvals from the Baltimore County Department of Environmental Protection and Resource Management and the Maryland Aviation Administration. MDE has issued approvals for sediment and stormwater. **Gary Setzer moved to approve the construction of a hangar for Baltimore County Police Helicopters, as well as access lanes, ramps and parking at Glenn L. Martin State Airport in accordance with the staff report (attached to and made a part of these Minutes). The motion was seconded by Cathleen Vitale and unanimously carried.**

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Prince George's County: Lisa Hoerger presented for VOTE the request by the Department of Natural Resources (DNR) for approval of a Buffer Exemption Area (BEA) along the shoreline of the Ft. Washington Marina. The National Park Service owns the land, but leases the site to DNR and DNR subleases the site to a management company. The marina was first developed in the 1950s. The Commission approved the redevelopment of this marina site in 1987 and attached a memorandum to a letter sent to DNR outlining 22 items for consideration by DNR, which included mapping the site as a BEA. The mapping of a BEA requires that the pattern of existing development prevents the Buffer from fulfilling the functions set forth in the Critical Area Criteria. The required justification was provided by DNR stating that the amount of impervious surface and development activities established in the Buffer over 50 years ago compromise the abilities of the Buffer area. Approximately 85-90% of the site is developed and the parking areas are regularly used. The entire 1,300-foot marina waterfront and two-fifths of the Marina site is within the Buffer and the balance is within the Critical Area. There are some strips and blocks of grass on site, but not at the waterfront, which is bulkheaded and trimmed with a boardwalk along its edge. **Gary Setzer moved to approve the Buffer Exemption Area along the shoreline of the Ft. Washington Marina in accordance with the Staff Report (attached to and made a part of these Minutes.)** The motion was seconded by Frank Dawson and unanimously carried.

Prince George's County: Lisa Hoerger presented for VOTE the proposal by DNR to locate four new outbuildings and an addition to an existing restaurant building at the Ft. Washington Marina on Piscataway Creek. First developed as a marina in the 1950s, the site is approximately eight acres and considered an area of intense development. Ms. Hoerger described the outbuildings and said that none of the structures are within the 100-foot Buffer. No other Habitat Protection Areas will be impacted and no clearing will be required. All four structures will be sited on existing impervious areas. The addition to the existing restaurant building will be in the 100-foot Buffer, but will be no further waterward than the existing building. Since this site was approved today by the Commission as a BEA, Ms. Hoerger said that this development activity would meet the Commission's Policy on Buffer Exemption Areas with the appropriate mitigation. There are two components of BEA mitigation: first, the applicant is required to establish a 25-foot bufferyard; and second, the applicant is required to plant two times the area of new impervious surface. As this marina is an area of intense development, the applicant must meet the 10% pollutant reduction requirement and is proposing to treat the removal requirement with a bioretention area. **Gary Setzer moved to approve the construction of four new outbuildings and an addition to the existing marina services building at the Fort Washington Marina in accordance with the staff report and the following conditions: 1) The Planting Agreement, including a Buffer Management Plan associated with the restaurant addition, be completed and returned to Commission staff within 30 days of this approval; 2) Proposed best management practices for the required phosphorus removal associated with the four buildings and the restaurant addition and their locations are finalized within 30 days of this approval; 3) any change in location of proposed structures shall be resubmitted to Commission staff for review and, if necessary, approval by the Commission; and 4) Any required permits from the Maryland Department of the Environment for stormwater or erosion and sediment control, or a letter of exemption if permits are not required, should be received by the Department of Natural Resources prior to initiating construction at the site.** The motion was seconded by Jim McLean and unanimously carried.

✓ **Baltimore County:** Ren Serey presented for VOTE the conditional approval request by the Department of Natural Resources for the expansion of an existing rubble landfill (Days Cove) at

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Gunpowder Falls State Park. Conditional approval is being sought for this project as an alternative because new landfills or expansion of existing landfills are prohibited in the Critical Area unless the proposal meets certain standards, as this one does not. This landfill is an ongoing use and the Critical Area portion of the site will be closed and restored to park use. Commission Counsel, Marianne Mason, told the Commission that the portion of the site in the Critical Area was already disturbed prior to the enactment of the Critical Area law. She said that the lease between Days Cove Rubble Landfill, Inc. and the State states that there can be no action on the land. She therefore had to work with Days Cove and DNR on the lease so that the project could be considered under a conditional approval standard for development activities consisting of grading and other land disturbances. The Company wants to expand the landfill and link two existing sections with a recently purchased area in between on land outside the Critical Area. The development activities proposed for the Critical Area involve grading and forming an earth berm to contain the rubble fill. Even though no new rubble material will be placed in the Critical Area, all associated work on the facility and all accessory structures or uses are considered part of the solid waste under the facility's permit from the Department of the Environment. Mr. Serey summarized the requisite characteristics that qualify this proposal for conditional approval. This proposal is recommended for approval based on the following condition: The planting plan for restoration of the site shall be submitted to the Critical Area Commission staff for approval. Gary Setzer moved that the Commission conditionally approve the expansion of the existing rubble landfill at Gunpowder Falls State Park in accordance with the staff report, including the condition that the planting plan for restoration of the site shall be submitted to the Critical Area Commission staff for approval. As required by Code of Maryland Regulations, this motion is based on the following factors:

1. The extent to which the project is in compliance with the requirements of the relevant chapters of this subtitle: Days Cove is an approved rubble landfill in operation for over 17 years. The landfill is part of the reclamation of a former sludge storage site. A portion of the original reclamation landfill was located in the Critical Area prior to the Critical Area law. Although the primary expansion will be on land outside the Critical Area, development activities, including construction of an earthen berm to contain the rubble fill and grading of approximately two acres of stockpiled soil, are necessary within the Critical Area. These activities are part of the Maryland Department of the Environment permit to operate the landfill. Prior to the lateral expansion of the landfill, the Critical Area boundary will be carefully demarcated to insure that no rubble is deposited within the Critical Area, where only clean fill will be used. The landfill liner separating rubble from clean fill will be outside of the Critical Area. All subterranean drainage from within the landfill will be directed away from the Critical Area and long-term monitoring will insure that no drainage from the landfill enters the Critical Area. In addition, the landfill expansion will occur in previously disturbed areas, without any impacts to existing woodland.
2. The adequacy of any mitigation proposed to address the requirements of this subtitle that cannot be met by the project: The privately owned Bynum property, a 12-acre in-holding within Gunpowder Falls State Park, has been acquired by Days Cove and gifted to the State. Upon closure of the rubble landfill, the 34-acre site will be restored and incorporated into the Park. Approximately 2 acres of the property are located in the Critical Area.
3. The extent to which the project, including any mitigation measures, provides substantial public benefits to the overall Critical Area Program: The entire area of the rubble landfill will be fully stabilized and restored with native vegetation. Current plans by the Department of Natural Resources call for the development of a system of nature trails to be used for educational and recreational purposes throughout the landfill area. Completion of the trail

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system, now developed only on the original cell, will be possible when the lateral expansion is closed. This will increase the educational value of the Smuck Environmental Center located adjacent to the expansion site. X *Correction in NW min*

Baltimore City: Dawnn McCleary presented for VOTE the Maisel Street Mitigation Project under the Critical Area Institutional Management Plan which was approved by the Commission in May 2004. This is the second project to seek off-site mitigation under the Plan. This project is another proposal by the Maryland Port Administration to address the Port's inability to treat phosphorus on site due to the heavily developed nature of most Port properties. The Port currently owes 3.24 pounds of phosphorus based on past projects. This plan proposes to treat 3.13 pounds. The site is designated both RCA and IDA. It was a residential site prior to being purchased by the City after Hurricanes Agnes and David demolished everything except the roads. The area has been reforested by the community and it will not be disturbed by the removal of the impervious surfaces. The MPA also will backfill the area and seed it with grasses and wildflowers. Gary Setzer moved to approve the construction of the Maisel Street Mitigation Site in accordance with the staff report (attached to and made a part of these Minutes) and the Institutional Management Plan adopted by the Commission on May 5, 2004. The motion was seconded by Cathleen Vitale and unanimously carried.

Town of Chestertown: Mary Owens presented for Concurrence with the Chairman's determination of Refinement, a change to the Critical Area Ordinance in Chestertown regarding the existing Modified Buffer Area Provisions for all three Critical Area designations to establish appropriate setbacks; clarify and improve mitigation standards; and address commercial and multi-family residential development projects. When the Town adopted this section of its ordinance, all of the Modified Buffer Areas were fully developed. The Town realized that its Modified Buffer Area provisions needed to be updated when, during this past year, an undeveloped parcel, mapped as a Modified Buffer Area prior to annexation, was annexed into the Town. The proposed language of Ordinance No. 7-2004 was approved by the Mayor and Council and adopted by the Town on June 7, 2004 and is generally consistent with the Commission's Buffer Exemption Area policies. As a condition of approval, the Commission staff recommends changing a typographical error in the definitions section of the ordinance (page seven) concerning the width of a "bufferyard." The Town indicated in its submission that the definition for bufferyard should state, "...at least 25 feet wide." The Commission supported the Chairman's determination that this change be approved as a Refinement with the above condition.

Town of Ocean City: LeeAnne Chandler presented for Concurrence with the Chairman's determination of Refinement, several proposed text amendments to incorporate the 2004 Legislation as well as new Fee-in-Lieu provisions for afforestation. In regard to the 2004 legislation, she said that the new variance language has been incorporated verbatim as well as the language increasing fines to \$10,000 for Critical Area violations. The Town is proposing to provide further clarification of the 15% afforestation requirement and also to allow a fee-in-lieu option for afforestation in two downtown zoning districts. The changes are meant to clarify the planting requirements and resolve differences in interpretation. Fees-in-lieu of afforestation will be permitted in the Boardwalk district and the downtown mixed-use district, where intense redevelopment is being encouraged and zero lot line setbacks limit afforestation opportunities. The fee-in-lieu of planting is established at a minimum of \$2.40 per square foot. The Commission supported the Chairman's determination of Refinement.

OLD BUSINESS

The Chairman once again thanked the entire Commission staff for putting together the workshop at the Wye Research Center. He said that he thought it was extremely well run, timely, covered a lot of territory in six hours and was well presented. He said that letters of thanks have gone out to all who presented from other agencies, U.S.Fish and Wildlife Service, Chesapeake Bay Program, and Shore Erosion Control at DNR.

The Chairman queried the Commission on their thoughts on having out-of-town meetings. They were generally in agreement that it would be a good idea. They asked about tours of the Port Administration or projects approved at sites a couple of years ago, such as the Hyatt, for holding a meeting. The Chairman asked that they contact either him or Ren with any ideas or requests they may have.

NEW BUSINESS

The Chairman asked Commission Member Meg Andrews to talk about an upcoming boat tour of the Port of Baltimore. She said that the tour was originally planned for the project subcommittee members but other members have expressed interest. The dates now being considered are October 25th or October 28th. The tour would last for approximately one-half day and there would be room for about 20 people onboard. She asked that the members get back with Dawnn McCleary with their interest. Seagirt Marine Terminal, along with a land tour of the Dundalk Marine Terminal, are being considered.

Legal Update:

Commission Counsel Marianne Mason gave a legal update to the Commission. She said that in the Lewis case in Wicomico County, the County asked for more time to get the transcripts on the case which is on remand from the Court of Appeals. Normally the administrative agency has 60 days to file.

Talbot County: Ms. Mason said that she is currently trying to put together a massive collection of documents for discovery in response to a request filed by Talbot County. The documents include all the comments that were received on Bill #933, as well as all the legal memoranda that the attorneys have filed, etc. The Court has not ruled yet on the Commission's Motion to Dismiss.

Town of St. Michaels: Ms. Mason reported that St. Michaels has filed a motion to intervene in the Talbot County case on behalf of the Commission. They are making an argument that the Commission cannot make for them, which is that the County unfairly tried to take back their growth allocation.

Town of St. Michaels, Miles Point: Ms. Mason stated that this case is moving along faster than the Talbot County case. She went to a scheduling conference with the Court and set up a briefing for the Commission's legal argument on summary judgement, a factual legal dispute without testimony. It will be heard at the end of January.

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The Chairman announced that the next meeting will follow election day and the subcommittees may be scheduled a little later than usual.

There being no further business the meeting adjourned at 2:55 p.m.

Minutes submitted by: Peggy Campbell, Commission Coordinator

Critical Area Commission

STAFF REPORT

November 3, 2004

APPLICANT: St. Mary's College

PROPOSAL: Cobb House Parking Lot

JURISDICTION: St. Mary's County

COMMISSION ACTION: Vote

STAFF RECOMMENDATION: Approval with condition

STAFF: Mary Owens

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

DISCUSSION:

St. Mary's College is requesting approval of a project involving the construction of a small parking lot, which will provide parking for 18 cars for the staff located at the Cobb House. The Cobb House provides office space for the College's personnel department and for 11 faculty members. The parking area is needed because future projects on campus will isolate the Cobb House from other parking areas currently being used by the staff.

The parking lot is located in an open field area that is entirely within the Critical Area. There are no impacts to existing forest, developed woodlands or Habitat Protection Areas.

The campus is largely developed and is considered an area of intense development. There are no impervious surface limits; however, compliance with the 10% Rule for pollutant removal is required. The project involves the use of Gravelpave, a system of pervious pavers with a gravel substrate that is capable of storing stormwater runoff and allowing gradual infiltration into the soil. Commission staff had previously reviewed the manufacturer's information for this material and determined that, for purposes of calculating phosphorus loads, the pavers would be considered 65% impervious. Because the parking lots is relatively small and the use of the Gravelpave system will allow some infiltration of stormwater, it is proposed that in lieu of providing a small and potentially inefficient structural Best Management Practice, the College will provide 1,700 square feet of tree and shrub plantings on the site around the parking lot.

St. Mary's College staff has consulted with the Maryland Department of the Environment (MDE), and MDE has indicated that they do not require stormwater treatment practices for parking lots constructed using the Gravelpave system.

During the recent review of the Telecommunications Ductbank Project, the Commission requested a summary of the status of mitigation plantings at the College. The following table provides that information:

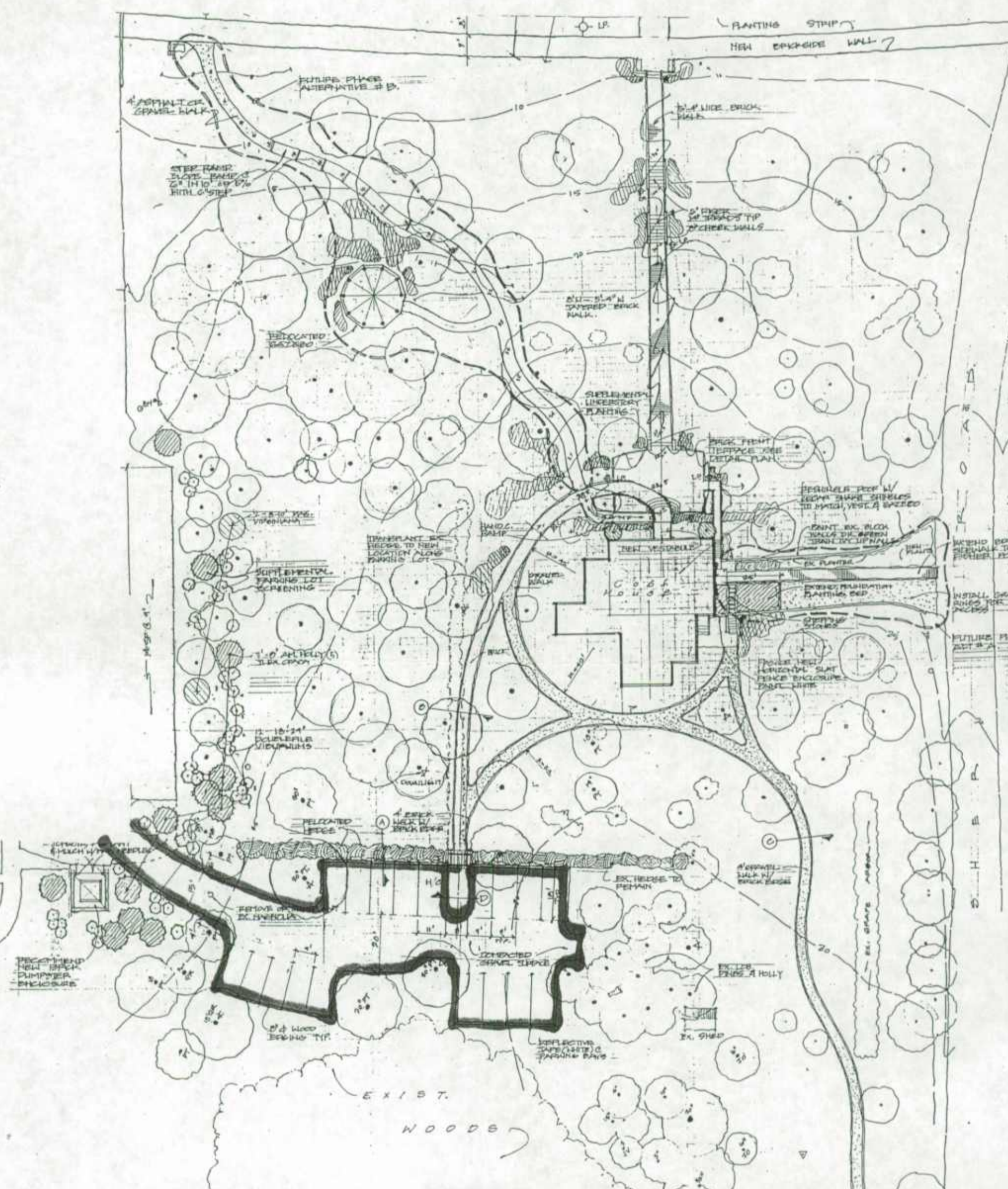
Project	Planting Required	Planting Provided
Somerset Hall Expansion and Renovation	40,511 SF	19,015 SF
New Student Residence	47,480 SF	10,550 SF
New Entrance Road – Fisher Road Relocated	14,562 SF	35,787 SF
Student Services Building Parking Lot	31,559 SF	11,600 SF
TOTAL	134,112 SF	76,952

At this time, St. Mary’s College needs to provide 57,160 SF or 1.312 acres of additional planting. At this time, College staff is proposing to allow an open field area located across Mattapan Road from the Guam Parking Lot to naturally regenerate. This area is not within the Critical Area, but is adjacent to an existing forested area. Commission staff will be reviewing this proposal with College staff in the next few weeks

STAFF RECOMMENDATION:

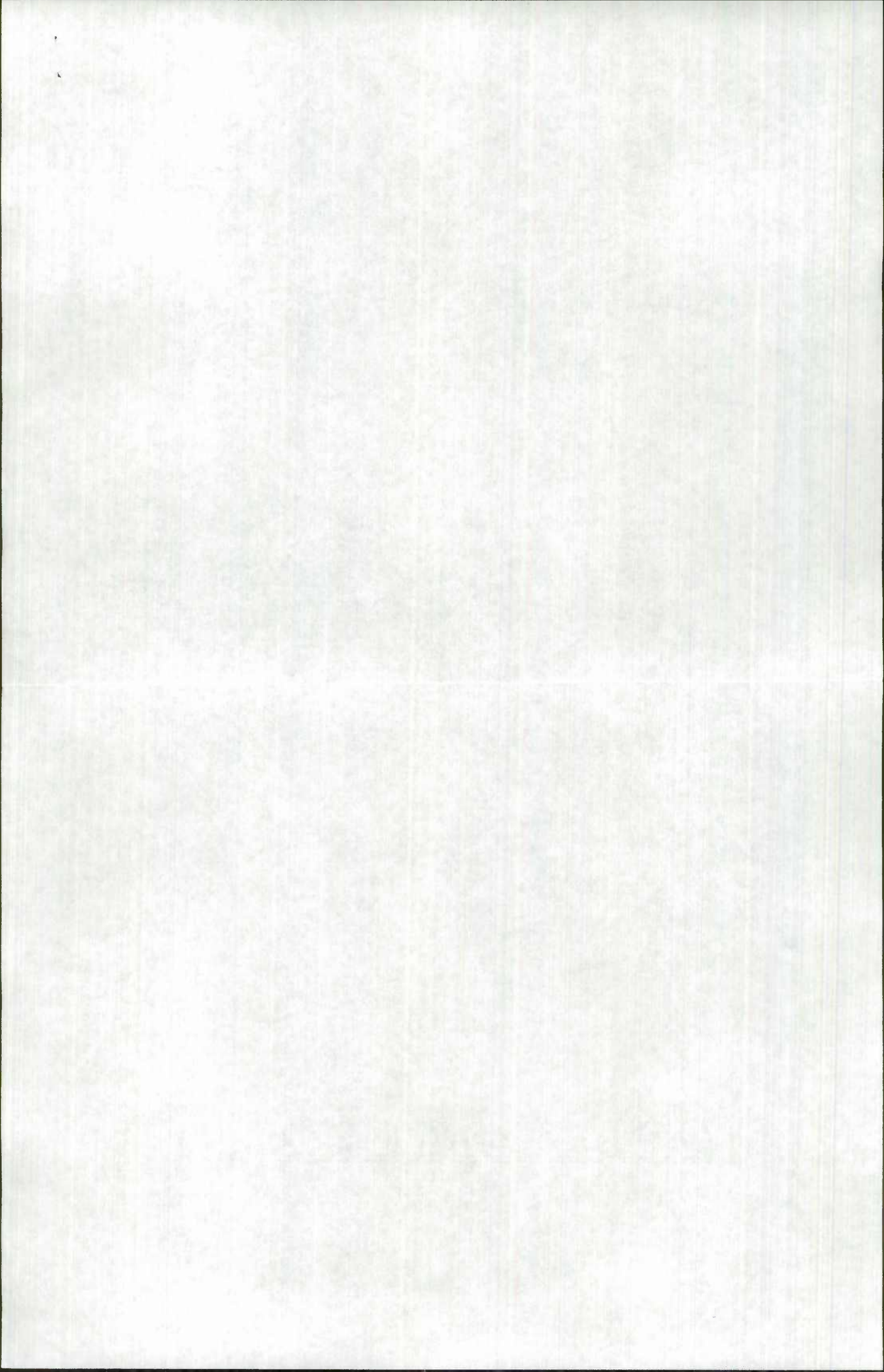
Commission staff recommends that the Cobb Street Parking Lot project be approved with the following condition:

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



COBB HOUSE PARKING LOT

SCHEMATIC SITE PLAN
 1"=20'-0" T-15-70 MVLA



Critical Area Commission

STAFF REPORT
November 3, 2004

APPLICANT: State Highway Administration

PROPOSAL: Shore Erosion Repairs to MD 5

JURISDICTION: St. Mary's County

COMMISSION ACTION: Vote

STAFF RECOMMENDATION: Approval with conditions

STAFF: Kerrie Gallo

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

DISCUSSION:

Erosion along the shoreline of St. Mary's River in St. Mary's County threatens to undercut the MD 5 roadway in the vicinity of the St. Mary's College campus. SHA is proposing to repair the erosion by constructing short sections of riprap revetments in two areas. Site 1 is a 171 linear foot extension of an existing revetment, and Site 2 is a 56 linear foot extension of an existing revetment which flanks the outlet end of a culvert. The tops of the revetment sections will be no more than two feet wide, and the revetments are proposed to extend no further than 4-5 feet from the toe of the bank.

While this project will cause new disturbances in the 100-foot Critical Area Buffer, a Conditional Approval is not required as the Commission's regulations for development by state agencies permits and encourages using structural measures where necessary to control shoreline erosion. No clearing of woody vegetation is required, and there will be no impacts to Habitat Protection Areas (HPAs) other than the Buffer. Mitigation is required at a 1:1 ratio for all Buffer disturbance. Staff have requested that a planting agreement for Buffer mitigation be submitted by SHA and approved by staff within the next 60 days. Staff recommends that submittal of the planting agreement is included as a condition of Commission approval for the project.

MD-5 Shore Erosion Control



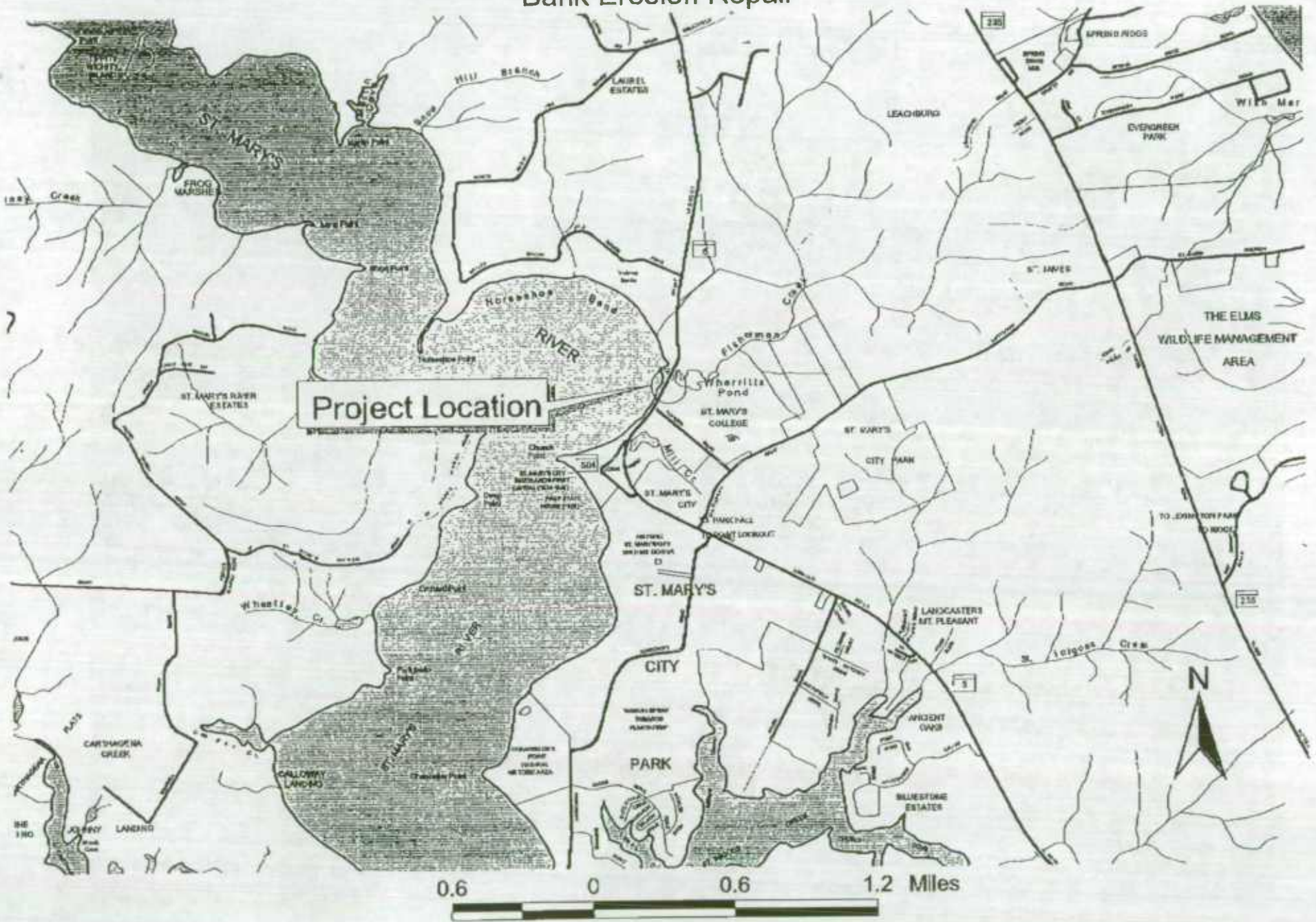


MD 5 and St. Mary's River
Approximately 0.3 Mile North of MD 584
Bank Erosion Repair

P.003

410 209 5004

MAR-30-2004(TUE) 11:19 SHA PPD



Critical Area Commission

STAFF REPORT November 3, 2004

APPLICANT: Town of Indian Head

PROPOSAL: River Watch at Indian Head Growth Allocation

JURISDICTION: Town of Indian Head

COMMISSION ACTION: Concurrence with Chairman's Determination

STAFF RECOMMENDATION: Approval with Conditions

STAFF: Mary Owens

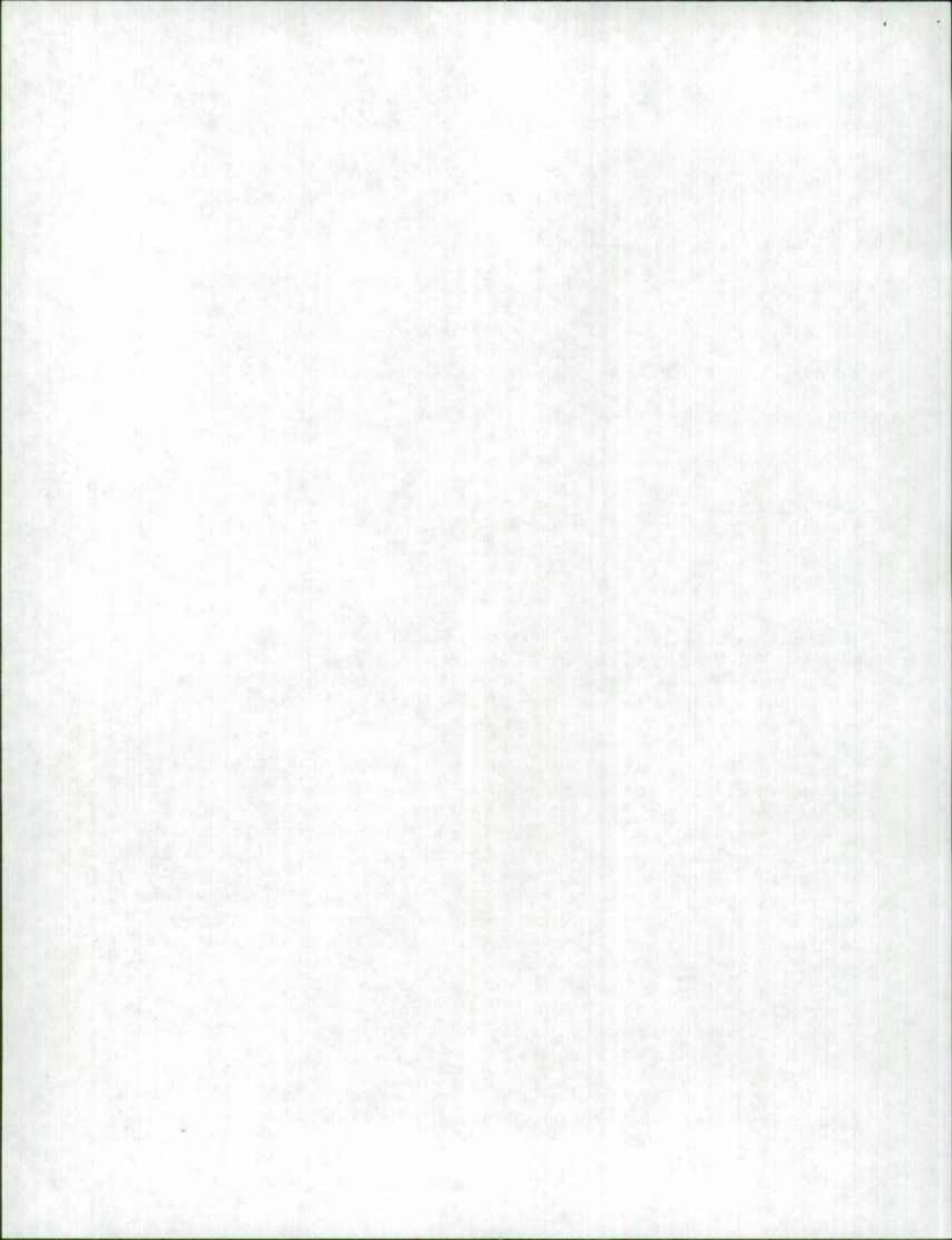
**APPLICABLE LAW/
REGULATIONS:** COMAR 27.01.02.06 Location and Extent of Future Intensely Developed and Limited Development Areas

DISCUSSION:

The Town of Indian Head has approved the use of 13.00 acres of growth allocation and passed Resolution 09-01-04 on September 7, 2004. This use of growth allocation will change the Critical Area designation of Parcel 136 on Tax Map 11, Grid 15, from a Limited Development Area to an Intensely Developed Area. The entire site consists of 30.73 acres, and is proposed for development as a residential subdivision called River Watch at Indian Head.

Earlier this summer, it was brought to the Commission's attention, that the Town permitted construction of a subdivision requiring the use of growth allocation, without the required local and State approvals. The Commission notified the Town in a letter dated June 17, 2004 that the on-going development activity on the site was in violation of several provisions of state law and the Town's zoning ordinance. In August 2004, the Commission was briefed on the issue, and Chairman Madden notified the Town by letter that it was currently in violation of the Town's Critical Area Program. The letter stated that the Town had 30 days to notify the Commission of actions taken to remedy the violations on the site and bring the project into compliance with the Town's Critical Area Program through the use of growth allocation. These letters and other correspondence and meetings with the Town also identified several other issues that needed to be resolved in order for the Commission to review and approve the growth allocation request. Mayor Edward Rice responded to the Commission's letter and expressed his intention to resolve the outstanding issues, obtain all outstanding local approvals, and request Commission approval of the growth allocation as soon as all of these actions could be accomplished.

One of the issues involved an outstanding Buffer clearing and disturbance violation on the site that pre-dated the ownership and development of the property by the current applicant. In 2001, the



Town had requested the Commission's assistance in pursuing a violation of the Town's Critical Area ordinance by the former owner of the site, Mr. Ken Ammar. This violation involved the clearing of 7,000 square feet of stream Buffer for which the Town assessed a 3:1 mitigation requirement of 21,000 square feet. In addition to the Town, both the Maryland Department of the Environment and the U. S. Army Corps of Engineers documented this violation. MDE is not requiring further restoration of the site; however, the U.S. Army Corps of Engineers has an outstanding restoration activity notice dated November 7, 2001.

On August 31, 2004, the Town notified the Commission of their intent to use growth allocation obtained from the County to bring the project into compliance with the Town's Critical Area Program. The Town had requested, and was granted, an additional 22.6 acres of growth allocation by the Charles County Commissioners on July 20, 2004. Following that action by the County, the Town Council held a public hearing on September 7, 2004 and approved the growth allocation award to the River Watch Project. On September 17, 2004, Commission staff and the Chairman met with the Mayor of Indian Head and Town staff and consultants to discuss the resolution of all outstanding issues. At this time, it appears that the Town and the developer have addressed the issues and concerns raised over the last several months, and there is sufficient information for the Commission to review the Town's request for growth allocation.

Project Description

The River Watch at Indian Head Project involves the development of 26 townhouses and 52 single-family detached dwellings on a 30.73-acre parcel, with 58 units located completely or partially within the Critical Area. Prior to the initiation of unauthorized development activity on the site, it was forested with medium-aged to mature hardwoods and was characterized by steeply rolling topography with especially steep topography along a wetland and braided stream system running west to east across the property. The Potomac River frontage is also very steep with eroding cliffs ranging from 3 - 20 feet high. The project involves approximately 11.7 acres of forest clearing.

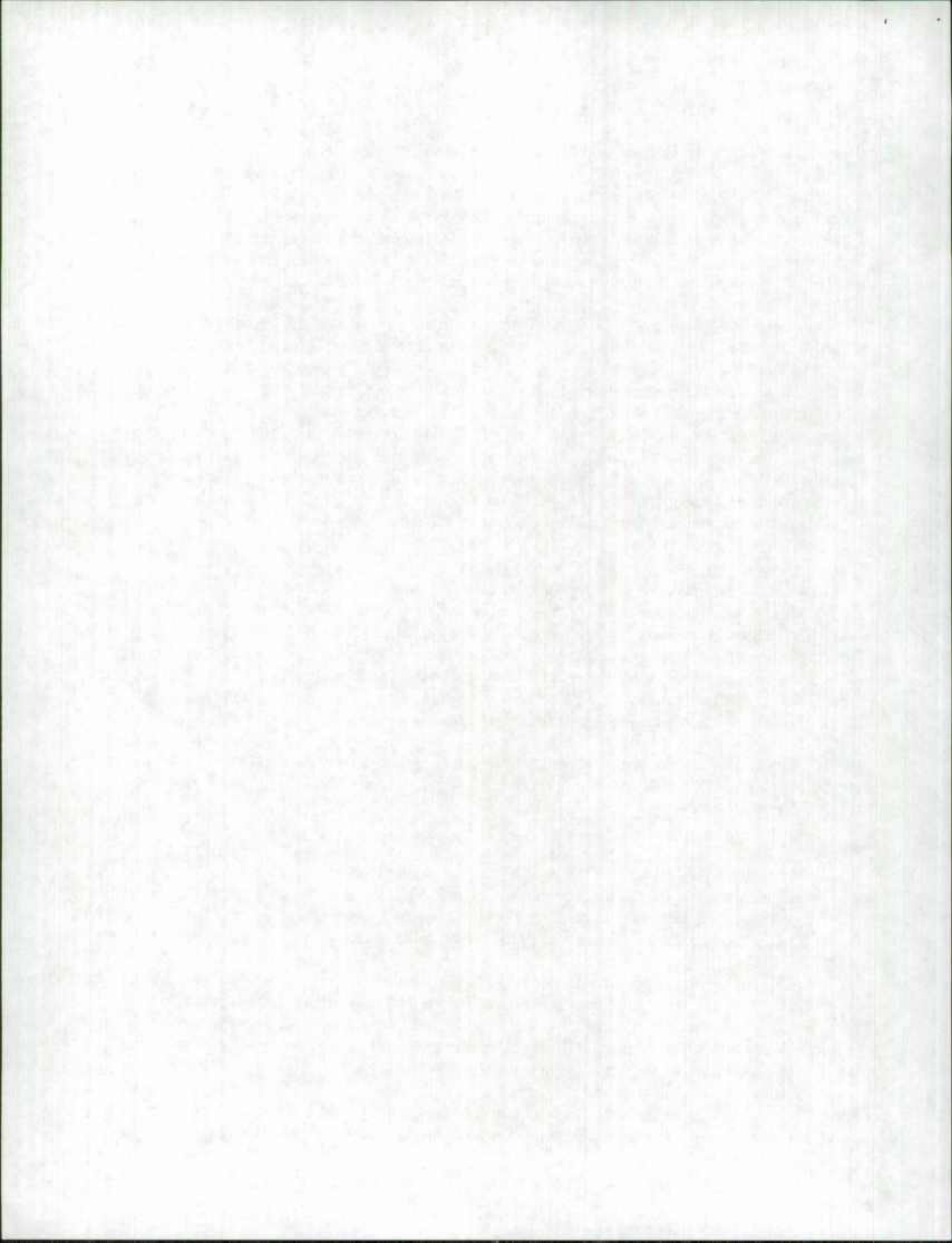
Growth allocation is necessary for this project because the proposed development impacts slopes greater than 15%, will exceed the limitations of 15% impervious surface 30% forest clearing for Limited Development Areas.

100-foot Buffer

The 100-foot Buffer adjacent to the Potomac River is generally forested, except for portions of the cliff face that have eroded and a roadbed that was cleared by the former owner. The roadbed area is naturally regenerating with shrubs and saplings. At this time, supplemental planting of the 100-foot Buffer on the Potomac River is not necessary to "establish the Buffer."

The tributary stream on the property and its 100-foot Buffer were partially disturbed by the previous owner's 2001 Critical Area violation and the stream was not properly delineated when the Town approved the current construction activity. Recently the delineation has been amended, and the developer's consultant has prepared a Buffer Management Plan indicating that the 100-foot stream Buffer will be re-established in natural forest vegetation.

The Buffer adjacent to the Potomac River and most of the tributary stream Buffer are proposed to be maintained as either Town-owned or community open space; however, portions of Lots 1



through 14 on Rivers Edge Terrace include portions of the Buffer within the lot boundaries. The developer has prepared a conceptual Buffer Management Plan for these areas and detailed, customized plans for each lot will be implemented prior to the sale and subsequent issuance of an occupancy permit for the subject properties.

Several lots are significantly affected by the delineation of the Buffer, and it has been discussed that the site plans and/or the dwellings on these lots may need to be modified, so that the dwellings and decks can be constructed without impacts to the 100-foot Buffer. The limit of disturbance adjacent to River Watch Drive and located behind Lots 1 through 14 will also need to be amended, so that it is located outside the 100-foot Buffer. The Subcommittee will discuss these issues in more detail on Wednesday.

It is necessary to ensure that the 100-foot stream Buffer will be protected from disturbance pursuant to the field delineation and the preparation and implementation of Buffer Management Plans for the individual lots and for the Town-owned or community-owned open space. Revised plans showing the Buffer and including appropriate protective notes will be recorded to replace those currently recorded.

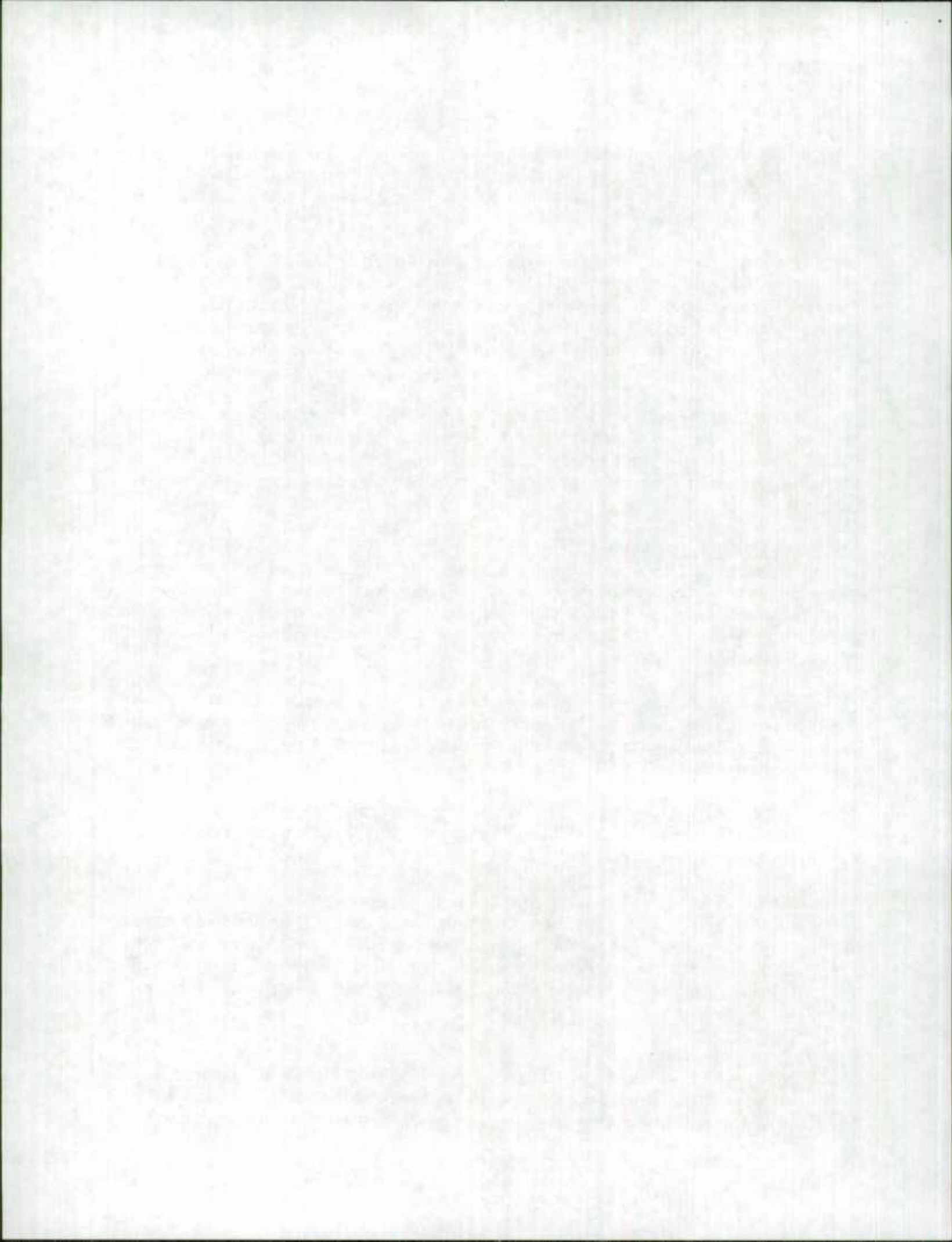
Mitigation for Prior Violation

In order to address the prior Buffer clearing and disturbance violation on the site that pre-dated the ownership and development of the property by the current applicant, the Town, which now owns the portion of the property where the violation occurred, proposes to provide appropriate mitigation. The Town proposes to meet the 21,000 square feet (0.48 acres) of mitigation previously assessed through the following efforts:

- The U.S. Army Corps of Engineers' restoration activity notice dated November 7, 2001 will be accepted and implemented. Correction measures will be conducted prior to establishment of the Buffer in order to minimize impacts associated with access. If necessary, vegetation removed will be replaced.
- The areas cleared will be allowed to naturally regenerate, including the area of the existing roadbed. If necessary, all or portions of the roadbed and related appurtenances will be removed to facilitate natural regeneration.
- The Town will convert the existing nontidal wetland system to its former inter-tidal condition by restoring 0.5 acres of wetland located at the mouth of the tributary stream. The restoration will consist of planting appropriate native species, removal of trash and debris, and re-establishment and stabilization of a tidal connection to the Potomac River. A detailed restoration plan will be submitted to the Commission for review and comment within one year.

Habitat Protection Areas

In addition to the 100-foot Buffer, the Heritage Division provided comments on the project in a letter dated September 20, 2004. The letter stated that there were no records for Federal or State rare, threatened, or endangered plants or animals within the project site. The open water areas



adjacent to the site are identified as an historic waterfowl staging and concentration area. The applicant is advised that no construction of water-dependent facilities should occur between November 15 and April 30 of any given year, and that further assistance can be obtained by contacting Mr. Larry Hindman, Waterfowl Project Manager for the Department of Natural Resources.

Reforestation

The award of growth allocation will change the Critical Area designation of the property to IDA, and this classification does not include specific afforestation or reforestation standards. However, the project does include street tree plantings along the roadways. The landscape plan specifies the planting of 46 Red maples, 27 Sugar maples, and 17 Pin oaks.

Town Open Space and Shoreline Access

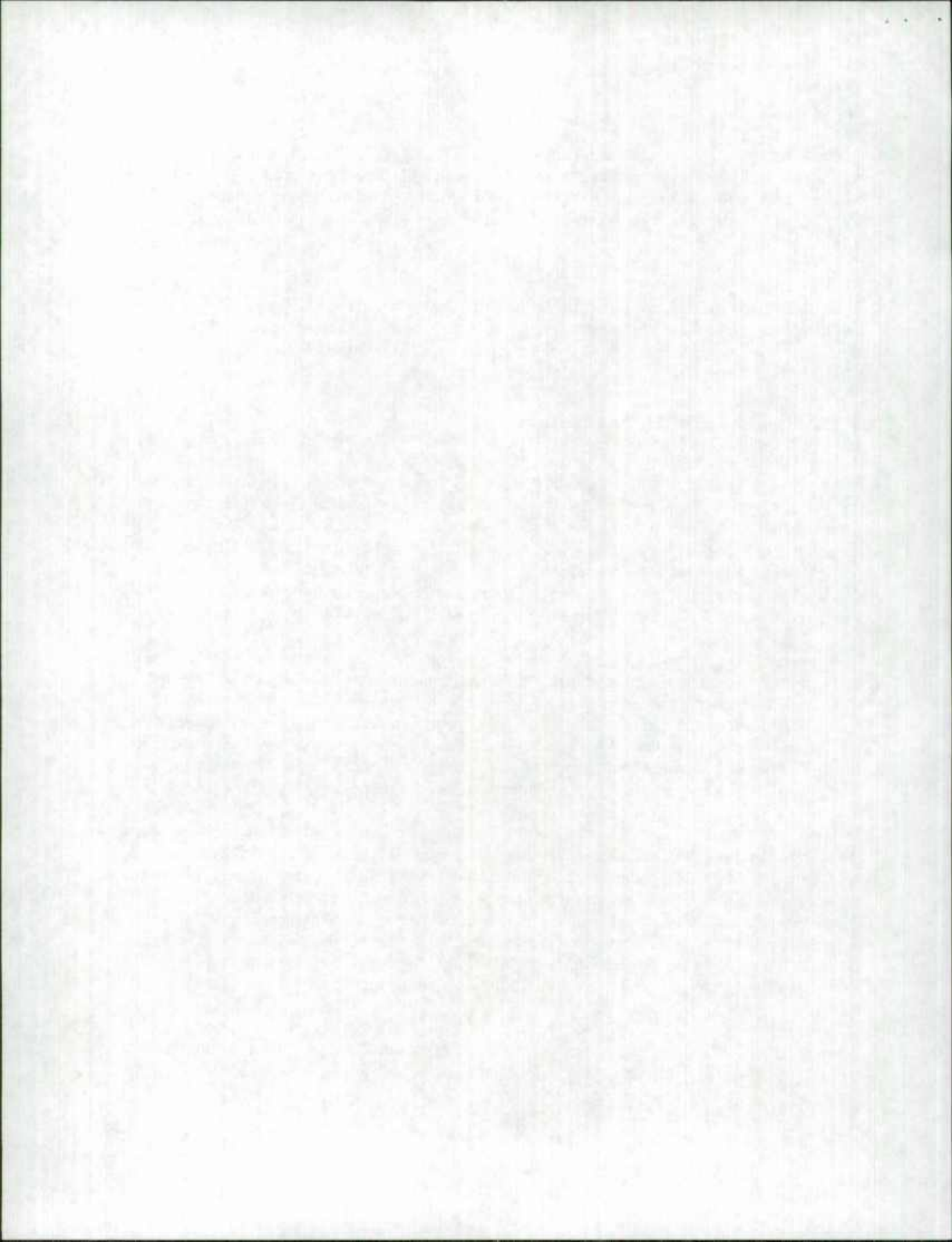
The project includes approximately 12 acres of land, outside of the area proposed for designation as IDA, which has been dedicated to the Town. This area will be used for wetland creation and enhancement necessary to mitigate for the previous Buffer clearing violation, for public access to the Potomac, and for creation of a future boardwalk. The project includes a walking path from the main entrance road, River Watch Drive, to the Potomac River. The path will be six-feet wide and constructed of pervious materials. It will be designed to minimize disturbance to the 100-foot Buffer of the Potomac River, but may meander slightly to accommodate the steep topography along the shoreline. A 10-car parking area will also be provided at the beginning of the path to provide access to the Town-owned open space. The parking area is included in the IDA development envelope.

Stormwater Management

The applicant has prepared and submitted a stormwater management report, which includes the worksheets for reducing pollutants in stormwater runoff by 10%. Based on the worksheets, the pollutant removal requirement for the project is 5.45 pounds of phosphorus. The design includes two best management practices (BMPs), a multiple pond system serving roughly 75 percent of the site and a dry swale serving about 7 percent of the site. The pollutants removed by these BMPs total 5.50 pounds, which exceeds the removal requirement by 0.05 pounds.

The phosphorus removal calculations were based on an impervious surface coverage established by the specific dwelling proposed for each lot. Because the pollutant removal provided by the BMPs only marginally exceeds the removal requirement, and it is likely that property owners will desire to add sheds and patios on their lots, it is recommended that rooftop disconnection be applied wherever feasible. This is a viable option for many of the lots over 6,000 square feet, as long as it is possible to provide a 75' flow path from the disconnected downspout through a vegetated channel, swale, or filter strip to the property line or a BMP. If necessary, dry wells, French drains, rain gardens, or similar storage devices can be used for areas with disconnection lengths less than 75 feet.

When accessory structures are proposed on any lot greater than 6,000 square feet, disconnection of rooftop run-off and appropriate supplemental treatment practices should be required.



Shore Erosion Control

There are no existing shore erosion control measures on the property. The waterfront portion of this property has been dedicated to the Town, and the Town is proposing to design and construct shore erosion control measures along the Potomac River. This portion of the site is believed to be significantly eroding (eroding two feet or more per year) in some areas, and the Town is currently working on a design for shoreline enhancements and stabilization. Funds in the amount of \$400,000 have been committed to this effort and the related construction of a public boardwalk. These projects will be referred to the Commission as a local government project in the future and will comply with the Critical Area law and criteria and the Town's adopted Program.

Sewage Treatment

The project will be served by public water and sewer and the Town of Indian Head has certified that there exists adequate capacity at the existing plant to provide service to the project.

CONDITIONS OF APPROVAL

1. Revised plats showing the 100-foot stream Buffer and including appropriate protective notes shall be recorded to replace those currently recorded prior to the sale of any affected lots. A copy of the revised, recorded plats shall be provided to the Commission.
2. Buffer Management Plans for the individual lots (Lots 1 through 14 on River's Edge Terrace) and for the community-owned and Town-owned open space shall be submitted for review and approval by Commission staff, and if appropriate, the full Commission. The Buffer Management Plans shall be implemented within two years or prior to the issuance of Certificates of Occupancy for each lot, whichever comes first.
3. When accessory structures are proposed on any lot greater than 6,000 square feet, disconnection of rooftop run-off and appropriate supplemental treatment practices shall be required.
4. The U.S. Army Corps of Engineers' restoration activity notice dated November 7, 2001 will be accepted and implemented.
5. The areas cleared will be allowed to naturally regenerate, including the area of the existing roadbed. If necessary, all or portions of the roadbed and related appurtenances will be removed to facilitate natural regeneration.
6. The Town will convert the existing nontidal wetland system to its former inter-tidal condition by restoring 0.5 acres of wetland located at the mouth of the tributary stream. The restoration will consist of planting appropriate native species, removal of trash and debris, and re-establishment and stabilization of a tidal connection to the Potomac River. A detailed restoration plan will be submitted to the Commission for review and approval within one year.
7. The shore erosion control and boardwalk projects on the Town-owned portion of the site will be referred to the Commission as local government projects in the future and will comply with the Critical Area law and criteria and the Town's adopted Program.

Approval Process
for Finality
of Feasibility

• December
• January
• February
• March
• April
• May
• June
• July
• August
• September
• October
• November

Conditions for Indian Head

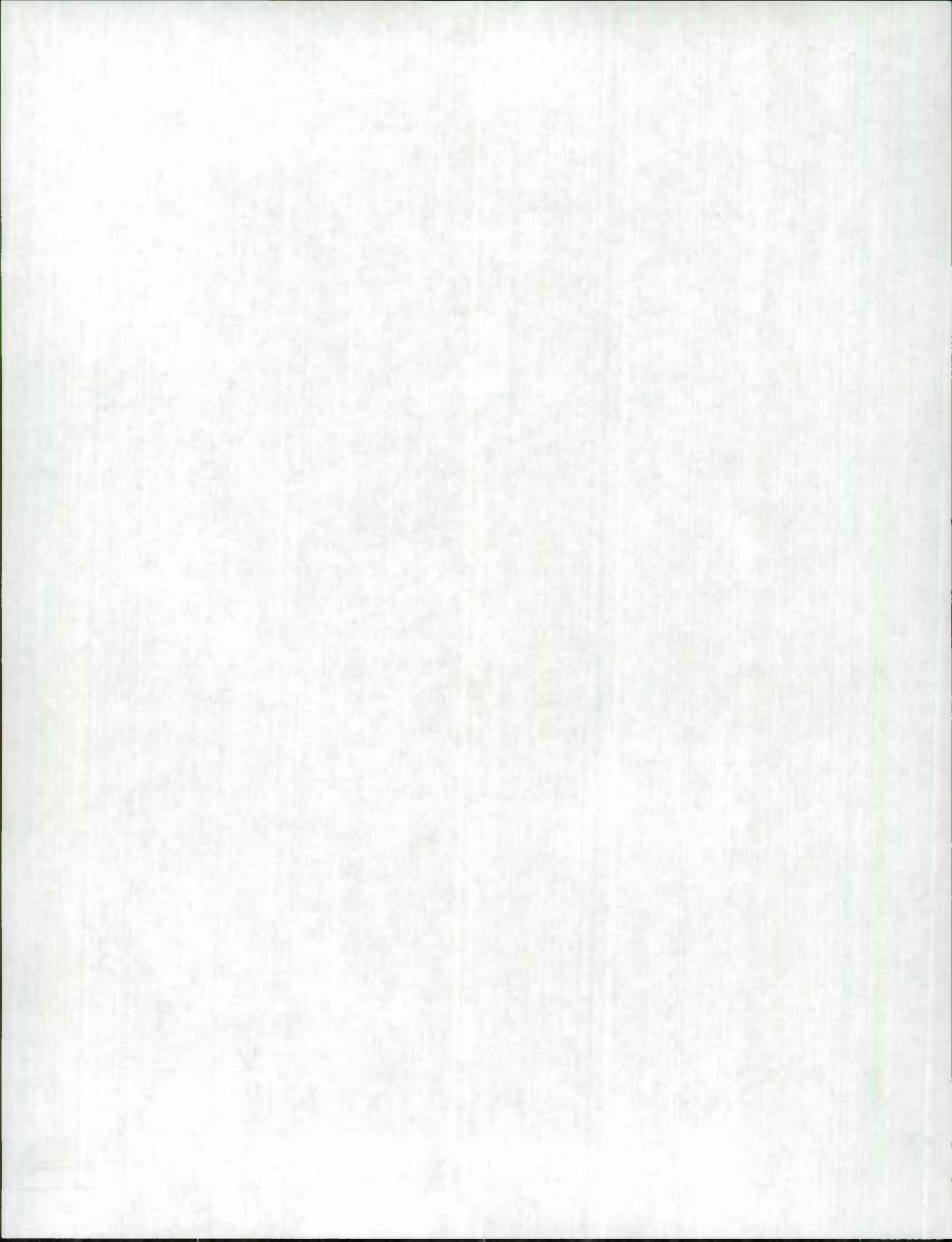
2. Buffer Management Plans for the individual lots (Lots 1 through 14 on River's Edge Terrace) and for the community-owned and Town-owned open space shall be submitted for review and approval by the full Commission within 90 days. The Buffer Management Plans shall be implemented or recorded and bonded within two years or prior to the issuance of Certificates of Occupancy for each lot, whichever comes first. Potential lot purchasers shall be advised of the location of the 100-foot Buffer and the requirements of the Buffer Management Plan.

8. The Town will execute a maintenance agreement with the developer regarding the maintenance of the stormwater management facilities.

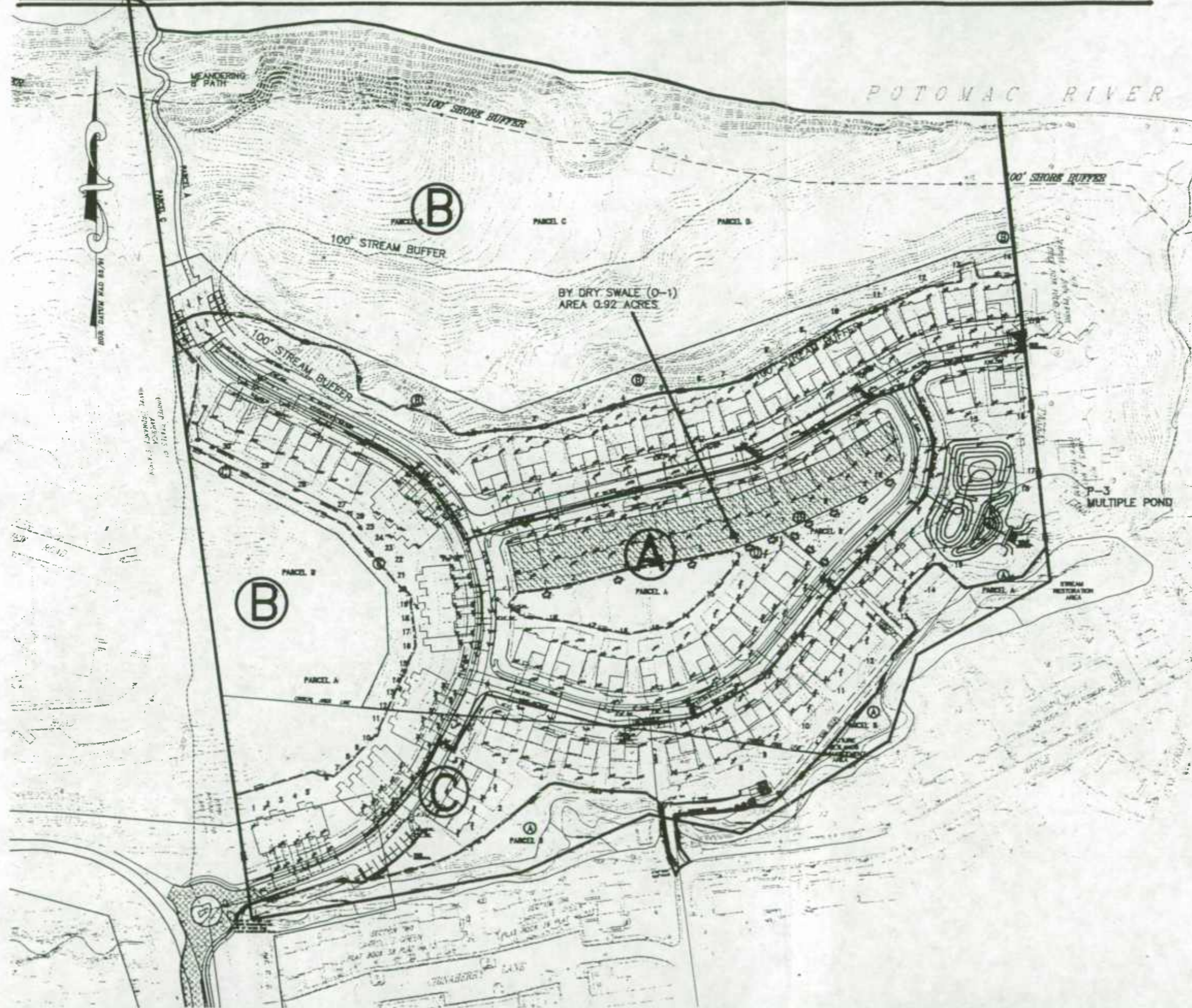
Within 90 days

Send to the Commission an




9. The Town shall ^{adopt} ~~adopted~~ a resolution or ~~perform~~ some other official act ^{of the Town} accepting the conditions of the Critical Area Commission's approval of this growth allocation and clearly expressing their intent to implement and enforce these conditions.



RIVER WATCH AT INDIAN HEAD GROWTH ALLOCATION



LEGEND

-  DRY SWALE
-  IDA AREA
-  DRY SWALE AREA

AREA COMPUTATIONS

	SQ FT	ACRES
Area of development as IDA	566,280	13.0000
IMPERVIOUS AREA		
Building		
SF	78,750	1.8079
TH	12,800	0.2893
Sidewalks	14,050	0.3225
Pavement	64,241	1.4748
Driveways/Parking	23,400	0.5372
TOTAL	193,041	4.4316

A. AREA FOR IDA	=	13.00 ACRES
B. REMAINING AREA (LDA)	=	11.58 ACRES
TOTAL SITE WITHIN THE CRITICAL AREA	=	24.58 ACRES
C. AREA OUTSIDE THE CRITICAL AREA	=	3.72 ACRES
TOTAL PARCEL AREA	=	28.28 ACRES
SITE DRAINAGE AREA TO POND	=	8.85 ACRES
OVERALL DRAINAGE AREA TO THE POND	=	12.14 ACRES
DRAINAGE AREA TO DRY SWALE	=	0.92 ACRES

150 SCALE OF
SITE DEVELOPMENT PLAN
RIVER WATCH AT INDIAN HEAD

L 2901 F 321
TAX MAP #11 PARCEL # 136
SEVENTH (7th) ELECTION DISTRICT
CHARLES COUNTY, MARYLAND

ATCS, P.L.C.
ENGINEERING • PLANNING • SURVEYING


49 Old Solomons Island Road, Suite 204
Annapolis, Maryland 21401
(410) 224-7487 • Fax (410) 224-7488
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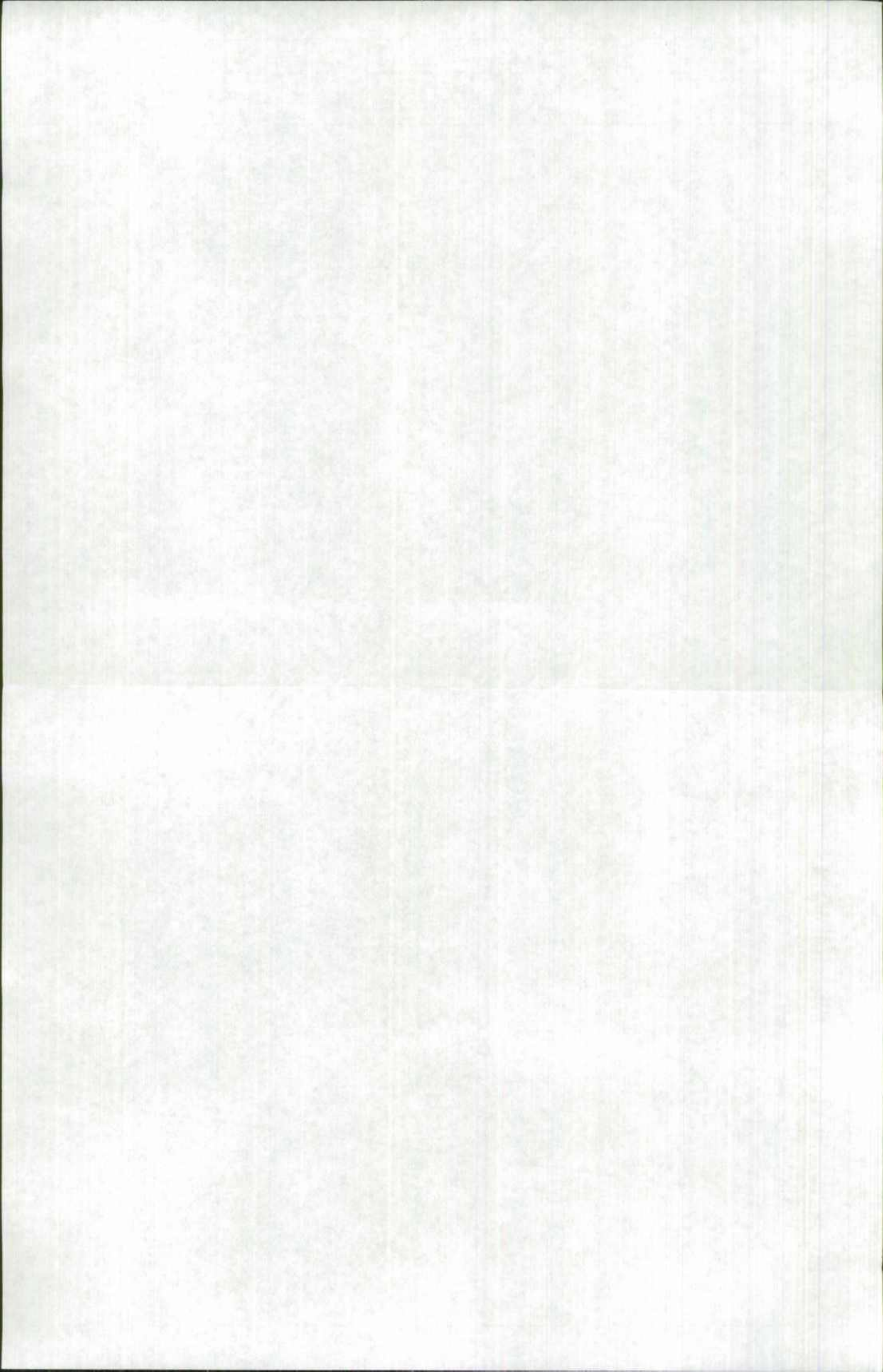
OFFICE MANAGER
PROJECT MANAGER
DESIGNER
DRAWN BY
SURV. CHIEF
FIELD BOOK NO.

CLIENT
NAME: LANDKUS, L.L.C.
STREET: 128 LUBRANO DR.
CITY: STATE ANNAPOIS, MD 21401
PHONE: 410-266-8484
FAX: 410-266-8720

CHD BY: []
RFP: []
CHD BY: []
RFP: []
DATE: []

NO. DATE





Critical Area Commission

STAFF REPORT

November 3, 2004

APPLICANT: Town of Greensboro

PROPOSAL: Ordinance No. 2004-O-29: Buffer Exemption Area Designation for Sunset Avenue Area and Riverside Lane Area
Ordinance No. 2004-O-29: Buffer Exemption Area Provisions

JURISDICTION: Town of Greensboro

COMMISSION ACTION: Concurrence with Chairman's Determination

STAFF RECOMMENDATION: Approval

STAFF: Roby Hurley and Dawnn McCleary

**APPLICABLE LAW/
REGULATIONS:** Annotated Code of Maryland, Section 8-1809(h) - (p) and COMAR 27.01.09.01

DISCUSSION:

The Town of Greensboro recently amended its Critical Area Program to add two new Buffer Exemption Areas to the Town's Critical Area Map and to replace the Town's provisions for development activities within Buffer Exemption Areas. The changes are the result of potential interest in redeveloping one area of the Town and inquiries from homeowners in another area. A study of these areas was conducted to determine eligibility for Buffer Exemption Area (BEA) designation. BEA evaluation reports were produced for both areas and are included in Ordinance No. 2004-O-28. (See attachments.)

The two areas are identified as the "Sunset Avenue Area" which includes five parcels and the "Riverview Lane Area" which includes four parcels. In general, these properties are developed with residential, commercial and institutional uses. These sites include Buffers adjacent to tidal waters and tributary stream. Existing development within the Buffer includes houses, driveways, decks, a pool, outbuildings, a town street, and parking areas. The Town Council determined that the existing pattern of development in these areas prevented the Buffer from fulfilling the Buffer function relating to water quality enhancement and habitat protection because the Buffer is

developed and is actively used.

The second amendment involves the adoption of new BEA provisions that are consistent with the Commission's policies and are included in Ordinance No. 2004-O-29. (See attachments.) The provisions include separate sections for addressing single-family residential development and for addressing commercial, industrial, institutional, and multi-family residential development. The new regulations also require a 50-foot setback for new development on undeveloped lots and a minimum 25-foot setback for redevelopment on developed lots. There are also specific planted mitigation requirements, as well as provisions for offsets and fees-in-lieu of planting.

The Town Council held a public hearing on September 16, 2004, and there were some questions from the public, which were addressed. On October 7, 2004, the Town Commissioners voted to approve Ordinance 2004-O-28 and Ordinance No. 2004-O-29.

ORDINANCE NO. 2004-O-29

AN ORDINANCE OF THE TOWN OF GREENSBORO

Sponsored by Boyd

WHEREAS, the current zoning ordinance of the Town does not contain specific guidance by which limited use of shoreline areas that have been mapped as Buffer Exemption Areas (BEAs) may be accommodated,

BE IT ENACTED AND ORDAINED BY THE TOWN COUNCIL OF GREENSBORO:

SECTION 1. That Subparagraph 5 of Paragraph T (page 82) of § 158-49, *Critical Areas Overlay District CAO* be deleted in its entirety and the following enacted in lieu thereof:

T. The 100-foot Buffer.

5. Buffer Exemption Areas (BEAs)

(a) **Definitions.** For the purpose of implementing this subsection, the following words have the following meanings. (In the case of conflicts with other definitions, the stricter provisions shall apply.):

- (1) *Accessory Structure* means a structure that is detached from the principal structure, located on the same lot and clearly incidental and subordinate to the principal structure; or if there is no principal structure on the lot, a structure that is customarily incidental and subordinate to a principal structure.
- (2) *Buffer Exemption Area* means an area officially mapped by the local jurisdiction and approved by the Critical Area Commission as a Buffer Exemption Area, where it has been sufficiently demonstrated that the existing pattern of residential, industrial commercial, institutional or recreational development in the Critical Area prevents the Buffer from fulfilling its intended functions for water quality protection and wildlife habitat conservation.
- (3) *Bufferyard* means an area, at least 25 feet wide, located between development activity and the water (or edge of wetlands or streams), planted with vegetation consisting of native species and other appropriate plantings. This area shall be maintained primarily for wildlife habitat and water quality and shall not be maintained in a manner that conflicts with these goals such as mowing or applying herbicides.
- (4) *Grandfathered Parcel/Lot* means a parcel of land or lot that was subdivided into recorded, legally buildable lots where the subdivision received final approval before December 1, 1985.

- (5) *Development Activity* means the construction or substantial alteration of residential, commercial, industrial, institutional, recreational or transportation facilities or structures. Development activities include, among other things, structures, roads, parking areas, and other impervious surfaces, mining and related facilities, clearing, grading and septic systems. For purposes of implementing this policy, development activity does not include subdivision.
 - (6) *Natural Forest Vegetation* means vegetation consisting of canopy trees, understory trees, shrubs, and herbaceous plants that are typically found in riparian areas in Maryland. Areas of natural forest vegetation planted to meet the mitigation requirements in this policy shall be designed to mimic the structure and species composition of natural forests.
 - (7) *New Development* means a development activity that takes place on a property with pre-development imperviousness less than 15 percent as of December 1, 1985.
 - (8) *Principal Structure* means, for the purpose of establishing setbacks, the primary or predominant structure on any lot or parcel. For residential parcels or lots, the principal structure is the primary dwelling, excluding utilities and the septic system.
 - (9) *Redevelopment* means a development activity that takes place on a property with pre-development imperviousness greater than 15 percent as of December 1, 1985.
- (b) **Description.** The following provisions are intended to accommodate limited use of shoreline areas that have been mapped as Buffer Exemption Areas (MBAs) under the provisions of this Chapter while protecting water quality and wildlife habitat to the greatest extent possible. This section applies only to new development or redevelopment within 100 feet of tidal waters, tidal wetlands and tributary streams on lots of record as of December 1, 1985. The lots shall have been officially designated by the Town, and approved by the Critical Area Commission, as a Buffer Exemption Areas.
- (c) **Commercial, Industrial, Institutional, Recreational and Multi-family residential Development and Redevelopment Standards.** New development or redevelopment activities, including structures, roads, parking areas and other impervious surfaces or septic systems will not be permitted in the Buffer unless the applicant can demonstrate that there is no feasible alternative and the Zoning Administrator or his designee finds that efforts have been made to minimize Buffer impacts and the development shall comply with the following standards:

- (1) Development and redevelopment activities have been located as far as possible from mean high tide, the landward edge of tidal wetlands, or the edge of tributary streams.
- (2) Variances to other local setback requirements have been considered before additional intrusion into the Buffer.
- (3) Convenience or expense were not factors considered when evaluating the extent of allowable impacts to the Buffer.
- (4) New development, including accessory structures, shall minimize the extent of intrusion into the Buffer. New development shall not be located closer to the water (or edge of tidal wetlands) than the local setback for the zoning district or 50 feet, whichever is greater. Structures on adjacent properties shall not be used to determine the setback line. The 50-foot setback shall be maintained for all subsequent development or redevelopment of the property.
- (5) Redevelopment, including accessory structures, shall minimize the extent of intrusion into the Buffer. Redevelopment shall not be located closer to the water (or edge of tidal wetlands) than the local setback for the zoning district or 25 feet, whichever is greater. Structures on adjacent properties shall not be used to determine the setback line. Existing structures located within the setback may remain or a new structure may be constructed on the footprint of an existing structure or impervious surface. Opportunities to establish a 25-foot setback should be maximized.
- (6) Development and redevelopment may not impact any Habitat Protection Area (HPA) other than the Buffer, including nontidal wetlands, other State or federal permits notwithstanding.
- (7) Buffer Exemption Area designation shall not be used to facilitate the filling of tidal wetlands that are contiguous to the Buffer or to create additional build able land for new development or redevelopment.
- (8) No natural vegetation may be removed in the Buffer except that required by the proposed construction.
- (9) Mitigation for development or redevelopment in the in the BEA approved under the provisions of this subsection shall be implemented as follows:
 - A. A forested or landscaped buffer yard, 25 feet wide, shall be established on the project site between the development and the distance to the water. This buffer yard shall be

densely planted with trees and shrubs in accordance with Table 1.

- B. Redevelopment sites, where existing structures or those rebuilt on an existing footprint limit the area available for planting, appropriate modifications to the width of the planted buffer yard may be made on a case by case basis.

**Table 1
Required Bufferyard Planting**

Area	Quantity and Stocking	Suggested Species
For every 100 linear feet of buffer yard	5 Trees and 10 Understory Trees/Large Shrubs, and 30 Small Shrubs and 40 Herbaceous Plants, Grasses, Etc.	White or Red Oak, Pin Oak, Willow Oak, Red Maple, American Holly, Eastern Red Cedar Dogwood, Mountain Laurel, Bayberry, Shadbush, Winterberry Pepperbush, Chokeberry, Strawberry Bush, Sweetspire Wild Columbine, Butterflyweed, Common Milkweed, Asters

- (10) In addition to establishing a 25-foot bufferyard on site as described above, one of the following mitigation measures shall be implemented based on the following order of preference:
 - A. Natural forest vegetation of an area twice the extent of the footprint of the development activity within the 100-foot Buffer shall be planted on site in the Buffer or at another location approved by the or Zoning Administrator or his designee.
 - B. Applicants who cannot fully comply with the planting requirement in A. above, may use offsets to meet the mitigation requirement. Offsets include the removal of an equivalent area of existing impervious surfaces in the Buffer, the construction of Best Management Practices for stormwater, wetland creation or restoration, or other measures that improve water quality or habitat.
 - C. Applicants who cannot comply with either the planting or offset requirements in A. or B. above shall pay into a fee-in-lieu program as follows:
 - (i) Applicants shall submit to the Zoning Administrator two cost estimates from qualified

landscape businesses for planting the equivalent of twice the extent of the development within the 100-foot Buffer. The estimate shall include the cost of stock, planting, staking, mulching and a one year guarantee.

- (ii) The Zoning Administrator shall determine the amount of the fee-in-lieu based on the average of the two estimates.

D. Any fees-in-lieu collected under these provisions shall be placed in an account that will assure their use only for projects within the Critical Area for the benefit of wildlife habitat and water quality improvement. The status of these funds must be reported in the Town's quarterly reports.

(d) **Single Family Residential Development and Redevelopment Standards.** New development or redevelopment activities, including structures, roads, parking areas and other impervious surfaces or septic systems will not be permitted in the Buffer unless the applicant can demonstrate that there is no feasible alternative, the Zoning Administrator finds that efforts have been made to minimize Buffer impacts, and the development complies with the following standards:

- (1) New development or redevelopment shall minimize the shoreward extent of intrusion into the Buffer. New development and redevelopment shall not be located closer to the water (or the edge of tidal wetlands) than principal structures on adjacent properties or the local setback for the zoning district, whichever is greater. In no case shall new development or redevelopment be located less than 25 feet from the water (or the edge of tidal wetlands).
- (2) Existing principal or accessory structures in the Buffer may be replaced in the same location. Any increase in impervious area within the Buffer shall comply fully with the requirements of this policy.
- (3) New accessory structures may be permitted in the Buffer in accordance with the following setback requirements:
 - A. New accessory structures may be located closer to the water or edge of tidal wetlands than the principal dwelling only if it has been determined by the Zoning Administrator or his designee that there are no other locations for the accessory structures.

- B. The area of the accessory structures within the Buffer shall be minimized and the cumulative total area of all new and existing accessory structures on the property shall not exceed 500 square feet within 50 feet of the water and 1,000 square feet total.
- (4) Variances to other local setback requirements shall have been considered before additional intrusion into the Buffer.
- (5) Development may not impact any HPAs other than the Buffer, including nontidal wetlands, other State or federal permits notwithstanding.
- (6) No natural vegetation may be removed in the Buffer except that required by the proposed construction. The applicant will be required to maintain any other existing natural vegetation in the Buffer.
- (7) Buffer Exemption Area designation shall not be used to facilitate the filling of nontidal wetlands that are contiguous to the Buffer to create additional buildable land for new development or redevelopment.
- (8) Mitigation for development or redevelopment in the Buffer Exemption Areas approved under this subsection shall be implemented as follows:
- A. Natural vegetation of an area twice the extent of the footprint of the development activity within the 100-foot Buffer shall be planted on site in the Buffer or other location as may be determined by the Zoning Administrator. If it is not possible to carry out offsets or other mitigation within the Critical Area, any plantings or other habitat/water quality improvements should occur within the affected watershed.
- B. Applicants who cannot comply with the planting requirements may use offsets to meet the mitigation requirements. Offsets may include the removal of an equivalent area of existing impervious surface within the Buffer, the construction of Best Management Practices for stormwater, wetland creation or restoration, or other measures that improve water quality or habitat.
- C. Applicants who cannot comply with either the planting or offset requirements in A. and B. above shall pay into a fee-in-lieu program as follows:
- i) Applicants shall submit to the Zoning Administrator two cost estimates from qualified


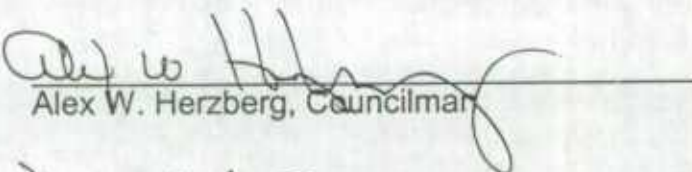

landscape businesses for planting the equivalent of an area twice the extent of the footprint of the development activity within the 100-foot Buffer. The estimate shall include the cost of stock, planting, staking, mulching and a two- year survival guarantee.

- ii) The Zoning Administrator shall determine the amount of the fee-in-lieu based on the average of the two estimates.

- (e) **Notification Requirements.** All new commercial, industrial, institutional, recreational, multi-family residential development or redevelopment projects shall be submitted to the Critical Area Commission in accordance with COMAR 27.03.01.03. Mitigation plans shall be included as part of the project submission.
- (f) **Review Process.** The Town shall make written findings documenting that all the Criteria in this section are met including that the disturbance to the Buffer is the least intrusion necessary. These findings shall be available to the Commission upon request.
- (g) **Buffer Exemption Area Mapping Standards.** The following standards shall apply for the mapping of new Buffer Exemption Areas:
 - (1) Only lots of record as of December 1, 1985 are eligible for mapping as Buffer Exemption Areas.
 - (2) The parcel or lot being considered for BEA status shall contain a Buffer that was significantly impacted by development at the time of program adoption and that prevent the Buffer from fulfilling its functions.
 - (3) Developed parcels or lots shall contain a Buffer intrusion by the principal structures (excluding utilities or septic systems).
 - (4) Undeveloped or vacant parcels or lots (i.e., infill) may be designated as a BEA if development within the Buffer can not be avoided based on the size of the parcel or lot, area of the parcel or lot within the Buffer, or the surrounding pattern of development.
 - (5) If only part of a parcel or lot meets the criteria for designation as a BEA, then only portions of the parcel or lot shall be designated as a Buffer Exemption Area. The portion of the parcel designated as a BEA will be subject to the BEA requirements. Portions of the property that are not designated as a BEA shall comply fully with the 100-foot Buffer restrictions.

- (6) Any proposal by the Town for designation of an area as a BEA shall include, at a minimum, a written evaluation and supporting reasons which demonstrate the degree to which the proposed BEA does not perform each of the following Buffer functions:
- i) Provide for the removal or reduction of sediments, nutrients, and potentially harmful or toxic substances in runoff entering the Bay and its tributaries;
 - ii) Minimize the adverse effects of human activities on wetlands, shorelines, stream banks, and aquatic resources;
 - iii) Maintain an area of transitional habitat between aquatic and upland communities;
 - iv) Maintain the natural environment of streams; and
 - v) Protect riparian wildlife habitat.

SECTION 2. That this ordinance shall take effect and be in full force and effect twenty (20) days from and after the date of its final passage and adoption or November 1, 2004, whichever is later.

	Yea or Nay
 Gerald P. Garey, Councilman	<u>yea</u>
 Alex W. Herzberg, Councilman	<u>yea</u>
 David A. Spencer, Councilman	<u>yea</u>
 Timothy D. Boyd, Councilman	<u>yea</u>

ATTEST:

Shelley E. Pacello
Shelley E. Pacello, Clerk/Treasurer

Thomas L. Riddleberger
Thomas L. Riddleberger, Mayor

Introduced and read the first time
Read the second time and passed
by the Council

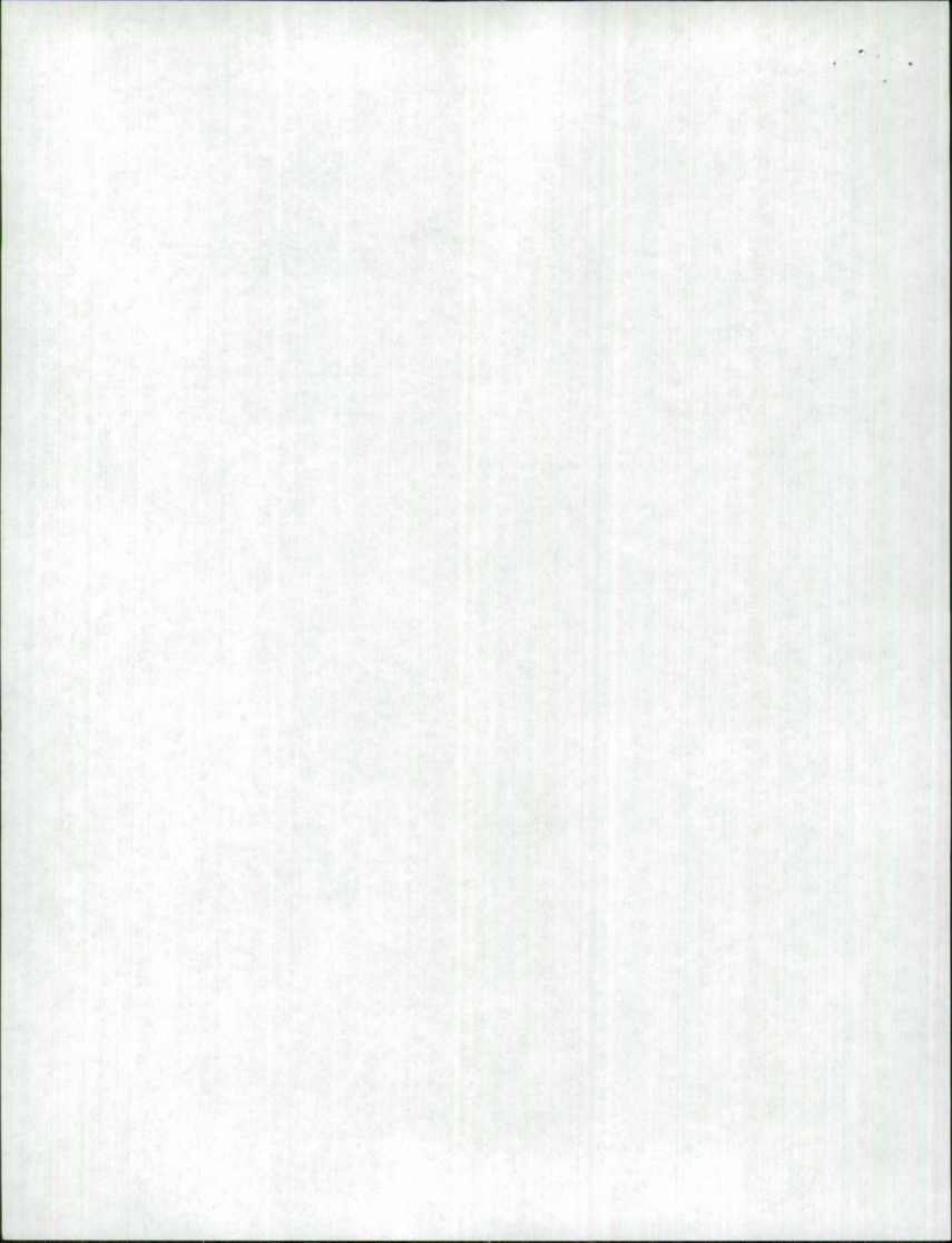
9/16 2004

10/7 2004

Approved by the Mayor

10/7 2004

Y:\Municipalities\Greensboro\zoning\Buffer exempt area\BEA procedures amendment.wpd8/31/04



ORDINANCE NO. 2004-O-28

AN ORDINANCE OF THE TOWN OF GREENSBORO
REVISING THE TOWN ZONING MAP BY ASSIGNING
CERTAIN PROPERTIES ALONG THE CHOPTANK RIVER TO
THE BUFFER EXEMPTION AREA

Sponsored by MR. GARCY

Findings of Fact

At a result of the most recent comprehensive rezoning, the area of the following properties lying within 100 feet of the Choptank River was assigned to the Buffer Exempt Area (BEA):

Address	Tax Map 303, Parcel No.	Owners
111 Stonesifer Drive (or Water Street (entirely within the BEA))	1157	Gray's Gas, Inc.
116 N. Main	1166	Greensboro Volunteer Fire Co., Inc
118 N. Main	1167	The street front is owned by Town of Greensboro; the 100 ft area along the River is owned by the Greensboro VFC
204 N. Main	1173	Paul T. & Ruth D. Morris (Riverside Hotel)

The above properties were so assigned because the level of development of the area of properties lying within 100 feet of the Choptank River, as of the date of adoption of the Zoning Ordinance was of such an intense nature that the land could not perform the Buffer Area's intended purposes of absorbing runoff, of acting as a filtration system for groundwater pollution, of providing protection against flooding and of providing wildlife habitat.

Since the effective date of the current ordinance on November 18, 1999, several other properties have been identified by the Town Planning Commission as likewise having inconsequential value to the Buffer Area's intended purposes. Those properties are:

Address	Tax Map 303, Parcel No.	Owners
203-205 E. Sunset (substantially within the BEA)	1152 & 1153	Greensboro Properties, LLC
115 Stonesifer (vacant land) (a small portion in the BEA)	1155	Edwina Brooks

113 Stonesifer (vacant land) (a substantial portion in the BEA)	1156	Patricia Witt Crandall
No address. Area designated on the tax map as no-man's land at the northeast corner of 115 Stonesifer	None; shown as "?" on the tax map	None assigned by Department of Assessments & Taxation
112 Riverview Lane	787	Noreen M. Levee
114 Riverview Lane	786	Mary W. Riddleberger
115 Riverview Lane	782	Helen Spencer Estate
118 Riverview Lane	783	Brian R. Ott

On September 16, 2004, the Town Council conducted a public hearing concerning the assignment of the above properties to the Buffer Exempt Area. At that hearing, Robey Hurley, Critical Area Commission Circuit Rider presented certain evidence with regard whether the properties were suitable for assignment to the Buffer Exempt Area. For the purpose of presenting the evidence, Mr. Hurley divided the properties into two major groupings, namely, those properties located on Sunset Avenue, and those properties in the vicinity of Riverview Lane. The evidence presented by Mr. Hurley included the following:

As to the properties on Sunset Avenue:

Existing development on this site includes houses, decks, pool, sheds, drives, and parking areas.

Existing vegetation is a mix of lawn grass with large canopy and understory trees and some scrub shrub. Some of the site that receives less maintenance has grown up in primarily non native species. The shoreline has some rubble type rip rap and wood block terracing and vegetation ranges from a narrow strip of native and non native scrub shrub to mowed lawn, to mature tree species.

The site is privately owned.

In evaluating the site for designation as a BEA, the following factors were considered:

1) The Buffer's ability to provide for the removal of sediments, nutrients, and harmful or toxic substances has been compromised because there are existing structures, drives and parking areas in the Buffer. Existing development is located as close as 4 feet from the shoreline. Existing vegetation includes lawn grass, native and non native scrub shrub, and mature tree species.

2) The Buffer's effectiveness at minimizing the adverse effects of human activities on wetlands, shorelines, stream banks, etc. is limited because human activities are taking place very close to the shoreline because of the location of existing development. There

are minimal areas of natural vegetation within the Buffer and the shoreline is altered with some rubble rip-rap and terracing .

3) The Buffer does not function optimally as an area of transitional habitat between aquatic and upland communities because this area is developed with structures and parking. There is little natural vegetation to provide food or cover for wildlife.

4) The Buffer does not function to maintain the natural environment of streams because there are no streams on this particular site.

5) The Buffer's capacity for protecting wildlife habitat on this site is severely limited because the Buffer is developed and is actively used for parking and residential use. Human disturbance to wildlife would be unavoidable because of the intensity of the development on this site.

As to the properties along Riverview Lane:

The site includes both tidal and non-tidal stream Buffer. Existing development on this site includes houses, sheds, barn/ shop, drives, a Town road and parking areas.

Existing vegetation is primarily lawn grass with scattered large canopy trees and some understory trees and shrubs. The shoreline has some rubble type rip rap and vegetation ranges from a narrow strip of native scrub shrub to mowed lawn, to non tidal wetland fringe species.

The site is primarily privately owned with the exception of some Town Road areas.

In evaluating the site for designation as a BEA, the following factors were considered:

1) The Buffer's ability to provide for the removal of sediments, nutrients, and harmful or toxic substances has been compromised because there are existing structures, drives and parking areas in the Buffer. Existing development is located as close as 8 feet from the stream bank 13 feet from the tidal shoreline. Existing vegetation is primarily lawn grass with scattered large canopy trees

2) The Buffer's effectiveness at minimizing the adverse effects of human activities on wetlands, shorelines, stream banks, etc. is limited because human activities are taking place very close to the shoreline because of the location of existing development. There are minimal areas of natural vegetation within the Buffer and the shoreline is partially protected with rubble rip-rap while other areas are mowed lawn down to the water.

3) The Buffer does not function optimally as an area of transitional habitat between aquatic and upland communities because this area is developed with structures and parking. There is little natural vegetation to provide food or cover for wildlife.

4) The Buffer does not function to maintain the natural environment of streams because of the existing impervious surfaces, proliferation of non native lawn grass and continual maintenance of the stream bank and Buffer.

5) The Buffer's capacity for protecting wildlife habitat on this site is severely limited because the Buffer is developed and is actively used for parking and residential use. Human disturbance to wildlife would be unavoidable because of the intensity of the development on this site.

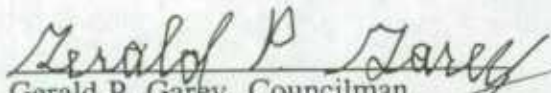
The Council is persuaded by the evidence presented by Mr. Hurley and by its own examination and familiarity with the areas. It adopts Mr. Hurley's findings as its own. It concludes that the properties identified above cannot perform their intended function as a buffer area and that all of the designated properties should be designated as within the Buffer Exempt Area. The Council further finds that the failure to so designate them at the time of the adoption of the most recent zoning ordinance was a mistake.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED BY THE TOWN COUNCIL OF GREENSBORO:

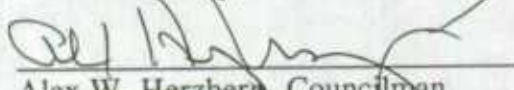
SECTION 1. That the Zoning Map of the Town of Greensboro be and the same is hereby amended by assigning that portions of the properties shown on Tax Map 303, as Parcels 1152, 1153, 1155, 1156, 782, 783, 786 and 787, and the parcel designated by a question mark off (north of) Sunset Avenue that lie within 100 feet of a tributary of the Chesapeake Bay, or the entire property if it lies entirely within the Buffer Area, as the case may be, to the Buffer Exempt Area.

SECTION 2. This Ordinance shall be effective twenty (20) days after its enactment.

Yea or Nay


Gerald P. Garey, Councilman

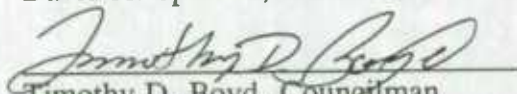
yea


Alex W. Herzberg, Councilman

yea.

David A. Spencer, Councilman

Abstain


Timothy D. Boyd, Councilman

yea

ATTEST:

Abstain
Thomas L. Riddleberger, Sr.,

Shelley E. Patello
Shelley E. Patello, Clerk

Alex W. Herzberg, Vice Mayor

Introduced and read the first time

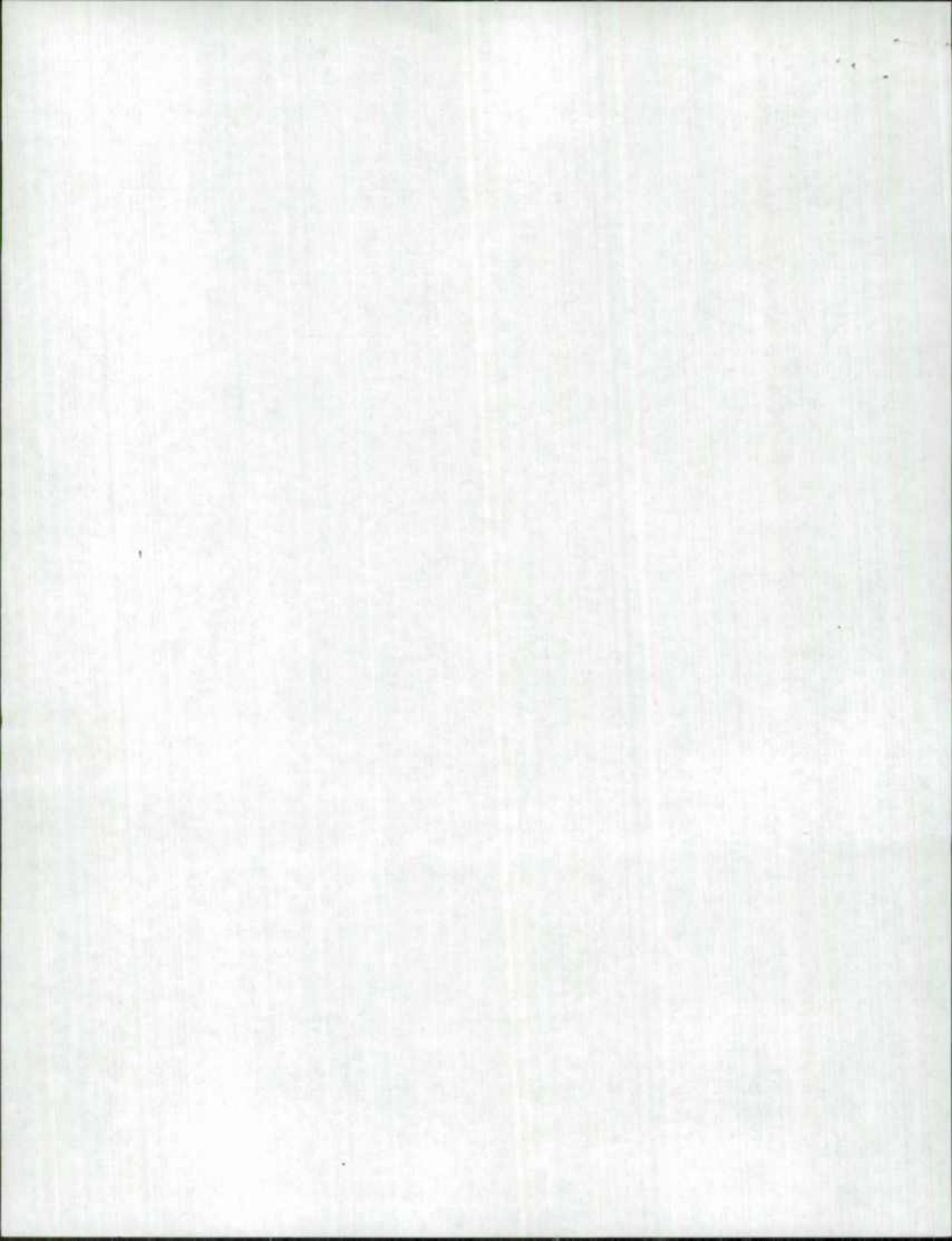
9/2, 2004

Read the second time and passed
by the Council

10/7, 2004

Approved by the Vice Mayor

10/7, 2004



Critical Area Commission

STAFF REPORT

November 3, 2004

APPLICANT: Dorchester County

PROPOSAL: Resolution No. 2004-10: Miscellaneous Text Changes
Pertaining to Procedures
Resolution No. 2004-20: Additional Growth Allocation for
Municipalities

JURISDICTION: Dorchester County

COMMISSION ACTION: Vote

STAFF RECOMMENDATION: Concurrence with Chairman's Determination

STAFF: Mary Owens

**APPLICABLE LAW/
REGULATIONS:** COMAR 27.01.02.06 Location and Extent of Future
Intensely Developed and Limited Development Areas

On September 14, 2004, the Dorchester County Council approved two resolutions affecting the implementation of the County's Critical Area Program. Resolution No. 2004-10 amends various sections of the Dorchester County Critical Area Program to address the change in the County government from County Commissioners to County Council and to eliminate some restrictions on the use of growth allocation with regard to residential development and to the number of acres per year that may be used. The resolution also changes the approval authority for Buffer Management Plans from the Dorchester County Forestry Board to the Planning and Zoning Office to facilitate more effective implementation of the Critical Area Buffer provisions.

Resolution No. 2004-20 amends Resolution No. 321 regarding the use of growth allocation by municipalities in Dorchester County. Resolution No. 321, which was adopted by the County in June of 2001, reserved growth allocation acreages for the City of Cambridge and the Towns of Vienna and Secretary. Additional acreage was also set aside for use by Church Creek, Eldorado, Brookview, and Galestown, which implement Critical Area Programs with the assistance of Dorchester County. Resolution No. 2004-20 states that, "... once an incorporated municipality has completely expended the growth allocation allotment provided to them for infill development by the County in Resolution No. 321, then the incorporated municipality must have the applicant for a development project submit an application to the Dorchester County Planning and Zoning Office for any additional growth allocation needs."

The County Council approved this resolution in order to accommodate several development projects involving the use of growth allocation that are currently being reviewed in the City of

Cambridge. The County has coordinated with the all of the affected municipalities regarding the new procedure, meeting several times with the staff of Cambridge, and then meeting with Cambridge staff, Critical Area Commission staff, and the Critical Area Circuit Riders representing the other municipalities. The County is in the process of reviewing implementing procedures for Resolution No. 321, which are addressed in Dorchester County Bill No. 2004-19. This legislation will be forwarded to the Critical Area Commission after it has received final approval by the County.

The Chairman has determined that these matters may be handled as refinements to the County's Critical Area Program, because they primarily affect local processes and procedures relating to local implementation of the County's Critical Area Program and are consistent with the County's Critical Area Program.

COPY

DORCHESTER RESOLUTION

RESOLUTION NO. 2004-20

A RESOLUTION OF THE COUNTY COUNCIL OF DORCHESTER COUNTY AMENDING RESOLUTION NO. 321 TO PROVIDE THAT ONCE AN INCORPORATED MUNICIPALITY HAS COMPLETELY EXPENDED THE GROWTH ALLOCATION ALLOTMENT PROVIDED TO THEM FOR INFILL DEVELOPMENT BY THE COUNTY IN RESOLUTION NO. 321, THEN THE INCORPORATED MUNICIPALITY MUST HAVE THE APPLICANT FOR A DEVELOPMENT PROJECT SUBMIT AN APPLICATION TO THE DORCHESTER COUNTY PLANNING AND ZONING OFFICE FOR ANY ADDITIONAL GROWTH ALLOCATION NEEDS.

WHEREAS, Natural Resources Article, Section 8-1801 et seq., Annotated Code of Maryland, requires and empowers local jurisdictions to use their growth allocation allotment to create new intensely developed areas and new limited development areas; and

WHEREAS, the Dorchester County Planning and Zoning Office met with the municipalities on June 9, 2004 and notified them that the Dorchester County Council was concerned about the distribution of Dorchester County's growth allocation and furthermore had determined that once a municipality uses the growth allocation allotment granted for infill development the municipality must request any additional growth allocation needed for infill from the County Council; and

WHEREAS, the Dorchester County Planning and Zoning Office has prepared amendments to the Critical Area Protection District to reflect the policies and procedure outlined in this resolution and former Resolution No. 321 and these were presented to the municipalities for review and comment on June 9, 2004 as well as Chesapeake Bay Critical Area Commission staff.

WHEREAS, the Dorchester County Council held an advertised public hearing on September 14, 2004 regarding amendments to the Chesapeake Bay Critical Area Protection District and recommended said amendments to the Chesapeake Bay Critical Area Commission on September 17, 2004; and

WHEREAS, the Chesapeake Bay Critical Area Commission, by unanimous vote approved the bill amending the Critical Area Protection District on _____.

NOW THEREFORE, The County Council of Dorchester County does hereby resolve that once an incorporated municipality has completely expended the growth allocation allotment provided for them for infill development by the County in Resolution No. 321, then the incorporated municipality must have the applicant for a development project submit an application to the Dorchester County Planning and Zoning Office for any additional growth allocation needs.

Adopted this 14th day of September, 2004.

SEP 22 2004

ATTESTED BY:

THE COUNTY COUNCIL OF DORCHESTER COUNTY

[Handwritten signature]

[Handwritten signature]

Effie M. Elzey
Effie M. Elzey

Thomas A. Flowers
Dr. Thomas A. Flowers

David Yockey
David Yockey

William V. Nichols
William V. Nichols

CERTIFICATION

THE COUNTY COUNCIL OF DORCHESTER COUNTY HEREBY CERTIFIES TO THE CLERK OF THE CIRCUIT COURT FOR DORCHESTER COUNTY, THAT THE FOREGOING IS A TRUE AND EXACT COPY OF THE RESOLUTION ADOPTED AND ORDAINED BY THE COUNTY COUNCIL OF DORCHESTER COUNTY ON THE _____ DAY OF _____ 2004 AND FURTHER ORDER THE SAME TO BE RECORDED AMONG THE ORDINANCE BOOKS OF DORCHESTER COUNTY, MARYLAND, WITHOUT COST.

ATTEST:

Jane Baynard
Jane Baynard, County Manager

THE COUNTY COUNCIL
OF DORCHESTER COUNTY

Glenn L. Bramble
Glenn L. Bramble, President

Effie M. Elzey
Effie M. Elzey

Thomas A. Flowers
Dr. Thomas A. Flowers

David Yockey
David Yockey

William V. Nichols
William V. Nichols

COPY

RESOLUTION NO. 2004-10

A RESOLUTION OF THE COUNTY COUNCIL OF DORCHESTER COUNTY PROVIDING FOR DELETION OF 200 ACRE GROWTH ALLOCATION LIMITATION PER YEAR, REMOVAL OF FORESTRY BOARD FROM FINAL APPROVAL OF BUFFER MANAGEMENT PLAN AND TO ADDRESS FORM OF GOVERNMENT CHANGE FROM COUNTY COMMISSIONER TO COUNTY COUNCIL.

WHEREAS, Natural Resources Article, Section 8-1801 et. seq., Annotated Code of Maryland, requires and empowers the County to prepare, adopt, and amend a Chesapeake Bay Critical Area Protection Program; and

WHEREAS, in accordance with the said law, Dorchester County has conducted their local Annual Review; and

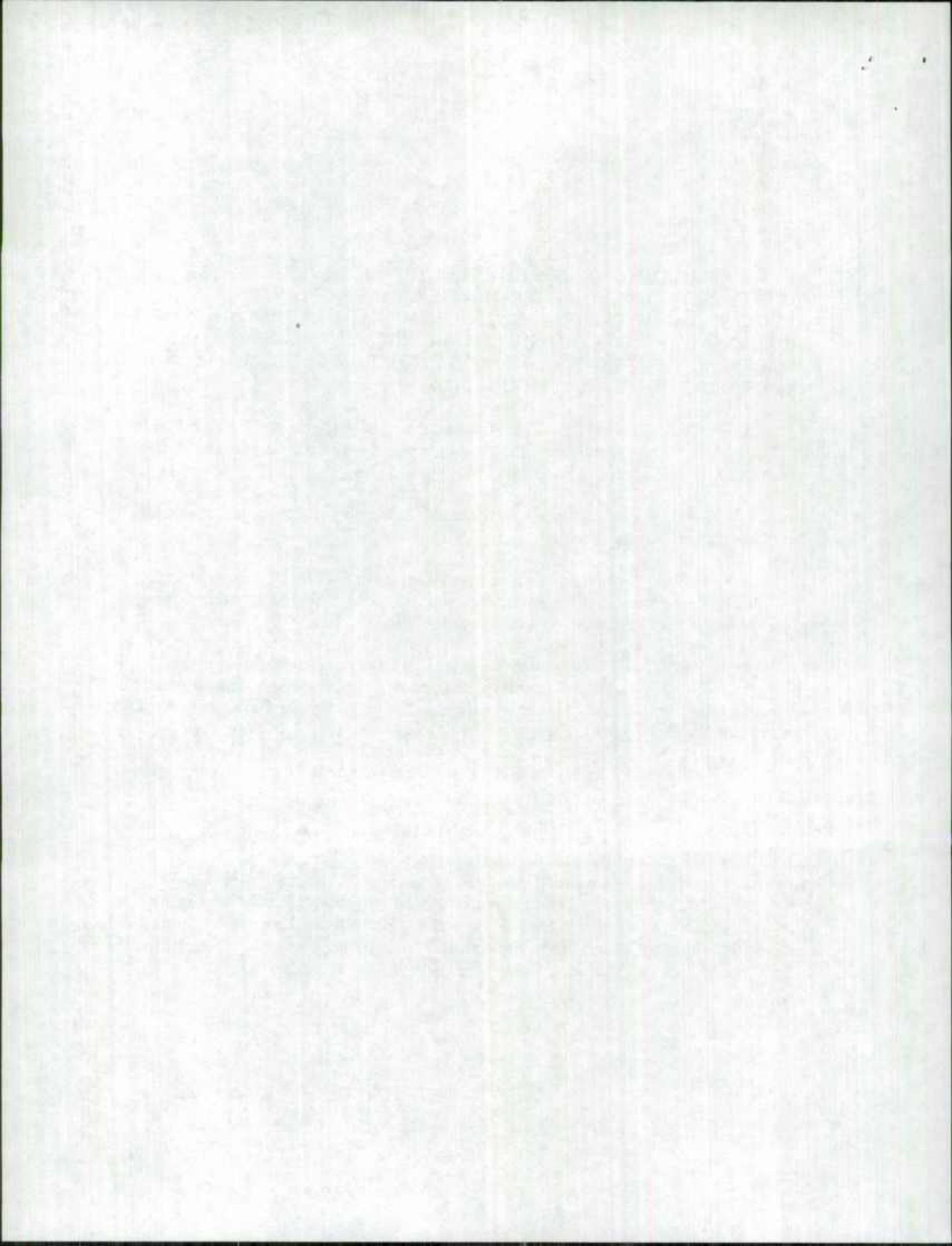
WHEREAS, the Planning Commission reviewed and approved the Chesapeake Bay Critical Area Protection Program amendments on July 2, 2003 and forwarded them to the County Council for adoption; and

WHEREAS, the County Commissioners held an advertised public hearing on September 14, 2004 regarding the amended Chesapeake Bay Critical Area Protection Program and forwarded the amendments to the Chesapeake Bay Critical Area Commission on September 17, 2004; and

WHEREAS, the Chesapeake Bay Critical Area Commission approved the amended Program on _____.

NOW THEREFORE, the County Council of Dorchester County, having complied with the procedural and substantive prerequisites of Natural Resources Article, Section 8-1801 et. Seq., Annotated Code of Maryland, do hereby repeal pages 1, 6, 26, and 42 of the Chesapeake Bay Critical Area Protection Program for Dorchester County, Maryland, and adopt amended pages 1, 6, 26, and 42, herewith attached; and be it further resolved that a true and exact copy of the amended pages of the Program shall be certified to the Clerk of the Circuit Court of Dorchester County.

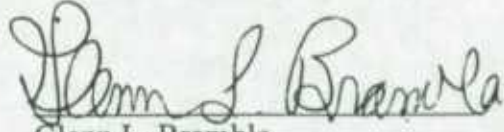
Adopted this 14th day of September, 2004.



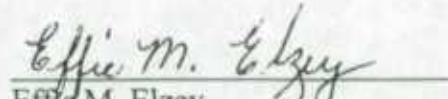
ATTESTED BY:

Jane Baynard
County Manager

THE COUNTY COUNCIL
OF DORCHESTER COUNTY



Glenn L. Bramble
President



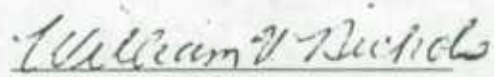
Effie M. Elzey



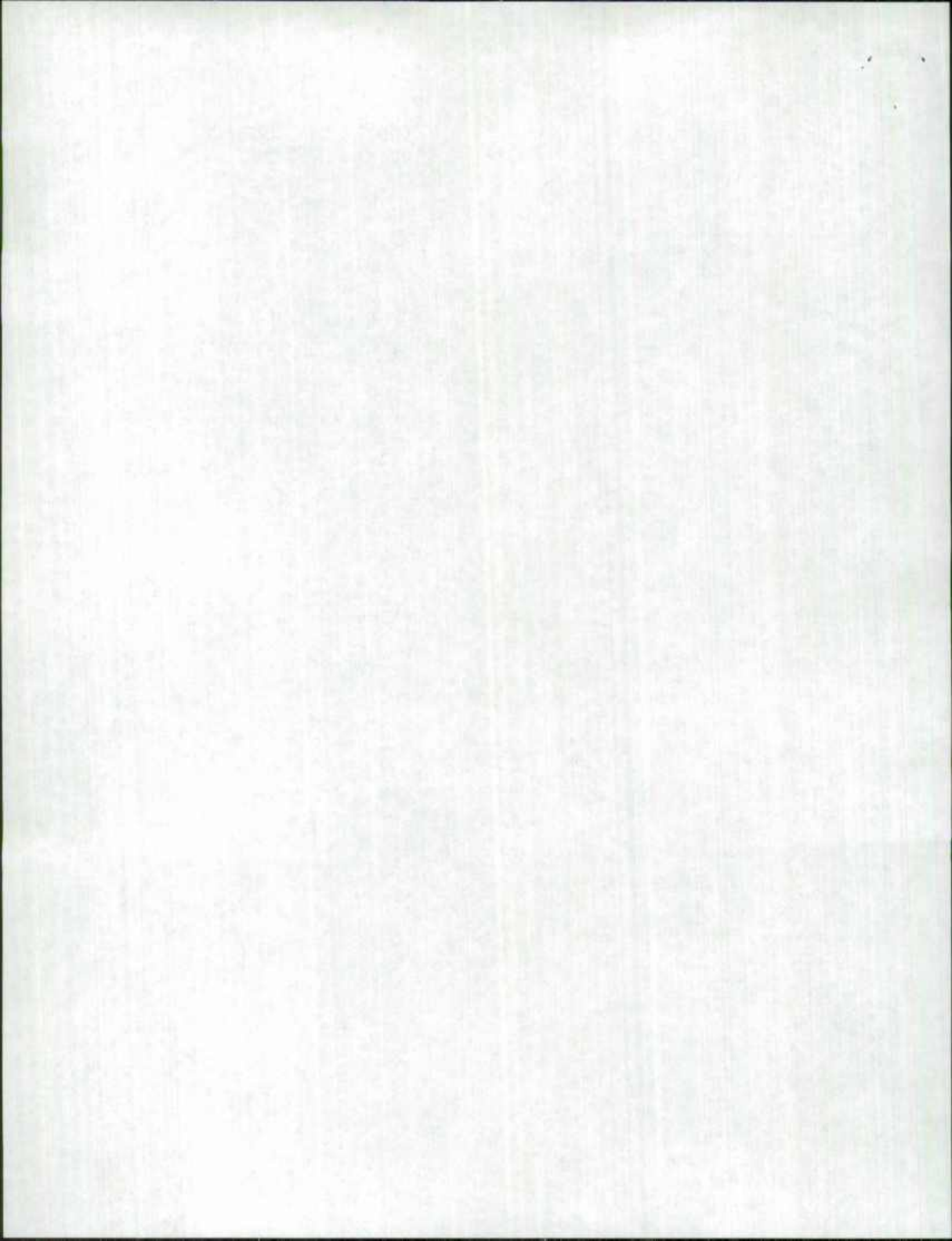
Dr. Thomas A. Flowers



David Yockey



William V. Nichols



I. INTRODUCTION

The Chesapeake Bay is the largest estuary in North America. The Bay is bordered by some 8,000 miles of shoreline and its 64,000 square mile drainage basin covers portions of four states (map 1).

The Chesapeake and its associated tidal wetlands provide rich habitat for an abundance of life. In addition to resident species of fish and wildlife, the Bay supports large wintering populations of migratory waterfowl and provides spawning, nursery, and feeding grounds for ocean dwelling fish.

The Chesapeake Bay has long been associated with seafood. Generations of bay watermen have harvested finfish, oysters, clams, and crabs. Recreational fishing, hunting, and boating attract millions of people to the Bay each year and contribute significantly to the economies of Maryland and Virginia.

Today the Chesapeake Bay is being degraded by pollution resulting from intense human activity along its shorelines and within its watershed. The living resources of the Bay are being stressed by toxic substances from industry, nutrients from sewage treatment plants and farmlands, and sediment from farms and construction sites.

These water quality problems are complex but not beyond resolution. The states of Maryland, Virginia, and Pennsylvania have formally agreed to cooperate in an effort to address the problems and restore the Chesapeake Bay, and many public and private organizations are involved as well. Maryland's Critical Area Law constitutes one element in the cleanup effort.

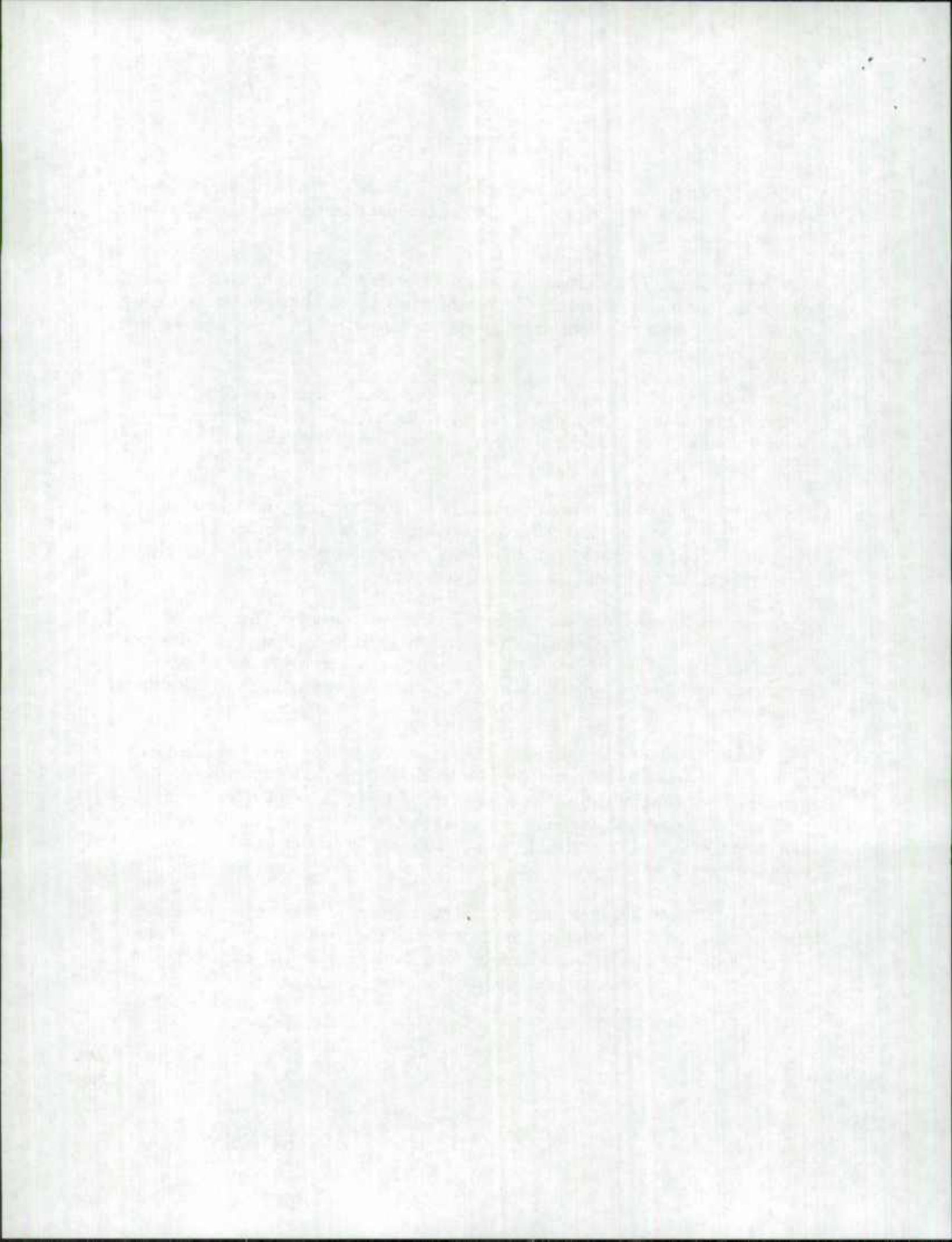
This Critical Area Protection Program for Dorchester County was developed as required by the Critical Area Law (Natural Resources Article, Sections 8-1801 through 8-1816, Annotated Code of Maryland) and associated Critical Area Criteria. The concept of designating a Critical Area along the Chesapeake Bay and controlling land use and development therein was conceived by state officials, not by the Dorchester County Commissioners COUNCIL or any other local entity.

The original Critical Area Protection Program was prepared by Norman Day Associates, a planning and urban design consultant in Philadelphia, Pennsylvania. Contributing firms included Andrews Miller and Associates, Inc. of Cambridge, Maryland (engineering and mapping) and Coastal Resources, Inc. of Annapolis, Maryland (natural resources). Local

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SEP 22 2004

CRITICAL



III. CRITICAL AREA MAPPING

A. CRITICAL AREA

To address environmental degradation in the Chesapeake Bay, the Maryland General Assembly has designated a geographical area around the bay as the Critical Area. The Critical Area encompasses all waters of and lands under the Chesapeake Bay and its tributaries to the head of tide, all state and private tidal wetlands, and all land and water areas within 1,000 feet of the landward boundary of heads of tides and State or private tidal wetlands.

Critical Area mapping for Dorchester County was prepared by the Wetlands Division, Water Resources Administration, Maryland Department of Natural Resources. Using the State wetland boundary map (1971) as a basis, a 1,000 foot strip of land upland of tidal waters and tidal wetlands was dimensioned off to establish the limits of the Critical Area.

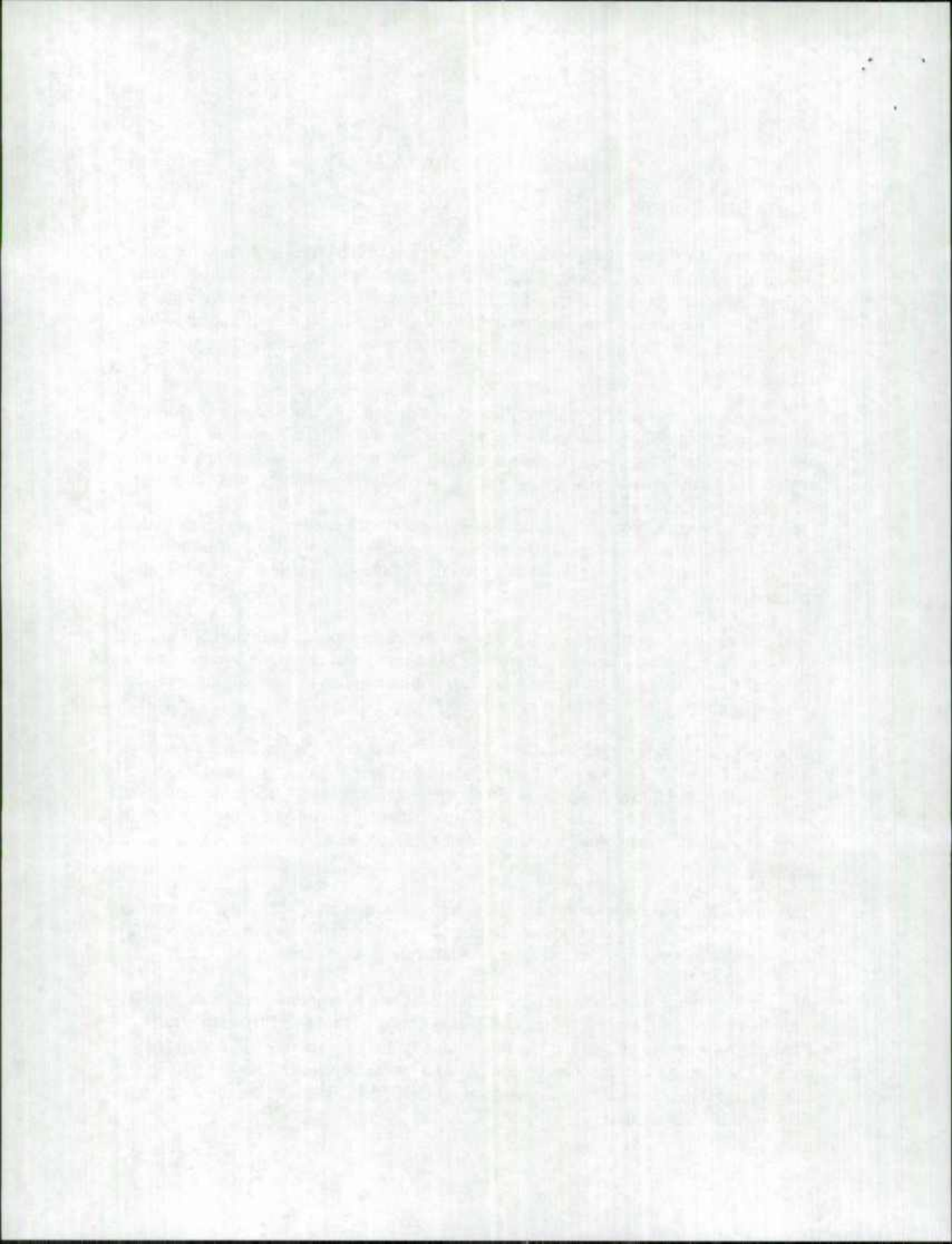
The Critical Area was originally delineated by the State at a scale of 1 inch equals 200 feet. Maps suitable for implementation purposes have been prepared at 1 inch equals 600 feet, and a second map series drawn at a scale of 1 inch equals 1 mile to satisfy overall planning needs.

A significant portion of Dorchester County was determined to lie within the Critical Area, owing to the extensive shoreline and relatively flat terrain that prevails. Over two-thirds of the total area of the county and nearly one-half of its land area are affected, involving some 176,600 acres or 276 square miles of land (map 2).

Primary land use data for the Dorchester County Critical Area was compiled by the Maryland Department of State Planning (Chesapeake Bay Critical Area: Land Use Composition and Change Analysis, Publication No. 85, July 1985). The approximate land use composition for the Critical Area in 1981 was as follows: residential uses - 1,700 acres; other development - 500 acres; agriculture - 27,500 acres; forests 53,400 acres; and wetlands - 93,500 acres.

The initial Critical Area boundary may be extended if requested by an individual property owner, provided that the change is not detrimental to water quality or natural habitat. All such requests will be reviewed and approved on a case-by-case basis.

Any person seeking an extension of the Critical Area will be required to file a sketch plan with the Dorchester County Planning and Zoning Office. The sketch plan must clearly illustrate the proposed change and must show the location of environmentally sensitive areas. The change must be subsequently approved by the Dorchester County Planning Commission, Dorchester County ~~Commissioners~~ COUNCIL, and the Chesapeake Bay Critical Area Commission.



~~Assuming that the existing underlying zoning in the undeveloped portions of the Limited Development Areas will not be changed to permit development at densities of 4.0 or more dwelling units per acre, there will be no need to use any of the permitted Critical Area growth allocation to convert Limited Development Areas to Intensely Developed Areas for residential purposes. As a result, all of the 2,900 acre county gGrowth allocation other than that reserved for the municipalities is expected to be MAY BE directed to Resource Conservation Areas, or USED to convert Limited Development Areas to Intensely Developed Areas, for RESIDENTIAL, commercial, industrial and institutional uses.~~

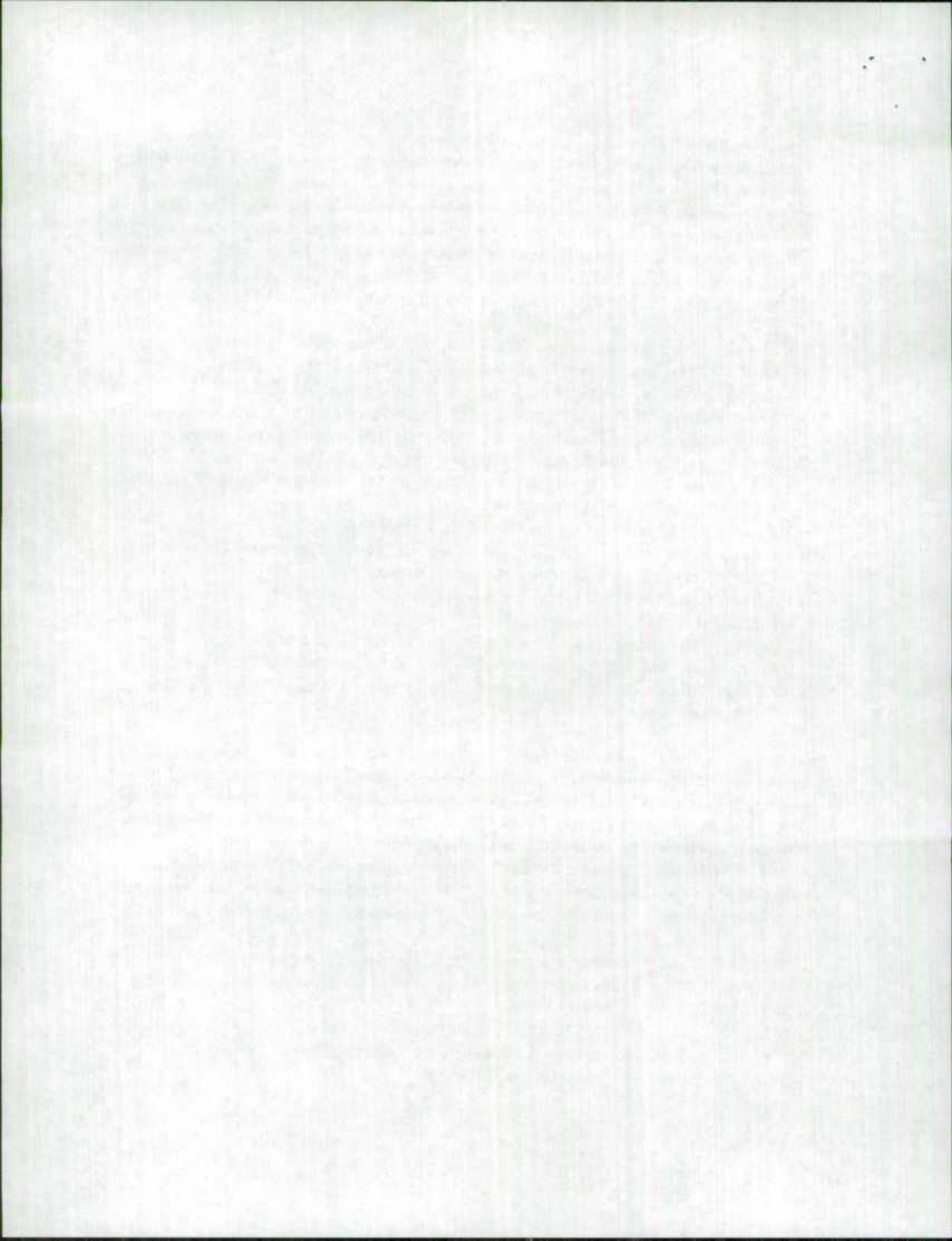
~~Based on the above considerations, tThe 2,900 2902.49 acre growth allocation for Dorchester County will be used as follows, specific acreage amounts are not listed and may be adopted by resolution by the County Commissioners COUNCIL:~~

- ~~Based on the methodology for calculating the amount of growth allocation required for new development described below, an estimated 1,149 acres of growth allocation has already been committed to development projects approved since December 1, 1985. Actual approved projects will be precisely determined retroactively, and the estimated 1,149-acre figure revised accordingly.~~
- ~~Acreage will be reserved for the City of Cambridge.~~
- ~~Acreage will be reserved for the Town of Vienna, Town of Secretary, Town of Church Creek, Eldorado, Brookview And Galestown.~~
- ~~Acreage will be reserved to convert existing Limited Development Areas to Intensely Developed Areas for nonresidential uses.~~
- ~~Acreage will be reserved to convert existing Resource Conservation Areas to Limited Development Areas or Intensely Developed Areas for nonresidential uses.~~
- ~~Acreage will be reserved for future residential development elsewhere in the Resource Conservation Areas.~~

~~Commitment of the estimated net 1,250 acre growth allocation reserved for residential development in Resource Conservation Areas will be phased over approximately 11 years, beginning December 1, 1985, to minimize the impacts of new development on the Critical Area. The annual award of growth allocation for residential development will not exceed 200 acres, and the annual award of growth allocation for nonresidential uses will not exceed 20 acres unless it is determined that the proposed use will provide substantial economic benefit to the county. Any portion of the intended allocation for one year that is unused for any reason may be added to the intended allocation for the next year.~~

The approval of either residential or nonresidential development projects requiring commitment of some of the county growth allocation will be responsive to the following location criteria:

- New Intensely Developed Areas should be located in Limited Development Areas or adjacent to existing Intensely Developed Areas;



The buffer will be maintained in natural vegetation, but may include planted vegetation where necessary to protect, stabilize, or enhance shoreline areas. Any clearing of existing natural vegetation will be based on a Buffer Management Plan, as described in the Dorchester County Zoning Ordinance. The plan will be prepared by the person proposing to clear vegetation—in consultation with the Dorchester County Forestry Board **PLANNING AND ZONING OFFICE**, ~~and must be approved by the Forestry Board.~~ Existing trees and natural vegetation will not be cut, cleared or removed, except for commercial harvesting and special-purpose cutting.

Commercial harvesting of loblolly pine and tulip poplar will be permitted within the buffer to within 50 feet of tidal waters, tidal wetlands, and perennial streams, and to the edge of intermittent streams. The Timber Harvest Plan and the Erosion and Sediment Control Plan will require current best management practices and other appropriate measures established by the Maryland Department of Natural Resources to minimize impacts and provide mitigation.

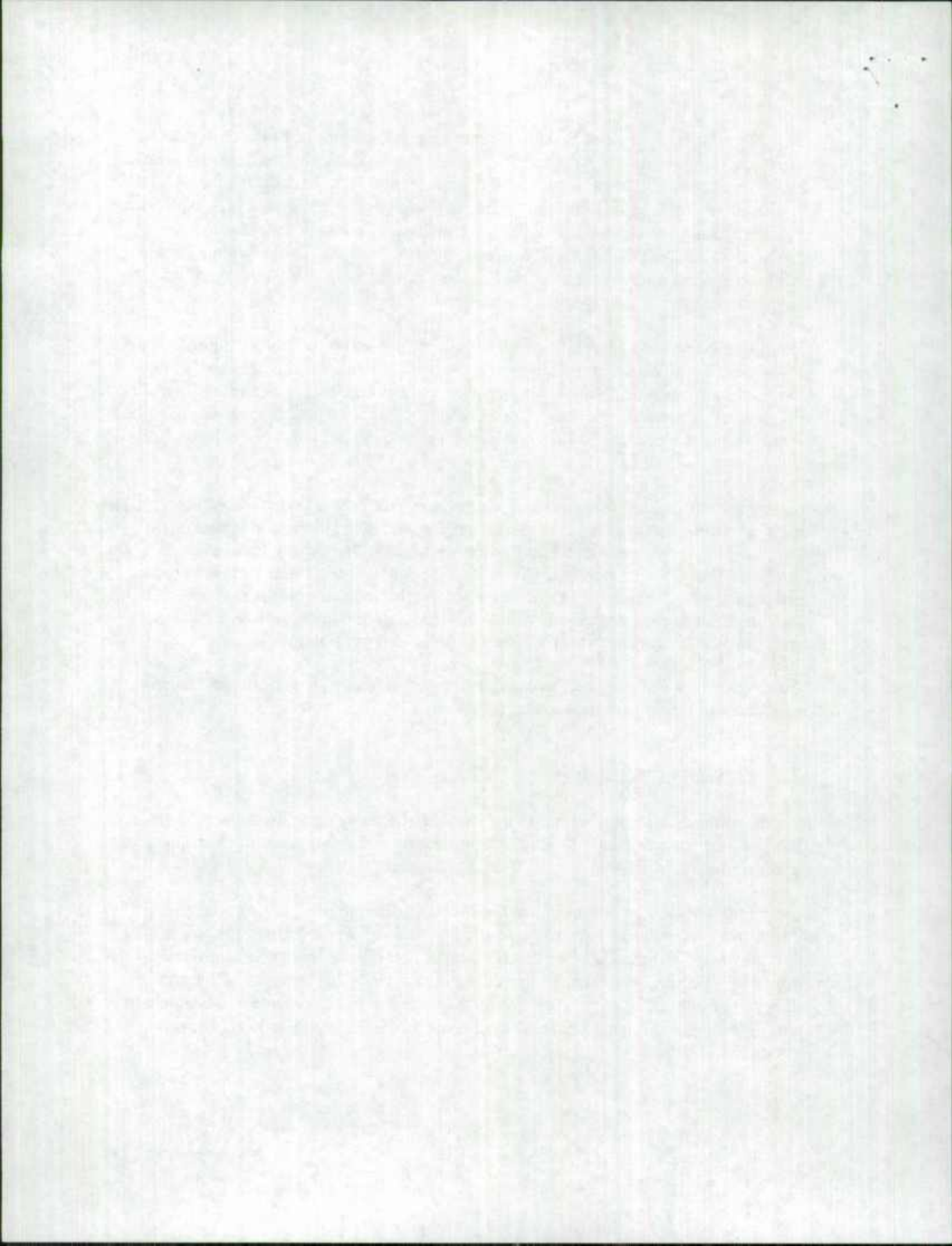
Existing agricultural activities will be permitted in the buffer, provided that a filter strip adjoining water areas or comparable water quality and habitat protection measures are established in accordance with a Soil Conservation and Water Quality Plan approved by the Dorchester Soil Conservation District. Where agricultural use of land within the buffer ceases and the land is proposed to be converted to other uses, the buffer shall be established. Management measures will be undertaken to provide forest vegetation that assures the intended water quality and habitat protection functions of the buffer.

New development activities such as buildings, paved areas, septic systems, and mining operations will not be permitted in the buffer.

2. Nontidal Wetlands

Nontidal wetlands are not regulated in the Dorchester County Code, however they are in Title 26 of the Environmental Article. Administration and enforcement of the regulations is through the Maryland Department of the Environment.

The preliminary location of nontidal wetlands can be determined by reference to the wetlands map series, color infrared photography, National Wetlands Inventory maps, and soil survey maps and reports. The actual extent of nontidal wetlands will be determined in the field by a person(s) experienced in wetland identification and boundary delineation. It will be the responsibility of the applicant for a specific project to provide to the Dorchester County Planning and Zoning Office the results of these field determinations for final approval.



Critical Area Commission

STAFF REPORT

November 3, 2004

APPLICANT: Dorchester County

PROPOSAL: Longboat Estates Subdivision Growth Allocation

JURISDICTION: Dorchester County and the City of Cambridge

COMMISSION ACTION: Vote

COMMISSION PANEL: Judith Evans, Chair, Meg Andrews, Margo Bailey, Dave Blazer and Ed Richards

PANEL RECOMMENDATION: Pending Panel Discussion

STAFF: Mary Owens

**APPLICABLE LAW/
REGULATIONS:** COMAR 27.01.02.06 Location and Extent of Future Intensely Developed and Limited Development Areas

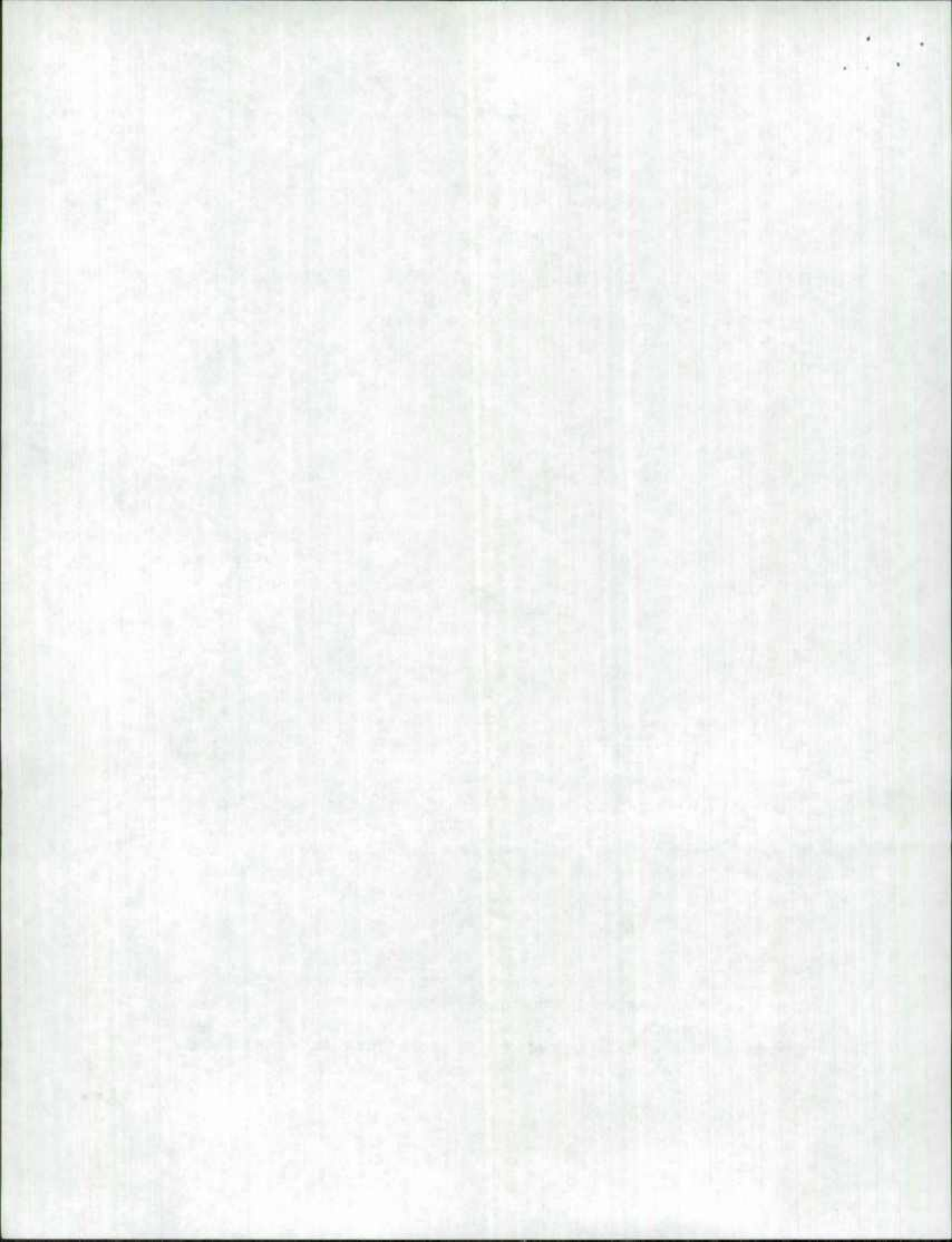
DISCUSSION:

The County Council of Dorchester County approved the use of 15.742 acres of growth allocation and passed Resolution 396 on August 17, 2004. This use of growth allocation will change the Critical Area designation of Parcel 13 on Tax Map 30 from a Limited Development Area to an Intensely Developed Area. The entire site consists of 66.57 acres, and is proposed for development as a residential subdivision.

This property has been annexed into the City of Cambridge and a separate map amendment request will address that issue. Although the City of Cambridge has its own pool of growth allocation, under a Memorandum of Understanding executed with the City of Cambridge, Dorchester County, and the developers of the property, Dorchester County approved the use of the County's pool of growth allocation for this specific project located on property which has been subsequently annexed into the City of Cambridge.

Project Description

The Longboat Subdivision Project involves the creation of 162 single-family residential lots on a 66.57 acre parcel, with 38 lots located within the Critical Area. The site is generally level with several areas of nontidal wetlands outside the Critical Area. There are approximately 14.06 acres of forest cover on the site with 4.80 acres of forest within the Critical Area. Approximately 3.62 acres within the Critical Area are proposed to be cleared.



100-foot Buffer

The 100-foot Buffer adjacent to Jenkins Creek is currently partially forested. Impacts to the Buffer associated with this project include any necessary grading for and the construction of an access road, a 150 foot by 20 foot gravel boat ramp, and two piers (one is 105 feet by six feet and the other is 150 feet by six feet) adjacent to the boat ramp, as well as, two stormwater outfalls. The Buffer is proposed to be maintained as community open space; however, Lots 78 and 79 do include portions of the Buffer within the lot boundaries. In accordance with COMAR 27.01.09.01(6), the applicant is required to establish the 100- foot Buffer in natural vegetation. The applicant is proposing to provide 0.96 acres of Buffer planting in areas that are currently unforested and provide supplemental plantings in areas that are sparsely forested. The proposed plan is based on a tree stocking of 300 stems per acre and includes understory species.

Habitat Protection Areas

In addition to the 100-foot Buffer, the Heritage Division provided comments on the project in a letter dated June 6, 2003. The letter stated that there were no records for Federal or State rare, threatened, or endangered plants or animals within the project site; however, the applicant was urged to contact the U.S. Fish and Wildlife Service because the property is within the range of the endangered Delmarva Fox Squirrel. The applicant coordinated with Ms. Charisa Morris at the U.S. Fish and Wildlife Service, and the plans were modified. Commission staff has verified with Ms. Morris that the current plans are acceptable and do not adversely affect DFS habitat.

The open water areas adjacent to the site are identified as an historic waterfowl staging and concentration area. The applicant is advised to contact Mr. Larry Hindman, Waterfowl Project Manager for the Department of Natural Resources regarding the construction of the proposed water-dependent facilities. It is likely that time of year restrictions will be necessary.

Reforestation

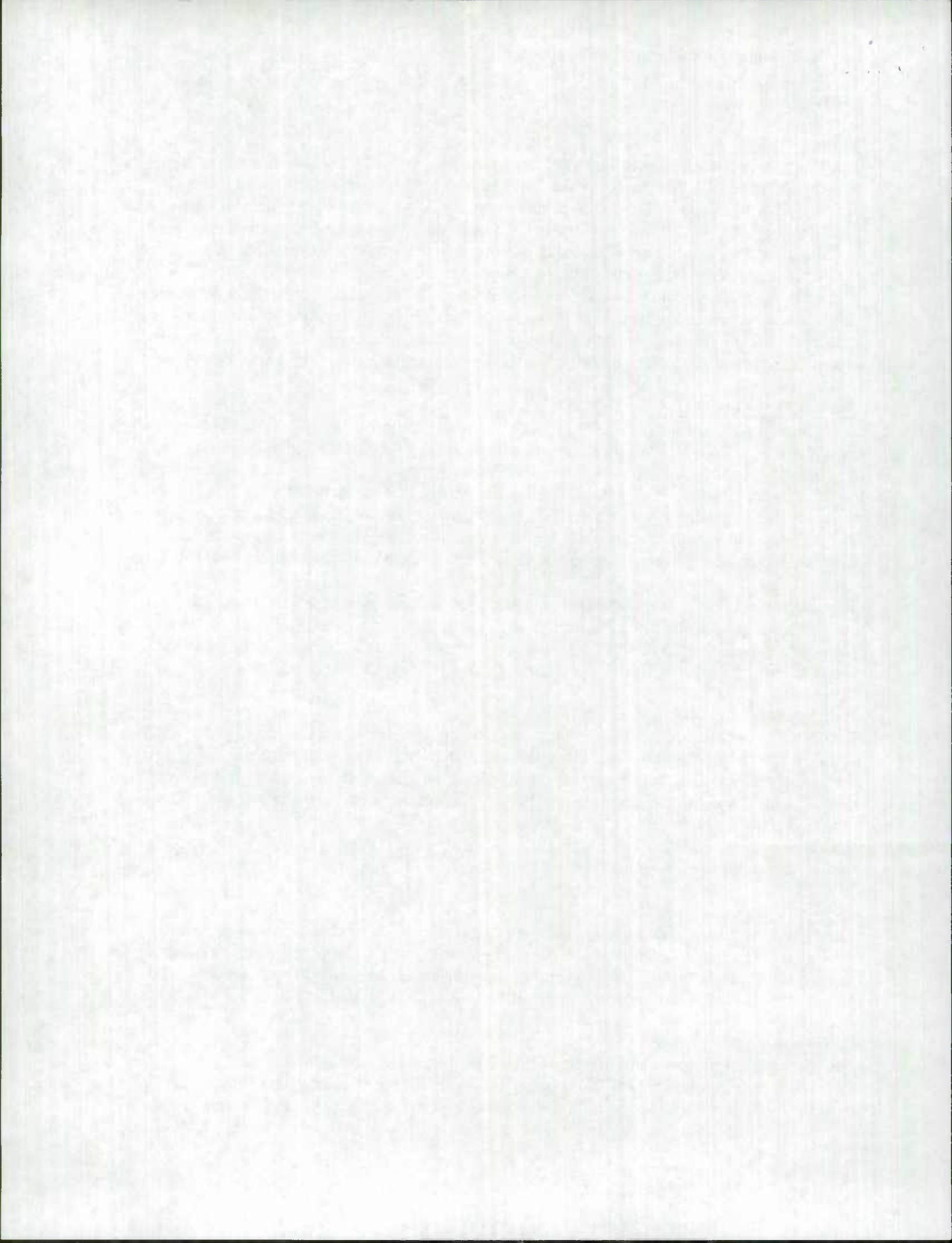
The award of growth allocation will change the Critical Area designation of the property to IDA, and this classification does not include specific afforestation or reforestation standards. However, the project includes forest enhancement and supplemental plantings in forested areas to be retained and adjacent to the proposed stormwater practices. In addition, street tree plantings are proposed along the access road to the boat ramp and along all subdivision streets. Presently, the landscape plan includes some non-native species in the area of the pier, and Commission staff has recommended some alternative native species.

Shoreline Access

The project includes a gravel boat ramp with a gravel access road and turn-around area within the Buffer. Two piers, one on either side of the boat ramp, are also proposed. The piers are recreational piers for fishing, crabbing, and facilitating the use of the boat ramp. No slips are proposed. A gazebo is also proposed in this area, but it will be located just outside the Buffer.

Stormwater Management

The applicant has prepared and submitted a detailed stormwater management report, which includes the worksheets for 10% Rule compliance. After the panel meeting on October 5, 2004, the Panel requested Commission staff review the estimated impervious surface coverage on the



individual lots with the Maryland Department of the Environment (MDE) to determine if this estimate was reasonable. MDE staff commented that based on reference materials and their experience, the original estimate of 30% could be somewhat low.

As a result, the consultant has revised the calculations, and they are now based on an estimated impervious surface coverage of 38 percent on each of the 38 lots within the Critical Area. Based on the worksheets, the pollutant removal requirement for the project is 6.92 pounds of phosphorus. The design includes two best management practices (BMPs), a pond wetland system serving roughly 75 percent of the site and a wet swale serving about 5 percent of the site. The pollutants removed by these BMPs total 6.13 pounds. In order to meet the removal requirement, two off-site areas are proposed to be treated by the on-site BMPs, which have been designed to accommodate this additional stormwater. The pond/wetland system will treat a portion of Jenkins Creek Road and the wet swale will treat a portion of Algonquin Manor Subdivision.

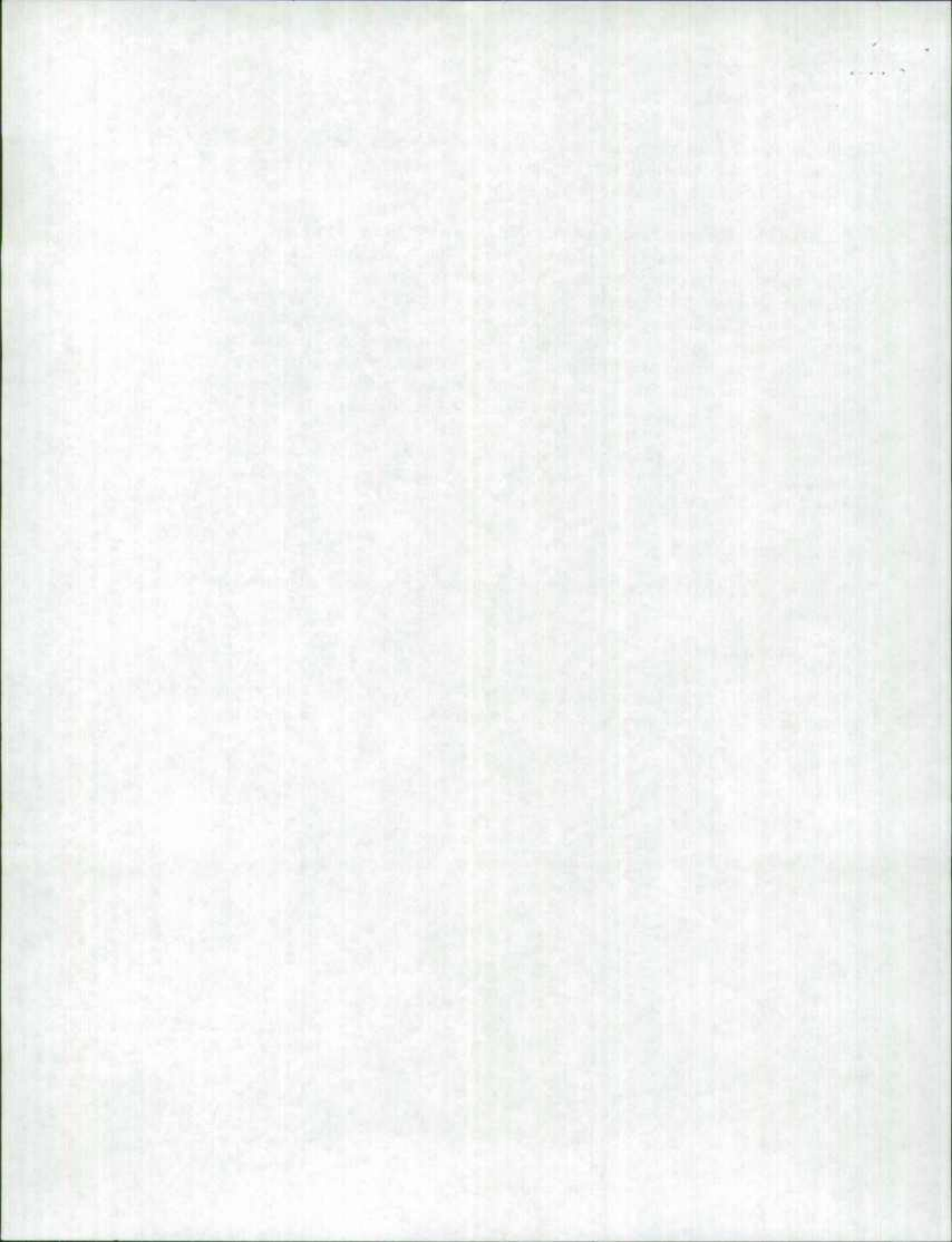
The applicant will include a table with impervious surface calculations and notes on the plat stating that impervious surface coverage on the lots within the Critical Area will be limited to 38 percent of the lot area.

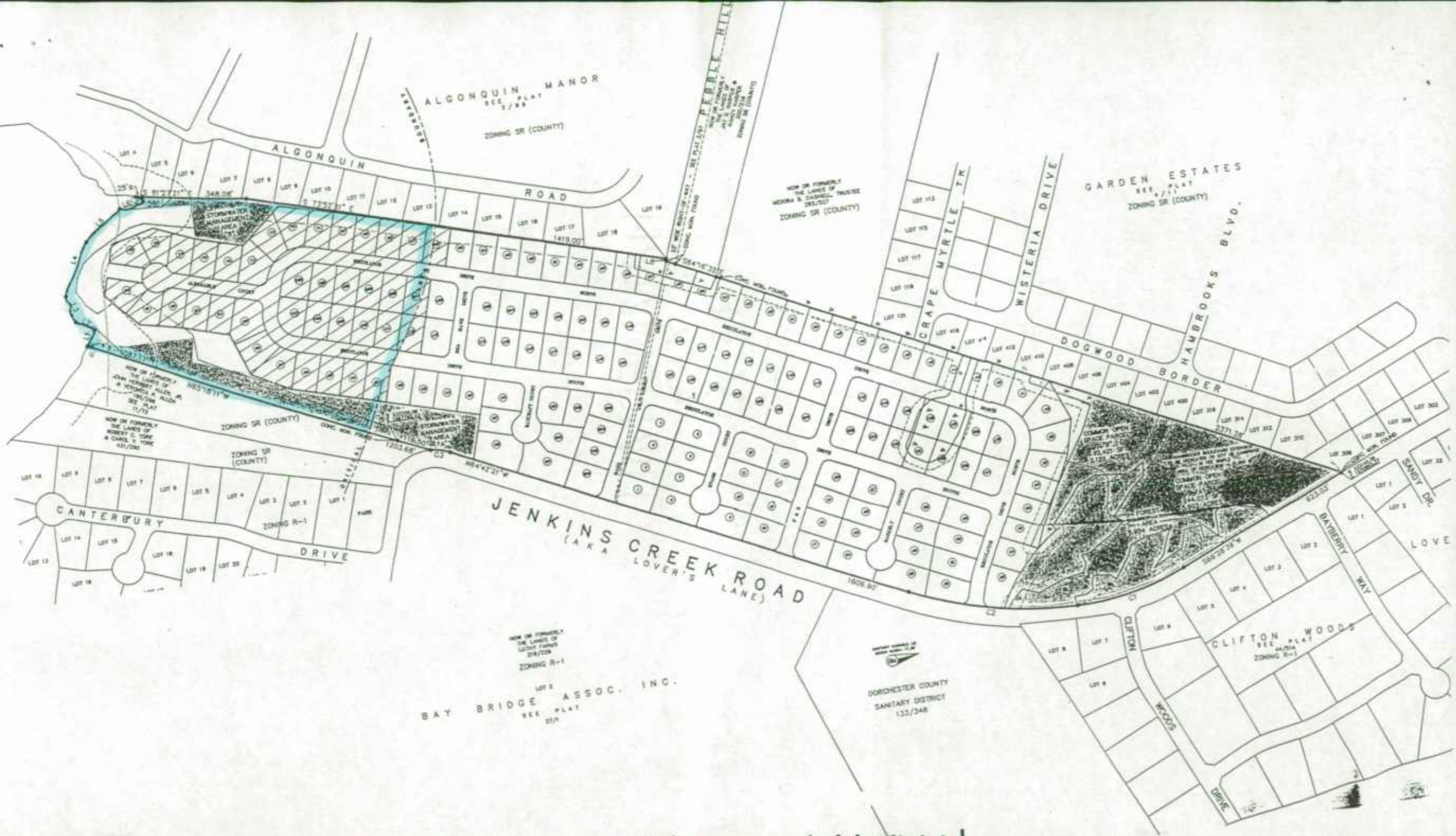
Shore Erosion Control

There are no existing shore erosion control measures on the property, and no measures are proposed.

Sewage Treatment

The project will be served by public water and sewer and the City of Cambridge has certified that there exists adequate capacity at the existing plant to provide service to the project.



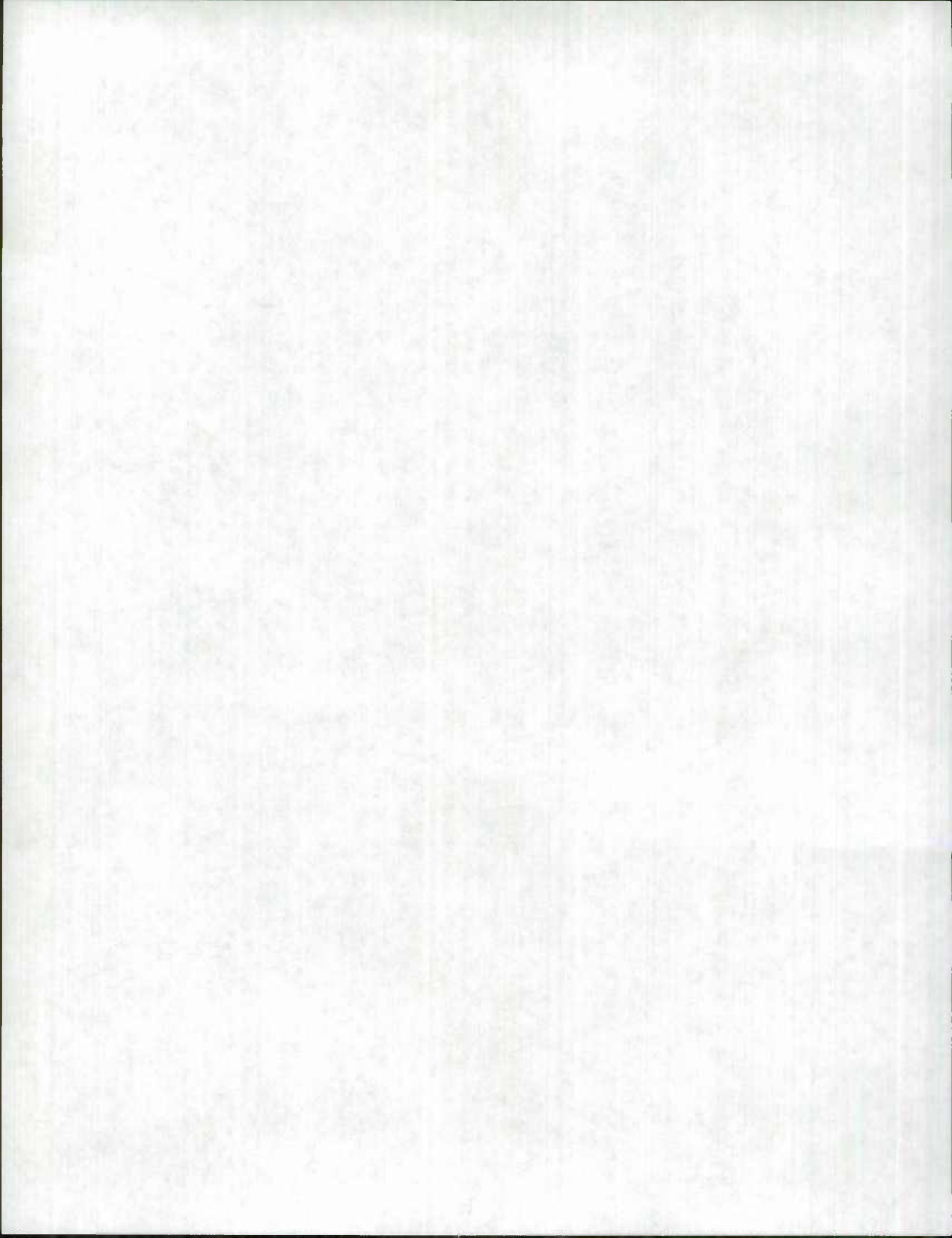


LONGBOAT SUBDIVISION GROWTH ALLOCATION

THE NEW YORK

Conditions for Longboat Estates

1. The homeowner's association covenants pertaining to the protection of plantings and stormwater practices required for compliance with the City's Critical Area Program shall be clarified to ~~express~~ convey that they are required Critical Area compliance measures. The revised covenants shall be ~~app~~ submitted to the Commission for review & comment.
2. The covenants pertaining to Critical Area compliance measures shall clearly state that they cannot be amended or terminated without Critical Area Commission approval. The revised covenants shall be submitted to the Commission for review and comment.
3. The developer shall install fencing or some other form of protective barrier adjacent to the boat ramp access to ensure that the Buffer is not adversely affected by use of this facility.
4. The developer shall revise the covenants for the subdivision to limit the use of the boat ramp facility to non-motorized vessels or motorized vessels 16 feet or less in length. The revised covenants shall be submitted to the Commission for review and comment.
5. The developer shall provide stormwater quality practices at the boat ramp to ensure that pollutants from the ramp itself are not discharged into adjacent waters or wetlands. The design shall be submitted to the Commission for review and comment.



Critical Area Commission

STAFF REPORT November 3, 2004

APPLICANT: City of Cambridge

PROPOSAL: Annexation of Parcels 13, 165, 350, and 409

JURISDICTION: City of Cambridge

COMMISSION ACTION: Vote

STAFF RECOMMENDATION: Pending Panel Discussion

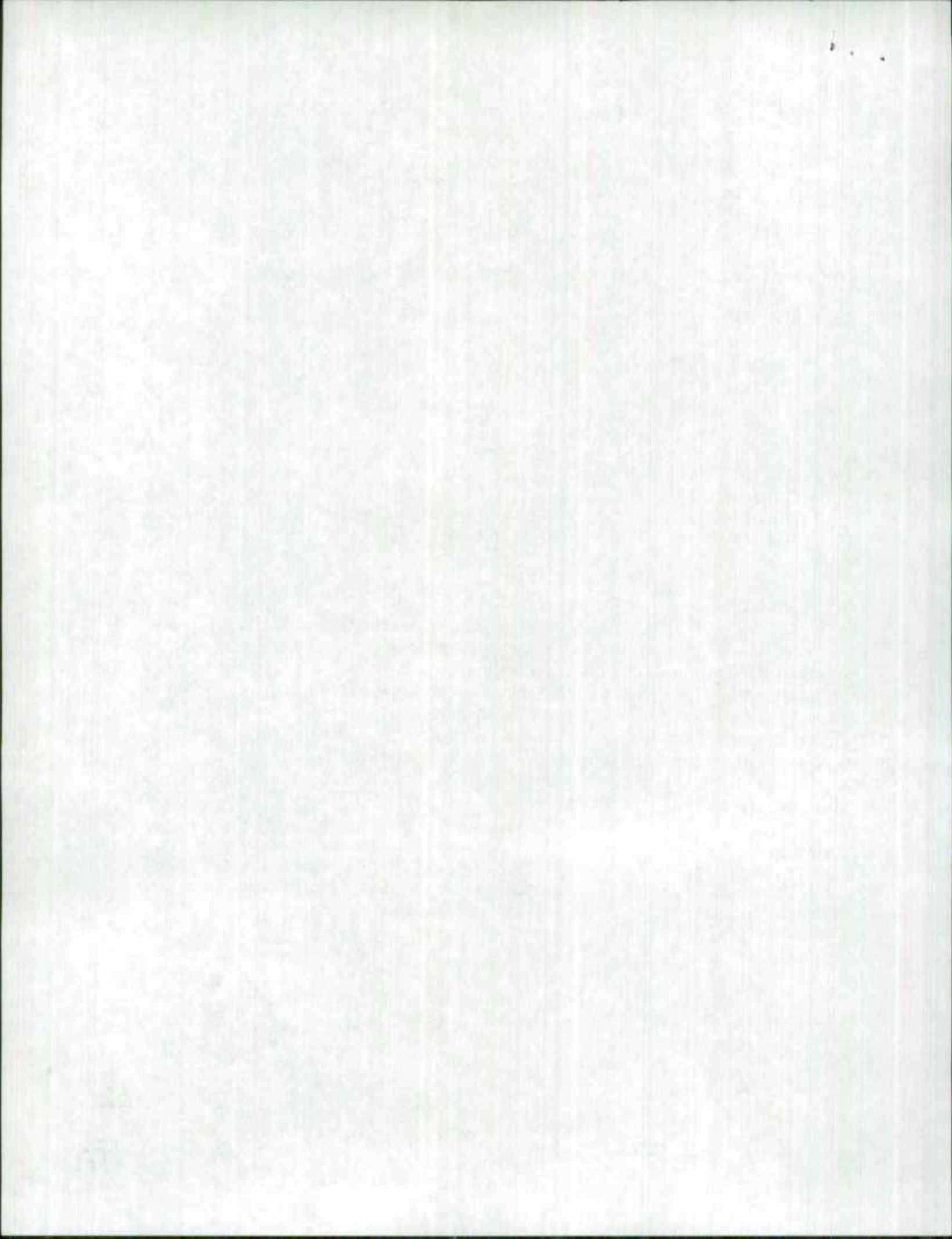
STAFF: Mary Owens

**APPLICABLE LAW/
REGULATIONS:** Natural Resources Article §8-1809(h) Proposed Program
Amendments and Refinements

DISCUSSION:

On September 1, 2004, the Critical Area Commission received notice from the City Commissioners of Cambridge that they had annexed property into the City limits and were requesting that the Critical Area Commission approve a corresponding change to the City's Critical Area maps. The subject area involves four properties, Parcels 13, 165, 350, and 409 on Tax Map 30, and totals 103.571 acres with 15.742 acres within the Critical Area. This portion of the property is designated Limited Development Area; however, Dorchester County has approved the use of growth allocation to change the Critical Area designation from Limited Development Area (LDA) to Intensely Developed Area (IDA). A single-family residential subdivision is proposed for the property.

The growth allocation approved by the County is being simultaneously processed as a separate map amendment with Dorchester County and the City of Cambridge identified as applicants. The City of Cambridge has executed a Memorandum of Understanding with Dorchester County and the developers of the property, regarding the award of growth allocation.



CAMBRIDGE ANNEXATION

MAP 29 - P. 11

EDWINA R SIPLER,
ET AL
243/228
56.00 A.
P.129

JENKINS CREEK

FRANK S. DUDLEY
184/131
67.27 A.
P.13

SARA S. JOHNSON
223/5
18.64
P.61

DORCHESTER COUNTY
SANITARY DISTRICT
133/348
18.26 A.
P.350

JOHN W. LUTHY, JR.
ET AL
230/227
66.42 A.
P.12

MAP 29 - P. 89

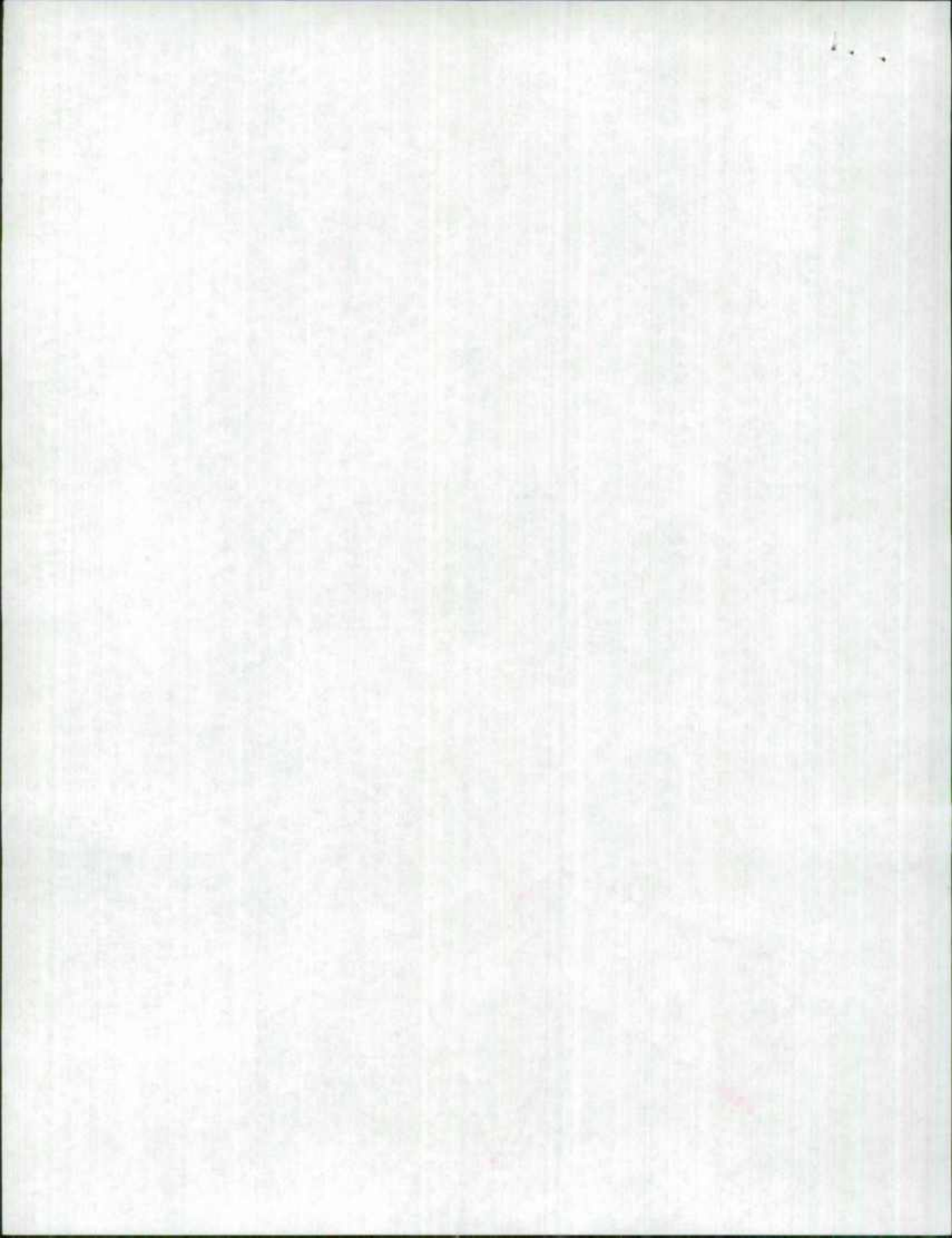
G. PHILIP JACKSON, ET AL
235/252
121.30 A.
P.103

LUTHY FARMS
219/279
151.97 A.
P.168

DORCHESTER COUNTY
SANITARY DISTRICT
147/181
17.00 A.
P.409

GEORGE
H.
ROBINSON
III
210/222
21.22 A.
P.164

JOHN W. LEVI B
TIEDER, JR. JAMES
250/619



Critical Area Commission

STAFF REPORT November 3, 2004

APPLICANT: Kent County

PROPOSAL: Refinement – Text Changes, Bill No. 3-2004

COMMISSION ACTION: Concurrence

STAFF RECOMMENDATION: Concur with Chairman's Determination

STAFF: Lisa Hoerger

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

DISCUSSION:

The Kent County Commissioners approved changes to the Kent County Land Use Ordinance in order to address the changes to the Critical Area Law that were made by the General Assembly in 2004. The County has amended the standards for approving variances, amended the language pertaining to fines, and inserted the new provision for accessory dwelling units in the Resource Conservation Area. Commission staff reviewed Bill No. 3-2004 and it appears to be consistent with the changes to the Critical Area Law.

2004 Maryland General Assembly - Changes to the Critical Area Law

In the 2004 legislative session, the General Assembly passed House Bill 1009/Senate Bill 694, which primarily restored components of the Critical Area Law that were undermined by the Maryland Court of Appeals in the Lewis vs. Department of Natural Resources decision. These companion bills accomplished the following:

- Reaffirmed the 1984 and 2002 legislative findings that establish the importance of the 100-foot Buffer as a protected area
- Defined the term “unwarranted hardship” as it applies to variances
- Restored the original intent of the Law regarding the standards and procedures for considering Critical Area variances
- Moved the definition of Buffer from the Code of Maryland Regulations to the Natural Resources Article of the Annotated Code of Maryland
- Inserted provisions for establishing the Buffer in the Natural Resources Article of the Annotated Code of Maryland
- Increased fines for Critical Area violations
- Provided for assistance from the Attorney General and the Commission for enforcement actions

The General Assembly also passed House Bill 1345/Senate Bill 795, which provided a definition of dwelling unit. These companion bills also provided flexibility for local governments to permit one additional dwelling unit in the Resource Conservation Area (RCA) to be considered part of the primary dwelling unit for density calculations in the RCA. If a local government chooses to allow an additional unit, it must maintain records of all building permits issued and incorporate specific language into its local Critical Area Program that limits the location and size of these units.

Governor Ehrlich signed these bills into law, effective June 1, 2004; therefore, all local governments should be making the required changes to their Critical Area Programs in order to be consistent with the changes to the Critical Area law.

Kent County Text Changes

Bill No. 2-2004 updated the Kent County Critical Area Program by inserting the following:

- Added the definition of unwarranted hardship
- Updated the variance language
- Added the definition of dwelling unit
- Added the optional provision to allow additional dwelling units in the RCA
- Increased fines in the Critical Area
- Amended the County's list of allowable uses in the RCA

A copy of Bill No. 3-2204 is attached for your review. Chairman Madden has determined these text changes to be a refinement to the Kent County Critical Area Program and is seeking your concurrence.

THE COUNTY COMMISSIONERS OF KENT COUNTY, MARYLAND

August 3, 2004
Legislative Session Day

Legislative Session Day
August 3, 2004

BILL NO. 3-2004

INTRODUCED BY: William W. Pickrum, President of the Board of County Commissioners for Kent County, Maryland, at the request of the Kent County Planning Commission.

AN ACT TO REPEAL AND RE-ENACT WITH AMENDMENTS ARTICLE V, SECTION 2.4B; ARTICLE IX, SECTION 2.2.5; ARTICLE XI, SECTION 2.98; ARTICLE XII, SECTION 4.5 OF THE KENT COUNTY LAND USE ORDINANCE; AND TO ADD NEW ARTICLE IX, SECTIONS 2.2.3H. AND 2.2.3J; ARTICLE XI, SECTION 2; AND NOTE #4 TO ARTICLE V, SECTION 2.5 OF THE KENT COUNTY LAND USE ORDINANCE; COMPLYING WITH CHANGES IN THE POLICIES AND CRITERIA OF THE CHESAPEAKE BAY CRITICAL AREA PROGRAM APPROVED BY THE MARYLAND GENERAL ASSEMBLY IN 2004; REVISING PROVISIONS GOVERNING "ACCESSORY USES" IN THE RESOURCE CONSERVATION DISTRICT; ADDING PROVISIONS APPLICABLE TO VARIANCE AND WAIVER DECISIONS AND ORDERS; ADDING A DEFINITION OF "UNWARRANTED HARDSHIP" WITHIN THE CRITICAL AREA; REVISING THE DEFINITION OF "DWELLING UNIT" WITHIN THE CRITICAL AREA; REVISING PENALTIES FOR VIOLATIONS OF CRITICAL AREA PROVISIONS; ADDING CONSIDERATIONS RELATED TO CRITICAL AREA VARIANCE REQUESTS; DEFINING "UNWARRANTED HARDSHIP" WITHIN THE CRITICAL AREA; AND MAKING CERTAIN TECHNICAL CHANGES.

THE COUNTY COMMISSIONERS OF KENT COUNTY

By William W. Pickrum
William W. Pickrum, President

INTRODUCED, read first time, August 3, 2004, ordered posted and public hearing scheduled on the 24th day of August, 2004, at 10 : 30 a.m. in the County Commissioners Hearing Room, County Government Center, 400 High Street, Chestertown, Maryland.

By Order Of

Janice F. Fletcher
Janice F. Fletcher
Executive Assistant

PUBLIC HEARING

HAVING been posted and notice of time and place of hearing and copies having been made available to the public and the press, a public hearing was held on August 24, 2004, and concluded on August 24, 2004. Reported favorably [with] [~~without~~] amendments, read second time and ordered to be considered on September 7, 2004, a legislative session day.

Janice F. Fletcher
Janice F. Fletcher
Executive Assistant

PLANNING OFFICE

REC'D 9 Sept 04

A BILL ENTITLED

AN ACT TO REPEAL AND RE-ENACT WITH AMENDMENTS ARTICLE V, SECTION 2.4B; ARTICLE IX, SECTION 2.2.5; ARTICLE XI, SECTION 2.98; ARTICLE XII, SECTION 4.5 OF THE KENT COUNTY LAND USE ORDINANCE; AND TO ADD NEW ARTICLE IX, SECTIONS 2.2.3H. AND 2.2.3J; ARTICLE XI, SECTION 2; AND NOTE #4 TO ARTICLE V, SECTION 2.5 OF THE KENT COUNTY LAND USE ORDINANCE; COMPLYING WITH CHANGES IN THE POLICIES AND CRITERIA OF THE CHESAPEAKE BAY CRITICAL AREA PROGRAM APPROVED BY THE MARYLAND GENERAL ASSEMBLY IN 2004; REVISING PROVISIONS GOVERNING "ACCESSORY USES" IN THE RESOURCE CONSERVATION DISTRICT; ADDING PROVISIONS APPLICABLE TO VARIANCE AND WAIVER DECISIONS AND ORDERS; ADDING A DEFINITION OF "UNWARRANTED HARDSHIP" WITHIN THE CRITICAL AREA; REVISING THE DEFINITION OF "DWELLING UNIT" WITHIN THE CRITICAL AREA; REVISING PENALTIES FOR VIOLATIONS OF CRITICAL AREA PROVISIONS; ADDING CONSIDERATIONS RELATED TO CRITICAL AREA VARIANCE REQUESTS; DEFINING "UNWARRANTED HARDSHIP" WITHIN THE CRITICAL AREA; AND MAKING CERTAIN TECHNICAL CHANGES.

SECTION 1. BE IT ENACTED by the County Commissioners of Kent County that Article V (District Regulations), Section 2.4.B.1. (Resource Conservation District – Accessory Uses); Article IX (Variances and Waivers), Section 2.2.5 (Decision and Order); Article XI (Definitions), Section 2.98 (Dwelling Unit); and Article XII (Administrative Procedures), Section 4.5 (Enforcement – Penalties) of the Kent County Land Use Ordinance, be and are hereby repealed.

SECTION 2. BE IT FURTHER ENACTED THAT NEW SECTIONS BE and are hereby enacted in lieu thereof and in addition thereto, to read as follows:

ARTICLE V. DISTRICT REGULATIONS

SECTION 2.4. ACCESSORY USES

- B. The following *accessory uses* are allowed on all properties in the Resource Conservation District
1. *Accessory dwelling unit*, one, in principal or *accessory structures*, provided:
 - a. The property owner resides on the premises.
 - b. The *accessory dwelling unit* is located within the primary dwelling unit or its entire perimeter is within 100 feet of the primary dwelling unit.
 - c. The *accessory dwelling unit* does not exceed 900 square feet in total enclosed area.
 - d. The *accessory dwelling unit* is served by the same sewerage disposal system as the primary dwelling unit.
 - e. If the *accessory dwelling unit* is located within the primary dwelling unit, it shall not increase the amount of impervious surfaces already attributed to the primary dwelling unit.
 - f. The *accessory dwelling unit* may not be subdivided or conveyed separately from the primary dwelling unit.
 - g. The appearance of the structure and property remain that of a single family residence so that the average neighbor is unaware of the *accessory dwelling unit's* existence.
 - h. If the entrance to the *accessory dwelling unit* is separate from that of the primary dwelling, the entrance to the *accessory dwelling unit* shall be from the *side or rear yard*.
 - i. One parking space is provided in the *rear yard* for the *accessory dwelling unit*.
 - j. The *structure* meets all applicable Kent County Codes, including the building code, and Health Department regulations
 - k. The *accessory dwelling unit* is subordinate to the principal dwelling in size and appearance.
 2. *Accessory off-street parking* and loading of non-commercial vehicles that have current licenses and are operable.
 3. *Accessory off-street parking* of one commercial vehicle in the *rear yard* provided:
 - a. The vehicle is used by the occupant of the building.
 - b. The vehicle does not exceed 16,000 pounds manufacturers' gross vehicle weight.
 - c. No major repair is conducted *on-site*.
 - d. No engines may run when parked *on-site*. Electrical refrigeration units may run.
 - e. Honey wagons, sanitation, garbage, or other trucks used to transport odorous, flammable, or hazardous materials are prohibited.
 - f. The vehicle has a current license and is operable.

4. Appurtenant signs in accordance with Article VI, Section 2, of this Ordinance.

5. Day care home provided:

- a. One drop off / pickup space is provided.
- b. Outdoor play areas are fenced and screened.
- c. Signs shall be limited to two square feet.
- d. Structured areas for active play or play structures shall not be in the front yard and shall be a minimum of 10 feet from the side or rear property line.
- e. Structural or decorative additions shall be designed to be compatible with the residential character of the neighborhood.

6. Home occupations in main or accessory building.

Intent - The conduct of business in residential units may be permitted under the provisions of this section. It is the intent of this section to:

- a. Ensure the compatibility of home occupations with other uses permitted in the residential districts;
- b. Maintain and preserve the character of residential neighborhoods by regulating the operation of home occupations so that the average neighbor is unaware of their existence;
- c. Guarantee to all residents freedom from excessive noise, excessive traffic, nuisance, fire hazard, and other possible effects of commercial uses being conducted in residential areas;
- d. Promote the efficient use of public services and facilities by assuring these services are provided to the residential population for which they were planned and constructed, rather than commercial uses.

Conditions -

- a. A home occupation shall be incidental to the use of a dwelling unit for residential purposes and shall be conducted only by members of the family residing in the dwelling unit plus no more than one non-resident assistant or employee.
 - b. There shall be no outdoor storage of materials of products on the premises.
 - c. The home occupation shall not cause any external effect associated with the home occupation, such as increased noise, excessive lighting, or offensive odor, which is incompatible with the characteristics of the residential zone. There shall be no illegal discharge of any materials, fluids, or gases into the sewer system or any other manner of discharging such item in violation of any applicable government code.
 - d. No traffic shall be generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood, and any need for parking generated by the conduct of such home occupation shall be met off the street and other than in a required front yard.
 - e. A home occupation shall limit any external evidence of an occupation to one identification sign not to exceed 2 square feet in area.
7. Private piers, community piers, and private shared piers, not to exceed 25% of the width of the waterway, the edge of the channel, or 150 feet in length, whichever is less and subject to the stipulations of Article VI, Section 3.7 of this Ordinance. Regulations governing community piers may be found in Article VI, Section 3.7.
8. Private garages, swimming pools, game courts, and other customary residential outbuildings and structures provided on parcels less than five acres accessory storage structures do not exceed 1,200 square feet in size or a height of 17 feet.
9. Roadside stands offering for sale locally grown fresh agricultural products in season, operated by the owner, lessee or tenant of the premises upon which such stand is located. Adequate off-street parking shall be provided. Such stands shall be completely removed at the end of the local fresh produce season.
10. Satellite dish, private, with an antenna exceeding 3 feet in diameter provided:
- a. No antenna shall exceed an overall diameter of 12 feet or an overall height of 15 feet above existing grade.
 - b. The antenna shall be permanently ground mounted. No antenna shall be installed on a portable or movable structure.
 - c. The antenna shall be totally screened along the non-receptive axis and low-level ornamental landscaping shall be installed along the reception window axis of the base of the antenna. Screening may consist of fencing or a variety of plant types. Screening may be waived when the antenna is located 100 feet from all property lines or the antenna is of a nature that is not visible or intrusive to the neighborhood.

11. Satellite dish, private, with an antenna of 3 feet or less, and solar panel arrays, in *rear yard* only, provided that the antenna is not installed on portable or movable *structures*.
12. School buses, limited to two, parked in the *rear* or *side yard* of dwelling provided that the buses are owned or operated by the current occupants of the dwelling, have current licenses, and are operable.
13. Storage of boats, campers, boat trailers, camper trailers, which are titled under the name of the property owner, or occupant. All boats, campers, boat trailer and camper trailers must be operable and have current licenses, if required.

SECTION 2.5. DENSITY, AREA, HEIGHT, WIDTH AND YARD REQUIREMENTS

Footnote 4: Accessory *dwelling units* that comply with Article V, Section 2.5.4.B.1 do not count toward the density calculation.

ARTICLE IX. VARIANCES AND WAIVERS

SECTION 2. VARIANCES

2.2 Variances

3h. In considering an application for a variance, the Board of Appeals 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 this Ordinance and the Critical Area Law.

3j. The Board may consider the cause of the variance request and if the variance request is the result of actions by the applicant, including the commencement of development activity before an application for a variance has been filed.

5. Decision and Order

Each case shall be decided and a decision and order issued no later than 30 days after the hearing is concluded. The decision and order granting or denying the variance shall be in writing and shall be signed by the Board of Appeals. This decision and order shall be based on competent and substantial evidence and when applicable shall contain findings as to whether the applicant has overcome the presumption established in Article IX, Section 2.2.3h of this Ordinance. With due regard of the person's experience, technical competence, and specialized knowledge, the written findings may be based on evidence introduced and testimony presented by the applicant, any government agency, or any other person deemed appropriate by the Board. The Department of Planning and Zoning shall mail a copy of the decision to the applicant. The decision and order shall be made a part of the public record of the proceedings on file in the Department of Planning and Zoning.

ARTICLE XI. DEFINITIONS

SECTION 3. DEFINITIONS

98. Dwelling Unit – A room or group of rooms occupied or intended to be occupied as separate living quarters by a single family.

Within the *Critical Area*: A single unit providing complete, independent living facilities for at least one person, including permanent provisions for sanitation, cooking, eating, sleeping, and other activities routinely associated with daily life. *Dwelling unit* includes a living quarters for domestic of other employee or tenant, an in-law or accessory apartment, a guest house, or a caretaker residence.

- 337 ½. Unwarranted Hardship – Within the *Critical Area*, without a variance, an applicant would be denied reasonable and significant use of the entire parcel or lot for which the variance is requested.

ARTICLE XII. ADMINISTRATIVE PROCEDURES

SECTION 4. ENFORCEMENT

- 5. The preset fine shall not be less than \$100.00 nor more than \$500.00 for zoning violations. The preset fine shall not exceed \$5,000.00 for violation of the *floodplain, subdivision, and sediment* control provisions of this Ordinance, \$1,000.00 plus \$0.30 a square foot for *forest conservation* violations, and \$5,000.00 for *stormwater management* violations. Non-compliance fees for violation of the *forest conservation* provisions of this Ordinance shall be deposited in the *forest conservation* fund and may be used by the County for purposes related to implementing the *forest conservation* objectives of this Ordinance. Every day the violation continues may be considered a separate offense.

Within the *Critical Area*, in addition to any other penalty applicable under state law, a person who violates a provision pertaining to the *Critical Area* is subject to a fine not to exceed \$10,000.00. In determining the amount of the penalty to be assessed, the following may be considered:

- a. The gravity of the violation;
- b. Any willfulness or negligence involved in the violation;
- c. The environmental impact of the violation.

SECTION 3. BE IT FURTHER ENACTED that this Act shall take effect on the 22nd day of October, 2004, or upon approval by the Chesapeake Bay Critical Areas Commission, whichever shall occur later.

Read Third Time September 7, 2004.

PASSED this 7th day of September, 2004.

Failed of passage _____.

ORDERED a fair summary thereof of the entire bill shall be published in at least one newspaper of general circulation in the County, not less than three times at weekly intervals within a four week period.

By Order Of:

Janice F. Fletcher
Janice F. Fletcher
Executive Assistant

Approved:
Date: September 7, 2004

THE COUNTY COMMISSIONERS
OF KENT COUNTY, MARYLAND

William W. Pickrum
William W. Pickrum, President

Roy W. Crow
Roy W. Crow, Member

Scott D. Livie
Scott D. Livie, Member



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Critical Area Commission

STAFF REPORT November 3, 2004

APPLICANT: Anne Arundel County

PROPOSAL: Refinement - Mapping Mistake
Sorrell Property

COMMISSION ACTION: Concurrence

STAFF RECOMMENDATION: Concur with Chairman's Determination

STAFF: Lisa Hoerger

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

DISCUSSION:

Anne Arundel County submitted a map amendment to correct a mapping mistake on property located in southern Anne Arundel County. The property is 11.55 acres with a Critical Area designation of Resource Conservation Area (RCA). The Administrative Hearing Officer approved the request to change this property to a Limited Development Area (LDA).

The property is currently developed with a driveway that serves one dwelling, a barn and several outbuildings. The property functions as a farm to raise horses. Horse pastures occupy the northern portion of the property while the dwelling and other outbuildings are located on the southern portion of the property along Parker Creek. The parcel is bisected by a gravel road from west to east, and is also bisected by a wetland system from north to south.

Along the western edge of the property on Tyler Point Road the County maintains a sewer pump station. A force main bisects the property from west to east. The applicant deeded a portion of the property to the County for this purpose in 1979, and it is shown on the County's Official Sewer Map that was adopted by the County Council in 1984.

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."

In this proposal, it is the responsibility of the County to determine that a mistake occurred and that the property should have been designated LDA. It is then the responsibility of the Commission to determine that at the time of original mapping (1988), the area met the criteria for LDA. As required by the Critical Area Criteria at COMAR 27.01.02.04.A, at that time, the area would have had to have at least one of the following features:

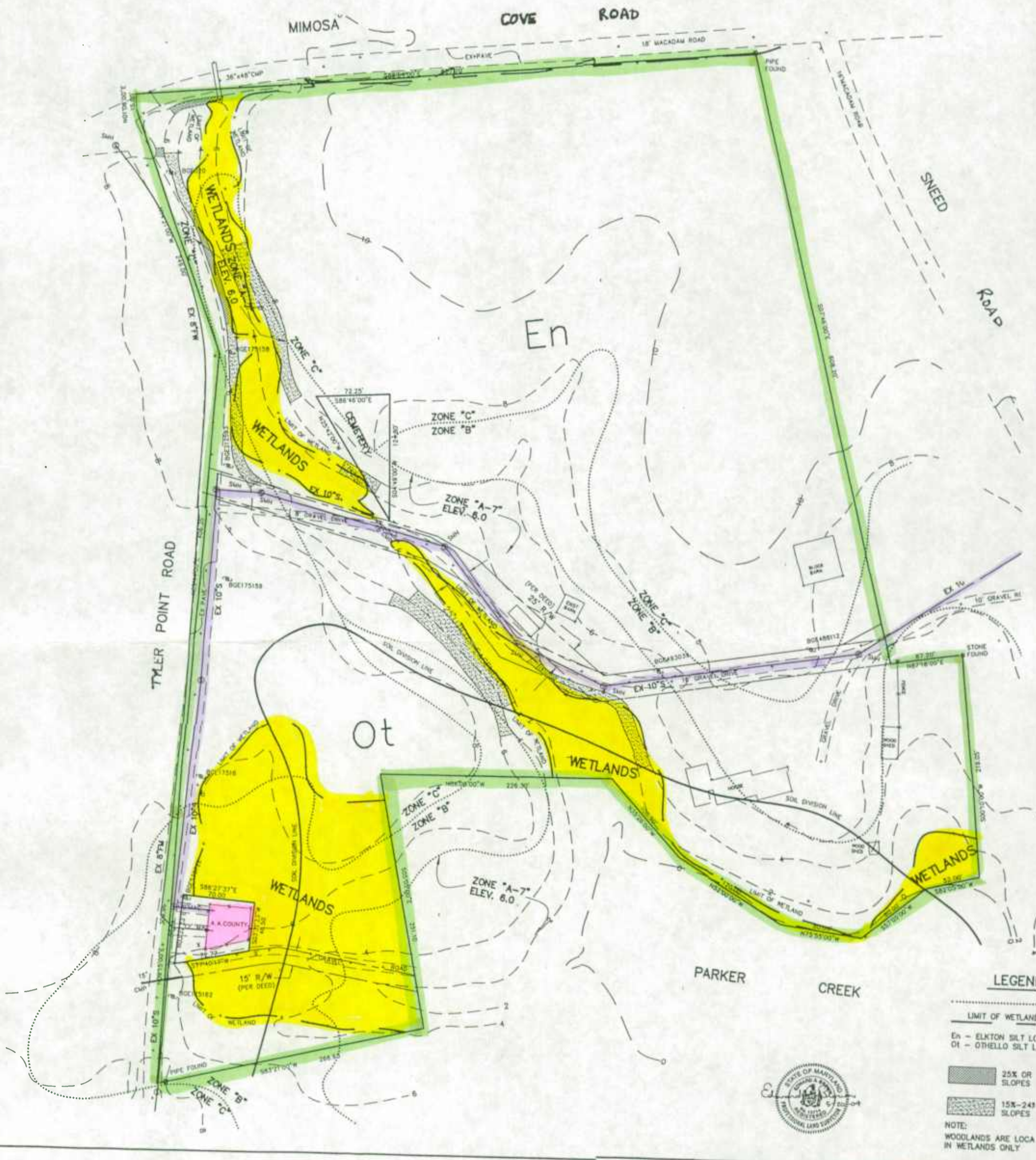
- 1) Housing density ranging from one dwelling unit per 5 acres up to four dwelling units per acre;
- 2) Areas not dominated by agriculture, wetland, forest, barren land, surface water, or open space;
- 3) Areas meeting the conditions of Regulations .03A, but not .03B, of this regulation;
- 4) Areas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

In Anne Arundel County, the Administrative Hearing Officer approves proposed map changes based on mistake. The County Planning Office advised the Hearing Officer that based on the provisions of the County Critical Area Program, which include the standards outlined above, it was the County's original intent to map this parcel as an LDA since the County's Program document states that properties within 2,000 feet of an existing water or sewer line were mapped as LDA. This mapping standard is unique to Anne Arundel County. Since a sewer line bisects the property, the Hearing Officer granted the reclassification request; however, the Program document also states that any land within 2,000 feet of an existing water or sewer line was mapped LDA unless it was a wetland or public property.

This limitation on mapping areas as LDA was not apparent in the Hearing Officer's decision or in the evidence presented to him by the County staff or witnesses, but was important to the case since approximately half of this parcel appears to be wetlands, according to the site plan submitted by the County. The Commission staff letter noted the mapping restriction; however, it does not appear to be part of the decision. Since the County has additional mapping standards for LDA, and the Critical Area Commission approved them as part of the local Critical Area Program, it seems that these additional criteria must be met; therefore, those portions of the site that are wetlands should remain RCA.

The Chairman has determined that this change to the local Anne Arundel County Program can be handled as a refinement, and has recommended that a condition be included such that only the portion of the site within 2,000 feet of the existing sewer line that is not wetlands be mapped as an LDA and the area that is wetlands remain RCA. The Chairman is seeking your concurrence with the determination that this mapping mistake is a refinement to Anne Arundel County's Critical Area Program.

Anne Arundel County - Refinement Request Mapping Mistake - Sorrell Property

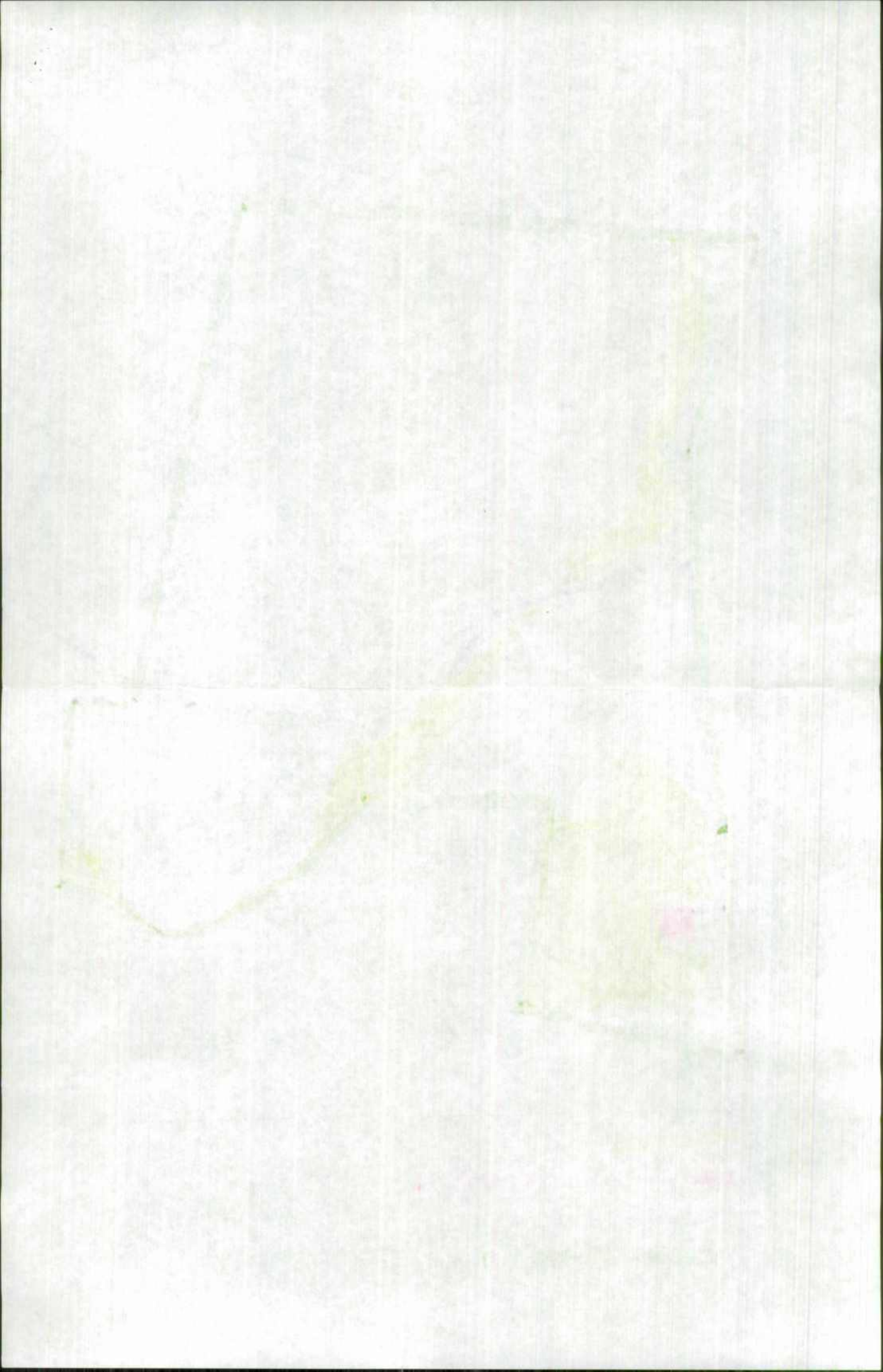


Wetlands

Sewer Pumping Station

Sewer Line

Parcel Boundary



**MARYLAND PORT ADMINISTRATION
LAND AND BOAT
TOUR ATTENDEES
AND ORGANIZERS**

Land and Boat Tour date: October 28, 2004

Commissioners that came on the tour

- 1. Judith Evans, Anne Arundel County**
- 2. Ella Ennis, Calvert County**
- 3. Joseph "Joe" Jackson – Worcester County**
- 4. James McLean- DBED**
- 5. Meg Andrews – DOT**
- 6. Gary Setzer – MDE**
- 7. Duncan Stuart for Otis Rolley – Balto. City**
- 8. Dr. Earl Chambers, - Queen Anne County**

Land and Boat Tour Organizers

- 1. Dawnn McCleary – CAC Planner**
- 2. Meg Andrews – DOT**
- 3. Mark Kreifle – MPA**
- 4. Rep Serey – Ex. Director for CAC**
- 5. Jim Dwyer, mpa**

