

Commission Meetings & Corresp.

Apr 1990

MSA_S1832-69



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

March 19, 1990

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 April 4th meeting of the Commission is scheduled for 1:00 p.m. at the Commission offices, 275 West Street, Suite 320, Annapolis, Maryland. Sub-committee meetings will be held in the morning.

Enclosed for your information is a copy of the Agenda for the meeting and the Minutes of March 7th. Please bring a copy of the Oil and Gas Regulations as they are the focus for discussion and must be approved at the May 3rd meeting.

I anticipate a lengthy meeting and ask that we start promptly at 1:00 p.m. Please call Mrs. Peggy Mickler by March 29th if you are unable to attend.

Yours very truly,

Judge John C. North, II
Chairman

JCN\pgm

Enclosures: cited

cc: Dr. Ken Schwartz, MGS
Mr. Thomas A. Deming, AAG

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

PRELIMINARY AGENDA

CHESAPEAKE BAY CRITICAL AREA COMMISSION

275 West Street
Suite 320
Annapolis, Maryland 21401

April 4, 1990

9:00 - 12:00 SPECIAL ISSUES SUBCOMMITTEE MEETING
with Department of the Environment, Fish and Wildlife
Service and Soil Conservation District

10:30 - 11:30 PROJECT EVALUATION SUBCOMMITTEE

10:30 - 11:30 PROGRAM AMENDMENT AND IMPLEMENTATION SUBCOMMITTEE

12:00 - 1:00 LUNCH

1:00 - 1:15 Approval of Minutes of Judge John C. North, II
March 7, 1990 Chairman

PROGRAM AMENDMENTS AND IMPLEMENTATION

1:15 - 1:30 Vote - Program Amendments James E. Gutman, Chairman
for Queen Anne's County Pat Pudelukewicz

- ✓ 1) Thompson Creek Townhomes *appr.*
- ✓ 2) Text Amendment *approved*

1:30 - 1:45 Vote - Approval of Worcester Bill Bostian, Chairman
County Program Tom Ventre

conditionally approved

1:45 - 2:00 Vote - Program Amendment for Kay Langner, Chairman
Town of North East Anne Hairston

Annexation of Portion of
Cecil County by Town of *approved*
North East

PROJECT EVALUATION

2:00 - 2:15 Vote - Tentative - State Project Sam Bowling/
Kay Langner
Dawnn McCleary

Point Lookout State Park's
Wastewater Treatment Plant and
Operating Lift Stations
St. Mary's Co., Maryland
Environmental Services (MES)

*Manskin Aquifer
Paluxent Aquifer Below - high Fe*

Preliminary Agenda
Page Two

2:15 - 3:00 Vote - Tentative -
Queen Anne's County
Golf Course

Ren Serey

3:00 - 3:15 Vote - Tentative -
State Project
Police Academy /
Maryland Transportation
Authority

Susan Lawrence
Ren Serey

*revised site plan approved
SWM on roads & planted buffer*
REGULATIONS AND LEGISLATION

3:00 - 4:45 Oil and Gas Regulations
Questions and Discussion

Liz Zucker,
Dr. Ken Schwarz, MGS
Tom Deming

4:45 - 5:00 Old Business
New Business

Judge John C. North, II

Next Commission Meeting: May 3rd, 1990, Critical Area Commission
Offices

CHESAPEAKE BAY CRITICAL AREA COMMISSION

Minutes of Meeting Held
March 7, 1990

The Chesapeake Bay Critical Area Commission met at Great Oak Landing, Chestertown, Maryland. The meeting was called to order by Acting Vice Chairman, Mr. Victor Butanis, with the following Members in attendance:

Roger Williams	Albert Zahniser
Samuel Bowling	James E. Gutman
William Corkran, Jr.	William Bostian
Ronald Hickernell	Thomas Jarvis
Shepard Krech, JHr.	Kathryn Langner
G. Steele Phillips	Parris Glendening
Louise Lawrence of DOA	Ronald Kreitner of MOP
Deputy Secretary Griffin of DNR	Robert Schoeplein of DEED

It is to be noted that a copy of the court-reported transcript of this meeting would be made available at the Commission office.

Dr. Taylor introduced the new Commission staff persons, Ms. Peggy Mickler, who was now the Commission Secretary, and Ms. Claudia Jones who was the new Natural Resource Planner III, replacing Ms. Abi Rome. Dr. Taylor then introduced two interns from the University of Maryland, Ms. Theresa Corless and Mr. Carmen Gilotte, who would be working on counting the number of grandfathered lots in RCAs of the 16 counties, and evaluating the counties' growth allocation programs.

Dr. Taylor announced that the Commission's Assistant Attorney General, Mr. Lee Epstein was leaving the Commission as of the end of March to work for the private sector at the firm of Linnowes and Blocher. Mr. Epstein said that to have worked with as dedicated a Commission, on a State Program that was as far reaching as the Critical Area Program, had been a privilege, and he wished the Commission the best.

Dr. Taylor and the Commission then thanked Mr. Epstein for all of his working efforts and his accomplishments with the Critical Area Program.

The Minutes of the Meeting of February 7th, 1990, were approved as written.

Mr. Butanis asked Mr. Sam Bowling to report on the map amendments for the Town of Chesapeake Beach.

Mr. Bowling reported that the Panel was prepared to recommend approval of two of the amendments and approve the third with conditions and acceptance of a mapping correction. He asked Ms. Susan Lawrence to explain the amendments.

Ms. Lawrence explained that the Town had requested that four locations be designated as Buffer Exempt on the Critical Area Maps. At the first location, a portion of the parcel Harbor Road and Howlin Property, Captain's Quarters, borders a tidal wetland. Townhouses had been proposed for the upland portion of the site. The portion of the property that bordered the wetland involved a portion of an existing parking lot and an area adjacent to the parking lot for a total of approximately 5,500 square feet. The land had been created by dredged material and an unpaved road crosses the Buffer, which leads to a Town water treatment facility. Ms. Lawrence said that according to information provided from Coastal Resources, Inc., the functions of the Buffer to provide wildlife habitat were being poorly met by the existing Buffer. She said that the developers were proposing to replace 1 - 2 feet of the surface fill material with soils suitable to permit revegetation with indigenous woody plants and trees for a distance of 25 feet, along a 250-foot strip adjacent to the tidal wetlands, which would provide for limited wildlife habitat. Engineering designs had been developed to address stormwater management.

Ms. Lawrence reported that at the second location, Baycrest Subdivision, Block 13, the request was for an area along a bulkheaded tidal basin. The rest of the property held a small gas station. The soil was compacted through nearly all of the site, making it approximately 84% impervious. The site was currently designated as IDA.

The third property, North Chesapeake Beach Subdivision, Block/Lots 1/16, 1/17, 2/10, 2/11, and 3/8 was an area that was subdivided into small parcels which were developed with single family homes. The portions of these lots next to tidal wetlands were maintained lawns with a few trees. The site was currently designated as LDA.

The justification for the mapping correction of the fourth property, Fishing Creek, stated that the areas proposed to be mapped as Buffer Exempt were intensely used and bulkheaded with the exception of the naval boat dock.

Ms. Lawrence said that locations one, two and four were currently qualified for designation as Buffer Exempt, but the third location did not qualify.

Mr. Kreitner asked what was the purpose of the third exemption the Town requested. Ms. Lawrence answered that the Town felt there was no functioning buffer and it did not want the public to have to go through various procedures to build a porch or deck on their homes.

Mr. Bowling said that all of the locations, except for North Chesapeake Beach, were in intensely developed areas.

A motion was made and seconded that the Commission approve the Buffer Exemption area designation on Harbor Road, Howlin Property, Captain's Quarters, provided that development standards in the Buffer Exemption Area as per the Town of Chesapeake Beach's Critical Area Protection Program and amendments to the Chesapeake Beach Zoning Ordinance, are followed, and that the stormwater pond which the Town had indicated would be constructed on the site, be included in the final site development plan. The vote was unanimously in favor.

A motion was made and seconded that the Commission approve the Buffer Exemption Area designation of Baycrest Subdivision, on the site along the bulkheaded inland tidal basin, provided that development standards in the Buffer Exemption Area, as per the Town of Chesapeake Beach Critical Area Protection Program and amendments to the Chesapeake Beach Zoning Ordinances, are followed, and that the stormwater pond which the Town had indicated would be constructed on the site, be included in the final site development plan, and as shown, vegetation is planted per the standards of the local Program. The vote was unanimously in favor.

A motion was made and seconded that the Commission approve the mapping correction designation of the bulkheaded portion of Fishing Creek, with the Buffer Exemption. The vote was unanimously in favor.

Mr. Butanis then asked Mr. Serey to report on the Chesapeake Bay Environmental Education/Visitors' Center. Mr. Serey reported the State Highway Administration proposed to construct an environmental education/visitors' center on Kent Island. The site was located on Queen Anne's County parkland and would be leased from the County. The park was designated by the County as RCA and the immediate surrounding area would remain in agricultural use.

Mr. Serey said that there were some changes that needed to be made regarding disturbance to the Buffer and some planting that needed to be done. What now existed was a 300-foot buffer, as required by Queen Anne's County; a building, a parking lot, and an access road, all on County-owned park land that would be leased to the State. The State would operate the facility, and would bring, for the most part, school children and other groups in for environmental education activities.

Mr. Serey said that no development was proposed within the Buffer. Stormwater management was to be conducted for water quality. There would be a waterfowl enhancement project on the site, and that would be coordinated with DNR.

Ms. Margaret Kaii, of Queen Anne's County Planning Office, stated that the County was in favor of the project and felt it met with the County's requirements.

Mr. Bostian asked who was requiring that the mitigation of the wetlands be performed. Mr. Serey answered that that was a voluntary action by State Highways through coordination with DNR.

Mr. Bostian asked if it was required by EPA or the Army Corps of Engineers. Mr. Serey answered that he did not know.

Mr. Charlie Adams, Chief of the Landscape Architecture Division of SHA, stated that it wasn't known if mitigation would be required, but regardless, it would be provided.

Ms. Langner reported that the Subcommittee recommended approval.

A motion was made and seconded that the Commission approve the State Highway Administration proposal to construct an environmental education/visitors' center on Kent Island. The vote was unanimously in favor.

Mr. Butanis then asked Mr. Serey to report on St. Mary's County Program changes. Mr. Serey reported that during the period between Commission approval and local adoption, the County is allowed to propose changes to the Commission. The County's request involved administrative changes to local procedures, and technical corrections, both of the text and the mapping. The map revisions described in the Staff Report of February 7th, are of a minor nature. Mr. Serey said that the changes were all recommended for approval by the staff. The Subcommittee met both last month and that morning to discuss the changes. Mr. Serey explained the Maryland Rock property was a separate issue.

A motion was made and seconded that the Commission approve the administrative additions, technical corrections and map revisions to the St. Mary's County approved Critical Area Program as contained in the staff report of February 7, 1990. The vote was unanimously in favor.

Mr. Serey reported that in December, when the Commission approved the County's Program, the Maryland Rock property was included and designated as RCA. At the February Commission meeting, the St. Mary's County Commissioners informed the Commission that they wanted to propose a change for that parcel to designate a portion of it, 22 acres, as IDA.

The Commission decided not to vote the map changes for the Maryland Rock Property at that time because a 30-day period was permitted for the Commission to consider the change. Mr. Serey said that a letter had been received this day from the County Commissioners asking that the Commission disregard its earlier request for a change of designation of that parcel to IDA. He said that the Subcommittee had met before this day's Commission meeting to discuss the County's recent designation of RCA, and recommended approval of the County's position. The Subcommittee recommendation was based in part, on the fact that sand and gravel mining and accessory uses are permitted in the RCA. These permitted uses include processing, which is the use of the Maryland Rock Property. The County had proposed an RCA designation for the site and the Subcommittee's recommendation was that this was consistent with the criteria and with the County's Program.

A motion was made and seconded that the Commission approve the RCA designation for the property designated as Parcel 123 on Tax Map 48.

Mr. Butanis asked if there was further discussion. Mr. Hickernell asked if the Commission had already so acted.

Mr. Butanis answered that an argument could certainly be made that the County's letter of March 7th removed from the Commission's consideration, anything to do with the change in this property. However, after consulting with counsel, the Commission might believe it prudent that it act on this change to the County's proposal of February 6, 1990 to designate the site IDA. Mr. Epstein said that the Commission could consider this March 7th action by the County Commissioners a new amendment which would trigger another 30-day period. He said that the Commission need not utilize that entire time if it was prepared to vote now.

Mr. Doug Brossman, attorney for Maryland Rock, said that there were two issues to be considered--one substantive, one procedural. The substantive issue concerned the proper designation of this property. He said that the initial mapping of this property by the County showed the area as an Intensely Developed Area. There was no question that the entire parcel was used as industrial use on December 1, 1985. The Court of Speical

Appeals held that it had been used as an industrial use since before 1975, which predated zoning in St. Mary's County.

Mr. Brossman said that the draft program that the Commission received in December had changed the designation of that property from IDA to RCA, and provided a specific rationale for that in the Program that the Commission approved. The sub area encompassing the surface mining operation was classified as RCA. The rationale for this lay in the fact that the mine operation was permitted under a conditional use permit, which mandated that the area be restored to its former state upon the completion of the gravel mining. Upon such restoration, the property should not meet the required test for either LDA or IDA classification.

Mr. Brossman said that the Court of Special Appeals held that this property was subject to a nonconforming use, not a conditional use. The nonconforming use allowed the uses on the property to proceed ad infinitum. They were not subject to the restoration and termination procedures of the conditional use. He said that the conditional use was for an adjacent property; therefore, the rationale for the initial RCA designation, as approved by the Commission, was wrong.

Mr. Brossman said that at the County's January 23rd, 1990 public hearing on the issue, the Commissioners asked for their County Attorney's opinion and found that the use on the Maryland Rock property was not subject to a restoration agreement, and did not have to terminate; therefore the County's rationale for the RCA determination was wrong.

Mr. Brossman said that the County then submitted a request to the Commission to change the parcel to IDA. He said that the County evidently had now reversed its decision as of the meeting the night before this Commission meeting. The County Attorney was not present at the time the Commissioners made this reversal.

Mr. Brossman stated that the County cannot withdraw a decision from a duly authorized public hearing; therefore, the holding of their public hearing must stand, which was the request to reclassify this area to IDA.

Mr. Gutman asked Mr. Brossman if it was within the authority of the County Commissioners to designate how parcels should be classified. Mr. Brossman answered affirmatively, pursuant to their Program.

Mr. Gutman stated that it seemed the argument would be with the actions of the County Commissioners.

Mr. Hickernell remarked that it might be best to delay action at this time, and that the statement made by counsel needs investigation.

Mr. Butanis asked Mr. Epstein if it was incumbent on the Commission to look behind any proposed procedural defects in an amendment that comes before the Commission. Did the Commission have that obligation, because he assumed that when a County submitted a Program or an amendment, the Commission would presume that it had been lawfully enacted, and lawfully endorsed by the governing body. Mr. Epstein answered that it was not the legal charge of the Commission to look behind what purported to be an appropriate local action, but may do so if it wished. He said that whether or not the Commission agreed with Mr. Hickernell, since the County Attorney was present, it would be helpful to have the County Attorney give his view of the procedural regularity or irregularity on this action.

Mr. Densford, County Attorney for St. Mary's County, said that he urged the Commission to adopt the decision made by the Board of County Commissioners, and that if there were any procedural problems with the vote taken last night, the County would defend those at the local level.

Mr. Hickernell asked Mr. Jeffrey Jackman, Critical Area Planner for the County, how the RCA designation of this site conforms to the Program.

Mr. Jackman answered that this tract was designated RCA when the Commission received the County's Program. The County had confirmed that designation.

Mr. Hickernell asked why that designation was appropriate when it was made in front of this Commission some months ago, and why it was appropriate at the present time.

Mr. Jackman explained that the classification was considered to be acceptable for a surface mining operation, which was permitted in an RCA. The County did not want to require LDA classifications for any new sand and gravel or surface mining operations that would require growth allocation for any new operations opening up anywhere in the County. Therefore, it was felt that for a surface mining operation, RCA was proper.

He said that what triggered a discussion as to whether or not some other classification might be warranted at this site, was a barge-loading operation, which was located in the Buffer. Under the County's Program, this use might be considered a water-

dependent facility, and would come under a different mapping rule, that would trigger an LDA or IDA classification.

Mr. Jackman said that the County Commissioners had a locally appointed commission, a Critical Area Review Task Force, advising them. The Task Force made a finding that the barge-loading operation was of such a nature and extent, 22 acres, that, according to the mapping rules, warranted an IDA classification. It was the water-dependent facility, more so than the surface mining operation, that triggered the Task Force recommendation that led to the February 7th request from the County Commissioners. He said that in speaking with the County Administrator and the President of the Board of County Commissioners that morning, he got the sense that their focus was towards the predominant use of the property as surface mining, which was appropriate in RCA.

Mr. Butanis remarked that perhaps the motion and second should be temporarily withdrawn.

Several residents of St. Mary's County spoke to request that the Commission approve the RCA designation for the property.

Mr. Glendening remarked that unless this was substantively inappropriate under either the Critical Area Law or St. Mary's County's local Program, the RCA designation should be approved.

Mr. Bostian remarked that the attorney for Maryland Rock had suggested that it was inconsistent with the County's Program.

Mr. Glendening answered that the interpretation of the Law was that the Commission was expected to follow the recommendations of the local governing body. He said that he felt the issue should be resolved and not left to linger on.

Deputy Secretary Griffin added that he could agree with Mr. Glendening except for the question of whether it was within the discretion of the County to make a decision to map based on existing uses, under the Critical Area Law. The other question being whether the Commission should investigate in cases where information comes to the Commission by way of allegations that there was a procedural impropriety in terms of an action locally. He said that he was in favor of postponing the vote for a month to find out from counsel whether or not St. Mary's County had the authority to do what it did, under the Critical Area Law and regulations and its own regulations.

Mr. Zahniser said that he urged the Commission to vote now as the County is suffering because it does not have a Critical Area Law, and the Commission's object is to save the environment, and get that law into effect. The Panel had looked at aerial photographs, it had studied this particular project for some time, and sand and gravel mining is a resource utilization use, and can be in the RCA.

Mr. Zahniser said that all the Commission need do is accept a letter from the County Commissioners, with their signatures on it, because the Commission had already approved a Critical Area Plan from the County which had this area mapped as RCA. All the County Commissioners were asking was for the Commission to disregard their previous letter requesting a modification.

A motion was made and seconded to table the motion to approve the RCA designation of the Maryland Rock Property.

Mr. Gutman stated that this was an issue that the Panel had been keenly aware of since the day the Commission had its hearing in St. Mary's County. The public had come forward to speak at that hearing and everyone spoke in favor of an RCA designation. Now the County Commissioners agree. He said that he could not conceive of anything occurring in 30 days that would be new, other than reversal. If this issue is headed for the courts, let the Commission expedite that action.

Mr. Epstein noted that if it was the Commission's decision to approve the motion to table, part of that motion should reflect that this was merely an exercise of the 30 days that this Commission had to make this decision under the statute, because otherwise it could be perceived as this Commission not making any decision under the statute, thus being an automatic approval of the Commissioner's proposal.

The motion to table was amended to include that the Commission was exercising its right of a 30-day review period. The vote was 13:3 opposed.

A call for the question was requested, the motion being that the Commission approve the RCA designation for the property designated as Parcel 123 on Tax Map 48, St. Mary's County. The vote was 13 in favor with 3 opposed and Mr. Hickernell abstaining.

UNDER NEW BUSINESS

Dr. Taylor reported on the draft Oil and Gas regulations. Dr. Taylor explained that Ms. Liz Zucker had developed the draft regulations for the Commission's review. She said that an issue to be considered was whether the Commission should entertain new Critical Area Commission water-dependent, port-related facilities for the transport of oil and gas, or should the Commission restrict it to those facilities that are in existence and mandate that the transport of oil and gas be a land-side issue as opposed to water-based. She said that at the April meeting, this issue and any comments would be discussed and the meeting would be a policy-issue-oriented one. She said that the regulations should be approved by the Commission and promulgated at the May meeting so that they can be published in the Maryland Register.

Dr. Taylor announced that a representative from St. Mary's County had been approved by the Senate, Mr. Michael J. Whitson, which leaves one vacancy to be filled for Baltimore City.

UNDER OLD BUSINESS

Dr. Taylor gave a legislative update. She reported that most of the Bills that the Commission had testified on and represented the Commission on, had all been heard on one side of the Legislature. The Staff is waiting for these Bills to be heard on the other side of the Legislature.

In regard to the Bill introduced by the Joint Legislative Oversight Committee requiring the criteria be subject to vote of the full General Assembly, the Environmental Matters Committee Chairman had asked for amendments, in essence, changing that process and providing that the Commission had the ability, as any other department, to go through the AELR Committee as the group to hear the changes in the criteria, as opposed to the full vote by the General Assembly.

She said that the Special Issues Subcommittee was beginning to entertain proposed changes to the criteria and would be working with them for the next few months.

Two Panels were appointed by Vice-Chairman Butanis. For Rock Hall: Roger Williams, Kay Langner, Bob Price, Tom Jarvis, and Bill Corkran. The Panel for Queen Anne's County was chosen comprising Bob Price, Bill Corkran, Roger Williams, James Gutman, and Shepard Krech.

There being no further business, the Meeting was adjourned.

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There being no further business, the Meeting was adjourned.



Maryland Department of Natural Resources

Maryland Environmental Service
2020 Industrial Drive
Annapolis, Maryland 21401
(301) 974-7281



William Donald Schaefer
Governor

Torrey C. Brown, MD
Secretary

March 19, 1990

George G. Perdikakis
Director

Mr. Ren Serey
Chesapeake Bay Critical Areas Commission
Department of Natural Resources
Tawes State Office Building
580 Taylor Avenue
Annapolis, MD 21401

Dear Mr. Serey:

This is a follow-up to the meeting Dr. Peter Robertson and I had in your office on March 16th concerning several emergency utility projects at the Eastern Correctional Institute (ECI), which is located in Somerset County near Princess Anne. In our discussions, I outlined three projects which are important to provide continued efficient and effective delivery of water and sewer services to this correctional facility.

The first of these projects involves connecting an exploratory well which was drilled in the Fall of '89 into the Patapsco aquifer, the drilling of a second well into the Patapsco aquifer, and laying about 4,000 feet of pipe. The current prison system is served by several wells on the ECI property which is supplemented by the County's well system both of which are currently drawing water from the Manokin aquifer. The Manokin aquifer has been diminishing at an alarming rate over the past several years to such extremes that residential wells have been going dry. The Water Resources Administration (WRA), in cooperation with the Department of General Services has for the past two years been providing financial assistance to local home-owners in order for them to either lower well pumps or drill new wells. This program has been undertaken at a considerable cost to the State. Shifting ECI from the Manokin aquifer to the Patapsco aquifer will reduce Manokin withdrawals by approximately 300,000-400,000 gpd, thereby allowing the Manokin aquifer to recover. Since the Patapsco aquifer contains iron and manganese, a new water treatment plant will also have to be provided, it will occupy a space of about 30' x 40'.

Mr. Serey
page 2 of 3

The second project involves modification of the existing sewage pumping station serving ECI, which transmits approximately 325,000 gpd to the Princess Anne WWTP. In order to protect the pumps against clogging, to eliminate odors and to reduce organic and solids loadings to the Princess Anne plant, a mechanical bar screen is to be installed, as well as a chemical addition system for odor control. A small vault for the bar screen will be necessary, which will be about 18' deep and 16' x 10' in size.

The third project will be a package wastewater treatment plant which will be installed for purposes of providing pretreatment. The existing user agreements with the County's Princess Anne Sanitary District require that BOD and suspended solids concentrations stay below 200 mg/l. Loadings for the past year have averaged just under 400 mg/l and the County has imposed quarterly surcharges on these violations. In order to eliminate the surcharges, bring ECI's BOD and suspended solids strength within constraints of local limits, and to improve overall water quality, a pretreatment plant will be designed to significantly reduce loadings. The package plant would be erected on a concrete pad which would be poured in the vicinity of the existing sewage pumping station and elevated water storage tank and should be approximately 5100 sq. ft. in size.

Each of these projects would be constructed using expedited State procedures, and elements of these jobs could be under construction as early as May 1, 1990. Since each of these projects is an improvement to the existing water and sewer facilities, it does not involve "development" or "development activities" as defined in Subtitle 19 of Natural Resources Article 8-1814 Annotated Code of Maryland. The construction of all three projects involves drilling a well, pouring concrete pads, erecting package plants, pumps, motors, and other related appurtenances. Excavation for the vault for the pumping station and the trenches for any water or sewer line extensions and/or inner connections will be very minor in scale. This construction will not result in substantial alterations of facilities or structures or in any way materially effect the condition and use of dry land. There are no trees in the areas where work is programmed to be done. There will not be any human activities that result in disturbances to land in conjunction with the construction of these improvements. We have reviewed the project, relative to possible impacts to non-tidal wetlands with Mr. Robert Miller, Deputy Director of the WRA, Department of Natural Resources. Mr. Miller has indicated that these proposed construction activities will not pose a significant impact.

Mr. Serey
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Please advise as soon as possible as to whether or not you can agree with our recommendation that the projects be allowed to proceed on the basis that they do not qualify as "development" or "development activities" as defined by the Critical Areas regulations.

Within 30 days we will be in a position to initiate construction of certain elements of these projects and therefore will greatly appreciate your assistance in regards to approval of these essential public service facilities. Should you require anything further in these regards, please don't hesitate to contact me on (301) 974-7276.

Sincerely,



Dane S. Bauer
Program Director
Water & Wastewater

DSB/sw

cc: G. Perdikakis
P. Robertson
Bob Miller



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

March 27, 1990

Thomas Osborne
Anne Arundel Co.
James E. Gutman
Anne Arundel Co.
Ronald Karasic
Baltimore City
Ronald Hickmell
Baltimore Co.
Alben W. Zahniser
Calvert Co.
Thomas Jarvis
Caroline Co.
Kathryn D. Langner
Cecil Co.
Samuel Y. Bowling
Charles Co.
G. Steele Phillippe
Dorchester Co.
Victor K. Butanle
Hartford 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. Boston
Wicomico Co.
Russell Blake
Worcester Co.

Mr. Dane S. Bauer
Program Director
Water and Wastewater
Maryland Environmental Service
2020 Industrial Drive
Annapolis, MD 21401

Re: Eastern Correctional
Institute - Somerset
County

Dear Mr. Bauer:

Thank you for providing information on the proposed projects at the Eastern Correctional Institute. I have discussed the situation with Dr. Sarah J. Taylor, the Critical Area Commission Executive Director. It is the Commission's position that the projects constitute "development" and "development activities" under COMAR 14.19.01(14) and (16), Regulations for Development in the Critical Area Resulting from State and Local Agency Programs.

Under these Regulations, the Commission must approve the projects. However, it is not the Commission's intention to delay consideration, or to prevent the Maryland Environmental Service from proceeding in a timely manner, if Commission approval is granted. From your description of the projects at our meeting and in your letter, it appears that the Commission's primary concern will be with regard to disturbance of nontidal wetlands. As you

CABINET MEMBERS

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

Mr. Dane S. Bauer
March 27, 1990
Page Two

indicated, the impacts to nontidal wetlands may indeed be minimal. Nevertheless, the Commission will require:

- a site plan indicating areas of disturbance, building footprints, proposed water and sewer lines and pertinent site features;

- a delineation of the nontidal wetlands;

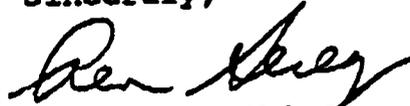
- an analysis of nontidal wetland impacts;

- a discussion of the need for nontidal wetland mitigation, and a mitigation plan, if necessary; and

- an analysis of any other impacts relevant to resources protected under COMAR 14.19.05.03-.14.

I realize that you may not be able to prepare this information prior to the Commission's meeting on April 4, 1990. In previous instances where the Commission has been requested to expedite a review, it has approved projects upon the condition of further review and approval by the Project Evaluation Subcommittee. Considering the need for your agency to proceed with the projects as soon as possible, I suggest that you discuss the possibility of a conditional approval with the Subcommittee on the morning of April 4th. If acceptable to the Subcommittee, the projects can be placed on the Commission's afternoon agenda. Please contact me for further details.

Sincerely,

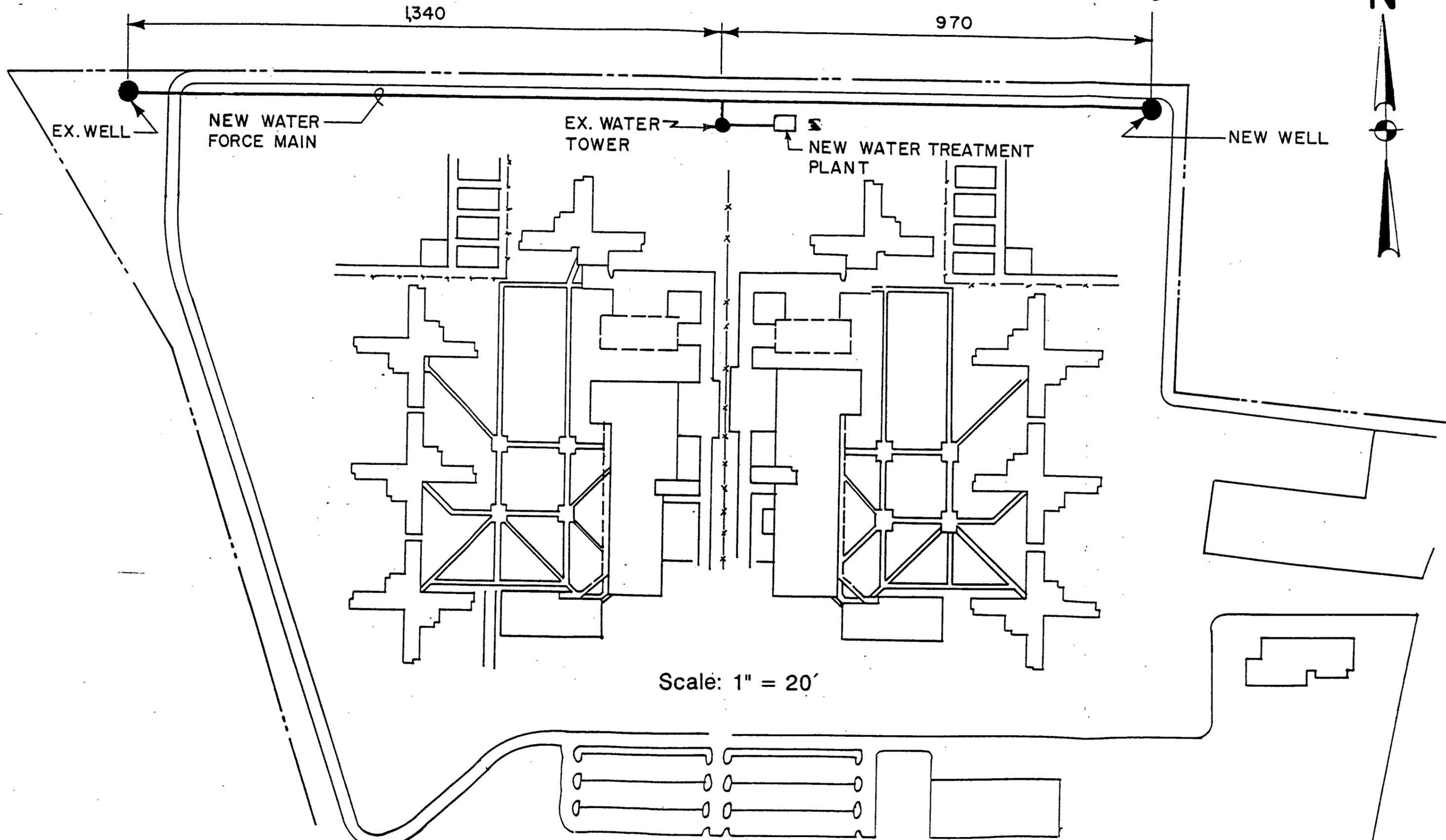


Ren Serey, Chief
Project Evaluation Division

RS:msl

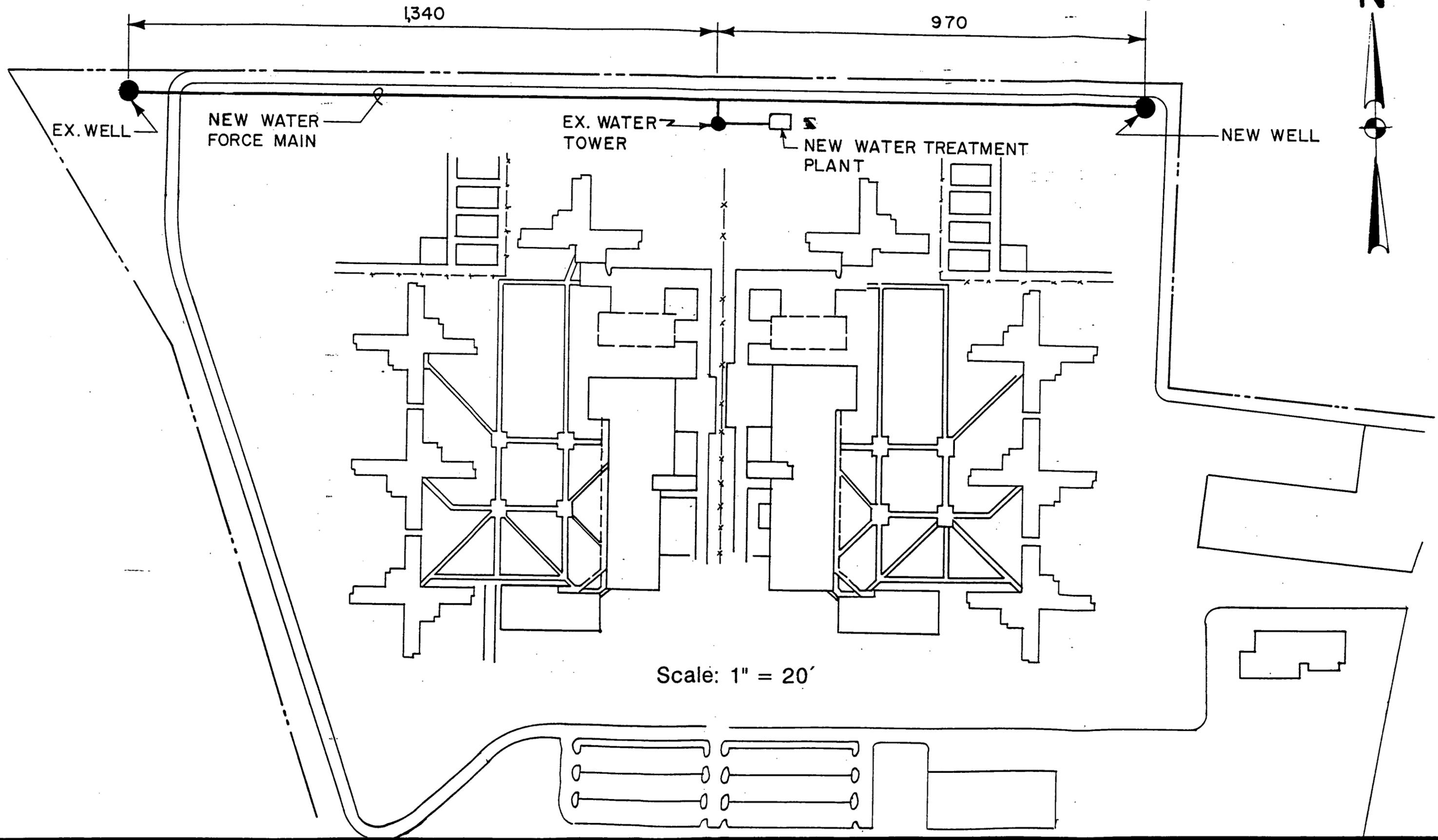
cc: Project Evaluation Subcommittee
Dr. Sarah Taylor
Mr. Thomas Ventre
Mr. Robert Miller

Eastern Correctional Institution Improvement To The Existing Water Treatment System



Scale: 1" = 20'

Eastern Correctional Institution Improvement To The Existing Water Treatment System



Scale: 1" = 20'

ATTACHMENT "A"

SYNOPSIS OF THE PROPOSED IMPROVEMENTS TO THE WASTEWATER TREATMENT FACILITIES FOR THE POINT LOOKOUT STATE PARK WHICH IS LOCATED WITHIN THE CRITICAL AREA IN POINT LOOKOUT, ST. MARY'S COUNTY, MARYLAND

This capital improvement program for the park is necessary because of the rapid deterioration of the wastewater treatment plant and the wastewater collection system that serves the facility.

The project is not for new development. It is to replace and upgrade existing facilities.

The entire project is within the critical area and portions of the improvement are within the 100 foot buffer zone.

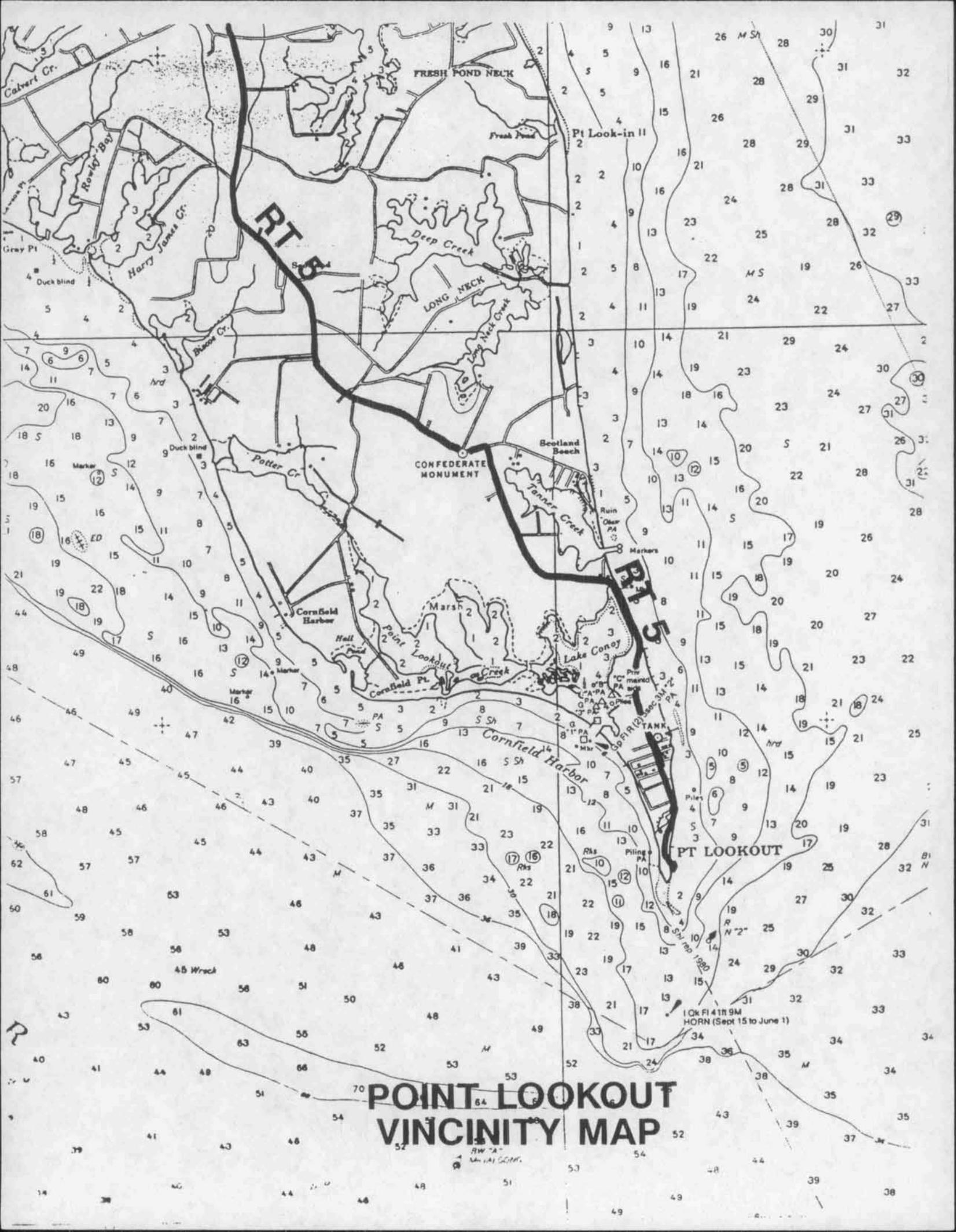
The park is a wetland area and has been classified by St. Mary's County as a Resources Conservation Area. The park has yet to be mapped to differentiate between tidal and non-tidal wetlands.

The project consists of the following elements:

- o Remove both of the existing dual, metal package wastewater treatment units and replace them with a reinforced concrete facility. The new facility will be constructed within the original 0.740 acre site. Approximately 50% of this site is in the 100 foot buffer zone. The existing impervious area within the site is 0.188 acres. After the improvements are completed, the impervious area will be a slightly smaller 0.179 acres.
- o Eliminate four (4) of the fourteen (14) pneumatically operated wastewater lift stations. Areas formerly served by these stations will now be served by New Gravity Sanitary Sewers.
- o Convert eight (8) of the fourteen (14) pneumatically operated wastewater lift stations to electrically operated pump stations. Construction activities will be confined to within the existing lift

stations.

- o Abandon the two (2) remaining pneumatically operated pump stations and replace them with electrically operated pump stations. The area disturbed during construction should be limited to a ten foot square for each unit.
- o It will be necessary to run new buried power cables to each of the pump stations.
- o Construct approximately 2,800 lineal feet of six (6) inch diameter gravity sanitary sewers to replace an equal amount of abandoned force mains. When the existing force mains were installed, tree free construction zones were created within the woodlands. These zones remain free of trees. Therefore, few, if any, trees will need to be removed during construction. During a recent site visit, standing water was observed in some of these areas. Short segments of two sewer lines may fall within the 100 foot buffer zone. Allowing for a 15 foot wide working area, the total area disturbed during installation of the sewer lines will be 0.964 acres.
- o The anticipated date of the start of construction is October 1990, with a completion date of October 1991.
- o For additional clarification the following drawings are enclosed:
 1. Vicinity Map
 2. Site Plan - Wastewater Lift Stations
 3. Site Plan - Wastewater Collection Lines
 4. Site Plan - Wastewater Treatment Plant

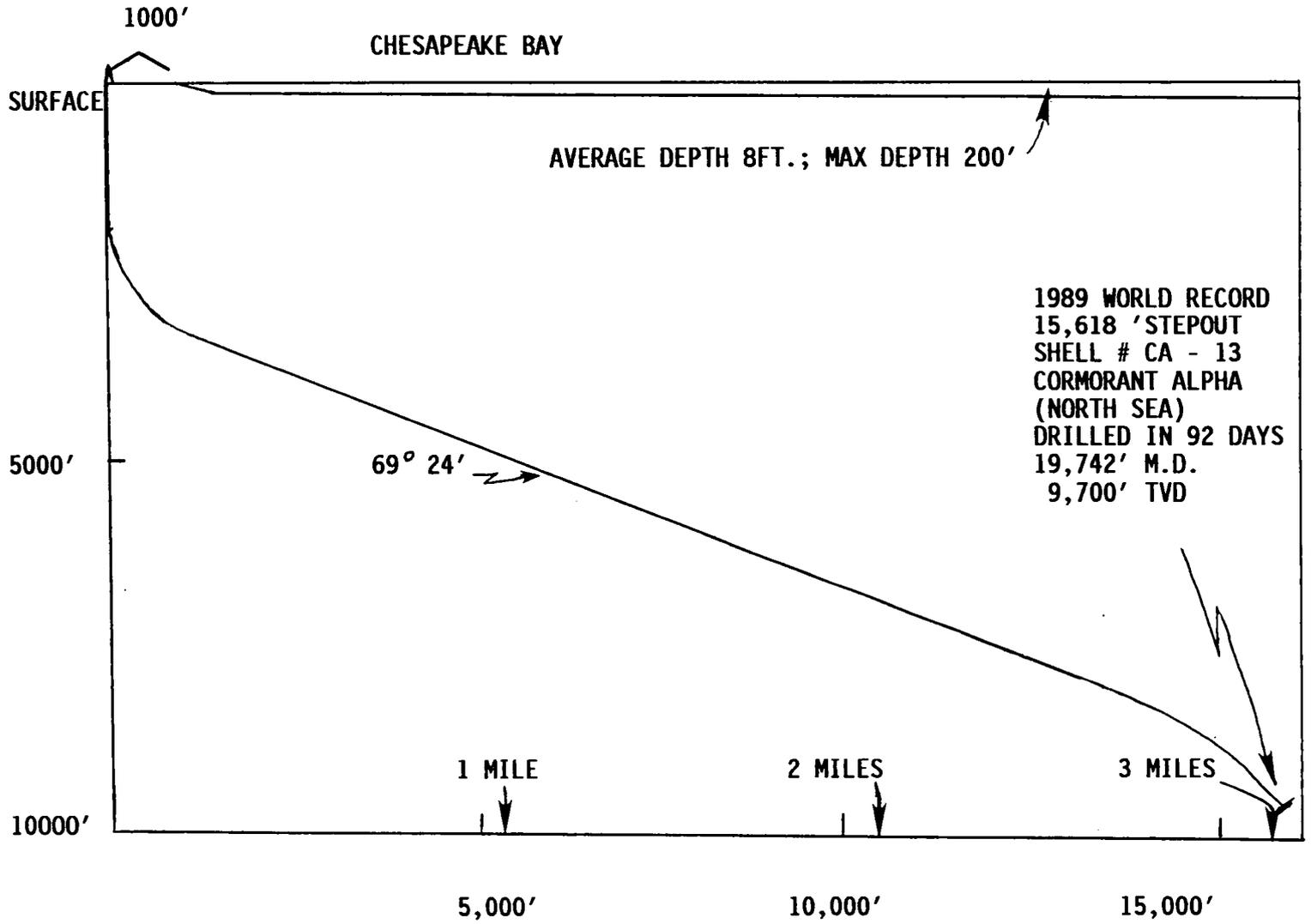


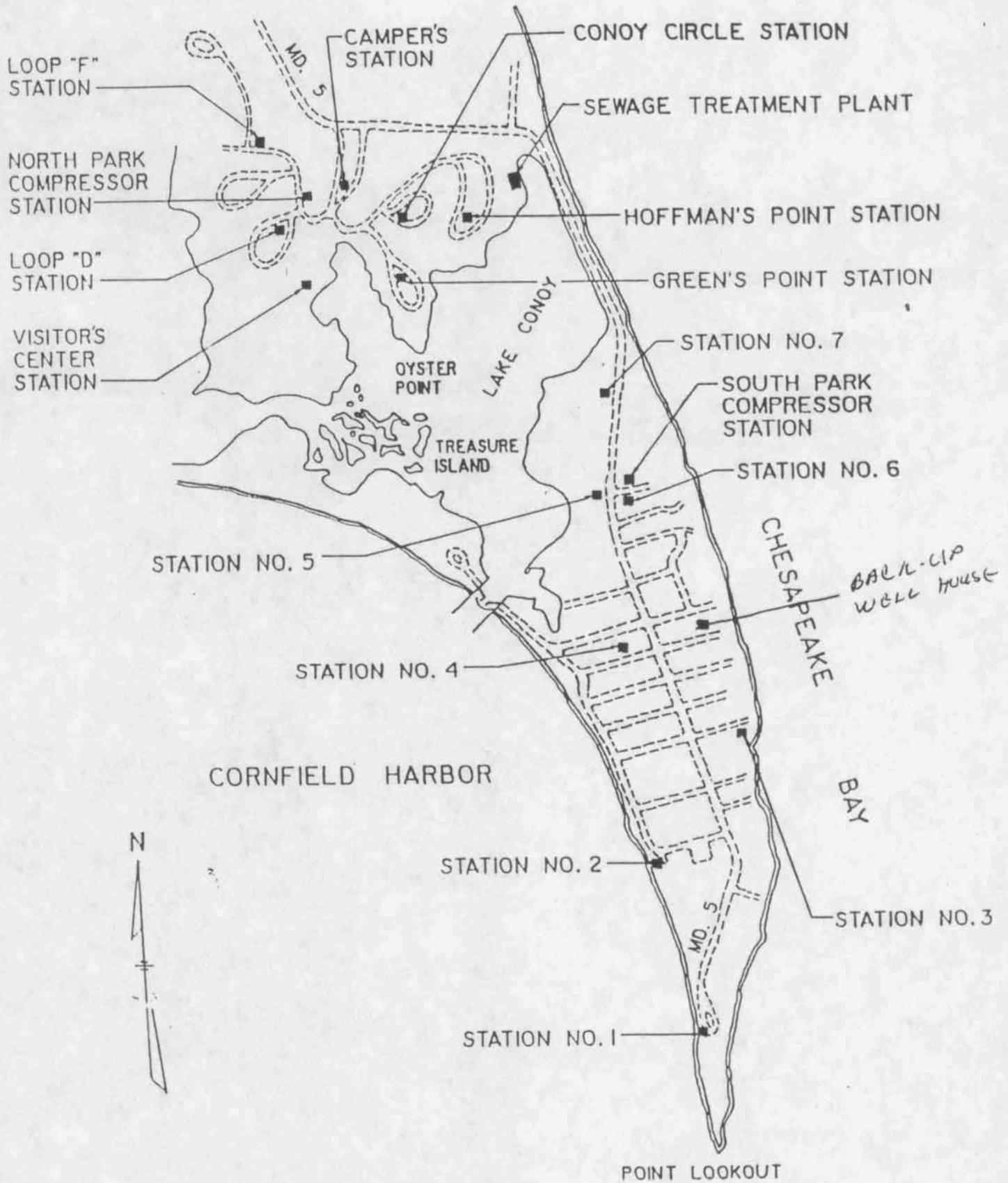
POINT LOOKOUT VICINITY MAP

AW-A
MAY 1907

L O K F I 4 1 1 9 M
HORN (Sept 15 to June 1)

TRUE SCALE PLOT, WORLD RECORD STEPOUT





**POINT LOOKOUT
SITE PLAN
WASTEWATER LIFT STATION**

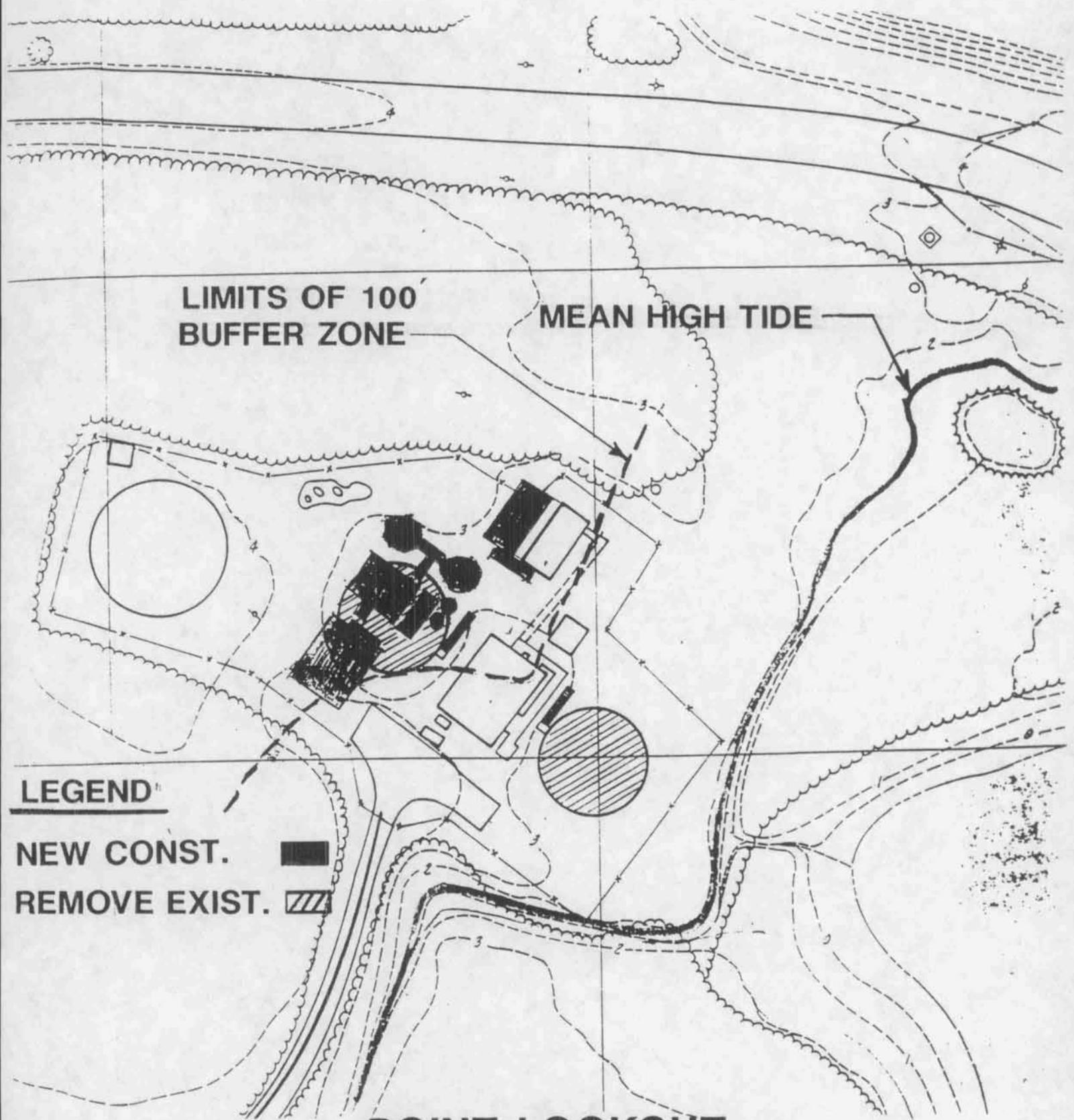
LIMITS OF 100'
BUFFER ZONE

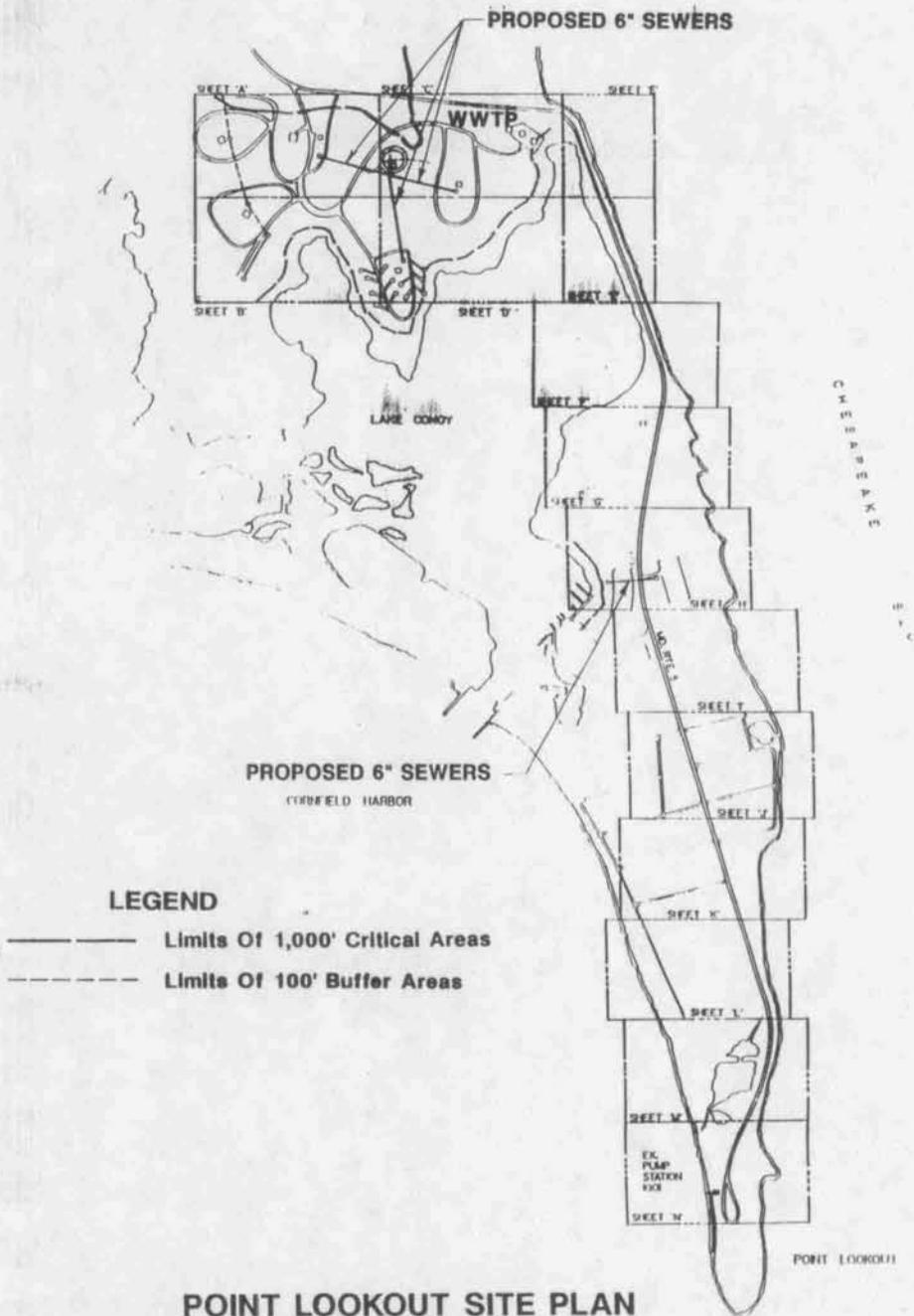
MEAN HIGH TIDE

LEGEND

- NEW CONST. 
- REMOVE EXIST. 

**POINT LOOKOUT
SITE PLAN
WASTEWATER TREATMENT PLANT**





PROPOSED 6" SEWERS
CYRUSFIELD HARBOR

LEGEND

- Limits Of 1,000' Critical Areas
- - - - Limits Of 100' Buffer Areas

**POINT LOOKOUT SITE PLAN
WASTEWATER COLLECTION LINES**

JOINT FEDERAL / STATE APPLICATION FOR THE ALTERATION OF ANY FLOODPLAIN, WATERWAY, TIDAL OR NON-TIDAL WETLAND IN MARYLAND

- All applications must be accompanied by plan drawings which show the location and character of the proposed work. For specific information on what is required on the plans, refer to the instruction package. 8½" x 11" black & white drawings are required for every application. Full construction plans are required for projects submitted to the Waterway Permits Division.
- Any application which is not completed in full or is accompanied by poor quality drawings may be returned and will result in a time delay to the applicant.
- If you need help understanding how to fill out the application form, please refer to the instruction booklet.

APPLICATION NUMBER:

(To be assigned by the agencies)

1. APPLICANT INFORMATION:

Name: Maryland Environmental Service Telephone: (301) 974-7276
Address: 2020 Industrial Drive
City: Annapolis State: Maryland Zip: 21401

2. AGENT / ENGINEER INFORMATION:

Name: _____ Telephone: (_____) _____
Address: _____
City: _____ State: _____ Zip: _____

3. PRINCIPAL CONTACT, if not the applicant:

Name: George D. Storm Telephone: (301) 974-7276

4. PROJECT DESCRIPTION: SEE ATTACHMENT "A"

5. PROJECT PURPOSE:

- | | | |
|---|---|--|
| <input type="checkbox"/> Shore Erosion Control | <input type="checkbox"/> Erosion/Sediment Control | <input type="checkbox"/> Storm Drain/Stormwater Management |
| <input checked="" type="checkbox"/> Utility Installation | <input type="checkbox"/> Improve Navigable Access | <input type="checkbox"/> Marina |
| <input type="checkbox"/> Create Waterfowl Habitat | <input type="checkbox"/> Improve Fish Habitat | <input type="checkbox"/> Fill |
| <input type="checkbox"/> Temporary Construction | <input type="checkbox"/> Stream Channelization | <input type="checkbox"/> Bridge |
| <input type="checkbox"/> Beach Nourishment | <input type="checkbox"/> Maintenance/Repair | <input type="checkbox"/> Dam |
| <input type="checkbox"/> Residential/Commercial Development | <input type="checkbox"/> Small Pond | <input type="checkbox"/> Road |
| <input type="checkbox"/> Other: (describe) _____ | | <input type="checkbox"/> Culvert |

CERTIFICATION:

I hereby designate and authorize the agent named above to act on my behalf in the processing of this application and to furnish any information that is requested. I certify that the information on this form and on the attached plans and specifications is true and accurate to the best of my knowledge and belief. I understand that any of the agencies involved in authorizing the proposed works may request information in addition to that set forth herein as may be deemed appropriate in considering this proposal. I grant permission to the agencies responsible for authorization of this work, or their duly authorized representative, to enter the project site for inspection purposes during working hours. I will abide by the conditions of the permit or license if issued and will not begin work without the appropriate authorization. I also certify that the proposed works are not inconsistent with Maryland's Coastal Zone Management Plan.

APPLICANT MUST SIGN: _____ Date _____

SUBCOMMITTEE REPORT

April 4, 1990

Applicant: Maryland Environmental Service

Project: Eastern Correctional Institute (Somerset County): Water and Wastewater Improvements

Recommendation: APPROVAL

Discussion:

The Maryland Environmental Service proposes the following improvements to the Eastern Correctional Institute in Somerset County:

- 1) 2,000 feet of pipe and a new well into the lower Patapsco aquifer, to reduce the demand on the Manokin aquifer used by local property owners.
- 2) A water treatment plant to treat iron and manganese from the lower aquifer. The plant will occupy approximately 1,200 square feet.
- 3) A package wastewater treatment plant, to provide pretreatment, in order to bring the existing plant into compliance with County regulations. The plant will occupy approximately 5,100 square feet.

No trees will be removed; no wetlands will be disturbed.

Contact person: Ren Serey

CHESAPEAKE BAY CRITICAL AREA COMMISSION
275 WEST STREET, SUITE 320
ANNAPOLIS, MARYLAND 21401

April 4, 1990

MEMORANDUM

TO: Dorchester County Amendments Panel
Bob Schoeplein, Ch./Bill Bostian/Sam Bowling/
Shepard Krech/Ron Kreitner/Bob Price

FROM: Tom Ven 

SUBJECT: Reschedule Dorchester Public Hearing

Please refer to my memorandum to you, dated March 19, 1990.

The date for this Panels's local public hearing on three program-amendment proposals, originally scheduled for Monday evening, April 9th, is changed. The new date is April 23rd (also a Monday), at 7:30 p.m., in Room 110 of the County Administration Building in Cambridge. Please note the change on your calendars.

Please notify me in the event that you cannot attend. Site visits are scheduled for Friday, April 6th.

/jjd

STAFF REPORT

April 4, 1990

Subject: Queen Anne's County Critical Area Ordinance Text
Amendment

Issue: Amend Section 6007 - Development Standards in
Resource Conservation Areas

Discussion:

Currently, the Queen Anne's County Critical Area Ordinance prohibits "new commercial and industrial uses" in the RCA. Industrial uses are subdivided into 6 categories in the Zoning Ordinance. This amendment would solely prohibit the following industrial uses in the RCA: "light industrial, heavy industrial, extraction and disposal and effluent disposal." New, allowed "industrial" uses would be: towers and minor extraction and dredge disposal uses, as defined in Attachment 1.

Panel Recommendation:

Panel recommends approval of this text amendment with two conditions:

1. Omit "lateral oil and gas drilling and extraction." The panel believes this issue should be excluded until such time as the Critical Area Commission adopts its oil and gas regulations.
2. Specify what the "storage operations" pertain to. If "storage operation" pertains to the sand and gravel extraction, then this should be so stated. If it applies to anything else, it must be resubmitted to the Commission for approval.

Staff Contact:

Pat Pudelkewicz

Section 4009

unsightly, such as concrete batching plants. These uses also have severe potential for generation of odor and may involve large amounts of exterior storage; because of their scale, they are likely to have a regional impact.

- C. Extraction and disposal uses. This category includes junk, scrap or salvage yards, landfills, sludge disposal or storage, resource recovery facilities, and trash compaction on transfer stations and any other form of waste management facilities and all extraction operations which disturb more than five (5) acres and dredge disposal uses which disturb more than ten (10) acres of land and all non-lateral oil and gas drilling and extraction. Extraction associated with aquacultural activities are exempted from this Section.

Commentary: These uses create major disruptions to the area's environment, even when carefully regulated. Dust, dirt, noise, and unsightly conditions can be anticipated. None of these uses is an acceptable neighbor in a residential environment.

- D. Towers. Towers for phone, radio, microwave, or other forms of communications transmission that exceed district height limitations, except power transmission line towers and windmills.
- E. Effluent disposal uses. This use category includes spray irrigation facilities, sewer treatment plants, community septic fields, berm infiltration ponds and other State and County approved effluent treatment facilities which dispose of or treat effluent which is generated on or off site.
- F. Minor Extraction and Dredge Disposal Uses. This category includes dredge disposal sites which disturb less than ten (10) acres; and gravel, sand, or similar extraction; lateral oil and gas drilling and extraction; and storage operations which disrupt five (5) or less acres of land. Extraction associated with aquacultural activities are exempt from this Section.

SECTION 4010. TEMPORARY USES.

- A. Authorization. Temporary uses are permitted only as expressly provided in this section and shall comply with the requirements of Article IX.
- B. Zoning Certificate required. No temporary use shall be established unless a Zoning Certificate evidencing the compliance of such use with the provisions of this

STAFF REPORT

April 4, 1990

Subject: Queen Anne's County Critical Area Map Amendment

Thompson Creek Townhomes, Inc. (Parcel #312,
Map 56)

Thompson Creek Townhomes Joint Venture
(Parcel #313, Map 56)

Issue: Map amendment based on mistake; request change from
LDA to IDA

Discussion:

Queen Anne's County has requested a Critical Area map amendment for two parcels of land located along Thompson Creek on Kent Island (Attachment 1). The map amendment is for a change in designation from LDA to IDA based on reason of mistake in original designation. The issue of IDA designation for these parcels was raised late in the original mapping process; however, changing the map to reflect IDA would have delayed the approval of the County's Critical Area Program, which the County was not willing to delay.

The following are pertinent facts concerning these parcels:

- Acreage and zoning:

Parcel #312	5.3 acres	UR zoning 7/89, previously SR
Parcel #313	8.8 acres	UR zoning 7/89, previously SR

- The parcels were rezoned in July 1989 from SR (suburban residential) to UR (urban residential) by reason of mistake. Other properties with UR zoning and with public sewer and water were mapped as IDA by the County.

- Sewer lines were in place or under construction immediately adjacent to the properties on December 1, 1985.

- On December 1, 1985, public water (2 wells) was being provided to the residential communities to the south of these parcels, as well as adjacent commercial uses. There is sufficient capacity to service the properties in question.

- If the residential density of four parcels to the south of these properties (8.4 dwelling units per acre) is spread over the adjoining parcels in question, the density would be 3.584 units per acre, as of December 1, 1985 (Attachment 2). This would meet IDA density requirements for areas with public sewer and water.

- The character of the area is currently high density residential and commercial.

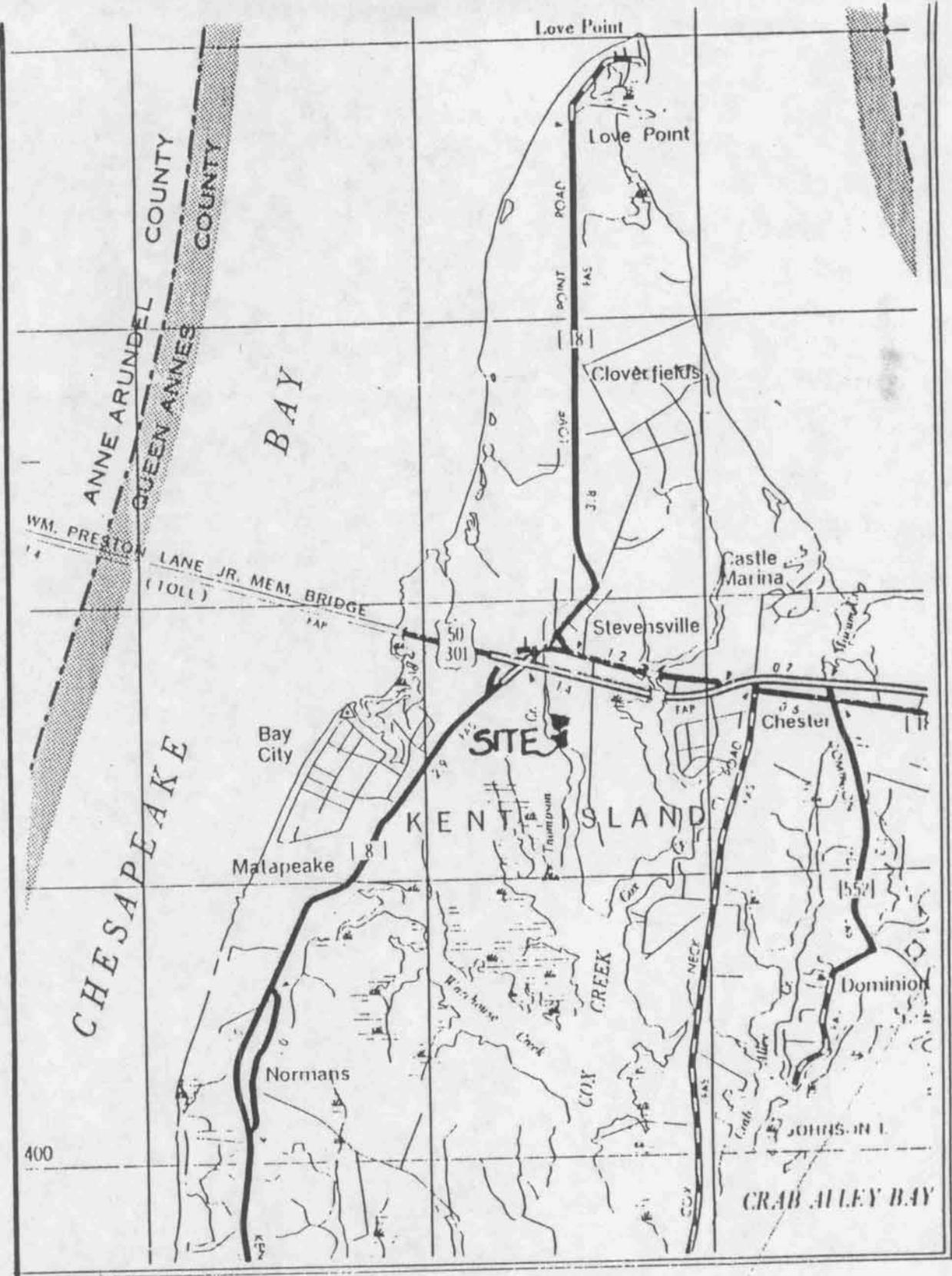
Staff Report
April 4, 1990
Page Two

Panel Recommendation:

Panel recommends approval of the map amendment based on sewer/water availability and residential density as of December 1, 1985, and the IDA designation of adjoining and nearby parcels.

Staff Contact:

Pat Pudelkewicz



VICINITY MAP
1" = 1 MILE

COMPUTATION OF HOUSING DENSITY
 IN THE RESIDENTIALLY ZONED
NEIGHBORHOOD AS OF DECEMBER 1, 1985

<u>Project</u>	<u>Land Area</u>	<u>Dwelling Units</u>
Kangaroo Beach	3.7A	14DU
Kent Cove	7.0A	64DU
Thompson Creek Condominiums	2.3A	26DU
Thompson Creek Colony	2.6A	0
Thompson Creek Town Homes	8.8A	0
Thompson Creek Commons	<u>5.3A</u>	<u>0</u>
	29.7A	104DU

HOUSING DENSITY = $104/29.7 = 3.5$ DU/A

STAFF REPORT

Subject: Map Amendments for the Annexation of 11.2 Acres of Limited Development Area from Cecil Co. to the Town of North East, North East Station, c/o BTR Realty .

Action needed: vote on Cecil Co. amendment by 4/22, Town of North East by 5/13

Description of Issue: The County and Town ~~are~~ ^{were} seeking amendments to their Critical Area maps as a result of annexation of North East Station, an 80-acre parcel with 11.2 acres in the Critical Area. Because the annexation will change the maps of both the County and the Town, the jurisdictions are seeking map amendments pursuant to Natural Resources Article 8-1809(g) & (h). The Critical Area hearing was held Tuesday, March 6, at 7PM in North East.

The Critical Area designation is not changing, although the zoning is going from commercial in the County to industrial in the Town. The property has been used for a hotel and residences, and is currently used for parking and storage of tractor trailers. The parcel is being proposed for development in three phases, for a shopping center, office space, and townhouses. Much of this development will occur outside the Critical Area. In the shopping center phase, part of the stormwater management facility is proposed in the Critical Area. Stoney Run, an anadromous fish spawning stream, runs through the parcel, although it is outside the Critical Area for most of its length.

No text changes have been submitted for either program. The North East program seems to be comprehensive enough to address all Critical Area concerns for the additional property.

Recommendation: Approval

PROJECT REPORT

April 5, 1990

PROJECT:

Maryland Toll Facilities Police Headquarters and Academy

APPLICANT:

Maryland Transportation Authority (MTA)

SITE:

Coffin Point, 2,000 feet northeast of MTA administration building and the toll plaza on the northern side of the Francis Scott Key Bridge in Baltimore County.

PROPOSAL:

The Project Review Subcommittee reviewed this project on January 3, 1990. The Subcommittee requested that MTA coordinate with Baltimore County and incorporate their comments in reference to the project's compliance with the local Critical Area Program. Since the County's comments echoed those of the Commission, a vote for approval of the project was postponed until the County's comments were incorporated.

STAFF/SUBCOMMITTEE RECOMMENDATION:

Approve the Police Academy project based on the fact that the following changes have been made to the project in compliance with Baltimore County's Critical Area Program, and the Commission's comments from the previous review of the project:

- 1) Revised the parking lot layout to maximize removal of existing paved surface from the buffer zone.
- 2) Establishment of a vegetated filter strip around the perimeter of the parking lot for stormwater management and habitat enhancement.
- 3) The stormwater pond has been designed to be an extended detention pond with a shallow marsh in the bottom stage.
- 4) A preliminary planting plan has been prepared for the site.

STAFF CONTACT(S):

Susan Lawrence/Ren Serey

CRITICAL AREA COMMISSION
OIL AND GAS REGULATIONS

POINTS OF DISCUSSION FOR MEETING
APRIL 4, 1990

- Chapter 1 General Provisions
- .01 Definitions
Habitat Protection Area definitions are same as original
Critical Area Criteria (with some exceptions)
- Chapter 2 Oil and Gas Development
- .01 Introduction
 - .02 General Policies
 - Page 13 B(2) Written approval for directional drilling
 - 14 3(a) Allow more flexibility in activities?
 - 14 (4) Pros/cons of analysis
 - 15 (7) Vertical drilling through aquifers?
 - .03 Geographical Survey Operations
 - Page 17 (11) Modify distances from sensitive species
 - .04 Wellsite Construction and Drilling
 - Page 20 (7) Restrict wellsites from HPA's
 - 20 (9) Comments on distances
 - 21 (12) Include reforestation fee-in-lieu?
 - 25 (18) Prohibit underground storage tanks
 - 26 (28) Hearings on all wellsites?
 - .05 Wellsite Reclamation
 - Page 28 (ii) Add possible offset locations
 - .06 Pipelines
 - Page 28 A Comments on Policies?
 - 32 (v) Include fee-in-lieu?
 - .07 Water-dependent Facilities
 - Page 34 (2) Should we prohibit new marine transport
facilities for oil/gas produced in CA?
Require growth allocation if new sites
allowed?
 - Page 36 (3) Should we eliminate the marina term and
just keep boat docking facilities?

OVER

Chapter 3 Habitat Protection Areas

- .01 Buffer
- .02 Nontidal Wetlands
Page 43 (2) Comments on distances
- .03 Threatened and Endangered Species
- .04 Plant and Wildlife Habitat
- .05 Anadromous Fish Spawning Areas
Page 50 (2) Comments on distances

Chapter 4 Application Requirements

Environmental Assessment
Exploration Plan
Wellsite Alternative Analysis
Drilling Operations
Wellsite Reclamation
Pipeline Operations
Reforestation
Water-Dependent Facilities
Pollution Prevention and Contingency Plan
Additional Information

Chapter 5 Commission Review

- .01 Application Proposal
Page 61 Comments on procedures, time frames
- .02 Review Procedures
- .03 Panels
- .04 Time Frames
Page 64B Comments on processing time
Eliminate "Failure to make notice..."?

Should the following be included in Chapter 5:
Require the applicant to notify adjacent property owners and
local jurisdiction of oil/gas proposals

Insert a statement about applicant being responsible for
advocacy of project at all hearings

Does the Commission want to formally approve all activities
(including seismic surveys)

Should a conditional approval mechanism be added?

Chapter 6 Appeals

DEPARTMENT OF NATURAL RESOURCES
CRITICAL AREAS COMMISSION

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Wednesday, March 7, 1990

GENERAL MEMBERSHIP MEETING

Pursuant to Notice, the above-entitled meeting
of the Department of Natural Resources Critical Areas
Commission was held at the White Oaks Marina, in
Chestertown, Maryland, commencing at 1:35 p.m.

- - -



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P R O C E E D I N G S

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MR. BUTANIS: I'd like to call the meeting to order. As you can all see, Judge North is not here today, nor is our vice chair, Mr. Price, so I've been asked to fill in, so you're stuck with me.

Preliminarily, Sarah had some introductions to make, I believe.

MS. TAYLOR: Yes. Before half of the new staff leave I wanted to introduce them to you.

I'd first of all like to start with Judge North's secretary, and my secretary, Peggy Mickler, to my right. And she'll be doing most of the phone calls from here on out, as far as Commission meetings are concerned, attendance, et cetera.

And if you could all kind of turn your name tags in this direction it would be helpful to her, since she doesn't know all of you as of yet, but has promised to have your names memorized by the next meeting.

I would also like to introduce Claudia Jones. She is our new Natural Resource Planner III, that is filling the shoes of Abbie Rome, and we're mighty



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1 pleased to have her on board. She is now our wetlands
2 expert, and hails from Fish and Wildlife Service. Am I
3 correct on that one?

4 MS. JONES: Yes.

5 MS. TAYLOR: Good, I kept that.

6 I'd like to introduce finally two interns,
7 from the University of Maryland, College Park, who have
8 agreed to tackle a few issues that we have around
9 grandfathering. I'm really amazed that they want to do
10 this, and every week they come in they're excited and
11 thrilled that they're still working on it. I can't
12 guarantee that by the end of June, but I would like to
13 introduce Carmen Jelotti and Theresa Corliss. And they
14 both come from a Natural Resource management program at
15 the University of Maryland, so we're really pleased to
16 have them, as well.

17 I have another announcement to make, if I may
18 do so. Our assistant attorney general is going to the
19 private sector, and the firm of Linowes and Blocher is
20 very lucky to get him, I must say. And we will be
21 losing as of April 1st, an auspicious date, Lee Epstein.



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1 And there are several people that will be
2 coming back, for whom we have certificates. We want to
3 have Lee's done as well, for our April meeting, so we
4 can acknowledge everyone.

5 But Lee, on behalf of Judge North and I, at
6 least today, but we'll be saying some more about it,
7 congratulations to you, and now we're going to be
8 illegal, I guess, as all get out, because we'll have
9 nobody keeping up straight.

10 Do you want to say anything?

11 MR. EPSTEIN: Well, I guess this is probably
12 the last time I'm going to be with you all, at least
13 from this side of the table. I've got to say this has
14 been a hell of an experience.

15 Not many people have the opportunity to work
16 with a group as dedicated as this group has been. To
17 work on a new state program as far reaching as this
18 state program is, and to work with a staff as good as
19 this staff has been, but I have been privileged to do
20 that.

21 I have other clients in DNR. This has



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1 certainly been the most interesting of clients. Again,
2 not many lawyers get the opportunity to have a client
3 that's 26 people big, or 26 different minds, all
4 operating at the same speed. But I've had that chance,
5 and I appreciate it, and I appreciate all your help, and
6 certainly your patience, over the last five and a half
7 years, and I wish you the best. I think your work is
8 valuable, and I think it's probably one of the few
9 programs in the country like it. And I hope for nothing
10 but the best for this Commission.

11 Thank you.

12 MS. TAYLOR: Well, Lee, we really appreciate
13 everything you've done for us, and I personally, quite
14 frankly, could not have done anything at all without
15 your help and assistance, and I know the rest of the
16 staff feels the same.

17 And when you come back in April for "the
18 roast" or whatever it may be, we know you'll be
19 then wearing the private hat, but at least for now we'd
20 really like to thank you so much for what you've done.

21 (Applause.)



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1 MR. BUTANIS: Okay, let's move on with the
2 agenda.

3 First we have the approval of the minutes of
4 the last meeting of February 7th. I guess they've been
5 disseminated and everybody has had a chance to read
6 them. Is there a motion to approve them?

7 VOICE: So moved.

8 MR. BUTANIS: Second?

9 VOICE: Second.

10 MR. BUTANIS: Any discussion, amendments,
11 changes?

12 All in favor say "aye".

13 AUDIENCE: Aye.

14 MR. BUTANIS: Any opposed?

15 AUDIENCE: (No response.)

16 MR. BUTANIS: So ordered.

17 Let's move on to the vote on Chesapeake Beach.

18 Sam, you were the chair of that.

19 MR. BOWLING: We are prepared to recommend
20 approval of two of these amendments, approval of a third
21 with conditions, and acceptance of a mapping correction



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1 is really what -- I can do these separately, or
2 individually, or we can have Susan come forward and
3 explain --

4 MR. BUTANIS: Okay, why don't we have Susan
5 give a brief synopsis of what this is all about.

6 MS. LAWRENCE: Okay, Chesapeake Beach has
7 proposed map amendments for four different parcels
8 within the town of Chesapeake Beach. Actually I should
9 say four different locations. North Chesapeake
10 subdivision, location number three, is several lots.

11 The first location, the Harbor Road and Howlin
12 property, has a development named Captain's Quarters
13 proposed. We're not voting on that proposal today, just
14 on the buffer exemption designation.

15 We do have information about what is proposed
16 on the sites, however, we're not specifically voting on
17 that today.

18 The areas are currently qualified, locations
19 one, two and four are currently qualified, for
20 designation as buffer exemption, according to 14.15.09 C
21 (8) that states that buffer exemptions may be requested



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1 for portions of the critical area, from buffer
 2 requirements -- that's the 100 foot buffer requirements
 3 -- where it can be sufficiently demonstrated that the
 4 existing pattern of residential, industrial, commercial
 5 or recreational development in the critical area
 6 prevents the buffer from fulfilling the functions stated
 7 in 14.15.09 B.

8 The functions include providing for the
 9 removal or reduction of sediments, nutrients and
 10 potentially harmful toxic substances in run off entering
 11 the Bay and it's tributaries; minimizing the adverse
 12 effects of human activities on wetlands, shoreline,
 13 stream banks, tidal waters and aquatic resources;
 14 maintaining an area of transitional habitat between
 15 aquatic and upland communities; maintaining the natural
 16 environment of streams, and protecting riparian wildlife
 17 habitat.

18 Areas one -- locations one, two and four are
 19 all areas where those functions are not being fulfilled
 20 due to the fact that there's been unnatural fill placed
 21 in the area in the case of the Harbor Road and Howlin



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1 property. Location number two, the area that's being
2 requested is along a bulkheaded tidal basin, the rest of
3 the property has a little gas station, and has been
4 determined by Coastal Resources, Inc. to be 84 percent
5 impervious. A very compacted area that has been used as
6 a garage, parking lot area for years.

7 And then location number four, Fishing Creek
8 is bulkheaded and used as a marina. It's in marina use,
9 and that's actually a mapping correction, they're
10 proposing that as a mapping correction for buffer
11 exemption because it should have been mapped as such in
12 the original map.

13 The third area in North Chesapeake Beach
14 subdivision is currently developed in single family
15 lots, and we are recommending to the Commission that
16 this area not be approved due to the precedent that
17 might be set throughout the critical area with similar
18 lots, with lawns and trees, that's throughout the Bay
19 area, and we thought no, in the critical area there are
20 many, many lots like that. That might set a precedent
21 that we don't want to set.



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1 Does anyone have any questions about any of
2 the sites or --

3 MR. BUTANIS: Sam, do you have anything?

4 MR. KREITNER: What's the purpose of the third
5 exemption they're seeking? Why do they want it?

6 MS. LAWRENCE: They want it because there's no
7 functioning buffer, and they don't want people to have
8 to go through various procedures to build a porch or
9 deck on their home.

10 MR. BOWLING: Actually all of these are in an
11 intensely -- in intensely developed areas. None of them
12 are in an LDA, or RDA.

13 MS. LAWRENCE: I think the North Chesapeake
14 Beach subdivision is.

15 MR. BOWLING: Is LDA?

16 MS. LAWRENCE: Yes. But the remaining areas are
17 IDA.

18 MR. BUTANIS: Okay, is the panel prepared to
19 make a recommendation and motion?

20 MR. BOWLING: I have motions on them
21 separately.



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1 On the Harbor Road, Howlin property, Captain's
2 Quarters, the panel moves that we approve the buffer
3 exemption area designation on this site, provided that
4 development standards in the buffer exemption area as
5 per the town of Chesapeake Beach's Critical Area
6 Protection Program, and amendments to the Chesapeake
7 Beach zoning ordinance are followed.

8 Provided they follow those amendments, we
9 approve it.

10 And that the storm water pond which they have
11 indicated they will construct on the site be included.

12 MR. BUTANIS: Okay, and that's one motion?

13 VOICE: Second.

14 MR. BOWLING: One site.

15 MR. BUTANIS: Any further discussion?

16 MR. ZAHNISER: Being included in what?

17 MR. BOWLING: Being included in their final
18 development?

19 MR. ZAHNISER: In their plan?

20 MR. BOWLING: Yes, their site development
21 plan, I guess I should say.



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1 MR. BUTANIS: All in favor say "aye".

2 AUDIENCE: Aye.

3 MR. BUTANIS: Any opposed?

4 AUDIENCE: (No response.)

5 MR. BUTANIS: Motion carried.

6 MR. BOWLING: On Baycrest subdivision,
7 approve the buffer exemption area designation of the
8 site along the bulkheaded inland tidal basin, provided
9 that development standards in the buffer exemption area,
10 as per the town of Chesapeake Beach Critical Area
11 Protection Program, and amendments to the Chesapeake
12 Beach zoning ordinances, are followed.

13 And that the storm water management pond on
14 the proposed site plan is constructed. And as shown,
15 vegetation is planted per the standards of the local
16 program.

17 MR. BUTANIS: Is there a second?

18 VOICE: Second.

19 MR. BUTANIS: Any further discussion?

20 AUDIENCE: (No response.)

21 MR. BUTANIS: All in favor say "aye".



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1 AUDIENCE: Aye.

2 MR. BUTANIS: Any opposed?

3 AUDIENCE: (No response.)

4 MR. BUTANIS: Motion carried.

5 MR. BOWLING: Disapprove the map amendment
6 proposed to change the designation of the shore line of
7 the five lots in old Chesapeake Beach subdivision to a
8 buffer exemption area.

9 We feel that we would be setting a bad
10 precedent, and we don't want to do that.

11 MR. BUTANIS: Is there a second?

12 MR. ZAHNISER: Second.

13 MR. BUTANIS: Any discussion?

14 MR. EPSTEIN: I'd like to ask a question just
15 for the record.

16 MR. BUTANIS: Sure.

17 MR. EPSTEIN: Is it your view that that
18 development as is currently configured, is not
19 preventing the buffer from performing as it's supposed
20 to perform?

21 MR. ZAHNISER: No, because it is a normal



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1 grass lawn from the houses to the property line, or to
2 the wetlands that exist, and if you say that that's not
3 causing a normal function of the buffer, then no lawn
4 would be in that.

5 MR. EPSTEIN: So you're saying that the
6 buffer is -- that there is a function that's being
7 performed and therefore --

8 MR. BOWLING: Converting it should require a
9 variance rather than a --

10 MR. ZAHNISER: The buffer is treed and
11 grassed.

12 MR. BOSTIAN: And the point is that you're
13 making a distinction between LDA and IDA situations.

14 MR. BUTANIS Any further discussion?

15 AUDIENCE: (No response.)

16 MR. BUTANIS: All in favor say "aye."

17 AUDIENCE: AYE.

18 MR. BUTANIS: Any opposed?

19 AUDIENCE: (No response.)

20 MR. BUTANIS: Motion carried.

21 MR. BOWLING: And we also move that we accept



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1 the mapping correction designation of bulkheaded portion
2 of Fishing Creek, with the buffer exemption. That they
3 just indicated they made a mistake in their mapping, and
4 we agreed with them that it probably should have been
5 that way.

6 MR. BUTANIS: Is there a second?

7 MR. ZAHNISER: Second.

8 MR. BUTANIS: Any discussion?

9 AUDIENCE: (No response.)

10 MR. BUTANIS: All in favor say "aye."

11 AUDIENCE: Aye.

12 MR. BUTANIS: Opposed?

13 AUDIENCE: (No response.)

14 MR. BUTANIS: Motion carried.

15 Thank you, Sam.

16 Is Bob Sallit here?

17 MS. TAYLOR: Margaret?

18 VOICE: (Inaudible.)

19 MS. TAYLOR: Oh, we can then go ahead with the
20 Kent Island project?

21 Okay, thank you.



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1 MR. BUTANIS: Let's go on with the Kent Island
2 Environmental Center Project.

3 Kay, you and Sam were co-chairs on that, and
4 you've got a statement to make?

5 MR. BUTANIS: You want to run through this,
6 Ren?

7 MR. SERCY: The State Highway Administration
8 is proposing the Chesapeake Bay Environmental Education
9 and Visitor Center on Kent Island.

10 In January, SHA attended our meeting and
11 described the project, and David Carroll was here also,
12 and described a little bit about it. Abbie Rome had
13 been the staff planner for the project, and she watched
14 it pretty carefully.

15 There were a couple changes that needed to be
16 made regarding staying out of the buffer and some
17 planting that needed to be done.

18 What we have now is a 300 foot buffer as
19 required by Queen Anne's County; we have the building,
20 the Environmental Education and Visitor Center; a
21 parking lot; an access road, all on county owned land,



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1 park land, that will be leased to the state. The state
2 will operate the facility, and will bring, for the most
3 part, school children, and other groups in for
4 environmental education activities.

5 No development is proposed within the buffer.
6 Stormwater management is to be conducted for water
7 quality. There will be a waterfowl enhancement
8 project on the site, and that will be coordinated with
9 DNR.

10 Margaret Ki, from the County Planning Office,
11 is here and Charlie Adams, the director of the
12 landscape architecture division at State Highways, is
13 here.

14 The county is in favor of the project, feels
15 that it does meet their requirements, and the county
16 planning staff had been involved at every stage.

17 If you have any questions for either of those
18 people, they'd be willing to answer them.

19 MR. BOSTIAN: Ren, I have a question for you.
20 Who's requiring the mitigation of the wetlands be
21 performed?



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1 MR. SERCY: Who's requiring that it -- there
2 was no requirement, it's voluntary action by State
3 Highways, I think through coordination with DNR. But
4 they will be doing it on site.

5 MR. BOSTIAN: It's not being required by the
6 EPA or the Army Corps of Engineers?

7 MR. SERCY: That I don't know.

8 VOICE: This is out on applications of public
9 notice, due to come off public notice on the 26th of the
10 month. It's 22/100ths of an acre impact and shrub
11 scrub, and I don't know -- typically that's a nationwide
12 permit, and for that small an impact normally does not
13 require mitigation, but we are going to provide
14 mitigation whether it's required by permit or not.

15 MR. BOSTIAN: -- whether we're being required
16 to do it or not?

17 MR. BUTANIS: We don't know at this point
18 whether we will be or not, but whether we are or not
19 we're going to provide the mitigation.

20 Sir, would you be so kind as to identify
21 yourself?



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1 MR. ADAMS: I'm sorry, I'm Charlie Adams. I'm
2 chief of the Landscape Architecture Division, State
3 Highway Administration.

4 MR. SERCY: The staff recommendation is for
5 approval on the sub committee -- or the sub committee
6 met this morning, and Kay has a motion.

7 MS. LANGNER: The Project Evaluation Committee
8 is in favor, and I would like to move that we vote
9 approval as proposed on the Kent Island Environmental
10 Study.

11 MR. PHILLIPS: Second.

12 MR. BUTANIS: Any further discussion?

13 AUDIENCE: (No response.)

14 MR. BUTANIS: All in favor say "aye."

15 AUDIENCE: Aye.

16 MR. BUTANIS: Any opposed?

17 AUDIENCE: (No response.)

18 MR. BUTANIS: Motion carried unanimously.

19 Thank you, Ren.

20 Okay, let's move back to the vote on St.
21 Mary's County map amendments.



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1 Go ahead, please.

2 MR. SERCY: As you'll notice at the top of the
3 page, this staff report is dated January -- February
4 7th. February 7th. It's the same staff report that I
5 passed out last month.

6 At that time St. Mary's County had proposed
7 changes to its program. During the period between
8 Commission approval and local adoption the county is
9 allowed to propose changes to the Commission during that
10 period.

11 There are a number of changes outlined on
12 this. I explained them briefly last time. I'll just
13 mention them again.

14 They involve administrative changes to local
15 procedures, and technical corrections, both of the text
16 and the mapping.

17 The map revisions are explained on the back.
18 These map revisions described in this staff report are
19 of a minor nature. They are corrective changes. They
20 do not involve the issue that has been of some
21 controversy.



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1 These changes are all recommended for
2 approval, by the staff. The subcommittee met both a
3 month ago and this morning on these changes.

4 As you remember, and I'll just emphasize it
5 once again, as you remember there has been considerable
6 discussion about the Maryland Rock property in St.
7 Mary's County. That is not contained in this staff
8 report. The panel has decided to consider that as a
9 separate issue, and what you have before you is
10 merely a recommendation for approval of those minor
11 changes.

12 MR. GUTMAN: Mr. Chairman, if I may at this
13 time make a motion to accept the staff report, and
14 affirm these changes.

15 MR. BUTANIS: Okay, that would be the
16 administrative additions, the technical corrections and
17 the map revisions?

18 MR. GUTMAN: That is correct.

19 MR. BOWLING: I'll second that.

20 MR. BUTANIS: And with the understanding that
21 the map revisions do not pertain to the Maryland Rock



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1 property?

2 MR. BOWLING: Correct.

3 MR. BUTANIS: There is a second.

4 Any further discussion?

5 AUDIENCE: (No response.)

6 MR. BUTANIS: All in favor say "aye."

7 AUDIENCE: Aye.

8 MR. BUTANIS: Any opposed?

9 AUDIENCE: (No response.)

10 MR. BUTANIS: Motion is carried.

11 MR. SERCY: The other issue regarding St.
12 Mary's County is not described in a staff report.

13 That issue is about the Maryland Rock
14 property. And as you probably remember that is a parcel
15 of land that has an ongoing sand and gravel processing
16 facility on it.

17 In December when you approved the County's
18 Critical Area Program that parcel was included, and was
19 designated as RCA, and you approved that.

20 Last month, at our last month meeting, the St.
21 Mary's County Commissioners informed the Commission that



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1 they wanted to propose a change for that parcel to
2 designate a portion of it, 22 acres, as IDA.

3 The Commission decided not to vote on that
4 parcel, on that change, at that time because a 30 day
5 period is permitted for the Commission to consider
6 these changes, and because February was a short month we
7 could also consider it today and still be within the 30
8 days. So in a sense that proposal was tabled last time.
9 Now you have before you the County Commissioner's
10 request and notification to the Commission to change,
11 once again, the designation and the proposal to RCA, to
12 coincide with what you approved in December for this
13 parcel.

14 The letter that I'm passing around is from the
15 County Commissioners, dated today. They met last night
16 and decided to leave as RCA the designation.

17 The letter contains two paragraphs. Only the
18 top paragraph pertains to the Maryland Rock property.
19 The bottom paragraph concerns one of the technical
20 changes that we discussed a few moments ago.

21 The subcommittee met this morning, discussed



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1 the County's latest designation of this parcel. I
2 reported to them that the staff recommendation is for
3 approval of the RCA, as the County has proposed.

4 The reason for that is that not only is sand
5 and gravel mining permitted within the critical area,
6 within the RCA, but the accessory uses, which would
7 include processing, is also permitted in an RCA
8 designation. The County has proposed RCA for the site.
9 The staff recommendation is that that is consistent with
10 the criteria, and with the County's program.

11 The panel, St. Mary's County panel, voted to
12 agree with the County, regarding the designation as RCA.

13 Jim?

14 MR. GUTMAN: And I would at this time so move.

15 MR. ZAHNISER: Second.

16 MR. BUTANIS: Any further discussion?

17 Ron?

18 MR. HICKERNELL: Our motion is to do what?

19 MR. GUTMAN: The motion is to approve the St.
20 Mary's County Commissioners' decision of March 7th, the
21 paper that was distributed, identifying the parcel in



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1 question as RCA.

2 MR. HICKERNELL: Well, I heard the Commission
3 has already so acted.

4 MR. BUTANIS: An argument could certainly be
5 made that the Commission's letter of March 7th removes
6 from our consideration anything to do with the change in
7 this property. However, after consulting with counsel,
8 we believe it prudent that we must act in some form or
9 fashion on this amendment to their proposed amendment,
10 so to speak.

11 So we could, if we so chose, consider this
12 March 7th action by the County Commissioners a new
13 amendment, and which would trigger another 30 day
14 period. We don't have to utilize that entire time if
15 we're prepared to move forward today.

16 The panel has considered this in light of the
17 amendment to the proposal, and I understand they're
18 endorsing the County Commissioners' actions with respect
19 to keeping this property as RCA.

20 I see at least a couple people out in the
21 audience that would probably like to make a statement.



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1 Now might be an appropriate time.

2 Is there anybody in the audience that would
3 like to address the Commission at this time?

4 VOICE: Yes.

5 MR. BUTANIS: Before you begin, is there
6 anybody else that wanted to address the Commission on
7 the issue of the Maryland Rock property?

8 If we could keep our statements to maybe five
9 minutes, that would help things proceed.

10 MR. BROSSMAN: My name is Doug Brossman. I'm
11 an attorney for Maryland Rock. I want to go through
12 slowly and clearly the history of this property. I'll
13 try and keep it below five minutes, but if I'm still
14 holding your interest after that time, I request your
15 indulgence.

16 MR. BUTANIS: You can say a lot in five
17 minutes. The clock is running.

18 MR. BROSSMAN: There's two issues here. One
19 substantive, one is procedural.

20 I want to do the substantive issue first, as
21 to what is the proper designation of this property.



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1 The initial draft Critical Areas Program,
2 initial mapping of this property by the county,
3 showed this area in question as an intensely
4 developed area.

5 You heard testimony last month that there's
6 no question it was used, the entire parcel, was used as
7 industrial use on December 1, '85.

8 The Court of Special Appeals has held that
9 it's been used as an industrial use since before 1975,
10 which pre-dates zoning in Queen Anne's County.

11 So factually there's no question.

12 MR. BUTANIS: St. Mary's.

13 MR. BROSSMAN: St. Mary's, I'm sorry.

14 So factually there's no question the property
15 has been used as an industrial use.

16 Now the draft program that came up to you in
17 December, however, for approval, submitted by St. Mary's
18 County had changed the designation of that property from
19 IDA to RCA, and they provided a specific rationale for
20 that in the program that you approved. So that the sub
21 area encompassing the surface mining operation, while in



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1 existence prior to December 1, '85, was nevertheless
2 classified as RCA. The rationale for this
3 classification lay in the fact that said mine operation
4 is permitted under a conditional use permit, which
5 mandates, among other provisions, that the area be
6 restored to its former state upon the completion of the
7 gravel mining.

8 Upon such restoration the subject property
9 shall not meet the required test for either LDA or IDA
10 classification.

11 This says they classified it based on a
12 presumption that the property was operating subject to a
13 conditional use under zoning.

14 That issue was in the courts at the time. The
15 Court of Special Appeals held that this property was
16 subject to a non-conforming use, not a conditional use.

17 The non-conforming use allowed the uses on
18 this property to proceed ad infinitum. They're not
19 subject to the restoration and termination procedures of
20 the conditional use. That is an adjacent property,
21 which had the use started on it sometime later.



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1 So, the rationale for the initial RCA
2 designation was wrong, and that's what you approved, the
3 rationale was wrong.

4 At their County's January 23, 1990 public
5 hearing on the issue, which, by the way, was an
6 advertised public hearing with the agenda published in
7 the newspaper, they addressed that issue, and they asked
8 for their county attorney's opinion on it -- to research
9 the issue, and they found that the use on the Maryland
10 Rock property was not subject to a restoration
11 agreement, did not have to terminate; therefore their
12 rationale for the RCA determination was wrong.

13 They then submitted a request to you, among
14 other requests, to change the parcel to an IDA. That
15 was based on their definition and their plan for how
16 property should be designated.

17 Now we're hearing that another reason why it
18 should be RCA is because it's an allowable use in an RCA
19 district.

20 That's really irrelevant. The issue is, it's
21 not a use issue here, the issue is how should it be



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1 designated, it's a designation issue, under the
2 designation criteria in the plan.

3 It clearly says IDA, or those areas developed
4 predominately with commercial, industrial or
5 institutional uses over 20 acres. That clearly applies
6 here. That clearly fits the definition of an IDA area,
7 therefore there's really no factual question, the area
8 should be designated IDA.

9 The county held a public hearing on that
10 January 23rd. They reached that conclusion, and they
11 submitted that request for a change to you.

12 That gets us back to the procedural issue.
13 Last night, apparently St. Mary's County has an open
14 forum the first Tuesday of every month, which apparently
15 is an open, public hearing. There was no published
16 agenda saying the critical areas issue would be looked
17 at. No public notice the critical areas issue would be
18 looked at. This was their open forum.

19 We had representatives at that meeting.
20 Relatively early in that meeting -- I'm paraphrasing, I
21 don't know what the exact quote was as I'm getting this



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1 secondhand. A question was asked to the audience, "Is
2 there any business to come before this board now, which
3 was subject old business or a reconsideration of old
4 decisions?"

5 There was nothing brought up from the
6 audience.

7 As a result our representative left.

8 We find out this morning that at 12:00 last
9 night, after no notice to anybody, no public notice of
10 an agenda, the county had reversed its decision from
11 what it held on the public hearing, which had a
12 published agenda.

13 The county attorney wasn't even present at the
14 time they made this reversal.

15 We submit that the county cannot withdraw a
16 duly authorized holding of a public hearing by
17 what ever you want to call it -- I don't even have a
18 name for it, but they were not authorized to withdraw
19 it. It was an illegal request for a withdrawal of their
20 formal proposal.

21 As a result the holding of their public



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1 hearing must stand, and that's the request to re-
2 classify this area to its proper designation, the IDA,
3 which, as I pointed out to you earlier, the initial RCA
4 designation was wrong. And in fact, the rationale here
5 was held wrong by the Court of Special Appeals.

6 And those are the facts I don't think have
7 been brought out to this Commission.

8 You have a property that was unquestionably
9 industrial. There's no requirement for it to be
10 restored under the clear definition of your criteria,
11 your own criteria, it has to be IDA. How it can be
12 anything else is beyond me.

13 You have a valid request from the county
14 asking it to be changed at a valid public hearing, and
15 that's what should be considered.

16 MR. BUTANIS: Thank you, sir.

17 MR. BROSSMAN: Thank you.

18 MR. GUTMAN: Can I just ask the speaker a
19 question?

20 MR. BUTANIS: Sure.

21 MR. GUTMAN: Mr. Brossman, is it within the



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1 authority of the County Commissioners to provide a
2 designation for what they feel belongs in the three
3 classifications, IDA, LDA and RCA. Is that within their
4 province?

5 MR. BROSSMAN: Are you asking me to give you
6 my opinion, or advise you on that?

7 I feel they've set rules --

8 MR. GUTMAN: Can you answer the question?

9 MR. BROSSMAN: They set rules in their program
10 to be used in delineating the three use categories in
11 their county, and they are bound to follow those rules.
12 Those rules say property of 20 acres or more, dominated
13 by industrial use is already designated IDA. Therefore,
14 an application of those rules -- you have to apply those
15 rules within their discretion, and that mandates
16 the property being designated IDA.

17 MR. GUTMAN: I'm afraid you didn't get the
18 thrust of my question.

19 Under county law do the County Commissioners
20 have authority to designate how parcels shall be
21 classified? I think a straight yes or a no would help.



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1 MR. BROSSMAN: They have the authority to
2 designate it pursuant to their rules. They must apply
3 their laws, that's the simple answer, and you can ask
4 your counsel if he feels any differently on it.

5 MR. GUTMAN: I'm asking you, sir.

6 MR. BROSSMAN: And I'm telling you.

7 MR. GUTMAN: Do they have the authority, or
8 don't they?

9 MR. BROSSMAN: They cannot arbitrarily
10 designate property, no.

11 MR. GUTMAN: They don't have the authority?

12 MR. BROSSMAN: To arbitrarily designate
13 property?

14 MR. GUTMAN: No, I said do they have the
15 authority to designate --

16 MR. BOSTIAN: Jim, I think he's answered your
17 question.

18 MR. BROSSMAN: Pursuant to their program, yes,
19 they have the duty to.

20 MR. GUTMAN: They have the authority?

21 MR. BROSSMAN: Pursuant to their program.



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1 MR. BUTANIS: Okay, let me cut this off.

2 MR. GUTMAN: It would seem to me that the
3 thrust of your argument is not with this Commission, but
4 rather whether there's a problem with what your County
5 Commissioners did.

6 MR. BROSSMAN: The County Commissioners took
7 some action last night. I am pointing out what I feel
8 are the facts in the law to this Commission. Because
9 they have asked you, through what I feel, an improper
10 means to take action, and I'm pointing out why I feel
11 that is improper.

12 You, as a Board, can either take action today
13 or can defer that another 30 days, and that is your
14 decision.

15 MR. BUTANIS: Mr. Hickernell?

16 MR. HICKERNELL: I would speak to the argument
17 of delaying action by the Commission at this time.

18 Very simply, we have before us a letter dated
19 earlier today, that refers to action taken last evening,
20 that reverses prior action taken by this County
21 Commission. I think the statement made by counsel bears



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1 investigation, at least for my vote.

2 It seems to me that, very simply, if the
3 Commission has designated a program in this -- if the
4 County Commissioners designated a program, and this
5 Commission has reviewed their program and accepted it,
6 that an amendment to that program which may not in fact
7 conform with the tenants of the program, at least ought
8 to bear out our investigation, and we should act based
9 on that understanding, and not act before we understand
10 that.

11 I would suggest we not act today.

12 MR. BUTANIS: Lee, is it incumbent on us to
13 look behind any proposed procedural defects in an
14 amendment that comes before us? Do we have that
15 obligation?

16 As I understand it, when a county submits a
17 program or an amendment to us, we would presume that it
18 had been lawfully enacted, lawfully endorsed by that
19 governing body.

20 When a challenge is made to that, to the
21 enactment of that proposal, and the challenge is made,



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1 really for the first time before us, what is our
2 obligation with respect to investigating that before we
3 consider the proposal?

4 MR. EPSTEIN: I think you're correct that it's
5 probably not the legal charge of this Commission to look
6 behind what purports to be an appropriate local action.

7 You can though, you may, if you feel you wish
8 to, you may feel it's your moral, if you will,
9 obligation to do so. But that's your decision. You
10 don't have to do so, I don't believe.

11 I would suggest also that today, depending on
12 whether the full Commission agrees with Mr. Hickernell
13 or not, or regardless of whether the full Commission
14 agrees with Mr. Hickernell or not, I think since the
15 county attorney is here I think it would be helpful to
16 have the county attorney give his view of the procedural
17 regularity or irregularity on this action, just so the
18 Commission has that on the record. And if it wishes to
19 take an additional 30 days it can study that, as well as
20 anything else that may or may not come up.

21 MR. BOSTIAN: There isn't any doubt that we



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1 would have another -- we have the option of delaying
2 this another 30 days, given the procedural status of it?

3 MR. EPSTEIN: I believe you do. There was
4 some question from one of the county representatives at
5 the subcommittee, that since their 90 days are ticking,
6 that for the Commission to delay this further would
7 interrupt, or exceed that 90 day clock. I don't
8 believe, after looking at sub section "E" of section
9 .08.18.09 that that's a problem. I think that the
10 regulations essentially leave room for those kinds of
11 changes, and provide that when those changes come
12 forward the Commission has 30 days to decide upon them.
13 So I think if they came forward at day 30 or day 60 or
14 virtually day 90, the Commission would still have 30
15 days to consider them, thereby moving the county's date
16 up by at least that amount of time.

17 So I don't think you have to act today.

18 MR. BUTANIS: I think Lee's recommendation
19 that we hear from the county attorney is an appropriate
20 one.

21 Mr. Densforth, would you care to come forth?



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1 MR. DENSFORTH: When I went to bed last night
2 I went to bed and slept very well. When I got up this
3 morning the whole world had turned around, after I found
4 out about last nights meeting.

5 I was not, as it's been indicated before, I
6 was not at last nights meeting. There are people here
7 in the audience who I know were at last nights meeting,
8 who may be able to fill in some of the gaps in my
9 knowledge about what transpired yesterday.

10 The Maryland Rock issue was discussed very
11 briefly yesterday at a public meeting of the County
12 Commissioners, as an agenda item. No decision was made
13 at that time.

14 I think an important issue, from my
15 perspective as an attorney to the Commissioners, is
16 whether or not there was any indication given at that
17 3:00 public meeting that a discussion of the Maryland
18 Rock issue, and perhaps a decision, would be deferred
19 until later that evening.

20 I was present at the 3:00 meeting. I do not
21 recall hearing anything that would have led the public,



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1 and those present, to believe that further official
2 action may be taken that evening. If it was there are
3 people here who would have knowledge of that, and I
4 would hope that you would listen to them, and let them
5 give you their recollections of the meeting, which are
6 probably better than mine. But that is certainly an
7 issue that I have, that's raised in my mind as to the
8 vote that was taken late last night, which was taken
9 around 11:30 or so.

10 I would, and I must, because of the position
11 that I'm in, urge you to adopt the decision made last
12 night of the Board of County Commissioners. Obviously,
13 if there are procedural problems with the vote taken
14 last night we will defend those at the local level, to
15 the best of our ability. Obviously, we will call in, if
16 they're willing to be called in, the attorney general's
17 office to help us defend the Critical Area Ordinance
18 that we're asking you to approve today.

19 But by a vote of three to one last night the
20 Commissioners made it very clear they would like this
21 Commission to designate -- accept their designation of



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1 the property as RCA. It's a very highly charged issue
2 down in St. Mary's. It has been lingering now, through
3 no fault of this Commission, of course, for many,
4 many months. It's one we would all like to put behind
5 us.

6 I have no doubt this matter is going to the
7 courts to be resolved, and I would urge you not to delay
8 it further. Go ahead -- I would urge you to make your
9 decision today, let it wind its way through the courts
10 because it's headed there anyway, and let us sort it out
11 there on the procedural issues.

12 Mr. Hickernell?

13 MR. HICKERNELL: Sir, are you willing to speak
14 to the question of the conformance of the designation of
15 RCA to this site, to the program adopted by St. Mary's
16 County Commissioners?

17 MR. DENSFORTH: I have an opinion on that, but
18 frankly I come before you not really authorized by the
19 Board of County Commissioners to express that opinion.

20 MR. HICKERNELL: Is anyone on your staff
21 willing to state as to the conformance of the



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1 designation of RCA to the St. Mary's County
2 Commissioners?

3 MR. DENSFORTH: Maybe I didn't understand.

4 MR. SERCY: Do you mean the local staff,
5 county staff?

6 MR. HICKERNELL: The Commission staff, or
7 county staff if the county staff is present.

8 MR. SERCY: It might be more appropriate if we
9 hear from them.

10 MR. DENSFORTH: Jeff Jackman, from the Office
11 of Planning and Zoning.

12 MR. JACKMAN: Your question, please?

13 MR. HICKERNELL: Yes, the conformance of an
14 RCA designation of this site to the program adopted by
15 St. Mary's County Commissioners for the -- how does this
16 conform to that program?

17 MR. JACKMAN: I likewise was not at last
18 nights meeting, but this tract was designated RCA when
19 the Commission's plan came to us. We have already have
20 acted once, and confirmed that designation. So the
21 present designation is RCA.



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1 MR. HICKERNELL: That is correct, and I just
2 need to have re-explained to me why that designation was
3 appropriate when it was made in front of this Commission
4 some months ago, and why it's so appropriate at the
5 present time. That's the other question.

6 MR. JACKMAN: Okay, the classification was
7 considered to be acceptable for a surface mining
8 operation, which is permitted in an RCA classified area.

9 We did not want to require LDA classifications
10 for any new sand and gravel, or surface mining,
11 operations that would require growth allocation for any
12 new operations opening up anywhere in the county.
13 Therefore we felt that for a surface mining operation
14 RCA was proper.

15 What triggered a discussion as to whether or
16 not some other classification might be warranted at this
17 particular site, was a barge loading operation, which
18 was located in the buffer, which under our program might
19 be considered a water dependent facility, which is under
20 a different mapping rule, that would trigger an LDA or
21 an IDA classification.



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1 And the County Commissioners had advising them
2 a locally appointed commission, a Critical Area Review
3 Task Force, that made some findings that the barge
4 loading operation, the water dependent facility, was of
5 such a nature, and extent, in area location that it
6 involved some 22 acres, and therefore according to the
7 mapping rules warranted an IDA classification. But it
8 was that water dependent facility, more so than the
9 surface mining operation, that triggered that
10 recommendation that led to the February 7th request from
11 the County Commissioners.

12 But again, last night I was not there to hear
13 why they felt the consideration of the overall use of
14 the property as a surface mining operation outweighed
15 the consideration of its use as a water dependent
16 facility.

17 But just in conversation with the County
18 Administrator and the president of the Board of County
19 Commissioners this morning, I got the sense, and again
20 I'm not -- I also am not authorized to represent them
21 any more than what's being communicated officially, but



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1 I got the sense that their focus was towards the
2 predominant use of the property as surface mining, which
3 is appropriate in RCA.

4 MR. HICKERNELL: Do you know that land, 22
5 acres that's utilized for the dock and the barge
6 operation is what? Do you know approximately?

7 MR. JACKMAN: There were some -- about 35
8 acres in the critical area that is a part of the overall
9 Maryland Rock operation. They then said, well, what of
10 that overall operation is a water dependent facility?
11 Obviously the barge loading operation, which penetrates
12 the buffer. Now what is supporting that? They kind
13 of just worked their way back from there, and drew a
14 line tightly around what they felt supported --

15 MR. HICKERNELL: "They" being the special task
16 force?

17 MR. JACKMAN: "They" being the Critical Area
18 Task Force, who made the recommendation before the
19 County Commissioners.

20 MR. HICKERNELL: Was that recommendation which
21 came to this Commission in February?



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1 MR. JACKMAN: Right. That was the 22 acres.
2 That was according to an exhibit that was attached to
3 the February 7th letter.

4 MR. HICKERNELL: Again, I'd speak to the
5 Commission and ask us not to act at this time. I think
6 what is of fundamental importance to us is not to
7 produce conflicts between our applicants and the rules
8 of this Commission, and also the program adopted by St.
9 Mary's County. I think that's an awfully important
10 issue. I don't think we can be --

11 MR. BUTANIS: Okay, we currently have a motion
12 pending before the full Commission. I would ask Mr.
13 Gutman, who made that motion, and the seconder, if they
14 would consider temporarily withdrawing it while, maybe
15 you formulated your motion, Ron, and --

16 MR. GUTMAN: I wonder whether, before you take
17 that action, whether the rest of the people who have
18 come here to speak, are given an opportunity to say
19 what's on their minds.

20 MR. WITTEN: Mr. Chairman, Ladies and
21 Gentlemen of the Commission, it's a delight to be here.



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1 My name is Jack Witten. I'm the public member
2 of the Chesapeake Bay Commission for the State of
3 Maryland, and I am spokesperson today for an assembly of
4 groups in St. Mary's County, such as Potomac River
5 Association, which has been wrestling with this problem
6 for seventeen years, and the Save St. Mary's Waterway
7 Group, and others.

8 I think there was some questions raised, and
9 -- first I commend the Commission in providing this last
10 30 days to give us an opportunity, to give the community
11 an opportunity, to really absorb the impact of the
12 decision which was made very quickly a month ago.

13 And you have before, you petitions signed by
14 3500 people who support the Resource Conservation
15 designation.

16 The Resource Conservation designation, of
17 course, was in our original submittal. It has been
18 arrived at by an orderly and arduous process, and it
19 was only after that happened that the dust started to
20 rise.

21 There's no question, at least in our



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1 authority, that it's a proper designation. The question
2 of the Court of Appeals decision -- I'm not an attorney,
3 but our attorneys feel that the interpretation, which is
4 being placed on that decision, is far broader than the
5 decision really merits.

6 I think there is one other thing that
7 dominated the discussion last night, which went almost
8 to midnight. First, the County Commissioners'
9 conference room was full. This was no secret. It had
10 been full at 3:00 that afternoon. We had had a session
11 in conference room 16 across the hall, concurrent with
12 the County Commissioners' meeting, discussing the
13 strategy that would be used at the open forum that
14 night.

15 But the golden thread, I think, that was in
16 the Commissioners' decision, was that the designation of
17 Resource Conservation leaves all kinds of options open,
18 that it doesn't lock anything in concrete, it gives
19 plenty of opportunity for further discussion,
20 further changes, amendments, as knowledge becomes
21 available.



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1 And there's one other significant fact I'd
2 like to point out to you. Sitting on our Board of
3 Zoning Appeals is a member who was on that Board 17
4 years ago when the original decision was made. At the
5 last Board of Zoning Appeals meeting he made a very
6 eloquent statement, which ended saying, "17 years ago it
7 was agreed that at the end of December 31, 1989 that
8 project would end, and they would go."

9 The out shot of that statement was, the Board
10 of Appeals said, everything in the history of this is so
11 cloudy we have to designate an independent authority to
12 establish the definition of what is being alleged to be
13 a non-conforming use, the boundaries, the meats and
14 bones, and the remainder of the property. We have to
15 have an independent authority go through all the permits
16 and approvals on this property to make sure that
17 everything is in order.

18 Last night the County Commissioners reaffirmed
19 that and instructed the County Administrator to make
20 sure that resources were made available to the Office of
21 Planning and Zoning, to do this independent study, to



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1 really recreate the history of what happened in those 17
2 years. And I think the lesson in the 17 years is a
3 lesson that any citizen activist in this business ever
4 learns, is that money can wait. And it has waited 17
5 years, and the project grew from a little modest project
6 to the monstrous one that exists today.

7 So I think in your decision today, and it
8 should be made today, because as you know you can only
9 -- the attention span of the private citizen is
10 relatively short. And the longer you protect this
11 discussion the more vulnerable we are to this same kind
12 of transactional events that happened over the 17 years,
13 which so obscured the history, and so confused the
14 public, that we have to now go back and try to recreate
15 that history with an independent analysis.

16 And I think the -- really the beauty of this
17 body, and the thing that attracted me to it when the
18 legislation was under discussion, is this is a classic
19 example why local issues such as this, which are so --
20 become so volatile, and so susceptible to all kinds of
21 extraneous acts, that you have to have a body that



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1 raises this discussion above the flail, and applies the
2 wisdom and experience of a body such as this,
3 independent of the local jurisdiction, and says, having
4 looked at the facts, and looked at the situation, we
5 will act to protect the community in instances where
6 sometimes it's vulnerable, it has difficulty protecting
7 itself.

8 Thank you, very much.

9 I'll be glad to answer any questions.

10 VOICE: Jack, would you cover the procedural
11 events of what happened when the IDA was sent up as
12 against what happened yesterday, that they parallel each
13 other, and how?

14 MR. WITTEN: Well, last night's meeting was a
15 mirror image of the meeting of a month ago exactly. It
16 was exactly a mirror image of it.

17 As a matter of fact we seized upon that,
18 saying that if that was right on February 7th, it should
19 be right on March 6th.

20 MR. GREASE: I am Leonard Grease, a resident
21 of St. Mary's County.



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1 The same series of events that the legal
2 counsel for Maryland Rock referred to, as it occurred
3 yesterday, also occurred on February 6th. We were in
4 attendance in the morning, heard a presentation from the
5 task force chairman recommending 14 acres limited
6 development.

7 The Commissioners didn't accept that
8 recommendation. They came and voted, leave it in RCA.

9 That evening at the public forum, the same
10 type of public forum that existed yesterday, that
11 occurred yesterday, at that forum one of the
12 Commissioners who had voted RCA in the morning,
13 came back in the evening and said he had obtained
14 additional information and wished to change his vote
15 that night.

16 It was at that meeting that night,
17 without any public notice -- none of us who were there
18 in the afternoon heard a word that the subject would be
19 brought up again that evening.

20 One Commissioner brought it up. One of
21 the others who had voted for LDA in the afternoon



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1 seconded it, and it was passed. There was nobody, to
2 our knowledge, who had any contrary interest in the
3 subject in attendance that evening.

4 Last evening there was a roomful. Last
5 evening was the first opportunity again, in a public
6 forum, for us to put our recommendations forth, and our
7 opinions.

8 In the interim there was no opportunity to do
9 so, nor was there an opportunity in the afternoon when
10 the Commissioners briefly -- I would say for a period of
11 two minutes the chairman, or the president, entertained
12 a motion, said is there a motion, to do -- even to come
13 up here and suggest that you folks defer the decision
14 again.

15 He got nobody to make that motion. That was
16 the end of the discussion. And that's why we appeared
17 in the evening to let them know what we thought was
18 wrong with the action that had been taken the previous
19 month, that we had no opportunity to object to.

20 We had no idea, also -- I might go back before
21 that to the public hearing. The public hearing covered



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1 a presentation by the task force chairman, recommending
2 14 acres in LDA. The following two weeks following
3 that, at the Commissioners' meeting, the task force
4 chairman presented a proposal for 22 acres, based
5 supposedly upon a written instrument that they received
6 from Maryland Rock's attorney, suggesting that 22 acres
7 was a more appropriate designation than 14. No further
8 explanation, no further support.

9 So that as we sat there in the Commissioners'
10 room, that was the first anybody in the public heard
11 about designating 22 acres. But that's what came up
12 before you, without any adequate opportunity for the
13 public to intervene.

14 Thank you.

15 MR. BUTANIS: Mr. Kreitner, you had a question
16 or a statement?

17 MR. KREITNER: Yes, I wanted some
18 clarification with regard to what the status of the
19 current plan is, the designation of the property, and
20 why we have to act on a request from the Commissioners
21 to withdraw an amendment to their plan?



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1 MR. BUTANIS: As I understand it, the current
2 state of the plan is that this property is designated
3 RCA. Again, an argument could be raised that there is
4 nothing before us to do in conjunction with this
5 proposal, and that the County Commissioners have
6 ostensibly withdrawn it.

7 We've discussed this with Mr. Epstein, our
8 counsel, and his advise is that he believes that we need
9 to take some type of action. That their withdrawal of
10 the proposal is an amendment in and of itself, that
11 needs to be addressed.

12 Is that it?

13 MR. EPSTEIN: That's my view.

14 MR. BUTANIS: Okay.

15 Ron?

16 MR. HICKERNELL: Does that action have to take
17 the form of a vote, officializing the condition or the
18 knowledge of the position of the County Commissioners?

19 MR. EPSTEIN: My suggestion is that you take a
20 vote. The words in sub section E of 1809 are that
21 unless the Commission approves the change, or



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1 disapproves the change, and states in writing the
2 reasons for its disapproval within 30 days after it
3 receives the change, the change shall be deemed
4 approved. So, you know, under the statute if you don't
5 take any action the change that they're recommending,
6 and I feel it is a change today, would be, quote,
7 "deemed approved."

8 In my view --

9 MR. HICKERNELL: Which is the March 7th
10 letter?

11 MR. EPSTEIN: Right.

12 In my view, and in the past the Commission has
13 had trouble with what's occurred under this statute by
14 virtue of the Commission not taking an action. And my
15 suggestion would be to make it clean and upright and so
16 everyone knows what's happening, the Commission should
17 take an affirmative vote.

18 MR. HICKERNELL: I understand.

19 MR. BUTANIS: Any further discussion?

20 MR. BOSTIAN: It seems to me that the County
21 Commissioners of St. Mary's County ought to have a



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1 meeting and provide notice to both sides and have
2 them duke it out, rather than having one side argue that
3 the other side came, and without notice to them, argued
4 their position successfully, which it appears to have
5 happened both ways, at least in my opinion.

6 And I don't particularly wish to be part of
7 Commission action that condones such action.

8 MR. BUTANIS: Are you done? I didn't mean to
9 cut you off.

10 MR. BOSTIAN: I'm not quite done.

11 MR. BUTANIS: I'm sorry.

12 MR. BOSTIAN: So I feel as though I'd like to
13 support Ron's suggestion and have the Commission not
14 take any action, and table this matter.

15 MR. BUTANIS: Parris?

16 MR. GLENDENING: Let me just put on my other
17 hat, in the sense that as I understand it, I was
18 initially appointed and I believe re-appointed
19 subsequently, as the representative of the Maryland
20 Association of Counties to specifically kind of
21 represent the local government interests, as was



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1 intended in the history of the legislation.

2 And during that time period, and a number of
3 people here were in the Commission later on, and some of
4 us are getting gray hair and aged through this process,
5 but were here at the beginning.

6 And at the beginning one of the discussions
7 that I felt personally to be important, as well as
8 representing the Mako (phonetic) was specifically what
9 happens to the local government decision making process.
10 And through a whole series of discussions and
11 interpretations and clear statements in the minutes, and
12 so on, I believe that the intention was that unless
13 there was a finding by this Commission that the use
14 recommended was inappropriate, a substantive finding of
15 some type, and the staff had recommended that, and so
16 on, and that we went in and we looked, and we sent
17 people to the site, and things of this type, and we
18 said, no, we disagree, that this is not consistent with
19 the intent or the law of the Critical Area Commission.

20 Unless that occurred we were indeed expected
21 to follow the recommendations of the local governing



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1 body, and in this particular case it would seem to me
2 that what we have before us is obviously a controversial
3 issue. I note with interest the 17 years, and I suppose
4 at some point if we don't make a decision it will just
5 go on to the courts, because that's definitely where it
6 will end up, you know, it will be like the 17 year
7 locusts going on forever about this. And it seems to me
8 that what has occurred is within the dynamics of the
9 local community, and the Commission has made a decision.
10 Obviously a difficult decision, by noting the votes and
11 by noting some of the publicity on it, but it has made a
12 decision.

13 And unless someone tells us here, and I have
14 not heard that, and my apologies for coming in a few
15 minutes late, but unless someone tells us here that this
16 is substantively inappropriate under either the law or
17 under the -- by the law I mean the Critical Area
18 Commission law, or under the local plan, St. Mary's
19 plan, then it ought to be approved, and I didn't hear
20 Lee say it was inconsistent at all. I heard him say it
21 was a consistent part of the plan.



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1 MR. BOSTIAN: Well, it's been suggested by
2 attorney for the Maryland Rock that it is inconsistent
3 --

4 MR. GLENDENING: No, I understand that, but I
5 think the interpretation of the law was that we were
6 expected to follow the recommendations of the local
7 governing body, not of the --

8 MR. BOSTIAN: No question about that.

9 MR. GLENDENING: In which case, my feeling
10 would be -- and you know they've obviously had a series
11 of major meetings over there. I know a number of people
12 in St. Mary's, as I'm sure many Commissioners do. This
13 is controversial, very visible, very important issue in
14 St. Mary's, and I think that it is philosophically
15 incumbent upon us to honor the decision of the St.
16 Mary's Commissioners, which is, as I understand the
17 motion that's on the floor, for RCA.

18 I don't know that deferral is going to do
19 anything at all, except keep the thing boiling in St.
20 Mary's, and I also think that without hesitation that
21 this issue is going to go back to St. Mary's and is



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1 going to be resolved in terms of legal challenges,
2 whether we do something now, whether we extend it three
3 months, or whether we extend it another 17 years, that's
4 where it's going to end up.

5 And I don't know kind of philosophically why
6 would possibly move away from the interpretation that
7 the local governing people have, indeed, done their
8 thing according to their law and their procedures.

9 Now, I heard the issue raised, well, maybe
10 this wasn't properly advertised and so on. That's a
11 local issue. I mean, that's the responsibility
12 there, and we surely don't want to get in the position
13 of checking whether every single recommendation that's
14 come through us has been advertised, and meets all the
15 sunshine requirements, and things like that. And I
16 would recommend, again, unless there's some substantive
17 reason that this is not RCA, and that we can say to the
18 Commissioners, you're not honored the state law or
19 the local plan, that we ought to go ahead and approve
20 the motion that is on the floor, which I understand to
21 be approval of the Commissioners' recommendation that it



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1 go back to RCA, or stay RCA, depending on what happened
2 at the February 6th.

3 MR. BUTANIS: John?

4 MR. GRIFFIN: I tend to agree with Parris,
5 except I have one concern. The more I listen to this
6 debate, the more I think on the one hand you're
7 absolutely right, and others who have spoken are right,
8 that we don't want to turn this Commission into a local
9 zoning body. You're also right -- it's my understanding
10 of this whole program where there's discretion to be
11 exercised properly, legally, the local governments are
12 the ones who ought to do it.

13 The only question in my mind is whether under
14 our law and regulations, and the Commission's plan, the
15 particular designation of this area as RCA as opposed to
16 IDA, is within their discretion to make, or whether the
17 law, the regs, and their plan compel them, if they're
18 supposed to map based on existing uses, to designate
19 this as IDA. That's the only question to me. And I
20 don't know that we've had a clear legal opinion, and I
21 think where I'm leading is to ask Lee to give us a swan



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1 song here, and to give us an opinion. Do they have the
2 discretion or don't they? If they have the discretion
3 under our law and regulations to designate it as RCA, my
4 view is so be it.

5 The only other comment I would make, Parris,
6 is I agree with you on the notion of not looking behind
7 every procedural action locally to validate it. But
8 there has been an issue raised here in this particular
9 case, and I wonder in cases where information comes to
10 us by way of allegations that there's been a procedural
11 impropriety in terms of an action locally, whether or
12 not we do have a duty in those limited cases to
13 investigate it.

14 I don't know where I can come out on that, but
15 I don't think we should categorically dismiss situations
16 where allegations come to the Commission that something
17 hasn't been done properly.

18 So, I guess I would speak in support if it's
19 necessary, in postponing it a month, primarily to find
20 out from our learned counsel whether or not St. Mary's
21 County has the authority to do what they did, under our



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1 law and regulations. And their own. That's the only
2 question to me. The rest of this is clearly a local
3 debate, as you point out, and may take another 17 years.

4 MR. ZAHNISER: I'd like to quote the St.
5 Mary's county attorney, and urge the Commission to act
6 today. St. Mary's County is suffering because they
7 don't have a critical areas law, and that's what we're
8 here for is to save the environment, basically, and get
9 that law into effect. The panel has looked at aerial
10 photographs, it has studied this particular project for
11 some time, and sand and gravel mining is a resource
12 utilization use, and can be in the RCA.

13 The, quote, "port" that they have is a sunken
14 barge which acts as a loading platform. The
15 justification for 20 acres IDA is nothing more than a
16 conveyer belt from one of their washing areas, which is
17 part of the sand and gravel mining operation. It is
18 just contiguous with the sand and gravel operation, and
19 we feel, and have felt from the beginning that it is
20 RCA. To stretch it to its limit, as far as IDA goes, it
21 would be only the immediate area here, which is about



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1 three acres that could be considered IDA at all.

2 Twenty-two acres, gentlemen, of intensely
3 developed land in a otherwise mostly RCA body of water,
4 or creek, is a big chunk of land and can have a
5 tremendous effect on the environment. And sand and
6 gravel mining does not justify it. That is a resource
7 utilization, and we've been through this thing for quite
8 some time now. If we wait 30 days what will be
9 resolved. It will probably be in the courts for another
10 -- years.

11 All we have to do is accept a letter from the
12 County Commissioners, with their signatures on it, and
13 that's it, because we have already approved a critical
14 areas plan from the county, which has it mapped RCA.
15 And all they're doing is asking us to disregard their
16 previous letter requesting a modification.

17 I don't see the big issue here. I think that
18 it certainly can be RCA because of its use, and the
19 panel feels that way also.

20 MR. BROSSMAN: Can I say one more thing?

21 Just back to the substantive issues, I mean,



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1 obviously I take the position the entire thing is
2 industrial and should be IDA, and you all take that with
3 a grain of salt obviously.

4 Last month your own staff said there's a water
5 dependent facility there so some of it should be LDA.
6 Now all of a sudden the water dependency issue has gone
7 out the window and now it should all be RCA. That
8 brings up what John brought up, there are significant
9 issues here, what does the law mandate this area being
10 designated. And the staff itself -- Mr. Jackman stood
11 here and said five acres, 14 acres, 22 acres were part
12 of a water dependency argument.

13 Then there's a big substantive issue here.
14 What should it be designated under the law?

15 What I'm hearing is, just because it's clearly
16 an unpopular site, it should go back to RCA, and that's
17 not a criteria that's in the law, and that's what I have
18 a problem with.

19 MR. BUTANIS: I just want to recognize this
20 gentlemen. He's been wanting to speak for a few minutes
21 now.



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1 MR. BOWLING: Almost identical sand and gravel
2 operation in Charles County, it is totally RCA.

3 MR. FLEURY: My name is George Fleury. I'm a
4 home owner in St. Mary's County. I'd like to challenge
5 some of the statements that this young man has made
6 regarding this operation.

7 MR. BUTANIS: Could you identify yourself
8 again, sir.

9 MR. FLEURY: Fleury, F-L-E-U-R-Y, George.
10 This is no longer a gravel mining operation. There was
11 a grading permit issued for removal of gravel, removal
12 of 400,000 cubic yards of gravel, from this site in
13 1974. That gravel has all been exhausted. There was a
14 conditional use permit permitting the removal of gravel
15 from the rest of the -- from most of the rest of the
16 parcels, 213 acres. That conditional use permit has now
17 expired.

18 So both the barging and the processing were
19 lawful as accessory uses to the mining. The mining has
20 ceased. The operation is now purely one of processing
21 and shipping gravel that is being brought from other



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1 gravel mines throughout the county.

2 The statement that this gentleman made that
3 the Court of Special Appeals in 1984 declared that this
4 area was a non-conforming use -- I don't have that
5 document with me, but I know it pretty well by heart.
6 They concluded, "We find the shipping to be lawful as an
7 accessory to the mining, which was allowed by
8 Conditional Use Permit 74-2. Therefore, it comes under
9 the provision of the 1978 ordinance which allows non-
10 conforming uses to continue." That statement did not
11 say that it's a non-conforming use. It implied that
12 they considered it a non-conforming use, but there was
13 no reason for them to designate it a non-conforming use.
14 They had already declared it as a legal use by stating
15 that it was an accessory to the conditional use.

16 It is our position that both the processing
17 and the shipping of this gravel has now lost its
18 legality, first because the conditional use permit that
19 supported the shipping has expired and, secondly,
20 because the money of the gravel under the terms of the
21 initial grading permit, that gravel has been exhausted,



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1 so there's no longer a justification for the processing.
2 So that is the reason the county takes the position that
3 this should not be considered an industrial site. It
4 does not meet the state's criteria for intensely
5 developed areas. It is not a concentration of
6 industrial uses. It has never been a concentration of
7 uses. And it is now simply a processing and shipping
8 operation for gravel brought off-site. Thank you.

9 MR. BUTANIS: Thank you, sir.

10 MR. BROSSMAN: Which supports our dependency
11 argument.

12 MR. BUTANIS: Ron, one last comment before we
13 do something here.

14 MR. HICKERNELL: My last comment is I move
15 that we table the motion that's on the floor.

16 MR. BUTANIS: Till when?

17 MR. HICKERNELL: Move to table the motion
18 that's on the floor now.

19 MR. BUTANIS: Is there a second?

20 MR. BOSTIAN: Second.

21 MR. BUTANIS: All in favor?



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1 MR. ZAHNISER: When there is a motion on the
2 floor, is there not a -- it precedes that motion --

3 MR. BUTANIS: No, motion to table. Motion to
4 table takes precedent.

5 MR. BOWLING: I just want to point out that
6 this motion to table will, in fact, leave this property
7 RCA. Is that correct? So it resolves not one damn
8 thing.

9 MR. EPSTEIN: Actually, it doesn't do that
10 because there is no designation until the county adopts
11 a local Critical Area Program.

12 MR. BOWLING: But the county has formally
13 adopted their plan, have they not? Sent it forward to
14 us and --

15 MR. EPSTEIN: No, not until this body approves
16 everything, and then it goes back to the county, and the
17 county adopts its ordinances and programs.

18 MR. BOWLING: And we escape the 60-day clause,
19 too?

20 MR. EPSTEIN: I believe this body has 30 more
21 days, if it wishes to use them.



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1 MR. BUTANIS: Any further discussion on that
2 motion to table? Let's take a vote on that. This is
3 Ron's motion to table. The motion to table takes
4 precedence; right, Lee?

5 MR. EPSTEIN: Yes.

6 MR. BUTANIS: Okay. All in favor of tabling
7 this issue --

8 THE AUDIENCE: Just a minute. We have a
9 person here that wanted to --

10 MR. BUTANIS: Oh, sorry.

11 MR. PAWLKIEWICZ: My understanding is that
12 the St. Mary's Commission is ready to adopt this.
13 They're planning on next Tuesday; and, if they don't
14 adopt it, if this motion isn't adopted, then perhaps
15 that would delay the adoption of the St. Mary's
16 programs.

17 MR. EPSTEIN: That's correct.

18 MR. PAWLKIEWICZ: So I just wanted to say
19 that, so the commissioners are aware of that.

20 MR. BUTANIS: Appreciate that. Yes, very
21 briefly, if you would.



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1 MR. JACKMAN: I just want to call attention to
2 our Mapping Rule 6, which is in the program that this
3 commission has approved, which I think we're also
4 relying on here. "During the preparation of this
5 Critical Area Ordinance and the accompanying maps, there
6 may have existed some developed areas meeting the test
7 for LDA or IDA classification which were not so
8 classified due to an oversight. The following process
9 is established whereby such properties may be considered
10 for an LDA or IDA classification. Application for LDA
11 or IDA classification under this provision shall be made
12 with the Planning Commission, which shall forward the
13 recommendation to the Board of County Commissioners.
14 The board shall make a determination as to whether or
15 not the property meets the test for an LDA or IDA
16 classification. If the board finds that the property in
17 question should be appropriately classified as LDA or
18 IDA, then such findings shall be submitted to the
19 Critical Area Commission for approval or disapproval of
20 the LDA or IDA classification."

21 I would urge you to give us our program. If



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1 we're making an oversight here, let us rely on Rule 6 to
2 resolve it locally.

3 MR. BUTANIS: Okay. All in favor -- Roger.

4 MR. WILLIAMS: Just let me ask one question of
5 our attorney. Do you feel -- everything seems to be
6 legal in nature -- do you feel that you can come up with
7 something that you can tell us 30 days from now that you
8 can't tell us today as an instruction?

9 MR. EPSTEIN: Well, I won't be telling you
10 anything. I must say that I keep coming back in my own
11 mind to this being a judgment that the commission has to
12 make based on its own criteria, and usually the
13 commission makes those judgments based on its staff
14 recommendation and on its subcommittees or panel
15 recommendations. I'm not sure that your counsel,
16 whoever that may be, is going to be able to give you the
17 magic answer on this. I'm frank to say that, John. I'm
18 not sure there is a magic legal answer as to whether
19 this is RCA or IDA. I know counsel for Maryland Rock
20 thinks there is, and he thinks there's no doubt about
21 it; but I don't agree with that.



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1 I think that if -- I tend to agree with Parris
2 that, if there is a call to be made and if staff
3 believes that there's a legitimate argument to be made
4 for calling something one of the three designations and
5 if your subcommittee believes there's a legitimate
6 argument to be made and if the local jurisdiction
7 believes there's a legitimate argument to be made, I
8 tend to agree that the commission probably ought to
9 defer to the local jurisdiction's expertise.

10 Beyond that, though, I'm not prepared to tell
11 you that you're going to get a magic "yes" or "no,"
12 "this is RCA, this is not" legal counsel. You may. I
13 may be surprised, but I'm not going to be the one that's
14 going to do it.

15 MR. BUTANIS: Mr. Gutman.

16 MR. GUTMAN: Regarding the motion to table, I
17 think it should be understood clearly by all the
18 commission here that we recognize this was an option, to
19 put the matter off for another 30 days. None of the
20 panel members saw any merit in this, and I can only
21 reiterate that this is an issue that the panel has been



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1 keenly aware of since the day we had our hearing in St.
2 Mary's County. We had a room full of people who wanted
3 to speak and go on record at that meeting conducted by
4 the commission, and every one of them was of one voice
5 regarding Maryland Rock; and that is the way,
6 ultimately, the county commissioners have come down on
7 the matter.

8 I, for the life of me, can't conceive of
9 anything occurring in 30 days that would be new, other
10 than another reversal. And how many reversals can
11 happen? Who knows. If it's going to the courts for a
12 change, let this commission expedite that action.

13 MR. EPSTEIN: Mr. Chairman, let me also note
14 that, if you're going to -- if it is your decision to
15 approve the motion to table, part of that motion ought
16 to reflect that this is merely an exercise of the 30
17 days that this commission has to make this decision
18 under the statute, because otherwise it could be
19 perceived as this commission not making any decision
20 under the statute, thus being an automatic approval of
21 the commissioners' proposal to you.



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1 MR. HICKERNELL: Understood. I amend my
2 motion accordingly.

3 MR. BOSTIAN: I'll second the amendment.

4 MR. BUTANIS: Okay. There being no further
5 discussion, all in favor of the motion to table, please
6 raise your right hand.

7 All opposed?

8 MS. TAYLOR: Three for tabling, and 13
9 opposed.

10 MR. BUTANIS: Three in favor and 13 opposed.
11 Any abstentions? No abstentions. Motion is defeated.
12 Now we get back to your original motion.

13 MR. GUTMAN: And I would like to call the
14 question.

15 MR. BUTANIS: Okay. Could you repeat your
16 motion again just for the record.

17 MR. GUTMAN: Oh, no.

18 MR. BUTANIS: It's been so long.

19 MR. GUTMAN: Would it be better to have the
20 motion read off the tape, or should I come up with new
21 wording?



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1 MR. EPSTEIN: She can't find it.

2 MR. GUTMAN: She can't find it. All right.

3 The Critical Area Commission having received from St.
4 Mary's County Commissioners on March 7 a recommendation
5 to designate the parcel commonly referred to as Maryland
6 Rock as RCA is hereby approved by the Critical Area
7 Commission. Will that apply?

8 MR. EPSTEIN: I will just say that, as a
9 result, you're approving and forwarding back to the
10 county commissioners their full program and maps for
11 adoption in accord with the Critical Areas statute.

12 MR. GUTMAN: Just what I said.

13 MR. EPSTEIN: Okay.

14 MR. ZAHNISER: Second.

15 MR. BUTANIS: Okay, there is a second. All in
16 favor of the motion?

17 MR. HICKERNEILL: Mr. Chairman.

18 MR. BUTANIS: Oh, further discussion.

19 MR. HICKERNEILL: There is one qualifying
20 point. In the earlier discussion on the prior motion,
21 it was my understanding that the panel in this matter



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1 has consistently advised the commission that RCA is the
2 proper designation of this site, and that's been a
3 consistent opinion on the part of the subcommittee?

4 MR. BOWLING: Last month it was LDA.

5 MR. ZAHNISER: That is not true. The only
6 difference that we ever had is that we thought we could
7 entertain three to five acres that may be justified as
8 IDA, but no more than that. But our initial
9 recommendation was RCA, and our recommendation today,
10 and only because we were confronted with the county
11 commissioners' request for all 20 acres to be IDA, we
12 disagreed with the county commissioners on that.

13 MR. HICKERNELL: But the recommendation of the
14 commission at that time was to do what?

15 MR. GUTMAN: To send it back for further
16 consideration.

17 MR. BOSTIAN: To propose a compromise is what
18 it was.

19 MR. BOWLING: Yeah, in a way, it was a
20 compromise. We asked them to consider a smaller area
21 which would then become LDA.



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1 MR. BROSSMAN: That never went to the
2 commission.

3 MR. HICKERNELL: I think that makes my point.

4 MR. BUTANIS: All in favor of --

5 MR. BOSTIAN: Are you putting off discussion
6 on that? I just wanted to make a point. It appears --
7 I don't think that we should be making a decision -- I
8 agree with Parris completely in that we should not be
9 making a decision for the local jurisdiction. However,
10 I wonder whether they really have made a decision in
11 this instance, and are they just trying to put the
12 burden off on us; but that's up for us to decide and
13 take a vote on.

14 MR. BOWLING: Under Rule 6, it reads -- if we
15 do another Murphy's Law, then we'll have it back again
16 next month.

17 MR. BOSTIAN: Very possibly, but maybe they
18 will have a meeting at which they would have both sides
19 and have the argument.

20 MR. BUTANIS: Well, the question has been
21 called. Let's take a vote. All in favor, raise your



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1 right hand.

2 MS. TAYLOR: Thirteen.

3 MR. BUTANIS: All opposed?

4 MS. TAYLOR: Three.

5 MR. BUTANIS: Any abstentions?

6 (Mr. Hickerell abstained.)

7 MR. BUTANIS: Okay. Motion carried. I think
8 we can get through the rest of the agenda very, very
9 quickly. Sarah's got an update on the oil and gas draft
10 regulations.

11 MS. TAYLOR: Liz Zucker, who was responsible
12 for coordinating and doing mostly all of the penmanship,
13 along with Lee Epstein, of our oil and gas regulations,
14 is in the Caribbean; and so I know she's thinking of us
15 right now. She had it arranged several months ahead of
16 time and apologized profusely, so it was a little hard
17 to say, "No, you can't go."

18 But I want to draw your attention to the oil
19 and gas regulations. They should have been, and I hope
20 you received a copy of them, with this meeting agenda.
21 If you do not have a copy of the oil and gas "regs,"



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1 please let me know, and we will send you a copy. These
2 require your review.

3 April is going to be "oil and gas meeting"
4 month, and what it will be -- the purpose of that
5 meeting will be, quite frankly, to take your suggestions
6 as to changes and to have your decision on several
7 policy issues, two of which were enumerated in the cover
8 sheet: One dealing with "Should drilling be completely
9 prohibited within the Critical Area?" We have chosen
10 not to take that route, but have chosen that oil and gas
11 exploration and drilling should be in the Critical Area
12 but under very, very unique circumstances and under very
13 strict regulation. The second issue, "Which land use
14 designations are appropriate for drilling?" It was
15 decided that drilling is resource utilization and it
16 could occur in any land use designation.

17 There is a third policy issue that is going to
18 be arising out of our Special Issue Subcommittee, but
19 for which Liz wanted to make you aware; and that is
20 this: "Should we entertain new water-dependent, port-
21 related facilities for the transport of oil and gas, or



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1 should we restrict it to those facilities that are in
2 existence and mandate that transport of oil and gas be a
3 land-side issue as opposed to water-based?" So we would
4 like you to think on that between now and April at our
5 commission meeting.

6 I suggest the following. I suggest that, if
7 you have any changes and specific comments, that you
8 send them in ahead of time. We will try to incorporate
9 them or at least have a summary of them before the April
10 meeting. However, if you don't have the opportunity to
11 do so, we can certainly take those specific changes
12 written by you individually.

13 We would like to keep the April meeting one
14 which is a policy-issue-oriented meeting; in other
15 words, rather than decide whether something ought to
16 have a period or a semicolon or use the word "will" or
17 "would" or "shall" or "should," we would like to keep it
18 a conceptual issue, policy discussion on the criteria.
19 Please plan to spend a couple of hours or more as
20 necessary for the review of these regulations. We would
21 like to have them approved by the commission,



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1 promulgated by the commission at the May meeting, so
2 that then we can publish them in the Maryland Register.

3 So keep in mind April is discussion of the oil
4 and gas "regs." We will take your specific comments
5 before the April meeting. If you can do that, we
6 welcome them, so that we can produce a summary. If you
7 can't, please hand us those specific comments at the
8 meeting, and then we will proceed to go through them
9 section by section, so that we can get them promulgated
10 in May. There may be a couple straggler issues, but
11 this will be the important topic.

12 MR. EPSTEIN: Let me just note for those of
13 you who have been on the commission for a long time,
14 this is going to be similar to other sessions that
15 you've used to go through and adopt and approve
16 regulations. It's going to be a "roll up your sleeves,
17 sit around the table and go through these things concept
18 by concept." Sarah says the idea is not to nitpick on
19 wordsmithing, but your ideas and your dispute with the
20 current way they're written, that's what it's all about.
21 So be prepared to spend a good few hours, just like you



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1 did on the last sets of regulations that you wrote, in
2 that same kind of forum, that same kind of round table,
3 you know, sitting around and going through them
4 paragraph by paragraph.

5 MS. TAYLOR: That's it.

6 MR. EPSTEIN: It's a work session.

7 MS. TAYLOR: Quickly --

8 MR. CORKRAN: Sarah.

9 MS. TAYLOR: Yes.

10 MR. CORKRAN: At that meeting that Lee is
11 referring to, it would seem to me to be very helpful if
12 someone were there familiar with drilling operations.

13 MS. TAYLOR: Yes.

14 MR. CORKRAN: I have a lot of questions about
15 some of the --

16 MS. TAYLOR: We will have the "Ken and Ken"
17 duo.

18 MR. CORKRAN: Okay.

19 MS. TAYLOR: Dr. Weaver and Dr. Schwartz from
20 the Maryland Geological Survey.

21 MR. CORKRAN: Okay, good.



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1 MS. TAYLOR: Yes, we certainly will, should
2 any technical questions arise, and they will, that we
3 will certainly not be prepared to handle as the Critical
4 Area Commission staff. We will have that covered.
5 Thank you for reminding me of that.

6 MR. CORKRAN: Thank you.

7 MR. BUTANIS: Okay. We have a legislative
8 update?

9 MS. TAYLOR: Legislative update briefly. Most
10 of the bills that we have testified on and represented
11 the commission on, meaning specifically Judge North,
12 have all been heard on one side of the Legislature. We
13 are awaiting for these bills to hop to the other side of
14 the Legislature, and so far none of them have, except
15 for the House joint resolution on the study being
16 proposed for a property tax credit or for -- I forget
17 the other term for tax credit -- so that we can look
18 into the paying to the land owner or to the local
19 jurisdiction for the inability to use certain lands in
20 the Critical Area, particularly those for forest
21 harvesting. So that's where we stand there.



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1 With respect to the one bill that was
2 introduced by the Joint Legislative Oversight Committee
3 requiring that our criteria changes be, in essence,
4 subject to a "thumbs up/thumbs down" vote of the full
5 General Assembly, the Environmental Matters Committee
6 chairman has asked for amendments, in essence, changing
7 that process and providing that we have the ability, as
8 any other department, to go through the AELR Committee
9 as the group to hear the changes in the criteria as
10 opposed to the full vote by the General Assembly.

11 So that looks pretty hopeful. We'll see how
12 it goes, but I think it may very well be entertained
13 that way, in which case we will not then have to go
14 through a long legislative process, but rather we'll be
15 dealing with one committee. So we'll keep you informed
16 as this takes place, and hopefully we'll be able to say
17 the AELR Committee is our forum, as it is with every
18 other department.

19 That is about it. Special Issue Subcommittee
20 is beginning to entertain proposed changes to the
21 criteria. We'll be working with them for the next few



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1 months in sharing those detailed changes, and then they
2 will come to the entire commission probably for two
3 sessions, one of which will be a work group session
4 maybe at the Aspen Institute. We seem to be able to
5 have all of our watershed decisions over at the Aspen
6 Institute. And, why not, this will be another one.

7 So that's the legislative update and changes
8 in the criteria update.

9 MR. BUTANIS: Is there any old business?

10 (No response.)

11 MR. BUTANIS: No old business. Any new
12 business?

13 MR. BOWLING: I think, in some instances, we
14 need to add definitions to our criteria, things like
15 "What is a guest house?" You know, the things that we
16 can do. There are a number of little issues like that
17 that we should be looking at.

18 MS. TAYLOR: We are, indeed, looking at those
19 issues. Yes, you betcha.

20 MR. BOWLING: Enough said.

21 MR. BUTANIS: Okay. Is there a motion to



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1 adjourn?

2 MR. BOSTIAN: No, hold on a second.

3 MR. BUTANIS: No?

4 MR. BOSTIAN: No. I see there's something
5 else on the agenda: New members, executive director.

6 MS. TAYLOR: The new members were new members
7 on the staff. I believe that I announced Claudia Jones
8 as our Natural Resource Planner 3, who has filled the
9 position of Abby Rohm. We have two graduate students
10 from the University of Maryland: Carmen Jellotti and
11 Theresa Corliss, both of whom had to leave. And, also,
12 Mrs. Peggy Micker, who is Judge North's secretary and
13 my secretary, and she'll be handling all the commission
14 meetings from here on out and commission notifications.

15 I might add, though, that in addition to
16 Mr. Williams, who is the, not so new anymore but I guess
17 relatively so, appointment for Kent County, we have
18 heard that Mr. Witson has been appointed and I believe
19 has received Senate endorsement for the representative
20 of St. Mary's County, which leaves us with one vacancy
21 to be filled, and that is the position to represent



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1 Baltimore City. I have heard a name, which I forget, as
2 having been tossed around, and I don't know if it's made
3 it as far as Governor's Office with Senate endorsement
4 yet.

5 MR. BOSTIAN: May I make a request that we
6 have a current list of members?

7 MS. TAYLOR: You bet, you bet.

8 MR. GUTMAN: That's the fifth time that
9 Dr. Taylor has been subjected to that request.

10 MR. BOSTIAN: That's the first time
11 officially, I think.

12 MS. TAYLOR: There will (a) be a current list;
13 (b) we are getting name tags to update, name plates to
14 update; and we are ordering new stationery, but the
15 stationery, I think, will wait until we get the
16 Baltimore City member. The name plates we're putting in
17 for now, and we can certainly do an update list for you,
18 and we'll have it available at the next meeting. How's
19 that?

20 MR. BOSTIAN: That's fine.

21 MR. BUTANIS: Anything further? You're sure?



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1 MR. BOSTIAN: Yes.

2 MR. BUTANIS: Absolutely sure?

3 MR. BOSTIAN: Absolutely.

4 MR. BUTANIS: Any motion to adjourn? Oh, wait
5 a minute, wait a minute.

6 MS. TAYLOR: I'm the crumb bum this time, and
7 that will probably get reported. I can see it now.
8 Recommended panel members, we have two jurisdictions
9 that have amendments, and I understand everyone has said
10 yes, but let me announce them.

11 Panel members for Rock Hall, Roger Williams,
12 Kay Langner, Bob Price -- he can't say anything because
13 he isn't here -- Tom Jarvis, and Bill Corkran have all
14 agreed to serve. Recommended panel members for Queen
15 Anne's County, Bob Price, Bill Corkran, Roger Williams,
16 Jim Gutman, and Shep Krech.

17 So that's the last one.

18 MR. BUTANIS: Okay. Motion to adjourn?

19 MR. COCKRAN: So move.

20 (Whereupon, at 3:20 p.m., the above-
21 entitled meeting was adjourned.)



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CERTIFICATE OF NOTARY

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I, SUSAN DILLEY, the officer before whom the foregoing testimony was taken, do hereby certify that the witnesses whose testimony appears in the foregoing transcript were duly sworn before me; that the testimony of said witnesses was taken by me by magnetic tape and thereafter reduced to typewriting by me or under my direction; that said testimony is a true record of the testimony given by said witnesses; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this testimony was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.

Susan L. Dilley

SUSAN DILLEY
Notary Public in and for the
State of Maryland

My Commission expires:

September 14, 1993



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BOARD OF

ST. MARY'S COUNTY COMMISSIONERS

P.O. BOX 653 • GOVERNMENTAL CENTER • LEONARDTOWN, MARYLAND 20650
 (301) 475-4464

March 7, 1990

Judge John C. North, II, Chairman
 Chesapeake Bay Critical Area Commission
 275 West Street, Suite 320
 Annapolis, Maryland 21401

*Maryland
 Rock*

Dear Judge North:

On March 6, 1990, the Board of County Commissioners reconsidered its previous decision to designate a portion of that property designated as Parcel 123 on Tax Map 48 as IDA. By a vote of three (3) to one (1), with one (1) member absent, the County Commissioners voted to classify the entire parcel as RCA. On December 6, 1989 the Critical Area Commission approved the RCA classification for this parcel, and we would ask that you disregard our request of February 6, 1990 to classify a portion of the property as IDA.

In response to your letter of February 27, 1990, the Board of County Commissioners hereby amends its February 6, 1990 request for certain modifications to our Critical Area Ordinance; the accompanying page details the changes we now ask the Commission to consider.

Very truly yours,

Carl M. Loffler, Jr.
 CARL M. LOFFLER, JR., President

John G. Lancaster
 JOHN G. LANCASTER, Commissioner

Rodney Thompson
 RODNEY THOMPSON, Commissioner

STAFF REPORT

February 7, 1990

Jurisdiction:

St. Mary's County

Issue:

Program changes before local adoption

Recommendation:

APPROVAL

Discussion:

St. Mary's County proposes changes to its approved Critical Area Program as permitted under Section 8-1809(e) of the Critical Area Law. This section provides that a jurisdiction may propose changes after Commission approval but before local adoption. The Commission must approve the changes, or disapprove them in writing within 30 days of receipt. If no action is taken by the Commission, a proposed change is deemed approved. Changes may not be adopted locally without Commission approval.

The County's proposed changes were received February 7, 1990. The changes include the following:

1. Administrative additions: official description of maps at scale of 1 inch equals 600 feet, Growth Allocation procedures which require sewer service for change to IDA for residential purposes, and deleting points in Growth Allocation competition for performance outside of Critical Area.
2. Technical corrections: Areas may qualify for IDA designation at time of original mapping if residential density was three dwelling units per acre with water and sewer service; County amendment procedures; acknowledging that existing nonconforming uses may continue; intra-family transfers must contain qualifying acreage within Critical Area; required date for Soil Conservation and Water Quality Plans; policies for creating new agricultural land now consistent with

Staff Report
February 7, 1990
Page Two

Criteria; definition of water-dependent facilities.

3. Map revisions: two parcels corrected to include small, qualifying portions of LDAs designated RCA through oversight; two parcels changed from RCA to LDA after reevaluation according to approved mapping rules; one parcel changed from LDA to RCA after reevaluation according to approved mapping rules.

Contact person:

Ren Serey

Sall, H

STAFF REPORT

January 7, 1990

Applicant: State Highway Administration

Project: Chesapeake Bay Environmental Education/
Visitors' Center

Recommendation: APPROVAL

Discussion:

The State Highway Administration proposes to construct an environmental education/visitors' center on Kent Island. The site is located on Queen Anne's County parkland and will be leased from the County. The park is designated by the County as Resource Conservation Area. The immediate surrounding area will remain in agricultural use.

Critical Area impacts of the project include:

- 11.3 acres of disturbed area during construction of the building, parking lot and access road;
- less than 15% impervious area;
- 50% afforestation within the Buffer; a 300 foot Buffer is provided, as required by Queen Anne's County;
- .22 acres of nontidal wetlands filled for access road; mitigation performed on-site;
- no disturbance of slopes over 15%;
- access within the Buffer provided by permeable footpaths and boardwalks; to be used for supervised educational purposes only;
- protection of historic waterfowl concentration area to be coordinated with Department of Natural Resources;
- stormwater runoff to be managed for water quality.

Contact person:

Ren Serey

TO: Commission Members

FROM: Chesapeake Beach Critical Area Commission Staff and Panel

SUBJECT: Chesapeake Beach Map Amendments

DATE: March 7, 1990

DESCRIPTION: On December 21, 1989, the Town of Chesapeake Beach held a public hearing in reference to proposed Critical Area map amendments, at which no public comment was received. On January 18, 1990, the Critical Area Commission received a complete program amendment submission from the Town of Chesapeake Beach requesting that the four locations discussed below be designated as Buffer Exempt on the Town's Critical Area Maps.

Panel members Sam Bowling (Chairman), Joe Elbrich, Jim Gutman, Louise Lawrence, and Skip Zahniser were designated at the February 7, 1990 meeting of the Critical Commission. A panel hearing was held in the Town of Chesapeake Beach, on Thursday February 22, 1990. All panel members attended the hearing. There was no public comment at the hearing. John Hoffman, Town Engineer, described the locations that are being considered for map amendment and correction.

LOCATIONS:

(1) HARBOR ROAD AND HOWLIN PROPERTY, CAPTAIN'S QUARTERS - A portion of this IDA designated parcel borders a tidal wetland. Townhouses have been proposed for the upland portion of the site. The portion of the property that borders the wetland involves a portion of an existing parking lot and an area adjacent to the parking lot for a total of approximately 5,500 square feet. Existing conditions within that part of the Buffer are that of a partially vegetated field, with common herbaceous plants and small shrubs. The land has been created by dredged material, as indicated by soil boring information from the site. An unpaved road crosses the Buffer, which leads to a Town water treatment facility. There are no trees in this area. According to information provided from Coastal Resources Inc., the functions of the Buffer to provide wildlife habitat are being poorly met by the existing Buffer. The developers are proposing to replace 1-2 feet of the surface fill material with soils suitable to permit re-vegetation with indigenous woody plants and trees for a distance of 25 feet, along a 250 foot strip adjacent to the tidal wetland, which will provide for limited wildlife habitat. This proposed 25' wide vegetated strip will help only slightly to reduce nutrient and sediment runoff from the uplands, but is not expected to significantly improve the situation over existing conditions since it is so narrow. Engineering designs have been developed by Advanced Surveys, Inc., to address stormwater management, using a wetland-type retention pond adjacent to the 25' filter strip.

(2) BAYCREST SUBDIVISION, BLOCK 13 - The portion of this parcel being requested for Buffer exemption designation involves an area located along an inland, bulkheaded tidal basin which is adjacent to a portion of the property along the shoreline of the Chesapeake Bay currently designated as Buffer Exempt. The land in this area is not vegetated, except for scattered clumps of high tide bush growing through the deteriorating bulkhead. According to Coastal Resources, Inc., the functions of the Buffer to filter upland runoff and provide wildlife habitat are not being met by the existing buffer. Proposed development on the site involves removal of the part of the deteriorating bulkhead along the tidal basin shoreline, and regrading, stabilization, and planting with wetland vegetation to enhance habitat. The property is nearly devoid of vegetation and has been used as a parking lot, boat launching area, and garage for many years. The soil is compacted throughout nearly all of the site, making approximately 84% of the site impervious at this time. There is no wildlife habitat on the site, however the adjacent shallow waters provide some habitat for wading birds, ducks, small fish and mammals. The site is currently designated as IDA.

(3) NORTH CHESAPEAKE BEACH SUBDIVISION, BLOCK/LOTS - 1/16, 1/17, 2/10, 2/11, & 3/8 - This request for Buffer Exemption is located in an area that is subdivided into small parcels which are developed with single family homes. The portions of these lots next to tidal wetlands are maintained lawns with a few trees. Essentially there is no functioning buffer on these lots for either habitat provision or stormwater runoff reduction. This site is currently designated as LDA.

(4) FISHING CREEK - A justification for the mapping correction is documented on page (9)-12 of the approved Town's Critical Area Program, which states the justification for a Buffer Exemption designation along currently intensely developed, used, and bulkheaded portions of the Creek. The areas proposed to be mapped as Buffer Exempt are intensely used and bulkheaded, with the exception of the Naval boat dock. A permit has been issued by the Army Corps of Engineers to bulkhead this section of Fishing Creek as well.

COMMISSION ACTION NEEDED: The Commission is required to approve, disapprove, or approve with conditions the proposed amendments within 90 days of submission, that is by April 19, 1990.

RELATIONSHIP TO STATE LAW/CRITERIA AND LOCAL PROGRAM: Each location has specific characteristics which determine the suitability of the site for designation as Buffer Exempt, which will be discussed below. COMAR 14.15.09.C.(8) states that "...local jurisdictions may request an exemption of certain

portions of the Critical Area from the Buffer requirements where it can be sufficiently demonstrated that the existing pattern of residential, industrial, commercial, or recreational development in the Critical Area prevents the Buffer from fulfilling the functions stated in COMAR 14.15.09.B. The functions listed include (1) Provide for the removal or reduction of sediments, nutrients, and potentially harmful or toxic substances in runoff entering the Bay and its tributaries; (2) Minimize the adverse effects of human activities on wetlands, shorelines, stream banks, tidal waters, and aquatic resources; (3) Maintain an area of transitional habitat between aquatic and upland communities; (4) Maintain the natural environment of streams; and (5) Protect riparian wildlife habitat. According to the local Critical Area Program, an Exemption means an act of the Town Council, approved by the Critical Area Commission, that relieves an area of Chesapeake Beach from compliance with the full Buffer provisions, and subject to Development Standards in Buffer Exemption Area, listed on pages 53-57 of the Amendments to Chesapeake Beach's Zoning Ordinance, and on pages (9)-12 through (9)-14 of Town of Chesapeake Beach, Chesapeake Bay Critical Area Protection Program.

ISSUES: Panel members raised the concern that an undesirable precedent may be set by designating single family lots as Buffer Exemption Areas simply because they have lawns and trees existing within the 100' Buffer. If the lots in North Chesapeake Beach Subdivision are designated as Buffer Exempt, property owners would not be required to go through a variance procedure to redevelop their property. However, they would be subject to the Development Standards for Buffer Exemption Areas as listed in the Zoning Ordinance Amendments to implement the Town's Critical Area Protection Program (See attachment).

STAFF RECOMMENDATION: The staff recommends approval of the Buffer Exemption designation for all of the proposed sites, based on the fact that the parcels meet the requirements of COMAR 14.15.09.C.(8), and that development and redevelopment standards are specified for areas so designated in the local program, which includes offsets. Conditions similar to these standards and required offsets may or may not be required in the case of a variance being granted for future alteration of these sites within the Buffer. The standards do not allow for the drastic intensification of development which currently exists in Buffer Exemption Areas.

PANEL RECOMMENDATION: To be stated during the Commission meeting.