

Commission Meetings & corresp.

July, 1989

MSA_51832-60



JOHN C. NORTH, II
CHAIRMAN

STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREAS COMMISSION

SARAH J. TAYLOR, PhD
EXECUTIVE DIRECTOR

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COMMISSIONERS

Thomas Osborne
Anne Arundel Co.

James E. Gutman
Anne Arundel Co.

Ronald Karasic
Baltimore City

Ronald Hickernell
Baltimore Co.

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.
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William Corkran, Jr.
Talbot Co.

William J. Bostian
Wicomico Co.

Russell Blake
Worcester Co.

June 29, 1989

Dear Commission Member

The next meeting of the Critical Area Commission is scheduled for July 5, 1989, at 1:00 p.m. at the Commission Office, 275 West Street, Annapolis. Enclosed are the following items for your review prior to the Meeting:

- 1) The Minutes of the Meeting of May 24, 1989;
- 2) Agenda for July 5, 1989;
- 3) Final Shared Facilities Policy;
- 4) MOU with the Department of Agriculture, to be approved;
- 5) Schedule of Subcommittee meetings.

I look forward to seeing you on July 5th.

Sincerely,

Judge John C. North, II
Chairman

JCN/jjd

Enclosures

CABINET MEMBERS

Wayne A. Cawley, Jr.
Agriculture

Robert Schoepflein
Employment and Economic Development

Robert Perciasepe
Environment

Ardath Cade
Housing and Community Development

Torrey C. Brown, M.D.
Natural Resources

Ronald Kreitner
Planning

AGENDA

CHESAPEAKE BAY CRITICAL AREA COMMISSION

275 West Street
Suite 320
Annapolis, Maryland

July 5, 1989

1:00 - 5:00 p.m.

- | | | |
|-------------|---|--|
| 1:00 - 1:10 | Approval of the Minutes
of May 24, 1989 | John C. North, II
Chairman |
| 1:10 - 2:15 | <u>Program Review & Amendment</u>

Somerset County
Update & Discussion

St. Mary's County Program
Update & Discussion

Vote on Baltimore Co.
Amendment

Kent County Amendment
Status

Appointments of Panels
for Hearings for St.
Michaels, Oxford, and
Calvert County | Robert Price, Ch./
Tom Ventre/Panel

James Gutman, Ch./
Ren Serey/Panel

Bob Perciasepe, Ch./
Anne Hairston/Panel

Ron Karasic, Ch./Pat
Pudelkewicz/Panel

John C. North, II
Chairman |
| 2:15 - 2:45 | <u>Projects</u>
<i>Floating pier - Pt Lookout State Park</i>
Vote on Light Rail, Mass
Transit | Ren Serey/Project
Officials |
| 2:45 - 3:30 | <u>Policies & MOUs</u>
<i>Giles Landing</i>

Vote on MOU With the
Dept. of Agriculture

Shared Facilities | Louise Lawrence/
Abi Rome

James Gutman/
Sarah Taylor |

Agenda - 7/5/89
Page 2

3:30 - 4:15 Updates on Subcommittees

Project Evaluation

Samuel Bowling/
Kathryn Langner

Program Amendment
Amendment Procedures

Ron Karasic/
Larry Duket

4:15 - 4:30 New Business
Old Business

John C. North, II
Chairman

Next Meeting: August ²⁷ 3, 1989, ~~Patterson Farm and Museum,~~
~~Calvert County 1:00 p.m.~~

CAC conf. rm.

CHESAPEAKE BAY CRITICAL AREA COMMISSION

Minutes of Meeting Held
May 24, 1989

The Chesapeake Bay Critical Area Commission met at the Chesapeake Bay Critical Area Commission Office, 275 West Street, Annapolis, Maryland. The meeting was called to order by Chairman North with the following Members in attendance:

Russell Blake
William Corkran
Victor Butanis
Ronald Karasic
Albert Zahniser
Samuel Bowling
Robert Price
Ronald Adkins
Michael Nelson for
Secretary Brown
Sheila Moscow for
Deputy Secretary Cade

Kathryn Langner
Thomas Jarvis
James E. Gutman
Thomas Osborne
J. Frank Raley, Jr.
Ronald Hickernell
Parris Glendening
Louise Lawrence for
Secretary Cawley
Robert Schoeplein of DEED
Ronald Kreitner of DSP
Robert Perciasepe of DOE

The Minutes of the Meeting of May 3rd were approved as written with the addition that discussion had been held concerning the treatment of sludge at the Bowie treatment plant.

Chairman North asked Mr. Tom Ventre to report on the request for the award of growth allocation in Somerset County, for a proposed development known as Somerset Springs. Mr. Ventre reported that of the 1,100-acre site, a request had been made for 222 acres of growth allocation and for a reclassification from RCA to LDA.

Mr. Ventre showed, by use of a map, where the proposed development would be situated. He noted that the County Commissioners had approved growth allocation for this project with 15 conditions for the developer to meet, which were basically reiterations of the criteria. He said that the only map received from the developer was a schematic of the proposal. The project was for a residential, commercial, and resort facility. The resort aspects include accommodations for hunting, marinas and boating, fishing and for golf. Commercial development, retail, hotel and conference facilities are proposed, as well as a range of residential development. He said that the Panel's public hearing had been held, and written comments had been received from the public.

Mr. Gutman asked if 222 acres was the amount of acreage that all agreed with, or was there another suggestion as to the number of acres requested for growth? Mr. Ventre answered that 222 acres is the number requested, and the number that the County Commissioners had approved.

Mr. Zahniser asked if the 222 acres encompassed all of the land that was developed upon, excluding the tidal wetlands. Mr. Ventre answered that it was difficult to say because of the way the Somerset County's Program's growth allocation works (i.e., as a floating zone), and because of the developer's sketchy submission, it isn't known exactly where these 222 acres would fall.

Mr. Zahniser said that because the site plan is not formally drawn by the developer, it isn't known how much of the 1,000 acres were going to be utilized.

Mr. Adkins added that not all of the tract is RCA needing growth allocation, as some of it was LDA. He said that the County has a debiting system that deducts all of its growth allocation for a type of use, and requires that type of use to be clustered and minimized within that area of debiting. The 222 acres figure was what the County had available for the calendar year 1988. Those acres are beyond what the developer would need for the structural improvements on the site. He said that instead of requesting a site plan, the County accepted a schematic because it would be unreasonable at the County level to expect a project of this scale to have all of the metes and bounds of each lot being proposed, etc., before it came before the County for a growth allocation request. He said that the County is not requesting approval of the Somerset Springs project, but approval of the growth allocation of that site, debiting 222 acres, based upon the schematic of Somerset Springs.

Mr. Osborne asked if the growth allocation was done in accord with the Commission's growth allocation guidelines, how much difference would there be in size. Mr. Adkins answered that to apply the guidelines, which require that development sit at least 300 feet from tidal wetlands or the entire tract of land is counted, would be impractical.

Mr. Gutman asked if the request for 222 acres would be final, or could the County or developer return to request a greater number. Mr. Adkins answered that the County is not allowing more than a certain percentage of growth allocation to be available in any given year, but it was possible that the developer may not have enough acreage, or may not want that much allocated to it if the project needed to be scaled down due to limitations.

Mr. Ventre asked if the developer did not need as much, what then would be done. Mr. Adkins answered that if the developer did not need that much, he would have a number of years to use the growth allocation, or the County would take it back.

Critical Area Commission
Minutes - 5/24/89
Page Three

Mr. Price, Panel Chairman, explained the Panel's findings concerning the request. He said that the Panel met with Mr. Adkins, Director of the Department of Technical and Community Services prior to the hearing for Somerset County. He said that the primary question in mind was that in addressing its award of growth allocation outside of the growth allocation designated for municipalities, the County followed a pattern similar to that of Cecil County, in that it provided all of its award of growth allocation through a floating zone process. The process and procedure is by application of property owners, not by the County Commissioners. Preliminary site plan approval or subdivision approval, and health department approval is required prior to receiving the growth allocation award. In this particular Program amendment request of 222 acres of growth allocation, no site plan had been filed and no subdivision approval had been granted, nor had any approvals from the health department been given. He said that the Panel felt that these procedural defects were of such a substantial nature, that the Program amendment should be returned to the County Commissioners, not being approved on the basis that the County did not follow the procedural guidelines of its own Program. The Panel did not consider the merits of the project.

Mr. Blake, Panel member, concurred with Mr. Price that the Panel did not want to examine the merits of the project, as that could be done in the future during site review and specific project approval which would be brought before the full Commission. The problem was more that of a technical one.

Mr. Karasic added that the right of the local jurisdiction to allocate its resources is something that the Panel did not want to debate, but to ratify what was viewed as a violation of the County's own procedure would open the door to future problems.

Mr. Adkins noted that there were no standards or guidelines to follow when voting on a growth allocation project, other than locational features, and the County believed that this project met those standards. When the County first submitted this growth allocation request, the Critical Area Commission did not recognize the County as having a Program. He further stated that the Commission's being involved in the granting of growth allocation makes it a planning commission, which is something that the Commission wanted to avoid.

Mr. Raley asked Mr. Price to explain which procedures were those that the County did not follow. Mr. Price answered that no site plan or subdivision application of any type or nature was filed with the Planning Commission or the County Commissioners.

He said that in the ordinance of the County under growth allocation, these procedures are required with preliminary approval which gives the public, etc., time for review of maps, preliminary designs, and concepts, etc.

Mr. Perciasepe asked Mr. Epstein what the nature was of the Commission's responsibility on individual growth allocation determination in each County, and did the Commission have to approve each one, or was it dependent upon each County's Program. Mr. Epstein answered that growth allocation was an amendment to a local Program, and as such, an application would need the Commission's approval.

A motion was made and seconded that the Program amendment of Somerset County's local Critical Area Program, awarding growth allocation for the project known as Somerset Springs, not be approved, and that the County be notified that in order for the proposal to be approved, that Program amendment must meet the statutory requirements of the County's Critical Area Program and its supporting ordinances. The vote was 16 in favor with 1 opposed and 1 abstention.

Acting Secretary Kreitner proffered his thoughts that there are two approaches that might be pursued by the County and the staff regarding the Program amendment. One would be to examine the preliminary approval route, and another would be to develop some type of provisions for the County to waive particular requirements depending upon the nature of the development.

Mr. Raley stated that this issue was one that the Commission should examine so that not only would the State's resources be protected, but that some type of preliminary approval could be given to a project before huge amounts of money were expended by developers.

Mr. Zahniser agreed that there needs to be a solution found for these incidences.

Chairman North asked Mr. Ventre to report on the growth allocation request for Dorchester County. Mr. Ventre reported that the Commission had previously given approval to a Program text amendment for the County to accommodate a class of "grandfathered" interim subdivisions. A public hearing was held in Cambridge to hear testimony on this growth allocation of approximately 129 acres for two subdivisions and two parcels. No particular issues emerged as a result of the hearing.

Critical Area Commission
Minutes - 5/24/89
Page Five

Mr. Schoepflein, Panel Chairman, stated that the Panel met at the conclusion of the public hearing. He said that with no reservation, the Panel recommended approval of 129 acres of growth allocation in the County's Program.

A motion was made and seconded that the Commission approve the Program amendment for Dorchester County of 129 acres of growth allocation. The vote was 18:0 in favor.

Chairman North then asked Ms. Hairston to report on the extension for Cecil County's growth allocation time frame. Ms. Hairston reported that the County had officially requested to extend the time period to apply its first year of growth allocation (one cycle). The growth allocation system designed by the County, including the point system, was given an experimental trial period of one year by the Commission. She said that the intent was to evaluate the performance of the system relative to standard Commission policy after the first cycle of growth allocation was given. This one-year period would expire at the end of June. She said that the County had not completed its growth allocation cycle, and was requesting that the trial period be extended long enough to complete the process with the associated procedural requirements for both the County and the Commission.

Mr. Raley asked what constituted a cycle. Ms. Janet Gleisner, Planning Director for Cecil County, answered that a cycle is the application of the allotted amount of growth allocation for one year. She explained the schedule for the process and said that the County would be ready at the end of this year to make a recommendation to the Commission. This would give ample time to the County for the growth allocation to be awarded through the proper procedures.

A motion was made and seconded to extend the time period for Cecil County's growth allocation process for one year. The vote was 18:0 in favor.

Chairman North asked Mr. Charles Davis to report on the text amendment for St. Michaels' local Critical Area Program. Mr. Davis reported that the Chairman had sent a letter to the Town explaining the difficulty the Commission had with the Town's procedures for changing its Program. He said that the staff was awaiting an official response from the Town, and at that time, would be scheduling a hearing.

Critical Area Commission
Minutes - 5/24/89
Page Six

Mr. Davis then reported on Baltimore County's text amendment. He explained that this was primarily a process issue. The County had made an amendment to its zoning ordinance last December, and it had been done without Commission approval. Mr. Davis said that a meeting had been held at the staff level to clarify issues. To date, the amendment and a letter by the County Executive transmitting the proposed changes, had officially been received by the Commission, and a hearing would be scheduled at the end of June.

A Panel for Baltimore County was then chosen comprising Ronald Karasic, Victor Butanis, Kathryn Langner, Ronald Hickernell, Robert Perciasepe.

Mr. Davis reported that Kent County had submitted to the Commission, an amendment to its Program. He said that the County was developing a process to revise its zoning ordinance. He said that the staff had not yet time to review it, but the County had asked for the opportunity to hold a joint hearing.

Mr. Adkins asked if, in this amendment, the impervious surface issue would be addressed. Chairman North answered that it was thought that that issue would not be addressed.

Chairman North then asked Ms. Pat Pudelkewicz to report on the three waterfowl habitat improvement projects of the Forest, Park and Wildlife Service. Ms. Pudelkewicz reported that the three projects were at Wye Island Natural Resource Management Area, Elk Neck State Park, and at Bush River Natural Resource Management Area. She said that the project at Wye Island proposed to renovate and expand an existing pond, and a second impoundment would be created. At Elk Neck State Park, the project would rehabilitate two existing impoundments. One is a 20-acre impoundment, and the other is a 14-acre impoundment. The third project at Bush River proposed to place a variable-crest weir across the Bush River to provide optimum water regimes in a 160-acre high phase marsh. She said that the Subcommittee had met on these projects and unanimously agreed that the projects addressed the goals of the criteria to improve water quality, and enhance wildlife habitat.

A motion was made and seconded to approve the three habitat improvement projects of the Department of Natural Resources' Forest, Park and Wildlife Service. The vote was 18:0 in favor.

Chairman North asked Ms. Kathryn Langner, Panel Chairman, and Mr. Ren Serey to report on the project at the Solomons Island boat ramp facility and the Salisbury District Court Multi-Service Center. Ms. Langner reported that the Waterway Improvement Division, DNR, proposed to expand the existing parking lot at the Solomons Island boat ramp facility. The parking area would be expanded from 73 spaces to 114 spaces. The expanded area would be paved, and the Division would plant trees and shrubs for mitigation, at the Calvert Marine Museum in Solomons. She said that the Subcommittee recommended approval.

A motion was made and seconded that Waterway Improvement Division's project to expand the parking lot at the Solomons Island boat ramp facility be approved. The vote was 19:0 in favor.

Ms. Langner then reported that the Maryland Department of General Services proposed to construct a new District Court Multi-Service Center in Salisbury on a 2.4-acre site. She said that approximately 85% of the site is paved with asphalt and concrete, and the site has public water and sewer service. The Subcommittee recommended that the applicant investigate an alternative method of maintaining the indoor parking lot to provide maximum protection of water quality. She said that the Subcommittee recommended approval with the condition that the applicant would provide plantings, or their equivalent, as shown on the proposed site plan.

Mr. Epstein asked if the Town would achieve the 10% stormwater quality improvement requirement. Ms. Langner answered affirmatively.

Mr. Adkins asked how much of the site was in the Critical Area. Ms. Langner answered that entire site was in the Critical Area.

A motion was made and seconded that the Commission approve the Maryland Department of General Services' construction of a District Court Multi-Service Center in Salisbury with the condition that the applicant shall provide plantings, or their equivalent, as shown on the proposed site plan. The vote was 19:0 in favor.

Chairman North asked Ms. Abi Rome to report on the Procedural Guidance Paper for State Agency Projects. Ms. Rome reported that the guidance paper had been discussed at the last meeting and there appeared to be general agreement that the guidance paper was acceptable, but due to lack of a quorum, there had been no vote.

Critical Area Commission
Minutes - 5/24/89
Page Eight

A motion was made and seconded that the Procedural Guidance Paper for State Agency Projects be approved. The vote was 19:0 in favor.

Chairman North asked Mr. James E. Gutman, Panel Chairman, to report on the Shared Facilities Policy. Mr. Gutman reported the activity of the Special Issues Subcommittee. He said that there had been a fourth revision to the work that had been accomplished on the shared facilities policy. The Subcommittee would be sending the final revision to the Commission for comments and/or corrections to be ready for a vote at the July meeting.

Mr. Gutman said that another discussion of the Subcommittee concerned uses that are appropriate in RCAs. He said that a draft had been developed, but nothing would yet be ready for the full Commission to respond to, as another Subcommittee meeting would be needed. He said that the same applied to the issue of Critical Area extension which was also discussed by the Subcommittee.

Mr. Gutman said that the Subcommittee had discovered more issues to be investigated, and would remain open to the Commission for future suggestions.

Mr. Adkins remarked that he does not have full understanding of what floodplain soils are in relation to the draft paper distributed on shared facilities. He asked if he could be provided a definition, as it was a prohibition that was being suggested.

Mr. Perciasepe proffered what information and definition the Department of the Environment had in possession, to Mr. Adkins.

Mr. Bowling mentioned that he had visited the Texaco drill site in King George County, the previous week. He said that the company had indicated that the next well the company wanted to drill would probably be located in Charles County, in the Critical Area. He suggested that the Subcommittee may want to investigate this proposed activity. Mr. Gutman said that that was indeed an item for the Subcommittee's next meeting, but perhaps it would be appropriate for the Commission to formulate a letter of inquiry to the company.

It was suggested and agreed to that the Commission contact the Maryland Geological Survey for information concerning this activity.

Chairman North asked Mr. Davis to report on the Program Amendment Process and changes to the Critical Area Law. Mr. Davis reported that a packet was distributed to the Commission for discussion purposes that offers possible amendments to the Critical Area Law in order to clarify the Program amendment process, and possible new regulations that the Commission would pass. He said that the whole purpose of the regulation section is to clarify expectations and provide a structure through which the Commission and local jurisdictions can modify programs in the most efficient manner.

Mr. Epstein remarked that the question of how local jurisdictions are supposed to know what constitutes sufficient information for Program amendments is an issue that should be investigated by the Subcommittee. He said that as it stands, there was no guidance for the jurisdictions to show what they needed to prove or show the Commission in any instance, when requesting a text amendment, map change, or growth allocation.

Mr. Davis answered that that issue, as a first draft, was part of the regulation.

Mr. Hickernell added that there would be two tiers of inquiries and action by the Commission. The first tier would be determined by the Commission Chairman as not really being a program amendment, which would need legislative action to allow items to change in local Programs without being an amendment to a Program. Those would be internalized primarily by the local jurisdiction, i.e., a so-called "refinement" would require internal action.

Mr. Osborne remarked that the current process seemed cumbersome, and that it would be more expedient if the hearings were optional based upon request as many of the future issues would be procedural in nature.

Mr. Bowling suggested that time may be expedited by giving authority to the Chairman. Further discussion ensued as to the possibilities of holding hearings on the basis of public interest.

UNDER OLD BUSINESS

Chairman North reported that because of the Commission's concern that adequate information was not being received from the State Highway Administration concerning construction projects, he and Dr. Taylor had met with Mr. Kassoff of SHA, and formally requested that the Commission be advised of all projects underway or proposed.

Chairman North reported that he had had a discussion with Mr. Lee Epstein on the question of variances being granted on the 15% impermeability surface requirement. It was agreed that unless there was a gross variation which is approved, or a radical situation which comes to the Commission's attention, the Commission will generally follow the practice of not intervening.

Mr. Epstein added that the Commission would follow the normal practice for reviewing variances.

UNDER NEW BUSINESS

Chairman North then asked Mr. Epstein to report on other legal issues at hand. Mr. Epstein reported that the staff had been made aware of variances being granted in the Critical Area that, while individually minor in scope, collectively, they could cause a problem. Mr. Epstein said that he and the Chairman had discussed possible solutions to this problem. One would be for the Commission to intervene and make appeals to the Circuit Courts of any number of particular local variances that had recently been granted. He said that this would not be the best solution, however. A second suggestion was to send a letter to each of the individual Boards of Zoning Appeal, informing them of the stringent standards for variances in the Critical Area, and to inform them that the Commission will be overseeing these variances. He offered Chairman North's suggestion that they follow that course of action.

Mr. Epstein said that he had spoken to Mr. Myron Miller, staff to the Legislative Oversight Committee, who will change the dates for the exchange between the Commission and Legislature.

Mr. Epstein reported that correspondence from the Commission had been sent to Dorchester County requesting a change in the County's Program to accommodate an appropriate habitat protection program. He said that Chairman North had suggested he would speak with the County to discover what the County's intention would be concerning this request.

Mr. Epstein reported that there are still local Programs not yet approved by the Commission. He said that by law, the Commission was to prepare these Programs for the local jurisdictions, and his advice was to do so.

Mr. Gutman noted that the Program for St. Mary's County was very near completion, and would hopefully, be ready for a vote by August.

Critical Area Commission
Minutes - 5/243/89
Page Eleven

Mr. Bowling said that Mr. Ren Serey, with Mr. Ford Dean, are responsible for having the Program move so far forward, and they deserved recognition for their efforts.

Mr. Price inquired of the status of the Program for Caroline County. Dr. Taylor reported that the Program had been submitted to the Commission office 2/3 completed. The remaining 1/4 concerned the allocation of growth, and the County had not yet submitted that portion. Dr. Taylor said that the remaining Programs to be approved were Worcester County, Wicomico County, Salisbury, Mardella Springs, Sharptown, and Snow Hill. The Town of Fruitland was considering exclusion from the Critical Area.

Chairman North then asked Dr. Taylor to report on the hearing dates for local governments in response to the Oversight Committee. Dr. Taylor reported that the dates were now as follows: July 26th, August 23rd, August 30th, September 20th, and October 10th. She said that Chairman North had been asked to make a presentation to the Oversight Committee to give them an update of the Commission's activities on June 13, 1989.

Dr. Taylor reported that HB 272, concerning prevention of cutting trees in the Buffer by individuals who do not comply with the criteria, was being signed by the Governor. She noted that the Bill becomes effective on July 1st.

Chairman North asked Dr. Taylor to report on the funding for Somerset County. Dr. Taylor recommended that the County's request for a no-cost extension be granted, and that the remaining \$30,000 be released, but that in order for the County to receive the \$52,200 set aside for 1990, the Commission should receive and vote upon, by September, all changes made to the County's Program.

Mr. Adkins commented that in order to maintain staff, it would be necessary to continue the funding for the County. He said that the County had an approved Program, and grant funds are for implementation of an approved Program, and therefore, should not be denied. The County was requesting an extension of those funds, and hoped that the Commission would not deny the money next year.

Mr. Epstein stated that, in accordance with the Attorney General's opinion, the County's Program was approved by default. However, there had never been a judgement by the Commission, that the Program "met the goals and standards of the Critical Area Law and criteria". That judgement having never been made, there remains some legal uncertainty in regard to the approved Program. Mr. Epstein said that because of that Critical

uncertainty, it is desired that the County and the Commission continue to move toward Program amendments so that a Program could be in place that all agreed was acceptable. That was the agreement in October of last year.

Mr. Adkins said the County believes itself to have a Program, and had been negotiating in good faith.

Mr. Bowling asked how close to a resolution were the County and Commission staff. Mr. Ventre answered that the remaining issue mainly concerned the County's growth allocation.

Mr. Gutman suggested that the remaining issues be brought before the full Commission for vote in order to resolve the problem.

Mr. Epstein asked if, aside from the growth allocation issue, the County would be prepared to submit all of the other modifications to the Commission, as a Program amendment. Mr. Adkins answered that the County would welcome any piecemeal amendment that would help solve the other problems.

Mr. Osborne said that if the County submitted a text amendment concerning allocation, the Commission would have some discretion as to what it approved or approved with conditions.

Mr. Epstein said that at this time, the County did not have the intention of submitting an amendment concerning its growth allocation text, in that the County is perfectly satisfied with the process it has developed.

Mr. Osborne asked that if the County does submit a text amendment does the Commission have discretion to condition an approval of the change, because attempting to withhold staffing funds would be counter-productive.

Mr. Epstein answered that the Commission can disapprove an amendment just as it can disapprove a Program.

Mr. Perciasepe asked if, therefore, would not the Commission have an alternative other than to withhold funding. Mr. Epstein answered that the County could decide not to submit an amendment. He added that although the Commission cannot now "disapprove" the County's Program, the Attorney General's opinion said that there are still questions concerning the Program that need to be resolved between the Commission and the County, and the County and Commission had agreed to do so.

Critical Area Commission
Minutes - 5/243/89
Page Thirteen

Mr. Gutman suggested that since the issue was the funding for FY 90, not due until July, could not the Commission table discussion until the July Commission meeting, after the Commission receives an opinion on the Program amendments from the Panel.

A motion was made and seconded that the work to develop finally acceptable Program amendments for Somerset County be the first item on the Agenda at the Commission's July 5th meeting, and that in the interim, the Panel make every effort to resolve all outstanding differences and provide to the Commission a detailed listing of all elements they were unable to resolve in this 40-day period. The vote was 12 in favor with 2 opposed.

There being no further business, the Meeting was adjourned.



JOHN C. NORTH, II
CHAIRMAN

STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREAS COMMISSION

SARAH J. TAYLOR, PhD
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- Russell Blake
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MEMORANDUM

TO: Critical Area Commission

FROM: Special Issues Subcommittee

DATE: June 27, 1989

SUBJ: Final Policy on Shared Facilities for the Limited Development Area and Resource Conservation Area

Situation 1: There is a non-percable lot in the Critical Area and a percable lot in the Critical Area. Is the percable lot able to be used to treat the non-percable lot's wastes?

Yes, but only if the percable lot meets the following conditions:

- a) the lot must have been legally recorded as of December 1, 1985, in compliance with 14.15.02.07 of the criteria (COMAR 14.15) which took effect on May 13, 1986;
- b) the system for the percable lot must have received Health Department approval;
- c) the treatment of wastes must not occur in floodplain soils pursuant to COMAR 26.04.02 of the Department of the Environment's Regulations;
- d) the 100-foot Buffer requirement of COMAR 14.15.09.01 is followed as a setback from open tidal waters or from the landward side of tidal wetlands;

CABINET MEMBERS

- Wayne A. Cawley, Jr.
Agriculture
- Robert Schoeplein
Employment and Economic Development
- Robert Perciasepe
Environment
- Ardath Cade
Housing and Community Development
- Torrey C. Brown, M.D.
Natural Resources
- Ronald Kreitner
Planning

- e) the cutting of trees to provide for an area to treat the wastewater shall be in conformance with the applicable criteria in COMAR 14.15.02 and COMAR 14.15.09, which became effective on May 13, 1986;
- f) the percable and non-percable lots must be owned by the same person, but if there is to be a long-term easement or lease involving different parties, the percable lot must be abutting the non-percable lot;
- g) the owner is to be the one financially responsible for the maintenance, upgrading or replacement of the system under normal operational standards or in case of system failure;
- h) the county must have an approved Groundwater Protection Plan before situations of this nature can receive approval;
- i) the treatment system must comply with the Department of the Environment's current applicable regulations (§ 9-217 of the Environment Article);
- j) the land area for the treatment system on the percable lot shall be counted against the growth allocation if densities on the buildable lot exceed the prescribed density of the local Critical Area Program's designation. The excess density will require growth allocation to be used and this constitutes an amendment to a local Program which must be approved by the Critical Area Commission.

Situation 2: There is a lot in the Critical Area which does not perc. There is a lot outside of the Critical Area which does perc. Is it acceptable to the Commission to use the percable lot outside of the Critical Area to treat the wastes from the buildable lot inside the Critical Area, which is non-percable?

Yes, but under the following conditions:

- a) the lot inside the Critical Area must have been legally recorded as of December 1, 1985;
- b) the system for the percable lot outside the Critical Area must have received Health Department approval;
- c) the treatment of wastes must not occur in the floodplain soils pursuant to COMAR 26.04.02;

- d) the criteria must be followed for the lot in the Critical Area when development takes place;
- e) the percable and non-percable lot must be owned by the same person or, if there is a long-term easement or lease allowed, the percable lot must abut the non-percable lot;
- f) the owner is to be the one financially responsible for the maintenance, upgrading or replacement of the system under normal operational standards or in case of system failure;
- g) the county must have an approved Groundwater Protection Plan before situations of this nature can receive approval;
- h) the treatment system must comply with the Department of the Environment's current applicable regulations (§9-217 of the Environment Article);
- i) densities on the buildable lot inside the Critical Area shall comply with the prescribed density of the local Critical Area Program's designation or count against the growth allocation, unless the lot is grandfathered. If density is exceeded, the situation requires the use of growth allocation and is to be considered an amendment requiring Critical Area Commission approval.

Situation 3: An applicant owns a lot inside the Critical Area which percs. The same applicant also owns land outside of the Critical Area which does not perc. The applicant wishes to handle the wastes from the area outside of the Critical Area on the lot inside the Critical Area. The applicant may or may not want to build on the lot inside the Critical Area as well. Is this acceptable to the Commission?

Yes, but only if the following conditions are met:

- a) treatment of wastes in the Critical Area is the only option a developer has;
- b) the lot inside the Critical Area must have been legally recorded as of December 1, 1985, in compliance with 14.15.02.07 of the criteria (COMAR 14.15), which took effect on May 13, 1986;

- c) the system for the percable lot must have received Health Department approval;
- d) the treatment of wastes must not occur in floodplain soils pursuant to COMAR 26.04.02 of the Department of the Environment's Regulations;
- e) the 100-foot Buffer requirement of COMAR 14.15.09.01 is followed as a setback from open tidal waters or the landward side of tidal wetlands for the treatment system;
- f) the cutting of trees to provide for an area to treat the wastewater shall be in conformance with the applicable criteria in COMAR 14.15.02 and COMAR 14.15.09 which became effective on May 13, 1986;
- g) the percable and non-percable lot must be owned by the same person, but if there is to be a long-term easement or lease involving different parties, the percable lot must abut the non-percable lot;
- h) the owner is to be the one financially responsible for the maintenance, upgrading or replacement of the system under normal operational standards or in case of system failure;
- i) the county must have an approved Groundwater Protection Plan before situations of this nature can receive approval;
- j) the treatment system must comply with the Department of the Environment's current applicable regulations (§9-217 of the Environment Article);
- k) the entire area for each treatment system on the percable lot inside of the Critical Area shall be counted against the growth allocation if the density limit, counting each individual system or the number of units served as that many treatment systems, exceeds the prescribed density of the percable land classified in the Critical Area. Exceeding the density involves the use of growth allocation which is an amendment to a local Program, requiring Commission approval.

Critical Area Commission

June 27, 1989

Page 5

NOTE: In all three situations, and in addition to the other conditions so noted, if there is more than one lot involved, an agreement must be signed between the owners of the lots and the local jurisdiction specifying the following:

1. A responsible, preferably public, authority has control of the facility either through ownership or operation. This should ensure adequate operation and maintenance are performed as required and that a mechanism to collect funds for repairs exists;
2. Area equivalent to that required for sewage disposal in subdividing land for individual on-site systems, is available in the shared facility sewage disposal area (i.e., a minimum of 10,000 sq. ft. for each home to be served);
3. Existence of, and responsibility for, the shared facility is recorded in the land records;
4. Funds are available to effect facility repairs as necessary; and
5. The controlling authority ensures all facilities under its control cannot be dissolved until equivalent or better facilities are available.

/jjd

FOR DISCUSSION PURPOSES

May 23, 1989
Staff Draft 1B
/progre4/ca189/

POSSIBLE AMENDMENTS TO THE CRITICAL AREA LAW TO CLARIFY THE PROGRAM
AMENDMENT PROCESS

AMEND NRA subsection 8-1802. Definitions; obligation imposed by subtitle on Prince George's County and Commission. To amend section (a)(6). To add new section (a) (7), (8) and (10). And to renumber old section (7) to new section (9):

(a) (6) "Program" means the critical area protection program of a local jurisdiction including any program amendments or program refinements to it and other supporting ordinances or decisions that affect the actions of landowners that may influence the land use and/or management of the Critical Area resources.

(7) "Program amendment" means any proposed change to an adopted critical area protection program or other action of a local jurisdiction that reduces or increases the obligation of person(s) as specified in the approved program.

(8) "Program refinement" means any proposed change to an adopted critical area program or other action of a local jurisdiction that does not reduce or increase the obligation of persons as specified in the approved program.

(9) "Project Approval" means the approval of development, other than development by a state or local government agency, in the Chesapeake Bay Critical Area by the appropriate local approval authority. The term includes approval of subdivision plats and site plans; inclusion of areas within floating zones; issuance of variances, special exceptions, and conditional use permits; and issuance of zoning permits. The term does not include building permits.

(10) "Obligation" means a course of action imposed by the local program by which persons are bound or restricted.

→ [Note #1: The purpose of adding the underlined section of definition #6 is to explicitly include for review any local action that could be considered a change to the Program even though that particular issue may not now be discussed in the local program. Since programs were required to contain all changes in local plans, policies and ordinances that were necessary to bring local actions into conformance with the Law and Criteria, therefore future actions that were not listed within the words of the written, approved program would be considered Program changes, if they alter the requirements for landowners within the Critical Area.]

→ [NOTE #2: The chief purpose for definitions #s 7, 8, & 10 is to establish "major" and "minor" categories of program amendments. As

*manage their land in
certain ways.*

defined here the distinction is based on the effect of a change in the local program on the landowners' obligations to } Several people who have commented on an early draft have suggested that this proposed language is too vague and also too narrowly defined for the types of situations that the Commission should consider as minor amendments. The subcommittee is looking for other suggestions for ways to discriminate between major and minor amendments.]

AMEND NRA subsection 8-1809. Approval and adoption of Program. Subsection (g) and (h). And add new (k), (l), (m), (n) & (o). To read as follows:

(g) proposed amendments by local jurisdictions - comprehensive program review.--Each jurisdiction shall review its program at least once every four years. The starting date for the four-year interval is the date of initial program approval. Program review shall be submitted to the Commission before each four year anniversary of that starting date. At a minimum, the local review shall include:

(i) a statement of the local program accomplishments since the last review;

(ii) a request for program recertification (?);

(iii) a request for program refinements or amendments, if appropriate;

(iv) growth allocation requests, if appropriate;

(v) a statement of alternative ideas for implementing difficult sections of the program;

(vi) a record of public comment on the results of the comprehensive program review;

(v) a resource inventory update; and

(vi) a statement of the acreages within each land classification and summary of growth allocation used and remaining.

→ [NOTE #3: The subcommittee noted that currently there are no sanctions for non-compliance with the once-every-four-years review.]

(h) proposed amendments by local jurisdictions - piecemeal changes.--Local jurisdictions shall submit to the Commission all program amendments necessary to bring the local program into conformance with the Law [NRA 8-1801 through 8-1817] and Criteria [COMAR 14.15.].

→ [NOTE #4: Local jurisdictions must assume that their programs approved by the Commission are complete and acceptable. However if in the future a program is found to lack an element or if the approved

language is unacceptable for other legitimate reasons, the local jurisdictions should be required to modify their programs to make it consistent with others as is called for in the purpose statement of the Critical Area Law 8-1801(b)(2), namely: "...with local governments esytablishing and implementing their programs in a consistent and uniform manner subject to State criteria and oversight." Approval by the Commission of a deficient program should not be the cause for continuing to implement a deficient program.]

(i) [no change]

(j) [no change]

(k) notification of program deficiency by the Commission.-- If the Commission discovers that a local program does not contain the elements that are necessary or appropriate to achieve the goals of the Law and Criteria, then it shall notify the jurisdiction of the deficiency and (?) state a proposed solution. The Commission shall begin to promulgate the revised language within ____ days of notifying the local jurisdiction of the necessary changes unless the local jurisdiction acknowledges the need for the change, presents to the Commission a schedule for incorporating the change and follows the porposed schedule for program amendment procedures. In no case shall the schedule show more than ____ days to adoption.

→ [NOTE #5: Some people have suggested that we need to develop a more effective sanction than having the Commission do the revision as is proposed by this section. Nor is it necessarily desirable for the Commission to be forced to promulgate the changes within a certain period of time— However, there are still several jurisdictions without programs adopted that the Law require them or us to adopt by June 1988.]

(l) On or before ____ (date) the Commission shall promulgate regulations that describe the procedures for refining and amending a local program. These regulations shall supersede any inconsistent elements of procedures in local programs approved by the Commission. At a minimum, these regulations shall include:

(i) frequencies that local jurisdictions may submit program amendments and program refinements;

(ii) classes of program amendments, such as regulatory, administrative, editorial;

(iii) a description of the minimum types of information required as part of a proposed program change;

(iv) procedures for the affected public to comment on the proposed program amendments and program refinements; and

(v) procedures for processing program amendments and program refinements.

→ [NOTE #6: This section explicitly establishes the mandate for the

Commission to clarify the program revision procedures through new regulations. A draft of these regulations are included in this document.]

(m) program amendment or refinement requires approval of Commission.--A program may not be amended except with the approval of the Commission.

(Clarify (?) Except for amendments developed during program review under subsection (g) of this section, an amendment to a zoning map may be granted by a local approving authority only on proof of a mistake in the existing zoning.)

→ [NOTE #7: The phrase immediately above is from the item (h)—the current wording of the Law. Item (g) referred to here is the current section that requires a local jurisdiction to review and propose amendments to its local program at least once every four years, and also that approval of amendments be handled in the same manner as the original program. All amendments to date have been through item (g) of the Law. It is the only section of the Law that currently prescribes procedures for amending programs.

Existing item (h) appears to limit the reasons for which a zoning map can be amended. It is not clear whether this limitation applies at all times, that is, for piecemeal changes and/or also for comprehensive program reviews as some people have interpreted item (g) to mean. Some people have read section (h) to mean that mistake-changes can be made by a jurisdiction without Commission approval. Yet, an amendment to a zoning map for any purpose is a program change [See NRA 8-1808(c)(2) and COMAR 14.15.10.01.F(5)] and consequentially requires Commission approval. At a minimum this section requires clarification of legislative intent.]

(?) (n) The Commission has the authority to appeal the enactment of any local ordinance, policy, procedure, order or other official action if that action is inconsistent with the purpose of the Resource Protection Program or inconsistent with the goals or objectives of the Criteria.

→ [NOTE #8: Subcommittee suggests that this new item be deleted since the Commission already has the authority to appeal based on NRA 8-1812(a).]

(o) The Commission shall send a copy of the proposed regulation required by (l), above, to all affected jurisdictions so that they may comment on it prior to its adoption by the Commission.

→ [NOTE #9: Staff should shift this item to become part of item (q), above.]

(p) The Commission may process certain program amendments for specific local programs as program refinements, if the local jurisdiction demonstrates to the Commission that their alternate

approval procedure will result in a more effective program. The Commission may rescind that approval.

→ [NOTE #10: This item was added to allow the Commission and a local jurisdiction to develop specific procedures for approval of Program changes. The procedure would be based on a process to be proposed by the local jurisdiction. This procedure would allow the Commission to consider at one time an issue, such as a project approval, that may have multiple stages of local approval (for example: comprehensive plan, zoning map, growth allocation), each stage of which would normally be considered to be a program amendment. For instance, Prince Georges County may consider a request for growth allocation, that would require a change to their zoning maps and a special exception hearing. They may want to approve the zoning map amendment and special exception on the condition that growth allocation is acceptable to the Commission. The procedure could be set up so that the Commission only reviews the project (zoning map change, and growth allocation) as though one program amendment issue, rather than two.

Some people have suggested that the current proposed wording is not clear enough to achieve that intended effect.]

→ *this item may be more appropriate as part of the following regulations on next page.*

ADD new NRA 8-1817

8-1817 (?) Authority of Local Boards of Appeals - local boards of appeals shall not have the authority to amend a local program.

→ [NOTE #11: The purpose of this item was to bring to the subcommittee's attention the fact that there has been some confusion concerning the appropriate procedure for landowners to appeal decisions made by local jurisdictions, particularly when the jurisdiction's negative decision is based on a rejection of a program change proposed by the jurisdiction to the Commission. The subcommittee suggested that *adding this wording to the Law would be unnecessary.*]

POSSIBLE NEW REGULATIONS TO BE PASSED BY THE COMMISSION TO CLARIFY THE
PROGRAM AMENDMENT AND REFINEMENT PROCESS

COMAR 14.XX.01 GENERAL PROVISIONS

.01 DEFINITIONS

A. As used in this subtitle, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Local Critical Area Protection Program" means

(2)

(3)

(4)

(5)

COMAR 14.XX.02 Purpose of Regulation; relationship to other Laws and local ordinances.

.01 Purpose. - The local Critical Area Programs are agreements between the local jurisdictions and the Commission which contain the specific policies and courses of action that the local governments will pursue to accomplish the objectives of the Law and Criteria. From time to time, as new information about the Bay, about upland resources and about the effectiveness of the agreed upon programs becomes available, both the local jurisdiction and the Commission may wish to change the local program to increase or decrease its detail, scope or content within the bounds of the Critical Area Law and Criteria. The purpose of these regulations is to guide and clarify the procedures to allow changes to local programs.

.02 Authority. - The authority for this regulation to establish procedures for the review and approval of amendments and refinements to local Critical Area Protection Programs is pursuant to [new] NRA 8-1809(1).

.03 These procedures and requirements shall supersede any inconsistent elements or procedures in local programs regardless of their approval by the Commission prior to (the date of promulgation of this ordinance).. This regulation does not replace any requirements specified in NRA 8-1801 through 8-1816.

COMAR 14.XX.03 Classes of Program Changes

.01 Introduction. Changes to a local program can affect the function of a program in various ways. Some changes affect administrative process but do not affect the obligation on the landowners within the Critical Area. Some changes may alter the obligations on landowners within the Critical Area but still be well within the intent of the Law and criteria. Other proposed changes--and perhaps existing subcomponents of programs--may be found to be inconsistent or not as thorough as required by the Law and Criteria or ineffective in accomplishing the goals of the Law and Criteria.

As stated in the Law [NRA 8-1801(b)(2)], its purpose is to "Implement the Resource Protection Program on a cooperative basis between the State and affected local governments, with local governments establishing and implementing their programs in a consistent and uniform manner subject to State criteria and oversight." And as stated in NRA 8-1808(a) the intent of the Law is "...that each jurisdiction have primary responsibility for developing and implementing a program, subject to review and approval by the Commission." The Commission must maintain an approval process for all Program changes. The intent of this section is to establish a decision-making system that allows the Commission to differentiate

types of program changes and to match appropriate approval procedures for each.

.02 Authority for Determining Category of Program Change - The Chairman of the Commission shall have the authority for determining the Category of Program Change and shall exercise that authority using procedures as described for intervention authority in NRA 8-1812.

→ [NOTE #12: There is a need for the local jurisdiction to know early in the amendment process the category of program change so that they can take all necessary steps for approval].

.03 The Chairman shall use the category of program change proposed by the local jurisdiction and other relevant information to determine whether the requested program change is a program amendment or program refinement.

.04 Determination of class of change shall be resolved prior to the local jurisdiction advertising its initial public hearing for that change ... (?) or _____ if no public hearing is required.

.05 Classes Described.

A. Editorial - those changes that are not substantive and mostly related to grammar, clarity and organization of the text. This category may include these types of changes even though they may also be included in any of the other categories.

B. Administrative - these changes would result in modification to the local procedure through which the approved program is implemented. These changes would not lessen the coverage or effect of the local program.

C. Policy - includes changes to any of the local jurisdiction's guiding principles and adopted policies as documented through Comprehensive Plans and other statements of jurisdiction intent.

D. Regulation - Any change to any implementing ordinances, including, but not limited to: zoning, subdivision, floodplain, sediment control, stormwater management, building codes and other special ordinances established to implement a local program.

E. Zoning Map Change - includes any changes to base zoning maps and/or overlay and or assignment of a floating zone. May take the form of a mapping "mistake".

→ [NOTE #13: The Commission must clarify when the "change in community character" rule would appropriately apply to a zoning map amendment. - Suppose the Change in character occurred before December 1, 1985.]

F. Growth Allocation - includes any proposed change in land use or intensity of land use that requires a change in the Critical Area land use classification (i.e., IDA, LDA, RCA)

G. Inventories - any of the inventories that were required as part of program development or that are part of the local program, including , but not limited to: agricultural area, forest, and habitat protection areas.

H. Non-regulatory Program implementation element - this category includes action agenda portions of programs that are not being implemented through regulation, e.g., street planting programs, environmental education, establishing natural parks.

I. Modification of Critical Area Boundary - includes extensions and deletions to the Boundary as allowed by NRA 8-1807. Changes may affect growth allocation by modifying the total RCA land area.

J. Town Annexations -

K. Relationship of local program to local jurisdiction's and State projects - Based on NRA 8-1814(a) certain types of local projects may not require Commission review if they are subject to the local jurisdiction's program.

→ [NOTE #14: For more information about this issue read NRA 8-1814(a).]

L. Buffer Exemption Areas -

→ [NOTE #15: Some ~~programs~~ ^{local jurisdictions} included Buffer Exemption Areas in their original programs as called for in the Criteria [COMAR 14.15.09.01C(8)]. But not all areas that may have reasonably qualified for being handled through this procedure have necessarily been proposed by local jurisdictions.]

M. Actions beyond the Written Program - these may include modifications to the base ordinances, administrative procedures and new initiatives that are not identified in the originally approved program but that would change the obligations of landowners within the Critical Area concerning land management and land-use requirements.

→ [NOTE #16: This class ("N.") of program changes was added to cover the same types of issues that would be covered by the proposed change in the definition of a local program found on page 1 of this document.]

COMAR 14.XX.04 Information required for program Amendment and Program Refinement Applications

.01 A statement indicating the class or classes of amendment included in the application.

.02 Administrative information requested on the submittal form.

.03 A transcript of the local public hearing that was held for that amendment

.04 Information required for the specific classes of program change that are included in the proposed category of program change.

(a) Editorial.

(i) currently approved element and its location in the approved program.

(ii) proposed new language or change

(iii) brief explanation of the reason for the change.

(b) Administrative.

(i) description of existing process and its deficiencies

(ii) location of description of existing process in approved program

(iii) proposed changes to existing program

(iv) statement of expected benefits of proposed process

(c) Policy.

(i) Description of existing policy to be revised and its location within adopted program

(ii) statement of deficiency or undesirable effect in existing policy

(iii) words for proposed policy and proposed location in local program document

(iv) statement of expected new benefits of proposed policy

(d) Regulations.

(i) existing regulation to be changed and its location in the adopted program.

(ii) statement of evidence of deficiency of existing regulations

(iii) proposed regulation in to-be-adopted format

(iv) statement of expected benefits and effects

(e) Zoning Map Change.

(i) acreage of subject property

(ii) acreage of subject property in the Critical Area

(iii) tax map and parcel number

(iv) the subject property shall be identified on a location map and the Critical Area map

(v) the existing and proposed zoning classifications, and critical Area classification

(vi) if mapping mistake is claimed, evidence of proof of mistake in the existing zoning

→ [NOTE #17: Add language to clarify the use of the "change in character of community rule", if appropriate.]

(f) Growth Allocation

(i) map of area affected by the new classification showing the boundary of the growth allocation

(ii) existing classification

(iii) proposed classification

(iv) statement of current land use and proposed land use

(v) County's current growth allocation budget

(vi) amount of growth allocation to be requested for this site

(vii) if municipality is making request, evidence of growth allocation granted by the County for this project

(viii) statement of resource impact so that Commission can judge COMAR 14.15.02.06B(4)&(5), including the supporting documentation and other evidence.

(ix) statement of proximity of the project to tidal wetlands and tidal waters. If within 300 feet then explain why the growth allocation must occur so close to the water, including supporting documentation and other evidence.

(x) if less than the full tract is proposed for growth allocation, then additional information will be required so the Commission can determine the extent of the land-use conversion [based on the maximum allowed used (?)]

(g) Inventories

- (i) updated version of inventory
- (ii) for those requiring public hearings (See COMAR 14.15.09.) a copy of the public hearing record

(h) Non-regulatory Implementation Element.

- (i) description of existing program element
- (ii) statement of existing deficiency or undesirable effect of that element
- (iii) proposed text of replacement element and location in Program
- (iv) statement of expected benefits to resource protection to result for the new element

(i) Modification of Critical Area Boundary

- (i) all information required for section e, above.
- (ii) statement to satisfy conditions of NRA 8-1807
- (iii) modifications to Critical Area inventories
- (iv) effect of boundary modification on growth allocation if RCA land is added or deleted
- (v) a map of the new Boundary location at the same scale as the Critical Area base map for that jurisdiction.
- (vi) ? special controls on development to minimize concentration toward the shoreline

(j) Town Annexations -

(k) Relationship of Local Program to Local and State Projects

- (i) description of the kinds of local projects that will be subject to the local program
- (ii) description of the procedures to be followed

(l) Buffer Exemptions -

- (i) map of new Buffer Exemption Area

(ii) statement of land use as of December 1, 1985 and supporting documentation and evidence.

(iii) explanation as to how the land uses continue to prevent the buffer from fulfilling the functions for the Buffer stated in COMAR 14.1215.09.01B.

(iv) a description and action plan for other measures that will be undertaken to achieve the water quality and habitat protection objectives

(m) Actions Beyond the Written Program -

(i) a description of the action

(ii) a statement to indicate the degree of consistency of the proposed action with the Law And Criteria

(iii) a suggestion as to how to handle this type of action in the future

(iv) a statement indicating where this action is proposed to be appended to the written program

.05 The Commission may require additional information

COMAR 14.XX.05 Procedure for Commission review of program amendments

.01 Frequency of submittals. -

→ [NOTE #18: This section will describe acceptable intervals for submitting program changes.]

.02 Response time. -

→ [NOTE #19: Reasonable response times will depend on the frequency of Commission meetings and the frequency of submittals.]

.03 All requests for program amendments and refinement shall be filed with the Chairman using a prescribed form.

.04 All proposed program amendments and refinements must be submitted by the governing body of the local jurisdiction

.05 A pre-submittal inquiry to the Critical Area Staff is recommended

→ [NOTE #20: The subcommittee suggested that item .05 be dropped since it requires no actions.]

.06 The Commission will begin processing a request once it receives and verifies that all necessary and relevant information is included in the application.

.07 The Commission Chairman will indicate whether the request is a program amendment or program refinement.

.08 The Commission will notify the local jurisdiction of receipt of the proposed change in the program.

COMAR 14.XX.06 Public Comment

.01 Public Hearing Requirements

.02 For Program amendments and program refinements, a local jurisdiction shall hold at least one public hearing on the proposed action, for which 2-weeks notice shall be published in a newspaper of general circulation in the local jurisdiction. A copy of that announcement shall be filed concurrently with the Commission.

→ [NOTE #21: Some have suggested that greater flexibility should be included here for local jurisdictions to decide whether public hearings should be required in all cases.]

.03 The Commission may hold a public hearing on a program refinement.

.04 The Commission shall hold a public hearing for all program amendments.

.05 The location of Commission-sponsored public hearings shall be determined by the Chairman after consultation with the local public officials.

→ [NOTE #22: Hearings for program refinements could be held at monthly Commission meetings.]

.06 Before a local jurisdiction adopts an approved program amendment or refinement it shall hold at least one public hearing on the proposed change to the program. A hearing held prior to submitting the proposed change to the Commission may qualify if the adopted change is the same as the proposed change.

.07 All Commission-sponsored public hearings shall be advertised for 2 weeks prior to the hearing in a paper of local circulation to the affected jurisdiction.

COMAR 14.XX.07 Approval of Program Refinements and Amendments.

.01 Chairman may approve or deny program refinements, [but the Commission may override that approval using procedures similar to NRA 8-1812]

.02 Program Amendments shall require a decision from the full Commission

.03

COMAR 14.XX.08 Notification of Local Action.

.01 Local jurisdiction shall inform the Commission of all (?) "actions beyond the written program". [NOTE : The Commission must take some of this responsibility.]

→ [NOTE #23: This section revisits the issue concerning how the Commission keeps informed about local actions (changes to plans, policies, regulations) that may not be part of the Program but would have an effect on the Critical Area resources.]

COMAR 14.XX.09 Adoption of Program changes by local jurisdictions

→ [NOTE #24: This section would address any actions to be required of local jurisdictions once a program change is approved by the Commission.]

May 24, 1989

SUBCOMMITTEE REPORT

PROJECT: Salisbury District Court - Multi-Service Center

APPLICANT: Maryland Department of General Services

RECOMMENDATION: APPROVAL, with condition

DISCUSSION:

The Department of General Services proposes to construct a new District Court/Multi-Service Center in Salisbury. The 2.4 acre site is designated on the City of Salisbury Critical Area map as IDA. For purposes of review of State projects, the site is considered an Area of Intense Development.

Approximately 85% of the site is paved with asphalt and concrete. The site has public water and sewer service. Stormwater runoff is directed to the City's stormdrain system. The applicant will provide Best Management Practices in compliance with the Regulations for State and local agency actions.

The subcommittee recommends that the applicant investigate alternative methods of maintaining the indoor parking lot, to provide maximum protection of water quality.

CONDITION: The applicant shall provide plantings, or their equivalent, as shown on the proposed site plan.

Staff: Ren Serey

May 24, 1989

SUBCOMMITTEE REPORT

PROJECT: Parking Lot Expansion - Solomons Island
Boat Ramp Facility

APPLICANT: Department of Water Resources; Waterway
Improvement Division

RECOMMENDATION: APPROVAL

DISCUSSION:

The Waterway Improvement Division proposes to expand the existing parking lot at the Solomons Island Boat Ramp Facility. The facility is located under the Thomas Johnson Bridge, at the Patuxent River shoreline in Calvert County.

The parking area will be expanded from 73 spaces to 114 spaces. The expanded area will be paved, as is the existing area. The applicant will plant trees and shrubs, for mitigation, at the Calvert Marine Museum in Solomons.

This project was presented to the Commission on May 3, 1989.

Staff: Ren Serey

STAFF PROJECT REPORT

Project

Waterfowl Habitat Improvement Projects

Applicant

Migratory Bird Program
Forest, Park and Wildlife Service, DNR

Location and Project Description

1. Wye Island Natural Resource Management Area, Queen Anne's County

The proposal is to construct two impoundments within the Critical Area as part of a Canada Goose sanctuary project. One impoundment is the renovation and expansion of an existing pond; the other involves the creation of a 5+ acre shallow loafing area.

2. Elk Neck State Park, Cecil County

The proposal is to rehabilitate two existing impoundments within the Critical Area. One is located within the 100' Buffer.

3. Bush River Natural Resource Management Area, Harford County

The project involves placing a variable-crest weir across the Bush River in order to provide optimum water regimes in a 160+ acre high phase marsh.

Subcommittee Recommendation

The Project Review Subcommittee recommends approval of these projects. These waterfowl habitat improvement projects are in direct support of the Critical Area program goals of improving water quality and improving natural habitats.

Staff Contact

Pat Pudelkewicz

PROPOSED WATERFOWL HABITAT
IMPROVEMENT PROJECT

FOREST, PARK & WILDLIFE SERVICE
DEPARTMENT OF NATURAL RESOURCES

WYE ISLAND NATURAL RESOURCE
MANAGEMENT AREA

The Migratory Bird Program of the Forest, Park and Wildlife Service is proposing to construct two impoundments within the Critical Area on Department Property in Queen Anne's County. The impoundments are an integral part of a larger (400 acre +) Canada Goose sanctuary project on the Management Area. In the face of declining goose populations, the Department is seeking to enhance available habitat to provide safe roosting and feeding areas for these birds. One impoundment involves the renovation and modest expansion (from 0.9 ac to 1.3 ac +) of an existing deepwater roosting pond. The second impoundment involves creation of a 5+ acre shallow "moist soil"/loafing area in a low lying agricultural field. This later site is in all probability a previously drained non-tidal wetland. Neither site is tidal.

Specific Critical Area concerns cited under Chapter 5.01 of Subtitle 19 are dealt with below.

- 5.03: This project does not represent an "Area of Intense Development" as defined in this section.
- 5.04: This project is not a "water-dependent facility" as defined in this section. Located outside of the 100' Buffer, the project is essentially an upland project located adjacent to the Buffer.
- 5.05: This project does not involve any shoreline activities.
- 5.06: This project will not involve "forests" or "developed woodlands" as defined in this section.
- 5.07: This project will remove approximately 8 acres of ground from tillage and put it into either grass strips or recreated emergent wetlands. These activities should reduce agricultural impacts to water quality in the Bay.
- 5.08: Surface mining is not a part of this proposal.
- 5.09: Project activities are further than 100 feet from mean high tide and do not involve activities which increase run-off. In fact activities should serve to improve water quality within the affected areas through the mitigating influence of the artificial non-tidal wetlands.

- 5.10 This project does not alter any non-tidal wetlands under the definition in this section.
- 5.11: Critical Area Staff Biologist have already reviewed the project sites and have found that no Threatened, Endangered species or species in Need of Conservation will be impacted. Waterfowl, one group of species in need of conservation, would be directly benefited by the project.
- 5.12: As mentioned under 5.11 above, this project is beneficial to waterfowl and has no detrimental impact on other species groups of concern under 5.12.
- 5.13: No Anadromous Fish waters are involved in this project.
- 5.14: Wye Island NRMA already serves as a "Natural Park." This project should enhance this function on the property.

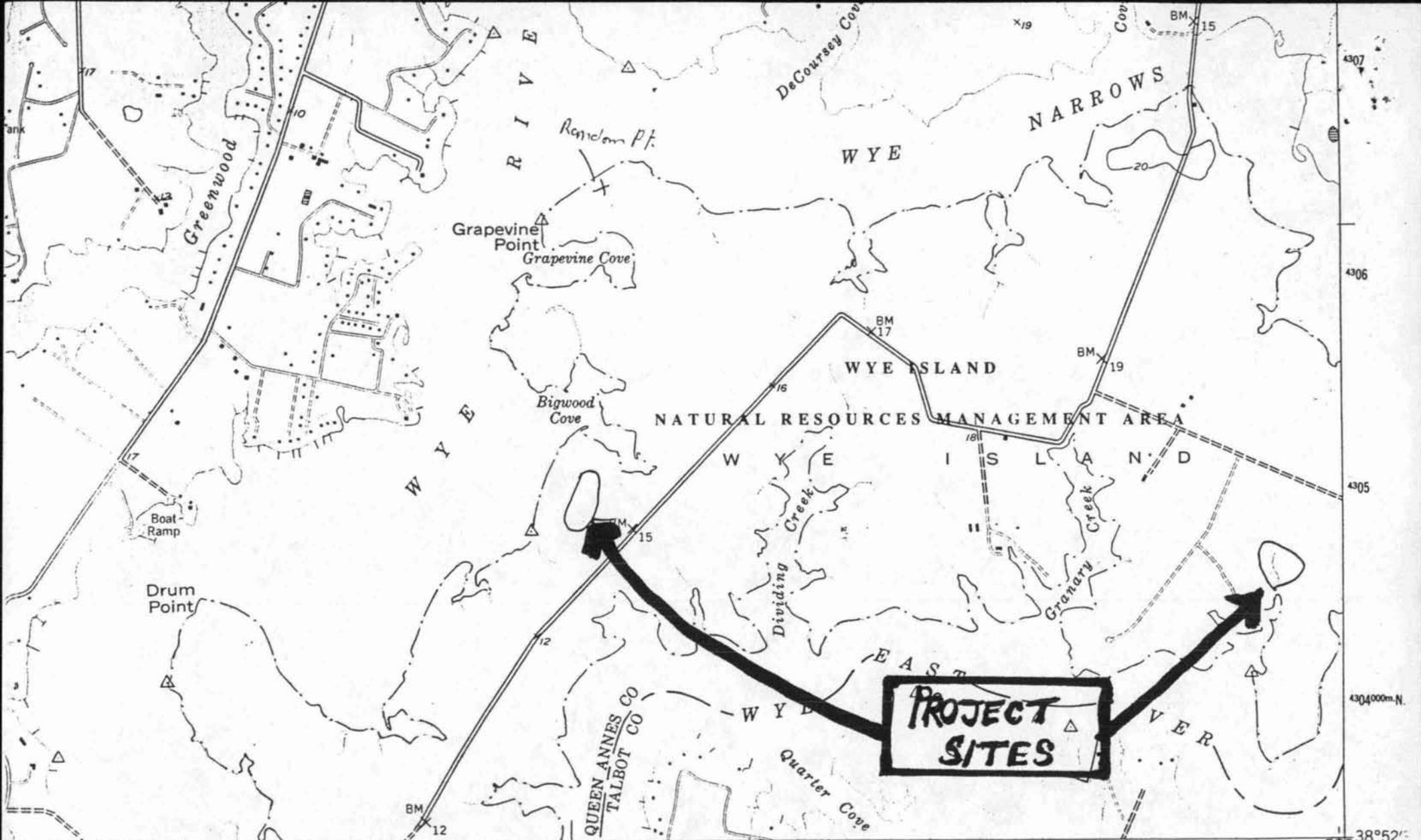
In summary, it is the Department's view that this project is in no way detrimental, or in conflict with, either the letter or spirit of Critical Areas Regulations. In fact, with respect to waterfowl habitat, non-tidal wetlands and agricultural runoff, it is in direct support of program goals.



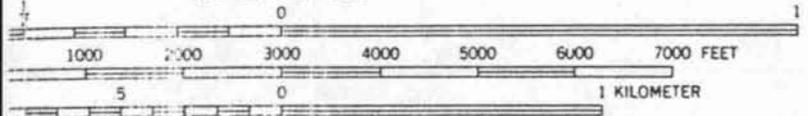
**PROJECT
SITE**

BALTIMORE
For More Detail See
Map on Reverse Side

CAMBRIDGE



(ST. MICHAELS)
5761 1 SW
SCALE 1:24 000



CONTOUR INTERVAL 20 FEET
NATIONAL GEODETIC VERTICAL DATUM OF 1929

LINE SHOWN REPRESENTS THE APPROXIMATE LINE OF MEAN HIGH WATER
THE MEAN RANGE OF TIDE IS 1.3 FEET



QUADRANGLE LOCATION

INTERIOR—GEOLOGICAL SURVEY, RESTON, VIRGINIA—1988
402000m.E.

38°52' N
76°07'30" W

ROAD CLASSIFICATION

Heavy-duty	—————	Light-duty	—————
Medium-duty	—————	Unimproved dirt	- - - - -
	⬢ U. S. Route		○ State Route

QUEENSTOWN, MD.
22676 113 75 024

PROPOSED WATERFOWL HABITAT
IMPROVEMENT PROJECT

FOREST, PARK AND WILDLIFE SERVICE
DEPARTMENT OF NATURAL RESOURCES

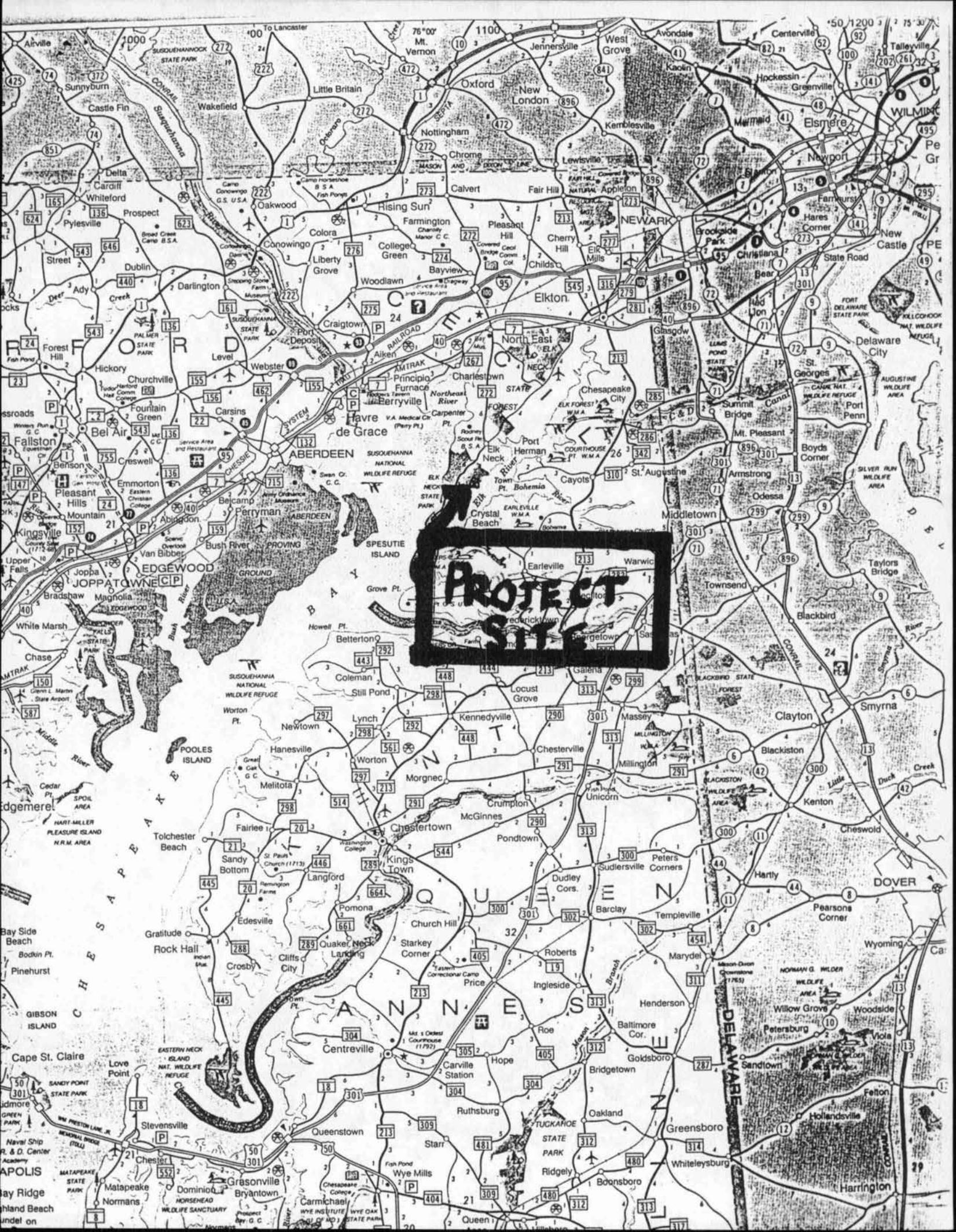
ELK NECK STATE PARK

The Migratory Bird Program of the Forest, Park and Wildlife Service is proposing to rehabilitate two existing impoundments located within the Critical Area on Department property in Cecil county. Both impoundments are located along an unnamed tributary of the Elk River. The upper impoundment is approximately 20 acres in size and was originally constructed as a dredge disposal site by the U.S. Army Corps of Engineers but was not utilized. The impoundment is still intact but needs to be redesigned and the water control structure replaced. The lower impoundment (14 + ac) was created by a road embankment which has been breached. The area has been choked with an almost pure stand of phragmites. This embankment needs to be re-worked and a water control structure placed. The project would enable the restoration and management of two valuable waterfowl habitat types (deep water and emergent marsh) adjacent to one another.

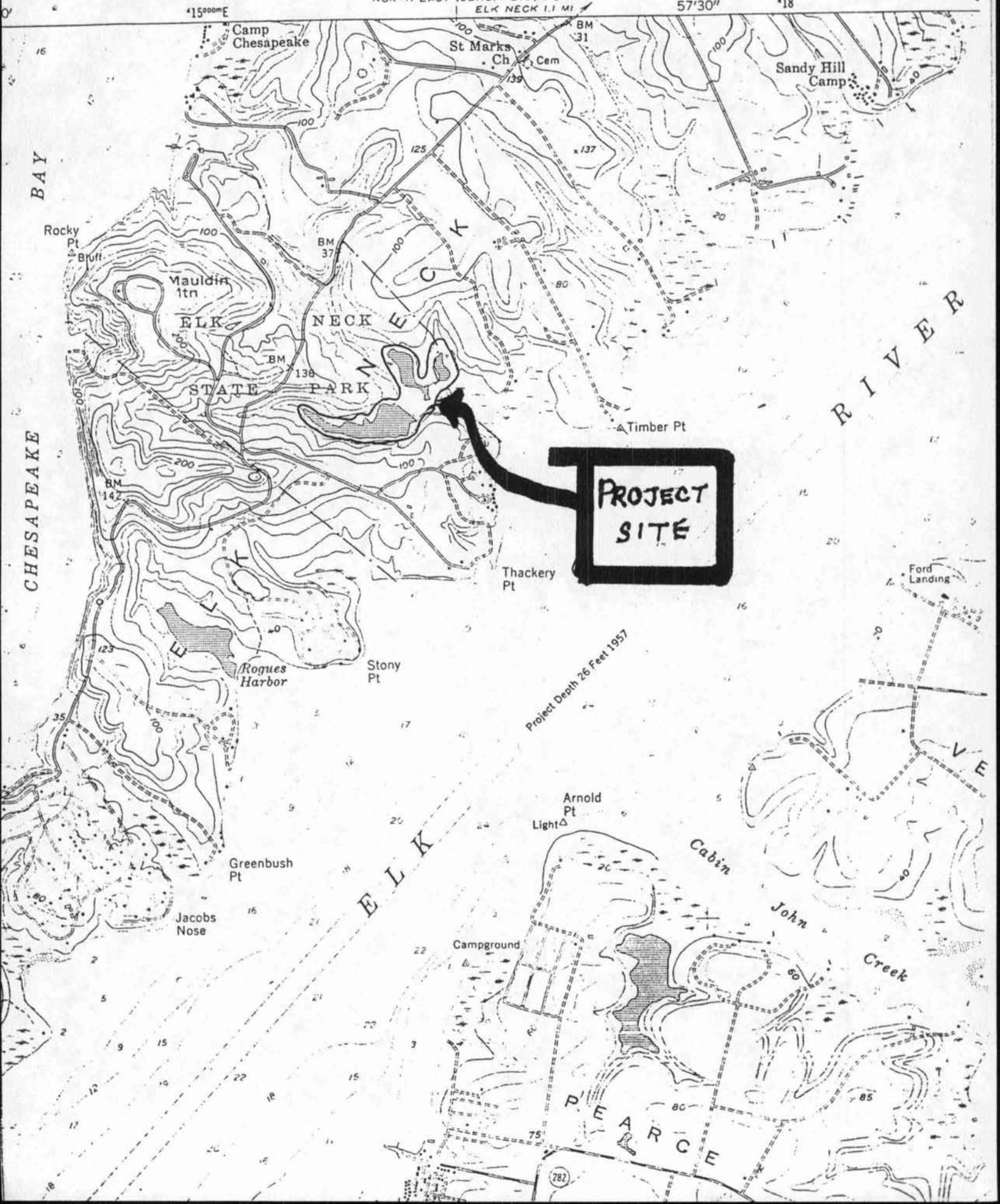
Specific Critical Area concerns cited under Chapter 5.01 of Subtitle 19 are dealt with below. Sections that are not pertinent to the project (5.03, 5.05, 5.06, 5.07, 5.08) are not included.

- 5.04: This project is fully water-dependent and could function no where else. The project meets a public need by helping fulfill the Agency's mandated goal of enhancing waterfowl habitat. Waterfowl populations are a key part of the cultural, economic, biological, ecological and aesthetic values of the Chesapeake Bay. Fishery, water quality and wildlife habitat will all be positively impacted. Water salinity and circulation patterns will only be moderately influenced. Any disturbance to the associated wetlands and aquatic habitats will be during actual construction. Beyond that the project should provide net benefit to these areas. Dredging, sand movement and shellfish beds are not impacted by this project.
- 5.09: Project activities will not involve the placement of any facilities or structures that will increase erosion or runoff and a buffer is not therefore applicable. No additional facilities will be placed as a part of the project. The actual work on the lower impoundment is within the 100' Buffer. All necessary steps will be taken to minimize disturbances.

- 5.10: Although both impoundment sites are classified as non-tidal wetlands by the National Wetland Inventory, both are man-made or impounded. Under 5.10 A(2) neither is considered a non-tidal wetland for the purposes of the Critical Area.
- 5.11: Staff Critical Area Wildlife Biologists and Natural Heritage personnel have reviewed the site. No threatened or endangered species or species in need of conservation will be negatively impacted by the project. One group of the "species in need of conservation", waterfowl, will be directly benefited by the project.
- 5.12: As designated in 5.11 above, habitat will be enhanced by this project for waterfowl but will not negatively impact other habitat types as outlined in this section.
- 5.13: According to the Power Plant Siting and Review section of the Tidewater Administration, the Elk River itself is an important Striped Bass spawning area. Specific records for the site in question are not available though. No concrete or other artificial surfaces, channelization, or other associated land activities are a part of the project. Natural vegetation, and therefore water quality, will be improved. Sedimentation rates should actually be reduced. Construction activities will not occur between March 1 and May 15.
- 5.14: The project site currently functions as a "Natural Park," a condition that should be enhanced by this project.



**PROJECT
SITE**



PROPOSED WATERFOWL HABITAT
IMPROVEMENT PROJECT

FOREST, PARK AND WILDLIFE SERVICE
DEPARTMENT OF NATURAL RESOURCES

BUSH RIVER NATURAL RESOURCES
MANAGEMENT AREA

The Department of Natural Resources is proposing a waterfowl habitat improvement project on the Bush River Natural Resources Management Area. The actual project would involve placing a variable-crest weir under a railroad bridge where the grade crosses the Bush River. This approximately 100' wide sheeting and piling structure would enable full movement of water at selected times of the year, while enabling water-level control at others. The goal would be to provide optimum water regimes in a 160 acre + high phase marsh. The marsh is currently degraded by excessive runoff and channel erosion (and thus drainage). As a result this marsh is highly mono-typic (Typhus latifolia), is being invaded by woody brush (Alnus and Acer spp.) and has only marginal value for waterfowl. Furthermore habitat for aquatic organisms is greatly reduced in quality.

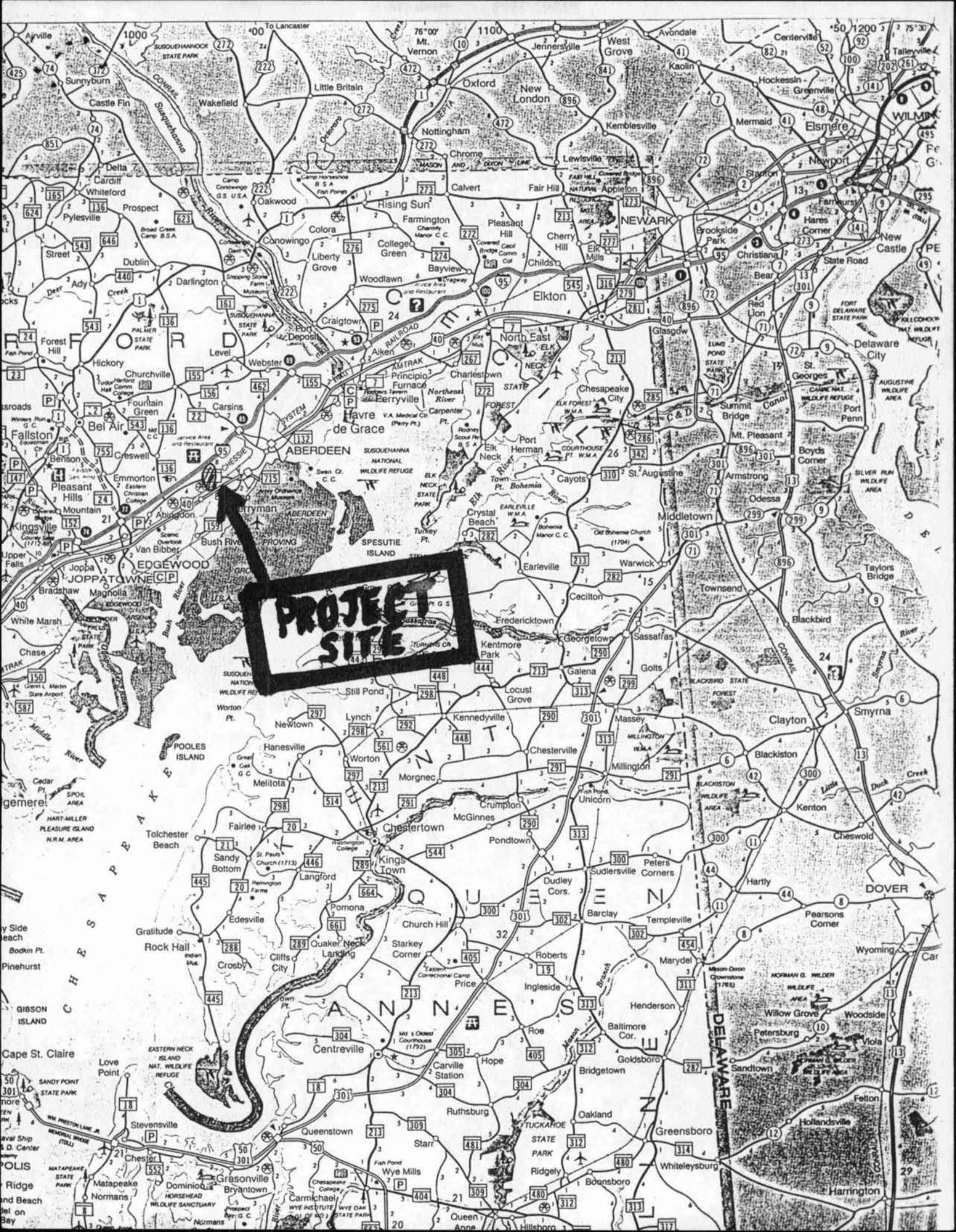
The proposed project would enable submerged aquatic vegetation (SAV) to become established which in turn would enhance water quality. Sediment export would be reduced by reduced water velocities behind the weir. Fisheries value would increase with increased water quality. Lastly, the principle project goal of improving waterfowl habitat would be realized through greater species and structural diversity and the establishment of SAV.

Specific Critical Area concerns cited under Chapter 5.01 of Subtitle 19 are dealt with below. Sections that are not pertinent to the project (5.03, 5.05, 5.06, 5.07, 5.08, 5.10) are not included.

- 5.04: This project is fully water-dependent and could function no where else. The project meets a public need by helping fulfill the Agency's mandated goal of enhancing waterfowl habitat. Waterfowl populations are a key part of the cultural, economic, biological, ecological and aesthetic values of the Chesapeake Bay. Fishery, water quality and wildlife habitat will all be positively impacted. Water salinity and circulation patterns will only be moderately influenced. Any disturbance to the associated wetlands and aquatic habitats will be during actual construction. Beyond that the project should provide net benefit to these areas. Dredging, sand movement and shellfish beds are not impacted by this project.

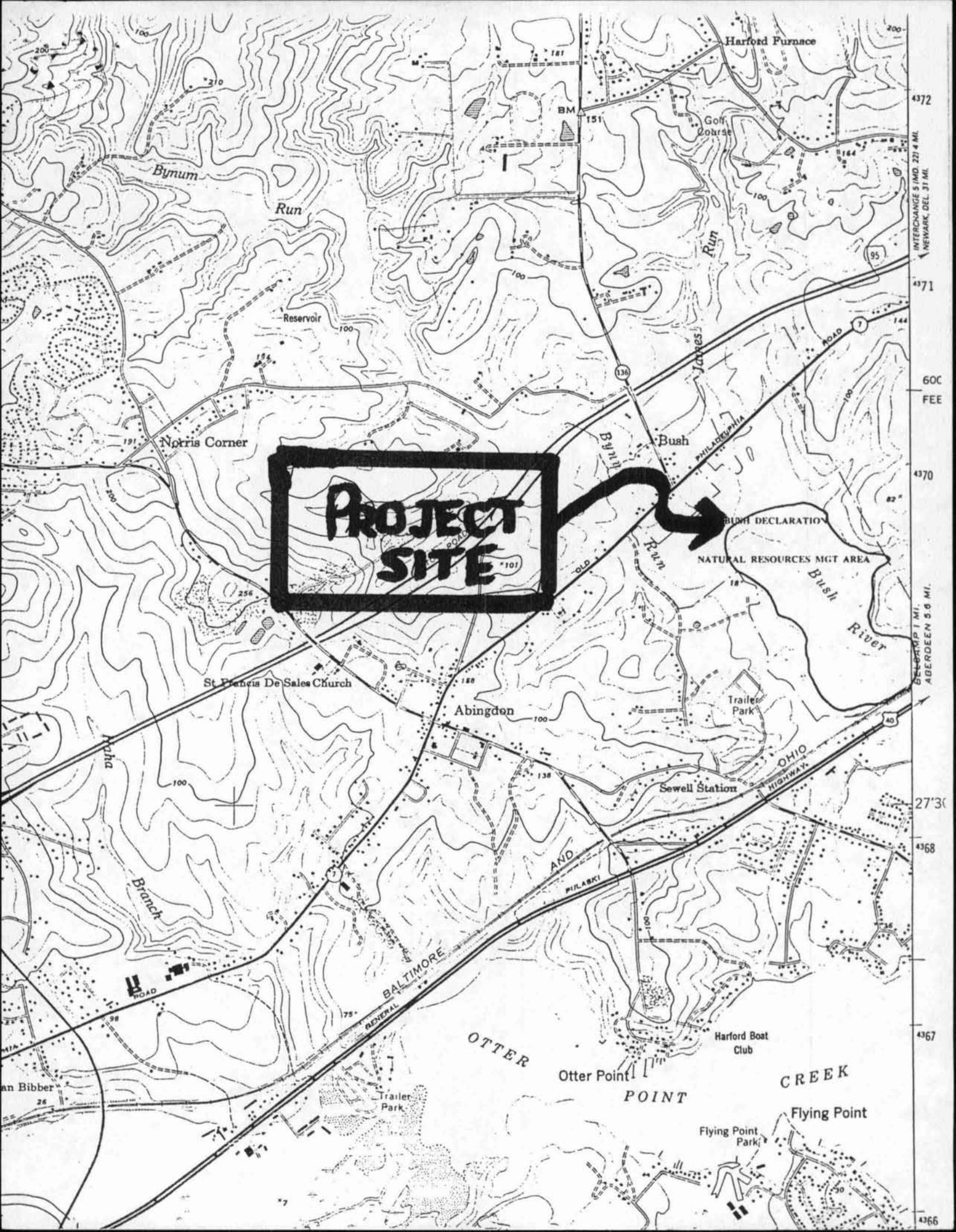
- 5.09: Project activities will not involve the placement of any facilities or structures that will increase erosion or runoff and a buffer is not therefore applicable. No support facilities will be placed as a part of the project. The actual project, however will be within the 100' Buffer. Necessary steps will be taken to minimize disturbance from construction.
- 5.11: Staff Critical Area Wildlife Biologists and Natural Heritage personnel have reviewed the site. No threatened or endangered species or species in need of conservation will be negatively impacted by the project. One group of the "species in need of conservation", waterfowl, will be directly benefited by the project.
- 5.12: As designated in 5.11 above, habitat will be enhanced by this project for waterfowl but will not negatively impact other habitat types as outlined in this section.
- 5.13: Bush River at the project site is an Anadromous Fish Propagation Area. No placement of rip-rap or fill or channelization shall occur as a result of this project. Water quality should be improved as well as increasing natural vegetation in the project area. The structure (weir) to be placed will be designed to allow full unimpeded passage of fish during the spawning period.
- 5.14: The project site currently functions as a "Natural Park," a condition that should be enhanced by this project.

The Department considers this project to be an enhancement to overall agency goals as well as to the Critical Areas.



**PROJECT
SITE**





**PROJECT
SITE**

Harford Furnace

Bynum Run

James Run

Reservoir

Bush

Norris Corner

BUSH DECLARATION
NATURAL RESOURCES MGT AREA

St. Francis De Sales Church

Abingdon

Trailer Park

Sewell Station

Branch

BALTIMORE
GENERAL

AND
PHILADELPHIA

OHIO
HIGHWAY

OTTER

Harford Boat Club

Otter Point
POINT

CREEK

Flying Point Park

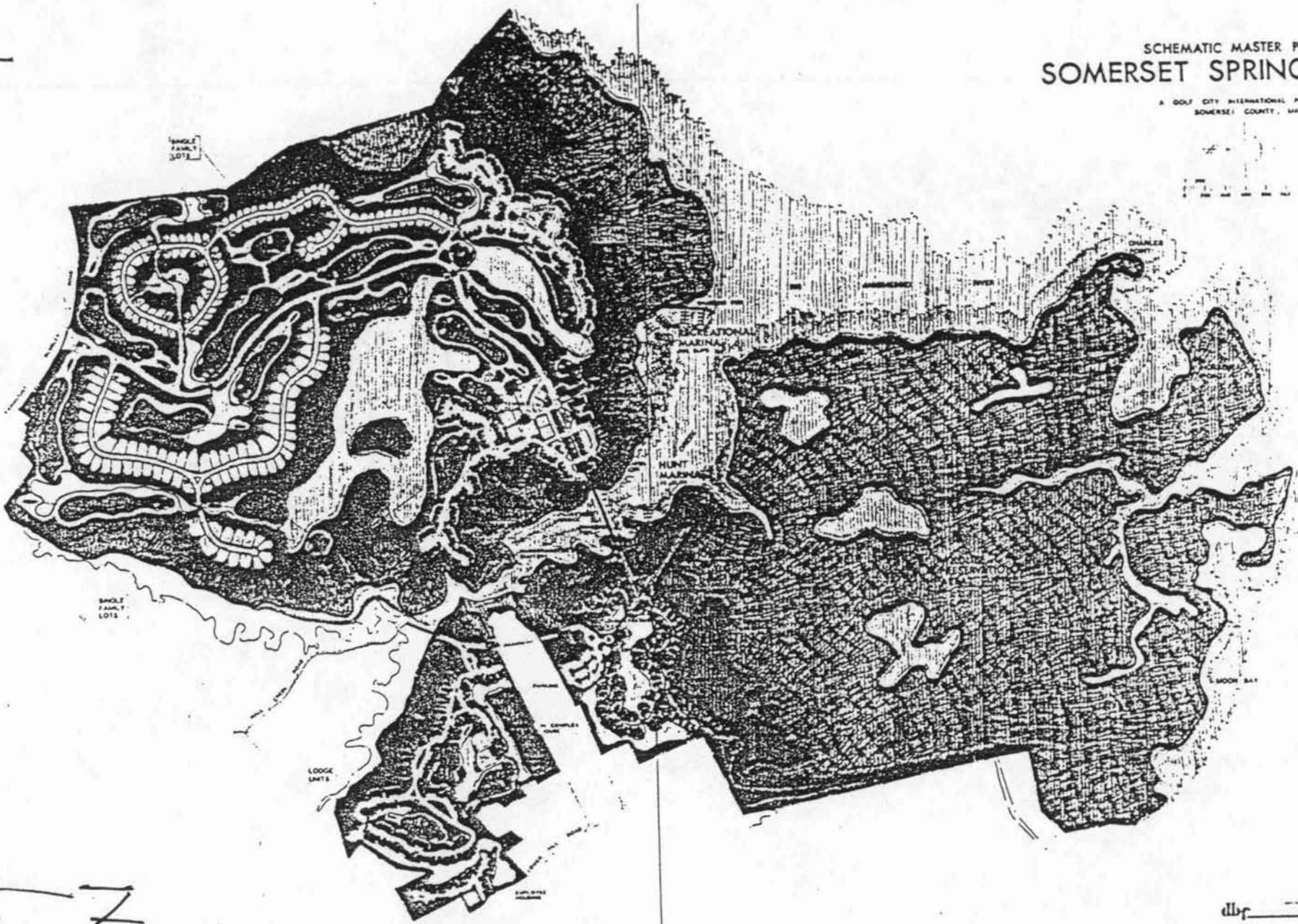
Flying Point

4372
INTERCHANGE 5 (MD. 22) 4 MI.
NEWARK, DEL. 31 MI.
4371
60C
FEE
4370
4370
BERGSPITZ 1 MI.
ABERDEEN 5.6 MI.
27'30"
4368
4367
4366

#1

SCHEMATIC MASTER PLAN SOMERSET SPRINGS

A GOLF CITY INTERNATIONAL PROJECT
BOWSER COUNTY, MARYLAND



dlr _____

Road Pileup
543-9091

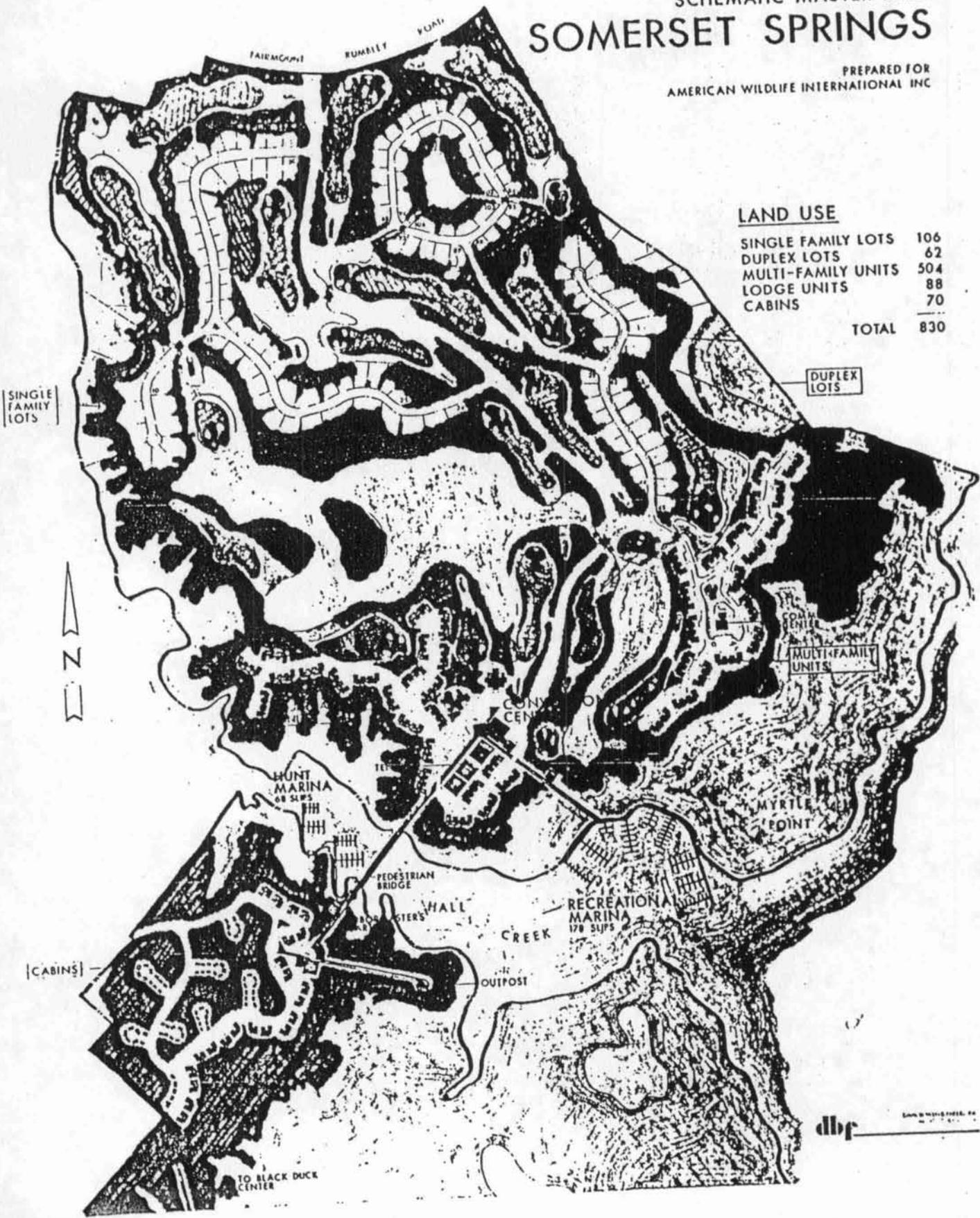
#2

SCHEMATIC MASTER PLAN SOMERSET SPRINGS

PREPARED FOR
AMERICAN WILDLIFE INTERNATIONAL INC

LAND USE

SINGLE FAMILY LOTS	106
DUPLEX LOTS	62
MULTI-FAMILY UNITS	504
LODGE UNITS	88
CABINS	70
TOTAL	830



dbf

Scale 1/4" = 100' (approx.)



File

JOHN C. NORTH, II
CHAIRMAN

STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREAS COMMISSION

SARAH J. TAYLOR, PhD
EXECUTIVE DIRECTOR

WEST GARRETT PLACE, SUITE 320
275 WEST STREET
ANNAPOLIS, MARYLAND 21401
974-2418 or 974-2426

COMMISSIONERS MEMORANDUM

Thomas Osborne
Anne Arundel Co.

TO: MOU Subcommittee

James E. Gutman
Anne Arundel Co.

James E. Gutman, Ch./Sam Bowling/Skip Zahniser/
Shepard Krech/Bill Corkran/Bob Perciasepe

Ronald Karasic
Baltimore City

Ronald Hickernell
Baltimore Co.

FROM: Sarah Taylor

Albert W. Zahniser
Calvert Co.

DATE: July 27, 1989

Thomas Jarvis
Caroline Co.

SUBJ: MOU With the Department of Transportation

Kathryn D. Langner
Cecil Co.

Samuel Y. Bowling
Charles Co.

For 1 1/2 years, beginning with Dr. Kevin Sullivan's work, the Commission staff has sought to develop an MOU with the Department of Transportation. On June 26, 1989, I met with Mr. Bill Mangles to try to finalize the MOU. Many changes were suggested, and we decided to rewrite sections.

G. Steele Phillips
Dorchester Co.

Victor K. Butanis
Harford Co.

Wallace D. Miller
Kent Co.

The intent of the MOU is to describe how all of the Administrations in DOT are to work with the Commission mandated by law and demonstrated by the State regulations that took effect on June 11, 1988. The MOU is far from final, and as Mr. Gutman accurately pointed out, the clarity of language describing the hows, whats and whens, is lacking.

Parris Glendening
Prince George's Co.

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

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

Enclosed are three items for your review and discussion on August 2nd at 9:30 a.m.

Ronald D. Adkins
Somerset Co.

Shepard Krech, Jr.
Talbot Co.

William Corkran, Jr.
Talbot Co.

- 1) the charge to this Panel from Mr. Gutman;
- 2) the MOU with DOT;
- 3) a listing of the projects of State Highway Administration affecting the Critical Area.

William J. Bostian
Wicomico Co.

Russell Blake
Worcester Co.

Mr. Gutman has raised issues which need to be discussed, and I can give this Panel an update on our coordination with the Department to date.

CABINET MEMBERS

Wayne A. Cawley, Jr.
Agriculture

Robert Schoeplein
Employment and Economic Development

Robert Perciasepe
Environment

Enclosures

Ardath Cade
Housing and Community Development

Torrey C. Brown, M.D.
Natural Resources

Ronald Kreitner
Planning

cc: Chairman North
CAC Staff

CHARGE TO:

The Ches. Bay Critical Area Commission - State Highway Memorandum of Understanding Panel (Hereinafter known as the "MUD Panel")

PURPOSE:

Create the policy and the directive for the protection of the Critical Area, its buffer, habitat (including trees) and wetlands during and after construction of roads by the State Highway Administration.

AUTHORITY:

Section 8-1814. Chapter 1.01 B (14) (a) & (16). Chapter 5.05 plus Environmental Article section 4.101.1 (c) (defining 'pollution')

ELEMENTS FOR CONSIDERATION:

Notification to CAC - time & documents

C A C approval - start-work date

e.g. Required control (5' perimeter dyke) and total suspended solids limit on discharge from sediment trap (800 mg/l)?

Sequence schedule - maintenance schedule

Mitigation - ratio of tree replacement

Enforcement - by local program - local inspection or MDE enforcement.

Penalties (if any). Stop work orders.

General approval - limited to road repair and trash collection.



Maryland Department of Transportation

The Secretary's Office

As make copies + distribute to:

William Donald Schaefer
Governor
Richard H. Trainor
Secretary
Stephen G. Zentz
Deputy Secretary

June 16, 1989

Dr. Sarah Taylor, Executive Director
Chesapeake Bay Critical Areas Commission
Department of Natural Resources
Tames State Office Building, D-4
Annapolis, MD 21401

5) Anne
6) Dawn
7) Abi
8) Judge
9) Ren
10) Pat P
1) Lee
2) Chay
3) Kevin
4) Tom
The S

Dear Dr. Taylor:

Enclosed is the latest (and hopefully last!) draft of the Memorandum of Understanding between our two agencies.

Since your response to our draft some time ago, there have been further refinements and reviews conducted within MDOT and the appropriate modal administrations and our Office of General Counsel.

I look forward to meeting with you on Monday, June 26, 1989 at 3:30 p.m. at MDOT Headquarters to discuss the M.O.U.

Sincerely,

William A. Mangels
William A. Mangels

WAM:ckj

cc: Clyde E. Pyers, OTP w/attachment
Stephen L. Reich, OTP w/attachment

RECEIVED

JUN 21 1989

DNR LEGAL SECTION

RECEIVED

JUN 19 1989

DNR
CRITICAL AREA COMMISSION

Mitigation ?
enforcement ?

DRAFT

MEMORANDUM OF UNDERSTANDING
BETWEEN
MARYLAND DEPARTMENT OF TRANSPORTATION
AND THE
CHESAPEAKE BAY CRITICAL AREA COMMISSION
ON THE
CHESAPEAKE BAY CRITICAL AREA REGULATIONS AFFECTING
MARYLAND DEPARTMENT OF TRANSPORTATION PROGRAMS

I. Purpose

This Memorandum serves to establish an agreement between the Maryland Department of Transportation (MDOT) and the Chesapeake Bay Critical Area Commission (CAC) concerning Maryland's Chesapeake Bay Critical Area Regulations, which guide the protection and the environmentally sensitive development along the shore of the Chesapeake Bay and its tributaries. MDOT is responsible for the planning, funding, and administration of the State's transportation activities pursuant to the Transportation Article. Through the Chesapeake Bay Critical Area Protection Law (Natural Resources Article, Title 8, Subtitles 1801 to 1816), the CAC was given the responsibility to: (1) develop criteria for guiding local jurisdictions in developing programs for the Critical Area and (2) establish regulations for development by State and local agencies on State and local land (not subject to (1) above). MDOT and other State agencies participated with CAC staff in drafting the regulations in (2) above, listed as COMAR 14.19.01-14.19.08.

The following broad points of understanding have been reached and clarify the role of MDOT in implementation of the Chesapeake Bay Critical Area Commission regulations regarding MDOT activities on land owned by MDOT.

A. MDOT recognizes the goals, objectives, and policies of the CAC Regulations in COMAR 14.19.01-14.19.08 as the State's comprehensive statement of critical area policy on development in the critical area by MDOT, pursuant to Natural Resources Article, Title 8-1808.1-

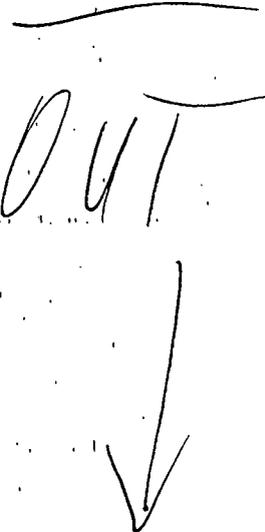
1816.

B. The CAC recognizes the Maryland Transportation Plan, and the Consolidated Transportation Programs that comprise MDOT's State Report on Transportation, as the comprehensive statement of goals, objectives, and priorities of the MDOT and will review and evaluate transportation projects within the framework of the plan.

More specifically, the following points have been recognized and agreed to as of major importance to the implementation of the regulations in COMAR 14.19.01-14.19.08.

II. Goals, Objectives, and Policies

The MDOT recognizes the goals, objectives, and policies of the CAC Regulations in COMAR 14.19.01-14.19.08 as the State's policy on the management of Chesapeake Bay Critical Area resources as they relate to State agency development projects. MDOT shall, to the extent consistent with its statutorily prescribed responsibilities, conduct its activities, including the development and implementation of the Maryland Transportation Plan and other Department planning activities, in a manner consistent with these regulations. Additionally, as the CAC regulations and the State Report on Transportation are both legislatively required in the state, both MDOT and CAC agree to work in a mutually cooperative manner in the implementation of their respective programs.

The programs of the State and local jurisdictions in the Critical Area must ensure that a balance between economic and environmental concerns is maintained in the management of the Chesapeake Bay resources. Both MDOT and CAC recognize that the provision of an adequate transportation system in the State may require trade-offs between these two concerns.

Furthermore, the CAC recognizes that the legislative mandate of MDOT to provide an adequate transportation system which meets the needs of people and goods movement in the Critical Area will require the upgrading and construction of highway, rail, aviation, port, and mass transit facilities and services. This recognizes that the maintenance, enhancement, and development of new land transportation facilities should be consistent with the CAC regulations as long as environmental impacts are minimized to the extent feasible and consideration is given to the "no build" alternative as called for in the 40 CFR Part 1500, Section 1502.14 and in the Natural Resources Article,

Section 1-302. To ensure that these actions give full consideration to the natural resource values inherent to the Critical Area, MDOT agrees to incorporate the goals, objectives, and policies of the CAC regulations into the Department's planning process, and to ensure consistency, to the extent feasible, with the regulations at all levels of transportation planning.

III. Relationship of Programs and Plans

The Maryland State Report on Transportation (SRT) consisting of the Maryland Transportation Plan and Consolidated Transportation Program is prepared, revised, and approved annually. The Maryland Transportation Plan provides the framework for multimodal transportation planning which will guide program development and serve to foster efficient and economical transportation services throughout the State. The Maryland Transportation Plan and its future revisions shall be developed, to the extent feasible, to ensure consistency with the CAC regulations.

^{to be}
The Department, with its modal administrations, prepare annually and submit to the General Assembly in January a Consolidated Transportation Program (CTP) as part of the SRT. The CTP developed within the framework of the SRT is consistent with the policies and long range plans described therein. The CTP contains forecasts of the Department's expenditures for operating, constructing, and improving transportation facilities for the current and following five years. It includes highway, transit, port, rail, and aviation capital projects. In addition, the Development and Evaluation Program (D&E) of the CTP lists projects for planning studies, preparation of environmental studies and preliminary design which are candidates for future addition to the Consolidated Program. The CTP serves as the principal mechanism for informing the CAC of proposed projects within the State's Critical Area.

IV. Consultation and Review Procedures

A. MDOT will submit to the CAC in January the SRT submitted to the General Assembly. The CAC will review the CTP, particularly the D&E Program described in Section III, above. For those D&E Program projects within the Chesapeake Bay Critical Area, the CAC will provide comments to MDOT within 60 days noting the D&E projects that may qualify for "general approval" at that time under COMAR 14.19.05.02 E through G. This does not prohibit MDOT from submitting specific projects for approval under provisions of COMAR 14.19.05.02 A-B, but permits MDOT to list in a comprehensive fashion all major capital projects in.

planning that the CAC can identify ^{as being} of no further interest. MDOT will alert the CAC of those occasional capital construction projects that have not advanced through the D&E Program to the Construction Program of the CTP.

Vague

B. MDOT agrees to maintain liaison with the CAC through the Office of Transportation Planning. The Office has authority and responsibility for coordinating statewide transportation planning and responsibilities for the formulation of transportation policies, systems planning, and program planning. Thus, CAC participation in these levels of planning will be through direct contact with the Office.

C. When CAC has indicated interest in a project, MDOT's Office of Transportation Planning will notify the appropriate modal administration. Once project planning studies are initiated by one of MDOT's modal administrations, CAC participation will be through direct contact with that administration.

major degradation is the point.

D. MDOT agrees to participate in major project evaluations (on projects other than transportation projects) and in program reviews carried out by the CAC when projects or programs being evaluated may have a significant impact on existing transportation facilities or will involve the need to provide new transportation facilities.

E. In concert with these general points, the following procedures will be followed by CAC and the modal administrations of MDOT in making findings on various transportation actions.

1. State Highway Administration Projects

disturbance of the topo or habitat

a. The State Highway Administration classifies its federally funded projects in accordance with the Rules and Regulations put forth by the U.S. Department of Transportation, Federal Highway Administration; 23 CFR Part 771. There are three classes of actions. Class 1 or major actions are those presumed to require draft and final Environmental Impact Statements. Class 2 actions are those which are presumed not to have a significant environmental impact and no additional environmental analysis is required. These actions qualify as Categorical Exclusions (CE's). Class 3 actions are those for which an Environmental Assessment (EA) is prepared. An EA is appropriate when an Environmental Impact Statement is not required and the project does not qualify as a CE. An EA is also appropriate when it would assist in determining whether an Environmental Impact Statement is needed if

the environmental impacts are unknown. If no significant environmental impacts are found, a Finding of No Significant Impact (FONSI) is prepared.

b. The State Highway Administration will send the CAC a copy of minutes of the scoping meeting involving each new project in the critical area, in accordance with Section IV. paragraph C, above. The CAC will note its degree of interest in such projects, if not previously reviewed.

c. If the CAC expresses particular concern in a particular Class 1 or Class 3 project and it is subsequently determined that an Environmental Impact Statement is not required and an EA/FONSI or EAF/EER (Environmental Assessment Form/Environmental Effects Report) is issued, the State Highway Administration will send a copy of the EA/FONSI or EAF/EER, or other findings or information deemed necessary by the CAC under COMAR 14.19.05.02 A, to the CAC. The CAC ~~staff~~ will review the project and return comment to the State Highway Administration within thirty (30) days as under COMAR 14.19.05.02, *or such longer time as is necessary as under COMAR 14.19.07.04.*

d. On all projects requiring an Environmental Impact Statement, the CAC staff will review the proposed project alternatives in the Draft Environmental Impact Statement and indicate which alternatives are consistent with the CAC regulations to the extent the CAC has appropriate information, and will inform SHA within 30 days what additional information, if any, the CAC will need for their review. Failure to request such information, within 30 days, shall mean that the CAC will need no further information.

e. Rehabilitation or maintenance activities of the State Highway Administration in the Critical Area is not to be defined as Development in COMAR 14.19.-01.01 B. (14) and therefore not necessary for CAC review under COMAR 14.19.05 include the following:

- (1) Highway resurfacing and bridge redecking
- (2) Intersection or interchange reconstruction with no increase in through travel lanes.

f. Class 2 actions, Categorical Exclusions, and all other projects exempt from MEPA regulations will be exempt from CAC review.

2. Maryland Transportation Authority Projects

a. Major projects are those requiring signifi-

cant right-of-way acquisition. Non-major projects are those involving repair or reconstruction within existing rights-of-way. All major projects require the preparation of an Environmental Effects Report.

b. For all major projects, found to be of interest to the CAC (Section IV. paragraph C, above), MdTA will notify the CAC at the earliest feasible stage of project planning. The CAC will notify the MdTA directly of its level of interest in the projects. For major projects, CAC staff will review Environmental Effects Reports and inform the MdTA within thirty (30) days of potential issues which may affect ~~their~~ approval.

The Commission's
c. Rehabilitation or maintenance activities of the MdTA in the Critical Area is not to be defined as Development under COMAR 14.19.01.01. B. (14) are as described in 1.e. above.

3. State Aviation Administration Projects

a. Major projects may be those such as construction of a new runway, major extension of an existing runway, new construction or major relocation of service roads or taxiways, new building construction (except those described as non-major), or major expansion of existing structures.

Non-major projects are those such as: 1) renovation, rehabilitation, reconstruction, removal or on-site replacement of: a) existing paving, utilities, hangars or buildings, b) lighting or navigation-aid aids; or 2) minor obstruction removal, 3) maintenance, 4) new construction of T-hangars, storage shelters for runway de-icing materials or airport maintenance equipment storage shelters and similar prefabricated structures, or 5) safety-related renovations which are not defined as development in COMAR 14.19.01.01.B(14) and therefore not requiring CAC review under COMAR 14.19.05. SAA reserves the right to request that the CAC add other activities at any time.

b. For all major projects, SAA will notify the CAC at the earliest practical stage of project planning and the CAC will notify the SAA of its level of interest in the project in accordance with COMAR 14.19.05.02.

c. All SAA facilities will be classified as Existing Areas of Intense Development, as defined in

*Major/Minor
not a CA
distinction.*

COMAR 14.19.05.03 A., and therefore, development and redevelopment activities will need to achieve a 10% improvement in storm water quality on the site of the development. Since such improvement may be impossible or impractical to achieve for every project, the Administration may propose an overall water quality improvement program at each facility to ensure that projects are consistent with the program under COMAR 14.19.05.03 B. (2)(b).

5. State Railroad Administration Projects

a. The State Railroad Administration administers various federal assistance programs and grants to rehabilitate freight and commuter rail lines in the State. At this time, the actions of the State Railroad Administration are not considered to constitute development as defined in COMAR 14.19.01.01. B. (13).

b. It is not anticipated that the State Railroad Administration will be applying for CAC review under COMAR 14.19.05. Should any review be necessary, procedures outlined for the State Highway Administration projects will be followed.

6. Mass Transit Administration Projects

a. Major projects are those involving construction of new rail lines and construction of ~~major~~ facilities. Non-major projects include, but are not limited to, purchase of equipment, allocation of transit vehicles to particular routes, changes, additions or deletions of routes, and minor rehabilitation, modernization, and/or maintenance of rights-of-way, building or other transit facilities. All major projects require the preparation of either a Federal Environmental Impact Statement (FEIS) or a Maryland Environmental Effects Report (EER).

b. The MTA will notify the CAC directly at the earliest feasible planning stage for major projects (Section IV. paragraph C, above). The CAC will notify the MTA directly of its level of interest in such projects. For projects found to be of interest, CAC staff will review the FEIS or EER and inform the MTA within thirty (30) days of potential issues which may affect their approval, or the need for additional information.

None sense

significant support

NEW

?

?

new



What are they doing here? If they are to be included let's work up a new version of that letter I prepared. or an increase in impervious surfaces.

7. Maryland Port Administration Projects

a. Major projects are those requiring significant new construction, new expansion of existing facilities and new bulkheading, Minor projects are those such as maintenance, repair and replacement type work or purchase of equipment.

b. For major projects during the Preliminary Engineering phase, a project proposal is prepared outlining the costs and benefits of a project. At this stage, the CAC will be notified of the intended project and will have the opportunity to review planning reports developed by the Maryland Port Administration. The CAC staff will inform the Maryland Port Administration within 30 days of potential issues which may be raised under COMAR 14.19.05.02, or of the need for additional information.

c. Many projects at Maryland Port Administration facilities would not be considered Development, as defined by COMAR 14.19.01 B. (14) regulations, and therefore will not be regulated under the Critical Area program. Examples of such activities include, but are not limited to:

1. roof replacement
2. lighting improvements
3. crane rail replacement
4. sprinkler system installation
5. capital equipment purchases
6. new fender installation
7. oil switch relocation
8. minor paving or utility repair or replacement
9. existing inlet repair or replacement where environmental impacts are considered minor.
10. bulkhead restrengthening

11. gate and fence repair or replacement

2 (12)

12. minor building rehabilitation or the expansion of existing buildings

d. Certain Maryland Port Administration activities could be defined as development but, because of their recurring nature, are candidates for General Approval under provisions of COMAR 14.19.05.02 H by the Commission. These include road widening work, strengthening bulkheads, and in some cases, relocation of small boat facilities. The Maryland Port Administration shall have the right to request that the CAC add other operational activities at any time.

e. Dredging or the establishment of open water or other similar dredged material disposal areas in the Bay, do not require review under the Critical Area regulations, provided that the requisite State and/or federal permits are obtained. Notice of the projects and submission of the approved permits would need to be given to the Commission. Minor fill projects at a wet basin or between two existing piers would be similarly covered by State and federal permits, as noted in COMAR 14.19.05.03 B. (1)(d)(iii). Development on any such fast land so created shall be consistent with COMAR 14.19.05 requirement.

f. All Maryland Port Administration facilities will be classified as Existing Areas of Intense Development, as defined in COMAR 14.19.05.03 A., and therefore, development and redevelopment activities will need to achieve a 10% improvement in storm water quality on the site of the development. Since such improvement may be impossible or impractical to achieve for every project, the Maryland Port Administration may propose an overall water quality improvement program at each facility to ensure that projects are consistent with the program under COMAR 14.19.05.03 B. (2)(b).

g. In recognition of the substantial benefits achieved in terms of environmentally safe disposal of contaminated materials presently in the Bay through the development of State and Federally permitted containment areas for dredged material disposal, such as the Hart/Miller Island facility, the CAC will regard a similar dredge material facility as an Area of Intense Development. After such a potential facility has received necessary State and federal

I hope they know this means they must ~~do~~ go through the full general approval process.

Dredging, yes. Establishment of new ~~containment~~ containment areas, I'm not so sure.

This needs to be thought through, thoroughly.

permits for its construction, the CAC will not apply the 10% or better storm water pollutant loading criteria to fast land created at that facility.

F. To promote coordination of the activities of the CAC and MDOT in areas of mutual interest, staff will meet at least annually to inform each other of ongoing and proposed activities that may be of interest and to discuss areas in which cooperative efforts may be appropriate.

Based upon the understanding agreed upon by this Memorandum, it is hereby established that the Department of Transportation and Chesapeake Bay Critical Areas Commission will work together to implement Maryland's CAC regulations via COMAR 14.19.01.-14.19.08.

Where's the final section added by J.K.S.?! *

IN WITNESS THEREOF, the contents of this Agreement have been accepted and approved by the Chesapeake Bay Critical Area Commission and the Department of Transportation this _____ day of _____, 1987.

Richard H. Trainor, Secretary
Department of Transportation

John C. North, II Chairman
Chesapeake Bay Critical Areas
Commission

* He + I added that section since the rest of this hinges on information transfer, review, + "comment" (e.g. IV.E.1.c.+d.; E.3.b.; E.6.b.; etc. The new section was to make clear that the C'm. must approve such projects. See attached.

06/16/89



*Maryland Department of Transportation
State Highway Administration*

Richard H. Trainor
Secretary
Hal Kassoff
Administrator

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DNR
CRITICAL AREA COMMISSION

June 20, 1989

Judge John C. North, II
Chairman, Chesapeake Bay Critical Areas Commission
Department of Natural Resources
Tawes State Office Building, D-4
Annapolis, Maryland 21401

Dear Judge North:

Thank you for your May 16th letter regarding the status of State Highway Administration projects within the critical areas.

Attached is a list you requested of SHA projects that are located within the critical areas.

I enjoyed meeting with you and Sarah Taylor recently and look forward to meeting with the Commission on August 2nd and developing a positive working relationship between the Commission and SHA.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Hal Kassoff', written over a horizontal line.

Hal Kassoff
Administrator

HK/t

Attachment

My telephone number is (301) _____

CRITICAL AREA CONTRACTS - UNDER CONSTRUCTION

CONTRACT NO.	ROUTE NO.	PROJECT LIMITS	REMARKS
AA 369-501-570	US 50/301	Cape St. Claire Interchange	
AA 316-503-572 021015	I-68	W. of MD 450 to E. of Admiral Dr.	
AA 132-503-572 021006	I-97	MD 178 @ Dorr's Corner to Brightview Drive	
AA 376-501-570	MD 4	W. of Patuxent River Br. to MD 258	
Q 508-504-270	US 50/301	W. of Cox Creek to E. of Piney Creek	
Q 508-503-270	US 50/301	E. of Piney Creek to W. of Jackson Cr. Lane (Incl. Kent Narrows Br.)	
AA 315-501-570	US 50/301	MD 70 to Severn River Bridge	
AA 414-501-576	MD 648	At Macy's Corner (Cattail Creek) and at Old Man Creek	Notice to Proceed on or about September 18, 1989
WI 650-501-177	MD RTE. 349	From North of Wetipquen Rd. to Md. Rte. 347, Resurfacing of roadway and shoulders only	Notice to Proceed on November 27, 1989
S 363-501-176	MD RTE. 363	From Md. Rte. 627 to Hall's Curve Resurfacing of roadway and shoulders only	Notice to proceed on October 30, 1989
Q 625-501-271	MD 838	Bridge No. 17040 @ Wye Mills	
D 517-502-171	MD 335	Bridge No. 09012 over Honga River	
D 517-503-171	MD 335	Bridge No. 09013 over Great Marsh Creek	
AA 376-501-52	MD 4	W. of Patuxent River Br. to Md. 258 (includes Bridge #16011 over Patuxent River)	
AA 317-501-571	MD 665	Md. 2 to Bywater Rd. (Church Creek)	
CE 701-501-571	US 40	Br. #7017 over Little Northeast Creek (deck replacement)	

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CRITICAL AREA COMMISSION

CRITICAL AREA CONTRACTS - UNDER DESIGN

CONTRACT NO.	ROUTE NO.	PROJECT LIMITS	REMARKS
AA 369-201-570	US 50/301	Sandy Point Interchange and Access Roads	Design on Hold
S 353-201-171	MD 358	End SHA Maintenance to Janes Island State Park	
A 730-201-680	MD 51	Over Evitt's Creek Rem. & Rep. Bridge Rehab. (Br. #1044)	
K 364-201-271	MD 213	MD 213 @ MD 544 to MD 213 @ MD 297 (Chestertown Bypass)	
AA 408-201-571	MD 648	Replacement of Bridge over the Patapsco River	
T 348-201-271	MD 33	St. Michael's Parkway N. of Lincoln Ave. to N. of Yacht Club Road	
AA 169-503-570 022012	MD 2	S. of Md. 214 to S. of Virginia Ave.	Inactive
Q 508-101-270	US 50	US 50/301 Interchange to S. of MD 404	
AA 376-502-570	MD 4	MD 4/MD 408 Interchange	
Q 508-502-270	US 50/301	W. of Jackson Cr. Lane to W. of US 50/301 Interchange	
AA 572-251-570	MD 10	MD 100 to MD 10	
B 769-251-471	MD 45	Cockeysville Rd. to Beaver Run Lane	
H 876-201-471	MD 24	I 95 to Md. 755 (Winters Run & Tributaries)	
AA 316-202-572	US 50/301	E. of South Haven Rd. to the Severn River Bridge	
Ho 292-202-770	MD 32	MD 108 to Pindell School Rd.	
AA 315-502-572 022010	I-68	W. Patuxent River to I-97	
CL 416-203-770	MD 30	N. of MD 482 to N. of Hampstead	
AW 993-201-570	US 301	S. of Beantown Road to N. of Timothy Bridge Road	

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CRITICAL AREA CONTRACTS - UNDER DESIGN

CONTRACT NO.	ROUTE NO.	PROJECT LIMITS	REMARKS
S 336-501-177	MD RTE. 413	Kingston Br. to 0.4 miles south of US Rte. 13. Resurfacing roadway and shoulder only.	Notice to Proceed on May 25, 1990
CH 540-501-571 (Marginal)	MD 425	Bridge #08042 over Jane Berry's Run	
CE 694-101-271	MD 7	Bridge #7012 over Big Elk Creek	
AA 440-501-570	US 50	Interchange at Old Mill Bottom Road	
T 358-201-271	MD 333	Bridge #20016 over Peach Blossom Creek (on hold)	
T 358-201-271	MD 333	Bridge #20017 @ Trippe Creek	
AA 334-252-571	MD 450	Bridge #2070 over Severn River (on hold)	
AA 315-251-572	I-68	West of Patuxent River Bridge to I-97 (on hold)	
CH 540-501-571 (Marginal)	MD 225	Bridge #8024 over Mattawoman Cr. Bridge #8025 over Port Tabacco Cr.	

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CRITICAL AREA CONTRACTS - PLANNING PHASE

CONTRACT NO.	ROUTE NO.	PROJECT LIMITS	REMARKS
B 813-302-471	US 1	US 1 Belair Rd. from Pindale Dr. to MD 152	Currently not funded- any phase
W 818-101-671	MD 68	Repl. of structures over Antietam and Beaver Creeks	
H 888-101-471	US 1/US 1 Bus.	MD 152 to MD 24 and US 1 Bypass	
AA - -570 & Benfield Rd.	East-West Blvd.	MD 2 to MD 3 (Future I-97)	
AW 927-101-070	(Washington Bypass)	I-95 in Virginia (north of Fredericksburg to I-95 in Balto.)	
B 635-151-472	I-695	MD 140 to MD 702	
C 397-101-570	MD 4	MD 4 at MD 260	
P 917-101-370	MD 4	I-95 to Anne Arundel Co. Line	
B 847-101-471	MD 43	US 40 to MD 150	
H 899-101-471	MD 152	US 40 to US 1	
H 896-201-471	MD 161	MD 161 over Deer Creek	
P 930-101-371	MD 210	South of MD 225 to vicinity of MD 414	
K 346-252-271	MD 213 Relocated	MD 213 at MD 544 to MD 213 at MD 297 (Chestertown Bypass)	
AW 760-251-071	MD 228	MD 210 to US 301	
P - -371	US 301	MD 5 at T.B. to US 50	
D 539-251-171	MD 335	Bridge No. 9014 over Fishing Creek	
AW 896-101-070	MD 404	US 50 to Denton Bypass (Tuckahoe Creek, Norwich Creek, 4 tributaries)	
CH 552-153-570	Eastern Bypass	Potomac River to MD 5/US 301	(on hold)
WO 630-101-171	Delaware-Maryland Beach Access Study	MD 90, MD 610 and DEL 54	

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CRITICAL AREA COMMISSION