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/

July 1, 2008

Ms. Pam Cotter
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road, MS 6301
Annapolis, MD 21401

Re: 2008-0209-V – Schummer, Raymond and Dorothy

Dear Ms. Cotter:

I have received the information regarding the above-referenced variance request. The applicant requests a variance to allow a dwelling with less setbacks and buffer than required. The lot is designated as a Resource Conservation Area (RCA) and the majority of the lot is encumbered by an expanded 100-foot Buffer. This lot is 4.78 acres and is currently improved with an existing dwelling unit. The applicant proposes to raze the existing dwelling and construct a new dwelling in a similar footprint slightly pushed back from the northwestern slopes. The existing impervious site coverage on this site is 12,054 square feet for the current house and the applicant proposes a reduced reconstruction of 11,561 square feet, which is within the impervious surface area limits for a lot of this size.

We cannot support this variance request as submitted. This is a large lot and it appears that there is ample opportunity to construct this new dwelling outside of the Buffer. This proposal does not minimize impacts to the extent feasible as a redevelopment project. This proposal constitutes complete redevelopment of the parcel, ample opportunity to site the new dwelling as far away from the water as possible, and at the very least, outside of the first 100 feet from the water. Where there is a reasonable alternative to further minimize disturbance to the Buffers, slopes, and other natural areas, the variance should be denied. Equally, it is the burden of the applicant to comply to the law in so far as possible and when the opportunity exists, to redevelop the property in keeping with the spirit and intent of the County's Critical Area Program. Should the Hearing Officer determine further minimization is possible, the County should send revised plans to this office for review and comment.

Thank you for the opportunity to comment. Please include this letter in your file and submit it as part of the record for variance. Please notify the Commission of the decision made in this case.

Sincerely,

Julie Roberts
Natural Resources Planner

cc: AA 363-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

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Executive Director

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July 1, 2008

MAJ John Hayes, Deputy Base Civil Engineer
Maryland Air National Guard, Martin State Airport
2701 Eastern Boulevard
Baltimore, MD 21220-2899

Re: Proposed Extension to Hercules Boulevard

Dear Major Hayes,

Thank you for forwarding the information for your proposed extension to Hercules Boulevard. Under COMAR 27.02.05, State Agency Actions Resulting in Development on State-Owned Lands, this project must be presented to the Critical Area Commission for review and approval. In order to facilitate my review of this project, it would be helpful if the pertinent parties involved in this proposal meet to discuss outstanding items. There are several issues that we would like to discuss, including the 10% calculations submitted and other information that is missing from the project submittal. This information is required in order to complete the submittal and schedule your project before the Critical Area Commission.

Please contact me at your earliest convenience or have your consultant contact me in order to set up a meeting with the pertinent members of your staff. I would also like to include Leyla Lange and Robin Bowie in the meeting.

Thank you for your attention to this matter and I will look forward to hearing from you. I can be reached at 410-260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner

Cc: Robin Bowie, Maryland Aviation Administration
Leyla Lange, Maryland Aviation Administration
Shashi Patel, Prime Engineering Incorporated
John McVicker, Air National Guard
26-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

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July 1, 2008

Mr. Stephen Crowell
VIKA Incorporated
8180 Greensboro Drive, Suite 200
McLean, VA 22102

Re: Indian Head NSWC
Riverview Village Phase II, VIKA #6850B

Dear Mr. Crowell,

Thank you for sending information on the above-referenced project to review for consistency under the Maryland Coastal Zone Management Act and the goals and objectives of the Critical Area Law and Criteria. The submitted proposal is the second phase of a project previously reviewed by Kate Schmidt in December of 2006. I have reviewed the materials and determined that this project on Federal lands is consistent with the Maryland Critical Area Law and Criteria in the Code of Maryland Regulations based on the following reasons:

- Stormwater calculations have been provided for Phase I and II of this redevelopment. The pollutant removal requirement was met for both phases of development by the construction of the Extended Detention Pond, which services all redevelopment on site.
- No activities are proposed within the 100-foot Buffer.
- There will be no impacts to other Habitat Protection Areas.

Thank you for coordinating with us on this project. If you have any questions, please call me 410-260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner
Cc: 47-06

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

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Executive Director

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July 1, 2008

Ms. Regina Esslinger
Baltimore County DEPRM
401 Bosley Avenue, Suite 416
Towson, Maryland 21204

Re: Variance – 3001 Eastern Boulevard

Dear Ms. Esslinger:

Thank you for providing information on the above referenced variance. The applicant is requesting a variance to the impervious surface limits and to the 100-foot Buffer to a stream. This lot is 29,895 square feet and located in a Limited Development Area (LDA). The applicant proposes to pave an area of 1,675 square feet and construct an addition that is partially within the 100-foot stream Buffer. This lot is currently improved with 7,540 square feet of impervious surface, which is over the allowable impervious surface area of 5,445 square feet. The proposed total area of impervious surface on this site is 9,215 square feet, which is almost double allowable impervious surface area. In addition, approximately 1,208 square feet of the proposed addition and paving will be within the 100-foot Buffer to the stream. We oppose this variance request because the applicant has not met all of the standards, including the standard of unwarranted hardship, which the General Assembly defined as "without the variance, the applicant would be denied reasonable and significant use of the entire parcel or 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, especially emphasizing the importance of the 100-foot Buffer. In particular, the General Assembly reaffirmed the stringent standards, 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 zoning board finds that an applicant has satisfied its burden to prove that the applicant meets each one of the county's variance standards.

In addition, the State law establishes 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. The State law, including the presumption of non-conformance, applies to all variance decisions in the Critical Area and the 100-foot Buffer. [2007 Laws of Maryland, Chapter 221].

The Critical Area Law and Criteria are intended to assure that the integrity of the Critical Area is not compromised by the individual and cumulative impacts of development. This variance would be in direct contrast to the goals of the General Assembly and for the Critical Area. This lot is already subject to reasonable use. Accordingly, we do not believe that the applicant can meet the standard of unwarranted hardship, and we oppose this variance request. I have addressed each of the standards as it pertains to this case:

Relevant Variance Standards

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.*
   As stated above, the General Assembly defined "unwarranted hardship" to mean that without the requested variance, the applicant would be denied reasonable and significant use of **the entire parcel or lot**. The applicant already enjoys reasonable and significant use of the property by virtue of the existing building, covered walks, porches, parking, and paved area. Based on this information, we do not believe that the County has evidence on which to base a favorable finding of this factor.

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.*
   There is no inherent right to build a structure in the Buffer or to exceed impervious surface area limits on a lot. Therefore, denial of this variance 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 that would be denied to others in this area, as well as in similar situations in the County's Critical Area. Commission staff would not support similar requests to construct an addition within a stream Buffer, particularly where the lot currently exceeds the impervious surface area limit in the Law. The proposed addition and paving would create further nonconformance on the lot and is not in keeping with the spirit and intent of the Law. 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.*
   This variance request is not based on conditions or circumstances which are the result of the actions by the applicant.

5. *The granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat with in 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.*
   In contrast, the granting of this variance is not in harmony with the general spirit and intent of the Critical Area law and regulations. This proposal would impact the Buffer to the stream, creating more impervious surface which not only affects the filtration of stormwater but limits the area and ability for functioning habitat. Therefore this proposal would not only reduce water quality on site, but would contribute to the individual and cumulative impacts of development on the Bay.

This letter has addressed five of the relevant variance standards. Based on the information provided, the applicant has not met all of the standards. The County and State law provide that in order to grant a variance, the applicant must meet and satisfy each and every variance standard. Therefore, we recommend that the County deny the applicant's request for this variance.

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,

Julie Roberts
Natural Resource Planner
cc: BC 365-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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July 2, 2008

Mr. Steven Dodd
Dorchester County Planning and Zoning
County Office Building
P.O. Box 307
Cambridge, Maryland 21613

Re: James BEA

Dear Mr. Dodd:

Thank you for forwarding information on the above referenced project. The applicant proposes to construct a structure (wind turbine) with a 225 square foot pad no further waterward than an existing structure (concrete wall). The lot is 27,878 square feet and is located in a Limited Development Area (LDA). This is a Buffer Exempt Area (BEA). The existing impervious surface on this lot is currently 5,806, which is over the allowable impervious surface for a lot of this size (allowable impervious surface area is 5,445). The applicant proposes to remove a total of 587 square feet which will bring this lot into conformance, for a total impervious surface area of 5,444 square feet.

Provided this lot is properly grandfathered, we do not oppose this request. Per our BEA Policy, the applicant must mitigate at a 2:1 ratio for the area of new disturbance in the Buffer, for a total of 450 square feet of plantings. These plantings should be placed waterward of the existing dwelling to the extent possible. The plantings should be done in the form of native species and the applicant shall provide to the County a schedule which includes the species, size, spacing, and proposed dates of plantings for your review and approval. The County should note that no further impervious surface may be constructed on this property without a variance.

We will be providing further guidance regarding wind turbines under separate cover. Thank you for the opportunity to provide comments. If you have any questions, please contact me at 410-260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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July 7, 2008

Mr. Brendan McArdle
AMT, Inc.
12750 Twinbrook Parkway
Rockville, MD 20852-1700

Re: Jersey Island Bulkhead Replacement Project

Dear Mr. McArdle:

Earlier this year, you sent plans for both the above-referenced project and Piers "F" and "G" at Somers Cove Marina. We processed the Pier project for consistency under the Maryland Coastal Zone Management Act (CZMA) and the goals and objectives of the Critical Area Law and Criteria. The Jersey Island Bulkhead Replacement project is a state project on state owned land and therefore does not qualify for consistency under CZMA. Instead, this project must be approved by the Critical Area Commission under COMAR 27.02.05, 'State Agency Actions Resulting in Development on State-Owned Lands' prior to start of Construction. In order to process this project, we require that all necessary materials be received by this office approximately 6 weeks prior to the desired Critical Area Commission meeting which are scheduled for the first Wednesday of every month (barring any conflicts with holidays).

Please review the enclosed checklist and provide the necessary materials to have this project reviewed by Critical Area Commission staff. We will then schedule this project for review by the Commission. If you are no longer involved with this project, please call me and forward any contact information for the individual responsible. Thank you for attention on this matter. If you have any questions, please call me at (410) 260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner

Cc: Mr. John Brush, Maryland Department of General Services
Mr. Keith Lackie, Maryland Department of Planning

Enclosures

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

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Executive Director

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July 8, 2008

Aimee Dailey
Charles County Department of Planning and Growth Management
PO Box 2150
La Plata, MD 20646

Re: Local Case No. ORD 80128 – Rock Point

Dear Ms. Dailey:

Thank you for forwarding the above referenced grading project for review and comment. This lot is 0.81 acres and is located in the Intensely Developed Area (IDA). The applicant proposes to emplace a 200 foot long stone revetment for the purposes of shore erosion control. It appears that the Buffer disturbance will be in the amount of 4,960 square feet. Based on this information I have the following comments:

The cross section provided indicates that graded area will be the source for the fill. The applicant has failed to demonstrate that it is the minimum necessary for shore erosion control. It appears that more disturbance to the Buffer is proposed than necessary to stabilize the bank and the overall extent of grading proposed remains significant and excessive. It appears that shore erosion control could be accomplished without grading the bank, leaving the bank to fall to a natural angle of repose. We recommend that the applicant resubmit the proposal to the County without the grading to the bank. In addition, the applicant must mitigate at a ratio of 1:1 for the square area of disturbance in the Buffer associated with the revetment, including any and all grading. Please indicate in future submittals how all mitigation will be implemented.

Thank you for the opportunity to provide comments on this shore erosion control proposal. If you have any questions, please contact me at (410) 260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner
cc: CS 383-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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July 8, 2008

Aimee Dailey
Charles County Department of Planning and Growth Management
PO Box 2150
La Plata, MD 20646

Re: Local Case No. VR 80062 – John Denison

Dear Ms. Dailey:

Thank you for forwarding the above referenced shore erosion control project for review and comment. There are three components to the application submitted. The applicant proposes to rebuild an existing pier; construct a marsh, and construct a revetment along 1,200 feet of eroding shoreline. It appears that a tidal wetlands license has been received from MDE for these proposed activities. Please find my comments below.

Pier
We have no comments regarding the construction of the proposed in-kind pier.

Marsh Creation
Any area of the Buffer disturbed during the creation of the marsh requires mitigation at a ratio of 1:1. Mitigation plantings should be performed within the Buffer. The applicant should submit a plantings plan to the County including the species, spacing, size and schedule for review. Additionally, the County should certify the existing Mean High Water (MHW) location for regulatory purposes. It should be noted that any marsh creation located below MHW is the property of the State and not of the applicant.

Revetment
The applicant is proposing to grade the 100-foot Buffer and emplace stone along 1,100 feet of shoreline. The cross section provided indicates that graded area will be the source for the bench. The applicant has failed to demonstrate that it is the minimum necessary for shore erosion control. In fact, it appears that much more disturbance to the Buffer is proposed than necessary in order to fill behind the revetment, and as such the overall extent of grading

proposed remains significant and excessive. It appears that the shore erosion control aspect of this project could be accomplished without grading the bank, leaving the bank to fall to a natural angle of repose. We recommend that the applicant resubmit the proposal to the County without the grading to the bank. In addition, the applicant must mitigate at a ratio of 1:1 for the square area of disturbance in the Buffer associated with the revetment, including any and all grading. Please indicate how all mitigation requirements will be fulfilled.

Thank you for the opportunity to provide comments on this shore erosion proposal. If you have any questions, please contact me at (410) 260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner

cc: CS 382-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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July 14, 2008

Mr. Arnold Norden
Maryland Park Service
Tawes State Office Building
580 Taylor Avenue
Annapolis, MD 21401

Re: Smallwood State Park, Art Center Parking Improvements (2008-DNR-039)

Dear Mr. Norden:

I have reviewed the above-referenced project to perform road and parking lot repair and resurfacing. The project will repair existing packed gravel entry road with millings; repair a 130'x130' blue chip parking area; resurface a handicapped parking area; and post four lights on exterior of an existing building. Since there will be no expansion of the roads or parking areas, this action by the Department does not constitute a development activity and does not require approval by the Commission.

This office supports the Department's efforts in repairing existing public facilities on State lands. In addition, we appreciate your continued efforts to provide Commission staff notice of these projects.

Thank you again for forwarding this request to this office. Please call me at (410) 260-3476 if you have any questions.

Sincerely,

Julie Roberts
Natural Resources Planner

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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July 14, 2008

Aimee Dailey
Charles County Department of Planning and Growth Management
PO Box 2150
La Plata, MD 20646

Re: Local Case No. SFD 80218 – William L. Breese

Dear Ms. Dailey:

This office has received the above referenced building permit for comments. This parcel is 48.45 acres, with a total of 37.57 acres located in the Resource Conservation Area (RCA). The applicant proposes to construct a single family dwelling unit for a total disturbed area of 36,723 square feet. Based on the information submitted, I have the following comments:

1. It appears that the applicant has incorrectly expanded the 100-foot Buffer to include the areas of nontidal wetlands and its buffer. Please have the applicant correct this error on the site plan.
2. It should be noted that a portion of the northwest quadrant of the site is within a habitat protection area (HPA) for a federally listed species, presumably an eagle's nest. Should the applicant propose any future construction within this area, time of year (TOY) restrictions may be necessary.
3. Please ensure that the Buffer has been expanded as necessary to include hydric and highly erodible soils. We note that Elkton soils are considered hydric and are shown to be contiguous with the 100-foot Buffer. In addition, Keyport soils are considered highly erodible. If a slope greater than 5% accompanies the keyport soils in an area contiguous to the 100-foot Buffer, the Buffer must be expanded to include the extent of highly erodible soils
4. The applicant has indicated that 15.64 acres of this parcel is forested, meeting the minimum forestation requirements. No clearing is proposed.

Thank you for the opportunity to provide comments. If you have any questions, please contact me at (410) 260-3746.

Sincerely,

Julie Roberts
Natural Resources Planner

cc: CS 393-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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July 14, 2008

Ms. Pam Cotter
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road, MS 6301
Annapolis, MD 21401

Re: 2008-0219-V – Keenan, D. Michael

Dear Ms. Cotter:

I have received the information regarding the above-referenced variance request. The applicant requests a variance to allow a dwelling with less setbacks and Buffer than required and with disturbance to slopes greater than 15%. The lot is designated as a Resource Conservation Area (RCA). This lot is 5.402 acres and is currently improved with an existing dwelling unit. The applicant proposes to raze the existing dwelling and construct a new dwelling. The existing impervious site coverage on this site is 13,207 square feet for the current house and driveway and the applicant proposes 14,442 square feet of lot coverage. This proposal would increase the size of the dwelling unit from 1,800 square feet to 3,683 square feet. We cannot support this variance request as submitted.

Impacts to the 100-foot and Expanded Buffer

While it is difficult to ascertain from the information provided where the existing dwelling footprint is in relation to the proposed dwelling, it appears that the proposed replacement dwelling places an extensive area of new lot coverage waterward of the existing dwelling and in a sprawling manner. We recognize that the existing dwelling is located within the expanded 100-foot Buffer. However, the subject property is a large lot and it appears that there is ample opportunity to construct a new dwelling outside of the expanded Buffer entirely. In the context of redevelopment of the parcel as proposed, every effort to site the new dwelling as far away from the water as possible should be made, and every opportunity to minimize the amount of lot coverage should be explored. In contrast, the applicant proposes to more than double the size of the proposed dwelling in the expanded Buffer and has made no apparent attempts to minimize overall disturbance.

Should the Hearing Office find it reasonable to reconstruct a replacement dwelling within the Buffer in the general vicinity of the existing structure, the limits of disturbance should be restricted to the waterward extent of the existing dwelling. The proposal for development of the garage and terrace should be revised to reduce and further minimize the extent of disturbance to the Buffer. Preferably, the garage should be incorporated into the footprint of the dwelling or be eliminated from the plan.

Lot Coverage in the Critical Area

It is appears from the variance application that the property is being developed in the context of impervious surface area. In 2008, the General Assembly passed House Bill 1253 which included a change within the Critical Area from the term impervious surface area to the term lot coverage. As such, Section 8, Ch. 119, 2008 Laws of Maryland at 765, contains provisions in regard to the lot coverage requirements of Natural Resources Article §8-1808.3 which may be applicable to this variance application. Under these provisions, a development project whose initial application for development that satisfies all local requirements is filed by October 1, 2008 and whose development plan is approved (recorded) by July 1, 2010 may utilize Anne Arundel County's approved impervious surface area limitations in effect prior to July 1, 2008 provided that;

a) The approved development plan remains valid in accordance with Anne Arundel County's procedures and requirements; and

b) By July 1, 2010, the applicant prepares a detailed lot coverage plan drawn to scale and showing the amounts of impervious surface area, partially pervious area, and developed pervious surface area in the development project.

In addition to (a) and (b) above, Section 8, Ch. 119, 2008 Laws of Maryland at 765 requires the lot coverage plan to be approved by Anne Arundel County and implemented in accordance with the approved lot coverage plan. Should the applicant intend to develop this property in accordance with the County's impervious surface area limitations, please indicate that intent and ensure that the applicant is aware of the requirements of Chapter 119 of the 2008 Laws of Maryland for proceeding as such.

In summary, the County and State law provide that in order to grant a variance, the applicant must meet and satisfy each and every variance standard. Based on the proposal submitted, this applicant has failed to meet all of the County standards. Because the applicant has failed to meet all of the County and State variance standards, this office recommends that the Hearing Officer deny the applicant's request for this variance.

Thank you for the opportunity to comment. Please include this letter in your file and submit it as part of the record for variance. Please notify the Commission of the decision made in this case.

Sincerely,

Julie Roberts
Natural Resources Planner
cc: AA 380-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
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July 14, 2008

Mr. Steven Dodd
Dorchester County Planning and Zoning
County Office Building
P.O. Box 307
Cambridge, Maryland 21613

Re: Guidance on wind turbines

Dear Mr. Dodd:

It is my understanding that Dorchester County is seeking guidance on the siting of wind turbines, specifically located within the Critical Area 100-foot Buffer. Mr. Bonsteel of your office has indicated that several of these projects are being submitted to the County, and requested clarification as to whether the County may adopt provisions that would allow a building permit for these structures without necessitating a variance. We recently reviewed the James case and sent a letter regarding this project on July 2, 2008.

Commission staff has reviewed the materials sent to this office by Mr. Bonsteel and Mr. Fluharty, the contractor who is currently constructing the turbines within the County. In addition, we have reviewed the County Zoning Ordinance and Critical Area Program in reference to your request for guidance. Based on our review of these materials, it appears that a wind turbine would qualify as a structure in the County Code. As such, the County should continue to process requests to construct or erect a wind turbine on a case-by-case basis under the appropriate provisions in the County Code pertaining to development of new structures in the Buffer. In certain instances, such as the James case, it appears that the existing County provisions for development activities within the Buffer Exemption Area (BEA) may permit the siting of a wind turbine in the BEA without a variance. In other instances, such is the case of an undeveloped property or a non Buffer Exempt property, the location of the wind turbine in the Buffer may require a variance. Accordingly, please continue to forward these variance applications and BEA requests in a timely fashion that allows appropriate review by Commission staff.

Should the County wish to adopt separate or more specific regulations regarding the siting of wind turbines, such as the "Draft Model Small Wind Ordinance for Maryland" that was provided by the Energy Administration, Commission staff would be happy to work with you in drafting

and adopting appropriate ordinance language.. Thank you for the opportunity to provide input on this wind turbine siting process. If you have any questions, please contact me at 410-260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner

Replaces other ltr of same date

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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July 16, 2008

Mr. Steve Dodd
Dorchester County Planning and Zoning
County Office Building
P.O. Box 307
Cambridge, Maryland 21613

Re: Local case number 1190 – Scott, Douglas and Patti

Dear Mr. Dodd:

Thank you for forwarding the above-referenced project. The applicant proposes to convert one lot currently zoned as "agricultural" to a buildable lot ("C") located in the Resource Conservation Area (RCA). Based on the information provided, I have the following comments:

1. The note (3) on the recorded plat indicates that "the parcels being transferred ["A," "B," and "C"] are exempt from Dorchester County Subdivision regulations in accordance with Section 140-4A(3). The conveyance of an agricultural parcel does not confer upon the purchaser any expressed or implied development rights." Additionally, the recorded plat indicates that this agricultural subdivision was recorded on November 4, 2003, after the adoption of the Critical Area Law and Criteria. Parcel C is a substandard lot for RCA density, appears to have been created for agricultural purposes, and has only 4.94 acres seemingly associated with its creation. Without the additional 15.06 acres placed in "reserve" or added to Parcel C, this lot does not meet the required density for designation as a buildable lot within the RCA.

   No information has been provided, nor has it been demonstrated by the applicant that Parcel C has the requisite density associated with it to legally support the conversion from an agricultural parcel to a buildable lot. It is the burden of the applicant to provide this information.

2. Should the applicant resubmit a site plan which provides the requisite total of 20 acres for a lot in the RCA, he is also responsible for adding a 200-foot Buffer to this new subdivision lot in the RCA per Chapter 119 of the 2008 Laws of Maryland.

3. A letter has been provided by the from the Department of Natural Resources Wildlife and Heritage program indicating that there may be the presence of rare, threatened, or endangered species on or in the vicinity of the site. These species include the Hairy Snoutbean, Showy Goldenrod, Southern Goats-rue, Lowland Loosestrife, Rough Hedge-nettle, Long's Bittercress, Halberd-leaved Greenbriar, Butternut, Giant Cane, and Pumpkin Ash. Additionally, this parcel contains Forest Interior Dwelling (FIDs) bird habitat. Provided it is determined that the parcel can be upgraded to a buildable lot, all FIDs guidelines must be followed and information regarding any mitigation requirements must be provided at the time of subdivision.

3. Future submittals should contain information regarding proposed clearing, and proposed lot coverage onsite. Please note that if the applicant is able to provide documentation supporting the upgrade of this parcel to a buildable lot, the property is limited to 15% lot coverage.

4. No topography or soils information has been provided on the plat. The Buffer may need to be expanded for contiguous hydric or highly erodible soils. Please have the applicant include this information in the next submittal.

Thank you for forwarding this information for comment. Please forward any additional information should it become available. I can be reached at 410-260-3476 with any questions.

Sincerely,

Julie Roberts
Natural Resources Planner

Cc: DC 368-08

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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July 17, 2008

Aimee Dailey
Charles County Department of Planning and Growth Management
PO Box 2150
La Plata, MD 20646

Re: Local Case VC 80011 – Swan Point Yacht and Country Club Reforestation Plan

Dear Ms. Dailey:

Thank you for forwarding the above-referenced reforestation plan. We sent a letter to your office on June 10, 2008 requesting revisions to the submitted Yacht and Country Club Golf Course. The above-referenced plans were submitted subsequent to these comments and thus, do not benefit from the requested changes. However, I have reviewed the submitted reforestation plan. Please have the applicant ensure that all comments from my June 10, 2008 comment letter are reflected in each submission (the site plan and reforestation plan). I have the following comments for the reforestation plan:

1. Development is defined under the Charles County Zoning Regulations "as any activity, other than normal agricultural activity, which materially affects the existing condition or use of any land or structure, including mines, landfills, or land disturbances such as grading, paving, and excavation." Per § 297-131 of the County regulations, in addition to the State Critical Area Law and Criteria, the proposed development activity in the Buffer requires a variance. Please have the applicant submit a variance request for the proposed grading associated with the reconfiguration of the golf course greens and tee boxes. Minimization of disturbance in the Buffer must be a consideration of the redevelopment of this golf course.

2. Sheets 2/18 and 16/18 show new cart paths proposed in the Buffer. Per my previous letter, please have the applicant remove these proposed paths. Should the applicant choose to not remove the cart paths, a variance will be necessary.

3. The applicant has provided a reforestation plan which includes species, size, spacing, and distribution patterns for the site. Time of Year (TOY) restrictions have been included on sheet 1/18. The majority of these appear correct except for Hole #10 which includes a typo. It should read "July 31" instead of "July 13."

4. It is unclear how the applicant calculated mitigation amounts. For example, the "Trees to be removed inside the Chesapeake Bay Critical Area" table indicates that 141 trees plus 21,200 square feet need to be replaced. It appears that this has been calculated correctly. However, calculations near the top of the sheet show a total reforestation area of 2.15 acres. It is unclear where this number was derived from. Please have the applicant either clarify or revise.

Thank you for the opportunity to provide comments on this plan. If you have any questions, please contact me at (410) 260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner

cc: CS Swan Point Golf Course

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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July 17, 2008

Mr. Jack Willing, Director
Somerset County Dept. of Technical
And Community Services
11916 Somerset Ave., Rm. 211
Princess Anne, MD 21853

Re: Somerset County Critical Area Regulations
Adoption of 2006 Legislative Changes

Dear Mr. Willing:

This office has received a copy of the June 13, 2008 revisions to the County's Critical Area Ordinance (Somerset County, Maryland Resolution No. 973). These revisions are a result of legislative changes to the Critical Area law passed during the 2006 legislative session. The Critical Area Commission is accepting the revised ordinance for processing. The Chair will make an amendment or refinement determination within 30 days of the date of this letter, and Commission staff will notify you of his determination and the procedures for review by the Critical Area Commission.

Thank you for your cooperation. If you have any questions, please telephone me at (410) 260-3476.

Sincerely,

Julie Roberts
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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July 17, 2008

Ms. Pam Cotter
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road, MS 6301
Annapolis, MD 21401

Re: 2008-0218-V – Seybold, Nancy; Dynerman, Alan

Dear Ms. Cotter:

Thank you for forwarding the above-referenced variance request. The applicants request a variance to allow a dwelling with less setbacks and buffer than allowed. This lot is 29,573 square feet and is located in the Resource Conservation Area (RCA). This lot is fully encumbered by the expanded Buffer. The applicant proposes to raze the existing dwelling and construct a new dwelling unit, septic system, and driveway for an impervious surface amount of 2,248 square feet. This represents a net reduction of 1,013 square feet of impervious surface on site. In addition, the applicant is proposing to construct the dwelling an additional 9.5 feet back from the steep slopes than the existing dwelling. The applicant has also indicated that a large, existing brick patio is proposed to be replaced with "pervious material." From a conversation with the applicant today, July 16, 2008, he has indicated that area landward of the proposed deck to the edge of the bluff will be planted with native species and grasses.

Provided the lot is properly grandfathered, we do not generally oppose a variance request for the construction of a modest dwelling and driveway on this lot. However, it appears that further minimization is possible by restricting the location of the proposed dwelling to the footprint of the existing structure. Minimization to the extent possible is an important consideration in light of the dwelling's location in the Buffer and within the RCA, the Critical Area designation intended to provide the greatest protection to environmental resources. If the County determines this request, or some variation of this request can be granted, we recommend 3:1 mitigation for the area of disturbance in the expanded Buffer. A fee in lieu may be substituted if there are no appropriate areas on site for mitigation. The applicant should submit a plantings plan to the County for review and approval. The applicant is also proposing to construct two rain gardens on site for water quality purposes; we support the use of such gardens.

As a reminder, in 2008, the General Assembly passed House Bill 1253 which included a change within the Critical Area from the term impervious surface area to the term lot coverage. It is appears from the variance application that the property is being developed in the context of impervious surface area. As such, Section 8, Ch. 119, 2008 Laws of Maryland at 765, contains provisions in regard to the lot coverage requirements of Natural Resources Article §8-1808.3 which may be applicable to this variance application. Under these provisions, a development project whose initial application for development that satisfies all local requirements is filed by October 1, 2008 and whose development plan is approved (recorded) by July 1, 2010 may utilize Anne Arundel County's approved impervious surface area limitations in effect prior to July 1, 2008 provided that;

a) The approved development plan remains valid in accordance with Anne Arundel County's procedures and requirements; and

b) By July 1, 2010, the applicant prepares a detailed lot coverage plan drawn to scale and showing the amounts of impervious surface area, partially pervious area, and developed pervious surface area in the development project.

In addition to (a) and (b) above, Section 8, Ch. 119, 2008 Laws of Maryland at 765 requires the lot coverage plan to be approved by Anne Arundel County and implemented in accordance with the approved lot coverage plan. Should the applicant intend to develop this property in accordance with the County's impervious surface area limitations, please indicate that intent and ensure that the applicant is aware of the requirements of Chapter 119 of the 2008 Laws of Maryland for proceeding as such.

Please include this letter in your file and submit it as part of the record for variance. Please notify the Commission of the decision made in this case. I can be reached at 410-260-3476 should you have any questions.

Sincerely,

Julie Roberts
Natural Resources Planner

cc: AA 379-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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July 18, 2008

Ms. Regina Esslinger
Baltimore County DEPRM
401 Bosley Avenue, Suite 416
Towson, Maryland 21204

Re: Variance -- Callan Investments Propery, Frog Mortar Road Lots 58-61

Dear Ms. Esslinger:

Thank you for forwarding information on the above-referenced project. The applicant is requesting a variance to disturb the 25-foot nontidal wetlands buffer and 35 foot primary structure setback. This lot is 0.53 acres and is located in the Limited Developed Area (LDA). The applicant proposes to construct a new dwelling on this unimproved lot totaling 1,350 square feet which is within the 15% lot coverage limit. Additionally, the applicant proposes to clear existing phragmites and trees in the 25-foot nontidal wetlands buffer for a total amount of 13,000 square feet (per MDE authorization).

Provided the lot is properly grandfathered, we do not oppose this variance request for the construction of a modest sized dwelling on this lot. The applicant has provided a mitigation plantings plan for review by the County. Additionally, the applicant has received their permit from MDE to impact the nontidal wetland and their buffer (Authorization No. 07-NT-0398/200765394).

We have no comments on the request to impact the 35-foot setback.

Please include this letter in your file and submit it as part of the record for variance. Please notify the Commission of the decision made in this case. I can be reached at 410-260-3476 should you have any questions.

Sincerely,

Julie Roberts
Natural Resources Planner

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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July 21, 2008

Mr. Steve Dodd
Dorchester County Planning and Zoning
County Office Building
P.O. Box 307
Cambridge, Maryland 21613

Re: Local Case No. 1023 – Baumgartner Subdivision

Dear Mr. Dodd:

This office has received revised information for the above referenced subdivision proposal. On July 18, 2008, I spoke with Mr. Showalter and understand that he would like to be placed on the County's next Planning Commission meeting. Although we received the site plans on June 17, 2008, we have just received the Habitat Conservation Plan (HCP), a requested component of our review. We received this document on July 17, 2008. This document will require additional review time. However, in the interim, I have provided comments on the site plan received. Please note that these comments are subject to change and addition in light of the outstanding review of the HCP:

1. Please have the applicant delete Note 20, as it appears that the Comment 13 recognizes the presence of Delmarva Fox Squirrel on this site and notes that there is a HCP.

2. The applicant has provided a table and note (10) of the proposed total impervious area allowed.
   a. As worded, the applicant's note and table do not correctly express the allowable lot coverage for this development (please note that as of July 1, 2008, the term "impervious surface" is no longer applicable and that the term "lot coverage" should replace it).
   b. The applicant's note indicates that "Total impervious surface is limited to 15% of acreage being subdivided." This is incorrect. COMAR § 8-1808.3 states that, "Except as otherwise provided in this subsection for stormwater runoff, man-made impervious surfaces are limited to 15% of a parcel or lot." As each of the proposed lots is over 1 acre in size, each lot is limited to 15% total of lot coverage.
   c. Equally, if Deer Drive is a private road, the lot coverage associated with it must be removed from the total available amount for the site and for each individual lot.

d. Please have the applicant amend note 10 and the Critical Area table to reflect this information. Equally, the applicant should add a lot coverage table.

3. The subdivision plat must contain information regarding existing and proposed lot coverage. Section 8, Ch. 119, 2008 Laws of Maryland at 765, contains provisions in regard to the lot coverage requirements of Natural Resources Article §8-1808.3 which may be applicable to this subdivision. Under these provisions, a development project whose initial application for development that satisfies all local requirements is filed by October 1, 2008 and whose development plan is approved (recorded) by July 1, 2010 may utilize Dorchester County's approved impervious surface area limitations in effect prior to July 1, 2008 provided that;
   a) The approved development plan remains valid in accordance with Dorchester County's procedures and requirements; and
   a. By July 1, 2010, the applicant prepares a detailed lot coverage plan drawn to scale and showing the amounts of impervious surface area, partially pervious area, and developed pervious surface area in the development project.

   In addition to (a) and (b) above, Section 8, Ch. 119, 2008 Laws of Maryland at 765 requires the lot coverage plan to be approved by Dorchester County and implemented in accordance with the approved lot coverage plan. Should the applicant intend to develop this subdivision in accordance with the County's impervious surface area limitations, please indicate that intent and ensure that the applicant is aware of the requirements of Chapter 119 of the 2008 Laws of Maryland for proceeding as such.

4. It is not clear how areas of steep slopes were determined. No topographical information has been provided by the applicant. Therefore, it is unclear if the Buffer was expanded properly.

5. The applicant provided a revised note via email on July 18, 2008 for the plat regarding forest cleared. This note will need to be further reviewed in conjunction with the HCP to assess its sufficiency.

6. The applicant has indicated that 4.83 acres of forest will be cleared in association with this proposed subdivision. It appears that 1.65 acres will be replaced on site, both within and outside of the Critical Area. It is unclear how the applicant proposes to address the remaining 3.18 acres of reforestation.

I also requested in my letter dated August 21, 2007 that the final plat be provided to the US Fish and Wildlife Service for their review and comment prior to the final plat approval. Although I left a voice message for Cherry Keller of the USFWS, we have yet to discuss the adequacy of the site plan in conjunction with the HCP. Given the extent of outstanding issues, we question whether it is appropriate to schedule this proposed subdivision plat for review by the Planning Commission. Rather, the applicant should be required to correct the plat and resolve all outstanding inconsistencies, including the comments above.

Thank you for the opportunity to provide comments on this site plan. I will continue to review the site plan and will provide additional comments after my review of the HCP. In the interim, please have the

applicant address these comments and forward revised materials as they become available. If you have any questions, please contact me at 410-260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner

Cc: Ryan Showalter, Miles & Stockbridge via Fax 410-822-5450

DC 413-03

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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July 22, 2008

Aimee Dailey
Charles County Department of Planning and Growth Management
PO Box 2150
La Plata, MD 20646

Re: Cliffton on the Potomac Road Construction

Dear Ms. Dailey:

Thank you for forwarding additional information on the Potomac Road construction. A comment letter was provided to you by this office on June 15, 2007. During our conversation on July 16, 2008, you indicated that these roads have been now been built. Over the last year, we have been discussing appropriate mitigation sites for the 4.6 acres of forest cleared in association with the construction of the roads. You indicated during our June 15th conversation that the purpose of this submission was to alert this office that a fee-in-lieu has been paid to the County, as no appropriate mitigation sites could be secured for the mitigation plantings (of 4.6 acres at a 1:1 ratio). The site plan indicates that a total of $240,451.20 was collected as a fee-in-leiu (4.6 acres at $1.20 per square foot). It appears that the County exhausted options for finding appropriate sites for the mitigation plantings and that this has been an appropriate use of the fee-in-lieu program.

Thank you for updating this office regarding the collection of the fees. The Commission will be interested to hear how the fee-in-lieu monies are spent as the opportunities arise. The quarterly reports may be a good avenue for relaying this information. We have no further comments. If you have any questions, please contact me at (410) 260-3746.

Sincerely,

Julie Roberts
Natural Resources Planner

cc: CS 322-07

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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July 22, 2008

Mr. Steve Dodd
Dorchester County Planning and Zoning
County Office Building
P.O. Box 307
Cambridge, Maryland 21613

Re: Local case number 1196 – Windy Acres at St. John's Creek

Dear Mr. Dodd:

I have received the information for the above-referenced project. The applicant has submitted a "Feasibility Study" for a cluster subdivision. The project notification form indicates that there are 70.2 acres located in the Resource Conservation Area (RCA). Based on the limited information provided, I have the following comments:

1. Dorchester County Zoning Regulations provide for three types of subdivision plat submissions, a sketch plat, a preliminary plat, or a final plat (Chapter 140, Articles IV, V, and VI). It does not appear to contain provisions for the submission of a feasibility study, and thus, no associated standards for submission are provided in the code. As submitted, the neccssary and required components for a preliminary plat have not been included in this feasibility study. For example, natural features have not been labeled, nor has a legend been provided, among other missing components necessary for the review and comment of a proposed project. It is the responsibility of the applicant to provide as complete information as possible when submitting a site plan for project review. In the abscncc of this information, this office cannot provide adequate or complete comments for this feasibility study.

2. In the absence of a submittal that meets the minimum requirements set forth in the County Code, we question whether the County has made a determination that the submittal can or cannot benefit from any grandfathered rights that could have been obtained by a complete sketch or preliminary plat submitted prior to July 1, 2008. In the absence of a County determination on this issue, the subdivision is subject to the new provisions established in Chapter 119 of the 2008 Laws of Maryland. This includes the addition of the 200-foot Buffer to any new lots subdivided in the RCA. If the County has determined that a feasibility study is

identified within the current County Code and thereby properly establishes grandfathering rights, please provide a reference to this section of the Code for this office's records.

3. The applicant must provide a letter from the Department of Natural Resources' Wildlife and Heritage program indicating the presence of any rare, threatened, or endangered species on site. If present, the applicant will be required to address any recommendations made by DNR for protections of the species and submission of a Habitat Protection Plan (HPP) will be required.

4. Future submittals should contain information regarding proposed clearing, including the location of the development envelopes on each lot and a summary of proposed lot coverage per lot and for the subdivision as a whole.

5. No topography or soil delineation information has been provided on the plat. The Buffer may need to be expanded for contiguous hydric or highly erodible soils. Please have the applicant include this information in the next submittal.

6. The current plat contains information regarding wetlands onsite. Information regarding field delineated limits of wetlands, as well as State versus privately-owned wetland limits will be necessary prior to preliminary plat approval.

Please forward the preliminary subdivision plan when it becomes available, along with information that addresses the comments above. At that time, we will provide more complete review and comments. I can be reached at 410-260-3476 with any questions.

Sincerely,

Julie Roberts
Natural Resources Planner

Cc: DC 430-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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July 22, 2008

Mr. Steve Dodd
Dorchester County Planning and Zoning
County Office Building
P.O. Box 307
Cambridge, Maryland 21613

Re: Local case number 834E – Boettger, Babbie

Dear Mr. Dodd:

Thank you for forwarding the above-referenced subdivision request. The applicant proposes to subdivide Parcel 4 into one building lot (of 15.01 acres) and two agricultural lots (of 6.676 and 8.239 acres respectively) with no building rights associated. Parcel 4 is 29.925 acres in total. The subdivision history noted on the plat indicates that Parcel 4 was recorded on September 24, 2004, after the adoption of the Critical Area Law and Criteria. Based on the information provided, I have the following comments:

1. The recorded subdivision plat for Parcel 4 contains a note stating, "Based on the development rights summary on plat 46/141B, Lot 3 and remaining land (remaining land shown hereon as Lot 4 and Residue) have a total of 2 development rights. It is the intention of the subdividing parties to keep 1 development right with the existing dwelling (shown hereon as Residue) and the remaining development right to be used on Lot 3 or 4 as necessary." Based on this recorded plat note, it appears that there is only 1 development right available for use by either Lot 3 or Lot 4. Accordingly, please indicate whether Lot 3 is currently developed as or has the ability to be developed with a primary dwelling unit. If so, it does not appear that the subdivision of Lot 4 as proposed can be approved.

2. The applicant is currently providing a 100-foot Buffer on the site plan. It is our understanding that the applicant submitted an application for subdivision prior to July 1, 2008. Please note that Ch. 119, 2008 Laws of Maryland at 765 contains provisions in regards to a new 200-foot Buffer which may be applicable to this subdivision. Under these provisions, a subdivision located in the RCA must provide a new 200-foot Buffer *unless* an application for subdivision was submitted before July 1, 2008 *and* is legally recorded by July 1, 2010. Should the applicant fail to have the subdivision plat recorded by the July 1, 2010 deadline, then a 200-foot Buffer

will apply to this project. Please ensure that the applicant is aware of this requirement as stated in Chapter 119 of the 2008 Laws of Maryland.

3. The applicant must provide a letter from the Department of Natural Resources Wildlife and Heritage program indicating that there may be the presence of rare, threatened, or endangered species on or in the vicinity of the site. If present, the applicant will be required to address any recommendations made by DNR for protections of the species and submission of a Habitat Protection Plan (HPP) will be required.

4. Future submittals should contain information regarding proposed clearing, the location of building envelopes, and proposed lot coverage onsite.

4. No topography or soils information has been provided on the plat. The Buffer may need to be expanded for contiguous hydric or highly erodible soils. Please have the applicant include this information in the next submittal.

5. The recorded subdivision plat for Lot 4 indicates that the property is 30.74 acres in size yet the current subdivision plat indicates the property is 29.925 acres in total. Please clarify the discrepancy.

Thank you for forwarding this information for comment. Please forward additional information which addresses the comments above as it becomes available. I can be reached at 410-260-3476 with any questions.

Sincerely,

Julie Roberts
Natural Resources Planner

Cc: DC 368-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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July 24, 2008

Ms. Pam Cotter
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road, MS 6301
Annapolis, MD 21401

Re: 2008-0222-V – Davis, Mark

Dear Ms. Cotter:

Thank you for forwarding information on the above-referenced variance. This lot is 61,724 square feet and is located in the Limited Development Area (LDA). The applicant seeks a variance to allow a dwelling addition (walkway between two existing decks) with less Buffer than required and with impacts to slopes greater than 15%. The applicant proposes to construct an approximately 100 square foot wrap-around walkway to connect two second story decks.

Provided the lot is properly grandfathered, we do not oppose this variance request to adjoin the two decks via a walkway. If the County determines this request, or some variation of this request can be granted, we recommend that the applicant provide mitigation at a ratio of 3:1 for the area of disturbance in the Buffer and that these requirements are met by planting a mix of native species in the area waterward of the house. The applicant shall provide a plantings plan including species, size, spacing, and schedule for review and approval by the County.

Please include this letter in your file and submit it as part of the record for variance. Please notify the Commission of the decision made in this case. I can be reached at 410-260-3476 should you have any questions.

Sincerely,

Julie Roberts
Natural Resources Planner

cc: AA 413-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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July 24, 2008

Aimee Dailey
Charles County Department of Planning and Growth Management
PO Box 2150
La Plata, MD 20646

Re: Local Case VR 70114 – Swan Point Vacuum Pumping Station

Dear Ms. Dailey:

Thank you for forwarding the above-referenced grading permit. The applicant has provided 10% calculations for the station, as well as site plans. This proposed station is bisected by the Intensely Developed Area (IDA) and the Limited Development Area (LDA). Worksheet A, calculating the Pollutant Removal Requirement for IDA portion of the site (0.29 acres) has been submitted and appears to have been calculated correctly. The applicant is proposing to utilize a grass swale as a BMP to meet their Pollutant Removal Requirement. We have these comments:

1. Please ensure that the nontidal wetland permit application includes the outfall associated with this pumping station is included as an impact.

2. As the vacuum pumping station is one component of the larger Swan Point development project, and appears to require clearing within FIDS habitat, the applicant must provide information describing how the mitigation associated with this impact will be provided, including a timeframe for completion and a description of the location for mitigation. We acknowledge that this request is being evaluated as part of the Habitat Protection Plan for Swan Point. However, a permit for the pumping station should not be issued until resolution of this matter is finalized.

Thank you for the opportunity to provide comments on this plan. If you have any questions, please contact me at (410) 260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner

cc: CS Swan Point Vacuum Pumping Station

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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July 24, 2008

Mr. Steven Dodd
Dorchester County Planning and Zoning
County Office Building
P.O. Box 307
Cambridge, Maryland 21613

Re: Weatherford BEA

Dear Mr. Dodd:

Thank you for forwarding information on the above referenced project. The applicant proposes to construct a 352 square foot addition to the existing dwelling unit no further waterward than an existing screened-in porch and stone tile patio. The lot is 14,374 square feet and is located in a Limited Development Area (LDA). The existing house is located in a Buffer Exempt Area (BEA). The project application indicates that the existing lot coverage on this parcel is currently 2,405, which is within the allowable amounts for a lot of this size. As the area of the proposed addition is already considered "covered," there will be no increase in lot coverage associated with this addition. However, the proposed addition will be no further waterward than existing lot coverage.

Provided this lot is properly grandfathered, we do not oppose this request. Per our BEA Policy, the applicant must mitigate at a 2:1 ratio for the square footage of disturbance associated with this addition for a total of 704 square feet of plantings. These plantings should be placed waterward of the existing dwelling to the extent possible. The plantings should be done in the form of native species and the applicant shall provide to the County a schedule which includes the species, size, spacing, and proposed dates of plantings for your review and approval.

Thank you for the opportunity to provide comments. If you have any questions, please contact me at 410-260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner
Cc: DC 416-08

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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July 25, 2008

Ms. Pam Cotter
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road, MS 6301
Annapolis, MD 21401

Re: 2008-0218-V – Seybold, Nancy; Dynerman, Alan

Dear Ms. Cotter:

Please accept this letter in place of my letter dated July 17, 2008.

Thank you for forwarding the above-referenced variance request. The applicants request a variance to allow a dwelling with less setbacks and buffer than allowed. This lot is 29,573 square feet and is located in the Resource Conservation Area (RCA). This lot is fully encumbered by the expanded Buffer. The applicant proposes to raze the existing dwelling and construct a new dwelling unit, septic system, and driveway for an impervious surface amount of 2,248 square feet. This represents a net reduction of 1,013 square feet of impervious surface on site. In addition, the applicant is proposing to construct the dwelling an additional 9.5 feet back from the steep slopes than the existing dwelling. The applicant has also indicated that a large, existing brick patio is proposed to be replaced with "pervious material." From a conversation with the applicant on July 16, 2008, he has indicated that area landward of the proposed deck to the edge of the bluff will be planted with native species and grasses.

Provided the lot is properly grandfathered, we do not oppose a variance request for the construction of a modest dwelling and driveway on this lot. If the County determines this request, or some variation of this request can be granted, we recommend 3:1 mitigation for the area of disturbance in the expanded Buffer. A fee in lieu may be substituted if there are no appropriate areas on site for mitigation. The applicant should submit a plantings plan to the County for review and approval. The applicant is also proposing to construct two rain gardens on site for water quality purposes; we support the use of such gardens.

As a reminder, in 2008, the General Assembly passed House Bill 1253 which included a change within the Critical Area from the term impervious surface area to the term lot coverage. It is appears from the variance application that the property is being developed in the context of impervious surface area. As

such, Section 8, Ch. 119, 2008 Laws of Maryland at 765, contains provisions in regard to the lot coverage requirements of Natural Resources Article §8-1808.3 which may be applicable to this variance application. Under these provisions, a development project whose initial application for development that satisfies all local requirements is filed by October 1, 2008 and whose development plan is approved (recorded) by July 1, 2010 may utilize Anne Arundel County's approved impervious surface area limitations in effect prior to July 1, 2008 provided that;

a) The approved development plan remains valid in accordance with Anne Arundel County's procedures and requirements; and

b) By July 1, 2010, the applicant prepares a detailed lot coverage plan drawn to scale and showing the amounts of impervious surface area, partially pervious area, and developed pervious surface area in the development project.

In addition to (a) and (b) above, Section 8, Ch. 119, 2008 Laws of Maryland at 765 requires the lot coverage plan to be approved by Anne Arundel County and implemented in accordance with the approved lot coverage plan. Should the applicant intend to develop this property in accordance with the County's impervious surface area limitations, please indicate that intent and ensure that the applicant is aware of the requirements of Chapter 119 of the 2008 Laws of Maryland for proceeding as such.

Please include this letter in your file and submit it as part of the record for variance. Please notify the Commission of the decision made in this case. I can be reached at 410-260-3476 should you have any questions.

Sincerely,

Julie Roberts
Natural Resources Planner

cc: AA 379-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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July 25, 2008

Mr. Steve Dodd
Dorchester County Planning and Zoning
County Office Building
P.O. Box 307
Cambridge, Maryland 21613

Re: Local case number 914A – GST Exempt Trust, Et al.

Dear Mr. Dodd:

I have received the information for the above-referenced project. The applicant has submitted a preliminary subdivision plat for a two-lot intrafamily transfer. The project notification form indicates that there are 68.2 acres located in the Resource Conservation Area (RCA). Based on the information provided, I have the following comments:

1. Although the application indicates that a two-lot intrafamily transfer is requested by the applicant, it does not appear that they meet the qualifications for intrafamily transfer. COMAR § 8-1808 indicates that "a parcel that is 12 acres or more and less than 60 acres in size may be subdivided into 3 lots." The parent parcel in this case is over 60 acres in size (68.2 acres) and therefore, does not appear to qualify for intrafamily transfer. Additionally, this property was last subdivided in 1999.

2. However, it appears that the applicant has the required density to obtain the total of 3 lots requested for this site (Lot 1 is currently existing, Lots 2 and 3 are proposed). The applicant has provided sufficient area "in reserve" (30 acres) for the two proposed 5-acre parcels.

3. The existing dwelling must be removed prior to subdivision recordation. Please have the applicant add a note to the plat to that effect.

4. Once recorded, the lands with the reserved development rights cannot be moved or revised. Please have the applicant add a note to the plat to that effect.

5. The applicant has included Critical Area Forest Calculations.

a. It is unclear what the "area changing land use" section is referring to, and therefore, to understand how the forestation requirements are met. Equally, this section indicates that 3.45 acres, or 35%, of the 68.196 acres in the Critical Area is currently forested. 3.45 acres is only 5% of the total acreage in the Critical Area. Please have the applicant amend this table
b. Per COMAR 27.01.02.04, the applicant is responsible for establishing 15% forest cover on this site, or 10.23 acres, at the time of building permit. Additionally, this forest must be placed in a protective easement or restrictive covenant.

6. The applicant must provide a letter from the Department of Natural Resources' Wildlife and Heritage program indicating the presence of any rare, threatened, or endangered species on site. Our records indicate that there may be a sensitive species located in the vicinity of the applicant's parcels. If present, the applicant will be required to address any recommendations made by DNR for protections of the species and submission of a Habitat Protection Plan (HPP) will be required.

7. Future submittals should contain information regarding proposed clearing, if applicable, and proposed lot coverage onsite. Please note that each lot is limited to 15% lot coverage.

8. No topography or soil delineation information has been provided on the plat. The Buffer may need to be expanded for contiguous hydric or highly erodible soils. Please have the applicant include this information in the next submittal.

9. If not currently established, the 100-foot Buffer must be established in native species on Lots 2 and 3 at the time of building permit, or preferably at the time of subdivision recordation. A Buffer Management Plan must be provided to County for review and comment in fulfillment of this requirement.

10. As there will no longer be a dwelling on the residue parcel or the reserved development rights lands, who will the pier service? Please have the applicant clarify.

Please forward the revised subdivision plat when it becomes available. I can be reached at 410-260-3476 with any questions.

Sincerely,

Julie Roberts
Natural Resources Planner

Cc: DC 430-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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July 28, 2008

Mr. Paul Dennis
Baltimore County DEPRM
401 Bosley Avenue, Suite 416
Towson, Maryland 21204

Re: Variance – Cedar Ave. Lots 84-87, Goodwood Farms

Dear Mr. Dennis:

Thank you for forwarding information on the above-referenced project. We previously reviewed the preliminary assessment of this site plan and comments were made to your office in a letter dated March 11, 2008. These lots total 1.0 acres and are located in the Limited Developed Area (LDA). The applicant is requesting variances for these three, currently unimproved lots for the purposes of constructing three single family dwelling units. The applicant requests a variance for the disturbance to the 100-foot Buffer for each lot, per my letter. The applicant proposes to construct a new dwelling with driveway on each lot for a total lot coverage in the amount of 1,400 square feet. This is within the allowable lot coverage for each lot.

Provided these lots are properly grandfathered, we do not oppose this variance request for the construction of modest sized dwellings on these lots. The applicant is responsible for providing mitigation at a ratio of 3:1 for any disturbance to the Buffer. Mitigation should be a mix of native trees and shrubs and located in the Buffer, if possible. The applicant should provide the County with a Buffer Management Plan including the size, species, spacing and schedule for the mitigation plantings. If there is not adequate space on site to perform some or all planting, a fee-in-lieu may be substituted for any remaining portion.

We have no comments on the request to impact the 35-foot setback.

Please include this letter in your file and submit it as part of the record for variance. Please

notify the Commission of the decision made in this case. I can be reached at 410-260-3476 should you have any questions.

Sincerely,

Julie Roberts
Natural Resources Planner

Cc: BC 130-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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July 31, 2008

Ms. Pam Cotter
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road, MS 6301
Annapolis, MD 21401

Re: 2008-0214-V – Kanne, Jeffrey

Dear Ms. Cotter:

Thank you for forwarding the above-referenced variance request. Mr. Konowal of your office and I visited the site on July 28, 2008. The applicants request a variance to allow accessory structures (garage and retaining wall) with disturbance to slopes greater than 15%. This lot is 44,047 square feet and is located in the Limited Development Area (LDA). The applicant proposes to remove an existing, failing retaining wall and replace it in a tiered fashion along the hill behind the house. There appears to be heavy sheet flow from this hill. The applicant also proposes to remove an existing, attached garage and plant this area for the purposes of stormwater management. The applicant proposes to build an equivalently sized garage of 25'x 31' (775 square feet) as an accessory structure further landward of the existing dwelling than the current garage. The applicant also has indicated that there will be a net lot coverage reduction of 1,425 square.

Provided the lot is properly grandfathered, we do not oppose a variance request for the construction of the retaining walls and the garage. If the County determines this request, or some variation of this request can be granted, we recommend 3:1 mitigation for the area of disturbance to the steep slopes. These plantings should be configured in a way to maximize stormwater management. The applicant should submit a plantings plan to the County for review and approval. The applicant is also proposing to construct two rain gardens on site for water quality purposes; we support the use of such gardens.

As a reminder, in 2008, the General Assembly passed House Bill 1253 which included a change within the Critical Area from the term impervious surface area to the term lot coverage. It is appears from the variance application that the property is being developed in the context of impervious surface area. As such, Section 8, Ch. 119, 2008 Laws of Maryland at 765, contains provisions in regard to the lot coverage requirements of Natural Resources Article §8-1808.3 which may be applicable to this variance application. Under these provisions, a development project whose initial application for

development that satisfies all local requirements is filed by October 1, 2008 and whose development plan is approved (recorded) by July 1, 2010 may utilize Anne Arundel County's approved impervious surface area limitations in effect prior to July 1, 2008 provided that;

- ***a)*** The approved development plan remains valid in accordance with Anne Arundel County's procedures and requirements; and
- ***b)*** By July 1, 2010, the applicant prepares a detailed lot coverage plan drawn to scale and showing the amounts of impervious surface area, partially pervious area, and developed pervious surface area in the development project.

In addition to (a) and (b) above, Section 8, Ch. 119, 2008 Laws of Maryland at 765 requires the lot coverage plan to be approved by Anne Arundel County and implemented in accordance with the approved lot coverage plan. Should the applicant intend to develop this property in accordance with the County's impervious surface area limitations, please indicate that intent and ensure that the applicant is aware of the requirements of Chapter 119 of the 2008 Laws of Maryland for proceeding as such.

Please include this letter in your file and submit it as part of the record for variance. Please notify the Commission of the decision made in this case. I can be reached at 410-260-3476 should you have any questions.

Sincerely,

Julie Roberts
Natural Resources Planner

cc: AA 379-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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July 31, 2008

Ms. Regina Esslinger
Baltimore County DEPRM
401 Bosley Avenue, Suite 416
Towson, Maryland 21204

Re: West Shore Yacht Center

Dear Ms. Esslinger:

Thank you for forwarding the plans and Variations of Standards for the above referenced project. The applicant has indicated that no Alternatives Analysis has been performed for this site. The project proposes the redevelopment of an existing marina to 12 single family, semi-detached condominium units, a yacht club and associated parking and recreation facilities. This site is 2.974 acres and is located in a Limited Development Area (LDA) and is designated a Buffer Management Area (BMA).

As you know, the term impervious surface has been replaced by "lot coverage" per the 2008 legislation. Further, subdivision plats (including variances and these redevelopment projects) must contain information regarding existing and proposed lot coverage. Section 8, Ch. 119, 2008 Laws of Maryland at 765, contains provisions in regard to the lot coverage requirements of Natural Resources Article §8-1808.3 which may be applicable to this subdivision. Under these provisions, a development project whose initial application for development that satisfies all local requirements is filed by October 1, 2008 and whose development plan is approved (recorded) by July 1, 2010 may utilize the County's approved impervious surface area limitations in effect prior to July 1, 2008 provided that;

a) The approved development plan remains valid in accordance with the County's procedures and requirements; and

b) By July 1, 2010, the applicant prepares a detailed lot coverage plan drawn to scale and showing the amounts of impervious surface area, partially pervious area, and developed pervious surface area in the development project.

In addition to (a) and (b) above, Section 8, Ch. 119, 2008 Laws of Maryland at 765 requires the lot coverage plan to be approved by the County and implemented in accordance with the approved lot coverage plan. Should the applicant intend to develop this site in accordance with the County's impervious surface area limitations, please indicate that intent and ensure that the

applicant is aware of the requirements of Chapter 119 of the 2008 Laws of Maryland for proceeding as such.

Based upon the information provided, we do not oppose this variance request. I have the following comments on this project:

Variations of Standards

1. The purpose of the variations of standards application is to address the reduction of the 100-foot Buffer to a 25-foot setback to accommodate multi-family development on a commercial marina site. The applicant has indicted that 77% of this site is encumbered by the 100-foot buffer (2.29 acres). In this case, the applicant is proposing multi-family units that will be clustered and will provide a fully planted setback area of 30-60 feet. The proposed setback area meets the minimum 25-foot setback required for BMAs.
2. The applicant is proposing to reduce the lot coverage on this site from 2.24 acres to 1.37 acres. This represents a net reduction of lot coverage on site of 0.9 acres or 40%. The proposed lot coverage should be the minimum necessary to obtain relief.
3. The applicant has offered several types of mitigation for the proposed disturbance to the 100-foot Buffer at different mitigation ratios. The applicant is providing the following mitigation:
    a. Removal of lot coverage area such as gravel, pavement, concrete, etc. and the planting of 19,578 square feet of native species;
    b. Removal of invasive species and additional areas covered by impervious surface and the creation of 575 feet of soft or living shoreline;
    c. Removal of 40% of total lot coverage on site;
    d. Removal of three existing piers and floating piers for a total of 780 square feet;
    e. Removal of invasive species and additional plantings to meet the 15% forestation rule, in the amount of 18,467 square feet.
    f. We do not oppose this mitigation package should the County find it sufficient.
4. We continue to recommend that the County add provisions to their zoning ordinance regarding the redevelopment of commercial and multi-family properties, if they have not been added already as part of the Comprehensive review.

We have no further comments on this project. Thank you for the opportunity to provide comments. If you have any questions, please call me at (410) 260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner

Cc: BC 858-03

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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July 31, 2008

Aimee Dailey
Charles County Department of Planning and Growth Management
PO Box 2150
La Plata, MD 20646

Re: Local Case No. MIR 80225 – Cobb Island

Dear Ms. Dailey:

Thank you for forwarding the above-referenced Buffer Management Plan and your letter to the applicant dated July 10, 2008. This lot is 0.75 acres and is located in the Limited Development Area (LDA). The applicant proposes to replace a retaining wall in the Buffer. Based on the application materials, I concur with each of the issues that you listed in your July 10, 2008 letter. Those comments include:

1. As the proposed retaining wall is above Mean High Water (MHW) and does not appear to be a shore erosion control technique, it is considered a structure in the 100-foot Buffer and therefore, requires a variance. Mitigation is required for any disturbance in the Buffer at ratio of 3:1, should a variance be granted.

2. Please have the applicant show the limits of the 100-foot Buffer on the site plans.

3. It is unclear from the site plan what the existing conditions are and what is proposed. For example, what is the extent of the grading proposed as associated with the retaining wall? Is the beach shown on sheet 2 of 3 existing or proposed? Please have the applicant clarify.

4. There is a gazebo shown in the Buffer. Does the applicant propose to preserve or replace this gazebo? It must be demonstrated that this gazebo existed prior to the inception of Charles County's Critical Area Program, or it must be removed, as it is in violation.

5. A Buffer Management Plan must be submitted which includes the species, size, spacing, and schedule for plantings in the Buffer.

Please forward the revised Buffer Management Plan as it becomes available. Thank you for opportunity to provide comments. If you have any questions, please contact me at 410-260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner

Cc: CS 432-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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July 31, 2008

Mr. Steve Dodd
Dorchester County Planning and Zoning
County Office Building
P.O. Box 307
Cambridge, Maryland 21613

Re: Local case number 1197 – Clearview at Horn's Point

Dear Mr. Dodd:

I have received the information for the above-referenced project. The applicant proposes to expand an existing non-conforming use (a restaurant/reception hall and parking area). Based on the information provided, I have the following comments:

1. It is unclear from the application and the information provided by the applicant what the designation of this site is:
    a. Sheet C-1.0 indicates that the site is 133.78 acres and that there are 2.03 acres located in the Limited Development Area (LDA).
    b. Sheet C-2.0 indicates the same site acreage but that that the Critical Area designation is Resource Conservation Area (RCA), with 68.21 acres outside of the Critical Area and 65.57 acres within the Critical Area.
    c. Additionally, the table on C-2 indicates that 3.82 acres of the site are tidal wetlands. It appears from the table that the applicant is calculating their impervious surface allowance (now referred to as "lot coverage" under 2008 legislation) with the acreage of tidal wetlands included.
        i. The applicant must perform a state vs. private tidal wetland delineation in the field if they wish to include any areas of wetlands into their lot coverage.
        ii. Should the tidal wetlands be determined to be private, then the 15% allowable lot coverage on this site may be calculated with the acreage of wetlands included. Absent this information, the area of tidal wetlands must be excluded from the lot coverage calculations and the 15% lot coverage calculations must be recalculated.

d. Please indicate how the tidal/nontidal delineation was performed on sheet C-2.0, including the date of the delineation and the name of the delineator. An environmental report describing the delineation methods may be helpful in this request.

2. The applicant has also provided forest cover calculations and has indicated that the site is currently not forested to the required 15%. Per COMAR 27.01.02.04, the applicant is responsible for establishing 15% forest cover on this site at the time of building permit. Additionally, this forest must be placed in a protective easement or restrictive covenant.
   a. Is the applicant proposing to meet this 0.535 acre deficit of forest through the landscaping trees and shrubs indicated on the L-1.0?
   b. The applicant has provided a landscaping plan which shows the species, size but not the spacing or schedule. Please have the applicant provide this information.
   c. We recommend that 15% minimum afforestation plantings be located in the 100-foot Buffer, as it appears that the Buffer is currently absent of woody stems.

3. The applicant has indicated that a parking lot in the amount of 3,459 square feet will be removed from the 100-foot Buffer. In addition, on sheet C-3.0, the applicant has indicated that 8,106 square feet of impervious surface is to be removed. Does this amount include the area of lot coverage to be removed in the Buffer? On Sheet C-3.0, it appears that the majority of the proposed lot coverage to be removed is in the Buffer (cross-hatched area) and the remaining cover proposed to be removed does not appear to amount to the approximately 4,500 additional square feet proposed.
   a. Please have the applicant clarify where the total amount of lot coverage proposed to be removed is located.
   b. Also, please have the applicant provide a complete table with individual listings that detail existing and proposed lot coverage, including the amount of any new buildings or additions.

4. As a reminder, site plats must contain information regarding existing and proposed lot coverage. Section 8, Ch. 119, 2008 Laws of Maryland at 765, contains provisions in regard to the lot coverage requirements of Natural Resources Article §8-1808.3 which may be applicable to this site plan. Under these provisions, a development project whose initial application for development that satisfies all local requirements is filed by October 1, 2008 and whose development plan is approved (recorded) by July 1, 2010 may utilize the County's approved impervious surface area limitations in effect prior to July 1, 2008 provided that;
   a) The approved development plan remains valid in accordance with the County's procedures and requirements; and
   b) By July 1, 2010, the applicant prepares a detailed lot coverage plan drawn to scale and showing the amounts of impervious surface area, partially pervious area, and developed pervious surface area in the development project.

   In addition to (a) and (b) above, Section 8, Ch. 119, 2008 Laws of Maryland at 765 requires the lot coverage plan to be approved by the County and implemented in accordance with the approved lot coverage plan. Should the applicant intend to develop this property in accordance with the County's impervious surface area limitations, please indicate that intent and ensure

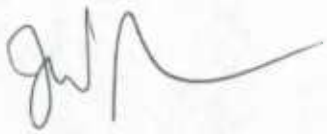
that the applicant is aware of the requirements of Chapter 119 of the 2008 Laws of Maryland for proceeding as such.

5. The applicant must provide a letter from the Department of Natural Resources' Wildlife and Heritage program indicating the presence of any rare, threatened, or endangered species on site. Our records indicate that there may be a sensitive species located in the vicinity of the applicant's parcels. If present, the applicant will be required to address any recommendations made by DNR for protections of the species and submission of a Habitat Protection Plan (HPP) will be required.

6. Per Dorchester County Code §155-38.H(3)(d), if the Planning Commission has determined that that the current use of this site does not conform with the provisions of the Dorchester County Critical Area Program and the Critical Area Overlay zone, a variance must be granted in order to perform the proposed work.

Please forward the revised site plan when it becomes available. I can be reached at 410-260-3476 with any questions.

Sincerely,



Julie Roberts
Natural Resources Planner

Cc: DC 425-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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August 4, 2008

Mr. Steve Dodd
Dorchester County Planning and Zoning
County Office Building
P.O. Box 307
Cambridge, Maryland 21613

Re: Local case number 1194 – Joyner and Goad

Dear Mr. Dodd:

I have received the information for the above-referenced project. The applicant has submitted a sketch plan for a two-lot subdivision created via a bonafide intrafamily transfer. The project notification form indicates that there are 8.8 acres located in the Resource Conservation Area (RCA). Based on the information provided, I have the following comments:

1. Provided that the County verifies that this parent parcel is properly grandfathered as the original parcel of record since 1972 as stated in note #19 on the plat, it appears that this parcel may qualify for the requested two-lot intrafamily subdivision under Natural Resources Article § 8-1808. Future plat submittals must include a note stating that Lots 1 and 2 are created via a bonafide intrafamily transfer and indicate the intended recipients of the lots as well as include appropriate signature blocks.

2. While there are tidal wetlands shown with the property boundaries of Parcel 3, it is not clear whether the acreage of wetlands is private or State-owned. As you are aware, the area of State-owned wetlands must be subtracted from the property's acreage totals prior to determining development rights or eligibility for intrafamily transfer provisions. In making this determination, the applicant may either provide a field delineation of the private versus State-owned wetland areas or deduct the entire acreage of tidal wetlands from the property total. Please provide information requesting this concern in future submittals.

3. Please have the applicant revise note 16, as there are nontidal wetlands shown on site.

4. Please have the applicant provide the date of the wetlands delineation on the plat.

6. The applicant has indicated that there the parcel is not forested. Per COMAR 27.01.02.04, the applicant is responsible for establishing 15% forest cover on this site based on the property acreage, at the time of building permit or preferably, at the time of subdivision. Additionally, this forest must be placed in a protective easement or restrictive covenant. Please have this information added to the plat in future submittals.

7. The applicant must provide a letter from the Department of Natural Resources' Wildlife and Heritage Service (WHS) indicating the presence of any rare, threatened, or endangered species on site. Our records indicate that there may be a sensitive species located in the vicinity of the applicant's parcel. If present, the applicant will be required to address any recommendations made by DNR for protections of the species and submission of a Habitat Protection Plan (HPP) will be required.

8. Future submittals should contain information regarding permitted and/or proposed lot coverage onsite. Please note that each lot is limited to 15% lot coverage.

9. No topography or soil delineation information has been provided on the plat. Note 16 indicates that there are steep slopes present on site. The Buffer may need to be expanded for contiguous hydric, highly erodible soils, or for steep slopes. Please have the applicant include this information in the next submittal.

10. As it does not appear that it has been established, the 100-foot Buffer must be planted in native species on Lots 1 and 2 at the time of building permit, or preferably at the time of subdivision recordation. A Buffer Management Plan must be provided to County for review and comment in fulfillment of this requirement.

11. It is our understanding that the applicant submitted an application for subdivision prior to July 1, 2008. Please note that Ch. 119, 2008 Laws of Maryland at 765 contains provisions in regards to a new 200-foot Buffer which may be applicable to this subdivision. Under these provisions, a subdivision located in the RCA must provide a new 200-foot Buffer *unless* an application for subdivision was submitted before July 1, 2008 *and* is legally recorded by July 1, 2010. Should the applicant fail to have the subdivision plat recorded by the July 1, 2010 deadline, then a 200-foot Buffer will apply to this project. Please ensure that the applicant is aware of this requirement as stated in Chapter 119 of the 2008 Laws of Maryland.

Please forward the revised subdivision plat when it becomes available. I can be reached at 410-260-3476 with any questions.

Sincerely,

Julie Roberts
Natural Resources Planner

Cc: DC 428-08

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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August 5, 2008

Mr. Steve Dodd
Dorchester County Planning and Zoning
County Office Building
P.O. Box 307
Cambridge, Maryland 21613

Re: Local case number 1153A – Mill Point

Dear Mr. Dodd:

Thank you for forwarding the above-referenced project. The applicant proposes a two lot subdivision for two single family dwellings located in the Resource Conservation Area (RCA). Based on the information provided, I have the following comments:

1. According to the plat for this site, obtained from www.plats.net, Parcel "C", which the applicant proposes to subdivide into Lots 1 and 2, is currently considered an agricultural lot and it not currently buildable. The plat also indicates that two development rights are associated with this parcel. It is unclear how two development rights are associated with Parcel C. Please have the applicant provide supporting documentation regarding the parent parcel, which appears to have been subdivided on March 19, 2007. It is the burden of the applicant to provide this information.
    a. Note 17 indicates that retained residue contains sufficient area to qualify as a building lot in the area in which it is located. The meaning, intention, and impact of this note is not clear and must be clarified.

2. It is our understanding that the applicant submitted an application for subdivision prior to July 1, 2008. Please note that Ch. 119, 2008 Laws of Maryland at 765 contains provisions in regards to a new 200-foot Buffer which may be applicable to this subdivision. Under these provisions, a subdivision located in the RCA must provide a new 200-foot Buffer *unless* an application for subdivision was submitted before July 1, 2008 *and* is legally recorded by July 1, 2010. Should the applicant fail to have the subdivision plat recorded by the July 1, 2010 deadline, then a 200-foot Buffer will apply to this project. Please ensure that the applicant is aware of this requirement as stated in Chapter 119 of the 2008 Laws of Maryland.

3. The applicant must provide a letter from the Department of Natural Resources' Wildlife and Heritage Service (WHS) indicating the presence of any rare, threatened, or endangered species on site. Our records indicate that there may be a sensitive species located in the vicinity of the applicant's parcel. If present, the applicant will be required to address any recommendations made by DNR for protections of the species and submission of a Habitat Protection Plan (HPP) will be required.

3. Future submittals should contain information regarding proposed clearing, existing and proposed lot coverage onsite. Please note that if the applicant is able to provide documentation supporting the subdivision of this parcel, the property is limited to 15% lot coverage.

4. Although the site plan shows the tree line, no calculations for forest cover have been provided. Per COMAR 27.01.02.04, the applicant is responsible for establishing 15% forest cover on each parcel based on the property acreage, at the time of building permit or preferably, at the time of subdivision. Additionally, this forest must be placed in a protective easement or restrictive covenant. Please have this information added to the plat in future submittals.

5. Please have the applicant correct Note 14 on the plat to indicate that this subdivision is located in the Critical Area.

6. The site plan indicates that the site has hydric soils and that a wetlands were flagged by a surveyor in March of 2006 (Note 16); However, Note 8 indicates that any wetland delineation on the plat may not comply with federal or state regulations. It is unclear what this means. Both nontidal/tidal and state vs. private wetland delineation must be done in the field. Equally, all buffers must be expanded for contiguous hydric or highly erodible soils.
    a. It does not appear that the applicant has correctly drawn the 25-foot buffers around the nontidal wetlands.
    b. Also, the nontidal wetlands should be marked in a consistent fashion. For example, nontidal wetland C is shown as a dotted area on the site plan, but the other nontidal wetlands are not. Please have the applicant revise and make these corrections.
    c. Please have the applicant provide a table of the acreage of tidal, nontidal, State, and privately owned wetlands.

Thank you for forwarding this information for comment. Please forward the revised plans and additional information as it becomes available. I can be reached at 410-260-3476 with any questions.

Sincerely,

Julie Roberts
Natural Resources Planner
Cc: DC 426-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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August 5, 2008

Mr. Steve Dodd
Dorchester County Planning and Zoning
County Office Building
P.O. Box 307
Cambridge, Maryland 21613

Re: Local case number 1193 – Robert and Joyce Kirkley

Dear Mr. Dodd:

I have received the information for the above-referenced project. The applicant has submitted a subdivision and lot line revision for parcels 10 and 17. The project notification form indicates that there are 44.55 acres located in the Resource Conservation Area (RCA). Based on the information provided, I have the following comments:

1. It appears that the applicant is abandoning the current lot line for Parcel 17 and adding the area labeled Parcel "A" to create a larger lot. The site plan shows Parcel A to be 2.226 acres.
    a. Please have the applicant clarify the acreage associated with Parcel 17 prior to the proposed lot line adjustment and after. A table should be added indicating the existing and proposed acreage of each lot proposed, including Lot 1 and P/O Parcel 10, 4 of 4.
    b. Please have the applicant provide information documenting that Parcel 17 is a buildable lot of record prior to December 1, 1985.

2. The site plan also indicates that a lot line separating Lot 1 from P/O Parcel 10, 4 of 4 is proposed. This lot is proposed to be 2.160 acres. Should the applicant choose to subdivide P.10, 4 of 4, the remaining 17.84 acres must be placed "in reserve."
    a. Once recorded, the reserved lands cannot be moved or revised. Please have the applicant add a note to the plat to that effect.
    b. A note must be added to the plat that there are no remaining development rights associated with the reserved lands as the existing mobile home appears to exhaust the one development right of this proposed lot. Please have the applicant note this restriction on the plat.

4. The applicant must have a wetland delineation conducted in the field to determine whether the acreage of wetlands on proposed Lot 1 (and all other lots proposed to be subdivided) is private or State-owned. In making this determination, the applicant may either provide a field delineation of the private versus State-owned wetland areas or deduct the entire acreage of tidal wetlands from the property total. Please provide information requesting this concern in future submittals.

5. No forest cover information has been provided. Per COMAR 27.01.02.04, the applicant is responsible for establishing 15% forest cover on each parcel based on the property acreage, at the time of building permit or preferably, at the time of subdivision. Additionally, this forest must be placed in a protective easement or restrictive covenant. Please have this information added to the plat in future submittals.

6. The applicant must provide a letter from the Department of Natural Resources' Wildlife and Heritage Service (WHS) indicating the presence of any rare, threatened, or endangered species on site. Our records indicate that there may be a sensitive species located in the vicinity of the applicant's parcel. If present, the applicant will be required to address any recommendations made by DNR for protections of the species and submission of a Habitat Protection Plan (HPP) will be required.

7. Future submittals should contain information regarding permitted and/or proposed lot coverage for each parcel. Please note that each new lot is limited to 15% lot coverage.

8. No topography or soil delineation information has been provided on the plat. The Buffer may need to be expanded for contiguous hydric, highly erodible soils, or for steep slopes. Please have the applicant include this information in the next submittal.

10. If not currently established, the 100-foot Buffer must be planted in native species at the time of building permit, or preferably at the time of subdivision recordation. A Buffer Management Plan must be provided to County for review and comment in fulfillment of this requirement.

11. It is our understanding that the applicant submitted an application for subdivision prior to July 1, 2008. Please note that Ch. 119, 2008 Laws of Maryland at 765 contains provisions in regards to a new 200-foot Buffer which may be applicable to this subdivision. Under these provisions, a subdivision located in the RCA must provide a new 200-foot Buffer *unless* an application for subdivision was submitted before July 1, 2008 *and* is legally recorded by July 1, 2010. Should the applicant fail to have the subdivision plat recorded by the July 1, 2010 deadline, then a 200-foot Buffer will apply to this project. Please ensure that the applicant is aware of this requirement as stated in Chapter 119 of the 2008 Laws of Maryland.

Please forward the revised subdivision plat when it becomes available. I can be reached at 410-260-3476 with any questions.

Sincerely,

Julie Roberts
Natural Resources Planner

Cc: DC 427-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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MEMORANDUM

To: Marti Sullivan, Program Open Space

Cc: Aimee Dailey, Charles County

From: Julie Roberts

Date: August 5, 2008

RE: POS Project #5387-8-68
Nanjemoy Community Park, Charles County

This office has received the Clearinghouse review notice for the above referenced project. The notice states that the purpose of the project is acquire 108.87 acres in the Nanjemoy area of Charles County to provide a community park to address current and future needs for public open space and recreation facilities.

This property does not appear to be in the Critical Area. However, our records indicate that portions of the parcel are Forest Interior Dwelling (FID) Bird habitat and that there may be a local, rare, or threatened species on site. All state and federal regulations should be followed in any clearing or development on this parcel. Should development be proposed on the property at a future date, we recommend that the applicants or representatives for the proposed projects work closely with the County Department of Planning staff as early as possible in the planning process.

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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MEMORANDUM

To: Marti Sullivan, Program Open Space

Cc: Regina Esslinger, Baltimore County

From: Julie Roberts

Date: August 5, 2008

RE: POS Project #5420-3-426
Samogyi Property Acquisition, Baltimore County

This office has received the Clearinghouse review notice for the above referenced project. The notice states that the purpose of the project is the acquisition of 80.4 acres of an 84.0 acre parcel of land for a community park. The majority of this property is in the Critical Area and is designated as Resource Conservation Area (RCA). The notice states that the purpose of this acquisition is to continue the County's efforts to preserve much of the peninsula as parklands, open spaces, and natural resource areas. The remaining 3.6 acres portion of the property will be purchased with County funding for potential road widening and utility issues.

Within the RCA, lot coverage is restricted to 15%. Additionally, there are protections for Habitat Protection Areas (HPAs), including for rare, threatened, and endangered species and certain types of active recreation are restricted based on the County Critical Area Program. Should development be proposed on the property at a future date, we recommend that the applicants or representatives for the proposed projects work closely with the County Department of the Environment Planning and Resource Management (DEPRM) staff as early as possible in the planning process.

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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August 7, 2008

Mr. Steve Dodd
Dorchester County Planning and Zoning
County Office Building
P.O. Box 307
Cambridge, Maryland 21613

Re: Local case number 1195 – Fishing Point

Dear Mr. Dodd:

Thank you for forwarding the above-referenced project. Your notification indicates that Parcels 234 (Lot 3) and 235 (Lot 2) were created as "agricultural lots" immediately prior to the adoption of the Critical Area Program. The applicant proposes to convert these agricultural lots to buildable lots and serve Lot 2 and 3, as well as Lots 1 and 4, with a shared Bermed Infiltration Pond (BIP). The property is located within the Resource Conservation Area (RCA). I have the following comments regarding the applicant's subdivision proposal:

1. Please provide deed and/or plat book and folio references for each of the existing parcels of record. This information was left blank on the plat. In addition, since parcels 234 and 235 were created as agricultural parcels and not as buildable lots or with the intent to be built upon, the applicant and County must demonstrate that the parcels had sufficient upland areas which could be legally built upon at the time of recordation in order to qualify as a nonconforming lot of record in the RCA currently and qualify for an upgrade to a buildable lot. Not withstanding this information, parcels 234 and 235 appear unbuildable without a variance, would be substandard per the RCA density restrictions, and would not be upgradable to building lots in the RCA.

2. It is not clear whether Parcels 214 and 215 are also currently designated as agricultural parcels. If so, please provide information for these parcels identical to that requested in comment # 1 above.

3. It does not appear that the applicant has expanded the 100-foot Buffer to include the contiguous areas of nontidal wetlands on Lots 2 and 3. Please have the applicant revise. In addition:

a. No topography or soils information has been provided on the plat. The Buffer may need to be expanded for contiguous hydric or highly erodible soils, as well. Please have the applicant include this information in the next submittal.
b. As the General Notes section indicates, any impacts to the nontidal wetlands or their buffer will require a permit from the Maryland Department of the Environment (MDE).
c. It appears that the proposed driveways for Lots 2 and 3 propose impacts to the expanded 100-foot Buffer, when properly delineated on the plat. As such, a variance would be required. If the County and/or applicant is not able to demonstrate that the existing parcels can qualify as nonconforming parcels of record in regard to density and buildable areas, thereby entitled to a development right within the RCA as requested in comment #1 above, this office will not support variances to develop lots 2 and 3 as proposed.

4. Plat note #18 indicates that the wetlands were delineated in the field, but the plat contains a statement saying that the tidal wetland line was scaled from the State Wetlands Inventory Map. The tidal wetland limits, as well as the limits of State versus privately-owned wetlands, and the limits of the 100-foot and expanded 100-foot Buffer must be delineated in the field and cannot be taken from maps. Please revise and provide information once available.

5. A letter must be provided by the from the Department of Natural Resources Wildlife and Heritage program indicating whether there may be the presence of rare, threatened, or endangered species on or in the vicinity of the site. Our records indicate that may be a sensitive species in the vicinity of these lots. If species are present, the applicant must address any protections for the species made by DNR through submission of a Habitat Protection Plan (HPP). If applicable, the HPP must be submitted prior to preliminary plat approval.

6. Future submittals should contain information regarding proposed clearing, and proposed lot coverage onsite. Please note that if the applicant is able to provide documentation supporting the upgrade of these parcels to buildable lots, the property is limited to 15% lot coverage.

7. It does not appear that Lots 1 and 4 are currently forested. Per COMAR 27.01.02.04, the applicant is responsible for establishing 15% forest cover on this site at the time of building permit, or preferably, at the time of subdivision approval. Additionally, this forest must be placed in a protective easement or restrictive covenant. Please have the applicant include a plantings plan with the next submittal.

Thank you for forwarding this information for comment. Please forward revised materials as they become available. I can be reached at 410-260-3476 with any questions.

Sincerely,

Julie Roberts
Natural Resources Planner

Cc: DC 429-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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August 8, 2008

Mr. Tom Lawton
Department of Technical and Community Services
11916 Somerset Avenue
Princess Anne, MD 21853

Re: Local case number SA-08-427 – Westview

Dear Mr. Lawton:

I have received the information for the above referenced project. The applicant proposes to create four lot subdivision. These parcels are designated as Resource Conservation Area (RCA). Based on the information provided, I have the following comments:

1. It is not clear what portion of the acreage of wetlands shown are privately owned and which are State-owned. Please have the applicant provide a table which includes this acreage (as well as any acreage outside of the Critical Area). Per COMAR 8-1801(e)(ii) and County Zoning Ordinance 6.13.c.3(b), private wetlands may be included in the calculation of one unit per 20 acre density, provided the density on the upland acres does not exceed 1 unit per 8 acres.
    a. If the applicant has not or chooses to not perform a state vs. private tidal wetland assessment, the applicant may subtract the entire acreage of the tidal wetlands from available acreage.
    b. Please note that the applicant must have at least 80 acres, which may include private wetlands, in order to subdivide this parcel and meet the requisite 1 per 20 density for these 4 proposed lots in the RCA.

2. Should it be determined that the applicant has adequate acreage to support these 4 lots, the applicant has indicated that the residue lands in the amount of 54.718 acres will be held in reserve.
    a. Please have the applicant place a note on the plat indicating that there are no development rights associated with this parcel.

b. Once recorded, the reserved lands cannot be moved or revised. Please have the applicant add a note to the plat to that effect.

3. Please have the applicant clarify the total acreage within the Critical Area. The plat indicates that there are 82.510 acres in the RCA. However, the total acreage of each of the lots plus the residue equals more than this stated acreage. Please have the applicant clarify this discrepancy.

4. Per the Zoning Ordinance Section 6.13.h.6 and COMAR 27.01.02.04, the applicant is responsible for establishing 15% forest cover on this site based on the property acreage, including the reserved lands. The amount of existing forest should be indicated on the plat as well as the amount of required planting. A Planting Agreement should be required at the time of the final subdivision approval.

5. The applicant must provide a letter from the Department of Natural Resources' Wildlife and Heritage program indicating the presence of any rare, threatened, or endangered species on site. If present, the applicant will be required to address any recommendations made by DNR for protections of the species and submission of a Habitat Protection Plan (HPP) will be required.

6. Future submittals should contain information regarding permitted and/or proposed lot coverage onsite. Please note that each lot and the entire subdivision is limited to 15% lot coverage.

7. If not currently fully established, the 100-foot Buffer must be planted in native species on Lots 1, 2, 3, and 4. (There appear to be unforested Buffer areas on each lot which must be planted.) A Buffer Management Plan must be provided to County for review and comment in fulfillment of this requirement.

8. It is our understanding that the applicant submitted an application for subdivision prior to July 1, 2008. Please note that Ch. 119, 2008 Laws of Maryland at 765 contains provisions in regards to a new 200-foot Buffer which may be applicable to this subdivision. Under these provisions, a subdivision located in the RCA must provide a new 200-foot Buffer *unless* an application for subdivision was submitted before July 1, 2008 *and* is legally recorded by July 1, 2010. Should the applicant fail to have the subdivision plat recorded by the July 1, 2010 deadline, then a 200-foot Buffer will apply to this project. Please ensure that the applicant is aware of this requirement as stated in Chapter 119 of the 2008 Laws of Maryland.

9. The 100-foot Buffer should also be expanded for hydric and highly erodible soils, which are soils with a k factor of 0.35 or greater and slopes of 5% or greater. Please confirm whether an expanded Buffer for highly erodible soils is required.

10. Please have the applicant include a note on the plat that disturbance the 100-foot Buffer is prohibited except in accordance with the provisions of the Somerset Zoning Ordinance.

11. Is the applicant proposing a lot line adjustment for the residue parcel? Current tax maps appear to show P.61, 1 of 2, in a different configuration than the submitted site plan. Please have the applicant clarify.

Please forward the revised subdivision plat when it becomes available. I can be reached at 410-260-3476 with any questions.

Sincerely,

Julie Roberts
Natural Resources Planner

Cc: SO 464-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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August 8, 2008

Mr. Tom Lawton
Department of Technical and Community Services
11916 Somerset Avenue
Princess Anne, MD 21853

Re: Local case number SA-8-428 – Minor Subdivision, Lands of Sharpe & Buhl

Dear Mr. Lawton:

I have received the information for the above referenced project. The applicant proposes to subdivide Parcel 24 into two lots (Lot 1 = 20.13 acres and Lot 2 = 22.13 acres). Parcel 24 is located in the Resource Conservation Area (RCA). Based on the information provided, I have the following comments:

1. It is not clear what portion of the acreage of wetlands shown are privately owned and which are State-owned. Please have the applicant provide a table which includes this acreage. Per County Zoning Ordinance 6.13.c.3(b), if the applicant has not or chooses to not perform a state vs. private tidal wetland assessment, the applicant may subtract the entire acreage of the tidal wetlands from available acreage. Please note that the applicant must have at least 40 acres, which may include private wetlands, in order to subdivide this parcel and meet the requisite 1 per 20 density for these 2 proposed lots in the RCA.

2. The project notification indicates that Parcel 24 is 44.025 acres; however, the size of the combined, proposed Lots 1 and 2 appear to equal 42.26 acres. Please clarify this discrepancy.

3. Per the Zoning Ordinance Section 6.13.h.6 and COMAR 27.01.02.04, the applicant is responsible for establishing 15% forest cover on this site based on the property acreage. The applicant has indicated that a forest conservation area ('A' and 'B') will be located on each lot respectively; each of these proposed areas is over the required 15% forestation for each lot. A Planting Agreement should be required at the time of the final subdivision approval.

4. The applicant must provide a letter from the Department of Natural Resources' Wildlife and Heritage program indicating the presence of any rare, threatened, or endangered species on site.

If present, the applicant will be required to address any recommendations made by DNR for protections of the species and submission of a Habitat Protection Plan (HPP) will be required.

5. Future submittals should contain information regarding permitted and/or proposed lot coverage onsite. Please note that each lot and the entire subdivision is limited to 15% lot coverage.

6. If not currently fully established, the 100-foot Buffer must be planted in native species on Lots 1 and 2. (There appear to be unforested Buffer areas on both Lots which must be planted.) A Buffer Management Plan must be provided to County for review and comment in fulfillment of this requirement.

7. It is our understanding that the applicant submitted an application for subdivision prior to July 1, 2008. Please note that Ch. 119, 2008 Laws of Maryland at 765 contains provisions in regards to a new 200-foot Buffer which may be applicable to this subdivision. Under these provisions, a subdivision located in the RCA must provide a new 200-foot Buffer *unless* an application for subdivision was submitted before July 1, 2008 *and* is legally recorded by July 1, 2010. Should the applicant fail to have the subdivision plat recorded by the July 1, 2010 deadline, then a 200-foot Buffer will apply to this project. Please ensure that the applicant is aware of this requirement as stated in Chapter 119 of the 2008 Laws of Maryland.

8. The 100-foot Buffer should also be expanded for highly erodible soils, which are soils with a k factor of 0.35 or greater and slopes of 5% or greater. Please confirm whether an expanded Buffer for highly erodible soils is required.

9. Please revise Note #13 to include the statement that disturbance the 100-foot Buffer is prohibited except in accordance with the provisions of the Somerset Zoning Ordinance.

Please forward the revised subdivision plat when it becomes available. I can be reached at 410-260-3476 with any questions.

Sincerely,

Julie Roberts
Natural Resources Planner

Cc: SO 463-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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August 8, 2008

Ms. Regina Esslinger
Baltimore County DEPRM
401 Bosley Avenue, Suite 416
Towson, Maryland 21204

Re: Local Government Consistency Report – Morse/Lynhurst Rd. 12" Water Main

Dear Ms. Esslinger:

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 installing approximately 3,500 feet of 12" diameter water main in the pavement of Morse Lane and Lynhurst Road. The project site is located in the Limited Development Area (LDA). After reviewing the consistency report this office agrees that the project is consistent with the Baltimore County Critical Area Program for the reasons outlined below.

- There will be no impacts to the 100-foot Buffer;
- The site is 100% covered; therefore, there will be no increase in lot coverage;
- The total area disturbed (17,500 square feet in the Critical Area) is comprised of existing roads that were paved several decades prior to the inception of the Critical Area regulations;
- As no increase in lot coverage is proposed, no stormwater management or sediment and erosion control approvals are necessary;
- There are no Habitat Protection Areas (HPAs) located on site or impacts to tidal or nontidal wetlands.

Since the project is consistent with the local program, it will not require formal approval by the Chesapeake Bay Critical Area Commission, notwithstanding any other required resource agency approvals.

Sincerely,

Julie Roberts
Natural Resources Planner
CC: BC 468-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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August 11, 2008

Mr. Jack Willing, Director
Somerset County Dept. of Technical
And Community Services
11916 Somerset Ave., Rm. 211
Princess Anne, MD 21853

Re: Somerset County Critical Area Regulations
Adoption of 2004 Legislative Changes

Dear Mr. Willing:

This office has received a copy of the July 22, 2008 revisions to the County's Critical Area Ordinance (Somerset County, Maryland Resolution No. 979). These revisions are a result of legislative changes to the Critical Area law passed during the 2004 legislative session. The Critical Area Commission is accepting the revised ordinance for processing. The Chair will make an amendment or refinement determination within 30 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 your cooperation. If you have any questions, please telephone me at (410) 260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
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Ren Serey
Executive Director

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August 11, 2008

Mr. Joe Kincaid
Maryland Department of the Environment
Water Management Administration
Salisbury District Court/Multi-Service Building
201 Baptist Street
Salisbury, MD 21801

Dear Mr. Kincaid:

I have the following comments for this project in Dorchester County:

200861361/08-WL-1204: Choptank Electric Cooperative, Inc.
The applicant has applied to directionally bore an 8" conduit under 1,200 feet of tidal wetlands and 650 feet of State Critical Area directly adjacent to Slaughter Creek. The purpose of this project is to upgrade an existing underground electrical cable. As it appears from this project description that there will be disturbance in the Critical Area, this project may need further review by staff and may necessitate full Commission approval. Prior to determining how this project can be processed, we will need the following information:

1. The applicant must determine the property owner for the area above Mean High Water (MHW). Is it a state, local, or private entity?
2. Is there disturbance proposed in the 100-foot Buffer? If possible, any disturbance to the Buffer should be limited and the bore should begin and end outside of the first 100 feet from the MHW.
3. Will there be any clearing associated with this project? Mitigation for disturbance to the Buffer is required at a ratio of 3:1. Outside of the Buffer, mitigation is necessary at a ratio of 1:1.

Please have the applicant provide this information to our office and begin coordination with Commission staff as early as possible. As stated above, review and approval by the full Critical Area Commission may be necessary. If you have any questions, please feel free to call me at 410-260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner

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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August 11, 2008

Mr. Tom Lawton
Department of Technical and Community Services
11916 Somerset Avenue
Princess Anne, MD 21853

Re: Local case number SA-08-429 – Subdivision for Lands of Thornton Properties

Dear Mr. Lawton:

I have received the information for the above referenced project. The applicant proposes a two-lot subdivision from 10.78 acre parcel that is located in the Limited Development Area (LDA). Proposed Parcel 201 will be 8.573 acres and Lot 1 will be 2.207 acres. Based on the information provided, I have the following comments:

1. The 100-foot Buffer should be delineated in the field. Further, the 100-foot Buffer should be expanded for hydric and highly erodible soils, which are soils with a k factor of 0.35 or greater and slopes of 5% or greater. Please confirm whether an expanded Buffer for highly erodible soils is required.

2. Future submittals should contain information regarding permitted and/or proposed lot coverage onsite. Please note that each lot and the entire subdivision is limited to 15% lot coverage.

3. Per the Zoning Ordinance Section 6.13.h.6 and COMAR 27.01.02.04, the applicant is responsible for maintaining 15% forest cover on this site based on the property acreage.
    a. It appears that the applicant proposes to place 1.840 acres, or 17%, in forest conservation easement, which exceeds the requirement.
    b. It is unclear from the site plan what acreage of the site is currently forested. Please have the applicant provide current and proposed conditions, including the total proposed acreage to be removed as associated with the dwelling, sewage reserve area, and driveway on Parcel 201 and Lot 1, as applicable.

c. The applicant will be required to mitigate at a ratio of 1:1 for all clearing outside of the Buffer, provided it is less than 20%.
d. A Planting Agreement should be required at the time of the final subdivision approval.

4. Please have the applicant include a note on the plat that disturbance the 100-foot Buffer is prohibited except in accordance with the provisions of the Somerset Zoning Ordinance.

5. If not currently fully established, the 100-foot Buffer must be planted in native species. (There appear to be unforested Buffer areas which must be planted.) A Buffer Management Plan must be provided to County for review and comment in fulfillment of this requirement.

6. The applicant must provide a letter from the Department of Natural Resources' Wildlife and Heritage program indicating the presence of any rare, threatened, or endangered species on site. If present, the applicant will be required to address any recommendations made by DNR for protections of the species and submission of a Habitat Protection Plan (HPP) will be required.

Please forward the revised subdivision plat when it becomes available. I can be reached at 410-260-3476 with any questions.

Sincerely,

Julie Roberts
Natural Resources Planner

Cc: SO 462-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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August 11, 2008

Mr. Tom Lawton
Department of Technical and Community Services
11916 Somerset Avenue
Princess Anne, MD 21853

Re: Local case number SA-08-426 – Subdivision for Jae Kyom Kim

Dear Mr. Lawton:

I have received the information for the above referenced project. The applicant proposes to create a 1-lot subdivision. The existing lot is 24.223 acres and is located in the Limited Development Area (LDA). Based on the information provided, I have the following comments:

1. The applicant has not included soils information on the plat. The 100-foot Buffer should be expanded for hydric and highly erodible soils, which are soils with a k factor of 0.35 or greater and slopes of 5% or greater. Please confirm whether an expanded Buffer for highly erodible soils is required.

2. Nontidal wetlands are shown on the site plan. These resources should be confirmed by a jurisdictional determination to ensure the 100-foot Buffer and the 25-foot nontidal buffer are correctly shown.

3. Future submittals should contain information regarding permitted and/or proposed lot coverage onsite. Please note that each lot and the entire subdivision is limited to 15% lot coverage.

4. Per the Zoning Ordinance Section 6.13.h.6 and COMAR 27.01.02.04, the applicant is responsible for maintaining 15% forest cover on this site based on the property acreage. It appears that the applicant currently has 4.75 acres, or 25.16%, of total wooded area on site.
    a. Please have the applicant include the total proposed acreage to be removed as associated with the dwelling, sewage reserve area, and driveway on Lot 2.

b. The applicant will be required to mitigate at a ratio of 1:1 for all clearing outside of the Buffer, provided it is under 20%.
c. A Planting Agreement should be required at the time of the final subdivision approval.
d. At least 15% of the forested area must be placed in permanent protective easement.

5. Please have the applicant include a note on the plat that disturbance the 100-foot Buffer is prohibited except in accordance with the provisions of the Somerset Zoning Ordinance.

6. If not currently fully established, the 100-foot Buffer must be planted in native species. (There appear to be unforested Buffer areas which must be planted.) A Buffer Management Plan must be provided to County for review and comment in fulfillment of this requirement.

7. The applicant must provide a letter from the Department of Natural Resources' Wildlife and Heritage program indicating the presence of any rare, threatened, or endangered species on site. If present, the applicant will be required to address any recommendations made by DNR for protections of the species and submission of a Habitat Protection Plan (HPP) will be required.

Please forward the revised subdivision plat when it becomes available. I can be reached at 410-260-3476 with any questions.

Sincerely,

Julie Roberts
Natural Resources Planner

Cc: SO 462-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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August 11, 2008

Mr. Tom Lawton
Department of Technical and Community Services
11916 Somerset Avenue
Princess Anne, MD 21853

Re: Local case number SA-08-424
Minor Subdivision of the lands for William T. Chaffey, III

Dear Mr. Lawton:

I have received the information for the above referenced project. The applicant proposes to create a five lot subdivision. This site is 103.1 acres and is located in the Resource Conservation Area (RCA). Based on the information provided, I have the following comments:

1. It is unclear how the wetlands portion of this site were delineated; Additionally, it is unclear what portion of the acreage of wetlands shown are privately owned and which are State-owned. Please have the applicant provide a table which includes this acreage (as well as any acreage outside of the Critical Area). Per COMAR 8-1801(e)(ii) and County Zoning Ordinance 6.13.c.3(b), private wetlands may be included in the calculation of one unit per 20 acre density, provided the density on the upland acres does not exceed 1 unit per 8 acres.
    a. If the applicant has not or chooses to not perform a state vs. private tidal wetland assessment, the applicant may subtract the entire acreage of the tidal wetlands from available acreage.
    b. Please note that the applicant must have at least 100 acres, which may include private wetlands, in order to subdivide this parcel and meet the requisite 1 per 20 density for these 5 proposed lots in the RCA..

2. Per the Zoning Ordinance Section 6.13.h.6 and COMAR 27.01.02.04, the applicant is responsible for establishing and/or maintaining 15% forest cover on this site based on the property acreage. The applicant has indicated that 25.84 acres, or 19.9%, of this site is

forested. Please have the applicant include any proposed forest clearing associated with the development of each lot, as applicable.

3. The applicant must provide a letter from the Department of Natural Resources' Wildlife and Heritage program indicating the presence of any rare, threatened, or endangered species on site. If present, the applicant will be required to address any recommendations made by DNR for protections of the species and submission of a Habitat Protection Plan (HPP) will be required.

4. Future submittals should contain information regarding permitted and/or proposed lot coverage onsite. Please note that each lot and the entire subdivision is limited to 15% lot coverage.

5. If not currently fully established, the 100-foot Buffer must be planted in native species on each lot. (There appear to be unforested Buffer areas on each lot which must be planted.) A Buffer Management Plan must be provided to County for review and comment in fulfillment of this requirement.

6. It is our understanding that the applicant submitted an application for subdivision prior to July 1, 2008. Please note that Ch. 119, 2008 Laws of Maryland at 765 contains provisions in regards to a new 200-foot Buffer which may be applicable to this subdivision. Under these provisions, a subdivision located in the RCA must provide a new 200-foot Buffer *unless* an application for subdivision was submitted before July 1, 2008 *and* is legally recorded by July 1, 2010. Should the applicant fail to have the subdivision plat recorded by the July 1, 2010 deadline, then a 200-foot Buffer will apply to this project. Please ensure that the applicant is aware of this requirement as stated in Chapter 119 of the 2008 Laws of Maryland.

7. The 100-foot Buffer should also be expanded for hydric and for highly erodible soils, which are soils with a k factor of 0.35 or greater and slopes of 5% or greater. Please confirm whether an expanded Buffer for highly erodible soils is required.

8. Please have the applicant include a note on the plat that disturbance the 100-foot Buffer is prohibited except in accordance with the provisions of the Somerset Zoning Ordinance.

Please forward the revised subdivision plat when it becomes available. I can be reached at 410-260-3476 with any questions.

Sincerely,

Julie Roberts
Natural Resources Planner

Cc: SO 461-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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August 11, 2008

Ms. Regina Esslinger
Baltimore County DEPRM
401 Bosley Avenue, Suite 416
Towson, Maryland 21204

Re: Variance – Eastern Yacht Club, 2300 Seneca Road

Dear Ms. Esslinger:

Thank you for forwarding information on the above-referenced variance request. The applicant is proposing to create two residential lots (Lot 1 and Lot 2) at an existing yacht club. The yacht club and associated facilities will remain. One of the two proposed lots, Lot 1, requires a variance for a dwelling to encroach in the 35-foot setback to the 100-foot Buffer. This site is 13.84 acres and is located in the Limited Development Area (LDA). For the reasons outlined below, this office opposes the granting of the variance.

This is a large site, with ample opportunity to locate a new lot (such as lot 2) both outside of the Buffer and without the need for a variance. Based on the site plan, it appears that the applicant has locations on the eastern and southern ends of this site, outside of the 100-foot Buffer, that could accommodate a new lot and dwelling. Because the applicant has not demonstrated an unwarranted hardship, and because it appears that the applicant has the opportunity to move the proposed lot and the associated proposed dwelling so that its creation does not necessitate a variance, we oppose this variance request.

In 2002, 2004, and 2008, 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 create a lot and build a dwelling unit which will necessitate a variance to the 35-foot setback to the 100-foot Buffer. The applicant has not met each one and every one of Baltimore 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.*

This site is currently improved with an existing yacht club, marina, and associated facilities. A new lot is proposed (Lot 2) for residential purposes; this new lot is being created without the need for a variance. 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 that the applicant enjoys reasonable use of the property as evident by the existing marina and yacht club, we do not believe that the County has evidence on which to base a finding that, without the creation of this new lot, the entire parcel would be denied reasonable and significant use. In addition, it is the burden of the applicant to comply with current standards and regulations so that new lots and their associated improvements are not considered substandard, requiring a variance for their 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 commercial purposes and proposed residential purposes, and therefore, would not be denied a right commonly enjoyed by neighboring properties. No property owner has the right to configure a new lot so that the improvement of a residential dwelling requires a variance. Therefore, the rejection of a variance for the new lot 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 configuring a new lot for which the development would require a variance. This request

would be denied to others in this area as well as in similar areas found within the County's Critical Area. 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.*

It appears that the applicant has ample opportunity to locate the proposed new lot and associated dwelling on site in a manner that does not require a variance. Therefore, the applicant has not 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 for a dwelling within the 35-foot setback to 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 potential habitat loss. Given that the applicant can adequately redevelop this property and locate the lot and proposed new dwelling outside of the setback to 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 applicant must overcome the burden to meet each and every one of the County's variance standards in order for a variance to be granted. Because we believe that the applicant has failed to meet each and every variance standards, we oppose the applicant's variance request.

Please include this letter in your file and submit it as part of the record for variance. Please notify the Commission of the decision made in this case. I can be reached at 410-260-3476 should you have any questions.

Sincerely,

Julie Roberts
Natural Resources Planner

Cc: BC 470-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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August 12, 2008

Mr. Steven Dodd
Dorchester County Planning and Zoning
County Office Building
P.O. Box 307
Cambridge, Maryland 21613

Re: Local Case No. 2348 – Burton, Harry

Dear Mr. Dodd:

Thank you for forwarding information on the above referenced variance. The applicant requests a variance to construct an attached 6.5'x14' (91 square foot) porch on the landward side of a dwelling entirely located in the Buffer. This lot is located in the Resource Conservation Area and is 92 acres.

While this office is not generally opposed to modest requests for porch or deck additions to existing non-conforming structures within the Buffer, it appears that the applicant in this case currently enjoys reasonable use of the outdoor areas on the property as evident by the existing decks and walkways. As such, we question whether the strict variance standards can be met in relation to the applicant's request for an additional porch. We recommend that the use of wooden pervious steps be considered as an alternative to the proposed porch. However, should the Board determine that the County's variance standards has been met for this request, mitigation is required at a ratio of 3:1, for a total of 273 square feet. This mitigation should be in the form of native plantings and should be placed waterward of the existing dwelling. The applicant should provide a plantings plan to the County which includes the species, size, spacing, and proposed dates of plantings for review and approval.

Thank you for the opportunity to provide comments. If you have any questions, please contact me at 410-260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner
Cc: DC 484-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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August 12, 2008

Ms. Pam Cotter
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road, MS 6301
Annapolis, MD 21401

Re: 2008-0254-V – Higgins, Charles

Dear Ms. Cotter:

Thank you for forwarding the above-referenced variance request. The applicants request a variance to allow a dwelling addition (second level deck and two-story addition) with less Buffer than required. This lot is 30,427 square feet, or 0.71 acres and is located in the Limited Development Area (LDA). The applicant proposes to construct a two-story addition and second story deck on the waterward side of the dwelling. Both of these proposed additions are entirely within the 100-foot Buffer. This lot is currently non-conforming and is over its lot coverage limit of 5,445 square feet (the site plan incorrectly states that a lot of this size is allowed 40% lot coverage). The applicant proposes a net reduction of lot coverage in the amount of 240 square feet as part of this redevelopment, including the removal of a shed out of the Buffer.

Provided the lot is properly grandfathered, we do not generally oppose a variance request for the construction of a modest dwelling addition. However, it appears that minimization is possible by restricting the location of the proposed addition to the footprint of the existing structure. For example, it appears that the addition could be constructed above the portion of the house that is currently proposed to be maintained as a single story, or lateral to the existing dwelling outside of the Buffer. We do not oppose the construction of the second story deck.

Should the Hearing Officer determine that the applicant has met each and every one of the variance standards and/or if some variation of this request can be granted, we recommend 3:1 mitigation for the area of disturbance in the Buffer. The applicant's lot is almost entirely kept in lawn and no mitigation proposal or stormwater management has been included in this submission. Additionally, it appears that there is ample opportunity to plant the Buffer, thus improving the water quality on site, offset the area of lot coverage over the allowed amount, and provide habitat for species. The applicant should submit a plantings plan to the County for review and approval.

Please include this letter in your file and submit it as part of the record for variance. Please notify the Commission of the decision made in this case. I can be reached at 410-260-3476 should you have any questions.

Sincerely,

Julie Roberts
Natural Resources Planner

cc: AA 476-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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August 22, 2008

Ms. Pam Cotter
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road, MS 6301
Annapolis, MD 21401

Re: 2008-0257-V Arscott, John and Cherie

Dear Ms. ~~Schappert~~ Cotter:

I have received the information regarding the above-referenced variance request. The applicant requests a variance to allow a dwelling with less setbacks than required and with disturbance to slopes greater than 15%. The lot is designated as a Limited Development Area (LDA) and is entirely within the 100-foot Buffer. This lot is 0.37 acres and is currently improved with an existing dwelling unit. The existing impervious site coverage on this site is 3,361 square feet for the current house and driveway and the proposed lot coverage is 4,550.

Provided the lot is properly grandfathered, we do not oppose this variance request to raze the existing dwelling and construct a modestly sized dwelling in a similar footprint. It appears that the applicant has minimized disturbance to the steep slopes to the extent feasible. If the Hearing Officer determines that this request can be granted, we recommend that the applicant provide mitigation at a ratio of 2:1 for the area of disturbance to the steep slopes. Mitigation should be in the form of native plantings and located on site, preferably in the Buffer Modification Area, if possible. The applicant shall provide a plantings plan including species, size, spacing and schedule for review and approval by the County. In addition, we recommend that the Hearing Officer require stormwater management for all areas of lot coverage as a condition of approval. Finally, it appears that the septic system is being replaced as part of the redevelopment. If not already provided, we recommend the Hearing Officer require the use of nitrogen removing technology in association with the new septic system

We have no comments on setbacks.

As a reminder, in 2008, the General Assembly passed House Bill 1253 which included a change within the Critical Area from the term impervious surface area to the term lot coverage. It is appears from the variance application that the property is being developed in the context of

impervious surface area. As such, Section 8, Ch. 119, 2008 Laws of Maryland at 765, contains provisions in regard to the lot coverage requirements of Natural Resources Article §8-1808.3 which may be applicable to this variance application. Under these provisions, a development project whose initial application for development that satisfies all local requirements is filed by October 1, 2008 and whose development plan is approved (recorded) by July 1, 2010 may utilize Anne Arundel County's approved impervious surface area limitations in effect prior to July 1, 2008 provided that;

a) The approved development plan remains valid in accordance with Anne Arundel County's procedures and requirements; and

b) By July 1, 2010, the applicant prepares a detailed lot coverage plan drawn to scale and showing the amounts of impervious surface area, partially pervious area, and developed pervious surface area in the development project.

In addition to (a) and (b) above, Section 8, Ch. 119, 2008 Laws of Maryland at 765 requires the lot coverage plan to be approved by Anne Arundel County and implemented in accordance with the approved lot coverage plan. Should the applicant intend to develop this property in accordance with the County's impervious surface area limitations, please indicate that intent and ensure that the applicant is aware of the requirements of Chapter 119 of the 2008 Laws of Maryland for proceeding as such.

Thank you for the opportunity to comment. Please include this letter in your file and submit it as part of the record for variance. Please notify the Commission of the decision made in this case.

Sincerely,

Julie Roberts
Natural Resources Planner
cc: AA 702-07

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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August 22, 2008

Ms. Patricia Cotter
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road, MS 6301
Annapolis, MD 21401

Re: 2008-0181-V – Staurulakis, Leo and Cheryl

Dear Ms. Cotter:

We have received revised information on the above referenced variance. The applicant is requesting a variance to allow a dwelling addition (mudroom/garage) with less setbacks and Buffer than required and with disturbance to slopes greater than 15%. Members of Critical Area Commission staff meet with the applicant's architect, and William Ethridge of the County on July 21, 2008. We discussed minimizing the impact to the steep slopes on site and moving the proposed addition out of the side yard setback, which the applicant has shown on the revised site plan. The net lot coverage increase on this site remains 60 square feet, with a total proposed lot coverage are of 5,311 square feet (or 25%) which is within the limits for a lot of this size.

It appears that the applicant has decreased the disturbance to the steep slopes for this proposed addition by relocating the proposed addition to the northeast portion of the property. While overall disturbance to steep slopes has been reduced, the revised plan has not avoided disturbance to steep slopes entirely. Should the Hearing Officer find that this revised request is the minimum necessary to provide relief, we recommend that the County require mitigation at a ratio of 3:1 for the area of disturbance to the steep slopes, Buffer and expanded Buffer. Mitigation should be performed on site in the area waterward of the dwelling. The applicant must provide a plantings plan including species, size, spacing, and schedule for review and approval by the County. We further recommend that if a variance is granted, the Hearing Officer require as a condition of approval some form of stormwater management for the new areas of impervious surface.

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,

Julie Roberts
Natural Resource Planner
cc: AA 12-03

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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August 22, 2008

Mr. Jeff Wiggin
Navigation Section
Department of the Army
Baltimore District, U.S. Army Corps of Engineers
PO Box 1715
Baltimore, MD 21203-1715

Re: Goose Creek Dredging, Somerset County

Dear Mr. Wiggin,

We have received notice for the above-referenced dredging project. The project proposal that we received indicates that approximately 45,000 cubic yards of material will be hydraulically dredged. The dredged material is then proposed to be used as part of a wetland creation. In a conversation on August 21, 2008, Mr. Roland Limpert of MDE indicated that all proposed work will be performed below Mean High Water (MHW) and that the dredge material will be barged in for placement for the wetland creation.

Provided that there is no proposed disturbance above MHW and that all appropriate permits are received, we have no comments on the proposed dredge site or wetland creation. Should these plans change, or should there be any proposed disturbance to the 100-foot Buffer, temporary or otherwise, we request that these changes be routed to this office for additional review and comment.

Thank you for forwarding this information. If you have any questions, I can be reached at 410-260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner

Cc: Roland Limpert, MDE

34-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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August 22, 2008

Ms. Pam Cotter
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road, MS 6301
Annapolis, MD 21401

Re: 2008-0219-V – Keenan, D. Michael

Dear Ms. Cotter:

I have received revised information for the above-referenced variance request. On August 21, 2008, the applicant's architect met with members of Critical Area Commission staff to discuss this request and the revised site plan. The applicant requests a variance to allow a dwelling with less setbacks and Buffer than required and with disturbance to slopes greater than 15%. The lot is designated as a Resource Conservation Area (RCA), is 5.402 acres, and is currently improved with an existing dwelling unit. This lot is almost entirely encumbered by the expanded Buffer and the area of level land is currently in easement for a septic system. The applicant proposes to raze the existing dwelling and construct a new dwelling in a similar area. Revisions to the site plan indicate that the applicant has removed the proposed stone terrace, which reduces the proposed lot coverage on site by 720 square feet.

Impacts to Steep Slopes and the Expanded Buffer

In general, this office does not oppose modest dwelling additions or modest reconstruction of dwelling units. In this case, we acknowledge that the site is severely constrained and that the applicants have made an effort to reduce impacts to steep slopes by placing most of the proposed reconstruction over areas that are currently covered by driveway and other surfaces as well as by providing stormwater management. However, in regard to the size and orientation of the proposed garage, it appears that there may be further opportunity to minimize the structure and the associated disturbance to the expanded Buffer by limiting the size of the garage or by incorporating the garage into the design of the dwelling in a more compact manner. Should the Hearing Office find that the applicants have minimized to the extent feasible, we recommend 3:1 mitigation for disturbance in the expanded Buffer. Mitigation should be in the form of native plantings and a plantings plan should be submitted to the County for review and approval.

Lot Coverage in the Critical Area

It is appears from the variance application that the property is being developed in the context of impervious surface area. In 2008, the General Assembly passed House Bill 1253 which included a change within the Critical Area from the term impervious surface area to the term lot coverage. As such, Section 8, Ch. 119, 2008 Laws of Maryland at 765, contains provisions in regard to the lot coverage requirements of Natural Resources Article §8-1808.3 which may be applicable to this variance application. Under these provisions, a development project whose initial application for development that satisfies all local requirements is filed by October 1, 2008 and whose development plan is approved (recorded) by July 1, 2010 may utilize Anne Arundel County's approved impervious surface area limitations in effect prior to July 1, 2008 provided that;

a) The approved development plan remains valid in accordance with Anne Arundel County's procedures and requirements; and

b) By July 1, 2010, the applicant prepares a detailed lot coverage plan drawn to scale and showing the amounts of impervious surface area, partially pervious area, and developed pervious surface area in the development project.

In addition to (a) and (b) above, Section 8, Ch. 119, 2008 Laws of Maryland at 765 requires the lot coverage plan to be approved by Anne Arundel County and implemented in accordance with the approved lot coverage plan. Should the applicant intend to develop this property in accordance with the County's impervious surface area limitations, please indicate that intent and ensure that the applicant is aware of the requirements of Chapter 119 of the 2008 Laws of Maryland for proceeding as such.

Thank you for the opportunity to comment. Please include this letter in your file and submit it as part of the record for variance. Please notify the Commission of the decision made in this case.

Sincerely,

Julie Roberts
Natural Resources Planner
cc: AA 380-08

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
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August 27, 2008

Mr. Paul Dennis
Baltimore County DEPRM
401 Bosley Avenue, Suite 416
Towson, Maryland 21204

Re: Variance – Edgar Grove, Lots 45-55

Dear Mr. Dennis:

Thank you for forwarding information on the above-referenced project. The total site area is 1.29 acres and these lots are located in the Limited Development Area (LDA). The applicant proposes to raze five dwellings on this site and reconstruct five new single family dwelling units. It appears that each of these lots is either mostly or entirely encumbered by the 100-foot Buffer. This office reviewed a previous variance request for these lots and did not oppose the proposal in a letter dated November 10, 2003. This request is to amend the variance request approved on February 10, 2004 by shifting the approved homes. It appears that this request further reduces the impacts to the Buffer by shifting each of these five dwellings further away from Mean High Water (MHW). Each of the requested dwellings appears to be within the allowable lot coverage.

Provided these lots are properly grandfathered, we do not oppose this variance request to amend the configuration of each of these dwellings; however, each of these houses could be smaller in size. We question how in 2004 it was found that the variance request for these lots was the minimum necessary to provide relief and that this current submission shows proposed dwellings that have increased in size. Should the Director find that this variance request is the minimum necessary to provide relief, the applicant is responsible for providing mitigation at a ratio of 3:1 for all disturbance to the 100- Buffer. Mitigation should be a mix of native trees and shrubs and located waterward of the dwellings. The applicant should provide the County with a Buffer Management Plan including the size, species, spacing and schedule for the mitigation plantings.

Please include this letter in your file and submit it as part of the record for variance. Please

notify the Commission of the decision made in this case. I can be reached at 410-260-3476 should you have any questions.

Sincerely,

Julie Roberts
Natural Resources Planner

Cc: BC 755-03

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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August 27, 2008

Ms. Pam Cotter
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road, MS 6301
Annapolis, MD 21401

Re: 2008-0255-V

Dear Ms. Cotter:

Thank you for providing information on the above referenced variance. The applicant is proposing to raze the existing single family dwelling and construct a new dwelling on this lot (Lot 6) with disturbance to slopes greater than 15%. This lot is 17,284 square feet and is located in the Limited Development Area (LDA). Lot 6 is also considered a Buffer Modified Area (BMA). This office previously received a variance request (2008-0096-V) for this property in April of 2008. The Hearing Officer concurred with our recommendation of denial, as the applicant had not met the burden of unwarranted hardship, specifically as it appeared that the applicant could configure the desired porch and deck so as to not be any further waterward than the existing dwelling and setback. This current request shows the proposed porch and deck no further waterward than the existing dwelling (to be demolished), which is allowable under Anne Arundel County code. This lot appears to be significantly encumbered by areas of steep slopes, precluding the reconstruction of a dwelling without additional disturbance and the need for a variance. The proposed lot coverage for both Lots 6 and 13 are within the allowable amount.

Provided that the lot is properly grandfathered, we do not oppose the variance request to construct a modest dwelling with associated facilities. Mitigation should be performed at a ratio of 2:1 for the area of disturbance to the steep slopes and for the area of disturbance within the 100-foot Buffer. Mitigation should be in the form of native plantings and located on site, preferably in the Buffer Modification Area, if possible. The applicant shall provide a plantings plan including species, size, spacing and schedule for review and approval by the County. Also, it appears that the septic system is being replaced as part of the redevelopment. If not already provided, we recommend the Hearing Officer require the use of nitrogen removing technology in association with the new septic system.

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,

Julie Roberts
Natural Resource Planner
cc: AA 190-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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August 27, 2008

Mr. Richard Parks
Town of Indian Head
4195 Indian Head Highway
Indian Head, Maryland 20640

Re: Local Government Consistency Report – Mattingly Park Restroom and Parking Lot Improvements

Dear Mr. Parks:

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 removing and replacing restrooms fixtures, building enclosure, partitions, and the addition of gravel for additional parking areas. The 9.7 acre site is designated as Limited Development Area (LDA) and Resource Conservation Area (RCA). After reviewing the consistency report this office agrees that the project is consistent with the Indian Head Critical Area Program for the reasons outlined below.

- There will be no impacts to the 100-foot Buffer;
- There are no Habitat Protection Areas (HPAs) located on site or impacts to tidal or nontidal wetlands;
- This project is not water dependent;
- Proposed lot coverage (2,586 square feet) is within the 15% limit for the site (with proposed additional lot coverage, site is 12.5% covered);
- As this disturbance to the site is under 5,000 square feet, no stormwater management permit is necessary;
- Mitigation in the amount of 1:1 is necessary for the clearing of the three trees outside of the Buffer. This mitigation requirement has been fulfilled per the signed planting agreement. Please notify staff once the plantings have been implemented.

Since the project is consistent with the local program, it will not require formal approval by the Chesapeake Bay Critical Area Commission, notwithstanding any other required resource agency approvals. Please contact me with any questions at 410-260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner

CC: IH 99-04

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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August 28, 2008

Mr. Steven Dodd
Dorchester County Planning and Zoning
County Office Building
P.O. Box 307
Cambridge, Maryland 21613

Re: Picken House

Dear Mr. Dodd:

We have received information regarding the redevelopment of the above referenced property. There are two lots in question that the applicant has included in the submitted information, Deed Parcel 1 (0.62 acres) and Deed Parcel 2 (0.59 acres). These lots are located in the Resource Conservation Area. Deed Parcel 1 appears to be entirely encumbered with tidal wetlands and Deed Parcel 2 is encumbered by the 100-foot Buffers to tidal wetlands on three sides. The shoreward portion of the property is mapped as a Buffer Exempt Area (BEA), necessitating multiple variances and a BEA hearing in the context of redevelopment. This property was previously used as part of the crabbing industry and appears to have been abandoned with no remediation of the site. We have these comments and questions:

1. The applicant has submitted this project proposal showing the lot coverage area in relation to the total area of the two lots, which is 1.21 acres.
    a. The applicant has not stated that these lots are legally merged as one, showing two separate parcels on the plan. However, it appears that areas of existing lot coverage and/or structures are located such that they straddle the parcel lines. In this case, it seems that the two lots are merged by order of law and should be treated as such. Further clarification from the County and applicant is necessary on this point.

2. Please provide parcel history which indicates that this property is an existing parcel of record in the Critical Area and that its configuration predates the date of adoption of the County's Critical Area Program.

3. Although P.2 is almost entirely covered by gravel, concrete pads, structures, and other miscellaneous debris, it is the responsibility of the applicant to bring the property into

conformance to the extent possible in the context of redevelopment. As submitted, the applicant is proposing to reduce the total lot coverage on the property from 44.5% to 26.3%.

a. In the context of meeting the County's BEA criteria for redevelopment, if the applicant cannot bring the lot into compliance with a maximum of 15% impervious coverage, an impervious surface coverage variance must be obtained per Dorchester County Zoning Ordinance § 155-38.M.1 from the Board of Zoning Appeals.

b. The County's BEA criteria require that redevelopment minimize the shoreward extent of intrusion into the BEA and shall not exceed the shoreward extent of existing structures. In this case, the applicant has previously stated that the BEA setback can be determined by the location of the existing concrete pad at the shoreline. However, we question whether the existing structures can be considered legally nonconforming for any purpose based the amount of time they have been abandoned and based on the proposed change in use of the property. The applicant should provide a full history of this parcel, including when it was abandoned and the County should make a determination regarding the nonconforming status of the structures on the property for the purpose of determining the BEA setback and applying the BEA criteria consistently.

c. Regardless of the outcome of (b) above, the County's BEA criteria also state that in no case shall intrusion into the BEA encroach into a required yard under the terms of the underlying zoning unless a variance has first been granted. In this case, we understand the yard setback from the shore to be 40 feet, which is not being met by the applicant.

d. The factors in (a-d) above result in staff's conclusion that the applicant has not provided enough information to fully evaluate the redevelopment proposal. Based solely on the materials received to date, it is our position that the County's BEA criteria for redevelopment have not been met.

4. Please clarify whether the Health Department approved the proposed holding tanks on this property proposed in conjunction with the redevelopment.

5. Should the applicant chose to pursue the variances required under the County's BEA provisions, we note that the burden to meet each and every one of the County and State variance standards falls on the applicant. In this regard, we recommend that the applicant give particular consideration to demonstrating that the variance is the minimum necessary to provide relief and in demonstrating that adverse impacts to water quality and fish and wildlife habitat have been minimized to the extent possible. Currently, opportunities to further reduce the proposed footprint and redesign the layout are abundant and would not be supported by this office.

In general, this office does not oppose the redevelopment of this constrained site. However, it is the burden of the applicant to provide enough information for this office, the County Planning and Zoning office, the Planning Commission, and the Board of Appeals to make useful and informed comments, recommendations, and decisions. To date, the applicant has not met this burden. For example, in a meeting with the applicants and the County (via conference call) on July 31, 2008, and in a follow up email from the County dated August 1, 2008, additional information was requested. The applicant briefly addressed the concerns of the County but did not provide the level of detail useful for further review.

Additionally, it does not appear that minimization has been demonstrated for the proposed redevelopment of this property consistent with the County's provisions for redevelopment in the BEA, nor has the information provided to this office show that the mitigation requirements been fully addressed. Finally, there are areas of this property that are proposed to be redeveloped without being brought into compliance, such as the concrete pad at the bulkhead. The applicant has indicated that it would be difficult to remove this pad, but no supporting information has been provided. In general, further attempts at minimization must be made by the applicant and further site plan information is necessary.

Please have the applicant provide the additional information requested in this letter and forward this information as it becomes available. If you have any questions, please contact me at 410-260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner
Cc: DC 484-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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August 28, 2008

Ms. Regina Esslinger
Baltimore County DEPRM
401 Bosley Avenue, Suite 416
Towson, Maryland 21204

Re: Local Government Consistency Report – Hawthorne Trail

Dear Ms. Esslinger:

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 installing a 10-foot wide public trail system (18,250 linear feet) and associated stormwater management through an existing County park. A small portion of the trail is proposed to be constructed in the 100-foot Buffer. The project site is 5.73 acres and is located in the Limited Development Area (LDA). After reviewing the consistency report this office agrees that the project is consistent with the Baltimore County Critical Area Program for the reasons outlined below.

- The Director of Environmental Protection and Resource Management (DEPRM) has approved the alternative analysis for this trail project and stormwater management facility under §33-2-402(d)(1, 2) subject to the condition of mitigation;
- Mitigation is offered at a ratio of 3:1 in the amount of 148,263 square feet for temporary and permanent impacts to the 100-foot Buffer, as well as the removal of 4 trees. 13,124 square feet of mitigation associated with the temporary disturbance (grading) in the Buffer is associated with the stormwater management practices and impacts to the 25-foot buffer to wetlands;
- There are no other Habitat Protection Areas (HPAs) located on site.

Since the project is consistent with the local program, it will not require formal approval by the Chesapeake Bay Critical Area Commission, notwithstanding any other required resource agency approvals.

Sincerely,

Julie Roberts
Natural Resources Planner

CC: BC 473-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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September 2, 2008

Ms. Regina Esslinger
Baltimore County DEPRM
401 Bosley Avenue, Suite 416
Towson, Maryland 21204

Re: Local Government Consistency Report – Bear Creek Pumping Station

Dear Ms. Esslinger:

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 adding 277 square feet of impervious surface. After reviewing the consistency report this office agrees that the project is consistent with the Baltimore County Critical Area Program for the reasons outlined below.

- The proposed upgrades are required subject to a Federal Consent Decree.
- While the proposed upgrades are within the 100-foot Buffer, the County Code permits utilities in Habitat Protection Areas provided no feasible alternative exists and the location, design, construction and maintenance provides erosion protection and minimizes impacts.
- The pumping station site existed within the 100-foot Buffer prior to the adoption of the Baltimore County Critical Area Program.
- Three trees will be removed as part of this project. These trees must be mitigated at a ratio of 3:1, as they are located in the Buffer. A fee in lieu of may be substituted if the mitigation cannot be performed on site.
- A fee in lieu may be provided for the 0.02 pounds of phosphorous associated with the Pollutant Removal Requirement.
- Stormwater management and sediment and erosion control approvals will be provided.
- There are no other impacts to Habitat Protection Areas.

Since the project is consistent with the local program, it will not require formal approval by the Chesapeake Bay Critical Area Commission, notwithstanding any other required resource agency approvals.

Sincerely,

Julie Roberts
Natural Resources Planner

Cc: BC 506-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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September 4, 2008

Mr. Steve Dodd
Dorchester County Planning and Zoning
County Office Building
P.O. Box 307
Cambridge, Maryland 21613

Re: Local case number 714C– Jeffrey W. Brown and Valerie Powell Brown

Dear Mr. Dodd:

I have received the information for the above-referenced project. The applicant has submitted a plat with the proposed subdivision of a 6.5 acre parcel into two buildable lots (Lot 1 and Lot 2), of which Lot 1 is already improved. This parcel is located in the Limited Development Area (LDA). Based on the information provided, I have the following comments:

1. Please have the applicant add a note to the plat indicating that no development activities are permitted in the 100-foot Buffer on Lot 2.

2. As it does not appear that it has been established on the proposed Lot 2, the 100-foot Buffer must be planted in native species on Lots 1 and 2 at the time of building permit, or preferably at the time of subdivision recordation. A Buffer Management Plan must be provided to the County for review and comment in fulfillment of this requirement. Please note that a forested Buffer consists of three-tiered vegetation, with canopy, understory, and groundcover layers.

3. The site plan indicates that 375 square feet of forest coverage is proposed to be removed during the construction process. Any clearing outside of the Buffer must be mitigated at a ratio of 1:1. This clearing appears to be included in the afforestation calculations.

4. Please provide a letter from the Department of Natural Resources' Wildlife and Heritage Service (WHS) indicating whether there is the presence of any rare, threatened, or endangered species on site on or in the vicinity of the site. If present, the applicant will be required to address any recommendations made by DNR for protections of the species and submission of a Habitat Protection Plan (HPP) will be required.

5. Future submittals should contain information regarding permitted and/or proposed lot coverage for Lot 2.

6. Although the plat indicates that there are no hydric soils on site, no topography or soil delineation information has been provided on the plat. The Buffer may need to be expanded for contiguous hydric and highly erodible soils.

Please forward the revised subdivision plat when it becomes available. I can be reached at 410-260-3476 with any questions.

Sincerely,

Julie Roberts
Natural Resources Planner

Cc: DC 485-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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September 4, 2008

Ms. Aimee Dailey
Charles County Department of Planning
And Growth Management
P O Box 2150
La Plata, Maryland 20646

Re: Local Case No. BOA 1218 – Port Tobacco Riviera

Dear Ms. Dailey:

Thank you for sending the above-referenced variance request for review and comment. I understand that the Hearing was continued and it has been requested that this office clarify its position on the proposed pool and redevelopment in the 100-foot Buffer. According to the site plan submitted, the proposal for the dwelling and the pool would increase the impervious surface in the Buffer by 2,300 square feet.

As submitted, this office cannot support the variance request for the proposed configuration of the renovated dwelling. We question whether this variance is the minimum necessary to afford relief. For example, it appears that the 500 square foot deck could be shifted to another side of the house so as to not encroach into the 100-foot Buffer to the stream. It is the burden of the applicant to provide a proposal that demonstrates minimization of impacts on Habitat Protection Areas such as the 100-foot Buffer. Where opportunities clearly exist to avoid impacting the Buffer, the variance is not the minimum necessary.

The applicant is also proposing to construct an in-ground pool within this Buffer. As indicated in my letter of June 20, 2008, this office strongly opposes the variance request for the in-ground pool in the Buffer. I have outlined our concerns below.

Structures in the 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

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 pool, an accessory structure, in the 100-foot Buffer to a stream, as well as place new areas of lot coverage within the Buffer, associated with the primary dwelling. Since the applicant enjoys reasonable and significant use of the property and could reasonably redevelop the property without an accessory pool or additional areas of lot coverage in the Buffer, denial of the variance would not result in an unwarranted hardship to the applicant. In this regard, the applicant has not met each one and every one of Charles 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, walkway, and pier. The applicant is requesting a variance to construct an accessory structure (pool) within the 100-foot Buffer, as well as place new areas of lot coverage in the 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 that the applicant currently enjoys reasonable use, as evident by the house, driveway, walk and pier, we do not believe that the County has evidence on which to base a finding that, without the pool, and new Buffer disturbance, 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 within the 100-foot Buffer. Equally, there appears to be ample opportunity to construct a pool outside of the Buffer; (for example, within the area specified for the temporary stockpile). Therefore, the denial of a variance for the swimming pool 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 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. 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.*

The variance request is not based on conditions or circumstances that are the result of the applicant. Therefore, the applicant has met this standard.

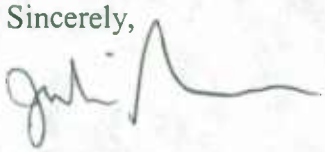
5. The granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the jurisdiction's Critical Area, and that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area law and the regulations.

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 within the 100-foot Buffer to a stream results in an increase in stormwater and sediment runoff, the loss of essential infiltration opportunities, increased human impacts to the Buffer, and potential habitat loss. Given that the applicant can adequately redevelop this property and locate the pool 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 Board 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 the applicant has failed to meet four out of the five variance standards, we oppose the applicant's variance request for the pool.

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) 260-3476.

Sincerely,



Julie Roberts
Natural Resources Planner
cc: CS 313-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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September 5, 2008

Mr. Tom Lawton
Department of Technical and Community Services
11916 Somerset Avenue
Princess Anne, MD 21853

Re: Somerset Detention Center Exercise Yard

Dear Mr. Lawton:

At its meeting on September 3, 2008, the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays unanimously approved the above-referenced project. Please contact us once the plantings plan has been executed.

Please note that should any changes to the site plan be proposed in the future, additional review and approval by the Commission will be required. Thank you and your staff for your assistance with this project. Please call me if you have any questions at (410) 260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner

Cc: 277-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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September 5, 2008

Mr. Dennis Barnes
Project Engineer
Carroll Engineering, Inc.
Executive Plaza IV, Suite LL1
McCormick Road
Hunt Valley, MD 21031

Re: MdTA Francis Scott Key Maintenance Building

Dear Mr. Barnes:

At its meeting on September 3, 2008, the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays unanimously approved the above-referenced project with the following condition:

1. The MdTA shall obtain the necessary sediment erosion control permits from the Maryland Department of the Environment prior to the initiation of construction activities. A copy of the Sediment and Erosion Control permit shall be provided to the Commission staff once obtained.

Please note that should any changes to the site plan be proposed in the future, additional review and approval by the Commission will be required. Thank you and your staff for your assistance with this project. Please call me if you have any questions at (410) 260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner

Cc: William Kirk, ra, MdTA

12-08

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/

September 5, 2008

Ms. Rene' Henry
Baltimore County Sewer Design
111 West Chesapeake Ave., Room 200
Towson, MD 21204

Re: Patapsco Sewer Interceptor and Relief

Dear Ms. Henry:

At its meeting on September 3, 2008, the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays unanimously approved the above-referenced project with the following conditions:

1. 1 Prior to the start of construction activities, the Department of Public Works shall obtain Sediment and Erosion Control and Stormwater Management permits from Baltimore County Department of Environmental Protection and Resource Management. A copy of these permits shall be provided to Commission staff.

2. Prior to the start of construction activities, the appropriate modifications are made to the MDE permit.

3. Prior to the start of construction activities, the applicant adds protective language to the contract documents to indicate the eagle zone restrictions.

Please fill out the attached plantings agreement and return it to my attention as soon as possible. Also, please notify this office once mitigation has been completed. Should any changes to the site plan be proposed in the future, additional review and approval by the Commission will be required. Thank you and your staff for your assistance with this project. Please call me if you have any questions at (410) 260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner

Enclosure: Plantings Agreement

Cc: Glenn Schaffer, Baltimore County
Pat Farr, Baltimore County
Pedro Ramirez, URS Corp.

7-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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September 8, 2008

Ms. Heather Kelley
Charles County Department of Planning
And Growth Management
P O Box 2150
La Plata, Maryland 20646

Re: XPN #07-0010
Swan Point Preliminary Subdivision Plans-Phase A

Dear Ms. Kelley:

This letter is in response to the revised preliminary subdivision plans received for Phase A of the Swan Point project, dated July 8, 2008. Based on my review of the revised plans, the following comments are provided:

1. Sheet 3/11: The Forest Conservation Easement area for the sewer construction project decreased in size. Please verify whether this change is consistent with the County's requirements in this area.

2. Sheet 4/11: The Open Space Area increased from 47.68 acres to 48.41 acres.

3. The 10% Rule calculations provided to date are not sufficient to make a determination that the pollutant reduction requirements for development within the IDA portions of Phase A are met. Commission staff has requested a meeting with County staff and the developers to discuss Critical Area requirements for 10% and to collaboratively determine a method by which this issue can be resolved. At this time, Commission staff is waiting to hear back from County staff regarding scheduling of this meeting.

Thank you for the opportunity to provide comments on the revised subdivision plans for Phase A. If you have any questions, please contact me at 410-260-3476.

Sincerely,

Julie Roberts
Natural Resource Planner

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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September 8, 2008

Mr. Richard Parks, P.E.
The Arro Group, Inc.
1101 Opal Court
Hagerstown, MD 21740-5941

Re: New Boardwalk along Potamac River
Town of Indian Head, Charles County, MD

Dear Mr. Parks,

Thank you for forwarding preliminary information on the above referenced project. The Town of Indian Head proposes to install a new boardwalk, with shoreline protection, along the Potomac River. Your letter dated August 11, 2008 indicates that the boardwalk will provide public access along 2,535 feet of the River and along portions of a tidal/nontidal stream. I have included some preliminary comments to help guide you in your next submission:

1. As your letter indicates, full Critical Area Commission approval is necessary for this project. I have included a project checklist which details the necessary information to be included in the full package to be submitted.

2. We have received a letter from the Department of Natural Resources Wildlife and Heritage Service indicating that they have no record for state, threatened, or rare species on site (September 8, 2008). However, the letter does indicate that the location of the project may be adjacent to historic waterfowl concentration areas. All appropriate guidelines must be followed, including Time of Year (TOY) restrictions.

3. Please submit the plans for this boardwalk at scale that will allow for a thorough review, no larger than 1"=100'. Preferably, a scale of 1"=60' or smaller should be used.

4. Although it appears that the Town has provisions to place a walkway in a park under Section 969 of the Zoning Ordinance, it is unclear if the area associated with the proposed walkway is considered as such. Please provide further clarification on this point.

5. Future submittal should address how the proposal minimizes disturbance to steep slopes and the Buffer. Currently, the site plan indicates a significant amount of disturbance to the steep slopes. Particularly if the property is designated as a Limited Development Area (LDA) or Resource Conservation Area (RCA), the Commission will expect that all disturbance is the minimum necessary.

Thank you for forwarding the concept plans. I look forward to receiving the full package as it becomes available. Please contact me with any questions at 410-260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner

Enclosure

Cc: Ryan Hicks, Town of Indian Head

IH 494-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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September 8, 2008

Ms. Pam Cotter
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road, MS 6301
Annapolis, MD 21401

Re: 2008-0209-V – Schummer, Raymond and Dorothy

Dear Ms. Cotter:

I have received revised information regarding the above-referenced variance request. The applicant's original request was for a variance to allow a dwelling with less setbacks and Buffer than required. The lot is designated as a Resource Conservation Area (RCA) and the majority of the lot is encumbered by an expanded 100-foot Buffer. This lot is 4.78 acres and is currently improved with an existing dwelling unit. The applicant proposes to raze the existing dwelling and construct a new dwelling. The revised plans indicate that the new dwelling will be located entirely outside of the 100-foot Buffer. The existing impervious site coverage on this site is 12,054 square feet for the current house and the applicant proposes a reduced reconstruction of 11,316 square feet, which is within the lot coverage area limits for a lot of this size. During a meeting with the applicants on August 21, 2008, they indicated that a substantial portion of lot coverage for this site is associated with a neighbor's driveway.

Provided this lot is properly grandfathered, we do not oppose this variance request to construct a replacement dwelling in the expanded Buffer. Should the Hearing Officer determine that this request can be granted, we recommend mitigation at a ratio of 3:1 for the area of disturbance in the expanded Buffer. The applicant should provide a plantings plan to the County showing the species, size, spacing and schedule for review and comment.

Thank you for the opportunity to comment. Please include this letter in your file and submit it as part of the record for variance. Please notify the Commission of the decision made in this case.

Sincerely,

Julie Roberts
Natural Resources Planner

cc: AA 363-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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September 8, 2008

Ms. Aimee Dailey
Charles County Department of Planning
And Growth Management
P O Box 2150
La Plata, Maryland 20646

Re: Local Case No. XRS 80064 – Wellington Beach

Dear Ms. Dailey:

I have received the information for the above-referenced project. The applicant has submitted a subdivision and consolidation plat for multiple lots. As shown, it appears that there may be 11 lots of varying sizes that are proposed to be reconfigured into 4 lots (Parcels 1-A through 1-D). It appears that the total property is 45.45 acres and is located in the Resource Conservation Area (RCA). Based on the information provided, I have the following comments:

1. The Critical Area Criteria (COMAR 27.01.02.07B.2.a) and more recently, Chapter 119 of the 2008 Laws of Maryland, require local Critical Area programs to include procedures for lot consolidation and reconfiguration in order to bring certain lands into conformance with the County's Critical Area Law and Program to the extent possible. This requirement is intended, in part, to recognize that while impacts to HPAs may be unavoidable in developing individual grandfathered lots of record, opportunities exist to minimize impacts to HPAs where lots in common ownership can be combined and/or reconfigured. The new legislation also requires local jurisdictions to submit their existing lot consolidation and reconfiguration procedures to the Commission and authorizes the Commission to develop regulations on this subject. If Charles County does not intend to revise its ordinance at this time to incorporate specific provisions to bring qualifying lots of record into conformance to the extent possible, then the County must make specific findings on a case-by-case basis to meet the new legislative requirement. I have attached an example of draft language that the County may wish to utilize in making findings specific to this subdivision request. Please provide staff with the County's findings as described above as soon as possible.

2. As we discussed on the telephone last week, there appears to be a 50' Right Of Way (ROW) indicated on the plat as Grace Drive. This ROW cuts through the four proposed lots and allows ingress and egress from the unimproved lot shown as Willis C. Proper Jr. Please confirm if this ROW does, in fact, cut through the four parcels, as it is not shown on the 1962 plat.

Additionally, please clarify if the County will require the applicant to revise this reconfiguration, as the ROW appears to bisect the proposed lots.

3. It appears that proposed parcels 1-B, 1-C, and 1-D have wetlands located on them. The applicant must perform a wetland delineation in the field to determine whether the wetlands on the proposed lots are tidal or nontidal. If the wetlands are tidal in nature, the applicant must also provide a field determination of private or State-ownership. In making this determination, the applicant may either conduct a field delineation of the private versus State-owned wetland areas or deduct the entire acreage of tidal wetlands from the property total. Please provide information requesting this concern in future submittals.

4. The applicant must provide a letter from the Department of Natural Resources' Wildlife and Heritage Service (WHS) indicating the presence of any rare, threatened, or endangered species on site. If present, the applicant will be required to address any recommendations made by DNR for protections of the species and submission of a Habitat Protection Plan (HPP) will be required. Our records indicate that this area, including the proposed lots, is located in Forest Interior Dwelling (FID) bird habitat. The applicant must apply the guidelines outlined in the Commission's guidance paper, A Guide to the Conservation of Forest Interior Dwelling Birds in the Chesapeake Bay Critical Area.

5. The plat indicates that the subject property is totally wooded. No information has been provided regarding proposed clearing. All clearing should be considered in light of the FIDs guidelines.

6. Future submittals should contain information regarding permitted and/or proposed lot coverage for each parcel. Please note that each new lot is limited to 15% lot coverage.

7. No topography or soil delineation information has been provided on the plat. The Buffer may need to be expanded for contiguous hydric, highly erodible soils, or for steep slopes. Please have the applicant include this information in the next submittal.

8. It appears that a 200-foot Buffer must be applied to this site as the application for subdivision as this submission was received after July 1, 2008.

Please forward the revised subdivision plat and requested findings as soon as they become available. I can be reached at 410-260-3476 with any questions.

Sincerely,

Julie Roberts
Natural Resources Planner

Attachment

Cc: DC 427-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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September 11, 2008

Ms. Regina Esslinger
Baltimore County DEPRM
401 Bosley Avenue, Suite 416
Towson, Maryland 21204

Re: Variance – 3001 Eastern Boulevard

Dear Ms. Esslinger:

We have received revised information on the above referenced variance. The applicant is requesting a variance to the impervious surface limits and to the 100-foot Buffer to a stream. This lot is 29,895 square feet and located in a Limited Development Area (LDA). The applicant proposes to pave an area of 1,675 square feet and construct an addition that is partially within the 100-foot stream Buffer. This lot is currently improved with 7,540 square feet of lot coverage which is over the allowable impervious surface area of 5,445 square feet. The redevelopment will reduce lot coverage on site by 625 square feet; however, 200 square feet of new lot coverage is proposed in the 100-foot Buffer.

It appears that the applicant has attempted to minimize their variance request by the removal of areas of lot coverage on this site. If the County determines that this request or some version of this request can be granted, we recommend mitigation at a ratio of 3:1. The applicant must submit a plantings plan which includes the species, size, spacing, and schedule to the County for review and comment. These plantings should be located on site to the extent possible. A fee in lieu may be substituted if a portion of the plantings cannot be established on site. Further, given the significant amount of lot coverage, we recommend that the County require stormwater management for all areas of lot coverage as a condition of approval.

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,

Julie Roberts
Natural Resource Planner

cc: BC 365-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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MEMORANDUM

To: Martha Anderson, DNR, Maryland Park Service

Cc: Aimee Dailey, Charles County

From: Julie Roberts

Date: September 11, 2008

RE: Nanjemoy NRMA 06-41 NRT Trail Work
Charles County

This office has received the NEPA review and evaluation of NRT grant affecting DNR lands notice for the above referenced project. The notice states that the purpose of the project is as follows: Site A – signage to indicate trail runs along beach; Site B – trail marking and signage; Site C – stabilize parking lot; Site D – remove steps and close short trail segment leading to water; Site E – trail stabilixation. Based on the information provided, we have the following comments.

Based on the limited information provided, it appears that these projects are located Critical Area. Further information regarding the project's location will be necessary to determine the extent of Critical Area review required. Depending on the size and location of the proposed gravel parking lot, as well as the location and extend of the trail stabilization and the other planned amenities within the Critical Area, formal review by the Critical Area Commission may be required; however this determination cannot be made without additional information.

We recommend representatives for the proposed projects work closely with this office and Charles County Department of Planning as early as possible in the planning process in order to determine any Critical Area review requirements. Thank you for the opportunity to review this proposal. If you have any questions, please call me at 410-260-3476.

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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September 11, 2008

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

Re: 2008-0107-V – Kaminski, Bernard

Dear Ms. Schappert:

We have received notice that the Board of Appeals will hear on the above referenced case on October 8, 2008. The applicant requests an after-the-fact variance to perfect an accessory structure (retaining wall) with less Buffer than required and with disturbance to slopes greater than 15%. We understand that a fine had been assessed and to date has been paid in regard to the existing violation. This lot is designated as a Limited Development Area (LDA) and is improved with a dwelling unit, garage, and driveway. The walls for which this variance is requested are 44 linear feet and 58 linear feet and range in height from 2' to 8'4" at the maximum. The application indicates that these walls are replacements for previous walls, although the replacement was not in-kind.

We cannot support this variance request as submitted. The applicant has not demonstrated that the standards for variance have been met or that these retaining walls are the appropriate measure to protect against erosion of the steep slopes. Based on the information provided alone, it is difficult, or impossible, to assess whether the applicant has met each and every one of the variance standards. Prior to taking action on the requested variance, the Board should first require the applicant to address the variance standards and to demonstrate that active erosion existed on the site prior to the construction of the retaining walls which would have warranted their construction.

In evaluating this variance request, the Board must then decide that the requested variance is the minimum necessary to provide relief, and find that the proposed project will not create adverse impacts to water quality or plant and wildlife habitat. Based solely on the information provided,

this office questions whether it is possible to make such a determination. The Board should take into consideration the actions the applicant took without proper authority from the County and incorporate this into a mitigation requirement. Specifically, we recommend that mitigation at a 4:1 ratio be required. Should the Board find that the retaining walls were constructed for purposes other than active erosion, or that each and every one of the County's variance standards has not been met, we recommend that the retaining walls be removed and site be restored and heavily planted.

Thank you for the opportunity to comment. Please include this letter in your file and submit it as part of the record for variance. Please notify the Commission of the decision made in this case.

Sincerely,

Julie Roberts
Natural Resources Planner
cc: AA 196-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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September 11, 2008

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

Re: 2008-0172-V – Annapolis Specialty Houses

Dear Ms. Schappert:

We have received notice that the Board of Appeals will hear this case on October 14, 2008. As we previously stated in our letter of June 10, 2008, provided the lot is properly grandfathered, we do not oppose this variance request for the construction of a modest dwelling and driveway on this lot.

This lot is 5,000 square feet and is located in the Limited Developed Area (LDA). Almost the entirety of the property is encumbered by forested, nontidal wetlands. The applicant proposes to construct a new dwelling unit and driveway of approximately 1,725 square feet on this currently unimproved lot. This is below the lot coverage limit for a lot of this size (allowable lot coverage is 1,750 square feet). The applicant has also indicated that 4,120 square feet of this nontidal wetland will be permanently impacted.

If the Board determines this request, or some variation of this request can be granted, we recommend mitigation at a ratio determined by the County for impacts to the 25-foot nontidal buffer and any impact to nontidal wetlands. The applicant is also responsible for mitigation at a ratio of 1:1 for any area cleared to build the dwelling and driveway and for the cleared area of the yard. A fee in lieu may be substituted if there are no appropriate areas on site for mitigation. Additionally, permits from MDE will be required to impact non-tidal wetlands.

Please include this letter in your file and submit it as part of the record for variance. Please notify the Commission of the decision made in this case. I can be reached at 410-260-3476 should you have any questions.

Sincerely,

Julie Roberts
Natural Resources Planner

cc: AA 300-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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September 15, 2008

Mr. Paul Dennis
Baltimore County DEPRM
401 Bosley Avenue, Room 416
Towson, Maryland 21204

Re: Varacelle Property

Dear Mr. Dennis:

Thank you for forwarding information for the above-referenced project. The applicant proposes to construct a dwelling unit with a practical side and rear yard. The parcel is 7.8 acres and is located in the Resource Conservation Area (RCA). This property is considered Forest Interior Dwelling (FID) bird habitat and the applicant has submitted the FIDs conservation worksheet. I have the following comments on the information submitted:

1. Review of the FIDs worksheet appears to indicate that the guidelines have been followed.

2. The application indicates that a protective easement will be placed on all property outside of the area utilized for the dwelling, driveway, and yard.

3. It appears that the applicant is removing 0.399 acres of forest. The clearing of FIDs forest requires an in-kind replacement of FIDs forest at a ratio of 1:1. No information has been provided regarding the proposed location of this replacement. Please have the applicant provide this information. A fee-in-lieu may be substituted if Baltimore County has an allotted fund in place specifically for FIDs mitigation.

I look forward to receiving this additional information from you. If you have any questions, please contact me at 410-260-3476.

Sincerely,

Julie Roberts
Natural Resource Planner
Cc: BC 509-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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September 15, 2008

Ms. Adriene Stiffler
Environmental Manager, OPPE
Mail Stop C-301
707 N. Calvert Street
Baltimore, MD 21202

Re: Project No. SO4215180
MD 362 over Monie Creek
Replacement of Bridge No. 19005
Somerset County, MD

Dear Ms. Stiffler,

We have received your application for the above referenced project. This project represents routine maintenance on this bridge, with a net decrease of 0.01 acres of lot coverage on this parcel. As we have previously discussed, this project appears to be an eligible minor project under the Memorandum of Understanding (MOU), Exhibit B1, "Conditions for General Approval of State Highway Administration Projects." This project meets the conditions of Section C for routine bridge and culvert replacement. It appears that all necessary documentation for this project has been received via your letter of September 3, 2008.

An appropriate mitigation plan has been provided to this office which includes (1) the mitigation plan for impacts to the Buffer at a ratio of 3:1 for a total of 0.309 acres, and (2) plantings that meet the 10% pollutant removal requirement of 0.005 lbs/year. I have enclosed a planting agreement that should be completed, signed, and returned to this office as soon as possible.

We have no further comments on this proposal. Thank you for your efforts on this project. Should you have any questions, please call me at 410-260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner
Enclosure

cc: 22-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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September 15, 2008

Ms. Pam Cotter
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road, MS 6301
Annapolis, MD 21401

Re: 2008-0279-V – Athey, Gary and Susan

Dear Ms. Cotter:

Thank you for forwarding the above-referenced variance request. The applicants request a variance to allow a dwelling and associated facilities with less setbacks and Buffer than required. This lot is 7,500 square feet and is located in the Limited Development Area (LDA). The applicant proposes to construct a new dwelling, detached garage, covered deck, and driveway for a total lot coverage of 2,375 square feet. This is permitted limit of lot coverage on a lot of this size (25% plus 500 square feet). The proposed lot coverage on this site is outside of the 100-foot Buffer. The applicant proposes to clear a portion of the Buffer to construct a well for a total amount of disturbance in the amount of 866 square feet (according to the August, 2008 site plan).

Provided the lot is properly grandfathered and provided that no other option exists to locate the well outside of the Buffer, we do not oppose the variance request. The applicant is responsible for mitigating at a ratio of 3:1 for the disturbance in the Buffer which should be a condition of variance approval. The applicant should submit a plantings plan to the County for review and approval. If the applicant cannot fulfill these requirements entirely on site, a fee-in-lieu may be substituted; However, it appears that ample room exists within the Buffer to locate mitigation plantings. Please note that this office would not support any further variance requests for an increase in lot coverage on this site, as this proposal represents the maximum lot coverage allowed on site.

Please include this letter in your file and submit it as part of the record for variance. Please notify the Commission of the decision made in this case. I can be reached at 410-260-3476 should you have any questions.

Sincerely,

Julie Roberts
Natural Resources Planner

cc: AA 503-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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September 18, 2008

Ms. Pam Cotter
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road, MS 6301
Annapolis, MD 21401

Re: 2008-0285-V – Schravesande, Marian

Dear Ms. Cotter:

Thank you for forwarding the above-referenced variance request. The applicants request a variance to allow a dwelling addition (sunroom) with less Buffer than required. This lot is 20,058 square feet and is located in both the Resource Conservation Area (RCA) and the Limited Development Area (LDA). The applicant proposes to construct a sunroom partially on an existing deck. A portion of the sunroom is proposed to be constructed adjacent to the existing deck, but no further waterward than the existing primary dwelling. The area of Buffer proposed to be disturbed is 192 square feet. This site is well below the allowable lot coverage area at 16.7% (allowable lot coverage on a lot of this size is 31.25%).

Provided the lot is properly grandfathered, we do not oppose the variance request. The applicant is responsible for mitigating at a ratio of 3:1 for the disturbance in the Buffer. The applicant should submit a plantings plan to the County for review and approval. It appears that ample room exists within the Buffer to locate mitigation plantings. Additionally, we recommend that the Hearing Officer require stormwater management as a condition of approval.

Please include this letter in your file and submit it as part of the record for variance. Please notify the Commission of the decision made in this case. I can be reached at 410-260-3476 should you have any questions.

Sincerely,

Julie Roberts
Natural Resources Planner
cc: AA 526-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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September 18, 2008

Mr. Steven Dodd
Dorchester County Planning and Zoning
County Office Building
P.O. Box 307
Cambridge, Maryland 21613

Re: Currier BEA

Dear Mr. Dodd:

Thank you for forwarding information on the above referenced project. The applicant proposes to construct a 267 square foot porch addition on the landward side of the dwelling unit. The lot is 15,680 square feet and is located in a Limited Development Area (LDA). The existing house is located in a Buffer Exempt Area (BEA). The existing impervious surface on this lot is currently 1,207, or 7.7%. An email sent by your office on September 11, 2008 indicated that approximately ¾ of this porch is in the 100-foot Buffer, or approximately 176 square feet.

Provided this lot is properly grandfathered, we do not oppose this request. Per the County's BEA Policy, the applicant must mitigate at a 2:1 ratio for the area of new disturbance in the Buffer. These plantings should be placed waterward of the existing dwelling to the extent possible. The plantings should be done in the form of native species and the applicant shall provide to the County a schedule which includes the species, size, spacing, and proposed dates for planting for your review and approval.

Thank you for the opportunity to provide comments. If you have any questions, please contact me at 410-260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner

Cc: DC 535-08

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/

September 19, 2008

Ms. Pam Cotter
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road, MS 6301
Annapolis, MD 21401

Re: 2008-0258-V – Spivey & Goldman

Dear Ms. Cotter:

Thank you for forwarding the above-referenced variance request. The applicants request a variance to allow a dwelling with less Buffer than required. This lot is 4.15 acres and is located in the Resource Conservation Area (RCA). A portion of this lot is designated Buffer exempt. The applicant proposes to raze an existing dwelling and to construct a new dwelling with a septic system. The proposed house has been largely pulled back from the steep slopes. This lot is within the allowable lot coverage area (proposal represents a 6% lot coverage) for a parcel of this size.

Provided the lot is properly grandfathered, we do not generally oppose a variance request for the construction of a replacement dwelling. However, it appears that to disturbance to the Buffer could be further minimized by placing the septic system outside of the Buffer. Should the Hearing Officer determine that the applicant has met each and every one of the variance standards for this request or for some variation of this request, we recommend 3:1 mitigation for the area of disturbance in the Buffer and Buffer exempt area. The applicant should submit a plantings plan to the County for review and approval. In addition, we recommend a condition of approval be included which requires the area of removed lot coverage in the Buffer to be restored with native plantings. These plantings may be considered a portion of the Buffer mitigation requirement.

Please include this letter in your file and submit it as part of the record for variance. Please notify the Commission of the decision made in this case. I can be reached at 410-260-3476 should you have any questions.

Sincerely,

Julie Roberts
Natural Resources Planner

cc: AA 488-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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September 22, 2008

Mr. Shawn Krout
Baltimore County DEPRM
401 Bosley Avenue, Suite 416
Towson, Maryland 21204

Re: Variance – Swan Point

Dear Mr. Krout:

Thank you for providing information on the above referenced variance. The applicant is requesting a variance to reconstruct a previously existing 10'x 20' (200 square foot) structure 6 feet from Mean High Water (MHW). This lot is designated as a Limited Development Area (LDA) and is located in a Buffer Exempt Area (BEA). It is my understanding that this structure was damaged as a result of Hurricane Isabel and was not replaced within one year, thus losing its nonconforming grandfathered status. We oppose this variance request because the applicant has not met all of the standards, including the standard of unwarranted hardship, which the General Assembly defined as "without the variance, the applicant would be denied reasonable and significant use of the entire parcel or 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, especially emphasizing the importance of the 100-foot Buffer. In particular, the General Assembly reaffirmed the stringent standards, 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 zoning board finds that an applicant has satisfied its burden to prove that the applicant meets each one of the county's variance standards.

In addition, the State law establishes 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. The State law, including the presumption of non-conformance, applies to all variance decisions in the Critical Area and the 100-foot Buffer. [2007 Laws of Maryland, Chapter 221].

The Critical Area Law and Criteria are intended to assure that the integrity of the Critical Area is not compromised by the individual and cumulative impacts of development. This variance would be in direct contrast to the goals of the General Assembly and for the Critical Area. This lot is already subject to reasonable use. Accordingly, we oppose this variance request, as the applicant cannot meet the standard of unwarranted hardship. I have addressed each of the standards as it pertains to this case:

Relevant Variance Standards

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.*
   As stated above, the General Assembly defined "unwarranted hardship" to mean that without the requested variance, the applicant would be denied reasonable and significant use of **the entire parcel or lot**. The applicant already enjoys reasonable and significant use of the property by virtue of the dwelling, porch, pier, pool, and walkways. Therefore, special conditions or circumstances do not exist that would result in an unwarranted hardship to the applicant.

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.*
   There is no inherent right to build a structure in the Buffer Exempt Area (BEA), particularly as the nonconforming grandfathered status for the structure has been lost. Therefore, denial of this variance 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 that would be denied to others in this area, as well as in similar situations in the County's Critical Area. Commission staff would not support similar requests to construct a new structure 6 feet from Mean High Water. The proposed construction would create further nonconformance on the lot and is not in keeping with the spirit and intent of the Law. 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. The applicant has not 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.*
   This variance request is not based on conditions or circumstances which are the result of the actions by the applicant.

5. *The granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat with in 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.*
   In contrast, the granting of this variance is not in harmony with the general spirit and intent of the Critical Area law and regulations. This proposal would create more lot coverage on this property, which not only affects the filtration of stormwater but limits the area and ability for functioning habitat. Therefore this proposal would not only reduce water quality on site, but would contribute to the individual and cumulative impacts of development on the Bay.

This letter has addressed five of the relevant variance standards. Based on the information provided, the applicant has not met all of the standards. The County and State law provide that in order to grant a variance, the applicant must meet and satisfy each and every variance standard. Therefore, we recommend that the County deny the applicant's request for this variance.

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,

Julie Roberts
Natural Resource Planner
cc: BC 511-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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September 24, 2008

Aimee Dailey
Charles County Department of Planning and Growth Management
PO Box 2150
La Plata, MD 20646

Re: BOA Docket #1228 – Swan Point/Elliot

Dear Ms. Dailey:

Thank you for forwarding the above-referenced request for variance. The applicant proposes to construct a wind turbine in the 100-foot Buffer. The parcel is 1.0 acres and is located in the Resource Conservation Area (RCA). The proposed wind turbine is 33 feet high and will be secured to a 6' x 6' (36 square foot) concrete slab. The proposal indicates that there will be a length of trenching necessary for the electrical component of the turbine, but the information provided does not indicate the linear footage of earth that will be disturbed.

Based of the lack of a scale on the site plan provided, it is not possible to conclude whether the entire property is constrained by the 100-foot Buffer, and therefore whether any opportunity exists to locate the wind turbine outside of the Buffer. Provided the County verifies that the entire property is constrained by the Buffer, and that the lot is properly grandfathered, this office does not generally oppose this variance request. However, we note that the Swan Point peninsula is documented to support several breeding colonies of Colonial Nesting Waterbirds (Great Blue Herons) as well as several active Bald Eagle nests. Both of these species are protected under the Charles County Zoning Ordinance. Impacts to either species would require the applicant to submit a Habitat Protection Plan to the County for review and approval.

Based on this knowledge, the Board should require the applicant to consult with the Department of Natural Resources (DNR) to determine any potential impacts to these species from the wind turbine. This consultation should be required prior to the Board making a decision on the turbine. Commission staff has concerns that a delay in consulting with DNR could result in the Board granting a variance inconsistent with the Habitat Protection requirements in the County ordinance.

In addition to the issue outlined above, we recommend that 3:1 mitigation be required in the form of native plantings for the disturbance in the Buffer associated with the turbine and the trenching. Additionally, it appears that the applicant may need a wetlands license from the Board of Public Works in order to install the electrical line under state land.

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 410-260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner
Cc: CS 512-08

Cc: Glenn Therres, DNR

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

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Executive Director

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September 24, 2008

Mr. Joe Kincaid
Maryland Department of the Environment
Water Management Administration
Salisbury District Court/Multi-Service Building
201 Baptist Street
Salisbury, MD 21801

Re: MDE Authorization No. 08-GL-1361

Dear Mr. Kincaid:

Thank you for forwarding information on the above referenced application. A tidal wetlands license has been issued to emplace 490 feet of rip rap revetment within a maximum of 10 feet channelward of the Mean High Water (MHW) line of LeCompte Bay at 1824 Horns Point Road in Dorchester County as depicted on the attached plan dated 4/30/08. Your email of September 17, 2008 indicates that the stone may be necessary to place 14 feet channelward. It is my understanding from the conversation that we had today that the approved shore erosion plan minimizes disturbance to the Buffer while providing the protection needed on this high energy shoreline.

As we discussed, the applicant is responsible for mitigation at a ratio of 3:1 for any disturbance to the 100-foot Buffer. Mitigation should be in the form of native plantings, consisting of woody stems. As we discussed, these plantings may help further stabilize this bank. Please have the applicant coordinate with Dorchester County to develop a Buffer Management Plan as soon as possible.

If you have any questions, please feel free to call me at 410-260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner

Cc: Mike Bonsteel, Dorchester County
CAG Little Horn Point, LLC c/o Sandy Russum

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
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Executive Director

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September 25, 2008

Mr. Jack Willing, Director
Somerset County Dept. of Technical
And Community Services
11916 Somerset Ave., Rm. 211
Princess Anne, MD 21853

Re: Somerset County Critical Area Regulations
Adoption of County Resolution 984

Dear Mr. Willing:

This office has received a copy of the September 18, 2008 revisions to the County's Critical Area Ordinance (Somerset County, Maryland Resolution No. 984). These revisions list specific violations of local zoning laws and expressly permit the County to decline acceptance, or otherwise proceed with, the processing of any application if a current violation exists on the subject property. This change is intended to address the Critical Area Commission's June 4, 2008 sanction of the County's Critical Area Program. The Critical Area Commission has accepted the revised ordinance for processing and has determined it to be a refinement to the Somerset County Critical Area Program on September 25, 2008.

The proposed text refinement has been scheduled for review at the October 1, 2008 Critical Area Commission meeting in Crownsville. Enclosed please find a copy of my staff report and the agenda. Thank you for your cooperation and your continued diligence on these changes. If you have any questions, please call me at (410) 260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner

Enclosure

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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September 29, 2008

Mr. Vic Law
Laws and Robertson
209 E. Main St.
Salisbury, MD 21801

Re: Village Down River, Declaration of Covenants, Conditions, and Restrictions

Dear Mr. Laws:

Please find enclosed herein two copies of the executed Declaration of Covenants document. Please forward the second copy on to the County. We have retained one copy for our files.

Please let me know if I can assist you with anything further. I can be reached at 410-260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner

cc: WI 593-06

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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September 30, 2008

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

Re: 2008-0149-V – Powell, Richard and Nancy

Dear Ms. Schappert:

We have received additional information on the above referenced case. On July 1, 2008, the Hearing Officer found that the applicant was entitled to conditional, modified relief from the code regarding the applicant's request for a 20'x 10' deck. The Hearing Officer found that a 20' x 4' deck represented the minimal relief and would provide egress from existing sliding doors. In a conversation today, Mr. Fury of your office indicated that the applicant has appealed and is requesting a deck in the amount of 20' x 6'. This lot is lot is 9,757 square feet and located in a Buffer-Modified, Limited Development Area (LDA). This lot is currently improved with a dwelling with a waterside deck, shed, driveway, pump house and pier.

Provided this lot is properly grandfathered, we do not oppose this modified request. The applicant is responsible for providing mitigation at a ratio of 3:1 for the area of new decking. These plantings should be located waterward of the dwelling to the extent feasible. A plantings plan should be provided to the County for review. Additionally, we recommend that the Board require stormwater management as a condition of approval.

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,

Julie Roberts
Natural Resource Planner
cc: AA 252-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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October 3, 2008

Mr. Brian Lindley
Baltimore County DEPRM
401 Bosley Avenue, Suite 416
Towson, Maryland 21204

Re: Variance – Hays Property

Dear Mr. Lindley:

Thank you for providing information on the above referenced variance. This lot is 9,632 square feet and is designated as a Limited Development Area (LDA). The applicant is requesting an after the fact variance to construct a bulkhead approximately 18 feet channelward and fill behind the bulkhead. The 2008 changes to the Critical Area law, which took effect July 1, 2008 require that before a local jurisdiction approves a variance for after-the-fact activities, the person seeking that variance has (1) fully paid all administrative, civil, and criminal penalties regarding the violation, (2) prepared a restoration or mitigation plan approved by the local jurisdiction, and (3) performed the abatement measure in the approved plan. It is my understanding the applicant has paid the administrative fine for this violation and that mitigation for the violation is still pending. I also understand that the existing structure and backfill have not been removed at this time.

We oppose this after the fact variance request. The applicant is unable to meet any of the strict variance standards. Equally, the applicant has not completed the remediation of the site. Therefore, the variance may not be granted at this time. The applicant must mitigate at a ratio of 3:1 for the current violation by either planting on site or paying a fee in lieu.

Thank you for the opportunity to provide comments. Please notify us if there are any further actions regarding this case and 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,

Julie Roberts
Natural Resource Planner

cc: BC 568-08

Enclosure

DOUGLAS F. GANSLER
Attorney General

KATHERINE WINFREE
Chief Deputy Attorney General

JOHN B. HOWARD, JR.
Deputy Attorney General

MARIANNE E. DISE
Assistant Attorney General
Principal Counsel

SAUNDRA K. CANEDO
Assistant Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

CRITICAL AREA COMMISSION FOR THE
CHESAPEAKE AND ATLANTIC COASTAL BAYS

FAX NO. (410) 974-5338

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

July 2, 2008

Board of Zoning Appeals
P O Box 773
Perryville, Maryland 21903

RE: **Notice of Important Changes to Law re: Critical Area Variances**

Dear Board Chair:

This letter advises you of important changes to the law governing your authority to grant "after-the fact" variances to the Critical Area program. Effective July 1, 2008, Chapter 119 of the 2008 Laws of Maryland prohibits a local government from issuing a variance, permit, or special exception to legalize a development activity conducted in violation of the Critical Area law, unless certain conditions precedent have been fully met. **Accordingly, no "after the fact" Critical Area variance may be issued by a local government from this day forward, unless full compliance with Chapter 119 has been achieved**. See *Layton v. Howard County Board of Appeals*, 399 Md. 36 (2007), where the Court of Appeals held that in land use and zoning cases, the case is governed by "the law as it exists at the time the case is before us."

Chapter 119 of the 2008 Laws of Maryland applies directly to, and must be applied by, all local jurisdictions, including zoning boards, regardless of whether local ordinances, codes, or practices have been amended. Effective July 1, 2008, the law prohibits the Board from granting any Critical Area variance, permit, or special exception for an "after-the fact" development project without proof that the applicant has fully paid all fines and performed all mitigation required for the violation. For your information and assistance, this Office has prepared the following summary of the provisions of Chapter 119 relevant to variances.

- A development activity commenced without a required permit, approval, special exception, or variance is a violation of Code, Natural Resources Article Title 8 subtitle 18 ("Critical Area law"). Ch. 119, 2008 Laws at 750.

1804 West Street, Suite 100
Annapolis, Maryland 21401

- Notwithstanding any provision in a local law or ordinance, or the lack of a provision in a local law or ordinance, all of the requirements of this subtitle (Title 8 Subtitle 18) shall apply to, and be applied by, a local jurisdiction as minimum standards for its Critical Area Program. Ch. 119, 2008 Laws at 743.

- Each violation of the Critical Area law constitutes a separate violation, and each calendar day is a separate offense. Ch. 119, 2008 Laws at 747.

- A local jurisdiction may not accept an application for a variance to legalize a violation, including an unpermitted structure or development activity, unless the jurisdiction has first issued a notice of violation, including assessment of a penalty. Ch. 119, 2008 Laws at 750.

- A local jurisdiction may not grant a variance for an unpermitted development activity unless the person seeking the variance has fully paid all penalties imposed by the local government; has prepared (and the local jurisdiction has approved) a mitigation or restoration plan; and has performed the mitigation required for the violation. Ch. 119, 2008 Laws at 748.

- Satisfaction of all fines and penalties, and performance of mitigation "shall be a condition precedent to the issuance of any permit, approval, variance, or special exception for the affected property." Ch. 119, 2008 Laws at 747.

As of July 1, 2008, the prohibition on granting an "after the fact" variance without full satisfaction of the conditions precedent applies to all pending applications for "after the fact" variances regardless of when the application was accepted, when the hearing was held, or when the development activity occurred.

This letter is not a formal Opinion of the Attorney General, nor does this summary purport to include all provisions of the 2008 Law which may affect your practice and procedures. However, it is the view of this Office that any "after the fact" variance issued after July 1, 2008, without proof of full satisfaction of fines and mitigation for the violation, is of no legal effect.

Sincerely,

Marianne E. Dise

Marianne E. Dise
Assistant Attorney General
Principal Counsel

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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October 3, 2008

Mr. Brian Lindley
Baltimore County DEPRM
401 Bosley Avenue, Suite 416
Towson, Maryland 21204

Re: Variance – Ulrich Property

Dear Mr. Lindley:

Thank you for providing information on the above referenced variance. This lot is 8,520 square feet and is designated as a Limited Development Area (LDA). The applicant is requesting an after the fact variance to construct a bulkhead approximately 18 feet channelward and fill behind the bulkhead. The 2008 changes to the Critical Area law, which took effect July 1, 2008 require that before a local jurisdiction approves a variance for after-the-fact activities, the person seeking that variance has (1) fully paid all administrative, civil, and criminal penalties regarding the violation, (2) prepared a restoration or mitigation plan approved by the local jurisdiction, and (3) performed the abatement measure in the approved plan. It is my understanding the applicant has paid the administrative fine for this violation and that mitigation for the violation is still pending. I also understand that the existing structure and backfill have not been removed at this time.

We oppose this after the fact variance request. The applicant is unable to meet any of the strict variance standards. Equally, the applicant has not completed the remediation of the site. Therefore, the variance may not be granted at this time. The applicant must mitigate at a ratio of 3:1 for the current violation by either planting on site or paying a fee in lieu.

Thank you for the opportunity to provide comments. Please notify us if there are any further actions regarding this case and 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,

Julie Roberts
Natural Resource Planner

cc: BC 570-08

Enclosure

DOUGLAS F. GANSLER
Attorney General

KATHERINE WINFREE
Chief Deputy Attorney General

JOHN B. HOWARD, JR.
Deputy Attorney General

MARIANNE E. DISE
Assistant Attorney General
Principal Counsel

SAUNDRA K. CANEDO
Assistant Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

CRITICAL AREA COMMISSION FOR THE
CHESAPEAKE AND ATLANTIC COASTAL BAYS

FAX NO. (410) 974-5338

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

July 2, 2008

Board of Zoning Appeals
P O Box 773
Perryville, Maryland 21903

RE: **Notice of Important Changes to Law re: Critical Area Variances**

Dear Board Chair:

This letter advises you of important changes to the law governing your authority to grant "after-the fact" variances to the Critical Area program. Effective July 1, 2008, Chapter 119 of the 2008 Laws of Maryland prohibits a local government from issuing a variance, permit, or special exception to legalize a development activity conducted in violation of the Critical Area law, unless certain conditions precedent have been fully met. **Accordingly, no "after the fact" Critical Area variance may be issued by a local government from this day forward, unless full compliance with Chapter 119 has been achieved**. See *Layton v. Howard County Board of Appeals*, 399 Md. 36 (2007), where the Court of Appeals held that in land use and zoning cases, the case is governed by "the law as it exists at the time the case is before us."

Chapter 119 of the 2008 Laws of Maryland applies directly to, and must be applied by, all local jurisdictions, including zoning boards, regardless of whether local ordinances, codes, or practices have been amended. Effective July 1, 2008, the law prohibits the Board from granting any Critical Area variance, permit, or special exception for an "after-the fact" development project without proof that the applicant has fully paid all fines and performed all mitigation required for the violation. For your information and assistance, this Office has prepared the following summary of the provisions of Chapter 119 relevant to variances.

- A development activity commenced without a required permit, approval, special exception, or variance is a violation of Code, Natural Resources Article Title 8 subtitle 18 ("Critical Area law"). Ch. 119, 2008 Laws at 750.

1804 West Street, Suite 100
Annapolis, Maryland 21401

- Notwithstanding any provision in a local law or ordinance, or the lack of a provision in a local law or ordinance, all of the requirements of this subtitle (Title 8 Subtitle 18) shall apply to, and be applied by, a local jurisdiction as minimum standards for its Critical Area Program. Ch. 119, 2008 Laws at 743.

- Each violation of the Critical Area law constitutes a separate violation, and each calendar day is a separate offense. Ch. 119, 2008 Laws at 747.

- A local jurisdiction may not accept an application for a variance to legalize a violation, including an unpermitted structure or development activity, unless the jurisdiction has first issued a notice of violation, including assessment of a penalty. Ch. 119, 2008 Laws at 750.

- A local jurisdiction may not grant a variance for an unpermitted development activity unless the person seeking the variance has fully paid all penalties imposed by the local government; has prepared (and the local jurisdiction has approved) a mitigation or restoration plan; and has performed the mitigation required for the violation. Ch. 119, 2008 Laws at 748.

- Satisfaction of all fines and penalties, and performance of mitigation "shall be a condition precedent to the issuance of any permit, approval, variance, or special exception for the affected property." Ch. 119, 2008 Laws at 747.

As of July 1, 2008, the prohibition on granting an "after the fact" variance without full satisfaction of the conditions precedent applies to all pending applications for "after the fact" variances regardless of when the application was accepted, when the hearing was held, or when the development activity occurred.

This letter is not a formal Opinion of the Attorney General, nor does this summary purport to include all provisions of the 2008 Law which may affect your practice and procedures. However, it is the view of this Office that any "after the fact" variance issued after July 1, 2008, without proof of full satisfaction of fines and mitigation for the violation, is of no legal effect.

Sincerely,

Marianne E. Dise

Marianne E. Dise
Assistant Attorney General
Principal Counsel

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
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STATE OF MARYLAND
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October 3, 2008

Mr. Brian Lindley
Baltimore County DEPRM
401 Bosley Avenue, Suite 416
Towson, Maryland 21204

Re: Variance – Aquilano Jr. Property

Dear Mr. Lindley:

Thank you for providing information on the above referenced variance. This lot is 10,350 square feet and is designated as a Limited Development Area (LDA). The applicant is requesting an after the fact variance to construct a bulkhead approximately 18 feet channelward and fill behind the bulkhead. The 2008 changes to the Critical Area law, which took effect July 1, 2008 require that before a local jurisdiction approves a variance for after-the-fact activities, the person seeking that variance has (1) fully paid all administrative, civil, and criminal penalties regarding the violation, (2) prepared a restoration or mitigation plan approved by the local jurisdiction, and (3) performed the abatement measure in the approved plan. It is my understanding the applicant has paid the administrative fine for this violation and that mitigation for the violation is still pending. I also understand that the existing structure and backfill have not been removed at this time.

We oppose this after the fact variance request. The applicant is unable to meet any of the strict variance standards. Equally, the applicant has not completed the remediation of the site. Therefore, the variance may not be granted at this time. The applicant must mitigate at a ratio of 3:1 for the current violation by either planting on site or paying a fee in lieu.

Thank you for the opportunity to provide comments. Please notify us if there are any further actions regarding this case and 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,

Julie Roberts
Natural Resource Planner

cc: BC 569-08

Enclosure

DOUGLAS F. GANSLER
Attorney General

KATHERINE WINFREE
Chief Deputy Attorney General

JOHN B. HOWARD, JR.
Deputy Attorney General

MARIANNE E. DISE
Assistant Attorney General
Principal Counsel

SAUNDRA K. CANEDO
Assistant Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

CRITICAL AREA COMMISSION FOR THE
CHESAPEAKE AND ATLANTIC COASTAL BAYS

FAX NO. (410) 974-5338

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

July 2, 2008

Board of Zoning Appeals
P O Box 773
Perryville, Maryland 21903

RE: **Notice of Important Changes to Law re: Critical Area Variances**

Dear Board Chair:

This letter advises you of important changes to the law governing your authority to grant "after-the fact" variances to the Critical Area program. Effective July 1, 2008, Chapter 119 of the 2008 Laws of Maryland prohibits a local government from issuing a variance, permit, or special exception to legalize a development activity conducted in violation of the Critical Area law, unless certain conditions precedent have been fully met. **Accordingly, no "after the fact" Critical Area variance may be issued by a local government from this day forward, unless full compliance with Chapter 119 has been achieved**. See *Layton v. Howard County Board of Appeals*, 399 Md. 36 (2007), where the Court of Appeals held that in land use and zoning cases, the case is governed by "the law as it exists at the time the case is before us."

Chapter 119 of the 2008 Laws of Maryland applies directly to, and must be applied by, all local jurisdictions, including zoning boards, regardless of whether local ordinances, codes, or practices have been amended. Effective July 1, 2008, the law prohibits the Board from granting any Critical Area variance, permit, or special exception for an "after-the fact" development project without proof that the applicant has fully paid all fines and performed all mitigation required for the violation. For your information and assistance, this Office has prepared the following summary of the provisions of Chapter 119 relevant to variances.

- A development activity commenced without a required permit, approval, special exception, or variance is a violation of Code, Natural Resources Article Title 8 subtitle 18 ("Critical Area law"). Ch. 119, 2008 Laws at 750.

1804 West Street, Suite 100
Annapolis, Maryland 21401

- Notwithstanding any provision in a local law or ordinance, or the lack of a provision in a local law or ordinance, all of the requirements of this subtitle (Title 8 Subtitle 18) shall apply to, and be applied by, a local jurisdiction as minimum standards for its Critical Area Program. Ch. 119, 2008 Laws at 743.

- Each violation of the Critical Area law constitutes a separate violation, and each calendar day is a separate offense. Ch. 119, 2008 Laws at 747.

- A local jurisdiction may not accept an application for a variance to legalize a violation, including an unpermitted structure or development activity, unless the jurisdiction has first issued a notice of violation, including assessment of a penalty. Ch. 119, 2008 Laws at 750.

- A local jurisdiction may not grant a variance for an unpermitted development activity unless the person seeking the variance has fully paid all penalties imposed by the local government; has prepared (and the local jurisdiction has approved) a mitigation or restoration plan; and has performed the mitigation required for the violation. Ch. 119, 2008 Laws at 748.

- Satisfaction of all fines and penalties, and performance of mitigation "shall be a condition precedent to the issuance of any permit, approval, variance, or special exception for the affected property." Ch. 119, 2008 Laws at 747.

As of July 1, 2008, the prohibition on granting an "after the fact" variance without full satisfaction of the conditions precedent applies to all pending applications for "after the fact" variances regardless of when the application was accepted, when the hearing was held, or when the development activity occurred.

This letter is not a formal Opinion of the Attorney General, nor does this summary purport to include all provisions of the 2008 Law which may affect your practice and procedures. However, it is the view of this Office that any "after the fact" variance issued after July 1, 2008, without proof of full satisfaction of fines and mitigation for the violation, is of no legal effect.

Sincerely,

Marianne E. Dise

Marianne E. Dise
Assistant Attorney General
Principal Counsel

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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October 3, 2008

Ms. Pam Cotter
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road, MS 6301
Annapolis, MD 21401

Re: 2008-0292-V – Agee, Jerry

Dear Ms. Cotter:

Thank you for forwarding the above-referenced variance request. The applicant requests a variance to allow a dwelling addition (deck) with less setbacks than required and with disturbance to slopes greater than 15%. This lot is 15,959 square feet. A portion of the site is located the Resource Conservation Area (RCA) and a portion is in the Limited Development Area (LDA). The applicant proposes remove a small portion of existing brick walk and deck (189 square feet) and construct an additional deck and entrance way in the amount of 406 square feet. This lot is currently improved with a dwelling, driveway, several decks (with an area of over approximately 1,000 square feet), and wood walkway (with several large landings) to a pier.

Based on the information provided, we cannot support this variance request. Although we do not typically oppose modest deck additions, it appears that this applicant has reasonable and significant use of this property, including several existing decks to enjoy the outdoor areas. The applicant has reasonable and significant use of this property and the denial of this request does not represent an unwarranted hardship to the applicant. As a result, it does not appear that the applicant can meet each and every one of the strict variance standards. In addition, the site plan indicates that two 24" oaks will be removed as part of this proposed deck construction, further adding to the disturbance of these slopes, and risking stabilization of a large area on the property. In this case, and particularly in consideration of the existing uses of the property, the removal of two mature, large oak trees on steep slopes is contrary to the spirit and intent of the Critical Area law and creates adverse environmental impacts. For all of these reasons, we oppose the submitted request.

Please include this letter in your file and submit it as part of the record for variance. Please notify the Commission of the decision made in this case. I can be reached at 410-260-3476 should you have any questions.

Sincerely,

Julie Roberts
Natural Resources Planner

cc: AA 538-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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October 3, 2008

MAJ John Hayes, Deputy Base Civil Engineer
Maryland Air National Guard, Martin State Airport
2701 Eastern Boulevard
Baltimore, MD 21220-2899

Re: Projects located in the Critical Area, including Hercules Boulevard

Dear Major Hayes,

We have reviewed your submission for the Hercules Boulevard project. It appears that Shashi Patel's most recent 10% calculations are accurate. There are, however, a couple of outstanding items that we must receive before this project can be scheduled before the Critical Area Commission. These items are as follows:

1. A letter from the Department of Natural Resources Wildlife and Heritage Program indicating the presence of any rare, threatened or endangered species on or in the vicinity of the site;
2. A letter (or stamp) from the Maryland Historic Trust;
3. Information regarding mitigation remains outstanding. The area within the Hercules Boulevard loop has been graded and vegetation removed. Please calculate the square footage of vegetation disturbance associated with this area. Mitigation must be provided at a ratio of 1:1 for this disturbance. In addition, any areas of impervious surface/lot coverage in the 100-foot Buffer must be mitigated at a ratio of 3:1. As part of this mitigation submission, a plantings plan (which includes size, spacing, species, schedule and location of the mitigation plantings) should be provided for review and comment by our agency. Mitigation for impacts to the 100-foot Buffer should be located within the Buffer on site. I have included our guidance document as an enclosure. Additionally, Ms. Bowie may be able to provide guidance to you regarding plantings location.

It is my understanding from Robin Bowie that Maryland Air National Guard has several more projects in development. As you know, these will also need full Commission approval under COMAR 27.02.05, State Agency Actions Resulting in Development on State-Owned Lands. Ms. Bowie gave some indication that she would like to have these projects presented together at one

time, rather than bringing each project separately to the Commission. This is at your and Ms. Bowie's discretion. A complete application, including all items on our Project Checklist, will also be necessary for these projects. If you choose to bring Hercules Boulevard as a separate project, please provide the remaining outstanding items numbered in this letter by October 22nd to be scheduled for our December 3, 2008 Commission meeting.

I suggest you coordinate with Ms. Bowie and contact me at your earliest convenience with your submission plans. Thank you for your attention to this matter and I will look forward to hearing from you. I can be reached at 410-260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner

Cc: Robin Bowie, Maryland Aviation Administration
Leyla Lange, Maryland Aviation Administration
Shashi Patel, Prime Engineering Incorporated
John McVicker, Air National Guard
26-08

Enclosure

John McVicker
Maryland Air National Guard, Martin State Airport
2701 Eastern Boulevard
Baltimore, MD 21220-2899

Shashi Patel
Prime Engineering Incorporated
3106 Lord Baltimore, Suite 106
Baltimore, MD 21244

Leyla Lange
Maryland Aviation Administration
P.O. Box 8766
BWI Airport, MD 21240-0766

Robin Bowie
Maryland Aviation Administration
P.O. Box 8766
BWI Airport, MD 21240-0766

Guidelines for Mitigation Plantings in the Critical Area

1. Amount of Disturbance and Clearing

There are two ways to calculate the amount of disturbance in the Critical Area. Disturbance is based on either the area disturbed or the number of individual trees that will be cut. It is recommended that when an area to be disturbed more closely resembles in a natural forest (i.e., canopy cover with a multi-layer understory) or when structures or other impervious surfaces are placed within the Buffer or a BEA, even if no trees are cleared, you should quantify the disturbance amount in the *area cleared.* On the other hand, if your site more closely resembles a park setting (i.e., scattered trees with little or no understory), it is recommended that you count the *number of trees removed.*

2. Plant Spacings and Mitigation Credits for Various Size Trees and Shrubs*

Credit Square Feet	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-ft. center understory: 10-ft. center
50 sq. ft.	1 tree (seedlings)	7-ft. center
50 sq. ft.	1 shrub	3 - 7 ft. center

* The Critical Area Commission recognizes natural regeneration as a method for mitigation on appropriate sites. This will be determined on a case-by-case basis. All plantings will require an easement to ensure that these areas remain forested in perpetuity.

3. Mitigation Ratios

Choose from the following for the mitigation ratios:

Mitigation Ratio for Clearing Outside of Buffer

Clearing of Forest/Woodlands up to 20% 1:1
Clearing of Forest/Woodlands up to 30% 1.5:1
Clearing of Forest/Woodlands over 30% 3:1
Clearing Violation 3:1
Other
N/A

Mitigation Ratio for Disturbance/Clearing Within Buffer

New Development/Redevelopment (non-BEA) 3:1
New Development/Redevelopment (BEA) 2:1
Shore Erosion Control 1:1
Public Shoreline Access 2:1
Clearing Violation 3:1
Other
N/A

4. Planting Date

The Planting Date should be either the Spring or Fall season following the approval of the project by the Critical Area Commission.

5. Site Visits

Two site visits will be conducted over a period of two years by Critical Area Commission staff. The objective of the site visits is to verify that the plantings have been carried out in accordance with the approved planting plan (i.e., species, number of trees/shrubs, location) and that the plantings are surviving.

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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October 3, 2008

Mr. Rodney Banks, Assistant Director
Dorchester County Planning and Zoning
County Office Building
P.O. Box 307
Cambridge, Maryland 21613

Re: Text Amendment Application for Joseph H. Layton, Jr.
Case # 318-03-2007

Dear Mr. Banks:

Thank you for emailing the copy of the recent text amendment and requesting additional comments. As our email dialogue detailed, Commission staff has some concern that certain uses associated with the wineries as detailed within the proposed text amendment are inconsistent with the character of the Resource Conservation Area (RCA). Specifically, Section JJ.1(F) of the proposed amendment indicates that "A commercial restaurant shall be expressly prohibited unless a special exception is granted by the Board of Zoning Appeals." The inclusion of language permitting a new commercial restaurant within the RCA, even by special exception, results in the potential for intensification in use of the land in a manner contrary to the resource utilization and nature-dominated goals and policies for development in the RCA. As such, we recommend striking the language of this proposed text amendment permitting a commercial restaurant by special exception. Rather, the language should simply include a prohibition on commercial restaurants.

As you are aware, the full Critical Area Commission is required to vote on the text amendment. Please forward the approved text amendment to this office once it has been approved by the County. If you have questions, please call me at 410-260-3476.

Sincerely,

Julie Roberts
Natural Resource Planner

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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October 6, 2008

Mr. Paul Dennis
Baltimore County DEPRM
401 Bosley Avenue, Suite 416
Towson, Maryland 21204

Re: Variance – Huber, Charles Property
Local Case No. 06-07-547

Dear Mr. Dennis:

Thank you for forwarding information on the above-referenced project. The applicant proposes to resubdivide two residential lots with continued use of one dwelling and accessory structures, including the reduction of the 100-foot Buffer for continued use areas. The total site area is 0.951 acres and these lots are located in the Limited Development Area (LDA). A sewer is proposed to extend through the Buffer to connect to the proposed new dwelling unit.

Provided this lot is properly grandfathered, we do not oppose this variance request to extend the sewer through the Buffer, provided that no other opportunity exists to extend it without this disturbance. The applicant is responsible for providing mitigation at a ratio of 3:1 for the approximately 8,932 square feet of disturbance. The applicant should provide the county with a plantings plan which indicates the size, species, spacing and schedule for this requirement. If the remainder cannot be located on site, we recommend that the barn be removed from the 100-foot Buffer in order to reduce impacts and provide additional planting area. It does not appear that this site meets the 15% afforestation requirement, therefore, at a minimum, the plantings should be accommodated on site to meet this threshold.

Please include this letter in your file and submit it as part of the record for variance. Please notify the Commission of the decision made in this case. I can be reached at 410-260-3476 should you have any questions.

Sincerely,

Julie Roberts

Julie Roberts
Natural Resources Planner

Cc: BC 574-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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October 7, 2008

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

Re: 2008-0203-V – Molinerio, Ernest

Dear Ms. Schappert:

We have received notice that the Board of Appeals will conduct a public hearing on October 9, 2008. The applicant is requesting a variance to perfect an accessory structure (above ground pool) will less setbacks and Buffer than required. This structure was placed in the Buffer without permits or approvals from the County, and in order to retain the pool in its present location, the applicant seeks a variance. Our position has not changed and we continue to oppose the granting of this variance. We have outlined our concerns below.

This lot is 9,677 square feet and is located in a Limited Development Area (LDA). The lot is currently developed with a single-family dwelling unit, parking area, walkway, and pier. It appears that approximately half of this lot is encompassed by the 100-foot Buffer. The applicant seeks to legalize this 10' x 20' (200 square foot) above ground pool. Based on the site plan, it appears that the applicant has locations on the eastern and southern ends of the lot, outside of the 100-foot Buffer, that could accommodate a pool. Because the applicant has not demonstrated an unwarranted hardship, and because it appears that the applicant has the opportunity to move the proposed pool outside of the 100-foot Buffer, we oppose this 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. 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 Board 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 legalize an after the fact pool currently within the 100-foot Buffer. The applicant has not met each one and every one of Anne Arundel 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, parking area, walkway, and pier. The applicant is requesting a variance to legalize an accessory structure (pool) 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 that the applicant enjoys reasonable use of the property as evident by the dwelling, walkway and pier, we do not believe that the County has evidence on which to base a finding that, without the pool, the entire parcel would be denied reasonable and significant use. In addition, the pool, if desired, could be located outside of the Buffer.

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 within the 100-foot Buffer. Therefore, the rejection of a variance for the swimming pool 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 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. 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.*

As this is an after the fact variance, the variance request appears to be based on conditions or circumstances that are the result of the applicant. Therefore, the applicant has not 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 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 potential habitat loss. Given that the applicant can adequately redevelop this property and locate the pool 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 Board 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 each and every variance standards, we oppose the applicant's variance 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) 260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner
cc: AA 345-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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October 7, 2008

Mr. Steve Dodd
Dorchester County Planning and Zoning
County Office Building
P.O. Box 307
Cambridge, Maryland 21613

Re: Local case number 952B – Joseph Schwartz, et al.

Dear Mr. Dodd:

I have received the information for the above-referenced project. The applicant has submitted a request for a subdivision via intrafamily transfer. The property is located in the Resource Conservation Area (RCA). Based on the information provided, I have the following comments:

1. Additional information is necessary regarding the subdivision history for this property in order to evaluate whether the intrafamily transfer provisions can be applied as proposed. Specifically, this office has not been able to verify the acreage and configuration of the parent parcel existing as of March 1, 1986. An original acreage is necessary in order to determine that number of lots permitted via interfamily transfer. In addition, a summary of subdivision history since 1986, including dates, recorded liber and folio information, and number of lots previously created is necessary to determine whether any existing intrafamily rights exist. It is the burden of the applicant and/or the County to provide the parcel history as requested in the context of a new subdivision request. Please consider this a request for additional information under COMAR 27.03.01.02.

2. A note has been provided indicating that a wetland delineation was performed in June of 2008. However, no information has been provided regarding the acreage of tidal and nontidal wetlands on site. Please have the applicant provide a table with this information on the next submission, including the acreage of State versus privately-owned tidal wetlands. .

3. No topography or soil delineation information has been provided on the plat. The Buffer may need to be expanded for contiguous hydric, highly erodible soils, or for steep slopes. Please have the applicant include this information in the next submittal.

4. No forest cover information has been provided. Per COMAR 27.01.02.04, the applicant is responsible for establishing 15% forest cover on each parcel based on the property acreage, at the time of building permit or preferably, at the time of subdivision. Additionally, this forest must be placed in a protective easement or restrictive covenant. Please have this information added to the plat in future submittals.

4. Future submittals should contain information regarding permitted and/or proposed lot coverage for each parcel. Please note that each new lot is limited to 15% lot coverage.

5. The applicant has provided a letter from the Department of Natural Resources' Wildlife and Heritage Service (WHS) indicating that the Delmarva Fox Squirrel is known to occur on or near the vicinity of this site. Any clearing must comply with the guidelines set forth in the July 3, 2008 letter from WHS. If clearing is proposed on the property, a Habitat Protection Plan will be necessary. A note to this extent has been provided on the plat (General Note 14), however, given the lack of forest cover information provided, it is not clear whether clearing is proposed at this time.

6. If not currently established, the 100-foot Buffer must be planted in native species at the time of building permit, or preferably at the time of subdivision recordation. A Buffer Management Plan must be provided to County for review and comment in fulfillment of this requirement.

7. It is our understanding that the applicant submitted an application for subdivision prior to July 1, 2008. Please note that Ch. 119, 2008 Laws of Maryland at 765 contains provisions in regards to a new 200-foot Buffer which may be applicable to this subdivision. Under these provisions, a subdivision located in the RCA must provide a new 200-foot Buffer *unless* an application for subdivision was submitted before July 1, 2008 *and* is legally recorded by July 1, 2010. Should the applicant fail to have the subdivision plat recorded by the July 1, 2010 deadline, then a 200-foot Buffer will apply to this project. Please ensure that the applicant is aware of this requirement as stated in Chapter 119 of the 2008 Laws of Maryland.

Please forward the revised subdivision plat which addresses the issues identified above when it becomes available. I can be reached at 410-260-3476 with any questions.

Sincerely,

Julie Roberts
Natural Resources Planner

Cc: DC 271-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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October 7, 2008

Ms. Pam Cotter
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road, MS 6301
Annapolis, MD 21401

Re: 2008-0285-V – Barrett, Kory

Dear Ms. Cotter:

Thank you for forwarding the above-referenced variance request. The applicants request a variance to allow a dwelling addition (bedroom) with less Buffer than required. This lot is 14,178 square feet and has a split designation of Intensely Developed Area (IDA) and Limited Development Area (LDA). The applicant proposes to construct a 364 square foot bedroom addition in an area which is currently improved with a small deck. This proposed addition is located in the IDA portion of the site. Approximately, two thirds of the area of this lot (located in the Critical Area) is encumbered by the 100-foot Buffer to a stream.

Provided the lot is properly grandfathered and that the Hearing Officer finds that there are no other suitable locations for this addition, we do not oppose the variance request. The applicant is responsible for mitigating at a ratio of 3:1 for the disturbance in the Buffer. The applicant should submit a plantings plan to the County for review and approval. A fee-in-lieu of may be substituted if the entirety of the mitigation plantings cannot be located on site. Additionally, we recommend that the Hearing Officer require stormwater management as a condition of approval.

Please include this letter in your file and submit it as part of the record for variance. Please notify the Commission of the decision made in this case. I can be reached at 410-260-3476 should you have any questions.

Sincerely,

Julie Roberts
Natural Resources Planner
cc: AA 554-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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October 8, 2008

Ms. Regina Esslinger
Baltimore County DEPRM
401 Bosley Avenue, Suite 416
Towson, Maryland 21204

Re: Variance – Long Beach Marina

Dear Ms. Esslinger:

Thank you for forwarding information on the above-referenced project. The applicant proposes to construct a 2,700 square foot pavilion, 943 square feet of which would be located in the 100-foot Buffer. This site is 3.9 acres and is designated as a Limited Development Area (LDA). This site is located in a Buffer Management Area (BMA). The cumulative total of the accessory structures within the BMA will exceed 1,000 square feet. This site is almost entirely covered with impervious surface at 99.4%.

Provided this lot is properly grandfathered, we do not oppose this variance request. We recommend mitigation at a ratio of 3:1 for the square footage of the pavilion located in the 100-foot Buffer. Although the County's BMA provisions allow the applicant to pay a fee in lieu of mitigation at a rate of $1.20 per square foot, we question whether there is the opportunity to remove a portion of impervious area and do some plantings on site. Additionally, we recommend that the County require stormwater management as a condition of approval.

Please include this letter in your file and submit it as part of the record for variance. Please notify the Commission of the decision made in this case. I can be reached at 410-260-3476 should you have any questions.

Sincerely,

Julie Roberts
Natural Resources Planner

Cc: BC 555-08

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/

October 8, 2008

Ms. Adrienne Stiffler
State Highway Administration
707 North Calvert Street
Baltimore, MD 21202

Re: MD 363, Structure No. 19033X0

Dear Ms. Stiffler:

I have reviewed the above-referenced project which was completed as part of an emergency repair in May and August of 2008. Your letter indicates that a 32" plastic pipe was emplaced where the original piping failed. In addition, the area around the pipe on the eastbound and westbound was backfilled with crusher stone (60 sf x 2 = 120 square feet). You have indicated that these are temporary repairs and that preliminary engineering plans for the permanent repairs are in the design phase.

We concur that this temporary emergency repair is consistent with the Memorandum of Understanding, under Exhibit B1, Section A, General Conditions, Maintenance Projects. After the permanent repairs have been completed, the vegetation must be replaced in the Right of Way. It appears from the pictures that you forwarded that the area that collapsed was seeded in turf grass.

This office supports the Administration's efforts in repairing existing public utilities on State lands. In addition, we appreciate your efforts to provide Commission staff notice of these projects. Please send the plans for the permanent replacement when they become available.

Thank you for forwarding this request to this office. Please call me at (410) 260-3476 if you have any questions.

Sincerely,

Julie Roberts
Natural Resources Planner

cc: 47-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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October 8, 2008

Mr. Tom Lawton
Department of Technical and Community Services
11916 Somerset Avenue
Princess Anne, Maryland 21853

Re: Chase House Estates
Critical Area Plan

Dear Mr. Lawton:

Thank you for forwarding the above referenced conceptual sketch plan. We received revised plans from the applicant for this proposed subdivision. Based on these plans, we have the following comments:

1. The applicant did not include copies of the three previously approved phases of the project as stated in their cover letter to us. However, we found the following plats on the Maryland Archives; Pages 66B, 67B, and 68A and 68B of Book 17. These appear to constitute phases I, II, and III of this project. Please confirm with this office whether these are the necessary plats or provide any additional plats as necessary.

2. The previously approved plats do not contain information regarding the amount of allowed impervious surface or proposed impervious surface. Considering this phase is utilizing parts of parcels that were subdivided previously, the applicant must demonstrate compliance to date with the impervious surface limit.

3. As state above, this entire subdivision must meet the 15% impervious surface limit, including the construction of roads or other amenities. Additionally, each lot approved in Phases I, II, and III were limited to 25% impervious surface. In order for the County to track compliance with this limit the applicant must submit a summary that identifies the amount of impervious surface permitted to date. This summary is necessary prior to any further approval of this subdivision, including this phase.

4. We also noted on the site plan that the applicant is including tidal wetlands within the area by which they are calculating the 15% impervious surface limit, however there is no

information included as to whether these are State tidal wetlands or private tidal wetlands. Please advise the applicant that State tidal wetlands cannot be used to calculate performance standards for development in the Critical Area. The overall 15% impervious surface limit for the entire project may need to be revised.

5. Please be advised that in 2008 the Critical Area law was amended to change the requirements for 15% impervious surface limits in the Limited Development Area and the Resource Conservation Area to a 15% lot coverage limit. "Lot Coverage" means the percentage of a total lot or parcel that is occupied by a structure, accessory structure, parking area, driveway, walkway, or roadway; or covered with gravel, stone, shell, impermeable decking, a paver, permeable pavement, or any manmade material.

6. Section 8, Ch. 119, 2008 Laws of Maryland at 765, contains provisions in regard to the lot coverage requirements of Natural Resources Article §8-1808.3 which may be applicable to this subdivision. Under these provisions, a development project whose initial application for development that satisfies all local requirements is filed by October 1, 2008 and whose development plan is approved (recorded) by July 1, 2010 may utilize the County's approved impervious surface area limitations in effect prior to July 1, 2008 provided that;
   a) The approved development plan remains valid in accordance with the County's procedures and requirements; and
   b) By July 1, 2010, the applicant prepares a detailed lot coverage plan drawn to scale and showing the amounts of impervious surface area, partially pervious area, and developed pervious surface area in the development project.

   In addition to (a) and (b) above, Section 8, Ch. 119, 2008 Laws of Maryland at 765 requires the lot coverage plan to be approved by the County and implemented in accordance with the approved lot coverage plan. Should the applicant intend to develop this subdivision in accordance with the County's impervious surface area limitations, please indicate that intent and ensure that the applicant is aware of the requirements of Chapter 119 of the 2008 Laws of Maryland for proceeding as such.

7. Further, for new subdivisions while the overall 15% lot coverage limit remains, the 25% lot coverage cap per each lot has been lifted. Therefore, the applicant may increase the amount of proposed lot coverage shown provided the overall 15% limit is met.

8. The applicant states that they have removed the 100-foot Buffer from lots wherever possible. This office continues to recommend the lots be revised to be located completely outside the 100-foot Buffer and the Buffer be designated as community property. These types of mechanisms help to protect the Buffer from illegal disturbance activities which would require enforcement action by the County.

9. Should the County allow lot lines within the 100-foot Buffer, the plat must be revised to show a building restriction line completely outside the 100-foot Buffer. If these lines are shown in the Buffer than an individual who purchases the lot may be left with the impression that they can develop within the Buffer area. As you are aware, they would

not be able to develop in the Buffer without a variance, which may not be granted for non-grandfathered lots. New lots must be able to completely comply with the current standards of the Somerset County Critical Area Program. As currently shown, this subdivision does not demonstrate compliance with the County Program.

10. The location of the Critical Area line is missing from this site plan.

11. The plat notes should include the designation of the Critical Area, which is Limited Development Area.

12. Similar to the lot coverage issue above, the applicant must demonstrate compliance over the entire subdivision with the afforestation and forest clearing development standards. Additional details regarding existing forest cover and forest clearing, including from the previous phases should be submitted to the County and to this office for review.

Thank you for the opportunity to provide comments. We look forward to reviewing the revised site plan. If you have any questions, please contact me at 410-260-3476.

Sincerely

Julie Roberts
Natural Resources Planner
SO226-08

Cc: Mr. Edward Hastings, Parker & Associates

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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October 9, 2008

Mr. Steve Dodd
Dorchester County Planning and Zoning
County Office Building
P.O. Box 307
Cambridge, Maryland 21613

Re: Local case number 793B – Eastern Shore Properties

Dear Mr. Dodd:

We have received revised information on the above referenced project. As your original application materials indicate, Parcel 185 is a residue parcel created by a subdivision in 1992. At the time of original subdivision, this parcel was designated as a non-buildable lot. In this most recent submission, the applicant has removed the limit of disturbance and the proposed dwelling unit, leaving only the Septic Reserve Area (SRA) proposed at this time. This septic reserve area is juxtaposed between the 100-foot Buffer to tidal waters and the 25-foot buffer to nontidal wetlands. Based on this information, I reiterate the context of the comment from my June 13, 2008 letter below and provide the following additional comments.

While the applicant has removed the limit of disturbance (LOD) from this plan, it appears that access to the SRA is required which would impact the 100-foot Buffer and the 25-foot nontidal wetland buffer. These impacts would require a variance. The proposed SRA represents a development activity necessarily associated with a residential dwelling unit. In support of this statement, we note that the County's zoning ordinance does not appear to include stand alone SRAs within the Resource Conservation Area (RCA) as a permitted use. Rather, the SRA is a residential use permitted in the RCA only in association with a dwelling unit. We note that the applicant expressly chose to subdivide the property in 1992, and created the residue parcel in question "not for development purposes," as stated on the recorded plat. Accordingly, the residue parcel does not qualify as a grandfathered lot of record defined within COMAR 27.01.02.07. This office does not support variance requests on lots or parcels of land subdivided and created after the effective date of the County's Critical Area Program. A subdivision to upgrade this parcel to a buildable lot should only be approved if the lot can be developed in accordance with the current Critical Area Law and Criteria and so as to not require a variance. Based on the information provided by the County to date, and the fact that development of the

residue parcel does not appear possible without a variance, we continue to recommend that the County deny the request to upgrade Parcel 185 to a buildable lot.

Thank you for forwarding this information for comment. I can be reached at 410-260-3476 with any questions.

Sincerely,

Julie Roberts
Natural Resources Planner

Cc: DC 294-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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October 14, 2008

Ms. Pam Cotter
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road, MS 6301
Annapolis, MD 21401

Re: 2008-0303-V – Kyle, Peter and Margaret

Dear Ms. Cotter:

Thank you for forwarding the above-referenced variance request. The applicants request a variance to allow a dwelling addition (garage) with less Buffer than required. This lot is 9,075 square feet and is designated as a Limited Development Area (LDA). The applicants propose to raze the existing dwelling unit and reconstruct in the same footprint. In addition, the applicants propose to raze an existing carport and garage and construct an attached garage. In a phone conversation with Nugent Design Build, LLC, it was confirmed that the second 100-foot Buffer line drawn (which bisects the proposed garage) was drawn in error, and is not 100 feet from a water body.

Based on the above information, we do not oppose the proposed reconstruction of the dwelling unit. We have no comments on the variance request for the attached garage, as it is outside the 100-foot Buffer. Mitigation is required at a ratio of 3:1 for the area of disturbance associated with the dwelling reconstruction in the 100-foot Buffer, including any trees removed. Mitigation plantings should be placed waterward of the dwelling to the extent possible. A fee-in-lieu may be provided if all plantings cannot be located on site. Additionally, we recommend that the Hearing Officer require stormwater management for the reconstructed dwelling and garage as a condition of approval.

Please include this letter in your file and submit it as part of the record for variance. Please notify the Commission of the decision made in this case. I can be reached at 410-260-3476 should you have any questions.

Sincerely,

Julie Roberts
Natural Resources Planner

cc: AA 539-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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October 15, 2008

District Engineer
US Army Corps of Engineers
Baltimore District
PO Box 1715
Baltimore, MD 21203-1715

Re: CENAB-OP-RMS (U.S. Navy, Naval Support Facility, Indian Head) 2007-08519-M03

Dear District Engineer:

We have received the public notice for the above reference project. The purpose of the proposed work is to protect the shorelines from further erosion and protect infrastructure by emplacing stone sills and breakwaters along approximately 34,000 linear feet of the Potomac River and 1,700 feet of the Mattawoman Creek. From the information submitted, it appears that all proposed work will take place below Mean High Water (MHW) and that there will be no grading associated with the shore erosion control activities. The proposal must be consistent with the Maryland Coastal Zone Management Act and the goals and objectives of the Critical Area Law and Criteria. Further review may be necessary by this office if:

- Impervious surfaces, including revetment, will be created above MHW.
- Trees or natural vegetation will be removed for construction above MHW.
- Any grading will be performed in the 100-foot Buffer, drawn landward from the MHW line.
- Staging areas will be located within the 100-foot Buffer and will necessitate the need for clearing of natural vegetation or trees.
- There will be impacts to other Habitat Protection Areas, as defined in COMAR 27.01.09.

Please forward additional information regarding this proposal if any of the above factors will be part of this project. Thank you for your coordination. If you have any questions, please call me at (410) 260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner

Cc: Mr. Elder Ghigiarelli, MDE
Mr. Ryan Hicks, Indian Head
Mr. Richard Parks, Arro

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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October 15, 2008

Mr. Brendan McArdle
AMT, Inc.
12750 Twinbrook Parkway
Rockville, MD 20852-1700

Re: Jersey Island Bulkhead Replacement Project

Dear Mr. McArdle:

On September 30, 2008, I sent an email that outlined the outstanding items necessary for the review of the above referenced project. To date, we have not received these materials. They are as follows:

1. A clarification of the amount of disturbance in the 100-foot Buffer associated with the bulkhead replacement, including the area associated with the tie backs.
2. A plantings plan which shows the required 1:1 mitigation for this project. The plantings plan must include the location of the mitigation, the species, size, spacing, and schedule.
3. A letter from the Department of Natural Resources indicating whether there are rare, threatened or endangered species on or near the vicinity of the project area.

Please contact me should you have any questions regarding the above outstanding items. Our submittal deadline for the December Commission meeting is October 22, 2008. Thank you for attention on this matter. If you have any questions, please call me at (410) 260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner

Cc: Mr. John Brush, Maryland Department of General Services
Mr. Keith Lackie, Maryland Department of Planning

Enclosures

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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October 15, 2008

District Engineer
US Army Corps of Engineers
Baltimore District
PO Box 1715
Baltimore, MD 21203-1715

Re: CENAB-OP-RMS (U.S. Navy, Naval Support Facility, Indian Head) 2007-08519-M03

Dear District Engineer:

We have received the public notice for the above reference project. The purpose of the proposed work is to protect the shorelines from further erosion and protect infrastructure by emplacing stone sills and breakwaters along approximately 34,000 linear feet of the Potomac River and 1,700 feet of the Mattawoman Creek. From the information submitted, it appears that all proposed work will take place below Mean High Water (MHW) and that there will be no grading associated with the shore erosion control activities. The proposal must be consistent with the Maryland Coastal Zone Management Act and the goals and objectives of the Critical Area Law and Criteria. Further review may be necessary by this office if:

- Impervious surfaces, including revetment, will be created above MHW.
- Trees or natural vegetation will be removed for construction above MHW.
- Any grading will be performed in the 100-foot Buffer, drawn landward from the MHW line.
- Staging areas will be located within the 100-foot Buffer and will necessitate the need for clearing of natural vegetation or trees.
- There will be impacts to other Habitat Protection Areas, as defined in COMAR 27.01.09.

Please forward additional information regarding this proposal if any of the above factors will be part of this project. Thank you for your coordination. If you have any questions, please call me at (410) 260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner

Cc: Mr. Elder Ghigiarelli, MDE
Mr. Ryan Hicks, Indian Head
Mr. Richard Parks, Arro

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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October 15, 2008

Ms. Kristin Aiosa
JMT
72 Loveton Circle
Sparks, MD 21152

Re: Replacement of Bridge No. S-12 on Calvary Road
Over Jenkins Creek, Crisfield, Somerset County, MD
JMT Job No. 020392016

Dear Ms. Aiosa:

Thank you for submitting a revised mitigation plantings plan for the above-referenced. Previously, mitigation was proposed on two separate sites: at the Great Hope Golf Course and at the J.M. Tawes Vocational Center. Currently, the proposal is to perform the entirety of the mitigation plantings at the Vocational Center site. Your office has provided a plantings plan which shows the new placement of the 8,500 square feet of plantings. Based on your submittal, I have these comments:

- As we discussed in our phone conversation today, to diversify the tree/shrub groupings, the individual species of shrubs should be randomly assigned rather than grouped together, as is currently indicated in the specifications.
- The area of plantings should be clearly marked in the field to ensure long term maintenance.

Please complete the enclosed Planting Agreement Form and return a copy to this office. Also, please notify this office when the plantings are complete. We have no further comments on the mitigation plan. Feel free to contact me with any questions at 410-260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner

Cc: Gary Kitching, Somerset County Roads Department
Jon Conner, JMT

Enclosure

SO 297-04

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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October 16, 2008

Mr. Steve Dodd
Dorchester County Planning and Zoning
County Office Building
P.O. Box 307
Cambridge, Maryland 21613

Re: Local case number 952B – Joseph Schwartz, et al.

Dear Mr. Dodd:

I received a revised site plan for the above referenced plat. This revision was made without the benefit of my comments in letter dated October 7, 2008. As these comments have not been addressed in the most recent submission, I am including them again in this letter:

1. Additional information is necessary regarding the subdivision history for this property in order to evaluate whether the intrafamily transfer provisions can be applied as proposed. Specifically, this office has not been able to verify the acreage and configuration of the parent parcel existing as of March 1, 1986. An original acreage is necessary in order to determine that number of lots permitted via interfamily transfer. In addition, a summary of subdivision history since 1986, including dates, recorded liber and folio information, and number of lots previously created is necessary to determine whether any existing intrafamily rights exist. It is the burden of the applicant and/or the County to provide the parcel history as requested in the context of a new subdivision request. Please consider this a request for additional information under COMAR 27.03.01.02.

2. A note has been provided indicating that a wetland delineation was performed in June of 2008. However, no information has been provided regarding the acreage of tidal and nontidal wetlands on site. Please have the applicant provide a table with this information on the next submission, including the acreage of State versus privately-owned tidal wetlands.

3. No topography or soil delineation information has been provided on the plat. The Buffer may need to be expanded for contiguous hydric, highly erodible soils, or for steep slopes. Please have the applicant include this information in the next submittal.

4. No forest cover information has been provided. Per COMAR 27.01.02.04, the applicant is responsible for establishing 15% forest cover on each parcel based on the property acreage, at the time of building permit or preferably, at the time of subdivision. Additionally, this forest must be placed in a protective easement or restrictive covenant. Please have this information added to the plat in future submittals.

4. Future submittals should contain information regarding permitted and/or proposed lot coverage for each parcel. Please note that each new lot is limited to 15% lot coverage.

5. The applicant has provided a letter from the Department of Natural Resources' Wildlife and Heritage Service (WHS) indicating that the Delmarva Fox Squirrel is known to occur on or near the vicinity of this site. Any clearing must comply with the guidelines set forth in the July 3, 2008 letter from WHS. If clearing is proposed on the property, a Habitat Protection Plan will be necessary. A note to this extent has been provided on the plat (General Note 14), however, given the lack of forest cover information provided, it is not clear whether clearing is proposed at this time.

6. If not currently established, the 100-foot Buffer must be planted in native species at the time of building permit, or preferably at the time of subdivision recordation. A Buffer Management Plan must be provided to County for review and comment in fulfillment of this requirement.

7. It is our understanding that the applicant submitted an application for subdivision prior to July 1, 2008. Please note that Ch. 119, 2008 Laws of Maryland at 765 contains provisions in regards to a new 200-foot Buffer which may be applicable to this subdivision. Under these provisions, a subdivision located in the RCA must provide a new 200-foot Buffer *unless* an application for subdivision was submitted before July 1, 2008 *and* is legally recorded by July 1, 2010. Should the applicant fail to have the subdivision plat recorded by the July 1, 2010 deadline, then a 200-foot Buffer will apply to this project. Please ensure that the applicant is aware of this requirement as stated in Chapter 119 of the 2008 Laws of Maryland.

Please forward the revised subdivision plat which addresses the issues identified above when it becomes available. I can be reached at 410-260-3476 with any questions.

Sincerely,

Julie Roberts
Natural Resources Planner

Cc: DC 271-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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October 21, 2008

Mr. Joe Kincaid
Maryland Department of the Environment
Water Management Administration
Salisbury District Court/Multi-Service Building
201 Baptist Street
Salisbury, MD 21801

Dear Mr. Kincaid:

I have the following comments for these adjoining properties in Dorchester County:

200863314/09-WL-0234 RRM Carpenter IV
200863313/09-WL-0233 David Carpenter

The applicant has applied to emplace 3,000 feet and 1,700 feet of rip rap respectively for the above mentioned projects. This revetment is proposed to be placed no further than 8 feet channelward and is for the purposes of shore erosion control. The Critical Area Law and Criteria provide that nonstructural shore erosion control measures be used where they would be a practical and effective means of protecting a shoreline and that structural measures be utilized only where nonstructural measures are not practical for halting erosion. 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. In either case, disturbance of the Buffer, including grading and the clearing of vegetation and trees, should be the minimum necessary to provide stabilization of the bank. Additionally, mitigation must be provided at a ratio of 1:1 for the total disturbance in the Buffer associated with the shore erosion control structure. Mitigation for shoreline access to install a structure must be performed at a 2:1 ratio. The applicant should coordinate with Dorchester County staff to create a Buffer Management Plan, which will include a plantings plan for mitigation purposes.

If you have any questions, please feel free to call me at 410-260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner

Cc: Mike Bonsteeel, Dorchester County

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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October 23, 2008

Mr. Steven Dodd
Dorchester County Planning and Zoning
County Office Building
P.O. Box 307
Cambridge, Maryland 21613

Re: Batton Jr. Wind Turbine

Dear Mr. Dodd:

Thank you for forwarding information on the above referenced project. The applicant proposes to construct a structure (wind turbine) with a 49 square foot pad no further waterward than an existing structure (pier 15 feet from shoreline) 18 feet from Mean High Water (MHW). The lot is 36,154 square feet and is located in a Resource Conservation Area (RCA). This is a Buffer Exempt Area (BEA). The applicant is within the allowable lot coverage area for a lot of this size.

Per Dorchester County code § 155-38.J.5(c)1, the applicant must demonstrate that there is no feasible alternative but to place the structure within the BEA setback. This application does not include any indication that other locations were considered outside of the 100-foot Buffer or demonstrate that there is no feasible alternative. The applicant, via an expert in wind turbine function, should demonstrate that this location is the only alternative for the placement of this turbine including providing supporting information to document that a wind turbine cannot function on this property outside of the BEA setback and the 100-foot Buffer. This additional information, including responses from the applicant, is necessary for a thorough review by this office.

Additionally, Dorchester County code § 155-38.J.5(c)2 indicates that "in no case shall the intrusion into the buffer exemption area encroach into a required yard under the terms of the underlying zoning unless a variance thereto has been first granted." While the application materials do not indicate what the underlying zoning setback from the shoreline is, it is our understanding that a variance would be required to place the turbine within a yard setback that is greater in extent than the BEA setback. Please provide information to address this section of the County's Code. Further, 6[a] of this same section requires that "the extent of the lot or parcel shoreward of the new development or redevelopment shall be required to remain, or shall be established and maintained in natural vegetation." Natural vegetation is defined in County's code as "those plant communities that develop in the absence of human activities;" this definition appears to preclude maintained lawn grass. Although the County has been fulfilling the mitigation requirements of subsection [b], requiring a 2:1 ratio of mitigation, subsection [a] appears to be

unaddressed during the BEA procedures. The County should address this provision or indicate to this office why it is not appropriate to address.

Finally, the County's BEA provisions in Section 155-38.J.5.c.2 are not intended to permit structures such as a pier landing and steps to a pier to be used in determining the BEA setback. Such an interpretation would be inconsistent with the spirit and intent of the Critical Area law and Criteria and the Commission's established policies on development and redevelopment in residential BEAs, and would prevent the County from maintaining viable Buffer areas on residential lots. The Commission's policies reflect the intent of the Commission in approving the County's BEA provisions as part of the local Dorchester County Critical Area Program. The BEA setback should be determined by the location of existing principal structures.

Thank you for the opportunity to provide comments. If you have any questions, please contact me at 410-260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner

Cc: DC 596-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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October 23, 2008

Mr. Steven Dodd
Dorchester County Planning and Zoning
County Office Building
P.O. Box 307
Cambridge, Maryland 21613

Re: Batton III Wind Turbine

Dear Mr. Dodd:

Thank you for forwarding information on the above referenced project. The applicant proposes to construct a structure (wind turbine) with a 49 square foot pad no further waterward than an existing structure (steps to a pier) 83 feet from Mean High Water (MHW). The lot is 2.44 acres and is located in a Resource Conservation Area (RCA). This is a Buffer Exempt Area (BEA). The applicant is within the allowable lot coverage area for a lot of this size.

Per Dorchester County code § 155-38.J.5(c)1, the applicant must demonstrate that there is no feasible alternative but to place the structure within the BEA setback. This application does not include any indication that other locations were considered outside of the 100-foot Buffer or demonstrate that there is no feasible alternative. The applicant, via an expert in wind turbine function, should demonstrate that this location is the only alternative for the placement of this turbine including providing supporting information to document that a wind turbine cannot function on this property outside of the BEA setback and the 100-foot Buffer. This additional information, including responses from the applicant, is necessary for a thorough review by this office.

Additionally, Dorchester County code § 155-38.J.5(c)2 indicates that "in no case shall the intrusion into the buffer exemption area encroach into a required yard under the terms of the underlying zoning unless a variance thereto has been first granted." While the application materials do not indicate what the underlying zoning setback from the shoreline is, it is our understanding that a variance would be required to place the turbine within a yard setback that is greater in extent than the BEA setback. Please provide information to address this section of the County's Code. Further, 6[a] of this same section requires that "the extent of the lot or parcel shoreward of the new development or redevelopment shall be required to remain, or shall be established and maintained in natural vegetation." Natural vegetation is defined in County's code as "those plant communities that develop in the absence of human activities;" this definition appears to preclude maintained lawn grass. Although the County has been fulfilling the mitigation requirements of subsection [b], requiring a 2:1 ratio of mitigation, subsection [a] appears to be

unaddressed during the BEA procedures. The County should address this provision or indicate to this office why it is not appropriate to address.

Finally, the County's BEA provisions in Section 155-38.J.5.c.2 are not intended to permit structures such as a pier landing and steps to a pier to be used in determining the BEA setback. Such an interpretation would be inconsistent with the spirit and intent of the Critical Area law and Criteria and the Commission's established policies on development and redevelopment in residential BEAs, and would prevent the County from maintaining viable Buffer areas on residential lots. The Commission's policies reflect the intent of the Commission in approving the County's BEA provisions as part of the local Dorchester County Critical Area Program. The BEA setback should be determined by the location of existing principal structures.

Thank you for the opportunity to provide comments. If you have any questions, please contact me at 410-260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner

Cc: DC 597-08

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/

October 24, 2008

Ms. Aimee Dailey
Charles County Department of Planning
And Growth Management
P O Box 2150
La Plata, Maryland 20646

Re: Local Case No. BOA 1218 – Port Tobacco Riviera

Dear Ms. Dailey:

Thank you for sending me the revised site plan for the above-referenced variance request. At the Board of Appeals hearing on September 23, 2008, we questioned whether this variance was the minimum necessary to afford relief. The applicant has removed the pool entirely from their proposal. In addition, the applicants have reduced the size of the proposed porch by nearly half (from 614 square feet to 362 square feet). The size of the proposed house has also decreased by 42 square feet. It appears that the area of the gravel driveway has increased by 181 square feet, although it is unclear from the site plan where the additional gravel will be placed.

In order to grant a variance, the Board must find that the applicant has overcome the burden to meet each and every one of the County's variance standards, including that the disturbance to the Buffer is the minimum necessary to provide relief. Should the Board determine that the applicant has met every variance standard, mitigation at a ratio of 3:1 must be provided for the area of disturbance in the 100-foot Buffer. We acknowledgement the applicant has provided a mitigation plan for the County's review and approval.

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) 260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner
cc: CS 313-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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October 24, 2008

Mr. Keith Lackie
Maryland Department of Planning
201 Baptist Street, Suite 24
Salisbury, MD 21801-4974

Re: Food Lion Site Plan

Dear Mr. Lackie:

Thank you for forwarding the above referenced site plan. The applicant proposes to redevelop a site designated as an Intensely Developed Area (IDA). Based on these plans, we have the following comments:

1. Each piece of the submission indicates different project acreage. For example, the site plan shows the total project area to be 5.63 acres with 0.93 acres being leased by McDonalds, leaving 4.70 acres. The project description in the stormwater management report details the four existing drainage areas (which add up to 4.44 acres). The 10% calculations show a site area of 5.883 in the Critical Area. The 10% calculations should be based on the area of redevelopment (the site area minus the McDonalds parcel) within the Critical Area. The entire site is not in the Critical Area so the 4.7 acres should be adjusted accordingly.

2. The 10% worksheet provided shows a 65% removal efficiency for the proposed stormwater pond. However, this type of pond is assigned a 50% removal efficiency in the 10% Rule Guidance document. Please have the applicant correct the 10% calculations to use the correct site area and correct removal efficiency for the proposed pond.
    a. It does not appear that with the correct removal efficiency that the applicant has met their pollutant removal requirement.
    b. Disconnects may be possible in some of the smaller areas.
    c. We are willing to provide assistance to the applicant should they need guidance meeting their 10% requirement.

3. It appears that there are opportunities to provide vegetation other than turf grass in various locations on the site. For example, a larger island could accommodate trees and/or shrubs.

Thank you for the opportunity to provide comments. We look forward to reviewing the revised information for review. If you have any questions, please contact me at 410-260-3476.

Sincerely

Julie Roberts
Natural Resources Planner

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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October 27, 2008

Ms. Regina Esslinger
Baltimore County DEPRM
401 Bosley Avenue, Suite 416
Towson, Maryland 21204

Re: Variance – Bruzdzinski Property

Dear Ms. Esslinger:

Thank you for forwarding information on the above-referenced project. The applicant proposes to construct a house, driveway, and deck on this lot, the majority of which would be located in the 100-foot Buffer. This site is 0.324 acres, or 14,100 square feet and is designated as a Limited Development Area (LDA). The majority of this site is encumbered by the 100-foot Buffer.

Provided this lot is properly grandfathered, we do not oppose this variance request to establish a modest sized dwelling. However, it does appear that impacts to the Buffer could be reduced by minimizing the size of the deck and the area of "yard space." We recommend mitigation at a ratio of 3:1 for the area of disturbance in the 100-foot Buffer. Plantings should be provided on site to the maximum extent possible. The applicant has provided a plantings plan for your review which represents a portion of the necessary mitigation. Should the County determine that the proposed area of yard be reduced, this would allow area for additional plantings to be accommodated on site.

Please include this letter in your file and submit it as part of the record for variance. Please notify the Commission of the decision made in this case. I can be reached at 410-260-3476 should you have any questions.

Sincerely,

Julie Roberts
Natural Resources Planner

Cc: BC 604-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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October 28, 2008

Mr. Richard Parks, PE
The Arro Group
1101 Opal Court
Hagerstown, MD 21740-5941

Re: Arrowwood Subdivision – Town of Indian Head

Dear Mr. Parks:

I have received the information for the above-referenced project, including your comments dated October 6, 2008. It is my understanding from our phone conversation today that the applicants are rescinding their previous subdivision and would like to rerecord it. The applicant has submitted a subdivision for 5 lots and an out-parcel (Lots 7-11 and out-parcel "C," respectively). Based on the information provided, I have the following comments:

1. Please have the applicant clarify the Critical Area designation of this subdivision. Your letter indicates that it may be located in the Limited Development Area (LDA). Please have the applicant add a note on the plat to this effect.

2. Your letter of October 6, 2008 indicates that the applicant is proposing a total of 21.1% of impervious cover (now referred to as "lot coverage") for the entire site. As you correctly pointed out, this is over the lot coverage limit for the entire site.
   a. For new lots less than one acre in size, the 2008 Critical Area legislation does not limit the lot coverage per lot but limits the entire subdivision to 15% lot coverage. The applicant must bring this proposal into conformance with this provision.
   b. Please have the applicant provide a table indicating the proposed lot coverage per lot, demonstrating compliance with the 15% overall lot coverage limit.

3. No forest cover information has been provided.
   a. Per COMAR 27.01.02.04, the applicant is responsible for establishing a minimum of 15% forest cover based on the property acreage, at the time of building permit or preferably, at the time of subdivision. Additionally, this forest must be placed in a protective easement or other protective measure. Please have the applicant indicate the amount of existing forest cover on the site.

b. If this area is fully forested, as it appears to be from aerial photographs, the applicant may clear no more than 20 percent of any forest or developed woodland, except as provided in § C(4) under COMAR 27.01.02.04.C(c). The remaining 80% shall be maintained through recorded, restrictive covenants or similar instruments. In addition, any trees cleared for the construction purposes must be mitigated at a ratio of 1:1, so as to achieve no net loss of forest cover.

c. Please have the applicant provide a table on the plat which includes i. the acreage/square footage of currently existing forest, ii. the proposed clearing for the site, iii. necessary mitigation for forest clearing.

4. Although a landscape plan has been provided, it does not address the mitigation requirements outlined in the previous comment 3. Please have the applicant prepare a mitigation plan for review and comment. All mitigation plantings should be native species.

5. The applicant must provide a letter from the Department of Natural Resources' Wildlife and Heritage Service (WHS) indicating the presence of any rare, threatened, or endangered species on site. If present, the applicant will be required to address any recommendations made by DNR for protections of the species and submission of a Habitat Protection Plan (HPP) will be required. Please provide a copy to this office once received.

Please forward the revised subdivision plat when it becomes available. I can be reached at 410-260-3476 with any questions.

Sincerely,

Julie Roberts
Natural Resources Planner

Cc: IH 598-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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October 28, 2008

Mr. Steve Dodd
Dorchester County Planning and Zoning
County Office Building
P.O. Box 307
Cambridge, Maryland 21613

Re: Proposed Bills: § 155-38 and § 155-21

Dear Mr. Dodd:

Thank you for forwarding the above referenced bills for comment. These bills have been drafted by the County in response to Chapter 119 of the 2008 Laws of Maryland. We have these comments on the following bills (~~deleted~~, **added**):

General Comment

We would like to set up a meeting with you, the County Attorney, and other members of your staff, as necessary, to discuss your enforcement and administrative processes in lieu of Bill 1253.

Proposed Bill: § 155-38

Page 1 of Bill: acting under the Authority of Title 8, Subtitle 1**8**, Section 1-1808 of the Annotated Code of Maryland, as amended by Chapter 119 of the 2008 Laws of Maryland (The "Act") ~~by~~ **be** it…

Page 2: Under Section Q.1. How is "person" defined under the Dorchester County code? Does the term "person" include corporations? If it does not, please include corporations as a culpable/responsible body under this section.

Page 3: Possible section "Q.10". How are appeals from civil infractions handled? This notice should specifically indicate that an applicant has a right to be heard, as is included in the 2008 Critical Area Bill on page 22, item 15 which says "Administrative enforcement procedures in accordance with due process principles, including notice and an opportunity to be heard." Please include a statement to this effect in your proposed bill.

Proposed Bill: § 155-21

Page 1 of Bill: Does this section only apply to appeals or does it also apply to an original application? This should be clear in the bill that it applies to all applications for permits or other approvals on a property that is currently in violation of the Critical Area program.

Page 2: "...acted upon within a reasonable time, not to exceed 60 days from the date of the receipt of the application ~~of~~ **or** such lesser period as may be provided by the rules of the Board."

Thank you for forwarding these bills to me for review and comment. We look forward to meeting with you and discussing these questions and procedures. Please contact me at 410-260-3476 to set up the meeting or email me at jroberts@dnr.state.md.us.

Sincerely,

Julie Roberts
Natural Resources Planner

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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October 28, 2008

Ms. Pam Cotter
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road, MS 6301
Annapolis, MD 21401

Re: 2008-0318-V -- Ostrye, William and Sheryl

Dear Ms. Cotter:

Thank you for forwarding the above-referenced variance request. The applicants request a variance to allow a dwelling with less setbacks than required, greater coverage by structure than allowed and with disturbance to slopes greater than 15%. This lot is 4,600 square feet and is designated as a Limited Development Area (LDA). The applicants propose to raze the existing dwelling unit and reconstruct in a similar footprint. The proposed lot coverage for this area is 1,970 which is above the allowable limit, but below what currently exists on this property.

Based on the above information, we do not oppose the proposed reconstruction of the dwelling unit. Mitigation is required at a ratio of 3:1 for the area of disturbance associated with the dwelling reconstruction in the 100-foot Buffer. A fee-in-lieu may be provided if all plantings cannot be located on site. Additionally, we recommend that the Hearing Officer require stormwater management for the reconstructed dwelling as a condition of approval. We also recommend that as the septic system is being replaced, that a nitrogen removing septic component is required as a condition of variance approval.

Please include this letter in your file and submit it as part of the record for variance. Please notify the Commission of the decision made in this case. I can be reached at 410-260-3476 should you have any questions.

Sincerely,

Julie Roberts
Natural Resources Planner

cc: AA 588-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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October 28, 2008

Ms. Pam Cotter
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road, MS 6301
Annapolis, MD 21401

Re: 2008-0312-V -- Blazek Properties LLC

Dear Ms. Cotter:

Thank you for forwarding the above-referenced variance request. The applicants request a variance to perfect a new impervious area within the 100-foot Buffer to a tributary stream. This lot is 22,963 square feet in size and is designated as an Intensely Developed Area (IDA). It appears from the narrative submitted that a total of 1,250 square feet was disturbed and covered in gravel.

Based on the above information, it appears that the applicant may have paid a fine and completed the required restorative measures in accordance with the requirements of Chapter 119 of the 2008 Laws of Maryland. However, prior to hearing the variance request, we recommend that the Hearing Officer obtain verification from County staff that the violation has been accordingly abated. In regard to the variance request, the Hearing Officer must find that the applicant has met each and every one of the County's variance standards, including the standard of unwarranted hardship and the standard that the request is the minimum variance necessary. Provided that the area of lot coverage requested cannot be located outside of the Buffer, we do not generally oppose this variance request. Should the Hearing Officer grant a variance, mitigation is required at a ratio of 3:1 for the area of disturbance associated with the grading in the 100-foot Buffer. This mitigation at this ratio should be required as a condition of approval. We note that any mitigation associated with the granting of variance is required in addition to that which is associated with abatement of the violation. Both mitigation requirements may be met by planting on site to the extent possible and/or paying a fee in lieu.

Please include this letter in your file and submit it as part of the record for variance. Please notify the Commission of the decision made in this case. I can be reached at 410-260-3476 should you have any questions.

Sincerely,

Julie Roberts
Natural Resources Planner

cc: AA 580-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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October 29, 2008

Ms. Michele Hurt
Public Lands
Department of Natural Resources
580 Taylor Avenue
Annapolis, MD 21401

Re: Lapidum Boating Facility Renovation, Hartford County

Dear Ms. Hurt,

Information on the above referenced project has been forwarded to this office. Per COMAR 27.02.06, Conditional Approval of State or Local Agency Programs in the Critical Area, this project must be approved by the Critical Area Commission. Based on the information submitted, I have the following comments:

1. The Buffer shown on the plan is to the Susquehanna River. However, Herring Run does not have a Buffer drawn from it. All tributary streams require a Buffer. I discussed this with Mike Rivera on October 28th, but did not clarify this point. Please revise the site plan to indicate this Buffer. It appears that all impacts associated with this project are encompassed by the 100-foot Buffers.

2. Please clarify the total area of disturbance in the 100-foot Buffer for the tidal river and tributary stream. Mitigation requirements are based on the total area of disturbance to the Buffer and not on the impervious surface associated with the parking lot improvements.

3. Activities such as parking lots do not qualify as "water dependant" and require mitigation at a 3:1 ratio. For mitigation which exceeds 5,000 square feet, the formal submission to the Critical Area Commission must include a mitigation plan showing the location of mitigation plantings, size, species, spacing, and schedule.

    a. One overstory tree may receive credit of 100 square feet. Groupings of one tree and three shrubs or one tree and two understory trees may receive credit of 400 square feet. See enclosure.

b. Please provide a plantings plan, which shows the location of the site, as well as the species, spacing, size, and schedule.

4. As this is an area of Intense Development, the project must meet the 10% pollutant reduction requirement. Please fill out the 10% worksheet from the 2003 Critical Area Commission 10% Rule Guidance Manual and return to this office for review.

5. A letter from the Wildlife and Natural Heritage Division is necessary indicating the presence of any rare, threatened, or endangered species on or near this site location. Please forward the letter to this office.

6. As this project proposes to impact the 100-foot Buffer and is not consistent with COMAR 27.02.05, it will require a conditional approval. I have included the conditional response sheet which should be completed and submitted to this office.

The deadline for submittals for the January 7, 2009 Critical Area Commission is November 22, 2008. Please have these materials sent in to this office prior to that date, as some pieces may require revision and resubmission. Thank you for sending in this project for review and comment. Should you have any questions, I can be reached at 410-260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner

Cc: Mike Rivera, Chesapeake Environmental Management

Enclosures

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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October 29, 2008

Ms. Pam Cotter
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road, MS 6301
Annapolis, MD 21401

Re: 2008-0317-V -- De Perignat, Salvidor

Dear Ms. Cotter:

Thank you for forwarding the above-referenced variance request. The applicant requests a variance to allow dwelling additions (decks) with less setbacks and Buffer than required. This lot is 11,895 square feet and is designated as a Limited Development Area (LDA). The applicants propose add a 54 square foot concrete pad adjacent to existing concrete patio and add a second floor deck. The existing concrete pad is also proposed to be extended an additional two feet. The applicant is within the lot coverage area for a lot of this size.

Based on the above information, we do not oppose the proposed variance request. Mitigation is required at a ratio of 3:1 for the area of disturbance associated with the patio extension. Mitigation is required in the form of native plantings and the plantings should be located waterward of the dwelling, so as to provide water quality benefits to Old Man's Creek. Additionally, we recommend that the Hearing Officer require a stormwater management practice which addresses runoff from the patio, or retrofits the existing dwelling as a condition of approval.

Please include this letter in your file and submit it as part of the record for variance. Please notify the Commission of the decision made in this case. I can be reached at 410-260-3476 should you have any questions.

Sincerely,

Julie Roberts
Natural Resources Planner

cc: AA 587-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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October 31, 2008

Ms. Adriene Stiffler
SHA, OPPE, Mail Stop C-301
707 North Calvert Street
Baltimore, MD 21202

Re: MD 335 Replacement Bridge over Wallace Creek, Dorchester County
Change of staging area

Dear Ms. Stiffler:

Based on your email dated October 2, 2008, it is my understanding that an unexpected problem has arisen with the location of the temporary staging area approved by the Commission as related to the above referenced project. You have sent information regarding an alternative location proposed for use as a temporary staging area. Your photographs and written description indicate that the newly proposed site is currently in a grassed and graveled area outside of the 100-foot Critical Area Buffer, and is currently being used as a marine storage area. The temporary staging associated with this project will not require any additional clearing or disturbance.

Based on the information you have presented, the revised location for the proposed staging area appears to be consistent with the Critical Area Law and Criteria, and constitutes a minor revision to the Commission's formal approval of the bridge replacement projects. Thank you for contacting me regarding this change in your project proposal. We will include notice of the change within the Commission's project file. Please call me if you have any questions at (410) 260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner

Cc: 3-07

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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November 3, 2008

Ms. Pam Cotter
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road, MS 6301
Annapolis, MD 21401

Re: 2008-0328-V -- Harper, Alexia and Steven

Dear Ms. Cotter:

Thank you for forwarding the above-referenced variance request. The applicant requests a variance to allow a dwelling addition (stairwell) with disturbance to slopes greater than 15%. This lot is 10,125 square feet and is designated as a Limited Development Area (LDA). The applicants propose to remove and replace a 136 square foot stairwell. The applicant is within the lot coverage area for a lot of this size.

Based on the above information, we do not oppose the proposed variance request. Mitigation is required at a ratio of 3:1 for the area of disturbance associated with the stairwell. Mitigation should be implemented in the form of native plantings, and a plantings plan should be provided to the County for their review and comment.

Please include this letter in your file and submit it as part of the record for variance. Please notify the Commission of the decision made in this case. I can be reached at 410-260-3476 should you have any questions.

Sincerely,

Julie Roberts
Natural Resources Planner

cc: AA 600-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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MEMORANDUM

To: Roland J. Limpert, Environmental Review Unit

Cc: Regina Esslinger, Baltimore County

From: Julie Roberts JR

Date: November 5, 2008

RE: State Clearinghouse POS# 5487-3-429
Watersedge Community Center, Baltimore County

This office has received the Clearinghouse review notice for the above referenced project. The purpose of this project is to construct a community center, parking, and associated amenities (including access road, sidewalks, and utilities). From our records, this site appears to be located in the Intensely Developed Area (IDA) of the Critical Area and will require compliance with the applicable development standards. If the property is owned by the local jurisdiction, the project will require confirmation of consistency with the local Critical Area program. The County should begin coordination with Commission staff as soon as detailed plans become available.

Thank you for the opportunity to review this proposal. If you have any questions, please call me at 410-260-3476.

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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November 6, 2008

Ms. Pam Cotter
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road, MS 6301
Annapolis, MD 21401

Re: 2008-0232-V – Napjus, Chris & Barbara

Dear Ms. Cotter:

We have received the above-referenced variance request. The applicant is requesting a variance to convert an existing concrete entrance stoop to an entry deck of a larger footprint and to construct a rear accessory deck/patio and retaining walls with less Buffer than required and with disturbance to slopes greater than 15%. The lot is 1.68 acres and is located in the Limited Development Area (LDA). On November 3, 2008, I conducted a site visit with William Ethridge of the County. Subsequently, it was brought to my attention that the applicants have revised their variance request and no longer request the rear patio/deck or retaining walls. It appears that the applicant is now requesting a variance to construct a 543 square foot rear deck in the 100-foot Buffer and on steep slopes, as well as to construct a 198 square foot decked area to replace a existing concrete stoop and walking path.

We cannot support the revised proposal as submitted. In the previous submission, both the retaining walls and rear patio/deck were proposed in the context of being necessary to stabilize the steep slopes from active erosion. As resubmitted, the retaining walls and patio have been removed. It is unclear how the remaining rear decking will stabilize the steep slopes, rather than simply create unnecessary and adverse impacts to steep slopes and highly erodible soils in the Buffer. In addition, the 543 square feet of deck proposed in the 100-foot Buffer is not the minimum necessary to afford relief, nor would a lack thereof deprive the applicants of reasonable and significant use of the property. As a result, the applicant has failed to meet each and every one of the County's variance standards, and the variance should be denied.

Should the applicant choose to revise their proposal and minimize the disturbance to steep slopes, highly erodible soils, and the 100-foot Buffer by constructing a smaller deck in a different configuration, this office may be able to revise our position. Please note that we do not oppose the request for the decking at the primary entrance of the dwelling. If the Hearing Office grants a variance to this component, please ensure that mitigation at a ratio of 3:1 is required in the form of native plant species, located waterward of the dwelling.

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) 260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner
cc: AA 415-08

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

November 7, 2008

Ms. Diane E. Ditzel
State Highway Administration
707 North Calvert Street
Baltimore, MD 21202

Re: Project No. 2380203-B27000
MD 702 Ramp 'A' over Northeast Creek
Bridge No. 0327000, Baltimore County

Dear Ms. Ditzel,

Thank you for forwarding information on the above referenced project. As your submittal indicates, the State Highway Administration (SHA) proposes to reseal the north abutment joint, modify the south abutment joint, replace the neoprene trough, repair the roadway and west parapet spalls, and plate the area of deterioration on Beam 1 of Span 2. No excavation is proposed and these repairs will be completed without the need for heavy equipment or a construction entrance. This work is proposed to be completed within the existing right-of-way.

The proposed repair work on the bridge appears to meet the Conditions of General Approval in the Memorandum of Understanding (MOU) under section Exhibit B1, 3b Routine Maintenance Projects and is, therefore, consistent with the MOU. Ten percent calculations and mitigation are not necessary for this project.

Thank you for forwarding this repair project. Please contact me with any questions at 410-260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner
Cc: 58-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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November 7, 2008

Ms. Regina Esslinger
Baltimore County DEPRM
401 Bosley Avenue, Suite 416
Towson, Maryland 21204

Re: Variance – McCluskey Property

Dear Ms. Esslinger:

Thank you for forwarding information on the above-referenced project. The applicant proposes to reconfigure lot lines to separate existing dwellings from the existing marina use. The lot coverage for the parent parcel is currently over its coverage limit, causing one of the four lots (#2103) to require a continued use variance. The application indicates that two of the four lots require a continued use variance; however, upon review it appears that only the above mentioned lot requires the variance. The total acreage of the site is 1.751 acres and is designated a Limited Development Area (LDA). Lot #2103 is currently used as a marine storage area and has a total lot coverage of 68%. The applicant is proposing to remove a total of 7,011 square feet of lot coverage (maintained in gravel) associated with the other three lots proposed for the lot line reconfiguration.

Provided this lot is properly grandfathered, we do not oppose this variance request. However, it is the burden of the applicant to bring this lot into conformance in so much as possible and to minimize the impacts to the maximum extent possible. We recommend the applicant provide best management practices on site to treat existing stormwater, further reduce the impervious surface, and provide plantings in select areas.

Please include this letter in your file and submit it as part of the record for variance. Please notify the Commission of the decision made in this case. I can be reached at 410-260-3476 should you have any questions.

Sincerely,

Julie Roberts
Natural Resources Planner

BC 490-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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November 7, 2008

Ms. Pam Cotter
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road, MS 6301
Annapolis, MD 21401

Re: 2008-0327-V -- Faranetta, John and Diane

Dear Ms. Cotter:

Thank you for forwarding the above-referenced variance request. The applicants request a variance to allow a dwelling addition with less Buffer than required and with disturbance to slopes greater than 15%. This lot is 1.93 acres and is designated as a Limited Development Area (LDA). The applicants propose to remodel the existing dwelling and add a large addition (approximately 1,571 square feet of new coverage by structures) with two porches and a deck. The application indicates that there will be 27 square feet of impact to steep slopes associated with this proposed addition. The applicant is within the lot coverage area for a lot of this size.

Based on the above information, we cannot support the proposed variance request. It appears that this extensive addition could be minimized so as to not impact the area of steep slopes. As proposed, this addition does not appear to be the minimum necessary to afford relief, nor would a lack thereof deprive the applicants of reasonable and significant use of the property. This office may be able to support a variance for an addition that eliminates the impact to steep slopes and further minimizes impacts to the Buffer. Should the Hearing Officer determine that a minimized version of this request may be granted, we recommend that mitigation be required at a ratio of 3:1 for the area of disturbance associated with the addition. Also, we recommend that the Hearing Officer require a stormwater management practice which addresses runoff from the proposed addition as a condition of any variance approval.

Please include this letter in your file and submit it as part of the record for variance. Please notify the Commission of the decision made in this case. I can be reached at 410-260-3476 should you have any questions.

Sincerely,

Julie Roberts
Natural Resources Planner
cc: AA 601-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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November 13, 2008

Ms. Pam Cotter
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road, MS 6301
Annapolis, MD 21401

Re: 2008-0343-V – Bender, Honora

Dear Ms. Cotter:

Thank you for forwarding the above-referenced variance request. The applicant requests a variance to allow dwelling addition with less setbacks and with disturbance to slopes greater than 15%. This lot is 8,218 square feet and is designated as a Limited Development Area (LDA). The applicants propose to add a new screen porch and construct a second floor addition. The existing dwelling is 24' x 26' (624 square feet). No new lot coverage is proposed; however, a portion of the existing dwelling proposed for redevelopment is currently non-complying with the rear yard setback and the porch footers are proposed to impact steep slopes, so a variance is required.

Based on the above information, we do not oppose the proposed variance request. Should there be any ground disturbance associated with the redevelopment, mitigation is required at a ratio of 3:1 for the any area of disturbance associated. Additionally, we recommend that the Hearing Officer require a stormwater management practice, or retrofits, which address runoff from the redeveloped dwelling as a condition of approval.

Please include this letter in your file and submit it as part of the record for variance. Please notify the Commission of the decision made in this case. I can be reached at 410-260-3476 should you have any questions.

Sincerely,

Julie Roberts
Natural Resources Planner

cc: AA 636-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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November 13, 2008

Mr. Steven Dodd
Dorchester County Planning and Zoning
County Office Building
P.O. Box 307
Cambridge, Maryland 21613

Re: Picken House

Dear Mr. Dodd:

On October, 28, 2008, Mr. Mike Bonsteel sent an email response to several of our comments from a letter dated August 28, 2008. We have been asked by your office to provide additional comments in response to this email. The last site plan was received by this office on August 22, 2008 and it is my understanding that although additional information has been provided, no adjustments have been made to this plan. Therefore, the majority of our comments remain the same:

1. Although P.2 is almost entirely covered by gravel, concrete pads, structures, and other miscellaneous debris, COMAR requires the applicant to bring the property into conformance to the extent possible in the context of redevelopment. As submitted, the applicant is proposing to reduce the total lot coverage on the property from 44.5% to 26.3%.

    a. In the context of meeting the County's BEA criteria for redevelopment, if the applicant cannot bring the lot into compliance with a maximum of 15% impervious coverage, it appears that an impervious surface coverage variance must be obtained per Dorchester County Zoning Ordinance § 155-38.M.1 from the Board of Zoning Appeals.

    b. The County's BEA criteria require that redevelopment minimize the shoreward extent of intrusion into the BEA and shall not exceed the shoreward extent of existing structures. In this case, the applicant has previously stated that the BEA setback can be determined by the location of the existing concrete pad at the shoreline. However, we question whether the existing structures can be considered legally nonconforming for any purpose based the amount of time they have been abandoned and based on the proposed change in use of the property. The applicant should provide a full history of this parcel, including when it was abandoned and the County should make a determination regarding the nonconforming status of the structures on the property for the purpose of determining the BEA setback and applying the BEA criteria consistently. In addition, the minimum BEA setback should be determined based on the location of any legal primary structures, and not an accessory

concrete pad. Use of an accessory concrete pad in defining the BEA setback is not consistent with the Commission's policies on redevelopment in the BEA, nor with the spirit and intent of the Critical Area Law and Criteria.

c. Regardless of the outcome of (b) above, the County's BEA criteria also state that in no case shall intrusion into the BEA encroach into a required yard under the terms of the underlying zoning unless a variance has first been granted. In this case, we understand the yard setback from the shore to be 40 feet, which is not being met by the applicant.

d. The factors in (a-d) above result in staff's conclusion that the applicant has not provided enough information to fully evaluate the redevelopment proposal. Based solely on the materials received to date, it is our position that the County's BEA criteria for redevelopment have not been met.

2. Should the applicant chose to pursue the variances required under the County's BEA provisions, we note that the burden to meet each and every one of the County and State variance standards falls on the applicant. In this regard, we recommend that the applicant give particular consideration to demonstrating that the variance is the minimum necessary to provide relief and in demonstrating that adverse impacts to water quality and fish and wildlife habitat have been minimized to the extent possible. Currently, opportunities to further reduce the proposed footprint and redesign the layout appear ample.

In general, this office does not oppose the redevelopment of this constrained site. However, it is the burden of the applicant to provide enough information for this office, the County Planning and Zoning office, the Planning Commission, and the Board of Appeals to make useful and informed comments, recommendations, and decisions. To date, the applicant has not met this burden. Additionally, it does not appear that minimization has been demonstrated for the proposed redevelopment of this property consistent with the County's provisions for redevelopment in the BEA. Finally, there are areas of this property that are proposed to be redeveloped which could be further brought into compliance, such as the concrete pad at the bulkhead. The applicant has indicated that it would be difficult to remove this pad, but no supporting information has been provided. In general, further attempts at minimization must be made by the applicant and further site plan information is necessary.

In several of the meeting and conversations we have had with the applicant, the County, and the applicant's attorney, alternative design options were being considered to bring this redevelopment further into compliance. To date, we have not seen a revised site plan. Please have the applicant forward a revised site plan as it becomes available. If you have any questions, please contact me at 410-260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner
Cc: DC 484-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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November 13, 2008

Mr. Thomas Wright
Naval Support Facility Indian Head
3972 Ward Road, Suite 101
Indian Head, MD 20640-5157

Re: Upgrades of the Sewage Treatment Plant at the Naval Support Facility, Indian Head, MD

Dear Mr. Wright:

We have received notice for the above reference project. The scope of the proposed work includes demolition of several existing facilities and the upgrade of activities within the area of the existing sewage treatment plant. The proposal must be consistent with the Maryland Coastal Zone Management Act and the goals and objectives of the Critical Area Law and Criteria. As it appears that there will be an increase in impervious (lot) coverage on site, further review by this office will be necessary. We will need additional information on the following items:

- Impervious surfaces created above Mean High Water (MHW), tidal waters, or wetlands.
- Trees or natural vegetation proposed to be removed for construction above MHW.
- The square area of any grading proposed to be performed in the 100-foot Buffer, drawn landward from the MHW line, wetlands, and/or a stream.
- Any proposed staging areas to be located within the 100-foot Buffer which may necessitate the need for clearing of natural vegetation or trees.
- A letter from the Department of Natural Resources Wildlife and Heritage Program to determine if there will be impacts to other Habitat Protection Areas on site, as defined in COMAR 27.01.09.

I have included our project checklist. This information is necessary to perform our review and confirm consistency with the CZMA. Please forward additional information regarding this proposal as it becomes available. Thank you for your coordination. If you have any questions, please call me at (410) 260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner

Enclosure

Cc: Mr. Ryan Hicks, Indian Head

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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November 13, 2008

Mr. Steve Dodd
Dorchester County Planning and Zoning
County Office Building
P.O. Box 307
Cambridge, Maryland 21613

Re: Local case number 1173 – Cedar Grove Subdivision

Dear Mr. Dodd:

Thank you for forwarding me the revised information on the above-referenced project. The applicant has proposed to build a 23-lot subdivision on 33.88 acres (31.0 acres are in the Critical Area) located in the Limited Development Area (LDA). It appears that my comments from the May 21, 2008 letter, except the following, have been addressed. Please have the applicant provide the appropriate signage indicating that a Critical Area Easement is in place on those lots that include the Buffer and wooded areas (Lots 4-9).

We have no further comments on this subdivision. Please call me with any questions at 410-260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner

Cc: DC 402-07

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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November 13, 2008

Commander J.P. Slaughter
U.S. Department of Homeland Security
United States Coast Guard
2401 Hawkins Point Road
Baltimore, MD 21226

Re: Coast Guard's Waesche Avenue Bridge Rehabilitation Project

Dear Commander Slaughter:

Thank you for the information you sent for the above referenced project to review for consistency under the Maryland Coastal Zone Management Act and the goals of the Critical Area Law and Criteria. This project involves the removal of the existing bridge deck, beams, abutments and pile caps, leaving the existing concrete piles intact. The bridge is then proposed to be rebuilt in the same footprint and profile as the existing bridge.

Based on my initial review, it appears that the site is an area "intensely developed" and that the 10% pollutant reduction rule applies for the proposed work in the Critical Area. I have included the 10% worksheet which may also be obtained from the Critical Area 10% Rule Guidance Manual available on our website at www.dnr.state.md.us/criticalarea. Please complete it and return it back to this office. Also please verify that no trees or vegetation will be disturbed as part of this project.

Once this information has been received, I will be able to make a final consistency determination. Thank you for your coordination. If you have any questions, I may be reached at (410) 260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner

Enclosure

Cc: Mr. Elder Ghigiarelli, MDE

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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November 13, 2008

Ms. Regina Esslinger
Baltimore County DEPRM
401 Bosley Avenue, Suite 416
Towson, Maryland 21204

Re: Variance -- Callan Investments Propery

Dear Ms. Esslinger:

Thank you for forwarding information on the above-referenced project. This lot is 1.09 acres and is located in the Limited Developed Area (LDA). The applicant proposes to attach a deck to a proposed dwelling within the 35-foot setback to the wetlands buffer. This office reviewed the original proposal for the proposed dwelling unit and sent a letter not opposing the variance request on February 20, 2008; the porch now proposed was not included in that package to the County. The applicant is proposing to construct a 14'x 36'(520 square foot) porch over an area that is currently grassed.

Provided the lot is properly grandfathered, we do not oppose this variance request for an attached deck. However, it does appear that the size of the porch could be minimized. If the County determines this request, or some variation of this request can be granted, we recommend 3:1 mitigation for the area of the porch. Additionally, the porch should be constructed so as to be pervious.

Please include this letter in your file and submit it as part of the record for variance. Please notify the Commission of the decision made in this case. I can be reached at 410-260-3476 should you have any questions.

Sincerely,

Julie Roberts
Natural Resources Planner
cc: BC 640-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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November 18, 2008

Ms. Diane E. Ditzel
State Highway Administration
707 North Calvert Street
Baltimore, MD 21202

Re: Project No. 2380203-B27103
MD 702 over Northeast Creek
Bridge No. 0327103, Baltimore County

Dear Ms. Ditzel,

Thank you for forwarding information on the above referenced project. As your submittal indicates, the State Highway Administration (SHA) proposes to repair spalls on piers, replace Pedestals 1 and 4 of Pier 1, Span 2, remove concrete from the trough of the pier cap over Pier 1, fill erosion along the northwest wingwall with Class II riprap, and perform other related work. No excavation is proposed and these repairs will be completed without the need for heavy equipment or a construction entrance. This work is proposed to be completed within the existing right-of-way.

There appears to be a state listed sensitive species review area in the vicinity of the project site. Please provide information regarding review by the Department of Natural Resources Wildlife and Heritage program. Once this information is received, we will make a final determination on concurrence with the General Approval. Please note that this requirement supercedes our determination of concurrence with Project No. 2380203-B27000, MD 702 Ramp 'A' over Northeast Creek, Bridge No. 0327000, Baltimore County in my letter dated November 7, 2008. That letter was written without the benefit of the above information regarding the sensitive species.

Thank you for forwarding this repair project. Please forward the information from the Department of Natural Resources as soon as you receive it. I can be contacted with any questions at 410-260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner

Cc: 57-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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November 18, 2008

Mr. Steven Dodd
Dorchester County Planning and Zoning
County Office Building
P.O. Box 307
Cambridge, Maryland 21613

Re: Variance – Ray Schoenke and Associates
Local Case No. 2354
Recommendation for Postponement of Board of Appeals Hearing

Dear Mr. Dodd:

Thank you for forwarding the information on the above-referenced variance. As explained below, this Office recommends that the scheduled hearing before the Board of Appeals be postponed until the applicant has provided to the County the information sufficient for the County and the Critical Area Commission to evaluate the variance request.

The applicant is requesting eight variances for tidal crossings, impacts to tidal and nontidal wetlands, and for impacts to the 100-foot Buffer, all associated with a proposed subdivision. The area of the site located in the Critical Area is designated as a Resource Conservation Area (RCA) and is approximately 179.75 acres. On January 18, 2008, this office provided the County with comments on the proposed subdivision of the Schoenke property (letter attached). The majority of the comments in that letter have not been addressed. Specifically, in our view, neither the County nor the Commission staff can evaluate the proposed subdivision or the proposed variances without an accurate wetland delineation to determine the location, nature, and extent of tidal and nontidal wetlands onsite in order to calculate the permitted density and development potential of the site. The comments and requests for information in our January 18th letter pertain directly to the requested variances for the road upgrades for the proposed subdivision. Information regarding development potential is necessary before Commission staff can comment regarding the need for a variance that is specific to a particular lot layout and roadway alignment.

Because basic, necessary information regarding the proposed subdivision has not been provided as requested, Commission staff has insufficient information to comment on whether the upgrades to the road for this new subdivision would meet the variance standards in State law. Therefore, we recommend that the Board of Appeals postpone this hearing until the applicant has addressed

the outstanding comments of our January 18, 2008 letter. When the County has received the requested information, please contact me at 410-260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner

Enclosure

Cc: Marianne Dise, Commission Counsel
Walter Gunby, Counsel to Board of Appeals
Ryan Showalter, Esquire

cc: DC 632-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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November 19, 2008

Mr. Jerry Ringling
Charles County Department of Planning
And Growth Management
P O Box 2150
La Plata, Maryland 20646

Re: Local Case No. XPN 07-0027, McCormick Property

Dear Mr. Ringling:

I have received the information for the above-referenced project. The applicant has submitted a preliminary site plan for a baseball diamond, a portion of which is located within the boundary of the Critical Area. This baseball diamond is proposed in associated with a larger subdivision which is outside of the Critical Area. Based on the information submitted, it appears that the total area of the property is 160 acres, 59.39 acres of which are located in the Critical Area and are designated as a Resource Conservation Area (RCA). Based on the information provided, I have the following comments:

1. Section 297-132 D of the Charles County Code includes a list of the permissible uses in the Resource Conservation Zone (RCZ). Baseball fields and other athletic/recreational facilities are not included within the list. This is consistent with the strict limitations on use of the RCA found within the Critical Area Criteria. Therefore, the baseball diamond must be pulled out of the Critical Area/Resource Conservation Area.

2. We suggest rearranging the locations of the stormwater management (SWM) pond, the basketball court and the baseball diamond. For example, if the SWM pond could be slid to the west of the site, it appears that the diamond could be pulled entirely out of the Critical Area.

Please forward the revised site plan when it becomes available. I can be reached at 410-260-3476 with any questions.

Sincerely,

Julie Roberts
Natural Resources Planner

Cc: CS 614-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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November 19, 2008

Mr. Steve Dodd
Dorchester County Planning and Zoning
County Office Building
P.O. Box 307
Cambridge, Maryland 21613

Re: Local case number 1184 – John Russell et. al.

Dear Mr. Dodd:

I have received the information for the above-referenced project. The applicant has submitted a request for a subdivision. It appears that originally an intrafamily transfer was requested but that as proposed, this request is only for subdivision. The parent parcel is 97.97 acres and is located in the Resource Conservation Area (RCA). Based on the information provided, I have the following comments:

1. The applicant is proposing to subdivide one lot, Lot 1, for a total of 2.623 acres. As the density for the RCA is 1 dwelling per 20 acres, the applicant must place the remaining17.377 acres "in reserve." A note to this effect must be placed on the plat. We recommend that a development rights summary table also be provided for clarity.

2. The applicant has provided a letter from the Department of Natural Resources' Wildlife and Heritage Service (WHS) indicating that the Delmarva Fox Squirrel (DFS) is known to occur on or near the vicinity of this site. Any clearing must comply with the guidelines set forth in the July 15, 2008 letter from WHS. If clearing is proposed on the property, a Habitat Protection Plan will be necessary.
    a. Please have the applicant amend Note 10 to reflect this information.
    b. It is not clear whether clearing is proposed at this time.
    c. This is an oblong lot and it appears that the area of Delmarva habitat is in the northern section of the parcel, while Lot 1 is in the southeastern section. Therefore, it appears from our records that this area may be outside of the DFS habitat.

d. Documentation must be provided to this office prior to final plat approval that the U.S. Forest Service has been contacted and has no concerns with the proposed subdivision in regard to the Delmarva Fox Squirrels.

3. No topography or soil delineation information has been provided on the plat. The Buffer must be expanded for contiguous hydric, highly erodible soils, or for steep slopes. Please have the applicant include this information in the next submittal.

4. The applicant has indicated that 52% of the site is forested. Per COMAR 27.01.02.04, no more than 20% of any forest or developed woodland may be removed from forest use, except as provided in § C(4). Additionally, the remaining 80% of forest must be placed in a protective easement or restrictive covenant. Please have this information added to the plat in future submittals.

4. As is indicated on the plat, each new lot is limited to 15% lot coverage.

5. If not currently established on proposed Lot 1, the 100-foot Buffer must be planted in native species at the time of building permit, or preferably at the time of subdivision recordation. A Buffer Management Plan must be provided to County for review and comment in fulfillment of this requirement.

6. It is our understanding that the applicant submitted an application for subdivision prior to July 1, 2008. Please note that Ch. 119, 2008 Laws of Maryland at 765 contains provisions in regards to a new 200-foot Buffer which may be applicable to this subdivision. Under these provisions, a subdivision located in the RCA must provide a new 200-foot Buffer *unless* an application for subdivision was submitted before July 1, 2008 *and* is legally recorded by July 1, 2010. Should the applicant fail to have the subdivision plat recorded by the July 1, 2010 deadline, then a 200-foot Buffer will apply to this project. Please ensure that the applicant is aware of this requirement as stated in Chapter 119 of the 2008 Laws of Maryland.

Please forward the revised subdivision plat which addresses the issues identified above when it becomes available. I can be reached at 410-260-3476 with any questions.

Sincerely,

Julie Roberts
Natural Resources Planner

Cc: DC 308-08

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/

December 1, 2008

Mr. Thomas Krispin
Baltimore County DEPRM
401 Bosley Avenue, Suite 416
Towson, Maryland 21204

Re: **COMMENTS ON PROPOSED VARIANCE**
Howard Property, 1534 Denton Road

Dear Mr. Krispin:

Thank you for forwarding the above referenced variance. The applicant is requesting an after the fact variance for a deck addition within the 100-foot Buffer. This deck was built without the appropriate permits. This lot is 32,012 square feet and is located in the Limited Development Area (LDA). The deck, as built, is 20'x 35.5' (710 square feet). It does not appear that any vegetation was removed during the construction of this deck.

Provided this lot is properly grandfathered, we do not oppose a variance for an attached deck. However, impacts must be minimized and the variance must be the minimum necessary to provide relief. Based on the information provided, I have the following comments:

1. This office cannot support a deck of this size in the Buffer as the minimum necessary.
2. If a smaller deck is approved, it should be constructed so as to be and remain pervious with spacing between the boards, so water flows freely.
3. Mitigation of 3:1, in addition to required restoration from the violation, should be required. We recommend a mix of native shrubs and trees planted on the site in the Buffer.

Thank you for the opportunity to comment. Please include this letter in your file and submit it as part of the record for variance. Please notify the Commission of the decision made in this case.

Sincerely,

Julie Roberts
Natural Resources Planner

cc: BC 659-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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December 1, 2008

Mr. Thomas Krispin
Baltimore County DEPRM
401 Bosley Avenue, Suite 416
Towson, Maryland 21204

Re: **AFTER THE FACT VARIANCE/VIOLATION**
Howard Property, 1534 Denton Road

Dear Mr. Krispin:

We are in receipt of your request for review of an after the fact variance for the above-referenced applicant. As of July 1, 2008, all Critical Area development activities which require after-the-fact variances are considered violations of the Critical Area law. Before seeking a variance to legalize the illegal structure, in this case a deck addition in the Buffer, the County must issue a notice of violation, assess a fine, be in receipt of a restoration or mitigation plan and the applicant shall have performed the abatement measures in the plan. The County may not issue the variance until these measures have been taken.

In this case, the applicants seek an after the fact variance to permit development within the 100 ft. Buffer for a deck addition. The property is currently developed with a single family dwelling and it is classified as a Limited Development Area (LDA). The applicant has indicated that they replaced their dwelling after it was destroyed in Hurricane Isabel and have now replaced the previously existing deck with the one that is the subject of the variance. This deck was built without requesting or receiving any type of permit. The new deck measures approximately 20' x 35.5' (710 square feet).

It is our understanding that the County has issued a "Notice of Violation" at this time. Other corrective actions are being required by the County which includes reviewing of an after the fact site plan and variance. We were advised that if the site plan and variance are not approved then removal of the un-permitted structure will be enforced.

As stated in the first paragraph above, Chapter 119 of the 2008 Laws of Maryland includes a number of provisions for after the fact variances that are applicable in this case. In addition to sections on penalty determinations and variance standards, the following applies to initial processing:

1. Baltimore County may not accept an application for a variance to legalize a violation, including an un-permitted structure until the County first issues a notice of violation, including assessment of an administrative or civil penalty, for the violation.

2. Baltimore County must consider the environmental impact, and costs of site restoration and local government inspections in determining a penalty.

3. Baltimore County cannot issue a permit, approval, variance or special exception until the applicant has:
    a. Fully paid all administrative, civil, and criminal penalties imposed.
    b. Prepared a restoration or mitigation plan, approved by Baltimore County that abates impacts to water quality and natural resources as a result of the violation.
    c. Implemented the abatement measures in accordance with the County's Program.

As a courtesy, we would like to request the County inform us of the actions taken regarding this enforcement action. When the County has taken the above actions and is prepared to hear the variance, please include, as part of the record, the attached comments on the proposed variance request.

If you have any questions, please call me at 410-260-3467

Sincerely,

Julie Roberts
Natural Resources Planner

Cc: Adam Rosenblatt

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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December 1, 2008

Aimee Dailey
Charles County Department of Planning and Growth Management
PO Box 2150
La Plata, MD 20646

Re: Local Case VR 70114 – Swan Point Vacuum Pumping Station

Dear Ms. Dailey:

Thank you for forwarding the above-referenced grading permit. As you have indicated through a phone discussion, there have been no changes to the current proposal since our review and comment provided in July, 2008. To date, our comments from the July 24, 2008 letter are still pending. Please find these below.

1. Please ensure that the nontidal wetland permit application includes the outfall associated with this pumping station is included as an impact.

2. Since we last reviewed the Vacuum Pumping Station, the Habitat Protection Plan has been approved by the Critical Area Commission. As a condition of approval, each submittal must have a FIDs impact tracking sheet (and Buffer Impact tracking sheet, if applicable). Please have the applicant submit the tracking sheet for this component of the project.

We do not have any additional comments at this time. If you have any questions, please contact me at (410) 260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner

cc: CS 639-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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December 2, 2008

Mr. Keith Lackie
Maryland Department of Planning
201 Baptist Street, Suite 24
Salisbury, MD 21801-4974

Re: Food Lion Site Plan

Dear Mr. Lackie:

We have received additional information on the above referenced project. It is my understanding that the applicants were unable to meet their pollutant removal requirement of 0.8022 pounds on site and will pay a fee-in-lieu to the City of Crisfield for a total amount of $24,065.30. We continue to recommend that some vegetation other than turf grass be added to various locations on the site.

We have no further comments on this project. However, we would like to request a meeting between Commission staff and the City to discuss expenditure of the fee-in-lieu monies collected to date. Please contact Roby Hurley at your earliest convenience at 410-260-3468.

Sincerely

Julie Roberts
Natural Resources Planner

Cc: Roby Hurley
Mr. Cabby Dize, City of Crisfield
Mr. Roger Kahl, via fax 410-749-1012

CF 583-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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December 2, 2008

Mr. Thomas Krispin
Baltimore County DEPRM
401 Bosley Avenue, Suite 416
Towson, Maryland 21204

Re: **AFTER THE FACT VARIANCE/VIOLATION**
Maggio, Louis – 3621 Red Rose Farm Road

Dear Mr. Krispin:

We are in receipt of your request for review of an after the fact variance for the above-referenced applicant. A variance letter has also been sent bearing the same date. As of July 1, 2008, all Critical Area development activities which require after-the-fact variances are considered violations of the Critical Area law. Before seeking a variance to legalize the illegal structures, in this case a gazebo, a sunroom addition, a shed, and an expanded driveway, the County must issue a notice of violation, assess a fine, be in receipt of a restoration or mitigation plan and the applicant shall have performed the abatement measures in the plan. The County may not issue the variance until these measures have been taken.

In this case, the applicants seek an after the fact variance to permit development which is over the lot coverage amount for a lot of this size. The property is currently developed with a single family dwelling and it is classified as a Limited Development Area (LDA). The applicant has constructed a sunroom addition, expanded the driveway, and has placed a gazebo and shed on site for a total of 1,206 square feet of unpermitted lot coverage. Prior to these unpermitted additions, the total lot coverage on this site was 1,837 square feet, or 14.5%. The applicant seeks a variance for the additional 1,206 square feet, for a total of 24% of lot coverage, which is over the lot coverage limit for this property (15%).

It is our understanding that the County has issued a "Notice of Violation" at this time. Other corrective actions are being required by the County which includes reviewing of an after the fact site plan and variance. We were advised that if the site plan and variance are not approved then removal of the un-permitted structure will be enforced.

As stated in the first paragraph above, Chapter 119 of the 2008 Laws of Maryland includes a number of provisions for after the fact variances that are applicable in this case. In addition to

sections on penalty determinations and variance standards, the following applies to initial processing:

1. Baltimore County may not accept an application for a variance to legalize a violation, including an un-permitted structure until the County first issues a notice of violation, including assessment of an administrative or civil penalty, for the violation.

2. Baltimore County must consider the environmental impact, and costs of site restoration and local government inspections in determining a penalty.

3. Baltimore County cannot issue a permit, approval, variance or special exception until the applicant has:
   a. Fully paid all administrative, civil, and criminal penalties imposed.
   b. Prepared a restoration or mitigation plan, approved by Baltimore County that abates impacts to water quality and natural resources as a result of the violation.
   c. Implemented the abatement measures in accordance with the County's Program.

As a courtesy, we would like to request the County inform us of the actions taken regarding this enforcement action. When the County has taken the above actions and is prepared to hear the variance, please include, as part of the record, the attached Comments on the proposed variance request.

If you have any questions, please call me at 410-260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner

Cc: Adam Rosenblatt, County Attorney
Baltimore County Office of Law
400 Washington Ave. Rm 219
Towson, MD 21204

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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December 2, 2008

Mr. Thomas Krispin
Baltimore County DEPRM
401 Bosley Avenue, Suite 416
Towson, Maryland 21204

Re: **COMMENTS ON PROPOSED VARIANCE**
Maggio, Louis – 3621 Red Rose Farm Road

Dear Mr. Krispin:

Thank you for forwarding information on the above referenced project. Please also reference the violation letter sent on today's date. In this case, the applicants seek an after the fact variance to permit development which is over the lot coverage amount for a lot of this size. The property is currently developed with a single family dwelling and it is classified as a Limited Development Area (LDA). It is part of a subdivision that was created in 2005 and assigned an impervious surface limit of 15%. Based on this information provided, all existing development was defined as 100% impervious.

The applicant has constructed a sunroom addition and has placed a gazebo and shed on site for a total of 1,206 square feet of unpermitted lot coverage. Prior to these unpermitted additions, the total lot coverage on this site was 1,837 square feet, or 14.5%. The applicant seeks a variance for the additional 1,206 square feet, for a total 24% of lot coverage, which is over the lot coverage limit for this property (15%).

In 2002 and 2004, 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 Board 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 legalize an after the fact sunroom addition, shed, gazebo, and a driveway expansion. The applicant has not met each one and every one of Baltimore 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.*

The lot was created in 2005 and developed with a single family dwelling, porch, and driveway, in conformance with the impervious surface limit. The applicant is requesting a variance to legalize an addition, shed, gazebo, and driveway expansion. 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 that the applicant enjoys reasonable use of the property as evident by the dwelling with a driveway, we do not believe that the County has evidence on which to base a finding that, with the illegal additions and expansions, 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 exceed the lot coverage limit. Further, this is not a grandfathered lot. It was platted in conformance with Critical Area standards. Therefore, the rejection of a variance for an addition, gazebo, shed, and expanded driveway 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 exceeding the lot coverage limit, which would be denied to others in this area as well as in similar areas found within the County's Critical Area. This subdivision was created in 2005 and was built to the maximum 15% impervious surface (now referred to as lot coverage) limit. There is no provision by which any additional lot coverage can be added to the new three lots that were subdivided. 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.*

As this is an after the fact variance, the variance request appears to be based on conditions or circumstances that are the result of the applicant. Therefore, the applicant has not 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 more lot coverage than allowed results in an increase in stormwater and sediment runoff, the loss of essential infiltration opportunities, and potential habitat loss. Therefore, the approval of this variance would not be in harmony with the general intent and spirit of the Critical Area Law.

In summary, the County must find that the applicant has overcome the burden to meet each and every one of the variance standards in order to grant a variance. Because we believe that the applicant has failed to meet each and every variance standard, we oppose the applicant's variance request.

Thank you for the opportunity to comment. Please include this letter in your file and submit it as part of the record for variance. Please notify the Commission of the decision made in this case.

Sincerely,

Julie Roberts
Natural Resources Planner

cc: BC 655-08

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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December 2, 2008

Mr. Robert DeMarco
Environmental Engineer
Coast Guard Yard
2401 Hawkins Point Road
Baltimore, MD 21226

Re: Coast Guard's Waesche Avenue Bridge Rehabilitation Project

Dear Mr. DeMarco:

Thank you for forwarding additional information on the above referenced project. As we have discussed via telephone and email, the pollutant removal requirement of 0.012 pounds of phosphorus associated with the bridge rehabilitation may be met by planting 3 trees. As you indicated, there is no available area on site to plant these trees. In order to meet this requirement, you have indicated that trees are being planted in association with another project, for aesthetic purposes. I understand that you will be sending a letter to this effect to this office.

This project appears consistent under the Maryland Coastal Zone Management Act and the goals of the Critical Area Law and Criteria for the following reasons:

1. The planting of the three trees will meet the 10% pollutant reduction requirements.
2. There will be no impacts to the 100-foot Buffer.
3. There will be no impacts to other Habitat Protection Areas.

Beyond receipt of the above referenced letter, we have no further comments on this project. Thank you for your coordination on this project. If you have any questions, I may be reached at (410) 260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner

Cc: Commander J.P. Slaughter
Mr. Elder Ghigiarelli, MDE

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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December 3, 2008

Ms. Diane E. Ditzel
State Highway Administration
707 North Calvert Street
Baltimore, MD 21202

Re: Project No. 2380208-B02200
MD 225 over Mattawoman Creek
Bridge No. 0802200, Charles County

Dear Ms. Ditzel,

Thank you for forwarding information on the above referenced project. As your submittal indicates, the State Highway Administration (SHA) proposes to conduct various repairs on MD 225. The construction will be conducted via access piers from floats. No excavation is proposed and these repairs will be completed without the need for heavy equipment or a construction entrance. This work is proposed to be completed within the existing right-of-way.

The proposed repair work on the bridge appears to meet the Conditions of General Approval in the Memorandum of Understanding (MOU) under section Exhibit B1, 3b Routine Maintenance Projects and is, therefore, consistent with the MOU. Ten percent calculations and mitigation are not necessary for this project.

Thank you for forwarding this repair project. Please contact me with any questions at 410-260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner
Cc: 63-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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December 5, 2008

Ms. Pam Cotter
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road, MS 6301
Annapolis, MD 21401

Re: 2008-0356-V – Clarke, James and Deborah

Dear Ms. Cotter:

Thank you for forwarding the above-referenced variance request. The applicant requests a variance to allow dwelling addition (porch) with less setbacks and with disturbance to slopes greater than 15%. This lot is 1.182 square feet and is designated as a Limited Development Area (LDA). The applicants propose to build a covered porch in place of an existing deck and a 25 square foot landing. The proposed screened porch will increase the lot coverage on this site by approximately 150 square feet, as other areas of coverage will be removed. This is within the allowable lot coverage for a property of this size. The proposed porch will be built no further waterward than the existing structures.

Based on the above information, we do not oppose the proposed variance request. Should there be any ground disturbance associated with the redevelopment, we recommend that the Hearing Officer require mitigation is required at a ratio of 3:1 for the area of disturbance. Additionally, we recommend that the Hearing Officer require a stormwater management practice, or retrofits, which address runoff from the redeveloped dwelling as a condition of approval.

Please include this letter in your file and submit it as part of the record for variance. Please notify the Commission of the decision made in this case. I can be reached at 410-260-3476 should you have any questions.

Sincerely,

Julie Roberts
Natural Resources Planner

cc: AA 653-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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December 5, 2008

Mr. Patrick Bright
Smallwood State Park
2750 Sweden Point
Madbury, MD 20658

Re: Nanjemoy Trail Development and Maintenance

Dear Mr. Bright:

I have reviewed the above-referenced project to perform maintenance on a largely existing trail at Nanjemoy Natural Resources Management Area (NRMA). This project includes 1) vegetation management including stump removal and the trimming of branches, 2) trail rerouting with certain sections being blocked off by tree planting, 3) maintenance and repair of trails and the parking area, and 4) the addition of signage. As discussed in a meeting with you, Butch Norden, Martha Anderson, and myself on December 4, 2008, there will be no grading in the 100-foot Buffer, nor any vegetation removal. Any gravel placed in the 100-foot Buffer is for the purposes of maintaining previously graveled areas, which may have eroded. The proposed signage will not constitute a "footprint" as concrete will not be used to stabilize the signs. Since there will be no expansion of lot coverage, this action by the Department does not require approval by the Commission.

This office supports the Department's efforts in repairing existing public facilities on State lands. In addition, we appreciate your continued efforts to provide Commission staff notice of these projects.

Thank you again for forwarding this request to this office. Please call me at (410) 260-3476 if you have any questions.

Sincerely,

Julie Roberts
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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December 8, 2008

Mr. Paul Dennis
Baltimore County DEPRM
401 Bosley Avenue, Suite 416
Towson, Maryland 21204

Re: Variance – Beavers, Robert Property
Local Case No. 06-08-715

Dear Mr. Dennis:

Thank you for forwarding information on the above-referenced variance. The applicant seeks a variance for an addition to an existing dwelling which will encroach 31 feet into the 35 foot primary structure setback, and the continued use of a shed and yard area. This lot is 2.633 acres and is located in the Limited Developed Area (LDA). The applicant proposes to construct a 3,060 square foot addition to the existing dwelling and a 3,961 driveway, for a total of an additional 7,021 square feet. This is within the allowable coverage for this lot.

Provided this lot is properly grandfathered, we do not oppose this variance request. Should the County approve this request or some variation of this request, mitigation may be necessary at a rate determined by the County for the disturbance to the 35-foot setback. A mitigation plan should be submitted to the County for review and approval, as necessary.

Please include this letter in your file and submit it as part of the record for variance. Please notify the Commission of the decision made in this case. I can be reached at 410-260-3476 should you have any questions.

Sincerely,

Julie Roberts
Natural Resources Planner

Cc: BC 679-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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December 8, 2008

Ms. Adriene Stiffler
State Highway Administration
OPPE – Environmental Planning Division
Mail Stop C-301
707 North Calvert Street
Baltimore, MD 21202

Re: Structure No. 09019X0
MD 16 over Parsons Creek
Dorchester County

Dear Ms. Stiffler,

Thank you for forwarding information on the above referenced project. As your submittal indicates, the State Highway Administration (SHA) proposes to preserve the integrity of an existing structure by inserting a spiral liner into an existing culvert and construct new headwalls. The project limits of disturbance are 25 feet to each side of the centerline of each pipe and 25 feet out from the edge of each pipe. This work is proposed to be completed within the existing right-of-way and there will be no increase in impervious area associated with this work.

There appears to be a federally listed endangered species review area in the vicinity of the project site. Given the limited scope of this activity, it does not appear that the endangered species would be affected by the proposed maintenance of the structure. If any grading or clearing is required as part of this proposal, additional review by this office may be necessary. Barring that, this project appears to be consistent under the Memorandum of Understanding, Exhibit B1, Section A, General Conditions, 3b.

Thank you for forwarding this repair project. I can be contacted with any questions at 410-260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
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Ren Serey
Executive Director

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December 8, 2008

Ms. Jessica Silwick
State Highway Administration
707 North Calvert Street
Baltimore, MD 21202

Re: Project No. BA664A21
MD 150 at Island Point Road

Dear Ms. Silwick,

Thank you for forwarding information on the above referenced project. As your submittal indicates, the State Highway Administration (SHA) proposes to add a center left turn lane from westbound MD 150 onto Island Point Road in Baltimore County. This area is designated as an Intensely Developed Area (IDA) and the total site area is 2.22 acres. The lot coverage area (previously referred to as impervious surface) associated with this turn lane is 1.4 acres. The proposed work includes narrowing an existing grass median and realigning the road for an additional coverage area of 0.07 acres.

The proposed repair work on the bridge appears to meet the definition of a "minor project" referred to in the Conditions of General Approval in the Memorandum of Understanding (MOU) under section Exhibit B1, B and is, therefore, consistent with the MOU. As there will be an increase of lot coverage ten percent calculations and mitigation are necessary for this project. We have received Worksheet A which indicates that there is a 0.27 pollutant removal requirement. As you have indicated that there is not adequate area on site to meet this requirement, planting at an alternate location (Martin State Airport) has been discussed. It appears that this location may be appropriate. Please forward me the final draft planting plan as it becomes available.

Thank you for forwarding this repair project. Please contact me with any questions at 410-260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner

Cc: 63-08

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
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December 9, 2008

Aimee Dailey
Charles County Department of Planning and Growth Management
PO Box 2150
La Plata, MD 20646

Re: Local Case No. ORD 80261 – John Candland

Dear Ms. Dailey:

Thank you for forwarding the above referenced shore erosion control project for review and comment. The applicant proposes to construct a 240 linear foot revetment for the purposes of shore erosion control. The site is 11.061 acres and is located in the Resource Conservation Area (RCA). A tidal wetlands license has been received from MDE for these proposed activities. Please find my comments below:

1. It is unclear if the cross section provided to MDE is accurate to scale. If so, it appears that the total disturbance associated with this proposal is 7,200 square feet in the 100-foot Buffer. As your letter of November 14, 2008 to the applicant indicates, a Sediment and Erosion Control plan is necessary. Please forward the plan to this office once you have received it.

2. This property has been reviewed by this office previously for other purposes and is known to be Forest Interior Bird Dwelling (FIDs) habitat. The information provided does not indicate how the construction of the revetment is proposed to be performed. For example, it is unclear if the needed heavy machinery will be barged in or if it is necessary to clear vegetation to create a pathway for the machinery and materials. Submission of a habitat protection plan detailing existing habitat, proposed protection measures, and mitigation obligations, must be provided if any clearing is proposed on the property. Please have the applicant clarify the scope of the proposed work.

3. Aside from concerns regarding impacts to FIDs, mitigation is necessary at a ratio of 3:1 for disturbance in the 100-foot Buffer, with at least a 1:1 ratio replaced within the Buffer. Please forward the proposed Buffer Management Plan when it is available.

I will provide additional comments once the requested materials are received. Thank you for the opportunity to provide comments on this shore erosion proposal. If you have any questions, please contact me at (410) 260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner

cc: CS 663-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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MEMORANDUM

Date: December 9, 2008

To: Butch Norden, Maryland Park Service

From: Julie Roberts, Natural Resources Planner

Re: Gunpowder Falls, SP Hammerman Educational Enhancements

Thank you for forwarding the above-referenced project. The Department proposes to perform maintenance and enhance an area at Gunpowder Falls State Park. One component of this project is to build a small cabin on an existing 10' x 12' concrete pad which previously had a picnic table on it. The second component of the project is to rebuild a deck platform with stairs in the amount of 180 square feet. You provided information that this deck had been vandalized in the past (the upright posts and footings are currently in place) and that the Department now seeks to rebuild it. No vegetation is proposed to be disturbed in association with these enhancements and repairs.

This office supports the Department's efforts in repairing existing public facilities on State lands. Per COMAR 27.02.05, this action by the Department does not require approval by the Commission. However, this office recommends that the platform deck be constructed so as to be pervious, with spacing between boards so water can "flow freely" through.

We appreciate your continued efforts to provide Commission staff notice of these projects. Please call me at (410) 260-3476 if you have any questions.

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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December 9, 2008

Ms. Adriene Stiffler
State Highway Administration
OPPE – Environmental Planning Division
Mail Stop C-301
707 North Calvert Street
Baltimore, MD 21202

Re: Structure No. 09014X0
MD 343 over Branch of Gary Creek
Dorchester County

Dear Ms. Stiffler,

Thank you for forwarding information on the above referenced project. As your submittal indicates, the State Highway Administration (SHA) proposes remedial repairs to MD 343 which include paving the invert of the pipe with grout. The project limits of disturbance are 25 feet to each side of the centerline of each pipe and 25 feet out from the edge of each pipe. This work is proposed to be completed within the existing right-of-way and there will be no increase in impervious area associated with this work.

There appears to be a federally listed endangered species (Delmarva Fox Squirrel) review area in the vicinity of the project site. Given the limited scope of this activity, it does not appear that the endangered species would be affected by the proposed maintenance of the structure. If any grading or clearing is required as part of this proposal, additional review by this office may be necessary. Barring that, this project appears to be consistent under the Memorandum of Understanding, Exhibit B1, Section A, General Conditions, 3b, Routine Maintenance Projects.

Thank you for forwarding this repair project. I can be contacted with any questions at 410-260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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December 9, 2008

Mr. Steve Dodd
Dorchester County Planning and Zoning
County Office Building
P.O. Box 307
Cambridge, Maryland 21613

Re: Local case number 793B – Eastern Shore Properties

Dear Mr. Dodd:

We have received revised information on the above referenced project. As your original application materials indicate, Parcel 185 is a residue parcel created by a subdivision in 1992. At the time of original subdivision, this parcel was designated as a non-buildable lot. The submission shows the proposed dwelling unit and the location of the Septic Reserve Area (SRA) proposed. This septic reserve area is juxtaposed between the 100-foot Buffer to tidal waters and the 25-foot buffer to nontidal wetlands. Our position on this proposed development remains the same.

There are two unresolved and unchanging issues associated with this proposed development: 1) Any development of this lot will require variances; and 2) this is not a legally grandfathered lot of record in regard to the Critical Area Law and Criteria. The plans that the applicant submitted to the County in September and in November both show that variances are necessary to access this lot. Additionally, both sets of plans show an incorrect Limit of Disturbance (LOD) wherein the LOD runs along the 100-foot Buffer line with proposed development not encompassed within this LOD. Also, the site plans show an area for the SRA that touches the LOD on one side.

We note that the applicant expressly chose to subdivide the property in 1992, and created the residue parcel in question "not for development purposes," as stated on the recorded plat. Accordingly, the residue parcel does not qualify as a grandfathered lot of record defined within COMAR 27.01.02.07. This office does not support variance requests on lots or parcels of land subdivided and created after the effective date of the County's Critical Area Program. A subdivision to upgrade this parcel to a buildable lot should only be approved if the lot can be developed in accordance with the current Critical Area Law and Criteria and so as to not require

a variance. Based on the information provided by the County to date, and the fact that development of the residue parcel does not appear possible without a variance, we continue to recommend that the County deny the request to upgrade Parcel 185 to a buildable lot.

Thank you for forwarding this information for comment. I can be reached at 410-260-3476 with any questions.

Sincerely,

Julie Roberts
Natural Resources Planner

Cc: Marianne Dise

DC 294-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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December 17, 2008

Ms. Pam Cotter
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road, MS 6301
Annapolis, MD 21401

Re: 2008-0232-V – Napjus, Chris & Barbara

Dear Ms. Cotter:

We have received revised information (December 10, 2008) on the above-referenced variance request. The applicant is requesting a variance to construct a rear patio and retaining walls, and decking around an existing accessory structure, with less Buffer than required and with disturbance to slopes greater than 15%. The lot is 1.68 acres and is located in the Limited Development Area (LDA). Since my initial November 3, 2008 site visit with William Ethridge, the applicants have met with the members of County staff and myself twice, the last meeting on December 1, 2008. We discussed their proposals and as submitted, they currently seek to build a new patio in the amount of 177 square feet, retaining walls and steps in the amount of 156 square feet, and 2.5 feet of decking around the currently existing hot tub.

Provided this lot is properly grandfathered, we do not oppose the variance request for a modestly sized back patio and retaining walls. Mitigation is necessary at a ratio of 3:1 for the increase in lot coverage in the expanded Buffer. The applicants have provided a landscaping plan to the County for review and comment. However, we cannot support the use of decking around the existing accessory hot tub.

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) 260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner
cc: AA 415-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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December 18, 2008

Mr. Steven Dodd
Dorchester County Planning and Zoning
County Office Building
P.O. Box 307
Cambridge, Maryland 21613

Re: Batton III Wind Turbine

Dear Mr. Dodd:

Thank you for forwarding information on the above referenced project. The applicant proposes to construct a structure (wind turbine) with a 49 square foot pad no further waterward than an existing structure (steps to a pier) 83 feet from Mean High Water (MHW) and outside of the 25' setback. The lot is 2.44 acres and is located in a Resource Conservation Area (RCA). This is a Buffer Exempt Area (BEA). The applicant is within the allowable lot coverage area for a lot of this size.

Provided this lot is properly grandfathered, we do not oppose this request. Should the Board find that the applicant has met the County's BEA standards, the applicant must mitigate at a 2:1 ratio for the area of lot coverage in the Buffer, for a total of 98 square feet of plantings. These plantings should be placed waterward of the existing dwelling to the extent possible. The plantings should be done in the form of native species and the applicant shall provide to the County a schedule which includes the species, size, spacing, and proposed dates of plantings for your review and approval.

Thank you for the opportunity to provide comments. If you have any questions, please contact me at 410-260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner

Cc: DC 597-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

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December 18, 2008

Mr. Steven Dodd
Dorchester County Planning and Zoning
County Office Building
P.O. Box 307
Cambridge, Maryland 21613

Re: Batton Jr. Wind Turbine

Dear Mr. Dodd:

Thank you for forwarding revised information on the above referenced project. The applicant proposes to construct a structure (wind turbine) with a 35 square foot pad no further waterward than 25 feet from Mean High Water (MHW). The lot is 36,154 square feet and is located in a Resource Conservation Area (RCA). This is a Buffer Exempt Area (BEA). The applicant is within the allowable lot coverage area for a lot of this size.

Provided this lot is properly grandfathered, we do not oppose this request. Should the Board find that the applicant has met the County's BEA standards, the applicant must mitigate at a 2:1 ratio for the area of lot coverage in the Buffer, for a total of 70 square feet of plantings. These plantings should be placed waterward of the existing dwelling to the extent possible. The plantings should be done in the form of native species and the applicant shall provide to the County a schedule which includes the species, size, spacing, and proposed dates of plantings for your review and approval.

Thank you for the opportunity to provide comments. If you have any questions, please contact me at 410-260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner

Cc: DC 596-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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December 18, 2008

Mr. Steven Dodd
Dorchester County Planning and Zoning
County Office Building
P.O. Box 307
Cambridge, Maryland 21613

Re: Turowski BEA

Dear Mr. Dodd:

Thank you for forwarding information on the above referenced project. The applicant proposes to raise the existing dwelling for flood prevention purposes. The applicant also proposes to move an existing shed from within 10 feet of the eastern portion of the Creek to a location beyond the setback associated with the dwelling and outside of the 25 foot setback from the inlet side (western) of the Creek. The lot is 14,218 square feet and is located in a Limited Development Area (LDA). This lot is considered a Buffer Exempt Area (BEA). No new lot coverage is proposed.

Provided this lot is properly grandfathered, we do not oppose this request. Should there be any disturbance associated with raising the house or moving the shed, mitigation is required at a 2:1 ratio. The plantings should be done in the form of native species and the applicant shall provide to the County a schedule which includes the species, size, spacing, and proposed dates of plantings for your review and approval, as necessary.

Thank you for the opportunity to provide comments. If you have any questions, please contact me at 410-260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner

Cc: DC 692-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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December 19, 2008

Mr. Paul Dennis
Baltimore County DEPRM
401 Bosley Avenue, Suite 416
Towson, Maryland 21204

Re: Variance – Sullivan Garage
Local Case No. 07-08-754

Dear Mr. Dennis:

Thank you for forwarding information on the above-referenced variance. The applicant seeks a variance to impact the 100-foot Buffer and 100-year floodplain to streams and encroach into the 25-foot setback for the purpose of constructing a commercial building and access road to Rossville Boulevard, as well as continued use of the site. This lot is 13.61 acres and is located in the Intensely Developed Area (IDA). The applicant proposes to construct 6,041 square feet of additional lot coverage and remove 19,421 square feet of coverage.

Provided this lot is properly grandfathered, we do not oppose this variance request. However, no 10% calculations have been provided. Please have the applicant complete Worksheet A to determine if pollutant removal is required. As new lot coverage associated with the access road is proposed adjacent to nontidal wetlands, we recommend requiring the use of a BMP on this site to improve water quality.

Please include this letter in your file and submit it as part of the record for variance. Please notify the Commission of the decision made in this case. I can be reached at 410-260-3476 should you have any questions.

Sincerely,

Julie Roberts
Natural Resources Planner
Cc: BC 690-08

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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December 22, 2008

Aimee Dailey
Charles County Department of Planning and Growth Management
PO Box 2150
La Plata, MD 20646

Re: Fenwick Shores – Local Case No. SFD 70399

Dear Ms. Dailey:

Thank you for forwarding additional information on the above-referenced building permit application. This lot (1B) is 4.96 acres and is located in the Resource Conservation Area (RCA). The applicant proposes to clear 1.18 acres, or 48,700 square feet, to build a single family dwelling unit and driveway. Based on the information provided, I have the following comments:

1. The applicant has labeled the 100-foot Buffer to the Potomac River as "Critical Area." Please have the applicant label it as the Buffer.

2. Due to the size of the dwelling, length of driveway, and the amount of clearing, it does not appear that the Critical Area Commission FIDs guidelines were considered in this proposal. Impacts could be reduced in several ways:
   a. Although the applicant has indicated that the driveway will be 12' in width, the plan shows a canopy break of up to approximately 35' associated with the drive. As the HPP provided by the applicant indicates, the clearing along the driveway should be limited so the tree canopy remains intact. The plan is not currently drawn to express this. Please have the applicant revise.
   b. Impacts could also be decreased by reducing the clearing associated with the yard, reducing the size of the proposed dwelling and garage, and overall minimizing disturbance areas.
   c. In addition, we recommend that the applicant shorten the length of the driveway so as to decrease the impacts to FIDs interior. There is no justification provided for locating the dwelling so far from the road and minimization appears feasible.
   d. Section 197-132.G.6 of the Charles County code states that "development activities shall be located and designed to provide for the maintenance of the existing wildlife and plant habitats on the site and to maintain continuity with those on adjacent sites." By locating the proposed dwelling deep into the interior of the lot, the applicant's proposal does not meet this requirement.

3. The applicant has provided a Habitat Protection and Mitigation Plan for lot 1B. However, a FIDs worksheet has not been provided. Please have the applicant forward this information.
   a. The worksheet is necessary to demonstrate how the FIDs guidelines have been addressed and to calculate the required FIDs mitigation.
   b. Please have the applicant provide details of the proposed location of the FIDs mitigation.

4. It appears that the proposed driveway must cross nontidal wetlands, a Habitat Protection Area, and their buffer. A permit is necessary from MDE to cross these areas, as well as mitigation.

5. The applicant has indicated that the 12,800 square foot gravel driveway will be constructed to be fully pervious. It is unclear if the applicant seeks to claim the previously accepted 50% credit for gravel. The applicant's proposal of 17,650 square feet of lot coverage, or 8.1%, is within the allowable limits. The applicant may consider the gravel drive to be 100% impervious, change the gravel to a paved drive at 100% imperviousness, or draw up a lot coverage plan to maintain the 50% credit for gravel. See below for direction regarding lot coverage:
   a. The subdivision plat must contain information regarding existing and proposed lot coverage. Section 8, Ch. 119, 2008 Laws of Maryland at 765, contains provisions in regard to the lot coverage requirements of Natural Resources Article §8-1808.3 which may be applicable to this subdivision. Under these provisions, a development project whose initial application for development that satisfies all local requirements is filed by October 1, 2008 and whose development plan is approved (recorded) by July 1, 2010 may utilize the County's approved impervious surface area limitations in effect prior to July 1, 2008 provided that;
      a) The approved development plan remains valid in accordance with the County's procedures and requirements; and
      b) By July 1, 2010, the applicant prepares a detailed lot coverage plan drawn to scale and showing the amounts of impervious surface area, partially pervious area, and developed pervious surface area in the development project.
      In addition to (a) and (b) above, Section 8, Ch. 119, 2008 Laws of Maryland at 765 requires the lot coverage plan to be approved by the County and implemented in accordance with the approved lot coverage plan. Should the applicant intend to develop this subdivision in accordance with the County's impervious surface area limitations, please indicate that intent and ensure that the applicant is aware of the requirements of Chapter 119 of the 2008 Laws of Maryland for proceeding as such.

Thank you for the opportunity to provide comments. If you have any questions, please contact me at (410) 260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner

cc: CS 538-07

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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December 22, 2008

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

Re: 2008-0107-V – Kaminski, Bernard

Dear Ms. Schappert:

We have received notice that the Board of Appeals will hear on the above referenced case on January 14, 2009. The applicant requests an after-the-fact variance to perfect an accessory structure (retaining wall) with less Buffer than required and with disturbance to slopes greater than 15%. We understand that a fine had been assessed and to date has been paid in regard to the existing violation. This lot is designated as a Limited Development Area (LDA) and is improved with a dwelling unit, garage, and driveway. The walls for which this variance is requested are 44 linear feet and 58 linear feet and range in height from 2' to 8'4" at the maximum. The application indicates that these walls are replacements for previous walls, although the replacement was not in-kind.

We cannot support this variance request as submitted. The applicant has not demonstrated that the standards for variance have been met or that these retaining walls are the appropriate measure to protect against erosion of the steep slopes. Based on the information provided alone, it is difficult, or impossible, to assess whether the applicant has met each and every one of the variance standards. Prior to taking action on the requested variance, the Board should first require the applicant to address the variance standards and to demonstrate that active erosion existed on the site prior to the construction of the retaining walls which would have warranted their construction.

In evaluating this variance request, the Board must then decide that the requested variance is the minimum necessary to provide relief, and find that the proposed project will not create adverse impacts to water quality or plant and wildlife habitat. Based solely on the information provided,

this office questions whether it is possible to make such a determination. The Board should take into consideration the actions the applicant took without proper authority from the County and incorporate this into a mitigation requirement. Specifically, we recommend that mitigation at a 4:1 ratio be required. Should the Board find that the retaining walls were constructed for purposes other than active erosion, or that each and every one of the County's variance standards has not been met, we recommend that the retaining walls be removed and site be restored and heavily planted.

Thank you for the opportunity to comment. Please include this letter in your file and submit it as part of the record for variance. Please notify the Commission of the decision made in this case.

Sincerely,

Julie Roberts
Natural Resources Planner
cc: AA 196-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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December 30, 2008

Mr. Robert Tabisz
Maryland Department of the Environment
Wetlands & Waterways Program
1800 Washington Boulevard
Baltimore, MD 21230

Dear Mr. Tabisz:

I have the following comments for the below-referenced project within Charles County:

200864470/09-WL-0444 Peter O Nyce Jr

The applicant has applied to fill, grade and emplace 1,150 feet of stone revetment within a maximum of 10 feet channelward of Mean High Water (MHW). It appears from the information submitted that approximately 20 feet of the bank will be graded as part of this proposal. It is unclear from the information submitted whether this is the minimum necessary for this shore erosion control. We question whether an alternative proposal could stabilize the toe of the cliff without the proposed grading back into the Buffer, which from aerials, appears to be fully forested. In addition, it appears that the mouth of the stream is proposed to be reveted and a portion of the stream bed will be graded. This does not appear to be protective of the stream channel. Where less intrusive measures are possible, the applicant should be required to first explore these options. More detailed comments cannot be provided on the project due to the limited information submitted and small scale.

As this grading represents a potentially significant impact to the 100-foot Buffer, the applicant must submit a Buffer Management Plan to Charles County. Mitigation is necessary at a 1:1 ratio for disturbance in the Buffer deemed necessary for shoreline stabilization (grading which exceeds the minimum necessary may require a variance). In conjunction with the Buffer Management Plan, the applicant must obtain a permit from the County for the proposed activities. This permit is in addition to the MDE authorization.

We have no comments on the proposed pier and platforms.

Thank you for the opportunity to provide comments. Please feel to follow up with a phone call if you have any questions at 410-260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner

Cc: Aimee Dailey, Charles 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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December 30, 2008

Ms. Pam Cotter
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road, MS 6301
Annapolis, MD 21401

Re: 2008-0364-V – Bryant, Mark

Dear Ms. Cotter:

We have received information on the above-referenced variance request. The applicant is requesting a variance to allow associated facilities (driveway and parking) with greater lot coverage than allowed and with disturbance to slopes greater than 15%. An existing court order has allowed the owners of lots 7 and 8 of this subdivision to deny the use of Heidi Lane whose entrance is located on their property. Without this access to Heidi Lane, it appears that there is currently no point of ingress or egress to the other nine lots of this subdivision. These currently existing lots are over their lot coverage limit at an average of 23%.

Provided these lots are properly grandfathered, we do not oppose the variance request for a point of ingress and egress off of Nabbs Creek Road. However, we cannot support any additional proposed off-street parking. We recommend that mitigation be required at a ratio of 3:1 for the increase in lot coverage. The applicants should provide a plantings plan, including species, size, spacing and schedule to the County for review and comment.

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) 260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner
cc: AA 553-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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December 30, 2008

Ms. Diane E. Ditzel
State Highway Administration
707 North Calvert Street
Baltimore, MD 21202

Re: Project No. 2380208-B01500
MD 6 over Nanjemoy Creek
Bridge Remedial, Charles County

Dear Ms. Ditzel,

Thank you for forwarding information on the above referenced project. As your submittal indicates, the State Highway Administration (SHA) proposes to conduct various repairs, including remortaring, and upgrading traffic barrier attachments, on MD 6 over Nanjemoy Creek in Charles County. No excavation is proposed and these repairs will be completed without the need for heavy equipment or a construction entrance. This work is proposed to be completed within the existing right-of-way.

The proposed repair work on the bridge appears to meet the Conditions of General Approval in the Memorandum of Understanding (MOU) under section Exhibit B1, 3b Routine Maintenance Projects and is, therefore, consistent with the MOU. Ten percent calculations and mitigation are not necessary for this project.

Thank you for forwarding this repair project. Please contact me with any questions at 410-260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner
Cc: 73-08