

Commission Meetings & Corresp. Oct 1989

NSA-51832-63

AGENDA

CHESAPEAKE BAY CRITICAL AREA COMMISSION

275 West Street, Suite 320  
Annapolis, Maryland

October 4, 1989

1:00 - 5:30 p.m.

1:00 - 1:05 Approval of the Minutes of September 6, 1989 John C. North, II  
Chairman

PRESENTATIONS & QUESTIONS

1:05 - 1:35 Geographic Information System Dr. Alade/Staff ✓

1:35 - 2:05 Chesapeake Bay Agreement and Initiatives Verna Harrison, Assistant Secretary ✓

PROJECT EVALUATION

2:05 - 2:20 Vote on Magruder's Landing, Prince George's Co., MNCPPC *pass* Kathryn Langner, Ch./ Samuel Bowling, Ch./ Ren Serey ✓

2:20 - 2:45 Vote on Harmony Hall Parking Prince George's Co. ✓

*King's Landing <sup>pass</sup> Abi + Kay Langner - concept approved*  
PROGRAM REVIEW & AMENDMENT ✓

2:45 - 3:00 Somerset County Update Robert Price/Tom Ventre ✓

3:00 - 3:15 Vote on St. Mary's County Program *returned to City* James Gutman, Ch./ Ren Serey ✓

3:15 - 3:30 Vote on Kent County Program Amendments *pass* Victor Butanis, Ch./ Pat Pudelkewicz ✓

3:30 - 3:45 Vote on Prince George's County Program Amendments *pass* Samuel Bowling, Ch./ Anne Hairston ✓

POLICIES, MOU'S & GENERAL APPROVALS

3:45 - 4:45 Vote on Amendments Procedure Ronald Karasic, Ch./ Larry Duket ✓

4:45 - 5:00 Vote on MOU with Waterway Improvements Division and General Approvals for Piers and Ramps Samuel Bowling, Ch./ Abi Rome

Mr. Tom Ventre to give the Commission a status report. Mr. Ventre reported that one of the outcomes of that meeting was that the County had requested a meeting with the Somerset Panel. One of the items to be discussed would be the counting of growth allocation.

Chairman North suggested that the Panel convene after the Commission meeting, to schedule a time and date for the Panel meeting.

Chairman North then asked Mr. Serey to give a status report on St. Mary's County's Program. Mr. Serey reported that the County Commissioners had held a public hearing and the County's Citizen Task Force had met. Some changes have been made as a result of the hearing. He said that the County Commissioners would be meeting again and, if no further significant changes are recommended, would resubmit the Program to the Commission. The Panel would again meet, and the Program could possibly be voted upon at the October Commission meeting.

Chairman North asked Ms. Abi Rome to report on the Program amendment for the Town of Oxford. Ms. Rome reported that the Town had approved an amendment to modify the formula for the number of piers and slips allowed in community marinas for projects submitted before Program approval.

Chairman North added that he, Mr. Price, Panel members, and staff attended a meeting held in the Town Office. He said that the shoreline in question, under the Oxford Ordinance, was sufficient to provide for two slips where the applicant wished to install four. He said that the shoreline could accommodate possibly three slips, but not four. The general sentiment of the Town was to preserve the limited and restricted Town Creek area.

Mr. Price, Panel Chairman, reported that the Panel does not recommend approval of this amendment as its provisions are contrary to those in the Town's Program and the State's grandfathering criteria are not intended to alter any of the water-dependent facilities regulations.

A motion was made and seconded that the Commission not grant approval for the Town of Oxford's Program amendment. The vote was 21 in favor, with Deputy Secretary Cade abstaining.

Chairman North asked Dr. Taylor to report on Caroline County's Program status. Dr. Taylor distributed a synopsis of the actions concerning the development of the County's Program. She reported that the Panel recommends approval as all suggested changes to the Program have been made.

Betsy Krempasky - Planning Director, Caroline County

- 1) compensation - hard to say that people have been adversely affected. Farms - larger tracts - farm value per acre have gone down. Gone down \$20-25/acre - inland farms. Problem with large tracts of forest.
- 2) growth allocation - how shall it be used and counted against the amount. The County is using growth allocation for minor subdivisions rather than having one large developer take it all. Have about 500 acres of growth allocation.
- 3) municipalities - model ordinances for them. Wish one had been developed to help them.

? Senator Simpson - Population of 26,000 in the County. Growing at 500 - 700 people/year.

? Delegate Guns - Are you familiar with the 2020 program. Are you looking at the 2020 to see what will happen in the future?  
Ms. Krempasky - yes. Does not feel 2020 approach is contrary to what Critical Area Program is trying to do.

J. JOSEPH CURRAN, JR.  
ATTORNEY GENERAL  
JUDSON P. GARRETT, JR.  
DENNIS M. SWEENEY  
DEPUTY ATTORNEYS GENERAL



THOMAS A. DEMING  
ASSISTANT ATTORNEY GENERAL  
COUNSEL TO SECRETARY  
M. BRENT HARE  
JUDITH F. PLYMYER  
MARIANNE D. MASON  
PAMELA D. ANDERSEN  
LEE R. EPSTEIN  
MAUREEN O'F. GARDNER  
PAMELA P. QUINN  
SEAN COLEMAN  
JODI R. O'DAY  
SHARON B. BENZIL  
ASSISTANT  
ATTORNEYS GENERAL

STATE OF MARYLAND

**OFFICE OF THE ATTORNEY GENERAL**

DEPARTMENT OF NATURAL RESOURCES  
TAWES STATE OFFICE BUILDING  
ANNAPOLIS, MARYLAND 21401  
(301) 974- 2501

**RECEIVED**

SEP 1 1989

MEMORANDUM

**DNR  
CRITICAL AREA COMMISSION**

TO: John C. North II, Chairman  
and  
Membership, Chesapeake Bay Critical Area Commission

FROM: Lee R. Epstein, Assistant Attorney General

DATE: August 30, 1989

SUBJ: Commission Review of Proposed Critical Area Law Amendments

Following please find a brief summary and discussion of each proposed change in the Critical Area law, as developed by the Policy and Procedure Subcommittee with the assistance of Larry Duket, Charlie Davis, and other staff. This memorandum, together with the actual proposed language, attached, may be used as the initial basis for the Commission's discussion of this important proposed legislation, prior to a vote to seek legislative sponsorship.

Proposed Amendments

(1) Amend definitions, NR §8-1802

Purposes:

- A) To add statutory definitions of "growth allocation" and "development area designation" (IDA, LDA, RCA);
- B) to clarify that a "program" includes all local critical area ordinances and regulations, and that "project approval" specifically includes rezoning;
- C) and to add two new definitions which separate "program amendments" from the lesser "program refinements", so that another new provision can streamline Commission review procedures for the local program changes.

TO: Chesapeake Bay Critical Area Commission Panel for Caroline County  
FROM: Sarah J. Taylor  
RE: Vote on Caroline County Program  
Date: September 6, 1989

#### BACKGROUND

In April 1988, the Caroline County Critical Area Program was submitted to the Commission staff. On June 6, 1988, comments were drafted on the Program document and the Commission voted in July 1988 to return the Program for changes to be made. In December 1988 the Commission voted to take over the development of the Caroline County Program. No action was taken by the staff to do this because the staff could not handle the work load, and Caroline County imposed a moratorium on development in the Resource Conservation Area except for single family homes or for subdivisions within keeping of the RCA density and other criteria.

On June 30, 1989, Caroline County resubmitted its Program with changes.

#### RECOMMENDED ACTION BY STAFF

Approval of Caroline County Program.

#### REASONS FOR RECOMMENDED ACTION

All changes have been made.

#### GENERAL COMMENTS MADE IN 1988 WHICH WERE INCORPORATED IN THE 1989 REVISION

##### JUNE 1988 COMMENTS

1. The County proposes to adopt the Program by reference in appropriate ordinances and plans. These references have not yet been drafted. These references will need to be a part of the final submittal to the Commission prior to approval.

##### RESPONDED TO IN 1989 PROGRAM

1. Completed as Ordinance # 89-00 as amending County Zoning Ordinance No. 82-004, adding Article 3,4,5,6, 15,18, 19 encompassing the creation of zoning districts, district regulations, supplementary regulations, site plans, special use exceptions, variances.

2. The County should develop Growth Allocation Guidelines similar to the Commission's February 1988 policy.

3. The Buffer exemption provisions in the Program are unclear and unspecified. Measurement of the Buffer appears to be from the wrong base. Check this out.

4. The variance provision which allows for development in the Buffer should indicate what types are allowed and should be consistent with the criteria.

5. Certain parcels on the maps have been labeled LDA and may be more suitable as RCA-reexamine.

6. Caroline County should enforce the SCWQP and FMPs not the State.

7. Complete Forest & Woodland Protection Plan

#### PAGE BY PAGE COMMENTS

p. 1 County must develop Program and not claim it is a program "dropped in its lap" by the State

p. 4 and on others. Change all references of OEP to Dept. of the Environment.

p. 10 and on others. Change all references of DNR Waterway Construction Agency to Waterway Improvement Division. Change references from Tidewater Admin. to Shore Erosion Control Program for shore erosion reference. Change reference of agricultural land management plan to Soil Conservation & Water Quality Plan.

2. Submitted and developed a new Growth Allocation package as part of the Program that is consistent with the Commission's Growth Allocation procedures.

3. pg. 56 corrected  
pg. 63 corrected.  
All maps checked and Buffer is measured correctly.

4. The variance which is to be used to allow for some development in the Buffer reflects the variance language in the criteria and applies to situations in which the lot depth is not enough to meet the Buffer application.

5. List and analysis of each site was provided by the County. The list was re-checked by staff and determined to be justified in all instances.

6. Language to correct the situation provided and cooperative effort with county enforcement is reflected. p. 12.

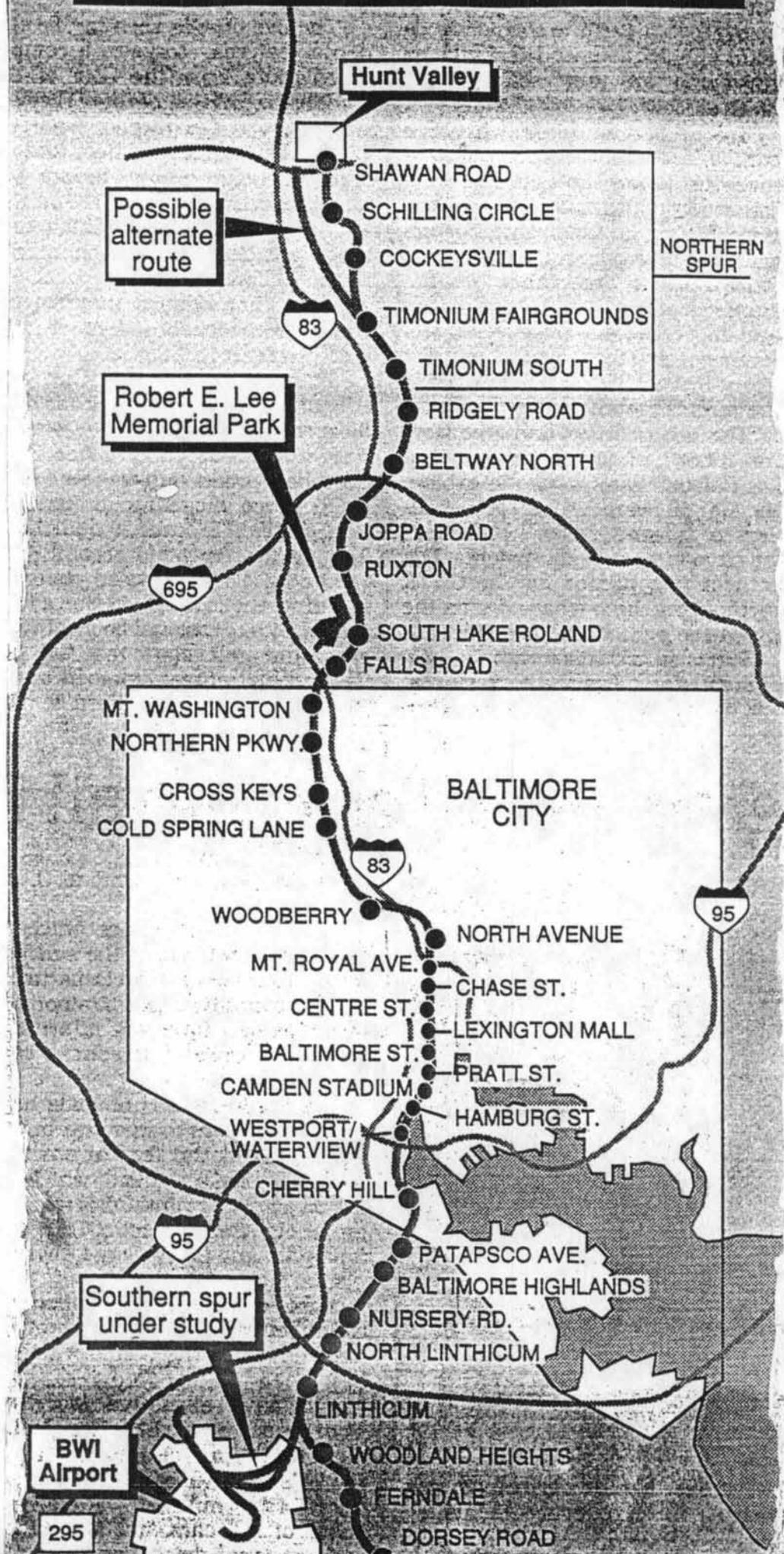
7. Included as pages 97,98,99,100 and added to the Program. Meets the criteria.

p. 1 language corrected

p. 4 and on others. changed:

p. 10 and others: corrected.

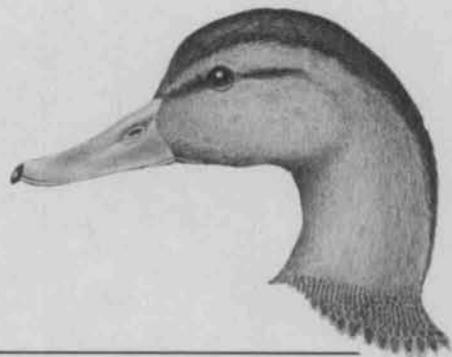
# PROPOSED LIGHT RAIL STOPS





# Black Duck

(*Anas rubripes*)



## The Black Duck — A Resource at Risk

Of all America's waterfowl, few surpass the black duck in prestige among hunters. Along with mallards and pintails, the black duck is referred to by sportsmen as one of the "wary three." It is a favorite and challenging quarry of hunters throughout the Atlantic and Mississippi Flyways.

Severe droughts of the 1930's and subsequent agricultural drainage of prairie pothole regions of the Dakotas and nearby Canadian provinces drastically reduced numbers and permanently altered the nesting grounds for most North American waterfowl. During the same period in the East, however, black ducks remained secure in their relatively unchanged nesting areas in the coastal marshes, rivers, and wooded wetlands of the Northeast and Canada. But today the black duck is in trouble. Since 1955, annual mid-winter waterfowl surveys reveal a continuous decline in black duck numbers that has averaged about 2 percent yearly.

Loss of habitat, deterioration of water quality and food resources, and increased hunting pressure have all contributed to the population's downward trend as has competition and crossbreeding with the closely related mallard.

## The Black Duck on Chesapeake Bay

Historically, large numbers of migrating black ducks arrived on the Bay in late fall. They spent winters feeding primarily on the abundant seeds of annual plants at the heads of tidal creeks and rivers. At this time, the black duck was widely distributed over the many Chesapeake Bay tributaries. Today, the Bay's much reduced winter population of black ducks concentrates in marshes of the lower Bay and other areas that have remained relatively unaltered.

Although the Chesapeake Bay is near the southern limit of the black duck's nesting range, studies in the 1950's showed that particular areas often produced substantial

numbers of young. Today, very few black ducks nest on the Chesapeake. Small islands and isolated points of land relatively safe from predators and human disturbance are essential for successful nesting, and only a few of these small nesting islands remain; shoreline nesting areas have been eliminated by development; and sturdy offshore blinds where black ducks occasionally nested are much less prevalent. Unlike the urbanized mallard which nests on lawns, docks, or even docked boats, black ducks remain a wary bird.

## Life History

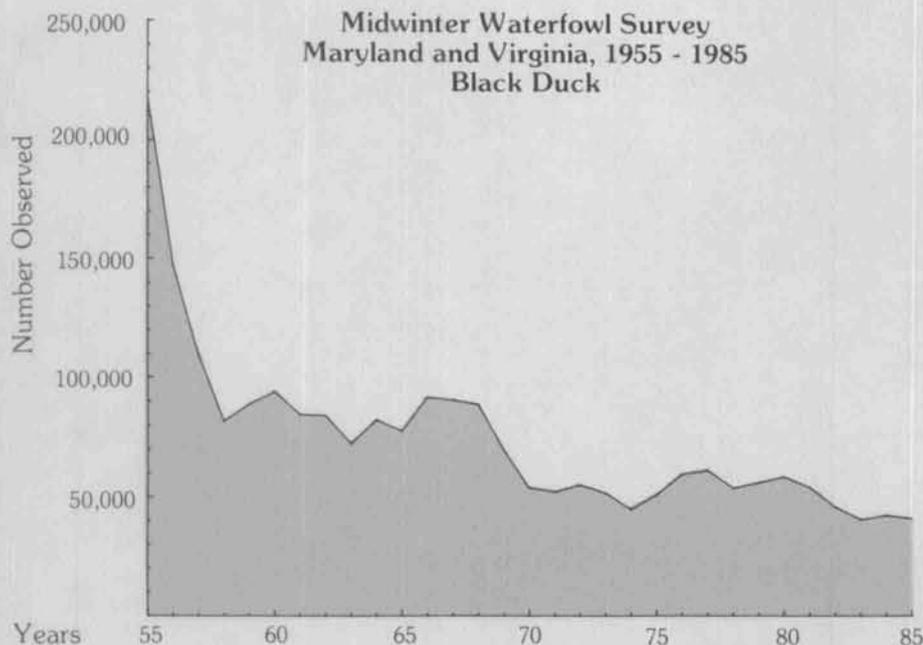
The black duck is native to eastern North America. Its plumage is predominantly a dark, mottled brown, and both hens and drakes are very similar in appearance. The black duck is one of 11 species of North American waterfowl known as puddle ducks or dabbling ducks that feed in shallow water by "tipping up," with only their tails showing above the water. Unlike diving ducks that "run" along the surface of the water to take flight, dabbling ducks are able to jump directly up into the air.

The black duck feeds extensively on seeds, leaves, and roots of aquatic plants, as well as small insects and snails. It will, when available, eat waste grain and seeds or upland vegetation.

The black duck breeds in forested wetlands, beaver flowages, and both fresh and salt marshes from Ontario and the Great Lakes eastward to the Maritime Provinces of Canada, New England, and south along the Atlantic Coast to North Carolina. Its nest is a hollowed-out place on the ground or a stump lined with grass and down. An egg is laid daily until the clutch is complete, usually consisting of eight to 10 buff-green eggs that hatch in 26 to 28 days. Hens do all the incubating and raise the young. Ducklings show their first flight feathers at about 3 weeks and young birds can fly by 2 months of age.

Although many black ducks migrate down the Mississippi Flyway and winter along interior rivers and lakes and Gulf Coast marshes, most winter along the Atlantic Coast from Nova Scotia to South Carolina, particularly between Massachusetts and Virginia.





### Black Duck Facts

- Black duck populations are dwindling throughout their range, but nowhere more dramatically than on the Chesapeake Bay.
- As recently as 1955, about 200,000 black ducks wintered on the Bay; today less than 50,000 winter here.
- Loss of habitat, deterioration of water quality and food resources, and hunting pressure have all contributed to the black ducks' decline.
- The black duck is native only to eastern North America. The black duck is a dabbling, feeding in shallow waters by "tipping up."
- The black duck is a close relative of the mallard. The two species often hybridize and share the same habitats, to the disadvantage of the black duck.

### Help for the Black Duck

There are many reasons for the decline of the black duck. Overhunting, years of DDT and other pesticide use on both breeding and wintering wetlands, loss or deterioration of breeding and wintering habitat, possibly acid rain, and competition and crossbreeding with wild and semi-wild mallards all have contributed to the species' decline.

Hunting restrictions have been in effect for many years, but in 1983, State and Federal waterfowl managers agreed that additional restrictions were necessary. Shorter hunting seasons, closed seasons in some areas, a reduction in daily bag limits, and color leaflets to help hunters identify and avoid shooting black ducks are some of the measures in effect.

The Fish and Wildlife Service is conducting studies to determine how to halt or reverse the long-term decline. In Maine, the Service is looking at the potential adverse effects of acid rain on aquatic insects and other invertebrates so critical to the protein-rich diet ducklings require during their first weeks of life. Elsewhere, levels of other toxic contaminants are being monitored. In the Chesapeake Bay area, wildlife specialists are radio-tagging black ducks to study their use of various habitats, and creating improved nesting habitat on some national wildlife refuges.



## U.S. FISH AND WILDLIFE SERVICE

The Chesapeake Bay is the largest estuary in North America. Its waters provide food and habitat for an abundance of fish and wildlife. It serves as a highway for commerce, a playground, a storehouse of food, and a home for the 13 million people who live in its vast watershed. But in recent years the Chesapeake has become less able to support the fish and wildlife it once did. Increasing amounts of excess nutrients, sediment, and toxic substances are causing serious ecological problems in the Bay. Studies show alarming declines in species of fish and wildlife and in the habitat available to them.

The U.S. Fish and Wildlife Service is one of many Federal, State, and local agencies and private organizations engaged in the Chesapeake Bay restoration program to reverse the damage already done, to arrest further degradation, and to restore the Bay -- as nearly as time, technology and resources allow -- to its former productivity.

As one of the primary Federal stewards of the nation's living natural resources, the U.S. Fish and Wildlife Service provides leadership in habitat and wetlands protection, fish and wildlife research, technical assistance, and in the conservation and protection of migratory birds, anadromous fishes, certain marine mammals, and threatened and endangered species. The Service also manages more than 400 National Wildlife Refuges and 70 National Fish Hatcheries across the country, including several in the Bay area.

For more information, contact: The U.S. Fish and Wildlife Service, 1825 Virginia Avenue, Annapolis, MD 21401, (301)269-5448.

OFFICE OF THE ATTORNEY GENERAL  
DEPARTMENT OF NATURAL RESOURCES  
580 Taylor Avenue  
Annapolis, Maryland 21401  
301/266-2251 SEP 11 1989

**RECEIVED**

LEE R. EPSTEIN  
Assistant Attorney General

DNR  
CRITICAL AREA COMMISSION

September 8, 1989

TO: Sarah Taylor  
SUBJ: Baltimore City- Approval of Policy on Educational Institutions in Buffer

The Commission on Sept. 6 approved a rather broad concept permitting Baltimore City to waive all or some fees-in-lieu for National Aquarium, Marine Mammal Pavilion, Lady Maryland - Maritime Institute, and the Christopher Columbus Center -- all Buffer developments in the City. The subcommittee report on which such approval was based did not correctly summarize my advice on this matter, and I fear the Commission may have gone too far in its approval as a result.

What I advised was that each case must be examined on a site and facility-specific basis, to determine whether it would "otherwise achieve" the specific policies sought to be achieved in COMAR 14.15.09.01B. I noted that while virtually none seemed to be met with a wastewater treatment facility, they conceivably could be met in an educational facility. I don't see how each of those noted serve such objectives. I also noted that the facility should provide runoff controls, as well.

I believe the approval may well have gone too far.

SUBCOMMITTEE REPORT

*Unanimously approved - Judge North - for our discussion w/ Ken.*  
September 6, 1989

JURISDICTION: Baltimore City  
ISSUE: Whether Baltimore City can accept educational programs as substitution for Buffer-offset fees?  
RECOMMENDATION: APPROVAL: The Criteria permit Buffer-offset fees to be used for educational programs; the City can determine whether proposed programs are acceptable substitutes for the fees.

DISCUSSION:

As mitigation for development in the Buffer, Baltimore City's Critical Area Program provides for payment of fees. As an alternative, the Program provides for offsets in the nature of public education programs, as permitted by the Criteria.

The City is requesting Commission approval of the concept of waiving all or a portion of the fees in lieu of the educational programs to be provided by:

- The National Aquarium in Baltimore; Marine Mammal Pavilion;
- The Lady Maryland Foundation- Maritime Institute;
- The Christopher Columbus Center of Marine Research and Exploration.

The Subcommittee asked Lee Epstein to investigate the concept of substituting educational programs for the fees. Lee's opinion is that the concept is consistent with the policy objectives of the Criteria.

*Gen - these need to go w/ Sept 6 Commission minutes*

J. JOSEPH CURRAN, JR.  
ATTORNEY GENERAL  
JUDSON P. GARRETT, JR.  
DENNIS M. SWEENEY  
DEPUTY ATTORNEYS GENERAL



THOMAS A. DEMING  
ASSISTANT ATTORNEY GENERAL  
COUNSEL TO SECRETARY

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ATTORNEYS GENERAL

## STATE OF MARYLAND

## OFFICE OF THE ATTORNEY GENERAL

DEPARTMENT OF NATURAL RESOURCES  
TAWES STATE OFFICE BUILDING  
ANNAPOLIS, MARYLAND 21401  
(301) 974- 2251

July 24, 1989

MEMORANDUM

TO: Sarah Taylor, Executive Director  
Chesapeake Bay Critical Areas Commission

FROM: Lee R. Epstein  
Assistant Attorney General

SUBJECT: Buffer exemption areas

The following question was posed at a recent Commission meeting:

Can certain new development in the Buffer, where an exemption exists (or may be requested), be permitted without special offset contributions or measures, if the development itself is intended:

- (1) as a water quality/habitat improvement measure; or
  - (2) as a special public environmental educational facility?
- An example of (1) is a new or enhanced waste water treatment facility; and of (2), a new aquarium/Chesapeake Bay education institute.

For the reasons outlined below, I believe the answer must be development- and facility-specific.

COMAR 14.15.09.01C(8) provides that local jurisdictions may propose Buffer exemptions to the Commission where they sufficiently demonstrate that the existing pattern of development in that area prevents the Buffer from fulfilling the functions outlined in this regulation. If such is requested, local jurisdictions are to propose "other measures for achieving the water quality and habitat protection objectives of the policies," including public education.



JOHN C. NORTH, II  
CHAIRMAN

STATE OF MARYLAND  
**CHESAPEAKE BAY CRITICAL AREAS COMMISSION**

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

SARAH J. TAYLOR, PhD  
EXECUTIVE DIRECTOR

COMMISSIONERS

September 18, 1989

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.  
Talbot Co.

William Corkran, Jr.  
Talbot Co.

William J. Bostian  
Wicomico Co.

Russell Blake  
Worcester Co.

Dear Commission Member:

The October 4th, 1989 meeting of the Chesapeake Bay Critical Area Commission will be held at 1:00 p.m. in the Commission Conference Room, Annapolis, Maryland. A separate Subcommittee notice will be mailed to you for that Wednesday morning.

Enclosed are the following items pertaining to the meeting:

- 1) Agenda for the Meeting;
- 2) Minutes of the Meeting of September 6th;
- 3) MOU with Waterway Improvement Division and General Approval for Piers and Ramps. We hope to be able to take a vote on these items; and
- 4) Draft Policy Statement for Expanding the 1,000-foot Critical Area. A vote on this policy is suggested.

Please bring your copy of the Proposed Amendments Procedure which was distributed at the September Commission Meeting. A vote on these amendments is necessary.

I look forward to seeing you on October 4th.

Sincerely,

John C. North, II  
Chairman

CABINET MEMBERS

Wayne A. Cawley, Jr.  
Agriculture

JCN/jjd

Robert Schoepflein  
Employment and Economic Development

Enclosures

Robert Perciasepe  
Environment

cc: Asst. Secretary Verna Harrison

Ardath Cade  
Housing and Community Development

Torrey C. Brown, M.D.  
Natural Resources

Ronald Kreitner  
Planning

Agenda  
10/4/89  
Page 2

|             |   |                                      |
|-------------|---|--------------------------------------|
| 5:00 - 5:15 | Vote on Policy for Expanding<br>the 1000-Foot Critical Area | James Gutman, Ch. /<br>Anne Hairston |
| 5:15 - 5:30 | Old Business<br>New Business                                | John C. North, II ✓<br>Chairman      |

Next Commission Meeting: <sup>Nov. 1,</sup> ~~October 4,~~ 1989, Somewhere on the Eastern  
Shore (Tidewater Inn)



JOHN C. NORTH, II  
CHAIRMAN

STATE OF MARYLAND  
**CHESAPEAKE BAY CRITICAL AREAS COMMISSION**  
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275 WEST STREET  
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974-2418 or 974-2426

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- Thomas Osborne  
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- James E. Gutman  
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- Ronald Karasic  
Baltimore City
- Ronald Hickernell  
Baltimore Co.
- Albert W. Zahniser  
Calvert Co.
- Thomas Jarvis  
Caroline Co.
- Kathryn D. Langner  
Cecll Co.
- Samuel Y. Bowling  
Charles Co.
- G. Steele Phillips  
Dorchester Co.
- Victor K. Butanis  
Harford Co.
- Wallace D. Miller  
Kent Co.
- Parris Glendening  
Prince George's Co.
- Robert R. Price, Jr.  
Queen Anne's Co.
- J. Frank Raley, Jr.  
St. Mary's Co.
- Ronald D. Adkins  
Somerset Co.
- Shepard Krech, Jr.  
Talbot Co.
- William Corkran, Jr.  
Talbot Co.
- William J. Bostian  
Wicomico Co.
- Russell Blake  
Worcester Co.

MEMORANDUM

**TO:** COMMISSION MEMBERS

**FROM:** TERA LISA HARNISH

**SUBJ:** SUBCOMMITTEE MEETINGS

**DATE:** September 21, 1989

**PLACE:** 275 WEST STREET, SUITE 320, ANNAPOLIS, MD, 21401

The following Subcommittee and Panel Meeting will be held at 275 West Street, Suite 320, Annapolis, MD. The meetings will start at 9:30a.m. *Oct 4, 1989*

9:30a.m. - 10:30a.m.  
(Dr. Taylor's Office)

MOU WITH MDOT PANEL

James E. Gutman, Ch., Samuel Bowling, Albert Zahniser, Shepard Krech, William Corkran, and Robert Perciasepe

9:30a.m. - 11:30a.m.  
(Conference Room)

PROJECT SUBCOMMITTEE

Kay Langner, Ch., Samuel Bowling, William Corkran, Thomas Jarvis, G. Steele Phillips, Russell Blake, Ardath Cade, and Robert Schoeplein

9:30a.m. - 11:30a.m.  
(Chairman's Office)

PROGRAM AMENDMENTS SUBCOMMITTEE

Ronald Karasic, Ch., Ronald Adkins, Ronald Kreitner (Larry Duket), Ronald Hickernell, J. Frank Raley, and Victor Butanis

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

10:30a.m. - 12:00p.m.  
(Dr. Taylor's Office)

SPECIAL ISSUES SUBCOMMITTEE

James E. Gutman, Ch., William Bostian, Parris Glendening, Robert Perciasepe, Robert Price, Albert Zahniser, Torrey Brown, and Wayne Cawley (Loiuse Lawrence)

Page Two  
Subcommittee & Panel Memo  
September 21, 1989

11:00a.m. - 11:30a.m.  
(Pat's Office-See Anne)

PRINCE GEORGE'S COUNTY PANEL  
Samuel Bowling, Ch., Albert Zahniser,  
Parris Glendening, Robert Schoeplein,  
and Ardath Cade.

11:30a.m. - 12:45p.m.  
(Conference Room)

ST. MARY'S COUNTY PANEL  
James E. Gutman, Ch., Albert Zahniser,  
Samuel Bowling, J. Frank Raley, and  
Robert Perciasepe

/TLH

CHESAPEAKE BAY CRITICAL AREA COMMISSION

Minutes of Meeting Held  
September 6, 1989

The Chesapeake Bay Critical Area Commission met at the Jefferson Patterson Park and Museum, St. Leonard, Maryland. The meeting was called to order by Chairman North with the following Members in attendance:

|                               |                         |
|-------------------------------|-------------------------|
| Robert Price, Jr.             | William Bostian         |
| J. Frank Raley, Jr.           | Ronald Hickernell       |
| Parris Glendening             | James E. Gutman         |
| Shepard Krech                 | Kathryn Langner         |
| Victor Butanis                | G. Steele Phillips      |
| William Corkran               | Ronald Adkins           |
| Ronald Karasic                | Russell Blake           |
| Samuel Bowling                | Albert Zahniser         |
| Ronald Kreitner               | Secretary Brown of DNR  |
| Robert Shoeplein of DEED      | Secretary Cawley of DOA |
| Deputy Secretary Cade of DHCD |                         |

The minutes of the Meeting of August 2, 1989, were approved as written, although prior to the meeting, Director Ron Kreinter of the Maryland Office of Planning, wanted it noted that he had attended the August 2nd meeting.

Chairman North asked Ms. Pat Pudelkewicz to present the concept site plan for the Jefferson Patterson Park and Museum. Ms. Pudelkewicz said that the staff recommendation was that the Commission endorse Amendment B to the Master Plan subject to the individual development projects within the Critical Area being submitted to the Commission for site plan review and approval. She asked Mr. Wayne Clark, Director of the Park and Museum, to describe the proposed projects. Mr. Clark said that the concept was to use the existing buildings and limit new ones. He said that three new facilities were proposed and that the schematics would be submitted to the Commission before the end of the year.

Mr. Gutman asked what the acreage of impervious surface would be. Mr. Clark answered that porous surfaces were chosen whenever possible, and that he thought the impervious surface would measure less than an acre.

A motion was made and seconded to approve the concept plan as presented in Amendment B for the Jefferson Patterson Park and Museum. The vote was unanimously in favor.

Chairman North introduced Mr. Jonathan McKnight and Mr. John Gill of Program Open Space, DNR, to present the Department of Natural Resources' Bodkin Island Waterfowl Enhancement Project in Queen Anne's County. Mr. McKnight said that the black duck population had decreased from 200,000 in 1955, to less than 50,000 today. He explained that the Island's shoreline continues

to erode and was now 100 acres in size supporting 50 black duck nests. The problem was that the black duck requires a different type of habitat in which to brood than it does to grow, so that after the ducklings are hatched, they must traverse almost three miles across Eastern Bay to their habitat site, and approximately half of the ducklings do not survive this trek. With the assistance of the Army Corps of Engineers and the U S Fish and Wildlife Service, the project would expand the upland area on the lee side of the Island by using clean dredge spoil, to create a brood habitat adjacent to the ducks' nesting habitat.

Deputy Secretary Cade asked if this project was included in DNR's budget. Secretary Brown answered that part of the project was budgeted. He pointed out that this project would prevent shore erosion, create habitat, promote the species of black duck, and utilize clean dredge spoil.

Mr. Gutman asked what the estimated cost of this project would be. Mr. McKnight answered that at that time, because the project was in concept stage, the cost was not known.

Mr. Gill said that this project was also an experiment to see if it was possible to protect and possibly expand those islands threatened by erosion.

Chairman North said that it was an exciting proposal and that it would have the general interest and support of the Commission.

Chairman North asked Ms. Dawnn McCleary to report on the Light Rail project. Ms. McCleary reported that the Subcommittee approved the project with conditions. She said those were: 1) Baltimore County continue to work with PB/MK to satisfy the requirements of the County's Critical Area program including the 10% pollutant calculations and Stormwater and Sediment Control Plans for the County and that the Department of the Environment review and accept those plans; 2) that the Department of the Environment review and accept the 10% pollutant reduction and Stormwater and Sediment Control Plans for Baltimore City; and 3) that the Department of the Environment review and accept the Stormwater and Sediment Control Plans of the Light Rail Line including the 10% Stormwater Calculations and Sediment Control Plans for Anne Arundel County.

Mr. Gutman, said that some of the alignments for the Light Rail are being modified to some degree. He asked if any of those changes in alignment would require further consideration and reports to the Commission. Mr. Bowling, Panel Chairman, answered negatively.

A motion was made and seconded that the Commission approve the application of the Maryland Mass Transit Administration to construct a Light Rail system partially within the Critical Area of Baltimore City, Baltimore County, and Anne Arundel County with the following conditions: 1) final review by the Maryland Department of the Environment for calculations of pollutant reduction of 10% within Intensely Developed Areas; 2) final review by the Maryland Department of the Environment of sediment control plans; 3) final review by Baltimore County for consistency with the County's Critical Area Program and incorporation insofar as possible of the County's recommendations; 4) Subcommittee members and staff will meet with the Department of the Environment; and 5) offsets or fees will be required if necessary.

Mr. Gutman asked if the Commission's vote would be a final action taken on the project. Mr. Bowling answered affirmatively, unless there was found a fault in the pollutant calculations.

The vote was unanimously in favor.

Chairman North asked Mr. Ren Serey to present Baltimore City's request for concept approval to waive its Buffer offset fees, when educational facilities are proposed for location in the Buffer. Mr. Serey introduced Mr. Bob Hewitt of the Baltimore City Planning Office to explain the City's intention. Mr. Hewitt explained that as a mitigation for development in the Buffer, Baltimore City's Critical Area Program provides for payment of fees. As an alternative, the Program provides for offsets in the nature of public education programs, as permitted by the criteria.

He said that the City requests approval of the waiving of all or a portion of the fees in lieu of the Bay-related educational programs to be provided by the National Aquarium in Baltimore-Marine Mammal Pavillion; The Lady Maryland Foundation-Maritime Institute; and The Christopher Columbus Center of Marine Research and exploration.

Mr. Gutman asked if the type of education for which the facilities are now proposed would be allowed to change to something that was not Bay-related. Mr. Hewitt answered that the City would determine whether the type of use was appropriate.  
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Mr. Hickernell asked if the City had collected any monies from the offset program to date. Mr. Hewitt answered affirmatively, in the amount of \$220,000. He said that the City is finalizing the way in which the City selects projects and spends monies and had now prioritized the expenditures.

Mr. Hickernell expressed his concern that the City might be requesting special consideration.

Mr. Bowling replied that the Subcommittee did not think the City was asking for special consideration, but merely, was asking for an opinion on an approach. that was permitted by the criteria.

Mr. Hewit pointed out that he is the Critical Area Planner for the City of Baltimore and that he was not advocating these projects. He said that if the Commission disapproves of them, then the City would comply with the Commission's decision. He was there today, to obtain the Commission's opinion.

Deputy Secretary Cade remarked that there was logic to the Commission's approval in defining that these projects were non-profit, educational organizations, that are water-related, and involved in the revitalization of the Baltimore City harbor area. She further stated that it appears appropriate for the Commission to extend its approval of education in lieu of the collection of the fee, in this case.

Mr. Bostian stated that the Commission might want to keep in mind that when its members were contemplating the educational program idea, the notion of the educational program had to do specifically with the Bay and estuarine research. He suggested that the Commission should take a position that the educational program should have something to do with the Bay.

Mr. Adkins asked if the projects would improve water quality by more than 10%. Mr. Hewitt answered affirmatively and that the 10% would be exceeded. He said that none of the projects would be allowed to be excluded from the 10% rule.

A motion was made and seconded that the Commission approve the Baltimore City substitution of educational programs for Buffer-offset fees, and that the City should determine whether proposed programs are acceptable substitutes for the fees. The vote was unanimously approved.

Chairman North then summarized the issue concerning Somerset County. He said that several weeks prior, he and Dr. Taylor met with the County Commissioners and with Ronald Adkins. He asked

Mr. Butanis, Panel Chairman, reported that the Panel had met that morning and briefly reviewed the changes that the County had made, and concurred that approval can be granted.

A motion was made and seconded that the Commission, pursuant to the Critical Area Law, Section 8-1809(d), approve Caroline County's local Critical Area Program, and direct that pursuant to Section 8-1809(e), within 90 days, the County shall adopt the Program together with all relevant ordinance changes. The vote was unanimously approved.

Chairman North then asked Mr. Ventre to report on Dorchester County's Program amendment concerning the proposed Trans-Bay Ferry and the Wigglesworth property. Mr. Ventre reported that the County Commissioners had awarded growth allocation and land reclassification for these two projects and Commission approval is now being sought.

He reported that a Panel hearing had been held. One issue concerned a landowner, Mr. Wigglesworth, who owned 20 acres in the County's RCA. He requested a growth allocation of 2 acres reclassifying those acres from RCA to LDA, in order to accommodate a second residence on his property for his son's sister-in-law. Mr. Wigglesworth did not wish to subdivide, and an intrafamily transfer could not be used because the recipient would not qualify according to the Critical Area Law as an immediate family member. Mr. Ventre stated that the size of Mr. Wigglesworth's property did not meet the criteria qualifying for growth allocation. Mr. Ventre said that the Panel had met to consider these factors, and did not recommend approval for the County's amendment.

Chairman North asked what the County's position was. Mr. Ventre answered that in violation of its own ordinances, the County had awarded growth allocation.

Mr. Glendening suggested that the Commission return the amendment to the County and note that in the Commission's review, there appeared to be a conflict of the County's rule, and ask the County how the Commission should treat this.

A motion was made and seconded that the Commission return the request to the County without approval, as the proposal does not meet the eligibility requirements of the Dorchester County Subdivision Ordinance for growth allocation, specifically Section 140-51.B.(1): "...the site must be located...within a Limited Development Area to be considered for conversion to an Intensely Developed Area".

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Mr. Blake asked if the Commission received a formal written request from the County to consider this amendment. Mr. Ventre answered affirmatively.

Mr. Ventre then reported on an applicant's proposal of the development of a Ferry landing on Taylor's Island. The applicant had received from the County an award of growth allocation and a reclassification of the land in question, from RCA to IDA. He said that the land did not meet the requirements of the County's subdivision regulations pertaining to growth allocation, and that the Panel did not recommend approval of this amendment.

Chairman North introduced Emory Tamplin, Esq., of the Dorchester Bar. Mr. Tamplin said that in conversation with the County, it was found that the County had not recognized the oversight and did not realize that it had violated its own ordinances.

A motion was made and seconded that the Commission return the amendment to the County with the clear explanation that disapproval was not because of the Commission's judgement of whether or not growth allocation should be used in this instance, but because it was in violation of the County's own Program ordinances. The Commission would inform the County of its willingness to work with them toward a mutually agreeable conclusion. The vote was unanimously in favor.

Chairman North asked Mr. Larry Duket of the Maryland Office of Planning, to report on the status of the amendments procedure. Mr. Duket distributed the most recent changes to the amendments together with Mr. Epstein's comments on the changes. He suggested the Commission review both simultaneously to prepare for a discussion and vote at the next Commission meeting.

Chairman North asked Ms. Rome to report on the status of the MOU with Waterway Improvement Division. Ms. Rome reported that the Commission had been given copies of the MOU and the General Approval requested by the Waterway Improvement Division of the Boating Administration for projects involving construction of piers and boat ramps. She asked that the Commission review these, and send her any comments. She said that hopefully, there can be a vote at the next Commission meeting. The General Approval will be sent to the local jurisdictions to allow them to comment upon it.

Chairman North asked Ms. Rome to present the General Approval with the Department of Agriculture for Soil Conservation and Water Quality plans. The General Approval had been sent to

all local jurisdictions and only one of them had suggested a change.

Mr. Gutman stated that if the General Approval is approved, there would be no notification to the Commission of any activities that happen in the Critical Area in the realm of agriculture, as to whether BMPs had been employed, had been improved, etc. He said that was important for the Commission to remain informed and requested that there be an extension of 30 days before a Commission decision.

Secretary Cawley said that role of the Soil Conservation District is to assist farmers in the development of plans and the responsibility of enforcement lies with the local jurisdiction, not with the SCD. The concerns of enforcement by the local jurisdiction should have been addressed in the context of the local jurisdiction's Program.

He said that the Department agreed to report progress made in each County to develop and implement SCWQPs, and to assist the Critical Area Commission in an annual field review of planning efforts. He further stated that if this was not sufficient the Department would give the Commission an update on a quarterly basis, or whatever is requested.

A motion was made and seconded to approve the Soil Conservation and Water Quality Plan General Approval of the Department of Agriculture. The vote was 20 in favor with 2 opposed.

Chairman North asked Dr. Taylor to give a status report on the policy for expanding the 1,000-foot Critical Area initial boundary. Dr. Taylor reported that the Subcommittee had suggested a change to the policy. The change concerned Part B, "Primary Reasons for Extending the Critical Area", in that a proposal must have at least one reason from each of the categories of Habitat Protection, Water Quality, and Minimizing Impact in the Critical Area. Previously, the requirement was to have at least one reason from any of the three categories.

Mr. Corkran asked, in regard to Part C, "Supporting Reasons", why an inholding was described as having 50% or more of its boundary adjacent to the Critical Area, and could that be uniformly applied. Ms. Hairston answered that that was merely an attempt to define inholding, and that any suggestions would be welcome.

Mr. Corkran said that there needed to be a clarification.

Chairman North suggested further review of the policy and to have it presented again in October.

Chairman North asked Mr. Ventre to report on the status of Wicomico County's Program. Mr. Ventre gave an update of the County's Program development activities to date. He said that the County had made the recommended changes and the County Council held its public hearing. The Panel met with the County staff to review the outstanding issues. He said that there were two or three issues that still remained to be resolved.

Mr. Butanis, Panel Chairman, added that the Panel was unanimous in recommending that the Commission vote for approval of the Program, although the approval may need to be conditional as there are still outstanding mapping issues. These issues concerned Hitch, Benedict, Marshall, and Pemberton properties, and Mr. Bill Livingston, Planning Director, and Mr. Frank McKenzie, staff for Wicomico County Planning Office, explained what each of these entailed.

Mr. Butanis stated that the Panel had reached a consensus as to how these properties should be designated. Concerning the Hitch property, the County had agreed to let the property remain as RCA although it was formerly designated as LDA.

Concerning the Benedict and Marshall properties, Mr. Butanis said that the Panel wanted an LDA designation.

In order to reach an agreement, it was decided that the Pemberton property should be designated RCA.

Mr. Butanis said that because these designations are debatable, they needed to be brought before the Commission to decide.

Mr. Gutman asked what the number of acres was that changed from RCA to LDA and from LDA to RCA. Mr. McKenzie answered that the two parcels that the County would agree to change from LDA to RCA total 102 acres. The parcels that the County would like to remain LDA totals 70 acres.

A motion was made and seconded that the Commission approve the designation of the Hitch property on Map #7 as Resource Conservation Area; the Benedict parcel designation as Limited Development; the Marshall property be designated Limited Development Area; and the Pemberton property be designated Resource Conservation Area. The vote was 15 in favor with 3 opposed and Mr. Schoeplein abstaining.

Mr. Butanis asked Mr. Ventre to explain the mapping issue in the vicinity of Allen, along Passerdyke Creek, across from Somerset County. Mr. Ventre explained that, in the preparation of its Critical Area maps, the County did not map and classify lands in this area because there were no official State Wetlands Maps for this particular area. The County felt that, as the Critical Area Law requires the Critical Area upland boundary be mapped according to the State Wetlands Maps, no line could be demarcated. Thus, the County did not map or classify that area, leaving a "hole" in the map.

Mr. Ventre said that the County suggested dashed lines based on what appeared to be a reasonable extension of the Critical Area boundary lines.

A motion was made and seconded that in regard to the Allen area of Wicomico County, the Critical Area boundary be extended in this situation incorporating the logical area and closing the gap left between lines on the official maps. The vote was unanimously in favor.

Mr. Butanis said that another issue in the County concerned the Koppers property, an abandoned creosote plant. The County proposed to designate the property IDA in the hope that that would encourage business to decontaminate the area. Because the property is contaminated, the Health Department will not permit residences. The Panel agreed that the area should be designated IDA.

A motion was made and seconded that the Koppers property in Wicomico County be designated IDA. The vote was unanimously in favor.

A motion was made and seconded that the Commission, pursuant to the Critical Area Law, Section 8-1809(d), approve Wicomico County's local Critical Area Program, and direct that pursuant to Section 8-1809(e), within 90 days, the County shall adopt the Program together with all relevant ordinance changes. The vote was unanimously in favor.

There being no further business, the meeting was adjourned.



HEARING  
July 26, 1989

Senator Simpson  
Delegate Weir  
Myron Miller

Delegate Guns  
Delegate Sprague  
Joe Bernstein

Alexander Raisin, Kent County Commissioner President

- 1) supports compensation
- 2) 15% impervious surface rule. Maybe go above the 15% for every 1% over the 15%, and require 2% improvement to water quality for every 1 % over. Kent Co. has problems with the 15%.
- 3) administration - zoning ordinance hearing process is too cumbersome and should work the same way with an amendment to the ordinance.

? Delegate Guns - compensation. Those with the 20 acre or 30 acre parcel who cannot subdivide to sell off a lot or give to a family member are somewhat hamstrung. Also value is not there. What do we do?

Commissioner Raisin answered that if there is compensation, need it on larger lots who have had a loss.

? Senator Simpson - concerned that assessments exceed the value of the dwelling and people are on a fixed income. What do we do with these people? Raisin - circuit breaker tax. Income at certain level - certain level of tax. Perhaps controls in the assessment area.

? Delegate Guns - How much growth allocation does Kent County have? 800 acres or so left. Have used growth allocation for the towns and do not intend to use it all. If a really good project comes along, then maybe they'll use it up.

Joe Stevens, Queen Anne's County Planning Director

- 1) program amendments - hearings are too much. Need to make it a little more simple. Amendment process should work the way project evaluation should work. (Are trying to work out equity between the 30 acre vs. several hundred acres owner).
- 2) projects approved prior to Critical Area were grandfathered "insofar as possible". Little bit grey. Need to clarify this. Site plans are not mentioned in the grandfathering language. Problem with that (gave reference to a subdivision - 1954).
- 3) commercial and industrial uses in the RCA - definition needs to be addressed. 2 approaches - give specific uses, or use maps and see how the use allowed relates.
- 4) impervious cover - problems with a nonresidential use. Can cope with it for residential. Allow for a greater percentage and do it with a water quality improvement ratio. Maybe do 30% together with a 10% stormwater requirement.
- 5) funding - what the State gives is not enough, there is much more spent by the County in Critical Area.

- 6) community pier criteria - want to encourage community piers rather than individual piers. Should be able to give everyone a slip as part of the subdivision.
- 7) consistency between nontidal wetlands and the Commission.
- 8) how much of a site gets deducted from the growth allocation. Concern - vague language. May be an issue, but not yet.
- 9) assign a staff member for each jurisdiction.

? Delegate Guns - Has there been much back and forth between the local governments and the Commission? Yes, especially during implementation. Do you think that changes can now be made? That is, are the politics O.K.?

Joe Stevens - need to get the big groups behind you, such as CBF. They need to learn how something works. There may be some polarization yet remaining.

Steve Parker - Cecil County Board of Realtors

Feels that Cecil Program is moving along very well. General consensus is that Cecil Co. Plan is a model one. There is a problem with the growth allocation. Does not seem to be enough. (No specifics to back up that statement).

Discussion:

The latter two new definitions are necessary for the proposed new review procedures to work. The only issue is whether they successfully and accurately capture the Commission's perception of what each action is. The other changes are self-explanatory.

(2) Amend §8-1809, Program approval procedure

Purposes:

- A) To provide a clarification on the quadrennial local program review procedure;
- B) to provide a streamlined procedure for local program amendment review by the Commission, and clarify that the "mistake" test need not be met for map amendments that are already consistent with existing critical area designation or for the use of growth allocation.

Discussion:

The current procedure for reviewing and approving local program changes is cumbersome, time-consuming, and probably wasteful of both Commission and local jurisdiction resources. The proposed solution is to separate program changes into two categories: true "program amendments", which are essentially subject to a full Commission review and approval process; and "program refinements", changes that the Chairman is empowered to decide are less significant and substantive (with Commission override available), and which he/she is then authorized to approve or disapprove without further Commission action, hearings, etc. Among the issues for possible Commission discussion are:

- A) the concept of splitting program changes into these two categories;
- B) the concepts of the Chairman making the determination of "program refinement", the Commission override mechanism, and the Chairman's power to approve/send back a refinement;
- C) time frames for action, notice, etc.

(3) Amend §8-1809, Commission discovery of local program deficiency:

Purpose:

To permit the Commission to mandate changes to a local program when a deficiency is found that does not meet the criteria.

Discussion:

As staff works with the local programs, as projects are reviewed, and as private citizens become aware of how local programs are working, local program "deficiencies" are routinely exposed. Commonly, these are quirks of local program procedures and ordinances; gaps in program elements (e.g., the Habitat Protection Program), and ordinances (e.g., an incomplete grandfathering or other provision); and problems with how the local jurisdiction is implementing its program. Currently the Commission has no clear, articulated means for remedying this situation, short of "jaw-boning". The proposed new sub-section would provide such a mechanism, and would back it up with the ability to withhold technical or funding assistance. Among the issues for possible Commission discussion are:

- A) Does the Commission desire that authority, and how will it "play" among the local jurisdictions?
- B) Is the withholding of technical or funding assistance an effective remedy? Is it self-defeating? Are there better remedies that could be written into such a provision, or is this the best?

(4) Amend §8-1809 to permit various program amendments to be combined for a single project approval.

No discussion.

(5) Amend §8-1809, Commission enabled to amend criteria

Purpose:

To allow Commission to make substantive amendments to the criteria after two regional hearings and AELR review.

Discussion:

Currently, there is no method in the statute for the Commission to significantly amend its own regulations. It could try to do so using a process similar to that which was used initially to promulgate the criteria, with its numerous regional hearings and affirmation by the General Assembly, but there are specific inapplicable dates in the original law and other problems associated with such an attempt. The Commission, on the other hand, could seek to make substantive revisions to its Criteria by way of a Bill in the Legislature. Aside from the fact that such detail probably does not belong in the Annotated Code, such a process is fraught with potential political maneuvering and associated pitfalls. Third, the Commission could just leave its Criteria as is. Finally, the Commission could seek a statutory amendment that would empower it to amend its regulations just as any other State agency may do.

Memo: John C. North  
August 30, 1989  
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This amendment would provide that authority, and would mandate local program revisions to account for any Criteria changes within 6 months of such changes. The amendment might well generate some discussion or controversy among the local jurisdictions (although changes will often be to their benefit, as they will clarify or better define many criteria) because they will have to change recently adopted programs. The legislative committees may also not be favorable to giving the Commission this power. Further, the amendment will create a mechanism for changes, and there will constantly be pressure for those changes.

Another matter for discussion is the 6 month mandate and method for approving responsive local program changes.

### Conclusions

Finally, among the general issues the Commission should discuss and decide concerning the full package of the above-discussed proposed amendments (if the Commission is favorably disposed toward them), is: (1) how to present them to the General Assembly, i.e., as a package, or separate certain ones out, etc.; and (2) how to get them sponsored.

cc: Larry Duket, Office of State Planning

Attachment

Program Amendments and Refinements (September 6, 1989)

1. AMEND NRA 8-1802. Definitions.

Add new (a)(4) "DEVELOPMENT AREA DESIGNATION" MEANS THE DESIGNATION OF LAND IN THE CRITICAL AREA AS INTENSELY DEVELOPED, LIMITED DEVELOPMENT, OR RESOURCE CONSERVATION AREAS UNDER COMAR 14.15.02.

Add new (a)(5) "GROWTH ALLOCATION" MEANS THE AMOUNT OF ACRES THAT A LOCAL JURISDICTION MAY USE TO CREATE NEW INTENSELY DEVELOPED AND LIMITED DEVELOPMENT AREAS.

Renumber existing (a)(4) to NEW (a)(6).

Renumber existing (a)(5) to NEW (a)(7).

Amend existing (a)(6) and renumber to (a)(8) "Program" means the critical area protection program AND ALL IMPLEMENTING LAWS, ORDINANCES, AND REGULATIONS of a local jurisdiction, including any amendments OR REFINEMENTS to ~~it~~ THESE.

Add new (a)(9) "PROGRAM AMENDMENT" MEANS ANY CHANGE TO AN ADOPTED PROGRAM WHICH THE COMMISSION DETERMINES WILL RESULT IN A USE OF LAND OR WATER IN THE CRITICAL AREA IN A MANNER NOT PROVIDED FOR IN THE ADOPTED PROGRAM, INCLUDING, BUT NOT LIMITED TO, A CHANGE TO A ZONING MAP THAT IS NOT CONSISTENT WITH THE DEVELOPMENT AREA DESIGNATION OF THE ADOPTED PROGRAM, AND A USE OF GROWTH ALLOCATION THAT IS NOT CONSISTENT WITH THE METHOD FOR DEDUCTING GROWTH ALLOCATION CONTAINED IN THE ADOPTED PROGRAM.

Add new (a)(10) "PROGRAM REFINEMENT" MEANS ANY CHANGE TO AN ADOPTED PROGRAM WHICH THE COMMISSION DETERMINES WILL RESULT IN A USE OF LAND OR WATER IN THE CRITICAL AREA IN A MANNER ALREADY PROVIDED FOR IN THE ADOPTED PROGRAM, INCLUDING, BUT NOT LIMITED TO, A CHANGE TO A ZONING MAP THAT IS CONSISTENT WITH THE DEVELOPMENT AREA DESIGNATION OF THE ADOPTED PROGRAM, AND THE USE OF GROWTH ALLOCATION IN ACCORDANCE WITH THE METHOD FOR DEDUCTING GROWTH ALLOCATION CONTAINED IN THE ADOPTED PROGRAM.

Amend existing (a)(7) and renumber to NEW (a)(11) "Project Approval" means the approval of development...authority. The term includes approval of REZONINGS, subdivision plats, and site plans;...and conditional use permits; and issuance of zoning permits. (Note: Definition of "Project Approval" in Criteria also amended)

2. AMEND NRA 8-1809. Approval and Adoption of Program.

Amend existing (g) Proposed amendments AND REFINEMENTS. -- Each local jurisdiction shall review and ~~propose any necessary amendments to~~ its ENTIRE program, including local zoning maps, at least ONCE every four years, ~~Amendments shall be submitted to and acted on by the Commission in the same manner as the original program~~ BEGINNING WITH THE FOUR YEAR ANNIVERSARY OF THE DATE THAT THE ADOPTED PROGRAM BECAME EFFECTIVE, AND EVERY FOUR YEARS THEREAFTER. EACH LOCAL JURISDICTION SHALL SEND IN WRITING TO THE COMMISSION, WITHIN 60 DAYS OF EACH FOUR YEAR ANNIVERSARY, THE FOLLOWING:

- (1) A STATEMENT CERTIFYING THAT THE REQUIRED REVIEW HAS BEEN ACCOMPLISHED;
- (2) ANY NECESSARY REQUESTS FOR PROGRAM AMENDMENTS, REFINEMENTS, OR OTHER MATTERS WHICH THE LOCAL JURISDICTION WISHES THE COMMISSION TO CONSIDER;
- (3) AN UPDATED RESOURCE INVENTORY; AND
- (4) A STATEMENT QUANTIFYING ACREAGES WITHIN EACH LAND CLASSIFICATION, GROWTH ALLOCATION USED, AND GROWTH ALLOCATION REMAINING.

THE COMMISSION MAY WITHHOLD OR DENY STATE TECHNICAL OR FUNDING ASSISTANCE FOR LOCAL PROGRAM ACTIVITIES IF A LOCAL JURISDICTION FAILS TO COMPLY WITH THIS SUBSECTION.

Add new (h) PROPOSED AMENDMENTS AND REFINEMENTS. -- AS NECESSARY, BUT NOT MORE THAN FOUR TIMES PER CALENDAR YEAR, EACH LOCAL JURISDICTION MAY PROPOSE AMENDMENTS AND REFINEMENTS TO ITS ADOPTED PROGRAM. EXCEPT FOR AMENDMENTS OR REFINEMENTS DEVELOPED DURING PROGRAM REVIEW UNDER SUBSECTION (g) OF THIS SECTION, A ZONING MAP AMENDMENT MAY BE GRANTED BY A LOCAL APPROVING AUTHORITY ONLY ON PROOF OF A MISTAKE IN THE EXISTING ZONING. THE REQUIREMENT IN THIS SUBSECTION THAT A ZONING MAP AMENDMENT MAY BE GRANTED ONLY ON PROOF OF A MISTAKE SHALL NOT APPLY TO PROPOSED CHANGES TO A ZONING MAP THAT ARE CONSISTENT WITH THE DEVELOPMENT AREA DESIGNATIONS IN THE ADOPTED PROGRAM, OR THAT PROVIDE FOR THE USE OF GROWTH ALLOCATION.

Amend existing (h) and renumber to (i) Program not to be amended OR REFINED without approval of Commission. -- A program may not be amended OR REFINED except with the approval of the Commission. ~~Except for existing zoning~~

Amend existing (i) and renumber to new (j) Standards for approval by Commission. -- The Commission shall approve programs, and amendments AND REFINEMENTS that meet:...this subtitle.

Renumber existing (j) to new (k).

Add new (1) NOTIFICATION OF PROGRAM DEFICIENCY BY THE COMMISSION. -- IF THE COMMISSION DISCOVERS THAT AN ADOPTED PROGRAM WILL NOT ACHIEVE THE GOALS OF THE LAW AND CRITERIA, IT SHALL THEN NOTIFY THE LOCAL JURISDICTION OF THE SPECIFIC DEFICIENCY AND REQUEST THAT THE JURISDICTION SUBMIT A PROPOSED AMENDMENT OR REFINEMENT TO CORRECT THE DEFICIENCY. WITHIN 90 DAYS, THE LOCAL JURISDICTION SHALL SUBMIT TO THE COMMISSION, AS PROGRAM AMENDMENTS OR REFINEMENTS, SUCH PROPOSED CHANGES AS ARE NECESSARY TO CORRECT ANY DEFICIENCY OF WHICH IT IS NOTIFIED BY THE COMMISSION, IN ORDER TO REMAIN ELIGIBLE FOR STATE TECHNICAL OR FUNDING ASSISTANCE FOR LOCAL PROGRAM ACTIVITIES.

Add new (m) PROCEDURES FOR PROGRAM AMENDMENTS AND REFINEMENTS. THE COMMISSION MAY PROMULGATE REGULATIONS THAT DESCRIBE THE PROCEDURES AND INFORMATION REQUIREMENTS FOR PROGRAM AMENDMENTS AND REFINEMENTS. IN THE ABSENCE OF SUCH REGULATIONS, LOCAL JURISDICTIONS MAY PROPOSE CHANGES TO ADOPTED PROGRAMS AND WITHIN 14 WORKING DAYS OF RECEIVING A PROPOSAL, THE COMMISSION SHALL ACCEPT THE PROPOSAL FOR PROCESSING, OR RETURN THE PROPOSAL AS INCOMPLETE. A LOCAL JURISDICTION MAY SPECIFY WHETHER IT INTENDS A PROPOSED CHANGE TO BE A PROGRAM AMENDMENT OR REFINEMENT. HOWEVER, THE COMMISSION SHALL TREAT A PROPOSED CHANGE AS A PROGRAM AMENDMENT UNLESS THE CHAIRMAN DETERMINES THAT IT IS A PROGRAM REFINEMENT.

FOR PROPOSED PROGRAM AMENDMENTS, A COMMISSION PANEL MAY HOLD A PUBLIC HEARING IN THE LOCAL JURISDICTION AND A QUORUM OF THE COMMISSION SHALL ACT UPON THE PROPOSED AMENDMENT WITHIN 90 DAYS OF THE COMMISSION'S ACCEPTANCE OF THE PROPOSAL. IF ACTION IS NOT TAKEN WITHIN 90 DAYS, THE PROPOSED AMENDMENT IS DEEMED APPROVED. THE LOCAL JURISDICTION SHALL INCORPORATE THE APPROVED AMENDMENT INTO THE ADOPTED PROGRAM WITHIN 120 DAYS OF RECEIVING NOTICE FROM THE COMMISSION THAT THE AMENDMENT HAS BEEN APPROVED.

PROPOSED PROGRAM REFINEMENTS SHALL BE DECIDED AS FOLLOWS:

- (1) THE CHAIRMAN MAY, ON BEHALF OF THE COMMISSION AND WITHIN 30 DAYS OF THE COMMISSION'S RECEIPT OF A PROPOSED CHANGE TO AN ADOPTED PROGRAM, DETERMINE THAT THE PROPOSED CHANGE IS A PROGRAM REFINEMENT. THE COMMISSION SHALL NOTIFY THE LOCAL JURISDICTION WHEN A PROPOSED CHANGE THAT WAS SPECIFICALLY INTENDED TO BE A REFINEMENT WAS NOT ACTED ON BY THE CHAIRMAN WITHIN THE 30 DAY PERIOD AND SHALL INFORM THE JURISDICTION THAT THE PROPOSAL HAS BEEN DEEMED A PROGRAM AMENDMENT.

(2) THE COMMISSION MAY OVERRIDE THE CHAIRMAN'S DETERMINATION ONLY BY A MAJORITY VOTE OF A QUORUM TAKEN AT THE FIRST COMMISSION MEETING THAT FOLLOWS THE CHAIRMAN'S DETERMINATION. IF THE CHAIRMAN'S DETERMINATION IS OVERRIDDEN, THE PROPOSED CHANGE IS DEEMED A PROGRAM AMENDMENT AND SHALL BE DECIDED BY THE COMMISSION IN ACCORDANCE WITH THE PROCEDURES FOR PROGRAM AMENDMENTS SET FORTH IN THIS SECTION, EXCEPT THAT THE COMMISSION SHALL ACT ON THE AMENDMENT WITHIN 60 DAYS OF ITS VOTE TO OVERRIDE THE CHAIRMAN.

(3) IF THE CHAIRMAN'S DETERMINATION IS NOT OVERRIDDEN, THE CHAIRMAN, ON BEHALF OF THE COMMISSION, SHALL THEN APPROVE THE PROPOSED REFINEMENT OR SEND IT BACK TO THE LOCAL JURISDICTION FOR THE MAKING OF SPECIFIC CHANGES. WITHIN 14 WORKING DAYS OF RECEIVING A CHANGED REFINEMENT, THE CHAIRMAN SHALL APPROVE OR DENY THE REFINEMENT. THE LOCAL JURISDICTION SHALL INCORPORATE AN APPROVED REFINEMENT INTO THE ADOPTED PROGRAM WITHIN 120 DAYS OF RECEIVING NOTICE FROM THE COMMISSION THAT THE REFINEMENT HAS BEEN APPROVED.

Add new (n) AMENDMENTS AND REFINEMENTS IN CONNECTION WITH PROJECT APPROVAL. -- AS NECESSARY, A LOCAL JURISDICTION MAY COMBINE ANY OR ALL PROPOSED PROGRAM AMENDMENTS OR REFINEMENTS REQUIRED FOR A SPECIFIC PROJECT APPROVAL INTO A SINGLE REQUEST TO THE COMMISSION FOR PROGRAM AMENDMENT OR REFINEMENT. APPROVAL BY THE COMMISSION OF AN AMENDMENT OR REFINEMENT DOES NOT AFFECT THE COMMISSION'S AUTHORITY TO RECEIVE NOTICE OF, OR INTERVENE IN, A PROJECT APPROVAL THAT WAS NOT SPECIFICALLY APPROVED BY THE COMMISSION AS PART OF ITS APPROVAL OF AN AMENDMENT OR REFINEMENT.

Add new (o) AMENDMENTS TO THE CRITERIA. AFTER THE INITIAL PROMULGATION OF THE CRITERIA FOR PROGRAM DEVELOPMENT ON OR BEFORE DECEMBER 1, 1985, AND THEIR AFFIRMATION BY THE GENERAL ASSEMBLY, THE COMMISSION MAY, FROM TIME TO TIME, MAKE SUCH AMENDMENTS TO THE CRITERIA AS IT DEEMS NECESSARY AND APPROPRIATE.

(1) PRIOR TO PROMULGATING ANY SUCH CHANGES, A PANEL OF THE COMMISSION SHALL HOLD AT LEAST TWO PUBLIC HEARINGS, ONE ON THE EASTERN SHORE AND ONE ON THE WESTERN SHORE OF THE CHESAPEAKE BAY.

(2) THE COMMISSION SHALL FOLLOW ALL OF THE PROCEDURES FOR ADOPTING RULES OR REGULATIONS SET OUT IN TITLE 2, SUBTITLE 5 (JOINT COMMITTEE ON ADMINISTRATIVE, EXECUTIVE, AND LEGISLATIVE REVIEW) AND TITLE 10, SUBTITLE 1 (ADMINISTRATIVE PROCEDURES ACT) OF THE STATE GOVERNMENT ARTICLE, IN AMENDING THE CRITERIA.

(3) WITHIN SIX MONTHS AFTER THE PROMULGATION OF AMENDED CRITERIA, THE LOCAL JURISDICTION SHALL SEND TO THE COMMISSION, AS PROPOSED PROGRAM AMENDMENTS OR REFINEMENTS, CHANGES TO ADOPTED PROGRAMS THAT ADDRESS THE AMENDED CRITERIA, OR SHALL SEND TO THE COMMISSION A STATEMENT CERTIFYING THAT THE ADOPTED PROGRAM IS CONSISTENT WITH THE AMENDED CRITERIA.

J. JOSEPH CURRAN, JR.  
ATTORNEY GENERAL  
JUDSON P. GARRETT, JR.  
CHARLES O. MONK, II  
DENNIS M. SWEENEY  
DEPUTY ATTORNEYS GENERAL



STATE OF MARYLAND  
OFFICE OF  
THE ATTORNEY GENERAL  
DEPARTMENT OF NATURAL RESOURCES  
TAWES STATE OFFICE BUILDING  
ANNAPOLIS, MARYLAND 21401  
(301) 974- 2251

July 7, 1989

MEMORANDUM

*Staff + members*  
THOMAS A. DEMING  
ASSISTANT ATTORNEY GENERAL  
COUNSEL TO SECRETARY

M. BRENT HARE  
JUDITH F. PLYMYER  
MARIANNE D. MASON  
PAMELA D. ANDERSEN  
LEE R. EPSTEIN  
MAUREEN O'F. GARDNER  
PAMELA P. QUINN  
SEAN COLEMAN  
JODI R. O'DAY  
ASSISTANT  
ATTORNEYS GENERAL

**RECEIVED**

JUL 10 1989

DNR  
**CRITICAL AREA COMMISSION**

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

Sarah Taylor, Executive Director ✓  
Chesapeake Bay Critical Areas Commission

FROM: Lee R. Epstein  
Assistant Attorney General

SUBJECT: Panel reviews and reporting on local programs and  
program amendments

On several recent occasions, I have observed Commission panel action that may not be completely in accord with the limited role that panels have been given under the Critical Area law (see my memorandum of advice of June 16, 1986). The central tenet of my earlier advice was that the panels' role is quite limited, to that of a hearing body which passes on to the full Commission information received at the hearing on the local program or program amendment. The panels may also make recommendations to the full Commission concerning a program or amendment, but only the Commission as a whole is empowered to approve or disapprove and send back with changes the local submissions.

What has been observed over the past year is a willingness on the Commission's part to "leave to the panels" all the details, discussions, negotiations, and even compromises over a particular matter, such that what comes before the Commission is a "fait accompli", with the panel chair and staff announcing that "all outstanding issues have been resolved" and seeking Commission approval of the program or amendment as a whole. I believe such a process is flawed.

If the Commission must, by virtue of work load, economy and efficiency, and administrative reality, rely on a small number of its members to concentrate on a particular jurisdiction's proposals and make recommendations thereon, such a process must also recognize its own limitations. Too often, I believe, many of the contentious and difficult issues that surround a particular local proposal are compromised and bargained solely by the panel toward the admittedly wished-for goal of accomodating all interests equitably and putting the local proposal in place. The Commission, in voting the proposal, may have little or no idea of the actual extent of these controversies, or the impact of the compromises. Instead, the briefest of outlines of the "remaining issues" is often discussed, assurances by the panel that these have been suitably "worked out" is received, and the Commission votes with the panel's recommendation for approval. Quite simply, I believe more full-Commission attention is required.

I recommend that both staff and panel brief the full commission in (perhaps more agonizing, but necessary) detail on program proposals, issues raised therein, and panel and staff recommendations. If a panel is split, for example, or if "negotiations" have occurred over a long period of time, I do not believe that a panel should necessarily continue to "negotiate" for the full Commission; rather, the issues and positions should be made known to the full Commission, which should then render a decision or itself continue negotiations. This is not to say that local jurisdictions and the Commission should cease negotiating or, if settlement on an item appears close, should cut off discussion. Rather, I believe that since panels cannot represent full Commission views, their negotiations should be limited and tightly constrained, and full Commission discussion and decision on various issues should be more regular.

The consequences of almost total reliance on panels (and even on panels with staff) can be significant. Issues of broad import Bay Critical Area-wide could be essentially decided by a panel for one jurisdiction without wider exposure; or, programs, parts of programs, or amendments to programs could be approved on panel recommendation without their broader implications ever being voiced or discussed among the full Commission -- as has indeed happened on more than one occasion.

I believe the remedy is to provide stronger and renewed guidance to the Commission on the proper role of panels, and to insist on full staff briefings to the Commission on all matters either under discussion at particular points along the way, or certainly prior to Commission vote on a local proposal. This would necessarily imply more than a report that "the issues have been narrowed to one or two, and here is what they are", and rather should be constructed as "the issues under discussion for the past two months were A (with some detail), B (the same), C (etc.), D, E, and F, and we propose to have the Commission resolve them thusly (with some detail), leaving only G and H for

John C. North, Chairman

July 7, 1989

Page 3

resolution . . .". In this way, the Commission's decision-making role is adequately protected, a record of decision is created, and issues of (perhaps) wide implication are broadly aired and reviewed.

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

LRE/cjw

p. 11. Refer to Buffer as a minimum of 100 feet. Corps does not determine non-tidal wetlands, use U.S.F & WS. Change Natural Heritage Program to Forest Park and Wildlife Service.

p. 11 so noted in all cases.

p. 72. Need hearings process for Non-Tidal Wetlands.

p. 71 incorporated.

p. 76 Define Species in Need of Conservation and Threatened and Endangered Species.

p. 75 done.

p. 77. Add hearing process for Threatened and Endangered Species.

p. 76 done.

p. 80 Add hearing process for Plant and Wildlife Habitats

p. 79 added.

p. 82. Change date for instream disturbance from May 15 to June 15 for anadromous fish.

p. 81 changed

p. 121. Grandfathered lots are not exempt from 14.15.03 or 14.15.09.

p. 120. eliminated and corrected to reflect the criteria.

Please note that there were other comments made in the draft submitted document which are quite detailed and not necessary to include in this summary. The corrections were made to these detailed comments. The documents are available for examination if requested by any Commission member.

SUBCOMMITTEE REPORT

September 6, 1989

JURISDICTION: Baltimore City

ISSUE: Whether Baltimore City can accept educational programs as substitution for Buffer-offset fees?

RECOMMENDATION: APPROVAL: The Criteria permit Buffer-offset fees to be used for educational programs; the City can determine whether proposed programs are acceptable substitutes for the fees.

DISCUSSION:

As mitigation for development in the Buffer, Baltimore City's Critical Area Program provides for payment of fees. As an alternative, the Program provides for offsets in the nature of public education programs, as permitted by the Criteria.

The City is requesting Commission approval of the concept of waiving all or a portion of the fees in lieu of the educational programs to be provided by:

The National Aquarium in Baltimore- Marine Mammal Pavilion;  
The Lady Maryland Foundation- Maritime Institute;  
The Christopher Columbus Center of Marine Research and Exploration.

The Subcommittee asked Lee Epstein to investigate the concept of substituting educational programs for the fees. Lee's opinion is that the concept is consistent with the policy objectives of the Criteria.

Staff:  
Ren Serey

CENTRAL LIGHT RAIL  
STAFF REPORT

APPLICANT: MASS TRANSIT ADMINISTRATION, PB/MK

PROJECT REVIEWS FOR: BALTIMORE CITY, BALTIMORE COUNTY, AND  
ANNE ARUNDEL COUNTY

DATE: SEPTEMBER 6, 1989

STAFF RECOMMENDATIONS: Approval with conditions  
(see ¶ conditions below)

CONDITIONS:

BALTIMORE COUNTY:

That Baltimore County continue to work with PB/MK to satisfy the requirements of Baltimore County's Critical Area Program including the 10% pollutant reduction calculations and Stormwater and Sediment Control plans for Baltimore County; and that the Maryland Department of the Environment review the Stormwater and Sediment Control Plans

BALTIMORE CITY:

That Maryland's Department of the Environment review the 10% pollutant reduction and Stormwater and Sediment Control Plans.

ANNE ARUNDEL COUNTY:

That Maryland's Department of the Environment review the Stormwater and Sediment Plans of the Light Rail Line including the 10% Stormwater Calculations and Sediment Control plans for Anne Arundel County.

STAFF PERSON:

Dawnn McCleary

## SUMMARY OF LIGHT RAIL LINE

LIGHT RAIL SITE: BALTIMORE COUNTY

### SITE, LOCATION AND DESCRIPTION OF PROJECT:

Baltimore County's Light Rail Line impacts in the Critical Area.

The proposed CLRL alignment crosses through the critical area of Baltimore County primarily along the existing Baltimore and Annapolis Railroad right of way. In this area, approximately 6,300 linear feet of track are located within the critical area. In addition to the track, the proposed Baltimore Highlands stop is also located within the critical area. The proposed stop is located east of Baltimore Street between Georgia and Florida Avenues. Limited parking will be located adjacent to the track. The proposed alignment and stop will be located primarily on the Baltimore and Annapolis Railroad right-of-way although CSX right-of-way adjacent to the Baltimore and Annapolis will also be used and is intended for acquisition. Each of the right-of-ways is approximately 66 feet wide.

Current plans (dated July 1989) call for a 46 space parking lot and a single platform station. The MTA is proposing to operate the CLRL at 15 minute headways (one train in each direction every 7.5 minutes).

Currently, the Baltimore and Annapolis Railroad serves one customer (a printing operation) at the southern end of the line near Dorsey Road. This involves approximately three trains consisting of six to ten cars each week. While the CLRL will increase the frequency of rail service in the corridor, the use of electric power as opposed to diesel will be much quieter and cleaner. Rail transit, including light rail transit is a transportation control measure in the state's implementation plan for reducing hydrocarbon emissions and obtaining regional air quality standards.

Construction of the CLRL will include the rehabilitation of the existing trackway, although short stretches of new track will be required in some locations. The plans indicate where a second parallel track will be constructed in the future, when demand warrants expansion of the system. Track rehabilitation will involve the removal of the existing ties, ballast and rail and replacement with new ties and ballast, as well as continuously

welded rail to reduce train wheel and rail noise. The track embankment and slopes will be shaped and ditches will be cleaned of debris. Erosion and sediment control and stormwater management plans are included in the contract documents.

Construction of the Baltimore Highlands stop parking area will include approximately 0.5 acres of impervious surface for the 46 parking spaces and the access drive. A stormwater management facility will be provided on the north side of the parking area. Landscaping and lighting will also be provided. \*\*\*

\*\*\* (NOTE: Information cited from final copy of the "Chesapeake Bay Critical Area Commission Report for MTA's Central Light Rail Line, Balto. County, Md. Aug. 1989". Prepared by PB/MK", pp.1-2.)

CITY/COUNTY RECOMMENDATIONS, CHANGES OR COMMENTS:

Baltimore County needs to send an official letter outlining what MTA needs to revise in the Baltimore County's Light Rail Report for final approval.

STATUS OF STORMWATER/SEDIMENT ISSUES:

The Critical Area staff would like the Maryland Department of the Environment to review the Stormwater/Sediment Control Plans including the 10% pollutant calculations.

STAFF ANALYSIS:

Critical Area staff is still reviewing and making comments to the first draft report of Baltimore County's Light Rail Line.

## SUMMARY OF LIGHT RAIL LINE

LIGHT RAIL SITE: BALTIMORE CITY

### SITE, LOCATION, AND DESCRIPTION OF PROJECT:

Baltimore City's Light Rail Line will impact in the Critical Area.

The proposed light rail alignment crosses through the Critical Area of Baltimore from Howard and West Street southward just west of the Animal Shelter, across Middle Branch, under the I-395/95 ramps, and south along the existing rail alignment on Kloman Street. It then crosses Waterview Avenue and continues slightly west of the present rail alignment between Cherry Hill Road and I-295, (see attached plan). Portions of the line will be at-grade, while others will be on aerial structures. Figure 1 lists the segments of the alignment which are aerial and at-grade, and which are pervious and impervious at the present time. Most of the land in the Critical Area is rather flat, with elevations ranging from sea level to 30' feet. \*\*

\*\* (NOTE: The information was cited from the final copy of the "Chesapeake Bay Critical Area Commission Report for MTA's Light Rail Line in Baltimore City, Md. Jan. 1989, update June 1989 and revised July, 1989". Prepared by Nancy Kelly and Betsy Wurstsbakugh, under subcontract to PB/MK, p.1.)

### CITY/COUNTY RECOMMENDATIONS, CHANGES OR COMMENTS:

The City of Baltimore in a letter dated July 26, 1989 informed the Critical Area staff and PB/MK what changes were needed to make the Light Rail segment in Baltimore City comply with Baltimore City's Critical Area Program. On Aug. 9, 1989, a meeting with Baltimore City's staff and PB/MK took place where PB/MK went over new July, 1989 revisions to the updated June, 1989 report.

### STATUS OF STORMWATER/SEDIMENT ISSUES:

The Critical Area staff would like Maryland's Department of the Environment review the Stormwater/Sediment Control Plans including the 10% pollutant calculations.

STAFF ANALYSIS:

The Critical Area staff does not have any problems with Baltimore City's report except the 10% pollutant calculations for Intensely Developed Areas (IDA); which the staff will seek review from MDE.

## SUMMARY OF CENTRAL LIGHT RAIL LINE

LIGHT RAIL SITE: ANNE ARUNDEL COUNTY

### SITE, LOCATION AND DESCRIPTION OF PROJECT:

Anne Arundel County's Light Rail Line will impact in the Critical Area.

The proposed light rail alignment crosses through the Critical Area of Anne Arundel County on the existing railroad track bed, entering the County at the Patapsco River in North Linthicum at the east end of Nursery Road. A station and small parking area are planned at the end of Nursery Road. The proposed parking lot is already paved and has been used as a storage and repair lot for used cars. The location of the station is within the existing railroad right-of-way and is mostly disturbed.

Current plans (dated 5/31/89) call for a 37-space parking lot, and a double platform station (see Figure 3). MTA is proposing to run light rail transit service, at 15 minute headways (one train in each direction every 7 1/2 minutes) on the existing B&A Railroad right of way.

Currently, the Baltimore and Annapolis Railroad serves one customer (a printing operation) at southern end of the line near Dorsey Road. This involves approximately three trains consisting of six to ten cars each week. While the LRT will increase the frequency of rail service in the corridor, the use of electric power as opposed to diesel will be much quieter and cleaner. Rail transit, including LRT is a transportation control measure in the state's implementation plan for reducing hydrocarbon emissions and obtaining regional air quality standards.

As much as possible, the LRT is being designed to be constructed within the right of way of the B&A Railroad. However, in the area of this project, the MTA plans to acquire parcel No. 229, a parcel in private ownership; located on the northeast corner of the intersection of Baltimore and Annapolis Boulevard and Nursery Road. At this time, it is MTA's intent to construct the required facilities within the

existing right of way and parcel No. 229. No other parcels are needed. Adjacent parcel No. 259 will have access from Baltimore Annapolis-Boulevard via a driveway (see Figure 3). However, these plans are subject to change, if needed, based upon final design refinements.

Construction of the facility will also include the rehabilitation of the existing trackway. This effort will involve the removal of the existing ties, ballast and rail and their replacement with new ties and ballast, as well as continuously welded rail to reduce train wheel and rail noise. The track embankment and slopes will be shaped and ditches will be cleaned of debris. \*

\*(NOTE: Cited from "Chesapeake Bay Critical Area Commission for MTA's Central Light Rail Line, Nursery Road Station and Parking Lot, Anne Arundel County, June 1989" prepared by Nancy G. Kelly and Betsy Wurtsbaugh under sub-contract to PB/MK, pp.1 and 2.)

CITY/COUNTY RECOMMENDATIONS, CHANGES OR COMMENTS:

Anne Arundel County in a letter dated July 10, 1989, informed the Critical Area staff and PB/MK what changes were needed to make the Light Rail segment in Anne Arundel County comply with Anne Arundel County's Critical Area program. PB/MK made the changes to Anne Arundel County's Light Rail report and sent back the revised reports with the new changes added. Staff assigned to Anne Arundel County's Light Rail reviewed and approved the Light Rail report. Anne Arundel County's Office of Planning and Zoning are satisfied with the Light Rail and feels it is consistent with the County's Critical Area program.

STATUS OF STORMWATER/SEDIMENT ISSUES:

The Critical Area staff would like the Maryland Department of the Environment (MDE) to review the Stormwater/Sediment Control Plans including the 10% pollutant reductions calculations.

STAFF ANALYSIS:

The Critical Area staff does not have any problems with the Anne Arundel County report except the 10% pollutant calculations for Intensely Developed Areas (IDA); which the staff will seek review from MDE.

Motion for approval of the Maryland Mass Transit Administration's  
Central Light Rail Line

...motion to approve the application of the Maryland Mass Transit Administration to construct a Light Rail System partially within the Critical Area within Baltimore City, Baltimore County and Anne Arundel County with the following conditions:

- 1) final review by the Maryland Department of Environment of calculations for pollutant reductions of 10% within Intensely Developed Areas;
- 2) final review by the Maryland Department of Environment of sediment control plans;
- 3) final review by Baltimore County for consistency with the County's Critical Area Program and incorporation insofar as possible of Baltimore county's recommendations.

4) subcommittee members and staff  
will meet with MDC

5) offsets or fees will be required if  
necessary

CHESAPEAKE BAY CRITICAL AREA COMMISSION  
275 West Street, Suite 320  
Annapolis, Maryland 21401  
301-974-2426

MEMORANDUM

TO: Commission Members  
FROM: ~~Tera~~ Lisa Harnish  
SUBJ: Change in Mileage Reimbursement  
DATE: August 25, 1989

The reimbursement for mileage has been raised to .23¢ per mile. Please make a note of this memo, so that when you do your next Expense Account Reports they will have the correct amount for mileage and the totals.

Thank you.

SUBCOMMITTEE REPORT

September 6, 1989

JURISDICTION: Baltimore City

ISSUE: Whether Baltimore City can accept educational programs as substitution for Buffer-offset fees?

RECOMMENDATION: APPROVAL: The Criteria permit Buffer-offset fees to be used for educational programs; the City can determine whether proposed programs are acceptable substitutes for the fees.

DISCUSSION:

As mitigation for development in the Buffer, Baltimore City's Critical Area Program provides for payment of fees. As an alternative, the Program provides for offsets in the nature of public education programs, as permitted by the Criteria.

The City is requesting Commission approval of the concept of waiving all or a portion of the fees in lieu of the educational programs to be provided by:

The National Aquarium in Baltimore; Marine Mammal Pavilion;  
The Lady Maryland Foundation- Maritime Institute;  
The Christopher Columbus Center of Marine Research and Exploration.

The Subcommittee asked Lee Epstein to investigate the concept of substituting educational programs for the fees. Lee's opinion is that the concept is consistent with the policy objectives of the Criteria.

Staff:  
Ren Serey