

Critical Area Commission
Chesapeake and Atlantic Coastal Bays
Meeting At
Department of Housing and Community Development
Crownsville, Maryland
December 1, 2004

AGENDA

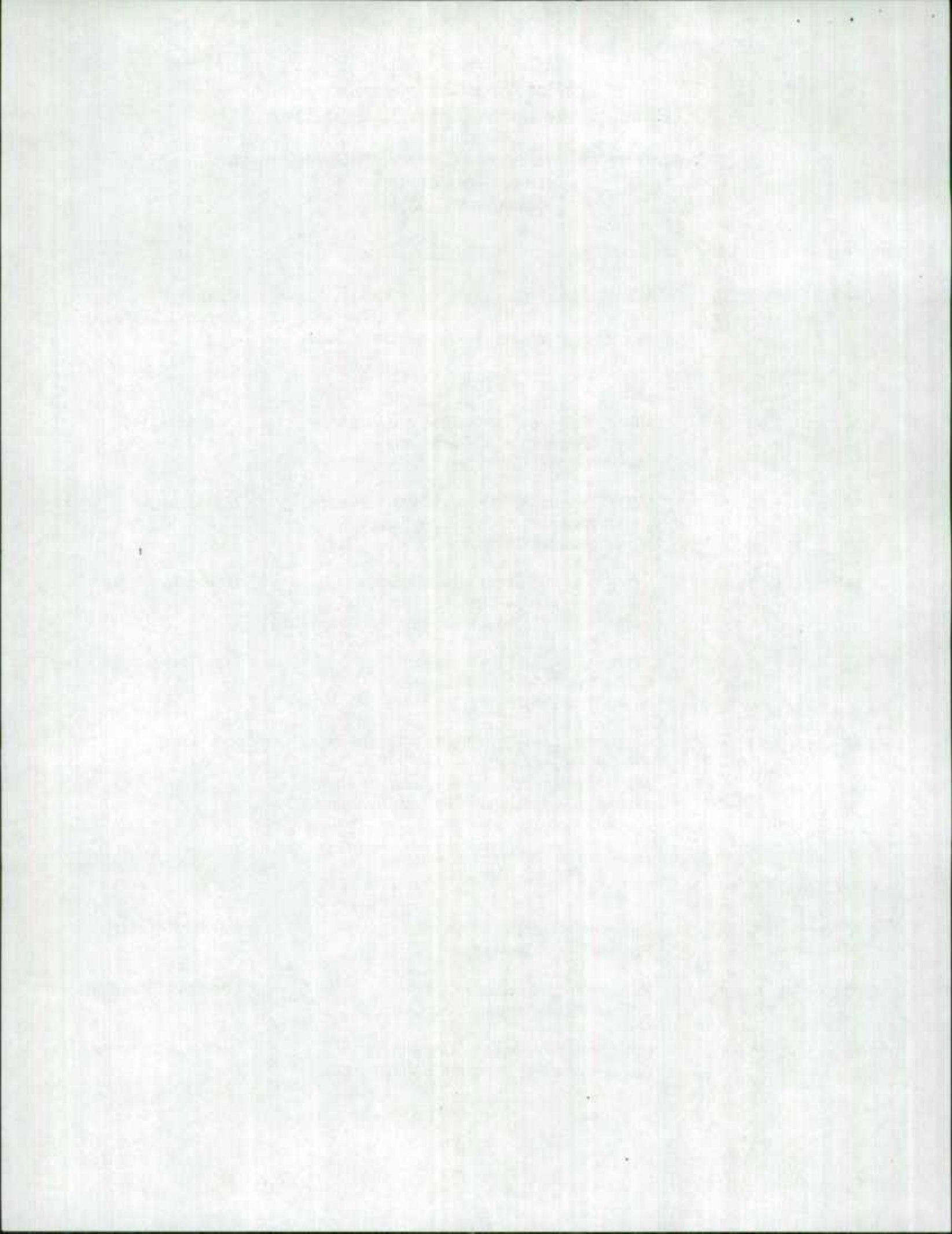
1:00 p.m. – 1:05 p.m.	Welcome and Remarks	Chairman Martin G. Madden
	Approval of Minutes for November 3, 2004	

PROJECTS

1:05 p.m. – 1:15 p.m.	VOTE: Maryland Transportation Authority: US 50 Widening of EZ Pass Lane (Anne Arundel County)	Lisa Hoerger
1:15 p.m. – 1:25 p.m.	VOTE: Maryland Transportation Authority: US 50 Widening of Departure Lane (Anne Arundel County)	Lisa Hoerger
1:25 p.m. – 1:35 p.m.	VOTE: Maryland Port Administration: Masonville Marine Terminal Cell 5 (Phase 1) Rough Grading (Baltimore City)	Dawnn McCleary
1:35 p.m. – 1:45 p.m.	VOTE: Maryland Port Administration: CSX / Cox Creek Unloading Pier (Anne Arundel County)	Lisa Hoerger
1:45 p.m. – 1:55 p.m.	VOTE: Department of Natural Resources / Erickson Foundation: North Bay Environmental Education Camp: Wastewater Treatment Plant Improvements (Cecil County)	Ren Serey

PROGRAMS

1:55 p.m. – 2:00 p.m.	Refinement: City of Annapolis: Program Text Changes	Dawnn McCleary
2:00 p.m. – 2:05 p.m.	Refinement: Worcester County: Coastal Bays Program Text Changes	LeeAnne Chandler
2:05 p.m. – 2:10 p.m.	Refinement: Worcester County: Chesapeake Bay Program Text Changes	LeeAnne Chandler



2:10 p.m. – 2:20 p.m.

Refinement: Talbot County
County Bills 961, 962, 963, 964

Lisa Hoerger

OLD BUSINESS

2:20 p.m. – 2:25 p.m.

Legal Update

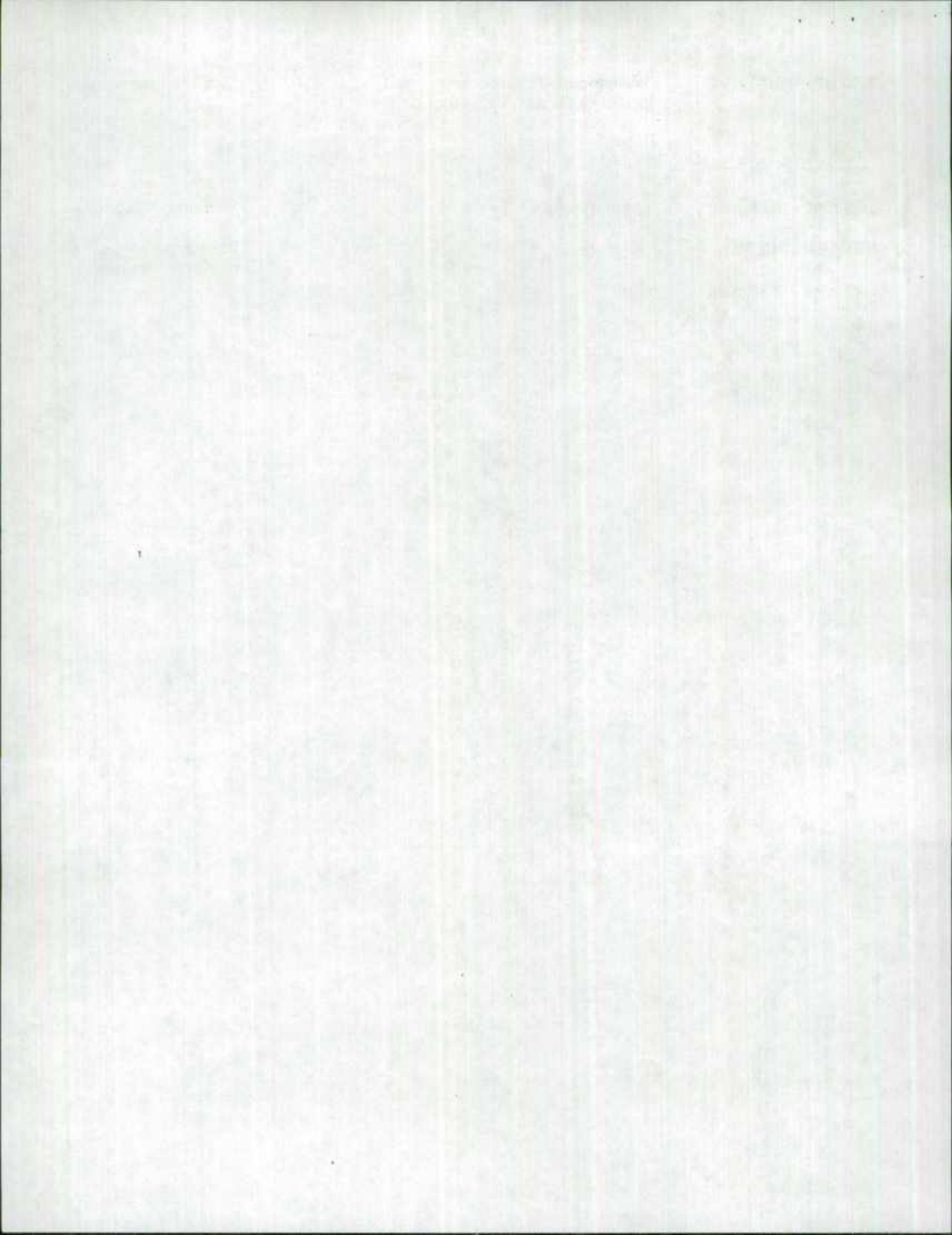
Marianne Mason

NEW BUSINESS

2:25 p.m. – 2:30 p.m.

Chairman
Martin G. Madden

Adjourn



**Critical Area Commission
Chesapeake and Atlantic Coastal Bays
Meeting At
Department of Housing and Community Development
Crownsville, Maryland
December 1, 2004**

PANELS

9:30 a.m. – 9:45 a.m. **Talbot County
County Bills 961, 962, 963, 964**

Panel Members: **Dave Blazer, Chair; Ed Richards; Joe Jackson; Gary Setzer**

SUBCOMMITTEES

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

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

Department of Natural Resources / Erickson Foundation: **Ren Serey**
North Bay Environmental Education Camp
Wastewater Treatment Plant Improvements (Cecil County)

Maryland Port Administration: Masonville Marine Terminal **Dawnn McCleary**
Cell 5 (Phase 1) Rough Grading (Baltimore City)

Maryland Transportation Authority: **Lisa Hoerger**
US 50 Widening of EZ Pass Lane (Anne Arundel County)

Maryland Transportation Authority: **Lisa Hoerger**
US 50 Widening of Departure Lane (Anne Arundel County)

Maryland Port Administration: **Lisa Hoerger**
CSX / Cox Creek Unloading Pier (Anne Arundel County)

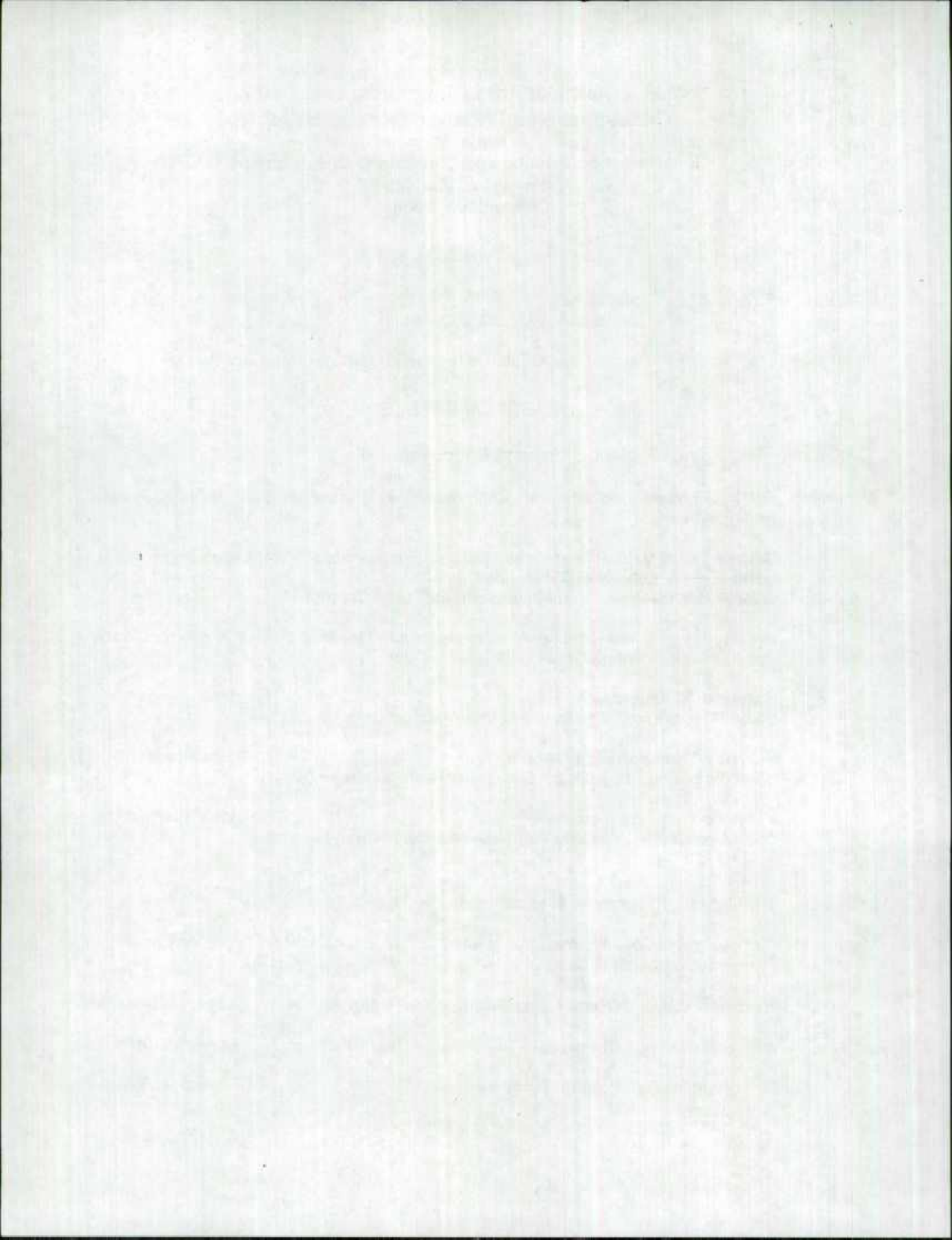
9:45 a.m. – 12:00 p.m. **Program Implementation Subcommittee**

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

Worcester County: Coastal Bays Program Text Changes **LeeAnne Chandler**

Worcester County: Chesapeake Bay Program Text Changes **LeeAnne Chandler**

City of Annapolis: Program Text Changes **Dawnn McCleary**

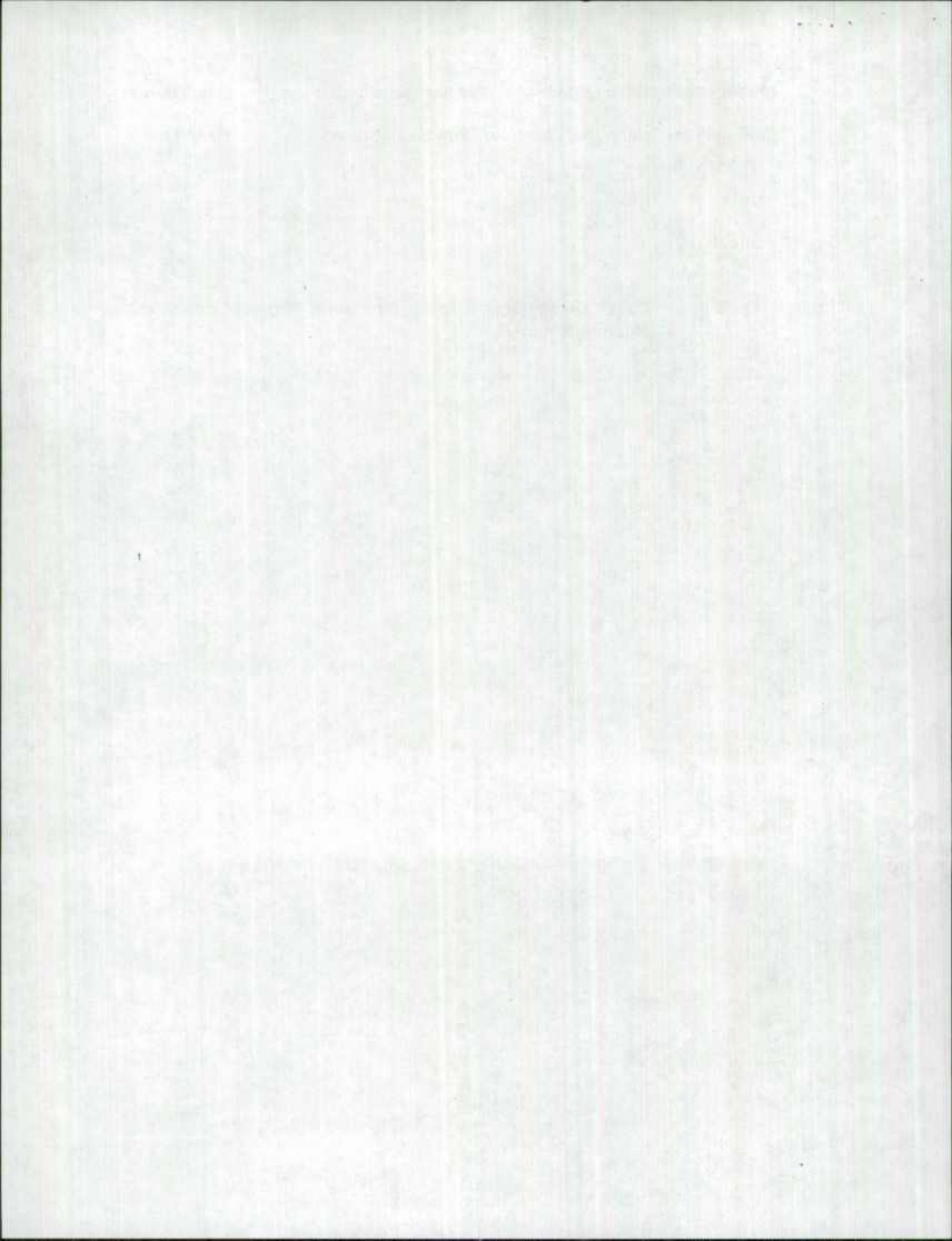


(Information) Baltimore County: Holly Neck Growth Allocation Mary Owens

(Information) Cambridge: Waterford Growth Allocation Mary Owens

12:00 p.m. Lunch

12:15 p.m. – 12:45 p.m. Lunch Discussion: Growth Allocation (Project Subcommittee Meeting Room)



Critical Area Commission
For the Chesapeake and Atlantic Coastal Bays
People's Resource Center
100 Community Place
Crownsville, Maryland
November 3, 2004

approved

The full Critical Area Commission met at the People's Resource Center Crownsville, Maryland. The meeting was called to order by Chairman Martin G. Madden with the following Members in

Attendance:

Howard K. Anderson, Somerset County
Margo Bailey, Kent County
David Blazer, Coastal Bays
Glenn L. Bramble, Dorchester County
Dr. Earl Chambers, Queen Anne's County
Judith Cox, Cecil County
Ella Ennis, Calvert County
Judith Evans, Western Shore Member at Large
Tracey Gordy, Department of Planning
Joseph Jackson, Worcester County, Chesapeake Bay
Gail Booker Jones, Prince George's County
James N. Mathias, Jr., Ocean City
Daniel Mayer, Charles County
Thomas McKay, St. Mary's County
S. Michael Mielke, Talbot County
C. Edward Prager, Eastern Shore Member at Large
Edwin Richards, Caroline County
Duncan Stuart for Otis Rolley, Baltimore City
Cathleen Vitale, Anne Arundel County
Frank Dawson, Maryland Department of Natural Resources
Rowland Agbede, Maryland Department of Agriculture for Louise Lawrence
Gary Setzer, Maryland Department of the Environment
Jim McLean, Md. Depart of Business and Economic Development
Meg Andrews, Maryland Department of Transportation

NOT IN ATTENDANCE:

Allison Ladd, Md. Dept. Housing and Community Development
Otis Rolley, Baltimore City
Stevie Prettyman, Wicomico County
Douglas Wilson, Harford County

Chairman Madden thanked Dawnn McCleary of the Commission Staff, Commissioner Meg Andrews, Mark Kreadle and Jim Dwyer of the Maryland Port Administration for organizing a land and boat tour for the Commission and local government officials of the Baltimore Harbor on October 28th 2004. Chairman Madden thanked the members who attended the Cambridge panel meeting.

The Chairman asked for a motion to amend the Minutes of October 6th on page six to reflect that a vote was taken and unanimously carried on the Days Cove, Gunpowder Falls State Park issue in Baltimore County. Commissioner McLean moved to amend the Minutes as noted by the

Critical Area Commission Minutes

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Chairman. The motion was seconded by Commissioner Vitale and unanimously carried. Commissioner Prager moved to approve the Minutes of October 6th, 2004 as amended. The motion was seconded by Commissioner Ennis and unanimously carried.

St. Mary's County: Mary Owens presented for **Vote** the request by St. Mary's College to construct a small parking lot to serve the Cobb House staff because future projects will isolate them from other parking areas that are used by the staff. The parking lot will be located in an open field situated entirely within the Critical Area. Ms. Owens said that the campus is largely developed and considered IDA. There are no impervious surface limitations but compliance with the 10% Rule for pollutant reduction in stormwater is required. A system of pervious pavers called Gravelpave will be used which is considered by Commission staff to be 65% impervious as far as phosphorus loads are calculated. The College will provide 1,700 square feet of planting on the site in lieu of Best Management Practices and will also do landscaping. Ms. Owens stated that this is acceptable as the project is small and that the plantings may be more effective than structural Best Management Practices. MDE does not require stormwater treatment when the Gravelpave system is used. Ms. Owens said that the college still needs to provide 57,160 square feet of additional planting from their combined projects and that College staff is proposing to allow an open field area located across from the Guam Parking Lot to naturally regenerate. This area is not within the Critical Area. **Gary Setzer moved to approve the construction of the parking lot at the Cobb House in accordance with the staff report including the condition that a planting agreement be executed with the Commission staff prior to beginning construction. The motion was seconded by Jim McLean and unanimously carried.**

St. Mary's County: Kerrie Gallo presented for **Vote** the proposal by the State Highway Administration to repair with riprap revetments the erosion of the shoreline of St. Mary's River which threatens to undercut the MD 5 roadway near the St. Mary's College campus. Because the Commission encourages using structural measures to control significant shoreline erosion areas a Conditional Approval is not required even though there will be disturbances in the 100-foot Critical Area Buffer. There will be no clearing and no Habitat Protection Areas impacted except in the Buffer where a 1:1 Buffer mitigation is required. A sediment and erosion control permit is not required as this project is less than 5,000 square feet. **Gary Setzer moved to approve the construction of the shore erosion control project proposed by the State Highway Administration in accordance with the staff report including a condition that a planting agreement be executed with the Commission staff prior to beginning construction. The motion was seconded by Dr. Chambers and unanimously carried.**

Town of Indian Head: Mary Owens presented for **Concurrence with the Chairman's determination of Refinement**, the Growth Allocation request for the residential subdivision known as River Watch at Indian Head. The use of the growth allocation will change the Critical Area designation from LDA to IDA. The entire project area consists of 30.73 acres. The Chairman informed the Commission that it was brought to the Commission's attention earlier in the summer that the Town allowed the construction of this subdivision to go forward without the required local and State approvals for growth allocation. Chairman Madden stated that he notified the Town by letter that the activity was in violation of State law and the Town's Critical Area ordinance and that the Town had 30 days to notify the Commission of actions taken to remedy the violations and to bring the project into compliance through the use of growth allocation. He said that there have been meetings with the Town as well as other correspondences in addition to the

letters, and several other issues were identified that needed to be resolved in order for the Growth Allocation request to be reviewed and approved. He told the Commission that Indian Head Mayor Edward Rice, in responding to the Commission's letter, indicated his intentions to resolve the outstanding issues, obtain all outstanding local approvals and to request the Commission's approval of the growth allocation.

In order to bring the project into compliance with the Town's Critical Area Program, the Town notified the Commission of their intent to use growth allocation. The Charles County Commissioners and the Town Council approved 13.0 acres. Subsequent to this, the Commission staff and Chairman met with the Mayor of Indian Head, the Town staff and consultants to discuss the resolution of all outstanding issues and it appears that the Town and the developer have addressed the issues and concerns raised over the last several months.

Critical Area Commission member and Charles County Commissioner Daniel Mayer, stated that the Town of Indian Head came to the County pleading ignorance as to the proper process to acquire growth allocation, not disclosing to the County that it had proceeded with the subdivision construction. Mr. Mayer said that letters were sent back to the County giving them precise instructions on the process with copies to the Chairman and Executive Director of the Commission and directing the County attorney to contact the Commission's attorney. He stated that when the Critical Area Commission was established the municipalities were included in the amount of growth allocation that was allotted to a County. For that reason, he said, the Town maintains that it was under the impression that it had its own growth allocation initially. He urged the Commission to approve the growth allocation and stated that the Town has gone through the County process and been issued the growth allocation pending the Commission's approval and any conditions.

Ms. Owens said that the entire parcel is 30.73 acres and is designated LDA and they need IDA because the proposed development impacts slopes greater than 15%, and it will exceed the limitations of 15% impervious surface and 30% forest clearing for LDA. The development consists of 26 townhouses and 52 single family detached dwellings. The property that was forested, except for the areas that will be developed, will remain forested. There is no proposed development for the portion of the parcel that will remain LDA.

Ms. Owens said that one of the major issues of this request involves an outstanding Buffer clearing and disturbance violation predating the ownership and development of the property by the current applicant. The violation involved impacts to a stream that drains into the Potomac River where a pipe was placed in the middle of the stream and a road was put across it with extensive clearing across the roadway out to a home site. All of this work was undertaken without permits. The violation was documented by MDE and the U.S. Army Corps of Engineers and the Town assessed a 3:1 mitigation of 21,000 square feet which the Town had requested the Commission's assistance in pursuing. MDE is not requiring further restoration. However, the Army Corps has an outstanding restoration activity notice dated Nov. 7, 2001 that needs to be taken care of. She said that the Town now owns the portion of the property where the violation occurred and the Town has proposed providing 21,000 square feet of mitigation and complying with the Army Corps restoration activity notice. Cleared areas will be allowed to naturally regenerate and the existing nontidal wetland system will be converted to its former inter-tidal condition by restoring 0.5 acres of wetland.

For the current project, the Town did not properly delineate the 100-foot Buffer at the stream where the previous violation took place. Appropriate protection measures were not put into place before the construction began and the Buffer will have to be re-established. Several lots

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are affected by the delineation of the Buffer and the site plans on these lots may need to be modified to avoid impacts to the Buffer. Ms. Owens reported that there is an historic waterfowl staging and concentration area adjacent to the site. Habitat Protection Areas are required to be conserved and the applicant was advised that no construction of water-dependent facilities should occur between November 15 and April 30. There are no specific afforestation or reforestation standards within IDAs, but the project includes street tree plantings and the landscape plan specifies plantings. Stormwater Management issues are addressed by the applicant who is proposing to provide two best management practices, a multiple pond system and a dry swale. The pollutants that will be removed by these BMPs exceed the removal requirements by 0.05 pounds. Shore erosion control is not proposed at this time; however, the Town is proposing to design and construct measures along the Potomac River with \$400,000 in funds committed to this effort. Ms. Owens believes that an offshore breakwater will be used. The project is served by public water and sewer and the Town has certified that there is adequate capacity at the existing treatment plant for this project. In conclusion, she said that there are 12 acres outside of the area proposed for designation as IDA, which has been dedicated to the Town. It 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. A 10-car parking area will also be provided at the beginning of a six-foot wide path that provides access to the Town's open space.

Dave Blazer, Chairman of the Program Subcommittee, stated that in the letter that will be sent to the Town of Indian Head there should be strong wording stating that the Commission does not appreciate being put into this situation and that the process followed is 'after the fact'. Another recommendation for the letter is that the Commission would not support any of the variances that may come to the Commission as a result of the development, particularly on the north side of the development where they are very close to the 100-foot buffer. Mr. Blazer stated that the Program subcommittee concurs with the Refinement with the following conditions:

- 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 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 come first. Potential lot purchasers shall be advised of the location of the 100-foot Buffer and the requirements of the Buffer Management Plan.**
- 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.
8. The Town will execute a maintenance agreement with the developer regarding the maintenance of the stormwater management facilities.
9. Within 90 days the Town shall send to the Commission an adopted resolution or 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.
10. The open space area conveyed to the Town shall be restricted to passive recreation uses.

The Commission supported the Chairman's determine of Refinement.

Town of Greensboro: Roby Hurley presented for **Concurrence with the Chairman's Determination of Refinement** an amendment to the Critical Area Program for Greensboro. Greensboro has recently amended their program to map two new Buffer Exemption Areas (Ordinance 2004-0-28) and to add new Buffer Exemption language to their program (Ordinance No. 2004-0-29). He said that he and the Town evaluated the proposed areas for BEA and determined that they meet the criteria for BEA as the existing pattern of development prevents the Buffer from fulfilling the Buffer function relating to water quality enhancement and habitat protection because the Buffer is developed and actively used. The Town will use current Critical Area Commission policy for the new BEA language based on a model of ordinance language which includes the 25 and 50-foot setbacks; mitigation at twice the amount of impact; the 25 foot bufferyard provisions for offsets; and fees-in-lieu of planting. In his presentation of the new language Mr. Hurley pointed out clarifications to the new language structure in the new ordinance no. 2004-0-29 (attached to and made a part of these Minutes) on page 4 under "Required Bufferyard Planting", #(10), C. after *requirements in, (9) and (10) are added and A- or B-* are deleted which will include the ability to do offsite and monetary mitigation for both the 25 foot bufferyard and mitigation at two times the development impact. Under C. (i) for planting *the required mitigation area(s) is added and, equivalent of twice the extent of the development within the 100 foot Buffer* is deleted. On page 5, under (d) Single Family Residential Development and Redevelopment Standards, (1) in the last line, after (or the edge of tidal wetlands), add *except as described in (2) below*. He explained that this is just for clarification. Mr. Hurley told the Commissioners that this amendment was approved by the Town Commissioners on October 7th. Dave Blazer, Program Subcommittee Chair, recommended concurrence with the Chairman's determination of Refinement with the condition that the clarification language in the Ordinance be included with the original proposal. **The Commission supported the Chairman's determination of Refinement.**

Dorchester County: Mary Owens presented for **Concurrence with the Chairman's Determination of Refinement** Resolution No. 2004-10: Miscellaneous Text Changes Pertaining to Procedures; and Resolution No. 2004-20: Additional Growth Allocation for Municipalities for Dorchester County. Ms. Owens told the Commission that on September 14, 2004 two

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resolutions affecting the implementation of the County's Critical Area Program were approved by the County Council. Resolution No. 2004-10 involves text changes to improve their Critical Area ordinance. She described the changes (Resolutions attached too and made a part of these Minutes) for the Commission and stated that one of the resolutions involves changes resulting from the County's conversion from a Commissioners form of government to a County Council form of government. Resolution No. 2004-20 amends Resolution No. 321 that was previously approved by the Commission which pertained to growth allocation that was set aside for the municipalities for their independent use and application approval. It was designed primarily for infill growth allocation. Since that time, the County has realized that some of the Towns are running out of growth allocation and some of them are involved in development projects that involve annexing areas of land and then using growth allocation. The County wanted to provide for procedures for dealing with those kinds of situations and they coordinated with the municipalities to accommodate those needs. She said that the County is adopting official procedures for how to go about doing this. Detailed procedures will be forthcoming. **The Commission supported the Chairman's determination.**

Dorchester County & The City of Cambridge: Mary Owens presented for **Vote** the Longboat Estates Subdivision Growth Allocation request in Cambridge. In order to assure that the growth allocation awarded to the City would be used for this particular project, the County executed a Memorandum of Understanding with the City regarding the use of 15.742 acres of growth allocation and passed Resolution 396 on August 17, 2004 that changes the Critical Area designation from LDA to IDA. Subsequent to this approval, the City of Cambridge annexed the property and a separate map amendment request addressed this issue. Ms. Owens said that the entire project is 66.57 acres. There will be 162 single-family residential lots and 38 lots are located within the Critical Area. Of the 4.80 acres of forest within the Critical Area, 3.62 are proposed to be cleared. Impacts to the 100-foot Buffer will be mitigated with 0.96 acres of planting in areas that are currently not forested and by providing supplemental plantings in areas that are sparsely forested. The Buffer is proposed to be maintained as community open space although some of the lots include portions of the Buffer within the lot boundaries. There are no Habitat Protection Areas impacted, with the exception of some Delmarva Fox Squirrel activity on the site, primarily in the forested areas of the property. Delmarva Fox Squirrel protection was addressed by the U.S. Fish and Wildlife Service, and lots were removed from the forested areas of the project site. There is a waterfowl staging and concentration area that will be addressed by a time of year restriction on water-dependent development at the shoreline. There are no afforestation or reforestation standards for the redesignated IDA property. Shoreline access will be provided with a boat ramp and gravel access road within the Buffer, although no parking is provided. Two piers are proposed, although no slips are proposed. A gazebo is also proposed although it will not be located inside the Buffer. Stormwater management practices will include two best management practices, a pond wetland system and a wet swale for 38 percent impervious surface coverage on all of the lots. Treatment of two off-site areas is proposed to meet the phosphorus removal requirements. There are no shore erosion control measures proposed at this time. The project will be served by public water and sewer. **Judith Evans moved on panel recommendation to approve the Longboat Estates Subdivision Growth Allocation request in Cambridge with the following five conditions: 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 convey**

that they are required Critical Area compliance measures. The revised covenants shall be submitted to the Commission for review and 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. The motion was seconded by Glenn Bramble. Ed Richards stood opposed to the approval stating that he believes that the modifications made by the developer between the time of the panel hearing and the meeting, even with the proposed conditions, are not sufficient to deal with all the concerns that he has with the project. The major issue he has is the fact that the Commission came into the development process so late after the Memorandum of Understanding was executed and the final subdivision approved. He had concerns that it will have other effects on the entire Program. The Chairman stated that he believes that the Commission is following the process set up by the General Assembly and that the Commission's Counsel, Marianne Mason, has been consulted. Chairman Madden said that this is an issue that will be discussed at the next meeting of the Commission during the lunch roundtable. The motion carried with 22 in favor to one in opposition (Ed Richards).

City of Cambridge: Mary Owens presented for **Vote** the request by the City of Cambridge to annex parcels 13, 165, 350 and 409 with a corresponding change to the City's maps. (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 for parts of the annexed area). The total acreage of the property proposed for annexation is 103.571 acres with 15.742 within the Critical Area. The designation of the Critical Area portion property will change from LDA to IDA and be covered under the City's Critical Area Program, and the City Department of Planning will be responsible for enforcing all of the conditions that have been put upon it in conjunction with the award of growth allocation. **Judith Evans moved on panel recommendation to approve the request by the City of Cambridge to annex parcels 13, 165, 350, 409. The motion was seconded by Daniel Mayer and unanimously carried.**

Kent County: Lisa Hoerger presented for **Concurrence with the Chairman's determination of Refinement**, the text changes in Bill No. 3-2004 that will make the required changes to Kent County's Land Use Ordinance consistent with the changes to the Critical Area Law which became effective June 1, 2004. Ms. Hoerger said that the Commission staff reviewed the changes and they appear to be consistent with the changes to the Critical Area Law. She summarized the changes for the Commission from Bill (attached to and made a part of these Minutes). The Commission supported the Chairman's determination of the Refinement.

Anne Arundel County: Lisa Hoerger presented for **Concurrence with the Chairman's determination of Refinement**, the request for a map amendment to correct a mapping mistake

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on the Sorrell property in southern Anne Arundel County. The 11.55 acre property has a Critical Area designation of RCA which the Administrative Officer has determined, based on several standards in the County's Code, qualifies for reclassification from RCA to LDA. It was the County's original intent to map this parcel as an LDA since in the Anne Arundel County's Program document it states that properties within 2,000 feet of an existing water or sewer line as shown on the water and sewer map without any development was also classified as an LDA, unless it was a wetland or public property. This mapping standard in Anne Arundel County is unique since it is in addition to the mapping standards found in the Code of Maryland Regulations. The Commission approved this additional standard at the request of the County at the time of the original mapping of the County's Critical Area. Since a sewer line bisects the property, the reclassification request was granted; however, half of this parcel appears to be wetlands according to the site plan submitted by the County, but was not apparent in the hearing Officer's decision or evidence presented to him, even though Commission staff noted the restriction. Because the County has additional mapping standards for LDA, and the Critical Area Commission approved them as part of their Program, these criteria must be met and those portions of the site that are wetlands should remain RCA. The Chairman has recommended that a condition be included 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. **Dave Blazer on behalf of the Program Subcommittee said that the Subcommittee concurs that this can be handled as a refinement with the condition that the areas that are wetlands remain in RCA and also that the county follow the appropriate procedures to accomplish the condition. The Commission supported the Chairman's determination of Refinement.**

OLD BUSINESS

Legal Update:

Marianne Mason updated the Commission on legal matters.

Talbot County: Talbot County has challenged the Commission's rejection of Bill #933 and the County's program amendment. The Town of St. Michaels intervened on the Commission's behalf and the Commission supported their intervention because they believed that the Town could make arguments that the Commission could not make on its own behalf. The County opposes the Town's intervention. Ms. Mason said that a hearing will be held on November 15th, but it is unclear if the intervention will be part of the hearing. The Commission has moved to dismiss part of the County's case.

Miles Point: Ms. Mason said that an Intervention Petition was filed by the people who live next door to the proposed development at Miles Point, the Fog Cove homeowners. The Commission has opposed their intervention because they are raising issues that the Commission does not have any control over. The Commission's response to the developer's legal motion is due the end of November and arguments are scheduled in January.

Wicomico: We are still waiting on the County Zoning office in the Lewis case to file the administrative record. Once they do, Mr. Lewis will have 30 days to file his response. After that she will have 30 days to file a response which will be sometime after the first of the year.

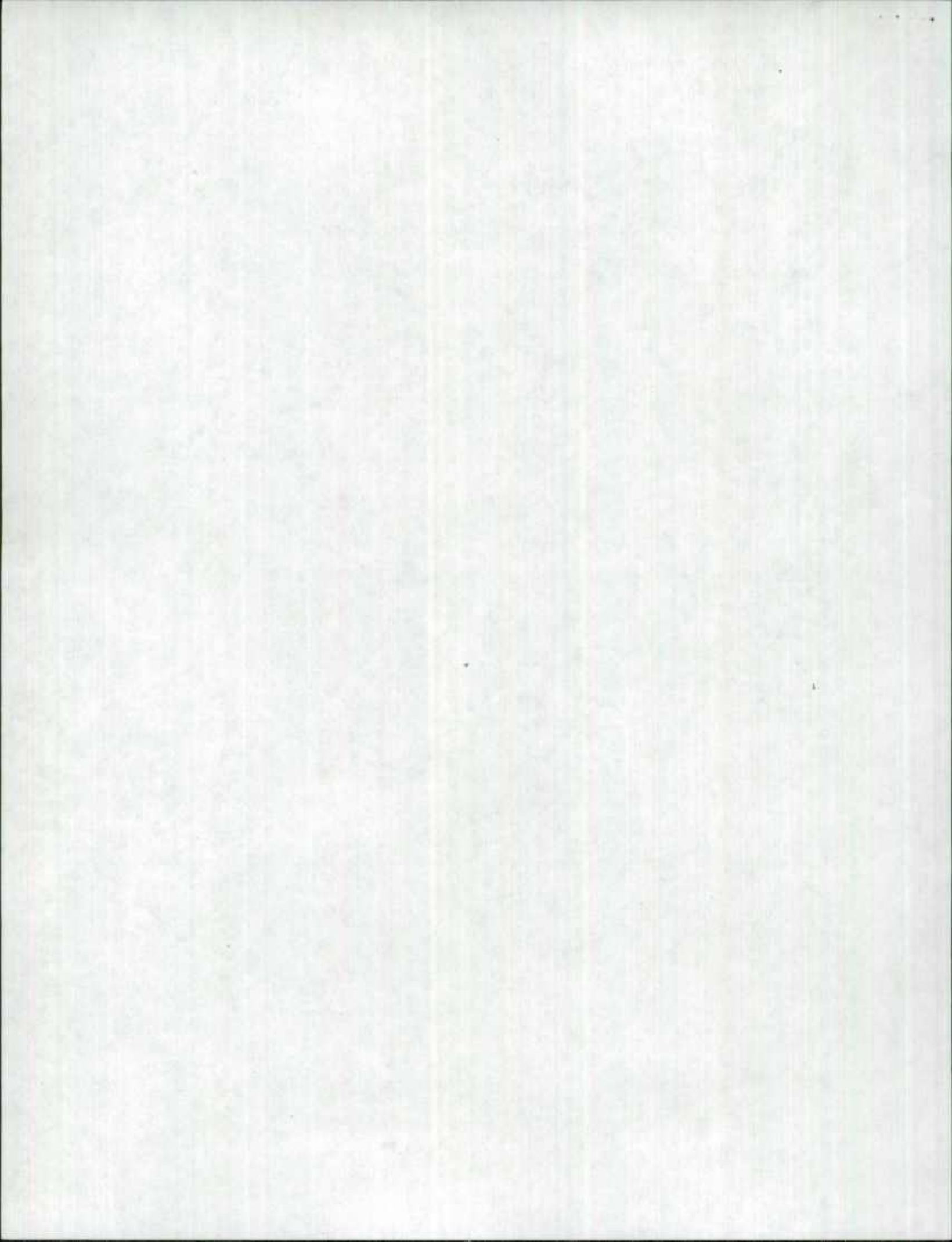
Critical Area Commission Minutes
November 3, 2004

NEW BUSINESS

There was no new business reported.

There being no further business the meeting adjourned at 2:35 p.m.

Minutes submitted by: Peggy Campbell, Commission Coordinator



MAM - re: ...
Had to wk. = Days Cove & DNR - on lease - which says
cannot do any action according to lease -
"so - get
Critical Area Commission cond. approval"

ATTACH
TO NOV 04
MINUTES - corrected
amended

STAFF REPORT
October 6, 2004

C/M

APPLICANT:

Department of Natural Resources / Days Cove
Rubble Landfill, Inc.

PROPOSAL:

restored
to
park
land

Conditional Approval for Days Cove Rubble
Landfill at Gunpowder Falls State Park

as an alternative

ing use
Butch Narden
for Vinney

JURISDICTION:

Baltimore County

COMMISSION ACTION:

Vote

RECOMMENDATION:

Approval, with conditions

STAFF:

Ren Serey

APPLICABLE LAW/
REGULATIONS:

COMAR 27.02.06 Conditional Approval of State or
Local Agency Programs in the Critical Area

SUMMARY:

The Department of Natural Resources (DNR) and Days Cove Rubble Landfill, Inc.
request approval for the expansion of an existing rubble landfill at Gunpowder Falls State
Park. New landfills, and the expansion of existing landfills, are prohibited in the Critical
Area unless 1) there is no environmentally acceptable location outside of the Critical
Area and 2) the activity is needed to correct an existing water quality problem.

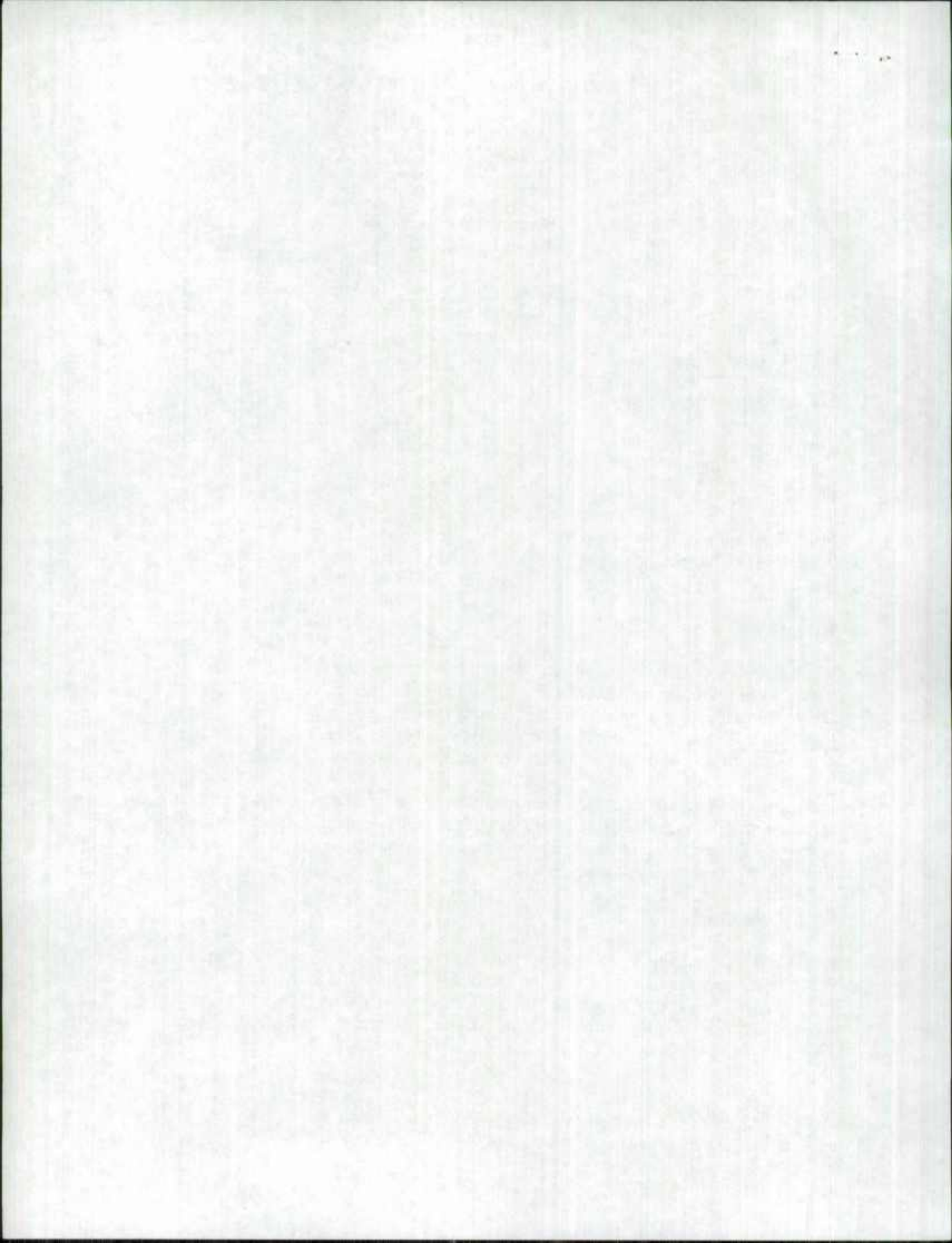
The current proposal cannot meet the above standards. As an alternative, the Department
requests that the Commission consider the project under its regulations for Conditional
Approval. These provisions, which are similar to a variance on privately owned land,
allow for a more site-specific analysis and a balancing of impacts and benefits.

DISCUSSION:

Days Cove Rubble Landfill, Inc. leases a portion of Gunpowder Falls State Park in
Baltimore County for disposal of construction rubble. The site is a former sand and
gravel mine. The Company has leased this area from the State since 1992 and operated
the rubble landfill prior to the lease. A portion of the landfill is within the Critical Area.
(See site plan.)

critical area portion of site
is about to be
closed & restored to park use.

- All area restored
& added to PK
- no fill into C.A.
Section
- Long term
impacting



The regulations for Conditional Approval require that "The Commission shall approve, deny or request modifications to the request for conditional approval based on the following factors:"

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

Recommended Condition:

The planting plan for restoration of the site shall be submitted to the Critical Area Commission staff for approval.

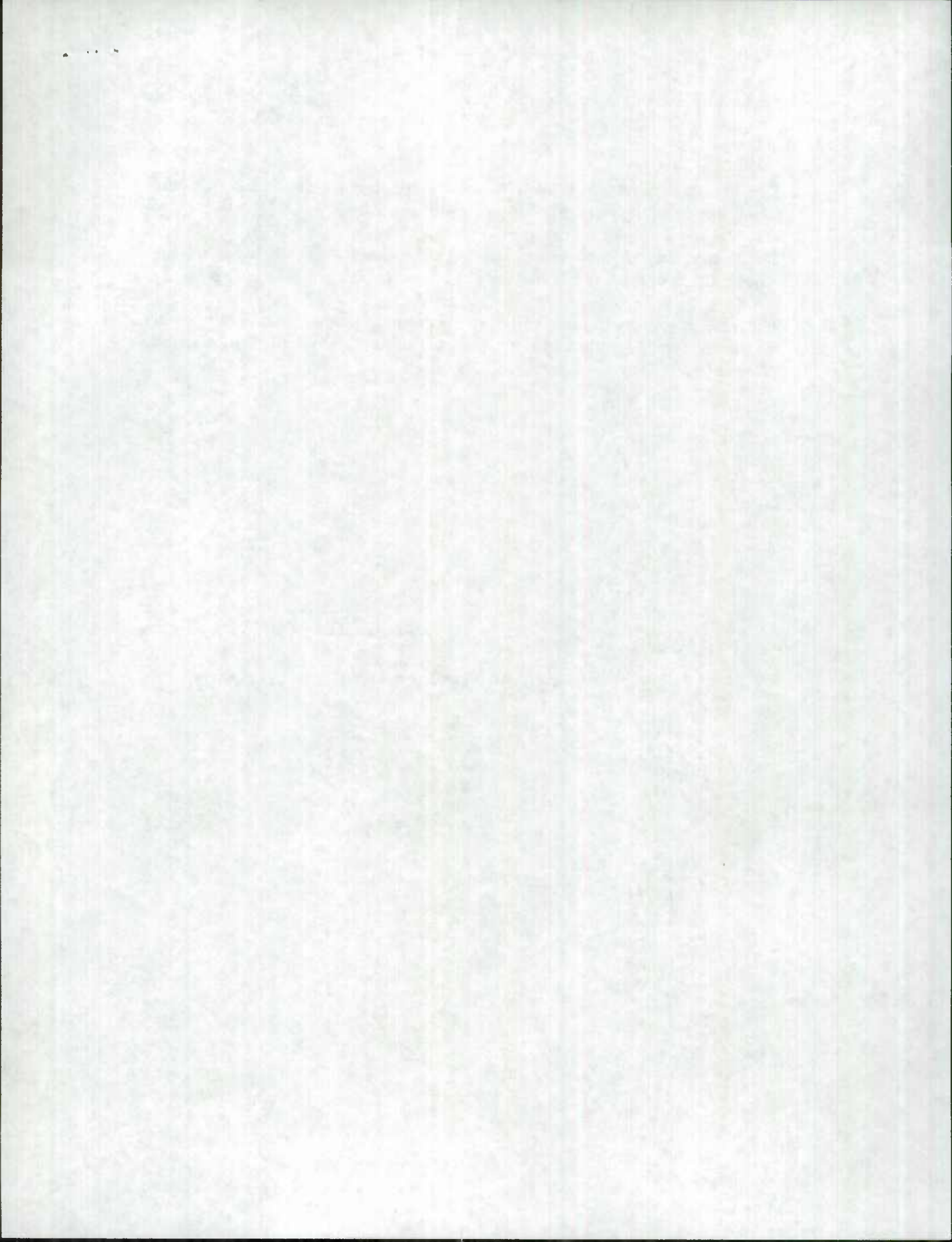
Gary - cond. approve as presented in Staff report.
incl. 'condition' & findings

Based on Judy's (reading)
not included

Judy Cox - second

n/c

(not recorded)



Critical Area Commission

STAFF REPORT

December 1, 2004

APPLICANT: Maryland Transportation Authority (MdTA)

PROPOSAL: US 50 at Bay Bridge Toll Facilities - Widening of Departure Lane

JURISDICTION: Anne Arundel County

COMMISSION ACTION: Vote

STAFF RECOMMENDATION: Approval with condition

STAFF: Lisa Hoerger

**APPLICABLE LAW/
REGULATIONS:** Code of Maryland Regulations (COMAR) 27.02.05
State Agency Actions Resulting in Development on
State-Owned Lands

DISCUSSION:

The Maryland Transportation Authority (MdTA) is proposing to extend the departure lane at the William Preston Lane, Jr. Memorial Bridge (Chesapeake Bay Bridge). The site is located on the western side of the Bay Bridge in Anne Arundel County. The departure lane is located just beyond the toll facilities and prior to the western end of the bridge.

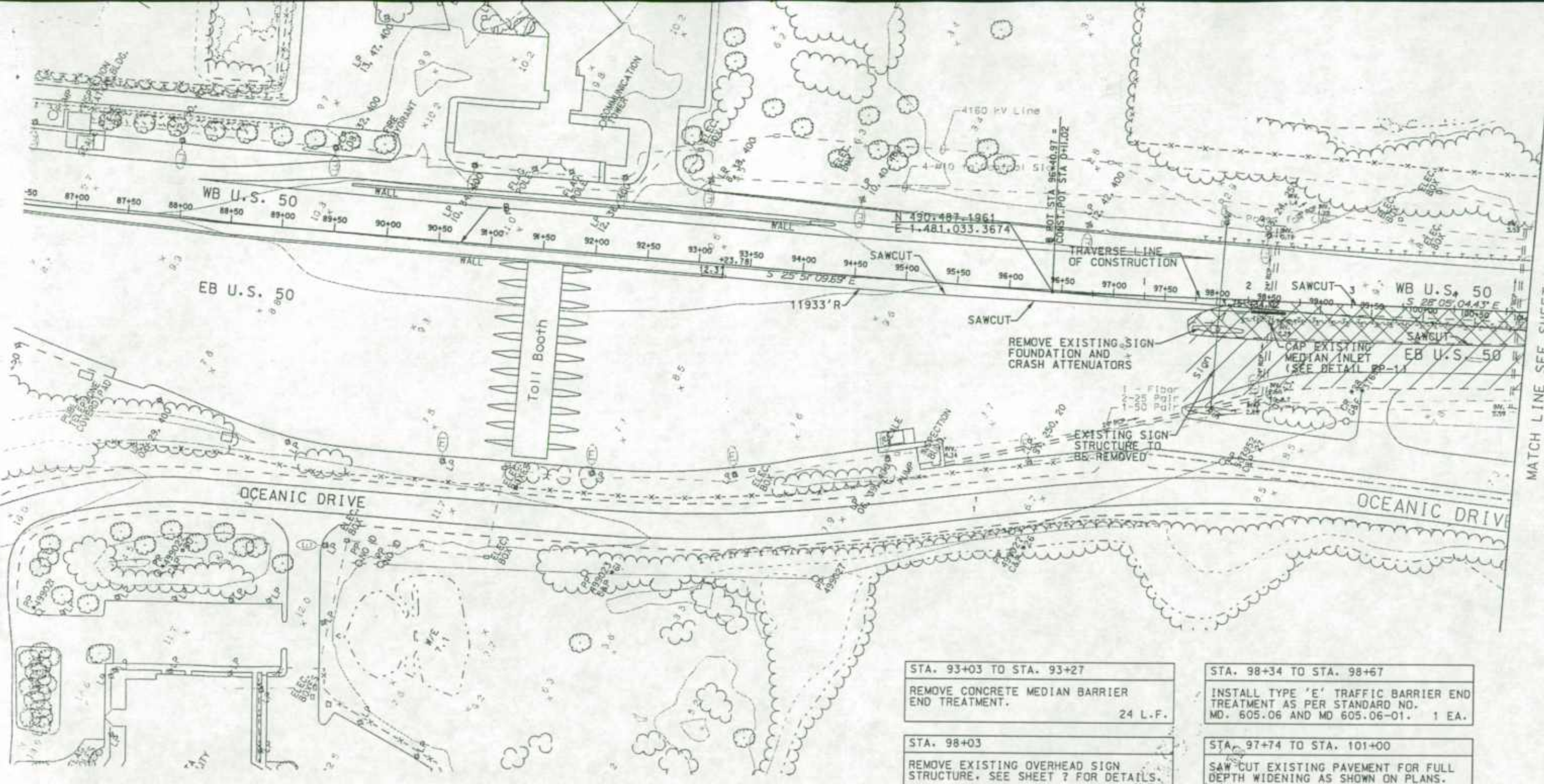
The Departure Lane Project consists of paving the center median of eastbound US 50 between the toll plaza and the bridge to improve the efficiency and safety of the vehicles leaving the toll plaza. The widening will take place approximately 600 feet east of the Toll Plaza and extend 950 feet eastward along the bridge approach.

No Habitat Protection Areas will be impacted. Compliance with the 10% rule for this project has been provided by the surplus water quality created from the pocket sand filters installed for the previous EZ™ Pass Lane extension project. The Maryland Department of the Environment is currently reviewing the stormwater permits for this project and an update of that review will be provided at the meeting.

One tree will be cleared for this project and four additional trees were cleared at an earlier date in the immediate project area. The mitigation will be located on nearby MdTA property. The reforestation area is north of US 50/301 and will be done within the 100-foot tidal Buffer.

Staff recommends approval with the following condition:

MdTA receives all required permits from the Maryland Department of the Environment prior to construction.

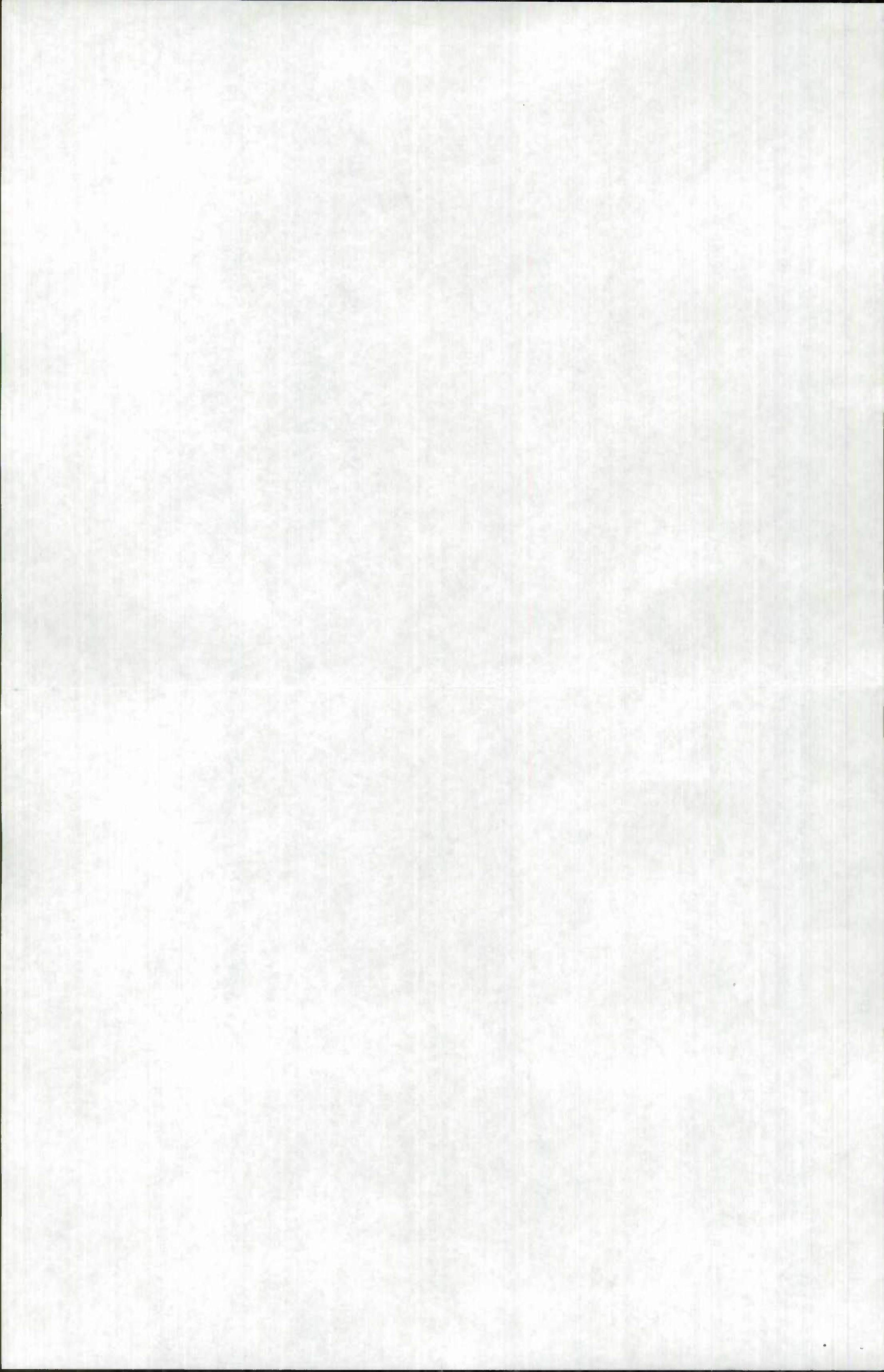


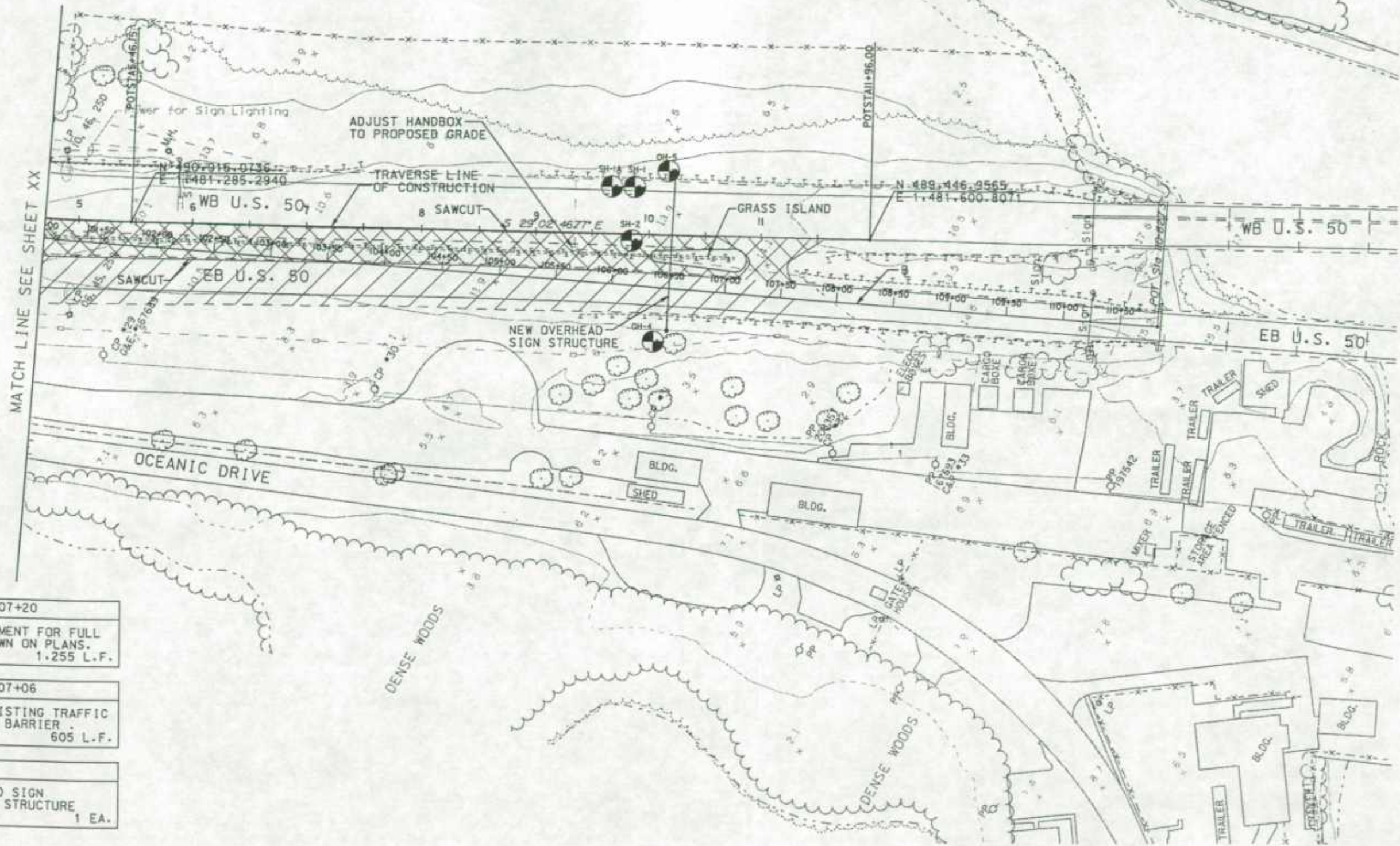
MATCH LINE SEE SHEET XX

- LEGEND:**
- 2" GRINDING EX. ROADWAY & SHOULDER FOR OVERLAY
 - NEW ASPHALT ROADWAY & SHOULDER

- | | |
|---|---|
| STA. 93+03 TO STA. 93+27
REMOVE CONCRETE MEDIAN BARRIER END TREATMENT.
24 L.F. | STA. 98+34 TO STA. 98+67
INSTALL TYPE 'E' TRAFFIC BARRIER END TREATMENT AS PER STANDARD NO. MD. 605.06 AND MD 605.06-01. 1 EA. |
| STA. 98+03
REMOVE EXISTING OVERHEAD SIGN STRUCTURE. SEE SHEET 7 FOR DETAILS. 1 EA. | STA. 97+74 TO STA. 101+00
SAW CUT EXISTING PAVEMENT FOR FULL DEPTH WIDENING AS SHOWN ON PLANS. 670 L.F. |
| STA. 93+03 TO STA. 98+34
SAW CUT EXISTING PAVEMENT FOR CONCRETE MEDIAN BARRIER PLACEMENT. 1062 L.F. | STA. 98+25 TO STA. 101+00
REMOVE AND DISPOSE EXISTING TRAFFIC BARRIER W BEAM MEDIAN BARRIER. 275 L.F. |
| STA. 93+03 TO STA. 98+34
CONSTRUCT CONCRETE MEDIAN TRAFFIC BARRIER 42" HIGH SEE SHEET NO. 3 FOR DETAIL. 531 L.F. | |

 MARYLAND TRANSPORTATION AUTHORITY Engineering Division <i>Widening of Departure Lane</i>	ADDENDUMS & REVISIONS <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;">NO.</th> <th style="width: 65%;">DESCRIPTION</th> <th style="width: 10%;">BY</th> <th style="width: 20%;">DATE</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>REDLINE NO. 5 MEDIAN WIDENING ON DEPARTURE SIDE</td> <td>TRM</td> <td>NOV '04</td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	NO.	DESCRIPTION	BY	DATE	1	REDLINE NO. 5 MEDIAN WIDENING ON DEPARTURE SIDE	TRM	NOV '04									ROADWAY IMPROVEMENTS TO TOLL PLAZA APPROACH WILLIAM PRESTON LANE JR. MEMORIAL BRIDGE Roadway Plan - Sta. 86+50 to Sta. 101+00	CONTRACT NO. LB 345-000-006 DRAWING NO. R-? SHEET NO. 2 of 27
	NO.	DESCRIPTION	BY	DATE															
1	REDLINE NO. 5 MEDIAN WIDENING ON DEPARTURE SIDE	TRM	NOV '04																
DESIGNED BY <u>AAR</u> DRAWN BY <u>AAR</u> CHECKED BY <u>EDW</u> CONST. REVIEW BY _____ DATE <u>NOVEMBER, 2004</u> SCALE <u>1"=50'</u>																			





- STA. 101+00 TO STA. 107+20
SAW CUT EXISTING PAVEMENT FOR FULL DEPTH WIDENING AS SHOWN ON PLANS.
1,255 L.F.
- STA. 101+00 TO STA. 107+06
REMOVE AND DISPOSE EXISTING TRAFFIC BARRIER W BEAM MEDIAN BARRIER.
605 L.F.
- STA. 106+50
CONSTRUCT NEW OVERHEAD SIGN STRUCTURE AS SHOWN ON STRUCTURE PLANS.
1 EA.

LEGEND:

2" GRINDING EX. ROADWAY & SHOULDER FOR OVERLAY

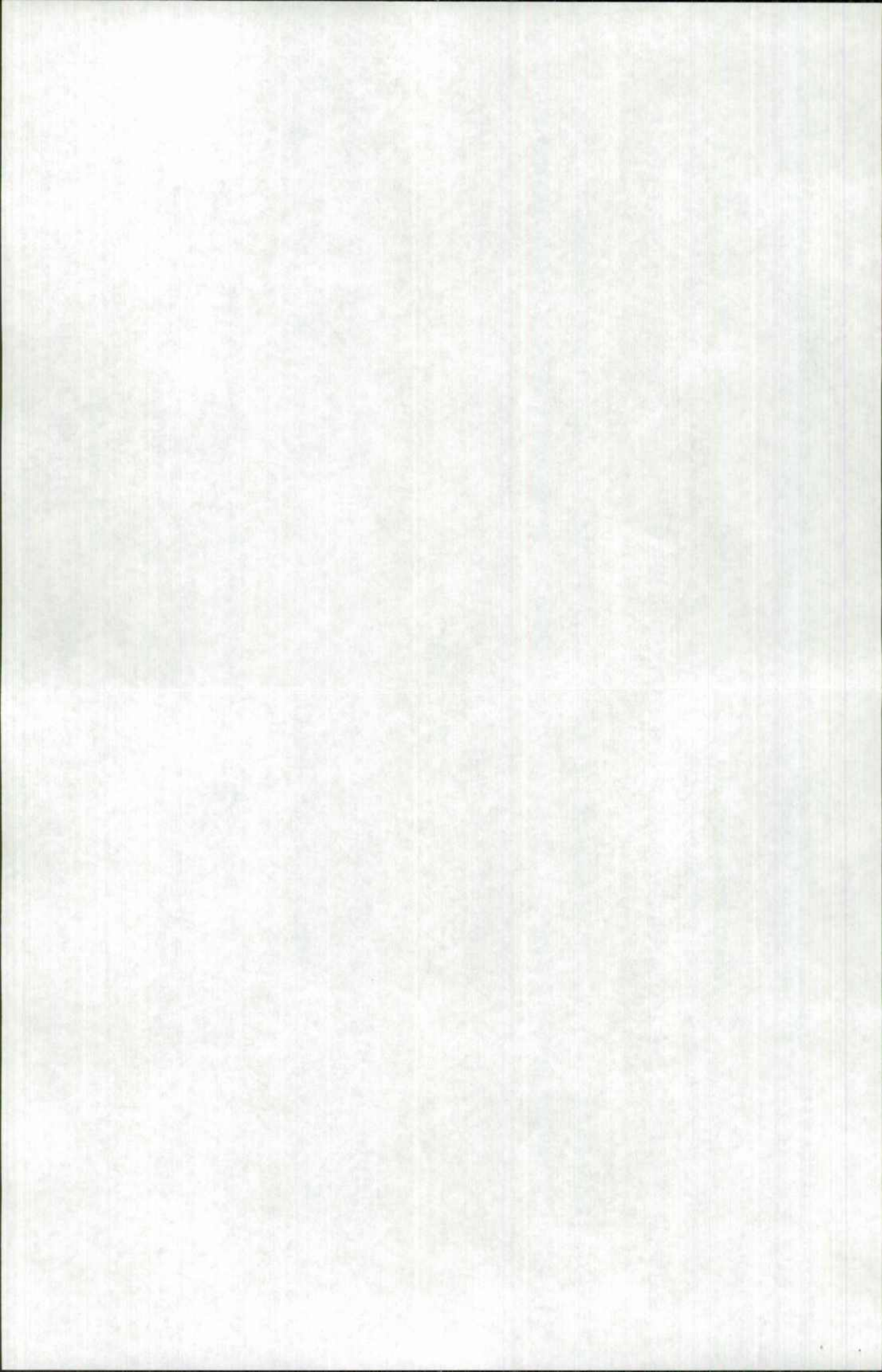
NEW ASPHALT ROADWAY & SHOULDER

MARYLAND TRANSPORTATION AUTHORITY
 Engineering Division
Widening of Departure Lane

ADDENDUMS & REVISIONS			
NO.	DESCRIPTION	BY	DATE
(1)	REDLINE NO. 1 MEDIAN WIDENING ON DEPARTURE SIDE	MAR	NOV '84

**ROADWAY IMPROVEMENTS
 TO TOLL PLAZA APPROACH**
WILLIAM PRESTON LANE JR. MEMORIAL BRIDGE
 Roadway Plan - Sta. 101+00 to Sta. 110+82
 DESIGNED BY AAR DRAWN BY AAR CHECKED BY ECM

CONTRACT NO. LB 34C
 DRAWING NO. R
 SHEET NO. 2



Critical Area Commission

STAFF REPORT

December 1, 2004

APPLICANT: Maryland Transportation Authority (MdTA)

PROPOSAL: U.S. Route 50 Widening of EZ™ Pass Lane

JURISDICTION: Anne Arundel County

COMMISSION ACTION: Vote

STAFF RECOMMENDATION: Approve with condition

STAFF: Lisa Hoerger

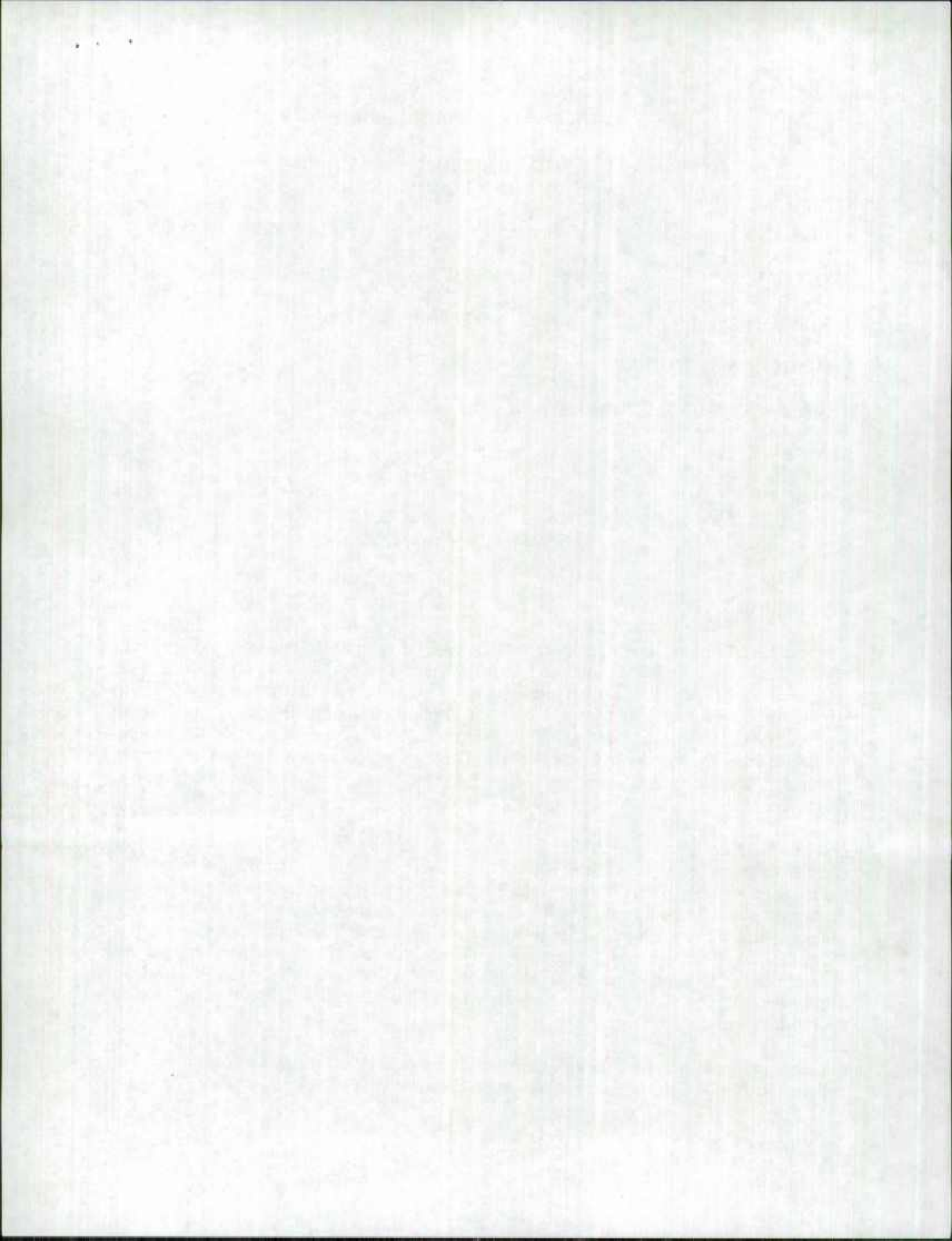
**APPLICABLE LAW/
REGULATIONS:** Code of Maryland (COMAR) 27.02.06
Conditional Approval of State Agency Programs in the
Critical Area

DISCUSSION:

The Maryland Transportation Authority (MdTA) is proposing to widen the eastbound approach of U.S. Route 50 prior to the toll plaza at the William Preston Lane, Jr. Memorial Bridge (Chesapeake Bay Bridge). The site is located in Anne Arundel County on the western side of the Bay Bridge. At its meeting in March of 2003, the Commission approved a similar project (Red Line Revision #1) which extended a single dedicated lane from approximately 1,300 feet west of the Sandy Point Interchange overpass (Oceanic Drive) to approximately 800 feet east of the overpass. This lane extension and the one proposed are for the purpose of extending the EZ Pass™ lane.

The EZ Pass™ Lane Extension Project extends from approximately 3,200 feet west of the Sandy Point Interchange overpass (Oceanic Drive) to the westerly limits of Red Line Revision #1 located approximately 1,300 feet west of the overpass. The project consists of road widening on the median side of the roadway, which will eliminate the existing grass median and create an additional lane and a concrete barrier between the eastbound and westbound roadways. The EZ™ Pass Lane Extension will impact two tributary stream Buffers; therefore, this project requires conditional approval under the provisions found in the Code of Maryland Regulations (COMAR) 27.02.06. A small section of new pavement and the proposed dry swale will impact the 100-foot Buffer.

Since the project is located in an Intensely Developed Area (IDA), compliance with the 10% Pollutant Reduction Calculation for stormwater is required. The MdTA will create 2,700 linear



feet of dry swale facilities on site, which satisfy the 10% pollutant reduction calculations and the Maryland Department of the Environment's (MDE) Stormwater Management Regulations.

No clearing will be required for this project; however the MdTA is required to perform mitigation at a 3:1 ratio for impacts to the tributary stream buffers. Mitigation will be accomplished with native species at a nearby location on MdTA property. Total mitigation for this project is 6,897 square feet. The reforestation area is north of US 50/301 and will be planted within the 100-foot tidal Buffer, immediately adjacent to existing forest, and the reforestation areas created to mitigate for Red Line Revision #1. The mitigation area will provide a forested buffer in an area that is currently mowed, and will expand the overall acreage of forest in the area.

The MdTA is seeking conditional approval for the EZ Pass lane expansion of U.S. Route 50 from the overpass of Oceanic Drive to the toll booth facilities, to provide an additional lane to relieve congestion in this area. In accordance with COMAR 27.02.06, MdTA provided justification to the Critical Area staff for conditional approval to permit certain activities within the 100-foot Buffer.

01 Criteria

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

MdTA seeks conditional approval due to limited alternatives near the existing facility. The area of disturbance in the stream buffer is an existing man-made drainage ditch containing an existing stormdrain system between two existing paved roadways. This area will be disturbed to connect future drainage structures as a result of any improvements made to the site.

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

The inclusion of the proposed dry swale will provide additional phosphorus removal in accordance with the Critical Area Commission's 10% pollutant reduction rule and additional water quality treatment in accordance with MDE design criteria without adversely impacting the buffer area. MdTA is proposing to mitigate the area of the dry swale in the Buffer at a 3:1 ratio with native Buffer plantings. The proposed buffer mitigation will provide additional forest benefits to that area.

B.(3)

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

The project will be otherwise in conformance with this subtitle and all other regulations associated with development within the Critical Area including sediment and erosion

protection, the 10% Pollutant Reduction Rule, forest and woodland protection, plant and wildlife habitat, and threatened and endangered species.

C.(1)

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

The MdTA, operator of toll-collected transportation facilities in the State, is proposing the construction of an extended EZ Pass lane in order to eliminate the existing bottleneck due to the increasing traffic volumes. This proposed project will distribute the traffic evenly, thus increasing traffic flow and reducing backups.

C.(2)

A proposed process by which the program or project could be so conducted as to conform, insofar as possible with the criteria set forth in COMAR 27.02.05;

The project is in compliance with COMAR 27.02.05 insofar as possible given the physical constraints associated with the project area, and the project provides mitigation for the disturbance to the stream buffer.

C.(3)

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

Mitigation has been provided for the disturbance in compliance with COMAR 27.02.05 by the planting of native species at a 3:1 ratio. The plantings will occur near the MdTA's administration building within the 100-foot Buffer.

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

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

Staff Recommendation:

Commission staff recommends that conditional approval with the following conditions:

1. The MdTA perform mitigation with native species at a 3:1 ratio.
2. The MdTA will not begin construction until all permits required by the Maryland Department of the Environment are received.

ABANDON EXISTING 15" CMP

MODIFIED TYPE K INLET
SINGLE OPEN END GRATE

SINGLE FACE.
2972 L.F.

STA. 604+00 TO STA. 613+50
CONSTRUCT 42" F-SHAPE BIFURCATED
CONCRETE MEDIAN TRAFFIC BARRIER.
950 L.F.

STA. 603+70 TO STA. 613+50, US 50 MED.
STA. 599+00 TO STA. 613+50, COLLEGE PKWY

REMOVE AND DISPOSE OF EXISTING
DOUBLE FACE TRAFFIC BARRIER.
1450 L.F.

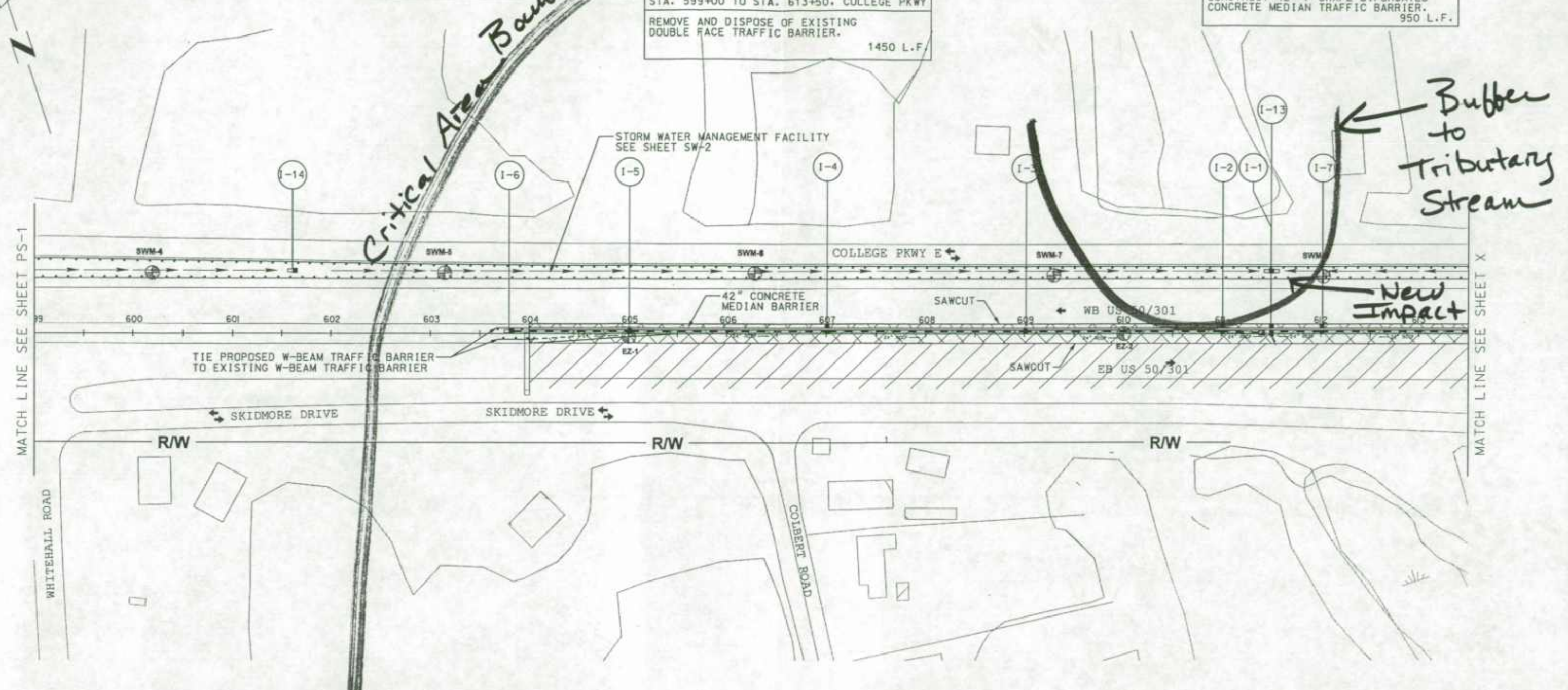
Critical Area Boundary

*Bubble
to
Tributary
Stream*

*New
Impact*

MATCH LINE SEE SHEET PS-1

MATCH LINE SEE SHEET X



STA. 604+00, RT. US 50 EB
TYPE I TRAFFIC BARRIER END TREATMENT
1 EA.

STA. 605+00, 4' LT.
SINGLE MEDIAN BARRIER INLET
1 EA.

STA. 603+82, LT. 2.5' LT.
TYPE K INLET
SINGLE OPEN END GRATE (MD 378.05)
1 EA.

STA. 611+50, 63.6' LT.
MODIFIED TYPE K INLET
DOUBLE OPEN END GRATE
1 EA.

STA. 607+00, 4' LT.
STA. 611+00, 4' LT.
STA. 611+50, 4' LT.
STA. 612+00, 4' LT.
DOUBLE MEDIAN BARRIER INLET
4 EA.

ND:
 2" GRINDING AND 2" OVERLAY
 FULL DEPTH ASPHALT PAVING

NEW SHEET

MARYLAND TRANSPORTATION AUTHORITY
 Engineering Division
 EZ Pass Lane Extension

ADDENDUMS & REVISIONS			
NO.	DESCRIPTION	BY	DATE
1	REVISION NO. 1, APPROACH SEE E-2 PLAN EXTENSION	RAW	NOV 04

ROADWAY IMPROVEMENTS
 TO TOLL PLAZA APPROACH
 WILLIAM PRESTON LANE JR. MEMORIAL BRIDGE
 Roadway Plan - Sta. 599+00 to Sta. 613+50

DESIGNED BY ECM
 CONST. REVIEW BY

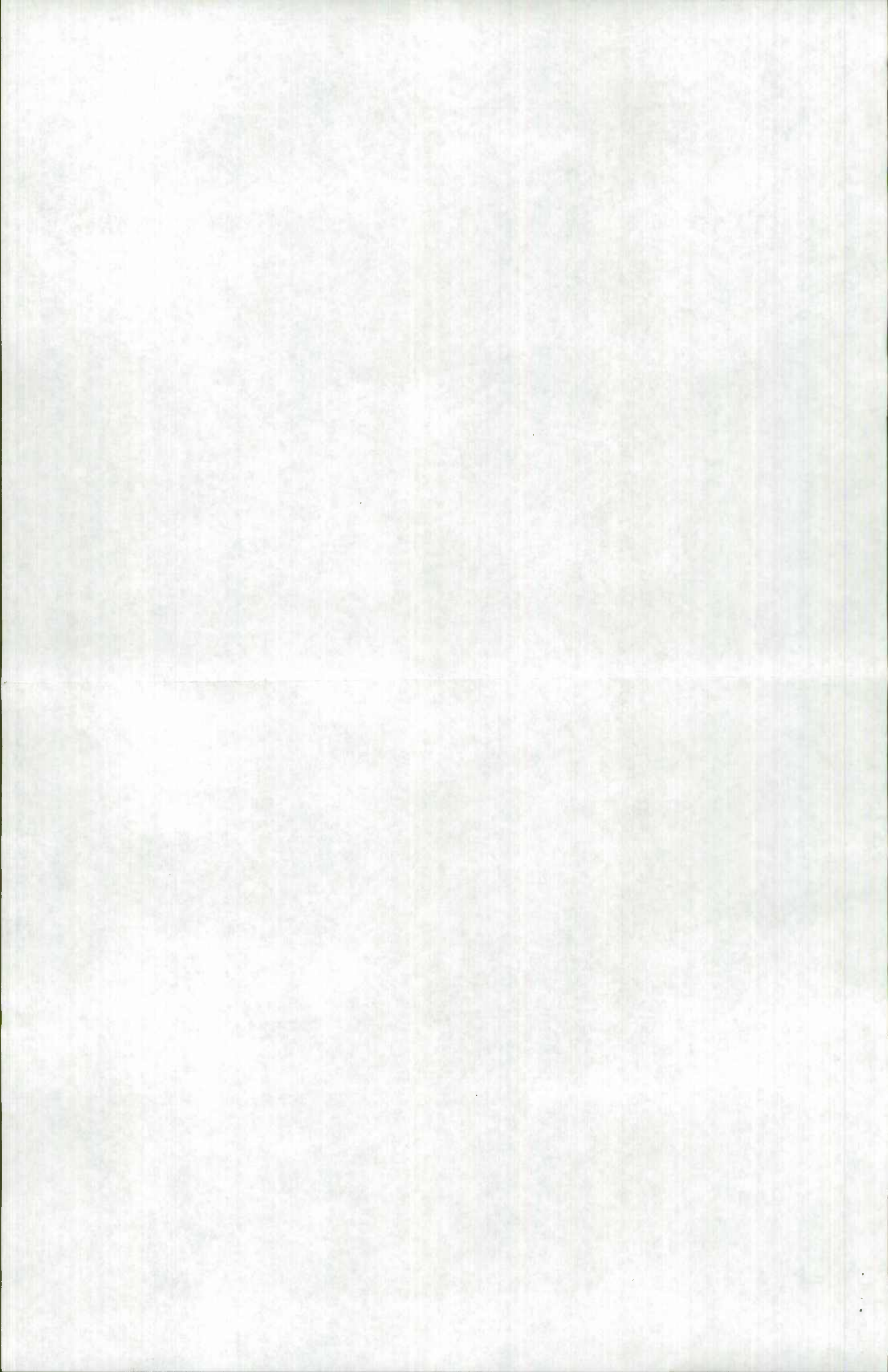
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 DATE NOVEMBER 5, 2004

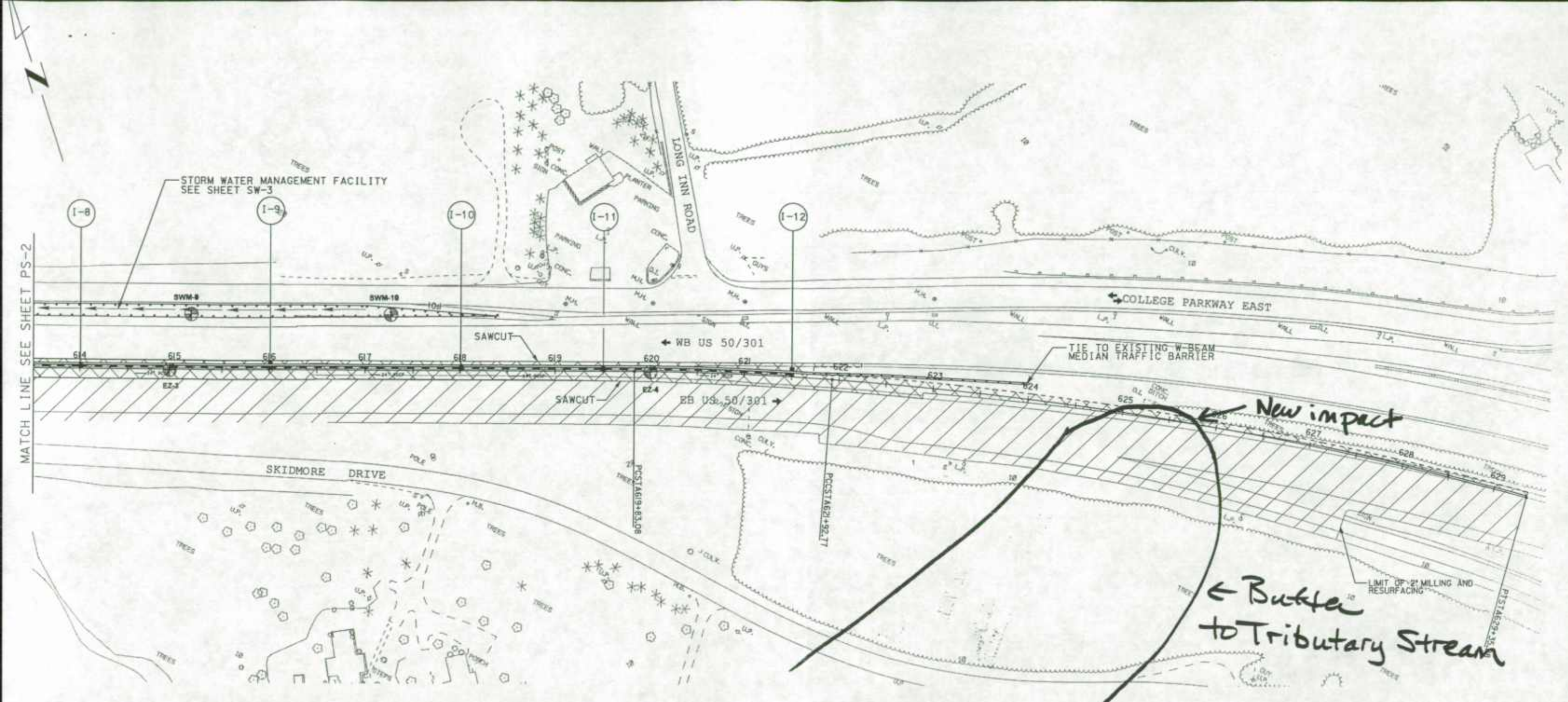
CHECKED BY ECM
 SCALE 1"=50'

CONTRACT NO.
 LB 345-000-006

DRAWING NO.
 R-2

SHEET NO.
 2 OF XX





STA. 621+50, 4' LT. STA. 616+00, 4' LT.	DOUBLE MEDIAN BARRIER INLET	2 EA.
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STA. 613+50. TO STA. 621+50	24" RCCP CL IV	800 L.F.
STA. 614+00, 4' LT.	SINGLE MEDIAN BARRIER INLET	1 EA.

STA. 613+50 TO STA. 622+23, US 50 WB STA. 613+50 TO STA. 629+35, US 50 EB	SAW CUT EXISTING PAVEMENT FOR FULL DEPTH WIDENING AS SHOWN ON PLANS.	2458 L.F.
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STA. 613+50 TO STA. 621+73	CONSTRUCT 42" F-SHAPE MD SHA BIFURCATED CONCRETE MEDIAN TRAFFIC BARRIER.	823 L.F.
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STA. 621+73 TO STA. 624+00	CONSTRUCT TRAFFIC BARRIER W-BEAM MEDIAN BARRIER	227 L.F.
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STA. 619+50, 4' LT. STA. 618+00, 4' LT. STA. 614+00, 4' LT.	SINGLE MEDIAN BARRIER INLET	3 EA.
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STA. 616+00, 4' LT.	DOUBLE MEDIAN BARRIER INLET	1 EA.
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STA. 613+50 TO STA. 624+00, US 50 MED. STA. 613+50 TO STA. 618+50, US 50 WB, LT	REMOVE AND DISPOSE OF EXISTING DOUBLE FACE TRAFFIC BARRIER.	1550 L.F.
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STA. 613+50 TO STA. 618+50, LT, US 50 WB STA. 613+50 TO STA. 618+50, COLLEGE PKWY	INSTALL TRAFFIC BARRIER W-BEAM, SINGLE FACE.	1000 L.F.
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LEGEND:
 2" GRINDING AND 2" OVERLAY
 FULL DEPTH ASPHALT PAVING

NEW SHEET

MARYLAND TRANSPORTATION AUTHORITY
 Engineering Division
E2 Pass Lane Extension

ADDENDUMS & REVISIONS			
NO.	DESCRIPTION	BY	DATE
1	REDLINE NO. 1, APPROACH SEE E-201004 EXTENSION	REAL	NOV '04

ROADWAY IMPROVEMENTS
 TO TOLL PLAZA APPROACH
WILLIAM PRESTON LANE JR. MEMORIAL BRIDGE
 Roadway Plan - Sta. 613+50 to Sta. 629+35

DESIGNED BY ECM
 CONST. REVIEW BY

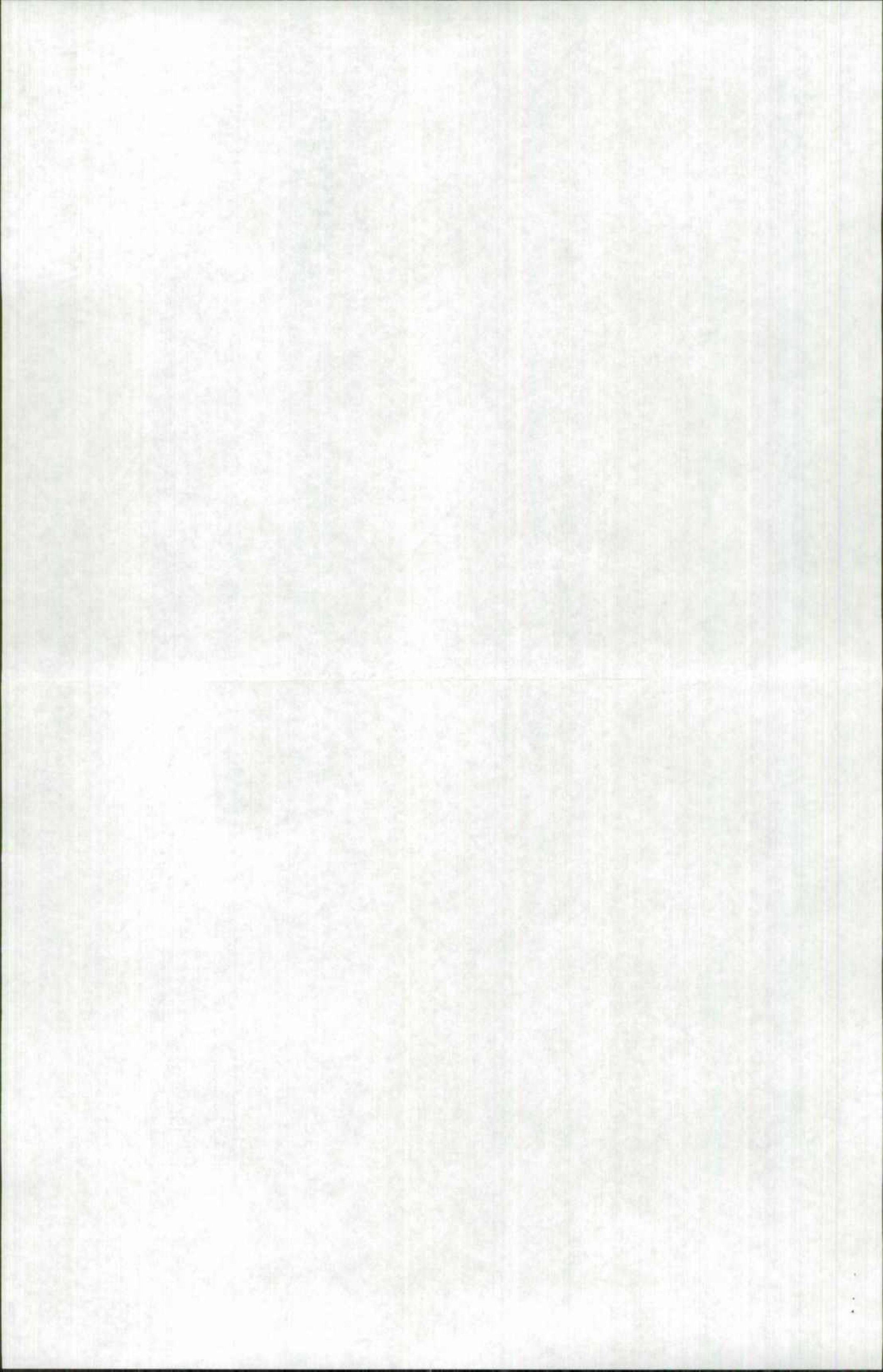
DRAWN BY ECM
 DATE NOVEMBER 5, 2004

CHECKED BY ECM
 SCALE 1"=50'

CONTRACT NO.
 LB 345-000-006

DRAWING NO.
R-3

SHEET NO.
 2 of XX



Critical Area Commission

STAFF REPORT

December 1, 2004

APPLICANT: Maryland Port Administration

PROPOSAL: Masonville Marine Terminal
Phase I – Rough Grading at Cell 5

JURISDICTION: Baltimore City

COMMISSION ACTION: Vote

STAFF RECOMMENDATION: Pending Subcommittee Review

STAFF: Dawnn McCleary

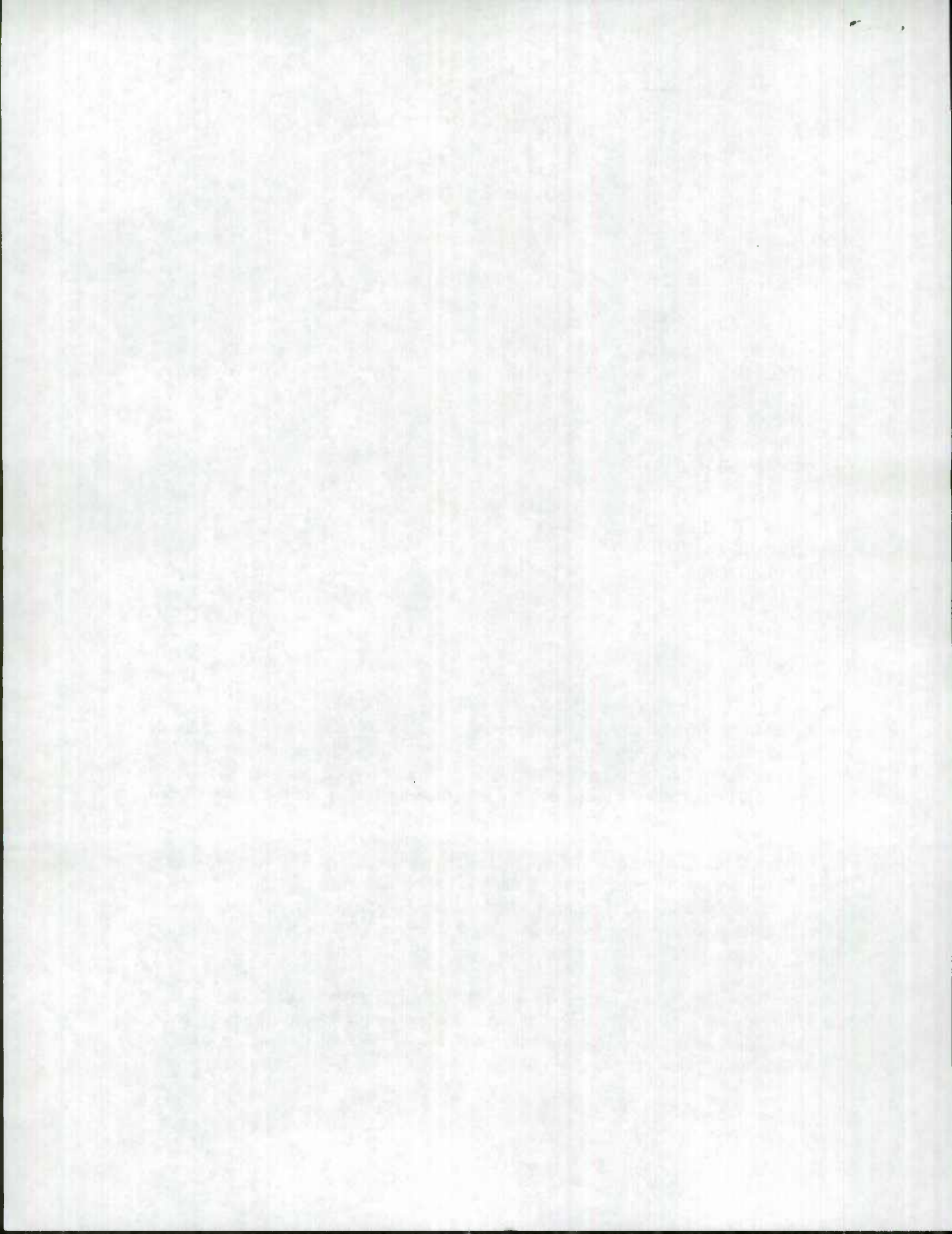
**APPLICABLE LAW/
REGULATIONS:** COMAR 27.02.05 - State Agency Actions Resulting in
Development on State-Owned Lands

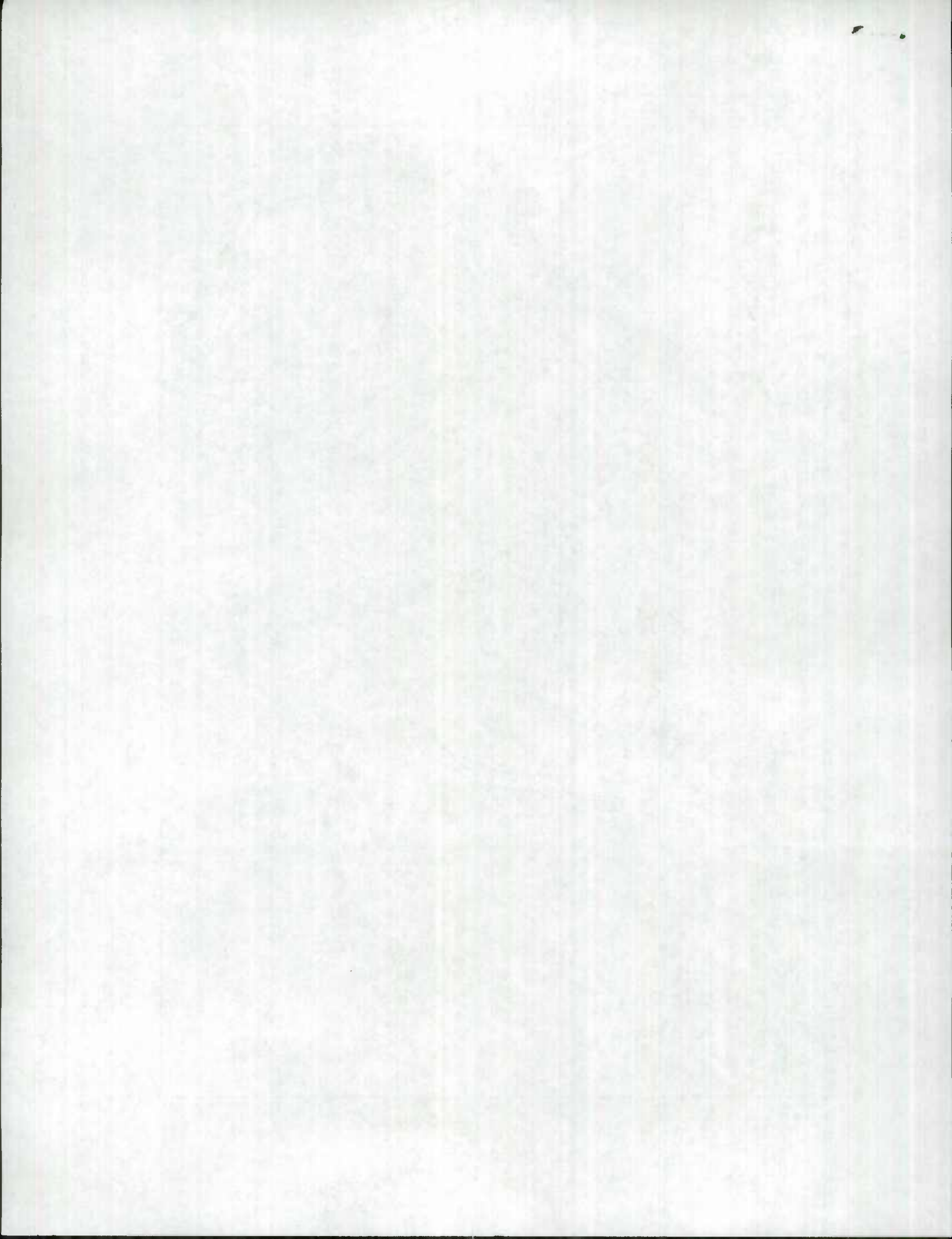
DISCUSSION:

The Maryland Port Administration (MPA) is preparing to expand the Cell 5 Dredge Disposal Facility at Masonville Marine Terminal. The site is a 13.82-acre dredge disposal containment facility authorized by the Army Corps of Engineers in 1977 and purchased by MPA in 1978. It is located in southwest Baltimore, north of the I-895 toll plaza. MPA performs periodic maintenance activities including re-grading to insure proper drainage. Some of this work is currently underway. The entire site is in the Critical Area.

The Port Administration proposes to rough grade and place gravel over 9.89 acres of the site. The work is proposed to accommodate expanded use of the Masonville area by the Port Administration's tenant, ATC Logistics of Maryland, Inc. The proposed rough grading and gravel placement will be outside the 100-foot Buffer. In Spring 2005 the Port Administration will submit a proposal to complete grading and to pave a larger portion of the site.

MPA submitted plans to the Department of the Environment for approval of the initial Erosion and Sediment Control plan and a waiver for stormwater management for rough grading of the site. It is unclear at this time if placement of gravel on the site was included in the request for waiver of stormwater management.





Critical Area Commission

STAFF REPORT December 1, 2004

APPLICANT: Maryland Port Administration

PROPOSAL: CSX/Cox Creek Dredged Material Containment Facility
Unloading Pier

JURISDICTION: Anne Arundel County

COMMISSION ACTION: Vote

STAFF RECOMMENDATION: Approval

STAFF: Lisa Hoerger

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

DISCUSSION:

The Maryland Port Administration (MPA) requests approval of an unloading pier at their CSX/Cox Creek Dredged Material Containment Facility (DMCF) in northern Anne Arundel County. The site is approximately one mile south of the Francis Scott Key Bridge off of the Patapsco River.

The CSX site was purchased by the MPA in 1993 and the Cox Creek site was purchased in 1996. For the last several years, the MPA has been in the process of reconstructing and stabilizing the containment cells on each property to receive dredge material from the Baltimore Harbor channels. In 1998, the Commission approved a storm drain project, which diverted stormwater from entering the containment cells. In 2003, the Commission approved a wetland restoration project, which addressed mitigation owed to the Department of the Environment (MDE) for the open-water fill associated with the raising of the containment cell walls.

The present request is for the construction of the unloading pier. This pier will be used for the loading and off-loading of vessels, but primarily for the off-loading of the barges that will be transporting the dredged material from the Baltimore Harbor channels.

The proposed pier will be a concrete structure that is 882-foot long by 30 to 50-foot wide. It will extend a maximum of 169 feet channelward of the mean high water line. The pier's design will allow for the movement of dump trucks and loaders to transport the dredge material from the barges into the trucks, which will move the material to the containment cells.

Since the site is considered an area of intense development, the MPA is required to perform the 10% Pollutant Reduction Calculations. The removal requirement for the site is .38 pounds of phosphorus. The MPA is currently working with the Commission staff and the Maryland Department of the Environment (MDE) to select and locate suitable Best Management Practices for this unique site. Currently, the plan is to install a swale in the immediate vicinity of the unloading pier and to remove impervious area in the upland portion of the site to address the 10% Pollutant Removal requirement.

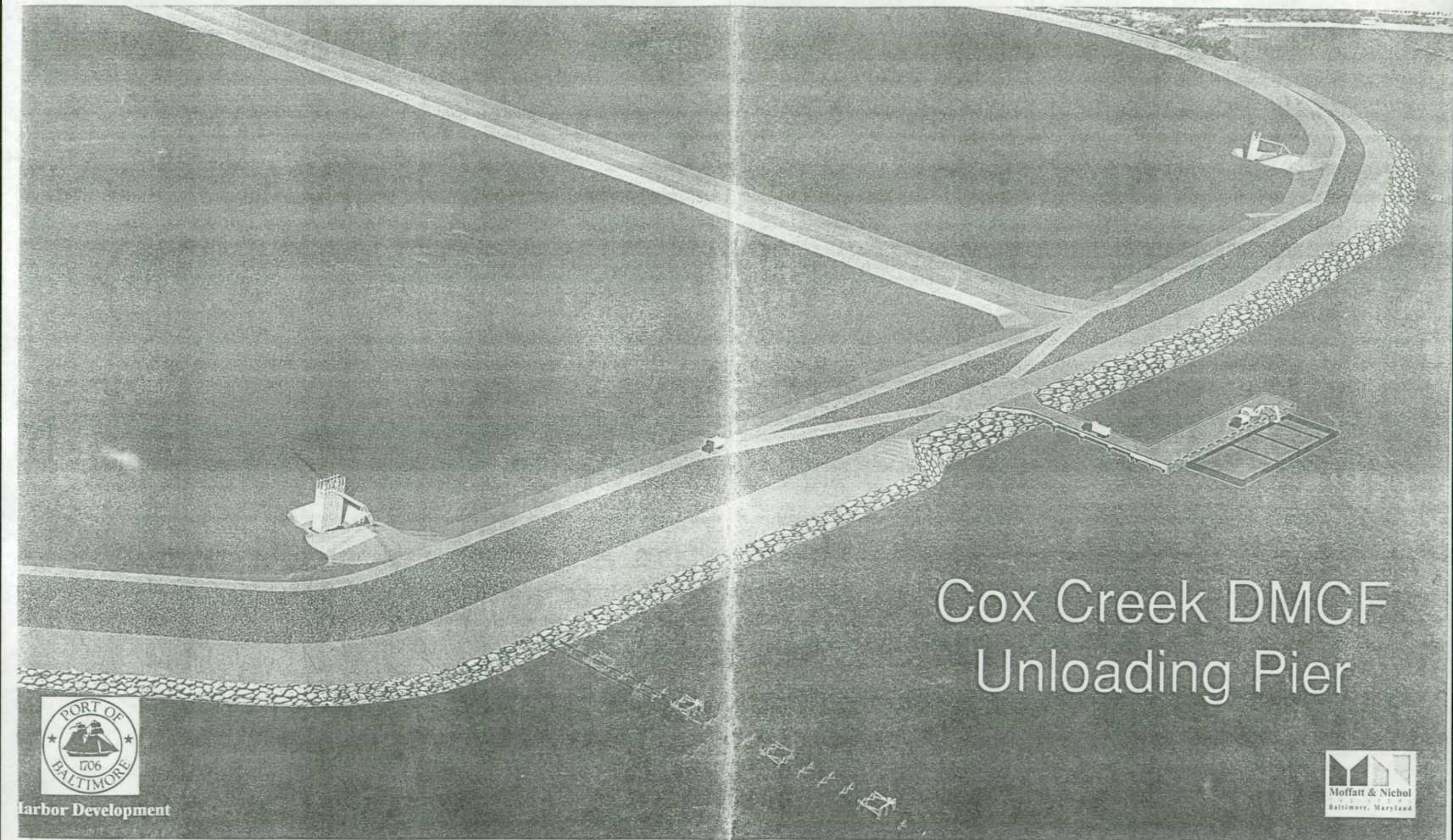
The MDE issued permits for MPA to mechanically or hydraulically dredge an 1800-foot long by 250-foot wide channel and a 900-foot by 1,235-foot turning basin area to the 18-foot depth at mean low water, and transport 279,000 cubic yards of dredged material to the CSX/Cox Creek DMCF.

All other permits, with the exception of the Discharge Permit and Sediment and Erosion Control permit have been issued. The public hearing for this permit was held and there were no public comments, although several local and State officials and one citizen attended the hearing. An update on MDE's Sediment and Erosion Control permit will be provided at the meeting.

The Heritage and Biodiversity Division of the Department of Natural Resources has reviewed the site and found no threatened or endangered species to be present. The Maryland Historical Trust has also reviewed the site and found no sites at the project area. Anne Arundel County Office of Environmental and Cultural Resources is currently reviewing the project and any comments generated by the County will be provided.

Commission staff recommends approval of the project with the following condition:

The Maryland Port Administration secure the sediment and erosion control permit from the Maryland Department of the Environment prior to construction of the pier.

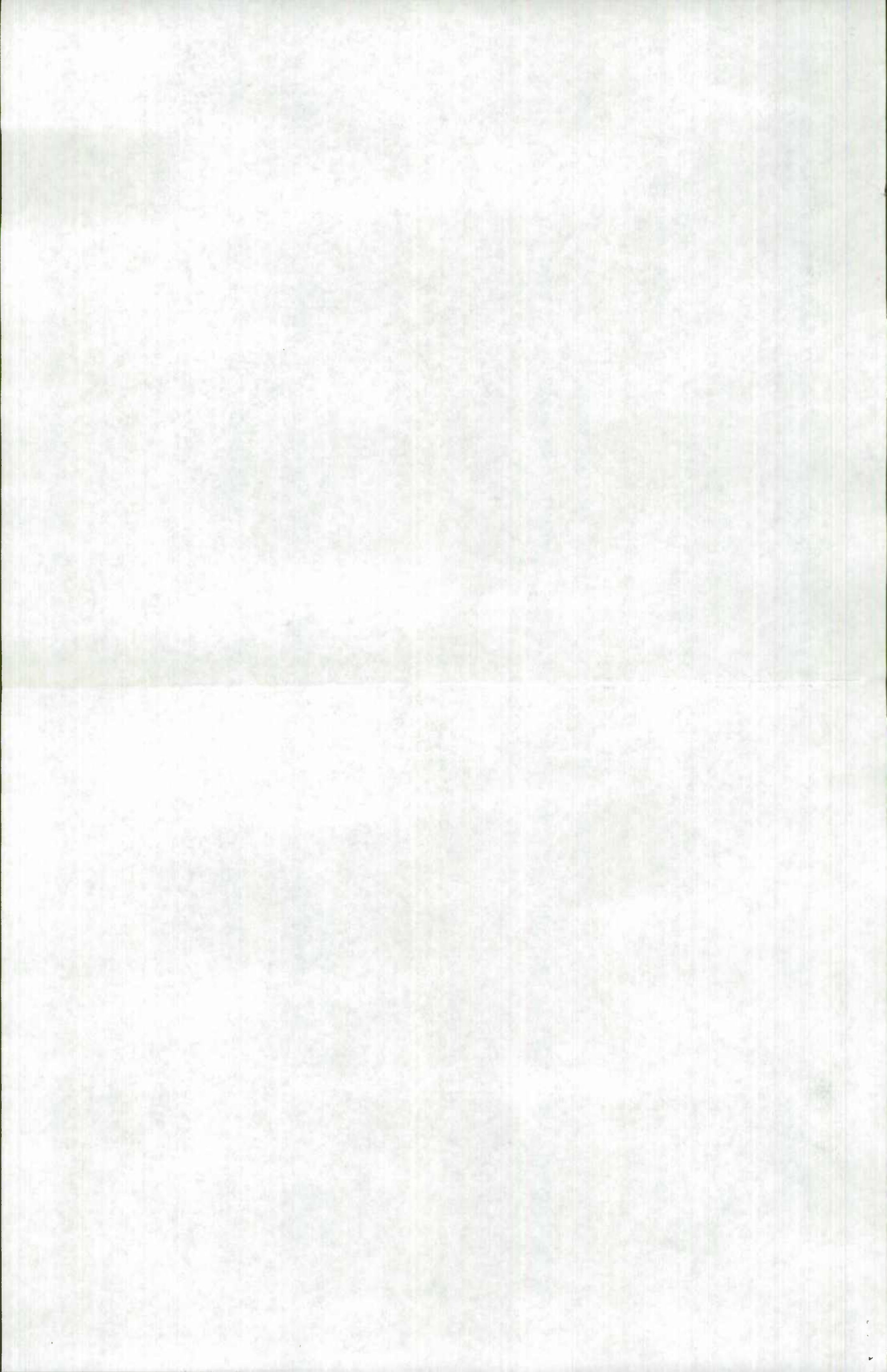


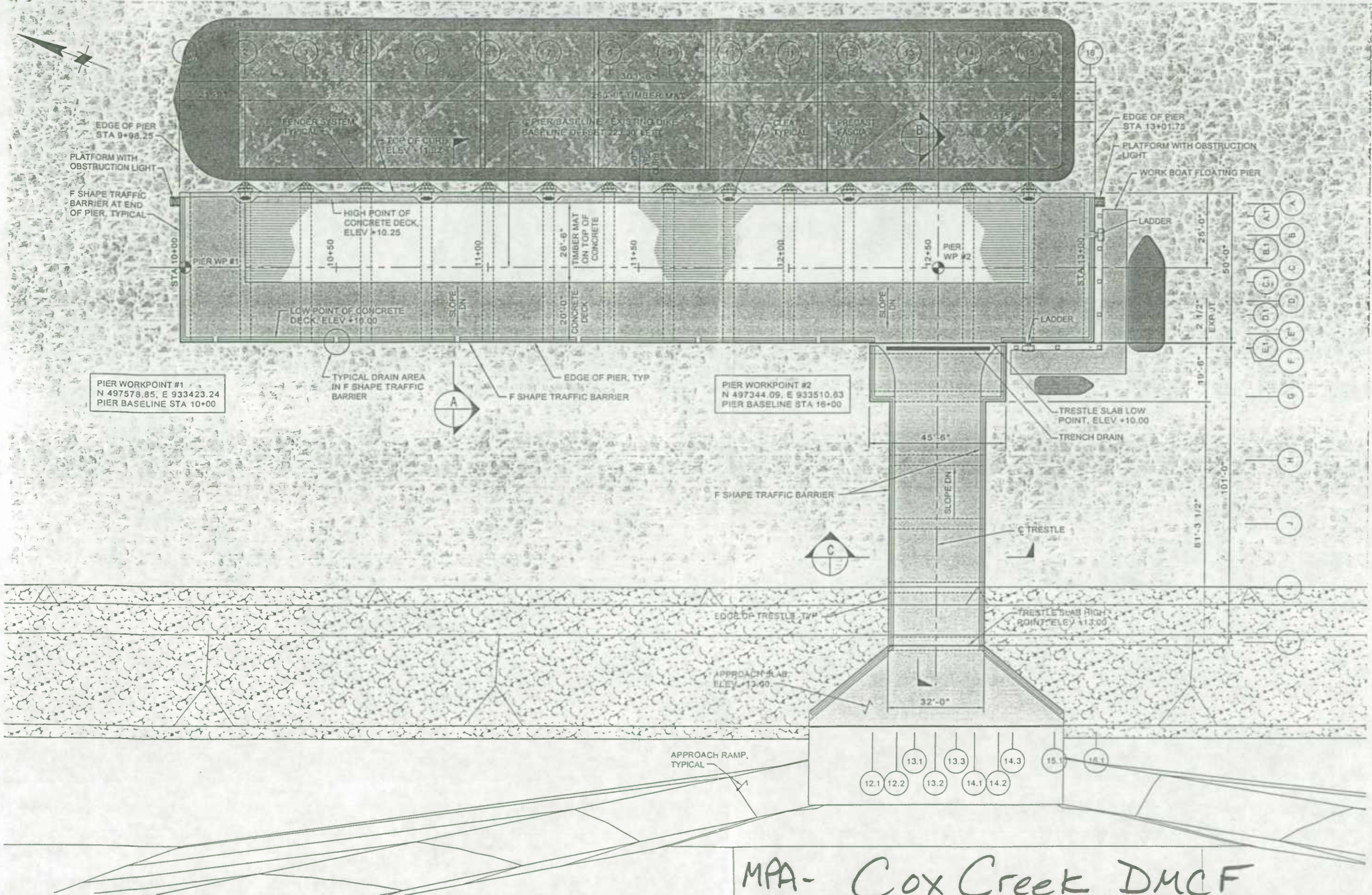
Cox Creek DMCF Unloading Pier



Harbor Development







PIER WORKPOINT #1
N 497578.85, E 933423.24
PIER BASELINE STA 10+00

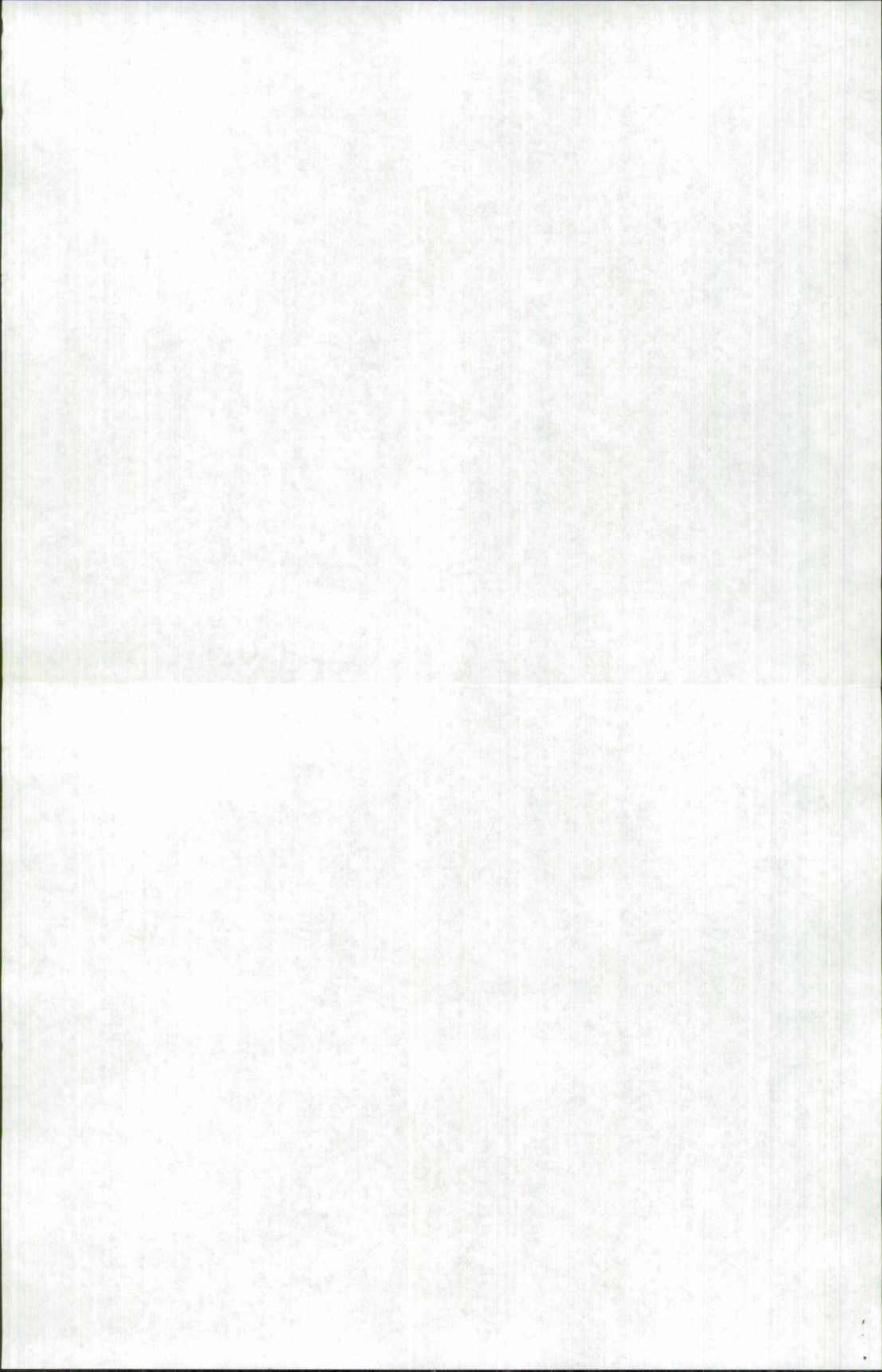
PIER WORKPOINT #2
N 497344.09, E 933510.83
PIER BASELINE STA 16+00

MPA- Cox Creek DMOF
Unloading Pier

DECK PLAN
SCALE 1/16" = 1'-0"

DESIGNED BY A.L.M.	DATE 11/11/2004	PROJECT NO. 100-100-100-100-100	DATE 11/11/2004	SCALE 1 = 1
CHECKED BY P.G.V.	DATE 11/11/2004	PROJECT NO. 100-100-100-100-100	DATE 11/11/2004	SCALE 1 = 1
REVIEWED BY M.L.B.	DATE 11/11/2004	PROJECT NO. 100-100-100-100-100	DATE 11/11/2004	SCALE 1 = 1
SUBMITTED BY P.W.K.	DATE 11/11/2004	PROJECT NO. 100-100-100-100-100	DATE 11/11/2004	SCALE 1 = 1
MOFFATT & NICHOL BALTIMORE, MARYLAND				
COX CREEK DAMAGED MATERIAL HANDLING FACILITY UNLOADING PIER				
DECK PLAN				
1				

COX CREEK DAMAGED MATERIAL HANDLING FACILITY UNLOADING PIER
 DESIGNED BY A.L.M. DATE 11/11/2004 PROJECT NO. 100-100-100-100-100
 CHECKED BY P.G.V. DATE 11/11/2004 PROJECT NO. 100-100-100-100-100
 REVIEWED BY M.L.B. DATE 11/11/2004 PROJECT NO. 100-100-100-100-100
 SUBMITTED BY P.W.K. DATE 11/11/2004 PROJECT NO. 100-100-100-100-100
 MOFFATT & NICHOL BALTIMORE, MARYLAND
 COX CREEK DAMAGED MATERIAL HANDLING FACILITY UNLOADING PIER



Critical Area Commission

STAFF REPORT

December 1, 2004

APPLICANT: Department of Natural Resources / Erickson Foundation

PROPOSAL: North Bay Environmental Education Camp
Wastewater Treatment Plant Upgrades

JURISDICTION: Cecil County

COMMISSION ACTION: Vote

RECOMMENDATION: Approval

STAFF: Ren Serey

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

DISCUSSION:

On July 3, 2003 the Commission granted concept approval for the North Bay Environmental Education Camp at Elk Neck State Park in Cecil County. On April 7, 2004 the Commission granted the camp final concept approval. The Erickson Foundation is building the camp in partnership with the Department of Natural Resources (DNR) to serve public and private schools, religious groups, Boys Scouts, Cub Scouts, Girl Scouts, Young Life, and athletic associations. The camp will accommodate up to 500 people including campers and staff. The Erickson Foundation, with input from and in coordination with DNR, is developing a program to provide experience and training in environmental awareness, natural resources conservation, team and confidence building, and leadership training.

Since granting final conditional approval the Commission has approved changes to the original site plan on three occasions. These changes include the addition of a classroom building, the removal of two bridges, the reduction of a portion of the aquatics building and several minor modifications.

Current Proposal:

DNR and the Erickson Foundation are proposing upgrades to the existing wastewater treatment plant at Elk Neck State Park. The upgrades will improve treatment of wastes at

the facility and expand its capacity to accommodate the North Bay Camp. The work is being designed and implemented in conjunction with the Maryland Environmental Service, which operates and maintains the plant. There are three aspects to the current proposal: 1) additions and improvements to the collection and distribution system; 2) a pump station; and 3) a holding tank and vault facility.

Impacts from the proposed improvements include disturbance to the Buffer (both the 100-foot Buffer and the expanded Buffer for adjacent slopes 15% or greater) and to other steep slopes not connected to the Buffer. These impacts and their required mitigation were included in the Commission's prior approval of the North Bay Camp and are set out in bold italics in Tables 1 and 2 below. No additional mitigation is required for the current proposal. Tables 3 and 4 are unchanged from the Commission's prior approvals and included for informational purposes.

The following conditions have remained unchanged since final site plan approval on April 7, 2004:

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

The Commission determined on April 7, 2004 that the final design of the camp satisfied these conditions.

Staff recommends approval of the wastewater treatment plant improvements as proposed.

NORTH BAY IMPACTS AND REQUIRED MITIGATION
As of December 1, 2004

Table 1

Buffer impacts and required mitigation – no changes from April 7, 2004 approval except for italicized notations below under Offsite utilities.

(includes temporary and permanent disturbance)

	100-foot Buffer	Exp. Buffer for slopes	Exp. Buffer for NTW	Ratio	Total
Water dependent facilities	2415 sq.ft.	0	0	1	2415 (0.06 ac)
Water access	6304 sq. ft	3102 sq. ft.	1050 sq. ft.	2	20912 (0.48 ac)
Trails at 30% clearing	2505 sq. ft	12523.5 sq. ft.	0	3	45085.5 (1.04 ac)
Other impacts (buildings, roads, grading)	11635 sq. ft	144100 sq. ft.	346 sq. ft.	3	468243 (10.7 ac)
Offsite utilities	31600 sq. ft. <i>Proposed 12/1/04: 167 sq. ft.</i> <i>Approved Impacts Remaining: 31433 sq. ft.</i>	4000 sq. ft. <i>Proposed 12/1/04: 2551 sq. ft.</i> <i>Approved Impacts Remaining: 1449 sq. ft.</i>	0	3	106800 (2.45 ac)
Total Buffer mitigation owed					643455.5 (14.77 ac)

Table 2

Proposed steep slope impacts and required mitigation – reduced from 4/7/04 approval.

(includes temporary and permanent disturbance)

	Steep slopes	Ratio	Total
Main site	73460 sq. ft	1	73460 (1.68 ac)
On-site utilities	6550 sq. ft.	1	6550 (0.15 ac)
Offsite utilities	2000 sq. ft.	1	2000 (0.04 ac)
	<i>Proposed 12/1/04: 929 sq. ft.</i>		
	<i>Approved Impacts Remaining: 1071 sq. ft.</i>		
1			82010 (1.88 ac)

Table 3

Steep slope impacts and required mitigation as of April 7, 2004 approval.

(includes temporary and permanent disturbance)

	Steep slopes	Ratio	Total
Main site	74490 sq. ft	1	74490 (1.71 ac)
On-site utilities	6550 sq. ft.	1	6550 (0.15 ac)
Offsite utilities	2000 sq. ft.	1	2000 (0.04 ac)
			83040 (1.9 ac)

Table 4

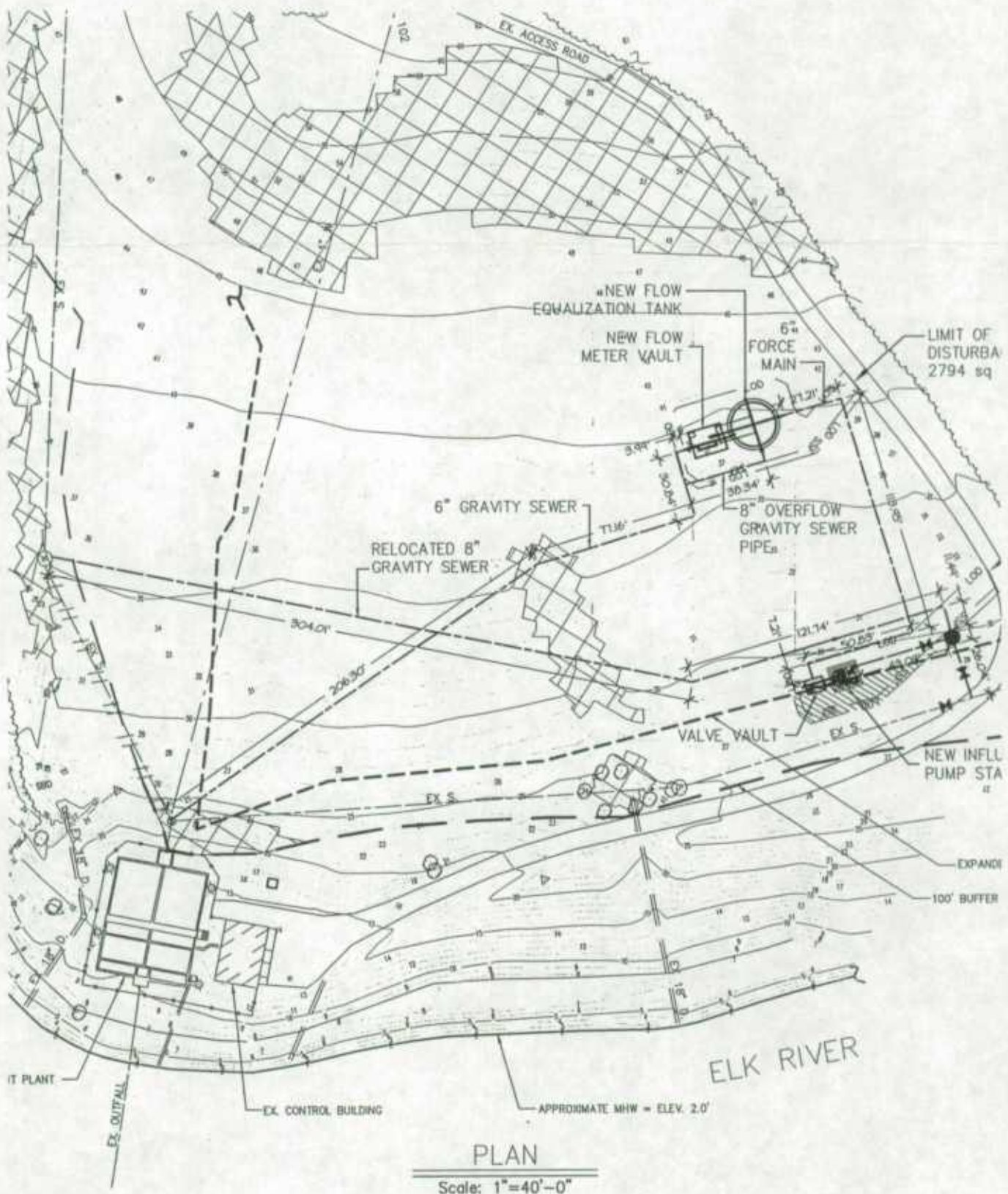
Steep slope impacts and required mitigation as of July 2, 2003 approval.

(includes temporary and permanent disturbance)

	Steep slopes	Ratio	Total
Main site	80806 sq. ft	1	80806 (1.86 ac)
On-site utilities	0	1	0
Offsite utilities	2000 sq. ft.	1	2000 (0.04 ac)
			82806 (1.9 ac)

**WASTEWATER TREATMENT PLANT
IMPROVEMENTS IMPACTS SUMMARY**

DESCRIPTION	PERMANENT				TEMPORARY			
	100' BUFFER (S.F.)	EXPANDED BUFFER (S.F.)	STEEP SLOPE (S.F.)	OTHER IN CRITICAL AREA(S.F.)	100' BUFFER (S.F.)	EXPANDED BUFFER (S.F.)	STEEP SLOPE (S.F.)	OTHER IN CRITICAL AREA(S.F.)
1. INFLUENT PUMP STATION	0	711	0	1433	0	0	0	0
2. FLOW EQUALIZATION TANK/FLOW METER VAULT	0	0	0	2794	0	0	0	0
3. COLLECTION/DISTRIBUTION SYSTEM IMPROVEMENTS	11	115	58	743	156	1725	871	11136



ES, INC.
ANNERS,
HITECTS

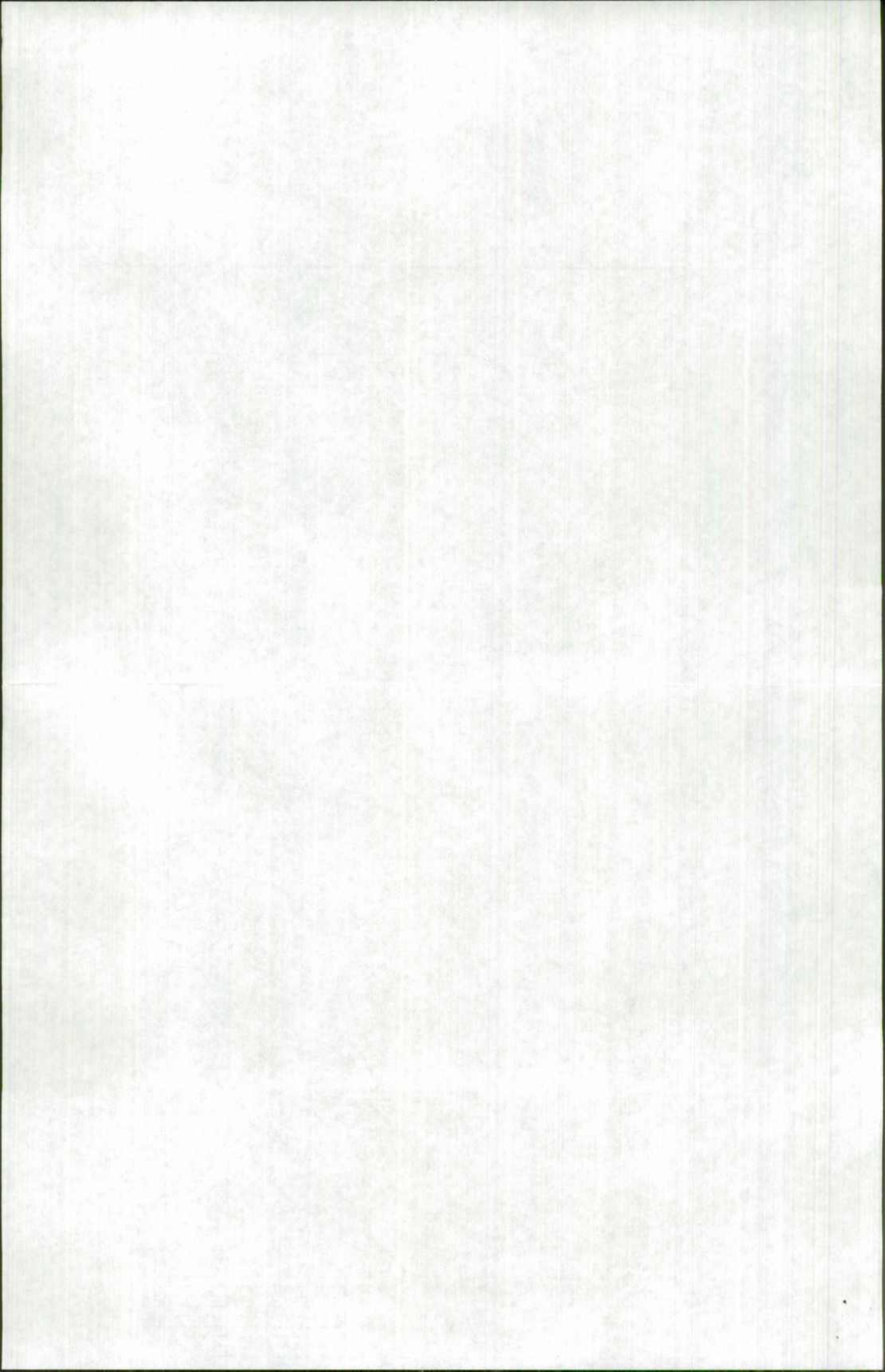
02)855-0157

SCALE: AS SHOWN
DATE: NOV 17, 2004
DESIGNED
DRAWN
CHECKED



**MARYLAND
ENVIRONMENTAL
SERVICE**

NO.	DATE	REVISION



Critical Area Commission

STAFF REPORT December 1, 2004

APPLICANT: City of Annapolis Planning and Zoning

PROPOSAL: Ordinance O-11-04: Valuing and Replacing Trees in Development Areas

JURISDICTION: City of Annapolis

COMMISSION ACTION: Concurrence with Chairman's Determination to Approve with Conditions

STAFF RECOMMENDATION: Approval with Conditions

STAFF: Dawnn McCleary

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

DISCUSSION:

The City Council of Annapolis approved Ordinance O-11-04 on September 13, 2004. This ordinance amends Chapter 17.09 of the City of Annapolis Municipal Code. The City feels that certain aspects of the existing code are confusing, vague, and difficult to apply. The revised provisions will clarify the method for determining how to replace trees in development areas and will streamline the handling of violations.

The new language changes the criteria for mitigating the removal of trees and vegetation from a system based on the monetary value of the trees removed to a system based on the size of the trees removed. The new provisions also require mitigation for the removal of trees less than 5" DBH (Diameter Breast Height) and shrub-scrub vegetation, which previously had not been required. The ordinance also includes changes to the enforcement provisions, which will allow the City to consider each day of the violation as a separate violation and subject to fines established by resolution of the city council. The goals of the changes are to clarify and streamline forest and tree replacement requirements and to increase overall tree and woodland cover throughout the City of Annapolis. A copy of the new ordinance language is attached.

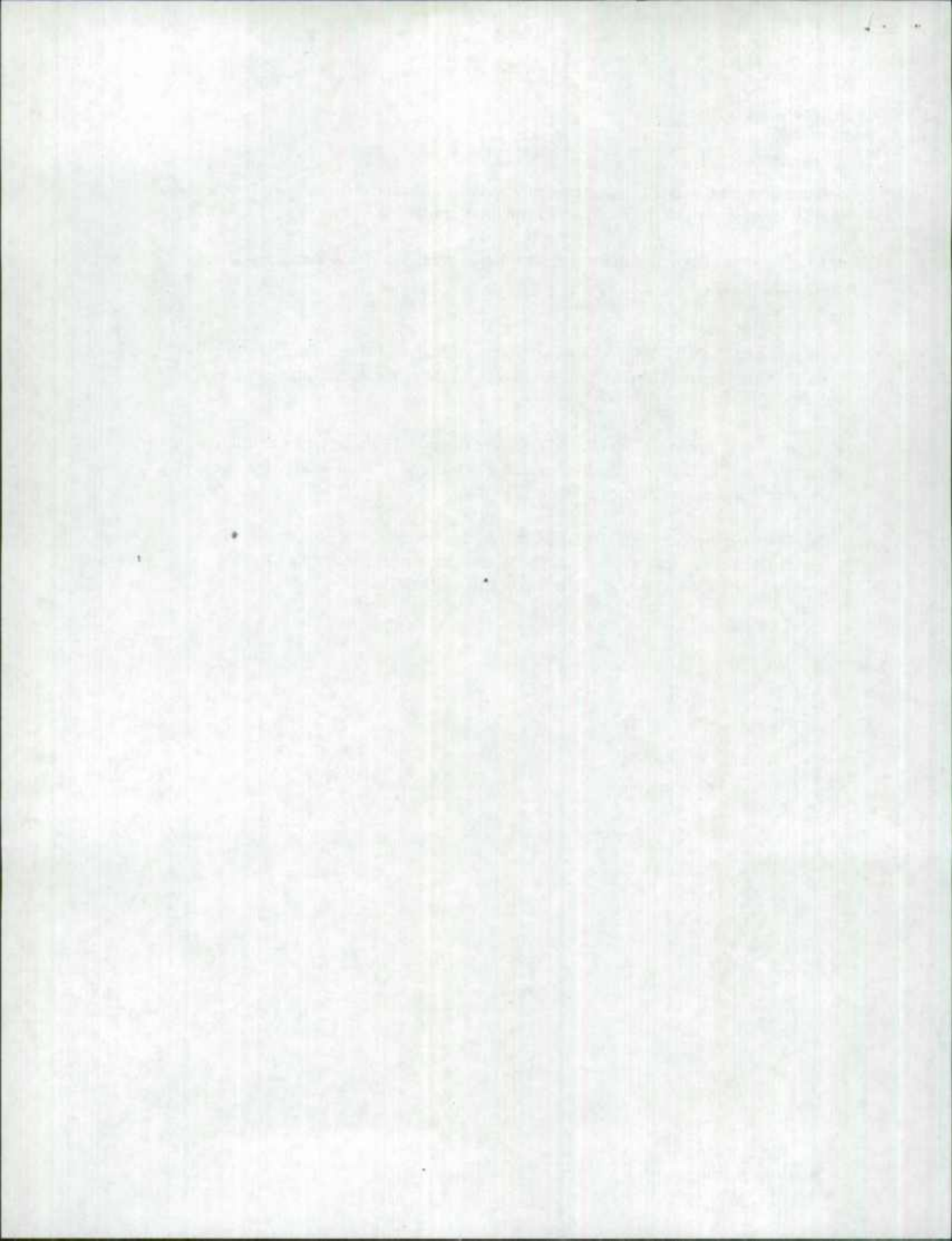
Summary of Changes Resulting from Ordinance No. O-11-04

- In Section 17.09.030 "Landscape Plan," the provisions have been revised to clarify when a landscape plan is required, the information that must be included on the plan, and the agency that is responsible for reviewing the plan.
- In Section 17.09.070 "Replacement value – Mitigation--- Fee-in-Lieu-Exceptions," the City has revised this section and replaced many of the provisions with Table 17.090.070 "Tree Replacement Requirements." The table includes specific mitigation requirements for land outside the Critical Area and within the three Critical Area land use classifications. Mitigation requirements were significantly increased within Intensely Developed Areas because the City believes that trees and woodland resources are so limited in these areas that every effort should be made to protect and enhance these resources. It is anticipated that the higher mitigation requirements may serve as deterrent to the removal of older, mature trees on development sites. The table requires one modification and that is to correct the mitigation ratio for trees removed in Limited Development Areas to ensure that they are replaced at 1 for 1.
- Also in this section, in the provisions pertaining to fee-in-lieu of planting, language was added to specify how the fee would be calculated. The fee will be based on an estimate of the in-ground cost of the required planting. The estimate will need to be prepared by a commercial nursery, landscape contractor, or similar professional, and obtained by the applicant. The fee-in-lieu will be based on the estimate plus twenty percent to cover administration of the program.
- In subparagraph G of Section 17.09.070 "Replacement value – Mitigation--- Fee-in-Lieu-Exceptions," language was added to reference the official City of Annapolis Critical Area Maps and Critical Area Plan.
- In subparagraphs H, I, and J, provisions were moved from Section 17.09.080 "Critical Area" to 17.09.070 "Replacement value – Mitigation--- Fee-in-Lieu-Exceptions," so that all tree, forest, and woodland protection provisions will be found in the same section of the City Code.
- In subparagraph I, a revision is needed to clarify that the standards in this section are in addition to those applicable to Limited Development Areas. The following language, shown in bold, must be added: "**In addition to the requirements in H above**, the overall acreage of forest and woodland within the resource conservation area may not be decreased." There is also a typographical error that needs to be corrected to provide the correct reference.
- In Section 17.09.140 "Enforcement – Violation—Penalties," minor clarifications were made and the City added language specifying that the unapproved removal of a single tree constitutes a violation and that fines for these violations will be incurred each day the

violation continues without abatement or mitigation. Violations will include the removal of trees that were approved for preservation and then removed.

Senator Madden has determined that this matter can be approved as a refinement with the following conditions:

1. On page 6 in Table 17.09.070 "Tree Replacement Requirements," change "1 for 2" to "**1 for 1**" in the Limited Development Areas column for plant material size category 'Trees 1 to 4" DBH.'
2. On page 10, in Section 17.09.070. I(1), add the following language: "**In addition to the requirements in H above**, the overall acreage of forest and woodland within the resource conservation area may not be decreased."
3. On page 10, in Section 17.09.070. I(2), correct the typographical error to provide the correct reference as follows, "... except where trees are removed according to subparagraphs 4, 6 and 8 of subsection **J of this section.**"



Critical Area Commission

STAFF REPORT

December 1, 2004

APPLICANT: Worcester County

PROPOSAL: Refinement – Text Amendments to Atlantic Coastal Bays Critical Area Program – 2004 Legislation

COMMISSION ACTION: Concurrence

STAFF RECOMMENDATION: Approval

STAFF: LeeAnne Chandler

**APPLICABLE LAW/
REGULATIONS:** Chapter 526 of the 2004 Laws of Maryland: “Chesapeake and Atlantic Coastal Bays Critical Area Protection Program – Miscellaneous Enforcement Provisions”, Chapter 546 of the 2004 Laws of Maryland: “Chesapeake and Atlantic Coastal Bays Protection Program – Dwelling Units” and Natural Resources Article §8-1809(h)

DISCUSSION:

The County Commissioners of Worcester County approved changes to the Natural Resources Article of the County Code 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. 04-6 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.

Worcester County Text Changes

Bill 04-6 updated the County's Atlantic Coastal Bays Critical Area Law to incorporate provisions of the 2004 legislation passed by the General Assembly. The text amendments include the following:

- The addition of definitions of "unwarranted hardship" and "dwelling unit" to the definitions section
- Added the optional provisions allowing an additional dwelling unit to be considered part of the primary dwelling unit under the specified circumstances
- Updated the variance language to include the specific procedures for consideration of variances by the Board of Zoning Appeals
- Increased the maximum fine for Critical Area violations to \$10,000.

A copy of Bill 04-6 is attached for review. Chairman Madden has determined that these text changes can be handled as a refinement to the County's Atlantic Coastal Bays Critical Area Program.

COUNTY COMMISSIONERS OF WORCESTER COUNTY, MARYLAND

BILL 04-6

BY: Commissioners Boggs, Cetola, Church, Gulyas, Purnell and Shockley
INTRODUCED: July 27, 2004

A BILL ENTITLED

AN ACT Concerning

Natural Resources - Atlantic Coastal Bays Critical Area

For the purpose of amending the Worcester County Atlantic Coastal Bays Critical Area Law to incorporate provisions required by the recent enactment of State legislation which mandates amendments to local law.

Section 1. BE IT ENACTED BY THE COUNTY COMMISSIONERS OF WORCESTER COUNTY, MARYLAND that Subsection NR 3-102(a) of the Natural Resources Article of the Code of Public Local Laws of Worcester County, Maryland is hereby amended by the addition of definitions of the terms " Dwelling Unit" and "Unwarranted Hardship" to read as follows:

DWELLING UNIT — A single unit providing complete, independent living facilities for at least one person, including permanent provisions for sanitation, cooking, eating, sleeping, and other activities routinely associated with daily life. A dwelling unit may include a living quarters for a domestic or other employee or tenant, an in-law or accessory apartment, a guest house, or a caretaker residence.

UNWARRANTED HARDSHIP — A situation wherein without a variance, an applicant would be denied reasonable and significant use of the entire parcel or lot for which the variance is requested.

Section 2. BE IT FURTHER ENACTED BY THE COUNTY COMMISSIONERS OF WORCESTER COUNTY, MARYLAND that Subsection NR 3-108(c) of the Natural Resources Article of the Code of Public Local Laws of Worcester County, Maryland is hereby amended by the addition of a new subsection (10) to read as follows:

- (10) In consideration of additional dwelling units per lot or parcel as part of the primary dwelling unit the County shall adhere to the following:
 - A. Within a Resource Conservation Area, the County may consider one additional dwelling unit per lot or parcel as part of the primary dwelling unit for the purpose of the density calculation under this subsection if the additional dwelling unit meets either of the following set of conditions:

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CRITICAL AREA COMMISSION

1. The additional dwelling unit is located within the primary dwelling unit or its entire perimeter is within 100 feet of the primary dwelling unit, it does not exceed 900 square feet in total enclosed area, and it is served by the same sewage disposal system as the primary dwelling unit; or
 2. The additional dwelling unit is located within the primary dwelling unit, is built so that its construction does not increase the amount of impervious surface already attributed to the primary dwelling unit, and it is served by the same sewage disposal system as the primary dwelling unit.
- B. An additional dwelling unit meeting all the criteria of this section that is separate from the primary dwelling unit may not be subdivided or conveyed separately from the primary dwelling unit.
- C. The provisions of this section apply to density calculations only and may not be construed to authorize the County to grant a variance, unless the variance is granted in accordance with the requirements and standards in this Subtitle for variances in the Atlantic Coastal Bays Critical Area.
- D. The County shall maintain records of all building permits issued under this section for additional dwelling units considered part of a primary dwelling unit and shall provide this information on a quarterly basis to the Critical Area Commission.

Section 3. BE IT FURTHER ENACTED BY THE COUNTY COMMISSIONERS OF WORCESTER COUNTY, MARYLAND that Subsection NR 3-111(b)(6) of the Natural Resources Article of the Code of Public Local Laws of Worcester County, Maryland is hereby repealed and Subsection NR 3-111(b)(7) is renumbered as NR 3-111(b)(6).

~~(6) In reviewing an application for a variance the Board of Zoning Appeals shall consider the reasonable use of the entire parcel or lot for which the variance is requested.~~

Section 4. BE IT FURTHER ENACTED BY THE COUNTY COMMISSIONERS OF WORCESTER COUNTY, MARYLAND that Section NR 3-111 of the Natural Resources Article of the Code of Public Local Laws of Worcester County, Maryland is hereby amended by the renumbering of existing subsections (d) and (e) to (e) and (f) respectively and by the addition of a new subsection (d) to read as follows:

- (d) Board procedures. The following procedures shall be adhered to by the Board of Zoning Appeals when considering variance requests to this Subtitle:
- (1) In considering an application for a variance the Board of Zoning 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 Natural Resources Article, Title 8,

Subtitle 18, COMAR Title 27, as from time to time amended, and the requirements of the County's Atlantic Coastal Bays Critical Area Program.

- (2) If the variance request is based on conditions or circumstances that are the result of actions by the applicant, including the commencement of development activity before an application for a variance has been filed, the Board of Zoning Appeals may consider that fact.
- (3) An applicant has the burden of proof and the burden of persuasion to overcome the presumption of nonconformance established in subsection (1) hereof.
- (4) Based on competent and substantial evidence, the Board of Zoning Appeals shall make written findings as to whether the applicant has overcome the presumption of nonconformance as established above.
- (5) With due regard for the person's experience, technical competence, and specialized knowledge, the written findings may be based on evidence introduced and testimony presented by:
 - A. The applicant;
 - B. Any agency of the local, state or federal government; or
 - C. Any other person deemed appropriate by the Board of Zoning Appeals.

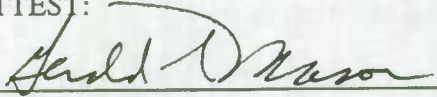
Section 5. BE IT FURTHER ENACTED BY THE COUNTY COMMISSIONERS OF WORCESTER COUNTY, MARYLAND that Section NR 3-114 of the Natural Resources Article of the Code of Public Local Laws of Worcester County, Maryland is hereby amended by the addition of a new subsection (c) to read as follows:

- (c) Additional penalties. In addition to any other penalty applicable under State or County law, a person who violates a provision of Natural Resources Article, Title 8, Subtitle 18, as from time to time amended, or the County's Atlantic Coastal Bays Critical Area Law is subject to a fine not exceeding \$10,000.00. In determining the amount of the penalty to be assessed under this subsection, the County may consider the following:
 - (1) The gravity of the violation;
 - (2) Any willfulness or negligence involved in the violation; and
 - (3) The environmental impact of the violation.

Section 6. BE IT FURTHER ENACTED BY THE COUNTY COMMISSIONERS OF WORCESTER COUNTY, MARYLAND, that this Bill shall take effect forty-five (45) days from the date of its passage.

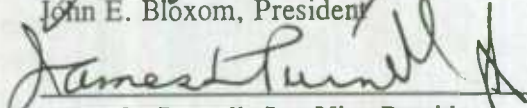
PASSED this 21st day of September, 2004.


ATTEST:



Gerald T. Mason
Chief Administrative Officer

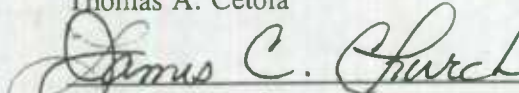
WORCESTER COUNTY COMMISSIONERS

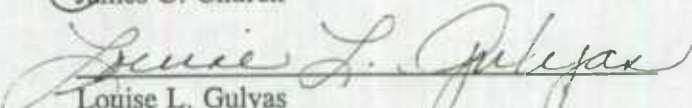

John E. Bloxom, President

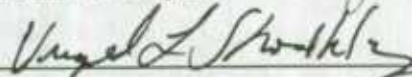

James L. Purnell, Jr., Vice President


Judith O. Boggs


Thomas A. Cetola


James C. Church


Louise L. Gulyas


Virgil L. Shockley

Critical Area Commission

STAFF REPORT

December 1, 2004

APPLICANT: Worcester County

PROPOSAL: Refinement – Text Amendments to Chesapeake Bay Critical Area Program – 2004 Legislation

COMMISSION ACTION: Concurrence

STAFF RECOMMENDATION: Approval

STAFF: LeeAnne Chandler

**APPLICABLE LAW/
REGULATIONS:** Chapter 526 of the 2004 Laws of Maryland: “Chesapeake and Atlantic Coastal Bays Critical Area Protection Program – Miscellaneous Enforcement Provisions”, Chapter 546 of the 2004 Laws of Maryland: “Chesapeake and Atlantic Coastal Bays Protection Program – Dwelling Units” and Natural Resources Article §8-1809(h)

DISCUSSION:

The County Commissioners of Worcester County approved changes to the Natural Resources Article of the County Code 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. 04-7 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.

Worcester County Text Changes

Bill 04-7 updated the County's Chesapeake Bay Critical Area Law to incorporate provisions of the 2004 legislation passed by the General Assembly. The text amendments include the following:

- The addition of definitions of "unwarranted hardship" and "dwelling unit" to the definitions section
- Added the optional provisions allowing an additional dwelling unit to be considered part of the primary dwelling unit under the specified circumstances
- Updated the variance language to include the specific procedures for consideration of variances by the Board of Zoning Appeals
- Increased the maximum fine for Critical Area violations to \$10,000.

A copy of Bill 04-7 is attached for review. Chairman Madden has determined that these text changes can be handled as a refinement to the County's Chesapeake Bay Critical Area Program.

COUNTY COMMISSIONERS OF WORCESTER COUNTY, MARYLAND

BILL 04-7

BY: Commissioners Boggs, Cetola, Church, Gulyas, Purnell and Shockley
INTRODUCED: July 27, 2004

A BILL ENTITLED

AN ACT Concerning

Natural Resources - Chesapeake Bay Critical Area

For the purpose of amending the Worcester County Chesapeake Bay Critical Area Ordinance to incorporate provisions required by the recent enactment of State legislation which mandates amendments to local law.

Section 1. BE IT ENACTED BY THE COUNTY COMMISSIONERS OF WORCESTER COUNTY, MARYLAND that Subsection NR 3-202(a) of the Natural Resources Article of the Code of Public Local Laws of Worcester County, Maryland is hereby amended by the addition of definitions of the terms "Dwelling Unit" and "Unwarranted Hardship" to read as follows:

1 DWELLING UNIT — A single unit providing complete, independent living facilities for at least one person, including permanent provisions for sanitation, cooking, eating, sleeping, and other activities routinely associated with daily life. A dwelling unit may include a living quarters for a domestic or other employee or tenant, an in-law or accessory apartment, a guest house, or a caretaker residence.

UNWARRANTED HARDSHIP — A situation wherein without a variance, an applicant would be denied reasonable and significant use of the entire parcel or lot for which the variance is requested.

Section 2. BE IT FURTHER ENACTED BY THE COUNTY COMMISSIONERS OF WORCESTER COUNTY, MARYLAND that Subsection NR 3-206(c) of the Natural Resources Article of the Code of Public Local Laws of Worcester County, Maryland is hereby amended by the addition of a new subsection (10) to read as follows:

(10) In consideration of additional dwelling units per lot or parcel as part of the primary dwelling unit the County shall adhere to the following:

A. Within a Resource Conservation Area, the County may consider one additional dwelling unit per lot or parcel as part of the primary dwelling unit for the purpose of the density calculation under this subsection if the additional dwelling unit meets either of the following set of conditions:

1. The additional dwelling unit is located within the primary dwelling unit or its entire perimeter is within 100 feet of the primary dwelling unit, it does not exceed 900 square feet in total enclosed area, and it is served by the same sewage disposal system as the primary dwelling unit; or
2. The additional dwelling unit is located within the primary dwelling unit, is built so that its construction does not increase the amount of

impervious surface already attributed to the primary dwelling unit, and it is served by the same sewage disposal system as the primary dwelling unit.

- B. An additional dwelling unit meeting all the criteria of this section that is separate from the primary dwelling unit may not be subdivided or conveyed separately from the primary dwelling unit.
- C. The provisions of this section apply to density calculations only and may not be construed to authorize the County to grant a variance, unless the variance is granted in accordance with the requirements and standards in this Subtitle for variances in the Atlantic Coastal Bays Critical Area.
- D. The County shall maintain records of all building permits issued under this section for additional dwelling units considered part of a primary dwelling unit and shall provide this information on a quarterly basis to the Critical Area Commission.

Section 3. BE IT FURTHER ENACTED BY THE COUNTY COMMISSIONERS OF WORCESTER COUNTY, MARYLAND that Section NR 3-211 of the Natural Resources Article of the Code of Public Local Laws of Worcester County, Maryland is hereby amended by the renumbering of existing subsections (d) and (e) to (e) and (f) respectively and by the addition of a new subsection (d) to read as follows:

- (d) Board procedures. The following procedures shall be adhered to by the Board of Zoning Appeals when considering variance requests to this Subtitle:
 - (1) In considering an application for a variance the Board of Zoning 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 Natural Resources Article, Title 8, Subtitle 18, COMAR Title 27, as from time to time amended, and the requirements of the County's Chesapeake Bay Critical Area Program.
 - (2) If the variance request is based on conditions or circumstances that are the result of actions by the applicant, including the commencement of development activity before an application for a variance has been filed, the Board of Zoning Appeals may consider that fact.
 - (3) An applicant has the burden of proof and the burden of persuasion to overcome the presumption of nonconformance established in subsection (1) above.
 - (4) Based on competent and substantial evidence, the Board of Zoning Appeals shall make written findings as to whether the applicant has overcome the presumption of nonconformance as established above.
 - (5) With due regard for the person's experience, technical competence, and specialized knowledge, the written findings may be based on evidence introduced and testimony presented by:
 - A. The applicant;

- B. Any agency of the local, state or federal government; or
- C. Any other person deemed appropriate by the Board of Zoning Appeals.

Section 4. BE IT FURTHER ENACTED BY THE COUNTY COMMISSIONERS OF WORCESTER COUNTY, MARYLAND that Section NR 3-212 of the Natural Resources Article of the Code of Public Local Laws of Worcester County, Maryland is hereby amended by the addition of a new subsection (b) to read as follows:

- (b) Additional penalties. In addition to any other penalty applicable under State or County law, a person who violates a provision of Natural Resources Article, Title 8, Subtitle 18, as from time to time amended, or the County's Chesapeake Bay Critical Area Ordinance is subject to a fine not exceeding \$10,000.00. In determining the amount of the penalty to be assessed under this subsection, the County may consider the following:
 - (1) The gravity of the violation;
 - (2) Any willfulness or negligence involved in the violation; and
 - (3) The environmental impact of the violation.

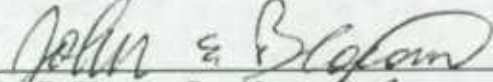
Section 5. BE IT FURTHER ENACTED BY THE COUNTY COMMISSIONERS OF WORCESTER COUNTY, MARYLAND, that this Bill shall take effect forty-five (45) days from the date of its passage.

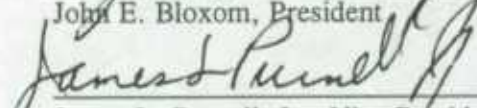
PASSED this 21st day of September, 2004.


ATTEST:


 Gerald T. Mason
 Chief Administrative Officer


WORCESTER COUNTY COMMISSIONERS

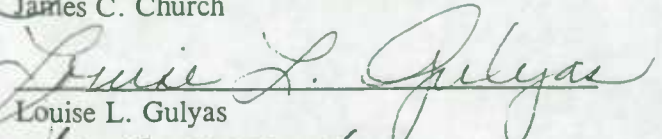

 John E. Bloxom, President



 James L. Purnell, Jr., Vice President

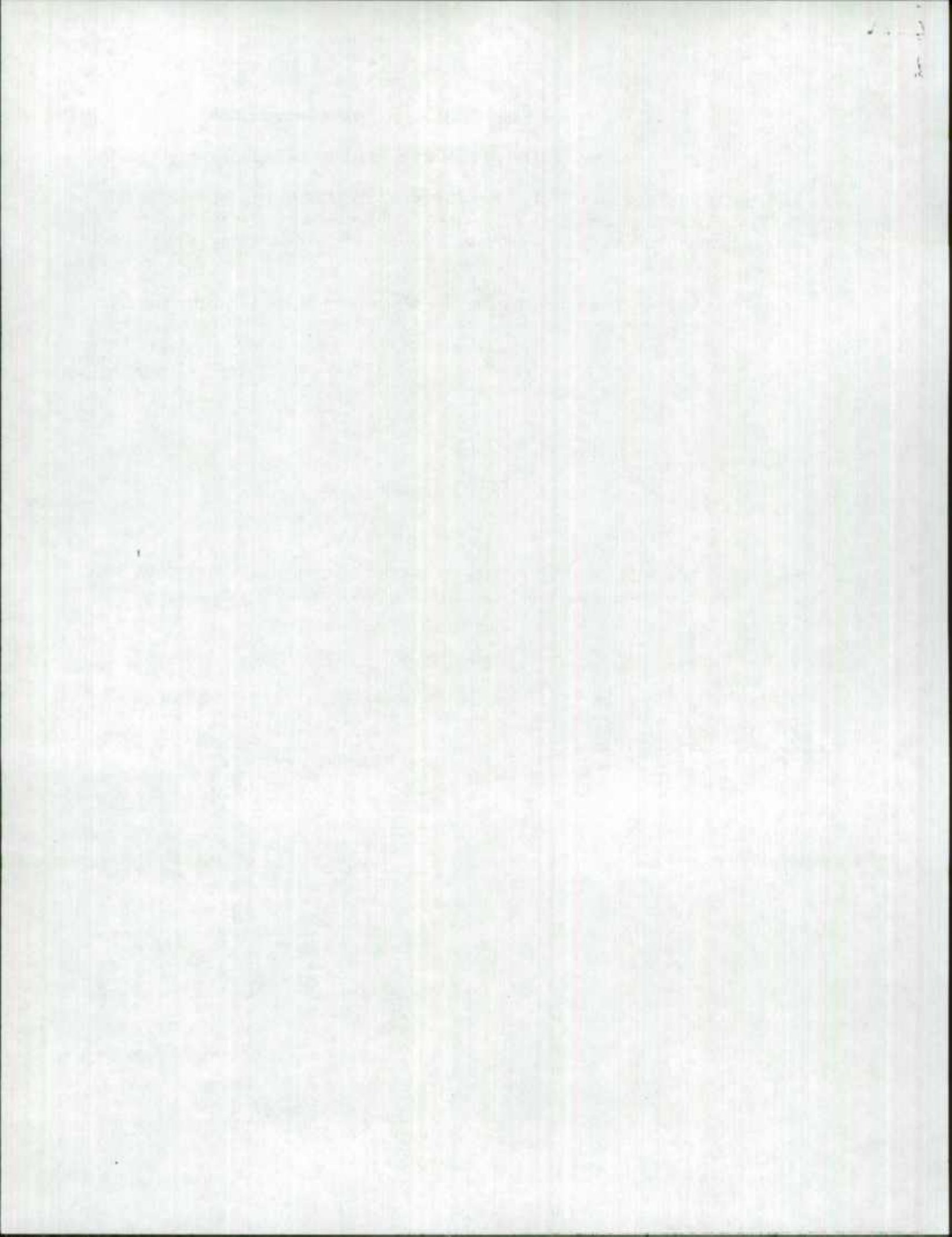

 Judith O. Boggs


 Thomas A. Cetola


 James C. Church


 Louise L. Gulyas


 Virgil L. Shockley



Critical Area Commission

STAFF REPORT

December 1, 2004

APPLICANT: Talbot County

PROPOSAL: Refinement – County Council Bills 961, 962, 963 and 964

COMMISSION ACTION: Concurrence

STAFF RECOMMENDATION: Concur with Chairman's Determination

STAFF: Lisa Hoerger

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

DISCUSSION:

The Talbot County Council passed bills 961, 962, 963 and 964 that addressed the conditions of the Commission's May 5, 2004 approval of the County's original comprehensive review bills. In an effort to summarize the long history of the Talbot County Comprehensive Review, these bills are the result of more than ten years of discussion and deliberation between the County staff and Commission staff. The resulting County Council bills that were submitted to the Commission last spring were voted on and approved at the Commission's May 5, 2004 meeting. The Commission conditioned the approval of those bills with specific changes. I have outlined the resulting bills and those changes below.

Bill 961 amends the original bill (Bill 926 – which amended Chapter 190 Zoning, Article II Definitions and Word Usage)) to change the definition of dwelling unit, amend the definition of Buffer, and delete a portion of the definition of development activities. The County elected to add a definition of passive recreation. All changes appear consistent with the Commission's conditions except that the definition of dwelling unit is not complete. In order for it to be consistent with State law, the County must amend the definition as follows, "A single unit providing complete, independent living facilities for at least one person, including permanent provisions for sanitation, cooking, eating, sleeping, and other activities routinely associated with daily life. Dwelling unit includes a living quarters for a domestic or other employee or tenant, an **in-law or** accessory apartment, a guest house, **or a caretaker residence.**"

Bill 962 amends the original bill (Bill 927 – which amended Chapter 190 Zoning, Article IV Land Use Regulations by Zoning Districts, General Table of Land Use Regulations) to insert language added by the Commission for uses in the Resource Conservation Area (RCA). One of the changes amended the conditions under which Parks and Playgrounds are permitted in the

RCA by adding the phrase, "Limited to passive recreation." The other changes involved inserting the phrase, "edge of tidal wetlands" to the conditions that permit Treated Septage Land Application, Community Sewage Treatment Plants, and Sludge Application for Agricultural and Horticultural Purposes in the RCA.

Bill 963 amends the original bill (Bill 929 – which repealed and reenacted Chapter 190 Zoning, Article XI Critical Area Special Provisions) to amend the provisions for Forest Preservation Plans and the Buffer Management Area language as required by the Commission. The County inserted language found in the conditions of the Commission's May 5, 2004 approval that establishes time limits for implementing Forest Preservation Plans, and allowing a five year period for the removal of invasive/exotic species and the maintenance of newly established native species. Language was also inserted so that in the case of invasive/exotic removal, the County can also inspect these sites annually.

A change was made to another section of this bill, which describes how mitigation will be calculated and performed in the County's proposed Buffer Management Areas. The Commission's condition clarified the mitigation ratio by stating, "Mitigation equal to an area two times the square footage of the development activity in the Buffer area..." The County inserted this language.

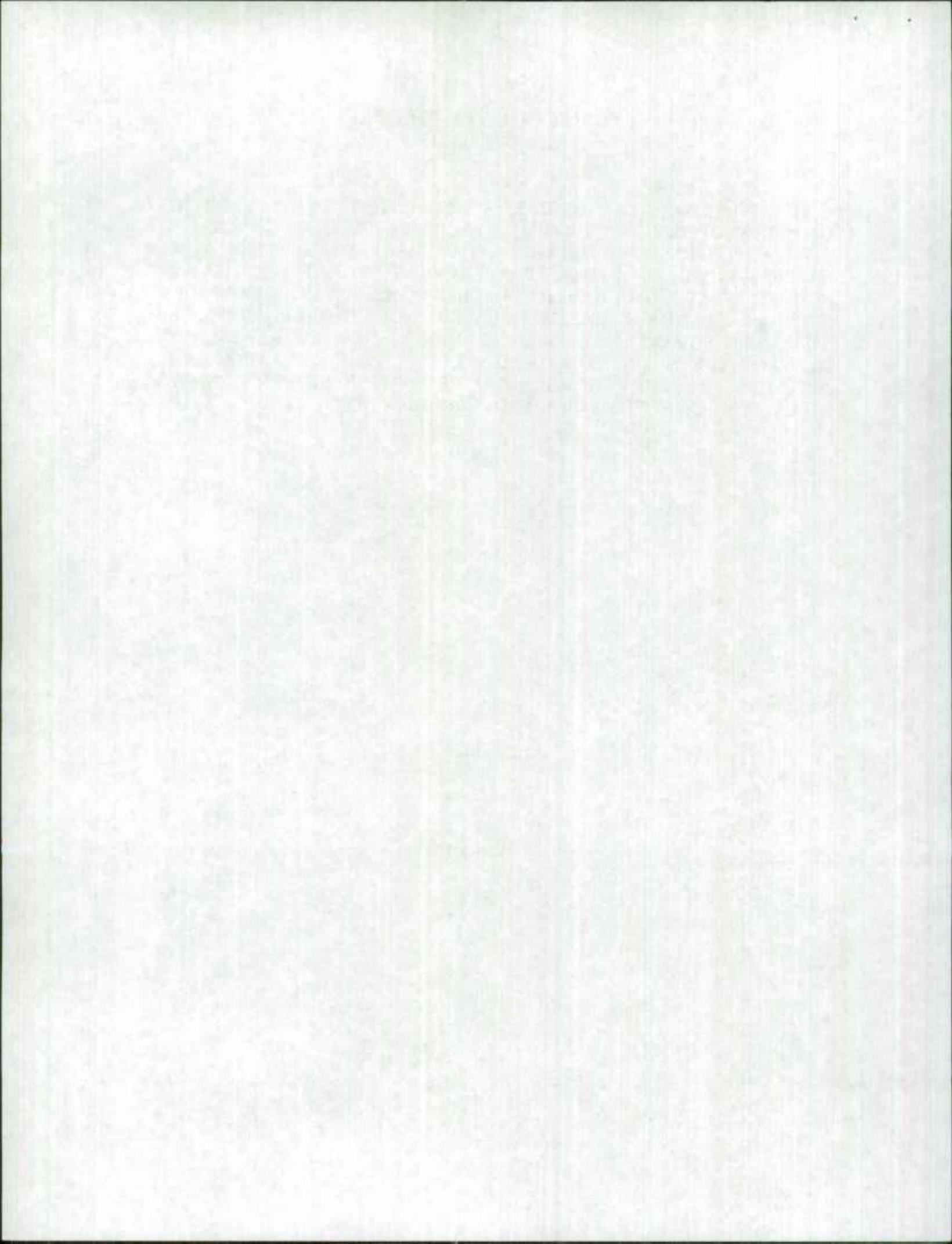
Bill 964 amends the original bill (Bill 931 – which repealed and reenacted Chapter 190 Zoning, Article XII Site Plan Review) to delete references to parcels seven acres or less that were excluded from providing afforestation, and correcting a reference to forest replacement ratios.

Overall, the changes conform to the Commission's conditions with the exception of the definition for dwelling units. The Chairman has determined that these changes to the local Talbot County Program can be handled as a refinement, and has recommended that a condition be included such that the definition of dwelling unit is amended to include "in-law" and "caretaker" as in State law, and as required as a condition of the Commission's original approval on May 5, 2004. The Chairman is seeking your concurrence with the determination that these changes are a refinement to Talbot County's Critical Area Program.

TALBOT COUNTY BILL 961

{Amends Bill 926}

A BILL TO ELIMINATE THE EXISTING QUALIFIER IN THE DEFINITION OF "DEVELOPMENT ACTIVITIES" WHICH STATES THAT GENERALLY, SUBSTANTIAL RESIDENTIAL ALTERATIONS WOULD CAUSE THE TOTAL IMPERVIOUS AREA ON THE LOT TO EXCEED 15% OF THE LOT OR 5,000 SQUARE FEET, WHICHEVER IS LESS, AND THAT GENERALLY, SUBSTANTIAL NONRESIDENTIAL ALTERATIONS WOULD ADD MORE THAN 5,000 SQUARE FEET OF IMPERVIOUS AREA; TO REPEAL AND REENACT THE DEFINITION OF "DWELLING UNIT", TO MODIFY THE DEFINITION OF THE "SHORELINE DEVELOPMENT BUFFER", AND TO ADD A NEW DEFINITION FOR "PASSIVE RECREATION"



COUNTY COUNCIL

OF

TALBOT COUNTY, MARYLAND

2004 Legislative Session, Legislative Day No. August 24, 2004

Bill No. 961 *AS AMENDED*

Expiration Date: October 28, 2004

Introduced by: Mr. Carroll

A BILL TO ELIMINATE THE EXISTING QUALIFIER IN THE DEFINITION OF "DEVELOPMENT ACTIVITIES" WHICH STATES THAT GENERALLY, SUBSTANTIAL RESIDENTIAL ALTERATIONS WOULD CAUSE THE TOTAL IMPERVIOUS AREA ON THE LOT TO EXCEED 15% OF THE LOT OR 5,000 SQUARE FEET, WHICHEVER IS LESS, AND THAT GENERALLY, SUBSTANTIAL NONRESIDENTIAL ALTERATIONS WOULD ADD MORE THAN 5,000 SQUARE FEET OF IMPERVIOUS AREA; TO REPEAL AND REENACT THE DEFINITION OF "DWELLING UNIT", TO MODIFY THE DEFINITION OF THE "SHORELINE DEVELOPMENT BUFFER", AND TO ADD A NEW DEFINITION FOR "PASSIVE RECREATION"

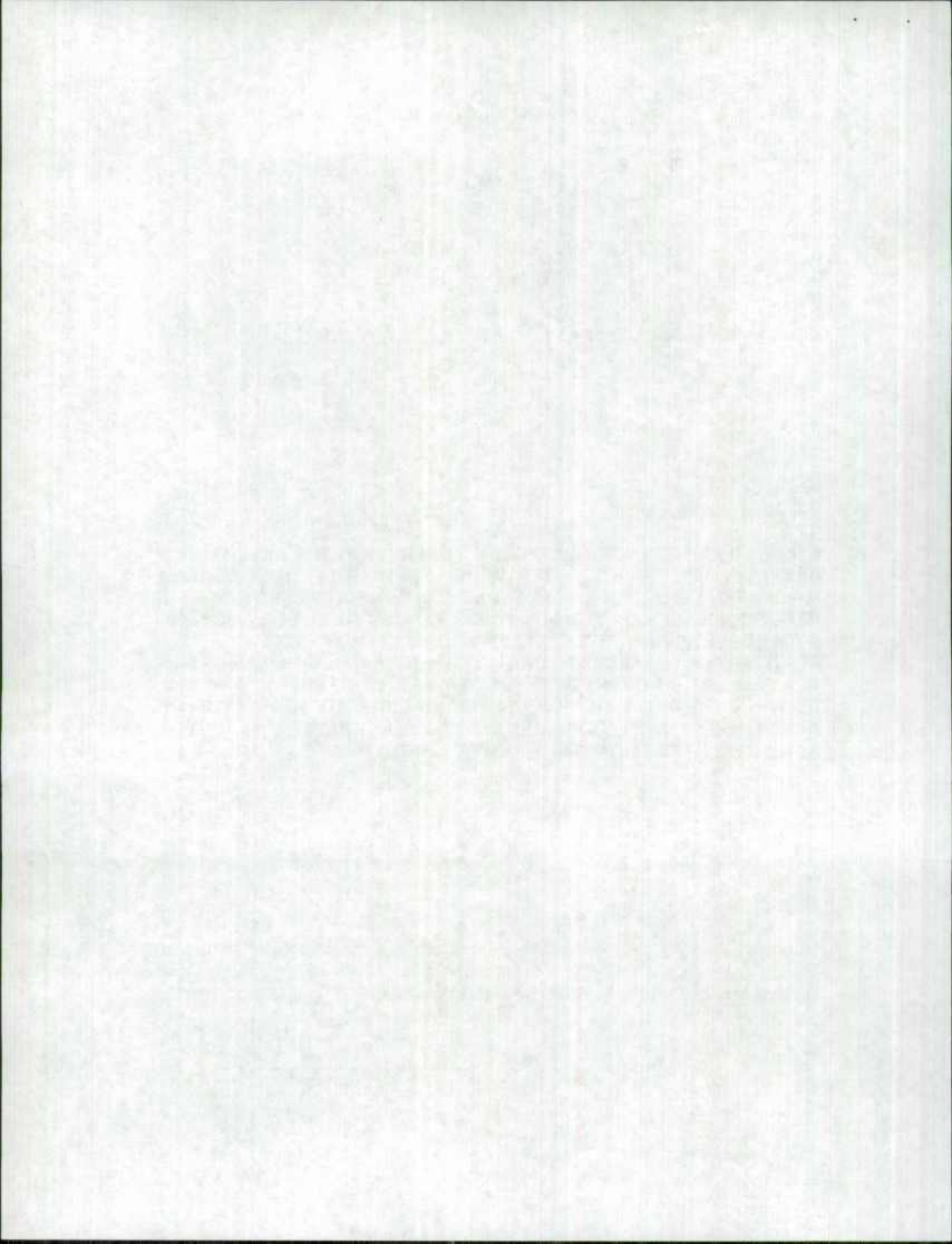
By the Council August 24, 2004

Introduced, read first time, ordered posted, and public hearing scheduled on Tuesday, September 14, 2004 at 1:45 p.m. in the County Council Meeting Room, Talbot County Government Building, 142 N. Harrison Street, Easton, Maryland 21601.

By Order

Susan W. Moran

Secretary



Preamble

Introduction and adoption of this legislation to amend Talbot County's local critical area program is not intended to suggest that the Critical Area Commission's review of Bill Nos. 926, 927, 929, 931, or 933 was timely or effective. Bills 961, 962, 963 and 964 have been introduced for practical reasons and their introduction or adoption does not mean and cannot be construed to mean that the County concedes that the Commission's actions on the Bills at issue, or on any other Bills, was either timely or proper.

SECTION TWO: BE IT FURTHER ENACTED by the County Council of Talbot County, Maryland, that the Talbot County Code, Chapter 190 Zoning, Article II Definitions and Word Usage, §190-14. Terms Defined, be amended by changing the definition of DEVELOPMENT ACTIVITIES. The new wording follows:

DEVELOPMENT ACTIVITIES (CA) – Any activity that:

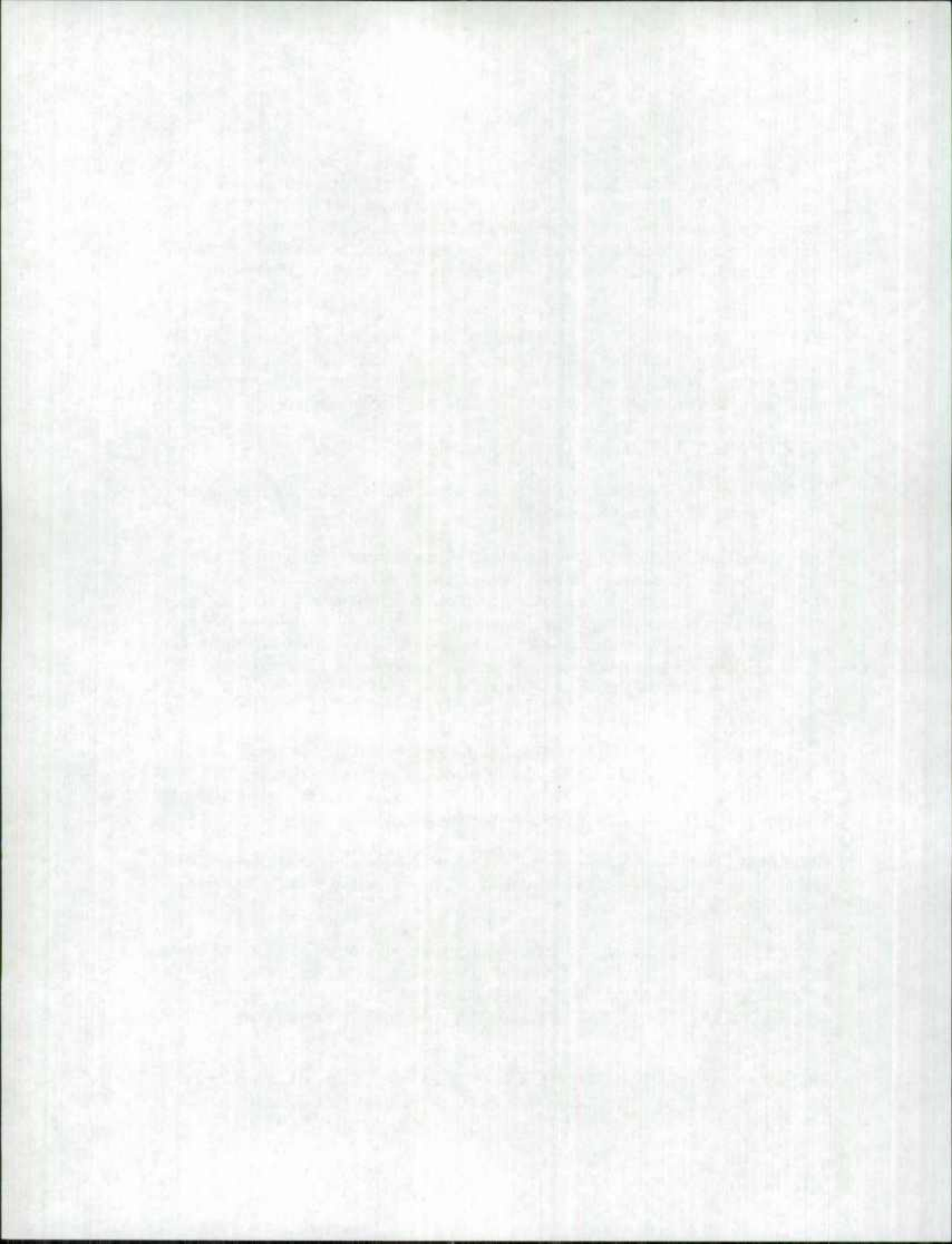
- a. Is shown on a subdivision plat, revised plat, site plan, building/zoning permit or Forest Preservation Plan; and/or,
- b. Results in the construction or substantial alteration of any residential, commercial, industrial, institutional, recreational (including golf courses), or transportation facilities or structures. The Planning Officer shall determine whether a proposed alteration is substantial. ~~Generally, substantial residential alterations would cause the total impervious area on a lot to exceed 15% of the lot or 5,000 square feet, whichever is less. Generally, substantial nonresidential alterations would add more than 5,000 square feet of impervious area.~~

SECTION THREE: BE IT FURTHER ENACTED by the County Council of Talbot County, Maryland, that the Talbot County Code, Chapter 190 Zoning, Article II Definitions and Word Usage, §190-14. Terms Defined, be amended by changing the definition of DWELLING UNIT. The new wording follows:

~~DWELLING UNIT – A room, or rooms connected together constituting a separate independent housekeeping establishment for one family containing cooking, sleeping and sanitation facilities.~~

A single unit providing complete, independent living facilities for at least one person, including permanent provisions for sanitation, cooking, eating, sleeping, and other activities routinely associated with daily life. Dwelling unit includes a living quarters for domestic or other employee or tenant, an accessory apartment, or a guest house.

SECTION NINE: BE IT FURTHER ENACTED by the County Council of Talbot County, Maryland, that the Talbot County Code, Chapter 190 Zoning, Article II

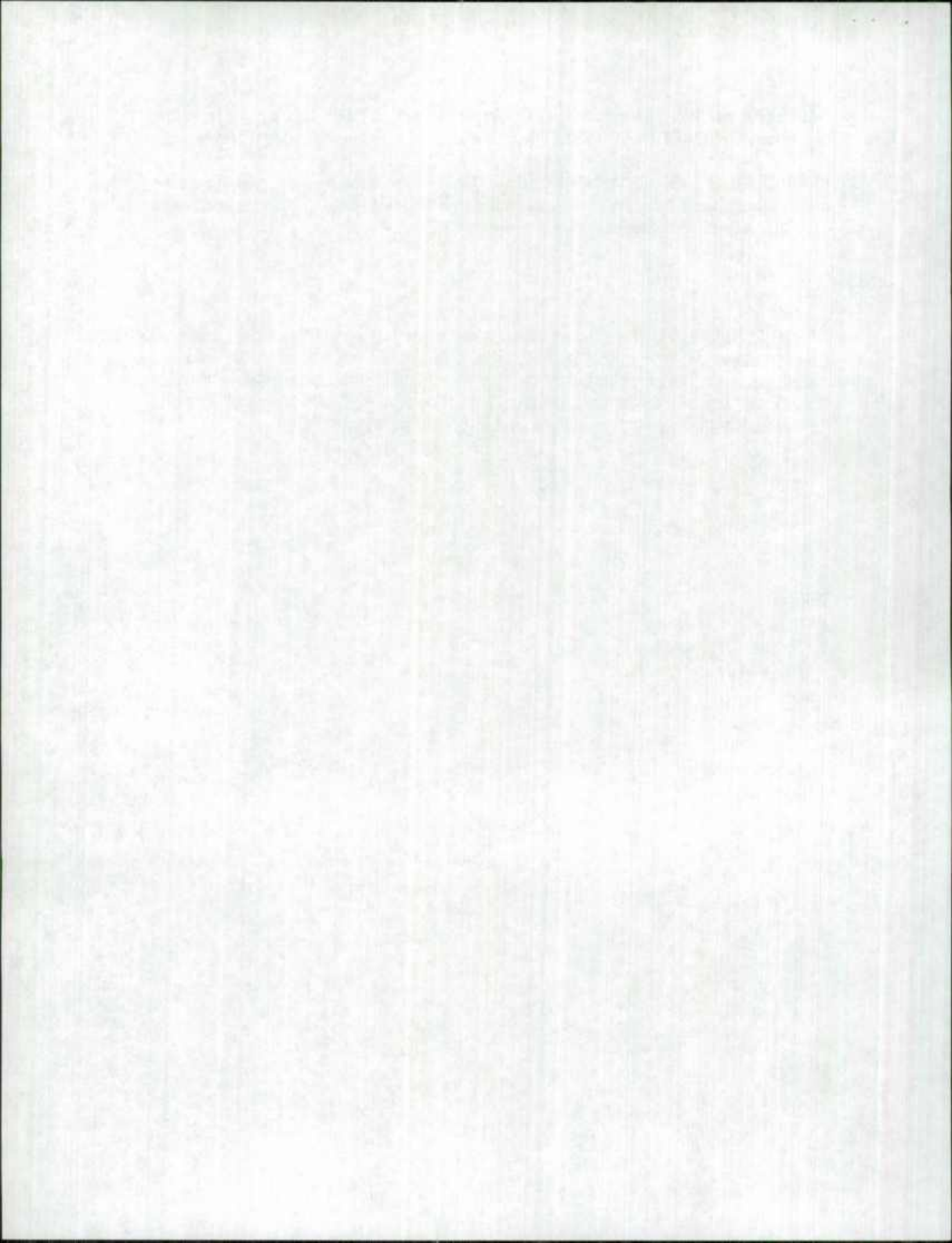


Definitions and Word Usage, §190-14. Terms Defined, be amended by changing the definition of SHORELINE DEVELOPMENT BUFFER. The new wording follows:

SHORELINE DEVELOPMENT BUFFER (CA) – The area at least 100 feet wide measured landward from the mean high-water line of tidal waters, tributary streams and edge of tidal wetlands and ~~from tributary streams~~.

New:

PASSIVE RECREATION – Those recreational pursuits that involve existing natural resources, provide for minimal impact and can be carried out with little alteration or disruption to the area in which they are performed. Such passive recreation shall not include commercial athletic fields or motorized recreation and may include, but not be limited to, hiking, bicycling, picnicking, and bird watching.



PUBLIC HEARING

Having been posted and Notice of time and place of hearing and Title of Bill No. 961 having been published, a public hearing was held on Tuesday, September 14, 2004.

BY THE COUNCIL

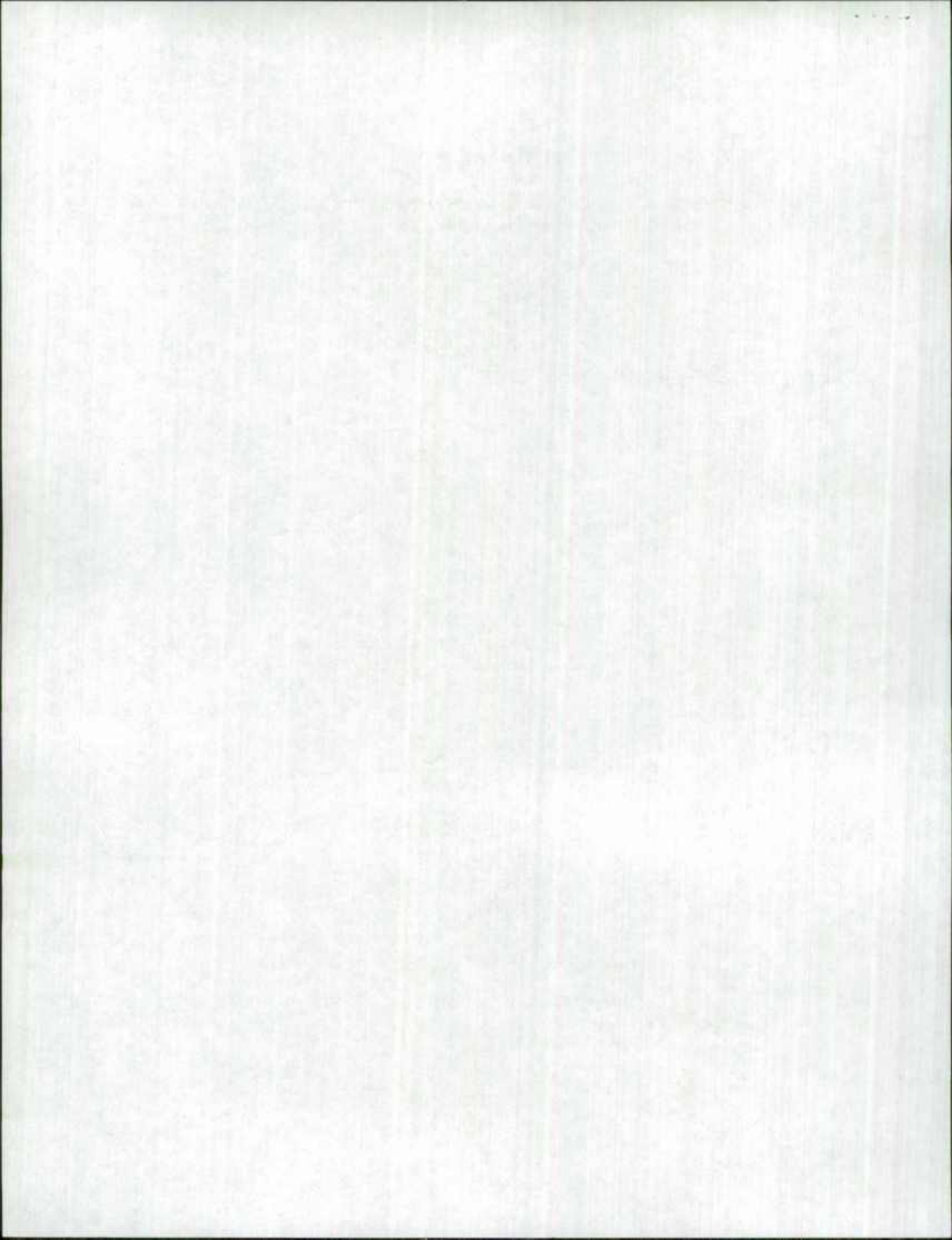
Read the third time.

ENACTED: September 28, 2004*

AS AMENDED

By Order Susan W. Moran
Secretary

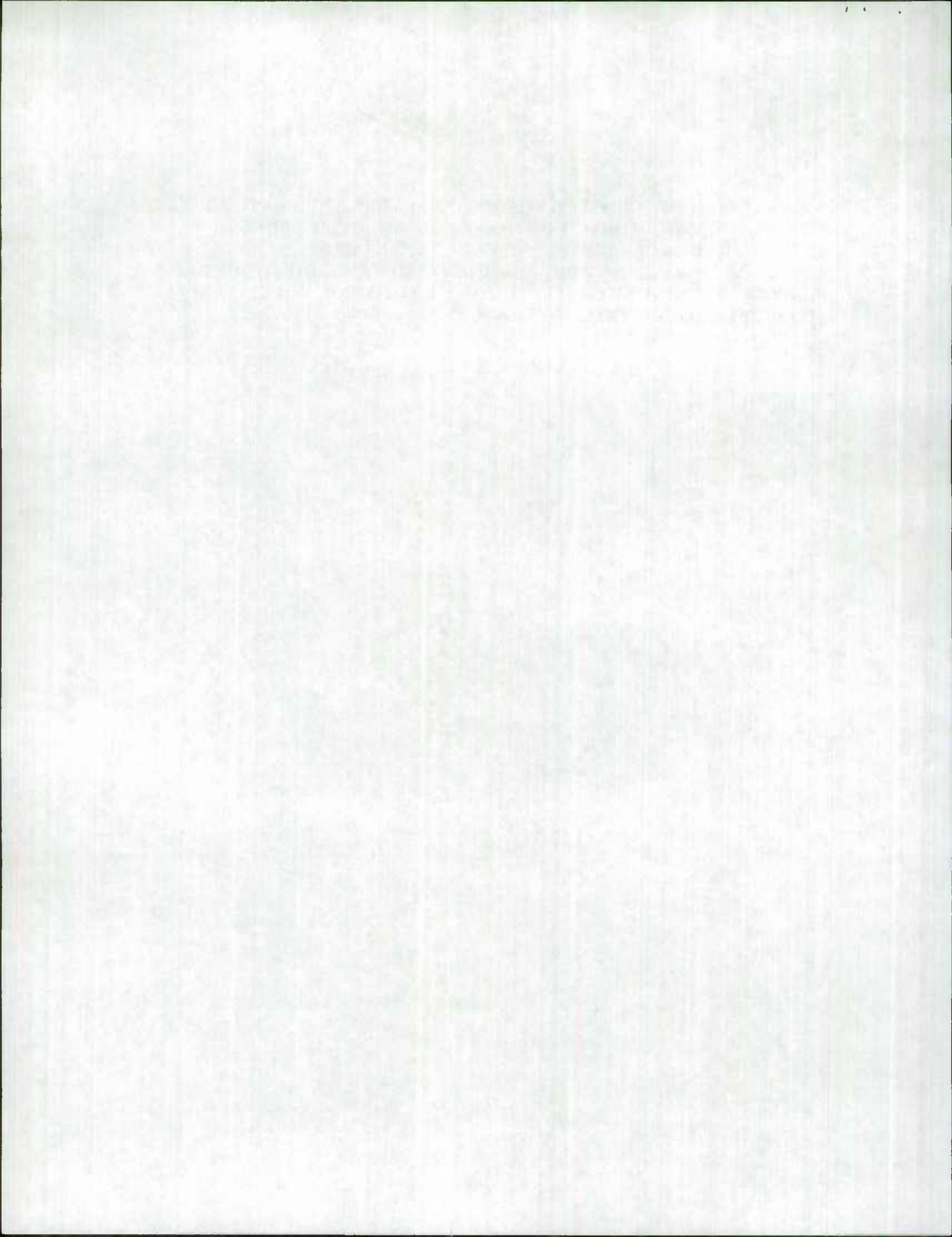
Foster – Nay
Duncan – Aye
Carroll – Aye
Spence – Aye (via absentee ballot)
Harrington – Aye (via absentee ballot)



TALBOT COUNTY BILL 962

{Amends Bill 927}

**A BILL TO MODIFY THE CONDITIONS FOR PARKS AND PLAYGROUNDS,
AND TO CHANGE THE CONDITIONS FOR TREATED SEPTAGE LAND
APPLICATION, COMMUNITY SEWAGE TREATMENT PLANTS, AND
SLUDGE APPLICATION FOR AGRICULTURAL AND HORTICULTURAL
PURPOSES TO PROHIBIT APPLICATION OR LOCATION WITHIN 200 FEET
FROM THE EDGE OF TIDAL WETLANDS**



COUNTY COUNCIL
OF
TALBOT COUNTY, MARYLAND

2004 Legislative Session, Legislative Day No. August 24, 2004

Bill No. 962 *AS AMENDED*

Expiration Date: October 28, 2004

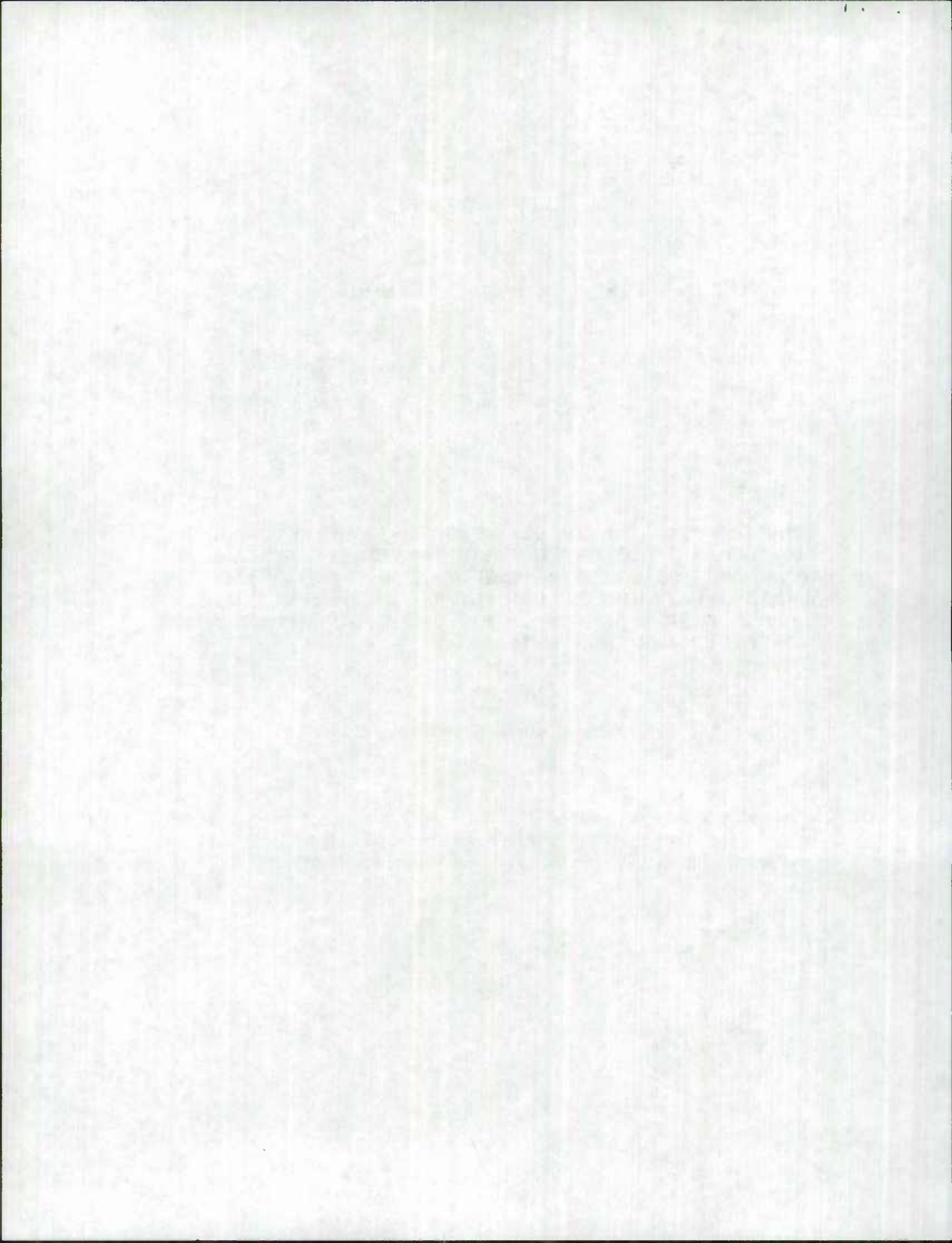
Introduced by: Mr. Carroll

**A BILL TO MODIFY THE CONDITIONS FOR PARKS AND PLAYGROUNDS,
AND TO CHANGE THE CONDITIONS FOR TREATED SEPTAGE LAND
APPLICATION, COMMUNITY SEWAGE TREATMENT PLANTS, AND
SLUDGE APPLICATION FOR AGRICULTURAL AND HORTICULTURAL
PURPOSES TO PROHIBIT APPLICATION OR LOCATION WITHIN 200 FEET
FROM THE EDGE OF TIDAL WETLANDS**

By the Council August 24, 2004

Introduced, read first time, ordered posted, and public hearing scheduled on Tuesday, September 14, 2004, at 1:45 p.m. in the County Council Meeting Room, Talbot County Government Building, 142 North Harrison Street, Easton, Maryland 21601.

By order Susan W. Moran
Secretary



Preamble

Introduction and adoption of this legislation to amend Talbot County's local critical area program is not intended to suggest that the Critical Area Commission's review of Bill Nos. 926, 927, 929, 931, or 933 was timely or effective. Bills 961, 962, 963 and 964 have been introduced for practical reasons and their introduction or adoption does not mean and cannot be construed to mean that the County concedes that the Commission's actions on the Bills at issue, or on any other Bills, was either timely or proper.

SECTION FOUR: BE IT FURTHER ENACTED by the County Council of Talbot County, Maryland, that the Talbot County Code, Chapter 190 Zoning, Article IV Land Use Regulations by Zoning Districts, §190-19. General Table of Land Use Regulations be amended to change the conditions for Parks and Playgrounds (public or private). The amended wording follows:

Parks and Playgrounds (public or private)

- * ~~Excludes commercial ball fields and motorized vehicle courses intended for recreational purposes~~
- * In the RC zone commercial and public pools are not permitted except where growth allocation is approved subject to §190-109D(21)
- * Limited to passive recreation

SECTION EIGHTEEN: BE IT FURTHER ENACTED by the County Council of Talbot County, Maryland, that the Talbot County Code, Chapter 190 Zoning, Article IV Land Use Regulations by Zoning Districts, §190-19. General Table of Land Use Regulations be amended to change the conditions for Treated Septage Land Application. The amended wording follows:

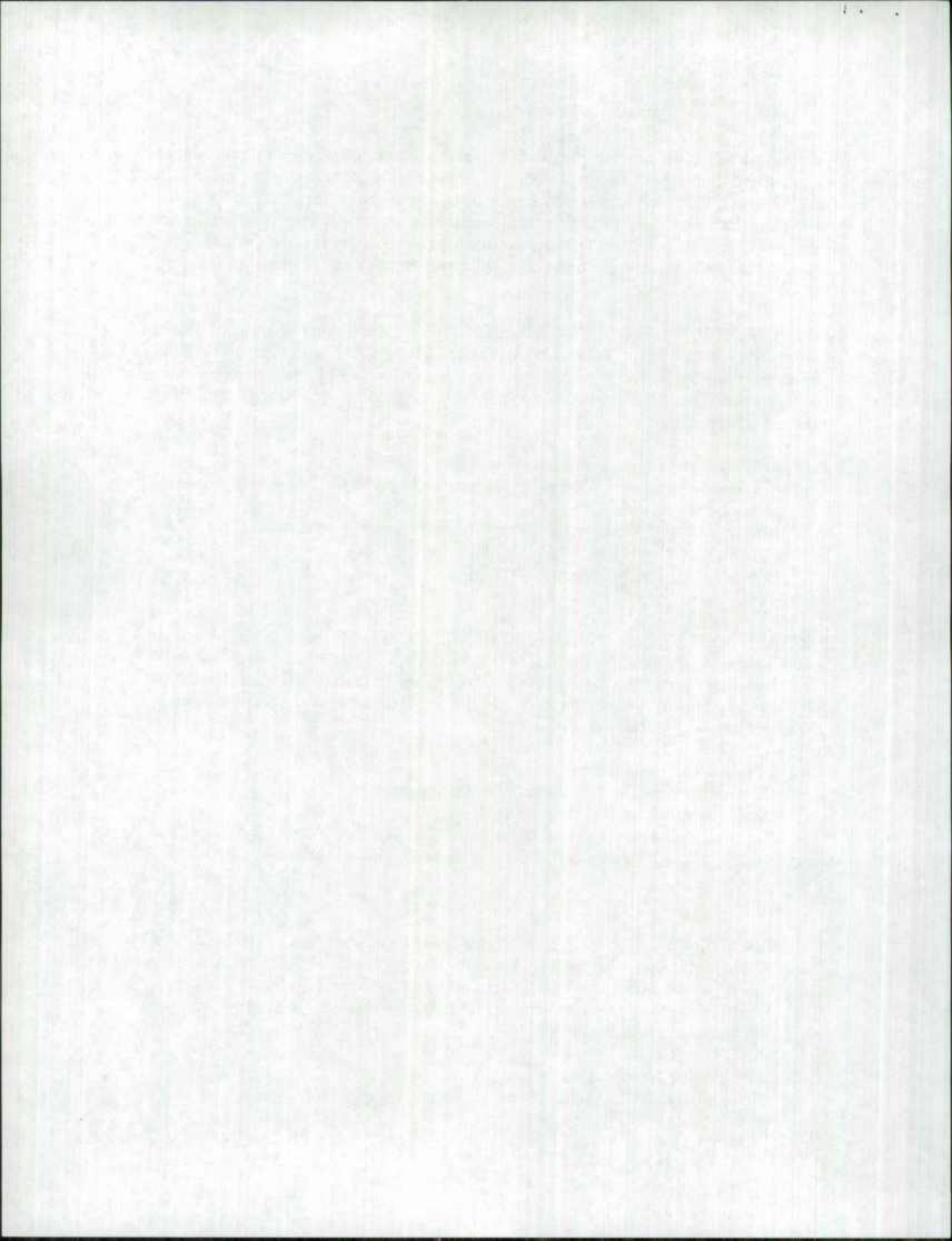
Treated Septage Land Application

- * Shall comply with all County and State regulations
- * Shall not include storage of septage
- * No land application shall take place within 200 feet from Mean High Water, the edge of Tidal Wetlands or Tributary Streams. This provision is not subject to a variance

SECTION TWENTY: BE IT FURTHER ENACTED by the County Council of Talbot County, Maryland, that the Talbot County Code, Chapter 190 Zoning, Article IV Land Use Regulations by Zoning Districts, §190-19. General Table of Land Use Regulations be amended to change the conditions for Community Sewage Treatment Plant. The amended wording follows:

Community Sewage Treatment Plant

- * Shall comply with all County, State and Federal regulations

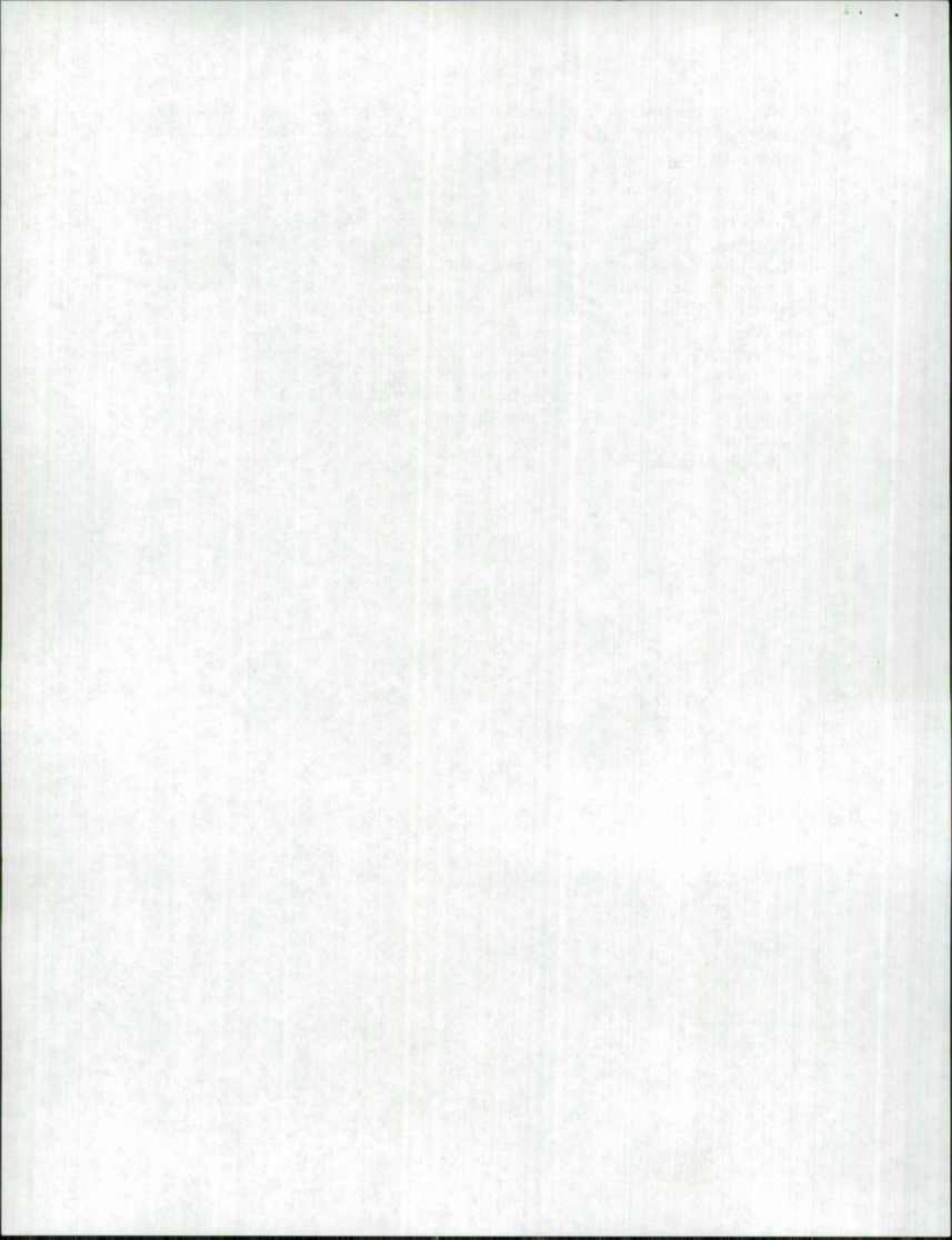


- * No treatment plant shall be placed within 200 feet from Mean High Water, the edge of Tidal Wetlands or Tributary Streams. This provision is not subject to a variance

SECTION TWENTY-ONE: BE IT FURTHER ENACTED by the County Council of Talbot County, Maryland, that the Talbot County Code, Chapter 190 Zoning, Article IV Land Use Regulations by Zoning Districts, §190-19. General Table of Land Use Regulations be amended to change the conditions for Sludge Application for Agricultural and Horticultural Purposes. The amended wording follows:

Sludge Application for Agricultural and Horticultural Purposes

- * Shall comply with all County and State regulations
- * No sludge application shall take place within 200 feet from Mean High Water, the edge of Tidal Wetlands or Tributary Streams. This provision is not subject to a variance
- * See additional land use regulations, §190-20F



PUBLIC HEARING

Having been posted and Notice of time and place of hearing and Title of Bill No. 962 having been published, a public hearing was held on Tuesday, September 14, 2004.

BY THE COUNCIL

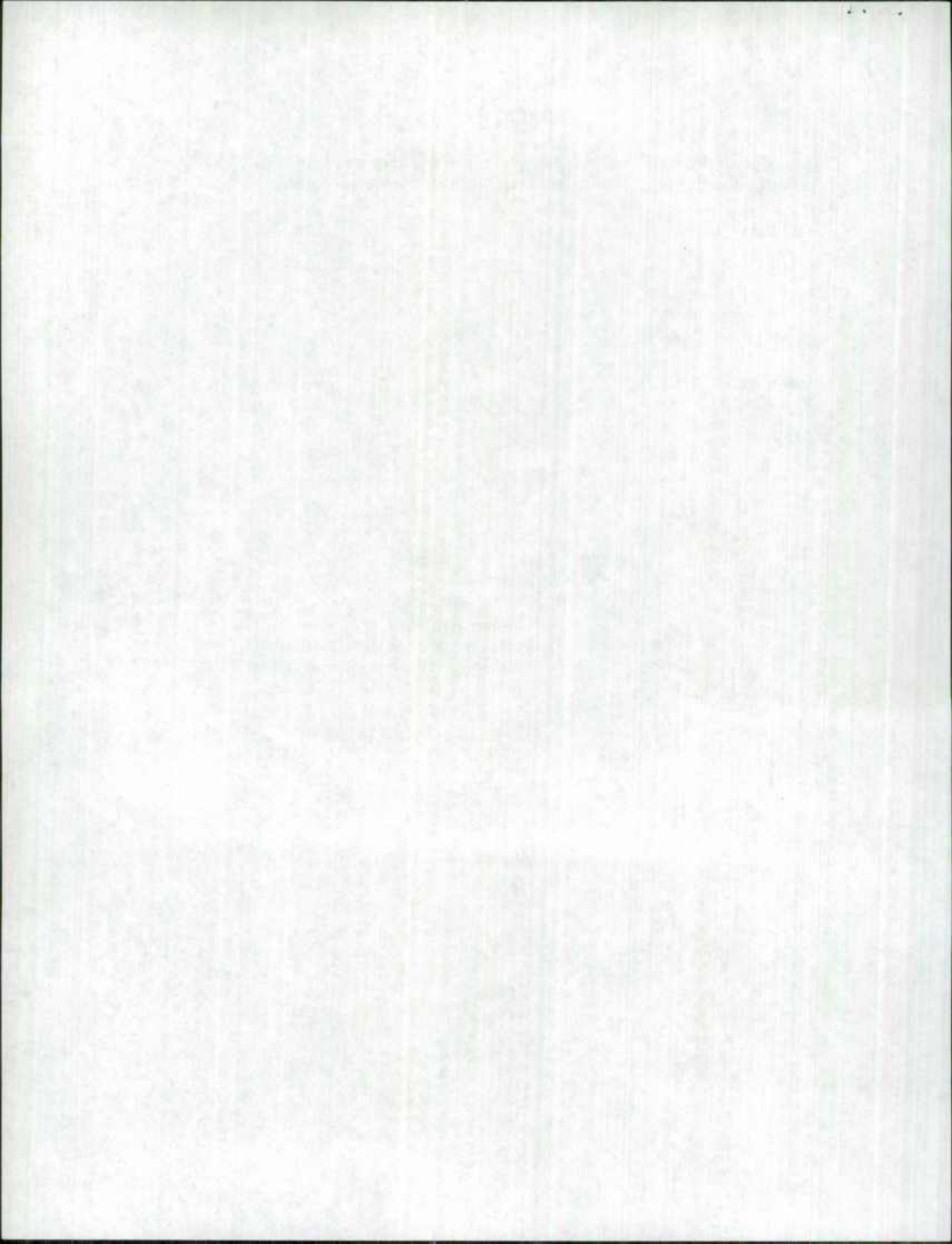
Read the third time.

ENACTED: September 28, 2004 *

AS AMENDED

By Order Susan W. Moran
Secretary

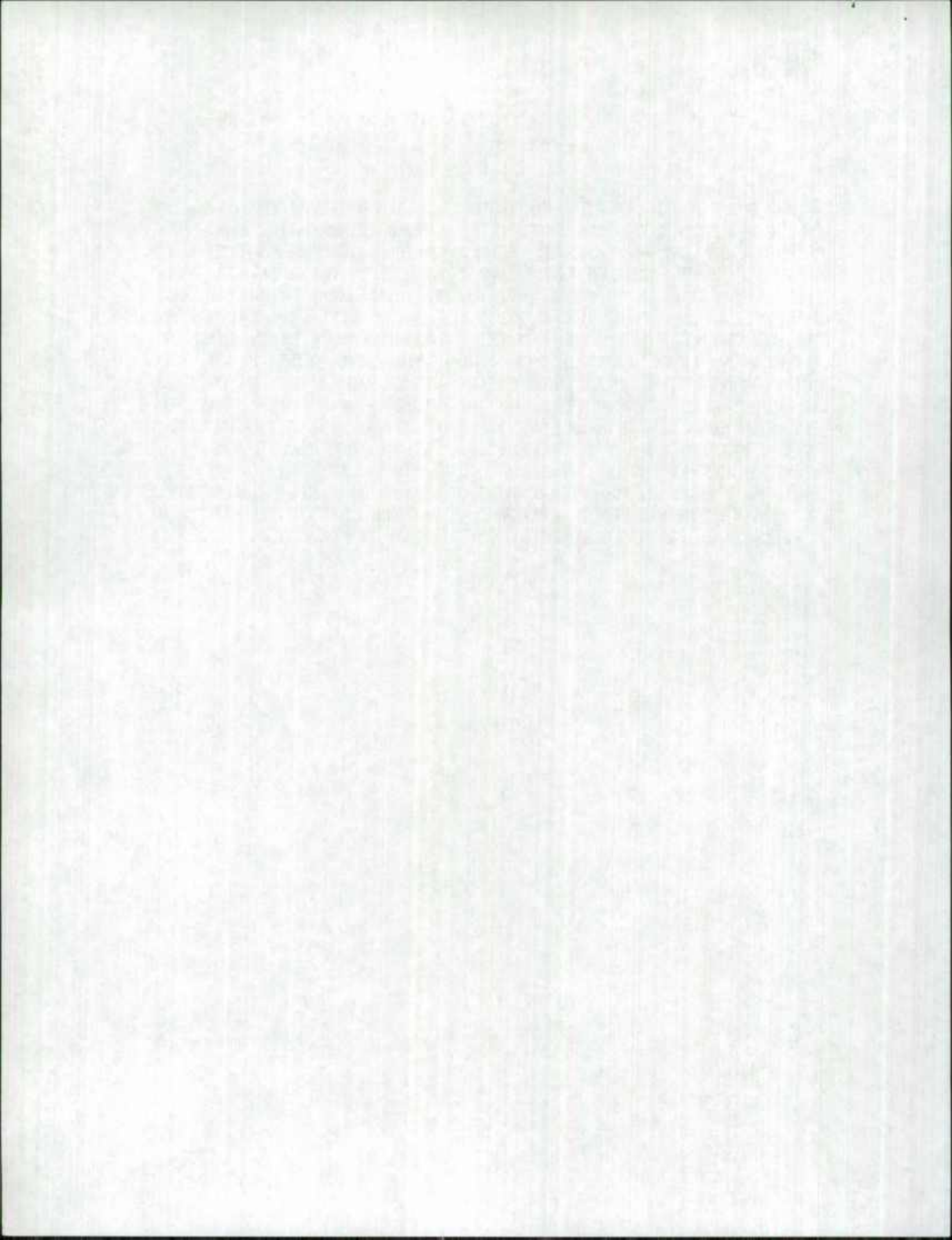
Foster – Nay
Duncan – Aye
Carroll – Aye
Spence – Aye (via absentee ballot)
Harrington – Aye (via absentee ballot)



TALBOT COUNTY BILL 963

{Amends Bill 929}

A BILL TO ELIMINATE THE PROVISION THAT APPROVAL OF A FOREST PRESERVATION PLAN OR ACTIVITIES APPROVED BY THE PLANNING OFFICER SHALL AUTHORIZE THE CURRENT PROPERTY OWNER TO MAINTAIN THE APPROVED AREA OR ACTIVITY IN ACCORDANCE WITH THE PLAN OR APPROVAL WITHOUT ANY REQUIREMENT FOR REAPPLICATION OR REAPPROVAL, AND TO SUBSTITUTE A REQUIREMENT THAT THE FOREST PRESERVATION PLAN INCLUDE EITHER A TIME PERIOD FOR IMPLEMENTING THE PLAN AND PROVISIONS FOR A FINAL INSPECTION, AFTER WHICH THE PLAN WILL BE CERTIFIED COMPLETE, OR PROVISIONS FOR REMOVAL OF INVASIVE SPECIES AND/OR MAINTENANCE OF NATURAL VEGETATION FOR A PERIOD OF UP TO FIVE YEARS INCLUDING PROVISIONS FOR ANNUAL INSPECTIONS, TO SUBSTITUTE "DEVELOPMENT ACTIVITY" FOR "PROPOSED IMPERVIOUS SURFACE" AS THE AREA SUBJECT TO MITIGATION IN BUFFER MANAGEMENT AREAS, AND TO PROVIDE FOR A FEE SCHEDULE TO BE ADOPTED BY THE COUNTY COUNCIL



COUNTY COUNCIL

OF

TALBOT COUNTY, MARYLAND

2004 Legislative Session, Legislative Day No. August 24, 2004

Bill No. 963 *AS AMENDED*

Expiration Date: October 28, 2004

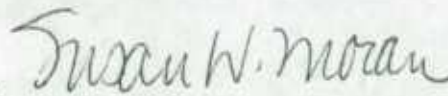
Introduced by: Mr. Carroll

A BILL TO ELIMINATE THE PROVISION THAT APPROVAL OF A FOREST PRESERVATION PLAN OR ACTIVITIES APPROVED BY THE PLANNING OFFICER SHALL AUTHORIZE THE CURRENT PROPERTY OWNER TO MAINTAIN THE APPROVED AREA OR ACTIVITY IN ACCORDANCE WITH THE PLAN OR APPROVAL WITHOUT ANY REQUIREMENT FOR REAPPLICATION OR REAPPROVAL, AND TO SUBSTITUTE A REQUIREMENT THAT THE FOREST PRESERVATION PLAN INCLUDE EITHER A TIME PERIOD FOR IMPLEMENTING THE PLAN AND PROVISIONS FOR A FINAL INSPECTION, AFTER WHICH THE PLAN WILL BE CERTIFIED COMPLETE, OR PROVISIONS FOR REMOVAL OF INVASIVE SPECIES AND/OR MAINTENANCE OF NATURAL VEGETATION FOR A PERIOD OF UP TO FIVE YEARS INCLUDING PROVISIONS FOR ANNUAL INSPECTIONS, TO SUBSTITUTE "DEVELOPMENT ACTIVITY" FOR "PROPOSED IMPERVIOUS SURFACE" AS THE AREA SUBJECT TO MITIGATION IN BUFFER MANAGEMENT AREAS, AND TO PROVIDE FOR A FEE SCHEDULE TO BE ADOPTED BY THE COUNTY COUNCIL

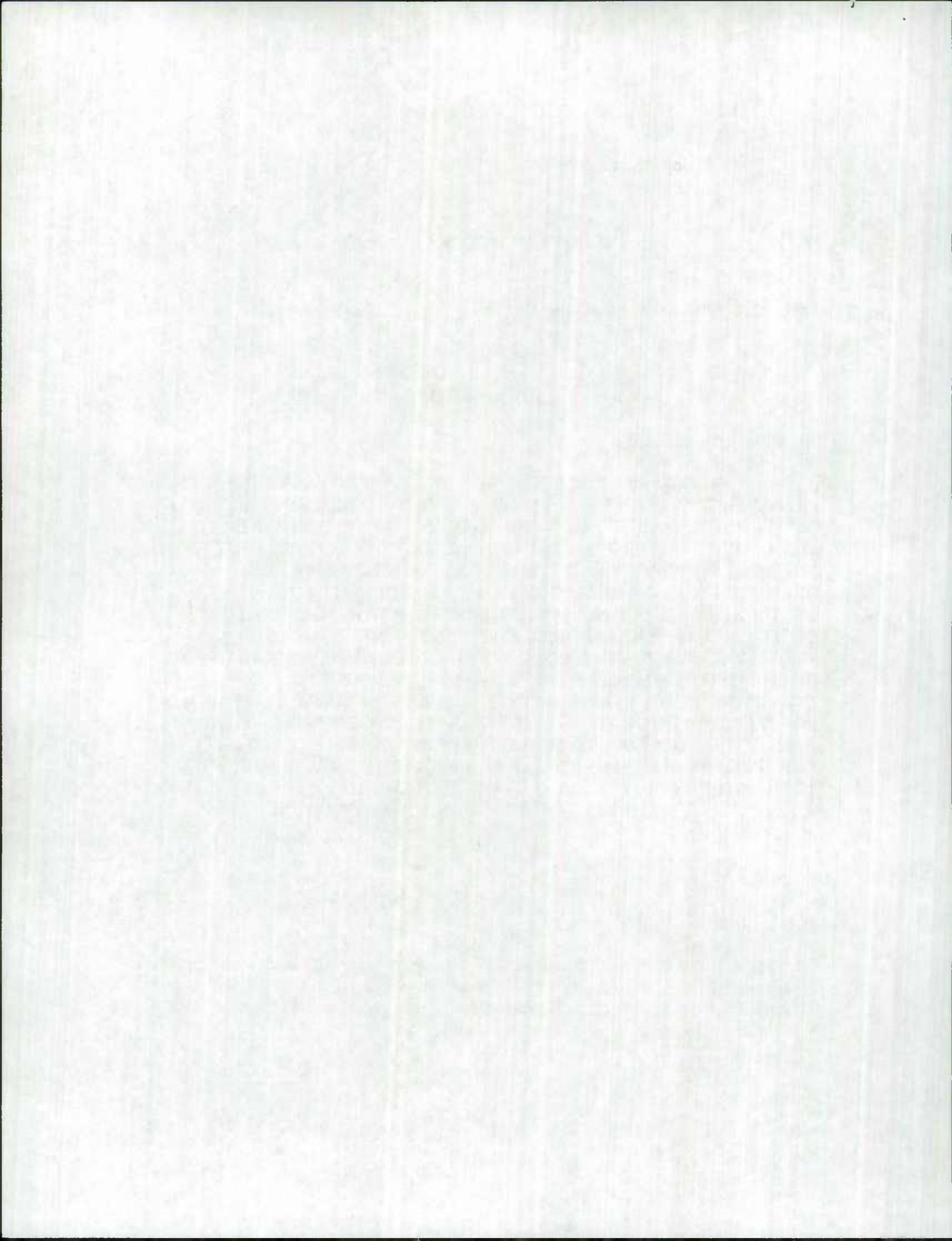
By the Council August 24, 2004

Introduced, read first time, ordered posted, and public hearing scheduled on Tuesday, September 14, 2004, at 1:45 p.m. in the County Council Meeting Room, Talbot County Government Building, 142 North Harrison Street, Easton, Maryland 21601.

By Order



Secretary



Preamble

Introduction and adoption of this legislation to amend Talbot County's local critical area program is not intended to suggest that the Critical Area Commission's review of Bill Nos. 926, 927, 929, 931, or 933 was timely or effective. Bills 961, 962, 963 and 964 have been introduced for practical reasons and their introduction or adoption does not mean and cannot be construed to mean that the County concedes that the Commission's actions on the Bills at issue, or on any other Bills, was either timely or proper.

Article XI Critical Area Special Provisions

§190-88. Agricultural and forestry management.

B. Forest uses.

(3)[g] – Normal and customary maintenance of lawns located in the 100 foot Shoreline Development Buffer that were established prior to the adoption of this section may continue until an approved ~~development activity~~ substantial alteration or change of use occurs.

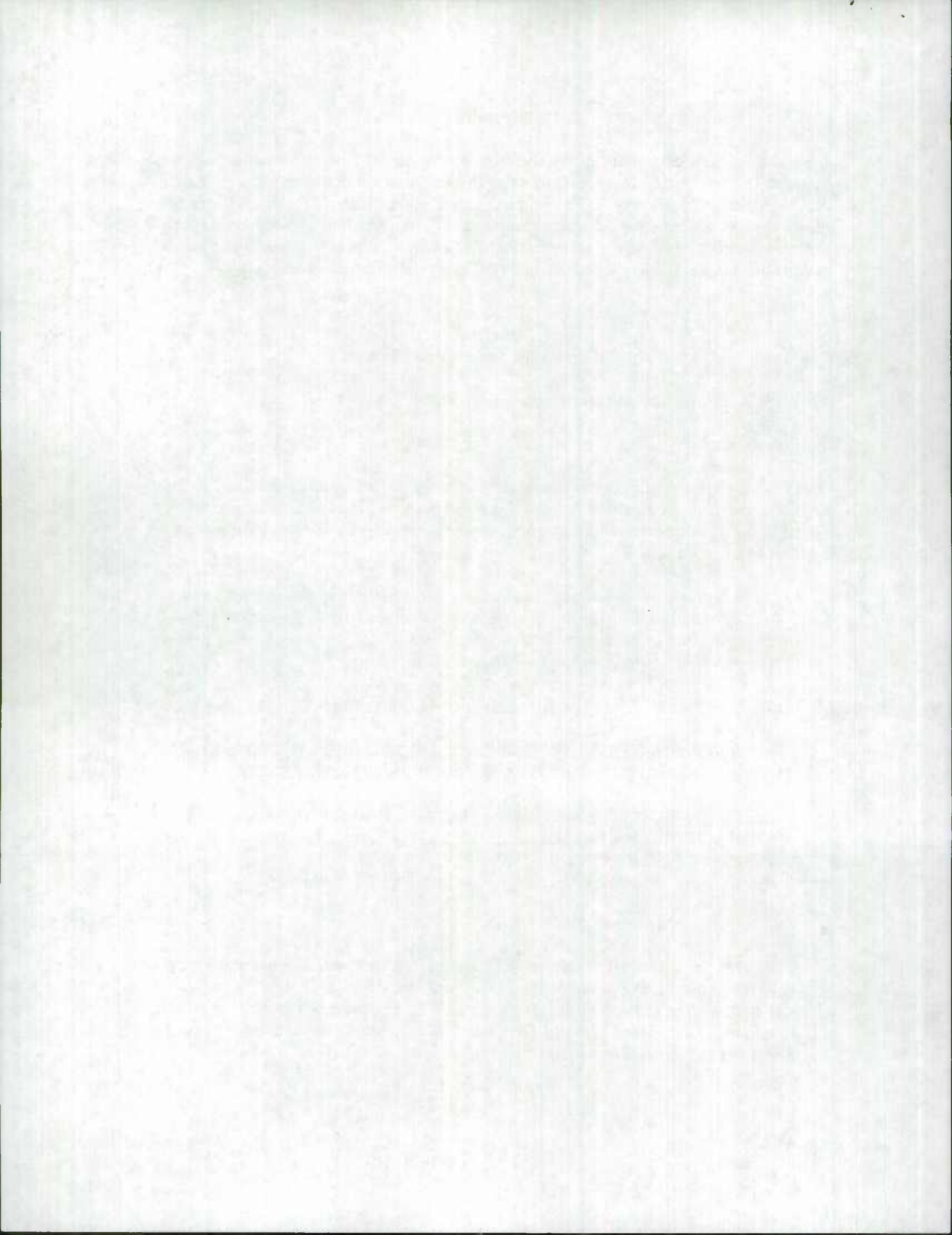
(3)[h] – ~~Approval of a Forest Preservation Plan, or Planning Officer approval for these activities listed in [a] through [f] above shall authorize the current property owner to maintain the approved area or activity in accordance with the plan or approval, without any requirement for reapplication or reapproval.~~

(3)[h] – The Forest Preservation Plan shall include either of the following:

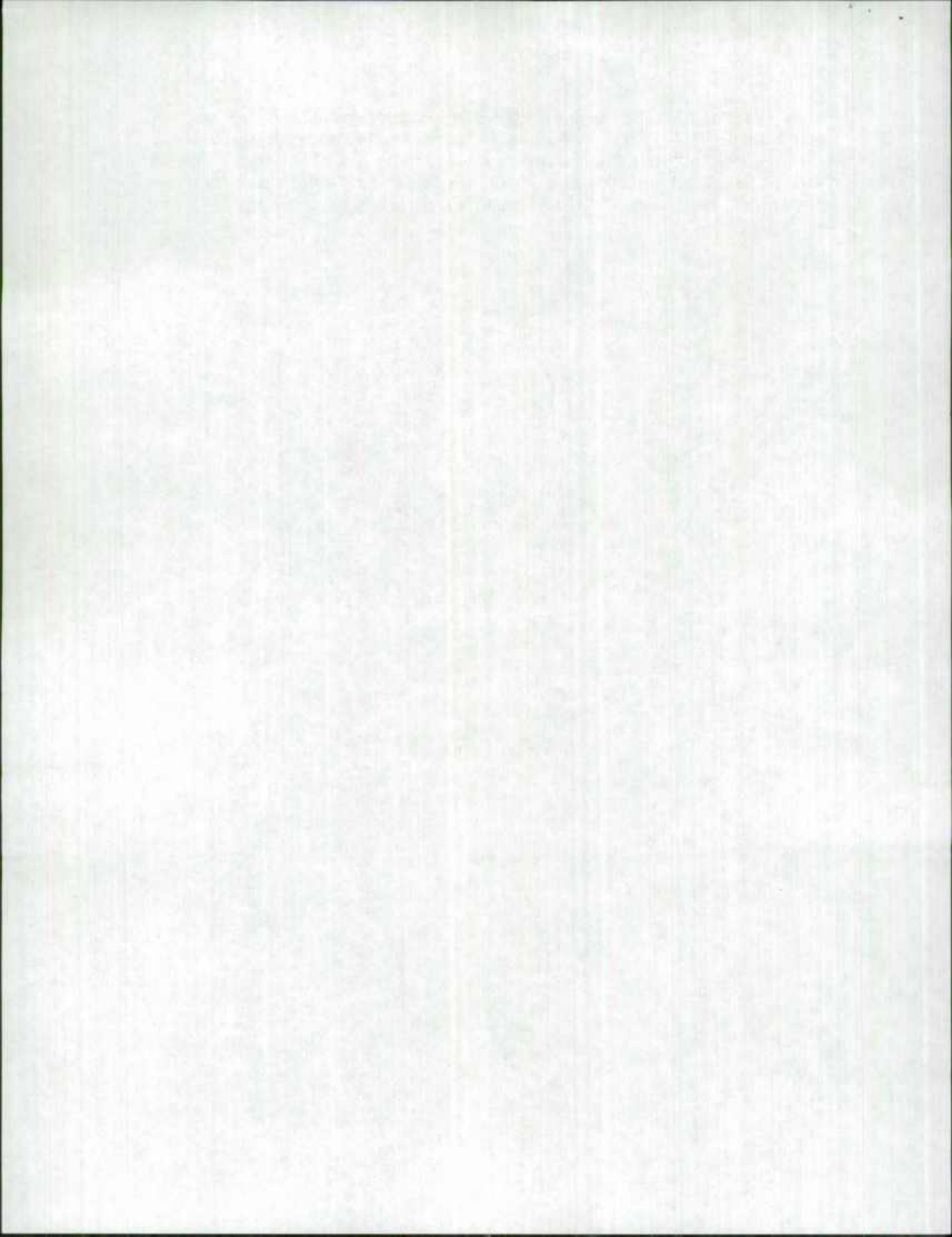
- a. A time period for implementing the plan and provisions for a final inspection by the County after which the Plan will be certified complete; or,
- b. Provisions for removal of invasive species and/or maintenance of natural vegetation for a period of up to 5 years including provisions for annual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

§190-88.1 Buffer Management Areas

B.(6)(b) Mitigation equal to an area two times the square footage of the development activity ~~proposed impervious surface~~ in the Buffer area will be required to be planted within the Buffer. Should on site Buffer preclude the planting or required vegetation, an off site Buffer location may be established. The applicant is responsible for filing a Forest Preservation Plan with the Planning Office.



B.(6)(c) Should the on site or off site Buffer locations preclude the implantation of subsection [2] above, a fee-in-lieu shall be provided to the County adequate to ensure the restoration or establishment of an equivalent forest area. The amount of the fee shall be determined by the ~~Planning Officer~~ based on the ~~recommendation of the Maryland Department of Natural Resources~~ a fee schedule adopted by the County Council.



PUBLIC HEARING

Having been posted and Notice of time and place of hearing and Title of Bill No. 963 having been published, a public hearing was held on Tuesday, September 14, 2004.

BY THE COUNCIL

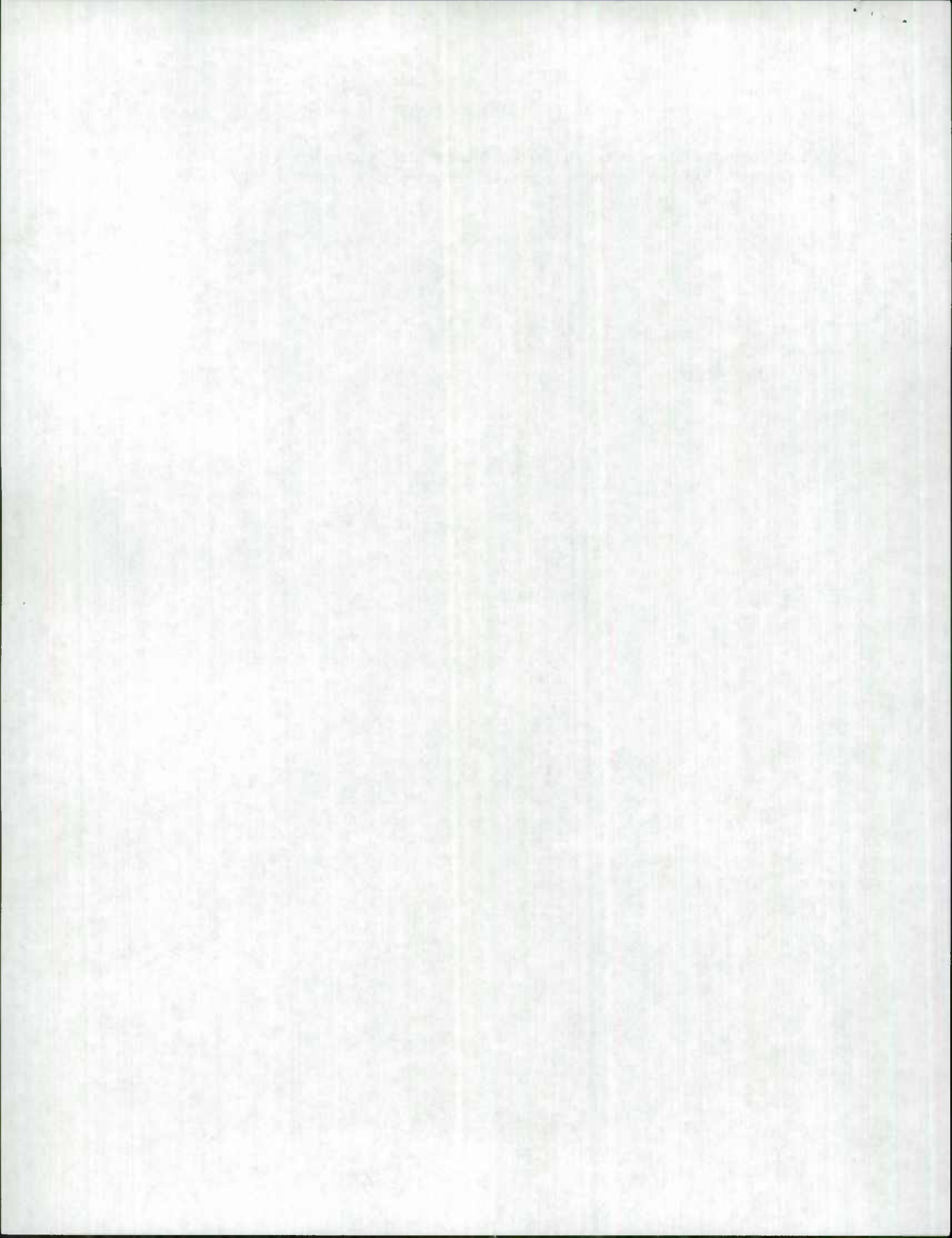
Read the third time.

ENACTED: September 28, 2004 *

AS AMENDED

By Order Susan W. Moran
Secretary

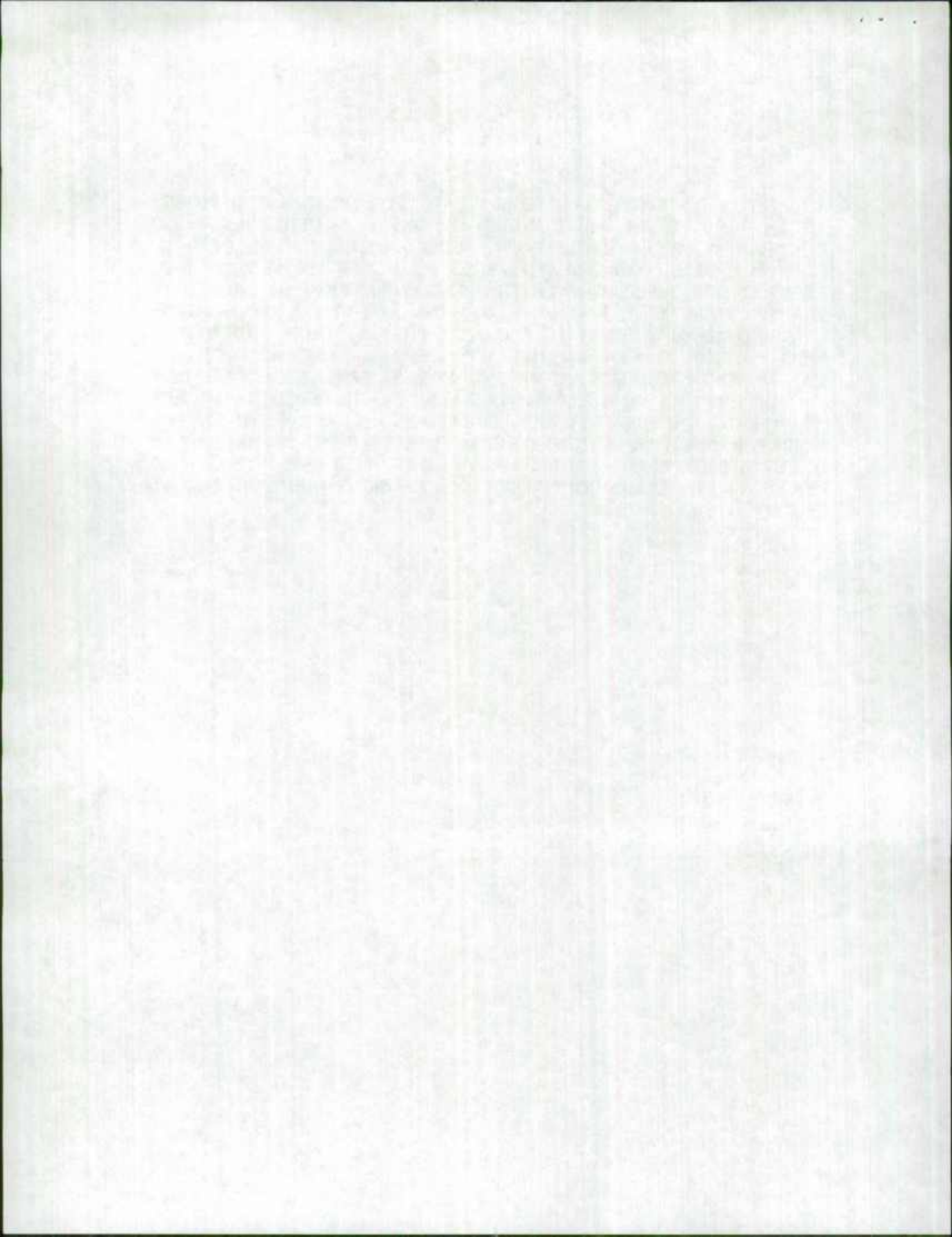
Foster – Nay
Duncan – Aye
Carroll – Aye
Spence – Aye (via absentee ballot)
Harrington – Aye (via absentee ballot)



TALBOT COUNTY BILL 964

{Amends Bill 931}

A BILL TO SUBSTITUTE "PERMIT OFFICIAL" FOR "PLANNING OFFICER" AS THE INDIVIDUAL AUTHORIZED TO ISSUE A CERTIFICATE OF OCCUPANCY IN §190-92M(1); TO REQUIRE A FOREST REPLACEMENT PLAN FOR DEVELOPMENT ACTIVITIES RESULTING IN SUBSTANTIAL ALTERATIONS, TO ELIMINATE THE EXISTING EXCEPTION FROM THE PLAN REQUIREMENT FOR DEVELOPMENT ACTIVITIES ON PARCELS EXISTING AS OF AUGUST 13, 1989 LESS THAN 7 ACRES UNDER §190-93E(9)(a) AND §190-93E(9)(d)[1][i]; TO CHANGE THE METHOD OF CALCULATION FOR THE AMOUNT OF FOREST REPLACEMENT UNDER §190-93E(9)(d)[1][c]; TO SUBSTITUTE "TALBOT COUNTY COUNCIL" FOR "MARYLAND DEPARTMENT OF NATURAL RESOURCES" AS THE ENTITY TO DETERMINE THE AMOUNT OF SURETY FOR FOREST REPLACEMENT UNDER §190-93E(9)(d)[1][e] AND TO PROVIDE THAT THE AMOUNT OF THE FEE SHALL BE DETERMINED BASED ON A FEE SCHEDULE ADOPTED BY THE COUNTY COUNCIL



COUNTY COUNCIL

OF

TALBOT COUNTY, MARYLAND

2004 Legislative Session, Legislative Day No. August 24, 2004

Bill No. 964 *AS AMENDED*

Expiration Date: October 28, 2004

Introduced by: Mr. Carroll

A BILL TO SUBSTITUTE "PERMIT OFFICIAL" FOR "PLANNING OFFICER" AS THE INDIVIDUAL AUTHORIZED TO ISSUE A CERTIFICATE OF OCCUPANCY IN §190-92 M (1); TO REQUIRE A FOREST REPLACEMENT PLAN FOR DEVELOPMENT ACTIVITIES RESULTING IN SUBSTANTIAL ALTERATIONS, TO ELIMINATE THE EXISTING EXCEPTION FROM THE PLAN REQUIREMENT FOR DEVELOPMENT ACTIVITIES ON PARCELS EXISTING AS OF AUGUST 13, 1989 LESS THAN 7 ACRES UNDER § 190-93 E (9) (a) AND § 190-93 E (9) (d) [1][i]; TO CHANGE THE METHOD OF CALCULATION FOR THE AMOUNT OF FOREST REPLACEMENT UNDER §190-93 E (9) (d) [1] [c]; TO SUBSTITUTE "TALBOT COUNTY COUNCIL" FOR "MARYLAND DEPARTMENT OF NATURAL RESOURCES" AS THE ENTITY TO DETERMINE THE AMOUNT OF SURETY FOR FOREST REPLACEMENT UNDER §190-93 E (9) (d) [1] [e] AND TO PROVIDE THAT THE AMOUNT OF THE FEE SHALL BE DETERMINED BASED ON A FEE SCHEDULE ADOPTED BY THE COUNTY COUNCIL

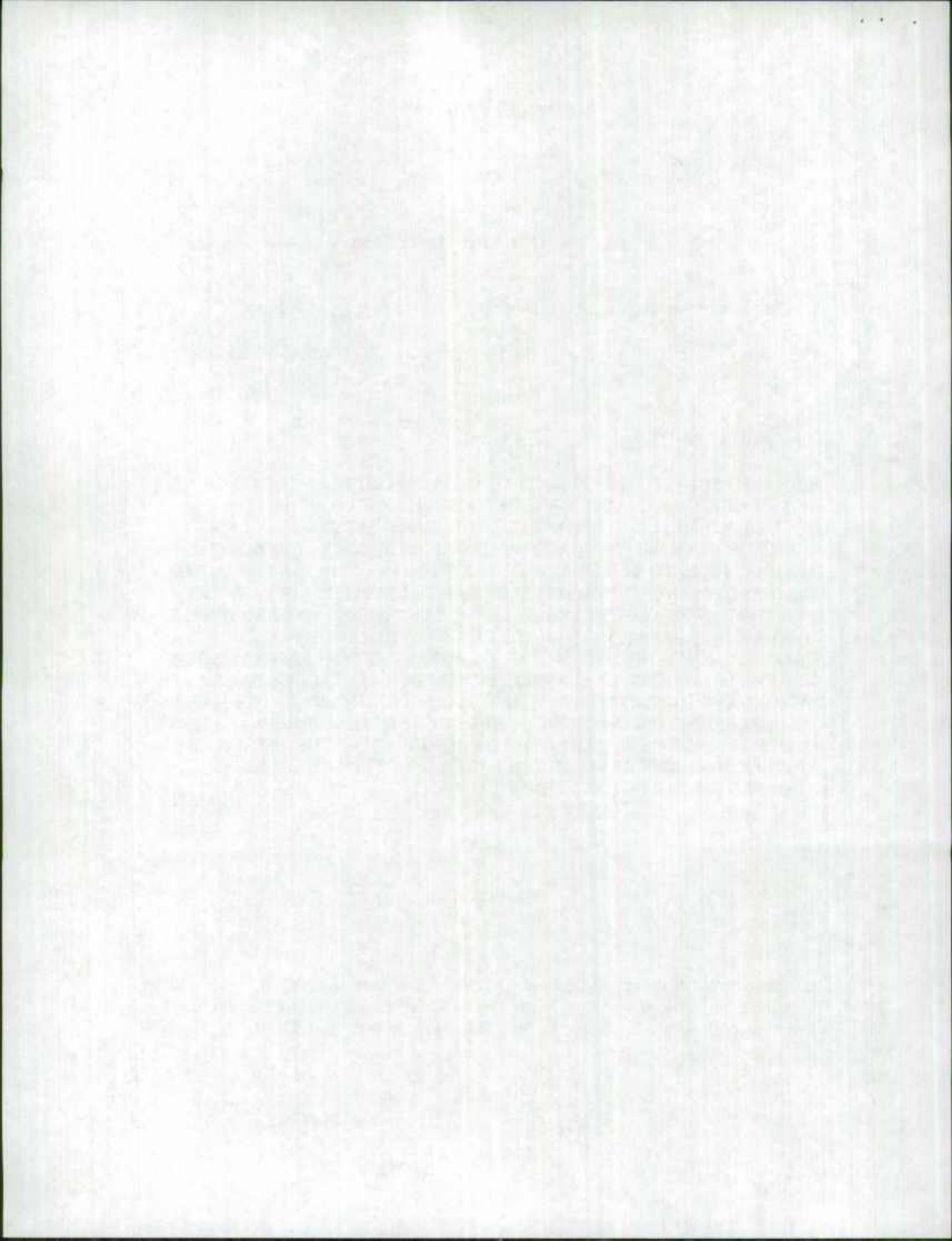
By the Council August 24, 2004

Introduced, read first time, ordered posted, and public hearing scheduled on Tuesday, September 14, 2004, at 1:45 p.m. in the County Council Meeting Room, Talbot County Government Building, 142 North Harrison Street, Easton, Maryland 21601.

By Order

Suzanne W. Moran

Secretary



Preamble

Introduction and adoption of this legislation to amend Talbot County's local critical area program is not intended to suggest that the Critical Area Commission's review of Bill Nos. 926, 927, 929, 931, or 933 was timely or effective. Bills 961, 962, 963 and 964 have been introduced for practical reasons and their introduction or adoption does not mean and cannot be construed to mean that the County concedes that the Commission's actions on the Bills at issue, or on any other Bills, was either timely or proper.

Article XII Site Plan Review

§190-92. General site plan requirements.

M(1) Uses and structures described in §190-92B shall not be occupied or utilized until a certificate of occupancy shall have been issued by the ~~Planning Officer~~ Permit Official.

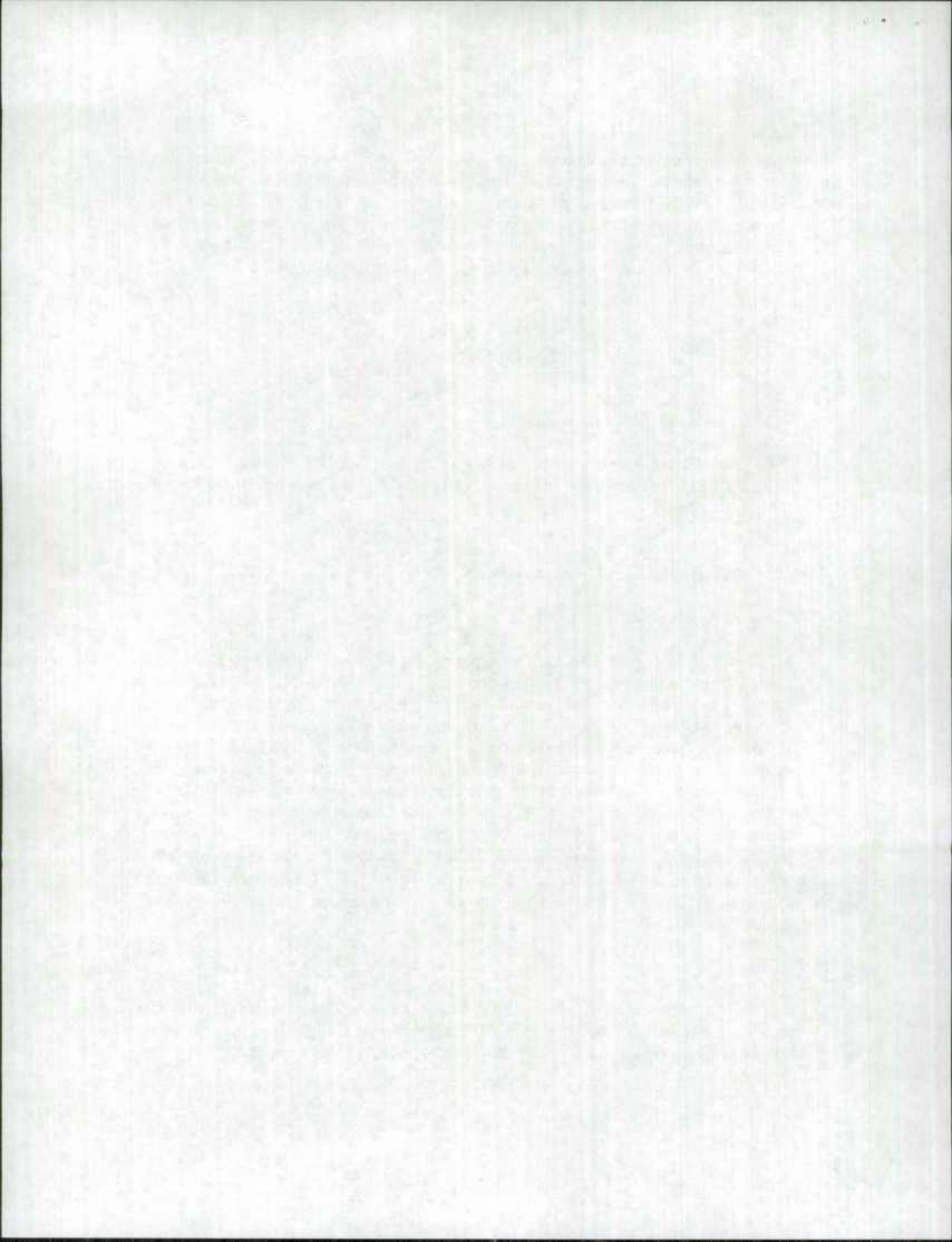
§190-93. Critical area site plan requirements.

E(9) Forest Replacement

(a) A Forest Preservation Plan shall be approved for any development activity which results in the cutting or clearing of any portion of a forest or developed woodland or individual trees, or for development activities resulting in substantial alterations on parcels ~~existing as of August 13, 1989 of seven acres or more~~ that have less than 15% of the site in forest or developed woodland in accordance with §190-88B. The purpose of the Forest Preservation Plan is to maintain, and preferably increase, the developed woodland vegetation to the greatest extent possible. The removal of forest or developed woodland in the 100 foot Shoreline Development Buffer for shore access, pier improvements, water dependant facilities, and shore erosion protection shall be mitigated in accordance with §190-88B. Approval of a Forest Preservation Plan shall authorize the current property owner to maintain the approved area or activity in accordance with the plan, without any requirement for reapplication or reapproval.

E(9) Forest Replacement

(d)[1][c] An additional 10% of any forest or developed woodland may be removed from forest use provided that the entire replacement forest shall be 1.5 times the area ~~of this additional 10%~~ of the forest or developed woodland being removed;

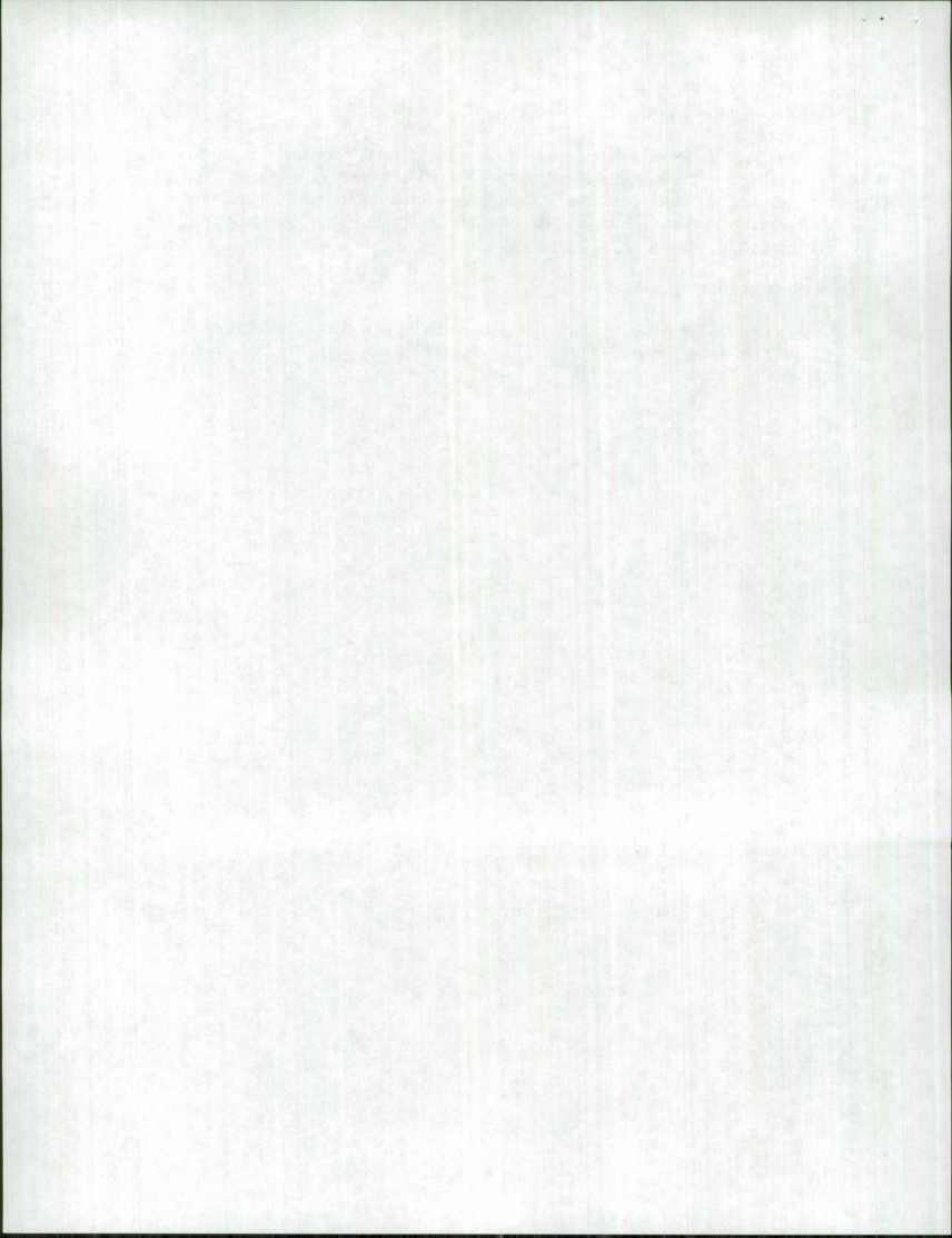


E(9) Forest Replacement

(d)[1][e] Surety shall be provided by the property owners or developers in an amount acceptable to the ~~Maryland Department of Natural Resources~~ Talbot County Council that will be suitable to assure satisfactory forest replacement as required in Subsections [b] and [c] above. The amount of the fee shall be determined based on a fee schedule adopted by the County Council;

E(9) Forest Replacement

(d)[1][i] Unforested or partially forested parcels or lots existing as of August 13, 1989, ~~of seven acres or more~~ shall be planted to provide a forest or developed woodland cover of at least 15%.



PUBLIC HEARING

Having been posted and Notice of time and place of hearing and Title of Bill No. 964 having been published, a public hearing was held on Tuesday, September 14, 2004.

BY THE COUNCIL

Read the third time.

ENACTED: September 28, 2004*

AS AMENDED

By Order

Susan W. Moran

Secretary

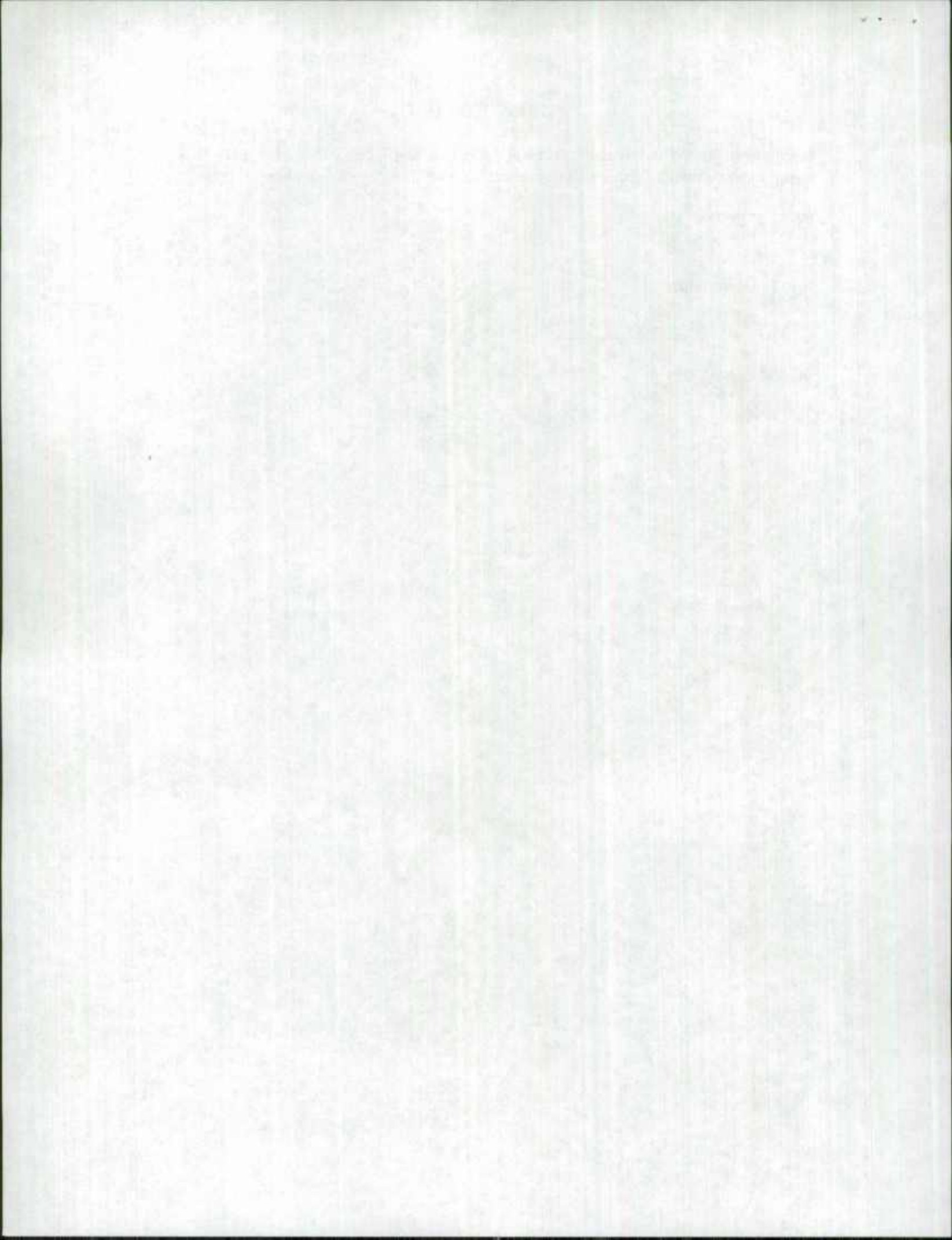
Foster - Nay

Duncan - Aye

Carroll - Aye

Spence - Aye (via absentee ballot)

Harrington - Aye (via absentee ballot)





Robert L. Ehrlich, Jr.
Governor

Michael S. Steele
Lt. Governor

Martin G. Madden
Chairman

Ren Serey
Executive Director

STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS

1804 West Street, Suite 100, Annapolis, Maryland 21401
(410) 260-3460 Fax: (410) 974-5338
www.dnr.state.md.us/criticalarea/

November 18, 2004

The Honorable Edward W. Rice
Town of Indian Head
4195 Indian Head Highway
Indian Head, Maryland 20640

RE: River Watch at Indian Head Growth Allocation Request
IH 245-03

Dear Mayor Rice:

The purpose of this letter is to officially notify you of the Critical Area Commission's action on the growth allocation request for River Watch at Indian Head. On November 5, 2004, the Commission voted to approve with conditions the use of 13.00 acres of growth allocation to change the Critical Area designation of Parcel 136 on Tax Map 11 from a Limited Development Area to an Intensely Developed Area. I want to thank you for your prompt and direct response to the issues requiring resolution prior to the Commission's review of the growth allocation request.

The Commission's conditions of approval are as follows:

1. Revised plats showing the 100-foot stream Buffer and including appropriate protective notes will 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 the full Commission within 90 days of the date of this letter. 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.
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 project 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.
8. The Town will execute a maintenance agreement with the developer regarding the maintenance of the stormwater management facilities.
9. The open space area conveyed to the Town shall be restricted to passive recreation uses only and appropriate deed restrictions shall be recorded.
10. Within 90 days of the date of this letter, the Town shall send to the Commission an adopted resolution or 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.

Under provisions of the Critical Area Act, this change of the designation of the site must be officially incorporated into the Town's Critical Area Program and shown on the Critical Area maps within 120 days of the date of this letter. Please coordinate with Mary Owens regarding compliance with the conditions set forth above and the subsequent commencement of construction in the affected areas.

The Commission members discussed this project at length and expressed serious concerns about the problems associated with the after-the-fact nature of the Town's growth allocation request. Under State law the Commission is responsible to ensure that new development in the Critical Area is carried out in a consistent and uniform manner, one that minimizes adverse impacts to water quality and conserves fish, plant and wildlife habitats. In reviewing the River Watch growth allocation, the members expressed their opinion that their review authority and associated responsibilities were significantly compromised by the Town's actions in approving, recording, and initiating construction on this project. The Commission asked me to emphasize to you that the recordation of the subdivision plats, without the Commission's approval of the growth allocation, was a clear violation of State law and local Critical Area regulations.

The Honorable Edward W. Rice

November 18, 2004

Page 3

The Commission also discussed the problems associated with the fact that the stream and its required Buffer were not properly delineated until after construction had already started. I appreciate the position you outlined in previous correspondence regarding the Town's role as the implementing authority of its local Critical Area Program. You noted, correctly, that the Town is responsible for determining whether the Buffer provisions apply in a particular setting; i.e., whether a certain water feature qualifies as a stream requiring a 100-foot Buffer. I do not disagree with you in general. However, for the stream on the River Watch project, I believe that the Town and its officials were bound by the outstanding regulatory violations documented by the Town itself, by the U.S. Army Corps of Engineers, and the Maryland Department of the Environment, all of which clearly showed that the stream was the type covered by the Critical Area regulations. The prior violations on this property were of record, and were known by Town officials who, unfortunately, decided to ignore the situation. The Town's actions illustrate the need to obtain Commission approval of growth allocation before plats are recorded or any construction activity begins.

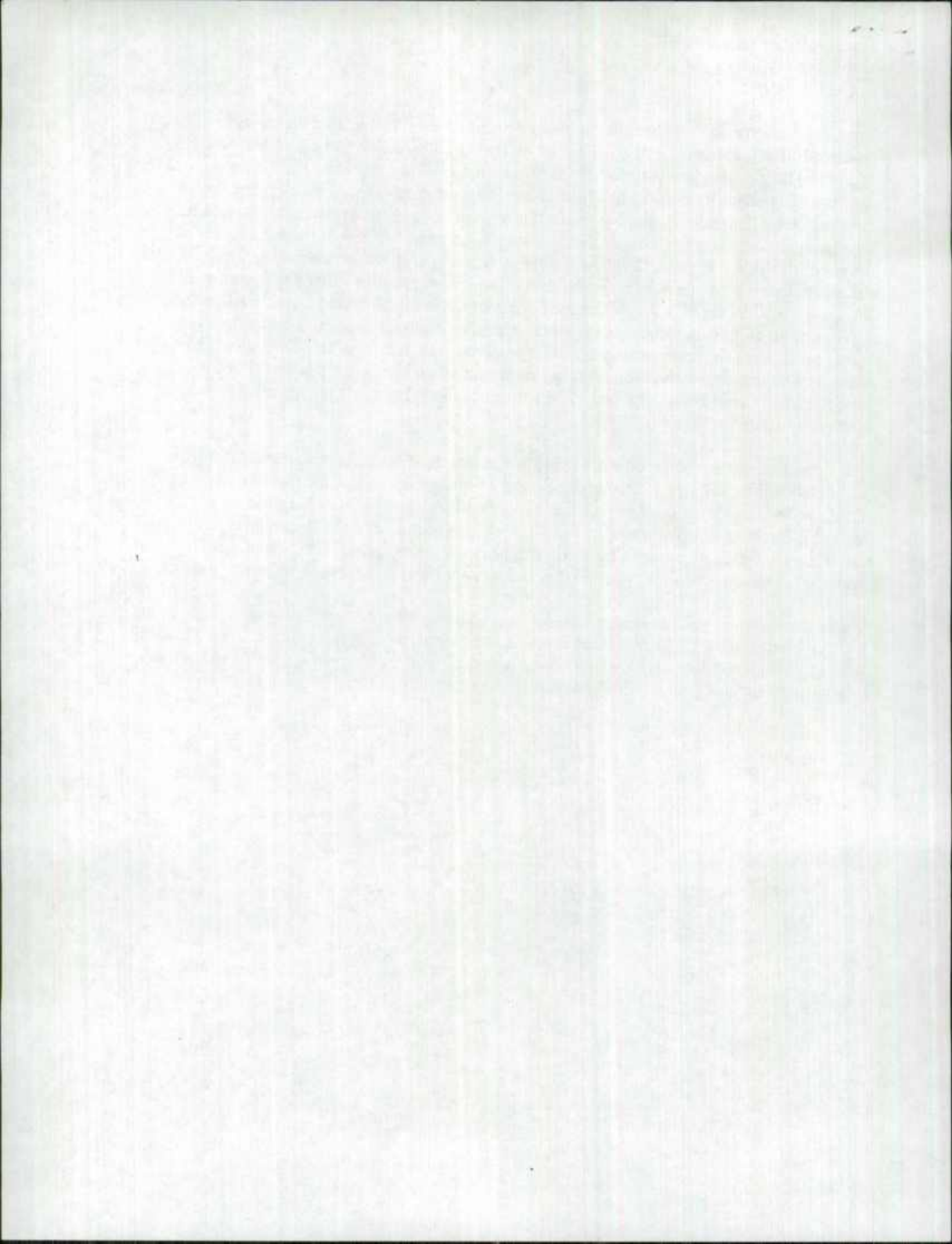
The Commission also requested that I stress to you that development activities and disturbance within the 100-foot Buffer of tributary streams are prohibited, and that the Commission would strongly and actively oppose any variances requested for this area. From our review of the revised plans, it appears that enough flexibility remains so that once the stream and Buffer delineation is finalized, minor adjustments can be made in the size and location of dwellings and decks or accessory structures to ensure that variances will not be necessary on any of the lots.

Thank you again for your assistance in resolving the issues relating to this project. In spite of the difficult circumstances, I believe that the project can ultimately comply with the Town's Critical Area Program, and I look forward to working with the Town on future projects. If you have any questions about the Commission's action, please contact me or Mary Owens at (410) 260-3460.

Sincerely,

Martin G. Madden
Chairman

cc: Mr. John Klein (Coastwatch Inc.)
Mr. Francis Silverholz (Centex Homes)
Honorable Daniel Mayer



Robert L. Ehrlich, Jr.
Governor

Michael S. Steele
Lt. Governor



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May 14, 2004

Mr. George Kinney
Talbot County Office of Planning and Zoning
11 N. Washington Street
Courthouse
Easton, Maryland 21601

Re: **County Council Bills 922, 926, 927, 929, 931, 932**

Dear Mr. Kinney:

This letter notifies Talbot County of action by the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays. At its meeting on May 5, 2004 the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays unanimously approved County Council Bills 922 and 932 as amendments to the Talbot County Critical Area Program. The Commission unanimously approved Council Bills 926, 927, 929, and 931 with conditions as set forth below. These bills and the other information submitted by the County in accordance with § 8-1809(g) constitute the required comprehensive review of the local program. The next required comprehensive review of the Talbot County Critical Area program is due in 2010.

The Commission's approval of Bills 926, 927, 929, and 931 is subject to the following conditions:

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

1. Section Three, Dwelling Unit (See page 2) – Delete the existing definition of dwelling unit and substitute the following language. “Dwelling unit means a single unit providing complete, independent living facilities for at least one person, including permanent provisions for sanitation, cooking, eating, sleeping, and other activities routinely associated with daily life. Dwelling unit includes a living quarters for a domestic or other employee or tenant, an in-law or accessory apartment, a guest house, or a caretaker residence.”
2. Section Nine, Shoreline Development Buffer (See page 4) – Amend the definition of shoreline development buffer to state, “The area at least 100 feet wide measured

landward from the mean high-water line of tidal waters, tributary streams and tidal wetlands."

3. Section One, Development Activities (CA) (See page 2) – Delete the following language from paragraph b: "~~Generally, substantial residential alterations would cause the total impervious area on a lot to exceed 15% of the lot or 5,000 square feet, whichever is less. Generally, substantial nonresidential alterations would add more than 5,000 square feet of impervious area."~~

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

4. Section Four, Parks and Playgrounds (Public and Private) (See page 3) – Add another bullet that states, "Limited to passive recreation."
5. Sections Eighteen, Twenty, and Twenty-One, Treated Septage Land Applications, Community Sewage Treatment Plant, Sludge Application for Agricultural and Horticultural Purposes (See page 8-9) – Add the underlined language to the last bullet in each of these sections as follows: "No land application shall take place within 200 feet from Mean High Water, the edge of tidal wetlands, or tributary streams. This provision is not subject to a variance."

As an alternative, the County may add a bullet that states, "No land application shall take place within the 100-foot Buffer of tidal wetlands."

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

6. 190-88 B (3) [h] (See page 8) – In place of [h] insert the following language:

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

- a. A time period for implementing the plan and provisions for a final inspection by the County after which the Plan will be certified complete;
or
 - b. Provisions for removal of invasive/exotic species and/or maintenance of native vegetation for a period of up to 5 years including provisions for annual inspections by the County."
7. 190-88.1 B (6) (b) (See page 12) –Delete "~~Mitigation equal to an area two times the square footage of the proposed impervious surface in the Buffer area ..."~~ Add "Mitigation equal to an area two times the square footage of the development activity in the Buffer area..."

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

8. 190-93 E (9) (a) (See page 31) - Delete references to parcels up to seven acres as follows: "A Forest Preservation Plan shall be approved for any development activity which results in the cutting or clearing of any portion of a forest or developed woodland or individual trees, or for development activities on parcels ~~existing as of August 13, 1989 of seven acres or more~~ that have less than 15% of the site in forest or developed woodland in accordance with § 190-88B."

If it is the County's intent to allow some flexibility for grandfathered parcels under seven acres, then the County may propose alternative provisions for specific situations. In general, any alternative provisions proposed by the County must ensure that the objective to maintain and increase the forested vegetation in the Critical Area will be achieved.

9. 190-93 E (9) (d) [c] (See page 33) – Amend the forest replacement provisions as follows, "An additional 10% of any forest or developed woodland may be removed from forest use provided that the replacement forest shall be 1.5 times the area of ~~this additional 10%~~ of the forest or developed woodland being removed."
10. 190-93 E (9) (d) [i] (See page 34) – Delete references to parcels up to seven acres as follows: "Unforested or partially forested parcels or lots ~~existing as of August 13, 1989 of seven acres or more~~ shall be planted to provide a forest or developed woodland cover of at least 15%."

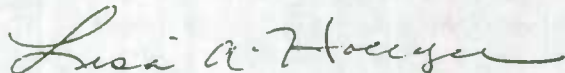
If it is the County's intent to allow some flexibility for grandfathered parcels under seven acres then the County may propose alternative provisions for specific situations. In general, any alternative provisions proposed by the County must ensure that the objective to maintain and increase the forested vegetation in the Critical Area will be achieved.

Certain provisions in County Council Bills 926, 929, and 931, along with previously approved County Council Bill 891, effectively correct those mistakes and omissions cited by the Critical Area Commission in a letter to the County dated September 23, 2002. The only remaining item to be addressed in that letter relates to the County's guest house provisions. At the County Council's request, the Commission worked with the Maryland General Assembly in its last session to further define dwelling unit and seek provisions for accessory dwelling units that can be considered part of the primary dwelling unit for density calculations. After the Governor signs House Bill 1345, the Commission will provide draft ordinance language to all of the jurisdictions implementing Critical Area Programs. Commission staff will work with Talbot County to assist the County in incorporating the required provisions of House Bill 1345 into the County's Program.

Mr. Kinney
May 14, 2004
Page 4

The County is required to finalize these changes in the applicable ordinances within 120 days of this notice. Please forward a copy of all revised ordinance sections or the entire reprinted zoning ordinance to this office. Thank you for your cooperation. If you have any questions, please telephone me at (410) 260-3478.

Sincerely,



Lisa A. Hoerger
Natural Resources Planner

cc: Honorable Philip Carey Foster
Mr. R. Andrew Hollis, Talbot County
Mr. Mike Pullen, Talbot County
Ms. Mary Kay Verdery, Talbot County
Ms. Marianne Mason, DNR- AG