

Committee Meetings & Correspondence May 1988

MSA S 1832.45



Commission  
Mtg  
4/20/88

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  
974-2418 or 974-2426

SARAH J. TAYLOR, PhD  
EXECUTIVE DIRECTOR

COMMISSIONERS

Thomas Osborne  
Anne Arundel Co.

James E. Gutman  
Anne Arundel Co.

Ronald Karasic  
Baltimore City

Albert W. Zahniser  
Calvert Co.

Thomas Jarvis  
Caroline Co.

Kathryn D. Langner  
Cecil Co.

Samuel Y. Bowling  
Charles Co.

G. Steele Phillips  
Dorchester Co.

Victor K. Butanis  
Harford Co.

Wallace D. Miller  
Kent Co.

Parris Glendening  
Prince George's Co.

Robert R. Price, Jr.  
Queen Anne's Co.

J. Frank Raley, Jr.  
St. Mary's Co.

Ronald D. Adkins  
Somerset Co.

Shepard Krech, Jr.  
Talbot Co.

Samuel E. Turner, Sr.  
Talbot Co.

William J. Bostian  
Wicomico Co.

Russell Blake  
Worcester Co.

April 27, 1988

Dear Commission Member:

The next meeting of the Chesapeake Bay Critical Area Commission is scheduled for May 4, 1988 from 1:00 to 6:30 p.m., at the Department of Agriculture Building, 50 Harry S. Truman Parkway, Annapolis.

An agenda and the Minutes of the April 20th Meeting are attached. As you can see, there are a number of votes to be taken at the May 4th Meeting, so I urge all of you to attend and to please be prompt.

Sincerely,

Solomon Liss  
Chairman

SL/jjd

Attachments

CABINET MEMBERS

Wayne A. Cawley, Jr.  
Agriculture

J. Randall Evans  
Employment and Economic Development

Martin Walsh, Jr.  
Environment

Ardath Cade  
Housing and Community Development

Torrey Brown  
Natural Resources

Constance Lieder  
Planning

CHESAPEAKE BAY CRITICAL AREA COMMISSION

AGENDA

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

May 4, 1988

1:00 - 6:30 p.m.

- |                   |   |                                   |
|-------------------|---|-----------------------------------|
| 1:00 - 1:10       | Approval of Minutes of<br>April 20, 1988  | Solomon Liss<br>Chairman          |
| 1:10 - 1:45       | Vote on Cecil County<br>Program   | Kevin Sullivan/<br>Panel          |
| 1:45 - 2:15       | Discussion on Perryville,<br>Port Deposit, Charlestown,<br>and North East                     | Kevin Sullivan                    |
| 2:15 - 2:40       | Vote on Dorchester Co.<br>and Towns of Church Creek,<br>Brookview, Galestown, and<br>Eldorado | Ed Phillips/<br>Panel             |
| 2:40 - 2:50       | Vote on Anne Arundel Co.<br>(Possibly)  | Marcus Pollock/<br>Panel/         |
| 2:50 - 3:00       | Vote on State Projects:<br>Smallwood State Park<br>Somers Cove Marina                         | Sarah Taylor/<br>Subcommittee     |
| 3:00 - 3:15       | Break   |                                   |
| Presentations of: |   |                                   |
| 3:15 - 3:45       | Somerset County   | Local Governments/<br>Consultants |
| 3:45 - 4:15       | Crisfield   | Local Governments/<br>Consultants |
| 4:15 - 4:45       | Princess Anne   | Local Governments/<br>Consultants |
| 4:45 - 5:15       | Wicomico County   | Local Governments/<br>Consultants |
| 5:15 - 5:45       | Mardella Springs<br>Sharptown   | Local Governments/<br>Consultants |
| 5:45 - 6:15       | Salisbury   | Local Governments/<br>Consultants |

6:15 - 6:30 New Business:  
Hearings for  
Talbot Co., Caroline Co.,  
Denton, Federalsburg

Sarah Taylor

Old Business

Solomon Liss

Next Meeting: May 18, 1988 at the Department of Agriculture  
Building, 1:00 - 6:00 p.m.

CHESAPEAKE BAY CRITICAL AREA COMMISSION

Minutes of Meeting Held  
April 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:

Thomas Jarvis  
Robert Price, Jr.  
Ronald Hickernell  
William Bostian  
J. Frank Raley, Jr.  
G. Steele Phillips  
James E. Gutman  
Parris Glendening  
Louise Lawrence for  
Secretary Cawley  
Robert Perciasepe of DOE  
Secretary Lieder of DSP

Thomas Osborne  
Samuel Bowling  
Shepard Krech, Jr.  
Wallace Miller  
Victor Butanis  
Ronald Karasic  
ALbert W. Zahniser  
Kathryn Langner  
Robert Schoeplein for  
Secretary Evans  
Secretary Brown of DNR

The Minutes of the Meeting of April 6 were approved as written with the insertion of Robert Schoeplein in attendance for Secretary Randall Evans.

Chairman Liss asked Dr. Sullivan to report on the status of Easton's Program. Dr. Sullivan said that he had met with the Town Attorney last week to discuss the changes that the staff requested the Town to make. The changes have been shown to the Mayor and the City Manager and a hearing on these changes is to be scheduled for the 16th of May. A hearing on the ordinances will be scheduled for late May.

Chairman Liss asked Dr. Lewis Waters to report on the Worcester County Program. Dr. Waters reported that the Program was formally submitted on March 28th, and a joint hearing was held on February 2nd. He said that the two strongest elements of the Program are the Forest and Woodlands Protection and Agrigricultural elements. These need minor modifications. He distributed to the Commission, copies of the Worcester County Program Review document, and explained that the report incorporates comments from Assistant Attorney General Epstein, State Planning, Department of Natural Resources and Department of Agriculture. Dr. Waters said that at this point, he and the Panel felt that the Program has now been thoroughly reviewed. The suggestion is that the Critical Area staff work with the County planners to institute language in the Program that will bring it into conformance with the criteria. Dr. Waters then discussed the mapping issues that need to be adjusted and the County's Growth Allocation process.

A motion was made and seconded that the Commission believes that the Worcester County Program is a satisfactory one, but for final approval, pursuant to Section 8-1809(d)(2) of the Critical Area Law, the Commission requests Worcester County to make the changes recommended by the staff report of April 20, 1988, and endorsed by the panel. Pursuant to Section 8-1809(d)(3), such changed Program must be resubmitted to the Commission within 40 days, and only after at least one additional public hearing has been held, concerning the changes made to the originally submitted Program, relevant ordinances, and plans. The vote was 17:0 in favor.

Chairman Liss then reported on the Project Notification Regulations, saying that most of those groups concerned with the Regulations have now been satisfied and that they await a vote by the Commission Members to be approved and made final. The vote was 17:0 in favor.

Chairman Liss asked Dr. Kevin Sullivan to report on Cecil County. Dr. Sullivan said that several changes have been made to the Program reflecting new language to address the changes that the Commission staff had recommended. The mapping issues had been presented to the panel. The County would like to schedule a public hearing on May 3rd, and if there are no forthcoming comments from the public that would substantially alter the Program, then the changed Program would be ready for Commission vote on May 4th. An implementation hearing would be scheduled for later in May. Dr. Sullivan then itemized the outstanding issues of the Program, that the Commission staff had presented to the County, and discussed how the County had responded to these issues.

Chairman Liss said that there is still a disagreement between the County and the Panel concerning the process that the County is using to count their Growth Allocation, and asked Secretary Lieder, Panel Chairman, to expatiate on this matter.

Mr. Mike Pugh, Cecil County Planning Director said that an explanation of the County's proposal should be made, and asked Mr. Peter Johnston, County Consultant, and Mr. John Murphy, County Attorney, to do so. A discussion then ensued regarding the County's approach. It was explained that the major difference between the County's proposal for debiting Growth Allocation and the Commission's Guidelines is that the County wishes to include lands in individually owned lots and in the Buffer, as being eligible for "not counting" against the Allocation.

Chairman Liss summarized the discussion by stating that it was his sense of the Commission that the Commission's Guidelines should be observed, and that the matter would be subject to final Commission vote at the May 4th Meeting. Mr. Pugh indicated that the County would reassess its position prior to that time.

Chairman Liss asked Mr. Ren Serey to report on the status of the Program for St. Mary's County. Mr. Serey said that the Commission staff has completed its review. He said that the Program does not provide sufficient detail in most required elements. Regarding the maps, there are several areas where the LDA designation should be RCA. The County will be submitting a new mapping system, which significantly increase LDA designations. Staff comments indicate where additional information is necessary and have been provided to the County. The Panel informed the County that the Commission will have to vote on the Program as it now exists.

A discussion ensued regarding the County's use of grandfathering. Chairman Liss said that in sufficient information has been given to the Commission to make a final decision on this issue, since the Program seemed so flawed.

A motion was made and seconded that before final approval to any plan of St. Mary's County is given, that pursuant to Section 8-1809(d)(2) of the Critical Area Law, the Commission requests St. Mary's County to make the changes recommended by the staff report of April 20th, 1988, and endorsed by the panel. Pursuant to Section 8-1809(d)(3), such changed Program must be resubmitted to the Commission within 40 days, together with the updated maps of the area, and only after at least one additional public hearing has been held concerning the changes made to the originally submitted Program, relevant ordinances, and plans. The vote was 20:0 in favor.

Chairman Liss then asked Mr. Davis to report on the status of the Programs for Caroline County, Denton, and Federalsburg. Mr. Charles Davis said that the Commission staff has not yet reviewed the Program, but introduced Mr. William Kirwin, of William Kirwin, Inc., to make the presentation and explain the processes of the Programs.

Mr. Kirwin said that the Program is a document containing three elements: 1) primary land-uses by description, 2) zoned density requirements and coverage, and natural resources protection plans, and 3) the review mechanism to allow the County to develop a review agency to determine whether a development proposal in the Critical Area is appropriate, and whether it will adversely affect the environment. He said that two zoning

districts have been established, that of Limited Development and Resource Conservation, as there are no Intensely Developed Areas in Caroline County. He then gave a thorough explanation the process for development of the Program and presented the maps and explained the mapping process used for Caroline County, Denton, and Federalsburg.

In summary, Mr. Kirwin stated that the Programs for the County and both Towns have been submitted to the Commission and a public hearing for the County and Towns has been held.

Chairman Liss asked Mr. Charles Davis to give a status report on Queen Anne's County. Mr. Davis reported that during the last two weeks, he has met with the planning staff and consultants to finish examining the Program and bring the wording into compliance with the criteria. He briefly described the remaining outstanding issues and how they have since been resolved. At present, Mr. Davis said that the Program is in fairly good order, but that it is still being re-worked. Mr. Johnston added that May 10th had been tentatively scheduled for a hearing on the changes.

Dr. Krech asked what is the status of the 1du/5 acre density issue? Mr. Johnston answered that in the RCA, the density is 1du/20 acres.(?)

Mr. Price asked if it is the intent of the County that in order to obtain any Growth Allocation, they must use a development envelope approach.

Mr. Johnston answered affirmatively, that they must do a performance zoning.

#### UNDER OLD BUSINESS

Mr. Glendening reported that as part of the Patuxent River Day celebration, the Commission was invited to the dedication of the Chesapeake Bay Critical Area Driving Tour.

#### UNDER NEW BUSINESS

Mr. Karasic announced that Mr. Victor Butanis has been nominated as County Solicitor for Harford County.

There being no further business, the meeting was adjourned.



5/14/88  
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JUDGE SOLOMON LISS  
CHAIRMAN

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**CHESAPEAKE BAY CRITICAL AREAS COMMISSION**  
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Torrey Brown  
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Constance Lieder  
Planning

May 12, 1988

Dear Commission Member:

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An Agenda and the Minutes of the May 4th Meeting are attached. As you can see, a number of votes will be taken at the Meeting, so I urge all of you to attend.

Sincerely,

Solomon Liss  
Chairman

SL/jjd

Attachments

CHESAPEAKE BAY CRITICAL AREA COMMISSION

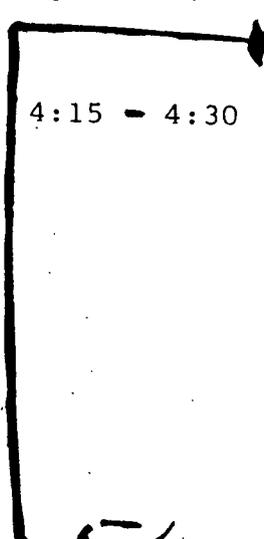
AGENDA

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

May 4, 1988

1:00 - 4:30 p.m.

- 1:00 - 1:10 Approval of Minutes of May 4, 1988 Solomon Liss  
Chairman
- 1:10 - 1:30 Vote on Anne Arundel Co. Marcus Pollock/  
Panel  
Comments on Havre de Grace  
and Harford Co.
- 1:30 - 2:15 *Discussion*  
~~Vote~~ on Chestertown Charles Davis/  
Vote on Queen Anne's Co. Panel
- 2:15 - 3:00 Vote on Cecil Co. (*Motion*) Kevin Sullivan/  
Vote on Easton Panel  
Vote on Perryville,  
North East, Port Deposit,  
Charlestown (Perhaps)  
*Vote on Chesapeake City*
- 3:00 - 3:15 Break
- 3:15 - 3:30 *Status*  
~~Vote~~ on Chesapeake Beach - Ren Serey/Panel  
*John Willis - Weinberg - Green*
- 3:30 - 3:45 ~~Vote on Chesapeake Beach~~  
~~John Willis - Weinberg - Green~~  
Ed Phillips/  
Panel
- 3:45 - 4:15 Presentation of St. Mary's *Ford Deane, former*  
County ~~Frank Corfee,~~ *Co.*  
*Some time in July 1988.* *Commissioner.*  
*St. Mary's Co. general program.*  
New Business Consultants
- 4:15 - 4:30 *Lapidum Boat Ramp*  
*Susq State Park*  
Solomon Liss  
Chairman  
Old Business: Solomon Liss  
Langford Farms: Chairman/Lee  
Talbot Co. Epstein



*Summarized the criteria, grandfathering  
& growth allocation.*  
*- Contestants own ability to evaluate a  
project and stop a project if it has  
all of the permits.*

CHESAPEAKE BAY CRITICAL AREA COMMISSION

Minutes of Meeting Held  
May 4, 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:

William Bostian	Samuel Bowling
G. Steele Phillips	Ronald Adkins
Albert Zahniser	J. Frank Raley, Jr.
Kathryn Langner	Wallace Miller
Robert Price, Jr.	James E. Gutman
Ronald Karasic	Victor Butanis
Shepard Krech, Jr.	Russell Blake
Parris Glendening	Ronald Hickernell
Secretary Brown of DNR	Robert Schoeplein for
Deputy Secretary Cade of DHCD	Secretary Evans of DEED
Debra Weller for	Secretary Lieder of DSP
Robert Perciasepe	

The Minutes of the Meeting of April 20, 1988, were approved as written.

Chairman Liss asked Mr. Ed Phillips to report on the Program of Dorchester County. Mr. Phillips said that the Panel has met twice and discussed the primary difficulty with the Program, that being the mapping of LDAs. Also, the growth allocation deductions were not included. He said that the Program is divided into two sections. The first is the document itself consisting of mapping criteria, etc., and the second section is the implementation of the program containing modifications to the zoning ordinances, subdivision ordinances, stormwater, erosion and sediment control ordinances, etc. It also contains two new ordinance sections on forestry and agriculture.

Mr. Phillips said that in general, the Program is a good one. The Panel has reviewed the Program and made recommendations. He said that at the last meeting with the County, the members of the County's Critical Area Task Force were also in attendance. He asked Mr. Bostian, Panel Chairman, to make the Panel report.

Mr. Bostian said that a representative from the Soil Conservation Service had remarked that there was concern because all farms in Dorchester County could not have a Soil and Water Conservation Plan implemented within five years. Chairman Liss explained that this was already known, and that no penalties will be forthcoming to the County.

A motion was made and seconded that in general, the Commission believes the local Program for Dorchester County to be a good one, but for final approval, pursuant to Section 8-1809(d)(2) of the Critical Area Law, the Commission requests Dorchester County to make the changes recommended by the staff report of May 4th, 1988, and endorsed by the Panel. Pursuant to Section 8-1809(d)(3), such changed Program must be resubmitted to the Commission within 40 days, and only after at least one additional public hearing has been held concerning the changes to the originally submitted Program, relevant ordinances, and plans. The vote was 15:0 in favor.

Mr. Phillips said that the Towns of Brookview, Church Creek, Galestown, and Eldorado have been contacted by letter requesting that they apply for deferment of the development regulations until such activities do occur.

Mr. Philips reported that the Towns of Vienna and Secretary will be submitting their Programs and that the public hearing for Vienna is being held that evening and Secretary will be holding their hearing the following week.

Chairman Liss asked Mr. Pollock to report on the status of Anne Arundel County's Program. Mr. Pollock reported that he has met with the County staff over the last several weeks. All of the required changes have been made, but all comments from various State Departments have not yet been received, nor has a final Panel meeting to review the County's changes been made. The County has held a public hearing on the changes to the Program. Mr. Pollock said that the panel anticipates a final vote on the Program by the next Commission Meeting.

Chairman Liss asked Dr. Taylor to report on Leonardtown's Program. Dr. Taylor reported that the Program had been submitted in the Fall of 1987, and the hearing had been held in November. Two to three meetings have been held with the Town and its consultant. The Panel had several concerns regarding the Program. One concern being a mapping issue regarding designation, and that the Buffer had not been designated on any of the maps. There were a number of development issues and items that needed to be incorporated into the Program. Dr. Taylor said that in general, the Panel feels that the Program is a good one, but there are changes that need to be incorporated.

Mr. Karasic, Panel Chairman, averred that the Program was a good Program, and that referral should be made that the changes and comments can be adopted.

A motion was made and seconded that in general, the Commission believes the local Program for the Town of Leonardtown to be a good one, but for final approval, pursuant to Section 8-1809(d)(2) of the Critical Area Law, the Commission requests Leonardtown to make the changes recommended by the staff report of May 4th, 1988, and endorsed by the Panel. Pursuant to Section 8-1809(d)(3), such changed Program must be resubmitted to the Commission within 40 days, and only after at least one additional public hearing has been held concerning the changes to the originally submitted Program, relevant ordinances, and plans. The vote was 17:0 in favor.

Chairman Liss then asked Dr. Sullivan to report on Cecil County's Program. Dr. Sullivan said that at the time of the last Commission Meeting, with the exception of the growth allocation debiting and several mapping issues, all other outstanding issues had been resolved. Dr. Sullivan asked Mr. Mike Pugh to make a presentation on the County's response concerning growth allocation debiting.

Chairman Liss asked Secretary Lieder, Panel Chairman, to explain the position of the Panel. Secretary Lieder said that the Panel is not in agreement with Cecil County's proposal for debiting growth allocation.

Mr. Bostian suggested that the proposal of Cecil County be on a two-year trial basis.

Secretary Lieder said that if the Commission adopts the Program, and its proposed method of counting growth allocation is implemented for two years, the Commission will not have the benefit of judgement on a case-by-case basis.

Mr. Pugh answered that Cecil County's proposal would still allow and provide that because the reclassification would be from RCA to IDA or LDA, and the classification issue must still be brought before the Commission. The two-year trial period would not preclude those reclassifications from requiring Commission approval.

Mr. Hickernell suggested that perhaps a one-year trial basis would be appropriate with a limitation placed on the amount of acres to be awarded.

A motion was made and seconded that the Commission approve the Program as proposed by Cecil County with the provision that such be for a one-year period and not more than 70 acres of growth allocation would be awarded, excluding that portion which is set aside for municipalities.

Deputy Secretary Cade asked what happens at the end of the one-year period if the Commission is dissatisfied with the County's procedure?

Mr. Epstein replied that the action that will be taken after the one-year period should be included in the motion.

Dr. Sullivan pointed out that there are several outstanding mapping issues remaining, and that Mr. Pugh has asked for an opportunity to present the County's case for its mapping of these parcels at a subsequent Commission Meeting. The County would agree to abide by the Commission's decision in that regard.

A call for the question was then asked. The vote was 10 in favor, 9 opposed, and 1 abstention. The motion did not carry.

Secretary Brown asked if it is possible to adopt the Program without the inclusion of the County's growth allocation procedure?

Mr. Price said that if the growth allocation portion is deleted from the Program, and the acreage is expended, there would be noting the Commission could do.

Mr. Epstein suggested that a motion be made to assume the development of Cecil County's Program, and that that motion be tabled until the next Commission Meeting.

A motion was made and seconded that on February 10, 1988, the Commission returned the Cecil County Critical Area Program to the County for specific changes to be made in accordance with the staff report endorsed by the Panel. The County held its requisite hearing on all changes on May 2, 1988, and agreed to all changes directed except for that concerning the counting of growth allocation usage. Section 8-1810 of the Critical Area Law provides that if changes as directed are not timely made, the Commission must prepare and adopt the local Program by way of regulation, which the local jurisdiction must then enforce. If after the Commission adopts a substitute local Program, the local jurisdiction submits an alternative one, acceptable to the Commission under the criteria, that one would supercede the one adopted by the Commission. The Commission hereby notifies that it will now promulgate by regulation, a Cecil County Critical Area Program being the one developed and changed by the County to date, with the sole exception being that the Commission's method for counting growth allocation will be substituted for the County's. A Panel of the Commission will be constituted to hold two public hearings no less than 10 days apart in Cecil County on this Commission-Program, and the Program will then be published

in the Maryland Register as appropriate. The motion to table was voted upon, 14:6 in favor.

Dr. Sullivan reported that Programs for North East, Charlestown, Perryville and Port Deposit generally appear to be acceptable. However, he indicated that the mapped Buffer Exemption Areas will need to be verified before final approval. Each of the Towns will be holding local hearings on the Program changes over the next several weeks.

Chairman Liss then asked Dr. Taylor to report on the Sweden Point and Somers Cover Marina projects. Dr. Taylor said that the Panel for Sweden Point has had a site visit. The Panel felt that the plans were good, but that an addition to the construction and design of the Marina should be made in that there should be an oil collection facility to receive waste oil, fuel, and antifreeze from the boaters which will also collect oil of such quantity and quality so that it can be commercially collected and properly disposed of. The Panel also added that the landscaping, grading, and naturally vegetated areas are to be included per the site plan. In addition, a speed limit sign of six miles an hour shall be posted one-half mile upriver from the marina by the Marine Police and enforced by the Marine Police. Dr. Taylor said that another item that the Panel felt should be added as a condition was that a program for the use and maintenance of the facility in light of the use made by the Naval Ordinance Station, must be worked out between DNR and the Department of the Navy.

A motion was made and seconded that the plans for development of Sweden Point be approved with these conditions. The vote was 19:0.

Dr. Taylor then reported on Somers Cover Marina. She said that the project is an extension of the existing Marina that consists of adding an additional restroom, adding two fish cleaning stations, and a control tower to monitor traffic. The Panel's recommendations were that there should be an oil collection facility to receive waste oil, fuel, and antifreeze from the boaters which will also collect oil of such quantity and quality so that it can be commercially collected and properly disposed of. As mitigation to the loss of grass and buffer due to the new construction of comfort station and other buildings, two additional oil-collection facilities will be provided at the Marina. The new restroom facilities shall be built as indicated on the plans following the design and landscaping plans. The new walkway around the bulkhead area shall be built out of porous pavers as used in front of the existing control building. The two new fish cleaning stations shall be built 50 feet away from the bulkhead line. The new control tower building shall be

constructed so that the face of the building is on line with the existing fence line. The new parking facility shall have stormwater control measures designed to protect water quality that will handle the first inch of rainfall. The construction of the control measures will be mitigation for the control building and the two fish cleaning stations to be partially in the Buffer. The landscaping plans for the control building, the parking areas, and the fish cleaning stations as drawn, are to be implemented.

A motion was made and seconded that the plans for development of Somers Cove Marina be approved as conditioned. The vote was 19:0.

Dr. Taylor then reported on the status of the public hearings. She said that a hearing has been scheduled for the Town of Denton, at 6:00 p.m., on May 17th at the Town Office Building, and for the Town of Federalsburg, at 8:00 p.m., on May 17th in the Town Office. The Panel is comprised of Ardath Cade, Chairman, Wayne Cawley, G. Steele Phillips, Vic Butanis, and Shepard Krech. The hearing for Caroline County is scheduled for May 19th at the Court House at 7:00 p.m. The Panel is comprised of Vic Butanis, Chairman, Wayne Cawley, Ron Karasic, Bob Price, and Tom Jarvis. The hearing for the Town of Snow Hill is scheduled for May 24th, at 7:00 p.m. in the Library. The Panel is comprised of Kay Langner, Chairman, Wally Miller as substitute for Shepard Krech, Russell Blake, Bill Bostian, and Ron Adkins. The joint for Talbot County is scheduled for May 25th at 7:00. No place is yet decided upon. The Panel is comprised of Jim Gutman, Chairman, Ron Adkins, Sam Bowling for Shepard Krech, Bob Price, and Ron Hickernell.

Dr. Taylor then reported that as of the day of this meeting, the Commission will have approved in final form, or through Commission takeover, 19 Programs. A decision will need to be made on 18 Programs at the 90-day juncture. 17 Programs have been returned for changes. A decision will need to be made on 6 Programs at the 40-day juncture. 60 presentations have been made to the Commission, and as of the end of May, all Commission public hearings will have been held.

Chairman Liss then informed the Commission that a request for information was received by the Commission staff, from Ms. Gail Webb-Owings, Planning Director for Kent County, concerning proposed development on a piece of property where the County chose to extend the Critical Area Boundary allowing development along the water, and impose restrictions on the rest of the property. Chairman Liss read the Commission's letter of reply to Ms. Webb-Owings, generally giving approval to such a concept in

this instance, and asked the Commission for authorization to send the letter to Kent County as a statement of policy adopted by the Commission. A motion was made and seconded authorizing the submission of the letter to the Kent County Planning Director. All were in favor.

Chairman Liss then asked Mr. Ronald Adkins to present Somerset County's Program. Mr. Adkins said that a draft Program was submitted to the Commission in early December and a public hearing has been held. An official submittal of the Program has been made and the County is awaiting comments from Commission staff. Mr. Bob Pearson of Rogers, Golden, and Halpern was then introduced to discuss highlights of the Program.

Mr. Peter Johnston of Redman/Johnston Assoc., was then asked to explain the agricultural Program.

Shepard Krech, Panel member commended the County for the excellent production of its tax maps.

Mr. Bostian asked if it was known how many permits have been issued over the last few years? Mr. Adkins answered that in FY 86 120 permits were issued. In FY 87, 88 were issued in the entire County.

Chairman Liss then asked Mr. Phillips to present for the Town of Crisfield. Mr. Phillips said that there has been a cooperative effort between Crisfield and Somerset County in the development of their Programs, using the same consultants. The consultants made a presentation for Crisfield and Princess Anne.

Chairman Liss asked William Livingston, Director of Planning and Zoning to present the Program for Wicomico County. this was done through the consultant firm of Rogers, Golden and Halpern.

There being no further business, the meeting was adjourned.

5/18/88  
Judge + Co.  
negotiation

Cecil County Program Amendment

Growth Allocation

A. Computing Use of Growth Allocation

For a period of one year from the date of approval of this Program, and limited to the use of seventy (70) acres of the County's total Growth Allocation, the manner in which approved project growth allocation will be subtracted from the total Cecil County growth allocation will vary depending on the type of development proposed and how it is placed on the site. Subtractions from the total County Growth Allocation will be based on the development envelope specified taking into consideration proposed resource conservation measures to be employed herein. For purposes of this determination the development envelope includes:

Individually owned lots and required Buffers, any part of which are not subject to a restrictive conservation easement running to the County or community association, impervious surfaces, utilities, stormwater management measures, onsite sewage disposal measures, any areas subject to regular human use such as active recreation areas, and any additional acreage needed to meet the development requirements of the Criteria.

The remainder of the parcel may not be counted against the County's Growth Allocation if it is contiguous and is generally twenty (20) acres in size, retains it's natural features or is established in natural vegetation, or continues in use as a resource utilization activity (agriculture, forestry, fisheries activities, or aquaculture). Areas not counted must be restricted from disturbance, future subdivision and/or development through enforceable restrictive covenants, conservation easements, habitat management requirements or other protective measures approved by the County. In determining the area that will not be subtracted from the Growth Allocation the County will consider the impact of each proposed development on the post-development character of the area. In general, areas retained in open space will not be counted if they result in the following characteristics:

- o Formation of contiguous open space areas of generally no less than twenty acres that are determined by the County to retain the characteristics of an RCA;
- o Development setback a minimum of 300 feet from tidal waters, tidal wetlands, or tributary stream;
- o Afforestation in areas that provide or enhance riparian habitat;

- o Retention of the existing dominant natural features in the area; and
- o Retention of resource utilization activities (e.g., agriculture, forestry, fisheries, nursery or aquaculture activities, or wildlife habitat, woodlands, etc.) restricted from further subdivision and/or development through restrictive covenants, conservation easements, or other protective measures approved by the County.

A Forest Management Plan is required for any forested areas in the undeveloped portion of the parcel and lots. A comprehensive Habitat Management Plan that includes contiguous portions of individual lots under conservation easement shall be prepared and shall limit resident/community use and/or activity in sensitive portions of the site or during critical times of the year. Replanting in natural vegetation of lands abandoned from agriculture is required.

#### B. QUALIFYING PARCELS

Parcels of land that qualify for application of the above guideline are the following:

1. Those parcels designated as new IDA's which are located within an LDA or adjacent to an existing IDA where the development on the parcel is located at least 300 feet from the edge of tidal waters, tidal wetlands or tributary streams providing such designation:
  - a. minimizes adverse impacts to agriculture, forest lands, fisheries or aquaculture;
  - b. minimizes adverse impacts to Habitat Protection Areas; and
  - c. optimize benefits to water quality.
2. Those parcels designated as new LDA's which are located adjacent to existing LDA's or IDA's where the development on the parcel is located at least 300 feet from the edge of tidal waters, tidal wetlands or tributary streams.
3. Those parcels designated as new LDA's or IDA's which are located in RCA where development on the parcel is located at least 300 feet from the edge of tidal waters, tidal wetlands, or tributary streams.

C. The above-noted methodology is different from that set out in Critical Area Commission guidelines, but will be used by the County experimentally for one year. After such time, the Critical Area Commission will review the results and after

consultation with the County may, if it deems appropriate, direct the County to thereafter debit the use of growth allocation in accordance with the Commission's guidelines as applied on a case-by-case basis. In order to assist that evaluation, the County will keep records adequate to show how, where land in individually owned lots is excluded from the development envelope, such lands nevertheless meet the intent of the Commission guidelines of not excessively disturbing RCA lands. If the County's methodology is permitted by the Commission to continue to be used beyond the one year trial period, the Commission may, at any one year interval thereafter, evaluate the growth allocation results and direct the County to utilize the Commission's guidelines.

D. Among the reasons for the County and the Commission engaging in this experiment is the extensive, detailed point system analysis which the County will use, on a competitive basis, to award its growth allocation, and the fact that the County will be adhering to all the other requirements of Commission's growth allocation guidelines, as set out above.

Judge Liss and members of the Commission:

On behalf of St. Mary's County, may I express my appreciation for this opportunity to appear before the Commission to discuss some issues that are significant to St. Mary's County. The issues about which I speak are: critical area mapping; prior project approval; grandfathering; and the 5% growth allocation.

Prior to the discussion of these issues, a little background is in order:

The Board of St. Mary's County Commissioners sent the proposed County Program to the Critical Area Commission on October 8, 1987.

In late January 1988, the Board of County Commissioners appointed a Critical Area Review Task Force for the purpose of reviewing the proposed County Program. I was asked to be the Chairman of the Task Force; we have been reviewing the County Program concurrent with the Commission's staff review.

I would also add that I am here today under the auspices of the Board of St. Mary's County Commissioners and am authorized to articulate the County position.

The body of law which is known as the Chesapeake Bay Critical Area Protection Program was passed in 1984 with certain amendments thereto passed in 1986. The law required this Commission to promulgate by regulation, on or before December 1, 1985, Criteria for program development and approval. The Criteria were subsequently adopted in May 1986. I am sure you will agree that much new ground has been ploughed as we (the local jurisdictions and this Commission) have tried to interpret and apply the Law and the Criteria. And, as would be expected, there are several development projects in St. Mary's County (and I would expect in other counties as well) that were in various stages of development as the Critical Area Program came into existence which, consequently, are potentially affected by the Program.

The Criteria require that each local jurisdiction map the Critical Area and determine which land areas fall within the three (3) types of development areas -- IDA, LDA, or RCA -- based on features of land use and development in existence on December 1, 1985.

The required features for each development area are stated in the Criteria.

This Commission, however, recognized that certain development projects, while not actually in existence on December 1, 1985, had acquired certain rights through prior approval to be developed "... in accordance with density requirements in effect prior to the adoption of the local Critical Area Program." This concept was manifested in the grandfathering section of the Criteria.

Neither the Law nor the Criteria mandated that local jurisdictions cease to process applications for development projects in the Critical Area.

In fact, the Law expressly requires in Section 8-1813 that ....  
"from June 1, 1984, with regard to any subdivision plat approval or approval of a zoning amendment, variance, special exception, conditional use permit or use of a floating zone, affecting any land or water area within the initial planning area....The approving authority of the local jurisdiction in rendering its decision to approve an application shall make specific findings that:

(in summary)

- (1) Adverse impacts on water quality will be minimized.
- (2) The proposed development be designed to protect fish, wildlife and plant habitat."

This section of the Law further expressly states that it does not apply to any application filed prior to March 1, 1984.

Section .07 (Grandfathering) of the Criteria mandates that local jurisdictions establish grandfather provisions as part of their local Programs, which shall permit certain types of land to be developed in accordance with density requirements in effect prior to the adoption of the local Program.

Among the types of land to be grandfathered are:

"(3) Land that was subdivided into recorded, legally buildable lots, where the subdivision received the local jurisdiction's final approval between June 1, 1984, and December 1, 1985."

"(4) Land that was subdivided into recorded, legally buildable lots, where the subdivision received the local jurisdiction's final approval after December 1, 1985, provided that either development of any such land conforms to the Criteria...or the area of the land is counted by the local jurisdiction against the growth increment....."

From the foregoing, it seems clear that:

1. Land areas which have the required features as of December 1, 1985, are classified as either IDA, LDA, or RCA and may be developed in accordance with the requirements as stated in the Criteria for each classification.
2. Certain land areas, even though classified as RCA, may be permitted to be developed in accordance with density requirements in effect prior to adoption of the local Program (i.e., grandfathered)-- determined by prior approvals given by the local jurisdiction, dates of the approvals, and whether or not the development of the land area otherwise conforms to the Critical Area Criteria.

It also seems clear that such land areas approved for development which meet the Criteria ARE NOT to be counted against the growth increment of the local jurisdiction.

I think that it might be appropriate at this time to outline the land development approval process in St. Mary's County. The approval authority for land development activities not requiring rezoning is the County Planning Commission. In the case of a residential subdivision, the developer submits to the Planning Commission a "Concept Plan." This Concept Plan

indicates the number of lots, proposed lot configuration, road entrances, streets, etc. Upon receipt of Concept Plan approval, the project is deemed to be approved and the developer is then authorized to proceed to prepare detailed site plans, engineer roads, conduct perk tests, etc. When the various requirements of the Zoning Ordinance, Road Ordinance, and Subdivision Regulations have been met through a site plan approval process, the developer is then authorized to start construction.

The process is similar with a P.U.D. (or floating zone). The approval authority in such cases is the Board of County Commissioners with a recommendation from the Planning Commission. The application for a P.U.D. requires the developer to submit a detailed development plan as part of his/her application for rezoning. Upon approval of the overall development plan, the P.U.D. is deemed by the County to be approved and the applicant is authorized to proceed with the very expensive preparation of detailed site plans. In most cases, the land development activities and construction of the buildings are accomplished before a record plat is prepared.

While I realize that the points expressed are somewhat involved, the fact is that St. Mary's County and this Commission need to have an understanding of the process and procedure against which each specific land area (i.e., development project) can be evaluated for determination of its classification and/or grandfathered status.

With respect to grandfathering, I submit that the following provisions are consistent with the Law and the Criteria and would be an appropriate process to evaluate individual development projects:

1. Local jurisdictions were, under the Law, permitted after 1984 to continue to process applications for land development activities in the Critical Area.
2. Even if not developed as of December 1, 1985, .07B of the Criteria identifies four (4) types of land that shall be grandfathered and allowed to be developed at densities in effect prior to the adoption of the local Program.

Three (3) dates are significant:

- (1) Projects which received the local jurisdiction's final approval prior to June 1, 1984.
- (2) Projects which received the local jurisdiction's final approval between June 1, 1984, and December 1, 1985.
- (3) Projects which received the local jurisdiction's final approval after December 1, 1985.

For projects receiving final approval:

- . Prior to June 1, 1984, that land shall not be counted against the 5% growth allocation reserve if steps have been taken to conform the development to the Criteria insofar as possible.
  - . Between June 1, 1984, and December 1, 1985, they are simply grandfathered.
  - . After December 1, 1985, that land shall not be counted against the 5% growth allocation reserve if the development conforms or is required to conform to the Criteria. If it does not conform to the Criteria, then it shall be counted against the 5% growth allocation reserve.
3. For the purposes hereunder, "final approval" shall be deemed to be concept plan approval in the case of a subdivision; and development plan approval in the case of a P.U.D.

If these guidelines were in place, it would then be a straight forward, objective process to assemble the record for each specific development project and evaluate to determine the project's status and whether it should or should not count against the County's 5% growth allocation reserve.

If I might be afforded the opportunity, I ask your indulgence for just a few more minutes. I would like to express an opinion -- albeit a considered opinion.

You, the members of the Critical Area Commission, have a serious and important task and responsibility -- to achieve the goals of the Chesapeake Bay Critical Area Protection Program. This Program is rooted in a body of law and adopted Criteria. While I do not purport to be a lawyer, it seems to me that all laws and regulations are subject to interpretation in their application.

I submit that this Commission has the responsibility to administer the Bay Program in such a manner that will accomplish the Program's objectives, but also an equal responsibility to administer the Program with justice, fairness and equity. Development projects that have proceeded appropriately AND the County's 5% growth allocation reserve should be protected.

It seems to me that there is something patently wrong if an individual property owner has made applications to local, state and federal agencies for approval of a development project -- and has proceeded in good faith in concert with approvals received, spending large sums of money in the process -- to be told that a narrow, legalistic interpretation of the Criteria wipes out all of the prior approvals received and ignores vested rights acquired through expenditures made on the basis of those approvals!!

You, the members of the Commission, have a difficult and arduous task. I can identify with your position. The Chesapeake Bay Program grew out of the Patuxent River Basin Program, and I served for several years on the Patuxent River Commission. The Patuxent River Commission was created by the General Assembly -- I am convinced as a direct result of a suit filed by the three Southern Maryland counties against the State of Maryland over water quality issues in the Patuxent River. I was one of the County Commissioners who agreed to file that suit.

I don't mean to unnecessarily laud the environmental efforts of St. Mary's County, but in November 1983 -- before there was a Chesapeake Bay Critical Area Program -- the Board of St. Mary's County Commissioners approved a P.U.D. on the Patuxent River.

If you will read the conditions of the approving resolution, you will come to the conclusion that it is almost as if this Commission extracted your Criteria from that resolution.

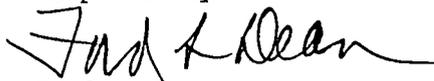
Some conditions of approval found in that resolution are:

1. Impervious surfaces not absolutely required were prohibited.
2. Sediment and stormwater controls designed so that levels of runoff would not exceed pre-development levels.
3. Eroding embankments required to be stabilized.
4. Development prohibited on slopes greater than 15%.
5. Vacuum evacuation sewage disposal system required for each pier slip.
6. No dwellings constructed within 100 feet of the mean high water line.
7. Required development of a plan for maintenance of wetland and wildlife areas, with walkways to be located outside of those areas.

And there were others.

To summarize, St. Mary's County supports the goals of the Chesapeake Bay Critical Area Program. In recent years we have been trying to require that waterfront development be done correctly and we have been involved in water quality issues. While there may be different views on certain specific means to accomplish the goals of the Bay Program, support for the concept is strong. We request that you consider and affirm the process and procedures contained on pages 4 and 5 of these remarks and then let us, together with the Commission and staff, evaluate prior individual development projects on the basis of the record and the facts as they exist for each project.

Respectfully submitted,



Ford L. Dean  
Chairman  
St. Mary's County  
Critical Area Review Task Force

May 18, 1988