

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/](http://www.dnr.state.md.us/criticalarea/)

September 30, 2004

Mr. Ronald N. Young  
Town Manager  
Town of Indian Head  
4195 Indian Head Hwy.  
Indian Head, MD 20640

Re: **IH 810-03: Saber Helal Revised Plan for Lot 88 Buffer Variance**

Dear Ron,

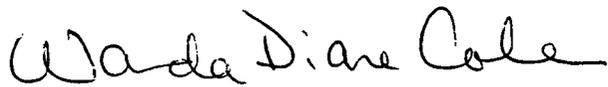
I have reviewed the revised plan provided by Mr. Helal during our site visit on August 17<sup>th</sup>. There are minor math errors that I have listed below. In addition, the amount of disturbance in the Buffer has not been calculated completely. The following comments are being provided for your use.

1. New disturbances in the Buffer include tree clearing, impervious surface areas, and areas of grading that cause a substantial change in grade. The plan has calculated tree clearing in the Buffer but not the square footage for where the house and driveway encroach into the Buffer. The grading in the Buffer on this site will slightly raise the grade around the foundation to provide positive drainage away from the foundation, and does not cause major terraforming. Additional mitigation must be provided at a 3:1 ratio for the area of encroachment by the house and driveway. The actual number of plantings may be added to the plan as a red-line revision. Please provide me with a copy of the red-line revision to keep in our file.
2. The mitigation tabulations for tree clearing on Lots 86 & 87 is more than what is required. From the information provided, it appears no tree clearing will occur on Lot 86, and only one tree will be removed on Lot 87, therefore, only one tree is needed for mitigation of disturbances on Lots 86 & 87.
3. The impervious surface tabulations for Lots 86-88 are correct. Instead of asking for these numbers to be changed on the plans, I am providing the correct figures for your future

use. For Lot 86, the post development impervious area will be 9.2%, Lot 87 is 9.3 %, and Lot 88 will be 23.3%.

If you have any questions regarding these comments, please contact our office at 410-260-3460.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

cc: Herbert Crowder

Robert L. Ehrlich, Jr.  
Governor



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September 28, 2004

Mr. Ron Young  
Town Manager  
Town of Indian Head  
4195 Indian Head Highway  
Indian Head, Maryland 20640

Re: IH 317-04: **Subdivision Plan Revision**  
**R.H. Knott Subdivision, Lots 1, 2 & 3 (Maureen O'Brien)**

Dear Ron,

I have reviewed the revised site plan which our office received on September 13<sup>th</sup>. This site plan was prepared in response to my comments in a letter dated August 9, 2004. One comment remains which needs to be addressed. I also have two additional comments.

1. The species listed in the revised landscape plan are not native to Maryland. The 15% afforestation species must be native to Maryland. The applicant may use these non-native ornamentals for landscaping purposes, however, they cannot be given credit as Critical Area plantings. The following native species are readily available, have similar characteristics to the ones that were previously chosen, and should tolerate the site's conditions of occasional salt spray, wet topsoil, and/or high winds:
  - Evergreen species: eastern red cedar, American holly, white pine.
  - Small trees with color/interest: winterberry, eastern redbud, sweetbay magnolia, flowering dogwood, American hornbeam
  - Tall trees with interest: river birch, willow oak, pin oak, scarlet oak, southern red oak.

There are also a number of attractive native shrubs which could be used, such as sweet pepperbush, spicebush, lowbush or highbush blueberry, northern bayberry, southern wax myrtle, witch hazel, and obovate serviceberry. Any professional nursery and landscape center would be able to assist in selecting species which would meet the applicant's desired outcome.

2. Although the deed describes a property line that follows the mean low water line of the river, land below mean high water belongs to the State. Unless the Maryland Department of the Environment and the Maryland Archives can certify that the applicant owns the area below mean high water, that area cannot be used in calculating lot size or percentages. The site area for Lot 3 must deduct the area below mean high water. Mean high water in this area most likely approximates elevation + 2.5 ft. However, the National Oceanographic and Atmospheric Administration has set bench marks around the state to help determine the actual elevation of mean high water. I don't know if these bench marks have been adjusted for sea level rise.

The mean high water line can also be determined in the field and set by a surveyor. The impervious surface and afforestation percentages must be based upon the area of land that is above mean high water.

3. The amount of existing forest cover has not been stated on the plan. This information must be provided, as it will assist in calculating how many plantings are needed to reach 15% afforestation. The applicant may calculate the percentage of existing forest cover using the site area of the entire re-subdivision; e.g. Lots 1-3 measure x acres and Lots 1-3 contain y forested area, so that the percentage of existing forest cover would be  $y/x$ . If  $y/x$  is less than 15%, afforestation is needed. Or, the applicant can calculate the amount of forest cover and afforestation needed on a per lot basis.
4. This plan does not propose new disturbances in the Buffer, nor does it propose clearing of woody vegetation. Therefore, no mitigation plantings are needed, and the Impervious Area Notes at the bottom of the plan sheet can be deleted. The only plantings needed for this resubdivision are those needed to meet the 15% afforestation requirement.

Prior to approval of the subdivision, please provide a copy of the revised plat indicating the information above. Please contact our office at 410-260-3460 if you have any questions regarding these comments.

Sincerely,



Wanda Diane Cole  
Natural Resources Planner

cc: Maureen O'Brien  
Kerrie Gallo

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
Executive Director

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September 29, 2004

Mr. R.W. "Jerry" Soderberg, Jr.  
DH Steffens Company  
22335 Exploration Drive, # 1020  
Lexington Park, Maryland 20653

Re: SM 271-04: MSUB 04-110-028 Land of William Snyder

Dear Jerry,

I have reviewed the information you provided to support your findings that the forested area of this property is not suitable FIDS habitat. As a result of our observations during our site visit on September 14, 2004, I agree that the type and spacing of the trees, and the overgrown condition by invasive ivy, do not provide FIDS habitat.

I recommend that you contact the Wildlife and Heritage Service and the St. Mary's County Department of Land Use and Growth Management, who has the approval authority, regarding your findings. We would not oppose this site plan provided a driveway into Lot 2 is addressed.

Thank you for the opportunity to visit this site. If you have any questions, please contact this office at 410-260-3460.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

cc: Sue Veith  
Lori Byrne

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
Executive Director

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September 28, 2004

Mr. R.W. "Jerry" Soderberg, Jr.  
Project Manager  
DH Steffens Company  
22335 Exploration Drive, # 1020  
Lexington Park, Maryland 20653

Re: **SM 434-04: Carbone Properties Mitigation Planting Plan**

Dear Jerry,

I have reviewed the off-site mitigation plan that you provided to address the mitigation requirements for the Carbone property located along Bay Front Drive in the Critical Area of Chesapeake Bay and Tanner Creek. The applicant is proposing to clear more than 30% of the existing forest on the Bay Front Drive property. The 2.25- acre off-site mitigation is being proposed to establish the 25' Critical Area agricultural Buffer in the RCA of Long Neck Creek. The proposed planting area is owned by the applicant, and is located off MD 5, about a mile from the site where the impacts are proposed.

We do not object to this off-site planting location. We recommend that the applicant update his approved farm plan to state that a 25' Buffer has been established in this area and will be protected from future disturbance. We also recommend the applicant seek approval from the St. Mary's County Department of Land Use and Growth Management regarding the actual native species used for the planting.

Thank you for your cooperation in this process. Please call our office at 410-260-3460 if you have additional questions.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole

cc: Denis Canavan



Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
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Ren Serey  
Executive Director

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September 28, 2004

Mr. Jack Kontgias  
Bailey/Thompson, LLC  
6517 Allview Drive  
Columbia, Maryland 21046

Re: **IH 711-04: Lot 70 West Glymont Site Plan  
Bailey/Thompson, LLC**

Dear Jack,

Thank you providing the site plan for the redevelopment of Lot 70 prior to making formal application for a variance and/or building permit. I have reviewed the plan, which proposes to remove an existing dwelling and walkways located in the 100-foot Critical Area Buffer and to replace them with a new dwelling, porch and driveway. The redevelopment has been pulled as far away from the 100-foot top of cliff setback as possible while maintaining the local requirement of a 25' property line setback. Although 1,265 square feet of existing impervious areas will be removed from the Buffer, the Town has no provision for trading disturbances in the Buffer. Therefore, you will need to apply for a variance for 651 square feet of new disturbances in the Buffer that will be created by the porch.

We would not oppose the granting a variance for this project as proposed, if one is requested. All new disturbances in the Buffer must be able to meet all of the variance standards, and mitigation would be required at a 3:1 ratio. A mitigation planting plan using native trees and shrubs will be required by the Town. The mitigation plantings must be provided on-site to the extent practical, and it appears there is room on this lot to do so.

Once you have formally applied to the Town, your variance application will be forwarded to our office for formal comments. Please reference the project review number above so that these comments may be used to expedite that review.

If you have any questions regarding these comments, please contact our office at 410-260-3460.

Sincerely,

*Wanda Diane Cole*

Wanda Diane Cole  
Natural Resources Planner

cc: Ron Young  
Kerrie Gallo

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

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September 28, 2004

Mr. Steve Dodd, Director  
Dorchester County  
Department of Planning and Zoning  
PO Box 107  
Cambridge, MD 21613

Re: **DC 656-04: #1060 Riverbend Waterfowl, LLC: Lots 1 and 2  
Tax Map 71 Parcel 17, Maple Dam Road**

Dear Steve,

I have reviewed the plan for this two-lot subdivision in the RCA of Little Blackwater River. The following comments are provided for your use:

1. The plat must state how many acres of the parent parcel are located in the Critical Area, the number of RCA density rights available, and how many RCA density rights have been used.
2. If any State tidal wetlands are located within the parcel boundaries, they must be deducted from the gross parcel area when calculating the RCA density. The amount of State tidal wetlands must be noted on the plat.
3. It appears 15% afforestation is required. The amount of existing forest must be stated on the plat.
4. We recommend a 1"= 100' scale be used to show the environmental features in the Critical Area of the parcel. The plat must show topography, location of soils types, and any nontidal wetlands. The Buffer may need to be expanded if nontidal wetlands are located contiguous to the 100' Buffer.

5. If this subdivision represents a change in use from agriculture to residential, the 100-foot Buffer must be established in forest vegetation.
6. The Wildlife and Heritage Service (WHS) must be contacted regarding the presence of rare, threatened and endangered, and their habitats. All WHS comments must be addressed on the plat prior to granting any approvals.

Please provide a copy of the revised plat when it is available. We may have additional comments based upon any new information. If you have any questions, please contact Mary Owens at 410-260-3480.

Sincerely,



Wanda Diane Cole  
Natural Resources Planner

cc: McCrone  
Mary Owens

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
Executive Director

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September 28, 2004

Ms. Phil Shire  
St. Mary's County Government  
Department of Land Use and Growth Management  
PO Box 653  
Leonardtown, MD 20650-0653

Re: **SM 658-04: MSUB # 04-141-040 Boundary Line Adjustment Plat  
Tax Map 47 Parcels 9 & 240 Robert A. Russell and Robert Allen Russell, Jr.**

Dear Phil,

I have reviewed the boundary line adjustment plat which will transfer 0.172 acres from Parcel 9 to Parcel 240. The purpose of the transfer is to provide an area for a septic disposal system on Parcel 240. These parcels are located in the RCA of Canoe Neck Creek. The owners of Parcel 9 also own the adjacent Parcel 225.

We do not oppose this boundary line adjustment. However, this action will significantly reduce the buildable area on Parcel 9. This office will oppose any variance requested for development on Parcel 9 because the owner has voluntarily reduced the buildable area in order to increase the development potential of Parcel 240. We recommend that St. Mary's County require the owner to place a note on the plat to the effect of giving up further residential development rights on Parcel 9.

If you have any questions, please contact Ren Serey at 410-260-3460.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

**STATE OF MARYLAND  
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September 27, 2004

Ms. Sue Veith  
St. Mary's County Government  
Department of Land Use and Growth Management  
PO Box 653  
Leonardtown, MD 20650-0653

Re: **SM 650-04: MSUB # 04-120-031 Greens Rest Farm Subdivision, Lots 8 & 9,  
Outparcel 'A', BLAP of Lot 500-2**

Dear Sue,

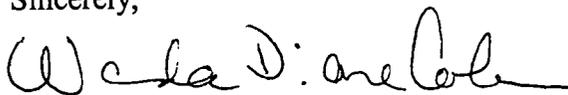
I have reviewed the plat for this simplified subdivision located in the RCA of St. Mary's River. The subdivision includes the creation of Outparcel 'A', Lots 8 and 9, a boundary line adjustment for Lot 500-2. Lots 8 and 9 include sewage reserve areas while Lot 500-2 does not. The plat states Outparcel 'A' is not being a legal building lot. The following comments are provided for your use:

1. This plat creates three lots, however, General note # 3 states that two density rights are being used. What is the intention for Lot 500-2? If it is not a legal building lot, the plat must include a note to this effect.
2. The Critical Area acreage of the parent parcel and the available number of RCA density rights must be stated on the plat. It appears the parent parcel created five (5) lots prior to implementation of the County's Critical Area Program. However, this plat shows six (6) existing lots: Lots 3-7 and Lot 500-1. When was Lot 500-1 created? It appears growth allocation may be needed to correct Lot 500-1 and to allow implementation of this proposed plat.
3. The acreage for Lots 8, 9, 500-2, Outparcel A, and the density area for Lot 8 add up to 66.38 acres. The plat states the site area as 50.49 acres. Please verify the correct acreages.
4. Does the 13.63 acre tabulation for Lot 8 include the acreage to Lot 8's density area, or is the density area's 6.57 acres in addition to the 13.63 acres?

5. The expanded Buffer line on Lot 500-2 has not been delineated for the remainder of the lot. The Buffer line on Lot 500-2 must be clearly delineated from the tidal pond and St. Mary's River shorelines.
6. This plat does not incorporate FIDS habitat protection measures, as mentioned in the Commission's comments dated June 20, 2002 and January 15, 1997 (copies attached).
7. The Wildlife and Heritage Service comments dated July 19, 2002 indicate that a great blue heron colony was located nearby, while their September 14, 2004 comments do not. Please verify with Lori Byrne as to whether the heron rookery still exists, and if so, what time of year restriction must be observed.

We request the opportunity to review any revisions to this plat. We may have additional comments based upon any new information. Please call me at 410-260-3481 if you have any questions.

Sincerely,



Wanda Diane Cole  
Natural Resources Planner

cc: Little Silences Rest

Judge John C. North, II  
Chairman



Ren Serey  
Executive Director

**STATE OF MARYLAND  
CHESAPEAKE BAY CRITICAL AREA COMMISSION**

1804 West Street, Suite 100, Annapolis, Maryland 21401  
(410) 260-3460 Fax: (410) 974-5338

June 20, 2002

Ms. Theresa Dent  
St. Mary's County Department of Planning & Zoning  
22740 Washington Street  
PO Box 653  
Leonardtown, MD 20650-0653

Re: 02-110-009 Greens Rest Farm Lot 8 Simplified Subdivision Plat

Dear Theresa,

Thank you for the opportunity to review and comment on this proposed subdivision. The following comments area being provided for your use at the TEC review meeting:

1. A dwelling is shown on Outparcel A. Is it remain? If so, Outparcel A cannot have any other dwelling units in the Critical Area.
2. The Resource Protection Table incorrectly shows the level of forest resource ("C") protection at 50%. No more than 30% of the existing forest cover within the Critical Area may be removed, therefore, the table should be revised to show 70% protection of forest resources.
3. Previous letters from this office (copy attached) indicated the presence of FIDS habitat at this site, and comments were provided that every effort should be made to minimize impacts to this habitat. Were these efforts made? What is the current status of the forest acreage at this subdivision? New lots need to meet the FIDS provisions as found in the most current document, *A Guide to the Conservation of Forest Interior Dwelling Birds in the Chesapeake Bay Critical Area, June 2000*.

Please call me at 410-260-3481 if you have questions regarding these comments.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Cole".

Wanda Cole  
Natural Resources Planner

cc: SM 319-02

Branch Office: 31 Creamery Lane, Easton, MD 21601  
(410) 822-9047 Fax: (410) 820-5093

TTY For The Deaf:  
Annapolis: (410) 974-2609 D.C. Metro: (301) 586-0450

JUDGE JOHN C. NORTH, II  
CHAIRMAN  
410-822-9047 OR 410-974-2418  
410- 820-5093 FAX

REN SEREY  
EXECUTIVE DIRECTOR  
410-974-2418 /26  
410-974-5338 FAX



WESTERN SHORE OFFICE  
45 CALVERT ST., 2<sup>ND</sup> FLOOR  
ANNAPOLIS, MARYLAND 21401

EASTERN SHORE OFFICE  
31 CREAMERY LANE  
EASTON, MARYLAND 21601

STATE OF MARYLAND  
CHESAPEAKE BAY CRITICAL AREA COMMISSION

January 15, 1997

Mr. Keith Lackie  
Department of Planning and Zoning  
P O Box 3000  
Leonardtown, Maryland 20650

RE: Greens Rest Farm, ISUB #95-2999  
(CBCAC File #SM 533-96)

Dear Mr. Lackie:

This letter is sent in response to your letter to Kathy McCarthy regarding correspondence from Donald Ocker regarding the referenced project. Specifically, the proposed project is an application for resubdivision, and the relocation of the lots will impact Forest Interior Dwelling Birds' (FID) habitat. I have discussed the project with Kathy McCarthy, and it is our understanding that the lots are being relocated in order to accommodate passing perc locations. Because, this subdivision is considered "grandfathered", the lots can be relocated; however, every effort must be made to minimize impacts to FID habitat. In order to accomplish this objective, clearing on each lot should be limited to 10,000 square feet. Notes or a building restriction line should be placed on the plat to ensure that this restriction is understood by potential lot purchasers. In addition, a closed canopy should be maintained over all access paths and driveways.

With regard to the method of reforestation, natural succession or planting may be used. The primary consideration is to maintain a mix of species similar to that of the existing forest. This can be successfully accomplished by both methods. It may be desirable to plant trees near the homesites where some lawn area is likely to be established and to use natural regeneration in the field area of Lot 500-1.

If you have any questions about these comments or other FID related issues, please feel free to call me at (410) 974-2426.

Sincerely yours,

A handwritten signature in cursive script that reads "Mary R. Owens".

Mary R. Owens  
Natural Resources Planner

MRO/jjd

cc: Mr. Donald Ocker  
Ms. Kathy McCarthy  
P:\CAC\PLANR\MARY\GREENS.SM

Robert L. Ehrlich, Jr.  
*Governor*

Michael S. Steele  
*Governor*



Martin G. Madden  
*Chairman*

Ren Serey  
*Executive Director*

**STATE OF MARYLAND  
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September 27, 2004

Ms. Sue Veith  
St. Mary's County Government  
Department of Land Use and Growth Management  
PO Box 653  
Leonardtown, MD 20650-0653

Re: **SM 649-04: MSUB # 04-120-033 Rivendel Farm Subdivision  
Lots 5000-2 and 6-9  
Resubdivision of Lot 500-2**

Dear Sue,

I have reviewed the subdivision plat, which proposes to resubdivide Lot 500-2 into Lot 5000-2 and Lots 6-9 in the RCA of Chaptico Bay. Lot 500-2 and Lots 3-5 were created from the Thomas Reeves subdivision Farmstead 2. Farmstead 1 and Farmstead 2 of the Thomas Reeves subdivision, and Lot 500-1 of the White Plains subdivision, were created from a parent parcel shown on Tax Map 23 Parcel 61, which contained 63.48 acres in the Critical Area. The parent parcel was entitled to three RCA density rights, all of which were used by the previous subdivision actions.

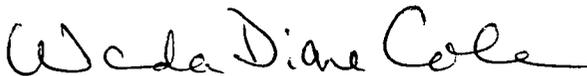
It is our understanding that the applicant intends to apply for growth allocation so that the Critical Area portion of proposed Lots 8 and 9 may be developed. In addition, a 30' access easement is being provided as community access to the shoreline of Chaptico Bay for Lots 3-9. The following comments are provided for your use.

1. There are tributary streams on Farmstead 1 and Lot 9 for which a 100-foot Buffer must be delineated and expanded, if necessary, for contiguous nontidal wetlands, steep slopes and/or highly erodible soils.
2. This proposal does not utilize the development envelope concept and has not designated a 20-acre RCA reserve area. In accordance with the Commission's growth allocation policy, at least 20 acres are needed to maintain RCA character. Therefore, the entire Critical Area acreage of the parent parcel must be deducted from the County's RCA growth allocation acreage if a 20-acre RCA reserve cannot be provided.

3. The Commission's growth allocation policy encourages a 300' setback to be provided. At this time, this proposal does not provide a 300' setback. The amount of growth allocation deduction can be reduced if a 300' setback is provided, and it appears there are opportunities to do so.
4. 15% afforestation is not required, however, if a 300' setback is provided, it must be fully established in forest vegetation.
5. The growth allocation application must tabulate the amount of impervious surfaces currently present within the parent parcel, as well as the amount proposed for the access roadways. The entire subdivision may not exceed 15% in impervious areas. If it is found that development on Lots 3-9 would cause the subdivision(s) to exceed the impervious surface limit, we recommend an impervious surface allocation be established for each lot, and those allocations recorded on the plat.
6. The Wildlife and Heritage Service provided comments regarding the parent parcel in December 2002, and it was determined that no rare, threatened or endangered species occur on this site. However, this area of Chaptico Bay is a known waterfowl wintering and staging area. The applicant must provide details regarding any proposed waterfront development associated with the community access to the shoreline. If water-dependent facilities are provided, a note must be added to the plat regarding the waterfowl time of year restriction. Community parking is not a water-dependent facility, and may not be located in the Buffer.

Please call me at 410-260-3481 if you have questions regarding these comments.

Sincerely,



Wanda Diane Cole  
Natural Resources Planner

cc: Jerry Soderberg

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
Executive Director

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September 27, 2004

Ms. Sue Veith  
St. Mary's County Government  
Department of Land Use and Growth Management  
PO Box 653  
Leonardtown, MD 20650-0653

Re: **SM 657-04: MSUB # 04-110-077 John Unkle Intrafamily Subdivision, Lot 3  
Tax Map 46, Block 23, Parcel 69**

Dear Sue,

I have reviewed the plan for this subdivision, which is being created under the RCA intrafamily transfer provisions on a parcel located in the RCA of Dukehart's Creek. The subdivision will create a 2.52-acre area shown as Lot 3. The parent parcel measures 14.33 acres and is entitled to two intrafamily development rights, in addition to the existing non-intrafamily right. One intrafamily development right was used to create Lot 2 in 1995. Lot 3 will utilize the last intrafamily development right. The following comments are provided for your use:

1. The area shown as a 100-year floodplain occurs in an area of hydric soils and low elevation. The configuration suggests this may be a headwater area of a tributary stream. At a minimum, the area appears to have the potential to support nontidal wetlands, and may need to be mapped as an expanded Buffer.
2. The Wildlife and Heritage Service (WHS) must be contacted for a determination on the presence of rare, threatened and endangered species on this site. All WHS comments must be addressed on the plat and plans for this project. A copy of the WHS comments must be provided to this office prior to granting any approvals.

Please call me at 410-260-3481 if you have questions regarding these comments.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
Executive Director

STATE OF MARYLAND  
CRITICAL AREA COMMISSION  
CHESAPEAKE AND ATLANTIC COASTAL BAYS  
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September 23, 2004

Mr. Steve Dodd  
Dorchester County  
Department of Planning and Zoning  
PO Box 107  
Cambridge, MD 21613

Re: **DC 507-04: # 2206 Bride and Harold M. Miller, Jr.**  
**Continuance of Buffer Variance Application**

Dear Steve,

This letter supercedes the comments in my letter dated July 16, 2004. The applicants have worked diligently to identify a development footprint that would accommodate both the desired house design and minimize impacts to the 100-foot Critical Area Buffer. I have reviewed the revised site plan that Mr. Harold Miller faxed to our office this afternoon. This site plan has greatly reduced the encroachment into the Buffer over that which was originally submitted. The total encroachment into the Buffer measures 1,120 square feet. There is also some encroachment by the gravel driveway into the 25' nontidal wetland Buffer, which will require approval from MDE. I have attached a copy of the revised site plan that we received today.

We do not oppose this Buffer variance request as it is now being proposed. We recommend the variance approval include a condition that the required 3:1 mitigation for new disturbances to the Buffer be provided on-site in the Buffer to the extent feasible. Potential planting areas could include the open area beyond the proposed steps to the house, and in areas where ATV-travel has created deep ruts and/or compacted the soil around the trees.

Please provide this office with a copy of the written decision made in this case. If you have any questions, please contact me at 410-260-3481.

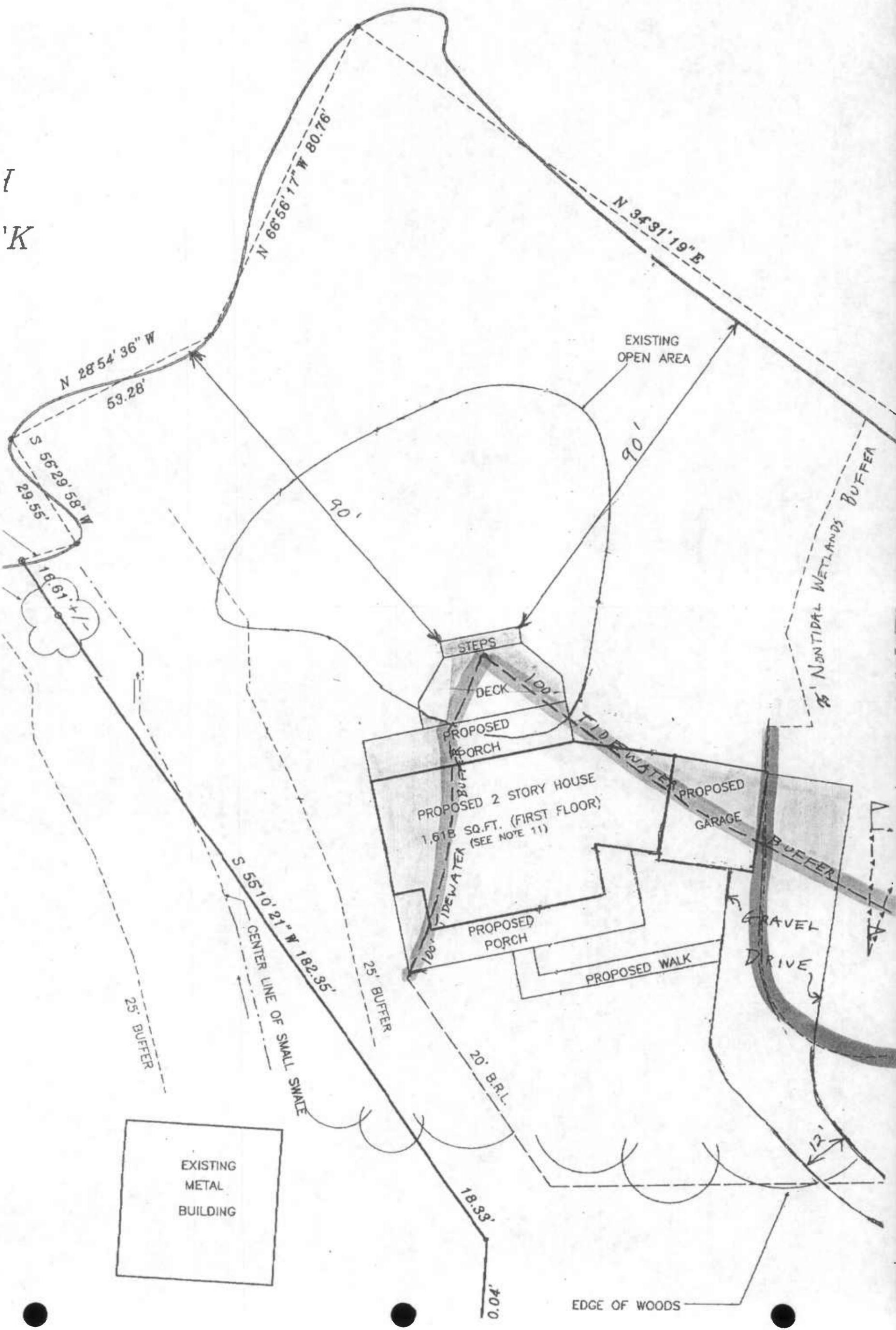
Sincerely,

A handwritten signature in cursive script that reads 'Wanda Diane Cole'.

Wanda Diane Cole  
Natural Resources Planner

cc: Harold and Bride Miller, by fax

I  
'K



Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

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September 23, 2004

Mr. Steve Dodd  
Dorchester County  
Department of Planning and Zoning  
PO Box 107  
Cambridge, MD 21613

Re: **DC 654-04: # 2214 William M. and Mary C. Webb Buffer Variance Request  
Tax Map 18, Block 13, Parcel 149**

Dear Steve,

I have reviewed the information regarding the applicant's variance request to construct a detached garage in the 100-foot Critical Area Buffer on a grandfathered lot in the LDA of Hudson Creek. While the location of the Buffer has not been delineated on the site plan, it appears the entire lot may be constrained by the Buffer. The total new disturbances in the Buffer will be 864 square feet. This office does not oppose this request. We recommend the variance approval include a condition that the required 3:1 mitigation for new disturbances to the Buffer be provided on site in the Buffer.

Please note that the total disturbance to the Buffer could be reduced if the garage is moved closer to the road so that it sits over the end of the driveway instead of at the end of the driveway.

Please provide this office with a copy of the written decision made in this case. If you have any questions, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
Executive Director

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September 21, 2004

Mr. Steve Dodd  
Dorchester County  
Department of Planning and Zoning  
PO Box 107  
Cambridge, MD 21613

Re: **DC 702 -04: # 2212 Windmill Place, LLC- James Franzoni Variance Request  
Tax Map 39, Parcel 40, Lot 2**

Dear Steve,

I have reviewed the information regarding the applicant's variance request to construct an addition onto an existing accessory structure, which serves as both a guest house and garage. A portion of this structure will encroach into the 100' Critical Area Buffer. This is a 14-acre, grandfathered property located in the LDA of Fishing Creek and Parris Cove. The property is currently developed with a main dwelling, the guest house and garage, and a third dwelling that was once used as a rental property. The proposed addition will measure 2,188 square feet; 66% of the addition, or 1,436 square feet, will encroach into the Buffer. During a site visit on May 20, 2004 with Mr. Franzoni, the applicant, and Ms. Karen Houtman, Assistant Director, Dorchester County Planning and Zoning, it was our understanding that the limits of disturbance for the addition would be located ten (10) feet east of where it is shown in this application. If so located, the Buffer encroachment would be reduced by at least 520 square feet.

Because we believe that the application does not present information sufficient for the County to make the required findings under the variance standards, we oppose this Buffer variance request. In 2002 and 2004, the Maryland General Assembly reiterated its commitment to protection of the Chesapeake Bay Critical Area's water quality and wildlife habitat values, by strengthening the Critical Area law. In particular, the General Assembly stated that variances to a local jurisdiction's Critical Area program may be granted only if a zoning board finds that an applicant has satisfied its burden to prove that the applicant meets each one of the county's variance standards, including the standard of "unwarranted hardship." The General Assembly defined

that term as follows: without the variance, the applicant would be denied reasonable and significant use of the entire parcel or lot. Because a variance of less magnitude than the one requested would allow reasonable and significant use of the applicant's property, this office believes that the standard of unwarranted hardship has not been met. In addition, I have discussed each one of the County's variance standards below:

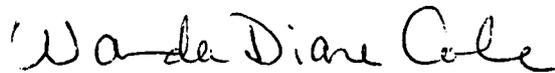
1. That special conditions or circumstances exist that are peculiar to the land or structure within the jurisdiction's Critical Area program that would result in an unwarranted hardship to the applicant. This is a 14-acre parcel developed with three dwellings, therefore, the applicant has reasonable use of the property. There is opportunity to both minimize the encroachment into the Buffer and improve the living area of the guest house.
2. That a literal interpretation of this subtitle or the local Critical Area Program and related ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical area of the local jurisdiction. The applicants have reasonable use of this property for residential purposes, and therefore, they would not be denied a right commonly enjoyed by their neighbors. Rights commonly enjoyed must be compared to the rights of other persons under the Critical Area program. There is no right to locate accessory structures in the Buffer.
3. The granting of a variance will not confer upon an applicant any special privilege that would be denied by this subtitle or the local Critical Area program to other lands or structures within the jurisdiction's Critical Area. If the variance is granted, it would confer upon the applicant a special privilege that would be denied to others in this subdivision, as well as in similar situations in the County's Critical Area. Owners of parcels must select footprints that will conform to all setbacks and development standards that apply to their lands. In this case, the applicant has opportunity to provide a footprint that minimizes encroachment into the Buffer.
4. The variance request is not based upon conditions or circumstances which are the result of the actions by the applicant, nor does the request arise from any condition conforming, on any neighboring property. The applicant meets this standard.
5. The granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the jurisdiction's Critical Area, and that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area law and the regulations. The applicant bears the burden to prove this factor, along with the others discussed above. In 2002 and 2004, the General Assembly re-enacted its findings regarding the importance of maintaining the water quality of the Chesapeake Bay and its contributing tidal watersheds. The General Assembly also reiterated the importance of the minimum 100-foot Buffer to promote the water quality and habitat goals of the legislation. Granting this variance will decrease the area available for infiltration of nutrient-laden runoff. If the Buffer is not allowed to function on this site, water quality in Fishing Creek will eventually decline. Decline in water quality

contributes to declines in aquatic habitat, ultimately affecting the viability of local fisheries and the local economies that depend on them.

In conclusion, it is our position that, unless the Board finds that the applicant has met the burden of proof on each one of the County's variance standards, the Board must deny this application.

Please provide this office with a copy of the written decision made in this case. If you have any questions, please contact me at 410-260-3481.

Sincerely,



Wanda Diane Cole  
Natural Resources Planner

cc: Marianne Mason

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

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September 21, 2004

Mr. Steve Dodd  
Dorchester County  
Department of Planning and Zoning  
PO Box 107  
Cambridge, MD 21613

Re: **DC 655-04: # 2215 Dennis R. and Mary L. Mabry Buffer Variance Request  
Tax Map 21 Parcel 70; 3502 Green Point Road**

Dear Steve,

I have reviewed the information regarding the applicant's variance request to construct a dwelling and wrap around porch to replace a dwelling and porch damaged by Hurricane Isabel. This is a grandfathered lot in the LDA of Choptank River; the lot is entirely constrained by the Buffer. The amount of new disturbance in the Buffer will measure 1,192 square feet. We do not oppose this variance request. We recommend the variance approval include a condition that the required 3:1 mitigation (3,576 square feet) for new disturbances to the Buffer be provided entirely on site.

Please provide this office with a copy of the written decision made in this case. If you have any questions, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

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September 15, 2004

Mr. Michael G. Ewing, Deputy Director  
Department of Natural Resources  
Waterway Improvement Program  
580 Taylor Avenue, E-4  
Annapolis, Maryland 21401

Re: **CM 652-04: Y-1-5 City of Cambridge Marina Expansion**

Dear Mr. Ewing,

I have reviewed the information regarding the expansion of the City-owned marina located on the Choptank River in the City of Cambridge, Dorchester County. This project is located in an area of Cambridge that was excluded from the requirements of the City's Critical Area Program, therefore, Critical Area Commission approval of this project is not required. We have no comments on the specifics of the project.

Thank you for providing the opportunity to review the proposal. Best wishes as the project moves forward.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

cc: Anne Roane, City Planner

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

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Executive Director

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September 15, 2004

Ms. Colleen J. Bonnell  
Planning Director  
Commissioners of Leonardtown  
PO Box 1  
Leonardtown, MD 20650

Re: **LE 678-04: Case # 131-04 Benjamin and Marie Garner Buffer Variance Request**

Dear Colleen,

I have reviewed the information on this variance request, which proposes the construction of a dwelling, garage, porch, patio, and walkway in the 100-foot Critical Area Buffer. This is a grandfathered lot located in the LDA of Breton Bay. We do not oppose this variance request. We recommend the variance approval include a condition that the required 3:1 mitigation for new disturbances in the Buffer be provided on-site to the extent feasible. It appears the remaining plantings could be accomplished on an adjacent lot owned by the applicant.

Please provide a copy of the written decision made in this case. If you have any questions, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
Executive Director

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September 14, 2004

Mr. Kevin Vienneau  
Charles County  
Department of Planning and Growth Management  
PO Box 2150  
La Plata, MD 20646-2150

Re: **CS 527-04: Docket # 1125 Terrence D. and Joanne Poag Buffer Variance**

Dear Kevin,

I have reviewed the applicant's revised plan for their Buffer variance request. The applicant proposes to redevelop the site, which includes a 300 square foot dining room addition onto the existing dwelling, two wooden decks, and a wooden walkway in the 100' Critical Area Buffer. This is a grandfathered property that lies within the LDA of Potomac River. The total amount of new disturbances in the Buffer measures 429 square feet.

We do not oppose this Buffer variance; however, we recommend 3:1 forest mitigation for new disturbances be provided on-site and native species be used.

Please note that the plan is unclear as to the amount of forest vegetation to be cleared outside the Buffer. According to the tabulations on the plan, the amount of forest to be cleared exceeds the amount of existing forest. The plan must clearly identify how much forest will be cleared as mitigation for clearing outside the Buffer must be provided at a 1:1 ratio.

Please provide this office with a copy of the written decision made in this case. If you have any questions, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda D. Cole".

Wanda Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
Executive Director

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September 14, 2004

Mr. Steve Dodd, Director  
Dorchester County Department of Planning and Zoning  
PO Box 107  
Cambridge, MD 21613

**RE DC 604-04: # 1057 Unity Hill Lot 1A  
Intrafamily Transfer Subdivision Plat**

Dear Steve,

I have reviewed the conceptual plat for this one-lot, intrafamily subdivision in the RCA of Little Choptank River. The plat shows proposed Lot 1A as being mostly wooded and containing wetland vegetation. I have the following comments:

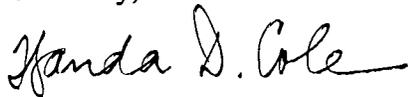
1. No information was provided on forest clearing. Appropriate mitigation must be provided for all clearing on Lot 1A.
2. The parent tract appears to contain State tidal wetlands. Additional information is needed to ensure State tidal wetlands are not included within the metes and bounds of the property. A vegetation and elevation survey of the marsh may be necessary along with a determination of the elevation of mean high water based on NOAA benchmarks and tide information. Areas below mean high water belong to the State unless the property owner holds a valid land patent approved by the State Commissioner of Land Patents
3. Nontidal wetlands on this property must be identified and delineated on the plat. If contiguous nontidal wetlands are present, the 100' Buffer must be expanded to include the nontidal wetlands. It is possible that nontidal wetlands on the residue could affect the location of the Buffer on Lot 1A.
4. The Wildlife and Heritage Service has determined that the forested area of this property may contain habitat for the Delmarva Fox Squirrel, a Federal and State-endangered species. The applicant must contact Scott Smith at the Department of Natural Resources

Wildlife and Heritage Service (WHS) for guidance on providing protection for this species. Mr. Smith may be reached at 410-827-8612. The final plat must reflect the site-specific habitat protection guidance provided by WHS. Please provide this office with a copy of the site-specific guidance provided by WHS.

5. Topography and location of soils types must be shown on the plat.
6. The name and relationship of the immediate family member must be stated on the plat. The Dorchester County intrafamily transfer provisions must be stated on the plat.

Please provide a copy of the revised plat when it is available. We may have additional comments based upon any new information. If you have any questions, please contact me at 410-260-3481.

Sincerely,



Wanda Diane Cole  
Natural Resources Planner

cc: Scott A. Smith  
William C. Craig Company, LLC

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
Executive Director

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September 14, 2004

Mr. Brian Lindlay  
Baltimore County Department of Environmental Protection  
and Resource Management  
401 Bosley Avenue, Suite 416  
Towson, Maryland 21204

**RE: BC 645-04: Dennis M. and Donna L. Ayres Buffer Variance Request  
Tax Map 97 Parcel 286 Lot 87: Cedar Avenue**

Dear Mr. Lindlay,

I have reviewed the information regarding this Buffer variance request to construct a single family dwelling, attached garage and driveway in the 100' Critical Area Buffer of Back River. This is a 0.4 acre grandfathered lot located in the LDA. This property is entirely constrained by the Buffer; therefore, any development on this lot requires a Buffer variance. The proposed development will remove 8,160 square feet of forest cover, which represents 46.83% of the site's existing forest cover. Therefore, a variance for clearing greater than 30% of the site's forest is also required. The applicant is proposing to pay a fee-in-lieu instead of planting due to the lack of available area for replanting. This office does not oppose these variance requests.

Please forward to this office a copy of the written decision made in this case. If you have any questions, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda D. Cole".

Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

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September 13, 2004

Ms. Sue Veith  
St. Mary's County Government  
Department of Land Use and Growth Management  
PO Box 653  
Leonardtown, MD 20650-0653

**Re: SM 613-04: The Woods at Myrtle Point, Sections 4, 5 & 6  
Subdivision and Construction Plans**

Dear Sue,

I have reviewed the plans for Sections 4, 5 & 6 of the Woods at Myrtle Point Subdivision and find that the proposed development will not be located within the Critical Area. It appears the limits of disturbance line for bioretention pond area #1 encroaches slightly across the Critical Area boundary line. Bioretention pond #1 must be shifted a sufficient distance away from the limits of disturbance to prevent construction equipment from encroaching into the Critical Area during construction of the embankment.

Please call me at 410-260-3481 if you have questions regarding these comments.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

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September 13, 2004

Ms. Elsa Ault  
Charles County  
Department of Planning and Growth Management  
PO Box 2150  
La Plata, MD 20646-2150

RE: CS 614-04: SFD 40497 Southport Landing Lot 8  
Tax Map 43 Parcel 57 Lot 8: Bryan Ward

Dear Elsa,

I have reviewed the site plan for this project, which proposes to construct a dwelling with garage, driveway, well and septic in the designated Resource Conservation Area of Port Tobacco River. The Buffer has been expanded for steep slopes and ends in the area where the slope measures less than 15%. The Buffer line approximates contour + 143', which measures horizontally +/- 600' from the shoreline.

We do not oppose this site plan. The development envelope is located on slopes measuring 10% or less. All of the proposed development is located outside the Buffer and forest clearing is being mitigated on-site. The mitigation planting plan will result in most of the site's open areas being established in forest vegetation.

Please note that the drainage swales will change the runoff characteristics from sheet flow to concentrated flows, which will increase runoff velocity. The discharge from these swales could erode the face of the slope. I recommend the Soil Conservation technicians be consulted as to whether grading for the driveway can be eliminated or minimized, and whether the swales can be installed with inverts flatter and wider than shown in order to spread out the flow. If these soils have high k factors, the swale inverts may need to be riprapped.

If you should have any questions regarding these comments, please don't hesitate to contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Cole".

Wanda Cole  
Natural Resources Planner

cc: Bolton Latham, LLC

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

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September 13, 2004

Mr. Bob Infussi  
Expedite, LLC Consulting  
PO Box 1043  
Bel Air, Maryland 21014

Re: **BC 596-04: Robert J. Jankalski Variance Request**  
**1351 S. Seneca Road, Baltimore County**

Dear Mr. Infussi,

Thank you for your email inquiry regarding the status of this review. Our office received information regarding this variance application on August 11, 2004 and responded with comments in a letter dated August 27, 2004 (copy enclosed). Our office does not oppose redevelopment on this lot; however opportunity exists to provide a footprint would not require a variance. It appears the dwelling could be rotated or rearranged to maintain the previous setback and still have a single-story dwelling to accommodate the owners' needs.

The authority to issue approvals for projects on privately-owned land in the Critical Area was delegated to each county and municipality. Baltimore County is the approving authority for variance requests. I recommend you contact Ms. Patricia Farr, Baltimore County DEPRM, at 410-887-3980 to inquire as to the status of the application.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Cole".

Wanda Cole  
Natural Resources Planner

cc: Patricia Farr

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

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August 27, 2004

Mr. Keith Kelley  
Baltimore County  
Department of Environmental Protection  
and Resource Management  
401 Bosley Avenue, Suite 416  
Towson, Maryland 21204

RE: **BC 596-04: 04-014 Robert Jankalski Variance Request  
Tax Map 91, Parcel 133, Lots 217-219**

Dear Keith,

I have reviewed the information regarding this variance request to raze a flood-damaged dwelling and replace it with a larger dwelling that will encroach into nontidal wetlands and the 35' setback from the nontidal wetland buffer. In addition to the nontidal wetland encroachment, the proposed dwelling will encroach into the expanded Critical Area Buffer contiguous nontidal wetlands.

While this office does not oppose redevelopment on this property, we cannot support the encroachment into the expanded Buffer. There is ample room on this property to select a footprint that will not require a variance. We recommend that the proposed dwelling be sited no closer to the shoreline than the original dwelling.

Please forward to this office a copy of the written decision made in this case. If you have any questions regarding these comments, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
*Governor*



Martin G. Madden  
*Chairman*

Michael S. Steele  
*Lt. Governor*

Ren Serey  
*Executive Director*

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September 13, 2004

Ms. Karen Houtman, Assistant Director  
Dorchester County  
Department of Planning and Zoning  
PO Box 107  
Cambridge, MD 21613

**Re: Proposed Text Amendments to Dorchester County Code  
Article VII, Chapter 155, Sections 155-13 and 155-38**

Dear Karen,

I have reviewed the proposed text amendments to Article VII, Chapter 155, Sections 155-13 and 155-38, which were submitted to our office for review on August 24, 2004. The first bill proposes language changes throughout Section 155-38 that would allow the Planning and Zoning office to review Buffer Management Plans and Critical Area planting requirements at permit application; and to allow the Planning and Zoning office to calculate fee-in-lieu payments for the forest replacement fund. These changes represent a procedural change that would remove the Forestry Board and Maryland Department of Natural Resources from the review process. This bill will also correct the mitigation ratio for non-Buffer Exempt areas from 2:1 to 3:1. We have no comments regarding the text changes in this bill.

The second bill proposes new three new definitions in Sections 155-13 regarding growth allocation, and repeals and reenacts 155-38.N with new language regarding the growth allocation processes for municipal and non-municipal growth allocation requests. We have no comments regarding the new definitions proposed in Section 155-13. We are providing the following comments regarding proposed changes to Section 155-38.N for your use:

1. Page 3 of 10, Section 155-38.N.2.c.iii., The following change is recommended:

"No more than one-half of the allocated expansion may be located in resource conservation areas. However, if the county is unable to utilize a portion of the growth

allocation within or adjacent to existing intensely developed areas or limited development areas, then that portion of the growth allocation which cannot be ~~allocated~~ **so located** may be located in the resource conservation area in addition to the expansion allocated in this section.”

2. Page 9 of 10, Section 155-38.N.3.c.iv., The following revision is recommended, **“Subsequent to the County Council hearing, tThe county or /municipal staff shall forward the growth allocation request to the State of Maryland Critical Area Commission for approval.”**
3. Page 10 of 10, the definition for Municipal Annexation Growth Allocation should read, **“Areas outside of the municipal boundary as of original adoption of the municipality’s Critical Area Program.”**

If you have any questions, please contact me at 410-260-3481, or Mary Owens at 410-260-3480.

Sincerely,



Wanda Diane Cole  
Natural Resources Planner

cc: Mary Owens  
Marianne Mason

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
Executive Director

STATE OF MARYLAND  
CRITICAL AREA COMMISSION  
CHESAPEAKE AND ATLANTIC COASTAL BAYS

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September 9, 2004

Mr. Matt Hedger, Planner  
City of Salisbury-Wicomico County  
Department of Planning, Zoning and  
Community Development  
125 North Division Street, Room 203  
PO Box 870  
Salisbury, MD 21803-0870

Re: SA 586-04: City of Salisbury Service Center  
Redevelopment Site Plan

Dear Matt,

Thank you for the Consistency Report for the above referenced project, located in the IDA of the north branch of Wicomico River, in which you find that this project is in compliance with the City of Salisbury Critical Area Program. I concur with your findings. This project has met the requirements of COMAR 27.02.02 State and Local Agency Actions Resulting in Development of Local Significance on Private Lands or Lands Owned by Local Jurisdictions.

Thank you for your participation in this process.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

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September 9, 2004

Mr. Jerry Soderberg  
DH Steffens Company  
22335 Exploration Drive, # 1020  
Lexington Park, Maryland 20653

Re: **SM 434-04: # 03-2779 Carbone Properties, LLC Variance Request  
Offsite Mitigation Proposal**

Dear Mr. Soderberg,

I have received your request to review the applicant's proposal to provide 3:1 forest mitigation plantings at an offsite area that is also located within the Critical Area. The following comments are based upon the information discussed during our telephone conversations today, and with Ms. Susan Mahoney of the St. Mary's Department of Land Use and Growth Management. I also reviewed the map you provided today which shows additional, nearby parcels owned by the applicant.

It is our understanding that the St. Mary's County Department of Land Use and Growth Management supports this variance for clearing greater than 30% of the subject parcel. The applicant proposes to provide the required 3:1 forest mitigation at an offsite area located within the Critical Area. This offsite plantings will be provided on a property located on Tax Map 73, which is also owned by the applicant. This forest mitigation will be planted to enhance an area of FIDS habitat. We will be conducting a site visit to these properties next week.

Should the St. Mary's County Board of Appeals grant the variance, we have no objection to the forest mitigation plantings being located at an offsite area, provided the planting area is located within the Critical Area and enhances FIDS habitat.

Thank you for providing the additional information. If you have any questions, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

cc: Susan Mahoney

Robert L. Ehrlich, Jr.  
*Governor*



Martin G. Madden  
*Chairman*

Michael S. Steele  
*Lt. Governor*

Ren Serey  
*Executive Director*

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September 9, 2004

Ms. Yvonne Chaillet  
St. Mary's County  
Department of Land Use and Growth Management  
PO Box 653  
Leonardtown, MD 20650-0653

**RE: SM 617-04: # 03-0830 Marshall Ludlow Buffer Variance Request**

Dear Yvonne,

This letter is a revision to the comments faxed to you in my letter, dated September 8, 2004, and supercedes those comments.

I have reviewed the information regarding the applicant's variance request, which proposes development in the 100-foot and expanded Critical Area Buffer. This request proposes to raze an existing dwelling and replace it with a new dwelling, a 30'x50' pool and deck, a circular driveway, a 24' x 24' barn, and sand mound septic disposal system. The house is proposed to be located farther from the shoreline but is larger in area than the development it replaces. Under the County's written policy for Buffer expansion, the Buffer on this lot has been expanded for contiguous hydric soils, and accordingly the entire lot is within the expanded Buffer. This is a grandfathered property located in the LDA of the County's Chesapeake Bay Critical Area.

Because we believe that the application does not present information sufficient for the County to make the required findings under the variance standards, we oppose this Buffer variance request.

In 2002 and 2004, the Maryland General Assembly reiterated its commitment to protection of the Chesapeake Bay Critical Area's water quality and wildlife habitat values, by strengthening the Critical Area law. In particular, the General Assembly stated that variances to a local jurisdiction's Critical Area program may be granted only if a zoning board finds that an applicant has satisfied its burden to prove that the applicant meets each one of the county's variance standards, including the standard of "unwarranted hardship." The General Assembly defined that term as follows: without the variance, the applicant would be denied reasonable and significant use of the entire parcel or lot.

Because a variance of less magnitude than the one requested would allow reasonable and significant use of the applicant's property, this office believes that the standard of unwarranted

hardship has not been met. In addition, I have discussed each one of the County's variance standards below::

1. That special conditions or circumstances exist that are peculiar to the land or structure within the jurisdiction's Critical Area program that would result in an unwarranted hardship to the applicant. This is a 2-acre lot, which is sufficient area for developing an ample homesite. While the redevelopment is being moved farther away from the shoreline, it is significantly greater in extent than the existing development. Pools and barns are accessory structures, which are not permitted in the Buffer. Furthermore, an existing straight driveway currently exists that could be used to access the site with significantly less impact than the proposed driveway.
2. That a literal interpretation of this subtitle or the local Critical Area Program and related ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical area of the local jurisdiction. The applicants have reasonable use of this property for residential purposes, and therefore, they would not be denied a right commonly enjoyed by their neighbors. Rights commonly enjoyed must be compared to the rights of other persons under the Critical Area program. There is no right to locate accessory structures in the Buffer. From a review of the application, we believe that there is opportunity to redevelop the site in a manner that minimizes impacts to the Buffer.
3. The granting of a variance will not confer upon an applicant any special privilege that would be denied by this subtitle or the local Critical Area program to other lands or structures within the jurisdiction's Critical Area. If the variance is granted, it would confer upon the applicant a special privilege that would be denied to others in this subdivision, as well as in similar situations in the County's Critical Area. Owners of parcels must select footprints that will conform to all setbacks and development standards that apply to their lands.
4. The variance request is not based upon conditions or circumstances which are the result of the actions by the applicant, nor does the request arise from any condition conforming, on any neighboring property. The applicant meets this standard.
5. The granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the jurisdiction's Critical Area, and that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area law and the regulations. The applicant bears the burden to prove this factor, along with the others discussed above. In 2002 and 2004, the General Assembly re-enacted its findings regarding the importance of maintaining the water quality of the Chesapeake Bay and its contributing tidal watersheds. The General Assembly also reiterated the importance of the minimum 100-foot Buffer to promote the water quality and habitat goals of the legislation. Granting this variance will contribute to the decline of water quality in the

Chesapeake Bay by considerably increasing the amount of disturbance on this site.  
Decline in water quality contributes to declines in aquatic habitat, ultimately affecting the viability of local fisheries and the local economies that depend on them.

In conclusion, it is our position that, unless the Board finds that the applicant has met the burden of proof on each one of the County's variance standards, the Board must deny this application.

Please provide this office with a copy of the written decision made in this case. If you have any questions, please contact me at 410-260-3481.

Sincerely,

*Wanda Diane Cole*

Wanda Diane Cole  
Natural Resources Planner

cc : Marianne Mason, Counsel

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
Executive Director

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September 8, 2004

Ms. Yvonne Chaillet  
St. Mary's County  
Department of Land Use and Growth Management  
23150 Leonard Hall Drive  
PO Box 653  
Leonardtown, MD 20650-0653

RE: **SM 617-04: # 03-0830 Marshall Ludlow Buffer Variance Request**

Dear Yvonne,

I have reviewed this variance application for development in the 100-foot and expanded Buffer. This request proposes to raze an existing dwelling and replace it with a new dwelling, a 30'x50' pool and deck, a circular driveway, a 24' x 24' barn, and a sand mound septic disposal system. The proposed house is to be located farther from the shoreline but is larger in area than the development it replaces. The Buffer has been expanded for contiguous hydric soils, and the result is that the entire lot is constrained by the expanded Buffer. This is a grandfathered property located in the LDA of Chesapeake Bay.

We oppose this Buffer variance request. In 2002, the Maryland General Assembly reiterated its commitment to protection of the Chesapeake Bay Critical Area's water quality and wildlife habitat values. By Chapters 431 and 432 of the 2002 Laws of Maryland, the General Assembly stated that variances to a local jurisdiction's Critical Area program may be granted only if a zoning board finds that an applicant has satisfied its burden to prove that the applicant meets each one of the county's variance standards. The Code of Maryland Regulations and County Code both provide standards a local government must use when granting a variance. Again, because the applicant must meet all of the standards in order for the Board to grant a variance, this office believes that, in this case, those standards clearly have not been met. I have outlined those standards below:

1. That special conditions or circumstances exist that are peculiar to the land or structure within the jurisdiction's Critical Area program that would result in an unwarranted hardship to the applicant. This is a 2-acre lot, which is sufficient area for developing an ample homesite. While the redevelopment is being moved farther away from the shoreline, it is significantly greater in extent. Pools and barns are accessory structures, which are restricted from the Buffer. An existing straight driveway currently exists that could be used to access the site

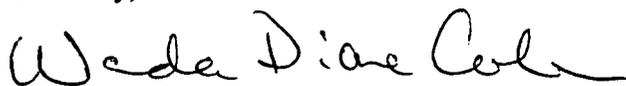
with significantly less impact to the Buffer than the proposed driveway.

2. That a literal interpretation of this subtitle or the local Critical Area Program and related ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical area of the local jurisdiction. The applicants have reasonable use of this property, and therefore, they would not be denied a right commonly enjoyed by their neighbors. There is opportunity to redevelop the site in a manner that minimizes impacts to the Buffer. The applicant's rights must be evaluated against the rights of other property owners under the Critical Area Program.
3. The granting of a variance will not confer upon an applicant any special privilege that would be denied by this subtitle or the local Critical Area program to other lands or structures within the jurisdiction's Critical Area. If the variance is granted, it would confer upon the applicant a special privilege that would be denied to others in this subdivision, as well as in similar situations in the County's Critical Area. Owners of parcels must select footprints that will conform to all setbacks and development standards that apply to their lands.
4. The variance request is not based upon conditions or circumstances which are the result of the actions by the applicant, nor does the request arise from any condition conforming, on any neighboring property. The applicant meets this standard.
5. The granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the jurisdiction's Critical Area, and that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area law and the regulations. The applicant bears the burden to prove this factor, along with the others discussed above. In 2002, the General Assembly re-enacted its findings regarding the importance of maintaining the water quality of the Chesapeake Bay and its contributing tidal watersheds. Granting this variance will directly contribute to the decline of water quality in the Chesapeake Bay by considerably increasing the amount of disturbance currently experienced on this site. Decline in water quality contributes to declines in aquatic habitat, ultimately affecting the viability of local fisheries and the local economies that depend on them.

In conclusion, it is our position that, unless the Board finds that the applicant has met the burden of proof on each one of the County's variance standards, the Board must deny this application.

Please provide this office with a copy of the written decision made in this case. If you have any questions, please contact me at 410-260-3481.

Sincerely,



Wanda Diane Cole  
Natural Resources Planner

cc : Marianne Mason, Counsel

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

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September 2, 2004

Ms. Yvonne Chaillet  
Department of Land Use and Growth Management  
23150 Leonard Hall Drive  
PO Box 653  
Leonardtown, MD 20650-0653

RE: **SM 532-04: # 04-0408 Mike Abell Variance Request**  
**Tax Map 48, Parcel 189, Lots 176 & 177**

Dear Ms. Chaillet:

I have reviewed the variance application for this project, which proposes a single-family dwelling with covered porch, a driveway and sand mound septic disposal system, located on a largely wooded lot in the LDA of Breton Bay. The project will clear more than 30% of the forest cover that exists on the property.

The reforestation information provided indicates the existing forested area is 11,615 square feet, with the proposed clearing at 5,480 square feet. The calculations for reforestation required are incorrect. The entire area cleared must be replaced at a 3:1 ratio when clearing exceeds 30%; therefore, mitigation is 16,440 square feet. The site plan also indicates that 11,000 square feet of reforestation is provided, but it does not say where. There does not appear to be room on site to accommodate all the mitigation. The applicant should specify how much mitigation will occur on site and how the remaining mitigation will be addressed.

It appears that this lot may also contain the Buffer, expanded for contiguous nontidal wetlands. If so, this project would also need a Buffer variance. The St. Mary's Soil Survey shows a large area of Othello soils in the vicinity of this parcel, as well as possibly Tidal Marsh soils, both of which are hydric. The State tidal wetland maps show tidal headwaters wrapping around the Othello soils and approaching very close to this area. I have attached copies of images printed from the MERLIN on-line database for NWI and DNR wetlands. These images also indicate large areas of both estuarine and palustrine wetlands in the vicinity of this parcel.

While we do not oppose a clearing variance on this lot, we recommend a field verification of tidal and nontidal wetlands be performed to determine whether this project will have Critical Area Buffer impacts and a Buffer variance be required if so.

Please forward a copy of the written decision made in this case. If you have any questions regarding these comments, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda D. Cole".

Wanda Diane Cole  
Natural Resources Planner

Enclosures

cc: Mike Hitchings, US Army Corps of Engineers  
Judy Cole, MDE  
Nokleby Surveying

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

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September 2, 2004

Ms. Yvonne Chaillet  
Department of Land Use and Growth Management  
23150 Leonard Hall Drive  
PO Box 653  
Leonardtown, MD 20650-0653

RE: **SM 531-04: # 03-3046 Mark Roy Variance Request**  
**Tax Map 27 Parcel 794 Lot 500-2 and Outlot AA**

Dear Ms. Chaillet:

We received a second copy of the site plan submitted for a Buffer and steep slope variance for proposed development on a grandfathered parcel located in the LDA of Cuckhold Creek. Our comments remain the same, in that we do not oppose a variance for development of this grandfathered parcel. However, we recommend the dwelling be moved forward toward the front building restriction line so that grading of steep slopes in the expanded Buffer can be avoided or minimized. If the variance is granted, we recommend 3:1 mitigation be provided for the 11,125 square feet of Buffer disturbance, for a total of 33,375 square feet of native forest plantings.

Please forward a copy of the written decision made in this case. If you have any questions regarding these comments, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda D. Cole".

Wanda Diane Cole  
Natural Resources Planner

WDC/jjd

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



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Chairman

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September 2, 2004

Ms. Yvonne Chaillet  
Department of Land Use and Growth Management  
23150 Leonard Hall Drive  
PO Box 653  
Leonardtown, MD 20650-0653

RE: **SM 434-04: # 03-2779 Carbone Properties, LLC Variance Requests  
Tax Map 73 Parcel 60**

Dear Ms. Chaillet:

I have reviewed the site plan for this project, which was submitted for variances to the Buffer and to the 30% forest clearing limit. This project proposes construction of a single-family dwelling, detached garage, relocated driveway, and sewage reserve area in the RCA of Chesapeake Bay. The site is entirely constrained by the Buffer expanded for hydric soils; therefore, all of the development is located in the Buffer. The total clearing represents 43.6% of the existing forest, based upon the 2.73 acre area east of Bay Front Drive. Bay Front Drive serves as a parcel divider on this property.

While we recognize this as a grandfathered lot with constraints, we cannot support these variances as proposed. There is opportunity to reduce the amount of clearing and impact to the Buffer by consolidating and reducing the footprint of the proposed development. In addition, we recommend the porch and septic disposal chambers be moved away from the 100-foot Buffer line, as encroachment across this line will occur during construction.

Please forward a copy of the written decision made in this case. If you have any questions regarding these comments, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

WDC/jjd



Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
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Executive Director

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August 31, 2004

Ms. Yvonne Chaillet  
St. Mary's County  
Department of Land Use and Growth Management  
23150 Leonard Hall Drive  
PO Box 653  
Leonardtown, MD 20650-0653

**RE: SM 618-04: # 04-1241 Woodward Buffer Variance Request  
Tax Map 27, Parcel 241**

Dear Yvonne,

I have reviewed the site plan for this project, which was submitted for our review as a Buffer variance request. This project proposes to construct a patio and set of stairs in the 100-foot Critical Area Buffer. This is a grandfathered property located in the LDA of Patuxent River.

We do not oppose this variance request. We recommend the variance approval include a condition that the required 3:1 mitigation for new disturbances in the Buffer be provided on-site.

Please forward a copy of the written decision made in this case. If you have any questions regarding these comments, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
Executive Director

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August 31, 2004

Ms. Yvonne Chaillet  
St. Mary's County  
Department of Land Use and Growth Management  
23150 Leonard Hall Drive  
PO Box 653  
Leonardtown, MD 20650-0653

RE: **SM 619-04: # 04-1150 Sotterly Manor Lot 13 Buffer Variance Request**  
**Tax Map 27, Parcel 241**

Dear Yvonne,

I have reviewed the site plan for this project, which was submitted for our review as a Buffer and steep slope variance request. This project proposes to construct a single-family dwelling, deck, driveway and septic disposal area in the Buffer, which has been expanded for steep slopes. The expanded Buffer constrains the entire lot. This is a grandfathered property located in the LDA of St. Thomas Creek.

We do not oppose this variance request. We recommend the variance approval include a condition that the required 3:1 mitigation for new disturbances in the Buffer be provided.

Please forward a copy of the written decision made in this case. If you have any questions regarding these comments, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
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August 27, 2004

Mr. Steve Dodd, Director  
Dorchester County  
Department of Planning and Zoning  
PO Box 107  
Cambridge, MD 21613

Re: **DC 589-04: #1054 William A. Larmore, III Subdivision, Lot 1**

Dear Steve,

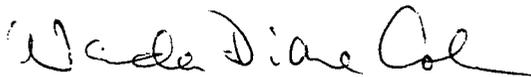
I have reviewed the plan for a one-lot subdivision proposed in the RCA of Nanticoke River and Peach Orchard Creek. Lot 1 will contain 83.64 acres, and is being created as one of five lots allowed by a conservation easement that has been recorded on this 710.16 acre property. It is unclear where Lot 1 is situated relative to the shoreline, as the vicinity map does not show the boundaries of the parent parcel, nor does it show the location of Lot 1 within it. The following comments are provided for your use.

1. The plat must provide a Critical Area note stating how many acres of the parent parcel are located in the Critical Area. The aerial information on the MERLIN database indicates the parent parcel may contain considerable tidal wetland acreage. Lot 1 contains significant areas of tidal marsh. Because the site is designated RCA, additional information is needed to ensure State tidal wetlands are not included within the metes and bounds of the property. A vegetation and elevation survey of the marsh may be necessary along with a determination of the elevation of mean high water based on NOAA benchmarks and tide information. Areas below mean high water belong to the State unless the property owner holds a valid land patent approved by the State Commissioner of Land Patents.
2. The number of available RCA density rights must be stated on the plat. Areas of State tidal wetlands must be deducted from the parcel acreage prior to calculating the RCA density rights.

3. The location of existing forested areas on Lot 1 must be shown. The amount of existing forest cover on the parent parcel and on Lot 1 must be stated in the Critical Area notes. It appears 15% afforestation may be necessary.
4. If agriculture is to be continued on Lot 1, a note must be provided to state that a 25' fully forested Buffer must be established. This note must also state that once agricultural use of the lot is discontinued, the 100' Buffer will be fully established.
5. Location of soils types must be shown on the plat. There appear to be areas of hydric soils which are associated with nontidal wetlands. Lot 1 must be evaluated for the presence of nontidal wetlands, and all nontidal wetlands must be mapped. The Buffer may need to be expanded for contiguous nontidal wetlands.
6. The MERLIN database indicates that sensitive species may occur on this property. The Wildlife and Heritage Service (WHS) must be contacted regarding the presence of rare, threatened and endangered, and their habitats. All WHS comments must be addressed on the plat prior to granting any approvals. We request a copy of the WHS determination letter and we will provide additional comments based upon any new information.

Please provide a copy of the revised plat when it is available. If you have any questions, please contact me at 410-260-3481.

Sincerely,



Wanda Diane Cole  
Natural Resources Planner

cc: Lori Byrne  
William C. Craig & Company, LLC

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
Executive Director

**STATE OF MARYLAND  
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August 27, 2004

Mr. Ronald N. Young  
Town Manager  
Town of Indian Head  
4195 Indian Head Hwy.  
Indian Head, MD 20640

Re: **IH 595-04: Lot 71 West Glymont Buffer Variance Request  
Bailey/Thompson, LLC**

Dear Ron,

Thank you for providing this site plan for review. The plan proposes redevelopment of a grandfathered lot located in the LDA of the Potomac River. The redevelopment consists of removal of a driveway, sidewalk and detached garage, and replacing them with a dwelling, driveway, attached garage and porch. The property owner will need to request a variance to allow 713 square feet of new disturbance in the 100-foot Buffer. In accordance with the provisions of the Town's Critical Area Zoning Ordinance Part III, Section 971(d)(v), the Buffer has been expanded 100 feet from the top of the bluff.

In accordance with the provisions of Critical Area Zoning Ordinance Part III, Section 955(c)(vii)E.2, the maximum allowable impervious surface limit for this lot would be 5,108 square feet. This project will create 3,655 square feet of new impervious areas and will remove 3,784 square feet of existing impervious areas, for a net decrease of 129 square feet of impervious area.

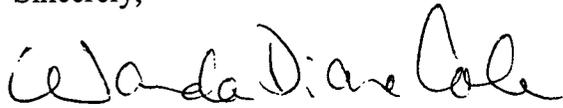
While we do not oppose redevelopment of this site, there appears to be opportunity to select a footprint that would avoid the need for a variance. Moving the house toward the road another 20 feet would avoid encroachment into the Buffer. Moving the house 10 feet and reconfiguring the deck would accomplish the same goal.

All new disturbances in the Buffer must be able to meet all of the variance standards. Mitigation for this project is required at a 3:1 ratio for all new disturbance in the Buffer. All of the mitigation plantings must be provided on-site.

We request the opportunity to review any revised plans. If a variance is granted, please provide our office with a copy of the written decision made in the case.

Please contact me at 410-260-3481 if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

cc: Jack Kontgias

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
Executive Director

**STATE OF MARYLAND  
CRITICAL AREA COMMISSION  
CHESAPEAKE AND ATLANTIC COASTAL BAYS**

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August 27, 2004

Mr. Keith Kelley  
Baltimore County  
Department of Environmental Protection  
and Resource Management  
401 Bosley Avenue, Suite 416  
Towson, Maryland 21204

**RE: BC 596-04: 04-015: 3900 New Section Road, LLC Buffer Variance Request  
Tax Map 91, Parcel 99, Lots 344 & 345**

Dear Keith,

I have reviewed the information regarding this variance request to construct a single-family dwelling in the 35' setback to the nontidal wetland Buffer on a grandfathered property located in the RCA of Seneca Creek. This property is constrained by the nontidal wetland and its 25' buffer. This office does not oppose this variance request.

Please forward to this office a copy of the written decision made in this case. If you have any questions, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
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August 27, 2004

Mr. Keith Kelley  
Baltimore County  
Department of Environmental Protection  
and Resource Management  
401 Bosley Avenue, Suite 416  
Towson, Maryland 21204

RE: **BC 596-04: 04-014 Robert Jankalski Variance Request  
Tax Map 91, Parcel 133, Lots 217-219**

Dear Keith,

I have reviewed the information regarding this variance request to raze a flood-damaged dwelling and replace it with a larger dwelling that will encroach into nontidal wetlands and the 35' setback from the nontidal wetland buffer. In addition to the nontidal wetland encroachment, the proposed dwelling will encroach into the expanded Critical Area Buffer contiguous nontidal wetlands.

While this office does not oppose redevelopment on this property, we cannot support the encroachment into the expanded Buffer. There is ample room on this property to select a footprint that will not require a variance. We recommend that the proposed dwelling be sited no closer to the shoreline than the original dwelling.

Please forward to this office a copy of the written decision made in this case. If you have any questions regarding these comments, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner



**MARYLAND**  
DEPARTMENT OF  
NATURAL RESOURCES

Robert L. Ehrlich, Jr., Governor

Michael S. Steele, Lt. Governor

C. Ronald Franks, Secretary

August 16, 2004

Memorandum

To: Tammy Broll, NRP  
Regina Esslinger, CAC  
Peter Dunbar, RAS  
Tim Larney, WHD

From: <sup>RCD</sup> Ray C. Dintaman, Jr., Director, Environmental Review Unit

Subject: U.S. Army Corps of Engineers Public Notice NN-04-04; Maintenance Dredging, Potomac River; Lower Potomac River Area; Charles County

Enclosed please find a request for comments from the U.S. Army Corps of Engineers regarding the proposed mechanical maintenance dredging of three channels in the Federal Navigation project in the Potomac River, Charles County, Maryland. Approximately 579,468 cubic yards of material will be dredged from the channels: Lower Smith Point Bar (177,142 cy), Maryland Point Bar (278,026 cy) and Nanjemoy Bar (124,300 cy). It is proposed to place the dredged material on barges and transport the material to an offloading area near Possum Point, Virginia, reslurried and pumped to an approved upland contained ash pit on the property of Dominion Generation. The location of the three channel reaches and placement site are shown on the map. Please review the submitted materials and provide any comments you may have by September 15, 2004. If no comments are received by that date we will assume that you have none. If you have any questions, please contact Roland Limpert of my staff at X-8333.

Check one:

Comments are attached.

No Comments.

Name W.D. Cole

Agency CAC

Date 08/26/04

RCD:RJL

Enclosures

**RECEIVED**

AUG 17 2004

CHESAPEAKE BAY  
CRITICAL AREA COMMISSION

CLEARINGHOUSE REVIEW

Due 8/30

August 16, 2004

**RECEIVED**

TO: Arnold Norden, Greenways and Resources Planning (E-4)  
 Glenn Therres, Wildlife (E-1)  
 Robert Beckett, State Forest and Park Service (E-3)  
 Mark S. Chaney, Natural Resources Police (E-3)  
 Ray Dintaman, Environmental Review (B-3)  
 Matthew Fleming, Education, Bay Policy & Growth Mgmt (E-3)  
 Marian Honecny, Forestry (E-1)  
 David Goshorn, Resource Assessment Services (B-3)  
 Regina Esslinger, Crit. Area Cmsn. (1804 West St., Suite 100, Annap., 21401)

AUG 18 2004

CHESAPEAKE BAY  
CRITICAL AREA COMMISSION

FROM: *ME* Michael G. Ewing, Deputy Director, Waterway Improvement Program

SUBJ: DNR Clearinghouse Review for Cambridge Municipal Yacht Basin Upgrade/Expansion

Project proposes to remove 2 existing deteriorated earth mole breakwaters; to mechanically dredge an approximately 6.02 acre area of open water to a depth of -6.0 feet at mean low water and to transport approximately 14,300 cubic yards of dredged material to an upland disposal site on Leonard Lane in Cambridge; to install 1,809 linear feet of 14-foot wide floating breakwater, 180 feet of segmented timber breakwater and 240 linear feet of fixed timber breakwater; and to install 3,307 linear feet of 8-foot wide timber collector piers, 114 finger piers and 356 mooring piles. The project will create an additional 162 boat slips and extend the boundaries of the existing marina an additional 590 feet channelward. **Note: The City of Cambridge has received permits from the U.S. Corp of Engineers and the Maryland Department of the Environment.**

Please submit any comments you may have concerning this project within two weeks of the date of this letter. If no comments are received within two weeks, it will be assumed that this project does not conflict with the programs, plans, or objectives of your Agency. If you require additional information before you can complete your review, please contact the undersigned.

CHECK ONE AND INITIAL

CHECK

INITIAL

1. The project does not conflict with the plans, programs or objectives of this Agency.
2. The project does not conflict with this Agency's plans, programs or objectives, but the attached comments are submitted for consideration.
3. The project conflicts with this Agency's plans, programs or objectives for the reasons indicated on the attachment.

*ME* (This is located in an area Excluded from Critical Area regulation)

Please return to Michael Ewing, Waterway Improvement Program, Tawes State Office Building (E-4) Annapolis, upon completion of review.

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
Executive Director

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CRITICAL AREA COMMISSION  
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August 26, 2004

Mr. Matt Hedger, Planner  
City of Salisbury-Wicomico County  
Department of Planning, Zoning and  
Community Development  
125 North Division Street, Room 203  
PO Box 870  
Salisbury, MD 21803-0870

Re: SA 586-04: City of Salisbury Service Center  
Redevelopment Site Plan

Dear Matt,

I have reviewed the information for this project, which proposes the demolition of an existing brick garage and replacing it with a larger structure. This facility is located in the IDA of the North Branch of Wicomico River. It appears the 100-foot Critical Area Buffer does not occur on this site. The 10% phosphorus pollutant removal requirement of 0.22 pounds will be met by the use of two, 4-cartridge catchbasins with Stormfilters. These cartridges use a leaf medium for filtering pollutants. I have the following comments:

1. The City must provide findings in the form of a Consistency letter that demonstrates this project is consistent with its Critical Area Program.
2. There appears to be opportunity at this site to provide tree and shrub plantings to improve the water quality on the remainder of the site.

Thank you for your participation and assistance in this process. I look forward to your letter.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

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Executive Director

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August 25, 2004

Ms. Sue Veith  
St. Mary's County Government  
Department of Land Use and Growth Management  
PO Box 653  
Leonardtown, MD 20650-0653

Re: **SM 272-04: MSUB # 04-110-031 Pettit Subdivision, Lot 1**

Dear Sue,

I recently received a revised plat from DH Steffens Co. regarding the above referenced subdivision, along with a copy of the 2001 St. Mary's Soil Conservation District Conservation Plan. I have also received a copy of the WHS comments regarding this site. I am providing the following comments for your use:

1. The WHS indicates there are no rare, threatened or endangered species or habitats within the boundaries of this project.
2. Because Lot 1 is being changed from an agricultural use to residential use, a 100-foot Buffer must be established in native vegetation as part of the subdivision approval. The Soil Conservation Plan does not address the 25-foot agricultural Buffer in the Critical Area for the parent parcel. Now that Lot 1 is being created, this plan should be updated to provide for the establishment of a fully forested 100' Buffer for Lot 1 and a 25' Buffer on the remaining agricultural lands on the parent parcel.
3. The number of RCA density rights available to the parent parcel, and the number of rights used must be stated on the plat prior to final approval. State tidal wetlands must be deducted from the parcel acreage prior to calculating density. It is not clear on the plat what the acreage is from a density standpoint.

Please call me at 410-260-3481 if you any questions.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

cc: Jerry Soderberg, Jr.



Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
Executive Director

STATE OF MARYLAND  
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August 23, 2004

Mr. Robert Tabisz  
Maryland Department of the Environment  
Tidal Wetlands Division  
1800 Washington Blvd.  
Baltimore, Maryland 21230

Re: **200463874/04-WL-1598: Bluford Putnam Dredge Material Disposal Site  
Hattie's Lane, St. Mary's County**

Dear Bob,

The dredged material disposal site is/will be located within the 1,000 foot Critical Area boundary of Rowley Bay in St. Mary's County. Construction of, or modifications to, this facility will require Critical Area review and approval through the St. Mary's County Department of Land Use and Growth Management. The applicant may contact Ms. Sue Veith at 301-475-4200 ext. 2547 for assistance in that process.

Thank you for the opportunity to comment. If you have any questions, I may be reached at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole

cc: Sue Veith

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

**STATE OF MARYLAND  
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August 23, 2004

Mr. Michael S. Kulis  
Baltimore County Department of  
Environmental Protection and Resource Management  
401 Bosley Avenue, Suite 416  
Towson, Maryland 21204

**RE: BC 547-04: Cove Point Apartments Development Plan  
CSX Realty Development Corp.**

Dear Michael,

I have reviewed the plan for the proposed development of an 11-acre property, located in the IDA of Bullneck Creek, for the construction of a 156-unit, senior apartment complex. The majority of the development is located outside the 100-foot Buffer to a tributary stream. The following comments are provided for your use.

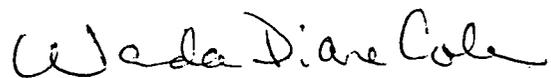
1. On the east side of the property is a structure labeled as a gabion sand filter, although it resembles a gabion toe of slope protection measure. Please provide design details for a gabion sand filter, and/or verify the type of structure that is being shown.
2. The BMPs listed on Worksheet A include an infiltration trench and surface sand filter. There is no structure on the plan labeled as a surface sand filter. Please clarify the location of a surface sand filter.
3. The infiltration trench overflows into a storage area with dewatering pipe that is not labeled. Please provide design details for this structure.
4. We recommend replacement of any forest cover removed to fulfill the policies of COMAR 27.01.05.02, wherein developed woodland shall be protected, conserved and maintained; removal of trees shall be minimized, and, where appropriate, mitigated.
5. The Wildlife and Heritage Service (WHS) must be contacted regarding the presence of rare, threatened and/or endangered species and/or their habitats on this site. All WHS



comments must be addressed on the plan. Please provide a copy of the WHS determination to our office.

Please forward the revised plans and we will provide additional comments. If you have any questions, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

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August 20, 2004

Ms. Sue Veith  
St. Mary's County Government  
Department of Land Use and Growth Management  
23150 Leonard Hall Drive  
PO Box 653  
Leonardtown, MD 20650-0653

**Re: SM 593-04: Airedele Road Turn-Around Consistency Report**

Dear Sue,

I have reviewed the findings, described in your August 11, 2004 Consistency letter, regarding the need to relocate a school bus turn-around at the end of Airedele Road. This road is located in the LDA and RCA of St. Jerome's Creek. In addition to the removal of existing pavement and construction of a new paved cul-de-sac, improvements will be provided for proper drainage. While there will be an 807 square foot net reduction in impervious areas, the new disturbance in the Buffer is 2,231 square feet. Mitigation will be provided at a 3:1 ratio. No other HPA will be affected and no tree clearing is required. Earth disturbances associated with the drainage improvements will be temporary.

In accordance with COMAR 27.02.02, we concur with your findings that this project is consistent with the County's Critical Area Program and Zoning Ordinance. We recommend a species other than switchgrass be used for mitigation, as recent studies have found that switchgrass has a tendency to become a dense, monotypic stand.

Thank you for your participation in this process.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
L. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

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August 20, 2004

Ms. Sue Veith  
St. Mary's County Government  
Department of Land Use and Growth Management  
PO Box 653  
Leonardtown, MD 20650-0653

Re: **SM 516-04: MSUB # 04-11000060 Hunter Retreat Lot 6**  
**Joseph M. Drury, et al**

Dear Sue,

I have reviewed the plat and environmental features map for this minor subdivision of a parcel that contains 62.26 acres in the RCA of Breton Bay. This parcel is currently developed with two dwellings, and will create a one-acre lot, Lot 6, around existing conditions. The existing house and shed shown on Lot 6 will be removed. The following comments are provided for your use.

1. The Wildlife and Heritage Service (WHS) must be contacted for a determination on the presence of rare, threatened and endangered species and/or their habitats on this site. All WHS comments must be addressed on the plat and plans, and a copy of the WHS determination letter must be provided to our office prior to issuance of any approvals. We may have additional comments based upon this determination.
2. The plat must include a note stating the number of RCA density rights associated with the parent parcel and how many have been used. It appears tidal wetlands may be contained within the parcel boundaries. State tidal wetlands acreage must be deducted prior to calculating the RCA density.
3. The 100-ft Buffer has been expanded for steep slopes. It appears the correct method for expansion was used- expansion to the top of the slope.
4. This subdivision represents a change in use from agricultural to residential. The 100-foot Buffer must be fully established on Lot 6.
5. The parent parcel contains 5.8% forest cover. Afforestation to 15% must be provided. We recommend the afforestation be directed to the Buffer, particularly in areas where it

would provide slope protection benefits.

Please provide a copy of the revised plan when it becomes available. If you have any questions regarding these comments, please call me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

cc: Jerry Soderberg

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
Executive Director

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July 19, 2004

Ms. Karen Arnold  
Project Planning Division  
State Highway Administration  
707 North Calvert Street  
Baltimore, Maryland 21202

Re: **CAC 33-021: SHA Project No. BA 693A21**  
**MD 695 over Chesaco Avenue, Baltimore County**

Dear Karen,

Thank you for researching the location of the Critical Area boundary relative to the limits of work for this project. Your findings show that impacts in the Critical Area are both insignificant and temporary, therefore, we concur with your determination that this project is consistent with COMAR 27.02 and Exhibit B-1 of the MOU between MDOT and CAC.

Thank you for your assistance. If you have any additional questions, please contact our office at 410-260-3460.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Cole".

Wanda Cole  
Natural Resources Planner



Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

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August 18, 2004

Ms. Sue Veith  
St. Mary's County Government  
Department of Land Use and Growth Management  
PO Box 653  
Leonardtown, MD 20650-0653

Re: **SM 517-04: MSUB # 04-110-00068 Minor Subdivision Plan  
Deerfield Farmstead A & Outparcel A  
Tax Map 63, Grid 21, Parcel 43**

Dear Sue,

I have reviewed the subdivision plan that will create Farmstead A and Outparcel A on a 20.63-acre property which contains 12.104 acres in the RCA of Church Cove. This parcel is entitled to one RCA right. It appears this right is being utilized on Farmstead A. Outparcel A is designated as not being a legal building lot. This is not a waterfront property. I am providing the following comments for your use:

1. The Wildlife and Heritage Service (WHS) must be contacted for a determination on the presence of rare, threatened and endangered species on this site. All WHS comments must be addressed on the plat and plans for this project. Please provide this office with a copy of the WHS comments prior to final approval of this subdivision.
2. According to the St. Mary's Soil Survey, Map # 32, there is a tributary stream on the northwestern boundary line. The full length of this stream has not been shown. The 100-foot Buffer must be delineated along this stream and must be expanded for contiguous nontidal wetlands. In addition, the Buffer may need to be expanded for contiguous Othello soils.
3. The MERLIN database confirms general note # 23, in that nontidal wetlands appear to be present on this site. The database indicates these wetlands are located in the area where the forested area coincides with the Othello soils. The location of these wetlands must be field-delineated on the plans, as they most likely will determine the location of the expanded Buffer.

TTY For the Deaf

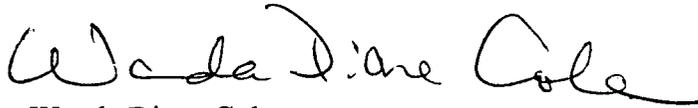
Annapolis: (410) 974-2609 D.C. Metro: (301) 586-0450



4. We recommend a Critical Area plat note that states Outparcel A has no development rights in the Critical Area.

Please call me at 410-260-3481 if you have questions regarding these comments.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole". The signature is written in black ink and is positioned above the typed name.

Wanda Diane Cole  
Natural Resources Planner



Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Governor

Martin G. Madden  
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August 18, 2004

Ms. Sue Veith  
St. Mary's County Government  
Department of Land Use and Growth Management  
PO Box 653  
Leonardtown, MD 20650-0653

Re: **SM 566-04: MSUB # 04-110-005 Shady Maple Farm Intrafamily Transfer  
Tax Map 66, Block 09, Parcel 30**

Dear Sue,

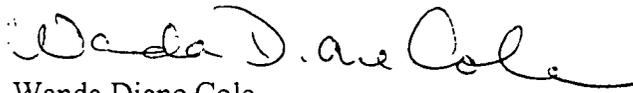
I have reviewed the plat for this minor subdivision, which is being created through the intrafamily transfer provisions. This 20.761-acre parcel contains 14.139 acres located in the RCA of Carthegena Creek. The subdivision will create Lot 1 and Farmstead 1. We do not oppose an intrafamily subdivision on this parcel. However, the plat must provide the following additional information prior to final approval:

1. The topography and location of soils types must be shown in order to determine whether the Buffer has been correctly delineated.
2. The location of forest resources must be shown in order to determine whether the Buffer needs to be established. It appears this subdivision represents a change in use from agriculture to residential. If so, the entire 100-foot Buffer must be established on Lot 1.
3. A determination must be obtained from the Department of Natural Resources Wildlife and Heritage Service (WHS) regarding the presence of rare, threatened and/or endangered species and/or their habitats on this site. All WHS comments must be addressed on the plat. A copy of the WHS comments must be provided to this office prior to final plat approval.
4. The plat should include a note that impervious surfaces are limited to 15% of each lot.

Please provide a copy of the revised plat when it becomes available. We may have additional comments based upon any new information.

Please call me at 410-260-3481 if you have questions regarding these comments.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole". The signature is written in black ink and is positioned above the printed name.

Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Governor



Martin G. Madden  
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August 18, 2004

Mr. Ronald N. Young  
Town Manager  
Town of Indian Head  
4195 Indian Head Hwy.  
Indian Head, MD 20640

Re: **IH 588-04: Lot 72 West Glymont Buffer Variance Request  
Bailey/Thompson, LLC**

Dear Ron,

Thank you for sending this site plan to construct a single-family dwelling with garage and driveway in the LDA of the Potomac River. The applicant will need to request a variance to allow 445 square feet of new disturbance in the 100-foot Buffer. In accordance with the provisions of the Town's Critical Area Zoning Ordinance Part III, Section 971(d)(v), the Buffer has been expanded to 100 feet from the top of the bluff.

The applicant has defined a site area to include that area of the property that is landward from the top of the bluff. In accordance with the provisions of Critical Area Zoning Ordinance Part III, Section 955(c)(vii)E.2, the maximum allowable impervious surface limit for this site area would be 3,972.5 square feet. This project will create 3,388 square feet of new impervious areas and will remove 1,511 square feet of existing impervious areas in the Buffer, for a net increase of 445 square feet of new disturbance in the expanded Buffer.

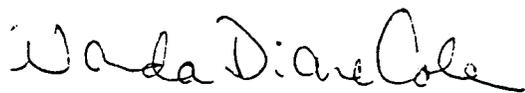
We would not oppose the granting a variance for this project as proposed, if one is requested. However, there appears to be opportunity to select a footprint that would avoid the need for a variance. All new disturbances in the Buffer must be able to meet all of the variance standards. Mitigation for this project would be required at a 3:1 ratio for all new disturbance Buffer disturbance. If removal of the 42" oak tree cannot be avoided, mitigation for its removal would be 1:1, as it is located outside the Buffer. There is opportunity to accomplish all the mitigation plantings on-site.

Please note that during our site visit today, we observed a considerable amount of kudzu growing. While this plant appears to be holding the bank together at this time, it is a non-native

and invasive species and will choke out any plant it grows over. We recommend the applicant seek guidance in preventing the kudzu from spreading any farther on this site.

Please provide this office with a copy of the written decision made in the variance case. If you have any questions regarding these comments, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

cc: Jack Kontgias

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

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/](http://www.dnr.state.md.us/criticalarea/)

August 17, 2004

Ms. Sue Veith  
St. Mary's County Government  
Department of Land Use and Growth Management  
PO Box 653  
Leonardtown, MD 20650-0653

Re: **SM 515-04: MSUB # 04-12000024 Section II, St. Jerome's Crossroads**  
**Lots 500-11 & 12-29**

Dear Sue,

I have reviewed the information regarding the second phase of this subdivision, which proposes to create Lot 500-11 in the RCA of St. Jerome's Creek. Lot 500-11 will utilize the remaining RCA density unit for this 233-acre parcel which has 86.6 acres in the Critical Area.

This plan shows lot lines for Lots 12 and 27-29 encroaching into the Critical Area. While General Notes # 15 and 19 address the fact that no development may occur in the Critical Area of these lots, we recommend the deeds include a note regarding the same.

The Wildlife and Heritage Service has provided comments on this site. In my letter dated August 3, 2004, which commented on the plans for Lots 1-10, habitat on this site does not appear to be capable of supporting populations of Grass-leaved Lady's Tresses or Crested Yellow Orchid. While FIDS habitat is present in this section of the subdivision, no development is being proposed in FIDS habitat, and the FIDS habitat is protected through Critical Area Notes 2-4, and General Note 15.

Please call me at 410-260-3481 if you have questions regarding these comments.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor



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August 11, 2004

Ms. Anne D. Roane  
City Planner  
City of Cambridge  
Planning and Zoning  
705 Leonard Lane  
Cambridge, Maryland 21613

Re: **City of Cambridge Comprehensive Review**

Dear Anne,

I am pleased to inform you that on August 4, 2004, the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays voted to approve the text amendments to Article IX of the Cambridge Zoning Ordinance with conditions. The conditions are set forth in detail below. This approval and the incorporation of the conditions will complete the City's six-year Comprehensive Review of its Critical Area Program, specifically Article IX, Part VII Critical Area District of the City Zoning Ordinance.

The Commission's approval includes the following conditions. The language shown in bold indicates new language to be added and the language shown as ~~strike through~~ indicates language to be deleted. Page numbers in brackets, i.e. [Page 10], refer to the pages in the original document submitted to the Commission for review.

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

**General Comments**

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

2. Change all references to the Chesapeake Bay Critical Area Commission to "Critical Area Commission for the Chesapeake and Atlantic Coastal Bays" or "Critical Area Commission."
3. Part I – Definitions. Add the following definition for "Dwelling Unit" that will apply within the Critical Area:

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

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

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

5. Include provisions for Intrafamily Transfers within the RCA. See Attachment A for appropriate language.
6. Include provisions for Structures on Piers. See Attachment A for appropriate language.
7. Include provisions for Shore Erosion Protection Works. See Attachment A for appropriate language.
8. Include provisions for Agriculture. See Attachment A for appropriate language.
9. Include provisions for Natural Parks. See Attachment A for appropriate language.
10. Include provisions for Forest and Woodland Protection and Commercial Timber Harvesting. See Attachment A for appropriate language.
11. Include provisions for Enforcement. See Attachment A for appropriate language.

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

1. **Definition.** Surface mining is defined as the breaking of the surface soil in order to extract or remove minerals in the Critical Area. Surface mining includes any activity or process constituting all or part of a process for the extraction or removal of minerals from their original location in the Critical Area and the extraction of sand, gravel, rock, stone, earth or fill from borrow pits for highway construction purposes or for other facilities. For the purpose of this section, surface mining is also defined as operations engaged in processing minerals at the site of extraction; removal of overburden and mining of limited amounts of any mineral when done for the purpose of prospecting and to the extent necessary to determine the location, quantity or quality of any natural deposit; and mining operations, if the affected land exceeds one acre or more in area.
  
2. **Surface mining is not a permitted use in the City.** Should the City amend its Zoning Ordinance to allow surface mining in any zone within the Critical Area, the City shall amend its Critical Area Ordinance to include appropriate language.

13. Add the following paragraph to Section 198. **“The City has an approved exclusion area identified in Section K of the City Critical Area Program. Said exclusion extends only to those developed areas of the City, designated IDA on the maps submitted with this Program and not the entire area within the City limits. The map is identified as \_\_\_\_\_ produced by \_\_\_\_\_ and dated \_\_\_\_\_.”** (Blanks to be completed based on the new map currently being developed for the City.)

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

**“Unwarranted hardship means that without a variance, an applicant would be denied reasonable and significant use of the entire parcel or lot for which the variance is requested.”**

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

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

- (1) An applicant shall have the burden of demonstrating the following:
  - A. The existence of a physical disability;
  - B. Literal enforcement of the provisions of this ordinance would result in discrimination by virtue of such disability;
  - C. A reasonable accommodation would reduce or eliminate the discriminatory effect of the provisions of this ordinance;
  - D. The accommodation requested will not substantially impair the purpose, intent, or effect, of the provisions of this ordinance as applied to the property;
  - E. Environmental impacts associated with the accommodation are the minimum necessary to address the needs resulting from the particular disability of the applicant.
- (2) The Board of Appeals shall determine the nature and scope of any accommodation under this section and may award different or other relief than requested after giving due regard to the purpose, intent, or effect of the applicable provisions of this ordinance. The Board may also consider the size, location, and type of accommodation proposed and whether alternatives exist which accommodate the need with less adverse effect.
- (3) The Board of Appeals may require, as a condition of approval, that upon termination of the need for accommodation, that the property be restored to comply with all applicable provisions of this ordinance. Appropriate bonds may be collected or liens placed in order to ensure the City's ability to restore the property should the applicant fail to do so.

**Section 197. Intent**

16. [Page 1] Revise the beginning of the first sentence to read, "The City of Cambridge has certain areas within its corporate limits that lie within the Critical Area as defined

**pursuant to...** Delete the following language, "~~The City recognizes that at the present time the intent of these laws is to minimize damage to water quality and natural habitat.~~" Add the following language regarding the purpose, intent, and goals of the Critical Area regulations:

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

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

- (1) To establish a resource protection program for the Chesapeake Bay and its tributaries by fostering more sensitive development activity for certain shoreline areas so as to minimize impacts to water quality and natural habitats; and
- (2) To implement a resource protection program on a cooperative basis between the State and affected local governments, with local governments establishing and implementing their programs in a consistent and uniform manner subject to State Criteria and oversight.

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

- (1) Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or run off from surrounding lands;
- (2) Conserve fish, wildlife, and plant habitat; and
- (3) Establish land use policies for development in the Chesapeake Bay Critical Area which accommodate growth as well as address the environmental impacts that the number, movement, and activities of people may have on the area.

**Section 198. Land Use Area**

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

The City, with approval of the Critical Area Commission (CAC), ~~has may declare certain lands in the City to be~~ designated **land within the Critical Area** as Intensely Developed Areas (IDA), Limited Development Areas (LDA), and Resource Conservation Areas (RCA), as hereinafter defined. ~~In designated~~ **On land within in these classifications, the City any land use activities or development** shall conform to the directives and regulations contained in COMAR 27.01.02 ~~for any utilization or development of land in the Chesapeake Bay Critical Area ("Critical Area"), and~~ in addition to zoning regulations affecting said land. The land shall also be subject to the provisions set forth below for each designation. In the case of conflicting provisions, the stricter provisions shall apply."

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

**At the time of the initial mapping, these areas shall have had at least one of the following features:**

- (1) **Housing density equal to or greater than four dwelling units per acre;**
- (2) **Industrial, institutional or commercial uses are concentrated in the area; or**
- (3) **Public sewer and water collection and distribution systems are currently serving the area and housing density is greater than three dwelling units per acre;**
- (4) **In addition, these features shall be concentrated in an area of at least 20 adjacent acres or that entire upland portion of the Critical Area within the boundary of a municipality, whichever is less.**

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

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

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

- (2) Accommodate additional development of the type and intensity designated by the City in this Program provided that water quality is not impaired;
- (3) Minimize the expansion of Intensely Developed Areas into portions of the Critical Area designated as Habitat Protection Areas and Resource Conservation Areas under this Program;
- (4) Conserve and enhance fish, wildlife, and plant habitats, as identified in Section 1-521, to the extent possible within Intensely Developed Areas; and
- (5) Encourage the use of retrofitting measures to address existing stormwater management problems.

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

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

- (1) Solid or hazardous waste collection or disposal facilities, including transfer stations; or
- (2) Sanitary landfills.

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

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

- (1) Non-maritime heavy industry;

- (2) **Transportation facilities and utility transmission facilities, except those necessary to serve permitted uses, or where regional or interstate facilities must cross tidal waters (utility transmission facilities do not include power plants); or**
  - (3) **Permanent sludge handling, storage and disposal facilities, other than those associated with wastewater treatment facilities. However, agricultural or horticultural use of sludge under appropriate approvals when applied by an approved method at approved application rates may be permitted in the Critical Area, except in the 100 foot-Buffer;**
  - (4) **The City may preclude additional development activities that it considers detrimental to water quality or fish, wildlife, or plant habitats within the Critical Area.**
22. [Page 1] In Paragraph 1.b (2), revise as follows, "Development plans should be altered to **avoid, minimize or mitigate** any negative impacts."
23. [Page 2] In Paragraph 1.c (2) and (3), add the following reference to the Commission's 10% Rule guidance: **Guidance for compliance with the 10% pollutant reduction requirement is provided in the manual prepared for the Commission entitled, *Critical Area 10% Rule Guidance*, dated Fall 2003, and as may be subsequently revised or amended.**
24. [Page 2] In Paragraph 1.h (1), revise the first sentence to read, "Establishment of programs by the City ~~applicant~~ for the enhancement ..."
25. [Page 2] In Paragraph 2, insert the following language pertaining to the LDA mapping standards:

**At the time of the initial mapping, these areas shall have had at least one of the following features:**

- (1) **Housing density ranging from one dwelling unit per 5 acres up to four dwelling units per acre;**
- (2) **Areas not dominated by agricultural, wetland, forest, barren land, surface water, or open space;**
- (3) **Areas meeting the conditions of Intensely Developed Area but comprising**

less than 20 acres;

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

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

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

(1) Maintain, or, if possible, improve the quality of runoff and groundwater entering the Chesapeake Bay and its tributaries;

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

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

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

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

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

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

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

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

~~program development~~ set forth in COMAR 27.01.11 **and provisions for notification of project applications set forth in COMAR 27.03.01.”**

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

**At the time of the initial mapping, these areas shall have had at least one of the following features:**

- (1) Existing density is less than one dwelling unit per five acres; or**
- (2) Dominant land use is in agriculture, wetland, forest, barren land, surface water or open space.**

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

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

- (1) Conserve, protect and enhance the overall ecological values of the Critical Area, its biological productivity and its diversity;**
- (2) Provide adequate breeding, feeding and wintering habitats for those wildlife populations that require the Chesapeake Bay, its tributaries or coastal habitats in order to sustain populations of those species.**
- (3) Conserve the land and water resource base that is necessary to maintain and support land uses such as agriculture, forestry, fisheries activities and aquaculture.**
- (4) Conserve the existing developed woodlands and forests for the water quality benefits that they provide.**

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

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

**Land use in the RCA. In addition to the uses specified above, certain nonresidential uses may be permitted in Resource Conservation Areas if it is**

determined by the City Office of Planning, Permits, and Inspections that the proposed use is one of the following:

- (1) A home occupation as an accessory use on a residential property and as provided for in the City's zoning ordinance;
- (2) A golf course, excluding main buildings and/or structures such as the clubhouse, pro-shop, parking lot, etc.;
- (3) A cemetery that is an accessory use to an existing church; provided impervious surfaces are limited to 15 percent of the site or 20,000 square feet, whichever is less;
- (4) A bed and breakfast facility located in an existing residential structure and where meals are prepared only for resident operators and guests staying at the facility;
- (5) A gun club or skeet shooting range or similar use, excluding main buildings and/or structures, such as a clubhouse, snack bar, etc.;
- (6) A day care facility in a dwelling where the operators live on the premises and there are no more than eight children;
- (7) A group home or assisted living facility with no more than eight residents;
- (8) Other uses determined by the City and the Critical Area Commission to be similar to those listed above.

**Section 199. Habitat Protection Areas (HPA)**

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

- a. **Description.** The Habitat Protection Section of the City's Critical Area ordinance addresses protection of the following four habitats: the 100-foot Buffer; Threatened and Endangered Species and Species in Need of Conservation; Plant and Wildlife Habitat Protection Areas including non-tidal wetlands; and Anadromous Fish Propagation Waters
- b. **Identification.** Maps illustrating the general location, extent and configuration of Habitat Protection Areas in the City are on file with the

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

c. The 100-foot Buffer.

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

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

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

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

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

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

(d) Maintain the natural environment of streams; and

(e) Protect riparian wildlife habitat.

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

**the Buffer:**

- (a) **The Buffer shall be established at a minimum distance of 100 feet landward from the mean high water line of tidal waters, the edge of tributary streams and the landward edge of tidal wetlands within the Critical Area.**
- (b) **The Buffer shall be expanded beyond 100 feet to include contiguous sensitive areas such as steep slopes, hydric soils or highly erodible soils whose development or disturbance may impact streams, wetlands or other aquatic environments. In the case of contiguous slopes of 15 percent or greater the Buffer shall be expanded 4 feet for every one percent of slope or to the top of the slope, whichever is greater in extent.**
- (c) **New development activities including structures, roads, parking areas and other impervious surfaces, mining and related facilities or septic tanks may not be allowed in the Buffer except for those necessarily associated with Water-Dependent Facilities approved under the applicable sections of this ordinance.**
- (d) **The Buffer shall be maintained in natural vegetation, but may include planted vegetation where necessary to protect, stabilize, or enhance the shoreline. When lands are proposed to be developed or converted to new uses, the Buffer shall be established. In establishing the Buffer, management measures, including planting, shall be undertaken to provide forest vegetation that assures the Buffer functions as set forth in this section.**
- (5) **Agriculture in the Buffer. Agricultural activities are permitted in the Buffer, if, as a minimum best management practice, a 25-foot vegetated filter strip measured landward from the mean high water line of tidal waters, from the edge of tidal wetlands, and from the edge of tributary streams, whichever is further inland, is established and further provided that:**
  - (a) **The filter strip shall be composed of either trees with a dense ground cover or a thick sod of grass and shall be so managed as to provide water quality benefits and habitat protection consistent with the policies stated above. Noxious weeds which occur in the filter strip, may be controlled by authorized means;**

- (b) The filter strip shall be expanded by a distance of 4 feet for every 1 percent of slope, for slopes greater than 6 percent;
  - (c) The 25-foot vegetated filter strip shall be maintained until such time as the landowner is implementing, under an approved Soil Conservation and Water Quality Plan, a program of best management practices for the specific purposes of improving water quality and protecting plant and wildlife habitat; and provided that the portion of the Soil Conservation and Water Quality Plan being implemented achieves the water quality and habitat protection objectives of the 25-foot vegetated filter strip;
  - (d) The best management practices shall include a requirement for the implementation of a grassland and manure management program where appropriate and that the feeding or watering of livestock, may not be permitted within 50 feet of the mean high water line of tidal water, the edge of tributary streams and the landward edge of tidal wetlands, whichever is further inland;
  - (e) Clearing of existing natural vegetation in the Buffer is not allowed; and
  - (f) Farming activities, including the grazing of livestock, do not disturb stream banks, tidal shorelines or other Habitat Protection Areas as described in this ordinance.
  - (g) Where agricultural use of lands within the Buffer ceases and the lands are proposed to be converted to other uses, the Buffer shall be established. In establishing the Buffer, management measures shall be undertaken to provide forest vegetation that assures the Buffer functions set forth in this section of the ordinance.
- (6) **Timber harvests in the Buffer.** The Buffer shall be managed to achieve or enhance the policies stated in this section. Cutting or clearing of trees within the Buffer shall be prohibited except that:
- (a) Commercial harvesting of trees by selection or by the clearcutting of loblolly pine and tulip poplar may be permitted to within 50 feet of the landward edge of the mean high water line of tidal waters and

perennial tributary streams, or the edge of tidal wetlands, provided that this cutting is conducted in conformity with the forest and developed woodland and commercial timber harvest provisions of this ordinance and in conformance with a Timber Harvest Plan and/or Buffer Management Plan prepared by a registered, professional forester and approved by the Maryland Department of Natural Resources.

- (b) A Buffer Management Plan and/or Timber Harvest Plan shall be required for all commercial harvests within the Buffer, regardless of the size of the area to be cut, and shall comply with the following minimum requirements:
  - A. Disturbance to stream banks and shorelines shall be avoided;
  - B. Areas disturbed or cut shall be replanted or allowed to regenerate in a manner that assures the availability of cover and breeding sites for wildlife and re-establishes the wildlife corridor function of the Buffer;
  - C. The cutting does not involve the creation of logging roads and skid trails within the Buffer; and
  - D. Commercial harvesting practices shall be conducted to protect and conserve the Habitat Protection Areas in accordance with the applicable sections of this ordinance.
- (c) Commercial harvesting of trees, by any method, may be permitted to the edge of intermittent streams provided that the cutting is conducted pursuant to the requirements of regarding Habitat Protection Areas.
- (7) Tree cutting in the Buffer. The Buffer shall be managed to achieve or enhance the policies for the Buffer stated in this section. Individual trees may be cut for personal use provided the cutting does not impair water quality or existing habitat value or other functions of the Buffer. Any cutting in compliance with the provisions specified herein shall require a Buffer Management Plan approved by the Planning Commission or their designee. Cutting of trees or clearing of vegetation within the Buffer shall be prohibited except that:

- (a) **Cutting of trees or removal of natural vegetation may be permitted where necessary to provide access to private piers, or to install or construct a shore erosion protection device or measure, or a water-dependent facility, providing the device, measure or facility has received all necessary State and Federal permits.**
- (b) **Individual trees may be cut for personal use providing that this cutting does not impair the water quality or existing habitat value or other functions of the buffer as set forth in the policies of this plan and provided that the trees are replaced on an equal basis for each tree cut.**
- (c) **Individual trees may be removed which are in danger of falling and causing damage to dwellings or other structures, or which are in danger of falling and therefore causing the blockage of streams, or resulting in accelerated shore erosion.**
- (d) **Horticultural practices may be used to maintain the health of individual trees.**
- (e) **Other cutting techniques may be undertaken within the Buffer and under the advice and guidance of the State Departments of Agriculture and Natural Resources, if necessary to preserve the forest from extensive pest or disease infestation or threat from fire.**

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

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

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

- (1) **"Plant habitat" means a community of plants commonly identifiable by the composition of its vegetation and its physiographic characteristics.**
- (2) **"Wildlife habitat" means those plant communities and physiographic features that provide food, water and cover, nesting, and foraging or feeding conditions necessary to maintain populations of animals in the Critical Area.**

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

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

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

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

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

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

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

**and appropriate protection and conservation measures may be obtained from the Department of Natural Resources.”**

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

**General policies. The policies of the City regarding plant and wildlife habitat in the Critical Area shall be to:**

- 1. Conserve wildlife habitat in the Critical Area;**
- 2. Protect those wildlife habitats that tend to be least abundant or which may become so in the future if current land-use trends continue;**
- 3. Protect those wildlife habitat types which are required to support the continued presence of various species;**
- 4. Protect those wildlife habitat types and plant communities which are determined by the City to be of local significance;**
- 5. Protect Natural Heritage Areas.**

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

- 1. Any development or significant land use change of property located within the Critical Area of the City will require a site specific survey to determine the presence of any plant and wildlife habitat areas. The survey shall be submitted along with design plans and a written description of the measures the property owner proposes to take to protect the habitats identified. This information concerning habitats will be incorporated onto the Resource Inventory Maps for future reference.**
- 2. The City may seek additional information and comments from the Department of Natural Resources and other appropriate agencies.**
- 3. For development activities in RCA and LDA, wildlife corridors shall be established and used to connect areas left in forest cover with any large forest tracts, which are located outside of the area of the property being**

**developed or subdivided. The area left in forest cover shall be adjacent to larger forest, not left as an isolated island of trees. Planting required as a mitigation measure shall also be adjacent to other habitat.**

- 4. Buffer areas for colonial water bird (heron, egret, tern, and glossy ibis) nesting sites shall be established (if such birds are found to exist in the Critical Area) so that these sites are protected from the adverse impacts of development activities and from disturbance during the breeding season.**
- 5. New water-dependent facilities shall be located to prevent disturbance to sites of significance to wildlife such as historic, aquatic staging and concentration areas for waterfowl.**
- 6. Protection measures, including a buffer area, shall be established where appropriate, for other plant and wildlife habitat sites identified in this ordinance.**
- 7. Forested areas required to support wildlife species identified as threatened and endangered, or in need of conservation, shall be protected and conserved by developing management programs which have as their objective, conserving the wildlife that inhabit or use the areas. Development activities, or the clearing or cutting of trees, which might occur in the areas, shall be conducted so as to conserve riparian habitat, forest interior wildlife species and their habitat. Management measures may include incorporating appropriate wildlife protection elements into Timber Harvest Plans, Forest Management Plans, cluster zoning or other site design criteria, which provide for the conservation of wildlife habitat. Measures may also include Soil Conservation Plans, which have wildlife habitat protection provisions appropriate to the areas defined above, and incentive programs, which use the acquisition of easements and other similar techniques.**
- 8. When development activities, or the cutting or clearing of trees, occurs in forested areas, to the extent practical, corridors of existing forest or woodland vegetation shall be maintained to provide effective connections between wildlife habitat areas.**
- 9. Those plant and wildlife habitats considered to be of local significance by the City shall be protected. Examples of these are those whose habitat values may not be of statewide significance, but are of importance locally or regionally because they contain species uncommon or of limited occurrence in the jurisdiction, or because the species are found in unusually high**

concentrations.

10. **Natural Heritage Areas shall be protected from alterations due to development activities or cutting or clearing so that the structure and species composition of the areas are maintained.**
11. **The determination of the existence and extent of these plant and wildlife habitats, and the development of appropriate protection measures shall result from a cooperative effort between the local jurisdiction and appropriate public or private agencies. If the Secretary of the Department of Natural Resources designates additional species by regulation in the future, local public hearings, as appropriate, shall be held to consider comments on these areas and the protection measures proposed for these species. The protection measures shall be adopted within 12 months of the date of the Secretary's designation.**

46. [Page 12] In Paragraph 2.f.(3) change the time of year restriction to "... be prohibited between March 1 and ~~May~~ **June 15.**"
47. [Page 12] In Paragraph 2.g, correct the COMAR citations for nontidal wetlands to **26.23.01 through 26.23.06.**

#### **Section 200. Water Dependent Facilities**

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

#### **Section 201. Maps**

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

#### **Section 202. Variances**

50. [Page 15] In Section 202, Paragraph 1, add the following language at the end of the paragraph, "**In considering an application for a variance, the City shall presume that the specific development activity in the Critical Area that is subject to the application and for which a variance is required does not conform with the general purpose and intent of Natural Resources Article, Title 8 Subtitle 18, COMAR Title 27, and the requirements of the City's Critical Area Program.**"

51. [Page 15] Paragraph 2.d, revise as follows, "That the variance request is not based upon conditions or circumstances which are the result of actions by the applicant, **including the commencement of development activity before an application for a variance has been filed**, nor does the request arise from any conditions conforming, on any neighboring property."
52. [Page 15] Paragraph 3, add the following language, "**The Board of Zoning Appeals shall make written findings reflecting analysis of each standard. The applicant has the burden of proof and the burden of persuasion to overcome the presumption of nonconformance established in paragraph (1) above. The City shall notify the Critical Area Commission of their decision.**"
53. [Page 15] Add a Paragraph 4 and include the following language:
  - (4) **Findings. Based on competent and substantial evidence, the Town shall make written findings as to whether the applicant has overcome the presumption of nonconformance as established in paragraph (a) above. With due regard for the person's technical competence, and specialized knowledge, the written findings may be based on evidence introduced and testimony presented by:**
    - (a) The applicant;
    - (b) The City or any other government agency; or
    - (c) Any other person deemed appropriate by the City.

**Section 203. Nonconforming Uses and Lots in the Critical Area**

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

**Grandfathering.**

- (1) **Continuation of existing uses. The City shall permit the continuation, but not necessarily the intensification or expansion, of any use in existence on the date of Program approval, unless the use has been abandoned for more than one year or is otherwise restricted by existing local ordinances. If any existing use does not conform to the provisions of the Program, its intensification or expansion may be permitted only in accordance with the variance procedures set forth in this ordinance.**
- (2) **Residential density. Except as otherwise provided, the City shall permit the types of land described in the following subsections to be developed in accordance with density requirements in effect prior to the adoption of the**

**Critical Area Program notwithstanding the density provisions of the Program. The City shall permit a single lot or parcel of land that was legally of record on the date of Program approval to be developed with a single-family dwelling if a dwelling is not already placed there (not withstanding that such development may be inconsistent with the density provisions of this ordinance) provided that:**

- (a) It is on land where development activity has progressed to the point of the pouring of foundation footings or the installation of structural members.**
- (b) It is a legal parcel of land, not being part of a recorded or approved subdivision, that was recorded as of December 1, 1985 and land that was subdivided into recorded, legally buildable lots, where the subdivision received the City's final approval prior to June 1, 1984 if:
  - i. At the time of development, the land is brought into conformance with the Critical Area Program insofar as possible, including the consolidation or configuration of lots not individually owned and these procedures are approved by the Critical Areas Commission; or**
  - ii. The land has received a building permit subsequent to December 1, 1985, but prior to local Program approval.****
- (c) It is on land that was subdivided into recorded, legally buildable lots, where the subdivision received the City's final approval between June 1, 1984 and December 1, 1985; and**
- (d) It is on land that was subdivided into recorded, legally buildable lots, where the subdivision received the final approval after December 1, 1985 and provided that either development of any such land conforms to the IDA, LDA OR RCA requirements in this chapter or the area of the land is counted against the Growth Allocation permitted under this ordinance.**

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

**Section 204. Amendments**

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

**Program amendments.** The City Commissioners may from time to time amend the City Critical Area Program. All such amendments shall also be approved by the Critical Area Commission as established in Section 8-1809 of the Critical Area Law. No such amendment shall be granted without approval of the Critical Area Commission. Standards and procedures for Critical Area Commission approval of proposed amendments are as set forth in the Critical Area Law Section 8-1809(i) and Section 8-1809(d), respectively. In addition, the City Commissioners shall comprehensively review their entire Critical Area Program and propose any necessary amendments as required at least every six (6) years.

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

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

**Section 205. Site Plan Review**

56. [Page 16] In Section 205.1, revise as follows, "... site plans wholly or partially within the Critical Area to the CAC for review and comment. In addition, all special exceptions, conditional uses, variances, and rezonings shall be forwarded to the CAC for review and comment."
57. [Page 17] In Paragraph 1.f, revise to read, "Development in the IDA and LDA in which the land disturbance does not exceed 15,000 square feet."

58. [Page 17] In Paragraph 2.c, revise to read, "Parcel/lot lines **and acreage.**"
59. [Page 17] In Paragraph 2.e, revise to read, "Percentage area of parcel/lot covered by forest vegetation **and percentage of existing forest area to be cleared.**"
60. [Page 17] In Paragraph 2.f, add "**and appropriate topographic information at the City's discretion.**"

### Section 206. Growth Allocation

61. [Page 17] In Paragraph 1, last sentence, revise as follows, "The purpose is to designate areas of the Critical Area where the Planning Commission and City Commissioners may approve a change in the current land management classification on specific sites, **so that they may be developed to the extent permitted by this chapter and the new land use management classification.**"
62. [Page 18] In Paragraph 2, revise the first sentence to read, "Locating growth allocation in the City of Cambridge **shall be** is consistent with the ~~City's County's~~ Growth Allocation guidelines."
63. [Page 18] In Paragraph 2, add the following two additional guidelines: "**New IDAs should be located where they minimize their impacts to the defined land uses of the RCA;**" and "**New IDAs and LDAs in the RCA should be located at least 300 feet beyond the landward edge of tidal wetlands or tidal waters.**"
64. [Page 18] Add to section 3, "**The evaluation of growth allocation applications relative to the acreage deducted shall be based upon a parcel's configuration as of December 1, 1985.**"
65. [Page 18] Revise Paragraph 3.b to read, "If any portion of a lot or parcel located in the RCA is not awarded Growth Allocation, **this portion** ~~the remainder~~ of the lot or parcel shall contain at least twenty (20) contiguous acres or the Critical Area acreage of the entire parcel not in **State** tidal wetlands shall be deducted from the City's Growth Allocation."
66. [Page 18] Delete Paragraph 3.c.
67. [Page 18] Insert the following language as Paragraph 3.d regarding development envelopes:

**In order to allow some flexibility in the use of growth allocation when development is**

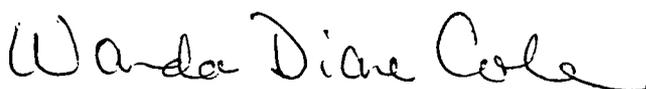
only proposed on a portion of the property, the following methodology may be used for parcels designated as RCA. On a parcel proposed for the use of growth allocation, a single development envelope may be specified, and the acreage of the development envelope rather than the acreage of the entire parcel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

- A. The development envelope shall include individually owned lots, required buffers, impervious surfaces, roads, utilities, stormwater management measures, on-site sewage disposal measures, any areas subject to human use such as active recreation areas, and any additional acreage needed to meet the development requirements of the criteria. The required buffers refer to the minimum 100-foot Buffer and the 25-foot nontidal wetlands buffer.
- B. Only one development envelope shall be established per parcel of land.
- C. If a development envelope is proposed in the RCA, a minimum of 20 acres must remain outside of the development envelope or the acreage of the entire parcel must be deducted. If the original parcel in the RCA is less than 20 acres, then the acreage of the entire parcel must be deducted. If there is a permanently protected Resource Conservation Area (an area protected by easement) adjacent and contiguous to a residue that is less than 20 acres, that will result in a minimum 20-acre residue, then the entire parcel does not have to be deducted.
- D. The minimum 20-acre residue outside of the development envelope may be developed at an RCA density unless some type of permanent protection exists that restricts development.

These changes shall be incorporated into the City's Critical Area Program within 120 days of the date of this letter. Please provide a copy of the City's revised Zoning Ordinance as soon as the document is available.

Thank you for your assistance during this process. If you have any questions, please contact me at 410-260-3481.

Sincerely,



Wanda Diane Cole  
Natural Resources Planner

ATTACHMENT A

**Section \*\*\*. Intrafamily Transfers.**

- (a) **Definitions.** In this section the following words have the meanings indicated:
- (1) "Bona Fide Intrafamily Transfer" means a transfer to a member of the owner's immediate family of a portion of the owner's property for the purpose of establishing a residence for that family member.
  - (2) "Immediate Family" means a father, mother, son, daughter, grandfather, grandmother, grandson or granddaughter.
- (b) **Applicability.** The City shall permit bona fide intrafamily transfers to be made only from parcels of land that:
- (1) Were of record on March 1, 1986; and
  - (2) Are 7 acres or more and less than 60 acres in size.
- (c) **Required subdivision.** A bona fide intrafamily transfer from a parcel of land shall be a subdivision of the parcel of land that is subject to approval under the Subdivision Regulations of the City.
- (d) **Approval of subdivision of parcels.** The City may approve the subdivision of a parcel of land into the number of lots indicated in this subsection by means of a bona fide intrafamily transfer and may not approve any greater subdivision of the parcel of land or any portion of it as follows:
- (1) A parcel that is seven acres or more and less than 12 acres in size may be subdivided into two lots.
  - (2) A parcel that is 12 acres or more and less than 60 acres in size may be subdivided into three lots. The lots may be created at different times.
- (e) **Conditions of approval.** As a condition of approval the City shall require that:
- (1) Any deed for a lot that is created by a bona fide intrafamily transfer shall contain a covenant approved by the City Attorney stating that the lot is created subject to the provisions of Natural Resources Article Section 8-1808.2, Annotated Code of Maryland, and
  - (2) A lot created by a bona fide intrafamily transfer may not be conveyed subsequently to any person other than a member of the owner's immediate family, except under provisions set forth in (f) of this section.

- (3) This subsection does not prevent the conveyance of the lot to a third party as security for a mortgage or deed of trust.
- (f) **Standards and procedures for subsequent conveyance of lots.** The City has established standards and procedures for bona fide intrafamily transfers as part of this program which will permit the subsequent conveyance of lots to persons other than immediate family members. The standards and procedures shall assure that:
- (1) The lot was created as part of a bona fide intrafamily transfer and not with the intent of subdividing the original parcel of land for purposes of ultimate commercial sale; and
  - (2) A change in circumstances has occurred since the original transfer was made that is not inconsistent with this subtitle and that warrants an exception; or
  - (3) Other circumstances that are consistent with this subtitle and with the Critical Area Criteria to maintain land areas necessary to support the protective uses of agriculture, forestry, open space and natural habitats in Resource Conservation Areas and thus warrant an exception.

### **Section \*\*\*.Structures on Piers.**

- (a) **Definition.** Pier means any pier, wharf, dock, walkway, bulkhead, breakwater, piles or other similar structure. Pier does not include any structure on pilings or stilts that was originally constructed beyond the landward boundaries of State or private wetlands.
- (b) **Standards.** Except as provided in paragraphs (1), (2), and (3) below, the City may not issue a building permit for any project involving the construction of a dwelling unit or other non-water-dependent structure on a pier located on State or private tidal wetlands within the Critical Area.
  - (1) The City may issue a building permit for a project involving the construction of a dwelling unit or other non-water-dependent- structure on a pier located on State or private wetlands within the Critical Area that was issued a permit by the Department of Natural Resources on or before January 1, 1989.
  - (2) The City may issue a building permit for a project involving the construction of a dwelling unit or other non-water-dependent- structure on a pier located on State or private wetlands within the Critical Area if the following conditions exist:
    - A. The project is constructed on a pier that existed as of December 1, 1985 that can be verified by a Department of Natural Resources aerial photograph dated 1985, accompanied by a map of the area;

- B. The project does not require an expansion of the pier greater than 25% of the area of piers or dry docks removed on the same property; however, additional expansion may be allowed in the amount of 10% of the water coverage eliminated by removing complete piers from the same or other properties. If the horizontal surface of a pier to be removed is not intact, but pilings identify its previous size, then that area may be used in determining the additional expansion permitted. The project expansion based on water coverage eliminated can be considered only if all nonfunctional piers on the property are removed except for the project pier. The total expansion may not exceed 35% of the original size of the piers and dry docks removed;
  - C. The project is approved by the City Office of Planning, Permits, and Inspections;
  - D. The project is located in an Intensely Developed Area (IDA) as designated in programs approved by the Critical Area Commission.
- (3) The City may issue a building permit for the repair of an existing dwelling unit or other non-water-dependent- structure on a pier located on State or private wetlands within the Critical Area.
- (4) If a structure that is not water-dependent is to be permitted by the City under the exceptions included in this Section, an applicant is required to demonstrate that the project will meet the following environmental objectives using the standards established under the City=s Critical Area Program:
- A. The construction and operation of the project will not have a long term adverse effect on the water quality of the adjacent body of water;
  - B. The quality of stormwater runoff from the project will be improved; and
  - C. Sewer lines or other utility lines extended for the pier will not affect the water quality of adjoining waters.

**Section \*\*\*. Shore Erosion Protection Works.**

- (a) **Definition.** Shoreline erosion protection works means those structures or measures constructed or installed to prevent or minimize erosion of the shoreline in the Critical Area. The use of structural devices to protect the shoreline from erosion can result in a significant disturbance to the aquatic environment and increase erosion downstream. This section sets forth a plan for limiting the use of structural erosion control devices to only those areas where major erosion problems exist. As an alternative to structural erosion controls, the City encourages the use of non-structural controls such as marsh

creation, maintenance of buffer zones, and the establishment of natural barriers to prevent intrusion on fragile vegetated shorelines. The criteria set forth in this chapter are not intended to apply to those structures necessarily associated with water-dependent facilities as discussed in the water-dependent facilities section of this ordinance.

- (b) **General policies.** In protecting shore areas from erosion the City shall follow these policies:
- (1) Encourage the protection of rapidly eroding portions of the shoreline in the Critical Area by public and private landowners;
  - (2) Where such measures can effectively and practically reduce or prevent shore erosion, encourage the use of non-structural shore protection measures in order to conserve and protect plant, fish and wildlife habitat.
- (c) **Identification.** The shoreline areas of Cambridge were surveyed to identify those areas where erosion was occurring and where erosion control would or would not be needed. Areas where non-structural erosion control devices could be effectively used were identified as well as areas where erosion was so severe that only structural measures could be effectively used to control the erosion. The study considered the following criteria and shoreline characteristics:
- (1) Areas where no appreciable erosion appeared;
  - (2) Areas where appreciable erosion appeared and where non-structural measures would be practical and effective; and
  - (3) Areas where appreciable erosion appeared and where non-structural measures would **not** be practical in controlling erosion.
- (d) **Standards for erosion protection.** The City shall require that each application for shore erosion protection meet the following standards:
- (1) Structural control measures shall only be used in areas where appreciable erosion occurs and where non-structural measures would not be practical or effective in controlling erosion.
  - (2) Where structural erosion control is required, the measure that best provides for conservation of fish and plant habitat, and which is practical and effective shall be used;
  - (3) Non-structural measures shall be utilized in areas of erosion where they would be a practical and effective method of erosion control ;

- (4) Structural erosion measures shall not be encouraged in areas where no significant erosion occurs;
  - (5) If significant alterations in the characteristics of a shoreline occur, the measure that best fits the change may be used for sites in that area.
- (e) **Shoreline changes.** The City recognizes that storms and other natural events may change current shoreline erosion patterns. As such, an individual may request the use of a structural erosion control device in an area currently designated for non-structural controls. This request to the City must be accompanied by documentation which identifies the specific location of the site to be protected, and a description of the event or events which led to the change in the erosion pattern. Notification of such a request shall be sent to the City Office of Planning, Permits and Inspections for the review of that office.
- (f) **Process.** The City, in reviewing any application for a permit for structural erosion control devices, shall refer the application to the Soil Conservation District and to the Department of Natural Resources for field verification of the need for the structural erosion control as well as for recommendations on proposed erosion control mechanisms.
- (1) Any application made to the City for the installation of an erosion control device must, at a minimum, include the following information:
    - A. Photograph of erosion problem;
    - B. The specific location of the site on a USGS 7.5 topographic map;
    - C. Soil type and erodibility;
    - D. Proposed and existing land use.
  - (2) Applications must include appropriate authorization from the Maryland Department of the Environment and the U.S. Army Corps of Engineers.
  - (3) For shore erosion control projects that involve clearing of forest vegetation within the Buffer, applicants shall be required to reforest the impacted area of the Buffer.

### **Section \*\*\*. Agriculture.**

- (a) **General policies.** The City shall follow all of the following policies with regard to agriculture in the Critical Area:
- (1) Assure that agricultural lands are identified and that programs are established for the Critical Area to maintain, where appropriate, agricultural lands in agricultural use, to the greatest extent possible.

- (2) Recognize that agriculture is a protective land use that should be properly managed so that it minimizes its contribution to pollutant loadings to the Bay and its tributaries.
  - (3) Assure that the creation of new agricultural lands is not accomplished:
    - A. By diking, draining or filling of any nontidal wetlands unless mitigation is accomplished in accordance with applicable State and City regulations;
    - B. By clearing of forests or woodlands on soils with a slope greater than 15 percent; or on soils with a "K" value greater than .35 and slope greater than 5 percent;
    - C. If the clearing will adversely affect water quality or will destroy plant and wildlife habitat as defined in this ordinance; or
    - D. By the clearing of existing natural vegetation within the Buffer as defined in this ordinance.
  - (4) Assure that the drainage of non-tidal wetlands for the purpose of agriculture be done in accordance with a Soil Conservation and Water Quality Plan, approved by the County Soil Conservation District.
  - (5) Assure that Best Management Practices for the control of nutrients, animal wastes, pesticides and sediment runoff be used to protect the productivity of the land base and enhance water quality. These practices shall minimize contamination of surface and groundwater and further, shall minimize adverse effects on plants, fish and wildlife resources.
  - (6) Assure that animal feeding operations, including retention and storage ponds, feed lot waste storage and manure storage minimize the contamination of water bodies.
  - (7) Assure that agricultural activity permitted within the Critical Area use Best Management Practices in accordance with a Soil Conservation and Water Quality Plan approved by the County Soil Conservation District.
- (b) **Identification.** The City of Cambridge recognizes the County's intent to maintain agriculture and forestry as viable and productive land uses. The County has developed an Agricultural Protection Plan as part of the Critical Area Program. These plans have been developed in cooperation with the Soil Conservation Districts, the County Agricultural Land Preservation Advisory Boards and other appropriate agencies. The County has inventoried and mapped the general extent of agricultural lands within the Critical Area and has also mapped the Habitat Protection Areas referenced in Sections 1-122 through 1-123 and Sections 1-126 through 1-129 of this ordinance. These maps shall be used to

make an initial determination regarding how a proposed agricultural activity may adversely impact a Habitat Protection Area.

(c) **Standards.** The following performance standards shall be adopted for all land in agricultural use or to be converted to agricultural use within the Critical Area:

- (1) The City hereby incorporates the agricultural components of the Clean Water Act and other State and local water quality programs into this ordinance. These components shall be applicable to all agricultural activities in the Critical Area.
- (2) Soil Conservation and Water Quality Plans and Best Management Practices shall be developed and implemented for those portions of farms which lie within the Critical Area. Local farmers shall cooperate with the County Soil Conservation District for approval of their proposed plans. Landowners who have signed up as Conservation District operators but who do not have a Conservation Plan prepared for them by the local Conservation District shall be allowed to continue to farm until a Conservation Plan is developed provided that the goals of this program are being met.
- (3) A landowner shall select and implement, with the assistance of a technically trained soil conservation planner or technician, from among the several best management practices that minimize impacts to water quality, conserve fish, wildlife, and plant habitat, and integrate best with the farming operation.
- (4) Until such time as the farm plans are developed and implemented, farmers shall as a part of the program be encouraged to use the following practices:
  - A. Cover crops shall be planted to reduce erosion.
  - B. Nutrients shall be applied at the appropriate time and appropriate methods shall be used.
  - C. Reduced tillage (e.g. no-till) practices shall be utilized where practical.
  - D. Crop rotations shall be implemented.

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

- (1) The filter strip shall be composed of either trees with a dense ground cover or a thick sod of grass and shall be so managed as to provide water quality benefits and habitat protection consistent with the policies stated above. Noxious weeds which occur in the filter strip, may be controlled by authorized means;
- (2) The filter strip shall be expanded by a distance of four feet for every one percent of slope, for slopes greater than six percent;
- (3) The 25-foot vegetated filter strip shall be maintained until such time as the landowner is implementing, under an approved Soil Conservation and Water Quality Plan, a program of best management practices for the specific purposes of improving water quality and protecting plant and wildlife habitat; and provided that the portion of the Soil Conservation and Water Quality Plan being implemented achieves the water quality and habitat protection objectives of the 25-foot vegetated filter strip;
- (4) The best management practices shall include a requirement for the implementation of a grassland and manure management program where appropriate and that the feeding or watering of livestock, may not be permitted within 50 feet of the mean high water line of tidal waters, the landward edge of tidal wetlands, and the edge of tributary streams within the Critical Area:
- (5) Clearing of existing natural vegetation in the Buffer is not allowed; and
- (6) Farming activities, including the grazing of livestock, shall not disturb stream banks, tidal shorelines or other Habitat Protection Areas as described in this ordinance.
- (7) Where agricultural use of lands within the Buffer ceases and the lands are proposed to be converted to other uses, the Buffer shall be established. In establishing the Buffer, management measures shall be undertaken to provide forest vegetation that assures the Buffer functions set forth in this section of the ordinance.

**Section \*\*\*. Natural Parks.**

- (a) **Definition.** Natural parks are areas of natural habitat that provide opportunities for those recreational activities that are compatible with the maintenance of natural conditions.
- (b) **Identification.** The City has identified areas within their Critical Area that are appropriate for natural parks. These areas were not chosen to preserve only natural curiosities, but include coastal ecosystems that are within the jurisdiction, each with its

geological and biological resources intact. Park boundaries are based on biological considerations rather than administrative convenience.

(c) **General Policies.** The City shall encourage the creation of opportunities for interaction between people and natural environments without destroying the fragile components of natural habitats. Any plans developed for the use of parks should recognize that all natural terrain has a finite capacity to tolerate human disturbances, and, therefore, attention should be given to limiting the number of park visitors in any park at any one time or in the course of a season.

- (1) Limit park activities to passive recreation such as hiking , picnicking, fishing, bird watching, etc. Consider limited hours or park closure, if necessary, during the breeding season of certain species.
- (2) Limit development in the park to reduce impacts to sensitive resources. Structures should be limited to trails, observation blinds, walkways, rest stops, instructional pavilions, maintenance offices and maintenance equipment storage sheds.
- (3) Limit park use during times when plant or wildlife species may be especially sensitive to disturbance (i.e. after a heavy rain, a flood, during a drought period or at the beginning of the growing season).

### **Section \*\*\*. Forest and Woodland Protection.**

(a) **General policies.** The following policies for forest and woodland protection recognize the value of forested land for its water quality benefits and for habitat protection while accommodating the utilization of forest resources:

- (1) Maintain and increase the forested vegetation in the Critical Area;
- (2) Conserve forests and developed woodlands and provide for expansion of forested areas;
- (3) Provide that the removal of trees associated with development activities shall be minimized and, where appropriate, shall be mitigated; and
- (4) Recognize that forests are a protective land use and should be managed in such a manner so that maximum values for wildlife, water quality, timber, recreation, and other resources can be maintained, even when they are mutually exclusive.

(b) **Identification.** The City has identified and mapped forests and developed woodlands within the Critical Area and has identified and mapped habitat protection areas as described in Sections 1-122 through 1-123 and Sections 1-127

through 1-129. More detailed evaluation of forest resources on specific sites shall be accomplished as part of the environmental analysis required prior to site plan and subdivision approval.

(c) **Policies for the protection of riparian forest habitat.** The protection of riparian habitat shall be accomplished through the following policies:

- (1) Vegetation shall be maintained in its natural condition along all streams to provide wildlife corridors.
- (2) A minimum 100-foot Buffer shall extend landward from the mean high water line of tidal water, tributary streams and tidal wetlands. This area is to be conserved for wildlife protection.
- (3) Non-tidal wetland forests should be left in a natural state for wildlife and water quality protection.
- (4) Forest areas utilized as breeding areas by forest interior dwelling birds and other wildlife species (for example relatively mature forested areas within the Critical Area of 100 acres or more, or forest connected with these areas) shall be conserved.
- (5) Existing riparian forests (for example, those relatively mature forest of at least 300 feet in width which occur adjacent to streams, wetlands, or the Bay shoreline and which are documented breeding areas shall be conserved.

(d) **Process.** If a forest is to be developed, a site-specific field investigation shall be conducted to determine important sensitive species present and to make sure that appropriate protection measures are incorporated into the development plan. The Department of Natural Resources will make specific recommendations based on an evaluation of the site and the proposed development. In general, the following measures are recommended:

- (1) Minimize forest and woodlands disturbance from May through August of each year;
- (2) Focus all development on the periphery of the forest or woodlands;
- (3) Retain the forest canopy as well as shrub understory;
- (4) Retain snag and mature seed trees as dens for woodpeckers and as nests for bald eagles;
- (5) Discourage the creation of small clearings and expansion of forest edge habitats; and

- (6) Encourage re-establishment of native forests and woodlands.
- (e) **Policies for the establishment or replacement of forest.** The following policies should be used for afforestation and reforestation:
- (1) The replacement or establishment of forests or developed woodlands should ensure a diversified plant community and should include canopy trees, understory trees, shrub scrub and herbaceous plants;
  - (2) Native species should be used for all reforestation and afforestation;
- (f) **Tree cutting in the Buffer.** The Buffer shall be managed to achieve or enhance the policies stated in Section 1-123 (c). Any cutting as allowed below, shall require a Buffer Management Plan approved by the Planning Commission or their designee. Cutting or clearing of trees within the Buffer shall be prohibited except that:
- (1) Cutting of trees or removal of natural vegetation may be permitted where necessary to provide access to private piers, or to install or construct a shore erosion protection device or measure, or a water-dependent facility, providing the device, measure or facility has received all necessary State and Federal permits.
  - (2) Individual trees may be cut for personal use providing that this cutting does not impair the water quality or existing habitat value or other functions of the Buffer as set forth in the policies of this plan and provided that the trees are replaced in the Buffer on an equal basis for each tree cut.
  - (3) Individual trees may be removed which are in danger of falling and causing damage to dwellings or other structures, or which are in danger of falling and therefore causing the blockage of streams, or resulting in accelerated shore erosion.
  - (4) Horticultural practices may be used to maintain the health of individual trees.
  - (5) Other cutting techniques may be undertaken within the Buffer and under the advice and guidance of the State Departments of Agriculture and Natural Resources, if necessary to preserve the forest from extensive pest or disease infestation or threat from fire.
- (g) **Enforcement.** As required under Section 8-1815.1 unauthorized clearing, cutting, or removal of vegetation; unauthorized clearing, cutting, or removal of vegetation in the Buffer; and clearing, cutting or removal of vegetation in excess of the area permitted to be cleared by this ordinance is considered a civil violation of this

ordinance and shall result in fines and mandatory planting. The Planning Commission, or their designee, shall have the authority to issue a citation and are hereby declared to be the officials with the duty of enforcing these provisions. All replanting plans shall be prepared by a state or registered professional forester or landscape architect.

- (1) For unauthorized clearing, cutting, or removal of vegetation that does not exceed the area that could be authorized in accordance with this ordinance, fines shall be assessed in the amount of \$100 for each occurrence and reforestation shall be required on an equal area basis if less than 20 percent of the forest cover is removed. For clearing between 20 % and 30 % of the existing forest cover, reforestation shall be required at 1.5 times the total surface acreage of forest cleared.
- (2) For unauthorized clearing, cutting, or removal of vegetation that exceeds the area that could be authorized in accordance with this ordinance, fines shall be assessed at \$100 for each occurrence and reforestation shall be required at 3 times the total surface acreage of forest cleared.
- (3) For unauthorized clearing, cutting, or removal of vegetation in the Buffer or another Habitat Protection Area, fines shall be assessed at \$100 for each occurrence and reforestation shall be required at 3 times the total surface acreage of forest cleared.
- (4) When trees or vegetative cover can not be fully replaced on site including multipliers as described above because of existing vegetation, existing development, or the size of the parcel, then planting shall take place on an off site location approved by the Planning Commission or their designee. If an offsite location cannot be utilized then fees-in-lieu shall be collected. All offsite locations resulting from (3) above shall be located in the Buffer or Habitat Protection Area. Fees shall be assessed at \$.20 per square foot of required mitigation or \$50 per tree.
- (5) Fines collected from enforcement actions in the Critical Area shall be maintained in a separate account to be used by the municipality for reforestation or other habitat or water quality enhancing efforts.
- (6) All violations resulting in on or offsite planting shall include a written Planting Agreement signed by the land owner and the Planning Commission designee. Said Planting Agreement shall include: size and species of trees, planting windows, survivability, follow-up inspection period, bonding and other factors deemed to be relevant.

**Section \*\*\*. Commercial Timber Harvesting.**

- (a) **Policies.** A goal of the Critical Area program is to maintain or increase the lands in forest cover, because forests provide protection of the water quality and habitat values of the Chesapeake Bay and its tributaries.
- (b) **Procedures.** Landowners proposing to harvest timber within any one year interval and affecting one or more acres in the Critical Area shall submit a "Timber Harvest Plan." This plan shall be prepared by a registered professional forester. The Timber Harvest Plan shall be reviewed and approved by the Department of Natural Resources and the District Forestry Board.
- (c) **Timber harvest plan contents.** Plans shall include measures to protect surface and groundwater quality and identify whether the activities will disturb or affect Habitat Protection Areas as identified in Sections 1-122 through 1-123 and Sections 1-127 through 1-129 of this ordinance and shall incorporate protection measures for these areas as specified in that section. To provide for the continuity of habitat, the plans shall address mitigation through forest management techniques which shall include scheduling size, timing and intensity of harvest cuts, afforestation and reforestation.
- (d) **Sediment control plan.** In the City's Critical Area, any landowner who plans to harvest timber on an area which will disturb 5,000 square feet or more including harvesting on agricultural lands shall submit a Sediment Control Plan. This plan shall be developed according to the State guidelines entitled: "Standard Erosion and Sediment Control Plan for Harvest Operations". The operations shall be implemented in accordance with specifications set out by the Department of Natural Resources and enforced by the Department of the Environment and the City.
- (e) **Timber harvest in the Buffer.** The Buffer shall be managed to achieve the water quality and habitat functions set forth in Section 1-123 of this ordinance. Cutting or clearing of trees within the Buffer shall be prohibited except that:
  - (1) Commercial harvesting of trees by selection or by the clearcutting of loblolly pine and tulip poplar may be permitted to within 50 feet of the landward edge of the mean high water line of tidal waters and perennial tributary streams, or the edge of tidal wetlands, provided that this cutting is conducted in conformity with Section 1-117 of this ordinance and in conformance with a Buffer Management Plan prepared by a registered, professional forester and approved by the Maryland Department of Natural Resources.
  - (2) A Buffer Management Plan shall be required for all commercial harvests within the Buffer, regardless of the size of the area to be cut, and shall comply with the following minimum requirements:
    - A. Disturbance to stream banks and shorelines shall be avoided;

- B. Areas disturbed or cut shall be replanted or allowed to regenerate in a manner that assures the availability of cover and breeding sites for wildlife and re-establishes the wildlife corridor function of the Buffer;
  - C. The cutting may not involve the creation of logging roads and skid trails within the Buffer; and
  - D. Commercial harvesting practices shall be conducted to protect and conserve the Habitat Protection Areas in accordance with Sections 1-122 through 1-123 and Sections 1-126 through 1-129 of this ordinance.
- (3) Commercial harvesting of trees, by any method, may be permitted to the edge of intermittent streams provided that the cutting is conducted pursuant to the requirements of paragraph (e) above.
- (f) **Other requirements.** Forest and timbering operations within the Critical Area shall conform to all other requirements of this ordinance.

### **Section \*\*\*. Enforcement**

- (a) **Consistency.** The Critical Area provisions of this Section, in accordance with the Maryland Chesapeake Bay Critical Area Act and Criteria, and as set out in any other applicable City Sections, supersedes any inconsistent law, Section or plan of the City of Cambridge. In the case of conflicting provisions, the stricter provisions shall apply.
- (b) **Responsible agencies.** These provisions shall be implemented and enforced by the Zoning Administrator with the assistance of the Critical Area Circuit Rider. Should an infraction of provisions contained in this Critical Area Overlay District, or under any law, Section or plan related to the City's Critical Area Program provisions or requirements, be brought to the attention of any official of the City, said official shall immediately contact the Zoning Administrator who may consult with the Critical Area Circuit Rider and/or City Attorney to determine the proper remedial course of action. The Zoning Administrator shall send a copy of his decision to the Critical Area Commission. The Commission, at its discretion, may also take such remedial action as given it under State law.
- (c) **Violations.** In addition to any other penalty applicable under state or municipal law, a person who violates a provision of Natural Resources Article, Title 8 Subtitle 18, or the City's Critical Area Program, ordinance, or regulations is subject to a fine not exceeding \$10,000.

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

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

**Section \*\*\*. Water Dependent Facilities**

- (a) **Definition.** "Water-dependent facilities" means those structures or works associated with industrial, maritime, recreational, educational or fisheries activities that require location at or near the shoreline within the Buffer specified in Section 1-519 of this ordinance. An activity is water-dependent if it cannot exist outside the Buffer and is dependent on the water by reason of the intrinsic nature of its operation.
- (b) **Identification.** Water dependent facilities include, but are not limited to, ports, the intake and outfall structures of power plants, water-use industries, marinas and other boat docking structures, public beaches and other public water-oriented recreation areas, and fisheries activities. Excluded from this regulation are individual private piers installed or maintained by riparian landowners, and which are not part of a subdivision which provides community piers.
- (c) **General policies.** The policies of the Town with regard to water-dependent facilities shall be to limit development activities in the Buffer to those that are water-dependent and provide by design and location criteria that these activities will have minimal individual and cumulative impacts on water quality and fish, wildlife, and plant habitat in the Critical Area.
- (d) **Standards.** The following standards shall apply to new or expanded development activities associated with water -dependent facilities:
  - (1) New or expanded development activities may be permitted in the Buffer in the Intensely Developed and Limited Development Areas provided that it can be shown:
    - A. That they are water-dependent;
    - B. That the project meets a recognized private right or public need;
    - C. That adverse effects on water quality, fish, plant and wildlife habitat are minimized;

D. That, insofar as possible, non-water-dependent structures or operations associated with water-dependent projects or activities are located outside the buffer; and

E. That the facilities are consistent with an approved local plan as set forth below.

(2) Except as otherwise provided in this program, new or expanded development activities may not be permitted in those portions of the Buffer which occur in Resource Conservation Areas.

(e) **Implementation.** Applicants for new or expanded water-dependent facilities in Intensely Developed Areas or Limited Development Areas shall set out in the application how the above requirements are met. Applicants for water-dependent facilities in a Resource Conservation Area, other than those specifically permitted herein, must apply for a portion of the Town's growth allocation as set forth in Section 1-507 of this ordinance.

(f) **Evaluating plans for new and expanded water-dependent facilities.** The Town shall evaluate on a case by case basis all proposals for expansion of existing or new water-dependent facilities. The Town shall work with appropriate State and federal agencies to ensure compliance with applicable regulations. The following factors shall be considered when evaluating proposals for new or expanded water dependent facilities:

(1) That the activities will not significantly alter existing water circulation patterns or salinity regimes;

(2) That the water body upon which these activities are proposed has adequate flushing characteristics in the area;

(3) That disturbance to wetlands, submerged aquatic plant beds, or other areas of important aquatic habitats will be minimized;

(4) That adverse impacts to water quality that may occur as a result of these activities, such as non-point source run-off, sewage discharge from land activities or vessels, or from boat cleaning and maintenance operations, is minimized;

(5) That shellfish beds will not be disturbed or be made subject to discharge that will render them unsuitable for harvesting;

(6) That dredging shall be conducted in a manner, and using a method which causes the least disturbance to water quality and aquatic and terrestrial habitats in the area immediately surrounding the dredging operation or within the critical area, generally;

(7) That dredged spoil will not be placed within the buffer or elsewhere in that portion of the Critical Area which has been designated as a Habitat Protection Area except as necessary for:

- A. Backfill for permitted shore erosion protection measures;
- B. Use in approved vegetated shore erosion projects;
- C. Placement on previously approved channel maintenance spoil disposal areas; and
- D. Beach nourishment.

(8) That interference with the natural transport of sand will be minimized; and

(9) That disturbance will be avoided to historic areas of waterfowl staging and concentration or other Habitat Protection Areas identified in Sections 1-518 through 1-522 of this ordinance.

(g) **Availability of information.** The information necessary for evaluating the above factors, if not available locally, shall be obtained from appropriate State and Federal agencies.

(h) **Industrial and port-related facilities.** New, expanded or redeveloped industrial or port-related facilities and the replacement of these facilities may be permitted only in those portions of Intensely Developed Areas that have been designated as Modified Buffer Areas as described in this ordinance and are subject to the provisions set forth in that section.

(i) **Marinas and other commercial maritime facilities.** New, expanded or redeveloped marinas may be permitted in the Buffer within Intensely Developed Areas and Limited Development Areas subject to the requirements set forth in this section. New marinas or related maritime facilities may not be permitted in the Buffer within Resource Conservation Areas except as provided in this section. Expansion of existing marinas may be permitted by the Town within Resource Conservation Areas provided that it is sufficiently demonstrated that the expansion will not adversely affect water quality, and that it will result in an overall net improvement in water quality at or leaving the site of the marina. New and existing marinas shall meet the sanitary requirements of the Department of the Environment as required in COMAR 26.04.02. New marinas shall establish a means of minimizing the discharge of bottom wash waters into tidal waters.

(j) **Community piers.** New or expanded community marinas and other non-commercial boat-docking and storage facilities may be permitted in the Buffer subject to the requirements in this section of the zoning ordinance provided that:

- (1) These facilities may not offer food, fuel, or other goods and services for sale and shall provide adequate and clean sanitary facilities;
- (2) The facilities are community-owned and established and operated for the benefit of the residents of a platted and recorded riparian subdivision;
- (3) The facilities are associated with a residential development approved by the Town for the Critical Area and consistent with all State requirements and program requirements for the Critical Area;
- (4) Disturbance to the Buffer is the minimum necessary to provide a single point of access to the facilities; and
- (5) If community piers, slips, or moorings are provided as part of the new development, private piers in the development are not allowed.

(k) **Number of slips or piers permitted.** The number of slips or piers permitted at the facility shall be the lesser of (1) or (2) below:

- (1) One slip for each 50 feet of shoreline in the subdivision in the Intensely Developed and Limited Development Areas and one slip for each 300 feet of shoreline in the subdivision in the Resource Conservation Area; or
- (2) A density of slips or piers to platted lots or dwellings within the subdivision in the Critical Area according to the following schedule:

Platted Lots or Dwellings in the Critical Area	Slips
up to 15	1 for each lot
16 - 40	15 or 75% whichever is greater
41 - 100	30 or 50% whichever is greater
101 - 300	50 or 25% whichever is greater
over 300	75 or 15% whichever is greater

(l) **Public beaches and other public recreation or education areas.** Public beaches or other public water-oriented recreation or education areas including, but not limited to, publicly owned boat launching and docking facilities and fishing piers may be permitted in the Buffer in Intensely Developed Areas. These facilities may be permitted within the Buffer in Limited Development Areas and Resource Conservation Areas provided that:

- (1) Adequate sanitary facilities exist;

- (2) Service facilities are, to the extent possible, located outside the buffer;
- (3) Permeable surfaces are used to the extent practicable, if no degradation of groundwater would result;
- (4) Disturbance to natural vegetation is minimized; and
- (5) Areas for possible recreation, such as nature study, and hunting and trapping, and for education, may be permitted in the Buffer within Resource Conservation Areas if service facilities for these uses are located outside of the Buffer.

(m) **Research areas.** Water-dependent research facilities or activities operated by State, Federal, or local agencies or educational institutions may be permitted in the Buffer, if non-water-dependent structures or facilities associated with these project are, to the extent possible, located outside of the Buffer.

(n) **Fisheries activities.** Lands and water areas with high aquacultural potential will be identified by the Town in cooperation with the State when applications for new or expanded fisheries or aquaculture facilities in these areas are submitted to the Town. These areas are encouraged for that use and if so used, should be protected from degradation by other types of land and water use or by adjacent land and water uses. Commercial water-dependent fisheries including, but not limited to structures for crab shedding, fish off-loading docks, shellfish culture operations and shore-based facilities necessary for aquaculture operations and fisheries activities may be permitted in the Buffer in Intensely Developed, Limited Development and Resource Conservation Areas.

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/](http://www.dnr.state.md.us/criticalarea/)

August 16, 2004

Ms. Sue Veith  
St. Mary's County Government  
Department of Land Use and Growth Management  
PO Box 653  
Leonardtown, MD 20650-0653

Re: **SM 271-04: MSUB # 04-110-031 William D. Snyder Minor Subdivision  
Revised Plat**

Dear Sue,

I have reviewed a revised plat provided to our office by DH Steffens Co. for the above referenced minor subdivision. The revised plat now shows a footprint for a proposed dwelling and detached garage, and includes statements regarding FIDS habitat protection. I am providing the following comment for your use.

1. Please add a Critical Area note # 10 that states the Wildlife and Heritage Service has determined that the forested area of this property may qualify as FIDS habitat.
2. Access into Lot 2 must be shown. The limits of disturbance for all clearing must be shown and quantified.
3. The FIDS conservation worksheet must be completed to determine how much forest interior, if any will be removed. The amount of FIDS mitigation is based upon the ratio of forest interior habitat to edge habitat. The aerial information suggests a break in canopy greater than 30' occurs on this parcel, which may reduce the size of the contiguous forest being affected by the development.

Please call me at 410-260-3481 if you have questions regarding these comments.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

cc: DH Steffens Co.



Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

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August 16, 2004

Ms. Heather Kelley  
Charles County  
Department of Planning and Growth Management  
PO Box 2150  
La Plata, MD 20646-2150

RE: CS 559-04: SFD # 40482 Dr. John Gunsolley Site Plan  
Tax Map 49, Parcel 13

Dear Heather,

I have reviewed the site plan for this property, which proposes the construction of a single-family residence and septic disposal system in the RCA of Patuxent River. None of this work will encroach into the 100' Critical Area Buffer. This office does not oppose this site plan.

Please note that the plan submitted for review did not label the 100' Buffer line nor the landward limit of tidal wetlands. This morning, Mr. Gunsolley provided our office with a copy of the revised site plan that included the missing information.

Please contact me at 410-260-3481 if you have any questions regarding these comments.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Cole".

Wanda Cole  
Natural Resources Planner



Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
Executive Director

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August 12, 2004

Mr. George H. White, Esquire  
PO Box 169  
Salisbury, Maryland 21803-0169

Re: Expungement of Plat: Case No. 09-C-04-12842  
Property of Gilbert C. and Penny P. Dean, & Elizabeth T. Plummer

Dear Mr. White,

I have reviewed the Petition and exhibits submitted regarding the above referenced case to expunge a plat entitled "Plat Showing Exchange of Lands Between Adjoining Owners of Property Belonging to Elizabeth T. Plummer", dated August 12, 1998 and made by Tim Marshall & Associates, Inc., Land Surveyors & Planners, as recorded among the Land Records of Dorchester County, Maryland at Liber No. M.L.B. 47, Folio 245A. This office has no objection to the expungement of this plat.

Please forward to this office a copy of the decision made in this case, as well as any newly recorded plat that may result from the actions taken by the Circuit Court in this case. If I may be of further assistance, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

cc: Steve Dodd  
Tim Marshall & Associates

**Cole, Wanda**

---

**From:** Cole, Wanda  
**Sent:** Thursday, August 12, 2004 10:57 AM  
**To:** Esslinger, Regina  
**Cc:** Serey, Ren; Mason, Marianne D  
**Subject:** Chronology for River Watch discussions with Indian Head  
**Importance:** High

Regina,

I went through the River Watch file and found several of my emails that document my efforts to work with Ron for nearly every month since we got the submittal. I know I didn't document every phone conversation I had with Ron, but I did keep a log of voice messages from the Town and/or the consultant. Claudia and I met with the Mayor and Ron in September 2003 and January 2004, so Claudia may have notes or emails from our communications as well.

I will prepare a chronolgy next week.

Wanda Diane Cole  
Natural Resources Planner  
Critical Area Commission  
Chesapeake and Atlantic Coastal Bays  
1804 West Street, Suite 100  
Annapolls, Maryland 21401

Office: 410-260-3481  
Fax: 410-974-5338  
wcole@dnr.state.md.us

8/12/2004

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

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August 12, 2004

Mr. Steve Dodd, Director  
Dorchester County  
Department of Planning and Zoning  
PO Box 107  
Cambridge, MD 21613

Re: **DC 503-04: #1010 Richard G. Wheatley et al, Lots 3 & 4**  
**Tax Map 27, Block 15, Parcel 164**

Dear Steve,

I have reviewed the plat which converts two agricultural parcels created by deed into lots of record. These lots are located in the LDA of Brooks Creek. The following comments are provided for your use:

1. Tidal wetlands are shown within the parcel boundaries. The plat must identify the location of the mean high water line and indicate whether these tidal wetlands are State tidal wetlands. The acreage of State tidal wetlands must be deducted from the gross lot area when calculating impervious surface and clearing limits, and should not be shown within the lots.
2. The 100-foot Critical Area Buffer line must be delineated and labeled on the plat. It appears the Buffer needs to be expanded for contiguous nontidal wetlands so that the Buffer line will coincide with the limits of nontidal wetlands.
3. It appears the lot is largely forested, so that 15% afforestation and establishment of the Buffer will not be necessary.
4. The Wildlife and Heritage Service (WHS) has indicated that the forested area of this property may qualify as FIDS habitat. The plat must incorporate the FIDS forest conservation guidance found in the WHS July 27, 2004 letter, as well as the Commission's June 2000 document, *A Guide to the Conservation of Forest Interior*

*Dwelling Birds in the Chesapeake Bay Critical Area.* The applicant must complete the FIDS Conservation Worksheet found as Appendix D on page 43-46, and provide a copy of the completed worksheet to this office.

Forest mitigation for impacts to FIDS habitat must be provided as FIDS habitat in the amount indicated by the worksheet. It appears the proposed development is within the 300' edge, therefore, mitigation would be 1:1.

5. The WHS has also indicated that Delmarva Fox Squirrel (DFS) habitat occurs on these lots, therefore, General Note #9 is inaccurate and must be deleted. The proposed BIP will encroach into the forested area, which is DFS habitat. We recommend the applicant coordinate with both the US Fish and Wildlife Service and the Wildlife and Heritage Service to determine what protection measures are appropriate for this proposal. We also recommend a plat note that states DFS habitat is on site.
6. The plat must contain notes regarding protection of the Buffer from development. It appears the only suitable development envelopes on these lots are located adjacent to Ragged Point Road. We recommend the plat contain notes to that effect.
7. We recommend the wetland note in the upper left corner be moved to the General Note section of the plat. In addition, we recommend a plat note stating that the BIP will impact the nontidal wetland buffer and will need authorization from Maryland Department of the Environment.

Please provide a copy of the revised plat when it is available. We may have additional comments based upon any new information. If you have any questions regarding these comments, please contact me at 410-260-3481.

Sincerely,



Wanda Diane Cole  
Natural Resources Planner

cc: Tim Marshall  
Glenn Therres  
Scott Smith  
Ace Adkins

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

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August 11, 2004

Ms. Karen Houtman  
Assistant Planning Director  
Dorchester County  
Planning and Zoning Office  
PO Box 100  
Cambridge, Maryland 21613

Re: **Taylor's Island Marina Growth Allocation**

Dear Karen,

I am pleased to inform you that on August 4, 2004, the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays unanimously concurred with the determination that the above referenced growth allocation request may be approved as a refinement. The refinement changes the Critical Area Overlay designation of 10.604 acres of RCA to IDA, and 7.484 acres of LDA to IDA, at the Taylor's Island Marina property, as found on Tax Map 59, Block 9, Parcel 150. The change to IDA designation will allow the marina to expand its boat hauling and storage operations. The marina expansion project will be subject to the 10% pollutant removal requirement for development in the IDA.

This change shall be incorporated into the County's Critical Area Program within 120 days of the date of this letter. Please provide a copy of the County's revised Critical Area Map reflecting the new designation as soon as it is available.

Thank you for your assistance during this process. If you have any questions, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
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1804 West Street, Suite 100, Annapolis, Maryland 21401  
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August 9, 2004

Mr. Ron Young  
Town Manager  
Town of Indian Head  
4195 Indian Head Highway  
Indian Head, Maryland 20640

Re: **IH 317-04: R.H. Knott Subdivision, Lots 1, 2 & 3 Critical Area Plan  
A Resubdivision of Lots 47, 48 & 69 (Maureen O'Brien)**

Dear Ron,

Thank you for providing the deed information and a revised plan for this subdivision. The plan now shows a specific footprint for the proposed dwellings and one of the existing structures on Lot 3 will remain. I have the following remaining comments:

1. The landscape schedule proposes species that are non-native ornamental species. We recommend native forest and shrub species be used for the Critical Area afforestation and forest mitigation plantings. We also recommend that these plantings be placed in the Buffer.
2. The label for the Critical Area Buffer line was omitted from this plan.
3. The elevation of mean high water in this area is generally 2.0 ft +/- . Elevation 0 ft denotes mean low water. The plan must correct the labeling. This error does not appear to affect the location of the 100-ft Buffer/top of cliff setback line.
4. The deed describes a property line following mean low water and the plan shows a property line in the Potomac River. Land below mean high water belongs to the State unless the property owner can show ownership that satisfies the Maryland Department of the Environment and the Maryland Archives. If the lot sizes were calculated based upon the property line in the river, the lot sizes and 15% impervious allowance must be recalculated.

5. The west and east boundary lines of the parent parcel go to the river, the proposed lot lines do not- they appear to stop at the top of the bank. Who will own the area between the top of bank and the shoreline? This information must be clarified on the plan.

Prior to approval of the subdivision, please provide a copy of the revised plat indicating the information above. Please contact me at 410-260-3481 if you have any questions regarding these comments.

Sincerely,

*Wanda Diane Cole*

Wanda Diane Cole  
Natural Resources Planner

cc: Maureen O'Brien

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

STATE OF MARYLAND  
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August 9, 2004

Mr. Jerry Soderberg, Jr.  
D.H. Steffens Company  
22335 Exploration Drive, Suite 1020  
Lexington Park, MD 20653

Re: **SM 618-03: MSUB # 03-110-077 Jerry M. Bond, Sr. Minor Subdivision**

Dear Jerry,

Thank you for sending the revised plan for this minor, two-lot subdivision, which is being created around existing conditions. The revised plan indicates this parcel is located in the LDA, whereas the previous plan stated RCA. I am providing the following comments for your use:

1. The Critical Area intrafamily transfer provisions apply only to parcels in the RCA, therefore, the plan may delete the notes for the Critical Area transfer provisions.
2. This subdivision must provide 15% afforestation and the plat must include this statement.

Thank you for the opportunity to comment. Please contact me at 410-260-3481 if you have questions regarding these comments.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

cc: Sue Veith

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
Executive Director

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August 9, 2004

Mr. Ronald N. Young  
Town Manager  
Town of Indian Head  
4195 Indian Head Hwy.  
Indian Head, MD 20640

Re: **IH 810-03: Saber Helal Variance Request, Lot 88: 14 Poplar Avenue**

Dear Ron,

I have reviewed the July 16<sup>th</sup> plan revision for the proposed homesite on Lot 88, a grandfathered lot located in the LDA of Potomac River. A portion of the proposed house and driveway will create 1200 square feet of new impervious surface in the Critical Area Buffer, which has been expanded for steep slopes. The applicant has requested a Critical Area Buffer variance. The site plan does not show the limits of disturbance, so I am unable to determine the total amount of Buffer disturbance. While we do not oppose this variance request, we recommend the variance approval include a condition that 3:1 mitigation for all disturbances in the Buffer, be provided on-site using native forest plantings. It appears much of this mitigation can occur within the Buffer. The Site Grading Plan has listed black walnut and American holly, both of which are suitable native plantings for this site.

Please note that an additional 1200 square feet of forest clearing will occur outside the Buffer on Lot 88. This area of clearing will require 1:1 mitigation.

In addition to our comments on the variance, the impervious surface and forest cover information on the site plan for Lots 86, 87, and 88 needs to be clarified. The semi-impervious surface totals should be corrected to 50% of the affected footprint. I recommend that the existing, proposed, and total impervious surface area tabulations be listed separately for each lot. Please note that the lots do not extend all the way to the shoreline.

**Lot 86**

Lot Area	28,095 square feet
Impervious Surface Limit	5,445 square feet [per Section 955(c)(vii)E.3]
Existing and Proposed Impervious Area	2,576 square feet
Existing Forest Cover	0 trees

**Lot 87**

Lot Area	16,949 square feet
Impervious Surface Limit	4,737 square feet [per Section 955(c)(vii)E.2]
Existing and Proposed Impervious Area	1,584 square feet
Existing Forest Cover	9 trees

**Lot 88**

Lot Area	19,760 square feet
Impervious Surface Limit	5,440 square feet [per Section 955(c)(vii)E.2]
Existing and Proposed Impervious Area	4,609 square feet
Existing Forest Cover	23 trees

Please provide this office with a copy of the written decision made in the variance case. If you have any questions regarding these comments, please contact me at 410-260-3481.

Sincerely,



Wanda Diane Cole  
Natural Resources Planner

cc: Cliff Crowder

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

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August 5, 2004

Ms. Yvonne Chaillet  
St. Mary's County  
Department of Land Use and Growth Management  
23150 Leonard Hall Drive  
PO Box 653  
Leonardtown, MD 20650-0653

RE: SM 531-04: # 03-3046 Mark Roy Variance Request  
Tax Map 27 Parcel 794 Lot 500-2 and Outlot AA

Dear Yvonne,

The applicant has requested variances for proposed development on a grandfathered parcel located in the LDA of Cuckhold Creek. The 100-foot Critical Area Buffer has not been properly delineated on the site plan. When expanded for contiguous steep slopes and highly-erodible Evesboro-Westphalia soils, the Buffer constrains nearly the entire site so that all of the proposed development encroaches into the Buffer. Therefore, a Buffer variance is needed for the entire project.

We do not oppose a variance for development of this grandfathered parcel. However, it appears the dwelling could be moved forward to the front building restriction line so that grading of steep slopes in the expanded Buffer can be avoided or minimized. If the variance is granted, we recommend 3:1 mitigation be provided for the 11,125 square feet of Buffer disturbance, for a total of 33,375 square feet of native forest plantings.

Please forward a copy of the written decision made in this case. If you have any questions regarding these comments, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

Cc: Nokleby Surveying, Inc.

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
Executive Director

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August 3, 2004

Mr. Jerry Soderberg, Jr.  
D.H. Steffens Company  
22335 Exploration Drive, Suite 1020  
Lexington Park, MD 20653

Re: **SM 411-04: MSUB # 04-120-017 St. Jerome's Crossroads Lots 1-10**

Dear Jerry,

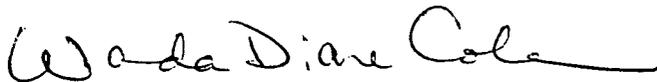
Thank you for faxing the revised comment letter from the Wildlife and Heritage Service, dated July 21, 2004, and the latest iteration of the subdivision plat. I have reviewed this information and have the following remaining comments regarding the Critical Area portion of this project:

1. From our discussions, the wooded portions of Critical Area Lots 1-3 do not provide the habitat necessary to support Grass-leaved Lady's Tresses and Crested Yellow Orchid, as described by Wildlife and Heritage Service. The existing woodland is dense and overgrown, and does not contain pines. No development is proposed in the wetland portions of the property. The Wildlife and Heritage Service and the St. Mary's County Land Use and Growth Management staff must concur with this conclusion prior to granting permits for development in these areas.
2. The sewage reserve areas on Lots 1-3 are located within 300 feet of the woods edge, as recommended by the Wildlife and Heritage Service for FIDS habitat protection. Lot 1 has very little Critical Area acreage, and a portion of its SRA will utilize most of that area. Lot 3 is largely constrained by the expanded Buffer and its sewage reserve area, so that homesite development will most likely be located on or outside the Critical Area boundary. Additional FIDS protection can be provided on Lot 2 by designating a development envelope in the existing cleared area on Lot 2.
3. The plat must include a note that the FIDS Conservation Worksheet must be completed for any clearing of FIDS habitat in the Critical Area, and FIDS habitat mitigation must be provided. The FIDS Conservation Worksheet is found as Appendix D, page 43, in *A Guide to the Conservation of Forest Interior Dwelling Birds in the Chesapeake Bay Critical Area, June 2000*.

4. Critical Area notes have been provided regarding protection of reforestation areas and forested areas that will remain after development. No notes have been provided regarding forest clearing limits and mitigation ratios. If the plat does not record this information, these requirements must be addressed at the building permit phase.
5. Each lot is limited to 15% impervious surface. At this time, the only proposed impervious surface area in the Critical Area is the end of School House Lane, where it occurs on Lots 1 and 3. Site development plans for these two lots must deduct this impervious area from their respective impervious surface limits. We recommend a note on the plat stating exactly how much impervious surface is permitted in the Critical Area on each lot.

Please contact me at 410-260-3481 if you have questions regarding these comments.

Sincerely,



Wanda Diane Cole  
Natural Resources Planner

cc: Sue Veith  
Kathy McCarthy

Robert L. Ehrlich, Jr.  
*Governor*

Michael S. Steele  
*Lt. Governor*



Martin G. Madden  
*Chairman*

Ren Serey  
*Executive Director*

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July 27, 2004

The Honorable Warren Bowie  
Vice-Mayor, Town of Indian Head  
9 Maple Street  
Indian Head, Maryland 20640

Re: River Watch Property

Dear Vice-Mayor Bowie,

As you requested during our recent telephone conversation, enclosed are copies of the material from our file regarding past and current development on the River Watch property.

Please do not hesitate to contact me at 410-260-3481 if you have additional questions regarding the Critical Area in the Town of Indian Head.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

Enclosures (6)  
cc: Ren Serey

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
Executive Director

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July 29, 2004

Mr. Reed Faasen  
Charles County  
Department of Planning and Growth Management  
PO Box 2150  
La Plata, MD 20646-2150

Re: **CS 558-04: Docket # 1123 Suzan Kates Buffer Variance Request**

Dear Reed,

I have reviewed the information regarding the applicant's request to replace an existing, uncovered front stoop with a covered porch, located in the 100-foot Critical Area Buffer on a grandfathered lot. This property is in the LDA of Wicomico River. The applicant has proposed, as a condition of the request, to remove the remainder of an existing garage, thereby decreasing the site's total impervious surface areas. The applicant has also provided a mitigation plan to offset the new disturbance to the Buffer.

We do not oppose this variance request. We recommend the variance approval include conditions to reiterate the applicant's proposal to remove the remainder of the existing garage, and to provide the required mitigation for new disturbances in the Buffer.

We recommend the applicant reconsider the use of red maple for planting in this area. Red maples are shallow-rooted, grow a spreading and top-heavy canopy, and are subject to wind-throw. We recommend the use of a species with a tap root system, such as a red oak, which can also tolerate high ground-water conditions.

Please provide this office with a copy of the written decision made in this case. If you have any questions regarding these comments, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Cole".

Wanda Cole  
Natural Resources Planner



Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Governor

Ren Serey  
Executive Director

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July 26, 2004

Mr. Steven M. Sottung  
Environmental Operations Manager  
STV Incorporated  
205 West Welsh Drive  
Douglassville, PA 19518

Re: **24-04: 03-11716 Redevelopment Plan for Veterans Medical Center at Ft. Howard**

Dear Mr. Sottung,

Thank you for your request for comments regarding proposed redevelopment of the Ft. Howard Veterans Medical Center property, located in the Critical Area of Chesapeake Bay, Patapsco River, and Denton Cove in Baltimore County. Federal agency projects proposed in the Coastal Zone are subject to State agency requirements. While this project does not require formal approval by the full Critical Area Commission, design details are to be submitted to our office for staff review and approval.

Ms. Regina Esslinger met with Ms. Sharon Huber-Plano, STV, and Mr. Ben Brockway, Biota Environmental Design and Restoration on June 14, 2004 to discuss the Critical Area requirements that would pertain to this redevelopment project. The following information was conveyed during their discussions:

1. Federal projects must be developed consistent with State laws and programs under the agreement with the Federal Coastal Zone Management Act. The redevelopment of the Ft. Howard property will be reviewed under the criteria for State projects in the Critical Area, as found in COMAR 27.02.05.
2. The existing developed portion of the site is considered an Area of Intense Development, while the relatively undeveloped area along Denton Cove and the County Park is considered Not an Area of Intense Development.

3. The bulk of the redevelopment should be directed to the Area of Intense Development. The redevelopment must meet the 10% pollutant removal requirement, as discussed in the Commission's Fall 2003 document, *Critical Area 10% Rule Guidance Manual*. A copy of this document was provided to Ms. Huber, and the document can also be found on the DNR web site at [http://www.dnr.state.md.us/criticalarea/10percent\\_rule.html](http://www.dnr.state.md.us/criticalarea/10percent_rule.html). All stormwater best management practices must be provided on-site, and located outside the Buffer.
4. Development in the Buffer must conform to the criteria found in COMAR 27.02.09. The Ft. Howard property is not a Buffer Exemption Area.
5. There is no growth allocation process for State projects to allow development to exceed the development standards for areas considered Not an Area of Intense Development. The mitigation ratio for clearing  $\leq 20\%$  of the existing forest is 1:1. The mitigation ratio for clearing  $> 20\%$  and  $\leq 30\%$  of the existing forest is 1.5 to 1, and above 30% is 3:1.
6. Impervious surfaces are limited to 15% in areas that are Not Areas of Intense Development.
7. New marinas are permitted only in Areas of Intense Development.
8. Information must be provided on the environmental features. Identify and delineate all tidal and nontidal wetland areas that occur on the site, as well as areas of hydric and/or highly erodible soils, and steep slopes. Identify and quantify forested areas to be cleared. Locate potential mitigation planting areas. Quantify existing impervious areas and proposed impervious areas.
9. A copy must be provided to this office of the determination made by the Maryland Department of Natural Resources Wildlife and Heritage Service regarding the presence of rare, threatened and/or endangered species on this property.

Thank you for the opportunity to comment. I may be reached at 410-260-3481 for assistance with additional questions.

Sincerely,



Wanda Diane Cole  
Natural Resources Planner

cc: Patricia Farr, Baltimore County DEPRM  
Ken Pensyl, MDE  
Elder Ghigiarelli, MDE

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
Executive Director

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July 26 , 2004

Mr. Brian C. Smith, P.E.  
Whitney, Bailey, Cox & Magnani, LLC  
849 Fairmount Avenue, # 100  
Baltimore, Maryland 21286

Re: **21-04: Job No. 2001.0439.13.0 Sailwinds Visitor Center Berm**

Dear Mr. Smith,

This letter is intended to document a phone conversation between James Krampert of your office, and myself, regarding the plans for the visitor center berm. This berm is being proposed as flood protection to the visitor center during 100-year flood events of the Choptank River. Our maps indicate that this project is located in an area of the City of Cambridge that is Excluded from Critical Area requirements. Therefore, this project will not need Critical Area Commission approval.

Mr. Krampert and I discussed the potential of visitors taking a shorter route to the beach when leaving the circular concrete area that surrounds the inlet. I suggested the boardwalk might include a railing on the side closest to the berm to direct traffic to the intended beach access points. My concern is that pedestrian traffic would eventually wear a depression into the top of the berm, and compromise its flood protection function.

If I may be of any further assistance, please contact me at 410-260-3481.

Sincerely,

*Wanda Diane Cole*  
Wanda Diane Cole  
Natural Resources Planner

**Cole, Wanda**

---

**From:** Cole, Wanda  
**Sent:** Monday, July 26, 2004 10:34 AM  
**To:** 'Kristen'  
**Subject:** RE: Buffer Zones

Hello Marie.

The 100' Buffer line is measured starting at the mean high water line or the most landward limit of tidal wetlands. There are situations where tidal wetlands grow in the zone between the mean high water line and the spring high tide line, so you would start to measure from the upland/wetland edge. Sometimes the Buffer line needs to be expanded for contiguous nontidal wetlands, steep slopes, and/or hydric soils.

Mean high water is defined in the Maryland Department of the Environment Articles. It is generally the line where the average daily high tide falls, and is an arbitrary line that must be determined in the field, using field marks such as barnacle and alga lines on pilings, wrack along a beach, slope of a beach, change in vegetation, et al.

In Maryland, the high tide elevation can vary from 8-10 inches to as much as 2.8 ft above low tide. The high tide elevation depends on the distance from the ocean, the constriction and profile of a waterway, the volume of water being pushed up a channel, and other hydraulic properties, which we laymen would have a tough time determining. It is my understanding that NOAA has established bench marks around the state for mean low and mean high elevations. I am not sure how often this information is updated, as I have seen plans where the mean high water line on a site does not match the bench mark established by NOAA. The bench mark data is published on their web site.

If you are a homeowner, I recommend you study your shoreline for the field marks I listed above. If you can identify the wetland plants, *Spartina alterniflora* grows between mean high and mean low water, while *Spartina patens* grows above mean high water. Certain shrubs, such as *Iva frutescens* and *Baccharis hamifolia* also grow above mean high water. Alga lines on pilings are good indicators, and you can run a level string line from the highest alga line to the bank/upland area to determine where mean high water hits the land.

I hope this helps. If you need additional assistance regarding the mean high water line, contact MDE via their website at [www.mde.state.md.us](http://www.mde.state.md.us) or call 410-537-3837.

Wanda Diane Cole  
Natural Resources Planner  
Critical Area Commission  
Chesapeake and Atlantic Coastal Bays  
1804 West Street, Suite 100  
Annapolis, Maryland 21401

Office: 410-260-3481  
Fax: 410-974-5338  
[wcole@dnr.state.md.us](mailto:wcole@dnr.state.md.us)

-----Original Message-----

**From:** Kristen [<mailto:dreaminofgc247@yahoo.com>]  
**Sent:** Wednesday, July 14, 2004 3:47 PM

7/26/2004

**To:** Cole, Wanda  
**Subject:** Buffer Zones

Could you please let me know where the 100' buffer zone begins at, is it mean low tide or mean high tide. Would that be 2' above sea level or 1' above or how do you determine where mean high tide is. What is the State definition of Mean High Tide, could you please let us know, so that we can address this issue.

Thank you.

Marie

[dreaminofgc247@yahoo.com](mailto:dreaminofgc247@yahoo.com)

7/26/2004

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Governor

Ren Serey  
Executive Director

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July 21, 2004

Ms. Sue Veith  
St. Mary's County Government  
Department of Land Use and Growth Management  
23150 Leonard Hall Drive  
PO Box 653  
Leonardtown, MD 20650-0653

**Re: SM 429-04: MNSP # 04-131-000024 Piney Point Elementary School  
Relocatable Classrooms**

Dear Sue,

I have reviewed the site plan for two portable classrooms at the Piney Point Elementary School, which is located in the LDA of Potomac River and Tall Timbers Cove. These classrooms will create 3,915 feet of impervious area for the duration of their use. The following comments are based upon review of the site plan and phone conversations with you and the project's design engineer at DH Steffens Company.

1. The amount of existing impervious area appears to exceed the 15% limit for development in the LDA. The plan must quantify the existing and proposed impervious areas. If the site exceeds the 15% impervious surface limit, a Conditional Approval will be required for this project. Removal of the existing impervious area must be explored so that the site at least maintains its current amount of impervious area.
2. The plan does not provide sufficient information to determine from where the Buffer line was measured. Your site visit revealed that the wetland limits shown on the plan do not match what is on the plan. Additional information must be provided to determine how the Buffer line was delineated and whether it must be expanded for contiguous nontidal wetlands, and possibly for hydric soils.
3. You advised the site plan will most likely be revised to meet the County's setback from the Buffer requirement. We request the opportunity to review any new information provided for this project.

4. The plan must provide information regarding the size of the parcel, its boundaries, and existing environmental conditions.
5. The plan must update labels and tables for buildings and features that are now existing.

Please call me at 410-260-3481 if you have questions regarding these comments.

Sincerely,

*Wanda Diane Cole*

Wanda Diane Cole  
Natural Resources Planner

cc: DH Steffens (LaPlata)

Judge John C. North, II  
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

July 20, 2004

Ms. Sue Veith  
St. Mary's County Government  
Department of Land Use and Growth Management  
23150 Leonard Hall Drive  
PO Box 653  
Leonardtown, MD 20650-0653

**Re: SM 428-04: MNSP # 04-131-00027 Brodesser B&B**

Dear Sue,

I have reviewed the site plan for the proposed two-bedroom Bed & Breakfast accommodations to be operated from an existing house in the RCA of Breton Bay. This use is permitted in the RCA, and will not require expansion of the existing footprint. We do not oppose the site plan or the use.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

Branch Office: 31 Creamery Lane, Easton, MD 21601  
(410) 822-9047 Fax: (410) 820-5093

TTY For The Deaf:  
Annapolis: (410) 974- 2609 D.C. Metro: (301) 586-0450

Judge John C. North, II  
Chairman



Ren Serey  
Executive Director

**STATE OF MARYLAND  
CRITICAL AREA COMMISSION  
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1804 West Street, Suite 100, Annapolis, Maryland 21401  
(410) 260-3460 Fax: (410) 974-5338

July 19, 2004

Ms. Karen Arnold  
Project Planning Division  
State Highway Administration  
707 North Calvert Street  
Baltimore, Maryland 21202

Re: Project No. BA 693A21 I-695 over Chesaco Avenue, Baltimore County

Dear Karen,

This letter is a follow-up to our telephone conversation of July 15, 2004 regarding the July 7<sup>th</sup> submittal requesting Commission approval of the above referenced project. Approval is being sought in accordance with the December 2003 Memorandum of Understanding between SHA and CAC. I have reviewed the submittal and find that additional information is needed in order to complete my review. Please reference Item 2.6 and Appendix A of the MOU regarding the environmental reports and documents needed for our review. Appendix A is the Commission's State Project Checklist, which I have attached for your use.

Based upon the information provided to-date, I have the following comments and questions:

1. Your letter states that the two areas of temporary pavement fall within the Critical Area Buffer for the Back River. Temporary paving in the Buffer was not contemplated during development of the MOU, and it does not fit anywhere in the MOU. It is likely this project may need formal approval. We will make a determination as to whether formal approval is needed after we receive the design plans.
2. Is the drainage pipe, proposed at the outside, southbound shoulder on the south side of the bridge, temporary or permanent? Please provide a design plan depicting its location relative to the location of the bridge and the 100-foot Critical Area Buffer.

Branch Office: 31 Creamery Lane, Easton, MD 21601  
(410) 822-9047 Fax: (410) 820-5093

TTY For The Deaf:  
Annapolis: (410) 974- 2609 D.C. Metro: (301) 586-0450

3. Will it be necessary to remove woody vegetation for any portion of this project? If so, please indicate the location and amount. Has a mitigation plan been prepared to replace this vegetation?

Thank you in advance for your assistance in providing the additional information. If you have any questions, please contact me at 410-260-3481.

Sincerely,



Wanda Cole  
Natural Resources Planner

Encl. (1)

cc: DOT/SHA 33-01  
Donald H. Sparklin  
Cynthia D. Simpson

# ***Chesapeake Bay Critical Area Commission Project Application Checklist***

## **State Agency Actions Resulting in Development on State-Owned Lands in the Critical Area** (COMAR 27.02.05)

### **General Instructions**

The following checklist contains a list of items for consideration by the Critical Area Commission during its review of each State project affecting the Critical Area. While some items will not apply to the project of concern, the responsible Agency should review and be able to discuss aspects of each relevant item. This checklist should be completed and sent, with all other completed information, to the Critical Area Commission staff contact prior to Commission review. Please be aware of the following general guidelines:

- (1) **The completed checklist, maps, and all other pertinent project materials must be submitted to Critical Area staff contact at least 1 month prior to scheduled review by the Project Subcommittee at the Critical Area Commission's monthly meeting.**
- (2) **The sediment and erosion control plan must be finalized prior to scheduling the project for review by the Project Subcommittee.**
- (3) **All other resource/environmental permits and other release documents must be obtained or must be in their final stages (i.e., public comment period completed, permit conditions in final form) prior to scheduling the project for review by the Project Subcommittee.**

If there are any questions with any aspect of this form or with the Commission's review process, please do not hesitate to call the Commission staff contact at (410) 260-3460.

### **General Mapping Features**

Please include the following features on all site plans:

- |  |  |
|--|--|
| <input type="checkbox"/> Vicinity map              | <input type="checkbox"/> Project boundary/Limits of disturbance  |
| <input type="checkbox"/> Scale                     | <input type="checkbox"/> Orientation   |
| <input type="checkbox"/> Project Name and Location | <input type="checkbox"/> Tract or lot lines  |
| <input type="checkbox"/> Critical Area boundary    | <input type="checkbox"/> Development area boundaries (Intensely Developed Areas - IDAs, Limited Development Areas - LDAs, Resource Conservation Areas - RCAs if information is |

available)

- One hundred-year floodplain boundary**
- Dredging activity and spoil site**
- Topography**
- Vegetative cover:**
  - Existing forest
  - Forest clearing
  - Afforestation/reforestation areas
  - Mitigation areas (Buffer impacts)
- Agricultural lands**
- Surface mining sites and wash plants**
- Soil:**
  - Type
  - Area of hydric soils
  - Area of highly erodible soils
- Existing and proposed structures** (buildings, roads, other paved or impervious areas, parking lots, lots, storm drains, septic, stormwater management systems, shore erosion control structures).
- Natural parks**

**Habitat Protection and other Sensitive Area Mapping Features**

Please show the following Habitat Protection Area features on all site plans, if relevant to the particular project site:

- Buffers:**
  - Minimum 100 ft. from tidal waters, tidal wetlands and tributary streams
  - Expanded Buffer to include 15% slopes, hydric soils and highly erodible soils
  - 25 ft. from nontidal wetlands
  - Plant and Wildlife Habitat (Colonial water bird nesting sites, historic waterfowl staging and concentration areas, riparian forest, forest interior dwelling bird habitat, areas of state or local significance, and natural heritage areas)
- Tidal Wetlands**
- Nontidal Wetlands**
- Plant and Wildlife Habitats** (same as above)
- Threatened and Endangered Species** (including species in need of conservation)

**Anadromous Fish Propagation Waters**

**General Project Information**

Please include the following text information, if applicable to the site, in the project application materials. This information may be included in the form of letters, reports, or site plan notes.

- |  |   |
|--|---|
| <u>      </u> <b>Project name and location</b>   | <u>      </u> <b>State agency sponsoring project</b>  |
| <u>      </u> <b>Project description</b><br>(brief narrative including project type, i.e. industrial, port-related, etc.)  | <u>      </u> <b>Anticipated timeline</b><br>(Include project milestones, approximate start and completion dates) |
| <u>      </u> <b>Total acreage in Critical Area</b>  | <u>      </u> <b>Whether project is on State-owned land, locally-owned land or privately-owned land</b>           |
| <u>      </u> <b>Total forest area cleared</b>   | <u>      </u> <b>Method of stormwater control</b>   |
| <u>      </u> <b>10% calculations (Please enclose worksheet) or impervious surface information</b>   | <u>      </u> <b>Soil erosion and sediment control measures and implementation strategy</b>                       |
| <u>      </u> <b>Mitigation required for clearing of forest area</b> (1:1 ratio outside the 100-foot Buffer, 1.5:1 if between 20%-30% clearing, and 3:1 ratio inside the 100-foot Buffer or if above 30% clearing) |   |
| <u>      </u> <b>Afforested area</b> (site must have a minimum of 15% forest cover if not IDA)   |   |

**Minimum Documentation Requirements**

The following permits and documents should be secured or must be in their final stages (i.e., public comment period completed, permit conditions in final form), if applicable to the site, prior to scheduling the project for review by the Project Subcommittee:

- Maryland Department of the Environment (MDE)**
- Stormwater Management
  - Sediment and erosion control plan\*
  - Tidal wetlands permits
  - Nontidal wetlands permits
  - Water Quality Certification
- Army Corps of Engineers (ACOE) Tidal Wetlands Permit (404)**

\* All applicants are required to obtain their sediment and erosion control plans from MDE prior to review by the CBCAC.

**State / Federal Agency Recommendations**

Review and comment from the appropriate MDE, DNR, and ACOE units shall be provided, if applicable to the site, for the following resources and habitats:

- |   |  |
|---|--|
| <input type="checkbox"/> <b>Threatened and Endangered Species</b>       | <input type="checkbox"/> <b>Plant and Wildlife Habitat</b>                         |
| <input type="checkbox"/> <b>Riparian Forests</b>                        | <input type="checkbox"/> <b>Forest Interior Dwelling Birds (FIDs)</b>              |
| <input type="checkbox"/> <b>Natural Heritage Areas</b>                  | <input type="checkbox"/> <b>Colonial water birds</b>                               |
| <input type="checkbox"/> <b>Submerged Aquatic Vegetation</b>            | <input type="checkbox"/> <b>Anadromous Fish Propagation Waters</b>                 |
| <input type="checkbox"/> <b>Other Aquatic Species (Shellfish, etc.)</b> | <input type="checkbox"/> <b>Historic Waterfowl Staging and Concentration Areas</b> |

**Site Visits**

Site visits should be arranged by the responsible agency in advance of Commission review. At a minimum, the site visit should include the Commission staff contact.

**PLEASE MAIL OR FAX THE ABOVE INFORMATION TO:**

**CHESAPEAKE BAY CRITICAL AREA COMMISSION  
1804 WEST STREET, SUITE 100  
ANNAPOLIS, MARYLAND 21401  
(410) 260-3460  
Fax (410) 974-5338**

Judge John C. North, II  
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

July 20, 2004

Ms. Sue Veith  
St. Mary's County Government  
Department of Land Use and Growth Management  
23150 Leonard Hall Drive  
PO Box 653  
Leonardtown, MD 20650-0653

**Re: SM 427-04: MNSP # 04-131-00018 Pridgett's Cove Site Plan**

Dear Sue,

I have reviewed the site plan for the proposed duplex dwelling, located in the IDA of St. George Creek. No disturbance is being proposed in the 100-foot Critical Area Buffer. We do not oppose this site plan. Since the project is located in the IDA, best management practices for residential development are required to manage stormwater quality.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

Branch Office: 31 Creamery Lane, Easton, MD 21601  
(410) 822-9047 Fax: (410) 820-5093

TTY For The Deaf:  
Annapolis: (410) 974- 2609 D.C. Metro: (301) 586-0450

Judge John C. North, II  
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

July 19, 2004

Ms. Sue Veith  
St. Mary's County Government  
Department of Land Use and Growth Management  
23150 Leonard Hall Drive  
PO Box 653  
Leonardtwn, MD 20650-0653

**Re: SM 430-04: MNSP # 04-131-00021 Mill Point Shores Church Addition**

Dear Sue,

I have reviewed the site plan for the bathroom addition to Mill Point Shores Church, located in the RCA of Wicomico River. The 100-foot Critical Area Buffer does not occur on this site, and the proposed impervious surface areas do not exceed the 15% limit. We do not oppose this site plan. Any tree removal will require 1:1 mitigation.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

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July 16, 2004

Mr. Steve Dodd  
Dorchester County  
Department of Planning and Zoning  
PO Box 107  
Cambridge, MD 21613

**Re: DC 507-04: # 2206 Bride and Harold M. Miller, Jr. Buffer Variance Application**

Dear Steve,

I have reviewed the applicant's variance request to construct a dwelling, pool and deck in the 100-foot Critical Area Buffer on a property located in the RCA of Beckwith Creek. This property contains 17.71 acres and is developed with a dwelling constructed in 1800, located in what is now the 100-foot Buffer of the parcel. A pool, shed, and part of a metal building are present and are located in the 100-foot Buffer of this property.

Please note that the applicant's site plan for this variance request shows the proposed development on a 2.52-acre area labeled as Lot 2. The applicant intends to subdivide this property through the intrafamily transfer provisions. Lot 2 has not yet been recorded. All newly-created lots must be able to comply with the County's Critical Area Program and ordinances, which include no development in the Buffer. This site plan clearly shows proposed development in the Buffer.

This office opposes this request for a variance to construct a dwelling, pool and deck in the 100-foot Critical Area Buffer. In 2004, the Maryland General Assembly reiterated its commitment to protection of the Chesapeake Bay Critical Area's water quality and wildlife habitat values. By Chapters 431 and 432 of the 2002 Laws of Maryland, the General Assembly stated that variances to a local jurisdiction's Critical Area program may be granted only if a zoning board finds that an applicant has satisfied its burden to prove that the applicant meets each one of the county's variance standards. The Code of Maryland Regulations and County Code both provide standards a local government must use when granting a variance. Again, because the applicant must meet

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all of the standards in order for the Board to grant a variance, this office believes that, in this case, those standards clearly have not been met. I have outlined those standards below:

1. That special conditions or circumstances exist that are peculiar to the land or structure within the jurisdiction's Critical Area program that would result in an unwarranted hardship to the applicant. The General Assembly defined "unwarranted hardship" as "without a variance, an applicant would be denied reasonable and significant use of the entire parcel or lot for which the variance is requested." Annotated Code of Maryland, Natural Resources Article §8-1808(d)(2). It appears there are opportunities to select a footprint that can be developed outside the Buffer provided a conforming lot has first been recorded.
2. That a literal interpretation of this subtitle or the local Critical Area Program and related ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical area of the local jurisdiction. The applicants have reasonable use of this property, and therefore, they would not be denied a right commonly enjoyed by their neighbors. There is opportunity to locate development on this property without the need for a variance. The applicant's rights must be evaluated against the rights of other property owners under the Critical Area Program.
3. The granting of a variance will not confer upon an applicant any special privilege that would be denied by this subtitle or the local Critical Area program to other lands or structures within the jurisdiction's Critical Area. If the variance is granted, it would confer upon the applicant a special privilege that would be denied to others in this subdivision, as well as in similar situations in the County's Critical Area. This property is eligible for subdivision under the intrafamily transfer provisions. There is room to create a second lot without the need for a variance.
4. The variance request is not based upon conditions or circumstances which are the result of the actions by the applicant, nor does the request arise from any condition conforming, on any neighboring property. The applicant meets this standard.
5. The granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the jurisdiction's Critical Area, and that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area law and the regulations. The applicant bears the burden to prove this factor, along with the others discussed above. In 2004, the General Assembly made specific findings regarding the importance of the Buffer and the detrimental impact that new development activities in the Buffer cause to water quality and habitat. The General Assembly required that "in considering an application for a variance, a local jurisdiction shall presume that any new development activity in the Critical Area for which a variance is required does not conform" to the Critical Area program. Code, Natural Resources Article §8-1808(d)(2). The 100-foot Buffer is the last area of protection between upland and aquatic habitats. The vegetated Buffer intercepts stormwater runoff, blocking sediments, allowing soils time to absorb the runoff, and providing plants capable of

nutrient uptake, which improves water quality. In addition, the forest vegetation in the Buffer provides a transition, or "step-down" habitat between the aquatic and upland environments. The above-ground woody structures provide protection to upland creatures who visit the shoreline to feed on aquatic organisms. Many upland species return to the same area each year to breed and feed. Loss of Buffer vegetation ultimately affects the health and numbers of wildlife populations. The woody structures of Buffer vegetation provide shade to aquatic environments and moderate the water temperature for species that thrive only in cool environments. The leaf litter that reaches the waterways decomposes into detritus on which aquatic organisms feed. Without these benefits, water quality to the Chesapeake Bay and its tributaries will decline, and wildlife populations will diminish.

In conclusion, it is our position that, unless the Board finds that the applicant has met the burden of proof on each one of the County's variance standards, the Board must deny this application. Please provide this office with a copy of the written decision made in this case. If you have any questions, please contact me at 410-260-3481.

Sincerely,



Wanda Diane Cole  
Natural Resources Planner

cc: Marianne Mason, Counsel

Judge John C. North, II  
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

July 16, 2004

Mr. Steve Dodd  
Dorchester County  
Department of Planning and Zoning  
PO Box 107  
Cambridge, MD 21613

**Re: DC 502-04: # 2205 Poplar Island Gun Club Buffer Variance Request**

Dear Steve,

I have reviewed the applicant's Buffer variance request to construct an addition between an existing dwelling and a detached garage, and a deck that will run from the mid-point of the waterfront side of the addition to the mid-point of the waterfront side of the existing house. This parcel is grandfathered and located in the RCA of Fishing Bay. The property is almost entirely constrained by the 100-foot Critical Area Buffer and the presence of nontidal wetlands. This office does not oppose this request. We recommend the variance approval include a condition that the required 3:1 mitigation for new disturbances to the Buffer be provided on site.

Please provide this office with a copy of the written decision made in this case. If you have any questions, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

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Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



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[www.dnr.state.md.us/criticalarea/](http://www.dnr.state.md.us/criticalarea/)

July 15, 2004

Ms. Karen Houtman  
Dorchester County Planning & Zoning Office  
PO Box 107  
Cambridge, Maryland 21613-0107

**Re: DC 24-04: Taylor's Island Marina Growth Allocation Request  
Tax Map 59 Parcel 150**

Dear Karen,

This office has received Dorchester County's submittal requesting approval of the use of growth allocation to change the Critical Area Overlay designation of 10.604 acres of land on Tax Map 59 Parcel 150 from RCA to IDA, and 7.484 acres of land on the same parcel from LDA to IDA, and accepts them for processing. The residue of Parcel 150 will contain 40.007 acres of RCA. The purpose of the request is to allow an existing marina to expand its area of operations in order to meet the demands of nearby communities for boat hauling and storage service. The project will be proposing best management practices to meet the 10% pollutant reduction requirement for projects in the IDA.

The Chairman will make an amendment or refinement determination within 30 days of the date of this letter, and Commission staff will notify you of his determination and the procedures for review by the Critical Area Commission.

Thank you for your cooperation. If you have any questions, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

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July 14, 2004

Ms. Robin M. Bowie, Manager  
Division of Environmental Planning  
Maryland Aviation Administration  
PO Box 8766  
BWI Airport, MD 21240-0766

Re: **9-04: Maryland Air National Guard Relocated Access Road, Lynbrook to Hercules**  
**10-04: Maryland Air National Guard Parking For Mobility Storage Building 4010**

Dear Robin,

I am pleased to inform you that on July 7, 2004, the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays unanimously approved the above referenced projects, which are proposed on land located at Martin State Airport that is leased by Maryland Air National Guard. These projects have been reviewed for 10% compliance, and will be providing best management practices that will exceed the pollutant removal requirements.

Attached is a Planting Agreement for the mitigation plantings that will be provided for the relocated access road project. Please have the appropriate party sign and return the form to this office.

I wish to thank both the Maryland Aviation Administration and Maryland Air National Guard for their participation and assistance in this process. It has been a pleasure working with you and your consultants, Joanna Hiebler and Michael Wilmore, of URS Corporation.

If you have any questions, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

cc: Lt. Col. Scott Kearby, MANG  
Joanna Hiebler, URS Corporation



Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

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July 12, 2004

Ms. Elsa Ault  
Charles County  
Department of Planning and Growth Management  
PO Box 2150  
La Plata, MD 20646-2150

RE: **CS 143-04: SFD 40092 Jeffrey and Kimberly Leonard Revised Site Plan  
Waverly Point Subdivision, Lot 3**

Dear Elsa,

I have reviewed the revised site plan for this project, which reorients the garage from 45 to 90 degrees. We do not oppose this revision.

However, during the March 2004 review, we overlooked providing comments on the proposed grading for and construction of retaining walls in the 100-foot Buffer. These retaining walls are also proposed on a steep slope measuring 16%. There is an existing bulkhead along the shoreline, which protects the property from eroding and contributing sediment to Potomac River.

The first terrace proposes excavation of 6-8 feet of material, and the second terrace proposes the excavation of 2-4 feet. This activity requires a Buffer variance. The applicant has not provided information that supports the need for this level of disturbance in the Buffer.

If you have any questions regarding these comments, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Cole".

Wanda Cole  
Natural Resources Planner



Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lieutenant Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

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July 12, 2004

Mr. Ray Dintaman, Jr., Director  
Environmental Review Unit  
B-3 Tawes Building  
580 Taylor's Avenue  
Annapolis, Maryland 21401

Re: Draft EA: Presidential Replacement Helicopter Programs Support Facility  
Patuxent NAS, St. Mary's County

Dear Ray,

I have reviewed the draft environmental assessment for this proposal. As stated in the document, Federal agency projects proposed in the Coastal Zone are subject to State agency requirements. While this project does not require formal approval by the full Critical Area Commission, design details are to be submitted to our office for staff review and approval. I am providing the following comments regarding the two preferred alternatives.

1. The preferred alternative, Site 3, is located in the Critical Area of Harper Creek, a tributary to Patuxent River. The second alternative, Site 6, is not in the Critical Area, and is not immediately adjacent to a natural waterway. Given the various types of noxious and/or hazardous materials to be used at this facility, the numerous vehicles that will be parked there, and the amount of impervious areas that will be created, we recommend use of Site 6, as it is farthest removed from any natural waterways. This would provide additional water quality protection should a serious spill or equipment failure occur.
2. Selection of Site 6 would eliminate the need for relocating the Air Operations Control Tower, thus preserving 5 acres of forest.
3. Site 3 is considered an Area of Intense Development. If selected, the stormwater management facilities must be designed to meet both Maryland Department of the Environment stormwater requirements and the Critical Area 10% pollutant removal requirement. The Commission has recently published a new document, **Critical Area 10% Rule Guidance Manual, Fall 2003**. This document is available on-line at [http://www.dnr.state.md.us/criticalarea/10percent\\_rule.html](http://www.dnr.state.md.us/criticalarea/10percent_rule.html). The 10% calculation worksheets will need to be completed and submitted with the design details.

4. If Site 3 is selected, all non-water-dependent development must be located outside the 100-foot Critical Area Buffer of Harper Creek. A 100-foot Buffer must also be provided for any tributaries to Harper Creek, if those tributaries are located within the 1,000-foot Critical Area boundary, and development must be outside of these Buffers, as well. Stormwater management facilities are considered non-water-dependent.
5. If Site 3 is selected, a copy of the determination letter from the Maryland Department of Natural Resources, regarding the presence of rare, threatened, and/or endangered species, must be provided to this office.
6. Statements regarding the amount of forest clearing are confusing. Section 4.1.7.2 states, "...the Air Operations Control tower would have to be relocated, resulting in the loss of 2.5 acres of forest cover at the relocation site." Section 4.2.1.2 states, "...at the Air Operations Control Tower Relocation Site, approximately 5 to 10 acres of the proposed project area is covered by forest vegetation, ..." The final EA should clarify the actual amount of forest clearing expected.
7. It would be helpful if Table 4-3, Cumulative Impacts Expected from Construction and Operation of the Proposed Presidential Helicopter Programs Support Facility, included columns that compared impacts for Site 3 to those of Site 6. In addition, the table should include data on the amount of forest clearing required, amount of new impervious area to be created, and the overall limits of disturbance for the development footprint, including that of any new access roads that must be provided. If and when a field survey is performed for locating rare, threatened and endangered plants, a list of the affected plants should also be provided for both sites.
8. If Site 3 is chosen, 1:1 Critical Area forest mitigation is to be provided. A mitigation planting plan should be developed concurrent with the design plans, and the planting should be implemented prior to or during construction. On State projects, a Planting Agreement is executed to ensure survival of the mitigation plantings for 2-5 years.

I may be reached at 410-260-3481 for any questions regarding these comments or for guidance on Critical Area requirements.

Thank you for the opportunity to comment.

Sincerely,



Wanda Diane Cole  
Natural Resources Planner

cc: Sue Veith

Judge John C. North, II  
Chairman



Ren Serey  
Executive Director

**STATE OF MARYLAND  
CRITICAL AREA COMMISSION  
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July 12, 2004

Mr. Steve Dodd, Director  
Dorchester County  
Department of Planning and Zoning  
PO Box 107  
Cambridge, MD 21613

**Re: DC 475-04: # 1052 Barbara Murphy Hale One-Lot Subdivision**

Dear Steve,

I have reviewed the plan for this one-lot subdivision in the RCA of Chicamacomico River. The information shown on the plan suggest the deed may include two tracts, one containing a total of 61.174 acres of upland area, and another containing 13.64 acres of what appears to be high marsh, or jurisdictional private tidal wetlands. A boundary line adjustment is proposed between the second tract and Lot 1, which will result in the upland portion of the second tract being transferred to Lot 1. The following comments are provided for your use, and supplement the comments in your June 23, 2004 letter to the surveyor.

1. Topography and soil information must be shown on the plan in order to determine if the Buffer has been properly expanded. The sudden transition from floodplain zone A to C suggests a steep bank might occur in the area. Zone A might also contain inclusions of nontidal wetlands. The Buffer may need to be expanded for steep slopes and/or nontidal wetlands.
2. The Wildlife and Heritage Service (WHS) must be contacted regarding the presence of rare, threatened and endangered, and their habitats. All WHS comments must be addressed on the plat prior to granting any approvals. Please provide our office a copy of the WHS determination letter.
3. The 100-foot Buffer line must be labeled on the plan, and the Buffer should be delineated for the residue.

Branch Office: 31 Creamery Lane, Easton, MD 21601  
(410) 822-9047 Fax: (410) 820-5093

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4. This subdivision represents a change in use from agriculture to residential use. The 100-foot Buffer, which appears to be largely wooded, must be fully established with forest plantings.
5. We recommend the development envelope for the house on Lot 1 utilize an existing cleared area in order to eliminate the need for forest clearing.

Please provide a copy of the revised plat when it is available. We may have additional comments based upon any new information. If you have any questions regarding these comments, please contact me at 410-260-3481.

Sincerely,



Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
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Ren Serey  
Executive Director

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July 9, 2004

Ms. Patricia Farr  
Baltimore County Department of  
Environmental Protection and Resource Management  
401 Bosley Avenue, Suite 416  
Towson, Maryland 21204

RE: **BC 12-04: Lauenstein Property Subdivision  
Development Plan and Buffer Mitigation Plan**

Dear Pat,

I have reviewed the information for the proposed subdivision of a 50.73-acre property located in the LDA of Middle River, Norman and Hogpen Creeks. This property contains existing structures and roadways in the 100-foot Buffer that will be removed. The areas of demolition will be restored by establishing the 100-foot Buffer in forest vegetation. All of the proposed development will be located outside the 100-foot Buffer with the exception of a pathway to the proposed community marina. The proposed 6.16 acres of forest clearing will occur outside the 100-foot Buffer, representing a 19.69% loss of existing forest cover. The County requires 3:1 mitigation for forest clearing in the 300-foot Buffer. The total forest mitigation required for this development is 19.54 acres, with 8.32 acres being planted on-site.

We do not oppose this development plan and we support the Buffer Mitigation plan for this site. We recommend that applicant explore off-site opportunities to provide afforestation on adjacent properties, particularly the areas at the end of River Neck Road. Afforestation on those properties would further enhance the reforestation efforts on the Lauenstein property, and would establish a quality riparian corridor.

Please provide a copy of the Wildlife and Heritage Service comments regarding the presence of rare, threatened and endangered species at this site. We may have additional comments based on any new information received.

If you have any questions regarding these comments, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
Executive Director

STATE OF MARYLAND  
CRITICAL AREA COMMISSION  
CHESAPEAKE AND ATLANTIC COASTAL BAYS  
1804 West Street, Suite 100, Annapolis, Maryland 21401  
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[www.dnr.state.md.us/criticalarea/](http://www.dnr.state.md.us/criticalarea/)

July 8, 2004

Mr. Keith Kelley  
Baltimore County Department of  
Environmental Protection and Resource Management  
401 Bosley Avenue, Suite 416  
Towson, Maryland 21204

RE: **BC 438-04: Karll Trust Property Concept Plan and Site Proposal Map**

Dear Keith,

I have reviewed the information for the proposed development of this 41.53 acre property located entirely in the LDA of Back River. The site contains a large inclusion of tidal and nontidal wetlands. These comments are intended to supplement your March 1, 2004 comments.

1. The net site area after deducting State tidal wetlands must be stated on the plan so that the correct percentages of impervious surface and forest cover may be established.
2. The amount of existing forest cover must be quantified and stated on the plat, in addition to the amount of forest cleared.
3. The amount of impervious surface area is limited to 15% of the site's net area.
4. This office cannot support variances for new subdivisions. The encroachments into the 100-foot Buffer would require a Buffer variance for building 8, the stormwater management facility to the east of building 8, and the overlook. Please indicate whether the proposed paths will be available to the public. If so, they should address the Commission's guidance paper on public walkways. While access to the water may be permitted, this design does not minimize impacts to the Buffer.
5. Please provide this office with a copy of the Wildlife and Heritage Service (WHS) determination regarding the presence of rare, threatened and/or endangered species and their habitats at this site. All WHS comments must be addressed on the plat and plans.
6. The topographic information is hard to read amid all the other information being shown. Perhaps the contour elevations could be numbered in areas on the plan that would make the site relief easier to interpret.



Mr. Kelley  
July 8, 2004  
Page Two

7. The full length of the field-located stream channel must be clearly delineated. The 100-foot Buffer must be provided on each side of this tributary stream and expanded to include all contiguous non-tidal wetlands. The Buffer may need to be expanded for hydric soils.
8. There is a small area of Elkton soils in the southeast corner of the site that may need to be included in an expanded Buffer. Soils information was either not present or discernible for the northwest portion of the property. Given the extent of the 100-year floodplain, irregular topography and low elevations across the site, and the presence of Woodstown soils which have seasonally high water tables, there may be additional areas of hydric soils and/or nontidal wetlands present on this site. If so, the 100-foot Buffer may need to further expanded.
9. The location of the 100-foot Buffer line may have been expanded too far in the area west of building 8.

We request the opportunity to review the revised plan. We may have additional comments based upon any new information received. If you have any questions regarding these comments, please contact me at 410-260-3481.

Sincerely,



Wanda Diane Cole  
Natural Resources Planner

WDC/jjd

cc: Daft-McCune-Walker, Inc.

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
Executive Director

STATE OF MARYLAND  
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July 8, 2004

Mr. Keith Kelley  
Baltimore County Department of  
Environmental Protection and Resource Management  
401 Bosley Avenue, Suite 416  
Towson, Maryland 21204

RE: **BC 404-04: PDM # XII-139 Bear Creek Towne Concept Plan**

Dear Keith,

I have reviewed the concept plan and site proposal map for the proposed 41-unit townhouse community on Parcel 64. A boundary line adjustment is also being proposed between Parcel 64 and Parcel 301. Parcel 301 is currently developed with an apartment complex. The following comments are provided to supplement your April 19, 2004 comments.

1. The 100-foot Critical Area Buffer line has not been delineated and labeled. The area shown as the Forest Buffer Easement appears to be the location of the County's required 300-foot Critical Area Buffer.
2. The linear feature that parallels the shoreline must be labeled. If this is to be a public walkway, it should be designed according to the Commission's guidance paper regarding public walkways.
3. The proposed community marina is limited to the lesser of one slip per lot or dwelling unit or one slip for every 50' of LDA and IDA shoreline. Based upon the survey information shown, the shoreline for Parcel 64 measures approximately 1,409.88 feet, which would permit 28 slips.
4. The IDA and LDA boundary(ies) must be shown, labeled, and their areas quantified.
5. Is redevelopment proposed for Parcel 301?
6. Please provide a copy of the 10% Rule calculations for the IDA portion of the project.
7. The limits of the nontidal wetlands on the property must be delineated and clearly labeled.

Mr. Kelley  
July 6, 2004  
Page Two

8. The Wildlife and Heritage Service (WHS) must be contacted for a determination on the presence of rare, threatened and endangered species and/or their habitats at this site. Any WHS comments must be addressed on the plat and plans. Please provide this office with a copy of the WHS determination.

We request the opportunity to review revisions to the plan. We may have additional comments based upon any new information. If you have any questions regarding these comments, please contact me at 410-260-3481.

Sincerely,

  
Wanda Diane Cole  
Natural Resources Planner

WDC/jjd

cc: Colbert Matz Rosenfelt, Inc.

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

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July 8, 2004

Mr. Reed Faasen  
Charles County  
Department of Planning and Growth Management  
PO Box 2150  
La Plata, MD 20646-2150

RE: CS 468-04: SFD # 04-0297 Green Manor Estates

Dear Reed,

I have reviewed the site plan for this project, which proposes to construct a dwelling with garage, driveway, well and septic in the RCA of Mallows Bay. No development is proposed in the 100-foot Critical Area Buffer and forest clearing is limited to the footprint of the primary septic field only. Mitigation is being provided for the forest clearing. We do not oppose this site plan.

Critical Area Note # 2 must be revised to show that the impervious surface limit for this property is 15%.

If you should have any questions regarding these comments, please don't hesitate to contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Cole  
Natural Resources Planner

WDC/jjd

## *Critical Area Commission*

### STAFF REPORT

July 7, 2004

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

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

**JURISDICTION:** Baltimore County

**COMMISSION ACTION:** Vote

**STAFF RECOMMENDATION:** Approval

**STAFF:** Wanda Diane Cole

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

### DISCUSSION:

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

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

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

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

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

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

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

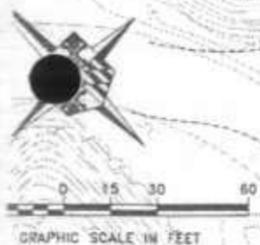
Maryland Air National Guard  
Baltimore County  
Building 4010 and Existing Access Road  
Existing Conditions



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

Prepared by Wanda Diane Cole  
June 2004





HERCULES BOULEVARD

FUTURE ACCESS ROAD  
(BY OTHERS)

ACCESS ROAD  
(BY OTHERS)

FUTURE ACCESS  
& PARKING FOR  
MOBILITY STORAGE  
BUILDING 4010  
(BY OTHERS)

CHESAPEAKE BAY  
CRITICAL AREA

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

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

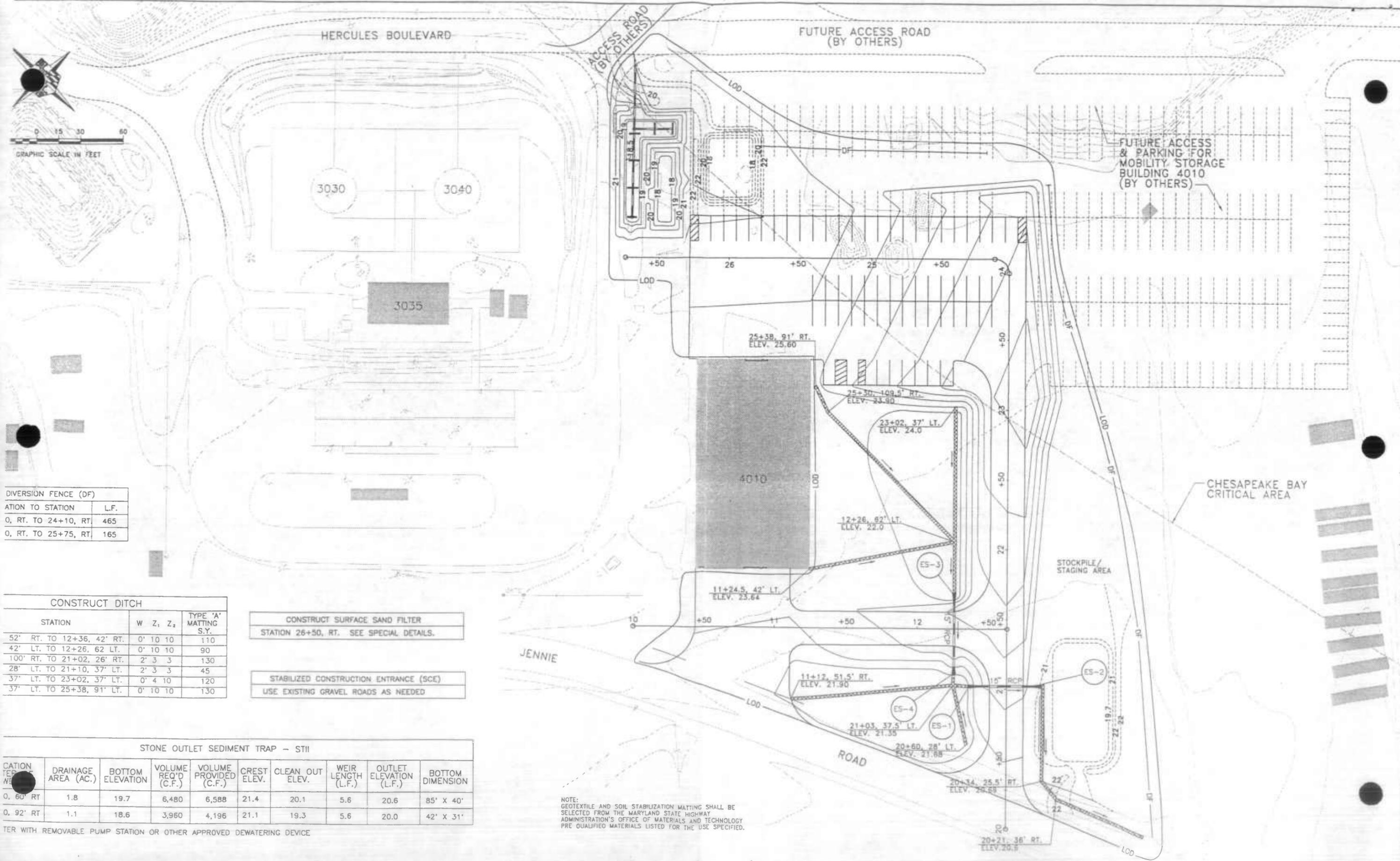
CONSTRUCT SURFACE SAND FILTER  
STATION 26+50, RT. SEE SPECIAL DETAILS.

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

STONE OUTLET SEDIMENT TRAP - STII									
CATION TRAP NO.	DRAINAGE AREA (AC.)	BOTTOM ELEVATION	VOLUME REQ'D (C.F.)	VOLUME PROVIDED (C.F.)	CREST ELEV.	CLEAN OUT ELEV.	WEIR LENGTH (L.F.)	OUTLET ELEVATION (L.F.)	BOTTOM DIMENSION
0, 60' RT	1.8	19.7	6,480	6,588	21.4	20.1	5.6	20.6	85' X 40'
0, 92' RT	1.1	18.6	3,960	4,196	21.1	19.3	5.6	20.0	42' X 31'

TER WITH REMOVABLE PUMP STATION OR OTHER APPROVED DEWATERING DEVICE

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



25+38, 91' RT.  
ELEV. 25.60

25+30, 109.5' RT.  
ELEV. 23.90

23+02, 37' LT.  
ELEV. 24.0

12+26, 62' LT.  
ELEV. 22.0

11+24.5, 42' LT.  
ELEV. 23.64

11+12, 51.5' RT.  
ELEV. 21.90

21+03, 37.5' LT.  
ELEV. 21.35

20+60, 28' LT.  
ELEV. 21.68

20+34, 25.5' RT.  
ELEV. 20.59

20+21, 36' RT.  
ELEV. 20.8

ES-3

ES-4

ES-1

ES-2

STOCKPILE/  
STAGING AREA

JENNIE

ROAD

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

STATE OF MARYLAND  
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June 28, 2004

Ms. Yvonne Chaillet  
St. Mary's County  
Department of Land Use and Growth Management  
23150 Leonard Hall Drive  
PO Box 653  
Leonardtown, MD 20650-0653

RE: **SM 436-04: # 04-0134 Collins & Ascencio Buffer Variance Request**

Dear Yvonne,

This letter replaces the comments in my letter dated June 28, 2004. I have reviewed the site plan for this Buffer variance request. This project proposes a sand mound system in the LDA of St. Patrick's Creek. A small portion of the sewage reserve area will encroach into the 100-foot Critical Area Buffer. We do not oppose this variance request.

Please note that the site plan shows very little forest cover, while Critical Area note # 7 indicates the site is 16% forested.

Please forward a copy of the written decision made in this case. If you have any questions regarding these comments, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

STATE OF MARYLAND  
CRITICAL AREA COMMISSION  
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July 2, 2004

Mr. Keith Kelley  
Baltimore County Department of  
Environmental Protection and Resource Management  
401 Bosley Avenue, Suite 416  
Towson, Maryland 21204

RE: **BC 439-04: Robert Dvorak Subdivision Concept Plan**

Dear Keith,

I have reviewed the concept plan for the proposed subdivision of 9.85 acre property, part of which is located in the LDA of Norman Creek. This subdivision will create 10 dwelling units located wholly or partially within the Critical Area. We concur with DEPRM's comments regarding: delineation of the Critical Area Buffer on the plan and adding notes regarding the LDA designation, creek name, and impervious surface limits; and for the need to obtain a determination from the Maryland Department of Natural Resources regarding the presence of rare, threatened and/or endangered species and/or their habitats on this site.

Please provide a copy of the DNR determination letter when it is available. We may have additional comments based on any new information provided.

If you have any questions regarding these comments, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda".

Wanda Diane Cole  
Natural Resources Planner



Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

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July 2, 2004

Mr. Keith Kelley  
Baltimore County Department of  
Environmental Protection and Resource Management  
401 Bosley Avenue, Suite 416  
Towson, Maryland 21204

RE: **BC 437-04: # 04-11 Robert B. Beavers Buffer Variance Request**

Dear Keith,

I am providing the following comments subsequent to our telephone conversation about the property and my review of the site plan provided with the variance application. The applicant proposes raising the elevation to + 8 across the entire property by placing 20,000 cubic yards of fill behind a proposed replacement bulkhead. The purpose is to eliminate wet conditions caused by stormwater runoff from Lot 56, which borders the property on the south side, and by tidal encroachment from a tidal gut that borders the north side. There is a naturally-low area behind a deteriorated and collapsed bulkhead along the shoreline, which borders the west side. The elevation of the property at East Riverside Avenue, which borders the east side, is + 8. The property slopes quickly and steeply between the road and the shoreline. The applicant has stated that the wet soils do not allow for complete use of the yard and may be contributing to settling of the house foundation. Your visit to the property found very saturated conditions with a significant amount of standing water.

This is a grandfathered property located in the LDA of Back River. The site is entirely constrained by the 100-foot Buffer, therefore, the fill operation would occur entirely within the Buffer. It is our understanding that the applicant is considering replacing the 1952 dwelling.

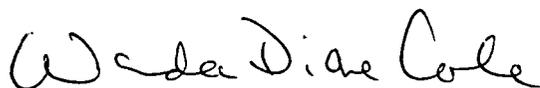
We do not have enough information to determine whether this fill operation would create problems that would affect the adjacent properties, nor can we tell whether other options are available to address the problem. Has the applicant explored whether the use of underdrains in the lawn and/or riprap along the tidal gut and shoreline would address the problem? What will the proposed cross-sections across the property at the road, mid-point and shoreline look like? Will retaining walls be needed to contain the fill along the tidal gut? If not, sediment and erosion control regulations would require a 2:1 or 3:1 slope, creating a steep slope that would encroach 20-24 feet into the northern side of the property.

Will the applicant be able to obtain permission from the owner of Lot 56 to tie into that lot's elevations? What measures will be taken to prevent sediment runoff during the operation? Will the bulkhead and any retaining walls be constructed first? Will equipment need to work around the existing house or will this be done concurrent with the demolition process? It is my understanding, based on our conversation, that this proposal has not yet been reviewed by the County's sediment and erosion control division.

We are not opposed to the concept of ameliorating the wet site conditions on this property, if detailed information can be provided to ensure the proposal doesn't create other problems on or off-site. Please send us a copy of any written decision made in this case.

If you have any questions regarding these comments, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

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July 2, 2004

Mr. Phil Shire  
St. Mary's County  
Department of Land Use and Growth Management  
23150 Leonard Hall Drive  
PO Box 653  
Leonardtown, MD 20650-0653

Re: **SM 479-04: 04-141-024 Blackistone Farm (Gould)**  
**Boundary Line Adjustment Plat, Lots 1 & 2**

Dear Phil,

I have reviewed the boundary line adjustment plat for this property, which is located in the LDA of Cuckold Creek. The boundary between Lots 1 & 2 is being expanded to increase the size of Lot 2 by 0.47 acres. In so doing, a large area of existing impervious surface will no longer be a part of Lot 1, allowing Lot 1 to be developed with a single-family dwelling in conformance with the 15% impervious surface limit. While this adjustment will not cause a change in density on Lot 2, it increases the nonconformity with the impervious surface limitations for Lot 2.

We cannot support this boundary line adjustment as proposed. We recommend the applicant explore ways to eliminate non-essential impervious areas on these lots so as to decrease or eliminate the nonconforming situations. The applicant might also consider the use of growth allocation to remove the impervious surface limits.

Please call me at 410-260-3481 if you have questions regarding these comments.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

cc: Sue Veith

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Governor

Ren Serey  
Executive Director

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June 30, 2004

Mr. Matt Hedger, Planner  
City of Salisbury-Wicomico County  
Department of Planning, Zoning and  
Community Development  
PO Box 870  
Salisbury, MD 21803-0870

Re: **WI 443-04: Pearl Tan Trustees Site Plan**

Dear Matt,

I have reviewed the site plan for the single-family dwelling proposed on a grandfathered lot in the LDA of Sharps Creek. The lot is located within a Special Buffer Area. A portion of the proposed dwelling encroaches into the 50' Buffer, placing it closer to the shoreline than the structure on the adjacent property. The site is constrained by both the 50' Buffer and the location of the sewage reserve area. The following comments are provided for your use:

1. If the health department cannot approve another configuration for the sewage reserve area so that the house can be constructed outside the 50' Buffer, a Buffer variance is needed for the dwelling. However, the applicant must show that there are no alternative footprints that could fit in the area between the SRA and Buffer. Mitigation for new disturbances in the Buffer of a Special Buffer Area is 2:1.
2. Unless the County's Special Buffer Area provisions prohibit sewage reserve areas in the 100' Buffer, a Buffer variance is not needed for the sewage reserve area, as it is proposed outside the 50' Buffer. Given the shallow depth of this lot, it is preferable, from a water quality standpoint, to locate the sewage reserve area closer to the road than to the shoreline.



Please contact me at 410-260-3481 if you have any additional questions.

Sincerely,

*Wanda Diane Cole*

Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

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L. Governor

Ren Serey  
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June 30, 2004

Mr. Keith Kelley  
Baltimore County  
Department of Environmental Protection  
and Resource Management  
401 Bosley Avenue, Suite 416  
Towson, Maryland 21204

RE: **BC 416-04: Lakes At Stansbury Shores Subdivision, Concept Plan**

Dear Keith,

I have reviewed the concept plan for this subdivision, which proposes multi-family and single-family development on a property located in the RCA of Bear and Bullneck Creeks, as well as the IDA of Lynch Cove, Bear Creek and Bullneck Creek. The majority of the development is proposed in the IDA. The following comments are provided for your use:

1. The 100-foot Buffer line in the RCA of Bear Creek, north of the pier, must be delineated on the plan. It appears the Buffer may also need to be expanded for contiguous nontidal wetlands.
2. The project must be designed to avoid the need for Critical Area variances. Our office cannot support new subdivisions that require variances.
3. We concur with your June 7, 2004 comment regarding moving all development out of the RCA that supports the development in the IDA, including stormwater management facilities and parking.
4. We concur with your comments regarding required compliance with the 10% Rule for development in the IDA.
5. The site plan should include a note stating the maximum number of slips allowed in the Critical Area for the proposed community marina.
6. We concur with your comment regarding the need for a Wildlife and Heritage Service determination on rare, threatened and endangered species. Please provide our office with

a copy of the determination letter.

We would appreciate the opportunity to review revisions to plans as they become available. We may have additional comments based upon any new information.

Thank you for the opportunity to comment. Please contact me at 410-260-3481 if you have any questions regarding these plans.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
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1804 West Street, Suite 100, Annapolis, Maryland 21401  
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[www.dnr.state.md.us/criticalarea/](http://www.dnr.state.md.us/criticalarea/)

June 28, 2004

Ms. Yvonne Chaillet  
St. Mary's County  
Department of Land Use and Growth Management  
23150 Leonard Hall Drive  
PO Box 653  
Leonardtown, MD 20650-0653

RE: **SM 433-04: # 04-0494 Short Acres, Lot 5 Buffer Variance Request**

Dear Yvonne,

I have reviewed the site plan for this project, which proposes construction of a single-family dwelling, garage and driveway in the LDA of Green Holly Pond. It is our understanding that the County considers this a grandfathered lot because it was recorded prior to implementation of the County's Critical Area Program. The Buffer, which must be expanded for contiguous steep slopes, has not been correctly delineated on the site plan. It appears the slopes measure 50% in steepness, which requires the Buffer to be expanded another 200 feet. The properly expanded Buffer then constrains most of the entire site, requiring a variance for development.

We do not oppose this variance request. We recommend the variance approval include a condition that the 3:1 mitigation required for new disturbances in the Buffer be based upon a correctly expanded Buffer. It appears the amount of clearing and its required mitigation can be reduced by moving the house closer to the road.

Please forward a copy of the written decision made in this case. If you have any questions regarding these comments, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
Executive Director

STATE OF MARYLAND  
CRITICAL AREA COMMISSION  
CHESAPEAKE AND ATLANTIC COASTAL BAYS

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Ms. Yvonne Chaillet  
St. Mary's County  
Department of Land Use and Growth Management  
23150 Leonard Hall Drive  
PO Box 653  
Leonardtown, MD 20650-0653

RE: **SM 436-04: # 04-0134 Collins & Ascencio Buffer Variance Request**

Dear Yvonne,

I have reviewed the site plan for this project, which was submitted for our review as a Buffer variance request. This project proposes an addition and a sand mound system in the LDA of St. Patrick's Creek. Based on the plan we received, these features are located outside the Buffer and would not require a variance.

The amount of existing forest should be verified, as the site plan shows very little forest cover, while Critical Area note # 7 indicates the site is 16% forested. It appears 25% of the existing forest is being cleared, and that mitigation is being provided at the required 1.5 to 1 ratio.

Please forward a copy of the written decision made in this case. If you have any questions regarding these comments, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor

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June 28, 2004

Ms. Yvonne Chaillet  
St. Mary's County  
Department of Land Use and Growth Management  
23150 Leonard Hall Drive  
PO Box 653  
Leonardtown, MD 20650-0653

RE: **SM 435-04: # 03-0607 Blynn & Linda Kuhstoss Buffer Variance Request**

Dear Yvonne,

I have reviewed the site plan for this project, which proposes a single-family dwelling, garage, driveway and sewage reserve area in the LDA of St. Thomas Creek. This lot is constrained entirely by the 100-foot Buffer, which has been expanded for steep slopes, requiring a Buffer and steep slopes variance for the project. We do not oppose this variance request. The development envelope has been sited on the flattest part of the slope, and is adjacent to an existing access easement, thereby minimizing the amount of clearing needed to implement the project.

There does not appear to be opportunity to provide the required 1.5 to 1 forest mitigation on-site. We recommend the variance approval include a condition that a fee-in-lieu payment be made for any mitigation plantings that cannot be accomplished on or off-site.

Please forward a copy of the written decision made in this case. If you have any questions regarding these comments, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

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

**MEMORANDUM**

**To:** Jim McLean, Chair, Meg Andrews, Joe Jackson and Ed Richards  
**From:** Wanda Cole and Mary Owens  
**Date:** June 24, 2004  
**Subject:** City of Cambridge Comprehensive Review

---

Thank you for agreeing to serve on the Cambridge Panel. The public hearing is scheduled for Wednesday, June 30, 2004 at 6:30 p.m. at the City Council Chambers located at 305 Gay Street in Cambridge. Directions to this location are attached.

The purpose of the hearing is to review revisions to the City's zoning ordinance, which pertain to implementation of the City's Critical Area regulations. These provisions provide for implementation of and supplement the Cambridge Critical Area Program document, which is not being amended at this time. The revisions are the result of the City's review of the growth allocation and annexation sections of their Program document and Zoning Ordinance. The City has requested that these changes be processed as a refinement; however, due to the number and nature of the changes, the Chairman has determined that the changes are to be processed as an amendment. The City's Planning Commission unanimously approved the amendment on October 7, 2003, and the Mayor and Council approved it on November 24, 2003 after a public hearing.

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

The proposed changes to the zoning ordinance serve to correct typographical errors, eliminate redundancy, clarify provisions to ensure consistency with the State Criteria, and eliminate sections that would preclude long-term build-out and phased-in projects. Staff has reviewed the changes and provides the following comments:

**General Comments**

1. Check for consistency in codification format throughout the document.
2. Check for typographic and grammatical errors throughout document.
3. Ensure consistency in the use of capitalization and acronyms.

4. Change all references to the Wildlife and Heritage Service and Forest Service to "Maryland Department of Natural Resources".
5. Change all references to the Chesapeake Bay Critical Area Commission to "Critical Area Commission for the Chesapeake and Atlantic Coastal Bays" or "Critical Area Commission."
6. Part I – Definitions. Amend the definition for "Accessory Dwelling Unit" to "Dwelling Unit" and include the following definition:

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

8. Include provisions for Intrafamily Transfers within the RCA. See Attachment A for appropriate language.
9. Include provisions for Structures on Piers. See Attachment A for appropriate language.
10. Include provisions for Shore Erosion Protection Works. See Attachment A for appropriate language.
11. Include provisions for Agriculture. See Attachment A for appropriate language.
12. Include provisions for Natural Parks. See Attachment A for appropriate language.
13. Include provisions for Forest and Woodland Protection and Commercial Timber Harvesting. See Attachment A for appropriate language.
14. Include provisions for Enforcement. See Attachment A for appropriate language.
15. Provide a section for Surface Mining. If surface mining is not a permitted use within the City, include the following provisions:
  1. **Definition.** Surface mining is defined as the breaking of the surface soil in order to extract or remove minerals in the Critical Area. Surface mining includes any activity or process constituting all or part of a process for the extraction or removal of minerals from their original location in the Critical Area and the extraction of sand, gravel, rock, stone, earth or fill from borrow pits for highway construction purposes or for other facilities. For the purpose of this section, surface mining is also defined as operations engaged in processing minerals at the site of extraction; removal of overburden and mining of limited amounts of any mineral when done for the purpose of

prospecting and to the extent necessary to determine the location, quantity or quality of any natural deposit; and mining operations, if the affected land exceeds one acre or more in area.

2. **Surface mining is not a permitted use in the City.** Should the City amend its Zoning Ordinance to allow surface mining in any zone within the Critical Area, the City shall amend its Critical Area Ordinance to include appropriate language.
  
16. Provide additional information on the City's Excluded Areas. A summary of the information included on pages 42 – 44 of the City's Critical Area Program and information on the location and extent of the excluded areas would be appropriate.
  
17. Add the following language (may be added to Part I Definitions or Section 202 Variances) regarding unwarranted hardship:

**“Unwarranted hardship means that without a variance, an applicant would be denied reasonable and significant use of the entire parcel or lot for which the variance is requested.”**

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

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

- (1) An applicant shall have the burden of demonstrating the following:
  - A. The existence of a physical disability;
  - B. Literal enforcement of the provisions of this ordinance would result in discrimination by virtue of such disability;
  - C. A reasonable accommodation would reduce or eliminate the discriminatory effect of the provisions of this ordinance;
  - D. The accommodation requested will not substantially impair the purpose, intent, or effect, of the provisions of this ordinance as applied to the property;

- E. **Environmental impacts associated with the accommodation are the minimum necessary to address the needs resulting from the particular disability of the applicant.**
- (2) **The Board of Appeals shall determine the nature and scope of any accommodation under this section and may award different or other relief than requested after giving due regard to the purpose, intent, or effect of the applicable provisions of this ordinance. The Board may also consider the size, location, and type of accommodation proposed and whether alternatives exist which accommodate the need with less adverse effect.**
- (3) **The Board of Appeals may require, as a condition of approval, that upon termination of the need for accommodation, that the property be restored to comply with all applicable provisions of this ordinance. Appropriate bonds may be collected or liens placed in order to ensure the City's ability to restore the property should the applicant fail to do so.**

**Section 197. Intent**

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

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

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

- (1) **To establish a resource protection program for the Chesapeake Bay and its tributaries by fostering more sensitive development activity for certain shoreline areas so as to minimize impacts to water quality and natural habitats; and**
- (2) **To implement a resource protection program on a cooperative basis between the State and affected local governments, with local governments establishing**

and implementing their programs in a consistent and uniform manner subject to State Criteria and oversight.

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

- (1) Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or run off from surrounding lands;
- (2) Conserve fish, wildlife, and plant habitat; and
- (3) Establish land use policies for development in the Chesapeake Bay Critical Area which accommodate growth as well as address the environmental impacts that the number, movement, and activities of people may have on the area.

#### **Section 198. Land Use Area**

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

**The City, with approval of the Critical Area Commission (CAC), has designated land within the Critical Area as Intensely Developed Area (IDA), Limited Development Area (LDA), or Resource Conservation Area (RCA), as hereinafter defined. On land within these classifications, any land use activities or development shall conform to the directives and regulations contained in COMAR 27.01.02 in addition to zoning regulations affecting said land. The land shall also be subject to the provisions set forth below for each designation. In the case of conflicting provisions, the stricter provisions shall apply.”**

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

**At the time of the initial mapping, these areas shall have had at least one of the following features:**

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

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

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

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

- (1) Improve the quality of runoff from developed areas that enters the Chesapeake Bay or its tributary streams;
- (2) Accommodate additional development of the type and intensity designated by the City in this Program provided that water quality is not impaired;
- (3) Minimize the expansion of Intensely Developed Areas into portions of the Critical Area designated as Habitat Protection Areas and Resource Conservation Areas under this Program;
- (4) Conserve and enhance fish, wildlife, and plant habitats, as identified in Section 1-521, to the extent possible within Intensely Developed Areas; and
- (5) Encourage the use of retrofitting measures to address existing stormwater management problems.

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

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

- (1) Solid or hazardous waste collection or disposal facilities, including transfer stations; or
- (2) Sanitary landfills.

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

**Activities not permitted except in IDA.** Certain new development, redevelopment or expanded activities or facilities, because of their intrinsic nature or because of

their potential for adversely affecting habitats or water quality, may not be permitted in the Critical Area except in Intensely Developed Areas under regulations of this section and only after the activity or facility has demonstrated to all appropriate local and State permitting agencies that there will be a net improvement in water quality to the adjacent body of water. These activities include the following:

- (1) Non-maritime heavy industry;
- (2) Transportation facilities and utility transmission facilities, except those necessary to serve permitted uses, or where regional or interstate facilities must cross tidal waters (utility transmission facilities do not include power plants); or
- (3) Permanent sludge handling, storage and disposal facilities, other than those associated with wastewater treatment facilities. However, agricultural or horticultural use of sludge under appropriate approvals when applied by an approved method at approved application rates may be permitted in the Critical Area, except in the 100 foot-Buffer;
- (4) The City may preclude additional development activities that it considers detrimental to water quality or fish, wildlife, or plant habitats within the Critical Area.

25. [Page 2] In Paragraph 1.b (2), revise as follows, "Development plans should be altered to avoid, minimize or mitigate any negative impacts."
26. [Page 2] In Paragraph 1.c (2) and (3), add the following reference to the Commission's 10% Rule guidance: **Guidance for compliance with the 10% pollutant reduction requirement is provided in the manual prepared for the Commission entitled, *Critical Area 10% Rule Guidance*, dated Fall 2003, and as may be subsequently revised or amended.**
27. [Page 2] In Paragraph 1.h (1), revise the first sentence to read, "Establishment of programs by the **City applicant** for the enhancement ..."
28. [Page 2] In Paragraph 2, insert the following language pertaining to the LDA mapping standards:

**At the time of the initial mapping, these areas shall have had at least one of the following features:**

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

- (2) Areas not dominated by agricultural, wetland, forest, barren land, surface water, or open space;
- (3) Areas meeting the conditions of Intensely Developed Area but comprising less than 20 acres;
- (4) Areas having public sewer or public water, or both.

29. [Page 3] Insert the following policies for LDA:

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

- (1) Maintain, or, if possible, improve the quality of runoff and groundwater entering the Chesapeake Bay and its tributaries;
- (2) Maintain, to the extent practicable, existing areas of natural habitat; and
- (3) Accommodate additional low or moderate intensity development if:
  - A. This development conforms to the water quality and habitat protection criteria in paragraph (c) below; and
  - B. The overall intensity of development within the Limited Development Area is not increased beyond the level established in a particular area so as to change its prevailing character as identified by density and land use currently established in the area.

30. [Page 3] In Paragraph 2.d., change "vegetative" to "vegetated".

31. [Page 4] In Paragraph 2.h (1), revise to read, "...as required by (f) and (g) above."

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

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

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

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

- (1) Existing density is less than one dwelling unit per five acres; or
- (2) Dominant land use is in agriculture, wetland, forest, barren land, surface water or open space.

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

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

- (1) Conserve, protect and enhance the overall ecological values of the Critical Area, its biological productivity and its diversity;
- (2) Provide adequate breeding, feeding and wintering habitats for those wildlife populations that require the Chesapeake Bay, its tributaries or coastal habitats in order to sustain populations of those species.
- (3) Conserve the land and water resource base that is necessary to maintain and support land uses such as agriculture, forestry, fisheries activities and aquaculture.
- (4) Conserve the existing developed woodlands and forests for the water quality benefits that they provide.

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

37. [Page 8] Add a list of permissible uses in the RCA. The following list has been approved by the Commission in other jurisdictions:

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

- (1) A home occupation as an accessory use on a residential property and as provided for in the City's zoning ordinance;
- (2) A golf course, excluding main buildings and/or structures such as the clubhouse, pro-shop, parking lot, etc.;

- (3) A cemetery that is an accessory use to an existing church; provided impervious surfaces are limited to 15 percent of the site or 20,000 square feet, whichever is less;
- (4) A bed and breakfast facility located in an existing residential structure and where meals are prepared only for guests staying at the facility;
- (5) A gun club or skeet shooting range or similar use, excluding main buildings and/or structures, such as a clubhouse, snack bar, etc.;
- (6) A day care facility in a dwelling where the operators live on the premises and there are no more than eight children;
- (7) A group home or assisted living facility with no more than eight residents;
- (8) Other uses determined by the City and the Critical Area Commission to be similar to those listed above.

**Section 199. Habitat Protection Areas (HPA)**

38. [Page 8] In Paragraphs 1.a. through c, replace with the following language.

- a. **Description.** The Habitat Protection Section of the City's Critical Area ordinance addresses protection of the following four habitats: the 100-foot Buffer; Threatened and Endangered Species and Species in Need of Conservation; Plant and Wildlife Habitat Protection Areas including non-tidal wetlands; and Anadromous Fish Propagation Waters
- b. **Identification.** Maps illustrating the general location, extent and configuration of Habitat Protection Areas in the City are on file with the Planning, Permits and Inspections Office. They will be used as a "flagging" device to assist property owners, developers, any person proposing development activity, Planning Department, Planning Commission and other agencies of the City government when reviewing development plans. While these maps give a general indication of the area, they do not excuse any property owner or operator from establishing to the satisfaction of the City Planning Commission, whether or not the property or activity will affect the element of habitat to be protected. At the time of development the applicant will be responsible for providing an on-site analysis and inventory.
- c. **The 100-foot Buffer.**
  - (1) **Definition.** The Buffer is an existing, naturally vegetated area or an area established in native vegetation and managed to protect aquatic, wetlands, shoreline and terrestrial environments from man-made disturbances.

- (2) **Identification of the Buffer.** The establishment of a minimum 100-foot Buffer from the mean high water line of tidal waters, the edge of the bank of tributary streams, and the landward extent of tidal wetlands shall be required on a site by site basis as part of the environmental review and site analysis process.
- (3) **General policies.** The City adopts the following policies with regard to the functions of the Buffer:
- (a) Provide for the removal or reduction of sediments, nutrients and potentially harmful or toxic substances in runoff entering the Bay and its tributaries;
  - (b) Minimize the adverse effects of human activities on wetlands, shoreline, stream banks, tidal waters and aquatic resources;
  - (c) Maintain an area of transitional habitat between aquatic and upland communities;
  - (d) Maintain the natural environment of streams; and
  - (e) Protect riparian wildlife habitat.
- (4) **Standards.** The following criteria apply to land use activities within the Buffer:
- (a) The Buffer shall be established at a minimum distance of 100 feet landward from the mean high water line of tidal waters, the edge of the bank of tributary streams and the landward edge of tidal wetlands within the Critical Area.
  - (b) The Buffer shall be expanded beyond 100 feet to include contiguous sensitive areas such as steep slopes, hydric soils or highly erodible soils whose development or disturbance may impact streams, wetlands or other aquatic environments. In the case of contiguous slopes of 15 percent or greater the Buffer shall be expanded 4 feet for every one percent of slope or to the top of the slope, whichever is greater in extent.
  - (c) New development activities including structures, roads, parking areas and other impervious surfaces, mining and related facilities or septic tanks may not be allowed in the Buffer except for those necessarily associated with Water-Dependent Facilities approved under Sections 1-524 and 1-525 of this ordinance.

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

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

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

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

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

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

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

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

(g) Where agricultural use of lands within the Buffer ceases and the lands are proposed to be converted to other uses, the Buffer shall be established. In establishing the Buffer, management measures shall be undertaken to provide forest vegetation that assures the Buffer functions set forth in this section of the ordinance.

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

(a) Commercial harvesting of trees by selection or by the clearcutting of loblolly pine and tulip poplar may be permitted to within 50 feet of the landward edge of the mean high water line of tidal waters and perennial tributary streams, or the edge of tidal wetlands, provided that this cutting is conducted in conformity with Section 1-514 of this ordinance and in conformance with a Timber Harvest Plan and/or Buffer Management Plan prepared by a registered, professional forester and approved by the Maryland Department of Natural Resources.

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

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

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

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

D. Commercial harvesting practices shall be conducted to protect and conserve the habitat protection areas in accordance with the applicable sections of this ordinance.

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

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

- (a) Cutting of trees or removal of natural vegetation may be permitted where necessary to provide access to private piers, or to install or construct a shore erosion protection device or measure, or a water-dependent facility, providing the device, measure or facility has received all necessary State and Federal permits.**
- (b) Individual trees may be cut for personal use providing that this cutting does not impair the water quality or existing habitat value or other functions of the buffer as set forth in the policies of this plan and provided that the trees are replaced on an equal basis for each tree cut.**
- (c) Individual trees may be removed which are in danger of falling and causing damage to dwellings or other structures, or which are in danger of falling and therefore causing the blockage of streams, or resulting in accelerated shore erosion.**
- (d) Horticultural practices may be used to maintain the health of individual trees.**
- (e) Other cutting techniques may be undertaken within the Buffer and under the advice and guidance of the State Departments of Agriculture and Natural Resources, if necessary to preserve the forest from extensive pest or disease infestation or threat from fire.**

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

40. [Page 9] Revise Paragraph 2.b. to read, **“The following areas of significant natural value are defined as ‘Habitat Protection Areas,’ and are generally designated on the City Critical Area Map or on maps or within an inventory maintained by the Department of Natural Resources**

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

- (1) **“Plant habitat” means a community of plants commonly identifiable by the composition of its vegetation and its physiographic characteristics.**
- (2) **“Wildlife habitat” means those plant communities and physiographic features that provide food, water and cover, nesting, and foraging or feeding conditions necessary to maintain populations of animals in the Critical Area.**

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

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

43. [Page 10] In Paragraph 2.c. (1), revise to read, **“ prohibited within the boundaries of an identified habitat protection area, other than the Buffer, unless the Zoning Official ...”**

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

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

46. [Page 11] In Paragraph 2.d.(1), change “prepares” to “prepared.” Add a statement as to whether any Natural Heritage Areas (NHA) exist within the City’s limits. If so, list and briefly describe the Natural Heritage Areas.

47. In Paragraph 2.e (1 through 6), replace with the following language:

**General policies. The policies of the City regarding plant and wildlife habitat in the Critical Area shall be to:**

- 1. Conserve wildlife habitat in the Critical Area;**
- 2. Protect those wildlife habitats that tend to be least abundant or which may become so in the future if current land-use trends continue;**

3. **Protect those wildlife habitat types which are required to support the continued present of various species;**
4. **Protect those wildlife habitat types and plant communities which are determined by the City to be of local significance;**
5. **Protect Natural Heritage Areas.**

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

1. **Any development or significant land use change of property located within the Critical Area of the City will require a site specific survey to determine the presence of any plant and wildlife habitat areas. The survey shall be submitted along with design plans and a written description of the measures the property owner proposes to take to protect the habitats identified. This information concerning habitats will be incorporated onto the Resource Inventory Maps for future reference.**
2. **The City may seek additional information and comments from the Department of Natural Resources and other appropriate agencies.**
3. **For development activities in RCA and LDA, wildlife corridors shall be established and used to connect areas left in forest cover with any large forest tracts, which are located outside of the area of the property being developed or subdivided. The area left in forest cover shall be adjacent to larger forest, not left as an isolated island of trees. Planting required as a mitigation measure shall also be adjacent to other habitat. Tree planting which serves only as a visual screening will not meet these requirements.**
4. **Buffer areas for colonial water bird (heron, egret, tern, and glossy ibis) nesting sites shall be established (if such birds are found to exist in the Critical Area) so that these sites are protected from the adverse impacts of development activities and from disturbance during the breeding season.**
5. **New water-dependent facilities shall be located to prevent disturbance to sites of significance to wildlife such as historic, aquatic staging and concentration areas for waterfowl.**
6. **Protection measures, including a buffer area, shall be established where appropriate, for other plant and wildlife habitat sites identified in this ordinance.**

- 7. Forested areas required to support wildlife species identified as threatened and endangered, or in need of conservation, shall be protected and conserved by developing management programs which have as their objective, conserving the wildlife that inhabit or use the areas. Development activities, or the clearing or cutting of trees, which might occur in the areas, shall be conducted so as to conserve riparian habitat, forest interior wildlife species and their habitat. Management measures may include incorporating appropriate wildlife protection elements into Timber Harvest Plans, Forest Management Plans, cluster zoning or other site design criteria, which provide for the conservation of wildlife habitat. Measures may also include Soil Conservation Plans, which have wildlife habitat protection provisions appropriate to the areas defined above, and incentive programs, which use the acquisition of easements and other similar techniques.**
- 8. When development activities, or the cutting or clearing of trees, occurs in forested areas, to the extent practical, corridors of existing forest or woodland vegetation shall be maintained to provide effective connections between wildlife habitat areas.**
- 9. Those plant and wildlife habitats considered to be of local significance by the City shall be protected. Examples of these are those whose habitat values may not be of statewide significance, but are of importance locally or regionally because they contain species uncommon or of limited occurrence in the jurisdiction, or because the species are found in unusually high concentrations.**
- 10. Natural Heritage Areas shall be protected from alterations due to development activities or cutting or clearing so that the structure and species composition of the areas are maintained.**
- 11. The determination of the existence and extent of these plant and wildlife habitats, and the development of appropriate protection measures shall result from a cooperative effort between the local jurisdiction and appropriate public or private agencies. If the Secretary of the Department of Natural Resources designates additional species by regulation in the future, public hearings, as appropriate, shall be held to consider comments on these areas and the protection measures proposed for these species. The protection measures shall be adopted within 12 months of the date of the Secretary's designation.**

48. [Page 12] In Paragraph 2.f.(3) change the time of year restriction to "between March 1 and June 15."

49. [Page 13] In Paragraph 2.g, correct the COMAR citations for nontidal wetlands to 26.23.01.00.

## Section 200. Water Dependent Facilities

50. [Page 13] Add a Paragraph 1.f to read, **“That by their designated location, these activities will have minimal individual and cumulative impact on water quality and fish, wildlife and plant habitat in the Critical Area.”**
51. [Page 14] Paragraph 2.b(1) conflicts with Paragraph 1 on page 13, which does not appear to allow any water dependent facilities in the RCA. In Paragraph 3.b, public beaches and public water-oriented recreation and education areas may also be permitted in the RCA. Revisions are necessary for consistency in this section.
52. [Page 14] Add the following provisions for reviewing new or expanded water-dependent facilities:

**Evaluating plans for new and expanded water-dependent facilities.** The City shall evaluate on a case-by-case basis all proposals for expansion of existing or new water-dependent facilities. The City shall work with appropriate State and federal agencies to ensure compliance with applicable regulations. The following factors shall be considered when evaluating proposals for new or expanded water dependent facilities:

1. That the activities will not significantly alter existing water circulation patterns or salinity regimes;
2. That the water body upon which these activities are proposed has adequate flushing characteristics in the area;
3. That disturbance to wetlands, submerged aquatic plant beds, or other areas of important aquatic habitats will be minimized;
4. That adverse impacts to water quality that may occur as a result of these activities, such as non-point source run-off, sewage discharge from land activities or vessels, or from boat cleaning and maintenance operations, is minimized;
5. That shellfish beds will not be disturbed or be made subject to discharge that will render them unsuitable for harvesting;
6. That dredging shall be conducted in a manner, and using a method which causes the least disturbance to water quality and aquatic and terrestrial habitats in the area immediately surrounding the dredging operation or within the critical area, generally;

7. **That dredged spoil will not be placed within the buffer or elsewhere in that portion of the Critical Area which has been designated as a Habitat Protection Area except as necessary for:**
  - A. **Backfill for permitted shore erosion protection measures;**
  - B. **Use in approved vegetated shore erosion projects;**
  - C. **Placement on previously approved channel maintenance spoil disposal areas; and**
  - D. **Beach nourishment.**
8. **That interference with the natural transport of sand will be minimized; and**
9. **That disturbance will be avoided to historic waterfowl staging and concentration areas or other Habitat Protection Areas.**

53. [Page 15] Paragraphs 5.a and 5.b refer to facilities within the RCA; however, the provisions of Paragraph 200.1 do not appear to permit water-dependent facilities within the RCA. \*

54. [Page 16] Paragraph 7.b refers to facilities within the RCA; however, the provisions of Paragraph 200.1 do not appear to permit water-dependent facilities within the RCA.

#### **Section 201. Maps**

55. [Page 16] In Section 201, add, **“Any changes to the City’s Critical Area Maps shall be submitted to the Critical Area Commission for review and approval.”**

#### **Section 202. Variances**

56. [Page 16] In Section 202, Paragraph 1, add the following language at the end of the paragraph, **“In considering an application for a variance, the City shall presume that the specific development activity in the Critical Area that is subject to the application and for which a variance is required does not conform with the general purpose and intent of Natural Resources Article, Title 8 Subtitle 18, COMAR Title 27, and the requirements of the City’s Critical Area Program.”**

57. [Page 16] Paragraph 2.d, revise as follows, **“That the variance request is not based upon conditions or circumstances which are the result of actions by the applicant, including the commencement of development activity before an application for a variance has been filed, nor does the request arise from any conditions conforming, on any neighboring property.”**

58. [Page 16 Paragraph 3, add the following language, “The Board of Zoning Appeals shall make written findings reflecting analysis of each standard. The applicant has the burden of proof and the burden of persuasion to overcome the presumption of nonconformance established in paragraph (1) above. The City shall notify the Critical Area Commission of their decision.”

[Page 17] Add a Paragraph 4 and include the following language:

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

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

**Section 203. Nonconforming Uses and Lots in the Critical Area**

59. [Page 17]: Replace Paragraphs 1 through 4 with the following language:

**Grandfathering.**

- (1) **Continuation of existing uses.** The City shall permit the continuation, but not necessarily the intensification or expansion, of any use in existence on the date of Program approval, unless the use has been abandoned for more than one year or is otherwise restricted by existing local ordinances. If any existing use does not conform to the provisions of the Program, its intensification or expansion may be permitted only in accordance with the variance procedures set forth in this ordinance.
- (2) **Residential density.** Except as otherwise provided, the City shall permit the types of land described in the following subsections to be developed in accordance with density requirements in effect prior to the adoption of the Critical Area Program notwithstanding the density provisions of the Program. The City shall permit a single lot or parcel of land that was legally of record on the date of Program approval to be developed with a single-family dwelling if a dwelling is not already placed there (not withstanding that such development may be inconsistent with the density provisions of this ordinance) provided that:
  - (a) It is on land where development activity has progressed to the point of the pouring of foundation footings or the installation of structural members.

- (b) It is a legal parcel of land, not being part of a recorded or approved subdivision, that was recorded as of December 1, 1985 and land that was subdivided into recorded, legally buildable lots, where the subdivision received the City's final approval prior to June 1, 1984 if:
  - i. At the time of development, the land is brought into conformance with the Critical Area Program insofar as possible, including the consolidation or configuration of lots not individually owned and these procedures are approved by the Critical Areas Commission; or
  - ii. The land has received a building permit subsequent to December 1, 1985, but prior to local Program approval.
- (c) It is on land that was subdivided into recorded, legally buildable lots, where the subdivision received the City's final approval between June 1, 1984 and December 1, 1985; and
- (d) It is on land that was subdivided into recorded, legally buildable lots, where the subdivision received the final approval after December 1, 1985 and provided that either development of any such land conforms to the IDA, LDA OR RCA requirements in this chapter or the area of the land is counted against the Growth Allocation permitted under this ordinance.

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

#### **Section 204. Amendments**

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

**Program amendments.** The City Commissioners may from time to time amend the City Critical Area Program. All such amendments shall also be approved by the Critical Area Commission as established in Section 8-1809 of the Critical Area Law. No such amendment shall be granted without approval of the Critical Area Commission. Standards and procedures for Critical Area Commission approval of proposed amendments are as set forth in the Critical Area Law Section 8-1809(i) and Section 8-1809(d), respectively. In addition, the City Commissioners shall comprehensively review their entire Critical Area Program and propose any necessary amendments as required at least every six (6) years.

**Process.** When an amendment is requested, the applicant shall submit the amendment to the Planning Commission for review and research. Upon completing

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

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

#### **Section 205. Site Plan Review**

61. [Page 18] In Section 205.1, add the following, **“All special exceptions, conditional uses, variances, and rezonings shall be forwarded to the Critical Area Commission for review and comment.”**
62. [Page 18] In Paragraph 1.e, revise to read, **“Development in the IDA and LDA in which the land disturbance does not exceed 15,000 square feet.”**
63. [Page 18] In Paragraph 2.c, revise to read, **“Parcel/lot lines and acreage.”**
64. [Page 18] In Paragraph 2.e, revise to read, **“Percentage area of parcel/lot covered by forest vegetation and percentage of existing forest area to be cleared.”**
65. [Page 18] In Paragraph 2.f, add **“and topographic contours shown at 2-foot intervals.”**

#### **Section 206. Growth Allocation**

66. [Page 19] In Paragraph 1, last sentence, revise as follows, **“The purpose is to designate areas of the Critical Area where the Planning Commission and City Commissioners may approve a change in the current land management classification on specific sites, so that they may be developed to the extent permitted by this chapter and the new land use management classification.”**
67. [Page 20] In Paragraph 2, revise the first sentence to read, **“Locating growth allocation in the City of Cambridge shall be is consistent with the ...”**
68. [Page 20] In Paragraph 2, add the following two additional guidelines: **“New IDAs should be located where they minimize their impacts to the defined land uses of the**

RCA;" and "New IDAs and LDAs in the RCA should be located at least 300 feet beyond the landward edge of tidal wetlands or tidal waters."

69. [Page 18] Add to this section, "The evaluation of growth allocation applications relative to the acreage deducted is based upon a parcel's configuration as of December 1, 1985."
70. [Page 21] Revise Paragraph 3.b to read, "If any portion of a lot or parcel located in the RCA is not awarded Growth Allocation, ~~this portion the remainder~~ of the lot or parcel shall contain at least twenty (20) contiguous acres or the Critical Area acreage of the entire parcel not in State tidal wetlands shall be deducted from the City's Growth Allocation."
71. [Page 22] Delete Paragraph 3.c.
72. [Page 22] Insert the following language regarding development envelopes:

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

- A. The development-envelope shall include individually owned lots, required buffers, impervious surfaces, roads, utilities, stormwater management measures, on-site sewage disposal measures, any areas subject to human use such as active recreation areas, and any additional acreage needed to meet the development requirements of the criteria. The required buffers refer to the minimum 100-foot Buffer and the 25-foot nontidal wetlands buffer.
- B. Only one development envelope shall be established per parcel of land.
- C. If a development envelope is proposed in the RCA, a minimum of 20 acres must remain outside of the development envelope or the acreage of the entire parcel must be deducted. If the original parcel in the RCA is less than 20 acres, then the acreage of the entire parcel must be deducted. If there is a permanently protected Resource Conservation Area (an area protected by easement) adjacent and contiguous to a residue that is less than 20 acres, that will result in a minimum 20-acre residue, then the entire parcel does not have to be deducted.
- D. The minimum 20-acre residue outside of the development envelope may be developed at an RCA density unless some type of

**permanent protection exists that restricts development.**

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**

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June 22, 2004

Mr. Keith Kelley  
Baltimore County  
Department of Environmental Protection  
and Resource Management  
401 Bosley Avenue, Suite 416  
Towson, Maryland 21204

RE: **BC 413-04: Jeff Markley Subdivision- Lots 1, 2 & 3  
Jeff Markley Impervious Surface Variance Request**

Dear Keith,

I have reviewed the information for the proposed subdivision of an existing marina property located in the LDA of Hopkins Creek. This marina property includes an existing single-family dwelling. The purpose of the subdivision is to allow the owner's son to build a second dwelling on the property in compliance with the local density requirements. The site plan did not provide sufficient information on the amount of existing impervious surfaces on the property, nor the proposed impervious surfaces for each lot. It appears two of the lots may exceed the maximum allowable impervious surface limit, which would require variances. This office cannot support a new subdivision that creates a non-conforming situation that would require a variance. While we do not oppose subdivision and redevelopment of this property, we cannot support an impervious surface variance based upon the information provided. The applicant has not provided supporting information to show that the project cannot be designed to meet all the Critical Area requirements.

The following comments are provided for your use and that of the applicant:

1. Please provide a table of information on the percentage of impervious surface area that exists on the entire site, the percentage of impervious surface area that would remain on each lot, and any proposed impervious surfaces.
2. There appear to be opportunities to achieve the impervious surface limits for each lot: by removal of the driveway on Lot 3 that crosses onto and across Lot 2; by relocating the marina entrance road totally onto Lot 2; by redrawing the boundary lines to Lots 1 and 3

to increase their size; or by using growth allocation.

3. The subdivision must provide 15% afforestation.

We will provide additional comments once the impervious surface information and any plan revisions are received. If you have any questions regarding these comments, please contact me at 410-260-3481.

Sincerely,



Wanda Diane Cole  
Natural Resources Planner

cc: Development Engineering Consultants, Inc.

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

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June 22, 2004

Mr. Keith Kelley  
Baltimore County  
Department of Environmental Protection  
and Resource Management  
401 Bosley Avenue, Suite 416  
Towson, Maryland 21204

RE: **BC 415-04: # 04-10 Mark A. Fuchsluger (Carpentry Unlimited Homes, LLC)  
Buffer Variance Request**

Dear Keith,

I have reviewed the information regarding this variance request to replace a dwelling located in the 100' Critical Area Buffer of a tributary stream on a grandfathered property located in the RCA of Back River. The lot is almost entirely constrained by the Buffer. The replacement dwelling will be located farther from the stream. We do not oppose this variance request. We recommend the variance approval include the following condition:

- That the required 3:1 mitigation for new disturbances in the Buffer is to be provided on-site to the extent practicable.

Please forward to this office a copy of the written decision made in this case. If you have any questions regarding these comments, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

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June 22, 2004

Mr. Keith Kelley  
Baltimore County  
Department of Environmental Protection  
and Resource Management  
401 Bosley Avenue, Suite 416  
Towson, Maryland 21204

RE: **BC 414-04: # 04-9 Herman and Grace Mueller Buffer Variance Request**

Dear Keith,

I have reviewed the information regarding this variance request to construct a dwelling in the 100' Critical Area Buffer on a grandfathered property located in the LDA of Greyhound Creek. The site is almost entirely constrained by the Buffer. This property lies within a Buffer Management Area (BMA), and the proposed location for the house is closer to the shoreline than the neighboring houses. The proposed house is also closer to the road than the neighboring houses. The applicant has proposed a modestly-sized footprint for the house.

This office does not oppose this variance request. We recommend the variance approval include the following conditions:

1. That all of the required 2:1 mitigation (2,868 square feet) for new disturbances in the Buffer be provided on-site.

Please forward to this office a copy of the written decision made in this case. If you have any questions regarding these comments, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

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June 16, 2004

Mr. Steve Dodd  
Dorchester County  
Department of Planning and Zoning  
PO Box 107  
Cambridge, MD 21613

Re: **DC 394-04: # 2198 James A. Bush, Jr. Critical Area Buffer Variance Request**

Dear Steve,

I have reviewed the information regarding the applicant's Buffer variance request to construct a gravel driveway to his shoreline for the purpose of accessing his proposed pier. This property is located in the RCA of Chicamacomico River. The total disturbance to the Buffer will be 1,700 square feet and no tree clearing is required. I have visited the site with Karen Houtman and Mr. Bush. It is my understanding that Mr. Bush once accessed the shoreline with his boat and trailer across the Robbins and Brannock property, with the permission of that property's former owner. The new owner does not wish to share access, and Mr. Bush must now provide access to the shoreline across his own property. While access to the shoreline is permitted without a variance, this driveway exceeds the maximum six-foot width permitted without a variance. This office does not oppose this request. We recommend the variance approval include a condition that the 3:1 mitigation, required for the 2.5' wide area that exceeds the maximum 6' width, be provided on site in the Buffer.

Please provide this office with a copy of the written decision made in this case. If you have any questions, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

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June 16, 2004

Mr. Steve Dodd  
Dorchester County  
Department of Planning and Zoning  
PO Box 107  
Cambridge, MD 21613

Re: **DC 395-04: # 2199 Joseph Jenkins Buffer Variance Request**

Dear Steve,

I have reviewed the information regarding the applicant's Buffer variance request to construct a sunroom addition onto an existing dwelling located on a grandfathered lot in the LDA of White Hall Creek. This property is largely constrained by the 100-foot Critical Area Buffer. The total encroachment into the Buffer will equal 288 square feet for the addition itself. It appears the applicant is not requesting a walkway or outside steps leading from the sunroom into the yard. This office does not oppose this request as shown on the plan provided with the application. We recommend the variance approval include the following conditions:

1. The required 3:1 mitigation (864 square feet) for new disturbances to the Buffer is to be provided on site in the Buffer.
2. No walkways to and from the sunroom are to be created.

Please provide this office with a copy of the written decision made in this case. If you have any questions, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

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June 16, 2004

Mr. Steve Dodd  
Dorchester County  
Department of Planning and Zoning  
PO Box 107  
Cambridge, MD 21613

Re: **DC 396-04: # 2201 Bennett & Jacquelyn Groton Special Exception Request  
Dog Kennel in the RCA**

Dear Steve,

I have reviewed the information regarding the applicant's Special Exception request to operate a dog kennel business on a residential property located in the RCA of Choptank River. This operation will not require the creation of additional structures or parking areas. Provided this operation meets all other local zoning requirements, we do not oppose this special exception request. We recommend the approval include the following condition:

- That the kennels minimize water quality impacts to the Critical Area by maintaining strict compliance with all local health department and zoning code requirements regarding animal waste handling and disposal.

Please provide this office with a copy of the written decision made in this case. If you have any questions, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner



Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
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June 15, 2004

Ms. Sue Veith  
St. Mary's County Government  
Department of Land Use and Growth Management  
PO Box 653  
Leonardtown, MD 20650-0653

Re: **SM 372-04: MSUB # 04-110-037 Notely Hall Farm  
4-Lot Minor Subdivision Plat and Environmental Features Map**

Dear Sue,

I have reviewed the information for this subdivision, which proposes to create Lots 2 through 5 and a farm residue from an 84.264-acre parcel located in the RCA of Wicomico River and Manahonic Creek. I have also discussed the project with Jerry Soderberg at DH Steffens Company. It is my understanding that the parent parcel is currently developed with one existing dwelling, which will be replaced, and a deteriorated and abandoned dwelling, which will be removed. The purpose of this subdivision is to create lots for the owners' children. Lot 1, which appears on the plat and map, was created pre-Critical Area. The following comments are provided for your use:

1. The Wildlife and Heritage Service (WHS) must be contacted for a determination on the presence of rare, threatened and endangered species on this site. All WHS comments must be addressed on the plat and plans for this project.
2. The Critical Area acreage is greater than 60 acres, which does not meet the intrafamily transfer provisions for subdivision in the RCA.
3. The parcel contains 70.364 acres in the Critical Area, excluding all State tidal wetlands. The parcel has three (3) RCA density rights, including the dwelling to be replaced. Therefore, two lots can be created by right. In order to create four lots and a residue, growth allocation is needed.
4. The direction of the woodline is reversed on the environmental features map. The plat depicts the correct forest resource information. The parcel contains 29.7 acres (42%) in forest cover; 15% afforestation is not required.

5. This subdivision represents a change in use from agricultural to residential use, which requires that the 100-foot Buffer be fully established in native forest vegetation. The Buffer must be established on all newly-created lots.
6. It appears the 100-foot Critical Area Buffer line has not been delineated all the way to the 100-foot mark in the area of lines L-45 through L-50 on the plat.

Please call me at 410-260-3481 if you have questions regarding these comments.

Sincerely,



Wanda Diane Cole  
Natural Resources Planner

cc: Jerry Soderberg  
Lori Byrne

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

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/](http://www.dnr.state.md.us/criticalarea/)

June 15, 2004

Ms. Sue Veith  
St. Mary's County Government  
Department of Land Use and Growth Management  
PO Box 653  
Leonardtown, MD 20650-0653

Re: **SM 370-04: MSUB # 04-120-020 The Woods at Myrtle Point  
Section One, Phase Three Subdivision Plan**

Dear Sue,

I have reviewed the information on this 40-unit subdivision proposed on a parcel located partially within the RCA of Mill Creek. The majority of the development is proposed outside the Critical Area. The sand filter at stormwater pond # 1, storm drain outfalls ES 123A & B near the intersection of Woodhaven Drive and Mill Cove Road, and the intersection of Woodhaven with Mill Cove are all located inside the Critical Area. The following comments are provided for your use:

1. The Wildlife and Heritage Service (WHS) must be contacted for a determination on the presence of rare, threatened and endangered species and/or their habitats on this portion of the site. All WHS comments must be addressed on the plat and plans.
2. The Critical Area acreage, the RCA designation, and number of available RCA density rights must be stated on the plat. It appears the parcel may have only one RCA development right available.
3. A portion of stormwater management pond # 1 is located inside the RCA and serves subdivision development outside the Critical Area. All facilities that serve development outside the Critical Area must be located outside the RCA or growth allocation must be used.

Please call me at 410-260-3481 if you have questions regarding these comments.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

cc: Loiderman Soltesz Associates, Inc.

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

STATE OF MARYLAND  
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June 14, 2004

Ms. Sue Veith  
St. Mary's County Government  
Department of Land Use and Growth Management  
PO Box 653  
Leonardtown, MD 20650-0653

Re: **SM 373-04: MSUB # 04-110-036 Merle Zimmerman Subdivision Plan**

Dear Sue,

I have reviewed the above referenced subdivision plan for a 5-lot subdivision located in the IDA of St. George Creek. The 100-foot Critical Area Buffer does not occur on this site. The following comments are provided for your use:

1. The project must meet the 10% Rule compliance requirements. The 10% calculation worksheets must be completed to indicate the pollutant removal requirement. A best management practice must be provided to address the pollutant removal requirement. The applicant must provide design plans for the proposed best management facility.
2. The Wildlife and Heritage Service (WHS) must be contacted for a determination on the presence of rare, threatened and endangered species on this site. All WHS comments must be addressed on the plat and plans for this project.
3. The Othello soils are capable of supporting nontidal wetlands. The applicant must investigate whether nontidal wetlands exist on this site, and, if found, delineate them on the plat and subdivision plans.

Please call me at 410-260-3481 if you have questions regarding these comments.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
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June 14, 2004

Ms. Sue Veith  
St. Mary's County Government  
Department of Land Use and Growth Management  
PO Box 653  
Leonardtown, MD 20650-0653

Re: **SM 371-04: MSUB # 04-110-035 Keatley Minor Subdivision Plat  
Farmstead 1 & Outparcel A**

Dear Sue,

I have reviewed the above referenced plat which proposes one farmstead established around existing conditions, and one outparcel located in the RCA of McKay Cove. No development is proposed in the 100-foot Critical Area Buffer, and the Buffer has been expanded to include contiguous hydric soils. The outparcel is not being evaluated for development at this time. I am providing the following comments for your use:

1. The Wildlife and Heritage Service (WHS) must be contacted for a determination on the presence of rare, threatened and endangered species on this site. All WHS comments must be addressed on the plat and plans for this project.
2. It appears the expanded Buffer could be reduced as provided by the County's recent policy on expansion of the Buffer for hydric soils.
3. It appears the site has no existing forest cover. If that is incorrect, the plat must show the location of the forest cover and state the amount of forest cover in the notes on the plat.
4. If and when development plans are submitted for Outparcel A, we recommend a minimum scale of 1"= 100' be used.

Please call me at 410-260-3481 if you have questions regarding these comments.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
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June 14, 2004

Ms. Sue Veith  
St. Mary's County Government  
Department of Land Use and Growth Management  
PO Box 653  
Leonardtown, MD 20650-0653

Re: **SM 369-04: MSUB # 04-132-014 Oakwood Lodge Concept Subdivision Plan**

Dear Sue,

I have reviewed the above referenced concept plan for a 6-unit townhouse development located in the IDA of Potomac River. No development is proposed in the 100-foot Critical Area Buffer, and the Buffer is to be established in native plantings. Our comments are:

- The project must meet the 10% Rule compliance requirements. The 10% calculation worksheets must be completed to indicate the pollutant removal requirement. Design plans must be provided for the proposed best management facility that will address the pollutant removal requirement.
- The Wildlife and Heritage Service (WHS) must be contacted for a determination on the presence of rare, threatened and endangered species on this site. All WHS comments must be addressed on the plat and plans for this project.

Please call me at 410-260-3481 if you have questions regarding these comments.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
Executive Director

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June 4, 2004

Mr. Steve Dodd, Director  
Dorchester County  
Department of Planning and Zoning  
PO Box 107  
Cambridge, MD 21613

Re: **DC 887-03: Douglas Spedden, et al. Subdivision- Lot 4, Revised Plat**

Dear Steve,

Thank you for providing a copy of the revised plat for the proposed subdivision of Lot One, which will result in the creation of Lot 4 around existing conditions. I have reviewed the changes and find that most of my previous comments have been addressed. It appears there is no more density available on Lot 1 in the RCA. We do not object to this subdivision provided the 15% afforestation requirement is met for Lot 4. We recommend the afforestation be provided to establish the Buffer.

I have not yet received a copy of a determination letter from the Wildlife and Heritage Service (WHS) regarding rare, threatened and endangered species at this site. A copy of the determination letter must be provided to this office prior to granting any approvals, and all WHS comments must be addressed on the plat.

If you have any questions regarding these comments, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



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June 4, 2004

Ms. Elsa Ault  
Charles County  
Department of Planning and Growth Management  
PO Box 2150  
La Plata, MD 20646-2150

RE: CS 332-04: SFD 30777 Durham Church Property (Jimmy Stewart)

Dear Elsa,

I have reviewed the site plan for this building permit application, which seeks after-the-fact approval for forest clearing that has been completed, and proposes the construction of a log cabin, garage, driveway extension, and sewage reserve area in the expanded Critical Area Buffer. In addition, this development activity and proposal is located in the Habitat Protection Area for a bald eagle nest as well as within FIDS habitat. This project requires a Buffer variance, which this office cannot support as there is room to develop a house outside the Buffer.

We have determined that the applicant has not met the FIDS conservation guidelines, and therefore, the mitigation calculations are incorrect. The unauthorized clearing is an avoidable loss of forest interior habitat and must be treated as such. In addition to the FIDS Conservation Worksheet, the applicant must provide a map that shows how forest interior was measured. Forest edge must be measured for the total contiguous forest, not just the forested area that occurs on this parcel.

If you should have any questions regarding these comments, please don't hesitate to contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Cole".

Wanda Cole  
Natural Resources Planner

cc: Diane Chasse, MET  
Mr. James Stewart

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

STATE OF MARYLAND  
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June 4, 2004

Ms. Elsa Ault  
Charles County  
Department of Planning and Growth Management  
PO Box 2150  
La Plata, MD 20646-2150

RE: **CS 367-04: SFD & HPP Gunston Pointe, Phase 2, Lot 17 (Dave Anderson)**

Dear Elsa,

I have reviewed the site plan for this project, which proposes construction of a dwelling, garage, driveway, well and septic system in the RCA of Hilltop Fork Creek and Nanjemoy Creek. No development is proposed in the expanded Critical Area Buffer. We do not oppose this site plan, however, we recommend the applicant physically mark the Buffer line to protect the Buffer from inadvertent mowing.

If you should have any questions regarding these comments, please don't hesitate to contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Cole".

Wanda Cole  
Natural Resources Planner

## CLEARINGHOUSE REVIEW

TO : Arnold Norden, Greenways and Resources Planning (E-4)  
Glenn Therres, Wildlife (E-1)  
Robert Beckett, State Forest and Park Service (E-3)  
Tammy Broll, Natural Resources Police (E-3)  
Matthew Fleming, Education, Bay Policy Growth Management (E-2)  
Marian Honeczy, Forestry (E-1)  
Bill Hodges, Resource Assessment Services (B-3)  
Ray Dintamin, Environmental Review (B-3)  
Regina Esslinger, Critical Area Cmsn. (1804 West St., Suite 100, Annapolis MD 21401)

FROM : <sup>J.W.P.</sup> James W. Price, Director, Program Open Space

SUBJ : POS # 4508-18-96  
Lexington Manor (John G. Lancaster Park), St. Mary's County

This project proposes the acquisition of 50+ acres of property on Rt. 235 in Lexington Park. The property is contiguous to the John G. Lancaster Park and will double the size of the existing park. The expansion of the park will provide additional recreational area for the new housing development.

The above referenced project has been submitted to this office for funding in accordance with the Outdoor Recreation Land Loan of 1969, and remains on file in this office. Please submit any comments you may have concerning this project within two weeks of the date of this letter. If no comments are received within two weeks, it will be assumed that this project does not conflict with the programs, plans, or objectives of your Agency. If you require additional information before you can complete your review, please contact the undersigned.

### CHECK ONE AND INITIAL

### CHECK

### INITIAL

1. The project does not conflict with the plans, programs or objectives of this Agency

WJC 6/3/04

2. The project does not conflict with this Agency's plans, programs or objectives, but the attached comments are submitted for consideration.

\_\_\_\_\_

3. The project conflicts with this Agency's plans, programs or objectives for the reasons indicated on the attachment.

\_\_\_\_\_

Please return to Marti Sullivan or Judy Jones, Program Open Space, Tawes State Office Building (E-4) Annapolis, upon completion of review.

RECEIVED

JUN 13 2004

CHESAPEAKE BAY  
CRITICAL AREA COMMISSION

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
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[www.dnr.state.md.us/criticalarea/](http://www.dnr.state.md.us/criticalarea/)

June 3, 2004

Mr. C. John Sullivan, Jr., Director  
Maryland Department of Assessments and Taxation  
301 W. Preston Street  
Baltimore, Maryland 21201-2395

Re: **Residential Property without a Tax Account: Tax Map 11 Parcel 311  
26 Sixth Street, Town of Indian Head, Charles County**

Dear Mr. Sullivan,

I am forwarding information for your Department's use regarding a property whose tax account information appears to be missing from the Department of Assessment and Taxation's database. If I have misdirected this information, please forward it to the correct agency.

This parcel can be seen while viewing the database's maps to adjacent parcels. In addition, there is confusion as to the configuration and ownership of Lot 69 of the West Glymont/R.H. Knott subdivision. The current owner's survey shows all of Lot 69 being part of a parcel that also includes Lots 47 & 48. However, Parcel 207 of Tax Map 11 appears in the database as including part of Lot 69, as well as all of Lot 68. Perhaps your staff will be able to clarify this information in the database. I discovered this situation while reviewing a request to re-subdivide a parcel containing Lots 47, 48 & 69, where the tax map and parcel number information given did not match this site.

If you have any questions regarding this information, I may be reached at 410-260-3481. Thank you in advance for your assistance.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

cc: IH 317-04

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
Executive Director

**STATE OF MARYLAND  
CRITICAL AREA COMMISSION  
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(410) 260-3460 Fax: (410) 974-5338  
[www.dnr.state.md.us/criticalarea/](http://www.dnr.state.md.us/criticalarea/)

May 27, 2004

Mr. Ron Young  
Town Manager  
Town of Indian Head  
Indian Head, MD 206

Re: **IH 317-04: R.H. Knott Subdivision, Lots 1, 2 & 3 Concept Plan  
A Resubdivision of Lots 47, 48 & 69 (Maureen O'Brien)**

Dear Ron,

I have reviewed the concept plan for the resubdivision of three lots, Lots 47, 48, & 69 into three lots, Lots 1, 2, & 3. These lots are located in the LDA of Potomac River. There are two existing dwellings on Lot 47, and no existing development on Lots 48 and 69. The concept plan shows one proposed dwelling on each of Lots 1, 2 & 3. It is our understanding that the applicant may wish to raze the two existing dwellings on Lot 47 and eventually replace them with one dwelling on Lot 3.

Prior to our May 25, 2004 meeting, I researched the Land Surveys and Condominium Plats section of the Maryland State Archives database and the Maryland Tax Assessment database. I discovered the following information:

- A plat was recorded on December 3, 1951 in Plat Book 4, page 84, whereby Lots 47 & 48 were combined into one lot. I have enclosed a copy of this plat (encl. #1), as well as the May 1915 plat (encl. #2).
- It is unclear whether the applicant is entitled to a grandfathered development right for Lot 69. According to the State Tax Assessment database, Tax Map 11 Parcel 207 includes Lot 68 and part of Lot 69 (encl. #3). I was unable to find a plat or survey that records a subdivision of Lot 69. Parcel 207 is owned by Bailey-Thompson, LLC. Parcel 207 was developed in 1920, therefore, the development right for Lot 69 may have already been used.

- The tax map and parcel number that appears below the vicinity map on the applicant's Concept Plan is incorrect. This tax map and parcel number belong to a property on Sandy Point Road in Nanjemoy (encl. #4). The State Tax Assessment database map show this property as being Parcel 311 on Tax Map 11. However, there is no tax record for such a parcel (encl. #5). There are no other tax records that list Lots 47 & 48 or the remainder of Lot 69. The Town's Critical Area map of this area does not show the subdivision's individual lots nor does it match the Tax Assessment database parcel maps.

Prior to granting any subdivision or building permit approvals for this parcel, the applicant must verify the correct tax map and parcel designation for the property. I have enclosed copies of the tax map and plat information referenced above.

All future plans regarding development or redevelopment of this property must include the following:

1. A Critical Area note stating that the property is located in the LDA.
2. A Critical Area note stating that each lot is limited to 15% in impervious surface areas, including any impervious areas created by the hardening of trails, rights of way and driveways.
3. A Critical Area note stating that each lot must provide afforestation up to 15%.
4. A Critical Area note stating that the Buffer must remain in natural vegetation and may not be disturbed.

Prior to approval of any subdivision activity, please provide a copy of a revised plat indicating the information above. We may have additional comments based upon any new information. Please contact me at 410-260-3481 if you have any questions regarding these comments.

Sincerely,



Wanda Diane Cole  
Natural Resources Planner

Enclosures (5)

cc: Marianne Mason, Counsel  
Maureen O'Brien  
Maryland Department of Assessments and Taxation



## Charles County Circuit Court Land Surveys and Condominium Plats



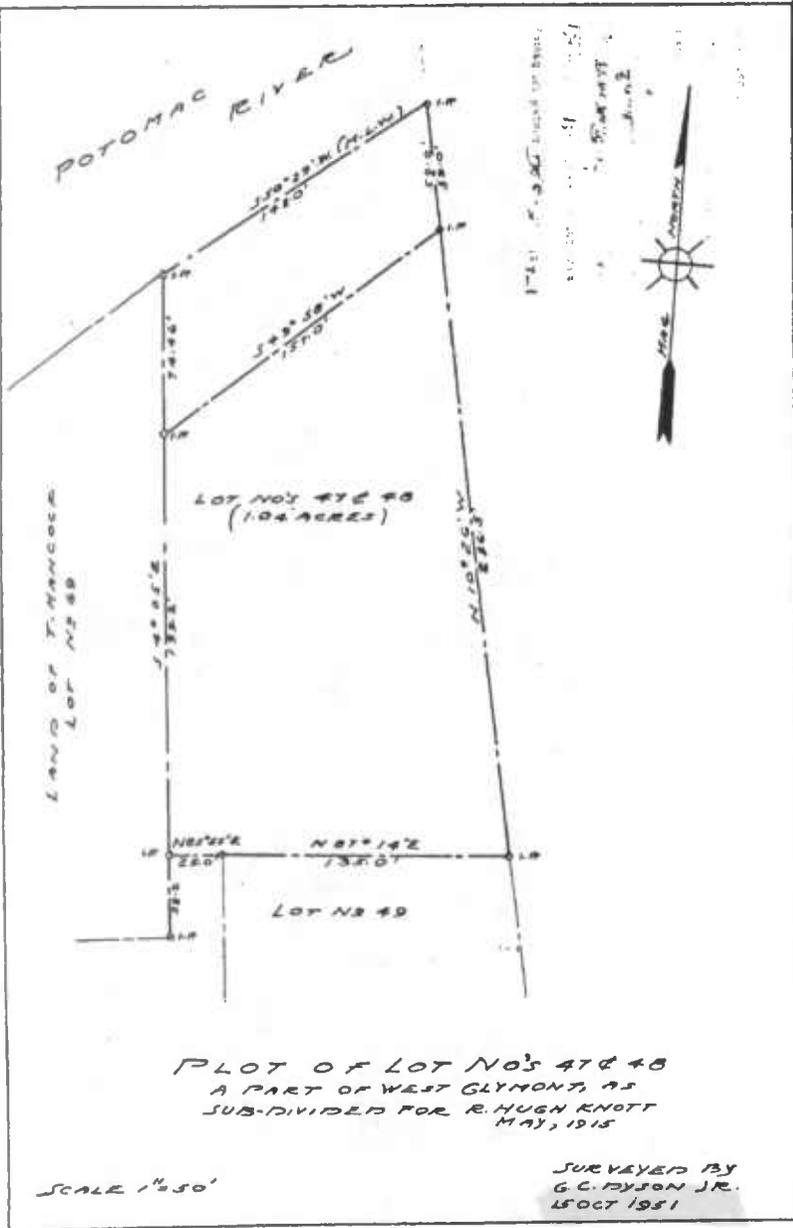
Results Returned from Search on : Description: West Glymont

7 records found

Description	Date	Reference	Direct Scans	Microfilm Scans	Accession Number
West Glymont, R. H. Knott Subdivision, Lot 32, Resubdivision, 7th District; Glenn P. Posey and Phyllis J. Posey	1991/12/17	Plat Book 43, p. 44	0	0	MSA C 2271-11732
Knott, R.H., West Glymont, Lots 32A, 32B, 32C, Resubdivision	1991/12/17	Plat Book 43, p. 44	0	1	MSA S 1242-2017
Knott, RH, West Glymont, Lot 80A, 80B, Resubdivision	1989/11/17	Plat Book 40, p. 42	0	1	MSA S 1242-1762
West Glymont, Lot 80, 7th District, Resubdivision; Hancock, Bryan and Pauline	1989/11/17	Plat Book 40, p. 42	0	0	MSA C 2271-10869
West Glymont; Tiny Hancock and wife	1951/12/03	Plat Book 4, p. 84	0	0	MSA C 2271-3698
West Glymont; Tiny Hancock and wife	1951/12/03	Plat Book 4, p. 84	1	0	MSA C 2267-298
West Glymont, R. Hugh Knott, Subdivision	N/A	Plats M38	1	0	MSA C 2276-18

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**Charles County Circuit Court**  
**Land Survey, Subdivision, and Condominium Plats**  
**MSA C2276: (Miscellaneous Plats from Land Records)**

**Index by Reference**

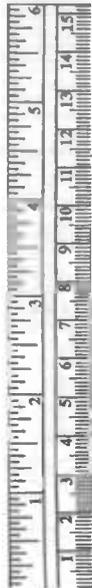
**Reference:** Plats M38  
**Date:**  
**Description:** West Glymont, R. Hugh Knott, Subdivision  
**Storage Location:** B5/4/1/24  
**Image(s):** *Direct Scan(s):*  
MSA C2276-18, p. 1 From S454-p51391a.tif (File Size: 134 kb)

#2

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A PART OF  
**"WEST GLYMONT,"**  
 As sub-division for R. Hugh Knott, Esq.  
 May, 1915.

NOW KNOWN AS THE  
**"R. H. KNOTT SUB-DIVISION."**



Scale: 1" = 200'.  
 MAGNETIC MERIDIAN  
 1910.

MSA (54) 2276-18

Prince Georges County Surveyor

Addition to 'South Glymont'

In Plat. 112.

#3

Click here for a plain text ADA compliant screen.

<b>Maryland Department of Assessments and Taxation</b> <b>CHARLES COUNTY</b> <b>Real Property Data Search</b>	<a href="#">Go Back</a> <a href="#">View Map</a> <a href="#">New Search</a> <a href="#">Ground Rent</a>
---	--

Account Identifier: District - 07 Account Number - 010869

**Owner Information**

<b>Owner Name:</b>	BAILEY-THOMPSON LLC	<b>Use:</b>	RESIDENTIAL
		<b>Principal Residence:</b>	NO
<b>Mailing Address:</b>	2049 WEST STREET STE 200 ANNAPOLIS MD 21401	<b>Deed Reference:</b>	1) / 3991/ 555 2)

**Location & Structure Information**

<b>Premises Address</b>	<b>Legal Description</b>
25 SIXTH ST INDIAN HEAD 20640	LOT 68 & P/O 69 KNOTTS SUB - W GLYMONT TOWN OF INDIAN HEAD

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Group	Plat No:
11	17	207		7457			68	81	Plat Ref:

<b>Special Tax Areas</b>	Town Ad Valorem Tax Class
	INDIAN HEAD

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1920	768 SF	27,900.00 SF	
<b>Stories</b>	<b>Basement</b>	<b>Type</b>	<b>Exterior</b>
1	NO	STANDARD UNIT	FRAME

**Value Information**

	Base Value	Value			Phase-in Assessments		
		As Of	As Of	As Of	As Of	As Of	As Of
		01/01/2002	07/01/2003	07/01/2004			
<b>Land:</b>	76,140	64,990					
<b>Improvements:</b>	20,300	21,900					
<b>Total:</b>	96,440	86,890	86,890	86,890			
<b>Preferential Land:</b>	0	0	0	0			

**Transfer Information**

<b>Seller:</b> CHESLOCK, CLARA P TRS	<b>Date:</b> 03/28/2003	<b>Price:</b> \$500,000
<b>Type:</b> MULT ACCTS ARMS-LENGTH	<b>Deed1:</b> / 3991/ 555	<b>Deed2:</b>
<b>Seller:</b> CHESLOCK, JOSEPH J & CLARA P	<b>Date:</b> 08/21/2002	<b>Price:</b> \$0
<b>Type:</b> NOT ARMS-LENGTH	<b>Deed1:</b> / 3661/ 353	<b>Deed2:</b>
<b>Seller:</b>	<b>Date:</b>	<b>Price:</b>
<b>Type:</b>	<b>Deed1:</b>	<b>Deed2:</b>

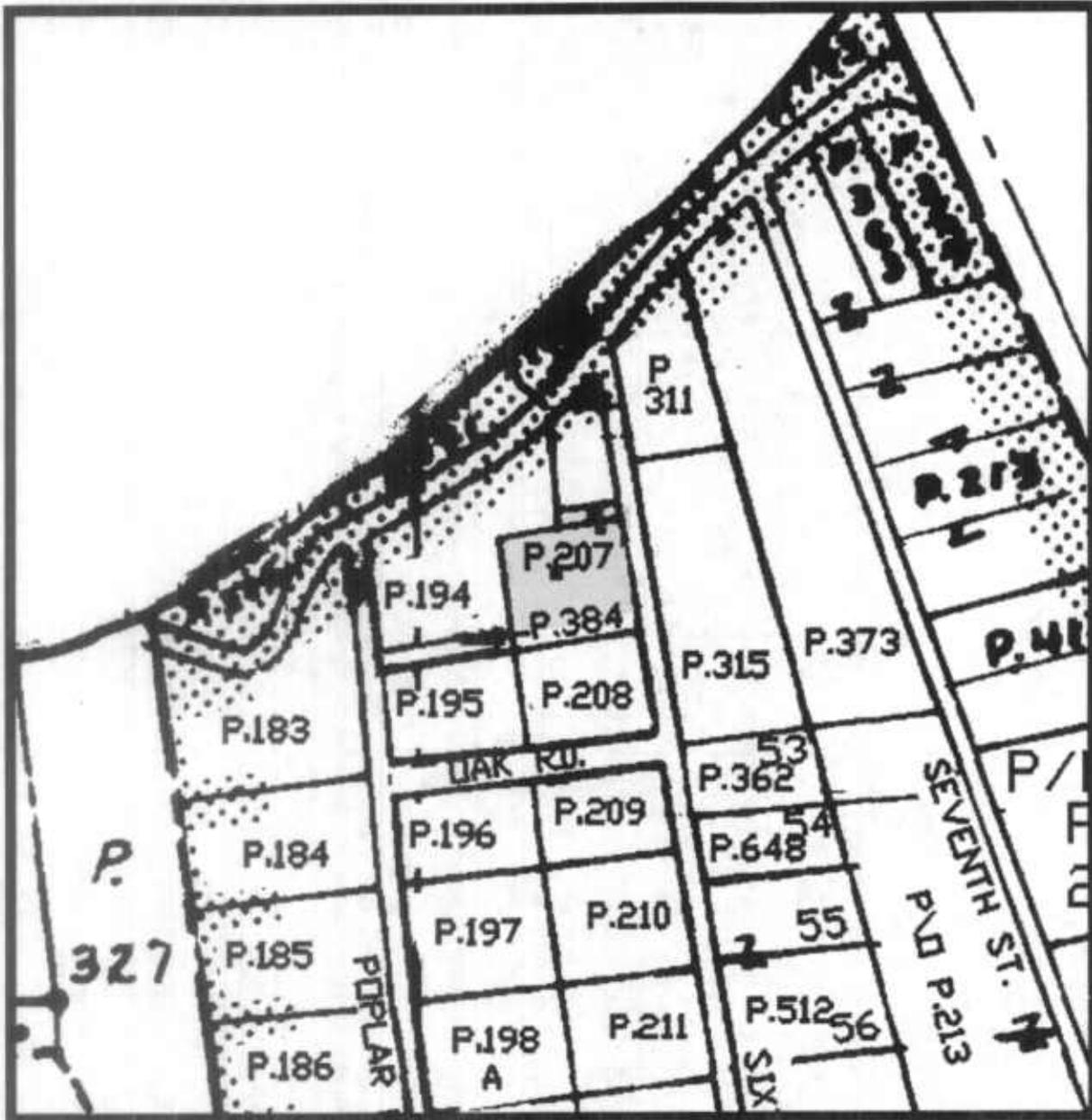
**Exemption Information**

Partial Exempt Assessments	Class	07/01/2003	07/01/2004
County	000	0	0
State	000	0	0
Municipal	000	0	0

<b>Tax Exempt:</b> NO	<b>Special Tax Recapture:</b>
<b>Exempt Class:</b>	* NONE *



District - 07 Account Number - 010869



Property maps provided courtesy of the Maryland Department of Planning ©2001 - 2002.  
For more information on electronic mapping applications, visit the Maryland Department of Planning  
web site at [www.mdp.state.md.us/webcom/index.html](http://www.mdp.state.md.us/webcom/index.html)

#4

Click here for a plain text ADA compliant screen.



Maryland Department of Assessments and Taxation  
**CHARLES COUNTY**  
 Real Property Data Search

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[New Search](#)  
[Ground Rent](#)

Account Identifier: District - 03 Account Number - 013332

**Owner Information**

Owner Name: TIPPETT, GARY L Use: RESIDENTIAL  
 Principal Residence: YES  
 Mailing Address: 2000 SANDY POINT RD Deed Reference: 1) / 1694/ 14  
 NANJEMOY MD 20662-3209 2)

**Location & Structure Information**

Premises Address  
 2000 SANDY POINT RD  
 NANJEMOY 20662

Legal Description  
 10.80 AC  
 CEDAR SHELTER SUB

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Group	Plat No: Plat Ref:
51	1	5		3115				81	

Special Tax Areas		Town Ad Valorem Tax Class	Enclosed Area	Property Land Area	County Use
Primary Structure Built	1935		904 SF	10.80 AC	
Stories	1	Basement	NO	Type	Exterior
				STANDARD UNIT	ASBESTOS SHINGLE

**Value Information**

	Base Value	Phase-in Assessments		
		Value As Of	As Of	As Of
Land:	52,800	52,800	07/01/2003	07/01/2004
Improvements:	41,840	45,060		
Total:	94,640	97,860	96,786	97,860
Preferential Land:	0	0	0	0

**Transfer Information**

Seller: ROLPH, RITA H Date: 09/10/1992 Price: \$100,000  
 Type: IMPROVED ARMS-LENGTH Deed1: / 1694/ 14 Deed2:  
 Seller: Date: Price:  
 Type: Deed1: Deed2:  
 Seller: Date: Price:  
 Type: Deed1: Deed2:

**Exemption Information**

Partial Exempt Assessments	Class	07/01/2003	07/01/2004
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO  
 Exempt Class:

Special Tax Recapture:  
 \* NONE \*

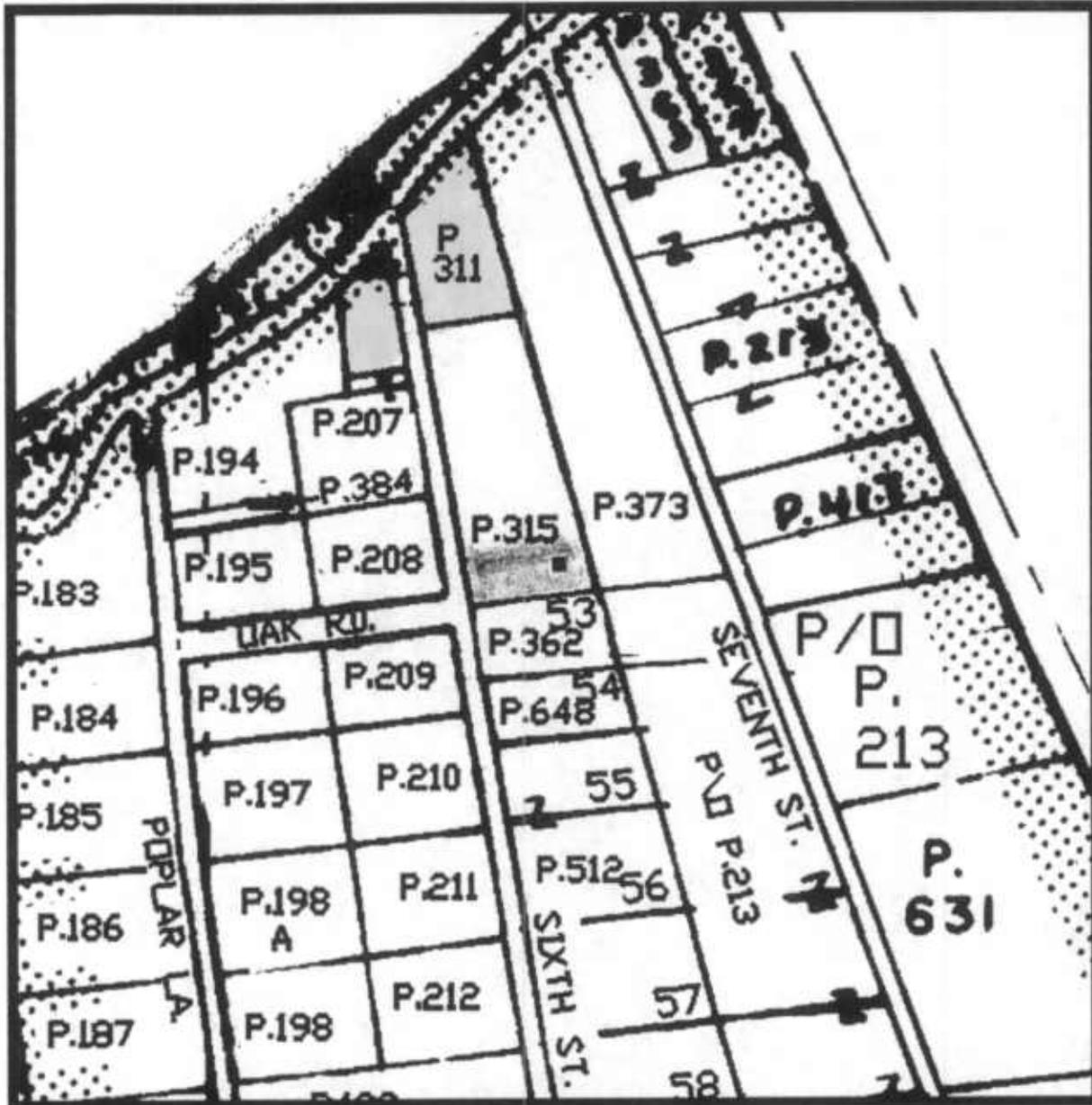


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District - 07 Account Number - 017936

#5



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Name	Account	Street	OWN OCC	Map Parcel
<u>ELLIS GROUP LLC</u>	07 032242	SIXTH ST	N	11 210
<u>ELLIS GROUP LLC</u>	07 076924	SIXTH ST	N	11 654
<u>BOYDEN RAYMOND N</u>	07 076126	1 SIXTH ST	H	11 652
<u>HURLEYNICOLAS RON</u>	07 075650	2 SIXTH ST	H	11 512
<u>NEWHOUSE JOHN J &amp;</u>	07 017731	3 SIXTH ST	H	11 199
<u>JOHNSON WALLACE &amp;</u>	07 075642	4 SIXTH ST	H	11 512
<u>HARRIS JOHN H JR</u>	07 018436	5 SIXTH ST	N	11 212
<u>COOLEY THOMAS</u>	07 075634	6 SIXTH ST	H	11 512
<u>FORD NANCY B</u>	07 075626	8 SIXTH ST	H	11 512
<u>PROCTOR DAVID W &amp;</u>	07 030436	9 SIXTH ST	H	11 211
<u>SERVETNICK DALE M</u>	07 033346	10 SIXTH ST	H	11 512
<u>HENDERSON FLOYD &amp;</u>	07 065825	12 SIXTH ST	H	11 648
<u>MALBROUGH TONY &amp;</u>	07 040679	14 SIXTH ST	H	11 362
<u>VINES BRENDA C</u>	07 052812	16 SIXTH ST	H	11 315
<u>CARTMELL ROCHELLE</u>	07 052804	18 SIXTH ST	H	11 315
<u>COX CURTIS L</u>	07 052782	20 SIXTH ST	H	11 315
<u>MOORE WILLIAM H I</u>	07 017936	22 SIXTH ST	H	11 315
<u>BAILEYTHOMPSON LL</u>	07 010869	25 SIXTH ST	N	11 207

Mawreen O'Brien → No 26<sup>th</sup> Sixth St listed 11 311 (?)



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Name	Account	Street	OWN OCC	Map Parcel
<u>HART GILBERT &amp; MA</u>	07 020082	2 E POPLAR LN	H	11 201
<u>DATCHER HENRIETTA</u>	07 012721	3 E POPLAR LN	H	11 400
<u>KLINE RONALD G</u>	07 038941	3 POPLAR LN	H	11 200
<u>NYGAARD THOMAS G</u>	07 077955	3A POPLAR LN	N	11 199
<u>SUTPHIN MERLE A &amp;</u>	07 017766	4 POPLAR LN	H	11 188
<u>DATCHER FRANK L &amp;</u>	07 012713	5 E POPLAR LN	H	11 204
<u>SAIA JOSEPH G &amp; S</u>	07 027435	5 POPLAR LN	H	11 198
<u>GREENAN JOHN J &amp;</u>	07 025904	6 S POPLAR LN	H	11 267
<u>HANCOCK MARY E E</u>	07 017898	6 POPLAR LN	N	11 226
<u>LUCAS WARREN J &amp;</u>	07 024215	6 POPLAR LN	H	11 187
<u>HOSMER NINA E &amp; A</u>	07 024193	7 POPLAR LN	N	11 198A
<u>MOREY MARY R</u>	07 024207	8 POPLAR LN	H	11 186
<u>DELOZIER L ROLAND</u>	07 013256	10 POPLAR LN	H	11 185
<u>NEITZKE CRAIG A &amp;</u>	07 017464	11 POPLAR LN	H	11 196
<u>HONEY ROBERT M</u>	07 025378	12 POPLAR LN	H	11 184
<u>VANTASSEL PAMELA</u>	07 022905	13 POPLAR LN	H	11 195
<u>HELAL SABER M &amp; A</u>	07 008627	14 POPLAR LN	N	11 183
<u>LEE DONALD H &amp; BA</u>	07 049005	16 E POPLAR LN	H	11 629
<u>BAILEYTHOMPSON LL</u>	07 010877	19 POPLAR LN	N	11 194
<u>RICHARDSON CARLEN</u>	07 033109	22 E POPLAR LN	H	11 217
<u>POSEY THERON &amp; TH</u>	07 008546	24 E POPLAR LN	H	11 217
<u>WOODLEY THOMAS S</u>	06 109632	2600 POPLAR CT	H	6 219
<u>TUCKER WILLIAM B</u>	06 109624	2601 POPLAR CT	H	6 219
<u>RIMMER THOMAS &amp; D</u>	06 109659	2604 POPLAR CT	H	6 219
<u>FRYE WILLIAM E &amp;</u>	06 109616	2605 POPLAR CT	H	6 219
<u>VEACH SEAN &amp; SHER</u>	06 109667	2608 POPLAR CT	H	6 219
<u>MILLER EDWARD J</u>	06 109608	2609 POPLAR CT	H	6 219
<u>SCHOFIELD KENNETH</u>	06 109675	2612 POPLAR CT	H	6 219
<u>SWANSON KENNETH A</u>	06 109594	2613 POPLAR CT	H	6 219
<u>HANDWORK PAUL E I</u>	06 109683	2616 POPLAR CT	H	6 219

<u>KIM EUN HEE</u>	06 109691	2624 POPLAR CT	H	6	219
<u>HENNIGE CRAIG L</u>	06 109586	2627 POPLAR CT	N	6	219
<u>LOCKARD THOMAS J</u>	06 109578	2631 POPLAR CT	H	6	219
<u>DILLARD PLEAS E J</u>	08 040168	7450 POPLAR ST	H	47	172
<u>WENTWORTH ROBERT</u>	08 040079	7455 POPLAR ST	H	47	172
<u>WESCHLER ADAM A S</u>	08 040141	7470 POPLAR ST	H	47	172
<u>RUPARD DANIEL P &amp;</u>	08 040087	7475 POPLAR ST	H	47	172
<u>UNDERWOOD PETER &amp;</u>	08 040133	7490 POPLAR ST	H	47	172
<u>WOOD CHARLES M &amp;</u>	08 048355	7515 POPLAR ST	H	47	181
<u>MURRAY JAMES H &amp;</u>	08 048401	7520C POPLAR ST	H	47	181
<u>TONEY ROBERT W &amp;</u>	08 048347	7525 POPLAR ST	H	47	181
<u>FASTNAUGHT ROBERT</u>	08 048363	7535 POPLAR ST	H	47	181
<u>THOMAS SCOTT A &amp;</u>	08 048371	7540B POPLAR ST	H	47	181
<u>TRICHEL ALLEN J &amp;</u>	08 040281	7545 POPLAR ST	H	47	182
<u>SOUDER ROBERT K &amp;</u>	08 048398	7570 POPLAR ST	H	47	181
<u>YINGLING FRANK C</u>	08 031509	7595 POPLAR ST	N	47	114
<u>MADDOX THOMAS W</u>	08 012822	7620 POPLAR ST	H	47	114
<u>SWANN JAMES W &amp; H</u>	08 022186	7625 POPLAR ST	H	47	114
<u>WEGAND JOSEPH B &amp;</u>	08 029814	7630 POPLAR ST	H	47	114
<u>MILLS JAMES F JR</u>	08 023956	7635 POPLAR ST	H	47	114
<u>HODGE THOMAS E</u>	08 029474	7650 POPLAR ST	H	47	114
<u>COLLINS CHARLES W</u>	08 011362	7655 POPLAR ST	H	47	114
<u>BUCKLER GENEVIEVE</u>	08 014558	7670 POPLAR ST	H	47	114
<u>FORMAN WM E &amp; JAN</u>	08 015139	7675 POPLAR ST	H	47	114
<u>THOMPSON KELLY M</u>	08 020728	7700 POPLAR ST	H	47	114

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
Executive Director

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June 1, 2004

Ms. Yvonne Chaillet  
St. Mary's County  
Department of Land Use and Growth Management  
23150 Leonard Hall Drive  
PO Box 653  
Leonardtown, MD 20650-0653

Re: **SM 368-04: # 04-1070 Reich/Harting Variance Requests:  
Critical Area Buffer and Impervious Surface**

Dear Yvonne,

I have reviewed the information regarding this request to construct a porch onto an existing dwelling located in the 100-foot Critical Area Buffer on a grandfathered lot in the LDA of St. Catherine Sound. The applicant is requesting two variances, one involving the location of the porch in the 100-foot Buffer, and the second to construct a new impervious surface that exceeds the lot's 15% impervious surface limit. While we do not oppose the construction of the porch in the Buffer, we cannot support creating additional impervious surfaces beyond the 7,770 square feet of impervious area that already exists on this lot. There is opportunity to avoid the need for an impervious surface variance by removing impervious surfaces associated with the gravel driveway and parking area.

If the variance is granted, we recommend the variance approval include the following conditions:

1. The required 3:1 mitigation for new disturbances in the Buffer is to be provided on-site in the Buffer.
2. Ninety-one (91) square feet of existing impervious area is to be removed so that the site maintains its current impervious area of 17.8%.

Please forward a copy of the written decision made in this case. If you have any questions regarding these comments, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner



Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
L. Governor

Ren Serey  
Executive Director

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May 27, 2004

Mr. Ronald N. Young  
Town Manager  
Town of Indian Head  
4195 Indian Head Hwy.  
Indian Head, MD 20640

Re: **Follow-up Regarding Saber Helal Variance Request**

Dear Ron,

I wanted to summarize our most recent conversations regarding Mr. Helal's latest variance request.

1. We have reviewed the April 2004 site plan as being a variance request for a new dwelling on Lot 88 only. Development of Lot 88 must conform with the Critical Area regulations that apply to Lot 88.
2. The site plan for Lot 88 must show:
  - The square footage contained within the property boundaries;
  - The amount of existing impervious surface area; and
  - The amount of existing forest cover.
3. The plan must state the impervious surface limit allowed for a grandfathered lot of this size. I have enclosed the Commission's Impervious Surface guidance document that gives the impervious surface limits according to the size of a grandfathered lot. Mr. Helal may need to adjust the size of the house to comply with the impervious surface limitation. Our office will not support a variance to exceed the impervious surface limit.

4. The expanded Buffer on Lot 88 needs to be extended farther eastward, as it has not been expanded 4 feet for every percent of slope, which is the method that needs to be used for Lot 88. It appears the proposed house will be located partially within the expanded Buffer. Mr. Helal will need a Buffer variance for building the house in the expanded Buffer.
5. Mitigation using native species is required for any tree clearing in the Critical Area. If the trees are outside the Buffer, mitigation is 1:1, provided the clearing is less than 20% of the woodland that occurs on the site. Mitigation for new disturbances in the Buffer, which would be the area of the proposed house that is located inside the Buffer, is required at a 3:1.
6. We recommend that Mr. Helal provide the Town with a mitigation planting plan which must be implemented prior to construction, or within the first growing season after construction is completed. Survival of the plantings must be guaranteed for two years. A fee-in-lieu of payment is not appropriate for this site.

Our office does not object to the granting of a Buffer variance for constructing a house in the expanded Buffer on Lot 88, provided 3:1 mitigation is provided for all new disturbances in the Buffer.

Please let me know if you or Mr. Helal have any remaining questions. I can be available for a site meeting, if requested. I can be reached at 410-260-3481.

Sincerely,



Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
Executive Director

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June 1, 2004

Ms. Yvonne Chaillet  
St. Mary's County  
Department of Land Use and Growth Management  
23150 Leonard Hall Drive  
PO Box 653  
Leonardtown, MD 20650-0653

Re: **SM 334-04: # 04-0900 Frederick & Joan Ritter  
Critical Area Buffer Variance Request**

Dear Yvonne,

I have reviewed the information regarding this variance request to replace part of a dwelling that was damaged during Hurricane Isabel, and to construct a deck onto the replaced portion of the dwelling. This work is proposed in the 100-foot Critical Area Buffer on a grandfathered lot located in the IDA of Potomac River. We do not oppose this variance request and recommend the variance approval include a condition that three trees and nine shrubs are planted for every 100 square feet of new impervious surface created. These plantings will satisfy both the 10% Rule for new impervious areas in the IDA, as well as new disturbances to the Buffer.

Please forward a copy of the written decision made in this case. If you have any questions regarding these comments, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner



Judge John C. North, II  
Chairman



Ren Serey  
Executive Director

STATE OF MARYLAND  
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May 24, 2004

Mr. R.W. Soderberg, Jr.  
Project Manager  
D.H. Steffens Co.  
22335 Exploration Drive, # 1020  
Lexington Park, Maryland 20653

Re: **SM 319-03 Tennyson's Waverly Subdivision, Lot 2**

Dear Jerry,

I have reviewed the Minor Subdivision plat for this lot, compared it against my May 2, 2003 comments, and have the following remaining comments:

1. I am unclear as to where the 34,654 square feet of existing forest actually occurs. If Lot 2 contains this amount, no afforestation is needed, as this amount represents 23.8% of the lot's area. However, Lot 2 does not appear to contain that much forested area. Please clarify the existing forest's location in Critical Area note # 8.
2. Yes, the high water line does indeed meander, however, it is generally labeled as the mean high water line.
3. It appears only a small portion of the Buffer occurs on Lot 2, and that area is near the SRA. The Buffer does not need to be established on Lot 2.
4. Lot 2 is not being created as a waterfront lot. The future owner will not be able to establish legal access to the shoreline.

Thank you for the opportunity to review the revisions.

Sincerely,

Wanda Diane Cole

cc: Sue Veith

Branch Office: 31 Creamery Lane, Easton, MD 21601  
(410) 822-9047 Fax: (410) 820-5093

TTY For The Deaf:  
Annapolis: (410) 974- 2609 D.C. Metro: (301) 586-0450

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
Executive Director

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May 18, 2004

Ms. Sue Veith  
St. Mary's County Government  
Department of Land Use and Growth Management  
PO Box 653  
Leonardtown, MD 20650-0653

Re: **SM 293-04: MSUB # 04-141-011 Boundary Line Adjustment Plat**  
**Nancy McKay & Joseph A. Potanka, Jr, and Vicky D. and Donald J. Parker**

Dear Sue,

I have reviewed the boundary line adjustment plat, which proposes to transfer 0.090 acres from the Joseph and Nancy Pohanka property to the Donald and Vicky Parker property, both of which are located in the LDA of Mill Creek. I have no comments regarding this plat.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



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May 17, 2004

Mr. James W. Price, Director  
Program Open Space  
580 Taylor Avenue, E-4  
Annapolis, Maryland 21401

Re: DNR Clearinghouse Review for Local POS/CCP Project # 44462-9-102  
Dorchester County, Town of Secretary Veterans Memorial Park  
Park Enhancements and Memorial

Dear Mr. Price,

I have reviewed the information regarding this project. The park property appears to lie within the 1,000-foot Critical Area of Warwick River. If any portion of the project requires grading and filling and/or creation of impervious surfaces, the project will require Critical Area review and Consistency approval pursuant to COMAR 27.02. Please advise the applicant to contact Ms. Tracey Gordy, Critical Area Circuit Rider, at 410-543-6904, regarding the requirements for local projects in the Critical Area.

If any of the work will create new disturbances in the 100' Critical Area Buffer, the project must be submitted to this office for Conditional Approval. Ms. Gordy will assist the applicant in making this determination.

I may be reached at 410-260-3481 if there are any questions regarding this process. Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

cc: Tracey Gordy

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
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May 17, 2004

Mr. H. Joseph Hamilton  
Maryland Department of the Environment  
Wetlands and Waterway Program  
1800 Washington Blvd  
Baltimore, Maryland 21230

**Re: 200462348/04-WL-1316 Gregory A. Koski, Dorchester County  
Tidal Wetland License to mechanically dredge and deposit spoil on upland**

Dear Mr. Hamilton,

I have reviewed the information in the Joint Public Notice regarding this application to mechanically dredge Snug Harbor and deposit the spoil material on an upland site located one mile away near East New Market. It appears the upland spoil disposal site may be located within the 1,000 foot Critical Area of Cabin Creek and/or Warwick River. Please advise the applicant to contact Ms. Karen Houtman, Dorchester County Planning and Zoning, at 410-228-3234 regarding approval requirements for activities in the Critical Area of Dorchester County.

I may be reached at 410-260-3481 for questions regarding these comments.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

cc: Karen Houtman

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



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Chairman

Ren Serey  
Executive Director

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May 17, 2004

Mr. Steve Dodd  
Dorchester County Department of Planning and Zoning  
PO Box 107  
Cambridge, MD 21613

Re: **DC 322-04: # 2196 Beebe M. & W. Grason Winterbottom, III**  
**Buffer Variance Request**

Dear Steve,

I have reviewed the information regarding the applicant's variance request to construct a swimming pool and its equipment building in the 100-foot Critical Area Buffer of a grandfathered lot, located in the LDA of Choptank River. The pool will be sited adjacent to the enclosed porch off the side of the existing house, all of which are located in the Buffer. The footprint of the new disturbance in the Buffer will measure 672 square feet.

When granting variances, the Board of Appeals must ensure the project meets the standards of unwarranted hardship, and that the project has no alternatives to avoid new impacts to the Buffer. If this variance is granted, we recommend the variance approval include the following conditions:

1. That the project does not cause the property to exceed its 15% maximum limit on impervious surface areas.
2. That the required 3:1 mitigation for new disturbances to the Buffer be provided on site in the Buffer.

Please provide this office with a copy of the written decision made in this case. If you have any questions, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
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May 11, 2004

Mr. Keith Kelley  
Baltimore County  
Department of Environmental Protection  
and Resource Management  
401 Bosley Avenue, Suite 416  
Towson, Maryland 21204

RE: **BC 283-04: Joseph Pappagallo Buffer Variance Request**

Dear Keith,

I have reviewed the information regarding this variance request for after-the-fact approval of 2,400 square feet of fill placed partially in tidal wetlands and partially in the 100' Critical Area Buffer without a grading permit. This property is located in the LDA of Browns Creek. We do not oppose this Buffer variance request for repairs to property damaged by Hurricane Isabel, provided the applicant has submitted supporting information regarding the site's pre-Isabel condition. Supporting information may be in the form of the MDE authorization to repair and backfill the bulkhead, photographs, neighbors' affidavits, and/or site surveys.

Jurisdiction regarding activities in tidal wetlands lies with the Maryland Department of the Environment (MDE). By copy of this letter, the Commission is referring this case to MDE for any necessary action regarding this potential unauthorized activity in tidal wetlands.

If you have any questions regarding these comments, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

cc: Patricia Farr  
Richard Ayella

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
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May 11, 2004

Mr. Phil Shire  
St. Mary's County Government  
Department of Land Use and Growth Management  
PO Box 653  
Leonardtown, MD 20650-0653

Re: **SM 162-04: MSUB # 04-110-010 Stecklein Estate 5-Lot Subdivision  
Tax Map 74, Block 03, Parcel 6**

Dear Phil,

Thank you for providing a copy of the minor subdivision plan for this 5-lot subdivision. I have reviewed this plan in conjunction with the Existing Conditions plan and the Critical Areas Analysis report. The following comments are in addition to the comments I provided in my letter dated April 13, 2004.

1. The minor subdivision plan creates 5 lots around 7 dwellings. General Note # 4 states that Lots 500-3 and 500-4 have non-conforming structures. Will the non-conforming structures be required to be removed? If so, this information must be stated on the plan.
2. There is one SRA proposed, which is located on Lot 500-2. Will the existing septic systems continue to be used for the remaining lots?
3. The plan must provide Critical Area notes to address my previous comments regarding impervious surfaces, forest cover, and State tidal wetlands. Notes regarding protection of existing forest resources and the Buffer from future disturbances must also be provided.
4. The 15% afforestation areas must be shown on the plan.

We request a copy of the revised plat once it is available. We may have additional comments based upon any new information. Please call me at 410-260-3481 if you have questions regarding these comments.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

cc: Lori Byrne  
Loiderman Soltesz Associates, Inc.

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

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May 11, 2004

Mr. Phil Shire  
St. Mary's County Government  
Department of Land Use and Growth Management  
PO Box 653  
Leonardtown, MD 20650-0653

Re: **SM 161-04: MSUB # 04-110-009 Ferst for St. Mary's, Inc.**  
**8-lot Resubdivision, Tax Map 05, Block 07, Parcel 333**

Dear Phil,

Thank you for providing a copy of the Farmstead Subdivision plat. I have reviewed the plat in conjunction with the Environmental Features plan for the re-subdivision of Parcels 1-8. The following comments replace those in my letter dated April 14, 2004.

1. State tidal wetlands appear to be included within the property boundaries. The area of State tidal wetlands must be quantified and stated on the plat. The RCA density must be based on acreage that does not include State tidal wetlands.
2. Parcel 5 contains sudden changes in gradient and convoluted contours, as well as Evesboro-Westphalia soils. This combination suggests that this area has undergone numerous slope failures and/or ancient mud flows. It appears the Critical Area portion of Parcel 5 may be unsuitable for homesite development. Since the SRA is shown straddling the Critical Area boundary line, development on this parcel must be counted toward using RCA density. This information must be stated on the plat.
3. The expanded Critical Area Buffer must be labeled on the plat.
4. The Wildlife and Heritage Service (WHS) has provided a determination that FIDS habitat is present on this parcel. The WHS comments must be addressed on the plat. Mitigation for clearing FIDS habitat must be provided as FIDS habitat. The FIDS mitigation calculation worksheets must be completed and provided to this office with the FIDS planting plan prior to granting subdivision approval. The FIDS mitigation worksheets are provided as Appendix D, starting on page 43 of the Commission's June

*2000 Guide to the Conservation of Forest Interior Dwelling Birds in the Chesapeake Bay Critical Area.*

5. The location for access into Parcel 4 is not clear. It appears that access into Parcel 4 may involve crossing steep slopes. If an access lane does not already exist in this area, access into Parcel 4 must avoid steep slopes in order to avoid the need for a steep slope variance. There appears to be a narrow, linear opening in the forest that approximates the Critical Area boundary on Parcel 4. If this opening is a road, please label it accordingly.

Please call me at 410-260-3481 if you have questions regarding these comments.

Sincerely,

*Wanda Diane Cole*

Wanda Diane Cole  
Natural Resources Planner

cc: Lori Byrne  
Jerry Soderberg

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
Executive Director

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May 11, 2004

Ms. Sue Veith  
St. Mary's County Government  
Department of Land Use and Growth Management  
PO Box 653  
Leonardtown, MD 20650-0653

Re: **SM 271-04: MSUB # 04-110-031 William D. Snyder Minor Subdivision  
Tax Map 69, Parcel 101**

Dear Sue,

I have reviewed the minor subdivision plat, which proposes to create one lot on a 4.0 acre parcel located in the LDA of Potomac River. I am providing the following comment for your use:

1. The Department of Natural Resources Wildlife and Heritage Service (WHS) comments have identified the forested areas of this property as FIDS habitat. The FIDS comments must be addressed on the plat. We recommend a development envelope be designated in the area between the overhead electric line right-of-way and the northeast boundary line so as to concentrate clearing into one area.
2. Mitigation for clearing FIDS habitat must be provided as FIDS habitat. The FIDS mitigation calculation worksheets must be completed and provided to this office with the FIDS planting plan prior to granting subdivision approval. The FIDS mitigation worksheets are provided as Appendix D, starting on page 43 of the Commission's June 2000 *Guide to the Conservation of Forest Interior Dwelling Birds in the Chesapeake Bay Critical Area*.
3. If fee-in-lieu funds are accepted from the applicant, the County must provide a letter certifying the amount of FIDS mitigation it will be providing and that a FIDS planting plan will be provided to this office for review prior to finalizing the mitigation plan.

Please call me at 410-260-3481 if you have questions regarding these comments.

Sincerely,

*Wanda Diane Cole*

Wanda Diane Cole  
Natural Resources Planner

cc: DH Steffens Co.  
Lori Byrne

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



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Chairman

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Executive Director

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May 11, 2004

Ms. Sue Veith  
St. Mary's County Government  
Department of Land Use and Growth Management  
PO Box 653  
Leonardtown, MD 20650-0653

Re: **SM 272-04: MSUB # 04-110-031 Petit Subdivision, Lot 1**

Dear Sue,

I have reviewed the Environmental Features plan and subdivision plat for this one-lot subdivision, located in the RCA of Bramleigh Creek. The parent parcel contains 129.83 acres, of which 95.95 acres lie within the Critical Area. I am providing the following comments for your use:

1. The number of RCA density rights available and the number of RCA density rights used must be stated on the plat. The parent parcel appears to be developed with two dwelling units, and Lot 1 will use a third density right. RCA density must be calculated based on acreage that does not include State tidal wetlands.
2. This subdivision appears to be a change in use from agriculture to residential. The 100' Critical Area Buffer must be fully established in native forest vegetation.
3. The Wildlife and Heritage Service (WHS) must be contacted for a determination on the presence of rare, threatened, and/or endangered species, and/or their habitats, on this parcel. All WHS comments must be addressed on the plat. A copy of the WHS comment letter must be provided to this office prior to issuing any approvals for this subdivision. We may have additional comments based upon any new information.

Please call me at 410-260-3481 if you have questions regarding these comments.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

cc: Lori Byrne

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

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Lt. Governor

Ren Serey  
Executive Director

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May 10, 2004

Ms. Sue Veith  
St. Mary's County Government  
Department of Land Use and Growth Management  
23150 Leonard Hall Drive  
PO Box 653  
Leonardtown, MD 20650-0653

**Re: SM 270 -04: MNSP # 04-131-009 Site Plan: David Buckler Walk-In Freezer**

Dear Sue,

I have reviewed the site plan regarding the applicants' request to install a 360 square foot walk-in freezer. I have provided the following comments for your use:

1. The location of the proposed walk-in freezer must be shown on the plan.
2. The location of the 100' Critical Area Buffer must be delineated and labeled, if applicable. It appears the entire site may be located within the Buffer. If so, the freezer is not a water-dependent facility and a Buffer variance will be required.
3. Mitigation plantings for new disturbances in the Buffer will be required. The site plan should designate the intended planting area.
4. The plan must also include a statement regarding the amount of existing impervious surface areas. It appears this site now exceeds the 15% impervious surface limit for grandfathered LDA parcels of this size. If the freezer creates additional impervious area, an equal amount of impervious area must be removed to avoid the need for an impervious surface variance, which this office cannot support.

Please call me at 410-260-3481 if you have questions regarding these comments.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner



Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
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May 7, 2004

Ms. Sue Veith  
St. Mary's County Government  
Department of Land Use and Growth Management  
PO Box 653  
Leonardtown, MD 20650-0653

Re: **SM 226-04: # 04-131-004 Piney Point Lighthouse Museum  
Addition to Existing Metal Building**

Dear Sue,

I am pleased to inform you that on May 5, 2004, the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays unanimously approved the Saint Mary's County Department of Recreation and Parks request to construct a 1,926 square foot addition onto the back of an existing metal building located in the 100' Critical Area Buffer of Potomac River. This approval has been granted in accordance with the provisions of COMAR 27.02.06 Conditional Approval of State or Local Agency Programs in the Critical Area.

I have attached a copy of the Planting Agreement for this project. Please have Phil Rollins sign and date the form, and return it to me prior to construction. Please contact me for a joint inspection of the plantings when they have been completed.

Thank you for your participation and assistance in this process. If you have any questions, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

cc: Phil Rollins

# Planting Agreement for State and Local Projects

**State or Local Agency**  
St Mary's County Department of Recreation and Parks (SM 226-04)

**Project Number**

**Agency Contact**  
Sue Veith, Dept of Land Use and Growth Management

**Phone Number**  
(301) 475-4200

**Commission Approval Date**  
May 5, 2004

**CAC Planner**  
Wanda Diane Cole

**Project Name**  
Piney Point Museum- Addition to Metal Building

**Project Location**  
Piney Point Museum, IDA of Potomac River

**Square Feet Cleared Outside 100ft Buffer**  
0

**Mitigation Ratio for Clearing Outside Buffer\***  
N/A

**Mitigation Calculation Outside Buffer**

**Square Feet Disturbed/Cleared Within 100ft Buffer**  
1926

**Mitigation Ratio for Disturbance/Clearing Within Buffer\***  
N/A

**Mitigation Calculation Within Buffer**

**15% Afforestation Requirement Met?**  
No- grandfathered

**Total Mitigation Required**  
0

**Planting and Natural Regeneration Plan (attach additional sheets if necessary)**  
Plantings are being provided as a stormwater offset to meet the 10% Rule requirements. A total of 12 trees and 18 shrubs are required to remove 0.27 lbs of phosphorus pollutant loadings. Tree will measure 6' tall x 1.5 " caliber; shrubs will be 3-gallon size.  
  
Survival of plantings are to be guaranteed by St. Mary's County Department of Recreation and Parks for five (5) years from date plantings are completed, to ensure plantings survive the hardships of wind, salt exposure, flooding, insect damage, drought conditions, and/or blight which could occur in this area.  
  
Please contact CAC at 410-260-3460 for joint inspection: a) when plantings are completed, and b) for the five-year inspection.

**Planting Date**  
Fall

**Year**  
2004

**First Site Visit Date**

**First Site Visit By**

**Second Site Visit Date**

**Second Site Visit By**

**Mitigation Completed?**

\* see back for explanations

Revised 9/03

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

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Executive Director

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Lt. Governor

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May 7, 2004

Mr. James W. Price, Director  
Program Open Space  
580 Taylor Avenue, E-4  
Annapolis, Maryland 21401

Re: DNR Clearinghouse Review for Local POS/CCP Project # 4450-3-382  
Baltimore County, Stansbury Park, Replacement of Playground Equipment

Dear Mr. Price,

I have reviewed the information regarding this project. This property lies within the Critical Area of Lynch Cove. If any portion of the project requires the redevelopment of the site by grading and filling, demolition and replacement of impervious surfaces, or the creation of new impervious surfaces, the project will require Critical Area review and Consistency approval. Please advise the applicant to contact Ms. Patricia Farr, Baltimore County DEPRM, at 410-887-3980 for guidance in this process.

If any of the work will create new disturbances in the 100' Critical Area Buffer, the project must be submitted to this office for Conditional Approval. Ms. Farr will assist the applicant in making this determination, and either the applicant or DEPRM may make the submittal to this office. I may be reached at 410-260-3481 if there are any questions regarding this process.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

cc: Patricia Farr

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
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Ren Serey  
Executive Director

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May 6, 2004

Ms. Anne D. Roane  
City of Cambridge  
Department of Public Works  
Planning & Zoning  
705 Leonard Lane  
Cambridge, Maryland 21613

**Re: City of Cambridge Critical Area Ordinance Text Amendments**

Dear Ms. Roane,

This office has received the revised Part VII of the zoning chapter of the Cambridge City Code, and accepts it for processing. This document amends the Critical Area regulations in the City, as well as, supplements and provides for implementation of the City's Critical Area Program document. The Program document was amended in 1998 and no revisions are proposed at this time. The Chairman will make an amendment or refinement determination within 30 days of the date of this letter, and Commission staff will notify you of his determination and the procedures for review by the Critical Area Commission.

Thank you for your cooperation. If you have any questions, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

cc: Roby Hurley

CLEARINGHOUSE REVIEW

April 28, 2004

TO: Arnold Norden, Greenways and Resources Planning (E-4)  
Glenn Therres, Wildlife (E-1)  
Robert Beckett, State Forest and Park Service (E-3)  
Tammy Broll, Natural Resources Police (E-3)  
Ray Dintaman, Environmental Review (B-3)  
Matthew Fleming, Education, Bay Policy & Growth Mgmt (E-2)  
Marian Honecny, Forestry (E-1)  
Bill Hodges, Resource Assessment Services (B-3)  
Regina Esslinger, Crit. Area Cmsn. (1804 West St., Suite 100, Annap., 21401)

RECEIVED  
MAY 4 2004  
CHESAPEAKE BAY  
CRITICAL AREA COMMISSION

FROM: *[Signature]* James W. Price, Director, Program Open Space  
*[Signature]* Marketa L. Walker, Program Manager, Community Parks & Playgrounds

SUBJ: DNR Clearinghouse Review of Local POS/CPP Project #4447-3-379, Carriage Hills Park, Baltimore County

Replace antiquated, non-ADA compliant, playground equipment. Install a picnic pavilion as well as other park amenities.

The above referenced project has been submitted to this office for funding in accordance with the Outdoor Recreation Land Loan of 1969, and remains on file in this office. Please submit any comments you may have concerning this project within two weeks of the date of this letter. If no comments are received within two weeks, it will be assumed that this project does not conflict with the programs, plans, or objectives of your Agency. If you require additional information before you can complete your review, please contact the undersigned.

CHECK ONE AND INITIAL

CHECK

INITIAL

1. The project does not conflict with the plans, programs or objectives of this Agency.

*wdc 05/06/04*

2. The project does not conflict with this Agency's plans, programs or objectives, but the attached comments are submitted for consideration.

\_\_\_\_\_

\_\_\_\_\_

3. The project conflicts with this Agency's plans, programs or objectives for the reasons indicated on the attachment.

\_\_\_\_\_

\_\_\_\_\_

Please return to Marti Sullivan or Judy Jones, Program Open Space, Tawes State Office Building (E-4) Annapolis, upon completion of review.



Joins Map 23

570.00

39°22'30"

MD GRID 560,000 FT

11

12

13



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Governor

Michael S. Steele  
Governor



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Chairman

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May 5, 2004

Mr. Keith Kelley  
Baltimore County DEPRM  
401 Bosley Avenue, Suite 416  
Towson, Maryland 21204

Re: **BC 330-04: John K. Smith Buffer Variance Request**

Dear Keith,

I have reviewed the information regarding this variance request to place a gazebo in the 100' Critical Area Buffer on a 1.35 acre grandfathered property located in the LDA of Bird River. This property is almost entirely constrained by the 100' Critical Area Buffer and a nontidal wetland and its 25' buffer, and was the subject of a Buffer variance request made in 1999.

This office opposes this variance request to create new disturbances in the 100' Critical Area Buffer. In 2002, the Maryland General Assembly reiterated its commitment to protection of the Chesapeake Bay Critical Area's water quality and wildlife habitat values. By Chapters 431 and 432 of the 2002 Laws of Maryland, the General Assembly stated that variances to a local jurisdiction's Critical Area program may be granted only if a zoning board finds that an applicant has satisfied its burden to prove that the applicant meets each one of the county's variance standards. The Code of Maryland Regulations and County Code both provide standards a local government must use when granting a variance. Again, because the applicant must meet all of the standards in order for the Board to grant a variance, this office believes that, in this case, those standards clearly have not been met. I have outlined those standards below:

1. That special conditions or circumstances exist that are peculiar to the land or structure within the jurisdiction's Critical Area program that would result in an unwarranted hardship to the applicant. Despite the lot being constrained by the 100' Buffer and nontidal wetlands, a reasonable area has been allowed to be developed, with a portion of that development approved through the granting of variance # 99-10.
2. That a literal interpretation of this subtitle or the local Critical Area Program and related ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical area of the local jurisdiction. The applicants have reasonable use of this property, and therefore, they would not be denied a right commonly enjoyed by their

neighbors. There is opportunity to enclose one of the existing decks to accommodate insect-free outdoor enjoyment without the need for a variance. The applicant's rights must be evaluated against the rights of other property owners under the Critical Area Program.

3. The granting of a variance will not confer upon an applicant any special privilege that would be denied by this subtitle or the local Critical Area program to other lands or structures within the jurisdiction's Critical Area. If the variance is granted, it would confer upon the applicant a special privilege that would be denied to others in this subdivision, as well as in similar situations in the County's Critical Area. In its September 3, 1999 comments regarding variance # 99-10, the Commission stated that disturbance to the wetlands on the east side of the property should be avoided by placing all structures as far back from the wetlands as possible. The proposed location for the gazebo not only encroaches toward these wetlands, it is closer to the wetlands than any existing structure on this lot.
4. The variance request is not based upon conditions or circumstances which are the result of the actions by the applicant, nor does the request arise from any condition conforming, on any neighboring property. The applicant meets this standard.
5. The granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the jurisdiction's Critical Area, and that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area law and the regulations. The applicant bears the burden to prove this factor, along with the others discussed above. In 2002, the General Assembly re-enacted its findings regarding the importance of maintaining the water quality of the Chesapeake Bay and its contributing tidal watersheds. Granting this variance will contribute to the decline of water quality in Bird River, and, ultimately, the Chesapeake Bay. The proposed gazebo would displace an area that would otherwise function to provide groundwater recharge and pollutant removal. Decline in water quality contributes to declines in aquatic habitat, ultimately affecting the viability of local fisheries and the local economies that depend on them.

In conclusion, it is our position that, unless the Board finds that the applicant has met the burden of proof on each one of the County's variance standards, the Board must deny this application.

Please provide this office with a copy of the written decision made in this case. If you have any questions, please contact me at 410-260-3481.

Sincerely,



Wanda Diane Cole  
Natural Resources Planner

cc: Marianne Mason, Counsel

*Critical Area Commission*

**STAFF REPORT**

**May 5, 2004**

**APPLICANT:** St. Mary's County Department of Recreation and Parks

**PROPOSAL:** Piney Point Museum- Addition to Metal Building

**COMMISSION ACTION:** Vote

**STAFF RECOMMENDATION:** Approval

**STAFF:** Wanda Diane Cole

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

**DISCUSSION:**

The Piney Point Museum is a County-owned property located in the IDA of Potomac River. The Museum property is managed by Saint Mary's County, Department of Recreation and Parks, who is proposing the construction of an addition onto an existing metal building. This building will house a boat collection from the Lundeberg School of Seamanship, per an agreement between the County Commissioners and the School.

The existing building is located in the 100-foot Critical Area Buffer, as will be the addition. The footprint of the addition will be sited over an existing impervious area, and will measure 96.3 ft long by 20 ft wide, for a total of 1,926 feet of redevelopment in the Buffer. No tree clearing is required and there will be no disturbance to any Habitat Protection Areas other than the Buffer. As the project involves less than 5,000 square feet and/or 100 cubic yards of disturbance, neither sediment and erosion control, nor stormwater management approval is required.

Compliance with the 10% Rule requirements must be met, as the property is mapped as an Intensely Developed Area. The County has determined that the pollutant removal requirement is 0.4181 pounds phosphorous, which can be met by disconnecting roof drains to decrease the amount of untreated impervious area, and by providing dense plantings in the Buffer. The proposed plantings consist of 59, 6' tall x 1.5" diameter native trees and 75, 3-gallon native shrubs, which will increase the woodland habitat on site, as well as improve the quality of stormwater runoff.

As this project is located in the Buffer, a Conditional Approval from the Commission is required. The County has certified that this project otherwise conforms to its Critical Area Program and Ordinance. The following responses are those of the applicant:

The following responses are those of the applicant:

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

The proposed site is an addition to the existing structure that will be entirely located over an existing paved impervious surface in the IDA. The existing buildings and impervious surfaces on the site are predominately located within the Critical area Buffer. Denial of the "Conditional Approval" will deprive the county of the ability to make a reasonable addition to an existing metal building on the site that is necessary to accommodate museum display and interpretation of moderately-sized watercraft and interpretive displays of the history and context of the Piney Point Lighthouse site.

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

The facility will provide for an expanded collection of Chesapeake Bay watercraft, displays and interpretation of the history, setting and natural habitats of the Piney Point lighthouse site. The project site is a relatively recent addition to county property adjacent to the existing Piney Point Lighthouse Museum historical site (which also is predominately within the Critical Area Buffer) on the end of the peninsula known as Piney Point located between the Potomac River and a large tidal wetland to the north. The project site offered an existing metal building which could, with minimum modification, meet the need for additional display and interpretation adjacent to the primary museum site. The proposed 20 x 96 foot addition to the metal building is necessary to accommodate the watercraft and artifacts acquired by and donated to the museum. The addition of such a structure could not be accommodated on the Museum's current site without drastically altering the historic lighthouse building complex and disrupting the historic character, and increasing impervious surface within the natural habitat, beach and wetlands of the Piney Point site.

This adjacent site, which had been a part of an industrial complex for ST Services, with some modifications over existing impervious surface had been abandoned and was minimally maintained, which has allowed some non-native and invasive species to begin to take hold on the site. The existing structures can meet the display needs of the museum and offers opportunities for education and interpretation of Critical Area habitats, native plants, Bay friendly-practices including rooftop drain disconnects, control/ removal of invasive plants and the benefits of buffer plants for water quality improvements.

The proposed planting of native trees and shrubs necessary to meet mitigation and 10% rule requirements will provide improved habitat and water quality improvements in the adjacent tidal wetland by reducing surface runoff volume and filtering the sediments, pollutants and nutrients from any runoff that does leave the site.

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

The Piney Point Lighthouse Museum -Addition to Existing Metal Building is consistent with the currently adopted comprehensive plan for St. Mary's County. A condition of any permit issued for

this project by the County will be agreement to provide planted mitigation necessary under this ordinance provision and to meet the 10% rule water quality improvements for this IDA site.

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

The proposed redevelopment is within the Critical Area Buffer on a grandfathered parcel that is predominately within the Critical Area Buffer. The addition is to a structure that predates the Critical Area regulations located entirely within the Buffer. Denial of the "Conditional Approval" will deprive the county of the ability to make a reasonable addition to an existing metal building on the site that is necessary to accommodate additional museum displays and interpretation of moderately-sized watercraft and interpretive displays of the history and environment of the Piney Point Lighthouse site.

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

The proposed project substantially conforms to the existing St. Mary's County Critical Area Program. The proposed addition to the structure is 1,920 square feet. The replacement surfaces encroach no closer to the water than the surfaces they replace, the replacement surfaces are entirely outside of sensitive areas, the paving over which the addition is proposed is appears visible on 1980 aerials of the area, and mitigation is provided for all new disturbances.

**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.**

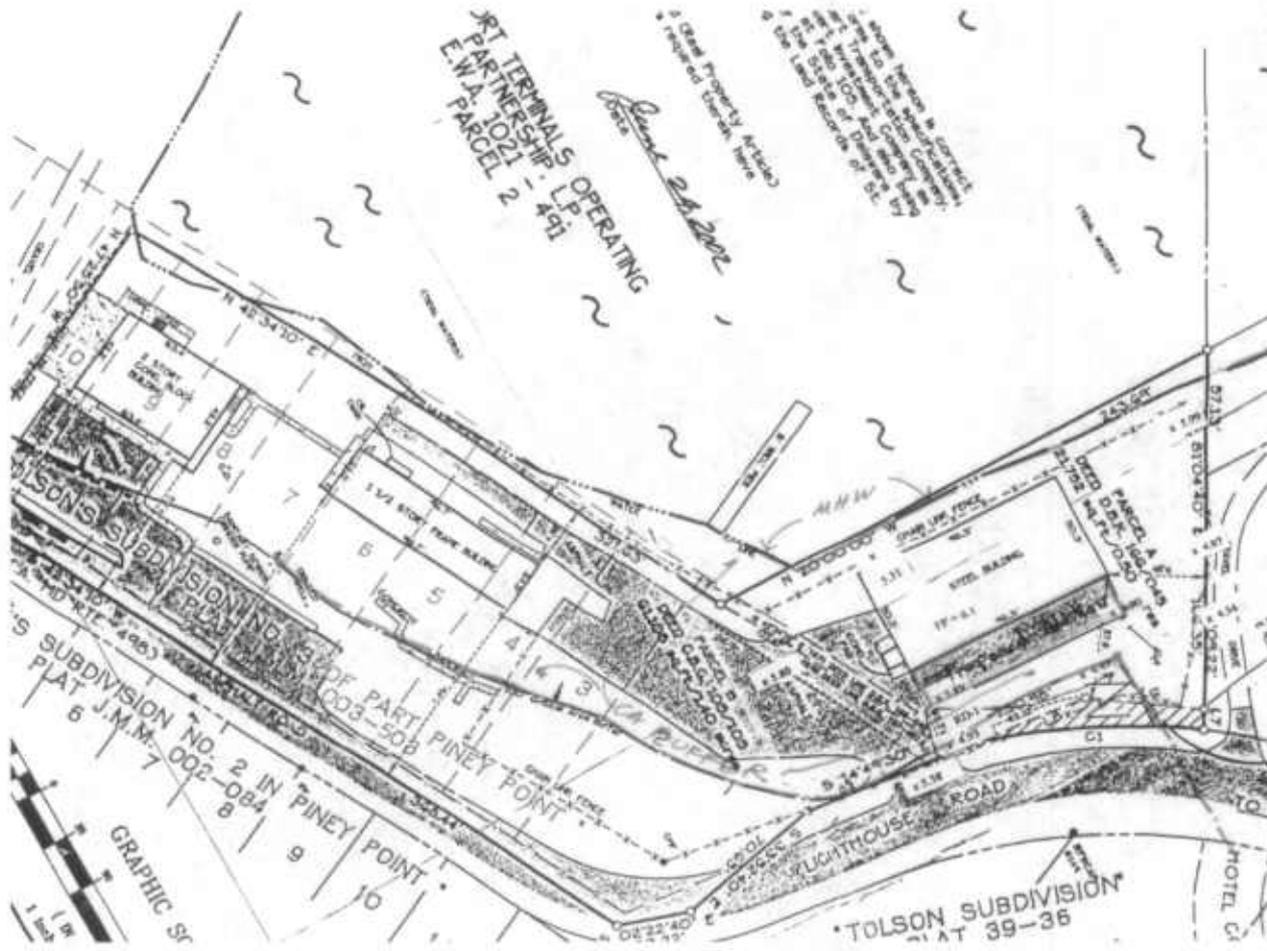
On March 5, 2004, the county staff prepared the 10% rule calculations for the site, and submitted the calculations and a proposal for extensive planting in the Buffer as a BMP to meet the 10 percent rule requirements for redevelopment on the site. The calculations include disconnection of roof drains (implementation of BMP # RD-1 of the Stormwater Management Ordinance) effectively reducing total impervious surface on the site. The balance of the reduction required (.4181 lb phosphorus) is proposed to be provided by densely planting the Critical Area Buffer down slope from the existing impervious surface on the site. The letter of March 25, 2004 from W. Diane Cole to Sue Veith indicates that the Commission staff concurs with the county staff analysis and request to utilize Buffer planting in lieu of a structural BMP to meet the 10% rule requirement for this site.

*The Commission shall approve, deny, or request modifications to the request for conditional approval based on the following factors:*

*E.(1) The extent to which the project or program is in compliance with the requirements of the relevant chapters of this subtitle;*

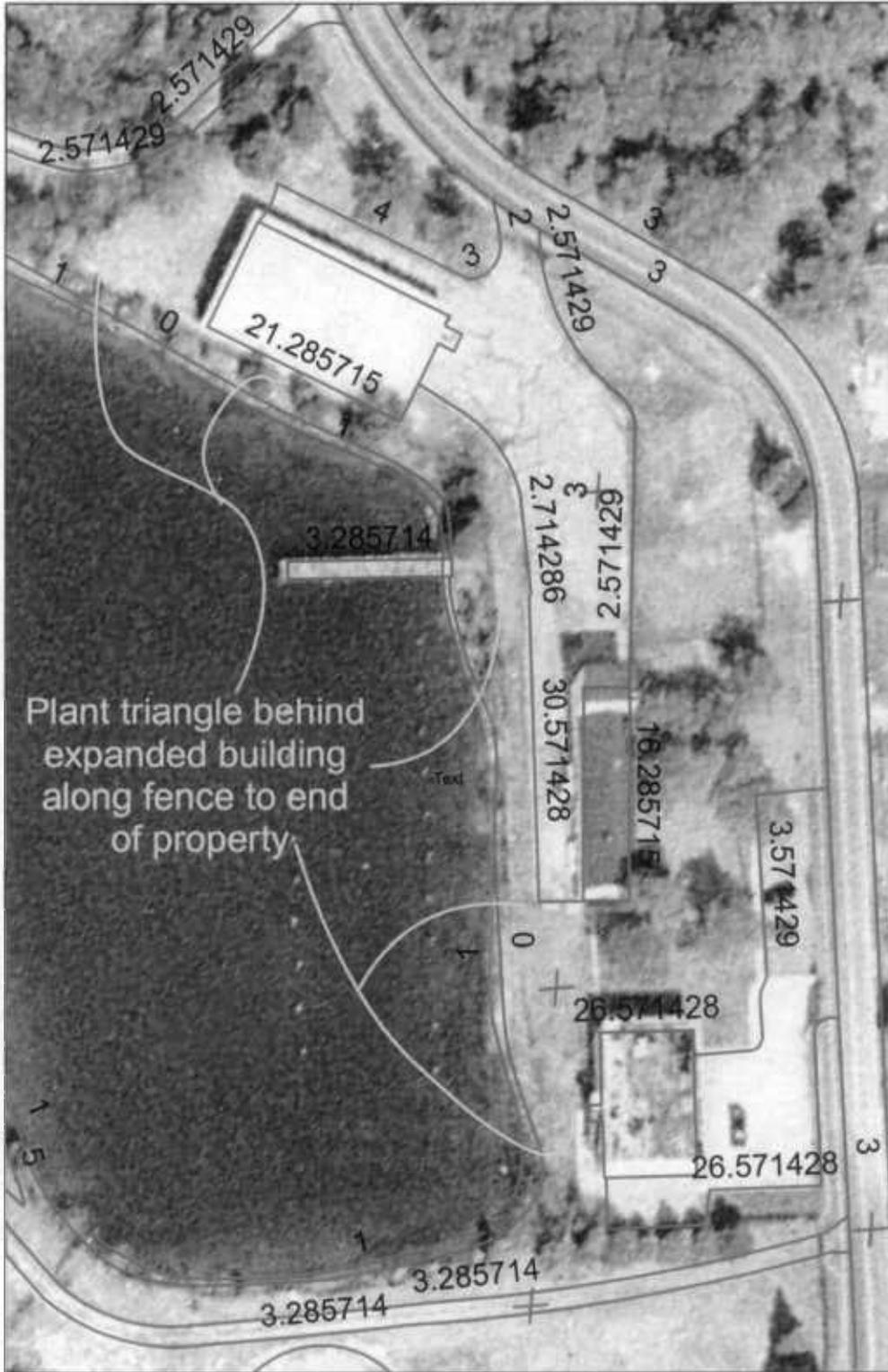
*E.(2) The adequacy of any mitigation measures proposed to address the requirements of this subtitle that cannot be met by the project or program; and*

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



Piney Point Museum Site Plan-

Addition in the Buffer (behind the Metal Building)



Plant triangle behind expanded building along fence to end of property

Piney Point Museum Site



Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
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Executive Director

**STATE OF MARYLAND  
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May 5, 2004

Ms. Yvonne Chaillet  
St. Mary's County  
Department of Land Use and Growth Management  
23150 Leonard Hall Drive  
PO Box 653  
Leonardtown, MD 20650-0653

**RE: SM 249-04: # 04-0001 Toby Byrd Buffer Variance Request  
TM 46 Parcel 51; 37335 River Springs Road**

Dear Yvonne,

I have reviewed the information regarding this variance request to construct an addition and deck onto an existing house, as well as a portion of an addition to an existing detached garage, in the 100' Critical Area Buffer on a grandfathered lot located in the LDA of St. Catherine Sound. This lot is largely constrained by the 100' Critical Area Buffer. The impervious surface area will increase from 15% to 23.5%, which is within the allowable limit for grandfathered lots of this size.

This office does not oppose the granting of this variance. We recommend the variance include a condition that the required 3:1 mitigation for new disturbance to the Buffer is to be provided on-site.

Please forward a copy of the written decision made in this case. If you have any questions regarding these comments, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner



Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

STATE OF MARYLAND  
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May 5, 2004

Ms. Elsa Ault  
Charles County  
Department of Planning and Growth Management  
PO Box 2150  
La Plata, MD 20646-2150

RE: CS 284-04: SFD # 04-0170 Charleston Estates Lot 9, Section 1  
Site Plan for Albert & Laura Niggles

Dear Elsa,

I have reviewed the site plan for this property, which proposes the construction of a single-family residence and septic disposal system in the RCA of Charleston Creek. None of this work will encroach into the 100' Critical Area Buffer. The site was previously cleared and a planting plan provided.

This office does not oppose this site plan. We recommend the site plan provide the following additional information:

- The location where mitigation plantings will be/have been provided. Please note that the plan shows the same number and type of species before and after the clearing, yet the percentage of tree coverage is less after the clearing than before. Please verify that 1:1 mitigation is being provided for all clearing that occurs within the limits of disturbance.

Please contact me at 410-260-3481 if you have any questions regarding these comments.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Cole".

Wanda Cole  
Natural Resources Planner

CLEARINGHOUSE REVIEW

April 16, 2004

RECEIVED

APR 27 2004

CHESAPEAKE BAY  
CRITICAL AREA COMMISSION

TO: Arnold Norden, Greenways and Resources Planning (E-4)  
Glenn Therres, Wildlife (E-1)  
Robert Beckett, State Forest and Park Service (E-3)  
Tammy Broll, Natural Resources Police (E-3)  
Ray Dintaman, Environmental Review (B-3)  
Matthew Fleming, Education, Bay Policy & Growth Mgmt (E-2)  
Marian Honeczy, Forestry (E-1)  
Bill Hodges, Resource Assessment Services (B-3)  
Regina Esslinger, Crit. Area Cmsn. (1804 West St., Suite 100, Annap., 21401)

FROM: *[Signature]* James W. Price, Director, Program Open Space  
*[Signature]* Marketa L. Walker, Program Manager, Community Parks & Playgrounds

SUBJ: DNR Clearinghouse Review of Local POS/CPP Project #4448-3-380, Gwynnvale Park, Baltimore County Recreation and Parks, Baltimore County

Replace antiquated, non-ADA compliant, playground equipment.

The above referenced project has been submitted to this office for funding in accordance with the Outdoor Recreation Land Loan of 1969, and remains on file in this office. Please submit any comments you may have concerning this project within two weeks of the date of this letter. If no comments are received within two weeks, it will be assumed that this project does not conflict with the programs, plans, or objectives of your Agency. If you require additional information before you can complete your review, please contact the undersigned.

CHECK ONE AND INITIAL

CHECK

INITIAL

1. The project does not conflict with the plans, programs or objectives of this Agency.

wdc 05-04-04

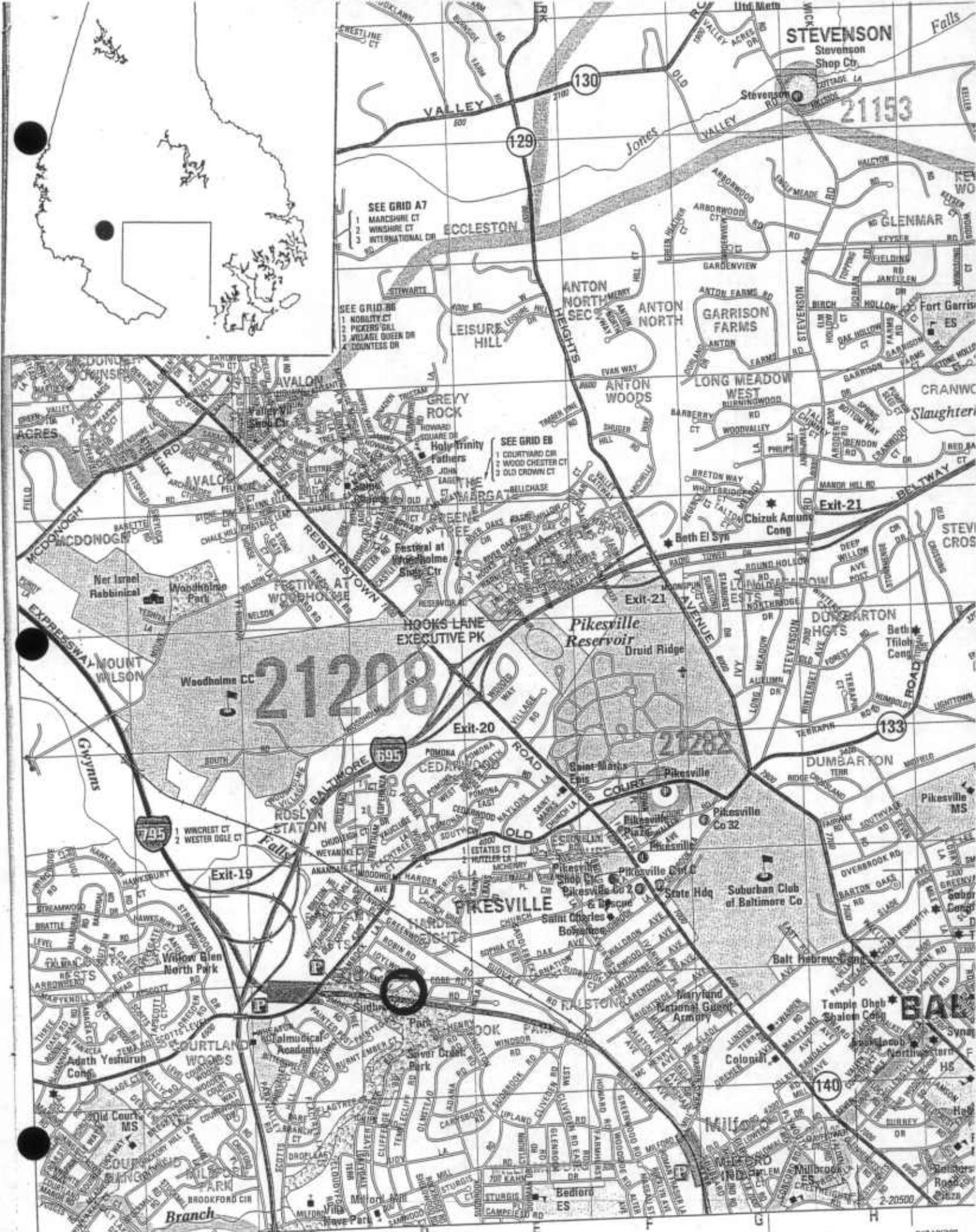
2. The project does not conflict with this Agency's plans, programs or objectives, but the attached comments are submitted for consideration.

\_\_\_\_\_

3. The project conflicts with this Agency's plans, programs or objectives for the reasons indicated on the attachment.

\_\_\_\_\_

Please return to Marti Sullivan or Judy Jones, Program Open Space, Tawes State Office Building (E-4) Annapolis, upon completion of review.



SEE GRID A7  
 1 MARCUSHRE CT  
 2 WINDSHIRE CT  
 3 INTERNATIONAL DR

SEE GRID B6  
 1 NOBILITY CT  
 2 PICKERS GALL  
 3 VILLAGE QUEEN DR  
 4 COUNTNESS DR

SEE GRID E8  
 1 COURTYARD DR  
 2 WOOD CHESTER CT  
 3 OLD CROWN CT

870,000 FT 76°45'00"

Joins Map 33

MD GRID 880,000 FT

76°42'30"

CLEARINGHOUSE REVIEW

April 19, 2004

RECEIVED

APR 27 2004

TOWNE WEAKE BAY  
CRITICAL AREA COMMISSION

TO: Arnold Norden, Greenways and Resources Planning (E-4)  
Glenn Therres, Wildlife (E-1)  
Robert Beckett, State Forest and Park Service (E-3)  
Tammy Broll, Natural Resources Police (E-3)  
Ray Dintaman, Environmental Review (B-3)  
Matthew Fleming, Education, Bay Policy & Growth Mgmt (E-2)  
Marian Honeczy, Forestry (E-1)  
Bill Hodges, Resource Assessment Services (B-3)  
Regina Esslinger, Crit. Area Cmsn. (1804 West St., Suite 100, Annap., 21401)

FROM: James W. Price, Director, Program Open Space  
Marketa L. Walker, Program Manager, Community Parks & Playgrounds

SUBJ: DNR Clearinghouse Review of Local POS/CPP Project #4449-3-381, Chapel Hill Elementary School Recreation Center, Baltimore County Recreation and Parks, Baltimore County

Renovate two existing ball diamonds, which will include: backstops, safety fencing and player benches.

The above referenced project has been submitted to this office for funding in accordance with the Outdoor Recreation Land Loan of 1969, and remains on file in this office. Please submit any comments you may have concerning this project within two weeks of the date of this letter. If no comments are received within two weeks, it will be assumed that this project does not conflict with the programs, plans, or objectives of your Agency. If you require additional information before you can complete your review, please contact the undersigned.

CHECK ONE AND INITIAL

CHECK

INITIAL

1. The project does not conflict with the plans, programs or objectives of this Agency.

wde 05-04-04

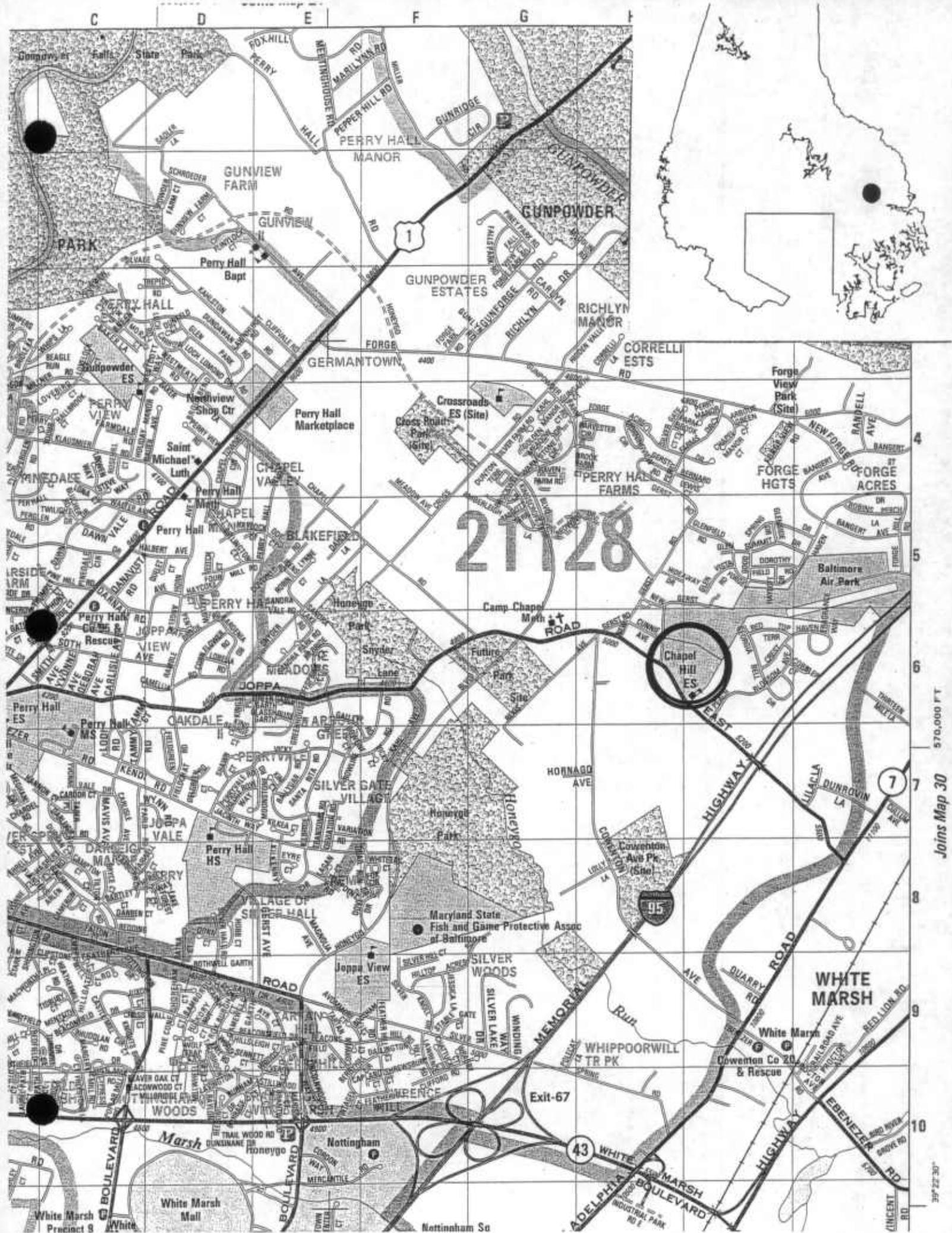
2. The project does not conflict with this Agency's plans, programs or objectives, but the attached comments are submitted for consideration.

\_\_\_\_\_

3. The project conflicts with this Agency's plans, programs or objectives for the reasons indicated on the attachment.

\_\_\_\_\_

Please return to Marti Sullivan or Judy Jones, Program Open Space, Tawes State Office Building (E-4) Annapolis, upon completion of review.



21128

Chapel Hill ES

570,000 FT

Joins Map 30

39° 22' 30"

White Marsh Precinct 9

Nottingham So

LINCOLN RD

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
Executive Director

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April 30, 2004

Ms. Yvonne Chaillet  
St. Mary's County  
Department of Land Use and Growth Management  
23150 Leonard Hall Drive  
PO Box 653  
Leonardtwn, MD 20650-0653

RE: SM 251-04: # 04-0158 Todd & Chandra Hayden BufferVariance Request

Dear Yvonne,

I have reviewed the information regarding this variance request to construct a replacement dwelling in the Critical Area Buffer on a grandfathered lot located in the LDA of Back Creek. This site is almost entirely constrained by the Buffer. The sand mound system for septic disposal is located on a separate lot, Parcel 275, which appears to also be located in the Critical Area.

We do not oppose this variance request. We recommend the variance approval include a condition that the required 3:1 mitigation for new disturbances in the Buffer be provided on site. Please forward a copy of the written decision made in this case.

If you have any questions regarding these comments, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Governor



Martin G. Madden  
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Ren Serey  
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April 30, 2004

Ms. Yvonne Chaillet  
St. Mary's County  
Department of Land Use and Growth Management  
23150 Leonard Hall Drive  
PO Box 653  
Leonardtown, MD 20650-0653

RE: **SM 250-04: # 04-0144 Meagan Connell Steep Slope Variance Request**

Dear Yvonne,

I have reviewed the information regarding this request to raze and replace a dwelling with deck and garage on steep slopes located on a grandfathered lot in the RCA of Patuxent River. This lot is located in a Buffer Management Overlay zone. We do not oppose this steep slope variance request. We recommend the variance approval include a condition that the required 2:1 mitigation must be provided for all new disturbances in the Buffer, as well as for tree clearing.

Please forward a copy of the written decision made in this case. If you have any questions regarding these comments, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
Executive Director

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April 30, 2004

Ms. Yvonne Chaillet  
St. Mary's County  
Department of Land Use and Growth Management  
23150 Leonard Hall Drive  
PO Box 653  
Leonardtown, MD 20650-0653

**RE: SM 248-04: # 03-2788 Kelly Thorne Impervious Surface Variance Request**

Dear Yvonne,

I have reviewed the information regarding this request to exceed the 31.25% impervious surface limit on this grandfathered lot located in the LDA of Trent Hall and Indian Creeks. The applicant proposes to replace a front porch with a slightly larger one. The site already contains 33.7% in impervious area. While we do not oppose replacing the porch, we cannot support a variance that would further increase the impervious surface area beyond the 31.25% allowed. We recommend the applicant consider ways to remove an equivalent amount of impervious area so that the existing level of imperviousness is at least maintained.

Please forward a copy of the written decision made in this case. If you have any questions regarding these comments, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

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Executive Director

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April 29, 2004

Mr. Ronald N. Young  
Town Manager  
Town of Indian Head  
4195 Indian Head Hwy.  
Indian Head, MD 20640

Re: **IH 810-03: Saber Helal Variance Request, Lot 88 at 14 Poplar Avenue**

Dear Mr. Young,

Thank you for sending the revised site plan for Mr. Helal's proposed dwelling, which is now shown on Lot 88 instead of Lot 87 as previously submitted. The existing house, shed, and carport, located on Lots 86 and 87, are still being proposed for razing. The applicant owns the three contiguous lots, which total 2.13 acres. This site plan shows new information regarding environmental features, which were not available during my November 2003 review; e.g., the expanded Critical Area Buffer, which occurs on all three lots.

This office has the following comments:

1. It appears Lot 88 is a grandfathered lot. It is not clear if the applicant intends to use Lots 86-88 as one site or as separate grandfathered lots. This is an important question as it affects the Buffer impacts and impervious surface limits.
2. The Buffer has been expanded for contiguous steep slopes, as required by the Town's Zoning Ordinance Part III, Section 971(d)(ii). Expansion of the Buffer for steep slopes is the greater of 4 feet for every percent of slope, or to the top of the slope. For this site, the greater is 4 feet for every percent of slope. The expanded Buffer on Lot 88 needs to be extended farther eastward.

However, Part III, Section 971(d)(v) of the Town Ordinance requires a minimum buffer of 100' from the top edge of cliffs and bluffs. I was not able to find a formal definition of cliff or bluff in the Ordinance to determine if these slopes met this definition.

3. Lot 88 has a maximum impervious surface limit of 5,445 square feet. The proposed impervious area for development on Lot 88 is 5,540 square feet. The development on Lot 88 must comply with the impervious surface limit, or a variance to the impervious surface limit must be granted. If the applicant intends to build only one house on the entire 2.13 acre site, the proposed site plan complies with its impervious surface limit. The impervious surface limit for the 2.13 acre site is 15%, or 12,917 square feet.
4. There are several trees growing on this site. Please quantify how many and determine the percentage of cover they provide. Please indicate how many existing trees must be removed to facilitate this development. Mitigation will be required 1:1 for tree clearing outside the Buffer. Mitigation for new disturbances in the Buffer, including tree clearing, is 3:1.
5. If the applicant intends to build on each grandfathered lot, Lots 86 and 87 are entitled to only one development right under the Doctrine of Merger, as set forth by *Friends of Ridge v. BG&E*, 352 Md 645 (1999). In accordance with this Doctrine, "When a landowner combines or merges several parcels or lots of land by integrating or utilizing contiguous lots in service of a single structure or project, the platted lot lines remain in place for title purposes until deed of conveyance or new subdivision is created, but by operation of law, a single parcel emerges for zoning purposes."

We may have additional comments once we receive the above requested information. If you have any questions regarding these comments, please contact me at 410-260-3481.

Sincerely,



Wanda Diane Cole  
Natural Resources Planner

cc: Marianne Mason, Counsel

Robert L. Ehrlich, Jr.  
Governor



Michael S. Steele  
Lt. Governor

Martin G. Madden  
Chairman

Ren Serey  
Executive Director

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April 23, 2004

Ms. Sue Veith  
St. Mary's County Government  
Department of Land Use and Growth Management  
23150 Leonard Hall Drive  
PO Box 653  
Leonardtown, MD 20650-0653

**Re: SM 282-04: # 04-0441 Tall Timbers Drain Pipe Relocation  
Consistency Report**

Dear Sue,

I have reviewed the findings, described in your April 19, 2004 Consistency letter, regarding the need to replace a clogged and inaccessible drain pipe in the LDA of Potomac River. This pipe serves a County-maintained road and is being placed in a County right of way. The replacement pipe will be emplaced on an adjacent lot, where it will be connected to an existing storm drain outfall. The relocated pipe will cross the 100-foot Buffer in a manner consistent with the criteria of COMAR 27.01.02.04. No other HPA will be affected, no tree clearing is required, and earth disturbances will be temporary trenching which will be backfilled immediately after installation of the pipe. Therefore, this office concurs with the County's findings.

Thank you for your participation in this process.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
Executive Director

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April 23, 2004

Mr. Keith Kelley  
Baltimore County  
Department of Environmental Protection  
and Resource Management  
401 Bosley Avenue, Suite 416  
Towson, MD 21204

RE: BC 236-04: # 04-03 James & Bertha McNulty Variance Request

Dear Keith,

I have reviewed the information regarding this variance request to construct a replacement dwelling within the 100-foot Critical Area Buffer on a grandfathered lot located in the LDA of Seneca Creek. This lot is also located in a Buffer Management Area. This dwelling will replace one destroyed by Hurricane Isabel in September 2003. The replacement dwelling is proposed 18 feet closer to the shoreline than the original dwelling, and encroaches into the Buffer Setback.

No information has been provided as to why the house cannot be rebuilt in the same location. We do not oppose rebuilding on this site, but new impacts to the Buffer should be minimized.

Please provide our office with a copy of the written decision made in this case. If you have any questions regarding these comments, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner



Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

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Executive Director

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April 23, 2004

Mr. Keith Kelley  
Baltimore County DEPRM  
401 Bosley Avenue, Suite 416  
Towson, MD 21204

RE: **BC 234-04: Q-C Golden Mile II Property, Concept Plans 'A' and 'C'  
Sandy Plains Road and Lynch Road**

Dear Keith,

I have reviewed Concept plans 'A' and 'C' for the Sandy Plains Road and Lynch Road project, also known as Q-C Golden Mile II. This project proposes a 16-lot subdivision in the LDA of Chink and Bear Creeks. The following comments are provided for your use:

1. I concur with your April 5, 2004 Concept Plan comment # 15 regarding removal of the parking spaces from the Buffer where they are proposed to serve the Open Space area. The parking spaces require a Buffer variance and our office cannot support variances for new subdivisions. Similarly, this office cannot support any stormwater management facilities in the Buffer. The proposed location in the vicinity of lots 3 through 8 could be located outside the 100-foot Buffer, which would eliminate the need for a variance.
2. It appears the last sentence in your comment # 5 was intended to state that the reforestation required is at a ratio of 1.5 to 1, rather than 1.5 acres.
3. More detail is needed regarding the "Waters of the US" area shown on Lot 8. Is this area a nontidal wetland or stream? Will it require a Buffer?
4. There is a 25' Buffer area shown around the limits of the tidal wetlands located in the Open Space area. Only the 100' foot Critical Area Buffer is required around tidal wetlands, and that is already shown on the plan. If this 25' Buffer is associated with a nontidal wetland, those wetlands must be labeled accordingly.
5. Is the Inverness pumping station existing or proposed?
6. Will the community pier provide slips or is it intended for fishing and viewing purposes only? This information must be stated on the plat.

7. Lot 9 on Concept Plan 'C' appears to have a sidewalk to the street but no driveway.

All of our other comments were raised in your letter. Thank you for the opportunity to review the plan. Please call me if you have any questions regarding these comments.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Cole".

Wanda Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
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April 22, 2004

Mr. Keith Kelley  
Baltimore County  
Department of Environmental Protection  
and Resource Management  
401 Bosley Avenue, Suite 416  
Towson, MD 21204

RE: **BC 235-04: 04-05 Mr & Mrs. John Shiner Variance Request**

Dear Keith,

I have reviewed the information regarding this variance request to construct a driveway across a portion of a nontidal wetland and its buffer. This nontidal wetland is a Habitat Protection Area located on a grandfathered lot in the LDA of Frog Mortar Creek. This nontidal wetland encumbers a large area of the lot, and access to the development site cannot occur without crossing the wetland. Permanent impacts consist of filling 5 square feet of vegetated nontidal wetlands and disturbing 1400 square feet of wetland buffer. We do not oppose this variance request.

Please forward to this office a copy of the written decision made in this case. If you have any questions regarding these comments, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
Executive Director

STATE OF MARYLAND  
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April 22, 2004

Mr. Keith Kelley  
Baltimore County  
Department of Environmental Protection  
and Resource Management  
401 Bosley Avenue, Suite 416  
Towson, MD 21204

RE: **BC 237-04: 04-04 Charles Bryan Diegel Variance Request**

Dear Keith,

I have reviewed the information regarding this variance request to construct a dwelling within the 35-foot building setback from the 25-foot nontidal wetland buffer on a grandfathered lot located in the LDA of Frog Mortar Creek. We do not oppose this variance request.

Please forward to this office a copy of the written decision made in this case. If you have any questions regarding these comments, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

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Executive Director

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April 19, 2004

Ms. Patricia Farr  
Baltimore County DEPRM  
County Courts Building  
401 Bosley Avenue  
Towson, Maryland 21204

**RE: Vandermast Property Growth Allocation Proposal**

Dear Pat:

Thank you for submitting the preliminary concept plans for the Vandermast Property. It is my understanding that this property may be the subject of a proposed growth allocation request. The 60-acre Vandermast property includes approximately 12 acres in the LDA and 48 acres in the RCA and is located adjacent to Sue Creek. The property is currently developed with several dwellings. It is likely that the applicant will be requesting a change in the Critical Area Overlay designation of the RCA portion of the property to LDA. As you requested, I have reviewed the information submitted, and I have the following preliminary comments:

1. The proposed subdivision utilizes the development envelope concept of the Commission's growth allocation policy. A single development envelope is proposed, and there appears to be a 28-acre residue of RCA south of Vandermast Lane. This proposal could allow the County to use approximately 20 acres of growth allocation versus deducting the entire area of RCA.
2. It is not clear whether the subdivision plan includes areas of State tidal wetlands. State tidal wetlands are owned by the State of Maryland; therefore, they should not be included in lot boundaries and cannot be used for acreage, density, or impervious surface calculations.
3. The 300-foot Buffer recommended in COMAR 27.01.02.06.b(6) is not being provided.

Ms. Farr  
February 3, 2003  
Page 2

4. No information about Habitat Protection Areas (HPAs), other than the 100-foot Buffer, has been provided. Information about HPAs will need to be obtained from the Heritage Division of the Department of Natural Resources, and there may be additional comments.

Thank you for the opportunity to comment at this early phase of the project. If you have any questions regarding these comments, please contact me at (410) 260-3481, or Mary Owens at 410-260-3480.

Sincerely,



Wanda Cole  
Natural Resources Planner

cc: Regina Esslinger, CAC  
Mary Owens, CAC  
Ren Serey, CAC

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

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April 19, 2004

Ms. Patricia Farr  
Baltimore County DEPRM  
County Courts Building  
401 Bosley Avenue  
Towson, Maryland 21204

**RE: Holly Neck Limited Partnership  
Draft Growth Allocation Plan**

*Pat*  
Dear Ms. Farr:

This letter serves to follow up on the Critical Area Commission's letter dated March 29, 2004 and our meeting with you and Mr. David Carroll on April 6, 2004 regarding the proposed subdivision on the Holly Neck property.

As we discussed, the Commission has a policy regarding the use of growth allocation and how the acreage to be deducted is calculated if a County proposes to deduct less than the entire Critical Area acreage of a parcel. At this time, the County is proposing to deduct less than the entire Critical Area acreage of Parcel 424 in order to conserve the County's limited growth allocation acreage. In order for the project to minimize the use of growth allocation and maintain consistency with the Commission's growth allocation deduction methodology, Court B needs to be relocated.

We discussed the possibility of relocating these eight units and adding them to Court A or reconfiguring them and adding them to Courts D, E, I or J. Based on our conversation, I believe that there are a variety of design options that would work and would result in the portion of the parcel south of Holly Neck Road and west of Brown's Cove Road remaining RCA. This configuration allows for the preservation of at least a 20-acre contiguous area within the RCA, thereby reducing the amount that would need to be deducted from the County's growth allocation reserve. It also does not result in the creation of more than one "development envelope" per parcel.

Ms. Farr  
February 3, 2003  
Page 2

If you have any questions regarding this recommendation, please contact me at (410) 260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Cole".

Wanda Cole  
Natural Resources Planner

cc: Regina Esslinger, CAC  
Mary Owens, CAC  
Ren Serey, CAC

Wanda - Reader

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steeie  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

STATE OF MARYLAND  
CRITICAL AREA COMMISSION  
CHESAPEAKE AND ATLANTIC COASTAL BAYS  
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(410) 260-3460 Fax: (410) 974-5338  
www.dnr.state.md.us/criticalarea/

April 15, 2004

Ms. Karen Houtman  
Dorchester County  
Planning and Zoning Office  
P.O. Box 107  
Cambridge, Maryland 21613

Re: Proposed Municipal Growth Allocation Procedures

Dear Ms. <sup>Kae</sup>Houtman:

We have reviewed the proposed text amendments to the Dorchester County Zoning Ordinance regarding municipal growth allocation procedures, as well as, the existing language. The proposed "infill growth allocation" procedures pertain to the use of growth allocation for "infill projects" on properties located within a municipality's boundaries. Growth allocation for these projects is deducted from the growth allocation acreage that has already been allotted to the municipality. The proposed "annexation growth allocation" procedures address the use of growth allocation for a specific property that is in the process of being annexed by a municipality, and on which a development project has been proposed that would require growth allocation in order to be approved. The following comments apply to both the existing and proposed language in Section N - Growth allocation:

1. In Section N.2.a, it is stated that, "Redesignation from a "higher" designation to a "lower" designation (for example from IDA to LDA) does not require the use of growth allocation." No process or procedure is specified. It may be helpful to clarify how this would be accomplished.
2. In Section N.2.d and N.2.d.ii, references are made to both the "County's overall growth allocation" and "jurisdiction's allocation." Since these provisions pertain to the amount of growth allocation to be deducted and not the pool of growth allocation that is to be used, this section should probably be clarified.
3. In Section N.3.e, "the conditional approval by the Planning Commission" is specified. Is this "conditional approval" the same as the "favorable recommendation" described in Section N.3.a? Perhaps the same term should be used or a clarification provided.



Ms. Houtman  
April 15, 2004  
Page 2

4. In Section N.4.a, the annexation growth allocation procedures should probably state from which pool the growth allocation will be deducted.
5. In Section N.4.c.ii, the County may want to include a statement that the project may be sent to the Critical Area Commission for preliminary comments.
6. In Section N.4.c.iii, the term "supplemental growth allocation" is used; however, it is not defined. Does supplemental simply mean additional?
7. In accordance with COMAR Section 27.01.02.06.A(2), counties, in coordination with affected municipalities, shall establish a process to accommodate the growth needs of the municipalities. It is likely that when the Commission reviews these amendments, they will want to ensure that the County coordinated with the affected municipalities. The County may want to provide the municipalities with an opportunity to review and comment on this proposed text amendment during the current review.

When the text amendment has been approved by the Dorchester County Commissioners, it can be submitted for formal review and approval by the Commission. Thank you for providing Commission staff with the opportunity to review and comment. Please contact me at 410-260-3481, or Mary Owens at 410-260-2480, if you have any questions about our comments.

Sincerely,



Wanda Diane Cole  
Natural Resources Planner

cc: Mary Owens

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

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April 14, 2004

Ms. Sue Veith  
St. Mary's County Government  
Department of Land Use and Growth Management  
PO Box 653  
Leonardtown, MD 20650-0653

Re: **SM 161-04: MSUB # 04-110-009 Ferst for St. Mary's, Inc.  
8-lot Resubdivision, Tax Map 05, Block 07, Parcel 333**

Dear Sue,

I have reviewed the Environmental Features plan for this parcel. A subdivision plan was not included in the information provided. I consulted the State tax assessment database for Parcel 333, and the plat records for plats 46-106 and 47-42, which recorded a previous resubdivision of this property in 1998. I can find no record that the 1998 resubdivision had been submitted to our office for review. I could only locate parcels 5 through 8 on the tax assessment database.

1. This parcel is located in the RCA of Trent Hall Creek and contains 50.85 acres in the Critical Area. However, State tidal wetlands appear to be included within the property boundaries. Parcels 4 and 5 are proposed in the Critical Area portion of the property.
2. What is the net tract area of Parcel 333 after subtracting State tidal wetlands? The RCA density must be based on acreage that does not include State tidal wetlands.
3. Please provide a copy of the proposed subdivision plat. We may have additional comments based upon the information shown on that plat.
4. Existing impervious areas must be quantified and stated on the plat. Any proposed impervious surface areas must also be quantified and shown on the plat.
5. The amount of existing forest cover must be quantified. It appears afforestation and establishment of the 100-foot Buffer are not required.

6. The sudden changes in gradient and the convolution of the contours on Parcel 4, which contain primarily Evesboro-Westphalia soils, suggest this area has undergone numerous slope failures and/or ancient mud flows. As a result, the Critical Area portion of this lot may be unsuitable for homesite development. The SRA is shown straddling the Critical Area boundary line. If the SRA is intended to serve a development envelope outside the Critical Area, it must be counted toward using RCA density, and this information must be stated on the plat.
7. The Wildlife and Heritage Service (WHS) must be contacted for a determination on the presence of rare, threatened, and/or endangered species, and/or their habitats, on this parcel. All WHS comments must be addressed on the plat. A copy of the WHS comment letter must be provided to this office prior to issuing any approvals for this subdivision.

We request a copy of the revised plat once it is available. We may have additional comments based upon any new information. Please call me at 410-260-3481 if you have questions regarding these comments.

Sincerely,



Wanda Diane Cole  
Natural Resources Planner

cc: Lori Byrne

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
Executive Director

STATE OF MARYLAND  
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April 14, 2004

Mr. Steve Dodd  
Dorchester County  
Department of Planning and Zoning  
PO Box 107  
Cambridge, MD 21613

Re: **DC 240-04: # 2191 Edward & Karin Meyers**  
**Critical Area Buffer and Impervious Surface Variance Requests**

Dear Steve,

I have reviewed the information regarding the applicants' request to construct a replacement dwelling and a relocated driveway in the 100-foot Critical Area Buffer on a grandfathered lot in the RCA of Hudson Creek. The project will result in a net decrease from 28 % in impervious surface areas to 22%. This office does not oppose this request. We recommend the variance approval include a condition that the required 3:1 mitigation for new disturbances to the Buffer be provided on site.

Please provide this office with a copy of the written decision made in this case. If you have any questions, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
Executive Director

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April 13, 2004

Ms. Sue Veith  
St. Mary's County Government  
Department of Land Use and Growth Management  
PO Box 653  
Leonardtown, MD 20650-0653

Re: **SM 163-04: MSUB # 04-110-011 Joseph H. Raley Subdivision, Lots 1 & 2**  
**Tax Map 70, Block 6, Parcel 62**

Dear Sue,

I have reviewed the plat for the above referenced minor subdivision, which will create Outparcel A in the RCA of Fox Harbor Creek. This 7.69 acre outparcel includes all of the Critical Area acreage contained by Parcel 62. If permitted by the underlying zoning, Parcel 62 would have one RCA density right available, provided it can obtain all other approvals necessary for development. The following comments are provided for your use:

1. The 100-foot Critical Area Buffer line has not been labeled on the plan. It appears that when the Buffer is expanded for contiguous hydric soils and steep slopes, the entire outparcel is constrained by the expanded Buffer. This would necessitate variances for development on Outparcel A.
2. The proposed 20' access easement to Outparcel A ends at a forested nontidal wetland. Building access into the outparcel would impact a significant area of nontidal wetlands in order to reach a potential homesite on Outparcel A. We recommend the 20' access lane be terminated at the future development envelope for Lot 2, and that future access into Outparcel A occur from the existing 12' gravel road that parallels the outparcel's northern boundary.

3. The Wildlife and Heritage Service (WHS) must be contacted for a determination on the presence of any rare, threatened and/or endangered species, and/or their habitats, on this property. All WHS comments must be address on the plan. A copy of the WHS comment letter must be provided to this office prior to granting any approvals for this subdivision. We may have additional comments based upon any new information.

Please contact me at 410-260-3481 if you have questions regarding these comments.

Sincerely,



Wanda Diane Cole  
Natural Resources Planner

cc: Lori Byrne  
Bill Higgs, Little Silences Rest

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

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April 13, 2004

Ms. Sue Veith  
St. Mary's County Government  
Department of Land Use and Growth Management  
PO Box 653  
Leonardtown, MD 20650-0653

Re: **SM 162-04: MSUB # 04-110-010 Stecklein Estate 5-Lot Subdivision  
Tax Map 74, Block 03, Parcel 6**

Dear Sue,

I have reviewed the Existing Conditions plan for this parcel, and the Critical Areas Analysis for the proposal. A subdivision plan was not included in the information provided.

1. This 22.8 acre parcel is located in the RCA of Potomac River and Point Lookout Creek. It is currently developed with seven dwellings, four septic tanks, and two sheds. A five-lot subdivision around existing conditions is being proposed.
2. Please provide a copy of the proposed 5-lot subdivision plat. We may have additional comments based upon the information shown on that plat.
3. What is the net tract area of Parcel 6 after subtracting State tidal wetlands?
4. Which of the dwellings will be removed? Will any be replaced with new structures?
5. The existing impervious area for Loretta Landing Road must be accounted for. The amount of existing impervious surface areas, including driveways to the individual houses, must be quantified and stated on the plat. We recommend a matrix be provided to establish the amounts of existing impervious area and impervious area available for each lot.
6. Any proposed impervious surface areas must also be quantified and shown on the plat.

7. The amount of existing forest cover must be quantified. It appears 15% afforestation is required. The amount of afforestation required must be stated on the plat.
8. If this subdivision represents a change in use from agricultural to primarily residential use, the 100-foot Buffer must be fully established in forest vegetation. This information must be stated on the plat.
9. The Wildlife and Heritage Service (WHS) must be contacted for a determination on the presence of rare, threatened, and/or endangered species, and/or their habitats, on this parcel. All WHS comments must be addressed on the plat. A copy of the WHS comment letter must be provided to this office prior to issuing any approvals for this subdivision.

We request a copy of the revised plat once it is available. We may have additional comments based upon any new information. Please call me at 410-260-3481 if you have questions regarding these comments.

Sincerely,



Wanda Diane Cole  
Natural Resources Planner

cc: Lori Byrne  
Loiderman Soltesz Associates, Inc.

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

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April 12, 2004

Mr. John Roop  
US Army Corps of Engineers  
Baltimore District  
PO Box 1715  
Baltimore, Maryland 21203-1715

Re: CENAB-OP-RMS (Salisbury DPW/Beaverdam Creek/Dredging & Revetment)  
04-61940-2, Wicomico County

Dear Mr. Roop,

I have reviewed the information in the Public Notice for the above referenced project and would like to provide the following comment:

- A Critical Area consistency report is required for that portion of the revetment project that lies within the 1000-foot Critical Area boundary. The applicant must contact Mr. Matt Hedger, Department of Planning, Zoning and Community Development, for assistance. Mr. Hedger's office is located at 125 North Division Street, Room 203, in Salisbury. He may also be reached at 410-548-4860.

Thank you for the opportunity to comment. Please contact me at 410-260-3481 if there are any questions regarding this comment.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

cc: Matt Hedger  
Elder Ghigiarelli, MDE



Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

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April 12, 2004

Ms. Sue Veith  
St. Mary's County Government  
Department of Land Use and Growth Management  
23150 Leonard Hall Drive  
PO Box 653  
Leonardtown, MD 20650-0653

**Re: St. Mary's County Policy Regarding Expansion of Buffer for Hydric Soils**

Dear Sue,

We have reviewed the County's proposed policy regarding expansion of the Critical Area Buffer for hydric soils. Our only comment is to recommend that the introduction to the policy emphasize the policy applies only to hydric soils.

Thank you for the opportunity to comment. Please call me at 410-260-3481 if we may be of further assistance.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
Executive Director

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April 12, 2004

Ms. Michele Hurt  
Maryland Department of Natural Resources  
Engineering & Construction  
580 Taylor Avenue, D-3  
Annapolis, Maryland 21401

Re: **W50-02: Approval of Hammerman Area Beach Services Building  
Gunpowder Falls State Park, Baltimore County**

Dear Michele,

I am pleased to inform you that on April 7, 2004, the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays unanimously approved the Hammerman Area Beach Services Building project. This project involves the replacement of the existing beach services building located in the Critical Area of Gunpowder River, and has met the criteria found in COMAR 27.02.05 State Agency Actions Resulting in Development on State-Owned Land.

Enclosed are two copies of the Planting Agreement for the forest mitigation plantings. Please sign both copies and return them to me. Please note that the 17-year cicadas are expected to emerge from May through July 2004. As the egg-laying habits of these cicadas can damage the branches of young trees and kill the tree, you may wish to defer planting until fall 2004.

Thank you for your participation and assistance in this process. If you have any questions, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

Encl. (2)  
cc: Arnold Norden

# Planting Agreement for State and Local Projects

**State or Local Agency**

Department of Natural Resources

**Project Number**

50-02

**Agency Contact**

Michele Hurt

**Phone Number**

(410) 260-8905

**Commission Approval Date**

April 7, 2004

**CAC Planner**

Wanda Diane Cole

**Project Name**

Hammerman Beach Services Bldg.

**Project Location**

Gunpowder Falls State Park, Baltimore County

**Square Feet Cleared Outside 100ft Buffer**

5 trees

**Mitigation Ratio for Clearing Outside Buffer\***

Clearing of Forest/Woodlands up to 20% in CA 1:1

**Mitigation Calculation Outside Buffer**

5 trees

**Square Feet Disturbed/Cleared Within 100ft Buffer**

0

**Mitigation Ratio for Disturbance/Clearing Within Buffer\***

N/A

**Mitigation Calculation Within Buffer**

0

**15% Afforestation Requirement Met?**

Yes

**Total Mitigation Required**

5 trees

**Planting and Natural Regeneration Plan (attach additional sheets if necessary)**

Landscape plan L.1 and L.2 provide 37 trees, 37 shrubs, and 20,646 square feet of perennial plantings, using native species.

**Planting Date****Year****First Site Visit Date****First Site Visit By****Second Site Visit Date****Second Site Visit By****Mitigation Completed?**

\* see back for explanations

Revised 9/03

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

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April 12, 2004

Mr. Matt Hedger, Planner  
City of Salisbury-Wicomico County  
Department of Planning, Zoning and  
Community Development  
125 North Division Street, Room 203  
PO Box 870  
Salisbury, MD 21803-0870

Re: **WI 193-04: Ralph and Ann Harcum Critical Area Buffer Variance Request**

Dear Matt,

I have reviewed the information for this variance request to construct a garage in the 100-foot Critical Area Buffer of Rewastico Creek on a grandfathered parcel located in the RCA. The proposed garage will measure 576 square feet, of which approximately half will be located in the Buffer. While we do not oppose the garage, impacts to the Buffer could be further reduced, and possibly eliminated, by attaching the garage to the end of the house. If this variance is granted, we recommend the variance approval include a condition that the required 3:1 mitigation plantings for new disturbances in the Buffer are to be provided on-site in the Buffer.

Please contact me at 410-260-3481 if you have any questions regarding these comments.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

CLEARINGHOUSE REVIEW

March 26, 2004

RECEIVED

APR 1 2004

CHESAPEAKE BAY  
LOCAL AREA COMMISSION

TO: Arnold Norden, Greenways and Resources Planning (E-4)  
Glenn Therres, Wildlife (E-1)  
Robert Beckett, State Forest and Park Service (E-3)  
Tammy Broll, Natural Resources Police (E-3)  
Ray Dintaman, Environmental Review (B-3)  
Matthew Fleming, Education, Bay Policy & Growth Mgmt (E-2)  
Marian Honeczy, Forestry (E-1)  
Bill Hodges, Resource Assessment Services (B-3)  
Regina Esslinger, Crit. Area Cmsn. (1804 West St., Suite 100, Annap., MD 21401)

FROM: James W. Price, Director, Program Open Space

SUBJ: DNR Clearinghouse Review of Local POS Project #4002-3-358, Amended Northwest Regional Park, Baltimore County

The Board of Public Works approved the above referenced project on December 3, 2002. The project initially proposed the development of 50 acres of a 322± acre new regional park. Development included a variety of recreational facilities that would serve northwest Baltimore County. The amended scope of this project includes further development of 7 acres on the portion of the park west of Deer Park Road. Proposed recreational facilities include a lighted athletic field, a comfort station, and a paved 112-space parking lot.

The above referenced project has been submitted to this office for review and concurrence in accordance with the Outdoor Recreation Land Loan of 1969, and remains on file in this office. Please submit any comments you may have concerning this project within two weeks of the date of this letter. If no comments are received by the date indicated, it will be assumed that this project does not conflict with the programs, plans, or objectives of your Agency. If you require additional information before you can complete your review, please contact the undersigned.

CHECK ONE AND INITIAL

CHECK

INITIAL

1. The project does not conflict with the plans, programs or objectives of this Agency.

Wdc 04/12/04

2. The project does not conflict with this Agency's plans, programs or objectives, but the attached comments are submitted for consideration.

\_\_\_\_\_

3. The project conflicts with this Agency's plans, programs or objectives for the reasons indicated on the attachment.

\_\_\_\_\_

Please return to Marti Sullivan or Judy Davenport, Program Open Space, Tawes State Office Building (E-4) Annapolis, upon completion of review.

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
Executive Director

**STATE OF MARYLAND  
CRITICAL AREA COMMISSION  
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April 8, 2004

Ms. Sue Veith  
St. Mary's County Government  
Department of Land Use and Growth Management  
PO Box 653  
Leonardtown, MD 20650-0653

Re: **SM 164-04: MSUB # 04-110-0014 Blackistone Farm Resubivision  
Lots 500-1 & 500-2; Tax Map 27 Parcel 636**

Dear Sue,

I have reviewed the proposed resubdivision plat, which proposes the creation of two lots around existing conditions on a 4.71-acre parcel in the LDA of Cuckold Creek. The following comments are provided for your use:

1. General Note # 3 must be revised to show that this parcel is in the LDA, not the RCA.
2. General Note # 22 states that hydric soils might be present. The location of these soils must be shown on the plat, and if appropriate, the Buffer may need to be expanded to include areas of hydric soils.
3. The incorrect line has been labeled for the Buffer. The correct Buffer line for Lot 500-1 is the BRL and must be corrected on the plat.
4. The Buffer must be expanded for the steep slopes on both lots. It appears that the expansion will end at the top of these slopes.
5. The amount of existing impervious surface areas on each lot must be quantified.
6. As stated on the plat, no afforestation is necessary. It appears most of the 100-foot Buffer is established in forest vegetation.

7. We request a copy of the revised plat once it is available. We may have additional comments based upon any new information.

Please call me at 410-260-3481 if you have questions regarding these comments.

Sincerely,



Wanda Diane Cole  
Natural Resources Planner

cc: Shawn Day, DayTech Engineering, LLC

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

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March 29, 2004

Mr. Keith Kelley  
Baltimore County  
Department of Environmental Protection  
and Resource Management  
401 Bosley Avenue, Suite 416  
Towson, Maryland 21204

RE: **BC 353-03: 04-02 Oberst Property Buffer Variance Request**  
**Tax Map 98, Parcel 203, Lot 304: 809 Cold Spring Lane**

Dear Keith,

I have reviewed the information regarding this Buffer variance request to construct a dwelling in the 25-foot Critical Area Setback on a grandfathered lot in the LDA of Galloway Creek. This lot is located in a Buffer Management Area and is subject to a 25-foot Critical Area Setback. Due to the unusual configuration of this lot, the proposed development cannot be sited outside the Setback, even though it has been located as far away from the shoreline as possible. We do not oppose this variance request. We recommend the variance approval include the following condition:

- That mitigation for new disturbances in the Setback are to be provided on-site at a 3:1 ratio and disturbances in the Buffer outside the Setback are to be provided on-site at a 2:1 ratio, to the extent feasible.

Please provide this office with a copy of the written decision made in this case. Feel free to contact me at 410-260-3481 if you have any questions regarding these comments.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

cc: Mr. Harlan Zinn

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

STATE OF MARYLAND  
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April 6, 2004

Ms. Elsa Ault  
Charles County Government  
Department of Planning and Growth Management  
PO Box 2150  
La Plata, MD 20646-2150

RE: CS 211-04: XRS 40025 Richard's Portion Parcel 3  
Tax Map 61, Parcel 14 Tayloe's Neck Road

Dear Elsa,

I have reviewed the site plan for this one-lot subdivision, which will create Parcel 3 around existing conditions on a 137-acre tract located in the RCA of Nanjemoy Creek. The following comments are provided for your use:

1. The boundaries of the parent parcel must be shown on the plan. There appear to be State tidal wetlands on the parent parcel acreage, which may reduce the total amount of development permitted in the RCA as State tidal wetlands cannot be counted toward RCA density.
2. The plan shows approximately 40% of Parcel 3 containing tidal marsh. If this tidal marsh includes both State and private tidal wetlands, the approximate mean high water line must be shown and the area of State tidal wetlands quantified. The area of State tidal wetlands on Parcel 3 must be subtracted from the 20.015 acre area to determine the net tract area.
3. The existing sewage reserve area must be shown.
4. The soils information and topography must be shown. If steep slopes, highly-erodible soils, and/or hydric soils are located contiguous to the 100-foot Critical Area Buffer, the Buffer may need to be expanded.

5. The Wildlife and Heritage Service (WHS) must be contacted for a determination on the presence of rare, threatened and/or endangered species and/or their habitats. All WHS comments must be addressed on the plan. A copy of the WHS letter must be provided to this office prior to issuing any approvals.
6. Please provide a copy of the revised plan when it becomes available. We may have additional comments based upon any new information provided.

Please contact me at 410-260-3481 if you have any questions regarding these comments.

Sincerely,



Wanda Cole  
Natural Resources Planner

cc: Lori Byrne  
Herbert R. Crowder, Inc.

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

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/](http://www.dnr.state.md.us/criticalarea/)

April 5, 2004

Mr. Steve Dodd, Director  
Dorchester County  
Department of Planning and Zoning  
PO Box 107  
Cambridge, MD 21613

Re: **DC 210-04: # 1042 Perry Otwell Property  
Mill Pond @ Cabin Creek Sketch Plan**

Dear Steve,

I have reviewed the sketch plan for subdivision of a 956-acre parcel, which contains 21.6 acres in the RCA of Cabin Creek near Hurlock. This parcel has one RCA density right that will be utilized by Lot 55, which will contain the parcel's entire 21.6 RCA acres. There are two tributary streams on Lot 55 and the 100' Critical Area Buffer has been delineated for them. Our office does not oppose this subdivision provided the following information regarding Lot 55 is recorded on the final plat:

1. The location of any nontidal wetlands. The MERLIN database suggests there are forested, palustrine wetlands adjacent to the westernmost tributary stream. The 100' Buffer may need to be expanded for contiguous nontidal wetlands.
2. The soils types and their locations.
3. The Wildlife and Heritage Service (WHS) must be contacted for a determination on the presence of rare, threatened and/or endangered species and/or their habitats. The forested area of this property is contiguous to a larger tract of forest, and may qualify as FIDS habitat. The plat must address all WHS concerns. A copy of the WHS determination letter must be provided to this office.

4. The tree lines must be shown and the amount of existing forest area quantified. The amount of proposed clearing, if known, must be stated. If there are no plans to develop Lot 55 at this time, a note regarding the Critical Area forest clearing limits must be provided.
5. It appears subdivision of this parcel represents a change in use from agricultural to residential. The 100' Buffer along the easternmost tributary must be fully established in forest vegetation.
6. All existing impervious areas must be shown and quantified, including any farm equipment access lanes. A note regarding the 15% impervious surface limit must be provided. The impervious area where the proposed subdivision entrance road crosses Lot 55 must be deducted from Lot 55's impervious surface limit.
7. Lot 55 is bisected by the easternmost tributary stream, creating two potential upland development envelopes on this lot. There does not appear to be an existing crossing over the tributary stream to provide access to the northernmost upland area. A crossing over either of these streams would require a Buffer variance. We cannot support a variance for a new subdivision. We recommend the applicant consider providing a right of way into Lot 55 from Lot 43. The entrance road may need to be realigned to achieve this goal.
8. The location of the proposed sewage reserve area must be shown.

Please provide a copy of the revised plat and the WHS determination letter when they become available. We may have additional comments based upon any new information. If you have any questions regarding these comments, please contact me at 410-260-3481.

Sincerely,



Wanda Diane Cole  
Natural Resources Planner

cc: Lori Byrne  
Scott Smith

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

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April 2, 2004

Ms. Yvonne Chaillet  
St. Mary's County  
Department of Land Use and Growth Management  
23150 Leonard Hall Drive  
PO Box 653  
Leonardtown, MD 20650-0653

RE: SM 198-04: # 01-0952 Les Gould Impervious Surface Variance Request  
Lot 1, Blackstone Farm

Dear Yvonne,

I have reviewed the information regarding this application for an impervious surface variance on a grandfathered lot located in the LDA of Cuckold Creek. The applicant proposes the construction of a replacement dwelling and deck on a 1.1 acre lot that currently contains 12,873 square feet, or 26.87%, of impervious area. This lot has historically been used for marina operations and a residence. The replacement dwelling and deck will create an additional 1,798 square feet of impervious area and cause the site's impervious area to increase to 30.62%. Grandfathered lots of this size are limited to a maximum 15% in impervious area, therefore, an impervious surface variance is required.

While we do not oppose redevelopment on this lot that would maintain its current 26.87% in impervious area, we cannot support a variance that would further exceed the 15% impervious limit. There appear to be several areas where impervious cover can be eliminated on this site in order to maintain the existing level of impervious area, such as the gravel driveway that connects Blackstone Circle to the gravel driveway on Lot 3, as well as gravel areas around the existing block storage building.

Please forward a copy of the written decision made in this case. If you have any questions regarding these comments, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
Executive Director

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March 29, 2004

Ms. Patricia Farr  
Baltimore County DEPRM  
County Courts Building  
401 Bosley Avenue  
Towson, Maryland 21204

**RE: Holly Neck Limited Partnership  
Concept Plan**

Dear Ms. Farr:

The purpose of this letter is to provide comments on the latest plan, dated January 23, 2004, for the referenced project, which was received by the Critical Area Commission on March 17, 2004. I have reviewed the latest revisions, and the following issues need to be addressed as the design of the project progresses:

1. It appears that Parcel 424 is proposed to be developed in two separate areas of the property: the Brown's Cove waterfront villas at Courts G and K, and the villas in Courts B, D, E, I and J near the intersection of Henrietta Avenue and Holly Neck Road. If it is the County's intention to minimize the growth allocation acreage deducted by applying the development envelope provisions of the Commission's growth allocation policy, then there may be only one development envelope per parcel.
2. In accordance with the development envelope provisions of the Commission's growth allocation policy, areas that are not deducted and are to remain RCA, must include at least 20 contiguous acres. The 20.2-acre area proposed to remain as undeveloped RCA residue is bisected by Brown's Cove Road, which creates two non-contiguous areas of RCA, and as such, do not maintain the RCA character of the site. It may be possible to reconfigure the development slightly to provide 20 contiguous acres of RCA on the west side of Brown's Cove Road.
3. It is my understanding that two areas of the property are developed with small cottages which were constructed many years ago and existed prior to the adoption of the County's

Critical Area Program. Based on the preliminary information that has been presented, it appears that these two areas were incorrectly mapped as Resource Conservation Areas (RCA), and that they would have been more appropriately mapped as Limited Development Areas (LDA). Situations like this can be rectified by proposing a mapping amendment to change the Critical Area designation on the basis that a mistake was made at the time of the original mapping. This map change could possibly eliminate the need for one of the growth allocation development envelopes currently proposed on Parcel 424, provided that the proposed development in those areas could meet the requirements for LDA.

4. The project involves a change to IDA. Additional information about stormwater management and compliance with the 10% pollutant reduction requirement is needed. With regard to projects that involve the use of growth allocation, COMAR 27.01.02.07.B(4) states that, "New intensely developed areas and limited development areas should be located in order to minimize impacts to habitat protection areas as specified in COMAR 27.01.09 and in an area **and in a manner that optimizes benefits to water quality.**" It is likely that the Commission will want to review and consider the proposed design for stormwater management as part of their consideration of the use of growth allocation for the project.
5. The Commission has not yet received the final environmental report for this project. Additional information about Habitat Protection Areas on the site, including any habitats of Threatened and Endangered Species and Species in Need of Conservation, must be provided by the applicant. The applicant should contact the Heritage Division of the Department of Natural Resources (Ms. Lori Byrne) for information regarding this site. The Department may recommend additional field survey work.
6. Section 26-449(c) of the Baltimore County Code states that, "The buffer shall be expanded to three hundred (300) feet landward from the mean high water line of tidal waters, tidal wetlands and streams for new residential developments of more than five (5) dwelling units in LDAs and RCAs. The buffer may be reduced to the minimum noted in section 26-449(a) or to the extent of the expanded buffer noted in section 26-449(b), whichever is greater, if the following conditions are satisfied:
  - a. The three-hundred-foot-area does not contain contiguous forest habitat which drains into tidal wetlands, tidal water or a stream;
  - b. The three-hundred-foot-area does not provide breeding habitat for forest interior dwelling bird species as defined in the Chesapeake Bay Critical Area Commission Guidance Paper Number 3, dated July, 1986 and as may be amended; and
  - c. The director of the department of environmental protection and resource management determines that greater water quality or habitat benefits could be achieved through other site specific measures.

Ms. Farr  
March 29, 2004  
Page 3

7. It is my understanding that if the applicant cannot meet the standards set forth above for development in the three-hundred-foot buffer, the County may require a variance for those impacts. A variance to the three-hundred-foot buffer required by the Baltimore County Code could potentially be supported by the Commission if the County finds that impacts have been minimized. The Commission generally recommends three-to-one mitigation for all variances approved in the Critical Area.

Thank you for the opportunity to provide additional comments on the revised proposal. The comments included herein pertain primarily to the growth allocation request and do not include specific comments on the subdivision plan. The Critical Area Commission may have additional comments when the growth allocation request is formally submitted for review. If you have any questions, you may contact me at (410) 260-3481.

Sincerely yours,



Wanda Cole  
Natural Resources Planner

cc: Regina Esslinger, CAC  
Mary Owens, CAC  
Ren Serey, CAC

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
Executive Director

**STATE OF MARYLAND  
CRITICAL AREA COMMISSION  
CHESAPEAKE AND ATLANTIC COASTAL BAYS**

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March 29, 2004

Ms. Yvonne Chaillet  
St. Mary's County  
Department of Land Use and Growth Management  
23150 Leonard Hall Drive  
PO Box 653  
Leonardtown, MD 20650-0653

**RE: SM 199-04: # 03-1567 W.M. Davis Critical Area Setback Variance Request  
Lots 6-9 & 160-161, Brubacher Subdivision**

Dear Yvonne,

I have reviewed the information regarding this application for a variance from the Critical Area Buffer Setback. The applicant proposes a replacement dwelling with attached garage on a grandfathered lot located in the LDA of Breton Bay. This lot is also located in a Buffer Management Overlay zone. The majority of the existing dwelling is located within the 50-foot Critical Area Setback, while less than half of the replacement dwelling will lie within the Setback. The replacement dwelling is farther away from the shoreline than the existing dwelling. On-site mitigation is being provided at the required 2:1 ratio. We do not oppose this variance request. We recommend the variance approval include a condition that mitigation for new disturbances inside the Setback are to be provided at the required 3:1 ratio on-site in the Buffer.

Please note that labeling is needed on the site plan for the sewage reserve area and Lots 160 & 161.

Please forward a copy of the written decision made in this case. If you have any questions regarding these comments, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner



Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

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March 29, 2004

Ms. Yvonne Chaillet  
St. Mary's County  
Department of Land Use and Growth Management  
23150 Leonard Hall Drive  
PO Box 653  
Leonardtown, MD 20650-0653

RE: **SM 202-04: # 03-2538 Thomas & Wendi Dean Critical Area Variance Requests**

Dear Yvonne,

I have reviewed the information regarding applications for a Critical Area Buffer variance and an impervious surface variance. The applicant proposes construction of a deck and screened porch onto an existing dwelling located on a grandfathered lot in the LDA of Moll Creek. The deck and porch will create 312 square feet of new disturbances in the 100-foot Critical Area Buffer. We do not oppose this variance request, and recommend the variance approval include a condition that the required 3:1 mitigation plantings are to be provided on-site in the Buffer.

An impervious surface variance is not required for this project. The project proposes a total of 4,434 square feet of impervious surface area. Grandfathered lots of this size are permitted a maximum of 5,445 square feet of impervious surface area.

Please forward a copy of the written decision made in this case. If you have any questions regarding these comments, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

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Executive Director

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March 25, 2004

Ms. Sue Veith  
St. Mary's County Government  
Department of Land Use and Growth Management  
23150 Leonard Hall Drive  
PO Box 653  
Leonardtown, MD 20650-0653

**Re: Piney Point Lighthouse Museum Addition: 10% Requirements, Site Plan Review**

Dear Sue,

Thank you for your inquiry regarding the use of native species plantings on the Piney Point Lighthouse Museum property in lieu of constructing an on-site BMP to meet the 10% pollutant removal requirement of 0.4181 pounds. We concur that these plantings will provide both habitat and water quality improvements on this property. We recommend the planting plan include the following notes:

1. The plantings will be provided in the site's 100-foot Critical Area Buffer
2. The County's Department of Land Use and Growth Management will certify that the plantings have been completed in accordance with the approved planting plan, and that the mitigation area will be monitored regularly to ensure survival of the plantings.

This is a County project of local significance on County-owned land in the Critical Area. In accordance with COMAR 27.02.02, the County will need to provide a letter certifying that this project is consistent with the County's Critical Area Program and Ordinance.

Please call me at 410-260-3481 if you have questions regarding these comments.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

cc: Phil Rollins

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
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Executive Director

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March 24, 2004

Ms. Yvonne Chaillet  
St. Mary's County  
Department of Land Use and Growth Management  
23150 Leonard Hall Drive  
PO Box 653  
Leonardtown, MD 20650-0653

RE: **SM 200-04: # 03-2947 Robert & Karen White Critical Area Variance Request**

Dear Yvonne,

I have reviewed the information regarding this request to demolish existing structures and replace them with a dwelling, attached garage and accessory structures on a grandfathered lot located in the LDA of Cat Creek. This site is almost entirely constrained by the Critical Area Buffer, which has been expanded for steep slopes with highly erodible soils. This plan consolidates all structures into one location and will result in a net reduction in impervious surface areas. The replacement dwelling will not be in the same footprint as the existing dwelling; that area is constrained by the location of the sewage reserve area. A majority of the proposed development envelope will utilize previously disturbed areas and the existing sewage reserve area. Mitigation for forest clearing is being provided in excess of the required 3:1 ratio for new disturbances in the Buffer.

We are not opposed to redevelopment in the expanded Buffer on this grandfathered lot, however, we cannot support additional disturbances to the steeper sections of these slopes.

- It appears the development envelope could be moved closer to the road where the slopes are less steep, thereby reducing impacts to the expanded Buffer.
- Impacts to the expanded Buffer could be further minimized by reducing the size of the deck.
- We recommend the variance approval include a condition that the mitigation plantings be utilized to restore the demolition sites and existing open areas below elevation + 90.

Please provide our office with a copy of the written decision made in this case. If you have any questions regarding these comments, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole". The letters are fluid and connected, with a prominent initial "W".

Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

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March 24, 2004

Ms. Yvonne Chaillet  
St. Mary's County  
Department of Land Use and Growth Management  
23150 Leonard Hall Drive  
PO Box 653  
Leonardtown, MD 20650-0653

RE: **SM 201-04: # 03-2634 Fulton & Debra Matchett Variance Request**

Dear Yvonne,

I have reviewed the information regarding this request to exceed the 30% forest clearing limit on a grandfathered lot located in the LDA of Wicomico River. The applicant will be removing six trees in order to accommodate an addition onto an existing dwelling. Mitigation is being provided in the form of 36 trees using native species. We do not oppose this various request.

Please forward a copy of the written decision made in this case. If you have any questions regarding these comments, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

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March 23, 2004

Debra and Eric Bargar  
27279 Cat Creek Road  
Mechanicsville, Maryland 20659

Re: Critical Area Variance VAAP # 03-2194: Joseph Cerniglia  
Lot 28 Riverwood Farms

Dear Mr. and Mrs. Bargar,

Thank you for your letter expressing your concerns regarding a variance application for the above referenced lot. As follow up to our phone conversation of March 5, 2004, during which we discussed the Critical Area laws and regulations regarding grandfathered lots, variance standards, and disturbance to steep slopes, I would like to share with you a copy of a letter that the Commission's Chairman, Martin Madden, sent to your neighbor, Mrs. Joan Ritchie. Feel free to contact me at 410-260-3481 if you have any further questions regarding the review of Critical Area variances.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

cc: Denis Canavan

**CLEARINGHOUSE REVIEW**

March 18, 2004

**RECEIVED**

MAR 19 2004

CHESAPEAKE BAY  
CRITICAL AREA COMMISSION

TO : Arnold Norden, Greenways and Resources Planning (E-4)  
 Glenn Therres, Wildlife (E-1)  
 Robert Beckett, State Forest and Park Service (E-3)  
 Tammy Broll, Natural Resources Police (E-3)  
 Matthew Fleming, Education, Bay Policy Growth Management (E-2)  
 Marian Honecny, Forestry (E-1)  
 Bill Hodges, Resource Assessment Services (B-3)  
 Ray Dintamin, Environmental Review (B-3)  
 Regina Esslinger, Critical Area Cmsn. (1804 West St., Suite 100, Annapolis MD 21401)

FROM : *J.W.P.*  
 James W. Price, Director, Program Open Space

SUBJ : POS # 4517-18-97  
 Nicolet Park Expansion, St. Mary's County

This project proposes the use of FY 2004 Program Open Space funds to assist in the development of Phase II of Nicolet Park, the County's oldest park. Phase II includes two basketball courts, picnic pavilion, hard surface walkways, baseball field and nature trails.

The above referenced project has been submitted to this office for funding in accordance with the Outdoor Recreation Land Loan of 1969, and remains on file in this office. Please submit any comments you may have concerning this project within two weeks of the date of this letter. If no comments are received within two weeks, it will be assumed that this project does not conflict with the programs, plans, or objectives of your Agency. If you require additional information before you can complete your review, please contact the undersigned.

CHECK ONE AND INITIAL

CHECK

INITIAL

1. The project does not conflict with the plans, programs or objectives of this Agency

wdc 03/23/04

2. The project does not conflict with this Agency's plans, programs or objectives, but the attached comments are submitted for consideration.

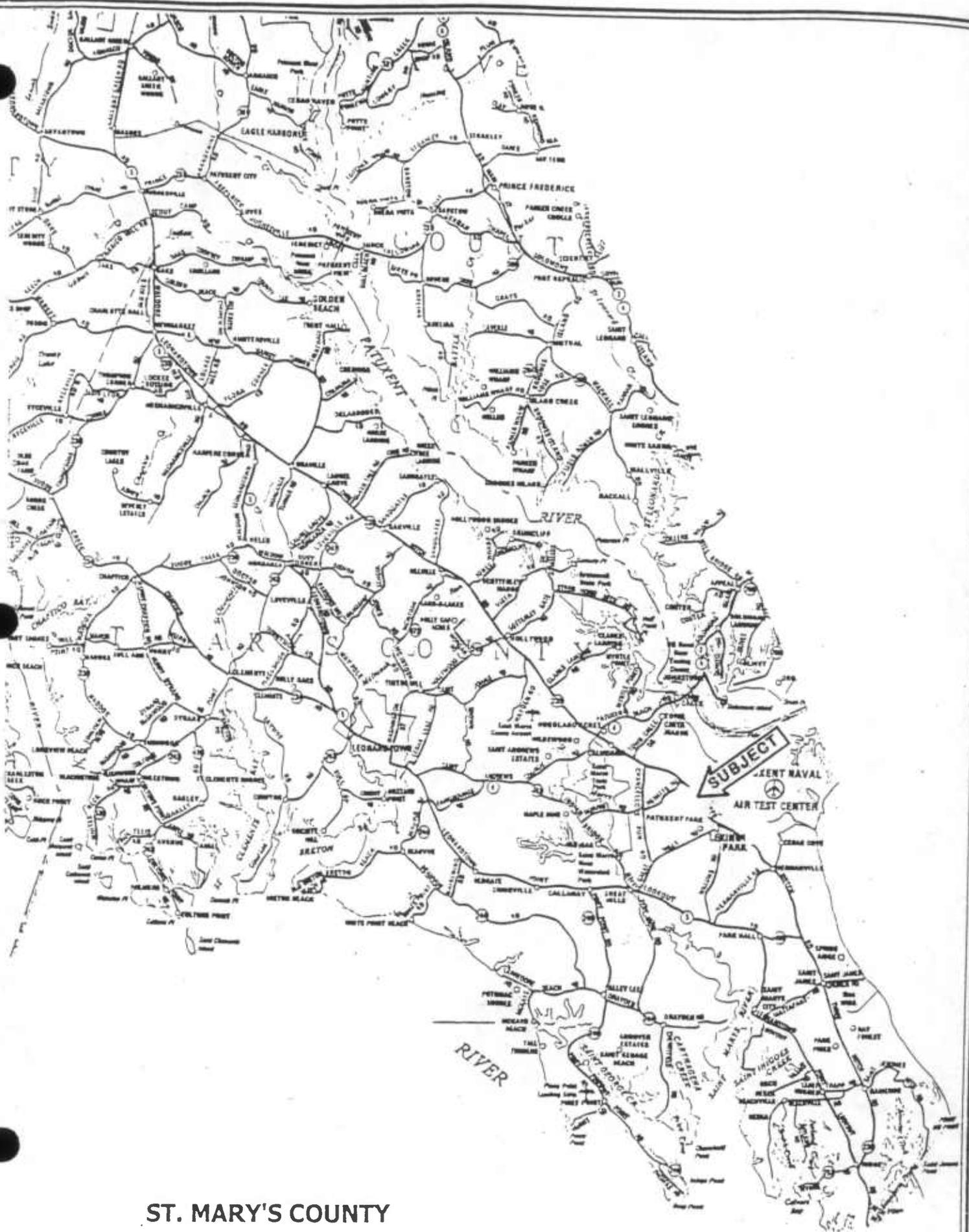
\_\_\_\_\_

3. The project conflicts with this Agency's plans, programs or objectives for the reasons indicated on the attachment.

\_\_\_\_\_

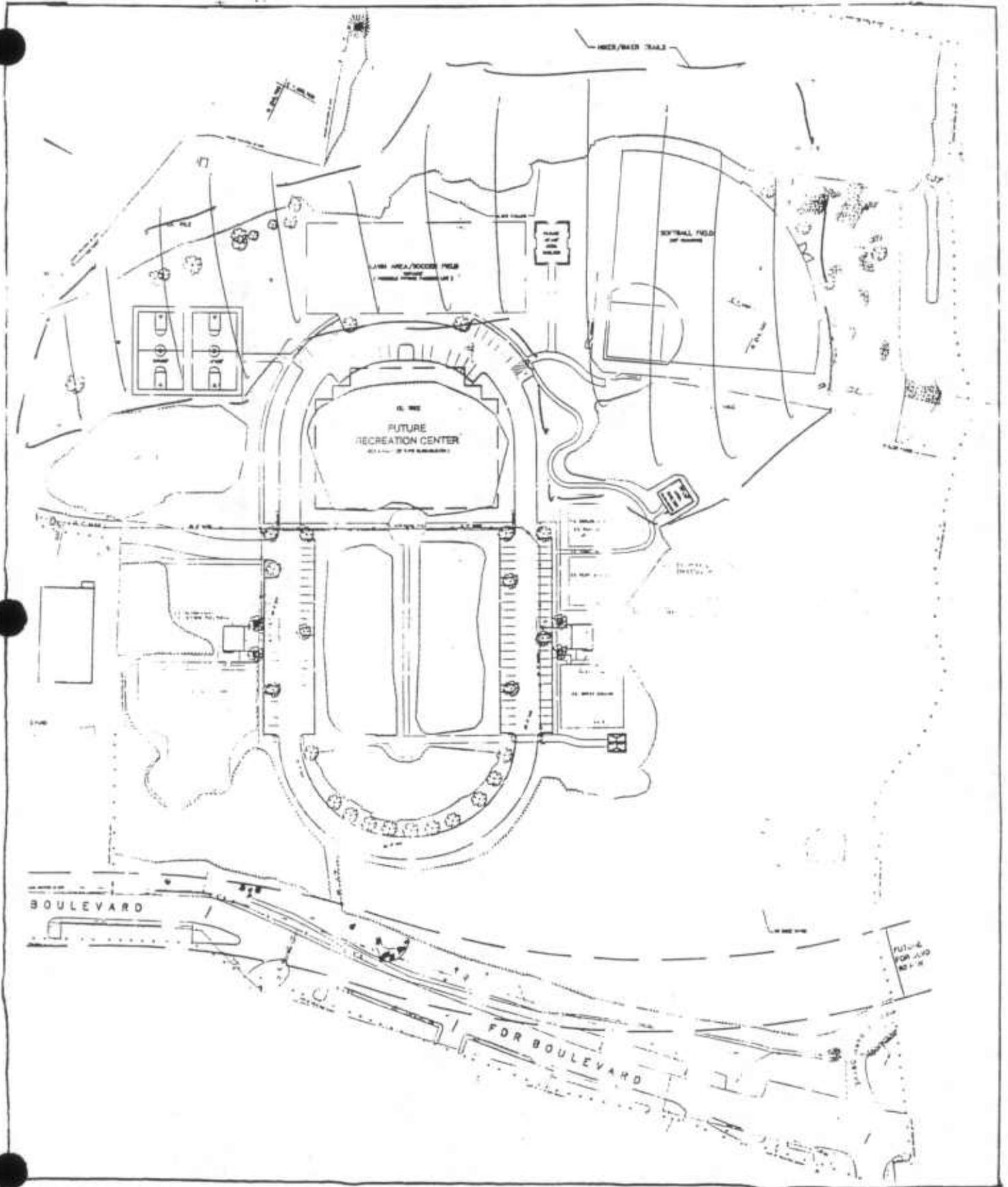
Please return to Marti Sullivan or Judy Jones, Program Open Space, Tawes State Office Building (E-4) Annapolis, upon completion of review.

# County Location Map



ST. MARY'S COUNTY

Nicolet Park Expansion  
Site Plan



Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

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March 23, 2004

Ms. Sue Veith  
St. Mary's County Government  
Department of Land Use and Growth Management  
PO Box 653  
Leonardtown, MD 20650-0653

Re: SM 177-04: MSUB # 04-141-007 Garland & Donna Wrenn  
Boundary Line Adjustment Plat  
Lot 4, Leverings Subdivision No. 1

Dear Sue,

I have reviewed the boundary line adjustment plat for this lot, which is located in the LDA of Patuxent River and have no comments.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

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March 23, 2004

Mr. Steve Dodd  
Dorchester County  
Department of Planning and Zoning  
PO Box 107  
Cambridge, MD 21613

Re: **DC 166-04: # 2187 George & Doris Joy Buffer Variance Request**

Dear Steve,

I have reviewed the information regarding the applicant's variance request to construct a replacement dwelling in the 100-foot Critical Area Buffer on a grandfathered lot in the RCA of Chesapeake Bay. This site is constrained by three separate areas of nontidal wetlands, their 25-foot Buffers, and the 100-foot Critical Area Buffer. The applicant will be removing from the Buffer a trailer, deck, sewage reserve area, walkway and garage, for a net reduction of 515 square feet of impervious surfaces. This office does not oppose this request. We recommend the variance approval include a condition that the required 3:1 mitigation for new disturbances to the Buffer will be provided on site in the Buffer.

Please provide this office with a copy of the written decision made in this case. If you have any questions, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
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March 18, 2004

Mr. Steve Dodd, Director  
Dorchester County  
Department of Planning and Zoning  
PO Box 107  
Cambridge, MD 21613

Re: **DC 877-03: # 622 D Chrabitat @ Sunset Farm**  
**Resubdivision of Lots 2 & 3, Sunset Farms**

Dear Steve,

I have reviewed the revised plan for this project, which has been renamed to Chrabitat @ Sunset Farm. This plan now shows the 20' community access easement as being contained within the boundaries of Lot C. The total Critical Area acreage for this project is 15.049 acres, which occurs in two areas of the property. In January 2004, we received a letter from the Wildlife and Heritage Service advising that there are records of Delmarva fox squirrel on or in the vicinity of this site. My comments are listed below.

1. The impervious surface table must show an accurate and complete accounting of the site's Critical Area acreage and distribution of its 15% allowable impervious surface limits. The following information must appear in this table:
  - The entire site's Critical Area acreage of 15.049 acres.
  - Lot 2 and 3 each has an impervious surface limit of 15%. The 15% impervious surface limit for the entire site is 2.26 acres.
  - Allocation of 0.31 acres of impervious surface to Byrnes Bend road.
  - The distribution of the remaining 1.95 acres of impervious surface area between Lots A through E. The impervious surface allocation for each lot may not exceed 15% of that lot's area.
  - Any impervious area created for the community access easement to the shoreline must be included as part of the impervious surface calculations for Lot C.

2. The plat must state how much of the site's existing forest cover is located in the Critical Area portions of the site.
3. The Wildlife and Heritage Service (WHS) has reported the presence of Delmarva fox squirrel (DFS) on or in the vicinity of this site. This is both a federal and state-endangered species. All comments provided by WHS must be addressed on the plat.
4. The U.S. Fish and Wildlife Service (FWS) requires a project to provide a 300-foot Buffer from the edge of DFS habitat to avoid having to submit the project for a federal permit review. A DFS buffer has not been shown on this plan. We request a copy of the FWS review comments for this project to be provided to this office for our review prior to issuing any approvals for the project.
5. Information on soils types and their locations must be shown on the plat.
6. We are aware that nontidal wetlands exist on this site, as observed during a prior site visit regarding a filling of wetlands incident. The location of all nontidal wetlands on this site must be field-verified and delineated on the plat. Wherever necessary, the 100-foot Critical Area Buffer may need to be expanded for contiguous nontidal wetlands.
7. The plat must include a note that agricultural activity had been allowed to continue on Lots 2 & 3 and that this re-subdivision represents a change in use, so that the 100-foot Critical Area Buffer must now be fully established in forest vegetation. If it is not the intent of the applicant to provide the necessary Buffer plantings, the plat must include a note to alert future owners that the responsibility for establishing the Buffer will become theirs during the building permit approval process.
8. A determination must be made as to whether the 1988 timber harvest contract complied with any reforestation conditions in the approved timber harvest plan for this property. If this parcel was required to naturally regenerate, the plat must include a note that designates all areas except the future development envelopes as regeneration areas that may not be disturbed.
9. If the Proposed SRAs on Lots D and C are intended for the use of Lots A through E, this information must be stated on the plan. The note in the lower left corner on interim water and sewer systems appears to conflict with Note # 6, which indicates that there is no planned service for public water and sewer to this area.
10. If a community pier and/or boat ramp are proposed at the end of the community access lane, this information must be shown on the plat. Otherwise, a note must be provided which states that the construction of a community pier will prohibit the construction of individual piers.

Please provide a copy of the revised plat and additional information when it becomes available. We may have additional comments based upon the new information. If you have any questions regarding these comments, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

cc: Glenn Therres, DNR  
Scott Smith, DNR  
Mary Ratnaswamy, FWS  
Lane Engineering, Inc.  
Ragged Point, LLC

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
Executive Director

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March 17, 2004

Ms. Elsa Ault  
Charles County  
Department of Planning and Growth Management  
PO Box 2150  
La Plata, MD 20646-2150

RE: **CS 113-04: SFD 40092 Jeffrey and Kimberly Leonard Site Plan  
Waverly Point Subdivision, Lot 3**

Dear Elsa,

I have reviewed the site plan for this project, which proposes to construct a dwelling with attached garage, a driveway, pool, tennis court, and septic system in the Resource Conservation Area of Potomac River. An existing shed is to be removed.

We do not oppose this site plan. The project will not exceed its impervious surface limit, and sufficient forest plantings are being provided to meet both the 1:1 mitigation and 15% afforestation requirements. However, minor adjustments and/or corrections to the plan are warranted, and must be provided prior to issuing the building and grading permits for this project.

1. The proposed tennis court must be shifted north by 5 feet to avoid encroachment into the 100' Buffer and the need for a variance, which we cannot support.
2. It is my understanding from Jennifer of DH Steffens Company, that the existing gravel driveway is to be abandoned. A statement to this effect must be added to the plan.
3. The percentage of existing forest area is based upon the area of the parcel minus the area of the State tidal wetlands. Therefore, the existing forest area measures 10.3%. The parcel requires 15% afforestation, which is being provided.

4. The percentage of existing forest area to be cleared is 20.39%, not 1.8 % as stated on the plan.

If you have any questions regarding these comments, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Cole". The signature is written in black ink and extends across the width of the page.

Wanda Cole  
Natural Resources Planner

cc: DH Steffens Company, Inc.

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

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March 17, 2004

Mr. Steve Dodd, Director  
Dorchester County  
Department of Planning and Zoning  
PO Box 107  
Cambridge, MD 21613

Re: **DC 97-04: # 1040 Curtis and Patricia Simmons Subdivision**

Dear Steve,

I have reviewed the plan for this one-lot subdivision proposed in the LDA of Honga River. This subdivision is being proposed around existing conditions to separate the house and pole shed from the seafood processing plant and building. Lot 2, which will contain the seafood processing structures, will include the all of the parcel's RCA acreage. No development is being proposed at this time. We do not oppose this subdivision.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
Executive Director

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March 16, 2004

Ms. Sue Veith  
St. Mary's County Government  
Department of Land Use and Growth Management  
PO Box 653  
Leonardtown, MD 20650-0653

Re: **SM 924-03: Revised Plat for MSUB # 03-110-109, Reese McKay Subdivision**

Dear Sue,

This letter serves to follow up my March 10, 2004 email message to you regarding the revised plat for Farmstead 1. Most of my comments have been addressed, however, information has not been provided for three items. They are:

1. The Critical Area intrafamily transfer provisions must be listed on the plat.
2. The Wildlife and Heritage Service (WHS) indicated a recent record for the eastern narrow-mouthed toad in the vicinity of this project. The habitat description for this species includes moist conditions found in almost every type of habitat. The applicant must consult with the WHS biologists to determine if a field evaluation is necessary for this property. This toad is secretive and can only be heard under specific temperature and humidity conditions for a brief period after a rain event in the spring. The window of opportunity for a field assessment is rapidly approaching.
3. A note must be provided to the plat regarding the need for 15% afforestation. The plat must show where these plantings will be provided. A note must also be provided regarding establishment of the 100-foot Critical Area Buffer where agricultural use of the site is abandoned. It appears areas of the Buffer could be planted to accomplish both the Buffer establishment and afforestation requirements.

Please call me at 410-260-3481 if you have questions regarding these comments.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

cc: Kathy McCarthy  
Nokleby Surveying

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
Executive Director

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March 15, 2004

Mr. Reed Faasen  
Charles County  
Department of Planning and Growth Management  
PO Box 2150  
La Plata, MD 20646-2150

RE: CS 600-03: Charles Satterfield Revised Site Plan

Dear Reed,

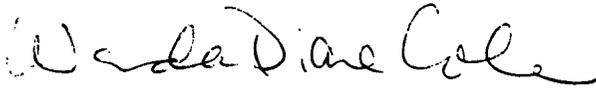
I have reviewed the revised site plan, which is being provided subsequent to our site visit on February 12, 2004 with the property owner, Mr. Satterfield, and Wes Tomlinson of Ben Dyer Associates. As we agreed, the existing roadbed, which is located in the 100-foot Buffer of Mattawoman Creek, is designated for the required FIDS mitigation plantings. In addition, the revised site plan shows a reduction in forest clearing for the development envelope, and the new limits of disturbance have been adjusted accordingly.

The revision date and note were omitted from the plan, so to distinguish this plan from its previous versions, the plan reviewed and found acceptable by this office is drawing no. 5.001-P, dated May 2003 by Ben Dyer Associates, Inc, drawn by CAK, designed and checked by WWT, and includes Sheets 1 and 2 of 2, which shows a detail for "Typical Planting Per 100' In Ex. Woods Road" in the center right side of Sheet 1 of 2.

Please note that the approved timber harvest plan for this site requires natural regeneration in the openings created in the forest canopy by haul roads and landings. Since Mr. Satterfield currently experiences trespassing problems with a neighbor, who rides an ATV along these haul roads, we recommend Mr. Satterfield take the steps necessary to prohibit trespass into these areas so that the required regeneration may occur.

Thank you for your continued assistance in addressing the FIDS mitigation planting requirements. If you have any questions regarding these comments, please do not hesitate to contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

cc: Charles Satterfield

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
Executive Director

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March 12, 2004

Mr. Ronald D. Gatton  
Environmental Consultants, Inc.  
28712 Island Creek Road  
PO Box 438  
Trappe, Maryland 21673

Re: Anthony R. Ulehla property on Taylors Island Road; Tax Map 49, Parcel 22

Dear Mr. Gatton,

Thank you for your inquiry regarding the location of a development envelope for this property. This site is located in the Critical Area of the Little Choptank River, and was cleared without authorization in the early 1990's. The cleared area has since converted to a nontidal wetland.

Claudia Jones, the Commission's Science Advisor, and I walked the site with you on January 6, 2004 and concurred with your determination that the younger nontidal wetland area did not provide the diversity of vegetation nor habitat benefits that the mature loblolly forest offers. We also believe that any additional clearing for a relocated development envelope would most likely result in the conversion to nontidal wetland.

Given the US Fish and Wildlife Services's determination that the remaining woodland is suitable Delmarva fox squirrel habitat, and that the endangered squirrel is known to occur within the vicinity, it is the Commission's position that protection of the forest resources on this property should be given a higher priority. Delmarva fox squirrel habitat is considered a Habitat Protection Area, and any clearing of its habitat in this area would require a Critical Area variance and the applicant would be required to provide supporting information for meeting the variance standards for encroachment into Delmarva fox squirrel habitat.

A Critical Area variance will also be needed for development within the created nontidal wetland as it represents an expanded Critical Area Buffer. Since the previous owner had cleared the property, which resulted in conditions that caused expansion of the Buffer, the current owner is in a better position to provide supporting information for meeting all the variance standards.

I have conferred with Karen Houtman, Critical Area Planner for Dorchester County Planning and Zoning, who agrees that protection of the forest resources is the most environmentally-sound approach to developing this parcel.

If you have any questions regarding this letter, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

cc: Karen Houtman

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

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March 12, 2004

Mr. Steve Dodd  
Dorchester County  
Department of Planning and Zoning  
PO Box 107  
Cambridge, MD 21613

Re: **DC 147-04: # 2186 Maurice Carlisle Buffer Variance Request**

Dear Steve,

I have reviewed the applicant's variance request to construct a replacement dwelling, an attached garage, and driveway improvements on a grandfathered lot in the RCA of Tedious Creek. This lot is entirely constrained by the 100-foot Buffer, and the site plan has utilized the only upland area available for the development envelope. This office does not oppose this request. We recommend the variance approval include a condition that the required 3:1 mitigation for new disturbances to the Buffer be provided on site to the extent feasible.

The following information regarding impervious areas needs to be revised or verified prior to issuing a building permit:

1. The word "existing" under the Critical Area Formula notes for proposed conditions needs to be changed to "proposed".
2. Note D. (2) for proposed conditions lists a pool/patio/terrace as having 0 square feet of impervious area. Are any of these amenities part of the proposal? If so, they need to be shown on the plan. We cannot support a pool in the Buffer. If these amenities are not being proposed, this note must be removed.
3. Similarly, note D. (3) lists an accessory structure as having 0 square feet, with no structure shown. This note must also be removed if no accessory structure is proposed.



4. Please verify whether the amount of proposed impervious area for the house includes just the dwelling and garage. My calculation of impervious area for the house and garage is 2700 square feet. There is an additional 196 square feet of impervious area being proposed with no corresponding feature is shown on the plan.
5. It is unclear whether the mapped tidal wetlands include State tidal wetlands. The 15% allowable impervious area must be calculated according to the net tract area that lies above the mean high water line. If State tidal wetlands are present on this parcel, their area must be subtracted from the parcel acreage, and Critical Area Formula note B must be revised to show the correct 15% impervious area limit.
6. The parcel configuration on the site plan differs from that shown on Tax Map 113 and the MERLIN database. The parcel configuration should be verified.

Please provide a copy of the written decision made in this case. If you have any questions regarding these comments, please contact me at 410-260-3481.

Sincerely,



Wanda Diane Cole  
Natural Resources Planner

cc: William C. Craig & Company

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

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March 12, 2004

Mr. Steve Dodd  
Dorchester County  
Department of Planning and Zoning  
PO Box 107  
Cambridge, MD 21613

Re: **DC 146-04: # 2183 Special Exception Request for Home Occupation  
Barbara L. Cavender, William E. Burton, May E. & Gilbert E. Horak**

Dear Steve,

I have reviewed the applicant's request for a Special Exception to operate a home-based florist business on a grandfathered lot located in the RCA of Warwick River. The business will utilize an existing building located outside the 100-foot Critical Area Buffer. This office does not oppose this request. We recommend the Special Exception approval include a condition that any additional parking or accessory structures that would be needed to facilitate this business are to be located outside the Buffer, and are to be designed to meet the Critical Area requirements for impervious surfaces.

Please provide this office with a copy of the written decision made in this case. If you have any questions, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

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Executive Director

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March 12, 2004

Ms. Sue Veith  
St. Mary's County Government  
Department of Land Use and Growth Management  
PO Box 653  
Leonardtown, MD 20650-0653

Re: **SM 79-04: MSUB # 04-120-008 Gardiner's Place**  
**Tax Map 35, Block 21, Parcel 42**

Dear Sue,

I have reviewed the information regarding the above referenced subdivision, which proposes to create eleven lots in the LDA of Patuxent River, Esperanza Pond, and Hominy Creek. This is a 65.05 acre parcel with 58.32 acres in the Critical Area. A growth allocation request for this parcel was reviewed and approved by the Commission as refinement SMA-20 on April 3, 1997. The following comments are provided for your use:

1. General Note # 3 on the plat must be amended to show the correct Critical Area Overlay designation as LDA.
2. More than 50 acres of the site is forested which qualifies as potential FIDS habitat. This site has not been evaluated by the Maryland Department of Natural Resources, Wildlife and Heritage Service (WHS), regarding the presence of rare, threatened and endangered species and/or their habitats for several years. WHS must be contacted for an updated determination. All WHS comments must be addressed on the plat and plans. Please provide a copy of the WHS determination letter prior to issuing any approvals for this request.
3. There appears to be a tributary stream on the north shore of Hominy Creek. It does not appear on the St. Mary's Soil Survey, USGS topographic maps, nor the MERLIN database. Please confirm whether this tributary has been field-verified, and if so, a 100-foot Buffer must be delineated alongside it.
4. In the proposed impervious surface tabulation chart, was the existing impervious area for Lanyon Lane included in the totals shown for Lots 6 and 7? If not, this amount must be accounted for in the table.

5. How will the 1:1 forest mitigation be provided for the 4.277 acres of clearing? The plat must state how the mitigation will be provided, and show the location for any proposed plantings. It appears this mitigation may need to be provided as FIDS habitat. If so, the FIDS Conservation Worksheet in Appendix D of *A Guide to the Conservation of Forest Interior Dwelling Birds in the Chesapeake Bay Critical Area* must be completed. This worksheet will determine if additional mitigation is required for creating new forest interior. Please contact Claudia Jones at 410-260-3476 if you have questions regarding the worksheet.
6. A community access trail to Esperanza Pond is shown. Are there plans to develop boardwalks, a community pier and/or boat ramp for this subdivision? If so, this information must be shown on the plans.

Please provide a copy of the revised plan when it becomes available. We may have additional comments based upon any new information provided by WHS. If you have any questions regarding these comments, please contact me at 410-260-3481.

Sincerely,



Wanda Diane Cole  
Natural Resources Planner

cc: Jerry Soderberg, DH Steffens Co., Inc.  
Claudia Jones  
Lori Byrne

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

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Executive Director

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March 11, 2004

Ms. Sue Veith  
St. Mary's County Government  
Department of Land Use and Growth Management  
PO Box 653  
Leonardtown, MD 20650-0653

Re: **SM 80-04: MSUB # 04-110-007 Tower Hill Farmsteads 1-4**

Dear Sue,

I have reviewed the above referenced subdivision, which proposes the creation of four farmsteads in the RCA of Potomac River and Poplar Hill Creek. This is a 144.76 acre parcel, of which 60.57 acres lies within the Critical Area. The following comments are provided for your use:

1. The property has three RCA density rights, which appear to have been allocated to Farmsteads 2, 3 and 4. A note must be provided on the plat that no development activity may occur within the Critical Area of Farmstead 1.
2. It appears that no tidal wetlands occur above the mean high water line. This information must be verified as it would affect the location of the 100-foot Critical Area Buffer line.
3. The 25-foot nontidal wetland Buffer line must be delineated for Tower Hill Pond and its headwater wetlands.
4. The tract contains a forest measuring greater than 50 acres and which may qualify as FIDS habitat. The property must be evaluated by the Maryland Department of Natural Resources, Wildlife and Heritage Service (WHS), for the presence of rare, threatened and endangered species and/or their habitats. Please provide a copy of the WHS determination letter to this office prior to issuing final approvals.
5. We recommend that the use of the farm access road be abandoned in the area where it parallels the Potomac River shoreline across Farmsteads 2, 3 and 4. This portion of the road is not needed for access to the development envelopes and lends itself as a suitable area for forest mitigation plantings.

6. The plat does not formalize access to the shoreline for Farmsteads 2, 3 and 4. We recommend shoreline access for Farmsteads 3 and 4 be established by creating a terminus at the end of Tower Hill Lane where it approaches the shoreline on Farmstead 4. A second terminus can then be created for the use of Farmstead 2 where the existing farmroad to Mulberry Fields approaches the shoreline.
7. Does the figure for existing impervious surface areas include all the roads in the Critical Area on this parcel?
8. We recommend the Buffer be expanded for the Othello soils which lie contiguous to the Buffer on Farmsteads 3 and 4.

We request a copy of the revised plat when it becomes available. We may have additional comments based upon any new information regarding this subdivision. If you have any questions regarding these comments, please me at 410-260-3481.

Sincerely,



Wanda Diane Cole  
Natural Resources Planner

Cc: Jerry Soderberg, DH Steffens Co., Inc.

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

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Executive Director

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March 9, 2004

Ms. Deanna Bailey  
Project Manager  
Baltimore County Department of Recreation and Parks  
Capital Planning and Development  
301 Washington Avenue  
Towson, Maryland 21204

Re: **BC 279-02: Chesapeake Village Park Conditional Approvals (2)  
Exceeding 15% Impervious Surface and Buffer Disturbance**

Dear Deanna,

I am pleased to inform you that on March 3, 2004, the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays unanimously approved two Conditional Approvals for the Chesapeake Village Park project: exceeding the 15% impervious surface limit in the LDA of Dark Head Cove, and for causing new Buffer disturbances in the Buffer of Dark Head Cove, located in Baltimore County. These approvals are in accordance with COMAR 27.07.06 Conditional Approval of State or Local Agency Programs in the Critical Area.

Thank you for your participation and assistance in this process. If you have any questions, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

cc: Patricia Farr, Baltimore County DEPRM

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

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March 9, 2004

Ms. Cynthia D. Simpson  
Deputy Director  
Office of Planning and Preliminary Engineering  
State Highway Administration  
707 North Calvert Street  
Baltimore, MD 21202

Re: **05-04: US 50 Bikeway- Bucktown Road to Woods Road, Dorchester County**

Dear Ms. Simpson,

I am pleased to inform you that on March 3, 2004, the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays unanimously approved the above referenced project in accordance with COMAR 27.02.06 Conditional Approval of State or Local Agency Programs In the Critical Area. This approval is for a 1.25 mile long bikeway to be located in the Critical Area of Shoal Creek. The bikeway will parallel westbound US 50 between Bucktown Road and Woods Road in the City of Cambridge. The project's 10% pollutant removal requirement will be met by construction of an off-site BMP adjacent to the Choptank River and MD 404 near the Town of Denton, in Caroline County.

Thank you for your participation and assistance in this process. If you have any questions, please don't hesitate to contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Cole".

Wanda Cole  
Natural Resources Planner



Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
Executive Director

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March 9, 2004

Ms. Michelle D. Robertson  
0921 MR, CE, EIT  
Public Works Facilities Engineering  
Naval Surface Warfare Center  
Indian Head, Maryland 20604-5035

Re: **06-04: Contract: N62477-XX-C-XXX Naval Surface Warfare Center  
Indian Head Division, Pavement of Building 864 Parking Lot**

Dear Ms. Robertson,

Thank you for the opportunity to review the site plan for this project, which is located within the Critical Area of the Potomac River. This project proposes paving of an existing, compacted gravel parking area that services Building 864. We have determined that the project is not located within the 100-foot Critical Area Buffer nor on steep slopes, will not require any clearing of woody vegetation, and will not affect any other Habitat Protection Area. Since pavement of an existing impervious area is considered maintenance of an existing facility, there is no requirement to provide for a 10% reduction of pollutant loadings.

Thank you for your assistance during this review. It has been a pleasure working with you. If you have any questions, please do not hesitate to contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

**STATE OF MARYLAND  
CRITICAL AREA COMMISSION  
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March 9, 2004

Ms. Sue Veith  
St. Mary's County Government  
Department of Land Use and Growth Management  
PO Box 653  
Leonardtown, MD 20650-0653

Re: **SM 78-04: MNSP # 04-131-003 Joseph Goddard, Lot 1 Duplex Site Plan**

Dear Sue,

I have reviewed the site plan for the proposed duplex which will be located in the IDA of Saint George's Creek. This is a 0.995 acre parcel, of which only 0.044 acres lie within the 1,000-foot Critical Area boundary. The 100-foot Buffer does not occur on this lot. Impacts in the IDA include 122 square feet of impervious surface for the driveway, and a similar amount of tree clearing. The 10% Rule requirements do not apply as the amount of new impervious area is less than 250 square feet. Reforestation is being provided which exceeds the actual clearing. Our office has no concerns regarding this site plan.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

STATE OF MARYLAND  
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March 8, 2004

Mr. Ron Young  
Town Manager  
Town of Indian Head  
Indian Head, MD 20640

Re: **IH 99-04: Slavins and Mattingly Park Master Plan**

Dear Mr. <sup>Ron</sup>~~Young~~,

Thank you for providing a copy of the Slavins and Mattingly Park Master Plan for our review. I have read the document, reviewed the maps, and have listed my comments below. These comments include requests for additional information and/or changes to the plans, as well as recommendations for relocating certain amenities in order to avoid impacts to wetlands, steep slopes, and the 100-foot Critical Area Buffer. As always, if you have any questions regarding these items, or would like to meet on-site to go over them, please do not hesitate to contact me.

1. Please delineate the 100-foot Critical Area Buffer line on the plans and provide a statement on the amount of new disturbances in the Buffer. It appears the Buffer will need to be expanded for contiguous steep slopes east of the proposed steps on the steep slope, and for nontidal wetlands south of the abandoned building.
2. Information on the amount of existing forest cover and forest area to be cleared must be provided.
3. A planting plan is needed to show where mitigation for new disturbances in the Buffer and for forest clearing will be provided.
4. The amount of existing impervious surface areas and proposed surface areas must be provided.



Robert L. Ehrlich, Jr.  
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Lt. Governor



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March 8, 2004

Mr. Matt Hedger, Planner  
City of Salisbury-Wicomico County  
Department of Planning, Zoning and  
Community Development  
PO Box 870  
Salisbury, MD 21803-0870

Re: **Guidance on Eco-Stone pervious surface credit**

Dear Matt,

Eco-stone has been used for State projects as well as projects in various local jurisdictions. We have previously determined that Uni Eco-Stone counts as 60% impervious if it is installed according to the manufacturer's recommendations. The recommended installation calls for a 9-inch base using two types of crushed stone.

If an applicant wishes to use an alternate base material, then the percent imperviousness must be computed according to the percentage of void area per square foot. Multiply the number of square feet of pavers by a factor of 0.85 determine the square footage of impervious area that would be counted toward the site's impervious surface limit.

If you have any questions regarding this information, please contact me at 410-260-3481, or Mary Owens at 410-260-3480.

Thank you for your patience while we researched this product for you.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

cc: WI 51-04

Robert L. Ehrlich, Jr.  
Governor

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Lt. Governor



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March 5, 2004

Mr. Charles Wallace  
Rummel, Klepper & Kahl, LLP  
Consulting Engineers  
81 Mosher Street  
Baltimore, Maryland 21217

Re: **CAC 4-04: MdTA Contract No. MA 258-000-002/6**  
**Broening Highway Noise Wall Extension- Avon Beach Road to Interstate 695**

Dear Mr. Wallace,

I have reviewed the information you provided regarding this project to extend a noise wall in the Critical Area of Bear Creek, and to provide an emergency use-only, gated, access lane. This work is located along Broening Highway between stations 200 + 70 and 210 + 40. This is considered an Area of Intense Development. None of the proposed work will be located in the 100-foot Critical Area Buffer, and no tree clearing is proposed. A sand filter is being provided to comply with the 10% Rule requirements to remove pollutant loadings for 0.11 acres of impervious area.

We find there are no Critical Area issues associated with this work. Should it become necessary to remove any trees to accommodate installation of the wall, those trees must be replaced on a 1:1 basis.

Thank you for your assistance during this review. Please do not hesitate to contact me if you have any additional questions regarding Critical Area requirements.

Sincerely,

A handwritten signature in blue ink that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

## *Critical Area Commission*

### STAFF REPORT

March 3, 2004

**APPLICANT:** State Highway Administration

**PROPOSAL:** US 50 Bikeway

**JURISDICTION:** Dorchester County

**COMMISSION ACTION:** Vote

**STAFF RECOMMENDATION:** Approval

**STAFF:** Wanda Diane Cole

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

### DISCUSSION:

State Highway Administration (SHA) proposes to widen the shoulders of US 50 on the westbound side between Woods Road and Bucktown Road in the Cambridge area of Dorchester County in order to provide a 1.25 mile long bikeway that parallels US 50. The bikeway will be 10 feet wide, and some areas will utilize the existing paved shoulder and other areas the highway shoulder will be widened. A portion of the project is located within the Critical Area but does not include impacts to the 100-foot Buffer. No clearing of forest vegetation will occur. A total of 0.94 acres of disturbance will occur, with 0.41 acres being new impervious surface areas. There will be a small area of temporary disturbance to nontidal wetlands, which will be addressed by Maryland Department of the Environment (MDE). No other Habitat Protection Areas will be affected.

The SHA right of way is considered an area of intense development, so the 10% Rule must be met in the form of a stormwater best management practice. There is no room within the right of way to provide a stormwater facility. SHA is proposing to meet this project's 10% removal requirement with the use of an off-site practice. This off-site facility is not located within the immediate watershed for Shoal Creek, however, Shoal Creek drains to the Choptank watershed, as does the proposed stormwater facility.

The proposed facility is a stormwater management pond approved by the Commission at its April 2, 2003 meeting as a Conditional Approval. It is partially located in the 100-foot Critical Area Buffer of Choptank River in Caroline County off the MD 404 Denton bypass. The pond was required by MDE as stormwater mitigation for the US 50 highway improvement project located between the Choptank River bridge and Bucktown Road. That project area is outside the Critical Area. The pond was required to treat 3.3 acres for MDE water quality requirements. The constructed facility will treat 17.9 acres of impervious surface. Information regarding the pond's pollutant removal capability and the pollutant removal requirement for the bikeway was not available at the time this staff report was being prepared. It will be available at the meeting.

# MD 404 EAST OF CHOPTANK RIVER

## STORMWATER MANAGEMENT MITIGATION



Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

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February 27, 2004

Ms. Yvonne Chaillet  
St. Mary's County  
Department of Land Use and Growth Management  
23150 Leonard Hall Drive  
PO Box 653  
Leonardtown, MD 20650-0653

RE: **SM 104-04: # 03-0195 Robert & Elizabeth Seal  
Buffer & Impervious Surface Variance Request**

Dear Yvonne,

I have reviewed the information regarding this Buffer and impervious surface variance request. The applicants propose to remove an existing dwelling and replace it with a new single-family dwelling located farther from the shoreline. This is a grandfathered lot located in the RCA of Tanner's Creek, and is almost entirely constrained by the Critical Area Buffer.

It appears an impervious surface variance is not needed. The site's total impervious surface area will be 3,731 square feet, which is less than the 5,445 square feet maximum for grandfathered lots of this size.

We do not oppose this variance request. We recommend the variance approval include a condition that the 3:1 mitigation required for new disturbances in the Buffer is to be provided on-site in the Buffer.

Please note: the 100-foot Buffer line must be shown on this plan. It appears the majority of the forest clearing will occur outside the 100-foot Buffer. If so, mitigation for this clearing will be 1:1, and in addition to the 3:1 mitigation required for new Buffer disturbances.

Please forward a copy of the written decision made in this case. If you have any questions regarding these comments, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



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February 27, 2004

Ms. Yvonne Chaillet  
St. Mary's County  
Department of Land Use and Growth Management  
23150 Leonard Hall Drive  
PO Box 653  
Leonardtown, MD 20650-0653

RE: **SM 106-04: # 03-2841 Mark Burroughs Variance Request  
Clearing in the Buffer**

Dear Yvonne,

I have reviewed the information regarding this request to clear trees in the Critical Area Buffer on a grandfathered lot located in the RCA of St. George Creek. This site is entirely constrained by the Critical Area Buffer, which is expanded for contiguous nontidal wetlands. The purpose of the clearing is to improve the lot's street view for resale.

While we do not oppose the development of a homesite on a grandfathered lot, we cannot support this request based upon the information provided and the reason stated. The applicant proposes to clear an area of forested, nontidal wetland but has no plan to build on this lot at this time. Furthermore, the applicant is proposing to clear an area which has not been evaluated as to whether it is the best location for a building site. There appear to be areas for developing a homesite which would require less forest clearing and cause fewer impacts to the site's nontidal wetlands. Finally, it is possible a future buyer may wish to develop a homesite elsewhere on this lot.

Please forward a copy of the written decision made in this case. If you have any questions regarding these comments, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



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February 27, 2004

Mr. Keith Kelley  
Baltimore County  
Department of Environmental Protection  
and Resource Management  
401 Bosley Avenue, Suite 416  
Towson, MD 21204

RE: **BC 98-04: 04-01 Jerome J. Cusic HPA Variance Request**

Dear Keith,

I have reviewed the information regarding this variance request to construct a driveway across a nontidal wetland and its 25-foot Buffer. This is a grandfathered lot located in the LDA of Frog Mortar Creek. A large portion of the lot is constrained by the nontidal wetland so that the only access into the lot is to cross the wetland.

We do not oppose this variance request. We recommend the variance approval include a condition that mitigation for all forest clearing on this site be mitigated at the appropriate ratio.

Please provide this office with a copy of the written decision made in this case. Feel free to contact me at 410-260-3481 if you have any questions regarding these comments.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
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February 27, 2004

Ms. Yvonne Chaillet  
St. Mary's County  
Department of Land Use and Growth Management  
23150 Leonard Hall Drive  
PO Box 653  
Leonardtown, MD 20650-0653

RE: SM 105-04: # 03-2194 S. Joseph Cerniglia Buffer Variance Request

Dear Yvonne,

I have reviewed the information regarding this request to construct a single-family home with deck in the Critical Area Buffer which has been expanded for steep slopes. This is a grandfathered lot located in the LDA of Big Cat Creek, and is almost entirely constrained by the expanded Buffer.

We do not oppose this variance request. We recommend the variance approval include a condition that 3:1 mitigation is required for new disturbances in the Buffer, including all forest clearing and new impervious surfaces. Mitigation for forest clearing outside the Buffer is required at a 1.5 to 1 ratio, as the project will result in clearing of 25% of the site's forest.

Please forward a copy of the written decision made in this case. If you have any questions regarding these comments, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
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February 24, 2004

Ms. Elsa Ault  
Charles County  
Department of Planning and Growth Management  
PO Box 2150  
La Plata, MD 20646-2150

RE: **CS -04: SFD 40081: Francis & Lillian Garner Site Plan  
Woodland Pt p/o Lot 59, Potomac View Drive**

Dear Elsa,

I have reviewed the site plan for this project, which includes a dwelling, garage, driveway, and walkways in the RCA of Neale Sound. I have provided the following comments:

1. The lot is entirely forested. No information is available regarding the presence of FIDS habitat on this site; however, the development envelope meets the guidelines for development in FIDS habitat. The Wildlife and Heritage Service must be contacted for a determination on the presence of rare, threatened and endangered species and their habitats. Please provide a copy of that determination to our office.
2. The planting chart includes species which are not or may not be native to Maryland. These include crape myrtle, wintergreen barberry, Judd viburnum and certain juniper species. Red cedar is the only native juniper species that I am aware of, and it matures as a large tree. Please verify that all plantings are natives and non-invasive. Attractive, colorful, berry-producing shrubs and trees, such as winterberry and American holly, tolerate shade, attract songbirds, and make good yard plantings.

If you should have any questions regarding these comments, please don't hesitate to contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Cole".

Wanda Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

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February 18, 2004

Ms. Sue Veith  
St. Mary's County Government  
Department of Land Use and Growth Management  
PO Box 653  
Leonardtown, MD 20650-0653

Re: **Hatton's Rest Subdivision: Investigation of RCA Density Used**

Dear Sue,

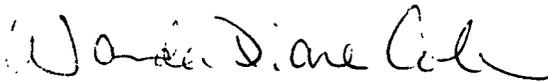
Thank you for arranging the February 6, 2004 site visit to this area so that Mary Owens and I could follow up on correspondence we had received regarding the number of RCA density rights that may have been used for this subdivision. Our observations and comments follow:

1. The number of RCA density rights available to the parent parcel and number of RCA density rights used must be verified. The plat recorded for the subdivision shows the Critical Area boundary in a location that differs from the Critical Area boundary map in effect at the time the plat was recorded. This discrepancy could alter the number of available RCA density rights. It is also not clear if State tidal wetlands were included in the acreage calculations. Only private tidal wetlands can be used to calculate density.
2. A possible second dwelling on Lot 3 may exist in the form of a boathouse that was remodeled into a storage area for one boat, as well as a two-story, two-room guest quarters. A bathroom is present on the first floor; its soil drain pipe enters the ground beneath the structure. A building permit, posted near the entrance onto the lot, indicated approval had been granted for replacement of a structure with addition. While we observed a well on the property, we were unable to determine the location of a septic system for the guesthouse. Please determine if there is a separate septic system for this structure, and whether it is proposed to be converted into a dwelling unit. If it is to be converted into a dwelling unit, growth allocation will be required.
3. The addition to the boathouse appears to lie within the 100-foot Critical Area Buffer. Please determine whether a variance was required for this work.

4. In an area labeled as the Farmstead, we observed a small cottage that appears to be in use as a residence. When did this structure become a residence and why was it not shown on the original plat? Where is the septic system that serves this cottage?
5. It appears this subdivision has reached or exceeded its RCA density rights. Growth allocation must be used if the number of RCA density rights has been exceeded.
6. No additional building permits may be issued for this subdivision until the RCA density issue has been resolved.

Please keep us informed of your findings, and do not hesitate to contact me at 410-260-3481 or Mary Owens at 410-260-3480 if you have any questions or concerns.

Sincerely,



Wanda Diane Cole  
Natural Resources Planner

**CLEARINGHOUSE REVIEW**

February 17, 2004

RECEIVED

TO : Arnold Norden, Greenways and Resources Planning (E-4)  
Glenn Therres, Wildlife (E-1)  
Robert Beckett, State Forest and Park Service (E-3)  
Tammy Broll, Natural Resources Police (E-3)  
Matthew Fleming, Education, Bay Policy Growth Management (E-2)  
Marian Honeczy, Forestry (E-1)  
Bill Hodges, Resource Assessment Services (B-3)  
Ray Dintamin, Environmental Review (B-3)  
Regina Esslinger, Critical Area Cmsn. (1804 West St., Suite 100, Annapolis MD 21401)

FEB 19 2004

CHESAPEAKE BAY  
CRITICAL AREA COMMISSION

FROM : James W. Price, Director, Program Open Space

SUBJ : POS # 4532-22-163

Pittsville Ball Field Light Replacement-Board of Education Property, Wicomico County  
Replacing the existing lighting fixtures with energy efficeint metal halide lights.

The above referenced project has been submitted to this office for funding in accordance with the Outdoor Recreation Land Loan of 1969, and remains on file in this office. Please submit any comments you may have concerning this project within two weeks of the date of this letter. If no comments are received within two weeks, it will be assumed that this project does not conflict with the programs, plans, or objectives of your Agency. If you require additional information before you can complete your review, please contact the undersigned.

CHECK ONE AND INITIAL

CHECK

INITIAL

- 1. The project does not conflict with the plans, programs or objectives of this Agency
- 2. The project does not conflict with this Agency's plans, programs or objectives, but the attached comments are submitted for consideration.
- 3. The project conflicts with this Agency's plans, programs or objectives for the reasons indicated on the attachment.

✓	wdc 2/25/04
_____	_____
_____	_____

Please return to Marti Sullivan or Judy Jones, Program Open Space, Tawes State Office Building (E-4) Annapolis, upon completion of review.

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
Executive Director

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February 17, 2004

Mr. Steve Dodd  
Dorchester County  
Department of Planning and Zoning  
PO Box 107  
Cambridge, MD 21613

Re: **DC 73-04: # 2180 Alton J. and Madeline H. Scavo Buffer Variance Request**

Dear Steve,

I have reviewed the information regarding the applicant's variance request to construct a deck and steps in the 100-foot Critical Area Buffer on a grandfathered lot in the RCA of Hudson Creek. The proposed encroachment into the Buffer is 77 square feet. The deck is located between the main dwelling and an addition that was recently constructed. This addition was granted Buffer variance # 2037 on May 25, 2001.

This office cannot support this Buffer variance request. In 2002, the Maryland General Assembly reiterated its commitment to protection of the Chesapeake Bay Critical Area's water quality and wildlife habitat values. By Chapters 431 and 432 of the 2002 Laws of Maryland, the General Assembly stated that variances to a local jurisdiction's Critical Area program may be granted only if a zoning board finds that an applicant has satisfied its burden to prove that the applicant meets each one of the county's variance standards. The Code of Maryland Regulations and County Code both provide standards a local government must use when granting a variance. Again, because the applicant must meet all of the standards in order for the Board to grant a variance, this office believes that, in this case, those standards clearly have not been met. I have outlined those standards below:

1. That special conditions or circumstances exist that are peculiar to the land or structure within the jurisdiction's Critical Area program that would result in an unwarranted hardship to the applicant. This is a 19-acre parcel that was developed with a dwelling with over half its footprint located in the 100-foot Critical Area Buffer. The applicant has

not shown that there is no opportunity to develop a footprint without the need for a Buffer variance.

2. That a literal interpretation of this subtitle or the local Critical Area Program and related ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical area of the local jurisdiction. The applicants have reasonable use of this property, and therefore, they would not be denied a right commonly enjoyed by their neighbors. There is opportunity to construct a deck with steps without the need for a Buffer variance. The applicant's rights must be evaluated against the rights of other property owners under the Critical Area Program.
3. The granting of a variance will not confer upon an applicant any special privilege that would be denied by this subtitle or the local Critical Area program to other lands or structures within the jurisdiction's Critical Area. If the variance is granted, it would confer upon the applicant a special privilege that would be denied to others in this area, as well as in similar situations in the County's Critical Area. The applicant has already received a variance to disturb the Buffer when they built the addition. Additional disturbances to the Buffer are unwarranted. The applicant must select a footprint that would not require the need for a Buffer variance.
4. The variance request is not based upon conditions or circumstances which are the result of the actions by the applicant, nor does the request arise from any condition conforming, or non-conforming, on any neighboring property. This standard has been met.
5. The granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the jurisdiction's Critical Area, and that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area law and the regulations. The applicant bears the burden to prove this factor, along with the others discussed above. In 2002, the General Assembly re-enacted its findings regarding the importance of maintaining the water quality of the Chesapeake Bay and its contributing tidal watersheds. Studies have been conducted that show that water quality and wildlife habitat benefits diminish when development occurs within 100 feet of a waterway. Granting this variance will contribute to the decline of water quality in Hudson Creek, and, ultimately, the Chesapeake Bay. Decline in water quality contributes to declines in aquatic habitat, ultimately affecting the viability of local fisheries and the local economies that depend on them.

In conclusion, it is our position that, unless the Board finds that the applicant has met the burden of proof on each one of the County's variance standards, the Board must deny this application.

Please provide this office with a copy of the written decision made in this case. If you have any questions, please contact me at 410-260-3481.

Sincerely,

*Wanda Diane Cole*

Wanda Diane Cole  
Natural Resources Planner

cc: Marianne Mason, Counsel  
Ren Serey, Executive Director

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

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February 17, 2004

Mr. Steve Dodd  
Dorchester County  
Department of Planning and Zoning  
PO Box 107  
Cambridge, MD 21613

Re: **DC 53-04: # 2181 Gary Kaufman Variance Request**

Dear Steve,

I have reviewed the information regarding this Buffer variance request, which amends the footprint shown on the site plan submitted for variance application # 2170. The applicant proposes to construct a replacement dwelling in the 100-foot Critical Area Buffer on a grandfathered lot in the LDA of Fishing Bay. This site is almost entirely constrained by the Buffer. The plan shows proposed mitigation planting areas.

This office does not oppose this variance request. We recommend the variance approval include a condition that the required 3:1 mitigation plantings to offset new disturbances in the Buffer are to be provided on-site.

Please provide this office with a copy of the written decision made in this case. If you have any questions, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
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February 17, 2004

Mr. Steve Dodd  
Dorchester County  
Department of Planning and Zoning  
PO Box 107  
Cambridge, MD 21613

Re: **DC52 -04: # 2179 Frank & Joanne Nabozny Impervious Surface Variance Request**

Dear Steve,

I have reviewed the information regarding the applicant's request to construct an accessory apartment that will cause the site to go from 19% in impervious surface areas to 23%. This is a 1.24 acre lot located in the LDA of Church Creek. The maximum allowable impervious surface area on a grandfathered lot of this size is 15%, or the amount that existed at the time the County's Critical Area Program was implemented. In this case, the existing impervious area is 19%.

While we do not oppose the construction of an accessory apartment, we cannot support this site plan as proposed. The applicant has reasonable alternatives to site this apartment so that an impervious surface variance is not needed. Alternatives include locating the apartment to the area of the lot which is located outside the Critical Area, and by reducing existing impervious surface areas by an amount equal to the proposal. Areas where impervious surfaces could be reduced include removal of the concrete pad behind the garage and replacing the concrete walkway with a pervious material.

Please provide this office with a copy of the written decision made in this case. If you have any questions, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

**CLEARINGHOUSE REVIEW**

February 13, 2004

RECEIVED

FEB 13 2004

QUANTICO BAY  
CRITICAL AREA COMMISSION

TO : Arnold Norden, Greenways and Resources Planning (E-4)  
Glenn Therres, Wildlife (E-1)  
Robert Beckett, State Forest and Park Service (E-3)  
Tammy Broll, Natural Resources Police (E-3)  
Matthew Fleming, Education, Bay Policy Growth Management (E-2)  
Marian Honeczy, Forestry (E-1)  
Bill Hodges, Resource Assessment Services (B-3)  
Ray Dintamin, Environmental Review (B-3)  
Regina Esslinger, Critical Area Cmsn. (1804 West St., Suite 100, Annapolis MD 21401)

FROM : *J.W.P.* James W. Price, Director, Program Open Space

SUBJ : POS # 4531-9-107  
McCarter Park Playground, Dorchester County

This project proposes to resurface the playground with engineered wood fiber surfacing along with new borders and a handicapped wheel chair ramp. This project is desperately needed in order to maintain public ADA safety and park attractiveness.

The above referenced project has been submitted to this office for funding in accordance with the Outdoor Recreation Land Loan of 1969, and remains on file in this office. Please submit any comments you may have concerning this project within two weeks of the date of this letter. If no comments are received within two weeks, it will be assumed that this project does not conflict with the programs, plans, or objectives of your Agency. If you require additional information before you can complete your review, please contact the undersigned.

CHECK ONE AND INITIAL

CHECK                      INITIAL

- 1. The project does not conflict with the plans, programs or objectives of this Agency
- 2. The project does not conflict with this Agency's plans, programs or objectives, but the attached comments are submitted for consideration.
- 3. The project conflicts with this Agency's plans, programs or objectives for the reasons indicated on the attachment.

✓	<i>Wde 2/25/04</i>
_____	_____
_____	_____

Please return to Marti Sullivan or Judy Jones, Program Open Space, Tawes State Office Building (E-4) Annapolis, upon completion of review.

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
Executive Director

STATE OF MARYLAND  
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February 12, 2004

Mr. Matt Hedger, Planner  
City of Salisbury-Wicomico County  
Department of Planning, Zoning and  
Community Development  
PO Box 870  
Salisbury, MD 21803-0870

Re: **WI 51-04: Philip A. & Barbara D. Long Impervious Surface Variance Request  
Tax Map 48, Grid 1, Parcel 28**

Dear Matt,

I have reviewed the information regarding this variance request to exceed the impervious surface limits for this lot. This is a grandfathered property located in the LDA of Wicomico River. Grandfathered lots of this size are limited to 5,445 square feet of impervious surface area. The property currently contains 9,033 square feet in impervious areas, and is developed with a dwelling, a 1,412 square foot parking area, a 3,578 square foot driveway, a 961 square foot flagstone patio, and a 720 square foot garage. The existing impervious surface areas cover 26% of the property. The applicants propose to construct an additional 2,389 square feet of impervious area in the form of a 1,989 square foot pool with terrace, a 300 square foot pool house, and a 100 square foot pool equipment building. This proposed increase would result in the site containing 11,422 square feet of impervious surface areas, which would cover 33% of the property. Therefore, the applicant is proposing to increase impervious surfaces from 26% to 33%.

While we do not oppose the applicants' right to maintain the existing 26% of impervious surface area, we cannot support this variance request to exceed that amount. In 2002, the Maryland General Assembly reiterated its commitment to protection of the Chesapeake Bay Critical Area's water quality and wildlife habitat values. By Chapters 431 and 432 of the 2002 Laws of Maryland, the General Assembly stated that variances to a local jurisdiction's Critical Area program may be granted only if a zoning board finds that an applicant has satisfied its burden to prove that the applicant meets each one of the county's variance standards. The Code of Maryland Regulations and County Code both provide standards a local government must use

when granting a variance. Again, because the applicant must meet all of the standards in order for the Board to grant a variance, this office believes that, in this case, those standards clearly have not been met. I have outlined those standards below:

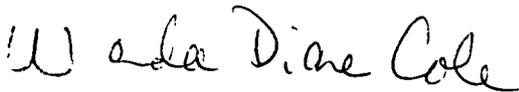
1. That special conditions or circumstances exist that are peculiar to the land or structure within the jurisdiction's Critical Area program that would result in an unwarranted hardship to the applicant. This 0.79 acre lot is already developed with a dwelling, garage, patio, driveway and parking area. There are no circumstances peculiar to the land or structure. The General Assembly required local governments to consider the reasonable use of the entire parcel or lot in evaluating whether an applicant for a variance has shown an unwarranted hardship. Given the well-developed state of this property, we do not believe that the applicants have met their burden to show that, without the variance for the excess impervious surface, they would be denied reasonable and significant use of the entire parcel or lot.
2. That a literal interpretation of this subtitle or the local Critical Area Program and related ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical area of the local jurisdiction. The applicants' reasonable use of this property is similar to that enjoyed by their neighbors and therefore, denial of the variance would not deny them a right commonly enjoyed by their neighbors. There are opportunities to avoid the need for a variance by removing sections of the existing driveway and parking area so that the lot does not exceed its existing amount of impervious surface area. The applicants' rights must be evaluated against the rights of other property owners under the County's Critical Area Program.
3. The granting of a variance will not confer upon an applicant any special privilege that would be denied by this subtitle or the local Critical Area program to other lands or structures within the jurisdiction's Critical Area. If the variance is granted, it would confer upon the applicants a special privilege that would be denied to others in this subdivision, as well as in similar situations in the County's Critical Area. All grandfathered lots of this size are subject to a maximum impervious surface limit of 5,445 square feet. This property currently contains 9,033 square feet of impervious area. Everyone in the County's Limited Development Area is similarly situated, and to allow these applicants to further exceed the impervious surface limits would grant them a special privilege not accorded to other lands or structures.
4. The variance request is not based upon conditions or circumstances which are the result of the actions by the applicants, nor does the request arise from any condition conforming, or non-conforming, on any neighboring property. This variance standard has been met.

5. The granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the jurisdiction's Critical Area, and that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area Law and regulations. The applicants bear the burden to prove this factor, along with the others discussed above. In 2002, the General Assembly re-enacted its findings regarding the importance of maintaining the water quality of the Chesapeake Bay and its contributing tidal watersheds. Studies have been conducted that show that water quality diminishes as impervious surface areas approach 15%, and that water quality becomes significantly degraded once impervious surfaces exceed 15%. Granting this variance will contribute to the decline of water quality in the Wicomico River, and, ultimately, the Chesapeake Bay. Decline in water quality contributes to declines in aquatic habitat, ultimately affecting the viability of local fisheries and the local economies that depend on them.

In conclusion, it is our position that, unless the Board finds that the applicants have met their burden of proof on each one of the County's variance standards, the Board must deny this application.

Please provide this office with a copy of the written decision made in this case. If you have any questions, please contact me at 410-260-3481.

Sincerely,



Wanda Diane Cole  
Natural Resources Planner

cc: Marianne Mason, Counsel  
Ren Serey, Executive Director

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
Executive Director

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February 11, 2004

Ms. Elsa Ault  
Charles County  
Department of Planning and Growth Management  
PO Box 2150  
La Plata, MD 20646-2150

RE: **Efton Hill/Steve Morgan Habitat Protection Plan**

Dear Elsa,

The Wildlife and Heritage Service and Critical Area Commission have completed their reviews of the final draft of the Habitat Protection Plan and have combined their comments as found below. We have enclosed a list of exotic, invasive plant species that the applicant should avoid planting.

**Introduction.** The introduction to the plan should mention that the wetlands and their 100-foot expanded Buffer on this property are regulated as Wetlands of Special State Concern by the Maryland Department of the Environment. This information can be added either to the end of the first paragraph of the first page under, "Habitat Protection Plan", or at the end of the second paragraph of the introduction on the second page. Please note that the 100 ft upland buffer must be identified on the plans. Currently only a 25ft buffer is shown.

In the 2<sup>nd</sup> paragraph, 4<sup>th</sup> sentence, please revise to read, "although none were found on this site during the last survey by the Wildlife and Heritage Service."

In the 4<sup>th</sup> paragraph of the introduction, a joint inspection of mitigation planting is mentioned. It is not essential that the Natural Heritage Service or the Critical Area Commission attend these inspections, therefore, this statement should be changed. As always, if the property owner has technical questions, we will be pleased to assist.

The foundation plantings will not contribute to FIDS habitat and should not be considered as mitigation for loss of FIDS habitat. The proposed tree plantings appear dense. All mitigation plantings must be planted in accordance with proper spacing requirements for the particular species.

In the next to last sentence of the last paragraph, delete "straw bales". Add a statement, "Straw mulch and straw bales will not be used adjacent to any wetland on the property, and if straw mulch is used around the homesite, it will be used conservatively."

Wherever the plan references the Wildlife and Heritage Service as being under the Department of the Environment, please change those references to the Department of Natural Resources.

**Section 3.0.** The next to last sentence of the last paragraph needs to be revised to "The Owner shall limit activity and disturbances within ¼ mile for rare, threatened and endangered birds and mammal species, and within 2000 feet for other plants and animal species."

**Section 4.0.** Wildlife and Heritage Service provided data for nests within ¼ mile of the property, so the statement regarding the locations of nests should be changed from ½ mile to ¼ mile.

**Section 5.0.** After the first sentence, add the following statement, "Protection of this area from development disturbances is required by Critical Area regulation COMAR 27.01.09.04(b)(vii)."

**Section 6.0.** Unless the Owner has specific permission to include The Nature Conservancy and local chapter of the Audubon Society as participants in development of a colonial waterbird management plan for this site, reference to them must be deleted.

**Section 8.0.** The plan must include the detail for reinforced silt fence, which is one of the preferred sediment control practices for this project, and show the section of silt fence that is to be installed across the driveway entrance at the end of each workday and at the beginning of any rain event until the construction has been completed and vegetative stabilization well-established. In addition, the plans must include the standard sediment and erosion control notes regarding the temporary and final stabilization timeframes required by Maryland Department of the Environment.

If you should have any questions regarding these comments, please don't hesitate to contact me at 410-260-3481.

Sincerely,



Wanda Cole  
Natural Resources Planner

cc: Kathy McCarthy  
Claudia Jones

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

STATE OF MARYLAND  
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February 2, 2004

Ms. Elsa Ault  
Charles County Government  
Department of Planning and Growth Management  
PO Box 2150  
La Plata, Maryland 20646

Re: **CS 9-04: Docket # 1111- Harold Walter Combs, Jr. Buffer Variance Request**

Dear Elsa,

I have reviewed the information regarding this variance request to remove a storm-damaged house and concrete pad located on a grandfathered parcel in the LDA of Potomac River. The storm-damaged house is located in the 100-foot Buffer. The proposed replacement dwelling is shown in an alternate location and will create new disturbances in the Buffer. While we do not oppose the redevelopment of this parcel, we cannot support the design.

While this proposal results in a 41 square foot decrease in overall Buffer disturbances, it also includes construction of a significantly larger house with garage and expanded driveway. This expanded footprint creates its own site constraints for implementing the design. There appears to be ample room on site to accommodate this design while minimizing new disturbances to the Buffer. Impacts to the Buffer could be reduced by moving the redevelopment envelope farther uphill, and by removing the existing shed and section of existing driveway that encroaches into the Buffer. We recommend the applicant further minimize proposed impacts.

If a variance is granted, we recommend the variance approval include a condition that the required 3:1 mitigation for new disturbances to the Buffer is provided on site in the Buffer.

Please provide this office with a written copy of the decision made in this case. If you have any questions regarding these comments, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

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February 2, 2004

Ms. Yvonne Chaillet  
St. Mary's County  
Department of Land Use and Growth Management  
PO Box 653  
Leonardtown, Maryland 20650-0653

Re: Variance Requests for New Disturbances in the Buffer and for Forest Clearing Greater Than 30%:

**SM 13-04: 03-1330 Gardner, Leverings Lot 10**  
**SM 14-04: 03-1331 Gardner, Leverings Lot 11**  
**SM 15-04: 03-1332 Gardner, Leverings Lot 12**

Dear Yvonne,

I have reviewed the site plan for these variance requests, which propose clearing more than 30% of the existing forest cover on each of these grandfathered lots, located in the LDA of Patuxent River. In addition, the proposed dwellings on each of these lots will encroach into the 100-foot Critical Area Buffer. This office does not oppose these variance requests; however, 3:1 mitigation is required for the area cleared once clearing exceeds 30%. We recommend the variance approval include a condition that the required 3:1 forest mitigation for new disturbances in the Buffer and for clearing greater than 30% is to be provided on site to the maximum extent possible.

Please provide a copy of the written decision made in this case. If you have any questions regarding these comments, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
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Executive Director

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February 2, 2004

Ms. Robin M. Bowie, Manager  
Division of Environmental Planning  
Maryland Aviation Administration  
PO Box 8766  
BWI Airport, MD 21240-0766

Re: **1-04: Relocation of Electrical Switchgear at Martin State Airport**

Dear Robin,

I have reviewed the information regarding this project, which proposes to relocate electrical switchgear in an intensely developed area of Martin State Airport. This project is located in the Critical Area of Dark Head Creek. The proposed sand filter will meet the 10% Rule Pollutant Removal Requirement. No tree clearing is proposed and no rare, threatened and/or endangered species and/or their habitats exist at this site. Therefore, this project is consistent with COMAR 27.02.05 (F) and Exhibit B2 of the General Approval Memorandum of Understanding between Maryland Department of Transportation and the Critical Area Commission.

It has been a pleasure working with you and I look forward to our future site tour. Please contact me at 410-260-3481 if you have any additional questions.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner



Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

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February 2, 2004

Ms. Yvonne Chaillet  
St. Mary's County  
Department of Land Use and Growth Management  
PO Box 653  
Leonardtown, MD 20650-0653

RE: SM 18-04: # 03-2304 Ronald L. Medford Variance Request

Dear Yvonne,

I have reviewed the information regarding this request to construct a replacement dwelling in the 100-foot Critical Area Buffer on a grandfathered lot located in the IDA of St. George's River. While we do not oppose the redevelopment of this lot, we cannot support this design.

This is a 3.14 acre lot developed with a single-family dwelling and detached garage, where a small portion of the existing house and garage have encroached into the Buffer. The proposed residence will create additional disturbance in a currently undisturbed portion of the Buffer. The proposal shows a significantly larger amount of disturbance to the Buffer than currently exists. This proposal also includes construction of a second garage and an expanded driveway and parking area. The dwelling could be sited in such a way that there is less impact to the Buffer by reducing the amount of driveway and parking area. There appears to be ample room on site to accommodate a dwelling without increasing Buffer impacts beyond what currently exists. We recommend the applicant further minimize proposed impacts.

If a variance is granted, we recommend the variance approval include a condition that the required 3:1 mitigation be accomplished on-site in the Buffer.

Please provide this office with a copy of the written decision made in this case. If you have any questions, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

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CLEARINGHOUSE REVIEW

January 16, 2004

FEB 9 2004

CHESAPEAKE BAY  
CRITICAL AREA COMMISSION

TO : Arnold Norden, Greenways and Resources Planning (E-4)  
Glenn Therres, Wildlife (E-1)  
Robert Beckett, State Forest and Park Service (E-3)  
Tammy Broll, Natural Resources Police (E-3)  
Matthew Fleming, Education, Bay Policy Growth Management (E-2)  
Marian Honeczy, Forestry (E-1)  
Bill Hodges, Resource Assessment Services (B-3)  
Ray Dintamin, Environmental Review (B-3)  
~~Regina Esslinger, Critical Area Cmsn. (1804 West St., Suite 100, Annapolis MD 21401)~~

FROM : James W. Price, Director, Program Open Space

SUBJ : POS # 4520-9-106  
East New Market Pavilion, Dorchester County

This project proposes to construct a mid-sized pavilion in the heart of the town park. The pavilion will help to host future community events and activities for the town and surrounding area residents.

The above referenced project has been submitted to this office for funding in accordance with the Outdoor Recreation Land Loan of 1969, and remains on file in this office. Please submit any comments you may have concerning this project within two weeks of the date of this letter. If no comments are received within two weeks, it will be assumed that this project does not conflict with the programs, plans, or objectives of your Agency. If you require additional information before you can complete your review, please contact the undersigned.

CHECK ONE AND INITIAL

CHECK

INITIAL

1. The project does not conflict with the plans, programs or objectives of this Agency

wdc 02/11/04

2. The project does not conflict with this Agency's plans, programs or objectives, but the attached comments are submitted for consideration.

\_\_\_\_\_

\_\_\_\_\_

3. The project conflicts with this Agency's plans, programs or objectives for the reasons indicated on the attachment.

\_\_\_\_\_

\_\_\_\_\_

Please return to Marti Sullivan or Judy Jones, Program Open Space, Tawes State Office Building (E-4) Annapolis, upon completion of review.

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

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January 16, 2004

Mr. Steve Dodd  
Dorchester County  
Department of Planning and Zoning  
PO Box 107  
Cambridge, MD 21613

Re: **DC 02-04: # 2177 Thomas M. Beeker and V. Dawn Forsyth  
Variance Request for Deck and Sidewalk**

Dear Steve,

I have reviewed the information regarding the applicant's variance request to construct a deck and sidewalk in the 100-foot Critical Area Buffer on a grandfathered lot in the LDA of Madison Bay. This site is constrained by the Buffer on three sides. The deck and sidewalk will create 538.36 square feet of new disturbances in the Buffer.

This office does not oppose this request. We recommend that the variance approval include a condition that the required 3:1 mitigation for new disturbances in the Buffer is to be provided on-site, in the Buffer.

Please provide this office with a copy of the written decision made in this case. If you have any questions, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
Executive Director

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January 16, 2004

Ms. Karen Houtman  
Dorchester County  
Department of Planning and Zoning  
PO Box 107  
Cambridge, MD 21613

Re: **DC 24-04: Taylor's Island Marina Expansion # 1040  
Rezoning Case 291-10-2003**

Dear Karen,

I have reviewed your draft letter to Mr. Eric Tolley, as well as the growth allocation submittals provided by Mr. William W. McAllister, Jr. The following comments are combined responses to these items.

Letter to Mr. Tolley

- Item # 2. If a 300-foot Buffer cannot be provided, a Buffer greater than 100 feet is encouraged. The Buffer must be shown on the plans.
- Item # 3. All new, non-water-dependent development activities must be located outside the Buffer. The plat must include a Critical Area note stating that only water-dependent facilities are permitted in the Buffer.
- Item # 5. The amount of existing impervious surface areas must be stated in the growth allocation application. If the growth allocation is approved, the project must comply with the 10% Rule requirements.
- Item # 6. The Commission has revised its 10% Rule guidance manual. The 10% calculation worksheets have been updated and include a new value of 0.30 for the runoff

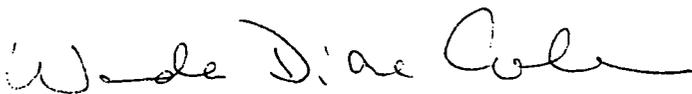
coefficient, "c", for both new development and redevelopment. Information on the best management practice to be used for pollutant removal must be provided on or before application for building and grading permit approvals.

Submittal by Mr. McAllister

- The Wildlife and Heritage Service (WHS) of the Department of Natural Resources must be contacted for a determination regarding the presence of any rare, threatened or endangered species and/or their habitats at this site. All WHS comments must be addressed, and a copy of the determination letter must be provided to this office.
- Is the redesignation of the existing 8.224 acre marina from LDA to IDA being requested as a mapping mistake or as part of the growth allocation request?
- The acreage for the open water areas of the boat basin does not need to be deducted as growth allocation, nor does the 0.131 acre triangular area located outside the Critical Area boundary on the southeast side of the parcel. At this time, it appears the growth allocation request will be for 25.225 acres, with 17.001 acres of RCA being redesignated to IDA, and 8.224 acres of LDA being redesignated to IDA.
- Parcel 150 does not lie entirely within the Critical Area. The plat and plans must state how much of the parcel's 66.42 acres are located within the Critical Area, and how much Critical Area acreage will remain as residue. It appears less than 41.06 acres will remain as residue, leaving only sufficient RCA density for one dwelling unit.
- A vicinity map must be included when the growth allocation is submitted to the Critical Area Commission for approval as a refinement.

Please contact me at 410-260-3481, or Mary Owens at 410-260-3480, if you have questions regarding these comments.

Sincerely,



Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
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Ren Serey  
Executive Director

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January 16, 2004

Ms. Patricia Farr  
Program Supervisor  
Environmental Impact Review  
Baltimore County DEPRM  
401 Bosley Avenue, Suite 416  
Towson, Maryland 21204

RE: **BC 25-04 & BC 26-04: Variance Requests for Tim Dorby, Apple Tree Homes  
3646 & 3650 Reveola Beach Road**

Dear Pat,

I have reviewed the information regarding these variance requests to construct dwellings within the Critical Area Easements on lots located in the LDA of Frog Mortar Creek. The Critical Area Easements (CAE) provide a buffer to the nontidal wetlands which occur on these sites. In accordance with the County's Critical Area Program and Ordinances, nontidal wetlands are considered Habitat Protection Areas (HPA), and variances are required when disturbances are proposed within an HPA.

These variances are being requested as the alignment for Reveola Beach Road has encroached onto these lots and created a situation where both the CAE setback and front yard setback cannot be met. The front yard setback has been reduced to the smallest distance practical to accommodate off-street parking for vehicles and maintain a safe distance from the road for the house. Encroachment into the CAE has been minimized.

We do not oppose these variance requests. Please provide this office with a copy of the written decision made in this case.

Please contact me at 410-260-3481 if you have any questions regarding these comments.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Diane Cole".

Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
Executive Director

**STATE OF MARYLAND  
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January 16, 2004

Ms. Sue Veith  
St. Mary's County Government  
Department of Land Use and Growth Management  
PO Box 653  
Leonardtown, MD 20650-0653

Re: **SM 925-03: MSUB # 03-110-114 Mattingly Subdivision  
Lots 5 & 6: A Resubdivision of Parcel 500-D**

Dear Sue,

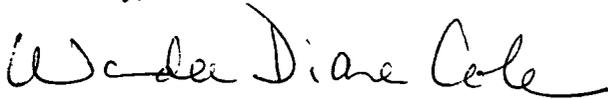
I have reviewed the plat for this two-lot subdivision and boundary line adjustment which will create Lots 5 & 6 and Outparcel A from a 7.428 tract located in the LDA of Forest Landing and Cuckold Creeks. This tract represents the remainder of former Parcels A, as shown on plat 25/45 and recorded on June 20, 1986, and D, as shown on plat 44/124 and recorded on September 15, 1997. The following comments are provided for your use:

1. St. Mary's County Soil Survey map # 12 shows a tributary stream located along the western boundary line to this parcel. This stream appears to parallel the steep slopes shown on the plat. The location of the 100-foot Critical Area Buffer to this stream must be determined, and expanded, if necessary, for contiguous steep slopes. If the Buffer or expanded Buffer occur on this site, it must be shown on the plat.
2. Critical Area note # 4 must specify the location of the existing impervious surface areas. It appears those areas may be the two 25' rights-of-way.
3. The combined 15% afforestation requirement for former Parcels A and D is 73,981 square feet. The existing forest retained on Outparcel A measures 97,513 square feet, therefore, no afforestation is required.

4. The Wildlife and Heritage Service (WHS) of the Department of Natural Resources must be contacted for a determination on the presence of rare, threatened and endangered species and/or their habitats on this site. A copy of the determination letter must be provided to this office, and all WHS comments must be addressed prior to issuing any final approvals.

Thank you for the opportunity to review and comment on this proposal. Please contact me at 410-260-3481 if you have questions regarding these comments.

Sincerely,



Wanda Diane Cole  
Natural Resources Planner

cc: Lori Byrne

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/](http://www.dnr.state.md.us/criticalarea/)

January 12, 2004

Mr. Reed Faasen  
Charles County  
Department of Planning and Growth Management  
PO Box 2150  
La Plata, Maryland 20646-2150

Re: **CS 600-03: SFD # 03-0477 Charles L. Satterfield/George F. Kettle Property  
FIDS Conservation Issues and Timber Harvest**

Dear Reed,

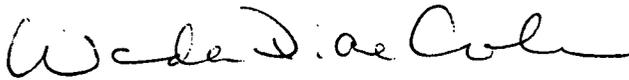
Claudia Jones and I reviewed the project for FIDS conservation, as well as compliance with the approved timber harvest plan, dated February 19, 2002. The timber harvest that was permitted on this parcel included commercial thinning and group selection. The Timber Harvest Plan required natural regeneration to meet the reforestation requirements. Reforestation requirements are always part of a Timber Harvest Plan. There was also a requirement that no new permanent forest openings be created. Since the property will be developed, it is not possible to meet the latter requirement. Forest clearing to develop this site plan will need to be mitigated elsewhere.

We have determined that FIDS mitigation for this specific project may be accomplished at a 1:1 ratio for the area cleared. Since this parcel is fully wooded, the mitigation will have to be provided off-site. The mitigation plantings must replace the area of FIDS habitat that is cleared on the parcel for houses, roads, septic, utilities, and other areas that support the development of this homesite. The mitigation area must function as FIDS habitat as specified in the Critical Area Commission's Guidance document for FIDS conservation.

Implementing FIDS mitigation projects in Charles County has become an ever-increasing problem for County planners. The Critical Area Commission requests that Charles County implement the forest mitigation fee-in-lieu-of program provided in its Critical Area Program

and Ordinance, which were approved by the Commission in 2001. If assistance is needed, Commission staff will be happy to provide guidance to County staff during this effort. Please contact me at 410-260-3481 to schedule meeting dates and locations.

Sincerely,



Wanda Diane Cole  
Natural Resources Planner

cc: Zachary Krebek  
Marianne Mason  
Mary Owens  
Regina Esslinger  
Claudia Jones  
Kathy McCarthy



Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
Executive Director

STATE OF MARYLAND  
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January 12, 2004

Ms. Sue Veith  
St. Mary's County Government  
Department of Land Use and Growth Management  
PO Box 653  
Leonardtown, MD 20650-0653

Re: **SM 924-03: MSUB # 03-110-109 Reese McKay Subdivision  
Farmstead 1 Simplified Subdivision Plat**

Dear Sue,

I have reviewed the plat for Farmstead 1, which is being created from a 55.94 acre parcel located in the RCA of McKay Cove. There are 37.98 acres located in the Critical Area. Two existing dwellings are located outside the Critical Area portion of the parcel. The following comments are provided for your use:

1. General note # 22 indicates that Farmstead 1 is an intrafamily transfer. The Critical Area notes must state the name and relationship of the immediate family member to whom Farmstead 1 will be conveyed. The Critical Area intrafamily transfer provisions must be listed on the plat.
2. This parcel qualifies for three intrafamily transfer rights; this subdivision uses one of those rights. This information must be stated on the plat.
3. The Wildlife and Heritage Service (WHS) of the Department of Natural Resources must be contacted for a determination of the presence of rare, threatened, or endangered species and/or their habitats. All WHS comments must be addressed on the plat.
4. It appears 15% afforestation may be required for this subdivision. The 100-foot Critical Area Buffer must be fully established where agricultural use of the site is abandoned. We recommend mitigation for any forest clearing be directed to the Buffer.
5. We recommend the location of the SRA be shifted to avoid the need for clearing trees.

6. The site area density calculations in general note # 2 are incorrect. RCA density is calculated as a whole number, rounded downward when there is insufficient acreage to form a multiple of 20.

We request a copy of the revised plat once it is available. We may have additional comments based upon the WHS comments.

Please call me at 410-260-3481 if you have questions regarding these comments.

Sincerely,



Wanda Diane Cole  
Natural Resources Planner

Robert L. Ebrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
Executive Director

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January 12, 2004

Mr. Steve Dodd, Director  
Dorchester County  
Planning and Zoning Office  
PO Box 107  
Cambridge, Maryland 21613

Re: **DC 907-03 Patapsco Homes 22-lot Subdivision**

Dear Steve,

I have reviewed the preliminary sketch plan for this 22-lot subdivision proposed in the LDA of Fishing Creek. It is my understanding that perc tests have not been completed for the interior lots, so that the lot layout for this subdivision might change. The following comments are provided for your use:

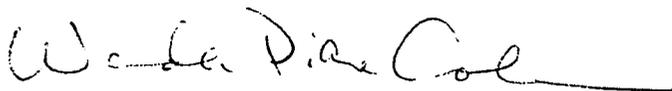
1. There appear to be tributary streams and/or tidal guts along portions of the eastern and western boundary lines. The 100-foot Critical Area Buffer needs to be correctly delineated for these features.
2. The location of any State tidal and nontidal wetlands must be shown. The Critical Area Buffer must be expanded for any nontidal wetlands that lie contiguous to the 100-foot Buffer.
3. Critical Area notes must be provided regarding no development activity permitted in the 100-foot Critical Area Buffer and no disturbances to any reforestation or afforestation areas. The Critical Area designation and the acreage located in the Critical Area must also be stated on the plat.
4. It appears 15% afforestation will be required for this project. Similarly, since this project represents a change in use from agriculture to residential, the 100-foot Critical Area Buffer must be fully established in forest vegetation. It appears that establishment of the

Buffer will also meet the afforestation requirement. The forested buffers shown on the plan serve more as visual screenings than habitat. We recommend the afforestation be planted as an integral wildlife habitat unit that also provides water quality benefits. Establishment of the Buffer would provide these benefits.

5. Information on the presence of rare, threatened, or endangered species and/or their habitats must be provided. The applicant must contact the Wildlife and Heritage Service (WHS) for a determination, and all comments provided by WHS must be addressed on the plat.
6. Information on soils types and topographic elevations must be shown. Information must be provided on the amount of existing forest cover with a Critical Area note stating that the Buffer must be established. Information on the amount of existing impervious surface must be provided, as well as a table that will track the subdivision's 15% limit on impervious surface areas for roads, dwellings, driveways and accessory structures and uses.
7. The final disposition of the existing house and sheds must be noted on the plat. It appears all these features are intended to be removed.

Please contact me at 410-260-3481 if you have any questions regarding these comments. We request the opportunity to review the revised plat when it becomes available, as we may have additional comments based upon the new information.

Sincerely,



Wanda Diane Cole  
Natural Resources Planner

cc: Lori Byrne

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

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January 12, 2004

Lt. Colonel Scott A. Kearby, Commander  
Maryland Air National Guard  
Department of the Air Force  
175 CES/CC  
2701 Eastern Blvd.  
Baltimore, Maryland 21220-2899

Re: Critical Area Commission Approval of Proposed Site Improvements for Munitions  
And Storage Complex, Martin State Airport, Baltimore County

Dear Lt. Colonel Kearby,

I am pleased to inform you that on January 7, 2004, the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays unanimously approved the above referenced conceptual site improvements in accordance with COMAR 27.02.05 State Agency Actions Resulting in Development on State-Owned Lands. These improvements include relocating the access road, and the munitions maintenance and storage complex. This approval is subject to the following condition:

1. Each project must be submitted to the Critical Area Commission for formal approval during the final design stage.

I will be happy to provide assistance on each project during their preliminary and subsequent design phases. This will ensure the project design is one which can be approved by the Commission. It was a pleasure working with you, and thank you for your participation and assistance in this process. If you have any questions, please don't hesitate to contact me at 410-260-3481.

Sincerely,

A handwritten signature in cursive script that reads "Wanda Cole".

Wanda Cole  
Natural Resources Planner

cc: Robin Bowie, MAA

TTY For the Deaf

Annapolis: (410) 974-2609 D.C. Metro: (301) 586-0450



Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
Executive Director

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January 9, 2004

Mr. Steve Dodd, Director  
Dorchester County  
Department of Planning and Zoning  
PO Box 107  
Cambridge, MD 21613

Re: **DC 887-03: # 4 A Douglas Spedden, et al., Lot 4**

Dear Steve,

I have reviewed the plan for a one-lot subdivision in the RCA of Choptank River. The lot will contain 2.59 acres and is being created around existing conditions on a grandfathered parcel containing 55.87 acres. A dwelling exists on the proposed lot, which is shown as Lot 4. Density reserve areas totaling 17.41 acres are shown on the plat in an area labeled as Lot Two, containing 10.55 acres. Lot Two is not contiguous to the parent parcel but is described in its deed. An area located north and east of an existing cemetery, containing 8.46 acres, is also designated as a density reserve area. Lot 3, which appears on this plat adjacent to Lot 4, is not part of or affected by this subdivision. It was a parcel that existed prior to the Critical Area Law. The following comments are provided for your use:

1. The plat must state how many acres of the parent parcel are located in the Critical Area as the parcel contains acreage located outside the 1,000-foot Critical Area boundary. The Critical Area acreage must exclude all State tidal wetlands.
2. The number of RCA density rights must be calculated based upon the net tract area after State tidal wetlands are deducted. The number of density rights used and remaining must be stated on the plat.
3. It appears State tidal wetlands are located within the parcel boundaries. These must be delineated on the plat and the acreage stated. Nontidal wetlands must be delineated as well.



4. The 100-foot Buffer occurs on this lot and must be delineated. The Buffer must be expanded for contiguous nontidal wetlands, where present.
5. The location of existing forest cover must be shown and quantified. If appears no forest cover is present on this lot. Therefore, 15% afforestation is required.
6. This subdivision represents a change in use from agriculture to residential, therefore, the Buffer must be fully established in forest vegetation on Lot 4. The Buffer plantings may be counted toward the 15% afforestation requirement.
7. Topography and location of soils types must be also be shown on the plat.
8. The presence of rare, threatened and endangered species and/or their habitats must be determined by the Wildlife and Heritage Service (WHS) of the Department of Natural Resources. A copy of the determination letter must be provided to this office prior to granting any approvals. All WHS comments must be addressed.

Please provide a copy of the revised plat when it is available. We may have additional comments based upon any new information. If you have any questions regarding these comments, please contact me at 410-260-3481.

Sincerely,



Wanda Diane Cole  
Natural Resources Planner

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
Executive Director

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January 8, 2004

Mr. Keith Kelley  
Baltimore County  
Department of Environmental Protection  
and Resource Management  
401 Bosley Avenue, Suite 416  
Towson, MD 21204

RE: **BC 889-03: 3-Lot Minor Subdivision; Impervious Surface Variance Request 03-17  
Hapsburg Construction Co.**

Dear Keith,

I have reviewed the information regarding the subdivision plat and impervious surface variance request. This is a proposal to resubdivide two grandfathered lots located in the LDA of Back River into three lots. There is currently one house on the two lots. I am providing the following comments for your use:

1. We cannot support a subdivision that would require a variance in order to develop the parcel. By resubdividing these lots, all grandfathered rights are lost. Therefore, the subdivision must meet the required 15% impervious surface limit.
2. This resubdivision will require 15% afforestation of the site. If a planting area is not identified on the plat, the plat must contain a Critical Area note stating that this requirement must be met.
3. The plat must contain plat notes stating the amount of existing and proposed forest cover, together with a statement that all existing and afforested areas shall be protected from future disturbances.
4. We cannot support a variance to exceed the 15% impervious surface limit. In 2002, the Maryland General Assembly reiterated its commitment to protection of the Chesapeake Bay Critical Area's water quality and wildlife habitat values. By Chapters 431 and 432 of



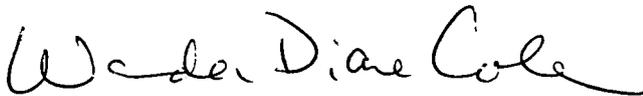
the 2002 Laws of Maryland, the General Assembly stated that variances to a local jurisdiction's Critical Area program may be granted only if a zoning board finds that an applicant has satisfied its burden to prove that the applicant meets each one of the county's variance standards. The Code of Maryland Regulations and County Code both provide standards a local government must use when granting a variance. Again, because the applicant must meet all of the standards in order for the Board to grant a variance, this office believes that, in this case, those standards clearly have not been met. I have outlined those standards below:

- i. That special conditions or circumstances exist that are peculiar to the land or structure within the jurisdiction's Critical Area program that would result in an unwarranted hardship to the applicant. The applicant has not shown that there is no opportunity to develop the site without the need for an impervious surface variance. The site contains a dwelling and meets impervious surface limits.
- ii. That a literal interpretation of this subtitle or the local Critical Area Program and related ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical area of the local jurisdiction. The applicants have reasonable use of this property, and therefore, they would not be denied a right commonly enjoyed by their neighbors. It may be possible to choose a footprint that will accommodate development of additional single-family homes without the need for a variance or to utilize the existing lots. The applicant's rights must be evaluated against the rights of other property owners under the Critical Area Program.
- iii. The granting of a variance will not confer upon an applicant any special privilege that would be denied by this subtitle or the local Critical Area program to other lands or structures within the jurisdiction's Critical Area. If the variance is granted, it would confer upon the applicant a special privilege that would be denied to others in this subdivision, as well as in similar situations in the County's Critical Area. All lots recorded after implementation of the County's Critical Area Program are subject to 15% limitations on impervious surfaces. Owners of parcels must select development footprints that will conform to all setbacks and development standards that apply to their lands.
- iv. The variance request is not based upon conditions or circumstances which are the result of the actions by the applicant, nor does the request arise from any condition conforming, on any neighboring property. The applicant has chosen a resubdivision plan that cannot meet the 15% impervious surface limit requirement, therefore, the need for a variance is the result of the action of the applicant.

- v. The granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the jurisdiction's Critical Area, and that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area law and the regulations. The applicant bears the burden to prove this factor, along with the others discussed above. In 2002, the General Assembly re-enacted its findings regarding the importance of maintaining the water quality of the Chesapeake Bay and its contributing tidal watersheds. Studies have been conducted that show that water quality diminishes as impervious surface areas approach 15%, and that water quality becomes significantly degraded once it exceeds 15%. Granting this variance will contribute to the decline of water quality in Back River, and, ultimately, the Chesapeake Bay. Decline in water quality contributes to declines in aquatic habitat, ultimately affecting the viability of local fisheries and the local economies that depend on them.

In conclusion, it is our position that, unless the Board finds that the applicant has met the burden of proof on each one of the County's variance standards, the Board must deny this application. Please provide this office with a copy of the written decision made in this case. If you have any questions, please contact me at 410-260-3481.

Sincerely,



Wanda Diane Cole  
Natural Resources Planner

cc: Marianne Mason, Counsel  
Ren Serey, Executive Director

## *Critical Area Commission*

### STAFF REPORT

January 7, 2004

**APPLICANT:** Maryland Air National Guard

**PROPOSAL:** Projected Site Improvements for Munitions and Storage Complex

**JURISDICTION:** Baltimore County

**COMMISSION ACTION:** Vote

**STAFF RECOMMENDATION:** Conceptual Approval with condition

**STAFF:** Wanda Cole

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

### **DISCUSSION:**

The Maryland Air National Guard (ANG) owns and maintains a facility contiguous to Martin State Airport in the Critical Area of Frog Mortar Creek. Many of the facilities at this site are old, obsolete, or sited in a manner that is not conducive to today's security standards. ANG is proposing development and improvement projects for FY 2005 that would include relocation of their munitions maintenance and storage complex and relocation of an access road. Future upgrades to overflow parking areas are also being considered. These projects are necessary to provide a properly sited, adequately sized, and correctly configured complex to support the munitions and training requirements for the A-10 and C-130J aircraft. The complex will encompass a 23,290 square foot (sf) area that includes:

- Administrative area- 8,050 sf
- Maintenance/equipment storage area- 4,900 sf
- Segregated storage magazine- 6,740 sf
- Storage igloos- 3,600 sf
- Relocation/consolidation of utilities
- Relocated access road, for an additional 90,000 sf

These projects are in the conceptual stage, as funding has not yet been received for project design. The National Guard Bureau will not authorize or fund these improvements, including the initial consulting and engineering costs, until ANG has shown that these projects can be

approved by the regulatory agencies. Therefore, these projected projects are being submitted for Commission review and approval with the understanding that ANG will return to the Commission for formal approval as each project is designed. This is similar to the approval the Commission granted to Maryland Aviation Administration in May 2003 for its projected development plan at Martin State Airport.

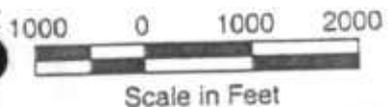
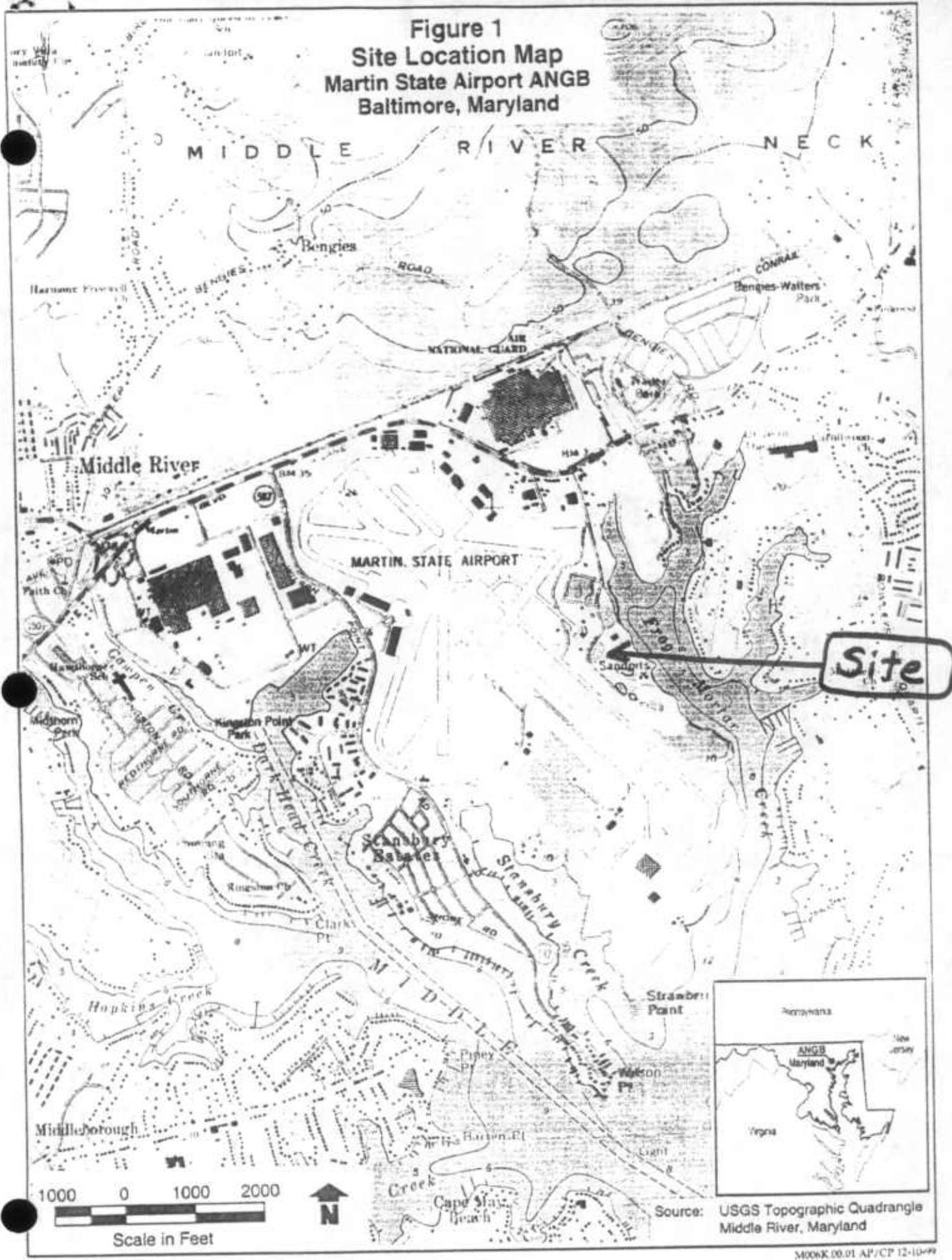
The Maryland Air National Guard property is considered an intensely developed area. Compliance with the 10% Rule will be required and pollutant removal practices will be addressed during the design phase. Stormwater management practices are also required by Maryland Department of the Environment. With the updated 10% Rule guidance manual, it is likely that a stormwater management facility can be designed to comply with both agencies' requirements.

The amount of impervious surface areas in the Critical Area portion of the site is expected to increase, however, there are opportunities to remove existing impervious surface areas and provide environmental enhancements, as well. The existing storage and maintenance facilities, which are sited close to Frog Mortar Creek, will be demolished and the area restored to wildlife habitat. The relocated maintenance and storage facilities are sited adjacent to the Critical Area boundary line. The existing gravel access road will be relocated with a parallel access road that is farther from the shoreline. There is an abandoned runway, part of which can be removed. The remainder is planned as an overflow parking area.

There are no proposed impacts in the Buffer. There are no other HPAs on this site. Any forest cover lost will be mitigated at a 1:1 ratio in an area that does not represent an aviation hazard. At this time, it is expected that the restoration of the demolished complex will meet any mitigation needs.

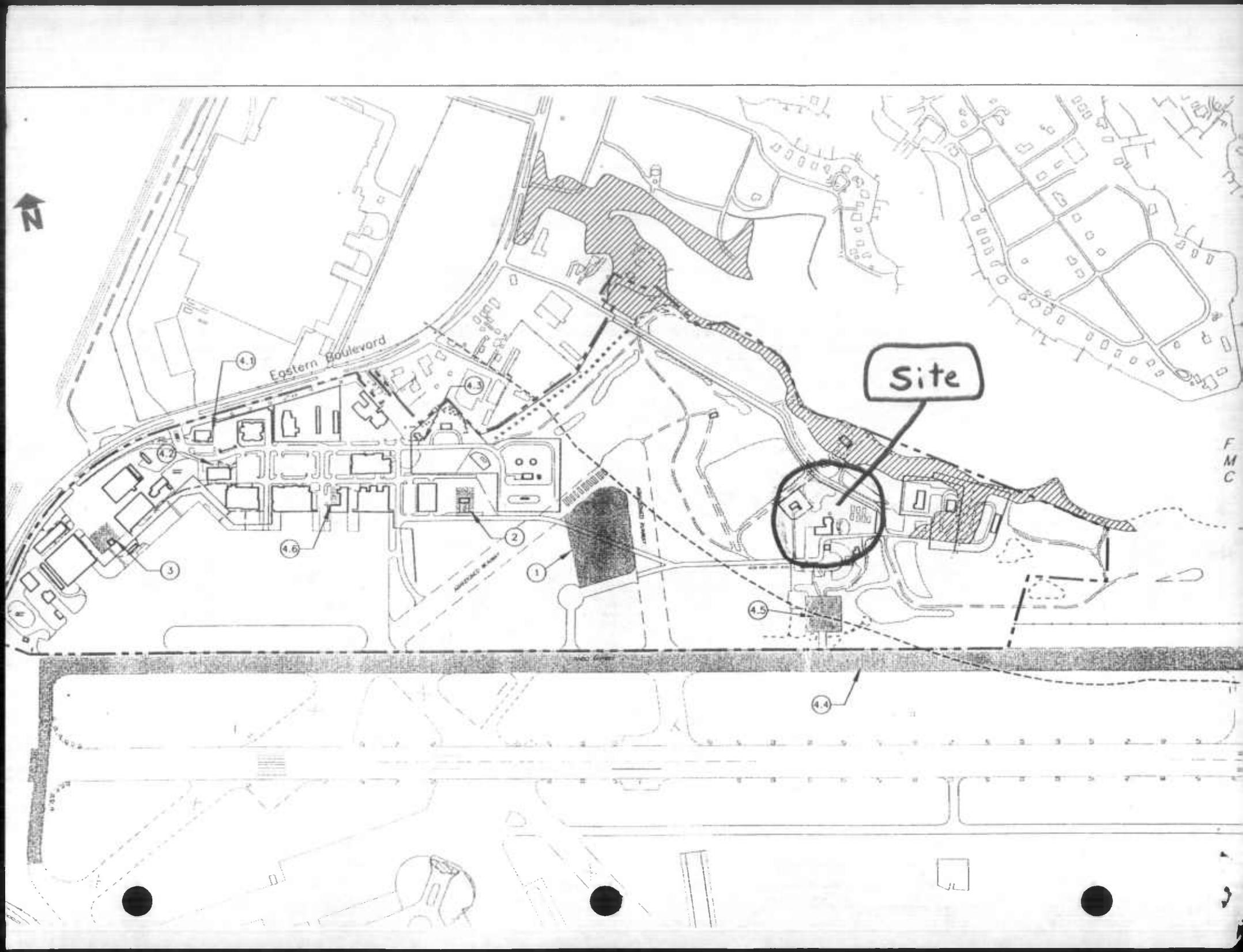
Staff recommends approval with the condition that each project must be returned to the Commission for formal approval during the final design phase.

**Figure 1**  
**Site Location Map**  
**Martin State Airport ANGB**  
**Baltimore, Maryland**



Source: USGS Topographic Quadrangle Middle River, Maryland

M006K.00.01 AP/CP 12-10-99



Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

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December 22, 2004

Dear Commissioner:

This is to inform you that there will be no meeting of the Critical Area Commission on January 5, 2005. We will hold our next meeting on **February 2, 2005**.

At present we have only two matters for Commission action. However, they are not time sensitive and can be handled at a future meeting. One of the items is a growth allocation in Cecil County. It involves a camp proposed by the Episcopal Diocese of Philadelphia and has been approved by the Cecil County Commissioners for 40 acres of growth allocation. There are no proposed impacts to the Buffer, steep slopes or other Habitat Protection Areas. I have determined that this matter can be handled as a refinement and will seek your concurrence at the February meeting.

The other item is a local bill submitted by Anne Arundel County. The bill modifies the County's Critical Area ordinance to satisfy certain conditions that the Commission required in regard to the six-year comprehensive review of the County's local program. Because the bill fulfills the Commission's prior conditions of approval, I have determined that it can be handled as a refinement. As in the Cecil County matter, I will seek your concurrence with my determination in February.

I greatly appreciate your commitment to the Commission and do not want to take more of your time than is absolutely necessary.

We will provide you with our regular Commission agenda and staff reports prior to the February 2nd meeting. If you have any questions in the interim, please feel free to contact me at (410) 260-3467 or Ren Serey at (410) 260-3462.

Sincerely,

A handwritten signature in black ink, appearing to read "Martin G. Madden".

Martin G. Madden  
Chairman

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

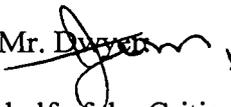
Ren Serey  
Executive Director

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November 1, 2004

Mr. Jim M. Dwyer  
Deputy Director  
Planning and Business Development  
Maryland Port Administration  
The World Trade Center  
401 E. Pratt Street, Suite 1855  
Baltimore, Maryland 21202-3041

Dear Mr. ,

On behalf of the Critical Area Commission and staff, I thank you for a most interesting and informative tour last week of the facilities of the Maryland Port Administration. You and your colleagues were extremely gracious and accommodating, and we greatly appreciate your hospitality.

As I know you are aware, it is essential for the Commission to understand the complexities and scope of the Port's operations in order to assure that the Critical Area regulations are appropriately applied. I am certain that the information you provided, and our first-hand observations and discussions, will enable us to continue to work closely and efficiently with the Port Administration in the future.

Again, I thank you for a most enjoyable day.

Sincerely,



Martin G. Madden  
Chairman

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
Executive Director

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November 1, 2004

Honorable Paula C. Hollinger, Chair  
Senate Education, Health and Environmental Affairs Committee  
2 West, Miller Senate Building  
Annapolis, Maryland 21401

Honorable Maggie L. McIntosh, Chair  
House Environmental Matters Committee  
141 Lowe House Office Building  
Annapolis, Maryland 21401

Honorable Roy Dyson, Senate Co-Chair  
Joint Committee on the Chesapeake and Atlantic  
Coastal Bays Critical Area  
102 James Senate Office Building  
Annapolis, Maryland 21401

Honorable Barbara Frush, House Co-Chair  
Joint Committee on the Chesapeake and Atlantic  
Coastal Bays Critical Area  
210 Lowe House Office Building  
Annapolis, Maryland 21401

Dear Senator Hollinger, Delegate McIntosh, Senator Dyson and Delegate Frush:

The Maryland General Assembly in its 2004 session enacted House Bill 1345 and Senate Bill 795 entitled *Chesapeake and Atlantic Coastal Bays Critical Area – Dwelling Units*. The bills define the term *dwelling unit* as it applies to the Critical Area, and require the 63 local Critical Area jurisdictions, including 16 counties, Baltimore City and 46 municipalities, to include all dwelling units within the calculation of residential density in the Resource Conservation Area. This density is limited to one dwelling unit per 20 acres.

Page 2  
November 1, 2004

The bills further provide for an exception to the density limit. The exception permits, at the local jurisdiction's discretion, one additional dwelling unit per lot or parcel in addition to the primary dwelling if the additional dwelling meets certain criteria for size, location, and waste disposal.

Local jurisdictions are required to maintain records of additional dwelling units permitted under the exception and to report this information to the Critical Area Commission on a quarterly basis. The law became effective June 1, 2004.

As of September 30, 2004 no jurisdictions have amended their local Critical Area Programs to include the optional exception to allow an additional dwelling unit in the Resource Conservation Area, and no jurisdictions have reported the approval of any such dwelling units.

The Critical Area Commission greatly appreciates the support of the Committees and looks forward to working with you in the future. If you have questions about the program or need additional information, please contact me at (410) 260-3467 or Ren Serey at (410) 260-3462.

Sincerely,

A handwritten signature in black ink that reads "Martin G. Madden". The signature is written in a cursive style with a large, sweeping initial "M".

Martin G. Madden  
Chairman

cc: Honorable Thomas V. Mike Miller  
Honorable Michael E. Busch  
Karl S. Aro, Department of Legislative Services

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
Executive Director

STATE OF MARYLAND  
CRITICAL AREA COMMISSION  
CHESAPEAKE AND ATLANTIC COASTAL BAYS  
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November 1, 2004

Honorable Paula C. Hollinger, Chair  
Senate Education, Health and Environmental Affairs Committee  
2 West, Miller Senate Building  
Annapolis, Maryland 21401

Honorable Maggie L. McIntosh, Chair  
House Environmental Matters Committee  
141 Lowe House Office Building  
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Joint Committee on the Chesapeake and Atlantic  
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102 James Senate Office Building  
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*Barbara*

Page 2  
November 1, 2004

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Sincerely,

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Martin G. Madden  
Chairman

cc: Honorable Thomas V. Mike Miller  
Honorable Michael E. Busch  
Karl S. Aro, Department of Legislative Services

Robert L. Ehrlich, Jr.  
Governor



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November 1, 2004

Ms. Meg Andrews  
Department of Transportation  
Office of Planning and Capital Programming  
P.O. Box 548  
7201 Corporate Center Drive  
Hanover, Maryland 21076

Dear Ms. Andrews:

I am writing to thank you for a most interesting and informative tour last week of the facilities of the Maryland Port Administration. You and your colleagues at the Port were extremely gracious and accommodating, and we greatly appreciate your hospitality.

As a member of the Critical Area Commission, I know you are aware that it is essential for us to understand the complexities and scope of the Port's operations in order to assure that the regulations are appropriately applied. I am certain that the information we received, as well as our first-hand observations and discussions, will enable us to continue to work closely and efficiently with the Port Administration in the future.

Again, I thank you for a most enjoyable day.

Sincerely,

A handwritten signature in cursive script that reads "Martin G. Madden".

Martin G. Madden  
Chairman

Robert L. Ehrlich, Jr.  
Governor



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November 1, 2004

Mr. Phillip Lee, P.E.  
Moffatt and Nichol  
2700 Lighthouse Point East, Suite 501  
Baltimore, Maryland 21224

Dear Mr. Lee:

On behalf of the Critical Area Commission and staff, I thank you for a most interesting and informative tour last week of the facilities of the Maryland Port Administration. You and your colleagues at the Port were extremely gracious and accommodating, and we greatly appreciate your hospitality.

As I know you are aware, it is essential for the Commission to understand the complexities and scope of the Port's operations in order to assure that the Critical Area regulations are appropriately applied. I am certain that the information you provided, and our first-hand observations and discussions, will enable us to continue to work closely and efficiently with the Port Administration in the future.

Again, I thank you for a most enjoyable day.

Sincerely,

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Martin G. Madden  
Chairman

Robert L. Ehrlich, Jr.  
Governor



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November 1, 2004

Mr. Mark Kreifle  
Assistant Chief of Engineering  
Maryland Port Administration  
2310 Broening Highway  
Baltimore, Maryland 21224

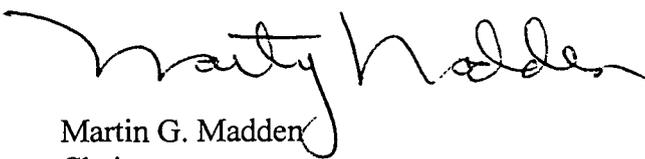
Dear Mr. Kreifle:

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November 1, 2004

Mr. Stephen E. Frank  
Manager of Special Projects  
Planning and Environment  
Maryland Port Administration  
The World Trade Center  
401 E. Pratt Street, Suite 1855  
Baltimore, Maryland 21202-3041

Déar Mr. Frank:

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Karl S. Aro, Department of Legislative Services

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October 25, 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:

Thank you for providing information on the Town of Indian Head's request to use growth allocation for the River Watch project. We have reviewed the materials including the Town's letter and five supporting attachments. This information will be helpful as we move forward.

Mary Owens and Ren Serey have scheduled meetings with representatives from CoastWatch and ATCS to discuss the project's Buffer Management Plan and stormwater management design. However, in order for me to make a determination whether the Town's request can be handled as an amendment or a refinement to the local Critical Area program, and for our staff to assemble the materials necessary for review by the full Commission, we will need some additional information, as I have outlined below. I am hopeful that by the end of this week we will be able to resolve most of these matters.

1. Three different acreage figures are used in the packet and need to be clarified. The letter states that the Town requests 13 acres of growth allocation. The site plan indicates that 11.57 acres are proposed for IDA designation. The pollutant removal calculations for the new IDA use a figure of 12.39 acres. Generally, the growth allocation acreage requested should include all of the developed portions of the project and should follow the limits of disturbance. The acreage should match the area designated on the site plan and should be the same area used in the pollutant removal calculations.
2. The stream and the 100-foot Buffer on both sides of the stream need to be clearly shown on the subdivision plans. The 100-Buffer line for the stream has been sketched in lightly in pencil on the site development plan and appears to be accurate. However, these features

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October 25, 2004

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Town of Indian Head  
4195 Indian Head Highway  
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3. need to be depicted in a more standard fashion so that the amended plats including this information can be properly recorded.
4. The Buffer Management Plan needs some corrections, clarifications, and additional detail. In order for the Commission to review the Buffer Management Plan, we will need full sized sheets, drawn to scale.

On Sheet 1, the plan needs to show and label the Potomac River; the 100-foot Buffer on the River; the stream; the 100-foot Buffer on both sides of the stream; the edge of proposed restored tidal wetlands; and the 100-foot Buffer on the tidal wetlands. The Buffer Management Plan also needs to indicate the proposed plantings for the cleared portions of the Buffer that are not on individually-owned lots.

On Sheet 2, the sample Buffer Management Plan for the individual lots, the 100-foot Buffer is incorrectly labeled "Critical Area Boundary." Because the lots are relatively small, we recommend that the plant quantities be increased, particularly along the edge of the Buffer adjacent to the backyards. Adding 10 to 12 shrubs and 20 to 30 herbaceous plants (flowering plants like Black-eyed susans, Purple cone-flower, Daisies, etc.) will help to clearly establish the edge of the Buffer and will facilitate natural regeneration further into the Buffer. Planting in the Buffer should be dense enough to allow the area to be maintained in mulch or natural grasses. It should not be planted in turfgrass and mowed.

5. The Buffer Management Plan should be accompanied by a narrative describing how the Buffer will be established both on the publicly-owned portions of the property and on the individually-owned lots. The narrative should include how the planting will be accomplished, who will be responsible for the planting, and who will be responsible for ensuring survival for two years. If passive recreational trails are proposed in this area, the narrative should include the width of the trail and the proposed construction materials.
6. The narrative should also describe how the Buffer will be protected. It should include appropriate deed restrictions and plat notes necessary to ensure that new development activities and the removal of natural vegetation are not permitted in the Buffer. It is likely that the Commission will require the recordation of these restrictions as a condition of the growth allocation approval in order to ensure the long-term protection of the Buffer.
7. The stormwater management plan and calculations need to be designed in accordance with the Fall 2003 Maryland Chesapeake and Atlantic Coastal Bays Critical Area 10% Rule Guidance Manual. The proposed Best Management Practices need to be selected and designed in accordance with those included in the Manual, which are the same as in the Maryland Department of the Environment (MDE) 2000 Stormwater Design Manual. The calculations need to reflect the current pollutant removal efficiencies.

8. The stormwater management calculations include "Roof-top Disconnects" as a Best Management Practice (BMP). "Roof-top Disconnects" are not a BMP assigned a removal efficiency, but are considered as a non-structural practice that reduces the impervious area of the site. "Roof-top Disconnects" must meet all of the standards regarding disconnection configuration, lot size, disconnection length, soil type, disconnection slope, etc. set forth in Chapter 5 of the MDE Manual. It is not clear whether this concept is appropriate for this project.
9. The stormwater management narrative, "Critical Area 10% Rule Narrative," discusses the use of sheet flow to buffer credits. It is not clear how these credits were applied; however, it appears that they would not be applicable to this site. In accordance with the Commission's 10% Rule Guidance (pages 4-5), this credit cannot be used within the Critical Area when the buffer to which the sheet flow is directed is the 100-foot Buffer adjacent to tidal waters, tidal wetlands, and tributary streams.
10. It appears that conversion of the existing sediment pond to a Wet Extended Detention Pond may be an appropriate BMP; however, it is not clear that the pond will be designed in accordance with the standards in the MDE Manual. The MDE Manual recommends a drainage area greater than 25 acres and/or base flow or supplemental water to retain the permanent pool.
11. It is not clear that the pollutant removal requirement will be able to be satisfied with the Wet Extended Detention Pond; therefore additional BMPs may be required. If alternative BMPs cannot be reasonably accommodated on-site, it is possible to meet the pollutant removal requirement at an off-site location or through the use of offsets. Section 6.0 of the Fall 2003 Maryland Chesapeake and Atlantic Coastal Bays Critical Area 10% Rule Guidance Manual provides additional information about offsets.
12. In the discussion regarding the outstanding violation, it is not clear how the Town is proposing to meet the 3:1 mitigation requirement of 21,000 square feet for clearing 7,000 square feet of stream Buffer. At our meeting on September 17, 2004, we discussed that this mitigation requirement could be addressed by the anticipated restoration of the tidal basin along the Potomac River at the eastern edge of the site. The restoration effort is necessary to mitigate for a past violation, is closely associated with protection of the stream and its Buffer, and needs to be part of the Town's growth allocation package. It is not clear from the information submitted that the Town and/or the developer has committed to the restoration effort at this time as part of the River Watch Project, nor is there necessary documentation of the restoration to determine whether it is sufficient to mitigate for the violation. A description and appropriate conceptual plans for the strategy to mitigate for the clearing violation need to be included as part of the growth allocation request.

The Honorable Edward W. Rice  
Town of Indian Head  
October 25, 2004  
Page 4

13. As we discussed in September, in addition to the Town, both MDE and the U. S. Army Corps of Engineers documented this violation. It is my understanding that MDE is not requiring further restoration of the site; however the U.S. Army Corps of Engineers has an outstanding restoration activity notice dated November 7, 2001. Additional information is needed regarding how and when the Town intends to perform the required restoration.

Following the meetings with the Town's consultants and receipt of additional information this week, it is possible that I will have sufficient information to make an amendment/refinement determination. If the matter can be handled as a refinement and all of the information necessary for the full Commission to review the matter has been received, we will make every effort to place the project on the agenda for the November 3, 2004 Commission meeting.

I thank you for your cooperation in these matters and look forward to receiving the requested clarifications and additional information. If I can be of any service in the interim, please do not hesitate to contact me at (410) 260-3467 or Ren Serey at (410) 260-3462.

Sincerely,



Martin G. Madden  
Chairman

cc: Marianne D. Mason, Assistant Attorney General  
Ren Serey  
Larry Duket

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

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VIA FAX

October 7, 2004

Mr. David R. Thompson  
Cowdrey, Thompson and Karsten  
130 North Washington Street  
P.O. Box 1747  
Easton, Maryland 21601

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To	Marianne Mason	From	Mary
Co.		Co.	
Dept.		Phone #	260 3480
Fax #		Fax #	

**RE: Ratcliffe Farm, LLC  
Critical Area Buffer Establishment and Management Plan (2 Plan Sheets and 3 pages of Specifications dated 9-21-04)  
DFS Habitat Creation Plan (1 Sheet dated 9-21-04)**

Dear Mr. Thompson:

I am writing in response to your letter dated October 5, 2004 regarding the referenced plans and specifications. We have reviewed the plans and determined that with two minor modifications, the package will satisfy the Critical Area Commission's conditions of approval of the growth allocation.

We have discussed the modifications with Mr. Bill Stagg of Lane Engineering, and he has indicated that they are acceptable to you and your clients. The modifications involve the long-term protection of the Delmarva Fox Squirrel Habitat Areas and the long-term Buffer management/maintenance of certain portions of individual lots.

With regard to the Delmarva Fox Squirrel Habitat Areas, identified as Open Space B totaling 20.52 acres and Open Space C totaling 21.715 acres, these areas shall be protected by an easement held by the Eastern Shore Land Conservancy or a similar organization, for the purpose of maintaining this land as viable Delmarva Fox Squirrel Habitat.

With regard to the Buffer management on the individual lots, on page 2 of the specifications, the following language shall be deleted from paragraph 3, "... turf grass mowed as necessary, ..." This paragraph will then read, "The ground plain of the non-forested area of the Buffer not proposed for afforestation shall be established/maintained in warm season grasses or meadow/perennials mowed up to 4 times annually, additional shrubs/perennials and mulch, or

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VIA FAX

October 7, 2004

Mr. David R. Thompson  
Cowdrey, Thompson and Karsten  
130 North Washington Street  
P.O. Box 1747  
Easton, Maryland 21601

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We have discussed the modifications with Mr. Bill Stagg of Lane Engineering, and he has indicated that they are acceptable to you and your clients. The modifications involve the long-term protection of the Delmarva Fox Squirrel Habitat Areas and the long-term Buffer management/maintenance of certain portions of individual lots.

With regard to the Delmarva Fox Squirrel Habitat Areas, identified as Open Space B totaling 20.52 acres and Open Space C totaling 21.715 acres, these areas shall be protected by an easement held by the Eastern Shore Land Conservancy or a similar organization, for the purpose of maintaining this land as viable Delmarva Fox Squirrel Habitat.

With regard to the Buffer management on the individual lots, on page 2 of the specifications, the following language shall be deleted from paragraph 3, "... turf grass mowed as necessary, ...". This paragraph will then read, "The ground plain of the non-forested area of the Buffer not proposed for afforestation shall be established/maintained in warm season grasses or meadow/perennials mowed up to 4 times annually, additional shrubs/perennials and mulch, or

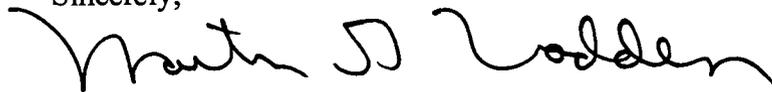
Mr. Thompson  
October 7, 2004  
Page 2

some combination of the above." Of course, if a property owner does not want to maintain this area in low-growing vegetation and desires to allow it to naturally regenerate, or to plant additional canopy and understory trees in this area, they would be allowed to do so.

This letter serves as the requested written affirmation that we do have an understanding, and that subject to the filing and execution of the referenced documents with the modifications outlined herein, the Commission will withdraw its instructions to the Town limiting the issuance of building permits on the affected lots.

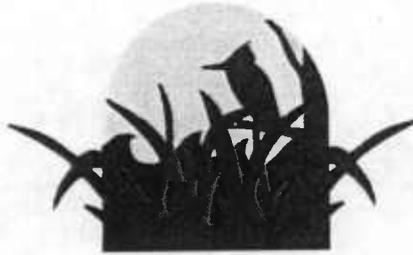
I wish to express my sincere appreciation to Mr. Bill Stagg of Lane Engineering, for working so closely and cooperatively with the Commission to develop a plan that satisfies the Commission's water quality and resource protection objectives and meets the needs of your clients.

Sincerely,

A handwritten signature in black ink, appearing to read "Martijn G. Madden". The signature is fluid and cursive, with a large initial "M" and a stylized "G" and "M" at the end.

Martijn G. Madden  
Chairman

cc: The Honorable Robert Willey  
Christopher B. Kehoe, Esquire  
Tom Hamilton  
Mary Owens  
Glenn Therres



Martin G. Madden  
Chairman

STATE OF MARYLAND  
CRITICAL AREA COMMISSION  
CHESAPEAKE AND ATLANTIC COASTAL BAYS

September 30, 2004

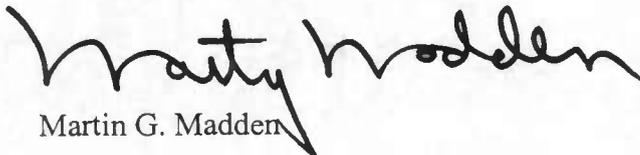
Ms. Ann Swanson  
Chesapeake Bay Commission  
60 West Street, Suite 200  
Annapolis, Maryland 21401

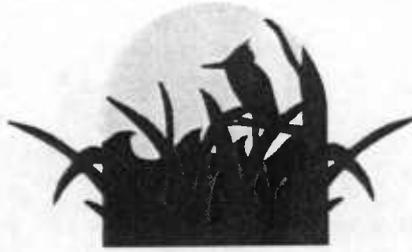
Dear Ms. Swanson:

On behalf of all of us at the Critical Area Commission, I would like to offer my sincere thanks for your excellent presentation on the history, work, and unique challenges of the Chesapeake Bay Commission at the recent Critical Area Commission Workshop. Your presentation was informative, timely, and extremely well received by both the staff and Commissioners. Your excellent PowerPoint slides and your thoughtful insights helped to convey the progress that has been made in restoring the Chesapeake Bay and the need to continue, and, in some cases, strengthen our efforts.

As you know, education, communication, and innovation are important components of broad-scale and cross-cutting restoration efforts and are also essential to the work of the Critical Area Commission. We greatly appreciate your time and effort in making this presentation, and we look forward to continuing our excellent working relationship with you, the staff, and members of the Commission as we continue our efforts to restore the Bay.

Sincerely,

  
Martin G. Madden



Martin G. Madden  
Chairman

STATE OF MARYLAND  
CRITICAL AREA COMMISSION  
CHESAPEAKE AND ATLANTIC COASTAL BAYS

September 30, 2004

Ms. Pat Stuntz  
Chesapeake Bay Commission  
60 West Street, Suite 200  
Annapolis, Maryland 21401

Dear Ms. Stuntz,

On behalf of all of us at the Critical Area Commission, I would like to offer my sincere thanks for your participation in the presentation on the history, work, and unique challenges of the Chesapeake Bay Commission at the recent Critical Area Commission Workshop. The presentation was clear, well-researched, and extremely well received by both the staff and Commissioners. The excellent PowerPoint slides helped to convey the progress that has been made in restoring the Chesapeake Bay and also the need to continue our efforts.

As you know, education, communication, and innovation are important components of broad-scale and cross-cutting restoration efforts and are essential to the work of the Critical Area Commission. We greatly appreciate your time and effort in preparing the presentation, and we look forward to continuing our excellent working relationship with you and members of the Commission as we continue our efforts to restore the Bay.

Sincerely,

Martin G. Madden



Martin G. Madden  
Chairman

STATE OF MARYLAND  
CRITICAL AREA COMMISSION  
CHESAPEAKE AND ATLANTIC COASTAL BAYS

September 30, 2004

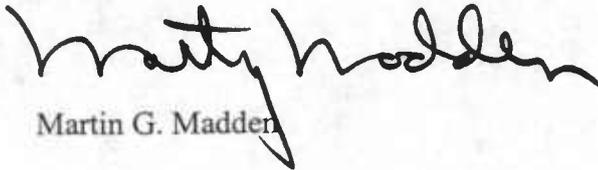
Mr. Kerry Kehoe  
Coastal Zone Management  
Department of Natural Resources  
Tawes State Office Building, E-2  
580 Taylor Avenue  
Annapolis, Maryland 21401

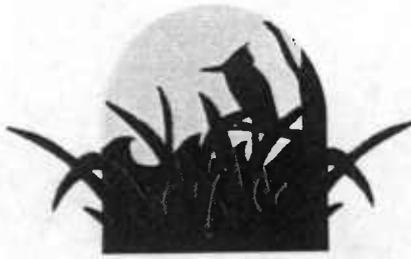
Dear Mr. Kehoe,

On behalf of all of us at the Critical Area Commission, I would like to offer my sincere thanks for your excellent presentation on shore erosion, sea level rise, and shoreline change at the recent Critical Area Commission Workshop. The Commission is concerned about these issues, and your presentation provided important information about the Department of Natural Resources' efforts to obtain, classify, and analyze information that may be used to make important decisions about shoreline development.

As you know, education, and the ability to understand and rely on the technical knowledge of experts are necessary in order to plan effectively for both conservation and development and are essential to the work of the Critical Area Commission. We greatly appreciate your time and effort in making this presentation, and we look forward to working with you and the staff of the Department of Natural Resources on issues relating to shoreline change in the future.

Sincerely,

  
Martin G. Madden



Martin G. Madden  
Chairman

STATE OF MARYLAND  
CRITICAL AREA COMMISSION  
CHESAPEAKE AND ATLANTIC COASTAL BAYS

September 30, 2004

Ms. Britt Eckhardt Slattery  
U.S. Fish and Wildlife Service  
Chesapeake Bay Field Office  
177 Admiral Cochrane Drive  
Annapolis, Maryland 21401

Dear Ms. ~~Slattery~~ *Britt*,

On behalf of all of us at the Critical Area Commission, I would like to offer my sincere thanks for your excellent presentation on BayScaping at the recent Critical Area Commission Workshop. Your presentation was informative, timely, and extremely well received by both the staff and Commissioners. Your wonderful photos of successful BayScapes and your thoughtful and humorous stories about your field experiences were entertaining and inspiring.

As you know, education and innovation are important components of effective land use planning and implementation and are essential to the success of the Critical Area Program. The Critical Area Commission greatly appreciates your time and effort in making this presentation, and we look forward to working with you and the staff of the U.S. Fish and Wildlife Service on BayScaping opportunities in the future.

Sincerely,

*Marty Madden*  
Martin G. Madden



Martin G. Madden  
Chairman

STATE OF MARYLAND  
CRITICAL AREA COMMISSION  
CHESAPEAKE AND ATLANTIC COASTAL BAYS

September 30, 2004

Mr. Rick Ayella  
Water Resources Administration  
Maryland Department of the Environment  
Montgomery Park Business Center, Suite 430  
1800 Washington Boulevard  
Baltimore, Maryland 21230-1708

Dear Mr. *Rick,*

On behalf of all of us at the Critical Area Commission, I would like to offer my sincere thanks for your excellent presentation on shore erosion control at the recent Critical Area Commission Workshop. The Commission reviews many shore erosion control projects, and your presentation provided technical information, recommendations and insights that were extremely well received by both the staff and commissioners.

As you know, education, innovation, and the ability to be flexible are important components of effective land use planning and implementation and are essential to the success of the Critical Area Program. The Critical Area Commission greatly appreciates your time and effort in making this presentation, and we look forward to working with you and the staff of the Maryland Department of the Environment on shore erosion control projects in the future.

Sincerely,

*Martin G. Madden*

Martin G. Madden

Robert L. Ehrlich, Jr.  
*Governor*



Martin G. Madden  
*Chairman*

Michael S. Steele  
*Lt. Governor*

Ren Serey  
*Executive Director*

**STATE OF MARYLAND  
CRITICAL AREA COMMISSION  
CHESAPEAKE AND ATLANTIC COASTAL BAYS**

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(410) 260-3460 Fax: (410) 974-5338  
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**VIA FAX**

September 21, 2004

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

Re: Riverwatch Development: Response to Letter of  
August 31, 2004

Dear Mayor Rice:

I was pleased that we were able to meet last week on the Riverwatch site and discuss the issues related to growth allocation and protection of the Critical Area Buffer. It was important for me to see the site and I appreciate the arrangements you made for our visit.

As we agreed, I am writing to provide you a summary of the points we discussed regarding the Town's submittal of a growth allocation package to the Critical Area Commission. In order for me to consider the submittal complete for processing, it will need to contain the following, in addition to the items set out in your letter of August 31, 2004:

- **Subdivision Plan:** The subdivision plan must be amended to show the stream located 1) in the community area between the Potomac River and Riverwatch Drive, and 2) on lots 1-14 on Rivers Watch Terrace. This is the area we walked during our site visit. A 100-foot Buffer must be delineated from this stream and shown on the subdivision plan submitted with the request for growth allocation. It is possible that the Commission's review of the growth allocation may identify additional revisions necessary to ensure that development activities do not cause impacts to the Buffer.
- **Buffer Management Plan:** A Buffer Management Plan must be prepared for the project. These plans typically consist of a landscape plan for the Buffer with a table identifying the quantity, species, size, stock, and spacing of the plants. Depiction of the plantings may be for a typical lot rather than the entire Buffer area. We will provide by a separate mailing a generic Buffer Management Plan for your use.



Honorable Edward W. Rice

September 21, 2004

Page 2

- Outstanding violation: The growth allocation submittal should include a discussion of the outstanding violation of the Town's Critical Area ordinance by the former owner of the site, Mr. Ken Ammar. This violation involved the clearing of 7,000 square feet of stream Buffer for which the Town assessed a 3:1 mitigation requirement of 21,000 square feet. As we discussed, both the Maryland Department of the Environment and the U. S. Army Corps of Engineers documented this violation. The growth allocation submittal should clearly indicate how this outstanding mitigation requirement is being met and should distinguish it from any mitigation related solely to the Riverwatch project.
- Restoration of the tidal basin: Our discussion of the Riverwatch project and the Town's proposed public access project included the anticipated restoration of the tidal basin along the Potomac River at the eastern edge of the site. The restoration effort is closely associated with protection of the stream and its Buffer and should be included in the Town's growth allocation package. The plans should indicate the establishment of a 100-foot Buffer adjacent to the reconfigured and restored tidal wetland. The wetland project, the establishment of Buffer from the new landward edge of the wetland, and any mitigation associated with this project should be included in the development plans and the growth allocation submittal.

As we discussed, you agreed that the Town would not issue additional building permits for lots 1-14 until the Commission has approved the Town's growth allocation, and that the Town would rescind the two building permits in this area that were previously issued. You said that you anticipate submitting the growth allocation package to the Commission by October 8, 2004. Upon receipt of the package I will review the materials to determine 1) whether they are complete for processing as a change to the Town of Indian Head's Critical Area Program, and 2) whether the Commission will consider the change as an amendment or a refinement to the Town's Program. I will notify you as soon as those determinations are made.

I thank you for your cooperation in these matters and look forward to receiving the growth allocation package and to working with you in the future. If I can be of any service in the interim, please do not hesitate to contact me at (410) 260-3467 or Ren Serey at (410) 260-3462.

Sincerely,



Martin G. Madden  
Chairman

cc: Marianne D. Mason, Assistant Attorney General  
Ren Serey  
Larry Duket  
Ron Young

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

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[www.dnr.state.md.us/criticalarea/](http://www.dnr.state.md.us/criticalarea/)

September 8, 2004

Mr. Robert D. Miller  
Land Use and Environment Officer  
2664 Riva Road, MS 6401  
Annapolis, Maryland 21401

Dear Mr. Miller, *Bob,*

I enjoyed seeing you again during the Joint Legislative Oversight Committee's boat trip on the South River.

You, Betty Dixon and your staff gave a thorough and informative overview of Anne Arundel County's Critical Area Program and your recent efforts to ensure effective enforcement of the regulations. I think the Committee members and other legislators in attendance were able to appreciate not only the County's commitment to the program but also the challenges you face in implementing the law over such a large and extensively developed area.

The Critical Area Commission has always enjoyed our cooperative relationship with Anne Arundel County and we look forward to working with you in the future.

Sincerely,

*Marty Madden*

Martin G. Madden  
Chairman

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
Executive Director

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September 8, 2004

Mr. Drew Koslow  
c/o South River Federation  
6 Herndon Avenue  
Annapolis, Maryland 21403

Dear Mr. ~~Koslow~~ *Drew*,

I enjoyed meeting you during the Joint Legislative Oversight Committee's boat trip on the South River.

Your attendance and comments highlighted the strong citizen support for the Critical Area law and the willingness of individuals and organizations to get involved in its implementation. I was particularly impressed by your support for the recent changes Anne Arundel County has made to its enforcement program. As you said, however, success will depend on the County's continued progress in addition to your on-going educational and monitoring efforts.

If the Commission or I can ever be of service, please let us know.

Sincerely,

A handwritten signature in cursive script that reads "Marty Madden".

Martin G. Madden  
Chairman

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
Executive Director

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September 8, 2004

Ms. Margaret McHale  
Department of Legislative Services  
Senate Education, Health and Environmental Affairs Committee  
Miller Senate Office Building  
Annapolis, Maryland 21401

Dear Ms. ~~McHale~~ *Margaret*,

I am writing to thank you for making the Joint Legislative Oversight Committee's recent boat trip such a success. I think the Committee members and the other legislators gained important first-hand knowledge regarding implementation of the new enforcement provisions of the law. It also was significant that they heard and saw some of the on-going challenges local governments face in this important aspect of the Critical Area program. You and Patrick Tracy ensured that we had a good turnout and that everyone was well briefed on the issues. You also did a nice job with the weather.

I appreciate your many efforts on our behalf, Margaret, and look forward to working with you in the future.

Sincerely,

*Marty Madden*  
Martin G. Madden  
Chairman

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
Executive Director

STATE OF MARYLAND  
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September 8, 2004

Mr. Patrick Tracy  
Department of Legislative Services  
House Environmental Matters Committee  
Lowe House Office Building  
Annapolis, Maryland 21401

Dear Mr. Tracy,

*Patrick*

I am writing to thank you for making the Joint Legislative Oversight Committee's recent boat trip such a success. I think the Committee members and the other legislators gained important first-hand knowledge regarding implementation of the new enforcement provisions of the law. It also was significant that they heard and saw some of the ongoing challenges local governments face in this important aspect of the Critical Area program. You and Margaret McHale ensured that we had a good turnout and that everyone was well briefed on the issues. You also did a nice job with the weather.

I appreciate your many efforts on our behalf, Patrick, and look forward to working with you in the future.

Sincerely,

A handwritten signature in black ink that reads "Marty Madden".

Martin G. Madden  
Chairman

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
Executive Director

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September 8, 2004

Mr. Wayne Miller  
Ms. Wendy Miller  
2425 Garrity Road  
St. Leonard, Maryland 20685

Dear Mr. and Ms. Miller:

I am writing in response to your letter regarding the Dominion Pipeline Expansion project across St. Leonard Creek in Calvert County. For several months Critical Area Commission staff have been reviewing preliminary information concerning this project with other State, federal and local representatives. At this time we understand that the regulatory evaluations have not been completed.

The proposal to expand the existing natural gas pipeline through Calvert County includes several alternative alignments where the new pipeline would diverge from the existing pipeline. One of the proposals, as you point out, would cross St. Leonard Creek south of the existing pipeline. We will continue to monitor the situation and will keep your letter on file should the matter of the alignment come before the Commission in a formal manner.

If you have questions or need additional information, please contact Mr. Ren Serey, the Commission's Executive Director, at (410) 260-3462.

Sincerely,

A handwritten signature in black ink that reads "Martin G. Madden".

Martin G. Madden  
Chairman

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

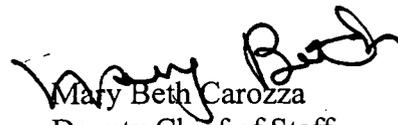
Ren Serey  
Executive Director

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September 8, 2004

MEMORANDUM

TO:

  
Mary Beth Carozza  
Deputy Chief of Staff  
Office of the Governor

FROM:

Martin G. Madden 

SUBJECT:

Wetipquin Road Bridge – Wicomico County

As you requested, I have reviewed the information you forwarded to me regarding construction of the Wetipquin Road Bridge in Wicomico County. The replacement of the existing bridge will be undertaken by Wicomico County. The County's Department of Public Works is seeking permits from the U.S. Army Corps of Engineers, other federal agencies, and the Maryland Department of the Environment.

As a local government project that does not have significant economic or environmental impacts, this project will not require formal approval by the Critical Area Commission. Our regulations, at COMAR 27.02.02, provide for staff review of the project site plans and the County's certification that the project will be carried out consistent with the local Critical Area Program. To date, we have not received any information on the project, but should it be received, I will make sure it is handled in an expedited manner.

If you have questions or would like additional information about the Commission's regulations or procedures, please feel free to contact me at (410) 260-3467.

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
Executive Director

STATE OF MARYLAND  
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[www.dnr.state.md.us/criticalarea/](http://www.dnr.state.md.us/criticalarea/)

September 7, 2004

Mr. Carl Hager  
Ms. Carole Hager  
2423 Garrity Road  
St. Leonard, Maryland 20685

Dear Mr. and Ms. Hager:

I am writing in response to your letter regarding the Dominion Pipeline Expansion project across St. Leonard Creek in Calvert County. For several months Critical Area Commission staff have been reviewing preliminary information concerning this project with other State, federal and local representatives. At this time we understand that the regulatory evaluations have not been completed.

The proposal to expand the existing natural gas pipeline through Calvert County includes several alternative alignments where the new pipeline would diverge from the existing pipeline. One of the proposals, as you point out, would cross St. Leonard Creek south of the existing pipeline. We will continue to monitor the situation and will keep your letter on file should the matter of the alignment come before the Commission in a formal manner.

If you have questions or need additional information, please contact Mr. Ren Serey, the Commission's Executive Director, at (410) 260-3462.

Sincerely,

A handwritten signature in cursive script that reads "Martin G. Madden".

Martin G. Madden  
Chairman

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

STATE OF MARYLAND  
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August 9, 2004

Mr. Joseph Rutter  
Planning and Zoning Officer  
2664 Riva Road  
P.O. Box 6675  
Annapolis, Maryland 21401

Re: Draft Subdivision and Development Code

Dear Mr. Rutter:

Thank you for providing a copy of Anne Arundel County's Draft Subdivision and Development Code. Our staff is reviewing the document and will coordinate with your office regarding our initial suggestions and comments. We are pleased to provide any assistance you may need in this regard, including discussions with our Program Subcommittee, if you think that would be helpful.

If you have specific questions about our review, please contact Mr. Ren Serey at (410) 260-3462.

Sincerely,

A handwritten signature in black ink, appearing to read "Martin G. Madden".

Martin G. Madden  
Chairman

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

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August 9, 2004

Mr. Hugh D. Hale  
2213 Garrity Road  
St. Leonard, Maryland 20685

Dear Mr. Hale:

I am writing in response to your letter regarding the Dominion Pipeline Expansion project across St. Leonard Creek in Calvert County. Critical Area Commission staff have been reviewing preliminary information concerning this project for several months with other State, federal and local representatives. At this time we understand that the regulatory evaluations have not been completed.

The proposal to expand the existing natural gas pipeline through Calvert County includes several alternative alignments where the new pipeline would diverge from the existing pipeline. One of the proposals, as you point out, would cross St. Leonard Creek south of the existing pipeline. We will continue to monitor the situation and will keep your letter on file should the matter of the alignment come before the Commission in a formal manner.

If you have questions or need additional information, please contact Mr. Ren Serey, the Commission's Executive Director, at (410) 260-3462.

Sincerely,

A handwritten signature in cursive script, appearing to read "Martin G. Madden".

Martin G. Madden  
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Martin G. Madden  
Chairman

Ren Serey  
Executive Director

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August 9, 2004

Ms. Anne Oman  
2207 Garrity Road  
St. Leonard, Maryland 20685

Dear Ms. Oman:

I am writing in response to your letter regarding the Dominion Pipeline Expansion project across St. Leonard Creek in Calvert County. Critical Area Commission staff have been reviewing preliminary information concerning this project for several months with other State, federal and local representatives. At this time we understand that the regulatory evaluations have not been completed.

The proposal to expand the existing natural gas pipeline through Calvert County includes several alternative alignments where the new pipeline would diverge from the existing pipeline. One of the proposals, as you point out, would cross St. Leonard Creek south of the existing pipeline. We will continue to monitor the situation and will keep your letter on file should the matter of the alignment come before the Commission in a formal manner.

If you have questions or need additional information, please contact Mr. Ren Serey, the Commission's Executive Director, at (410) 260-3462.

Sincerely,

A handwritten signature in black ink, appearing to read "Martin G. Madden".

Martin G. Madden  
Chairman



Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
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Michael S. Steele  
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Ren Serey  
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August 4, 2004

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

**BY CERTIFIED MAIL**

Re: Notice of Failure to Enforce Requirements of Critical Area Program – River Watch Development (Centex Homes)

Dear Mayor Rice:

I write this letter reluctantly, and with grave concern about the Town of Indian Head's implementation of its Critical Area program regarding the 59-lot River Watch development in the Limited Development Area (LDA) of the Town's Critical Area.

The Annotated Code of Maryland, Natural Resources Article Section 8-1815(b), requires the Chairman of the Critical Area Commission, whenever he or she has reason to believe that a local jurisdiction is failing to enforce the requirements of its Critical Area program applicable to a particular development, to serve notice upon the local jurisdiction. After consultation with my Assistant Attorney General, I have concluded that the statute requires me to issue this notice. I believe that the River Watch project is in violation of the Critical Area law based upon the following facts and circumstances.

When the Town first notified the Critical Area Commission of the proposed River Watch residential development project in 2003, Commission staff provided the Town with a list of detailed comments about the deficiencies in the subdivision information submitted for Commission review. (Letter of April 29, 2003 from Wanda Cole to Ronald Young.) Included in those comments are several issues which were not addressed by the Town and which have become violations today, namely, the excess of impervious surface on the site, the lack of delineated Buffer lines along the streams, and excessive forest clearing.

The Town's response to the Commission's April 29, 2003 letter informed us that the Town was "convinced that the project met all requirements of the Critical Area Commission." (Letter of May 21, 2003 from Ronald Young to Wanda Cole.) Rather than submitting a revised subdivision plat to the Commission, the Town proceeded to approve the project.

Despite the Town's having been advised more than a year ago that the entire site would be limited to 15% impervious surface under State law, and that growth allocation approval from the Commission would be required for a development with greater than 15% impervious surface, the Town approved plats and issued building permits for dwellings covering up to 35% of individual lots. Today, the site officially remains classified as LDA, although the Town has issued permits and approvals that are illegal on an LDA site. I understand that clearing and grading of the site and construction of homes is underway, and that a number of the homes are already occupied.

To date, the Town has not submitted a request for growth allocation to the Commission, and the site remains in violation. In particular, the River Watch project is in violation of the following provisions of State law and the Town's Critical Area program:

- **Limits on Impervious Surfaces in the Limited Development Area:** Annotated Code of Maryland, Natural Resources Article Section 8-1808.3 (d) (4) requires that "If an individual lot 1 acre or less in size is part of a subdivision approved after December 1, 1985, then man-made impervious surfaces of the lot may not exceed 25% of the lot. However, the total of the impervious surfaces over the entire subdivision may not exceed 15%." This provision is also found in the Town of Indian Head Zoning Ordinance, Article IX, Part III, Section 955 (c) (vii) C.
- **Limits on clearing of forests and developed woodlands:** COMAR 27.01.02.04 C (3-5) and Town of Indian Head Zoning Ordinance, Article IX, Part III, Section 955 (c) (iii-v) limit forest clearing on a development site in the Limited Development Area. According to the plat, clearing is currently 47.95%. Shoreline protection and planting of water grasses are not provided for as an alternative to replacement of lost forest cover.
- **Development Activities in the Buffer:** COMAR 27.01.09.01.C and the Town of Indian Head Zoning Ordinance, Article IX, Part III, Section 971 (d) require the Buffer to be established and prohibit development activities in it.

Because the Town has stated that it will continue to issue building permits on this site, I must conclude that the site will remain in violation of impervious surface limits and

forest clearing limits, unless and until the Commission approves the use of growth allocation for the appropriate area. Despite the assertions in the letter from Town Manager Ronald Young of July 21, 2004, the Town has not submitted the materials necessary for the Commission to consider a request for growth allocation. To amend the Town's Critical Area Program and maps for the use of growth allocation, the Town must submit to the Commission the following materials:

- A resolution or other appropriate documentation from the Mayor and Council that the Town has:
  - followed the established procedures in the Town's Critical Area Program for the awarding of growth allocation;
  - awarded specific acreage of growth allocation to the River Watch site; and
  - included any appropriate special conditions or time limits concerning completion of the project.
- A map indicating the specific area of the River Watch site the Town proposes for the use of growth allocation.
- A site plan that shows the 100-foot and expanded Buffers from the Potomac River shoreline and tributary and intermittent streams.
- Documentation from the Maryland Department of Natural Resources concerning the presence or absence on the site at the time of initial subdivision approval of Habitat Protection Areas including threatened or endangered species or their habitats; plant or wildlife habitats including habitat for Forest Interior Dwelling Birds; and Natural Heritage Areas;
- Measures for protecting and conserving any identified Habitat Protection Areas.

Within 10 working days of receipt of the Town's request to amend its Critical Area Program for the use growth allocation, the Commission will notify the Town whether the proposal is complete and accepted for processing. I then have 30 days to determine whether the proposed change is a program amendment or a program refinement. In either circumstance, the Commission may vote to attach conditions to any approval of the Town's use of growth allocation for this project.

Please respond to this letter within 30 days and notify the Commission of the action you have taken to remedy the violations at this site. Should the Commission fail to receive a satisfactory response from you within 30 days, the Critical Area law authorizes me to refer this matter to the Attorney General for appropriate legal action pursuant to Code,

Honorable Edward W. Rice  
August 2, 2004  
Page 4

Natural Resources Article 8-1815(b-c) (enclosed). It is my sincere hope that this will not be necessary.

Thank you for your anticipated cooperation. If you have questions about this letter, please contact me at (410) 260-3467 or Assistant Attorney General Marianne D. Mason at (410) 260-8351.

Sincerely,

A handwritten signature in cursive script, appearing to read "Martin G. Madden".

Martin G. Madden  
Chairman

cc:

Honorable Warren A. Bowie  
Honorable Dennis J. Scheessele  
Honorable Murray D. Levy  
Honorable W. Daniel Mayer  
Centex Homes  
Marianne D. Mason, Assistant Attorney General



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/](http://www.dnr.state.md.us/criticalarea/)

July 2, 2004

Associate Deputy Secretary Pete Jensen  
Department of Natural Resources  
580 Taylor Avenue, C-4  
Annapolis, Maryland 21401

Dear Mr. Jensen:

As you know, for the past month, discussions have been occurring among the staffs of DNR, the Critical Area Commission, and representatives of Days Cove Reclamation Co. regarding a proposed amendment to a lease between Days Cove and DNR. The lease amendment would allow Days Cove to expand its existing sanitary landfill operation located on State land. Because part of the proposed expansion area would cover land in the Critical Area, and because a sanitary landfill, or the expansion of an existing sanitary landfill, is a prohibited use in the Critical Area, my staff and our Assistant Attorney General have been working to ensure that all parties are aware of this legal restriction on the proposed activity.

Days Cove representatives have questioned the accuracy of the maps delineating the Critical Area line on the State property proposed for lease amendment. I have asked my Chief of Projects, Regina A. Esslinger, to examine the maps and to check them for accuracy, and she is satisfied that the Critical Area line as shown on the map submitted by Days Cove is consistent with the State tidal wetlands maps. That map depicts an area of approximately 2 + acres of the proposed lease area as within the Critical Area, and the map is consistent with the Baltimore County Critical Area maps on file at the Commission.

Recently, Warren K. Rich, an attorney representing Days Cove Reclamation Co., wrote to Ren Serey about the State tidal wetlands map on which the Critical Area line at the Days Cove site is based. In a letter of June 24, 2004 (enclosed), Mr. Rich submitted a copy of the State wetlands map which was annotated by a consultant for Days Cove to show "almost all of the proposed landfill area" as outside of the Critical Area. However, as long as any of the leased land proposed for the expansion of the sanitary landfill is in the Critical Area, that land in the Critical Area may not be used for that purpose.

TTY For the Deaf

Annapolis: (410) 974-2609 D.C. Metro: (301) 586-0450

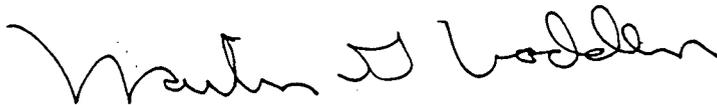


Mr. Jensen  
July 2, 2004  
Page Two

It appears that Days Cove is disputing the accuracy of the Critical Area line shown on the official Baltimore County maps, or, in the alternative, that Days Cove wishes the Commission to make a determination that the State wetlands maps are themselves incorrect. However, the Critical Area Commission cannot alter the line on the official maps. Because Baltimore County defers to the State tidal wetlands maps in case of inconsistency between those maps and the county's Critical Area maps, the proper procedure is for DNR or your lessee to request a map amendment from the Department of the Environment. MDE will then follow its process for evaluating the requested amendment. If the State tidal wetlands map is properly amended, then the Commission can consider a request from the local jurisdiction to amend its corresponding Critical Area map.

I appreciate your continued assistance and working relationship with the Commission on this matter. Please feel free to call me should you have any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Martin G. Madden".

Martin G. Madden  
Chairman

MGM/jjd



Martin G. Madden  
Chairman

STATE OF MARYLAND  
CRITICAL AREA COMMISSION  
CHESAPEAKE AND ATLANTIC COASTAL BAYS

July 1, 2004

Mr. Robert F. Karge  
Town of Easton  
14 S. Harrison Street  
P.O. Box 520  
Easton, Maryland 21601

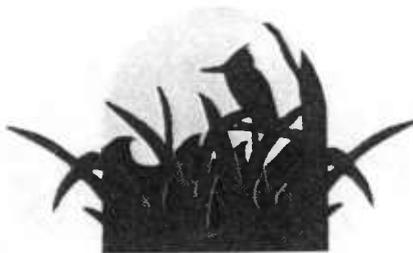
Dear Mr. Karge:

I enjoyed meeting you Wednesday on my trip to Easton. As you know, the interest and support of local government officials are essential to the success of the Critical Area Program.

I appreciate your time and thank you for providing me with an opportunity to better understand the challenges facing Easton in effectively implementing the Town's Critical Area Program. I look forward to working with you on future projects within the Town's Critical Area, and if I, or my staff can provide any specific assistance, please do not hesitate to call me.

Sincerely yours,

Martin G. Madden  
Chairman



Martin G. Madden  
Chairman

STATE OF MARYLAND  
CRITICAL AREA COMMISSION  
CHESAPEAKE AND ATLANTIC COASTAL BAYS

July 1, 2004

The Honorable Robert C. Willey  
Town of Easton  
14 S. Harrison Street  
P.O. Box 520  
Easton, Maryland 21601

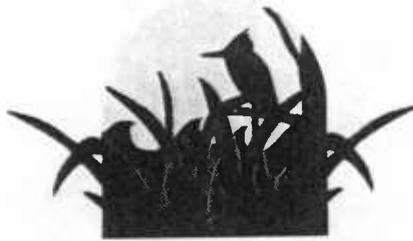
Dear Mayor Willey:

I enjoyed meeting you Wednesday on my trip to your beautiful town. As you know, the interest and support of local government officials are essential to the success of the Critical Area Program.

I appreciate your time and thank you for providing me with an opportunity to better understand the challenges facing Easton in effectively implementing the Town's Critical Area Program. I look forward to working with you on future projects within the Town's Critical Area, and if I, or my staff can provide any specific assistance, please do not hesitate to call me.

Sincerely yours,

Martin G. Madden  
Chairman



Martin G. Madden  
Chairman

STATE OF MARYLAND  
CRITICAL AREA COMMISSION  
CHESAPEAKE AND ATLANTIC COASTAL BAYS

July 1, 2004

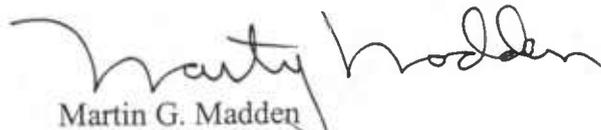
Mr. Mitchell A. Keiler  
Town of Queenstown  
P.O. Box 4  
Queenstown, Maryland 21658

Dear Commissioner Keiler:

I enjoyed meeting you Wednesday on my trip to Queenstown. As you know, the interest and support of local government officials are essential to the success of the Critical Area Program.

I appreciate your time and thank you for providing me with an opportunity to better understand the challenges facing Queenstown in effectively implementing the Town's Critical Area Program. I look forward to working with you on future projects within the Town's Critical Area, and if I, or my staff can provide any specific assistance, please do not hesitate to call me.

Sincerely yours,

  
Martin G. Madden  
Chairman



Martin G. Madden  
Chairman

STATE OF MARYLAND  
CRITICAL AREA COMMISSION  
CHESAPEAKE AND ATLANTIC COASTAL BAYS

July 1, 2004

The Honorable Leonard E. Wendowski  
Town of Easton  
14 S. Harrison Street  
P.O. Box 520  
Easton, Maryland 21601

Dear Councilman *Leonard* Wendowski:

I enjoyed meeting you Wednesday on my trip to Easton. As you know, the interest and support of local government officials are essential to the success of the Critical Area Program.

I appreciate your time and thank you for providing me with an opportunity to better understand the challenges facing Easton in effectively implementing the Town's Critical Area Program. I look forward to working with you on future projects within the Town's Critical Area, and if I, or my staff can provide any specific assistance, please do not hesitate to call me.

Sincerely yours,

Martin G. Madden  
Chairman



STATE OF MARYLAND  
CRITICAL AREA COMMISSION  
CHESAPEAKE AND ATLANTIC COASTAL BAYS

Martin G. Madden  
Chairman

July 1, 2004

The Honorable Winfield H. Miller  
Town of Queenstown  
P.O. Box 4  
Queenstown, Maryland 21658

Dear President Miller,

I enjoyed meeting you Wednesday on my trip to Queenstown. As you know, the interest and support of local government officials are essential to the success of the Critical Area Program.

I appreciate your time and thank you for providing me with an opportunity to better understand the challenges facing Queenstown in effectively implementing the Town's Critical Area Program. I look forward to working with you on future projects within the Town's Critical Area, and if I, or my staff can provide any specific assistance, please do not hesitate to call me.

Sincerely yours,



Martin G. Madden  
Chairman



Martin G. Madden  
Chairman

**STATE OF MARYLAND  
CRITICAL AREA COMMISSION  
CHESAPEAKE AND ATLANTIC COASTAL BAYS**

June 24, 2003

Secretary and Mrs. Christopher McCabe  
2969 Hearthstone Road  
Ellicott City, Maryland 21042

Dear Secretary and Mrs. McCabe:

*Chris + Diadre,*

Thank you for your very kind remarks, congratulations and the articles.

I will work diligently to uphold your confidence in me and the very high standards of the Commission in protecting the Chesapeake Bay.

I can be reached at 410-260-3467 in Annapolis and would be interested in hearing of any ideas you may have to share on how best to protect, preserve and restore the Bay.

Sincerely,

*Marty*

Martin G. Madden  
Chairman

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

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

June 22, 2004

Mr. John R. Valliant, President  
Chesapeake Bay Maritime Museum  
Navy Point, P. O. Box 636  
St. Michaels, Maryland 21663-0636

Dear President Valliant:

Thank you for your kind words and the offer to use meeting space at the Chesapeake Bay Maritime Museum. I was honored that Governor Robert L. Ehrlich, Jr. asked me to serve as Chairman of the Critical Area Commission and have been much impressed by the broad support for the work of the Commission. In fact, your staff arranged for us to use the museum facilities in April of this year. More than 100 people attended our public hearing on the proposed growth allocation by the Town of St. Michaels for the Miles Point project. We greatly appreciated the hospitality and the ability to accommodate such a large gathering.

If there is any assistance that the Commission staff or I can provide, please let us know.

Sincerely,

A handwritten signature in black ink, appearing to read "Martin G. Madden".

Martin G. Madden  
Chairman

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
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Ren Serey  
Executive Director

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June 22, 2004

The Honorable Martin O'Malley  
250 City Hall  
100 North Holliday Street  
Baltimore, MD 21202

Dear Mayor O'Malley:

As you may know, during the Maryland General Assembly's 2004 legislative session three sets of identical bills sponsored by Senator Roy Dyson and Delegate Barbara Frush passed both the House and the Senate. The bills cover several important matters related to implementation of local Critical Area programs, as explained below. The new legislation results from concerns raised by the Joint Legislative Oversight Committee on the Critical Area, co-chaired by Senator Dyson and Delegate Frush. Governor Robert L. Ehrlich, Jr. has signed the bills into law, effective June 1, 2004.

I have included some background information on the bills, and the necessary language the General Assembly approved for incorporation into your local Critical Area program. If you have questions or need additional information, please contact Commission staff.

**House Bill 1009 / Senate Bill 694: Chapter 526 of the 2004 Laws of Maryland:  
"Chesapeake and Atlantic Coastal Bays Critical Area Protection Program – Miscellaneous  
Enforcement Provisions"**

The primary intent of Chapter 526 is to restore components of the Critical Area law undermined by the Maryland Court of Appeals in its opinion last year in Lewis v. Department of Natural Resources. In the Lewis case the Wicomico County Board of Appeals denied a request for after-the-fact variances for six hunting cabins and a septic system constructed in the Critical Area Buffer and for which no permits had been sought. The applicant appealed the denial of the variances, but was unsuccessful before the Circuit Court for Wicomico County and the Maryland Court of Special Appeals. However, the Court of Appeals, Maryland's highest court, remanded the case to the Wicomico County Board with instructions to reconsider its decision consistent with the Court's written opinion. That opinion, however, changed more than 50 years of established Maryland zoning law and threatened the continued viability of the Critical Area law.

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
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Ren Serey  
Executive Director

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June 22, 2004

The Honorable Nelson Bolender  
Board of County Commissioners  
County Administrative Bldg., 107 North Street  
Elkton, MD 21921

Dear Commissioner Bolender:

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Michael S. Steele  
Lt. Governor



Martin G. Madden  
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June 22, 2004

The Honorable Ellen Moyer  
Municipal Building  
160 Duke of Gloucester Street  
Annapolis, MD 21401

Dear Mayor Moyer:

As you may know, during the Maryland General Assembly's 2004 legislative session three sets of identical bills sponsored by Senator Roy Dyson and Delegate Barbara Frush passed both the House and the Senate. The bills cover several important matters related to implementation of local Critical Area programs, as explained below. The new legislation results from concerns raised by the Joint Legislative Oversight Committee on the Critical Area, co-chaired by Senator Dyson and Delegate Frush. Governor Robert L. Ehrlich, Jr. has signed the bills into law, effective June 1, 2004.

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Michael S. Steele  
Lt. Governor



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June 22, 2004

The Honorable James Smith  
400 Washington Avenue  
Towson, MD 21204

Dear County Executive Smith:

As you may know, during the Maryland General Assembly's 2004 legislative session three sets of identical bills sponsored by Senator Roy Dyson and Delegate Barbara Frush passed both the House and the Senate. The bills cover several important matters related to implementation of local Critical Area programs, as explained below. The new legislation results from concerns raised by the Joint Legislative Oversight Committee on the Critical Area, co-chaired by Senator Dyson and Delegate Frush. Governor Robert L. Ehrlich, Jr. has signed the bills into law, effective June 1, 2004.

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Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



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June 22, 2004

The Honorable Carolyn C. Sorge  
P O Box 339, Third Avenue  
Bertterton, MD 21610

Dear Mayor Sorge:

As you may know, during the Maryland General Assembly's 2004 legislative session three sets of identical bills sponsored by Senator Roy Dyson and Delegate Barbara Frush passed both the House and the Senate. The bills cover several important matters related to implementation of local Critical Area programs, as explained below. The new legislation results from concerns raised by the Joint Legislative Oversight Committee on the Critical Area, co-chaired by Senator Dyson and Delegate Frush. Governor Robert L. Ehrlich, Jr. has signed the bills into law, effective June 1, 2004.

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Robert L. Ehrlich, Jr.  
Governor

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Martin G. Madden  
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June 22, 2004

The Honorable Jack Johnson, Esq.  
14741 Governor Oden Bowie Drive  
Upper Marlboro, MD 20772

Dear County Executive Johnson:

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Martin G. Madden  
Chairman

Ren Serey  
Executive Director

STATE OF MARYLAND  
CRITICAL AREA COMMISSION  
CHESAPEAKE AND ATLANTIC COASTAL BAYS

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(410) 260-3460 Fax: (410) 974-5338

[www.dnr.state.md.us/criticalarea/](http://www.dnr.state.md.us/criticalarea/)

June 22, 2004

The Honorable John W. Cole  
109 Market Street, Room 109  
Courthouse  
Denton, MD 21629

Dear Commissioner Cole:

As you may know, during the Maryland General Assembly's 2004 legislative session three sets of identical bills sponsored by Senator Roy Dyson and Delegate Barbara Frush passed both the House and the Senate. The bills cover several important matters related to implementation of local Critical Area programs, as explained below. The new legislation results from concerns raised by the Joint Legislative Oversight Committee on the Critical Area, co-chaired by Senator Dyson and Delegate Frush. Governor Robert L. Ehrlich, Jr. has signed the bills into law, effective June 1, 2004.

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June 22, 2004

The Honorable David Hale  
Board of County Commissioners  
175 Main Street  
Prince Frederick, MD 20678

Dear Commissioner Hale:

As you may know, during the Maryland General Assembly's 2004 legislative session three sets of identical bills sponsored by Senator Roy Dyson and Delegate Barbara Frush passed both the House and the Senate. The bills cover several important matters related to implementation of local Critical Area programs, as explained below. The new legislation results from concerns raised by the Joint Legislative Oversight Committee on the Critical Area, co-chaired by Senator Dyson and Delegate Frush. Governor Robert L. Ehrlich, Jr. has signed the bills into law, effective June 1, 2004.

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June 22, 2004

The Honorable Cleveland Rippons  
City of Cambridge  
307 Gay Street  
Cambridge, MD 21613

Dear Mayor Rippons:

As you may know, during the Maryland General Assembly's 2004 legislative session three sets of identical bills sponsored by Senator Roy Dyson and Delegate Barbara Frush passed both the House and the Senate. The bills cover several important matters related to implementation of local Critical Area programs, as explained below. The new legislation results from concerns raised by the Joint Legislative Oversight Committee on the Critical Area, co-chaired by Senator Dyson and Delegate Frush. Governor Robert L. Ehrlich, Jr. has signed the bills into law, effective June 1, 2004.

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June 22, 2004

The Honorable Norman Pinder  
101 Lawyers Row  
Centreville, MD 21617

Dear Councilman Pinder:

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June 22, 2004

The Honorable Murray Levy  
Charles Co Government Building  
P O Box 2150  
La Plata, MD 20646

Dear Commissioner Levy:

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June 22, 2004

The Honorable Steven Vandervort  
Town Hall 241 Market Street  
P O Box 154  
Charlestown, MD 21914

Dear Commissioner Vandervort:

As you may know, during the Maryland General Assembly's 2004 legislative session three sets of identical bills sponsored by Senator Roy Dyson and Delegate Barbara Frush passed both the House and the Senate. The bills cover several important matters related to implementation of local Critical Area programs, as explained below. The new legislation results from concerns raised by the Joint Legislative Oversight Committee on the Critical Area, co-chaired by Senator Dyson and Delegate Frush. Governor Robert L. Ehrlich, Jr. has signed the bills into law, effective June 1, 2004.

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June 22, 2004

The Honorable Gerald Donovan  
Town Hall, P O Box 400  
Chesapeake Beach, MD 20732

Dear Mayor Donovan:

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June 22, 2004

The Honorable Rob Bernstine  
Town Hall, P O Box P O Box 205  
Chesapeake City, MD 21915

Dear Mayor Bernstine:

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June 22, 2004

The Honorable Margo Bailey  
118 North Cross Street  
Chestertown, MD 21620

Dear Mayor Bailey:

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June 22, 2004

The Honorable John Griffin  
Town Hall  
P O Box 85  
Church Hill, MD 21837

Dear Commissioner Griffin:

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TTY For the Deaf

Annapolis: (410) 974-2609 D.C. Metro: (301) 586-0450



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Governor

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June 22, 2004

The Honorable Richard Scott  
City Hall, Main Street  
P O Box 270  
Crisfield, MD 21817-0270

Dear Mayor Scott:

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June 22, 2004

The Honorable H. Victoria Goldsborough  
13 N Third Street  
Denton, Maryland 21629

Dear Mayor Goldsborough:

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The Honorable Glenn L. Bramble  
501 Court Lane, P O Box 26  
Cambridge, MD 21613

Dear Councilman Bramble:

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

June 22, 2004

The Honorable Robert Willey  
P O Box 520  
Easton, MD 21601

Dear Mayor Willey:

As you may know, during the Maryland General Assembly's 2004 legislative session three sets of identical bills sponsored by Senator Roy Dyson and Delegate Barbara Frush passed both the House and the Senate. The bills cover several important matters related to implementation of local Critical Area programs, as explained below. The new legislation results from concerns raised by the Joint Legislative Oversight Committee on the Critical Area, co-chaired by Senator Dyson and Delegate Frush. Governor Robert L. Ehrlich, Jr. has signed the bills into law, effective June 1, 2004.

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Robert L. Ehrlich, Jr.  
Governor

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Lt. Governor



Martin G. Madden  
Chairman

Ren Seréy  
Executive Director

STATE OF MARYLAND  
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June 22, 2004

The Honorable Janet Owens  
Arundel Center, P O Box 2700  
Annapolis, MD 21404

Dear County Executive Owens:

As you may know, during the Maryland General Assembly's 2004 legislative session three sets of identical bills sponsored by Senator Roy Dyson and Delegate Barbara Frush passed both the House and the Senate. The bills cover several important matters related to implementation of local Critical Area programs, as explained below. The new legislation results from concerns raised by the Joint Legislative Oversight Committee on the Critical Area, co-chaired by Senator Dyson and Delegate Frush. Governor Robert L. Ehrlich, Jr. has signed the bills into law, effective June 1, 2004.

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The General Assembly reacted strongly to the Court's actions by voting unanimously to restore the Critical Area law to its status prior to the Lewis decision, and to reaffirm its 1984 and 2002 legislative findings that the 100-foot Buffer is a protected area where forest clearing or other land disturbance can cause significant effects on water quality and habitat. Chapter 526 also addresses the Joint Legislative Oversight Committee's recommendations to strengthen enforcement of the Critical Area.

I have summarized the provisions of Chapter 526 below and set out in capital letters the necessary amendments to your local Critical Area program that result from their enactment.

### **1) Variances and the Critical Area Buffer**

#### **Definition of Unwarranted Hardship**

The General Assembly defined the term "unwarranted hardship" as it applies to variances. Natural Resources Article 8-1808 (d)(1).

The definition from Chapter 526 is to be incorporated into the variance section of your local Critical Area Program. Note: This definition should replace any language regarding "consideration of the entire parcel or lot" that may exist in your program.

UNWARRANTED HARDSHIP MEANS THAT WITHOUT A VARIANCE, AN APPLICANT WOULD BE DENIED REASONABLE AND SIGNIFICANT USE OF THE ENTIRE PARCEL OR LOT FOR WHICH THE VARIANCE IS REQUESTED.

#### **Variance Standards and Procedures**

The General Assembly restored the original intent of the law regarding the standards and procedures a local Board of Appeals uses when considering Critical Area variances.

The language from Chapter 526 is to be incorporated into the variance section of your local Critical Area Program. Natural Resources Article 8-1808 (d)(2).

- I. IN CONSIDERING AN APPLICATION FOR A VARIANCE, THE COUNTY SHALL PRESUME THAT THE SPECIFIC DEVELOPMENT ACTIVITY IN THE CRITICAL AREA THAT IS SUBJECT TO THE APPLICATION AND FOR WHICH A VARIANCE IS REQUIRED DOES NOT CONFORM WITH THE GENERAL PURPOSE AND INTENT OF NATURAL RESOURCES ARTICLE, TITLE 8 SUBTITLE 18, COMAR TITLE 27, AND THE REQUIRMENTS OF THE COUNTY'S CRITICAL AREA PROGRAM.

- II. 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 COUNTY MAY CONSIDER THAT FACT.
- III. AN APPLICANT HAS THE BURDEN OF PROOF AND THE BURDEN OF PERSUASION TO OVERCOME THE PRESUMPTION OF NONCONFORMANCE ESTABLISHED IN PARAGRAPH I ABOVE.
- IV. BASED ON COMPETENT AND SUBSTANTIAL EVIDENCE, THE COUNTY SHALL MAKE WRITTEN FINDINGS AS TO WHETHER THE APPLICANT HAS OVERCOME THE PRESUMPTION OF NONCONFORMANCE AS ESTABLISHED ABOVE.
- V. 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. THE COUNTY OR ANY OTHER GOVERNMENT AGENCY; OR
  - C. ANY OTHER PERSON DEEMED APPROPRIATE BY THE COUNTY.

## **2) Definition of Buffer**

The Critical Area law has required since its enactment in 1984 that all local programs include a requirement for establishing the Buffer on development sites. In light of the Lewis case and the General Assembly's continuing emphasis on the significance of the Buffer, the existing definition was moved from Natural Resources Article 8-1808.5 to the formal definition section of the law in Natural Resources Article 8-1802 (4). This action underscores the importance of the Buffer in regard to improving water quality and protecting habitat and clarifies that the definition applies wherever the term is used in the law, the Critical Area Criteria, or the local programs.

The following language included from Chapter 526 is to be incorporated into the local program, although supplemental or more descriptive language may be added to the definition. If your approved local program uses this definition, no change is necessary.

**BUFFER MEANS AN EXISTING, NATURALLY VEGETATED AREA, OR AN AREA ESTABLISHED IN VEGETATION AND MANAGED TO PROTECT AQUATIC, WETLANDS, SHORELINE, AND TERRESTRIAL ENVIRONMENTS FROM MAN-MADE DISTURBANCES.**

#### **Provisions for Establishing the Buffer**

In addition to assuring that local programs properly define the Buffer, Chapter 526 includes language for the establishment of the Buffer on development sites. Natural Resources Article 8-1808 (c)(7). Many jurisdictions already have provisions for establishing the Buffer in the local programs, but in some instances these provisions are incomplete. To assure consistent implementation and enforceability in the local programs of all 63 Critical Area jurisdictions, we ask that you provide us with the relevant local citations for the definition of the Buffer and its implementation. If you are unsure how your existing language compares to the requirements of the new law, Commission staff can assist you in reviewing the language and drafting any necessary amendments.

#### **4) Increased Fines for Critical Area Violations**

The General Assembly heard concerns from several parties that local enforcement of the Critical Area law was often hampered by the state limitation of \$500 for violations of local zoning codes. In response, the Legislature increased the penalty provisions in Natural Resources Article 8-1808 (c)(14).

The following language Chapter 526 is to be incorporated into your local Critical Area Program.

- I. 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, OR THE COUNTY'S CRITICAL AREA PROGRAM, ORDINANCE, OR REGULATIONS IS SUBJECT TO A FINE NOT EXCEEDING \$10,000.
- II. IN DETERMINING THE AMOUNT OF THE PENALTY TO BE ASSESSED UNDER PARAGRAPH I, THE COUNTY MAY CONSIDER THE FOLLOWING:

- A. THE GRAVITY OF THE VIOLATION
- B. ANY WILLFULNESS OR NEGLIGENCE INVOLVED IN THE VIOLATION;  
AND
- C. THE ENVIRONMENTAL IMPACT OF THE VIOLATION

#### **5) Provisions for Assistance from the Commission**

The General Assembly also authorized local jurisdictions to request assistance from the Attorney General and the Commission for enforcement actions. Natural Resources Article 8-1815 (a). Without this authorization, the Commission could not prosecute a local enforcement case unless the Chairman first notified the jurisdiction that it was not properly enforcing the local program. The language in Chapter 526 provides a more cooperative framework for coordination between the Commission and local jurisdictions regarding enforcement actions. Please note that jurisdictions are not required to amend their local Critical Area Programs in order to request assistance. However, if you elect to address this issue through a change to your Critical Area regulations, Commission staff can provide appropriate language.

#### **HOUSE BILL 1345 / Senate Bill 795: Chapter 546 of the 2004 Laws of Maryland: "Chesapeake and Atlantic Coastal Bays Protection Program – Dwelling Units"**

##### **Definition of Dwelling Unit**

The General Assembly enacted Chapter 546 in order to address an inconsistency in the implementation of local Critical Area programs. Under the Critical Area Act and Criteria, residential development in the Resource Conservation Area (RCA) cannot exceed a density of one dwelling unit per 20 acres. As you know, the RCA was established to protect the water quality and habitat value of the farms, forests and open spaces of the Critical Area. Although all Critical Area jurisdictions previously defined "dwelling unit" in similar terms, some allowed certain types of dwelling units such as guest houses, caretaker houses and domestic quarters without regard to the one-per-20-density limitation.

By defining "dwelling unit," the General Assembly clarified that any structure or use in the RCA that meets the definition must be counted toward the residential density limit. This definition eliminates the potential for overdevelopment in the RCA and assures consistent application of the law. If not already in your local program, you will need to add language as stated in Chapter 546 that requires the counting of each dwelling unit in the RCA for density purposes.

Chapter 546 also contains optional provisions that allow local governments some flexibility to permit one additional dwelling unit to be considered part of the primary dwelling unit for density calculations in the RCA. If the County does not want to allow a new accessory dwelling unit on a lot in the RCA, or if local zoning prohibits it, the optional provisions are not needed.

The following definition from Chapter 546 is to be incorporated into your local Critical Area program:

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.

The optional provisions allow limited flexibility to the limit of one dwelling unit per 20 acres within the Resource Conservation Area. If a local jurisdiction intends to permit one additional dwelling unit, Chapter 546 requires two actions: 1) the jurisdiction must maintain records of all building permits issued for dwelling units considered part of a primary dwelling, and must provide this information to the Commission on a quarterly basis; and 2) the jurisdiction must incorporate the following language into the local program:

- I 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 SETS OF CONDITIONS:
- A. 1. IS LOCATED WITHIN THE PRIMARY DWELLING UNIT OR ITS ENTIRE PERIMETER IS WITHIN 100 FEET OF THE PRIMARY DWELLING UNIT;
  - 2. DOES NOT EXCEED 900 SQUARE FEET IN TOTAL ENCLOSED AREA; AND

3. IS SERVED BY THE SAME SEWAGE DISPOSAL SYSTEM AS THE PRIMARY DWELLING UNIT; OR
- B.
1. IS LOCATED WITHIN THE PRIMARY DWELLING UNIT;
  2. BY ITS CONSTRUCTION, DOES NOT INCREASE THE AMOUNT OF IMPERVIOUS SURFACE ALREADY ATTRIBUTED TO THE PRIMARY DWELLING UNIT; AND
  3. IS SERVED BY THE SAME SEWAGE DISPOSAL SYSTEM AS THE PRIMARY DWELLING UNIT.
- II 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.
- III 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 ORDINANCE FOR VARIANCES IN THE CRITICAL AREA.
- IV 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.

**House Bill 1030 / Senate Bill 482: Chapter 396 of the 2004 Laws of Maryland: "Real Property Sales – Disclosure Requirements – Chesapeake and Atlantic Coastal Bays Critical Area"**

In a matter related to enforcement, the General Assembly responded to concerns that some homebuyers are unaware of Critical Area regulations. Chapter 396 provides in the Real Property Article, 14-117 (e) that a contract for sale of real property must contain a statement notifying the buyer that the property may be in the Chesapeake or Atlantic Coastal Bays Critical Area and that additional zoning, land use and resource protection regulations apply in this area. The bills define the Critical Area and direct buyers to contact the local planning and zoning authorities for more information.

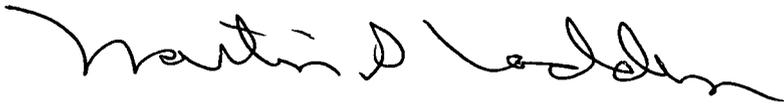
June 22, 2004  
Page Eight

Unlike the other bills outlined above, the legislation regarding disclosures in real property sales do not require changes to your local Critical Area program.

In conclusion, I hope that this summary of the legislation and the ordinance language included in this letter will facilitate your adoption of the necessary provisions in a timely and efficient manner. Please note that the new state laws became effective on June 1, 2004. I expect that we will be able to process the required changes to your ordinances on an expedited basis as refinements to your Program. The Commission staff and the Assistant Attorney General are available to assist you.

If you have questions or would like an electronic version of the language included in this letter, please contact Commission staff at (410) 260-3460.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Martin G. Madden". The signature is written in a cursive style with a long, sweeping underline.

Martin G. Madden  
Chairman

MGM/jjd

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

STATE OF MARYLAND  
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June 22, 2004

The Honorable Joseph Fisona  
Town Administrative Building  
100 Railroad Avenue  
Elkton, MD 21922-0157

Dear Mayor Fisona:

As you may know, during the Maryland General Assembly's 2004 legislative session three sets of identical bills sponsored by Senator Roy Dyson and Delegate Barbara Frush passed both the House and the Senate. The bills cover several important matters related to implementation of local Critical Area programs, as explained below. The new legislation results from concerns raised by the Joint Legislative Oversight Committee on the Critical Area, co-chaired by Senator Dyson and Delegate Frush. Governor Robert L. Ehrlich, Jr. has signed the bills into law, effective June 1, 2004.

I have included some background information on the bills, and the necessary language the General Assembly approved for incorporation into your local Critical Area program. If you have questions or need additional information, please contact Commission staff.

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Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
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June 22, 2004

The Honorable Betty Ballas  
118 N Main Street, P O Box 471  
Federalsburg, MD 21632

Dear Mayor Ballas:

As you may know, during the Maryland General Assembly's 2004 legislative session three sets of identical bills sponsored by Senator Roy Dyson and Delegate Barbara Frush passed both the House and the Senate. The bills cover several important matters related to implementation of local Critical Area programs, as explained below. The new legislation results from concerns raised by the Joint Legislative Oversight Committee on the Critical Area, co-chaired by Senator Dyson and Delegate Frush. Governor Robert L. Ehrlich, Jr. has signed the bills into law, effective June 1, 2004.

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June 22, 2004

The Honorable Thomas Riddleberger  
Commissioners of Greensboro  
P O Box 340, 104 East Sunset Avenue  
Greensboro, MD 21639

Dear Mayor Riddleberger:

As you may know, during the Maryland General Assembly's 2004 legislative session three sets of identical bills sponsored by Senator Roy Dyson and Delegate Barbara Frush passed both the House and the Senate. The bills cover several important matters related to implementation of local Critical Area programs, as explained below. The new legislation results from concerns raised by the Joint Legislative Oversight Committee on the Critical Area, co-chaired by Senator Dyson and Delegate Frush. Governor Robert L. Ehrlich, Jr. has signed the bills into law, effective June 1, 2004.

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June 22, 2004

The Honorable James Harkins  
220 S Main Street  
Bel Air, MD 21014

Dear County Executive Harkins:

As you may know, during the Maryland General Assembly's 2004 legislative session three sets of identical bills sponsored by Senator Roy Dyson and Delegate Barbara Frush passed both the House and the Senate. The bills cover several important matters related to implementation of local Critical Area programs, as explained below. The new legislation results from concerns raised by the Joint Legislative Oversight Committee on the Critical Area, co-chaired by Senator Dyson and Delegate Frush. Governor Robert L. Ehrlich, Jr. has signed the bills into law, effective June 1, 2004.

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June 22, 2004

The Honorable David Craig  
Department of Planning  
711 Pennington Avenue  
Havre de Grace, MD 21078

Dear Mayor Craig:

As you may know, during the Maryland General Assembly's 2004 legislative session three sets of identical bills sponsored by Senator Roy Dyson and Delegate Barbara Frush passed both the House and the Senate. The bills cover several important matters related to implementation of local Critical Area programs, as explained below. The new legislation results from concerns raised by the Joint Legislative Oversight Committee on the Critical Area, co-chaired by Senator Dyson and Delegate Frush. Governor Robert L. Ehrlich, Jr. has signed the bills into law, effective June 1, 2004.

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June 22, 2004

The Honorable Ronald Stafford  
P O Box 128  
Hillsboro, MD 21641

Dear Commissioner Stafford:

As you may know, during the Maryland General Assembly's 2004 legislative session three sets of identical bills sponsored by Senator Roy Dyson and Delegate Barbara Frush passed both the House and the Senate. The bills cover several important matters related to implementation of local Critical Area programs, as explained below. The new legislation results from concerns raised by the Joint Legislative Oversight Committee on the Critical Area, co-chaired by Senator Dyson and Delegate Frush. Governor Robert L. Ehrlich, Jr. has signed the bills into law, effective June 1, 2004.

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June 22, 2004

The Honorable Edward Rice  
4195 Indian Head Highway  
Indian Head, MD 20640

Dear Mayor Rice:

As you may know, during the Maryland General Assembly's 2004 legislative session three sets of identical bills sponsored by Senator Roy Dyson and Delegate Barbara Frush passed both the House and the Senate. The bills cover several important matters related to implementation of local Critical Area programs, as explained below. The new legislation results from concerns raised by the Joint Legislative Oversight Committee on the Critical Area, co-chaired by Senator Dyson and Delegate Frush. Governor Robert L. Ehrlich, Jr. has signed the bills into law, effective June 1, 2004.

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Martin G. Madden  
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Ren Serey  
Executive Director

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June 22, 2004

The Honorable William Pickrum  
County Commissioners of Kent County  
400 High Street  
Chestertown, MD 21620

Dear Commissioner Pickrum:

As you may know, during the Maryland General Assembly's 2004 legislative session three sets of identical bills sponsored by Senator Roy Dyson and Delegate Barbara Frush passed both the House and the Senate. The bills cover several important matters related to implementation of local Critical Area programs, as explained below. The new legislation results from concerns raised by the Joint Legislative Oversight Committee on the Critical Area, co-chaired by Senator Dyson and Delegate Frush. Governor Robert L. Ehrlich, Jr. has signed the bills into law, effective June 1, 2004.

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June 22, 2004

The Honorable J. Harry Norris, III  
41675 Park Avenue, P O Box 1  
Leonardtown, MD 20650

Dear Mayor Norris:

As you may know, during the Maryland General Assembly's 2004 legislative session three sets of identical bills sponsored by Senator Roy Dyson and Delegate Barbara Frush passed both the House and the Senate. The bills cover several important matters related to implementation of local Critical Area programs, as explained below. The new legislation results from concerns raised by the Joint Legislative Oversight Committee on the Critical Area, co-chaired by Senator Dyson and Delegate Frush. Governor Robert L. Ehrlich, Jr. has signed the bills into law, effective June 1, 2004.

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June 22, 2004

The Honorable David Insley, Sr.  
P O Box 81  
Mardela Springs, MD 21837

Dear Commissioner Insley:

As you may know, during the Maryland General Assembly's 2004 legislative session three sets of identical bills sponsored by Senator Roy Dyson and Delegate Barbara Frush passed both the House and the Senate. The bills cover several important matters related to implementation of local Critical Area programs, as explained below. The new legislation results from concerns raised by the Joint Legislative Oversight Committee on the Critical Area, co-chaired by Senator Dyson and Delegate Frush. Governor Robert L. Ehrlich, Jr. has signed the bills into law, effective June 1, 2004.

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June 22, 2004

The Honorable Dennis Hager  
P O Box 330  
Millington, MD 21651

Dear Mayor Hager:

As you may know, during the Maryland General Assembly's 2004 legislative session three sets of identical bills sponsored by Senator Roy Dyson and Delegate Barbara Frush passed both the House and the Senate. The bills cover several important matters related to implementation of local Critical Area programs, as explained below. The new legislation results from concerns raised by the Joint Legislative Oversight Committee on the Critical Area, co-chaired by Senator Dyson and Delegate Frush. Governor Robert L. Ehrlich, Jr. has signed the bills into law, effective June 1, 2004.

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June 22, 2004

The Honorable Robert McKnight  
P O Box 528, 106 S Main Street  
North East, MD 21901-0528

Dear Mayor McKnight:

As you may know, during the Maryland General Assembly's 2004 legislative session three sets of identical bills sponsored by Senator Roy Dyson and Delegate Barbara Frush passed both the House and the Senate. The bills cover several important matters related to implementation of local Critical Area programs, as explained below. The new legislation results from concerns raised by the Joint Legislative Oversight Committee on the Critical Area, co-chaired by Senator Dyson and Delegate Frush. Governor Robert L. Ehrlich, Jr. has signed the bills into law, effective June 1, 2004.

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June 22, 2004

The Honorable Sidney Campen, Jr.  
100 North Morris Street  
P O Box 339  
Oxford, MD 21654

Dear Commissioner Campen:

As you may know, during the Maryland General Assembly's 2004 legislative session three sets of identical bills sponsored by Senator Roy Dyson and Delegate Barbara Frush passed both the House and the Senate. The bills cover several important matters related to implementation of local Critical Area programs, as explained below. The new legislation results from concerns raised by the Joint Legislative Oversight Committee on the Critical Area, co-chaired by Senator Dyson and Delegate Frush. Governor Robert L. Ehrlich, Jr. has signed the bills into law, effective June 1, 2004.

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June 22, 2004

The Honorable James Mathias, Jr.  
Town of Ocean City  
P O Box 158  
Ocean City, MD 21843-0158

Dear Mayor Mathias:

As you may know, during the Maryland General Assembly's 2004 legislative session three sets of identical bills sponsored by Senator Roy Dyson and Delegate Barbara Frush passed both the House and the Senate. The bills cover several important matters related to implementation of local Critical Area programs, as explained below. The new legislation results from concerns raised by the Joint Legislative Oversight Committee on the Critical Area, co-chaired by Senator Dyson and Delegate Frush. Governor Robert L. Ehrlich, Jr. has signed the bills into law, effective June 1, 2004.

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June 22, 2004

The Honorable Steven Pearson  
515 Broad Street, P O Box 773  
Perryville, MD 21903-0513

Dear Mayor Pearson:

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June 22, 2004

The Honorable Rob Slayhart  
Town Hall, 64 S Main Street  
Port Deposit, MD 21904

Dear Mayor Slayhart:

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June 22, 2004

The Honorable Allen Muir  
30489 Broad Street  
Princess Anne, MD 21853

Dear Commissioner Muir:

As you may know, during the Maryland General Assembly's 2004 legislative session three sets of identical bills sponsored by Senator Roy Dyson and Delegate Barbara Frush passed both the House and the Senate. The bills cover several important matters related to implementation of local Critical Area programs, as explained below. The new legislation results from concerns raised by the Joint Legislative Oversight Committee on the Critical Area, co-chaired by Senator Dyson and Delegate Frush. Governor Robert L. Ehrlich, Jr. has signed the bills into law, effective June 1, 2004.

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June 22, 2004

The Honorable Randolph Esty  
P O Box 365  
Queen Anne, MD 21657-0365

Dear Mayor Esty:

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June 22, 2004

The Honorable Benjamin Cassell  
Board of County Commissioners  
107 N Liberty Street  
Centreville, MD 21617

Dear Commissioner Cassell:

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June 22, 2004

The Honorable Winfield H. Miller  
P O Box 4  
Queenstown, MD 21658

Dear Commissioner Miller:

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(410) 260-3460 Fax: (410) 974-5338  
[www.dnr.state.md.us/criticalarea/](http://www.dnr.state.md.us/criticalarea/)

June 22, 2004

The Honorable Jay Jacobs  
P O Box 367  
Rock Hall, MD 21661

Dear Mayor Jacobs:

As you may know, during the Maryland General Assembly's 2004 legislative session three sets of identical bills sponsored by Senator Roy Dyson and Delegate Barbara Frush passed both the House and the Senate. The bills cover several important matters related to implementation of local Critical Area programs, as explained below. The new legislation results from concerns raised by the Joint Legislative Oversight Committee on the Critical Area, co-chaired by Senator Dyson and Delegate Frush. Governor Robert L. Ehrlich, Jr. has signed the bills into law, effective June 1, 2004.

I have included some background information on the bills, and the necessary language the General Assembly approved for incorporation into your local Critical Area program. If you have questions or need additional information, please contact Commission staff.

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Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

STATE OF MARYLAND  
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June 22, 2004

The Honorable Thomas McKay  
Board of County Commissioners  
23115 Leonard Hall Drive, P O Box 653  
Leonardtown, MD 20650

Dear Commissioner McKay:

As you may know, during the Maryland General Assembly's 2004 legislative session three sets of identical bills sponsored by Senator Roy Dyson and Delegate Barbara Frush passed both the House and the Senate. The bills cover several important matters related to implementation of local Critical Area programs, as explained below. The new legislation results from concerns raised by the Joint Legislative Oversight Committee on the Critical Area, co-chaired by Senator Dyson and Delegate Frush. Governor Robert L. Ehrlich, Jr. has signed the bills into law, effective June 1, 2004.

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Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
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Ren Serey  
Executive Director

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June 22, 2004

The Honorable Robert Snyder  
Commissioners of St. Michaels  
P O Box 206  
St. Michaels, MD 21663-0206

Dear Commissioner Snyder:

As you may know, during the Maryland General Assembly's 2004 legislative session three sets of identical bills sponsored by Senator Roy Dyson and Delegate Barbara Frush passed both the House and the Senate. The bills cover several important matters related to implementation of local Critical Area programs, as explained below. The new legislation results from concerns raised by the Joint Legislative Oversight Committee on the Critical Area, co-chaired by Senator Dyson and Delegate Frush. Governor Robert L. Ehrlich, Jr. has signed the bills into law, effective June 1, 2004.

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Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

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June 22, 2004

The Honorable Susan Dukes  
P O Box 248  
Secretary, MD 21664

Dear Mayor Dukes:

As you may know, during the Maryland General Assembly's 2004 legislative session three sets of identical bills sponsored by Senator Roy Dyson and Delegate Barbara Frush passed both the House and the Senate. The bills cover several important matters related to implementation of local Critical Area programs, as explained below. The new legislation results from concerns raised by the Joint Legislative Oversight Committee on the Critical Area, co-chaired by Senator Dyson and Delegate Frush. Governor Robert L. Ehrlich, Jr. has signed the bills into law, effective June 1, 2004.

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Michael S. Steele  
Lt. Governor



Martin G. Madden  
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June 22, 2004

The Honorable P. Douglas Gosnell  
President of Council  
P O Box 338  
Sharptown, MD 21861

Dear Councilman Gosnell:

As you may know, during the Maryland General Assembly's 2004 legislative session three sets of identical bills sponsored by Senator Roy Dyson and Delegate Barbara Frush passed both the House and the Senate. The bills cover several important matters related to implementation of local Critical Area programs, as explained below. The new legislation results from concerns raised by the Joint Legislative Oversight Committee on the Critical Area, co-chaired by Senator Dyson and Delegate Frush. Governor Robert L. Ehrlich, Jr. has signed the bills into law, effective June 1, 2004.

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Martin G. Madden  
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June 22, 2004

The Honorable Stephen Matthews  
Mayor and Council Office  
Municipal Building, P O Box 348  
Snow Hill, MD 21863

Dear Mayor Matthews:

As you may know, during the Maryland General Assembly's 2004 legislative session three sets of identical bills sponsored by Senator Roy Dyson and Delegate Barbara Frush passed both the House and the Senate. The bills cover several important matters related to implementation of local Critical Area programs, as explained below. The new legislation results from concerns raised by the Joint Legislative Oversight Committee on the Critical Area, co-chaired by Senator Dyson and Delegate Frush. Governor Robert L. Ehrlich, Jr. has signed the bills into law, effective June 1, 2004.

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June 22, 2004

The Honorable Sam Boston  
Board of County Commissioners  
11916 Somerset Avenue, P O Box 37  
Princess Anne, MD 21853

Dear Commissioner Boston:

As you may know, during the Maryland General Assembly's 2004 legislative session three sets of identical bills sponsored by Senator Roy Dyson and Delegate Barbara Frush passed both the House and the Senate. The bills cover several important matters related to implementation of local Critical Area programs, as explained below. The new legislation results from concerns raised by the Joint Legislative Oversight Committee on the Critical Area, co-chaired by Senator Dyson and Delegate Frush. Governor Robert L. Ehrlich, Jr. has signed the bills into law, effective June 1, 2004.

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Governor



Martin G. Madden  
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June 22, 2004

The Honorable Philip Foster, Esq.  
County Council  
Courthouse, 11 N Washington Street  
Easton, MD 21601

Dear Councilman Foster:

As you may know, during the Maryland General Assembly's 2004 legislative session three sets of identical bills sponsored by Senator Roy Dyson and Delegate Barbara Frush passed both the House and the Senate. The bills cover several important matters related to implementation of local Critical Area programs, as explained below. The new legislation results from concerns raised by the Joint Legislative Oversight Committee on the Critical Area, co-chaired by Senator Dyson and Delegate Frush. Governor Robert L. Ehrlich, Jr. has signed the bills into law, effective June 1, 2004.

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Governor



Martin G. Madden  
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June 22, 2004

The Honorable Barrie Tilghman  
125 N Division Street  
Salisbury, MD 21803

Dear Mayor Tilghman:

As you may know, during the Maryland General Assembly's 2004 legislative session three sets of identical bills sponsored by Senator Roy Dyson and Delegate Barbara Frush passed both the House and the Senate. The bills cover several important matters related to implementation of local Critical Area programs, as explained below. The new legislation results from concerns raised by the Joint Legislative Oversight Committee on the Critical Area, co-chaired by Senator Dyson and Delegate Frush. Governor Robert L. Ehrlich, Jr. has signed the bills into law, effective June 1, 2004.

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Michael S. Steele  
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Executive Director

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June 22, 2004

The Honorable John Bloxom  
Board of County Commissioners  
One W Market Street, Room 1103  
Snow Hill, MD 21863

Dear Commissioner Bloxom:

As you may know, during the Maryland General Assembly's 2004 legislative session three sets of identical bills sponsored by Senator Roy Dyson and Delegate Barbara Frush passed both the House and the Senate. The bills cover several important matters related to implementation of local Critical Area programs, as explained below. The new legislation results from concerns raised by the Joint Legislative Oversight Committee on the Critical Area, co-chaired by Senator Dyson and Delegate Frush. Governor Robert L. Ehrlich, Jr. has signed the bills into law, effective June 1, 2004.

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June 22, 2004

The Honorable Anthony Sarbanes  
County Council  
125 North Division Street  
P O Box 870  
Salisbury, MD 21803-0870

Dear Councilman Sarbanes:

As you may know, during the Maryland General Assembly's 2004 legislative session three sets of identical bills sponsored by Senator Roy Dyson and Delegate Barbara Frush passed both the House and the Senate. The bills cover several important matters related to implementation of local Critical Area programs, as explained below. The new legislation results from concerns raised by the Joint Legislative Oversight Committee on the Critical Area, co-chaired by Senator Dyson and Delegate Frush. Governor Robert L. Ehrlich, Jr. has signed the bills into law, effective June 1, 2004.

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June 19, 2003

Honorable C. Ronald Franks, Secretary  
Department of Natural Resources  
Tawes State Office Building  
580 Taylor Avenue  
Annapolis, Maryland 21401

Re: Hiring Exception Form

Dear Secretary Franks:

When we met on May 20<sup>th</sup> to discuss the Critical Area Commission's proposed budget reductions for fiscal year 2004, we also discussed our need for an additional Natural Resources Planner to handle new statutory responsibilities under the Atlantic Coastal Bays Protection Act. In that regard I have enclosed a hiring exception form. Consistent with our discussion, I indicated on the form that we have identified sufficient funding for the position while satisfying Governor Ehrlich's request for a 7.5% reduction in fiscal year 2004. The Commission also has identified additional reductions of 2.5% should they be necessary.

If you have questions concerning this request, or if you need any additional information, please contact me at your earliest convenience at (410) 260-3467.

Sincerely,

A handwritten signature in cursive script that reads "Martin G. Madden".  
Martin G. Madden  
Chairman

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
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June 19, 2003

Honorable James C. DiPaula, Jr., Secretary  
Department of Budget and Management  
45 Calvert Street  
Annapolis, Maryland 21401

Re: Hiring Exception Form

Dear Secretary *DiPaula*,

I have requested Natural Resources Secretary C. Ronald Franks to submit to you a hiring exception form on behalf of the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays.

In 2002 the Maryland General Assembly enacted the Atlantic Coastal Bays Protection Act, bringing under the Commission's oversight responsibilities the Assawoman, Sinepuxent, Isle of Wight, Newport and Chincoteague Bays in Ocean City and Worcester County. The law increased the land area under the Commission's jurisdiction approximately 10%, but due to the rapid pace of development in the Coastal Bays region, our work program increased by 15-20%. Unfortunately, the Commission did not receive additional staffing to handle the new responsibilities.

As I have noted on the form, the Commission successfully used existing supervisory and administrative staff to assist Ocean City and Worcester County in the initial development of their local Critical Area programs. However, now that these programs are operational, we are unable to manage the statutorily required responsibilities of project review and program oversight absent an additional professional planner. The significant distance between Annapolis and the Coastal Bays region requires our staff to spend considerable time on the road, lessening their ability to attend to their other required duties.

We have identified sufficient funding for a Natural Resources Planner III within our existing budget while satisfying Governor Ehrlich's request for a 7.5% reduction in fiscal year 2004. We also have identified an additional 2.5% in savings if such measures are necessary.

I thank you for your consideration of this request. If you have questions or need additional information, please contact me at (410) 260-3467.

Sincerely,

A handwritten signature in black ink, appearing to read "Martin G. Madsen". The signature is fluid and cursive, with the first name "Martin" being more prominent than the last name "Madsen".

Martin G. Madsen  
Chairman



**DEPARTMENT OF BUDGET AND MANAGEMENT  
OFFICE OF BUDGET ANALYSIS  
Hiring Freeze Exception Request**

Date: June 19, 2003

Agency: CRITICAL AREA COMMISSION  
CHESAPEAKE AND ATLANTIC COASTAL BAYS

<b>Class Title:</b> Natural Resources Planner III	<b>Grade/Step:</b> 15/5
<b>PIN:</b>	<b>Date Vacant:</b> July 1, 2003
<b>Estimated Salary:</b> \$38,920	<b>Type of Position:</b> Permanent ( <i>click for choices</i> )

*(If multiple PINS are requested for this job title, please itemize on page 2.)*

<b>What job function will this position serve?</b>	In 2002 the Maryland General Assembly added to the Critical Area Commission's oversight responsibilities Worcester County, the Town of Ocean City and the Assawoman, Sinepuxent, Isle of Wight, Newport and Chincoteague Coastal Bays. This position will function as the Commission's Natural Resources Planner for this new region. Specific duties will include the review of development projects; coordination of local Critical Area program implementation; and provision of technical assistance to the new Coastal Bays jurisdictions.
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<b>How are the job responsibilities of this PIN currently being fulfilled?</b>	Since June 1, 2002 the Commission has used existing supervisory and administrative staff to assist Ocean City and Worcester County in developing their local Coastal Bays programs. A new Natural Resources Planner is absolutely essential now that the local programs are fully operational.
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<b>What are the consequences if the position is not filled?</b>	If the position remains unfilled, the Critical Area Commission will be unable to carry out its statutory responsibilities to review development projects; oversee implementation of local Critical Area programs; and approve amendments to those programs, particularly in Ocean City and Worcester County.
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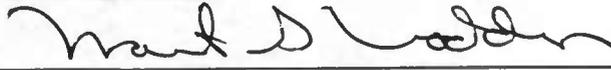
<b>Why can't the job responsibilities be performed by other staff?</b>	The General Assembly's inclusion of Worcester County, Ocean City and the five bays of the Coastal Bays region expanded Maryland's Critical Area by approximately 10% in land area. The expansion has added 15-20% to the Commission's work program due to the pace of land development in the Coastal Bays region. Staff reductions over the last five years, and the inability to fill current vacancies, have resulted in a lack of flexibility to reassign existing staff to new statutory responsibilities. In addition, the significant distance of the Coastal Bays region from the Commission's base in Annapolis prevents existing staff from effectively monitoring developemnt activities in the region as required by law.
--	---

<b>From where will the funds for these positions come?</b>	The Commission has identified sufficient funds within the current budget by relinquishing a proposed vehicle for the agency, as well as funds in other budget categories. These savings are over and above the savings of 7.5% we identified per the Secretary's instructions.
--	--

At what stage in the hiring process is the agency for this position? Not Yet Advertised (*Click for choices*)

Other Comments:

Agency Head: Martin G. Madden, Chairman Phone: 410-260-3467

Agency Head Signature: 

*(Submit hard or electronic copy Secretary DiPaula, although the electronic copy must be sent from the Agency Head's email account.)*

Personnel Director:  Approve     Deny     Neutral  
Date Received:                      Recommendation:  
Comments:  
Office of Budget Analysis Director:



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

**STATE OF MARYLAND**  
**CRITICAL AREA COMMISSION**  
**CHESAPEAKE AND ATLANTIC COASTAL BAYS**  
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June 17, 2003

Honorable Mark H. Guns  
Commissioner, 5<sup>th</sup> District  
Board of County Commissioners  
County Administrative Building  
107 North Street  
Elkton, Maryland 21921

Dear Commissioner Guns,

I enjoyed meeting you last night at the hearing held at the North East Elementary School on the North Bay Project now before the Critical Area Commission.

Please call on me if I can ever be of help to you or your constituents. Please also give my best to Ron.

Best wishes,

Martin G. Madden  
Chairman

MGM/pm



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

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June 17, 2003

Honorable Harry R. Hughes  
Pealiquor Road  
Denton, Maryland 21629

Dear Governor Hughes:

I enjoyed both the lunch and the conversation with you at Mary Mason's earlier this month. Since you were the original visionary for a comprehensive approach to the preservation of the Chesapeake Bay, the time that you took to share your insights and advice with me are invaluable.

On your recommendation, I will contact in the next few weeks Rob Etgen of the Eastern Shore Conservancy, and King Burnett and Russ Brimsfield of the Maryland Center for Agro-Ecology Studies for a meeting later this summer.

Once again, thanks for your support.

Best wishes,

A handwritten signature in black ink that reads "Marty Madden".

Martin G. Madden  
Chairman

MGM/pm



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

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June 16, 2003

Honorable Gerald W. Donovan  
Mayor, Town of Chesapeake Beach  
8200 Bayside Road  
P.O. Box 400  
Chesapeake Beach, MD 20732

Dear Mayor Donovan:

I enjoyed meeting you last week on your visit to the Commission offices. I look forward to working with you and the good people of Chesapeake Beach.

Please call whenever I can be of help to you or your Town.

Best Wishes,

A handwritten signature in black ink, appearing to read "Martin G. Madden".

Martin G. Madden  
Chairman

MGM/pm

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

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June 16, 2004

Raymond S. Smethurst, Jr.  
Post Office Box 4247  
Salisbury, Maryland 21803-4247

Dear Mr. Smethurst:

I received your letter of June 1, 2004 regarding the Edwin H. Lewis variance request to the Wicomico County Board of Appeals. Given the Board's discussion and vote at their April 15, 2004 meeting and the pending adoption of a final decision scheduled for June 24, 2004, I believe that it is not appropriate to comment at this time.

Should you have further questions, please feel free to contact Assistant Attorney General Marianne D. Mason at 410-260-8351.

Sincerely,

A handwritten signature in black ink that reads "Martin G. Madden".

Martin G. Madden  
Chairman

ADKINS, POTTS & SMETHURST, LLP

ATTORNEYS AT LAW

ONE PLAZA EAST, SIXTH FLOOR

100 EAST MAIN STREET

(MAILING ADDRESS)

POST OFFICE BOX 4247

SALISBURY, MARYLAND 21803-4247

PHONE: 410-749-0161  
FAX: 410-749-5021

E. DALE ADKINS, JR. (1915-1982)  
CHARLES J. POTTS (1910-1994)

RAYMOND S. SMETHURST, JR.  
ROBERT B. TAYLOR

S. JAMES SARBANES

June 1, 2004

**RECEIVED**

JUN 4 2004

**DNR - LEGAL DIVISION**

Honorable Martin G. Madden, Chairman  
Critical Area Commission  
1804 West Street, Suite 100  
Annapolis, MD 21401

Re: Edwin H. Lewis  
BZA Case No. WA 0054

Dear Mr. Madden:

I write this letter at the suggestion of Ed Baker, the County Attorney for Wicomico County, from whom I received the attached letter dated May 13, 2004.

I was surprised to learn from him that, following the conclusion of the April 15<sup>th</sup>, BZA hearing, Marianne Mason indicated to him that the Commission was not opposed to a compromise that would permit this matter to be settled. I was surprised because I had indicated Mr. Lewis' willingness to compromise in a letter I wrote to Marianne Mason last December (copy attached), and from the lack of any response I assumed the Commission had no similar interest.

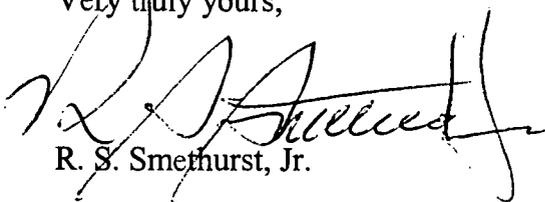
Mr. Lewis' position has not changed. To be certain, he would like his hunting camp to remain as presently proposed and (partially) constructed. Nevertheless, appreciative of both the time, expense and uncertainty of litigation, Mr. Lewis is willing to discuss a settlement if the Commission is.

If you have any such interest, kindly let me know promptly because, as Ed Baker's letter points out, any settlement probably would have to be agreed to prior to the BZA's meeting of June 24<sup>th</sup>.

Mr. Marty Madden  
June 1, 2004

Page 2

Very truly yours,

A handwritten signature in black ink, appearing to read "R. S. Smethurst, Jr.", written over a horizontal line.

R. S. Smethurst, Jr.

RSS/bh

cc: Marianne D. Mason, Esq., w/enc.  
Edgar A. Baker, Esq., w/enc.  
Edwin H. Lewis, w/enc.

M:\filesRSS\Lewis\20849\LtrMadden

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

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JUNE 16, '04

To: Raymond S. Smethurst, Jr.

TeleFAX: 410-749-5021

Hand  
Fax copy  
to  
Raymond S. Smethurst, Jr.  
Annapolis



Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

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JUNE 16, '04

To: Raymond S. Smethurst, Jr.

TeleFAX: 410-749-5021

HARD copy to follow.



Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

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May 14, 2004

The Honorable David R. Craig  
City of Havre de Grace  
711 Pennington Avenue  
Havre de Grace, Maryland 21078

Dear Mayor *David*:

Thank you for providing information about the comprehensive review of the City of Havre De Grace Critical Area Program. The Critical Area Commission Program Subcommittee reviewed the timeline you submitted and commended the City's efforts to complete the review and adopt a revised ordinance this summer. I have discussed the schedule with Commission staff, and they are available to provide any assistance that you may require.

As you may know, Mary Owens, the Commission's Chief of Program Implementation, and Ms. Marianne Mason, the Commission's Counsel, met with City staff and the City attorney this week. I understand that the meeting was productive, and several outstanding issues and concerns were addressed.

Thank you for your cooperation and attention to this important revision of the City's Critical Area Program. If I can provide any assistance, please do not hesitate to call me (410) 260-3467 or Mary Owens at (410) 260-3480.

Sincerely,

A handwritten signature in cursive script that reads "Martin G. Madden".

Martin G. Madden  
Chairman

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

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April 16, 2004

Ms. Kim Coble  
Maryland Executive Director  
Chesapeake Bay Foundation  
6 Herndon Avenue  
Annapolis, Maryland 21403

RE: Conditional Approval of North Bay Environmental Center

Dear Ms. Coble:

I received your letter dated April 7, 2004 on April 8<sup>th</sup>. In the letter you state that the Chesapeake Bay Foundation objects to the conditional approval request for the North Bay Environmental Center. The Commission conducted a public hearing in regard to this project and the record for public comment closed in June 2003. Our final approval on April 7<sup>th</sup> acknowledged full compliance with the conditions of the conceptual approval granted on July 2, 2003.

I am sorry that the Chesapeake Bay Foundation did not get a chance to express its concerns in the appropriate manner as set out in COMAR 27.02.07.02: Review Procedures. I do want you to know, however, that your concerns are similar to those discussed at great length by the Commission during the review process over the last three years.

We appreciate your comments and look forward to working with you in the future. We have added George Maurer to our monthly mailing list so he will receive notice of our meetings and agenda items. If you have questions or need additional information, please contact me at (410) 260-3467 or Ren Serey at (410) 260-3462.

Sincerely,

A handwritten signature in black ink that reads "Martin G. Madden".

Martin G. Madden  
Chairman

Robert L. Ehrlich, Jr.  
*Governor*

Michael S. Steele  
*Lt. Governor*



Martin G. Madden  
*Chairman*

Ren Serey  
*Executive Director*

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March 15, 2004

Ms. Joan Ritchie  
27255 Cat Creek Road  
Mechanicsville, Maryland 20659

RE: Lot 28, Riverwood Farms

Dear Ms. Ritchie:

I received a copy of your letter to Governor Robert L. Ehrlich, Jr. and I want to assure you that the Critical Area Commission monitors all variances occurring along the waterfront. We share your concerns about variances in the Critical Area.

In 1984 the General Assembly enacted the Critical Area Law, and in 1986 passed the Critical Area Criteria. Counties and municipalities in the Critical Area implement the law and Criteria through their local Critical Area programs. These programs contain provisions to allow development on lots that existed prior to December 1, 1985. Grandfathered lots have the legal right to one dwelling. Lot 28 in the Riverwood Farms subdivision was created long before the Critical Area regulations took effect. Often these lots created prior to the Critical Area regulations need a variance because there is not enough room to site a dwelling outside of the 100-foot Buffer or off of steep slopes. However, applicants must demonstrate to the local Board of Appeals that they have met all the variance provisions. Our staff works closely with the local jurisdictions to ensure that all development is done in the most environmentally sensitive manner in compliance with the law. We often make recommendations to the Board on variances to minimize impacts to water quality and habitat.

It is important to note that lots created since 1985 must not contain any steep slopes or Buffer within the buildable areas. These buildable areas are shown on the site plans during the review process so they can be verified.

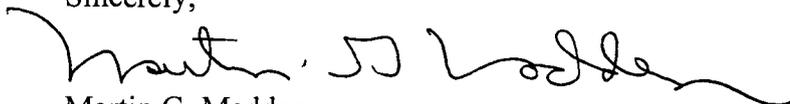
I encourage you to continue to practice the good environmental stewardship you mention

Ms. Joan Ritchie  
March 15, 2004  
Page 2

in your letter. We need more property owners in the Critical Area who do so. I thank you for your concern about the Bay and its tributaries.

If you have other questions about the Critical Area program or need additional information, please contact me at (410) 260-3467 or Mr. Ren Serey at (410) 260-3462.

Sincerely,

A handwritten signature in black ink, appearing to read "Martin G. Madden". The signature is fluid and cursive, with a long horizontal flourish at the end.

Martin G. Madden  
Chairman

cc: Honorable Roy Dyson  
Honorable Thomas McKay  
Honorable Kendl Philbrick  
Honorable C. Ronald Franks

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

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March 8, 2004

Honorable Barbara Frush  
Co-Chair,  
Joint Legislative Oversight Committee  
Lowe House Office Building  
Room 210  
Annapolis, Maryland 21401

Dear Delegate Frush:

I have outlined below some points for your consideration in regard to the email from Mr. Robert Taylor concerning HB 1009. Mr. Taylor's arguments in opposition to HB 1009 are set out in the first column. The second column contains the Critical Area Commission's position on these arguments. I hope this information is useful.

Mr. Taylor's arguments:	Critical Area Commission position:
<p>"The definition of Buffer is unlimited (has no finite limit, such as 100 feet)...It seems to authorize a change in the current regulatory limit (100 feet) by action of the Critical Area Commission."</p>	<p>The definition in HB 1009 is taken intact from existing Critical Area law (NR Article 8-1808.5 (a) (2)).</p> <p>COMAR 27.01.09.01 C (1) and (7) further define the Buffer as a minimum 100 feet with expansion for steep slopes, highly erodible soils and other sensitive features.</p> <p>This COMAR (Critical Area Criteria) definition was approved by the General Assembly by Joint Resolution in 1986, has not been changed, and can be amended only by the General Assembly.</p>



<p>The definition of unwarranted hardship in HB 1009 "is the current constitutional taking standard. It could mean almost no variances if strictly applied."</p>	<p>The current constitutional taking standard is denial of all economic use of a property. (Lucas case)</p> <p>The definition of unwarranted hardship in HB 1009 will return the law to the pre-Lewis state: More than 90% of Buffer variances are granted by the local jurisdictions.</p>
<p>Regarding self-created hardship:</p> <p>"The provision about pre-commenced activity is a penalty disguised as regulation."</p>	<p>The Court of Appeals in Lewis said any consideration of structures built without permits is "a red herring."</p> <p>HB 1009 provides only that a local decision-making body "may consider that fact."</p>
<p>"...the current state of the law in administrative proceedings,... was not changed by the Lewis case despite misstatement to the contrary by the Commission and Chesapeake Bay Foundation."</p>	<p>Judge Wilner, in dissent in the Lewis case said:</p> <p>"...in its determination to cripple the critical areas program by overturning a perfectly rational and well-supported decision, <b>the Court has not just ignored, but has, in fact, mutilated, fundamental principles of administrative law</b> well established in our case law and in the case law throughout the country."</p>
<p>"It seems the Commission wants to avoid having to present real evidence..."</p>	<p>Judge Wilner, in dissent in the Lewis case said:</p> <p>"The Court continues to maintain that, if an applicant having the burden of proof produces evidence that is perhaps legally sufficient, the opponents must rebut that evidence, even when the agency finds that the applicant's evidence is unpersuasive. <b>That is simply not the law.</b>"</p>

Regarding fines for violations:

"...in the case of innocent ignorance the new maximum (\$10,000) seems grossly excessive. There should be two amounts, one (lower) for ordinary and another (higher) for willful violations like the man who cut his trees so he would have a better view."

HB 1009 provides that a local government may subject a violator to a fine not exceeding \$10,000. This amount is not a required minimum.

If you have questions or need additional information, please contact me at (410) 260-3467.

Sincerely,



Martin G. Madden  
Chairman

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

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March 8, 2004

Honorable Maggie L. McIntosh, Chairman  
House Environmental Matters Committee  
141 Lowe House Office Building  
Annapolis, Maryland 21401



Dear Chairman McIntosh:

During our Critical Area briefing for the Environmental Matters Committee on January 21, 2004, Delegates Stull and Sossi asked the following questions:

- How many people live in the Critical Area?
- How much of the Critical Area is served by sewer systems?

The questions appeared relatively easy to research, but turned out to be a little more complicated. This type of information had not been collected before for the Critical Area. We asked the Maryland Department of Planning for assistance and the Department compiled the accompanying tables.

While I hope this information is useful to the Committee, I must make two important points. First, data for Baltimore City and Talbot, Dorchester and Queen Anne's Counties are not included. The 1,000-foot Critical Area line for these jurisdictions is not yet incorporated into the State's computerized mapping system. Second, because the Department has just compiled this information, they have not verified it with the jurisdictions, a process that can take considerable time. Instead of waiting, we thought the Committee would want to see the information that is available.

With all of that said, I think the tables are still interesting. The first table at the top of the page is a summary of the other two. It shows, based on parcel data (not including apartments), 308,825 people living on improved parcels in the listed Critical Area counties. The second and third tables show that two-thirds of these residents live on parcels served by sewer, and on a relatively small portion of the Critical Area: 62,003 acres. The entire Critical Area is approximately 650,000 acres, about 10% of the State.



Robert L. Ehrlich, Jr.  
*Governor*

Michael S. Steele  
*L. Governor*



Martin G. Madden  
*Chairman*

Ren Serey  
*Executive Director*

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March 8, 2004

Honorable Maggie L. McIntosh, Chairman  
House Environmental Matters Committee  
141 Lowe House Office Building  
Annapolis, Maryland 21401

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Honorable Maggie L. McIntosh

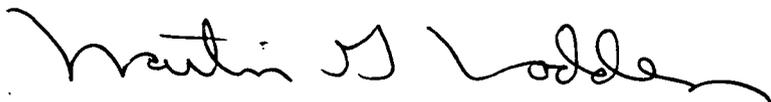
March 8, 2004

Page 2

I will be glad to answer any follow-up questions that you or the Committee members might have. In addition, you might want to contact Mr. Richard Hall at the Maryland Department of Planning for further information. Mr. Hall compiled the data and would be able to answer any related questions. His number is (410) 767-4560.

If I can be of further service, please contact me at (410) 260-3467.

Sincerely,

A handwritten signature in black ink, appearing to read "Martin G. Madden". The signature is fluid and cursive, with a long horizontal flourish at the end.

Martin G. Madden  
Chairman

cc: Honorable Paul S. Stull  
Honorable Richard A. Sossi  
Mr. Richard Hall

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

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March 12, 2004

Mr. Mareen D. Waterman  
109 Country Day Road, Suite 1  
Waterman Business Park  
Chester, Maryland 21619

Dear Mr. Waterman:

Delegate Richard Sossi asked me to respond to your letter to him regarding HB 1009. In the letter you raised several concerns about the use of wetlands and the effect of the bill on property rights associated with wetlands and small upland areas in marshes. I would like to address these concerns.

HB 1009 would restore the Critical Area law to the status it occupied prior to the Maryland Court of Appeals decision in the case of Lewis v. Department of Natural Resources. The Court issued its opinion in this case on July 31, 2003. In the opinion, the Court made it much more difficult for local governments to implement their Critical Area programs as they had for 15 years. The Court did this by saying, among other things, that when a local Board of Appeals considers a variance, to use your example, for a hunting cabin on a small pocket of uplands, the Board cannot look elsewhere on the property to see if a more environmentally protective location exists. Until the Lewis decision, a local Board always could do this. HB 1009 simply would restore to local governments the flexibility necessary, I believe, to make the best decisions. If a landowner was entitled to a variance before the Lewis decision, that same right would exist if the General Assembly enacts HB 1009.

You are correct that the wetland Buffer "starts not at the water, but at the edge of tidal wetlands." That has been the law since 1986 and would not change under HB 1009. The bill proposes to move the definition from one section of the law to the more logical definition section. The language of the definition, and its meaning, have not been altered.



Mr. Mareen D. Waterman

March 12, 2004

Page 2

If you have questions or would like additional information, please contact me at (410) 260-3467 or Mr. Ren Serey at (410) 260-3462.

Sincerely,

A handwritten signature in black ink, appearing to read "Martin G. Madden". The signature is written in a cursive style with a large initial "M".

Martin G. Madden

Chairman

cc: Honorable Richard A. Sossi

Robert L. Ehrlich, Jr.  
*Governor*

Michael S. Steele  
*Lt. Governor*



Martin G. Madden  
*Chairman*

Ren Serey  
*Executive Director*

**STATE OF MARYLAND  
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February 19, 2004

Mr. Callum R. W. Bain, President  
The Talbot River Protection Association  
P.O. Box 2234  
Easton, Maryland 21601

Dear Mr. Bain:

We have received your letter of January 26, 2004. As of this date, the Town of St. Michaels has not submitted a growth allocation proposal concerning The Midlands Companies. We will retain your letter in our records both for St. Michaels and Talbot County Bill 933.

If you have questions or need information about the Critical Area Commission's procedures, please contact me at (410) 260-3467, or Mr. Ren Serey, the Commission's Executive Director, at (410) 260-3462.

Sincerely,

A handwritten signature in black ink that reads "Martin G. Madden".

Martin G. Madden  
Chairman

Robert L. Ehrlich, Jr.  
*Governor*

Michael S. Steele  
*Lt. Governor*



Martin G. Madden  
*Chairman*

Ren Serey  
*Executive Director*

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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/](http://www.dnr.state.md.us/criticalarea/)

February 19, 2004

Honorable Robert T. Snyder, President  
The Commissioners of St. Michaels  
P. O. Box 206  
St. Michaels, Maryland 21663-0206

Dear Commissioner Snyder:

We have received your letter of January 13, 2004 providing additional comments on Talbot County Bill 933. As we have done with previous correspondence, we will include the letter in our official records relating to Bill 933.

If you have questions or need information concerning the Critical Area Commission or its procedures, please contact me at (410) 260-3467, or Mr. Ren Serey, the Commission's Executive Director, at (410) 260-3462.

Sincerely,

A handwritten signature in black ink that reads "Martin G. Madden".

Martin G. Madden  
Chairman



Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

STATE OF MARYLAND  
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February 19, 2004

Mr. Paul J. Jones, Jr.  
107 North Washington Street  
Easton, Maryland 21601

Dear Mr. Jones,

A handwritten signature in black ink that reads "Paul," written over the typed name "Mr. Jones".

I have received your letter of February 5, 2004 announcing your resignation from the Critical Area Commission. I certainly understand your need to devote proper time and attention to your law practice and will inform Governor Ehrlich of your decision.

Please accept my thanks and that of your fellow Commission members for your service and our best wishes for the future.

Sincerely,

A handwritten signature in black ink that reads "Marty Madden".

Martin G. Madden  
Chairman



Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
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February 17, 2004

Honorable Philip Carey Foster, President  
County Council of Talbot County  
142 N. Harrison Street  
Easton, Maryland 21601

Dear Councilman Foster:

Thank you for your letter of February 4, 2004 concerning correspondence we received from the Town of St. Michaels in the matter of County Bill 933. As of this date, the Critical Area Commission has accepted the bill for processing as a change to Talbot County's local Critical Area Program.

We will include your letter in our official records for Bill 933 and notify you whether the bill will be processed as a refinement or an amendment to the County's program. If you have questions or need information about the Commission's procedures, please contact me at (410) 260-3467, or Mr. Ren Serey, the Commission's Executive Director, at (410) 260-3462.

Sincerely,

A handwritten signature in black ink that reads "Martin G. Madden".

Martin G. Madden  
Chairman

J. JOSEPH CURRAN, JR.  
ATTORNEY GENERAL

DONNA HILL STATON  
Deputy Attorney General



ROBERT A. ZARNOCH  
Assistant Attorney General  
Counsel to the General Assembly

RICHARD E. ISRAEL  
KATHRYN M. ROWE  
SANDRA J. COHEN  
Assistant Attorneys General

THE ATTORNEY GENERAL OF MARYLAND  
OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY

February 2, 2004

**C O N F I D E N T I A L**

The Honorable Roy Dyson  
Senate Chairman  
Joint Committee on Chesapeake & Atlantic  
Coastal Bay Critical Areas  
102 James Senate Office Building  
Annapolis, Maryland 21401-1991

Dear Senator Dyson:

You have requested confidential advice on the interplay between the Court of Appeals decision in *Lewis v. Dept. of Natural Resources*, 377 Md. 382 (2003) and legislation enacted in 2002 by the General Assembly tightening standards for the granting of variances with respect to the Chesapeake Bay Critical Area program. Specifically, you have asked whether in light of the 2002 legislation, if the Court of Appeals "were presented with the same or similar facts as *Lewis*, would you anticipate any different result." In essence you have asked whether proposed legislation which has been drafted to address the impact of the *Lewis* decision is needed. In my view the answer to that question is yes.

The *Lewis* decision by a 4-3 vote overturned a governmental decision to deny a variance for a proposed seasonal hunting camp in Wicomico County. The decision and the subsequent denial of a motion for reconsideration rested on multiple grounds, some of which are specifically addressed by the 2002 legislation and some of which are not.<sup>1</sup> The

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<sup>1</sup> For example, the Court said that "[w]hat reasonable and significant use petitioner can make of the portions of his land other than the specific area subject to his variance request is irrelevant to the unwarranted hardship determination." 377 Md. at 428. The 2002 legislation required a local jurisdiction to consider the reasonable use of the

The Honorable Roy Dyson

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February 2, 2004

majority opinion of the Court declared that its decision was based on the pre-2002 law, 377 Md. at 410 n. 16.<sup>2</sup> However, in my view, this does not mean that that case will have no harmful impact on the future application of the Critical Area law or that new legislation is unnecessary.

First, the lead dissent with respect to the denial of the motion to reconsider indicates that future legislation is necessary. Specifically, Judge Alan Wilner noted that:

In my view, notwithstanding the explanations offered in the opinion denying the motion for reconsideration, the majority Opinion was deliberately designed, and *unless the General Assembly acts swiftly and decisively*, may be effective, not only to dismantle, the critical areas program but to seriously weaken fundamental zoning and land use controls generally.

377 Md. at 465 (emphasis added).

He adds that:

Even if the substantive provisions of the 2002 law are not applicable to this case, the Court should not be extending those cases in light of the Legislative declaration that they were contrary to the General Assembly's intent. In relying on those cases, as though they were still valid, the Court, is in effect, The

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"entire parcel or lot" for which the variance is requested. See Natural Resources Article, §8-1808(c)(13). However, in denying the motion for reconsideration, the majority relied on language in the "findings" provisions of the law, Natural Resources (NR) Article §8-1801, re-enacted without amendment in the 2002 legislation. See 377 Md. at 457-58.

<sup>2</sup> The Court also repeatedly emphasized that the case it decided was "unique". 377 Md. at 432, n.26. and 463. However, the Court also stated that testimony about the "cumulative negative impacts" described in the "findings" of the law, NR Art. §8-1801, was "irrelevant" and "should have been disregarded and not relied upon by the Board in this case, or any specific case." 377 Md. at 430-431.

Honorable Roy Dyson  
Page 3  
February 2, 2004

thumbing its nose at the General Assembly.<sup>3</sup>

*Id.* at 466.

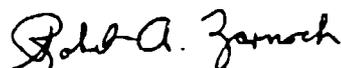
Second, the Court disturbed settled principles of administrative law by placing on government agencies a new burden to refute an applicant's experts with "empirical data." 377 Md. at 430. As Judge Wilner stated in dissent, "where that test came from is a mystery to me". 377 Md. at 454. By requiring administrative agencies to produce empirical data to refute evidence by the party having the burden of proof, the *Lewis* Court created a burden on local government agencies where none existed before. This issue is not resolved by the 2002 legislation.

Third, a failure by the General Assembly to address issues raised by the *Lewis* decision could be read by some members of the Court as acquiescence. The case will still have some precedential value in the next major critical area variance litigation that reaches the Court. In fact, I am told that one lower court (Cecil City) followed *Lewis* in a post-2002 case, decided last month.

Finally, as noted earlier, because the decision rested in part on the majority's interpretation of provisions not affected by the 2002 statute, that enactment could not be said to address all of the problems raised by *Lewis*.

In conclusion, if the Court were to apply the 2002 legislation to the *Lewis* facts, I would hope the outcome would be different. However, there is no guarantee of such a result. If the General Assembly wants greater assurance that the goals of the 2002 legislation are not thwarted, it should amend the law.

Sincerely,



Robert A. Zarnoch  
Assistant Attorney General  
Counsel to the General Assembly

RAZ:ads

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<sup>3</sup> Judge Wilner also noted that the issues in the pre-2002 case "were not Constitutional ones, although the Court now hints that some Constitutional defect may lurk somewhere [in the statute]." 377 Md. at 466.

Hand  
delivered

February 27, 2004

Honorable J. Lowell Stoltzfus  
James Senate Office Building  
Room 417  
Annapolis, Maryland 21401

Dear Senator Stoltzfus:

As you requested, I have reviewed the letters you provided from Mr. R. S. Smethurst, Jr., Mr. Edwin Lewis's counsel concerning the case of Lewis v. Department of Natural Resources. Mr. Smethurst discusses the Court's opinion extensively and questions the need for corrective legislation.

The Court of Appeals remanded the case to the Wicomico County Board of Appeals, which will consider it in light of the opinion later this week. Therefore, at this time, I cannot address the legal arguments raised in the letters. Nevertheless, I have set out below, and marked on the attachment, some points made by Judge Wilner in his Dissenting Opinion on the Motion for Reconsideration of the Court's original Opinion. I think Judge Wilner's concerns are significant and offer them for your consideration.

- "The Courts' Opinion is *not* (italics original) a narrow one, as the Court now suggests..."
- "It seems clear to me that both the holding of the Court and the language used to justify it attack the very heart of land use controls, and specifically the critical areas program.
- "...in its determination to cripple the critical areas program by overturning a perfectly rational and well-supported decision, the Court has not just ignored, but has, in fact, mutilated, fundamental principles of administrative law well established in our case law and in the case law throughout the country."
- "The Court continues to maintain that, if an applicant having the burden of proof produces evidence that is perhaps legally sufficient, the opponents must rebut that

evidence, even when the agency finds that the applicant's evidence is unpersuasive. That is simply not the law."

In addition, I am providing a copy of a letter from the Assistant Attorney General in which Bob Zarnoch definitively states his reasons why legislation is necessary.

As always, if I can be of further assistance, please let me know.

Sincerely,

Martin G. Madden  
Chairman

Robert L. Ehrlich, Jr.  
Governor



Martin G. Madden  
Chairman

Michael S. Steele  
Lt. Governor

Ren Serey  
Executive Director

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January 13, 2004

Honorable Robert T. Snyder, President  
The Commissioners of St. Michaels  
P.O. Box 206  
St. Michaels, Maryland 21663-0206

Re: Midlands/Miles Point Project

Dear Commissioner Snyder:

Thank you for your letter of January 7, 2004 concerning Talbot County's Bill 933 and the Midlands Company's proposed development in St. Michaels. As of this date, we have not received official submissions for local Critical Area Program changes from either Talbot County or the Town of St. Michaels.

We will keep your letter on record should these matters come before the Commission for review and will notify you in the event any public hearings are scheduled.

Please contact me at (410) 260-3467, or Executive Director Ren Serey at (410) 260-3462, if you have questions or need additional information.

Sincerely,

A handwritten signature in black ink that reads "Martin G. Madden".

Martin G. Madden  
Chairman

cc: Honorable Philip Carey Foster, President, Talbot County Council  
Marianne D. Mason, Assistant Attorney General  
Ren Serey

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madden  
Chairman

Ren Serey  
Executive Director

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January 28, 2004

Mr. Steven L Kreseski  
Chief of Staff  
State House  
100 State Circle  
Annapolis, Maryland 21401

Re: Erickson Foundation: NorthBay Environmental Center and  
Wastewater Treatment System at Elk Neck State Park

Dear Mr. Kreseski:

Per our conversation on January 23<sup>rd</sup>, I have reviewed the Critical Area Commission records and spoken with staff concerning the status of the NorthBay Environmental Center and the wastewater treatment system at Elk Neck State Park.

Following are my thoughts and conclusions:

- 1) The Commission has been in close contact with Mr. Ken Usab, the Erickson Foundation's primary representative for the NorthBay Environmental Center. Mr. Usab informed us last week that he anticipates Department of the Environment approval within the next few weeks for outstanding permits related to stormwater management and impacts to wetlands. Due to the scale of the NorthBay project and its proximity to sensitive resources, the Commission, in July 2003, granted the project concept approval but conditioned final approval on Erickson's receipt of the MDE permits.

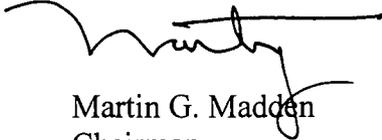
We are prepared, as Mr. Usab has requested, to move forward at our March 3<sup>rd</sup> meeting if MDE issues the permits or assures us that all outstanding matters related to stormwater management and wetlands have been resolved.

- 2) There is nothing in the Commission records to indicate who would assume responsibility for upgrading the wastewater treatment system at Elk Neck State Park. My understanding is that the Board of Public Works approved a

long-term lease between the Department of Natural Resources and the Erickson Foundation for the NorthBay portion of the park. You may want to examine the lease for specific information on this point.

Please let me know if you have other questions or need additional information. My number is (410) 260-3467, or you can reach me on my cell phone at (410) 507-2719.

Sincerely,

A handwritten signature in black ink, appearing to read "Martin G. Madden", with a horizontal line extending to the right from the end of the signature.

Martin G. Madden  
Chairman

January 28, 2004

Honorable Richard F. Colburn  
315 James Senate Office Building  
Annapolis, Maryland 21401-1991

Dear Senator Colburn:

Per your request, I have enclosed from the Critical Area Commission files the relevant correspondence concerning Talbot County Bill # 933. We recently received a formal request by the County Council to process Bill #933 as an amendment to the County's local Critical Area program. A panel of Commission members will hold a public hearing in Talbot County on the proposed amendment, but we do not have a firm date for the hearing at this time. We will notify you when the hearing is scheduled.

Following the hearing, the panel will make a recommendation to the full Critical Area Commission. The Commission also will be advised by the Assistant Attorney General and, at the appropriate time, will vote on the County's proposed amendment. We will notify you of the Commission's action.

If you have questions or need additional information, please contact me at (410) 260-3467.

Sincerely,

Martin G. Madden  
Chairman