

Committee Meetings & Correspondence November 1958 USA S1832-51

10/5/88



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

October 13, 1988

- 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.

Dear Commission Member:

November 2,

The next meeting of the Chesapeake Bay Critical Area Commission will be on ~~October 19, 1988~~, at the ~~"Bay House"~~ ^{Maryland} Department of Agriculture ^{150 Harry Truman Parkway,} of Dolly and Walter Harris in Worton, in Kent County, Maryland. ~~As lunch will be provided by Mr. and Mrs. Harris, the Meeting will begin at Noon.~~ A copy of the Agenda and the Minutes of the Meeting of October 5th are enclosed, ~~as well as a copy of a project from Capital Programs entitled Point Lookout State Park Fishing Pier, which will be presented at the Meeting.~~ ^{Please bring your} Also enclosed are ~~directions to the Bay House.~~ ^{and which was mailed to you on October 13, 1988.}

~~Please telephone Jennifer at 974-2418 by October 17th, if you are unable to join us for lunch.~~

Sincerely,

sol

Solomon Liss
Chairman

SL/jjd

Enclosure

Mr. Bob Price, Vice Chair, will preside at the meeting.

I know that all of us will personally miss the presence of Judge Liss, but all of us must carry the legacy established by him.

Our greatest tribute to him will be to continue to carry out the legacy established under his leadership. We can do no less than

focusing on the meetings. Process wise no. Project wise. Letters to the local govt's.

Dorchester Phillips Bostian Price Wieder

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

that.

The staff and I will continue
to do our best to support your
effort.

Sincerely,
Sarah J. Taylor, PhD
Ex Dir.

CHESAPEAKE BAY CRITICAL AREA COMMISSION

AGENDA

Md Dept of Agriculture
Bay House

Worton, Maryland

Nov 2, 1988

October 19, 1988

50 Harry Truman Parkway
Annapolis Md 21401

~~12:00 - 3:00 p.m.~~

- 1:00 - 1:10 Approval of Minutes of October 5, 1988
Chairman: ~~Solomon Liss~~ Robert Price, Vice-Chairman
- ~~1:10 - 1:30~~ ~~1:30 - 1:45~~ Tentative Approval of Centreville Program
Hearing: ~~Charles Davis~~ Ron Adkins Panel Chair
- 1:30 - 1:50 Presentation of State Project - Point Lookout State Park Fishing Pier
Capital Programs, DNR
- 1:50 - 2:00 Vote on Merkle Wildlife Area Boardwalk
Capital Programs, DNR / Panel: Sarah Taylor + Panel
- 2:00 - 2:30 Presentation of County Project - Timber Bridge Replacement on Moneymake Rd., Bolingbroke Cr., Talbot Co.
Charles Davis
- 2:30 - 2:45 Results of Talbot Co. Hearing.
James Gutman, Ch./ Panel
- 2:45 - 3:00 Old Business
Cecil Co. Amendments Hearing - 10/20/88
7 p.m., County Office Bldg Room 300
Chairman: ~~Solomon Liss~~ Robert Price

Langford Farm
Attorney General
Opinion on Voting
Dorchester County Hearing

New Business
Appointment of Panel for Kent Co. Amendments

Next Meeting: November 14, 1988, Department of Agriculture

Contribution to Nov 16, 1988
November 16, 1988 - Cecil County -

- directive letter
- committee approval
to use growth
allocation
- approve rezoning
request

- update on Langford Farm
Voting Atty General.
- Dorchester Co. Growth Allocation
decisions -

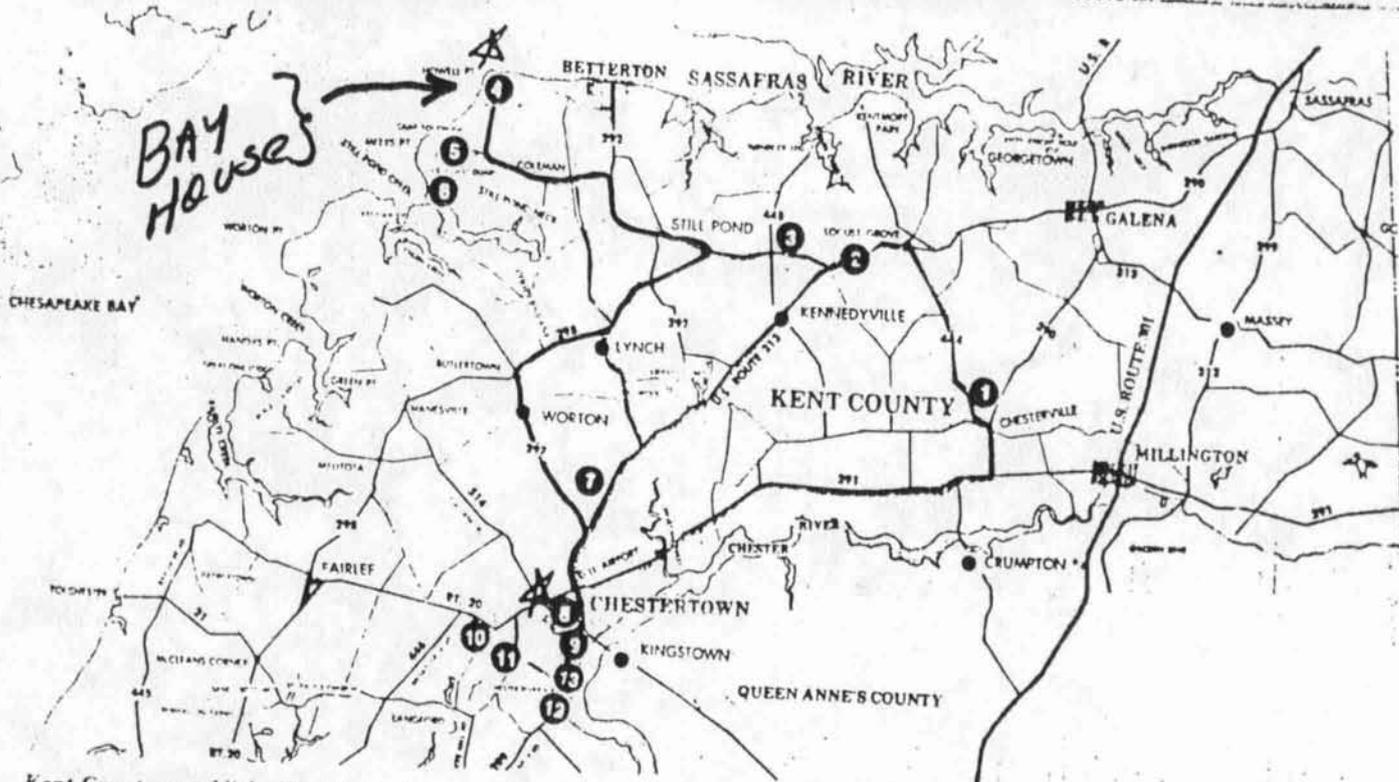
- Schedule mtg. for amendments
committee..

- hold hearing + defer decⁿ

Directions to Bay House on Blooming Neck:

Blooming Neck is located in the Northwest corner of Kent County, where the Sassafras River enters the Chesapeake Bay. Since the Coast Guard Station is just beyond Blooming Neck Road, their signs should be a help in reaching Bay House; however, the Still Pond Creek Bridge project may not be completed by October 19th. In that case, we recommend coming by way of Still Pond village.

Go through Chestertown by Washington College on 213 North.
Pass the Kent Plaza and Ames Stores on the right.
After the small airport, turn left from 213 onto 297.
At the County School complex, turn right onto 298.
Follow sign to Still Pond, then turn left onto 292.
Turn left at the Still Pond (Village) junction:
(Still on Rt 292) follow for about 2 miles.
You will see signs for Coleman and US Coast Guard (where you turn left onto Still Pond Neck Road)
Follow straight for approx. 3 miles.
On the right will be Blooming Neck Road.
You will see the entrance to Blooming Neck Farm, Echo Hill, and Bay House.
Go under the willows and follow the gravel road on the right for 1/3 mile.
After a dip in the road, there is a hidden turn to the left, leading to Bay House.



Kent County, established in 1642, is the second oldest in Maryland. It is one of the smallest in area and population, and is one of the most beautiful on the Eastern Shore.

NO. 4 BAY HOUSE ON BLOOMINGNECK FARM and THE WHIP FROM TOLCHESTER. Bay House — a traditionally styled house built in 1928 by the late Dr. and Mrs. Paul Smith on what is now Coast Guard property was found to be impractical for Coast Guard use and was scheduled for a burning drill in 1969 by the local fire company. With the assistance of the late Rogers C. B. Morton, then the Secretary of the Interior, it was spared the torch and moved three miles to this location by Mr. and Mrs. W. B. Harris, at great effort and risk. The Great Room, with its enormous fireplace reconstructed by Dudley Reed, is indeed a special place for winter meetings. Please note the unique design of the chimney exterior. (The Great Room has another large and wonderful surprise!) An addition nearing completion on the north side will have a 36' porch facing the Bay and will stage many Kent County artifacts.

Please walk across to THE WHIP —

This former Tolchester landmark was designed by the late Ralph McGinnis. Here we have a fine example of "adaptive use" of an old and beautiful structure to a useful purpose in a changing world. The design of the roof is unique to accommodate the attraction which was housed inside and has become one of Echo Hill School's trademarks. The building, moved over 20 miles from the Chesapeake Bay resort, was scheduled for demolition, but the determination of the Harris family to keep some tangible reminders of Tolchester beach and amusement park prevailed. The brick floor was laid this spring. The Whip has been the dining hall for Echo Hill since 1966. Owners: Mr. and Mrs. W. B. Harris.

This page is from our Three centuries of Kent Tour Folder for our third annual Tour — Saturday, Oct. 8, 1988, presented by Kent County Historical Trust, Inc.

CHESAPEAKE BAY CRITICAL AREA COMMISSION

Minutes of Meeting Held
October 5, 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:

James E. Gutman	Wallace Miller
William Bostian	Parris Glendening
Shepard Krech, Jr.	Thomas Osborne
Victor Butanis	Robert Price, Jr.
Ronald Karasic	Kathryn Langner
Louise Lawrence for Secretary Cawley	Russell Blake
Deputy Secretary Cade of DHCD	Ronald Adkins
	Robert Schoeplein of DECD

The Minutes of the Meeting of September 28, 1988, were approved as written.

Chairman Liss asked Mr. Gutman, Panel Chairman, to report on the Panel's review of the methodology for counting Anne Arundel County's growth allocation. Mr. Gutman suggested that the County first explain to the Commission its methodology, and he would then report on the Panel's findings.

Mr. Joe Elbrecht of the Anne Arundel County Planning and Zoning Office, explained the procedure the County is using for calculating growth allocation. He explained that grandfathered subdivisions approved after December 1, 1985, were counted against the growth allocation, if they did not comply with specific Critical Area criteria. Five subdivisions in that category were not counted against the growth allocation because of compliance with the interim findings and specific criteria. A portion of a 6th subdivision was counted because it had not completely met the criteria. Subdivisions that met the criteria and which planned for open space were not counted.

Ms. Eileen Fogarty of City of Annapolis, spoke to the Commission of the City's request to receive 11 acres of growth allocation from the County.

Mr. Gutman then advised the Commission that the staff and panel have carefully reviewed the methodology used by the County, and that the Panel recommends approval.

A motion was made and seconded that the Commission approve Anne Arundel County's remaining growth allocation, being 58 acres of RCA for future LDA designation, 102 acres of LDA for future IDA designation, and in addition, 11 acres designated for the City of Annapolis as growth allocation. The vote was 15:0 in favor.

Chairman Liss introduced Mr. Bill Krebs and Ms. Tolly Peuleche, of Program Open Space, DNR, to present the Days Cove Master Plan at Gunpowder Falls State Park. Ms. Peuleche distributed a discussion of relative criteria concerning the project, explained what the project will contain, and what development changes will take place.

A Panel was chosen to review the Master Plan comprising of Tom Osborne, Chairman, Ardath Cade, Victor Butanis, James Gutman, and Bob Schoeplein with Dr. Taylor as staff member.

Chairman Liss asked Dr. Taylor to report on the Department of Natural Resources, Waterway Improvement Division, DNR, Gunpowder River project. Dr. Taylor reported that the Panel had met to review the project, and that it recommends tentative approval subject to three conditions to be accommodated: 1) the walkway around the fish cleaning station should be of pervious material, 2) the existing ramp should be structured to divert stormwater from entering neighboring streams, and 3) that landscaping be located in the Buffer.

Mr. Miller asked if plants used in landscaping are indigenous to the area? Dr. Taylor answered affirmatively.

A motion was made and seconded that the Gunpowder River Project be approved subject to the incorporation of the three recommendations of the Panel. The vote was 15:0 in favor.

Chairman Liss then reported on the meeting with the Commissioners of Elkton, concerning the property owned by the Arundel Corporation. The Town has been assured of some growth allocation allotment from Cecil County, which may permit the Town to use the Arundel Corporation property for development. The Town is redrafting its maps, and will resubmit them to the Commission with a complete Program reproposal. When this is done, a Panel meeting will take place.

Chairman Liss asked Mr. Price, Panel Chairman, to report on the meeting with Somerset County. Mr. Price reported that the Panel had met with the County representatives and planning staff to review the Program and discuss funding. He reiterated that the County had requested funding to employ staff to implement its Program.

Mr. Price said that in reviewing the County's Program, the main issue appeared to be the growth allocation, but there were mapping issues and other items that needed to be resolved. He said that on assurances made by the County, the Panel will negotiate in good faith with the Commission to resolve those

issues, and that any proposed amendments, and the Program in its entirety, will be resubmitted to the Commission for approval. The Panel recommended that the County be granted its request of \$90,000.00.

Mr. Bostian, Panel member, concurred that the County's Program, by and large, meets the criteria, and that the matter concerning its growth allocation is a small one, as the County has not had a substantial amount of development occur in the last 20 years, and will not in the future.

Mr. Gutman asked if the full amount of \$90,000 was needed now as opposed to possibly halving that sum? Mr. Price answered affirmatively, and that it was the compromised amount that the Panel had agreed to. Chairman Liss added that if an agreement on the issues can be reached, the amount of monies requested doesn't matter.

A motion was made and seconded that the Commission allow \$90,000 out of the allotment that had been set aside for Somerset County with the understanding that good faith efforts will continue to prepare a Program that is acceptable to the Commission, and that when the Program is completed, it will be submitted to the Commission for approval. When the Program is approved, the balance will then be paid to the County. Included in the motion was that Somerset County be able to use these funds and extend their use through a no-cost extension.

UNDER NEW BUSINESS

The following questions were raised by Chairman Liss for discussion: 1) is it acceptable, given Health Department approval, to accommodate the sewage from dwelling units outside of the Critical Area, in the Critical Area; 2) is it acceptable, given Health Department approval, to have a drain field in the Critical Area that is remote to a lot already in the Critical Area, but which was platted and grandfathered some 30 years ago; and 3) is it acceptable, given Health Department approval, to have a drain field outside of the Critical Area that is remote to a lot that is already in the Critical Area.

It was suggested that a subcommittee be appointed to consider and recommend how the problems should be addressed. The subcommittee was chosen to comprise Parris Glendening, Chairman, Kay Langner, Jim Gutman, Bill Bostian, Shepard Krech, Bob Perciasepe, Wayne Cawley, and Judge Liss, with Dr. Taylor as staff.

Critical Area Commission
Minutes - 10/5/88
Page Four

UNDER OLD BUSINESS

Dr. Taylor announced the Panel hearing for Talbot County on October 11th at 7:00 p.m. Panel members are: Jim Gutman, Chairman, Shepard Krech, Bob Price, Wally Miller, and Ron Karasic. Cecil County Panel hearing is October 20th, at 7:00 p.m. Panel members are Connie Lieder, Chairman, Judge Liss, Ron Adkins, Louise Lawrence, Victor Butanis, and Jim Gutman as a standby. Dorchester Co. Panel hearing is October 27th at 6:30. Panel members are Shepard Krech, Chairman, Bob Schoeplein, Bob Price, and Judge Liss.

There being no further business, the Meeting was adjourned.

11/2/88



JUDGE SOLOMON LISS
CHAIRMAN

STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREAS COMMISSION
DEPARTMENT OF NATURAL RESOURCES
TAWES STATE OFFICE BUILDING, D-4
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Talbot Co.
- Samuel E. Turner, Sr
Talbot Co.
- William J. Bostian
Wicomico Co.
- Russell Blake
Worcester Co.

November 10, 1988

Dear Commission Member:

The next Meeting of the Chesapeake Bay Critical Area Commission is scheduled for November 16, 1988 at the Department of Agriculture, 50 Harry S Truman Parkway, Annapolis, at 1:00 p.m. The Agenda for the Meeting and the Minutes of the Meeting of November 2, 1988, are enclosed.

As you are aware, several issues have been raised with respect to Commission review of Growth Allocation. Dorchester County, in particular, believes that use of growth allocation is not an amendment to a local Program, and therefore, projects need not come before the Commission as an amendment, but through the project notification process. Enclosed, for your information, is a copy of an advice of counsel on the matter.

Also enclosed for your information, is the Attorney General's Opinion on the Commission By-Laws and voting procedure. Please note that as a result of this Opinion, the By-Laws will need to be changed. The proposed amendment is enclosed as well.

Sincerely,


Sarah J. Taylor, Ph.D.
Executive Director

CABINET MEMBERS

- Wayne A. Cawley, Jr. SJT/jjd
Agriculture
- J. Randall Evans Enclosures
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

November 16, 1988

1:00 - 4:00 p.m.

- | | | |
|-------------|---|--------------------------------------|
| 1:00 - 1:10 | Approval of the Minutes
of November 2, 1988 | Robert Price, Jr.
Vice-chairman |
| 1:10 - 2:30 | Vote on Town of
Centreville Program | Charles Davis/
Panel |
| 2:30 - 2:50 | Report and Recommendations
and Vote on the Dorchester
County Growth Amendment | Robert Price, Jr.
Vice-Chairman |
| 2:50 - 3:15 | Discussion of the Dorchester
County Program and Habitat
Requirements | Lee Epstein,
Asst. Attorney Gen. |
| 3:15 - 3:30 | Report on the Cecil County
Amendments | Charles Davis/
Panel |
| 3:30 - 3:45 | Update - Septic Panel | Parris Glendening,
Panel Chairman |
| 3:45 - 4:00 | Old Business
New Business | Robert Price, Jr.
Vice-Chairman |

CHESAPEAKE BAY CRITICAL AREA COMMISSION

Minutes of Meeting Held
November 2, 1988

The Chesapeake Bay Critical Area Commission met at the Department of Agriculture, 50 Harry S Truman Parkway, Annapolis, Maryland. The meeting was called to order by Vice-Chairman Robert Price with the following Members in attendance:

J. Frank Raley, Jr.	Wallace Miller
Kathryn Langner	Thomas Jarvis
Samuel Bowling	Shepard Krech, Jr.
Thomas Osborne	William Bostian
Ronald Karasic	James E. Gutman
G. Steele Phillips	Ronald Adkins
Albert Zahniser	Victor Butanis
Carolyn Watson for	John Griffin of DNR
Parris Glendening	Robert Perciasepe of DOE
Louise Lawrence for	Secretary Lieder of DSP
Secretary Cawley	Robert Schoeplein of DECD
Deputy Secretary Cade of DHCD	

Vice-Chairman Price asked Dr. Taylor to read an editorial in the memory of and dedication to Judge Solomon Liss.

Vice-Chairman Price then asked Mr. Pat Plocek of Capital Programs, DNR to report on the Point Lookout State Park Fishing Pier project in St. Mary's County. Mr. Plocek distributed an environmental assessment for non-intensive development on DNR land and explained the proposed construction for the pier.

Mr. Raley asked if fishing would be prohibited? Mr. Plocek answered that shoreline fishing would be encouraged.

Mr. Schoeplein asked if this project was already up for bid? Mr. Plocek answered that bids had been received, but it is still possible to make any changes to the project.

Mr. Adkins asked if there were any facilities, such as fish cleaning stations on the pier itself? Mr. Plocek answered negatively.

Mr. Gutman asked if the parking lot was an impervious surface? Mr. Plocek answered that there was no parking lot in the plans, but the only impervious surface would be the walkway from the pier to the main road.

Mr. Epstein asked if the plant habitat mentioned in the assessment as being insignificantly impacted, had been quantified? Mr. Plocek answered that the affected grass area or vegetation is in the area of the walkway itself, and there are no trees or shrubs present.

Mr. Zahniser suggested that a more comprehensive site plan be submitted in the future.

A panel was chosen for the project comprising of Skip Zahniser, Panel Chairman, Frank Raley, Sam Bowling, James Gutman and Ardath Cade.

The Minutes of the Meeting of October 5th, 1988, were approved as written.

Vice-Chairman Price then asked Dr. Krech to report on the Merkle Wildlife Area Boardwalk. Dr. Krech reported that the Panel had made a site-visit of the boardwalk. The boardwalk itself is 174 feet in length, and dilapidated. He said that the proposal was to widen the boardwalk by four feet, and to extend its length to 185 feet at the landward end, and to accommodate the handicapped. There exists no impact to the area, and the boardwalk will only be open for three hours per week. Dr. Krech said that the Panel would recommend approval of the project.

A motion was made and seconded that the Commission approve the renovation of the Merkle Wildlife Area Boardwalk. The vote was unanimously in favor.

Vice-Chairman Price asked Dr. Taylor to present Timber Bridge Replacement project on Bolingbroke Creek. Dr. Taylor distributed information on the proposed bridge, and explained that the County-sponsored project would normally be processed by the County and receive certification under the County's Critical Area Program. However, Talbot County's Program was not yet approved. The County has held two hearings on the bridge, and found that it was not safe and therefore, should be replaced. Dr. Taylor said that the size of the bridge would not be changed, and as a result of the two hearings, the County has given preliminary approval for the reconstruction.

Vice-Chairman Price suggested that the Talbot County Panel review the project, and all agreed.

Vice-Chairman Price asked Mr. Gutman to report on the hearing for Talbot County. Mr. Gutman reported that the hearing had been held and that the Panel will again be meeting.

Vice-Chairman Price then asked Mr. Epstein to give an update on the Langford Farms issue. Mr. Epstein reported that the Commission is involved in a suit brought by property owners against the County's approval of a final plat for Langford Farm. The Commission was named as a party defendant in the declaratory judgement action by those opponents, since they are

claiming that the portion of the Critical Area Law permitting local expansion of a Critical Area beyond the 1,000' initial planning area is unconstitutional. Mr. Epstein has filed a motion to dismiss the declaratory judgement action, and expects a hearing to be set in by the end of the month.

Mr. Adkins asked Mr. Epstein what his advise would be at this point concerning areas counties had included beyond 1,000 feet? Mr. Epstein replied that he would not recommend changing the approach taken by the Commission in the past, which was to essentially seek some kind of justification by local jurisdictions for such extensions.

Mr. Adkins asked how limited are declaratory judgements, i.e., would this one extend to other local jurisdiction? Mr. Epstein answered that it is unclear in Maryland Law, how much repercussion would be involved across the various judicial circuits.

Vice-Chairman Price then asked Mr. Adkins to report on Cecil County's amendments. Mr. Adkins reported that the County had requested two amendments to extend its Critical Area boundary in two locations. Mr. Adkins explained where the first extension would occur, by use of a map, and said that the request was to include an additional 119.7 acres to the Critical Area.

Mr. Miller asked if a jurisdiction wished to extend its boundary, need it make the request before the its Program is approved? Mr. Epstein answered that since the Law provides for amendments to a Program, it allows extensions of a Critical Area boundary line regardless of when the request is made.

Secretary Lieder asked if there was an environmental justification for this request for extension? Mr. Davis answered that justifications that were submitted to the County by the developers were transmitted to the Commission as part of the proposed amendments.

Ms. Langner said that she had, upon occasion, visited the area in question and found that it was abundant in wildlife habitat.

Mr. Adkins then described the area concerning the second amendment, and explained that the request was to increase the area by 6.6 acres to include non-tidal wetlands. A discussion ensued concerning the lots.

Vice-Chairman Price asked if the requests to extend the Critical Area were in order to generate the additional dwelling unit? Mr. Adkins answered that he did not know what the initiative behind the request was.

Mr. Zahniser said that this approach may soon become a standard for Counties to be able to increase their development, and the Commission needs to be careful that the justification would be for the environmental advantage of the County.

It was suggested that the Panel meet to discuss these amendments and report its findings to the Commission.

Vice-Chairman Price asked Mr. Epstein to report on the Attorney General's Opinion on Commission voting. Mr. Epstein reminded the Commission that a controversy had arisen concerning the Commission's voting procedures, under its by-laws. Several members had raised the question whether the voting procedure in the by-laws could continue to be used although the statutory change by the General Assembly relaxed the voting standards. The Attorney General's Opinion was that the Commission could not impose more strict standard than the common law one the Legislature passed.

Mr. Epstein advised the Commission to change its by-laws to comport with the statute that states that a majority of a quorum is what shall carry a question. Vice-Chairman Price asked Mr. Epstein to draft such by-law change and circulate it to the Commission for a vote.

Vice-Chairman Price reported on the Dorchester County hearing. He said that the County had submitted requests for Program amendments that three properties be converted from RCA to LDA. He said that the County's position was that Program amendments did not require holding a public hearing. The Program that was approved may not have been the one that was implemented by the County, with regard to certain grandfathered subdivisions. Staff would investigate and report back to the Panel on the matter.

Deputy Secretary Cade suggested that a subcommittee be formed to research and examine requests for expansions, and this was agreed to by the Commission.

Critical Area Commission
Minutes - 11/2/88
Page Five

UNDER NEW BUSINESS

Vice-Chairman Price asked Dr. Taylor to report on the Oversight Committee Meeting of October 18th. Dr. Taylor said that the Committee has not held any meetings with the local jurisdictions with respect to Delegate Guns' Bill, concerning re-enactment of the Oversight Committee. It was asked of the Commission to have the remaining 22 Programs completed.

Dr. Taylor reported that there are 9 amendments approved by Kent County subject to Commission approval. The Panel comprising of Victor Butanis, Torrey Brown, Kay Langner, Ron Karasic and James Gutman, needs to convene to address these amendments.

A suggestion was made to return to the original meeting time of 4:00 p.m. to 6:00 p.m. A vote was taken and the majority was in favor of returning to a starting time of 4:00 p.m. beginning in January.

There being no further business, the Meeting was adjourned.



RECEIVED

OCT 13 1988

OFFICE OF THE ATTORNEY GENERAL

Munsey Building
Calvert and Fayette Streets
Baltimore, Maryland 21202-1909
(301) 576-6300

LEGAL SECTION
DNR

WRITER'S DIRECT DIAL NO.

841-3889

TTY for Deaf Balto. Area 576-6372 D.C. Metro 565-0451

October 7, 1988

The Honorable Walter M. Baker
153 East Main Street
Elkton, Maryland 21921

ADMINISTRATIVE LAW - VOTING
PROCEDURES - CHESAPEAKE BAY
CRITICAL AREA COMMISSION -
COMMISSION MAY NOT SET VOTING
REQUIREMENT DIFFERENT FROM THAT
IN STATUTE

Dear Senator Baker:

You have asked for our opinion concerning the scope of the Chesapeake Bay Critical Area Commission's authority to adopt rules concerning its voting procedures. Specifically, you have asked whether the Commission has the authority to adopt a voting requirement stricter than that provided by statute.

For the reasons stated below, we conclude that the Commission may not apply a voting requirement different from the requirement set out in the statute.

I

Background

The Chesapeake Bay Critical Area Commission, created by Chapter 794 of the Laws of Maryland 1984, consists of 26 voting members appointed by the Governor. §8-1804(a) of the Natural Resources Article ("NR" Article).¹ It has the authority to develop criteria for local programs to protect the Chesapeake

¹ Originally, the Commission consisted of 25 voting members. The Commission gained a new member when the former Department of Economic and Community Development was bifurcated. Chapter 306, Laws of Maryland 1987. See NR §8-1804(a)(4).

OPINION OF THE ATTORNEY GENERAL

Cite as: 73 Opinions of the Attorney General (1988)
[Opinion No. 88-044 (October 7, 1988)]

Bay, NR §8-1808(d); to review local programs, NR §1809(d); to develop programs for those local jurisdictions that fail to do so themselves, NR §8-1809(b); to review certain project approvals, NR §8-1811(b); and to enforce the subtitle, NR §8-1815.

The General Assembly provided for geographic and interest group diversity in the Commission's composition. NR §8-1804(a)(2) and (3). Moreover, the General Assembly sought to assure active participation by the members, through the device of a minimum attendance requirement. NR §8-1804(c)(6). See Opinion No. 86-024, at 4 (April 2, 1986) (unpublished). However, the original statute had no quorum or voting requirements.

Two years after the Commission was created, the General Assembly enacted Chapter 601 (House Bill 1345) of the Laws of Maryland 1986, setting quorum and voting requirements for the Commission. NR §8-1804(e)(1) provides that a quorum "consists of one member more than a majority of the full authorized membership of the Commission." Thus, the statute increased the number previously required for a quorum under the common law.² In addition, the law now provides that the Commission may not take any action unless it is supported by "a majority of the members who are present and eligible to vote." NR §8-1804(e)(4)(ii).³

This latter provision merely condifies the common law rule. Gemeny v. Prince George's County, 264 Md. 85, 88, 285 A.2d 602 (1972). A majority of the members present can act for the body if a quorum is present, unless the organic law which created the body provides otherwise. Zeiler v. Central Railway Co., 84 Md. 304, 322-323 (1896). This rule applies to administrative bodies. FTC v. Flotill Products, Inc., 389 U.S. 179, 184-85 (1967).

The legislative history of Chapter 601 reveals that it was enacted in response to complaints from those who, believing that attendance by Commission members at public hearings was inadequate, argued that if more members attended, they might have a better understanding of local concerns.⁴ Thus, the primary concern of the General Assembly was to assure that citizens affected by the decisions of the Commission be afforded more

² Under the common law, a quorum consists of a simple majority of the membership. Heiskel v. City of Baltimore, 65 Md. 125, 149 (1886). See text accompanying note 8 below.

³ NR §8-1804(e)(3) also provides that neither the Commission nor a panel of members may hold a public hearing "unless a quorum is present."

⁴ See Testimony of the Maryland Association of Counties, Inc. and the State of Maryland Institute of Home Builders, Inc. on Senate Bill 528 (1986 Session).

fully attended hearings at which to express their concerns.⁵ The bill's title recites that its purpose was, in part, to "preven[t] the Commission or a panel of the Commission from holding a public hearing unless a quorum is present." The bill was opposed by the Commission, which argued that the requirement of a quorum at every hearing was too "cumbersome." In addition, the Commission contended that the bill's requirement for majority decisionmaking was "simply ... not needed," given the voting requirement in the Commission's bylaws discussed in Part II below.⁶

II

The Commission's Bylaw

The Commission adopted its bylaws shortly after its creation in 1984. Article V of the bylaws provides:

A quorum shall be a majority of all the voting members. On all issues, other than amendment of the by-laws, a simple majority of the voting members shall decide the question.

This voting requirement is stricter than that in NR §8-1804(e)(4)(ii). Under the bylaw, at least 14 votes - a majority of the 26 members entitled to vote - are necessary to approve an action. Under the statute, as few as 8 votes - a majority of the minimum possible quorum - would suffice. In forming its bylaws, the Commission obviously believed that the potential for action by so few members might frustrate the statute's objective of broad participation in the Commission's decisionmaking.

During the 1986 Session, the Commission asked for advice concerning the effect of House Bill 1345 on its voting requirement bylaw. The Commission's counsel concluded that the

⁵ See Testimony of the Honorable Richard Colburn before the Environmental Matters Committee, and the Committee Report for House Bill 1345 (1986 Session).

⁶ See Testimony of Solomon Liss and Sarah J. Taylor on House Bill 1345 and Senate Bill 528. The bill was also opposed by the Chesapeake Bay Commission, a tri-state legislative advisory group, which testified that the proposal would impose an undue burden on the membership of the Commission and would delay implementation of the critical areas programs. See Testimony of Chesapeake Bay Commission, February 19, 1986.

⁷ At the time that the bylaw was adopted, the Commission consisted of 25 members, so that application of the common law principle would have allowed a mere 7 members - a bare majority of the minimum possible quorum of 13 - to act for the Commission.

purpose of the legislation was to assure that minimum due process procedures were established and to give the Commission guidance concerning its public hearing and decisionmaking procedures. In the view of its counsel, the Commission's stricter voting requirement was in harmony with the overall intent of the bill, to strengthen the Commission's procedural safeguards. Thus, counsel advised that the stricter voting requirement could remain in effect if the bill passed. Upon further analysis, we conclude that the bylaw may not be given effect.

III

Analysis

The Court of Appeals has held that the legislative bodies of municipalities lack power to adopt quorum or voting requirements stricter than the common law. For example, in Heiskel v. City of Baltimore, 65 Md. 125 (1886), the Court held that City Council could not set its quorum at two-thirds, rather than a simple majority:

The City Council is the creature of the Legislature, and if it can exercise no powers not expressly granted to it, neither can it deprive itself by its own action of the powers that are granted to it. We have shown before that a majority of the Council constituted the legal body, and competent to do every act that the Council could do. It would be an anomaly indeed if the Council itself could deprive itself of the right that it admittedly had.

65 Md. at 151-52 (emphasis in original).⁸

Similarly, in Murdoch v. Strange, 99 Md. 89 (1904), the Court held that the City Council of Annapolis could not adopt a rule treating a blank ballot as a vote in dissent when, under the common law, a blank ballot was treated as a nullity and those who cast such a ballot are considered to have acquiesced in the action of the majority. 99 Md. at 110. The Court specifically held that: "[N]o rule can be established by custom or otherwise, that will substantially affect the determination of the majority, otherwise than according to the principles of the common law." 99 Md. at 107.

⁸ See also Borough of Florham Park v. Dept. of Health, 146 A. 354 (N.J. 1929); Traino v. McCoy, 455 A.2d 602, 607 (N.J. Super. 1982); 4 McQuillen, Municipal Corporations §13.27, at 698 (3rd ed. 1985).

This reasoning has been extended to a situation quite similar to that at hand. In Barnett v. City of Paterson, 6 A. 15 (N.J. 1886), the New Jersey Supreme Court held that a city council could not, by rule, require a two-thirds majority for passage of items involving money, where, under the common law, a simple majority was all that was required.⁹

These cases stand for the proposition that common law quorum or voting requirements - and, it must follow, statutory requirements that codify or change the common law - establish not only minimum standards, but also maximum ones. The standard establishes the power of the municipal body to act or decide once that standard is met; the body may not, by rule, divest itself of that power.

This background underscores the General Assembly's decision in 1986 to insert in the Commission's governing statute the common law decisional principle that a simple majority of the quorum controls. Administrative agencies, like municipal corporations, derive their power from the Legislature and may not act in excess of a statutory grant. Annapolis v. Annapolis Waterfront Co., 284 Md. 383, 394, 396 A.2d 1080 (1979). While the Commission has the power to adopt rules of procedure governing its conduct [NR §8-1806], it may not contravene the statute - in this instance, by adopting a more rigorous majority requirement.

We believe that the Commission's bylaw was a good-faith effort to fashion a consensus-building tool in harmony with the intent of the original statute. The Commission retained the bylaw in the belief that the General Assembly's 1986 enactment merely provided a statutory minimum. For the reasons stated above, however, the Commission's bylaw may no longer be applied.¹⁰

⁹ But see 62 C.J.S. Municipal Corporations §404a, at 764 (1949), which indicates that a municipal body may determine for itself the number of votes required to elect an officer or pass a particular measure. The cases cited, however, involve election of officers and procedural rule changes and not the passage of ordinances or other measures affecting the public.

¹⁰ We are advised by Commission Chairman Liss that the Commission has operated with a remarkable degree of consensus, dissenting votes being non-existent or few in number. Indeed, we understand that in dozens of Commission meetings since the bylaw was adopted, no vote of the Commission has succeeded or failed by a margin that called the bylaw into question, save for one vote on a matter that became moot soon after the vote was taken.

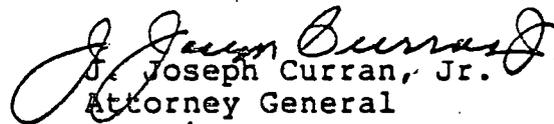
The Honorable Walter M. Baker
October 7, 1988
Page 6

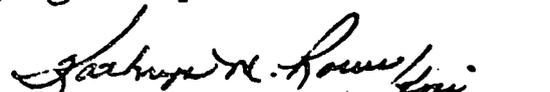
IV

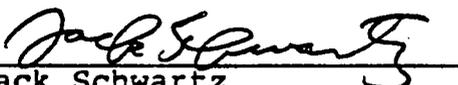
Conclusion

In summary, it is our opinion that the Chesapeake Bay Critical Area Commission may not apply a bylaw that varies from the voting requirement in NR §8-1804(e)(4)(ii).

Very truly yours,


J. Joseph Curran, Jr.
Attorney General


Kathryn M. Rowe
Assistant Attorney General


Jack Schwartz
Chief Counsel
Opinions & Advice

KMR/mar

B:KMI:JS03



TALBOT COUNTY DEPARTMENT
OF PUBLIC WORKS

COURT HOUSE
EASTON, MARYLAND, 21601
PHONE 301-822-5873

WILLIAM R. RUNYAN, P.E.
County Engineer

F. JESSE FEARINS
Asst. County Engineer

Call re. hearing process.

October 3, 1988

State of Maryland
Chesapeake Bay Critical Areas Commission
Department of Natural Resources
Tawes State Office Building, D-4
Annapolis, Maryland 21401

2) public sessions w/ Council + Spack (W) 2-2

Attn.: Ms. Sarah J. Taylor, Ph.D.
Executive Director

2) Council voted to go ahead.

Re.: Proposed Timber Bridge Replacement on
Moneymake Road crossing Bolingbroke Creek,
Talbot County, Maryland

Dear Dr. Taylor:

In accordance with this planned bridge replacement and in accordance with Title 14, Subtitle 19, "Regulations for Development in the Critical Area Resulting from State and Local Agency Programs", we hereby request Critical Area Commission approval of the project.

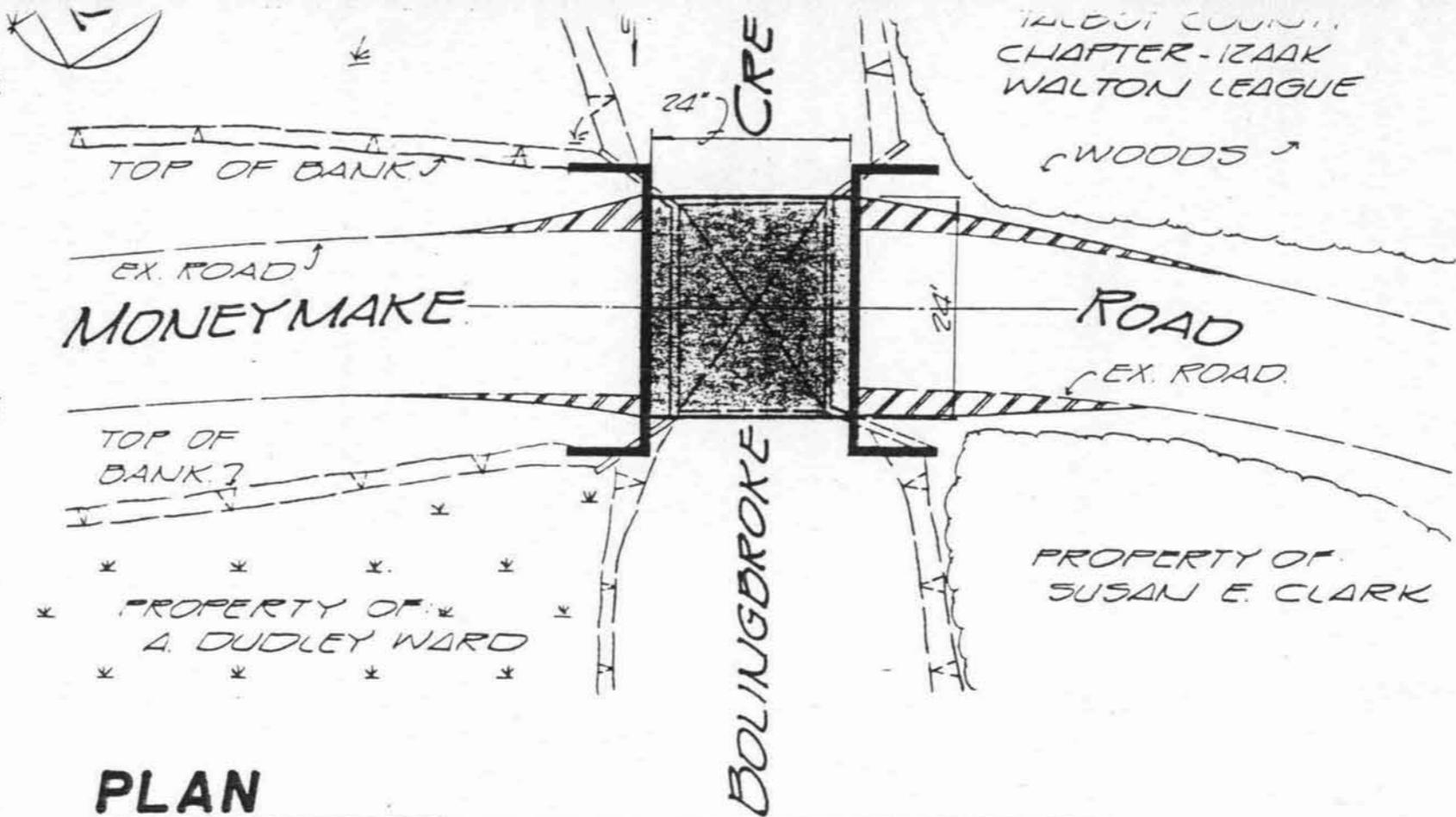
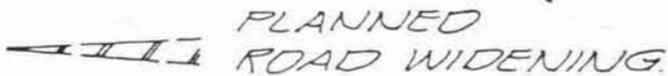
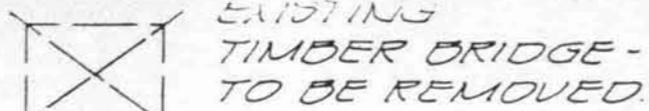
Attached also please find a drawing showing the planned improvements and copies of "Resource Maps". We have received appropriate Corp of Engineer's permit, State Board of Public Works approval, and State Water Quality Certification for this work. These permits restrict us from performing work within the creek's channel between March 1 and June 15. We are awaiting your approval and approval by the U.S. Coast Guard.

I trust that this is sufficient for your use in approval of this project. However should you have any questions or desire additional information, please do not hesitate to contact me. Thank you.

Sincerely,

F. Jesse Fearins
Assistant County Engineer

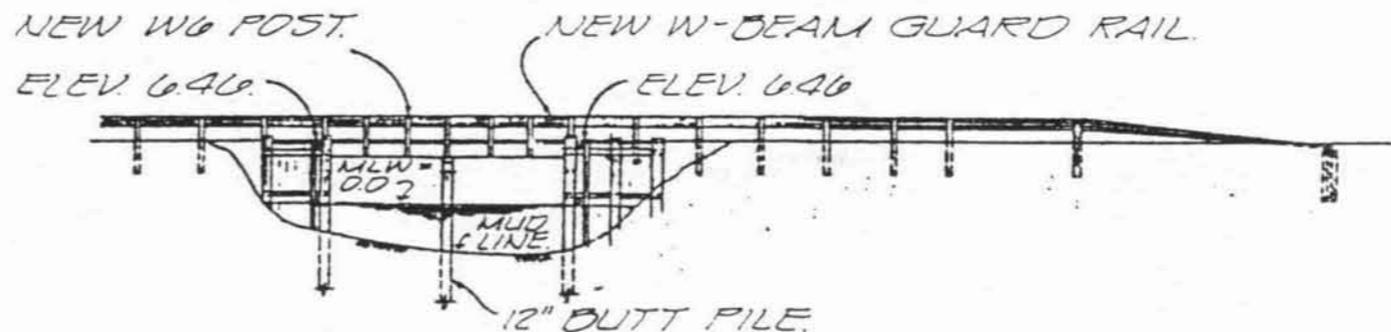
enclosures



VICINITY
SCALE: 1" = One m

PLAN

Scale: 1" = 20'

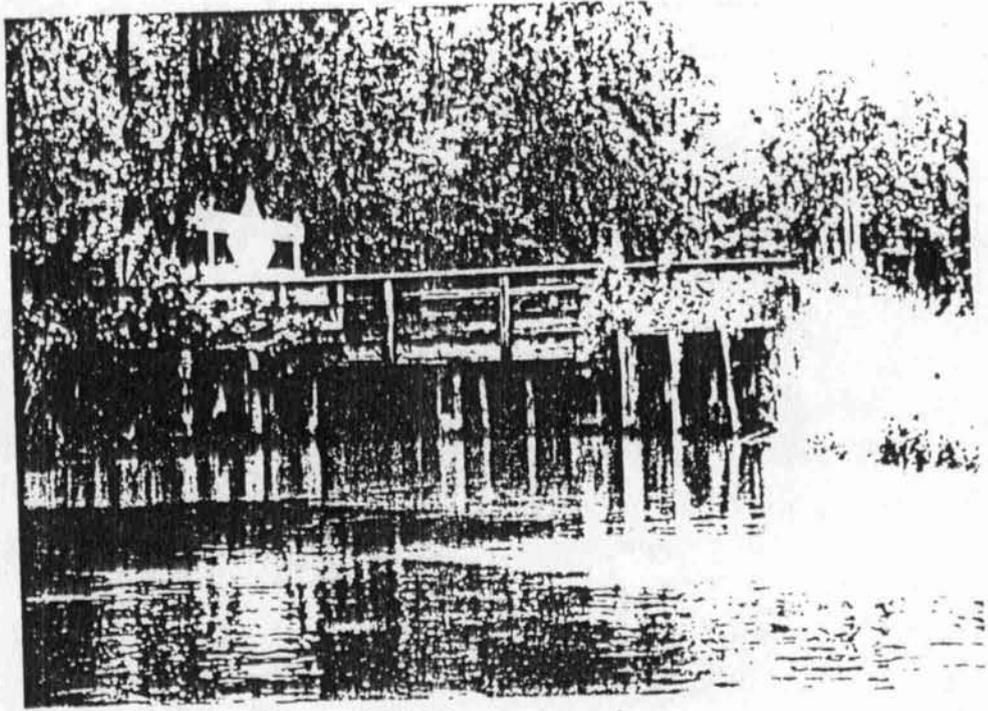


PROFILE

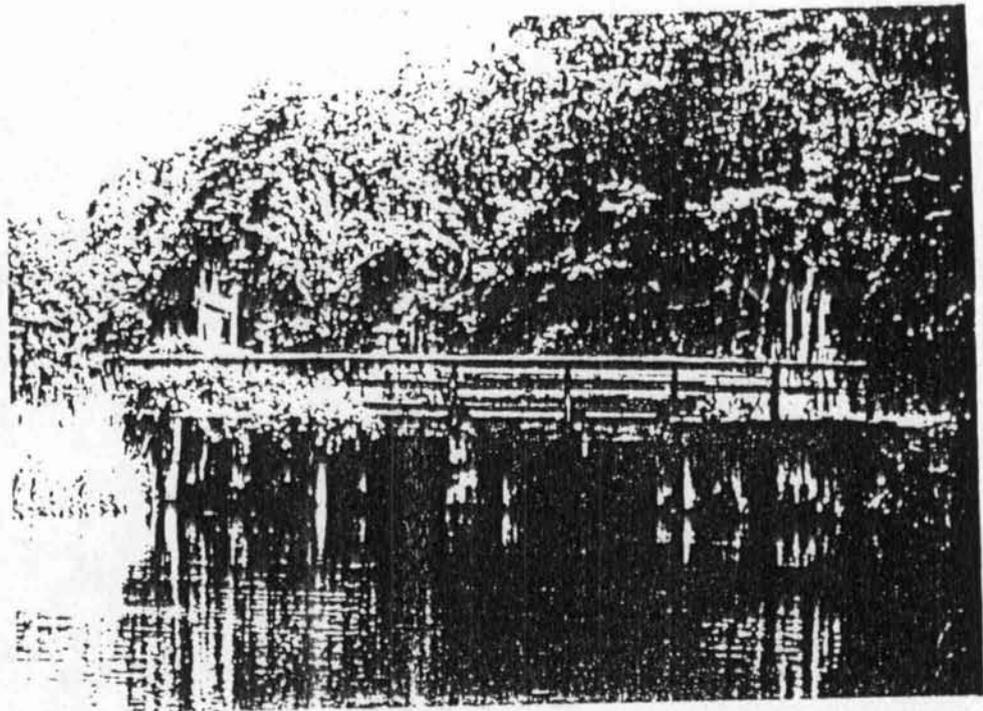
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**PLAN SHOWING
MONEYMAKE BRIDGE REPLAC**

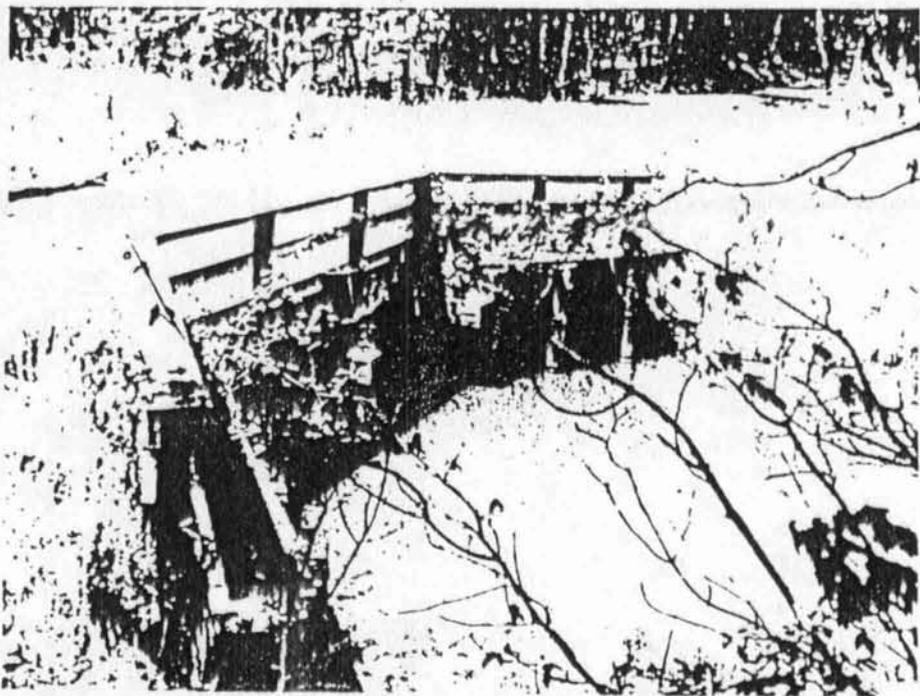
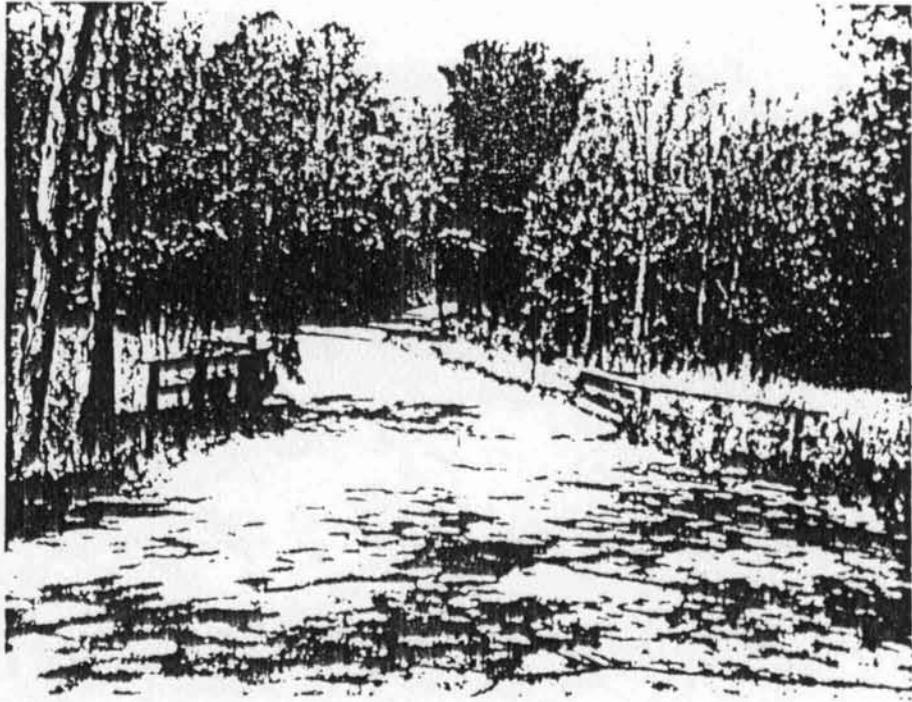
TALBOT COUNTY, MARYLAND

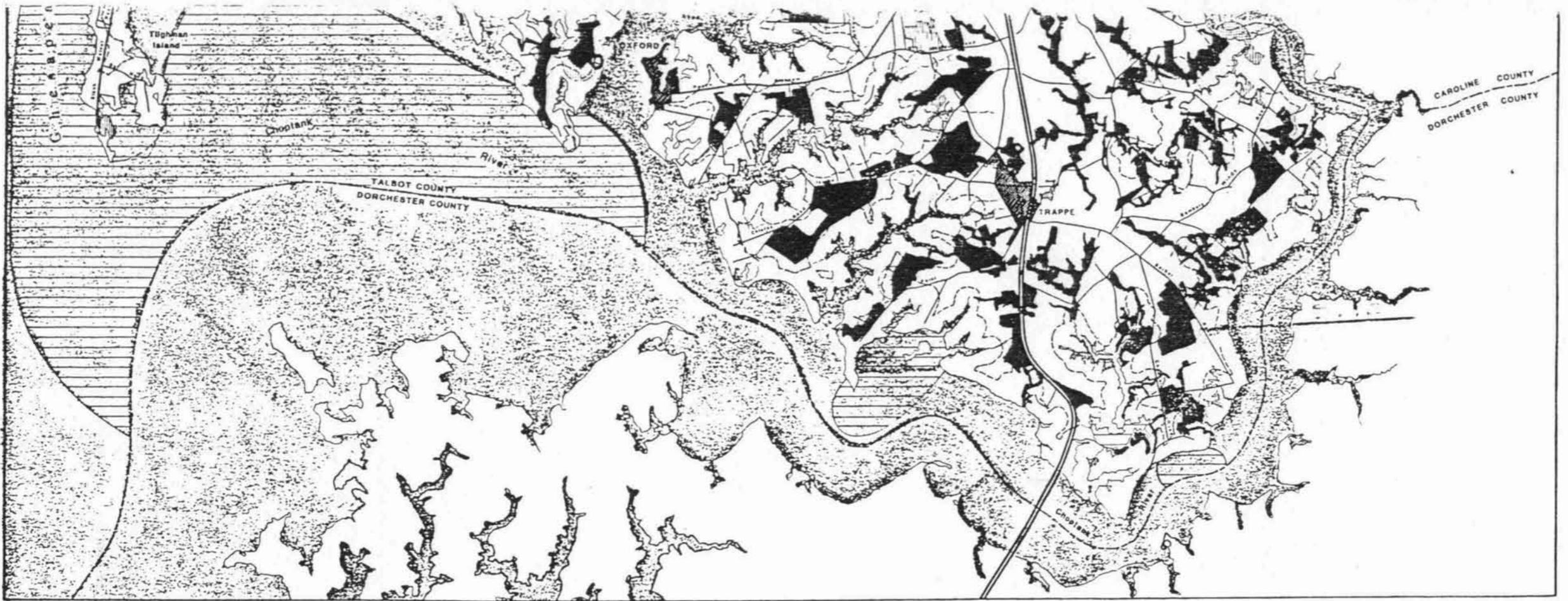


STATION 2+00 ON LEFT



STATION 2+00 ON RIGHT





WILDLIFE HABITATS



Historic Waterfowl Staging Areas



Riparian Forest Habitat



Habitat for Interior Forest Birds



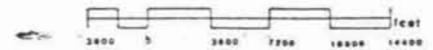
Habitat Locations for Threatened and Endangered Species



Colonial Waterbird Nesting Area

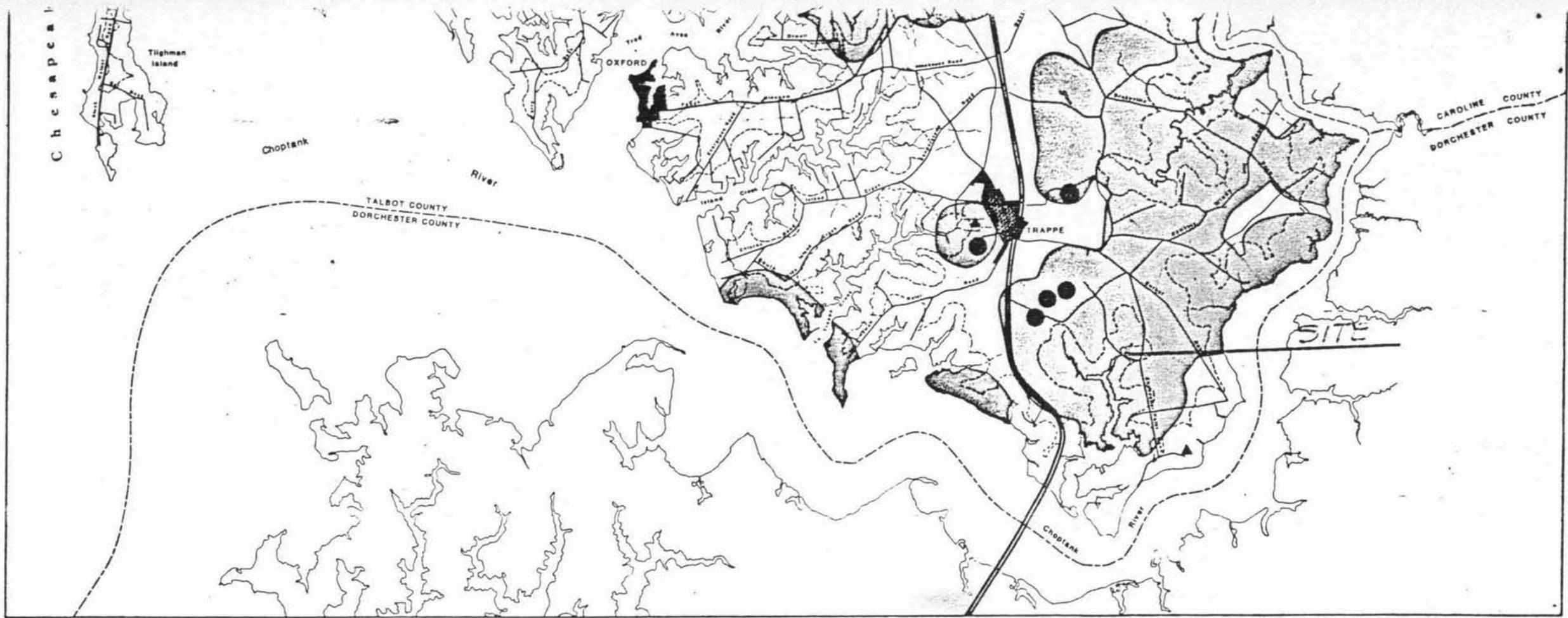


Critical Area-Line



MAP

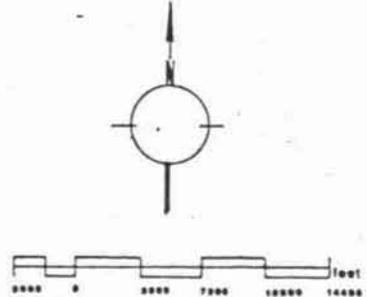
Map Sources:
Maryland Natural Heritage Program
Department of Natural Resources



SURFACE MINING / LANDFILL LOCATIONS

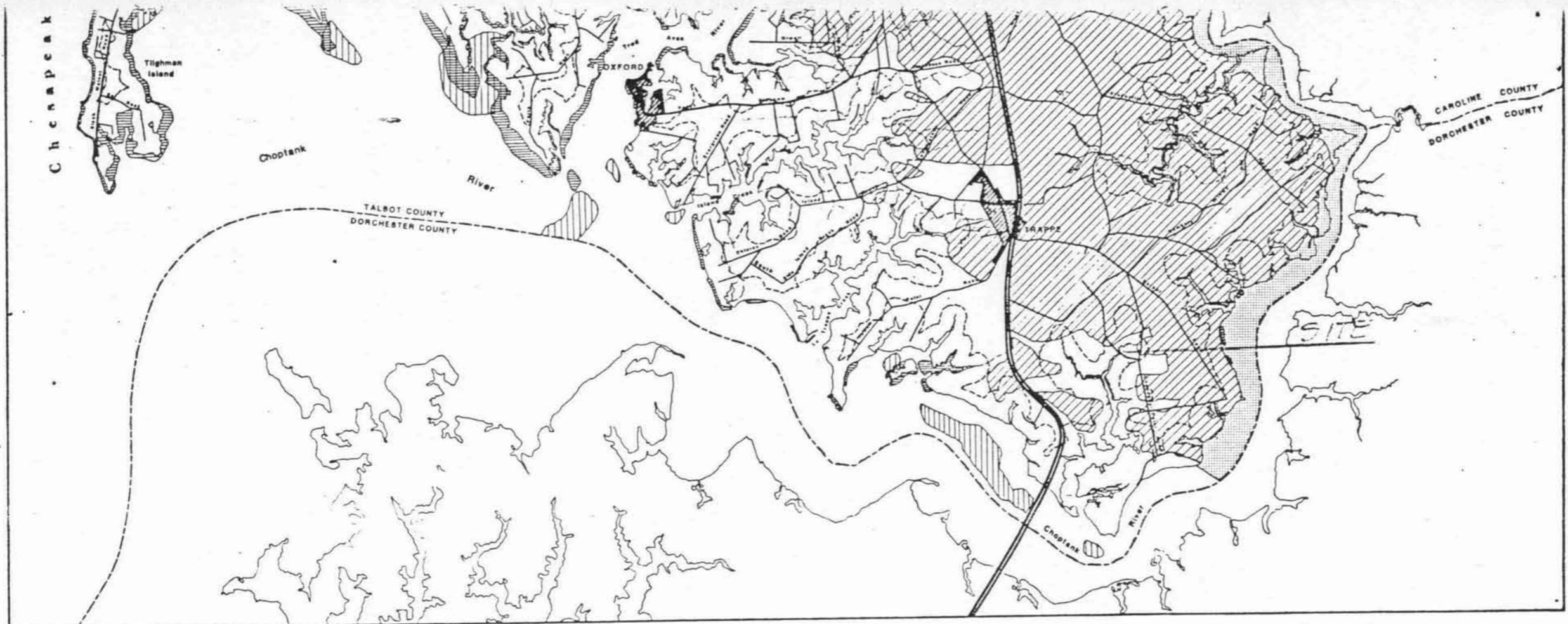
-  Location Of Potential Mining Operations
-  Active Mines
-  Landfill Locations
-  Inactive Operation Or Old Borrow Pit Site

----- Critical Area Line



MAP

Map Sources:
Maryland Geological Survey Of Talbot County



AQUATIC HABITATS



Anadromous Fish Spawning Waters



Drainage Basin Area Of Spawning Waters



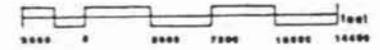
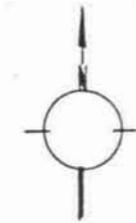
Shellfish Beds



Submerged Aquatic Vegetation
Nursery Area

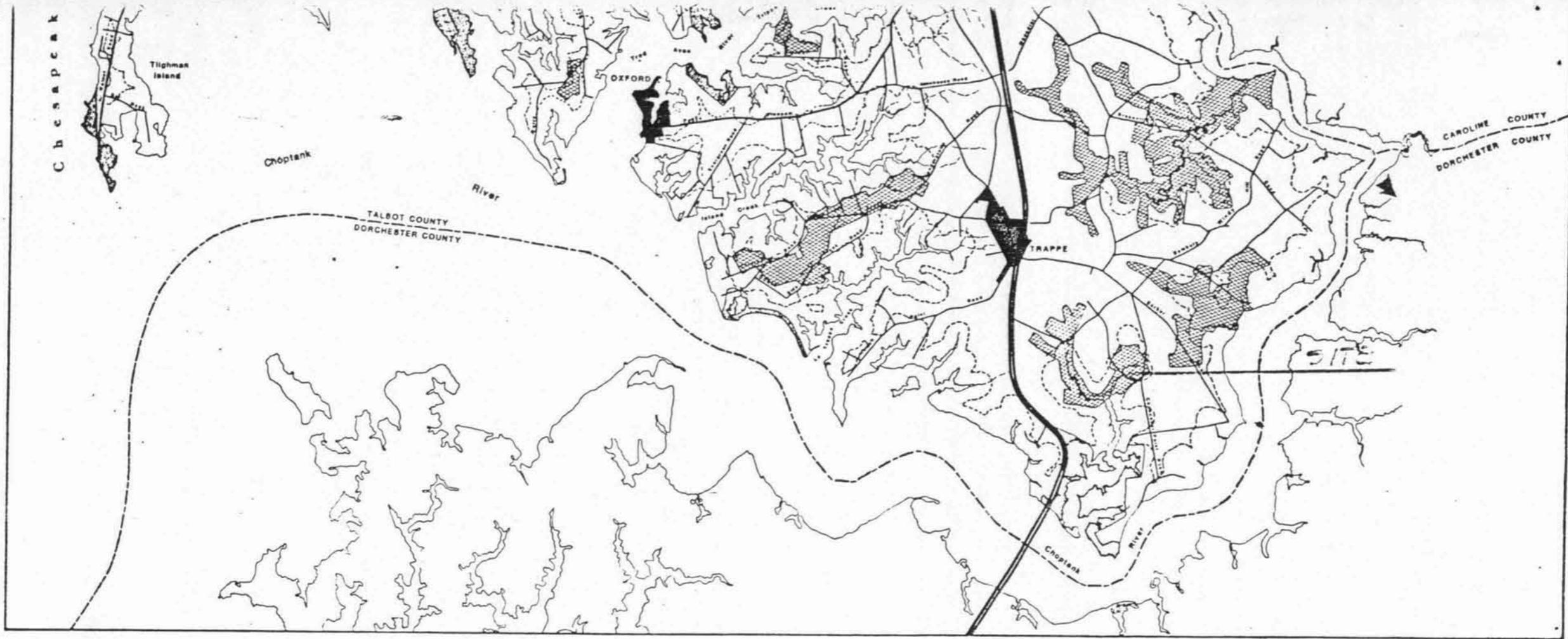


Critical Area Line



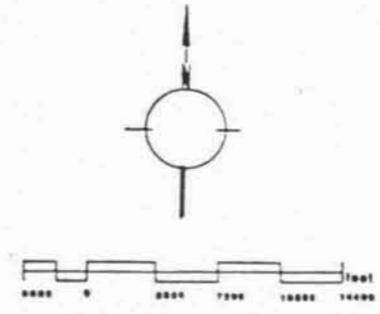
MAP

Map Sources:
Maryland Department Of Natural Resources

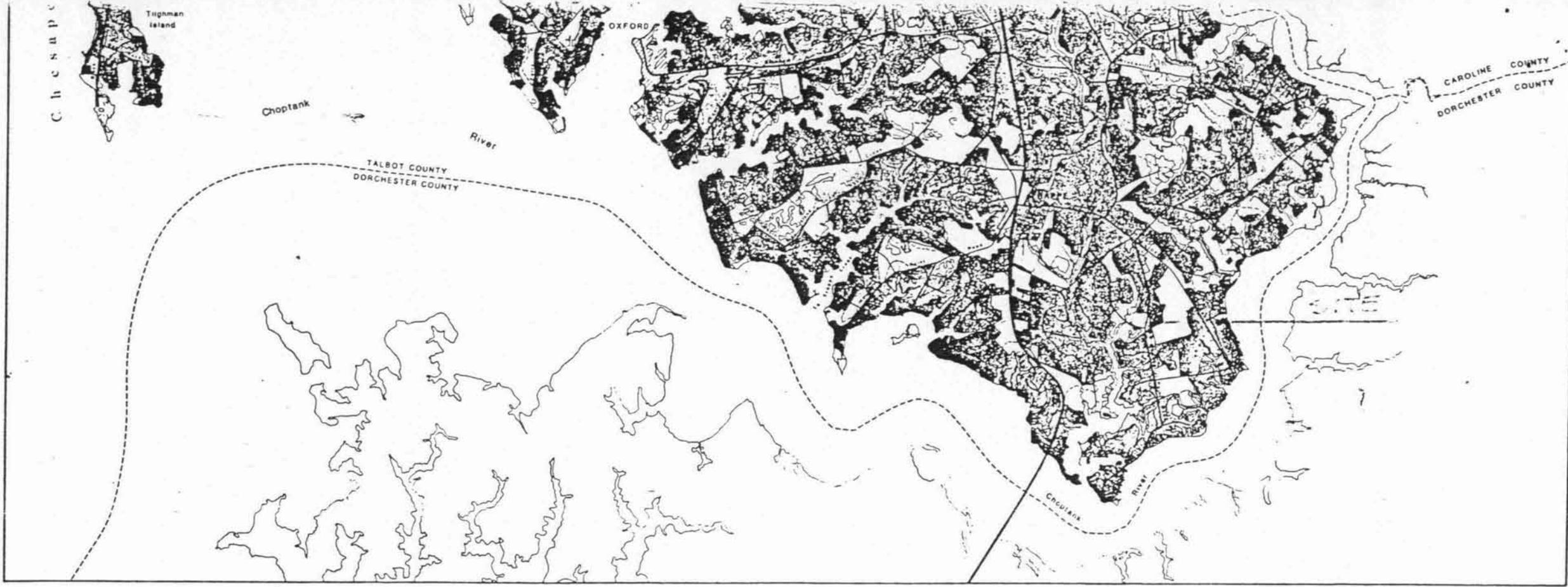


POTENTIAL NATURAL PARK SITES

-  Natural Park Sites
-  Recreational Open Space Sites
-  Critical Area Line

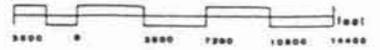


MAP



NATURAL FEATURES

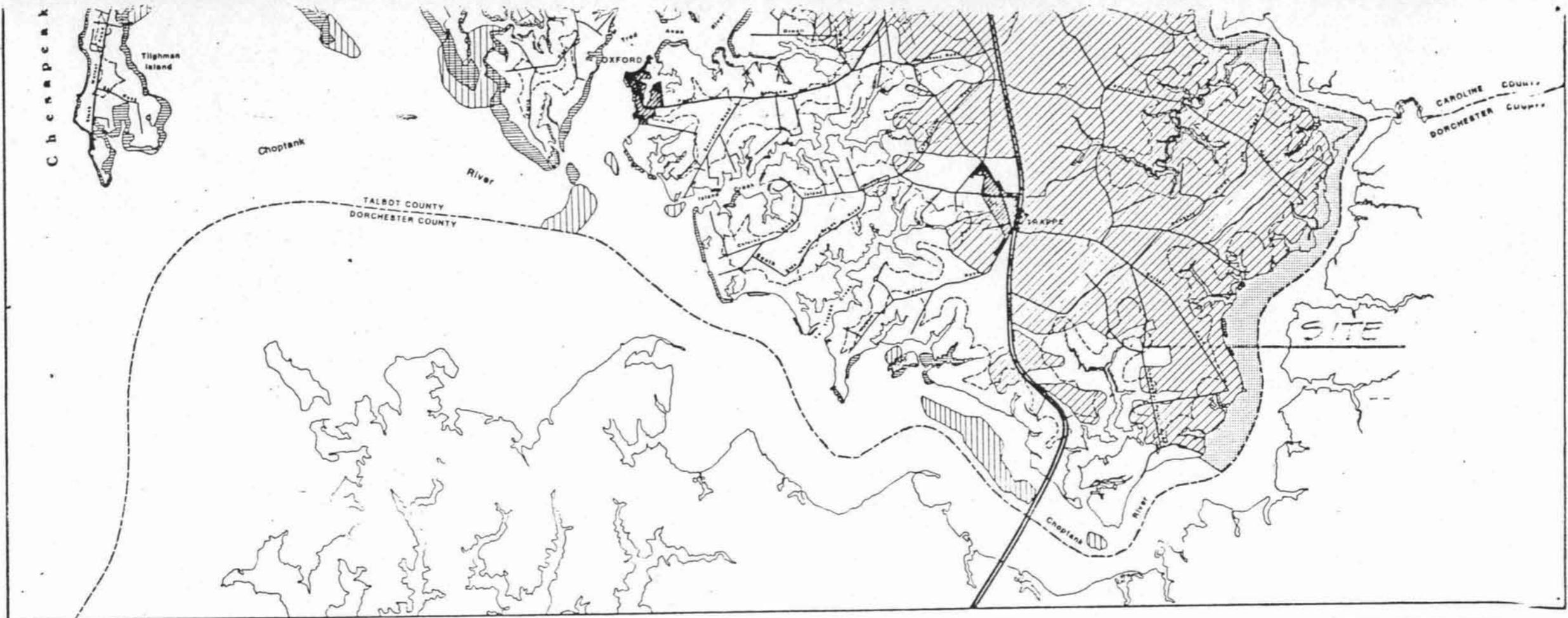
AGRICULTURE



TALBOT COUNTY, MARYLAND

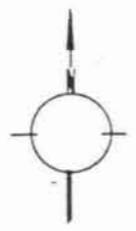
MAP

Map Sources:
 U.S. Fish And Wildlife Service
 National Wetlands Map
 Maryland Dept. Of Natural Resources



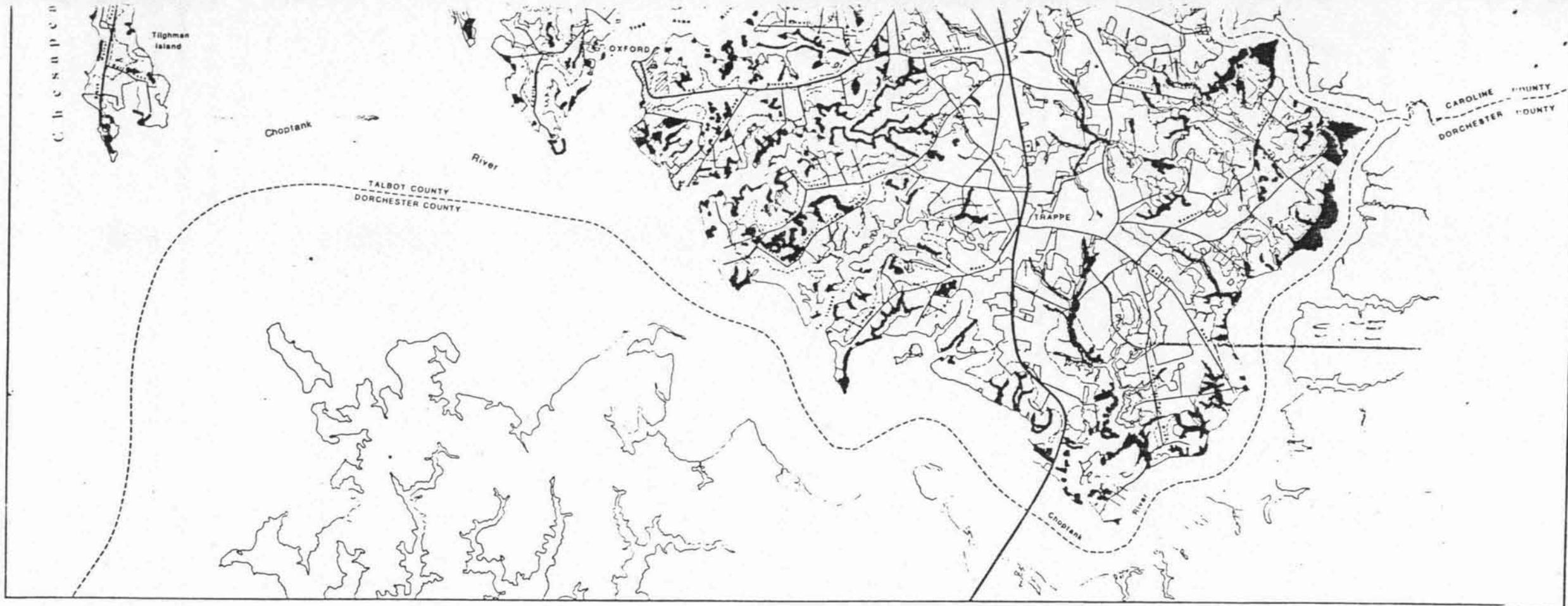
AQUATIC HABITATS

- | | | | |
|---|--|---|--|
|  | Anadromous Fish Spawning Waters |  | Submerged Aquatic Vegetation Nursery Areas |
|  | Drainage Basin Area Of Spawning Waters |  | Critical Area Line |
|  | Shellfish Beds | | |



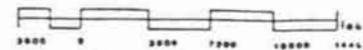
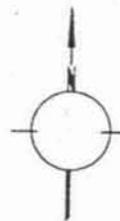
MAP

Map Sources:



NATURAL FEATURES


 Wetlands



MAP

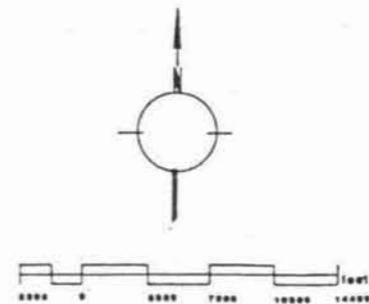
Map Sources:
 U.S. Fish And Wildlife Service
 National Wetlands Map

TALBOT COUNTY, MARYLAND

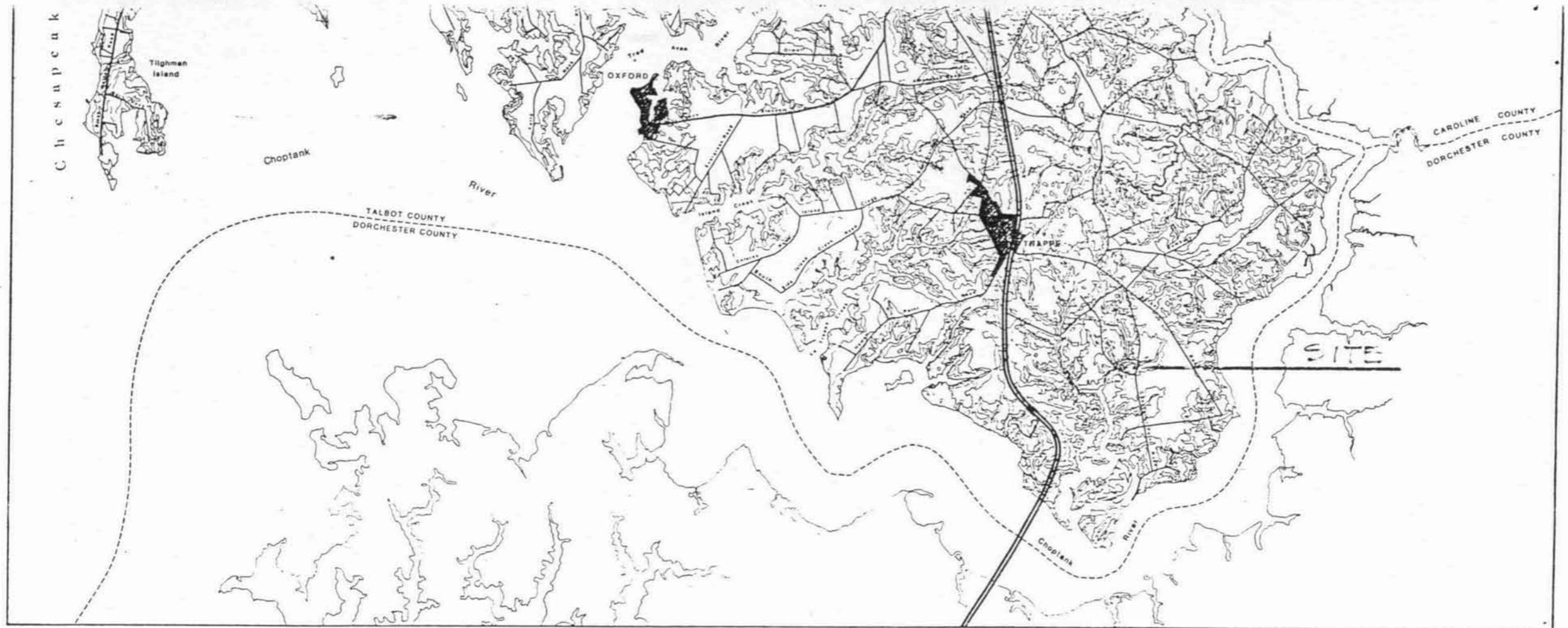


DEVELOPMENT AREA DESIGNATION

-  Critical Area Line
-  Resource Conservation Area
-  Intensely Developed Areas
-  Limited Development Areas

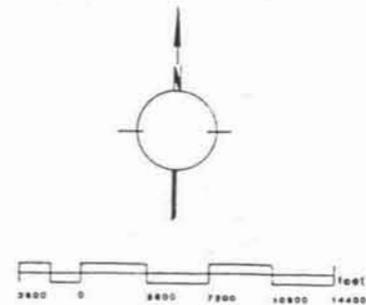


MAP



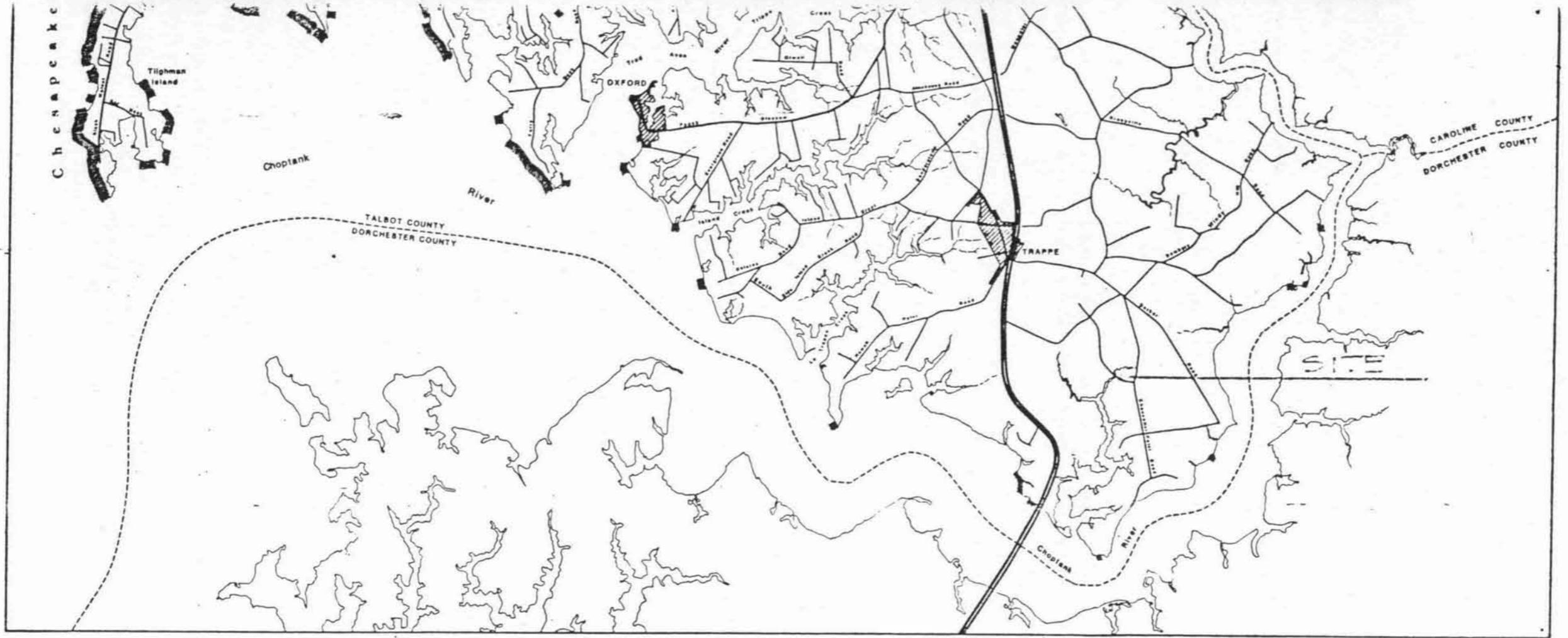
SOILS

- Steep and Erosive Soils
- Hydric and Low Permeability Soils



MAP

Map Sources:



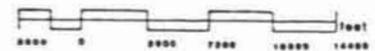
SHORE EROSION



Areas Of Mild And Non-Significant Erosion



Areas of Significant Erosion



MAP

FISHING PIER AT POINT LOOKOUT STATE PARK
ST. MARY'S COUNTY, MARYLAND

CRITICAL AREA ENVIRONMENTAL ASSESSMENT
FOR
NON-INTENSIVE DEVELOPMENT ON DNR LAND

SUBMITTED November 2, 1988

BY

Joe Pat Plocek

I. Reason For Proposed Action

Point Lookout State Park is heavily utilized for recreational fishing. At present this fishing activity is concentrated along the narrow shoulder of Point Lookout Road Md. (Route 5), which runs the length of the park and carries all park traffic. Persons fishing now park and fish from the shoulder, casting out over a wooden bulkhead armored with rip-rap. This fishing pier is intended to move park users off of the road shoulder onto the pier, and to make deeper waters accessible to them. This action should increase the size and diversity of anticipated harvest, increase safety for those fishing in this area of the park, and increase the safety and efficiency of traffic movement along this portion of Point Lookout Road.

II. Site Location and Description of Project Area

Point Lookout State Park is located at the southern most point in St. Mary's County, Maryland (Figure 1). Its eastern boundary is the Chesapeake Bay and its western boundary is the mouth of the Potomac River. Access is provided by Maryland Route 5. No part of Point Lookout State Park is intensely developed and no such development is called for in the approved master plan.

The site of the new fishing pier is the open Chesapeake Bay along the east side of Route 5. At this point, Route Five is a paved two lane road. Along its east side is a sandy plain of varying width that ends at a wooden bulkhead and/or rip-rap at the edge of the bay. This sandy area is sparsely vegetated with Virginia Pine and other common Coastal Plain vegetation. The entire area is within the Critical Area.

The bay is tidal, with a north-south ebb and flood that runs parallel to the bulkhead. The bottom is sandy and quite shallow with a water depth of less than five feet for over six hundred feet. A ten foot depth is not reached for a distance of over 800 feet from the bulkhead line.

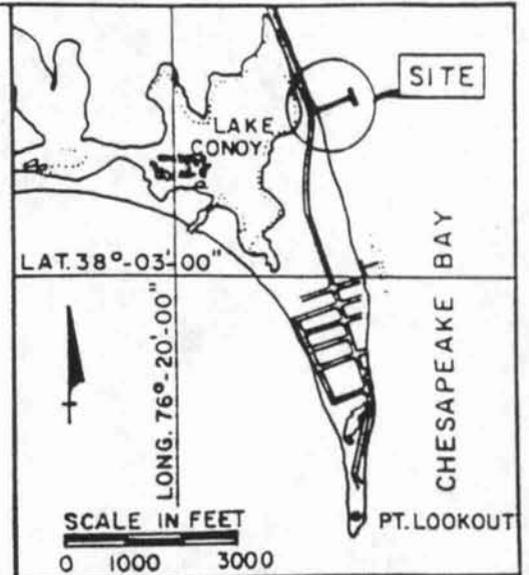
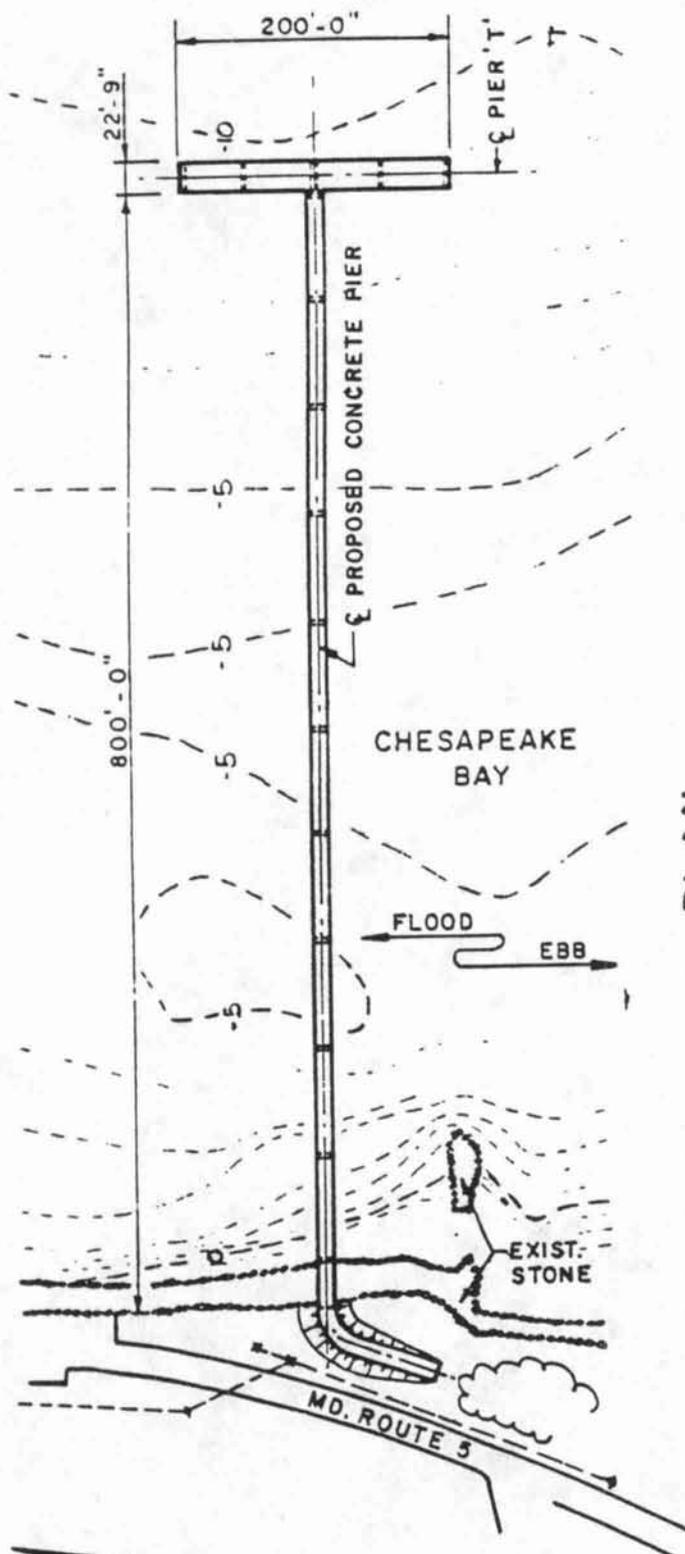
III. Description of Proposed Action

This action proposes construction of an 11 foot wide concrete pier 800 feet long, with a 200 foot by 23 foot T-head (Figure 1). The pier would be supported on piles and would be raised 12.0 feet above the MSL elevation. At the landward end, a ramp would be provided to bring users from the existing ground level up to the height of the pier. The ramp would be macadam on earth fill.

Review of Possible Impacts

1. Fish Habitat - The bay in this vicinity provides excellent shallow water habitat frequented by a abundance of marine fish. Not only will this facility not reduce the acceptability of this area to fishes, the cover and increased benthic growth that will develop on its support piles will actually increase the quality of fish habitat.
2. Plant Habitat - Construction of the ramp would require loss of some existing vegetation. However, the area impacted would not be significant, would affect only plant communities common in the park, and would impact no individuals of uncommon or unusual species.
3. Wildlife Habitat - Although construction of the ramp grading from the existing ground level up to the proposed pier would require removal of some natural habitat. The area impacted would be insignificant compared to the area remaining and would not reduce the carrying capacity of this area for any wildlife species.
4. Water Quality - The proposed action will have absolutely no effect on water quality. As discussed under #7, below, no runoff from the entry ramp will flow directly into the bay. All storm water runoff will be directed through grassed swales to natural wetlands or sandy, well drained areas where infiltration will be maximized.
5. Public Access to Shoreline - This portion of Point Lookout State Park is presently dedicated to fishing. The proposed action will increase available opportunities for this activity and will in no way decrease shoreline access for the public.
6. Slopes Greater than 15 Per Cent - No part of this action would involve slopes greater than 15 percent. In fact, this entire area is typically quite level. Side slopes constructed to support the short access ramp will be fully stabilized.
7. Stormwater Runoff - The only increase in volume or potential change in overland flow of stormwater runoff associated with this project would come from the short entry ramp at the end of the pier. All runoff from this area will flow over sand, where infiltration will be maximized, or will be directed into existing wetlands so that pollutant loads will be reduced to acceptable levels before the bay or its tributaries are reached.

8. Existing Water Circulation Patterns or Salinity Regimes - Both the adjacent bay and any bay tributary that might be affected by this minor project are adequately flushed and no change in water circulation pattern or salinity regime will occur.
9. Wetlands, Sav Beds or Other Aquatic Habitat - No known examples of any of these features would be adversely impacted by this project.
10. Shellfish Beds - An oyster bar does parallel the park in the area where this pier is proposed. Since the bar is continuous along this stretch, the pier will cross it. However, every effort will be made to keep support piles away from the oyster bar and otherwise avoid impact.
11. Required Dredging - This project would require no dredging or deposition of spoil. The fill required to construct the entrance ramp will be brought from off site. Piles to support the pier will be driven or jetted in.
12. Shoreline Protection - As noted previously, shoreline protection is already in place and will not be affected by this project.
13. Existing Buffers - This area is naturally vegetated and, although construction of this facility will displace some, re-vegetation to stabilize all new surfaces will be completed as soon as possible. This project will not decrease the effectiveness of the existing undeveloped strip east of Route 5 from buffering the bay. No trees will be removed for construction of this new facility.
14. Threatened or Endangered Species, or species in need of Conservation - To the best of our knowledge no such species occur in this vicinity. Up-to-date information was requested from the Natural Heritage program but no response has yet been received.
15. Natural Parks - Point Lookout State Park has not been identified, to the best of our knowledge, as a potential Natural Park. However, the proposed fishing pier would seem to be fully consistent with the Natural Park concept, since it would maximize opportunities for park users to view and appreciate this coastal area, while concentrating such activity to a specific point where intrusion and impact can be minimized, monitored and controlled.
16. Required Permits - All necessary approvals required for this action have been obtained (copies attached).



VICINITY MAP

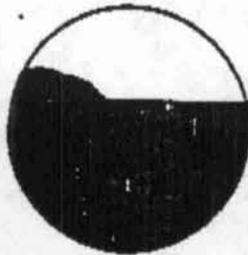
PLAN



ADJACENT PROPERTY OWNERS:
1. POINT LOOKOUT STATE PARK

PROPOSED CONCRETE FISHING PIER
 IN: CHESAPEAKE BAY
 AT: POINT LOOKOUT, MARYLAND
 POINT LOOKOUT STATE PARK
 APPLICATION BY: STATE OF MD.
 DEPT. OF NATURAL
 RESOURCES
 SHEET 1 OF 2 DATE: 10-9-86

PURPOSE: CONSTRUCTION OF FISHING PIER
 DATUM: USC & GS OF 1908



Maryland Department of Natural Resources

Water Resources Administration
Tawes State Office Building
Annapolis, Maryland 21401
Telephone: (301) 974-2224

William Donald Schaefer
Governor

Torrey C. Brown, M.D.
Secretary

James W. Peck
Director

May 28, 1987

DEPT OF GENL SERV.
OFFICE OF ENGR.
AND CONSTRUCTION
1987 JUN -1 AM 10:27

Mr. Wally North
Department of General Services
301 West Preston Street
Baltimore, Maryland 21202

RE: WRA No. 87-SF-1202
DGS Project No. P-065-851-010
Fishing Pier at Point Lookout
State Park
UBCM Job No. 86-019

Dear Mr. North:

The Administration has received and reviewed your sediment and erosion control plan for the referenced project. The review was in accordance with Sections 8-11A-05 and 8-1105 of the Natural Resources Article, Annotated Code of Maryland in regards to stormwater management and sediment control measures, respectively. As a result of that review it has been determined that you are eligible for a exemption from stormwater management because the total disturbed area is less than 5000 square feet, and you have provide an adequate sediment and erosion control plan.

An approval by this Administration is contingent upon receiving a set of signed construction plans and specifications. If there are any questions, please do not hesitate to contact me.

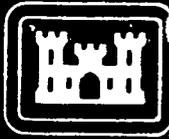
Very truly yours,

L. Kenneth Pensyl, III
Water Resources Engineer
Sediment and Stormwater Division

9/9

LKP:roe

cc: Mr. Bart Clark



This notice of authorization must be conspicuously displayed at the site of work.

United States Army Corps of Engineers

6 APR 1987

19

A permit to construct fishing pier on piles with "T" head in the Chesapeake Bay

at Lake Colony in Point Lookout State Park, St. Mary's County, Maryland

has been issued to Maryland Department of Natural Resources on **6 APR 1987**

Address of Permittee c/o Whitney, Bailey, Cox & Magnani
1850 C York Road
Timonium, Maryland 21093-5118

Permit Number

NABOP-RR(MD St. DNR)87-0406

Donald W. Roeske
Donald W. Roeske
Chief, Regulatory Branch
for the District Commander



DEPARTMENT OF THE ARMY
BALTIMORE DISTRICT, CORPS OF ENGINEERS
P.O. BOX 1715
BALTIMORE, MARYLAND 21203-1715

6 APR 1987

REPLY TO ATTENTION OF:

Operations Division

Subject: NABOP-RR(MD St. DNR)87-0406

Maryland Department of Natural Resources
c/o Whitney, Bailey, Cox & Magnani
1850-C York Road
Timonium, Maryland 21093-5118

Dear Sirs:

Referring to your written request dated 8 October 1986, upon recommendation of the Chief of Engineers and under the provisions of Section 10 of the Rivers and Harbors Act of March 1899, you are hereby authorized by the Secretary of the Army to construct an 800-foot x 11-foot concrete fishing pier supported on piles, including a 200-foot x 23-foot T-head; the pier will extend a maximum of 823 feet channelward of the mean high water shoreline, in the Chesapeake Bay, near Lake Colony in Point Lookout State Park, St. Mary's County, Maryland, in accordance with the attached plans submitted with your request and subject to the attached conditions.

Your particular attention is invited to conditions (a), (n), (o), (t), and special conditions (c) and (e). In addition, the applicant must contact the Commander (OAN), Fifth Coast Guard District, Federal Building, 431 Crawford St., Portsmouth, VA 23704-5004, or call (804) 398-6229, to ascertain the need for the placement of obstruction lights.

Enclosed is your NOTICE OF AUTHORIZATION, ENG FORM 4336, which must be conspicuously displayed at the site of the work. All required State and local permits must be obtained prior to construction.

By Authority of the Secretary of the Army:

Issued for and in behalf of
Colonel Martin W. Walsh, Jr.
District Engineer

Donald W. Roeseke
Donald W. Roeseke
Chief, Regulatory Branch

Enclosures

STANDARD CONDITIONS
DEPARTMENT OF THE ARMY PERMITS

I. General Conditions

- (a) That all activities identified and authorized herein shall be consistent with the terms and conditions of this permit; and that any activities not specifically identified and authorized herein shall constitute a violation of the terms and conditions of this permit which may result in the modification, suspension or revocation of this permit, in whole or in part, as set forth more specifically in General Conditions j or k hereto, and in the institution of such legal proceedings as the United States Government may consider appropriate, whether or not this permit has been previously modified, suspended or revoked in whole or in part.
- (b) That all activities authorized herein shall, if they involve, during their construction or operation, any discharge of pollutants into waters of the United States or ocean waters, be at all times consistent with applicable water quality standards, effluent limitations and standards of performance, prohibitions, pretreatment standards and management practices established pursuant to the Clean Water Act of 1972 (Pub. L. 92-500; 86 Stat. 816), the Marine Protection, Research and Sanctuaries Act of 1972 (Pub. L. 92-532, 86 Stat. 1052), or pursuant to applicable State and local law.
- (c) That when the activity authorized herein involves a discharge during its construction or operation, of any pollutant (including dredged or fill material), into waters of the United States, the authorized activity shall, if applicable water quality standards are revised or modified during the term of this permit, be modified, if necessary, to conform with such revised or modified water quality standards within 6 months of the effective date of any revision or modification of water quality standards, or as directed by an implementation plan contained in such revised or modified standards, or within such longer period of time as the district engineer, in consultation with the Regional Administrator of the Environmental Protection Agency, may determine to be reasonable under the circumstances.
- (d) That the discharge will not destroy a threatened or endangered species as identified under the Endangered Species Act, or endanger the critical habitat of such species.
- (e) That the permittee agrees to make every reasonable effort to prosecute the construction or operation of the work authorized herein in a manner so as to minimize any adverse impact on fish, wildlife, and natural environmental values.
- (f) That the permittee agrees that it will prosecute the construction or work authorized herein in a manner so as to minimize any degradation of water quality.
- (g) That the permittee shall allow the District Engineer or his authorized representative(s) or designee(s) to make periodic inspections at any time deemed necessary in order to assure that the activity being performed under authority of this permit is in accordance with the terms and conditions prescribed herein.
- (h) That the permittee shall maintain the structure or work authorized herein in good condition and in reasonable accordance with the plans and drawings attached hereto.
- (i) That this permit does not convey any property rights, either in real estate or material, or any exclusive privileges; and that it does not authorize any injury to property or invasion of rights or any infringement of Federal, state, or local laws or regulations.
- (j) That this permit does not obviate the requirement to obtain state or local assent required by law for the activity authorized herein.
- (k) That this permit may be either modified, suspended or revoked in whole or in part pursuant to the policies and procedures of 33 CFR 325.7.
- (l) That in issuing this permit, the Government has relied on the information and data which the permittee has provided in connection with his permit application. If, subsequent to the issuance of this permit, such information and data prove to be materially false, materially incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and or the Government may, in addition, institute appropriate legal proceedings.
- (m) That any modification, suspension, or revocation of this permit shall not be the basis for any claim for damages against the United States.
- (n) That the permittee shall notify the District Engineer of the time the activity authorized herein will be commenced, as far in advance of the time of commencement as the District Engineer may specify, and of any suspension of work, if for a period of more than one week, resumption of work and its completion.

(o) That if the activity authorized herein is not completed on or before 31st day of December, 1990, (three years from the date of issuance of this permit unless otherwise specified) this permit, if not previously revoked or specifically extended, shall automatically expire.

(p) That this permit does not authorize or approve the construction of particular structures, the authorization or approval of which may require authorization by the Congress or other agencies of the Federal Government.

(q) That if and when the permittee desires to abandon the activity authorized herein, unless such abandonment is part of a transfer procedure by which the permittee is transferring his interests herein to a third party pursuant to General Condition (t) hereof, he must restore the area to a condition satisfactory to the District Engineer.

(r) That if the recording of this permit is possible under applicable state or local law, the permittee shall take such action as may be necessary to record this permit with the Register of Deeds or other appropriate official charged with the responsibility for maintaining records of title to and interests in real property.

(s) That there shall be no unreasonable interference with navigation by the existence or use of the activity authorized herein.

(t) That this permit may not be transferred to a third party without prior written notice to the District Engineer, either by the transferee's written agreement to comply with all terms and conditions of this permit or by the transferee subscribing to this permit in the space provided below and thereby agreeing to comply with all terms and conditions of this permit. In addition, if the permittee transfers the interests authorized herein by conveyance of realty, the deed shall reference this permit and the terms and conditions specified herein and this permit shall be recorded along with the deed with the Register of Deeds or other appropriate official.

(u) That if the permittee during prosecution of the work authorized herein, encounters a previously unidentified archeological or other cultural resource that might be eligible for listing in the National Register of Historic Places, he shall immediately notify the district engineer.

II. Special Conditions

Structures In or Affecting Navigable Waters of the United States

(a) That this permit does not authorize the interference with any existing or proposed Federal project and that the permittee shall not be entitled to compensation for damage or injury to the structures or work authorized herein which may be caused by or result from existing or future operations undertaken by the United States in the public interest.

(b) That no attempt shall be made by the permittee to prevent the full and free use by the public of all navigable waters at or adjacent to the activity authorized by this permit.

(c) That if the display of lights and signals on any structure or work authorized herein is not otherwise provided for by law, such lights and signals as may be prescribed by the United States Coast Guard shall be installed and maintained by and at the expense of the permittee.

(d) That the permittee, upon receipt of a notice of revocation of this permit or upon its expiration before completion of the authorized structure or work, shall, without expense to the United States and in such time and manner as the Secretary of the Army or his authorized representative may direct, restore the waterway to its former conditions. If the permittee fails to comply with the direction of the Secretary of the Army or his authorized representative, the Secretary or his designee may restore the waterway to its former condition, by contract or otherwise, and recover the cost thereof from the permittee.

(e) Structures for Small Boats: That the permittee hereby recognizes the possibility that the structure(s) permitted herein may be subject to damage by wave wash from passing vessels. The issuance of this permit does not relieve the permittee from taking all proper steps to insure the integrity of the structure(s) permitted herein and the safety of boats moored thereto from damage by wave wash and the permittee shall not hold the United States liable for any such damage.

III. Maintenance Dredging

(a) That when the work authorized herein includes periodic maintenance dredging, it may be performed under this permit for _____ years from the date of issuance of this permit (ten years unless otherwise indicated).

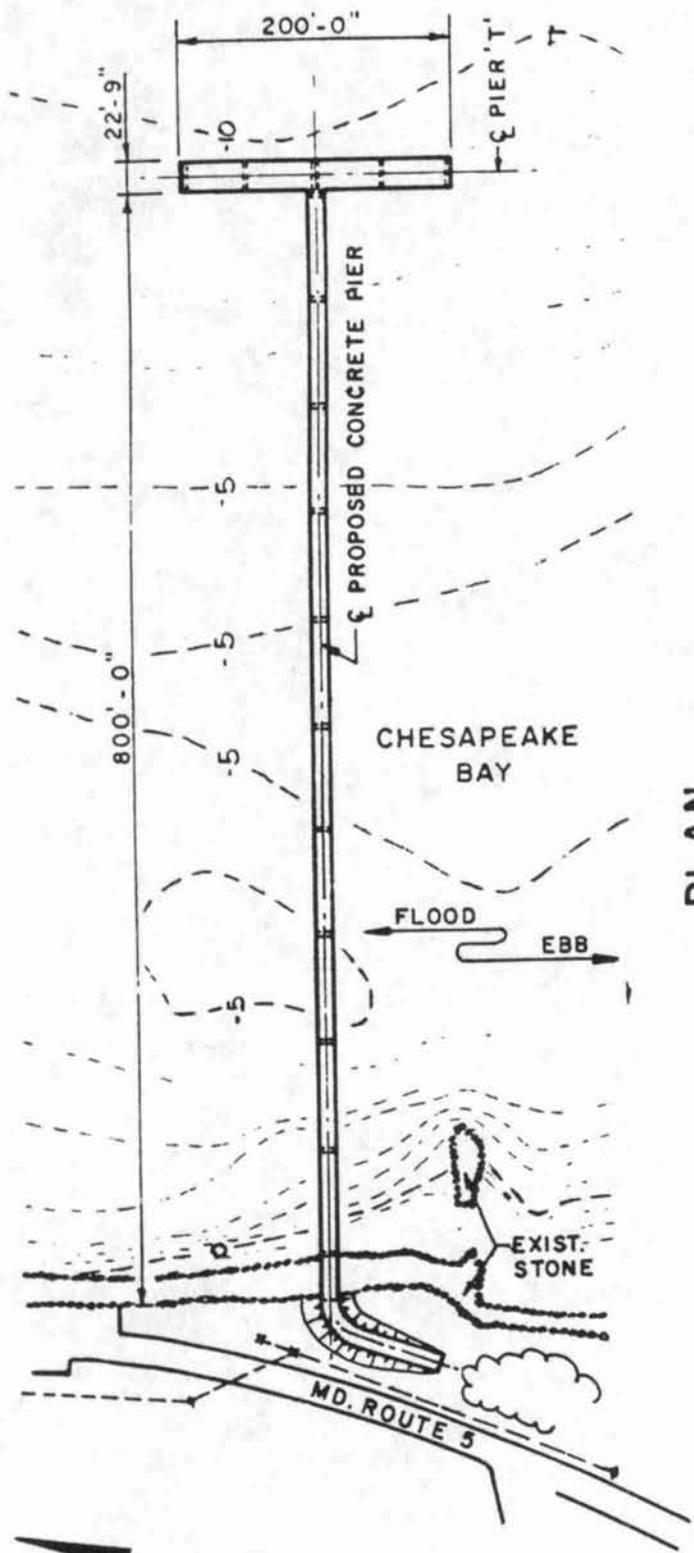
(b) That the permittee will advise the District Engineer in writing at least two weeks before he intends to undertake any maintenance dredging.

IV. Discharges of Dredged or Fill Material Into Waters of the United States

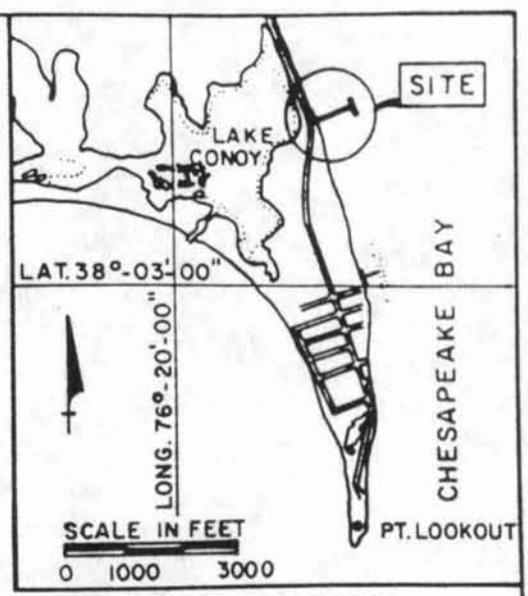
(a) That the discharge will be carried out in conformity with the goals and objectives of the EPA Guidelines established pursuant to Section 404(b) of the Clean Water Act and published in 40 CFR Part 230.

(b) That the discharge will consist of suitable material free from toxic pollutants in toxic amounts.

(c) That the fill created by the discharge will be properly maintained to prevent erosion and other non-point sources of pollution.



PLAN



VICINITY MAP

ADJACENT PROPERTY OWNERS:
1. POINT LOOKOUT STATE PARK

PROPOSED CONCRETE FISHING PIER

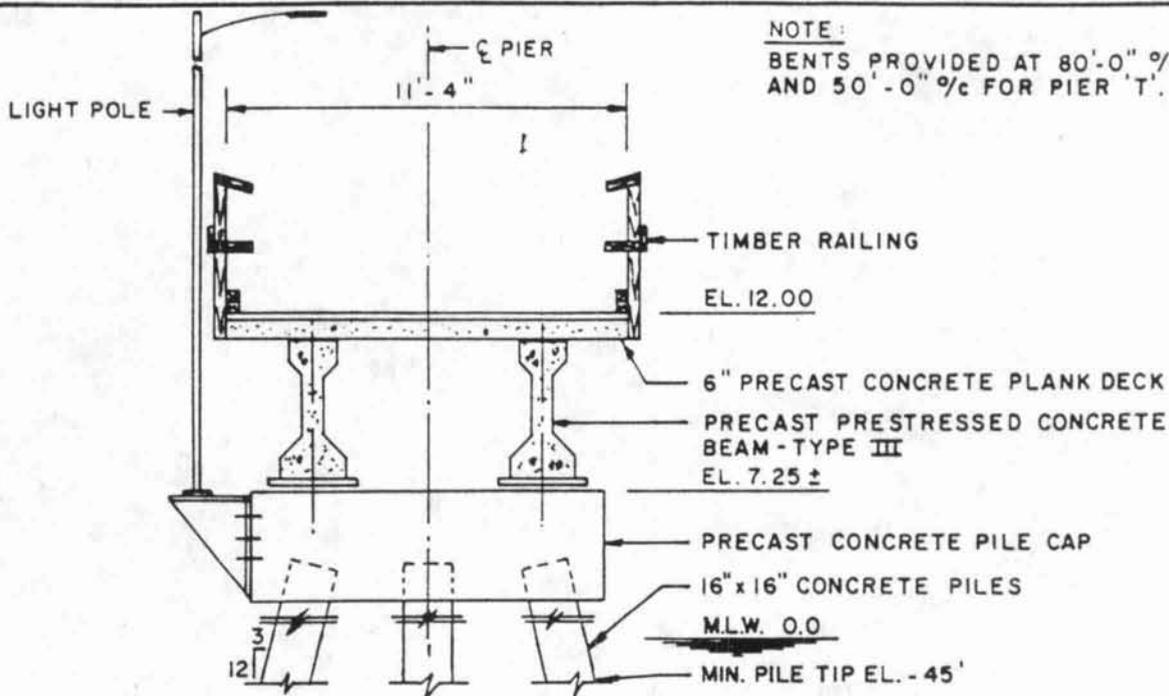
IN: CHESAPEAKE BAY
 AT: POINT LOOKOUT, MARYLAND
 POINT LOOKOUT STATE PARK
 APPLICATION BY: STATE OF MD.
 DEPT. OF NATURAL
 RESOURCES

PURPOSE: CONSTRUCTION OF FISHING PIER

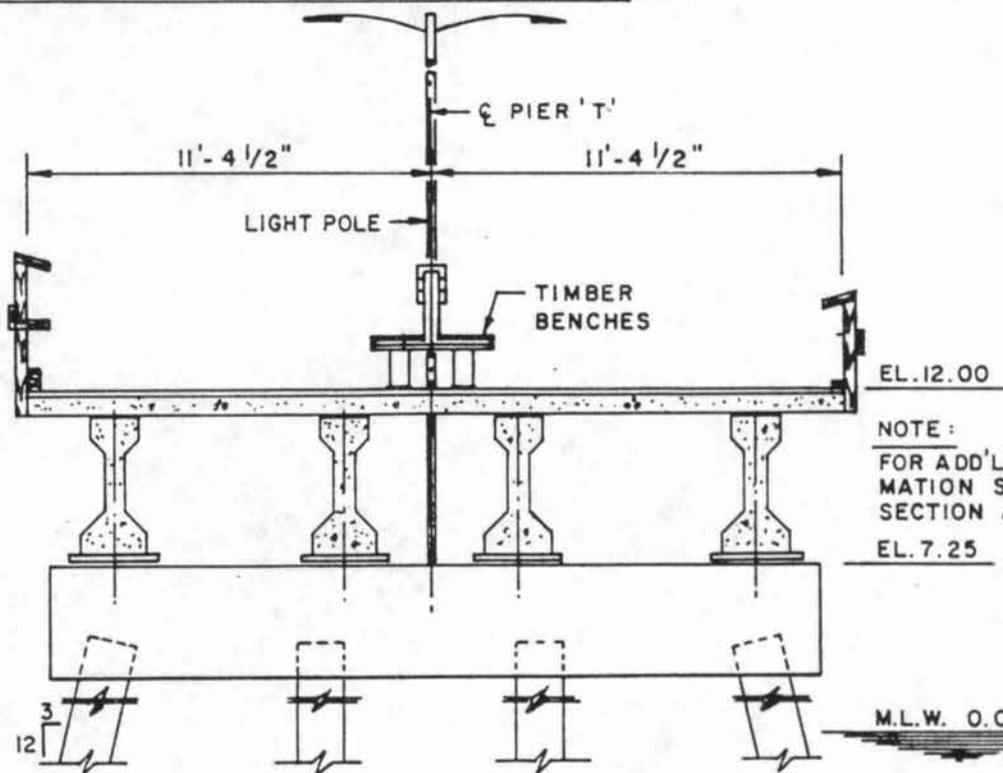
DATUM: USC & GS OF 1908

SHEET 1 OF 2

DATE: 10-9-86



TYPICAL SECTION THRU PIER



TYPICAL SECTION THRU PIER 'T'



PROPOSED CONCRETE FISHING PIER

IN: CHESAPEAKE BAY
 AT: POINT LOOKOUT, MARYLAND
 POINT LOOKOUT STATE PARK
 APPLICATION BY: STATE OF MD.
 DEPT. OF NATURAL
 RESOURCES



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
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Dorchester Co.
- Victor K. Butanis
Harford Co.
- Wallace D. Miller
Kent Co.
- Parris Glendening
Prince George's Co.
- Robert R. Price, Jr.
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- J. Frank Raley, Jr.
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- Shepard Krech, Jr.
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- Samuel E. Turner, Sr.
Talbot Co.
- William J. Bostian
Wicomico Co.
- Russell Blake
Worcester Co.

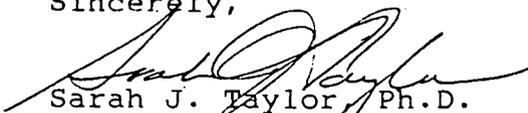
November 25, 1988

Dear Commission Member:

The next meeting of the Chesapeake Bay Critical Area Commission will be on November 30, 1988, at 1:00 p.m., at the Department of Housing and Community Development, 45 Calvert Street, Annapolis. The meeting room is #7 in basement of the building. A copy of the Agenda for the Meeting and the Minutes of the Meeting of November 16th are enclosed together with items pertaining to the Dorchester County vote to be taken that you should read.

Please also bring the By-laws and the proposed voting amendment as we will be voting on this item.

Sincerely,


Sarah J. Taylor, Ph.D.
Executive Director

SJT/jjd

Enclosure

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 Housing and Community Development
45 Calvert Street
Annapolis, Maryland

November 30, 1988

1:00 - 4:00 p.m.

- | | | |
|-------------|--|---|
| 1:00 - 1:10 | Approval of Minutes of November 16, 1988 | Robert Price
Vice Chairman |
| 1:10 - 2:00 | Presentation of General Approval Items:

1) FPWS Resource Conservation Plans
2) Timber Harvesting Plans | Janet McKegg/
Don MacLauchlan |
| 2:00 - 2:20 | Vote on By-Laws Amendment | Lee Epstein |
| 2:20 - 2:45 | Vote on Cecil County Program Amendments | Charles Davis/
Panel |
| 2:45 - 3:15 | Vote on Dorchester Co. Program Amendments | Robert Price,
Vice-Chairman |
| 3:15 - 3:45 | Presentation and Possible Vote on State Agency Project

Capital Programs - Bird Sculpture, Dorchester Co. | Mike Nelson, DNR |
| 3:45 - 4:00 | Old Business
Kent Co. Amendment Hearing
Cecil Co. Amendment Hearing
- December 20, 1988

New Business
Oversight Committee Meeting of November 29, 1988 | Robert Price
Vice Chairman

Sarah Taylor |

Next Meeting: December 7, 1988, Department of Agriculture

CHESAPEAKE BAY CRITICAL AREA COMMISSION

Minutes of Meeting Held

November 16, 1988

The Chesapeake Bay Critical Area Commission met at the Department of Agriculture, 50 Harry S Truman Parkway, Annapolis, Maryland. The meeting was called to order by Vice-Chairman Robert Price Jr., with the following Members in attendance:

Albert Zahniser	Victor Butanis
Wallace Miller	Samuel Bowling
Ronald Hickernell	Thomas Jarvis
Parris Glendening	G. Steele Phillips
William Bostian	Shepard Krech, Jr.
James E. Gutman	Ronald Karasic
J. Frank Raley	Thomas Osborne
Louise Lawrence for	Russell Blake
Secretary Cawley	Ronald Adkins
Deputy Secretary Cade of DHCD	Secretary Lieder of DSP
Robert Schoeplein of DEED	Secretary Brown of DNR

The Minutes of the Meeting of November 2, were approved with the correction that the Meetings beginning in January, will begin at 3:00 p.m. instead of 4:00 p.m.

Vice-Chairman Price and the Commission welcomed back Mr. Hickernell, who had been long absent, due to poor health. Vice-Chairman Price then informed the Commission that Mr. Samuel Turner had been replaced by Mr. William Corcoran of Talbot County.

Dr. Taylor introduced three new staff members, Mr. Tom Ventre, who will be working on Program Implementation and Amendment for the Eastern Shore; Mr. Michael Eckert, who will work on Program Implementation and Amendment in the lower Western Shore; and Ms. Abigail Rome, who will be working on Project Evaluation. She introduced again, Ms. Ann Hairston, who will be working with Charlie Davis on Program Implementation. She reported that on December 5th, the staff offices will be moving to the Garrett West Building on West Street, in Annapolis. The staff telephone numbers will remain the same.

Vice-Chairman Price asked Mr. Charles Davis to report on the Program for the Town of Centreville. Mr. Davis distributed a Summary of Program Revisions, and said that the requested changes had been made, but the Town needs to hold a public hearing and would like assurance that the Program is acceptable in its draft form, before they do so.

Mr. Schoeplein, Panel member, concurred that all changes have been addressed.

Mr. George Gay, resident of Talbot County, asked whether it was typical or atypical for jurisdictions to have had so much interaction between Commission and Town officials, without having had input from the public? Mr. Davis answered that although the process of Program development took a long time, other Programs have required a greater amount of Commission/jurisdiction interaction. The additional public hearing that the Town must now hold prior to final Commission approval, will provide public opportunity for comment. Only after such hearing may the Town formally seek, and the Commission grant, final approval of the Program.

A motion to tentatively approve the Program for the Town of Centreville was made and seconded as follows:

The Commission believes the local Program for the Town of Centreville to be a good Program. However, in order to fully approve the Program, the Commission hereby notifies the Town and its consultant, pursuant to Natural Resources Article, §8-1809(d)(3), that they must make the specific changes recommended by the Commission, as set out in the attached report and endorsed by the panel for the Town, in order for the Program to be fully approved by the Commission. The Program shall be submitted within 40 days of the date of notification by the Commission, with the changed Program documents and ordinances, and after the Town of Centreville, has held one additional public hearing concerning these changes. The action of the Commission shall be deemed a "tentative approval". The vote was 16:0

Mr. Glendening was asked to report on the Septic Panel meeting. Mr. Glendening explained the three issues that the Panel worked on. The first was whether it was acceptable upon local health department approval, to accommodate sewage for dwelling units outside of the Critical Area, in the Critical Area. He said that it had been decided to contact Secretary Walsh of DOE, local health directors, and the County health officer, to obtain their input on these issues and assist the Panel in making its conclusion.

The second issue was whether it is acceptable, upon local health department approval, to have a drain field in the Critical Area, that is removed from the immediate site on a lot already in the Critical Area. Mr. Glendening said that the Panel felt this would not be a concern, and recommended acceptance as a guideline for future decisions.

The third issue was whether it is acceptable, upon local health department approval, to have a drain field outside of the Critical Area that is remote to a lot already approved or grandfathered, in the Critical Area? The Panel felt that this was something to be encouraged where it has occasion to occur, and should be adopted as a guideline.

A motion was made and seconded that the Commission adopt as a guideline for subsequent approvals, that given local health department approval, it is acceptable to have a drain field in the Critical that is remote to a lot already approved or grandfathered, in the Critical Area. The vote was 15 approved and one opposed, with no abstentions.

A motion was made and seconded that the Commission adopt as a guideline for subsequent approvals, that given local health department approval, it is acceptable to have a drain field outside of the Critical Area that is remote to a lot already approved or grandfathered, in the Critical Area. The vote was approved 16:0.

Mr. Glendening said that the Panel has tentatively scheduled the next meeting for December 14th at 11:00 at the Department of Agriculture.

Vice-Chairman Price reported on Dorchester County's growth amendment. He said that the Panel had met last week and again this day. A public hearing was held on the proposed amendments. The amendments were submitted to the Commission in the form of three separate residential subdivision plats designating development areas requiring conversion of land from RCA to LDA. The areas are called Heron Harbor, McKiel Point, and the third is Bromwell's Adventure. He said that each subdivision had received preliminary subdivision approval by the Dorchester Planning Commission, prior to County adoption of its Program. Final approval has not been granted because of delay of health department approval.

Vice-Chairman Price reported that the County did not have a moratorium during its Program preparation, and all subdivisions finally approved during the interim period were recorded and counted against the County's growth allocation. If the three developments now subject to the amendment request had received health department approval prior to Program adoption, they would have been recorded and counted against the County's growth allocation, but they did not receive final County approval because they had not obtained the health department's approval.

The County claimed that these three areas did not constitute a Program amendment as the County Program exempted all subdivisions having preliminary approval on the date of Program adoption.

Vice-Chairman Price explained that a review of the Commission's records showed that the Commission approved the County's Program on June 29, 1988. The Panel found that the County, after Commission approval, made a significant change in that Program when the County adopted it at its public hearing, and the change was not submitted to the Commission for approval as required by the Law. There was no evidence of any nature presented to the Panel, to indicate that the County, in designating the location of the areas converting from RCA to LDA, considered any of the guidelines set forth by the criteria Section 14.15.02.06 §B, 1-6. Nor was there any evidence to indicate that the County considered the requirements of Section 8-1808.1. The areas selected were solely based upon the choice of the landowner to apply for subdivision approval under the then existing County regulations.

Vice-Chairman Price further stated that none of the three proposed subdivisions comply with the adopted County Program, and that the Panel recommends the Commission, in accordance with Section 8-1809(d)(2), notify Dorchester County that the following specific changes must be made in order for the amendment proposal to be approved:

- 1) The County must include in its amendment request, written findings that evidence the County, in locating the new LDAs, considered the guidelines set forth in Article 14.15.02.06 - §B, 1-6;
- 2) The areas requested for conversion must be designated on a Comprehensive Zoning Map submitted as a part of its amendment application as required by Section 8-1808.1;
- 3) That until additional satisfactory written evidence of documentation is submitted to the Commission as to the adoption of the Grandfather clause on page 39 of the Program, the Commission will consider the paragraph as now adopted to be null and void, and as not complying with the requirements of Section 8-1809(e); and
- 4) The amended proposal shall specify compliance with the Program as to clustering and as to the award of growth allocation.

Mr. Miller asked if because of this discovery of the change that the Commission was unaware of when it approved the Program, the entire Program as approved would be considered null and void? Mr. Price answered that this only pertains to the one paragraph specified.

Mr. Raley asked how was this change discovered? Vice-Chairman Price answered that the Program the Commission approved was entitled Final Draft Volumes I and II, June 1st, 1988 (as amended by letter). On the evening of the most recent panel hearing, a consultant submitted a Program dated August 23rd, 1988, the date that the County Commissioners adopted the Program. The Panel then reviewed again the submitted Program and compared it with the August 23rd Program to note any discrepancies.

Mr. Phillips asked what happens with the subdivisions already platted? Vice-Chairman Price answered that if the County concludes that it did not properly adopt its Program as it regards grandfathering, the County may put forth a suggested amendment for the Commission.

Mr. Warren Rich, Attorney for McKiel Point stated that the issue recently raised as to how much is counted against growth allocation, was an issue not germane to the changes in the grandfathering language. He further stated that the original grandfathering language indicated that subdivision plats received prior to the effective date of the ordinance will be grandfathered and growth allocation will count against them.

He said that if the Commission has a problem with the way that the County is counting its envelope, that is a different issue, and doesn't pertain to the ability of the County to grandfather or his client to rely upon what was approved by the Commission or Dorchester County. Mr. Rich said that all subdivisions went through interim findings and locational criteria testing. He said that there was no substantive change in the language, only clarification.

Mr. Gutman said that the language in the Program, was in fact, changed, and the reasoning behind it is irrelevant. He added that if the change was made without the the Commission's knowledge and approval, then the change should not be supported by the Commission, and actions thereunder are similarly not supportable.

Mr. Hickernell said that it might be premature for the Commission to act upon the particulars of this issue. He said that he felt that the Panel needs to investigate further.

Vice-Chairman Price explained to Mr. Rich that the County was misinformed as to what it refers to as having been approved by the Commission. He said, upon the advice of Dr. Taylor, that since the 90-day review period for amendments is not over, there is still enough time for the Commission to deliberate further on this issue.

Mr. Griffin suggested that members of the County Commission, Mr. Steve Dodd, the developers of the subdivision, and the Commission Panel, meet together to discuss this matter.

Vice-Chairman Price said that the Panel would withdraw its recommendation for now, and agree to meet with the concerned parties.

Mr. Epstein suggested that any Commission member other than the Panel itself, would also be welcome to that meeting.

A motion was made and seconded to close the Commission Meeting to the public in order for the Commission to consult with counsel over litigation and certain other legal matters, pursuant to SG§10 - 508(a)(7). It was agreed to unanimously and the meeting was closed.

Mr. Epstein said that there were three matters that the Commission should consider. One concerned the filing of an appeal of a Dorchester County District Forestry Board decision on timber harvesting on private property in Dorchester County. He explained the matter.

The second matter concerned Mr. Epstein's suggestion that the staff be requested to make a full study and report on the adoption procedures of the Dorchester County Program and content as it now stands, as compared to what the Commission thought it had approved. This concern arose via the appeal just discussed, and depending upon the findings, the Commission may wish to take further legal or other action.

The third matter involved Langford Farm. Mr. Epstein explained that the Commission is still a party in the suit for declaratory judgement, but not in an appeal filed on the same matter. The declaratory judgement suit is still active, while the administrative appeal had just been dismissed by a Kent County Circuit judge. He explained the issues.

The meeting then publicly reconvened.

Critical Area Commission
Minutes - 11/16/88
Page Seven

A motion was made and seconded that the Commission staff prepare the Dorechester County report. The vote was unanimously in favor.

A motion was made and seconded to support the appeal and sanction the action of the Vice-Chairman. The vote was 14 in favor, with 3 abstentions.

A motion was made and seconded to support the appeal forwarded by Mr. Epstein on behalf of the Vice-Chairman Price and the Commission. The vote was 14 in favor with 3 abstentions.

Vice-Chairman Price then asked Mr. Davis to report on Cecil County's Program amendments. Mr. Davis explained that the County requested to subdivide two projects, Sunset Pointe, and Budds Landing, and extend the Critical Area Boundary. He distributed a Panel Report that explained the administrative history, Panel rationale, specific issues, and the Panel recommendations concerning the two subdivision. Discussion of the projects ensued.

Deputy Secretary Cade asked if there had been a formal request of these subdivisions as Program Amendments? Mr. Davis answered negatively.

Mr. Adkins, Panel member, answered that the Panel felt that a review was needed.

A motion was made and seconded that the Commission table a decision on these two projects until the County has made a formal Program admendment request and submitted it to the Commission, and to informally communicate the Panel's recommendations to the staff of Cecil County, and let them know what the Panel's concerns are with the projects. The vote was unanimously in favor.

There being no further business, the Meeting was adjourned.

DORCHESTER COUNTY PLANNING & ZONING OFFICE

P. O. Box 307
CAMBRIDGE, MARYLAND 21613
PHONE: 228-3234

Rec'd
11-22-88

DIRECTOR
STEVE DODD, AICP

ASSISTANT PLANNER
KAREN D. PHILLIPS

PLANNING SECRETARY
JULIA T. HENRY



ZONING ADMINISTRATOR
JAMES H. MICHAEL

ZONING INSPECTOR
ALLEN TOLLEY

ZONING SECRETARY
RHONDA LONG

November 22, 1988

MEMORANDUM

TO: Critical Area Commission Panel (Dorchester County)
FROM: Steve Dodd, Planning Director *SMD*
RE: Background information concerning the inclusion of "grandfathering" language in the local program for "interim" subdivisions.

Well before the local program was adopted, the Dorchester County Planning Commission recognized that some proposed subdivisions in the County's Critical Area would not be recorded prior to the adoption of our local program. The County acknowledged that these interim subdivisions, some of which began well before the County started developing its local program, deserved special protection. There was tremendous concern by the County that, due to the length of the subdivision process, some developers would invest significant time and money only to be "shutout" at the last moment.

Therefore, at their September 1987 meeting, our Planning Commission established approval criteria for these interim subdivisions. If the subdivision met the criteria before the local program was adopted, the Planning Commission would exempt the subdivision from the new design standards required for new subdivisions in the Critical Area requiring growth allocation. This means that these subdivisions would not a) require cluster-development, b) require minimum 30% open space, and c) compete for growth allocation using the ranking methodology established in the local program.

The two criteria which the Planning Commission established at that September 1987 meeting were:

a. For major subdivisions (five lots or more) - The subdivisions must have received preliminary plat approval from all agencies and must have received approval under the interim finding requirements (Section 8-1813). This took the form of a Critical Areas Assessment. The developer was also required to map on the

100011 Sept. 3, 1967

d. Policy question - CA subdivision will be submitted prior to program adoption, but may not be approved prior to program adoption. How far along in the approval process must a subdivision be before it will be grandfathered? After discussion, the Planning Commission developed guidelines for determining the approval process. If a major subdivision has been to preliminary stage and going to final, the subdivision will be grandfathered. For a minor subdivision, the subdivision will be grandfathered if the CA assessment has been approved.

e. Critical Area Subdivision Assessments -

i. Phillips/Seddon (revised) - A Critical Area assessment was reviewed at last month's meeting, however, the subdivision plat was not available and the Planning Commission was not satisfied with the map that was used. Applicants were asked to come back when the subdivision was ready. Mr. Seddon and Mrs. Phillips appeared before the Planning Commission to review the map. The Planning Commission looked at the Critical Area portion to determine whether the map met all the requirements of the Critical Area law. Mr. Seddon said this is a four lot subdivision with lot sizes ranging from 9 to 14 acres. This is a highly erodable area and they made the lots small enough so that owners can afford to put in bulkheading. There will be a minimum disturbance of land and this should improve the property in general. Mr. Seddon said they had talked to forestry people about selective cutting of trees.

The Planning Commission believed that a note should be put on the plat that this is a highly erodable area. After discussion, a motion was made by Mr. Phillips "that we accept this CA assessment as our own." Seconded by Mr. Watkins. Unanimous.

ii. Mace & Henry Thomas #515 (Revised) - This assessment was not received prior to the meeting.

f. Building permit & subdivision summaries - Mr. Dodd handed-out the building permits and subdivision summaries to the Planning Commission.

g. Site Plan - Preston Ford - Mr. Dodd said this is an add-on. The site plan shows cedar and hemlock trees to be planted as a buffer. The nursery owner has recommended that leyland cypress be used as he feels it will do a better job. A motion was made by Mr. Watkins "that we amend the final plat to state that leyland cypress trees be used instead of cedar and hemlock." Seconded by Mr. Applegarth. Unanimous.

2. Subdivisions:

a. Ralph Wroten (#560) - Final - Subdivision not ready at this time.

b. Ernest Gerardi (#562) - Final review. Mr. Dodd gave the background on this subdivision and the agency comments were read into the record. After review, a motion was made by Mr.

MEMORANDUM

November 22, 1988

Page two

preliminary plat the location of tidal & non-tidal wetlands, buffers, wooded areas, habitat areas, fish spawning areas, shore erosion areas, etc. The purpose of this was to: a) demonstrate that the lots could be developed after the local program became effective, and b) serve as a "warning" to future lot owners that new restrictions would apply.

b. For minor subdivisions (less than five lots) - In our County, minor subdivisions are not required to be reviewed by the full Planning Commission and a preliminary plat is not required. Therefore, the Planning Commission only required the approval of the Critical Areas Assessment.

The County and its developers worked under this interim agreement until the local program was approved by the County Commissioners at a public hearing on June 8, 1988. The public hearing was held on the June 1, 1988 final draft (Volumes 1 & 2) which was made available to the public at the end of May, 1988. Among other comments received, the local Board of Realtors correctly criticized the County's program for failing to include language concerning the protection of these interim subdivisions. Up to this time, the County had operated under the policy established by the Planning Commission. The County Commissioners agreed, and voted to incorporate such language in the adopted version of the program.

As a result of the County's action at the June 8 hearing, a letter dated June 10 was sent to Judge Liss notifying the Commission that the County had approved the Program with the revisions which came about as a result of the final hearing. The paragraph in question was included in that June 10 letter.

On June 29, the Critical Area Commission met to vote on the County's program. I presented the program summary to the Commission and specifically discussed the County's policy for growth allocation. The Commission's minutes from that meeting reflect this. It was at this meeting that a Commission member suggested that the "grandfathering language" may be more appropriately placed in the Plan rather than the subdivision regulations.

In the months following the Commission's approval of the program the County worked on preparing the local ordinances for adoption. Our Commission staff representative felt that the paragraph in question was not clear and should be revised. The staff person and I together redrafted that paragraph. It was never our intent or desire to alter the intent of that paragraph. Our only goal was to clarify the County's position. And the only reason the language was changed at all was because the Commission staff suggested it.

MEMORANDUM

November 22, 1988

Page three

In summary, we believe the County has established that it has recognized "interim subdivisions" since September 1987, and properly included protective language in its program prior to adoption by the Commission. The County has acted openly and in good faith, following the Commission's established review procedure of working through its staff representative and panel. The County and the developers should not be unfairly punished because the Commission didn't understand certain portions of our local program.

I believe the County Commissioners would be willing to consider deducting all the land (minus tidal wetlands) included in the 20 "interim" subdivisions (approximately 975 acres in total). The County is and has been committed to the approval of these projects and the developers who have worked in good faith with the County.

A panel of the Commission on October 27, 1988 held a public hearing in Cambridge, Maryland on the proposed amendments for the Dorchester County Program.

The proposed amendments were submitted to the Commission in the form of three separate residential subdivision plats designating development areas requiring conversion of land from Resource Conservation Area (RCA) to Limited Development Area (LDA). The areas were called "Heron Harbor", "McKiel Point" and "Bromwell's Adventure.

Each subdivision had received preliminary subdivision approval by the Dorchester Planning Commission prior to the county adoption on August 23, 1988, of its Critical Area Program. In each case final approval was not granted because of Health Department delay in approving Bermed Infiltration Ponds for treatment of sewage effluent.

Dorchester County did not have a "moratorium" during its program preparation and all subdivisions finally approved during the interim period were recorded and counted against the growth allocation. If the three developments now subject to the amendment requests had received Health Department approval prior to program adoption, they would have been recorded and counted against the growth allocation.

The County claimed these three areas converting from RCA to LDA did not constitute a program amendment as the Program exempted all subdivisions having preliminary approval on the date of Program adoption from "density provisions of the zoning ordinance or to growth allocation

provisions of the Subdivision Regulations". This "grandfather clause" was set forth on page 39 of the County Program and was made available to the panel on the night of the hearing. The County further advised the panel there were an additional 18 other subdivisions under the grandfather exemption.

A review of the Commission's records shows the Commission approved the Dorchester County Program on June 29, 1988. The approval consisted of a "Final Draft" in bound book form dated June 1, 1988, as it was amended pursuant to a June 10th letter and enclosures from the President of the Dorchester County Commissioners. Among the letter amendments was an amendment to the subdivision ordinance at S. 140-51, Pg B-7, which to some extent grandfather the design aspects of certain subdivision plats under evaluation and required the Critical Area Commission approval over growth allocation.

The County in its adoption of its Program altered the amendment language significantly in attempting to exempt the subdivisions from density and growth allocation requirements; the County did not place the requested amendment in the subdivision ordinance, but included it instead in its Program. The County did not request a change to its approved proposed program pursuant to Sec. 8-1809(e).

There was no evidence of any nature presented to the panel to indicate the County in designating the location of the areas converting from RCA to LDA considered any of the guidelines set forth by the criteria Section 14.15.02.06-

Sub-section B, 1 through 6 or to the requirements of Section 8-1808.1. The areas selected were based solely upon the choice of the land owner to apply for subdivision approval under the then existing County regulations.

None of the three proposed subdivisions comply with the adopted County Critical Area Program.

The panel recommends the Commission in accordance with Section 8-1809(d)(2) notify Dorchester County that the following specific changes must be made in order for the amendment proposal to be approved.

1. The County must include in its amendment requests written findings that evidence the County in locating the new Limited Development Areas considered the guidelines as set forth in Article 14.15.02.06 - Sub-section B; 1 through 6

2. The areas requested for conversion must be designated on a comprehensive zoning map submitted as a part of its amendment application as required by Section 8 - 1808.1.

3. That until additional satisfactory written evidence or documentation is submitted to the Commission as to the adoption of the "grandfather clause" on page 39 of the Program the Commission will consider the paragraph as now adopted to be null and void as not complying with the requirements of Section 8-1809(e).

MOTION FOR TENTATIVE APPROVAL FOR
CENTREVILLE
LOCAL PROGRAM

The Commission believes the local Program for the Town of
CENTREVILLE to be ^a good

Program. However, in order to fully approve the ~~Program~~, the Commission hereby notifies ~~the Town~~ the Town, and their consultant, pursuant to Natural Resources Article, §8-1809(d) (3), that they must make the specific changes recommended by the Commission, as set out in the **Attached REPORT** and endorsed by the panel for ~~the town~~ the town, in order for ~~the Program~~ the Program to be fully approved by the Commission. ^{the} Each Program shall be submitted within 40 days of the date of notification by the Commission with the changed Program documents and ordinances, and after ~~each of the local jurisdictions~~ **CENTREVILLE** has held one additional public hearing, concerning these changes.

This action of the Commission shall be deemed a "tentative approval".

* The local jurisdictions should note that they may use the hearing on implementation of their ordinances, set out in Section 8-1809(e), for the hearing requested above. That is, the hearing required for passage of the local ordinances in final form may include the hearing on these proposed changes to the Program. Before final local legislative action, however, the local jurisdictions are required to re-submit to the Commission for final approval.

^A
the Program

10/27/88

SUMMARY OF PROGRAM REVISIONS

CENTREVILLE

- p.14 Included a rationale for the three IDAs that are less than 20 acres
- p.24 Added a statement concerning location and management of Buffer Exemption Areas
- p.33 Added language concerning the management of non-tidal wetlands and mitigation plans
- p.38 Added a requirement for a Threatened and Endangered Species survey prior to time of development approval
- p.44 Clarifying the role of the Town in approval of projects and determining acceptable impacts
- p.50 Rewording the language about the number of slips allowed at community marinas for consistency with the proposed Town regulations and CA criteria
- p.58 Fully specifying the requirements for Forest Management Plans
- p.67 Adding the specific language that requires SCWQPs on agricultural lands
- VI-6 Add in the findings requirement COMAR 14.15.10.0
- VI-9 Referencing the agricultural SCWQPs requirement of the plan
- VI-20 Clarifying language concerning actions in the Buffer Exemption Areas
- VI-24 Explicitly adding the Critical Area Commission into the growth allocation approval process

Maps

- 1. Modifying IDA boundary designations to more closely reflect the density required
- 2. Indicating the location of the Buffer Exemption Areas

November 16, 1988

Cecil County Program Amendments

Panel Report

ADMINISTRATIVE HISTORY

On September 6, 1988 the Critical Area Commission received copies of two applications for amendments to the Cecil County Critical Area Program in preparation for a planned joint hearing on the issues with the Cecil County Planning Commission on Tuesday September 20, 1988. The two proposed amendments were received by the County from:

- 1) "H & S Investments, Inc. ...for the purpose of increasing the total number of acres within the Critical Area of the subject property by adding an additional 119 +/- acres to the Critical Area, and affixing a land use designation of Resource Conservation Area (RCA) to the Property"; and
- 2) "Hall Creek, Inc. ...for the purpose of increasing the total number of acres within the Critical Area of the subject property by adding an additional 6.6 +/- acres to the Critical Area, and affixing a land use designation of Resource Conservation Area (RCA) to the property."

The Critical Area Commission panel members for the original Cecil County hearings were reassigned for the amendment hearing. They included: Judge Liss, Chairman, Ron Adkins, Secretary Lieder, Vic Butanis and Louise Lawrence. On September 20th, panel members were unable to assemble a quorum and consequently only the County Planning Commission held its hearing on that date. The panel hearing date was reset for October 20, 1988. That hearing was held and attended by Ron Adkins, Kay Langner and Vic Butanis. Kay Langner substituted for Judge Liss and Ron Adkins assumed the chairman's role. The proceedings of that hearing are available for inspection by the Commission.

The two issues were introduced for the initial discussion at the Critical Area Commission meeting held on November 2, 1988. A panel meeting was held on November 14, 1988 to develop recommendations to present to the Commission on November 16th. The panel meeting was attended by Ron Adkins and Louise Lawrence. The 90-day period of Commission review ends on Monday, December 5, 1988.

Process Observations: The Critical Area Commission has not received a letter from Cecil County that officially endorses the proposed amendments.

The panel treated each Critical Area boundary change issue separately in order to keep the comments concerning each proposal separate.

The process followed during this submittal has been one wherein the landowner prepared the reports, rationale, findings and at the panel hearing, presented the project directly to the Commission (via the panel).

Panel rationale

In reviewing both of the proposed amendments, the panel considered these principles:

- 1) The Resource Conservation Areas in the initial planning area were proposed to provide highly limited development areas around the perimeter of the Bay in order to minimize the immediate and adverse impacts on water quality and natural habitats resulting from various human disturbances.
- 2) Additions to the Critical Area should provide significant protection for the land / natural resources described by the Criteria.
- 3) Concentrating development at the shoreline of the Bay through the unplanned, incremental procedure of adding uplands to the Critical Area is potentially counter to the Commission's policies for Resource Conservation Areas (COMAR 14.15.02.05B).
- 4) If upland areas are added to the Critical Area, they should be done so for the purpose of increasing the protection to the Chesapeake Bay resources and therefore be proposed by the County only after a systematic and comprehensive effort is undertaken to identify those significant critical landscape elements whose inclusion within the Critical Area would foster the goals of the Law. Additions to the Critical Area should not be isolated, piecemeal additions that are proposed separate from a County wide strategy to identify and add similar areas with similar resource benefits.
- 5) The County should demonstrate how their proposed Critical Area boundary amendments are consistent with existing Comprehensive Plan and associated implementing regulations and policies, as well as, identify any changes to those documents that would be necessary in order to implement their proposed strategy to add additional areas to the existing Critical Area.

SPECIFIC ISSUES

Budds Landing proposed Critical Area Extension , owner: Hall Creek, Inc.

BRIEF:

The proposal is to add 6.6+/- acres to the Critical Area. The area proposed to be included is a forest Buffer along the headwaters of Coppin Creek. The landowner wishes to establish an additional 10-acre lot by resubdividing a 50.9-acre lot recently approved as part of the subdivision of Budds Landing. Benefits: The existing forest Buffer will locally achieve the objectives for Buffers described in COMAR 14.15.09.01B. A description of specific environmental benefits was developed by the applicant and included in the submittal.

Panel Recommendation:

The panel recommends that the proposed amendment be denied at this time. Although the management objectives for the area proposed to be included are beneficial and will likely assure that this side

and stretch of the headwaters of Coppin Creek will continue to benefit the Critical Area resources, there was no evidence presented to indicate that the area was adequate to protect the creek from unknown future land uses on the residual portions of this land locate uphill from this area and from other land uses on other lands adjacent to Coppin Creek. The amendment should be returned to the County and a request be made that the County demonstrate how this addition to the Critical Area is consistent with a comprehensive strategy for Chesapeake Bay Critical Area resource management through Critical Area boundary extensions. The County should also indicate how this land classification (RCA) is consistent with the County's policies and regulations that currently apply to that site, and/or what County-wide changes should be made to adopt a comprehensive strategy for extending the Critical Area boundary.

[other issues - If the Budds Landing subdivision was approved during the interim period it should count against the growth allocation , if the 30-slip community pier (see page 2, line 5 of Chesapeake Bay Critical Area Report for Subdivision of Lands of Hall Creek, Inc. Addendum, March 1988, McCrone, Inc.) was approved as part of the subdivision since it is inconsistent with COMAR 14.15.03.07 B(2).]

Sunset Pointe proposed Critical Area Extension , owner H & S Investments, Inc.

BRIEF

Sunset Pointe Subdivision received approval for Phase I sometime in June 1988 at which time the approved density for the Critical Area portion of the entire site was 20.7 du/a. Based on the letter from the developer that accompanied the application and plat, the intent appears to be to include the remainder of the subdivision located beyond the 1000' boundary (both Phase I and Phase II) in order to assemble an RCA land base to allow six additional dwelling units within the 1000' area. The trade-off would be the establishment of a 126-acre buildable lot (located approximately half in and half beyond the 1000' foot boundary) and that all or portions of 3 other buildable lots (Phase I) would be restricted from further subdivision based on the presence of the RCA land classification. These large lots are completely surrounded by lands that are either developed or owned by Bay View Realty. No direct land access connects these properties with the National Wildlife Refuge located a short distance to the North.

The resulting density within the present 1000' Critical Area would be one unit per 12.9 acre. Overall, the entire site (Phase I & II) would have a density of one unit per 20.4 acres.

Materials submitted as part of the application contains contradictory information. The plat indicates that the 119 acres is the non-Critical Area portion of Phase II only. However, in order for the calculations to sum correctly the entire non-Critical Area must be included. Density calculations for different Phases and Critical Area portions are not clearly labelled on the plat. Extensions to the 110'-foot Buffer are not shown where it appears that they should be required. The plat suggests that houses on lots 1-5 might be built on steep slopes. No Environmental Assessment and Impact Evaluation was

submitted as part of the request to the Critical Area Commission. No special easements or restrictions were indicated on the plat to assure that the open space and habitat values of the inland lots would be conserved.

In reference to the included letter from Jones/Hollenshead to Commissioner Buckworth, the plan should be consistent not only with Section 8-1808(b) of the Law, but also the Criteria [see 8-1809(1)] and the Cecil County Critical Area Program.

Panel Recommendation:

The panel recommends that the proposed amendment be denied at this time. The amendment should be returned to the County and a request be made that the County demonstrate how this addition to the Critical Area is consistent with their comprehensive strategy to include similar lands through Critical Area Boundary extensions and how that strategy, when applied uniformly will result in a program that fosters the goals of the Law, and is consistent with Critical Area Commission's Criteria and the local program.

Documentation submitted by the County as part of the proposed amendment of the Critical Areas boundary, must be internally consistent and should satisfy all requirements of the Cecil County Critical Area Program, Critical Area Commission Criteria and the Goals of the Critical Area Law.

/foreign/cecilA1/

10/27/85

SUMMARY OF PROGRAM REVISIONS

CENTREVILLE

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- VI-24 Explicitly adding the Critical Area Commission into the growth allocation approval process

Maps

1. Modifying IDA boundary designations to more closely reflect the density required
2. Indicating the location of the Buffer Exemption Areas

Paul Chairman

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October 5, 1988

MEMORANDUM

TO: Solomon Liss, Chairman
Chesapeake Bay Critical Areas Commission

Sarah J. Taylor, Executive Director
Chesapeake Bay Critical Areas Commission

FROM: Lee R. Epstein
Assistant Attorney General

SUBJ: Commission Review of Growth Allocation Proposals

You have asked my advice on the above-noted topic. I understand that your feeling is that some form of review and approval for local growth allocation application is necessary. In brief, I agree with your analysis.

The submission by (and approval of) several Prince George's County growth allocation use requests, and more recently the submission of proposals by Dorchester County to use growth allocation, makes especially timely this advice. A brief discussion of this matter at the Critical Areas Commission meeting of 7 September also points to the topicality of examining the issue now.

A. Legal Basis

As local critical areas programs are implemented, more and more jurisdictions will be following their implementation procedures and thus coming back to the Commission for review and approval of proposals to use portions of the growth increment which the Commission has allotted them. The need for Commission involvement in the local use of the allocation is affirmed by reference to two separate sources of law. The first and original source of the law is, of course, the Critical Area statute itself.

Therein, at Natural Resources Article 58-1809(g) and (h) Annotated Code of Maryland, the process is described for gaining Commission approval of program and local zoning map amendments. For standard piecemeal zoning map amendments the statutorily prescribed amendment process might be used, for example, to change a Limited Development Area (LDA) to an Intensely Developed Area (IDA) designation, or a Resource Conservation Area (RCA), to an LDA, without use of or reference to the jurisdiction's growth allocation. These changes require the Commission's review and approval, based upon the evidence presented by the local jurisdiction proposing the

mapping change. The chief standard of review is proof of mistake in the existing zoning. NR §8-1809(h).

It is my similar belief that the Commission must review and approve the use of growth allocation under the statutorily described process. This is because a new land use will necessarily result in a program change/map amendment. Such a change might best be described under subsection (g) of NR §8-1809 — the proposal of necessary amendments from time to time and at least every four years. Additionally, an amendment added by the legislature in 1986 requires, at NR §8-1808.1(b)(4), that new IDA's and LDA's, added via the growth allocation, must either be designated and submitted as part of the original program, "or at a later date in compliance with §8-1809(g) of this subtitle" (emphasis added). That section provides for a complete review and approval procedure.

As you will recall, growth allocation was a wholly Commission-invented instrument or method for providing some ability to local jurisdictions to intensify land use in their Critical Areas. As the criteria were drafted in 1985, numerous proposals were floated by Commissioners, staff, and outside commentators to permit some degree of additional growth, and some degree of flexibility in allocating it. Almost all commentators and participants agreed that some level of growth should be provided, since the Criteria's mapping and land use designations depended on existing land uses and without more, such a circumstance could essentially stifle growth and development in the less developed counties. Commission staff identified uniformity, maximum resource protection, utility of use, and flexibility, as some of the goals in developing such a mechanism. "Consideration of Alternative Criteria Concerning Land Development in the Chesapeake Bay Critical Areas Commission", unpublished Staff Draft, August 1985.

While the staff then developed a somewhat complex, multi-tiered system of growth allocation based upon amount of existing development and amount of existing RCA land, ultimately the Commission chose to vastly simplify the approach by pegging the amount of increment allotted, to the amount of RCA then existing, and giving local jurisdictions the ability to expand intense uses within the guidelines of the Criteria. COMAR 14.15.02.06. While it is true the Criteria do not themselves expressly state that the use of such an allotment would trigger a local program amendment process, those same Criteria do call the use of such increment "New Intensely Developed Areas", or "New Limited Development Areas". COMAR 14.15.02.06B (emphasis added). Newly mapped and changed land use designations are by their nature program amendments. Providing a flexible growth instrument was not intended to wholly divorce the Commission from its subsequent use.

That the use of allocation results in a program amendment is clear since land use is surely changed from that originally approved by the Commission (in fact, most jurisdictions use the formal zoning tool of a "floating zone" to increase density with growth allocation). Since the mechanism for change in this instance is the use of the Commission-granted growth allocation, however, and since the simple and stricter "mistake" rule is to be applied to standard piecemeal type zoning changes made under

sub-section (h) noted above, it would make no sense for that same standard to be applied here. On the other hand, while the use of growth allocation to change critical area zoning must meet the local criteria for the new designation, application of the broader "change or mistake" rule of Maryland land use law is probably not appropriate either. This is because the use of such allocation in most instances is done via a "floating zone", and the Maryland courts have made it clear that such a mechanism, properly accomplished, does not require the application of the "change or mistake rule". Aubinoe v. Lewis, 250 Md. 645 (1968); Wheaton Moose Lodge v. Montgomery County, 41 Md. App. 401 (1979). Even where the instrument is not formally called a floating zone, it is fairly clear that that is the true nature of growth allocations and their specific applications, and that the rules of local review and approval of growth allocation are more akin to those of a special exception than of a rezoning.

The second legal basis establishing the need for Commission review and approval of growth allocation program changes is the local law which implements the various approval programs. Most, if not all, local programs and ordinances contain clear provisions for growth allocation procedures which include Commission approval before the allocation can specifically be used. The Commission encouraged such local provisions in its earliest program reviews, relying on a straightforward interpretation of its criteria and organic statute and on its own enunciated policy. (At a Commission meeting on November 18, 1987, for example, the Commission affirmed that "any changes to a Program's mapping, particularly when the Growth Allocation is used . . . would constitute an amendment to the Program, and therefore, would require approval by the Commission." Chesapeake Bay Critical Areas Commission Minutes, November 18, 1987, at 2.)

Thus, I believe the statute and the approved local programs support and require a procedure in which the Commission must approve growth allocation requests by counties before such increments may be used to change those programs and their regulatory maps. While the standard of review for proposed changes through the use of growth allocation is not as clear as it is for any other mapping changes (the latter being solely proof of "mistake"), it is reasonable that at least the Criteria would need to be met, and the local jurisdiction, in recommending that such a change be approved by the Commission, should probably so demonstrate in writing.

Second in regard to Commission review and approval, please note that the nature, scope, and extent of the Commission's review of a proposed growth allocation program amendment is limited to some degree by the statute itself. As noted below, NR 58-1809(i) provides the general standards for approval, which are: (1) the three goals of the act, and (2) the Commission's Criteria. That section directs the Commission to approve programs and amendments that meet these standards. Thus, the Commission does not have the right to substitute its judgement for that of the local jurisdiction and arbitrarily deny a request for growth allocation. On the other hand, the Commission is charged with measuring program amendment requests -- and this, I believe, is one -- against both the statutory and regulatory standards.

B. Process and Procedure

Again, the statute provides the procedural basis for review and approval of local growth allocation use requests. Interpreted as above, a specific application of a given amount of growth allocation in a given location acts to change the Critical Area's land use designation in that area. As an amendment to a local map and program then, such a change "shall be submitted to and acted on by the Commission in the same manner as the original program". NR §8-1809(g). That "manner" is set out in earlier subsections of §8-1809(d) and (e), and includes official local submission, a Commission panel hearing, Commission vote of approval within 90 days of submission (or Commission direction to change the proposal and submission of changes back to the Commission under the given time frame), and required local adoption within 90 days of Commission approval. These steps are required, but of course may (and probably should) be telescoped to some extent.

That is, within this statutory process, there is room for Commission development of an efficient in-house administrative review process. I recommend that the same process that has been used for review and approval of proposed programs be utilized here, but, in fairness to counties and developers, on a much more expedited basis. Such would include quick initial staff review for completeness (i.e., has all necessary information been submitted by the County?), staff review, panel hearing and panel-County interactions, recommendations to the full Commission, and follow-up work with the local jurisdictions. As an example of possibly expedited processing you might consider routinely holding joint panel-local jurisdiction hearings on these matters.

As noted above and in NR §8-1809(i), the Commission's general standards for approval are the same for program amendments (via use of growth allocation) as for the original programs themselves:

- (1) The standards set forth in §8-1808(b)(1) through (3) ...; and
- (2) The Criteria adopted by the Commission under §8-1808

NR §8-1808(i). For example, in order for growth allocation to be used to increase density or intensity of use (RCA to LDA), the appropriate LDA standards must be met, as must all appropriate resource protection criteria (e.g., for protection of non-tidal wetlands, threatened and endangered species habitat, buffers, etc.) Adequate information must of course be submitted by the local jurisdiction for the Commission to be able to adjudge compliance with statute and criteria and thus approve the use of growth allocation.

The Commission's decision on particular requests may be informed by official policy guidance, where the Commission has developed specific policy strategies to address the interstices of its regulations. In this instance, the Commission did pass some "guidelines" for the local use and counting of growth allocation. While these do not have the force of regulations, they do represent the collective judgement of the Commission

October 5, 1988

Page 5

on an issue of interpreting its own regulations in the abstract, at a given point in time. As such, the Commission may, of course, use this guidance as one of its (non-binding) reference points as it evaluates a particular growth allocation request. It is, also bound to utilize the approved local program to assist in that analysis.

C. Conclusion

Given the statutory basis noted above, and given the format and substance of the local programs, I believe the Commission must continue to review and approve all local applications of growth allocation. As opposed to re-zonings without the use of growth allocation, where the initial standard for review under the critical area law is "mistake in the existing zoning", growth allocation requests merely must meet the standards of the critical area statute and criteria promulgated thereunder, for the new land use designation and for any resources affected. The change or mistake rule is not likely invoked.

The Commission process for considering growth allocation requests by local jurisdictions should mirror that used by the Commission to review and approve the local programs in the first instance, with the statutory panel hearing included. Similar, but expedited in-house review procedures would also seem appropriate, and Commission staff must be certain that the local jurisdiction has followed the appropriate criteria for development in the growth allocation area. Finally, while Commission "guidelines" or official "policies" are not legally binding regulations, as expressed opinions by the full Commission on their subject matter (usually attempting to interpret and "fill in" among somewhat incomplete or unclear criteria), such policies or guidelines may be considered by the Commission as it reviews particular site-specific local applications for the use of growth allocation.

Please note that this memorandum constitutes advice of counsel and is not an Opinion of the Attorney General.

LRE/ckg



RECEIVED

OCT 13 1988

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LEGAL SECTION
DNR

WRITER'S DIRECT DIAL NO.
841-3889

TTY for Deaf Balto. Area 576-6372 D.C. Metro 565-0451

October 7, 1988

The Honorable Walter M. Baker
153 East Main Street
Elkton, Maryland 21921

ADMINISTRATIVE LAW - VOTING
PROCEDURES - CHESAPEAKE BAY
CRITICAL AREA COMMISSION -
COMMISSION MAY NOT SET VOTING
REQUIREMENT DIFFERENT FROM THAT
IN STATUTE

Dear Senator Baker:

You have asked for our opinion concerning the scope of the Chesapeake Bay Critical Area Commission's authority to adopt rules concerning its voting procedures. Specifically, you have asked whether the Commission has the authority to adopt a voting requirement stricter than that provided by statute.

For the reasons stated below, we conclude that the Commission may not apply a voting requirement different from the requirement set out in the statute.

I

Background

The Chesapeake Bay Critical Area Commission, created by Chapter 794 of the Laws of Maryland 1984, consists of 26 voting members appointed by the Governor. §8-1804(a) of the Natural Resources Article ("NR" Article).¹ It has the authority to develop criteria for local programs to protect the Chesapeake

¹ Originally, the Commission consisted of 25 voting members. The Commission gained a new member when the former Department of Economic and Community Development was bifurcated. Chapter 306, Laws of Maryland 1987. See NR §8-1804(a)(4).

OPINION OF THE ATTORNEY GENERAL

Cite as: 73 Opinions of the Attorney General (1988)
[Opinion No. 88-044 (October 7, 1988)]

Bay, NR §8-1808(d); to review local programs, NR §1809(d); to develop programs for those local jurisdictions that fail to do so themselves, NR §8-1809(b); to review certain project approvals, NR §8-1811(b); and to enforce the subtitle, NR §8-1815.

The General Assembly provided for geographic and interest group diversity in the Commission's composition. NR §8-1804(a)(2) and (3). Moreover, the General Assembly sought to assure active participation by the members, through the device of a minimum attendance requirement. NR §8-1804(c)(6). See Opinion No. 86-024, at 4 (April 2, 1986) (unpublished). However, the original statute had no quorum or voting requirements.

Two years after the Commission was created, the General Assembly enacted Chapter 601 (House Bill 1345) of the Laws of Maryland 1986, setting quorum and voting requirements for the Commission. NR §8-1804(e)(1) provides that a quorum "consists of one member more than a majority of the full authorized membership of the Commission." Thus, the statute increased the number previously required for a quorum under the common law.² In addition, the law now provides that the Commission may not take any action unless it is supported by "a majority of the members who are present and eligible to vote." NR §8-1804(e)(4)(ii).³

This latter provision merely condifies the common law rule. Gemeny v. Prince George's County, 264 Md. 85, 88, 285 A.2d 602 (1972). A majority of the members present can act for the body if a quorum is present, unless the organic law which created the body provides otherwise. Zeiler v. Central Railway Co., 84 Md. 304, 322-323 (1896). This rule applies to administrative bodies. FTC v. Flotill Products, Inc., 389 U.S. 179, 184-85 (1967).

The legislative history of Chapter 601 reveals that it was enacted in response to complaints from those who, believing that attendance by Commission members at public hearings was inadequate, argued that if more members attended, they might have a better understanding of local concerns.⁴ Thus, the primary concern of the General Assembly was to assure that citizens affected by the decisions of the Commission be afforded more

² Under the common law, a quorum consists of a simple majority of the membership. Heiskel v. City of Baltimore, 65 Md. 125, 149 (1886). See text accompanying note 8 below.

³ NR §8-1804(e)(3) also provides that neither the Commission nor a panel of members may hold a public hearing "unless a quorum is present."

⁴ See Testimony of the Maryland Association of Counties, Inc. and the State of Maryland Institute of Home Builders, Inc. on Senate Bill 528 (1986 Session).

fully attended hearings at which to express their concerns.⁵ The bill's title recites that its purpose was, in part, to "preven[t] the Commission or a panel of the Commission from holding a public hearing unless a quorum is present." The bill was opposed by the Commission, which argued that the requirement of a quorum at every hearing was too "cumbersome." In addition, the Commission contended that the bill's requirement for majority decisionmaking was "simply ... not needed," given the voting requirement in the Commission's bylaws discussed in Part II below.⁶

II

The Commission's Bylaw

The Commission adopted its bylaws shortly after its creation in 1984. Article V of the bylaws provides:

A quorum shall be a majority of all the voting members. On all issues, other than amendment of the by-laws, a simple majority of the voting members shall decide the question.

This voting requirement is stricter than that in NR §8-1804(e)(4)(ii). Under the bylaw, at least 14 votes - a majority of the 26 members entitled to vote - are necessary to approve an action. Under the statute, as few as 8 votes - a majority of the minimum possible quorum - would suffice. In forming its bylaws, the Commission obviously believed that the potential for action by so few members might frustrate the statute's objective of broad participation in the Commission's decisionmaking.⁷

During the 1986 Session, the Commission asked for advice concerning the effect of House Bill 1345 on its voting requirement bylaw. The Commission's counsel concluded that the

⁵ See Testimony of the Honorable Richard Colburn before the Environmental Matters Committee, and the Committee Report for House Bill 1345 (1986 Session).

⁶ See Testimony of Solomon Liss and Sarah J. Taylor on House Bill 1345 and Senate Bill 528. The bill was also opposed by the Chesapeake Bay Commission, a tri-state legislative advisory group, which testified that the proposal would impose an undue burden on the membership of the Commission and would delay implementation of the critical areas programs. See Testimony of Chesapeake Bay Commission, February 19, 1986.

⁷ At the time that the bylaw was adopted, the Commission consisted of 25 members, so that application of the common law principle would have allowed a mere 7 members - a bare majority of the minimum possible quorum of 13 - to act for the Commission.

purpose of the legislation was to assure that minimum due process procedures were established and to give the Commission guidance concerning its public hearing and decisionmaking procedures. In the view of its counsel, the Commission's stricter voting requirement was in harmony with the overall intent of the bill, to strengthen the Commission's procedural safeguards. Thus, counsel advised that the stricter voting requirement could remain in effect if the bill passed. Upon further analysis, we conclude that the bylaw may not be given effect.

III

Analysis

The Court of Appeals has held that the legislative bodies of municipalities lack power to adopt quorum or voting requirements stricter than the common law. For example, in Heiskel v. City of Baltimore, 65 Md. 125 (1886), the Court held that City Council could not set its quorum at two-thirds, rather than a simple majority:

The City Council is the creature of the Legislature, and if it can exercise no powers not expressly granted to it, neither can it deprive itself by its own action of the powers that are granted to it. We have shown before that a majority of the Council constituted the legal body, and competent to do every act that the Council could do. It would be an anomaly indeed if the Council itself could deprive itself of the right that it admittedly had.

65 Md. at 151-52 (emphasis in original).⁸

Similarly, in Murdoch v. Strange, 99 Md. 89 (1904), the Court held that the City Council of Annapolis could not adopt a rule treating a blank ballot as a vote in dissent when, under the common law, a blank ballot was treated as a nullity and those who cast such a ballot are considered to have acquiesced in the action of the majority. 99 Md. at 110. The Court specifically held that: "[N]o rule can be established by custom or otherwise, that will substantially affect the determination of the majority, otherwise than according to the principles of the common law." 99 Md. at 107.

⁸ See also Borough of Florham Park v. Dept. of Health, 146 A. 354 (N.J. 1929); Traino v. McCoy, 455 A.2d 602, 607 (N.J. Super. 1982); 4 McQuillen, Municipal Corporations §13.27, at 698 (3rd ed. 1985).

This reasoning has been extended to a situation quite similar to that at hand. In Barnett v. City of Paterson, 6 A. 15 (N.J. 1886), the New Jersey Supreme Court held that a city council could not, by rule, require a two-thirds majority for passage of items involving money, where, under the common law, a simple majority was all that was required.⁹

These cases stand for the proposition that common law quorum or voting requirements - and, it must follow, statutory requirements that codify or change the common law - establish not only minimum standards, but also maximum ones. The standard establishes the power of the municipal body to act or decide once that standard is met; the body may not, by rule, divest itself of that power.

This background underscores the General Assembly's decision in 1986 to insert in the Commission's governing statute the common law decisional principle that a simple majority of the quorum controls. Administrative agencies, like municipal corporations, derive their power from the Legislature and may not act in excess of a statutory grant. Annapolis v. Annapolis Waterfront Co., 284 Md. 383, 394, 396 A.2d 1080 (1979). While the Commission has the power to adopt rules of procedure governing its conduct [NR §8-1806], it may not contravene the statute - in this instance, by adopting a more rigorous majority requirement.

We believe that the Commission's bylaw was a good-faith effort to fashion a consensus-building tool in harmony with the intent of the original statute. The Commission retained the bylaw in the belief that the General Assembly's 1986 enactment merely provided a statutory minimum. For the reasons stated above, however, the Commission's bylaw may no longer be applied.¹⁰

⁹ But see 62 C.J.S. Municipal Corporations §404a, at 764 (1949), which indicates that a municipal body may determine for itself the number of votes required to elect an officer or pass a particular measure. The cases cited, however, involve election of officers and procedural rule changes and not the passage of ordinances or other measures affecting the public.

¹⁰ We are advised by Commission Chairman Liss that the Commission has operated with a remarkable degree of consensus, dissenting votes being non-existent or few in number. Indeed, we understand that in dozens of Commission meetings since the bylaw was adopted, no vote of the Commission has succeeded or failed by a margin that called the bylaw into question, save for one vote on a matter that became moot soon after the vote was taken.

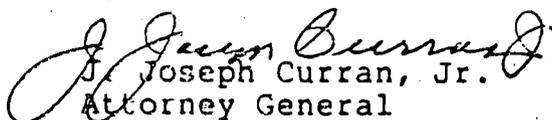
The Honorable Walter M. Baker
October 7, 1988
Page 6

IV

Conclusion

In summary, it is our opinion that the Chesapeake Bay Critical Area Commission may not apply a bylaw that varies from the voting requirement in NR §8-1804(e)(4)(ii).

Very truly yours,


J. Joseph Curran, Jr.
Attorney General


Kathryn M. Rowe
Assistant Attorney General


Jack Schwartz
Chief Counsel
Opinions & Advice

KMR/mar

B:KMI:JS03

MOTION TO AMEND THE BY-LAWS

A motion is hereby made to amend the Commission's by-laws at Article V, concerning quorum and voting requirements. This motion is made pursuant to an Attorney General's Opinion of October 7, 1988, which concluded that the Commission could not apply a voting requirement different from that set out in the Critical Area law at SNR8-1804(e).

The amended Article shall read as follows:

A quorum shall be one member more than a majority of the full authorized membership of the Commission. A quorum of a panel of the Commission shall be three members. The Commission or a panel of the Commission may not hold a public hearing unless a quorum is present, nor may the Commission or its panels take any official action unless a quorum is present and a majority of the members present and eligible to vote concur in or vote for the action.

BY-LAWS OF THE CHESAPEAKE BAY CRITICAL AREAS COMMISSION

Approved December 5, 1984

ARTICLE I. NAME AND PURPOSE

The name and purpose of the Commission are set forth in Natural Resources Article, Section 8-1801 through 8-1816 of the Annotated Code of Maryland (Chapter 794, Laws of 1984).

ARTICLE II. MEMBERSHIP, TERM, VOTING

The Commission is composed of those 25 members provided for in Natural Resources Article, Section 8-1804. The term of appointments is as stated in the Natural Resources Article, Section 8-1804 and Section 2 of Chapter 794, Laws of 1984. A member may appoint a designee for the purpose of attending meetings in the member's absence. The designation shall be made in writing to the Chairman. Designees shall not have voting rights. Each member is entitled to one vote on matters before the Commission.

ARTICLE III. OFFICERS, METHODS OF SELECTION, TERMS OF OFFICE

The Chairman is appointed by the Governor as provided for in Natural Resources Article, Section 8-1804(a). The Chairman shall preside at all meetings and hearings of the Commission and shall have the duties normally conferred by parliamentary usage of such office. The Chairman may designate another member of the Commission to assume the powers and duties of the Chairman during the absence or incapacity of the Chairman.

ARTICLE IV. MEETINGS

Meetings of the Commission shall be held at the call of, and at the time and place specified by the Chairman. Except in the event of an emergency requiring immediate action, the Chairman shall give each member at least ten (10) days advance notice of any meetings. The Chairman shall call a special meeting when requested to do so by at least five (5) members of the Commission or as specified in Section 8-1812(a), of the Natural Resources Article. The Commission is subject to the State's Open Meetings Law. Written minutes shall be prepared for all of its meetings. The minutes and other files and records of the Commission are subject to the State's Public Information Law, Article 76A, Subsection 1 et. seq. Annotated Code of Maryland.

Roberts Rules of Order, current edition, shall govern the meetings and hearings of the Commission and to all other cases to which they are applicable and in which they are not inconsistent with the by-laws and rules of procedure.

ARTICLE V. QUORUM AND VOTE REQUIRED FOR COMMISSION ACTION

A quorum shall be a majority of all the voting members. On all issues, other than amendment of the by-laws, a simple majority of the voting members shall decide the question.

ARTICLE VI. FUNDING, STAFF SUPPORT

The Commission shall have staff as provided in Natural Resources Article, Section 8-1805.

ARTICLE VII. COMMITTEES

The Chairman may appoint from among the members of the Commission such committees as the Chairman feels are necessary to properly conduct the business of the Commission and to perform the tasks assigned to the Commission.

ARTICLE VIII. AMENDMENTS

These by-laws may be amended by an affirmative vote of two-thirds (2/3rds) of the Commission, except that they may not be amended in any way that would render them inconsistent with Subtitle 18, Natural Resources Article. Proposed amendments shall be mailed to Commission members at least two weeks in advance of the meeting at which action is to be taken.

ARTICLE IX. PRESERVATION

These by-laws, upon approval of the Commission shall be appended to and become a part of the minutes of the Commission and shall remain in effect until recinded or amended. The Executive Director of the Commission shall provide for the printing of copies of the by-laws and shall provide each member of the Commission with a copy thereof.



*Please
make
copies
for
Commis
Mey.*

4 November, 1988

Sarah J. Taylor, Ph.D.
Executive Director
Chesapeake Bay Critical Areas Commission
Department of Natural Resources
Tawes State Office Building D4
Annapolis MD 21401

Dear Sarah:

I have hesitated writing this letter for a week and am still somewhat lost for words. I have just received what must have been one of the Judge's last letters, it was very kind. Please give my best to all the lovely folks at the Commission as well as my thoughts for their and the Commission's future. I must admit, I very much miss my weekly trip to the Bay and the swirl of issues surrounding it. One gets rusty very quickly.

In the last CRAC meeting I attended, Larry Whitlock suggested developing a video presentation focusing upon the Bay in general and the Commission's work in particular. In case Marcus has not had a chance to show you our thoughts, I want to get a copy to you.

This is probably not the time for thinking great thoughts or new ideas, however, your and the Commission's blessings on it or an improved version is a necessary beginning for me to be able to go out and seek funds or discuss the concept with Maryland Public Television.

Again, my best to Kevin, Charlie, Veronica and Jeniver.

Sincerely yours,


Patrick Beaton Ph.D.
Research Professor

THE FUTURE OF THE CHESAPEAKE BAY:

*A Proposed Video Presentation of the Findings of the
Chesapeake Bay Critical Areas Commission's
Two-Year Economic Impact Study*

by

W. PATRICK BEATON
CENTER FOR URBAN POLICY RESEARCH
RUTGERS, THE STATE UNIVERSITY OF NEW JERSEY

and

MARCUS POLLOCK
CHESAPEAKE BAY CRITICAL AREAS COMMISSION

The Center for Urban Policy Research Rutgers, working in cooperation with the Maryland Chesapeake Bay Critical Areas Commission has completed a Baseline Economic Impact study for new land use controls along the Bay. When entering into the study, it was recognized that the Chesapeake Bay is used as home, playground, means of commerce, fishery and finally as the repository for the nutrient rich effluent of public and private sewers for the populations of six states.

Much activity affecting the Bay comes from outside the state. However, Maryland is the state with the greatest stake in the improvement of the Bay. Much of the current point and non-point source pollution originates from within Maryland. The status of the various sources of such pollution will be determined by the type, level, and best management practices incorporated in new development. The quality of this development rests in the joint actions of the Commission in conjunction with Maryland's local jurisdictions. In addition, it must be recognized that political pressure requiring other states to improve their use of the Bay depends upon a united Maryland electorate supporting both their governor's negotiations with counterparts in the neighboring states and similar efforts of their congressional representatives in Washington.

The Baseline study finds that development along the Bay is indirectly encouraged and directly accommodated by the establishment and operation of the Critical Areas Commission. Generous grandfathering provisions in the law have provided for an inventory of developable parcels within the Critical Areas, while the gradual use of the growth increment provisions of the law will add to this inventory. Urbanization will continue to occur within the waterfront sector of Maryland's Chesapeake Bay.

The work finds that the Critical Areas policies reinforce an existing spatial separation of citizens by wealth. Waterfront property in desirable areas of the Bay is well over one hundred percent the price of comparable upland real estate. Waterfront owners are guaranteed access to the Bay; inlanders must rely on negotiations with developers or the enforcement of public access provisions with the Commission's development criteria.

Political support for the continued improvement of water quality within the Bay must include the votes of inlanders. At the same time, the economic development aspirations of the entire eastern shore must be recognized as contingent upon the land development decisions and actions permitted by the Commission in conjunction with their county and municipal governments. All citizens must recognize that they have an important role to play in the development along the Bay. High quality development with public access will permit Bay-related inland development to occur. Exclusionary development will result in a narrow block of voters supporting the upgrading of the Bay.

The mechanism proposed to advance the goals of the state of Maryland as implemented through the Chesapeake Bay Critical Areas Commission is a public television/VCR compatible video presentation. It will be designed for both a general viewing audience and in its shorter version, for city and county planning commissions, libraries, and public school social studies classes.

PROPOSAL

It is proposed that a set of 15-30 minute video presentations of these findings and conclusions be prepared. The video described in the proposal to follow will be constructed for the Bay as a whole; the other four videos will represent the specific conditions of each of the four major regions within Maryland's Chesapeake Bay.

The purpose of the set of video presentations is to move citizens to actively involve themselves in the clean up of the Bay. The first video will be an overview of the issues surrounding the Bay as a whole. It must identify the land development issues that influence the quality of water and life in and around the Bay. With the issues specified, the range of policies and regulations affecting land development will be reviewed and a view of the future explored. The four region specific videos will be relatively short 10 to 15 minute films. Each must identify the elements of local critical area policies, show places where citizen monitoring must take place and show the types of destructive activities that can occur if critical area criteria are not followed.

The theme for the proposed Chesapeake Bay video is as follows:

1. Population growth around the Bay is inevitable with or without the Critical Areas legislation.
2. Growth can take the form it has on the New Jersey shore or in the form envisioned by the Critical Areas criteria. In New Jersey the following practices are commonplace:
 - a) Elimination of public access to the ocean and bay waterfront.
 - b) Purposeful or inadvertent incremental destruction of wetlands.
 - c) Excessive removal of trees and shrubs from the development sites and buffer.
 - d) Loss of endangered species habitat.
 - e) Development in erosion hazard areas.
 - f) Destruction of submerged aquatic vegetation.
 - g) Filling of intermittent stream corridors.
 - h) Location of roads, sewers, water lines and parking lots that accelerate pollution runoff and siltation into the Bay.
3. With or without the Critical Areas Criteria, new development will continue and exacerbate the current income stratification between waterfront dwellers and inlanders.

4. Waterfront owners are guaranteed access to the Bay, inlanders are not.
5. Inlanders have expressed a desire to use the Bay. For such access to occur, open space wetland and critical scenic parcels must be in the public domain. Trails and stairways must be constructed where needed, public piers and mooring facilities made in adequate supply around the bay, handicapped accessways constructed, and environmental education facilities and historic buildings reconstructed and maintained. In urban areas such as Cambridge, Oxford, St. Mary's, Centerville, North, East and St. Michaels, existing marine service facilities need to be maintained, bay front or river front explanades constructed or linked with shopping centers, and appropriate signs indicating points of access and environmental/historical points of interest located.
6. Inland development with assured access to the Bay will promote an improved economy for current residents especially those living on the Eastern Shore.
7. Where development can be shifted uplands due to assured access to the Bay, pressure of environmentally-sensitive areas can be reduced.
8. However, absent a vigorous Maryland State, Critical Areas Commission and local campaigns to acquire waterfront land for public use and to incorporate public waterfront open space in waterfront subdivisions, Inlanders will be effectively blocked from enjoyment of Bay as they have been in Lake Tahoe, Nevada.
9. Political support by inland voters will be essential for the solution of many Chesapeake Bay problems such as sludge disposal from waste water treatment plants and interstate flows of sludge, toxic chemicals, fertilizers and pesticides.
10. Citizens living within the Critical Areas and those living uplands must both actively adopt of Chesapeake Bay, segment by segment, to ensure that all elements of the Critical Areas policy are continuously followed. When a sufficient majority of our voters feel they have a stake in the Bay, then legislative and executive action on the more difficult and costly problems can be broached.

MANAGEMENT OF PROJECT

The five video presentations:

- 1) The Future of the Chesapeake Bay;
- 2) Guiding the Future of the Upper Eastern Shore;
- 3) Guiding the Future of the Lower Eastern Shore;
- 4) Guiding the Future of the Metropolitan portion of the Chesapeake Bay, and
- 5) Building the Future of the Southwestern Shore,

will be produced and scripted by Patrick Beaton of the Center for Urban Policy Research of Rutgers University and Mr. Marcus Pollock of the Chesapeake Bay Critical Areas Commission. On-site filming will be performed by Maryland Public Television. File footage showing the geography and sources of environmental stress will be used where possible. Either an overflight of the Bay from the Virginia Capes to the farmlands of the Susquanna River in Pennsylvania or a segment of film from a shuttle overflight of the region will be used to show the extent of the region. The interstate nature of some of the

pollution problems will be acknowledged with a short emphasis on political solutions involving the Governor and Congress. The major effort across all films will be the solution of the intrastate sources of environmental economic and social stress in and around the Bay. This will be done by filming examples of the successes and failures in the bay and elsewhere intersperced with the commentary of respected political, governmental and scientific persons. In addition, the observations and comments of local residents, those living on the waterfront and uplands of the Critical Areas, watermen, farmers and marina operators and boat owners will be integrated into the performances.

In this day of massive media exposure and short attention spans, we recognize that only a first quality presentation will drive home to the citizens of Maryland the efforts required to reclaim the Bay for future generations. The role of the sponsors in these efforts is to both provide the necessary resources as well as to guide the results to the desired end. To that end, sponsors will be asked to provide a representative to be a member of a steering committee. The steering committee will be given monthly progress reports. The contents of the monthly progress reports will be presented on a review and approve basis. Future work will be contingent upon this approval.

It is estimated that the cost of producing the five video presentation will be approximately ninety thousand dollars.



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

November 14, 1988

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.

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Talbot Co.

Samuel E. Turner, Sr.
Talbot Co.

William J. Bostian
Wicomico Co.

Russell Blake
Worcester Co.

The Honorable Torrey C. Brown, M.D.
Secretary, Department of Natural Resources
Tawes State Office Building
Annapolis, Maryland 21401

Dear Secretary Brown:

Enclosed please find an Appeal which we have noted on a decision by the Dorchester County District Forestry Board to approve a timber harvesting plan for the Estate of Monroe Lakes.

The Board "approved" the plan on the evening of November 10, 1988, and this is the first business day after such approval. We wanted to note the appeal quickly both to expedite your consideration, for the property owners' benefit, and to inform all concerned, including the County Highway Department, so that the harvesting can be stayed until a decision is rendered. (Please note that we do not object to the removal of timber already cut to date, and that such removal activity is not contested under this appeal.)

By copies of this letter and the enclosure, I have notified the property owners, the County, and the logging company of this appeal. Please let us know how and when you wish to proceed on this appeal.

Sincerely,

Robert R. Price, Jr.
Robert R. Price, Jr.
Acting Chairman

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

cc: Elvin Thomas, Administrator
Dorchester County Highway Department

Dr. Virgie Lake Camper
Monroe Lake Heirs

Ronald Bridge
R & R Bridge Logging Co., Inc.

APPEAL OF	*	BEFORE
THE DECISION OF THE	*	TORREY C. BROWN, M.D.
DORCHESTER COUNTY DISTRICT	*	SECRETARY OF
FORESTRY BOARD	*	THE DEPARTMENT
IN THE MATTER OF THE	*	OF NATURAL RESOURCES
TIMBER HARVEST PLAN OF	*	
THE ESTATE OF MONROE LAKES	*	

APPEAL

COMES NOW the Chesapeake Bay Critical Area Commission ("Commission"), Robert R. Price, Jr., Acting Chairman, by its attorneys J. Joseph Curran, Jr., Attorney General and Lee R. Epstein, Assistant Attorney General, and files this, its appeal in the above-captioned matter.

1. On November 10, 1988, the District Forestry Board of Dorchester County gave its "approval" to a timber harvesting plan for the above-noted estate.
2. The plan purportedly approved provides for the cutting of about 181 acres of timber, which timber would be chipped and used for fuel. About 80 acres of the tract are in the Dorchester County Critical Area.
3. The entire wooded area provides habitat for the Federally and State-designated endangered species, the Delmarva fox squirrel.
4. The State Critical Area regulations, at COMAR 14.15.05.03C, (the "Criteria") require protection of endangered species habitat through Forest Management Plans in the Critical Area. The Dorchester County Critical Area Program at Chapter V D. 3, provides for protection of these species and their habitats. The Dorchester County Forestry Ordinance, at Section 6.1B provides for protection of these natural habitats.
5. The Maryland Forest, Park and Wildlife Service ("FPWS") prepared a harvesting Plan for the landowner that would preserve a 50 foot buffer or corridor in the

Critical Area to ameliorate the effects of the loss of the larger habitat area on the endangered animals. Such buffer constituted approximately 3 acres of reserved timber, out of about 178 acres to be cut over.

6. The Dorchester County District Forestry Board, against the recommendations of FPWS and the U.S. Fish and Wildlife Service, changed the FPWS plan to permit cutting the entire acreage, and proposed to approve this altered Plan.

7. The Commission, by the authority of Natural Resources Article §8-1812, Annotated Code of Maryland, and under Natural Resources Article §5-603, Annotated Code of Maryland, files this appeal of the District Board's "approval" of the cutting Plan to the Secretary of the Department of Natural Resources, and seeks to reinstate the original Plan prepared by the FPWS with the habitat buffer intact.

Respectfully submitted,

J. JOSEPH CURRAN, JR.
Attorney General



Lee R. Epstein
Assistant Attorney General
Department of Natural Resources
Tawes State Office Building
Annapolis, Maryland 21401
(301) 974-2251

APPEAL OF	*	BEFORE
THE DECISION OF THE	*	TORREY C. BROWN, M.D.
DORCHESTER COUNTY DISTRICT	*	SECRETARY OF
FORESTRY BOARD	*	THE DEPARTMENT
IN THE MATTER OF THE	*	OF NATURAL RESOURCES
TIMBER HARVEST PLAN OF	*	
THE ESTATE OF MONROE LAKES	*	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 14th day of November, 1988 forwarded copies of the Chesapeake Bay Critical Area Commission's Appeal by first class mail, postage pre-paid, to the following: Monroe Lake Heirs, c/o Dr. Virgie Lake Camper, 824 Washington Street, Cambridge, MD. 21613; Mr. Ronald Bridge, R & R Bridge Logging Co., Inc., Hobbs Road #3, Salisbury, MD. 21801; Mr. Elvin Thomas, Administrator, Dorchester County Highway Department, 5435 Handley Road, Cambridge, MD. 21613.



 Lee R. Epstein

APPEAL OF	*	BEFORE
THE DECISION OF THE	*	TORREY C. BROWN, M.D.
DORCHESTER COUNTY DISTRICT	*	SECRETARY OF
FORESTRY BOARD	*	THE DEPARTMENT
IN THE MATTER OF THE	*	OF NATURAL RESOURCES
TIMBER HARVEST PLAN OF	*	
THE ESTATE OF MONROE LAKES	*	

STAY PENDING APPEAL

An appeal having been filed by the Chairman of the Critical Areas Commission, the November 10, 1988 approval of the Dorchester County District Forestry Board, for a Timber Management Plan for the Estate of Monroe Lakes, is hereby stayed pending my further consideration of this matter.

Torrey C. Brown, M.D.
Secretary

PANELS THAT ARE ALIVE AND WELL

I. PANELS TO REVIEW STATE PROJECTS

Master Plan Gunpowder Falls State Park (Days Cove)

Tom Osborne, Ch.	James Gutman
Ardath Cade	Bob Schoeplein
Victor Butanis	Abi Rome - <u>Staff</u>

Point Lookout Fishing Pier

Skip Zahniser, Ch.	Sam Bowling
Ardath Cade	James Gutman
Frank Raley	Abi Rome - <u>Staff</u>

Mosquito Mgt. Program

Connie Lieder, Ch.	Wayne Cawley
Torrey Brown	Shepard Krech
Steele Phillips	Sarah Taylor - <u>Staff</u>

II. PANELS TO HANDLE POLICIES & PROCEDURES

Accommodation of Additional Sewage Into Critical Area

Parris Glendening, Ch.	Bob Perciasepe
Kay Langner	Wayne Cawley
James Gutman	Bill Bostian
Shepard Krech	Sarah Taylor - <u>Staff</u>

Review Amendments, Project Notification Procedures
& Hearing Process

Parris Glendening, Ch.	Wally Miller	<i>Connie Lieder</i>
Sam Bowling	John Griffin	
Ron Adkins	Sarah Taylor - <u>Staff</u>	

Natural Parks Guidance Paper

James Gutman, Ch.	Wally Miller
Ron Karasic	Tom Osborne
Shepard Krech	Dawnn McCleary - <u>Staff</u>
Sam Bowling	

Regulations on the Drilling of Oil & Gas in Critical Area

III. PANELS TO REVIEW LOCAL PROGRAMS & AMENDMENTS

Dates to Aim For

Program by 11/16/88

Centreville

Shepard Krech, Ch.	Russell Blake
Bob Price	John Griffin
Tom Osborne	Charlie Davis - <u>Staff</u>
<i>Bob Schoeplein</i>	

Programs by 11/30/88

Indian Head

Bob Schoeplein, Ch.	Sam Bowling
Parris Glendening	Ron Karasic
Ardath Cade	Ren Serey - <u>Staff</u>
Frank Raley	

Mardella Springs/Sharptown

Shepard Krech	Steele Phillips
Wally Miller	Russell Blake
Victor Butanis	Ed Phillips - <u>Staff</u>

Queenstown

Kay Langner, Ch.	Shepard Krech
Connie Lieder	Ron Adkins
Ardath Cade	Charlie Davis - <u>Staff</u>

Salisbury

Bill Bostian, Ch.	Bob Schoeplein
Torrey Brown	Shepard Krech
Tom Osborne	Ed Phillips - <u>Staff</u>

Somerset County

Bob Price, Ch.	Ron Karasic
Shepard Krech	Russell Blake
Bill Bostian	Ed Phillips - <u>Staff</u>

Wicomico County

Victor Butanis	Russell Blake
Shepard Krech	Wally Miller
Steele Phillips	Ed Phillips - <u>Staff</u>

Program by 11/30/88

Worcester County

Bill Bostian, Ch.	Victor Butanis
Russell Blake	Bob Price
Ron Adkins	Sarah Taylor - <u>Staff</u>

Programs by 12/7/88

Caroline County

Victor Butanis, Ch.	Wayne Cawley
Ron Karasic	Bob Price
Tom Jarvis	Sarah Taylor - <u>Staff</u>

Chestertown

Tom Osborne, Ch.	Louise Lawrence
Bob Perciasepe	Kay Langner
Vitor Butanis	Charlie Davis - <u>Staff</u>

Denton

Ardath Cade, Ch.	Wayne Cawley
Steele Phillips	Victor Butanis
Shepard Krech	Sarah Taylor &
Tom Jarvis	Dawn McCleary - <u>Staff</u>

Elkton

Ron Karasic, Ch.	Victor Butanis
James Gutman	Frank Raley
Sam Turner	Ren Serey - <u>Staff</u>

Federalsburg

Ardath Cade, Ch.	Wayne Cawley
Shepard Krech	Steele Phillips
Victor Butanis	Sarah Taylor &
Tom Jarvis	Dawn McCleary - <u>Staff</u>

North Beach

Ardath Cade, Ch.	Tom Osborne
Ron Karasic	Torrey Brown
Bob Schoeplein	Anne Hairston &
	Sarah Taylor - <u>Staff</u>

Snow Hill

Kay Langner, Ch.	Ron Adkins
Wally Miller	Russell Blake
Bill Bostian	Sarah Taylor - <u>Staff</u>

Program by 12/7/88

St. Mary's County

James Gutman, Ch.	Skip Zahniser
Sam Bowling	Frank Raley
Bob Percisepe	Ren Serey - <u>Staff</u>

Programs by 12/21/88

Cecil Co. Amendments

Connie Lieder, Ch.	Victor Butanis
Ron Adkins	James Gutman
Louise Lawrence	Charlie Davis - <u>Staff</u>

Charles County

James Gutman, Ch.	Skip Zahniser
Connie Lieder	Bob Schoeplein
Parris Glendening	Ren Serey - <u>Staff</u>

Church Hill

Shepard Krech, Ch.	John Griffin
Russell Blake	Ron Adkins
Bob Price	Charlie Davis - <u>Staff</u>

Dorchester County Amendments

Bob Schoeplein, Ch.	Sam Bowling
Shepard Krech	Bob Price
Bill Bostian	Ed Phillips - <u>Staff</u>
Connie Lieder	

Hillsboro/Queen Anne

Ardath Cade, Ch.	Shepard Krech
Torrey Brown	Bob Price
Louise Lawrence	Charlie Davis - <u>Staff</u>

Kent County Amendments

Victor Butanis	Ron Karasic
Torrey Brown	Kay Langner
James Gutman	Charlie Davis - <u>Staff</u>

Talbot County

James Gutman, Ch.	Ron Karasic
Shepard Krech	Bob Price
Wally Miller	Charlie Davis - <u>Staff</u>