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Chesapeake Bay Critical Area Commission  
Oxon Hill Manor House  
Oxon Hill, Maryland  
April 5, 2000

AGENDA

12:00 p.m. - 1:05 p.m. Approval of Minutes Of March 1, 2000 John C. North, II, Chair

PROGRAM AMENDMENTS and REFINEMENTS

1:05 p.m. - 1:20 p.m. VOTE BEA Policies Mary Owens, Pgm. Chief

1:20 p.m. - 1:30 p.m. Refinement/Kent County Assisted Living Facilities Text Amendment Tracy Batchelder, Planner

1:30 p.m. - 1:40 p.m. Refinement/Talbot County Enforcement Ordinance Lisa Hoerger, Planner

*10 min So. Co./Ref. Noble Farms - g.a. Clavin Jones,*

PROJECT EVALUATION

1:40 p.m. - 2:10 p.m. Woodrow Wilson Bridge Project SHA Prince George's County Lisa Hoerger, Planner

2:10 p.m. - 2:30 p.m. UPDATE/National Harbor Prince George's County Lisa Hoerger, Planner

2:30 p.m. - 2:40 p.m. Old Business Legal Update John C. North, II, Chairman Marianne Mason, Assistant Attorney General

2:40 p.m. - 2:50 p.m. New Business

Chesapeake Bay Critical Area Commission  
Oxon Hill Manor House  
Oxon Hill, Maryland

SUBCOMMITTEES

Project Evaluation      NO SUBCOMMITTEE MEETING

Members: Bourdon, Cain, Witten, Giese, Goodman, Corkran, Cooksey, Hearn, Graves, Wilde, Olszewski, Jackson, McLean, VanLuven

10:00 a.m. - 11:30 p.m.      Program Implementation

Members: Foor, Myers, Barker, Williams, Wynkoop, Johnson, Lawrence, Duket, Samorajczyk, Bradley

BEA Policies

Mary Owens, Program Chief

Kent County/Assisted Living Facility  
Zoning Text Amendment Refinement

Tracy Batchelder, Planner

Talbot County/Enforcement  
Ordinance Refinement

Lisa Hoerger, Planner

Charles County/RCA  
Uses

LeeAnne Candler, Planner

11:30 a.m. - 12:00 p.m.      Chesapeake Beach Panel  
Tidewater Homes

Regina Esslinger, Project  
Chief

Members: Foor, Bourdon, Cooksey, Duket

12:00 p.m. - 1:00 p.m. - LUNCH

Chesapeake Bay Critical Area Commission  
Department of Housing and Community Development  
Crownsville, Maryland  
March 2, 2000

The Chesapeake Bay Critical Area Commission met at the Department of Housing and Community Development in Crownsville, Maryland. The meeting was called to order by John C. North, II, Chairman, with the following Members in attendance:

Barker, Philip, Harford County  
Cain, Debbie, Cecil County  
Cooksey, David, Charles County  
Foor, Dr. James. C., Q.A. County  
Corkran, Bill, Talbot County  
J.L. Hearn, Maryland Department of the Environment  
Witten, Jack, St. Mary's County  
Lawrence, Louise, Maryland Department of Agriculture  
Goodman, Bob, Md. Dept. Housing and Community Development  
VanLuven, Heidi, Maryland Department of Transportation  
Bradley, Clinton, Eastern Shore Member at Large  
Samorajczyk, Barbara D., Anne Arundel County  
Myers, Andrew, Caroline County  
Wenzel, Lauren, Maryland Department of Natural Resources  
Jackson, Joseph, Worcester County  
Sam Wynkoop, P.G. County

**Not in Attendance or Represented:**

Wilde, Jinhee, Western Shore Member at Large  
Johnson, Samuel Q., Wicomico County  
Olszewski, John Anthony, Baltimore County  
Graves, Charles C. , Baltimore City  
Duket, Larry, Maryland Office of Planning  
Williams, Roger, Kent County  
Lawrence, Louise, Department of Agriculture  
Bourdon, Dave, Calvert County  
Giese, William, Jr., Dorchester County  
McLean, James H. DBED

The Minutes of February 2, 2000 were approved as read.

Claudia Jones, Science Advisor, CBCAC introduced Rob Schnabel representing Environmental Systems Analysis, Inc., who gave a slide presentation on innovative approaches to shoreline stabilization, and marsh creation methods including non-structural bio-engineering. Ms. Jones said that the Commission staff has consulted with Mr. Schnabel on these alternative methods. The Commission found this presentation very refreshing as well as informative.

Ms. Jones distributed the Draft of the new FIDS Guidance Paper.

Mary Ann Skilling, Circuit Rider, presented for Concurrence with the Chairman's determination of Refinement, the proposed request for 40 acres of growth allocation to change the designation from LDA to IDA for the Firestone Property in the Town of Perryville. She said that the property will be used as a warehousing and distribution facility. The Mayor and Town Commissioners of Perryville support the approval of this request as the designation of this parcel as an IDA would be compatible with the Town's Comprehensive Plan. The Commission supported the Chairman's determination of Refinement.

Susan Zankel, Planner, CBCAC presented for Concurrence with the Chairman's determination of Refinement, the proposed growth allocation for the "Cox Creek Landing" subdivision to change the designation of a 22.33 acre parcel of land in the Critical Area designated as RCA to IDA. This request was approved by the Planning Commission for a favorable recommendation to the County Commissioners for conceptual approval subject to conditions identified in the Planning Department staff report and was subsequently granted conceptual approval by the County Commissioners. Ms. Zankel stated that one of the features of this proposal is to place all of the Buffer area into community open space so that none of the Buffer will be located on the lots making forested Buffer maintenance easier. She described the technical aspects of the request and stated that the petition qualifies as a Refinement to the Queen Anne's County Critical Area Program. The Commission supported the Chairman's determination of Refinement.

Dawnn McCleary, Planner, CBCAC presented for VOTE the proposal by the Maryland Department of Natural Resources to construct a Pavilion in Martinak State Park in Caroline County. There will be no disturbance to the 100-foot Buffer and there will be no clearing of forest. Ms. McCreary gave the technical details of the project and said that there are no threatened or endangered species present in the area of the shelter. Bob Goodman moved to approve the proposal as presented. The motion was seconded by Debbie Cain and carried unanimously.

LeeAnne Chandler, Planner, CBCAC presented for VOTE the proposal by the Maryland Department of Natural Resources to locate four mini-cabins at the Shad Landing Area of Pocomoke River State Park in Worcester County. Ms. Chandler described the technical aspects of the project. She said that there are no rare, threatened or endangered species. There will be no negative impact to the Habitat Protection Area of the Mattaponi Natural Heritage Area on the opposite shore on Corkers Creek. Bob Goodman moved to approve the project as presented. The motion was seconded by Bill Corkran and carried unanimously.

Regina Esslinger, Project Chief, CBCAC presented for VOTE the proposal by the Maryland Department of Natural Resources to construct a picnic shelter attached to an existing store that will be used as an environmental education center at Janes Island State Park in Somerset County. She described the technical details of the project and said that the existing nature center will be removed after construction of the new structure. There will be no disturbance to the 100-foot Buffer. There are no threatened or endangered species present on the site. Bob Goodman moved to approve the project as presented. The motion was seconded by Heidi VanLuven and carried unanimously.

Ms. Esslinger presented for VOTE the proposal by the Maryland Department of Natural Resources to build a playground at Somers Cove Marina in Crisfield, Somerset County. No new impervious surfaces are proposed and DNR will provide 3:1 mitigation for disturbance to the Buffer. Because the playground is in the Buffer it must go through the conditional approval process. Ms. Esslinger iterated the process and said that this project is consistent with the Critical Area Program and the conditional approval. Bob Goodman moved to approve the project as presented with the conditions as outlined in the staff report. The motion was seconded by J.L. Hearn and carried unanimously.

## OLD BUSINESS

Lauren Wenzel, DNR updated the Commission on the Chesapeake Bay Agreement. She talked about a few components of the report that deal with living resources, habitat water quality, sound land use and individual responsibility. She said that there is a commitment to increase oyster population by tenfold; to achieve a no net loss of jurisdictional wetlands acreage and function, and to achieve a net resource gain of 25,000 acres of tidal and non tidal wetlands by 2010 for the whole bay watershed; to have local wetland preservation plans in 25% of the bay watershed; to have 50% of local governments adopt stream corridor protection plans; to regularly report to the public on stream health by 2003; to improve monitoring of groundwater; to integrate the regulatory with the volunteer components of the Bay Agreement for the Clean Water Act and to focus on the 40% reduction of nutrients; to correct all nutrient reductions in the Chesapeake Bay and the tidal tributaries by 2010; to establish no-discharge zones for boats; to reduce sediment by the same process as nutrients. She said that the goal statement for the land use section is to develop, promote and achieve sound land use practices which protect and restore watershed resources and water quality and to increase the number of water trails by 500 miles and 30% for public access to the Bay; and, to reduce the conversion of forest and agriculture lands by 30%. The comment period extends through March 31<sup>st</sup>.

## NEW BUSINESS

Commission Counsel Marianne Mason, Esquire updated the Commission on legal matters. She said that she has filed a Memorandum of Law in the Circuit Court in Dorchester County on an Appeal of a variance for a pool and a deck in the Buffer and it will be argued in June.

Ms. Mason told the Commission that testimony was presented in two cases in Anne Arundel County. One was at the Board of Appeals concerning a shed already built at the mean high water line without a permit. It is built on a very large piece of property, more than 20 acres on the Severn River. The shed is used for storage for medical waste. The hearing examiner had turned down the variance for the shed. In a second case testimony was presented at the hearing examiner level regarding a swimming pool.

Ms. Mason said that the Commission staff has been reviewing variance applications for accessory structures in the Buffer and that some of these cases were selected to take to the hearing examiner level with testimony on the uses of property. The Belvoir and White cases were used to illustrate the CBCAC position on why the denial of variances in these cases do not constitute unwarranted hardships. She said that no decisions on these cases have been forthcoming but the information has been well received.

Ms. Mason said that she will be having oral arguments on March 21<sup>st</sup> in the Anne Arundel County Board of Appeals on the Belvoir Farms case. This continuation of a hearing that was started last September and will be heard in the Anne Arundel Board of Appeals regarding a new house in the Buffer.

Both Chairman North and Ren Serey, Executive Director, CBCAC complimented Ms. Mason on her outstanding ability and presence in the Courts.

Ren Serey said that on Monday night Kent County and the Rock Hall Board of Appeals invited him and Ms. Mason to speak on the Belvoir and White cases, for guidance.

Mr. Serey announced that the Critical Area Commission will be losing Ms. Meredith Lathbury, Planner, CBCAC who has taken a job with the Potomac Conservancy based in Arlington, Virginia. Susan Zankel will also be leaving for New Hampshire where her husband will be taking a job with the State Nature Conservancy.

Mr. Serey disseminated to the Commission the Talbot County Bill that the Commission approved as a change to the Talbot County Critical Area Program in January that deals with access through the Buffer to the shoreline for people with disabilities. He said that last year this was also the subject of a Talbot County Amendment that the Commission denied because of its lack of specificity - it was without standards. He also provided them with a copy of House Bill #1323 sponsored by Delegate Weir this year to contrast it with the Talbot County Amendment. He said that it deals with the same subject but more resembles the first bill from Talbot County which was without standards and it shifts the burden to the Commission for approving amendments. Ms. Mason

Chesapeake Bay Critical Area Commission  
Minutes, March 1, 2000

commented on the proposed Bill stating that the wording in Bill #1323 asserts a burden of proof that occurs about 3 steps down the line in the Court case into a process where it really has no place being because the Commission's approval /disapproval in consideration of program amendments is essentially a legislative type of act. Chairman North stated that he will take up the matter directly with Delegate Weir to acquaint him with the technical problems which are embroiled by the suggested language.

Mr. Serey said that a letter of deficiency was sent to the City of Annapolis from Chairman North regarding the overall status of their Program and he has received a reply from the Mayor of Annapolis who says that Program changes are moving forward and the city intends to comply with the Chairman's request to complete the necessary changes by May 1. The local Program has been introduced to the City Council and a public hearing will be held on March 27<sup>th</sup>.

Claudia Jones, Science Advisor, CBCAC announced that Roby Hurley, Circuit Rider, will be participating in a Buffer enhancement in the City of Queenstown at the development adjacent to the Golf Course.. Roby will be recruiting high school students and Claudia invited the Commission members to also participate. The date is April 6 beginning at about 8:30 a.m. and the activity will be planting trees and putting up bird boxes.

Mary Owens, Program Chief, CBCAC reminded the Commission members about the retreat to be held at the Wye Education Center on March 11<sup>th</sup>, from 9 a.m. until 3 p.m. She outlined the Agenda for the day.

Chairman North told the Commission members that the Ethics Commission is online now and in the future Commission members will be able to file their forms online. He said that the April Commission meeting will be held at the Oxon Hill Manor in Oxon Hill, Maryland near the Woodrow Wilson Bridge. This Manor is maintained by the Maryland National Capital Park and Planning Commission.

There being no further business, the meeting was adjourned.

Minutes submitted by:  
Peggy Mickler, Commission Coordinator

**CHESAPEAKE BAY CRITICAL AREA COMMISSION**

**STAFF REPORT**

April 5, 2000

*Concurrence*

**APPLICANT:** Kent County

**PROPOSAL:** Refinement

**COMMISSION ACTION:** Concurrence with Chairman's determination that the proposed change is a refinement

**STAFF RECOMMENDATION:** Approval

**STAFF:** Tracy Batchelder

**APPLICABLE LAW/  
REGULATIONS:** COMAR 27.01.02.04 Limited Development Areas

**DISCUSSION:**

Kent County is seeking approval of an amendment to their zoning ordinance. The amendment would allow for assisted living facilities and group homes with no more than four beds in their Critical Area Residential District which is equivalent to the LDA designation in the Critical Area. The amendment includes conditions on allowing assisted living facilities and group homes in the LDA:

- The property owner resides on the premises;
- The assisted living facility or group home is subordinate and accessory to the single family dwelling in size and appearance and is in the same structure as the family dwelling;
- The rooms for the use are not designed or constructed to be separate dwelling units and may not be sold as a separate dwelling unit;
- The appearance of the structure and property remain that of a single family dwelling so that the average neighbor is unaware of the group home or the existence of an assisted living facility; and
- The structure meets all applicable Kent County Codes, including the building code, and health department requirements.

Currently, Kent County's zoning ordinance allows for convalescent, group, or homes for the aged in the RCA if they are located in dwellings that existed as of December 1, 1985. These types of homes are currently not allowed at all in the LDA.

The proposed refinement to Kent County's Zoning Ordinance is consistent with the Critical Area Act and Criteria.

THE COUNTY COMMISSIONERS OF KENT COUNTY, MARYLAND

July 6, 1999  
Legislative Session Day

Legislative Session Day  
July 6, 1999

BILL No. 3 -99

INTRODUCED BY: Ronald H. Fithian, President of the Board Of County Commissioners for Kent County, Maryland, at the request of the Planning Commission.

AN ACT TO AMEND THE KENT COUNTY ZONING ORDINANCE BY REPEALING SECTION 1.2.4 AGRICULTURAL DISTRICT, PERMITTED USES AND STRUCTURES AND SECTION 5.2.8 VILLAGE DISTRICT, PERMITTED USES AND STRUCTURES OF ARTICLE V, "DISTRICT REGULATIONS", PERTAINING TO FACILITIES FOR THE AGED AND TO ENACT IN LIEU THEREOF NEW SECTION 1.4.11. ACCESSORY USES AND STRUCTURES, AGRICULTURAL ZONING DISTRICT, SECTION 3.4.12 ACCESSORY USES AND STRUCTURES, RURAL DISTRICT, AND SECTION 4.4.12 ACCESSORY USES AND STRUCTURES, CRITICAL AREA RESIDENTIAL DISTRICT, AND SECTION 5.4.4 ACCESSORY USES AND STRUCTURES, VILLAGE DISTRICT ALL OF ARTICLE V, "DISTRICT REGULATIONS" PROVIDING FOR ASSISTED LIVING FACILITIES AND GROUP HOMES WITH NO MORE THAN FOUR (4) BEDS.

THE COUNTY COMMISSIONERS OF KENT COUNTY

By: Ronald H. Fithian  
Ronald H. Fithian, President

INTRODUCED, read first time, July 6, 1999, ordered posted and public hearing scheduled on the 24th day of August, 1999, at 1:00 p.m. in the County Commissioners Hearing Room, County Government Center, 400 High Street, Chestertown, Maryland.

By Order of

Janice F. Fletcher  
Janice F. Fletcher  
Executive Assistant

PUBLIC HEARING

HAVING been posted and notice of time and place of hearing and copies having been made available to the public and the press, a public hearing was held on August 24, 1999 and concluded on August 24, 1999. Reported favorably ~~[with]~~ [without] amendments, read second time and ordered to be considered on November 2, 1999, a legislative session day.

Janice F. Fletcher  
Janice F. Fletcher  
Executive Assistant



**A BILL ENTITLED**

AN ACT TO AMEND THE KENT COUNTY ZONING ORDINANCE BY REPEALING SECTION 1.2.4 AGRICULTURAL DISTRICT, PERMITTED USES AND STRUCTURES AND SECTION 5.2.8 VILLAGE DISTRICT, PERMITTED USES AND STRUCTURES OF ARTICLE V, "DISTRICT REGULATIONS", PERTAINING TO FACILITIES FOR THE AGED AND TO ENACT IN LIEU THEREOF NEW SECTION 1.4.11. ACCESSORY USES AND STRUCTURES, AGRICULTURAL ZONING DISTRICT, SECTION 3.4.12 ACCESSORY USES AND STRUCTURES, RURAL DISTRICT, AND SECTION 4.4.12 ACCESSORY USES AND STRUCTURES, CRITICAL AREA RESIDENTIAL DISTRICT, AND SECTION 5.4.4 ACCESSORY USES AND STRUCTURES, VILLAGE DISTRICT ALL OF ARTICLE V, "DISTRICT REGULATIONS" PROVIDING FOR ASSISTED LIVING FACILITIES AND GROUP HOMES WITH NO MORE THAN FOUR (4) BEDS.

**SECTION 1.** BE IT ENACTED by the County Commissioners of Kent County that Section 1.2.4. Principal Uses and Structures, Agricultural Zoning District and Section 5.2.8 Principal Uses and Structures, Village District, of Article V, District Regulations of the Kent County Zoning Ordinance, be and are hereby repealed.

**SECTION 2.** NEW SECTIONS BE and are hereby enacted in lieu thereof, to read as follows:

**ARTICLE V. DISTRICT REGULATIONS**

**Section 1. Agricultural Zoning District**

**1.4 Accessory Uses and Structures**

11. Assisted living facilities and group homes with no more than four (4) beds provided:


- a. The property owner resides on the premises.
- b. The assisted living facility or group home is subordinate and accessory to the single family dwelling in size and appearance and is in the same structure as the family dwelling.
- c. The rooms for the use are not designed or constructed to be separate dwelling units and may not be sold as a separate dwelling unit.
- d. The appearance of the structure and property remain that of a single family dwelling so that the average neighbor is unaware of the group home or the existence of an assisted living facility.
- e. The structure meets all applicable Kent County Codes, including the building code, and health department requirements.

**Section 3. Rural Residential District**

**3.4 Accessory Uses and Structures**

12. Assisted living facilities and group homes with no more than four (4) beds provided.


- a. The property owner resides on the premises.

- 
- b. The assisted living facility or group home is subordinate and accessory to the single family dwelling in size and appearance and is in the same structure as the family dwelling.
  - c. The rooms for the use are not designed or constructed to be separate dwelling units and may not be sold as a separate dwelling unit.
  - d. The appearance of the structure and property remain that of a single family dwelling so that the average neighbor is unaware of the group home or the existence of an assisted living facility.
  - e. The structure meets all applicable Kent County Codes, including the building code, and health department requirements.

#### Section 4. Critical Area Residential District

##### 4.4 Accessory Uses and Structures


12. Assisted living facilities and group homes with no more than four (4) beds provided.

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- a. The property owner resides on the premises.
  - b. The assisted living facility or group home is subordinate and accessory to the single family dwelling in size and appearance and is in the same structure as the family dwelling.
  - c. The rooms for the use are not designed or constructed to be separate dwelling units and may not be sold as a separate dwelling unit.
  - d. The appearance of the structure and property remain that of a single family dwelling so that the average neighbor is unaware of the group home or the existence of an assisted living facility.
  - e. The structure meets all applicable Kent County Codes, including the building code, and health department requirements.

#### Section 5. Village District

##### 5.4 Accessory Uses and Structures

4. Assisted living facilities and group homes with no more than four (4) beds provided.

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- a. The property owner resides on the premises.
  - b. The assisted living facility or group home is subordinate and accessory to the single family dwelling in size and appearance and is in the same structure as the family dwelling.
  - c. The rooms for the use are not designed or constructed to be separate dwelling units and may not be sold as a separate dwelling unit.

- single family dwelling so that the average neighbor is unaware of the group home or the existence of an assisted living facility.
- e. The structure meets all applicable Kent County Codes, including the building code, and health department requirements.

SECTION 3. BE IT FURTHER ENACTED, that this Act shall take effect on the 17th day of December, 1999.

Read Third time November 2, 1999.

PASSED this 2nd day of November, 1999.

Failed of passage \_\_\_\_\_.

ORDERED a fair summary thereof or the entire bill shall be published in at least one newspaper of general circulation in the County, not less than three times at weekly intervals within a four week period.

By Order of:

Janice F. Fletcher  
Janice F. Fletcher  
Executive Assistant

Approved:  
Date: 11/2/99

THE COUNTY COMMISSIONERS  
OF KENT COUNTY, MARYLAND

Ronald H. Fithian  
Ronald H. Fithian, President

Larry B. Beck  
Larry B. Beck, Member

W. Michael Newnam  
W. Michael Newnam, Member

**CHESAPEAKE BAY CRITICAL AREA COMMISSION**

**STAFF REPORT**

**April 5, 2000**

**APPLICANT:** Talbot County

**PROPOSAL:** Penalties and Enforcement Zoning Ordinance Text Change

**JURISDICTION:** Talbot County

**COMMISSION ACTION:** Concurrence with Chairman's Determination

**STAFF RECOMMENDATION:** Approval

**STAFF:** Lisa Hoerger

**APPLICABLE LAW/  
REGULATIONS:** Annotated Code of Maryland, Natural Resources Article  
§8-1815: Enforcement

**DISCUSSION:**

Talbot County is requesting to amend their zoning ordinance to incorporate new provisions addressing enforcement of the zoning ordinance through fines and penalties. The amendment consists of adding a new section to the County's zoning ordinance. The new section (which is included in the mailing) will be applicable throughout Talbot County, including the Critical Area.

The proposed section identifies the County Planning Officer as the enforcement official, addresses the County's ability to seek injunctive actions and abatement orders, and includes fines for minor, moderate, and major infractions.

The proposed changes to the County's zoning ordinance will enable the County staff to implement the Critical Area Program more effectively by defining the appropriate procedures for identifying and resolving violations within the Critical Area.

This zoning ordinance text change will affect the use of land and water in a manner that is consistent with the County's Critical Area Program; therefore, Chairman North has determined that this change can be approved as a refinement and is seeking the Commission's concurrence.

19.15 Enforcement and Penalties

- (a) **Authority.** This section implements the authority contained in Article 25A, Annotated Code of Maryland to provide for the enforcement of this Ordinance by fines, penalties and imprisonment and to provide that a violation of a zoning law or regulation enacted under Article 25A, may be a civil zoning violation.
- (b) **Enforcement Official.** This Ordinance shall be administered and enforced by the County Planning Officer who may delegate such duties and responsibilities as he determines appropriate. He may also be assisted by any other enforcement officials as the County Council may direct. The Planning Officer, his delegatee(s), or appointed enforcement officials shall have the authority to issue administrative orders, determine reasonable abatement periods and procedures, enter into abatement agreements on behalf of Talbot County, issue civil citations, assess civil monetary penalties, and exercise such other incidental powers as are necessary or proper to enforce the terms of this Ordinance.
- (c) **Right of Entry.** The Planning Officer, his delegatee(s), or appointed enforcement officials shall have the right to enter upon open land to perform their duties under the terms of this Ordinance. No enforcement official may enter any building or structure without permission from the owner or occupant except pursuant to a warrant issued by a Court of competent jurisdiction and accompanied by a police officer who shall serve and execute the warrant.
- (d) **Identification.** The Planning Officer shall adopt an appropriate form of identification for himself, his delegatee and any other appointed enforcement officials as provided by paragraph (b) above.
- (e) **Persons Responsible.** The owner or occupant of any building, structure, premises, or part thereof, or any architect, builder, contractor, agent, realtor, or other person who commits, participates in or assists, any violation of the terms of this Ordinance may each be chargeable with such violation.
- (f) **Continuing violations.** Each day that a violation continues after the issuance of a civil citation or after the failure to comply with an administrative order shall be a separate offense for the purposes of penalties specified in this Section. An inspection that indicates that a violation continues to exist shall be prima facie proof of a continuing violation that has existed since the last inspection.
- (g) **Repeat violations.** A violation will be considered repeated if it is of the same nature, committed by the same person, and occurs within three (3) years from the last infraction.
- (h) **Cumulative remedies.** The remedies available to the County under this Section are cumulative and not alternative, and the decision to pursue one remedy does not preclude the pursuit of another.
- (i) **Violation of Ordinance - Actions and penalties.**
  - (1) **Misdemeanor.** A person who uses property in violation of this Ordinance, who knowingly permits another to do so, or who violates an administrative order issued pursuant to §19.15(j)(1) of this Ordinance, may be prosecuted for a misdemeanor for each violation or noncompliance and on conviction is subject to a fine not exceeding \$1,000 or imprisonment not exceeding six months or both.
    - (i) Criminal prosecution of a misdemeanor shall require the approval of the Planning Officer who may enlist the services of the County Attorney to charge and prosecute such violations.
    - (ii) No criminal prosecution shall be initiated for any alleged violation unless it is determined to be either: (1) a major violation, (2) a second or subsequent moderate violation, or (3) a third or subsequent minor violation, all as defined in § 19.15(j)(3)(ii).

(2) Civil fine. A person who uses property in violation of this Ordinance, who knowingly permits another to do so, or violates an administrative order issued pursuant to §19.15(j)(1) of this Ordinance, may be subject to civil fine through the issuance of a citation as provided by §19.15(j)(3) of this Ordinance.

(3) Injunction.

(i) The County may institute injunctive or other appropriate actions or proceedings to bring about the discontinuance of any violation of this Ordinance, administrative order, permit, decision or other imposed condition. The pendency of an appeal to the Board of Appeals or subsequent judicial review shall not prevent the County from seeking injunctive relief to enforce an administrative order, permit, decision or other imposed condition, or to restrain a violation pending the outcome of the appeal or judicial review.

(ii) In an action for injunctive relief to enforce an administrative order, the court may also impose a civil monetary penalty of up to \$500 for each day that the administrative order was violated, but not exceeding \$10,000, after considering:

[a] the willfulness of the violation;

[b] the harm to the environment or the community in which the violation occurred; and,

[c] the cost to the County of enforcing the administrative order.

(iii) A person is not subject to the penalties described in this subsection for violations of an administrative order that occur during the pendency of an appeal or during subsequent judicial review unless the court finds that the appeal was taken in bad faith or without substantial justification.

(j) **Other Actions and Penalties - Administrative and Civil Citation.** Any one or any combination of the following enforcement procedures may be initiated upon verification of, or upon probable cause to believe that any terms of this Ordinance have been violated. These same actions or combination thereof may also be initiated for violation of, or noncompliance with, any condition imposed in (1) any permit or license issued under the authority of this Ordinance, (2) any order or decision from the Board of Appeals, (3) any conditional approval from the Planning Commission:

(1) Administrative Abatement Order. An administrative order to abate or correct an alleged violation, or to cease work or activity being performed in violation of this Ordinance or imposed condition may be sent by certified mail or by personal service to the persons(s) responsible for such violations or noncompliance. If service of the order is not reasonable or is unsuccessful, then service by posting of the order on the building, sign or land, with a copy mailed via first class mail to the last known address of the property owner or alleged violator, as the case may be, shall suffice. An abatement order shall advise the alleged violator:

(i) of the nature of the violation;

(ii) of a reasonable time limit for the violation to be abated, corrected or discontinued;

[a] Said time limit shall take into account the actions necessary to abate, correct or discontinue the violation.

[b] There is a rebuttable presumption that a period in excess of thirty (30) days is unreasonable unless special extenuating circumstances can be proven, or an alternative binding agreement to abate is entered into by the County and person(s) responsible for the violation.

(iii) of the right to and time limit to appeal the order to the Board of Appeals; and,

(2) Warning Notice. If the Planning Officer or enforcement official determines that the issuance of an abatement order is not appropriate, they may elect to issue an informal letter or warning notifying the person(s) responsible that a violation of the Ordinance may exist. A letter or notice issued under this subsection does not constitute a final order from the Planning Officer, and is therefore not appealable to the Board of Appeals.

(3) Civil Citation. The Planning Officer or enforcement official may deliver a citation to the person(s) believed to be committing a civil zoning violation. The citation shall serve as notification that a civil zoning violation has been committed and a monetary fine has been assessed that is due and payable to the County within ten (10) calendar days from the date of its issuance. A copy of the citation shall be retained by the Planning Officer and shall bear certification attesting to the truth of the matter set forth.

(i) The citation shall contain:

[a] The name and address of the person charged;

[b] The nature of the violation;

[c] The location where, date and time the violation occurred;

[d] The amount of the fine assessed according to the following schedule of fines;

	Minor Infraction	Moderate Infraction	Major Infraction
First Offense	\$50	\$100	\$500
Second Offense	\$100	\$200	\$500
Third Offense	\$150	\$300	\$500
Subsequent Offenses	\$200	\$400	\$500

[e] The manner, location, and time in which the fine may be paid; and,

[f] The person's right to elect to stand trial for the violation.

(ii) For purposes of establishing the amount of the pre-set fine, the following definitions apply:

[a] Minor infraction - an infraction which does not have noticeable or significant adverse affect on the environment or on the peaceful use, enjoyment or value of another's property.

[b] Moderate infraction - an infraction which has noticeable or significant adverse affect on the environment or on the peaceful use, enjoyment or value of another's property, but does not have significant adverse effect on the health, safety or general welfare of the neighborhood, community or the public at large.

[c] Major infraction - an infraction which has severe adverse affect and/or threatens the environment, or has significant adverse affect on the health, safety or general welfare of the neighborhood, community or the public at large.

(iii) Mischaracterization of an infraction as minor, moderate or major shall not be a defense to the alleged violation of the Ordinance, but shall only modify the amount of the pre-set fine.

(iv) Method of Delivery. A civil citation shall be delivered to the person(s) believed to be committing a civil zoning violation in the same manner as an administrative abatement order.

(v) Right to stand trial. A person who receives a citation may elect to stand trial for the offense by filing with the Planning Officer a notice of intention to stand trial. The Planning Officer shall forward to the District Court having venue, a copy of the citation and the notice of intention to stand trial. On receipt of the citation, the District Court shall schedule the case for trial and notify the defendant of the trial date. All fines, penalties, or forfeitures collected by the District Court for zoning violations shall be remitted to Talbot County.

(vi) Failure to pay fine. If a person who receives a citation for a violation fails to pay the fine by the date of payment set forth on the citation and fails to file a notice of intention to stand trial, a formal notice of violation shall be sent to the owner's last known address. If the citation is not satisfied within fifteen (15) days from the date of the formal notice, the person is liable for an additional fine twice the original fine. If, after thirty-five (35) days from the date of the formal notice the citation is not satisfied, the Planning Officer may request adjudication of the case through the District Court. The District Court shall schedule the case for trial and summon the defendant to appear.

(vii) Adjudication. Adjudication of a violation under this subsection is not a criminal conviction, nor does it impose any of the civil disabilities ordinarily imposed by a criminal conviction.

(viii) Proceedings. In a proceeding before the District Court, the violation shall be prosecuted in the same manner and to the same extent as set forth in municipal infractions in Article 23A, Section 3(b)(7) through (15), Annotated Code of Maryland, as amended from time to time and which is incorporated by reference herein. In the event a person is found to have violated the Ordinance, the court may impose any fine, including any doubling of the fine, not to exceed the limits imposed by Art. 23A §3(2) Md. Ann. Code. The County Attorney is authorized to prosecute a civil zoning violation, enter a nolle prosequi or place such cases on the stet docket.

(ix) Court Costs. If a person is found by the District Court to have committed a civil zoning violation, he shall be liable for the costs of the proceedings in the District Court.

**(4) Non-renewal, Non-issuance, Suspension or Revocation of Permit.**

(i) The Planning Officer may decline to issue or renew, suspend, or revoke any permit or license issued under the authority of, or required by this Ordinance on the following grounds:

[a] false, misleading, inaccurate or incorrect statements or information given on any application, or

[b] serious or repeated violations of this Ordinance or any terms, conditions or restrictions in the permit or license itself.

(ii) The Planning Officer shall give written notice and opportunity to be heard before any non-renewal, non-issuance, suspension or revocation and shall render a written decision on the matter, which shall be considered an administrative order.

**(k) Enforcement costs.** In any action or proceeding in which the County substantially prevails, the County may recover all costs incurred to enforce the terms of this Ordinance, counsel fees and litigation expenses.



**CHESAPEAKE BAY CRITICAL AREA COMMISSION**

**STAFF REPORT**

**April 5, 2000**

**APPLICANT:** Somerset County  
**PROPOSAL:** Noble Farm Growth Allocation  
**JURISDICTION:** Somerset County  
**COMMISSION ACTION:** Concurrence with Chairman's Determination  
**STAFF RECOMMENDATION:** Approval  
**STAFF:** Claudia Jones

*Concurrence*

**APPLICABLE LAW/  
REGULATIONS:**

Annotated Code of Maryland, Natural Resources Article §8-1808.1:  
Growth Allocation in Resource Conservation Areas

**DISCUSSION:**

Somerset County is requesting 31.4 acres of growth allocation to change the Critical Area overlay designation for the Noble Farm Property from a Resource Conservation Area (RCA) to a Limited Development Area (LDA). The County originally approved 37.2 acres of growth allocation for the project. Since then the subdivision has been reconfigured and only 31.4 acres of growth allocation is necessary.

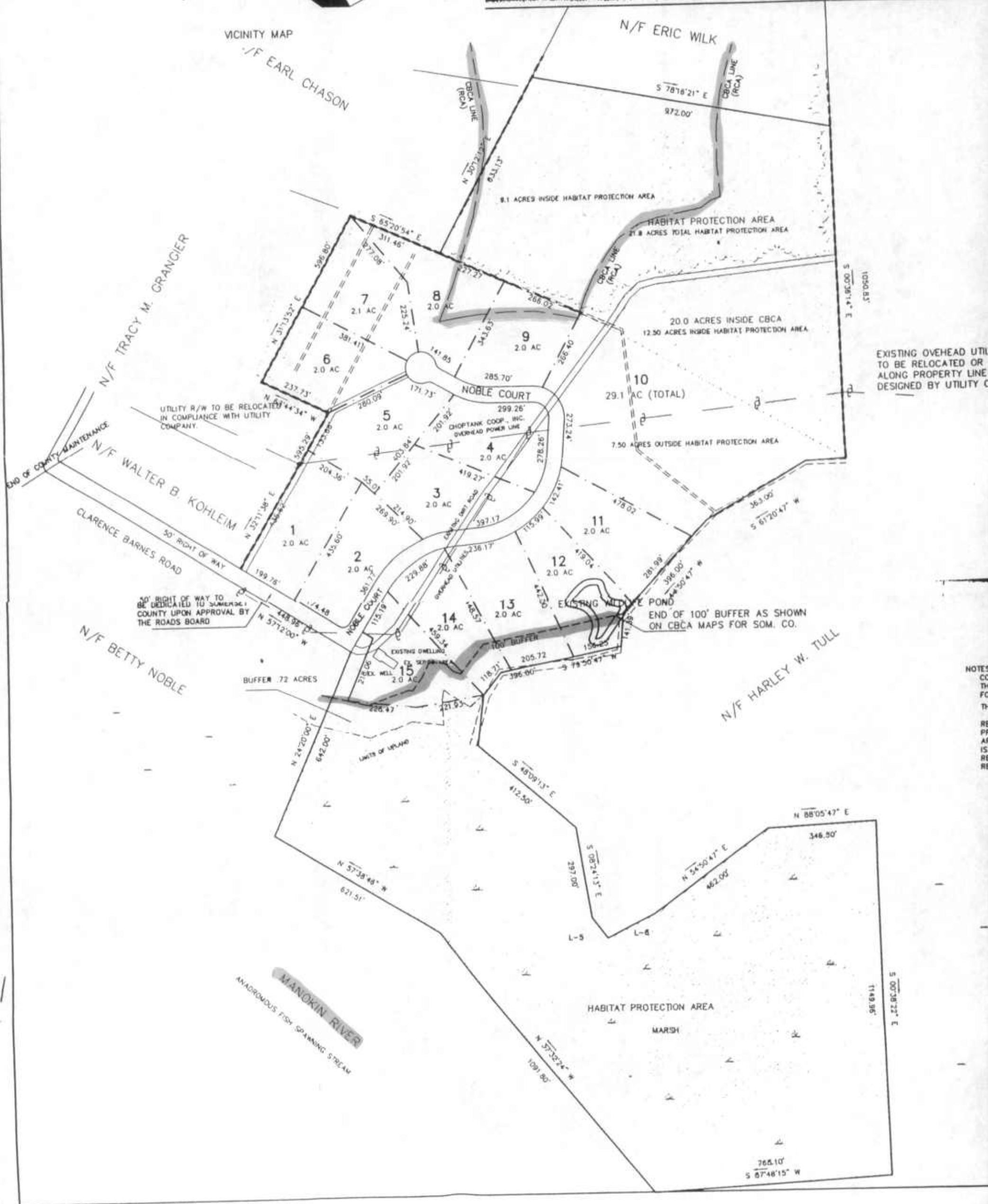
The County is requesting growth allocation to change the designation of the property to LDA because the property owner proposes development of the site as a 15 lot subdivision. The Critical Area portion of Lot 10 (29.1 acres total, 20 acres inside the Critical Area) will remain as RCA and therefore will not be deducted from the County's growth allocation. This is consistent with the Commission's Growth Allocation Policy, which specifies that a remaining minimum 20-acre residue outside of the development envelope may be developed at an RCA density and does not have to be deducted from the County's growth allocation.

The property is primarily open field but also contains some forest and tidal wetlands. The majority of the forest on the site will be protected under a conservation easement. On the southeast portion of the property the approximately 36 acres of tidal wetlands will be put in a conservation easement. There are no known threatened or endangered species located on the property.

Chairman North has determined that this growth allocation request can be approved as a refinement to the County's Critical Area Program and is seeking the Commission's concurrence.

ACRES

SITE



*Dr. Foor*

**CHESAPEAKE BAY CRITICAL AREA COMMISSION**

**STAFF REPORT**

**April 5, 2000**

*CFH  
Approved*

**PROPOSAL:** Residential Buffer Exemption Area Policy  
Buffer Exemption Area Policy for Commercial, Industrial,  
Institutional, Recreational, and Multi-family Development

**COMMISSION ACTION:** Vote

**STAFF RECOMMENDATION:** Approval

**STAFF:** Mary Owens

**APPLICABLE LAW/  
REGULATION:** COMAR 27.01.09.01: Buffer

**DISCUSSION:**

Last summer, Commission staff, under the direction of the Critical Area Commission Program Subcommittee, and with the assistance of several local government staff, prepared revisions to the Critical Area Commission's Buffer Exemption Area (BEA) Policy. The revision of the policy was undertaken to address several issues regarding implementation of the policy that had been raised by local governments. A revised policy was sent to local governments and numerous comments were received. Since that time, Commission staff have addressed the issues raised by local governments and additional revisions have been made.

Based on the comments received, the original revisions have been divided into two policies. The first policy, entitled "Residential Buffer Exemption Area Policy," is very similar to the Commission's current policy. It clarifies the methodology for determining how much encroachment is allowed in the Buffer and revises the mitigation requirements to accurately reflect current local practices. It also specifically allows the replacement of existing structures within the Buffer that may not be in full compliance with the other setback requirements in the policy. The policy also permits new accessory structures within the Buffer and waterward of the principal structure in accordance with certain limits on the size of the project.

The second policy, entitled "Buffer Exemption Area Policy for Commercial, Industrial, Institutional, Recreational and Multi-family Residential Development," is a completely new policy

designed to address the specific characteristics and development challenges presented by these types of development in Buffer Exemption Areas. Previously, these types of development were not specifically considered in the Commission's BEA Policy, and it has been difficult to adapt the current policy to address these projects, especially when larger parcels are proposed for development. The policy specifically addresses development on vacant parcels and requires a 50 foot setback for new development. The policy also includes stricter mitigation requirements which include the establishment of a 25 foot wide densely planted "bufferyard" in addition to the two-to-one planting requirement in the current policy.

Both policies include provisions that prohibit the use of the Buffer Exemption Area designation to facilitate the filling of tidal wetlands and include new requirements for mapping Buffer Exemption Areas and documenting how the existing pattern of development prevents the Buffer from fulfilling its functions. Both policies do not define subdivision as a development activity; therefore, the requirements for the subdivision of parcels designated as Buffer Exemption Areas will be addressed individually with those jurisdictions that want to permit subdivision. The policies also specifically provide for jurisdictions to develop alternative Buffer Exemption Area provisions as an amendment to their local programs if they desire to do so.

The policies and a draft letter to be sent to local governments is attached.

April 6, 2000

Mr. Rick Thompson  
Department of Environmental Resources  
9400 Peppercorn Place, Suite 600  
Largo, MD 20774

**RE: Buffer Exemption Area Policies**

Dear Mr. Thompson:

Last summer, Commission staff, under the direction of the Critical Area Commission Program Subcommittee, and with the assistance of several local government staff, prepared revisions to the Critical Area Commission's Buffer Exemption Area Policy. The revision of the policy was undertaken to address several issues regarding implementation of the policy that had been raised by local governments. A revised policy was recently sent to local governments and additional changes were made.

On April 5, 2000, the Critical Area Commission voted to adopt the revised "Residential Buffer Exemption Area Policy" and the new "Buffer Exemption Area Policy for Commercial, Industrial, Institutional, Recreational, and Multi-family Development". The revised policy, for residential development is very similar to the Commission's current policy. It clarifies the methodology for determining how much encroachment is allowed in the Buffer, addresses the construction of accessory structures in the Buffer, and revises the mitigation requirements to accurately reflect current local practices.

The new policy, entitled "Buffer Exemption Area Policy for Commercial, Industrial,

Institutional, Recreational and Multi-family Residential Development,” is a completely new policy designed to address the specific characteristics and development challenges presented by these types of development in Buffer Exemption Areas. Currently these types of development are not specifically considered in the Commission’s Buffer Exemption Area Policy, and it has proved to be extremely difficult to adapt the current policy to address these projects.

As requested by many local governments, both policies permit local planners to develop alternative provisions to address all or parts of the policies. Commission staff are available to assist local governments in developing policies that meet the specific needs of a jurisdiction and satisfy the purpose and intent of the policies. Any alternative policies will need to be reviewed and approved by the Critical Area Commission as a change to the local Critical Area Program.

At this time, Commission staff intend to address the incorporation of these policies or alternative provisions into local Critical Area Programs during the comprehensive review process. If a jurisdiction has only mapped single family residential lots as Buffer Exemption Areas, then the Buffer Exemption Area Policy for Commercial, Industrial, Institutional, Recreational and Multi-family Residential Development will not apply to that jurisdiction, and incorporation of those provisions into the local program will not be necessary. If at a later date a jurisdiction maps some of these properties as Buffer Exemption Areas, then the policy can be incorporated at that time. Of course, if a jurisdiction wants to incorporate these policies outside of the comprehensive review process, a request to amend a local program can be submitted to the Commission at any time.

Commission staff would like to thank the local government representatives who participated in early discussions of the revisions and provided many helpful comments throughout the process. We look forward to working with you on the opportunities to streamline the review process and improve the mitigation for Buffer impacts that will be afforded by the new policies. If you have any questions, please feel free to call me or Ren Serey at (410) 260-7516.

Sincerely yours,

Mary R. Owens, Chief  
Program Implementation Division

# RESIDENTIAL BUFFER EXEMPTION AREA (BEA) POLICY

*Draft  
April 5, 2000*

## **I PURPOSE**

*The purpose of this policy is to guide local jurisdictions in effectively implementing Buffer Exemption Area provisions for single family detached residential development that achieve the water quality and habitat protection objectives of the policies for the Buffer set forth in Section 27.01.09.01.B of the Critical Area Criteria.*

## **II BACKGROUND**

*Section 27.01.09.01.C(8) of the Critical Area Criteria permits local jurisdictions to request an exemption of certain portions of the Critical Area from the Buffer requirements where it can be sufficiently demonstrated that the existing pattern of residential, industrial, commercial, or recreational development in the Critical Area prevent the Buffer from fulfilling the functions set forth in the Criteria.*

## **III IMPLEMENTATION**

### **A. General Policy**

1. The following provisions are intended to accommodate limited use of shoreline areas in certain situations while protecting water quality and wildlife habitat to the *greatest* extent possible.
2. *Alternative provisions regulating development and redevelopment in Buffer Exemption Areas may be adopted by local governments if the provisions are approved by the Critical Area Commission as an amendment to the jurisdiction's Critical Area Program.*

### **B. Applicability**

1. This section policy applies to new development or redevelopment *on single family detached residential properties within 100 feet of tidal waters, tidal wetlands, and tributary streams.*
2. The portions of the Critical Area to be considered Buffer Exemptions Areas are those "where it can be sufficiently demonstrated that the existing pattern of residential, commercial, or recreational development in the Critical Area prevents the Buffer from

fulfilling the functions” set out in COMAR 27.01.09 for water quality protection and wildlife habitat. *Designation of these areas as Buffer Exemption Areas must be approved by the Critical Area Commission. Buffer exemption areas include:*

~~Areas mapped as existing Buffer Exemption Areas and newly mapped areas proposed and approved by the Commission. These areas could, but not necessarily will, include lots of record with an existing single family dwelling unit located at least partially in the Buffer and being less than 200 feet in depth from tidal waters, tidal wetlands or tributary streams.~~

3. This ~~section~~ *policy* only applies to lots of record at the time of original program approval.

**D. Standards**

1. New development or redevelopment activities, including structures, roads, parking areas and other impervious surfaces or septic systems will not be permitted in the Buffer ~~Exempt Area~~ unless the applicant can demonstrate that there is no feasible alternative.
2. New development or redevelopment shall minimize the shoreward extent of intrusion into ~~the Buffer. this Buffer Exempt area~~ *New development and redevelopment shall not be located closer to the water (or the edge of tidal wetlands) than principal structures on adjacent properties or the local setback for the zoning district, whichever is greater. In no case shall new development or redevelopment be located less than 25 feet from the water (or the edge of tidal wetlands). not exceed the shoreward extent of adjacent structures whichever is more restrictive. Structures on adjacent properties may shall not be used to determine the setback line.*
3. *Existing principal or accessory structures in the Buffer may be replaced in the same location. Any increase in impervious area within the Buffer shall comply fully with the requirements of this policy.*
4. *New accessory structures may be permitted in the Buffer in accordance with the following setback requirements:*
  - a. *New accessory structures may be located closer to the water or edge of tidal wetlands than the dwelling only if there are no other locations for the accessory structures.*
  - b. *The area of the accessory structures within the Buffer shall be minimized and the cumulative total area of all new and existing accessory structures on the property shall not exceed 500 square feet within 50 feet of the water and 1000 square feet total. See Figure 1.*



- c. *In no case shall new accessory structures be located less than 25 feet from the water (or edge of tidal wetlands).*

*(Sketch 1)*

**Figure 1 Allowable Cumulative Impacts of Accessory Structures**

5. Variances to local setback requirements ~~must~~ *should* be considered before additional intrusion into the Buffer.
6. Development may not impact any HPAs other than the Buffer, *including nontidal wetlands, other State or federal permits notwithstanding.*
7. No natural vegetation may be removed in the Buffer except that required by the proposed construction. The applicant will be required to maintain any other existing natural vegetation in the Buffer.
8. *BEA designation shall not be used to facilitate the filling of tidal wetlands that are contiguous to the Buffer to create additional buildable land for new development or redevelopment.*
9. Any development in the Buffer Exempt Area requires mitigation, *in the form of plantings, ~~enhancement~~ or offsets, or fees-in-lieu.*

**D. Mitigation**

1. *The following mitigation measures shall be implemented in the following order of preference:*

OPTION I

- A. ~~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; and~~
- a. Natural vegetation of an area twice the extent of the ~~impervious surface footprint~~ *of the development activity within the 100-foot Buffer shall be planted on site*

~~must be created in the Buffer Exemption offset area or other location as may be determined by the local jurisdiction. If it is not possible to carry out offsets or other mitigation within the Critical Area, any plantings or other habitat/water quality improvements should occur within the affected watershed impacted.~~

#### OPTION II

- ~~A. If there is no established naturally vegetated buffer, then at a minimum, 1/2 of the distance remaining from the structure to tidal waters, tidal wetlands and tributary streams, must be established in natural vegetation starting at the shoreward edge, or;~~
- ~~B. A naturally vegetated buffer must be established adjacent to the shoreline that is equal to the minimum building setback, whichever is greater.~~
- ~~C. Natural vegetation of an area twice the extent of the impervious surface must be created in a Buffer Exemption offset area or other location as may be determined by the local jurisdiction.~~

#### OPTION III

- ~~A. Alternative measures proposed by a local jurisdiction and approved by the Commission.~~
- b. Applicants who cannot comply with the planting requirement may use offsets to meet the mitigation requirement. Offsets may include the removal of an equivalent area of existing impervious surfaces in the Buffer, the construction of Best Management Practices for stormwater, wetland creation or restoration, or other measures that improve water quality or habitat.*
- ~~c. Applicants who cannot comply with either the planting or offset requirements in a or b above, are required to pay into a fee-in-lieu program administered by the local jurisdiction. A jurisdiction shall establish rates that will according to specifications below. The following rates are recommended. These rates are suggested in order to generate adequate funds to carry out planting or offset programs and to provide a sufficient deterrent to location in the Buffer. If a jurisdiction does not believe that these rates are appropriate for their region, alternative rates may be proposed. Any fees-in-lieu collected under these provisions shall be placed in an account that will assure their use only for projects within the Critical Area for the benefit of wildlife habitat and water quality improvement. , or environmental education. The status of these funds must be~~

reported in the jurisdiction's quarterly reports. at the time of comprehensive review.

A. ~~For each square foot of the Buffer Exempt Area disturbed \$1.20, and~~

B. ~~For any required plantings in either 8A or 8B above that cannot be implemented on site, 0.40 cents/square foot.~~

d. *Alternative provisions for meeting the mitigation requirements may be proposed by a local jurisdiction and approved by the Critical Area Commission.*

2. Any required reforestation/mitigation/offset areas must be designated under a development agreement or other instrument and recorded among the land records of the jurisdiction.

**E. Notification Requirements**

1. The local jurisdiction must make written findings documenting that all the Criteria in this section are met including that the disturbance to the Buffer exempt area is the least intrusion necessary. These findings must be available to the Commission upon request.
2. The reporting of development activity carried out under this provision must be included in the jurisdiction's *quarterly semi-annual* reports.

**F. Requirements for Mapping New BEAs**

1. *Only grandfathered lots are eligible for mapping as a BEA by a local jurisdiction.*
2. *For each BEA, the lots that comprise the BEA shall contain a Buffer which is, at the time of the proposal, significantly impacted by development activities that existed at the time of program adoption and that prevent the Buffer from fulfilling its functions. Developed parcels or lots shall contain a Buffer intrusion, at the time of proposal, caused by the principal structures (excluding utilities or septic systems). Undeveloped or vacant residential parcels or lots (i.e., infill) may be designated as a BEA if development within the Buffer cannot be avoided based on the size of the parcel or lot, area of the parcel or lot within the Buffer, or the surrounding pattern of development.*
3. *Any proposal by a jurisdiction for designation of an area as a BEA shall include, at a minimum, the jurisdiction's written findings of and supporting reasons which demonstrate the degree to which the proposed BEA does not perform each of the following Buffer functions (a) through (e):*
  - a. *Provide for the removal or reduction of sediments, nutrients, and potentially*

- harmful or toxic substances in runoff entering the Bay and its tributaries;*
- b. *Minimize the adverse effects of human activities on wetlands, shorelines, stream banks, and aquatic resources;*
  - c. *Maintain an area of transitional habitat between aquatic and upland communities;*
  - d. *Maintain the natural environment of streams; and*
  - e. *Protect riparian wildlife habitat.*

#### **IV DEFINITIONS**

*For the purpose of implementing this policy, the following words have the following meanings (In the case of conflicts with other definitions, the stricter provisions shall apply.):*

***Accessory Structure*** means a structure that is detached from the principal structure, located on the same lot as and clearly incidental and subordinate to the principal structure; or if there is no principal structure on the lot, a structure that is customarily incidental and subordinate to a principal structure.

***Buffer Exemption Area*** means an area officially mapped by the local jurisdiction and approved by the Critical Area Commission as a Buffer Exemption Area, where it has been sufficiently demonstrated that the existing pattern of residential, industrial, commercial, institutional or recreational development in the Critical Area prevents the Buffer from fulfilling its intended functions for water quality protection and wildlife habitat conservation.

***Grandfathered Parcel/Lot*** means a parcel of land or lot that was subdivided into recorded, legally buildable lots where the subdivision received final approval before December 1, 1985.

***Development Activity*** means the construction or substantial alteration of residential, commercial, industrial, institutional, recreational or transportation facilities or structures. Development activities include, among other things, structures, roads, parking areas, and other impervious surfaces, mining and related facilities, clearing, grading and septic systems. For purposes of implementing this policy, development activity does not include subdivision.

***Natural Forest Vegetation*** means vegetation consisting of canopy trees, understory trees,

*shrubs, and herbaceous plants that are typically found in riparian areas in Maryland. Areas of natural forest vegetation planted to meet the mitigation requirements in this policy shall be designed to mimic the structure and species composition of natural forests.*

***New Development** means a development activity that takes place on a property with pre-development imperviousness less than 15 percent as of December 1, 1985.*

***Principal Structure** means, for the purpose of establishing setbacks, the primary or predominant structure on any lot or parcel. For residential parcels or lots, the principal structure is the primary dwelling, excluding utilities and the septic system.*

***Redevelopment** means a development activity that takes place on a property with pre-development imperviousness greater than 15 percent as of December 1, 1985.*

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**EXPLANATION:**

Regular text is existing language to remain.

Italicized text is new language.

~~Strike out~~ text is deleted language.

**BUFFER EXEMPTION AREA (BEA) POLICY  
FOR COMMERCIAL, INDUSTRIAL, INSTITUTIONAL, RECREATIONAL  
AND MULTI-FAMILY RESIDENTIAL DEVELOPMENT**

*Draft  
April 5, 2000*

**I      PURPOSE**

*The purpose of this policy is to guide local jurisdictions in effectively implementing Buffer Exemption Area provisions for commercial, industrial, institutional, recreational and multi-family residential development that achieve the water quality and habitat protection objectives of the policies for the Buffer set forth in Section 27.01.09.01.B of the Critical Area Criteria.*

**II     BACKGROUND**

*Section 27.01.09.01.C(8) of the Critical Area Criteria permits local jurisdictions to request an exemption of certain portions of the Critical Area from the Buffer requirements where it can be sufficiently demonstrated that the existing pattern of residential, industrial, commercial, and recreational development in the Critical Area prevent the Buffer from fulfilling the functions set forth in the Criteria.*

**III    IMPLEMENTATION**

**G.    General Policy**

1.    *The following provisions are intended to accommodate limited use of shoreline areas in certain situations while protecting water quality and wildlife habitat to the greatest extent possible.*
  
- B.    *Alternative provisions regulating development and redevelopment in Buffer Exemption Areas may be adopted by local governments if the provisions are approved by the Critical Area Commission as an amendment to the jurisdiction's Critical Area Program.*

**B.    Applicability**

1.    *This policy applies to new commercial, industrial, institutional, recreational, and multi-family residential development or redevelopment within 100 feet of tidal waters, tidal wetlands, and tributary streams.*

2. *The portions of the Critical Area to be considered Buffer Exemptions Areas are those "where it can be sufficiently demonstrated that the existing pattern of residential, commercial, or recreational development in the Critical Area prevents the Buffer from fulfilling the functions" set out in COMAR 27.01.09 for water quality protection and wildlife habitat. Designation of these areas as Buffer Exemption Areas must be approved by the Critical Area Commission.*
3. *This policy only applies to lots of record at the time of original program approval.*

**C. Standards**

1. *New development or redevelopment activities, including structures, roads, parking areas and other impervious surfaces or septic systems will not be permitted in the Buffer unless the applicant can demonstrate that there is no feasible alternative, and the local jurisdiction finds that efforts have been made to minimize Buffer impacts based on the following guidelines:*
  - a. *Development and redevelopment activities shall be located as far as possible from mean high tide, the landward edge of tidal wetlands, or the edge of tributary streams.*
  - b. *Variations to other local setback requirements shall be considered before additional intrusion into the Buffer.*
  - c. *Convenience or expense shall not be factors considered when evaluating the extent of allowable impacts to the Buffer.*
2. *New development, including accessory structures, shall minimize the extent of intrusion into the Buffer. New development shall not be located closer to the water (or edge of tidal wetlands) than the local setback for the zoning district or 50 feet, whichever is greater. Structures on adjacent properties shall not be used to determine the setback line. The 50 foot setback shall be maintained for all subsequent development or redevelopment of the property.*
3. *Redevelopment, including accessory structures, shall minimize the extent of intrusion into the Buffer. Redevelopment shall not be located closer to the water (or edge of tidal wetlands) than the local setback for the zoning district or 25 feet, whichever is greater. Structures on adjacent properties shall not be used to determine the setback line. Existing structures located within the setback may remain or a new structure may be constructed on the footprint of an existing structure or impervious surface. Opportunities*

to establish a 25 foot setback should be maximized. See Figures 1 and 2.

*(Sketch 1)*

**Figure 1 Marina Site - Existing Conditions**

*(Sketch 2)*

**Figure 2 Marina Site - After Redevelopment**

4. *Development and redevelopment may not impact any HPAs other than the Buffer, including nontidal wetlands, other State or federal permits notwithstanding.*
5. *No natural vegetation may be removed in the Buffer except that required by the proposed construction. The applicant will be required to maintain any other existing natural vegetation in the Buffer.*
6. *BEA designation shall not be used to facilitate the filling of tidal wetlands that are contiguous to the Buffer or to create additional buildable land for new development or redevelopment.*
7. *Any development or redevelopment in the Buffer Exemption Area requires mitigation, in the form of plantings, offsets, or fees-in-lieu.*

**D. Mitigation**

1. *The following mitigation measure shall be implemented for all development and redevelopment projects:*



1. *A forested or landscaped bufferyard, 25 feet wide, shall be established on the project site between the development and the water. This bufferyard shall be densely planted with trees and shrubs in accordance with Table 1. See Figure 3.*
2. *On redevelopment sites, if existing structures or those rebuilt on an existing footprint limit the area available for planting, then appropriate modifications to the width of the planted bufferyard may be made on a case by case basis.*

**Table 1**  
**Required Bufferyard Planting**

<i>Area</i>	<i>Quantity and Stocking</i>	<i>Suggested Species</i>
<i>For every 100 linear feet of bufferyard</i>	<i>5 Trees</i>	<i>White or Red Oak, Pin Oak, Willow Oak, Red Maple, American Holly, Eastern Red Cedar</i>
	<i>and</i>	
	<i>10 Understory Trees/Large Shrubs,</i>	<i>Dogwood, Mountain Laurel, Bayberry, Shadbush, Winterberry</i>
	<i>and</i>	
	<i>30 Small Shrubs</i>	<i>Pepperbush, Chokeberry, Strawberry Bush, Sweetspire</i>
	<i>and</i>	
	<i>40 Herbaceous Plants, Grasses, Etc.</i>	<i>Wild Columbine, Butterflyweed, Common Milkweed, Asters</i>

*(Sketch 3)*

**Figure 3: Buffer Planting Plan**

2. *In addition to establishing a 25 foot bufferyard on site as described above, one of the following mitigation measures shall be implemented based on the following order of preference:*
  - a. *Natural forest vegetation of an area twice the extent of the footprint of the development activity within the 100-foot Buffer shall be planted on site in the Buffer or at another location, preferably on-site, as may be determined by the local jurisdiction.*
  - b. *Applicants who cannot fully comply with the planting requirement in "a" above, may use offsets to meet the mitigation requirement. Offsets may include the removal of an equivalent area of existing impervious surfaces in the Buffer, the construction of Best Management Practices for stormwater, wetland creation or restoration, or other measures that improve water quality or habitat.*
  - c. *Applicants who cannot comply with either the planting or offset requirements in a or b above, are required to pay into a fee-in-lieu program administered by the local jurisdiction. A jurisdiction shall establish rates that will generate adequate funds to carry out planting or offset programs and that provide a sufficient deterrent to location in the Buffer. Any fees-in-lieu collected under these provisions shall be placed in an account that will assure their use only for projects within the Critical Area for the benefit of wildlife habitat and water quality improvement. The status of these funds must be reported in the jurisdiction's quarterly reports.*
  - d. *Alternative provisions for meeting the mitigation requirements may be proposed by a local jurisdiction and approved by the Critical Area Commission.*
3. *Any required mitigation/offset areas must be protected from future development through an easement, development agreement, plat notes or other instrument and recorded among the land records of the jurisdiction.*

1. ***Notification Requirements***

1. *Within Buffer Exemption Areas, all new commercial, industrial, institutional, recreational, and multi-family residential development or redevelopment projects shall be submitted to the Critical Area Commission in accordance with COMAR 27.03.01.03. Mitigation plans shall be included as part of the project submission.*
2. *The local jurisdiction must make written findings documenting that all the Criteria in this*

*section are met including that the disturbance to the Buffer is the least intrusion necessary. These findings must be available to the Commission upon request.*

3. *The reporting of development activity carried out under this provision must be included in the jurisdiction's quarterly reports.*

**6. *Requirements for Mapping New BEAs***

1. *Only grandfathered lots are eligible for mapping as BEAs by a local jurisdiction.*
2. *For each BEA, the lots that comprise the BEA shall contain a Buffer which is, at the time of the proposal, significantly impacted by development activities that existed at the time of program approval and that prevent the Buffer from fulfilling its functions. Developed parcels or lots shall contain a Buffer intrusion, at the time of proposal, caused by the principal structures (excluding utilities or septic systems). Undeveloped or vacant parcels or lots (i.e., infill) may be designated as a BEA if development within the Buffer can not be avoided based on the size of the parcel or lot, area of the parcel or lot within the Buffer, or the surrounding pattern of development.*
3. *If only part of a parcel or lot meets the criteria for designation as a BEA then only those portions of a parcel or lot shall be designated as a BEA. The portion of the parcel designated as a BEA will be subject to the BEA development restrictions. Portions of the property that are not designated as a BEA shall comply fully with the 100-foot Buffer restrictions.*
4. *Any proposal by a jurisdiction for designation of an area as a BEA shall include, at a minimum, the jurisdiction's written findings and supporting reasons which demonstrate the degree to which the proposed BEA does not perform each of the following Buffer functions (a) through (e):*
  - a. *Provide for the removal or reduction of sediments, nutrients, and potentially harmful or toxic substances in runoff entering the Bay and its tributaries;*
  - b. *Minimize the adverse effects of human activities on wetlands, shorelines, stream banks, and aquatic resources;*
  - c. *Maintain an area of transitional habitat between aquatic and upland communities;*
  - d. *Maintain the natural environment of streams; and*

- e. *Protect riparian wildlife habitat.*

#### **IV DEFINITIONS**

*For the purpose of implementing this policy, the following words have the following meanings:*

***Accessory Structure*** means a structure that is detached from the principal structure, located on the same lot as and clearly incidental and subordinate to the principal structure; or if there is no principal structure on the lot, a structure that is customarily incidental and subordinate to a principal structure.

***Buffer Exemption Area*** means an area officially mapped by the local jurisdiction and approved by the Critical Area Commission as a Buffer Exemption Area, where it has been sufficiently demonstrated that the existing pattern of residential, industrial, commercial, institutional or recreational development in the Critical Area prevents the Buffer from fulfilling its intended functions for water quality protection and wildlife habitat conservation.

***Bufferyard*** means an area, at least 25 feet wide, located between development activity and the water (or edge of wetlands or streams), planted with vegetation consisting of native species and other appropriate plantings. This area shall be maintained primarily for the purposes of wildlife habitat and water quality and shall not be maintained in a manner that conflicts with these purposes such as by mowing or the application of herbicides.

***Grandfathered Parcel/Lot*** means a parcel of land or lot that was subdivided into recorded, legally buildable lots where the subdivision received final approval before December 1, 1985.

***Development Activity*** means the construction or substantial alteration of residential, commercial, industrial, institutional, recreational or transportation facilities or structures. Development activities include, among other things, structures, roads, parking areas, and other impervious surfaces, mining and related facilities, clearing, grading and septic systems. For purposes of implementing this policy, development activity does not include subdivision.

***Natural Forest Vegetation*** means vegetation consisting of canopy trees, understory trees, shrubs, and herbaceous plants that are typically found in riparian areas in Maryland. Areas of natural forest vegetation planted to meet the mitigation

*requirements in this policy shall be designed to mimic the structure and species composition of natural forests.*

***New Development** means a development activity that takes place on a property with pre-development imperviousness less than 15 percent as of December 1, 1985.*

***Principal Structure** means, for the purpose of establishing setbacks, the primary or predominant structure on any lot or parcel. For residential parcels or lots, the principal structure is the primary dwelling, excluding utilities and the septic system.*

***Redevelopment** means a development activity that takes place on a property with pre-development imperviousness greater than 15 percent as of December 1, 1985.*

**Chesapeake Bay Critical Area Commission**  
**STAFF REPORT**  
**April 5, 2000**



**APPLICANT:** State Highway Administration

**PROPOSAL:** Replacement of the Woodrow Wilson Bridge

**JURISDICTION:** Prince George's County

**COMMISSION ACTION:** **INFORMATION**

**STAFF:** Lisa Hoerger

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

**DISCUSSION:**

The State Highway Administration (SHA) proposes to replace the existing Woodrow Wilson Bridge and demolish the existing bridge which crosses the Potomac River just south of Washington D.C. At the April meeting, SHA will make a presentation before the full Commission for informational purposes only. The agency expects to have secured all Federal and State permits in June and may be before the Commission in July for project approval. This will be an opportunity for the Commission to ask questions or provide comments to SHA before the agency is before the Commission for project approval. As always, Commission staff are available to answer questions for Commission members at any time.

Description of New Bridge

The project area spans a 7.5 mile section along the I-95/I-495 Capital Beltway ramp, from west of Telegraph Road in Virginia to the east of Indian Head Highway (MD 210) in Prince George's County, Maryland. The proposed bridge will have two parallel drawbridges, one for eastbound traffic and other for westbound traffic, constructed approximately 30 feet south of the existing bridge. Each bridge will include four general use lanes, one HOV/express bus/transit lane and one merging/diverging lane. The drawbridges will be approximately 6,075 feet long, with a maximum grade of three percent, and have a 70-foot clearance over the navigational channel.

The proposed bridge consists of spans ranging in length from 120 feet to 398 feet including a 366-foot span over the main navigation channel of the Potomac River. The piers of this structure reflect a unique delta or V-shape with curved, vertically sloping pre-cast concrete legs. The foundations for the piers consist of cast-in-place concrete footings constructed on steel pipe piles. The cross section has a total width of 249 feet with the eastbound bridge being 110 feet wide, the westbound bridge being 124 feet wide, and a 15-foot separation between the bridges.

The interchanges at the intersections (MD I-295 and MD 210) will be reconstructed to provide for better traffic flow, increased access and roadway widening.

This selected alternative includes provisions for special design features. They include:

- A deck over the Capital Beltway on Rosalie Island to connect parkland on both sides and to provide a connection for the proposed Potomac Heritage Trail.
- A 12-foot wide pedestrian/bicycle facility with appropriate safety offsets will be included on the new bridge and will connect to the existing/proposed trail systems in Virginia, Maryland, and the District of Columbia.
- Conceptual mitigation plans have been developed to further enhance Rosalie Island to mitigate impacts to the parkland from the highway construction project. *(NOTE: This portion of the project will be reviewed and approved independently of the bridge and highway project).*

#### Impacts to the Critical Area

Unavoidable impacts are associated with the construction of the new Woodrow Wilson Bridge. They include impacts to tidal and nontidal wetlands, submerged aquatic vegetation, the 100-foot Buffer and forestry impacts. At present, SHA has quantified the impacts to the wetlands and SAV. Forest impacts are currently being quantified and the Commission will be updated. Commission staff are working closely with SHA to help the agency meet its reforestation requirements.

The following is a compilation of the aquatic resources impacts:

Tidal Wetlands	1.5
Nontidal Wetlands	1.0
Tidal Riverine/Open Water	6.7
SAV	31.7
Non Tidal Riverine/ Open Water	.1

SHA instructed its consultants to perform an exhaustive study of potential mitigation sites for the impacts to aquatic resources. Site visits were performed with the permitting resource agencies including the Army Corps of Engineers, the Maryland Department of the Environment, the Environmental Protection Agency, U.S. Fish and Wildlife Service, National Marine Fisheries and the Department of Natural Resources. Together with these agency representatives, SHA was able to identify and prepare an aquatic mitigation package. Its approval is pending with the permitting resources agencies. These agencies guided SHA in determining the components of an acceptable mitigation package. It includes the creation of new tidal wetlands, enhancement of existing wetlands and improvements to stream channels (i.e. fish passage).

The proposed mitigation is as follows:

<u>Impact/Type</u>		<u>Mitigation Proposed</u>	
Tidal Wetlands	1.5 acres	4.2 tidal wetland creation	1.6 acres tidal wetland enhancement
SAV	31.7 acres	Fish blockage removal	
Tidal Water	6.7 acres	(19 proposed removals)	
		30 acres tidal wetland creation	
		10.8 acres tidal wetlands enhancement	
		20 acres in-kind SAV creation	

The Commission will be updated at the meeting on the status of this package with respect to the permitting agencies.

Total Mitigation in Maryland for Aquatic Resources Impacts

- 2.0 acres nontidal wetland creation (forested)
- 31.6 acres tidal wetlands creation (emergent)
- 15 acres tidal wetland enhancement
- 14.5 miles of stream restoration for anadromous fish habitat in Maryland waters
- Hatchery restocking for three years in selected tributaries to the Anacostia River
- 20 acres SAV creation

Dredging

The proposed alternative will require 500,000 cubic yards of dredging over two seasons. The proposed areas to receive the dredge will be offered at the meeting.

Habitat Protection Areas (HPAs)

As previously discussed, SAV and tidal wetlands will be impacted by the construction of this project. Also, the Potomac River supports anadromous fish in addition to the short-nosed sturgeon. The bald eagle also frequents the project area. An update of these HPAs will be discussed at the meeting.



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PLEASE TYPE COMPLETE ALL ITEMS, UNLESS OPTIONAL

(1) Agency/Unit: DNR/Chesapeake Bay Critical Area Commission

(2) Subject:

- Public Hearing on Regulations
- Public Meeting on Regulations
- Public Hearing
- Public Meeting
- Other \_\_\_\_\_

If you have entered a document under "Other," check appropriate box below:

- Annotated Code requires publication (give citation): \_\_\_\_\_
- Administrative, Executive and Legislative Review (AELR) Committee approves publication.  
(attach copy of AELR Committee approval letter, unless waived)

(3) Date and Time: May 3, 2000 Wednesday 1:00 p.m.

(4) Place: People's Resource Center, Dept. Housing and Community Development, Crownsville, MD  
Conference Room 1100A

(5) Additional Information (optional): "Sign language interpreters and other appropriate accommodations for individuals with disabilities will be provided upon request"

(6) Contact: Peggy Mizkler Tel. No. 410-260-7016  
(Must be given)

(7) Authorized Agency Officer: Deborah Thompson Tel. No. \_\_\_\_\_  
(Must be given)

(8) Signature of Authorized Officer: Deborah Thompson Date: 4/3/2000

(9) Date of publication in Maryland Register: April 21, 2000 (Month/Day/Year)

(10) Acknowledgement card attached:  Yes  No

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