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/

January 2, 2008

Amy Moredock
Department of Planning and Zoning
Kent County Government Center
400 High Street
Chestertown, Maryland 21620

Re: Turner's Creek
Consistency Report

Dear Ms. Moredock:

Thank you for forwarding the above-referenced project to this office per the requirements of COMAR 27.02.02 - State and Local Agency Actions Resulting in Development of Local Significance on Private Lands or Lands Owned by Local Jurisdictions.
The County proposes to integrate a nonstructural shoreline protection project ("living shoreline") with a Buffer Management Plan and Afforestation Plan, a rain garden, and rain barrel demonstration site. The project is being funded through a Local Government Assistance for Improving Shoreline Management grant from the Coastal Zone Management Program. The area of the site is 147 acres, and is located in a Resource Conservation Area (RCA). After reviewing the consistency report, this office agrees that the project is generally consistent with the Kent County Critical Area Program for the reasons outlined below.

1. Approximately 48.25 acres (33%) of the site is covered with existing wooded vegetation; 1,000 square feet of wooded vegetation will be cleared, and afforestation for this clearing will be provided onsite.
2. Mitigation for any Buffer disturbance will be provided at a 1:1 ratio.
3. Existing impervious surface onsite is .416 acres (.2%). No new impervious surface will be added.
4. Approximately 340 square feet of area will be disturbed for two rain gardens.
5. The project is currently under review for Stormwater Management and Sediment and Erosion Control Plans.
6. The project is water dependent.
7. The project will impact tidal wetlands.

However, a final consistency determination cannot be made until this office receives the following information:

1. The property is located in a Colonial Nesting Waterbird site, an endangered/threatened species site, an Anadromous Fish Propagation Water site, and a Waterfowl Staging Area. Please have the applicant contact the Department of Natural Resources Wildlife and Heritage Service to determine which construction and time of-year restrictions will apply to this project.
2. Please forward a copy of the MDE Tidal Wetlands Impact Permit to this office.
3. Please provide the amount of Buffer disturbance (in square feet) that will occur as a result of this project.
4. Please submit a copy of a detailed Buffer Management Plan for Commission staff review and approval.

Thank you again for your cooperation and assistance with reviewing this project. If you have any questions, please call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resources Planner

cc: file

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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January 3, 2008

Ms. Dawnn McCleary
Maryland Transit Administration
6 St. Paul St.
Baltimore, MD 21202-1614

Re: MTA Mobility Bus Facility
Extension of Critical Area Forest Protection

Dear Ms. McCleary:

Thank you for forwarding the above referenced project to this office, in which the Maryland Transit Administration (MTA) plans to redevelop three individual parcels with an administration and maintenance facility for their Mobility Division. The property is 12.065 acres in size; approximately 10.254 acres (81% of the total area) are located in the Critical Area. Two existing buildings will be razed, and an administration and maintenance building will be constructed. The remainder of the property will be utilized for parking, bus storage, fueling areas, and stormwater management.

It is our understanding that MTA wishes to extend the Critical Area Forest Protection Standards to cover the entire project for forest conservation protection, which is permitted under Article 5-1602(11) (c) of Title 8, Subtitle 16, Forest Conservation. Commission staff has reviewed this request and has no objection to exempting the non-Critical Area portion of the site from Forest Conservation Act requirements and extending Critical Area Forest Protection measures across the entire site.

Under COMAR 27.02.05.03A, Development in the Critical Area Resulting From State and Local Agency Programs, areas of intense development are defined as "areas where residential, commercial, institutional, intense recreational, or industrial developed land uses predominate, and where relatively little natural habitat occurs." Upon visiting the site, and based on the City of Baltimore's designation of this property as IDA, Commission staff would designate this property as an area of intense development. Consequently, the property would be subject to the forest clearing regulations found under COMAR 27.02.05.03B(2)(g), which state that, for the cutting or clearing of trees and developed woodland that is associated with a current or planned development

activity, the project will be required to establish "programs for the enhancement of forest and developed woodland resources, such as programs for urban forestry," and that "development activities shall be designed and implemented to minimize destruction of forest and woodland vegetation." In addition, the Commission has consistently required a minimum 1:1 replacement ratio for any natural vegetation that is cleared. Therefore, the MTA should be prepared to provide mitigation at a 1:1 ratio for all clearing on the site.

Thank you again for forwarding the above referenced project to this office. If you have any questions, please call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: MTA 65-07

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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January 8, 2008

Mr. Blaine Smith
Zoning Administrator
Town of Ocean City
PO Box 158
Ocean City, MD 21843

Re: 13712
Ciminelli Building Permit

Dear Mr. Smith:

Thank you for providing information on the above referenced building permit application. The applicant proposes to construct an addition to an existing dwelling unit, construct a shed, and install a pervious paver driveway/walkway. Critical Area issues include stormwater management, pollutant removal, and afforestation.

The lot is 2,888 square feet in size and has a zoning setback of ten feet. Currently, the lot is developed with an existing three-story dwelling, four decks, pavement, and wood walkway. The applicant proposes to expand the size of the house and construct first-, second- and third-story decks with steps, a covered porch, a shed, and a pervious paver driveway/walkway. Total existing impervious surface onsite is 1,381 square feet (47.82%). Upon completion of the project, impervious surface will increase to 1,655 square feet (57.31%). To meet mitigation requirements in the 100-foot Buffer for a multi-family property, the applicant must provide 721 square feet of landscaping. The applicant proposes to meet this requirement by planting 900 square feet of new landscaping; a total of 8 large shrubs (Feather Reed, Heavenly Bamboo) and 6 small shrubs (Pampas, switchgrass) will be planted.

To meet stormwater management requirements, the applicant proposes to keep the amount of impervious surface below the 65% impervious surface limit, to provide vegetative mitigation, to install a grass swale, to install a five foot by five foot rain garden with plantings surrounding it, and to use pervious pavers for the driveway and walkway areas.

Based on the information provided, we have the following comments on this project:

1. The applicant is providing mitigation in the 100-foot Buffer using the guidelines for multi-family and commercial dwelling properties; however, to address stormwater management, the applicant is using the guidelines for a single-family dwelling unit. Commission staff does not have concerns with the property being subject to single-family stormwater management guidelines; however, to be consistent, we request that the applicant provide mitigation that follows the guidelines for a detached single-family dwelling unit as well.
2. The applicant proposes to expand the size of the house by 269 square feet and install first-, second- and third-story decks with steps, a covered porch (744 square feet including all three new decks), a shed (54 square feet), and a pervious paver driveway/walkway (707 square feet) within the 100-foot Buffer area. The Town of Ocean City Atlantic Coastal Bays Critical Area Program §30-554(d)(1) states that, "New development, including accessory structures, shall minimize the extent of intrusion into the Buffer…" It appears that the size and location of the decks, steps, and walkway do not minimize Buffer intrusion, particularly given that the home is located inside the 100-foot Buffer and is increasing by an additional 269 square feet. In addition, throughout the Critical Area, staff considers second- and third-story decks to be impervious in nature, due to the reduced amount of stormwater infiltration resulting in little, if any, infiltration. Consequently, staff recommends that the proposed second- and third-story decks be removed from the site plan, or that both decks be calculated as impervious surface, thus requiring additional mitigation and stormwater management for the site. Furthermore, to minimize water quality and habitat impacts, we recommend reducing the size of the first floor deck, removing the steps, and removing the proposed walkway. The area of the walkway should be replanted with native vegetation.
3. Please provide on the site plan the amount of square footage attributed to each individual structure (house, first-story deck, second-story deck, shed, covered porch etc.).
4. The first floor deck should be built in a pervious manner; that is, the deck should be constructed with gaps between the boards, have six inches of gravel spread underneath the deck but not compacted in order to allow stormwater to percolate, and be surrounded by native vegetation (at a minimum of three feet wide and composed of evergreen shrubs or woody, deciduous plant material).
5. The applicant proposes to plant Heavenly Bamboo as a form of vegetative mitigation. Bamboo is considered to be an invasive species to the Mid-Atlantic Natural Areas. Staff recommends planting blustem or Indiangrass in place of bamboo.

Thank you for the opportunity to provide comments on this building permit request. Please have the applicant provide the information requested above. If you have any questions, please feel free to call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: OC 757-07

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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January 10, 2008

Ms. Tressa Ellis
Maryland Department of the Environment
Wetlands & Waterways Program
1800 Washington Boulevard
Baltimore, MD 21230

RE: Comments on Applications for State Permits – Talbot County

Dear Ms. Ellis:

I am writing to provide comments on the following project located in Talbot County:

200765527/08-WL-0655: Commissioners of Oxford

In the Town of Oxford, the applicant has applied to emplace 35 feet of riprap revetment within a maximum of 12 feet channelward of a deteriorated bulkhead as a means of shore erosion control.

The Town of Oxford Critical Area Program recommends nonstructural shore protection measures whenever practical. Therefore, we recommend nonstructural measures in lieu of the proposed riprap revetment. Nevertheless, if MDE determines that structural means are necessary, then this office will defer to your determination. Any disturbance to the 100-foot Buffer shall be mitigated at a 1:1 ratio, and the applicant should coordinate all activities with the Town of Oxford.

Additionally, it appears that some of this work will occur above Mean High Water; therefore, the Town will need to acquire confirmation of consistency with the Critical Area Program for this project.

Thank you for the opportunity to provide comments on the referenced project. If you have any questions, please call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resources Planner
cc: Lillian Lord, Town of Oxford
Roby Hurley, Critical Area Circuit Rider, Town of Oxford

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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January 14, 2008

Gary Letteron
Environmental Planner
Baltimore City Department of Planning
417 East Fayette Street, 8th Floor
Baltimore, MD 21202

Re: Four Points Sheraton
Building Permit

Dear Mr. Letteron:

Thank you for providing information on the above referenced building permit. The applicant is proposing to raze an existing building and create a 13-story hotel. The total site area is .16 acres, and the property is designated as an Intensely Developed Area. To meet the Critical Area 10% pollutant removal requirement, .037 pounds per year of phosphorus must be removed from the Critical Area portions of the property. However, due to the size and location of the lot, stormwater cannot be treated onsite to meet the 10% requirement. Consequently, the applicant proposes to provide an offset fee of $1,295. To meet afforestation requirements, the applicant is providing two trees and 12 shrubs; these plants will be native species.

Based on the information provided, we have the following comment on this project:

- Please have the applicant submit to this office a list of the type of vegetation planted, including botanical name and common name, once they are chosen for this site.

Thank you for providing the information on 10% calculations for this building permit. If you have any questions, feel free to call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: BA 13-08

Martin O'Malley
Governor

thony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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January 14, 2008

Mr. Blaine Smith
Zoning Administrator
Town of Ocean City
PO Box 158
Ocean City, MD 21843

Re: 14197
Martin Building Permit

Dear Mr. Smith:

Thank you for providing information on the above referenced building permit application. The applicant proposes to construct a garage addition and a second-story addition to an existing dwelling unit. Critical Area issues include stormwater management, pollutant removal, and afforestation.

The lot is 6,525 square feet in size and has a zoning setback of ten feet. Currently, the lot is developed with a one-story dwelling, deck, dock, concrete sidewalk, and driveway. The applicant proposes to construct a garage and add a second-story addition to the existing dwelling unit. Total existing impervious surface onsite is 1,902 square feet (29.15%). Upon completion of the project, impervious surface will increase to 2,474 square feet (37.92%). To meet mitigation requirements in the 100-foot Buffer, $2,100 of landscaping is required. The applicant proposes to provide $2,225 in plantings; a total of 19 large shrubs (Bay Berry), 2 small trees (American Holly), and 3 large trees (Red Maple) will be provided as landscaping.

To meet stormwater management requirements, the applicant is minimizing impervious surface below 50% (3,262 square feet), is creating a grass swale and rain garden, and is providing vegetative mitigation.

Based on the information provided, we have the following comments on this project:

1. The applicant states on the Critical Area Project application that the zoning for this parcel is R2-A, which has a setback of 10 feet. However, the site plan reveals that the property

is zoned R-1 and has a 15 foot setback. Please clarify the zoning for this parcel to ensure that no future impervious surface is located within the setback area.

2. The applicant proposes to incorporate vegetative mitigation as a Best Management Practice for the proposed 572 square feet of new impervious surface on this site. Under this requirement, the applicant must provide 3 trees or 9 shrubs for every 100 square feet of new impervious surface; therefore, the applicant must provide 17 trees or 51 shrubs. However, the applicant plans to provide 10 trees and 19 shrubs; this amount of vegetation mitigates for only 544 square feet of new impervious surface. Please have the applicant plant 1 additional tree or 3 additional shrubs to fully meet this BMP requirement. In addition, the applicant only shows 5 trees being planted onsite. Please have the applicant provide more information on the additional 5 trees proposed, including location, botanical name, and common name.
3. Staff recommends placing the proposed vegetative mitigation within the setback area of the parcel.

Thank you for the opportunity to provide comments on this building permit request. Please have the applicant provide the information requested above. If you have any questions, please feel free to call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly, Ph.D
Natural Resource Planner
cc: OC 19-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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January 18, 2008

Mr. William Ethridge
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road, MS 6301
Annapolis, Maryland 21401

Re: Schmidt Variance
2007-0351 V

Dear Mr. Etheridge:

This letter is provided based on a request of the applicant, and is intended to supplement our previous letters regarding the property and requested variance. I have incorporated my observations made during our site visit today. The applicant is requesting a variance to allow a dwelling addition with disturbance to slopes greater than 15%. The property is 2.11 acres in size, with .67 acres located in a Limited Development Area (LDA) and 1.44 acres located in a Resource Conservation Area (RCA). The property is currently developed with a one-story dwelling, hot tub, patio, wood deck, walkway, garage, and gravel driveway. The applicant proposes to expand the garage and construct a patio, a retaining wall, a screened porch, and a porch. The deck with patio would be located within an area of steep slopes. Current impervious surface on this site is 9,277 square feet (10.1% of the site) and will increase to 10,116 square feet (11.0%) if the variance is granted.

This variance application was originally reviewed in November 2007 with the applicant proposing to expand the garage and construct a deck with patio beneath it, a retaining wall, a screened porch, and a porch; the deck with patio was located within an area of slopes greater than 15%. In December, a second site plan was submitted that reduced the size of the proposed deck, removed the patio underneath it, and constructed a patio adjacent to the proposed deck but outside of the area of steep slopes. Presently, the applicant has submitted a third site plan, proposing to remove the deck completely and proposing a patio/grassy area within the an area of steep slopes. Total disturbance to steep slopes will be 528 square feet.

While I acknowledge that the applicant believes that this newly revised proposal minimizes impacts to slopes greater than 15%, it does not appear that that the applicant can meet the

variance standard for unwarranted hardship; that is, without the granting of this variance, the applicant would be denied reasonable and significant use of this lot. Currently, the property is developed with a one-story dwelling, hot tub, patio, wood deck, walkway, garage, and gravel driveway. The applicant proposes to expand the garage and construct two patios, a retaining wall, a screened porch, and a porch. One of the proposed patios is located in an area of slopes greater than 15%. Given the uses enjoyed by the applicant on this property, we do not believe that the County has evidence on which to base a finding that, without the patio located in an area of steep slopes, the entire parcel would lack reasonable and significant use. Therefore, no disturbance to steep slopes should be permitted. Granting of such a variance to allow an accessory structure, such as a patio, in an area of slopes greater than 15% will result in destabilization of the slope, an increase in stormwater and sediment runoff, and the loss of essential infiltration opportunities. It appears that the applicant could avoid the need for a variance to steep slopes by placing the patio on the northwestern or southwestern corners of the lot. Therefore, the comments provided in my November 13, 2007 letter and December 17, 2007 letter are still applicable to this project, and I recommend that this variance request be denied.

Thank you for the opportunity to provide comments. Please include this letter in your file and submit it as part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case. If you have any questions, please call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: AA 645-07

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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January 23, 2008

Gary Letteron
Environmental Planner
Baltimore City Department of Planning
417 East Fayette Street, 8th Floor
Baltimore, MD 21202

Re: Schoolyard Greening Offset Fee Project Request

Dear Mr. Letteron:

Thank you for your letter requesting comments from the Critical Area Commission staff regarding the use of $40,000 to support Schoolyard Greening Projects that will aid in improving water quality and enhancing habitat within Baltimore City.

We understand that the project will use Critical Area offset fees to buy trees, shrubs, seed and other supplies for the Parks & People Foundation as they continue their work with the schools in the City of Baltimore. Originally, Critical Area offset fees have been used to remove asphalt from five schools. Currently, the Maryland Port Authority (MPA) is removing asphalt from school yards as offsite mitigation. The MPA is funding the Parks & People Foundation to aid in creating environmental education programs and further providing means to green schoolyards; however, the MPA is not funding any trees, shrubs, or supplies.

The total cost of the project will be $196,293, and $40,000 of Buffer Offset Fees are proposed to be used. Therefore, the amount of funding proposed to match the proposed Critical Area funding is over four to one. The Buffer Offset Fees will be used to purchase 180 trees (1.5-inch to 2.5-inchcaliper and over 6 feet tall), 360 shrubs, and 2700 perennials.

Based on the information you have provided, this office is satisfied with the use of Buffer Offset Fund monies for this project since it meets the Critical Area goals of improving water quality and enhancing wildlife habitat. If there are changes in the proposed project, please notify this office. Thank you for the opportunity to provide comments on this proposal. If you have any questions, please feel free to call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resources Planner

cc: Douglas B McCoach III, City of Baltimore
Duncan Stuart, City of Baltimore
Lisa Hoerger, CAC
Ren Serey, CAC

BA General Files

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

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Executive Director

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January 23, 2008

Ms. Tressa Ellis
Maryland Department of the Environment
Wetlands & Waterways Program
1800 Washington Boulevard
Baltimore, MD 21230

RE: Comments on Applications for State Permits – Talbot County

Dear Ms. Ellis:

I am writing to provide comments on the following project located in Talbot County:

200765851/08-GL-0763: Colin A MacLachlan

The applicant proposes to install 492 linear feet of marsh for natural shoreline stabilization. The applicant will install stone sills approximately 25 feet waterward from Mean High Water; the sills will be filled from behind with sand, and tidal marsh vegetation will be planted. The banks will be re-graded to 5:1 slopes or, where tree preservation is sought, stone will be placed along the shoreline. Individual trees may be removed during the re-grading process.

This office generally supports marsh creation as a means of shore protection in areas where long-term sustainability is ensured. However, upon visiting the site, staff cannot support the proposed re-grading of the banks at a 5:1 ratio, as this proposal far exceeds the minimum necessary to provide shore erosion control. Please feel free to contact with my any questions you may have in relation to the proposed grading portion of this project.

Additionally, staff recommends that biologs with toe boulders be used in place of the proposed stone sill. Nevertheless, if MDE determines that a stone sill is necessary for sustainability of the marsh, then this office will defer to your determination.

The applicant should coordinate with the Talbot County Planning Office in the creation of this marsh area.

Thank you for the opportunity to provide comments on the referenced project. If you have any questions, please call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resources Planner
cc: Mary Kay Verdery, Talbot County Planning and Zoning

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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January 24, 2008

Lynn Thomas
Town of Easton
14 South Harrison Street
P.O. Box 520
Easton, MD 21601

Re: Waterside Village Site Plan

Dear Mr. Thomas:

Thank you for providing information on the above-referenced site plan. The applicant proposes an MDE wetland mitigation pond within the Resource Conservation Area (RCA) of this site.

Currently, the applicant has submitted an overview, site topography, and cross-sectional plan of the proposed wetland mitigation pond. However, without a site plan, we cannot properly review this project to determine if it is in accordance with Critical Area regulations. Please have the applicant submit a full site plan that shows the location of the proposed mitigation pond within the context of the current structures located onsite, as well as information regarding any grading, filling, and disturbance to wetland buffers inside the Critical Area.

In addition, we have the following preliminary comments on this project:

1. Site plans from 2005 show a proposed gazebo and boardwalk over an area of created wetlands. It is unclear from the submitted information if these structures have been removed from the newly proposed wetland mitigation pond. A proposed walkway and gazebo would be problematic in the RCA. Please have the applicant provide clarification on this topic.
2. In April 2007, Commission staff reviewed site plans that included a proposed MDE mitigation pond as well as an "amenity pond" that appeared to be in the same location as a sediment pond that Commission staff had asked to be filled and removed in October 2006. Based on a January 15, 2008 site visit, it is unclear whether the sediment pond has been removed and filled, and whether the existing sediment pond is currently located in the Critical Area. Please have the applicant clarify this information, and please have the

applicant confirm if an amenity pond is still proposed in addition to the wetland mitigation pond.

3. Please note that construction of a mitigation wetland within the current 100-foot Buffer will require mitigation for Buffer impacts as well as establishment of a new Buffer around the edge of the created wetland. Please ensure that details regarding the Critical Area mitigation requirements are included with future submittals.

Thank you for the opportunity to provide comments on this site plan. Please have the applicant provide the information requested above. If you have any questions, please feel free to call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner

cc: EA 715-06
Gary Setzer, Maryland Department of the Environment
George Beston, Maryland Department of the Environment

Martin O'Malley
Governor

nthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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January 24, 2008

Ms. Mary Kay Verdery
Talbot County Office of Planning and Zoning
28712 Glebe Road, Suite 2
Courthouse
Easton, Maryland 21601

Re: **Talbot County Zoning Ordinance**

Dear Ms. Verdery:

Thank you for providing this office the opportunity to review the above-referenced ordinance and proposed text changes. This letter is to summarize Commission staff's suggested edits and revisions in order to help ensure that the ordinance is consistent with the Critical Area Law and Criteria. Please note that these comments are provided based on our preliminary and informal review of the County's proposed text changes. Additional comments and recommendations may be provided as necessary during staff's ongoing informal review of the proposed text amendments and/or as necessary during the Commission's formal review process. (**Bold text** indicates recommended additions, while ~~strikethroughs~~ indicate recommended deletions).

1. Page 2 Chesapeake Bay Critical Area **B.1 (a)**
Revise the Following Text:

Protect water quality by reducing pollution. **Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or run off from surrounding lands;**

2. Page 3 Chesapeake Bay Critical Area **B.4**
Insert the following text:

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

(d) Conserve and enhance fish, wildlife, and plant habitats, as identified in the Habitat

Protection Area sections of this ordinance, to the extent possible within Intensely Developed Areas; and

(e) **Encourage the use of retrofitting measures to address existing stormwater management problems.**

3. Page 8 Chesapeake Bay Critical Area **A.**

Insert the following text:

(3) Modification to these areas through inclusions or exclusions proposed by local jurisdictions and approved by the Commission as specified in §8-1807 of the Natural Resources Article, Annotated Code of Maryland.

4. Page 23 Other Rural and Residential Districts **A.(4)**

Insert the following text:

In calculating density for a parcel located within the Rural Conservation District, the area of **privately-owned** tidal wetlands located on the property may be included, subject to the following conditions:

5. Page 28 Village Center Districts **A.(1)**

Insert the following text:

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

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

(ii). The overall intensity of development within the VC district is not increased beyond the level established in a particular area so as to change its prevailing character as identified by density and land use currently established in the area.

6. Page 30 Limited Commercial District **A.(2)**

Insert the following text:

c) ~~Accommodate additional commercial development, provided that water quality is not impaired:~~ **Accommodate additional commercial development if:**

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

(ii). The overall intensity of development within the LC district is not increased beyond the level established in a particular area so as to change its prevailing character as identified by density and land use currently established in the area.

7. Page 57 Dwelling, Guest House **I**

Revise the following text:

1. In the RC District, **the county may consider one additional dwelling unit per lot or parcel as part of the primary dwelling unit for the purpose of the density calculation under this subsection if the additional dwelling unit meets either of the following sets of conditions:** ~~the following additional regulations apply~~:

A.

(1) Maximum **total enclosed** ~~gross floor~~ area per dwelling: 900 square feet.

(2) Housing shall be located within the primary dwelling unit or its entire perimeter must be located within 100 feet of the primary dwelling unit.

(3) Housing shall be served by the same sewage disposal system as the primary dwelling unit.

~~(4) An additional dwelling unit that may not be subdivided or conveyed separately from the primary dwelling unit.~~

~~(5) The County shall maintain records of all building permits issued under this section for additional dwelling units considered part of a primary dwelling unit, and shall provide this information on a quarterly basis to the Critical Area Commission.~~

B.

(1) Is located within the primary dwelling unit
(2) By its construction, does not increase the amount of impervious surface already attributed to the primary dwelling unit; and
(3) Is served by the same sewage disposal system as the primary dwelling unit

2. An additional dwelling unit meeting all the criteria of this section that is separate from the primary dwelling unit may not be subdivided or conveyed separately from the primary dwelling unit.

3. The provisions of this section apply to density calculations only and may not be construed to authorize the county to grant a variance, unless the variance is granted in

accordance with the requirements and standards in this ordinance for variances in the Critical Area.

4. The County shall maintain records of all building permits issued under this section for additional dwelling units considered part of a primary dwelling unit, and shall provide this information on a quarterly basis to the Critical Area Commission.

8. Page 67 Piers and Marinas, Commercial **B(2)**

Revise/Insert the following text:

The operational procedures shall meet the sanitary requirements of the ~~Maryland State Law~~ **Department of the Environment as required in COMAR 26.04.02**;

9. Page 67 Piers and Marinas, Commercial **B(2)**

Revise/Insert the following text:

The operational procedures shall meet the sanitary requirements of the ~~Maryland State Law~~ **Department of the Environment as required in COMAR 26.04.02**;

10. Page 68 Piers and Related Boating Facilities **E(3)**

Revise/Insert the following text

(3) Disturbance to the Buffer is the minimum necessary to provide a single point of access to the facilities. ~~A single point of access through the shoreline development buffer to the facilities shall be provided;~~

11. Page 114 Buffer Management Overlay District **C(1)**

Insert the following text:

That existing patterns of residential, commercial, industrial and institutional development prevent the shoreline development buffer from fulfilling its functions for **water quality protection and wildlife habitat conservation;**

12. Page 114 Buffer Management Overlay District **D**

Requirements for the Buffer Management Areas are in Article VI **§190-149**

13. Page 123 Pipestem lots **5**

Insert the following text:

(5) New subdivisions and/or development activities whose development or dwelling units are located outside of the Critical Area shall not include a flag or pipestem

connection through the Critical Area so as to create riparian access in addition to that which would be otherwise permitted in the Critical Area.

14. Page 134 Intent **A**

Insert the following text:

In 1984, the Maryland General Assembly passed the Chesapeake Bay Critical Area Act in response to growing concern over the decline of the quality and productivity of the waters of the Chesapeake Bay and its tributaries. The decline was found to have resulted, in part, from the cumulative effects of human activity that caused increased levels of pollutants, nutrients, and toxins, and also from declines in protective land uses such as forest land and agricultural land in the Bay region. **In 2002, the Atlantic Coastal Bays were added to the Critical Area because these bays were experiencing a similar decline.**

15. Page 134 §190-33 Goals **C**

Insert the following section:

C. Goals. The goals of the Critical Area Program are to accomplish the following:

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

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

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

16. Page 134 §190-33 Program Implementation **D**

Insert the following section:

D. Local implementation. These provisions regulate development activities and resource utilization activities, e.g., agriculture and forestry, within the Critical Area. They supplement existing land use regulations by imposing specific standards and requirements as set forth in the Critical Area Act and Criteria. The Critical Area provisions as set forth herein and in any other applicable regulations, supersede any inconsistent law, section, or plan of the County. In the case of conflicting provisions, the stricter provisions shall apply.

17. Page 134 County Critical Area Program **E**

Revise the following section heading:

~~C.~~ **E.** Critical Area Program. County Critical Area Program

The County's Critical Area Program became effective on August 13, 1989

18 Page 134 Applicability **A-E**

Insert the following text:

A. **Regulated activities and applicability.** The regulations in this article apply within the Critical Area. The relationship between the various zoning districts within the Critical Area and the Critical Area designations of Resource Conservation Area (RCA), Limited Development Area (LDA), and Intensely Developed Area (IDA) is shown by the table in § 190-12. **Any applicant for a permit or license to pursue activities within the Critical area, including but not limited to, development or redevelopment, grading, sediment and erosion control, timber harvesting, shoreline erosion control, installation of a septic system and drain field, operation of a waste collection or disposal facility, operation of a commercial or private marina or other water-related commercial or industrial operation (whether public or private), mining (whether surface or sub-surface) or quarrying, farming or other agriculture-related activities shall have such permits or licenses issued by the Zoning Administrator after review and approval under the County's Critical Area Program.**

B. Regulations relating to the administration of the County's Critical Area requirements are in Article IX.

C. **Notification of project applications. The County shall send copies of applications for all developments, subdivisions, and site plans wholly or partially within the Critical Area as specified in Appendix A to the Critical Area Commission from review and comment. The application shall be accompanied by a completed "Project Notification Application" form. The Commission shall send written notification of receipt of the application before the close of the next business day. The County may not process an application which has been sent to the Commission for notification until it has received notice of receipt by the Commission. Any action by the County in violation of these procedures shall be void.**

D. **Responsible agencies. These provisions shall be implemented and enforced by the County Department of Planning and Zoning and Department of Permits and Inspections. Should an infraction of the provisions contained in any law, regulation, or plan related to the County's Critical Area Program be brought to the attention of any County official, said official shall contact the Zoning Administrator who may consult with the County Attorney to determine the proper remedial course of action. If appropriate, the Zoning Administrator shall inform the Critical Area Commission about the infraction and any decision made regarding remedial action.**

The Commission, at its discretion, may also take remedial action under the authority it is given under State law.

E. State and local projects. For all development in the Critical Area resulting from State and local agency projects, the County shall adhere to COMAR 27.02.02, COMAR 27.02.04 and COMAR 27.02.06. If applicable, consistency reports shall be submitted to the Chesapeake Bay Critical Area Commission.

19. Page 134 Prohibited Uses **G**

Insert the following sections:

G. Continuation of existing, permitted facilities. Existing, permitted facilities of the type noted in paragraph (e) above shall be subject to the standards and requirements of the Department of the Environment, under COMAR Title 26.

20. Page 135 Development in the Critical Area

Insert the following section (Note: All subsequent section headings will need to be updated by inserting this section):

§190-___ Development in the Critical Area

(a) Description. The Critical Area of the County contains approximately ____ acres. Of this area about ____ acres is in uplands excluding the uplands of the adjacent incorporated Towns of Oxford and St. Michaels.

(b) General policies. In order to accommodate already existing land uses and growth in the *County* Critical Area while providing for the conservation of habitat and the protection of water quality, the County has identified and mapped three land use management districts within the Critical Area. The Critical Area has also been defined as an overlay zone in the County Zoning Ordinance. The County has identified each of the three land use management districts within the Critical Area based on the following criteria and has developed policies and programs to achieve the objectives as proposed by the County Program. The County recognizes the following three types of development areas: Intensely Developed Areas (IDAs); Limited Development Areas (LDAs); and Resource Conservation Areas (RCAs). The following general provisions are applicable throughout the Critical Area:

(1) Intense development should be directed outside of the Critical Area. Future intense development activities, when proposed in the Critical Area, shall be directed towards the Intensely Developed Areas.

(2) Additional low intensity development may be permitted in the Limited

Development areas, but shall be subject to strict regulation to prevent adverse impacts on habitat and water quality.

(3) Development shall be limited in the Resource Conservation Area, which shall be chiefly designated for agriculture, forestry, fisheries activities, other resource utilization activities and for habitat protection.

(c) Implementation. For purposes of implementing this regulation the County has determined, based on land uses and development in existence on December 1, 1985, which land areas fall within the three types of land management and development areas described in this program.

21. Page 135 Agricultural Uses **A**

Revise/Insert the following text:

A. Creation of new agricultural lands

(1) Assure that agricultural activity permitted within the Critical Area use Best Management Practices in accordance with a Soil Conservation and Water Quality Plan approved by the County Soil Conservation District (see subsection B.(3) below).

(2) The creation of new agricultural lands shall not be accomplished by:

(a) diking, draining or filling of **any class or subclass of** palustrine wetlands, **as described in this program which have a seasonally flooded or wetter water regime, unless mitigation is accomplished in accordance with as applicable State and County regulations;**

(b) Clearing forests or woodlands with soils having a slope greater than 15 percent; or on soils with a "K" value greater than 0.35 and slope greater than five percent;

(c) Clearing vegetation that will adversely affect water quality or will destroy plant and wildlife habitats as defined in this ordinance; or

(d) The clearing of existing natural vegetation within the Shoreline Development Buffer.

(3) Assure that the drainage of non-tidal wetlands for the purpose of agriculture be done in accordance with a Soil Conservation and Water Quality Plan, approved by the County Soil Conservation District.

(4) Assure that Best Management Practices for the control of nutrients, animal wastes, pesticides and sediment runoff be used to protect the productivity of the land base and enhance water quality. These practices shall minimize contamination of surface and groundwater and further, shall minimize adverse effects on plants, fish and wildlife resources.

(5) Assure that animal feeding operations, including retention and storage ponds,

feed lot waste storage and manure storage minimize the contamination of water bodies.

22. Page 135 Agricultural Uses **B(1)**

Revise/Insert the following text:

(a) The width of the filter strip shall be measured landward from the mean high-water line of tidal water, edge of tidal wetlands, and from the edge of tributary streams (excluding drainage ditches). If the average slope of the strip is greater than six percent (measured from the water's edge to the landward edge of the strip, along a line perpendicular to the water), then the strip shall be expanded in four-foot increments for each one percent of slope over six percent;

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

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

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

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

(f) **Where agricultural use of lands within the Buffer ceases and the lands are proposed to be converted to other uses, the Buffer shall be established. The Buffer shall be established landward from the mean high water line of tidal waters, the edge of tributary streams, and the edge of wetlands. In establishing the Buffer, management measures shall be undertaken to provide forest vegetation that assures the Buffer functions set forth in that section of the ordinance.**

23. Page 141 Critical Area Timber Harvests **E(2)(a)**

Revise the following text:

Cutting or clearing of trees within the Shoreline Development Buffer is prohibited, except **for the following: commercial harvesting by selection or clearcutting of loblolly pine or tulip poplar is permitted to within 50 feet of the landward edge of the Mean High Water Line of tidal rivers, perennial tributary streams or the edge of wetlands, provided that the cutting is conducted in conformity the Habitat Protection Area provisions of this ordinance and with a Buffer Management Plan that is prepared by a registered professional forester and is approved by the Department of Natural Resources.** ~~that commercial harvesting of trees may be permitted in the portion of the buffer more than 50 feet from the mean high-water line of tidal water and edge of wetlands, and more than 50 feet from tributary streams. Such harvesting shall allow the selective cutting of any species or clear cutting of Loblolly Pine and Tulip Poplar trees~~

24. Page 141 Critical Area Timber Harvests **E(2)(c)**
Insert the following text:

(iv) The cutting does not involve the creation of logging roads and skid trails within the Shoreline Development Buffer.

(v) Commercial harvesting practices shall be conducted to protect and conserve the Habitat Protection Areas in accordance with Sections 149 through Section 153 of this Chapter

25. Page 142 Critical Area Timber Harvests **E(3)**
Insert the following text:

~~For all harvests of 5,000 square feet or more, including harvesting of trees on agricultural lands, the Timber Harvest Plan submitted to the Soil Conservation District shall also include a timber harvest erosion and sediment control plan.~~

Erosion and Sediment Control Plan In the Critical Area

Any landowner who plans to harvest timber on an area which will disturb 5,000 square feet or more including harvesting on agricultural lands shall submit a Sediment Control Plan. This plan is also required for any harvests which will cross perennial or intermittent streams. This plan shall be developed according to the State guidelines entitled: "Standard Erosion and Sediment Control Plan for Harvest Operations". The operations shall be implemented in accordance with specifications set out by the Department of Natural Resources and enforced by the Department of the Environment and the County.

(a) If cuts and fills are three feet or more, if grades for roads are 15 percent or more, or if landings are on slopes of 10 percent or more, then the landowner must get a custom Sediment Control Plan for the operation. These are

prepared by Registered Professional Foresters and include controls necessary to prevent site erosion and to ensure site stabilization. This plan shall be submitted to the local Soil Conservation District for approval and notice of approval sent to the Office of Planning, Permits and Inspections.

(b) If a custom Sediment Control Plan is not required, a Standard Erosion and Sediment Control Plan is available through the Soil Conservation District. The landowner shall provide the following information:

1. Location description;

2. Harvest operation description;

3. Sketch map of the property showing acres to be cleared;

4. Identification of the landowner, licensed timber harvest operator, and other operators or subcontractors.

(c) Either the owner or the operator shall take responsibility for implementation of the Sediment Control Plan or each subcontractor must file a separate plan.

(d) The landowner must sign the agreement to certify that he understands the terms of the plan and is responsible for preventing erosion and sedimentation during the forest harvesting.

26. Page 145 Shoreline Development Buffer **(2)**

Revise the following text:

A buffer expansion as defined in Article XI shall be required, beyond the minimum 100 foot Shoreline Development Buffer, to include and extend beyond contiguous, sensitive areas, such as soils with slopes 15 percent or greater, hydric soils, or highly erodible soils, whose development or disturbance may impact streams, wetlands, or other aquatic environments. **In the case of contiguous slopes of 15 percent or greater the Buffer shall be expanded 4 feet for every one percent of slope or to the top of the slope, whichever is greater in extent.**

27. Page 146 Shoreline Development Buffer **(4)**

Insert the following text:

(4) In establishing the Buffer, management measures shall be undertaken to provide forest vegetation that assures the Buffer functions set forth in that section of the ordinance.

28. Page 147 Shoreline Development Buffer **(5-7)**

Insert the following sections:

(5) **Buffer Management Plans- When the Buffer is required to be established on a development site, when a proposed development activity will impact the Buffer, or when the removal of trees or vegetation in the Buffer is proposed, the County will require that the applicant prepare a Buffer Management Plan. The Plan shall show existing vegetation within the Buffer, any vegetation in the Buffer that is proposed to be removed, and the proposed planting in the Buffer required to "establish" the Buffer or as mitigation for impacts. The planting plan shall include the size, species, and location of all plantings.**

(6) **Planting Agreements- For all projects that require establishment of the Buffer or mitigation plantings that exceed 2,000 square feet or 10 trees, the applicant shall execute a planting agreement with the County. The planting agreement shall include provisions for the collection of a surety or bond that will permit the County to accomplish the required planting on the applicant's property or another location selected by the County should the applicant fail to meet the requirements of the agreement. A Planting Agreement is included in this ordinance as Appendix B.**

(7) **Tree cutting in the Buffer. The Buffer shall be managed to achieve or enhance the policies stated in Section 1-519(c). Individual trees may be cut for personal use provided the cutting does not impair water quality or existing habitat value or other functions of the Buffer. Any cutting in compliance with the provisions specified herein shall require a Buffer Management Plan approved by the Planning Commission or their designee. Cutting of trees or clearing of vegetation within the Buffer shall be prohibited except that:**

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

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

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

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

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

29. Page 148 Plant and Wildlife Areas **B (7-8)**

Insert the following text:

(7) Other plant and wildlife habitats determined to be of local significance; and

(8) Nontidal wetlands

30. Page 149 Anadromous Fish Propagation Waters **C**

Insert/Revise the following text:

Requirements

(1) The installation or introduction of concrete riprap or other artificial surfaces onto the bottom of natural streams shall be prohibited unless it can be demonstrated that water quality and fisheries habitat can be improved.

(2) Channelization or other physical alterations which may change the course or circulation of a stream and thereby interfere with the movement of fish, shall be prohibited.

(3) ~~(1)~~ **Land use and site design practices in the watershed of spawning streams shall minimize the adverse impacts of development on the water quality of the streams. Any adverse impacts of any activities shall be avoided by:**

(a) Minimizing development activities or other land disturbances in the watershed;
(b) Maintaining or, if practicable, improving water quality in streams;
(c) Minimizing, to the extent possible, the discharge of sediments into streams; and
(d) Maintaining or, if practicable, increasing the natural vegetation of the watershed

(4) ~~(2)~~ Unobstructed movement in streams shall be provided for spawning and larval forms of anadromous fish. The construction or placement of dams or other structures that would interfere with or prevent the movement of spawning fish or larval forms in streams shall be prohibited. The removal of existing barriers shall be accomplished wherever possible;

(5) Prohibit the construction or placement of dams or other structures that would interfere with or prevent the movement of spawning fish or larval forms in streams or other designated water bodies. If practical, existing structures shall be removed;

(6) ~~(3)~~ The construction, repair, or maintenance activities associated with bridges, or other stream crossings or with utilities and roads, which involve disturbance of

the Shoreline Development Buffer or which occur in-stream, shall be prohibited between March 1 and June 15;

(7) ~~(4)~~ The installation or introduction of concrete riprap or other artificial surfaces onto the bottom of natural streams shall be prohibited unless it can be demonstrated that water quality and fisheries habitat can be improved.

(8) ~~(5)~~ Channelization or other physical alteration which may change the course or circulation of a stream and thereby interfere with the movement of fish shall be prohibited;

(9) ~~(6)~~ Construction of shore-based facilities (such as marinas), dredging, filling, and construction of jetties or bulkheads shall not be allowed in areas of established submerged aquatic vegetation within

31. Page 173 Expansion of nonconforming structures in the Critical Area Shoreline Development Buffer **D(1)**

Revise the following text:

Natural vegetation of an area ~~two~~ **three** times the extent of the additional **disturbance** ~~impervious surface~~ allowed shall be created in the buffer or on the property if planting in the buffer cannot be reasonably accomplished.

32. Page 183 Applications for use of Growth Allocation in the Critical Area

*Insert the following sections (*Note: Change additional section headings to reflect these new sections)*:*

A. <u>Definition.</u> Growth allocation means the number of acres of land in the Critical Area that a local jurisdiction may use to create new Intensely Developed and new Limited Development Areas. The growth allocation shall be calculated based on five percent of the total Resource Conservation Area in the County at the time of the original approval of the County's program by the Commission, not including tidal wetlands or land owned by the federal government.

B. <u>Description.</u> The upland area of the County within the Critical Area comprises about _____acres. At the time of ? Within the Critical Area Program adoption there were _____ acres classified IDA, _____ acres classified LDA and ____ acres RCA. In (DATE), __ acres of growth allocation were awarded to ____ to change its designation from ____ to _____. (do for each growth allocation), acres were classified as IDA, acres were classified as LDA, and 39.9 acres were classified as RCA.

Note: Change additional section headings to reflect these new sections.

33. Page 184 Submission and Review Procedures D

Insert the following text:

Applicants for growth allocation shall submit a request for growth allocation accompanied by appropriate plans and environmental reports in accordance with the following process:

(1) All applications for growth allocation shall be submitted to the County Office of Planning. Requests shall be accompanied by a concept plan and appropriate environmental reports and studies so as to provide sufficient information to permit the Planning Commission to review the application for consistency with the County's Critical Area regulations. The subdivision history of parcels designated as RCA must be provided as part of the growth allocation application. The date of December 1, 1985 is the date used for the original Critical Area mapping and shall be used as a beginning point of analysis.

(2) All applications for growth allocation shall be forwarded to the Planning Commission for review and shall include comments and recommendations from the staff. The Planning Commission shall hold a public hearing on the growth allocation request prior to making a recommendation on the proposal to the County Commissioners.

(3) The applicant shall address the Planning Commission's comments and recommendations and may revise the concept plan accordingly. The growth allocation request shall then be forwarded to the County Commissioners with a recommendation for approval or denial from the Planning Commission.

(4) The County Commissioners shall hold a public hearing on the request for growth allocation and any revisions to the concept plan.

(5) The County Commissioners may establish conditions of approval that are consistent with the intent of the County's Critical Area Program.

(6) Upon approval of the growth allocation request by the County Commissioners, the County shall send a request to the Critical Area Commission to utilize a portion of their growth allocation. The request shall be accompanied by pertinent plans and environmental reports and studies. Upon receipt of the request from the County, the Critical Area Commission shall notify the County regarding the processing of the request as an amendment or refinement to the County's Program. Refinements shall be acted on within 30 days of the Commission's notification to the County of a complete submission. Amendments will be acted on within 90 days of the Commission=s notification of a complete submission.

(7) Following approval of the growth allocation request by the Critical Area Commission, the County Commissioners may implement the change, and the applicant may proceed to the preparation of the final site plan or subdivision plat for recording in the County land records.

(8) Prior to approving the final site plan or subdivision plat, the Planning Commission or their designee shall ensure that all conditions of approval are incorporated into the final plan, public works agreement, deed covenants, etc.

(9) Final subdivision plats and site plans shall be processed in accordance with the requirements of this ordinance and the County's subdivision regulations.

(10) The County's official Critical Area maps shall be amended to reflect the new land classification, and a copy of the new map shall be provided to the Critical Area Commission.

(11) ~~(1)~~As a condition of approval, the County may require that all projects approved for the use of growth allocation shall demonstrate that they are substantially completed within three years of the date of growth allocation approval by the Commission. Substantially completed shall be determined by the Planning Commission and is defined as projects in which all public improvements such as roads, sewer and/or water facilities, etc. have been built as required by the County.

(12) ~~(2)~~ An application for a zoning map amendment requiring growth allocation shall include a concept plan showing the proposed use and development of the site for which the growth allocation is requested.

(13) ~~(3)~~The concept plan shall show:

(a) Property boundaries,

(b) Generalized topography and natural features,

(c) For a proposed subdivision, the general location of proposed lots, structures, and roads;

(d) For a proposed commercial or industrial use, the general location of proposed structures, stormwater management, paved areas and open space.

(e) The plan may show a building envelope in lieu of the precise location of a building; may show the minimum and maximum areas to be devoted to impervious surfaces in lieu of an exact area, and may otherwise allow for flexibility, provided that appropriate precise limits are established. The application shall be submitted and heard in accordance with the process established in this Article for applications to amend the official zoning map, except that the concept plan shall be reviewed concurrently

as indicated below.

(14) ~~(4)~~The Planning Officer may circulate the concept plan to applicable reviewing agencies for comments.

(15) ~~(5)~~The zoning application shall not be considered by the Planning Commission until the Planning Officer finds that the development shown on the concept plan has the potential to comply with applicable requirements in subsequent subdivision or site plan review.

(16) ~~(6)~~The Planning Commission shall make recommendations to the County Council on the proposed concept plan, the proposed rezoning and the request for growth allocation.

(17) ~~(7)~~If the County Council approves the application:

(a) The County Council may impose conditions on the concept plan, stating the reasons for such actions.

(b) The Council may condition its approval of growth allocation on the provision of specific public benefits in furtherance of the implementation strategies of the Comprehensive Plan.

(c) A subdivision or site plan shall be approved by the Planning Commission as required by this chapter. The subdivision or site plan shall be substantially in accordance with the concept plan approved by the County Council.

(d) The Planning Commission in its approval of the subdivision or site plan may approve minor deviations from the concept plan resulting from more detailed engineering and site design. Significant changes must be approved by the County Council in accordance with the procedures for the original application.

34. Page 187 Deduction Methodology

*Insert the following section (*Note: Change additional section headings to reflect new sections)*:*

<u>Deduction methodology.</u> The following standards shall be used to determine the area of growth allocation to be deducted when the designation of a parcel or a portion of a parcel is changed through the growth allocation process:

(1) Subdivision of any parcel of land that was recorded as of December 1985, and classified as RCA where all or part of the parcel is identified by the County as a growth allocation area, shall result in the acreage of the entire parcel, not in tidal wetlands, being deducted from the jurisdiction's growth allocation, unless the development envelope concept outline in paragraph (2) below, is used.

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

A. The development envelope shall include individually owned lots, required buffers, impervious surfaces, roads, utilities, stormwater management measures, on-site sewage disposal measures, any areas subject to human use such as active recreation areas, and any additional acreage needed to meet the development requirements of the criteria. The required buffers refer to the minimum 100-foot Buffer and the 25-foot nontidal wetlands buffer.

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

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

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

(3) For growth allocation proposed in the RCA, a 300-foot naturally vegetated Buffer is strongly encouraged and where it is provided, it shall not be deducted even if the Buffer does not meet the 20-acre requirement.

35. Page 187 Standards for location of IDAs of LDAs **(4)**

Revise the following text:

A. The area of expansion of Intensely Developed and Limited Development Areas, or both, shall be coordinated with the County. When locating new intensely developed areas (IDA) or limited development areas (LDA), the County shall use the following guidelines:

(a) Locate a new IDA within an LDA or adjacent to an existing IDA.

(b) Locate a new LDA adjacent to an existing LDA or an existing IDA.

(c) New Intensely Developed Areas shall be at least 20 acres in size unless:

i. They are contiguous to an existing IDA or LDA; or

ii. They are a grandfathered commercial or industrial use which existed as of the date of local Program approval. The amount of growth allocation deducted shall be equivalent to the area of the entire parcel or parcels subject to the growth allocation request.

(d) No more than one-half of the County's allocated expansion may be located in Resource Conservation Areas except as provided in paragraph (9) below;

(e)~~(c)~~ Locate a new Limited Development Area or Intensely Developed Area in a manner that minimizes impacts to Habitat Protection Area as defined in COMAR 27.01.09 and in an area and manner that optimizes benefits to water quality;

(f)~~(e)~~ New Intensely Developed Areas should be located where they minimize their impacts to the defined land uses of the Resource Conservation Area;

(g)~~(d)~~ Locate a new Intensely Developed Area or a Limited Development Area in a Resource Conservation Area at least 300 feet beyond the landward edge of tidal wetlands or tidal waters;

(h) New Intensely Developed or Limited Development Areas to be located in Resource Conservation Areas shall conform to all criteria of the County for such areas, shall be so designated on the County Zoning Map and shall constitute an amendment to this program subject to review and approval by the County Planning Commission, the County Commissioners and the Critical Area Commission.

(i) If the County is unable to utilize a portion of its growth allocation as set out in paragraphs (a) and (b) above within or adjacent to existing Intensely Developed or Limited Development Areas, then that portion of the allocated expansion which cannot be so located may be located in the Resource Conservation Areas in addition to the expansion allowed in (d) above. An applicant shall be required to cluster any development in an area of expansion authorized under this paragraph.

(j) ~~(f)~~ For purposes of this section, adjacency means at least 25 percent of the perimeter of the subject parcel is in common with the existing LDA or IDA.

B. Applicants for growth allocation shall demonstrate that the following design standards will be met or exceeded by the proposed project:

(a) All requirements of the County's Critical Area Program, zoning ordinance, and subdivision regulations have been met.

(b) In addition to meeting the minimum requirements of the Critical Area regulations, the project design shall enhance the habitat value or improve water quality in the area. For example, afforestation may exceed the 15 percent requirement or best management practices for stormwater management may be installed on portions of the site to remain in agricultural use.

(c) For residential development, s community pier shall be provided rather than individual piers.

36. Page 193 Standards for variances to Critical Area provisions **D(5)-(7)**

Insert the following text:

(5) Findings. Based on competent and substantial evidence, the County shall make written findings as to whether the applicant has over come the presumption of nonconformance as established in paragraph (a) above. With due regard for the person's technical competence, and specialized knowledge, the written findings may be based on evidence introduced and testimony presented by:

A. The applicant;

B. The County or any other government agency; or

C. Any other person deemed appropriate by the County.

(6) Appeals. Appeals from decision concerning the granting or denial of a variance under these regulations shall be taken in accordance with all applicable laws and procedures of the County for variances. Variance decisions by the Board of Appeals may be appealed to the Circuit Court in accordance with the Maryland Rules of Procedure. Appeals may be taken by any person, firm, corporation or governmental agency aggrieved or adversely affected by any decision made under this section.

(7) Conditions and Mitigation. The Board of Appeals shall impose conditions on the use or development of a property which is granted a variance as it may find reasonable to ensure that the spirit and intent of the Critical Area Program is maintained including, but not limited to the following:

A. Adverse impacts resulting from the granting of the variance shall be

mitigated by planting on the site per square foot of the variance granted at no less than a three to one basis or as recommended by the Department of Permits, Planning, and Inspections.

B. New or expanded structures or impervious surfaces shall be located the greatest possible distance from mean high water, the landward edge of tidal wetlands, tributary streams, nontidal wetlands, or steep slopes.

37. Page 225 Definitions

Insert the following text:

Agricultural easement (CA) -a non-possessory interest in land which restricts the conversion of use of the land, preventing non-agricultural uses.

38. Page 226 Definitions

Revise the following text:

AQUACULTURE (CA) -- (a) Farming or culturing of finfish, shellfish, other aquatic plants or animals or both, in lakes, streams, inlets, estuaries, and other natural or artificial water bodies or impoundments; (b) Activities include hatching, cultivating, planting, feeding, raising, and harvesting of aquatic plants and animals and the maintenance and construction of necessary equipment, buildings, and growing areas; and (c) Cultivation methods include, but are not limited to, seed or larvae development and grow out facilities, fish ponds, shellfish rafts, rack and longlines, seaweed floats and the culture of clams and oysters on tidelands and subtidal areas. For the purpose of this definition, related activities such as wholesale and retail sales, processing and product storage facilities are not considered aquacultural practices. ~~The farming or culturing of fish, aquatic plants and animals in water. Activities include the culture of clams and oysters on tidelands and subtidal areas. For the purposes of this definition, related activities such as processing and product storage facilities are not considered aquacultural practices~~.

39. Page 227 Definitions

Insert the following text:

Barren land (CA)- means unmanaged land having sparse vegetation.

40. Page 229 Definitions

Insert the following text:

Clearcutting (CA) - the removal of the entire stand of trees in one cutting with tree reproduction obtained by natural seeding from adjacent stands or from trees that were cut from advanced regeneration or stump sprouts or from planting of seeds or seedlings by man.

Cluster development (CA)- a residential development in which dwelling units are concentrated in a selected area or selected areas of the development tract so as to provide natural habitat or other open space uses on the remainder.

41. Page 231 Definitions

Insert the following text:

CRITICAL AREA (CA) - All lands and waters defined in § 8-1807 of the Natural Resources Article, Annotated Code of Maryland. They include:

A. All waters of, and lands under, the Chesapeake Bay and its tributaries to the head of tide as indicated on the state wetlands maps and all state and private wetlands designated under Title 9 of the Natural Resources Article, Annotated Code of Maryland;

B. All land and water areas within 1,000 feet of the landward boundaries of state or private wetlands and the heads of tides designated under Title 9 of the Natural Resources Article, Annotated Code of Maryland;. and

C. **Modification to these areas through inclusions or exclusions proposed by local jurisdictions and approved by the Commission as specified in §8-1807 of the Natural Resources Article, Annotated Code of Maryland.**

42. Page 231 Definitions

Insert the following text:

Developed woodlands (CA) - Those areas of one acre or more in size which predominantly contain trees and natural vegetation and which also include residential, commercial, or industrial structures and uses.

43. Page 232 Definitions

Insert the following text:

Documented breeding bird areas (CA) - forested areas where the occurrence of interior dwelling birds, during the breeding season, has been demonstrated as a result of on-site surveys using standard biological survey techniques.

44. Page 232 Definitions

Revise the following text:

DWELLING UNIT (CA) - **a single unit providing** ~~One or more rooms providing~~ complete, independent living facilities for at least one person, including permanent provisions for ~~all of the following:~~ sanitation; cooking; eating; sleeping; and other activities routinely associated with daily life. "Dwelling unit" includes **a** living quarters for a domestic or other employee or tenant, **an in-law or** ~~an~~ accessory apartment, ~~or~~ a guest house**, or a caretaker residence.**

45. Page 232 Definitions

Insert the following text:

Ecosystem (CA) - a more or less self-contained biological community together with the physical environment in which the community's organisms occur.

46. Page 233 Definitions

Insert the following text:

Excess stormwater run-off (CA)-all increases in stormwater resulting from:

a) **An increase in the imperviousness of the site, including all additions to buildings, roads, and parking lots;**
b) **Changes in permeability caused by compaction during construction or modifications in contours, including the filling or drainage of small depression areas;**
c) **Alteration of drainageways, or regrading of slopes;**
d) **Destruction of forest; or**
e) **Installation of collection systems to intercept street flows or to replace swales or other drainageways.**

47. Page 233 Definitions

Insert the following text:

Forest practice (CA) - the alteration of the forest either through tree removal or replacement in order to improve the timber, wildlife, recreational, or water quality values.

48. Page 236 Definitions

Insert the following text:

K Value (CA)- The soil erodibility factor in the Universal Soil Loss Equation. It is a quantitative value that is experimentally determined.

49. Page 236 Definitions

Insert the following text:

Land-based aquaculture (CA)- the raising of fish or shellfish in any natural or man-made, enclosed or impounded, water body.

Land clearing (CA) -any activity that removes the vegetative ground cover.

50. Page 237 Definitions

Insert the following text:

Marina (CA)- any facility for the mooring, berthing, storing, or securing of watercraft, but not including community piers and other non-commercial boat docking and storage facilities.

51. Page 238 Definitions

Revise the following text:

NATURAL VEGETATION (CA) **- those plant communities that develop in the absence of human activities.**

Nature-dominated - a condition where landforms or biological communities, or both, have developed by natural processes in the absence of human activities.
~~Canopy trees, understory trees, shrubs, herbaceous plants and hydrophytic vegetation that are typically found in the Critical Area.~~

52. Page 238 Definitions

Insert the following text:

Non-point source pollution (CA) - pollution generated by diffuse land use activities rater than from an identifiable or discrete facility. It is conveyed to waterways through natural processes, such as rainfall, storm runoff, or groundwater seepage rather than by deliberate discharge. Non-point source pollution is not generally corrected by "end-of-pipe" treatment, but rather by changes in land management practices.

Non-renewable resources (CA) - resources that are not naturally regenerated or renewed.

53. Page 238 Definitions

Revise the following text:

NONTIDAL WETLANDS (CA) -- ~~See applicable Chesapeake Bay Critical Area, state and federal regulations for definition of nontidal wetlands.~~ **Those lands in the Critical Area, excluding tidal wetlands regulated under Title 9 of the Natural Resources Article, Annotated Code of Maryland, where the water table is usually at or near the surface, or lands where the soil or substrate it covered by shallow water at some time during the growing season. These regulations apply to the palustrine class of non-tidal wetlands as defined in "Classification of Wetlands and Deepwater Habitats of the United States" (Publication FWS/OBS 79/31, December 1979) and as identified on the Natural Wetlands Inventory maps, or which may be identified by site survey at the time of application for a developmental activity. These lands are usually characterized by one or both of the following:**

(a) At least periodically, the lands support predominantly hydrophytic vegetation;

(b) The substrate is predominantly undrained hydric soils.

54 Page 239 Definitions

Revise the following text:

OPEN SPACE (CA) - **land and water areas retained in an essentially undeveloped state.** ~~Any parcel or area of land or water essentially unimproved and set aside, dedicated, designated or reserved for public or private use or enjoyment or for the use and enjoyment of owners and occupants of land adjoining or neighboring such open space.~~

Overburden (CA)- the strata or material in its natural state, before its removal by surface mining, overlying a mineral deposit, or in between mineral deposits.

55. Page 239 Definitions

Insert the following text:

Physiographic features (CA)- the soils, topography, land slope and aspect, and local climate that influence the form and species composition of plant communities.

56. Page 240 Definitions

Insert the following text:

Private harvesting (CA)- the cutting and removal of trees for personal use

57. Page 240 Definitions

Insert the following text:

Project approvals (CA)- the approval of development, other than development by the State or local government, in the Chesapeake Bay Critical Area by the appropriate local approval authority. The term includes approval of subdivision plats and site plans; inclusion of areas within floating zones; issuance of variances, special exceptions, and conditional use permits; and issuance of zoning permits. The term does not include building permits.

58. Page 241 Definitions

Insert the following text:

Public water-oriented recreation (CA)- shore-dependent recreation facilities or activities provided by public agencies which are available to the general public.

59. Page 241 Definitions

Insert the following text:

Renewable resource (CA)- a resource that can renew or replace itself and, therefore, with proper management, can be harvested indefinitely.

60. Page 243 Definitions

Insert the following text:

Seasonally flooded water regime (CA)- a condition where surface water is present for extended periods, especially early in the growing season, and when surface water is absent, the water table is often near the land surface.

61. Page 243 Definitions

Insert the following text:

Selection (CA)- the removal of single, scattered, mature trees or other trees from uneven-aged stands by frequent and periodic cutting operations.

62. Page 243 Definitions

Insert the following text:

Significantly eroding areas (CA)- areas that erode two feet or more per year.

63. Page 245 Definitions

Insert the following text:

Steep slopes (CA)- slopes of 15 percent or greater incline

64. Page 247 Definitions

Insert the following text:

Thinning (CA)- a forest practice used to accelerate tree growth of quality trees in the shortest interval of time.

65. Page 247 Definitions

Insert the following text:

Tributary streams (CA)- those perennial and intermittent streams in the Critical Area which are so noted on the most recent U.S. Geological Survey 7-1/2 minute topographic quadrangle maps (scale 1:24,000) or on more detailed maps or studies at the discretion of the local jurisdictions.

Unwarranted hardship (CA) - 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.

66. Page 248 Definitions

Insert the following text:

Wash plant (CA)- a facility where sand and gravel is washed during processing.

Water-based aquaculture (CA) - the raising of fish and shellfish in any natural, open, free-flowing water body.

67. Page 249 Definitions

Insert the following text:

Water-use industry (CA)- an industry that requires location near the shoreline because it utilizes surface waters for cooling or other internal purposes.

In addition, we have the following additional comments about the proposed revisions to the Talbot County Zoning Ordinance:

1. The page numbers of the document go from Page 114 at the end of Article IV to Page 108 in Article V.
2. On Page 147, Buffer Requirements, (5)(c), the code states that "any lands within the Shoreline Development Buffer required to be established in forest vegetation may be credited towards any afforestation, reforestation, or mitigation required under §190-137, Forestry activities." However, it is unclear how Buffer will be established. Please provide in this ordinance the steps that will be required to establish the Buffer in vegetation. In particular, please add a note stating that Buffer mitigation must be provided in addition to any Buffer establishment and/or afforestation requirements.

3. The County's intentions to protect nontidal wetlands, found in §190-143, is unclear. For example, will the County consider nontidal wetlands to be Habitat Protection Areas? If so, will new development be prohibited in these areas? Please provide this office information detailing the extent to which the county wishes to protect these resources. Staff recommends including nontidal wetlands as Habitat Protection Areas so that the County may continue to locally evaluate potential impacts to these sensitive areas on a case-by-case basis.

4. Just as in §190-92, Septic Systems, the ordinance needs to contain a provision stating that stormwater management facilities or stormwater best management practices may not be located within the RC district serving development outside of the RC district and/or outside of the Critical Area. Please provide staff with the location of existing language addressing this requirement, or have the language added to the revised ordinance.

5. §190-99; pp. 220-221: It is staff's position that if the County wishes to permit Reservation of Development Rights agreements within the RC district of the Critical Area, provisions must be included which prevent an area designated as such at the time of subdivision from being altered in location, boundary, or extent in perpetuity. It is not clear whether the proposed changes in §190-99 address this prohibition or whether additional provisions are needed. Please clarify.

6. There does not appear to be a section in the Talbot County Zoning Ordinance that clearly addresses the status of grandfathered lots. As stated in COMAR 27.01.02.02.B.2.a, "The local jurisdiction develops, as part of its Program, procedures to bring these [grandfathering] lands into conformance with the local Critical Area Program insofar as possible, including the consolidation or reconfiguration of lots not individually owned, and these procedures approved by the Commission…" Talbot County must include this language from COMAR and, in accordance with the requirements of COMAR 27.01.02.02.B.2.a, develop procedures that bring grandfathered lots into conformance.

   In addition, staff noticed that there was no text regarding grandfathering, in general. In addition to developing procedures to bring grandfathered lots into conformance, staff recommends inserting the following text into the Critical Area section of the Talbot County Zoning Ordinance:

Section 190- ___ Grandfathering.

(a) **<u>Continuation of existing uses.</u>** The County shall permit the continuation, but not necessarily the intensification or expansion, of any use in existence on the date of Program approval, unless the use has been abandoned for more than one year or is otherwise restricted by existing local ordinances. If any existing use does not conform with the provisions of this ordinance, its intensification or expansion may be permitted only in accordance with the variance procedures outlined in the variances section of this ordinance.

(b) **<u>Residential density.</u>** Except as otherwise provided, the County shall permit the types of land described in the following subsections to be developed in accordance with density requirements in effect prior to the adoption of the Critical Area Program notwithstanding

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

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

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

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

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

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

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

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

7. Please provide this office a copy of Talbot County's fee schedules for both Buffer and stormwater fees-in-lieu in order to allow Commission staff to review the County's fee structure and to ensure that it is in accordance with current standards.

8. Please provide this office a copy of Talbot County's planting credits in order to allow Commission staff to review the County's credit structure and to ensure that it is in accordance with current standards. Planting credits must be the equivalent (or stricter) than the standards below:

Recommended Credit (Local jurisdictions can determine planting credits)	Plant Size	Plant Spacing
100 sq. ft.	1 tree(2-inch caliper)	10-foot center
400 sq. ft.	1 tree (minimum: 2-inch caliper and either balled and burlapped or container grown) and understory vegetation (minimum: 2 small trees or 3 shrubs)	tree: 20-foot center understory: 10-foot center
50 sq. ft.	1 tree (seedlings)	7-foot center
50 sq. ft.	1 shrub	3 to 7-foot center

Thank you again for allowing us the opportunity to review this ordinance. It is my understanding that this draft will be reviewed and amended by the County in the upcoming weeks. If you have any questions about these comments, please feel free to contact me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner

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

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www.dnr.state.md.us/criticalarea/

January 25, 2008

Ms. Mary Kay Verdery
Talbot County Office of Planning and Zoning
28712 Glebe Road, Suite 2
Courthouse
Easton, Maryland 21601

Re: L1072
Heyman Line Revision

Dear Ms. Verdery:

Thank you for providing information on the above referenced revision plat. The applicant is requesting a minor lot line revision between five parcels (Parcel A, Parcel B, Parcel 1, Parcel 2, Parcel 3). All parcels are located in a Limited Development Area (LDA). Parcel 1 is 7,798 square feet in size and is currently developed with a frame house, garage, patio walkway, and accessory structure. Parcel 2 is 290 square feet in size; this parcel will be abandoned and become part of Parcel 1. Parcel 3 is 10,647 square feet in size and is currently developed with a driveway. Parcel A is 2,629 square feet I size; this parcel will be abandoned to become part of Parcel 3. Parcel B is 894 square feet and will also be abandoned to become part of Parcel 3. Upon completion of the line revision, Parcel 1 will be 12,213 square feet in size, and Parcel 3 will be 10,045 square feet. Total impervious surface on Parcel 1 is 2,599 square feet (21.28%), while the impervious amount for Parcel 3 is 555 square feet (5.5%).

Based on the information provided, we have the following comments on this project:

1. Talbot County Soil Maps reveal that the property is located in hydric soils (Mattapex). In the future, any proposed agricultural uses and proposed structures should be constructed to minimize impacts to these soils.
2. Please have the applicant provide the amount of forest coverage for each parcel. Each parcel must have 15% forest cover.
3. For future reference, please have the applicant provide a clearer vicinity map.

Thank you for the opportunity to provide comments on this lot line revision request. Please have the applicant provide the information requested above. Please call me with any questions at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: TC 34-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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January 25, 2008

Ms. Mary Kay Verdery
Talbot County Office of Planning and Zoning
28712 Glebe Road, Suite 2
Courthouse
Easton, Maryland 21601

Re: L1070
Piszel Line Revision

Dear Ms. Verdery:

Thank you for providing information on the above referenced revision plat. The applicant is requesting a minor lot line revision between two parcels (Revised Parcel 61, Lot A2, Revised Parcel 61, Lot B2). Both properties are located in a Limited Development Area (LDA). Revised Parcel 61, Lot A2 is 5.095 acres in size and is currently developed with a three-story dwelling, patio, pool, brick walkways, two-story garage, brick columns, concrete apron, horse stables, and gravel driveway. Revised Parcel 61, Lot B2 is 4.012 acres in size and is currently developed with a two-story dwelling unit, pool, patio, slate walkways, retaining wall, concrete apron, driveway, and one-and-half story garage. Upon completion of the line revision, Revised Parcel 61, Lot A2 will be 4.497 acres in size, and Revised Parcel 61, Lot B2 will be 4.610 acres in size. Total impervious surface on Revised Parcel 61, Lot A2 is 18,092 square feet (9.47%), while impervious calculations for Revised Parcel 61, Lot B2 is 16,584 square feet (8.26%). Total forest coverage for Revised Parcel 61, Lot A2 is 86,244 square feet (45.15%), while forest coverage for Revised Parcel 61, Lot B2 is 71,660 square feet (35.70%).

Based on the information provided, we have the following comments on this project:

1. The site is located in an area where there is the potential for the presence of a Federally-listed endangered species. The applicant must receive a letter from the Department of Natural Resources (DNR) Wildlife and Heritage Division, and the applicant must address all recommendations from DNR for protection of this species. Please forward a copy of this letter to this office.
2. Talbot County Soil Maps reveal that portions of the property are located in hydric soils (Keyport). In the future, any proposed agriculture uses or proposed structures should be constructed to avoid impacting these soils.
3. If forest is cleared for any development on this parcel in the future, mitigation will be required. If up to 20% of forest is cleared from the parcel, then mitigation at a ratio of 1:1 is required; if clearing is between 20% and 30%, then mitigation is 1.5:1; clearing of over 30% of the site requires 3:1 mitigation.

Thank you for the opportunity to provide comments on this lot line revision request. Please have the applicant provide the information requested above. Please call me with any questions at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: TC 33-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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January 28, 2008

William S. Ingersoll
Town of Chestertown
Town Office
118 North Cross Street
Chestertown, MD 21620

Re: Radcliffe Point Subdivision

Dear Mr. Ingersoll:

Thank you for providing information on the above-referenced subdivision. The applicant proposes to create a 26-lot residential/condominium subdivision. The property is 5.578 acres in size, and is located in both a Limited Development Area (4.398 acres) and an Intensely Developed Area (1.180 acres). Currently, the lot is undeveloped. Upon completion of this project, the amount of impervious surface within the LDA portion of the property will be 27,950.83 square feet (14.56%). Currently, 6,970 square feet of forest cover exists in the LDA portion of the site (3.6%). No clearing of trees will occur during the construction of this project, and the applicant proposes to plant 21,780 square feet of additional forest cover to meet the 15% afforestation requirement.

Based on the information provided, we have the following comments on this project:

1. The Critical Area Assessment submitted mentions that 19 dwelling units are proposed on-site. However, the site plans reveals 26 dwelling units. Please have the applicant clarify the discrepancy between these two numbers.
2. The total proposed impervious area for the subdivision is already 14.56%; this only leaves a total of 786 square feet of future impervious area enhancements for all of the future owners of the proposed 26 lots. It is our position that all future disturbances associated with newly created lots should not require variances to the Town's Critical Area Program requirements. Accordingly, the subdivision's proposed impervious area must be reduced to leave future lot owners reasonable room for impervious area enhancements to their property. We recommend that the Town not approve this subdivision request until the applicant has addressed this issue.

3. Please have the applicant clarify if the concrete walkway with handicap ramp has been included in the impervious calculations for this site.
4. It is unclear if pervious pavers were included in the impervious surface calculations for this site. Please have the applicant provide soil borings and the manufacturer's specifications for the type of pervious pavers used. Typically, for stormwater management purposes, pervious pavers can receive a maximum pervious rate of 40%.
5. It appears that the Best Management Practice calculations for the 10% rule are incorrect. For F-6, bioretention, the L_{post} number should be .61 (1.51-.90), and the %Drainage Area served for this BMP type should be 92%. A third BMP should be added to the BMP options area that accounts for the remaining 8% of the drainage area served by the bio-retention. The L_{post} should be 1.51, the BMP_{re} should be 50%, and the %DA Served should be 8%. Please have the applicant resubmit the 10% calculations using these revised BMP options. In addition, please have the applicant submit drainage area maps so that Commission Staff can verify the percentage of drainage area served by each BMP, and please have the applicant submit to this office a list of the type of plant materials proposed in the bioretention. Please feel free to contact me to discuss this matter further.
6. The applicant must receive a letter from the Department of Natural Resources (DNR) Wildlife and Heritage Division evaluating the property to determine if there is the presence of any threatened or endangered species onsite. If present, the applicant must address all recommendations from DNR for protection of this species. Please forward to this office a copy of this letter. If there is the presence of such species onsite, a Habitat Protection Plan must be submitted to address proposed impacts. Final approval of this subdivision request should not occur until this information is received.

Thank you for the opportunity to provide comments on this subdivision application. If you have any questions, please contact me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: CT 23-08
Mary Ann Skilling, Chestertown Circuit Rider

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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January 28, 2008

Ms. Mary Kay Verdery
Talbot County Office of Planning and Zoning
28712 Glebe Road, Suite 2
Courthouse
Easton, Maryland 21601

Re: L1035
Glose Line Revision

Dear Ms. Verdery:

Thank you for providing information on the above referenced revision plat. The applicant is requesting a minor lot line revision between two parcels (Revised Tax Parcel 61, Revised Tax Parcel 71). All parcels are located in a Limited Development Area (LDA). Revised Tax Parcel 61 is .421 acres in size and is currently developed with a two-and-one-half story frame house, one-and-one-half frame garage, gravel driveway, porch, and walkway. Revised Tax Parcel 71 is 6.983 acres in size and is currently developed with an unoccupied dwelling and unoccupied garage. Upon completion of the line revision, Revised Tax Parcel 61 will be .995 acres in size, and Revised Tax Parcel 71 will be 6.409. Total impervious surface on Revised Tax Parcel 61 is 6,495 square feet (14.98%), while the impervious amount for Revised Tax Parcel 71 is 1,752 square feet (.63%). There is no forest coverage currently on Revised Tax Parcel 61; Revised Tax Parcel 71 has 1,655 square feet of forest coverage (.59%).

Based on the information provided, we have the following comments on this project:

1. Talbot County Soil Maps reveal that portions of the property are located in hydric soils (Keyport). In the future, any proposed agriculture uses or proposed structures should be constructed to avoid impacting these soils.
2. Please have the applicant provide additional forest coverage on each parcel to meet the 15% afforestation requirement.
3. In a December 7, 2006 letter, staff requested a wetland delineation to verify whether the 100-foot Buffer from tidal wetlands on the adjacent Dickson parcel encroached onto Revised Tax Parcel 71. Based on the information provided, it does not appear that this has occurred. In order to allow staff to review the vegetation, hydrology, and topography

of this site, please have the applicant submit to this office a copy of the environmental assessment taken on this property in July, 2006. Please consider this a request under COMAR 27.03.01.02C, which states that the Commission may "request additional information from either the local approving authority or the applicant if it is necessary for accurate evaluation of the proposed action."

Thank you for the opportunity to provide comments on this lot line revision request. Please have the applicant provide the information requested above. Please call me with any questions at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: TC ~~34-08~~ 736-06

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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January 28, 2008

Ms. Mary Kay Verdery
Talbot County Office of Planning and Zoning
28712 Glebe Road, Suite 2
Courthouse
Easton, Maryland 21601

Re: A107
Arnheim variance

Dear Ms. Verdery:

Thank you for providing information on the above-referenced variance application. The applicant proposes to expand an existing 23-foot by 23-foot house from by raising the roof from 1.5 stories to 2 stories. The property is 2.15 acres in size and is located in a Limited Development Area (LDA). The property is currently developed with a two-story brick dwelling, shed, fence, pier, patio, and driveway. Current impervious surface on site is 14,046 square feet (14.99%); no new impervious surface is proposed.

Provided the lot is properly grandfathered, we do not oppose this variance request.

Thank you for the opportunity to provide comments on this variance application. If you have any questions, please contact me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: TC 56-08

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/

January 28, 2008

Ms. Mary Kay Verdery
Talbot County Office of Planning and Zoning
28712 Glebe Road, Suite 2
Courthouse
Easton, Maryland 21601

Re: A111
Calabro variance

Dear Ms. Verdery:

Thank you for providing information on the above-referenced variance application. The applicant proposes to add a utility room and breakfast room to an existing dwelling unit, with a portion located in an area recently damaged by fire. The property is 4.923 acres in size and is located in a Resource Conservation Area (RCA). The property is currently developed with a two-story dwelling, gravel driveway, garage, slate walks, bilco doors, steps, deck, and concrete pad. The applicant proposes to construct a 165 square foot utility room and 88 square foot breakfast room; 15 square feet of concrete pads will be removed. In addition, a 110 square foot covered roof will be installed to connect the two additions, covering an existing impervious area. Total impervious surface onsite is currently 19,017 square feet (8.87%). Upon completion of this project, total impervious surface will be 19,255 square feet (8.97%). The proposed additions will be no closer to Mean High Water (MHW) than the existing dwelling unit.

Provided the lot is properly grandfathered, we do not oppose this variance request. However, we do have the following comments on this proposal:

1. Mitigation for any disturbance in the 100-foot Buffer must be performed at a 2:1 ratio.

Thank you for the opportunity to provide comments on this variance application. If you have any questions, please contact me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: TC 57-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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January 28, 2008

Mr. Blaine Smith
Zoning Administrator
Town of Ocean City
PO Box 158
Ocean City, MD 21843

Re: 14219
Ruszin Building Permit

Dear Mr. Smith:

Thank you for providing information on the above referenced building permit application. The applicant proposes to construct a single-family dwelling unit. Critical Area issues include stormwater management, pollutant removal, and afforestation.

The lot is 4,000 square feet in size and has a zoning setback of five feet. Currently, the lot is developed with a mobile home, deck, step, concrete driveway, concrete walkway, and shed. The applicant proposes to construct a single-family dwelling unit, deck, steps, concrete driveway, concrete walkway, and HVAC platform. Total existing impervious surface onsite is 2,232 square feet (55.8%). Upon completion of the project, impervious surface will increase to 2,901 square feet (65.3%). To meet mitigation requirements in the 100-foot Buffer, $3,078 of landscaping is required. The applicant proposes to provide $3,100 in plantings; a total of 2 large trees (Crepe Myrtle) and 36 large shrubs (Boxwoods, Holly) will be provided as landscaping.

To meet stormwater management requirements, the applicant building a pervious deck, is creating a grass swale and rain garden, is providing vegetative mitigation, and is paying a fee in lieu in the amount of $255.60.

Based on the information provided, we have the following comments on this project:

1. Within the 100-foot Buffer area, the applicant proposes to build a 1,690 square foot dwelling unit, a 24-foot by 12-foot pervious deck (288 square feet), steps (120 square feet), concrete driveway/walkway (794 square feet), and HVAC pad (9 square feet). The Town of Ocean City Atlantic Coastal Bays Critical Area Program §30-554(d)(1) states

that, "New development, including accessory structures, shall minimize the extent of intrusion into the Buffer…" While we understand that the Town of Ocean City Atlantic Coastal Bays Critical Area Program allows pervious decks in the setback, and we will continue to discuss this issue with staff, it appears that the size and location of the house and deck do not minimize Buffer intrusion. To minimize water quality and habitat impacts, we recommend reducing the size of the proposed house so that the deck can be located outside of the setback area. In addition, we recommend fully planting the setback area with the native vegetation that is required as mitigation for this site.

2. Please provide for this office the calculations used to determine the amount of fee-in-lieu required for stormwater management. Prior to the approval of this site plan, please ensure that the applicant has fully paid this fee.

Thank you for the opportunity to provide comments on this building permit request. Please have the applicant provide the information requested above. If you have any questions, please feel free to call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly, Ph.D
Natural Resource Planner
cc: OC 44-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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January 30, 2008

Mr. Blaine Smith
Zoning Administrator
Town of Ocean City
PO Box 158
Ocean City, MD 21843

Re: Barry Site Plan
13895

Dear Mr. Smith:

Thank you for providing additional information on the above referenced building permit application. The applicant proposes to construct an addition to an existing single family residence. Critical Area issues include stormwater management, pollutant removal, and afforestation.

The lot is 3,440 square feet in size and is currently developed with an existing mobile home, addition, concrete walkway, concrete driveway, and shed. The applicant proposes to remove the existing structures and construct a new home, shed, screen room, two decks, two ramps, and a driveway. Total existing impervious surface onsite is 1,546 square feet (44.9%). Upon completion of the project, impervious surface will increase to 2,014 square feet (58.5%). To meet mitigation requirements in the 100-foot Buffer, $3,280 of landscaping is required, and 516 square feet of planting is required to meet afforestation requirements outside of the 100-foot Buffer. The applicant proposes to plant 3,406 square feet of plantings.

To meet stormwater management requirements, the applicant is providing two grass swales, one rain garden, a pervious deck, and is limiting total impervious surface to less than 60% of the site.

In response to Mr. Donnelly's letter, we have the following comments for this project:

1. I understand that the Town of Ocean City Atlantic Coastal Bays Critical Area Program does not preclude the applicant from having a deck and screen room. However, §30-554(d)(1) states that, "New development, including accessory structures, shall **minimize** the extent of intrusion into the Buffer…" My comment simply requested that the

applicant reduce the size of the screen room and place the deck outside of the setback area in order to minimize water quality and habitat impacts. I understand that the Town of Ocean City is doing its best to meet this requirement using the Town's Critical Area regulations, and we will continue to work with the town on this issue; however, I continue to recommend reducing the size of the screen room and placing the deck outside of the setback area.

2. I have been in contact with Ms. Gail Blazer about the subject of rain gardens and grass swales, and therefore have no additional comments about the proposed rain gardens and grass swales onsite.
3. The provided landscaping/mitigation adequately addresses my prior comment.
4. My request for the amount of impervious surface attributed to each structure was to verify that the total amount of impervious surface onsite was accurate. Currently, the amount of proposed impervious surface is 50 feet below the 60% impervious limit required by the Town to meet the minimum homeowner BMPs to be incorporated onsite. Consequently, having the amount of impervious surface attributed to each structure is vital in determining that the applicant is meeting this requirement. Therefore, I respectfully request that the applicant provide the amount of impervious surface attributed to each structure, including the screen room, decks, and ramps. Please consider this a request under COMAR 27.03.01.02C, which states that the Commission may "request additional information from either the local approving authority or the applicant if it is necessary for accurate evaluation of the proposed action."

Thank you again for the opportunity to provide comments on this revised building permit request. Please have the applicant provide the information requested above. If you have any questions, please feel free to call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly, Ph.D
Natural Resource Planner
cc: OC 666-07

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
CRITICAL AREA COMMISSION
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January 30, 2008

Mr. Blaine Smith
Zoning Administrator
Town of Ocean City
PO Box 158
Ocean City, MD 21843

Re: 14255
Lewis Building Permit

Dear Mr. Smith:

Thank you for providing information on the above referenced building permit application. The applicant proposes to construct a single-family dwelling unit. Critical Area issues include stormwater management, pollutant removal, and afforestation.

The lot is 1,476 square feet in size. Currently, the lot is developed with a mobile home, storage unit, and concrete pad/shower. The applicant proposes to construct a single-family dwelling unit and concrete parking pad. Total existing impervious surface onsite is 726 square feet (49.1%). Upon completion of the project, impervious surface will increase to 1,012 square feet (68.6%). To meet mitigation requirements in the 100-foot Buffer, $1,325 of landscaping is required. The applicant proposes to provide $1,325 in plantings; a total of 1 large tree (Crepe Myrtle) and 15 large shrubs (Boxwoods, Holly) will be provided as landscaping.

To meet stormwater management requirements, the applicant is providing a five-foot by five-foot rain garden (with five plants), pervious deck, grass swale, and vegetative mitigation.

Based on the information provided, we have the following comments on this project:

1. It appears that one of the proposed BMPs for this project is limiting the amount of impervious surface onsite to less than 65%. However, the proposed impervious surface onsite is 68.6%. Please have the applicant provide a fee-in-lieu for the amount of impervious surface over 65%; this fee should be paid prior to granting this building permit. In addition, please clarify why the impervious surface limit is 65%, and not 60%, for this site.

2. It is unclear where the proposed pervious deck is located. Please have the applicant clearly delineate the deck on the site plan.
3. The proposed deck should be surrounded by native vegetation (at a minimum of three feet wide and composed of evergreen shrubs or woody, deciduous plant material). We recommend that this requirement be included as a condition of approval.

Thank you for the opportunity to provide comments on this building permit request. Please have the applicant provide the information requested above. If you have any questions, please feel free to call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly, Ph.D
Natural Resource Planner
cc: OC 53-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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January 30, 2008

Mr. Blaine Smith
Zoning Administrator
Planning and Community Development
P.O. Box 158
Ocean City, MD 21843

RE: **Ramada/Condo Conversion; Case # 06-18100009**
41st Street/Coastal Highway

Dear Mr. Smith:

Thank you for your recent updated submittal for the above request to convert hotel units within the existing Ramada Inn to multi-family residential units. The 1.77 acre lot is located in an Intensely Developed Area (IDA). The applicant has submitted a mitigation plan for the project. Total mitigation required for the site is 12,671.7 square feet; the applicant is providing 12,500 square feet of planting and is paying a fee-in-lieu of $1,710.70.

Based on the information provided, we have no additional comments on this project.

Thank you for sending the updated documentation. If you have any further questions regarding this project, please call me directly at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly, Ph.D
Natural Resources Planner
cc: OC 723-06

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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January 31, 2008

Lynn Thomas
Town of Easton
14 South Harrison Street
P.O. Box 520
Easton, MD 21601

Re: Eccleston Building Permit

Dear Mr. Thomas:

Thank you for providing information on the above-referenced building permit. The applicant is proposing to fill, grade, and plant marsh vegetation along 157 square feet of eroding shoreline with 205 cubic yards of sand and a low profile, stone, sand containment sill emplaced within a maximum of 10 feet channelward of the mean high water line.

This office supports marsh creation as a means of shore protection in areas where long-term sustainability is ensured. The applicant should coordinate with the Town of Easton in the creation of this marsh. In addition, we have the following comments on this project:

1. This site is adjacent to a historic waterfowl concentration area. Prior to project approval, please ensure that the applicant has contacted Lori Byrne of the Maryland Department of Natural Resources Wildlife and Heritage Service at (410) 260-8573 to receive an evaluation of the site, as restrictions may apply as to when and how construction in the marsh will be permitted.
2. It is unclear from the site plan if there will be any change in Mean High Water (MHW) from this project. Prior to project approval, please have the applicant submit information to this office clarifying this concern. Any change in MHW will require additional review by Commission staff.
3. It is unclear from the site plan if there will be any grading to the bank or disturbance to the Buffer. If grading or any other disturbance to the Buffer occurs, mitigation must be provided at a 1:1 ratio.

Thank you for the opportunity to provide comments on this site plan. Please have the applicant provide the information requested above. If you have any questions, please feel free to call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: EA 39-08

Martin O'Malley
Governor

hony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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January 31, 2008

Duncan Stuart
City of Baltimore Planning Commission
Department of Planning
417 E. Fayette Street, 8th Floor
Baltimore, Maryland 21202-3416

Re: 6000 Chemical Road
Site Plan

Dear Mr. Stuart:

Thank you for providing information on the above-referenced site plan. The applicant is proposing mitigation and the construction of bioretention facilities to treat impervious surface that was created by a violation in 2002. The lot is 4.641 acres in size and is located in an Intensely Developed Area (IDA). Total existing impervious surface onsite is 1.35 acres; the applicant proposes to remove .1 acres of impervious surface. Total forest coverage onsite is 1.221 acres; the applicant proposes to create .70 acres of additional forest coverage. To meet 10% requirements, .35 pounds of phosphorus per year must be removed; the applicant is proposing three bioretention areas that will remove 1.12 pounds of phosphorus.

Based on the information provided, and based on our understanding the City of Baltimore Department of Public Works has determined that the bioretention facilities meet Critical Area regulations, we do not oppose this project.

Thank you for providing the information on the 10% calculations, bioretention construction, and mitigation measures for this site plan. If you have any questions, feel free to call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: BA 101-06

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
CRITICAL AREA COMMISSION
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January 31, 2008

Ms. Mary Kay Verdery
Talbot County Office of Planning and Zoning
28712 Glebe Road, Suite 2
Courthouse
Easton, Maryland 21601

Re: L1071
Tyler Lot Line Revision

Dear Ms. Verdery:

Thank you for providing information on the above-referenced minor revision plat. The applicant proposes to abandon an existing lot line between two parcels (Parcel 23, Parcel 24) for the establishment of a new septic disposal area for an existing dwelling. Both parcels are located in a Resource Conservation Area (RCA). Parcel 23 is 9,193 square feet in size and is currently developed with a one story dwelling unit. Parcel 24 is 5,779 square feet in size and is developed with a two-story dwelling unit and shed; the dwelling unit and shed on this parcel are proposed to be razed.

Based on the information provided, we have the following comments on this proposal:

1. Please have the applicant provide the amount of impervious surface located onsite. Total impervious surface on this site may not exceed 31.25% for parcels between 8,001 and 21,780 square feet in size (4,678.75 square feet).
2. Please have the applicant provide the amount of forest coverage located onsite. All parcels must meet the 15% afforestation requirement.
3. This property is currently developed in a nonconforming manner; that is, two dwelling units exist on separate RCA parcels that are less than 20 acres in size. By agreeing to this lot line revision, the applicant appears to be forfeiting the right to the second dwelling unit in perpetuity. Please verify the County's understanding and position on this fact.

Thank you for the opportunity to provide comments on this revision plat. If you have any questions, please contact me at (410) 260-3483.

Sincerely,

Nick Kelly
Natural Resource Planner
cc: TC 223-06

Martin O'Malley
Governor

thony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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Memorandum

To : James W. Price, Director, Program Open Space

From: Nick Kelly, Critical Area Commission

Re: DNR Clearinghouse Review of Local POS Project 5322-14-73
Betterton Beach Development (Renovations), Kent County

Dear Mr. Price:

Thank you for providing information for the above-referenced project. The applicant proposes to replace the bathhouse roof and renovate the existing parking lot, including paving, curbing, retainer wall, and drainage swale. Additionally, a gazebo roof will be replaced, and the stairway from the gazebo and picnic shelter to the beach will be upgraded. The project is located in a Special Buffer Area (SBA).

Based on the information provided, we have the following comments on this project:

1. Projects on property owned by a local jurisdiction require confirmation of consistency with the Critical Area Program, or the project may require Conditional Approval from the Critical Area Commission if any element of the project does not meet all the requirements set forth by the jurisdiction's Critical Area Program. Therefore, any proposed development activities will require a review by Commission staff.
2. The applicant must receive a letter from the Department of Natural Resources (DNR) Wildlife and Heritage Division evaluating the property to determine if there is the presence of any threatened or endangered species onsite. If present, the applicant must address all recommendations from DNR for protection of this species.
3. The applicant must receive a letter from the Maryland Historic Trust (MHT) to determine if any historical or archeological areas of importance exist onsite. If present, the applicant must address all recommendations from MHT to protect these areas.

4. The project is located in a Special Buffer Area (SBA). Any intrusion into the Buffer should be minimized, and any disturbance within this Buffer area will require 2:1 mitigation.
5. We advise the Town of Betterton to work closely with Commission staff as early as possible on this project.

Thank you again for the opportunity to provide comments on this project. If you have any questions, feel free to call me at (410) 260-3483.

cc: Gail Owings, Kent County Planning and Zoning Director
Mary Ann Skilling, Critical Area Circuit Rider, Town of Betterton

Martin O'Malley
Governor

hony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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February 4, 2008

Mr. Blaine Smith
Zoning Administrator
Town of Ocean City
PO Box 158
Ocean City, MD 21843

Re: 14073
The Paddock Building Permit

Dear Mr. Smith:

Thank you for providing information on the above referenced building permit application. The applicant is proposing to construct a pool, outside bar, block wall, and cabana. Critical Area issues include stormwater management, pollutant removal, and afforestation.

The lot is 20,043 square feet in size. Currently, the lot is developed with a two-story building, patio, additional building, bar, parking lot, sidewalk, and garage. The applicant proposes to construct a pool, outside bar, block wall, and cabana. Current impervious surface onsite is 18,158 square feet (90.6%); upon completion of this project, total impervious surface will be 16,285 square feet (81.3%). To meet afforestation requirements, the applicant is providing 3,150 square feet of landscaping; 12 large trees (Bradford Pear) and 10 large shrubs (Cotoneaster-coral Beauty, blue rug Juniper) will be provided. The applicant is meeting the 10% pollutant removal requirement through the reduction of impervious surface onsite.

Based on the information provided, we have the following comment on this project:

1. The applicant proposes to plant Bradford Pear trees to meet afforestation requirements. The Bradford Pear tree is considered to be a plant invader of Mid-Atlantic Natural Areas. Staff recommends planting serviceberry in place of the Bradford Pear.
2. The applicant states that the pervious pavers used for this project receive a 65% efficiency rating for phosphorus removal. However, the low quality of the soils

onsite permits this Best Management Practice to receive only half the credit for removal (32.5%). Total phosphorus load removed onsite is now .037 pounds per year, not .074 pounds per year. This amount will still meet the load removal requirement for this project.

Thank you for the opportunity to provide comments on this building permit request. Please have the applicant provide the information requested above. If you have any questions, please feel free to call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly, Ph.D
Natural Resource Planner
cc: OC 71-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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February 4, 2008

Amy Moredock
Department of Planning and Zoning
Kent County Government Center
400 High Street
Chestertown, Maryland 21620

Re: Grays Inn Creek Variance
07-157

Dear Ms. Moredock:

Thank you for providing information on the above referenced variance request. The applicant is requesting a variance to construct a single-family dwelling unit with less Buffer than required. The property is .6 acres in size and is located in a Limited Development Area (LDA) and in a Modified Buffer Area/Buffer Exempt Area (BEA). Currently, the site is undeveloped. The applicant proposes to construct a single-family dwelling unit, porch, deck, and driveway that is located 65 feet from Mean High Water (MHW). Total proposed impervious surface is 2,982 square feet (11.41%).

Based on the information provided, we oppose a variance to construct the proposed single-family dwelling unit in its current location. The Land Use Ordinance for Kent County for parcels zoned Critical Area Residential (CAR), §5.7 B.3.a.ii.d, states that, "in so far as possible, non-water dependent structures....are located outside the minimum 100-foot Buffer." In a Modified Buffer Area, the Land Use Ordinance for Kent County grants new construction closer to mean high tide or the edge of tidal wetlands only for the expansion of dwellings existing as of April 12, 1988; it is our understanding that no dwelling currently exists on this site. Therefore, the provisions of the 100-foot Buffer must be applied for this site as contemplated by the County when it adopted this restriction to Modified Buffer Areas in the CAR zone.

In reviewing the site plan, it appears that the applicant has not requested the minimum variance to afford relief for this site. There is ample space outside of the 100-foot Buffer to construct a single-family dwelling unit, porch, deck, and driveway. Accordingly, the development of this lot should be accommodated outside of the 100-foot Buffer.

Relevant Variance Standards

In 2002 and 2004, the General Assembly strengthened the Critical Area Law and reiterated its commitment to the Chesapeake Bay Critical Area's water quality and wildlife habitat values, particularly emphasizing the importance of the 100-foot Critical Area Buffer. In particular, the General Assembly reaffirmed the stringent standards that an applicant must meet in order for a local jurisdiction to grant a variance to the Critical Area law. The State law provides that variances to a local jurisdiction's Critical Area program may be granted **only** if a zoning board finds that an applicant has satisfied its burden to prove that the applicant meets each one of the county's variance standards, including the standard of "unwarranted hardship;" that is, "denial of reasonable and significant use of the entire parcel or lot." Furthermore, the State law establishes a presumption that a proposed activity for which a Critical Area variance is requested does not conform to the purpose and intent of the Critical Area law. The County must make an affirmative finding that the applicant has overcome this presumption, based on the evidence presented.

In this instance, the applicant's request for a variance to allow a dwelling and associated accessory structures with disturbance in the Buffer in conflict with Kent County's Zoning Code provisions regarding new dwelling units in the 100-foot Buffer (Land Use Ordinance for Kent County §5.7 B.3). The proposed location of the house will create adverse impacts to the 100-foot Buffer. The applicant has ample room onsite to place entire house, porch, deck, and driveway outside of the 100-foot Buffer. The result of these actions would greatly minimize adverse impacts to water quality and habitat and not create an unwarranted hardship for the applicant.

In summary, the Planning Director must find that the applicant has overcome the burden to meet each and every one of the County's variance standards in order to grant a variance. Because we believe that the applicant has failed to demonstrate that an unwarranted hardship would exist without a variance, we are unable to offer support for the applicant's request. In addition, we believe that the granting of this variance is not in harmony with the spirit and intent of Critical Area law and regulations, and those specifically found in the Kent County Land Ordinance, as the proposed disturbances will create adverse impacts to the Buffer and that could be completely avoided.

Thank you for the opportunity to provide comments. Please include this letter in your file and submit it as part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case. If you have any questions, please call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: KC ~~701-07~~
52-08

Martin O'Malley
Governor

thony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
CRITICAL AREA COMMISSION
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February 4, 2008

Ms. Mary Kay Verdery
Talbot County Office of Planning and Zoning
28712 Glebe Road, Suite 2
Courthouse
Easton, Maryland 21601

Re: A108
Lean Variance

Dear Ms. Verdery:

Thank you for providing information on the above-referenced variance. The applicant is requesting a variance to cover an existing patio with a screened porch. The property is 14,528 square feet in size and is located in a Resource Conservation Area (RCA). Currently, the site is developed with a single-family dwelling unit, garage, patio, and driveway. The applicant proposes to cover the existing patio with a screened porch. Current impervious surface onsite is 2,306 square feet (15.87%), which is under the 31.25% limit allotted to lots between 8,001 and 21,780 square feet in size; no new impervious surface is proposed. Total area of disturbance will be 520 square feet.

Provided the lot is properly grandfathered, we do not oppose this variance request. However, we do have the following comments:

1. Mitigation for any disturbance in the Buffer shall be performed at a 2:1 ratio.
2. The applicant is requesting to cover an existing patio with a screened porch. Please note that this office would not support any future variances to create a patio within the 100-foot Buffer on this property.

Thank you for the opportunity to provide comments on this variance application. Please include this letter in your file and submit it as part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case. If you have any additional questions please contact me at 410-260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: TC 65-08

Martin O'Malley
Governor

hony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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February 4, 2008

Mr. Blaine Smith
Zoning Administrator
Town of Ocean City
PO Box 158
Ocean City, MD 21843

Re: Seaside Escape Site Plan
07-18100003

Dear Mr. Smith:

Thank you for providing information on the above referenced site plan. The applicant is proposing to build a 15-unit condominium with pool and ground level parking. Critical Area issues include stormwater management, pollutant removal, and afforestation.

Total lot size is 17,925 square feet. The lot is currently composed of a building, asphalt parking lot, and several landscaped areas. The applicant proposes to remove the existing building and construct a five-story condominium, parking lot, and landscaped areas. Current impervious surface on-site is 13,422 square feet (74.8% of the total site), and will increase to 14,810 square feet upon completion of this project (82.6%). The project is located outside of the 100-foot Buffer. To meet afforestation requirements, the applicant is providing 3,375 square feet of landscaping; 14 small trees (serviceberry, crapapple, emerald arborvitae), 1 large shrub (bayberry), and 38 small shrubs (pepperbush, shore juniper, rugosa rose, Adam's needle) will be planted. To meet 10% pollutant removal requirements, the applicant is using pervious pavers to remove the required .135 pounds of phosphorus per year.

1. The applicant states that the pervious pavers used for this project receive a 65% efficiency rating for phosphorus removal. However, as mentioned in our October 16, 2007 letter, the low quality of the soils onsite permits this Best Management Practice to receive only half the credit for removal (32.5%). Total phosphorus load removed onsite is now .142 pounds/year, not .286 pounds/year. This amount will still meet the load removal requirement for this project.

Thank you for the opportunity to provide comments on this site plan application. If you have any questions, please feel free to call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly, Ph.D
Natural Resource Planner
cc: OC 582-07

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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February 5, 2008

Ms. Mary Kay Verdery
Talbot County Office of Planning and Zoning
28712 Glebe Road, Suite 2
Courthouse
Easton, Maryland 21601

Re: A110
Wagner Variance

Dear Ms. Verdery:

Thank you for providing information on the above-referenced variance. The applicant is requesting a variance to replace an existing house that is located within the 100-foot Buffer. The property is 17,035 square feet and is located in a Limited Development Area (LDA) and a Buffer Management Area (BMA). The property is currently developed with a one-story dwelling unit, driveway, patio, and walkways. The applicant proposes to remove the existing home, driveway, and walkways, and construct a new one-story dwelling unit, driveway, patio, and walkways. Total impervious surface onsite is currently 5,225 square feet (30.67%); upon completion of this project, total impervious surface will decrease to 5,066 square feet (29.73%).

While we are not opposed to the proposed location for the newly constructed house, we have significant concerns regarding the use of pervious pavers on this site as proposed by the applicant. Without additional information related to the use of pervious pavers, including detailed soil boring information and manufacturer's specifications on the specific paver product, we are unable to determine whether the pavers will provide the intended infiltration benefits. In addition, if the site conditions are not amenable to the use of pavers, it appears that the applicant will exceed the impervious surface area limits in the law. As a result, we are unable to support this variance application at this time. We request that the applicant provide for this office a copy of the soil borings and the manufacturer's specifications in order to determine the pervious rate of the pavers and the site suitability for their use. Please consider this a request under COMAR 27.03.01.02C, which states that the Commission may "request additional information from either the local approving authority or the applicant if it is necessary for accurate evaluation of the proposed action." Upon receiving this information, we will fully review this application and provide a recommendation.

Thank you for the opportunity to provide comments on this variance application. Please include this letter in your file and submit it as part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case. If you have any additional questions please contact me at 410-260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: TC 67-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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February 5, 2008

Ms. Mary Kay Verdery
Talbot County Office of Planning and Zoning
28712 Glebe Road, Suite 2
Courthouse
Easton, Maryland 21601

Re: A109
Haley Variance

Dear Ms. Verdery:

Thank you for providing information on the above-referenced variance. The applicant is requesting a variance to construct an addition to a dwelling unit and remove impervious surface within the 100-foot Buffer. The property is 66,908 square feet in size and is located in a Resource Conservation Area (RCA). Currently, the site is developed with a single-family dwelling unit, gravel driveway, stone patio, shed, wood deck, concrete porch/stoop, and paved area. The applicant proposes to construct an addition to the existing house, remove 2,700 square feet of gravel driveway, and replace it using pervious pavers. Current impervious surface onsite is 11,949 square feet (17.85%). The applicant proposes to add 603 square feet of new impervious surface and remove 3,279 square feet of impervious surface. Upon completion of the project, total impervious surface onsite will be 9,273 square feet (13.85%). Total area of disturbance will be 6,247 square feet.

At this time, we have significant concerns regarding the use of pervious pavers on this site as proposed by the applicant. Without additional information related to the use of pervious pavers, including detailed soil boring information and manufacturer's specifications on the specific paver product, we are unable to determine whether the pavers will provide the intended infiltration benefits. In addition, if the site conditions are not amenable to the use of pavers, it appears that the applicant will exceed the impervious surface area limits in the law. As a result, we are unable to support this variance application at this time. We request that the applicant provide for this office a copy of the soil borings and the manufacturer's specifications in order to determine the pervious rate of the pavers and the site suitability for their use. Please consider this a request under

COMAR 27.03.01.02C, which states that the Commission may "request additional information from either the local approving authority or the applicant if it is necessary for accurate evaluation of the proposed action." Upon receiving this information, we will fully review this application and provide a recommendation.

Thank you for the opportunity to provide comments on this variance application. Please include this letter in your file and submit it as part of the record for this variance. If you have any additional questions please contact me at 410-260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: TC 66-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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February 5, 2008

Kenneth Hranicky
Environmental Planner
Baltimore City Department of Planning
417 East Fayette Street, 8th Floor
Baltimore, MD 21202

Re: Bagby Building
Building Permit

Dear Mr. Hranicky:

Thank you for providing information on the above referenced building permit. The applicant is proposing to renovate the first floor of a building to create three restaurant spaces, three retail spaces, a lobby, and two trash rooms. The total site area is .77 acres, and the property is designated as an Intensely Developed Area. To meet the Critical Area 10% pollutant removal requirement, .179 pounds per year of phosphorus must be removed from the property; however, due to the size and location of the lot, stormwater cannot be treated onsite to meet this requirement. Consequently, the applicant proposes to provide an offset fee of $6,265. Afforestation requirements have been met onsite through the use of existing planter boxes and street trees; one dead tree will be replaced.

Based on the information provided, we have the following comment on this project:

- Please have the applicant submit to this office the type of replacement tree planted, including botanical name and common name.

Thank you for providing the information on 10% calculations for this building permit. If you have any questions, feel free to call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: BA 76-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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February 7, 2008

Tom Hamilton, Town Planner
City of Easton
14 South Harrison Street
P.O. Box 520
Easton, MD 21601

Re: Cooke's Hope Phase IV and V Growth Allocation

Dear Mr. Hamilton:

The purpose of this letter is to officially notify you of the Critical Area Commission's action on the above referenced growth allocation request. On February 6, 2008, upon discussion by the full Critical Area Commission on the matters outlined in the "Panel Discussion" section on Page 6 of the attached staff report, the Commission unanimously voted to deny the proposed program amendment to change the designation of 34.92 acres of Resource Conservation Area (RCA) land to an Intensely Developed Area (IDA).

In an effort to resolve the issues that resulted in the denial of this program amendment, the Critical Area Commission invites the Town to continue to work closely with Commission staff to revise the current proposal and assist in the submission of a new growth allocation request. Commission staff will be happy to discuss any considerations, concerns, or other relevant information that developed from discussion of this project throughout the amendment process.

Thank you for your help and cooperation with the Critical Area Commission throughout the review of this growth allocation request. If you have any questions, feel free to contact me at (410) 260-3460.

Sincerely,

Margaret G. McHale

Margaret G. McHale
Chair

Enclosure

Martin O'Malley
Governor

nthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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February 8, 2008

Lynn Thomas
Town of Easton
14 South Harrison Street
P.O. Box 520
Easton, MD 21601

Re: Eccleston Building Permit

Dear Mr. Thomas:

Thank you for providing supplemental information on the above-referenced building permit. The applicant is proposing to fill, grade, and plant marsh vegetation along 157 square feet of eroding shoreline with 205 cubic yards of sand and a low profile, stone, sand containment sill emplaced within a maximum of 10 feet channelward of the mean high water line.

In response to the comments from our January 31, 2008 letter, the applicant has stated that Mean High Water (MHW) for this project will be moved channelward by approximately seven feet. In looking at the information provided, it is unclear as to whether the 100-foot Buffer was delineated using the current location or proposed location for MHW. The 100-foot Buffer must be delineated onsite from the *current* location of the Mean High Water line of tidal waters, tributary streams, and tidal wetlands. Please have the applicant submit a site plan to this office showing the current location of MHW, the proposed location of MHW, and the correct delineation of the 100-foot Buffer using the *current* location of MHW or edge of tidal wetlands.

Thank you for the opportunity to provide additional comments on this site plan. Please have the applicant provide the information requested. If you have any questions, please feel free to call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: EA 39-08

Martin O'Malley
Governor

hony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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February 20, 2008

Roland Limpert
Environmental Review Unit
Maryland Department of Natural Resources
Tawes State Office Building
580 Taylor Avenue
Annapolis, MD 21401

Re: Town of St Michaels Comprehensive Plan 2008 Draft Update

Dear Mr. Limpert:

Thank you for the opportunity to provide comments on the Town of St. Michaels Comprehensive Draft Plan. Based on the information provided, we have the following comment on the draft:

1. Page 35: The Critical Area Land Use Map states that IDA areas are highlighted in red. However, it appears that the IDA areas are highlighted in white. Please have the Town correct the map to accurately show the IDA-designated areas in red.

If you have any questions, please feel free to call me at 410-260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner

cc: Debbie Renshaw, Town of St. Michaels
Roby Hurley, Critical Area Circuit Rider, Town of St. Michaels

Martin O'Malley
Governor

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Lt. Governor

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Memorandum

To : James W. Price, Director, Program Open Space

From: Nick Kelly, Critical Area Commission

Date: February 20, 2008

Re: DNR Clearinghouse Review of Local POS Project #5349-20-105
Neavitt Community Park

Dear Mr. Price:

Thank you for providing information for the above-referenced project. The applicant plans to renovate and develop a new picnic pavilion, basketball court, playground, fitness trail, fire pit with patio, fencing, park fixtures and landscaping. The property is located in a Limited Development Area (LDA).

Based on the information provided, we have the following comments on this project:

1. Projects on property owned by a local jurisdiction require confirmation of consistency with the Critical Area Program, or the project may require conditional approval from the local Critical Area Commission if any element of the project does not meet all the requirements set forth by the jurisdiction's Critical Area Program. Therefore, any proposed development activities will require a review by Commission staff and County Staff.
2. Since the project is located in an LDA area, impervious surface amounts are limited to 15%. In addition, 15% of the site must be established in forest.
3. The applicant must receive a letter from the Department of Natural Resources (DNR) Wildlife and Heritage Division evaluating the property to determine if there is the presence of any threatened or endangered species onsite. If present, the applicant must address all recommendations from DNR for protection of this species.
4. The applicant must receive a letter from the Maryland Historic Trust (MHT) to determine if any historical or archeological areas of importance exist onsite. If

present, the applicant must address all recommendations from MHT to protect these areas.

5. We advise Talbot County to work closely with Commission staff as early as possible on this project.

Thank you again for the opportunity to provide comments on this project. If you have any questions, feel free to call me at (410) 260-3483.

cc: Mary Kay Verdery, Assistant Planning Officer, Talbot County Office of Planning and Zoning

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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Memorandum

To : James W. Price, Director, Program Open Space

From: Nick Kelly, Critical Area Commission

Date: February 20, 2008

Re: DNR Clearinghouse Review of Local POS Project #5345-20-101
Wittman Park

Dear Mr. Price:

Thank you for providing information for the above-referenced project. The applicant plans develop a picnic pavilion, playground equipment, basketball court, backstop, parking area, sidewalks, park fixtures and landscaping. The property is located in both a Resource Conservation Area (RCA) and a Limited Development Area (LDA).

Based on the information provided, we have the following comments on this project:

1. Projects on property owned by a local jurisdiction require confirmation of consistency with the Critical Area Program, or the project may require conditional approval from the local Critical Area Commission if any element of the project does not meet all the requirements set forth by the jurisdiction's Critical Area Program. Therefore, any proposed development activities will require a review by Commission staff and County Staff. We note that the proposal appears to contemplate active recreation in a Resource Conservation Area, which is generally not permitted unless the County seeks a Conditional Approval by the Commission.
2. Since the project is located in both an RCA and LDA area, impervious surface amounts are limited to 15%. In addition, 15% of the site must be established in forest.
3. The applicant must receive a letter from the Department of Natural Resources (DNR) Wildlife and Heritage Division evaluating the property to determine if there is the presence of any threatened or endangered species onsite. If present,

the applicant must address all recommendations from DNR for protection of this species.

4. The applicant must receive a letter from the Maryland Historic Trust (MHT) to determine if any historical or archeological areas of importance exist onsite. If present, the applicant must address all recommendations from MHT to protect these areas.
5. We advise Talbot County to work closely with Commission staff as early as possible on this project.

Thank you again for the opportunity to provide comments on this project. If you have any questions, feel free to call me at (410) 260-3483.

cc: Mary Kay Verdery, Assistant Planning Officer, Talbot County Office of Planning and Zoning

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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Memorandum

To : James W. Price, Director, Program Open Space

From: Nick Kelly, Critical Area Commission

Date: February 20, 2008

Re: DNR Clearinghouse Review of Local POS Project #5339-20-100
Oak Creek Landing

Dear Mr. Price:

Thank you for providing information for the above-referenced project. The applicant plans to acquire .594 acres of waterfront property to expanding boating access to the Miles River and the Chesapeake Bay. The property is located in a Limited Development Area (LDA).

Based on the information provided, if the property is acquired and boating access is proposed, we have the following comments on this project:

1. Projects on property owned by a local jurisdiction require confirmation of consistency with the Critical Area Program, or the project may require conditional approval from the local Critical Area Commission if any element of the project does not meet all the requirements set forth by the jurisdiction's Critical Area Program. Therefore, any proposed development activities will require a review by Commission staff and County Staff.
2. Since the project is located in an LDA area, impervious surface amounts are limited to 15%. In addition, 15% of the site must be established in forest.
3. Only water dependent activities are permitted in the 100-foot Buffer.
4. The applicant must receive a letter from the Department of Natural Resources (DNR) Wildlife and Heritage Division evaluating the property to determine if there is the presence of any threatened or endangered species onsite. If present, the applicant must address all recommendations from DNR for protection of this species.

5. The applicant must receive a letter from the Maryland Historic Trust (MHT) to determine if any historical or archeological areas of importance exist onsite. If present, the applicant must address all recommendations from MHT to protect these areas.
6. We advise Talbot County to work closely with Commission staff as early as possible on this project.

Thank you again for the opportunity to provide comments on this project. If you have any questions, feel free to call me at (410) 260-3483.

cc: Mary Kay Verdery, Assistant Planning Officer, Talbot County Office of Planning and Zoning

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

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Memorandum

To : James W. Price, Director, Program Open Space

From: Nick Kelly, Critical Area Commission

Date: February 20, 2008

Re: DNR Clearinghouse Review of Local POS Project #5352-20-108
Bellevue Park

Dear Mr. Price:

Thank you for providing information for the above-referenced project. The applicant plans to resurface basketball courts and develop a new picnic pavilion, playground equipment, park fixtures, and landscaping. The property is located in a Limited Development Area (LDA).

Based on the information provided, we have the following comments on this project:

1. Projects on property owned by a local jurisdiction require confirmation of consistency with the Critical Area Program, or the project may require conditional approval from the local Critical Area Commission if any element of the project does not meet all the requirements set forth by the jurisdiction's Critical Area Program. Therefore, any proposed development activities will require a review by Commission staff and County Staff.
2. Since the project is located in an LDA area, impervious surface amounts are limited to 15%. In addition, a minimum 15% of the site must be established in forest.
3. Only water dependent activities are permitted in the 100-foot Buffer.
4. The applicant must receive a letter from the Department of Natural Resources (DNR) Wildlife and Heritage Division evaluating the property to determine if there is the presence of any threatened or endangered species onsite. If present, the applicant must address all recommendations from DNR for protection of this species.

5. The applicant must receive a letter from the Maryland Historic Trust (MHT) to determine if any historical or archeological areas of importance exist onsite. If present, the applicant must address all recommendations from MHT to protect these areas.
6. We advise Talbot County to work closely with Commission staff as early as possible on this project.

Thank you again for the opportunity to provide comments on this project. If you have any questions, feel free to call me at (410) 260-3483.

cc: Mary Kay Verdery, Assistant Planning Officer, Talbot County Office of Planning and Zoning

Martin O'Malley
Governor

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Lt. Governor

Margaret G. McHale
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Ren Serey
Executive Director

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Memorandum

To : James W. Price, Director, Program Open Space

From: Nick Kelly, Critical Area Commission

Date: February 20, 2008

Re: DNR Clearinghouse Review of Local POS Project #5347-20-103
Tilghman Back Creek Park

Dear Mr. Price:

Thank you for providing information for the above-referenced project. The applicant plans to renovate the existing 6.8 acre park with a new picnic pavilion, playground, waterfront overlook and access, sidewalks, fence, fitness trail, park fixtures and landscaping. The property is located in a Limited Development Area (LDA).

Based on the information provided, we have the following comments on this project:

1. Projects on property owned by a local jurisdiction require confirmation of consistency with the Critical Area Program, or the project may require conditional approval from the local Critical Area Commission if any element of the project does not meet all the requirements set forth by the jurisdiction's Critical Area Program. Therefore, any proposed development activities will require a review by Commission staff and County Staff.
2. Since the project is located in an LDA area, impervious surface amounts are limited to 15%. In addition, 15% of the site must be established in forest.
3. Only water dependent activities are permitted in the 100-foot Buffer.
4. The applicant must receive a letter from the Department of Natural Resources (DNR) Wildlife and Heritage Division evaluating the property to determine if there is the presence of any threatened or endangered species onsite. If present, the applicant must address all recommendations from DNR for protection of this species.
5. The applicant must receive a letter from the Maryland Historic Trust (MHT) to determine if any historical or archeological areas of importance exist onsite. If

present, the applicant must address all recommendations from MHT to protect these areas.

6. We advise Talbot County to work closely with Commission staff as early as possible on this project.

Thank you again for the opportunity to provide comments on this project. If you have any questions, feel free to call me at (410) 260-3483.

cc: Mary Kay Verdery, Assistant Planning Officer, Talbot County Office of Planning and Zoning

Martin O'Malley
Governor

thony G. Brown
Lt. Governor

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Memorandum

To : James W. Price, Director, Program Open Space

From: Nick Kelly, Critical Area Commission

Date: February 20, 2008

Re: DNR Clearinghouse Review of Local POS Project #5350-20-106
Easton Middle School

Dear Mr. Price:

Thank you for providing information for the above-referenced project. The applicant plans to renovate the existing baseball field to include new dugouts, bleachers, and fencing. The property is located in an Intensely Developed Area (IDA).

Based on the information provided, we have the following comments on this project:

1. Projects on property owned by a local jurisdiction require confirmation of consistency with the Critical Area Program, or the project may require conditional approval from the local Critical Area Commission if any element of the project does not meet all the requirements set forth by the jurisdiction's Critical Area Program. Therefore, any proposed development activities will require a review by Commission staff and Town Staff.
2. Since the project is located in an IDA, any new development activities that exceed 250 square feet will require compliance with the 10% pollution reduction requirement.
3. We advise the Town of Easton to work closely with Commission staff as early as possible on this project.

Thank you again for the opportunity to provide comments on this project. If you have any questions, feel free to call me at (410) 260-3483.

cc: Lynn Thomas, Town of Easton

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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Memorandum

To : James W. Price, Director, Program Open Space

From: Nick Kelly, Critical Area Commission

Date: February 20, 2008

Re: DNR Clearinghouse Review of Local POS Project #5348-20-104
Perry Cabin Park

Dear Mr. Price:

Thank you for providing information for the above-referenced project. The applicant plans to develop a picnic pavilion, ADA accessible playground, dugouts, backstops, bleachers, landscaping, fencing, walkways, park fixtures and resurfacing of basketball courts. The property is located in both a Limited Development Area (LDA) and an Intensely Developed Area (IDA).

Based on the information provided, we have the following comments on this project:

1. Projects on property owned by a local jurisdiction require confirmation of consistency with the Critical Area Program, or the project may require conditional approval from the local Critical Area Commission if any element of the project does not meet all the requirements set forth by the jurisdiction's Critical Area Program. Therefore, any proposed development activities will require a review by Commission staff and Town Staff.
2. Since a portion of the project is located in an IDA, any new development activities within the IDA area that exceed 250 square feet will require 10% pollution reduction.
3. Since a portion of the project is located in an LDA area, impervious surface amounts within the LDA area shall be limited to 15%. In addition, 15% of the site must be established in forest
4. The applicant must receive a letter from the Department of Natural Resources (DNR) Wildlife and Heritage Division evaluating the property to determine if there is the presence of any threatened or endangered species onsite. If present,

the applicant must address all recommendations from DNR for protection of this species.

5. The applicant must receive a letter from the Maryland Historic Trust (MHT) to determine if any historical or archeological areas of importance exist onsite. If present, the applicant must address all recommendations from MHT to protect these areas.
6. We advise the Town of St. Michaels to work closely with Commission staff as early as possible on this project.

Thank you again for the opportunity to provide comments on this project. If you have any questions, feel free to call me at (410) 260-3483.

cc: Debbie Renshaw, Town of St. Michaels
Roby Hurley, Critical Area Circuit Rider, Town of St. Michaels

Martin O'Malley
Governor

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Lt. Governor

Margaret G. McHale
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February 20, 2008

Mr. Blaine Smith
Zoning Administrator
Town of Ocean City
PO Box 158
Ocean City, MD 21843

Re: 14329
Schroeder Building Permit

Dear Mr. Smith:

Thank you for providing information on the above referenced building permit application. The applicant is proposing to construct a single-family dwelling unit. Critical Area issues include stormwater management, pollutant removal, and afforestation.

The lot is 3,582 square feet in size, is zoned MH, and has a setback of 5 feet. The lot is currently constructed with a mobile home, screened porch, deck, steps, and concrete drive/pads. The applicant proposes to construct a single-family dwelling unit, steps/stoop, concrete drive/walkway, deck, and HVAC platform. Current impervious surface onsite is 2,303 square feet (64.29%); upon completion of this project, total impervious surface will be 2,569 square feet (71.72%). To meet mitigation requirements in the 100-foot Buffer, $2,764 of landscaping is required. The applicant proposes to provide $2,900 in landscaping; 2 small trees (Crepe Myrtle) and 36 large shrubs (boxwoods, hollies) will be provided onsite.

To meet stormwater management requirements, the applicant is building a pervious deck and is installing two grass swales and a rain garden onsite; all roof water will drain to swales or pervious surfaces. In addition, the applicant will pay a fee-in-lieu of $503.76 to compensate for not meeting the maximum impervious surface limit BMP.

Based on the information provided, we have the following comment on this project:

1. Within the 100-foot Buffer area, the applicant proposes to build a single-family dwelling unit, steps/stoop, concrete drive/walkway, deck, and HVAC platform.

The Town of Ocean City Atlantic Coastal Bays Critical Area Program §30-554(d)(1) states that, "New development, including accessory structures, shall minimize the extent of intrusion into the Buffer…" While we understand that the Town of Ocean City Atlantic Coastal Bays Critical Area Program allows pervious decks in the setback, it appears that the size and location of the house and deck do not minimize Buffer intrusion. To minimize water quality and habitat impacts, we recommend reducing the size of the proposed house so that the deck can be located outside of the setback area. In addition, we recommend fully planting the setback area with the native vegetation that is required as mitigation for this site.

Thank you for the opportunity to provide comments on this building permit request. Please have the applicant provide the information requested above. If you have any questions, please feel free to call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly, PhD
Natural Resource Planner
cc: OC 96-08

Martin O'Malley
Governor

thony 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/

February 20, 2008

Mr. Blaine Smith
Zoning Administrator
Town of Ocean City
PO Box 158
Ocean City, MD 21843

Re: 14812
Pavel Building Permit

Dear Mr. Smith:

Thank you for providing information on the above referenced building permit application. The applicant is proposing to construct a single-family dwelling unit. Critical Area issues include stormwater management, pollutant removal, and afforestation.

The lot is 6,234 square feet in size, is zoned R-1, and has a setback of 15 feet. The applicant proposes to construct a three-story frame dwelling, garage, covered porch, covered lanai, parking pad, and paver walkway. Current impervious surface onsite is 2,800 square feet (44.91%); upon completion of this project, total impervious surface will be 3,000 square feet (48.12%). To meet mitigation requirements in the 100-foot Buffer, $6,000 of landscaping is required. The applicant proposes to provide $4,755 in landscaping; 9 small trees (Dogwood, Crape Myrtle, Magnolia), 39 large shrubs (Inkberry, Clethra, Lilacs), 18 small shrubs (Black-eyed Susan), and 15 herbaceous plants (Knockout Roses, Ornamental Grasses, Hibiscus) will be provided. In addition, the applicant will provide a fee-in-lieu of $1,245.

To meet stormwater management requirements, the applicant is limiting impervious surface to 3,000 square feet and is providing two grass swales, a rain garden, and a dry well/gravel trench.

Based on the information provided, we have the following comments on this project:

1. Please have the applicant delineate on the site plan the location of the dry well/gravel trench BMP.

2. The Critical Area application states that 2,800 square feet of impervious surface currently exists onsite, and that 3,000 square feet of impervious is proposed. However, the site plan mentions that 3,209 square feet of impervious surface exists onsite, and that 3,808 square feet is proposed. Please have the applicant clarify the correct amount of impervious surface that both exist and are proposed for this project, and please have the applicant provide additional mitigation and stormwater management BMPs if necessary.

Thank you for the opportunity to provide comments on this building permit request. Please have the applicant provide the information requested above. If you have any questions, please feel free to call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly, Ph.D
Natural Resource Planner
cc: OC 96-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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February 21, 2008

Lynn Thomas
Town of Easton
14 South Harrison Street
P.O. Box 520
Easton, MD 21601

Re: Eccleston Building Permit

Dear Mr. Thomas:

Thank you for providing additional information on the above-referenced building permit. The applicant is proposing to fill, grade, and plant marsh vegetation along 157 square feet of eroding shoreline with 205 cubic yards of sand and a low profile, stone, sand containment sill emplaced within a maximum of 10 feet channelward of the mean high water line.

In response to the comments from our February 8, 2008 letter, the applicant has submitted a site plan showing that the 100-foot Buffer was delineated from the current location of Mean High Water (MHW), and not from the proposed location of MHW. Based on this information, we have no additional comments on this project.

Thank you for the opportunity to provide additional comments on this site plan. Please have the applicant provide the information requested. If you have any questions, please feel free to call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: EA 39-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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February 22, 2008

Ms. Mary Kay Verdery
Talbot County Office of Planning and Zoning
11 N. Washington Street
Courthouse
Easton, Maryland 21601

Re: L1014
Otwell Lot Line Revision

Dear Ms. Verdery:

Thank you for providing information on the above referenced lot line revision. The applicant is requesting a lot line revision between an existing parcel (Revised Tax Parcel 82) and an undeveloped parcel (Revised Tax Parcel 30). Both parcels are in the Limited Development Area (LDA) and are designated as a Buffer Management Area (BMA). Total square footage onsite is 86,200 square feet. Revised Tax Parcel 82 will increase in size from 8,421 square feet to 18,524 square feet. Revised Tax Parcel 30 will decrease in size from 77,779 square feet to 67,676 square feet. Revised Tax Parcel 82 is currently developed with a single-family house, wood porch, sidewalk, and shed. Revised Tax Parcel 30 is currently developed with a private road; a portion of this roadway will be abandoned.

Based on the information provided, this office has the following comments:

1. Talbot County Soil Maps reveal that the property is located entirely in hydric soils (Keyport). In the future, any proposed structures should be constructed to minimize impacts to these soils.
2. It appears the allowable impervious surface calculations for Revised Tax Parcel 82 (3,650 square feet, or 20% of the lot) is incorrect. Please make the appropriate changes to the site plan.
3. If forest is cleared for any development on this parcel in the future, mitigation will be required. If up to 20% of forest is cleared from the parcel, then mitigation at a ratio of 1:1 is required; if clearing is between 20% and 30%, then mitigation is 1.5:1; clearing of over 30% of the site requires 3:1 mitigation.

Thank you for the opportunity to provide comments on this lot line revision request. Please have the applicant provide the information requested above. Please call me with any questions at (410) 260-3483.

Sincerely,

Nick Kelly

Natural Resource Planner

TC 41-04

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
CRITICAL AREA COMMISSION
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February 22, 2008

Ms. Mary Kay Verdery
Talbot County Office of Planning and Zoning
28712 Glebe Road, Suite 2
Courthouse
Easton, Maryland 21601

Re: A113
Solitude Partners Trust

Dear Ms. Verdery:

Thank you for providing information on the above-referenced variance. The applicant is requesting a variance to construct a pervious deck and a dwelling addition to an existing dwelling unit within the 100-foot Buffer. The property is 3.033 acres in size and is located in a Limited Development Area (LDA). Currently, the site is developed with a two-story dwelling unit, kennel, two garages, carport, sidewalk, steps, gravel driveway, concrete pads, and deck. The applicant proposes to construct a dwelling addition to the existing house (670 square feet), remove 203 square feet of porch, steps, and sidewalk, and install a pervious deck (225 square feet). Current impervious surface onsite is 16,343 square feet (12.37%). The applicant proposes to add 1,072 square feet of new impervious surface and remove 203 square feet of impervious surface. Upon completion of the project, total impervious surface onsite will be 17,212 square feet (13.02%).

Provided that the Planning Officer finds that the applicant has exhausted all available options to locate the proposed dwelling addition outside of the 100-foot Buffer, we do not oppose the variance request for the addition. We request that mitigation for disturbance to the Buffer be performed at a 2:1 ratio.

In regards to the proposed second deck within the 100-foot Buffer, this office opposes granting the requested variance. In 2002 and 2004, the General Assembly strengthened the Critical Area Law and reiterated its commitment to the Chesapeake Bay Critical Area's water quality and wildlife habitat values, particularly emphasizing the importance of the 100-foot Critical Area Buffer. In particular, the General Assembly reaffirmed the stringent standards that an applicant must meet in order for a local jurisdiction to grant a variance to the Critical Area law. One

condition that the State law provides is that variances to a local jurisdiction's Critical Area program may be granted **only** if a Board of Appeals finds that an applicant has satisfied its burden to prove that the applicant meets each one of the county's variance standards, including the standard of "unwarranted hardship;" that is, "denial of reasonable and significant use of the entire parcel or lot." Furthermore, the State law establishes a presumption that a proposed activity for which a Critical Area variance is requested does not conform to the purpose and intent of the Critical Area law. The County must make an affirmative finding that the applicant has overcome this presumption, based on the evidence presented.

In reviewing the site plan, the applicant is proposing to construct a second deck, which will be pervious in nature, within the 100-foot Buffer. Based on the site plan, however, the applicant already has use of an existing deck that is located 60.7 feet from the shoreline. Furthermore, the site is developed with a two-story dwelling unit, kennel, two garages, carport, sidewalk, steps, gravel driveway, concrete pads, and deck. Given the structures that currently exist onsite, we do not believe that the County has evidence on which to base a finding that, without the granting of this variance for a second deck, the applicant would be denied reasonable and significant use of the entire lot or parcel. In addition, granting a variance to allow a second deck in the Buffer would not deny the applicants a right commonly enjoyed by others, would result in conferring a special privilege to the applicant that would be denied to other lands or structures within the jurisdiction's Critical Area, and would adversely affect water quality and habitat. Therefore, a variance to permit a second deck within the Critical Area would not be in harmony with the general spirit and intent of the Critical Area law and regulations.

The State law establishes the presumption that a proposed activity for which a Critical Area variance is requested does not conform to the purpose and intent of the Critical Area law. The Planning Officer must make an affirmative finding that the applicant has overcome this presumption, based on the evidence presented. The State law, including the presumption of non-conformance, applies to all variance decisions in the Critical Area [2007 Laws of Maryland, Chapter 221(2)]. Thus, the Planning Officer must find that the applicant has overcome the burden to meet each and every one of the County's variance standards in order to grant a variance. Based on the information provided, this applicant has failed to meet all of the County standards. Because of the impacts to 100-foot Buffer, and because the applicant has not met each one of Talbot County's variance standards, this office recommends that the Planning Officer deny the applicant's variance request for a second deck.

Thank you for the opportunity to provide comments on this administrative variance request. Please include this letter in your file and submit it as part of the records for this variance. If you have any questions, please feel free to contact me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
TC 93-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
CRITICAL AREA COMMISSION
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February 22, 2008

Ms. Mary Kay Verdery
Talbot County Office of Planning and Zoning
28712 Glebe Road, Suite 2
Courthouse
Easton, Maryland 21601

Re: A112
Langley Variance

Dear Ms. Verdery:

Thank you for providing information on the above-referenced variance. The applicant is requesting a variance to construct a one-story kitchen addition and deck located within the 100-foot Buffer. The property is 4.88 acres in size and is located in a Limited Development Area (LDA). Currently, the site is developed with a two-story dwelling unit, walkway, arbor, guest house, and shed. The applicant proposes to construct a dwelling addition and deck to the existing house (364 square feet). Current impervious surface onsite is 5,730 square feet (2.7%). The applicant proposes to add 364 square feet of new impervious surface, thus increasing impervious surface onsite to 6,094 square feet (2.87%).

Based on the information provided, we do not oppose the granting of this variance request. However, it appears that this is the second variance request for this property (a variance was granted in 2004 for an enclosed deck). Consequently, it is unlikely that this office would support any future variances requests for this property.

In addition, we have the following comments on this project:

1. Mitigation for any disturbance to the Buffer must be performed at a 2:1 ratio.
2. Aerial photography reveals that the property is heavily wooded. If forest is cleared for this project, then additional mitigation will be required. If up to 20% of forest is cleared from the parcel, then mitigation at a ratio of 1:1 is required; if clearing is between 20% and 30%, then mitigation is 1.5:1; clearing of over 30% of the site requires 3:1 mitigation.

Thank you for the opportunity to provide comments on this administrative variance request. Please include this letter in your file and submit it as part of the records for this variance. If you have any questions, please feel free to contact me at 410-260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
TC 687-04

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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February 25, 2008

Gary Letteron
Environmental Planner
Baltimore City Department of Planning
417 East Fayette Street, 8th Floor
Baltimore, MD 21202

Re: Potee Street
Building Permit

Dear Mr. Letteron:

Thank you for providing information on the above referenced building permit. The applicant is proposing to renovate and convert a vacant gas station into a gas station, car wash, and convenience store. The property is .5 acres in size and is designated as an Intensely Developed Area (IDA). To meet Critical Area 10% requirements, the applicant is reducing impervious surface onsite by .05 acres. The applicant is meeting 15% afforestation requirements by plantings eight trees (2.5 inch caliper); additionally, the applicant is proposing to plant an additional mix of 113 trees and shrubs onsite.

Based on the information provided, we have no additional comments for this project.

Thank you for providing the information on this building permit. If you have any questions, please call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: BA 13-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Reh Serey
Executive Director

STATE OF MARYLAND
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(410) 260-3460 Fax: (410) 974-5338
www.dnr.state.md.us/criticalarea/

February 25, 2008

Gary Letteron
Environmental Planner
Baltimore City Department of Planning
417 East Fayette Street, 8th Floor
Baltimore, MD 21202

Re: Cylburn Aboretum Offset Fee Approval Request

Dear Mr. Letteron:

Thank you for your letter requesting comments from Critical Area Commission staff regarding the use of $80,000 to support the Cylburn Aboretum in the creation of the new Orientation and Education Center. The project will aid in improving water quality and enhancing habitat within Baltimore City.

We understand that the project will use Critical Area offset fees to prepare planting areas throughout the Arboretum, for wildflower seed mix, and for planting native trees and shrubs onsite. Additionally, a bio-retention area will be installed. All stormwater inlets in the Park are to be closed, and stormwater will be managed onsite.

The proposed cost of the project for $4,964,900, and $80,000 of Buffer Offset Fees is proposed to be used. The Buffer Offset Fees will be used to purchase 1,339 shrubs and 101 native trees.

Based on the information you have provided, this office is satisfied with the use of Buffer Offset Fund monies for this project since it meets the Critical Area goals of improving water quality and enhancing wildlife habitat. If there are changes in the proposed project, please notify this office. Thank you for the opportunity to provide comments on this proposal. If you have any questions, please feel free to call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly

Natural Resources Planner

cc: Douglas B McCoach III, City of Baltimore
Duncan Stuart, City of Baltimore
Lisa Hoerger, CAC
Ren Serey, CAC

BA General Files

SHEILA DIXON
Mayor

DOUGLAS B. MCCOACH, III
Director

February 1, 2008

Mr. Ren Serey, Executive Director
Chesapeake Bay Critical Area Commission
1804 West Street, Suite 100
Annapolis, Maryland 21401

Dear Mr. Serey:

RE: Offset Fee Project Approval Request

Please accept this letter as a formal request to use Critical Area offset fees on a project in Baltimore City. This request is for $80,000 in Buffer fees to support the creation and environmental integrity of the new Orientation and Education Center at Cylburn Arboretum.

This project meets the Critical Area goals of improving water quality and enhancing habitat. Additionally, the Center will improve the quality of life of in Baltimore, and provide environmental education to Baltimore's citizens.

The Critical Area Offset funds will be use to prepare planting areas throughout the Arboritium, for wildflower seed mix, and to plant 1339 native shrubs and 101 native trees. The project will also include a bio-retention area. All the stormwater inlets in the Park are to be closed and all stormwater will be managed on site.

Thank you for your hard work and continued support. If you have any questions on this Project, please call Gary Letteron at (410) 396-4369. We are excited about this proposal and look forward to your response.

Sincerely,

Douglas B. McCoach III
Director

DM/GL

cc:
Mr. Nick Kelly, CAC
Ms. Beth Strommen, DOP
Mr. Duncan Stuart, DOP
Mr. Gary Letteron, DOP
File

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FEB 14 2008
CRITICAL AREA COMMISSION
Chesapeake & Atlantic Coastal Bays

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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www.dnr.state.md.us/criticalarea/

February 25, 2008

Ms. Florence Ball
Talbot County Office of Planning and Zoning
28712 Glebe Road, Suite 2
Courthouse
Easton, Maryland 21601

RE: MDE Permit 200860192/08-PR-0881
Katherine R. Simpson

Dear Ms. Ball:

Thank you for providing information on the above-referenced MDE permit for review. In Easton, on Tred Avon Circle and along Jacks Cove, the applicant proposes to remove an existing deteriorated pier and construct a 72-foot long by 6-foot wide timber pier with a 12-foot long by 16-foot wide 'L' head, emplace three mooring piles and one bumper pile, and install a boatlift with associated pilings. All activities will occur within a maximum of 84 feet channelward of the Mean High Water line (MHW).

Based on the information provided, we do not oppose this project. However, we do have the following comments:

1. Any disturbance to the Buffer shall be mitigated at a 2:1 ratio.
2. The proposed project is located in a waterfowl concentration area. Therefore, time of year restrictions for shoreline work will apply between November 15 and March 1.

Thank you for the opportunity to provide comments on the referenced project. If you have any questions, please call me at (410) 260-3483.

Sincerely,
Nick Kelly
Nick Kelly
Natural Resources Planner
cc: Mary Kay Verdery, Talbot County Planning and Zoning
Stan Causey, Causey Consulting

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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February 25, 2008

Ms. Mary Kay Verdery
Talbot County Office of Planning and Zoning
11 N. Washington Street
Courthouse
Easton, Maryland 21601

Re: 1092
Graves Subdivision

Dear Ms. Verdery:

Thank you for providing information on the above referenced subdivision plan. The applicant proposes to create a two-lot subdivision on property that is partially located within a Resource Conservation Area (RCA). Currently, the site is undeveloped. Total parcel size is 39.851 acres. Upon subtracting state-owned wetlands from the total area of the parcel, developable acreage falls to 39.744 acres. The parcel will be broken into a 21.070 acre lot (Lot 1) and a 15.834 acre lot (Lot 2). The amount of impervious surface permitted will be 133,771 square feet for Lot 1 and 106,511 square feet for Lot 2. Total forested area onsite is 407,868 square feet (25.37% of the total site area).

Based on the information provided, we have the following comments on this project:

1. Aerial photography reveals that the forested area currently located on the southern portion of Lot 2 is listed as Forest Interior Dwelling Bird (FIDS) habitat. Development should be restricted to non-forested areas if possible. However, if forest disturbance is unavoidable, then the applicant will need to follow the site design guidelines for FIDS habitat protection that can be found in "A Guide to the Conservation of Forest Interior Dwelling Birds in the Critical Area" (http://www.dnr.state.md.us/criticalarea/guidancepubs/index.html). Measures of protection include restricting development to the outer edges of FIDS habitat, limiting construction to areas that will remove only thin strips of forest that are 300 feet wide or less, and minimizing the number and lengths of driveways and roadways. Time of year restrictions for construction may also be necessary. In addition, mitigation, including the creation of new FIDS habitat, will be required.

2. If forest is cleared in the future for this project, then mitigation will be required. If up to 20% of forest is cleared from the parcel, then mitigation at a ratio of 1:1 is required; if clearing is between 20% and 30%, then mitigation is 1.5:1; clearing of over 30% of the site requires 3:1 mitigation.
3. Based on the site plan, it appears that the regulated ditch is part of the expanded Buffer. Therefore, any impacts to this area will be subject to Buffer regulations.

Thank you for providing the opportunity to comment on this project. If you have any questions, feel free to call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: TC 621-07

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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CRITICAL AREA COMMISSION
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February 26, 2008

Mr. Blaine Smith
Zoning Administrator
Town of Ocean City
PO Box 158
Ocean City, MD 21843

Re: 14302
Chernauskas Building Permit

Dear Mr. Smith:

Thank you for providing information on the above referenced building permit application. The applicant is proposing to construct a single-family dwelling unit. Critical Area issues include stormwater management, pollutant removal, and afforestation.

The lot is 5,549 square feet in size, is zoned MH, and has a setback of 5 feet. The lot is currently constructed with a mobile home, concrete walk, concrete drive, concrete patio, and shed. The applicant proposes to remove the existing structures and construct a single-family dwelling unit, shed, concrete walk, concrete driveway, and pervious deck. Current impervious surface onsite is 2,066 square feet (37.2%); upon completion of this project, total impervious surface will increase to 3,251 square feet (58.6%). To meet mitigation requirements in the 100-foot Buffer, $3,600 of landscaping is required. The applicant proposes to provide $2,750 in landscaping and $850 as a fee-in-lieu; 3 large trees, 2 small trees, 18 large shrubs, and 12 small shrubs will be provided as landscaping.

To meet stormwater management requirements, the applicant is building a pervious deck and is installing a grass swales and rain garden onsite; all roof water will drain to swales or pervious surfaces. In addition, the applicant will pay a fee-in-lieu of $408.36 to compensate for not meeting the maximum impervious surface limit BMP.

Based on the information provided, we have the following comment on this project:

1. Within the 100-foot Buffer area, the applicant proposes to build a single-family dwelling unit, shed, concrete walk, concrete driveway, and pervious deck. The

Town of Ocean City Atlantic Coastal Bays Critical Area Program §30-554(d)(1) states that, "New development, including accessory structures, shall minimize the extent of intrusion into the Buffer…" While we understand that the Town of Ocean City Atlantic Coastal Bays Critical Area Program allows pervious decks in the setback, it appears that the size and location of the house and deck do not minimize Buffer intrusion. To minimize water quality and habitat impacts, we recommend reducing the size of the proposed house so that the deck can be located outside of the 5-foot setback area. In addition, we recommend fully planting the setback area with the native vegetation that is required as mitigation for this site.

2. The Critical Area application lists proposed impervious surface as 3,251 square feet, while the stormwater management application and site plan list proposed impervious surface as 3,114 square feet. Please have the applicant clarify the correct amount of impervious surface onsite, and correct any stormwater management calculations appropriately.
3. The stormwater management application states that the applicant is not meeting the requirement to maintain impervious surface under 60% of the site area and therefore requires a fee-in-lieu of $408.30. However, based on the Critical Area application, impervious surface for this site is 58.6% of the site area. It appears that the applicant filled out a stormwater management application for lots less than 5,000 square feet, despite the lot being 5,549 square feet in size. Does this mean that the impervious standard for lots over 5,000 square feet is tighter than 60%? Please have the applicant clarify this issue, fill out the appropriate stormwater management form, and provide the correct amount of fee-in-lieu for exceeding impervious surface limits.
4. Please have the applicant provide the botanical name and common name of each tree and shrub to be planted onsite. Landscaping shall be performed using native vegetation.

Thank you for the opportunity to provide comments on this building permit request. Please have the applicant provide the information requested above. If you have any questions, please feel free to call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly, Ph.D
Natural Resource Planner
cc: OC 120-08

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

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February 27, 2008

Amy Moredock
Department of Planning and Zoning
Kent County Government Center
400 High Street
Chestertown, Maryland 21620

Re: Sorenson Special Exception
08-11

Dear Ms. Moredock:

Thank you for providing information on the above referenced special exception request. The applicant is proposing to replace a swimming pool that no longer holds water and to replace associated stone and brick surrounding the pool. The parcel is 6.62 acres in size and is designated as a Resource Conservation Area (RCA). Total impervious surface onsite is .195 acres (2.9%); impervious surface will remain unchanged on this lot. Total forest coverage onsite is 1.64 acres (24.8)%; no forest cover is proposed to be removed.

Based on the information provided, we have the following comment on this application:

- It is our understanding that the replacement of the stone and brick area will occur around the pool and outside of the 100-foot Buffer. If any stone or brick replacement occurs within the 100-foot Buffer area, then the applicant will be required to obtain a variance.

Thank you for the opportunity to provide comments on this variance request. If you have any questions, please contact me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: KC 117-08

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/

February 27, 2008

Gary Letteron
Environmental Planner
Baltimore City Department of Planning
417 East Fayette Street, 8th Floor
Baltimore, MD 21202

Re: Chesapeake Paperboard Building Permit

Dear Mr. Letteron:

Thank you for providing updated information on the above referenced building permit. The applicant is proposing to create a mixed use commercial/residential property. Total site area is 9.36 acres, with two portions of the site (1.52 acres combined) designated as an Intensely Developed Area. To meet the Critical Area 10% pollutant removal requirement, .329 pounds per year of phosphorus must be removed from the Critical Area portions of the property. However, due to the uniqueness of the site, the Critical Area portions cannot be treated to meet the 10% requirement. Originally, the applicant proposed to treat of an offsite drainage area to meet the 10% requirement using an underground sand filter, which was approved by Commission Staff in October 2007. However, it has been determined that the proposed sand filter is unfeasible for the site. Consequently, the applicant proposes to pay a fee-in-lieu of $11,523.96. It is our understanding that the City of Baltimore Department of Planning proposes that these funds go directly to the City of Baltimore Department of Public Works Water Quality Management Fund for watershed 263. This watershed is 930-acre storm drain area in west and southwest Baltimore City that encompasses part of 12 urban neighborhoods and converges into an outfall pipe near the mouth of the Gwynns Falls, in the Middle Branch of the Patapsco River.

Based on the information provided, we do not oppose the collection of a fee-in-lieu for this project that will be used for water quality management of watershed 263. Commission staff does recommend, however, that the applicant pay the fee-in-lieu prior to receiving a certificate of occupancy.

Thank you for providing updated information for this building permit. If you have any questions, feel free to call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: BA 568-07

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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February 28, 2008

Mr. Blaine Smith
Zoning Administrator
Town of Ocean City
PO Box 158
Ocean City, MD 21843

Re: Shafer Building Permit
14175

Dear Mr. Smith:

Thank you for providing information on the above referenced building permit application. The applicant is proposing to construct a single-family dwelling unit. Critical Area issues include stormwater management, pollutant removal, and afforestation.

The lot is 7,257 square feet in size, is zoned R-1, and has a setback of 15 feet. The lot is currently constructed with a two-story frame dwelling, deck, steps, porch, sidewalk, and driveway. The applicant proposes to remove the existing deck and construct an addition and new deck. Current impervious surface onsite is 4,441 square feet (61.2%); upon completion of this project, total impervious surface will increase to 4,664 square feet (64.2%). To meet mitigation requirements in the 100-foot Buffer, $3,340 of landscaping is required. The applicant proposes to provide $4,000 in landscaping; 15 small trees (Seaside Alder) and 50 small shrubs (Abelia) will be provided.

To meet stormwater management requirements, the applicant is building a pervious deck and is installing a two grass swales; all roof water will drain to swales or pervious surfaces. In addition, the applicant will pay a fee-in-lieu of $151.20 to compensate for not meeting the maximum impervious surface limit BMP.

Based on the information provided, we have the following comment on this project:

- Within the 100-foot Buffer area, the applicant proposes to remove the existing deck and construct a 284-square foot addition and a 833-square foot deck. The

Town of Ocean City Atlantic Coastal Bays Critical Area Program §30-554(d)(1) states that, "New development, including accessory structures, shall minimize the extent of intrusion into the Buffer…" While we understand that the Town of Ocean City Atlantic Coastal Bays Critical Area Program allows pervious decks in the setback, it appears that the size and location of the addition and deck do not minimize Buffer intrusion. To minimize water quality and habitat impacts, we recommend reducing the size of the deck and locating it entirely outside of the 15-foot setback area. In addition, we recommend fully planting the setback area with the native vegetation that is required as mitigation for this site.

Thank you for the opportunity to provide comments on this building permit request. Please have the applicant provide the information requested above. If you have any questions, please feel free to call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly, PhD
Natural Resource Planner
cc: OC 114-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
CRITICAL AREA COMMISSION
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February 28, 2008

Mr. Blaine Smith
Zoning Administrator
Town of Ocean City
PO Box 158
Ocean City, MD 21843

Re: 14360
Daskaiakis Building Permit

Dear Mr. Smith:

Thank you for providing information on the above referenced building permit application. The applicant is proposing to replace boards on an existing deck and construct a new deck. Critical Area issues include stormwater management, pollutant removal, and afforestation.

The lot is 6,791 square feet in size, is zoned R-1, and has a setback of 15 feet. The lot is currently constructed with a 2.5-story dwelling unit, deck, second story deck, porch, garage, and driveway. The applicant proposes to replace the boards on an existing deck and construct a new ground level deck for the property. Current impervious surface onsite is 3,802 square feet (55.9%); upon completion of this project, total impervious surface will remain unchanged. To meet mitigation requirements in the 100-foot Buffer, $1,200 of landscaping is required. The applicant proposes to provide $3,850 in landscaping; 6 large trees (Crepe Myrtle), 12 large shrubs (Hydrangea), and 35 small shrubs (Lillies, Zebra Grass) will be provided as landscaping.

The applicant has applied for a stormwater management waiver, claiming that disturbance is less than 250 square feet and that the proposed deck will be constructed as pervious.

Based on the information provided, we have the following comment on this project:

1. To meet the requirement for a stormwater management waiver, total area disturbed must be less than 250 square feet. However, the Critical Area Project

Application states that 700 square feet of disturbance will occur with this project. Based on this information, please have the applicant meet stormwater management requirements for lots less than 5,000 square feet, and please submit this information to this office for review prior to approval of the building permit.

2. Within the 100-foot Buffer area, and within the setback area, the applicant proposes to construct a new ground level deck. The Town of Ocean City Atlantic Coastal Bays Critical Area Program §30-554(d)(1) states that, "New development, including accessory structures, shall minimize the extent of intrusion into the Buffer…" While we understand that the Town of Ocean City Atlantic Coastal Bays Critical Area Program allows pervious decks in the setback, it appears that the construction of a new ground level deck does not minimize Buffer intrusion. We note that the applicant currently has use of two decks: a ground level deck and second story deck, both of which are located within the Buffer.

   The Critical Area law was created to protect the valuable, fragile, and sensitive areas along the shoreline from human activity. This includes minimizing adverse impacts to water quality and habitat as well as reducing human activity in shoreline areas by limiting the development of non-water dependent structures or impervious surfaces, particularly within the 100-foot Buffer. With the Critical Area law in mind, we recommend removing the proposed new deck from the site plan. In addition, we recommend fully planting the area of the proposed new deck with the native vegetation that is required as mitigation for this site.

3. The site plan states total site area as 8,426 square feet; however, the Critical Area application states total site area as 6,791 square feet. Please have the applicant clarify the correct square footage for the site.

Thank you for the opportunity to provide comments on this building permit request. Please have the applicant provide the information requested above. If you have any questions, please feel free to call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly, Ph.D
Natural Resource Planner
cc: OC ~~120~~-08
119

Martin O'Malley
Governor

ıthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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March 3, 2008

Amy Moredock
Department of Planning and Zoning
Kent County Government Center
400 High Street
Chestertown, Maryland 21620

Re: O'Connor Variance
08-12

Dear Ms. Moredock:

Thank you for providing information on the above referenced variance request. The applicant is requesting a variance to construct a detached garage over an existing driveway and lawn within the 100-foot Buffer. The lot is .357 acres in size and is designated as a Limited Development Area (LDA) and a Modified Buffer Area (MBA); however, since the dwelling unit for this lot was constructed after April 12, 1988 (the dwelling was built in 2004), the provisions of the MBA do not apply to this lot, and the provisions of the 100-foot Buffer must be applied (Land Use Ordinance for Kent County §5.7 B.3.d). This office opposes construction of a new detached garage in the 100-foot Buffer, because this lot, which was developed pursuant to a variance issued in 2004, enjoys reasonable and significant residential use. Accordingly, the applicant cannot meet the State's required variance standards.

Currently, the lot is developed with a single-family dwelling unit, deck, and driveway. All of these improvements were built pursuant to a variance granted in 2004. At that time, the applicant was granted the minimum variance necessary to afford relief for this site. The applicant proposes to construct a 22-foot by 24-foot detached double car garage (528 feet) over an existing driveway and lawn, within the 100-foot Buffer. This office cannot support a subsequent variance request to allow a new detached garage within the 100-foot Buffer.

Relevant Variance Standards

In 2002 and 2004, the General Assembly strengthened the Critical Area Law and

reiterated its commitment to the Chesapeake Bay Critical Area's water quality and wildlife habitat values, particularly emphasizing the importance of the 100-foot Critical Area Buffer. The State Legislature made findings that "the new development of non-water dependent structures or the addition of impervious surfaces [in the Buffer] is presumed to be contrary to the purpose of this subtitle." Code, Natural Resources Article §8-1801(a)(4). The General Assembly reaffirmed the stringent standards that an applicant must meet in order for a local jurisdiction to grant a variance to the Critical Area law. The State law provides that variances to a local jurisdiction's Critical Area program may be granted **only** if a zoning board finds that an applicant has satisfied its burden to prove that the applicant meets each one of the county's variance standards, including the standard of "unwarranted hardship;" that is, "denial of reasonable and significant use of the entire parcel or lot." Furthermore, the State law establishes a presumption that a proposed activity for which a Critical Area variance is requested does not conform to the purpose and intent of the Critical Area law. The County must make an affirmative finding that the applicant has overcome this presumption, based on the evidence presented.

In this instance, the applicant's request for a variance to construct a detached garage within the 100-foot Buffer is in conflict with Kent County's Zoning Code provisions regarding development activities in the 100-foot Buffer (Land Use Ordinance for Kent County §5.7 B.3). The County ordinance provides that, "in so far as possible, non-water dependent structures....are located outside the minimum 100-foot Buffer" (§5.7 B.3.a.ii.d).

While we understand that the lot is located almost entirely within the 100-foot Buffer, the 2004 variance which allowed development of the lot represented the County's determination that the variance issued at that time was the minimum relief necessary to allow reasonable and significant use. The granting of an additional variance for a detached garage within the 100-foot Buffer would be in direct contrast to the spirit and intent of the Critical Area Law, as well as in contrast to State and County goals for proper Buffer management. Because we do not believe that each and every one of the County's variance standards has been met, including the standard of unwarranted hardship, we oppose this variance and recommend that it be denied.

I have discussed each one of the variance standards below as it pertains to this site:

1. *That special conditions or circumstances exist that are peculiar to the land or structure within the jurisdiction's Critical Area program that would result in an unwarranted hardship to the applicant.*

Currently, the property is developed with a dwelling unit, deck, and driveway. The applicant proposes to construct a detached garage over an existing driveway and lawn within the 100-foot Buffer. The State law standards, applicable to this variance request, define "unwarranted hardship" to mean that the applicant must prove that, without the requested variance, he would be denied reasonable and significant use of **the entire parcel or lot**. Given the uses enjoyed by the applicant on this property, we

do not believe that the County has evidence on which to base a finding that, without the garage, the entire parcel would lack reasonable and significant use.

2. *That a literal interpretation of this subtitle or the local Critical Area Program and related ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area of the local jurisdiction.*

The applicant proposes to construct a detached garage over an existing driveway and lawn within the 100-foot Buffer. This office would not support similar requests to construct a detached garage over an existing driveway and lawn within the 100-foot Buffer on other sites within the Critical Area. There is no "right" to build a new, non-water dependent structure in the 100-foot Critical Area Buffer. Therefore, the rejection of this variance for a detached garage within the 100-foot Buffer would not deny the applicants a right commonly enjoyed by other properties.

3. *The granting of a variance will not confer upon an applicant any special privilege that would be denied by this subtitle or the local Critical Area program to other lands or structures within the jurisdiction's Critical Area.*

The granting of a variance to permit a detached garage over an existing driveway and lawn within the 100-foot Buffer would constitute a special privilege upon the applicant which would be denied to others in the County as well as within other jurisdictions in the Critical Area.

4. *The variance request is not based upon conditions or circumstances, which are the result of the actions, by the applicant, nor does the request arise from any condition conforming, on any neighboring property.*

From the information provided, it does not appear that the variance request is based on conditions or circumstances that are the result of the applicant or from a neighboring property. Therefore, it appears that the applicant has met this standard.

5. *The granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the jurisdiction's Critical Area, and that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area law and the regulations.*

A granting of a variance to allow an accessory structure, such as a detached garage, within the 100-foot Buffer results in an increase in stormwater and sediment runoff and the loss of essential infiltration opportunities. Given that the applicant currently has reasonable and significant use of this lot, approval of this variance would not be in harmony with the general intent and spirit of the Critical Area Law.

In summary, the Planning Director must find that the applicant has overcome the burden to meet each and every one of the County's variance standards in order to grant a

variance. Because we believe that the applicant has failed to meet four of the five variance standards, we oppose the applicant's request.

Thank you for the opportunity to provide comments. Please include this letter in your file and submit it as part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case. If you have any questions, please call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: KC 156-04

cc: Marianne Dise, Commission Counsel

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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March 3, 2008

Mr. Blaine Smith
Zoning Administrator
Town of Ocean City
PO Box 158
Ocean City, MD 21843

Re: 13884
Davis Building Permit

Dear Mr. Smith:

Thank you for providing information on the above referenced building permit application. The applicant is proposing to construct a single-family dwelling. Critical Area issues include stormwater management, pollutant removal, and afforestation.

The lot is 4,343 square feet in size, is zoned R-1, and has a setback of 15 feet. The lot is currently undeveloped. The applicant proposes to construct a single-family home, swimming pool, boardwalk, screened porch, two covered porches, beach storage room, outside shower, driveway, and walkway. Proposed impervious surface for this project is 2,292 square feet (52.8%). To meet mitigation requirements in the 100-foot Buffer, $7,000 of landscaping is required. The applicant proposes to provide $7,037 in landscaping; 6 large trees (Red Maple, River Birch, Yoshino Cherry), 2small trees (Crepe Myrtle), 71 large shrubs (Juniper, Winter Berry, Inkberry, Bayberry, Hydrangea, Euonymous, Juniper), and 6 herbaceous plants (Joepyeweed) will be provided as landscaping.

To meet stormwater management requirements, the applicant is limiting impervious surface onsite to less than 60%, is building the boardwalk in a pervious manner, and is installing two grass swales and a rain garden onsite; all roof water will drain to swales or pervious surfaces.

Based on the information provided, we have the following comment on this project:

- Within the 100-foot Buffer area, the applicant proposes to construct a single-family home, swimming pool, boardwalk, screened porch, two covered porches, beach storage room, outside shower, driveway, and walkway.. The Town of Ocean City Atlantic Coastal Bays Critical Area Program §30-554(d)(1) states that, "New development, including accessory structures, shall minimize the extent of intrusion into the Buffer…" Commission staff understands that an individual has the right to construct a home on an undeveloped lot; and we understand that the Town of Ocean City Atlantic Coastal Bays Critical Area Program allows pervious walkways in the setback. However, it appears that the size and location of the home, pool, porch, and boardwalk do not minimize Buffer intrusion. The Critical Area law was created to protect the valuable, fragile, and sensitive areas along the shoreline from human activity. This includes minimizing adverse impacts to water quality and habitat as well as reducing human activity in shoreline areas by limiting the development of non-water dependent structures or impervious surfaces, particularly within the 100-foot Buffer. Commission staff has concerns about the size and location of the pool, boardwalk, and screened porch, as we question whether these accessory structures truly minimize Buffer intrusion. Therefore, with the Critical Area law in mind, we recommend removing the pool from the site plan, reducing the size of the screened porch, and placing the pervious boardwalk outside of the setback area. In addition, we recommend fully planting the area of the proposed new deck with the native vegetation that is required as mitigation for this site.

Thank you for the opportunity to provide comments on this building permit request. Please have the applicant provide the information requested above. If you have any questions, please feel free to call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly, Ph.D
Natural Resource Planner
cc: OC 12[illegible]-08

Martin O'Malley
Governor

nthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
CRITICAL AREA COMMISSION
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March 3, 2008

Mr. Blaine Smith
Zoning Administrator
Town of Ocean City
PO Box 158
Ocean City, MD 21843

Re: 14393
Zeller Building Permit

Dear Mr. Smith:

Thank you for providing information on the above referenced building permit application. The applicant is proposing to construct a single-family dwelling unit. Critical Area issues include stormwater management, pollutant removal, and afforestation.

The lot is 3,600 square feet in size, is zoned MH, and has a setback of 5 feet. The lot is currently constructed with a mobile home, concrete walk, concrete drive, and shed. The applicant proposes to remove the existing structures and construct a single-family dwelling unit, shed, covered deck, concrete walk, and concrete driveway. Current impervious surface onsite is 1,672 square feet (46.4%); upon completion of this project, total impervious surface will increase to 2,400 square feet (66.7%). To meet mitigation requirements in the 100-foot Buffer, $1,720 of landscaping is required. The applicant proposes to provide $2,400 in landscaping; 2 large trees, 2 small trees, and 16 large shrubs, and 12 small shrubs and will be provided.

To meet stormwater management requirements, the applicant is installing two grass swales and rain garden onsite; all roof water will drain to swales or pervious surfaces. In addition, the applicant will pay a fee-in-lieu of $372.48 to compensate for not meeting the maximum impervious surface limit BMP of 60%.

Based on the information provided, we have the following comment on this project:

- Please have the applicant provide the botanical name and common name of each tree and shrub to be planted onsite. Landscaping shall be performed using native vegetation.

Thank you for the opportunity to provide comments on this building permit request. Please have the applicant provide the information requested above. If you have any questions, please feel free to call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly, Ph.D
Natural Resource Planner
cc: OC 128-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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March 3, 2008

Ms. Mary Kay Verdery
Talbot County Office of Planning and Zoning
28712 Glebe Road, Suite 2
Courthouse
Easton, Maryland 21601

Re: Hunter Subdivision
1089

Dear Ms. Verdery:

Thank you for providing additional information on the above referenced subdivision application. The applicant proposes to create a two lot subdivision on land zoned as Resource Conservation Area (RCA). Total size of the parcel is 133.279 acres; 102.548 acres are located within the Critical Area. The parcel will be subdivided into a 105.084 acre lot (Tax Parcel 279 Deed Parcel 1, Lot 1), of which 74.353 acres are located in the Critical Area, and a 28.195 acre lot (Tax Parcel 279 Deed Parcel 1, Lot 2), which is located entirely within the Critical Area; Tax Parcel 31 will be abandoned and become part of Tax Parcel 279 Deed Parcel 1 Lot 1. A total of three development rights exist on Tax Parcel 279 Deed Parcel 1; two will be utilized if the subdivision is granted. Lot 1 is currently developed with seven assorted farm buildings, concrete pads, and brick walkways. Lot 2 is currently developed with a gravel roadway and deck. Total impervious surface is 129,130 square feet on Lot 1 (3.9% of the total lot) and 40,622 square feet on Lot 2 (3.3%). The impervious area existing on both lots fall under the 15% permitted. Total forest coverage on Lot 1 is 25.13 acres (23.9% of the total lot size) and is 17.42 acres (61.8%) on Lot 2.

Based on the information provided, we have the following comments on this project:

1. In our previous letter, we mentioned that The National Wetlands Inventory and Department of Natural Resource wetlands maps, as well as soil surveys, showed the presence of two intermittent streams on Lot 1 that converge to the nontidal pond. These features are not shown on the current site plan. The applicant responded that the streams do not exist on quad maps, which are the source of

stream information per the Talbot County Code (§168-28). However, the Talbot County Code states that intermittent streams can also be delineated "as confirmed by field verification and at the discretion of the Planning Department." Since existing maps are conflicting, Commission staff requests that a field delineation be performed to determine if the two intermittent streams exist onsite, as field conditions should prevail in this matter.

2. In our previous letter, we mentioned that the tidal wetlands classification table on the site plan shows that, of the total amount of tidal wetlands on-site (23,458 square feet), half is privately owned and half is State-owned. The current site plan shows a decrease in state wetlands by 8,620 square feet; however, no updated wetland delineation was performed. This is a concern to Commission staff. While we understand that this change will not affect development rights for either parcel, we ask the applicant to explain how these numbers have changed without performing an updated wetland delineation.
3. It appears that applicant has acquired a DNR Wildlife and Heritage Letter. Please forward a copy of this letter to this office.

Thank you for the opportunity to provide comments on this subdivision request. Please have the applicant provide the information requested above. Please call me with any questions at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
TC 572-07

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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March 5, 2008

Ms. Chris Corkell
Talbot County Office of Planning and Zoning
28712 Glebe Road, Suite 2
Courthouse
Easton, Maryland 21601

Re: 1489
Hall-Davies Variance

Dear Ms. Corkell:

Thank you for providing information on the above referenced variance request. The applicant requests a variance to the 100-foot Buffer to retain an existing gravel walkway, which is located 7.9 feet from Mean High Water. The property is 1.01 acres in size and is designated as a Limited Development Area (LDA). Due to the location of 756 square feet of State-owned tidal wetlands onsite, total developable area is 0.99 acres. Currently, the property is developed with a gravel path that leads to a pier. Total impervious surface is 685.76 square feet (1.5%). The applicant proposes to maintain the existing gravel pathway instead of removing the pathway or replacing it with mulch or another pervious material.

Based on the information provided, we cannot support a variance to maintain the existing gravel pathway that leads to the pier, as Talbot County does not permit man-made disturbances, such as walkways, that are constructed of gravel within the 100-foot Buffer. We acknowledge that the applicant has the right to shoreline access, and that the applicant requires reasonable means to access the existing pier. Therefore, Commission staff recommends that the applicant replace the gravel pathway with mulch or pervious wooden boards, and mitigate for any disturbances to the 100-foot Buffer at a 2:1 ratio. It appears that an opportunity exists within the Buffer to accommodate the mitigation plantings.

Thank you for the opportunity to provide comments on this Board of Appeals variance request. If you have any questions, please feel free to contact me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
TC 818-06

Martin O'Malley
Governor

hony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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March 10, 2008

Amy Moredock
Department of Planning and Zoning
Kent County Government Center
400 High Street
Chestertown, Maryland 21620

Re: Bradley Subdivision
08-15

Dear Ms. Moredock:

Thank you for providing information on the above referenced subdivision. The applicant is proposing to adjust the lot lines for Lot 2 to decrease total acreage from 20 acres to 7.52 acres and create Lot 3 (15.416 acres). The total parcel is 52.37 acres and is located in a Resource Conservation Area. Total existing forest within the RCA portion of the site is .50 acres. The applicant proposes to plant 4.588 acres of forest cover within the Critical Area, thus increasing forest cover onsite within the RCA to 5.08 acres (10%).Total existing impervious surface onsite is .055 acres (.1%).

Based on the information provided, we have the following comments on this project:

1. The applicant has created two lots within the RCA portion of this parcel, thus exhausting all available development rights within the RCA. Please have the applicant note on both the plat and the deed that no additional development within the Critical Area will be permitted.
2. The applicant must receive a letter from the Department of Natural Resources (DNR) Wildlife and Heritage Division evaluating the property to determine if there is the presence of any threatened or endangered species onsite. If present, the applicant must address all recommendations from DNR for protection of this species. Please forward to this office a copy of this letter.
3. Please have the applicant list on the site plan the amount of impervious surface allowed and currently existing onsite for each lot. Impervious surface is limited to 15% for each lot. In addition, the applicant must list each structure currently located onsite and the amount of impervious surface attributed to each.

4. The subdivision must meet the 15% Critical Area afforestation requirement as found in COMAR 27.01.02.04; therefore, the applicant must plant an additional 2.77 acres of forest cover. The applicant can choose to provide 15% afforestation on each lot, or provide 15% afforestation in one area of the property for the entire subdivision.

Thank you for the opportunity to provide comments on this subdivision application. If you have any questions, please contact me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: KC 153-08

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

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(410) 260-3460 Fax: (410) 974-5338
www.dnr.state.md.us/criticalarea/

March 10, 2008

Gary Letteron
Environmental Planner
Baltimore City Department of Planning
417 East Fayette Street, 8th Floor
Baltimore, MD 21202

Re: Hanover Street Resurfacing

Dear Mr. Stuart:

Thank you for forwarding the above-referenced project to this office per the requirements of COMAR 27.02.02 - State and Local Agency Actions Resulting in Development of Local Significance on Private Lands or Lands Owned by Local Jurisdictions. The project involves the milling, overlay, resurfacing, and repair of a portion of Hanover Street.
Total disturbance is less than 10,000 square feet. The property is 6.10 acres and is located in an Intensely Developed Area (IDA). After reviewing the consistency report, this office agrees that the project is generally consistent with the City of Baltimore Critical Area Program for the reasons outlined below:

1. No forests, woodlands, or trees will be removed.
2. Existing impervious surface onsite will remain the same.
3. Since no new impervious surface is added to the site, 10% pollutant removal is not required.
4. This activity is not located within the 100-foot Buffer.
5. The project is exempt from stormwater management review.
6. No habitat protection areas (colonial nesting waterbird sites, endangered/threatened species areas, anadromous fish propagation waters, waterfowl staging areas, or forest interior dwelling bird habitats) will be impacted.
7. No tidal or non-tidal wetlands will be impacted.

Thank you again for your cooperation and assistance with reviewing this project. If you have any questions, please call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resources Planner
cc: BA 131-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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March 10, 2008

Amy Moredock
Department of Planning and Zoning
Kent County Government Center
400 High Street
Chestertown, Maryland 21620

Re: Turner's Creek
Consistency Report

Dear Ms. Moredock:

Thank you for forwarding supplemental information to this office in regards to the above-referenced project per the requirements of COMAR 27.02.02 - State and Local Agency Actions Resulting in Development of Local Significance on Private Lands or Lands Owned by Local Jurisdictions.

The County proposes to integrate a nonstructural shoreline protection project ("living shoreline") with a Buffer Management Plan and Afforestation Plan, a rain garden, and rain barrel demonstration site. The project is being funded through a Local Government Assistance for Improving Shoreline Management grant from the Coastal Zone Management Program. The area of the site is 147 acres, and is located in a Resource Conservation Area (RCA). After reviewing the consistency report, this office agrees that the project is generally consistent with the Kent County Critical Area Program for the reasons outlined below.

1. Approximately 48.25 acres (33%) of the site is covered with existing wooded vegetation; 1,000 square feet of wooded vegetation will be cleared, and reforestation for this clearing will be provided onsite.
2. Approximately 1,020 square feet in the Buffer will be disturbed. Mitigation for any Buffer disturbance will be provided at a 1:1 ratio. A Buffer Management Plan was provided; 10 canopy trees and 12 understory plantings will be provided.
3. Existing impervious surface onsite is .416 acres (.2%). No new impervious surface will be added.

4. Approximately 340 square feet of area will be disturbed for two rain gardens, which are located outside the 100-foot Buffer.
5. The project is currently under review for Stormwater Management and Sediment and Erosion Control Plans.
6. The project is water dependent.
7. The applicant has a received a permit (07-GL-1075/200760737) to work in tidal wetlands.
8. The project is located within a waterfowl nesting area; therefore, no activity may occur in this area between November 15 and March 15.

Thank you again for your cooperation and assistance with reviewing this project. If you have any questions, please call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resources Planner
cc: KC 004-08

Martin O'Malley
Governor

thony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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March 11, 2008

Ms. Mary Kay Verdery
Talbot County Office of Planning and Zoning
28712 Glebe Road, Suite 2
Courthouse
Easton, Maryland 21601

Re: Frana Building Permit
NC13

Dear Ms. Verdery:

Thank you for providing information on the above-referenced building permit. The applicant is requesting to construct a garage addition to an existing dwelling unit outside of the 100-foot Buffer. The property is 1.75 acres in size and is located in a Limited Development Area (LDA). Currently, the site is developed with a one-story frame dwelling, patio, garage, gravel driveway, and gravel sidewalk. The applicant proposes to construct a garage, remove gravel driveway, and replace a portion of the driveway with pervious pavers. Current impervious surface onsite is 12,236 square feet (16.05%). The applicant proposes to add 452 square feet of new impervious surface and remove 1,740 square feet of impervious surface. Upon completion of the project, total impervious surface onsite will be 10,948 square feet (14.36%). Total area of disturbance will be 3,730 square feet.

At this time, we have significant concerns regarding the use of pervious pavers on this site as proposed by the applicant. Without additional information related to the use of pervious pavers, including detailed soil boring information and manufacturer's specifications on the specific paver product, we are unable to determine whether the pavers will provide the intended infiltration benefits. In addition, if the site conditions are not amenable to the use of pavers, it appears that the applicant will exceed the impervious surface area limits in the law. As a result, we are unable to support the granting of a building permit application at this time. We request that the applicant provide for this office a copy of the soil borings and the manufacturer's specifications in order to determine the pervious rate of the pavers and the site suitability for their use.

Thank you for the opportunity to provide comments on this building permit application. Please include this letter in your file and submit it as part of the record for this variance. If you have any additional questions please contact me at 410-260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: TC 66-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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March 13, 2008

Ms. Mary Kay Verdery
Talbot County Office of Planning and Zoning
28712 Glebe Road, Suite 2
Courthouse
Easton, Maryland 21601

Re: A114
Smith Variance

Dear Ms. Verdery:

Thank you for providing information on the above-referenced variance. The applicant is requesting a variance to enclose an existing deck. The property is 28,750 square feet in size and is located in a Limited Development Area (LDA). Currently, the site is developed with a one-story frame dwelling, wood deck, and driveway. The applicant proposes to cover the existing deck with sunroom walls and a roof. Current impervious surface onsite is 1,072 feet. Total area of disturbance is 4 square feet.

Provided the lot is properly grandfathered, we do not oppose this variance request. However, we do have the following comments:

1. Mitigation for any disturbance in the Buffer shall be performed at a 2:1 ratio.
2. The applicant is requesting to cover an existing deck with sunroom walls and a roof. Please note that this office would not support any future variances to create a deck within the 100-foot Buffer on this property.

Thank you for the opportunity to provide comments on this variance application. Please include this letter in your file and submit it as part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case. If you have any additional questions please contact me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: TC 123-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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March 13, 2008

Lynn Thomas
Town of Easton
14 South Harrison Street
P.O. Box 520
Easton, MD 21601

Re: YMCA of Talbot County
Site Plan

Dear Mr. Thomas:

Thank you for providing information on the above-referenced site plan. The applicant is proposing to install a new outdoor tennis pavilion. The site is located in an Intensely Developed Area (IDA).

In speaking with the Town about this project, it is our understanding that the first phase of this project will not involve any development activity within the Critical Area. A future phase will involve the construction of the proposed tennis pavilion within the IDA, at which point the Town will provide site plans and 10% pollutant removal worksheets, and this office will provide comments. At this time, however, Commission staff has no comment on the project phase as shown on the submitted site plans.

Thank you again for your help with this matter. We look forward to reviewing this project in the future. If you have any questions, please feel free to call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: TC 669-07

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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March 13, 2008

Ms. Mary Kay Verdery
Talbot County Office of Planning and Zoning
28712 Glebe Road, Suite 2
Courthouse
Easton, Maryland 21601

Re: A116
DeCaro Variance

Dear Ms. Verdery:

Thank you for providing information on the above-referenced variance. The applicant is requesting a variance to add a second story balcony over an existing patio. The property is 7.466 acres in size and is located in a Resource Conservation Area (RCA). Total existing impervious surface onsite is 46,203 square feet (14.2%); no new impervious surface is proposed for this project.

Provided the lot is properly grandfathered, we do not oppose this variance request. However, we do have the following comments:

1. The site plans shows a slate walkway existing within the 100-foot Buffer. Talbot County does not permit walkways that are constructed of slate within the Buffer. Commission staff recommends that the applicant replace the slate walkway with mulch or pervious wooden boards.
2. Mitigation for any disturbance to the 100-foot Buffer or expanded Buffer shall be performed at a 2:1 ratio.

Thank you for the opportunity to provide comments on this variance application. Please include this letter in your file and submit it as part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case. If you have any additional questions please contact me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: TC 161-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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March 17, 2008

April Stehr
Maryland Department of the Environment
Wetlands & Waterways Program
1800 Washington Boulevard, Suite 430
Baltimore, MD 21230

RE: Parish Pier Proposal

Dear Ms. Stehr:

I am writing to provide comments on an application by Mr. and Mrs. Andrew Parish to construct a 70-foot by 6-foot timber pier that includes a 20-foot by 10-foot "T" head, two mooring piles, and a boat lift, and to construct a 15-foot by 12-foot gravel boat ramp. The property is located at 24760 Rays Point Road in St. Michaels, Maryland.

Based on the information provided to this office by Talbot County staff, it appears that the site plan does not show the area of afforestation that exists onsite; this area would be impacted in order to provide access to the proposed pier. The afforestation area is protected by easement, and as such, Talbot County does not permit vehicular access or development activities within this afforestation area. In addition, the site plan fails to mention how both tidal and nontidal wetlands will be impacted, and whether MDE permits have been acquired to impact these areas. Impacts to the wetland areas will also require a variance. Finally, wetland maps indicate that the nontidal wetlands delineated on the site plan are tidal in nature. A wetland delineation may be required to ensure that existing tidal and nontidal wetlands located onsite are properly mapped.

In reviewing this application, Commission Staff recommends that the applicant relocate the pier so that impacts to the afforestation area are avoided and both nontidal and tidal impacts are minimized.

Thank you for the opportunity to provide comments on the referenced project. If you have any questions, please call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resources Planner
cc: Elisa DeFlaux, Environmental Planner, Talbot County

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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March 17, 2008

Ms. Mary Kay Verdery
Talbot County Office of Planning and Zoning
28712 Glebe Road, Suite 2
Courthouse
Easton, Maryland 21601

Re: A115
Wadsworth Variance

Dear Ms. Verdery:

Thank you for providing information on the above referenced variance request. The applicant is requesting a variance to construct a one-story library addition to an existing two-story dwelling unit. The property is 7.056 acres in size and is located in a Resource Conservation Area (RCA). Currently, the site is developed with a two-story dwelling unit, steps, guest house, garage, gravel driveway, sheds, patio, and propane tanks. The applicant proposes to remove a portion of the walkway and install a library addition within the 100-foot Buffer. Total impervious surface onsite is currently 18,728 square feet (6.09%); if the variance is granted, total impervious surface will increase to 18,884 square feet (6.14%).

Based on the information provided, Commission staff cannot support a variance to construct a library addition to the existing dwelling unit within the 100-foot Buffer. The applicant must demonstrate that the variance shall not exceed the minimum adjustment necessary to relieve unwarranted hardship. It is our understanding that Talbot County granted an administrative variance to the applicant in May 2007 to allow a two-story dwelling porch addition with bath to the existing two-story dwelling unit. This expansion was considered to be the minimum adjustment necessary to relieve unwarranted hardship. Granting a second variance to allow a library addition within the 100-foot Buffer would allow the applicant to exceed the minimum adjustment necessary, and would also confer upon the applicant a special privilege that would be denied to other owners of lands or structures within the same zone.

Additionally, to be granted a variance to the 100-foot Buffer, an applicant must satisfy its burden to prove that the project meets each one of the county's variance standards, including the standard of "unwarranted hardship;" that is, "denial of reasonable and significant use of the entire parcel or lot." Currently, the applicant enjoys the use of a two-story dwelling unit, steps,

guest house, garage, gravel driveway, sheds, patio, and propane tanks onsite. Given these uses, we do not believe that the County has evidence on which to base a finding that, without the granting of this variance, the applicant would be denied reasonable and significant use of the entire lot or parcel.

In reviewing the site plan, there appears to be an opportunity to construct the library addition outside of the Buffer without the need for variances. Based on this information, and based on the inability of the applicant to fulfill each and every variance standard, Commission staff recommends that the library addition be constructed entirely outside of the 100-foot Buffer.

Thank you for the opportunity to provide comments for this administrative variance. Please include this letter as part of the record for the case. In addition, please notify the Commission in writing of the decision made in this case. If you have any questions, please call me at 410-260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: TC 92-07

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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March 17, 2008

Ms. Mary Kay Verdery
Talbot County Office of Planning and Zoning
28712 Glebe Road, Suite 2
Courthouse
Easton, Maryland 21601

Re: A117
Latka Variance

Dear Ms. Verdery:

Thank you for providing information on the above-referenced variance application. The applicant is requesting a variance to add a second floor over a section of an existing house, and to extend and replace a currently existing deck with a deck that will be partially located in the 100-foot Buffer. The property is 19,107 square feet in size and is located in a Limited Development Area (LDA). The property is currently developed with a single-story frame dwelling, deck, wood shed, metal shed, porch, brick grill, concrete pavers, gravel driveway, and gravel parking area. The applicant proposes remove the existing deck and porch and install a new deck and covered entry porch to the front of the house, facing Cooper Point Road. In addition, the applicant proposes to construct a second-story addition over an existing portion of a dwelling unit that is partially located in the 100-foot Buffer, and to replace the existing deck at the rear of the house, facing Grace Creek; the new deck facing Grace Creek will be partially located in the 100-foot Buffer. Total impervious surface onsite is currently 2,868 square feet (15.0%); if the variance is granted, total impervious surface will increase to 3,274 square feet (17.1%).

Based on the information provided, we do not oppose the construction of the second-story addition over an existing portion of the dwelling unit, as the addition does not increase impervious surface within the Buffer or further encroach into the Buffer. However, we do oppose the construction of a replacement deck facing Grace Creek as currently proposed. Currently, the applicant enjoys use of a deck facing Grace Creek that is located entirely outside of the 100-foot Buffer. To be granted a variance to the 100-foot Buffer, an applicant must satisfy its burden to prove that the project meets each one of the county's variance standards, including the standard of "unwarranted hardship;" that is,

"denial of reasonable and significant use of the entire parcel or lot." Given that an opportunity exists to construct an amply-sized replacement deck in a manner which does not impact the Buffer, we do not believe that the County has evidence on which to base a finding that, without the granting of this variance, the applicant would be denied reasonable and significant use of the entire lot or parcel. Therefore, staff recommends that the applicant construct a replacement deck that will be located entirely outside of the 100-foot Buffer.

Thank you for the opportunity to provide comments on this variance application. Please include this letter in your file and submit it as part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case. If you have any additional questions please contact me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: TC 162-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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March 17, 2008

Mary Kay Verdery
Talbot County Planning and Zoning
Talbot County Courthouse
11 North Washington Street
Easton, MD 21601

Re: Tilghman on the Chesapeake Site Plan
1067

Dear Ms. Verdery:

Thank you for providing information on the above referenced site plan. The applicant is proposing to move .61 acres of Reservation of Development Rights (RDR) land from one portion of a 56.08-acre easement within a Resource Conservation Area (RCA) to another. As a result of this proposal, Resource Conservation Area 1 (RC1) will fall from 5.62 acres to 5.01 acres, while RC5 will be created as a .61 acre easement; RC5 will be located adjacent to RC4. This revision is requested in order to widen an existing private road right-of-way along Spinnaker Way and Black Walnut Point Road, which runs through the RC1 area.

Based on the information provided, we have the following comment:

- The RDR land may not be developed for residential, commercial, or industrial development, and this area shall not be considered as an approved building lot for development purposes.

Thank you for the opportunity to provide comments on this site plan. If you have any questions, please contact me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: TC ~~163-08~~
116-07

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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March 17, 2008

Ms. Chris Corkell
Talbot County Office of Planning and Zoning
11 N. Washington Street
Courthouse
Easton, Maryland 21601

Re: 1490
Elite Nails, etc. Special Exception

Dear Ms. Corkell:

Thank you for providing information on the above referenced special exception request. The applicant requests a special exception to permit the operation of a Beauty Salon to offer services such as hair, nails, and massage therapy to be conducted within an existing structure. The applicant also requests a special exception to sell hair and nail products, jewelry, and beach attire. The property is 9.68 acres in size and is designated Limited Development Area (LDA). No new development activity is proposed onsite.

Provided that the Board of Appeals finds that the proposed use meets the requirements for a special exception, we do not oppose this special exception request.

Thank you for the opportunity to provide comments on this Board of Appeals special exception request. If you have any questions, please feel free to contact me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: TC 164-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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March 17, 2008

William S. Ingersoll
Town of Chestertown
Town Office
118 North Cross Street
Chestertown, MD 21620

Re: Radcliffe Point Subdivision

Dear Mr. Ingersoll:

Thank you for providing additional information on the above-referenced subdivision. The applicant proposes to create a 26-lot residential/condominium subdivision. The property is 5.578 acres in size, and is located in both a Limited Development Area (4.398 acres) and an Intensely Developed Area (1.180 acres). Currently, the lot is undeveloped. Upon completion of this project, the amount of impervious surface within the LDA portion of the property will be 28,178.70 square feet (14.70%). Currently, 6,970 square feet of forest cover exists in the LDA portion of the site (3.6%). No clearing of trees will occur during the construction of this project, and the applicant proposes to plant 21,780 square feet of additional forest cover to meet the 15% afforestation requirement.

Based on the information provided, we have the following additional comments on this project:

1. To ensure proper functionality of the proposed paver system, Commission staff recommends that the applicant use a clean 57 stone base with no fines.
2. In our previous letter, dated January 28, 2008, we mentioned concerns about the total amount of proposed impervious surface for this subdivision application since it is currently 14.70%; this leaves a total of 558 square feet of impervious area available for future enhancements to each unit in the LDA without requiring individual owners to apply for a variance to the 15% impervious surface limit. Commission staff is unable to support variances that exceed the 15% impervious surface limit. Additionally, this causes difficulty for local jurisdictions since it increases time spent on enforcement.

   With these factors in mind, we continue to stress that all future development activities associated with newly created lots should not require variances to the Town's Critical Area Program requirements. Accordingly, we recommend that the subdivision's proposed impervious area be reduced to leave future residential tenants reasonable room for impervious area enhancements to their property. We strongly recommend that the Town not approve this subdivision request until the applicant has fully addressed this concern.

Thank you for the opportunity to provide comments on this subdivision application. If you have any questions, please contact me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: CT 23-08
Mary Ann Skilling, Chestertown Circuit Rider
Tristan Stewart, McCrone Engineering

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

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March 18, 2008

Mr. Blaine Smith
Zoning Administrator
Town of Ocean City
PO Box 158
Ocean City, MD 21843

Re: 13701
Reel Inn Addition

Dear Mr. Smith:

Thank you for providing information on the above referenced building permit application. The applicant is proposing to construct alterations and additions to an existing bar/restaurant. Critical Area issues include stormwater management, pollutant removal, and afforestation.

The lot is 6,709 square feet in size, is zoned R-2, and has a setback of 25 feet. The lot is currently developed with a pool, pool bar, bath house, wood deck, wood walk, concrete ramp, concrete walks, concrete patios, and concrete porch. The applicant proposes to construct an office addition, roof addition, and deck/roof addition. Current impervious surface onsite is 5,065 square feet and will remain unchanged. Total area disturbed for this project will be 650 square feet. To meet mitigation requirements in the 100-foot Buffer, 418 square feet of landscaping is required; the applicant proposes to pay a fee-in-lieu of $501.60. The applicant has met afforestation requirements outside of the 100-foot Buffer, as 1 large tree, 8 large shrubs, and 8 small shrubs exist onsite.

To meet stormwater management requirements, the applicant must remove .027 pounds of phosphorus per year; the applicant will pay a fee-in-lieu of $540 to meet this requirement.

Based on the information provided, we have no additional comments for this project.

Thank you for the opportunity to provide comments on this building permit request. Please have the applicant provide the information requested above. If you have any questions, please feel free to call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly, Ph.D
Natural Resource Planner
cc: OC 169-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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March 19, 2008

Ms. Mary Kay Verdery
Talbot County Office of Planning and Zoning
28712 Glebe Road, Suite 2
Courthouse
Easton, Maryland 21601

Re: L1074
Price Lot Line Revision

Dear Ms. Verdery:

Thank you for providing information on the above referenced lot line revision. The applicant is requesting a lot line revision between two existing parcels (Tax Parcel 14, Tax Parcel 24). Both parcels are located partially in a Rural Conservation Area (RCA). Tax Parcel 14 was originally 174.365 acres in size, with no acreage within the Critical Area RCA; upon the approval of this line revision, total acreage will decrease to 148.239 acres, with 9.008 acres located in the Critical Area RCA. Tax Parcel 24 is currently 162.038 acres in size, with 56.451 acres located in the Critical Area RCA; upon approval of the line revision, total acreage will increase to 188.164 acres, with 47.443 acres located in the Critical Area RCA. All development rights have been utilized in the Critical Area for each parcel. Currently, there is no impervious surface existing in the Critical Area for either parcel; Tax Parcel 14 allots 58,858 square feet of impervious surface, and Tax Parcel 24 allots 309,993 square feet of impervious surface. Total forest coverage on Tax Parcel 14 is 253,102 square feet (64.5%), and total forest coverage on Tax Parcel 24 is 898,647 square feet (43.4%).

Based on the information provided, this office has the following comments:

1. The line revision as proposed is problematic in that it creates a non-conforming situation in regard to density within the RCA. Specifically, the line revision appears to constitute a subdivision within the Critical Area, creating a parcel of land on revised Tax Parcel 14 which is less than the required 20-acre minimum, and which did not previously exist. Should the applicant wish to reconfigure the RCA lands, the resulting parcels must comply with the current density standards in the law and not create a new, non-conforming parcel of RCA land.

2. Based on the comments in #1 above, staff recommends that the applicant redraw the line revision to include the entire amount of Critical Area acreage within Tax Parcel 24.
3. If forest is cleared for any development on the Critical Area portion these parcels in the future, mitigation will be required. If up to 20% of forest is cleared from the parcel, then mitigation at a ratio of 1:1 is required; if clearing is between 20% and 30%, then mitigation is 1.5:1; clearing of over 30% of the site requires 3:1 mitigation.

Thank you for the opportunity to provide comments on this lot line revision request. Please have the applicant provide the information requested above. Please call me with any questions at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: TC 138-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
CRITICAL AREA COMMISSION
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March 25, 2008

Ms. Suzanne Schappert
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road, MS 6301
Annapolis, Maryland 21401

Re: Teti Variance
2008-0073-V

Dear Ms. Schappert:

Thank you for sending the above-referenced variance request for review and comment. The applicant is requesting a variance to allow a dwelling unit with less setbacks and Buffer than required. The property is 8,850 square feet in size and is located in a Limited Development Area (LDA) and Buffer Exemption Area (BEA). The property is currently developed with a house, driveway, sidewalk, stoop, and porches. The applicant proposes to renovate and rebuild an existing single-story dwelling unit and install a pervious deck over an existing porch. Total impervious surface onsite is 1,409 square feet (15.9%); if the variance is granted, total impervious surface will increase to 2,282 square feet (25.8%).

Based on the information provided, we understand that the property was granted a variance to allow a dwelling addition with less setbacks than required in July 2007. It is our understanding that, after the granting of this variance, it was determined that the foundation was in disrepair; consequently, the applicant has applied for a variance to repair the foundation, rebuild the house within the existing footprint, and construct a pervious, second-floor deck over the existing porch. It is also our understanding that the County has not asked the applicant to move the house behind the existing BEA setback line due to the existing mature tree line and septic area located in front of the house.

Provided that the lot is properly grandfathered, we do not oppose this variance request. However, we do have the following comments:

1. Mitigation for any clearing or disturbance within the Buffer for this project should be performed at a 2:1 ratio.

2. Please note that, due to the existence of an impervious porch beneath it, the proposed second story deck cannot be considered pervious in nature.

Thank you for the opportunity to provide comments. Please include this letter in your file and submit it as part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: AA 415-07

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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March 26, 2008

Deborah A. Renshaw
Zoning Inspector
Town of St. Michaels
300 Mill Street
P.O. Box 206
St. Michaels, MD 21663

Re: Velo Variance
518-08

Dear Ms. Renshaw:

Thank you for providing information on the above-referenced variance application. The applicant proposes to construct a single-family home, garage, and driveway on a grandfathered lot that is located entirely within the 100-foot Buffer. The site is 9,357 square feet in size and is designated as an Intensely Developed Area (IDA). Currently, the site is undeveloped. If the variance is granted, total impervious surface onsite will increase to 2,130 square feet (17.1%). The proposed development will not encroach closer to the shoreline than 25 feet. The applicant proposes to mitigate for disturbance within the 100-Buffer by planting 11 canopy trees, 10 understory trees, and 18 shrubs (4,400 square feet of mitigation). The applicant is meeting 10% requirements by installing a bioretention facility.

Provided that Board of Appeals finds that the applicant has met each of the variance standards detailed within the Town of St. Michaels Zoning Ordinance, we do not oppose the granting of this variance. However, we do have the following comments:

1. It appears that portions of the 25-foot Buffer are not fully vegetated. Commission staff recommends that the applicant fully establish the 25-foot Buffer in native vegetation.
2. The applicant is requesting to install a driveway that provides access to both Radcliffe Avenue and North Harbor Road. While we understand that every lot requires roadway access, providing two access points does not minimize Buffer disturbance. In an effort to minimize the adverse effects on fish, wildlife, and plant habitat within the 100-foot Buffer, Commission staff requests that the applicant remove the portion of the driveway

that provides access to North Harbor Road and plant this area with native vegetation. We note that the applicant applied for a variance in 2005 to construct a home with a driveway that provided access only to Radcliffe Avenue.

Thank you for the opportunity to provide comments on this variance application. Please include this letter in your file and submit it as part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case. If you have any additional questions please contact me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: ST 789-05
Roby Hurley, Critical Area Circuit Rider, Town of St. Michaels

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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March 27, 2008

Ms. Suzanne Schappert
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road, MS 6301
Annapolis, Maryland 21401

Re: 2008-0075-V
Sippel Variance

Dear Ms. Schappert:

Thank you for providing information on the above-referenced variance application. The applicant is requesting a variance to allow a dwelling with less setbacks and Buffer than required and disturbance to slopes greater than 15%. The lot is 15,775 square feet and is designated as a Limited Developed Area (LDA). The applicant proposes to raze and remove an existing dwelling unit and construct a new single-family dwelling unit, two porches, and wooden deck. Total impervious surface onsite is currently 1,341 square feet (8.5%); if the variance is granted, impervious surface will increase to 2,500 square feet (15.84%). Total forest cover onsite is 13,240 square feet (83.9%); the applicant proposes to remove 2,570 square feet of forest cover. Approximately 950 square feet of steep slopes is proposed to be disturbed.

While we do not oppose the proposed construction of a new dwelling unit onsite, we do oppose the expansion of the home and accessory structures so that it further encroaches into slopes greater than 15%. Specifically, it appears that portions of the home and both proposed porches extend beyond the footprint of the existing home, thus disturbing slopes greater than 15%. Anne Arundel County Zoning Code §17-8-201 states that "development within the Limited Development Area (LDA) or Resource Conservation Area (RCA) may not occur within slopes of 15% or greater unless development will facilitate stabilization of the slope or the disturbance is necessary to allow connection to a public utility." To avoid further impacts to steep slopes, staff recommends that the applicant build the proposed house and porches within the existing footprint of the site.

In addition, we have the following comments on this variance application:

1. Anne Arundel County Soil Maps indicate that the existing ditch shown on the site plan is an intermittent stream. It is difficult to determine the nature of this feature from aerial photography. We recommend that the County verify whether the feature qualifies as an intermittent perennial stream. If it is determined that the existing ditch is a stream, then please have the applicant delineate a 100-foot stream buffer on the site plan.
2. The Critical Area report mentions that 2,500 square feet of impervious surface is proposed onsite. However, the site plan states that 2,175 square feet is proposed. Please have the applicant clarify the correct amount of proposed impervious surface onsite.
3. Mitigation for any disturbance within the Buffer or expanded Buffer for slopes greater than 15% must be performed at a 3:1 ratio.

Thank you for the opportunity to provide comments. Please include this letter in your file and submit it as part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case. If you have any questions, please contact me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: AA 168-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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March 28, 2008

Gail Webb Owings
Director
Department of Planning, Housing and Zoning
Kent County Government Center
400 High Street
Chestertown, Maryland 21620

Re: Kent County Critical Area Program Text Amendment – Commercial Critical Area Zoning District

Dear Ms. Owings:

We have received your request for the processing of the above referenced text amendment to the Kent County Critical Area Program. The text change proposes to include shopping centers as a permitted use within the Commercial Critical Area (CCA) Zoning District. This letter serves to notify the Town that Commission staff has accepted the materials forwarded by the Town as a complete submittal. The Chair will make an amendment or refinement determination within thirty days of the date of this letter, and Commission staff will notify you of her determination and the procedures for review by the Critical Area Commission.

Thank you for providing us with the opportunity to review your text amendment request. If you have any questions, feel free to call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: file

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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March 28, 2008

Amy Moredock
Department of Planning and Zoning
Kent County Government Center
400 High Street
Chestertown, Maryland 21620

Re: Langford Bay Associates, LLC
08-21

Dear Ms. Moredock:

Thank you for providing information on the above referenced variance request. The applicant is requesting a variance to repair and replace an existing dock. The property is 14,250 square feet in size and is designated as an Intensely Developed Area (IDA).

Based on the information provided, we do not oppose this variance request. However, we do have the following comments on this project:

- Mitigation for any disturbance in the 100-foot Buffer shall be performed at a 2:1 ratio.

Thank you for the opportunity to provide comments on this variance request. If you have any questions, please contact me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: KC 177-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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March 31, 2008

Ms. Deborah A. Renshaw
Zoning Inspector
Town of St. Michaels
300 Mill Street
P.O. Box 206
St. Michaels, MD 21663

Re: Town of St. Michaels Street Repaving Project, Phase 2

Dear Ms. Renshaw:

Thank you for forwarding the above-referenced project to this office per the requirements of COMAR 27.02.02 - State and Local Agency Actions Resulting in Development of Local Significance on Private Lands or Lands Owned by Local Jurisdictions. The project entails resurfacing five existing streets. The area of the site is 1.63 acres and is located in an Intensely Developed Area (IDA). After reviewing the consistency report, this office agrees that the project is generally consistent with the Town of St. Michaels Critical Area Program for the reasons outlined below:

1. The project is not located within the 100-foot Buffer, and the project is not water dependent.
2. There is no increase in impervious surface; therefore, 10% calculations are not required.
3. The project has received local approval of both stormwater management and sediment and erosion control plans.
4. A total of three dead, diseased, or dying trees will be removed; all three trees will be replanted on Canton Street, close to the current location of the trees that will be removed.
5. No habitat protection areas will be impacted.
6. There are no tidal or non-tidal wetland impacts.

Thank you again for your cooperation and assistance with reviewing this project. If you have any questions, please call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resources Planner
cc: ST 524-07

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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March 31, 2008

Mr. Bob Tabisz
Maryland Department of the Environment
Wetlands & Waterways Program
1800 Washington Boulevard
Baltimore, MD 21230

RE: Comments on Applications for State Permits – Talbot County

Dear Mr. Tabisz:

I am writing to provide comments on the following project located in Talbot County:

Barbara Nicholson Emergency Wetlands Permit Request

On Black Walnut Point Road in Tilghman Island, the applicant has applied to perform uprighting and brace a timber wall, and to place 27. 0 feet of stone revetment on filter cloth that will be a maximum of 12 feet channelward from Mean High Water (MHW) in front of the wall. The uprighting and wall revetment will allow the applicant to fix the backfill area with filter cloth, stone, common fill, topsoil, seeding and spartina patens.

The Talbot County Critical Area Program recommends nonstructural shore protection measures whenever practical. Therefore, we recommend nonstructural measures in lieu of the proposed stone revetment. Nevertheless, if MDE determines that structural means are necessary, then this office will defer to your determination. Any disturbance to the 100-foot Buffer shall be mitigated at a 1:1 ratio, and the applicant should coordinate all activities with Talbot County.

Thank you for the opportunity to provide comments on the referenced project. If you have any questions, please call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resources Planner
cc: Mary Kay Verdery, Talbot County Planning and Zoning

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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April 1, 2008

Mr. Blaine Smith
Zoning Administrator
Town of Ocean City
PO Box 158
Ocean City, MD 21843

Re: Sorenson Building Permit
14528

Dear Mr. Smith:

Thank you for providing information on the above referenced building permit application. The applicant is proposing to construct a duplex dwelling. Critical Area issues include stormwater management, pollutant removal, and afforestation.

The lot is 4,696 square feet in size, is zoned R-1, and has a setback of 15 feet. The lot is currently developed with a two-story building, paved driveway, covered porch, second floor deck, and wood walk. The applicant proposes to remove the existing structures and construct a duplex, pervious paver drive, first floor pervious deck, and two second floor pervious decks. Total existing impervious surface onsite is 3,346 square feet (71.25%). The applicant proposes to reduce impervious surface onsite to 2,864 square feet (60.9%).To meet mitigation requirements in the 100-foot Buffer, the applicant is required to provide 3,772 square feet of mitigation; the applicant proposes to plan 2 large trees (Japanese black pine), 6 small trees (crape myrtle), 20 large shrubs (blue point juniper), 15 small shrubs (Japanese barberry), and 20 herbaceous plants (bugleweed). In addition, the applicant will pay $578.40 as a fee-in-lieu for landscaping. The applicant is meeting 10% phosphorus removal requirements by reducing impervious surface onsite.

Based on the information provided, we have the following comment on this project:

1. Within the 100-foot Buffer area, the applicant proposes to construct a duplex, pervious paver drive, pervious deck, and two second floor pervious decks; the total area allocated for all three decks is 454 square feet. The Town of Ocean City Atlantic

Coastal Bays Critical Area Program §30-554(d)(1) states that, "New development, including accessory structures, shall minimize the extent of intrusion into the Buffer…" While we understand that the Town of Ocean City Atlantic Coastal Bays Critical Area Program allows pervious decks in the setback, and we will continue to discuss this issue with staff, it appears that the size and location of the duplex and decks do not minimize Buffer intrusion. To minimize water quality and habitat impacts, we recommend reducing the size of the proposed first floor deck, removing the two second floor decks, and fully planting the remaining area of the setback with the native vegetation that is required for mitigation. We note that existing dwelling currently has a 180 square foot deck located within the setback.

2. The applicant proposes to plant Japanese barberry and bugleweed for mitigation purposes. Japanese barberry is listed as an invasive species to the Mid-Atlantic natural areas, and bugleweed, while not officially listed, is known to show invasive tendencies as well. Commission staff recommends that the applicant plant highbush blueberry and sneezeweed in lieu of the aforementioned species.

Thank you for the opportunity to provide comments on this building permit request. Please have the applicant provide the information requested above. If you have any questions, please feel free to call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly, Ph.D
Natural Resource Planner
cc: OC 185-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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April 7, 2008

Gary Letteron
Environmental Planner
Baltimore City Department of Planning
417 East Fayette Street, 8th Floor
Baltimore, MD 21202

Re: Growing Home Campaign Proposed Joint Program

Dear Mr. Letteron:

Thank you for your letter requesting comments from Critical Area Commission staff regarding the use of $16,000 to support the Growing Home Campaign Proposed Joint Program to expand urban tree canopy on private residential properties throughout the City of Baltimore. The project will aid in improving water quality and enhancing habitat within the City of Baltimore.

We understand that the project will use Critical Area offset fees to provide City residents coupons that offer a $10.00 discount on trees to be planted on their property. The City is using this program to help meet its goal of doubling tree canopy from 20% to 40% within 30 years. In order to reach this goal, tree plantings on private property will be required.

The proposed cost of the project is $29,495, and $16,000 of Buffer Offset Fees is proposed to be used. The Buffer Offset Fees will be used to provide $5.00 towards each $10.00 coupon. The Growing Home Campaign projects that an additional 3,200 trees will be planted within the City as a result of this program.

In general, this office supports the Growing Home program, as the project works towards the goals of improving water quality and enhancing wildlife habitat within the Critical Area; however, in an e-mail dated February 29, 2008, you mentioned that 200 trees should be the deliverable quantity for the $16,000 requested. In order to provide the Commission better accountability for its use of Buffer offset fees, Commission Staff requests that the City require 3,200 trees to be the deliverable quantity, as mentioned in the Growing Home Campaign budget estimate that was provided to this office.

Based on the information provided, this office is satisfied with the use of Buffer Offset Fund monies for this project since it meets the Critical Area goals of improving water quality and enhancing wildlife habitat, **provided that** 3,200 trees is the deliverable quantity. If there are changes in the proposed project, please notify this office. Thank you again for the opportunity to provide comments on this proposal. If you have any questions, please feel free to call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resources Planner

cc: Douglas B McCoach III, City of Baltimore Planning Department
Duncan Stuart, City of Baltimore Planning Department
Mary Owens, CAC
Ren Serey, CAC
Lisa Hoerger, CAC
BA General Files

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
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April 7, 2008

Gary Letteron
Environmental Planner
Baltimore City Department of Planning
417 East Fayette Street, 8th Floor
Baltimore, MD 21202

Re: 2008 Branches Offset Fee Project Request

Dear Mr. Letteron:

This office understands that your department is requesting comments from the Critical Area Commission regarding the use of $46,318 to support the Building Resources and Nurturing Community Health and Environmental Stewardship (BRANCHES) Summer 2008 project to improve water quality and enhance habitat within Baltimore City. In addition, the project will improve the quality of life for the citizens of Baltimore as well as create employment and educational opportunities for the youth of Baltimore.

We understand that BRANCHES is a six-week summer program whose goal is to restore urban forests and riparian buffers in Baltimore's Park System. The BRANCHES project will provide employment and environmental training for twenty-five high school students from disadvantaged neighborhoods in Baltimore. In addition, five college students will be hired as team leaders. These students will work in Baltimore's forests, helping supplement the Forestry Division and other staff for Baltimore's Park System.

The proposed Buffer Offset Fees to be used for this project will be $46,318. A total of $141,254 is required for the program, and the Buffer Offset Fees accounts for approximately one-third of the total cost. The Buffer Offset Fees were collected to mitigate for 20,000 square feet of impacts to the Buffer. These funds will be used for planting a minimum of 25 native trees (minimum 15 gallon size) to be planted within the Critical Area, watering of trees, invasive plant removal, trash cleanup, shoreline erosion control Buffer planting, maintenance of 2007 Critical Area Tree Planting and erosion control projects, and training for youth workers.

In general, this office supports the BRANCHES program, as the project works towards the goals of improving water quality and enhancing wildlife habitat within the Critical Area; however, Commission staff has significant concerns about this Buffer offset fee project as proposed. The City is requesting $46,318 to restore habitat, remove invasive plants, and plant 25 trees on 20,000 square feet of property. Historically, the Commission is willing to support up to $10,000 per acre to support restoration, invasive removal, and supplemental reforestation; however, the current proposal for this project is well in excess of $10,000 per acre. As you know, it is important that the offset funds used for projects provide direct environmental benefits proportionate to the impacts associated with the collection of the fees.

Thank you for the opportunity to provide comments on this proposal. If you have any questions, please feel free to call me at (410) 260-3483. I look forward to reviewing a revised proposal in the near future.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resources Planner

cc: Douglas B McCoach III, City of Baltimore Planning Department
Duncan Stuart, City of Baltimore Planning Department
Mary Owens, CAC
Ren Serey, CAC
Lisa Hoerger, CAC
BA General Files

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

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April 7, 2008

Kenneth Hranicky
Environmental Planner
City of Baltimore Department of Planning
417 East Fayette Street, 8th Floor
Baltimore, MD 21202

Re: Harbor Point
Master Plan & Phase I

Dear Mr. Hranicky:

Thank you for providing information on the above referenced Master Plan and Phase I for Harbor Point. The applicant is proposing to develop five parcels for mixed use development. The property is 27.63 acres and is designated as an Intensely Developed Area (IDA). Currently, the site is developed with parking lots and additional impervious surface areas. The applicant proposes to develop office buildings, a service area, a public promenade, courtyard, roads, athletic field, and two residential buildings; Phase I will entail the creation of an office building and a portion of the promenade on Parcel 5. Total existing impervious surface on the entire site is 27.22 acres (98.5%); upon completion of this project, total impervious surface will be reduced to 20.74 acres (75.1%). The applicant is meeting 10% phosphorus removal requirements by reducing the amount of impervious surface onsite; in addition, the applicant is utilizing a green roof on portions of the proposed building in Phase I. To meet Buffer planting requirements, the applicant is proposing to plant 1.9 acres of natural vegetation onsite.

Based on the information provided, we have the following comments for this project:

1. On Sheet CA-2, the applicant has delineated the 100-year floodplain with a blue color that appears to represent the Mean High Water Line (MHW), based on the legend. Please have the applicant redraw the site plan, to clearly distinguish the 100-year floodplain from the MHW Line.
2. Please ensure the applicant plants the green space area onsite with native plants and vegetation.
3. Please submit future phases of the project for Commission review and comment.

Thank you for providing the information on this building permit. If you have any questions, please call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: BA 399-05
Duncan Stuart, City of Baltimore Department of Planning
Lisa Hoerger, CAC

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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April 8, 2008

Mr. Robert Cuthbertson
Maryland Department of the Environment
Wetlands & Waterways Program
1800 Washington Boulevard
Baltimore, MD 21230

RE: Comments on Applications for State Permits – Baltimore City

Dear Mr. Cuthbertson:

I am writing to provide comments on the following projects located in Baltimore City:

200860683/08-WL-1016: LaFarge North America

In Curtis Creek, near Chemical Road, the applicant proposes to emplace 100 feet of stone revetment within a maximum of 15 feet channelward of Mean High Water (MHW) as a method of shore erosion control.

The Baltimore City Critical Area Program recommends nonstructural shore protection measures whenever practical. Therefore, we recommend nonstructural measures in lieu of the proposed revetment. Nevertheless, if MDE determines that structural means are necessary, then this office will defer to your determination. Any disturbance to the 100-foot Buffer shall be mitigated at a 1:1 ratio, and the applicant should coordinate all activities with the City of Baltimore Department of Planning.

Thank you for the opportunity to provide comments on the referenced projects. If you have any questions, please call me at (410) 260-3483.

Sincerely,

Nick Kelly
Natural Resources Planner
cc: Duncan Stuart, City of Baltimore Department of Planning
General File

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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April 10, 2008

Deborah A. Renshaw
Zoning Inspector
Town of St. Michaels
300 Mill Street
P.O. Box 206
St. Michaels, MD 21663

Re: **Muskrat Park Renovation**

Dear Ms. Renshaw:

At the April 2, 2008 Critical Area Commission Meeting, the Project Subcommittee discussed proposed renovations to Muskrat Park. The Town of St. Michaels is proposing to upgrade the Muskrat Park area to create an environmentally friendly park with handicap accessibility. The parcel is located between Church and Green Streets and fronts the Miles River. The site is designated as an Intensely Developed Area (IDA) and a Buffer Exemption Area (BEA).

The information session focused on concerns over the location of the proposed boardwalk, the pervious nature of the proposed brick pavers, the location of impervious surface within the Buffer, and the proposed Living Shoreline. The Project Subcommittee provided the following comments on these topics:

1. While one subcommittee member mentioned concerns about the proposed boardwalk, the general consensus among the Project Subcommittee was that the proposed boardwalk would be acceptable. However, the Project Subcommittee requested that a filter strip be provided between the wooden walkway and the bulkhead to provide pre-treatment to any surface runoff prior to being discharged into the Harbor. The filter strip should be planted with native salt-tolerant and/or perennial grasses, and the grade should be such that stormwater is directed away from the Harbor.
2. All brick located onsite will be considered impervious, including the proposed "permeable" brick pavers.
3. The proposed picnic tables should be placed over existing impervious surface within the 100-foot Buffer or, *more preferably*, be located entirely outside of the 100-foot Buffer.

4. The proposed plantings for the Living Shoreline project should be both native and salt-tolerant.

We thank the Town of St. Michaels for taking the opportunity to speak with the Project Subcommittee for guidance. Please include this letter in your file. If you have any additional questions, please feel free to contact me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: Roby Hurley, Critical Area Circuit Rider, Town of St. Michaels

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

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April 10, 2008

Amy Moredock
Department of Planning and Zoning
Kent County Government Center
400 High Street
Chestertown, MD 21620

Re: Article V-5.3 Critical Area Residential Zoning Text Amendment Application

Dear Ms. Moredock:

Thank you for providing information on the above referenced text amendment application. The applicant is requesting approval of a text amendment to the Kent County Zoning Ordinance. The proposed zoning text amendment would amend Article V-5.3, Critical Area Residential Zoning, to allow the following special exception:

23. *Offices or headquarters for nonprofit environmental or preservation organizations.*

The conditions for the exception are:

1. *The organization must be actively pursuing its restoration, preservation, or related educational activities in Kent County.*
2. *The exception may be applied only to an existing structure.*
3. *The office may have (1) accessory apartment.*

The purpose of this amendment is to permit the Sassafras River Association to locate its office in an existing building that is located within the Critical Area Residential zoning district in Georgetown, MD.

Based on the information provided, our staff has no comments on this proposed text amendment request.

Thank you for providing the opportunity to comment on this proposed text amendment. If you have any questions, please contact me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: file

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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April 10, 2008

Amy Moredock
Department of Planning and Zoning
Kent County Government Center
400 High Street
Chestertown, MD 21620

Re: Article V-13.2.12, Marine District Under Permitted Use Text Amendment Application

Dear Ms. Moredock:

Thank you for providing information on the above referenced text amendment application. The applicant is requesting approval of a text amendment to the Kent County Zoning Ordinance. The proposed zoning text amendment would allow the following permitted use under Article V-13.2.12, Marine District:

> "One or more *buildings* owned, co-owned, or operated by a corporation, association, *person* or *persons* for transient or vacation use, by the day, week, or month, or on another reserved time basis"

The purpose of this proposed amendment is to allow economic opportunities in the Marine District.

Based on the information provided, our staff has no comments on this proposed text amendment request.

Thank you for providing the opportunity to comment on this proposed text amendment. If you have any questions, please contact me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: file

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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April 11, 2008

Ms. Suzanne Schappert
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road, MS 6301
Annapolis, Maryland 21401

Re: 2008-0097-V
Wood Variance

Dear Ms. Schappert:

Thank you for providing information on the above-referenced variance application. The applicant is requesting a variance to allow a dwelling with disturbance to slopes greater than 15%. The lot is 23,185 square feet in size and is designated as a Limited Developed Area (LDA). The applicant proposes to raze and remove an existing shed and construct a parking area and an attached addition to the existing single-family home. Total impervious surface onsite is currently 4,240 square feet (18.2%); if the variance is granted, impervious surface will increase by 991 square feet to 5,231 square feet (22.6%). Total forest cover onsite is 15, 481 square feet (66.7%); the applicant proposes to remove 948 square feet of forest cover. Total area disturbed onsite will be 2,316 square feet; approximately 736 square feet of steep slope disturbance is proposed.

While we do not oppose the proposed construction of a new addition and driveway onsite, we cannot support the proposed location of the addition and driveway within an area of slopes greater than 15% as currently proposed. Anne Arundel County Zoning Code §17-8-201 states that "development within the Limited Development Area (LDA) or Resource Conservation Area (RCA) may not occur within slopes of 15% or greater unless development will facilitate stabilization of the slope or the disturbance is necessary to allow connection to a public utility." Based on aerial photography, it appears that there are opportunities onsite to further minimize disturbance to steep slopes. In particular, it appears from the site plan that the applicant could reduce the size of the proposed addition and parking area to further minimize steep slope impacts, or the applicant could relocate the addition so that the northernmost side is located in the same footprint as the northernmost side of the existing shed. This office may be able to support a variance that further minimized such steep slope impacts.

Thank you for the opportunity to provide comments. Please include this letter in your file and submit it as part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case. If you have any questions, please contact me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: AA 194-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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April 11, 2008

Ms. Mary Kay Verdery
Talbot County Office of Planning and Zoning
28712 Glebe Road, Suite 2
Courthouse
Easton, Maryland 21601

Re: L1076
Feldman Line Revision Plat

Dear Ms. Verdery:

Thank you for providing information on the above referenced revision plat. The parcel is 20 acres in size and is designated a Resource Conservation Area (RCA); one development right is available for this parcel. Currently, there is no impervious surface existing onsite; a total of 130,680 square feet of impervious surface is permitted onsite. There is currently no forest coverage onsite.

Based on the information provided, this office has the following comments:

1. To meet 15% afforestation requirements within the Critical Area, the applicant must provide 130,680 square feet of forest cover onsite.
2. The 100-foot Buffer shall be fully established in natural vegetation.
3. Upon developing this site, the applicant will have exhausted all available development rights for this parcel.
4. Talbot County soil maps reveal that the property is completely covered in hydric soils (Mattapex, Othello). Since these soils are contiguous to the 100-foot Buffer, the Buffer must be expanded, and a variance may be required in order to develop on this site.
5. GIS mapping reveals a stream existing near the current location of the drainage ditch. An onsite stream delineation may be required to verify the nature of this feature.
6. The applicant must receive a letter from the Department of Natural Resources Wildlife and Heritage Division (WHS) evaluating the property for any rare, threatened, or endangered species location onsite.

Thank you for the opportunity to provide comments on this lot line revision request. Please have the applicant provide the information requested above. Please call me with any questions at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: TC 93-07

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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April 11, 2008

Ms. Suzanne Schappert
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road, MS 6301
Annapolis, Maryland 21401

Re: 2008-0108-V
Shaffer Variance

Dear Ms. Schappert:

Thank you for providing information on the above-referenced variance application. The applicant is requesting an after-the-fact variance to allow an accessory structure with less Buffer than required and with disturbance to slopes greater than 15%. The lot is 21,776 square feet in size and is designated as a Limited Developed Area (LDA). The applicant wishes to maintain a retaining wall that the applicant installed to replace an existing, rotting retaining wall. The wall is approximately 15 feet from the shoreline and is located in an area of steep slopes; the purpose of the wall is to prevent soil erosion from a vegetable and flower garden. Total impervious surface onsite is currently 4,527 square feet (20.8%); if the variance is granted, impervious surface will increase by 16 square feet to 4,543 square feet (20.8%). Total forest cover onsite is 17,817 square feet (81.8%); no forest cover is proposed to be removed.

Based on the information provided, we do not oppose this variance as requested. However, we do have the following comment:

- Mitigation for disturbance within the Buffer and expanded Buffer for slopes greater than 15% should be provided at a 3:1 ratio. This mitigation should be required as a condition of the variance approval and should be located in the Buffer to the extent possible.

Thank you for the opportunity to provide comments. Please include this letter in your file and submit it as part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case. If you have any questions, please contact me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: AA 197-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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April 14, 2008

Ms. Mary Kay Verdery
Talbot County Office of Planning and Zoning
28712 Glebe Road, Suite 2
Courthouse
Easton, Maryland 21601

Re: A119
Gunther Variance

Dear Ms. Verdery:

Thank you for providing information on the above-referenced variance. The applicant is requesting a variance to remove and replace an existing door and steps. The property is 13.019 acres in size and is located in a Resource Conservation Area (RCA). Currently, the site is developed with a single-family dwelling unit, tennis court, paved driveway, brick pads, walkways, pool, pool house, concrete pads, footbridge, garages, and gas pumps. Within the 100-foot Buffer, the applicant proposes to remove an exterior door and brick steps (16 square feet) and replace them with a new door and brick steps (18 square feet); the door and steps will be further from Mean High Water (MHW) than the footprint of the existing dwelling unit. Outside of the 100-foot Buffer, the applicant proposes to install an additional driveway area, a garage, a breezeway, concrete pads, and a dwelling addition. Current impervious surface onsite is 43,504 square feet (7.7%); upon completion of the proposed additions, total impervious surface will increase to 46,268 square feet (8.2%).

Provided the lot is properly grandfathered, we do not oppose this variance request. However, we do have the following comments:

- Mitigation for any disturbance in the Buffer shall be performed at a 2:1 ratio.

Thank you for the opportunity to provide comments on this variance application. Please include this letter in your file and submit it as part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case. If you have any additional questions please contact me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: TC 203-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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April 14, 2008

Lynn Thomas
Town of Easton
14 South Harrison Street
P.O. Box 520
Easton, MD 21601

Re: Ward Variance

Dear Mr. Thomas:

Thank you for providing information on the above-referenced variance. The applicant is proposing to extend a covered entry over an existing basement stairwell, remove an existing deck, and replace the existing deck with a new wooden deck and concrete slab. The property is 21,088 square feet in size and is located in an Intensely Developed Area (IDA). All additions are further from Mean High Water (MHW) than the existing footprint of the dwelling unit.

Based on the information provided, we do not oppose this variance. However, we do have the following comments:

1. Mitigation for any disturbance to the 100-foot Buffer shall be provided at a 3:1 ratio. Mitigation plantings should be documented via a Best Management Practice (BMP) and should be located in the Buffer to the extent possible.
2. The applicant will need to submit 10% pollutant removal worksheets to this office for review and comment if the removed deck was previously calculated as pervious in nature. The new deck and concrete slab would constitute new impervious surface in this case, resulting in the need for 10% calculations. Stormwater BMPs or offsets in the form of plantings may be necessary if there is a pollutant removal requirement on this site.

Thank you for the opportunity to provide comments. Please include this letter in your file and submit it as part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case. If you have any questions, please contact me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: EA 205-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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April 14, 2008

Gail Webb Owings
Director
Department of Planning, Housing and Zoning
Kent County Government Center
400 High Street
Chestertown, Maryland 21620

Re: Kent County Critical Area Program Text Amendment – Commercial Critical Area Zoning District

Dear Ms. Owings:

The purpose of this letter is to provide an update regarding the Commission's processing of the text amendment to the Kent County Critical Area Program. The text change proposes to clarify that more than three businesses may be located on the same parcel within the Commercial Critical Area (CCA) zoning district. On April 14, 2008, Chair McHale determined that the proposed text amendment will be processed as a refinement to the Kent County Critical Area Program.

The proposed text amendment has been scheduled for review at the May 7, 2008 Critical Area Commission meeting in Crownsville. I will forward both a copy of the meeting agenda as well as a copy of my staff report as soon as they are available. If you have any questions, feel free to contact me at (410) 260-3483. Thank you for your help.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: file

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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April 15, 2008

Ms. Mary Kay Verdery
Talbot County Office of Planning and Zoning
28712 Glebe Road, Suite 2
Courthouse
Easton, Maryland 21601

Re: M1099
Little York Farm Sketch Plan

Dear Ms. Verdery:

Thank you for providing information on the above sketch plan. The applicant proposes to create a 4-lot subdivision. The property is 107.807 acres in size, with 92.648 acres located in a Resource Conservation Area (RCA), and 15.159 acres located outside of the Critical Area. Currently, one development right within the Critical Area has been used, and the applicant proposes to utilize the remaining three Critical Area development rights. A total of 11.522 acres of forest exists onsite (12.4%).

Based on the information provided, we have the following comments:

1. The applicant has exhausted all development rights available on this parcel.
2. The applicant will be required to plant 2.375 acres of forest cover to meet the Critical Area 15% afforestation requirement.
3. The applicant has two proposed Sewage Disposal Areas (SDA) located on Lot 1. Are these potential locations to place a new SDA for the existing home, as the current SDA is located in the area of the private right-of-way? Please have the applicant explain the need for two proposed SDAs.
4. Talbot County Soil maps reveal several intermittent streams located onsite that have not been marked on the site plan. In addition, NWI wetland maps reveal the location of a nontidal wetland on the southern end of Lot 1, in the location where the second SDA is located. Staff recommends that the applicant have a stream and wetland delineation performed to determine if these features exist onsite. If a nontidal wetland does exist in the aforementioned location, then the proposed SDA in this area will need to removed.

5. Please have the applicant draw a 100-foot Buffer around the stream located at the southern and western boundary of Lot 4.
6. The applicant is proposing to create two lots (lots 2 and 3) that are less than 20 acres in size. Lots less than 20 acres in size within the RCA are required to place the remaining amount of acreage less than 20 acres in Reservation of Development Rights (RDR). However, no RDR locations are shown. Please have the applicant show the location of the additional RDR areas on the site plan.
7. The applicant must receive a letter from the Department of Natural Resources (DNR) Wildlife and Heritage Division evaluating the property and must address all recommendations from DNR for protection of this species.

Thank you for the opportunity to provide comments on this sketch plan. Please have the applicant provide the information requested above. Please call me with any questions at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: TC 163-08

Martin O'Malley
Governor

nthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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April 16, 2008

Ms. Mary Kay Verdery
Talbot County Office of Planning and Zoning
28712 Glebe Road, Suite 2
Courthouse
Easton, Maryland 21601

Re: A109
Haley Variance- Soil Borings

Dear Ms. Verdery:

The applicant for the above referenced variance has submitted to this office soil borings for review and approval. A variance request was approved for this property, allowing the applicant to construct an addition to the existing house within the 100-foot Buffer, remove 2,700 square feet of gravel driveway outside of the Buffer area, and replace this area with pervious grass pavers. The property is 66,908 square feet in size and is located in a Resource Conservation Area (RCA). Current impervious surface onsite is 11,949 square feet (17.85%). The applicant will add 603 square feet of new impervious surface and remove 3,279 square feet of impervious surface. Upon completion of the project, total impervious surface onsite will be 9,273 square feet (13.85%). Total area of disturbance will be 6,247 square feet.

It is our understanding that, as a condition of approval for this variance, the County required the applicant to provide to this office more information regarding the type of pervious paver being used, including the manufacturer's specifications and more detailed soil boring information. After several discussions with the applicant, Commission staff agreed to use soil borings on an adjacent property, in which the soil borings were located within 15 feet of the driveway area where the pavers will be installed. The proposed paver for this project is GrassPave2.

Upon reviewing the materials submitted, Commission staff finds that the soils located in the driveway area will support the use of pavers, provided that the applicant provides clean gravel and storage for a minimum one-inch rainfall beneath the proposed pavers. However, this office generally does not favor the use of GrassPave2 for residential driveways, as consistent driving of automobiles over this type of paver will cause compaction, thus preventing grass from properly

growing and reducing the infiltration rate of the product. GrassPave2 is more acceptable for use in areas of less constant traffic, such as fire lanes, emergency access lanes, and event parking.

In addition, it appears that the applicant is proposing the use of GrassPave2 (which has a 92% pervious rate with the County) in order to provide the applicant an opportunity to construct an addition onsite and still remain in conformance with the 15% impervious surface limit onsite, even though the property is currently 1,912 square feet over its impervious surface limit. The use of pavers in this nature conflicts with the Critical Area goals of water quality *and* habitat protection (Natural Resources Code §8-1801).

Should the County choose to permit the proposed use of pavers regardless of the information stated above, Commission staff strongly recommends that the County require the use of GravelPave2, a product better suited for the type of activity proposed on this site. Using GravelPave2, Commission staff would allow for 40% pervious credit for the driveway area. Use of this material will likely require the applicant to reconfigure and reduce the driveway area in order to stay in conformance with the 15% impervious surface limit.

In the future, this office suggests that the County require applicants to provide this office with manufacturer's specifications and soil borings *from the applicant's property* for review and comment *prior* to the Planning Officer making a decision on a variance. Commission staff is unable to make a recommendation on whether to support or oppose a variance request without this information. Providing complete information at the time of application would prevent unnecessary delays to the applicant.

Thank you for taking the time to review our comments on the above-referenced soil boring submittal. Please include this letter in your file and submit it as part of the record for this variance. If you have any additional questions please contact me at 410-260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner

cc: TC 66-08
Elisa DeFlaux, Talbot County Office of Planning and Zoning
Shawn Leidy, Talbot County Office of Planning and Zoning
Ren Serey, CAC
Kerrie Gallo, CAC
LeeAnne Chandler, CAC

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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April 16, 2008

Gary Letteron
Environmental Planner
Baltimore City Department of Planning
417 East Fayette Street, 8th Floor
Baltimore, MD 21202

Re: Inner Harbor Bioretention Area

Dear Mr. Letteron:

This office understands that your department is requesting comments from the Critical Area Commission regarding the use of $34,772 to construct a bioretention area at the Inner Harbor. The project will aid in improving water quality, enhancing habitat, and creating an educational opportunity for visitors to the Inner Harbor.

We understand that the project will be located adjacent to Light Street and Harborplace, a highly visited area within the City. The location makes this project a prime area for education about methods to enhance water quality and habitat within the City. It is our understanding that there will be two bioretention areas: one will have a drainage area of 0.09 acres, while the other will be 0.10 acres. Total impervious surface between both areas is 0.14 acres; this entire area will be treated by the bioretention facilities.

A total of $84,772 is required for the entire project. The proposed amount of Stormwater Offset Fees to be used for this project is $34,772. The Stormwater Offset Fees are requested to pay for the planting of 11 trees, 103 shrubs, 2007 perennials, for removal of impervious surface, for the installation of signage, and for stormwater management.

In general, this office supports the bioretention project for the Inner Harbor, as the project works towards the goals of improving water quality and enhancing wildlife habitat within the Critical Area; however, Commission staff cannot support this Buffer offset fee request as proposed without further documentation. The City is requesting $34,772 to plant vegetation, provide stormwater management, remove impervious surface, and install signage. However, Commission staff has calculated the fees associated with this project as follows:

11 Trees	x	$100/tree	=	$1,100
103 shrubs	x	$50/shrubs	=	$5,150
2007 perennials	x	$2/perennial	=	$4,014
Load Removed (Bioretention Area & and Impervious Surface reduction) (.276 lbs/ac)	x	$35,000/lb	=	$9,660
Signage			=	$8,000
Total			=	$27,924

Based on this information, the Commission is willing to provide $28,000 for this project. The current proposal from the City requests funds in excess of this amount by $6,772. Commission Staff requests that the City provide additional justification for the request of an additional $6,772 in fees. As you know, it is important that the offset funds used for projects provide direct environmental benefits proportionate to the impacts associated with the collection of the fees.

Thank you for the opportunity to provide comments on this proposal. If you have any questions, please feel free to call me at (410) 260-3483. I look forward to reviewing a revised proposal in the near future.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resources Planner

cc: Douglas B McCoach III, City of Baltimore Planning Department
Duncan Stuart, City of Baltimore Planning Department
Mary Owens, CAC
Ren Serey, CAC
Lisa Hoerger, CAC
BA General Files

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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April 21, 2008

Gail Webb Owings
Director
Department of Planning, Housing and Zoning
Kent County Government Center
400 High Street
Chestertown, Maryland 21620

Re: Drayton Manor Growth Allocation

Dear Ms.Owings:

We have received your request for the processing of the above referenced growth allocation request for the Drayton Manor Retreat Center in Worton, Maryland. This letter serves to notify the County that Commission staff has accepted the materials forwarded by the County as a complete submittal. The Chair will make an amendment or refinement determination within thirty days of the date of this letter, and Commission staff will notify you of her determination and the procedures for review by the Critical Area Commission.

Thank you for providing us with the opportunity to review your growth allocation request. If you have any questions, feel free to call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: KC 836-06

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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April 21, 2008

Ms. Mary Kay Verdery
Talbot County Office of Planning and Zoning
11 N. Washington Street
Courthouse
Easton, Maryland 21601

Re: 469
DW Holdings, LLC

Dear Ms. Verdery:

Thank you for providing information on the above-referenced site plan. The applicant proposes to construct a new building, asphalt paving, and signage area. The property is 7.1 acres in size, of which 4.87 acres is located in the Critical Area and is designated as a Limited Development Area (LDA). Tax Map Parcel 173, Deed Parcel A has 2.869 acres located within the LDA; Deed Parcel B has 1.99 acres located within the LDA. The property is currently developed with a retail auto sales building and garage, asphalt parking lots, canopy, concrete walks, concrete pads, temporary auto sales trailer, asphalt areas, and gravel areas. The applicant proposes to create an additional showroom, asphalt paving area, and signage area; all proposed development will occur on Deed Parcel B. Current impervious surface onsite is 10,559 square feet within Deed Parcel B (12.1%). The applicant proposes to increase impervious surface onsite by 8,978 square feet to 19,537 square feet (22.4%). The applicant proposes to plant 27,722 square feet of landscaping onsite (31.2%).

Based on the information provided, we have the following comments:

1. Natural Resources Code §8-1808.3(d) limits impervious surface within an LDA to 15%. Therefore, the applicant is limited to 13,064 square feet of impervious surface onsite. Please have the applicant revise the site plan to reduce proposed impervious surface on Deed Parcel B below this 15% limit. Alternatively, growth allocation would be necessary to accommodate development as proposed.
2. Talbot County Soil Surveys reveal that portions of the property are located in hydric soils (Keyport). Staff recommends that the applicant avoid impacting these areas with new structures.

Thank you for the opportunity to provide comments on this site plan. If you have any questions, please contact me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: TC 150-04

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
CRITICAL AREA COMMISSION
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April 21, 2008

Ms. Mary Kay Verdery
Talbot County Office of Planning and Zoning
28712 Glebe Road, Suite 2
Easton, Maryland 21601

Re: A118
Koh Variance

Dear Ms. Verdery:

Thank you for sending the above-referenced variance request for review and comment. The applicant is requesting a variance to remove an existing patio and install a pool and deck within the 100-foot Buffer. The property is 1.51 acres in size and is located in a Limited Development Area (LDA). The lot is currently developed with a single-family dwelling unit, driveway, patio, entry walkway, and brick walkway. Current impervious surface onsite is 7,991 square feet (12.1%); if the variance is granted, impervious surface onsite will increase to 8,686 square feet (13.2%). A variance was granted on this property in 2005, permitting the construction of a dwelling addition within the 100-foot Buffer.

This office opposes granting the requested variance on this site, as the applicant has the opportunity to construct the proposed pool and patio outside of the 100-foot Buffer. Based on the site plan, it appears that the applicant has locations on the northern and southern ends of the lot, outside of the 100-foot Buffer, that could accommodate a pool and deck. In addition, the applicant was granted a variance in 2005, in which the County viewed this variance request as the minimum necessary to relieve unwarranted hardship on the lot.

In 2002 and 2004, the General Assembly strengthened the Critical Area Law and reiterated its commitment to the Chesapeake Bay Critical Area's water quality and wildlife habitat values, particularly emphasizing the importance of the 100-foot Critical Area Buffer. Specifically, the General Assembly reaffirmed the stringent standards of the law, which an applicant must meet in order for a local jurisdiction to grant a variance to the Critical Area law. The State law provides that variances to a local jurisdiction's Critical Area program may be granted **only** if a Board of Appeals finds that an applicant has satisfied its burden to prove that the applicant meets each one of the county's variance standards, including the standard of "unwarranted hardship." The General Assembly defined that term as follows: "without the variance, the applicant would be denied reasonable and significant use of the entire parcel or lot." Furthermore, the State law establishes a presumption that a proposed activity for which a Critical Area variance is requested does not conform to the purpose and intent of the Critical Area law. The County must make an affirmative finding that the applicant has overcome this presumption, based on the evidence presented.

In this case, the applicant is proposing to construct a new pool and deck within the 100-foot Buffer. The Critical Area Buffer establishes an area of undisturbed natural vegetation managed to protect shorelines, streams, wetlands, and riparian biological communities from adverse effects of land use. Thus, the County has enacted a specific set of provisions to recognize the importance of the 100-foot Buffer and maintain its integrity by prohibiting the construction of new structures unless they are water dependent (Talbot County Code §190-93 E). Construction of a pool and deck within the 100-foot Buffer would be in direct conflict with the Buffer goals of reducing nutrient and sediment runoff, minimizing the adverse effects of human impacts, maintaining an area of transitional habitat between aquatic and ecological communities, protecting riparian wildlife, and maintaining natural vegetation.

In our view, the applicant has not met each one of Talbot County's variance standards and should therefore be denied a variance. I have discussed each one of the variance standards below as it pertains to this site:

1. *That special conditions or circumstances exist that are peculiar to the land or structure within the jurisdiction's Critical Area program that would result in an unwarranted hardship to the applicant.*

Currently, the lot is developed with a single-family dwelling unit, driveway, patio, entry walkway, and brick walkway. The applicant is requesting a variance to remove an existing patio and install a pool and deck within the 100-foot Buffer. The State law standards, applicable to this variance request, define "unwarranted hardship" to mean that the applicant must prove that, without the requested variance, the applicant would be denied reasonable and significant use of **the entire parcel or lot**. Given the uses enjoyed by the applicant on this property, and given the fact that a variance was awarded to this property in 2005 for a dwelling addition, we do not believe that the County has evidence on which to base a finding that, without the pool and deck, the entire parcel would be denied reasonable and significant use.

2. *That a literal interpretation of this subtitle or the local Critical Area Program and related ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area of the local jurisdiction.*

The applicant has a reasonable use of this property for residential purposes, and therefore, would not be denied a right commonly enjoyed by neighboring properties. No property owner has the right to build a new swimming pool or deck within the 100-foot Buffer. Therefore, the rejection of a variance for the swimming pool and deck would not deny the applicants a right commonly enjoyed.

3. *The granting of a variance will not confer upon an applicant any special privilege that would be denied by this subtitle or the local Critical Area program to other lands or structures within the jurisdiction's Critical Area.*

If the variance is granted, it would confer upon the applicant a special privilege, in this case constructing a pool and deck within the 100-foot Buffer, which would be denied to others in this area as well as in similar areas found within the County's Critical Area. To grant a variance to the Buffer would confer a special privilege on the applicant (County Code §190-97). The applicant has the burden of proof and the burden of persuasion to overcome the presumption that the proposed variance

does not conform to the Critical Area Law. We do not believe the applicant has overcome this burden.

4. *The variance request is not based upon conditions or circumstances, which are the result of the actions, by the applicant, nor does the request arise from any condition conforming, on any neighboring property.*

From the information provided, it does not appear that the variance request is based on conditions or circumstances that are the result of the applicant or from a neighboring property. Therefore, it appears that the applicant has met this standard.

5. The granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the jurisdiction's Critical Area, and that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area law and the regulations.

Granting of this variance is not in harmony with the general spirit and intent of Critical Area law and regulations. A granting of a variance to allow a pool and deck within the 100-foot Buffer results in an increase in stormwater and sediment runoff, the loss of essential infiltration opportunities, increased human impacts to the Buffer, and habitat loss. Given that the applicant can adequately redevelop this property and locate the pool and deck outside of the 100-foot Buffer, approval of this variance would not be in harmony with the general intent and spirit of the Critical Area Law.

In summary, the Planning Officer must find that the applicant has overcome the burden to meet each and every one of the County's variance standards in order to grant a variance. Because we believe that the applicant has failed to meet four of the five variance standards, we are unable to offer support for the applicant's request.

Thank you for the opportunity to provide comments. Please include this letter in your file and submit it as part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case. If you have any questions, please call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: TC 673-05

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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CRITICAL AREA COMMISSION
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April 22, 2008

Amy Moredock
Department of Planning and Zoning
Kent County Government Center
400 High Street
Chestertown, Maryland 21620

Re: Chester River Yacht and Country Club
08-30

Dear Ms. Moredock:

Thank you for providing information on the above referenced variance request. The applicant is requesting a variance to construct a second pier onsite that extends 220 feet channelward. The property is 164.72 acres in size, with 26.34 acres located within the Critical Area and designated as a Limited Development Area (LDA). Total impervious surface onsite is 2.7 acres (10.25%), and no new impervious surface is proposed.

Based on the information provided, we do not oppose this variance request, provided that the use is commercial. We do have the following comments on this project:

- Mitigation for any disturbance associated with the water-dependent use within the 100-foot Buffer shall be performed at a 2:1 ratio.

Thank you for the opportunity to provide comments on this variance request. If you have any questions, please contact me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: KC 673-05

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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April 22, 2008

Ms. Mary Kay Verdery
Talbot County Office of Planning and Zoning
28712 Glebe Road, Suite 2
Easton, Maryland 21601

Re: Blackwater Saulsbury, LLC
M1097

Dear Ms. Verdery:

Thank you for providing additional information on the above referenced subdivision application. The applicant proposes to create a 7-lot subdivision on two parcels (Revised Tax Parcel 11, Revised Tax Parcel 41) that are designated as a Resource Conservation Area (RCA). The parcels total 316.034 acres in size, with 139.020 acres located within the Critical Area RCA, and 177.014 acres located outside of the Critical Area. The property is currently developed with a single-family dwelling unit, two garages, and a gravel farm lane. Upon excluding 5.945 acres of state wetlands, a total of six development rights are permitted within the Critical Area; the applicant proposes to utilize all six development rights. Total existing forest coverage onsite within the Critical Area 92.667 acres (66.7%). The applicant proposes to clear 8.187 acres of forest cover.

Based on the information provided, and based upon a site visit to the property with Elisa DeFlaux of Talbot County and Al Kampmeyer from the Maryland Department of the Environment on April 8, 2008, we have the following comments on this project:

1. If the subdivision application is approved, the applicant will have exhausted all development rights allowed within the Critical Area.
2. The applicant should state on the site plan the amount of impervious surface permitted for each lot. Each lot is limited to 15% impervious surface area.
3. Mitigation at a ratio of 1:1 for forest clearing is required for this project.
4. The applicant has delineated a non-tidal wetland near Lots 1 and 2. Talbot County soil maps list this feature as an intermittent stream, which was confirmed through a field delineation by Mr. Kampmeyer. Please have the applicant update the site plan and provide a 100-foot Buffer around this stream.

5. A nontidal wetland area located near the western boundary of the site, approximately 450 feet from Saulsbury Road, is not delineated on the site plan. Please have the applicant delineate this feature on the site plan.
6. Based upon a field delineation by Mr. Kampmeyer, the nontidal wetland located approximately 750 feet from Saulsbury Road should be expanded to the north.
7. Talbot County soil maps reveal additional locations of hydric soils that are adjacent to the 100-foot Buffer (Keyport, Elkton, Mattapex, Othello); the Buffer must be expanded to include these sensitive areas. Please refer to the attached soil map to help determine the areas of hydric soils.
8. Based upon our comments in #4, #5, #6, and #7, Commission staff requests that the applicant perform a wetland and stream delineation for the entire property, as we have concerns that several features are either missing or inaccurately depicted on the site plan.
9. The applicant is proposing to create 5 lots that are less than 20 acres in size. Lots less than 20 acres in size are required to place the remaining amount of acreage less than 20 acres in Reservation of Development Rights (RDR). Approximately 52 acres of RDR land is required. However, only 18.075 acres of RDR is located onsite, which is the amount put into easement to transfer the existing development right from Tax Parcel 41 to Tax Parcel 11. Please have the applicant show location of the additional RDR areas on the site plan.
10. Please have the applicant clarify the process in how steep slopes were expanded on this site.
11. The site plan shows shaded areas of tidal wetlands. Please have the applicant explain what the shading represents on the site plan.
12. The applicant must submit to this office a letter from the Department of Natural Resources Wildlife and Heritage Division (WHS) evaluating the property for any rare, threatened, or endangered species location onsite. The applicant must address all recommendations from WHS for protection of this species.
13. Please have the applicant submit future plans at the 100 scale or less.

Thank you for the opportunity to provide comments on this subdivision request. Please have the applicant provide the information requested above. Please call me with any questions at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: TC ~~572-07~~
373-06

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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April 24, 2008

Gary Letteron
Environmental Planner
Baltimore City Department of Planning
417 East Fayette Street, 8th Floor
Baltimore, MD 21202

Re: 2008 Branches Offset Fee Project Request

Dear Mr. Letteron:

This office understands that your department is requesting comments from the Critical Area Commission regarding the use of $46,318 to support the Building Resources and Nurturing Community Health and Environmental Stewardship (BRANCHES) Summer 2008 project to improve water quality and enhance habitat within Baltimore City. In addition, the project will improve the quality of life for the citizens of Baltimore as well as create employment and educational opportunities for the youth of Baltimore.

We understand that BRANCHES is a six-week summer program whose goal is to restore urban forests and riparian buffers in Baltimore's Park System. The BRANCHES project will provide employment and environmental training for twenty-five high school students from disadvantaged neighborhoods in Baltimore. In addition, five college students will be hired as team leaders. These students will work in Baltimore's forests, helping supplement the Forestry Division and other staff for Baltimore's Park System.

The proposed Buffer Offset Fees to be used for this project will be $46,318. A total of $141,254 is required for the program, and the Buffer Offset Fees accounts for approximately one-third of the total cost. The Buffer Offset Fees were collected to mitigate for 20,000 square feet of impacts to the Buffer. These funds will also be used to plant 400 Root Promotion Method (RPM) trees on two locations within Baltimore's Critical; 300 trees are proposed to be planted within the 100-foot Buffer at Reedbird Park, while 100 additional trees are proposed to be planted outside the Buffer on an 11-acre Resource Conservation Area (RCA) parcel located on Maisel Street. Fees will go towards the planting and watering of trees, invasive plant removal, trash cleanup,

shoreline erosion control Buffer planting, maintenance of 2007 Critical Area Tree Planting and erosion control projects, and training for youth workers.

Based on the information you have provided, this office is satisfied with the use of Buffer Offset Fund monies for this project since it meets the Critical Area goals of improving water quality and enhancing wildlife habitat, *provided* that the proposed tree plantings are planted within a 2-3 acre area to ensure that the trees will have ample room for growth. If there are changes in the proposed project, please notify this office.

Thank you for the opportunity to provide comments on this proposal. If you have any questions, please feel free to call me at (410) 260-3483. I look forward to reviewing a revised proposal in the near future.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resources Planner

cc: Douglas B McCoach III, City of Baltimore Planning Department
Duncan Stuart, City of Baltimore Planning Department
Mary Owens, CAC
Ren Serey, CAC
Lisa Hoerger, CAC
BA General Files

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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April 24, 2008

Kenneth Hranicky
Environmental Planner
Baltimore City Department of Planning
417 East Fayette Street, 8th Floor
Baltimore, MD 21202

Re: Water Taxi Dock at Fells Point

Dear Mr. Hranicky:

Thank you for forwarding the above-referenced project to this office per the requirements of COMAR 27.02.02 - State and Local Agency Actions Resulting in Development of Local Significance on Private Lands or Lands Owned by Local Jurisdictions. The project involves the removal of an existing floating dock and the construction of new, larger replacement water taxi dock in Fells Point. The property is 3,400 square feet in size and is located in an Intensely Developed Area (IDA). Minor disturbance in the form of the removal and reconstruction of the fencing and associated gates is proposed landward of Mean High Water (MHW), while new impervious surface, in the form of the expanded replacement floating dock, will be placed waterward of MHW. All activities below MHW do not require a consistency determination.

After reviewing the consistency report, this office agrees that the development activities proposed above MHW are generally consistent with the City of Baltimore Critical Area Program for the reasons outlined below:

1. No forests, woodlands, or trees will be removed.
2. New impervious surface onsite will increase by 1,535 square feet, resulting in 100% impervious cover onsite; however, the property is designated IDA, so there is no impervious surface restriction.
3. Since most of the project is located over water, there is no location to place a pollution reduction best management practice onsite; therefore, the City will meet its 10% pollutant removal requirement by paying an offset fee.
4. This activity is located within the 100-foot Buffer, but is water dependent.
5. No habitat protection areas (colonial nesting waterbird sites, endangered/threatened species areas, anadromous fish propagation waters, waterfowl staging areas, or forest interior dwelling bird habitats) will be impacted.
6. No non-tidal wetlands will be impacted.
7. Tidal wetlands will be impacted; however, a permit from MDE has been acquired (#200860780).

In addition, we have the following comment on this project:

1. The 10% calculations submitted were inaccurate, as the site area and existing acreage of impervious surface were incorrect. Consequently, .09 pounds of phosphorus per year is to be removed, not .12 pounds per year. The associated offset fee for this project is $3,150.
2. Please submit a copy of the MDE tidal wetland permit to this office.

Thank you again for your cooperation and assistance with reviewing this project. If you have any questions, please call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resources Planner
cc: BA 223-08
Douglas B. McCoach III, City of Baltimore Department of Planning
Duncan Stuart, City of Baltimore Department of Planning

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
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Ren Serey
Executive Director

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April 24, 2008

Ms. Mary Kay Verdery
Talbot County Office of Planning and Zoning
28712 Glebe Road, Suite 2
Easton, Maryland 21601

Re: M1101
Beavers Subdivision

Dear Ms. Verdery:

Thank you for providing information on the above-referenced subdivision application. The applicant proposes to create a two-lot subdivision. The parcel is 2.388 acres in size and is designated as a Limited Development Area (LDA). Lot 1 is 1.730 acres in size and is currently developed with a single-family dwelling unit, brick porch, brick stoops, brick steps, brick walkways, wooden porch, wooden steps, and shared access driveway. Lot 2 is 0.658 acres in size and is currently developed with a portion of the shared access driveway. Current impervious surface on Lot 1 is 9,944 square feet (13.1%); current impervious surface on Lot 2 is 704 square feet (2.4%). There is no forest coverage located onsite.

Based on the information provided, we have the following comments on this proposal:

1. To meet 15% afforestation requirements, the applicant must provide 15,603 square feet of forest coverage.
2. Each lot within this subdivision is permitted one pier. However, the site plan reveals an existing pier on Lot 1 and two lateral line locations for pier access on Lot 2. Please have the applicant explain why two lateral line locations are shown on the site plan for Lot 2.
3. Lot 2 should be created to have a sufficient buildable area so that a need for variances in the future is eliminated. Please verify that the lot is buildable without a variance.
4. Talbot County soil maps reveal that the property is entirely covered in hydric soils (Mattapex). Since these soils are contiguous to the 100-foot Buffer, the Buffer must be expanded, and a variance may be required in order to develop on this site. This could be a problem for Lot 2.

5. The applicant must receive a letter from the Department of Natural Resources (DNR) Wildlife and Heritage Division evaluating the property to determine if there is the presence of any threatened or endangered species onsite. If present, the applicant must address all recommendations from DNR for protection of these species. Please forward to this office a copy of this letter. If there is the presence of such species onsite, a Habitat Protection Plan must be submitted to address proposed impacts.

Thank you for the opportunity to provide comments on this subdivision application. If you have any questions, please contact me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: TC 227-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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April 25, 2008

Lynn Thomas
Town of Easton
14 South Harrison Street
P.O. Box 520
Easton, MD 21601

Re: Heartfields at Easton

Dear Mr. Thomas :

Thank you for providing information on the above-referenced site plan. The applicant is proposing to expand an existing retirement community building with both a residence and dining addition. The property is 3.025 acres in size and is designated as an Intensely Developed Area (IDA). Current impervious surface onsite is 1.66 acres; the applicant proposes to reduce impervious surface onsite to 1.48 acres. Total area disturbed is 1.19 acres.

Based on the information provided, we have the following comments on this project:

1. Based on the site plan provided, it is unclear how impervious surface onsite is decreasing from 1.66 acres to 1.48 acres. It appears that approximately 10,800 square feet of impervious surface is being added to the site, while less than 1,000 feet is being removed. Please have the applicant clarify the amount of impervious surface proposed for this project.
2. This parcel is part of the Londonderry Retirement Community, which was granted 21.722 acres of growth allocation in March of 1992. A component of this approved growth allocation request was that a 15% pollutant reduction would be required onsite. The current pollutant removal worksheet requests only a 10% reduction. Please have the applicant revise the pollutant removal worksheets to meet the 15% requirement agreed upon when this growth allocation was approved in 1992.
3. The pollutant removal worksheets claim that existing impervious surface onsite is zero acres, the proposed amount of impervious surface is 1.54 acres, and that this project is considered new development. However, 1.66 acres of impervious surface current exists onsite, and the proposed amount of impervious surface onsite is 1.48 acres (Commission staff has concerns about the accuracy of this amount. See Comment #1). Please have the

applicant revise the pollutant removal worksheets to provide the correct amounts of existing and proposed impervious surface, and please have the applicant fill out the "Redevelopment" portion of the worksheet.

4. Based on the comments from #2 and #3, Commission staff requests that the applicant resubmit the pollutant removal worksheets to this office for review and comment prior to issuing site plan approval.
5. The applicant must receive a letter from the Department of Natural Resources (DNR) Wildlife and Heritage Division evaluating the property to determine if there is the presence of any threatened or endangered species onsite. If present, the applicant must address all recommendations from DNR for protection of these species. Please forward to this office a copy of this letter. If there is the presence of such species onsite, a Habitat Protection Plan must be submitted to address proposed impacts.

Thank you for providing us the opportunity to review this site plan request. If you have any questions, feel free to call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: EA 224-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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April 25, 2008

Ms. Mary Kay Verdery
Talbot County Office of Planning and Zoning
28712 Glebe Road, Suite 2
Easton, Maryland 21601

Re: NC15
Stinchcomb Nonconforming Structure

Dear Ms. Verdery:

Thank you for providing information on the above-referenced application to expand a nonconforming structure. The applicant proposes to remove an existing garage and replace it with a two-story addition. The parcel is 11.5 acres in size and is located in a Resource Conservation Area (RCA). The property is currently developed with a house, attached garage, shed, and driveway areas. Total current impervious onsite is 3,712 square feet (0.1%); if the nonconforming structure is granted, total impervious surface onsite will increase by 84 feet to 3,796 square feet (0.1%).

Based on the information provided, we do not oppose this proposed expansion of a nonconforming structure. However, we do have the following comments on this project :

1. Total forest coverage onsite has not been provided. To meet 15% afforestation requirements within the Critical Area RCA, the applicant must provide 75,141 square feet of forest coverage.
2. Please have the applicant provide the amount of impervious surface coverage attributed to the shed and driveway areas. Total impervious surface onsite is limited to 15%.

Thank you for the opportunity to provide comments on this application. If you have any questions, please contact me at (410) 260-3483.

Sincerely,

Nick Kelly
Natural Resource Planner
cc: TC 230-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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April 25, 2008

Gail Webb Owings
Director
Department of Planning, Housing and Zoning
Kent County Government Center
400 High Street
Chestertown, Maryland 21620

Re: Drayton Manor Growth Allocation

Dear Ms. Owings:

The purpose of this letter is to provide an update of the Commission's processing of the proposed growth allocation for the Drayton Manor Retreat Center in Worton, Maryland. On April 25, 2008, Chair McHale determined that the Drayton Manor Growth Allocation could be processed as an amendment to the Kent County Critical Area Program. Over the next few weeks, I will be in contact with you in regards to the amendment procedures and public hearing process.

If you have any questions, feel free to contact me at (410) 260-3483. Thank you in advance for all of your help with this process.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner

cc: Ren Serey, CAC
Lisa Hoerger, CAC
Marianne Dise, CAC
Amy Moredock, Kent County Department of Planning, Housing and Zoning

Martin O'Malley
Governor

nthony G. Brown
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April 25, 2008

Mr. Rob Konowal
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road, MS 6301
Annapolis, Maryland 21401

Re: 2008-0075-V
Sippel Variance

Dear Mr. Konowal:

Thank you for providing additional information on the above-referenced variance application. The applicant is requesting a variance to allow a dwelling with less setbacks and Buffer than required and disturbance to slopes greater than 15%. The lot is 15,775 square feet and is designated as a Limited Developed Area (LDA). The applicant proposes to raze and remove an existing dwelling unit and construct a new single-family dwelling unit, two porches, and wooden deck. Total impervious surface onsite is currently 1,341 square feet (8.5%); if the variance is granted, impervious surface will increase to 2,025 square feet (12.83%). Total forest cover onsite is 13,240 square feet (83.9%); the applicant proposes to remove 2,570 square feet of forest cover. Approximately 3,900 square feet of disturbance will occur onsite, of which 763 square feet of steep slopes are proposed for disturbance.

This variance application was originally reviewed in March 2008 with a similar request to raze and remove an existing dwelling unit and construct a new single-family dwelling unit, two porches, and wooden deck; the deck with patio was located within an area of slopes greater than 15%. However, proposed impacts to steep slopes were greater (950 square feet), and total proposed impervious surface was greater as well (2,500 square feet). The current plan reduces impacts to steep slopes by 187 feet, and decreases proposed impervious surface by 475 square feet.

While we understand that the applicant's new proposal reduces impacts to slopes greater than 15%, Commission staff still cannot support this variance as proposed. Consequently, the comments provided in Commission staff's March 27, 2008 letter are still applicable to this

project. Although we do not oppose the proposed construction of a new dwelling unit onsite, we still oppose the expansion of the home and accessory structures so that it further encroaches into slopes greater than 15%. Specifically, it appears that portions of the home and both proposed porches extend beyond the footprint of the existing home, thus disturbing slopes greater than 15%. Anne Arundel County Zoning Code §17-8-201 states that "development within the Limited Development Area (LDA) or Resource Conservation Area (RCA) may not occur within slopes of 15% or greater unless development will facilitate stabilization of the slope or the disturbance is necessary to allow connection to a public utility." To avoid further impacts to steep slopes, staff recommends that the applicant build the proposed house and porches within the existing footprint of the site.

Thank you for the opportunity to provide additional comments on this revised variance request. Please include this letter in your file and submit it as part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case. If you have any questions, please contact me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: AA 168-08

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
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April 30, 2008

Ms. Mary Kay Verdery
Talbot County Office of Planning and Zoning
11 N. Washington Street
Courthouse
Easton, Maryland 21601

Re: Scan, LLC
L1017A

Dear Ms. Verdery:

Thank you for providing supplemental information on the above referenced revision plat. The applicant is requesting a lot line revision between two properties on Tax Parcel 19 (Property 1, Property 2). Both properties are located in a Limited Development Area (LDA). Tax Parcel 19, Property 1 is developed with a one-story dwelling, footbridge, shed, and existing foundation. Tax Parcel 19, Property 2 is currently developed with a two-story dwelling, gravel driveway, one-and-a-half story garage, and shed. The applicant is planning to create a 12-lot subdivision on this property.

If this lot line abandonment is granted, acreage on Tax Parcel 19, Property 1 will increase from 10.73 acres to 11.84 acres, while acreage on Tax Parcel 19, Property 2 will fall from 1.71 acres to .60 acres. Total impervious surface onsite for Tax Parcel 19, Property 1 will be 5,018 square feet (1.1%). The applicant proposes to remove portions of the existing gravel on Tax Parcel 19, Property 2, reducing current impervious surface to 5,906 square feet (22.6%). Total forest coverage located on the parcel is 6.73 acres (55%).

Based on the information provided, we have the following comments on this project:

1. The applicant states that Property 2's impervious surface limit is 25% (6,534 square feet). It is my understanding that the applicant is referring to Talbot County Code §190-93E(6)(c)[1][a][i][c], which permits a 25% impervious surface limit on lots that are part of subdivision that was approved **after** December 1, 1985. However, plat records show that this parcel was platted in 1955, while tax records indicate the primary structure was built in 1890. Consequently, this would be considered a grandfathered lot, and the

above-referenced code would not apply. Therefore, Talbot County Code §190-93E(6)(c)(iii) C applies to this parcel, which states that impervious surface limits for a parcel between one-half acre and one acre in size cannot exceed 15% of the lot size, or 5,445 square feet, whichever is greater. For this case, 5,445 square feet is the maximum amount permitted. Please have the applicant further reduce the amount of impervious surface on this lot to meet this standard. The lot line revision cannot be approved where the resulting lot results in an increase in nonconformity.

2. Please have the applicant forward to this office information a copy of the wetland delineation report and that date that the delineation was completed onsite.
3. Please have the applicant forward to us copies of the Maryland Department of the Environment permit, the United States Army Corps of Engineers permit, and the updated Department of Natural Resources (DNR) Wildlife and Heritage Division letter.

Thank you for the opportunity to provide comments on this lot line revision request. Please have the applicant provide the information requested above. Please call me with any questions at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
TC 619-07

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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April 30, 2008

Ms. Mary Kay Verdery
Talbot County Office of Planning and Zoning
28712 Glebe Road, Suite 2
Courthouse
Easton, Maryland 21601

Re: Presquile Subdivision
M1098

Dear Ms. Verdery:

Thank you for providing additional information on the above referenced subdivision application. The applicant proposes to create a 10-lot subdivision on land designated as a Resource Conservation Area (RCA). The property is 310.423 acres in size, with 280.839 acres located within the Critical Area RCA, and 29.584 acres located outside of the Critical Area. The property is currently developed with three dwelling units, a barn, a shed, and driveway; all development is currently located on proposed lot one. Upon extracting .677 acres of state wetlands, a total 14 development rights are permitted; the applicant has currently utilized 3 development rights, and proposes to utilize an additional 8 development rights. Total existing forest coverage onsite is 28.468 acres (10.1%).

Based on the information provided, and based upon a site visit to the property with Elisa DeFlaux and Shawn Leidy of the Talbot County Office of Planning and Zoning, we have the following comments on this project:

1. If the subdivision application is approved, the applicant will have utilized 11 development rights; only three development rights will remain for utilization on this site.
2. The applicant must meet the 15% afforestation requirement by planting an additional 13.66 acres of forest cover.
3. The applicant should state on the site plan the amount of impervious surface permitted for each lot. Each lot is limited to 15% impervious surface area.

4. Talbot County soil maps reveal additional locations of hydric soils that are adjacent to the 100-foot Buffer (Keyport, Elkton, Mattapex, Othello); the Buffer must be expanded to include these sensitive areas. Please refer to the attached soil map to help determine the areas of hydric soils.
5. Based upon a field delineation with Ms. DeFlaux, it appears that the tidal wetland located on the northwestern edge of Lot 1 should be expanded to the east. In addition, there appears to be an unmarked tidal wetland located on the north eastern side of Lot 1, and a tidal wetland appears to exist in the area of Othello soils near the existing house on Lot 1.
6. The tidal wetland located in the center of Lot 2 should be expanded further east towards the existing stream crossing, as field conditions revealed this area to be tidal in nature.
7. An intermittent stream, located near the western edge of Lot 2, extending from the area of Othello and Keyport soils, was not delineated on the site plan. Please have the applicant delineate this feature on the plan and provide a 100-foot Buffer around the stream.
8. Based upon our comments in #4, #5, #6, and #7, Commission staff requests that the applicant perform a wetland and stream delineation for the entire property, as we have concerns that several features are either missing or inaccurately depicted on the site plan.
9. The applicant is proposing to create 6 lots that are less than 20 acres in size. Lots less than 20 acres in size are required to place the amount of acreage less than 20 acres in Reservation of Development Rights (RDR). However, no RDR location is shown on the site plan. Please have the applicant show location of the RDR area on the site plan.
10. Please have the applicant clarify the process in which steep slopes were expanded on this site.
11. The site plan states that the buffer for an intermittent stream is 50 feet; however, buffers for all streams within the Critical Area, including intermittent streams, are 100 feet.
12. Aerial photography reveals that a portion of the property, from Lot 2 southward, is located in an area inhabited by a federally listed endangered species. The applicant must receive a letter from the Department of Natural Resources (DNR) Wildlife and Heritage Division evaluating the property and must address all recommendations from DNR for protection of this species.

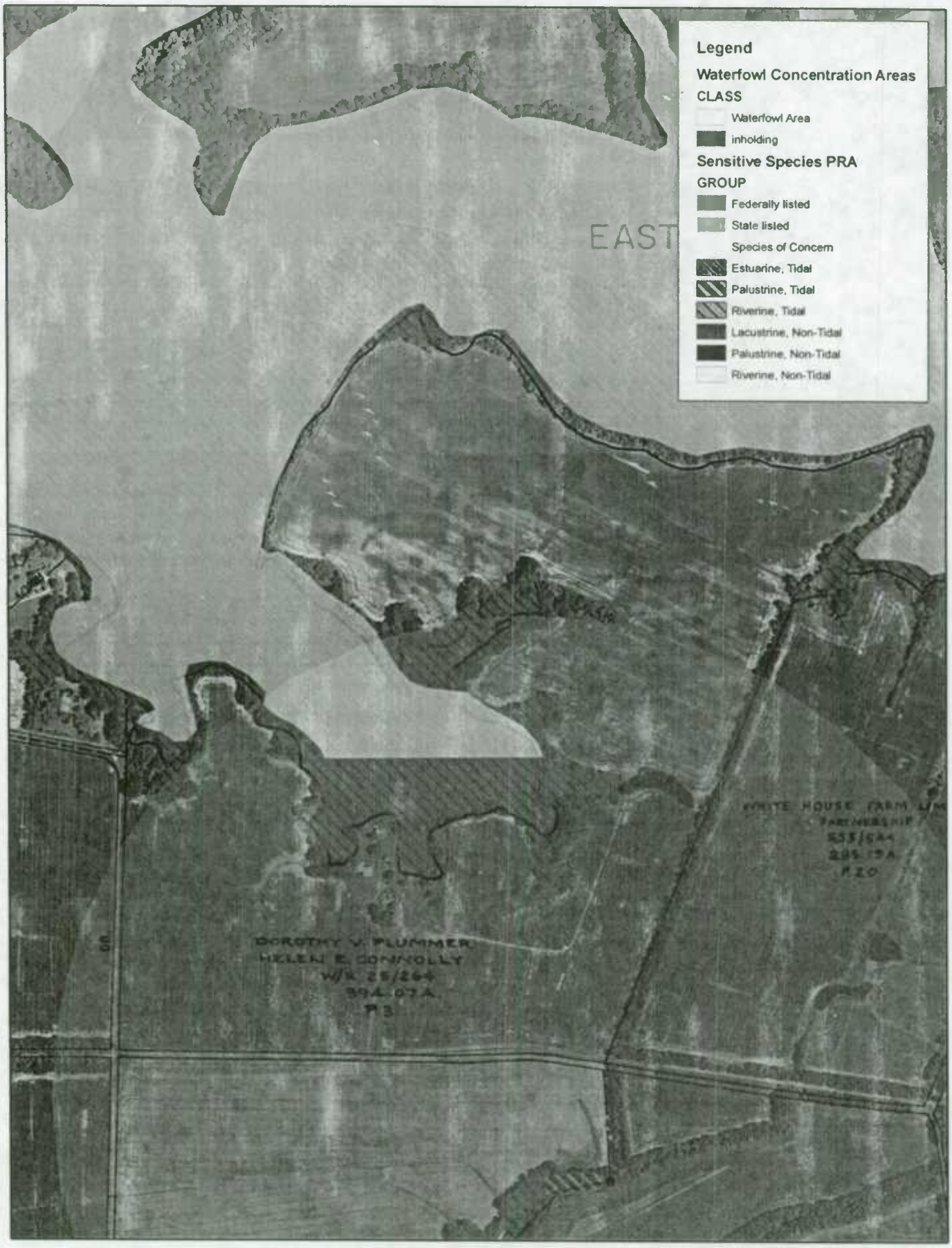
Thank you for the opportunity to provide comments on this subdivision request. Please have the applicant provide the information requested above. Please call me with any questions at (410) 260-3483.

Sincerely,

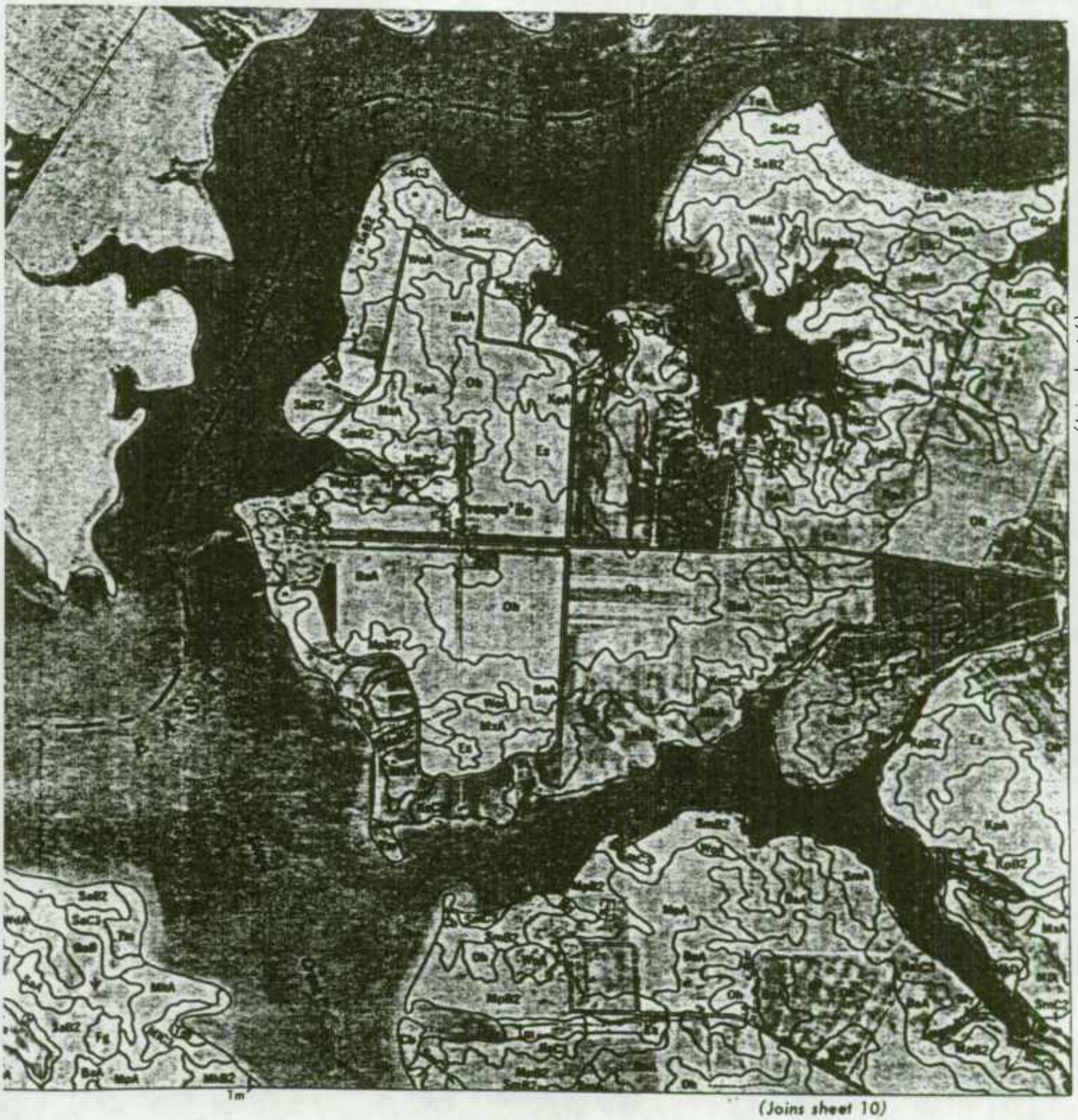
Nick Kelly

Nick Kelly
Natural Resource Planner
cc: TC 170-08

Talbot County-Presquile Subdivision



1 inch equals 732.46 feet



(Joins sheet 6)

(Joins sheet 10)

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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May 1, 2008

Lynn Thomas
Town of Easton
14 South Harrison Street
P.O. Box 520
Easton, MD 21601

Re: Waterside Village Site Plan

Dear Mr. Thomas:

Thank you for providing information on the above-referenced site plan. The applicant proposes an MDE wetland mitigation pond within the Resource Conservation Area (RCA) of this site.

Currently, the applicant has submitted a sediment and erosion control plan showing the location of the wetland mitigation pond in relation to the proposed structures and natural features located onsite. Based on this plan, and based on our conversation with Gene Slear of Environmental Concern, Inc., it is our understanding that no amenity pond will be proposed within the Critical Area; furthermore, the proposed wetland mitigation pond will have no features typically associated with an amenity pond. Based on this information, Commission staff has no additional concerns about the proposed wetland mitigation pond. However, we do have the following comments:

1. The applicant has a feature marked "100' Tidal Wetland Buffer" on sheet ES-01; however, it is difficult to determine which line represents the Buffer. Please have the applicant revise this sheet to more clearly delineate the 100-foot Buffer.
2. Please ensure that the applicant is providing mitigation for any disturbance to the Buffer at a 3:1 ratio.

Thank you for the opportunity to provide comments on this site plan. Please have the applicant provide the information requested above. If you have any questions, please feel free to call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner

cc: EA 715-06
Gary Setzer, Maryland Department of the Environment
George Beston, Maryland Department of the Environment

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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May 2, 2008

Timothy Manuelides
Law Offices of Peter G. Angelos
One Charles Center
100 North Charles Street, 22nd Floor
Baltimore, MD 21201

Re: Harbor Point
Master Plan & Phase I

Dear Mr. Manuelides:

Thank you for your request for information about the above-referenced project. As you may be aware, for the past several months the Critical Area Commission has been working on strengthening the State's Critical Area Law, which was passed by the General Assembly in early April and signed by Governor Martin O'Malley on April 24, 2008. Due to the press of legislative matters, staff's response to your request has been delayed, and, for that, we apologize. However, we have now gathered the information that corresponds to your request. The file is available in our office at 1804 West Street, Suite 100, Annapolis, Maryland, and you are welcome to review this file at any time.

Please contact our Principal Counsel, Marianne Dise, at (410) 260-3466, or me at (410) 260-3483, to set up a time to review the file or to ask any additional questions.

Once again, we thank you for your request, and we look forward to assisting you in this matter.

Sincerely,

Nick Kelly

Nick Kelly, Ph.D
Natural Resource Planner

cc: BA 399-05
Ren Serey, CAC
Marianne Dise, CAC
Duncan Stuart, City of Baltimore Department of Planning

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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May 2, 2008

Ms. Mary Kay Verdery
Talbot County Office of Planning and Zoning
28712 Glebe Road, Suite 2
Easton, Maryland 21601

Re: Callahan Subdivision
M1058

Dear Ms. Verdery:

Thank you for providing additional information on the above referenced subdivision application. The applicant proposes to create a seven lot subdivision on two parcels (Tax Parcel 3, Tax Parcel 54) that are designated as Resource Conservation Areas (RCAs). The parcels total 302.259 acres in size, with 103.802 acres located within the Critical Area RCA, and 198.457 acres located outside of the Critical Area. The Critical Area portions of the property are currently undeveloped. A total of five development rights are permitted within the Critical Area; the applicant proposes to utilize all five development rights. Total existing forest coverage onsite within the Critical Area is 27.52 acres (26.51%).

Based on the information provided, and based upon a site visit to the property with Elisa DeFlaux from Talbot County and Al Kampmeyer from the Maryland Department of the Environment on April 8, 2008, we have the following comments on this project:

1. If the subdivision application is approved, the applicant will have exhausted all development rights permitted within the Critical Area.
2. It appears that several additional intermittent streams are located onsite within proposed Lot 7 and Tax Parcel 54 "Remaining Lands" that are not shown on the site plan. Based upon this fact, Commission staff requests that the applicant perform a wetland and stream delineation for the entire property. We have concerns that several other features are either missing or inaccurately depicted on the site plan.
3. Talbot County soil maps reveal additional locations of hydric soils that are adjacent to the 100-foot Buffer (Keyport); the Buffer must be expanded to include these sensitive areas. Please refer to the attached soil map to help determine the areas of hydric soils.

4. A portion of the property is located within Forest Interior Dwelling Bird (FIDS) habitat. The applicant proposes to create building lots within this area. Commission staff has significant concerns about the proposed development within this Habitat Protection Area (HPA). Talbot County Code §190-15A(2)(a) states that purpose of the Rural Conservation District (RC) is to "conserve the irreplaceable, agricultural, forested, and natural environmental character of the county," and that "development activities are intended to be in the form of large lots or clustered lots **outside** of habitat protection areas." Furthermore, §190-15A(2)(b) states that any development in the Rural Conservation (RC) zoning district *shall* conserve and protect the ecological values of the Critical Area, provide protection for the breeding, feeding, and wintering habitats for those wildlife that require the Bay and its tributaries to sustain populations, and conserve the existing developed woodlands and forest for the water quality benefits that they provide.

   In reviewing the regulations for Habitat Protection Areas within the Critical Area, §190-93 E(8)(d)[2][c] of the County Code states that "development activities or the clearing or cutting of trees *shall* be designed and implemented so as to conserve riparian habitat and forest interior wildlife species and their habitats (particularly those of local significance)." Methods to achieve this goal *shall* include incorporating appropriate wildlife protection elements into Forest Preservation Plans, clustering development, and providing easements and other similar techniques that **restrict** land use.

   Finally, a review of the Critical Area site design guidelines for impacting FIDS habitat requires that development be restricted to non-forested areas, and development within FIDS habitat may **only** occur if forest loss or disturbance is **unavoidable**.

   In order to uphold the aforementioned regulations of the County Code and the Critical Area Commission's FIDS guidelines, Commission staff recommends that the County restrict the applicant from developing within FIDS habitat areas, as supported by the above-referenced section of the County Code. In reviewing the submitted site plan, it appears that there is ample opportunity to reasonably locate all five lots within the Critical Area without impacting FIDS habitat whatsoever. Restricting development from FIDS habitat will prevent the further decline of an area that supports the presence of forest interior wildlife species.
5. In addition to being FIDS habitat, the forested areas onsite are known to support the Delmarva Fox Squirrel. In order to protect these areas to the fullest extent possible, please have the applicant follow the guidelines stated in the Maryland Department of Natural Resources Wildlife and Heritage Service (WHS) letter.
6. Due to the presence of FIDS and Delmarva Fox Squirrel habitat onsite, a Habitat Protection Plan must be submitted to this office for review and comment, as required in §190-93 E(8)(d)of the Talbot County code. We note that, on the Habitat Protection Plan, the interior edge of FIDS habitat should be measured 300 feet from the landward edge of forest cover only. In reviewing the submitted FIDS Mitigation Analysis Plan for this project, the applicant incorrectly used the edge of tidal waters to measure the 300 foot FIDS interior edge as well.

In addition, COMAR 27.01.02.04.C(3)(c) requires that an area equal to 80% of the existing forested Critical Area on a property that is developed be placed in a conservation easement. Accordingly, the applicant must show on the Habitat Protection Plan how they are meeting this requirement.

7. The applicant has marked some locations of steep slopes as "Self Imposed 20' Buffer From Top of Slope." It is unclear how this type of buffer will be enforceable. Commission staff recommends classifying these regions as areas expanded for steep slopes, which will provide these areas the same protections that other Habitat Protection Areas would receive onsite. In addition, please have the applicant clarify why such a restriction is necessary in these areas.
8. The applicant is proposing to create six lots that are less than 20 acres in size. Lots less than 20 acres in size are required to place the amount of acreage less than 20 acres in Reservation of Development Rights (RDR). However, no RDR location is shown on the site plan. Please have the applicant show location of the RDR area on the site plan.

Thank you for the opportunity to provide comments on this subdivision request. Please have the applicant provide the information requested above. Please call me with any questions at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: TC 402-05

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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May 5, 2008

Mr. Blaine Smith
Zoning Administrator
Town of Ocean City
PO Box 158
Ocean City, MD 21843

Re: Francis Building Permit
14817

Dear Mr. Smith:

Thank you for providing information on the above referenced building permit application. The applicant is proposing to install a garage, breezeway, and walkway. Critical Area issues include stormwater management, pollutant removal, and afforestation

The lot is 6,089 square feet in size, is zoned R-1, and has a setback of 15 square feet. The lot is currently developed with single-family dwelling unit, patio, covered porch, deck, shed, and existing concrete drive. Current impervious surface onsite is 3,140 square feet (51.5%). The applicant proposes to increase impervious surface onsite by 293 square feet to 3,433 square feet (56.3%). To meet mitigation and afforestation requirements, the applicant is required to provide 500 square feet of landscaping; a total of 2,025 square feet of landscaping in the form of 27 large shrubs (18 evergreen ligustrums, 9 flowering shrub roses) will be provided onsite.

To meet stormwater management requirements onsite, the applicant is paying $351.60 as a fee-in-lieu and is providing additional vegetative mitigation.

Based on the information provided, and given that the proposed garage, breezeway, and walkway are further from Mean High Water (MHW) than the existing dwelling unit, we have only one comment on this building permit:

- The applicant is proposing to plant evergreen ligustrums and flowering shrub roses to meet planting requirements onsite. Certain forms of ligustrums are considered to be invasive to the Mid-Atlantic area, and it is unclear from the

information provided whether the flowering shrubs roses are multiflora rose, which is another invasive species. Staff recommends that the applicant substitute inkberry and pasture rose shrubs to meet the planting requirements onsite.

Thank you for the opportunity to provide comments on this building permit request. Please have the applicant provide the information requested above. If you have any questions, please feel free to call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly, Ph.D
Natural Resource Planner
cc: OC 245-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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May 8, 2008

Ms. Mary Kay Verdery
Talbot County Office of Planning and Zoning
11 N. Washington Street
Courthouse
Easton, Maryland 21601

Re: L1014
Otwell Lot Line Revision

Dear Ms. Verdery:

Thank you for providing information on the above referenced lot line revision. The applicant is requesting a lot line revision between an existing parcel (Revised Tax Parcel 82) and an undeveloped parcel (Revised Tax Parcel 30). Both parcels are in the Limited Development Area (LDA) and are designated as a Buffer Management Area (BMA). Total square footage onsite is 86,200 square feet. Revised Tax Parcel 82 will increase in size from 8,421 square feet to 18,906 square feet. Revised Tax Parcel 30 will decrease in size from 77,779 square feet to 67,294 square feet. Revised Tax Parcel 82 is currently developed with a single-family house, wood porches, sidewalk, and shed. Revised Tax Parcel 30 is currently developed with a private road; a portion of this roadway will be abandoned.

Based on the information provided, this office has no new comments on this project. However, we do wish to reiterate the following points:

1. Talbot County Soil Maps reveal that the property is located entirely in hydric soils (Keyport). In the future, any proposed structures should be constructed to minimize impacts to these soils.
2. If forest is cleared for any development on this parcel in the future, mitigation will be required. If up to 20% of forest is cleared from the parcel, then mitigation at a ratio of 1:1 is required; if clearing is between 20% and 30%, then mitigation is 1.5:1; clearing of over 30% of the site requires 3:1 mitigation.

Thank you for the opportunity to provide comments on this lot line revision request. Please have the applicant provide the information requested above. Please call me with any questions at (410) 260-3483.

Sincerely,

Nick Kelly
Natural Resource Planner
cc: TC 41-04

Martin O'Malley
Governor

nthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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May 8, 2008

Mr. Blaine Smith
Zoning Administrator
Town of Ocean City
PO Box 158
Ocean City, MD 21843

Re: Gray Building Permit
14823

Dear Mr. Smith:

Thank you for providing information on the above referenced building permit application. The applicant is proposing to install a paver patio and sidewalk. Critical Area issues include stormwater management, pollutant removal, and afforestation.

The lot is 4,500 square feet in size, is zoned R-2A, and has a setback of 10 square feet. The lot is currently developed with a single-family dwelling unit and accessory structures. No current or proposed impervious surface amount is given.

To meet mitigation and afforestation requirements, the applicant is required to provide 640 square feet of landscaping; a total of 3,100 square feet of landscaping in the form of 7 small trees (Crepe Myrtle) and 32 large shrubs (Hydrangea, Holly, Liriope, Maiden Grass, Japanese Blood Grass, Indian Hawthorne) will be provided onsite.

To meet stormwater management requirements onsite, the applicant is installing a deck that is pervious in nature and limiting impervious surface onsite to less than 60%.

Based on the information provided, we have the following comments on this building permit:

1. Within the 100-foot Buffer area, the applicant proposes to install a pervious paver patio and sidewalk. The Town of Ocean City Atlantic Coastal Bays Critical Area Program §30-554(d)(1) states that, "New development, including accessory structures, shall minimize the extent of intrusion into the Buffer…" Furthermore, the Town of Ocean City Atlantic Coastal Bays Critical Area Program allows **only** pervious wooden decks and walkways in

the setback area (§30-554(d)(4)). Based on the site plan provided, it appears that the applicant originally proposed to install a pervious patio within the setback area; however, it appears that the applicant has since revised the plan and now proposes to install a pervious deck in the setback area. Due to the difficulty in reviewing the provided plan, Commission staff recommends that the applicant revise and resubmit to this office for review and comment a site plan that more clearly shows what is proposed within the setback area.

Commission staff also notes that while the Town of Ocean City Atlantic Coastal Bays Critical Area Program allows pervious decks in the setback area, it appears that the size and location of the proposed deck, patio, and sidewalk do not minimize Buffer intrusion. Therefore, we strongly recommend that the applicant remove the proposed deck **entirely** from the setback area. In addition, we recommend fully planting this area with the native vegetation that is required as mitigation for this site.

2. Please provide the amount of existing impervious surface onsite. It is unclear if the applicant is meeting the stormwater management requirement of limiting impervious surface onsite to less than 60%.

3. To meet stormwater management requirements onsite, the applicant claims to be installing a deck that is pervious in nature. However, based on the site plan provided, it is unclear if a pervious deck or paver patio is proposed. Please have the applicant clarify this issue, as a paver patio cannot be counted as a pervious wooden deck.

Thank you for the opportunity to provide comments on this building permit request. Please have the applicant provide the information requested above. If you have any questions, please feel free to call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly, Ph.D
Natural Resource Planner
cc: OC 243-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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May 8, 2008

Mr. Blaine Smith
Zoning Administrator
Town of Ocean City
PO Box 158
Ocean City, MD 21843

Re: Swinski Building Permit
14350

Dear Mr. Smith:

Thank you for providing information on the above referenced building permit application. The applicant is proposing to install an addition to a single family residence. Critical Area issues include stormwater management, pollutant removal, and afforestation.

The lot is 4,442 square feet in size, is zoned R-1, and has a setback of 15 feet. The lot is currently developed with a single-family dwelling unit, deck, and concrete driveway. The applicant proposes to remove the existing deck and install an addition and new pervious deck. Current impervious surface onsite is 1,574 square feet (35.4%). The applicant proposes to increase impervious surface onsite by 363 square feet to 1,937 square feet (43.6%). A total of 702 square feet will be disturbed.

To meet mitigation and afforestation requirements, the applicant is required to provide 1,780 square feet of landscaping; a total of 1,000 square feet of landscaping in the form of 5 small trees, 4 large shrubs, and 4 small shrubs will be provided onsite, and $780.00 will be paid as a fee-in-lieu.

To meet stormwater management requirements onsite, the applicant is installing a deck that is pervious in nature, is limiting impervious surface onsite to less than 60%, and is installing a swale and rain garden.

Based on the information provided, we have the following comments on this building permit:

1. Within the 100-foot Buffer area, the applicant proposes to install a pervious deck and addition. The Town of Ocean City Atlantic Coastal Bays Critical Area Program §30-554(d)(1) states that, "New development, including accessory structures, shall minimize the extent of intrusion into the Buffer…" While we understand that the Town of Ocean City Atlantic Coastal Bays Critical Area Program allows pervious decks in the setback, it appears that the construction of a new pervious deck and addition does not minimize Buffer intrusion, particularly since the proposed addition is 9.7 feet closer to Mean High Water (MHW) than the existing deck.

   The Critical Area law was created to protect the valuable, fragile, and sensitive areas along the shoreline from human activity. This includes minimizing adverse impacts to water quality and habitat as well as reducing human activity in shoreline areas by limiting the development of non-water dependent structures or impervious surfaces, particularly within the 100-foot Buffer. With the Critical Area law in mind, Commission staff recommends that the applicant reduce the size of the addition or reconfigure it to ensure that it does not encroach closer to MHW than the location of the existing deck (25.2 feet). Commission staff also recommends that all required mitigation plantings of 1,780 square feet be located within the setback area.

2. Please have the applicant provide the botanical name and common name of each tree and shrub to be planted onsite. Landscaping shall be performed using native vegetation.

Thank you for the opportunity to provide comments on this building permit request. Please have the applicant provide the information requested above. If you have any questions, please feel free to call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly, Ph.D
Natural Resource Planner
cc: OC 244-08

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

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May 9, 2008

Ms. Mary Kay Verdery
Talbot County Office of Planning and Zoning
28712 Glebe Road, Suite 2
Easton, Maryland 21601

Re: 470
Bellavista Properties, LLC

Dear Ms. Verdery:

Thank you for providing information on the above-referenced site plan. The applicant proposes to construct a new maintenance building and driveway, replace the existing granary, and remove a barn. The property is 9.020 acres in size and is designated as a Limited Development Area (LDA). Total existing impervious surface onsite is 75,518 square feet (19.22%). The applicant proposes to remove 3,695 square feet and add 3,681 square feet of impervious surface; as a result, total impervious surface onsite will decrease to 75,504 square feet (19.21%).

Based on the information provided, we have the following comments:

1. Natural Resources Code §8-1808.3(d) limits impervious surface within an LDA to 15% (58,937 square feet). While the applicant states that the proposed development activity will result in a net decrease of 14 square feet of impervious surface area on the property, the site will still be over the 15% limit for lots greater than one acre in size. As such, a variance to the 15% impervious surface limit will be required in order to redevelop the property as proposed. Given the extent of development and impervious surface areas onsite, Commission staff questions whether a variance is the appropriate mechanism to permit redevelopment in excess of the 15% impervious surface area limit, particularly on a 9-acre parcel. Rather, the use of growth allocation should be considered. Should the County elect to permit the proposed redevelopment by way of variance, please note that the Commission would not support future development without the use of growth allocation.
2. It appears that the applicant is proposing to use 1,450 square feet of pervious pavers onsite. Commission staff has significant concerns regarding the use of pervious pavers on this site as proposed, particularly since the lot is already nonconforming in regards to the

15% impervious surface limit. Without additional information related to the use of pervious pavers, including detailed soil boring information and manufacturer's specifications on the specific paver product, we are unable to determine whether the pavers will provide the intended infiltration benefits and stated reduction in impervious surface area. If the site conditions are not amenable to the use of pavers, it appears that the applicant will even further exceed the impervious surface area limits in the law. We request that the applicant provide for this office a copy of the soil borings and the manufacturer's specifications in order to determine the pervious rate for the pavers and the site suitability for their use.

3. To meet 15% afforestation requirements onsite, the applicant must provide 58,937 square feet of forest cover.
4. Talbot County Soil Surveys reveal that portions of the property are located in hydric soils (Keyport). Staff recommends that the applicant avoid impacting these areas with new structures.

Thank you for the opportunity to provide comments on this site plan. If you have any questions, please contact me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: TC 833-03

Martin O'Malley
Governor

nthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
CRITICAL AREA COMMISSION
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May 9, 2008

Gary Letteron
Environmental Planner
Baltimore City Department of Planning
417 East Fayette Street, 8th Floor
Baltimore, MD 21202

Re: Riverside Avenue
Building Permit

Dear Mr. Letteron:

Thank you for providing information on the above referenced building permit. The applicant is proposing to construct an addition to an existing dwelling unit. The total site area is .105 acres, and the property is designated as an Intensely Developed Area. To meet the Critical Area 10% pollutant removal requirement, .067 pounds per year of phosphorus must be removed from the Critical Area portions of the property. The applicant proposes to meet this requirement onsite by installing a sand filter. To meet afforestation requirements, the applicant is maintaining two trees (Wild Flowering Cherry, Sugar Maple) and 20 shrubs (Spicebush); these plants will be native species.

Based on the information provided, we have the following comment on this project:

- The applicant is stating that the proposed underground sand filter will provide total phosphorus removal efficiency at a rate of 59% onsite. However, The Critical Area 10% Guidance Manual permits only a 50% removal efficiency rate for underground sand filters. Consequently, the applicant is .006 pounds per year short of meeting the removal requirement onsite. To meet the 10% requirement, please have the applicant expand the size of the current sand filter in order to serve a larger drainage area, provide another onsite Best Management Practice, or pay a fee-in-lieu. This matter should be resolved prior to issuing a building permit for this project.

Thank you for providing the information on 10% calculations for this building permit. If you have any questions, feel free to call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: BA 328-06

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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May 13, 2008

Ms. Chris Corkell
Talbot County Office of Planning and Zoning
28712 Glebe Road, Suite 2
Courthouse
Easton, Maryland 21601

Re: 1496
Herget Variance

Dear Ms. Corkell:

Thank you for providing information on the above referenced variance request. The applicant requests a variance to the 100-foot Buffer to retain an existing stepping stone and paver area that runs parallel to Mean High Water (MHW), and to maintain an existing impervious wooden walkway to the shoreline. The property is 4.49 acres in size and is designated as a Limited Development Area (LDA). Currently, the parcel is developed with a single family dwelling unit, gravel driveway, stepping stone walkways, stone paver walkways, patio, pool, pool deck, brick pads, walls, garage, concrete apron, breezeway, spa, storage shed, wood walkway, wood steps, and HVAC unit pads. Total impervious surface for Tax Map 41, Parcel 150 is 22,046 square feet (11.3%).

Based on the information provided, Commission staff cannot support maintaining the existing wood walkway that leads to the pier, as it appears from the provided photographs that the wooden walkway is impervious in nature (there does not appear to be gaps 1/8-inch to 3/8-inch in size between the boards to allow for water infiltration), and that the walkway was constructed to be parallel in places, rather than perpendicular. Talbot County permits only pervious walkways that provide perpendicular shoreline access within the 100-foot Buffer. We acknowledge that the applicant has the right to shoreline access, and that the applicant requires reasonable means to access the existing pier. However, it appears that the applicant could replace the walkway with pervious materials located in a perpendicular manner and still have reasonable access to the shoreline. Consequently, Commission staff recommends that the applicant replace the impervious wooden walkway with mulch and mitigate for any disturbances to the 100-foot Buffer at a 2:1 ratio. It appears that an opportunity exists within the Buffer to accommodate the mitigation plantings. Commission staff also recommends that the new walkway be constructed

perpendicular in nature, as the site plan reveals that the current wooden walkway is parallel to MHW 18.0 feet from the shoreline.

This office *opposes* the variance to maintain the existing slate stepping stone and paver area that runs parallel to MHW, as Talbot County Code §190-93E.3(c) states that new development activities may not be permitted in the 100-foot Buffer, except for those associated with water-dependent facilities or individual private piers." Furthermore, the Talbot County Setback Policy does not permit man-made disturbances, such as patios or walkways, that are constructed of brick, gravel, slate, or other like materials within the 100-foot Buffer.

The applicant also states that the stone and paver area is no closer to MHW than the existing non-conforming residence. However, it appears from the site plan that the stepping stone and paver area is closer to MHW than the existing home. Talbot County setback policy states that "non-covered concrete patios, walkways, or similar structures built as an accessory to a primary or principal structure (i.e. residential patio, pool decking, walkways, etc.) *shall not be considered* for the purposes of determining the closest point of the primary or principal structure and/or use from MHW of a property line." Consequently, the stone and paver area is closer to MHW than the existing home and is thus not permitted.

Based on these factors, and based on the reasonable and significant use of the property that the applicant currently enjoys onsite, Commission staff opposes this variance request.

Impacts to the 100-Foot Buffer

In 2002 and 2004, the General Assembly strengthened the Critical Area Law and reiterated its commitment to the Chesapeake Bay Critical Area's water quality and wildlife habitat values, particularly emphasizing the importance of the 100-foot Critical Area Buffer. Specifically, the General Assembly reaffirmed the stringent standards of the law, which an applicant must meet in order for a local jurisdiction to grant a variance to the Critical Area law. The State law provides that variances to a local jurisdiction's Critical Area program may be granted **only** if a Board of Appeals finds that an applicant has satisfied its burden to prove that the applicant meets each one of the county's variance standards, including the standard of "unwarranted hardship." The General Assembly defined that term as follows: "without the variance, the applicant would be denied reasonable and significant use of the entire parcel or lot." Furthermore, the State law establishes a presumption that a proposed activity for which a Critical Area variance is requested does not conform to the purpose and intent of the Critical Area law. The County must make an affirmative finding that the applicant has overcome this presumption, based on the evidence presented.

In this case the applicant is proposing to construct a new slate stepping stone and paver area within the Buffer. The Critical Area Buffer establishes an area of undisturbed natural forest vegetation, or an area for enhancement with vegetation native to the Critical Area, managed to protect shorelines, streams, wetlands, and riparian biological communities from adverse effects of land use. Accordingly, the County has enacted a specific set of provisions to recognize the importance of the 100-foot Buffer and maintain its integrity by prohibiting the construction of new structures unless they are water dependent (Talbot County Code §190-93). Constructing a

new slate stepping stone and paver area within the 100-foot Buffer would be in direct conflict with the County's Buffer goals.

Based on the information received, the applicant has not met each one of Talbot County's variance standards and should therefore be denied a variance. I have discussed each one of the variance standards below as it pertains to this site:

1. *That special conditions or circumstances exist that are peculiar to the land or structure within the jurisdiction's Critical Area program that would result in an unwarranted hardship to the applicant.*

Currently, the lot is developed with a single family dwelling unit, gravel driveway, stepping stone walkways, stone paver walkways, patio, pool, pool deck, brick pads, walls, garage, concrete apron, breezeway, spa, storage shed, wood walkway, wood steps, and HVAC unit pads. The applicant proposes to place 883 feet of slate stepping stone and paver area within the 100-foot Buffer. As stated above, the General Assembly defined "unwarranted hardship" to mean that the applicant must prove that, without the requested variance, he would be denied reasonable and significant use of **the entire parcel or lot**. Based on this information, we do not believe that the County has evidence on which to base a finding that, without the stepping stone and paver area, the entire parcel would lack reasonable and significant use.

2. *That a literal interpretation of this subtitle or the local Critical Area Program and related ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area of the local jurisdiction.*

The applicant has a reasonable use of this property for residential purposes, and therefore, would not be denied a right commonly enjoyed by neighboring properties. No property owner has the right to build a new slate stepping stone and paver area within the Buffer. Therefore, the rejection of a variance for the slate stepping stone and paver area would not deny the applicants a right commonly enjoyed.

3. *The granting of a variance will not confer upon an applicant any special privilege that would be denied by this subtitle or the local Critical Area program to other lands or structures within the jurisdiction's Critical Area.*

If the variance is granted, it would confer upon the applicant a special privilege, in this case the construction of a slate stepping stone and paver area over pervious land within the 100-foot Buffer, which would be denied to others in this area, as well as in similar areas found in the County's Critical Area. To grant a variance to the Buffer would confer a special privilege on the applicant (Talbot County Code §190-97). The applicant has the burden of proof and the burden of persuasion to overcome the presumption that his proposed variance does not conform to the Critical Area Law. We do not believe the applicant has overcome this burden.

4. *The variance request is not based upon conditions or circumstances, which are the result of the actions, by the applicant, nor does the request arise from any condition conforming, on any neighboring property.*

From the information provided, it does not appear that the variance request is based on conditions or circumstances that are the result of the applicant or from a neighboring property. Therefore, it appears that the applicant has met this standard.

5. The granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the jurisdiction's Critical Area, and that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area law and the regulations.

Granting of this variance is not in harmony with the general spirit and intent of the Critical Area law and regulations. An increase in impervious surface in the Buffer and consequential disturbance to the land results in increased stormwater and sediment runoff and the loss of essential infiltration opportunities. Further, the conversion of the Buffer to impervious areas reduces the opportunity for use of the Buffer as a transitional area and for the intended habitat benefits. Given that the applicant can adequately redevelop this property and enjoy outdoor activities without the addition of a slate stepping stone and paver area in the 100-foot Buffer, approval of this variance would not be in harmony with the general intent and spirit of the Critical Area Law.

In summary, the Board of Appeals must find that the applicant has overcome the burden to meet each and every one of the County's variance standards in order to grant a variance. Because we believe that the applicant has failed to meet four of the five variance standards, we are unable to offer support for the applicant's request.

Thank you for the opportunity to provide comments on this Board of Appeals variance request. If you have any questions, please feel free to contact me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: TC 620-07

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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May 15, 2008

Ms. Mary Kay Verdery
Talbot County Office of Planning and Zoning
11 N. Washington Street
Courthouse
Easton, Maryland 21601

Re: Mistretta Line Revision
L1077

Dear Ms. Verdery:

Thank you for providing information on the above-referenced line revision. The applicant is proposing a lot line revision. Revised Tax Parcel 770 is currently 0.99 acres in size and is designated Limited Development Area (LDA). Revised Tax Parcel 772 is currently .15 acres and is designated LDA. Upon completion of the line revision, Revised Tax Parcel 770 will be 1.02 acres in size, while Revised Tax Parcel 772 will be .12 acres. Total impervious surface onsite for Revised Tax Parcel 770 is .13 acres (12.7%).

Based on the information provided, we have the following comments on this proposed subdivision:

1. It is unclear where the new line of division is located. Please have the applicant more clearly delineate the new line of division on the site plan.
2. Please have the applicant provide the amount of impervious surface located on Revised Tax Parcel 772. Since Tax Parcel 772 is less than 8,000 square feet in size, the parcel is limited to 25% impervious surface onsite plus 500 square feet.
3. Please have the applicant delineate the 100-foot Buffer on the site plan. The 100-foot Buffer must be expanded if any steep slopes, hydric soils, or other Habitat Protection Areas (HPA) are located contiguous to the Buffer.
4. The applicant must receive a letter from the Department of Natural Resources Wildlife and Heritage Division (WHS) evaluating the property for any rare, threatened, or endangered species location onsite.
5. Please provide the amount of forest cover onsite for each parcel. Each parcel must meet the 15% afforestation requirement onsite.

Thank you for the opportunity to provide comments on this lot line revision. If you have any questions, please call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: TC 631-05

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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May 15, 2008

Ms. Mary Kay Verdery
Talbot County Office of Planning and Zoning
28712 Glebe Road, Suite 2
Courthouse
Easton, Maryland 21601

Re: A120
Gardner Variance

Dear Ms. Verdery:

Thank you for providing information on the above-referenced variance. The applicant is requesting a variance to permit a vertical expansion of an existing home within the 100-foot Buffer. The property is 5.24 acres in size and is located in a Resource Conservation Area (RCA). Currently, the site is developed with a single-family dwelling unit, gazebo, gravel driveway, gravel pad, concrete steps, concrete apron, brick pad, wood steps, and paved driveway. The applicant proposes to remove the wood steps, a portion of the concrete steps and stoop, the brick pad, and portions of the gravel and paved driveway in order to construct an addition, porch, entry porch, equipment shed, boat bay, pool, and pool terrace onsite, as well as vertically expand the existing home. All new structures will be located outside of the 100-foot Buffer. In addition, the applicant proposes to remove a portion of the gravel pad located within the 100-foot Buffer, and relocate the existing gazebo outside of the 100-foot Buffer.

The proposed vertical expansion within the 100-foot Buffer will not create any new impervious surface onsite. Current impervious surface onsite is 13, 935 square feet (6.1%). If the variance is granted, impervious surface onsite will increase to 18,540 square feet (8.1%).

Provided the lot is properly grandfathered, we do not oppose this variance request. However, we do have the following comments:

- Mitigation for any disturbance in the Buffer shall be performed at a 2:1 ratio.

Thank you for the opportunity to provide comments on this variance application. Please include this letter in your file and submit it as part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case. If you have any additional questions please contact me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: TC 247-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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May 19, 2008

Ms. Mary Kay Verdery
Talbot County Office of Planning and Zoning
28712 Glebe Road, Suite 2
Easton, Maryland 21601

Re: Judith's Garden Subdivision
M1100

Dear Ms. Verdery:

Thank you for providing information on the above-referenced subdivision. The applicant is proposing to create a major 3-lot subdivision. The parcel is 154.91 acres in size, with 95.92 acres located in the Critical Area and designated as Resource Conservation Area (RCA). Lot 5 will be 5.91 acres in size, Lot 6 will be 5.88 acres, and lot 7 will be 6.18 acres. Total impervious surface on lot 5 is currently 18,316 square feet; Lot 6 and 7 are currently undeveloped. Total existing forest onsite within the critical area is 29.00 acres.

Based on the information provided, we have the following comments on this proposed subdivision:

1. The applicant states that 57.08 acres of land is placed in Reservation of Development Right (RDR). Staff has concerns that some of the proposed RDR acreage for this portion of the subdivision may currently be encumbered as RDR land for Lots 2, 3 and 4, which were previously developed onsite. We request that the applicant provide information that clarifies where the RDR areas for Lots 2, 3, and 4 are located onsite. We note that 42.03 acres of land must be placed into RDR for the current subdivision request.
2. The applicant has stated on the site plan that 74.29 acres of land is remaining in the Critical Area. Has this area been placed into an easement or been designated as Reservation of Development Rights as well? Please have the applicant clarify what this acreage concerns.
3. Please have the applicant delineate and label the 100-foot Buffer on the site plan. The 100-foot Buffer must be expanded if any steep slopes, hydric soils, or nontidal wetlands are located contiguous to the Buffer.

4. Talbot County Soil maps reveal an area of tidal marsh and mixed alluvial soils located near the eastern edge of Lot 3. A wetland delineation should be required to determine if this feature exists onsite. If this wetland is present, then the 100-foot Buffer must be expanded to include this area. In addition, if this area is designated as State-owned wetlands, then the amount of developable acreage will be reduced, and the number of development rights permitted on this parcel may be affected.
5. The site plan reveals that a line revision is also occurring on Lot 3. However, no additional information is provided for this lot (acreage, impervious surface, forest cover). A separate submittal for this line revision should be required, and the aforementioned information should be provided to ensure that Lot 3 is conforming.
6. The applicant must receive a letter from the Department of Natural Resources Wildlife and Heritage Division (WHS) evaluating the property for any rare, threatened, or endangered species location onsite.
7. The site plan states that FIDS Habitat is located onsite. Therefore, development restrictions will apply if construction is proposed for this area. A FIDS Mitigation Analysis sheet must be submitted to this office for review and comment.
8. Due to the presence of FIDS habitat onsite, a Habitat Protection Plan must be submitted to this office for review and comment, as required in §190-93 E(8)(d)of the Talbot County code.
9. The site is located adjacent to a waterfowl concentration area. Therefore, time of year restrictions for shoreline work will apply between November 15 and March 1.

Thank you for the opportunity to provide comments on this subdivision request. If you have any questions, please call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: TC 281-98

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
CRITICAL AREA COMMISSION
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May 19, 2008

Mr. Blaine Smith
Zoning Administrator
Town of Ocean City
PO Box 158
Ocean City, MD 21843

Re: Galloway Building Permit
14907

Dear Mr. Smith:

Thank you for providing information on the above referenced building permit application. The applicant is proposing to install new concrete and replace existing concrete. Critical Area issues include stormwater management, pollutant removal, and afforestation.

The lot is 7,050 square feet in size, is zoned MH, and has a setback of 5 feet. The lot is currently developed with a single-family dwelling unit, porches, shed, driveway, and dock. Current impervious onsite is 3,108 square feet (44.1%). The applicant proposes to add an additional 479 square feet of impervious surface, resulting in a total of 3,587 square feet of impervious surface onsite (50.9%). Total area disturbed is 2,000 square feet.

To meet mitigation and afforestation requirements, the applicant is required to provide 80 square feet of landscaping; a total of 200 square feet of landscaping in the form of 2 small trees (Flowering Dogwood) will be provided.

To meet stormwater management requirements onsite, the applicant is installing a rain garden with three plants and 1 shrub and is paying a fee in lieu of $74.40 for exceeding 50% impervious area onsite.

Based on the information provided, and given that the proposed concrete area is further from Mean High Water (MHW) than the existing dwelling unit, we have the following comments on this building permit:

1. Please provide the botanical and common name of the three plants and one shrub located in the rain garden. Plants and shrubs should be native species.
2. The mitigation required for this site should be planted within the setback area onsite.
3. It appears that the new concrete pad will be located partially where the shed currently exists. Will the shed be moved onto the new concrete pad? Please have the applicant clarify if the shed will be relocated onsite. The shed must remain outside of the setback area.

Thank you for the opportunity to provide comments on this building permit request. Please have the applicant provide the information requested above. If you have any questions, please feel free to call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly, Ph.D
Natural Resource Planner
cc: OC 270-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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May 20, 2008

Mr. Blaine Smith
Zoning Administrator
Town of Ocean City
PO Box 158
Ocean City, MD 21843

Re: Hermann Building Permit
14848

Dear Mr. Smith:

Thank you for providing information on the above referenced building permit application. The applicant is proposing to install an addition to a single family residence. Critical Area issues include stormwater management, pollutant removal, and afforestation.

The lot is 13,200 square feet in size, is zoned R-1, and has a setback of 15 feet. The lot is currently developed with a single-family dwelling unit, two decks, stone patio, shed, wooden walkway, concrete walkway, and concrete driveway. The applicant proposes to remove the two existing decks and install two new decks. Current impervious surface onsite is 3,371 square feet (25.5%); no change in impervious surface is proposed.

To meet mitigation and afforestation requirements, the applicant is required to provide 140 square feet of landscaping; a total of 200 square feet of landscaping in the form of 4 small shrubs (beach plum).

To meet stormwater management requirements onsite, the applicant is installing a deck that is pervious in nature.

Based on the information provided, we have the following comments on this building permit:

- Within the 100-foot Buffer area, the applicant proposes to remove two existing pervious decks and install two new pervious decks. The Town of Ocean City Atlantic Coastal Bays Critical Area Program §30-554(d)(1) states that, "New development, including accessory structures, shall minimize the extent of intrusion into the Buffer…" While we

understand that the Town of Ocean City Atlantic Coastal Bays Critical Area Program allows pervious decks in the setback, it appears that the construction of two new pervious decks does not minimize Buffer intrusion, particularly since the proposed decks are a approximately 840 feet in size, compared to the two existing decks, which are approximately 510 feet in size. In addition, the decks encroach closer to Mean High Water (6.3 feet) than the existing decks (7.3 feet).

The Critical Area law was created to protect the valuable, fragile, and sensitive areas along the shoreline from human activity. This includes minimizing adverse impacts to water quality and habitat as well as reducing human activity in shoreline areas by limiting the development of non-water dependent structures or impervious surfaces, particularly within the 100-foot Buffer. Since the Town program requires that intrusion into the Buffer should be minimized, Commission staff recommends that the applicant replace the decks in kind or install a smaller deck. We note that the existing 510 square feet of decking is more than double the amount that Commission staff would typically recommend for an applicant requesting a deck for a single-family property.

Thank you for the opportunity to provide comments on this building permit request. Please have the applicant provide the information requested above. If you have any questions, please feel free to call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly, Ph.D
Natural Resource Planner
cc: OC 256-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
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Executive Director

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Memorandum

To : James W. Price, Director, Program Open Space

From: Nick Kelly, Critical Area Commission

Date: May 21, 2008

Re: DNR Clearinghouse Review of Local POS Project #5405-20-109 Neavitt/Bellevue Community Park, Talbot County

Dear Mr. Price:

Thank you for providing information for the above-referenced project. The applicant plans to relocate the existing playground equipment at Neavitt Park to Bellevue Park, and then to construct a new playground at Neavitt Park. Both properties are located in a Limited Development Area (LDA).

Based on the information provided, we have the following comments on this project:

1. Projects on property owned by a local jurisdiction require confirmation of consistency with the Critical Area Program, or the project may require conditional approval from the local Critical Area Commission if any element of the project does not meet all the requirements set forth by the jurisdiction's Critical Area Program. Therefore, any proposed development activities will require a review by Commission staff and County Staff.
2. It appears that the applicant proposes to place the playground equipment at Bellevue Park within the 100-foot Buffer. No new development activities are permitted within the 100-foot Buffer, except for those associated with water-dependent facilities. If the playground cannot be located outside of the Buffer, the County will have to obtain a conditional approval from the full Critical Area Commission.
3. Since the project is located in an LDA area, impervious surface amounts are limited to 15%. In addition, a minimum 15% of the site must be established in forest.
4. The applicant must receive a letter from the Department of Natural Resources (DNR) Wildlife and Heritage Division evaluating the property to determine if there is the

presence of any threatened or endangered species onsite. If present, the applicant must address all recommendations from DNR for protection of this species.

5. We advise Talbot County to work closely with Commission staff as early as possible on this project.

Thank you again for the opportunity to provide comments on this project. If you have any questions, feel free to call me at (410) 260-3483.

cc: Mary Kay Verdery, Assistant Planning Officer, Talbot County Office of Planning and Zoning

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
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May 23, 2008

Cheril Thomas
Town Manager
Town of St. Michaels
300 Mill Street
P.O. Box 206
St. Michaels, MD 21663

Re: Hatton's Gardens Annexation and Growth Allocation

Dear Ms. Thomas:

We have received your request for the processing of the above referenced annexation and growth allocation request. Effective May 8, 2006, the Town of St. Michaels adopted a resolution to annex a parcel of land from Talbot County (Tax Map 32, Parcel 7), located on the southwest side of Maryland Route 33 and abutting Boundary Lane, and bordering San Domingo Creek, from Talbot County in the Town of St. Michaels. Parcel 7 was originally designated as a Resource Conservation Area in Talbot County and is currently designated as RCA in the Town. Through the use of growth allocation, the Town proposes to change the Critical Area designation of 39.56 acres of Parcel 7 from RCA to Limited Development Area (LDA).

This letter serves to notify the Town that Commission staff has accepted the materials forwarded by the Town as a complete submittal. The Chair will make an amendment or refinement determination within thirty days of the date of this letter, and Commission staff will notify you of her determination and the procedures for review by the Critical Area Commission.

Thank you for providing us with the opportunity to review your text amendment request. If you have any questions, feel free to call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: Mary Kay Verdery, Talbot County
Roby Hurley, Critical Area Commission Circuit Rider, Town of St. Michaels

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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May 23, 2008

Mr. Duncan Stuart
City of Baltimore Planning Commission
Department of Planning
417 E. Fayette Street, 8th Floor
Baltimore, Maryland 21202-3416

Re: Baltimore High School Temporary Rowing Compound-Middle Branch

Dear Mr. Stuart:

At its meeting on May 7, 2008, the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays unanimously approved the Baltimore High School Temporary Rowing Compound along the Middle Branch River with the following condition:

- Upon completion of the new building addition for the current rowing club storage building, Baltimore City will remove the temporary rowing compound and restore the location with native plants and vegetation.

Thank you for of all your help in providing information for this project and for taking the time to come to our Commission Meeting to help assist with the presentation. If you have any questions, please call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resources Planner

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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May 30, 2008

Mr. Blaine Smith
Zoning Administrator
Town of Ocean City
PO Box 158
Ocean City, MD 21843

Re: Gray Building Permit
14823

Dear Mr. Smith:

Thank you for providing additional information on the above referenced building permit application. The applicant is proposing to install a pervious deck, paver patio, and sidewalk. Critical Area issues include stormwater management, pollutant removal, and afforestation.

The lot is 5,100 square feet in size, is zoned R-2A, and has a setback of 10 square feet. The lot is currently developed with a single-family dwelling unit and accessory structures. Current impervious surface onsite is 2,168 square feet. The applicant proposes to install 1,185 square feet of pervious surfaces.

The applicant has provided an updated site plan showing the location of the proposed pervious deck, patio, and walkway. Based on this site plan, we recommend that the applicant reduce the size of the proposed deck, as §30-554(d)(1) of the Town of Ocean City Atlantic Coastal Bays Critical Area Program states that "New development, including accessory structures, shall minimize the extent of intrusion into the Buffer…" Minimizing the size of the deck will help in reducing adverse impacts to water quality and habitat within this shoreline area.

Thank you for the opportunity to provide additional comments on this building permit request. Please have the applicant provide the information requested above. If you have any questions, please feel free to call me at (410) 260-3483.

Sincerely,

Nick Kelly, Ph.D
Natural Resource Planner
cc: OC 243-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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June 3, 2008

Ms. Chris Corkell
Talbot County Office of Planning and Zoning
11 N. Washington Street
Courthouse
Easton, Maryland 21601

Re: 1497
Emerson Point, LLC Special Exception

Dear Ms. Corkell:

Thank you for providing information on the above referenced special exception request. The applicant requests a special exception to confirm its right to maintain two accessory dwelling units (guest houses) on two new critical area lots. The parcel is 97.336 acres in size, with 61.828 acres located within the Critical Area and designated Resource Conservation Area (RCA).

In reviewing the site plan, it appears that the existing accessory dwelling units do not conform to the Critical Area law for guest houses in the RCA, as both dwelling units exceed 900 square feet in total enclosed area, and both dwelling units are further than 100 feet from the primary dwelling unit. Furthermore, both accessory dwelling units are located within the 100-foot Buffer. Based on the application materials submitted, it appears that the applicants propose to subdivide the property, retain the existing non-conforming accessory dwelling units on the new lots and to then construct new primary dwellings on the newly subdivided lots. As described, the proposed development scenario is problematic and should not be permitted.

We note specifically that subdivision of this parcel constitutes a development activity which results in the loss of all grandfathering rights for the subdivided lots. In subdividing a property, the applicant must create new lots that will conform with the current County Subdivision Ordinance and with the current Critical Area Law. It appears that the applicant could subdivide the property as proposed and maintain the existing accessory dwelling units as non-conforming primary dwelling units for each lot; however, the dwelling units may not be expanded, as both homes would be considered nonconforming due to their location within the 100-foot Buffer and would no longer be encompassed within a grandfathered lot of record. Further, the Commission would not support variance requests related to the non-conforming primary dwelling units on

newly created non-grandfathered lots. Rather, should the applicant choose to pursue the subdivision activity as proposed, Commission staff recommends that the applicant be required to remove the existing accessory dwelling units and construct a new primary dwelling unit on each lot that is located outside of the 100-foot Buffer. New accessory dwelling units may then be constructed on each lot, provided that they conform to the regulations found in Natural Resources Code §8-1808.1(e) regarding accessory dwelling units in the RCA.

Thank you for the opportunity to provide comments on this Board of Appeals special exception request. If you have any questions, please feel free to contact me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: TC 289-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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June 5, 2008

Ms. Suzanne Schappert
Anne Arundel County
Board of Appeals
2664 Riva Road, MS 6301
Annapolis, Maryland 21401

Re: Steinlein Variance
2007-0352-V

Dear Ms. Schappert:

Thank you for sending the above-referenced variance request for review and comment. The applicant is requesting an after-the-face variance for an accessory structure with less setbacks and Buffer than allowed. The property is 16,030 square feet in size and is located in a Limited Development Area (LDA). The property is currently developed with a two-story dwelling, driveway, garage, deck, and screened porch. The applicant requests to keep a 10 foot by 12 foot shed (120 square feet) that is approximately 70 feet from the shoreline. Current impervious surface on this site, including the shed, is 2,760 square feet (17.2%).

Based on the information provided, we oppose a variance to perfect a shed in its current location. As stated in Anne Arundel County Code 1816-305 (b) (1), a variance may be granted in the Critical Area if, "because of unique physical conditions, such as exceptional topographical conditions peculiar to and inherent in the particular lot or irregularity, narrowness, or shallowness of lot size and shape," strict implementation of Critical Area rules, regulations, and policies would create an unwarranted hardship." In this instance, the applicant has constructed a two-story dwelling, driveway, garage, deck, and screened porch on the site. In addition, there appears to be ample room outside of the 100-foot Buffer to place the shed. Therefore, denial of this variance will not create an unwarranted hardship for this applicant. Additionally, Anne Arundel County Code 1816-305 (b) (3) states that the variance cannot be based on "Conditions or circumstances that are the result of actions by the applicant." The applicant is requesting this variance due to the fact that the shed was constructed within the 100-foot Buffer without prior approval.

Thus, it is the result of circumstances that are based upon actions by the applicant that has created a need for this variance.

Based on the above purposes, policies, goals, and provisions of the Critical Area Law and Criteria, we recommend moving the shed outside of the 100-foot Buffer and replanting the current location of the shed with native plants and shrubs.

Thank you for the opportunity to provide comments. Please include this letter in your file and submit it as part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: AA 646-07

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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June 6, 2008

Cheril Thomas
Town Manager
Town of St. Michaels
300 Mill Street
P.O. Box 206
St. Michaels, MD 21663

Re: Hatton's Gardens Annexation and Growth Allocation

Dear Ms. Thomas:

The purpose of this letter is to provide an update of the Commission's processing of the proposed annexation and growth allocation for the Hatton's Gardens property in the Town of St. Michaels. On June 5, 2008, Chair McHale determined that the Hatton's Gardens annexation and growth allocation request would be processed as an amendment to the Town of St. Michaels Critical Area Program. Over the next few weeks, I will be in contact with you in regards to the amendment procedures and public hearing process.

If you have any questions, feel free to contact me at (410) 260-3483. Thank you in advance for all of your help with this process.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner

cc: Marianne Dise, CAC
Mary Kay Verdery, Talbot County Planning and Zoning
Roby Hurley, Critical Area Commission Circuit Rider, Town of St. Michaels

Martin O'Malley
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Anthony G. Brown
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June 6, 2008

Ms. Mary Kay Verdery
Talbot County Office of Planning and Zoning
28712 Glebe Road, Suite 2
Easton, Maryland 21601

Re: Engle Variance
A106

Dear Ms. Verdery:

Thank you providing information on the above referenced variance request. The applicant is requesting a variance to add a second story addition to an existing dwelling unit. The lot is designated as a Limited Development Area (LDA) and is 2.05 acres in size. Currently, the lot is composed of a one-and-a-half story dwelling unit, pool area, porch, garage, patio, and gravel driveway. The applicant proposes to install a second story addition to the existing dwelling unit. There will be no expansion of the footprint to construct this project. Total impervious surface on this site is 13,245 square feet (14.83% of the total area) and will remain unchanged if this variance is granted. This application was previously submitted for review to this office in November 2007; the only new change to this application is an increase in the height of the addition.

Provided the lot is properly grandfathered, we do not oppose this variance request.

Thank you for the opportunity to provide comments for this administrative variance. Please include this letter as part of the record for the case. In addition, please notify the Commission in writing of the decision made in this case. If you have any questions, please feel free to call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: TC 690-07

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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June 6, 2008

Ms. April Stehr
Maryland Department of the Environment
Wetlands & Waterways Program
1800 Washington Boulevard, Suite 430
Baltimore, MD 21230

RE: Comments on Applications for State Permits – Talbot County

Dear Ms. Stehr:

I am writing to provide comments on the following project located in Talbot County:

200764495/08-WL-0368 Talbot Farm, Inc

In Easton, along the Miles River, the applicant proposes to emplace 925 linear feet of 10-foot long by 4-foot wide by 4-foot high concrete beach prisms, with 2-foot spacing between the concrete structures, surrounding an existing 1,630 square foot island within a maximum of 290 feet channelward of Mean High Water (MHW). The purpose of this project is for shore erosion control and reclamation of lost land.

Based on the information provided , we have the following comments on this project:

1. Commission staff was unable to find a recorded plat which verified if any upland area existed on the island. Information provided on this project from a recent Joint Evaluation meeting with various State agencies revealed that the island is entirely composed of tidal marsh. We recommend that the applicant provide a copy of the plat that details the amount of upland area, if any, which existed on the island at the time the parcel was platted. This amount will be important in determining if development rights exist for the island.
2. It is unclear if the island is a separate parcel or is part of a larger parcel of land. Please have the applicant provide information on this issue, as it may also affect the amount of development rights permitted on the parcel.

3. To ensure proper delineation on the proposed reclaimed land area, please have the applicant provide a site plan which shows the following: the 100-foot Buffer; Mean High Water; and the edge of tidal wetlands, as shown on the 1972 State wetland maps.
4. The applicant should coordinate all activities with the Talbot County Planning Office.
5. The proposed project is located in a waterfowl concentration area. Therefore, time of year restrictions for shoreline work will apply. Please have the applicant contact Lori Byrne of the Maryland Department of Natural Resources Wildlife and Heritage Service (410-260-8573) to determine what restrictions will apply to this site.

Thank you for the opportunity to provide comments on the referenced project. If you have any questions, please call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resources Planner
cc: Mary Kay Verdery, Talbot County Planning and Zoning

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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June 10, 2008

Mr. Blaine Smith
Zoning Administrator
Town of Ocean City
PO Box 158
Ocean City, MD 21843

Re: Nickles Building Permit
14952

Dear Mr. Smith:

Thank you for providing information on the above referenced building permit application. The applicant is proposing to construct a deck and trellis to an existing family residence. Critical Area issues include stormwater management, pollutant removal, and afforestation.

The lot is 4,500 square feet in size, is zoned R-1, and has a setback of 15 square feet. The lot is currently developed with a two-story dwelling unit, stoop, and porch. No impervious surface amounts are given.

To meet mitigation and afforestation requirements, the applicant is required to provide 186 square feet of landscaping; a total of 200 square feet of landscaping in the form of four small shrubs will be provided onsite.

To meet stormwater management requirements onsite, the applicant is installing a deck that is pervious in nature.

Based on the information provided, we have the following comments on this building permit:

1. Within the 100-foot Buffer and 15-foot setback area, the applicant proposes to install a 460-square foot deck. The Town of Ocean City Atlantic Coastal Bays Critical Area Program §30-554(d)(1) states that, "New development, including accessory structures, shall minimize the extent of intrusion into the Buffer…" While the Town of Ocean City Atlantic Coastal Bays Critical Area Program does allow pervious wooden decks and walkways in the setback area (§30-554(d)(4)), based on the site plan provided, it appears that the size and location deck does not minimize Buffer intrusion. To minimize water

quality and habitat impacts, we recommend reducing the size of the proposed deck. We note that existing dwelling unit currently has use of a 166 square foot porch.

2. Please provide the amount of existing impervious surface onsite.

3. The site plan mentions that evergreen shrubs will be planted. Please have the applicant provided the botanical name, common name, and sizing for the proposed mitigation plantings. Landscaping shall be performed using native species.

Thank you for the opportunity to provide comments on this building permit request. Please have the applicant provide the information requested above. If you have any questions, please feel free to call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly, Ph.D
Natural Resource Planner
cc: OC 295-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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June 10, 2008

Mr. Justin Bereznak
Maryland Department of the Environment
Wetlands & Waterways Program
1800 Washington Boulevard
Baltimore, MD 21230

RE: Comments on Applications for State Permits – Talbot County

Dear Mr. Bereznak:

I am writing to provide comments on the following projects located in Talbot County:

200765398/08-WL-0612 James and Mary Flood

In Sherwood, the applicant proposes to fill, grade, and plant marsh vegetation along 555 feet of eroding shoreline with 240 cubic yards of sand and a low profile stone, sand containment sill emplaced within a maximum of 10 feet channelward of Mean High Water (MHW). The purpose of the project is for shore erosion control and tidal marsh creation. This office supports marsh creation as a means of shore protection in areas where long-term sustainability is ensured. Any excavation above mean high water and within the 100-foot Buffer that may require clearing should be mitigated at a 1:1 ratio. We also recommend the use of biologs in place of the proposed armor stone, if possible. The applicant should coordinate all activities with the Talbot County Planning Office.

In addition, the proposed project is located in a waterfowl concentration area. Therefore, time of year restrictions for shoreline work will apply. Please have the applicant contact Lori Byrne of the Maryland Department of Natural Resources Wildlife and Heritage Service (410-260-8573) to determine what restrictions will apply to this site.

200766024/08-WL-0823 Robert Lee

In Easton, on the Miles River, the applicant proposes to perform the following:

- Maintenance dredge an 18-foot wide by 135-foot long area to a depth of 7.0 feet at mean low water and transport 113 cubic yards of sandy dredged material to an adjoining proposed marsh creation site
- Maintenance dredge an 27-foot wide by 45-foot long area to a depth of 5.0 feet at mean low water and transport 60 cubic yards of sandy dredged material to an adjoining proposed marsh creation site
- Relocate one mooring pile, install two boatlift piles, and construct a 3-foot wide by 25-foot long finger pier
- Construct three 25-foot long by 8-foot wide sand containment groins and two 25-foot long by 4-foot wide surface groins
- Install 173 cubic yards of sand and 6,000 square feet of marsh grasses

The purpose of this project is to control shore erosion and improve navigable access.

The Talbot County Critical Area Program recommends nonstructural shore protection measures whenever practical. Therefore, we recommend nonstructural measures in lieu of the proposed replacement stone groin. Nevertheless, if MDE determines that structural means are necessary, then this office will defer to your determination. Any disturbance to the 100-foot Buffer for shore erosion control shall be mitigated at a 1:1 ratio, while mitigation for shoreline access must be performed at a 2:1 ratio. Mitigation in the form of native Buffer plantings shall be performed in the 100-foot Buffer on the lot. The applicant should coordinate all activities with the Talbot County Planning Office. Furthermore, the adjoining marsh creation site must be reviewed by Commission staff if any of the marsh area is located above Mean High Water.

Thank you for the opportunity to provide comments on the above referenced project. If you have any questions, please call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resources Planner

cc: Mary Kay Verdery, Talbot County Planning and Zoning

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
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June 10, 2008

Ms. Mary Kay Verdery
Talbot County Office of Planning and Zoning
28712 Glebe Road, Suite 2
Easton, Maryland 21601

Re: A121
Tooke Variance

Dear Ms. Verdery:

Thank you for providing information on the above-referenced variance. The applicant is requesting a variance to construct a screened porch addition within the expanded Buffer for steep slopes. The property is 1.42 acres in size and is located in a Limited Development Area (LDA). Currently, the site is developed with an existing one-frame house, shed, gravel driveway, concrete walk, and playhouse. Total existing impervious surface onsite is 8,976 square feet (14.51%); if the variance is granted, total impervious surface onsite will increase by 245 square feet to 9,221 square feet (14.91%).

Provided the lot is properly grandfathered, we do not oppose this variance request. However, we do have the following comments:

1. Based on the information provided, it is unclear if the 100-foot Buffer has been properly expanded for steep slopes. For slopes 15% or greater, the Buffer must be expanded 4 feet for every 1%; therefore, the Buffer for this parcel should at least be 160 feet. Please have the applicant redraw the site plan showing the accurate Buffer line, and please have the applicant provide to this office the topography of the parcel to ensure that the Buffer has been properly expanded
2. Mitigation for any disturbance in the Buffer shall be performed at a 2:1 ratio.

Thank you for the opportunity to provide comments on this variance application. Please include this letter in your file and submit it as part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case. If you have any additional questions please contact me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: TC 285-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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June 10, 2008

Robert M. Fordham
Whitman, Requardt and Associates, LLP
801 South Caroline Street
Baltimore, MD 21231

Re: MTA Mobility Centralized Facility

Dear Mr. Fordham:

Thank you for providing a copy of the stormwater management report for the above referenced project. At this time, we have the following comment to provide in regards to the 10% pollutant removal calculations for this site. This comment is similar to the comment provided in my May 9, 2008 email:

- The proposed grass channel and rooftop disconnect credits may be applied on the 10% worksheet *only* once, as either a method to reduce total impervious surface cover onsite (Step 1), *or* as a feasible Best Management Practice (BMP) option (Step 5). For example, the applicant is applying the grass channel credits to reduce impervious surface in Step 1; however, these areas were still included in the drainage areas for the multiple pond BMPs in Step 5. Please have the applicant revise the 10% worksheets to adjust for this change by either maintaining the grass channel credits as a means to reduce impervious surface in Step 1 (and thus reducing total drainage area served by the multiple ponds in Step 5), or by removing them from Step 1 (and leaving total drainage area served unchanged). The same measures should be applied to the rooftop disconnect credits onsite.

Thank for you providing preliminary information on the stormwater management portion of this project. We look forward to working with you in the future on all aspects of this Critical Area project. If you have any questions, please contact me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: Dawnn McCleary, Maryland Transit Administration
65-07

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
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June 10, 2008

Gary Letteron
Environmental Planner
Baltimore City Department of Planning
417 East Fayette Street, 8th Floor
Baltimore, MD 21202

Re: Van Deman
Building Permit

Dear Mr. Letteron:

Thank you for providing information on the above referenced building permit. The applicant is proposing reuse of the existing site with modifications, including resurfacing and the replacing existing concrete pads with asphalt. The total site area is .105 acres, and the property is designated as an Intensely Developed Area. To meet the Critical Area 10% pollutant removal requirement, 1.75 pounds per year of phosphorus must be removed from the Critical Area portions of the property. The applicant proposes to meet this requirement by paying a fee-in-lieu of $61,304. To meet afforestation requirements, the applicant is planting 40 trees. An additional 12 trees will be planted in the 100-foot Buffer.

Based on the information provided, we have the following comment on this project:

- Based on our phone conversation, it is my understanding that the first 50 feet of Buffer (from the shoreline inward) is owned by the Baltimore City Department of Recreation and Parks. The remaining depth is owned by the applicant. Upon reviewing aerial photography of the site, it appears that the Buffer area owned by the applicant is non-vegetated. Since the applicant will be unable to acquire an easement on City-owned property to protect the existing forested areas of the Buffer, Commission staff recommends that the applicant plant 50% of the Buffer area that they own in order to increase water quality and habitat benefits (Baltimore City Critical Area Management Program §III.C.2.b(ii)).

Thank you for providing the information on 10% calculations for this building permit. If you have any questions, feel free to call me at (410) 260-3483.

Sincerely,

Nick Kelly
Natural Resource Planner
cc: BA 297-08

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/

June 10, 2008

Ms. Mary Kay Verdery
Talbot County Office of Planning and Zoning
28712 Glebe Road, Suite 2
Easton, Maryland 21601

Re: A122 Kopicki –Ashby Variance

Dear Ms. Verdery:

Thank you for providing information on the above-referenced variance. The applicant is requesting a variance to vertically expand an existing single-family dwelling unit, remove and reconstruct an existing sunroom, and construct a new porch within the 100-foot Buffer. The property is 2.29 acres in size and is located in a Limited Development Area (LDA). Currently, the site is developed with a single-family dwelling unit, pool, patio, sidewalk, steps, and gravel driveway. Total existing impervious surface onsite is 13,919 square feet (13.92%); if the variance is granted, total impervious surface onsite will increase by 70 square feet to 13,989 square feet (13.99%); only 36 feet of new impervious surface will be located within the 100-foot Buffer. The proposed porch will be located further from Mean High Water (89 feet) than the existing dwelling unit (83 feet). The proposed sunroom will be reconstructed on the footprint of the existing sunroom.

Provided the lot is properly grandfathered, we do not oppose this variance request. However, we do have the following comments:

1. Please have the applicant delineate the 100-foot Buffer on the site plan.
2. Mitigation for any disturbance in the Buffer shall be performed at a 2:1 ratio.

Thank you for the opportunity to provide comments on this variance application. Please include this letter in your file and submit it as part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case. If you have any additional questions please contact me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: TC 286-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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June 12, 2008

Ms. Chris Corkell
Talbot County Office of Planning and Zoning
28712 Glebe Road, Suite 2
Easton, Maryland 21601

Re: 1496
Herget Variance – Infiltration Trench

Dear Ms. Corkell:

At the May 19, 2008 hearing for the above referenced variance case, the Talbot County Board of Appeals requested that Commission staff review and consider the benefit of a proposed infiltration trench within the 100-foot Buffer at the above referenced property. The Board requested staff input as to whether the infiltration trench would provide treatment of stormwater runoff and improve the overall quality of runoff from the property. This Best Management Practice (BMP) is requested as mitigation for the stone and paver areas that were installed within the Buffer without the required permits.

At this time, we have reviewed the applicant's proposal for an infiltration trench within the 100-foot Buffer. In the context of the variance case, we continue to note that both the State and County Law require the Board of Appeals to find that the applicant has overcome the burden to meet *each and every* one of the variance standards in order to grant a variance. These strict standards do not include consideration of offset measures, such as an infiltration trench, for after-the-fact variance requests. However, the variance standards do expressly authorize the Board of Appeals to consider whether the need for a variance was caused by the actions of the applicant. In this circumstance, the applicant constructed the stone and paver areas without the proper permits. In addition, as noted in our May 13, 2008 letter and our May 19, 2008 addendum letter, we believe that the applicant has failed to meet *all five* variance standards. Therefore, we are unable to offer support for the applicant's variance request, and we strongly recommend that the infiltration trench not be considered by the Board as an appropriate offset to legalize unpermitted construction in the Buffer.

In addition, please note that Commission staff generally does not support the construction of stormwater practices such as infiltration trenches in the 100-foot Buffer. Specifically, a BMP is

considered to be a development activity and thus is not permitted in the Buffer (COMAR 27.01.09C(2)). Furthermore, in reviewing the proposal with the Commission's science advisor, it appears that an infiltration trench of the nature proposed is typically placed adjacent to impervious surfaces in order to maximize the water quality benefits for a site. Thus, the optimal location of an infiltration trench on this site would be adjacent to the existing impervious areas, with stormwater runoff directed away from the Buffer. Finally, staff has significant concerns that the location of the infiltration trench as proposed, within five feet of the shoreline, could significantly weaken and damage the existing bulkhead. Based on all of these factors, the infiltration trench within the 100-foot Buffer as proposed should be removed from the plans.

Thank you for the opportunity to provide supplemental comments on this Board of Appeals variance request. If you have any questions, please feel free to contact me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: TC 620-07
LeeAnne Chandler, CAC

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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June 16, 2008

Mr. Blaine Smith
Zoning Administrator
Town of Ocean City
PO Box 158
Ocean City, MD 21843

Re: Lot 33 LLC Parking Lot
14946

Dear Mr. Smith:

Thank you for providing information on the above referenced building permit application. The applicant is proposing to construct a parking lot. Critical Area issues include stormwater management, pollutant removal, and afforestation.

The lot is 5,004 square feet in size, and is zoned R-2. The lot is currently undeveloped. The applicant proposes install a pervious paver parking lot. Current impervious surface onsite is 0 square feet (0.0%); no change in impervious surface is proposed.

To meet mitigation and afforestation requirements, the applicant is required to provide 1,958 square feet of landscaping; a total of 2,225 square feet of landscaping in the form of 5 small trees, 7 large shrubs, and 27 small shrubs will be provided.

Since no new impervious surface is proposed on site, the applicant is meeting stormwater management requirements onsite.

Based on the information provided, we have the following comment on this building permit:

- Please have the applicant provided the botanical name, common name, and sizing for the proposed mitigation plantings. Landscaping shall be performed using native species.

Thank you for the opportunity to provide comments on this building permit request. Please have the applicant provide the information requested above. If you have any questions, please feel free to call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly, Ph.D
Natural Resource Planner
cc: OC 281-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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June 17, 2008

Ms. Mary Kay Verdery
Talbot County Office of Planning and Zoning
28712 Glebe Road, Suite 2
Easton, Maryland 21601

Re: A128
Holmes Variance

Dear Ms. Verdery:

Thank you for providing information on the above-referenced variance. The applicant is requesting a variance to construct an elevator on an existing deck for medical reasons within the 100-foot Buffer. The property is 2.31 acres in size and is located in a Limited Development Area (LDA). Currently, the site is developed with a single-family dwelling unit, detached garage, wood deck, and driveway. Total existing impervious surface onsite is 7,260 square feet (7.22%); if the variance is granted, total impervious surface onsite will increase by 42.5 square feet to 7,302.5 square feet (7.26%); all 42.5 feet of new impervious surface will be located within the 100-foot Buffer. The proposed elevator will be located further from Mean High Water (80 feet) than the existing dwelling unit (50 feet). Total disturbance onsite will be 295.16 square feet.

Provided the lot is properly grandfathered, and provided that the Planning Commission determines that the proposed elevator is required for medical reasons, we do not oppose this variance request. However, we do have the following comments:

- Mitigation for any disturbance in the Buffer shall be performed at a 2:1 ratio.

Thank you for the opportunity to provide comments on this variance application. Please include this letter in your file and submit it as part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case. If you have any additional questions please contact me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: TC 425-03

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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June 18, 2008

Amy Moredock
Department of Planning and Zoning
Kent County Government Center
400 High Street
Chestertown, Maryland 21620

Re: Stoneton West, LLC Variance
08-64

Dear Ms. Moredock:

Thank you for providing information on the above referenced variance request. The applicant proposes construct an addition to a single-family dwelling unit that is located entirely within the 100-foot Buffer. The property is 3.29 acres in size and is designated Resource Conservation Area (RCA). Currently, the property is developed with two single-family dwelling units and three storage buildings. The applicant proposes to install a first floor bedroom, bathroom, and utility room as well as expand the kitchen and porch areas. Total existing impervious surface onsite is 2,932 square feet (2.0%); if the variance is granted, impervious surface will increase onsite by 684 square feet to 3,636 square feet (2.5%).

Based on the above information, we cannot support the variance as proposed at this time, as it appears that the proposed additions to the existing single-family dwelling unit can be further minimized. While we understand that the variance is requested to provide accommodations for an elderly family member, we question whether the proposed expansion of patio/deck and porch are necessary and meet the standard of "unwarranted hardship;" that is, without the granting of this variance, the applicant would be denied reasonable and significant use of the entire property. In particular, we note that the applicant currently has use of an existing porch. Consequently, Commission staff recommends the proposed porch and patio/deck be removed from the site plan.

In addition, we have the following comments on this variance application:

1. Please have the applicant provide a site plan which clearly delineates the 100-foot Buffer. The Buffer shall be expanded for any steep slopes, hydric or highly erodible soils, or non-tidal wetlands contiguous to the Buffer.

2. Mitigation for any disturbance shall be performed at a ratio of 3:1.

Thank you for the opportunity to provide comments on this variance request. Please include this letter in your file and submit it as part of the record for this variance. If you have any questions, please contact me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: file

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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June 18, 2008

Lynn Thomas
Town of Easton
14 South Harrison Street
P.O. Box 520
Easton, MD 21601

Re: Heartfields at Easton

Dear Mr. Thomas :

Thank you for providing supplemental information on the above-referenced site plan. The applicant is proposing to expand an existing retirement community building with both a residence and dining addition. The property is 3.025 acres in size and is designated as an Intensely Developed Area (IDA). Current impervious surface onsite is 1.27 acres; the applicant proposes to increase surface onsite to 1.54 acres.

Based on the information provided, we have the following comments on this project:

1. Upon reviewing the submitted 10% worksheets with the Commission's science advisor, Commission staff has significant concerns about the amount of pollution treated onsite. Due to the presence of an existing pond that is currently treating pollutants onsite, the L_{pre} for this project should be lower than what is stated. Consequently, a higher removal requirement for this site is likely. In addition, the applicant states that 25% of the site drains to a dry swale before being treated by the proposed multiple ponds. According to the applicant, the load removed by the swale has been deducted from the total load for 25% of the pond, and the pond's efficiency has been reduced by 50% for this portion of the drainage area. Both the dry swale and the portion of the drainage area from the dry swale draining into the multiple ponds should be shown on separate lines in Step 5 of the worksheet.

Based on these required changes, Commission staff recommends that the applicant work closely with this office to resolve any outstanding pollutant removal issues. We strongly recommend that approval of this site plan be withheld until these issues are resolved.

2. Please have the applicant forward to this office a copy of the letter from the Department of Natural Resources (DNR) Wildlife and Heritage Division evaluating the property to determine if there are any threatened or endangered species onsite. If present, the applicant must address all recommendations from DNR for protection of these species. Please forward to this office a copy of this letter. If there is the presence of such species onsite, a Habitat Protection Plan must be submitted to address proposed impacts.

Thank you for providing us the opportunity to review this site plan request. If you have any questions, feel free to call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: EA 224-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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June 19, 2008

Ms. Chris Corkell
Talbot County Office of Planning and Zoning
28712 Glebe Road, Suite 2
Easton, Maryland 21601

Re: 1499
Willis Variance

Dear Ms. Corkell:

Thank you for providing information on the above referenced variance request. The applicant requests variance to the 100-foot stream Buffer and 150-foot state highway setback in order to construct a new residence. The new residence is required to replace an existing residence that was damaged by Hurricane Isabel, and the new dwelling unit will be elevated to meet flood zone requirements. The property is 0.996 acres in size and is designated Resource Conservation Area (RCA). The lot is currently developed with an existing one-story dwelling unit, garage, sidewalk, porch, and gravel driveway; the existing dwelling unit, porch, and sidewalk will be removed and replaced. The new residence will be located 4.6 feet closer to the intermittent stream (49.4 feet) than the existing house (54.0 feet). Total existing impervious surface onsite is 2,455 square feet (5.6%); if the variance is granted, total impervious surface onsite will increase by 517 square feet to 2,972 square feet (6.8%).

Based on the information provided, we do not oppose this project. However, we do recommend that the new house be located so as to not further encroach into the stream Buffer than the existing home (54.0 feet). In addition, we have the following comments on this variance request:

1. Mitigation for any impacts to the stream Buffer shall be performed at a 2:1 ratio.
2. It appears that an existing shed is located within the sewage disposal area. Will this shed be removed?
3. As a condition of approval, Commission staff recommends that the Board require some form of stormwater management to address the rooftop runoff from the new dwelling unit.

Thank you for the opportunity to provide comments on this Board of Appeals variance request. If you have any questions, please feel free to contact me at 410-260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
TC ~~708-07~~
362-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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June 19, 2008

Gary Letteron
Environmental Planner
Baltimore City Department of Planning
417 East Fayette Street, 8th Floor
Baltimore, MD 21202

Re: DPW Storm Drain

Dear Mr. Letteron:

Thank you for forwarding the above-referenced project to this office per the requirements of COMAR 27.02.02 - State and Local Agency Actions Resulting in Development of Local Significance on Private Lands or Lands Owned by Local Jurisdictions. The project involves replacing a failing storm drain that is located within the 100-foot Buffer. Total disturbance is 1,990 square feet. The property is 4,954 square feet and is located in a Resource Conservation Area (RCA). After reviewing the consistency report, this office agrees that the project is generally consistent with the City of Baltimore Critical Area Program for the reasons outlined below:

1. Five trees will be removed within the 100-foot Buffer. Since the project involves the replacement of an existing utility, and developed woodland area is disturbed, the applicant is required to provide 1:1 mitigation. The applicant proposes to plant 15 trees (Eastern Cottonwood, Serviceberry, Sugar Maple) within the Buffer as mitigation, which more than meets the 1:1 requirement.
2. The project is water-dependent.
3. Existing impervious surface onsite will increase by 131 square feet to 1,492 square feet (30.1%).
4. The project is exempt from stormwater management review and does not require a sediment and erosion control plan.
5. No habitat protection areas (colonial nesting waterbird sites, endangered/threatened species areas, anadromous fish propagation waters, waterfowl staging areas, or forest interior dwelling bird habitats) will be impacted.
6. No tidal wetlands will be impacted.
7. Nontidal wetlands will be impacted, and a permit has been requested from MDE.

In addition, we have the following comment on this project:

- Prior to the start of construction, please have the applicant supply to this office a copy of the MDE nontidal wetland permit.

Thank you again for your cooperation and assistance with reviewing this project. If you have any questions, please call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resources Planner
cc: BA ~~131-08~~
340-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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June 19, 2008

Duncan Stuart
City of Baltimore Planning Commission
Department of Planning
417 E. Fayette Street, 8th Floor
Baltimore, Maryland 21202-3416

Re: Catholic Charities Dragon Boat Races

Dear Mr. Stuart:

Thank you for forwarding the above-referenced project to this office per the requirements of COMAR 27.02.02 - State and Local Agency Actions Resulting in Development of Local Significance on Private Lands or Lands Owned by Local Jurisdictions. The project involves the construction of temporary floating piers in an area near the Maryland Science Center to serve as loading and unloading docks for the Catholic Charities Dragon Boat Races. The piers will be 40 feet long, 60 feet wide, and a maximum 40 feet channelward from Mean High Water (MHW). After reviewing the consistency report, this office agrees that the project is generally consistent with the City of Baltimore Critical Area Program for the reasons outlined below:

1. The project is located 40 feet channelward of Mean High Water.
2. The project is water-dependent.
3. There will be no impacts to the 100-foot Buffer.
4. No new impervious surface is proposed.
5. No land area will be disturbed.
6. Local stormwater management and sediment and erosion control approval is not applicable.
7. No habitat protection areas (colonial nesting waterbird sites, endangered/threatened species areas, anadromous fish propagation waters, waterfowl staging areas, or forest interior dwelling bird habitats) will be impacted.
8. No non-tidal wetlands will be impacted.
9. Tidal wetlands will be impacted, and a license was issued by MDE for this project on May 27, 2008.

In addition, we have the following comment on this project:

- Prior to the start of construction, please have the applicant supply to this office a copy of the MDE tidal wetlands license.

Thank you again for your cooperation and assistance with reviewing this project. If you have any questions, please call me at (410) 260-3483.

Sincerely,

Nick Kelly
Natural Resources Planner
cc: BA 360-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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June 20, 2008

Ms. Mary Kay Verdery
Talbot County Office of Planning and Zoning
28712 Glebe Road, Suite 2
Courthouse
Easton, Maryland 21601

Re: **Talbot County Zoning Ordinance**

Dear Ms. Verdery:

Thank you for providing this office the opportunity to provide an additional review of the above-referenced ordinance and proposed text changes. This letter is to summarize Commission staff's suggested edits and revisions in order to help ensure that the ordinance is consistent with the Critical Area Law and Criteria. Please note that these comments are provided based on our preliminary and informal review of the County's proposed text changes. Additional comments and recommendations may be provided as necessary during staff's ongoing informal review of the proposed text amendments and/or as necessary during the Commission's formal review process. (**Bold text** indicates recommended additions, while ~~strikethroughs~~ indicate recommended deletions).

1. Page 28 Village Center Districts **A.(1)**

Insert the following text:

(c) Within the Critical Area, accommodate additional low or moderate intensity development if:

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

(ii). The overall intensity of development within the VC district is not increased beyond the level established in a particular area so as to change its prevailing character as identified by density and land use currently established in the area.

Commission staff noticed this language was located in other zones designated as Limited Development Area (LDA), but could not find this section for Village Center Districts. Please provide clarification as to why this was not included for the VC district.

2. Page 2 §190-3 Purpose **C(1)**

Insert the following text:

C. Goals. The goals of the Critical Area Program are to accomplish the following:

(a) ~~Protect water quality by reducing pollution;~~**Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or run off from surrounding lands;**

(b) Conserve fish, wildlife, and plant habitat; **and**
Establish land use policies for development in the Critical Area which accommodate growth as well as address the environmental impacts that the number, movement, and activities of people may have on the area.

It is our understanding that this has been included in the Ordinance; however, Commission staff could not locate this language. Please provide the citation for this language.

3. Page 135 Development in the Critical Area

Insert the following section (Note: All subsequent section headings will need to be updated by inserting this section):

§190-___ Development in the Critical Area

(a) Description. The Critical Area of the County contains approximately ____ acres.

(b) General policies. In order to accommodate already existing land uses and growth in the County Critical Area while providing for the conservation of habitat and the protection of water quality, the County has identified and mapped three land use management districts within the Critical Area. The Critical Area has also been defined as an overlay zone in the County Zoning Ordinance. The County has identified each of the three land use management districts within the Critical Area based on the following criteria and has developed policies and programs to achieve the objectives as proposed by the County Program. The County recognizes the following three types of development areas: Intensely Developed Areas (IDAs); Limited Development Areas (LDAs); and Resource Conservation Areas (RCAs). The following general provisions are applicable throughout the Critical Area:

(1) Intense development should be directed outside of the Critical Area.

Future intense development activities, when proposed in the Critical Area, shall be directed towards the Intensely Developed Areas.

(2) Additional low intensity development may be permitted in the Limited Development areas, but shall be subject to strict regulation to prevent adverse impacts on habitat and water quality.

(3) Development shall be limited in the Resource Conservation Area, which shall be chiefly designated for agriculture, forestry, fisheries activities, other resource utilization activities and for habitat protection.

(c) Implementation. For purposes of implementing this regulation the County has determined, based on land uses and development in existence on December 1, 1985, which land areas fall within the three types of land management and development areas described in this program.

Commission Staff understands growth allocation is addressed in section 190-172 of this ordinance. However, to provide addition clarification on the policies and implementation of development activities in the Critical Area, we recommend that the County provide the above information in their updated ordinance.

4. Page 133 §190-130 Forestry Activities **E(2)(c)(iv)**
Insert the following text:

(iv) Commercial harvesting practices shall be conducted to protect and conserve the Habitat Protection Areas in accordance with Sections 149 through Section 153 of this Chapter.

It is our understanding that this has been included in the Ordinance; however, Commission staff could not locate this language. Please provide the citation for this language.

5. Page 136 §190-135 Shoreline Development Buffer **(4)**
Insert the following text:

(4) In establishing the Buffer, the Buffer shall be managed to achieve or enhance the functions stated in (B) of §190-135.

We are requesting this language to ensure that the Talbot County Ordinance is in compliance with COMAR 27.01.09.01(5).

6. Page 137 §190-135 Shoreline Development Buffer **C (7-9)**
Insert the following text:

(7) Buffer Management Plans- When the Buffer is required to be established on

a development site, when a proposed development activity will impact the Buffer, or when the removal of trees or vegetation in the Buffer is proposed, the County will require that the applicant prepare a Buffer Management Plan. The Plan shall show existing vegetation within the Buffer, any vegetation in the Buffer that is proposed to be removed, and the proposed planting in the Buffer required to "establish" the Buffer or as mitigation for impacts. The planting plan shall include the size, species, and location of all plantings.

(8) Planting Agreements- For all projects that require establishment of the Buffer or mitigation plantings that exceed 2,000 square feet or 10 trees, the applicant shall execute a planting agreement with the County. The planting agreement shall include provisions for the collection of a surety or bond that will permit the County to accomplish the required planting on the applicant's property or another location selected by the County should the applicant fail to meet the requirements of the agreement. A Planting Agreement is included in this ordinance as Appendix B.

(9) Tree cutting in the Buffer. The Buffer shall be managed to achieve or enhance the policies stated in Section 1-519(c). Individual trees may be cut for personal use provided the cutting does not impair water quality or existing habitat value or other functions of the Buffer. Any cutting in compliance with the provisions specified herein shall require a Buffer Management Plan approved by the Planning Commission or their designee. Cutting of trees or clearing of vegetation within the Buffer shall be prohibited except that:

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

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

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

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

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

It is our understanding that this has been included in the Ordinance; however, Commission staff could not locate this language. Please provide the citation for this language.

7. Page 148 Plant and Wildlife Areas **B (7-8)**

Insert the following text:

(7) Other plant and wildlife habitats determined to be of local significance; and

(8) Nontidal wetlands

It is our understanding that the Planning Commission wishes to have a definition of "local significance" to include (7). The Critical Area Criteria currently do not contain a definition for this term. Staff recommends that the County contact the Maryland Department of Natural Resources Wildlife and Heritage Division at (410) 260-8573 to determine how "local significance" may be defined by this agency.

8. Page 143 §190-165 Nonconforming Structures **D(1)**

Revise the following text:

(1) Natural vegetation of an area ~~two~~ **three** times the extent of the additional **disturbance** ~~impervious surface~~ allowed shall be created in the buffer or on the property if planting in the buffer cannot be reasonably accomplished.

It is our understanding that County has concerns that 3:1 mitigation will not encourage applicants to apply for variances, as the current mitigation requirement for violations in the 100-foot buffer is 3:1. However, we note that the County's ordinance currently requires mitigation for development activities within the Buffer Exemption Area (BEA) at a 2:1 ratio. The mitigation ratio for development activities within the 100-foot Buffer should be higher than in BEAs. In addition, it is the Commission's experience and position that 3:1 mitigation for development activities in the 100-foot Buffer is the minimum necessary to achieve no net loss in tree canopy cover within the Critical Area. We note that the County's 2:1 mitigation standard within the Buffer is currently less than the standard mitigation ratio for jurisdictions with updated Critical Area Programs. As such, it is likely that the Commission will require 3:1 mitigation within the 100-foot Buffer during its formal review of the County's proposed text changes. Should the County wish to provide a higher mitigation ratio for violations, we recommend that a ratio of 4:1 be applied in these instances. There are several jurisdictions within the Critical Area which have

included 4:1 as the standard ratio for violations to date.

9. Page 171 §190-172 Applications for use of Growth Allocation in the Critical Area

*Insert the following sections (*Note: Change additional section headings to reflect these new sections)*:*

A. **<u>Definition.</u> Growth allocation means the number of acres of land in the Critical Area that a local jurisdiction may use to create new Intensely Developed and new Limited Development Areas. The growth allocation shall be calculated based on five percent of the total Resource Conservation Area in the County at the time of the original approval of the County's program by the Commission, not including tidal wetlands or land owned by the federal government.**

B. **<u>Description.</u> The upland area of the County within the Critical Area comprises about _____acres.**

10. Page 173 Submission and Review Procedures D

Insert the following text:

Applicants for growth allocation shall submit a request for growth allocation accompanied by appropriate plans and environmental reports in accordance with the following process:

(1) **All applications for growth allocation shall be submitted to the County Office of Planning. Requests shall be accompanied by a concept plan and appropriate environmental reports and studies so as to provide sufficient information to permit the Planning Commission to review the application for consistency with the County's Critical Area regulations. The subdivision history of parcels designated as RCA must be provided as part of the growth allocation application. The date of December 1, 1985 is the date used for the original Critical Area mapping and shall be used as a beginning point of analysis.**

(2) **All applications for growth allocation shall be forwarded to the Planning Commission for review and shall include comments and recommendations from the staff. The Planning Commission shall hold a public hearing on the growth allocation request prior to making a recommendation on the proposal to the County Commissioners.**

(3) **The applicant shall address the Planning Commission's comments and recommendations and may revise the concept plan accordingly. The growth allocation request shall then be forwarded to the County Commissioners with**

a recommendation for approval or denial from the Planning Commission.

(4) The County Commissioners shall hold a public hearing on the request for growth allocation and any revisions to the concept plan.

(5) The County Commissioners must make findings based on the growth allocation standards in Natural Resources Article §8-1808.1(c) and may establish conditions of approval that are consistent with the intent of the County's Critical Area Program.

(6) Upon approval of the growth allocation request by the County Commissioners, the County shall send a request to the Critical Area Commission to utilize a portion of their growth allocation. The request shall be accompanied by pertinent plans and environmental reports and studies. Upon receipt of the request from the County, the Critical Area Commission shall notify the County regarding the processing of the request as an amendment or refinement to the County's Program. Refinements shall be acted on within 30 days of the Commission's notification to the County of a complete submission. Amendments will be acted on within 90 days of the Commission=s notification of a complete submission.

(7) Following approval of the growth allocation request by the Critical Area Commission, the County Commissioners may implement the change, and the applicant may proceed to the preparation of the final site plan or subdivision plat for recording in the County land records.

(8) Prior to approving the final site plan or subdivision plat, the Planning Commission or their designee shall ensure that all conditions of approval are incorporated into the final plan, public works agreement, deed covenants, etc.

(9) Final subdivision plats and site plans shall be processed in accordance with the requirements of this ordinance and the County's subdivision regulations.

(10) Within 120 days of Growth Allocation approval, the County's official Critical Area maps shall be amended to reflect the new land classification, and a copy of the new map shall be provided to the Critical Area Commission.

(11) ~~(1)~~As a condition of approval, the County may require that all projects approved for the use of growth allocation shall demonstrate that they are substantially completed within three years of the date of growth allocation approval by the Commission. Substantially completed shall be determined by the Planning Commission and is defined as projects in which all public improvements such as roads, sewer and/or water facilities, etc. have been built as required by the

County.

(12) ~~(2)~~ An application for a zoning map amendment requiring growth allocation shall include a concept plan showing the proposed use and development of the site for which the growth allocation is requested.

(13) ~~(3)~~The concept plan shall show:

(a) Property boundaries,

(b) Generalized topography and natural features,

(c) For a proposed subdivision, the general location of proposed lots, structures, and roads;

(d) For a proposed commercial or industrial use, the general location of proposed structures, stormwater management, paved areas and open space.

(e) The plan may show a building envelope in lieu of the precise location of a building; may show the minimum and maximum areas to be devoted to impervious surfaces in lieu of an exact area, and may otherwise allow for flexibility, provided that appropriate precise limits are established. The application shall be submitted and heard in accordance with the process established in this Article for applications to amend the official zoning map, except that the concept plan shall be reviewed concurrently as indicated below.

(14) ~~(4)~~The Planning Officer may circulate the concept plan to applicable reviewing agencies for comments.

(15) ~~(5)~~The zoning application shall not be considered by the Planning Commissionuntil the Planning Officer finds that the development shown on the concept plan has the potential to comply with applicable requirements in subsequent subdivision or site plan review.

(16) ~~(6)~~The Planning Commission shall make recommendations to the County Council on the proposed concept plan, the proposed rezoning and the request for growth allocation.

(17) ~~(7)~~If the County Council approves the application:

(a) The County Council may impose conditions on the concept plan, stating the reasons for such actions.

(b) The Council may condition its approval of growth allocation on the provision of specific public benefits in furtherance of the implementation strategies of the Comprehensive Plan.

(c) A subdivision or site plan shall be approved by the Planning Commission as required by this chapter. The subdivision or site plan shall be substantially in accordance with the concept plan approved by the County Council.

(d) The Planning Commission in its approval of the subdivision or site

plan may approve minor deviations from the concept plan resulting from more detailed engineering and site design. Significant changes must be approved by the County Council in accordance with the procedures for the original application.

It is our understanding that this has been included in the Ordinance; however, Commission staff could not locate this language. Please provide the citation for this language. Please also note that (5) and (10) have been revised since our last letter to include a section on having the Planning Commission provide findings of fact that are consistent with Natural Resources Article §8-1808.1(c) and to require that revised maps be submitted to this office within 120 days of growth allocation approval.

11. Page 174 §190-172 Standards for location of IDAs of LDAs **E(4)**

Revise the following text:

A. **The area of expansion of Intensely Developed and Limited Development Areas, or both, shall be coordinated with the County.** When locating new intensely developed areas (IDA) or limited development areas (LDA), the County shall use the following guidelines:

(i) **New Intensely Developed Areas shall be at least 20 acres in size unless:**

a. **They are contiguous to an existing IDA or LDA; or**

b. **They are a grandfathered commercial or industrial use which existed as of the date of local Program approval. The amount of growth allocation deducted shall be equivalent to the area of the entire parcel or parcels subject to the growth allocation request.**

(j) **New Intensely Developed or Limited Development Areas to be located in Resource Conservation Areas shall conform to all criteria of the County for such areas, shall be so designated on the County Zoning Map and shall constitute an amendment to this program subject to review and approval by the County Planning Commission, the County Commissioners and the Critical Area Commission.**

B. **Applicants for growth allocation shall demonstrate that the following design standards will be met or exceeded by the proposed project:**

(a) **All requirements of the County's Critical Area Program, zoning ordinance, and subdivision regulations have been met.**

(b) **In addition to meeting the minimum requirements of the Critical Area regulations, the project design shall enhance the habitat value or**

improve water quality in the area. For example, afforestation may exceed the 15 percent requirement or best management practices for stormwater management may be installed on portions of the site to remain in agricultural use.

(c) **For residential development, a community pier shall be provided rather than individual piers.**

It is Commission staff's opinion that this section should be included to retain flexibility in permitting new IDAs less than 20 acres in size.

12. Page 236 Definitions

Insert the following text:

K Value (CA)- The soil erodibility factor in the Universal Soil Loss Equation. It is a quantitative value that is experimentally determined.

We understand that K-value is only used in the definitions section of this ordinance; however, we continue to recommend that this definition be included in the Talbot County Ordinance as it is used to define the erodibilty of certain soils restricted from development within the Critical Area Criteria.

13. § 190-90.1 Shore Erosion Control Projects

A. Plan required

(1) A Shore Erosion Control Plan shall be prepared when measures are proposed to protect eroding and rapidly eroding shoreline. Improvements to protect property against erosion shall consist of nonstructural shoreline stabilization measures that preserve the natural environment, such as Marsh Creation, except in areas:

a. Designated by Maryland Department of the Environment (MDE) maps as appropriate for structural shoreline stabilization measures; or

b. Where Maryland Department of the Environment (MDE) determined that nonstructural measures are not feasible, including areas of excessive erosion, areas subject to heavy tides, and areas too narrow for effective use of nonstructural shoreline stabilization measures.

(2) For purposes of this section the terms "structural" and "nonstructural" shall be determined by Maryland Department of the Environment (MDE) ~~or the Critical Area Commission.~~

B. Preparation and Submittal

(1) A zoning certificate from the Department of Permits and Inspections is required prior to construction of shore erosion control measures.

(2) The Shore Erosion Control Plan and Shore Erosion Control Project Evaluation Form shall be submitted to the Department of Permits and Inspections with the Zoning Certificate application. The Planning Office shall review the Shore Erosion Control Plan and supporting information for compliance with this section.

(3) The Plan shall include:

a. A copy of all relevant, federal and state permits, including but not limited to, those approvals by the Maryland Department of the Environment and the U.S. Army Corps of Engineers.

Specifications for the proposed shore erosion protection, including information on the design storm, calculated wave run-up, required stone weight, fill material, and other information required for review by Talbot County, the Maryland Department of the Environment and/or the US Army Corps of Engineers.

b. Any other information necessary for review of the plan in relation to the criteria in this Code to include, but not limited to, Erosion and Sediment Control Plan, Stormwater Management Plan, Floodplain Management compliance, impacts to historical property or sites, environmental impacts to wildlife or aquatic habitats and oyster bars.

c. Forest Preservation Plan delineating existing vegetative cover that would be removed and how it would be mitigated.

d. A Buffer Management Plan for the proposed shoreline erosion control project, including Buffer impacts and Buffer mitigation.

e. Location and stabilization of fill materials.

f. Plans for restoration of disturbed area.

g. Copy of review comments from the Critical Area Commission.

h. Copy of a letter from ~~the Critical Area Commission~~ or the Maryland Department of the Environment with a determination as to whether the project is considered structural or nonstructural.

i. If applicable and in accordance with section (h) above, a copy of an approved waiver from the Maryland Department of the Environment stating that nonstructural shoreline stabilization measures are not feasible if structural measures are proposed on the Shore Erosion Control Plan.

C. ~~Criteria for Plans~~

~~(1) The following criteria shall be used in developing and reviewing shore erosion control plans. These criteria shall be applied based on the written determination from the Critical Area Commission or the Maryland Department of the Environment as to whether the project is structural or nonstructural:~~

~~a. Use structural control measures only when nonstructural control measures would be impractical or ineffective,~~

~~b. Where structural erosion control is proposed use measures that best provide for conservation of fish and plant habitat,~~

~~c. Use nonstructural measures in areas of erosion where they would be a practical and effective method of erosion control,~~

~~d. Structural erosion measures are not to be encouraged in areas where no significant erosion occurs,~~

~~e. If significant alterations in the characteristics of a shoreline occur, the measure that best fits the change may be used for sites in that area, and~~

~~f. Habitat enhancement practices, such as dredge fill and marsh creation are encouraged.~~

In addition, we have the following additional comments about the proposed revisions to the Talbot County Zoning Ordinance:

1. On Page 137, Buffer Requirements, (5)(c), the code states that "any lands within the Shoreline Development Buffer required to be established in forest vegetation may be credited towards any afforestation, reforestation, or mitigation required under §190-137, Forestry activities." However, it is unclear how Buffer will be established. Please provide in this ordinance the steps that will be required to establish the Buffer in vegetation. In particular, please add a note stating that Buffer mitigation must be provided in addition to any Buffer establishment and/or afforestation requirements. It is our understanding that this has been included in the Ordinance; however, Commission staff could not locate this language

2. Just as in §190-92, Septic Systems, the ordinance needs to contain a provision stating that stormwater management facilities or stormwater best management practices may not be located within the RC district serving development outside of the RC district and/or outside of the Critical Area. Please provide staff with the location of existing language addressing this requirement, or have the language added to the revised ordinance.

3. §190-194; pp. 215-216: It is staff's position that if the County wishes to permit Reservation of Development Rights agreements within the RC district of the Critical Area, provisions must be included which prevent an area designated as such at the time of subdivision from being altered in location, boundary, or extent in perpetuity. It is not clear whether the proposed changes in §190-99 address this prohibition or whether additional provisions are needed. Please clarify and provide to this office the steps the procedures or policies that will be used to meet this need as well as to ensure that RDR policies are consistent with the Critical Area Law and Criteria.

4. There does not appear to be a section in the Talbot County Zoning Ordinance that clearly addresses the status of grandfathered lots in the Critical Area. As stated in COMAR 27.01.02.02.B.2.a, "The local jurisdiction develops, as part of its Program, procedures to bring these [grandfathering] lands into conformance with the local Critical Area Program insofar as possible, including the consolidation or reconfiguration of lots not individually owned, and these procedures approved by the Commission..." Talbot County must include this language from COMAR and, in accordance with the requirements of COMAR 27.01.02.02.B.2.a, develop procedures that bring grandfathered lots into conformance.

   While it is our understanding that this has been addressed in §190-113 of the ordinance, it does not appear to specifically address grandfathering in the Critical Area. Therefore, staff recommends inserting the following text into the Critical Area section of the Talbot County Zoning Ordinance:

Section 190-___ Grandfathering.

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

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

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

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

A. At the time of development, the land is

brought into conformance with the Critical Area Program insofar as possible, including the consolidation or configuration of lots not individually owned and these procedures are approved by the Critical Area Commission; or

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

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

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

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

5. Due to the passing of House Bill 1253, additional changes to the Talbot County Ordinance will be required in the future to ensure that the ordinance complies with the most recent changes to the Critical Area Law and Criteria. Language to address these changes will be formulated by Commission staff in the near future. Since we are unable to offer model language at this time, Commission staff will be happy to meet with County staff to discuss drafting language for the Talbot County Ordinance that meets the requirements of House Bill 1253.

6. Please provide this office a copy of Talbot County's fee schedules for both Buffer and stormwater fees-in-lieu in order to allow Commission staff to review the County's fee structure and to ensure that it is in accordance with current standards.

7. Please provide this office a copy of Talbot County's planting credits in order to allow Commission staff to review the County's credit structure and to ensure that it is in accordance with current standards. Planting credits must be the equivalent (or stricter) than the standards below:

Recommended Credit (Local jurisdictions can determine planting credits)	Plant Size	Plant Spacing
100 sq. ft.	1 tree(2-inch caliper)	10-foot center
400 sq. ft.	1 tree (minimum: 2-inch caliper and either balled and burlapped or container grown) and understory vegetation (minimum: 2 small trees or 3 shrubs)	tree: 20-foot center understory: 10-foot center
50 sq. ft.	1 tree (seedlings)	7-foot center
50 sq. ft.	1 shrub	3 to 7-foot center

Thank you again for allowing us the opportunity to review this ordinance. It is my understanding that this draft will be reviewed and amended by the County in the upcoming weeks. If you have any questions about these comments, please feel free to contact me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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June 23, 2008

Mary Kay Verdery
Talbot County Office of Planning and Zoning
28712 Glebe Road, Suite 2
Easton, Maryland 21601

Re: Murphy Variance
A127

Dear Ms. Verdery:

Thank you for providing information on the above referenced variance request. The applicant is requesting a variance to expand the master bedroom, bathroom, and kitchen, convert an existing porch into living space, and increase the roof height of the existing porch. The property is 2.072 acres and is designated Resource Conservation Area (RCA). The property is currently developed with a single-family dwelling unit, porch, garage, patio, and gravel driveway. Current impervious surface onsite is 8,494 square feet (9.4%); if the variance is granted, total impervious surface onsite will increase by 408 square feet to 8,902 square feet (9.8%). A total of 202 square feet of new impervious surface will be located in the Buffer.

Based on the information provided, we do not oppose the proposed variance request. However, we do have the following comments:

1. We recommend that the applicant reduce or reconfigure the proposed kitchen expansion and kitchen area to locate it entirely outside the Buffer.
2. Mitigation for any disturbance to the Buffer shall be performed at a 2:1 ratio.
3. The applicant is requesting to convert an existing porch, located within the 100-foot Buffer, into living space. Please note that this office would not support any future variances to create a porch or other accessory structure within the 100-foot Buffer on this property.

Thank you for the opportunity to provide comments. Please include this letter in your file and submit it as part of the record for this variance. Also, please notify the Commission

in writing of the decision made in this case. If you have any questions, please call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: TC 352-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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June 23, 2008

Ms. Suzanne Schappert
Anne Arundel County
Board of Appeals
2664 Riva Road, MS 6301
Annapolis, Maryland 21401

Re: Schmidt Variance
2007-0351 V

Dear Ms. Schappert:

Thank you for sending the above-referenced variance request for review and comment. The applicant is requesting a variance to allow a dwelling addition with disturbance to slopes greater than 15%. The property is 2.11 acres in size, with .67 acres located in a Limited Development Area (LDA) and 1.44 acres located in a Resource Conservation Area (RCA). The property is currently developed with a one-story dwelling, hot tub, patio, wood deck, walkway, garage, and gravel driveway. The applicant proposes to expand the garage and construct a patio, a retaining wall, a screened porch, and a porch. The deck with patio would be located within an area of steep slopes. Current impervious surface on this site is 9,277 square feet (10.1% of the site) and will increase to 10,116 square feet (11.0%) if the variance is granted.

This variance application was originally reviewed by this office in November 2007 with the applicant proposing to expand the garage and construct a deck with patio beneath it, a retaining wall, a screened porch, and a porch; the deck with patio was located within an area of slopes greater than 15%. In December, a second site plan was submitted that reduced the size of the proposed deck, removed the patio underneath it, and constructed a patio adjacent to the proposed deck but outside of the area of steep slopes. Presently, the applicant has submitted a third site plan, proposing to remove the deck completely and proposing a patio/grassy area within the an area of steep slopes. Total disturbance to steep slopes will be 528 square feet.

While I acknowledge that the applicant believes that this newly revised proposal minimizes impacts to slopes greater than 15%, it does not appear that that the applicant can meet the variance standard for unwarranted hardship; that is, without the granting of this variance, the applicant would be denied reasonable and significant use of this lot. Currently, the property is

developed with a one-story dwelling, hot tub, patio, wood deck, walkway, garage, and gravel driveway. The applicant proposes to expand the garage and construct two patios, a retaining wall, a screened porch, and a porch. One of the proposed patios is located in an area of slopes greater than 15%. Given the uses currently enjoyed by the applicant on this property, we do not believe that the County has evidence on which to base a finding that, without the patio located in an area of steep slopes, the entire parcel would lack reasonable and significant use. Therefore, no disturbance to steep slopes should be permitted. Granting of such a variance to allow an accessory structure, such as a patio, in an area of slopes greater than 15% will result in destabilization of the slope, an increase in stormwater and sediment runoff, and the loss of essential infiltration opportunities. It appears that the applicant could avoid the need for a variance to steep slopes by placing the patio on the northwestern or southwestern corners of the lot. Therefore, the comments provided in my November 13, 2007 letter and December 17, 2007 letter are still applicable to this project, and I recommend that this variance request be denied. I have attached the two aforementioned letters to be included in the record for this variance case.

Thank you for the opportunity to provide comments. Please include this letter in your file and submit it as part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case. If you have any questions, please call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: AA 645-07

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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June 24, 2008

Mr. Bruce M. Grey
Deputy Director
Office of Planning and Preliminary Engineering
State Highway Administration
707 North Calvert Street, Mailstop C-301
Baltimore, Maryland 21202

Re: US 50 Crossing Study

Dear Mr. Grey:

Thank you for providing the Draft Environmental Impact Statement for the above-referenced project. The State Highway Administration (SHA) proposes to replace the existing US 50 Harry W. Kelley Memorial Bridge over the Sinepuxtent Bay in Ocean City, MD. At this time, SHA has is considering five proposals for replacement of the bridge: No major improvements, bridge rehabilitation, construction of a fixed span bridge, construction of a 4-lane bridge south of US 50, and construction of a 4-lane bridge north of US 50.

Because of the extensive nature of development associated with this project, including significant Buffer impacts, the US 50 Bridge will require conditional approval from the full Critical Area Commission, as regulated under COMAR 27.02.06. A complete, approved application must be submitted *one month prior* to the Commission Meeting in which SHA wishes to present this project. Enclosed with this letter is a copy of the State Application Checklist for Critical Area Projects. We recommend that SHA work closely with Commission staff to address any issues or concerns that may be associated with this project.

In addition, upon reviewing the information provided in the Draft Environmental Impact Statement, we have the following comments:

1. Because the project is located in an Area of Intense Development, 10% Phosphorus Removal will be required. Please see the Critical Area 10% Rule

Guidance Manual for more information (http://www.dnr.state.md.us/criticalarea/guidancepubs/10percent_rule.html)

2. The applicant will be required obtain a letter from the Maryland Department of Natural Resources Wildlife and Heritage Service to determine if this project will impact any rare, threatened, or endangered species. Impacts will need to be addressed in the application based on recommendation from the Maryland Department of Natural Resources. It appears from the information provided that the project will impact several areas where threatened and endangered species are known to exist on-site.
3. The applicant must to obtain a letter from the Maryland Historic Trust to determine if this project will impact historic structures onsite. It appears from the information provided that the project may potentially impact eight historic sites.
4. Mitigation for any disturbance to the Buffer will be required at a 3:1 ratio.
5. Mitigation for any disturbance to vegetation outside the 100-foot Buffer will be required at a 1:1 ratio.
6. All mitigation must be shown on a planting plan that identifies species, stocking density, and a planting schedule. The planting plan should be included with the submittal and is required for app projects with 5,000 square feet of mitigation or greater prior to scheduling within the Commission.
7. Any MDE tidal or non-tidal permits or licenses will need to be acquired prior to Commission approval.
8. We recommend that SHA work closely with Worcester County and the Town of Ocean City on this project.

Thank you again for providing information on this project. If you have any questions, please feel free to contact me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: 19-08

Martin O'Malley
Governor

Anthony G. Brown
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June 24, 2008

Chris Corkell
Talbot County Office of Planning and Zoning
28712 Glebe Road, Suite 2
Easton, Maryland 21601

Re: Bay Hundred Restaurant
Appeal #1493

Dear Ms. Corkell:

Thank you for providing information on the above referenced special exception and variance request. The applicant is requesting a special exception to authorize seasonal outdoor seating for a restaurant in excess of 100 seats, and to permit a seasonal outdoor service bar, grill, and outdoor crab steaming area to the extent that these uses and accessory structures are considered expansions of a special exception use. Additionally, the applicant is requesting an after-the-fact variance to maintain two existing awnings and an existing wood deck within the 100-foot Buffer. The property is 0.83 acres and is designated Limited Development Area (LDA). The proposed awnings and deck will be located closer to Mean High Water than the existing structure (19.6 feet); one awning will be located 3.6 feet from the MHW, the second awning will be 26.5 feet from MHW, and the deck will be located immediately adjacent to the bulkhead. Total impervious surface onsite is 31,259 square feet (86%); no new impervious surface will be proposed onsite.

Provided that the proposed special exception is in conformance with the requirements of the Talbot County Ordinance for a special exception, we do not oppose the special exception request.

Based on the information provided, Commission staff questions whether a variance is the appropriate mechanism to permit redevelopment in excess of the 15% impervious surface area limit. Rather, the use of growth allocation should be considered. We note that Talbot County Code §190-109D has provisions that allow the County to create new IDA areas less than 20 acres in size. We recommend that the Board address whether the use of growth allocation is possible prior to considering the variance request.

Should the Board determine that this variance request can be heard, Commission staff recommends the following measures be considered as conditions to the approval:

1. Due to the after-the-fact nature of this request, we recommend 3:1 mitigation for disturbance to the 100-foot Buffer.
2. We recommend that the existing deck be configured to be pervious in nature (at least 1/8-inch gaps between the boards, a sloping 6-inch gravel bed is located below the decking to allow stormwater infiltration, and small shrubs planted around the deck).
3. We recommend that a 5-foot vegetated setback from the bulkhead be required to provide additional habitat and water quality benefits onsite.
4. Due to the extensive amount of impervious surface currently located onsite within an LDA area, we recommend the applicant install stormwater Best Management Practices onsite to address the rooftop runoff from the awnings. The Board may wish to consider having the applicant meet the Critical Area 10% Phosphorus Removal requirement onsite.

Thank you for the opportunity to provide comments. Please include this letter in your file and submit it as part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case. If you have any questions, please call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: TC 369-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
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June 26, 2008

Mr. Anthony DiGiacomo
Cecil County Department of Planning and Zoning
129 East Main Street
Elkton, MD 21921

Re: Curtis Subdivision

Dear Mr. DiGiacomo:

Thank you for providing information regarding the above referenced subdivision. The applicant is proposing to create two lots (2A and 2b) from the original Lot 2; both proposed lots are located outside of the Critical Area. Lot 2C is partially located within the Critical Area and is designated Resource Conservation Area (RCA). The parcel is 36.215 acres in size; 10.05 acres is located within the Critical Area. No development activities are proposed within the Critical Area portion of Lot 2C.

Based on the information provided, we have the following comments on this subdivision request:

1. Please have the applicant delineate the 110-foot Buffer on the site plan. The Buffer should be expanded for hydric or highly erodible soils, steep slopes, and/or nontidal wetlands that are located contiguous to the Buffer. It appears from the site plan that mixed alluvial soils, nontidal wetlands, and steeps slopes are all located adjacent to the Buffer.
2. Any future development on this property should be located outside of the 110-foot Buffer and the Expanded Buffer.
3. The applicant must receive a letter from the Department of Natural Resources Wildlife and Heritage Division (WHS) evaluating the property for any rare, threatened, or endangered species location onsite. Impacts will need to be addressed based on the recommendation from the Maryland Department of Natural Resources.
4. GIS maps reveal that FIDS Habitat is located onsite. While it is our understanding that no development or clearing is proposed within the FIDS habitat area at this time, we suggest that the applicant place this area in an easement to avoid any future development to this sensitive habitat area. At a minimum, please add a note to the plat indicating the presence

of FIDS habitat and the requirement for any disturbance of this area to comply with Cecil County development restrictions.

Thank you for the opportunity to provide comments on this subdivision request. We note the County is currently under sanction by the Critical Area Commission regarding the Habitat Protection Area provision of the Zoning Ordinance. Consequently, the Planning Commission may not approve any final subdivision plat in a Habitat Protection Area. Further, we may have additional comments to provide once the necessary changes to the Zoning Ordinance have been made.

Sincerely,

Nick Kelly

Natural Resource Planner

cc: CE 323-08

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/

June 26, 2008

Mr. Anthony DiGiacomo, AICP
Cecil County Department of Planning and Zoning
129 East Main Street
Elkton, MD 21921

RE: Browning Creek Subdivision Concept Plat
TM52 Block 24 Parcel 20

Dear Mr. DiGiacomo:

Thank you for providing information regarding the above referenced subdivision concept plat. The applicant is seeking to develop a 47-lot subdivision. The entire parcel is 355 acres, with 111.084 acres located in the Critical Area and designated Resource Conservation Area (RCA). The Critical Area portion of the site is currently developed with farm buildings and foundations. The applicant proposes to create 5 lots within the RCA portion of the site.

Based on the information provided, I have the following comments regarding the proposal:

1. It appears that the applicant wishes to create five lots within the RCA portion of the site. By doing this, the applicant will have exhausted all available development rights in the RCA. However, as mentioned in Kate Schmidt's July 26, 2006 letter, the status of the buildings shown within the Critical Area near Lot 47 should be clarified. If these buildings are to remain and can be considered as a dwelling units, they will need to be included in the density calculations and the proposal, as currently submitted, will need to be revised.

2. The Maryland Department of Natural Resources Wildlife and Heritage Service (WHS) has determined that FIDS Habitat is located onsite. While it is our understanding that no development or clearing is proposed within the FIDS habitat area at this time, we suggest that the applicant place this area in an easement to avoid any future development to this sensitive habitat area. At a minimum, please add a note to the plat indicating the presence of FIDS habitat and the requirement for any disturbance of this area to comply with Cecil County development restrictions.

3. Please have the applicant provide the amount of both State and private tidal wetlands located onsite. State wetlands cannot be included in Critical Area development calculations such as the number of allowable dwelling units for RCA, impervious surface, or forest clearing.

4. The eastern portion of the site is adjacent to a Nontidal Wetland of Special State Concern. Any proposed construction of water-dependent structures in this area will be subject to Maryland Department of the Environment regulations.

5. The property is located adjacent to a historic waterfowl concentration area. Therefore, any construction of water-dependent shoreline facilities will be subject to time-of-year restrictions. We recommend that the applicant contact WHS for more guidance on this issue.

6. WHS has indicated that State-listed threatened species (Lake-bank Sedge and Maryland Burmarigold) are known to occur within close proximity of the project site in Black Duck Creek. A site-specific survey of the RCA should be done to determine whether these species occur near the proposed development. If species are found, the applicant must follow any guidance provided by this agency in terms of conserving these sensitive species.

7. The applicant should avoid all impacts to steep slopes within the Critical Area portion of the site

8. We understand that the Cecil County Chesapeake Bay Critical Area Program §9.1 states that the Buffer shall be "extended four feet for every percent of slope over 15 percent or to the top of the slope, whichever is greater, but in no case more than 10 feet beyond the top of the slope greater than 10 percent." However, applicants must extend the Buffer for steep slopes according to the Cecil County Zoning Ordinance §196.2.b. and COMAR 27.01.09.01C(7), which states that "...In the case of contiguous slopes 15 percent or greater, the Buffer shall be expanded four feet for every one percent of slope, or the top of the slope, which is greater in extent." In order to verify its accuracy, please have the applicant provide samples of the methodology used on this site to calculate the expanded Buffer.

9. The 110-foot Buffer must to be expanded on the southern end of Lot 43, as steep slopes on Lot 43 are located contiguous to the Buffer on adjacent Parcel 22.

10. The 110-foot Buffer must be expanded for steep slopes in the area of common open space within the Critical Area.

Thank you for the opportunity to provide comments on this subdivision request. We note the County is currently under sanction by the Critical Area Commission regarding the Habitat Protection Area provision of the Zoning Ordinance. Consequently, the Planning Commission may not approve any final subdivision plat in a Habitat Protection Area. Further, we may have

additional comments to provide once the necessary changes to the Zoning Ordinance have been made.

If you have any questions, please call me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner
cc: CE 466-06

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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June 30, 2008

Mr. Tony DiGiacomo
Cecil County Department of Planning and Zoning
County Administration Building
200 Chesapeake Boulevard, Suite 2300
Elkton, MD 21921

Re: Elk Point Marina, Concept Plat
March 2008 Technical Advisory Committee

Dear Mr. DiGiacomo:

Thank you for providing information regarding the above-referenced subdivision. The applicant is proposing a 75-lot subdivision on a 76.326 acre parcel. Currently, 27.995 acres are designated as Intense Development Area (IDA), on which 70 of the lots are proposed. The remaining 48.331 acres are currently designated as Resource Conservation Area (RCA). The applicant is proposing the use of growth allocation to change the designation of 23.25 acres from RCA to Limited Development Area (LDA) in order to accommodate the remaining 5 proposed lots.

Based on the information provided, we have the following comments on this growth allocation and subdivision request:

1. It appears that the building envelopes of Lots 71, 72, and 75 are located in an area of slopes 15% or greater, which would thus require a variance in order to construct on each lot. Subdivisions must be created so that any need for a variance is eliminated. Please have the applicant reconfigure these lots to be conforming in nature.
2. The applicant is required to establish a 300-foot setback for the newly created LDA unless the local jurisdiction proposes, and the Commission approves, alternative measures for enhancement of water quality and habitat that provide greater benefits to the resources. It appears that the applicant is providing a Buffer Enhancement Easement on all lots that lie within 50 feet of the required expanded Buffer to "further Buffer sensitive areas." Commission staff has significant concerns about whether this offset will provide greater benefits to water quality and habitat than a 300-foot Buffer. We strongly

recommend the applicant provide a 300-foot Buffer onsite, or consider providing several additional offsets in conjunction with the proposed easement.

3. The applicant proposes to place a marina and clubhouse parking within the 110-foot Buffer. No structures are allowed within the 110-foot Buffer unless they are water-dependent. The applicant must relocate these structures outside the Buffer.
4. The applicant has delineated several areas onsite as "Potential Buffer Expansion Areas." These regions are areas of steep slopes that are contiguous to the 110-foot Buffer or expanded Buffer. Per Section 196 of the Cecil County Zoning Ordinance, the 110-foot Buffer to tidal waters, tidal wetlands, and tributary streams, must be expanded to include contiguous sensitive areas, such as steep slopes, hydric soils, or highly erodible soils. Therefore, the Buffer must be expanded for these areas.
5. It is our understanding that the applicant proposes to use drip irrigation onsite to meet the goals of wastewater and sewage systems onsite. Prior to full submittal to the Critical Area Commission, the applicant will need to provide a copy of the MDE approval for drip irrigation for this site.
6. For future clarification, we recommend the applicant draw the "Growth Allocation Request Area" boundary on the amended concept plat.
7. The concept plat should indicate soil type in order to demonstrate whether further expansion of the Buffer is required for hydric soils or for highly erodible soils. Expansion of the Buffer for these resources shall be to the upland limit per Section 196.2.c of the Zoning Ordinance. If onsite soil testing was done to address the status of the highly erodible soils, this information must be provided to this office.
8. Due to the presence of Natural Heritage Areas, a bald eagle's nest, and Wetlands of Special State Concern onsite, a Habitat Protection Plan will be required for review and approval by this office. An updated review of the property from the Maryland Department of Natural Resources Wildlife and Heritage Service (WHS) is also required. Any recommendations made by WHS must be addressed and incorporated into the Habitat Protection Plan.
9. Mitigation for forest clearing onsite shall be provided at a 1:1 ratio, provided it is less than 20% clearing.
10. The application indicates shoreline erosion control measures will be installed at this site. The applicant should contact MDE Tidal Wetlands Division to determine the type of replacement structure that may be allowed. A copy of any approved permit must be forwarded to this office.
11. The concept plan states approximately 70 private slips will be provided as part of the subdivision. Information included in our files state the old commercial marina provided 50 boat slips. If the applicant is proposing a community facility for the residents of the subdivision, the number of slips is determined by Section 198 of the Cecil County Zoning Ordinance. Section 198 permits the lesser of one slip for each 50 feet of shoreline in the IDA and LDA or 37 slips for the 75 platted lots in the Critical Area. If the applicant is proposing a commercial marina, the number of allowable slips is determined by Maryland Department of the Environment.
12. Conceptual 10% calculations should be provided at the Concept Plan stage to ensure that the applicant accounts for the necessary stormwater treatment measures through the design stage.

We note that, as of July 1, 2008, the growth allocation guidelines found in Natural Resources Article 8-1808.1(c) are now *standards*. The Critical Area Commission shall ensure that these standards are applied in a manner that is consistent with the purposes, policies, goals, and provisions of the Critical Area Law and Criteria. Documentation of the County's application of these standards must be provided as a part of the growth allocation request. The standards are provided below:

1. Locate a new Intensely Developed Area in a Limited Development Area or adjacent to an existing Intensely Developed Area
2. Locate a new Limited Development Area adjacent to an existing Limited Development Area or an Intensely Developed Area
3. Locate a new Intensely Developed Area in a Limited Development Area in a manner that minimizes impacts to a habitat protection area as defined in COMAR 27.01.09, and in an area and manner that optimizes benefits to water quality
4. Locate new Intensely Developed Area or Limited Developed Area in a Resource Conservation Area at least 300 feet beyond the landward edge of tidal wetlands, unless the local jurisdiction proposes, and the Commission approves, alternative measures for enhancement of water quality and habitat that provide greater benefits to the resources
5. New Intensely Developed or Limited Development Areas [to be located in the Resource Conservation Area]involving the use of growth allocation shall conform to all criteria of the Commission for Intensely Developed or Limited Development Areas and shall be designated on the comprehensive zoning map submitted by the local jurisdiction as part of its application to the Commission for program approval or at a later date in compliance with Section 8-1809(g)
6. Except in Calvert, Caroline, Cecil, Charles, Dorchester, Kent, Queen Anne's, St. Mary's, Somerset, Talbot, Wicomico, and Worcester, no more than one-half of the expansion allocated in the criteria of the Commission may be located in Resource Conservation Areas
7. The area of expansion of Intensely Developed or Limited Development Areas, or both, may not exceed an area equal to 5 percent of the county's portion of the Resource Conservation Area lands that are not tidal wetland or federally owned
8. New Intensely Developed Areas and Limited Development Areas should be located where they minimize impacts to the defined land uses of the Resource Conservation Area

In accordance with §8-1808.1(c)(3), the Commission shall also consider the following factors when reviewing a map amendment involving a new Limited Development Area:

1. Consistency with the jurisdictions adopted comprehensive plan and whether the growth allocation would implement the goals and objectives of the adopted plan
2. Whether the development is to be served by a public wastewater system or septic system that uses the best available nitrogen removal technology; is a completion of an existing subdivision; is an expansion of an existing business; or is to be clustered
3. The use of existing public infrastructure, where practical
4. Consistency with State and Regional Environmental Protection Policies concerning the protection of threatened and endangered species and species in need of conservation that may be located on- or off-site

5. Impacts on a Priority Preservation Area, as defined under §2-518 of the Agriculture Article
6. Environmental impacts associated with wastewater and stormwater management practices and wastewater and stormwater discharges to tidal waters, tidal wetlands, and tributary streams
7. Environmental impacts associated with location in a coastal hazard area or an increased risk of severe flooding attributable to the proposed development

An application made to the Critical Area Commission for approval of growth allocation should include a conceptual development plan, environmental features map, and a report to determine whether the development standards, as well as the factors the Commission shall consider when reviewing this growth allocation, can be achieved for this project. The applicant should also include 10% pollutant reductions requirements and all habitat protection area standards. Finally, the submittal should include a revised Critical Area Map showing the area proposed to be changed that matches the requested number of acres proposed to be changed.

Finally, we note the County is currently under sanction by the Critical Area Commission regarding the Habitat Protection Area provision of the Zoning Ordinance. Consequently, the Planning Commission may not approve any final subdivision plat in a Habitat Protection Area. Further, we may have additional comments to provide once the necessary changes to the Zoning Ordinance have been made.

Thank you for the opportunity to provide comments. If you have any questions, please contact me at (410) 260-3483.

Sincerely,

Nick Kelly

Nick Kelly
Natural Resource Planner

cc: Jason Traband, CNA
Lori Byrne, DNR
Reggie Graves, MDE
CE10-04