

Chesapeake Bay Critical Area Commission
Department of Housing and Community Development
Peoples Resource Center
Crownsville, Maryland
August 2, 2000

AGENDA

1:00 p.m. - 1:05 p.m. Approval of Minutes John C. North, II, Chair
Of July 5, 2000

PROGRAM AMENDMENTS and REFINEMENTS

1:05 p.m. - 1:15 p.m. VOTE Town of Queen Anne Roby Hurley, Circuit Rider
Comprehensive Review *CH*

1:15 p.m. - 1:35 p.m. VOTE City of Annapolis Dawnn McCleary-Evans,
Comprehensive Review Planner *CH*

PROJECT EVALUATION

1:35 p.m. - 1:50 p.m. VOTE Mayo Elementary School LeeAnne Chandler, Planner
Conditional Approval *CH*

1:50 p.m. - 2:00 p.m. VOTE Potomac Electric Power Ren Serey, Executive Director
Company Pipeline *CH*

2:00 p.m. - 2:15 p.m. Old Business John C. North, II, Chairman
Legal Update Marianne Mason, Esquire
Commission Counsel

2:15 p.m. - 2:30 p.m. New Business

CH/2000/1

Chesapeake Bay Critical Area Commission
People's Resource Center
Department of Housing and Community Development
Crownsville, Maryland
July 5, 2000

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

Bourdon, Dave, Calvert County	Graves, Charles, Baltimore City
Goodman, Bob, DHCD	Jackson, Joseph, III, Worcester Co
Cain, Deborah B., Cecil Co.	Witten, Jack, St. Mary's County
Cooksey, David, Charles Co.	Bradley, Clinton, ESMAL
Jones, Paul, Talbot County	Johnson, Samuel Q., Wicomico Co.
Duket, Larry, Md. Office of Planning	McLean, James H., DBED
Giese, William, Jr., Dorchester Co.	
Hearn, J.L., Md. Dept. of Environment	
Van Luven, Heidi, Maryland Department of Transportation	

Not in Attendance:

Barker, Philip, Harford County
Olszewski, John Anthony, Baltimore County
Wynkoop, Sam, Prince George's Co.
Samorajczyk, Barbara D., Anne Arundel County
Lawrence, Louise, Md. Dept. Ag.
Myers, Andrew, Caroline County
Foor, Dr. James, C. QA Co.
Wenzel, Lauren, DNR

The Minutes of June 7, 2000 were approved as read.

Chairman North introduced Ms. Carolyn Watson who gave an update on the oil spill in the Patuxent River. She reported on how the spill occurred, the geographical coverage of the spill, the cleanup activities, the Natural Resources damage assessment, enforcement and what can be expected next. Ms. Watson said that not only do the affected rivers have to be brought back to their pre-spill condition

but compensation for the loss of resources incurred during the affected period must be made and mitigation must be done for areas that cannot be brought back. A complete resource assessment will not be finished for about 4 years. Ms. Watson credited the United States Coast Guard for getting this spill under control.

Lisa Hoerger, Planner, CBCAC presented for Vote the Woodrow Wilson Bridge Replacement project that impacts State-owned lands and federally owned lands. She said that the highway administration has proposed to demolish and replace the existing Woodrow Wilson Bridge which crosses the Potomac River just south of Washington D.C. Ms. Hoerger described the technical details of the project and the impacts to the Critical Area. She said that this project is consistent with COMAR 27.02.05 and that the Commission approval of this request will be for the main line of the proposed bridge with the understanding that the changes to the 295 interchange will continue to be negotiated and reviewed by the Commission staff with the State Highway Administration and its representatives with the following conditions for approval:

1. The Commission staff will be apprised of changes to the aquatic mitigation package, and will be involved in all future site visits or discussions pertaining to the aquatic mitigation package. When the aquatic mitigation package is finalized, it will be brought to the Commission for review and approval. Periodic updating of the Commission's Project Subcommittee shall occur by SHA on a quarterly basis, or as often as the subcommittee deems necessary:
2. The Commission staff will be apprised of progress of the forest mitigation package, and will be involved in all future site visits or discussions pertaining to the forest resource package. Prior to construction, periodic updates shall be brought before the Commission's Project Subcommittee for review. The updates should include information that include efforts made to look on both public and private lands in the Critical Area, and including lands owned by land trusts. Sufficient documentation would include those alternatives examined, and justifications for selecting certain sites over others. Once the forest mitigation package is finalized, it will be brought to the Commission for review and approval.
3. The Commission staff will work with SHA to ensure the 10% Pollutant Reduction Requirement is met for this project. Once the 10% calculations are finalized they will be brought before the Commission for review and approval.
4. The mitigation packages as proposed in conditions 1, 2 and 3 be brought back on a monthly basis to the project subcommittee until all mitigation packages are finalized.

Mr. McLean moved to approve the project as presented with the four conditions as noted. The motion was seconded by Dave Bourdon and carried with fourteen (14) votes for approval and one (1) abstention, Mr. Cooksey.

Regina Esslinger, Project Chief, CBCAC presented for VOTE the North Point State Park Phase II improvements proposed by the Department of Natural Resources for the construction of a multi-purpose building; a ranger residence; a contact station; demolition of an existing visitor's center; demolition of the existing ranger residence; demolition of the six existing bridge abutments; and, resurfacing of the main parking lot. Ms. Esslinger said that all reforestation will occur on site within the Critical Area through natural regeneration in the same area where Phase I reforestation occurred. The stormwater management basins approved as part of Phase I were designed to accommodate runoff from Phase II as well. After the removal of the visitor's center and ranger residence which are currently in the Buffer, the replacement structures will be set farther back from the water and the area will be revegetated. There are no known or endangered plant and animal species that will be affected by the proposed activities. This project is consistent with the Master Plan. Dave Bourdon moved to approve the proposed project as presented. The motion was seconded by Dave Cooksey and carried unanimously.

Mary Owens, Program Chief, CBCAC presented for VOTE the proposed construction of a new student housing facility at St. Mary's College. This new structure will replace a currently developed gravel parking lot and associated stormwater management pond. Forest mitigation for the removal of 17,440 square feet of forest will be outside the Critical Area. The 10% rule calculations for the removal of 1.8 pounds of phosphorus has been provided and a bioretention facility is proposed to meet the removal requirement. Stormwater Management and Sediment and Erosion Control approval have been received. There are no known threatened or endangered plant or animal species. Dave Bourdon moved to approved the proposed project as presented. The motion was seconded by Dave Cooksey and carried unanimously.

Lisa Hoerger, Planner, CBCAC presented for Vote, the Anne Arundel County Four-year Comprehensive Review which was due in 1996. Ms. Hoerger said that County council Bill #12-00 which amends the variance language and the civil fines and procedures, provides for impervious surface fees, adjusts clearing fees for residential lots less than one half acre, increases the violation fees, provides an RCA use list, and amends one section of the Program document has been submitted by the County. The county has also provided the Commission staff with an updated set of 1000' scale maps depicting the 1000' Critical Area boundary and the three Critical Area designations. Bill #12-00 is written as an amendment to Bill#104-97 (which was passed by the County Council in 1997, was not acted on by the Commission but was incorporated into the County's ordinances even though the changes in Bill #104-97 were not implemented). Ms. Hoerger stated that there is a typographical error on Page One of the Bill, line 17 in the preamble "BY repealing: Article 21," and asked that this package be approved with the condition that the County Council fix this error at

their next hearing as this has already been drafted by the legal office. Larry Duket moved on panel recommendation to approve the legislative proposal for Anne Arundel County discussed by the staff with the condition that the minor error appearing on page 1, line 17 in the preamble of Bill #12-00 be corrected. The motion was seconded by Dave Cooksey and carried unanimously.

Tracey Green, Circuit Rider, CBCAC and Office of Planning, presented for VOTE the City of Fruitland's four year Comprehensive Review. Ms. Green explained that the City of Fruitland has a very limited amount of Critical Area and a total of forty acres of which thirty eight acres are undeveloped. She explained that because of the administrative burden of doing a typical comprehensive review, the City has adopted a streamlined Critical Area ordinance to replace their existing Program and Ordinance. It will contain only those aspects of the Criteria that are applicable to the City's Critical Area. The ordinance, along with the City's official Critical Area map, will be considered the City's Critical Area Program. Ms. Green reviewed the condensed document for the Commission. A joint public hearing with the Critical Area Commission panel and the city Planning Commission and Council was held on May 9, 2000 and no public comments were received. Sam Johnson moved to approve the Fruitland Comprehensive Review changes as presented. The motion was seconded by Bill Bradley and carried unanimously.

Ms. Hoerger, Planner, CBCAC presented for concurrence with the Chairman's determination of Refinement, Bill #762 which established procedures for awarding supplemental growth allocation in the municipalities in Talbot County. In anticipation of future growth the County has established a joint review process that will be conducted with each town when considering allotting additional growth allocation which will include the Planning Commission, the Talbot County Council, Town Commissions, and any other Commission involved at the local level. The Town of Easton has used up most of its original allocation since 1989. A request for additional acres was denied to the Town last year by the County. The Commission supported the Chairman's determination of Refinement.

Ms. LeeAnne Chandler, Planner, CBCAC presented for concurrence with the Chairman's determination of Refinement, the proposal for growth allocation by Wicomico County to change the Critical Area designation on Tax Map 46, Parcel 116, River Woods, from RCA to LDA. The proposed use is for a residential subdivision with 5 lots in the Critical Area. She said that with the appropriate mitigation for forest clearing the project meets the requirements for growth allocation as stated in the Wicomico County ordinance and will be consistent with COMAR 27.01.02.06 and the Commission policy on growth allocation. The property includes the 100-foot Buffer to "My Lord's Creek" and is completely forested. This project is recommended for approval by the Commission Staff

with the condition that the final plat contain appropriate notes stating that mitigation is required for forest clearing within the Critical Area; that property owners be notified that their property includes the 100' Buffer and that no disturbance is permitted within the Buffer; and, that the subdivision will be redesigned to ensure that the two wells proposed in the Buffer can be relocated outside the Buffer and that the subdivision will be replatted if necessary. The Commission supported the Chairman's determination of Refinement with Q. Johnson and Bill Bradley will reviewing the reconfigured plats.

Ms. Mary Owens, Program Chief, presented for concurrence with the Chairman's determination of Refinement the zoning ordinance and subdivision regulations text amendments changes in Dorchester County categorized as ordinances A through N. These changes correct some omissions, eliminate conflicting language and clarify some ambiguous provisions. She said that there were 14 ordinances forwarded by the County to the Commission although some do not significantly affect land use or development within the Critical Area. Ms. Owens described the different categories of changes which affect the Critical Area program and development activities and land use with the Critical Area. She said that the County has requested that Ordinance B be approved with the condition that the change restricting new agricultural uses in the RCA be deleted. The Commission supported the Chairman's determination of Refinement.

OLD BUSINESS

There was no old business reported.

NEW BUSINESS

Chairman North announced that Heidi VanLuven of the Department of Transportation would be resigning from the Commission to take a position in another state. Ms. VanLuven has been an extraordinary asset to the Commission and she will be greatly missed.

The Chairman appointed a panel for the Queen Anne's Comprehensive Review: Dr. Floor will Chair the panel and Andrew Myers, Paul Jones and Clinton Bradley will serve as well.

There being no further business, the meeting adjourned.

Minutes submitted by:

Peggy Mickler, Commission Coordinator

CHESAPEAKE BAY CRITICAL AREA COMMISSION

STAFF REPORT
August 2, 2000

Approved

APPLICANT: Town of Queen Anne

PROPOSAL: Comprehensive Review of Town of Queen Anne Critical Area Program

JURISDICTION: Town of Queen Anne

COMMISSION ACTION: VOTE

STAFF RECOMMENDATION: Approval

PANEL: Dr. Foor, Andrew Myers, Clinton Bradley and Paul Jones

PANEL RECOMMENDATION: Pending

STAFF: Roby Hurley

**APPLICABLE LAW/
REGULATIONS:** Annotated Code of Maryland, §8-1809(g)

DISCUSSION:

The Town of Queen Anne has recently completed the required four year review of their Critical Area Program. The review included the Town's Critical Area Program document and Critical Area maps. After reviewing the Program document and the associated implementation language, it was determined that significant revisions were necessary. Department of Planning staff worked closely with the Town Planning Commission to use a model ordinance, similar to the one used in Greensboro, to replace the existing Critical Area Program document and related ordinance language. The most significant changes to the Town's Program and maps are as follows:

ZONING ORDINANCE/ PROGRAM:

The new model ordinance was designed to be sufficiently comprehensive so that a separate program document would no longer be required. The model ordinance has been customized to address the specific conditions in the Town of Queen Anne, and it is designed to function as a stand alone Critical Area Ordinance. Calculation of the acreage of the three land use categories and evaluation of the growth allocation status was conducted. The Town is located in both Talbot and Queen Anne Counties and the Counties maintain all growth allocation acreage for the Town.

To date, the Town has not used any growth allocation.

The new Critical Area Ordinance includes updated information from the Heritage Division of the Department of Natural Resources on Habitat Protection Areas. The Natural Parks, Agriculture and Surface Mining sections were customized to reflect existing and planned land use relative to the Town.

The new ordinance also includes specific provisions for enforcement of violations in the Critical Area, new provisions relating to impervious surface limits, and clearer language about grandfathering, variances, water-dependent facilities, and shore erosion control. The new ordinance also includes language that prohibits new commercial, industrial, and institutional uses in the Resource Conservation Area (RCA). The Town only has 9.16 acres of RCA land, therefore, the Town did not think it was not necessary to develop a list of specific RCA uses.

The new ordinance includes the provisions of the current Commission Growth Allocation Policy. There are no existing or proposed Buffer Exemption Areas (BEAs), so specific provisions relating to the implementation of a BEA Program were not included. The ordinance does specify that should a BEA be proposed, use of the current Critical Area Policy will be required.

MAPPING:

New land use maps were produced by Department of Planning. Resource inventory mapping was done by the Critical Area Circuit Rider with assistance from the Heritage Division and the Environmental Review Unit at the Department of Natural Resources.

The original Program was adopted in September, 1989. The Town held public hearings on April 6, 2000 and May 10, 2000. No comments were received. The Commission held a public hearing in Queen Anne on July 17, 2000 and no comments were received.

BUFFER EXEMPTION AREA EVALUATIONS

Spa Creek BEA (Area 1 on Map 7-6)

Annapolis is requesting that the "Spa Creek BEA" identified as Area 1 on Map 7-6 be designated as a BEA because the existing pattern of development prevents the Buffer from fulfilling the functions set forth in the Criteria. The following factors were considered:

- 1) The Buffer's ability to provide for the removal of sediments, nutrients, and harmful or toxic substances has been compromised because there are many existing structures in the Buffer. The area is developed primarily with single family residences on lots that are approximately a quarter of an acre or less. Houses are generally located 25 to 50 feet from the shoreline. There are numerous accessory structures and walkways to private piers located within the Buffer. Existing vegetation is primarily lawn grass and scattered trees and shrubs.
- 2) The Buffer's effectiveness at minimizing the adverse effects of human activities on wetlands, shorelines, stream banks, tidal waters, and aquatic resources is limited because human activities are taking place very close to the shoreline because of the location of existing development. There are minimal areas of natural vegetation within the Buffer and the shoreline is heavily developed and actively used.
- 3) The Buffer does not function optimally as an area of transitional habitat between aquatic and upland communities because this area is developed with structures and is actively used by residents. There is little natural vegetation to provide food or cover for wildlife or to provide water quality protection or enhancement. Most of the shoreline has been altered through the installation of bulkheads and other structural erosion control measures.
- 4) The Buffer does not function to maintain the natural environment of streams because there are no streams on this particular property.
- 5) The Buffer's capacity for protecting wildlife habitat on this site is severely limited because the Buffer is developed and is actively used as yard areas by property owners. Human disturbance to wildlife would be unavoidable because of the intensity of the development on this site.

Acton Cove BEA (Area 2 on Map 4-6)

Annapolis is requesting that the "Acton Cove BEA" identified as Area 2 on Map 4-6 be designated as a BEA because the existing pattern of development prevents the Buffer from fulfilling the functions set forth in the Criteria. The following factors were considered:

- 1) The Buffer's ability to provide for the removal of sediments, nutrients, and harmful or toxic substances has been compromised because there are many existing structures in the Buffer. The area is developed primarily with single family residences and townhouses on lots that are approximately one eighth acre or smaller. Houses are located 25 to 50 feet from the shoreline. There are numerous accessory structures located within the Buffer. Existing vegetation is primarily lawn grass and scattered trees and shrubs.
- 2) The Buffer's effectiveness at minimizing the adverse effects of human activities on wetlands, shorelines, stream banks, tidal waters, and aquatic resources is limited because human activities are taking place very close to the shoreline because of the location of existing development. There are minimal areas of natural vegetation within the Buffer and the shoreline is heavily developed and actively used.
- 3) The Buffer does not function optimally as an area of transitional habitat between aquatic and upland communities because this area is developed with structures and is actively used by residents. There is little natural vegetation to provide food or cover for wildlife or to provide water quality protection or enhancement. Most of the shoreline has been altered through the installation of bulkheads and other structural erosion control measures.
- 4) The Buffer does not function to maintain the natural environment of streams because there are no streams on this particular property.
- 5) The Buffer's capacity for protecting wildlife habitat on this site is severely limited because the Buffer is developed and is actively used as yard areas by property owners. Human disturbance to wildlife would be unavoidable because of the intensity of the development on this site.

City Dock BEA (Area 3 on Map 4-6)

Annapolis is requesting that the "City Dock BEA" identified as Area 3 on Map 4-6 be designated as a BEA because the existing pattern of development prevents the Buffer from fulfilling the functions set forth in the Criteria. The following factors were considered:

- 1) The Buffer's ability to provide for the removal of sediments, nutrients, and harmful or toxic substances has been virtually eliminated because the Buffer is completely developed with structures, parking lots, and city streets. Most of the Buffer is completely impervious with buildings constructed at the water's edge. There is very little vegetation in the Buffer. The area is developed primarily with commercial uses.
- 2) The Buffer's effectiveness at minimizing the adverse effects of human activities on wetlands, shorelines, stream banks, tidal waters, and aquatic resources is limited because human activities are taking place very close to the shoreline because of the location of existing development. Much of this area is developed as an urban park that provides access to the water and fosters intense human activity at the shoreline. There are minimal areas of vegetation within the Buffer consisting primarily of small landscape features. The shoreline is heavily developed and intensely used.
- 3) The Buffer does not function optimally as an area of transitional habitat between aquatic and upland communities because this area is developed with structures and is actively used as an active downtown commercial center. There is no natural vegetation to provide food or cover for wildlife or to provide water quality protection or enhancement. Most of the shoreline has been altered through the installation of bulkheads and other structural erosion control measures.
- 4) The Buffer does not function to maintain the natural environment of streams because there are no streams in this area.
- 5) The Buffer's capacity for protecting wildlife habitat on this site has been virtually eliminated by development and automobile traffic. Human disturbance to wildlife would be unavoidable because of the intensity of the development on this site.

The Point BEA (Area 4 on Map 8-6)

Annapolis is requesting that the "The Point BEA" identified as Area 4 on Map 8-6 be designated as a BEA because the existing pattern of development prevents the Buffer from fulfilling the functions set forth in the Criteria. The following factors were considered:

- 1) The Buffer's ability to provide for the removal of sediments, nutrients, and harmful or toxic substances has been compromised because this area is developed with a multi-family housing development. The property is developed with several multi-family residential buildings and accessory structures which are located partially within the Buffer. Existing vegetation is primarily lawn grass and landscaped areas of trees and shrubs.
- 2) The Buffer's effectiveness at minimizing the adverse effects of human activities on wetlands, shorelines, stream banks, tidal waters, and aquatic resources is limited because human activities are taking place very close to the shoreline because of the location of existing development. There is a community pier associated with this development, and the Buffer is used for recreation by the residents. There are minimal areas of natural vegetation within the Buffer and the shoreline is actively used.
- 3) The Buffer does not function optimally as an area of transitional habitat between aquatic and upland communities because this area is developed with structures and is actively used by residents. There is little natural vegetation to provide food or cover for wildlife or to provide water quality protection or enhancement. Most of the shoreline has been altered through the installation of bulkheads and other structural erosion control measures.
- 4) The Buffer does not function to maintain the natural environment of streams because there are no streams on this particular property.
- 5) The Buffer's capacity for protecting wildlife habitat on this site is severely limited because the Buffer is developed and is actively used for recreation and water access by the residents. Human disturbance to wildlife would be unavoidable because of the intensity of the development on this site.

Eastport-Spa Creek Residential BEA (Area 5 on Map 8-6)

Annapolis is requesting that the "Eastport-Spa Creek Residential BEA" identified as Area 5 on Map 8-6 be designated as a BEA because the existing pattern of development prevents the Buffer from fulfilling the functions set forth in the Criteria. The following factors were considered:

- 1) The Buffer's ability to provide for the removal of sediments, nutrients, and harmful or toxic substances has been compromised because there are many existing structures in the Buffer. The area is developed primarily with single-family residences on lots that are approximately a quarter of an acre or less. Houses are generally located 25 to 50 feet from the shoreline. There are numerous accessory structures located within the Buffer. Existing vegetation is primarily lawn grass and scattered trees and shrubs.
- 2) The Buffer's effectiveness at minimizing the adverse effects of human activities on wetlands, shorelines, stream banks, tidal waters, and aquatic resources is limited because human activities are taking place very close to the shoreline because of the location of existing development. There are minimal areas of natural vegetation within the Buffer and the shoreline is heavily developed and actively used.
- 3) The Buffer does not function optimally as an area of transitional habitat between aquatic and upland communities because this area is developed with structures and is actively used by residents. There is little natural vegetation to provide food or cover for wildlife or to provide water quality protection or enhancement. Most of the shoreline has been altered through the installation of bulkheads and other structural erosion control measures.
- 4) The Buffer does not function to maintain the natural environment of streams because there are no streams on this particular property.
- 5) The Buffer's capacity for protecting wildlife habitat on this site is severely limited because the Buffer is developed and is actively used as yard areas by property owners. Human disturbance to wildlife would be unavoidable because of the intensity of the development on this site.

Eastport-Spa Creek Maritime Commercial BEA (Area 6 on Map 8-6)

Annapolis is requesting that the "Eastport-Spa Creek Maritime Commercial BEA", identified as Area 6 on Map 8-6, be designated as a BEA because the existing pattern of development prevents the Buffer from fulfilling the functions set forth in the Criteria. The following factors were considered:

- 1) The Buffer's ability to provide for the removal of sediments, nutrients, and harmful or toxic substances has been virtually eliminated because the Buffer is completely developed with structures, parking lots, boat storage areas, and city streets. Most of the Buffer is completely impervious with buildings constructed at the water's edge. There is very little vegetation in the Buffer. The area is developed primarily with commercial, marine industrial and maritime uses.
- 2) The Buffer's effectiveness at minimizing the adverse effects of human activities on wetlands, shorelines, stream banks, tidal waters, and aquatic resources is limited because human activities are taking place very close to the shoreline because of the location of existing development. There are numerous marinas and boat yards in this area which create intense human activity at the shoreline. There are minimal areas of natural vegetation within the Buffer and the shoreline is heavily developed and actively used.
- 3) The Buffer does not function optimally as an area of transitional habitat between aquatic and upland communities because this area is developed with structures and is actively used for a variety of industrial, commercial, and maritime activities. There is little natural vegetation to provide food or cover for wildlife or to provide water quality protection or enhancement. Most of the shoreline has been altered through the installation of bulkheads and other structural erosion control measures.
- 4) The Buffer does not function to maintain the natural environment of streams because there are no streams in this area.
- 5) The Buffer's capacity for protecting wildlife habitat on this site is severely limited because the Buffer is developed and is actively used for industrial, commercial, and maritime activities. Human disturbance to wildlife would be unavoidable because of the intensity of the development on this site.

Horn Point BEA (Area 7 on Map 8-6)

Annapolis is requesting that the "Horn Point BEA" identified as Area 7 on Map 8-6 be designated as a BEA because the existing pattern of development prevents the Buffer from fulfilling the functions set forth in the Criteria. The following factors were considered:

- 1) The Buffer's ability to provide for the removal of sediments, nutrients, and harmful or toxic substances has been compromised because there are many existing structures in the Buffer. The area is developed primarily with single family and residences on lots that are approximately a quarter of an acre or less. Houses are generally located 25 to 50 feet from the shoreline. There are numerous accessory structures located within the Buffer. This area also includes the two townhouse developments, Horn Point and Chesapeake Landing. Existing vegetation is primarily lawn grass and scattered trees and shrubs.
- 2) The Buffer's effectiveness at minimizing the adverse effects of human activities on wetlands, shorelines, stream banks, tidal waters, and aquatic resources is limited because human activities are taking place very close to the shoreline because of the location of existing development. There are minimal areas of natural vegetation within the Buffer and the shoreline is heavily developed and actively used.
- 3) The Buffer does not function optimally as an area of transitional habitat between aquatic and upland communities because this area is developed with structures and is actively used by residents. There is little natural vegetation to provide food or cover for wildlife or to provide water quality protection or enhancement. Most of the shoreline has been altered through the installation of bulkheads and other structural erosion control measures.
- 4) The Buffer does not function to maintain the natural environment of streams because there are no streams on this particular property.
- 5) The Buffer's capacity for protecting wildlife habitat on this site is severely limited because the Buffer is developed and is actively used as yard areas by property owners. Human disturbance to wildlife would be unavoidable because of the intensity of the development in this area.

Back Creek-West Shore Maritime Commercial BEA (Area 8 on Map 8-6)

Annapolis is requesting that the "Back Creek-West Shore Maritime Commercial BEA" identified as Area 8 on Map 8-6 be designated as a BEA because the existing pattern of development prevents the Buffer from fulfilling the functions set forth in the Criteria. The following factors were considered:

- 1) The Buffer's ability to provide for the removal of sediments, nutrients, and harmful or toxic substances has been virtually eliminated because the Buffer is completely developed with structures, parking lots, and city streets. Most of the Buffer is completely impervious with buildings constructed at the water's edge. There is very little vegetation in the Buffer. The area is developed primarily with commercial, marine industrial and maritime uses. Many of the properties are marinas and boat yards with boat slips and related services.
- 2) The Buffer's effectiveness at minimizing the adverse effects of human activities on wetlands, shorelines, stream banks, tidal waters, and aquatic resources is limited because human activities are taking place very close to the shoreline because of the location of existing development. There are numerous marinas in this area which create intense human activity at the shoreline. There are minimal areas of natural vegetation within the Buffer and the shoreline is heavily developed and actively used.
- 3) The Buffer does not function optimally as an area of transitional habitat between aquatic and upland communities because this area is developed with structures and is actively used for a variety of industrial, commercial, and maritime activities. There is little natural vegetation to provide food or cover for wildlife or to provide water quality protection or enhancement. Most of the shoreline has been altered through the installation of bulkheads and other structural erosion control measures.
- 4) The Buffer does not function to maintain the natural environment of streams because there are no streams in this area.
- 5) The Buffer's capacity for protecting wildlife habitat on this site is severely limited because the Buffer is developed and is actively used for industrial, commercial, and maritime activities. Human disturbance to wildlife would be unavoidable because of the intensity of the development on this site.

Chester Avenue BEA (Area 9 on Map 8-6)

Annapolis is requesting that the "Chester Avenue BEA" identified as Area 9 on Map 8-6 be designated as a BEA because the existing pattern of development prevents the Buffer from fulfilling the functions set forth in the Criteria. The following factors were considered:

- 1) The Buffer's ability to provide for the removal of sediments, nutrients, and harmful or toxic substances has been compromised because there are many existing structures in the Buffer. The area is developed primarily with single family residences on lots that are approximately a quarter of an acre or less. Houses are generally located 25 to 50 feet from the shoreline. There are numerous accessory structures and walkways to private piers located within the Buffer. Existing vegetation is primarily lawn grass and scattered trees and shrubs.
- 2) The Buffer's effectiveness at minimizing the adverse effects of human activities on wetlands, shorelines, stream banks, tidal waters, and aquatic resources is limited because human activities are taking place very close to the shoreline because of the location of existing development. There are minimal areas of natural vegetation within the Buffer and the shoreline is heavily developed and actively used.
- 3) The Buffer does not function optimally as an area of transitional habitat between aquatic and upland communities because this area is developed with structures and is actively used by residents. There is little natural vegetation to provide food or cover for wildlife or to provide water quality protection or enhancement. Most of the shoreline has been altered through the installation of bulkheads and other structural erosion control measures.
- 4) The Buffer does not function to maintain the natural environment of streams because there are no streams on this particular property.
- 5) The Buffer's capacity for protecting wildlife habitat on this site is severely limited because the Buffer is developed and is actively used as yard areas by property owners. Human disturbance to wildlife would be unavoidable because of the intensity of the development on this site.

Harbor View BEA (Area 10 on Map 8-6)

Annapolis is requesting the Harbor View BEA identified as Area 10 on Map 8-6 be designated as a BEA because development that is proposed for this property is located within the Buffer. Currently, there is no development on this fully forested site. On behalf of the City, the applicant's agent will provide testimony at the panel hearing regarding the findings necessary for designation as a BEA.

Watergate Apartments BEA (Area 11 on Map 8-6)

Annapolis is requesting that the "Watergate Apartments BEA" identified as Area 11 on Map 8-6 be designated as a BEA because the existing pattern of development prevents the Buffer from fulfilling the functions set forth in the Criteria. The following factors were considered:

- 1) The Buffer's ability to provide for the removal of sediments, nutrients, and harmful or toxic substances has been compromised because this area is developed with a multi-family housing. There are several buildings and parking areas within the Buffer, as well as, access to a community pier. Existing vegetation is primarily lawn grass and landscaped islands of trees and shrubs.
- 2) The Buffer's effectiveness at minimizing the adverse effects of human activities on wetlands, shorelines, stream banks, tidal waters, and aquatic resources is limited because human activities are taking place very close to the shoreline because of the location of existing development. There are minimal areas of natural vegetation within the Buffer and the shoreline is heavily developed and actively used.
- 3) The Buffer does not function optimally as an area of transitional habitat between aquatic and upland communities because this area is developed with structures and is actively used by residents. There is little natural vegetation to provide food or cover for wildlife or to provide water quality protection or enhancement. Most of the shoreline has been altered through the installation of bulkheads and other structural erosion control measures.
- 4) The Buffer does not function to maintain the natural environment of streams because there are no streams on this particular property.
- 5) The Buffer's capacity for protecting wildlife habitat on this site is severely limited because the Buffer is developed and is actively used as a yard area by residents. Human disturbance to wildlife would be unavoidable because of the intensity of the development on this site.

Back Creek-East Shore Maritime Commercial BEA (Area 12 on Map 10-6)

Annapolis is requesting that the "Back Creek-East Maritime Commercial BEA" identified as Area 12 on Map 10-6 be designated as a BEA because the existing pattern of development prevents the Buffer from fulfilling the functions set forth in the Criteria. The following factors were considered:

- 1) The Buffer's ability to provide for the removal of sediments, nutrients, and harmful or toxic substances has been virtually eliminated because the Buffer is completely developed with structures, parking lots, boat yards and boat storage areas. Most of the Buffer is completely impervious with buildings constructed at the water's edge. There is some natural vegetation in the Buffer, but generally it is less than 100 feet wide. The area is developed primarily with commercial, marine industrial and maritime uses .
- 2) The Buffer's effectiveness at minimizing the adverse effects of human activities on wetlands, shorelines, stream banks, tidal waters, and aquatic resources is limited because human activities are taking place very close to the shoreline because of the location of existing development. There are numerous marinas and other water dependent facilities in this area which create intense human activity at the shoreline. There are some areas of natural vegetation within the Buffer and the shoreline is heavily developed and actively used.
- 3) The Buffer does not function optimally as an area of transitional habitat between aquatic and upland communities because this area is developed with structures and is actively used for a variety of industrial, commercial, and maritime activities. Although there is some natural vegetation in the Buffer that could provide food and cover for wildlife, the intensity of human activity in the area limits the type of wildlife that would use this area. The existing natural vegetation does provide some water quality protection and enhancement and development in this area should be designed to preserve existing natural vegetation wherever possible. Most of the shoreline has been altered through the installation of bulkheads and other structural erosion control measures.
- 4) The Buffer does not function to maintain the natural environment of streams because there are no streams in this area.
- 5) The Buffer's capacity for protecting wildlife habitat on this site is severely limited because the Buffer is developed and is actively used for industrial, commercial, and maritime activities. Human disturbance to wildlife would be unavoidable because of the intensity of the development on this site.

Bay Ridge BEA (Area 13 on Map 10-6)

Annapolis is requesting that the "Bay Ridge BEA" identified as Area 13 on Map 10-6 be designated as a BEA because the existing pattern of development prevents the Buffer from fulfilling the functions set forth in the Criteria. The following factors were considered:

- 1) The Buffer's ability to provide for the removal of sediments, nutrients, and harmful or toxic substances has been compromised because there are many existing structures in the Buffer. The area is developed primarily with single family residences on lots that are approximately a quarter of an acre or less. Houses are generally located 25 to 50 feet from the shoreline. There are numerous accessory structures and walkways to private piers located within the Buffer. Existing vegetation is primarily lawn grass and scattered trees and shrubs.
- 2) The Buffer's effectiveness at minimizing the adverse effects of human activities on wetlands, shorelines, stream banks, tidal waters, and aquatic resources is limited because human activities are taking place very close to the shoreline because of the location of existing development. There are minimal areas of natural vegetation within the Buffer and the shoreline is heavily developed and actively used.
- 3) The Buffer does not function optimally as an area of transitional habitat between aquatic and upland communities because this area is developed with structures and is actively used by residents. There is little natural vegetation to provide food or cover for wildlife or to provide water quality protection or enhancement. Most of the shoreline has been altered through the installation of bulkheads and other structural erosion control measures.
- 4) The Buffer does not function to maintain the natural environment of streams because there are no streams on this particular property.
- 5) The Buffer's capacity for protecting wildlife habitat on this site is severely limited because the Buffer is developed and is actively used as yard areas by property owners. Human disturbance to wildlife would be unavoidable because of the intensity of the development on this site.

Severn House Condominiums BEA (Area 14 on Map 10-6)

Annapolis is requesting that the "Severn House Condominiums BEA" identified as Area 14 on Map 8-6 be designated as a BEA because the existing pattern of development prevents the Buffer from fulfilling the functions set forth in the Criteria. The following factors were considered:

- 1) The Buffer's ability to provide for the removal of sediments, nutrients, and harmful or toxic substances has been compromised because this area is developed with multi-family housing. The property is developed with several condominium buildings, parking areas, and accessory structures, including a pool, which are located partially within the Buffer. Existing vegetation is primarily lawn grass and landscaped islands of trees and shrubs.
- 2) The Buffer's effectiveness at minimizing the adverse effects of human activities on wetlands, shorelines, stream banks, tidal waters, and aquatic resources is limited because human activities are taking place very close to the shoreline because of the location of existing development. There are minimal areas of natural vegetation within the Buffer and the shoreline is heavily developed and actively used.
- 3) The Buffer does not function optimally as an area of transitional habitat between aquatic and upland communities because this area is developed with structures and is actively used by residents. There is a community pier associated with the development. There is little natural vegetation to provide food or cover for wildlife or to provide water quality protection or enhancement. Most of the shoreline has been altered through the installation of bulkheads and other structural erosion control measures.
- 4) The Buffer does not function to maintain the natural environment of streams because there are no streams on this particular property.
- 5) The Buffer's capacity for protecting wildlife habitat on this site is severely limited because the Buffer is developed and is actively used as a yard area by residents. Human disturbance to wildlife would be unavoidable because of the intensity of the development on this site.

C/M

CITY COUNCIL OF THE CITY OF ANNAPOLIS

ORDINANCE NO. O-6-2000 AMENDED

Introduced by Mayor Johnson

(At the request of the Department of Planning and Zoning)

AN ORDINANCE concerning

CRITICAL AREA OVERLAY

FOR the purpose of amending the critical area overlay requirements of the City Code to reflect State Critical Area requirements; and all matters relating to said critical area.

* * * * *

BY repealing and re-enacting, with amendments
Title 21 - Planning and Zoning
Chapter 21.10 - Residence Districts Generally
Section 21.10.070
Code of the City of Annapolis
(1996 Edition and Supplement)

BY repealing and re-enacting, with amendments
Title 21 - Planning and Zoning
Chapter 21.67 - Critical Area Overlay
Section 21.67.020;
21.67.050A.29, 30, 31, 32, and 33;
21.67.060E., F. and G.;
21.67.080C. and H.;
21.67.090B. and C.;
21.67.100A. and B.;
21.67.110;
21.67.140A., E., F., G., H. and I.;
21.67.150;
21.67.160;
21.67.170
Code of the City of Annapolis
(1996 Edition and Supplement)

1 BY adding new
2 Title 21 - Planning and Zoning
3 Chapter 21.67 - Critical Area Overlay
4 Section 21.67.065 and 21.67.180
5 Code of the City of Annapolis
6 (1996 Edition and Supplement)
7

8 SECTION I: BE IT ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY
9 COUNCIL that the Code of the City of Annapolis shall read as follows:

10
11 **Sec. 21.10.070 Waterway yards.**

12
13 A. Notwithstanding any other yard requirements set forth in this division, where
14 any side or rear lot line is contiguous to a waterway, a waterway yard shall be provided
15 which is the larger of:

16
17 1. The side or rear yard required in the zoning district in which the zoning lot
18 is located;

19
20 2. Thirty feet; or

21
22 3. The depth determined by averaging the depth of existing waterway yards of
23 all residences extending three hundred feet on either side of the subject property; except
24 that if more than four residences are located within three hundred feet, the largest and
25 smallest of the waterway yards shall not be used in determining the average depth. If the
26 waterway yard as determined by this subsection would render a property unbuildable, a
27 waterway yard shall be provided which is the larger of the yard required by subsections
28 A and B of this section.
29

30 B. Where the requirements of this section and of Section 21.67.060(E) are in
31 conflict, the more restrictive requirements shall apply.
32

33 **Sec. 21.67.020 Map.**

34
35 The location and boundaries of the critical area overlay district and the included
36 boundaries of the intensely developed areas, limited development areas, resource
37 conservation areas, buffer exemption and buffer are set forth on the zoning map entitled
38 "City of Annapolis Critical Area Map" which is incorporated in this section and made a part
39 of this title. The map, together with everything shown on the map and all amendments to
40 the map, is as much a part of this title as though fully set forth and described in this title.
41

1 **Sec. 21.67.050 Definitions.**

2
3 A. The following definitions shall be used in the interpretation and
4 administration of the city of Annapolis critical area program:

5
6 29. "Tributary streams" means those perennial and intermittent streams in the
7 Critical Area which are so noted on the most recent U.S. Geological Survey 7½ minute
8 topographic quadrangle maps (scale 1:24,000) or on more detailed maps or studies at the
9 discretion of the local jurisdictions.

10
11 30. "Water-dependent facilities" means:

12
13 a. those structures or accessory buildings associated with maritime,
14 recreational, educational or fisheries activities that require location at or near the
15 shoreline;

16
17 b. an activity that cannot exist outside the buffer and is dependent on the water
18 by reason of the intrinsic nature of its operation.

19
20 31. "Water-dependent structures (maritime)" means those structures or
21 accessory buildings associated with maritime activities involving seafood industrial, in-
22 water boat storage or marine fabrication use that, in the determination of the director of
23 planning and zoning, require location within one hundred feet of the bulkhead or mean
24 high water line for efficiency of operation.

25
26 32. "Wildlife corridor" means a strip of land having vegetation that provides a
27 safe passageway for wildlife.

28
29 33. "Wildlife habitat" means those plant communities and physiographic features
30 that provide food, water and cover, nesting, and foraging or feeding conditions necessary
31 to maintain populations of animals in the critical area.

32
33 **Sec. 21.67.060 Development requirements.**

34
35 E. Buffer.

36
37 1. New development activities, including structures; roads, parking areas and
38 other impervious surfaces; septic systems; accessory uses, including but not limited to
39 swimming pools; and the substantial alteration of existing facilities or structures shall not
40 be permitted in the buffer, except for those necessarily associated with water-dependent
41 facilities.

42

1 2. New construction on recorded lots, under the grandfathering provisions of
2 Section 21.67.140, shall be designed and sited in such a fashion that if the buffer is
3 impacted, the applicant shall obtain a variance in accordance with Section 21.67.150.
4

5 3. The buffer shall be expanded beyond one hundred feet to include contiguous
6 sensitive areas such as steep slopes, hydric soils, or highly erodible soils whose
7 development or disturbance may impact streams, wetlands, or other aquatic environments.
8 In the case of contiguous slopes of fifteen percent or greater, the buffer shall be expanded
9 four feet for every one percent of slope or to the top of the slope, whichever is greater in
10 extent.
11

12 F.1. Subdivision Access. New public streets developed as part of a subdivision
13 and necessary to provide legal access to subdivision lots will be considered as
14 contributing to the impervious surface requirements of this chapter. The director of
15 planning and zoning and the director of public works may, however, allow subdivision
16 redesign in order to minimize the amount of subdivision land dedicated to streets.
17

18 2. Modifications in road standards may be allowed to reduce potential impacts
19 to the site and critical area resources, where the reduced standards do not significantly
20 affect safety.
21

22 G. Trees shall be protected, preserved and replaced pursuant to the
23 requirements of Section 17.09.080E.
24

25 **Sec. 21.67.065 Buffer exemption areas.**
26

27 The state critical area commission policy applies only to lots of record that existed
28 as of December 1, 1985. However, subdivision of grandfathered parcels may be permitted
29 if the subdivision, consolidation, or reconfiguration of the parcels will result in an overall
30 environmental benefit. Applications for subdivision in buffer exempt areas shall be
31 approved by the critical area commission. In no case shall the subdivision and the
32 subsequent redevelopment result in a greater area of impervious surface in the buffer.

33 A. The Department of Planning & Zoning review of the submission shall be based
34 on the State of Maryland Buffer Exempt Area Policy dated April 5, 2000.
35

36 B. All new construction, or enlargement of any structure in the Buffer Exempt Area
37 shall be subject to:
38

39 1. Posting of Property. At the time of submissions of plans, notice shall be
40 posted on the property for 14 days, in a manner prescribed by the Department of Planning
41 & Zoning.
42

1 2. Public Comment Period. During the posting period, and for 7 days
2 thereafter, the Director of the Department of Planning & Zoning shall accept comments
3 from the public that are relevant to the proper consideration of the submitted plans.
4

5 **Sec. 21.67.080 Development requirement -- Limited development areas.**
6

7 C. Forests and Developed Woodlands.
8

9 1. Forests and developed woodlands are to be maintained in accordance with
10 Section 17.09.080 and within landscaping guidelines as determined by the department of
11 planning and zoning.
12

13 2. Tree replacement and fees in lieu of tree replacement shall be allowed in
14 accordance with the provisions of Section 17.09.070.
15

16 3. All forests designated on development plans shall be maintained to the
17 extent practicable, through conservation easements, restrictive covenants, or other
18 protective instruments.
19

20 4. The afforested area shall be maintained as forest cover through easements,
21 restrictive covenants, or other protective instruments.
22

23 H. Impervious Surfaces.
24

25 1. Except as otherwise provided in this section for stormwater runoff, man-made
26 impervious surfaces are limited to fifteen percent of a parcel or lot.
27

28 2. If a parcel or lot one-half acre or less in size existed on or before December
29 1, 1985, then man-made impervious surfaces are limited to twenty-five percent of the
30 parcel or lot.
31

32 3. If a parcel or lot greater than one-half acre and less than one acre in size
33 existed on or before December 1, 1985, then man-made impervious surfaces are limited
34 to fifteen percent of the parcel or lot.
35

36 4. If an individual lot one acre or less in size is part of a subdivision approved
37 after December 1, 1985, then manmade impervious surfaces of the lot may not exceed
38 twenty-five percent of the lot. However, the total of the impervious surfaces over the entire
39 subdivision may not exceed fifteen percent.
40

1 5. The City of Annapolis may allow a property owner to exceed the impervious
2 surface limits provided in subsection H.2 and H.3 of this section if the following conditions
3 exist:

4
5 a. New impervious surfaces on the site have been minimized.

6
7 b. For a lot or parcel one-half acre or less in size, total impervious surfaces do
8 not exceed impervious surface limits in subsection (2) of this section by more than twenty-
9 five percent or five hundred square feet, whichever is greater;

10
11 c. For a lot or parcel greater than one-half acre and less than one acre in size,
12 total impervious surfaces do not exceed impervious surface limits in subsection (3) of this
13 section or five thousand four hundred forty-five square feet, whichever is greater.

14
15 d. Water quality impacts associated with runoff from the new impervious
16 surfaces can be and have been minimized through site design considerations or use of
17 best management practices approved by the city to improve water quality;

18
19 e. The property owner performs on-site mitigation as required by the city to
20 offset potential adverse water quality impacts from the new impervious surfaces, or the
21 property owner pays a fee to the local jurisdiction in lieu of performing the on-site
22 mitigation;

23
24 f. All fees in lieu collected by the city under Section 21.67.080C.2. of this
25 section must be used to fund projects that improve water quality within the critical area.

26
27 g. Cluster development is encouraged, to the extent practicable, to reduce
28 impervious surfaces and maximize areas of natural vegetation.

29
30 6. For the purposes of this section, any calculation of area covered by man-
31 made impervious surfaces may exclude an area covered by a gapped wooden deck with
32 pervious surface underneath.

33
34 **Sec. 21.67.090 Development requirements -- Resource conservation areas.**

35
36 B. New commercial, industrial and institutional development ^{is} not permitted.

37
38 C. New development within the resource conservation areas shall conform to
39 the same requirements as those set forth in Section 21.67.080 for limited development
40 areas.

41
42 **Sec. 21.67.100 Water-dependent facilities.**

1 A. Water-dependent Activities.

2
3 1. New or expanded water-dependent development activities may be permitted
4 in the buffer in intensely developed and limited development areas provided that the
5 applicant shows:

- 6
7 a. That the activity is water-dependent;
- 8
9 b. That the project meets a recognized private right or public need;
- 10
11 c. That adverse effects on water quality, and fish, plant, and wildlife habitat are
12 minimized;
- 13
14 d. That, insofar as possible, non-water-dependent structures or operations
15 associated with water-dependent projects or activities are located outside the buffer;
- 16
17 e. That the facilities are consistent with an approved local plan; and
- 18
19 f. The above criteria shall not apply to individual private piers installed or
20 maintained by riparian landowners which are not part of a subdivision which provides
21 community piers.

22
23 2. In addition to the above criteria, developers of projects that are water-
24 dependent shall prepare a statement showing that the proposed project meets the
25 following requirements:

- 26
27 a. That the activities will not significantly alter existing water circulation patterns
28 or salinity regimes;
- 29
30 b. That the water body upon which these activities are proposed has adequate
31 flushing characteristics in the area:
- 32
33 c. That disturbance to wetlands, submerged aquatic plant beds, or other areas
34 of important aquatic habitats will be minimized;
- 35
36 d. That adverse impacts to water quality that may occur as a result of these
37 activities, such as non-point-source runoff sewage discharge from land activities or
38 vessels, or from boat cleaning and maintenance operations, is minimized;
- 39
40 e. That shellfish beds will not be disturbed or be made subject to discharge that
41 will render them unsuitable for harvesting;
- 42

1 f. That dredging shall be conducted in a manner, and using a method, which
2 causes the least disturbance to water quality and aquatic and terrestrial habitats in the
3 area immediately surrounding the dredging operation or within the critical area, generally;
4

5 g. That dredged spoil will not be placed within the buffer or elsewhere in that
6 portion of the critical area which has been designated as a habitat protection area except
7 as necessary for:
8

9 i. Backfill for permitted shore erosion protection measures,
10

11 ii. Use in approved vegetated shore erosion projects,
12

13 iii. Placement on previously approved channel maintenance spoil disposal
14 areas, and

15 iv. Beach nourishment; and
16

17 h. That interference with the natural transport of sand will be minimized.
18
19

20 B. Community Piers. An applicant for a community pier shall prepare a
21 statement to show the following requirements have been met:
22

23 1. The facilities shall be community-owned and established and operated for
24 the benefit of the residents of a platted and recorded riparian subdivision;
25

26 2. The facilities are associated with a residential development approved by the
27 city for the critical area and is consistent with all regulations of the City of Annapolis critical
28 area program;
29

30 3. Disturbance to the buffer is the minimum necessary to provide a single point
31 of access to the facilities;
32

33 4. The facilities shall not offer food, fuel or other goods and services for sale;
34

35 5. The number of slips permitted at the facility shall be the lesser of the
36 following:
37

38 a. One slip for each fifty feet of shoreline in the subdivision in the intensely
39 developed and limited development areas, or
40

41 b. One slip for each three hundred feet of shoreline in the subdivision in the
42 resource conservation area, or

1 c. A density of slips to platted lots or dwellings within the subdivision in the
2 critical area according to the following schedule:
3

4 **Platted Lots or Dwellings**

5 **in the Critical Area**

Slips

6		
7	Up to 15	1 for each lot
8	16 -- 40	The greater of 15 or 75%
9	41 -- 100	The greater of 30 or 50%
10	101 -- 300	The greater of 50 or 25%
11	Over 300	The greater of 75 or 15%
12		

13 6. When a community pier with slips is provided as part of a new development
14 project, private piers are not permitted for each individual residential lot.
15

16 **Sec. 21.67.110 Habitat protection.**
17

18 Each applicant proposing a land-disturbing activity within the critical area of the city
19 of Annapolis must submit a habitat protection area statement for plant and wildlife habitat
20 that addresses the following:
21

22 A. The applicant for any land-disturbing activity within the city's critical area is
23 required to identify all plant and wildlife habitat areas subject to this program anywhere
24 within the legally divided parcel proposed for development.
25

26 B. If there are plant and wildlife habitat areas within the parcel proposed for
27 development, the applicant will prepare a plant and wildlife habitat statement which
28 indicates the measures to be taken to meet the following requirements, as appropriate:
29

30 1. Establish buffer areas for colonial water bird nesting sites so that these sites
31 are protected from the adverse impacts of development activities and from disturbance
32 during the breeding season;
33

34 2. Provide that new water-dependent facilities are so located as to prevent
35 disturbance to sites of significance to wildlife such as historic, aquatic staging and
36 concentration areas for waterfowl;
37

38 3. Provide protection measures, including a buffer area, where appropriate, for
39 other plant and wildlife habitat sites which may in the future be identified by state and
40 federal agencies as important plant or wildlife habitat areas;
41

1 4. Protect and conserve those riparian forests of approximately three hundred
2 feet or more in width required to support forest interior dwelling birds, as determined by
3 methods described in the critical area commission Guidance Paper Number 1, "A Guide
4 to the Conservation of Forest Interior Dwelling Birds in the Critical Area";
5

6 5. To the extent practical, when development activities, or the cutting or clearing
7 of trees, occurs in forested areas, maintain corridors of existing forest or woodland
8 vegetation to provide effective connections between wildlife habitat areas;
9

10 6. Protect those plant and wildlife habitats considered to be of significance by
11 the city of Annapolis;
12

13 7. Protect natural heritage areas from alteration due to development activities
14 or cutting or clearing so that the structure and species composition of the areas are
15 maintained.
16

17 C. If a protected plant or wildlife habitat is not present within a parcel proposed
18 for development, then a statement to that effect from a qualified expert must be submitted
19 to the city.
20

21 D. In preparing the plant and wildlife habitat statement, the applicant is
22 responsible for consulting with the DNR Department of Natural Resources; the Maryland
23 Natural Heritage Program; the U.S. Fish and Wildlife Service; the city of Annapolis; and
24 other relevant public agencies and private organizations.
25

26 **Sec. 21.67.140 Grandfathering provisions.**
27

28 The following types of land may be developed in accordance with density
29 requirements in effect prior to February 13, 1989, notwithstanding the density provisions
30 of this chapter:
31

32 A. Existing Land Uses. Existing land uses as of February 13, 1989 may
33 continue. Alterations or expansion of nonconforming land uses will not be permitted,
34 unless a variance is granted under the procedures described in Section 21.67.150;
35

36 E. Subdivision Before June 1, 1984. Subdivision of land approved prior to June
37 1, 1984 is grandfathered, subject to the following conditions:
38

39 Recorded legally buildable lots in subdivisions which received the City's approval
40 prior to June 1, 1984 may be consolidated or reconfigured in order to bring them into
41 conformance with the Critical Area Program insofar as possible without the consolidation
42 or reconfiguration being considered a resubdivision by the state critical area commission.
43

1 F. Land that was subdivided into recorded, legally buildable lots, where the
2 subdivision received the final approval between June 1, 1984 and December 1, 1985.

3
4 G. Land that was subdivided into recorded, legally buildable lots, where the
5 subdivision received final approval after December 1, 1985, provided that development of
6 any such land conforms to the critical area criteria.

7
8 H. Nothing in this regulation may be interpreted as altering any requirements
9 for development activities set out in the Water Dependent Facilities Section and the
10 Habitat Protection Areas section of this code.

11
12 I. For purposes of implementing this regulation, the City has determined,
13 based on land uses and development in existence on December 1, 1985, which land areas
14 fall within the three types of development areas described in Section 21.67.070, 21.67.080
15 and 21.67.090.

16
17 **Sec. 21.67.150 Variances.**

18
19 A. Except as otherwise specified in Sections 21.67.160 and 21.67.170 of this
20 ✓ chapter, variances to the provisions of this City of Annapolis critical area program will be
21 considered due to special features of a site or other circumstances, City implementation ✓
22 of Title 27, 01, of the Code of Maryland Regulations or a literal enforcement of provisions
23 within the critical area program would result in unwarranted hardship to an applicant.
24 Applications for variances and administrative variances shall be made in writing to the
25 planning and zoning director with a copy to the Critical Area Commission in accordance
26 with the procedures in Section 21.80.020 of this title. Variances will be considered under
27 the provisions of Chapter 21.80 of this title, except that the standards or conditions under
28 which a variance shall be considered are:

29
30 ✓ 1. That special conditions or circumstances exist that are peculiar to the land
31 or structure within the City's critical area program, would result in unwarranted hardship;
32

33
34 ✓ 2. That a literal interpretation of Title 27, Subtitle 01, of the Code of Maryland
35 Regulations or the City Critical Area program and related ordinances will deprive the
36 applicant of rights commonly enjoyed by other properties in similar areas within the critical
37 area of the city;

38
39 3. That the granting of a variance will not confer upon an applicant any special
40 privilege that would be denied by Title 27, Subtitle 01, of the Code of Maryland
41 Regulations or the City Critical Area program to other lands or structures within the city
42 critical area;

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

5 5. That the granting of a variance will not adversely affect water quality or
6 adversely impact fish, wildlife, or plant habitat within the City's Critical Area, and that
7 granting of the variance will be in harmony with the general spirit and intent of the Critical
8 Area Law and the regulations adopted in Title 27, Subtitle 01, of the Code of Maryland
9 Regulations.
10

11 B. Appeals.
12

13 1. Any person aggrieved by any decision of the board of appeals may appeal
14 that decision to the circuit court for Anne Arundel County, Maryland pursuant to Annotated
15 Code of Maryland Article 66B, Section 4.08 (1988 Replacement volume) and Title 7,
16 Chapter 200 of the Maryland Rules or its successor.
17

18 2. The filing of an appeal to the circuit court under this section shall not stay the
19 order or action appealed from except as provided by Maryland Rule 7-205 or its successor.
20

21 **Sec. 21.67.160 Administrative variances.**
22

23 A. The purpose of this section is to authorize delegation of board of
24 appeals approval authority to the planning and zoning director to apply the standards for
25 variance as specified in Section 21.67.150 for proposed development activities as follows.
26
27

28 In the case of residential structures currently located within the designated
29 one-hundred-foot buffer, an expansion of these structures; provided, that the expansion
30 occurs parallel to the shoreline and does not further encroach into the waterway yard.
31

32 B. Administrative variances are subject to the following conditions:
33

34 1. This section applies to new development or redevelopment within the critical
35 area buffer.
36

37 2. This section only applies to single-family lots of record at the time of program
38 approval.
39

40 3. Development may not impact any habitat protection areas other than the
41 buffer.
42

1 4. The applicant will be required to maintain existing natural vegetation in the
2 buffer to the extent possible.

3
4 5. The disturbance to the buffer must be the least intrusion necessary.

5
6 6. Any development in the buffer will require mitigation/enhancement/or offsets,
7 as follows:

8
9 a. The extent of the lot or parcel shoreward of the new development or
10 redevelopment shall be required to remain, or shall be established and maintained, in
11 natural vegetation; and

12
13 b. Natural vegetation of an area twice the extent of the impervious surface must
14 be created in a buffer offset area or other location as may be determined by the city.

15
16 7. An applicant who cannot comply with the above planting or offset
17 requirements is required to pay into the fee-in-lieu program established under Chapter
18 17.09 according to the specifications below.

19
20 a. For each square foot of the buffer disturbed, \$1.20; and

21
22 b. For any buffer plantings required by Chapter 17.09 that cannot be
23 implemented on site, \$0.40/square foot.

24
25 c. Any fees-in-lieu collected under these provisions shall be placed in an
26 account that will assure their use only for projects within the critical area for the benefit of
27 wildlife habitat, water quality improvements or environmental education. The status of
28 these funds must be reported at the time of comprehensive review. If it is not possible to
29 carry out offsets or other mitigation within the critical area, any plantings or other
30 habitat/water quality improvement should occur within the affected watershed.

31
32 8. Any required reforestation/mitigation/offset areas must be designated under
33 a development agreement or other instrument and recorded among the land records of
34 Anne Arundel County.

35
36 9. The state critical area commission shall be notified prior to any administrative
37 action by the staff and within ten days of the action.

38
39 10. The chairman of the Critical Area Commission may appeal an administrative
40 variance granted by the planning and zoning director or local approving authority. At this
41 time the project will go before the board of appeals de novo.

42
43 **Sec. 21.67.170 Variances in conjunction with subdivisions.**

1 A. In accordance with the regulations of Chapter 20, Subdivisions, if a
2 subdivision requires approval by the planning commission, the authority to approve a
3 variance to the critical area requirements shall be that of the planning commission. The
4 planning commission in considering the variance shall apply the standards or conditions
5 of review specified under Section 21.67.150.
6

7 B. Appeals from decisions of the planning commission under Section 21.67.170
8 shall be made to the Circuit Court for Anne Arundel County, Maryland pursuant to
9 Maryland Rules, Title 7, chapter 200, or its successors.

10
11 Sec. 21.67.180 Appeals.
12

13 An appeal may be made to the board of appeals, in accordance with Chapter 21.90,
14 by a person, firm or corporation aggrieved or affected by a decision of the director of
15 planning and zoning in accordance with this chapter.
16
17

18 **SECTION II: AND BE IT FURTHER ESTABLISHED AND ORDAINED BY THE**
19 **ANNAPOLIS CITY COUNCIL** that this Ordinance shall take effect from the date of its
20 passage.
21

22 ADOPTED this 10th day of July, 2000.
23

24 **ATTEST:**

25 *Deborah Heinbuch*
26 _____
27 Deborah Heinbuch, CMC/AEE
28 City Clerk

THE ANNAPOLIS CITY COUNCIL

BY *Dean L. Johnson*

DEAN L. JOHNSON, MAYOR

BUFFER EXEMPTION AREA EVALUATIONS

Spa Creek BEA (Area 1 on Map 7-6)

Annapolis is requesting that the "Spa Creek BEA" identified as Area 1 on Map 7-6 be designated as a BEA because the existing pattern of development prevents the Buffer from fulfilling the functions set forth in the Criteria. The following factors were considered:

- 1) The Buffer's ability to provide for the removal of sediments, nutrients, and harmful or toxic substances has been compromised because there are many existing structures in the Buffer. The area is developed primarily with single family residences on lots that are approximately a quarter of an acre or less. Houses are generally located 25 to 50 feet from the shoreline. There are numerous accessory structures and walkways to private piers located within the Buffer. Existing vegetation is primarily lawn grass and scattered trees and shrubs.
- 2) The Buffer's effectiveness at minimizing the adverse effects of human activities on wetlands, shorelines, stream banks, tidal waters, and aquatic resources is limited because human activities are taking place very close to the shoreline because of the location of existing development. There are minimal areas of natural vegetation within the Buffer and the shoreline is heavily developed and actively used.
- 3) The Buffer does not function optimally as an area of transitional habitat between aquatic and upland communities because this area is developed with structures and is actively used by residents. There is little natural vegetation to provide food or cover for wildlife or to provide water quality protection or enhancement. Most of the shoreline has been altered through the installation of bulkheads and other structural erosion control measures.
- 4) The Buffer does not function to maintain the natural environment of streams because there are no streams on this particular property.
- 5) The Buffer's capacity for protecting wildlife habitat on this site is severely limited because the Buffer is developed and is actively used as yard areas by property owners. Human disturbance to wildlife would be unavoidable because of the intensity of the development on this site.

Acton Cove BEA (Area 2 on Map 4-6)

Annapolis is requesting that the "Acton Cove BEA" identified as Area 2 on Map 4-6 be designated as a BEA because the existing pattern of development prevents the Buffer from fulfilling the functions set forth in the Criteria. The following factors were considered:

- 1) The Buffer's ability to provide for the removal of sediments, nutrients, and harmful or toxic substances has been compromised because there are many existing structures in the Buffer. The area is developed primarily with single family residences and townhouses on lots that are approximately one eighth acre or smaller. Houses are located 25 to 50 feet from the shoreline. There are numerous accessory structures located within the Buffer. Existing vegetation is primarily lawn grass and scattered trees and shrubs.
- 2) The Buffer's effectiveness at minimizing the adverse effects of human activities on wetlands, shorelines, stream banks, tidal waters, and aquatic resources is limited because human activities are taking place very close to the shoreline because of the location of existing development. There are minimal areas of natural vegetation within the Buffer and the shoreline is heavily developed and actively used.
- 3) The Buffer does not function optimally as an area of transitional habitat between aquatic and upland communities because this area is developed with structures and is actively used by residents. There is little natural vegetation to provide food or cover for wildlife or to provide water quality protection or enhancement. Most of the shoreline has been altered through the installation of bulkheads and other structural erosion control measures.
- 4) The Buffer does not function to maintain the natural environment of streams because there are no streams on this particular property.
- 5) The Buffer's capacity for protecting wildlife habitat on this site is severely limited because the Buffer is developed and is actively used as yard areas by property owners. Human disturbance to wildlife would be unavoidable because of the intensity of the development on this site.

City Dock BEA (Area 3 on Map 4-6)

Annapolis is requesting that the "City Dock BEA" identified as Area 3 on Map 4-6 be designated as a BEA because the existing pattern of development prevents the Buffer from fulfilling the functions set forth in the Criteria. The following factors were considered:

- 1) The Buffer's ability to provide for the removal of sediments, nutrients, and harmful or toxic substances has been virtually eliminated because the Buffer is completely developed with structures, parking lots, and city streets. Most of the Buffer is completely impervious with buildings constructed at the water's edge. There is very little vegetation in the Buffer. The area is developed primarily with commercial uses.
- 2) The Buffer's effectiveness at minimizing the adverse effects of human activities on wetlands, shorelines, stream banks, tidal waters, and aquatic resources is limited because human activities are taking place very close to the shoreline because of the location of existing development. Much of this area is developed as an urban park that provides access to the water and fosters intense human activity at the shoreline. There are minimal areas of vegetation within the Buffer consisting primarily of small landscape features. The shoreline is heavily developed and intensely used.
- 3) The Buffer does not function optimally as an area of transitional habitat between aquatic and upland communities because this area is developed with structures and is actively used as an active downtown commercial center. There is no natural vegetation to provide food or cover for wildlife or to provide water quality protection or enhancement. Most of the shoreline has been altered through the installation of bulkheads and other structural erosion control measures.
- 4) The Buffer does not function to maintain the natural environment of streams because there are no streams in this area.
- 5) The Buffer's capacity for protecting wildlife habitat on this site has been virtually eliminated by development and automobile traffic. Human disturbance to wildlife would be unavoidable because of the intensity of the development on this site.

The Point BEA (Area 4 on Map 8-6)

Annapolis is requesting that the "The Point BEA" identified as Area 4 on Map 8-6 be designated as a BEA because the existing pattern of development prevents the Buffer from fulfilling the functions set forth in the Criteria. The following factors were considered:

- 1) The Buffer's ability to provide for the removal of sediments, nutrients, and harmful or toxic substances has been compromised because this area is developed with a multi-family housing development. The property is developed with several multi-family residential buildings and accessory structures which are located partially within the Buffer. Existing vegetation is primarily lawn grass and landscaped areas of trees and shrubs.
- 2) The Buffer's effectiveness at minimizing the adverse effects of human activities on wetlands, shorelines, stream banks, tidal waters, and aquatic resources is limited because human activities are taking place very close to the shoreline because of the location of existing development. There is a community pier associated with this development, and the Buffer is used for recreation by the residents. There are minimal areas of natural vegetation within the Buffer and the shoreline is actively used.
- 3) The Buffer does not function optimally as an area of transitional habitat between aquatic and upland communities because this area is developed with structures and is actively used by residents. There is little natural vegetation to provide food or cover for wildlife or to provide water quality protection or enhancement. Most of the shoreline has been altered through the installation of bulkheads and other structural erosion control measures.
- 4) The Buffer does not function to maintain the natural environment of streams because there are no streams on this particular property.
- 5) The Buffer's capacity for protecting wildlife habitat on this site is severely limited because the Buffer is developed and is actively used for recreation and water access by the residents. Human disturbance to wildlife would be unavoidable because of the intensity of the development on this site.

Eastport-Spa Creek Residential BEA (Area 5 on Map 8-6)

Annapolis is requesting that the "Eastport-Spa Creek Residential BEA" identified as Area 5 on Map 8-6 be designated as a BEA because the existing pattern of development prevents the Buffer from fulfilling the functions set forth in the Criteria. The following factors were considered:

- 1) The Buffer's ability to provide for the removal of sediments, nutrients, and harmful or toxic substances has been compromised because there are many existing structures in the Buffer. The area is developed primarily with single family residences on lots that are approximately a quarter of an acre or less. Houses are generally located 25 to 50 feet from the shoreline. There are numerous accessory structures located within the Buffer. Existing vegetation is primarily lawn grass and scattered trees and shrubs.
- 2) The Buffer's effectiveness at minimizing the adverse effects of human activities on wetlands, shorelines, stream banks, tidal waters, and aquatic resources is limited because human activities are taking place very close to the shoreline because of the location of existing development. There are minimal areas of natural vegetation within the Buffer and the shoreline is heavily developed and actively used.
- 3) The Buffer does not function optimally as an area of transitional habitat between aquatic and upland communities because this area is developed with structures and is actively used by residents. There is little natural vegetation to provide food or cover for wildlife or to provide water quality protection or enhancement. Most of the shoreline has been altered through the installation of bulkheads and other structural erosion control measures.
- 4) The Buffer does not function to maintain the natural environment of streams because there are no streams on this particular property.
- 5) The Buffer's capacity for protecting wildlife habitat on this site is severely limited because the Buffer is developed and is actively used as yard areas by property owners. Human disturbance to wildlife would be unavoidable because of the intensity of the development on this site.

Eastport-Spa Creek Maritime Commercial BEA (Area 6 on Map 8-6)

Annapolis is requesting that the "Eastport-Spa Creek Maritime Commercial BEA", identified as Area 6 on Map 8-6, be designated as a BEA because the existing pattern of development prevents the Buffer from fulfilling the functions set forth in the Criteria. The following factors were considered:

- 1) The Buffer's ability to provide for the removal of sediments, nutrients, and harmful or toxic substances has been virtually eliminated because the Buffer is completely developed with structures, parking lots, boat storage areas, and city streets. Most of the Buffer is completely impervious with buildings constructed at the water's edge. There is very little vegetation in the Buffer. The area is developed primarily with commercial, marine industrial and maritime uses.
- 2) The Buffer's effectiveness at minimizing the adverse effects of human activities on wetlands, shorelines, stream banks, tidal waters, and aquatic resources is limited because human activities are taking place very close to the shoreline because of the location of existing development. There are numerous marinas and boat yards in this area which create intense human activity at the shoreline. There are minimal areas of natural vegetation within the Buffer and the shoreline is heavily developed and actively used.
- 3) The Buffer does not function optimally as an area of transitional habitat between aquatic and upland communities because this area is developed with structures and is actively used for a variety of industrial, commercial, and maritime activities. There is little natural vegetation to provide food or cover for wildlife or to provide water quality protection or enhancement. Most of the shoreline has been altered through the installation of bulkheads and other structural erosion control measures.
- 4) The Buffer does not function to maintain the natural environment of streams because there are no streams in this area.
- 5) The Buffer's capacity for protecting wildlife habitat on this site is severely limited because the Buffer is developed and is actively used for industrial, commercial, and maritime activities. Human disturbance to wildlife would be unavoidable because of the intensity of the development on this site.

Horn Point BEA (Area 7 on Map 8-6)

Annapolis is requesting that the "Horn Point BEA" identified as Area 7 on Map 8-6 be designated as a BEA because the existing pattern of development prevents the Buffer from fulfilling the functions set forth in the Criteria. The following factors were considered:

- 1) The Buffer's ability to provide for the removal of sediments, nutrients, and harmful or toxic substances has been compromised because there are many existing structures in the Buffer. The area is developed primarily with single family and residences on lots that are approximately a quarter of an acre or less. Houses are generally located 25 to 50 feet from the shoreline. There are numerous accessory structures located within the Buffer. This area also includes the two townhouse developments, Horn Point and Chesapeake Landing. Existing vegetation is primarily lawn grass and scattered trees and shrubs.
- 2) The Buffer's effectiveness at minimizing the adverse effects of human activities on wetlands, shorelines, stream banks, tidal waters, and aquatic resources is limited because human activities are taking place very close to the shoreline because of the location of existing development. There are minimal areas of natural vegetation within the Buffer and the shoreline is heavily developed and actively used.
- 3) The Buffer does not function optimally as an area of transitional habitat between aquatic and upland communities because this area is developed with structures and is actively used by residents. There is little natural vegetation to provide food or cover for wildlife or to provide water quality protection or enhancement. Most of the shoreline has been altered through the installation of bulkheads and other structural erosion control measures.
- 4) The Buffer does not function to maintain the natural environment of streams because there are no streams on this particular property.
- 5) The Buffer's capacity for protecting wildlife habitat on this site is severely limited because the Buffer is developed and is actively used as yard areas by property owners. Human disturbance to wildlife would be unavoidable because of the intensity of the development in this area.

Back Creek-West Shore Maritime Commercial BEA (Area 8 on Map 8-6)

Annapolis is requesting that the "Back Creek-West Shore Maritime Commercial BEA" identified as Area 8 on Map 8-6 be designated as a BEA because the existing pattern of development prevents the Buffer from fulfilling the functions set forth in the Criteria. The following factors were considered:

- 1) The Buffer's ability to provide for the removal of sediments, nutrients, and harmful or toxic substances has been virtually eliminated because the Buffer is completely developed with structures, parking lots, and city streets. Most of the Buffer is completely impervious with buildings constructed at the water's edge. There is very little vegetation in the Buffer. The area is developed primarily with commercial, marine industrial and maritime uses. Many of the properties are marinas and boat yards with boat slips and related services.
- 2) The Buffer's effectiveness at minimizing the adverse effects of human activities on wetlands, shorelines, stream banks, tidal waters, and aquatic resources is limited because human activities are taking place very close to the shoreline because of the location of existing development. There are numerous marinas in this area which create intense human activity at the shoreline. There are minimal areas of natural vegetation within the Buffer and the shoreline is heavily developed and actively used.
- 3) The Buffer does not function optimally as an area of transitional habitat between aquatic and upland communities because this area is developed with structures and is actively used for a variety of industrial, commercial, and maritime activities. There is little natural vegetation to provide food or cover for wildlife or to provide water quality protection or enhancement. Most of the shoreline has been altered through the installation of bulkheads and other structural erosion control measures.
- 4) The Buffer does not function to maintain the natural environment of streams because there are no streams in this area.
- 5) The Buffer's capacity for protecting wildlife habitat on this site is severely limited because the Buffer is developed and is actively used for industrial, commercial, and maritime activities. Human disturbance to wildlife would be unavoidable because of the intensity of the development on this site.

Chester Avenue BEA (Area 9 on Map 8-6)

Annapolis is requesting that the "Chester Avenue BEA" identified as Area 9 on Map 8-6 be designated as a BEA because the existing pattern of development prevents the Buffer from fulfilling the functions set forth in the Criteria. The following factors were considered:

- 1) The Buffer's ability to provide for the removal of sediments, nutrients, and harmful or toxic substances has been compromised because there are many existing structures in the Buffer. The area is developed primarily with single family residences on lots that are approximately a quarter of an acre or less. Houses are generally located 25 to 50 feet from the shoreline. There are numerous accessory structures and walkways to private piers located within the Buffer. Existing vegetation is primarily lawn grass and scattered trees and shrubs.
- 2) The Buffer's effectiveness at minimizing the adverse effects of human activities on wetlands, shorelines, stream banks, tidal waters, and aquatic resources is limited because human activities are taking place very close to the shoreline because of the location of existing development. There are minimal areas of natural vegetation within the Buffer and the shoreline is heavily developed and actively used.
- 3) The Buffer does not function optimally as an area of transitional habitat between aquatic and upland communities because this area is developed with structures and is actively used by residents. There is little natural vegetation to provide food or cover for wildlife or to provide water quality protection or enhancement. Most of the shoreline has been altered through the installation of bulkheads and other structural erosion control measures.
- 4) The Buffer does not function to maintain the natural environment of streams because there are no streams on this particular property.
- 5) The Buffer's capacity for protecting wildlife habitat on this site is severely limited because the Buffer is developed and is actively used as yard areas by property owners. Human disturbance to wildlife would be unavoidable because of the intensity of the development on this site.

Watergate Apartments BEA (Area 11 on Map 8-6)

Annapolis is requesting that the "Watergate Apartments BEA" identified as Area 11 on Map 8-6 be designated as a BEA because the existing pattern of development prevents the Buffer from fulfilling the functions set forth in the Criteria. The following factors were considered:

- 1) The Buffer's ability to provide for the removal of sediments, nutrients, and harmful or toxic substances has been compromised because this area is developed with a multi-family housing. There are several buildings and parking areas within the Buffer, as well as, access to a community pier. Existing vegetation is primarily lawn grass and landscaped islands of trees and shrubs.
- 2) The Buffer's effectiveness at minimizing the adverse effects of human activities on wetlands, shorelines, stream banks, tidal waters, and aquatic resources is limited because human activities are taking place very close to the shoreline because of the location of existing development. There are minimal areas of natural vegetation within the Buffer and the shoreline is heavily developed and actively used.
- 3) The Buffer does not function optimally as an area of transitional habitat between aquatic and upland communities because this area is developed with structures and is actively used by residents. There is little natural vegetation to provide food or cover for wildlife or to provide water quality protection or enhancement. Most of the shoreline has been altered through the installation of bulkheads and other structural erosion control measures.
- 4) The Buffer does not function to maintain the natural environment of streams because there are no streams on this particular property.
- 5) The Buffer's capacity for protecting wildlife habitat on this site is severely limited because the Buffer is developed and is actively used as a yard area by residents. Human disturbance to wildlife would be unavoidable because of the intensity of the development on this site.

Back Creek-East Shore Maritime Commercial BEA (Area 12 on Map 10-6)

Annapolis is requesting that the "Back Creek-East Maritime Commercial BEA" identified as Area 12 on Map 10-6 be designated as a BEA because the existing pattern of development prevents the Buffer from fulfilling the functions set forth in the Criteria. The following factors were considered:

- 1) The Buffer's ability to provide for the removal of sediments, nutrients, and harmful or toxic substances has been virtually eliminated because the Buffer is completely developed with structures, parking lots, boat yards and boat storage areas. Most of the Buffer is completely impervious with buildings constructed at the water's edge. There is some natural vegetation in the Buffer, but generally it is less than 100 feet wide. The area is developed primarily with commercial, marine industrial and maritime uses .
- 2) The Buffer's effectiveness at minimizing the adverse effects of human activities on wetlands, shorelines, stream banks, tidal waters, and aquatic resources is limited because human activities are taking place very close to the shoreline because of the location of existing development. There are numerous marinas and other water dependent facilities in this area which create intense human activity at the shoreline. There are some areas of natural vegetation within the Buffer and the shoreline is heavily developed and actively used.
- 3) The Buffer does not function optimally as an area of transitional habitat between aquatic and upland communities because this area is developed with structures and is actively used for a variety of industrial, commercial, and maritime activities. Although there is some natural vegetation in the Buffer that could provide food and cover for wildlife, the intensity of human activity in the area limits the type of wildlife that would use this area. The existing natural vegetation does provide some water quality protection and enhancement and development in this area should be designed to preserve existing natural vegetation wherever possible. Most of the shoreline has been altered through the installation of bulkheads and other structural erosion control measures.
- 4) The Buffer does not function to maintain the natural environment of streams because there are no streams in this area.
- 5) The Buffer's capacity for protecting wildlife habitat on this site is severely limited because the Buffer is developed and is actively used for industrial, commercial, and maritime activities. Human disturbance to wildlife would be unavoidable because of the intensity of the development on this site.

Bay Ridge BEA (Area 13 on Map 10-6)

Annapolis is requesting that the "Bay Ridge BEA" identified as Area 13 on Map 10-6 be designated as a BEA because the existing pattern of development prevents the Buffer from fulfilling the functions set forth in the Criteria. The following factors were considered:

- 1) The Buffer's ability to provide for the removal of sediments, nutrients, and harmful or toxic substances has been compromised because there are many existing structures in the Buffer. The area is developed primarily with single family residences on lots that are approximately a quarter of an acre or less. Houses are generally located 25 to 50 feet from the shoreline. There are numerous accessory structures and walkways to private piers located within the Buffer. Existing vegetation is primarily lawn grass and scattered trees and shrubs.
- 2) The Buffer's effectiveness at minimizing the adverse effects of human activities on wetlands, shorelines, stream banks, tidal waters, and aquatic resources is limited because human activities are taking place very close to the shoreline because of the location of existing development. There are minimal areas of natural vegetation within the Buffer and the shoreline is heavily developed and actively used.
- 3) The Buffer does not function optimally as an area of transitional habitat between aquatic and upland communities because this area is developed with structures and is actively used by residents. There is little natural vegetation to provide food or cover for wildlife or to provide water quality protection or enhancement. Most of the shoreline has been altered through the installation of bulkheads and other structural erosion control measures.
- 4) The Buffer does not function to maintain the natural environment of streams because there are no streams on this particular property.
- 5) The Buffer's capacity for protecting wildlife habitat on this site is severely limited because the Buffer is developed and is actively used as yard areas by property owners. Human disturbance to wildlife would be unavoidable because of the intensity of the development on this site.

Severn House Condominiums BEA (Area 14 on Map 10-6)

Annapolis is requesting that the "Severn House Condominiums BEA" identified as Area 14 on Map 8-6 be designated as a BEA because the existing pattern of development prevents the Buffer from fulfilling the functions set forth in the Criteria. The following factors were considered:

- 1) The Buffer's ability to provide for the removal of sediments, nutrients, and harmful or toxic substances has been compromised because this area is developed with multi-family housing. The property is developed with several condominium buildings, parking areas, and accessory structures, including a pool, which are located partially within the Buffer. Existing vegetation is primarily lawn grass and landscaped islands of trees and shrubs.
- 2) The Buffer's effectiveness at minimizing the adverse effects of human activities on wetlands, shorelines, stream banks, tidal waters, and aquatic resources is limited because human activities are taking place very close to the shoreline because of the location of existing development. There are minimal areas of natural vegetation within the Buffer and the shoreline is heavily developed and actively used.
- 3) The Buffer does not function optimally as an area of transitional habitat between aquatic and upland communities because this area is developed with structures and is actively used by residents. There is a community pier associated with the development. There is little natural vegetation to provide food or cover for wildlife or to provide water quality protection or enhancement. Most of the shoreline has been altered through the installation of bulkheads and other structural erosion control measures.
- 4) The Buffer does not function to maintain the natural environment of streams because there are no streams on this particular property.
- 5) The Buffer's capacity for protecting wildlife habitat on this site is severely limited because the Buffer is developed and is actively used as a yard area by residents. Human disturbance to wildlife would be unavoidable because of the intensity of the development on this site.

CHESAPEAKE BAY CRITICAL AREA COMMISSION

STAFF REPORT

August 2, 2000

APPLICANT: City of Annapolis Planning and Zoning

PROPOSAL: City of Annapolis Comprehensive Review

COMMISSION ACTION: Vote

STAFF RECOMMENDATION: Approval

STAFF: Dawnn McCleary

PANEL: Dr. James Foor, Barbara Samorajczyk, Louise Lawrence,
Lauren Wenzel and Jack Witten

PANEL RECOMMENDATION: Pending

**APPLICABLE LAW
REGULATIONS:** Annotated Code of Maryland, Section 8-1809 (g)

DISCUSSION:

The City of Annapolis has recently completed the required four-year review of their Critical Area Program. The review included the Critical Area provisions of the City Code and a review of the City's Critical Area Buffer Exemption (BEA) maps to designated BEAs. The City Council has approved Ordinance No. 0-6-2000 which revises the City's code to address deficiencies identified during the Comprehensive Review. Please see a copy of the City's approved Ordinance for your review. The major changes to the City's Critical Area Ordinance are outlined below:

CITY OF ANNAPOLIS ZONING ORDINANCE:

Section 21. 67. 050 (A)(31) - Definitions - Water-dependent structures (maritime):
Structures associated with on-land boat storage and boat repair and maintenance are not considered water-dependent under the State regulations. However, within the Buffer Exemption Areas that are being created, both on-land boat storage and boat repair and maintenance and structures associated with these activities would be allowed. Conditions include: 1) that there is no feasible alternative elsewhere on the lot for the activity, 2) a twenty-five-foot setback from the water is provided for expansion, and 3) a fifty-foot setback from the water is provided for new development.

Continued, Page Two
City of Annapolis Comprehensive Review
Staff Report
August 2, 2000

Section 21. 67. 065 - Buffer Exemption Areas: This section was added to the City ordinance to bring the City into compliance with State regulations for all new development and redevelopment on lots of record within the Critical Area Buffer. For Annapolis, BEAs will aid property owners of lots of record that were subdivided prior to December 1, 1985 by allowing development in the Buffer if it is compatible with adjacent properties. The City adopted the Commission's policy dated April 5, 2000. In order to address specific needs of the City, the following additional language was added:

"The State Critical Area Commission policy applies only to lots of record that existed as of December 1, 1985. However, subdivision of grandfathered parcels may be permitted if the subdivision, consolidation, or reconfiguration of the parcels will result in an overall environmental benefit. Applications for subdivisions in Buffer Exemption Areas shall be approved by the Critical Area Commission. In no case shall the subdivision and the subsequent redevelopment result in a greater area of impervious surface in the Buffer".

Section 21. 67. 080 (H) (1 - 6) - Development requirements (Limited Development Areas) Impervious surface: In the City's new ordinance, the entire section on impervious surface was rewritten to comply with changes to the State regulations.

Section 21. 67. 090 (B) - Development requirements (Resource Conservation Area (RCA): There were questions about how the City handled uses in the RCA. These provisions were changed to be more specific, and to conform to the State regulations.

Section 21. 67. 100 (A)(1)(f) - Water dependent facilities: The language was changed in this section to clarify that residential private piers are permitted uses when new subdivisions do not provide community piers.

Section 21. 67. 140 (E) - Grandfathering Provisions: Because the City's grandfathering language was inconsistent with the Criteria, this entire section was revised to reflect State regulations concerning grandfathering provisions for subdivision.

Section 21. 67. 150 (A -G)(1-5) - Variance: Variance standards for the Annapolis Critical Area program ordinance were changed to conform with State Law. The old language did not reflect unwarranted hardship.

Continued, Page Three
City of Annapolis Comprehensive Review
Staff Report
August 2, 2000

Section 21. 67. 160 (A) - Administrative variances: This section was revised to be consistent with the Critical Area Criteria. The City has removed the language that allowed waivers up to 20% for impervious surfaces.

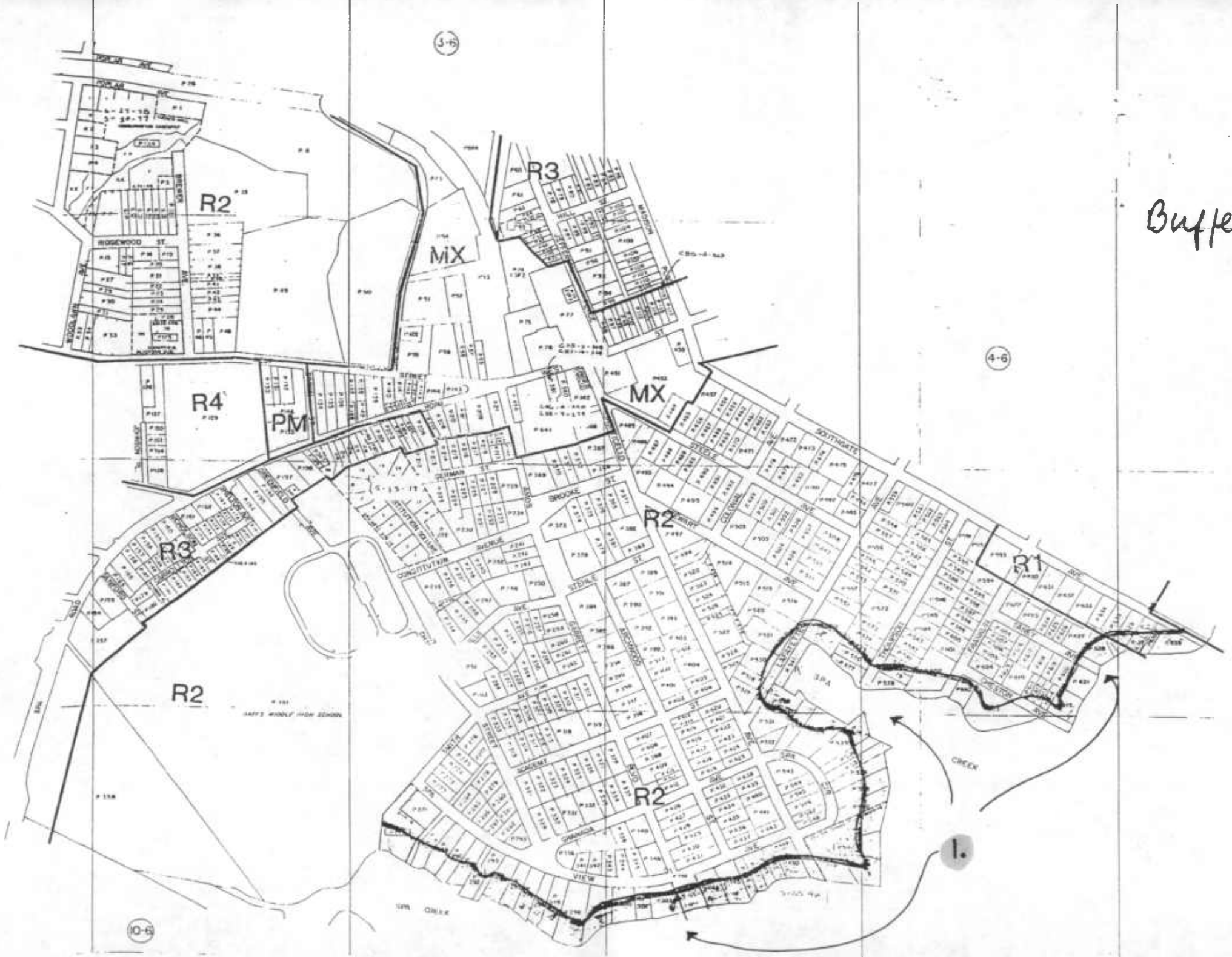
Buffer Exemption Area

6-6

3-6

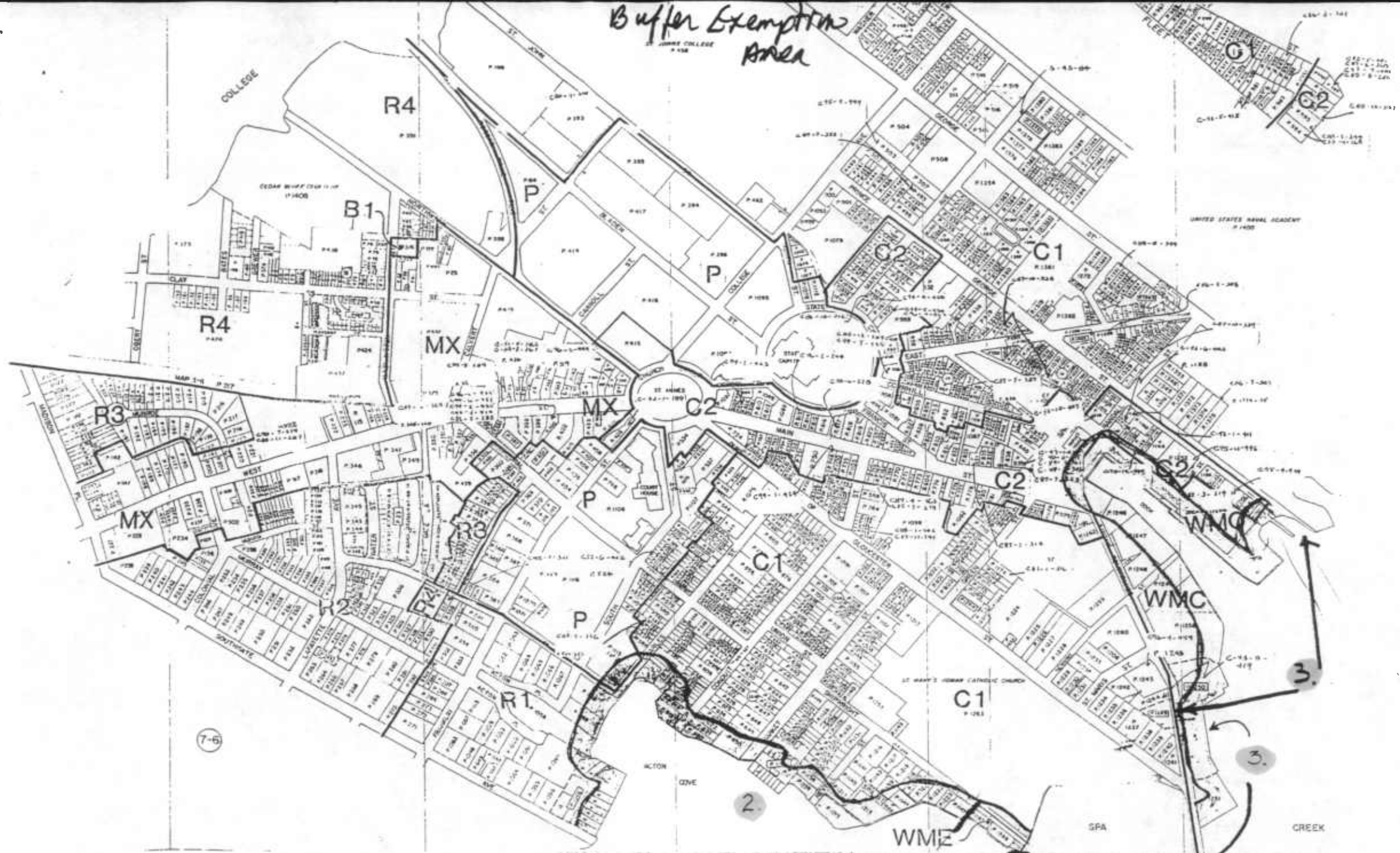
4-6

10-6



MAP
7-6

Buffer Exemption Area



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SCALE: 1" = 200'

REVISION NO. 1 DATE 1/1968

MAP 4-6

ANNAPOLIS
 E.D. 6

MAP
 4-6

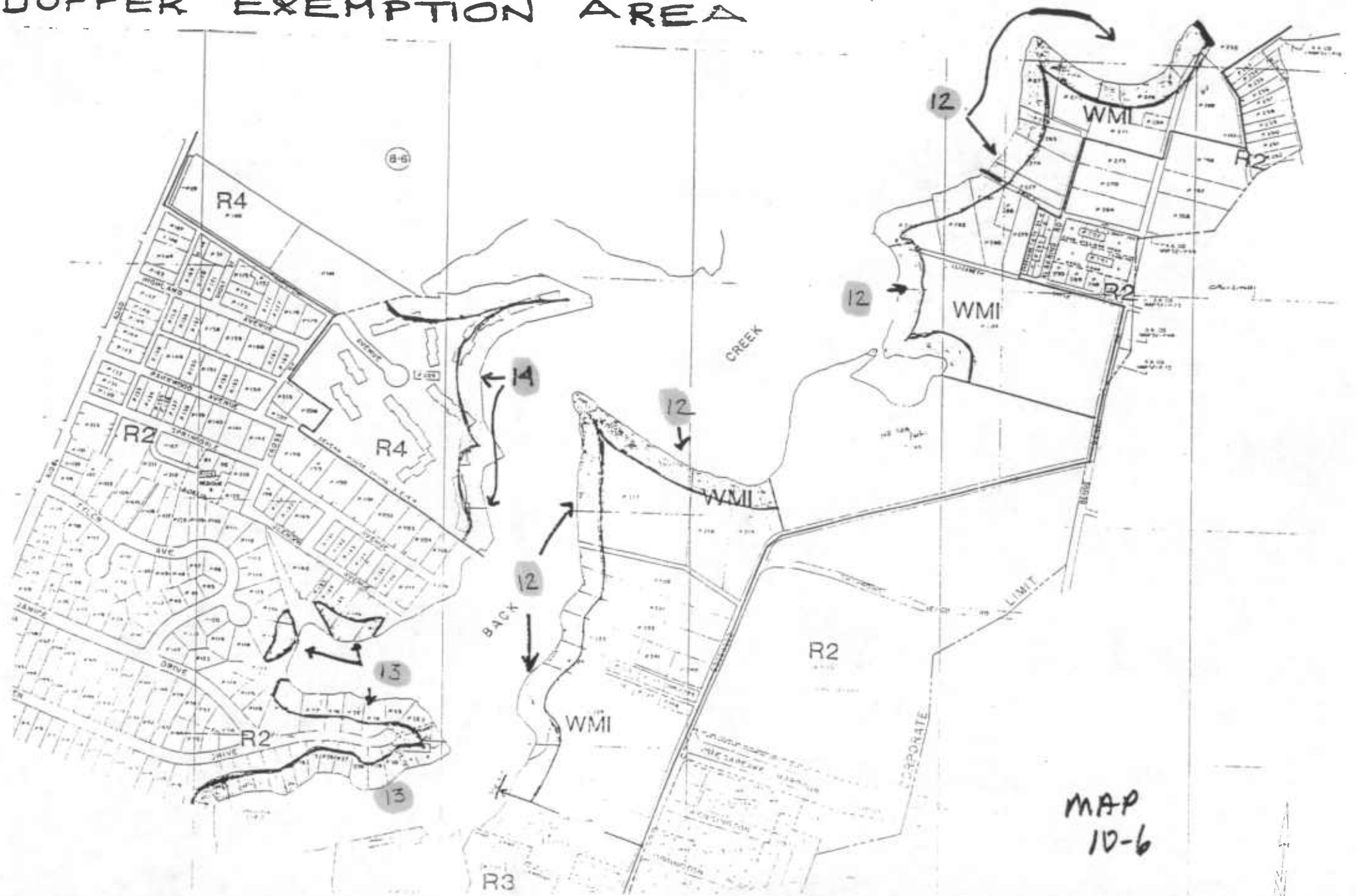


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MAP OF ...

MAP
8-6

BUFFER EXEMPTION AREA



Chesapeake Bay Critical Area Commission

STAFF REPORT

August 2, 2000

APPLICANT: Anne Arundel County Public Schools

PROPOSAL: Mayo Elementary School Renovations

COMMISSION ACTION: Vote

STAFF RECOMMENDATION: Approval with conditions

STAFF: LeeAnne Chandler

**APPLICABLE LAW/
REGULATIONS:** COMAR 27.02.06 Conditional Approval of State or Local Agency Programs in the Critical Area

DISCUSSION:

Anne Arundel County Public Schools (AACPS) is seeking approval to exceed the allowable impervious surface limits in the renovation of Mayo Elementary School. AACPS proposes to demolish the existing school and replace it with a new two-story structure and parking improvements. The subject parcel is 7.28 acres in size and is designated LDA. The permitted amount of impervious surface is 15% or 1.09 acres. Existing impervious surface covers 1.45 acres or 20% of the site. The existing school facility is a one story building which was originally constructed in 1936 with several additions completed in 1959 and 1964. Current full time enrollment of the school is 311 students. Access to the site is via a parking facility located on East Central Avenue (MD Route 214). The existing parking facility is used for both bus loading and unloading as well as parking for 40 vehicles.

The new Mayo Elementary School is proposed to be located on the existing site. The new school facility has been designed for an enrollment of approximately 400 students with access to the site being via Mayo Ridge Road. The new school is proposed to be a two-story building with a bus loop separated from the parent dropoff area. The new facility will include a large amount of on-site planting as well as an underground stormwater management device. Despite efforts to minimize impervious surfaces the proposed impervious coverage would be 2.43 acres or 33% of the site. As stated above, impervious coverage is strictly limited by the Critical Area Law to 15% of the site. Since the proposed school will exceed the impervious surface limits, this project requires Conditional Approval by the Commission as found in Chapter 2 of the Critical Area Commission's regulations for State and local government development activities.

Commission staff met with representatives of Anne Arundel County Public Schools, County Planning staff, and the consulting firms on two occasions. First, we met to discuss the proposed school on the existing school site and second to discuss the use of an alternative site.

The environmental features of the existing site are limited to a small area (22,500 square feet) of forest that receives drainage via a 12" pipe from the site. An area of palustrine intermittently

Staff Report

Mayo Elementary School

Page 2

flooded (non-tidal) wetland exists within the forest, the boundaries of which have been verified by the U.S. Army Corps of Engineers. The proposed school facility will not impact the existing forest, non-tidal wetlands or the required 25-foot wetland buffer. The applicant has received a letter from the Maryland Department of Natural Resources stating that there are no known rare, threatened or endangered species on the project site.

The alternate site is located across East Central Avenue from the existing school site. It is approximately 15 acres in size and contains 9.2 acres of forest, a grass field and four separate areas of non-tidal wetlands. One small building exists on the site. Substantial clearing (greater than 50%) would be necessary to utilize the site and all four areas of non-tidal wetlands would be impacted. Non-tidal wetlands are classified as a designated habitat protection area in the Anne Arundel County Critical Area Program and disturbance of this HPA may also require conditional approval by the Critical Area Commission and/or variances from the County's Critical Area requirements. Impervious surface limits may also be an issue. Finally, a letter regarding the presence or absence of rare, threatened or endangered species on the site has not yet been received.

Conditional Approval Process

In order to qualify for consideration by the Commission for conditional approval, the proposing local agency must show that the project or program has the following characteristics:

(1) That there exist special features of a site or there are other special circumstances such that the literal enforcement of these regulations would prevent a project or program from being implemented;

There are special circumstances in this situation that preclude Anne Arundel County Public Schools from complying with the 15% impervious limit on the existing school site. First, the existing school already exceeds the permitted amount of imperviousness. The existing school site is relatively small as compared to other elementary school properties throughout the County. Though efforts have been made to minimize impervious surfaces, there are standards for new school construction that must be followed. Also, the separation of the bus loop from the parent drop-off/parking area (one feature that has increased imperviousness) has been designed for safety reasons. The alternative location that has been considered will require much greater impact to Critical Area resources and will require a substantial amount of both forest and wetland mitigation. The alternative site also may not be suitable due to traffic safety reasons.

(2) That the project or program otherwise provides substantial public benefits to the Chesapeake Bay Critical Area Program;

The proposed school design has included substantial landscaping and a stormwater management facility. Currently there is very little vegetation surrounding the school and no stormwater management is provided. While the new school will increase imperviousness, the stormwater management will offset the increase and will likely improve the quality of runoff coming from the site.

(3) That the project or program is otherwise in conformance with this subtitle.

Except for the excessive impervious surface on the site, the project is otherwise in conformance with the state criteria and the County's Critical Area Program. County staff have provided a thorough review of the project, and Critical Area staff have consulted with the County to ensure this project is otherwise consistent with COMAR 27.02.06.

The Commission must find that the conditional approval request contains the following:

(1) That a literal enforcement of the provision of this subtitle would prevent the conduct of an authorized State or local agency program or project;

A literal enforcement would prevent Anne Arundel County Public Schools from constructing a new Mayo Elementary School on the existing school site and force them to use an alternative site that may have far greater impact to Critical Area resources.

(2) There is a process by which the program or project could be so conducted as to conform, insofar as possible, with the approved local Critical Area program or, if the development is to occur on State-owned lands, with the criteria set forth in COMAR 27.02.05; and

The County has determined the project to be consistent with the local Critical Area program with the exception of the excessive amount of imperviousness. However, the project includes provisions for stormwater management to offset new imperviousness as well as substantial planting of vegetation. These provisions, both lacking under current conditions, will result in improved habitat value and water quality leaving the site.

(3) Measures proposed to mitigate any adverse effects of the project or program on an approved local Critical Area program or, if on State-owned lands, on the criteria set forth in COMAR 27.02.05.

An effort has been made to minimize impervious surfaces on this site. For example, the applicant has obtained approval for an unpaved fire access road from the County Fire Marshall. Other design features to minimize impervious surface include the two-story building design, minimal sidewalks, and fewer parking spaces (than the usual elementary school). In addition, the stormwater management and proposed plantings will result in increased water quality benefits and improved habitat protection.

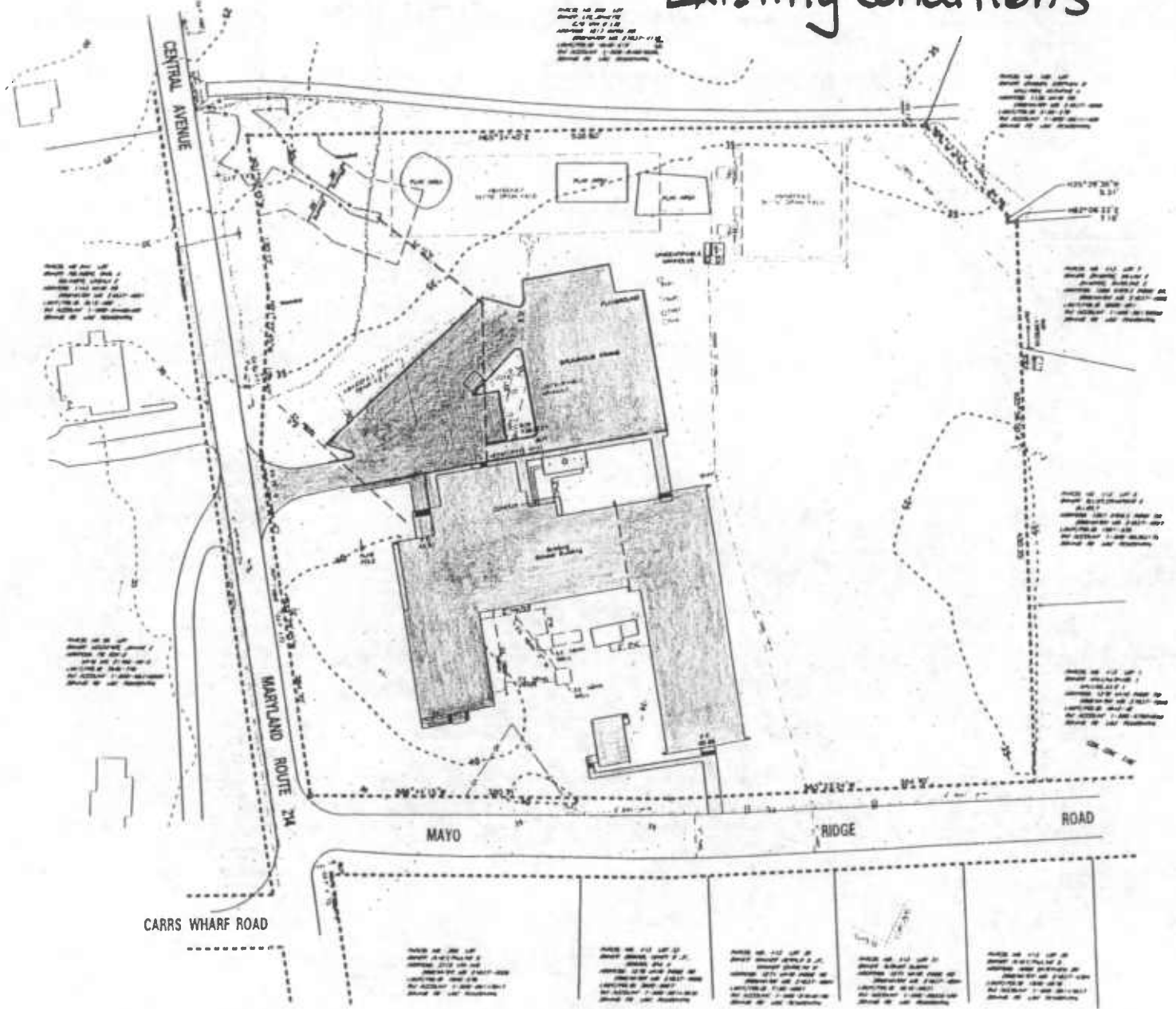
Along with the conditions listed below, the conditional approval request is consistent with COMAR 27.02.06, the Commission's regulations for Conditional Approval of State or Local Agency Programs in the Critical Area.

Conditions:

- 1) The applicant shall resubmit any revisions to the plan to the County for review and to the Commission for approval; and***
- 2) The applicant will work with County and Commission staff regarding the use of only native species in landscaping the site.***

Mayo Elementary School

Existing Conditions



VICINITY MAP

6715 Whetstone Avenue
Suite 200
McLean VA 22101
703 903 9100
703 903 9755 Fax

11785 Bethesda Drive
Suite 1400
Cameron MD 20795
301 595 1000
301 595 0089 Fax

**Grimm
and
Parker**

DEMOLITION PLAN
MAYO ELEMENTARY SCHOOL
ANNE ARUNDEL COUNTY, MARYLAND

DATE	BY	NO.

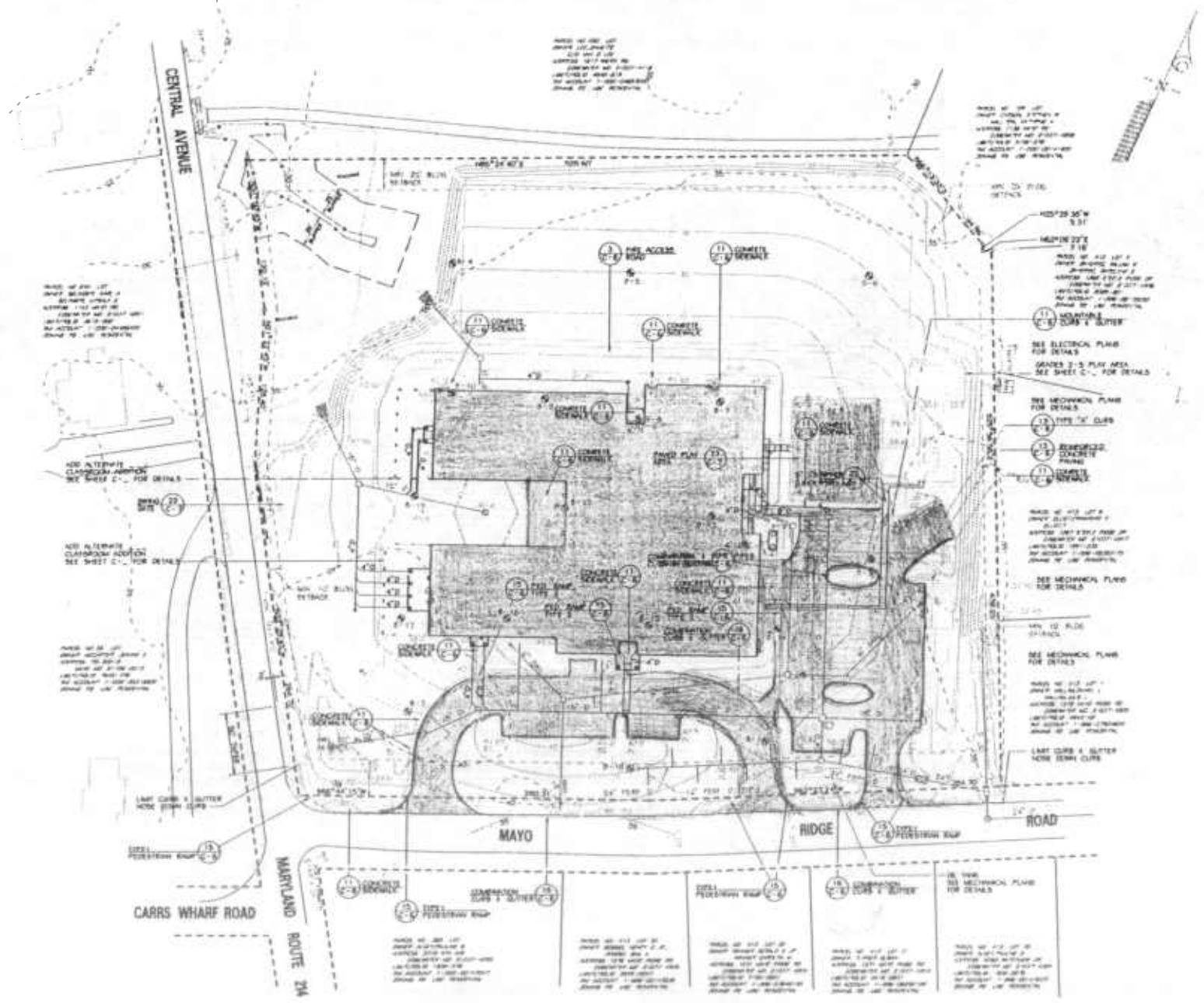
C1
AA 1998
ASCD 10 6

DEMOLITION PLAN
SCALE 1" = 40'

DESIGN DEVELOPMENT

Proposed Conditions

BM 1
 ANNE ARUNDEL COUNTY
 BEING AM 3/8" FROM
 OF THE MD RT 211
 WILKEY POINT RD



- 47 EX UNDER CO
- 75 EX INTERMED
- EX CLUB AN
- EX GAS LINE
- EX STORM DR
- EX ELECTRIC
- EX TELEPHON
- EX SANITARY
- EX WATER
- EX OVERHEAD
- EX WATER W
- EX FARE HYS
- EX MANHOLE
- EX CLEANOUT
- EX LIGHT PO
- EX RILET
- EX TREE
- EX WOODS LA

- 1 THE CONTRACTOR SHALL VERIFY THE EXISTING UTILITY INFORMATION (A FIELD SURVEY WHICH DATED MARCH 1978 BY A COUNTY DEPARTMENT, ANNE ARUNDEL COUNTY PUBLIC UTILITIES DEPARTMENT)
- 2 THE CONTRACTOR SHALL VERIFY THE EXISTING UTILITY INFORMATION (A FIELD SURVEY WHICH DATED MARCH 1978 BY A COUNTY DEPARTMENT, ANNE ARUNDEL COUNTY PUBLIC UTILITIES DEPARTMENT)
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SITE PLAN
 SCALE 1" = 40'

Important

Staff Report
Mayo Elementary School
Page 3

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- 1) *The applicant shall resubmit any revisions to the plan to the County for review and to the Commission for approval; and*
- 2) *The applicant will work with County and Commission staff regarding the use of only native species in landscaping the site. and*

3. *If the cost of the school storage after the new ⁴SWM regs are in effect, ~~SWM~~ storage in the SWM structure will be increased to ~~store 14~~ ^{store 14} ~~from~~ ^{the new imp. service}, consistent with the new regulations.*

Chesapeake Bay Critical Area Commission

STAFF REPORT

August 2, 2000

APPLICANT: Potomac Electric Power Company (PEPCO)

PROPOSAL: Oil Pipeline Replacement

JURISDICTION: Prince George's County

COMMISSION ACTION: APPROVAL

STAFF RECOMMENDATION: APPROVAL

STAFF: Ren Serey

**APPLICABLE LAW/
REGULATIONS:** Memorandum of Understanding: Prince George's
County, PEPCO and Chesapeake Bay Critical Area
Commission

COMAR 27.01.02.04 C (1) (b)

*Approved
Carried
Unanimously*

DISCUSSION:

In April of this year, an oil supply line ruptured at the Potomac Electric Power Company's (PEPCO) Chalk Point Generating Station in Prince George's County, spilling 111,000 gallons of oil into Swanson Creek and the Patuxent River. The Critical Area Commission was briefed on the impacts of the spill and the restoration efforts and its last meeting on July 5, 2000. As part of its repair plan, PEPCO intends to replace a portion of the pipeline that ruptured. The pipeline runs under Swanson Creek and a tidal marsh. A new 640 foot section of pipeline will be located under a roadbed adjacent to the marsh. The remainder of the pipeline will be abandoned and filled with inert material under other state and federal permits.

In April 1994 the Commission entered into a Memorandum of Understanding (MOU) with Prince George's County and PEPCO which covered the review and approval of development projects undertaken at Chalk Point. The MOU gave the Commission approval authority regarding PEPCO's development activities when a variance would be required under the County's Chesapeake Bay Critical Area Program. The County has determined that a variance is needed for replacement of the pipeline and therefore approval rests with the Commission.

The Critical Area Criteria provide for the installation of roads, bridges and utilities through the Buffer and other Habitat Protection Areas under the following conditions as set out in COMAR 27.01.02.04 C (1) (b):

- * No feasible alternatives exist.
- * They are designed to provide maximum erosion protection and minimize negative impacts to wildlife, aquatic life and their habitats and maintain hydrologic processes and water quality.

The Chalk Point Generating Station covers 1,156 acres in Prince George's County. Approximately 475 acres are within the Critical Area; 130 acres are in the Intensely Developed Area (IDA) and 345 acres are in the Resource Conservation Area (RCA). The new 12 inch pipeline will be placed three feet under the roadbed, which is in the RCA and the Critical Area Buffer. The installation will disturb an area 25 feet wide, covering approximately 16,000 square feet.

Sediment and erosion control plans have been approved by the Prince George's Soil Conservation District. No additional approvals are needed from the Maryland Department of the Environment and the Board of Public Works.

The staff recommendation for approval is based on a site visit, discussions with the permitting agencies and review of PEPCO's submitted materials. There appear to be no feasible alternatives to the proposal. Tidal marsh at the Chalk Point site is extensive. All other pipeline routes would cross the Critical Area Buffer at some point and likely have greater impacts than the proposed action. Here, disturbance will be minimal because the only portion of the Buffer to be affected lies within an existing roadbed. The approved sediment and erosion control plans appear to provide adequate protection to the marsh. There are no threatened or endangered species near the work area and no other Critical Area Habitat Protection Areas will be affected.

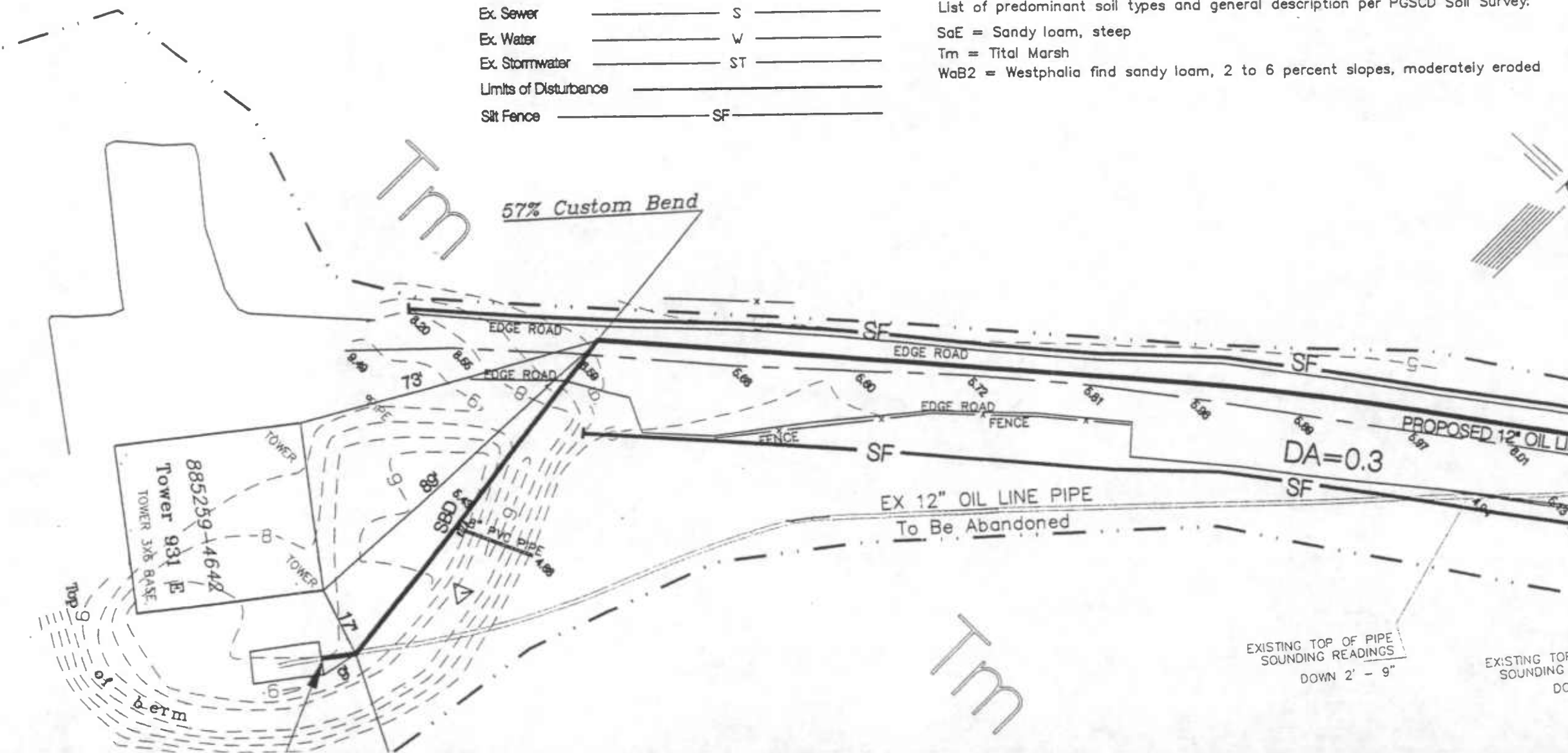
PERCO

LEGEND

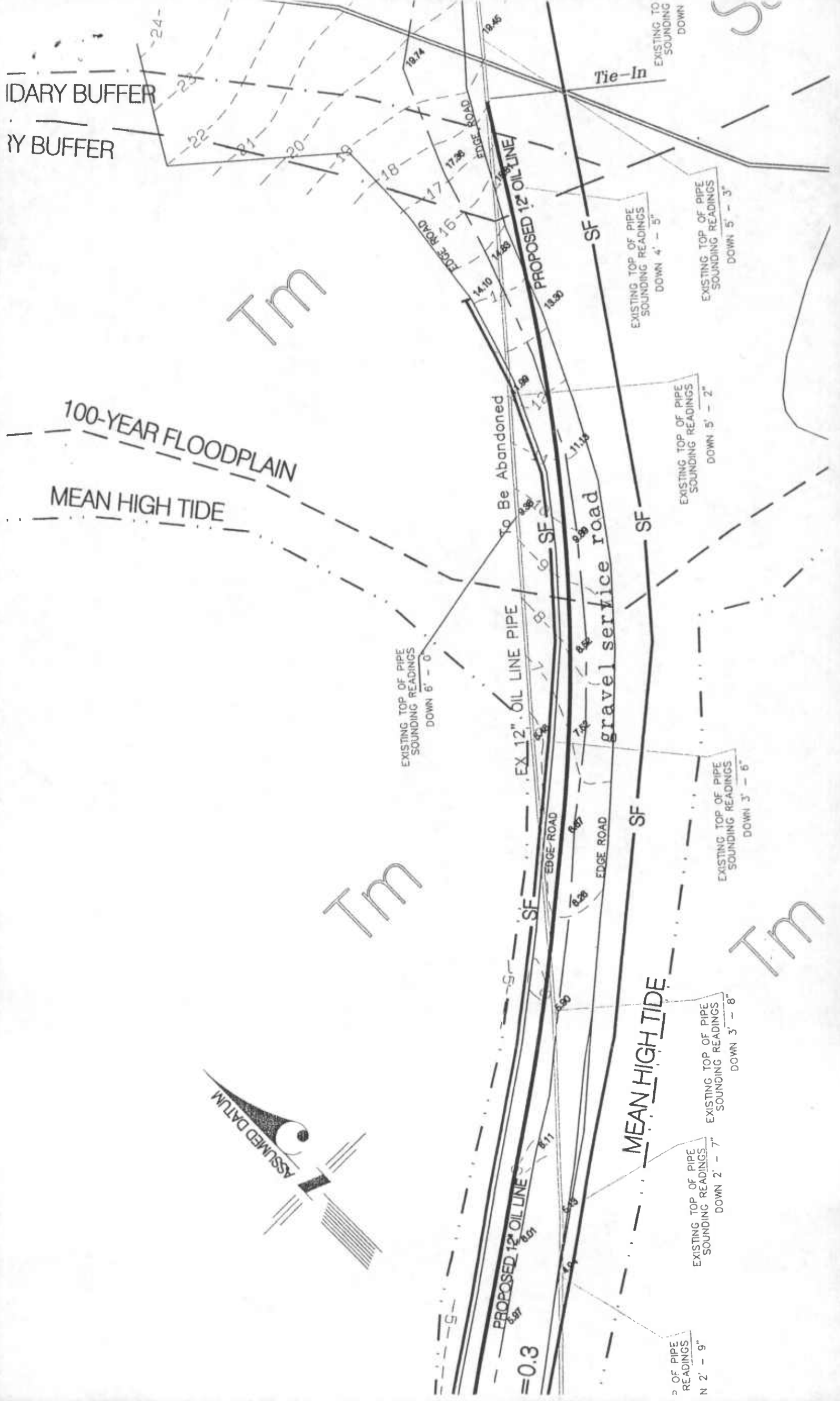
Existing Contour	
Proposed Contour	
Existing Spot Shot	100+1
Proposed Spot Shot	100 ¹ +
Existing Tree Line	
Proposed Tree Line	
Overhead Wires	
Ex. Sewer	
Ex. Water	
Ex. Stormwater	
Limits of Disturbance	
Silt Fence	

100 YEAR FLOODPLAIN	
MEAN HIGH TIDE	
PRIMARY BUFFER	
SECONDARY BUFFER	
SOIL LINE	

List of predominant soil types and general description per PGSCD Soil Survey:
 SaE = Sandy loam, steep
 Tm = Tidal Marsh
 WaB2 = Westphalia fine sandy loam, 2 to 6 percent slopes, moderately eroded



PROPERTY BUFFER
PROPERTY BUFFER



EXISTING TOP OF PIPE SOUNDING READINGS
DOWN 2' - 9"

EXISTING TOP OF PIPE SOUNDING READINGS
DOWN 2' - 7"

EXISTING TOP OF PIPE SOUNDING READINGS
DOWN 3' - 8"

EXISTING TOP OF PIPE SOUNDING READINGS
DOWN 3' - 6"

EXISTING TOP OF PIPE SOUNDING READINGS
DOWN 5' - 2"

EXISTING TOP OF PIPE SOUNDING READINGS
DOWN 5' - 3"

EXISTING TOP OF PIPE SOUNDING READINGS
DOWN 4' - 5"

EXISTING TO SOUNDING DOWN

Tie-In

PROPOSED 12" OIL LINE

EX 12" OIL LINE PIPE

gravel service road

100-YEAR FLOODPLAIN

MEAN HIGH TIDE

MEAN HIGH TIDE

PROPOSED 12" OIL LINE

To Be Abandoned

Tm

Tm

Tm

S

= 0.3

24-

23

22

21

20

19

18

17

16

19.45

18.74

17.38

14.10

13.30

11.18

9.88

8.28

7.48

6.88

6.28

5.68

5.08

4.48

3.88

3.11

2.51

1.91

1.31

0.71

EDGE ROAD

EDGE ROAD

EDGE ROAD

EDGE ROAD

EDGE ROAD

EDGE ROAD

EDGE ROAD

EDGE ROAD

EDGE ROAD

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EDGE ROAD

EDGE ROAD

SF

SF

SF

SF

SF

SF

SF

SF

SF

2' OF PIPE READINGS

Chesapeake Bay Critical Area Commission
1804 West Street, Suite 100
Annapolis, Maryland 21401
(410) 260-3460

MEMORANDUM

TO: Program Subcommittee (Foor, Myers, Williams, Wynkoop, Johnson, Lawrence, Duket, Samorajczyk, Bradley)

FROM: Mary Owens

DATE: August 2, 2000

RE: **Buffer Provisions for Development on Nonconforming Lots**

Recently Commission staff met with Gail Owings, the Planning Director of Kent County, regarding the County's Comprehensive Review of their Critical Area Program. The County is interested in incorporating some provisions into their zoning ordinance that are similar to a concept that Commission staff have been working on for some time. The concept involves the ability to remove existing structures and impervious surfaces within the Buffer on grandfathered lots, and to replace them with other structures (or impervious surfaces) that are no greater in size and no closer to tidal waters, wetlands, or streams.

Commission staff believes that this "reconfiguration" of development within the Buffer can be permitted without a variance under the provisions in Section 27.01.02.07 "Grandfathering." These provisions allow the continuation of nonconforming uses and specify that only the intensification or expansion of these uses would require a variance. In certain situations involving the removal of structures within the Buffer where the use of the property remains the same, and where there is no increase in impervious surface area within the Buffer, there is no expansion or intensification, and therefore, a variance would not be required.

This concept of "Buffer trading" has been discussed on several occasions involving variances when the project applicant has proposed to remove an existing structure in exchange for a new structure. It seems that in most situations that as long as the area of new impervious surface was no greater than the area removed, that the structure was located farther from tidal water, and that mitigation was provided, there would be an overall environmental benefit. There would also be additional benefits associated with fostering a cooperative relationship with applicants and implementing a more streamlined review process.

Pursuant to Commission staff's meeting with Kent County staff, the County staff is interested in getting some preliminary comments on this concept from the Commission. For

discussion purposes, the County is proposing the following "Buffer Provisions for Development on Nonconforming Lots". At this time, the County is proposing that these provisions would only apply to reasonable expansion of existing single family dwellings. Currently for this type of project, the applicant would request a variance, and the variance request would not be opposed by the Commission.

Buffer Provisions for Development on Nonconforming Lots

Expansion of Existing Dwellings in the Buffer

Dwellings existing as of April 12, 1988 and in the minimum 100-foot Buffer may be expanded, **without a variance provided:**

1. All opportunities for expansion outside the minimum 100-foot Buffer are exhausted.
2. The expansion occurs to the rear or side of the structure, but not closer to mean high tide. **In no case shall new structures be located within 25 feet of tidal waters, tidal wetlands, or tributary streams.**
3. The expansion is designed and located to maximize the distance from mean high tide or to enhance or protect environmentally sensitive features of the site.
4. The expansion does not exceed 20% of the gross floor area of the dwelling or **1,000 square feet, whichever is less**, as it existed at the time of the adoption of these regulations.
5. The purpose of the expansion is to provide additional living space, but not for uses such as swimming pools, hot tubs, garages, carports, or tennis courts.
6. An area of impervious surfaces in the Buffer equal to or greater than the footprint of the expansion shall be removed and re-vegetated; **and**
7. A forest Buffer equal to three times the footprint of the expansion shall be planted within the 100-foot Buffer. If there is not enough area in the Buffer to achieve the required planting, the property owner must plant the required area outside the Buffer on the same property. If there is not enough area on site to achieve the required plantings, the property owner shall reduce pollutant loadings coming off the site by at least 10% and plant the required area offsite or pay fees-in-lieu. Pollutant loadings shall be calculated using the method developed by the Metropolitan Washington Council of Governments using phosphorous as the keystone element. A Buffer or forest planting and management plan shall be submitted to and approved by the Kent County Department of Planning and Zoning.
8. Development rights are transferred according to the requirements set forth in Article VI,

Section 11 of this Ordinance. Deeds of transfer of development rights and credit use are recorded with the Clerk of Circuit Court of Kent County.

9. **The expansion may not involve the removal of existing natural vegetation.**
10. **The expansion may not affect any Habitat Protection Areas, other than the Buffer.**
11. **The expansion may not affect any nontidal wetlands.**
12. **The expansion may not be constructed on steep slopes.**

NOTE: **Bold text indicates additional standards proposed by Commission staff.**