

Committee Meetings & Correspondence February 1988

USA-S-1832-47



1/20/88  
Commiss  
mtg.

JUDGE SOLOMON LISS  
CHAIRMAN

STATE OF MARYLAND  
**CHESAPEAKE BAY CRITICAL AREAS COMMISSION**  
DEPARTMENT OF NATURAL RESOURCES  
TAWES STATE OFFICE BUILDING, D-4  
ANNAPOLIS, MARYLAND 21401  
301-269-2418 or 269-2426

SARAH J. TAYLOR, PhD  
EXECUTIVE DIRECTOR

COMMISSIONERS

January 28, 1988

- William Bostian  
Wicomico Co.
- Ann Sturgis Coates  
Town of Snow Hill
- Clarence Du Burns  
Baltimore City
- James E. Gutman  
Anne Arundel Co.
- Parris Glendening  
Prince George's Co.
- Ronald Hickernell  
Baltimore Co.
- Shepard Krech, Jr.  
Talbot Co.
- Florence Beck Kurdle  
Anne Arundel Co.
- Thomas L. Jarvis  
Caroline Co.
- John Luthy, Jr.  
Dorchester Co.
- Robert S. Lynch  
Harford Co.
- Barbara W. O'Neill  
Cecil Co.
- Robert R. Price, Jr.  
Queen Anne's Co.
- J. Frank Raley, Jr.  
St. Mary's Co.
- Harry T. Stine  
Charles Co.
- Samuel E. Turner, Sr.  
Talbot Co.
- Lloyd S. Tyler, III  
City of Crisfield
- Mary Roe Walkup  
Kent Co.
- Albert W. Zahniser  
Calvert Co.

Dear Commission Member:

The next meeting of the Chesapeake Bay Critical Area Commission will be on February 3rd, 1988 in the Department of Natural Resources, lobby conference room, at 1:00 p.m. Enclosed are the Minutes of the January 20th meeting, and the agenda for February 3rd.

There are several Programs upon which a vote must be taken, and we need to finalize our position on the growth allocation policy as well as the procedure for "having presence of sewer and water" for Limited Development Areas.

In addition, several panels must be appointed for the following jurisdictions:

- Crisfield - 2/18/88, Joint Hearing
- City of Salisbury - 2/29/88, Joint Hearing
- Wicomico Co. - 3/2/88, Joint Hearing

I look forward to seeing you on the 3rd.

Sincerely,

*Solomon Liss*  
Solomon Liss  
Chairman

CABINET MEMBERS

- Torrey C. Brown, M.D.  
Natural Resources
- Wayne A. Cawley, Jr.  
Agriculture
- William Eichbaum  
Health and Mental Hygiene SL/jjd
- Ardath Cade  
Economic and Community Development
- Constance Lieder  
Planning Enclosures

CHESAPEAKE BAY CRITICAL AREA COMMISSION

AGENDA

Department of Natural Resources  
Tawes State Office Building  
580 Taylor Avenue, C-1  
Annapolis, Maryland

February 3, 1988

1:00 - 6:00 p.m.

1:00 - 1:15	Approval of Minutes of January 20th, 1988	Solomon Liss Chairman
1:15 - 1:30	Vote on Rock Hall Program ✓	Charles Davis/ Panel/Consultants
1:30 - 1:45	Vote on Baltimore Co. ✓ Program	Marcus Pollock/ County Staff/Panel/ Consultants
1:45 - 2:15	Vote on Cecil Co. ✓ Program	Kevin Sullivan/ County Staff/Panel
2:15 - 2:45	Vote on Perryville, Port Deposit, North East, Charlestown ✓	Kevin Sullivan/ Local Government/ Panel
2:45 - 3:15	Vote on Harford Co. ✓	Marcus Pollock/ County Staff/ Panel
3:15 - 3:30	Vote on Havre de Grace ✓	Marcus Pollock/ Panel/Consultant
3:30 - 3:45	Vote on Cambridge ✓	Ed Phillips/ Panel/Consultant
3:45 - 4:00	Vote on Elkton ✓	McCrone, Inc./ Panel/Staff
4:00 - 4:15	Vote on Chesapeake Beach ✓	McCrone, Inc./ Panel/Staff
4:15 - 4:45	Vote on Growth Allocation Policy	Solomon Liss Chairman
4:45 - 5:15	Vote on Process for Addressing "Sewer and Water for LDAs"	Tom Deming

5:15 - 5:30 Appointment of Panels for:

Crisfield	(Joint hearing scheduled 2/18/88)
Salisbury	(Joint hearing scheduled 2/29/88)
Wicomico Co.	(Joint hearing scheduled 3/2/88)

5:30 - 6:00 Old Business Sarah Taylor

Meeting of Subcommittee  
Concerning the Regulations on  
Project Notification

Status of Legislative Hearings Sarah Taylor

New Business Solomon Liss  
Chairman

Next Meeting: February 17th, Department of Agriculture  
Conference Room at 1:00 p.m.

CHESAPEAKE BAY CRITICAL AREA COMMISSION

Minutes of Meeting Held  
January 20, 1988

The Chesapeake Bay Critical Area Commission met at the Department of Agriculture, Annapolis, Maryland. The meeting was called to order by Chairman Solomon Liss with the following Members in attendance:

Russell Blake ✓	Ronald Karasic ✓
Kathryn Langner ✓	Samuel Turner, Sr ✓
Shepard Krech, Jr. ✓	James Gutman ✓
Secretary Lieder of DSP ✓	Victor Butanis ✓
Ronald Adkins ✓	Robert Price ✓
Robert Shoeplein for ✓	William Bostion ✓
Secretary Randall Evans	Secretary Brown of DNR ✓
Ronald Hickernell ✓	Albert Zahniser ✓
Parris Glendening ✓	Wallace Miller ✓
Gail Parker for DOA ✓	Thomas Osborne ✓
Asst. Secretary Cade of DHCD ✓	Samuel Bowling ✓

The Minutes of the Meeting of January 6th were approved as written.

Chairman Liss asked Messrs. Ed Phillips, and Ron Karasic (Panel Chairman) to report on Pocomoke City's Program. Mr. Phillips said that the detailed requests to the City to explain portions of their ordinances, plans, and regulations substantiating the position of the City concerning exclusion, had been received by the panel members. He then asked the City's consultant, Mr. Peter Johnston of Redman/Johnston Associate, to give a presentation. Mr. Johnston said that the City is a mix of development. The City has met the provisions of the Law, and at the time of redevelopment, the criteria will be adhered to to the extent possible.

Chairman Liss reiterated that the Commission needs to be made aware of future development.

Mr. Karasic said that the panel made a site visit of the City. They felt that the waterfront areas and the efforts made by the City to protect the waterfront was impressive. He said that the panel is satisfied with the justification for exclusion given by the City.

A motion was made and seconded to accept the City's request for exclusion from the Critical Area based on the results of the Town's documentation and the report of the panel. All were in favor, 17:0.

Chairman Liss asked Mr. Davis to report on Queen Anne's County's Program. Mr. Davis described the types of changes needed in the Program and presented a copy of the written staff report to each Commission Member.

Mr. Gutman asked if at this time, there was a commitment thoroughly stated, from the County, that these corrections will be properly made. Mr. Davis answered that many of the corrections are clarifications and that the County has agreed to modify their Program to make it consistent with the criteria. Chairman Liss said that the County has 40 days to make the changes. The County has agreed to look at the Commission's suggestions, and to see what they can and cannot do. He further said that the panel generally felt that instead of sending these comments piecemeal to Queen Anne's, that the Commission made a complete list of the objections to the proposed Program. The panel would recommend to the Commission that the Program be sent back to the County with the comments from the staff, and that the staff be instructed to continue to work with Queen Anne's County to make the necessary changes correct the problems.

A motion was made and seconded to return the Program to Queen Anne's County for a 40-day period, in which time the staff will cooperate with them in correcting and supplying those elements that are absent from the Program. All were in favor, 18:0.

Chairman Liss then asked Mr. Davis to report on the Program for Kent County. Mr. Davis recommended that on the basis of the changes made by the County as requested, that the Commission approve the Program.

Mr. Butanis, Panel Chairman, agreed that the Commission adopt Kent Anne's County's Program. A motion was made and seconded to approve the Program for Kent County. All were in favor, 18:0.

Chairman Liss asked Mr. Zachary Krebeck of Redman/Johnston Associates to present for the Town of Havre de Grace. Mr. Krebeck introduced the Mayor, David Craig and Ms. Bonnie Van Olen. Mr. Craig made a brief presentation and Mr. Krebeck showed slides of the Town depicting the various land uses.

Chairman Liss thanked Mr. Krebeck and said that the panel should meet and develop a position of the Town's Program. He mentioned that at the February 3rd. meeting, the Commission will either have to approve or disapprove the Program or return it to the Town for further work.

Chairman Liss asked Ms. Carolyn Watson to give an update on the Regulations for Notification of Project Applications. He reported to the Commission that Ms. Watson is leaving the Commission and will be working for Prince George's County as their Critical Area Coordinator. He commended Ms. Watson for the work that she has done with the Commission, and said that the Department of Planning will be lending Mr. Ren Serey to the Commission Office for a period to take on some of Ms. Watson duties. Ms. Watson said that she has enjoyed working with the Commission and is looking forward to working with Mr. Glendening's staff but, will still be on Commission staff on a part-time basis until all programs have been approved.

Ms. Watson reported that the period for public comment of the Reproposed Regulations that were published in the January 4th edition of the Maryland Register will end on February 5th. If no substantial comments are received by then, and if the Commission chooses to finally adopt the Regulations, they will become effective on or before March 21, 1988.

Chairman Liss asked Dr. Kevin Sullivan to give an update of the Regulations on Development in the Critical Area Resulting From State and Local Agency Programs. Dr. Sullivan said that the Regulations were published in the Maryland Register in April, and as a result of public comment, changes to the Regulations were made and published in October of 1987. The comment period for that is over, and there have been no comments to suggest that further changes need to be made. The Regulations are now ready for the Commission to vote upon to be able to publish them in final form.

A motion was made and seconded to have the Regulations approved and printed in final form. All were in favor, 19:0.

Chairman Liss asked Dr. Taylor to report on three Bills that are pending in the Legislature that affect the Critical Area Commission.

Dr. Taylor said that on January 26th, at 1:00 p.m., before the Economic and Environmental Affairs Committee of the Senate, Senator Malkus' Bill will be heard. On the 27th at 11:00 a.m. before the Environmental Matters Committee of the House will be Delegate McCaffrey's Bill. Delegate Johnson's Bill has not been scheduled. She then explained each of the Bills as follows:

SB-52 - To extend the Critical Area Program to incorporate the entire State of Maryland. This will include not only tidal waters, but non-tidal waters in the Critical Area.

Dr. Taylor said that at this time, the Commission staff's opinion is to not favor the Bill, because of the time schedule under the existing Laws to which the Commission is trying to adhere, and because of the funds that are available in the Governor's budget to continue the implementation of the Program. Another reason for this is that with the Bay agreement that was recently signed by the Governors of Virginia, Pennsylvania, Maryland, the Environmental Protection Agency, the District of Columbia, and the Chesapeake Bay Commission, there are a number of steps being taken to address growth control and land development guidelines. Such a Bill would be too premature.

Chairman Liss then asked for discussion. Mr. Gutman said that he was not inclined to support the Bill and asked what the procedure would be before the Legislature. Chairman Liss requested that the Commission give authority to him and to Dr. Taylor to appear before the Legislature to express the opinion of the Commission.

Mr. Bostian said that perhaps it would be premature for the Commission to reject the Bill. We should be in support of looking into the possibility of regulations along non-tidal rivers that will aid in reducing pollution of the Bay.

Chairman Liss pointed out that because we may reject the Bill at this time, it does not mean that we will reject the idea of expansion of the Critical Area at a future date.

Mr. Bowling said that it would not be practical to take on the job effort that this Bill would produce, at this time.

Mr. Miller said that the Commission should possibly not take a position. Chairman Liss answered that by not taking a position, the Commission is showing support for the Bill.

Mr. Bowling reiterated that there is not enough available talent to take on more work.

Mr. Blake asked if the Commission has ever taken a position on a Bill? Dr. Taylor answered affirmatively, but that this Bill is the first one of its kind this year.

Mr. Zahniser said that the Commission should not oppose the water quality benefits that this Bill might produce, but logistically it would not be prudent to take on the task at this time.

Assistant Secretary Cade said that she felt that there is no appropriate position for the Commission to take.

Mr. Glendening said that the State is at the implementation stage of its Programs. To assign the Commission the task at this time would be unhelpful and reduce the Commission's efficiency.

A motion to oppose Senate Bill 52 was made and seconded. The vote was 8:10 in favor. A motion was made and seconded for the Commission to not take a position. The vote was 12:8 in favor. Chairman Liss said that because no majority vote could be had for either motion, he and Dr. Taylor will inform the Legislature of the various opinions of the Commission.

HB-30 - Compensation for Landowners. This would require the State to compensate certain persons for the full amount of devaluation of the person's real property if and when it became down-zoned in the Critical Area.

Dr. Taylor said that the Commission had previously opposed the Bill the last two years was introduced. She said that the staff recommends that the Commission continue to oppose the Bill because it is not known how many properties could be subject to downzoning, and if compensation were paid, it is not known how much additional funds would be used from the State Treasury.

A motion was made and seconded to oppose the House Bill 30. The vote was 14:2 in favor.

HB-130 - To alter the length of the terms of the office of certain members of the Commission. The Commission Members who serve for four years will serve for three years. Those that serve for three years will continue to serve for three years. There was no suggestion for those who serve for two years because Delegate McCaffrey was not aware that a two-year term exists.

Dr. Taylor said that the staff does not support the Bill because the four-year terms have given the Commission the ability to retain an institutional memory of the very beginnings of the Commission. She pointed out that a Commission Member has the option of petitioning to the Governor for no continuance of service.

Mr. Bostian said that he was in agreement that having an institutional memory is a necessary component for the Commission.

A motion was made and seconded to oppose House Bill 130. The vote was 16:0 in favor with 1 abstention.

Chairman Liss then introduced the issue of the "presence of sewer and water" policy. He said that there was a meeting of the subcommittee, and based on the previous advice from the Attorney General, a conclusion was reached as to how the matter should be handled. He then asked Mr. Deming, Assistant Attorney General, to explain the procedure for determining the issues of whether sewer and water are available in order to qualify under the LDA provision. Mr. Deming said that the subcommittee on "Sewer and Water" had devised a procedure for the Commission to follow.

Chairman Liss said that it needs to be made clear that the Commission will not get involved in a dispute between an individual and the local jurisdiction as to how a particular piece of property should be mapped. He said however, that when there is a dispute between a jurisdiction and the Commission on the mapping of a property, a panel of the Commission will be appointed to hold a hearing on the matter at which the jurisdiction will present facts pertinent to the case in question. The panel will make a report to the Commission for the full Commission to decide upon. Every dispute has to be decided upon on a case-by-case basis.

Secretary Lieder asked what the procedure would be if the Commission does not approve a jurisdiction's Program? Mr. Deming answered that the Commission must promulgate a Program for that jurisdiction, and that Commission-promulgated Program is to be in effect, until such time as the jurisdiction comes forward with a Program that the Commission will approve.

Mr. Osborne asked if this process will be the standard procedure for all questions regarding the criteria that are unclear? Chairman Liss answered affirmatively.

Chairman Liss asked that the Commission ponder this approach, and it will be further discussed at the next Commission meeting.

Chairman Liss then asked Mr. Price to present the policy of the Growth Allocation Subcommittee. The policy options were distributed, summarized briefly, and Chairman Liss asked each Member to read the policy for the next meeting in order for a vote to be taken.

The panels for upcoming Commission hearings were chosen as follows:

Charles Co.	James Gutman, Ch., Connie Lieder, Bob Schoeplein, Skip Zahniser, Parris Glendening
Dorchester Co.	Bill Bostian, Ch., Solomon Liss, Ron Hickernell, Tom Jarvis, Steele Phillips
North Beach	Ardath Cade, Ch., Sam Bowling, Torrey Brown, J. Frank Raley, Bob Perciasepe
Talbot Co.	Ron Karasic, Shepard Krech, Wallace Miller, Kay Langner, Ron Hickernell
Worcester Co.	Victor Butanis, Russell Blake, Ron Adkins, Bill Bostian, Bob Price

UNDER NEW BUSINESS

Dr. Taylor then informed the Commission that Caroline Co., and Federalsburg, should be in to the Commission this day. Dorchester Co. informally submitted a Program (to be completed after they hold their hearing), Chestertown will be submitted this week, St. Mary's Co. is now complete, Somerset Co. has informally submitted their Program except for the maps, Crisfield and Princess Anne have been submitted, Talbot Co.'s Program has been submitted, and Wicomico and Worcester Cos. have informally submitted their Programs.

Mr. Gutman asked which Program is the Commission staff uncertain of? Dr. Taylor answered Wicomico.

There being no further business, the meeting was adjourned.

Carolyn 952-3745

Increase  
Septic System  
growth allocation

Critical Area Commission  
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- Dorchester Co. Bill Bostian, Ch. Solomon Liss, Ron Hickernell, Tom Jarvis, Steele Phillips
- North Beach Ardath Cade, Ch., Sam Bowling, Torrey Brown, J. Frank Raley, Bob Perciasepe
- Talbot Co. Ron Karasic, Shepard Krech, Wallace Miller, Kay Langner, Ron Hickernell
- Worcester Co. Victor Butanis, Russell Blake, Ron Adkins, Bill Bostian, Bob Price

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Mr. Gutman asked which Program is the Commission staff uncertain of? Dr. Taylor answered Wicomico.

There being no further business, the meeting was adjourned.

Judge -  
I need to talk  
w/ you re:  
Charles Co. &  
Kent Co.

*Commiss  
mtg.*



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City of Crisfield  
Mary Roe Walkup  
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Albert W. Zahniser  
Calvert Co.

February 10, 1988

Dear Commission Member:

The February 17th Critical Area Commission Meeting will be held at the Department of Agriculture, 50 Harry S. Truman Parkway, Annapolis, from 1:00 - 6:00 p.m. The Agenda for the 17th and the Minutes from the February 3rd Meeting are enclosed.

Again, we will have several Programs upon which to vote, so I urge you to attend.

Sincerely,

*Solomon Liss*  
Solomon Liss  
Chairman

SL/jjd

Enclosures

CABINET MEMBERS

Torrey C. Brown, M.D.  
Natural Resources  
Wayne A. Cawley, Jr.  
Agriculture  
William Eichbaum  
Health and Mental Hygiene  
Ardath Cade  
Economic and Community Development  
Constance Lieder  
Planning

CHESAPEAKE BAY CRITICAL AREA COMMISSION

Department of Agriculture  
50 Harry S. Truman Parkway  
Annapolis, Maryland

February 17, 1988

1:00 - 6:00 p.m.

1:00 - 1:15*	Approval of Minutes of February 3, 1988	Solomon Liss Chairman
1:15 - 1:45*	Review of Panel Process, Staff Review, Commission Vote	Solomon Liss Chairman
1:45 - 2:15*	Vote of the Programs for Betterton, Millington, Easton, Oxford	Kevin Sullivan/ Charles Davis/ Panel/Consultants
2:15 - 3:00*	Presentation and Discussion of Anne Arundel Co. Program	County Officials
3:00 - 3:30*	Presentation and Discussion of Leonardtown's Program	Consultant/Town Officials
3:30 - 3:45	Break	
3:45 - 4:15	Presentation and Discussion of Calvert Co. Program	County Officials
4:15 - 4:45	Presentation and Discussion of Annapolis City Program	City Officials
4:45 - 5:00	Subcommittee - Project Notification Regulations	Sarah Taylor
5:00 - 5:15	New Business	Solomon Liss Chairman
	Appoint Panels for: Charles County Hillsboro Indian Head St. Mary's County	
	Reaffirm Panel for: Chesapeake City	
	Old Business	

Next Commission Meeting: March 2nd. Department of Agriculture.  
The Meeting will end early so that Panel  
Members can attend the Wicomico Co. Hearing  
that evening.

CHESAPEAKE BAY CRITICAL AREA COMMISSION

Minutes of Meeting Held  
February 3, 1988

The Chesapeake Bay Critical Area Commission met at the Department of Agriculture, Annapolis, Maryland. The meeting was called to order by Chairman Solomon Liss with the following Members in attendance:

Asst. Secretary Cade of DHCD  
Secretary Brown of DNR  
Victor Butanis  
Ronald Adkins  
Robert Price  
Samuel Bowling  
Ronald Hickernell  
Wallace Miller  
Secretary Evans of DEED  
Gail Parker for  
Secretary Cawley

Robert Perciasepe for DOE  
William Bostian  
Samuel Turner, Sr.  
Kathryn Langner  
Ronald Karassic  
Shepard Krech, Jr.  
J. Frank Raley, Jr.  
James E. Gutman  
Albert W. Zahniser  
Thomas Osborne  
Russell Blake

The Minutes of the January 20th Meeting were approved as written.

Chairman Liss introduced Ms. Carolyn Watson's temporary replacement, Mr. Ren Serey from the Department of State Planning.

Chairman Liss reported that a number of changes were suggested by the staff for the Program of Rock Hall, and asked Mr. Davis to explain and summarize those suggestions. Mr. Davis said that the Programs for Towns of Rock Hall, Betterton, and Millington were banded together as a group to be reviewed by the staff, because these Programs had similar elements and used the same Consultant. Mr. Davis said that the Town of Rock Hall held a public hearing on January 26 for public comment on the revisions to the Program. He has reviewed the revised text, and said that it reflects all of the proposed changes that were requested. The Town has resubmitted the Program, and the revisions are adequate for approval. The other Town Programs will be reviewed shortly.

Chairman Liss asked if the staff were satisfied with the changes that had been made? Mr. Davis answered affirmatively.

A motion was made and seconded to approve the Program of the Town of Rock Hall. All were in favor, 16:0.

Chairman Liss asked Mr. Pollock to give a report on the status of Baltimore County's Program. Mr. Pollock said that the Commission had required the County to make changes to their Program per staff comments. Included among the requirements was that the County should provide a technical basis for expanding the 1,000' boundary in the Back River Neck area. Those required changes have been made and a public hearing was held in January. He said that in regard to the one outstanding question of whether the Director of the Department of Environment of Baltimore County had the ability to waive certain restrictions in Habitat Protection Areas, the staff has offered some language changes to that provision, and he asked Chairman Liss to report on what was suggested.

Chairman Liss said that the staff and Attorney General felt that the Department of Environment of Baltimore County should not be entitled to waive any requirements with respect to Habitat Protection without having the advice of the Forest, Park and Wildlife Service to consider or without giving notice of the Department's proposals and giving the public an opportunity to be heard. The Commission staff has submitted an amendment to the Section 22-215 designated "Habitat Protection Areas", suggesting that Baltimore County amend its Program to include a new subsection "B": "providing that prior to any such certification of the Department of Environment, the Director shall gain and consider the comments of FPWS and shall hold at least one public hearing, before which the matter is presented and discussed". He said that the County has been provided with this proposal and has indicated that an adoption of the amendment will be made.

Mr. Gutman asked how the Commission will be certain that the procedures are being followed? Chairman Liss answered that the Commission, through its Chairman and generally as a Commission, has a right to involve itself as a party in any proceeding that is taking place with respect to the enforcement of the criteria under the Critical Area Law. If a public hearing is to take place, the Commission will be informed and it would be the responsibility of the Commission, if it objected to what is proposed to be done, to let the Department of the Environment know that the Commission would desire to present its case.

Mr. Gutman asked if, in the mapping of those areas that appear to be either totally wooded or totally in agriculture, whether those maps show RCA or whether, because of other language in the criteria, some of those areas have been placed in LDA? Mr. Pollock answered that for the most part, those areas that are held in agriculture are reflected as such, but there are some areas that are LDA that could otherwise qualify for RCA, particularly those areas that would be above the Urban Rural

Demarcation Line. Part of what the County is proposing is to preserve those areas that are below the Urban Rural Demarcation Line, that are essentially dominated by natural resources, and to be liberal in allowing growth and development above that line in areas that are already built-up.

A motion was made and seconded to approve Baltimore County's Program subject to the enactment of Section 22-215 B. All were in favor, 19:0.

Chairman Liss introduced the matter of the justification for extension of the Critical Area Boundary for Baltimore County. Mr. Kaplow, representing the owners of the Shapiro property, was introduced. Mr. Kaplow said that the decision of Baltimore County to extend the boundary was made with a lack of study and public comment, and that the County's rationale or justification had been developed after the fact.

Chairman Liss asked if there was an action pending in the Circuit Court? Mr. Kaplow answered that there is an action pending, but a complaint has yet to be filed. He said that his client is concerned about his property rights and that it is possible that a complaint will be filed.

Chairman Liss said if that Baltimore County and the County Council held hearings, and as a result of those hearings, decided that it wanted to extend its line, and then the County asked the Commission to approve it, and the Commission asked the County to justify their request, should not that be satisfactory?

Mr. Kaplow said that because there was no rationale presented at the time of the County's public hearing, there was no opportunity for comment on the issue of the County's rationale to extend the boundary. What his clients were asking is for there to be a full, comprehensive study of the issue before approval of the Program.

Mr. Gutman said that he does not feel it to be correct for the Commission to not encourage expansion of the Critical Area boundary for Habitat Protection Areas.

Mr. Miller said that it seems to be a conflict between a jurisdiction and its populus, and that the Commission should not involve itself in the conflict.

Chairman Liss answered that the problem is that the jurisdiction has asked for Commission approval. If there were a case pending in the court, then the Commission should not enter the conflict.

Mr. Epstein said that, under the Critical Area Law, §8-1807, the Commission has the authority at this time to make a decision concerning extension of the boundary.

Mr. Timothy Dugan of the Baltimore County Planning Office, said that as of yet, no Habitat Protection Areas have been designated, only identified in the County Program. On the matter of whether there was sufficient opportunity for public comment, he said that he felt the County did give sufficient opportunity, however, there would still be at least one more public hearing.

Mr. Glendening said that if the County has gone through the process, and has determined that it wishes to do more than is required by Law, and if the criteria states that the Commission is to encourage this, then the Commission should commend the County for doing so. If there is a procedural flaw, then there is opportunity for the public to take the matter to court.

Mr. Kaplow said that the Commission would be remiss in accepting that Baltimore County has met the requirements for public notice as stated in its own regulations, if the County has not done so. He said that since no public hearing had been held concerning designation of the Habitat Protection Areas, the procedure had not been fully honored.

Mr. Gutman said that as he recalled, when discussion of the Program was last presented, the Commission stated that it wanted to see justification for what was done, and to date, there was no comment that the justification was inadequate. The issue of whether or not the County gave sufficient notice is not an issue for the Commission to decide upon.

Secretary Evans asked if it was the opinion of counsel that Baltimore County did comply with the regulations of the Commission regarding adequate notice? Mr. Epstein answered affirmatively, since it was his understanding of the County Program that no HPA designation had yet been made, and that hearings would be required when, in the future, this occurred.

A motion was made and seconded to approve Baltimore County's plan and the rationale for extension of the Critical Area Boundary. The vote was 19:0, with one abstention.

Chairman Liss asked Dr. Kevin Sullivan to report on Cecil County and the Towns of Perryville, Port Deposit, North East, and Charlestown. Dr. Sullivan said that the Programs are basically prepared by the same group of consultants and that in general, the language is similar. In addition, some of the language is similar to Town Programs that the Commission has previously seen and voted upon. There are mapping issues in North East, and Port Deposit. There was a threatened plant species in Perryville that was not shown in the Program. A request for a Buffer exemption was made in Port Deposit without any of the rules that the Commission insisted be in an exemption request. He said that the staff is proposing that the Commission return the Programs with their comments. The mapping issues have arisen because the staff position is that mapping is based upon land-use that existed on a given parcel as of December 1, 1985, notwithstanding the presence of sewer and water on or adjacent to that parcel. That is, the land must be in low or moderate development, and have water and/or sewer per the criteria. Based on that position, there are several parcels that the staff would like to discuss with the Towns and see if the circumstances that the staff has observed are present.

Dr. Sullivan noted that the staff is making a conservative interpretation of the criteria based on the intent when the language was drafted.

Mr. Michael Pugh, Director of Cecil County Planning Department, asked if the staff report is in the nature of the staff entering into negotiations with the local jurisdictions concerning potential problems that would be raised?

Chairman Liss answered that the staff will call to the Consultants' and jurisdictions' attention certain problems that the submitted Programs have raised, and discuss these problems with the Consultant and jurisdiction and suggest certain changes that should be made.

The procedure for returning a Program to a jurisdiction was then discussed. A motion was made and seconded that the Programs of the Towns of Cecil County be referred back to them together with the suggested changes and directions of the staff, and that the matter be extended for the 40-day period permitted by the statute. The local jurisdictions will proceed to work on the suggestions, consulting with staff, and then resubmit the Programs for approval. The understanding is that if there are any issues which cannot be resolved between the Commission staff and the jurisdiction, they should be brought back before the Commission for final disposition.

Mr. Epstein added that if there are any substantial changes made to the Program or ordinances that are submitted, then the local jurisdiction has to hold another public hearing before resubmittal to the Commission, according to the Law at §8-1809(d). All were in favor, 20:0.

Dr. Sullivan continued with a report on Cecil County. He said that a principle issue in the Program is Growth Allocation because the County is proposing a method of allocating growth and counting against, about which the Commission has not yet adopted a policy. There are no specific comments on their growth allocation proposal until the Commission resolves the matter. Another issue, in regard to mapping rules, is that the County has assumed that the presence of sewer and water in and of itself will designate a parcel as LDA.

A motion was made and seconded that the Cecil County Program be referred back to County together with the suggested changes and directions of the staff, and that the matter be extended for the forty-day period permitted by the statute. The staff and the representatives of the County will proceed to discuss the suggestions and then the County will resubmit the Program for approval. The understanding is that if there are any issues which cannot be resolved between the Commission staff and the County, they will be brought before the Commission for disposition. All were in favor, 20:0.

Mr. Pollock then gave a report on Harford County. He said that he has discussed the changes that need to be made in the Program with the County's Planning Office. The Panel members had an opportunity to site-visit one of the more controversial areas in the County, the Old Trails property, and hold discussion regarding the problem. He then asked Mr. Perciasepe, Panel Chairman, to make a report.

Mr. Perciasepe said that the panel had met with the County's Planning Department. A major issue in the Program regards the Old Trails/Lee National property. "Old Trails" is a term used to refer to an area of approximately 50 acres, which contains two parcels known as Old Trails/Lee National. The issue is that the County's Program identifies the area in which these parcels are contained, as IDA. During the site-visit, the Panel discovered that the area is totally forested along the water, with varying slopes. It is between existing development and the water, not surrounded by existing development. The Panel believes that the area is distinctly separate from existing development, and as such, the IDA designation cannot be supported. However, the area is served by sewer. He said that the Panel recommends the County

to change the designation of that property to RCA or perhaps LDA, if an LDA designation could be justified by the County.

Chairman Liss asked if it were correct to say that if the designation could be changed to LDA, then it would not be charged against their Growth Allocation? Mr. Perciasepe answered that that would be correct.

Mr. Howard Alderman, the Attorney for the Old Trails partnership which owns the Old Trails property, spoke about the property and the present designation. His client's position is that their property was always planned and zoned as an intense development portion of Joppatown and that is the way it should be designated in the County Program.

Mr. Hickernell asked why the Commission is concerned with this level of detail? Mr. Perciasepe answered that this issue is of such high interest, as shown at the public hearing, that the Panel would be remiss not to be concerned with it. One of the things to be determined as a Commission is whether the local jurisdictions have properly followed the criteria in mapping.

A motion was made and seconded that in accordance with Section 8-1809(d)(3), the Commission notify Harford County of the specific changes that must be made in order for its proposed Program to be approved. These changes are contained in the staff report that have been recommended by the Panel and shall be furnished to the jurisdiction. The Program, with the changed Program documents and ordinances, shall be submitted within 40 days of the date of notification by the Commission, and after the County has held one additional public hearing concerning these changes. All were in favor, 20:0.

Chairman Liss asked Dr. Taylor to report on Chesapeake Beach. Dr. Taylor said that the 90-day period is finished. Staff comments have been sent to the Town. The comments regarded inconsistencies in the Program, the need for revisions, and some major mapping issues, reflecting sewer availability and compacity within the Town. Also, implementation ordinances were lacking. They had unofficially been submitted, but no local hearings had been held on them. The staff has received additional State Agency comments which have been combined with the staff comments and provided to the Panel. The Town has asked if the Program could be returned to the Town so that they could have the additional days to review the staff and State Agency comments, and to review the ordinances that the Town has not yet seen.

A motion was made and seconded that the Commission return the Program to Chesapeake Beach. All were in favor, 20:0.

Chairman Liss then reported on the Growth Allocation policy, and the proposals to be regarded. Changes to the policy were suggested as follows:

Add to the fourth line of page 5, "the entire parcel not in tidal wetlands counting against"...

Add to the first sentence of the last paragraph of page 5, "The remainder of the parcel, including any tidal wetlands, would not"...

Add No.3 to page 6 as

3. In those jurisdictions listed in Section 8-1808.1(B)(5) of the Critical Area Law as amended, the adjacency requirements of guidelines 1. and 2. above may be waived by the Commission provided that the jurisdiction can demonstrate that it would not be practical to locate Growth Allocation areas adjacent to existing LDA's or IDAs.

A motion was made and seconded to accept the revised Guidelines for the Counting of Growth Allocation as prepared by the staff, and as amended, to be circulated to the Commission upon their completion. All were in favor, 20:0.

Mr. Pollock reported on the status of the Program for Havre de Grace. He said that a staff report has been given to the Panel and the Panel has had an initial meeting on the City's Program prior to the Commission's public hearing on November 30th. He said that he will be meeting with the Panel to review the shoreline to see if justification has been adequately made for the buffer exemption that the City is proposing.

A motion was made and seconded to refer the Program back to the Town of Havre de Grace for revisions to be made in accordance with the staff and Commission recommendations, for the 40-day period. The vote was 18:0.

Chairman Liss asked Ms. Carolyn Watson to report on the Program for the Town of Elkton. Ms. Watson said that detailed staff comments were sent to the Town on January 7, 1988. The Program lacked ordinances, and there were mapping issues to be resolved. To date, there have been no comments received back from the Town on these comments, as the Town's Attorney is still preparing the ordinances, which the Town has not yet seen.

A motion was made and seconded to return the Program to Elkton for the 40-day period, for revisions to be made in accordance with comments already furnished. The vote was 18:0.

Chairman Liss then asked Mr. Ed Phillips to report on the Program for the Town of Cambridge. Mr. Phillips said that the Town has made a request for an exclusion of the IDA from the Critical Area Program. The Town has not made its presentation to the Panel as of yet, so that the Panel cannot make a recommendation at this time. The matter of the exclusion should be voted upon separately from the Program itself, as they are two different issues.

A motion was made and seconded that the Program be returned to the Town of Cambridge for the 40-day period, to give the Panel and staff time to confer with the Town. All were in favor, 19:0.

Chairman Liss then appointed Panels for the next round of hearings as follows:

Crisfield - William Bostian, Ron Adkins, Shepard Krech, Ronald Hickernell, and Ronald Karasic

Salisbury - William Bostian, Torrey Brown, Shepard Krech, Robert Schoeplein, Thomas Osborne

Wicomico County - Victor Butanis, Shepard Krech, Wallace Miller, G. Steele Phillips, Russell Blake

There being no further business, the meeting was adjourned.