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Principal Counsel

SAUNDRA K. CANEDO
Assistant Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CRITICAL AREA COMMISSION FOR THE
CHESAPEAKE AND ATLANTIC COASTAL BAYS

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April 10, 2008

Ms. Kathy P. Smith
Clerk, Circuit Court for Calvert County
175 Main Street
Prince Frederick, Maryland 20678

RE: *In the Matter of Margaret McHale v. Edward and Kay Parris*,
Civil Action No.: 04-C-07-1272

Dear Ms. Smith:

Please accept for filing the attached Critical Area Commission's Notice of Appeal in the above referenced case. We have also included the \$50 fee and an additional copy to be date stamped. Pursuant to Courts & Judicial Proceedings §7-202, the State is exempt from any fees to the Circuit Court.

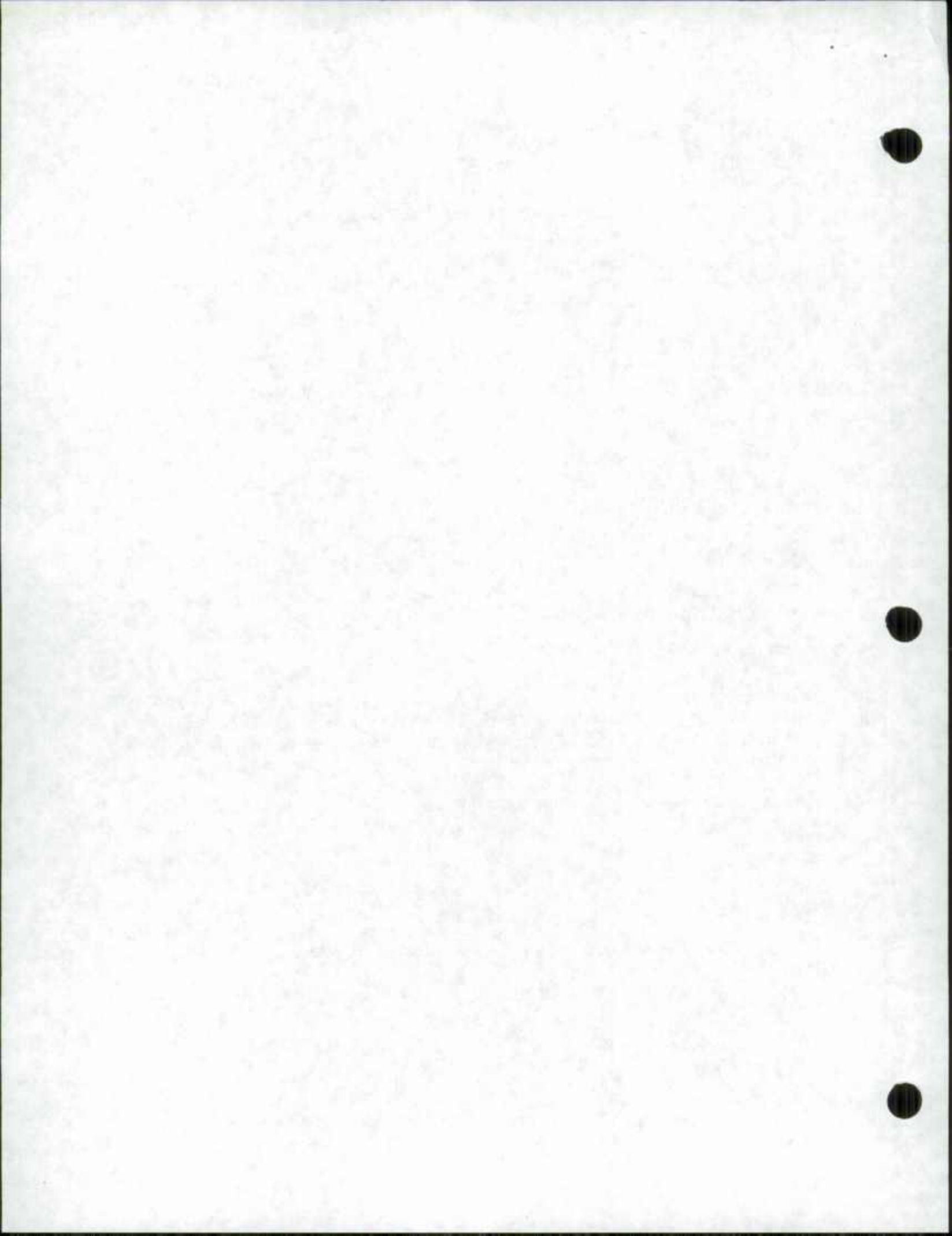
Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Sandra K. Canedo".

Saundra K. Canedo
Assistant Attorney General

cc: Eugene Pitroff, Esq.
Kay Parris, Esq.



IN THE CIRCUIT COURT OF MARYLAND
FOR CALVERT COUNTY

In the Matter of
MARGARET MCHALE,

Petitioner

v.

EDWARD AND KAY PARRIS,

Respondents.

Civil Action No.: C-07-1272

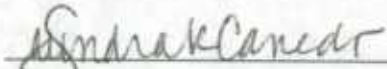
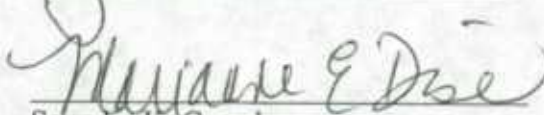
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NOTICE OF APPEAL

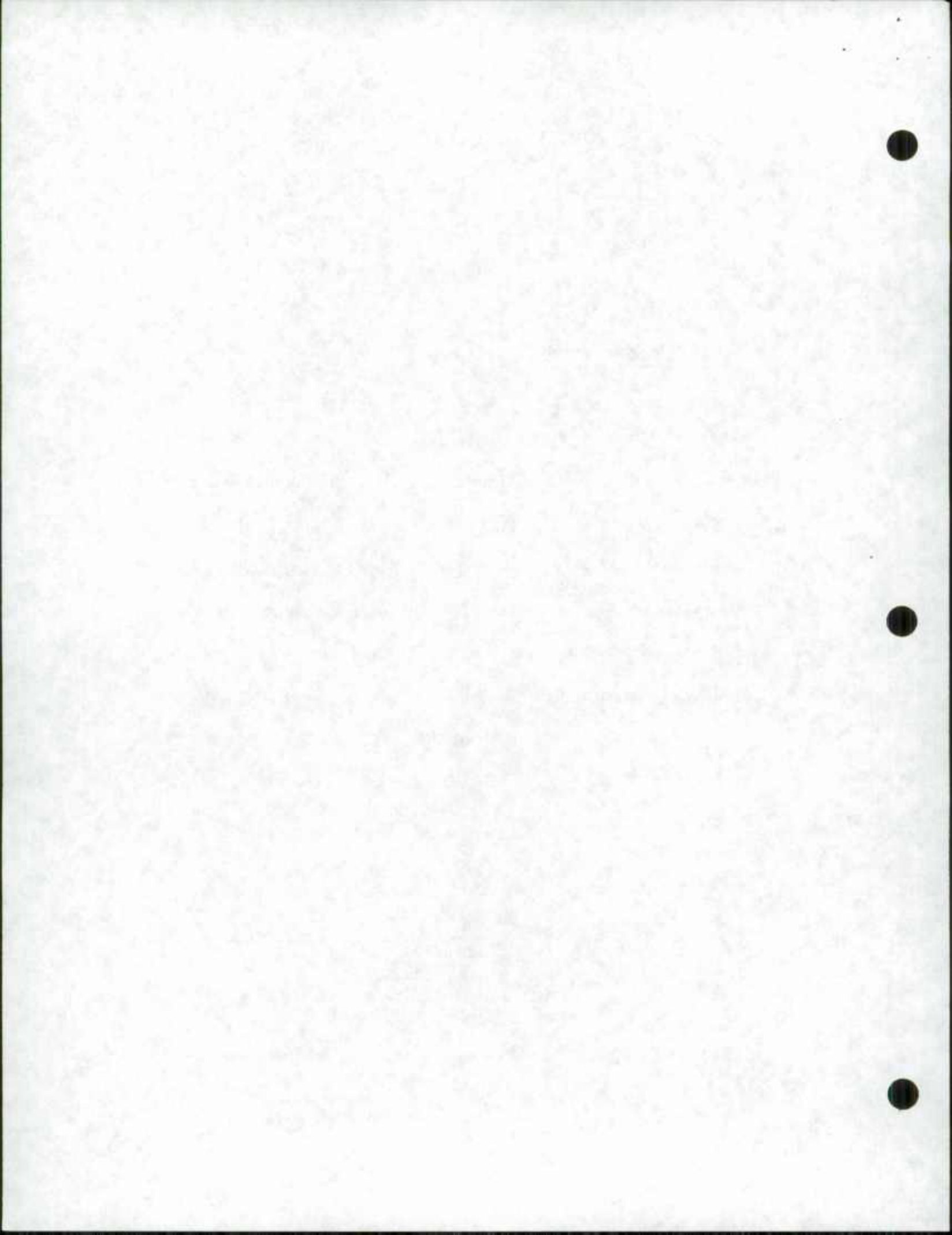
Petitioner Margaret McHale, Chair, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays ("Critical Area Commission") by her attorneys, Douglas F. Gansler, Attorney General of Maryland and Sandra K. Canedo and Marianne E. Dise, Assistant Attorneys General, pursuant to Rule 8-201, notes an appeal to the Court of Special Appeals in the above-captioned action from the Order of Circuit Court dated March 12, 2008. A copy of this Order is attached as Exhibit 1.

Respectfully submitted,

DOUGLAS F. GANSLER
Attorney General of Maryland

Sandra K. Canedo
Marianne E. Dise
Assistant Attorneys General
Critical Area Commission
1804 West Street, Suite 100
Annapolis, Maryland 21401
(410) 260-3467



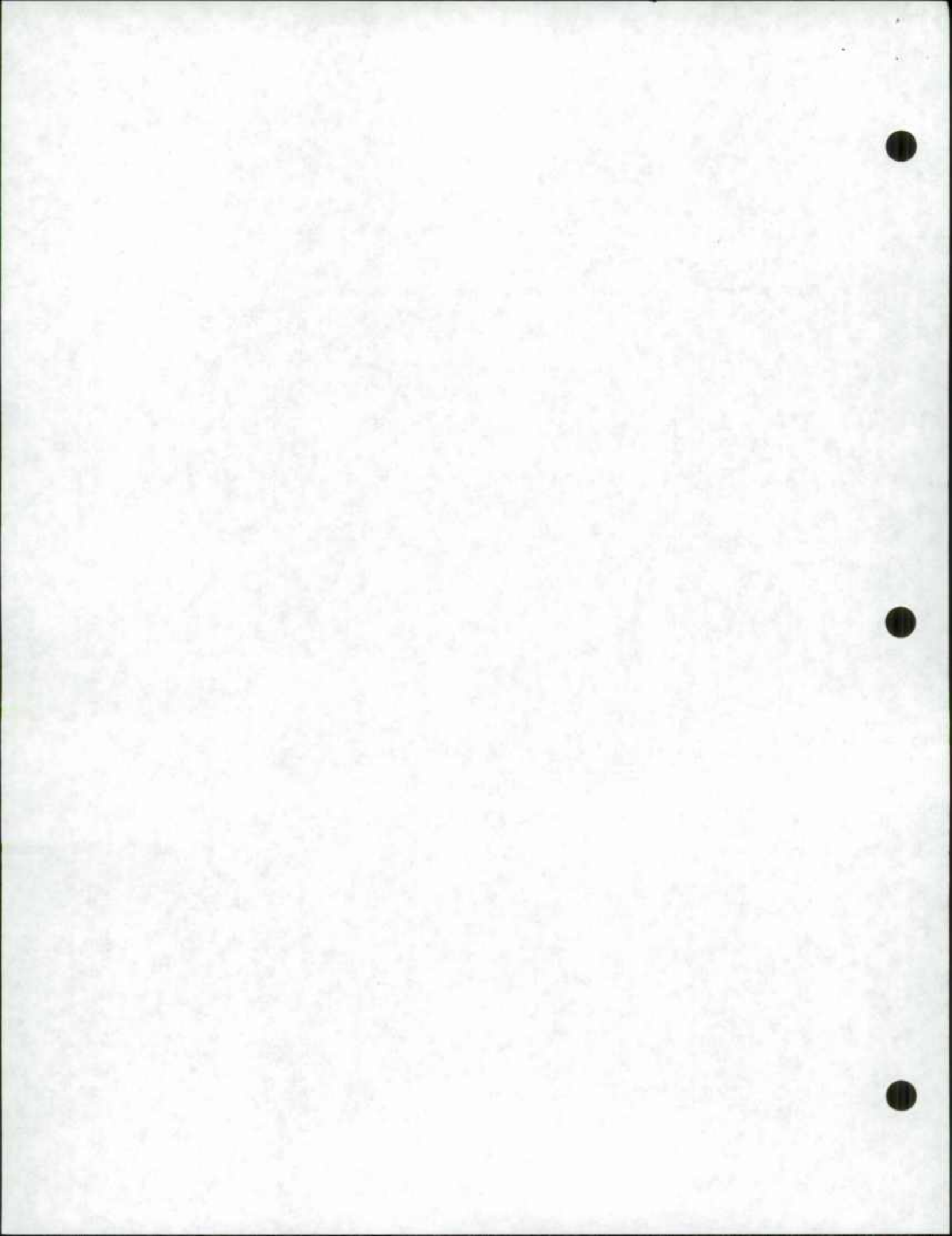
*Attorneys for Margaret McHale, Chair,
Critical Area Commission for the
Chesapeake and Atlantic Coastal Bays*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of April 2008, I sent a copy of the foregoing Notice of Appeal via U.S. Mail, postage prepaid to: Eugene Pitroff, Attorney for Respondents, 14713 Main Street, P.O. Box 130, Upper Marlboro, Maryland 20773 and Kay Parris, Attorney for Respondents, 7770 Swann Lane, Owings, Maryland 20736.



Saundra K. Canedo



IN THE CIRCUIT COURT FOR CALVERT COUNTY, MARYLAND

IN THE MATTER OF
MARGARET MCHALE

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C-07-1272

RECEIVED

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CRITICAL AREA COMMISSION

OPINION AND ORDER

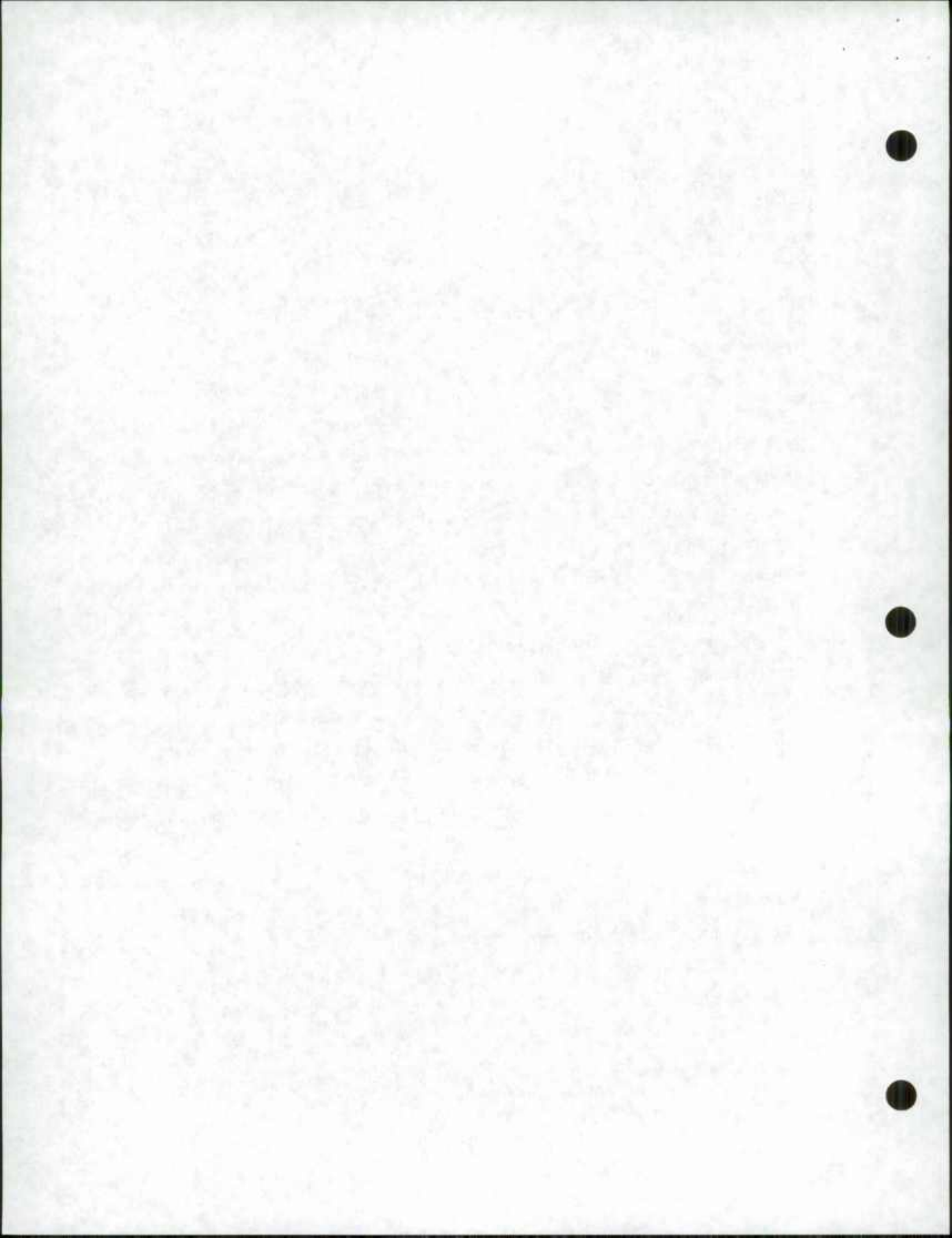
I. Background

Since 1996, Edward and Kay Parris (the Parrises) have owned 5.32 acres along the Patuxent River. In 1998, they built a modest two-story home, assiduously limiting the area of excavation to only the area for the house, a septic field, a well, two accessory structures—a small shed and a greenhouse—and an adjoining firewall. The house “footprint” is 1250 square feet. The Parrises preserved the wooded characteristics of the land and have maintained a heavy tree canopy. Seventy percent of the property is wooded. Virtually all of the property is within the extended buffer line. A large functional tidal marsh extends beyond the property and into the river area.¹ Transcript (T.) 82.

After their retirement, Mr. and Mrs. Parris desired to take up woodworking and sought approval from the Calvert County Board of Appeals (the Board) to build a small workshop. Again, just as their initial building, they sought to limit the footprint on their property. They selected a small, level area behind their home within the buffer zone. Their request was modest – a 20’ x 28’ wood shop with electricity, nothing more. They did not seek to put plumbing in the shop, nor did they request an asphalt drive or similar means of access to the shop. The impervious area on the lot is 1.6 percent, including the proposed addition – 15 percent is the allowable amount. To that end, the Parrises applied to the Board for a variance to the expanded buffer requirements of the County’s Critical Area Law and consistent with §11-1.01B of the Calvert County Zoning Ordinance (Zoning Ordinance).

The Calvert County Board of Appeals has the authority to grant variances from the Critical Area Requirements of the Zoning Ordinance. The variance request was first heard on

¹ For purposes of this opinion, the Court will deal with this request as a critical area matter. BOA Chairman Reber queried whether because of the “substantial tidal marsh” the Parrises’ request did not fall in the critical area analysis. The marsh acts as a filter or buffer for pollutants.



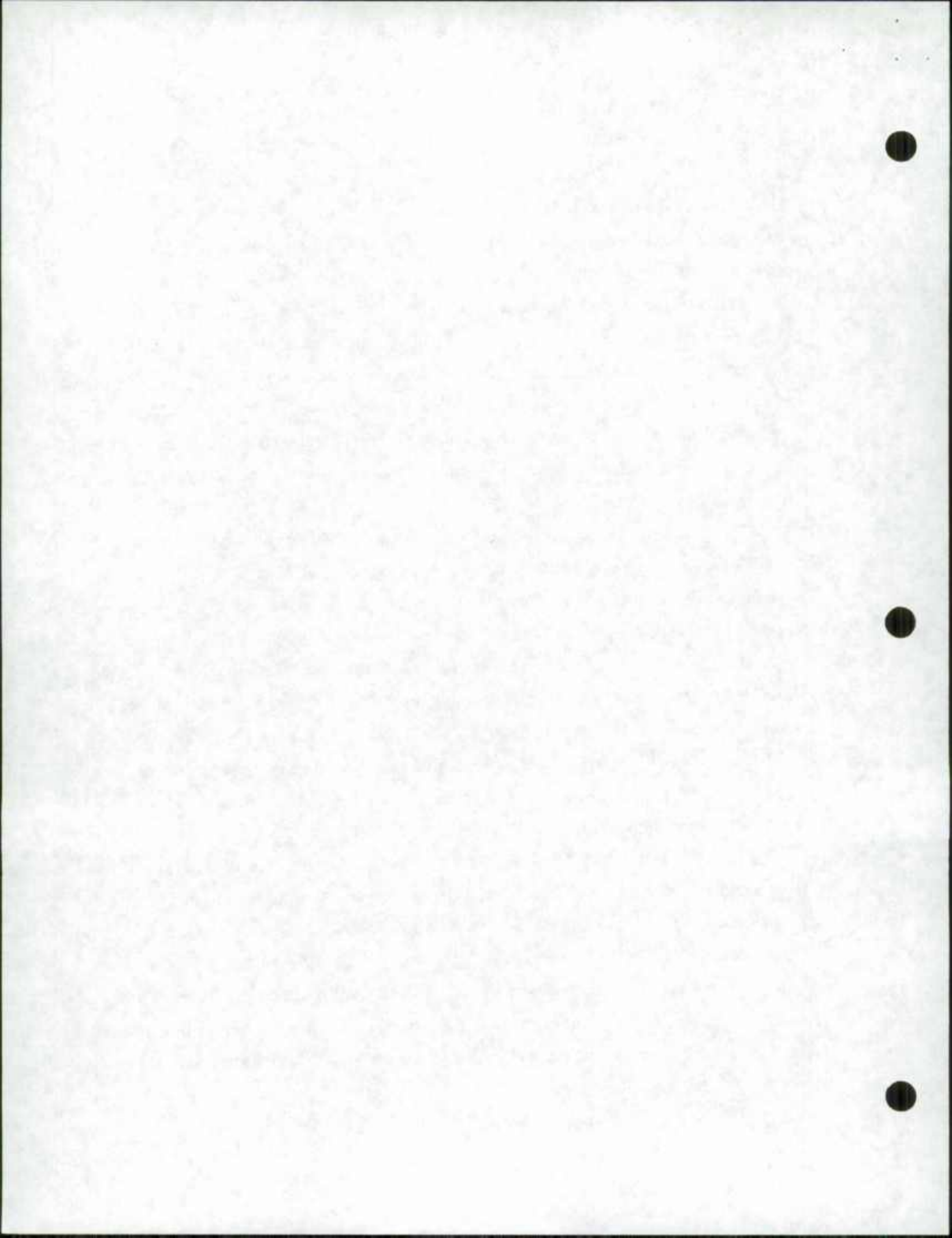
December 7, 2006, with the Board granting the variance request. The Critical Area Commission (CAC) sought judicial review in Circuit Court, which remanded the case back to the Board for additional testimony and to allow the Board to make written findings. The remand hearing was held on August 2, 2007, with the Board receiving testimony from Mrs. Parris, Mr. Roland Juan, and Lee Ann Chandler. Again, the Board unanimously granted the variance authorizing the Parrises to construct a woodshop in the expanded Critical Area Buffer.

The CAC once again seeks reversal of the Board's decision arguing that the Board erred as a matter of law by 1) applying the incorrect definition and standard of "unwarranted hardship" as defined by Maryland Critical Area Law and as adopted by the Zoning Ordinance; and by 2) failing to require the Parrises to satisfy the burdens of proof and persuasion to show they meet each of the variance requirements under the Zoning Ordinance and overcoming the statutory presumption that the variance does not conform to the intent of the State Critical Area Law.

II. Standard of Review

The standard for judicial review on zoning matters, including critical area variances, is "whether the issue before the administrative body is 'fairly debatable' and that is, whether its determination is based upon evidence from which reasonable persons could come to different conclusions." *White v. North*, 356 Md. 31, 44, 736 A.2d. 1072, 1079 (1999). Further, "[w]hether reasoning minds could reasonably reach a conclusion from facts in the record is the essential test. If such a conclusion is sufficiently supported by the evidence, then it is based upon substantial evidence." *Stansbury v. Jones*, 372 Md. 172, 182, 812 A.2d 312 (2002). "For its conclusion to be fairly debatable, the administrative agency overseeing the variance decision must have 'substantial evidence' on the record supporting its decision." *White*, 356 Md. at 44. If not, the Board decision may be overturned.

However, in this case, Petitioners argue that the Board of Appeals incorrectly applied the law, and, therefore, the above stated standard is inapplicable. "Generally, a decision of an administrative agency, including a local zoning board, is owed no deference when its conclusions are based upon an error of law." *Stansbury*, 372 Md. at 184, citing *Belvoir Farms Homeowners Association, Inc. v. North*, 355 Md. 259, 267-68, 734 A.2d 227 (1999). The Court must therefore conduct an *de novo* review of the record to determine whether the Board based its decision on an erroneous conclusion of law. If so, the Board decision may be reversed.



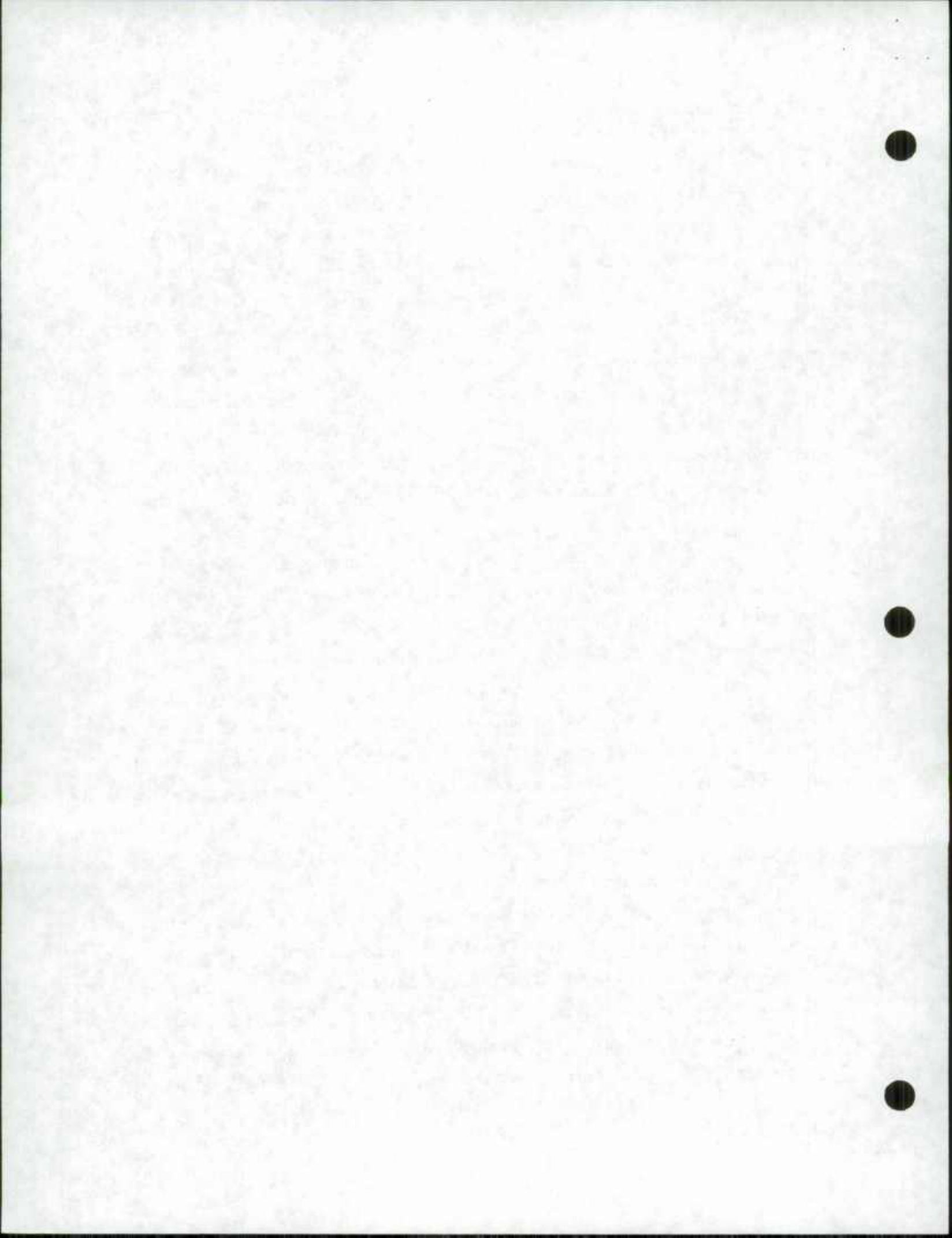
III. Whether the Board incorrectly applied the standard of “unwarranted hardship” as defined by MD. CODE, Nat. Res. Art. § 8-1808(d)(1).

The CAC contends that the Board used an incorrect legal standard in applying the “unwarranted hardship” standard to the Parrises’ property as defined by MD. CODE, Nat. Res. Art. §8-1808(d)(4)(i). It is the CAC’s position that a variance may only be granted if the applicant establishes, by competent and substantial evidence, that the applicant will suffer an “unwarranted hardship” in being denied the requested variance.

When an applicant seeks a variance in a critical area, the applicant must show that, “due to special features of a site, or special conditions or circumstances peculiar to the applicant’s land or structure, a literal enforcement of the critical area program would result in unwarranted hardship to the applicant.” MD. CODE, Nat. Res. §8-1808(d)(4)(i). “Unwarranted hardship” is defined 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.**” NR §8-1808(d)(1) [Emphasis added].

The CAC argues that the Board improperly applied the unwarranted hardship standard because the Board relied on the fact that other accessory structures on nearby properties had structures similar to the type that the Parrises wish to build. The CAC asserts that the Board ignored the current state of the law, which permits only the consideration of other parcels that have similar structures in conformance with the critical area law (a requirement that came into effect after the 2002 amendments to the law), not just the fact that other parcels have similar structures. At the Board hearing, there was testimony to the fact that there were similar structures on other parcels—but there was no indication as to whether these structures were built before or after the 2002 enactments. It is uncontroverted that surrounding properties do have such auxiliary structures. The Parrises’ requested use of their property is certainly one that others in their immediate area enjoy.

The Court agrees that the Board defined “unwarranted hardship” in this case to be “what virtually all other residents of Calvert County would consider reasonable and significant use of their properties” and that “legal enforcement... [of the Critical Area Law]... will deprive the applicants of rights commonly enjoyed by other properties in similar areas....” Board Decision at 4. This is not the standard of the State Critical Area Law since it did not address whether the applicants “would be denied a reasonable and significant use of their entire parcel or lot for

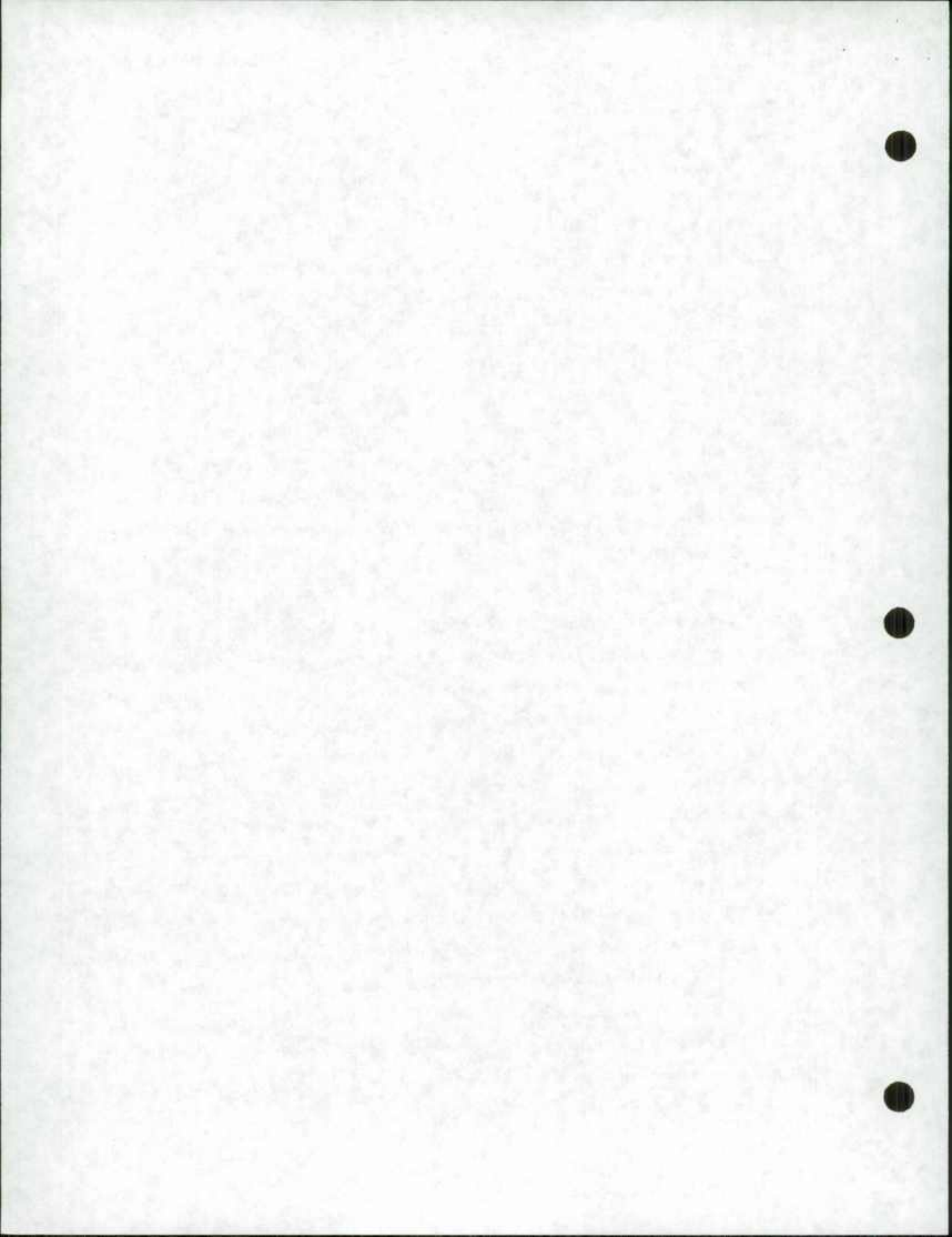


which the variance is requested" under NR §8-1808(d)(1). Thus, the Board used an incorrect standard.

IV. Whether there was substantial evidence before the Board to conclude that the denial of the variance would constitute an "unwarranted hardship."

Although the Court concedes that the Board incorrectly defined the standard of "unwarranted hardship" for this critical area variance, the Court will consider whether, using the standard in the text of the Maryland statute as the CAC proposes, there was nonetheless substantial evidence before the Board to reach the conclusion that the denial of the variance would result in "unwarranted hardship." The Parrises argue that out of all the available alternatives to them, the placement of the shop on the desired location, which falls within the critical area, is the least invasive means of building a woodworking shop. They contend that the portion of their parcel where they seek to build the shop is the only viable place to build such a structure, because the only other area – the site proposed by CAC – is encumbered by County zoning setback requirements or Limited Development Area restrictions, and may also be within the extended buffer line.

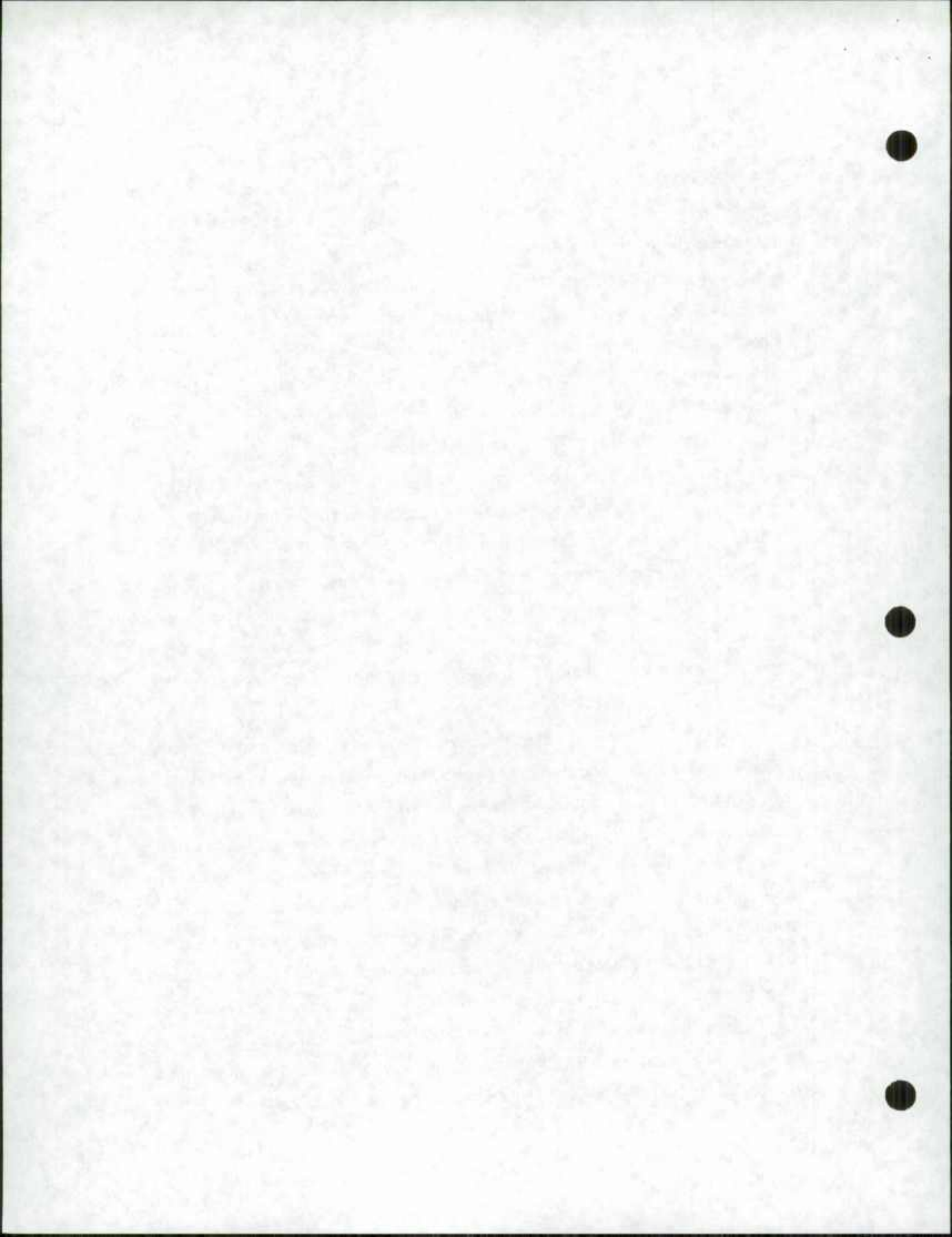
The CAC argues that, at the Board hearing, the Parrises failed to show that the denial of the variance for permission to build a woodworking shop would limit the Parrises' reasonable and significant use of the entire parcel, and that the Board improperly granted the variance. The CAC contends that there exists a "better" location for the woodworking shop, which proves that there is no unwarranted hardship in denying the variance. The Court notes that CAC has never in fact actually seen the location that it purports to be a better location for the woodworking shop. At the Board hearing, the CAC representative referred to an "aerial photo" to pick a location suitable for the shop, and relied on the site plan to determine that the location was not in the expanded buffer. T. 59. In fact, at the hearing, the CAC admitted to no visit of the site to determine an alternative for the woodworking shop; rather, the conclusion of CAC was entirely based on "the information in the [variance] application," and could not definitively say whether the CAC's proposed site was outside the expanded buffer. T. 65. At oral argument, CAC again pointed to the fact that there was another portion on the Parrises' property where the woodworking shop could be placed instead of the desired location. However, the CAC could not explain away the fact that the location it proposes is practically in the Parrises' front yard, and did not state whether that area was not in the expanded buffer. In addition, CAC is not



necessarily opposed to *any* structure being built within the expanded buffer. Their objection is the fact that the building sought to be built is an “accessory structure.” T. 61-62.

After an independent review of the testimony before the Board and the exhibits admitted during the hearing, this Court finds that there was substantial evidence before the Board to find that, “[d]ue to special features of a site, or special conditions or circumstances peculiar to the applicant's land or structure, a literal enforcement of the critical area program would result in unwarranted hardship to the applicant,” and that an “unwarranted hardship” was shown 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.” NR §8-1808(d)(4)(i) and §8-1808(d)(1). The Court finds that the Parrises have chosen an area for the woodworking shop that is minimally invasive – as it is on a relatively flat area, and there will be no sewage pipes connected to the structure. No trees will have to be cut, no driveways will be built, and no septic tanks or other piping will be connected to the structure. If the Parrises were required to build the proposed structure anywhere else on the property, in particular, the site suggested by the CAC, they would harm the land more; at a minimum, they would need to cut down trees and seek variances for setback requirements along county roads and the woodworking shop would be in their front yard—hardly a “reasonable” use of their property. Denying the Parrises’ request for the woodworking shop would certainly deny them a “reasonable and significant use” of their property in their retirement years.

The CAC argues that the Parrises already enjoy a reasonable and significant use of their property, since they have been using the property as it is right now for the past several years. The Court finds this argument too myopic—if that were the standard, one would never need a variance because they would have to be content with whatever structures were already existing on the property. Following the CAC’s argument, no variances would be provided to any applicant, and the CAC ignores the fact that the legislature has provided for variances from the State Critical Area Law. The Court notes the irony that, a new house with a larger footprint in the critical area, with proper permits, variances, and setbacks, could be allowed on the Parrises’ property. The Parrises only use 1.6 percent of the allowable 15 percent limit on impervious areas with the proposed woodworking shop. The CAC acknowledged that the Parrises’ property was a “gorgeous site” and that the Parrises have done an “admirable job of retaining all the forest and keeping that buffer. [The CAC] rarely see[s] a buffer like that.” T. 58.

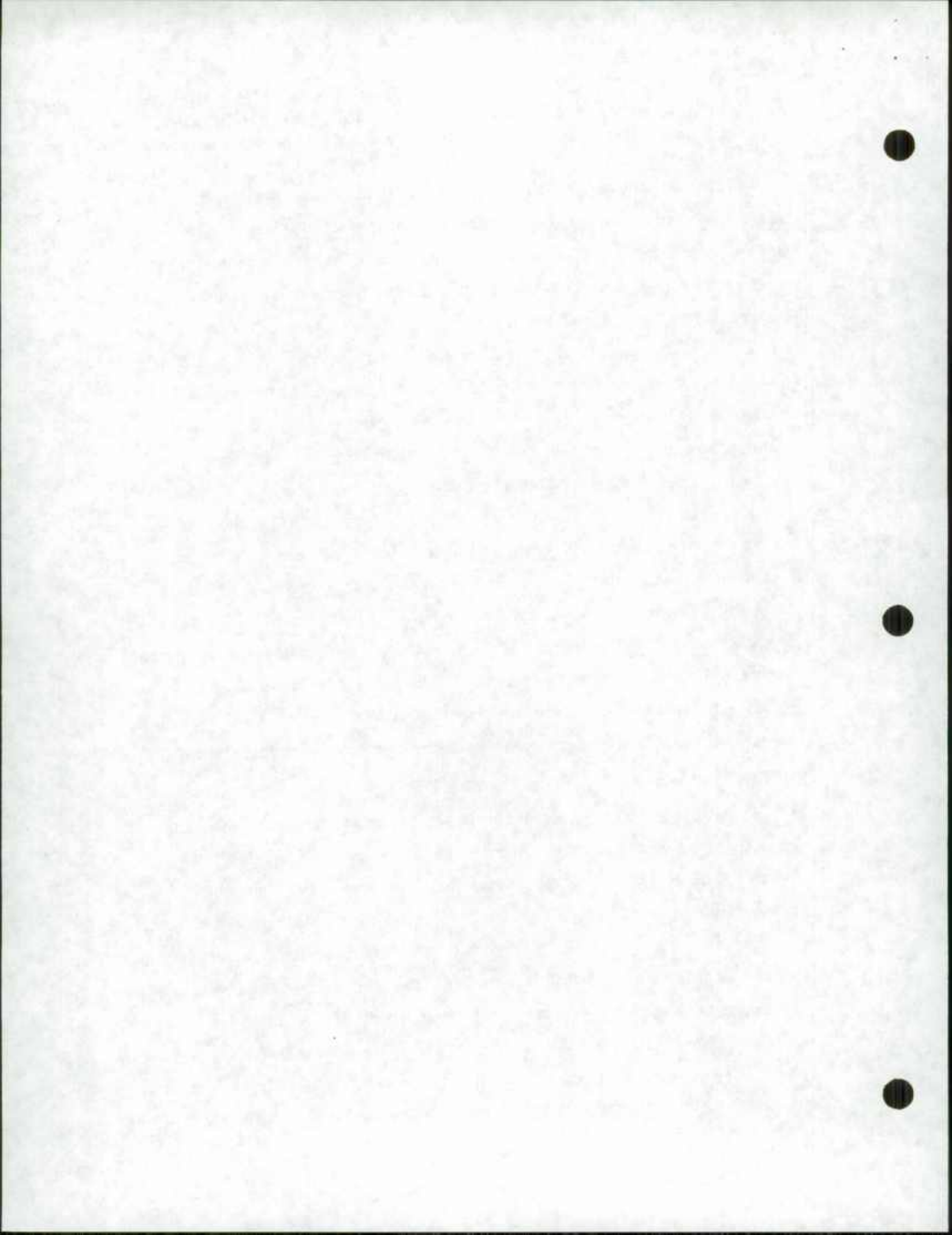


V. **Whether the Parrises have met their burdens of persuasion and proof to show that they meet all of the requirements for variance approval under the Zoning Ordinance**

In addition to meeting the requirements of the State Critical Area Law, the Parrises must also show, by overcoming their burdens of proof and persuasion, that they meet all requirements listed for variance approval pursuant to the Calvert County Zoning Ordinance for approval of their application. NR §8-1808(d)(4)(ii). Section 11-1.01.B of the Calvert County Zoning Ordinance consists of eight requirements that an applicant must show before a variance may be granted. The CAC argues that the Board incorrectly granted the variance without finding that the Parrises have met each and every requirement necessary for variance approval under the Calvert County Zoning Ordinance. The CAC concedes four requirements were met, but argues that the other four have not been met. The Court addresses each of these four requirements in turn.

First, §11-1.01.B.6.c of the Zoning Ordinance requires the Board to consider “special conditions or circumstances exist that are peculiar to the land or structure within Calvert County and that a literal enforcement of provisions within the County's Critical Area Program would result in unwarranted hardship.” The Parrises contend that their property is a peculiar one, as a long, narrow, wooded lot, with limited opportunities for building the shop. The maximum impervious area that may be built on the property is 15% percent. The property is five acres, and has a steep slope, which makes the lot mostly within the expanded buffer. T. 16. Further, the Board noted that this was a “very narrow piece of land.” Therefore, there was substantial evidence before the Board to come to the conclusion that this requirement of the Zoning Ordinance was met.

Second, §11-1.01.B.6.h requires the Board to find that “the granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the County'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.” The Parrises contend that the variance permitting the building of the structure would not adversely affect water quality or adversely impact fish, wildlife, or plant habitats. Roland June testified at the Board hearing that the Parrises would use a “best managed practice” for the roof runoff resulting from the structure, which will either be in the form of a rain garden or a dry well. Also, there is a vegetative buffer which spans 140 feet from the workshop to the marshland. According to the testimony at the hearing, evidence was presented that, with the dry well or rain garden, there would no adverse effect on the water, fish,



wildlife, or plant habitat. Therefore, there was substantial evidence before the Board to come to the conclusion that this requirement of the Zoning Ordinance was met.

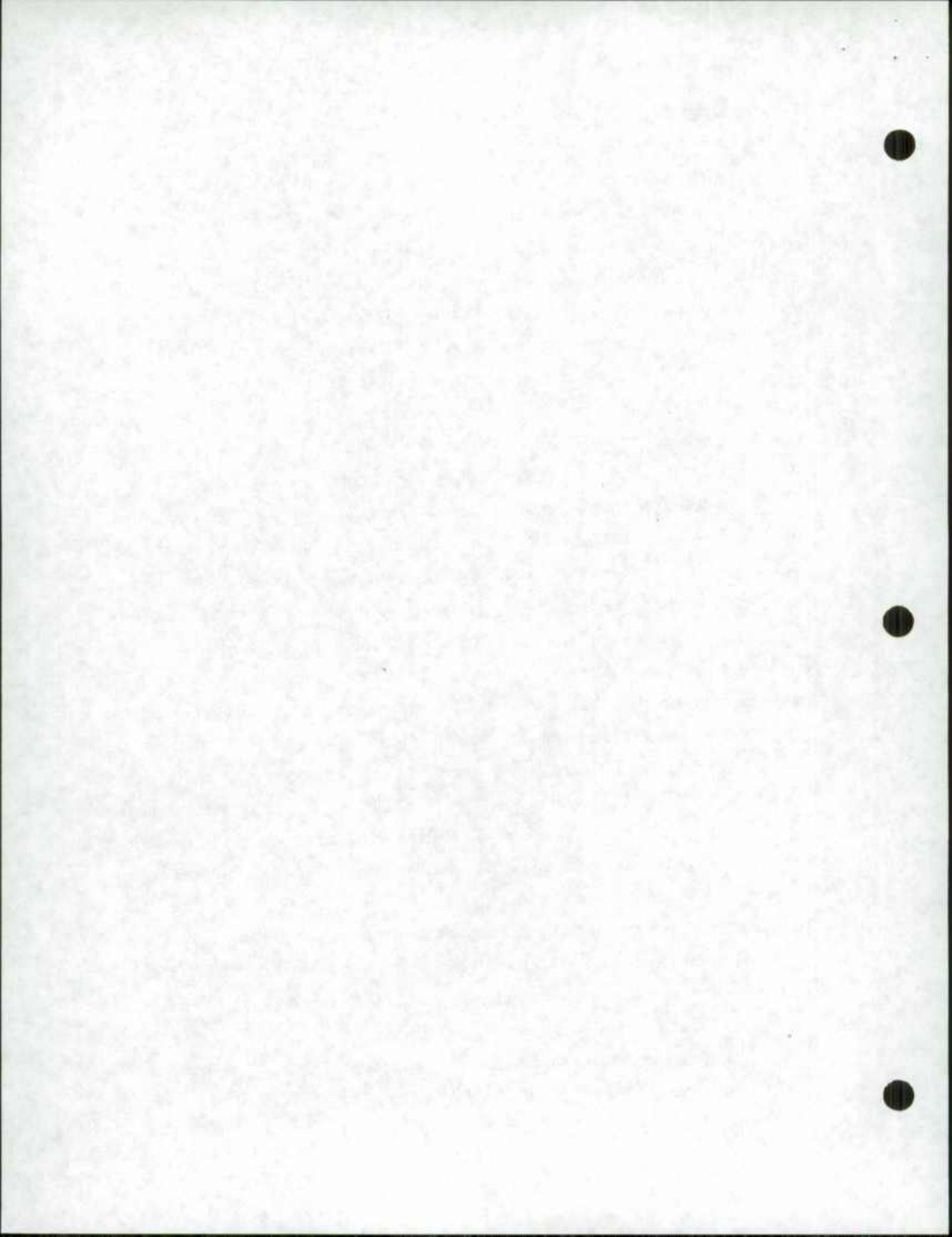
The third and fourth requirements, §11-1.01.B.6.e and §11-1.01.B.6.f, require more investigation by the Board. Section 11-1.01.B.6.e requires the Board to find that “a literal interpretation of the Critical Area Legislation and the Calvert County Critical Area Program and related ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area of the County.” The Parrises argue that other properties adjacent to the Parrises’ enjoy accessory structures. There was testimony at the Board hearing that there have “been a lot of accessory structures that have been built within the critical area.”

T. 23. Mrs. Parris testified to the fact that properties nearby have accessory structures such as tool houses, separate garages, and even a woodshop. T. 26-27. It is clear that the structure sought by the Parrises is a right commonly enjoyed by others.

However, the “rights commonly enjoyed by other properties” standard is only part of the standard to be considered, and has effectively been narrowed by State law. In 2002, the State Critical Area Law was amended to require that the consideration of the use of other properties when granting a variance be permitted only if those properties were given such rights to the use in conformance with the critical area law. The Court of Special Appeals has acknowledged that the intent of the General Assembly in passing the 2002 amendments was “to overrule recent decisions of the Court of Appeals, in which the Court had ruled that...when determining if the denial of a variance would deny an applicant rights commonly enjoyed by others in the critical area, a board may compare it to uses or development that predated the critical area program.” *Becker v. Anne Arundel County*, 174 Md.App. 114, 132, 920 A.2d 1118, 1128-1129 (2007).

Indeed, the Preamble to the Bills amending the State Critical Area Law states “[i]t is the intent of this Act to overrule the recent decisions of the Court of Appeals regarding variances to Critical Area regulations,” including the decision where “the Court of Appeals... ruled that a local Board of Appeals, when determining if denial of a variance would deny an applicant rights commonly enjoyed by others in the Critical Area, may compare a proposal to nonconforming uses or development that predated implementation of a local Critical Area Program.” 2002 Laws of Maryland, Ch. 431.

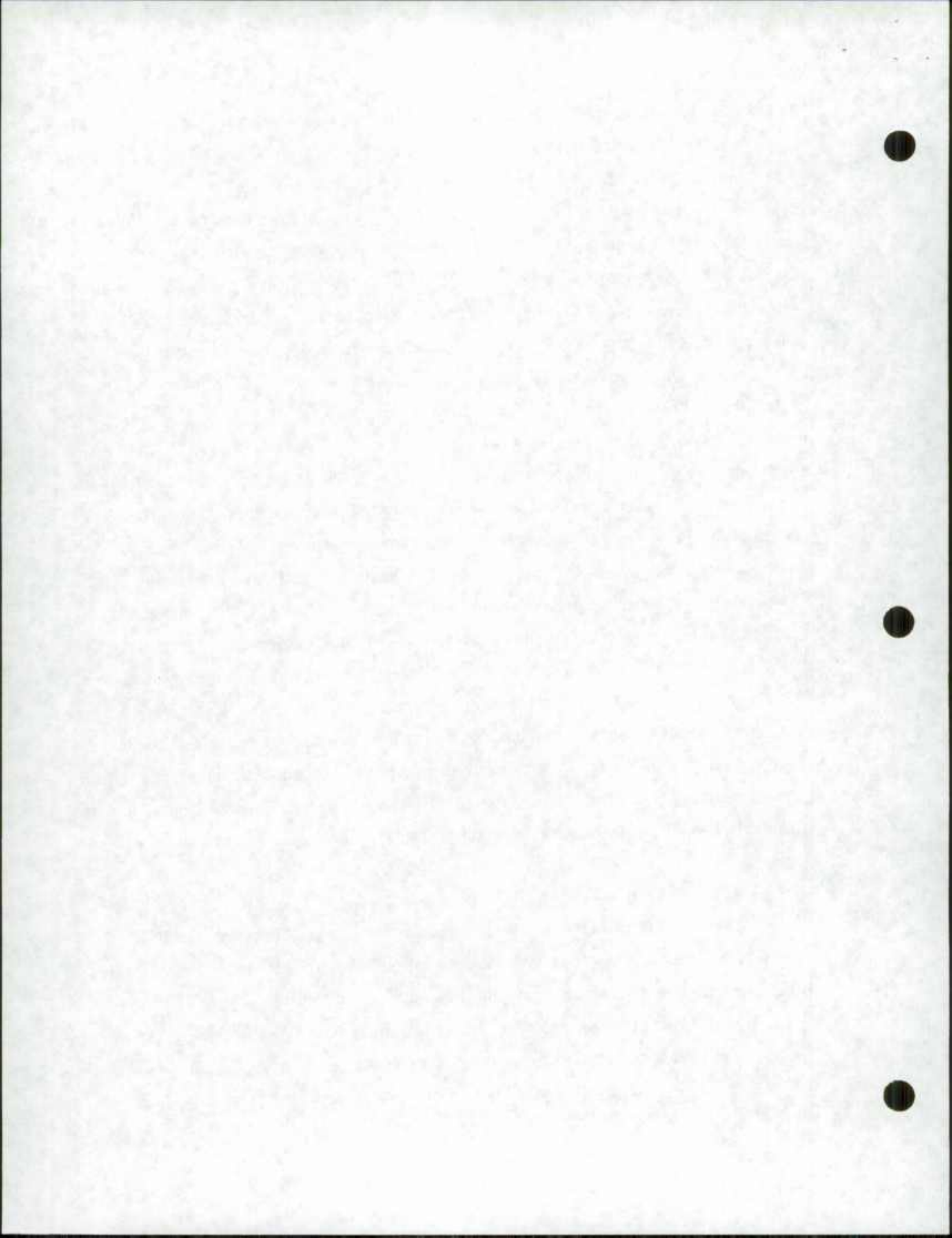
As a result, in 2002, the General Assembly amended the State Critical Area Law to require that a local jurisdiction may not grant a variance unless “[w]ithout the variance, the



applicant would be deprived of a use of land or a structure permitted to others in accordance with the provisions of the critical area program.” NR §8-1808(d)(4)(iii). In the instant case, the Board could not only consider rights commonly enjoyed by others—it had to consider only those rights commonly enjoyed by others that were in conformance with the critical area law. It is not clear whether the structures in place testified to at the hearing were built before or after the 2002 law, and no evidence was presented either way. Thus, this standard under the ordinance has not yet been met. Therefore, the Court remands this issue back to the Board for further testimony so that the applicants can show any variances that have been granted in Calvert County – not just in the Parrises’ neighborhood – for a similarly sized, detached structure in a Calvert County Critical Area after the 2002 amendments were made to State law.

Section 11-1.01.B.6.f requires the Board to find that “the granting of a variance will not confer upon an applicant any special privilege that would be denied by the Calvert County Critical Area Program to other lands or structures within the County’s Critical Area.” The Parrises contend that the variance, if granted, would not give them a special privilege, as the structure they are seeking is similar to structures on other lands near their property, which are also in the County’s Critical Area. As mentioned *supra*, the standard is narrower than this in order to be compliant with both County and State law. It is no longer enough to just look at whether other properties have similar structures. Under State law, these structures must also have been built pursuant to the restrictions of critical area law. Furthermore, no evidence was submitted to the Board showing that other applicants have been denied a variance similar to the type that the Parrises’ request. Therefore, the Court remands this issue back to the Board to take further testimony as to whether requests for similar structures were denied to determine whether the Parrises would be granted a special privilege denied to others seeking variances in the critical area.

The Court notes that it is with great reluctance that this case is to be remanded. The CAC decries this requested variance as one of “a thousand cuts” destroying the buffer zone; however, the Court’s objective and dispassionate analysis is that it is no more than an imperceptible smudge on the land. The request for the variance is meritorious and the Parrises are examples of true conservators of our critical areas—instead of building first, and seeking permission later, they have gone through the gauntlet of these new regulations. As stated previously, their



requested use and structure has been allowed in the past—they just had the misfortune of seeking this variance after 2002. In addition, the Board of Appeals is clearly the expert in this field, and it is well aware of the goal of preserving the critical area. A review of the testimony shows the Board sincerely desired to comply with the goal and intent of the State and County Critical Area Law, and their findings are affirmed with the two aforementioned exceptions. It is necessary that there be evidence submitted to the Board and findings made that all of the variance requirements are met.

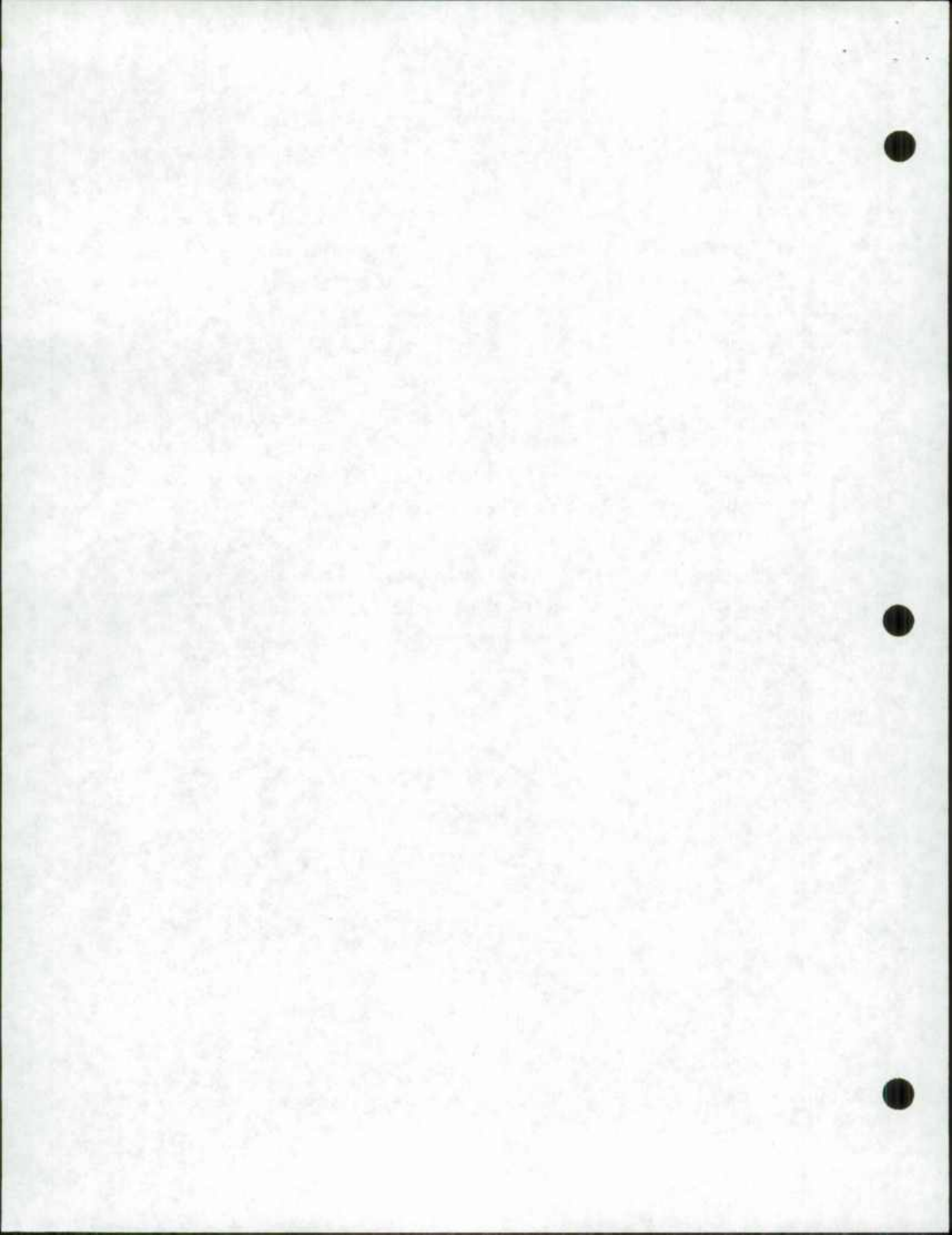
Based upon the transcripts, exhibits, memoranda, and an independent review of the record, and the Court's opinion herein, it is, therefore, this 12th day of March, 2008, by the Circuit Court for Calvert County, Maryland,

ORDERED, that the Board of Appeals' finding that denial of the variance would constitute an "unwarranted hardship" be **AFFIRMED**, based on the Court's independent review of the testimony and exhibits before the Board; and it is further

ORDERED, that the Board of Appeals' finding that the applicants have met the requirements for variance approval under Zoning Ordinance §11-1.01B be **AFFIRMED** with the exception of §11-1.01.B.6.e and §11-1.01.B.6.f, and that this case be **REMANDED** to the Board of Appeals to take additional testimony on these two limited issues, and make findings accordingly.



Marjorie L. Clagett, Judge



Copies to:

Sandra K. Canedo
Assistant Attorney General
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Eugene Pitrof
14713 Main Street
PO Box 130
Upper Marlboro, MD 20773

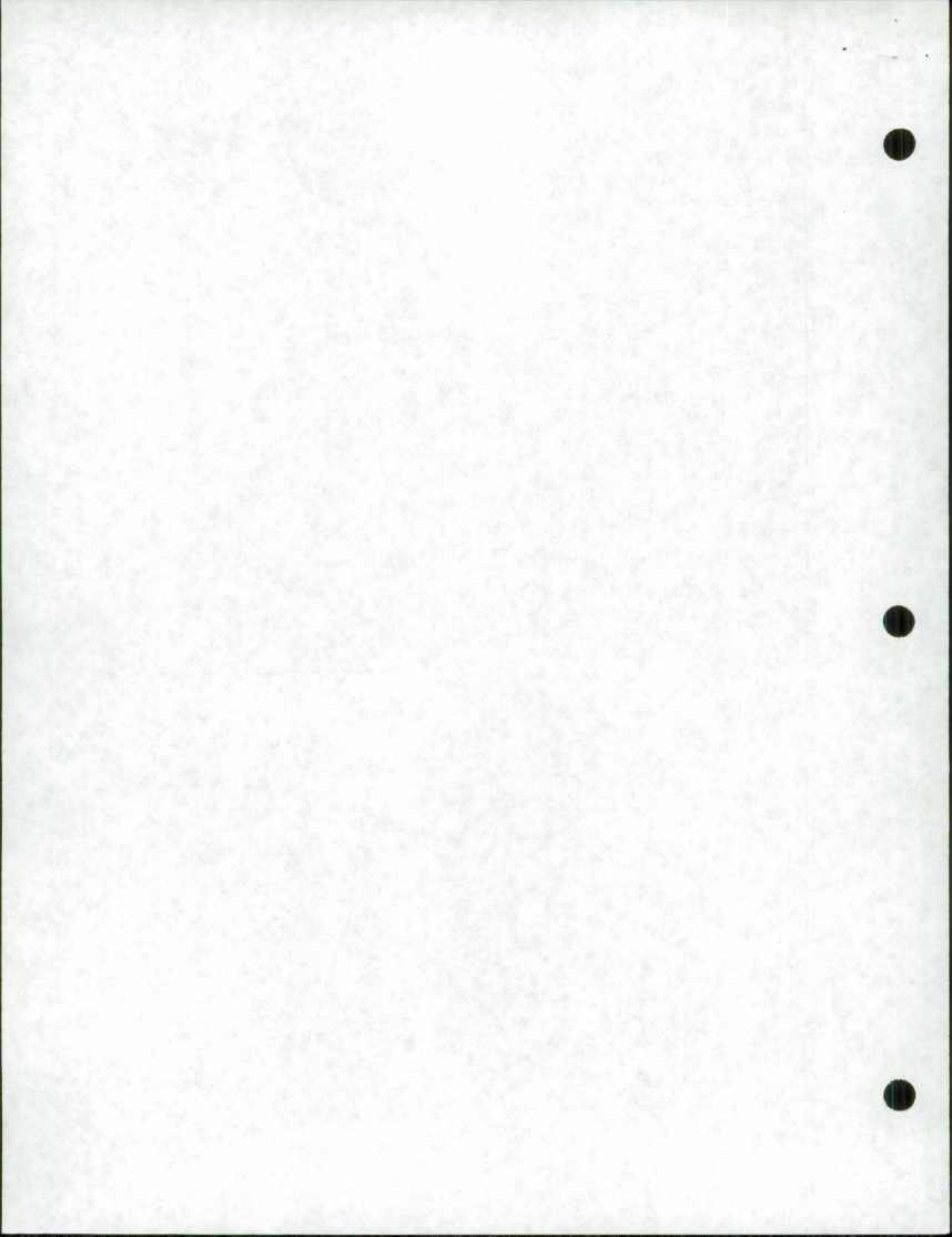
Calvert County Board of Appeals
150 Main Street
Prince Frederick, MD 20678

Certificate of Service

I HEREBY CERTIFY that on this 12th day of March, 2008, a copy of the foregoing Order was mailed to the above named parties.



Shikha Uppal, Law Clerk



IN THE CIRCUIT COURT FOR
TALBOT COUNTY

BRUCE P. BEDFORD, et al

Plaintiffs

v.

MARTIN G. MADDEN, et al

Defendants

Civil Case No. 5699

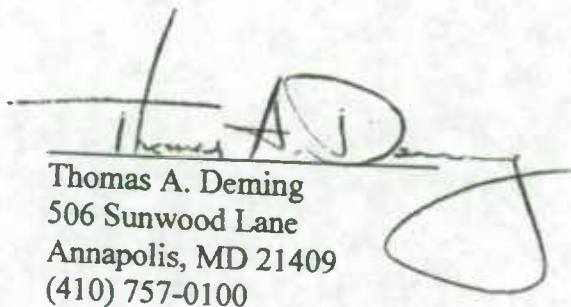
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Notice of Appeal

Plaintiffs Bruce P. Bedford, et al, by their undersigned attorneys and pursuant to Maryland Rule 8-201, note an appeal to the Court of Special Appeals in the above-captioned action.

Respectfully submitted,

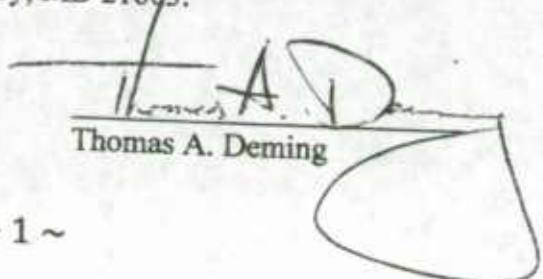
Thomas T. Alspach
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Easton, MD 21601
(410) 822 - 9100


Thomas A. Deming
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Annapolis, MD 21409
(410) 757-0100

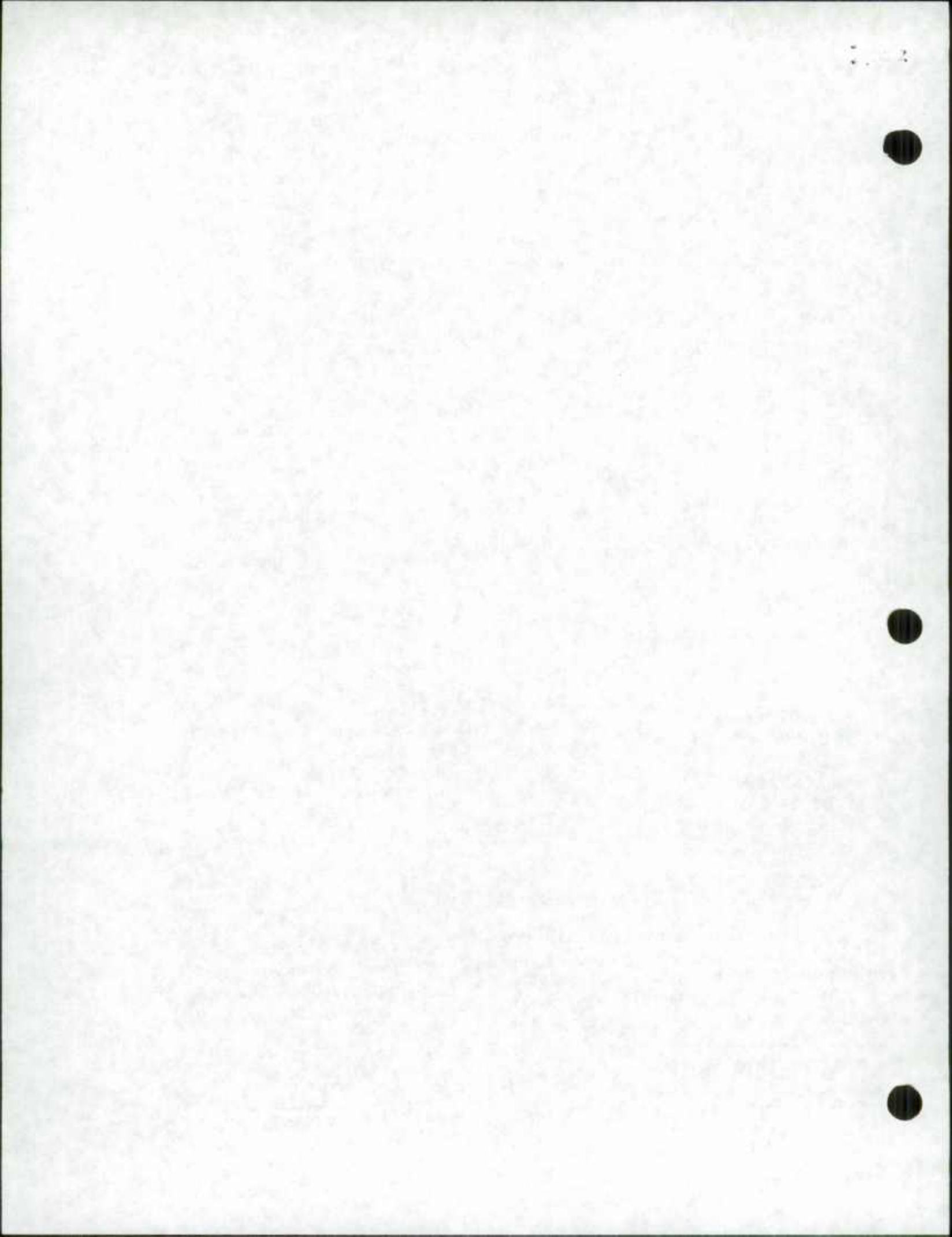
COUNSEL FOR PLAINTIFFS

Certificate of Service

I hereby certify that on this 26th day of March, 2008, a copy of the foregoing Notice of Appeal was mailed, first class, postage prepaid, to: Marianne Dise, Assistant Attorney General, 1804 West Street, Annapolis, MD 21401; Richard A. DeTar, Esquire, Miles & Stockbridge, P.C., 101 Bay Street, Easton, MD 21601; and to H. Michael Hixon, Esquire, Banks, Nason & Hixson, 113 South Baptist Street, P.O. Box 44, Salisbury, MD 21803.


Thomas A. Deming





Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

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/

April 17, 2008

Steve Sullivan, Esq.
Office of the Attorney General
Civil Division
200 Saint Paul Place, 20th Floor
Baltimore, Maryland 21202

RE: In the Matter of Bruce P. Bedford, et al.
Civil Case No. 5699

Dear Mr. Sullivan:

Enclosed, for your record, is a copy of the notice that an appeal has been filed.
If you have any questions, please contact me at (410) 260-3463.

Sincerely,

A handwritten signature in cursive script that reads "Jennifer J. Delve".

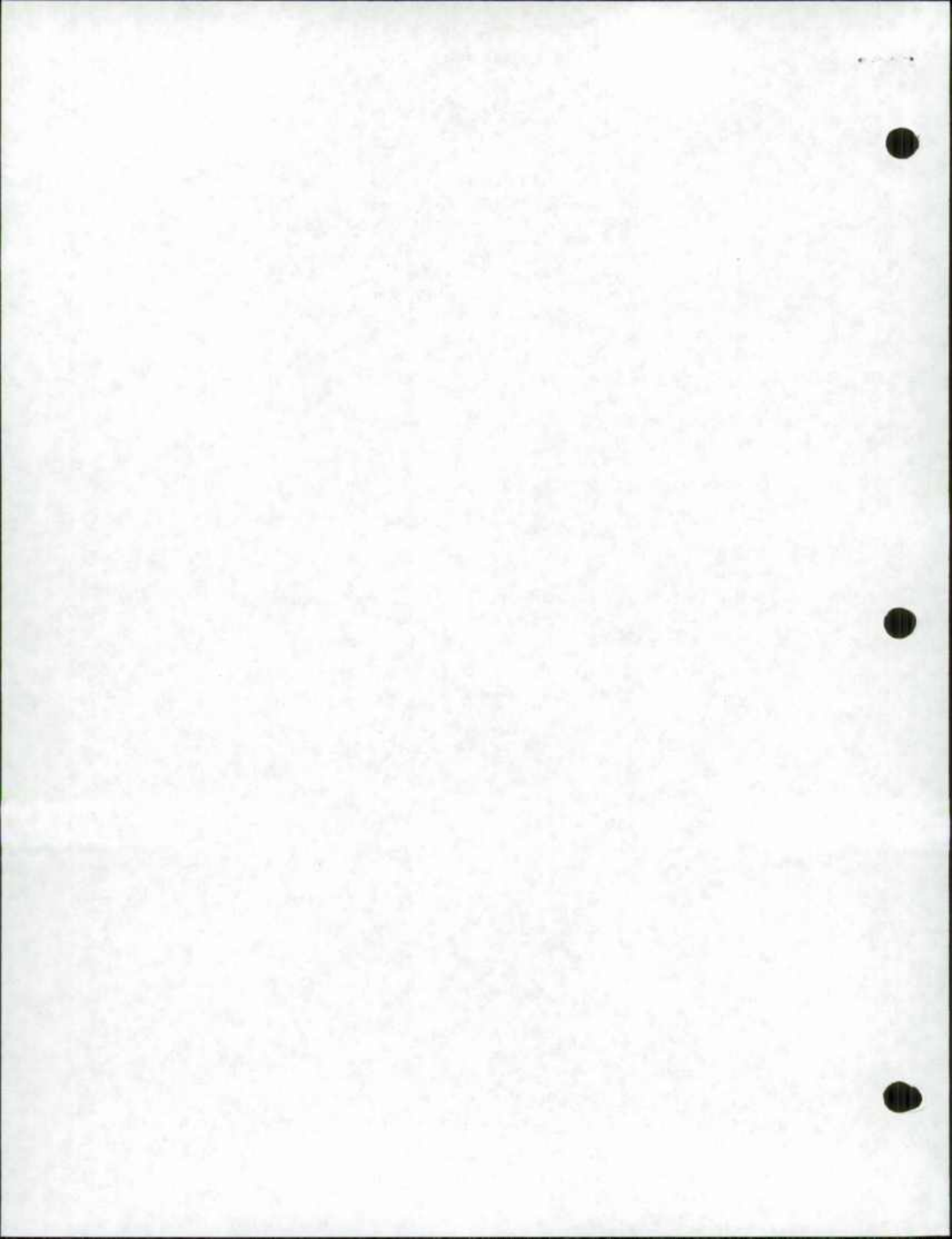
Jennifer J. Delve
Administrative Assistant

Enclosure

TTY for the Deaf

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





DOUGLAS F. GANSLER
Attorney General

KATHERINE WINFREE
Chief Deputy Attorney General

JOHN B. HOWARD, JR.
Deputy Attorney General



MARIANNE E. DISE
Assistant Attorney General
Principal Counsel

SAUNDRA K. CANEDO
Assistant Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CRITICAL AREA COMMISSION FOR THE
CHESAPEAKE AND ATLANTIC COASTAL BAYS

FAX NO. (410) 974-5338

WRITER'S DIRECT DIAL NO. (410) 260-3466
mdise@oag.state.md.us

April 11, 2008

Sent via facsimile and U.S. Mail

Robert Damalouji, Esquire
Law Offices of Davis, Upton & Palumbo, LLC
132 Main Street
Prince Frederick, Maryland 20678

RE: In the Matter of Harvey Holland, et al
Civil Case No.04-C-08-000090

Dear Mr. Damalouji:


I am writing on behalf of the Chair of the Critical Area Commission ("Commission"). As you may know, the Commission filed as a party Respondent in the above-referenced matter on February 21, 2008. Upon inquiry with the Circuit Court as to whether the Petitioner's had filed a Memorandum in support of their Petition, it came to my attention that a "Consent Line for Extension" had been filed for the above-referenced case on March 31, 2008. I have tried to reach both you and your assistant by telephone, leaving voice messages on April 10, 2008, but have not received a return call.

The Maryland Rules, specifically, Rule 7-207 (c), provide that "the time for filing a memorandum may be ... extended by stipulation of the parties..." My office was not contacted, and thus, could not possibly have consented or stipulated to any extension. I am writing this letter because I am concerned that an additional extension has either been or will be filed, and my office has again, not been contacted nor received a copy of any such filings.

At this time I would ask that you please send me a copy of any filings made by the Petitioner in which I was not provided a copy, as required by the Rules. Thank you for your prompt attention to this matter.

1804 West Street, Suite 100
Annapolis, Maryland 21401

Sincerely,

A handwritten signature in cursive script that reads "Sandra K. Canedo".

Sandra K. Canedo
Assistant Attorney General

cc: Marianne E. Dise, Esquire
Pamela Lucas, Esquire

DOUGLAS F. GANSLER
Attorney General

KATHERINE WINFREE
Chief Deputy Attorney General

JOHN B. HOWARD, JR.
Deputy Attorney General



MARIANNE E. DISE
Assistant Attorney General
Principal Counsel

SAUNDRA K. CANEDO
Assistant Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CRITICAL AREA COMMISSION FOR THE
CHESAPEAKE AND ATLANTIC COASTAL BAYS

FAX NO. (410) 974-5338

WRITER'S DIRECT DIAL NO. (410) 260-3467
scanedo@oag.state.md.us

April 15, 2008

Sent via facsimile and U.S. Mail

Robert Damalouji, Esquire
Law Offices of Davis, Upton & Palumbo, LLC
132 Main Street
Prince Frederick, Maryland 20678

RE: In the Matter of Harvey Holland, et al
Civil Case No.04-C-08-000090

Dear Mr. Damalouji:

As a follow-up to my phone message to both you and your assistant on April 10, 2008 and my letter to you dated, April 11, 2008, I have still not received any pleadings that you may have filed. I understand that you may be considering an additional request for extension and expect that you would contact my office prior to filing any further extensions.

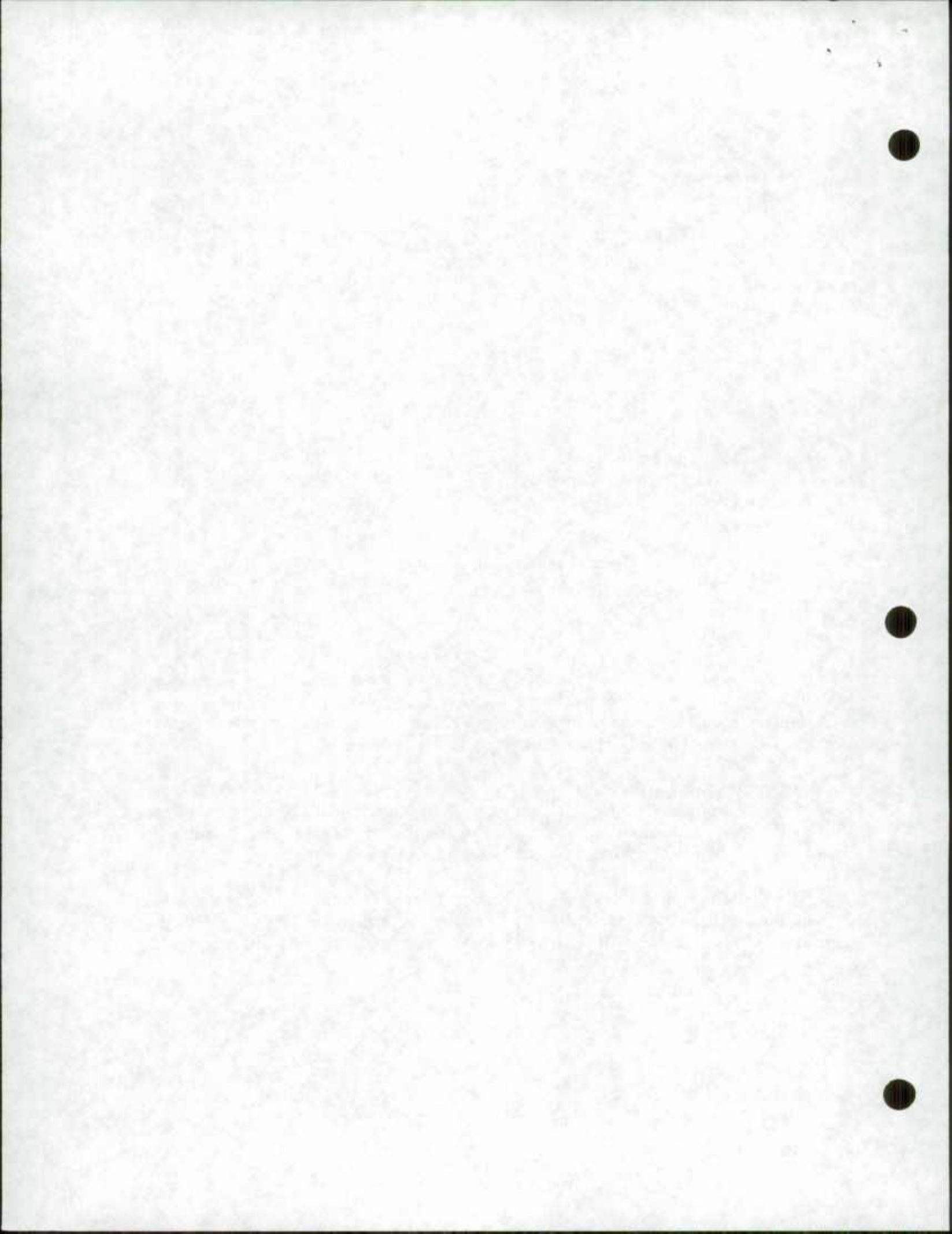
It has come to my attention that you may not have received the Critical Area Commission's Response to Petition directly from my client. Rather, that information likely came to you from the Circuit Court. Although all the court papers have identified my client as a party, I am nonetheless attaching the Commission's response here for your information.

At this time I would again ask that you please send me a copy of any filings made by the Petitioner in which I was not provided a copy, as required by the Rules. Thank you for your prompt attention to this matter. If you have any questions, please call me at (410) 260-3467.

Sincerely,

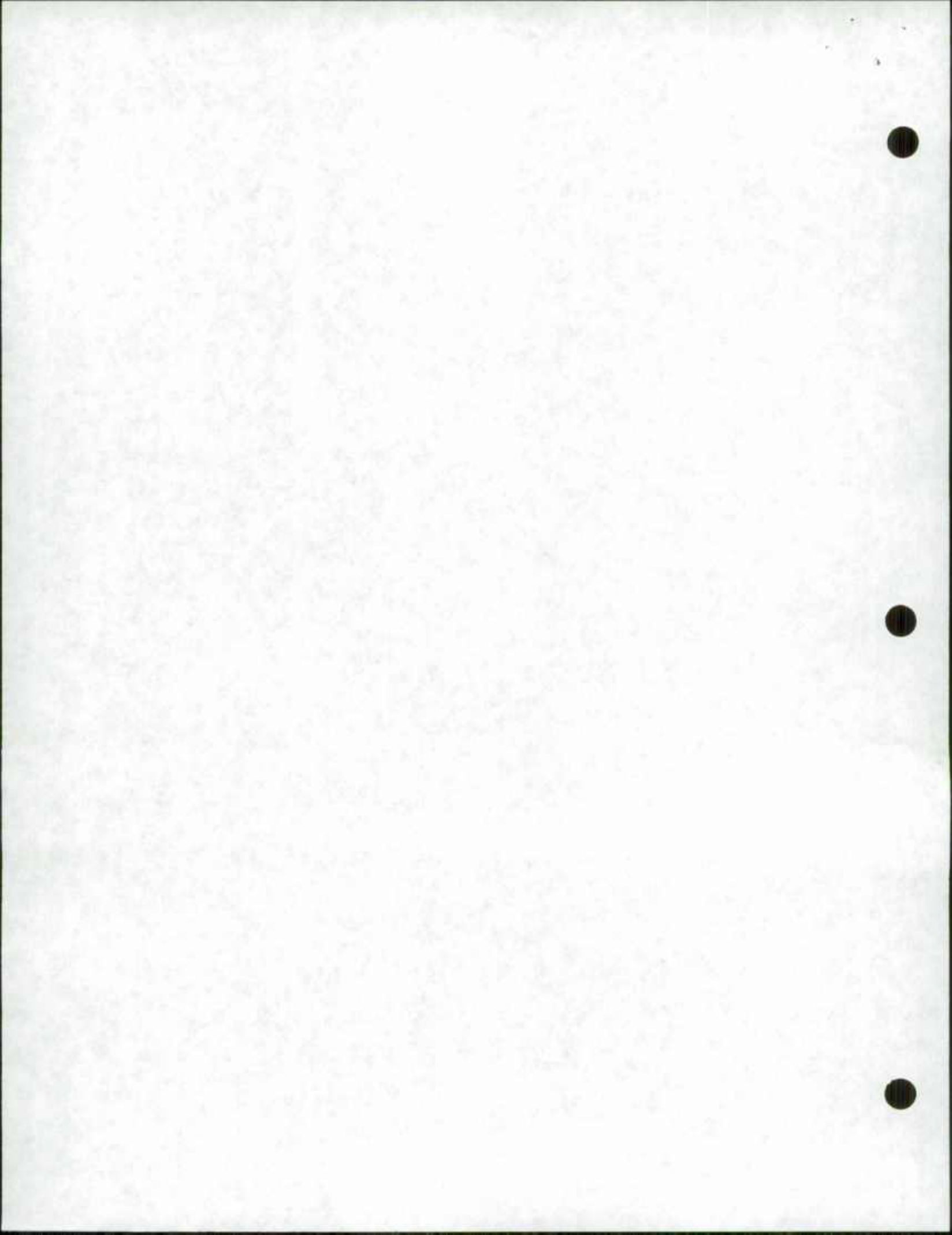
A handwritten signature in cursive script that reads "Sandra K. Canedo".

Saundra K. Canedo
Assistant Attorney General



Attachment

cc: Marianne E. Dise, Esquire w/o attachment
Pamela Lucas, Esquire w/o attachment



IN THE CIRCUIT COURT OF MARYLAND
FOR CALVERT COUNTY

PETITION OF:
HARVEY HOLLAND AND
PATRICIA HOLLAND
255 Chesapeake Avenue
Prince Frederick, Maryland 20678

*

*

FOR JUDICIAL REVIEW OF
The Decision of the
CALVERT COUNTY
BOARD OF APPEALS
150 Main Street
Prince Frederick, Maryland 20678

*

CIVIL ACTION No.
04-C-08-000090

*

In the Case of:
Harvey and Patricia Holland
Variance to Critical Area Requirements
Case No. 07-3461

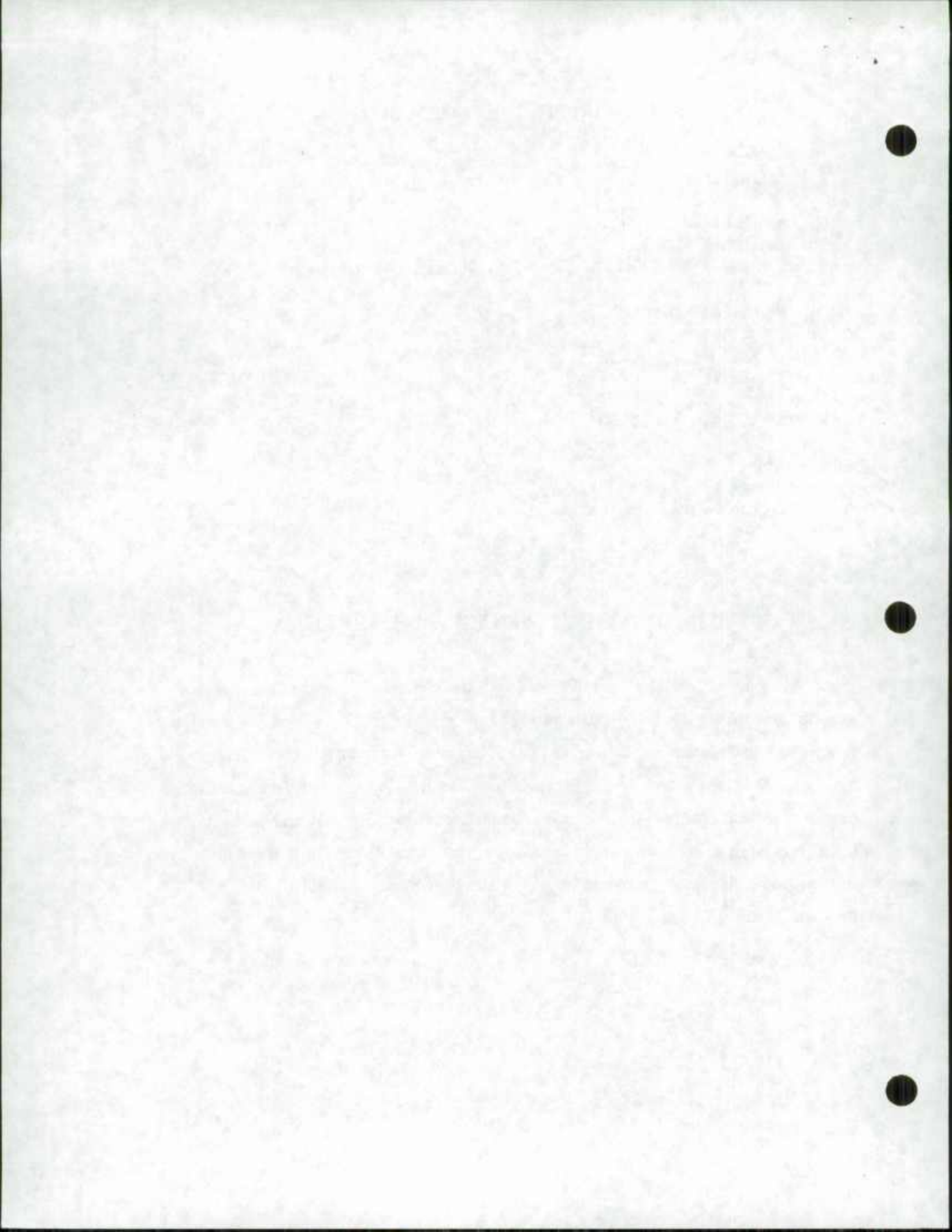
* * * * *

RESPONSE TO PETITION FOR JUDICIAL REVIEW

Margaret G. McHale, Chair of the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, ("Chair McHale") by her attorneys, Douglas F. Gansler, Attorney General of Maryland, and Marianne E. Dise and Sandra K. Canedo, Assistant Attorneys General, pursuant to Maryland Rule 7-204(a), files this Response to Petition for Judicial Review and states that she was a party to the proceedings before the Board of Appeals, and she intends to participate in this judicial proceeding. In addition, Chair McHale has standing and the right and authority to participate in this matter pursuant to Annotated Code of Maryland, Natural Resources Article, 8-1812(a) and (c).

Respectfully submitted,

DOUGLAS F. GANSLER
Attorney General of Maryland



**STATE OF MARYLAND
CRITICAL AREA COMMISSION
FOR THE
CHESAPEAKE AND ATLANTIC COASTAL BAYS
1804 West Street, Suite 100
Annapolis, Maryland 21401
(410) 260-3460**

FACSIMILE TRANSMITTAL

TO: Robert Damalouji

FAX: 301 855 1916

COMPANY:

PHONE:

FROM: Sandra Canedo

PHONE: 410 260 3467

DATE: April 15, 2008

No. of Pages: 4

TIME:

(Including Cover)

COMMENTS:

STATE OF MARYLAND
CRITICAL AREA COMMISSION
FOR THE
CHESAPEAKE AND ATLANTIC COASTAL BAYS
1804 West Street, Suite 400
Annapolis, Maryland 21404
(410) 326-3400

TRANSMITTAL FACSIMILE

TO: Robert Dainton
COMPANY:
FROM: Sandra Condo
DATE: April 15, 2004
TIME:
COMMITTEE:
PHONE: 410 260 3407
FAX: 301 822 1010
PHONE:
FAC. OF ENVIRONMENTAL & NATURAL RESOURCES

DOUGLAS F. GANSLER
Attorney General

KATHERINE WINFREY
Chief Deputy Attorney General

JOHN B. HOWARD, JR.
Deputy Attorney General



MARIANNE E. DISE
Assistant Attorney General
Principal Counsel

SAUNDRA K. CANEDO
Assistant Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CRITICAL AREA COMMISSION FOR THE
CHESAPEAKE AND ATLANTIC COASTAL BAYS

FAX NO. (410) 974-5338

WRITER'S DIRECT DIAL NO. (410) 260-3467
scanedo@oag.state.md.us

April 30, 2008

Leslie D. Gradet, Clerk
Robert C. Murphy Courts of Appeal Building
361 Rowe Boulevard
Annapolis, Maryland 21401


RE: *In the Matter of Margaret McHale v. Edward and Kay Parris*,
Civil Action No.: 04-C-07-1272

Dear Ms. Gradet:

Please accept for filing the attached Critical Area Commission's Information Report along with a copy of the Notice of Appeal filed in Circuit Court and the underlying Order from Circuit Court.

Thank you for your assistance in this matter.

Sincerely,


Saundra K. Canedo
Assistant Attorney General

cc: Eugene Pitroff, Esq. ✓
Kay Parris, Esq.

COURT OF SPECIAL APPEALS OF MARYLAND
361 Rowe Blvd., Second Floor
Annapolis, MD 21401
410-260-1450

CIVIL APPEAL INFORMATION REPORT (Md. Rules 8-205 & 8-206)

Appeal No. _____
(To be filled in by Clerk, Court of Special Appeals)

Directions: Generally, within 10 days after filing an appeal in a civil case, the appealing party ("appellant") must fill out, sign and file an original of this form by mail or by hand with P.H.C. Clerk, Court of Special Appeals, 361 Rowe Blvd., Annapolis, MD 21401, and send copies of it to all other attorneys and unrepresented parties in the case. Attach all requested items to the original and all copies. Use extra pages if desired. There is no filing fee for this report.

AN APPEAL MAY BE DISMISSED IF THIS FORM IS NOT TIMELY FILED, RULE 8-602(a)(4). Within 7 days of receiving an appellant's information report, each non-appealing party ("appellee") may but need not file one. Appeals of Juvenile Court cases, and appeals by prisoners relating to their confinement, are exempt from this form.

PLEASE SUPPLY THE FOLLOWING INFORMATION:

1. **Case Caption:** In the Matter of Margaret McHale v. Edward and Kay Parris

a. Name of party appealing: Margaret McHale, Chair, Critical Area Commission

b. Was this case previously appealed to this Court? No Yes;

If "yes," Appeal No. _____, Sept. Term, 20____; Appeal No. _____, Sept. Term, 20____.

c. Are there other cases pending in this Court that are related to this case? No Yes;

If "yes," Appeal No. _____, Sept. Term, 20____; Appeal No. _____, Sept. Term, 20____.

d. Are there other cases pending in another court that are related to this case? No Yes; if "yes," then:

Case No. _____

Court: _____

Case title: _____

2. **Name, mailing address, email & weekday telephone of parties and attorneys, if any:**

Appellant(s): Margaret McHale, Chair, Critical Area Commission

1804 West St., Suite 100

Annapolis, MD 21401

410 260-3464

Appellee(s): Edward and Kay Parris

7770 Swann Lane

Owings, MD 20736

Attorney(s) for Appellant(s): Sandra Canedo, Esq. & Marianne Dice, Esq.

1804 West Street, Suite 100

Annapolis, MD 21401

(410) 260-3467; (410) 260-3466

Attorney(s) for Appellee(s): Eugene Pitroff

14713 Main Street

P.O. Box 130, Upper Marlboro, MD 20773

301-627-4300

Kay Parris

7770 Swann Lane

Owings, MD 20736

3. **A.D.A. Accommodation/Interpreters for Proceedings in Maryland Appellate Courts**

Will a party or attorney need an A.D.A. accommodation or interpreter? No Yes
If "yes," please explain the need and the requested accommodation: _____

4. **Type of civil case:** administrative appeal, contract, declaratory judgment, domestic, estate, foreclosure, paternity, tort, workers' compensation, other (specify): _____

5. **Court appealed from:** Circuit Orphans Court for Calvert County

a. Full Case No: 04-C-07-001272 AA b. Judge's Name: Marjorie L. Clagett

c. Does the appeal arise from:
A pre-trial motion? No Yes; if yes, Motion with hearing, or Motion without hearing.
A trial? No Yes; if yes, Jury trial, or Non-jury trial.
Other? No Yes; if yes, (specify):
Hearing with oral argument

d. Is this an appeal of an order granting a motion to dismiss?..... No Yes; if yes, go to (f)
e. Is this an appeal of an order granting summary judgment?..... No Yes; if yes, go to (f)

If you answered "yes" to (d) or (e), then:

f. Was a hearing requested in writing by any party? No Yes; if yes, go to (g)
g. Was a hearing held?..... No Yes; if yes, go to (h)
h. Was the hearing recorded?..... No Yes; if yes, go to (i) thru (k)

For all cases where there was a hearing and/or trial, please answer (i) through (k):

i. Dates & duration of trial/hearing (days/hours): February 11, 2008, 1 1/2 hours

j. Number of exhibits in evidence: Record of Calvert County Board of Appeals attached

k. If a full transcript of all proceedings will not be ordered or is unnecessary for the appeal, please explain why Rule 8-411 does not apply: _____

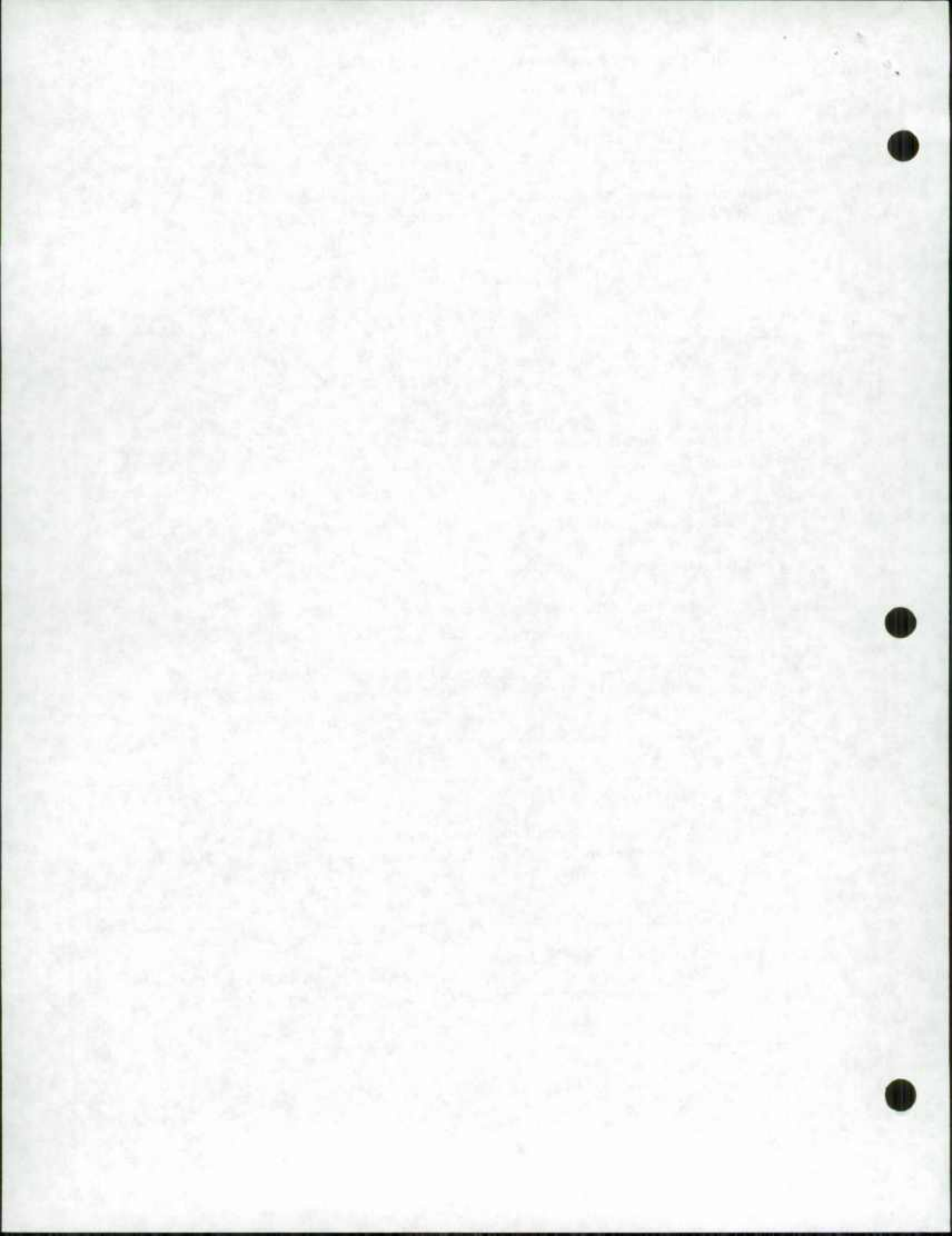
6. **Record Extract**

a. In your view, will the court file, exhibits and transcripts altogether exceed 100 pages? Yes No.
b. If "yes," have the attorneys and unrepresented parties discussed using Rules 8-413(b) ("Statement of Case in Lieu of Entire Record"), or 8-501(1) ("Deferred Record Extract")? Yes No; if "no," explain why:

7. **Judgments, Orders and/or Rulings in Question**

(ATTACH COPY OF WRITTEN JUDGMENTS, ORDERS &/OR RULINGS BEING APPEALED.)

a. Date of judgments, orders and/or rulings appealed (if different from shown on docket, please explain):
March 12, 2008



b. Describe judgments, orders and/or rulings appealed, including whether such is/are written:

Order affirmed The Board of Appeals granting of variance for accessory structure in the matter and remanded for additional testimony

c. Do the judgments, orders and/or rulings end the whole case (all claims) as to all parties? Yes No
(If "no," explain how the judgments, orders and/or rulings are appealable under Rule 2-602 and Code, Courts Art., sections 12-301, 12-303: _____)

8. Post-Judgment Motions

a. Were any motions filed under Rules 2-532, 2-533, or 2-534? Yes No

If "yes," please identify each such motion and for each, state:

- 1. Date(s) filed: _____;
- 2. Date(s) of ruling(s) on motion(s): _____;
- 3. Ruling(s) on motion(s): _____;

b. Was *in banc* review requested under Rule 2-551? Yes No

If "yes," who filed for *in banc* review: _____

9. Appeal

(ATTACH COPY OF NOTICE OF APPEAL)

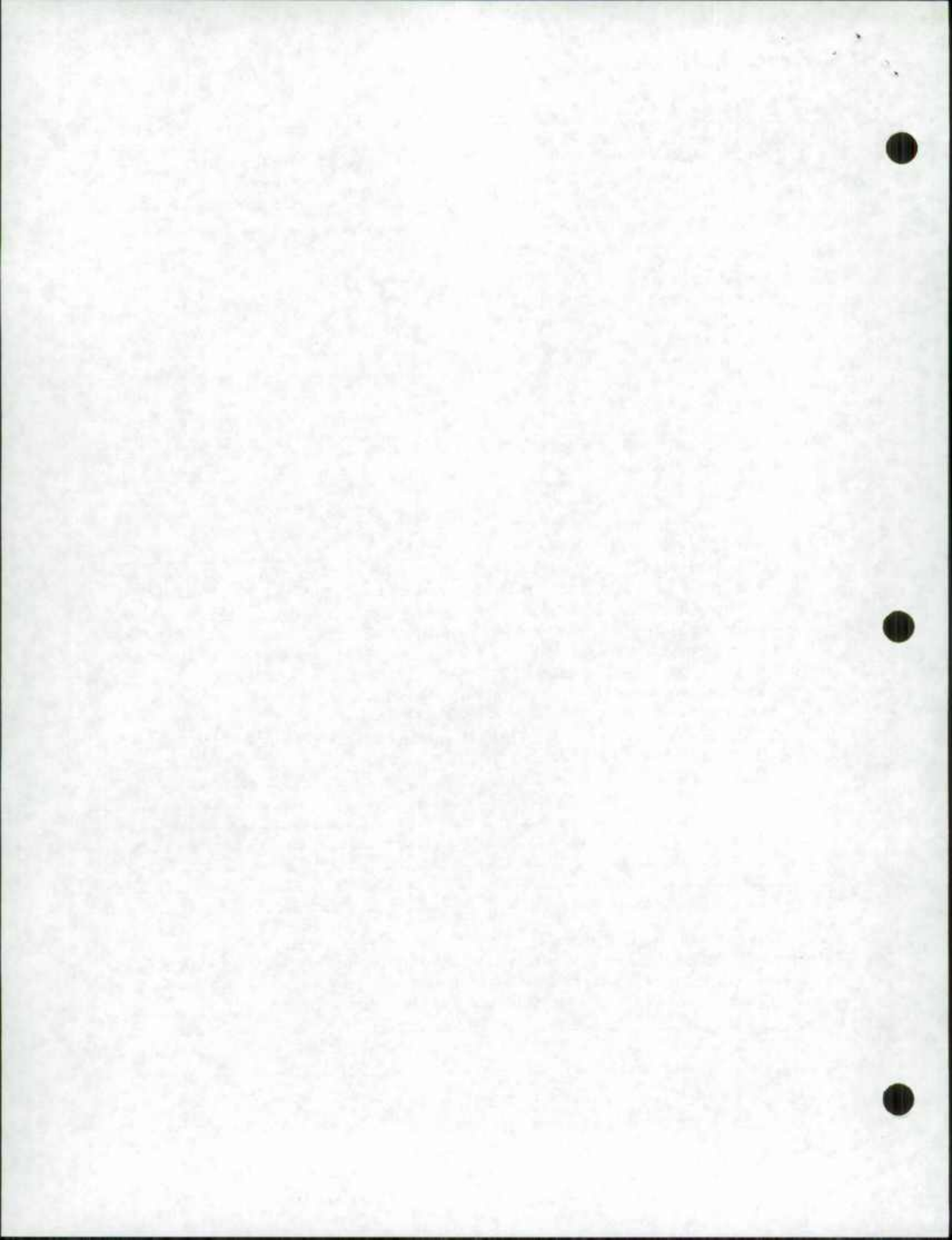
- a. Appeal's filing date in circuit court: April 11, 2008 _____;
- b. Name of party appealing: Margaret McHale, Chair, Critical Area Commission _____;
- c. Filing fee paid? Yes No; if "no," is a motion for waiver and affidavit attached? Yes No
- d. Is this an appeal under Rule 8-207(a) of an order about: adoption; guardianship terminating parental rights; guardianship of the person; child custody or visitation?..... Yes No
- e. Is this an appeal of an interlocutory order under Code, Courts Article, section 12-303? Yes No
- f. Will this be an Expedited Appeal under Rule 8-207(b)?..... Yes No
- g. State each issue and claim of trial court error that you are appealing. (Appellees may use this space to explain their contentions about an appellant's answer to this question.)

The circuit court erred in affirming the Board of Appeals' decision. The Board's decision was based on errors of law, including application of a legally incorrect standard of unwarranted hardship.

10. Settlement or Scheduling Conference

(Information disclosed on this form is subject to the confidentiality provision of Rule 8-205(f).)

a. Describe briefly the history and present status of settlement negotiations sufficient to aid the Court of Special Appeals to decide whether to schedule a Pre-Hearing Conference: _____



b. Was this case submitted to any Alternative Dispute Resolution process (arbitration, mediation, settlement conference, etc.)? Yes No. If "yes," describe briefly. _____

c. Would a Pre-Hearing Conference help to narrow or reduce legal issues? Yes No

d. Would a Pre-Hearing Conference help plan the handling of large records? Yes No

e. Would a Pre-Hearing Conference help plan for other administrative issues? Yes No

If "yes" to (c), (d), or (e), please state the issues and summarize your discussions to date with the opposing party/counsel about them. _____

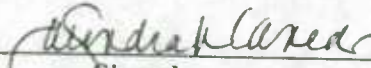
CERTIFICATE OF SERVICE

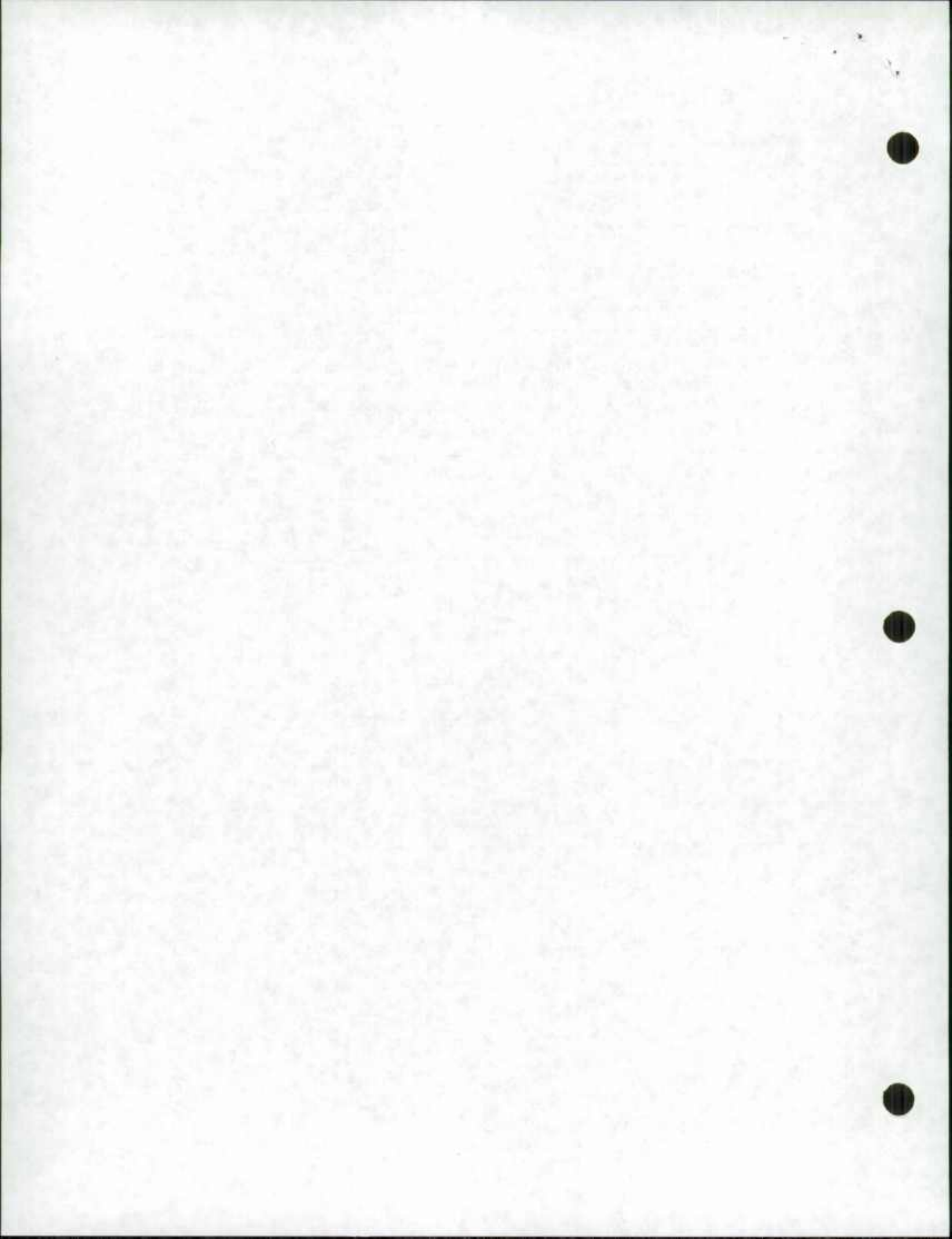
I certify that on the date stated below a copy of the foregoing Report was mailed, postage prepaid to:

Eugene Pitroff
14713 Main Street, P.O. Box 130
Upper Marlboro, MD 20773

Kay Partis
7770 SWARM LANE
Dwight, MD 20736

4-30-08
Date


Signed



CERTIFIED COPY OF RECORD FOR
BOARD OF APPEALS CASE NO. 06-3379 (REMAND)

Margaret McHale, Chair, CBCAC, Petitioner
Edward & Kay Parris, Applicants/Property Owners
Civil Action No. 04-C-07-001272

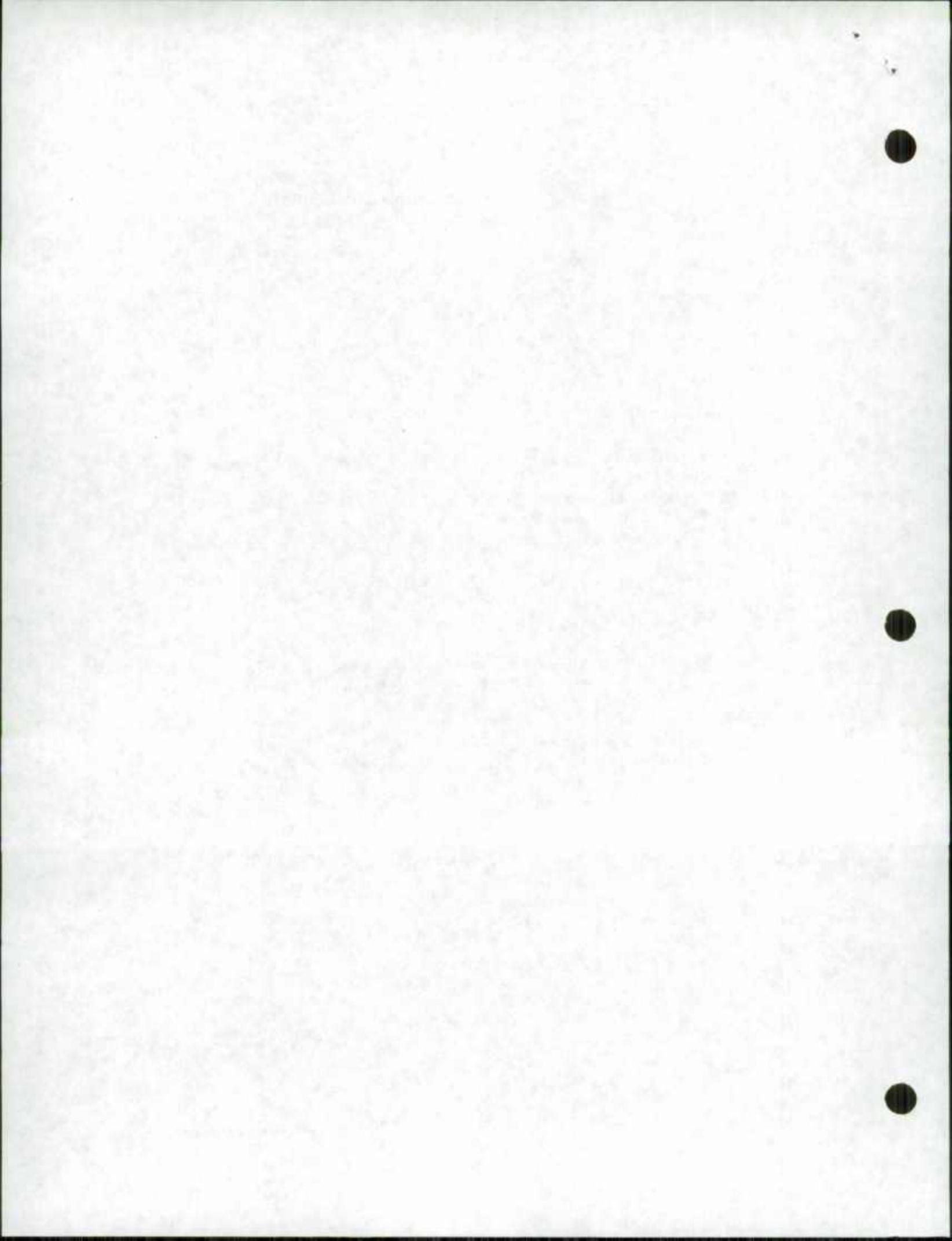
Contents (Board of Appeals Case No. 06-3379 (REMAND)):

- A. Board of Appeals Order Entered August 22, 2007 (from August 2, 2007 Public Hearing)
- B. Transcript of August 2, 2007 Public Hearing
- C. Applicant Exhibits
 - 1. Remand from Circuit Court dated July 6, 2007 Board of Appeals Application
 - 2. Plat, Dated October 2006
 - 3. Applicant's Memorandum for Case No. 06-3379 by Eugene Pitrof
 - 4. 7770 Swan Lane Maps (3 each)
 - 5. 7770 Swan Lane Map (1 each)
- D. Staff Report dated December 7, 2006/ August 2, 2007
- E. Affidavit of Sign Posting
- F. Notices of Public Hearing sent to Applicant and Adjoining Property Owners/Parties of Interest
 - 1. Letter & Notice Dated July 9, 2007 for August 2, 2007 Public Hearing
- G. Correspondence
 - 1. Board of Appeals Order – 06-3379 dated Jan 8, 2007 from December 7, 2006 Public Hearing
 - 2. Transcript – Board of Appeals Order 06-3379 from December 7, 2006 Public Hearing

RECEIVED

NOV 6 2007

CRITICAL AREA COMMISSION



DOUGLAS F. GANSLER
Attorney General

KATHERINE WINFREE
Chief Deputy Attorney General

JOHN B. HOWARD, JR.
Deputy Attorney General



MARIANNE E. DISE
Assistant Attorney General
Principal Counsel

SAUNDRA K. CANEDO
Assistant Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CRITICAL AREA COMMISSION FOR THE
CHESAPEAKE AND ATLANTIC COASTAL BAYS

FAX NO. (410) 974-5338

WRITER'S DIRECT DIAL NO. (410) 260-3467
scanedo@oag.state.md.us

May 12, 2008

Via Overnight Delivery

Ms. Gale Dempsey
200 Chesapeake Boulevard, Ste #2300
Elkton, Maryland 21921

RE: Affidavit for Cecil County Board of Appeals Case No. 3359

Dear Ms. Dempsey:

Pursuant to our conversation, enclosed is an Affidavit for your signature. Please sign the Affidavit, have it notarized and return to me in the enclosed pre-paid envelope.

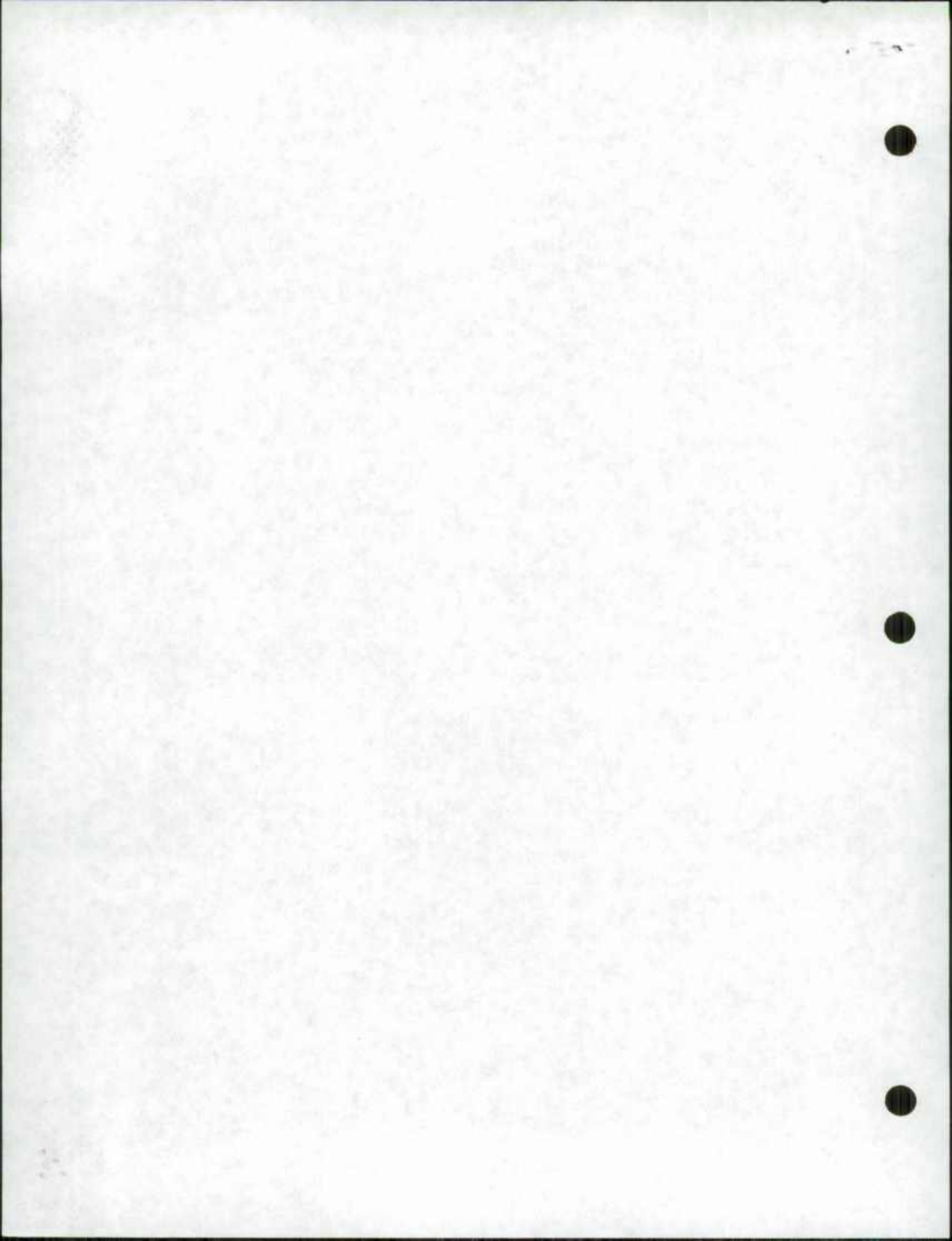
Thank you for your assistance.

Sincerely,

A handwritten signature in cursive script, appearing to read "Saundra K. Canedo".

Saundra K. Canedo
Assistant Attorney General

Encl.





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ELKTON MD 21921-6395

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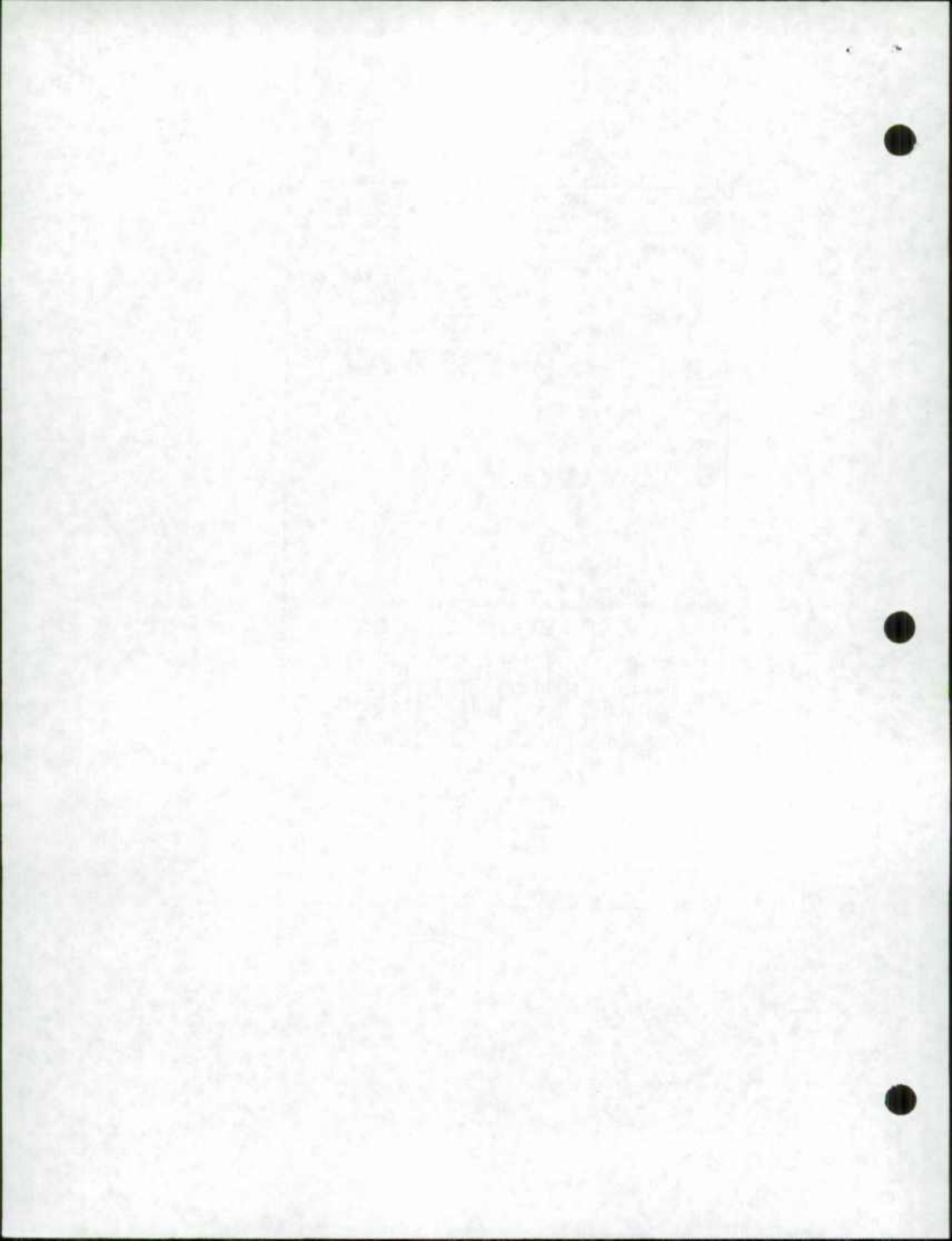
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1804 WEST SIKKEE, SUITE 100
ANNAPOLIS, MD 21401

X



**IN THE CIRCUIT COURT OF MARYLAND
FOR CECIL COUNTY**

IN THE MATTER OF:
FRON-DLP, LP,

Petitioner

**FOR JUDICIAL REVIEW OF
THE DECISION OF THE
CECIL COUNTY BOARD
OF APPEALS**

Civil Action No. 07-C-07-000402 AA

IN THE CASE OF
Cecil County Board of Appeals
#3359

* * * * *

AFFIDAVIT OF GALE DEMPSEY

STATE OF MARYLAND, COUNTY OF CECIL, to wit:

I HEREBY CERTIFY, that on this _____ day of May 2008, before me, a Notary Public of the State and County as aforesaid, personally appeared GALE DEMPSEY, and she made oath in due form of law as follows:

1. I am over the age of 18, am competent to be witness and have personal knowledge of the facts of this case.
2. I am an Administrative Assistant in the Office of Planning and Zoning for Cecil County Government.
3. The matter of FRON-DLP, L.P. was heard by the Board of Appeals on October 23, 2007.
4. On December 20, 2007, we received notice from the Clerk of the Circuit Court of Cecil County in case number 07-C-07-000402 AA that FRON-DLP, L.P. filed an Appeal to the Circuit Court from the Board of Appeals Decision.

5. On January 3, 2008, we sent a letter to Ms. Carol Beresch, Court Reporter requesting that she produce a transcript of the hearing from Board of Appeals Case No. 3359.

6. On January 3, 2008, I transmitted the record from the Board of Appeals hearing, minus the transcript, to the Circuit Court.

7. As of the date below, no transcript has been received by this office.

I do solemnly declare and affirm under penalties of law that the information set forth in this Affidavit is true and accurate to the best of my knowledge, information and belief.

Gale Dempsey
Administrative Assistant
Office of Planning and Zoning

STATE OF MARYLAND, COUNTY OF CECIL, to wit:

I HEREBY CERTIFY that on this _____ day of May 2008, before me, the subscriber, a Notary Public of the State and County as aforesaid, personally appeared GALE DEMPSEY, to be the person whose name is subscribed to the within instrument and acknowledged the foregoing instrument to be her act, and in my presence signed and sealed the same.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires:

DOUGLAS F. GANSLER
Attorney General

KATHERINE WINFREE
Chief Deputy Attorney General

JOHN B. HOWARD, JR.
Deputy Attorney General



MARIANNE E. DISE
Assistant Attorney General
Principal Counsel

SAUNDRA K. CANEDO
Assistant Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CRITICAL AREA COMMISSION FOR THE
CHESAPEAKE AND ATLANTIC COASTAL BAYS

FAX NO. (410) 974-5338

WRITER'S DIRECT DIAL NO. (410) 260-3467
scanedo@oag.statc.md.us

May 12, 2008

Via Overnight Delivery

Ms. Carol Beresch
129 E. Main Street
Elkton, Maryland 21921

RE: Affidavit for Cecil County Board of Appeals Case No. 3359

Dear Ms. Beresch:

Pursuant to our conversation, enclosed is an Affidavit for your signature. Please sign the Affidavit, have it notarized and return to me in the enclosed pre-paid envelope.

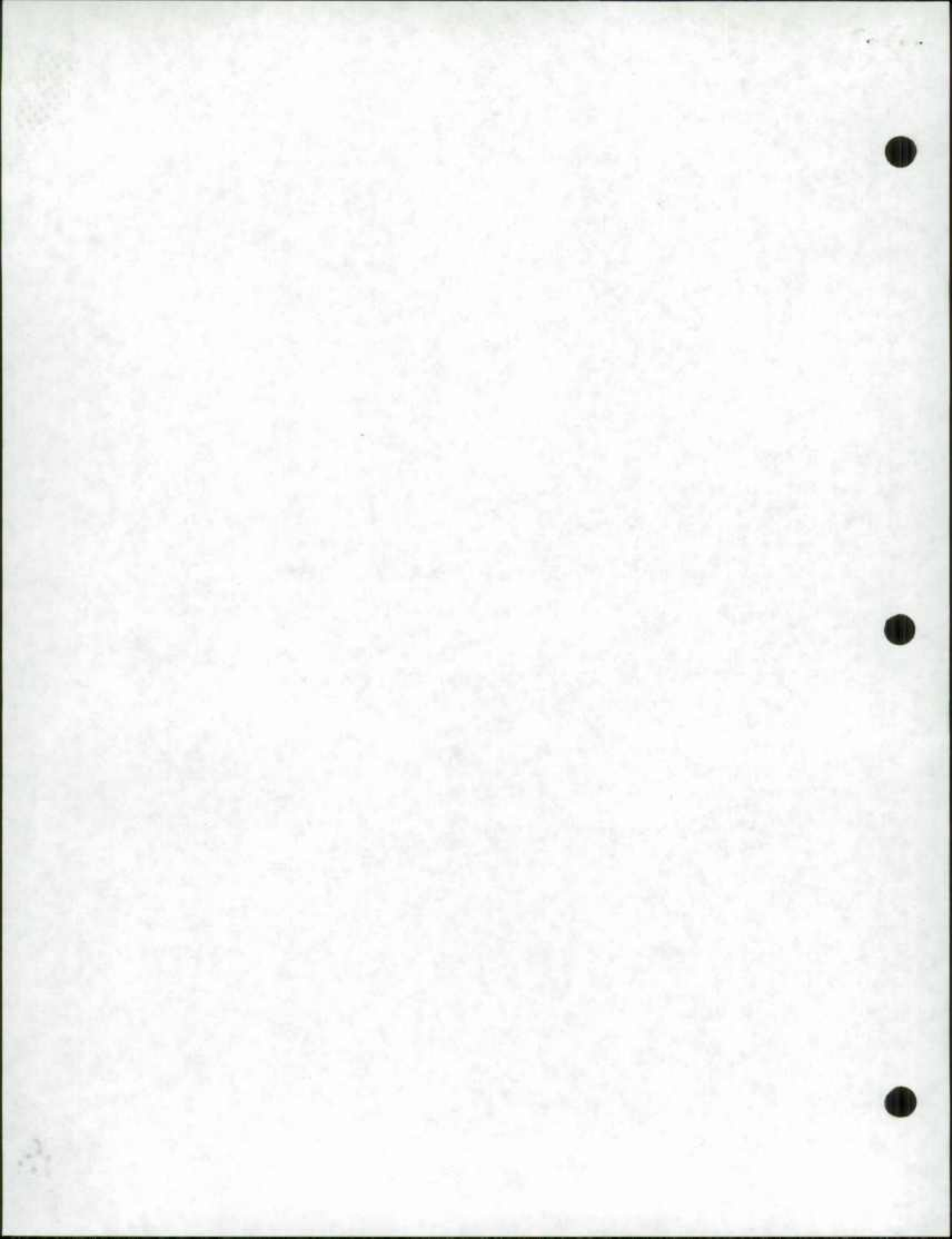
Thank you for your assistance.

Sincerely,

A handwritten signature in cursive script that reads "Sandra K. Canedo".

Saundra K. Canedo
Assistant Attorney General

Encl.



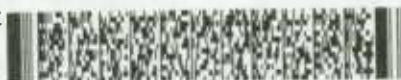


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ANNAPOLIS MD 21401-3946

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TO:

CAROL BERESCH
129 E MAIN ST
ELKTON MD 21921-5935

USPS EXPRESS MAIL



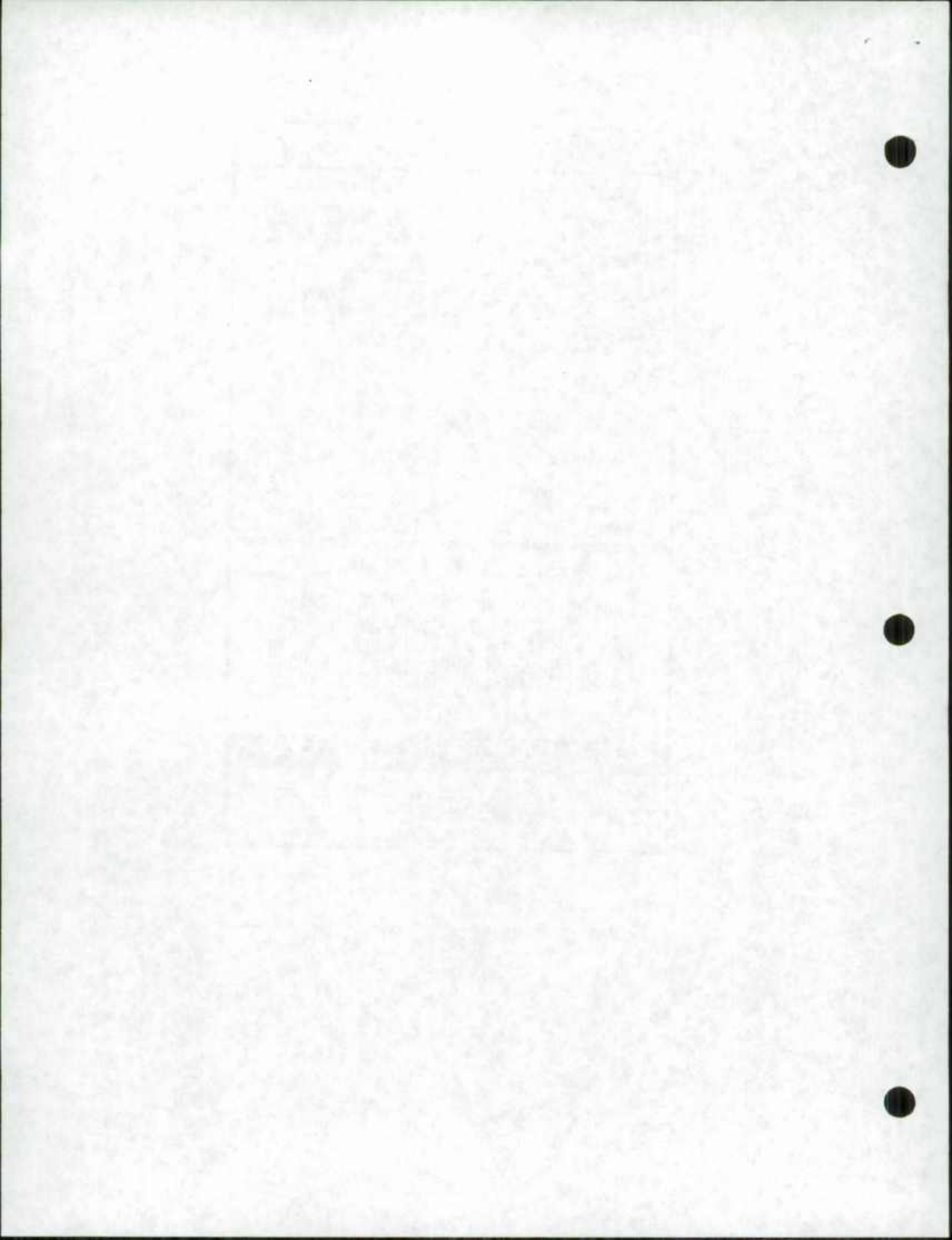
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Return Receipt	COD		Additional Insurance Fee	\$0.00	

STATE OF MARYLAND
CRITICAL AREA COMMISSION
1804 WEST STREET, SUITE 100
ANNAPOLIS, MD 21401

X



**IN THE CIRCUIT COURT OF MARYLAND
FOR CECIL COUNTY**

IN THE MATTER OF:
FRON-DLP, LP,

Petitioner

**FOR JUDICIAL REVIEW OF
THE DECISION OF THE
CECIL COUNTY BOARD
OF APPEALS**

IN THE CASE OF
Cecil County Board of Appeals
#3359

*

*

*

Civil Action No. 07-C-07-000402 AA

*

*

*

* * * * *

AFFIDAVIT OF CAROL BERESCH

STATE OF MARYLAND, COUNTY OF CECIL, to wit:

I HEREBY CERTIFY, that on this _____ day of May 2008, before me, a Notary Public of the State and County as aforesaid, personally appeared CAROL BERESCH, and she made oath in due form of law as follows:

1. I am over the age of 18, am competent to be witness and have personal knowledge of the facts of this case.
2. I am a Court Reporter in Cecil County and as part of my regular job duties I transcribe hearings for the Court as well as the Cecil County Board of Appeals.
3. I was the court reporter present for the matter of FRON-DLP, L.P., Case No. 3359, when it was heard by the Board of Appeals on October 23, 2007.
4. On January 3, 2008, I received a letter from the Cecil County Office of Planning and Zoning requesting that I prepare and file a transcript of the testimony for Case No. 3359 as recorded at the October 23, 2007, Board of Appeals meeting. In addition to noting the new

Circuit Court case number – Civil Action No. 07-C-07-000402 AA - the letter included contact information for the appellant/petitioner and I was instructed to contact the appellant/petitioner prior to preparing the transcription as the appellant/petitioner would be responsible for paying all expenses incurred for the transcription.

5. On February 26, 2008, I contacted Mr. Robert C. Welch of FRON-DLP, L.P. by letter and told him I would need a Four Hundred Forty Dollar (\$440) deposit before I would begin the transcription. My February 26, 2008 letter was a follow-up to several telephone conversations with Mr. Welch.

6. I never received any deposit and therefore, the hearing was not transcribed for the Appeal. Had I been paid, I would have been able to timely produce the transcript.

I do solemnly declare and affirm under penalties of law that the information set forth in this Affidavit is true and accurate to the best of my knowledge, information and belief.

Carol Beresch
Court Reporter

STATE OF MARYLAND, COUNTY OF CECIL, to wit:

I HEREBY CERTIFY that on this _____ day of May 2008, before me, the subscriber, a Notary Public of the State and County as aforesaid, personally appeared CAROL BERESCH, to be the person whose name is subscribed to the within instrument and acknowledged the foregoing instrument to be her act, and in my presence signed and sealed the same.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires:

DOUGLAS F. GANSLER
Attorney General

KATHERINE WINFREE
Chief Deputy Attorney General

JOHN B. HOWARD, JR.
Deputy Attorney General



MARIANNE E. DISE
Assistant Attorney General
Principal Counsel

SAUNDRA K. CANEDO
Assistant Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CRITICAL AREA COMMISSION FOR THE
CHESAPEAKE AND ATLANTIC COASTAL BAYS

FAX NO. (410) 974-5338

WRITER'S DIRECT DIAL NO. (410) 260-3467
scanedo@oag.state.md.us

May 15, 2008

VIA OVERNIGHT MAIL

Mr. William L. Brueckman
Clerk of the Circuit Court
Courthouse, 2nd floor
129 E. Main Street
Elkton, MD 21921

RE: Civil Action No.: 07-C-07-000402AA, Petition of FRON-DLP, L.P. for Judicial Review

Dear Mr. Brueckman:

Please find enclosed for filing the Respondent's Motion to Dismiss Petition for Judicial Review for Failure to File the Transcript in the above-referenced case. I am requesting that you please bring this to the immediate attention of the Hon. O. Robert Lidums as there is an upcoming hearing date scheduled.

Thank you for your assistance in this matter.

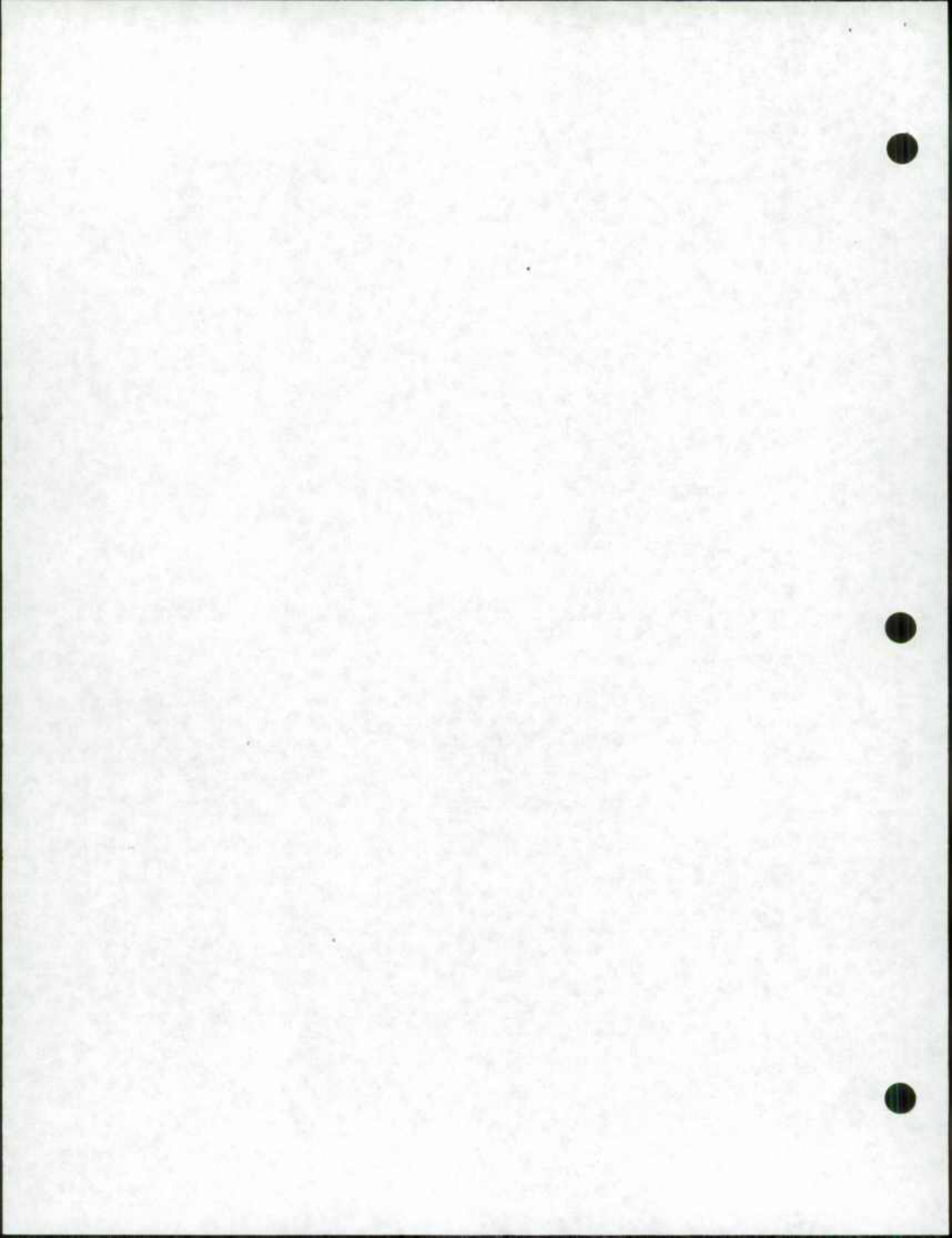
Sincerely,

A handwritten signature in cursive script that reads "Saundra K. Canedo".

Saundra K. Canedo
Assistant Attorney General

Encl.

cc: Robert Valliant Jones, Esq.
Jason L. Allison, Esq.
Keith A. Baynes, Esq.



**IN THE CIRCUIT COURT OF MARYLAND
FOR CECIL COUNTY**

IN THE MATTER OF:
FRON-DLP, LP,

Petitioner

**FOR JUDICIAL REVIEW OF
THE DECISION OF THE
CECIL COUNTY BOARD
OF APPEALS**

Civil Action No. 07-C-07-000402 AA

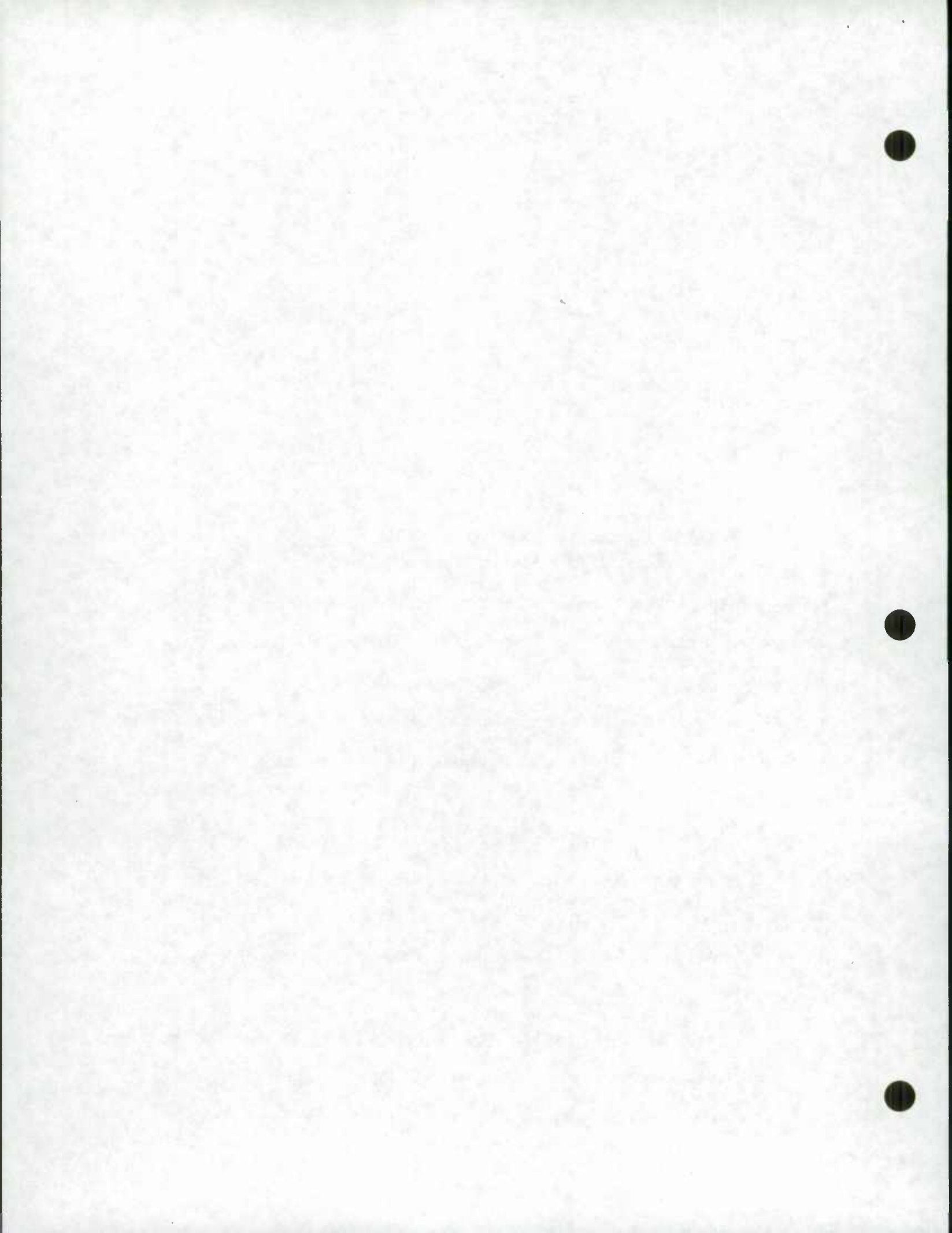
IN THE CASE OF
Cecil County Board of Appeals
#3359

* * * * *

**MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW
FOR FAILURE TO FILE THE TRANSCRIPT**

Respondent, Margaret McHale, Chair of the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, ("Chair McHale") by her attorneys, Douglas F. Gansler, Attorney General of Maryland, and Sandra K. Canedo and Marianne E. Dise, Assistant Attorneys General, hereby files this Motion to Dismiss pursuant to Maryland Rule 7-206 for failure of the Petitioners to file the transcript of the Board of Appeals proceeding, and in support thereof states the following.

1. This matter was heard before the Cecil County Board of Appeals on October 23, 2007. The Board of Appeals issued a decision denying FRON-DLP, L.P.'s ("Petitioner") variance request dated November 27, 2007.
2. Based on that decision of denial, Petitioner filed a Petition for Judicial Review on December 20, 2007.
3. A transcript of the proceedings is part of the record of agency proceedings which shall be transmitted to the court. Maryland Rule 7-206(a). Thus, on January 3, 2008, the Cecil



County Office of Planning and Zoning contacted the court reporter to request transcription of testimony from the October 23, 2007 hearing in this matter. *See* attached Letter from County Office of Planning and Zoning to Carol Beresch as Exhibit 1.

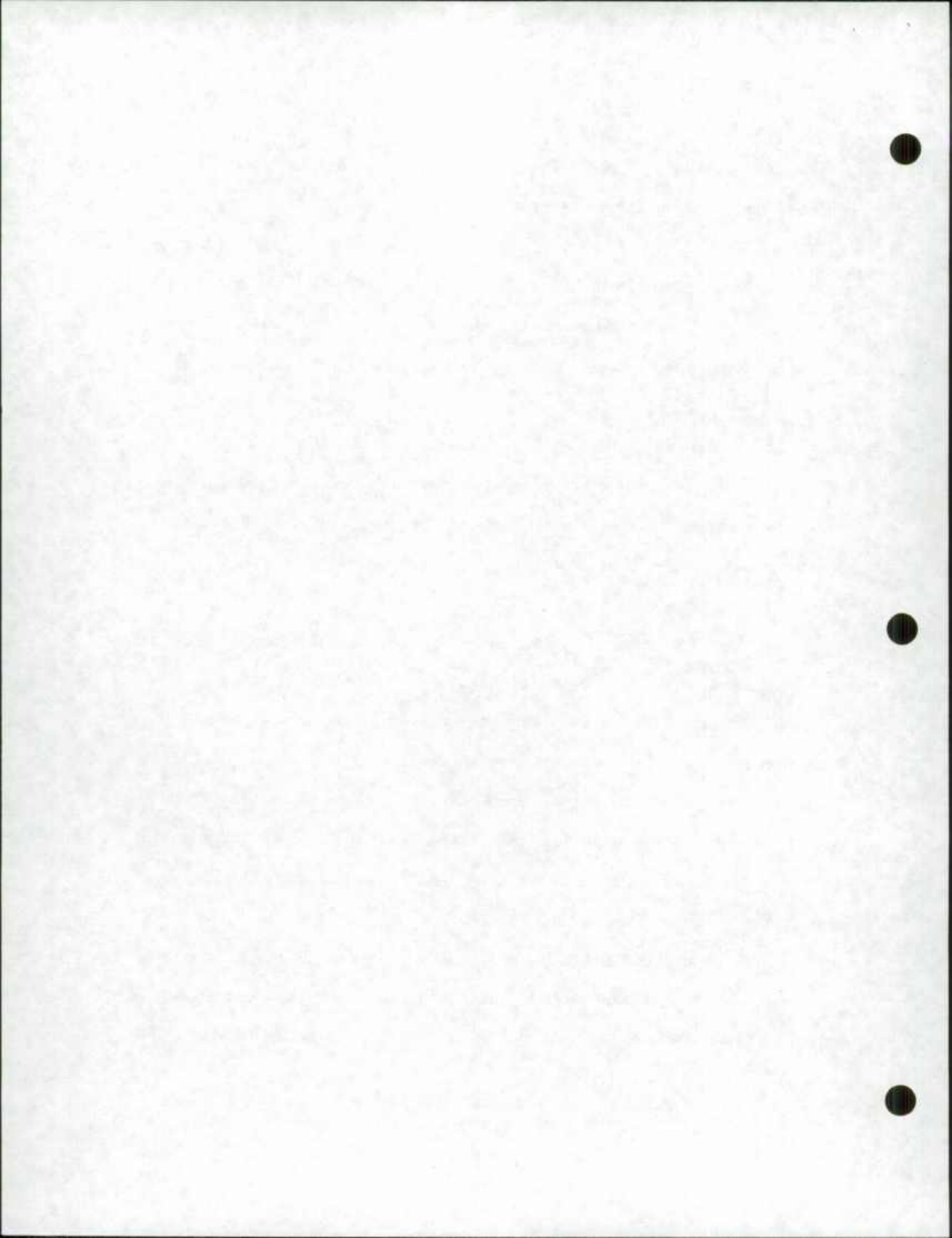
4. Maryland Rule 7-206(c) provides that a record of the proceedings, including the transcript, shall be transmitted to the circuit court within 60 days after the agency first receives the Petition for Judicial Review. The Petition for Judicial Review was received on December 20, 2007, therefore, the transcript should have been filed in this case no later than, February 18, 2008.

5. On February 26, 2008, the court reporter contacted Mr. Welch of FRON-DLP, L.P., appellant/petitioner and requested a deposit be made prior to commencing transcription. No payment has been made. The failure to file a transcript with the Circuit Court in this matter is a direct result of Petitioner's failure or refusal to pay for the transcription. *See* attached Affidavit of Carol Beresch as Exhibit 2.

6. On or about April 14, 2008, the undersigned contacted the office of the Clerk for the Circuit Court to inquire as to the status of the case. I was told that the record, minus the transcript, had been received from the Board of Appeals. Because the administrative record was not complete, the Court's Clerk had not issued the Notice of Record.

7. Maryland Rule 7-206(d), allows a party to request the court shorten or extend the time for transmittal of the record for no more than an additional 60 days. Even if the Petitioner had requested an extension, the additional 60 days would have expired on April 18, 2008. The transcript has not been filed as of this date.

8. No party has requested the Court to extend the time for filing the transcript. The failure to file the transcript requires that this action be dismissed, as Maryland Rule 7-206(d) provides, "[T] action *shall be dismissed* if the record has not been transmitted within the time



prescribed unless the court finds that the inability to transmit the record was caused by the act or omission of the agency, a stenographer, or a person other than the moving party.” (emphasis added).

9. Mandatory dismissal of the appeal is required in this matter because Petitioner has failed to timely file the transcript as required by Maryland Rule 7-206(c) and Petitioner has not requested an extension pursuant to Maryland Rule 7-206(d). Even if Petitioner had requested, and been granted an extension, the time has expired. See also, *Wormwood v. Batching Systems, Inc.*, 124 Md.App. 695, 704 (1999), citing *Jacober v. High Hill Realty, Inc.*, 22 Md.App. 115 (1974).

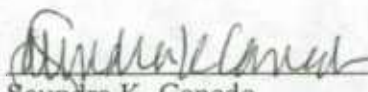
WHEREFORE, the Respondent, Chair of the Critical Area Commission, by her undersigned attorneys, prays this Honorable Court for the following relief:

An Order granting Respondent’s Motion to Dismiss Petition for Judicial Review for Failure to File the Transcript;

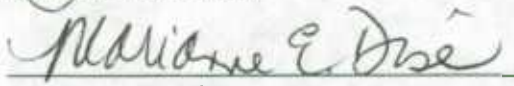
An Order dismissing Petitioner FRON-DLP, LP’s, Petition for Judicial Review; and
For such other and further relief as the nature of her cause requires.

Respectfully submitted,

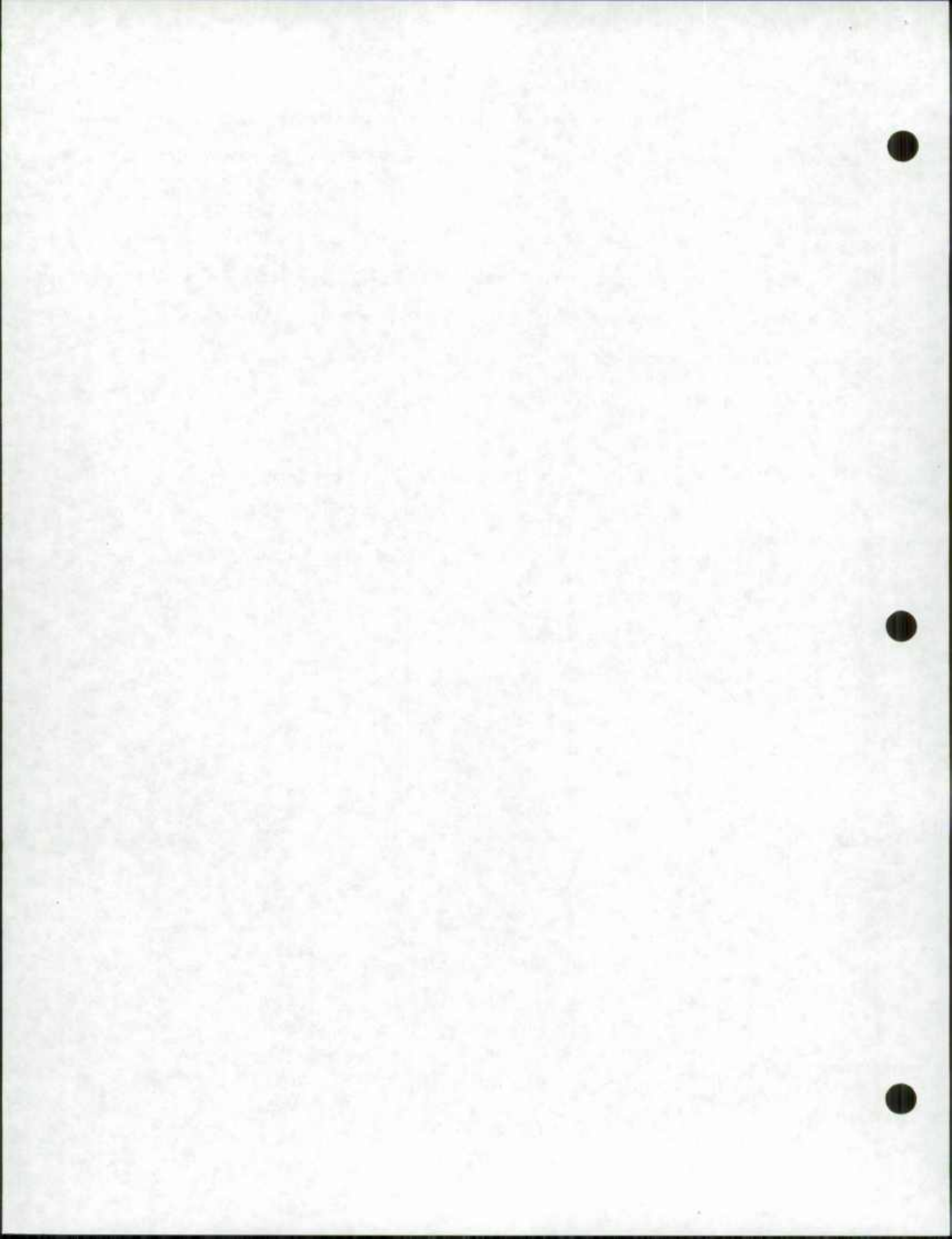
DOUGLAS F. GANSLER
Attorney General of Maryland



Sandra K. Canedo



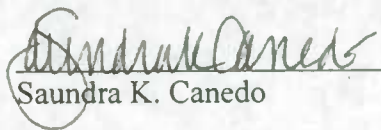
Marianne E. Dise
Assistant Attorneys General
Department of Natural Resources
Critical Area Commission
1804 West Street, Suite 100

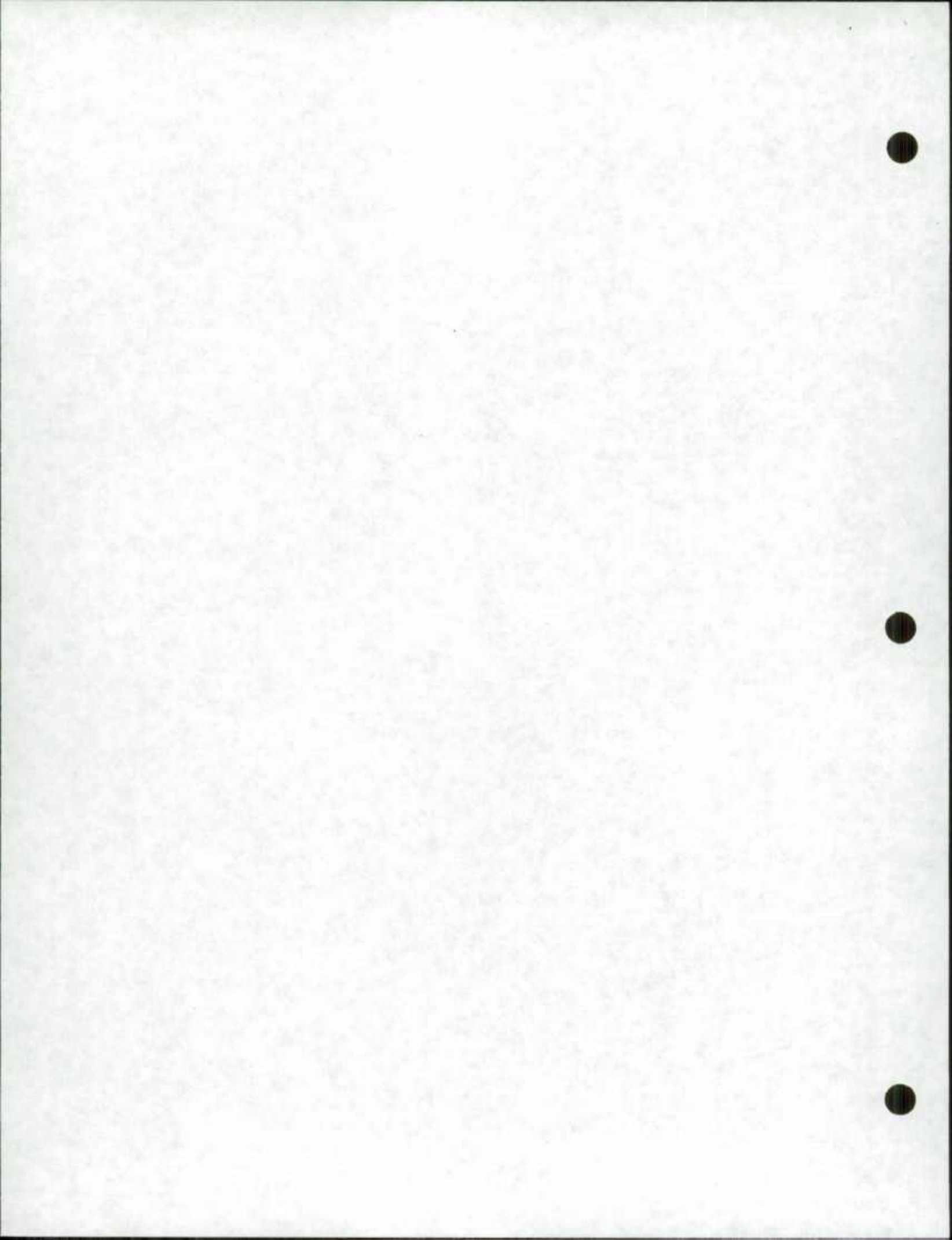


Annapolis, MD 21401
(410) 260-3467
Attorneys for Margaret McHale, Chair
Critical Area Commission for the
Chesapeake and Atlantic Coastal Bays

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of May 2008, I sent a copy of the foregoing Motion to Dismiss via U.S. Mail, postage prepaid to: Robert Valliant Jones and Jason L. Allison, Attorneys for Petitioners, 157 East Main Street, Elkton, Maryland 21921 and Keith Baynes, Attorney for Board of Appeals, 210 East Main Street, Elkton, Maryland 21921.


Saundra K. Canedo



IN THE CIRCUIT COURT OF MARYLAND
FOR CECIL COUNTY

IN THE MATTER OF:
FRON-DLP, LP

*

FOR JUDICIAL REVIEW OF
THE DECISION OF THE
CECIL COUNTY BOARD
OF APPEALS

*

*

Civil Action No. 07-C-07-402 AA

*

IN THE CASE OF
Cecil County Board of Appeals
Case No. 3359

*

*

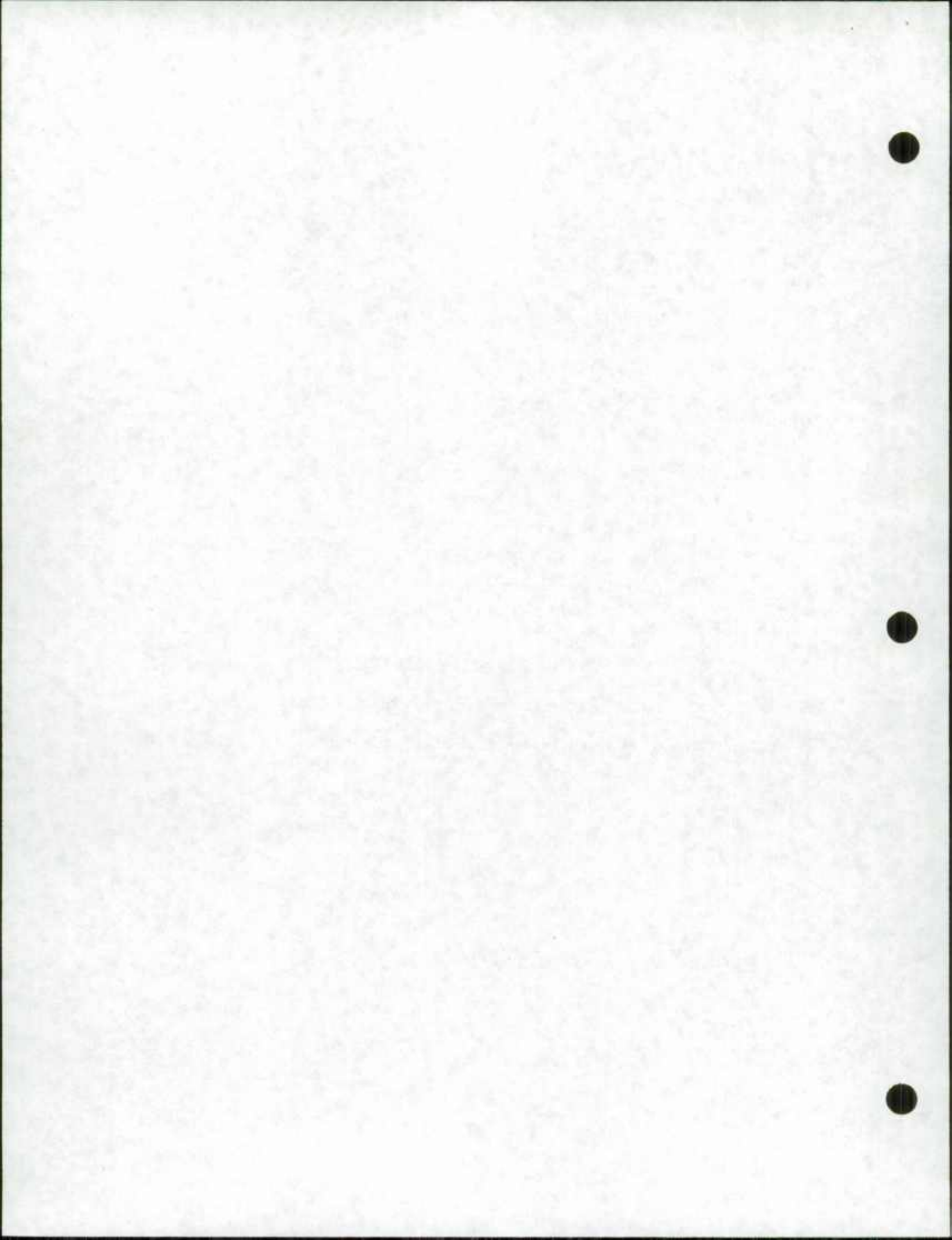
* * * * *

ORDER

Upon consideration of Respondent, Margaret McHale's, Motion to Dismiss Petition for
Judicial Review for Failure to File the Transcript, it is this _____ day of _____,
2008, ORDERED that:

Respondent, Chair of the Critical Area Commission's Motion to Dismiss is GRANTED;
Petitioner, FRON-DLP, LP's Petition for Judicial Review is DISMISSED; and
For such other and further relief as the nature of her cause requires.

JUDGE



Jan. 4. 2008 2:33PM
Vice President Mark H. Guns, District 5

Commissioner Rebecca J. Demmler, District 2

Commissioner Brian Lockhart, District 3

Commissioner Wayne L. Tome, Sr., District 4



Exhibit 1
No. 7403

P. Fred C. Wein, Jr.
County Administrator
410-996-5203

Cecil County Information
410-996-5200
410-658-4041

CECIL COUNTY GOVERNMENT

129 East Main Street
Elkton, MD 21921

January 3, 2008

Ms. Carol Beresch-Court Reporter
129 East Main Street
Elkton, MD 21921

RE: PETITION OF FRON-DJW, L.P., FOR JUDICIAL REVIEW OF THE DECISION OF the Cecil County Board of Appeals IN THE MATTER OF the Appeal of FRON-DJW, L.P., FILE: 3359.

CIRCUIT COURT OF CECIL COUNTY - Civil Action No. 07-C-07-000402 AA

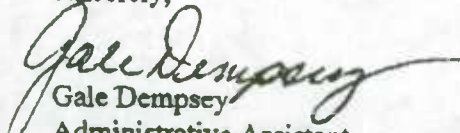
Dear Ms. Beresch:

An appeal was filed December 21, 2007 relative to the above captioned matter. The Board of Appeals voted to disapprove with a unanimous vote.

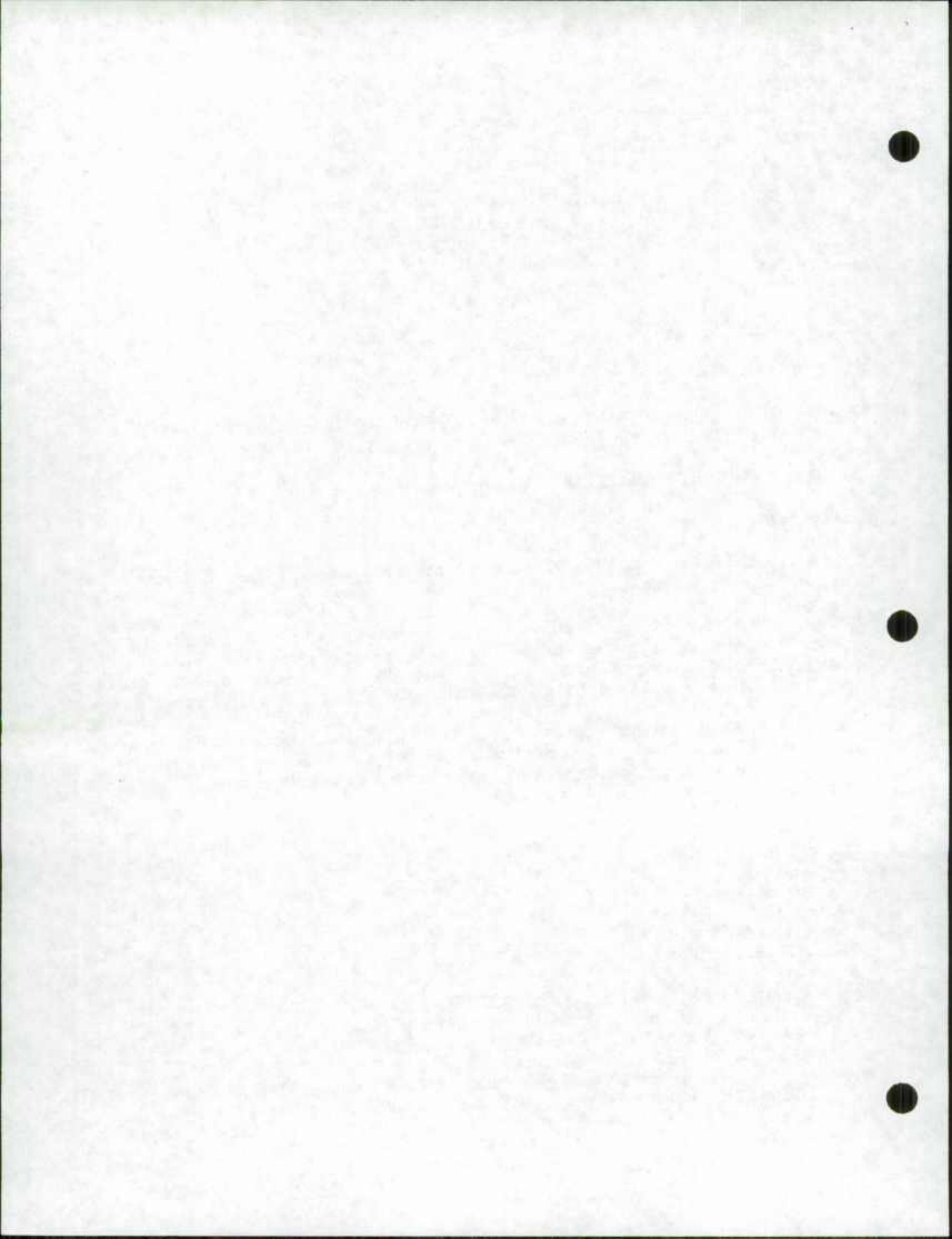
Pursuant to Rule 7-206, it is requested that you prepare and file a transcript of the testimony previously recorded for the meeting. The appellant/petitioner will be responsible to pay all expenses incurred for the transcription. Prior to preparing the transcription, please contact, FRON-DJW, L.P., c/o Robert C. Welch, 240 South 8th Street, Philadelphia, PA 19107, (215)-922-6088, regarding this matter.

Additionally, I am required to notify everyone of the appeal who testified before the Board, either supporting or opposing the application. Please forward their names and addresses as soon as possible. Your assistance is appreciated, and if you have any questions or need more information, please contact this office at 410-996-5225.

Sincerely,


Gale Dempsey
Administrative Assistant
Office of Planning and Zoning

cc: Board of Appeals, David Willis, Chairman, 207 Walnut Lane, Elkton, MD 21921
Keith A. Baynes, Esquire, 210 East Main Street, Elkton, MD 21921
Robert Valliant Jones, P.A., 157 East Main Street, Elkton, MD 21921
Jason L. Allison, P.A., 157 East Main Street, Elkton, MD 21921
Eric Sennstrom, Director of Planning and Zoning, 129 East Main Street - Room 300, Elkton, MD 21921
FRON-DJW, L.P., c/o Robert Welch, 240 South 8th Street, Philadelphia, PA 19107
File



IN THE CIRCUIT COURT OF MARYLAND
FOR CECIL COUNTY

IN THE MATTER OF:
FRON-DLP, LP,

Petitioner

FOR JUDICIAL REVIEW OF
THE DECISION OF THE
CECIL COUNTY BOARD
OF APPEALS

IN THE CASE OF
Cecil County Board of Appeals
#3359

Civil Action No. 07-C-07-000402 AA

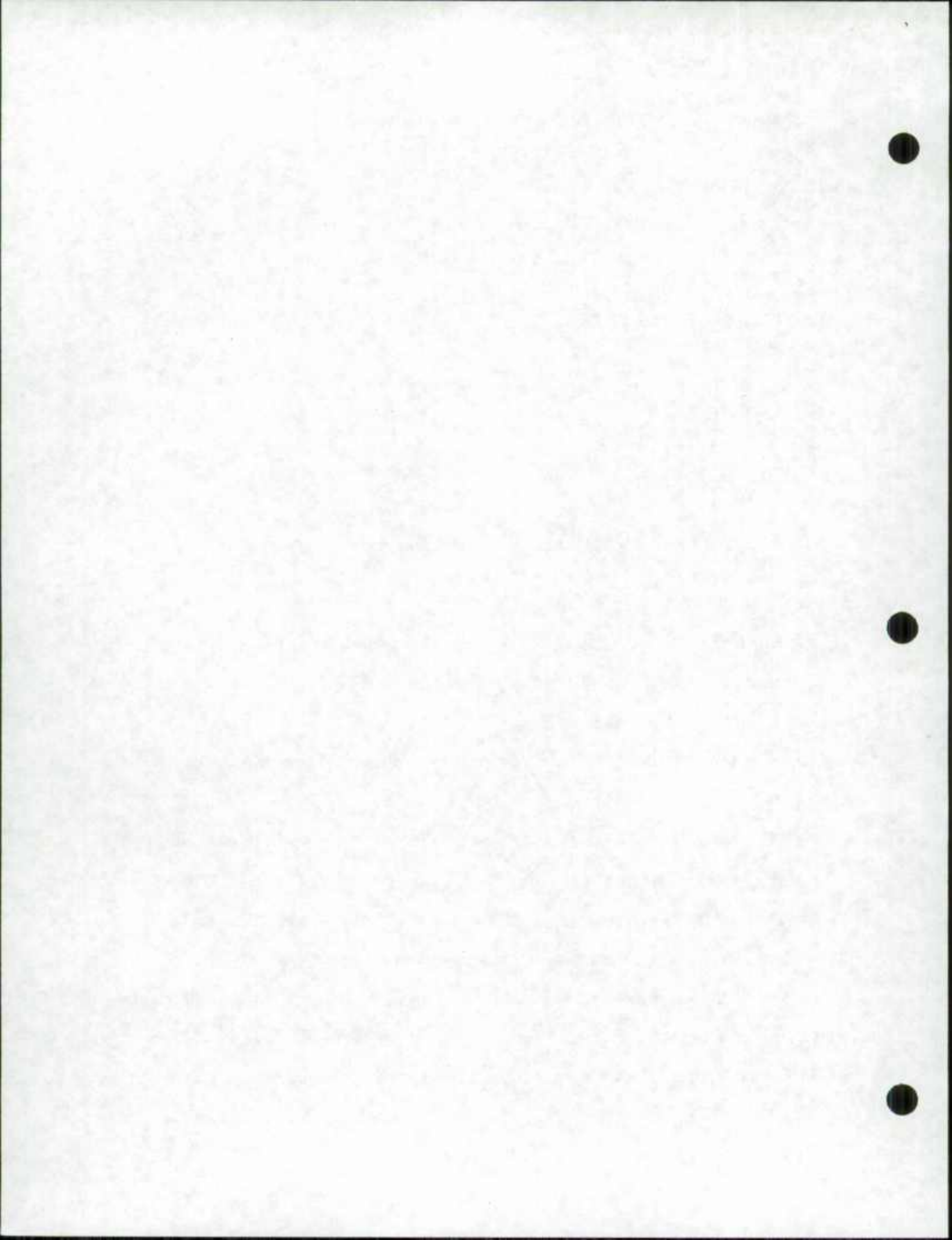
* * * * *

AFFIDAVIT OF CAROL BERESCH

STATE OF MARYLAND, COUNTY OF CECIL, to wit:

I HEREBY CERTIFY, that on this 13th day of May 2008, before me, a Notary Public of the State and County as aforesaid, personally appeared CAROL BERESCH, and she made oath in due form of law as follows:

1. I am over the age of 18, am competent to be witness and have personal knowledge of the facts of this case.
2. I am a Court Reporter in Cecil County and as part of my regular job duties I transcribe hearings for the Court as well as the Cecil County Board of Appeals.
3. I was the court reporter present for the matter of FRON-DLP, L.P., Case No. 3359, when it was heard by the Board of Appeals on October 23, 2007.
4. On January 3, 2008, I received a letter from the Cecil County Office of Planning and Zoning requesting that I prepare and file a transcript of the testimony for Case No. 3359 as recorded at the October 23, 2007, Board of Appeals meeting. In addition to noting the new

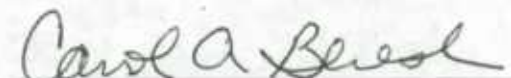


Circuit Court case number – Civil Action No. 07-C-07-000402 AA - the letter included contact information for the appellant/petitioner and I was instructed to contact the appellant/petitioner prior to preparing the transcription as the appellant/petitioner would be responsible for paying all expenses incurred for the transcription.

5. On February 26, 2008, I contacted Mr. Robert C. Welch of FRON-DLP, L.P. by letter and told him I would need a Four Hundred Forty Dollar (\$440) deposit before I would begin the transcription. My February 26, 2008 letter was a follow-up to several telephone conversations with Mr. Welch.

6. I never received any deposit and therefore, the hearing was not transcribed for the Appeal. Had I been paid, I would have been able to timely produce the transcript.

I do solemnly declare and affirm under penalties of law that the information set forth in this Affidavit is true and accurate to the best of my knowledge, information and belief.



Carol Beresch
Court Reporter

STATE OF MARYLAND, COUNTY OF CECIL, to wit:

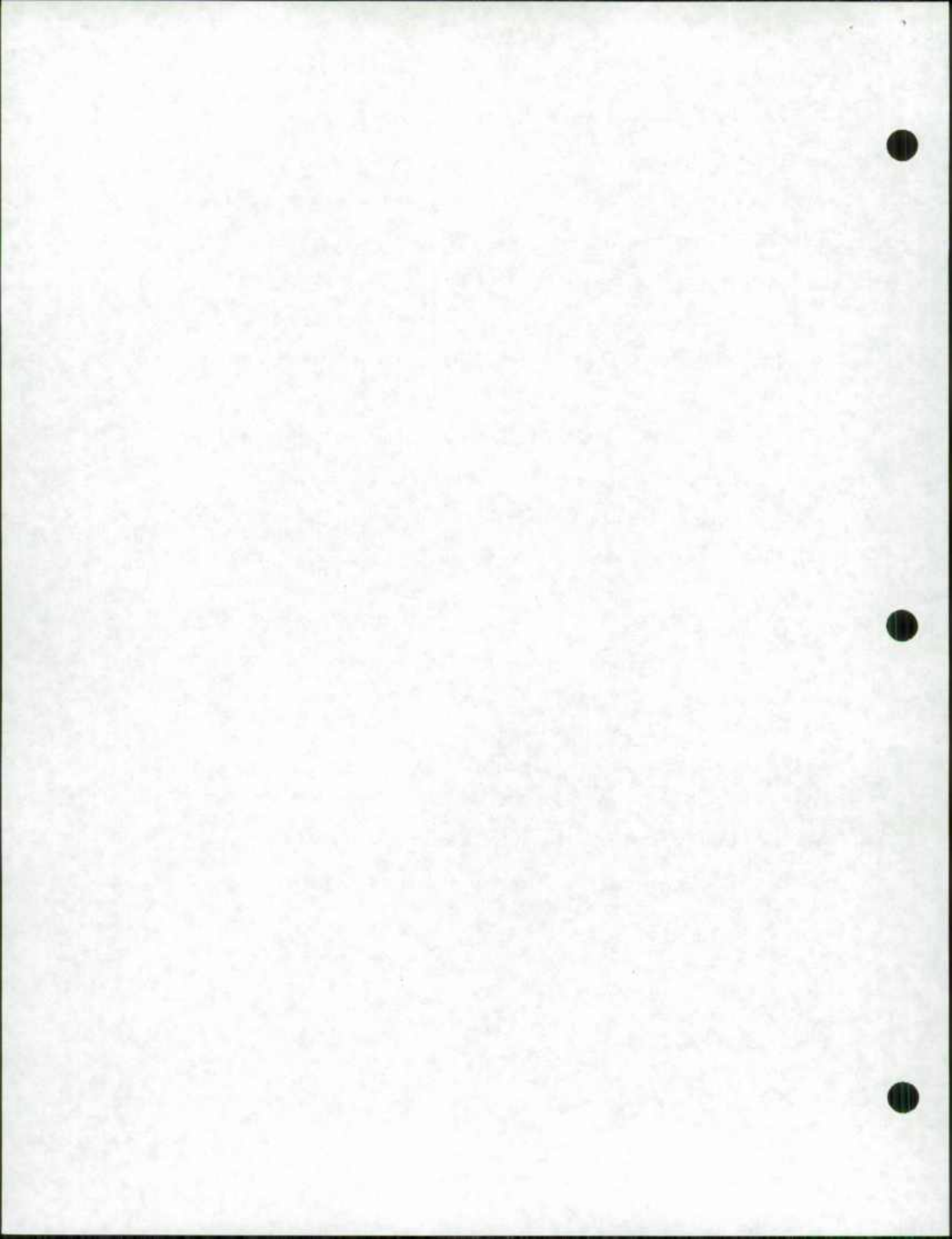
I HEREBY CERTIFY that on this 13th day of May 2008, before me, the subscriber, a Notary Public of the State and County as aforesaid, personally appeared CAROL BERESCH, to be the person whose name is subscribed to the within instrument and acknowledged the foregoing instrument to be her act, and in my presence signed and sealed the same.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Notary Public

My Commission Expires:
09/01/2009



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CAROL A. BERESH
CECIL COUNTY CIRCUIT COURT BUILDING
129 EAST MAIN STREET
ELKTON, MARYLAND 21921
FEBRUARY 26, 2008

Robert C. Welch
240 South 8th Street
Philadelphia, PA 19107

Re: Appeal of FRON-DJW, L.P.
FILE: 3359

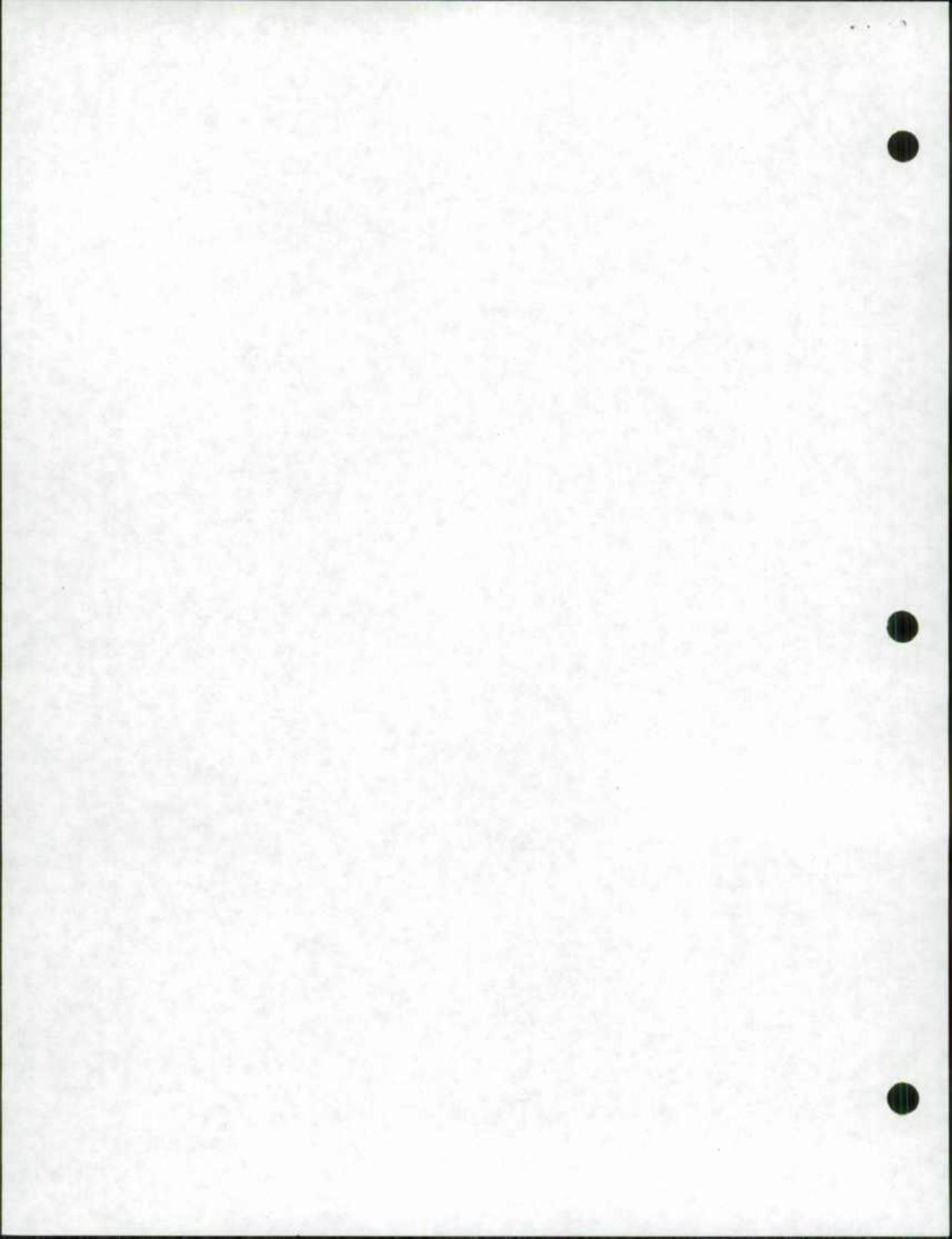
Dear sir:

I am writing this letter as a follow up to our conversations regarding this appeal. I informed you and also your staff that the cost of the transcript is estimated to be \$440.00, and that this amount was due up front. Your firm assured me they were sending the deposit, but I never received it. Because I have not received this deposit I have not proceeded to prepare this transcript in a timely manner.

If I can be of any further assistance in this matter, please contact me at 410-996-5326.

Sincerely

Carol A. Beresh
Court Reporter



DOUGLAS F. GANSLER
Attorney General

KATHERINE WINFREL
Chief Deputy Attorney General

JOHN B. HOWARD, JR.
Deputy Attorney General



MARIANNE E. DISE
Assistant Attorney General
Principal Counsel

SAUNDRA K. CANEDO
Assistant Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CRITICAL AREA COMMISSION FOR THE
CHESAPEAKE AND ATLANTIC COASTAL BAYS

FAX NO. (410) 974-5338

WRITER'S DIRECT DIAL NO. (410) 260-3467
scanedo@oag.state.md.us

June 5, 2008

Sent via U.S. Certified Mail

Mr. Joseph W. Dial
7408 F Street
Chesapeake Beach, Maryland 20732

Dear Mr. Dial:

The Town of Chesapeake Beach has requested assistance from the Office of the Attorney General in the matter arising from citations for Critical Area violations issued to you in October 2006. In settlement of those citations, the Town of Chesapeake Beach and you, by your attorney, entered into a Consent Order dated March 9, 2007. As you know, in that Consent Order, you agreed to provide to the Zoning Administrator a mitigation plan addressing the zoning ordinance mitigation requirements for the clearing violations on your property. In the event that your plan was not accepted or if there were disagreement with some aspects of the mitigation sought, the Town reserved its rights to enforce the zoning ordinance mitigation requirements.

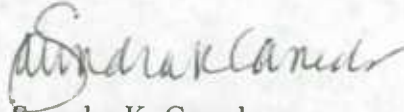
Although you did submit a mitigation plan in May 2007, it did not meet with the requirements of the zoning ordinance for the Town of Chesapeake Beach. By letter dated July 2, 2007, from William R. Watson, Zoning Administrator for the Town of Chesapeake Beach, you were provided comments to your plan from the Critical Area Commission and asked to revise the mitigation plan accordingly. I have attached both the July 2, 2007 letter from William Watson and the June 21, 2007 comment letter from the Critical Area Commission for your reference.

As of this date, neither a revised plan, nor compliance with the requirements of the zoning ordinance has been presented. Therefore, the Town has requested that this Office initiate enforcement procedures to secure compliance. I am writing to request your cooperation to remedy the violations on your property, so that further action by this Office is not required.

Within 10 days of receipt of this letter, please submit a revised mitigation plan to the Town, with

a copy to me. Should you fail to respond to this letter, or to submit a revised plan, this Office will have no choice but to seek compliance through the courts. I look forward to your timely response so that this matter may be resolved without further action by this Office.

Sincerely,



Sandra K. Canedo
Assistant Attorney General

Attachments

cc: Eric Blitz, Esquire
Marianne E. Dise, Esquire
William Watson
Cheri Hance Staples, Esq.

Martin O'Malley
Governor

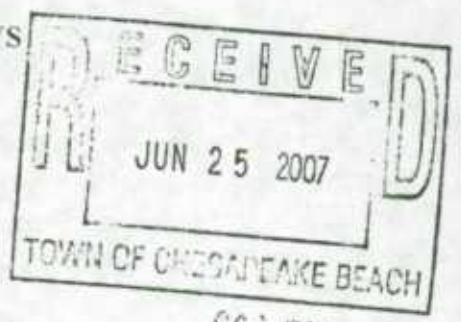
Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

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/



cc: Mary
Bill
file (J. Dial)
file

June 21, 2007

Mr. William Watson
Zoning Administrator
8200 Bayside Road
PO Box 400
Chesapeake Beach, MD 20732

Re: Joe Dial Mitigation Plan

Dear Mr. Watson:

This letter is in response to your request for comments regarding the above referenced mitigation plan. I have had a chance to review the plan as submitted and provide the following comments for consideration.

1. The amount of required mitigation appears to be stated inconsistently between the Town's letter to the Commission and the amount of mitigation stated on the planting plan. Specifically, you state that 7,974 square feet of clearing occurred. The planting plan states that 5,600 square feet of clearing was conducted. The amount of actual clearing needs to be determined and agreed upon before final approval of a planting plan.
2. It appears that the amount of plantings proposed by the applicant falls significantly short of that which is required under the Town's forest and developed woodland plan. Specifically, the Town's ordinance requires 3:1 mitigation for clearing in violation. Based on the applicant's assessment of 5,600 square feet of clearing, 16,800 square feet of plantings would be required. This calculation would require planting 42 canopy trees and 84 understory trees or 42 canopy trees and 126 shrubs. Based on my assessment of the plant schedule, the applicant has proposed the equivalent of approximately 4,500 square feet of plantings in total, leaving a deficit of 12,300 square feet. Substitution of understory trees for canopy trees may be possible as requested by the applicant, but the applicant bears the burden to demonstrate that the proposed plantings are consistent with the requirements of the Town's forest and developed woodland plan. Currently, the plan appears inconsistent.
3. In addition to the comments in #2 above, the method that the applicant has shown in the planting mitigation notes to calculate the required mitigation and obtain some credits for existing tree cover is confusing and should be simplified. We recommend that the planting plan be revised and that the applicant utilize the total required mitigation calculation as a starting point. From there, the Town

Bill Watson
Dial Mitigation Plan
June 21, 2007
Page 2

could elect to give credit per existing canopy tree, understory tree, or shrub dependent upon the Town's determination that this method is consistent with forest and developed woodland plan.

Thank you for the opportunity to provide comments for this mitigation planting plan. Given the concerns regarding numerous inconsistencies with the Town's ordinance, we recommend that a revised mitigation and planting plan be required. If you have any questions about the content of this letter, please feel free to contact me at 410-260-3482.

Sincerely,



Kerrie L. Gallo
Natural Resource Planner



Joe Dial file
FILE COPY (17)

OFFICE OF THE MAYOR AND TOWN COUNCIL

July 2, 2007

Mr. Joseph W. Dial
7408 F Street
Chesapeake Beach, MD 20732

**RE: Critical Area Commission Comments
Mitigation Plan - 7408 F Street**

Dear Mr. Dial:

Enclosed, please find a copy of the Critical Area Commission comments on the mitigation plan submitted by you, on May 1, 2007.

I have faxed a copy to your consultant - Advanced Surveys. I no longer have contact information for Ms. Staples - your attorney, therefore I have not sent her a copy.

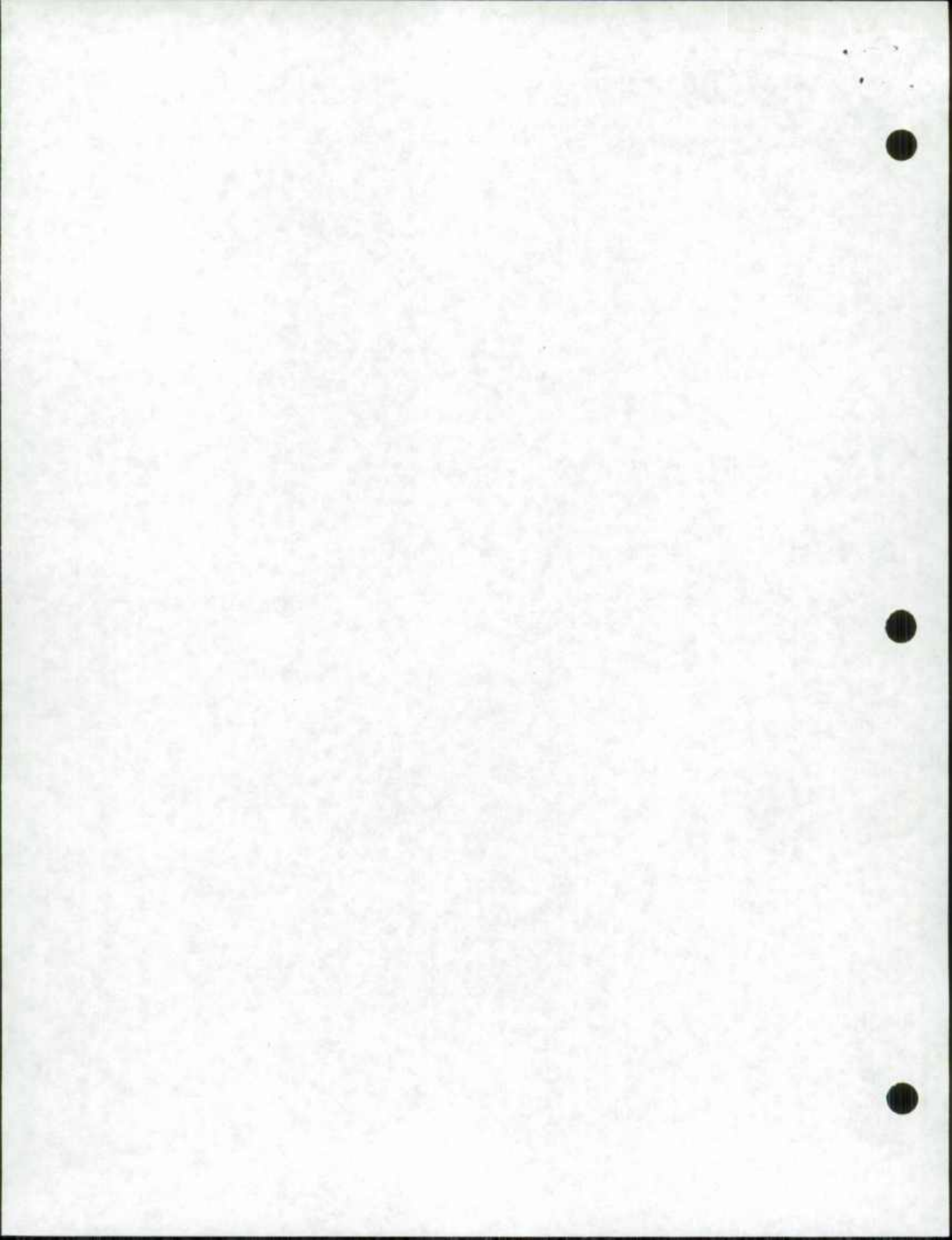
Please share this as you deem appropriate. Once the revised plan is re-submitted, I will compare the proposed plan to the comments from the Critical Area Commission.

Yours truly,

William R. Watson

Zoning Administrator

G:\Chesapeake Beach\Zoning\Violations\7408 F Street - Dial\Transmit CAC Comments to Joe Dial.wpd



DOUGLAS F. GANSLER
Attorney General

KATHERINE WINFREE
Chief Deputy Attorney General

JOHN B. HOWARD, JR.
Deputy Attorney General



MARIANNE E. DISE
Assistant Attorney General
Principal Counsel

SAUNDRA K. CANEDO
Assistant Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CRITICAL AREA COMMISSION FOR THE
CHESAPEAKE AND ATLANTIC COASTAL BAYS

FAX NO. (410) 974-5338

WRITER'S DIRECT DIAL NO. (410) 260-3467
scanedo@oag.state.md.us

June 13, 2008

Mr. Robert P. Duckworth
Clerk, Circuit Court for Anne Arundel County
P.O. Box 71
7 Church Circle
Annapolis, Maryland 21403

RE: *Moreland, LLC v. Anne Arundel County Board of Appeals,*
Civil Action No.: C-07-120131

Dear Mr. Duckworth:

Please accept for filing the attached Critical Area Commission's Notice of Appeal in the above referenced case. We have also included the \$50 fee and an additional copy to be date stamped. Pursuant to Courts & Judicial Proceedings §7-202, the State is exempt from any fees to the Circuit Court.

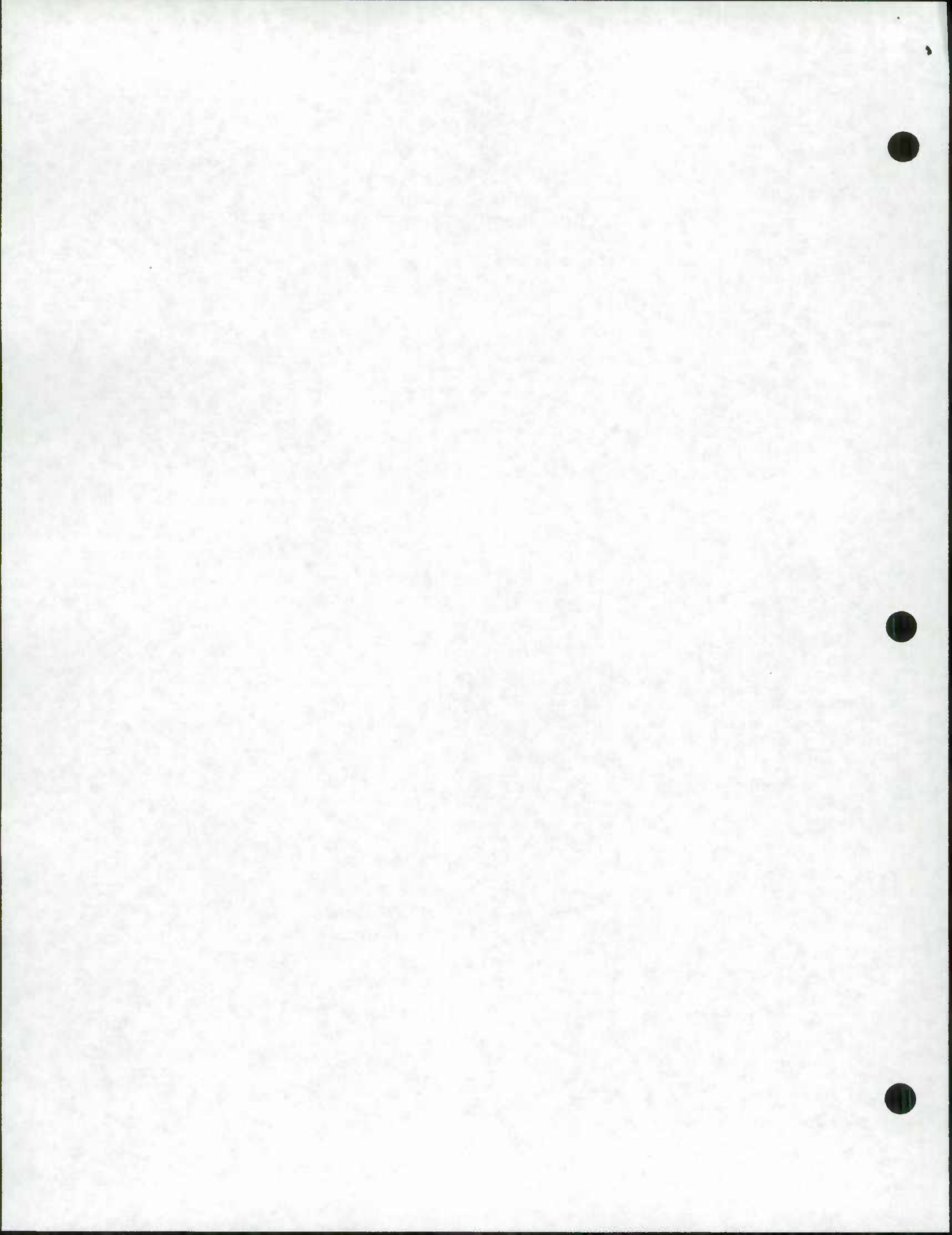
Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sandra K. Canedo".

Sandra K. Canedo
Assistant Attorney General

cc: David M. Plott, Esq.
James A. Chance, Esq.
Jon A. Mueller, Esq.



IN THE CIRCUIT COURT OF MARYLAND
FOR ANNE ARUNDEL COUNTY

MORELAND, LLC,

*

Petitioner

*

v.

Case No.: C-07-120131 AA

*

ANNE ARUNDEL COUNTY
BOARD OF APPEALS,

*

Respondents.

*

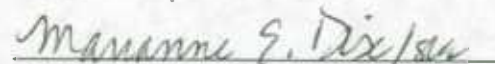
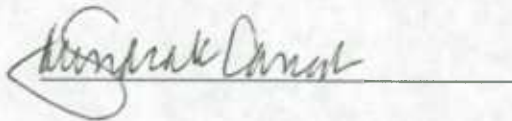
* * * * *

NOTICE OF APPEAL

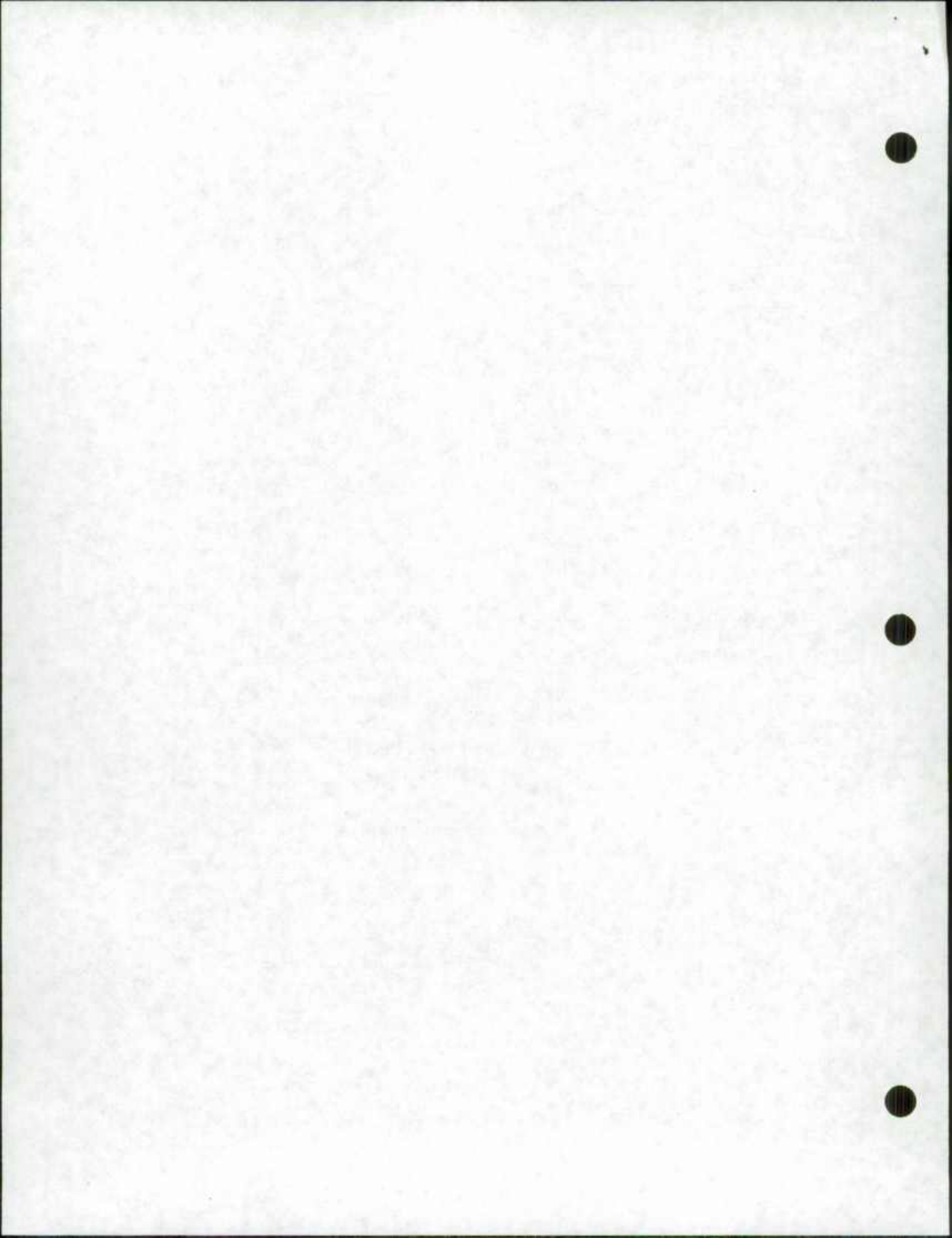
Margaret McHale, Chair, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays ("Critical Area Commission") by her attorneys, Douglas F. Gansler, Attorney General of Maryland and Sandra K. Canedo and Marianne E. Dise, Assistant Attorneys General, pursuant to Rule 8-201, notes an appeal to the Court of Special Appeals in the above-captioned action from the Order of Circuit Court dated May 15, 2008. A copy of this Order is attached as Exhibit 1. Chair McHale has standing and the right and authority to file this Appeal pursuant to Annotated Code of Maryland, Natural Resources Article §8-1812 (a) and (c).

Respectfully submitted,

DOUGLAS F. GANSLER
Attorney General of Maryland



Sandra K. Canedo
Marianne E. Dise
Assistant Attorneys General



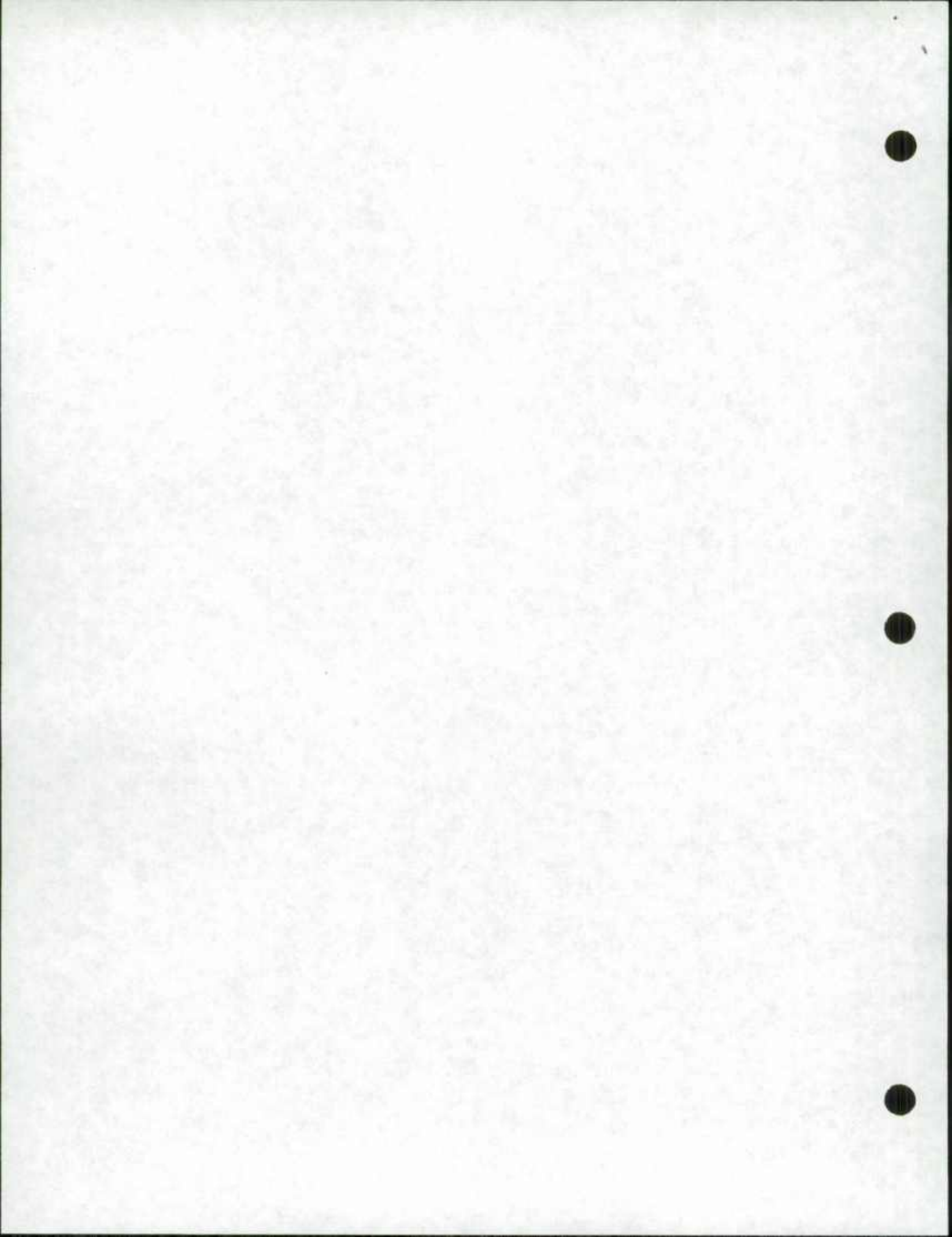
Critical Area Commission
1804 West Street, Suite 100
Annapolis, Maryland 21401
(410) 260-3467
*Attorneys for Margaret McHale, Chair,
Critical Area Commission for the
Chesapeake and Atlantic Coastal Bays*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of June 2008, I sent a copy of the foregoing Notice of Appeal via U.S. Mail, postage prepaid to: David M. Plott, Esq., 145 Main Street, Annapolis, Maryland 21401, James A. Chance, Esq., 2660 Riva Road, 4th Floor, Annapolis, Maryland 21401, and Jon A. Mueller, Esq., 6 Herndon Avenue, Annapolis, Maryland 21403.



Saundra K. Canedo



DOUGLAS F. GANSLER
Attorney General

KATHERINE WINFREE
Chief Deputy Attorney General

JOHN B. HOWARD, JR.
Deputy Attorney General



MARIANNE E. DISE
Assistant Attorney General
Principal Counsel

SAUNDRA K. CANEDO
Assistant Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CRITICAL AREA COMMISSION FOR THE
CHESAPEAKE AND ATLANTIC COASTAL BAYS

FAX NO. (410) 974-5338

WRITER'S DIRECT DIAL NO. (410) 260-3467
scanedo@oag.state.md.us

June 20, 2008

Leslie D. Gradet, Clerk
Robert C. Murphy Courts of Appeal Building
361 Rowe Boulevard
Annapolis, Maryland 21401

RE: *Moreland, LLC v. Anne Arundel County Board of Appeals,*
Civil Action No.: C-07-120131

Dear Ms. Gradet:

Please accept for filing the attached Critical Area Commission's Information Report along with a copy of the Notice of Appeal filed in Circuit Court and the underlying Opinion and Order from Circuit Court.

Thank you for your assistance in this matter.

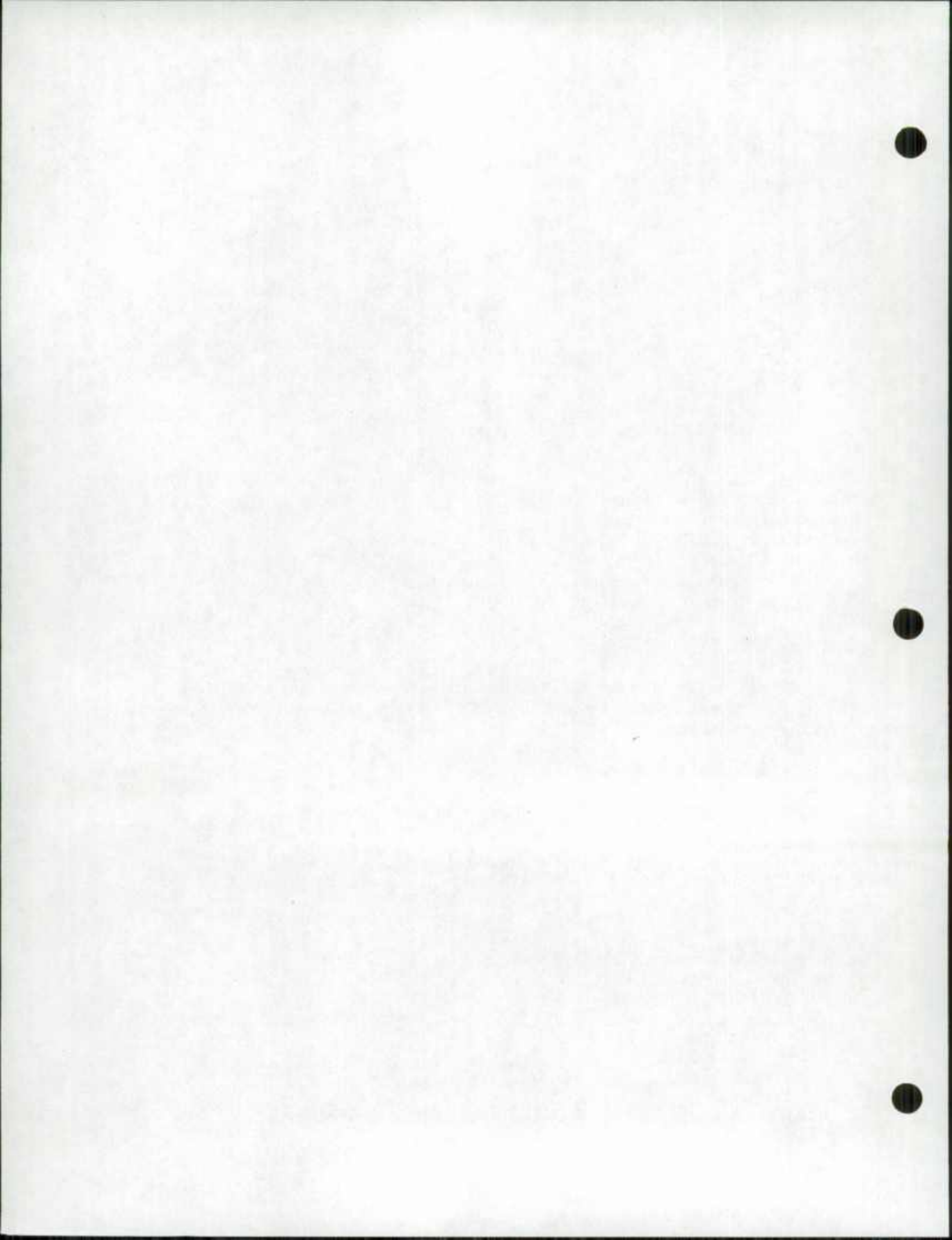
Sincerely,

A handwritten signature in cursive script that reads "Sandra K. Canedo".

Saundra K. Canedo
Assistant Attorney General

Copies of Information Report sent to:

Jon A. Mueller, Esq.
David M. Plott, Esq.
James A. Chance, Esq.



COURT OF SPECIAL APPEALS OF MARYLAND
361 Rowe Blvd., Second Floor
Annapolis, MD 21401
410-260-1450

CIVIL APPEAL INFORMATION REPORT (Md. Rules 8-205 & 8-206)

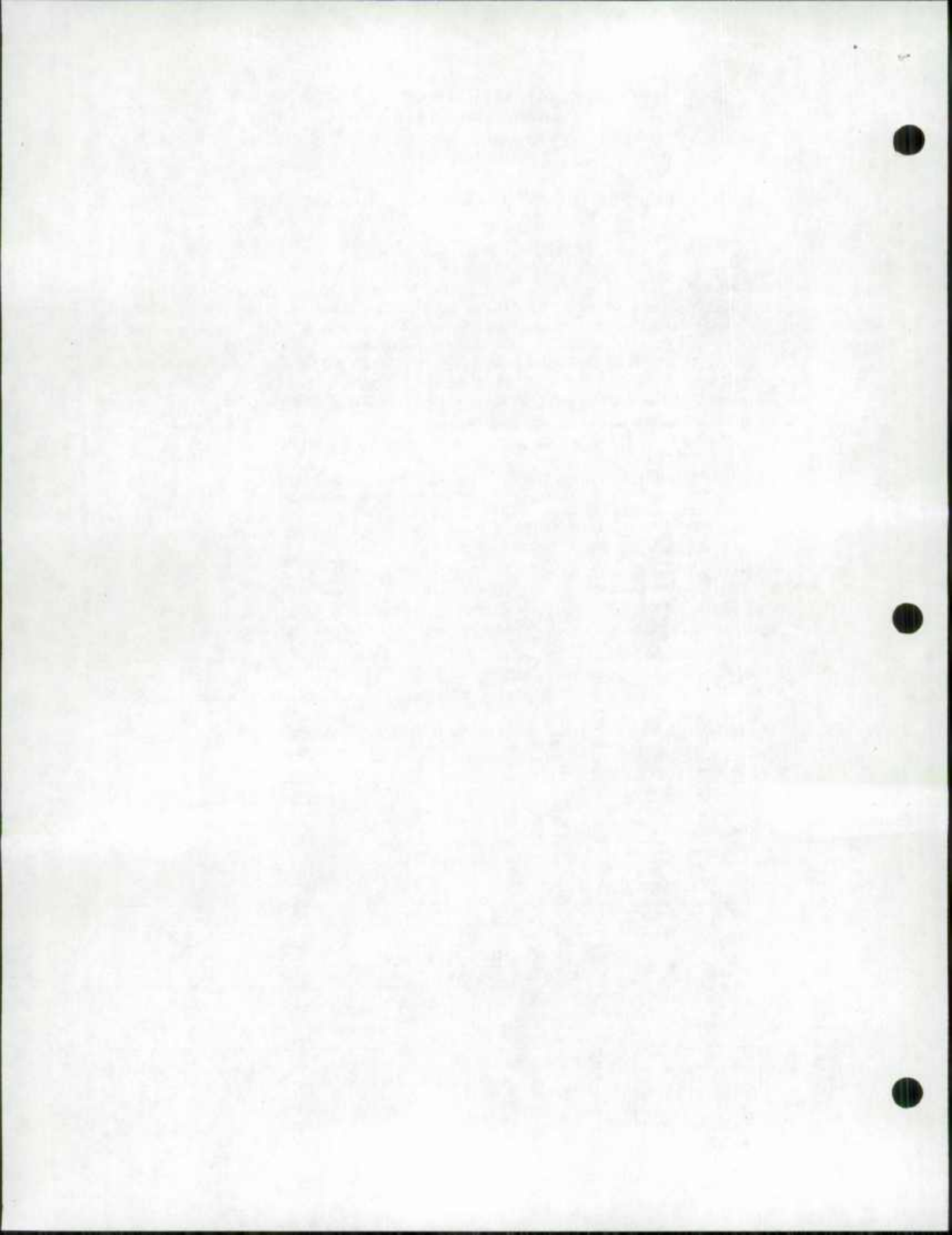
Appeal No. _____
(To be filled in by Clerk, Court of Special Appeals)

Directions: Generally, within 10 days after filing an appeal in a civil case, the appealing party ("appellant") must fill out, sign and file an original of this form by mail or by hand with P.H.C. Clerk, Court of Special Appeals, 361 Rowe Blvd., Annapolis, MD 21401, and send copies of it to all other attorneys and unrepresented parties in the case. Attach all requested items to the original and all copies. Use extra pages if desired. There is no filing fee for this report.

AN APPEAL MAY BE DISMISSED IF THIS FORM IS NOT TIMELY FILED, RULE 8-602(a)(4). Within 7 days of receiving an appellant's information report, each non-appealing party ("appellee") may but need not file one. Appeals of Juvenile Court cases, and appeals by prisoners relating to their confinement, are exempt from this form.

PLEASE SUPPLY THE FOLLOWING INFORMATION:

1. **Case Caption:** Moreland, LLC v. Anne Arundel County Board of Appeals
- a. Name of party appealing: Marqaret McHale, Chair, Critical Area Commission
- b. Was this case previously appealed to this Court? No Yes;
If "yes," Appeal No. _____, Sept. Term, 20__; Appeal No. _____, Sept. Term, 20__.
- c. Are there other cases pending in this Court that are related to this case? No Yes;
If "yes," Appeal No. _____, Sept. Term, 20__; Appeal No. _____, Sept. Term, 20__.
- d. Are there other cases pending in another court that are related to this case? No Yes; if "yes," then:
Case No. _____
Court: _____
Case title: _____
2. **Name, mailing address, email & weekday telephone of parties and attorneys, if any:**
- | | |
|---|----------------------------------|
| Appellant(s): <u>Marqaret McHale, Chair</u> | <u>South River Federation</u> |
| <u>1804 West Street, Suite 100</u> | <u>2830 Solomons Island Road</u> |
| <u>Annapolis, Maryland 21401</u> | <u>Edgewater, Maryland 21037</u> |
| <u>(410)260-3464</u> | <u>(410)224-3802</u> |
| Appellee(s): <u>Moreland, LLC</u> | |
| | |
| | |
| Attorney(s) for Appellant(s): <u>Saundra K. Canedo and Marianne E. Dise</u> | <u>Jon A. Mueller</u> |
| <u>1804 West Street, Suite 100</u> | <u>6 Herndon Avenue</u> |
| <u>Annapolis, Maryland 21401</u> | <u>Annapolis, Maryland 21401</u> |
| <u>(410)260-3467; (410)260-3466</u> | <u>(443)482-2162</u> |
| Attorney(s) for Appellee(s): <u>David M. Plott</u> | |
| <u>145 Main Street</u> | |
| <u>Annapolis, Maryland 21401</u> | |
| <u>(410)268-0881</u> | |



3. **A.D.A. Accommodation/Interpreters for Proceedings in Maryland Appellate Courts**

Will a party or attorney need an A.D.A. accommodation or interpreter? No Yes

If "yes," please explain the need and the requested accommodation: _____

4. **Type of civil case:** administrative appeal, contract, declaratory judgment, domestic, estate, foreclosure, paternity, tort, workers' compensation, other (specify): _____

5. **Court appealed from:** Circuit Orphans Court for Anne Arundel County

a. Full Case No: C-07-120131 b. Judge's Name: Paul Garvey Goetzke

c. Does the appeal arise from:

A pre-trial motion? No Yes; if yes, Motion with hearing, or Motion without hearing.

A trial? No Yes; if yes, Jury trial, or Non-jury trial.

Other? No Yes; if yes, (specify):

Hearing with oral argument on Petition for Judicial Review

d. Is this an appeal of an order granting a motion to dismiss?..... No Yes; if yes, go to (f)

e. Is this an appeal of an order granting summary judgment?..... No Yes; if yes, go to (f)

If you answered "yes" to (d) or (e), then:

f. Was a hearing requested in writing by any party? No Yes; if yes, go to (g)

g. Was a hearing held?..... No Yes; if yes, go to (h)

h. Was the hearing recorded?..... No Yes; if yes, go to (i) thru (k)

For all cases where there was a hearing and/or trial, please answer (i) through (k):

i. Dates & duration of trial/hearing (days/hours): November 26, 2007; 1 hour

j. Number of exhibits in evidence: 31

k. If a full transcript of all proceedings will not be ordered or is unnecessary for the appeal, please explain why Rule 8-411 does not apply: _____

6. **Record Extract**

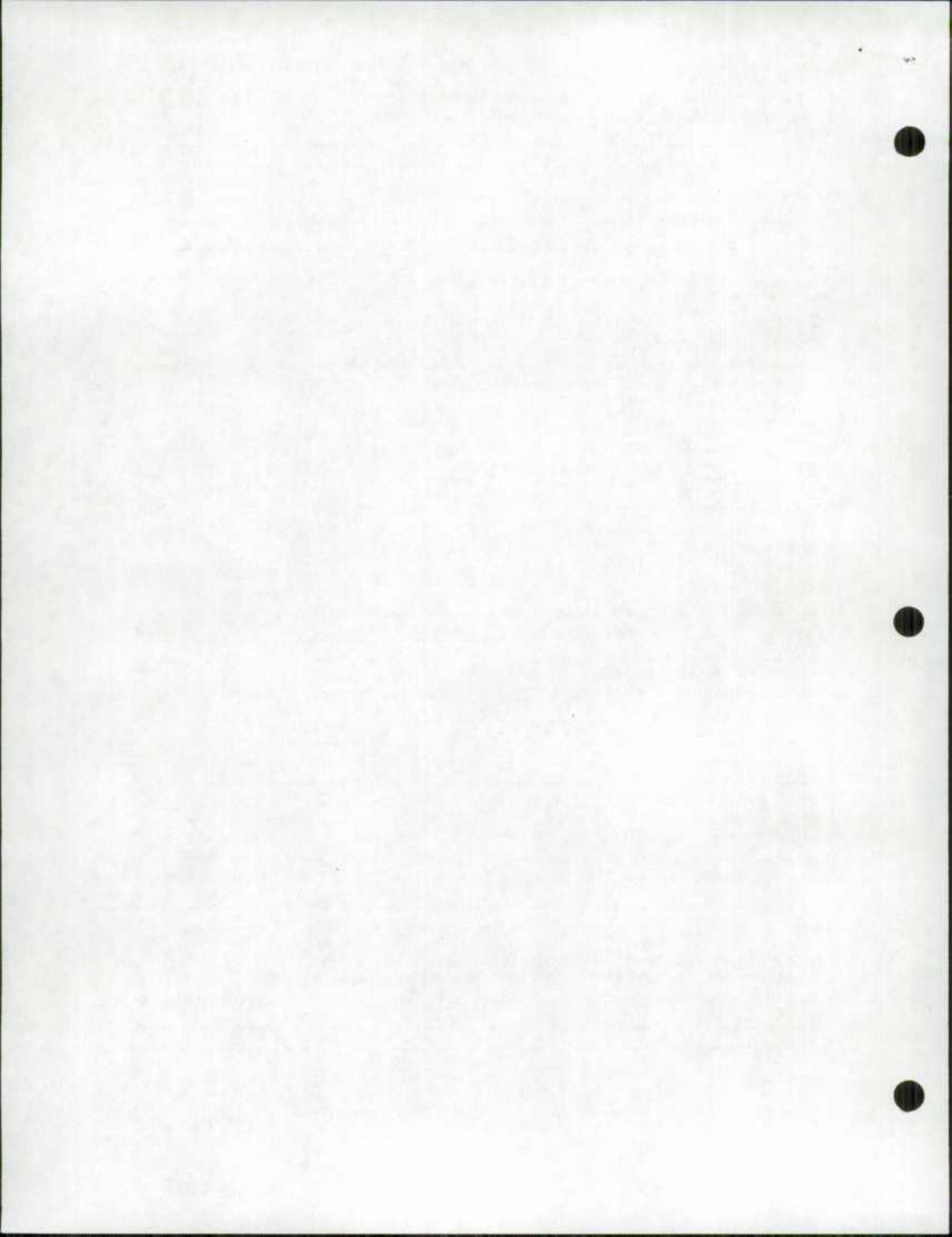
a. In your view, will the court file, exhibits and transcripts altogether exceed 100 pages? Yes No.

b. If "yes," have the attorneys and unrepresented parties discussed using Rules 8-413(b) ("Statement of Case in Lieu of Entire Record"), or 8-501(l) ("Deferred Record Extract")? Yes No; if "no," explain why: _____

7. **Judgments, Orders and/or Rulings in Question**

(ATTACH COPY OF WRITTEN JUDGMENTS, ORDERS &/OR RULINGS BEING APPEALED.)

a. Date of judgments, orders and/or rulings appealed (if different from shown on docket, please explain): May 15, 2008



b. Describe judgments, orders and/or rulings appealed, including whether such is/are written:

Order remanded to the Board of Appeals for further proceedings (Opinion attached).

c. Do the judgments, orders and/or rulings end the whole case (all claims) as to all parties? Yes No
(If "no," explain how the judgments, orders and/or rulings are appealable under Rule 2-602 and Code, Courts Art., sections 12-301, 12-303: _____)

8. Post-Judgment Motions

a. Were any motions filed under Rules 2-532, 2-533, or 2-534? Yes No

If "yes," please identify each such motion and for each, state:

1. Date(s) filed: _____;

2. Date(s) of ruling(s) on motion(s): _____;

3. Ruling(s) on motion(s): _____

b. Was *in banc* review requested under Rule 2-551? Yes No

If "yes," who filed for *in banc* review: _____

9. Appeal

(ATTACH COPY OF NOTICE OF APPEAL)

a. Appeal's filing date in circuit court: June 13, 2008 _____;

b. Name of party appealing: Margaret McHale, Chair, Critical Area Commission _____;

c. Filing fee paid? Yes No; if "no," is a motion for waiver and affidavit attached? Yes No

d. Is this an appeal under Rule 8-207(a) of an order about: adoption; guardianship terminating parental rights; guardianship of the person; child custody or visitation?..... Yes No

e. Is this an appeal of an interlocutory order under Code, Courts Article, section 12-303? Yes No

f. Will this be an Expedited Appeal under Rule 8-207(b)?..... Yes No

g. State each issue and claim of trial court error that you are appealing. (Appellees may use this space to explain their contentions about an appellant's answer to this question.)

The Circuit Court erred as a matter of law by: (1) shifting the burden of proof and persuasion to the government away from the applicant; (2) relying on case law superseded by statute; and (3) failing to apply the legal standards of Code, NR 8-1808(d).

10. Settlement or Scheduling Conference

(Information disclosed on this form is subject to the confidentiality provision of Rule 8-205(f).)

a. Describe briefly the history and present status of settlement negotiations sufficient to aid the Court of Special Appeals to decide whether to schedule a Pre-Hearing Conference: _____

b. Was this case submitted to any Alternative Dispute Resolution process (arbitration, mediation, settlement conference, etc.)? Yes No. If "yes," describe briefly. _____

c. Would a Pre-Hearing Conference help to narrow or reduce legal issues? Yes No

d. Would a Pre-Hearing Conference help plan the handling of large records? Yes No

e. Would a Pre-Hearing Conference help plan for other administrative issues? Yes No

If "yes" to (c), (d), or (e), please state the issues and summarize your discussions to date with the opposing party/counsel about them. _____

CERTIFICATE OF SERVICE

I certify that on the date stated below a copy of the foregoing Report was mailed, postage prepaid to:

David M. Plott, Esq.

145 Main Street

Annapolis, Maryland 21401

James A. Chance, Esq.

2660 Riva Road, 4th Floor

Annapolis, Maryland 21401

Jon A. Mueller, Esq.

6 Herndon Avenue

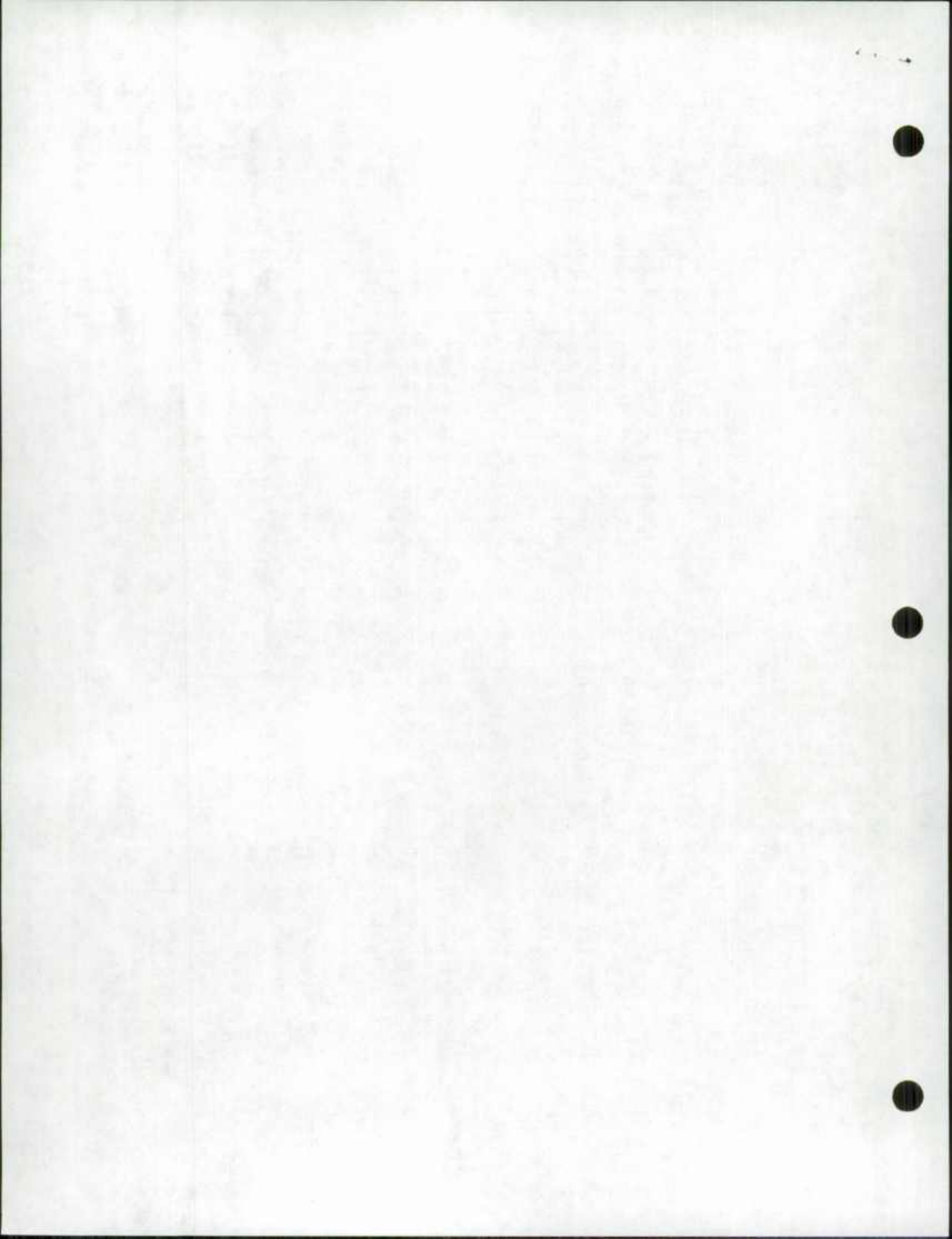
Annapolis, Maryland 21401

Date

6-20-08

Signed

Suzanne Carvedo



DOUGLAS F. GANSLER
Attorney General

KATHERINE WINFREE
Chief Deputy Attorney General

JOHN B. HOWARD, JR.
Deputy Attorney General



MARIANNE E. DISE
Assistant Attorney General
Principal Counsel

SAUNDRA K. CANEDO
Assistant Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CRITICAL AREA COMMISSION FOR THE
CHESAPEAKE AND ATLANTIC COASTAL BAYS

FAX NO. (410) 974-5338

WRITER'S DIRECT DIAL NO. (410) 260-3467
scanedo@oag.state.md.us

July 1, 2008

Via U. S. Mail and facsimile to (410)819-0994

Mark F. Gabler, Esquire
Rich and Henderson, P.C.
36 South Washington Street
Easton, Maryland 21601

RE: Roes' Property, 11672 Greensboro Road, Caroline County, Maryland

Dear Mr. Gabler:

I am writing in response to your letter of June 11, 2008. As Marianne Dise explained to you in a recent phone conversation, my client was under the impression that a revised site plan depicting the correct mitigation would be submitted from your client's consultant following their April 15, 2008 meeting. The following is an explanation of how the FIDS mitigation number/requirement was reached by my client in cooperation with your client's consultant, Stark McLaughlin at the aforementioned meeting.

As you are aware, the CAC staff offered to assist Mr. Roes in development of a mitigation plan by locating a potential off site mitigation location, and has done so by coordinating with TNC regarding a property in Caroline County. This coordination reached a point at which it could not proceed without a site plan from Mr. Roes' consultant depicting the correct mitigation amount for the violation as required by the FIDS manual, thus, staff informed Mr. Roes' consultant that the plan formerly submitted did not correctly apply the FIDS requirements. At the consultant's request, CAC staff came to his office on April 15, 2008 to provide further guidance. To date, no plan or information from the consultant has been submitted. Although CAC staff resources are limited, once the correct mitigation amount is known, CAC staff is willing to further assist Mr. Roes by continuing to pursue the potential TNC off site mitigation negotiations.

The following information has been provided to the consultant previously, but has been restated here for your benefit. The direct impact to FIDS habitat for the road clearing violation must be mitigated with

planting to create new FIDS habitat. The consultant has provided information that the direct impact (road clearing in the RCA FIDS habitat) area is 1.02 acres. The consultant has also stated that land within the cleared roadway both inside and out of the Critical Area can be used for the FIDS direct impact mitigation plantings. CAC staff has agreed to allow the direct impact mitigation to occur both inside and out of the Critical Area; however, the plantings must occur to the north of the road clearing in order to be appropriate FIDS mitigation, because planting a strip to the south of the driveway does not create FIDS habitat.

Since the road clearing was a violation, and the activity occurred without following FIDS guidelines (e.g. by minimizing the width of driveways and avoiding clearing of canopy) mitigation is required for the direct impacts (the area of the road clearing in the RCA) and the two times the loss of interior habitat, per the FIDS Manual. As stated in the manual "the amount of FIDS mitigation should equal the number of acres of direct forest habitat loss, plus, two times the number of acres of interior habitat loss (FIDS [interior] habitat cut or converted to edge)." As explained to the consultant on April 15, 2008, this includes the 300 feet surrounding the roadway clearing that resulted in conversion of interior habitat to edge.

The total mitigation area for FIDS must include the area of the road cleared in the RCA (the direct impact), plus two times the area of a 300 foot wide area surrounding the road clearing in the RCA. The existing edge before the clearing violation was the 300 foot wide area surrounding Moot Point Lane, not as platted, but as it existed on the ground at the time of the violation. Again, instruction for this calculation was provided to your client's consultant at the April 15 meeting. However, no site plan or mitigation calculation has been submitted. An estimate by CAC staff is that the amount of FIDS interior habitat loss is approximately 5.5 acres. If Mr. Roes would like to accept this estimate instead of providing a different estimate from his consultant, then for FIDS mitigation Mr. Roes is required to provide 1.02 acres of planting (for direct impact) and 11 additional acres (two times 5.5 acres of interior habitat loss) which may be satisfied either by planting or by payment of a fee in lieu.

Based on preliminary negotiations by CAC staff with TNC for Mr. Roes, we have determined that the TNC site may be used for his off site mitigation for \$1500 per acre of FIDS habitat to be protected, or \$4000 per acre of FIDS habitat to be created by planting. Please note that the availability of land at the TNC site for planting is limited, so protection is likely a necessary option for most of Mr. Roes' mitigation requirement. According to the FIDS manual, "when the protection option is chosen, the protected acres are given only half credit toward the required mitigation acres." Therefore, the acreage must be doubled for the portion of the mitigation requirement accommodated through protection of existing habitat.

In addition to the FIDS mitigation, the applicant is required to mitigate for the gravel area in the Buffer, which is a violation that must be mitigated at 3:1 ratio. The consultant has stated that the gravel violation area is 1,687 square feet (0.0387 acres). The CAC staff would accept a proposal to remove the gravel and plant shrubs and understory trees in the 1,687 square foot area, while the remaining 3,374 square feet (0.077 acres) of mitigation can be accomplished through fee in lieu.

In a related matter, it has been brought to our attention by Mr. Roes' consultant that he intends to develop the site with a house which requires additional clearing of FIDS habitat. The mitigation

amounts described in this letter do not address impacts for any future development on this site. FIDS guidelines should be met for any future development plans in the Critical Area and additional FIDS mitigation will be required for these impacts once approved. If there is not adequate space on the site to plant for the direct impacts, off site FIDS mitigation planting must be provided for that area as well.

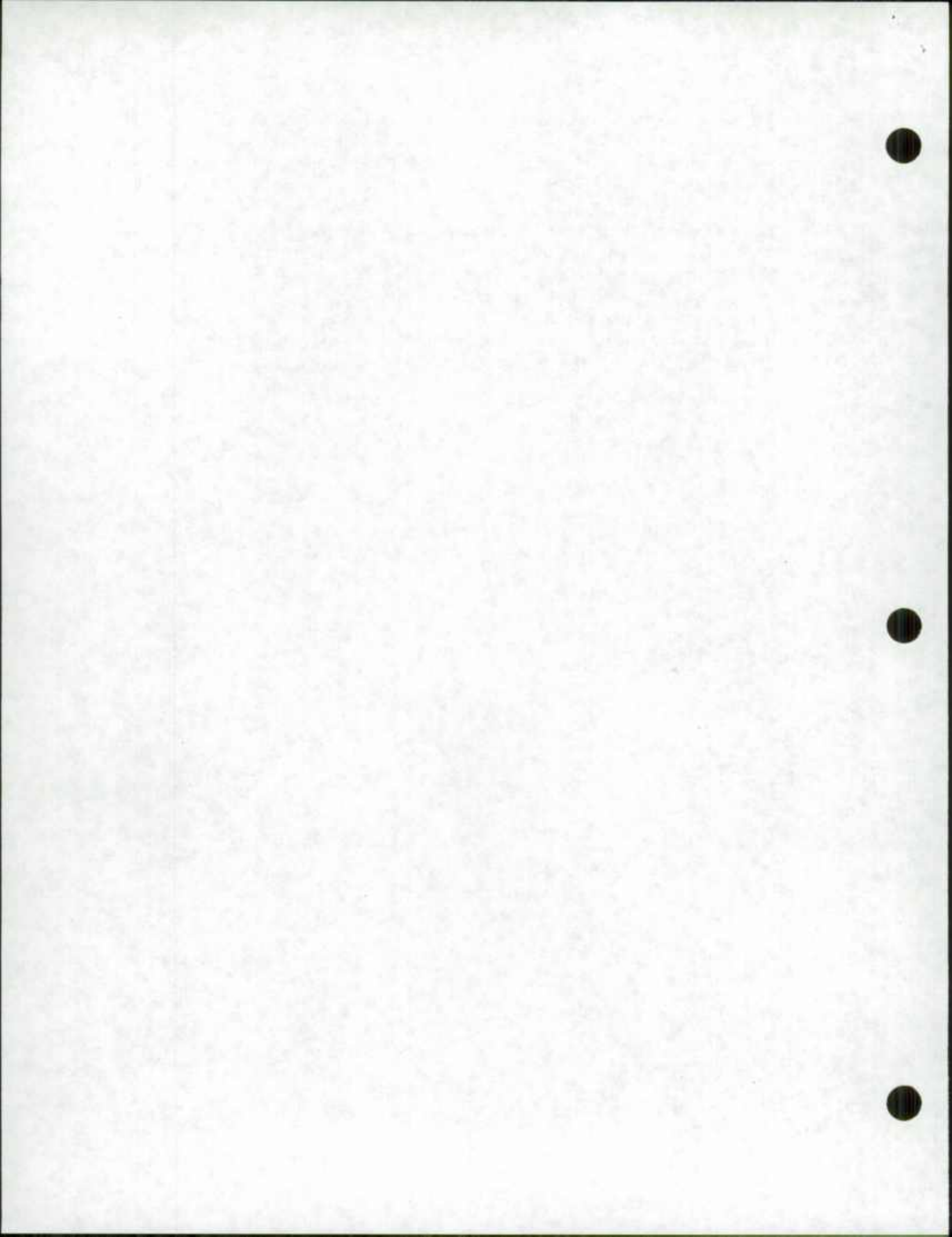
As you can see, any delay in resolving this matter for your client is shared, as my client was given the impression by your consultant that a new site plan would be forthcoming. At this point, we look forward to receiving a new plan from your client accurately depicting the FIDS habitat impact and correlating mitigation. Also, as mentioned earlier, my client has located a potential off-site mitigation location which may serve to assist your client in achieving resolution of this Critical Area violation. Please let us know whether your client wishes to utilize the TNC off-site mitigation, so that we can continue working with TNC to finalize that portion of the Roes' required mitigation for Critical Area violations.

Sincerely,



Sandra K. Canedo
Assistant Attorney General

cc: Marianne E. Dise, Principal Counsel
Marshall Johnson
Lee Anne Chandler
Stark McLaughlin



DOUGLAS F. GANSLER
Attorney General

KATHERINE WINFREE
Chief Deputy Attorney General

JOHN B. HOWARD, JR.
Deputy Attorney General



MARIANNE E. DISE
Assistant Attorney General
Principal Counsel

SAUNDRA K. CANEDO
Assistant Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CRITICAL AREA COMMISSION FOR THE
CHESAPEAKE AND ATLANTIC COASTAL BAYS

FAX NO. (410) 974-5338

WRITER'S DIRECT DIAL NO. (410) 260-3467
scanedo@oag.state.md.us

July 2, 2008

VIA OVERNIGHT MAIL

Vicki C. Rogers, Clerk of the District Court
District Court of Maryland for Somerset County
12155 Elm Street, Suite C
Princess Anne, Maryland 21853-1358

RE: **State of Maryland v. John Bunting**, Citation Nos: 0Z34076784; 2Z34076765;
3Z34076766; 4Z34076767; 5Z34076768; and 6Z34076769

Dear Madam Clerk:

Please find enclosed for filing a Motion for Continuance in the above-captioned case.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Sandra K. Canedo".

Saundra K. Canedo
Assistant Attorney General

Encl.

cc: Charles Butler
Raymond Smethurst
William Hall
David Lloyd

IN THE DISTRICT COURT FOR SOMERSET COUNTY, MARYLAND

STATE OF MARYLAND

v.

JOHN BUNTING

*
*
*
*
*

Citations: 0Z34076784
2Z34076765
3Z34076766
4Z34076767
5Z34076768
6Z34076769

* * * * *

MOTION FOR CONTINUANCE

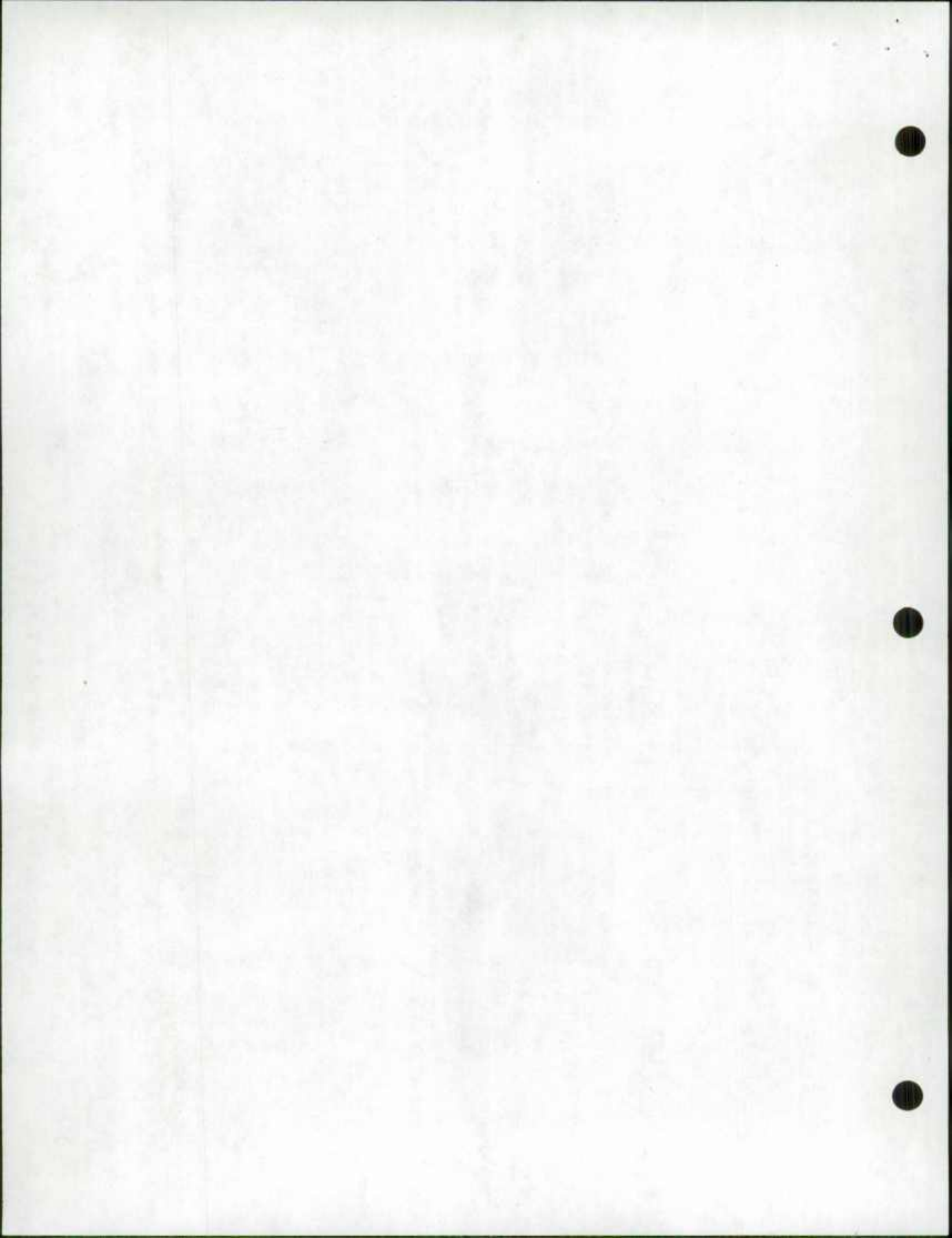
NOW COMES the State of Maryland, by and through its attorneys, Douglas F. Gansler, Attorney General for the State of Maryland and Sandra K. Canedo and Marianne E. Dise, Assistant Attorneys General pursuant to Maryland Rule 3-508, files this Motion for Continuance and states:

1. The hearing date for the above-captioned case is currently scheduled for July 28, 2008. On May 15, 2008, a Complaint for Declaratory Judgment and Specific Performance, titled, Douglas F. Gansler, Attorney General of the State of Maryland v. John Bunting, Case No. 19-C-08-12354, was filed in the Circuit Court for Somerset County concerning the same zoning enforcement matters on the same property at issue in the above-referenced citations.

2. A hearing date has been scheduled in the above-referenced Circuit Court case and it is likely that resolution of the circuit court case will resolve the matters before this honorable court.

WHEREFORE, the State of Maryland, by its undersigned attorneys prays for the following relief:

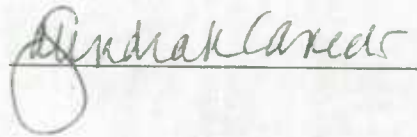
An Order continuing the above-captioned matters until such time as the Circuit Court case is finally adjudicated.




For such other and further relief as the nature of its cause requires.

Respectfully submitted,

DOUGLAS F. GANSLER
Attorney General of Maryland


Sandra K. Canedo

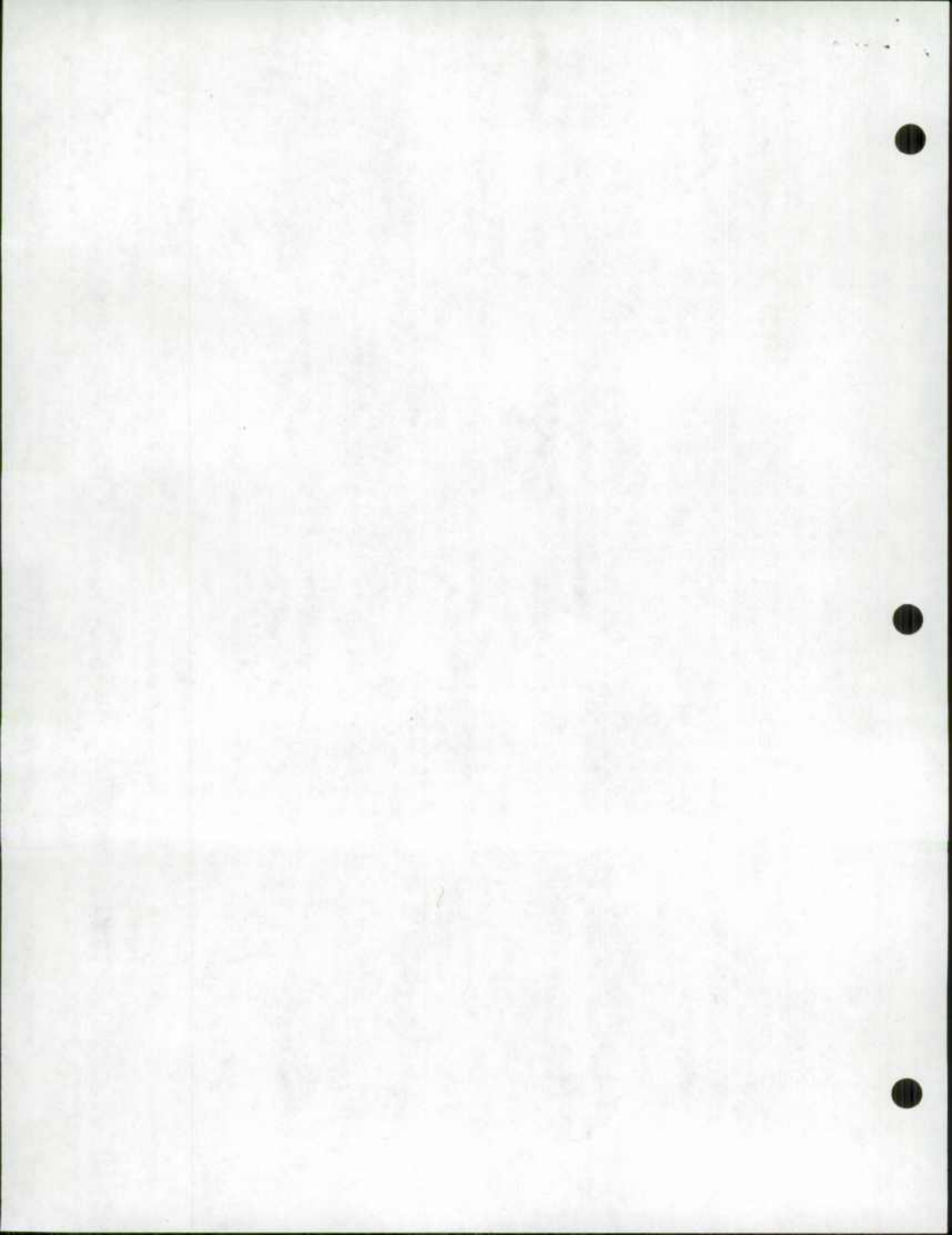

Marianne E. Dise

Sandra K. Canedo
Marianne E. Dise
Assistant Attorneys General
Critical Area Commission for the
Chesapeake and Atlantic Coastal Bays
1804 West Street, Suite 100
Annapolis, MD 21401
(410) 260-3467

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of July 2008, I sent a copy of the foregoing Motion for Continuance via U.S. Mail, postage prepaid to: William Hall, Esq., 26348 High Banks Drive, Salisbury, Maryland 21801-2306 and to Raymond S. Smethurst, Jr., Esq., P.O. Box 4247, Salisbury, Maryland 21803-4247, Attorneys for John Bunting, and to David Lloyd, Somerset County Technical & Community Services, 11916 Somerset Avenue, Princess Anne, Maryland 21853.


Sandra K. Canedo





< Back

Print >

Printed Domestic Labels

Transaction #: 119507995
 Charged to: VISA *****2114
 Labels Included: 1
 Print Date/Time: 7/2/08 2:43:20 PM CDT

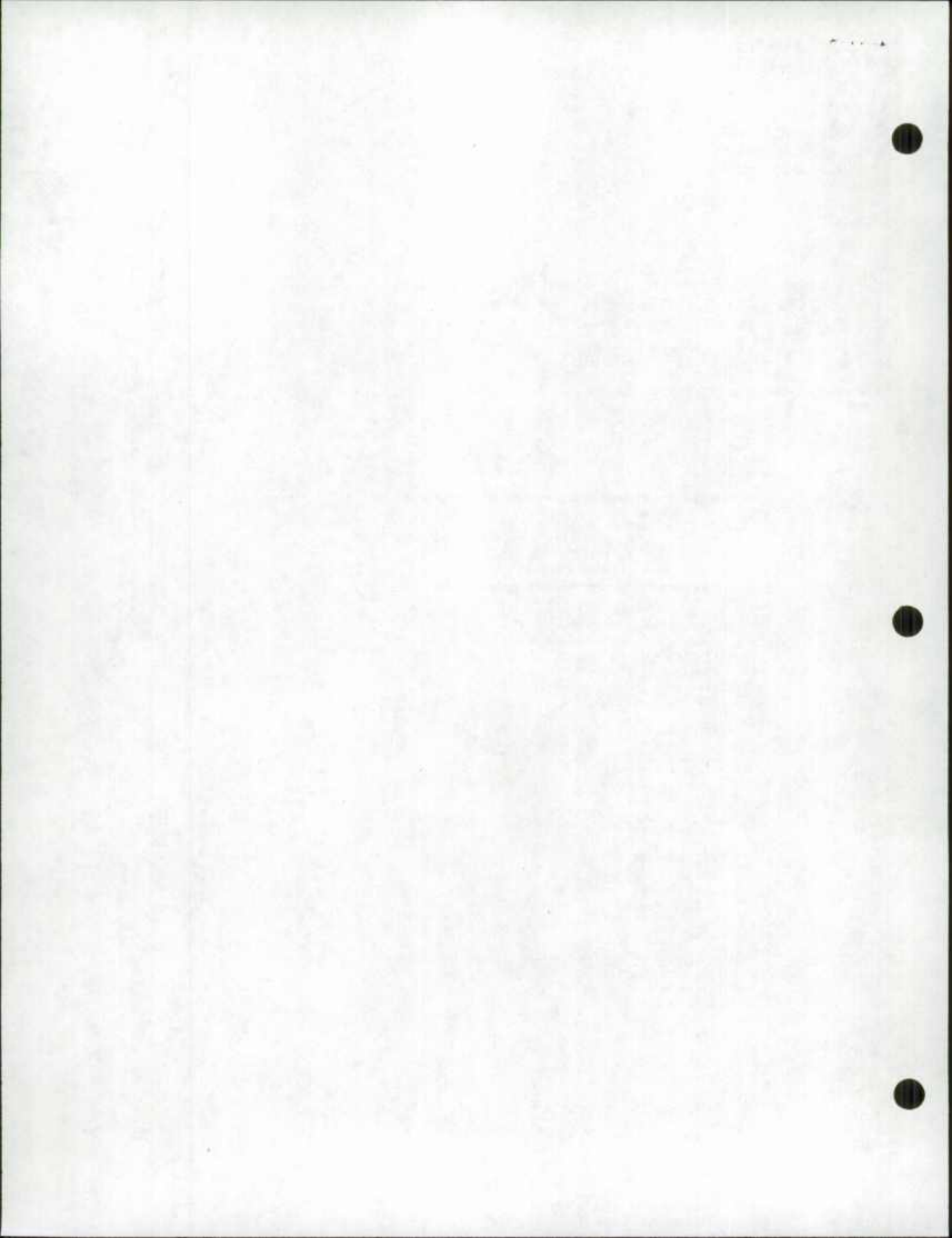
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1 of 1	VICKI C. ROGERS CLERK OF THE DISTRICT 12155 ELM ST STE C PRINCESS ANNE, MD 21853-1348	Ship Date: 07/02/08 Weight: 0lbs 3oz From: 21401	Express Mail	\$12.22
			Label Total	\$12.22

Express Mail® Label Number: EO 949 535 765 US

Domestic Order Total: \$12.22

Legion Ave Station
 Annapolis, Maryland
 214019996
 2303830505 -0097
 07/02/2008 (410)268-9668 04:08:14 PM

Product Description	Sales Receipt		Final Price
	Sale Qty	Unit Price	
PRINCESS ANNE MD 21853 Zone-1 First-Class Large Env 1.20 oz.			\$1.00
Issue PVI:			\$1.00
SALISBURY MD 21803 Zone-1 First-Class Large Env 1.20 oz.			\$1.00
Issue PVI:			\$1.00
SALISBURY MD 21801 Zone-1 First-Class Large Env 1.20 oz.			\$1.00
Issue PVI:			\$1.00
BALTIMORE MD 21202 Zone-1 First-Class Large Env 1.20 oz.			\$1.00
Issue PVI:			\$1.00
Total:			\$4.00
Paid by:			
Visa			\$4.00
Account #:	XXXXXXXXXXXX2114		
Approval #:	047166		
Transaction #:	870		
23 902860782			



DOUGLAS F. GANSLER
Attorney General

KATHERINE WINFREE
Chief Deputy Attorney General

JOHN B. HOWARD, JR.
Deputy Attorney General



MARIANNE E. DISE
Assistant Attorney General
Principal Counsel

SAUNDRA K. CANEDO
Assistant Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CRITICAL AREA COMMISSION FOR THE
CHESAPEAKE AND ATLANTIC COASTAL BAYS

FAX NO. (410) 974-5338

WRITER'S DIRECT DIAL NO. (410) 260-3467
scanedo@oag.state.md.us

July 7, 2008

Honorable Warren J. Krug
County Administrative Judge
Calvert County Circuit Court
175 Main Street
Prince Frederick, Maryland 20678

RE: *In the Matter of Margaret McHale v. Ella Williams,*
Case Number: 04-C-08-000076 AA

Dear Judge Krug:

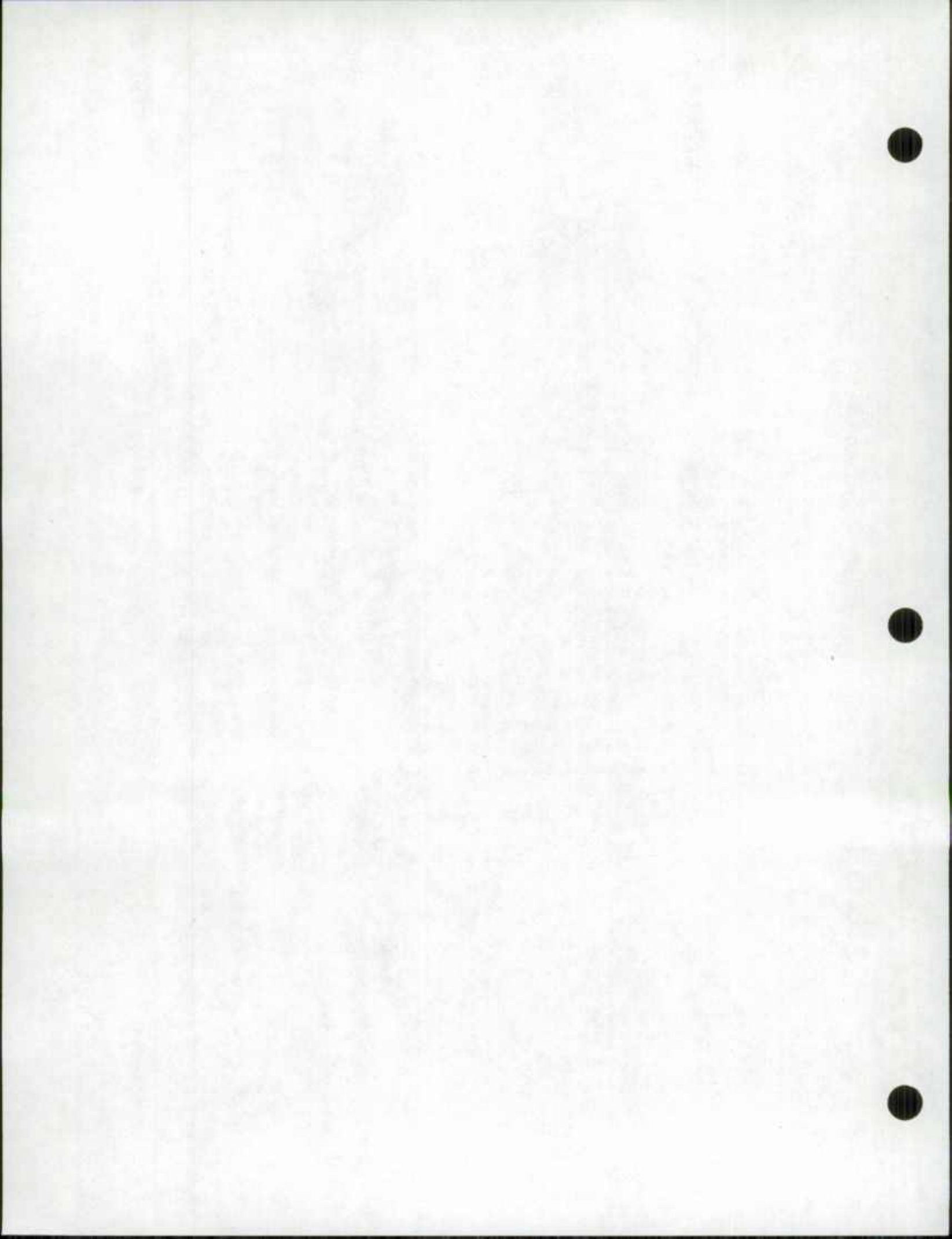
The above-referenced Petition for Judicial Review was filed on January 17, 2008. Subsequently, the record was filed on March 3, 2008 and Petitioner's Memorandum followed on March 28, 2008. There is no Party-Respondent to this proceeding and no Responsive Memorandum has been filed. I respectfully request the above-referenced matter be set in for hearing at this time, if the court deems necessary.

Your Honor's time and consideration is greatly appreciated.

Very truly yours,

A handwritten signature in cursive script that reads "Saundra Kay Canedo".

Saundra Kay Canedo
Assistant Attorney General



DOUGLAS F. GANSLER
Attorney General

KATHERINE WINFREE
Chief Deputy Attorney General

JOHN B. HOWARD, JR.
Deputy Attorney General



MARIANNE E. DISE
Assistant Attorney General
Principal Counsel

SAUNDRA K. CANEDO
Assistant Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CRITICAL AREA COMMISSION FOR THE
CHESAPEAKE AND ATLANTIC COASTAL BAYS

FAX NO. (410) 974-5338

WRITER'S DIRECT DIAL NO. (410) 260-3467
scanedo@oag.state.md.us

July 18, 2008

Via Hand-delivery

Mr. Robert P. Duckworth
Clerk, Circuit Court for Anne Arundel County
P.O. Box 71
7 Church Circle
Annapolis, Maryland 21403

RE: *Moreland, LLC v. Anne Arundel County Board of Appeals,*
Civil Action No.: C-07-120131

Dear Mr. Duckworth:

My office obtained a copy of the transcript from the Board of Appeals proceeding in the above-referenced case pursuant to an appeal filed in the Court of Special Appeals. I am writing to confirm that the transcript of the Board of Appeals hearing is therefore already part of the record and will be transferred to the Court of Special Appeals.

The transcript of the oral argument in circuit court has been ordered pursuant to Md. Rule 8-411(b). Please accept for filing, pursuant to Md. Rule 8-411(c), a copy of the transcript request form sent to the court reporter for transcription of the oral argument.

Thank you for your attention to this matter.

Sincerely yours,

A handwritten signature in cursive script that reads "Sandra K. Canedo".

Saundra K. Canedo

Encl.

cc: Jon A. Mueller, Esq.
David M. Plott, Esq.

1804 West Street, Suite 100
Annapolis, Maryland 21401



Circuit Court for Anne Arundel County

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Order Date: 18 July 2008
Name: Sandra Canedo
Organization: Critical Area Commission
Street Address: 1804 West Street
Address (cont.): Suite 100
City, State & Zip: Annapolis, MD
Country: USA
Daytime Phone: 410-260-3467
Daytime FAX: 410-974-5338
Email address: scannedo@dnr.state.md.us

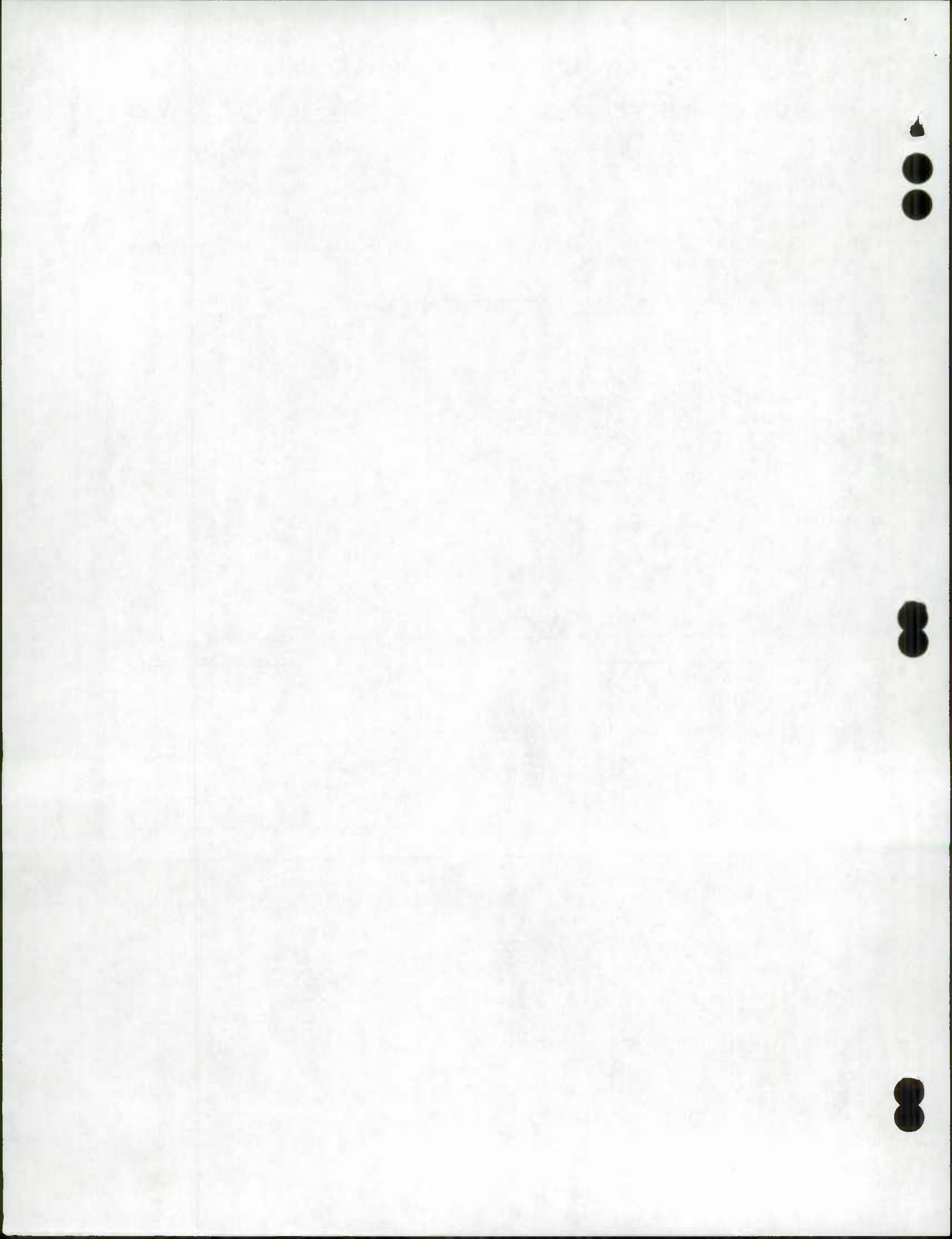
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Name of Case: Moreland, LLC v. Anne Arundel County Board of Appeals
Case Number: C-07-120131
Date of Hearing: November 26, 2007
Judge/Master's Name: Paul Garvey Goetzke
Date Needed by: September 8, 2008

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Circuit Court for Anne Arundel County

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DOUGLAS F. GANSLER
Attorney General

KATHERINE WINFREE
Chief Deputy Attorney General

JOHN B. HOWARD, JR.
Deputy Attorney General



MARIANNE E. DISE
Assistant Attorney General
Principal Counsel

SAUNDRA K. CANEDO
Assistant Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CRITICAL AREA COMMISSION FOR THE
CHESAPEAKE AND ATLANTIC COASTAL BAYS

FAX NO. (410) 974-5338

WRITER'S DIRECT DIAL NO. (410) 260-3467
scanedo@oag.state.md.us

July 25, 2008

VIA OVERNIGHT MAIL

Mr. William L. Brueckman
Clerk of the Circuit Court
Courthouse, 2nd floor
129 E. Main Street
Elkton, MD 21921

RE: Civil Action No.: 07-C-07-000402AA
Petition of FRON-DLP, L.P. for Judicial Review

Dear Mr. Brueckman:

Please find enclosed for filing the Respondent's Memorandum of Law in the above-referenced case.

Thank you for your assistance in this matter.

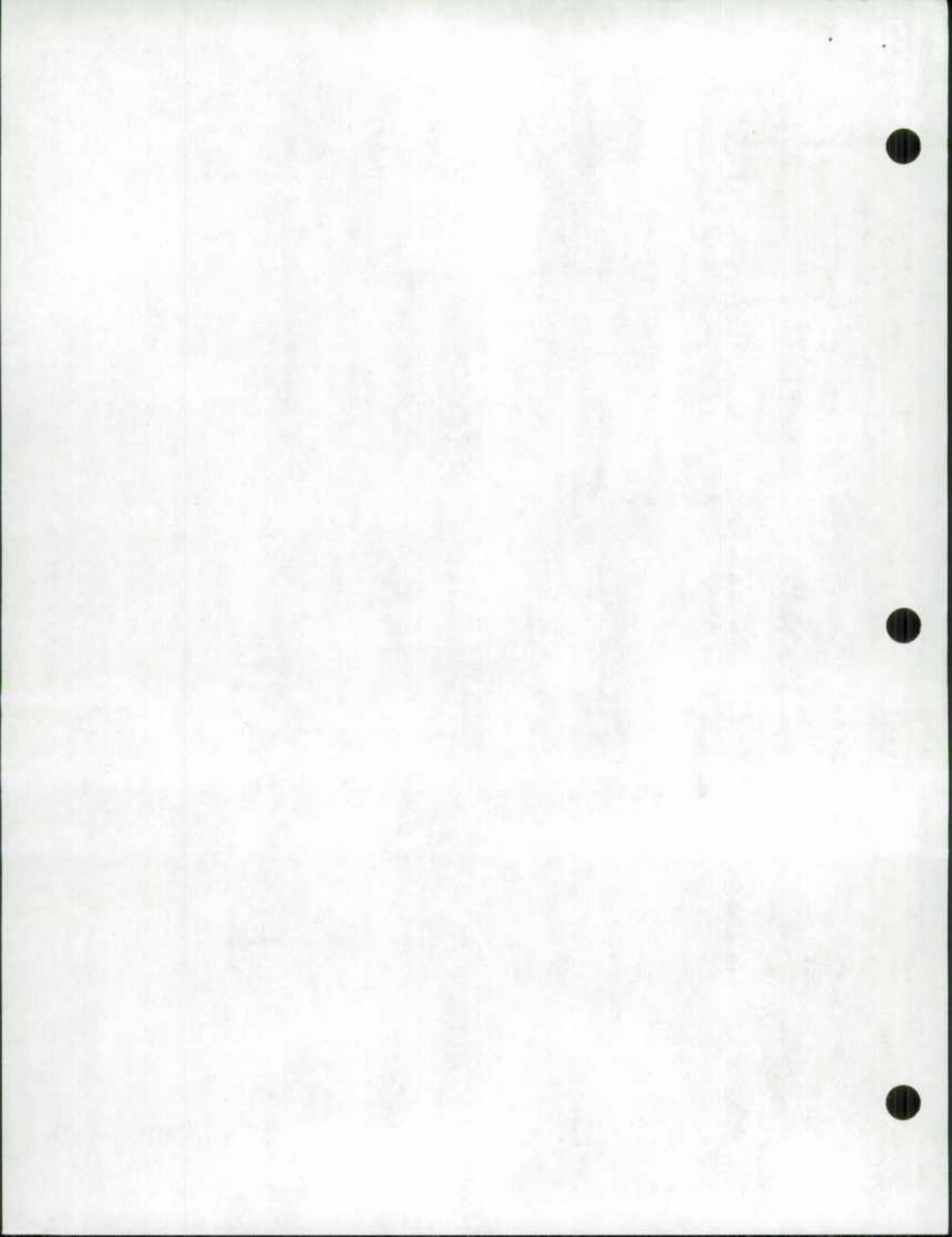
Sincerely,

A handwritten signature in cursive script that reads "Sandra K. Canedo".

Saundra K. Canedo
Assistant Attorney General

Encl.

cc: Robert Valliant Jones, Esq.
Jason L. Allison, Esq.
Keith A. Baynes, Esq.



**IN THE CIRCUIT COURT OF MARYLAND
FOR CECIL COUNTY**

PETITION OF: *
FRON-DLP, L.P. *
240 8th Street *
Philadelphia, PA 19107 *

FOR JUDICIAL REVIEW OF *
THE DECISION OF: * Civil Action No.: 07-C-07-000402
THE CECIL COUNTY BOARD *
OF APPEALS *

IN THE CASE OF: *
No. 3359 *
FRON-DLP, L.P. *

* * * * *

MEMORANDUM OF RESPONDENT CRITICAL AREA COMMISSION

Respondent Margaret McHale, Chair, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays (“Critical Area Commission”) by her attorneys, Douglas F. Gansler, Attorney General of Maryland and Sandra K. Canedo and Marianne E. Dise, Assistant Attorneys General, pursuant to Rule 7-207, files this Memorandum.

INTRODUCTION

Respondent urges this Court to affirm the November 27, 2007 Decision of the Cecil County Board of Appeals (“Board”) in the above-captioned matter. The Board denied three variances requested by FRON –DLP, L.P. (“Applicant” or “Petitioner”): (1) to the 110-foot stream Buffer; (2) for additional boat slips; and (3) to create additional lots in the 100-year floodplain¹. The Board’s decision denies the variances which would

¹ There was a fourth variance requested for structures to be located in the 110-foot Critical Area Buffer. That variance was not entertained as the Critical Area Commission had advised the County Commissioners that there was an omission in the County’s

be required for a new subdivision in the Critical Area, as that new subdivision was configured by the Applicant. In its decision denying the variances, the Board correctly applied the law and requirements required by the County's Critical Area law. As such, this Court should affirm the Board.

PROCEEDINGS BY BOARD OF APPEALS

On October 25, 2007, the Cecil County Board of Appeals conducted a hearing on FRON-DLP, L.P.'s application for variances to the County's Critical Area laws to permit a new subdivision with eighty-six (86) lots and eighty-six (86) boat slips on the North East River in Cecil County. The Applicant asked the Board to grant variances so that the Applicant could construct more boat slips than permitted by law; create lots in the County's 110-foot Critical Area buffer; and disturb the buffer to an intermittent stream on the property. At the hearing, Mr. Robert Welch testified on behalf of FRON-DLP, L.P. as to the history of the property and the origin of his philosophy "of trying to have one slip per single family home." Transcript of Board hearing, October 27, 2007 ("Tr.") at 17. Mr. Welch's only reference to the critical area variance standards during the presentation of his case-in-chief was, "[T]here is all sorts of issues with the Critical Area Commission. I think we have met them." Tr. at 19. Two other individuals also spoke on behalf of the Applicant, mainly discussing the layout of the property and the intermittent stream. Tr. at 9-14 and 22- 25.

Three members of the general public testified against the variances requested, two of whom stated that the variances, if granted, would have a detrimental effect on the quality of the Chesapeake Bay. Tr. at 37. Lisa Hoerger, Regional Program Chief, for the

Critical Area program with regard to how the County administers and enforces buffer exemption provisions. Tr. at 42.

Critical Area Commission, testified as to the purposes, policies and goals of the Critical Area program. Tr. at 41-47. Additionally, Kate Schmidt, Natural Resource Planner for the Critical Area Commission, testified as to all of the required variance standards, addressing how the applicant had not met them². Tr. at 51-62.

The Applicants requested a variance for their proposed subdivision because they wanted to: dramatically decrease the amount of stream buffer required; allow more slips than statutorily permitted; and build homes within the 100-year floodplain. Citing the prior use of the property as a mobile home/trailer park, Applicant sought these variances in an effort to **change the use** to a single family home subdivision. (emphasis added). Tr. at 9 – 11; 16, 19. Although the Applicant would like this court to believe that its variance requests are simply a matter of reducing the use of the site, this is not true. The requested variances are for a change in use, specifically for new development on new lots. New development in the Critical Area, such as the single family home subdivision requested, must conform with the law and regulations applicable to the critical area.

Consistent with State law, the Cecil County Critical Area law prohibits the construction of new impervious surfaces in the Buffer, which includes stream buffers³. See Annotated Code of Maryland (“Code”), Natural Resources Article 8-1808(c)(vii). The State law (Nat. Res. Art. 8-1808(d)(4)(ii)), and the County Code require that the Applicants satisfy each and every variance standard in order to be granted a variance. The

² The Critical Area Commission also submitted a detailed letter in opposition to the requested variances dated, October 22, 2007, addressed to David Willis, Chairman of the Cecil County Board of Appeals. “Commission letter.”

³ There was a jurisdictional determination by the U.S. Army Corps of Engineers in 2005 which indicated that the watercourse (referred to by Applicants as a ‘ditch’) running through the property is in fact a stream. Tr. at 45.

County Code does not follow the precise language of the State law, requiring “each and every” standard be met; however, the language of the County variance standards explicitly states, “[V]ariance requests in the Critical Area District *shall not* be granted unless the decision is based on the following additional criteria.” (emphasis added) County Code, Article XVII, Part I, Section 306. In any event, the Court of Special Appeals has held that the language of the State law in Nat. Res. Art. 8-1808 is mandatory, and that the State law language must be applied by all County zoning boards, in all Critical Area variance cases. *Becker v. Anne Arundel County*, 174 Md. App. 114, 136 (2007)⁴. In addition, State and County law alike require the Board to make written findings to support its decision on a variance application. Nat. Res. §8-1808(d)(3)(ii); County Code, Art. XVII, §306.3.g.

In this case, the Board correctly denied the requested variances, applying all of the requisite variance standards. The Board repeatedly held that the Applicant did not demonstrate that he would suffer an unwarranted hardship without the granting of the variance, Board Opinion at 6-7, finding that the “property can be developed without the requested variance.” Bd. Opinion at 6. In Critical Area cases the General Assembly has mandated that a variance **may not be granted** unless the applicant establishes by competent and substantial evidence that the applicant will suffer an “unwarranted hardship.” The General Assembly has defined “unwarranted hardship” as “without a

⁴ As of July 1, 2008, the General Assembly provided that all provisions of the Critical Area law are applicable regardless of whether a county has amended its Critical Area program, ordinance, plan or regulations. Ch. 119, 2008 Laws of Maryland at 19, *codified at* Md. Code Ann. Nat. Res. II § 8-1808 (c)(1)(i): “Notwithstanding any provision in a local law or ordinance, or the lack of a provision in a local law or ordinance, all of the requirements of this subtitle shall apply to, and be applied by, a local jurisdiction as minimum standards for a program sufficient to meet the goals of the Critical Area Program.”

variance, an applicant would be denied reasonable and significant use of the entire parcel or lot for which the variance is requested.” Nat. Res. II §8-1808(d)(4)(i).

The State legislature has assigned both the burden of proof and the burden of persuasion to the Applicants in Critical Area variance cases. Nat. Res. II § 8-1808(d)(3). These burdens, and the standards for Critical Area variances, are not optional. As the Court of Special Appeals recently held: “The criteria contained in [Natural Resources Article] 8-1808, including the criteria for granting a variance, are mandatory.” *Becker v. Anne Arundel County*, 174 Md. App. at 136. In the present case, the Cecil County Board found that “the Applicant has not met its burden of proof” and “specifically finds no demonstrated unwarranted hardship.” Bd. Opinion at 7. The Board’s written findings could hardly be more clear. Moreover, the findings are supported by the evidence and testimony from the October 2007 hearing. The Board found that the Applicant failed to overcome the statutory presumption of non-conformance with the general purpose and intent of the critical area law (“In considering an application for a variance, a local jurisdiction shall presume that the specific development activity in the critical area ... for which a variance is required does not conform with the general purpose and intent of this subtitle ... and the requirements of the local jurisdiction’s program.”) Nat. Res. II § 8-1808(d)(2)(i).

BACKGROUND OF CRITICAL AREA ACT

In an effort to protect the Chesapeake Bay from further decline, the General Assembly enacted Chapter 794 of the Laws of 1984, the Chesapeake Bay Critical Area Protection Program, Md. Code Ann. Nat. Res. II, §8-1801 et seq. (the “Critical Area Law”). In doing so, the General Assembly made findings that:

(2) The shoreline and adjacent lands constitute a valuable, fragile, and sensitive part of this estuarine system, where human activity can have a particularly immediate and adverse impact on water quality and natural habitats; . . .

(4) Human activity is harmful in these shoreline areas, where the new development of nonwater-dependent structures or the addition of impervious surfaces is presumed to be contrary to the purpose of this subtitle, because these activities may cause adverse impacts, of both an immediate and a long-term nature, to the Chesapeake and Atlantic Coastal Bays, and thus it is necessary wherever possible to maintain a buffer of at least 100 feet landward from the mean high water line of tidal waters, tributary systems, and tidal wetlands; . . .

(8) The restoration of the Chesapeake and the Atlantic Coastal Bays and their tributaries is dependent, in part, on minimizing further adverse impacts to the water quality and natural habitats of the shoreline and adjacent lands, particularly in the buffer;

(9) The cumulative impact of current development and of each new development activity in the buffer is inimical to these purposes; and

(10) There is a critical and substantial State interest for the benefit of current and future generations in fostering more sensitive development activity in a consistent and uniform manner along shoreline areas of the Chesapeake and Atlantic Coastal Bays and their tributaries so as to minimize damage to water quality and natural habitats.

Nat. Res. II§8-1801(a). As required by the Critical Area Law, each affected local government, including Cecil County developed a Resource Protection Program – or “Critical Area Program” – which is implemented “on a cooperative basis between the State and local governments.” Nat. Res. II §8-1808(b)(2). Cecil County administers its Critical Area Program subject to the oversight of the Critical Area Commission.

VARIANCES TO THE CRITICAL AREA LAW

Relevant here, Cecil County law requires the Applicants to apply for and receive variances to the Critical Area Program before the Applicants could build the proposed new subdivision. The State Law mandates that when local zoning boards consider Critical Area variance applications, the Boards must presume that the requested project “does not conform with the general purpose and intent of this subtitle, regulations

adopted under this subtitle, and the requirements of the local jurisdiction's program.”

Nat. Res. II §8-1808(d)(2)(i).⁵ The variance applicant bears the burden of proof and the burden of persuasion to overcome this statutory presumption. Nat. Res. II §8-1808(d)(3). In this case the Applicant did not carry his burden of proof and persuasion. Thus, given the utter dearth of supporting evidence, the Board concluded that the Applicant failed to overcome the presumption of nonconformance as required by the Critical Area Act and Article XVII, Part I, Section 306 of the County Zoning Ordinance. Bd. Decision at 7-8.

In addition to overcoming the presumption of non-conformance, an applicant must meet all of the County's enumerated variance standards, including that of unwarranted hardship. County Code, Art. XVII, Part I, §306.1. The Cecil County Code establishes specific criteria for Critical Area variances,⁶ and each of these standards must be satisfied.⁷ The County Code specifically incorporates the Critical Area Act's definition of “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.” (emphasis added). *Id.* This definition was added to the State law, Natural Resources Article §8-1808 in 2004, and it is intentionally strict. See 2004 Laws of Md., ch.526.

The Applicant's Memorandum is riddled with errors of law and citation to cases which have been superseded by statute. Contrary to Applicant's misplaced reliance on *White v. North*, the State Critical Area Act has, since 2002, required that a variance to a

⁵ Cecil County has adopted this presumption as part of the County's ordinance. County Code, Art. XVII, Part I, §306.3.d.

⁶ The Board Decision at 1 - 4 sets forth the text of the county variance standards.

⁷ The legislative intent to require that all variance standards must be met before granting a variance was codified in the 2004 Laws of Md., ch. 526.

local jurisdiction's critical area program may not be granted unless "the applicant has satisfied *each one* of the variance provisions." Chs. 431, 432, 2002 Laws of Maryland, *codified in* Nat. Res. II §8-1808(d)(3)(ii) and (4)(ii)(emphasis added). In the case before this Court, none of the Applicant's testimony at the hearing even touched on any of the relevant statutory standards. Thus, the Board's decision should be affirmed.

QUESTIONS PRESENTED

1. Did the Cecil County Board of Appeals correctly find as a fact that the Applicants did not meet the burden of satisfying each variance standard of the Cecil County Code?

2. Did the Cecil County Board of Appeals correctly find as a fact that the Applicants did not meet their burdens of proof and persuasion that the variances requested were in harmony with the spirit and intent of the Critical Area law?

ARGUMENT

The Board correctly applied the standard of unwarranted hardship and required the Applicant to meet all of the variance standards. This Court's review is "limited to determining if there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine if the administrative decision is based upon an erroneous conclusion of law." *Board of Physician Quality Assurance v. Banks*, 354 Md. 59, 67-68 (1999), citing *United Parcel v. People's Counsel*, 336 Md. 569 (1994). This court must look to the expertise of the agency, here the Board, and accord deference to its interpretation of the statute that it administers. *Board of Physician Quality Assurance* at 353 Md. 68-69. In this case, the Board heard substantial testimony from the Critical Area Commission that amply supports their decision to deny the

variances. The Applicants did not provide one shred of evidence that could possibly support any findings regarding the satisfaction of any of the variance standards. In fact, the attorney for the Applicant merely mentioned, near the conclusion of the hearing, “I am sure that the Board of Appeals was aware of the criteria for granting a variance before they were told in such great detail what they were. I think we have met them.” Tr. at 65.

The Board correctly applied the statutory standard of unwarranted hardship, and found that the Applicants failed to satisfy any of the variance standards. Petitioner consistently relies on *White v. North* for the proposition that all variance standards need not be met, but Petitioner failed to mention that the General Assembly expressly changed the State law in 2004 to reject the *White* decision. (“It is the intent of this Act to overrule these recent decisions of the Court of Appeals regarding variances to Critical Area regulations....”) Preamble to Ch. 431 and 432, 2002 Laws of Maryland.

As required by law, the Board’s Decision discusses each specific variance requested and the standards required. Failure of a variance application to meet just one of the variance standards requires this Court to affirm the decision of the Board. In this case, the Applicants failed to meet **any** of the standards. Therefore, the Board correctly denied the variance. The Board’s Decision is clearly well-founded and supported by facts and testimony, and it must be affirmed.

A. Applicants provided no evidence to meet their burden of proof and persuasion that they satisfied each of the variance standards.

1. Applicants failed to prove that denial of a variance for their development in the Buffer would cause an “unwarranted hardship” as defined by the General Assembly.

Under the State and County Critical Area law cited on pages 3-6 of this Memorandum, a variance applicant must prove that, without the specific requested

variance, that he will be denied “reasonable and significant use of the entire parcel or lot for which the variance is requested,” and thus, will suffer an “unwarranted hardship.” Nat. Res. II §8-1808(d)(1); County Code, Art. XVII, Part I, §306. This standard is intentionally strict, and the General Assembly expressly required that it be applied by every local Board of Appeals in Critical Area variance cases. *Becker v. Anne Arundel County*, 174 Md. App. 114, 124 (2007). In the instant case, the Applicants presented no evidence on which the Board could have based a finding that the Applicants would be denied reasonable and significant use of their entire property without this variance⁸. In fact, the record supports a finding to the contrary: that Applicants have more than ample space to design their new development in a manner that does not require any variances and will still provide reasonable and significant use of the property. The Board made several findings of fact in support of its finding of no unwarranted hardship, such as:

The tributary stream does not encumber the entire property and Applicant has ample room to design the subdivision to avoid all impact to the 110’ foot buffer. ...

That the granting of the variance would confer upon the Applicant special privileges that are denied by this Ordinance to other properties in the same zone. Section 191 of the Cecil Count (sic) Zoning Ordinance requires newly designed subdivisions to fully comply with the provisions of the ordinance. ...

That the variance request is based upon conditions or circumstances that are self-created or self-imposed by the design of the subdivision. The Board finds that the proposed subdivision could be redesigned without the need for the requested variance...

Tr. at 6 -7.

The property consists of 39.24 acres, most of which is located outside of the Buffer and floodplain. Commission letter, October 22, 2007 at 1. The language of the

⁸ The Court of Special Appeals has previously held that, “[A]lthough unwarranted hardships may be alleged, those hardships must be such as would preclude . . . from developing their lot.” *Citrano*, 123 Md.App. at 241.

State Critical Area Act narrowly defines unwarranted hardship. The legal test is whether without a variance, an applicant will be denied reasonable and significant use of his *entire* lot or parcel. (emphasis added.). The Applicants did not even allege, much less carry their burden to prove that they would suffer an unwarranted hardship. In fact, the testimony and evidence show that there is space outside of the stream buffer and floodplain in which to locate a new subdivision. Tr. at 53-54; Commission letter at 2. Clearly, the General Assembly did not anticipate that a new subdivision built in the Critical Area would satisfy the unwarranted hardship standard merely to placate an Applicant's desire to entertain a "family community concept." Tr. at 16.

The hearing was the opportunity for the Applicants to make their case, to satisfy the burdens of proof and persuasion and meet all of the variance standards. There was no evidence proffered which would satisfy the requirements of either the State or County laws or criteria for unwarranted hardship. The Applicant, along with his engineer, Joe Comanda, testified that the property was unique and the marina was man-made (Tr. at 18 – 19; Tr at 25), as if those were circumstances "peculiar to the applicant's land" resulting in an unwarranted hardship. Nat. Res. II §8-1808(d)(4)(i). Further, Applicant argued that the stream on the property was merely a man-made ditch and not a stream at all and therefore should not require a 110-foot buffer. This argument fails because Applicant's own witness testified that, "at the moment this has been determined as being classified as an intermittent stream." Tr. at 23.

2. Applicants failed to prove that variances for a new subdivision in the stream buffer and additional slips would not adversely affect fish, wildlife, or plant habitat, and that the variance would be in harmony with the spirit and intent of the Critical Area program.

The Applicants did not submit any evidence from which the Board could make a finding required under the County's ordinance that the variance would not cause an adverse effect on fish, wildlife, or plant habitat, and that the variance would be in harmony with the spirit and intent of the County's Critical Area program. In fact, the only evidence provided at hearing with regard to habitat came from opponents to the variance. Joseph Carabetta, a resident of Cecil County testified, that "most of these variances have to do with one thing, and one thing only. Really it's a protection of the Chesapeake Bay, and the protection of the water quality of the Chesapeake Bay. These variances, if granted, will have a detrimental affect.[sic]" Tr. at 36-37.

The Board recognized that this is a new subdivision and that the Applicant has an obligation to design the project in conformance with existing law, so as to not require variances. The Board was entirely within its right to deny a variance for a new subdivision. The Applicants can build a new subdivision on the property without the need for variances. The Board properly applied the definition of unwarranted hardship as required by the General Assembly in Nat. Res. II 8-1808(d)(1) and by the County Code, Art. XVII, Part I, §306.1. The Applicant did not meet the burden of proof to satisfy this variance standard and for this reason, the Board should be affirmed.

B. Applicants provided no evidence to overcome the presumption of non-conformance with the Critical Area program, or to meet their burden of proof and persuasion that the variances requested were in harmony with the spirit and intent of the Critical Area law.

The Cecil County Zoning Ordinance presumes that development projects for which variances are needed do not conform with the general purpose and intent of the Critical Area program. This presumption is required by State law. Nat. Res. II §8-1808. A new subdivision would introduce more impervious surface into the stream Buffer, and

the General Assembly has specifically found that “each new development activity in the buffer is inimical” to the purposes of the Critical Area law. Code, Nat. Res. Art. 8-1801(a)(9). The Applicants did not rebut this legislative finding. In fact, the testimony shows, and the Board found, that there is an opportunity to locate the subdivision in a manner as to not require any variances. The standard is whether, without the specific subdivision requested, the Applicants will be denied reasonable and significant use of the entire property or lot. The Board applied this mandated standard, and the Board should be affirmed.

In Critical Area variance cases, the burden is placed on the Applicant. Code, Nat. Res. Art. 8-1808(d). Recently, the Supreme Court reaffirmed this long-standing principle: The burdens of proof and persuasion “have and should be assigned to the plaintiff who generally seeks to change the present state of affairs and who therefore naturally should be expected to bear the risk of failure of proof or persuasion.” *Schaffer ex. rel Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528, 534 (2005), quoting C. Mueller & L. Kirkpatrick, *Evidence* §3.1, p. 104 (3d ed. 2003).

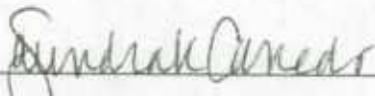
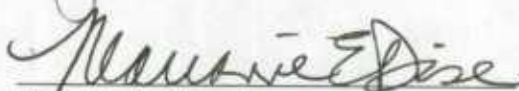
In the present case, the Applicants had the obligation to submit evidence sufficient to carry this burden. They did not meet their burdens of proof and persuasion on any of the statutory variance standards. The Board took the time and effort to make the required written findings to support its Decision. With regard to the stream variance, the Board found “the tributary stream does not encumber the entire property and applicant has ample room to design the subdivision to avoid all impact to the 110-foot Buffer.” Bd. Decision at 6. The Board’s Decision to deny the Critical Area variances is correct as a matter of law and this Honorable Court should affirm the Board.

CONCLUSION

For the reasons and authorities cited above, the Critical Area Commission respectfully requests this Honorable Court to affirm the decision of the Cecil County Board of Appeals.

Respectfully submitted,

DOUGLAS F. GANSLER
Attorney General of Maryland

Sandra K. Canedo

Marianne E. Dise

Assistant Attorneys General

Department of Natural Resources

1804 West Street, Suite 100

Annapolis, Maryland 21401


(410) 260-3467

*Attorneys for Margaret McHale, Chair,
Critical Area Commission for the
Chesapeake and Atlantic Coastal Bays*

July 25, 2008

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of July 2008, I sent a copy of the foregoing Memorandum of Law via U.S. Mail, postage prepaid to: Robert Valliant Jones and Jason L. Allison, Attorneys for Petitioner, 157 East Main Street, Elkton, Maryland 21921 and Keith Baynes, Attorney for the Board of Appeals, 210 East Main Street, Elkton, Maryland 21921.


Sandra K. Canedo

DOUGLAS F. GANSLER
Attorney General

KATHERINE WINFREE
Chief Deputy Attorney General

JOHN B. HOWARD, JR.
Deputy Attorney General



MARIANNE E. DISE
Assistant Attorney General
Principal Counsel

SAUNDRA K. CANEDO
Assistant Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CRITICAL AREA COMMISSION FOR THE
CHESAPEAKE AND ATLANTIC COASTAL BAYS

FAX NO. (410) 974-5338

WRITER'S DIRECT DIAL NO. (410) 260-3467
scanco@oag.state.md.us

July 25, 2008

Via regular U.S. Postal Delivery

Ms. Kathy P. Smith
Clerk, Circuit Court for Calvert County
175 Main Street
Prince Frederick, Maryland 20678

RE: Petition of Margaret McHale, Case No. 07-3476,
Civil Action No.:04-C-08-000076

Dear Ms. Smith:

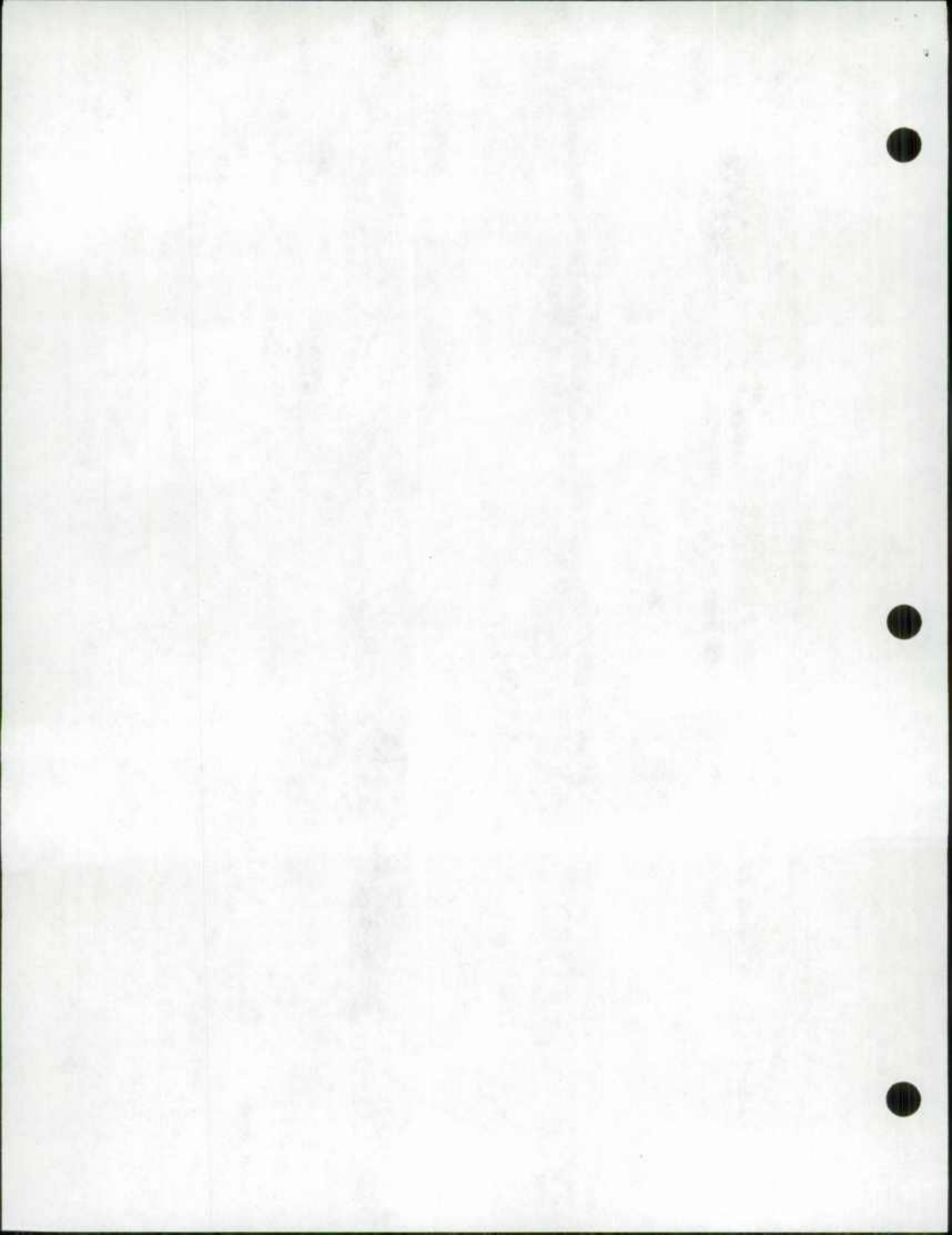
Enclosed for filing, please find a Motion to Submit for Decision on Memorandum of Law, and Notice of Waiver of Hearing, for the above-referenced case.

Thank you for your assistance.

Sincerely,

A handwritten signature in cursive script that reads "Sandra K. Canedo".

Saundra K. Canedo
Assistant Attorney General



**IN THE CIRCUIT COURT OF MARYLAND
FOR CALVERT COUNTY**

PETITION OF: *
MARGARET MCHALE, *
Chair, Critical Area Commission for *
the Chesapeake and Atlantic Coastal Bays *

FOR JUDICIAL REVIEW OF
THE DECISION OF: *
THE CALVERT COUNTY BOARD *
OF APPEALS *

Civil Action No.: 04-C-08-000076 AA

IN THE CASE OF: *
No. 07-3476 *
ELLA WILLIAMS *

* * * * *

**MOTION TO SUBMIT FOR DECISION ON MEMORANDUM OF LAW , AND
NOTICE OF WAIVER OF HEARING**

Petitioner Margaret McHale, Chair, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays (“Critical Area Commission”) by her attorneys, Douglas F. Gansler, Attorney General of Maryland and Sandra K. Canedo and Marianne E. Dise, Assistant Attorneys General, pursuant to Rule 7-208, files this Motion to Submit on her Memorandum of Law, and Notice of Waiver of Hearing, and in support thereof, states:

1. This Petition for Judicial Review was filed on January 17, 2008. The Notice of Petition filed was sent to all interested parties on January 25, 2008.
2. The only party participant in this matter is Petitioner, the Critical Area Commission. Petitioner’s Memorandum of Law was filed with this court on March 28, 2008.

3. Pursuant to Rule 7-204, no person has filed a response to the Petition, and accordingly, all other parties to the administrative proceedings have abandoned their party status in this Court.

4. A hearing date of August 26, 2008 has been set for this case. In the interest of efficiency and because the Petitioner is the only party in this case, Petitioner requests this Honorable Court to rule on the Petition, based on the pleadings and Petitioner's Memorandum of Law.

5. Pursuant to Rule 7-208(a), Petitioner hereby waives a hearing.

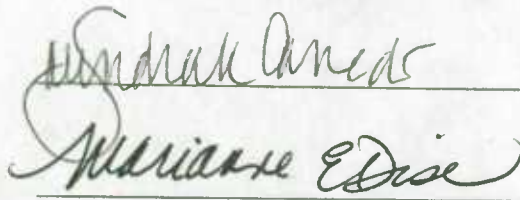
WHEREFORE, the Petitioner, Chair of the Critical Area Commission, by her undersigned attorneys, prays this Honorable Court for the following relief:

An Order granting Petitioner's Motion to Submit on Memorandum; and

For such other and further relief as the nature of her cause requires.

Respectfully submitted,

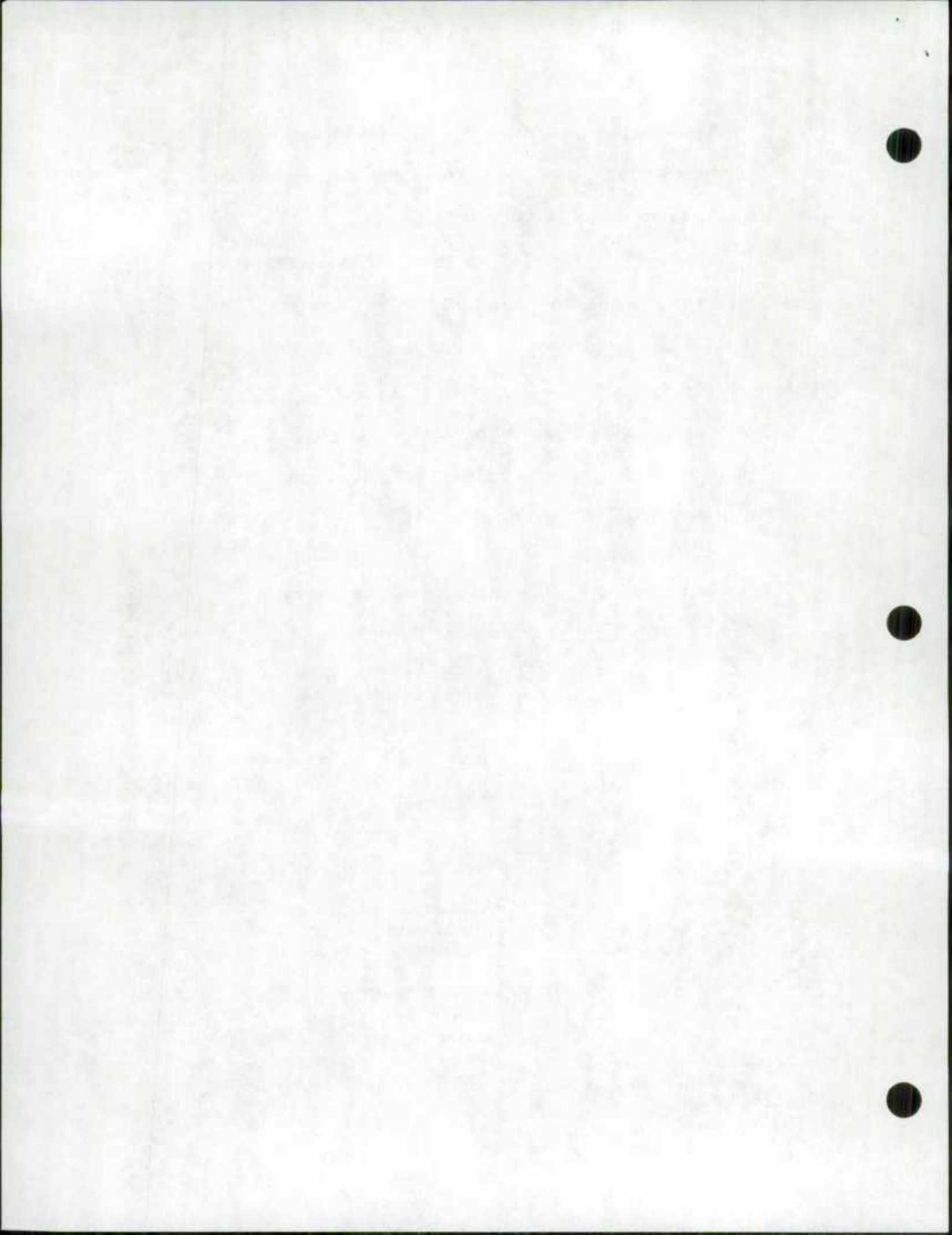
DOUGLAS F. GANSLER
Attorney General of Maryland



The image shows two handwritten signatures in cursive. The first signature is "Sandra K. Canedo" and the second is "Marianne E. Dise". Each signature is written over a horizontal line.

Sandra K. Canedo
Marianne E. Dise
Assistant Attorneys General
Critical Area Commission for the
Chesapeake and Atlantic Coastal Bays
1804 West Street, Suite 100
Annapolis, Maryland 21401
(410) 260-3467
*Attorneys for Margaret McHale, Chair,
Critical Area Commission for the
Chesapeake and Atlantic Coastal Bays*

July 25, 2008



IN THE CIRCUIT COURT OF MARYLAND
FOR CALVERT COUNTY

PETITION OF:
MARGARET MCHALE,
Chair, Critical Area Commission for
the Chesapeake and Atlantic Coastal Bays

*
*
*

FOR JUDICIAL REVIEW OF
THE DECISION OF:
THE CALVERT COUNTY BOARD
OF APPEALS

*
*

Civil Action No.: 04-C-08-000076 AA

IN THE CASE OF:
No. 07-3476
ELLA WILLIAMS

*
*

* * * * *

ORDER

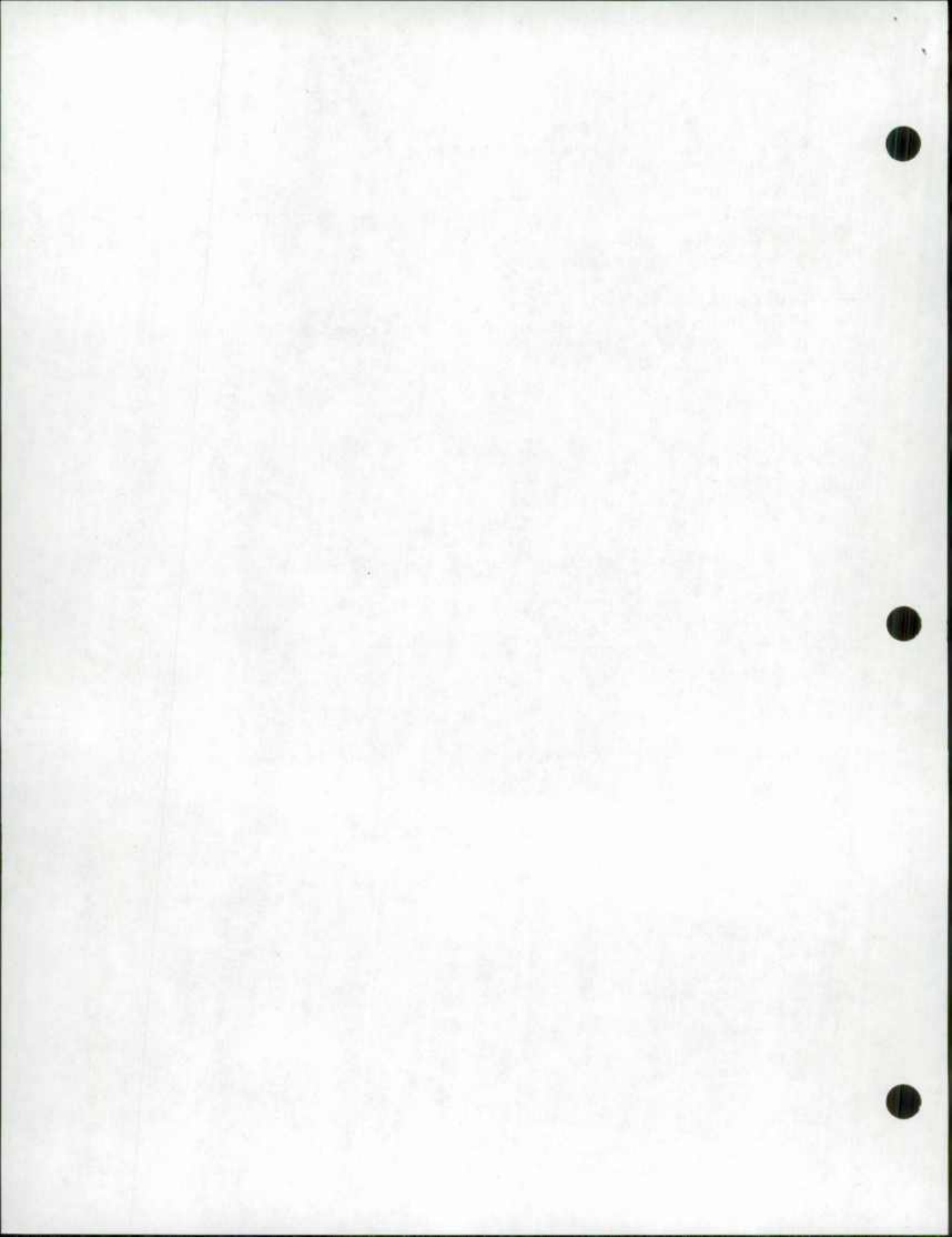
Upon consideration of Petitioner, Margaret McHale's, Motion to Submit on Memorandum of Law of Petitioner, and Petitioner's Notice of Waiver of Hearing, it is this _____ day of _____, 2008, ORDERED that:

Petitioner's Motion is GRANTED; and

The hearing scheduled for August 26, 2008 is hereby waived; and

The clerk shall remove from the Court's schedule the hearing for August 26, 2008.

JUDGE



DOUGLAS F. GANSLER
Attorney General

KATHERINE WINFREE
Chief Deputy Attorney General

JOHN B. HOWARD, JR.
Deputy Attorney General



MARIANNE E. DISE
Assistant Attorney General
Principal Counsel

SAUNDRA K. CANEDO
Assistant Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CRITICAL AREA COMMISSION FOR THE
CHESAPEAKE AND ATLANTIC COASTAL BAYS

FAX NO. (410) 974-5338

WRITER'S DIRECT DIAL NO. (410) 260-3467
seanedo@oag.state.md.us

August 8, 2008

Ms. Mary Ann Shortall, Clerk
Circuit Court for Talbot County
11 North Washington Street, Suite 16
Easton, Maryland 21601

RE: Petition of Margaret McHale for Judicial Review of Decision of the Talbot County Board of Appeals in Case No. 1496, R. Phillip Herget, III and Anne S. Herget

Dear Ms. Shortall:

Enclosed for filing pursuant to Rule 7-202, please find a Petition for Judicial Review on behalf of Margaret McHale, Chair of the State of Maryland Critical Area Commission for the Chesapeake and Atlantic Coastal Bays. Pursuant to the Annotated Code of Maryland, Courts and Judicial Proceedings Article, Section 7-202(b), the State is exempt from paying court filing fees. Also enclosed, pursuant to Rule 7-202(d), is a copy of the Petition for your use in notifying the Talbot County Board of Appeals.

Thank you for your assistance.

Sincerely,

A handwritten signature in cursive script that reads "Sandra K. Canedo".

Sandra K. Canedo
Assistant Attorney General

cc: Chair Margaret McHale

**IN THE CIRCUIT COURT OF MARYLAND
FOR TALBOT COUNTY**

PETITION OF: *
MARGARET McHALE, *
Chair, Critical Area Commission for *
the Chesapeake and Atlantic Coastal Bays *

FOR JUDICIAL REVIEW OF *
THE DECISION OF: * Civil Action No.:
THE TALBOT COUNTY BOARD *
OF APPEALS *

IN THE CASE OF: *
No. 1496 *
R. PHILLIP HERGET, III AND *
ANNE S. HERGET *

* * * * *

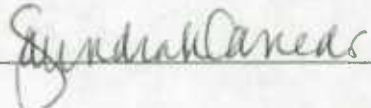
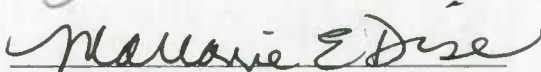
PETITION FOR JUDICIAL REVIEW

Margaret McHale, Chair of the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays (“Chair McHale”) by her attorneys, Douglas F. Gansler, Attorney General of Maryland, and Sandra K. Canedo and Marianne E. Dise, Assistant Attorneys General, pursuant to Rule 7-207, files this Petition for Judicial Review and states:

1. Chair McHale hereby requests judicial review of the July 15, 2008 Decision of the Talbot County Board of Appeals in the above-captioned Case no.1496, R. Phillip Herget, III and Anne S. Herget. The Board’s Decision granted an after-the-fact variance to the 100’ Buffer requirements of the Critical Area law, for property in Easton, in the Critical Area of Talbot County.
2. Chair McHale received the Decision from the County on July 16, 2008.
3. Chair McHale was a party participant in the proceedings before the Talbot County Board of Appeals.

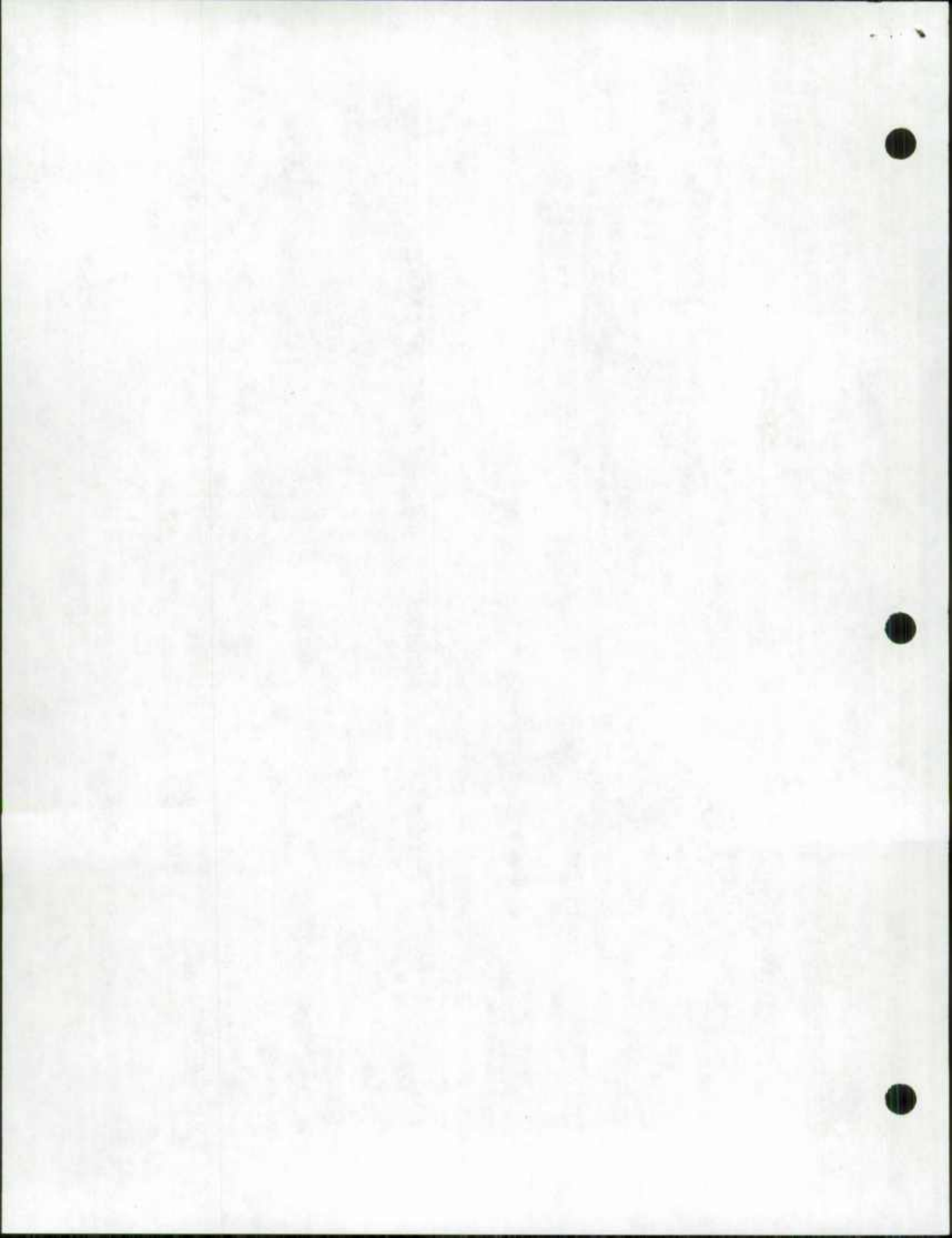
Respectfully submitted,

DOUGLAS GANSLER
Attorney General of Maryland

Sandra K. Canedo
Marianne E. Dise
Assistant Attorneys General
Critical Area Commission for the
Chesapeake and Atlantic Coastal Bays
1804 West Street, Suite 100
Annapolis, Maryland 21401
(410) 260-3467
*Attorneys for Margaret McHale, Chair,
Critical Area Commission for the
Chesapeake and Atlantic Coastal Bays*

August 8, 2008



DOUGLAS F. GANSLER
Attorney General

KATHERINE WINFREE
Chief Deputy Attorney General

JOHN B. HOWARD, JR.
Deputy Attorney General



MARIANNE E. DISE
Assistant Attorney General
Principal Counsel

SAUNDRA K. CANEDO
Assistant Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CRITICAL AREA COMMISSION FOR THE
CHESAPEAKE AND ATLANTIC COASTAL BAYS

FAX NO. (410) 974-5338

WRITER'S DIRECT DIAL NO. (410) 260-3467
scanedo@oag.state.md.us

August 15, 2008

Mrs. Jay Parris
7770 Swann Lane
Owings, Maryland 20736

RE: Margaret McHale et al v. Edward Parris et al
Maryland Court of Special Appeals, No. 00374, September Term 2008
Joint Record

Dear Mrs. Parris:

Enclosed please find a proposed Table of Contents for the Joint Record Extract in connection with the above-captioned appeal.

Please review the proposed table and let me know if you have any suggestions for additional parts of the record to include in the Extract.

Please let me know if you have any questions. Thank you.

Sincerely,

Saundra K. Canedo
Assistant Attorney General

cc:

1804 West Street, Suite 100
Annapolis, Maryland 21401

STATE OF TEXAS
COUNTY OF [illegible]



[illegible text]

STATE OF TEXAS
COUNTY OF [illegible]

[illegible text]

[illegible text]

[illegible text]

[illegible text]

[illegible text]

[illegible text]

[illegible text]

[illegible text]

[illegible text]

[illegible text]

[illegible text]

Record Extract – Proposed Table of Contents

1. Circuit Court for Calvert County Docket Entries
2. Transcript of February 11, 2008 Hearing before the Circuit Court for Calvert County
3. Circuit Court for Calvert County Opinion and Order dated March 12, 2008

THE UNIVERSITY OF CHICAGO
DEPARTMENT OF CHEMISTRY
530 SOUTH EAST ASIAN AVENUE
CHICAGO, ILLINOIS 60607

RECEIVED
JAN 10 1964

1964

DOUGLAS F. GANSLER
Attorney General

KATHERINE WINFREE
Chief Deputy Attorney General

JOHN B. HOWARD, JR.
Deputy Attorney General



MARIANNE E. DISE
Assistant Attorney General
Principal Counsel

SAUNDRA K. CANEDO
Assistant Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CRITICAL AREA COMMISSION FOR THE
CHESAPEAKE AND ATLANTIC COASTAL BAYS

FAX NO. (410) 974-5338

WRITER'S DIRECT DIAL NO. (410) 260-3467
scanedo@oag.state.md.us

August 25, 2008

Sent via U.S. Mail

Jon A. Mueller, Esq.
6 Herndon Avenue
Annapolis, Maryland 21401

David M. Plott, Esq.
Linowes & Blocher
145 Main Street
Annapolis, Maryland 21401

RE: Critical Area Commission, et al v. Moreland, LLC
Court of Special Appeals, No. 00823, September Term 2008

Dear Mr. ^{Jon}Mueller and Mr. Plott:

Enclosed is a copy of the Transcript of the November 26, 2007 proceedings before the Honorable Paul G. Goetzke in the Circuit Court for Anne Arundel County. Pursuant to Mr. Plott's request, this will be included as part of the Joint Record Extract.

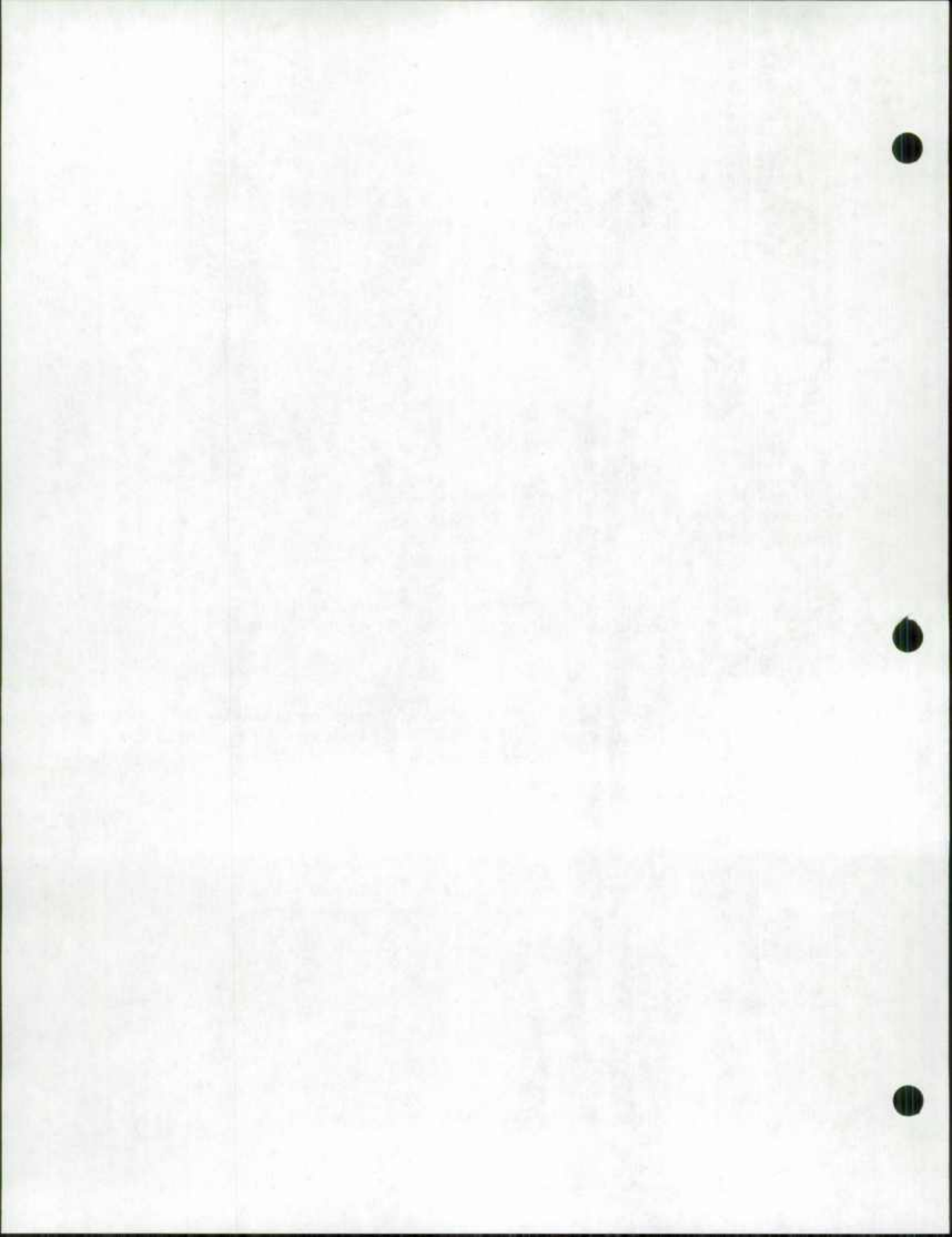
Sincerely,

A handwritten signature in cursive script, appearing to read "Saundra K. Canedo".

Saundra K. Canedo
Assistant Attorney General

Enclosure

cc: Marianne E. Dise, Esquire



DOUGLAS F. GANSLER
Attorney General

KATHERINE WINFREE
Chief Deputy Attorney General

JOHN B. HOWARD, JR.
Deputy Attorney General



MARIANNE E. DISE
Assistant Attorney General
Principal Counsel

SAUNDRA K. CANEDO
Assistant Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CRITICAL AREA COMMISSION FOR THE
CHESAPEAKE AND ATLANTIC COASTAL BAYS

FAX NO. (410) 974-5338

WRITER'S DIRECT DIAL NO. (410) 260-3467
scanedo@oag.state.md.us

August 25, 2008

Sent via U.S. Mail

Jon A. Mueller, Esq.
6 Herndon Avenue
Annapolis, Maryland 21401

David M. Plott, Esq.
Linowes & Blocher
145 Main Street
Annapolis, Maryland 21401

RE: Critical Area Commission, et al v. Moreland, LLC
Court of Special Appeals, No. 00823, September Term 2008

Dear Mr. Mueller and Mr. ^{David}Plott:

Enclosed is a copy of the Transcript of the November 26, 2007 proceedings before the Honorable Paul G. Goetzke in the Circuit Court for Anne Arundel County. Pursuant to Mr. Plott's request, this will be included as part of the Joint Record Extract.

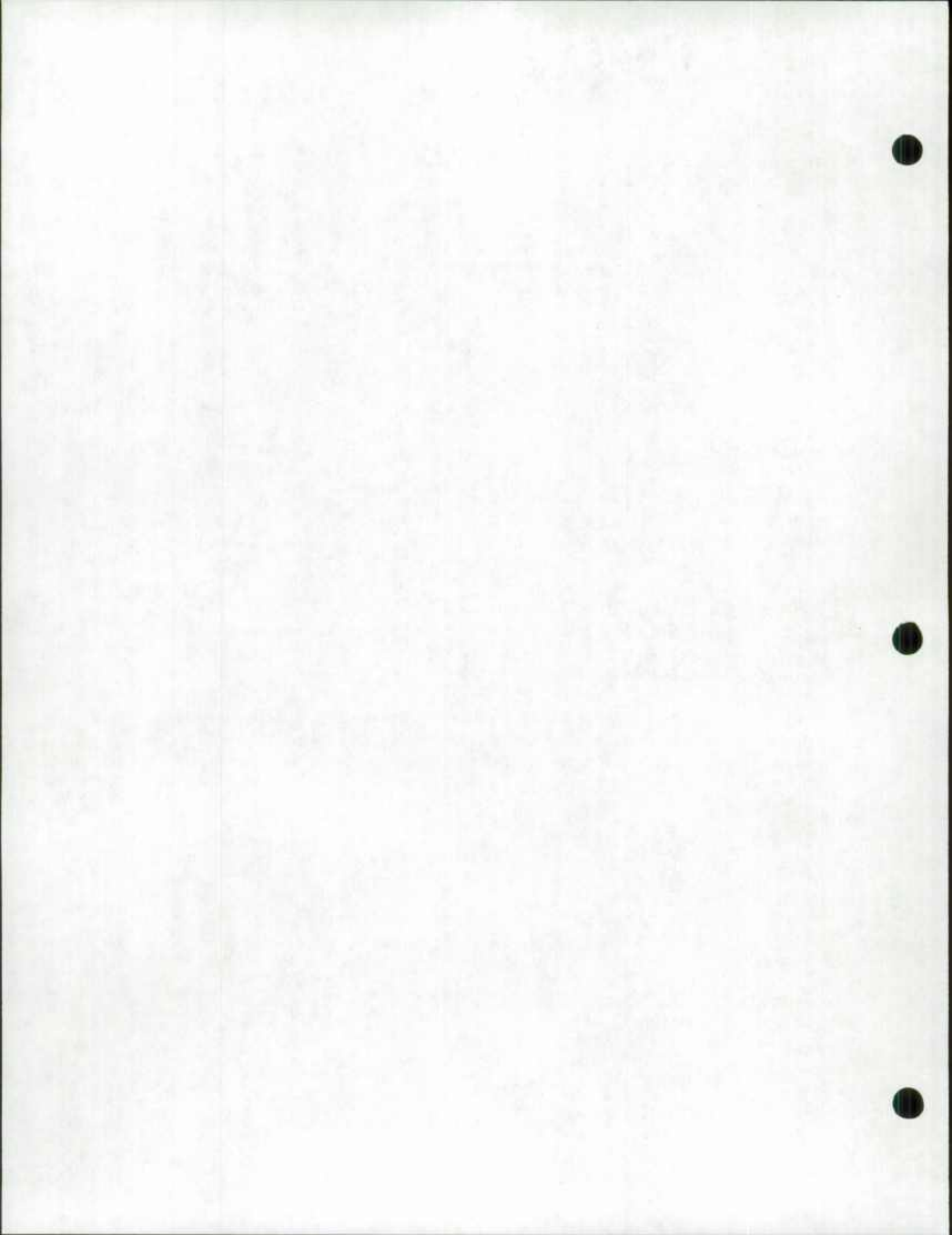
Sincerely,

A handwritten signature in cursive script, appearing to read "Sandra K. Canedo".

Saundra K. Canedo
Assistant Attorney General

Enclosure

cc: Marianne E. Dise, Esquire



DOUGLAS F. GANSLER
Attorney General

KATHERINE WINFREE
Chief Deputy Attorney General

JOHN B. HOWARD, JR.
Deputy Attorney General



MARIANNE E. DISE
Assistant Attorney General
Principal Counsel

SAUNDRA K. CANEDO
Assistant Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CRITICAL AREA COMMISSION FOR THE
CHESAPEAKE AND ATLANTIC COASTAL BAYS

FAX NO. (410) 974-5338

WRITER'S DIRECT DIAL NO. (410) 260-3467
scanedo@oag.state.md.us

August 25, 2008

Via regular U.S. Postal Delivery

Ms. Kathy P. Smith
Clerk, Circuit Court for Calvert County
175 Main Street
Prince Frederick, Maryland 20678

RE: Petition of Margaret McHale, Case No. 07-3476,
Civil Action No.:04-C-08-000076

Dear Ms. Smith:

Enclosed for filing, please find a proposed Order for the above-referenced case.

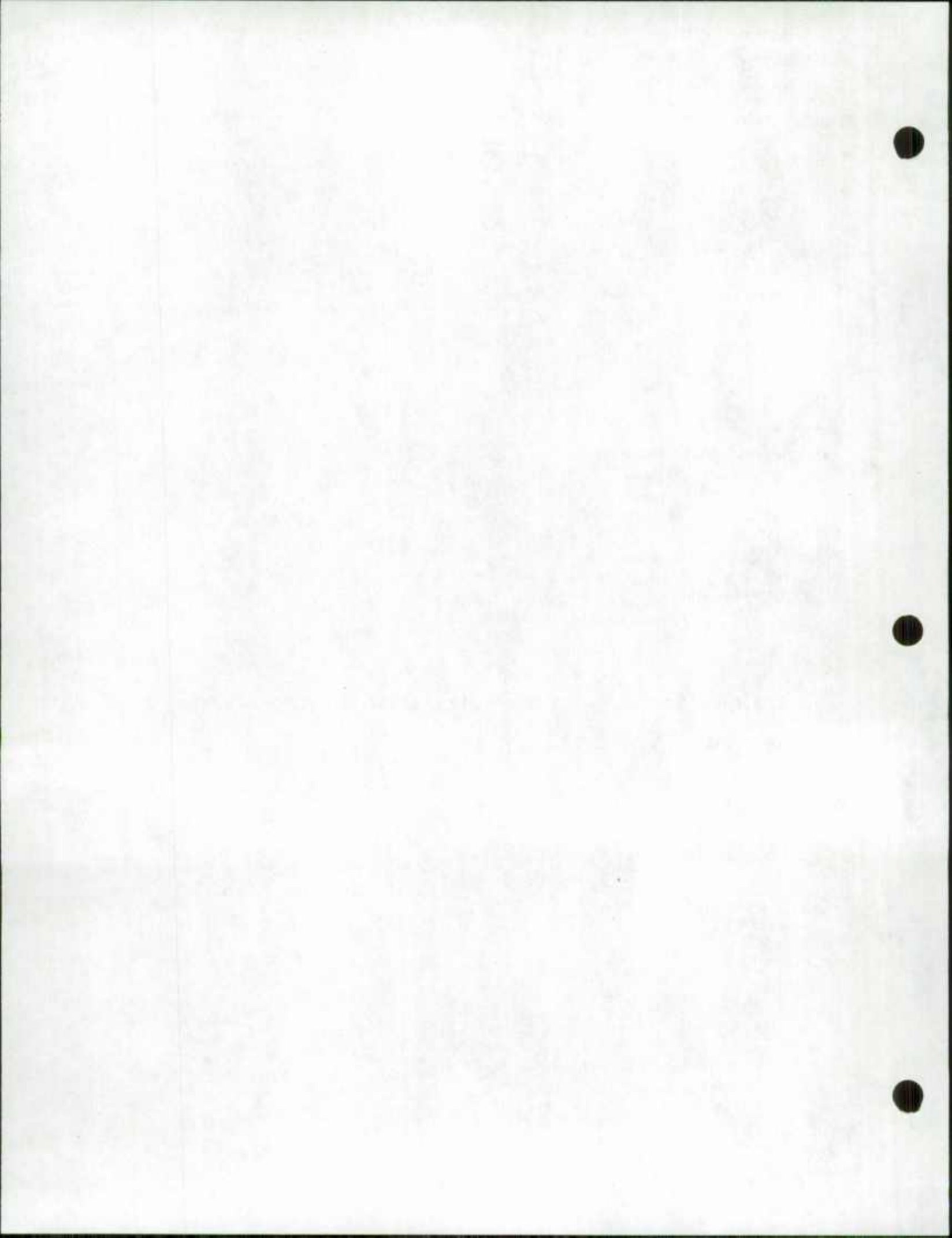
Thank you for your assistance.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sandra K. Canedo".

Saundra K. Canedo
Assistant Attorney General

Encl.



**IN THE CIRCUIT COURT OF MARYLAND
FOR CALVERT COUNTY**

PETITION OF: *
MARGARET MCHALE, *
Chair, Critical Area Commission for *
the Chesapeake and Atlantic Coastal Bays *

FOR JUDICIAL REVIEW OF *
THE DECISION OF: * Civil Action No.: 04-C-08-000076 AA
THE CALVERT COUNTY BOARD *
OF APPEALS *

IN THE CASE OF: *
No. 07-3476 *
ELLA WILLIAMS *

* * * * *

ORDER

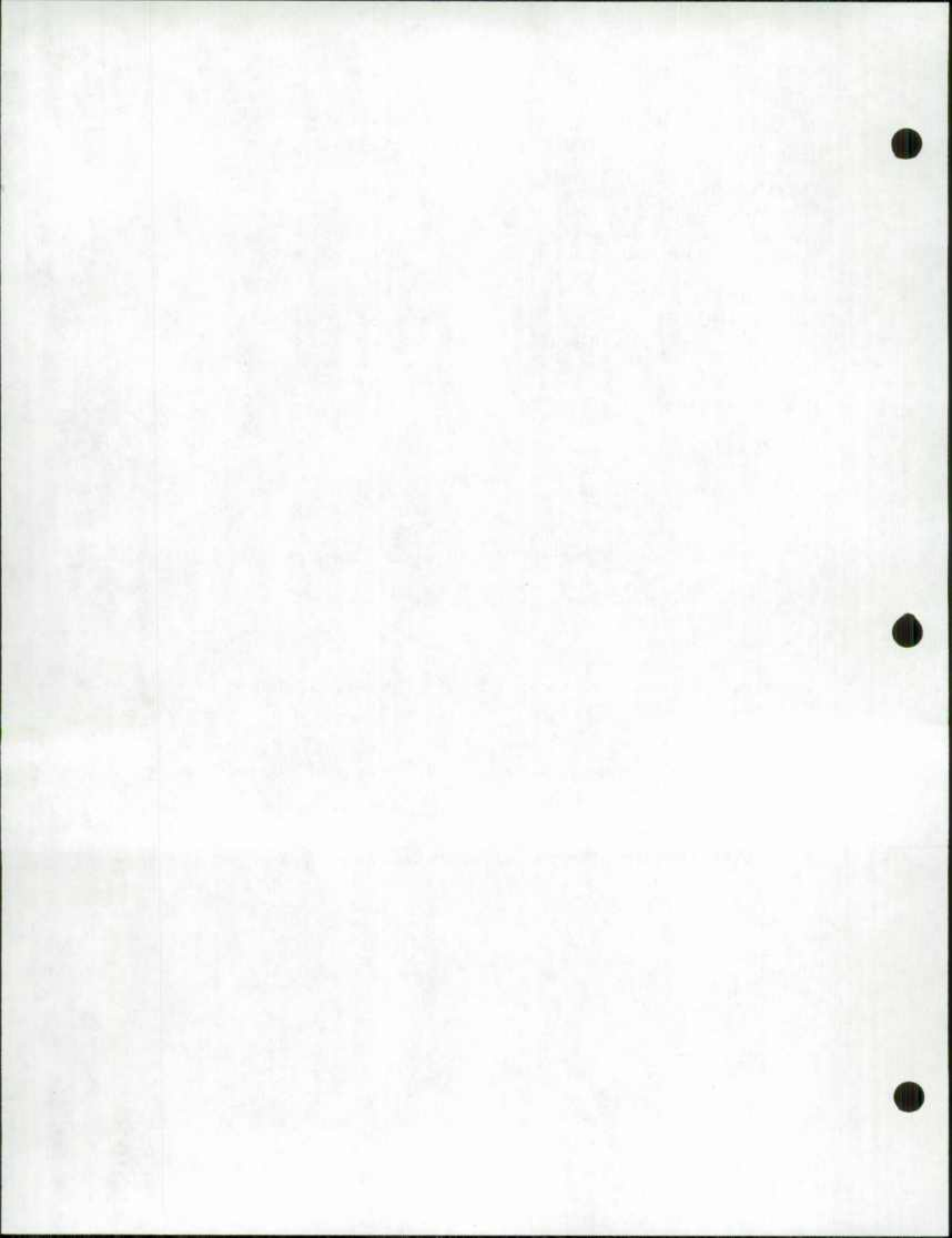
Upon consideration of Petitioner, Margaret McHale's, Petition for Judicial Review and Memorandum in support thereof, it is this _____ day of _____, 2008, ORDERED that:

The December 21, 2007 Decision of the Calvert County Board of Appeals is hereby reversed; and

The case shall be remanded back to the Calvert County Board of Appeals with instructions to enter an order denying the variance; and

For such other and further relief as the nature of her cause requires.

JUDGE



DOUGLAS F. GANSLER
Attorney General

KATHERINE WINFREE
Chief Deputy Attorney General

JOHN B. HOWARD, JR.
Deputy Attorney General



MARIANNE E. DISE
Assistant Attorney General
Principal Counsel

SAUNDRA K. CANEDO
Assistant Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CRITICAL AREA COMMISSION FOR THE
CHESAPEAKE AND ATLANTIC COASTAL BAYS

FAX NO. (410) 974-5338

WRITER'S DIRECT DIAL NO. (410) 260-3467
scanedo@oag.state.md.us

August 28, 2008

Sent via Overnight Delivery

Mrs. Kay Parris
7770 Swann Lane
Owings, Maryland 20736

RE: Margaret McHale et al v. Edward Parris et al
Maryland Court of Special Appeals, No. 00374, September Term 2008

Dear Mrs. Parris:

Pursuant to our conversations on August 25, 2008 and August 27, 2008 and your letter of August 26, 2008, we agreed to the following:

- (1) The Joint Record Extract will consist of all of the items listed in the letters dated August 15, 2008 and August 19, 2008 with the exception of the transcript of the February 11, 2008 hearing before Judge Claggett.
- (2) I will file a Consent Extension for filing the Briefs, extending the time for Appellant's brief until December 22, 2008; the Appellee's brief until January 21, 2008; and any reply brief until February 15, 2008.
- (3) We will meet at 10am on Thursday, September 11, 2008, at the Commission offices to discuss any settlement possibilities.

The Consent Extension is enclosed here for your signature, please sign and return so that it may be timely filed. I have included a prepaid overnight envelope for your use in returning the Consent Extension. Thank you and I look forward to meeting with you on the 11th.

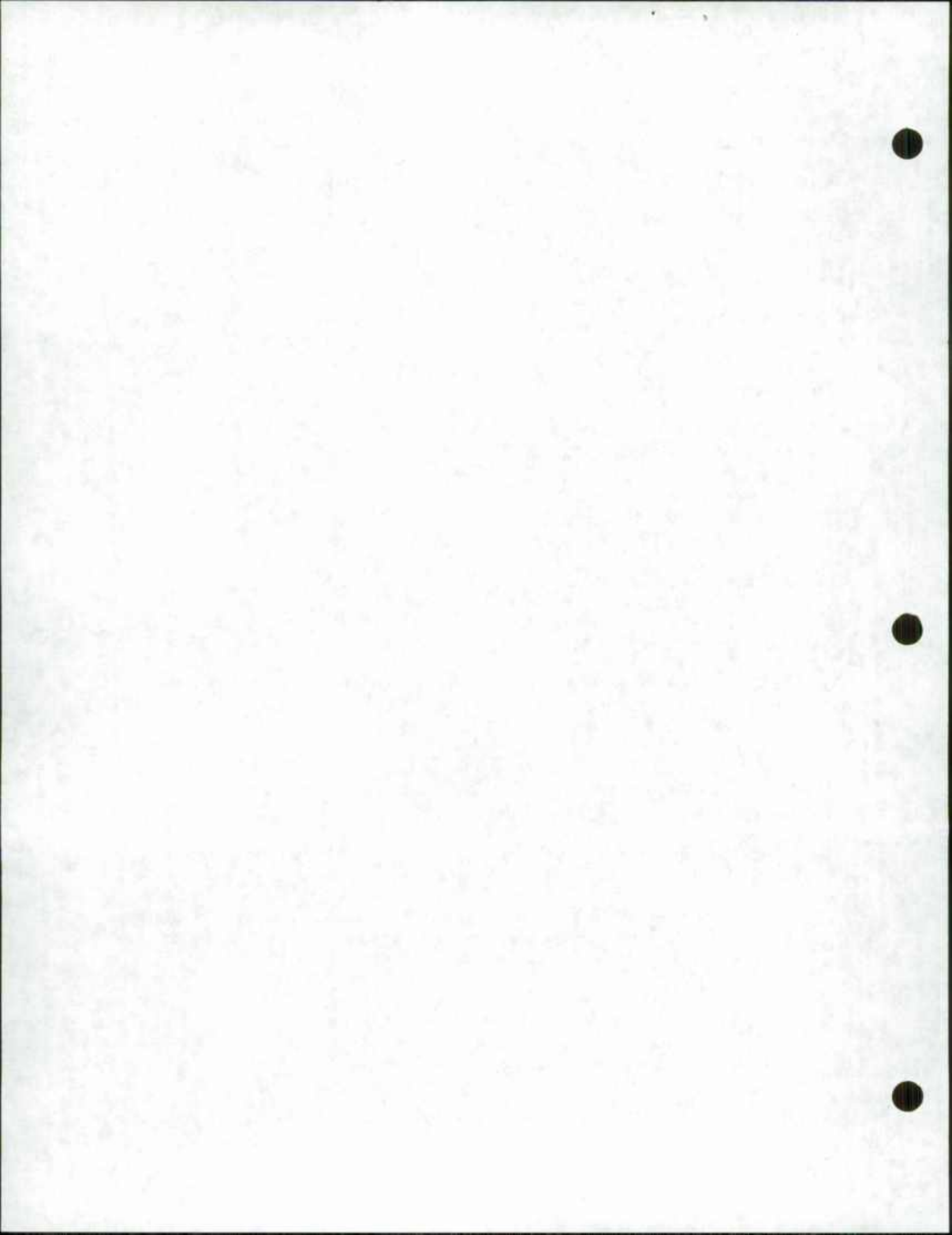
Sincerely,

Saundra K. Canedo
Assistant Attorney General

Encl.

cc: Marianne E. Dise, Esq.

1804 West Street, Suite 100
Annapolis, Maryland 21401



IN THE COURT OF SPECIAL APPEALS
FOR MARYLAND

MARGARET MCHALE,

Appellant

v.

EDWARD AND KAY PARRIS,

Appellee

*

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No. 00374

September Term, 2008

STIPULATION OF COUNSEL FOR EXTENSION OF TIME TO FILE BRIEF

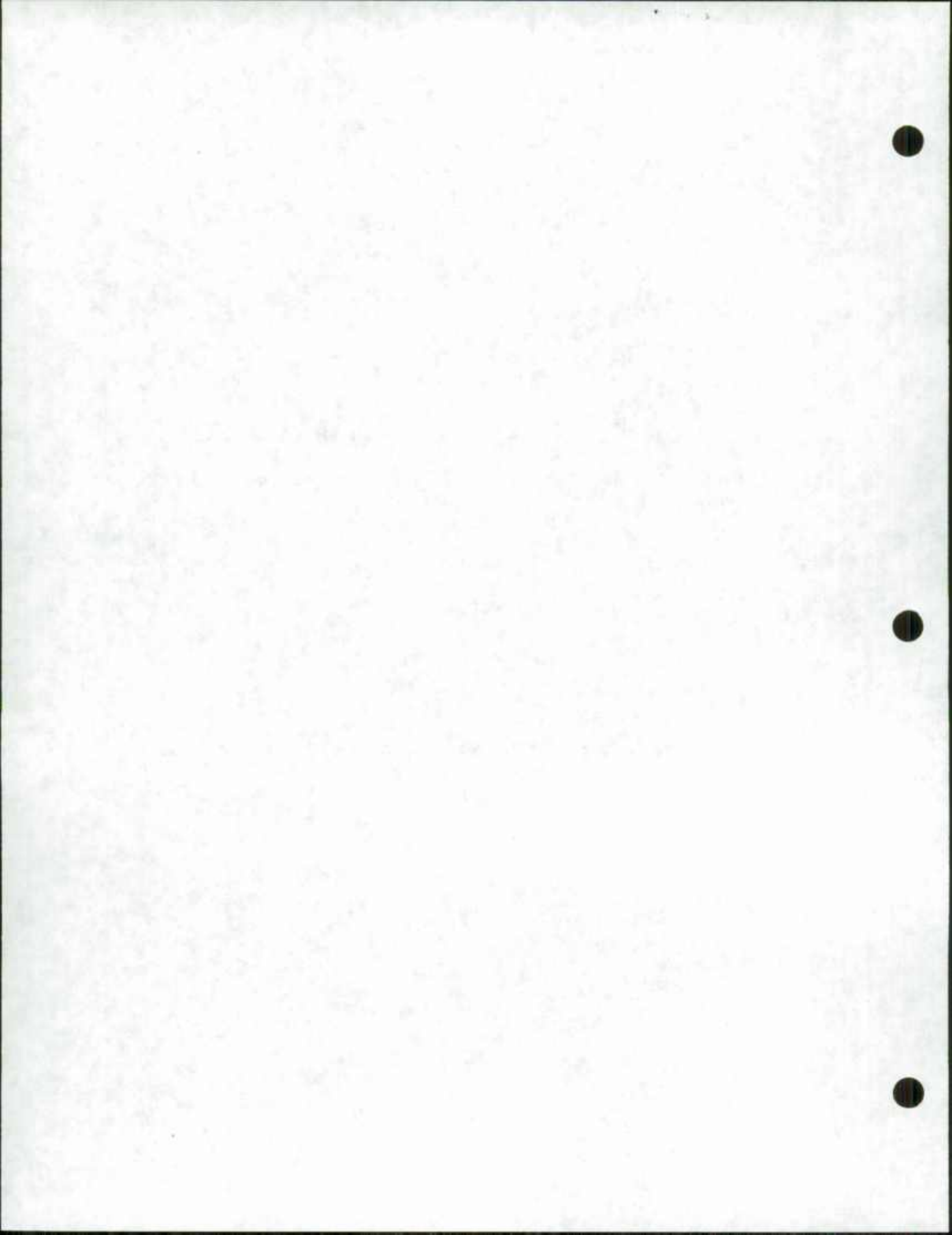
Pursuant to Md. Rule 8-502(b), the undersigned counsel agree that the dates for filing briefs shall be extended such that Appellant's brief shall be filed on or before December 22, 2008; the Appellee's brief shall be filed on or before January 21, 2009; and any reply brief shall be filed on or before February 15, 2009.

Marianne E. Dise

Sandra K. Canedo

Sandra K. Canedo, Esq.
Marianne E. Dise, Esq.
1804 West Street, Suite 100
Annapolis, MD 21401
(410) 260-3467
Attorneys for Appellant

Kay L. Parris, Esq.
7770 Swan Lane
Owings, MD 20736
(410) 257-0137
Attorney for Appellee



FedEx Tracking Number

8634 2350 5986

Form 4130

0215

SPH ?

Sender's Copy

1 From Please print and press hard.

Date 8/29 Sender's FedEx Account Number 1422-2935-8

Sender's Name Mrs. Kay Parris Phone (410) 260-3460

Company CRITICAL AREA COMM

Address 1804 WEST ST STE 100 Dept./Floor/Suite/Room _____

City ANNAPOLIS State MD ZIP 21401-3946

2 Your Internal Billing Reference First 24 characters will appear on invoice. OPTIONAL

3 To

Recipient's Name Sandra Canedo Phone (410) 260-3460

Company Critical Area Comm

Recipient's Address 1804 West St. Suite 100 Dept./Floor/Suite/Room _____

We cannot deliver to P.O. boxes or P.D. ZIP codes.

Address _____
To request a package be held at a specific FedEx location, print FedEx address here.

City Annapolis State MD ZIP 21401

0370923343



Find drop-off locations at fedex.com
 Simplify your shipping. Manage your account. Access all the tools you need.

4a Express Package Service

FedEx Priority Overnight
Next business morning** Friday shipments will be delivered on Monday unless SATURDAY Delivery is selected.

FedEx Standard Overnight
Next business afternoon* Saturday Delivery NOT available.

FedEx First Overnight
Earliest next business morning delivery to select locations.* Saturday Delivery NOT available.

FedEx 2Day
Second business day.* Thursday shipments will be delivered on Monday unless SATURDAY Delivery is selected.

FedEx Express Saver
Third business day* Saturday Delivery NOT available.

* To most locations.

4b Express Freight Service

FedEx 1Day Freight*
Next business day** Friday shipments will be delivered on Monday unless SATURDAY Delivery is selected.

FedEx 2Day Freight
Second business day** Thursday shipments will be delivered on Monday unless SATURDAY Delivery is selected.

FedEx 3Day Freight
Third business day** Saturday Delivery NOT available.

** To most locations.

5 Packaging

FedEx Envelope*

FedEx Pak*
Includes FedEx Small Pak, FedEx Large Pak, and FedEx Sturdy Pak.

FedEx Box

FedEx Tube

Other

* Declared value limit \$500.

6 Special Handling

Include FedEx address in Section 3.

SATURDAY Delivery
NOT Available for FedEx Standard Overnight, FedEx First Overnight, FedEx Express Saver, or FedEx 30 day Freight.

HOLD Weekday at FedEx Location
NOT Available for FedEx First Overnight.

HOLD Saturday at FedEx Location
Available ONLY for FedEx Priority Overnight and FedEx 2Day to select locations.

Does this shipment contain dangerous goods?
One box must be checked.

No **Yes** As per attached Shipper's Declaration. **Yes** Shipper's Declaration not required. **Dry Ice**
Dry Ice, 9 UN 1845 _____ x _____ kg

Dangerous goods (including dry ice) cannot be shipped in FedEx packaging. **Cargo Aircraft Only**

7 Payment Bill to:

Sender Acct. No. in Section 1 will be billed. **Recipient** **Third Party** **Credit Card** **Cash/Check**

Enter FedEx Acct. No. or Credit Card No. below.

FedEx Acct. No. _____ Exp. Date _____
 Credit Card No. _____

Total Packages	Total Weight	Total Declared Value*
1		\$.00

*Our liability is limited to \$100 unless you declare a higher value. See back for details. By using this Airbill you agree to the service conditions on the back of this Airbill and in the current FedEx Service Guide, including terms that limit our liability.

8 Residential Delivery Signature Options

If you require a signature, check Direct or Indirect.

No Signature Required
Package may be left without obtaining a signature for delivery.

Direct Signature
Someone at recipient's address may sign for delivery. *Fee applies.*

Indirect Signature
If no one is available at recipient's address, someone at a neighboring address may sign for delivery. *Fee applies.*

519

PULL AND RETAIN THIS COPY BEFORE AFFIXING TO THE PACKAGE. NO POUCH NEEDED.

Terms And Conditions

Definitions On this Airbill, "we," "our," "us," and "FedEx" refer to Federal Express Corporation, its employees, and agents. "You" and "your" refer to the sender, its employees, and agents.

Agreement To Terms By giving us your package to deliver, you agree to all the terms on this Airbill and in the current FedEx Service Guide, which is available upon request. You also agree to those terms on behalf of any third party with an interest in the package. If there is a conflict between the current FedEx Service Guide and this Airbill, the current FedEx Service Guide will control. No one is authorized to change the terms of our Agreement.

Responsibility For Packaging And Completing Airbill You are responsible for adequately packaging your goods and properly filling out this Airbill. If you omit the number of packages and/or weight per package, our billing will be based on our best estimate of the number of packages we received and/or an estimated "default" weight per package as determined by us.

Responsibility For Payment Even if you give us different payment instructions, you will always be primarily responsible for all delivery costs, as well as any cost we incur in either returning your package to you or warehousing it pending disposition.

Limitations On Our Liability And Liabilities Not Assumed

- Our liability in connection with this shipment is limited to the lesser of your actual damages or \$100, unless you declare a higher value, pay an additional charge, and document your actual loss in a timely manner. You may pay an additional charge for each additional \$100 of declared value. The declared value does not constitute, nor do we provide, cargo liability insurance.
- In any event, we will not be liable for any damage, whether direct, incidental, special, or consequential, in excess of the declared value of a shipment, whether or not FedEx had knowledge that such damages might be incurred, including but not limited to loss of income or profits.

- We won't be liable:
 - for your acts or omissions, including but not limited to improper or insufficient packing, securing, marking, or addressing, or those of the recipient or anyone else with an interest in the package.
 - if you or the recipient violates any of the terms of our Agreement.
 - for loss of or damage to shipments of prohibited items.
 - for loss, damage, or delay caused by events we cannot control, including but not limited to acts of God, perils of the air, weather conditions, acts of public enemies, war, strikes, civil commotions, or acts of public authorities with actual or apparent authority.

Declared Value Limits

- The highest declared value allowed for a FedEx Envelope or FedEx Pak shipment is \$500.
- For other shipments, the highest declared value allowed is \$50,000 unless your package contains items of extraordinary value, in which case the highest declared value allowed is \$500.
- Items of extraordinary value include shipments containing such items as artwork, jewelry, furs, precious metals, negotiable instruments, and other items listed in the current FedEx Service Guide.
- You may send more than one package on this Airbill and fill in the total declared value for all packages, not to exceed the \$100, \$500, or \$50,000 per package limit described above. (Example: 5 packages can have a total declared value of up to \$250,000.) In that case, our liability is limited to the actual value of the package(s) lost or damaged, but may not exceed the maximum allowable declared value(s) or the total declared value, whichever is less. You are responsible for proving the actual loss or damage.

Filing A Claim YOU MUST MAKE ALL CLAIMS IN WRITING and notify us of your claim within strict time limits set out in the current FedEx Service Guide.

You may call our Customer Service department at 1.800.GoFedEx 1.800.463.3339 to report a claim; however, you must still file a timely written claim. We aren't obligated to act on any claim until you have paid all transportation charges, and you may not deduct the amount of your claim from those charges.

If the recipient accepts your package without noting any damage on the delivery record, we will assume the package was delivered in good condition. For us to process your claim, you must make the original shipping cartons and packing available for inspection.

Right To Inspect We may, at our option, open and inspect your packages before or after you give them to us to deliver.

Right Of Rejection We reserve the right to reject a shipment when such shipment would be likely to cause delay or damage to other shipments, equipment, or personnel; or if the shipment is prohibited by law; or if the shipment would violate any terms of our Airbill or the current FedEx Service Guide.

C.O.D. Services C.O.D. SERVICE IS NOT AVAILABLE WITH THIS AIRBILL. If C.O.D. Service is required, please use a FedEx C.D.D. Airbill.

Air Transportation Tax Included A federal excise tax when required by the Internal Revenue Code on the air transportation portion of this service, if any, is paid by us.

Money-Back Guarantee In the event of untimely delivery, FedEx will, at your request and with some limitations, refund or credit all transportation charges. See the current FedEx Service Guide for more information.

DOUGLAS F. GANSLER
Attorney General

KATHERINE WINFREE
Chief Deputy Attorney General

JOHN B. HOWARD, JR.
Deputy Attorney General



MARIANNE E. DISE
Assistant Attorney General
Principal Counsel

SAUNDRA K. CANEDO
Assistant Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CRITICAL AREA COMMISSION FOR THE
CHESAPEAKE AND ATLANTIC COASTAL BAYS

FAX NO. (410) 974-5338

WRITER'S DIRECT DIAL NO. (410) 260-3467
scanedo@oag.state.md.us

September 2, 2008

Sent via regular U.S. Mail

Mrs. Kay Parris
7770 Swann Lane
Owings, Maryland 20736

RE: Margaret McHale et al v. Edward Parris et al
Maryland Court of Special Appeals, No. 00374, September Term 2008

Dear Mrs. Parris:

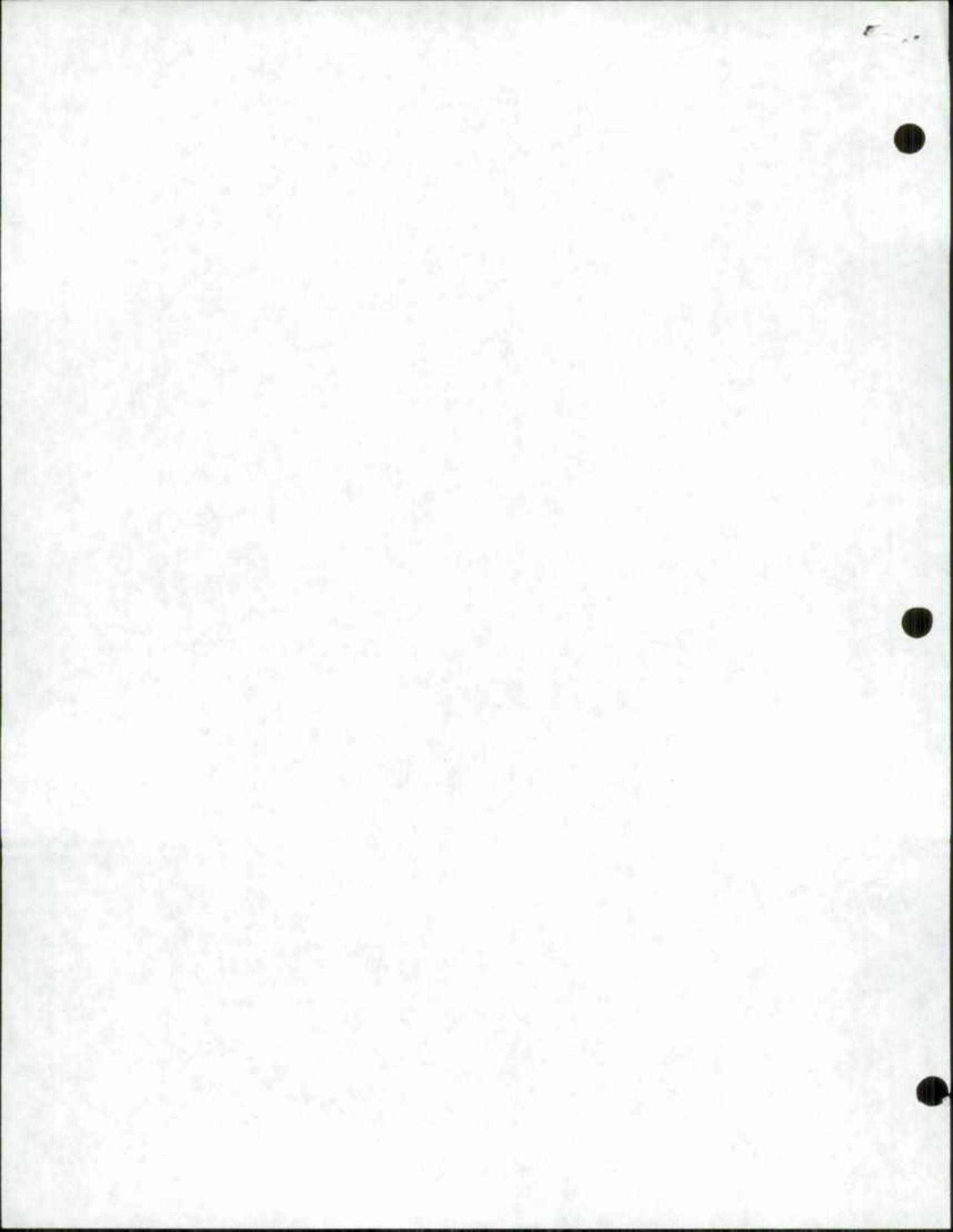
Enclosed is a copy of the Stipulation of Counsel filed earlier today. Thank you for your quick turn-around.

Sincerely,

A handwritten signature in cursive script that reads "Sandra K. Canedo".

Sandra K. Canedo
Assistant Attorney General

Encl.



IN THE COURT OF SPECIAL APPEALS
FOR MARYLAND

MARGARET MCHALE,

*

Appellant

*

No. 00374

v.

*

September Term, 2008

EDWARD AND KAY PARRIS,

*

Appellee

*

* * * * *

STIPULATION OF COUNSEL FOR EXTENSION OF TIME TO FILE BRIEF

Pursuant to Md. Rule 8-502(b), the undersigned counsel agree that the dates for filing briefs shall be extended such that Appellant's brief shall be filed on or before December 22, 2008; the Appellee's brief shall be filed on or before January 21, 2009; and any reply brief shall be filed on or before February 15, 2009.

Marianne E. Dise

Kay L. Parris

Saundra K. Canedo

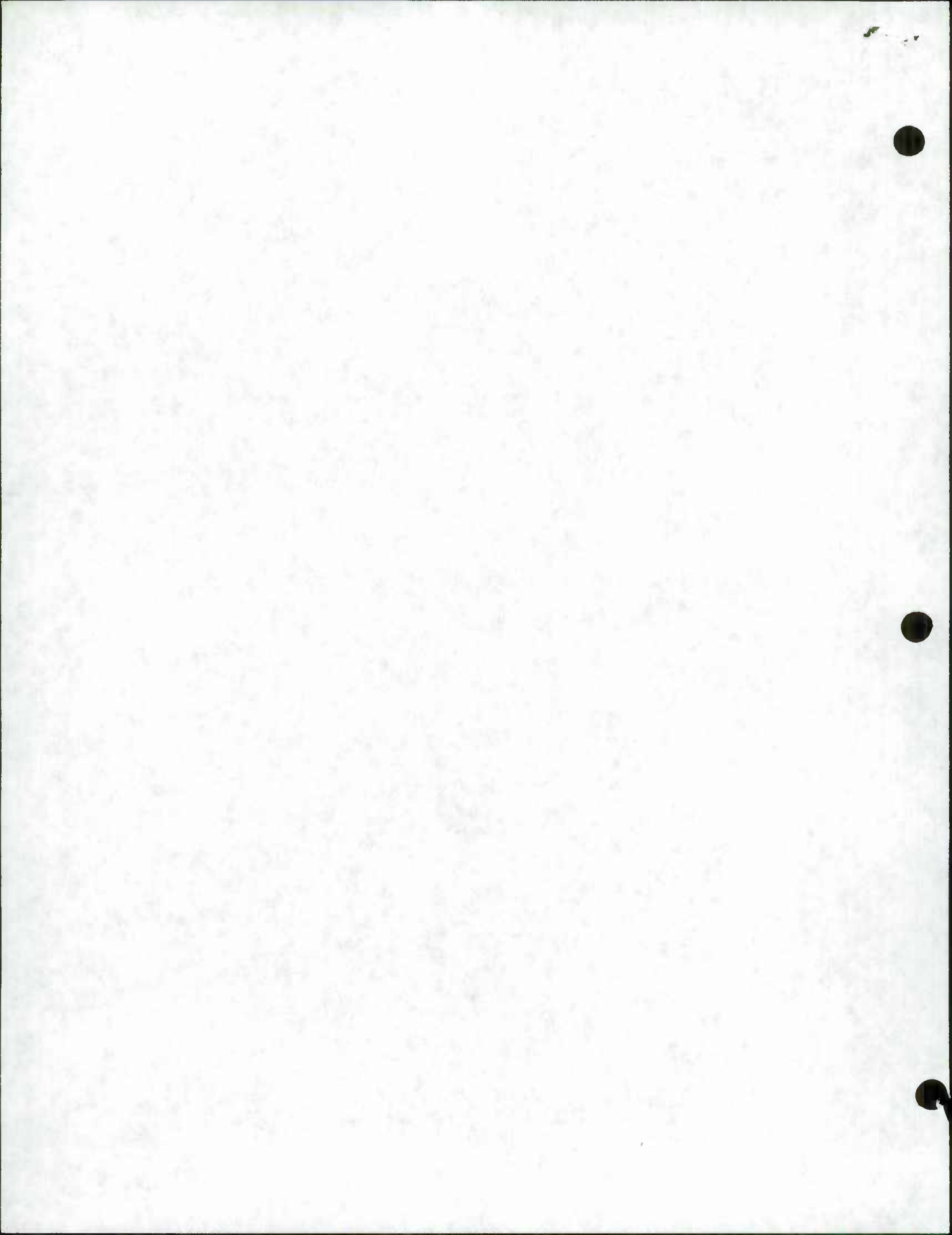
Saundra K. Canedo, Esq.
Marianne E. Dise, Esq.
1804 West Street, Suite 100
Annapolis, MD 21401
(410) 260-3467
Attorneys for Appellant

Kay L. Parris, Esq.
7770 Swan Lane
Owings, MD 20736
(410) 257-0137
Attorney for Appellee

CLERK OF COURT
COURT OF SPECIAL APPEALS

2008 SEP -2 A 11:10

CLERK'S OFFICE



DOUGLAS F. GANSLER
Attorney General

KATHERINE WINFREE
Chief Deputy Attorney General

JOHN B. HOWARD, JR.
Deputy Attorney General



MARIANNE E. DISE
Assistant Attorney General
Principal Counsel

SAUNDRA K. CANEDO
Assistant Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CRITICAL AREA COMMISSION FOR THE
CHESAPEAKE AND ATLANTIC COASTAL BAYS

FAX NO. (410) 974-5338

WRITER'S DIRECT DIAL NO. (410) 260-3467
scanedo@oag.state.md.us

September 23, 2008

Via regular U.S. mail and facsimile to 301-261-2603 and 410-268-6687

David M. Plott, Esq.
Linowes & Blocher
145 Main Street
Annapolis, Maryland 21401

Jon A. Mueller, Esq.
6 Herndon Avenue
Annapolis, Maryland 21403

RE: *Critical Area Commission, et al v. Moreland, LLC,*
No. 823, September Term 2008
Proposed Joint Record Extract

Dear David and Jon:

Enclosed please find a proposed Table of Contents for the Joint Record Extract in connection with the above-captioned appeal. Please review the proposed table and let me know if you have any suggestions for additional parts of the record to include in the Extract.

I would also like to ask for an extension for time for filing the briefs. Please let me know if you are agreeable to an extension.

Please let me know if you have any questions. Thank you.

Sincerely yours,

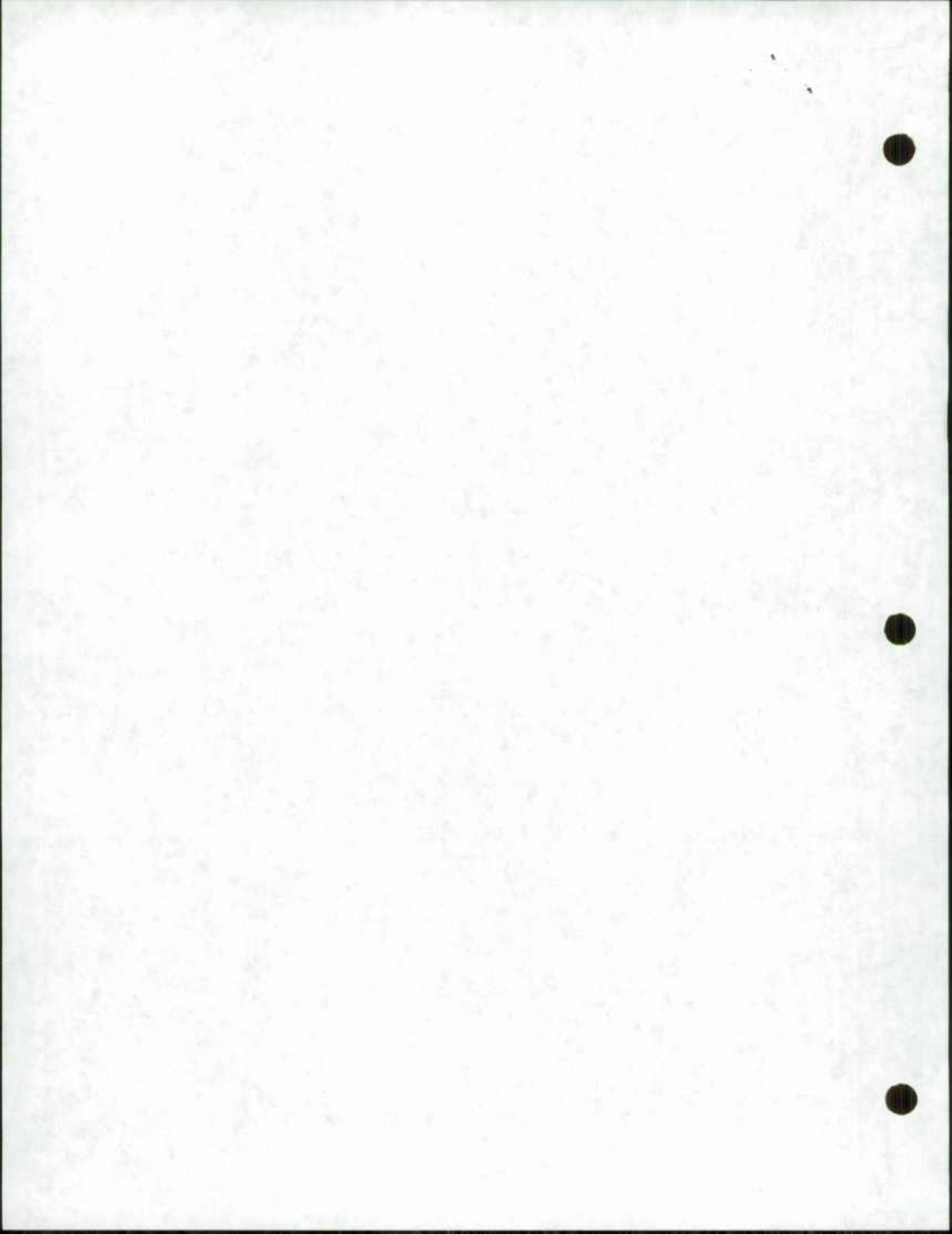
A handwritten signature in cursive script that reads "Sandra K. Canedo".
Saundra K. Canedo

Encl.

cc: Marianne E. Dise, Esq.

Record Extract – Proposed Table of Contents

1. Circuit Court for Anne Arundel County Docket Entries;
2. Complete Transcript of Testimony before the Anne Arundel County Board of Appeals, dated August 16, 2006; October 4, 2006; and December 6, 2006 (363 pages);
3. Transcript of argument before the Anne Arundel County Circuit Court, dated November 26, 2007 (41 pages);
4. Circuit Court for Anne Arundel County Memorandum Opinion dated May 15, 2008
5. Petitioner's Exhibits 2, 10, 11, 14, 21, 23, 24 (August 16, 2006; October 4, 2006);
6. County Staff Exhibits 1, 2 (December 6, 2006);
7. Protestant's Exhibits 1, 2, 3, 5, 6 (December 6, 2006);
8. Letter from Ren Serey, Critical Area Commission to County Office of Planning and Zoning, dated December 5, 2006 (County Exhibit 3 at December 6, 2006 hearing)



DOUGLAS F. GANSLER
Attorney General

KATHERINE WINFREE
Chief Deputy Attorney General

JOHN B. HOWARD, JR.
Deputy Attorney General



MARIANNE E. DISE
Assistant Attorney General
Principal Counsel

SAUNDRA K. CANEDO
Assistant Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CRITICAL AREA COMMISSION FOR THE
CHESAPEAKE AND ATLANTIC COASTAL BAYS

FAX NO. (410) 974-5338

WRITER'S DIRECT DIAL NO. (410) 260-3467
scanedo@oag.state.md.us

October 9, 2008

Hand-Delivered

Leslie D. Gradet
Clerk, Court of Special Appeals
Robert C. Murphy Courts of Appeal Building
361 Rowe Boulevard
Annapolis, Maryland 21401

RE: Critical Area Commission et al v. Moreland, LLC,
No. 00823, September Term, 2008

Dear Ms. Gradet:

Enclosed for filing, please find a Stipulation of Counsel for Extension of Time to File Brief for the above-referenced case. Also included is an additional copy to be date stamped.

Thank you for your assistance.

Sincerely,

A handwritten signature in cursive script that reads "Sandra K. Canedo".

Saundra K. Canedo
Assistant Attorney General

cc: David M. Plott, Esq.
Jon A. Mueller, Esq.
Marianne E. Dise, Esq.

RECEIVED
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LESLIE D. GRADET, CLERK
COURT OF SPECIAL APPEALS

IN THE COURT OF SPECIAL APPEALS
FOR MARYLAND

CRITICAL AREA COMMISSION, et al *

Appellant *

No. 00823

v. *

September Term, 2008

MORELAND, LLC, *

Appellee *

* * * * *

STIPULATION OF COUNSEL FOR EXTENSION OF TIME TO FILE BRIEF

Pursuant to Md. Rule 8-502(b), the undersigned counsel agree that the dates for filing briefs shall be extended such that Appellants briefs shall be filed on or before February 2, 2009; the Appellee's brief shall filed on or before March 4, 2009; and any reply brief shall be filed on or before March 24, 2009.

Sandra K. Canedo
Marianne E. Dise

Saundra K. Canedo, Esq.
Marianne E. Dise, Esq.
1804 West Street, Suite 100
Annapolis, MD 21401
(410) 260-3467
Attorneys for Appellant Critical
Area Commission

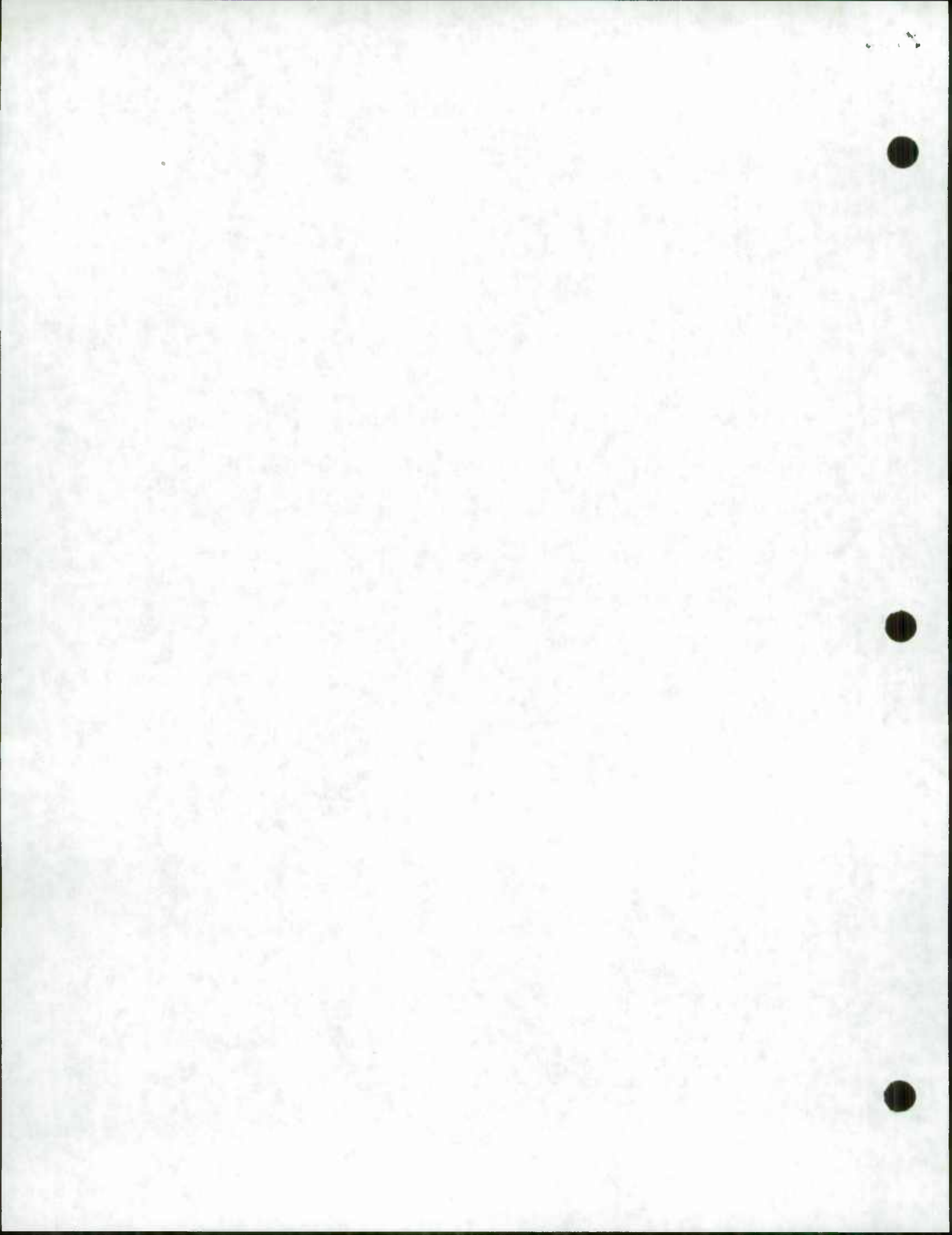
David M. Plott

David M. Plott, Esq.
Linowes & Blocher
Annapolis, MD 21401
(410) 268-0881
Attorney for Appellee

Jon A. Mueller

Jon A. Mueller, Esq.
6 Herndon Avenue
Annapolis, MD 21403
(443) 482-2162
Attorney for Cross-Appellant
South River Federation

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DOUGLAS F. GANSLER
Attorney General

KATHERINE WINFREE
Chief Deputy Attorney General

JOHN B. HOWARD, JR.
Deputy Attorney General



MARIANNE E. DISE
Assistant Attorney General
Principal Counsel

SAUNDRA K. CANEDO
Assistant Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CRITICAL AREA COMMISSION FOR THE
CHESAPEAKE AND ATLANTIC COASTAL BAYS

FAX NO. (410) 974-5338

WRITER'S DIRECT DIAL NO. (410) 260-3467
scanedo@oag.state.md.us

October 15, 2008

Sent via regular U.S. mail

Mrs. Kay Parris
7770 Swann Lane
Owings, Maryland 20736

RE: Margaret McHale et al v. Edward Parris et al
Maryland Court of Special Appeals, No. 00374, September Term 2008

Dear Mrs. Parris:

As you recall, we met on September 11, 2008 in the Critical Area Commission offices with Kerrie Gallo to discuss possible settlement of the above-referenced case. During that meeting we discussed your intentions with regard to building your wood shop. It is my understanding that you are no longer requesting to build a 26 x 28 wood shop, instead you will be replacing your current 14 x 13 greenhouse with a new greenhouse approximately sized 14 x 20 in a new location. Pursuant to our discussion on September 11, 2008, we agreed that you would provide Kerrie Gallo with the following information:

- (1) Proof that the existing greenhouse is a legal structure;
- (2) A plan showing the size and location of the new greenhouse;
- (3) A planting plan for the mitigation for disturbance at a 3:1 ratio; and
- (4) An agreement for storm water management.

As of today's date, our office has not yet received the above information. I appreciate your attention to this matter and look forward to receiving this information as soon as possible. Thank you.

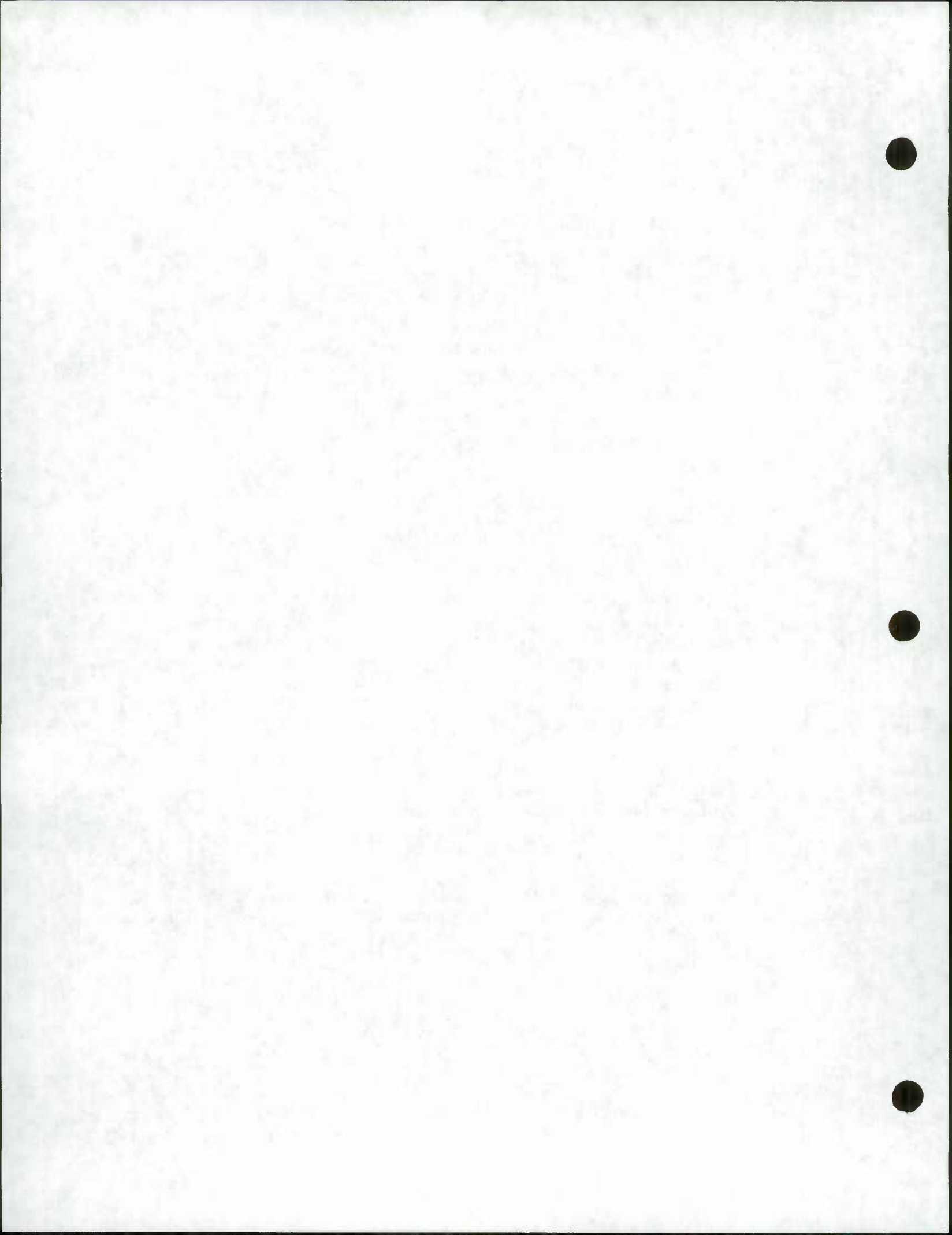
Sincerely,

A handwritten signature in cursive script that reads "Sandra K. Canedo".

Sandra K. Canedo
Assistant Attorney General

cc: Kerrie Gallo
Marianne E. Dise, Esq.

1804 West Street, Suite 100
Annapolis, Maryland 21401



DOUGLAS F. GANSLER
Attorney General

KATHERINE WINFREE
Chief Deputy Attorney General

JOHN B. HOWARD, JR.
Deputy Attorney General



MARIANNE E. DISE
Assistant Attorney General
Principal Counsel

SAUNDRA K. CANEDO
Assistant Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CRITICAL AREA COMMISSION FOR THE
CHESAPEAKE AND ATLANTIC COASTAL BAYS

FAX NO. (410) 974-5338

WRITER'S DIRECT DIAL NO. (410) 260-3467
scanedo@oag.state.md.us

October 23, 2008

Ms. Joan W. Williams,
Clerk of the Circuit Court
St. Mary's County Circuit Court
41605 Courthouse Drive
P.O. Box 676
Leonardtown, Maryland 20650

RE: Petition of Roy Hart, Jr and Jane Hart for Judicial Review
of the Decision of the St. Mary's County Board of Appeals
Civil Action No.: C-08-983

Dear Ms. Williams:

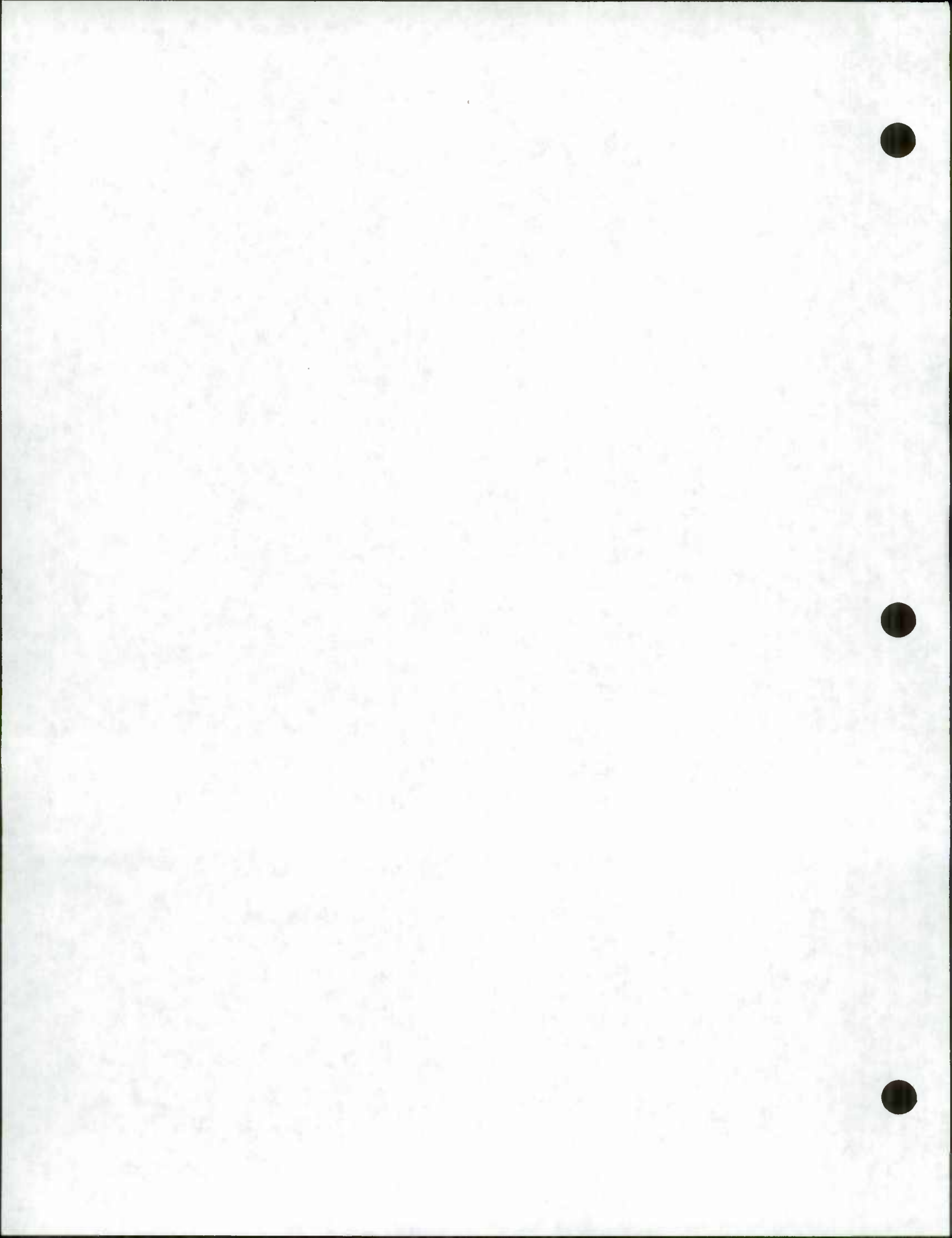
Please find enclosed for filing the State of Maryland's Response to Petition for Judicial Review in the above-captioned matter. This Response serves as notice of intent to participate. Thank you for your assistance.

Sincerely,

A handwritten signature in cursive script that reads "Sandra K. Canedo".

Saundra K. Canedo
Assistant Attorney General

cc: Christy Holt Chesser, Esquire
Christopher T. Longmore, Esquire



DOUGLAS F. GANSLER
Attorney General

KATHERINE WINEREF
Chief Deputy Attorney General

JOHN B. HOWARD, JR.
Deputy Attorney General



MARIANNE E. DISE
Assistant Attorney General
Principal Counsel

SAUNDRA K. CANEDO
Assistant Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CRITICAL AREA COMMISSION FOR THE
CHESAPEAKE AND ATLANTIC COASTAL BAYS

FAX NO (410) 974-5338

WRITER'S DIRECT DIAL NO. (410) 260-3467
scanedo@oag.state.md.us

October 29, 2008

Sent via overnight delivery

Ms. Mary Ann Shortall, Clerk
Circuit Court for Talbot County
11 North Washington Street, Suite 16
Easton, Maryland 21601

RE: Margaret McHale v. R. Phillip Herget, III and Anne S. Herget,
Case No. 20-C-08-006437
Stipulation of Counsel for Extension of Time to File Memorandum

Dear Ms. Shortall:

Enclosed for filing, please find a Stipulation of Counsel for Extension of Time to File Memorandum and a proposed Order.

Thank you for your assistance.

Sincerely,

A handwritten signature in cursive script that reads "Sandra K. Canedo".

Saundra K. Canedo
Assistant Attorney General

cc: Bruce C. Armistead, Esq.
Michael L. Pullen, Esq.

PETITION OF:
MARGARET McHALE
Chair, Critical Area Commission for
the Chesapeake and Atlantic Coastal Bays

*
*
*
*
*
*
*
*

IN THE

CIRCUIT COURT

FOR

TALBOT COUNTY

Case No.: 20-C-08-006437

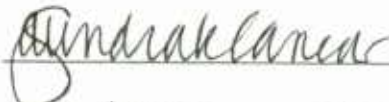
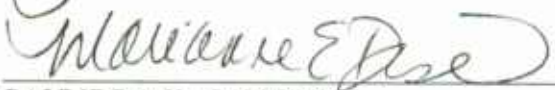
FOR JUDICIAL REVIEW OF THE
DECISION OF THE:
THE TALBOT COUNTY BOARD
OF APPEALS

IN THE CASE OF:
No. 1496
R. PHILLIP HERGET, III AND
ANNE S. HERGET

**STIPULATION OF COUNSEL FOR EXTENSION
OF TIME TO FILE MEMORANDUM**

Pursuant to Md. Rule 7-207(c), the undersigned counsel agree that the date for filing Petitioner's Memorandum shall be extended such that Petitioner's Memorandum shall be filed on or before January 2, 2009. This extension has been stipulated due to ongoing settlement negotiations.

Respectfully submitted,

SAUNDRA K. CANEDO
MARIANNE E. DISE

Assistant Attorneys General
Critical Area Commission for the Chesapeake
and Atlantic Coastal Bays
1804 West Street, Suite 100
Annapolis, MD 21401
(410) 260-3467
Attorneys for Petitioner



BRUCE C. ARMISTEAD

Armistead, Griswold, Lee & Rust, P.A.

114 Bay Street

Building C

Easton, MD 21601

(410) 822-4777

Attorneys for R. Phillip Herget, III and Anne S. Herget



MICHAEL L. PULLEN

Talbot County Attorney

11 North Washington Street

Easton, MD 21601

(410) 770-8092

Attorney for Talbot County

Dated October 29, 2008

PETITION OF:
MARGARET McHALE
Chair, Critical Area Commission for
the Chesapeake and Atlantic Coastal Bays

FOR JUDICIAL REVIEW OF THE
DECISION OF THE:
THE TALBOT COUNTY BOARD
OF APPEALS

IN THE CASE OF:
No. 1496
R. PHILLIP HERGET, III AND
ANNE S. HERGET

* IN THE
*
* CIRCUIT COURT
*
* FOR
*
* TALBOT COUNTY
*
* Case No.: 20-C-08-006437
*

ORDER

Upon consideration of the Stipulation of Counsel for Extension of Time to File Memorandum, and any responses thereto, it is this ____ day of October 2008, by the Circuit Court for Talbot County, hereby:

ORDERED, that the Stipulation of Counsel for Extension of Time to File Memorandum, is hereby GRANTED; and it is further

ORDERED, that Petitioner Margaret McHale shall file Petitioner's Memorandum on or before the 2nd day of January 2009.

JUDGE

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the circuit court for Talbot County

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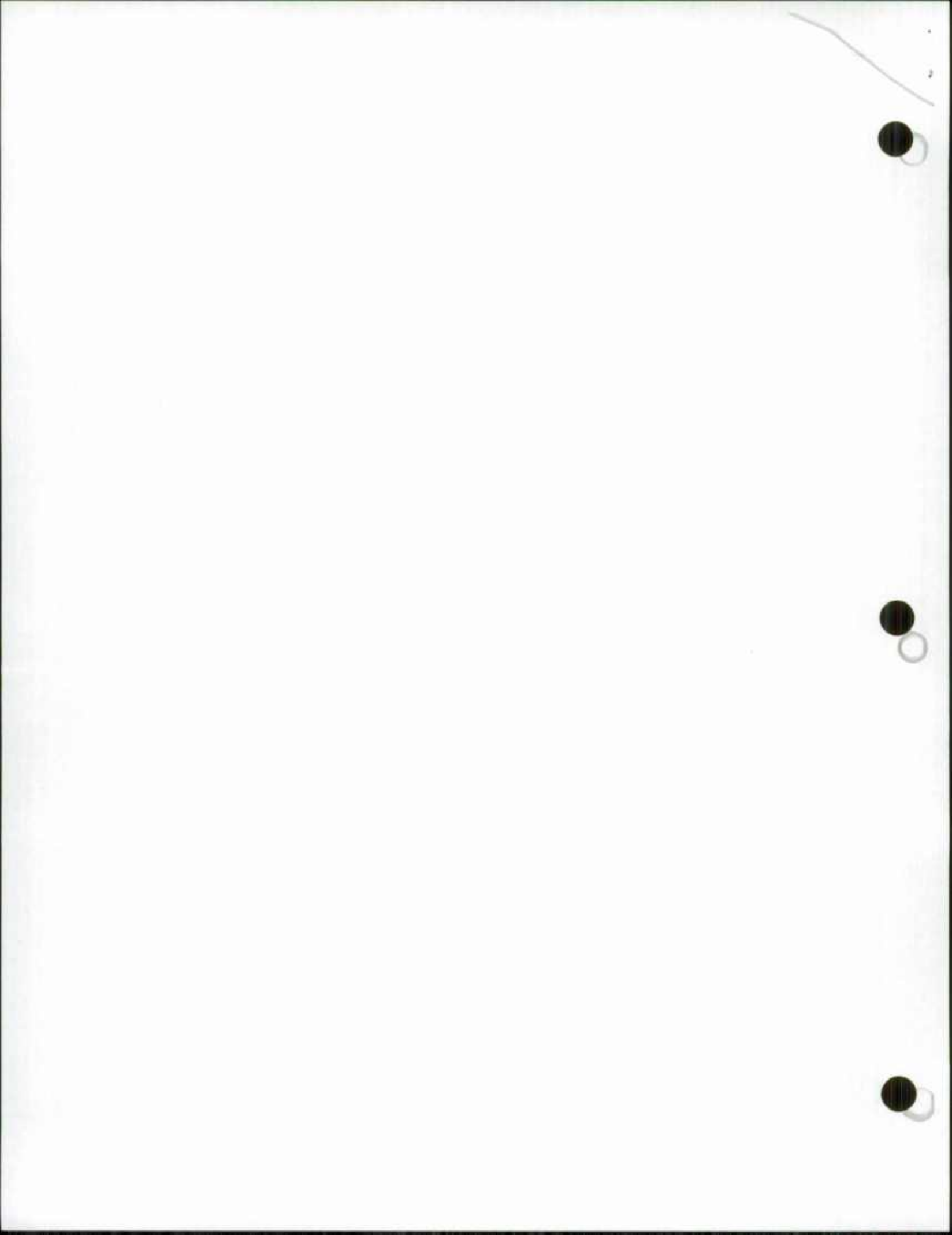
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DOUGLAS F. GANSLER
Attorney General

KATHERINE WINFREE
Chief Deputy Attorney General

JOHN B. HOWARD, JR.
Deputy Attorney General



MARIANNE E. DISE
Assistant Attorney General
Principal Counsel

SAUNDRA K. CANEDO
Assistant Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CRITICAL AREA COMMISSION FOR THE
CHESAPEAKE AND ATLANTIC COASTAL BAYS

FAX NO. (410) 974-5338

WRITER'S DIRECT DIAL NO. (410) 260-3467
scanedo@oag.state.md.us

October 23, 2008

Ms. Joan W. Williams,
Clerk of the Circuit Court
St. Mary's County Circuit Court
41605 Courthouse Drive
P.O. Box 676
Leonardtwn, Maryland 20650

RE: Petition of Roy Hart, Jr and Jane Hart for Judicial Review
of the Decision of the St. Mary's County Board of Appeals
Civil Action No.: C-08-983

Dear Ms. Williams:

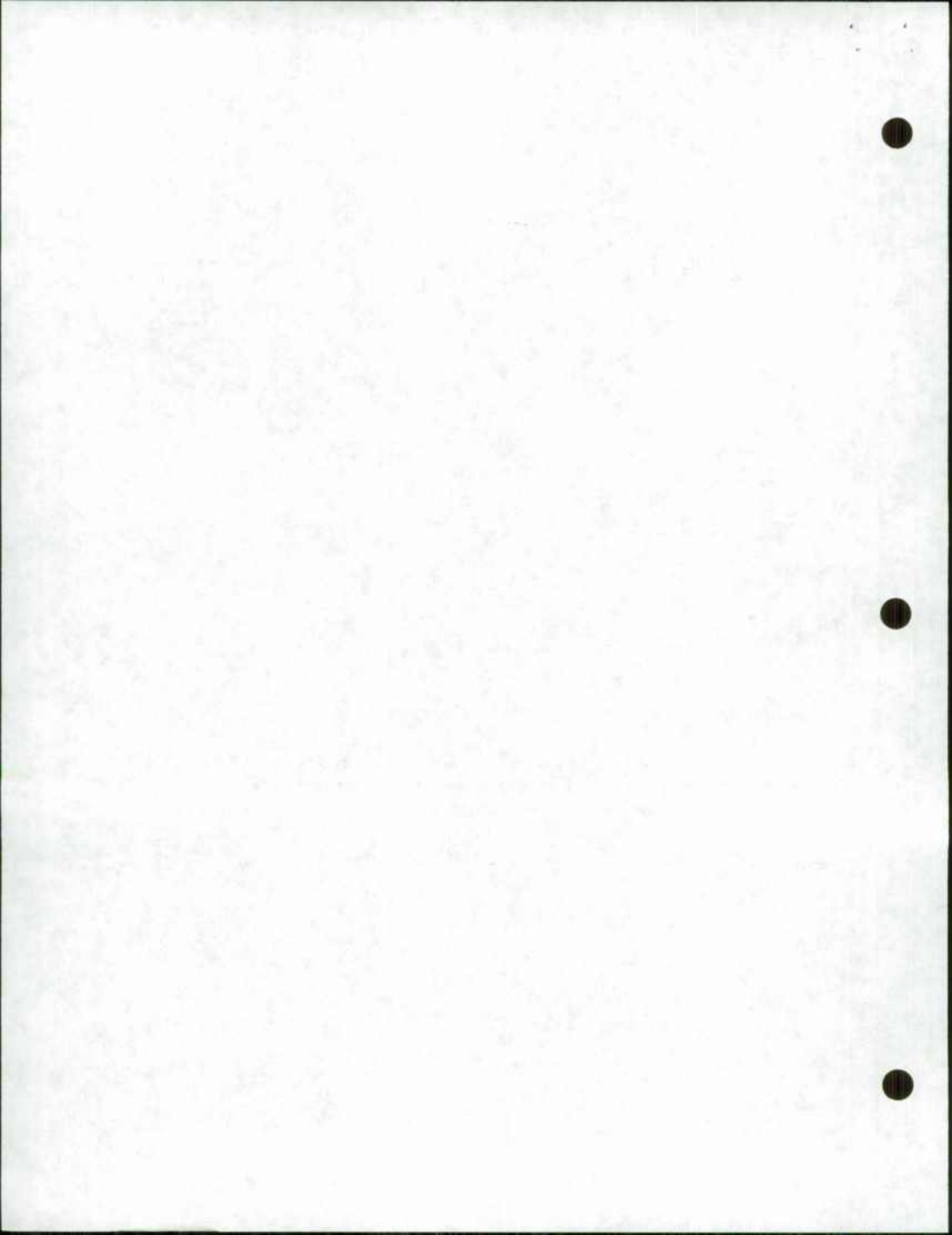
Please find enclosed for filing the State of Maryland's Response to Petition for Judicial Review in the above-captioned matter. This Response serves as notice of intent to participate. Thank you for your assistance.

Sincerely,

A handwritten signature in cursive script that reads "Sandra K. Canedo".

Saundra K. Canedo
Assistant Attorney General

cc: Christy Holt Chesser, Esquire
Christopher T. Longmore, Esquire



IN THE CIRCUIT COURT OF MARYLAND
FOR ST. MARY'S COUNTY

PETITION OF:
ROY HART, JR. AND JANE HART

*

*

FOR JUDICIAL REVIEW OF
THE DECISION OF:
THE ST. MARY'S COUNTY BOARD
OF APPEALS

*

Civil Action No.: CA-08-983

*

IN THE CASE OF:
ROY HART, JR. AND JANE HART,
AFTER THE FACT VARIANCE
No. VAAP #02-969

*

*

* * * * *

RESPONSE TO PETITION FOR JUDICIAL REVIEW

Margaret McHale, Chair, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays ("Critical Area Commission") by her attorneys, Douglas F. Gansler, Attorney General of Maryland and Sandra K. Canedo and Marianne E. Dise, Assistant Attorneys General, pursuant to Rule 7-204, files this Response to Petition for Judicial Review as notice of intent to participate.

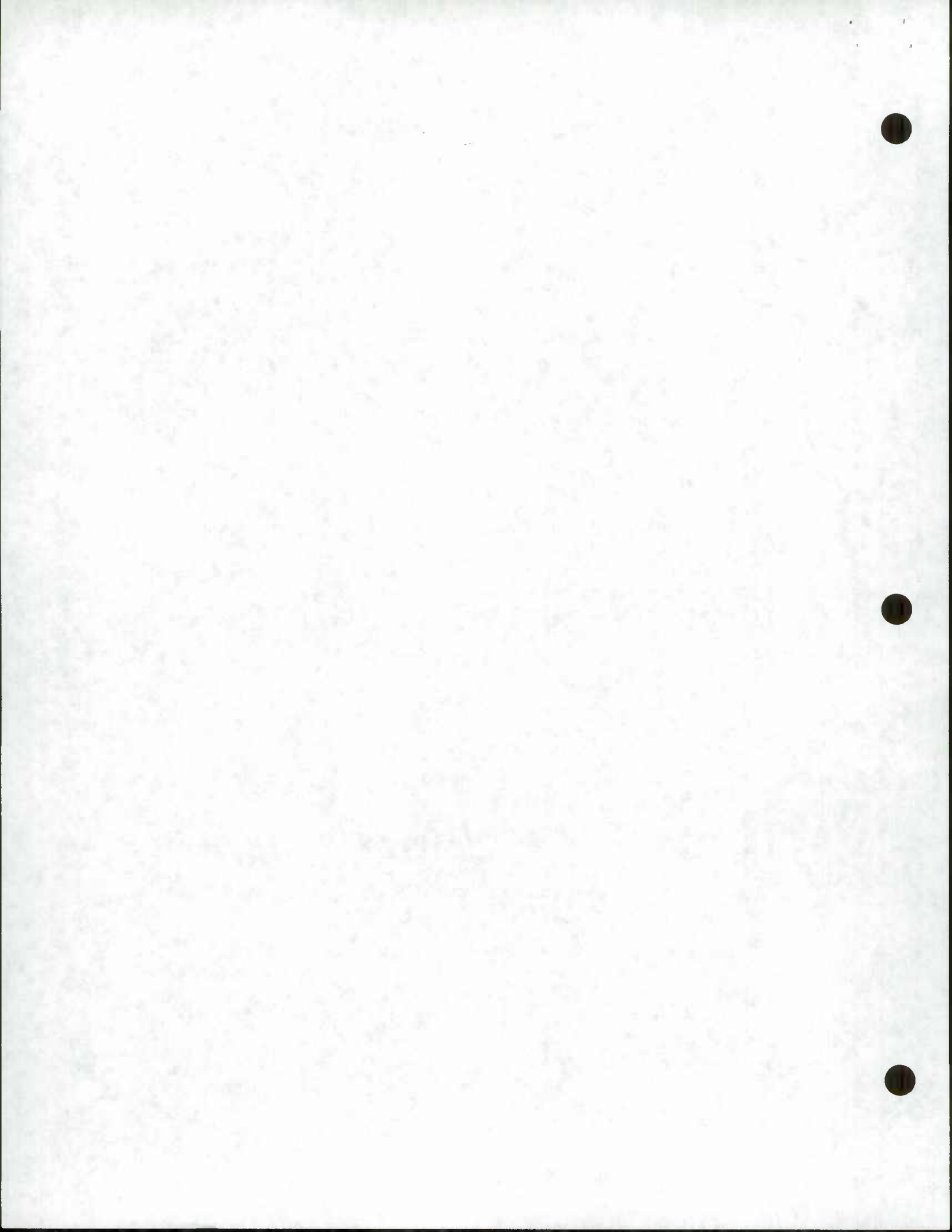
Respectfully submitted,

DOUGLAS F. GANSLER
Attorney General of Maryland

Sandra K. Canedo

Marianne E. Dise/sec

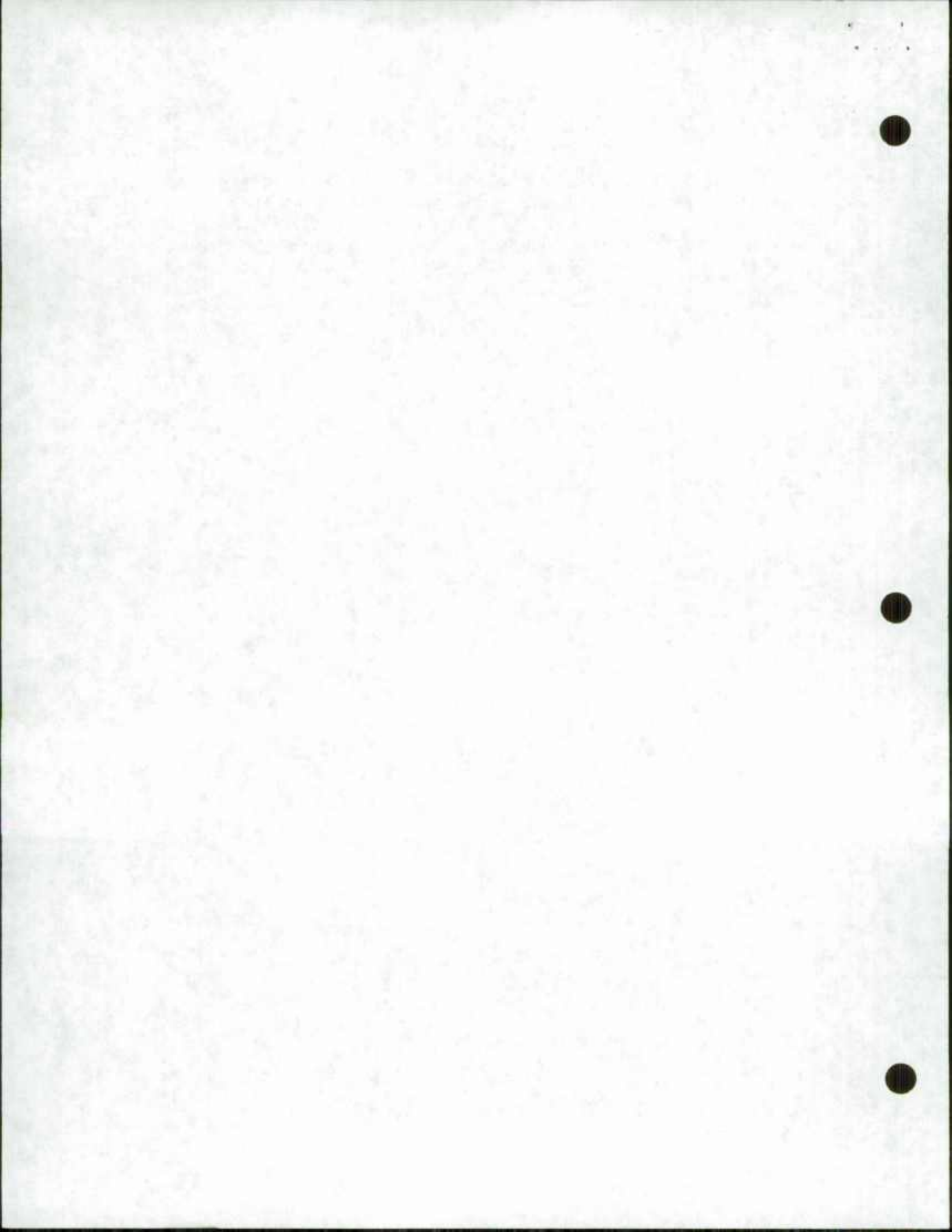
Sandra K. Canedo
Marianne E. Dise
Assistant Attorneys General
Critical Area Commission for the
Chesapeake and Atlantic Coastal Bays
1801 West Street, Suite 100
Annapolis, Maryland 21401
(410) 260-3467
*Attorneys for Margaret McHale, Chair,
Critical Area Commission for the
Chesapeake and Atlantic Coastal Bays*



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of October 2008, I sent a copy of the foregoing Response to Petition for Judicial Review via U.S. Mail, postage prepaid to: Christopher T. Longmore, Attorney for Petitioners, Dugan, McKissick, Wood & Longmore, LLC, 22738 Maple Road, Suite 101, Lexington Park, Maryland 20653 and Christy Holt Chesser, Attorney for the Board of Appeals, P.O. Box 653 Governmental Center, 41770 Baldrige Street, Leonardtown, Maryland 20650.


Sandra K. Canedo





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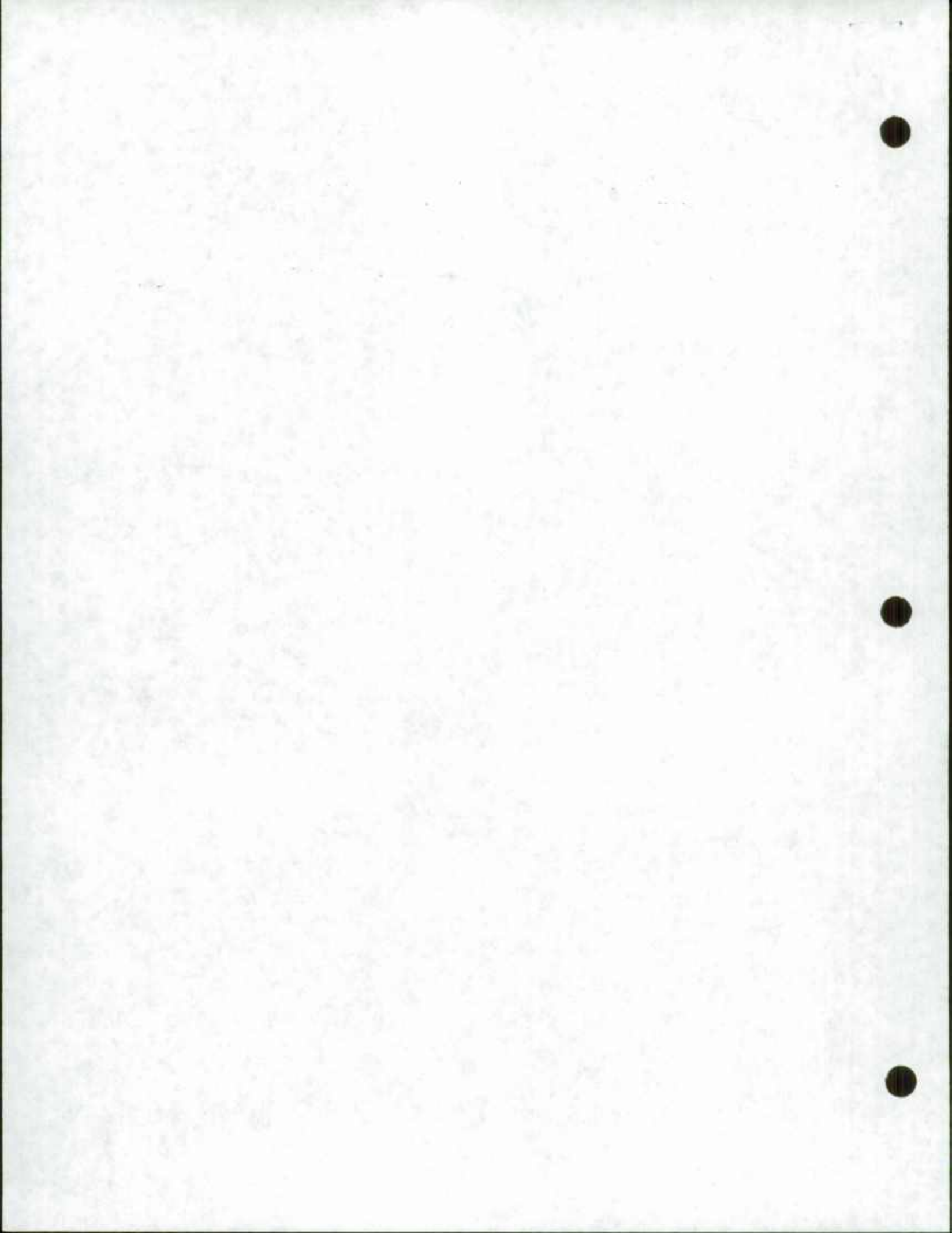
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DOUGLAS F. GANSLER

Attorney General

KATHERINE WINFREE

Chief Deputy Attorney General

JOHN B. HOWARD, JR.

Deputy Attorney General



MARIANNE E. DISE

Assistant Attorney General
Principal Counsel

SAUNDRA K. CANEDO

Assistant Attorney General

STATE OF MARYLAND

OFFICE OF THE ATTORNEY GENERAL

CRITICAL AREA COMMISSION FOR THE
CHESAPEAKE AND ATLANTIC COASTAL BAYS

FAX NO. (410) 974-5338

WRITER'S DIRECT DIAL NO. (410) 260-3467
seanedo@oag.state.md.us

November 10, 2008

Sent via Overnight Mail

Mrs. Kay Parris
7770 Swann Lane
Owings, Maryland 20736

FOR PURPOSES OF SETTLEMENT DISCUSSIONS ONLY

RE: Margaret McHale et al v. Edward Parris et al
Maryland Court of Special Appeals, No. 00374, September Term 2008

Dear Mrs. Parris:

I contacted you last Friday, November 7, 2008, after not receiving any response to my October 15, 2008 letter to you which laid out the preliminary settlement that we discussed at our meeting on September 11, 2008 in my office. As you may recall, those discussions ended with an agreement that you would provide certain information to my office. Based on our conversation last Friday, it appears as though you have decided not to continue toward settlement of this case. If this is not the case, please submit the requested site plan; mitigation planting plan; and draft agreement for storm water management to my office by close of business on Wednesday, November 19, 2008. In the event that nothing is received by the 19th, I will understand that to mean that you have chosen to forego settlement and instead wish to move forward in this case.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Saundra K. Canedo".

Saundra K. Canedo

Assistant Attorney General

cc: Kerrie Gallo
Marianne E. Dise, Esq.

1804 West Street, Suite 100
Annapolis, Maryland 21401



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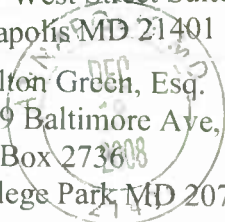
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- 7309 Baltimore Ave, Suite 115
- PO Box 2736
- College Park MD 20741-2736



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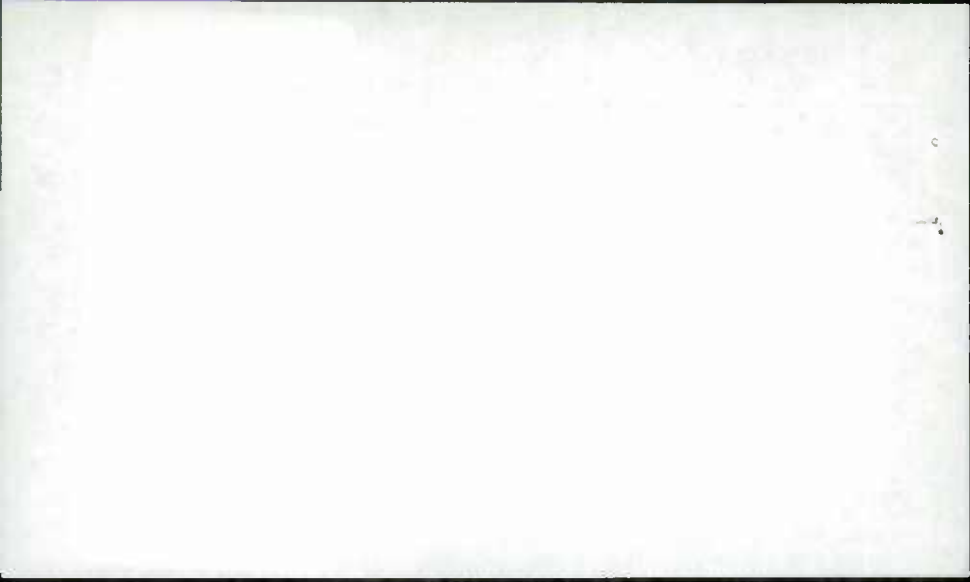
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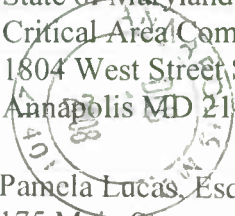
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Critical Area Commission
1804 West Street Suite 100
Annapolis MD 21401

To:

Pamela Lucas, Esq.
175 Main St.
Prince Frederick MD 20678



0000

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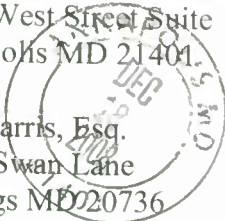


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From: State of Maryland
 Critical Area Commission
 1804 West Street Suite 100
 Annapolis MD 21401

To: Kay Parris, Esq.
 7770 Swan Lane
 Owings MD 20736



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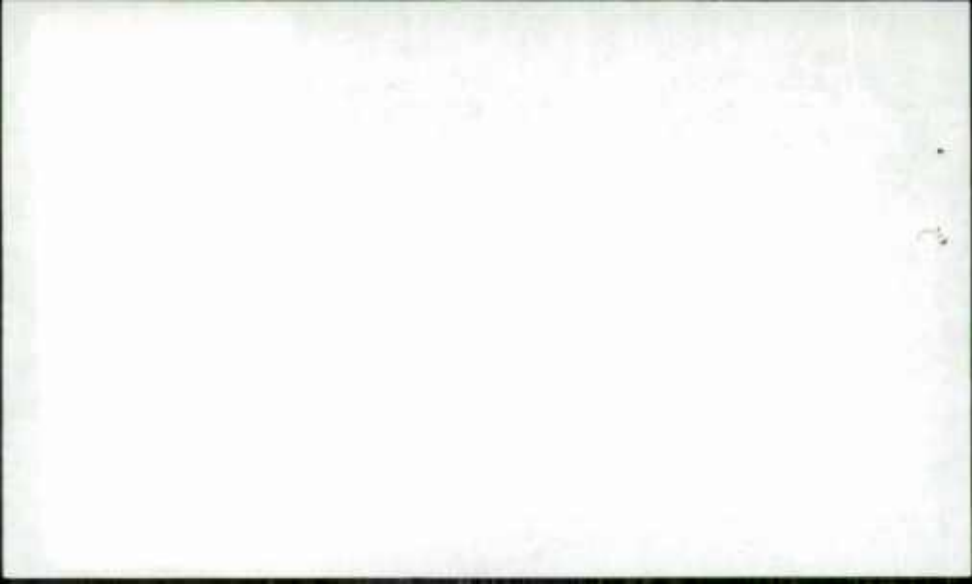
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From: State of Maryland
Critical Area Commission
1804 West Street Suite 100
Annapolis MD 21401

To: Mr. Greg Bowen, Director
Department of Planning & Zoning
150 Main Street
Prince Frederick MD 20678

0000

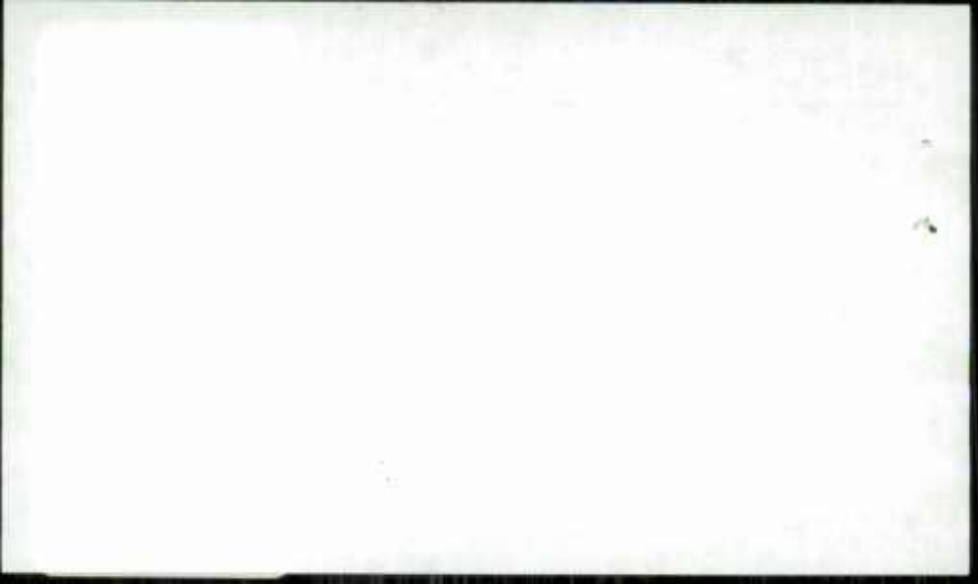
UNITED STATES
POSTAL SERVICE



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ANNAPOLIS, MD
21401
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DOUGLAS F. GANSLER
Attorney General

KATHERINE WINFREE
Chief Deputy Attorney General

JOHN B. HOWARD, JR.
Deputy Attorney General



MARIANNE E. DISE
Assistant Attorney General
Principal Counsel

SAUNDRA K. CANEDO
Assistant Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CRITICAL AREA COMMISSION FOR THE
CHESAPEAKE AND ATLANTIC COASTAL BAYS

FAX NO. (410) 974-5338

WRITER'S DIRECT DIAL NO. (410) 260-3467
scanedo@oag.state.md.us

December 18, 2008

Leslie D. Gradet, Clerk
Robert C. Murphy Courts of Appeal Building
361 Rowe Boulevard
Annapolis, Maryland 21401

RE: *Margaret McHale v. Edward and Kay Parris*,
Case No. 00374, September Term 2008

Dear Ms. Gradet:

Please accept for filing the attached two copies of Notice of Dismissal in the above referenced case.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Sandra K. Canedo".

Saundra K. Canedo
Assistant Attorney General

cc: Kay Parris, Esq.

DOUGLAS F. GANSLER
Attorney General

KATHERINE WINFREE
Chief Deputy Attorney General

JOHN B. HOWARD, JR.
Deputy Attorney General



MARIANNE E. DISE
Assistant Attorney General
Principal Counsel

SAUNDRA K. CANEDO
Assistant Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CRITICAL AREA COMMISSION FOR THE
CHESAPEAKE AND ATLANTIC COASTAL BAYS

FAX NO. (410) 974-5338

WRITER'S DIRECT DIAL NO. (410) 260-3467
scanedo@oag.state.md.us

December 18, 2008

Sent via regular U.S. Mail

Mr. Greg Bowen, Director
Department of Planning & Zoning for Calvert County
150 Main Street
Prince Frederick, Maryland 20678

RE: Margaret McHale, et al v. Edward Parris, et al,
Court of Special Appeals, Case No. 00374, September Term 2008
Settlement Agreement

Dear Mr. Bowen:

Enclosed please find a copy of the Notice of Dismissal along with the Settlement Agreement reached in the above matter. Please note that pursuant to paragraph 3 on page 4 of the Settlement Agreement, Variance No. 06-3379 has been withdrawn.

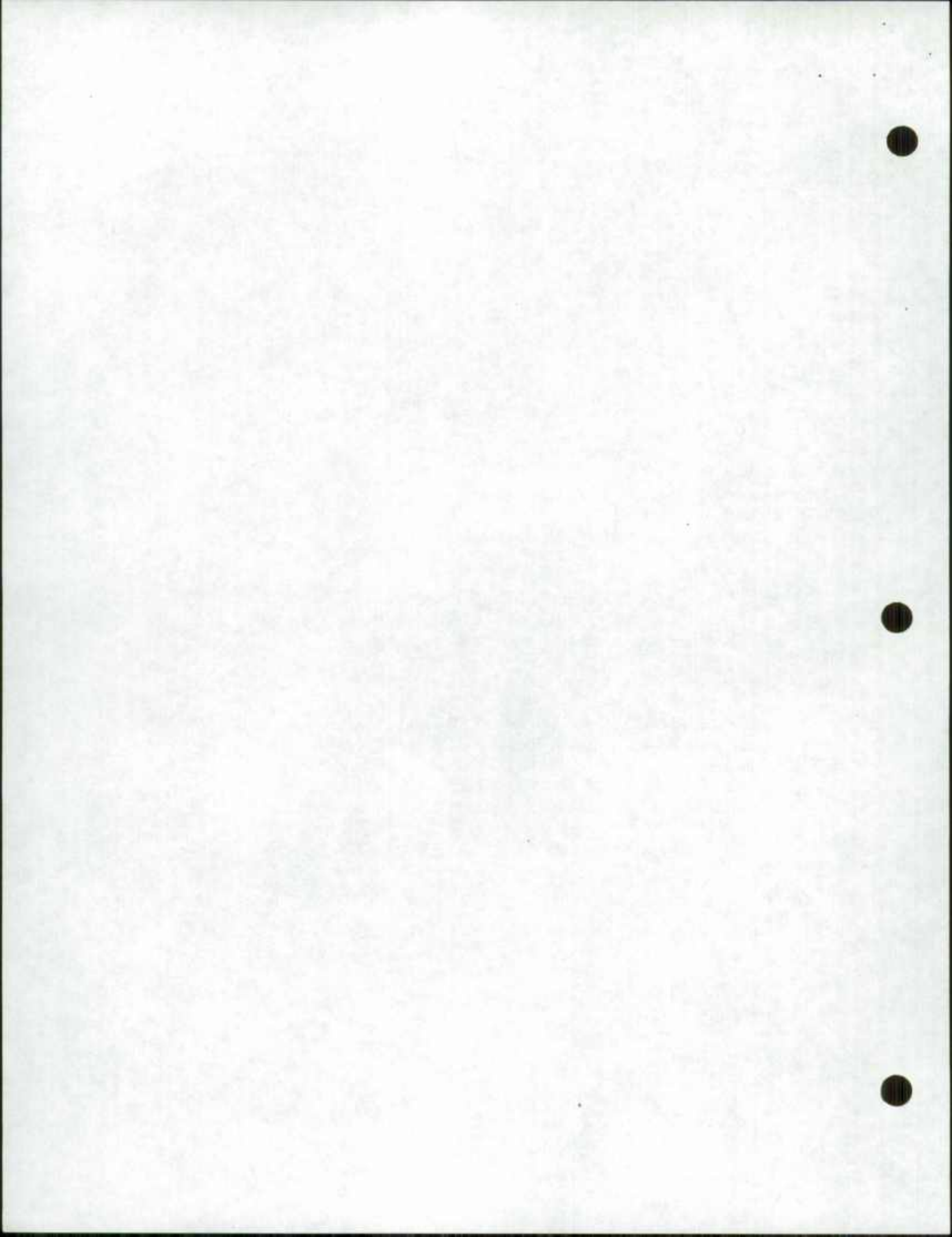
Thank you for your attention and assistance in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Sandra K. Canedo".

Saundra K. Canedo
Assistant Attorney General

cc: Carlton Green, Esq.
Pamela R. Lucas, Esq.



IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

MARGARET MCHALE,

*

Appellant

*

No. 00374

v.

*

September Term, 2008

EDWARD AND KAY PARRIS,

*

Appellee

*

*

*

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LESLIE D. RADETT, CLERK
COURT OF SPECIAL APPEALS

2008 DEC 18 P 2:13

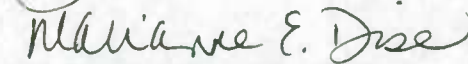
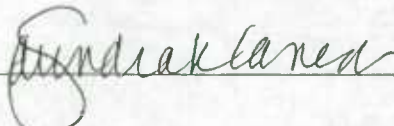
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CLERK'S OFFICE

NOTICE OF DISMISSAL

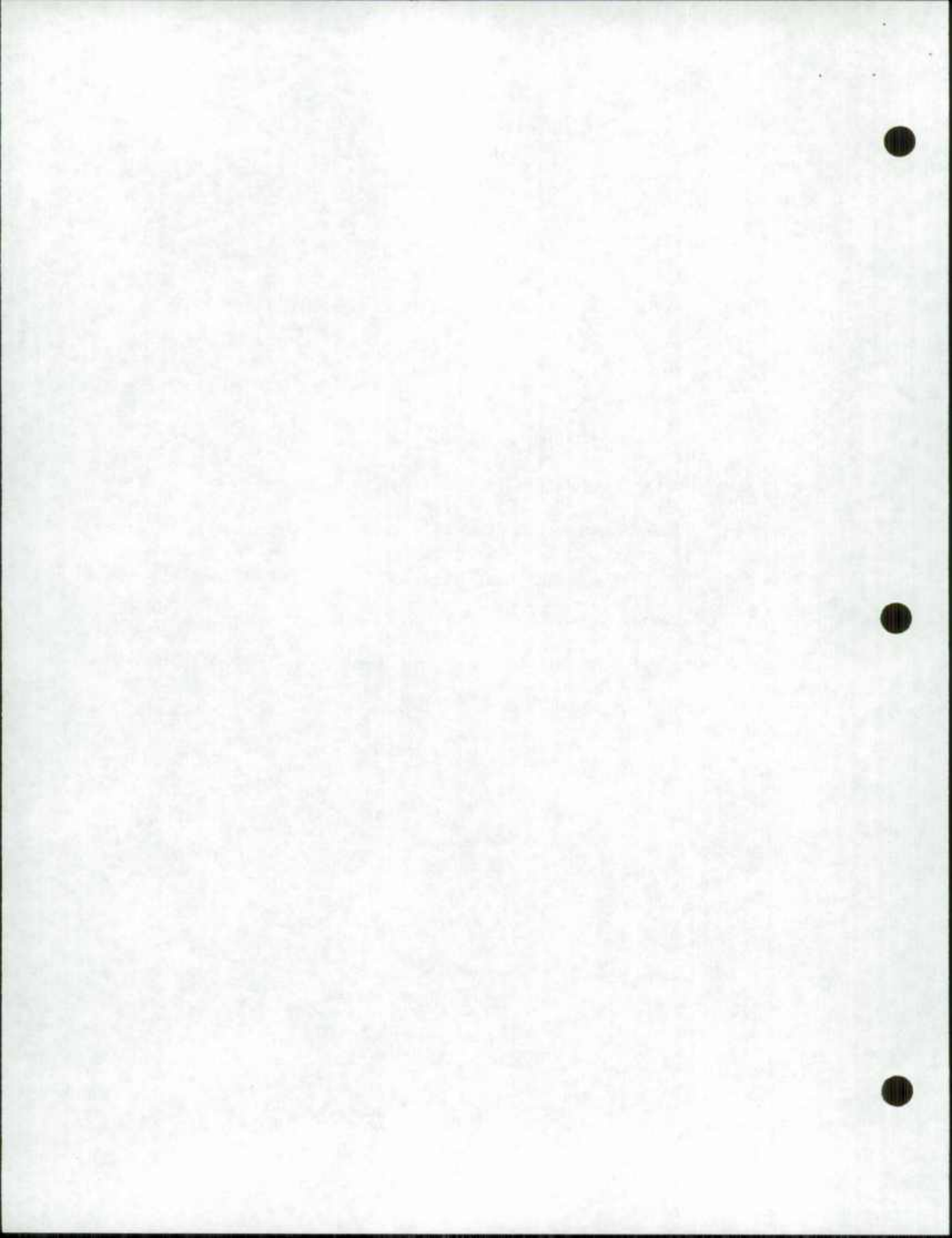
Appellant, Margaret McHale, Chair, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays ("Critical Area Commission") by her attorneys, Douglas F. Gansler, Attorney General of Maryland and Sandra K. Canedo and Marianne E. Dise, Assistant Attorneys General, pursuant to Md. Rule 8-601(a), hereby dismisses the above noted appeal. Settlement has been reached in this matter and the Settlement Agreement is attached hereto as Exhibit 1.

Respectfully submitted,

DOUGLAS F. GANSLER
Attorney General of Maryland

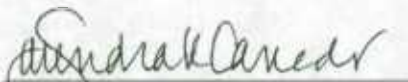


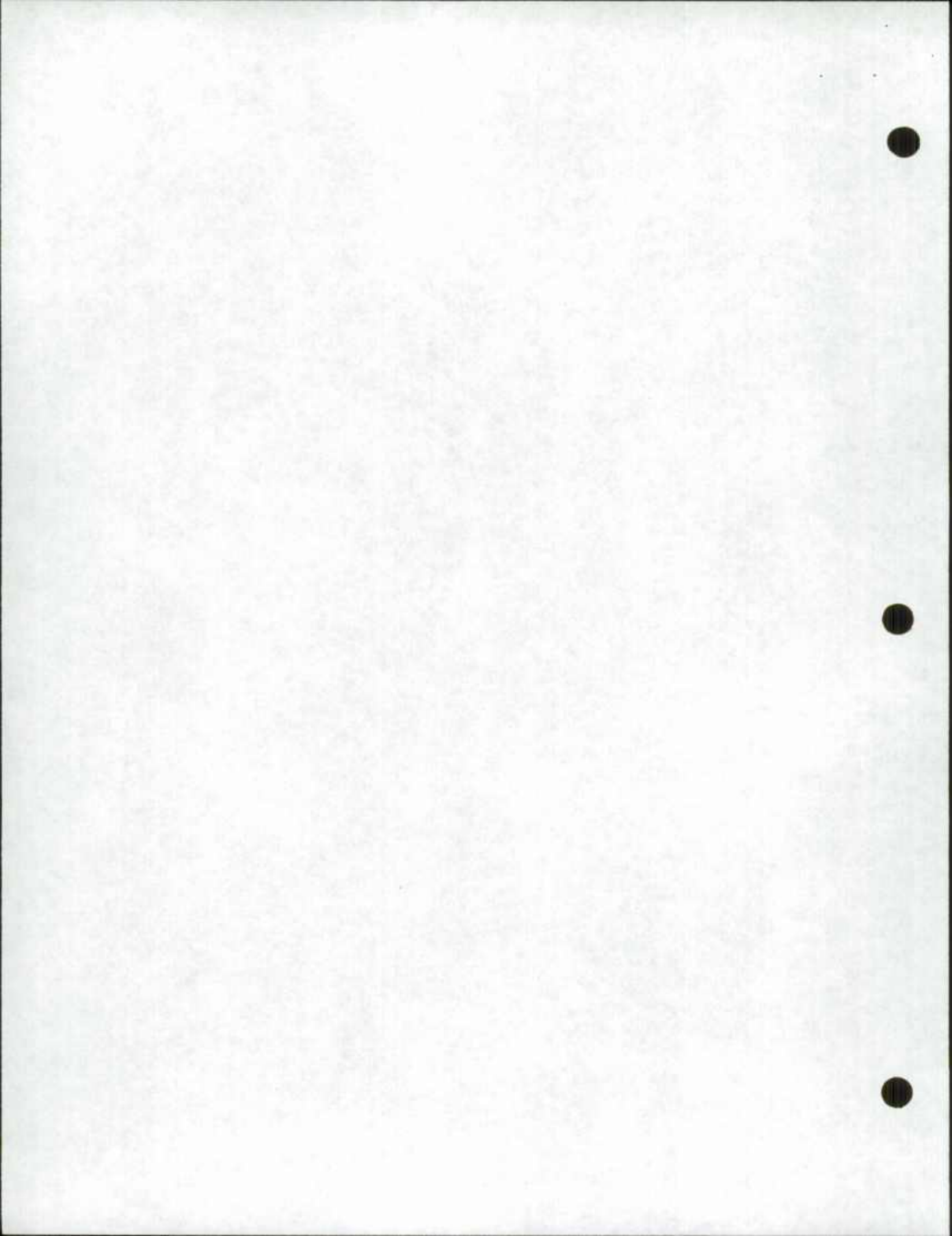
Sandra K. Canedo
Marianne E. Dise
Assistant Attorneys General
Critical Area Commission
1804 West Street, Suite 100
Annapolis, Maryland 21401
(410) 260-3467
Attorneys for Appellant



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of December 2008, I sent a copy of the foregoing Notice of Dismissal via U.S. Mail, postage prepaid to: Kay Parris, Attorney for Appellees, 7770 Swann Lane, Owings, Maryland 20736.


Saundra K. Canedo



SETTLEMENT AGREEMENT

This Settlement Agreement (also referred to as the "Agreement") is made and entered into this 17th day of December, 2008, by and between: (i) the Maryland Critical Area Commission for the Chesapeake and Atlantic Coastal Bays (the "CRITICAL AREA COMMISSION"), by and through MARGARET MCHALE, Chair, and their successors and assigns, agencies, departments, divisions, units, officers, agents, servants, representatives, employees and contractors; and (ii) Edward and Kay Parris, their heirs, executors, administrators, successors, and assigns ("MR. AND MRS. PARRIS").

Definitions

A. The term "PARTIES" shall mean, collectively, CRITICAL AREA COMMISSION and MR. AND MRS. PARRIS.

B. The term "CIVIL ACTION" shall mean the lawsuit captioned *Margaret McHale v. Edward and Kay Parris*, Case No. C-07-1272, Circuit Court for Calvert County, presently on appeal to the Court of Special Appeals of Maryland, where the case is captioned *Margaret McHale v. Edward and Kay Parris*, Case No. 00374, September Term, 2008.

C. The "PROPERTY" shall mean the property referred to in the CIVIL ACTION with an address of 7770 Swan Lane, Owings, Maryland, in Calvert County as shown on a site plan prepared by Wilkerson & Associates, Inc. for MR. AND MRS. PARRIS dated October 2006, a copy of which is attached hereto as Exhibit A and is incorporated herein as a substantive part of this Agreement.

D. The term "RELEASED CLAIMS" includes any and all claims, demands, damages, actions, causes of action, obligations, debts of whatsoever kind or nature, known or unknown, which arise or may arise, or which arose or may have arisen, as a result of, or in any way growing out of, any of the claims or circumstances set forth in the CIVIL ACTION, whether or not they are contemplated at the present time and whether or not they arise following execution of this Agreement.

Recitals

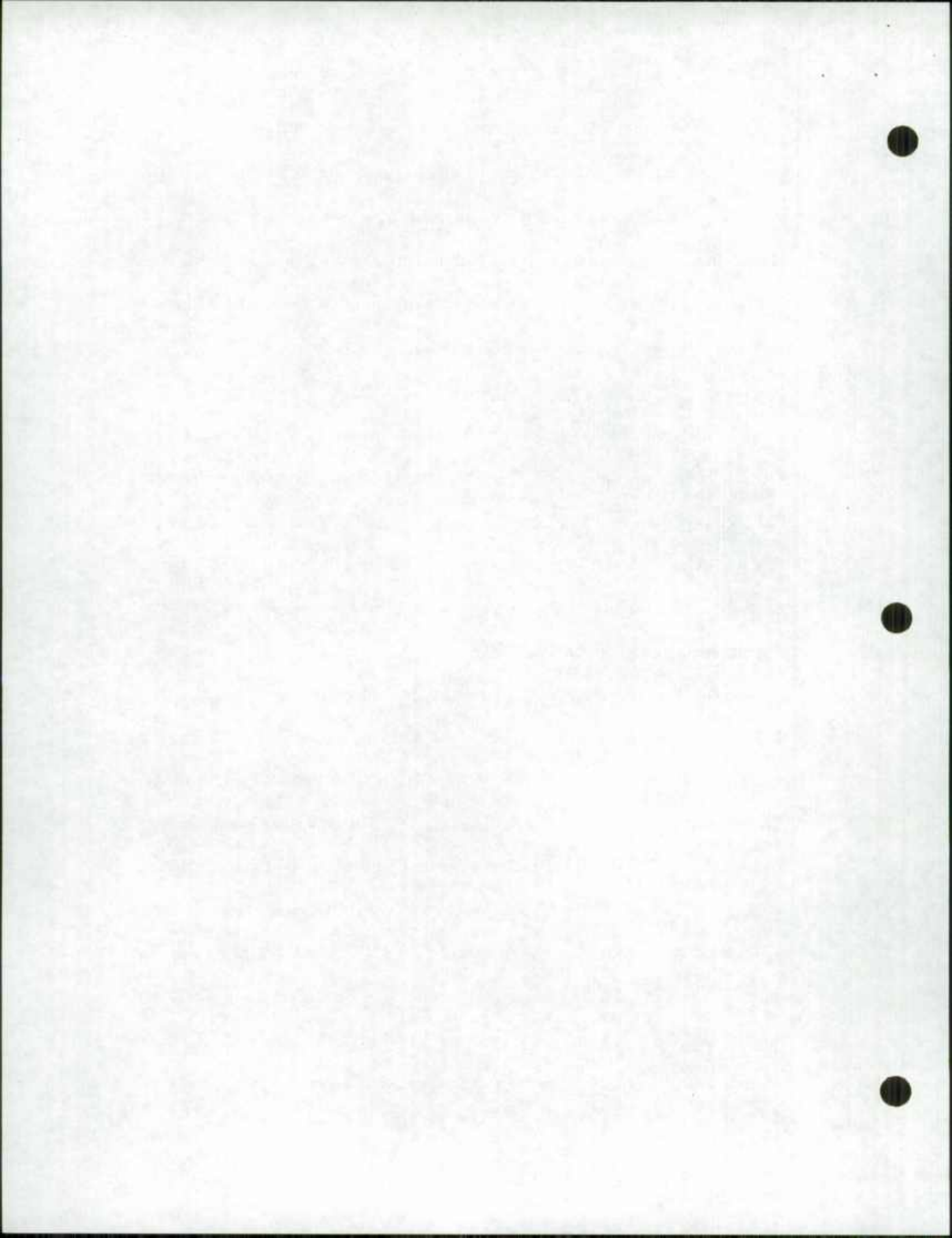
WHEREAS, on January 8, 2007, following a hearing, the Calvert County Board of Appeals (the "Calvert County BOA") granted MR. AND MRS. PARRIS a variance to build a shed/workshop on the PROPERTY in the expanded Critical Area Buffer. The CRITICAL AREA COMMISSION appealed that decision and upon a Consent Motion to Remand, the Circuit Court for Calvert County ordered the case remanded to the Calvert County Board of Appeals on July 6, 2007.

WHEREAS, on August 22, 2007, the Calvert County BOA again granted MR. AND MRS. PARRIS a variance to build a shed/workshop on the PROPERTY in the expanded Critical Area Buffer. The CRITICAL AREA COMMISSION filed the CIVIL ACTION challenging the legality of the August 22, 2007, Calvert County BOA decision.

WHEREAS, on March 12, 2008, the Circuit Court for Calvert County issued an ORDER in the CIVIL ACTION affirming the Calvert County BOA decision.

WHEREAS, on April 11, 2008, the CRITICAL AREA COMMISSION noted this appeal to the Court of Special Appeals.

WHEREAS, during the pendency of the CIVIL ACTION, the PARTIES have engaged in detailed discussions regarding the most environmentally responsible manner



to accommodate the desire of MR. AND MRS. PARRIS for additional use of the PROPERTY in the expanded Buffer while at the same time address the purposes, goals and intent of the Critical Area law.

WHEREAS, MR. AND MRS. PARRIS have proposed a Development Plan (the "Plan"), shown on Exhibit B, which identifies the location of a new greenhouse, with removal of the existing greenhouse, as well as addressing erosion control and providing mitigation for the development activity at a ratio of 3:1.

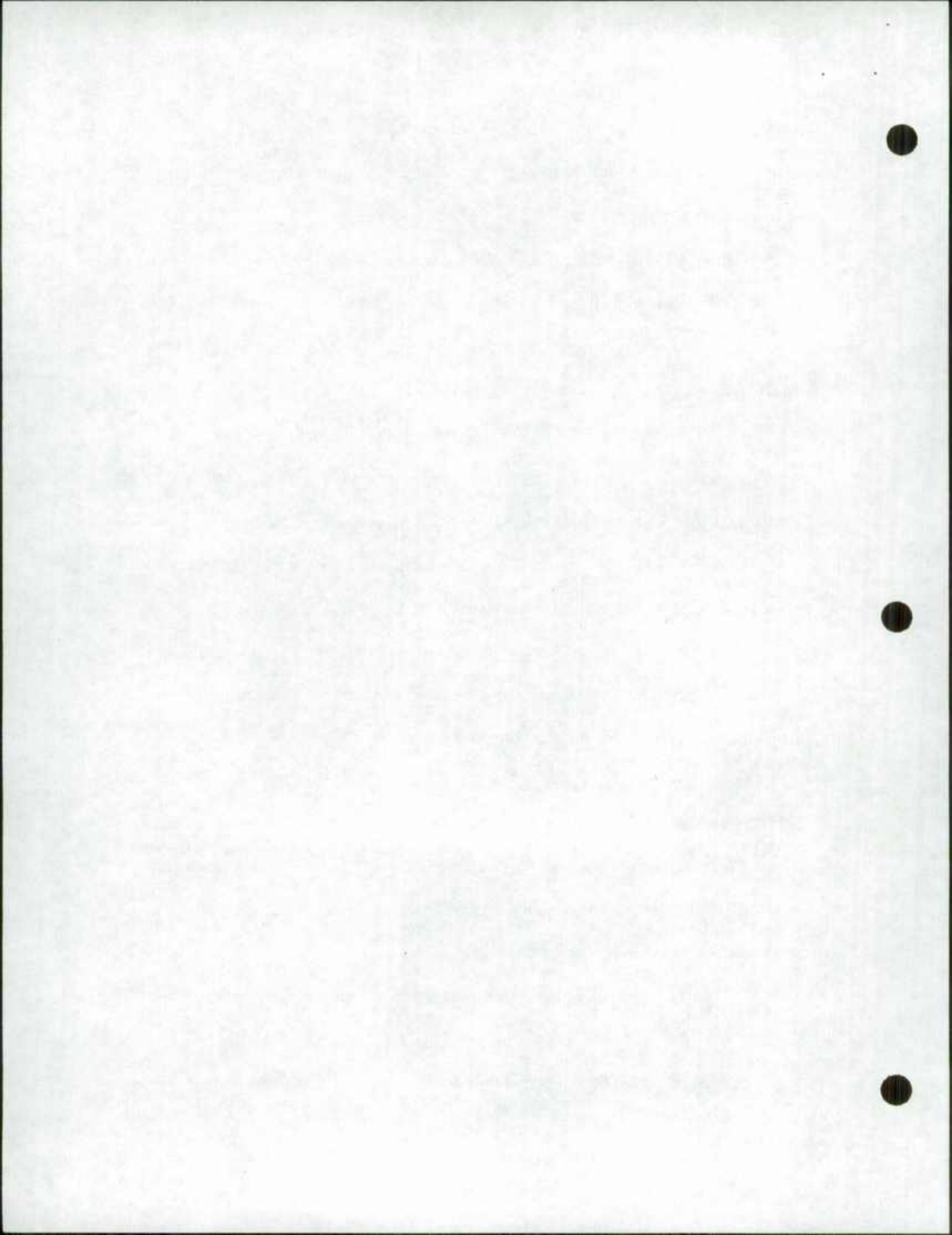
WHEREAS, the CRITICAL AREA COMMISSION has entered this Agreement after a determination that this Plan meets with overall purposes, goals and intent of the Critical Area program by resulting in less adverse impact to the expanded Buffer.

NOW THEREFORE, in consideration of the mutual promises and premises hereunder, and other good and valuable consideration, the PARTIES agree as follows:

Agreement Provisions

1. **Recitals.** The Recitals above are incorporated into these Agreement Provisions by reference, and made a substantive part thereof.

2. **Critical Area Commission Action.** Based upon the Chair of the CRITICAL AREA COMMISSION'S determination that this Plan meets the applicable Critical Area purposes and goals, and expressly recognizing that the CRITICAL AREA COMMISSION is under no obligation pursuant to this Agreement to reach this determination, the Chair, by delegated authority agrees to:
 - (A) file notice in the CIVIL ACTION of dismissal with prejudice; and
 - (B) approve the Plan proposed by MR. AND MRS. PARRIS as detailed in Exhibit B. For purposes of clarity, Exhibit B is intended to illustrate,



among other details specified thereon, the following: (1) the location of the new 13' x 16' greenhouse and the removal of the existing greenhouse; (2) stormwater management and erosion control measures around the new greenhouse structure; and (3) mitigation at a ratio of 3:1, or approximately 624 square feet of plantings in the area of the new greenhouse structure.

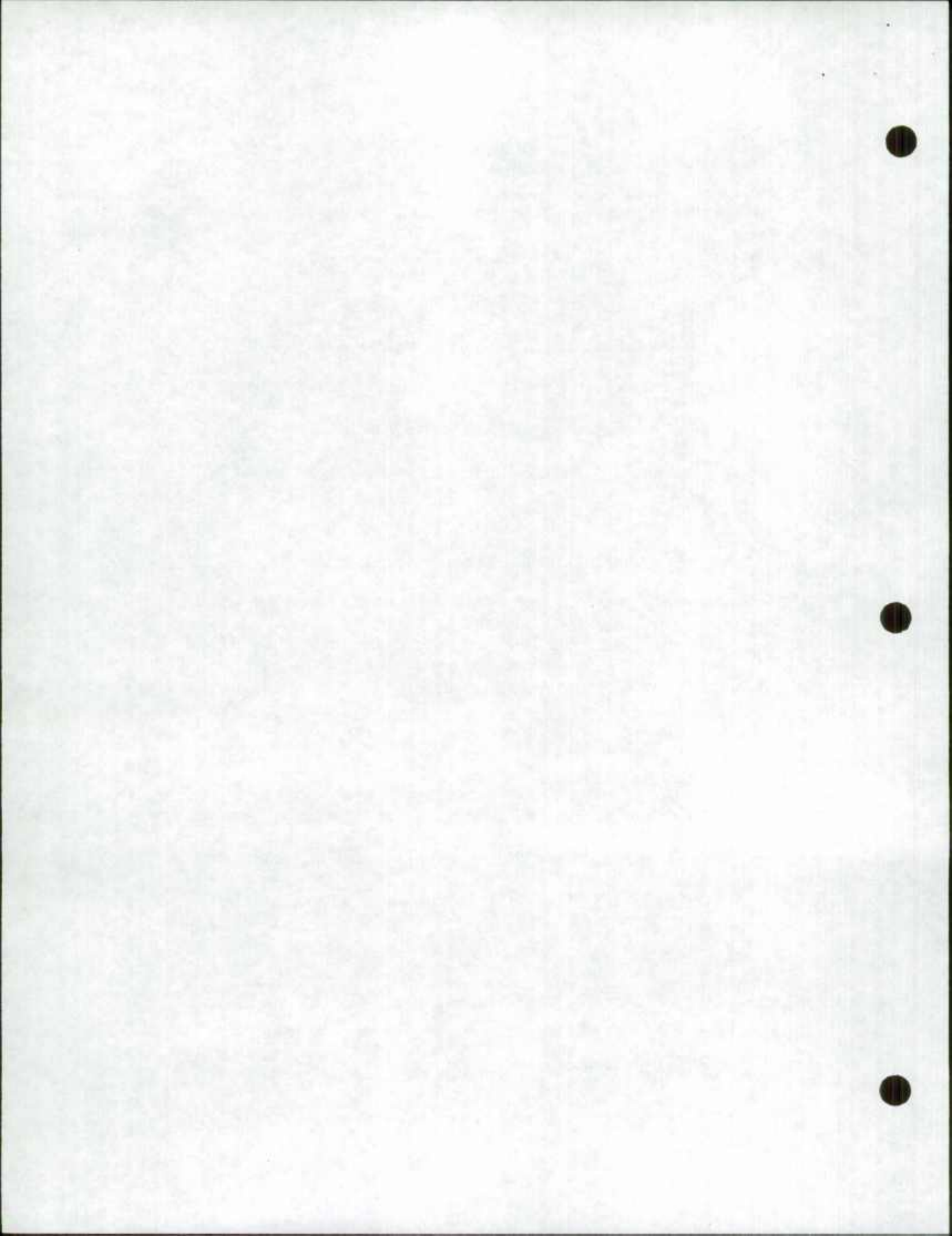
3. **Mr. and Mrs. Parris' Action.** MR. AND MRS. PARRIS shall (1) remove the existing greenhouse (as depicted on Exhibit B); (2) mitigate according to the Plan; and (3) withdraw the underlying variance and present to the Calvert County Department of Planning and Zoning Office a copy of this signed Agreement for their files.

4. **Calvert County Planning and Zoning Office Action.** It is the PARTIES' understanding that the Calvert County Department of Planning and Zoning Office shall accept this Agreement and issue any necessary permits to MR. AND MRS. PARRIS for their new greenhouse structure, subject to compliance with the Calvert County building code.

5. **General Provisions.**

(a) **Construction.** Unless the context requires otherwise, singular nouns and pronouns in this Agreement shall be deemed to include the plural, and pronouns of one gender shall be deemed to include the equivalent pronoun of the other gender.

(b) **Merger and Integration.** This Agreement constitutes the entire agreement between the PARTIES and supersedes all other prior oral or written agreements between the PARTIES. It is expressly understood that no amendment,



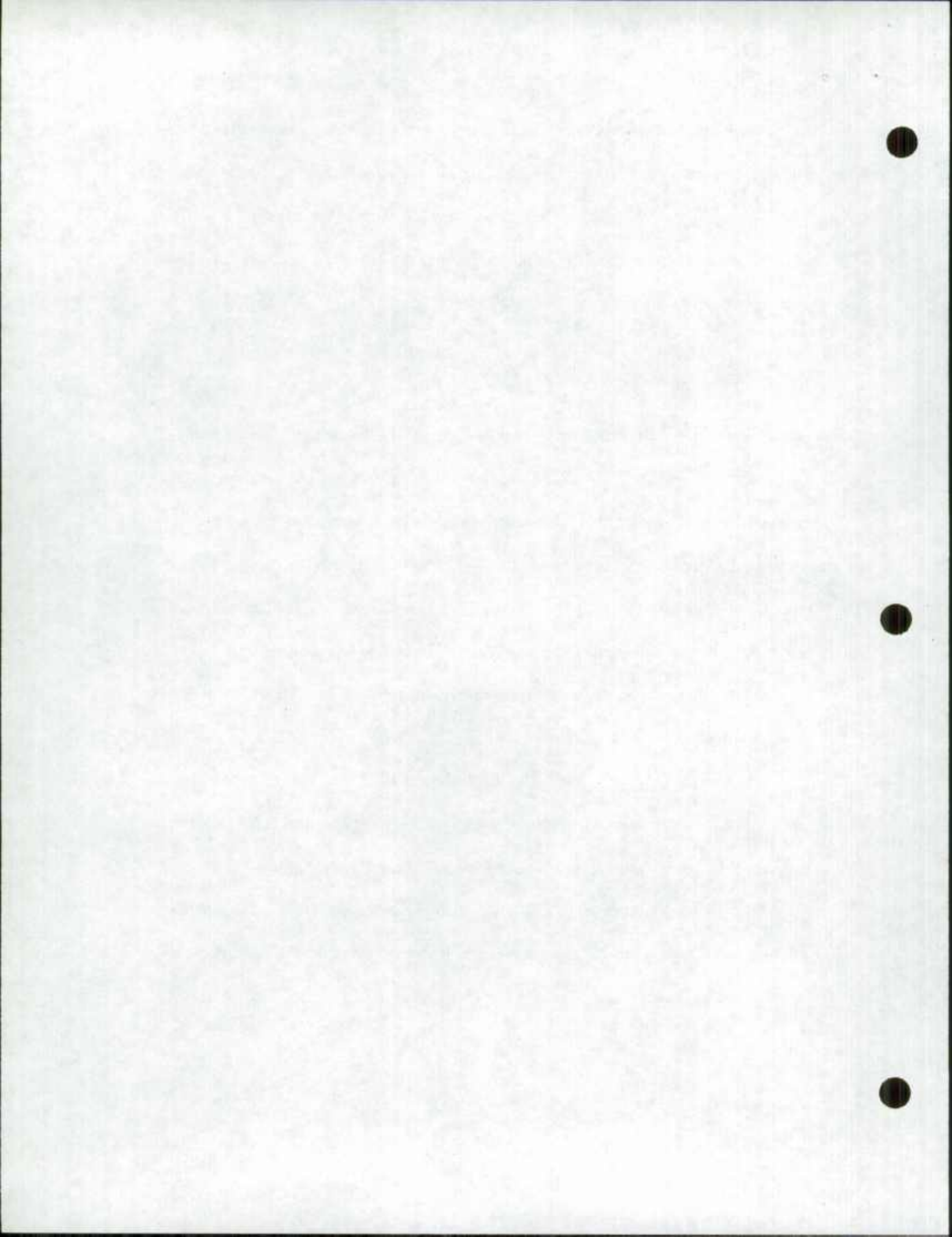
deletion, addition, modification, or waiver of any provision of this Agreement shall be binding or enforceable unless in writing and signed by all PARTIES.

(c) Severability. Each and every provision of this agreement is severable. If any term or provision is held to be invalid, void or unenforceable by a court of competent jurisdiction for any reason whatsoever, such ruling shall not affect the validity of the remainder of the Agreement.

(d) Meaning and Effect. This Agreement has been negotiated by the PARTIES through their respective counsel. MRS. PARRIS is a retired attorney with active bar membership. The PARTIES attest, by their respective signatures below that they understand the meaning of this document and the consequences of signing it and acknowledge that each has entered into this Agreement freely and after the opportunity to consult with counsel. The PARTIES accept this Agreement as their free and voluntary act, without duress, and intend to be legally bound by it. This Agreement is made without any reliance upon any statements or representations by the PARTIES or their representative not contained herein.

(e) Costs. The PARTIES shall bear all of their own costs and shall be responsible for all of their own attorney's fees in connection with the CIVIL ACTION and in connection with the negotiation, execution, and performance of this Agreement.

(f) Applicable Law. The performance, construction and enforcement of this Agreement and any documents executed in connection with this Agreement shall be governed by the laws of the State of Maryland, without regard to conflicts of law.



(g) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties have knowingly and voluntarily signed and sealed this Settlement Agreement.

STATE OF MARYLAND, CRITICAL AREA COMMISSION FOR THE
CHESAPEAKE AND ATLANTIC COASTAL BAYS:

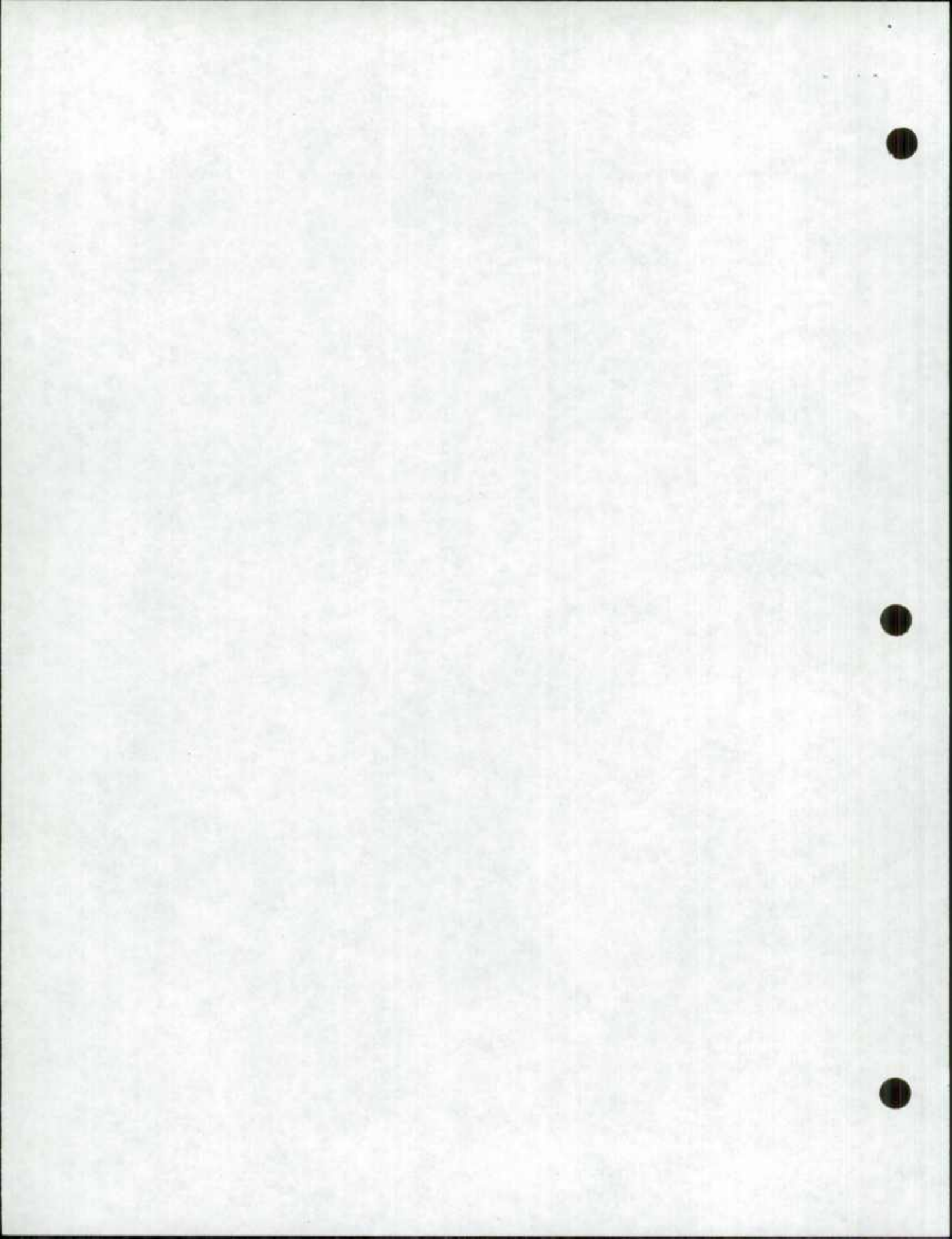
By: _____ (SEAL) _____
Margaret McHale, Chair Date

Witness

EDWARD AND KAY PARRIS:

Edward P. Parris (SEAL) 17 December 2008
Date

Kay L. Parris (SEAL) December 17, 2008
Date



(g) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties have knowingly and voluntarily signed and sealed this Settlement Agreement.

STATE OF MARYLAND, CRITICAL AREA COMMISSION FOR THE
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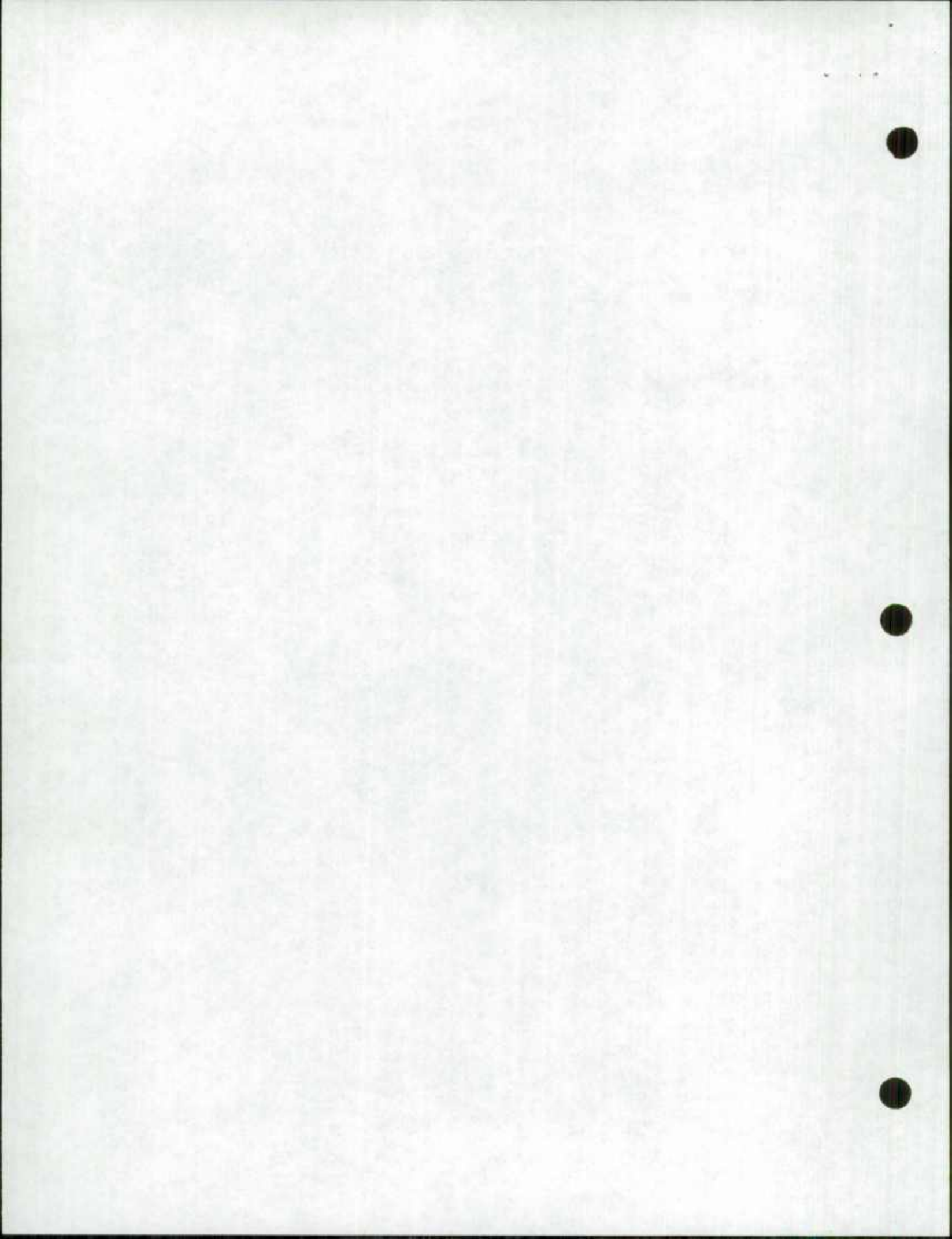
By: Margaret McHale (SEAL) 12/17/08
Margaret McHale, Chair Date

Sandra K. [Signature]
Witness

EDWARD AND KAY PARRIS:

_____ (SEAL) _____
Date

_____ (SEAL) _____
Date



DOUGLAS F. GANSLER
Attorney General

KATHERINE WINFREE
Chief Deputy Attorney General

JOHN B. HOWARD, JR.
Deputy Attorney General



MARIANNE E. DISE
Assistant Attorney General
Principal Counsel

SAUNDRA K. CANEDO
Assistant Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CRITICAL AREA COMMISSION FOR THE
CHESAPEAKE AND ATLANTIC COASTAL BAYS

FAX NO. (410) 974-5338

WRITER'S DIRECT DIAL NO. (410) 260-3467
scanedo@oag.state.md.us

December 18, 2008

Sent via regular U.S. Mail

Mr. Greg Bowen, Director
Department of Planning & Zoning for Calvert County
150 Main Street
Prince Frederick, Maryland 20678

RE: Margaret McHale, et al v. Edward Parris, et al,
Court of Special Appeals, Case No. 00374, September Term 2008
Settlement Agreement

Dear Mr. Bowen:

Enclosed please find a copy of the Notice of Dismissal along with the Settlement Agreement reached in the above matter. Please note that pursuant to paragraph 3 on page 4 of the Settlement Agreement, Variance No. 06-3379 has been withdrawn.

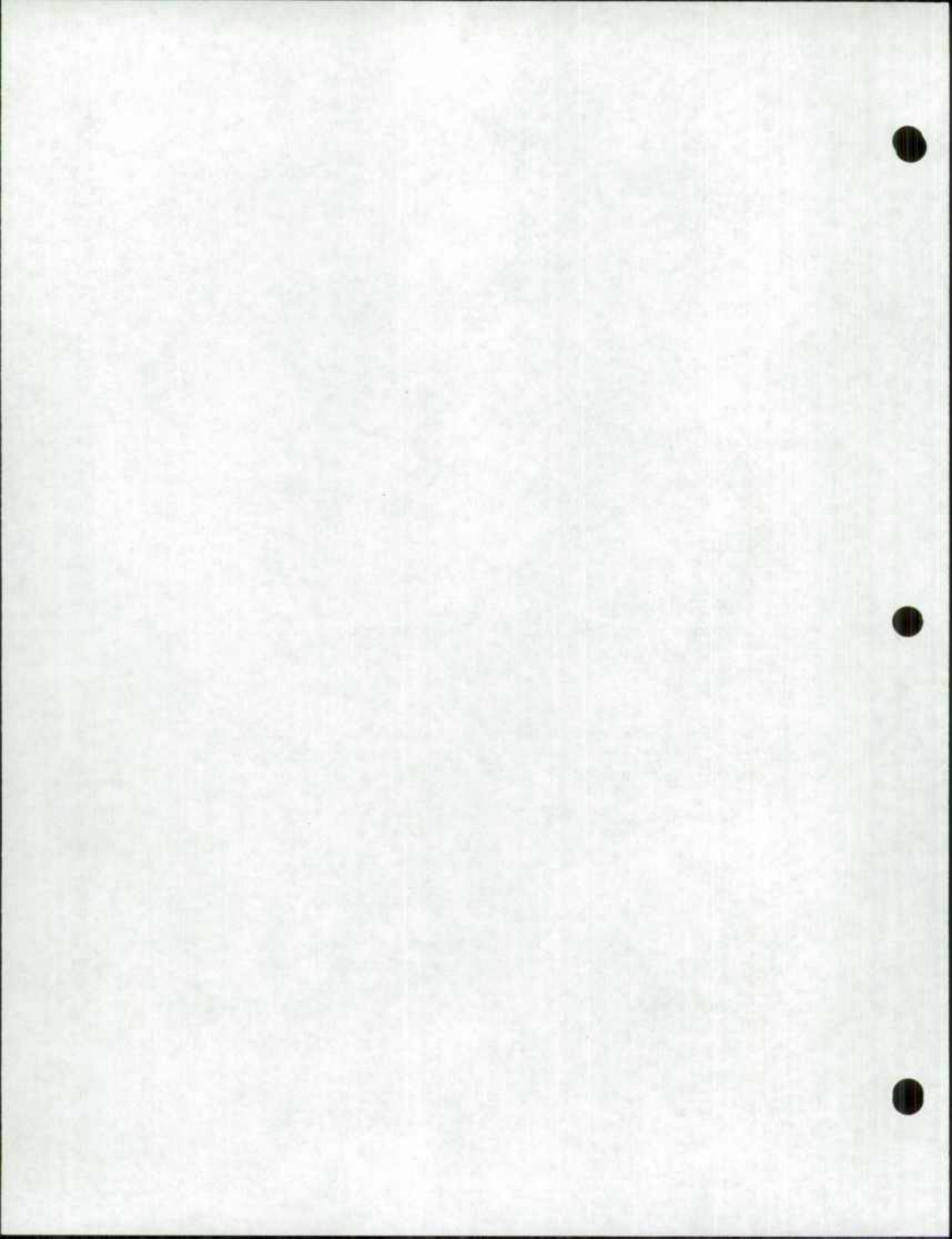
Thank you for your attention and assistance in this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sandra K. Canedo".

Saundra K. Canedo
Assistant Attorney General

cc: Carlton Green, Esq.
Pamela R. Lucas, Esq.



DOUGLAS F. GANSLER
Attorney General

KATHERINE WINFREE
Chief Deputy Attorney General

JOHN B. HOWARD, JR.
Deputy Attorney General



MARIANNE E. DISE
Assistant Attorney General
Principal Counsel

SAUNDRA K. CANEDO
Assistant Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CRITICAL AREA COMMISSION FOR THE
CHESAPEAKE AND ATLANTIC COASTAL BAYS

FAX NO. (410) 974-5338

WRITER'S DIRECT DIAL NO. (410) 260-3467
seanedo@oag.state.md.us

December 18, 2008

Sent via U.S. mail and facsimile

Bruce C. Armistead, Esq.
Carmen L. Farmer, Esq.
Armistead Griswold Lee & Rust
114 Bay Street, Building C
Easton, Maryland 21601

FOR PURPOSES OF SETTLEMENT DISCUSSIONS ONLY

RE: Margaret McHale et al v. R. Phillip Herget et al
Circuit Court for Talbot County, No. 20-C-08-006437

Dear Mr. Armistead and Ms. Farmer:

As discussed in our phone conversation on Tuesday, below are comments my office has with regard to the Buffer Planting Concept for the Herget property supplied by Lane Engineering, Inc., with their letter dated November 25, 2008.

Generally, the proposed plan provides Buffer mitigation plantings at a ratio of 3:1 for 1,110 square feet of Buffer impacts for a total requirement of 3,330 square feet of mitigation planting. The plan also proposes 670 square feet of woody shrub and perennial plants to capture stormwater run-off. However, this plan is not acceptable. Below are comments that address the three specific deficiencies in the proposed plan:

(1) A significant portion of the proposed Buffer mitigation is located on the portion of the property that was the subject of a lot line revision request by the applicant and will not continue to be a part of the property that is in need of mitigation. In our view, this does not address the most significant issue which is disturbance in the Buffer since the majority of mitigation would be located on a different property from where the disturbance occurred. The proposed mitigation plantings must be located on Tax Parcel 150, outside of the visual easement shown on the site plan provided on November 25, 2008, along the Buffer portion of the site that is located directly in front of the dwelling unit.

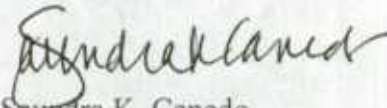
(2) The proposed plan indicates that 3,330 square feet of Buffer mitigation will be

provided, however, using the standards for mitigation credits found in the Commission's Guide for Forest Mitigation on the Critical Area Commission's website, these plantings only equate to 2,300 square feet of mitigation. Thus, the plan is deficient by 1,000 square feet. Please provide a revised plan showing the additional plantings. The mitigation planting in the Buffer should consist of three-tiered vegetation (COMAR 27.01.09.01 and §190-93 of the Talbot County Code). The Commission staff is available to assist you or your consultant to identify appropriate native species for the planting.

(3) The proposed offset plantings for stormwater management do not provide meaningful water quality benefits for this site. Because the offset plantings are only planted near 'pervious' structures that would not be contributing to stormwater run-off, the proposal does not contribute to a meaningful enhancement of water quality on the site. In our view, stormwater management can be better achieved by retrofitting the house for stormwater management by using methods such as rain gardens, French drains, dry wells and rain barrels.

Please discuss the above with your client and let me know if you have any questions.
Thank you.

Sincerely,



Sandra K. Canedo
Assistant Attorney General

cc: Marianne E. Dise, Principal Counsel
Mike Pullen, Talbot County Counsel

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CRITICAL AREA COMMISSION
FOR THE
CHESAPEAKE AND ATLANTIC COASTAL BAYS
1804 West Street, Suite 100
Annapolis, Maryland 21401
(410) 260-3460

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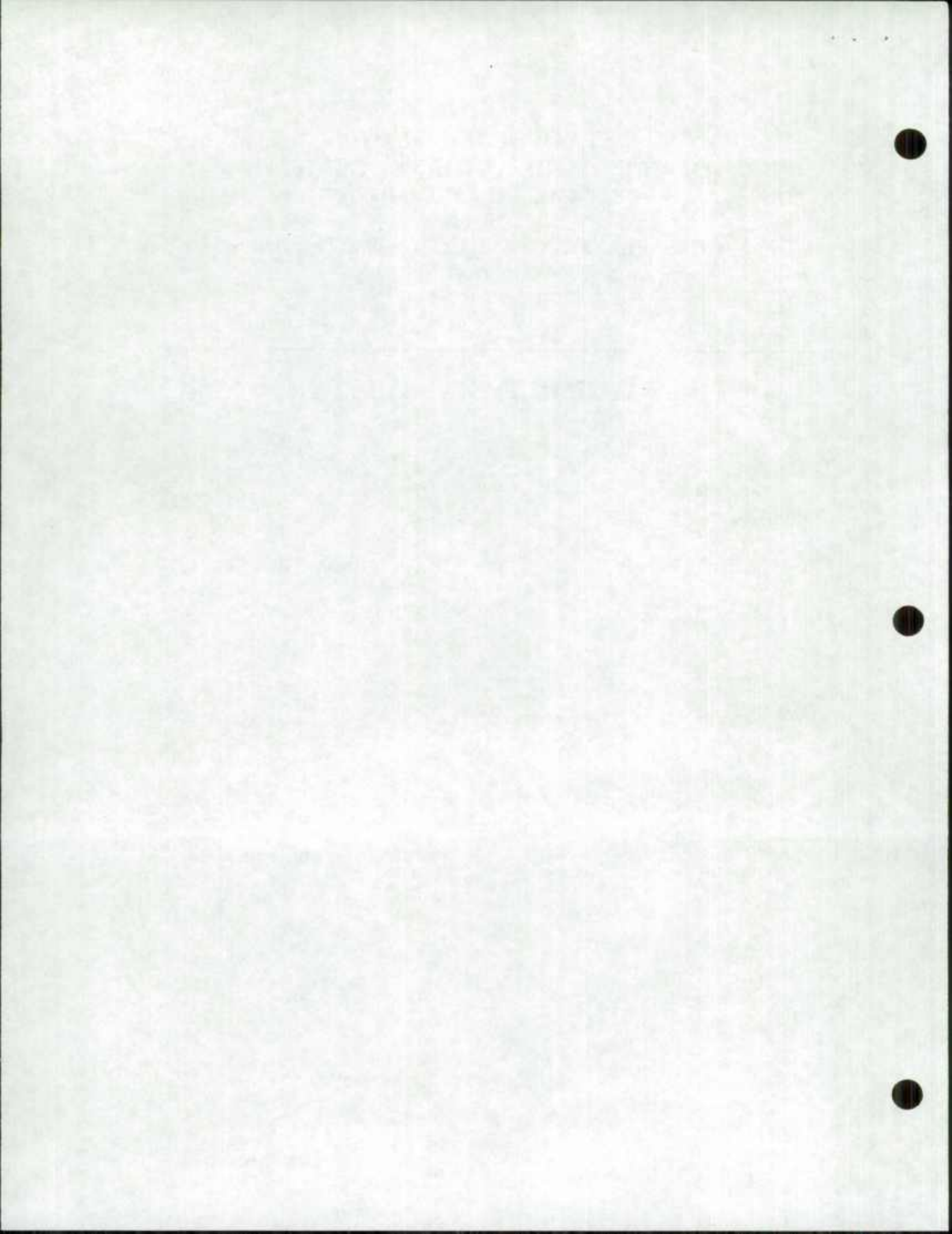
TO: *Bruce C. Armistead* FAX: *410-819-8966*
Carmen L. Farmer, Esq.

COMPANY: PHONE: *410-819-8989*

FROM: Sandra Canedo PHONE: 410 260 3467

DATE: *12/18/08* No. of Pages: *23*
(Including Cover)

COMMENTS:



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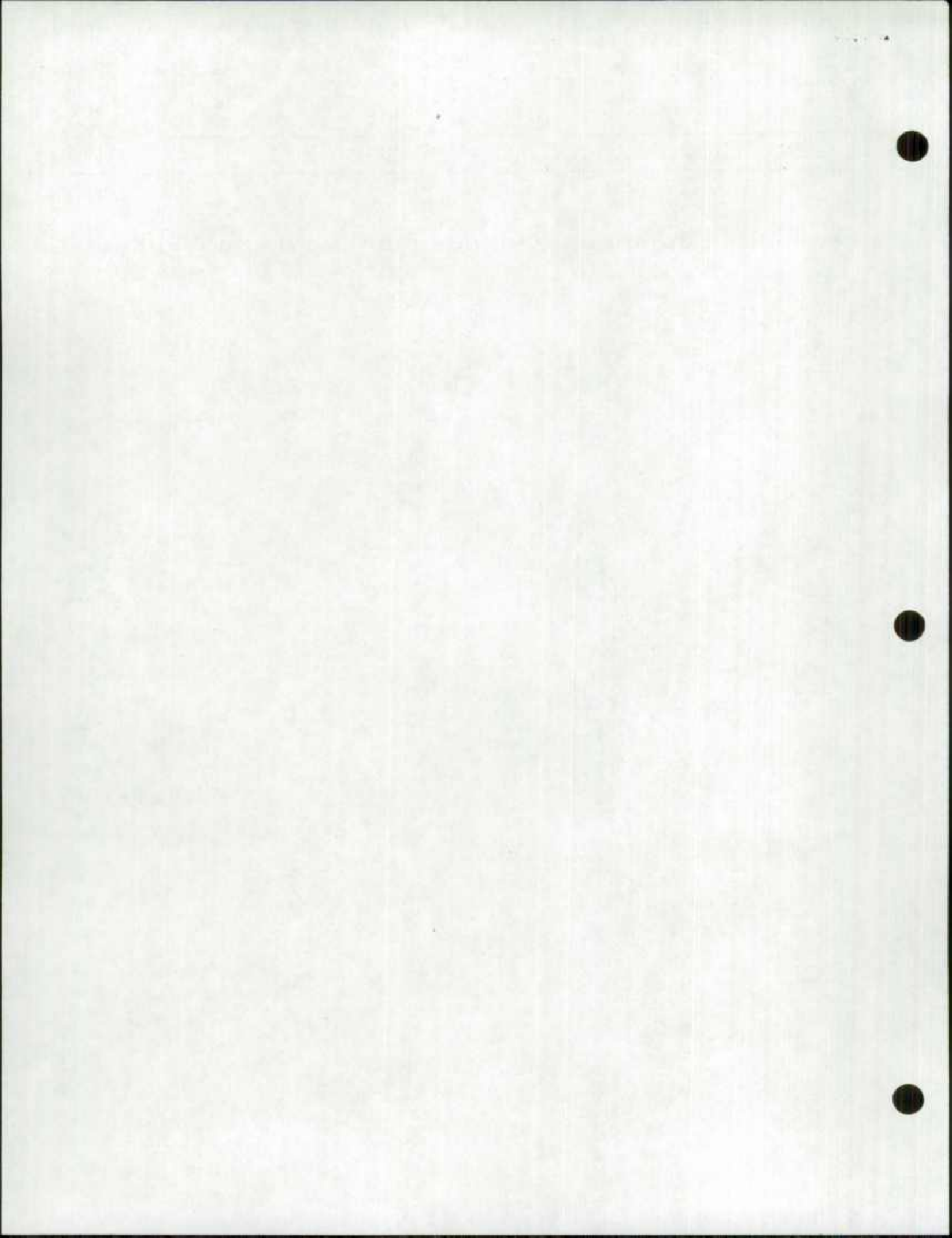
TOTAL : 58S PAGES: 3

COMMENTS:

DATE: 12/18/08

No. of Pages:
(Including Cover)

23



DOUGLAS F. GANSLER
Attorney General

KATHERINE WINFREE
Chief Deputy Attorney General

JOHN B. HOWARD, JR.
Deputy Attorney General



MARIANNE E. DISE
Assistant Attorney General
Principal Counsel

SAUNDRA K. CANEDO
Assistant Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CRITICAL AREA COMMISSION FOR THE
CHESAPEAKE AND ATLANTIC COASTAL BAYS

FAX NO. (410) 974-5338

WRITER'S DIRECT DIAL NO. (410) 260-3467
scanedo@oag.state.md.us

December 22, 2008

Via regular U.S. Postal Delivery

Ms. Pam Helie
Clerk, Calvert County Board of Appeals
150 Main Street
Prince Frederick, Maryland 20678

RE: Petition of Margaret McHale, Civil Action No. 04-C-08-000076 AA,
Variance Case No.:07-3476

Dear Ms. Helie:

Enclosed is a copy of the Court Order in the above referenced case. Please send me a copy of the Board of Appeals Order when they enter an order denying the variance pursuant to this Court Order.

Thank you for your assistance and attention to this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sandra K. Canedo".

Saundra K. Canedo
Assistant Attorney General

Encl.

cc: Greg Bowen, Director, Department of Planning & Zoning
Pamela R. Lucas, Associate County Attorney

IN THE CIRCUIT COURT OF MARYLAND
FOR CALVERT COUNTY

PETITION OF: *
MARGARET MCHALE, *
Chair, Critical Area Commission for *
the Chesapeake and Atlantic Coastal Bays *

FOR JUDICIAL REVIEW OF *
THE DECISION OF: * Civil Action No.: 04-C-08-000076 AA
THE CALVERT COUNTY BOARD *
OF APPEALS *

IN THE CASE OF: *
No. 07-3476 *
ELLA WILLIAMS *

* * * * *

ORDER

Upon consideration of Petitioner, Margaret McHale's, Petition for Judicial
Review and Memorandum in support thereof, it is this 11th day of December,
2008, ORDERED that:

The December 21, 2007 Decision of the Calvert County Board of Appeals is
hereby reversed; and

The case shall be remanded back to the Calvert County Board of Appeals with
instructions to enter an order denying the variance; and

For such other and further relief as the nature of her cause requires.

FILED COPY FILED

Gathry P. Smith

Clerk of Circuit Court

W. J. ... 741
JUDGE

2008 DEC 12 AM 8:36

CALVERT COUNTY, CLERK
CIRCUIT COURT

DOUGLAS F. GANSLER
Attorney General

KATHERINE WINFREE
Chief Deputy Attorney General

JOHN B. HOWARD, JR.
Deputy Attorney General



MARIANNE E. DISE
Assistant Attorney General
Principal Counsel

SAUNDRA K. CANEDO
Assistant Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CRITICAL AREA COMMISSION FOR THE
CHESAPEAKE AND ATLANTIC COASTAL BAYS

FAX NO. (410) 974-5338

WRITER'S DIRECT DIAL NO. (410) 260-3467
scanedo@oag.state.md.us

December 29, 2008

Austin Schlick, Chief
Civil Litigation Division
200 Saint Paul Place
Baltimore, Maryland 21202

RE: *Margaret McHale v. Edward and Kay Parris*,
Case No. 00374, September Term 2008

Dear Austin:

Attached is a copy of the Mandate from the Court of Special Appeals for the above-referenced case. Thank you for your assistance with the settlement agreement.

Sincerely,

A handwritten signature in cursive script that reads "Sandra K. Canedo".

Saundra K. Canedo
Assistant Attorney General

cc: Bonnie Ranaudo



MANDATE

Court of Special Appeals

No. 00374, September Term, 2008

Critical Area Commission for the
Chesapeake and Atlantic Coastal Bays
vs.
Edward Parris et ux.

JUDGMENT: December 18, 2008: Notice of Dismissal of appeal
filed by counsel for the appellant. Appeal
dismissed.

December 19, 2008: Mandate issued.

From the Circuit Court: for **CALVERT COUNTY**
04C070001272

STATEMENT OF COSTS:

<u>Appellant(s):</u>		
Lower Court Costs-	60.00
Filing Fee of Appellant-	50.00

DEC 23 2008

CRITICAL AREA COMMISSION

STATE OF MARYLAND, Sct:

I do hereby certify that the foregoing is truly taken from the records and proceedings of the said Court of Special Appeals. In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Special Appeals, this **nineteenth** day of **December** **2008**

Leslie D. Shadet
Clerk of the Court of Special Appeals

COSTS SHOWN ON THIS MANDATE ARE TO BE SETTLED BETWEEN COUNSEL AND NOT THROUGH THIS OFFICE.

