Commission Meetings & Corresp. June 1990 MSA_S1832-71

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

MEMORANDUM

TO: Critical Area Commission Members

FROM: Tera Lisa Harnish, Office Clerk

SUBJ: Subcommittees and Panel Meetings

DATE: June 6, 1990

PLACE: 275 West Street, Suite 320, Annapolis, Maryland 21401

The following Subcommittees and Panel Meetings will be held at the Chesapeake Bay Critical Area Commission's office. The meetings will begin at 9:30a.m. until 12:00p.m.

9:30a.m. - 10:30a.m. (Sarah's Office)	MOU WITH MDOT SUBCOMMITTEE: James E. Gutman, Ch./ Sam Bowling/ Skip Zahniser/ Shep Krech/ Bill Corkran/ Rick Naylor (Kathy Drazek)
10:30a.m. - 11:30a.m. (Sarah's Office) (OIL & GAS REGS.1/2 hour)	SPECIAL ISSUES SUBCOMMITTEE: James E. Gutman, Ch./ Bill Bostian/ Parris Glendening (Carolyn Watson)/ Rick Naylor/ Robert Price/ Skip Zahniser/ John Griffin/ Louise Lawrence.
10:30a.m. - 12:00noon (Conference Room)	PROJECT EVALUATION SUBCOMMITTEE: Kay Langner, Ch./ Sam Bowling/ Bill Corkran/ Tom Jarvis/ G. Steele Phillips/ Russell Blake/ Ardath Cade/Robert Schoeplein.
10:30a.m. - 11:30a.m. (Pat's Office)	PROGRAM AMENDMENT SUBCOMMITTEE: Victor Butanis, Ch./ Shep Krech/ Ron Adkins/ Ron Kreitner (Larry Duket)/ and Ron Hickrenell.

12:30noon - 1:00p.m. (Conference Room)	SOMERSET COUNTY CAUCUS: Robert Price, Ch./ Russell Blake/ Bill Bostian/ Shep Krech.

Please let me know if you are unable to attend the Subcommittees, Panels, or the Commission meeting. Please call before the day of the meetings. Thank you.

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Wednesday, June 6, 1990

GENERAL MEMBERSHIP MEETING

Pursuant to Notice, the above-entitled meeting of the Chesapeake Bay Critical Area Commission was held at 275 West Street, Suite 320, Critical Area Office Conference Room, Annapolis, Maryland, commencing at 1:00 p.m.

P R O C E E D I N G S

CHAIRMAN NORTH: The next item is the Queen Anne's County Golf Course. Bill Corkran chaired the panel and Tom Deming participated. Bill do you wish to make a presentation?

BILL CORKRAN: Yes sir, Mr. Chairman. I believe that all members and all those party to the proceedings, hopefully have received a copy of our report. If not, I have some extra ones here. Does everyone have it? I trust that you have all read it.

JIM GUTMAN: Which one is it?

TOM DEMING: Well, Jim it's 27 pages sent to you by Federal Express.

JIM GUTMAN: Is he referring to what was handed out today?

SHEPARD KRECH: No, what you got yesterday by Federal Express.

JIM GUTMAN: Yes, I guess I missed it, what about the staff report dated June 6th?

BILL CORKRAN: That was passed out today. I think that at this point in time, the important report basically is the one that is the Committee's Special Committee's report. What I would like to say at the outset is ah, my appreciation to Kay Langner and John Griffin for participating as members of the Committee through, I suppose, about 14 or 15 hours of hearings. Our first hearing began at 7:00 p.m. on April 23rd and was continued on May 21st. That hearing lasted 9 hours and 15 minutes - my note of the time - . I might add also that we gave very little relief to those who were in favor and those who were in oppositions because we didn't break for dinner either. I appreciate the effort that the proposers have made, and also the people who were opposing. The panel has taken into consideration all of the testimony, believe me, it was voluminous and we have had come up and presented to you the recommendation of our panel.

CHAIRMAN NORTH: And in sum, that is what, Bill?

BILL CORKRAN: And in sum, that we recommend that the Full Commission, to the Full Commission that the determination of whether a use is commerical development within the meaning of the regulation 105 C(5) must be weighed in terms of the effect of the use on the resource conservation area in terms of water qualtiy, habitat, people caused adverse environmental impacts. Is the use consistent with the goals of the resource conservation area designation or not. We go further, then. Based upon the entire record, that the panel recommends to the Full Commission, that a Golf Course use is not inconsistent with the overall purposes of the Resource Conservation Area, land designation under the Critical Area criteria and we have other recommendations as well. We at this time, I don't know, Judge did you want to pursue that or not? Or do you want to have discussion.

CHAIRMAN NORTH: Well, in effect, you are saying that your panel's recommendation is that the application be approved subject to certain recommendations, with respect to how the Golf CCourse is to be managed and supervised and certain modifications to their proposed plans.

BILL CORKRAN: Yes, and if it would be proper, I would, I would move at this time that the Commission adopt the report of the panel set forth in parts 1, 2, 3,and 4 and the recommendations set forth in parts 5, 6, and 7 which aren't part of the report.

CHAIRMAN NORTH: Alright, thank you. Do I hear a second to that motion? Alright. Now, ladies and Gentlemen, I'm sure there has been a great deal of interest in this project, I know there will be a substantial amount of discussion by the Commission members. But, prior to entertaining that discussion, the Attorney's representing the proponents and opponents of this proposal are here and have been previously advised that they would be permitted an opportunity to address this meeting. By letter, they were advised

they would have 15 minutes apiece to speak. Because of our heavy agenda, I'm reducing that to 10 minutes apiece to speak. Mr. Murray you represent the proponents, I understand it? You have the burden. I'll give you five minutes to speak directly and then 5 minutes to speak in rebuttal.

MR. MURRAY: It reminds me of the old days.

CHAIRMAN NORTH: It sort of reminds me of the old days, too.

JOHN MURRAY: Thank you. As Judge North said, my name is John Murray. I'm with the Law Firm of Miles and Stockbridge and my office is in Easton. I represent Washington Brick and Terra Cotta Company which is the proponent of the golf course project. In the five minutes that I have, I'm not going to attempt, because it's simply not possible to review all nor even a significant amount of the details related to this project. There are a couple of highlights that I would like to at least make. This is a farm. It has been in farming for many, many years; it lies to the confluence of Queenstown City and Chester River in Queen Annes' County. Those of you who have seen the site and those of you who have not, if you did see it, would see that approximately 400 acres of the 700 acres plus farm can be utilized for the golf course itself. Of those 400 and some odd acres, over half would be in the Critical Area. All of the principal activities related to the club house, parking, would be physically located outside the Critical Area. In the Critical Area, the only thing that will happen in management and activity of this golf course is the playing of the game of golf. Because of the various laws that impact on the design of this golf course as well as choices that have been made by the owners, there are a number of design considerations which we think, provide underlying habitat and water quality benefits compared with the present use. To be specific , the way the golf course was designed, instead of having agricultural activity up to 25 feet of tidewater, which is presently the case, there would be a 300' permanently vegetated Buffer

- a good portion of which would be aforested. Part of which would remain in grasses and that sort of thing. There would be nine new fresh-water ponds constructed; grading of the contours, as part of the construction of the golf course, which would cause surface water to the extent after construction in the planning and existence of well-maintained turf that if there is any surface water runoff it would run into these ponds. So, in terms of surface water runoff, we believe that the design basically, virtually precludes, except in an extraordinary circumstance, such as a 100-year storm, surface water getting into tidewater. It is obviously a tremendous benefit in terms of soil erosion and the transmittal of chemicals along with soil particles which is one of the problems you have with agriculture, both with wind erosion and water erosion, water getting into tidewater. It gets siltation into the tidewater as well as the chemicals themselves. Habitat, I mentioned the ponds, the ponds can be designed in such a way as to provide additional wildlife habitat; the Buffer I described provides tremendous new space presently used in agriculture, so it is getting turned up and turned around constantly. There will be a net 22 + acres of new forests planted in the Critical Area. Most of the golf course, the golf course itself, basically takes advantage of the existing cleared fields. With respect to other forms of water quality, the design is intended to use what is called a "Best Management Plan". An integrated pest management system. These are concepts which are state-of-the-art. They basically have approval in concept from the Environmental Protection Agency. What it involves is a careful, scientific monitoring of the need for various herbicide and pesticide application in nutrients so that you only put on what you need, when you need it and you do it in such a way that you minimize the potential for any excess to be existing on the ground or under the ground. In addition, you do the same thing with water. The golf course will be irrigated and instead of just blowing water on the golf course every two or three days, tests will be made as to exactly

how much water the grass needs, so that only that amount of water which the grass can uptake will be put on. So the net result, at least from a scientifc point of view, we believe, is better than the existing circumstances. The other main issue, I think, for your consideration, is whether or not this is a so-called commercial use. I'd like to say that I think that the reasoning of the panel set forth in the report that you all have received, is right on point; basically the concept of commercial in the RCA is not something that was defined very well, or if at all in your Law or Criteria, so we had to basically try to define that in the context to this particular course and I think that the panel's conclusion that commercial has to do with the type of use not whether "money changes hands" and the golf course, based on the evidence presented to the panel, as well as evidence that most of you probably know from personal experience would lead you to conclude that a golf course simply is not that type of commercial use which is intended to be precluded from use in the RCA.

CHAIRMAN NORTH: Your time is up.

JOHN MURRAY: I don't know if I have used it, but if I have, I'm going to stop.

CHAIRMAN NORTH: You used 20 seconds of your closing as well.

JOHN MURRAY: I'm sure that you will catch me on that.

CHAIRMAN NORTH: You may be assured of it. Mr. Murphy. There is counsel for the opposition, I believe. Yes. Good afternoon, Sir.

JIM GUTMAN: Questions should be held until both presentations are made.

CHAIRMAN NORTH: Yes, we will let them speak their piece. Mr. Murphy.

JOHN C. MURPHY: My name is John C. Murphy. I am the attorney for the group known as "Citizens for the Preservation of Queenstown Creek" and a number of individuals who live in Queenstown and around Queenstown. I am going to have to refer to the Memorandum of Law that I filed initially in the Proceedings and the final argument that I filed with the Panel on the detailed exposition of my position. I just can't say it in ten minutes. But I will try to set forth my principal points. This is the only case you have heard like this. I think that there is a reason for it. And that is , that the Critical Area Law and Regulations don't provide for any hearing of this sort. You derive your authority to provide for this hearing, to have this hearing from the Queen Anne's County Critical Area Program and I think that the simple situation is that it is if your authority is not stated in the State Law or in State Regulations, you don't have it. My principal point on the merits is what is a Resource Conservation use. Fortunately, that is defined in the Regulations. And, it says "Resource Conservation Area is those areas characterized by nature dominated environment. That is wetlands, forests or abandoned fields for resource utilization activities; that is, agriculture, forestry, fisheries or aquaculture." That is right in your Regulations. A golf course is not any one of those. It is not a forest, not agriculture, it is not wetlands, it is not abandoned fields. It is a golf course. I play golf. I'm not knocking it, but it doesn't fit your Regulations. The second aspect of this is that it doesn't fit the Regulations. It is a loss of agricultural land. It is 198

acres of agriculture land here; 164 are being converted to use as a golf course. The Regulations say that you should attempt to conserve and retain the agricultural land. They call agricultural land a "protective use". We brought in Dr. Russell Brinsfield the Director of the Wye Institute Center, University of Maryland. He disputed the claims that this would have a better effect thanagricultural land. Because that is not the case. The important thing is, that the Regulations contain a procedure whereby everyone all farmers have to follow"Best Management Practices" in the Critical Area. That is mandated. If you approve a golf course, you don't know what is going to happen. Your Regulations contain no procedures that have to be followed by golf course owners. As I understand the Panel's recommendation, you are limited to making recommendations to Queen Anne's County for them to follow. Non-binding recommendations. The essence of this problem is it's location for us. This is called Queenstown Harbour Golf Links. That is not by accident. On Queenstown Harbor. On Queenstown Creek. The problem is, a practical problem, if you put a golf course there you are going to attract boats to come and use the golf course and perhaps other commercial uses. This Harbor is very shallow. The property at the entrance to the harbor is called, "Blakeford". The reason that it is called Blakford is that originally it was a ford, right across the entrance to the harbor. And, the result is that it doesn't flush. Contaminants go in there and they stay. This has been documented by the Health Department. So even though a golf course may be appropriate, I'm not saying it isn't in some areas,

it is going to cause us a real problem in this area, because it is going to attract boats. It is going to be like St. Michaels, but even much worse. You go into Queenstown now, there is nothing there. There is not even a gas pump or a dock. The whole population of Queenstown is some 400 people. The golf course is going to have some 40,000 - 50,000 people a year. It is totally, a real threat to the existing character of Queenstown Creek which is very heavily stressed because of the existence of the sewage treament plant that discharges into the Creek and the poor flushing. That is the problem. That is the threat that we see. If you approve this, I would make, I would just like to plead with you in the strongest terms to put a condition on this use - that there be no water access to this property. It is right at the confluence of 50 and 301. The road access is, it is almost the busiest intersection in the State of Maryland People can get her to this activity by car. They don't need to get her by boat. Please put a condition on that no matter what happens to the property. Even if a portion of it is placed in the IDA or LDA classification, there will be no water access. That is terribly important. Do I have a couple of minutes left.

CHAIRMAN NORTH: Yes sir, you have one and a half by my watch.

JOHN MURPHY: One and a half. One final point I would like to make that sort of came up. I didn't think it was going to come up but it came up. I was reminded of it when you talk about the 8-1950's windows on the Armory.

The Historical Trust has written a letter that says, "Archeological resources on this property go back to the year 8,000 b.c. Well-documented archeological site. And that it is a well-documented Colonial site from the earliest Colonial settlement in the State of Maryland, mid-seventeenth centruy and that this Colonial site survives in pristine condition. Now, I don't want to get into an argument whether that is legally binding on you, I don't have time for that. All I would like for you to do is when you approve this, make a recommendation to Queen Anne's County that they pay attention to the archeological resources that have been brought to your attention by a sister State agency. Thank you very much.

CHAIRMAN NORTH: Thank you sir.

JOHN MURPHY: I have some materials that I wanted to leave with you with a summary of my argument and,

CHAIRMAN NORTH: We'll permit you to do that.

JOHN MURPHY: Can I do that now.

CHAIRMAN NORTH: Just put them here and we'll distribute them for you.

JOHN MURPHY: Thank you very much.

CHAIRMAN NORTH: Yes, indeed. Thank you sir.

JOHN MURPHY: I forgot though, I want to keep a couple for myself.

CHAIRMAN NORTH: Alright, fine.

JOHN MURPHY: I am sure that is enough for you. Thank you.

CHAIRMAN NORTH: Thak you. Now, Mr. Murray.

JOHN MURRAY: Like they do at the football games, you turn the clock back a few seconds. We have analyzed the use of the golf course & at its heaviest, the golf course has the capacity to have a maximum of 2 people per acre in the Critical Area. That is at the heaviest possible use in the golf course if sustained. Most of the time, there won't be anybody on the golf course because it is night time. No night time playing on the golf course. Much of the year, there is cold weather, you have bad weather and there are no people around. The suggestion or the implication that was made was that the community was not in support of this golf course. That is simply not the case. There is no evidence to that effect. There is a small minority of people for whatever reasons are held down by that. Most of the neighbors are very much perfectly in favor of it. With respect to agricultural uses, sure the Critical Area Law considers agricultural uses, protective uses. We know what that means. What is doesn't mean is that they have to be preserved forever over and above other alternatives & more favorable and more sensitive uses. That is what we are talking about. I believe there was a mistake made by Mr. Murphy that Dr. Brinsfield of the University of Maryland said that agricultural uses were more sensitive in the golf course. He never said that. What he did say is that"without additional testing and information, he would be unable to conclude that our proposition that a golf course would be more sensitive than agriculture"was true.

Normal scientist reservation until he knows all the facts. This idea of golf course use by boaters is on the one hand, ludicrous.

A) it is not of the project project proposal

B) I challenge any of you to identify a circumstance in your experience where you can, you ever seen anybody come to a golf course other than in some kind of unique circumstance, by boat.

Lastly, when we get to the specific recommendation of the Panel, I will affirm that this owner is not interested in using water facilities for access to the golf course. This is red herring

With respect to the Historic Trust, the first that this owner knew about the concerns of the Historic Trust, was about three weeks ago when these letters that you may have heard about were presented in the context of this hearing being held in Queen Anne's county. My clients have owned this property for twenty years and they have had little or no notice of anything of this sort from the historic trust. They were not notified directly on this occasion. The bottom line, however, is that if there is anything of historical interest there, they are perfectly willling to cooperate and discuss such things with the Historic Trust. They are interested in the culture as well as the environmental sensitivity of this site. Not only are they people with those kinds of attitudes, but is also desirable from the perspective of makeing this a very interesting, unusual golf course site. To make those kinds of connections if there are historical things about this site, then it is an opportunity to mix the two together

Ther eis nothing anti-ethical about the project plan which is basically as I say, revert currently tilled agricultural fields to grass. If there are such sites, then we will talk to the Historical Trust and find out what is there worth preserving, if anything, what is there worth surveying and so on. I would like to address, if I can, in closing, the specific recommendations that the Panel made. I believe that all but two of them we can accept without qualification and, two I think there are implicit qualif ications but I would like to recommend that they be made explicit. On page 25 of the proposed recommendations follow 5 and 6 recommendations.

The first one is basically the recommendation that there be no residential use of the golf, of the Critical Area as part of the Golf Course. There are in existence, two large private residences that have been there a long time. They are intended to be continued in that use, not part of the golf course project, but they would continue to be used as residences. It would be inappropriate and unfair, we think, to have those uses discontinued merely because of the creation of a golf course. Secondly, there is no intended use, no planned use, no requested use of any of the golf course sites for residential use of, or new residential use; so with respect to the essence of item A, my client is perfectly in agreement. There is however, a downstream concern and that is: one never know whether a golf course or any other use of land will be a permanent feature. It may or may not be economically successful. Who know where we will be 10 -15 or 20 years down the road. Should the golf course

not be found to be something that is economically vital at some time in the future, my client ought not to be constrained from discontinuing the golf course use and then taking advantage of whatever underlying land use law that was available to that land at that time. Be it residential or otherwise. So, if the point here is not, not residential and golf courses at the same time, no dispute. If it is, if you do a golf course, you may never make any other use of the property for the history of the world, we think that is unreasonable and shouldn't be imposed on us.

Under item B, the existing water-dependent facilities. There is a small dock there now. There is no effort or intention to use it for public access to the golf course. Again, the concern is the downstream issue, if the golf course is discontinued, or if the land is put to some other use under existing zoning or Critical Area Law at that time, for example if LDA arises; in any event, we would like to put a limitation on that.

Items C, D, and E, our client has no problems with.

CHAIRMAN NORTH: The Panel was fortunate in having had the assistance and counsel of Tom Deming at their two sessions and I would ask him whether he wishes to make any comment at this time.

TOM DEMING: Well, the only thing that I would emphasize and I hope that it is stated as cleanly as it could be stated in the Panel's Report Recommendation, is that the decision before the Commission is one of interpreting its Criteria. This is not approval of this golf course project. That is a step that Queen Anne's County will take under their local Program. And the

recommendations that Mr. Murray just discussed, as just that, they are recommendations to the County as to what they ought to do when they take this up as a matter of project approval. And, just keep that in mind as you are discussing this.

What you are really doing here is interpreting the regulations and the rest of the discussion about specific conditions is a matter of recommendation to the County.

CHAIRMAN NORTH: Now, Jim I believe that you indicated to me that you had some matters that you would like to address.

JIM GUTMAN: Yes, I think I have several and I wanted to, if I may, first ask if Mr. Murray, something about this Washington Brick and Terra Cotta Company's activities in golf course construction and management. I take it that they do have other such properties.

JOHN MURRAY: Mr. Gutman, my client has been in existence as an entity for about 80 - 90 years. The name of the company, Washington Brick and Terra Cotta Company is principally of Historical significance. They were in the beginning involved in the manufacture of bricks and terra cotta. In later years, their principal functioning as a land holding company. They have different types of properties that they own. They do not presently, nor to my knowledge, have they ever owned or operated a golf course.

JIM GUTMAN: Who will be doing that?

JOHN MURRAY: Well, Washington Brick and Terra Cotta will continue in ownership of the course and would hire professional management.

JIM GUTMAN: Have they been selective as yet?

JOHN MURRAY: Not to my knowledge. It is difficult of course to do that sort of thing when it is not final yet as to whether the golf course can even be built in the Critical Area.

JIM GUTMAN: Well, obviously it does make a difference as to who is operating a facility and whether we would have any knowledge of their capability of complying with some of the recommendations if it were approved. Another question I had, what structures will be built in the Critical Area to enable this facility to function?

JOHN MURRAY: To my knowledge, we don't have our engineer here with us, but to my knowledge, no structure in the sense of concrete or wood, the only structures in the general sense, you'd have some digging of ponds, some mounding, sand traps, some mounding for the holes themselves and there would be golf cart paths. But to my knowledge, that's it. No buildings in that sense of structure.

JIM GUTMAN: There would be no clubhouse.

JOHN MURRAY: Not in the Critical Area, no.

JIM GUTMAN: Would there be a pro-shop?

JOHN MURRAY: Will there be any roads?

JOHN MURRAY: Just using the existing road network.

JIM GUTMAN: No new ones?

JOHN MURRAY: NO.

JIM GUTMAN: Another concern of mine is the number of people, people bring pollution as I'm sure you are familiar. Can you give us any idea of whether we are dealing with "a world class

tournament golf course" or the other extreme, perhaps a "rinky-dink tauty nine-hold driving range"?

JOHN MURRAY: I'm not sure that I'd feel comfortable characterizing it as either. I think its in the middle. If you know the Hogneck Golf Course in Talbot County, it's very similar in design and designed by the same golf course architect. It also involved the transition from agricultural to golf course. So, if you have seen that, then perhaps that is the best way to describe it.

JIM GUTMAN: It will be a total of how many holes?

JOHN MURRAY: 27, well, presently the way the design includes 27. It's possible that there may be a very short pitch and putt course with nine holes but that is an uncertain decision at this time.

JIM GUTMAN: Have you any estimate as to the number of people that might be attracted at one time?

JOHN MURRAY: Well, as I said earlier and I may have miss stated, at its heaviest use you would get a maximum number of golfers on the course of 1:2 acres.

JIM GUTMAN: I don't quite know how to translate that.

SAMUEL BOWLING: Spectators, that is what Jim is driving at.

JOHN MURRAY: Well, we don't expect spectators. There is no intention to have public tournaments. Actual golfers is all that you would have.

JIM GUTMAN: There will be no tournaments of any kind for competition.

JOHN MURRAY: Well, we have Chamber of Commerce tournaments on the Shore and we have Rotary tournaments, sure. But those are not the kinds of things that attract spectators. They attract participants. When I said tournament in that sense, I meant the kind that would attract spectators. There is no plan, intent or expectation of that kind.

JIM GUTMAN: Well, I would just like to take up a little bit further on what Mr. Murphy was saying by reading from the Criteria to explain one of my problems with this project. The section that Mr. Murphy did not go into is that part of this resource conservation area description where it says, "in developing their Critical Area programs, local jurisdictions shall follow these policies when addressing resource conservation areas: conserve, protect and enhance overall ecological values of the Critical Area, its biological productivity and diversity". Now, I not quite sure that constructing a golf course is the way to achieve that. Nor, do I think that it would provide adequate breeding, feeding and wintering habitats for those wildlife populations that require the Chesapeake Bay and its tributary or coastal habitats in order to sustain populations of these species. Another require is "to conserve the land and water resource base as necessary to maintain and support land use such as, agriculture, forestry, fisheries activities and aquaculture".

I find, what I consider as a flaw in the document, where there is this effort to discern whether or not agricultural fields contribute more pollution that golf courses. I don't think that is an issue. The Criteria calls upon us to conserve agriculture.

That is our charge. Whether agriculture is maintaining best management practices to the degree that it is necessary, is not the issue. Our job is not to see agricultural lands broken up into such things as a golf course. Likewise, conserve existing developed woodlands and forests for the water quality benefits that they provide. Now, I don't know whether there would be any loss of forestry, but clearly there will be a loss of agriculture. And to do that under the guise of a golf course that provides superior protection of the environment, I think is totally fallacious. I would like to add that I am a bit surprised of the procedure that we see here where there is essentially a legal proceeding before a panel. I guess what disturbs me most is that there would be any question that before a panel, someone has to establish "standing". And there was "standing" apparently denied to some individual or to some group before the panel meeting which is new to me. We don't have the requirement of standing before these commission meetings where the full commission is present, so why in the world would there be a problem with anybody, even if they are from as far distant of Anne Arundel County discussing a Queen Anne's project. So, I'm a bit sorry to see that.

But my final point, I believe that it would be in error for this commission to support an interpretation that a golf course is an appropriate use in the resource conservation area. I don't think it was the intent of the commission to have the Bay lined with golf courses as a way to protect the environment.

CHAIRMAN NORTH: Thank you, Jim. Further comments, discussion? Yes, Skip.

SKIP ZAHNISER: If we accept this motion, are we accepting golf courses throughout the Bay? In other words, if this were a forested parcel, completely forested and they wanted to put a golf course in, I would be inclined to say "no". But in process of accepting this particular situation, are we accepting that possibility.

TOM DEMING: Well, first of all this only pertains to Queens Anne's County. I don't know what the situation is with other programs that were approved by the Commission, but to my recollection, it was only in Queen Anne's County that you had this overlay technique whereby you brought into the Critical Area Program an existing zone called the "Conservation District" which offer us all kinds of uses. Not just golf courses but things like all institutional uses. There is a list of what is authorized as appended to the report.

Would it set a precedent that would lead to golf courses elsewhere in resource conservation areas in other programs - if the circumstances exist given the language of that other program and the need to interpret the phrase "commercial development", it could lead to that. But I think all you can say today is that what is before you is - could lead to more golf courses in a resource conservation area in Queen Anne's County. Yes, it definitely could. You are interpreting the Criteria to say that golf courses are a use that is consistent with the resource conservation area, therefore under the language of their program, can go forward as a "institutional use" in the resource conservation are in Queen Anne's County. I can't, I don't have the information to look

beyond that to what might happen under other programs.

SKIP ZAHNISER: Is there any way of adding as a recommendation to Queen Anne's County that if this had been a completely forested area we would have recommended no?

TOM DEMING: Well I think that the place, if you want to add something like that, I think that the place to do it is in part 6, which is a recommendation of the Panel to the full commission that this way of proceeding ought to be changed. In other words, if the Program element that Queen Anne's County included in their program is proven to be unwieldy, has proven to subject parties on both sides to uncertainty as whether this is or isn't consistent with the Critical Area Criteria. And, I think a recommendation to that effect would fit in with and go, correct me if I'm wrong, but I think it would fit in with the Panel's overall recommendation that "okay, we did this one under the procedure that had been set up, but this procedure ought to be re-looked at, because it is unwieldy and takes too much time."

WILLIAM CORKRAN: I would certainly agree with that. I think their, and Jim almost had me rising to my feet when he talked about rinky-dink golf courses and other courses, but I will overlook that. The, but back to this point of, I personally have some and Tom has advised us that we couldn't do that as to basically rather than a recommendation is to make it a condition to the County. In other words, that it is conditional upon the things which are suggested and I think, to me, that carries more weight.

Now, whether we can do that legally, and Tom has advised us that we can't do that. I think we need discussion on how this

commission feels about that. It was never, I think, and I don't know what the, Kay is here, John is not here, never our thought that, that this would apply to any other golf course other than this specific golf course.

SKIP ZAHNIZER: Is it well enough stated--------(voice trails off) or will be have Anne Arundel County coming in to clear 200 acres of forestland to build a golf course next week. Based on this type of a decision.

CHAIRMAN NORTH: Skip, this is sort of indirectly on-point. Some months ago, I received a letter from the Chesapeake Bay Foundation addressed rather academically to the issue of golf courses in the Critical Area. The gist of that letter was that the Foundation, being the watch dog that it is, felt that it was not appropriate for them to take a position pro or con golf courses generally in the Critical Area, but thought rather that every case should be considered on its own bottom in accordance with the conditions and circumstances presented by each application. They argued in their letter that there were certain circumstances where they felt that a golf course could be beneficial in a Critical Area and there were cases where it could be disadvantageous as well. So, I don't think that it would be the sense of this body to interpret our action on this application as being in the nature of a binding precedent for future applications which may or may not be analogous physically to the circumstances presented here.

SKIP ZAHNISER: Could that be added to the motion?

WILLIAM CORKRAN: I would have no problem at all.

SHEP KRECH: Two things bother me, Judge. Mr. Murray

brought up one possibility that should this golf course not become a successful money-maker, that his client would have the opportunity to make other use of it. Once a golf course within the Critical Area is built, how do we, as a commission, define that area? Do we define it as an RCA still or an LDA or an IDA? Because of one big question comes to my mind is that should this be a red herring, it might be considered LDA and you'd have rather extensive development rather than the 1:20 development.

CHAIRMAN NORTH: Tom, did you wish to address this?

TOM DEMING: Yes, the action before the commission is interpretation of what can go in the RCA. And this is specifically not a request by Queen Anne's County to convert this from RCA to LDA. If Queen Anne's County chose to do that, they would have to come back to the commission for the usual action of amending a program to convert the area. So, the only thing that could happen here is other RCA type development. Until such time as the Commission approves or changes...

SHEP KRECH: Is this entire area, golf course area taken off their growth allocation?

TOM DEMING: No, because it is not a conversion.

SHEP KRECH: Not a conversion.

KAY LANGNER: I'd like to say a very particular point. Before we went to the hearings, we took a tour of the Hog Neck golf course and since that was designed by the same person that has designed this one, and it was quite enlightening to me to see the knowledge of the superintendent. I understand, I had never realized that they had to be licensed or certified ...

TOM DEMING: Certified.

KAY LANGNER: ... in the environment and they have, in the ponds they have fish species growing that they are actually cultivating. I think they have trout in the one area and he explained why that was natural and so forth. But it was very, very interesting to see all of the habitat on the golf course.

SAMUEL BOWLING: Well, as one of those who is probably responsible for you having this mess because I was one of the original Queen Anne's panel that bought this paragraph. I've got to say that we weren't comfortable with it then. The only reason we accepted it then was so that we could finally get a plan approved. It was a compromise probably engineered more by Judge Liss than by anybody else. At the same time, we all accepted it with the understanding that each time it would come back here for us to have a look at it and that is what has happened. It would seem to me that that is totally unworkable to go through what this panel has gone through. To do this is just not the right way to do it. We need to change that and we need to see what we can do about changing it. Certainly a nursing home or something like that is not a use suitable to the RCA, yet it is permissible under this "institutional" paragraph.

My other concern with this was the heron rookery that is there and the fact that if they have not been exposed to a lot of people passing by, they tend to become quite jerky. They will move particularly if they are affected in their period of time that they are nesting and I would hate to see a rookery broken up at that time of year. If a golf course goes in, it should stay away as

much as possible from that rookery and such construction has taken place in that area should be timed so as not to affect the nesting season.

CHAIRMAN NORTH: Thank you Sam.

WILLIAM CORKRAN: In that instance, we in fact did look at that area and we were assured that the wildlife folks were going to designate an area that would not be invaded. As a matter of fact, it is very close to Queenstown Creek and there is traffic there. There is boat traffic and other traffic and so it appeared to the panel at least that having some blue herons right beside my home and I drive by them every day, that would not really have, provision is being made to protect the area. (Garbled, several people talking)

RONALD HICKERNELL: Is there discussion to restate some of the facts of the case. The total acreage of this site is what?

WILLIAM CORKRAN: Of the farm?

RONALD HICKERNELL: Golf course.

WILLIAM CORKRAN: We should address this to Mr. Murray but it is 700 and some acres total.

RONALD HICKERNELL: And of that, how many is for the golf course.

MR. BOWLING: About 405 acres.

RONALD HICKERNELL: And of the 405 acres, what is the current situation of them. How much is forested and how much is for agricultural use?

MR. MURRAY: About half of it, 405 acres is in the Critical Area.

RONALD HICKERNELL: Let's deal with just that.

MR. MURRAY: And that is where you are concerned about. After the golf course is constructed, there would be a net gain of 22 forested acres. A very small amount of trees would be disturbed as a result of the design. Twenty two new acres would be planted. The 300 foot Buffer is mostly area that is presently active agricultural. I can't give you a the breakdown of the agricultural but it is the bulk of it, most of it, most of it, over half, well over half.

MR. MURPHY: 164 acres are lost in agriculture area.

RON HICKERNELL: I am more concerned about the forested areas at this point. Do you concur that about 22 acres would be planted additional to the existing? All those things, would they be occurring in the Buffer?

MR. MURRAY: No. The way this course is designed, not only is there a Buffer from tidewater, 300 feet, some of which will be afforested,(that is a term that I am using and I think everyone is used too and I have only learned about it in connection to Critical Areas; When I use it in other contexts, people look at me like I'm crazy) but, in addition, we have designed a 25 foot Buffer around all the wetlands here and so there - nontidal wetlands - excuse me, so there is a tremendous amount of buffering that goes on. Much of that is afforested but there is also the non-forested buffer that is to be planted and left alone in grasses so to speak.

RONALD HICKERNELL: And the 300' buffer will be respectively off the full length?

MR. MURRAY: Yes.

RONALD HICKERNELL: Either by enhancement or by preservation?

MR. MURRAY: Yes.

SAMUEL BOWLING: Still, you left something out. If there are 405 acres in this course and 164 are being lost to agriculture, what was the use of the rest of that land.

MR. MURRAY: Well remember we may be comparing apples and oranges somewhat. 405 acres of which a little over half are in the Critical Area. We need to be careful that we are preparing acreage of a particular use in the Critical Area.

SAMUEL BOWLING: The 164 is lost in the Critical Area.

MR. MURRAY: I believe that is the total loss.

MR. MURPHY: Agricultural land.

MR. MURRAY: No, I don't mean agricultural land, I mean the whole (garbled) divided

SAMUEL BOWLING: What is the current use of the balance of the property?

MR. MURRAY: Forests, woodland. Well, excuse me, there is the two residences, there is a couple of outbuildings, there is a barn. There are a number of other relatively insignificant uses. And some of those buildings would be moved off the site as part of this project.

CHAIRMAN NORTH: Mr. Murphy, you wish to make a point? Further discussion. Yes, Jim.

JIM GUTMAN: Would you clarify, is any of this forested area being harvested at all?

MR. MURRAY: Not currently, to my knowledge. No.

JIM GUTMAN: So far as the agriculture, is that currently being employed in agriculture?

MR. MURRAY: Your typical Eastern Shore rotation of soy beans and corn.

JIM GUTMAN: And the number of acres again was about 100 and?

MR. MURPHY: 198, total.

JIM GUTMAN: And some of that is or is not in the, am I correct, that some of that maybe outside the Critical Area?

MR. MURRAY: Yes sir, I believe that the good part of it is outside.

MR. MURPHY: No, no. I'm sorry, the agriculture land is 198 in the Critical Area, in the Critical Area 164 acres of that is being removed for the golf course. That is 82% of the agricultural land in the Critical Area is being eliminated.

JIM GUTMAN: And the agriculture, of course, is one of the, one of the types of use that is supposed to occur in the Resource Conservation Area, by definition.

CHAIRMAN NORTH: Yes. (to recognize person to speak)

RUSSELL BLAKE: I think the Commission or the Panel has done an excellent job despite the problems that Sam is talking about. I see no problem, personally, with having a golf course where they are talking about. I, for Jim's benefit, Pocomoke City has a Municipal golf course, only 9 holes but it is a pretty little golf course. When yo are in Pocomoke next time, I am going to give you a free pass.

KAY LANGNER: And it's on the waterfront, right.

RUSSELL BLAKE: On the water, and one other minor point, we also have docks and ramps there and I have never seen a boater use the golf course.

JIM GUTMAN: I just want to clarify my use of the term for County course was not that I thought all of them were of that nature, but the extreme might be, one that is of a lower calibre than tournament requirements and I mean no, so far as Hogneck, I don't mean to cast any aspersions on it at all. I believe that is what (interrupted)

CHAIRMAN NORTH: I'm sure Mr. Corkran's feelings are greatly assuaged by that. Yes, Steele.

JIM GUTMAN: I wanted to clarify it just for that reason.

STEELE PHILLIPS: I seem to be hearing your feeling that it is alright to take agriculture land for golf courses but don't touch the trees. Now, I you know, we need golf courses for some people, myself I'm a tennis player if that's alright, it doesn't take as much land, but in this State, we have a danger of losing our agriculture base.

And we has the 2020 panel that is telling us about all this development that is coming. We have the nontidal wetlands law that is pushing development into class I & II agriculture land and yet we are losing this, so I just submit the idea to you that this a Critical thing that we are losing so much agriculture land in this base and it has been said that if it continues as it is going we will not have a agi base west of the Chesapeake Bay.

SHEP KRECH: I'd like to echo Steele's words.

CHAIRMAN NORTH: Thank you. Yes, Joe.

JOSEPH ELBRICH: I would echo that also, however, the regulations in and of themselves allow that agriculture land to be converted without any restriction to residential development at a 1:20 dwelling unit per acre. Even though the intent there to preserve it and the intent was there to encourage it, the regulations themselves allow the destruction of the agricultural farm land to residential use as long as you comply with the RCA criteria. So, there is a contradictory in the law in and of itself in allowing residential development in RCA if its primary purpose is protect agriculture farm land.

CHAIRMAN NORTH: Thank you. Sam.

SAMUEL BOWLING: Just one further comment on the capacity of the course. I note that Avondale had what a 135,000 there some weeks. Spectators.

WILLIAM CORKRAN: Well, I talked about that. Avondale was designed as a spectator facility. It is not the normal golf course arrangement. As a matter of fact, if you look at the 27 holes, and you can have no more than, and should have no more than 4 people on the green at one time, basically you are talking a little over 100 people. And, but that is a specific course designed for a specific purpose and our, and the testimony that was presented to this panel there was no way in the world that facility could be used for that purpose.

CHAIRMAN NORTH: Yes, Jim.

JIM GUTMAN: If I could, I just want to respond to Joe's remark which is true enough, you can convert a twenty acre of

parcel of RCA for a residential use, but it was thought that when we came up with those numbers, that there might be a much larger unit - 100 acres or so that was to be divided among children of the current owner. So, that a single house might be put on the property of twenty acres and the remainder might remain in agriculture. So, the most that would be lost, would be that for one house for the necessary road to it. So, I don't think we need to say that every time we see a residence going up on twenty acres we are necessarily losing all the twenty acres from existing agriculture.

WILLIAM CORKRAN: Which was, I have forgotten in this long debate, if there is a motion on the floor and a second on the motion to accept Queens, the panel's report.

CHAIRMAN NORTH: There is both a motion and a second. We are entertaining discussion at this time. To that point, I should, I should note for the record that we, the Critical Area Commission office received a letter from one, Elwood R. Burgess, Jr., Queenstown, dated June 4th, in which he makes the argument that "it seems that the majority of the people in Queenstown and Queen Anne County are for the project. At present we have only one eighteen hole public golf course to serve the upper eastern shore". He includes with his letter, several pages of a petition favoring a golf course signed by 80 - 100 people and that should be included in the record here for what value it may have. Is there, Yes?

RONALD HICKERNEll: I'd like to call the question again.

SHEP KRECH: What is the motion again, please?

CHAIRMAN NORTH: Would you care to restate it again,

Bill?

WILLIAM CORKRAN: Sure. It's been moved that the Commission adopt the report of the panel set forth in parts 1,2,3, & 4; and the recommendation set forth in parts 5,6, and 7. A.and, the we were going to qualify Skip, you had suggested ah...

SKIP ZAHNISER: Assurance that this is not precedence setting and that it is limited to this case on a case by case basis.

CHAIRMAN NORTH: And would it be acceptable, Mr. Corkran, for you to consider a further recommendation as suggested by Mr. Murphy, that prior to granting final site plan approval Queen Anne's County Planning Commission should require that any archeological resources on the site be identified and measures be imposed to protect those resources from damage or destruction by the construction by the golf course. In formulating this requirement the advice of the Maryland Historical Trust should be sought.

ARDATH CADE: I would expect that doesn't need to be included in that because under law that already probably is required. And I should know that for absolute sure.

CHAIRMAN NORTH: Alright, I think that perhaps (interrupted) Yes, Tom.

TOM DEMING: I beg to differ with the Deputy Secretary, but what the law requires is that for State actions that requirement has to be met. Local governments are not wrapped into the definition of State action in that particular provision.

ARDATH CADE: I defer to attorneys, generally.

MR. MURPHY: I had another proposed restriction on water access. Would you consider that also?

CHAIRMAN NORTH: Well, you'll have to (interrupted)

MR. MURPHY: I would just like to make a point, that is only so long as the land is RCA use. Now, the proposal has always been to have a facility, water-front facility here which would involve people coming to that facility making use of the golf course. We desperately need a restriction here, water access to the golf course regardless of what classification the land is in.

CHAIRMAN NORTH: Mr. Murray, do you wish to speak to that?

MR. MURRAY: I would like to speak to that as well as to the Historic Trust issues. My clients have certain land use rights. Under Maryland law and under U.S. law. Now, we are here today dealing with Critical Area issues. What Mr. Murphy wants you to do, is to do something beyond the scope of your ability. He wants you to take away some of my clients rights that he may or may not want to use sometime 20 - 30 years down the road. That is not before you. That is not properly before you and you have no right to do that, even if you wanted to do that, it would be wrong to do it. Secondly, with respect to the other issue, the Historic Trust issue, I agree with Mr. Deming that likewise, Historic Trust issues are ones that if they exist at all, should be addressed to my client. Historic Trust is not sought to have direct contact at all with my client. My client is more than happy to talk to and work with the Historic Trust, but his Commission has no authority and ought not get into the business of telling owners of land what they

must do with their land with respect to Historic Trust issues. You start down that road and you have a real slippery slope. There is no structure to it, no authority to it, you are just basically making it up. If there is any existing structure, we are more than happy to comply with whatever law may exist, moreover, even if you are not obligated to deal with the Historic Trust, we are willing to work with them on a cooperative basis. But if you attempt to enclose something of a generic sense that as was just described, with no structure, no limits, no standards, is basically to put us under permanent limbo, I can assure you.

JOSEPH ELBRICH: I was just going to say that the Critical Area does address the preservation of archeological and historical sites within its guidelines and I think that it is acceptable to impose certain standards. I don't know whether or not the standards are, shall we say, confiscatory, or not, but I think that is appropriate to address.

CHAIRMAN NORTH: Yes, Tom.

TOM DEMING: Mr. Chairman may I suggest language to follow up on Skip Zahniser's point that would be a third paragraph under part 5. The paragraph would read, "This interpretation is for the pending Washington Brick application only and should not be viewed by Queen Anne's county or others as precedent for future applications".

CHAIRMAN NORTH: Alright, is that acceptable? Yes, Sam?

SAMUEL BOWLING: Well, our staff, in the package that they passed out today made a number of recommendations too. Many of which agreed with those made but they also talk about an

analysis to determine surface and ground water and monitoring establishment of a baseline and some comments on the integrated pest management plan as well barring the use of certain pesticides and copper furon, I believe. I think that we should give some thought to incorporating their recommendations in our motion as well.

CHAIRMAN NORTH: Yes, Mr. Murray.

MR. MURRAY: If I did not make it explicit, let me do so now. We wholeheartedly agree with the recommendations and are more than willing to cooperate with the County as well as the Commission staff when we get to those kinds of details. We believe that we can and will comply with that, no problem.

CHAIRMAN NORTH: Alright, ladies and gentlemen. Yes, yes, Jim.

JIM GUTMAN: I just want to inquire about this restriction on the boat access whether the panel has any problem with agreeing to that as a further recommendation?

WILLIAM CORKRAN: You mean forever and a day?

JIM GUTMAN: Well, I think it was stated as long it is, as long as the use is for a golf course.

SAMUEL BOWLING: That is the specific recommendation in the staff report that it can't be used in conjunction with a public golf course.

WILLIAM CORKRAN: The Panel has recommended under B on page 26.

JIM GUTMAN: I'm not, not that, I gotten a pile of papers here and have not read all of it.

MR. MURPHY: The problem is that the panel recommendation is limited to "as long as the total site remains RCA use." Historically Washington Brick has always proposed a hotel on the site but they came in and got limited LDA use for the hotel then the golf course would be an adjunct of that and people would be able to use the golf course by boat because they could be able to get water access from, as an LDA use. What we want to have, earnestly and for the Commission is to say there will be no water access to this site regardless of whether it remains RCA or LDA use. Thank you.

MR. MURRAY: As I thought I made clear, with respect to this land, it is in RCA and it is not supposed to change from RCA as part of the particular project that is before you. There is no proposal for any other water-dependent, water-oriented or otherwise on this site. And insofar as the Panel's recommendation goes, it says, "as long as this golf course exists, there shall be no public use of the water access to get to the golf course" - agreed. The questions is, "is it proper for the Commission to be putting restrictions on the use of this land for eventualities in the future which none of us can reasonably contemplate". For example, suppose twenty years from now the golf course is discontinued, and suppose the use that is allowed in the RCA has been modified, is my client not then allowed to make whatever underlying use of his land the law then permits. If it includes some water dependent use. We don't know. All we are saying is we are perfectly happy and we think you should require us to comply with the law today. But, it is inappropriate to put restrictions on the use of this

land that may apply to circumstances in the future that none of us contemplate with the sole exception that if we are using it as a golf course, No Water Access to the Golf Course -period.

CHAIRMAN NORTH: Ladies and gentlemen you have heard the motion, the second, the extended discussion, do I hear the question? I believe I did hear the question. Those in favor please say aye and those opposed. Alright, there are two in opposition, Madam Secretary - Mr. Gutman and Dr. Krech. Alright thank you very much ladies and gentlemen.

PRELIMINARY AGENDA

June 6, 1990

Chesapeake Bay Critical Area Commission
275 West Street, Suite 320
Annapolis, Maryland 21401

1:00 - 1:10	Approval of Minutes of May 2,1990	Judge John C. North, II Chairman

PROGRAMS AMENDMENTS

1:10 - 1:20	Vote: Town of Port Deposit - Creation of a Maritime Zone	James E. Gutman, Chair Anne Hairston
1:20 - 2:20	Vote: Queen Anne's Co. Golf Course	Bill Corkran, Chair Ren Serey

PROJECT EVALUATION

2:20 - 2:30	Vote: (T) National Guard Armory Chestertown	Kathryn Langner & Sam Bowling, Co Chairs Claudia Jones
2:30 - 2:45	Vote: (T) University of Maryland Horn Point Laboratory Environmental Education and Dorm Facility	Kathryn Langner & Sam Bowling, Co Chairs Liz Zucker
2:45 - 3:00	Vote: (T) Maryland Historic Trust DHCD - MAC Facility Jefferson Patterson Farm and Museum	Kathryn Langner & Sam Bowling, Co Chairs Pat Pudelkewicz
3:00 - 3:15	Vote: (T) Maryland Depart. of Natural Resources - MES - Point Lookout State Park - Expansion of Sewage Treatment Plant	Kathryn Langner & Sam Bowling, Co Chairs Dawnn McCleary

REGULATION AND UPDATES

3:15 - 3:30	Vote: Promulgation of Draft Oil & Gas Regulations	James E. Gutman, Chair Liz Zucker

Preliminary Agenda
Critical Area Commission
June 6, 1990

3:30 - 4:00	Update - Somerset County Critical Area Program	Tom Ventre
4:00 - 4:15	Old Business New Business	Judge John C. North, II Chairman

CHESAPEAKE BAY CRITICAL AREA COMMISSION

Minutes of Meeting Held
May 2, 1990

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

Ronald Adkins	Samuel Y. Bowling
James E. Gutman	William H. Corkran, Jr.
Thomas L. Jarvis	Shepard Krech, Jr.
Kathryn D. Langner	G. Steele Phillips
Michael J. Whitson	Albert Zahniser
Roger W. Williams	Louise Lawrence
Victor K. Butanis	Larry Duket for Ronald Kreitner
Carolyn Watson for Parris Glendening	Robert Schoeplein of DEED
Deputy Secretary Griffin of DNR	Assistant Secretary Naylor of DOE

The Minutes of the Meeting of April 4, 1990 were read, corrected as proposed with the following Amendments:

On page 8, Paragraph 2, Line 4:
Insert **not** before "an alternative;"
Replace could with **should not** before - "promulgate".
On page 8, Paragraph 7, Line 3:
Replace Bay with **Critical Area**.
On page 21, Paragraph 10, Line 1:
Insert **Conditional Approval** before "regulations" - and approved.

Vice Chairman Price asked Ms. Elizabeth Zucker to report on the Draft Oil and Gas Regulations.

Ms. Zucker presented the Special Issues Subcommittee's recommended changes to the Draft Regulations on the oil and gas issues.

Ms. Zucker said that the draft oil/gas regulations for the Critical Area were discussed at the Commission's April meeting and during the Commission's discussion, several regulatory issues were raised, but could not be resolved in the allotted time period. She said that the Commission, therefore, requested that the Special Issues Subcommittee examine the issues and present recommendations for their resolution at the May meeting.

In response to the Commission's request, she said that the Special Issues Subcommittee met on the morning of April 20, 1990 to discuss some of the issues that were identified at the last meeting. She also stated that the Special Issues Subcommittee met again on May 2, 1990, to again summarize the issues and look over the draft language which had been developed over the previous week.

She informed the Commission members that following a vote on the issues, a new Draft would be drawn up and mailed out by the 18th of May. The Commission should review the revised draft so that a vote can be taken at the June meeting. The promulgation process could begin thereafter.

She outlined the summary of identified issues needing resolution and the Subcommittee's recommendations to the Commission for modifications to the draft regulations.

Issue #1 dealt with the Restriction of Oil/Gas Development in Habitat Protection Areas (HPA's). She said that to determine if any or all oil\gas development should be restricted from HPA's, the Subcommittee examined each type of oil and gas activity permitted in the Critical Area (geophysical surveys, wellsites, pipelines and water-dependent facilities) and discussed possible effects to each type of Habitat Protection Area, including the 100' Buffer, non-tidal wetlands, endangered species, plant and wildlife habitat and anadromous fish spawning areas. Based on that examination, the Subcommittee recommended the following regulatory restrictions:

> A) geophysical surveys involving heavy equipment (e.g. vibratory trucks, aircraft) and explosives shall be prohibited from all HPA's; B) wellsites, including associated pipelines and access roads, shall be prohibited from all HPA's without exception;

To implement these, draft language has been written into the geophysical survey as well as the well-site section of the regulations. In addition, a new section was added to the Habitat Protection Area of the draft regulations.

Ms. Zucker said that oil/gas activities other than geophysical surveys, wellsites, pipelines and water-dependent facilities shall be located outside of the Critical Area (e.g., large storage areas and overland transportation facilities).

A motion was made and seconded that the Commission accept the proposed language under Issue #1.

Dr. Shepard Krech was noted as opposing the motion by stating that no oil and gas exploration should be done in the Critical Area.

Mr. Roger Williams acknowledged agreement with Dr. Krech and added that he believed that the regulations should "protect the surface" by having the rigs outside the Critical Area and the directional drilling go underneath.

Dr. Krech agreed to Mr. Williams' recommendation.

Mr. James E. Gutman asked for a clarification for what is allowed in the Critical Area in the way of drilling and how it would be conducted.

Ms. Zucker replied that Mr. Williams' statement implied prohibition of surface drilling in the Critical Area. However, the Statute implied that the Commission cannot make an outright prohibition; that the Commission should consider the possibility of a wellsite being located in the Critical Area. She noted, however, that language has been added to the regulations that states that "if the Commission does make a finding of fact that proposed activities provide unacceptable environmental risks, then the Commission may deny approval for an activity."

Mr. Tom Deming reminded the Commission members that at the last meeting, the general legal question was raised as to the intent of the General Assembly under the Statute. His advice, as reflected in the minutes, was that the Legislature did not intend to entirely prohibit exploration and production in the Critical Area. He said that he believes that the clear intent was not to prohibit drilling altogether but to establish strict controls on how it would be done.

Mr. Williams asked that if going underneath the Critical Area would be abiding by the regulations set down by the Legislature.

Mr. Deming replied that according to the Statute, that issue was expressly addressed as one way of oil and gas exploration in the Critical Area because there was a provision that the environmental impact statement would address impacts including drilling under the Critical Area but it was only one of the aspects of the oil and gas activities that was clearly addressed in the Statute.

Dr. Krech asked if anyone in the Legislature voiced any concern about this.

Mr. Deming said that he remembered that there was an amendment on a bill which would have prohibited outright oil and gas activity in the Critical Area and that amendment was defeated, so the Legislature spoke by not adopting that proposal when it was put forth.

On the motion made and seconded that Issue No.#1 of the Oil and Gas Regulations Draft be adopted as proposed, the vote was 15 in favor with Dr. Krech opposing.

Issue #2 dealt with Oil/Gas Development Buffers. Ms. Zucker said that the Subcommittee discussed the possibility of establishing a 500 foot buffer (instead of the 100 foot Buffer) for all oil/gas activities. She said that after examining each type of oil/gas activity with respect to locating it 500 feet from tidal waters, the Subcommittee determined that a 500 foot distance restriction from tidal waters is only feasible for one type of activity (wellsites). Pipelines and water-dependent facilities (if a project is approved by the Commission) would need to be established within 500 feet of tidal waters. She stated that geophysical surveys should be examined on a case-by-case basis.

Ms. Zucker also said that other distances/setbacks need to be established in the Regulations to separate certain oil/gas activities from sensitive resources (other than tidal waters). These would include:

100 feet between 100 yr. floodplains and wellsites
200 feet between nontidal wetlands, streams and wellsites
25 feet between nontidal wetlands and all other activities
500 feet between anadromous fish streams and seismic surveys
500 feet between anadromous fish streams and wellsites

Ms. Zucker stated that the Subcommittee determined that there should be a mechanism in the regulations that allows the Commission (under the advice of the Department of Natural Resources) to establish setbacks between oil\gas activities and HPA's, on a case-by-case basis. The Subommmittee also decided that the 100 foot Buffer would remain as a type of Habitat Protection Area that an applicant must identify and protect from oil/gas activities.

Mr. Ronald Adkins asked if the intent was to say "tidal waters" or should it be "tidal wetlands."

Ms. Zucker responded by saying that the regulations include "from the edge of Mean High Water of tidal waters and the edge of tidal wetlands."

A motion was made and seconded that Issue No.#2 of the Oil and Gas Regulations Draft be adopted as proposed. The vote was 17 in favor with Dr. Krech opposing.

Issue #3 dealt with restrictions on oil/gas activities that are not a resource utilization land use. Ms. Zucker stated that because of concerns expressed by several Commission members, the Subcommittee determined that language should be added to the regulations to ensure that nonresource utilization or commercial activities be located out of the Critical Area or in appropriate

land use designations. The recommendation of the Special Issues Subcommittee was to extend the list of oil\gas activities prohibited from the Critical Area in the General Policies Section of the regulations to include overland transportation facilities, cargo loading, parking areas and administrative support buildings. Also included were compressor facilities for underground storage of oil/gas which should be restricted from the Critical Area.

Ms. Zucker stated that water-dependent facilities (other than small oil spill operations) would be limited to IDA's. For marine transportation facilities, the only structures to be permitted in the Critical Area would be a docking area, loading equipment, and an access road. She said that all other oil/gas activities (such as storage tanks and overland transportation facilities) shall be located outside of the Critical Area and that a pipeline will be used to connect the docking area to facilities located outside of the Critical Area.

Ms. Zucker further stated that refineries and oil and gas storage areas (the large tank batteries), as well as treatment and separation facilities for oil and gas production, have been restricted from locating in the Critical Area.

Mr. Robert Schoeplein asked if storage tanks are the tanks on marginal rigs which are the large ones used for temporary holding places for transport.

Ms. Zucker, with the assistance of Dr. Ken Schwarz, from the Maryland Geological Survey, clarified storage tanks as ones used in production well sites which are probably the separators or treatment areas. She stated that these are prohibited from production well sites.

Mr. Schoeplein asked whether piping would be necessary in those cases.

Ms. Zucker replied that piping would be necessary to locate the treatment areas outside the Critical Area.

Ms. Carolyn Watson asked about administration areas for marine transportation facilities.

Ms. Zucker answered that there would be a provision for a maintenance type structure adjacent to the docking facility for equipment needed to be kept near a loading dock. But the larger commercial, industrial land uses would be excluded from the Critical Area.

A motion was made and seconded that Issue No.# 3 of the Oil and Gas Regulations Draft be adopted as proposed. The vote was 17 in favor with Dr. Krech abstaining.

Issue #4 dealt with Water-dependent Facilities. Ms. Zucker stated that the Special Issues Subcommittee identified 3 possible regulatory alternatives for Marine Transportation Facilities as: 1) to prohibit completely any new marine transport facilities for oil/gas produced in the Critical Area; 2) after a regional review and with environmental conditions, allow new marine transport facilities, but only in existing IDAs that have been Buffer Exempted (this is incorporated in the current draft regulations); and, 3) after a regional review and with environmental restrictions, allow new marine transport facilities in areas other than IDA, if necessary (and maybe require Growth Allocation).

Ms. Zucker stated that after a lengthy discussion, the Subcommittee decided that Alternative #2 should be retained in the draft regulations. She said that additional language would be included to prohibit an applicant from obtaining Growth Allocation for an IDA.

Ms. Zucker said that the Subcommittee's decision was based on the following concerns: If the Commission prohibits new facilities, an applicant may still seek a new marine transport area through the local jurisdiction (under the "blue" regulations). She said that alternative 2 parallels the "blue" regulations and provides additional criteria for environmental review and restrictions for new facilities. Marine transport has grave environmental risks (significant effects from spills during transport and loading), and by allowing new facilities in LDA's or RCA's, the Commission is allowing the possibility of significant water degradation in areas where water quality and habitat is to be maintained and enhanced. Along with wellsites, marine transport regulations may receive close public scrutiny. Currently the "blue" regulations do not allow for new industrial uses in areas other than IDA's that are Buffer exempted. She said that because of the environmental risks, the Commission should not be more lenient for oil/gas activities.

A motion was made and seconded that Issue #4 of the Oil and Gas Regulations Draft be adopted as proposed. The vote was 16 in favor with Dr. Krech abstaining and Mr. Williams opposed.

Issue #5 dealt with Conditional Approval. Ms. Zucker stated that the Commission has the option to include a Conditional Approval mechanism in the regulations. She also said that a Conditional Approval process would allow for flexibility in the

face of a "shall" in the regulations, but that it could also create "loopholes".

Ms. Zucker stated that the Subcommittee had decided that a Conditional Approval should be included to give the Commission the ability to deal with unusual or unanticipated situations.

Dr. Krech asked what the unanticipated circumstances might be.

Dr. Schwarz suggested that the oil business, having current technology ongoing, may develop new technology that the regulations haven't addressed at this time, and rather than being restricted, there should be some "out" to evaluate possibilities such as that in the future, as an example of unanticipated circumstances.

A motion was made and seconded that Issue # 5 of the Oil and Gas Regulations Draft be adopted as proposed. The vote was 17 in favor with Dr. Krech opposing.

Mr. Gutman advised that if there are additional comments, they should be telephoned to Ms. Zucker before the next meeting because of the deadline to get them to the Maryland Register. He reminded the members that there is no other meeting on these issues scheduled before the vote next month.

Vice Chairman Price asked Mr. Tom Ventre to report on the local Critical Area Program for Mardela Springs and Sharptown.

Mr. Ventre said that each Town had to hold one more final local hearing. There are no problems or issues. The hearings were forgotten. He stated that he is working with those towns in scheduling local hearings before the final Commission action, which probably will not be before the next Commission meeting in June.

Mr. Ventre reported that for Salisbury, the changes which were approved about a year ago but were rescinded on the suggestion of Dr. Kevin Sullivan who was concerned about other changes that had to be incorporated into the City's program. Those changes have been incorporated after consultation with the City's consultant as well as with the staff of the Salisbury - Wicomico County Planning and Zoning Office and therefore it is recommended, with the changes that were incorporated, that the Salisbury Program be approved.

Vice Chairman Price asked if there had been a public hearing on the final amendments.

Mr. Ventre said that the revisions were technical changes and not really substantive amendments.

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

Vice Chairman Price asked Ms. Hairston to report on the Program Amendment Process Change for the Town of Rock Hall.

Ms. Hairston said that the issue is an amendment to the Rock Hall Zoning Ordinance to alter the procedure for Program Amendments, including growth allocation. She said that a very similar one was just approved for the Town of Betterton and that its purpose is to change the procedure. Instead of going to the Planning Commission and then to the Critical Area Commission and from there to the Mayor and Council for final approval, the change is that it will go through both of the local procedural steps before it gets to the Commission. She said that they were requested to make this amendment and it brings their procedure into complete accordance with Section 8-1809.

A motion was made and seconded to approve the amendment to the Rock Hall Critical Area Program to alter the Program Amendment Process so that the amendments are submitted from the Mayor and Council subject to one correction, to additionally change the words "Planning Commission" to "Mayor and Council" in Section 1, Part C, Line 46. (Ms. Hairston explained that in the language that Rock Hall submitted, they omitted one change needed, so the Commission was adding the necessary change at this meeting. The omission was discovered the morning of the Commission meeting.) The vote was unanimously in favor.

Vice Chairman Price asked Mr. Ventre and Mr. Robert Schoeplein to report on the Program Amendment for Dorchester County.

Mr. Ventre described Dorchester County Amendment number 12 as being a text amendment to the local subdivision regulations, for Local Implementing Ordinance and pertaining to requirements and procedures for growth allocation requests. He said that the proposed language changes are intended to achieve internal consistency and consistency with similar, recently approved changes to the Zoning Ordinance. The Amendment was approved by the Dorchester County Commissioners and it was submitted for CBCAC review and action on February 22, 1990. Mr. Ventre said that the Critical Area Commission panel's recommendation is to approve the amendment.

A motion was made and seconded that the Commission adopt the proposed Dorchester County Amendment to their Local Implementing Ordinance. The vote was unanimously in favor.

Mr. Ventre described Dorchester County Amendment number 13 concerning a subdivision of land known as the McCauley property. The amendment is for Growth Allocation/Land Reclassification on approximately 10.3 acres in the Critical Area for a residential subdivision. The request is for a reclassification of the land from RCA to LDA to allow residential development at a higher density. Approval was granted for an award of growth allocation by the Dorchester County Commissioners subsequent to a local, advertised public hearing.

Mr. Ventre stated that this is one of the 19 interim subdivisions for which the CBCAC approved a categorical award of growth allocation in January 1989. He said that it is a very sensitive site and there are several concerns: high water table, hydric soils, nontidal wetlands, exposure of the site to storms coming across open water.

Mr. Ventre explained that the proposal is to create four lots from a total parcel of twenty-five acres which is entirely surrounded by tidal wetlands with a lot of nontidal wetlands on the site as well. He said that the site is heavily forested and that some of the forested areas have been cleared for driveways and for septic percolation test areas. Mr. Ventre said that there is a septic system already in place presumably serving an existing renovated house on the site, and that a pier extends into Brooks Creek. He said that on a site visit on April 6, 1990, several soil core samples were taken and all indicated hydric soils. He also said that within the forested area there are three species of vegetation - loblolly pine, wax myrtle and poison ivy - which DNR considers adaptive to growing in either wetland or upland environments. He said that it is the Critical Area staff's recommendation not to approve the amendment.

Mr. Schoeplein described the site as extremely low land with the high point about 3 feet above mean high tide, surrounded by wetlands.

Vice Chairman Price asked if there was an infiltration pond for a septic system.

Mr. Bowling volunteered that there was not, just individual septic only with subsurface drainage.

Mr. Gutman asked about the water table.

Mr. Bowling stated that it was 18 inches down.

Mr. Krech reiterated that the entire area is nontidal wetlands, highly moist, has facultative vegetation, and all soil samples are hydric, with vernal ponds all over the property. He reaffirmed his conviction that it would be a travesty if development was allowed to occur.

Mr. Bowling agreed with Mr. Krech, stating that the first major storm would flood the site, and a major coastal storm would destroy everything.

Mr. Gutman asked if permit applications from other governmental agencies had been issued.

Mr. Ventre said that there have been other activities on the site that received permits from the State and Federal agencies, including the reconstruction of marshlands and revetments, etc. The Corps of Engineers issued permits to the State agencies, however they were pertaining to activities 2 - 3 years ago.

Mr. Bowling said that there was Health Department approval for perk tests but that there was only an oral statement in effect at the time by the Health Department.

Vice Chairman Price stated that with the 19 interim subdivisions, the holdup has been from the Health Department. He said that everything had been entirely approved by the Planning Commission subject to Health Department approval, and as each subdivision obtained Health Department approval the Commission has been holding hearings, but the only permits issued have been for Bermed Infiltration Ponds. None of them pertained to individual site percolation.

Mr. Schoeplein stated that the panel recommended that the request not be approved.

A motion was made and seconded that the request for Local Program Amendments for File DC-A #13, Growth Allocation/Land Reclassification for the McCauley Residential Subdivision not be approved.

Mr. Deming clarified that the "so-called" approval of the 19 subdivisions by the Commission a year ago (1989) for growth allocation only recognized what the County was doing in terms of the reservation of an "amount," but approval was only given at the time to five subdivisions out of the nineteen, with the

understanding that each of the other ones would come back to the Commission for approval if and when they were actually going to allow the allocation to be assigned to the acreage.

Mr. Deming further defined the standard to be applied to the decision to vote on this issue as in the Criteria that "new limited development areas should be located in order to minimize the impacts to Habitat Protection Areas as specified in Chapter 09, and in an area and in a manner that optimizes benefits to water quality, and new limited development areas should be located at least 300 feet beyond landward edge of tidal wetlands or tidal waters." He recommended that the panel apply their findings to the stated provisions in the Criteria that set the standard by which the vote is taken. He then asked if we have a defined Habitat Protection Area in this area.

Mr. Ventre said that there are 5 HPA types, the Buffer being one, and nontidal wetlands being the second in particular. He said that they have made their Buffer setback, but they are not 300 feet back.

Ms. Carolyn Watson stated that the entire site appears to be in the Buffer area and there are buffer requirements with hydric soils which include the entire site.

Mr. Deming asked if the area had been designated formally, either by the Corps of Engineers or the State Nontidal Wetlands Division.

Mr. Ventre replied that it had not been formally designated to his knowledge.

Ms. Claudia Jones reiterated that it is a wetland according to the soil maps and designated a wetland under the Federal definition. She said that the Corps did not take jurisdiction of it when they listed the property three years ago in 1988.

Mr. Ventre stated that in more recent correspondence from the Corps, they have stated the same thing - standing with their determination made at a previous time that it was outside the wetlands.

Mr. Ronald Adkins asked whether, procedurally, this subdivision had gone through review prior to a Program in Dorchester County or whether it had been reviewed since the Program.

Mr. Ventre stated that according to the dates on the correspondence, the indication is that it was reviewed by the Dorchester Planning Commission in 1988, before the approved Program.

Mr. Deming summarized the point of minimizing impact to the Habitat Protection Area, stated that the staff expertise indicates that most of the area is tidal or nontidal wetlands. He also stated that with regard to optimizing benefits to water quality, there is the stated concern that the ground water table is so high in this area that there is some question as to whether in-ground sewage treatment would work. He said that with regard to the requirement that a Limited Development Area should be located at least 300 feet beyond the landward edge of tidal wetlands or tidal waters, while that is a "should" and not a "shall," nevertheless, this area is not satisfying that requirement.

Vice Chairman Price said that there was nothing in the record to show Health Department approval of the sewage system.

The motion to disapprove the request for Local Program Amendments for File DC-A #13, Growth Allocation/Land Reclassification for the McCauley Residential Subdivision was voted upon. The vote was 15 in favor, Mr. Adkins and Mr. Butanis opposing, and Mr. Steele Phillips abstaining.

Mr. Ventre then described File DC-A #14 for Dorchester County Growth Allocation/Land Reclassification Amendment for a Residential Subdivision known as Riverview. He said the request was for approximately 12.1 acres of growth allocation to create four lots, three of which would be for residential use. The fourth lot contains abandoned buildings which were a shellfish processing establishment twenty years ago. Mr. Ventre said that the site did contain tidal wetlands as well as nontidal wetlands. The three residential lots would share a wastewater disposal system, and in Dorchester this is a Bermed Infiltration Pond type which is customary to use.

Mr. Steve Bunker commented that he went to Dorchester County last week to meet with the Health Department and was told that their approval of Bermed Infiltation Ponds is on hold now because of the new Corps and Wetland Delineation Manual. He said that the Corps has to approve all infiltration pond applications and they have not acted on any of them since the new Delineation Manual was issued. Mr. Bunker said that this leaves the status of Bermed Infiltration Ponds suspect.

Mr. Ventre reminded the Commission that this was a "de novo" application for a subdivision, not one of the 19 interims. He said that the panel's recommendation is to approve, subject to one condition.

Mr. Schoeplein informed the Commission of the panel's recommendation for a condition of reforestation that would take place on this land. He made the motion that the Chesapeake Bay Critical Area Commission approve the Dorchester County Commissioners' Local Award of Growth Allocation of 12.1 acres and Land Reclassification of RCA to LDA for a proposed subdivision known as Riverview. The approval would be subject to the Commission being provided with information regarding the Program of Reforestation that is required by the County Code for development on LDA lands. The motion was seconded by Dr. Krech.

Mr. Gutman wanted to further restrict the motion to approve the request based on a Health Department permit or favorable action by the Corps of Engineers.

Mr. Deming wanted to know what the intent is with the condition on the approval. He said that he thought it was not clear enough to know when you have a growth allocation. Then he asked, what if the County or the developer submits a plan for reclamation reforestation and the Commission looks at it and decides it is inadequate. When is the condition satisfied.

Mr. Deming said that because it would be very hard to know when this cloud hanging over growth allocation would be removed he suggested: 1) to rely on the local requirement and, 2) reword it so that it sets a definite point in time with a definitely defined action that is required for the reforestation.

Vice Chairman Price said that had the request been presented to the Commission for reclassification from an RCA to an LDA as a 24-acre site with no lots at all, they could do with it what was appropriate under the LDA requirements in the future; then there would be no need for the conditions. He said, with this approach, the Commission is agreeing that it can be converted, but the County must come back and prove to the Commission that the County meets its own requirements.

Mr. Deming said that the Commission could just monitor the project to see that it is being done properly and use its intervention powers if necessary and not use the conditional approvals.

The motion to approve the proposed local Program Amendment for Dorchester County, DC-A 14 was made and seconded. The vote was unanimously in favor.

Vice Chairman Price asked Dr. Sarah Taylor to give a Legislative Update.

Dr. Taylor reported that the legislative process began with five oversight committee bills. Two Bills made it through the General Assembly. Bill 1060 - Impervious Surface Limitation (third reader copies are currently available). She told the Commission that as soon as a final version is obtained it will be mailed out to all of the Commission members as well as the local jurisdictions. This bill sets very specific circumstances under which the 15% surface limitation increases to a 25% limit.

Dr. Taylor said that Bill 1062 passed, Program Amendments and Program Refinements. She said that this now gives the Chairman the ability, with the support of the Commission, to determine whether the process will be to hold a hearing in the local jurisdiction or whether the Commission can call certain changes "refinements" and simplify and shorten the time frame.

Dr. Taylor told the Commission that a third Bill, number 1063, made it through the house in an amended version. Th/is Bill started out requiring a full up and down vote of the General Assembly for changes to be made to the Criteria. However, the House Environmental Matters Committee and certain members of the Oversight Committee agreed that the AELR process (Administrative, Executive and Legislative and Review Committee) could be the process for the Commission to use for changes to the Criteria, and as a trade-off a total of nine hearings would have to be held to inform the public, local governments and the General Assembly as to what was going on. She said that it was agreed upon and went to the Senate side, Economic and Environmental Affairs Committee. She said that testimony went smoothly, but the night before the last night of the General Assembly meeting, the Economic and Environmental Affairs Committee listened to a concern on the part of a couple of Senators and felt that because of it they could not endorse the House amended version. As a result, she said that it was changed back to the full up and down vote of the General Assembly as well as the AELR process, so there were two processes to go through which would have added a half year onto the approval of the Criteria. Dr. Taylor said that because it was too late to call a Joint Committee of both Senate and House, the Bill was killed. She said that perhaps next year we will try to have the AELR process become the manner in which changes can be made.

Dr. Taylor reported that all Compensation Bills died, either in the House or Senate. The Joint Legislative Oversight Committee's piece of legislation, which was to put into law a review and hearing process every two years by the Oversight Committee, was killed in the Environmental Matters Committee because it was considered to be duplicative of a bill that had passed two years ago and introduced by Del. Gunns.

Vice Chairman Price asked Dr. Taylor if the impervious surface legislation clears up any question about existing lots or grandfathered lots, insofar as possible compliance.

Dr. Taylor replied that it sets specific lot sizes for lots that were in residential use and lots that were in nonresidential use prior to Critical Area legislation.

Dr. Taylor was asked about the budget's health and replied that the Governor, through supplemental funds, put monies back into the budget that had been cut which will enable the Commission to do several things such as: allocate to jurisdictions additional monies for enforcement; hire a public affairs officer to produce information pamphlets and brochures, a slide presentation and a traveling exhibit so that the Critical Area Program can be explained and clarified; and hire a consultant to work on the 10% stormwater criterion.

Vice Chairman Price then asked Ms. Anne Hairston to report on the Request to Extend the Time-Frame for the Growth Allocation Process in Cecil County.

Ms. Hairston reported that all that is being requested at this time is additional time for the growth allocation process to be carried out. She said that the Commission previously approved the growth allocation process as a design competition in May, 1989, and gave the County one year to carry out the competition. Ms. Hairston said that the design competition has not been completed, so the County is requesting additional time. The County's growth allocation process was placed on a trial basis during program approval because the Commission had concerns regarding the method of deducting growth allocation.

Mr. Gutman asked what the County has actually used of their growth allocation.

Ms. Hairston replied that Cecil County has not used any growth allocation because they are still getting their process together.

Mr. Gutman asked if some of the Commission's concerns about granting this mechanism to Cecil County when it first came up were

that, indeed, they may use all their growth allocation very rapidly; and, what were the concerns about the methodology that they wanted to use for a single year.

Vice Chairman Price stated that Cecil County developed a concept of the development envelope and, using their growth allocation, they wanted to take their RCA and only be charged with the part that fit into the envelope to be converted into LDA. He said they presented the design competition, saying that if they were allowed to do that, they could come up with a better type of development and have a lot more amenities than the Critical Area wanted, i.e., 300 foot setback from the water, etc. Hence, they developed this "so-called" point system to achieve it and they wanted a year to try it. He said that they had been given a year, a second year and now another six months.

Ms. Hairston said that it had been fiercely debated during program approval and greatly modified from the initial development envelope concept. She said that it now is essentially very close to our Commission policy and quite strict.

Deputy Secretary John Griffin asked how it is different from our policy.

Ms. Hairston replied that the County point system, with their requirements for counting growth allocation, meets the 300 foot setback, includes buffers, stormwater ponds, and excludes areas only if there are 20 acres or more, and any differences from the Commission policy after those changes would require careful analysis of the two procedures for deducting growth allocation.

Deputy Secretary Griffin asked that if they had made all those changes, what advantage remains in terms of trying a different technique.

Ms. Langner answered that the reason is that they didn't want everybody coming in with subdivisions that were inferior. She said that with a point system, people would work so hard to get the points to be the one chosen that year that it would bring in "good" development.

Vice Chairman Price said that the practical part of it is that just to get into the contest one must do all of the engineering and because that is so expensive, just on a chance that one will be awarded the allocation, no one is going to take such a risk until there is some guarantee of an award provided they do things right.

Ms. Hairston said that applications were accepted for growth allocation between March 7 and April 7 and the initial staff review of the applications would begin the first of May with the anticipation that growth allocation will be awarded in December, 1990.

Mr. Deming stated that what the County has actually done is to obtain an initial approval for an experiment of one year, limited to 70 acres of growth allocation, and they are now merely talking about getting an extension of the time for the same 70 acres.

Mr. Gutman asked if this becomes a yearly process for the next 10 - 20 years, would they be talking extension as opposed to developing a Program Amendment that would incorporate the process so that the Critical Area Commission would not have to be granting extensions over the future years.

Ms. Hairston said that the idea was to see what the first round of growth allocation does before they finalize it, to do it on a trial basis.

Mr. Gutman inquired, in view of this, do we still have the same level of need for a demonstration.

Ms. Hairston replied that the Commission has the same level of need as when we first decided to do this. She said that the Commission may have changed its perspective a little bit but the situation is still the same. She said that her recommendation is to let them go through with their first round of growth allocation in the time frame in which their staff can deal with it.

Mr. Zahniser said that the Commission should keep the County on a trial basis as the Commission would be setting a precedent. Cecil County's growth allocation procedure was approved as a one-year experiment, and other jurisdictions were not allowed to have the same procedure and deduction method.

Vice Chairman Price said that this is the end of the trial basis. They will come back to the Commission and define for us how they are going to deduct their growth allocation from their envelope using this design competition system. He said the Commission had contentions with them as to whether the Buffer was to be counted as part of the growth allocation or not.

A motion to approve the Request to Extend the Time-Frame for the Growth Allocation Process in Cecil County was made and seconded. The vote was unanimously in favor.

Vice Chairman Price asked Mr. Ren Serey to report on the Hyattsville Waste-Water Treatment Plant Pumping Station.

Mr. Serey said that the Washington Suburban Sanitary Commission is requesting a new Waste-Water Treatment Plant at Bladensburg in Prince George's County. He introduced Mr. Bill Kennedy from Washington Suburban Sanitary Commission, who explained the project.

Mr. Kennedy said that the site is in an industrial/commercial area, designated IDA. The project would entail construction of a 5,624 square foot pumping station, an electrical substation of 1,200 square feet with 483 feet of 15" sewer pipe and 351 feet of 48" sewer pipe. He said that there will be no disturbance to the Buffer, tidal or nontidal wetlands, woodlands or floodplains. He also said that the applicant has exceeded the 10% pollutant reduction requirement for IDA.

Mr. Kennedy stated that the justification for the request is that about 2 1/2 - 3 years ago, the WSSC undertook a facility plan to look at all of its pumping stations in the vicinity; a total of 7 old stations. They found old pipes, 40 - 50 years old, problems with reliability and failure and unavailability of parts, and leaking wet wells. He said that the study consultants recommended consolidation of 6 of the stations with rehabilitation of the other one as the most cost effective and environmentally sound alternative vs. remodeling. He informed the Commission that stormwater management basins are being built for 10% nonpoint source pollution and that the Park and Planning Commission is requiring extensive landscaping.

Mr. Bowling asked if the existing leakage would be eliminated.

Mr. Kennedy replied that it would be.

Mr. Schoeplein asked if the Washington Suburban Sanitary Commission was under the jurisdiction of the National Capital Parks and Planning Commission.

Mr. Kennedy replied that the WSSC is leasing part of the land and the agreement includes extensive landscaping to be done.

Mr. Gutman asked if there was any redundancy in this station in the event there was a power failure.

Mr. Kennedy said there was an electrical substation being built and that the WSSC will maintain it.

A motion was made and seconded to approve the Hyattsville Waste-Water Treatment Plant Pumping Station as proposed. The vote was 16 in favor, Mr. Richard Naylor abstaining.

UNDER OLD BUSINESS

There being no old business the meeting proceeded.

UNDER NEW BUSINESS

Vice Chairman Price announced that there will be new panel appointments for Port Deposit for a Program Amendment regarding a Maritime Zone. Mr. Skip Zahniser, Mr. Ron Kreitner, Mr. Jim Gutman, Ms. Kay Langner and Mr. Richard Naylor are to be on the panel. He said that if these members, for any reason, could not serve to contact Ms. Anne Hairston who will be scheduling something between May 23th and May 30th at Port Deposit.

Mr. Zahniser stated that he would be out of town and not able to participate. Mr. Victor Butanis volunteered to replace Mr. Zahniser.

Vice Chairman Price announced that Dr. Taylor had informed him that Mr. Ron Hickernell had been taken to the hospital on Monday and there was no update since that time regarding his condition.

There being no further business, the meeting was adjourned.

Queenstown, Md. 21658
June 4, 1990

Honorable John North
Chairman of The Critical Areas Commission
275 West St.
Annapolis, Md. 21401

Honorable John North,

Enclosed please find petition signed in favor of the proposed Country Inn and Golf Course located at Queenstown, Md. on the farm known as "My Lords Gift".

These people are residents of Queenstown and the surrounding area.

It seems the majority of the people in Queenstown and Queen Anne County are for the project. At present we have only one 18 hole public golf course to serve the upper Eastern Shore. As you probably know, the game of golf is played by all ages. It is a good, clean game.

Much can be learned by the atomosphere that has been created by Hog Neck Golf course.

It seems there is little restriction made on the "Reach The Beach" program where much critical area is used to support transit needs through our county. In turn, for this inconvenienceI hope the Critical Areas Commission will look favorably to promote more recreation for the people in our county.

Sincerely,

Elwood R Burgess Jr.

Elwood R. Burgess, Jr.

LET IT BE KNOWN TO ALL THAT WE THE UNDERSIGNED RESIDENTS OF QUEENSTOWN ARE IN FAVOR OF WASHINGTON TERRA COTTA BRICKS AND MR. ARTHUR BURNIE'S PROPOSAL OF A COUNTRY INN AND GOLF COURSE ON THE FARM KNOWN AS "MY LORDS GIFT" ON THE BANKS OF QUEENSTOWN CREEK AND CHESTER RIVER. WE ALSO FEEL THIS WILL BE A BENEFIT TO THE ECOLOGY.

	SIGNATURE:	PHONE NUMBER:
1	Charles L. Anthony	
2	Toni Reynolds	
3	Tekla Anthony	
4	Vincent Anthony	
5	Allen + Auckland Jr	827-8846
6	Chester M. Andrews	
7	Harold C Hansen	
8	Gloria Wann	
9	Ina M Auckland	
10	Elizabeth C. Lane	
11	Sonny Wootton	
12	Irma Hernandez	
13	Evelyn Lombay	
14	Dave Lombay	
15	Shirley Anthony	
16	Ronnie L Anthony	
17	Terry K Gerry	
18	Jim Lewis	
19	Brian Pyle	
20	Terry Seaver	
21	Justin Anthony	
22	Dennis Anthony	
23	Ronnie Anthony	
24	Teresa Dent	
25	Sharon Falkenstang	
26	Henry Klingenberg	
27	Lillian Burke	
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SIGNATURE: PHONE NUMBER:

1 Elwood L Burrus Jr.
2 David C Wenck Jr
3 Rachael Wenck
4 Betty Anderson
5 Eddie Walls
6 Betty Walls
7 William A Ruda Jr.
8 R. Potter
9 Kaye E. Potter
10 T. Michael Faulkner
11 P Faulkner
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13 Thomas M Faulkner
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SIGNATURE:	PHONE NUMBER:
William E. Wootten	827-7187
Frankie Rhoden	
Helen T. Burgess	
Pat West	827-7674
Jack Ellis	
L. Seavers	
Mary S. Walbert	
S Leocha	827-6640
Kathleen Watts	
William E Walbert	
Donald Weaver	
Irene Weaver	
Connie Cole.	

LET IT BE KNOWN TO ALL THAT WE THE UNDEUSIGNED RESIDENTS OF QUEENSTOWN ARE IN FAVOR OF ANNEXATION OF THE PROPERTY OF "MY LORDS GIFT FARM" INTO THE CORPORATE TOWN LIMITS OF QUEENSTOWN WITH ITS PRESENT PLANS TO BUILD A GOLF COURSE AND COUNTRY INN. THAT IS IF WASHINGTON TERRA COTTA BRICK AND MR. ARTHUR BURNIE WANTS TO.

	SIGNATURE:	PHONE NUMBER:
1	Betty Andersen	
2	Eddie Walls	
3	RK Potter	
4	Kaye Potter	
5	T. Michael Faulkner	
6	P. Faulkner	
7	Thomas W. Faulkner	
8	Elwood R Barrow Jr.	
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	SIGNATURE:	PHONE NUMBER:
1	Charles L. Anthony	
2	Toni Reynolds	
3	Tekla Anthony	
4	Vincent Anthony	
5	Albert Auckland Jr	827-8846
6	Harold C Hansen	
7	Clinton M Anderson	827-8476
8	Gloria Warren	
9	Ina M Auckland	
10	Elizabeth C. Hawk	
11	Danny Upton	
12	Irma Hernandez	
13	Evelyn Lombay	
14	Dave Lombay	
15	Shirley Anthony	
16	Lonnie Anthony	
17	Larry Seevers	
18	Jim Lewis	
19	Justin Anthony	
20	Terry K. Gray	
21	Brian Snider	
22	Dennis Anthony	
23	Donnie Anthony	
24	Teresa Gray	
25	Mary Polmateer	
26	Henry Polmateer	
27	Teresa Burge	

Maryland
Department of Economic & Employment Development

William Donald Schaefer
Governor
J. Randall Evans
Secretary

Office of Research
217 East Redwood Street
Baltimore, Maryland 21202

Telephone: (301) 333-6947
Fax No. (301) 333-6911
TTY No. (301) 333-6926

June 4, 1990

Ms. Sarah J. Taylor, Ph.D.
Executive Director
Chesapeake Bay Critical Area Commission
West Garrett Place, Suite 320
275 West Street
Annapolis, MD 21401

Dear Sarah:

I appreciate our telephone conversation this morning, regarding the Commission's action on the Dorchester County McCauley property.

My immediate concern is that of time. We have two working days before our scheduled June 6 Commission meeting.

You are aware that the Dorchester County panel has been extremely cautious regarding procedure in the McCauley property review. I telephoned our acting Attorney General, Tom Deming, twice subsequent to our panel site visit and prior to last month's Commission meeting. I then telephoned you after the May meeting, again to discuss staff coordination and procedures because of the Commission vote on the McCauley property.

We both are aware how important it is for all information to be presented before the panel and the Commission on this issue. Though we have had a legal quorum for our review of this reclassification request, I believe that it may be imperative for every panel member to visit this site. Accordingly, I will request sufficient time in June for the Dorchester County panel to make a second site visit. We also may want to review Dorchester County health and planning departments' records and procedures, in order to more completely understand standards relating to such matters as on-site wastewater disposal.

I also ask you to locate the aerial survey photograph of this property which is maintained for due process.

I am at this telephone number in Ellicott City today and tomorrow: (301) 465-1500, extension 410. I would be pleased to drive to Annapolis tomorrow afternoon to further discuss this matter with you.

Sincerely,

Bob

Robert N. Schoeplein, Ph.D.
Director of Research

RNS:ca

cc: Hon. John C. North, II
Chairman

DORCHESTER COUNTY PLANNING & ZONING OFFICE

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

DIRECTOR
STEVE DODD, AICP

ASSISTANT PLANNER
KAREN HALES

PLANNING SECRETARY
JULIA T. HENRY

ZONING ADMINISTRATOR
JAMES H. MICHAEL

ZONING INSPECTOR
ALLEN TOLLEY

ZONING SECRETARY
MARNE COPPINGER

JUNE 1, 1990

The Honorable John C. North, II
Chairman, Critical Area Commission
West Garrett Place - Suite #320
275 West Street
Annapolis, Maryland 21401

REF: DORCHESTER COUNTY GROWTH ALLOCATION "RICHARD McCAULEY"

Dear Judge North,

I am unable to attend the Commission Meeting on June 6th and I respectfully request that this letter be entered as part of the official record of that meeting.

I would like to react to the minutes of the May 2nd Commission Meeting at which the Commission voted to deny growth allocation to Richard McCauley. It is not the decision of the Commission which I find disturbing so much as the reasoning behind it. The implications go well beyond the boundaries of the McCauley property. From the minutes of the May 2nd meeting, I conclude that the following reasons, or combination of reasons, were the Commission's basis for denial of growth allocation:

a. The property consisted of hydric soils which are indicators of non-tidal wetlands. Non-tidal wetlands are a habitat protection area and development is prohibited within them.

b. The property exhibited a high water table and since individual septic systems were proposed, ground water contamination would occur.

c. The property is completely within the 100 Year Floodplain and is vulnerable to coastal flooding.

d. The proposal violates Section 14.15.02.06B(6) of the Criteria, which requires new LDA's to be located at least 300 feet beyond the landward edge of tidal wetlands.

In response to these concerns, I offer the following:

a(1) Dorchester County is authorized to regulate only those non-tidal wetlands in the Critical Area as defined on page 22 of the Dorchester County Critical Area Protection Program (Volume I). This is the very same program approved by the Critical Area Commission on June 29, 1988. To my knowledge, the county has neither requested nor received permission from the Commission to amend its definition of "non-tidal wetlands". Therefore the application of any definition of non-tidal wetlands other than that found in the County Program is improper.

b(1) The issue of ground water contamination, as I understand it, is addressed through the regulatory authority of the Maryland Department of Environment. No development can take place on this, or any parcel, until permits are issued by that agency. It seems inappropriate to me for the Commission to substitute its opinion for that from MDE.

c(1) The property is completely within the 100 Year Floodplain. We estimate that 60 percent of the county is in the floodplain. In 1981, the county adopted a Floodplain Management Ordinance which requires, among other things, elevation of new structures above the 100 Year Flood. I am not aware of any prohibition of building in the 100 Year Floodplain relative to the Critical Area Criteria or the approved local program. I fail to understand the relevance of the floodplain issue to this growth allocation request.

d(1) There continues to be confusion with Section 14.15.02.06B as to the mandatory application of these "guidelines" to any request for growth allocation. As Mr. Tom Ventre correctly noted for the record at the Commission's panel hearing on April 23, 1990 in Cambridge, the locational criteria are only mandatory in the sense that the county must consider them in approving growth allocation. Dorchester has chosen not to require a 300 foot setback as a condition of growth allocation. I believe it is also important to note that of the dozen or so growth allocation requests approved by the Commission for Dorchester, to date, <u>none</u> have included a 300 foot setback. Yet the Commission has not chosen to deny a single one for this reason.

In summary, the single most important point I could make to the Commission is that the county and the Commission must both operate within the boundaries set forth in the Dorchester County Critical Area Protection Program. That program sets forth certain standards, both design and procedural, which any growth allocation request must meet. If those standards are not met, the request must be denied. Conversely if those standards have been, and we believe Mr. McCauley has done just that, the Commission must approve the request.

Sincerely,

Steve Dodd

Steve M. Dodd, AICP
Director of Planning

SMD:at

RICHARD G. McCauley
11317 Buckleberry Path
Columbia, Maryland 21044

May 31, 1990

The Honorable John C. North II
Critical Area Commission, Chairman
West Garrett Place - Suite 320
275 West Street
Annapolis, Maryland 21401

RE: Dorchester County Growth Allocation
McCauley Inter-family Subdivision
Ragged Point Road, Cambridge

Dear Judge North:

We have been advised by Commission Staff that, at the Commission's next meeting to be held on June 6, 1990, they will recommend reconsideration and approval of Dorchester County's growth allocation request for the above subdivision.

Inasmuch as I must be out of state on the day of this meeting, I have requested that Mr. Greg Moore of the Cambridge engineering and consulting firm of Andrews, Miller & Associates, attend as our representative. I would like to request that Mr. Moore be given the opportunity to respond to any questions that the Commission may have with respect to the property and to address the Commission with regard to this matter.

This request follows a meeting held at the Commission's offices on May 24, 1990, attended by Commission staff and a wetlands specialist from the Department of Natural Resources; Mr. Steven Dodd, Director of Planning and Zoning of Dorchester; Mr. Moore of Andrews, Miller & Associates, and me. At that meeting, we were advised by Mr. Ventre that Commission staff had changed its recommendation with respect to this matter and now was recommending approval of Dorchester County's growth allocation request for this subdivision. He related that this action followed a second visit and a detailed examination of the property by scientific staff of the Commission who, we were advised, confirmed that there were non-wetland (upland) areas landward of the buffer setback lines designated as a result of the U. S. Corps of Engineers' prior wetland determination of the property, as confirmed by letter dated March 14, 1990 (previously submitted to the Commission and introduced at the local Cambridge hearing in April).

In connection with the Commission's consideration of this matter at its June meeting, I would request that my letter of May 17, 1990 requesting reconsideration and approval of this growth allocation be made available to Commission members. In addition, a copy of a letter dated May 23, 1990 from the Director of the Dorchester Health Department, Stacy Beauchamp (copy enclosed), was sent to the Commission confirming prior testing and preliminary approval of on-site sewer facilities on the property, affirming that all State water quality standards and regulations will be met before final subdivision plat approval is given. I would request that this letter also be included.

With many thanks for your cooperation in connection with this matter, I am

Sincerely yours,

Richard G. McCauley

RGM:mct

cc: Thomas A. Deming, Esq.
Counsel
Critical Areas Commission

Mr. Steve Dodd, AICP
Director, Office of Planning and Zoning
Dorchester County

Mr. Thomas H. Ventre
Natural Resources Planner
Critical Areas Commission

Mr. Greg Moore
Andrews, Miller & Associates

DORCHESTER COUNTY HEALTH DEPARTMENT

TELEPHONE: (301) 228-3223
ENVIRONMENTAL HEALTH DIVISION
(301) 228-1167

751 WOODS ROAD
CAMBRIDGE, MD 21613

LEEROY G. JONES, M.D., M.P.H.
HEALTH OFFICER

May 23, 1990

Mr. Richard McCauley, Esq.
11317 Buckleberry Path
Columbia, Maryland 21044

Re: McCauley Subdivision Status
MBP: 38-10-30

Dear Mr. McCauley,

This letter is in response to a letter from Andrews, Miller & Associates, Inc. dated May 14, 1990. They have requested that I review the approval process for land evaluation situations, specifically as they relate to your site.

The Dorchester County Health Department is delegated the authority to review, disapprove, or approve Land Evaluation requests. This authority is delegated by the Maryland Department of the Environment (MDE). The COMAR regulations involved are 26.04.02 (land evaluation) and 26.04.03 (subdivision requirements). There are other regulations that may be applicable depending upon a specific request, for instance shared facility regulations. When the current COMAR 26.04.02 regulations were adopted they provided for each jurisdiction to promulgate a Groundwater Protection Report (GPR). The purposed of that report was to delineate areas of the county into sewage management areas. A GPR was prepared for Dorchester County and subsequently approved by the local County governing body and MDE. GPR requirements are incorporated in the review process along with the noted COMARs.

The Dorchester County GPR provides for four sewage management areas. Your site is located in the B1 area which allows groundwater penetration techniques to be considered. Elevated tile sand lined trenches and bermed infiltration ponds are two of those techniques.

Individual residential lot development is exempt from MDE groundwater discharge permit requirements. Shared facility developments are an exception. By agreement with MDE, groundwater discharge permits are required where a shared facility waste disposal system will serve five (5) or more lots. The local department at it's discretion may require a groundwater discharge permit for a shared facility with four (4) lots or less. We have not generally done so. In addition the department also requires a state construction permit for sewage effluent transmission lines where the shared facility will served five (5) or more lots. The construction permit is also required for four

(4) or less lots when the sewage effluent lines are shared and do not use individual transmission lines.

Your subdivision proposal does not require a specific groundwater discharge permit nor a separate state construction permit issued by MDE. Any sewage disposal permit or construction permit issued by this department under the COMAR regulations is in fact a state permit to construct.

The land evaluation approval process is straightforward. The department requires a request to be filed. The site is reviewed and tested in the appropriate time of year using the applicable COMAR regulations and the GPR. If the site meets the requirements, it is approved. It may be platted and recorded at this point. Septic system and well permits will be issued upon request after the plat is recorded. It is not unusual for septic and well permits to be issued several years after plat recording. Obviously there are additional county agencies involved in the platting process dealing with other than sewage and water supply issues. A plat is not recorded until all requirements of those agencies are met. The local Planning and Zoning agency functions as the coordinator of this process.

The department may modify the process concerning sewage and water supply issues for site specific reasons. In your particular case, the department has approved the sewage reserve areas detailed on the preliminary plat submittal. Those approvals were based on the department's site evaluations and further evaluations and report by Earth Data Inc., a hydrogeologic firm. Due to site specific construction constraints identified and noted in those evaluations, the department has required that engineered sewage system plans be submitted for approval. The department will not grant final approval of your plat until those sewage system plans are submitted and approved by this department. The plans will be noted and referenced on your final approved plat.

At such time that the sewage system plans are approved and referenced on the plat, the department will notify the Planning and Zoning office that it is ready to sign the mylar. Assuming all other involved agencies are also ready to sign the mylar, the plat could then be recorded. The department would then countersign the building permits and issue water and sewage permits upon your request.

I hope this serves to clarify the department's involvement in the platting process. Should you have any questions regarding the process or status of this site, please feel free to contact me (301-228-1167).

Sincerely,

Stacy A. Beauchamp Jr, RS

Stacy A. Beauchamp Jr., RS
Director
Environmental Health Division

cc: Steve Dodd, Planning and Zoning Office
Greg Moore, Andrews, Miller & Assocs., Inc.
Tom Ventry, State Critical Area Commission

LAW OFFICES

JOHN C. MURPHY
SUITE 206 - 516 NORTH CHARLES STREET
BALTIMORE, MARYLAND 21201

(301) 625-4828

June 6, 1990

OUTLINE OF PRESENTATION TO CRITICAL AREA COMMISSION

QUEENSTOWN HARBOR GOLF LINKS

1. The Resource Conservation Area is defined as nature dominated uses or resource utilization uses. See definition of Resource Conservation Areas contained in COMAR 14.15.02.05(A); letter of Assistant Attorney General Lee R. Epstein, August 7, 1989.

2. The Critical Area Regulations direct that agricultural land be maintained in agricultural use. COMAR 14.15.02.05(B)(3); COMAR 14.15.06. The existing use consists of 198 acres of agricultural land and the golf course results in the elimination of 164 acres of agricultural land, a reduction of 82%.

3. Converting from agricultural land to a golf course will not improve water quality. See attached testimony of Dr. Russell B. Brinsfield, Head, University of Maryland Wye Institute Education and Research Center, May 25, 1990.

4. The Regulations mandate that all farms establish a best management program to control pollutants. See COMAR 14.15.06..03(A)(5). No such program exists for non-agricultural uses and the Commission is limited to offering "recommendations" which may or may not be followed by the local government in its project approval and enforcement.

5. The golf course will attract boaters to Queenstown Creek. Boats in the creek will adversely affect water quality because of the poor flushing of Queenstown Creek.

6. If approved the recommendations should include a requirement that there be no water access to the golf course site. This restriction should not be nullified if a portion of the site is converted to LDA or IDA use. See attached proposed language.

7. If approved, the recommendations should include measures to identify and avoid damage to archeological resources. See attached letter from Orlando C. Ridout, Maryland Historical Trust, May 18, 1990; attached proposed language.

John C. Murphy

(10) Development may be allowed on soils having development constraints if it includes mitigation measures that adequately address the identified constraints and that will not have significant adverse impacts on water quality or plant, fish, or wildlife habitat.

D. In developing their Critical Area Programs, the local jurisdictions shall refer to all of the following complementary existing State laws and regulations:

(1) For soil erosion and sediment control (COMAR 08.05.1):

(a) In order to prevent soil erosion and sedimentation, a Soil Erosion and Sedimentation Control Plan shall be required whenever a development within the Critical Area will involve any clearing, grading, transporting, or other form of disturbance to land by the movement of earth. This plan shall be consistent with the Requirements of Natural Resources Article, §§8-1101 through 8-1108, Annotated Code of Maryland, and local ordinances. Sediment control practices shall be appropriately designed to reduce adverse water quality impact.

(b) Jurisdictions shall require erosion control as the basis of sediment control plans within the Critical Area.

(2) For stormwater runoff (COMAR .08.05.05):

(a) Limitation on Stormwater Runoff. Development may not cause downstream property, watercourses, channels, or conduits to receive stormwater runoff at a higher volume or rate than would have resulted from a 10-year storm were the land in its predevelopment state.

(b) Storage Capacity. All stormwater storage facilities shall be designed with sufficient capacity to achieve water quality goals of this Subtitle and to eliminate all runoff caused by the development in excess of that which would have come from the site if it were in its predevelopment state.

(c) Stormwater management measures shall be consistent with the requirements of Natural Resources Article, §8-11A-01 et seq., Annotated Code of Maryland.

.05 Resource Conservation Areas.

A. Resource Conservation Areas are those areas characterized by nature-dominated environments (that is, wetlands, forests, abandoned fields) and resource-utilization activities (that is, agriculture, forestry, fisheries activities, or aquaculture). These areas shall have at least one of the following features:

(1) Density is less than one dwelling unit per 5 acres; or

(2) Dominant land use is in agriculture, wetland, forest, barren land, surface water, or open space.

B. In developing their Critical Area Programs, local jurisdictions shall follow these policies when addressing Resource Conservation Areas:

(1) Conserve, protect, and enhance the overall ecological values of the Critical Area, its biological productivity, and its diversity;

(2) Provide adequate breeding, feeding, and wintering habitats for those wildlife populations that require the Chesapeake Bay, its tributaries, or coastal habitats in order to sustain populations of those species;

(3) Conserve the land and water resource base that is necessary to maintain and support land uses such as agriculture, forestry, fisheries activities, and aquaculture; and

(4) Conserve the existing developed woodlands and forests for the water quality benefits that they provide.

C. In developing their Critical Area Programs, local jurisdictions shall use all of the following criteria for Resource Conservation Areas:

(1) Land use management practices shall be consistent with the policies and criteria for Habitat Protection Areas in COMAR 14.15.09, the policies and criteria for Agriculture in COMAR 14.15.06, and the policies and criteria on Forestry in COMAR 14.15.05

(2) Agricultural and conservation easements shall be promoted in Resource Conservation Areas.

(3) Local jurisdictions are encouraged to develop tax or other incentive/disincentive programs to promote the continuation of agriculture, forestry, and natural habitats in Resource Conservation Areas.

(4) Land within the Resource Conservation Area may be developed for residential uses at a density not to exceed one dwelling unit per 20 acres. Within this limit of overall density, minimum lot sizes may be determined by the local jurisdiction. Local jurisdictions are encouraged to consider such mechanisms as cluster development, transfer of development rights, maximum lot size provisions, and/or additional means to maintain the land area necessary to support the protective uses.

(5) Existing industrial and commercial facilities, including those that directly support agriculture, forestry, aquaculture, or residential development not exceeding the density specified in §C(4), above, shall be allowed in Resource Conservation Areas. Additional land may not be zoned for industrial or commercial development, except as provided in Regulation .06, below.

(6) Local jurisdictions shall develop a program to assure that the overall acreage of forest and woodland within their Resource Conservation Areas does not decrease.

(7) Development activity within the Resource Conservation Area shall be consistent with the criteria for Limited Development Areas in Regulation .04.

(8) Nothing in this regulation shall limit the ability of a participant in the Agriculture Easement Program to convey real property impressed with such an easement to family members provided that no such conveyance will result in a density greater than 1 dwelling unit per 20 acres.

.06 Location and Extent of Future Intensely Developed and Limited Development Areas.

A. Intensely Developed and Limited Development Areas may be increased subject to these guidelines:

(1) The area of expansion of Intensely Developed or Limited Development Areas, or both, may not exceed an area equal to 5 percent of the county's portion of the Resource Conservation Area lands that are not tidal wetlands or federally owned;

(2) When planning future expansion of Intensely-Developed and Limited Development Areas, counties in coordination with affected municipalities shall establish a process to accommodate the growth needs of the municipalities.

B. When locating new Intensely Developed or Limited Development Areas, local jurisdictions shall use these guidelines:

(1) New Intensely Developed Areas should be located in Limited Development Areas or adjacent to existing Intensely Developed Areas;

(2) New Limited Development Areas should be located adjacent to existing Limited Development Areas or Intensely Developed Areas;

(3) No more than one half of the allocated expansion may be located in Resource Conservation Areas;

(4) New Intensely Developed Areas and Limited Development Areas should be located in order to minimize impacts to Habitat Protection Areas as specified in COMAR 14.15.09 and in an area and in a manner that optimizes benefits to water quality;

(5) New Intensely Developed Areas should be located where they minimize their impacts to the defined land uses of the Resource Conservation Area;

(6) New Intensely Developed Areas and Limited Development Areas in the Resource Conservation Area should be located at least 300 feet beyond the landward edge of tidal wetlands or tidal waters.

.07 Grandfathering.

A. After program approval, local jurisdictions shall permit the continuation, but not necessarily the intensification or expansion, of any use in existence on the date of program approval, unless the use has been abandoned for more than one year or is otherwise restricted by existing local ordinances. If any existing use does not conform with the provisions of a local program, its intensification or expansion may be permitted only in accordance with the variance procedures outlined in COMAR 14.15.11.

B. Local jurisdictions shall establish grandfather provisions as part of their local Critical Area Programs. Except as otherwise provided, local jurisdictions shall permit the types of land described in the following subsections to be developed in accordance with density requirements in effect prior to the adoption of the local Critical Area Program notwithstanding the density provisions of this Chapter. A local jurisdiction shall permit a single lot or parcel of land that was legally of record on the date of the program approval to be developed with a single family dwelling, if a dwelli... withstan... be incons... of the a...

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14.15.03 Water Dependent Facilities

.01 Definition.

A. "Water-dependent facilities" means those structures or works associated with industrial, maritime, recreational, educational, or fisheries activities that require location at or near the shoreline within the Buffer specified in COMAR 14.15.09.

B. An activity is water-dependent if it cannot exist outside the Buffer and is dependent on the water by reason of the intrinsic nature of its operation. These activities include, but are not limited to, ports, the ... power pl... marinas a... tures, pul... water-orie... fisheries a...

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(2) Provide that where structural erosion control is required, the measure that best provides for conservation of fish and plant habitat, and which is practical and effective shall be used;

(3) Provide that non-structural measures be utilized in areas of erosion as described in §A(2), above;

(4) Provide that structural erosion measures not be encouraged in areas where no significant erosion occurs; and

(5) Provide that if significant alteration in the characteristics of a shoreline occurs, the measure that best fits the change may be used for sites in that area.

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(3) Programs to provide incentives for the conversion of other land uses to forested conditions.

C. Where forests or developed woodland occur within the local jurisdiction's Critical Area, local policies and programs for tree cultural operations in the Critical Area shall include all of the following:

(1) A Forest Management Plan shall be required for all timber harvesting occurring within any 1 year interval and affecting 1 or more acres in forest and developed woodland in the Critical Area. The Plans shall be prepared by a registered professional forester and be reviewed and approved by the Maryland Forest, Park and Wildlife Service through the District Forestry Boards and the project forester, and filed with an appropriate designated agency within the local jurisdiction. Plans shall include measures to protect surface and groundwater quality and identify whether the activities will disturb or affect Habitat Protection Areas as identified in COMAR 14.15.09, and incorporate protection measures for these areas as specified by the local jurisdictions. To provide for the continuity of habitat, the plans shall address mitigation through forest management techniques which include scheduling size, timing and intensity of harvest cuts, afforestation, and reforestation.

(2) A Sediment Control Plan shall be required for all harvests of 5,000 square feet or more of disturbed area in the Critical Area, including harvesting on agricultural lands. This plan shall be developed according to the State guidelines entitled: "Standard Erosion and Sediment Control Plan for Harvest Operations." The operations shall be implemented in accordance with specifications set out by the Maryland Forest, Park and Wildlife Service, and enforced by the Department of Natural Resources or the local jurisdiction.

(3) The cutting or clearing of trees within the 100-foot Buffer, as described in COMAR 14.15.09, shall be in accordance with that Chapter.

14.15.06 Agriculture

.01 Definitions.

"Agriculture" means all methods of production and management of livestock, crops, vegetation, and soil. This includes, but is not limited to, the related activities of tillage, fertilization, pest control, harvesting, and marketing. It also includes, but is not limited to, the activities of feeding, housing, and maintaining of animals such as cattle, dairy cows, sheep, goats, hogs, horses, and poultry and handling their by-products.

.02 Policies.

In developing their Critical Area Programs, local jurisdictions shall follow all of these policies when addressing agriculture:

A. Assure that agricultural lands are identified and that programs are established for the Critical Area to maintain, where appropriate, agricultural lands in agricultural use, to the greatest extent possible.

B. Recognize that agriculture is a protective land use that should be properly managed so that it minimizes its contribution to pollutant loadings to the Bay and its tributaries.

C. Assure that the creation of new agricultural lands is not accomplished:

(1) By diking, draining, or filling of any class or subclass of palustrine wetlands, as described in COMAR 14.15.09.02, which have a seasonally flooded or wetter water regime, unless mitigation as provided for in COMAR 14.15.09.02 of these regulations is accomplished;

(2) By clearing of forests or woodland on soils with a slope greater than 15 percent; or on soils with a "K" value greater than .35 and slope greater than 5 percent;

(3) If the clearing will adversely affect water quality or will destroy plant and wildlife habitat as defined in COMAR 14.15.09 of these regulations; or

(4) By the clearing of existing natural vegetation within the Buffer as defined in COMAR 14.15.09 of these regulations.

D. Assure that the drainage of nontidal wetlands for the purpose of agriculture be done in accordance with a Soil Conservation and Water Quality Plan, approved by the local Soil Conservation District.

E. Assure that Best Management Practices for the control of nutrients, animal wastes, pesticides, and sediment runoff be used to protect the productivity of the land base and enhance water quality. These practices shall minimize contamination of surface and groundwater and, further, shall minimize adverse effects on plants, fish, and wildlife resources.

F. Assure that animal feeding operations, including retention and storage ponds, feed lot waste storage, and manure storage minimize the contamination of water bodies.

G. Assure that agricultural activity permitted within the Critical Area use Best Management Practices in accordance with a Soil Conservation and Water Quality Plan approved by the local Soil Conservation District.

.03 Criteria.

A. In developing their Critical Area Programs, local jurisdictions shall use the following criteria for agriculture:

(1) Local jurisdictions shall develop an Agricultural Protection Plan as part of their Critical Area Program if the land use exists in the jurisdiction. These plans are to be developed in cooperation with the Soil Conservation Districts, the County Agricultural Land Preservation Advisory Boards, and other appropriate agencies.

(2) Each agricultural plan shall consist of the following:

(a) An identification, inventory, and mapping of agricultural lands occurring within the Critical Area;

(b) An identification of agricultural lands which include Habitat Protection Areas defined in COMAR 14.15.09;

(c) Programs for maintaining the agricultural land in agricultural use and for protecting water quality, and plant and wildlife habitat, which shall include at a minimum:

(i) The incorporation of the agricultural components of the State 208 Water Quality Plan into local water quality plans if any exist,

(ii) Development of measures for encouraging the preservation of agricultural lands,

(iii) Provisions for the protection of Habitat Protection Areas within agricultural lands as required in COMAR 14.15.09, and

(iv) Provisions requiring Forest Management Plans for those farms which harvest timber to conform with the harvesting practices requirements in COMAR 14.15.05 and COMAR 14.15.09.

(3) Within 5 years from the effective date of these criteria, all farms within the Critical Area shall have in place and be implementing a currently approved Soil Conservation and Water Quality Plan approved by the local Soil Conservation District. Landowners who have signed up as conservation district cooperators, but who do not have a conservation plan developed for them by the District, shall be allowed to continue farming until a conservation plan is developed, provided that the goals of the Act and policies and all other requirements of this Chapter are being met.

(4) A landowner shall select and implement, with the assistance of a technically trained soil conservation planner or technician, from among the several Best Management Practices that minimize impacts to water quality, conserve fish, wildlife, and plant habitat, and integrate best with the farming operation.

(5) Until such time as a Soil Conservation and Water Quality Plan is approved and in place, landowners shall be encouraged to use the following practices:

(a) Proper nutrient application rates;

(b) Appropriate timing of nutrient application;

(c) Appropriate method of nutrient application;

(d) Reduced tillage practices;

(e) Crop rotations;

(f) Cover crop.

(6) Agricultural activities are permitted in the Buffer in accordance with COMAR 14.15.09. Agricultural activities shall refer to and use COMAR 14.15.09 in implementing this portion of this Subtitle.

Pat x

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL

JUDSON P. GARRETT, JR.
DENNIS M. SWEENEY
DEPUTY ATTORNEYS GENERAL

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STATE OF MARYLAND

OFFICE OF THE ATTORNEY GENERAL

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

August 7, 1989

Mr. Joseph L. Elbrich, Jr., Administrator
Environmental and Special Projects
Anne Arundel County Office of
Planning and Zoning
Arundel Center
P.O. Box 1831
Annapolis, Maryland 21404

Dear Mr. Elbrich:

Sarah Taylor has asked me to respond to your June 9 letter to Abi Rome of her staff. In your letter, you inquire as to the appropriate interpretation of COMAR 14.15.02.05, concerning commercial and industrial uses in the Critical Area's Resource Conservation Area, and grandfathering under COMAR 14.15.02.07. I know that Ms. Rome had, in abbreviated form, already offered her opinion concerning these matters, and that you were seeking a more detailed explication. As was Commission staff's, I am afraid all I can offer you is my own considered opinion on the matter, which is what follows. Please note that neither the Commission staff nor (least of all) their counsel is in a position to "render decisions".

While COMAR 14.15.02.05C(5) has been problemmatic because of its seemingly ambiguous wording, an examination of its context reveals, I believe, its clear intent. Secondarily, the regulatory history can also be plumbed for guidance on this issue.

Subsection .05C falls within the Resource Conservation Area portion of the Criteria's development chapter. Those regulations require the classification of a local jurisdiction's critical area into three designated management areas (COMAR 14.15.02.02A) with intense development to be directed out of the critical area entirely or, when proposed within the critical area, to be directed toward Intensely Developed Areas (IDA's). Additional low intensity (e.g., moderate commercial) development may be

permitted in Limited Development Areas (LDA's), but is subject to strict regulation; Resource Conservation Areas (RCA's) are chiefly reserved for natural resource utilization activities and the protection of valuable habitat. COMAR 14.15.02.02B, C, and D. This foundation is essential.

The process envisioned by the Commission was that local jurisdictions would examine existing land uses, and according to the definitions and descriptions of the criteria, properly classify their critical area lands into the three categories. In fact, the Commission's discussions and debate at the time centered around the presumption that local rezonings would take place in order to designate the land into the three categories. No other categories were contemplated or are, per se, permitted. Thus, while in actuality a number of jurisdictions have opted to utilize an "overlay" zoning approach, preserving underlying districts and their uses when consistent with the overlay zone, it is safe to say that the Commission generally envisioned a critical area regulated by but three principal land use categories.

Given that regulatory setting and the definitions of each of the three categories, it is self evident as to what kinds of uses and activities the Commission intended for the Resource Conservation Area. RCAs, the most conservation-oriented of the three categories, are intended to be nature-dominated or natural resources utilization districts, i.e., where farms, forests, open land, and areas of natural habitat value predominate. The only other appropriate land use in RCAs, for the most part, are "residential uses at a density not to exceed one dwelling unit per 20 acres," as specified in COMAR 14.15.02.05C(4). If there are significant commercial or industrial uses, they should probably not have been zoned RCA in the first place or, in Anne Arundel's case, overlain with an RCA designation; this is most likely an instance where the County should entertain seeking a map amendment from the Commission based upon mistake, in order to re-classify such areas LDA or IDA, dependent upon intensity of use and size.

Reading the regulation at COMAR 14.15.02.05(C)(5) in the context outlined above, while existing commercial facilities may be allowed to continue to operate, it is my belief that there was never an intention of permitting new such uses to pop up, and there is similarly no guarantee in the criteria that an existing facility may expand. The subject regulation reads as follows:

> (5) Existing industrial and commercial facilities, including those tha directly support agriculture, forestry, aquaculture or residential development not exceeding the density specified in §C(4), above, shall be allowed in Resource Conservation Areas. Additional land may not be zoned for industrial or commercial development, except

as provided in Regulation .06, below [Growth Allocation].

Thus, it would seem logical that the phrase "Additional land may not be zoned for industrial or commercial development . . ." indicates that no more land than that where the existing facilities resided -- i.e., that has already been "zoned" IDA or LDA by the local jurisdiction -- was intended to be allowed zoning (and thus use) for additional industrial or commercial activities in what are chiefly RCA areas. In order to permit such uses, growth allocation was provided in Regulation .06. Unless Regulation .05 is read in this admittedly conservative manner, the logical extension of an opposite interpretation could reach a result clearly unintended by the Commission. For example, even though only 2 acres of a 30 acre underlying "industrial" zone are currently industrially developed, regardless of the RCA overlay designation, an owner could by right develop out the remaining 28 acres of industrial use. Such a result is logically inconsistent with the whole complex and meaning of an RCA, as such is informed by the context of that regulation. Thus, I believe that readings of the regulation to permit this or a similar result are not in accord with the overall regulatory purpose and intent.

As noted above, there is also some legislative (i.e., regulatory) history that indicates an intention to control future or additional use. First, "[e]xisting facilities" means buildings and their associated activities in existence, not planned, programmed, or expanded. Second, it is useful to follow the progression of the subject provision from draft to final regulation. In the earlier, proposed version of this regulation, the provision read as follows:

> (4) Residential uses within the Resource Conservation Area may not exceed a density of one dwelling unit per twenty acres. Local jurisdictions are encouraged . . .
>
> (5) Development that directly supports agriculture, forestry, aquaculture, or residential development notexceeding the density specified in §C(4) above shall be allowed in Resource Conservation Areas.

12:12 Md. Reg. 1188-1206 (June 7, 1985). In the final version of this regulation, the Commission changed the language as indicated here:

> (4) LAND WITHIN the Resource Conservation Area MAY BE DEVELOPED FOR RESIDENTIAL USES AT a density NOT TO EXCEED ONE dwelling unit per 20 acres . . .

> (5) EXISTING INDUSTRIAL AND COMMERCIAL FACILITIES, INCLUDING THOSE that directly support agriculture, forestry, aquaculture, or residential development not exceeding the density specified in §C(4), above, shall be allowed in Resource Conservation Areas. ADDITIONAL LAND MAY NOT BE ZONED FOR INDUSTRIAL OR COMMERCIAL DEVELOPMENT, EXCEPT AS PROVIDED IN REGULATION .06, below [Growth Allocation].

12:20 Md. Reg. 1953-1977 (September 27, 1985) (capital letters and underlining indicate amendment/addition to previous version).

At the time the newer language was presented to the Commission for discussion and vote, staff comment on the entire above-noted change was that "Industrial and commercial development can occur in existing RCAs if a county reclassifies the land as IDA or LDA using [COMAR] 14.15.02.06" (Working Draft, proposed changes, August 1985). This seems to further indicate an intention or common understanding that, first, the "development" which directly supports resource utilization activities could include existing industrial and commercial facilities; and second, any additional such uses could be accomodated with a change in classification through use of the growth allocation.

Finally, the use of the grandfathering provisions toward this end may be similarly inappropriate. The Commission's discussion and debate over these provisions centered around residential development, since that was the chief prospect the Commission perceived as occurring. Thus, in the introductory paragraph, the Commission stated that:

> . . . local jurisdictions shall permit the types of land described in the following subsections to be developed in accordance with density requirements in effect prior to the adoption of the local . . . program . . .

COMAR 14.15.02.07B (emphasis added). The underlined passage deals with "density requirements," which are nearly always exclusive to residential land use classifications, with commercial, industrial or office-type uses normally regulated by floor-area-ratio or some surrogate standard. The "following subsections" then describe parcels and "subdivisions" at various stages of legal existence. Thus, I believe the primary intent was most likely to permit some local grandfathering of existing lots and subdivisions for residential purposes -- although I would admit that such a purpose is not made clear solely by the simple words of this oft-questioned provision, authored by committee.

For the reasons outlined in my earlier paragraphs I do not agree with statements (2) or (4) of your letter to Ms. Rome, and

I have strong doubts about (3). A key question, in addition to any analysis of the Criteria, is what does the County's own program say? Does it just copy these Criteria word for word? If not, how does your own regulatory language differ? As a first proposition, the county's own program must be examined.

Please note that the proposed solution to this problem noted previously (and reiterated here) assumes that the County wrongly and mistakenly zoned what is actually IDA or LDA land, as RCA. If that is the case, I suggest that you seek to amend such designation to the higher intensity use with a change proposed to the Commission. Aside from the areas in existing industrial/commercial use, however, together with adjacent facilities, activities, parking areas, etc., that can be legitimately rezoned or re-designated to IDA or LDA, I believe that new such uses in the RCA require the use of growth allocation. An opposite reading would, in my opinion, result in incompatible RCA uses.

Again, please note that this is merely our analysis of the subject provisions. The Commission may or may not agree with the views of counsel (or staff). We do believe, however, that read in their full context, the RCA and grandfathering regulations should generally be accorded this interpretation. Please call if you wish to discuss this matter further.

Yours sincerely,

Lee R. Epstein
Assistant Attorney General

LRE/cjw

cc: Sarah Taylor
Abi Rome

Testimony submitted to John Murphy by
Russell B. Brinsfield and Kenneth W. Staver
May 25, 1990

Several factors must be considered when reviewing the testimony of Mr. Steven Roy of Horsley Witten Hegemann, Inc. regarding the potential water quality impacts of the proposed Queenstown Harbor Golf Links. First, while Mr. Roy's resume is lengthy and impressive, it is dominated by administrative rather than scientific activities, which is reflected in the nature of the testimony. No evidence of the validity or accuracy of the model chosen to predict nitrate concentrations in groundwater at the site has been presented. In the original development and use of the model (Nelson et al., 1988), the model was forced to work as stated in Nelson et al. (1988), "loading values were altered until the simulated values matched actual measured values." Before a model can be legitimately used for predictive purposes, there should be at least one demonstration of its predictive capability at a site other than where it was calibrated (forced to work). It should be noted that papers published in National Well Water Association proceedings have not been reviewed in any way for scientific merit prior to publication.

Assuming that the model itself is valid, there are several questions about its application to the Queenstown site. In Table 2 of Mr. Roy's testimony where the modeling inputs and outputs are presented it is very critical to note that 245 acres of natural land with a total nitrogen leaching of 16 pounds per year was mixed in with the golf course area of 160 acres with a total nitrogen leaching of 5097 pounds per year. Essentially this approach uses the high volume of leachate under the natural land with a nitrate concentration of .024 mg/l and mixes it with the water under the golf course area with a concentration of 11.9 mg/l to arrive at an average nitrate concentration of 5.1 mg/l. Mr. Roy then compares this average value to the values obtained by Mr. King from the site (6.9, 10.0, 15.0, average 10.6 mg/l) and concludes that, "The conversion of the

site to a golf course will result in improved water quality from existing conditions, and reduce the nutrient loading to the Bay." In a phone conversation, Mr. King informed us that his samples were all taken from shallow wells installed in agricultural fields. That means that his sample results are not average values including low values from forested land, as are those generated by the model, but are values for cropland alone. Thus, in the conversion of cropland to a golf course, the correct comparison should be between Mr. King's sample results (average 10.6 mg/l) and the model output for the acreage of the golf course (11.9 mg/l). This comparison suggests that converting agricultural land to a golf course will not improve groundwater quality. If the same procedure applied in Mr. Roy's testimony is applied to the present condition within the critical areas at the site, (198 acre crops, 197 forest, wetlands, and buffers; from Environmental Assessment Queenstown Harbor Golf Links, by Rauch, Walls, and Lane, Inc.) using Mr. King's sample results, the following results would be achieved:

	Acres	Recharge	Volume	Total N leached/year
Cropland	198	11.8 in	63452730 gal	5584 pounds (using Mr. King's value of 10.6mg/l)
Forest, wetlands, buffers	197	11.8 in	63132262 gal	12.9 pounds (model loading rate of .0653 pounds/acre)
Total			126584992 gal	5597 pounds/year
			Average N Concentration 5.3 mg/l	

This again demonstrates, using Mr. Roy's method and Mr. King's data, that groundwater quality for the portion of the site within the Critical Areas would not be improved under the proposed development scenario.

Scenario 2, presented in Table 2 of Mr. Roy's testimony, predicts lower average nitrate loading concentrations simply by increasing the recharge volume for the same amount of nitrogen transported into groundwater as in scenario 1. While this lowers the groundwater nitrate concentration by dilution, it will not change the quantity of nitrogen transported into Chesapeake Bay via groundwater. Increasing recharge volume will increase the water table height relative to scenario 1, thereby increasing the hydraulic gradient between groundwater and the Chesapeake Bay. This will result in an increase in groundwater velocity towards the Bay, as well as an increase in the volume of groundwater discharge to the Bay, which will offset any reductions in groundwater nitrate concentration.

The use of Mr. King's data as documentation of groundwater quality conditions at the site must also be considered. Three samples on one date, all from shallow wells within agricultural fields, certainly do not give a definite description of nitrate levels at the site. The extreme variability of groundwater nitrate levels in both vertical and horizontal directions, as well as seasonally, has been demonstrated in rigorous groundwater studies (Spalding and Exner, 1980; Sgambat and Stedinger, 1981), and while Mr. King's data certainly indicates that groundwater nitrate levels under the agricultural fields are above background levels, a condition which has been demonstrated extensively, his results are not accompanied by information regarding agricultural practices, nitrate application, or crop yields, all of which will affect nitrate concentrations in groundwater. It should be noted that 1987 and 1988 had below average precipitation during the crop-growing season. During drought conditions, water availability limits crop growth and utilization of applied nitrogen fertilizers resulting in a high potential for nitrate loading to groundwater during the following winter recharge period. In studies on nitrogen transport currently underway near Queenstown, high nitrate loading rates during 1987 and

1988 resulted in average nitrate levels in early 1990 in shallow groundwater that were the highest observed since the study was initiated in 1984, suggesting that Mr. King's results may be similarly biased.

A final point to consider regarding groundwater nitrate concentrations is the distinct difference between human health effects, and effects on water quality degradation in Chesapeake Bay. The shallow groundwater at this site probably discharges into tidal waters, as suggested in Mr. Roy's testimony, rather than into deeper drinking water aquifers. Thus, the impact of groundwater contamination at this site should be discussed in reference to water quality in Chesapeake Bay, rather than to human health effects. The problem of eutrophication of Chesapeake Bay has been well publicized and extensive research has been conducted to determine the water quality requirements of various living resources in the Bay (Chesapeake Bay Program, 1987). A primary component of the Bay ecosystem is submerged aquatic vegetation (SAV). The total dissolved inorganic nitrogen (nitrate, nitrite, ammonia) concentration required for growth of SAV has been found to be < 0.14 mg/L. Thus, although it is questionable whether conversion of this site from its present use to a golf course will significantly alter groundwater nitrate discharge levels, even the low estimates for average groundwater nitrate concentrations presented in Mr. Roy's testimony (3.95 mg/L), which are more than 25 times greater than those proposed as satisfactory for the growth of SAV, suggest that the proposed use does not represent a land use in the Critical Areas which will favorably affect Chesapeake Bay water quality.

References

Habitat Requirements for Chesapeake Bay Living Resources: A Report from the Chesapeake Bay Living Resources Task Force. 1987. Chesapeake Bay Program, Annapolis MD.

Nelson, M.E. et al. 1988. Predicting Nitrogen Concentrations in Groundwater-An analytical Model. Proceedings of the conference on Eastern Regional Ground Water Issues. National Well Water Association. pp 179-202.

Sgambat, J.P. and J.R. Stedinger. 1981. Confidence in Ground-Water Monitoring. Ground Water Monitoring Rev. Vol. 1(1): 62-68.

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QUEENSTOWN HARBOR GOLF LINKS

PROPOSED RESTRICTION ON WATER ACCESS

"THE PROPERTY SHOULD BE RESTRICTED BY COVENANTS WHICH PROVIDE THAT SO LONG AS IT REMAINS IN GOLF COURSE USE, THERE SHALL BE NO WATER ACCESS TO THE PROPERTY. THIS RESTRICTION IS NECESSARY TO MAINTAIN THE WATER QUALITY OF QUEENSTOWN CREEK AND SHOULD CONTINUE IN FORCE WHETHER OR NOT A PORTION OF THE PROPERTY IS CONVERTED TO IDA OR LDA USE."

MARYLAND HISTORICAL

TRUST

William Donald Schaefer
Governor

Jacqueline H. Rogers
Secretary, DHCD

May 18, 1990

The Honorable John C. North, Chairman
Maryland Critical Areas Commission
275 West Street, Suite 320
Annapolis, Maryland 21401

Dear Sir:

On Monday, May 21, 1990, the Critical Areas Commission will review a project located on the Chester River across Queenstown Creek from the town of Queenstown. Because of my knowledge of the history and significance of this tract of land, I have been asked to summarize the known and potential historical significance of this site.

My familiarity with this site dates to 1978, when I was hired to conduct a comprehensive survey of significant architectural and historic sites in Queen Anne's County. This study, jointly sponsored by the Maryland Historical Trust and the Queen Anne's County Historical Society, was completed in 1982 and documented more than 500 sites across the county. Among the sites I visited and recorded was the property in question, known since the mid-17th century as My Lord's Gift.

In the fall of 1978 I visited the property and prepared a detailed architectural report on the ruins of a house on the property. This was a large frame house that I concluded was probably built in the mid-18th century. It had been moved from its original location early in this century and by 1978 was in an advanced state of decay. Nevertheless, it was clearly an important structure worthy of careful study, particularly given its ruinous condition.

Following the completion of my field report, I continued to compile information on the site, with increasing interest in the association of this property with one of the earliest settlements on the mainland portion of the county. While the settlement of Kent Island can be dated back to the late 1720s, the My Lord's Gift tract was one of the first patents claimed off the island in the mid-1650s. This tract was the home plantation of Henry Coursey, a prominent figure in mid-17th century Maryland, leading me to search for further clues of his occupation of the site. Since the house that I had examined was as much as a century newer in date, I was anxious to learn more about the Coursey period of occupancy and the possible site of Henry Coursey's plantation house.

With this as my goal, I searched the documentary records and canvassed the local archeological community for evidence. My documentary research was less than satisfactory, but archeological evidence turned up in quantities that astounded me. It quickly became evident that the Coursey tract had been yielding artifacts at a pace only slightly more modest than it had produced corn and soybeans, and has been recognized for as much as a century as an exceptional archeological site. The artifact assemblages that I examined over the ensuing years offered strong evidence for the location and importance of Henry Coursey's home, but also gave remarkable evidence of the importance of this land as an occupation site dating back over 10,000 years.

Specifically, the evidence I have examined demonstrates convincingly that a major early colonial archeological site of the mid-17th century survives in pristine condition, and that prehistoric archeological sites survive from every period from the Early Archaic Period of 8,000 B.C. to the Late Woodland Period just prior to European settlement.

With this evidence in hand, it is extremely important that any development of this tract be undertaken with the greatest concern for these sites. Of primary importance is the need to undertake a very careful professional survey of the portions of the site that will be developed. Professional archeologists will be able to identify those sites of most critical importance. Sites identified in the survey should then be tested to determine their size, periods of occupation and level of significance. If there are sites that are determined to be eligible for listing in the National Register of Historic Places, steps could then be taken to protect those areas from development and ground disturbance. If sites of this level of significance cannot be avoided, it is essential that steps are taken to properly excavate and record them.

At this point in time, my chief concern is to ensure that the significance of this site is recognized and fully understood. To underscore that point, I can state that to my knowledge this is the earliest known colonial archeological site on this part of the Eastern Shore, and offers an invaluable opportunity to learn more about the earliest period of English settlement in this part of Maryland. Of no less significance is the remarkable evidence of concentrated Indian occupation. The environmental characteristics of this site--close proximity to the bay, a major river, a deep water creek, marshes mixed with well-drained land, and the presence of fresh water springs--are ideal indicators of a prehistoric village site of some considerable size and importance. The artifact diversity and density only reinforces the environmental evidence.

In closing, I would like to reiterate the point that significant sites could be protected from planned development, but only if those sites have been adequately located and evaluated. With appropriate attention to the far-reaching significance that I believe applies here, the history of My Lord's Gift and the prehistoric people who preceded Henry Coursey can become an asset for the enhancement of this property's image, providing a backdrop for the marketing of any modern use of the site.

If I can be of any assistance to the Commission, I would be pleased to help in any way that I can.

Sincerely,

Orlando Ridout V

Orlando Ridout V
Chief, Office of Research,
Survey and Registration

ORV:dlt

bcc: Mr. John Murphy

QUEENSTOWN HARBOR GOLF LINKS

PROPOSED RECOMMENDATION TO PROTECT ARCHEOLOGICAL RESOURCES

"THAT PRIOR TO GRANTING FINAL SITE PLAN APPROVAL, THE QUEEN ANNE'S COUNTY PLANNING COMMISSION SHOULD REQUIRE THAT ANY ARCHEOLOGICAL RESOURCES ON THE SITE BE IDENTIFIED AND THAT MEASURES ARE IMPOSED TO PROTECT THOSE RESOURCES FROM DAMAGE OR DESTRUCTION BY THE CONSTRUCTION OF THE GOLF COURSE. IN FORMULATING THIS REQUIREMENT, THE ADVICE OF THE MARYLAND HISTORICAL TRUST SHOULD BE SOUGHT".

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With comments

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

May 17, 1990

MEMORANDUM

TO: Critical Area Commission Members

FROM: Liz Zucker

SUBJECT: Draft Oil and Gas Regulations

Attached, please find a copy of the most recent draft regulations for oil and gas development in the Critical Area. Once again, your review and comment are respectfully requested.

Handwritten notations appear in the margins to call your attention to certain items (particularly additions or major revisions of sections).

You will find a new introductory section on the economic impacts of the regulations and a call for public comment, as required for publication in the Maryland Register.

We ask that you examine these regulations in detail. We would like to take a vote at the June meeting to determine whether the promulgation process should be initiated.

We have also enclosed the Chesapeake Bay Foundation's newly released publication on oil and gas activities in the Bay region. Something else to read and think about!

Thanks again for your effort.

Attachments

/jjd

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A. Environmental Assessment. An applicant proposing an oil and gas development activity for the Critical Area (including directional drilling in or under the Critical Area from a location outside of the Critical Area) shall provide the Commission with an Environmental Assessment of potential adverse environmental effects from the project. At a minimum, the assessment shall include maps and written documentation to address the following:

(1) The identification of existing natural features of the site and adjacent areas;

(2) The identification of Habitat Protection Areas described in COMAR 14.25.03 of this Subtitle, and as documented by written correspondence with the Maryland Department of Natural Resources and the local jurisdiction;

(3) A description of potential effects from proposed activities to terrestrial and aquatic resources, including Habitat Protection Areas within the Critical Area;

(4) A description of mitigation measures, including protection plans for all identified Habitat Protection Areas as described in COMAR 14.25.03 of this Subtitle; and

New

(5) For directional drilling, a description of:

(i) Potential environmental effects to surface and subsurface resources within the Critical Area including ground water; and

(ii) Measures to be taken to ensure that significant adverse environmental effects to resources of the Critical Area will not occur as a result of directional drilling activities.

B. Exploration Plan. An applicant shall submit an Exploration Plan to the Critical Area Commission for review and approval of all proposed geophysical survey operations. At a minimum, the Plan shall include the following information:

Pages 1-5 are introductory sections required for publication in Md. Register. DRAFT

TITLE 14

INDEPENDENT AGENCIES

Subtitle 25 Chesapeake Bay Critical Area Commission: Oil and Gas Development in the Critical Area

Authority: Natural Resources Article §6-103, Annotated Code of Maryland

Notice of Proposed Action

The Chesapeake Bay Critical Area Commission proposes to adopt the following new chapters and regulations under a new subtitle: Regulations .01 - .02 under COMAR 14.25.01 General Provisions; Regulations .01 - .07 under COMAR 14.25.02 Oil and Gas Development in the Critical Area; Regulations .01 - .06 under COMAR 14.25.03 Habitat Protection Areas; Regulations .01 - .02 under COMAR 14.25.04 Application Requirements; Regulations .01 - .04 under COMAR 14.25.05 Commission Review and Decision Process; Regulation .01 under COMAR 14.25.06 Conditional Approval of Oil and Gas Development in the Critical Area; and Regulation .01 under COMAR 14.25.07 Appeals.

In 1984, the Maryland General Assembly passed the Chesapeake Bay Critical Area Protection Law (Natural Resources Article §8-1801 - 8-1816). The Critical Area Law provides the State of Maryland with a regional, land planning strategy for protecting and enhancing the water quality and natural habitats of the Chesapeake Bay and its tidal tributaries. The quality and productivity of the Bay have declined dramatically over the past several decades as a result of cumulative human impacts from intensified land-use and development. The Critical Area Law recognizes environmentally sensitive land-use planning as an effective natural resource protection tool with great potential for improving the ecological integrity of the Chesapeake Bay through the management of development activities.

The 1984 Law defines the Critical Area as the waters of the Bay and its tributaries to the head of tide, the land under these waters, and all

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land and water within 1000 feet of the mean high tide or the edge of tidal wetlands. As mandated by the Law, development within the Critical Area must proceed in a manner that minimizes adverse effects to the water quality and natural habitats of the Chesapeake Bay.

The 26-member Critical Area Commission was created under the Law and was directed to establish regulatory criteria for development within the Critical Area. Two sets of land-use criteria have been developed: COMAR 14.15.01 - 14.15.11, effective May 13, 1986, are regulations for private lands within the Critical Area. These criteria are implemented by local jurisdictions under Commission-approved local Critical Area Programs. COMAR 14.19.01 - 14.19.08 are regulations for development actions undertaken by State and local agencies and are implemented by the Critical Area Commission.

The Critical Area criteria encompass a wide range of development and land-use activities. However, when the criteria were first established, the Chesapeake Bay region, historically, was not an area of hydrocarbon exploration and production. Thus, the original criteria do not specifically address activities associated with oil and natural gas development. Therefore, in the late 1980's, when the Bay region became an area of oil and gas exploration interest, the Maryland General Assembly passed Natural Resources Article §6-103 - 6-114, the Gas and Oil Law. Under Section 6-104.2 of the Gas and Oil Law, the Critical Area Commission was directed to establish a specific set of criteria for protecting the Bay's water quality and natural habitats from activities associated with oil and gas exploration and production in the Critical Area.

The following regulations apply to oil and gas exploration and production activities proposed for private, local and State lands within the Critical Area. These regulations will become effective on January 1, 1991.

Estimate of Economic Impact

I. Summary of Economic Impact. These regulations will benefit the State of Maryland by protecting the natural resources of the Chesapeake Bay and its tributaries from potential adverse environmental effects to the

description of:

(a) The total number of alternative sites and the physical and economic requirements of the proposed site relative to the alternative sites analyzed.

(b) Efforts to first avoid and then, if necessary, minimize adverse environmental effects on water quality and natural habitat of the Critical Area through consideration of wellsite alignment or other site design; and

(c) Pursuant to COMAR 14.25.02.02B(5)(b), efforts made by the applicant to resolve:

(i) Technical hardships; and

(ii) Land-use constraints imposed by restrictions or requirements of federal, State or local agencies or private interests.

D. Plan of Drilling Operations. A Plan of Drilling Operations for all proposed drilling activities shall be submitted to the Commission for review and approval. At a minimum, the Plan shall include the following:

(1) A site plan and plat of the wellsite (at a scale of not less than 1" = 50') to show relative size and location of structures such as well, emergency reserve pit, storage tanks, utilities, pipelines, trailers, access road, berms and fencing. The site plan should show existing topography and proposed elevations. Existing man-made and natural features such as buildings, forest areas, soil types, drainageways, wetlands, agricultural fields, the Critical Area boundary, and identified Habitat Protection Areas within and adjacent to the site, should also be indicated on the plan.

(2) A map showing the alignment of any proposed access roads, including written justification for the road.

(3) A computation of the total surface coverage of

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Bay's resources will be reduced through regulation of oil and gas exploration and production activities within the Critical Area. Some increased administrative costs may be incurred by several State agencies that will be assisting the Commission in its review of proposed oil and gas development projects and in the implementation of the regulations. Reallocation of staff time within the affected agencies will be required. Because the regulations restrict oil and gas operations within the Critical Area, certain impacts to the regulated industry or trade groups are expected. The regulated community may realize increased costs for locating and designing oil and gas development projects to avoid or minimize adverse effects to the Critical Area. These costs cannot be quantified at this time. For oil and gas development projects that are proposed for location within the Critical Area, costs also will include those necessary to prepare written documentation required for the Commission's review of the proposed operation.

II. Types of Economic Impacts.	Revenue(+) Expense(-)	Magnitude
A. On issuing agency:		
Commission review of proposal submitted by applicant	(-)	$10-40,000 annually
B. On other State or local agencies:		
Technical assistance to issuing agency		
1. Department of Agriculture	(-)	$0-10,000 annually
2. Department of the Environment	(-)	$0-25,000 annually
3. Department of Natural Resources	(-)	$0-30,000 annually

provides information outlined in Section G, of this Regulation;

(4) A timetable for reclamation activities; and

(5) Provisions for a surety or bond, if required by the Commission, to cover any expenses incurred to implement the Reclamation Plan.

F. Pipeline Operations Plan. For oil and gas development activities that include pipelines, the applicant shall provide the Commission with a Pipeline Operations Plan that addresses all of the requirements of COMAR 14.25. 02.06 of this Subtitle. The Plan shall include:

(1) A map or maps of sufficient scale to indicate the proposed location of the pipeline corridor, the Critical Area Boundary, tidal and nontidal wetlands, streams, the 100-year floodplain and any Habitat Protection Areas including the minimum 100-foot Buffer and its extension, that may occur in the vicinity of the proposed pipeline;

(2) Results of a comprehensive environmental review and alternative analysis of possible pipeline corridor locations pursuant to COMAR 14.25.02.06.A(6)(c) through B(5) of this Subtitle;

(3) A computation of the following surface area coverage of forest in accordance with COMAR 14.25.02.06B(12):

(a) Total area of forest existing in the entire pipeline corridor before pipeline construction;

(b) Total area of forest existing in the minimum 100-foot Buffer or its extension before pipeline construction;

(c) Total area of forest to be temporarily and permanently removed from the pipeline corridor; and

(d) Total area of forest to be temporarily and permanently removed from the 100-foot Buffer or its extension.

(4) A description of pipeline construction methods and

Benefit (+) Cost (-) Magnitude

C. On regulated industries or trade groups:

1. Costs of designing projects to avoid adverse impacts on water quality or natural habitats. (-) Indeterminable

2. Preparation of documentation for Commission review. (-) $1-50,000

D. On other industries or trade groups affected: NONE

E. Direct and indirect effects on public: (+) Indeterminable

III. Assumptions (Identified by Impact Letter and Number from Section II).

A. The amount indicated will be a budget enhancement request to review and process proposals to the Commission. While most of these proposals can be handled by existing staff, it is anticipated that the scope of some will be beyond the capability of current staff, and will be done on a contractual basis.

B. The cost estimate is based on State salaries, travel and support costs for providing technical assistance to the Commission during review of project proposals.

1. The Soil Conservation District will assist in the reviewing of Sediment and Erosion Control Plans.

2. The Maryland Department of the Environment will assist in the review of Stormwater Management Plans, project procedures for handling hydrocarbons and other hazardous materials during oil and gas operations, and project effects on surface and ground water quality.

3. The Maryland Department of Natural Resources will assist in reviewing proposed project plans for potential effects to plant, fish and wildlife habitats and water quality of the Critical Area.

C1. The costs of some oil and gas development plans may be increased in order to locate and design projects that avoid or minimize adverse

impacts to the natural resources of the Critical Area. These costs can not be determined at this time.

C2. The amount indicated is for the regulated community to employ internal staff or outside consultants to obtain the technical information for documentation submitted to the Commission.

E. These regulations will provide long-term positive benefit to the people of Maryland. The Chesapeake Bay provides the State with commercial fishery and shellfish industries, education and research opportunities, and a variety of recreational activities such as boating, hunting, fishing, and wildlife observation. By regulating oil and gas activities within the Critical Area, potential adverse effects to the Bay's resources from oil and gas development will be avoided or minimized.

Opportunity for Public Comment

Written comments may be sent to Dr. Sarah Taylor, Executive Director, Chesapeake Bay Critical Area Commission, 275 West Street, Suite 320, Annapolis, Maryland 21401 or telephone (301) 974-2426 Monday through Friday, 9 a.m. to 4 p.m. Public comment must be received not later than _____, 1990 at 4 p.m.

If sufficient interest is shown, a public hearing will be held. Copies of these proposed regulations are available from Dr. Sarah Taylor at the address given above.

COMAR 14.25.01
General Provisions
.01 Definitions

A. As used in these regulations, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Abandoned well" means a well no longer in use or a dry hole.

(2) "Access road" means a paved or unpaved route from a public road to the wellsite.

(3) "Agriculture" means all methods of production and

provided to the Commission at the end of each growing season.

(3) Provisions for a surety or bond if required by the Commission to cover any expenses incurred to implement the Reforestation Plan.

(4) Description of covenants, easements or other instruments to be utilized for protecting reforested areas.

H. Water-Dependent Facilities Plan. For oil and gas development projects that are water-dependent, the applicant shall prepare a Water-Dependent Facilities Plan to document measures taken to address criteria outlined in COMAR 14.25.02.07 of this Subtitle. At a minimum, the Plan shall include the following:

(1) A site plan and plat of the proposed facility (at an appropriate scale) to show relative size and location of structures and activities including, but not limited to, piers, moorings, docking facilities, loading equipment, access road, pipelines, and equipment maintenance areas.

(2) A written description of the proposed project and a discussion of how criteria in COMAR 14.25.02.07B (1) through (3) of this Subtitle are addressed, including results of a regional review and alternative site analysis for any proposed industrial or port-related maritime facilities for the transport of oil and gas.

(3) Identification and discussion of all factors listed in COMAR 14.25.02.07B(4) of this Subtitle, and an assessment of measures to be taken to assure that the proposed project will not adversely affect water quality and aquatic resources and habitat.

(4) A Pollution Prevention and Contingency Plan as

(5) "Applicant" means the federal government, the State, any county, municipal corporation, or other political subdivision of the State, or any of their units, or an individual, partnership, firm, association, public or private corporation, or any other entity that, under these regulations, requests permission to conduct oil and gas development activities and is responsible for such activities in the Chesapeake Bay Critical Area.

(6) "Areas of Intense Development" means those areas where residential, commercial, institutional, or industrial uses predominate and little natural habitat exists as designated for State-owned lands pursuant to COMAR 14.19.05.03.

(7) "Best Management Practices (BMPs)" means conservation practices or systems of practices and management measures that control soil loss and reduce water quality degradation caused by nutrients, toxics, and sediment.

(8) "Blowout" means an uncontrolled flow of gas, oil, or other well fluids into the atmosphere. A blowout occurs when formation pressure exceeds the pressure applied to it by the column of drilling fluid.

(9) "Blowout prevention equipment" means devices attached to the top of the well casing which can be closed and shut off to control pressure at the well

head.

(10) "Brine" means a solution containing appreciable amounts of NaCl and/or other salts (that is, salt water).

(11) "Casing" means steel pipe used to prevent liquids or gas from entering a well; to prevent the walls of the hole from sloughing off or caving; and to prevent produced liquids or gas from escaping from the well.

(12) "Colonial nesting water birds" means herons, egrets, gulls, pelicans, terns, and glossy ibis. For purposes of nesting, these birds congregate (that is, "colonize") in relatively few areas, at which time, the regional populations of these species are highly susceptible to local disturbances.

(13) "Commission" means the Chesapeake Bay Critical Area Commission.

(14) "Critical Area" means all lands and waters defined in Section 8-1807 of the Natural Resources Article, Annotated Code of Maryland. It includes:

(a) All waters of and lands under the Chesapeake Bay and its tributaries to the head of tide as indicated on the State wetlands maps, and all State and private wetlands designated under Title 9 of the Natural Resources Article, Annotated Code of Maryland;

(b) All land and water within 1,000 feet beyond the landward boundaries of State or private wetlands and the heads of tides designated under Title 9 of the Natural Resources Article, Annotated Code of Maryland; and

(c) Modification to these areas through inclusions or exclusions proposed by local jurisdictions and approved by the Commission as specified in Section 8-1807 of the Natural Resources Article, Annotated Code of Maryland.

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(15) "Critical Area program" means those regulatory policies and criteria for the protection of water quality and habitat of the Critical Area as described in Sections 8-1801 — 8-1816 of the Natural Resources Article, Annotated Code of Maryland which are incorporated into a local jurisdiction's land planning procedures through the implementation of comprehensive or master plans, ordinances and any other local regulatory procedures or documents.

(16) "Cuttings" means fragments of rock produced in the well hole by the abrasive action of the drill bit and brought to the surface by the drilling fluid.

(17) "Directional drilling" means an intentional deviation of a well bore from the vertical. With controlled directional drilling, it is possible to reach the subsurface area from a point where the drill bit enters the ...

(18) "Drilling fluid" means a fluid circulated within the well hole to remove cuttings from the hole and to cool the drill bit. The fluid can consist of a mixture of clay, water, and other chemical additives. Air, gas, or water can be used as drilling fluid.

(19) "Documented breeding bird areas" means forested areas where the occurrence of interior dwelling birds, during the breeding season, has been demonstrated as a result of on-site surveys using standard biological survey techniques.

(20) "Ecosystem" means a more or less self-contained biological community together with the physical environment in which the community's organisms ...

(21) "Environmental assessment" means an orderly evaluation of comprehensive, site specific data to determine if a proposed project or action is likely

New

(4) A description of preventative maintenance measures and inspection routines and programs for avoiding environmental impacts specific to the site.

(5) A detailed discussion of equipment and measures to be taken in the event of a blowout or spill including equipment storage location, deployment procedures, and any cleanup contractors and supporting documents for potential or existing pollution incidents, and appropriate local, State and federal agencies. The discussion shall include the specific contingency measures for all Habitat Protection Areas as described in COMAR 14.25.03 of this Subtitle which potentially could be affected by a pollution incident.

(6) A schedule for updating the Plan to indicate the most current and planned activities at intervals mutually agreeable to the applicant and the Commission.

J. Additional Information. If certain concerns or issues are identified during the review process for a specific project, the Commission may require that the applicant provide further information in addition to that which is required under Sections A through I of this Regulation.

COMAR 14.25.05

Commission Review and Decision Process

.01 Application Procedures.

A. The Commission shall receive and review all applications for oil and gas development including information as required under COMAR 14.25.04 of this Subtitle. New The applicant shall provide the Commission with six copies of information submitted to support the application.

B. Before the close of business of the fifth working day following the receipt of an application, the Commission

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to have a significant effect on natural resources and the environment.

(22) "Explosives" means normal commercial explosives, blasting agents, and detonators.

(23) "Forest" means a biological community dominated by trees and other woody plants. This also includes forests that have been cut, but not cleared.

(24) "Forest interior dwelling birds" means species of birds which require relatively large forested tracts in order to breed successfully (for example, various species of flycatchers, warblers, vireos, and woodpeckers).

(25) "Gas" means all natural gas and other fluid hydrocarbons, not defined as oil, which are produced from a natural reservoir.

(26) "Highly erodible soils" means those soils with slopes greater than 15 percent; or those soils with a K value greater than .35 and with slopes greater than 5 percent.

(27) "Historic waterfowl staging and concentration area" means an area of open water and adjacent marshes where waterfowl gather during migration and throughout the winter season. These areas are "historic" in the sense that their location is common knowledge and because these areas have been used regularly during recent times.

(28) "Hydric soils" means soils that are wet frequently enough to periodically produce anaerobic conditions, thereby influencing the species composition or growth, or both, of plants on those soils.

(29) "Hydrophytic vegetation" means those plants cited in "Vascular Plant Species Occurring in Maryland Wetlands" (Dawson, F. et al., 1985) which are described as growing in water on a substrate that is at least periodically deficient in oxygen as a result of excessive water content (plants typically

found in wetlands)

oil and gas development.

(30) "Intensely Developed Areas" means those areas where residential, commercial, institutional, or industrial uses predominate and where little natural habitat exists.

(31) "K Value" means the soil erodibility factor in the Universal Soil Loss Equation quantitative value that is experimentally determined.

(32) "Marina" means any facility for the mooring, berthing, storing or securing of watercraft, but not including community docking and storage facilities.

(33) "Mean high water line" means the average level of high tides at any given location.

(34) "Natural Heritage Area" means any of the best State-wide examples of the kinds of plants or animals which are considered to be among the most significant in the State designated by regulation by the Secretary of the Department of Natural Resources.

(35) "Natural vegetation" means those plant communities that develop in the absence of human activities.

(36) "Natural features" means ponds and the processes present in or produced by them, including, but not limited to, water type, tide, vegetation, surface water, drainage patterns, aquifers, recharge areas, climate, flood plains, aquatic life, and wildlife.

(37) "Nonpoint source pollution" means pollution generated by diffuse land use activities rather than from an identifiable or discrete origin or source. It is conveyed to waters through natural processes such as rainfall, storm runoff, or ground water seepage rather than by deliberate discharge.

(38) "Nontidal wetlands" means those lands in the

New

New

New

.03 Panels.

A. The Chairman may appoint a panel of the Commission to review oil and gas development applications in Regulation .01 of this Chapter, and to make recommendations to the full Commission concerning approval or denial of such applications. The panel shall consist of five Commission members.

B. A panel may conduct a public hearing on an application for

Critical Area, excluding tidal wetlands regulated under Title 9 of Natural Resources Article, Annotated Code of Maryland, where the water table is usually at or near the surface, or lands where the soil or substrate is covered by shallow water at some time during the growing season. These regulations apply to the Palustrine class of nontidal wetlands as defined in "Classification of Wetlands and Deepwater Habitats of the United States" (Publication FWS/OBS-79/31, December 1979) and as identified on the National Wetlands Inventory maps, or which may be identified by site survey at the time of application for an oil and gas development activity. These lands are usually characterized by one or both of the following:

(a) At least periodically, the lands support predominantly hydrophytic vegetation;

(b) The substrate is predominantly undrained hydric soils.

Nontidal Wetlands of Special State Concern delisted per DNR Nontidal Wetland Division comments

(39) "Off-road land operations" means non-marine land activities conducted where there are no existing roads.

(40) "Offsets" means structures or actions that compensate for undesirable impacts.

(41) "Oil and gas" means with respect to the expressions "oil and gas" or "oil or gas", the word "and" includes the word "or" and the word "or" includes the word "and", unless the context clearly requires another meaning.

(42) "Oil and gas development" means the construction or substantial alteration of oil and gas exploration and production facilities or structures, or any activity associated with oil and gas exploration and production that materially affects the condition and use of natural resources within the designated Critical Area.

(43) "Oil and gas development activities" means human activities that result in disturbances to natural resources in conjunction with the construction or substantial alteration of oil and gas extraction and production facilities and structures.

(44) "Palustrine" means all nontidal wetlands dominated by trees, shrubs, persistent emergent plants, or emergent mosses or lichens and all such wetlands that occur in tidal areas where the salinity due to ocean-derived salts is below one-half part per 1,000 parts of water.

(45) "Physiographic features" means the soils, topography, land slope and aspect, and local climate that influence the form and species composition of plant communities.

(46) "Pipeline corridor" means a linear area, including easements or right-of-ways, designated for the location or route for the location of a pipeline.

(47) "Plat" means a map drawn to scale, showing specified projected and existing features.

(48) "Plugging" means the placement of physical or mechanical plugs into a well at specified intervals to prevent contamination of freshwater or oil and gas zones; or to prevent the intermigration of fluids; or to prevent the flow of fluids to the surface.

(49) "Port" means a facility or area established or designated by the State or local jurisdictions for purposes of water-borne commerce.

(50) "Portable equipment" means devices that can be carried separately by one individual during an oil and gas development activity.

(51) "Reclamation" means the protection and rehabilitation of all land affected by exploration and production of oil and gas resources to a minimum, contain the following:

C. The additional time taken by the Commission for review of complex operations shall not exceed 60 days beyond that provided in Section A of this Regulation, unless expressly agreed to by the applicant.

D. The Commission may require the applicant to provide supplemental information to clarify issues that are raised during the review process.

14.25.06 Conditional Approval of Oil and Gas Development in the Critical Area

.01 Criteria.

A. If oil and gas development is proposed to be undertaken in the Critical Area by an applicant and this development is prohibited from occurring by the criteria in this Subtitle, the applicant proposing such development may seek conditional approval for the project from the Commission.

B. In order to qualify for consideration by the Commission for conditional approval, it must be shown by the applicant that the project has the following characteristics:

(1) That there exist special features of a site or there are other special circumstances such that the literal enforcement of these regulations would wholly prevent oil and gas development from being undertaken;

(2) That the project otherwise provides substantial public benefits to the Chesapeake Bay Critical Area initiatives; and

(3) That the project is otherwise in conformance with this Subtitle.

C. In addition to all other information required of this Subtitle, the conditional approval request shall at a

New Section

(52) "Reforestation" means the establishment of a forest through artificial reproduction or natural regeneration.

(53) "Reserve pit" means a waste pit, usually an excavated earthen-walled pit, lined with plastic or other impervious material to prevent contamination of the soil or ground water.

(54) "Riparian habitat" means a habitat that is strongly influenced by water and which occurs adjacent to streams, shorelines, and wetlands.

(55) "Sediment and Erosion Control Plan" means a written plan with appropriate maps and cross-sections which describes how erosion and transportation of sediment is to be controlled and the time or schedule of the control activities.

(56) "Seismic operations" means the application of vibratory energy from any source to determine if conditions exist for the subsurface entrapment of oil or gas.

(57) "Separation" means the process used for separating oil, gas, water, and other materials, as it is produced.

(58) "Shot hole" means a bore hole in which an explosive is placed for generating seismic waves during a seismic survey.

(59) "Steep slopes" means slopes of 15 percent or greater incline.

(60) "Stormwater Management Plan" means a written plan with appropriate maps, and cross-sections which describes how the quality, volume and rate of stormwater runoff is to be managed and controlled and the time or schedule of the control activities.

(61) "Stratigraphic test well" means a hole drilled to gather engineering, geological or hydrological information including but not limited to structural, porosity, permeability and geophysical data.

(62) "Tank battery" means a group of receptacles or tanks for the storing of oil and gas prior to transportation by trucks, railways or pipelines.

(63) "Topography" means the existing configurations of the earth's surface including the relative relief, elevation, and position of land features.

(64) "Transportation facilities" means any thing affords built, installed or established to provide means of travel from one place to another.

(65) "Tributary streams" means those perennial or intermittent streams in the Critical Area which are so noted on the most recent U.S. Geological Survey 1/2 minute topographic quadrangle maps (scale 1:24,000) or on more detailed maps or studies at the discretion of the local jurisdictions.

(66) "Underground storage" means the injection and storage of gas and oil in a geological structure beneath the surface of the earth.

(67) "Utilities" means fixed structures associated with a wellsite that convey or distribute resources, wastes, or both, including, electric lines, water conduits, and sewer lines, but not including pipelines for transporting produced oil and gas from the well head.

(68) "Waterfowl" means birds which frequent and often swim in water, nest and raise their young near water, and derive at least part of their food from aquatic plants and animals.

(69) "Well" as used in these regulations without a qualifying adjective means a hole drilled into the earth for the purpose of producing oil or gas, whether it obtains production or is a dry hole.

(70) "Wellsite" means the area around a well which has been modified from its natural or existing condition, and includes access roads, drilling or production pads, pits, storage areas for equipment,

Revised

B. The appeal shall set out in detail all exceptions to the decision. Within 30 days of receipt of the Commission decision, the applicant may provide in writing, all arguments and technical information relevant to such exceptions.

C. After receipt of an appeal, the Commission shall afford the applicant another opportunity to be heard on the matter before the full Commission, at the next Commission meeting at which a quorum is present. The Commission shall issue its final decision in writing within 60 days of such reconsideration. Affected local governments shall be notified of any appeals for reconsideration and shall be afforded an opportunity to comment in writing or at the reconsideration hearing.

D. Any person aggrieved by the final decision on reconsideration may bring whatever appeal or civil action may be appropriate before the courts of this State.

New

increased from 30 days

pipes, and fuel tanks, crew trailers, vehicle parking areas, and structures for stormwater management and erosion control.

(71) "Wildlife corridor" means a strip of land having vegetation that provides habitat and a safe passageway for wildlife.

.02 Explanation of Certain Terms

Every provision of this Subtitle constitutes part of the "criteria" within the meaning and intent of Natural Resources Article §6-104.2, Annotated Code of Maryland, whether that provision is termed a "definition", "general policy", "policy", or "criteria".

COMAR 14.25.02

Oil and Gas Development in the Critical Area

.01 Introduction.

The Critical Area Commission recognizes oil and gas development as a resource-based land use with the potential for both economic benefit as well as significant adverse environmental effects. The Commission is charged with establishing criteria for protecting the water quality and natural habitats of the Critical Area from activities associated with oil and gas development. In this Chapter, criteria are presented for controlling and managing oil and gas exploration and production activities so that potential adverse environmental impacts resulting from these activities are avoided, or if necessary, minimized. The criteria are based on the General Policies of Regulation .02.

.02 General Policies.

A. Definitions.

(1) "Oil and gas exploration" means the preliminary phase of oil and gas development which includes activities conducted to locate potential oil and gas bearing geological strata. Exploration activities

include, but are not limited to, geophysical surveys, stratigraphic test drilling and exploratory well drilling.

(2) "Oil and gas production" means those activities associated with the extraction and processing of oil and gas in commercial quantities. Production activities include, but are not limited to, the construction and maintenance of production wellsites, access roads, pipelines, storage, processing, and treatment facilities. For purposes of these regulations, production does not include activities that occur or structures that are utilized once oil and gas are processed or refined for distribution and use as marketable products.

B. Criteria.

(1) Oil and gas exploration and production structures and activities shall, to the extent possible, be located outside of the Critical Area.

(2) If the siting of an oil and gas exploration or production development project in the Critical Area is unavoidable because of locational requirements that cannot be satisfied outside of the Critical Area, the applicant responsible for the oil and gas development project shall seek written approval for the project from the Commission.

(3) In addition to Section B(2) of this Regulation, an applicant shall seek written approval from the Commission for directional drilling into or through the Critical Area from a wellsite located outside of the Critical Area.

New

(4) Certain oil and gas development activities or facilities, because of their intrinsic nature, or because of their potential for adversely affecting water quality and natural habitats, shall not be permitted in the Critical Area. These activities include, but are not limited to:

(a) Subsurface injection for the disposal of brine or any other waste fluids in or under the Critical Area;

(b) New oil refinery facilities or oil and gas processing plants;

(c) Oil and gas separation and treatment facilities associated with a production wellsite;

(d) New facilities for the storage of oil and gas produced from the Critical Area (for example, tank batteries);

New

(e) New facilities for the overland transportation of oil and gas produced from the Critical Area (for example, trucking and railroad facilities) including, but not limited to, cargo loading, maintenance and parking areas, and administrative support buildings and structures;

(f) Ancillary facilities associated with oil and gas production pipelines, including, but not limited to, gas separation and dehydration plants, pump stations, compressor facilities and metering stations, except those small metering apparatus necessary for location at a production wellsite as approved by the Commission; and

Modified

New

(g) Compressor and distribution facilities associated with underground storage wells.

(5) Drilling activities for oil and gas exploration and production shall not be permitted in the Critical Area unless it is clearly and sufficiently demonstrated by an applicant proposing such activities that the public benefits derived from utilizing resources within the Critical Area outweigh potential risks of adverse environmental effects, and:

(a) Alternative locations of the oil and gas

development outside of the Critical Area will be more environmentally damaging; or

(b) Alternative locations of the development outside of the Critical Area is not possible or feasible as a result of:

(i) Existing federal, State, local or private land-use restrictions, laws, or regulations; or

(ii) Technical constraints and hardships.

(6) The Commission may deny approval of an application for an oil and gas development project within the Critical Area based upon a finding of fact that the proposed project presents an unacceptable risk to water quality or natural habitat of the Critical Area.

New

(7) An applicant's proposal to the Commission for conducting oil and gas exploration and production activities within the Critical Area shall be accompanied by all necessary information as required in COMAR 14.25.04 of this Subtitle, including a detailed alternative site analysis for proposed wellsites.

(8) The applicant shall provide the Commission with a signed affadavit that clearly indicates that the applicant is responsible for:

(a) The accuracy and completeness of all submitted information; and

(b) The proper implementation and cost of all proposed plans and activities, including any conditions placed on the Commission's approval (if an approval is to be granted), to ensure that the water quality and natural habitats of the Critical Area are protected from potential adverse effects of the oil and gas development.

(9) An applicant that proposes directional drilling into or through the Critical Area from a wellsite located

outside of the Critical Area shall provide the Commission with a written environmental assessment of any potential adverse effects to surface and subsurface resources from the directional drilling operations.

Modified

(10) All oil and gas development activities shall conform to criteria designated for Habitat Protection Areas as outlined in COMAR 14.25.03 of this Subtitle.

(11) The applicant shall acquire all applicable local, State and federal permits and approvals and notify the Commission of all permitting activities including meetings, hearings and written documentation.

(12) If any local, State or federal permits have not been obtained by the applicant at the time of the Commission's final decision, then the acquisition of such permits shall become a condition of the Commission's written approval, if an approval is to be granted.

(13) Seismic survey and drilling operations shall conform to requirements of Natural Resources Article §6-103-6-114, Annotated Code of Maryland and COMAR 08.11. - 08. The applicant shall obtain all applicable permits from the Maryland Department of Natural Resources prior to the commencement of seismic survey and drilling activities in the Critical Area.

.03 Geophysical Survey Operations.

A. Definitions.

(1) "Geophysical survey operations" means preliminary field studies conducted during the exploration phase of oil and gas development projects that are performed to obtain data on potential oil and gas-bearing geological strata within a particular region. Geophysical survey operations include geologic mapping, magnetic surveys, gravity surveys,

magnetotelluric exploration, geochemical sampling and seismic surveys.

(2) "Survey lane" means the passageway or course traversed by field personnel for the transport and placement of equipment during geophysical survey operations.

B. Criteria. Geophysical survey operations shall be designed to avoid or, if necessary, minimize impacts to water quality and fish, wildlife and plant habitat in the Critical Area. For the development and implementation of survey operation plans, an applicant shall use, at a minimum, all of the following criteria:

(1) Existing roads and parking areas shall be utilized for survey operations involving heavy equipment (for example, vibratory trucks and aircraft) and vehicles. No new roads, trails, or parking areas shall be created for use of vehicles or heavy equipment.

(2) Foot travel, portable equipment and hand clearing of vegetation shall be utilized for off-road operations within the Critical Area.

(3) Clearing of vegetation shall be confined to the minimum area needed for foot travel of survey crews and safe transport and use of portable equipment.

(4) Survey lanes that are cleared of woody vegetation, shall be replanted or allowed to naturally revegetate.

(5) Soil disturbance resulting from survey operations shall be restored to pre-existent or enhanced natural drainage patterns and conditions within 24 hours upon completion of the survey operation.

(6) Survey operations shall not be conducted within the Buffer, as described in COMAR 14.25.03.02 of this Subtitle.

(7) Hazardous materials and contaminants that are necessary to geophysical survey operations shall be

stored in a location outside of the Critical Area.

(8) Survey operations shall conform to criteria for Habitat Protection Areas as outlined in COMAR 14.25.03 of this Subtitle.

New

(9) Survey operations involving heavy equipment or explosives shall not be conducted in the Critical Area unless the applicant clearly demonstrates to the Commission that the proposed operation:

(a) Is necessary for obtaining information crucial to oil and gas exploration activities for a particular geological region; and

(b) Will not have or cause adverse effects to water quality and natural habitat of the Critical Area.

(10) Survey operations involving heavy equipment or explosives shall not be conducted within Habitat Protection Areas, as described in COMAR 14.25.03 of this Subtitle and as identified by the Maryland Department of Natural Resources and the local jurisdiction.

(11) The Commission, under the advice of the Maryland Department of Natural Resources, shall establish additional protection areas or buffers around Habitat Protection Areas within which use of heavy equipment, explosives, and other disturbances from survey operations are prohibited.

(12) Unless otherwise approved by the Commission under the advice of the Maryland Department of Natural Resources, seismic survey operations shall be conducted at a minimum distance of 500 feet from anadromous fish spawning streams. Distances shall

New

be measured from the landward edge of wetlands or from the top of the bank of spawning streams (whichever is further inland).

(13) Off-road survey operations involving explosives shall not be conducted in areas of slopes greater

than 15%.

(14) For all geophysical operations within the Critical Area, the applicant shall provide the Commission with an Environmental Assessment and an Exploration Plan pursuant to COMAR 14.25.04 of this Subtitle.

.04 Wellsite Construction and Drilling.

A. Definitions.

(1) "Exploration drilling" means structures and activities associated with a well that has been drilled to obtain data on potential oil and gas-bearing geological strata in an unproved area.

(2) For purposes of these regulations, stratigraphic test well drilling is considered to be a type of exploration drilling.

(3) "Production drilling" means structures and activities associated with a well that has the potential to bear oil and gas in commercial quantities and that has been established or converted for such purposes.

(4) For purposes of these regulations, drilling of wells for underground storage of gas and oil is considered a type of production drilling.

(5) These regulations shall apply to all wellsites that are partially or wholly located within the Critical Area.

B. Policies. In the design and implementation of exploration and production drilling activities, the applicant proposing such activities within the Critical Area shall assure that:

(1) All possible measures have been taken to first avoid, and then if necessary, minimize adverse effects to water quality and fish, plant and wildlife habitat from clearing of vegetation, disruption of soils, construction of structures, the presence of human activity and noise, and all other

wellsite activities;

(2) Water quality and natural habitats are protected from all sources of pollution including, but not limited to, sedimentation and siltation, chemical storage, use and spillage, the storage and disposal of solid and liquid wastes and the production, storage and transportation of produced oil and gas; and

(3) Drilling activities are conducted in a manner that provides for timely and complete reclamation of a site.

C. Criteria. Exploration and production drilling activities shall be designed, implemented, and maintained to first avoid, then if necessary, minimize adverse effects to water quality and natural habitat in the Critical Area. At a minimum, drilling activities shall be conducted according to the following criteria:

(1) To the extent feasible, existing roads shall be utilized for wellsite access.

(2) Construction of new access roads shall be permitted only after the applicant has demonstrated to the Commission that additional roads are necessary for the establishment and maintenance of wellsite structures and drilling activities.

(3) The wellsite construction pad shall be limited to the minimum area required to conduct drilling operations, store equipment and supplies, contain waste material, and control stormwater and erosion.

New

(4) Production wellsites shall be limited to the production well head. All other oil and gas production structures and activities, including separation, treatment, brine disposal, oil and gas storage, and overland transportation facilities, shall be located outside of the Critical Area.

(5) A pipeline shall be utilized to connect a production well head to production facilities established

outside of the Critical Area, as described in Section C(4) of this Regulation. The pipeline shall cross the Critical Area in the shortest and most direct route possible.

(6) All exploration and production wellsites and drilling activities including pipelines described in Section C(5) of this Regulations shall be prohibited in Habitat Protection Areas as described in COMAR 14.25.03 of this Subtitle, and as determined by the Maryland Department of Natural Resources and the local jurisdiction.

(7) The Commission, under the advice of the Maryland Department of Natural Resources, shall establish protection areas or buffers around Habitat Protection Areas, within which disturbances from a wellsite, including human activity and noise, are prohibited.

(8) All structures and activities associated with a wellsite including pipelines described in Section C(5) of this Regulation, and access roads created for the wellsite, shall be located:

(a) A minimum 500 feet from the Mean High Water of tidal waters or the landward edge of tidal wetlands and tributary streams;

(b) A minimum 250 feet from the upland limit of nontidal wetlands and the top of the bank of streams; and

(c) A minimum 100 feet from the edge of the 100-year floodplain.

(9) The Commission may require that distances in Sections C(8)(a) through (c) of this Regulation, be increased to include areas of contiguous sensitive resources such as hydric soils, steep slopes and highly erodible soils whose presence or disturbance may result in significant adverse effects to water quality or aquatic resources.

(10) Development of the wellsite and access roads on slopes greater than 15%, as measured before development, shall be prohibited.

(11) For the design and construction of wellsites and access roads, the applicant shall utilize the following criteria to minimize destruction of forest vegetation:

(a) The applicant shall consult with the Maryland Forest, Park and Wildlife Service when planning and constructing a wellsite and access roads located on forested lands.

(b) To the extent possible, oil and gas development sites, including reclamation activities, shall maintain or create a wildlife corridor system that connects the largest undeveloped, or most vegetative tracts of land within and adjacent to the site in order to provide continuity of existing wildlife and plant habitats with offsite habitats. The wildlife corridor system may include Habitat Protection Areas identified in COMAR 14.25.03 of this Subtitle. Wildlife corridors shall be maintained through the establishment of conservation easements, or similar protective instruments, to the extent practicable.

(c) Except as provided for in Section C(11)(d) of this Regulation, all forest vegetation cleared for a wellsite and access road shall be replaced in the Critical Area at a total of not less than two times the areal extent removed and in accordance with the following schedule:

(i) At the time of wellsite construction, on not less than an equal area basis within an offset area designated by the applicant and approved by the Critical Area Commission; and

(ii) At the time of well plugging, on not less than an equal area basis, onsite, as part of a reclamation plan for the wellsite and access roads.

(d) The applicant may propose reforestation of less than an equal area basis for onsite reclamation of the wellsite and access road at the time of well plugging pursuant to Section C(11)(c)(ii) of this Regulation, provided that:

(i) Additional reforestation is made in the offset area described in Section C(11)(c)(i) of this Regulation, to ensure that a total of two times the area of forest removed from the Critical Area has been replaced; and

(ii) The proposed reforestation in the offset area will provide the benefits of improved water quality and enhanced wildlife habitat within the Critical Area.

New

(e) Offset areas for forest replacement, as designated by the applicant, shall include, in order of descending preference:

(i) Areas within the 100-foot Buffer or areas that would enhance other Habitat Protection Areas;

(ii) Areas that would create a new wildlife corridor or enhance an existing wildlife corridor;

(iii) Areas designated for reforestation by a local jurisdiction under its local Critical Area Program; or

(iv) Other areas within the Critical Area of the State.

(f) Wellsites having less than 15% forested areas before oil and gas development, shall be

planted to provide woodland cover of at least 15% of the wellsite, in an area onsite and within an offset area approved by the Commission. changed from "or"

(g) The applicant shall fully warrant the success of reforestation for at least three complete growing seasons.

(h) All reforested areas shall be maintained through conservation easements, restrictive covenants, or other protective instruments.

(12) A Sediment and Erosion Control Plan shall be designed and implemented to prevent soil erosion and sedimentation resulting from wellsite and access road construction. The Plan shall be approved by the local Soil Conservation District or the Maryland Department of the Environment, as appropriate. At a minimum, the plan shall demonstrate:

(a) Minimal disturbance to soils for the construction and maintenance of roads and structures and the implementation of drilling activities;

(b) Proper removal and long-term storage of topsoil for wellsite reclamation;

(c) Location of soil disturbance away from steep slopes;

(d) Adequate use of temporary sediment control measures until permanent controls are established;

(e) Immediate vegetative restabilization of all exposed soils, including stored topsoil;

(f) Proper use of ground stabilization fabric and gravel, where appropriate;

(g) An adequate schedule for inspection and maintenance of erosion control measures throughout the entire drilling operation;

(h) Consistency with State and local sediment and

erosion control requirements and regulations; and

(i) No significant adverse effects to water quality and aquatic habitat as a result of sedimentation and soil erosion from construction and drilling activities.

(13) A Stormwater Management Plan shall be designed and implemented using Best Management Practices to contain all stormwater runoff onsite, with zero discharge of runoff from the wellsite. The Stormwater Management Plan shall be reviewed by appropriate officials from the Maryland Department of the Environment. At a minimum, the Plan shall include provisions for:

(a) Adequate use of temporary stormwater management measures during construction of roads and wellsites until permanent measures are established;

(b) Measures to contain all stormwater runoff onsite, including a system of bermed diversion ditches completely surrounding the wellsite;

(c) Adequate collection of contaminated stormwater runoff, including runoff from washing of equipment and vehicles, into transportable, impervious containers and disposal offsite, out of the Critical Area;

(d) Inspection and monitoring activities to ensure zero discharge of runoff from the site throughout the entire drilling operation; and

(e) Any additional measures for improving or maintaining water quality and aquatic habitat of surrounding waterbodies.

(14) The wellsite shall include a lined emergency reserve pit. The liner of the reserve pit shall be of a material of adequate strength to ensure that leakage of fluids or tearing will not occur.

(15) The reserve pit shall be utilized only for the temporary containment of drilling materials or other contaminants in the event of an emergency.

(16) Modified Within 48 hours following an emergency event, all contents of the reserve pit shall be collected in impervious containers and transported to an approved facility outside of the Critical Area.

(17) Modified All wellsite storage areas and tanks for fuel or other potential contaminants (which are necessary to drilling operations) shall be impervious and constructed in a manner to ensure that contaminants do not move into surface or ground waters of the Critical Area. Tanks shall not be buried underground.

(18) Dikes shall be established around all tanks containing fuel or other potential contaminants, regardless of location. The dike's capacity shall be two times the tanks' storage volume.

(19) The entire wellsite shall be adequately fenced to prevent access by wildlife and unauthorized persons.

(20) Fluids, including stormwater runoff, shall not be discharged from the wellsite into surface or ground waters of the Critical Area.

(21) Drilling fluids shall consist of air, water, or brine (that is, no chemical additives) unless the applicant demonstrates that drilling is otherwise not technically feasible. Materials which are potentially toxic to plant, wildlife or aquatic resources shall not be utilized in drilling operations. New

(22) New There shall be zero discharge of drilling materials and waste from the wellsite. All drilling wastes, including contaminated stormwater runoff, shall be collected in transportable, impervious containers and immediately removed from the wellsite for disposal at an approved facility outside of the

Critical Area. Drilling wastes, including the liner of the emergency reserve pit, shall not be buried within the Critical Area.

(23) If an applicant proposes directional drilling within or under the Critical Area, the Commission, under the advice of the Maryland Department of Natural Resources and the Maryland Department of the Environment, shall establish a distance from the surface within which the applicant must drill vertically to minimize potential effects to sensitive ground water resources within the Critical Area.

New

(24) The Commission shall seek comments from the Maryland Department of Natural Resources and the Maryland Department of the Environment on the potential effects of drilling operations and techniques on surface and ground water resources within the Critical Area, including effects to water resources from directional drilling that will enter or pass through the Critical Area from a wellsite located outside of the the Critical Area.

Modified

(25) Blowout preventor equipment, sufficient to meet any reasonably foreseeable geological condition or situation, shall be utilized on all wells drilled within the Critical Area.

(26) Blowout and spill containment and recovery equipment shall be located and maintained in a readily accessible area in or immediately adjacent to each wellsite within the Critical Area. The equipment shall be established and maintained to ensure protection of those natural resources which may be affected by an emergency event at the wellsite.

New

(27) A Pollution Prevention and Contingency Plan for blowouts and spills as specified in COMAR 14.25.04.02I of this Subtitle, shall be submitted by the applicant for approval by the Critical Area

Commission. The Commission shall seek comments on the Plan from the Maryland Department of the Environment, Department of Natural Resources, and the local jurisdiction, including local fire prevention personnel.

(28) A public hearing, as described in COMAR 14.25.05.02 of this Subtitle, shall be held by the Commission to consider comments on all exploration and production drilling wellsites that may be wholly or partially located within the Critical Area.

.05 Wellsite Reclamation.

A. Policies.

(1) The applicant shall prepare and implement a Reclamation Plan for all wellsites, including access roads. The Reclamation Plan shall specify mitigation measures that will provide plant and wildlife habitat and water quality benefits equivalent to or greater than those derived from the areas that were disturbed or altered.

(2) The Reclamation Plan shall address immediate measures (that is, measures taken while the wellsite is in use), interim measures (for example, measures taken to convert an exploration wellsite to a production wellsite), and final measures (that is, measures taken once an exploration or production well is finally abandoned and plugged).

B. Criteria.

(1) An applicant shall use all of the following criteria in the development and implementation of a Reclamation Plan:

(a) All liquid and solid waste and debris shall be safely transported and disposed of within an approved facility outside of the Critical Area.

(b) All impervious surfaces, including access roads

created for the wellsite, shall be removed, unless otherwise approved by the Critical Area Commission and the local jurisdiction.

(c) Topsoil shall be replaced to ensure the healthy functioning of replanted vegetative communities.

(d) Pre-development drainage patterns shall be restored to original or enhanced natural conditions.

(e) A Sediment Erosion Control Plan and Stormwater Management Plan shall be submitted as part of the Reclamation Plan.

(f) The Reclamation Plan shall include a Reforestation Plan for the wellsite (including access roads) and an offset area as required under Regulation .04C(11)(a) through (h) of this Chapter. The Reforestation Plan shall be designed and implemented to meet the following minimum criteria:

(i) Revegetation measures shall provide for wildlife habitat enhancement, including the incorporation of a forested wildlife corridor system.

(ii) Unless otherwise approved by the Commission, under the advice of the Maryland Department of Natural Resources, native, local species of forest vegetation shall be replanted. Plantings shall include a mixture of canopy, understory, shrub, and groundcover species.

(iii) Under approval of the Commission, a Reforestation Plan may include areas designated for the establishment of forests through natural regeneration.

(iv) The applicant shall design and

implement a monitoring program to ensure 85 percent survival of plants after three complete growing seasons. The monitoring program shall provide for replanting of dead or dying plants and removal of exotic or nuisance species.

Modified

(2) The Critical Area Commission shall seek comments on the Reclamation Plan from the Maryland Department of Natural Resources, the Maryland Department of the Environment, the local Soil Conservation District, and the local jurisdiction.

(3) The Commission may require that the applicant post a performance bond in an amount suitable to ensure compliance with reclamation provisions.

(4) Unless otherwise approved by the Commission, the applicant shall:

(a) Commence implementation of the final measures of the Reclamation Plan within 30 days following cessation of drilling operations; and

(b) Complete final Reclamation Plan measures and activities within 90 days following the cessation of drilling operations.

.06 Pipelines.

A. Policies.

(1) The following criteria shall apply to pipelines that are proposed for location in the Critical Area and that are associated with production of oil and natural gas within and under the Critical Area.

New

(2) Pipelines established for the transportation of oil and gas shall be limited to the following:

(a) Pipelines for connecting a production well head located within the Critical Area to oil and gas facilities which are located outside of the Critical Area, as described in Regulation .04C

(5) of this Chapter;

(b) Regional or interstate transportation pipelines that must cross tidal waters; and

(c) Pipelines for connecting a marine transportation docking area located within the Critical Area to storage, overland transportation or other facilities which are located outside of the Critical Area, as described in Regulation .07B(2)(b) of this Chapter.

New

(3) Pipelines shall be considered the environmentally preferred method of transport of oil and gas produced from the Critical Area.

(4) Pipelines that must be located in the Critical Area shall be designed to cross through the Critical Area in the shortest and most direct route possible.

(5) An applicant proposing use of a pipeline system shall assure that all measures have been taken to prevent and reduce environmental impacts to water quality and natural habitat from:

(a) The disruption of vegetation and soils during the routing of pipeline corridors and pipeline construction;

(b) The release of chemicals as a result of pipeline spills or breaches; and

(c) Any other disturbances related to pipeline activities.

(6) To reduce the need for future pipeline systems and thereby minimize cumulative environmental impacts from pipeline construction and operation, the applicant shall:

(a) Utilize existing pipelines and corridors where feasible;

(b) Construct new pipelines to be multiple-user, where feasible; and

(c) Restrict new pipeline construction to corridors

that have undergone comprehensive, regional environmental review for technically feasible and environmentally preferred routing.

B. Criteria. An applicant shall utilize the following minimum criteria in the design, location and operation of pipelines within the Critical Area.

(1) The applicant shall demonstrate to the Commission that spill volumes, durations, and trajectories in relation to surrounding natural resources have been considered in selection of a pipeline corridor.

(2) Pipelines shall, to the extent possible, be located in or adjacent to existing roads, railroads, existing pipelines, or utility transmission right-of-ways.

(3) The applicant shall identify natural resources and habitat including all Habitat Protection Areas occurring in the vicinity of the proposed pipeline corridor.

Modified

(4) When planning, constructing, operating and maintaining pipelines, the applicant shall conform to criteria for Habitat Protection Areas, as described in COMAR 14.25.03 of this Subtitle.

(5) Pipelines shall be located to avoid streams and the 100-year floodplain, unless no feasible alternative exists.

(6) Pipelines that must cross the 100-year flood plain shall be located, designed, constructed, and maintained so as to provide maximum stormwater and erosion protection.

(7) Pipeline corridors that must cross or affect streams shall be designed to:

(a) Reduce any increases in flood frequency and severity that are attributable to pipeline placement;

(b) Retain tree canopy so as to maintain stream water temperature within normal variation;

(c) Provide a natural substrate for streambeds;

(d) Minimize adverse water quality and quantity of stormwater; and

New [(e) Provide passage for fish and other aquatic life.

(8) All pipelines located in the Critical Area shall be buried with a minimum cover of 36 inches in soil.

(9) Pipelines that must cross surface waters shall be buried to a depth sufficient enough to avoid exposure by scouring, grounding of vessels, anchors, fishing and shellfish activities and any other potential obstacles or activities on the bottom of waters within the Critical Area.

(10) The Commission shall require that the applicant utilize:

(a) Automatic shut-off valves, increased pipe thickness, corrosion protection, leak detectors and other safety measures to minimize the amount of potentially spilled materials; and New

(b) Any other special design or construction measures to best accommodate sensitive or fragile habitat.

(11) Herbicides or other potentially toxic materials shall not be used in the establishment or maintenance of pipeline corridors located within the Buffer, as described in COMAR 14.25.03.02 of this Subtitle.

(12) In the design, construction and operation of pipelines, the applicant shall utilize the following criteria to minimize destruction of forest vegetation:

(a) All forested areas within a pipeline corridor that are either temporarily or permanently disturbed during construction or operation of pipelines shall be replaced on not less than an equal area basis within the Critical Area.

(b) All forested areas of a pipeline corridor that must be cleared and be kept clear of forest vegetation for purposes of pipeline maintenance, shall be replaced in the Critical Area on not less that an equal area basis in an offset area approved by the Commission.

(c) Forested areas that occur within the minimum 100-foot Buffer or its extension, as described in COMAR 14.25.03.02 of this Subtitle, and which must be cleared and kept free of forest vegetation for pipeline maintenance, shall be replaced at a rate of two times the total surface area of forested area disturbed. Replacement of forested Buffer shall be made in an offset area approved by the Commission.

(d) Offset areas for forest replacement, as designated by the applicant, shall include, in order of descending preference:

(i) Areas within the 100-foot Buffer or its extension;

New (ii) Areas that would enhance Habitat Protection Areas other than the Buffer;

(iii) An area that would create a wildlife corridor or enhance an existing wildlife corridor;

(iv) Areas designated for reforestation by a local jurisdiction under its local Critical Area Program; or

(v) Other areas within the Critical Area of the State.

(e) Locally native, forest vegetation shall be replanted, and shall include a mixture of canopy, understory, shrub and groundcover species.

(f) The applicant may propose reestablishment of forest through natural regeneration in certain

areas, as approved by the Commission.

(g) The applicant shall be responsible for monitoring the pipeline corridor and offset areas to assess the success of reforestation. The monitoring shall be done on an annual basis until it has been determined that 85 percent of the vegetation has survived at least three complete growing seasons. Monitoring activities shall include replanting of dead or dying plants and removal of exotic or nuisance species.

(h) The Commission may require the posting of a performance bond by the applicant in an amount sufficient to ensure compliance with these provisions.

.07 Water Dependent Facilities.

A. Definitions.

(1) "Water-dependent facilities" means those structures or works associated with oil and gas development that require location at or near the shoreline within the Buffer specified in COMAR 14.25.03.02 of this Subtitle. An activity is water-dependent if it cannot exist outside the Buffer and is dependent on the water by reason of the intrinsic nature of its operation.

(2) For the purposes of this Subtitle, water-dependent activities include, but are not limited to:

(a) Industrial or port-related facilities for the maritime transport of oil and gas produced in the Critical Area; and

(b) Marinas and boat docking facilities associated with oil and gas development activities including:

(i) Staging areas for temporary storage and

handling of equipment and materials for construction of a specific oil and gas development project; and

(ii) Facilities for oil spill containment and recovery operations.

(3) "Buffer" means an existing, naturally vegetated area, or an area established in vegetation and managed to protect aquatic, wetlands, shoreline, and terrestrial environments from man-made disturbances as defined in COMAR 14.25.03.02 of this Subtitle.

B. Criteria. The following criteria apply to water-dependent facilities that are proposed for location within the Critical Area and that are associated with exploration and production of oil and natural gas within and under the Critical Area.

(1) New or expanded water-dependent facilities associated with oil and gas development may not occur in the Buffer of the Critical Area, unless it can be shown that:

(a) Adverse effects on water quality, and fish, plant, and wildlife habitat are avoided, or if necessary, minimized; and

(b) In so far as possible, non-water-dependent structures or operations associated with water-dependent projects or activities are located outside the Buffer.

(2) Industrial or Port-Related Facilities for Maritime Transport of Oil and Gas Produced in the Critical Area.

(a) New, expanded, or redeveloped water-dependent industrial or port-related facilities for maritime transport of produced oil and gas, or the replacement of such facilities, shall only be permitted to occur in the Buffer in existing New Areas of Intense Development or Intensely Developed Areas and only if:

(i) The facility is subject to the requirements of Section B(1) of this Regulation;

(ii) The area proposed for the facility has been exempted from the Buffer requirements by the local jurisdiction under its Critical Area program as outlined by COMAR 14.15.09.01C(8) or by the Commission for State-owned lands under COMAR 14.19.05.09B(8); and

New

(iii) The area proposed for the facility has not been designated an Intensely Developed Area as a result of criteria for the allocation of future development under a local jurisdiction's Critical Area program, and as described under COMAR 14.15. 02.06.

(b) Structures for a marine transportation facility permitted within the Critical Area shall be limited to a boat docking area, hydrocarbon loading equipment, a loading equipment maintenance area and an access road. All other oil and gas development structures and activities, including product storage and overland transportation facilities, and equipment maintenance areas, shall be located outside of the Critical Area. A pipeline shall be utilized to connect the marine docking and loading facility to the oil and gas structures located outside of the Critical Area.

New

(c) The Commission shall consider proposals for a new marine transportation facility for produced oil and gas only after it has been clearly demonstrated that:

(i) Current methods of oil and gas

transport, including existing marine facilities are not adequate to meet a recognized public need for the transportation of oil and gas produced within the Critical Area;

(ii) The proposed use of marine transport is temporary until a regional or interstate pipeline system is established;

(iii) A comprehensive, regional environmental review has been completed with the assistance of appropriate local, State and federal agencies to ensure that the proposed site has the least potential for environmental damage as compared to alternative sites located outside of and within the Chesapeake Bay system;

(iv) The marine transportation facility shall accommodate multiple-users to the extent feasible;

(v) Proposed structures and activities meet all local, State and federal regulations for hazardous material transportation facilities and activities;

(vi) The facility has ready access to the most effective, state-of-the-art spill containment and recovery equipment; and

(vii) An adequate Pollution Prevention and Contingency Plan, as described in COMAR 14.25.04.02I of this Subtitle, has been prepared and will be implemented for the facility.

(d) The Commission shall obtain public comment on all proposed oil and gas marine transportation facilities through an advertised public hearing

as described in COMAR 14.25.05.02 of this Subtitle.

(3) Marinas and Other Boat Docking Facilities Associated with Oil and Gas Development.

(a) New or expanded marinas and boat docking facilities associated with oil and gas development may be permitted in the Buffer within Areas of Intense Development and Intensely Developed Areas subject to the requirements of Section B(1) of this Regulation.

This entire section has been modified to a certain extent.

(b) Except as provided for in Section B3(c) and (e) of this Regulation, new or expanded marinas or boat docking facilities associated with oil and gas development shall only be permitted in the Buffer of existing Areas of Intense Development or Intensely Developed Areas.

(c) Small water-dependent facilities for the sole use of storing oil spill containment and cleanup equipment and emergency crew transport facilities, including crew boat operations, may be permitted in the Critical Area in locations that would facilitate and expedite local emergency operations in Bay waters, as approved by the Commission and the local jurisdiction.

(d) New, large water-dependent facilities created for the establishment, storage and maintenance of vessels, equipment and chemicals necessary to a regional oil spill containment and recovery operation shall only be permitted in Intensely Developed Areas or Areas of Intense Development.

New per Subcommittee comments

(e) Expansion of existing marinas or boat docking facilities for oil and gas development may be permitted to occur outside areas of Intense Development or Intensely Developed Areas

provided that it is sufficiently demonstrated that the expansion will not adversely affect water quality, and that it will result in an overall net improvement in water quality at or leaving the site of the marina or docking facility.

(f) New and expanded marinas or boat docking facilities associated with oil and gas development shall meet the sanitary requirements of the State Department of Health and Mental Hygiene as required in COMAR 10.17.02.

(g) New and expanded marinas or boat docking facilities associated with oil and gas development shall establish a means of minimizing the discharge of bottom wash waters into tidal waters.

(h) New and expanded marinas and boat docking facilities shall provide site-specific measures for protecting water quality and aquatic habitat from potential release of chemicals and products associated with oil and gas development, including discharge from contaminated spill containment and recovery vessels and equipment.

(4) An applicant proposing new or expanded water-dependent facilities for the Critical Area shall provide the Commission with written documentation that the following factors were adequately considered and addressed in identifying areas suitable for such facilities:

(a) That all possible measures have been taken to minimize potential adverse effects to water quality, wetlands and aquatic habitat from the storage, use, or inadvertent spill or leakage of chemicals and products associated with oil

and gas development activities, including the release of oil from contaminated spill containment and recovery vessels and equipment;

(b) That the activities will not significantly alter existing water circulation patterns or salinity regimes;

(c) That the water body upon which these activities are proposed has adequate flushing characteristics in the area;

(d) That disturbance to wetlands, submerged aquatic plant beds, or other areas of important aquatic habitats will be avoided or, if necessary, minimized;

New

(e) That breeding and migratory waterfowl and their habitat will not be disturbed or be subject to discharge of oil or any other potentially hazardous contaminant;

(f) That adverse impacts to water quality that may occur as a result of these activities, such as nonpoint source pollutant run-off, sewage discharge from land activities or vessels, or from boat cleaning and maintenance operations, is minimized;

(g) That shellfish beds will not be disturbed or be made subject to discharge that will render them unsuitable for harvesting;

(h) That dredging shall be conducted in a manner, and using a method, which causes the least disturbance to water quality and aquatic and terrestrial habitats in the area immediately surrounding the dredging operation or within the Critical Area, generally;

(i) That dredged material will not be placed within the Buffer except as necessary for:

(i) Backfill for permitted shore erosion protection measures;

(ii) Use in approved vegetated shore erosion projects;

(iii) Placement on previously approved channel maintenance dredged material disposal areas; and

(iv) Approved beach nourishment;

(j) That interference with the natural transport of sand will be minimized.

(5) In addition to these regulations, proposed site plans for water-dependent facilities shall also comply with the following complementary State and local laws and regulations for development within the Critical Area:

(a) In the local jurisdiction's Critical Area program as specified in COMAR 14.15.02 and .03; or

(b) In COMAR 14.19.05.03. and .04, for State or local projects.

(6) Water-dependent facilities shall conform to all criteria for Habitat Protection Areas as outlined in COMAR 14.25.03 of this Subtitle.

New Section

COMAR 14.25.03

Habitat Protection Areas

.01 General Policies.

A. Introduction. The Critical Area Commission has identified certain natural resources as having particular significance to the Critical Area as a result of their water quality and wildlife habitat benefits or because of the resources' uniqueness, rarity or threatened reduction from land use changes. Because of their distinct value, these resources (collectively referred to as Habitat Protection Areas) are afforded specific protection under the Critical Area legislation. In this Chapter, criteria are presented for the identification and preservation of Habitat Protection Areas during the design, construction

and operation of oil and gas exploration and production activities in the Critical Area.

B. Definition. "Habitat Protection Areas" means those terrestrial, aquatic and wetland natural resources of significance that have been designated for protection within the Critical Area. As described in Regulations .02 through .06 of this Chapter, Habitat Protection Areas include the minimum 100-foot Buffer from tidal waters, tidal wetlands, or tributary streams; threatened and endangered species and their habitats; species in need of conservation and their habitats; nontidal wetlands; anadromous fish spawning streams; colonial waterbird nesting sites; historic waterfowl staging and concentration areas; forest interior dwelling bird habitat; riparian forests; large forested areas; Natural Heritage Areas; plant and wildlife of local significance; and any areas identified in the future as one of the above.

C. Criteria.

(1) An applicant, with the assistance of the Maryland Department of Natural Resources and the local jurisdiction, shall identify all Habitat Protection Areas in the vicinity of a proposed oil and gas development project.

(2) Certain oil and gas development activities, because of their intrinsic nature, or because of their potential for having adverse effects on water quality or fish, plant and wildlife habitat, shall not be permitted in any Habitat Protection Area. These activities include:

(a) Geophysical surveys involving heavy equipment or explosives; and

(b) Exploration and production wellsites, including access roads and pipelines that connect a well head to oil and gas facilities located outside of the Critical Area.

New Section

New Section

(3) The Commission, under the advice of the Maryland Department of Natural Resources, shall establish protection areas or buffers (including temporal restrictions) around Habitat Protection Areas, in which disturbances that may occur as a result of activities identified in Section C(2) of this Regulation, are prohibited.

(4) In addition to all other provisions of this Subtitle, oil and gas development not included in Section C(2) of this Regulation, shall conform to criteria set forth in Regulations .02 through .06 of this Chapter.

(5) The applicant shall provide the Commission with an Environmental Assessment and all other information relevant to an oil and gas project as described in COMAR 14.25.04 of this Subtitle. The Environmental Assessment shall contain information on all Habitat Protection Areas identified in the vicinity of the project and provide plans for their protection.

(6) The Commission may deny approval of an oil and gas development project based on a finding of fact that the proposed project presents an unacceptable risk to a Habitat Protection Area.

.02 Buffer.

A. Definition. "Buffer" means an existing, naturally vegetated area, or an area established in vegetation and managed to protect aquatic, wetlands, shoreline, and terrestrial environments from man-made disturbances.

B. Criteria. An applicant planning or proposing oil and gas development on Critical Area lands, shall use the following criteria:

(1) A minimum 100-foot Buffer shall be established landward from the mean high water line of tidal waters, or the landward edge of tributary streams, and tidal wetlands.

(2) Oil and gas development activities, including impervious structures such as buildings, roads, or parking areas are not permitted in the Buffer, except for those necessarily associated with water-dependent facilities, pursuant to COMAR 14.25.02.07 of this Subtitle.

(3) The use of heavy equipment, vehicles, or explosives associated with oil and gas development is not permitted in the Buffer.

(4) The storage and use of chemicals associated with oil and gas development activities, such as pesticides or petrochemicals, are prohibited in the Buffer.

(5) The Buffer shall be maintained in natural vegetation.

(6) Cutting or clearing of trees within the Buffer shall be prohibited, except that:

(a) Limited cutting of trees or removal of natural vegetation may be permitted where necessary to provide access to private or government piers, or a water-dependent facility, providing the device, measure, or facility has received all necessary local State and federal permits and providing that the area cut is the minimum necessary to provide sufficient access to the facility;

(b) Individual trees may be removed which are in danger of falling and causing damage to structures, or which are in danger of falling and thereby causing the blockage of streams, or resulting in accelerated shore erosion;

(c) Horticultural practices may be used to maintain the health of individual trees;

(d) Other cutting techniques may be undertaken within the Buffer and under the advice and guidance of the Maryland Departments of Agriculture and Natural Resources, if necessary

to preserve the forest from extensive pest or disease infestation or threat from fire.

(7) Where agricultural use of lands within the area of the Buffer ceases and such lands are proposed to be converted to other uses associated with oil and gas development, the Buffer shall be established. In establishing the Buffer, management measures shall be undertaken to provide forest vegetation.

(8) The Buffer shall be expanded beyond 100 feet to include contiguous, sensitive areas, such as steep slopes, hydric soils, or highly erodible soils, whose development or disturbance may impact streams, wetlands, or other aquatic environments. In the case of contiguous slopes of 15 percent or greater, the Buffer shall be expanded four feet for every one percent of slope, or to the top of the slope, whichever is greater in extent.

.02 Nontidal Wetlands.

A. Definition.

(1) "Nontidal wetlands" means those lands in the Critical Area, excluding tidal wetlands, regulated under Title 9 of Natural Resources Article, Annotated Code of Maryland, where the water table is usually at or near the surface, or lands where the soil or substrate is covered by shallow water at some time during the growing season, and which are usually characterized by one or both of the following:

(a) At least periodically, the lands support predominantly hydrophytic vegetation;

(b) The substrate is predominantly undrained hydric soils.

(2) Excluded from these regulations are existing farm ponds and other existing man-made bodies of water whose purpose is to impound water for agriculture,

water supply, recreation, or waterfowl habitat purposes.

B. Criteria. An applicant planning or proposing oil and gas development on lands within the Critical Area shall use the following criteria for protecting nontidal wetlands:

(1) The applicant shall identify with the assistance of the Department of Natural Resources, the following nontidal wetlands which may be affected by the oil and gas development:

(a) Nontidal wetlands of 1 acre or larger classified as Palustrine Aquatic Bed, Palustrine Emergent, Palustrine Forested and Palustrine Scrub-shrub as defined in "Classification of Wetlands and Deepwater Habitats of the United States" (Publication FWS/OBS-79/31, December 1979, Fish and Wildlife Service, U.S. Department of the Interior) and as identified on the National Wetlands Inventory Maps;

(b) Nontidal wetlands, not mapped on the National Wetlands Inventory, which may be found, by site survey or other means at the time an oil and gas development activity is proposed or planned, to be hydrologically connected, through surface or subsurface flow, to streams, tidal wetlands, or tidal waters; or are nontidal wetlands determined to be of special importance to fish, wildlife, or plant habitat by the Maryland Department of Natural Resources, or other appropriate agencies.

(2) The applicant shall develop protection measures for the nontidal wetlands identified above as follows:

(a) Pursuant to Regulation .01C(3) of this Chapter, a minimum distance of 250 feet shall be maintained between nontidal wetlands and all structures and activities associated with

New

exploration and production wellsites and drilling activities.

(b) A minimum distance of 150 feet shall be established between nontidal wetlands and pipelines which must cross tidal waters and pipelines associated with marine transportation facilities as described in COMAR 14.25.02.06A (2)(b) and (c) of this Subtitle.

New

(c) For all other oil and gas development, a minimum 25-foot buffer shall be established around identified nontidal wetlands. Oil and gas development structures or activities which may disturb the wetlands or the wildlife contained therein, shall be prohibited in the nontidal wetland and its buffer unless it can be shown that these activities will not adversely affect the wetland.

Modified

(d) The minimum distances described in Sections B2(a) through (c) of this Regulation shall be expanded to include contiguous, sensitive areas such as steep slopes, hydric soils, or highly erodible soils, whose development or disturbance may impact the nontidal wetland to be protected.

(e) Measures shall be taken to protect the hydrologic regime and water quality of identified nontidal wetlands by providing that oil and gas development activities in the drainage area of the wetlands will minimize alterations to the surface or subsurface flow of water into and from the wetland and not cause impairment of the water quality or the plant, fish and wildlife habitat value of the wetland.

(f) The applicant shall provide for the preparation and approval of a mitigation plan for

Modified activities or operations described in Section (2)(c) of this Regulation which, as a result of their being water-dependent or of substantial public benefit, will cause unavoidable and necessary impacts to the wetlands. The plan shall specify mitigation measures that will provide water quality benefits and plant and wildlife habitat equivalent to the wetland destroyed or altered and shall be accomplished, to the extent possible, on-site or near the affected wetland.

(g) The applicant shall seek comments on mitigation plans from the Maryland Department of Natural Resources, and where appropriate, the Maryland Department of the Environment, and the U.S. Fish and Wildlife Service. Upon finding that the plan as proposed, or as may be modified to address the comments of these agencies, provides mitigation sufficient to accomplish the objectives of this Regulation, then the Commission shall direct the applicant to implement the plan and bear all relevant costs. New

(h) Mitigation plans prepared pursuant to Sections B(2)(e) through (g) of this Regulation shall be submitted for approval to the Commission prior to their being implemented.

(i) The applicant shall provide the Commission with a copy of all permits and written correspondence with appropriate local, State and federal agencies that are involved in regulating a nontidal wetland that may be affected by the proposed oil and gas development project.

.03 Threatened and Endangered Species and Species in Need of Conservation.

A. Definitions.

(1) "Species in need of conservation" are those fish and wildlife whose continued existence as a part of the State's resources are in question and which may be designated by regulation by the Secretary of the Maryland Department of Natural Resources as in need of conservation pursuant to the requirements of Natural Resources Articles §§ 10-2A-03, and 4-2A-03, Annotated Code of Maryland.

(2) "Threatened species" are any species of fish, wildlife or plants designated as such by regulation by the Secretary of the Department of Natural Resources which appear likely, within the forseeable future, to become endangered, including any species of wildlife or plant determined to be a "threatened" species pursuant to the federal Endangered Species Act, 16 U.S.C. § 1531 et seq., as amended.

(3) "Endangered species" are any species of fish, wildlife or plants which have been designated as such by regulation by the Secretary of the Department of Natural Resources. Designation occurs when the continued existence of these species as viable components of the State's resources are determined to be in jeopardy. This includes any species determined to be an "endangered" species pursuant to the federal Endangered Species Act, cited above.

B. Criteria. An applicant planning or proposing oil and gas development on lands within the Critical Area shall use the following criteria to protect endangered and threatened species, species in need of conservation and their habitat:

(1) The applicant shall identify, with the assistance of the Department of Natural Resources and the local jurisdiction, any habitats of threatened or endangered species, or species in need of

conservation, that may be affected by the oil and gas development or activity.

(2) The applicant shall develop a plan for the protection of the habitats of species in need of conservation and threatened and endangered species as may be identified pursuant to Section B (1) of this Regulation. The Commission shall seek review and comments on the plan from the Maryland Department of Natural Resources.

(3) These plans shall consist of the following elements:

(a) Designation of a protection area around each of the habitats within which oil and gas development activities and associated disturbances shall be prohibited; and

Deleted phrase "unless it can be shown there is no disturbance..."

(b) Development of additional site-specific measures for providing protection of habitats of species in need of conservation and endangered, and threatened species which, at a minimum, shall include the following:

(i) Measures for protecting potentially affected species and habitat from destruction of vegetation and disturbance to soils during construction, operation and maintenance of an oil and gas development project;

(ii) Provisions, including temporal restrictions and distance limitations, to protect potentially affected species and their habitat from human activity and noise;

(iii) Measures for ensuring that species and habitat are protected from all sources of pollution associated with oil and gas development activities including storage, use and spillage of contaminants, disposal of solid and

liquid waste, and the production, storage and transportation of produced oil and gas as detailed in a Pollution Prevention and Contingency Plan pursuant to COMAR 14.25.04.02I of this Subtitle.

.04 Plant and Wildlife Habitat.

A. Definitions.

(1) "Plant habitat" means a community of plants commonly identifiable by the composition of its vegetation and its physiographic features as provided for in Section B of this Regulation.

(2) "Wildlife habitat" means those plant communities and physiographic features that provide food, water and cover, nesting, and foraging or feeding conditions necessary to maintain populations of animals in the Critical Area as provided for in Section B of this Regulation.

B. Criteria. An applicant planning or proposing oil and gas development on lands within the Critical Area shall use the following criteria for protecting plant and wildlife habitat:

(1) The applicant, with the assistance of the Department of Natural Resources and the local jurisdiction, shall identify the following plant and wildlife habitats that may be affected by the oil and gas development or activity:

(a) Colonial water bird nesting sites;

(b) Historic waterfowl staging and concentration areas in tidal waters, tributary streams, or tidal and nontidal wetlands;

(c) Existing riparian forests (for example, those relatively mature forests of at least 300 feet in width which occur adjacent to streams, wetlands, or the Bay shoreline, and which are

documented forest interior dwelling bird breeding areas);

(d) Forest areas utilized as breeding areas by forest interior dwelling birds and other wildlife species (for example, relatively mature forested areas within the Critical Area of 100 acres or more, or forest connected with such areas);

(e) Other areas which may in the future be identified by local, State and federal agencies as important plant or wildlife habitat areas; and

(f) Natural Heritage Areas which have been designated by the Maryland Department of Natural Resources.

(2) The applicant, under the guidance of the Maryland Department of Natural Resources, shall develop protection measures for the plant and wildlife habitats identified above as follows:

(a) Establish buffer areas for colonial water bird nesting sites so that such sites are protected from the adverse impacts of oil and gas development activities including:

(i) Potential release of oil or other toxic materials and waste;

(ii) Disturbance from noise and human activity during the breeding season; and

New [(iii) All other disturbances from oil and gas development activities that may adversely affect colonial nesting waterbirds and their habitat.

(b) Provide that oil and gas development activities including new water-dependent facilities are so located as to prevent disturbance to sites of significance to wildlife such as historic

staging and concentration areas for waterfowl, and that these sites are protected from:

New

(i) The inadvertent release of oil or other contaminants associated with oil and gas development;

(ii) Disturbance from noise and human activity during times of high concentrations of wildlife; and

(iii) All other disturbances associated with oil and gas development that may adversely affect wildlife populations.

(c) Provide protection measures including a buffer area for other plant and wildlife habitat sites identified in Section B(1)(e) of this Regulation;

(d) Protect and conserve those forested areas required to support wildlife species identified above in Section B(1) (c) and (d) of this Regulation, by developing protection plans for the wildlife that inhabit or use the areas. The plans shall assure:

New

(i) That oil and gas development activities, including the clearing or cutting of trees which might occur in the areas, is restricted;

(ii) That fragmentation of forested habitat is prohibited in the location of pipelines or other oil and gas development structures; and

(iii) That wildlife and habitat are protected from the release of oil or other contaminents.

(e) Establish temporal restrictions or limitations on oil and gas development activities and noise during the breeding season or during high concentrations of populations of sensitive

wildlife.

(f) Establish to the extent practical, that when conducting oil and gas development activities, including the cutting or clearing of trees in forested areas, corridors of existing forested vegetation be maintained to provide effective connections between wildlife habitat areas.

(g) Protect Natural Heritage Areas from alteration or disturbance due to oil and gas development by establishing buffer areas and other protective measures to ensure that:

Added

(i) The structure and species composition of the Areas are maintained; and

(ii) Plant, wildlife, and aquatic habitat and water quality of Natural Heritage Areas are not degraded by the release of oil or other contaminants.

(h) Prepare and implement a site-specific Pollution Prevention and Contingency Plan, pursuant to COMAR 14.25.04.02I of this Subtitle for the protection of all plant and wildlife habitat that may be adversely affected by the inadvertent release of hydrocarbons and other chemicals associated with oil and gas development.

(3) The Commission shall seek review and comments on plans for the protection of plant and wildlife habitat from the Maryland Department of Natural Resources.

.05 Anadromous Fish Spawning Streams.

A. Definition. "Anadromous fish propagation streams" means those streams that are tributary to the Chesapeake Bay where spawning of anadromous species of fish (e.g., rockfish, yellow perch, white perch, shad, and river herring) occurs or has occurred. The streams are

designated by the Tidewater Administration of the Department of Natural Resources.

B. Criteria. An applicant planning or proposing oil and gas development on lands within the Critical Area shall use the following criteria to protect anadromous fish spawning streams:

(1) The applicant shall, with the assistance of the Department of Natural Resources, identify whether the oil and gas development will occur in the watersheds of anadromous fish spawning streams.

(2) Where the development will occur in those watersheds, the following measures shall be used:

(a) Wellsite structures and activities shall be located a minimum 500 feet from the top of the bank or the edge of wetlands (whichever is more landward) associated with anadromous fish spawning streams.

(b) Unless otherwise approved by the Commission under the advice of the Tidewater Administration of the Maryland Department of Natural Resources, seismic surveys shall be conducted a minimum of 500 feet from the top of the bank or the edge of wetlands (whichever is more landward) associated with anadromous fish spawning streams.

(c) The installation or introduction of concrete riprap or other artificial surfaces onto the bottom of natural streams shall be prohibited unless it can be demonstrated that water quality and fisheries habitat can be improved.

(d) Channelization or other physical alterations which may change the course or circulation of a stream and thereby interfere with the movement of fish, shall be prohibited.

(e) The applicant shall develop measures for avoiding adverse impacts of any activities

occurring on those portions of any watershed within the Critical Area which drain into anadromous fish spawning streams. These measures shall address at least the following objectives:

(i) Minimize oil and gas development activities or disturbances in the watershed;

(ii) Maintain, or if practicable, improve water quality in streams;

(iii) Avoid, to the extent possible, the discharge of sediments into streams;

(iv) Protect water quality and aquatic habitat from adverse impacts from discharge, leakage, or spillage of toxic materials and waste associated with oil and gas development activities;

(v) Maintain, or if practicable, increase the natural vegetation of the watershed.

(3) The applicant shall prepare and implement a site-specific Pollution Prevention and Contingency Plan, as described in COMAR 14.25.04.02I of this Subtitle, for protecting anadromous fish spawning streams from the storage, use or inadvertent release of hydrocarbons and other chemicals associated with oil and gas activities.

Modified

(4) For wellsite, pipeline and water-dependent activities, the Commission shall require the applicant to establish and maintain spill containment and recovery equipment in a location readily accessible to potentially affected spawning streams.

(5) Unless otherwise approved by the Commission, the applicant shall perform pre- and post-construction

monitoring of water quality and aquatic habitat to detect any adverse environmental effects from an oil and gas activity.

(6) The applicant shall also comply with all of the following complementary State laws and regulations:

(a) The construction or placement of dams or other structures that would interfere with or prevent the movement of spawning fish or larval forms in streams shall be prohibited. If practical, the removal of existing barriers shall be effected (COMAR 08.05.03.02).

(b) The construction, repair, or maintenance activities associated with stream crossings, such as bridges, pipelines, utilities and roads, which involve disturbance within the Buffer or which occur instream, as described in COMAR .08.05.03.09B(4), shall be prohibited between March 1 and June 15.

COMAR 14.25.04

Application Requirements

.01 General.

A. An applicant proposing to conduct an oil and gas development activity within the Critical Area shall submit to the Commission all necessary information required in Regulation .02 of this Chapter and a signed affadavit pursuant to COMAR 14.25.02.02B(8) of this Subtitle.

B. The Commission shall coordinate the application review process under Memoranda of Understanding with the Maryland Department of Natural Resources, the Maryland Department of the Environment, and other State agencies.

C. The applicant shall be encouraged to undertake a pre-application consultation with members of the Commission and representative staff.

.02 Criteria.

A. Environmental Assessment. An applicant proposing an oil and gas development activity for the Critical Area (including directional drilling in or under the Critical Area from a location outside of the Critical Area) shall provide the Commission with an Environmental Assessment of potential adverse environmental effects from the project. At a minimum, the assessment shall include maps and written documentation to address the following:

(1) The identification of existing natural features of the site and adjacent areas;

(2) The identification of Habitat Protection Areas described in COMAR 14.25.03 of this Subtitle, and as documented by written correspondence with the Maryland Department of Natural Resources and the local jurisdiction;

(3) A description of potential effects from proposed activities to terrestrial and aquatic resources, including Habitat Protection Areas within the Critical Area;

(4) A description of mitigation measures, including protection plans for all identified Habitat Protection Areas as described in COMAR 14.25.03 of this Subtitle; and

New

(5) For directional drilling, a description of:

(i) Potential environmental effects to surface and subsurface resources within the Critical Area including ground water; and

(ii) Measures to be taken to ensure that significant adverse environmental effects to resources of the Critical Area will not occur as a result of directional drilling activities.

B. Exploration Plan. An applicant shall submit an Exploration Plan to the Critical Area Commission for review and approval of all proposed geophysical survey operations. At a minimum, the Plan shall include the following information:

(1) Proposed type, methods, equipment and timing of geophysical surveys including the number and type of vehicles;

(2) Map (at tax map scale of local jurisdiction) delineating the official Critical Area boundary, property lines within the area of exploratory investigations, survey lanes, equipment staging areas, and access routes to survey lanes;

(3) For seismic surveys involving use of explosives, the number and distance between shot points and timing of activities;

(4) A description of hazardous substance control, storage, cleanup and disposal, including fire prevention and control methods; and

(5) A plan for revegetation of areas cleared of woody vegetation and for restoration of disturbed soils and drainage patterns.

C. Wellsite Alternative Analysis. An applicant shall provide the Commission with a written alternative site analysis for all exploration or production drilling structures and activities that are proposed for location within the Critical Area.

(1) The alternative site analysis shall document:

(a) That alternative sites for the proposed project outside of the Critical Area have been examined during the initial planning phase of the oil and gas development project;

(b) That the applicant has made attempts to obtain land ownership interests, or mineral or other rights to locate the proposed wellsite on an alternative site outside of the Critical Area; and

(c) That the applicant has addressed criteria described in COMAR 14.25.02.02B(5) of this Subtitle.

(2) The alternative site analysis shall include a

description of:

(a) The total number of alternative sites and the physical and economic requirements of the proposed site relative to the alternative sites analyzed;

(b) Efforts to first avoid and then, if necessary, minimize adverse environmental effects on water quality and natural habitat of the Critical Area through consideration of wellsite alignment or other site design; and

(c) Pursuant to COMAR 14.25.02.02B(5)(b), efforts made by the applicant to resolve:

(i) Technical hardships; and

(ii) Land-use constraints imposed by restrictions or requirements of federal, State or local agencies or private interests.

D. Plan of Drilling Operations. A Plan of Drilling Operations for all proposed drilling activities shall be submitted to the Commission for review and approval. At a minimum, the Plan shall include the following:

(1) A site plan and plat of the wellsite (at a scale of not less than 1" = 50') to show relative size and location of structures such as well, emergency reserve pit, storage tanks, utilities, pipelines, trailers, access road, berms and fencing. The site plan should show existing topography and proposed elevations. Existing man-made and natural features such as buildings, forest areas, soil types, drainageways, wetlands, agricultural fields, the Critical Area boundary, and identified Habitat Protection Areas within and adjacent to the site, should also be indicated on the plan.

(2) A map showing the alignment of any proposed access roads, including written justification for the road.

(3) A computation of the total surface coverage of

forest existing on the wellsite (and access roads) before development and the total surface area of forest to be disturbed as a result of wellsite and access road construction.

(4) For roads and wellsites, a Sediment Erosion Control Plan, in accordance with COMAR 14.25.02.04C(12), and a Stormwater Management Plan, in accordance with COMAR 14.25.02.04C(13).

(5) A detailed, written description of drilling operations that addresses activities and equipment including, but not limited to, well type and capacity, management of domestic wastes, drilling fluids and cuttings, toxicity of drilling fluids and other potentially hazardous materials to be used, casing specifications, handling of hazardous materials, emergency operations, and well-monitoring procedures.

Modified

(6) A written description of short-term and long-range plans for production including, but not limited to, plans for converting exploration wells to production wells, plans for the treatment of produced oil and gas and the disposal of brine, and plans for storage and transportation of produced oil and gas.

Modified

E. Wellsite Reclamation Plan. The applicant shall prepare and submit a Reclamation Plan that addresses all criteria outlined in COMAR 14.25.02.05 of this Subtitle, and includes the following:

(1) A written description of methods and equipment used for disposal of liquid and solid waste material, removal of impervious surfaces including access roads, regrading of soils on the site, and topsoil replacement;

(2) A Sediment and Erosion Control Plan and Stormwater Management Plan;

(3) A Reforestation Plan that addresses criteria in COMAR 14.25.02.05B(1)(f) of this Subtitle, and that

provides information outlined in Section G, of this Regulation;

(4) A timetable for reclamation activities; and

(5) Provisions for a surety or bond, if required by the Commission, to cover any expenses incurred to implement the Reclamation Plan.

F. Pipeline Operations Plan. For oil and gas development activities that include pipelines, the applicant shall provide the Commission with a Pipeline Operations Plan that addresses all of the requirements of COMAR 14.25.02.06 of this Subtitle. The Plan shall include:

(1) A map or maps of sufficient scale to indicate the proposed location of the pipeline corridor, the Critical Area Boundary, tidal and nontidal wetlands, streams, the 100-year floodplain and any Habitat Protection Areas including the minimum 100-foot Buffer and its extension, that may occur in the vicinity of the proposed pipeline;

(2) Results of a comprehensive environmental review and New alternative analysis of possible pipeline corridor locations pursuant to COMAR 14.25.02.06.A(6)(c) through B(5) of this Subtitle.

(3) A computation of the following surface area coverage of forest in accordance with COMAR 14.25.02.06B(12):

(a) Total area of forest existing in the entire pipeline corridor before pipeline construction;

(b) Total area of forest existing in the minimum 100-foot Buffer or its extension before pipeline construction;

(c) Total area of forest to be added temporarily and permanently removed from the pipeline corridor; and

(d) Total area of forest to be added temporarily and permanently removed from the 100-foot Buffer or its extension.

(4) A description of pipeline construction methods and

equipment including a Sediment and Erosion Control Plan;

(5) A proposed timetable or schedule for pipeline construction and maintenance activities;

(6) A site-specific description of measures taken to mitigate potential impacts to streams and Habitat Protection Areas during construction, operation and maintenance of the pipeline system;

(7) A detailed description of emergency measures to be taken in the event of pipeline failure, leaks or fire, as outlined in a Pollution Prevention and Contingency Plan described in Section I of this Regulation; and

(8) A Reforestation Plan as described in Section G of this Regulation, for the pipeline corridor and any offset areas as required under COMAR 14.25.02.06B (12) of this Subtitle.

G. Reforestation Plan. A Reforestation Plan shall be prepared for wellsites, access roads, pipeline corridors and all offset areas as required under COMAR 14.25.02.06B (12) and COMAR 14.25.02.04C(11) of this Subtitle. The Reforestation Plan shall be prepared by a registered professional forester or registered landscape architect and, at a minimum, shall include:

(1) A plat of the wellsite, access roads, pipeline corridors, and offset areas showing the location, spacing, size and type of plant species and a detailed description of planting times and techniques.

(2) Provisions for an annual monitoring program to ensure 85 percent survival of plants after three growing seasons and the creation of a productive forest area. The monitoring program shall include provisions for the replanting of dead or dying plants and removal of exotic or nuisance species. A report on reforestation efforts and success shall be

provided to the Commission at the end of each growing season.

(3) Provisions for a surety or bond if required by the Commission, to cover any expenses incurred to implement the Reforestation Plan.

(4) Description of covenants, easements or other instruments to be utilized for protecting reforested areas.

H. Water-Dependent Facilities Plan. For oil and gas development projects that are water-dependent, the applicant shall prepare a Water-Dependent Facilities Plan to document measures taken to address criteria outlined in COMAR 14.25.02.07 of this Subtitle. At a minimum, the Plan shall include the following:

(1) A site plan and plat of the proposed facility (at an appropriate scale) to show relative size and location of structures and activities including, but not limited to, piers, moorings, docking facilities, loading equipment, access road, pipelines, and equipment maintenance areas. Existing natural features of the site, existing and proposed topography, the Critical Area boundary and all Habitat Protection Areas shall be shown on the plat.

(2) A written description of the proposed project and a discussion of how criteria in COMAR 14.25.02.07B (1) through (3) of this Subtitle are addressed, including results of a regional review and alternative site analysis for any proposed industrial or port-related maritime facilities for the transport of oil and gas.

(3) Identification and discussion of all factors listed in COMAR 14.25.02.07B(4) of this Subtitle, and an assessment of measures to be taken to assure that the proposed project will not adversely affect water quality and aquatic resources and habitat.

(4) A Pollution Prevention and Contingency Plan as

described in Section I of this Regulation.

I. Pollution Prevention and Contingency Plan. A Pollution Prevention and Contingency Plan shall be submitted by the applicant for all drilling, pipeline and water-dependent activities. Generally, the Plan shall address the types of materials used and encountered during oil and gas development activities; the potential for spillage or environmental contamination; measures to be taken by the applicant to prevent pollution and spillage; and contingeny measures necessary to recover materials spilled or discharged. A schedule for the Plan's implementation shall be provided. The Plan shall include, but not be limited to, the following:

(1) A site-specific assessment of the likelihood and environmental consequences of a blowout or spill of the materials utilized during the oil and gas development project including:

(a) Drilling, production, and plugging phases of a wellsite operation;

(b) Construction, operation and maintenance of pipelines; and

(c) Construction, operation and maintenance of water-dependent facilities.

(2) A description of the methods of containment for pollutant material (for example, produced brine, oil, drilling fluids), encountered or utilized during the:

(a) Drilling, production, and the plugging phases of a wellsite operation;

(b) Operation and maintenance of pipelines; and

(c) Construction, use and maintenance of a water-dependent facility.

(3) A site-specific description of potential adverse environmental impacts from external factors such as floods, power failures, or unauthorized acts of third parties, as well as measures and equipment

utilized to protect against potential problems.

(4) A description of preventative maintenance measures such as inspection routines and programs for training personnel in avoiding environmental impacts specific to the site.

(5) A detailed site-specific discussion of equipment and measures to be taken in the event of a blowout or spill including equipment storage location, deployment activities, necessary cleanup contractors and a procedure for reporting potential or existing pollution incidents to appropriate local, State, and federal agencies. The discussion shall include specific contingency measures for all Habitat Protection Areas as described in COMAR 14.25.03 of this Subtitle, which potentially could be affected by a pollution incident.

(6) A schedule for updating the Plan to indicate the most current and planned activities at intervals mutually agreeable to the applicant and the Commission.

J. Additional Information. If certain concerns or issues are identified during the review process for a specific project, the Commission may require that the applicant provide further information in addition to that which is required under Sections A through I of this Regulation.

COMAR 14.25.05

Commission Review and Decision Process

.01 Applicant Proposal.

A. The Commission shall receive and review all applications for oil and gas development including information as required under COMAR 14.25.04 of this Subtitle. The applicant shall provide the Commission with six copies of all information submitted to support the application.

New

B. Before the close of business of the fifth working day following the receipt of an application, the Commission

shall acknowledge receipt of the application in writing, by regular mail.

C. The Commission shall review the application to determine whether:

(1) The application contains all necessary information required in this Subtitle; and

(2) The information submitted is sufficient for the Commission to review the proposal.

D. Within 45 days of receipt of an application, the Commission shall notify an applicant in writing whether the application is complete and whether the submitted information is sufficient.

E. If the application is incomplete or submitted information is insufficient, the Commission shall notify the applicant in writing, of the additional information needed. The application procedures described in Section A through D of this Regulation shall be re-initiated upon receipt of the required information.

New

F. The Commission, upon written notice to the applicant, may extend the 45-day time period noted in Section D of this Regulation when the following circumstances prevent full consideration of the application within the allotted period:

(1) Additional time needed to coordinate review by local, federal or other State agencies; or

(2) The proposed activity is of substantial complexity and the potential for adverse impacts to the Critical Area warrants additional consideration by the Commission.

.02 Review Procedures.

A. The Commission may establish panels to assist in the review of oil and gas development applications pursuant to Regulation .03 of this Chapter or it may undertake such reviews by the full Commission.

B. The Commission may seek public comment on applications for

oil and gas development and may hold a public hearing for this purpose. If a public hearing is to be held, it shall be scheduled within 30 days following the Commission's determination that the application is complete and sufficient for review.

C. Where appropriate, a public hearing shall be held in the local jurisdiction in which the proposed development would be located. If the oil and gas development is located in, or would affect, more than one jurisdiction, the Chairman shall decide in which of the jurisdictions the hearing should be held. Multiple hearings may be held, if appropriate.

D. At a public hearing, the Commission or its panel shall hear the comments of the public concerning the proposed oil and gas development and may entertain a presentation by the applicant. Advocacy and defense of the oil and gas application shall be the sole responsibility of the applicant. The Commission shall limit comment by the public to relevant matters within the scope and purview of the Commission and shall make and keep a full record of the proceedings.

E. For purposes of reviewing applications that require public hearings for other local, State or federal permits or requirements, the Commission may hold joint hearings, as appropriate. The Critical Area Commission may establish a panel for this purpose as provided for in Regulation .03 of this Chapter.

.03 Panels.

A. The Chairman may appoint a panel of the Commission to review oil and gas development applications in Regulation .01 of this Chapter, and to make recommendations to the full Commission concerning approval, denial, or conditioning of the application. The panel shall consist of five Commission members.

B. A panel may conduct a public hearing on an application for

oil and gas development in accordance with the provisions of Regulation .02B through E of this Chapter. The panel shall keep and provide to the full Commission a record of the proceedings.

C. The panel shall make its recommendations on the application known to the full Commission, which shall make the final determination by majority vote of approval, disapproval or approval with conditions within the time frames stated in Regulation .04 of this Chapter.

.04 Time Frame For Commission Review and Decisions.

A. The Commission shall notify the applicant proposing oil and gas development of its decision to approve, deny, or approve with conditions the application in the time frames shown below.

(1) An application for geophysical survey operations as provided for in COMAR 14.25.02.03: 60 days from the Commission's determination that the application is complete;

(2) An application for all other oil and gas development activities within the Critical Area:

(a) 90 days from the Commission's determination that the application is complete; or

(b) 60 days from the closing date for receipt of written comments after a public hearing, if a hearing is held.

B. Certain oil and gas development activities of substantial complexity and potential adverse impact on the Critical Area may require additional time for review than provided for in Section A of this Regulation. In such cases, the Commission shall notify the applicant of the time frame needed to review the proposal within 15 working days following:

(1) The Commission's determination that the applicant's proposal package is complete; or

(2) The closing date for receipt of written comments

after a public hearing, if a hearing is held.

C. The additional time taken by the Commission for review of complex operations shall not exceed 60 days beyond that provided in Section A of this Regulation, unless expressly agreed to by the applicant.

D. The Commission may require the applicant to provide supplemental information to clarify issues that are raised during the review process.

New Section

14.25.06

Conditional Approval of Oil and Gas Development in the Critical Area

.01 Criteria.

A. If oil and gas development is proposed to be undertaken in the Critical Area by an applicant and this development is prohibited from occurring by the criteria in this Subtitle, the applicant proposing such development may seek conditional approval for the project from the Commission.

B. In order to qualify for consideration by the Commission for conditional approval, it must be shown by the applicant that the project has the following characteristics:

(1) That there exist special features of a site or there are other special circumstances such that the literal enforcement of these regulations would wholly prevent oil and gas development from being undertaken;

(2) That the project otherwise provides substantial public benefits to the Chesapeake Bay Critical Area initiatives; and

(3) That the project is otherwise in conformance with this Subtitle.

C. In addition to all other information requirements of this Subtitle, the conditional approval request shall, at a minimum, contain the following:

(1) A showing that the literal enforcement of the provisions of this Subtitle would wholly prevent oil and gas development or activities;

(2) A proposed process or measures by which the oil and gas development or activity could be so conducted as to conform insofar as possible with the criteria set forth in this Subtitle; and

(3) Measures proposed to mitigate any adverse effects of the project on the criteria set forth in this Subtitle.

D. The Commission shall hold a public hearing on any request for conditional approval in accordance with the requirements of COMAR 14.25.05.02 of this Subtitle.

E. The Commission shall approve, deny, or request modifications to the request for Conditional Approval based on the following factors:

(1) The extent to which the oil and gas development is in compliance with the requirements of the relevant Chapters of this Subtitle;

(2) The adequacy of any mitigation measures proposed to address the requirements of this Subtitle that cannot be met by the oil and gas development; and

(3) The extent to which the oil and gas development project, including any mitigation measures, provides substantial public benefits to the overall Chesapeake Bay Critical Area initiatives.

F. Appeal of the Commission's decision may be made according to the procedures set forth in COMAR 14.25.07.

New

14.25.07

Appeals

.01 Appeals From Commission Disapproval of Proposed Oil and Gas Development.

A. An applicant whose application for oil and gas exploration or production has been disapproved or unduly conditioned by the Commission may appeal, in writing, such disapproval

or conditions to the full Commission for reconsideration, within 30 days of receipt of the Commission's decision.

B. The appeal shall set out in detail all exceptions to specific aspects of the Commission's decision, and shall provide in writing, all arguments and technical information relevant to such exceptions.

C. After receipt of an appeal, the Commission shall afford the applicant another opportunity to be heard on the matter before the full Commission, at the next Commission meeting at which a quorum is present. The Commission shall issue its final decision in writing within 60 days of such reconsideration. Affected local governments shall be notified of any appeals for reconsideration and shall be afforded an opportunity to comment in writing or at the reconsideration hearing.

increased from 30 days

D. Any person aggrieved by the final decision on reconsideration may bring whatever appeal or civil action may be appropriate before the courts of this State.

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June 4, 1990

BY FEDERAL EXPRESS OR TELEFAX

Critical Area Commission Members:

On Wednesday, the Commission will take up the Washington Brick and Terra Cotta Company golf course matter. Commission member Bill Corkran, who chaired the special panel, has requested that I forward to each of you in advance of Wednesday's meeting a copy of the panel's Report and Recommendation.

Although the panel members could not convene today to sign the document, they received the report in draft and have conferred on it several times by telephone. This is their final Report and Recommendation.

The entire record of testimony, exhibits, and written submissions will be available at the Commission office on Wednesday morning should any of you wish to go review it.

Sincerely,

Thomas A. Deming

Thomas A. Deming

TAD:kab

CHESAPEAKE BAY CRITICAL AREA COMMISSION

In the matter of:	*	
APPLICATION OF QUEEN ANNE'S COUNTY AND WASHINGTON BRICK AND TERRA COTTA COMPANY FOR INTERPRETATION OF COMAR 14.15.02.05C.(5)	*	Ad Hoc Adjudicatory Proceeding No. 90-1

* * * * * * * * * * * * * * *

Report and Recommendation of the Special Panel

I. Introduction

Presently pending before the Queen Anne's County Department of Planning and Zoning is the application of Washington Brick and Terra Cotta Company (hereinafter "Washington Brick") for approval of construction of a golf course. About half of the site lies in the Resource Conservation Area adjacent to the Chester River and Queenstown Creek, West of U.S. Route 50/301 and Maryland Route 18. In Queen Anne's County, a golf course is a type of "Institutional Use". Section 6007B.1.g. of the Queen Anne's County Critical Area Ordinance provides:

> Institutional Uses as defined by the Queen Anne's County Zoning Ordinance shall be subject to interpretation by the Critical Area Commission and a determination of whether or not the use constitutes an industrial or commercial use under the provisions of the Critical Area Criteria.

On March 26, 1990 the Queen's County Department of Planning and Zoning forwarded to the Critical Areas Commission a copy of the site plans and supporting documentation submitted by Washington Brick, together with a request that the Commission make a

determination as provided under §6007B.1.g. of the Queen Anne's County Critical Area Ordinance.

Following consultation with counsel, Chairman John C. North determined that this matter would be taken up by a special panel of Commission members that would hold a hearing adjudicatory in nature. Although a five member panel was initially named, only three members of the panel were able to hear both nights of testimony, and therefore only three members are making this report and recommendation. They are: William Corkran, Jr., Chairman; Kathryn D. Langner; and John R. Griffin.

Notice of the hearing was telefaxed on April 5, 1990 to Queen Anne's County, to Washington Brick and to John Murphy, Counsel for certain persons who had already noted a concern about this project. The notice was also mailed to these parties by certified mail, and the notice was published in the Easton Star Democrat. The notice stated that "persons wishing to participate as parties must file a request that is received no later than 12:00 noon on Friday, April 20, 1990, at the offices of the Chesapeake Bay Critical Commission."

The Commission received letters of intent to participate from Washington Brick, the Queen Anne's County Department of Planning and Zoning, and from Mr. Murphy on behalf of Citizens for the Preservation of Queenstown Creek, Inc.; MacEvoy Cromwell and Byum Stevens, executors of the estate of Clare Stevens, deceased; Lawrence Hoyle, Jr.; Mrs. Thorpe Nesbit; Chauncey and Kathleen Brooks; Mr. and Mrs. Irving Tuttle; Margaret C.

Taliaferro; and John Lee Carroll.

The hearing was convened on April 23, 1990 in the County Office Building, Centreville, Maryland. The first night of hearing lasted from 7 p.m. until 12 p.m., and the taking of testimony was not completed. A continued hearing date of May 21, 1990 was scheduled, and on that date in the same location, the panel heard testimony from 1:15 p.m. until 10:30 p.m. This report and recommendation is based on the entire record of testimony, exhibits, and arguments presented by the parties during the hearing. References to the April 23 transcript and exhibits below bear a "I"; those to May 21 a "II".

II. Preliminary Matters

A. Standing

The first matter taken up by the panel on April 23, 1990 was the standing of various parties to participate. Washington Brick and the Queen Anne's County Department of Planning and Zoning were admitted as parties without objection. Washington Brick objected to the standing of all parties represented by Mr. Murphy, and testimony, exhibits, and argument were heard by the panel with regard to their interests. (T. I19-36; Ex. I1 and 2). Based on the testimony received, standing was granted to: the estate of Clare Stevens; Mrs. Nesbit; Chauncey and Kathleen Brooks; Margaret Taliaferro; and John Carroll. Standing was denied to the Citizens for the Preservation of Queenstown Creek, Inc.; Lawrence Hoyle, Jr.; and Mr. and Mrs. Irving Tuttle. (T. I36-37). In the opinion of the panel, and upon advice of

counsel, the Citizens to Preserve Queenstown Creek, Inc. as an organization showed no specific interest different than that of its members, and under Citizens Planning and Housing Association v. County Executive, 273 Md. 333, 345 (1974), standing for the organization was not appropriate. With regard to Lawrence Hoyle, Jr. and Mr. and Mrs. Irving Tuttle, and again on advice of counsel, the panel concluded that they did not have a sufficient property interest that could be affected by a project on the property in question, as they did not own property across a common waterway from the project site.

Although the transcript refers to Mr. Murphy as counsel for the Citizens for the Preservation of Queenstown Creek, Inc., as this organization was not granted standing, the parties represented by Mr. Murphy will hereinafter be referred to as "the adjoining landowners".

B. Authority of Commission to Decide this Matter

Counsel for the adjoining landowners has argued that what is really going on here is project review, and that Natural Resources Article §§8-1801(b)(2), 8-1808(a), 8-1806(2), 8-1811 and 8-1812 and COMAR 14.15.01.01B(54) all taken together establish that once a local program has been approved by the Commission, project approvals are a function for the local government not the Commission. Mr. Murphy also contends that the Commission has no authority to interpret its regulations to say that golf courses are a permissible use within the Resource

Conservation Area, as this would constitute a de facto amendment of the Criteria which should only be done pursuant to a regulatory change.

As set forth in Section III below, the question before the Commission is not a matter of project approval, but of interpretation of its Criteria. The Critical Area Commission, like any other administrative agency in this state, has an inherent authority to interpret its own regulations. This authority is recognized both by the Court of Appeals, Maryland Commission on Human Relations v. Bethlehem Steel, 295 Md. 586 (1983), and in the Administrative Procedure Act, State Government Article, §§10-304 and 10-305. The latter expressly authorizes any agency of State government to rule on the application of an agency regulation.

C. Maryland Historical Trust Statute Does Not Apply

During the hearing, counsel for the adjoining landowners introduced as Exhibits II22 and 23, correspondence from staff of the Maryland Historical Trust. Counsel argued that Article 83B, §§5-617 and 5-618 subject this matter to review by the Maryland Historical Trust for possible historical and archeological significance of this site before the Commission may take action. Section 5-617 pertains to State Capital Projects and is clearly inapplicable. Section 5-618(c) provides:

> Each state unit shall cooperate with the trust by providing, when requested, notice of applications for permits, licenses, or financial assistance and by

> requiring, where appropriate, consultation with the Trust by an applicant, prior to final action by the unit on the request for a permit, license, or financial assistance.

As noted in Section III below, what is before the Commission is not an application for a "permit, license, or financial assistance" but a question of interpretation of the Commission's Criteria. Specific approval of the Washington Brick golf course proposal is a matter for Queen Anne's County under its local Critical Area Program, and such local approvals are not a matter of "state action".

Counsel for the adjoining landowners also cites in this regard the Maryland Environmental Policy Act, Natural Resources Article §§1-301 through 1-305 inclusive. While MEPA provides in §1-302(c) that "all state agencies must conduct their affairs with an awareness that they are stewards of the air, land, water, living and historic resources, and that they have an obligation to protect the environment for the use and enjoyment of this and all future generations," MEPA imposes no specific obligations on state agencies other than the filing of environmental effects reports on "proposed state actions". However, this term is defined to mean: ". . . requests for legislative appropriations or other legislative actions that will alter the quality of the air, land, or water resources." Nothing in MEPA or the Administrative Procedures Act suggests that an agency's interpretation of its regulations is a "legislative action" within the meaning of MEPA.

III. The Issue Before the Commission

The Queen Anne's County Critical Area Program provides under §6007, "Development Standards in Resource Conservation Areas":

> A. Permitted Uses
>
> Except as provided herein, uses permitted within RCA development areas shall be those permitted in the applicable underlying base zoning district.

The property in question is in the "Countryside District" under the Queen Anne's County Zoning Ordinance. Under §4002 of the Zoning Ordinance, uses permitted as of right in the Countryside District include the following "Institutional Uses": "Outdoor Recreation"; "Institutional"; "Institutional Residential Serving Eight or Less Residents"; and "Public Service". Also possible in a Countryside District are institutional uses denominated "Institutional Residential Serving Nine or More Residents", which may be constructed if a conditional use permit is granted by Queen Anne's County. Section 4007 of the Zoning Ordinance that describes the aforementioned "Institutional Uses" is appended hereto as Attachment A.

The general authorization in §6007A of the Queen Anne's County Critical Areas Program that permits these various Institutional Uses in Resource Conservation Areas is qualified by the above-quoted proviso in §6007B.1.g. This proviso was added at the time of program approval by the Critical Areas Commission to address the question of which Institutional Uses, otherwise

permissible in a Countryside District under the Queen Anne's County Zoning Ordinance, could be allowed in the Resource Conservation Area under the Commission's Criteria.

The specific provision of the criteria in question is COMAR 14.15.02.05C.(5), which states:

> Existing industrial and commercial facilities, including those that directly support agriculture, forestry, aquaculture, or residential development not exceeding the density specified in §C(4), above, shall be allowed in Resource Conservation Areas. Additional land may not be zoned for industrial or commercial development, except as provided in Regulation .06, below.

Regulation .06 is the growth allocation regulation. Thus the issue of interpretation posed in this proceeding is whether a golf course should be deemed "commercial development" that is subject to the second sentence of §C(5).

The panel notes of course that the term "commercial development" is not defined in the Critical Area Criteria. It is a term susceptible of several interpretations of varying breadth. The Court of Appeals has noted that when words of broad scope in a statute must be interpreted, "they must be construed, broadly or narrowly, in light of their context and the legislative purpose." Comptroller of Treasury v. Crofton Company, 198 Md. 398, 403 (1951).

In terms of legislative purpose, Natural Resources Article §8-1808(d)(1), states that the criteria are those deemed by the Commission to be "necessary or appropriate to achieve the standards stated in subsection (b) of this section." Subsection

(b) sets forth the following standards:

> (1) Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances that have runoff from surrounding lands;
>
> (2) Conserve fish, wildlife, and plant habitat; and
>
> (3) Establish land use policies for development in the Chesapeake Bay Critical Area which accommodate growth and also address the fact that, even if pollution is controlled, the number, movement, and activities of persons in that area can create adverse environmental impact.

This statement of legislative purpose must guide the Commission's interpretation of COMAR 14.15.02.05C.(5).

Thus it is inescapable that in addressing the interpretive question of whether golf courses are or are not "commercial development" within the intent of Regulation .05C(5), the Commission must consider the water quality, habitat, and people-caused adverse environmental impacts that are posed by this type of institutional use. The bulk of the testimony heard by the panel addressed various matters pertinent to these three standards.

It cannot be emphasized enough that the question before the Commission is only that of interpretation. This must be distinguished from the separable action of project approval, which rests with Queen Anne's County under its Critical Areas Program. Natural Resources Article, §8-1811(a). Much of the testimony heard by the panel is pertinent to the latter issue,

but the Commission's role with respect to project approval is to make those recommendations to Queen Anne's County that the Commission feels would be pertinent to the County's project approval decision. The following discussion attempts throughout to distinguish testimony relevant to the interpretive question before the Commission from testimony pertinent to specific aspects of this project. With regard to the latter, the panel proposes herein for the full Commission's consideration several recommendations that should be made to Queen Anne's County for their project approval action.

IV. The Panel's Proposal for Interpretation Of Regulation .05C(5)

The testimony, exhibits, and arguments that are pertinent to the question of interpretation before the Commission lend themselves to discussion in four areas: interpreting the words "commercial development"; water quality; habitats; and, people-caused adverse environmental impacts. The hearing record is discussed below under these four areas.

A. The Meaning of "Commercial Development" in Regulation .05C(5)

Queen Anne's County and Washington Brick contend that the phrase "commercial development" in Regulation .05C(5) must be interpreted with recognition of the fact that many activities clearly permitted in the RCA have some sort of commercial component, e.g. farm produce stands and pick your own fruit operations in agricultural zones, commercial hunting operations

on agricultural and forested lands, and forestry itself. Therefore, they suggest, the term "commercial" does not include every activity in which money changes hands. Rather, as appears in the Queen Anne's County Zoning Ordinance, there must be distinctions between uses which may be broadly labeled "commercial" but are nevertheless permitted in protective zones and other types of uses which are clearly commercial and kept out of protective zones because of their impacts, e.g. stores, shopping centers, etc.. Testifying for the County in this regard was County Commissioner Wheeler R. Baker, who noted the distinction in the Queen Anne's County Zoning Ordinance between commercial uses and institutional uses. He characterized "commercial uses" as "like a seafood packing house, or lumbermill, full blown hotel . . ." (T. I45). Mr. Baker testified that the Commissioners in drafting the zoning ordinance were aware that some uses which they label "institutional" "may also have a commercial aspect to it". (T. I45-46). Washington Brick called Joe Stevens, Planning Director of the Queen Anne's County Department of Planning and Zoning. Mr. Stevens testified that zoning traditionally allows some "uses which are commercial in nature" in such protective classifications as agricultural zones, and that he has reviewed "a number of zoning ordinances that allow golf courses as a sub-category of agricultural use." (T. I79-81). In response to a question from the panel he went on to note:

> . . . the commercial in the zoning aspect really looks at the intensity of the

> use. Traffic generation, amount of building, amount of disturbance. And you generally try and put those uses into the commercial category from a zoning standpoint that have those impacts and have them in a significant manner.
>
> Whether or not something is for profit or not is not looked at. I mean, we allow farm stands all over the county and they are clearly commercial uses. (T. I84).

The panel notes that there was really no dispute in this record that this golf course is being constructed as a profit making venture. Testimony of Arthur A. Birney, a partner in Washington Brick (T. I22-123).

The adjacent landowners contend that "commercial development" as used in Regulation .05C(5) means just what it says, and the fact that the proposed use is a profit making golf course renders it a commercial use. They emphasize that agricultural use is designated in Natural Resources Article §8-1801(a)4 as a "protective land use" and is specifically enumerated in the Resource Conservation Area criteria, COMAR 14.15.02.05A. The adjacent landowners offered the testimony of Arthur H. Kutcher, a planner of 20 years experience including work with Baltimore County and Howard County, who was accepted as an expert in planning. (T. I26). Mr. Kutcher opined that the meaning of "commercial development":

> comes down to the definition, the ordinary planner's definition, of commercial activity, which is not merely activity for profit, because residential activity -- residential building or numerous other activities are also for

profit. Agriculture is for profit, as we pointed out. (T. II36)

Mr. Kutcher testified that deciding whether a use is "commercial" should turn on "turnover of people on the site, the coming and going of people on the site." (T. II37). In sum, although Mr. Stevens and Mr. Kutcher disagreed on the conclusion the Commission should reach, they agreed that it should be based not on whether the use involves profit-making, but on the intensity of the use.

The panel recommends that the full Commission should not interpret "commercial development" in Regulation .05C(5) based on whether a golf course is for profit. As the Criteria clearly permit activities in the Resource Conservation Area which have profit-making aspects, e.g. agriculture, this test for "commercial development" is inappropriate in the context of the Criteria. The panel recommends to the full Commission that the determination of whether a use is "commercial development" within the meaning of Regulation .05C(5) must be weighed in terms of the affect of the use on the Resource Conservation Area, in terms of water quality, habitat, and people-caused adverse environmental impacts. Is the use consistent with the goals of the Resource Conservation Area designation or not? These points are addressed below.

B. Water Quality Aspects of a Golf Course Use

Potential water quality impacts of a golf course use fall into two categories: surface runoff, from construction and after

construction from the golf course turf and supporting buildings and paved areas; and, the potential for infiltration to groundwater of fertilizers and pesticides used in golf course turf management, and of contaminants from paved areas. Washington Brick contends that, as evidenced by its proposed project, surface water impacts can be controlled during construction through proper erosion and sediment control techniques. After completion, runoff can be controlled by the final grading of a course so that all surface water drains to collection ponds rather than directly to adjacent water bodies. Groundwater leachate can be controlled through strict management of the rates and times at which pesticides and fertilizers are applied, and infiltrating contaminants from paved areas will be attenuated by plant uptake and by binding with soil particles. Washington Brick suggests that water quality controls during construction and during project management can actually improve the surface and groundwater impacts over those which are caused by an existing use, in this case agricultural use. (Testimony of Robert Rauch, President of the firm that prepared the engineering plans and environmental analyses for this project. T. I134-158; Exhibits I8 through 23 inclusive.)

The adjacent landowners contend that potential adverse impacts to both surface water and groundwaters are posed by a golf course project, and that, as evidenced by the Washington Brick project, extensive environmental assessment of pre-existing conditions must be performed before it can be determined that a

golf course use would not adversely impact water quality. In essence, the adjacent landowners contend that it must be presumed a golf course would have adverse water quality impacts until it has been proven otherwise through specific environmental assessment. 1/

For the adjacent landowners, Dr. Brinsfield, head of the University of Maryland Wye Research and Education Center, and an expert in agricultural engineering with a specialty in environmental sciences, including the field of water quality (T. II60-62) explained at length to the panel, the concept of a "water budget" on a site, noting that all water reaching a site has to go to one of four areas: runoff to surface water streams; be absorbed by plants and transpired back into the atmosphere; evaporate from surface pools; or, enter the groundwater regime. He noted that any contaminents in the water reaching the groundwater regime would flow into waters of the surrounding Chester River and Queenstown Creek. (T. II64-72). Dr. Brinsfield noted Washington Brick's efforts to control surface water runoff, but noted that under the principle that

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1/ It is in the testimony concerning water quality impacts, more than any other, that testimony and exhibits pertinent to the Commission's interpretation of its criteria have been intermixed with testimony and exhibits that go to the water quality impacts of this particular project. As noted at the outset of this report and recommendation, the panel is endeavoring to separate out those portions of the record that relate to the question of interpretation now before the Commission. Other aspects of the testimony that relate specifically to the potential impacts of this particular project are addressed below in part VII, Recommendations to Queen Anne's County for Project Approval.

water must go somewhere, this would likely mean more infiltration of potentially contaminated waters to groundwater. (T. II72-74). Dr. Brinsfield testified that nitrogen from fertilizers does go through the soil to groundwater. (T. II82). He could not say whether there would be more or less nitrogen going to groundwater than there would be with agriculture, but noted the potential for this to happen (T. II83, 88). He testified that it cannot be known without advance study exactly where the groundwater goes on this site. (T. II84-85). On cross-examination by counsel for Washington Brick, Dr. Brinsfield acknowledged that the schedule for fertilization application and irrigation would significantly affect the amount of nitrates which might get into the groundwater. (T. II106)

Dr. Fred Jacobs, President of Coastal and Environmental Services, testified for the adjacent landowners that Queenstown Creek is degraded. (T. II112-134) The panel notes that there was really no dispute from either side that Queenstown Creek has a water quality problem; it does not flush well, and pollutants that enter the Creek from any source tend to stay there.

The adjacent landowners presented Mr. Richard Klein, a consultant with special knowledge and expertise in the field of water quality. Mr. Klein was accepted as an expert. (T. II144). Mr. Klein testified about a study he performed of the impacts of existing golf courses in the Piedmont region of the State (Ex. II11,12, and 13; T. II145-150); that "sandy soils" on the site could have a low capacity to attenuate nitrogen and

nitrogen compounds and pesticides (T. II151; Ex. II14); and that the existance of sandy soils in the coastal plain Resource Conservation Area in question was similar to Cape Cod and that therefore the leachate information from a Cape Cod study (Ex. II15) suggests that a golf course in the Resource Conservation Area could have an adverse groundwater quality impact through leachate of fertilizers and pesticides. (T. II164). Mr. Klein testified to the pollutants which could run off from parking areas (T. II167-173). Finally with respect to water quality, Mr. Klein suggested that an environmental assessment of pre-existing conditions should be performed before any conclusions could be drawn about the potential impacts of the proposed project. (T. II184).

On cross-examination, Mr. Klein acknowledged the presence of clay and loam in the various Queen Anne's County soil types referenced in Exhibit II14, but asserted that it cannot be presumed that clay and loam are or are not present. He asserted that the only way to know for sure is to do an on-site soil analysis with various soil borings. (T. II192). He acknowledged that if the soils were "quite clayee, then the potential for contamination is far less." Of the proposal of Washington Brick for integrated pest management, Mr. Klein noted "its a lot better than past practice. But, its not a panacea." (T. II207).

On rebuttal, Washington Brick first presented the testimony of John Knickerson, Director of Environmental Health for Queen Anne's County. Mr. Knickerson testified that the site is

appropriate for septic treatement of the wastes generated from the proposed club house, and expressed his opinion that it would not pose a threat to Little Queenstown's Creek. (T. II311). Washington Brick called Mr. Thomas King, Senior Hydrologist with Earth Data, Inc., who was accepted as an expert. (T. II339). Mr. King took strong exception to Mr. Klein's characterization of the soils in this area as equivalent to the soils on Cape Cod. Mr. King noted "the inclusion of as little as five percent clay in an otherwise pure sand dramatically decreases its ability to transmit water." (T. II347). Mr. King went on to note:

> If you compare the hydraulic properties of the acquifers on Cape Cod with the acquifers here, let's say, a general parameter of hydraulic conductivity may vary by a factor of ten to several hundred times between the typical sediment you see at the Queenstown Harbor Golf Links and what you would see at those golf courses on Cape Cod -- dramatically different -- night and day. (T. II349).
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> * * *
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> Clearly, [the soils on the Washington Brick site] are not well drained or excessively well drained; they're not sandy by any means. The application of hydraulic chacteristics from Cape Cod is irrelevant and has no bearing on this site . . . . (T. II354).

Noting that the design of a golf course would tend to decrease runoff and increase infiltration, Mr. King argued that the same amounts of fertilizer placed on an agricultural setting and on a golf course setting would result in different concentrations of nitrates entering the groundwater. He noted that higher

infiltration means that more water would dilute the nitrates, and that their introduction would be spread out over time as well. (T. II345). He concluded, "its clear that the golf course application would tend to dilute the input considerably more than a short term, non-irrigated agricultural -- fertilizer." (T. II346).

Finally in rebuttal on the water quality issues, Washington Brick presented the testimony of Mr. Robert Roy, whose firm has produced a computer model of the nitrogen impacts of fertilizing golf courses. (Ex. II29) Running the model for the proposed site, he concluded that "the level of nitrates in the groundwater by converting this site from agriculture use to a golf course will actually improve groundwater quality by lowering the levels or the concentrations of nitrates in the groundwater significantly." (T. II374). 2/

In the panel's view, water quality concerns boil down to Washington Brick's contention that a golf course can be designed and managed to minimize infiltration of nitrates, pesticides, and other contaminants to a level less than that of other uses such as the existing agricultural use at the site, versus the adjacent landowners' contention that this cannot be known without significant additional environmental study. The panel recommends

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2/ In a post-hearing submission, the adjacent landowners have submitted a letter from Dr. Brinsfield, contesting the utility of the model. For reasons discussed below, the panel finds Dr. Brinsfield's earlier testimony more pertinent to the question before the Commission.

to the full Commission that the relevance of potential water quality impacts of a golf course use to the question of interpretation now before the Commission cannot turn in each instance on an environmental assessment of a particular project at a particular site. The panel is satisfied that there is sufficient expert testimony of record in this case to demonstrate that with modern management techniques for fertilizer and pesticide applications, a golf course can be located in the Resource Conservation Area and managed in such a way as to maintain groundwater pollution levels at no greater than the amounts realized under existing uses. Specifically, the panel found Mr. Klein's concern about sandy soils and the Cape Cod experience refuted by Mr. King's superior expertise on soils, and notes that even Dr. Brinsfield agreed that proper management could control infiltration impacts. With regard to surface water impacts, it is apparent from this record that surface water runoff to Queenstown Creek and the Chester River can be controlled through erosion and sediment controls during construction, and through designed, final contours of the course which will actually direct more surface water to retention ponds and infiltration than presently exists on the site. In sum, a golf course use is not inconsistent with the Resource Conservation Area goals from a water quality impact point of view.

C. Habitat Impacts

For Washington Brick, Mr. Milton McCarthy demonstrated

through the example of this project that a golf course use is not incompatible with, and can actually improve, wildlife habitats in the Resource Conservation Area. Existing habitats can be identified and protected (T. I193-195), and the creation of ponds and new forested areas in the buffer can add new habitat areas. (T. I195-198). For the adjacent landowners, John Garber testified to the value of this site in its present use for wildlife (T. II223-226). He noted that some species like bald eagles are sensitive to pervasive human presence (T. II226), but the panel notes that there is nothing in this record to suggest the presence of bald eagles. Mr. Garber testified that goose damage may be a problem for the golf course, and that if certain chemicals are used, geese could be poisoned. (T. II227-228). However, he noted that geese use a golf course in Talbot County to the extent that their presence is a problem. (T. II227). Nothing said by Mr. Garber suggests that goose habitat is necessarily lost by golf course use. The panel further notes that the Maryland Forest, Park, and Wildlife Service can be involved in site plan review, and in this case appear satisfied that habitats can be protected (Ex. II28). In sum, golf course use is not inconsistent with the habitat protection goals of the Resource Conservation Area.

D. People-Caused Adverse Impacts

The figure of about 40,000 golfers per year has been suggested for this example of golf-course use, but Washington Brick contended without contradiction that the acreage per golfer

at capacity use would be two acres. For the adjacent landowners, Arthur Kutcher opined that this level of "turn over of people on the site" would create "disturbance" (T. II37). The panel takes careful note of the wording of Natural Resources Article, §8-18081(b)(3):

> . . . even if pollution is controlled, the number, movement, and activities of persons in that area <u>can</u> create adverse environmental impacts. [emphasis added]

It cannot be said as a blanket proposition that allowing golf courses as a permitted use in Resource Conservation Areas will create adverse impacts. Indeed, the record as discussed above with respect to water quality and habitats provides no basis for concluding that people on a golf course will per se create adverse impacts. Indeed, as the Chesapeake Bay Foundation noted in a letter about this project (Ex. I5):

> It is worth noting in this regard that the 1987 Bay Agreement, signed by the Governors of Virginia and Pennsylvania as well as Maryland, identifies increased public access and recreation as a major goal of the Bay restoration effort.
>
> Public golf courses, that is golf courses the use of which is not restricted to private members, provide a form of public access and recreation in the Critical Area.

People uses of Resource Conservation Areas are not rendered inherently bad by the language of §8-1808(b)(3), and nothing in this record establishes that people use in terms of a golf course would create adverse impacts.

V. The Panel's Recommendation on the Issue Before the Commission

Based on the entire record of testimony, exhibits, and arguments placed before it, the panel recommends to the full Commission that a golf course use is not inconsistent with the overall purposes of the Resource Conservation Area land designation under the Critical Areas Criteria. Accordingly, in interpreting the phrase "commercial development" in COMAR 14.15.02.05C(5), the Commission should not deem golf course development to be within the intent of those other types of land uses which should be barred under a more traditional notion of "commercial development", as for example those uses clearly defined as commercial uses under the Queen Anne's County Zoning Ordinance.

The panel would emphasize that the Commission's action at this point in time is looking only at golf courses, and should no way be interpreted by Queen Anne's County or any other party as expressing a view as to whether other types of "institutional uses" that the Queen Anne's County Zoning Ordinance may allow in Resource Conservation Areas, are or are not "commercial development" uses within the meaning of Regulation .05C(5). With regard to testimony on behalf of the adjacent landowners by Arthur Kutcher (T. II37-38) and John Carroll (T. II252-253) that a golf course will lead to other, clearly commercial uses, e.g. hotels, restaurants, the panel would similarly note that in Queen Anne's County these are not permitted in the Conservation District, and therefore are not at issue here. As to what may

happen outside the Critical Area, the Commission has no jurisdiction to consider.

VI. Additional Recommendation Concerning Future Consideration of Issues of this Nature

The panel wishes to point out to the full Commission that a large amount of time and money has been expended by the parties and by the panel members in conducting a fair proceeding which allowed all parties to make whatever information they wished part of the record. However, this lengthy effort was about just one type of land use in the Resource Conservation Area in Queen Anne's County. As noted in Attachment A, there are under the Queen Anne's County Zoning Ordinance dozens of other types of "institutional uses" which may or may not be deemed "commercial development". The panel concludes from its experience that §4002B.1.g. of the Queen Anne's County Critical Areas Program is an extremely inadvisable way of dealing with the interpretation of COMAR 14.15.02.05C(5) as it relates to the various institutional uses in Queen Anne's County. It appears unfair to applicants, who at this late date have no way of knowing whether their efforts are consistent or not with the Queen Anne's County Critical Areas Program, and it is unworkable in terms of the time and expense involved in reaching a determination. The panel strongly recommends that the Commission request Queen Anne's County to negotiate with the Commission a program amendment to §4002B.1.g., such that the Queen Anne's County program will spell out once and for all which institutional uses are permitted in

the Resource Conservation Area and which are not.

VII. Proposed Recommendations for the Commission to Address to Queen Anne's County for Project Approval

As noted throughout this report and recommendation, much of the testimony heard by the panel relates to the specific step of project approval which under Natural Resources Article §8-1811(a) now rests with Queen Anne's County under its Critical Areas Program. The Commission's role with regard to specific conditions that might be placed on this project is to recommend such to Queen Anne's County. The panel proposes to the full Commission that the following recommendations be forwarded to the County:

A. Even if it were possible to place some dwellings at a density not exceeding one per twenty acres in that portion of the Resource Conservation Area occupied by the golf course, this should not be permitted. The additional use of this portion of the Resource Conservation Area for residential development would represent a compounding of permissible uses, and raise serious questions about the consistency of such compounded use with the goals for resource protection in the Resource Conservation Area.

B. Existing water dependent facilities on Queenstown Creek should not be permitted to be used or expanded for access for the golf course. Again this would represent a compounding of uses in the Resource Conservation Area and raise the same serious questions noted above.

C. Queen Anne's County should devise a binding and enforceable requirement that assures that integrated pest management and controlled fertilization and irrigation rates will protect groundwater from the leaching of nutrients, pesticides, and other contaminants. The Commission staff would be available to work with Queen Anne's County officials in devising such a condition on project approval.

D. Although it is not directly involved in Queen Anne's County's project approval, the proposal to spray irrigate on the Washington Brick property effluent from the Queenstown Savage Treatment Plant has merit for improving the quality of Queenstown Creek. Queen Anne's County should revisit this proposal with Washington Brick, Queenstown, and the Department of Environment.

E. Before project approval is granted, the final golf course layout should be reviewed by staff of the Critical Area Commission and the Non-Game and Urban Wildlife Program in the Forest, Park and Wildlife Service so that appropriate protections of existing habitats, including the heron rookery, can be devised and made a condition of project approval.

Rights of Appeal

The parties to this proceeding before the Commission are hereby advised that a right of appeal to circuit court from the Commission's interpretation of COMAR 14.15.02.05C(5) exists under State Government Article §§10-305(c) and 10-215, and pursuant to the B Rules of the Maryland Rules of Procedure. Any such appeal must be noted within 30 days from the date of the full Commission's final action on this report and recommendation.

Respectfully submitted,

William H. Corkran, Jr.

Kathryn D. Langner

John R. Griffin

SECTION 4007. INSTITUTIONAL USES.

A. Outdoor recreational. Outdoor recreational uses include areas for active recreational activities (including, but not limited to, jogging, cycling, totlots, playfields, playgrounds, outdoor swimming pools, tennis courts, shooting preserves and target ranges, and golf courses). Also included are passive recreational uses (including but not limited to, arboretums, areas for hiking, nature areas, and wildlife sanctuaries). Also included are picnic areas, public and private parks, garden plots and beaches.

B. Institutional uses. These uses include aquariums, youth camps, cemeteries, churches, conference centers associated with non-profit institutions, community or recreational centers, daycare centers (day or nursery schools), gymnasiums, libraries or museums, indoor recreational centers, public or private schools, indoor skating rinks (ice or roller), indoor swimming pools, tennis, racquetball, handball courts, and all other institutional, indoor recreational uses which serve eight (8) or more users, excluding all staff members.

C. Institutional residential. These uses include convents or monasteries, group care facilities, nursing homes, protective living facilities, rooming houses, and sheltered care homes. An institutional residence of eight (8) or less residents, excluding all staff members, shall be permitted in all districts which permit residential uses.

D. Public Service. These uses include emergency services, service buildings or garages (e.g., ambulance, fire, police, rescue), utility or broadcasting stations, utility or other towers meeting district height limits, utility service yards, and all other public utility and public service uses. These uses also include publicly owned and operated libraries and museums. See Section 5500 Detailed Uses.

ATTACHMENT A

STATE OF MARYLAND
MILITARY DEPARTMENT
FIFTH REGIMENT ARMORY
BALTIMORE, MARYLAND 21201-2288

31 May 1990

Judge John C. North, II
Chairman
Chesapeake Bay Critical Areas Commission
West Garrett Place, Suite 320
275 West Street
Annapolis, MD 21401

Dear Judge North:

The purpose of this letter is to lay before you a summary of the background information which is pertinent to our proposal to modernize the Chestertown Armory, now scheduled to be considered by the Commission at the June 6 meeting. Although the required documentation and related technical material is being prepared (and will be presented) by consultants under a contract which is being administered by Mr. Townsend of the Department of General Services, it seems appropriate to share with you at this time the viewpoint of the Military Department as the user of the existing facility and the proponent of the project to modernize/renovate/ expand it so that it can perform its intended function.

Enclosure 1 sets forth a chronology of how the project developed, from its inception to the current time, and provides some information on how the scope and cost changed during that development.

One very significant factor, at least in the later stages of development, has been the necessity to floodproof both the two existing facilities and the addition, in order to meet Federal requirements under Executive Order 11988 which concerns Federal assistance to projects which are located in the 100-year floodplain. These requirements concerning floodplain construction are separate from, and in addition to, any other guidelines and/or regulations concerning such construction (for example, the Rivers and Harbors Act as administered by the Baltimore District of the Corps of Engineers). While the consultant and the Department of General Services have been dealing with the question of obtaining required approvals at the State level, the Military Department has been working to obtain approval from the Office of the Assistant Secretary of the Army, as required by the Executive

Order before Federal assistance can be granted. In furtherance of this objective, a STATEMENT OF FINDINGS AND PUBLIC EXPLANATION (Enclosure 2) has been prepared and is being distributed through the State Clearinghouse. A copy of the background study upon which this document was based is attached as Enclosure 3; this study discusses, among other issues, the various alternatives which were considered.

I will be attending the meeting on June 6, along with Mr. Townsend of DGS, and look forward to discussing this project with you in greater depth at that time.

Sincerely,

Arthur W. Pulket
Lieutenant Colonel, MDARNG
Director of Facilities Engineering

Enclosures

CHRONOLOGY

1. Program documents submitted to the National Guard Bureau (NGB), requesting $626,000 to expand the existing facility (approximately 21,000 SF) by constructing a 4,500 SF addition located on the relatively high ground at the front of the existing facility. ---------- March 1985

2. NGB authorized award of Design Contract ---------- July 1985

3. Schematic Design approved ---------- August 1986

4. NGB authorized an increase in scope and cost (to $1,045,000) based on new criteria which was developed since the project was conceived. ---------- September 1986

5. MD Historical Trust determined that the addition must be moved to the rear so that it would not obscure a primary elevation of the historic building. ---------- October 1986

6. Revised schematic design approved; size of addition increased to approximately 6,500 SF. ---------- July 1987

7. Design development submission approved; size of addition increased to approximately 7,100 SF. ---------- January 1988

8. Initial Construction Document Phase approved; sediment and erosion control plan submitted to Department of Natural Resources by the A/E. ---------- October 1988

9. 95% Construction Document Phase received by the Military Department; first recognition that floodproofing (of both the two existing facilities, as well as the addition) would be required or Federal support would be withdrawn. ---------- January 1989

10. A/E requested approval of Kent County Planning Commission concerning development in a critical area. ---------- November 1989

11. Department of General Services was informed telephonically by the Kent County Planning Commission that, if either the addition is less than 50% of the value of the property (which it is) or the existing facility is on the Historic Register (which it is), approval should be no problem; regarding critical areas, it was stated that the property is in a location which received a "buffer exemption". ---------- December 1989

Enclosure 1

STATEMENT OF FINDINGS AND PUBLIC EXPLANATION

After analysis of the alternatives, I find that the only practicable method of bringing the Chestertown Armory (a recognized Historic Structure) into compliance with current criteria for Army National Guard facilities is to completely renovate the existing facility and to construct an addition which is located in the 100-year floodplain (See attached location and site plans). As required by Executive Order 11988, an exhaustive study has been performed to assure that all of the alternatives have been identified; all of the impacts (both negative and positive) of the proposed action have been considered; and that due consideration has been given to minimizing the harm which will result, as well as to restoring and preserving the floodplain. Copies of this study are available from the Maryland Military Department (LTC Pulket or Mr. Murphy: 301-576-6065).

Consistent with the Floodplain Management requirements of Executive Order 11988, the following explanatory information (which is discussed in more detail in the study noted above) is provided:

a. The proposed action must be located in the floodplain because it is the only practicable method of renovating a historic structure which is itself located partially in the floodplain.

b. Other alternatives which were considered include: construction of a new facility outside the floodplain (prohibitively expensive), other means of floodproofing (not practical), and no action (not acceptable from an operational viewpoint).

c. The proposed action conforms to applicable State and local floodplain protection standards; written approval is being obtained from the agencies concerned. See further discussion in paragraph i. below.

d. National Flood Insurance Program (NFIP) criteria for floodproofing of nonresidential structures to make them watertight to or above the base flood level (in this case by construction of a floodwall) is directly applicable and is being followed in the design.

e. Since this is a State project, located on State property, which is receiving Federal assistance for a substantial portion of the construction cost, this STATEMENT OF FINDINGS is being published in the Intergovernmental Monitor by the State Clearinghouse of the Maryland Department of State Planning.

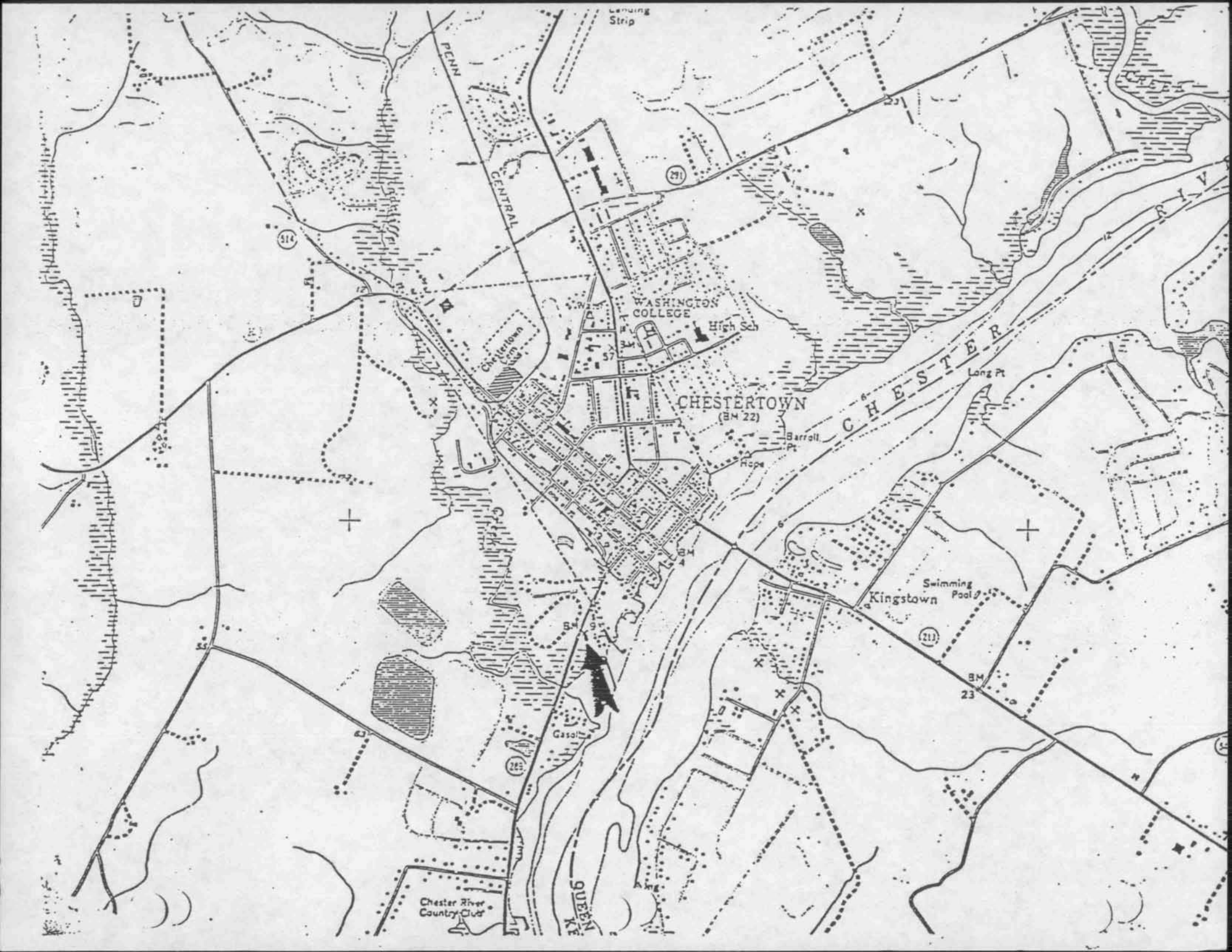
f. The Maryland Military Department invites comments on the proposed action to be sent to LTC Arthur W. Pulket, Fifth Regiment Armory, Baltimore, MD 21201-2288, postmarked no later than June 8, 1990.

g. The design includes floodproofing of both the existing and expanded facilities with a concrete floodwall extending around those portions of the site which are below the 100-year flood level. Stormwater falling on paved or roofed areas within the site will be retained and treated to meet Chesapeake Bay Critical Area Standards.

h. Since the enclosed area is relatively small (approximately 200-feet wide by 250-feet deep) and is located on the margin of an estuarine floodplain which is over 1/2-mile wide at this point, the proposed action will have no significant affect on hydraulic action in the Chester River and on the natural moderation of floods, since it will not reduce (to any measurable extent) the ability of the floodplain area to spread and slow floodwaters. Water quality maintenance will be improved, rather than degraded, and groundwater recharge will not be affected by any measurable amount. There will be no adverse impact on living resources, such as the biological productivity of the adjacent tidal marsh, nor will there be any adverse impact on cultural resources, such as archeological sites or unique habitats. The floodplain in this area is not utilized as a base for recreation, water-based sports, or recreational hunting or fishing. No natural barrier removal is involved nor will there be any drainage of wetlands or channelization of natural water courses. Agricultural, aquacultural, and forestry resources will be unaffected.

i. The design has been prepared by the Maryland Department of General Services, in coordination with the Corps of Engineers, the Maryland Department of the Environment, The Maryland Department of Natural Resources, The Chesapeake Bay Critical Areas Commission, The Kent County Planning Commission, and the Maryland Historical Trust.

Raymond B. Clift
Colonel, (Retired)
Director of Installations
Maryland Military Department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High Sch
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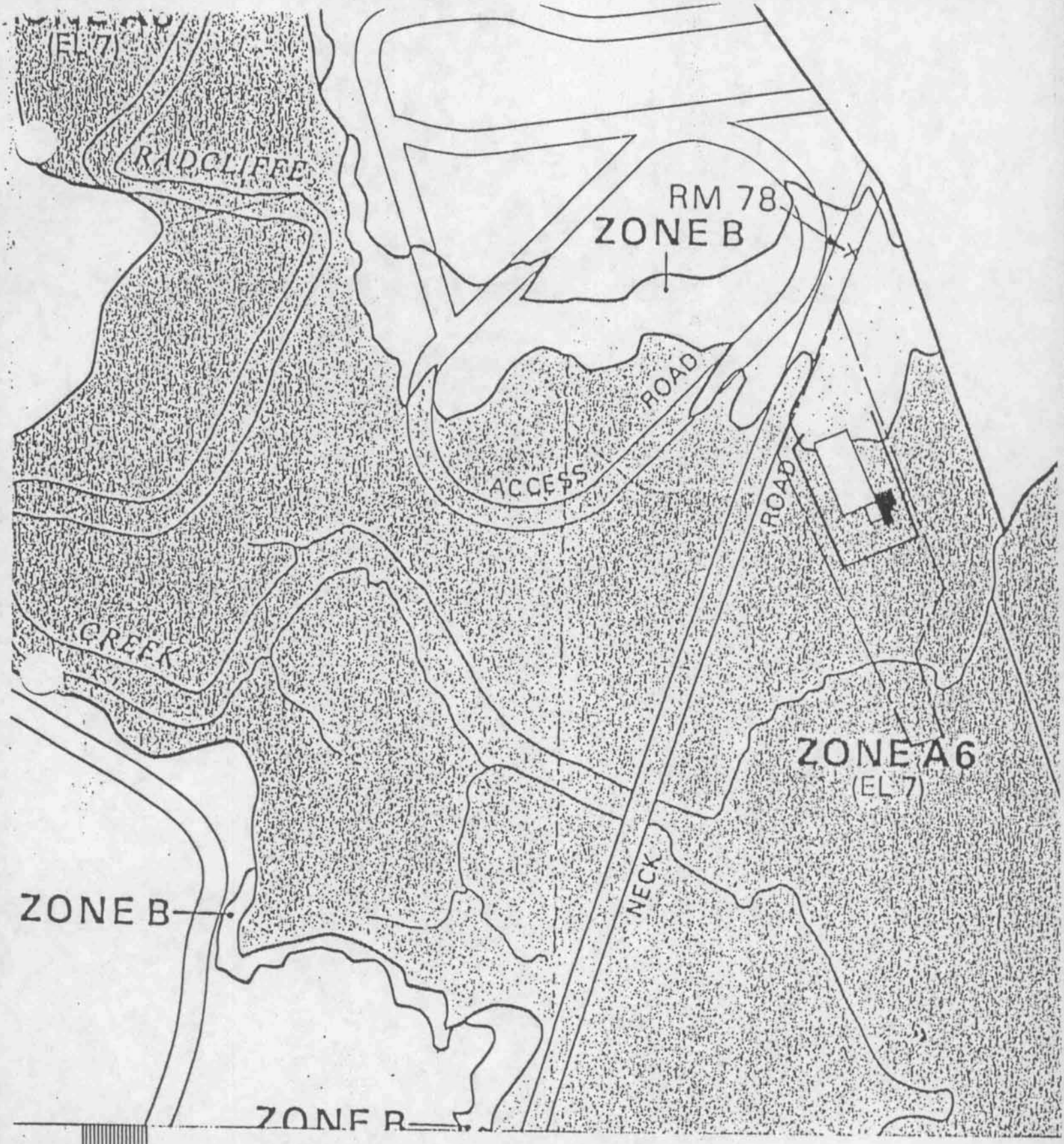
Hope
CHESTER R
Long Pt
Swimming Pool
Kingstown
BM 23
Gasoline
Chester River Country Club
QUEEN



COMMUNITY-PANEL NUMBER
240045 0175 B

EFFECTIVE DATE:
DECEMBER 4, 1985

LEGEND:

- PROP. LINE
- FLOOD WALL
- EXISTING ARMORY AND OMS
- PROPOSED ADDITION

INFORMATION PAPER

1. SUBJECT: Construction of Addition/Alterations to Armory, Chestertown, Maryland.

2. PURPOSE: To furnish information relating to proposed Federally-assisted construction which is located in the 100-year Floodplain.

3. POINTS OF MAJOR INTEREST.

a. Background:

(1). The existing Chestertown Armory,which is on the National Register of Historic Places, was constructed in 1931. It is located partially in the 100-year Floodplain of the Chester River; the attached Organizational Maintenance Shop, which was constructed in 1957, is located entirely in that floodplain. See Appendix A. Note that the 100-year Floodplain extends up to the elevation of 7 feet.

(2). The initial proposal for this project, upon which the original program documentation was based, envisioned that the addition was to be located adjacent to the Northeast corner of the existing armory, which would have kept it out of the 100-year Floodplain. The most that would have been required in the way of floodproofing of the addition would have been to elevate it slightly; as noted on Appendix A, an existing levee wall is already in place to protect the existing armory and OMS, although certain repairs to that wall would have been required under this proposal.

(3). During the early stages of design development, the Maryland Historical Trust determined that the addition would have to be moved to the Southeast corner of the existing armory, so that it would not obscure the historically-important East facade of the existing building (particularly the windows located in that facade). This relocation brought the proposed addition completely within the 100-year floodplain.

b. Analysis of the Floodplain Management Guidelines for Implementing E.O. 11988 (43 FR 6030, February 10, 1978; Reprinted by the Federal Emergency Management Agency) establishes that there are seven steps which must be accomplished prior to implementing a proposed action which falls under the purview of E.O. 11988. These steps, with appropriate discussion for each, are:

(1).Step 1: Determine if a proposed action is in the Base Floodplain.

Flood Insurance Rate Maps (FIRM) were obtained from The Federal Emergency Management Agency to verify the 100-year floodplain elevation and location which had been obtained informally from the Corps of Engineers. See Appendix B for a superposition of the proposed project elements on a portion of the appropriate FIRM.

(2). Step 2: Issue Notice for Early Public Review.

(a). Notice was forwarded to the State Clearinghouse on April 4, 1990. See Appendix C.

(b). Public Notice was published in the Intergovernmental Monitor and copies of the Notice were sent to concerned Agencies. See Appendix D.

(c). Response to the Public Notice was received. See Appendix E.

(3).Step 3: Identify and Evaluate Alternatives.

(a). Identify.

((1)). Construct new armory at location not in floodplain (Alternative Site).

((2)). Elevate the addition above the 100-year Floodplain level (Alternative action to accomplish the same purpose).

((3)). No action.

((4)). Utilize State funds to construct a wall or embankment to floodproof both the existing facilities and the proposed addition. See Appendix F

(b). Evaluate.

((1)). Construction of a new armory at a location not in the floodplain would not be economically feasible. If an appropriate site could be obtained in the demographic area now served by the existing armory, construction of a new armory of equivalent size could be expected to cost approximately $1,813,500 (27,900 sf x $65.00 per sf). In order to make a valid comparison, the cost of replacing the OMS would also have to be considered, since it could not remain in the same location if the armory were demolished; this would add another $262,500 (3,500 sf x $75.00 per sf). In addition, the cost of obtaining a suitable tract of land (assuming one could be located) could be expected to be at least $250,000 (10 acres x $25,000 per acre), based on a price of $35,000 per acre which was recently paid for approximately 5 acres adjacent to the Salisbury armory; to this must be added $100,000 for utility costs, parking, access roads, etc. Disposal

of the existing armory would cost approximately $50,000 (primarily for abatement of the existing asbestos and lead hazard, the cost of which is included in the estimated cost of renovating the existing facility). Based on this analysis, the cost of constructing an equivalent facility in a location outside the floodplain would be approximately $2,476,000 (total Federal and State) vs. the expected cost of $1,514,000 (total Federal and State) of the proposed renovation.

((2)). Elevation of the addition above the level of a 100-year flood is not a viable solution by itself, since it does not address the question of adequately floodproofing the existing facilities (the existing floodwall has deteriorated over time to the point where it offers little actual protection). To provide floodproofing of the existing facilities, a repaired and improved floodwall would be required; this same repaired (and extended) floodwall can also provide floodproofing for the addition at considerably less cost than would be involved in elevating that addition and without the attendant problems which would result from offsetting the floor level of the addition from that of the existing armory by 3-4 feet.

((3)). The " No Action " alternative is not viable for all the reasons outlined in the DD Forms 1390/1391; in its present configuration and condition, the existing facility does not provide an adequate Home Station in which the assigned unit can achieve and maintain its required readiness level.

((4)). Utilization of State funds to construct a floodwall to isolate both the Armory and the OMS from the effects of being in the 100-year Floodplain is the most cost-effective alternative from an overall viewpoint; it has no direct bearing on the Federal program, since no Federal funds are being utilized to pay for the actual floodproofing itself, but it has an indirect bearing in that the Federal cost of building a new facility elsewhere would be significantly more than the Federal cost of renovating and expanding the existing facility.

(4). Step 4: Identify Impacts.

(a). Direct and Indirect Support of Floodplain Development: This action does not provide significant support, either direct or indirect, for additional development in the floodplain, since the purpose is merely to bring an existing asset (a recognized Historical structure) into proper physical condition to adequately perform its present function. The facility is not being expanded to accommodate additional units or missions and, upon completion of this work, will be less subject to the hazard of flooding than it was before.

(b). Positive and Negative Impact:

((1)) Positive: The most positive long term concentrated impact is to provide protection from flooding to a

structure which is recognized as having significant historical value. It should be noted that the exterior shell of the historical structure has deteriorated to the point where significant repair of several components, primarily the masonry lintels and the metal windows, is required. Such an expenditure could not be justified unless, at the same time, the facility is improved to bring it into compliance with modern functional criteria. The net result will be to provide the Army National Guard with a significant asset, while at the same time preserving a facility which holds more than the usual amount of interest for the community at large.

((2)) Negative: Short term negative impacts, such as runoff of stormwater during construction, will be prevented by specific actions which the contractor will be required to implement and which will be established during the design phase. Without instituting such a program, approval cannot be obtained from the Maryland Department of the Environment, the Maryland Department of Natural Resources, and the Chesapeake Bay Critical Area Commission. (In addition to the normally stringent State requirements, this action is located in the Chesapeake Bay Critical Area, which brings even more severe requirements into play). Long term negative impacts, such as degradation due to stormwater runoff, must also be mitigated to an unusual extent because the site borders on a designated "wetlands" area. Established requirements dictate that there be a 10% improvement in the quality of the runoff after the action is completed; this will require impounding the stormwater runoff from the parking areas in sedimentation tanks for timed release after clarification.The net result will be that there will be little or no negative impact from this action, either concentrated or dispersed, and either short or long term. It should be noted, also, that the measures discussed above concerning stormwater runoff would be required of any project located in this vicinity, even if it were not within the 100-year Floodplain.

(c). Risk to Lives and Property: If anything, the risk to lives and property will be diminished by this action. Due to the fact that the site is located on a tidal estuary which is not subject to quick flooding, there is virtually no risk to lives under the present circumstances, a situation which, if anything, will be improved after the proposed action is completed. The risk of property damage will be decreased significantly, since the existing facility will be floodproofed by the same measures which will protect the addition.

(d). High Hazard Area: The site of this action is not in a high hazard area (such as a beach area in front of a high bluff), but instead is adjacent to a wide marshy estuary which would constitute a backwater area during a flood. There will be no destructive velocity flow or flood-related erosion to cause an increase in hazard. As discussed below, the level of any flood will not be increased by any measurable amount due to the proposed construction.

(e). Natural and Beneficial Floodplain Values: Since the enclosed area is relatively small (approximately 200-feet wide by 250-feet deep) and is located on the margin of an estuarine floodplain which is over 1/2-mile wide at this point, the proposed action will have no significant affect on hydraulic action in the Chester River and on the natural moderation of floods, since it will not reduce (to any measurable extent) the ability of the floodplain area to spread and slow floodwaters. Water quality maintenance will be improved, rather than degraded, as discussed above, and groundwater recharge will not be affected by any measurable amount. There will be no adverse impact on living resources, such as the biological productivity of the adjacent tidal marsh, nor will there be any adverse impact on cultural resources such as archeological sites or unique habitats. The floodplain in this area is not utilized as a base for recreation, water-based sports, or recreational hunting or fishing. No natural barrier removal is involved nor will there be any drainage of wetlands or channelization of natural water courses. Agricultural, aquacultural, and forestry resources will be unaffected.

(5) Step 5: Minimize, Restore, and Preserve. The Executive Order requires that consideration be given not only to minimizing any harmful effects which might occur to or within the floodplain, but also to possible measures for restoring and/or preserving original conditions. Specific discussion follows:

(a) Natural Moderation of Floods. The only feature which will impact on natural floodwater will be the floodwall, since there will be no construction of any kind outside of the relatively small tract of land which will be enclosed by that wall. Because of the relatively small size of that enclosure, when compared to the width of the floodplain itself (as discussed above), there will be no noticeable affect on either the level of or the moderation of floods. There will be adequate flow circulation, no compaction or disturbance of natural contours or natural drainage outside the floodwall enclosure, and no intrusion on or destruction of estuarine ecosystems.

(b) Water Quality. All wetland and floodplain vegetation buffers will be maintained (none are located within the floodwall enclosure); as discussed above, there will be a required level of improvement, rather than degradation, of water quality due to special features which will be incorporated. There will be no agriculture activities to cause nutrient inflow. Runoff of stormwater will be adequately controlled, as will erosion and sedimentation during construction. No pathogenic or toxic sources, such as sanitary landfills and/or septic tanks, are involved.

(c) Ground Water Recharge. The project will be designed to incorporate runoff retention; spoil and waste materials will not be allowed to contaminate ground or surface material.

(d) Living Resources. There is no wildlife habitat or other vital ecologically sensitive area on the site of the proposed work and no floodplain ecosystems will be damaged. Topsoil will be protected during construction. As discussed elsewhere, there will be no wetland drainage, channelization, or water withdrawal, and no significant tree cutting or vegetation removal. The floodwall will not have any affect on tidal activity or estuarine flow, since it will only be in contact with the river surface under the most extreme and unusual conditions.

(e) Cultural Resources. This site has always been, and will remain, accessible to the public for scientific study and educational instruction. There are no known cultural resources of historic significance, and appropriate agencies are being kept involved through the required public notice process.

(f) Agricultural Resources. There are no cropped areas in this vicinity. The use of pesticides, herbicides, and fertilizer on the small turfed area enclosed within the floodwall will be under strict and constant control; the area of grass involved is considerably less than 1/4 acre.

(g) Aquacultural Resources. As discussed above, impoundment will be provided for stormwater runoff. No exotic species of any kind will be introduced, and no dredging, weeding, or large scale harvesting will be involved.

(h) Forestry Resources. No timber harvesting of any kind is involved. It may be necessary to remove one mature tree, but even that will be avoided if at all possible.

(6) Step 6: Reevaluate Alternatives.

(a) Location in Base Floodplain. The proposed site is the only practicable alternative. It does not provide direct or indirect support for further floodplain development; the risk of flood loss will be reduced; the impact of floods on human safety, health, and welfare will certainly be no worse, and if anything will be lessened; and natural and beneficial floodplain values will remain intact.

(b) Limit Action. There is no requirement to reduce the proposed scope, since the four basic areas of concern discussed in the preceding paragraph have been adequately addressed.

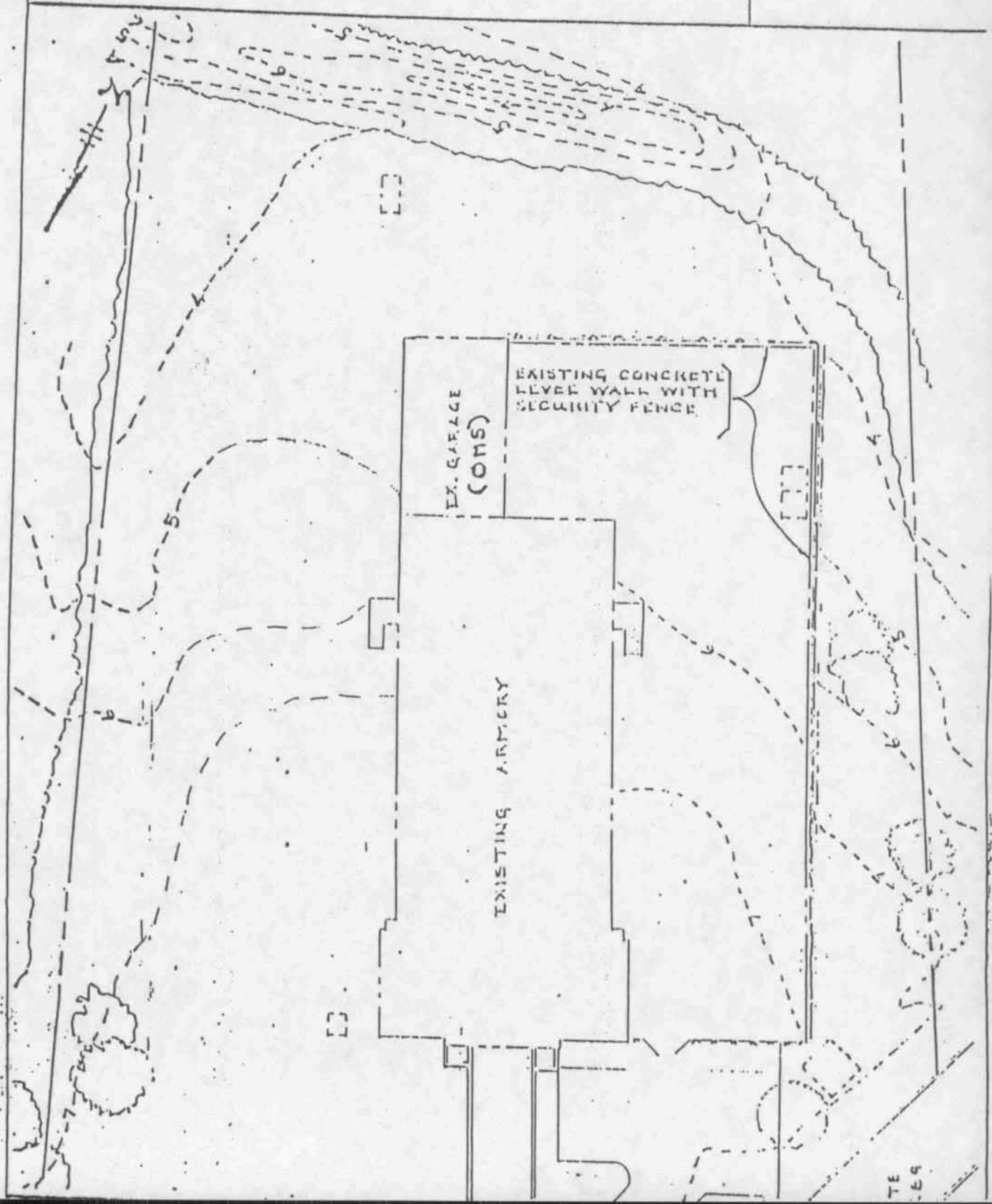
(c) No Action. There is no requirement to preclude the action, since all areas of concern have been satisfied.

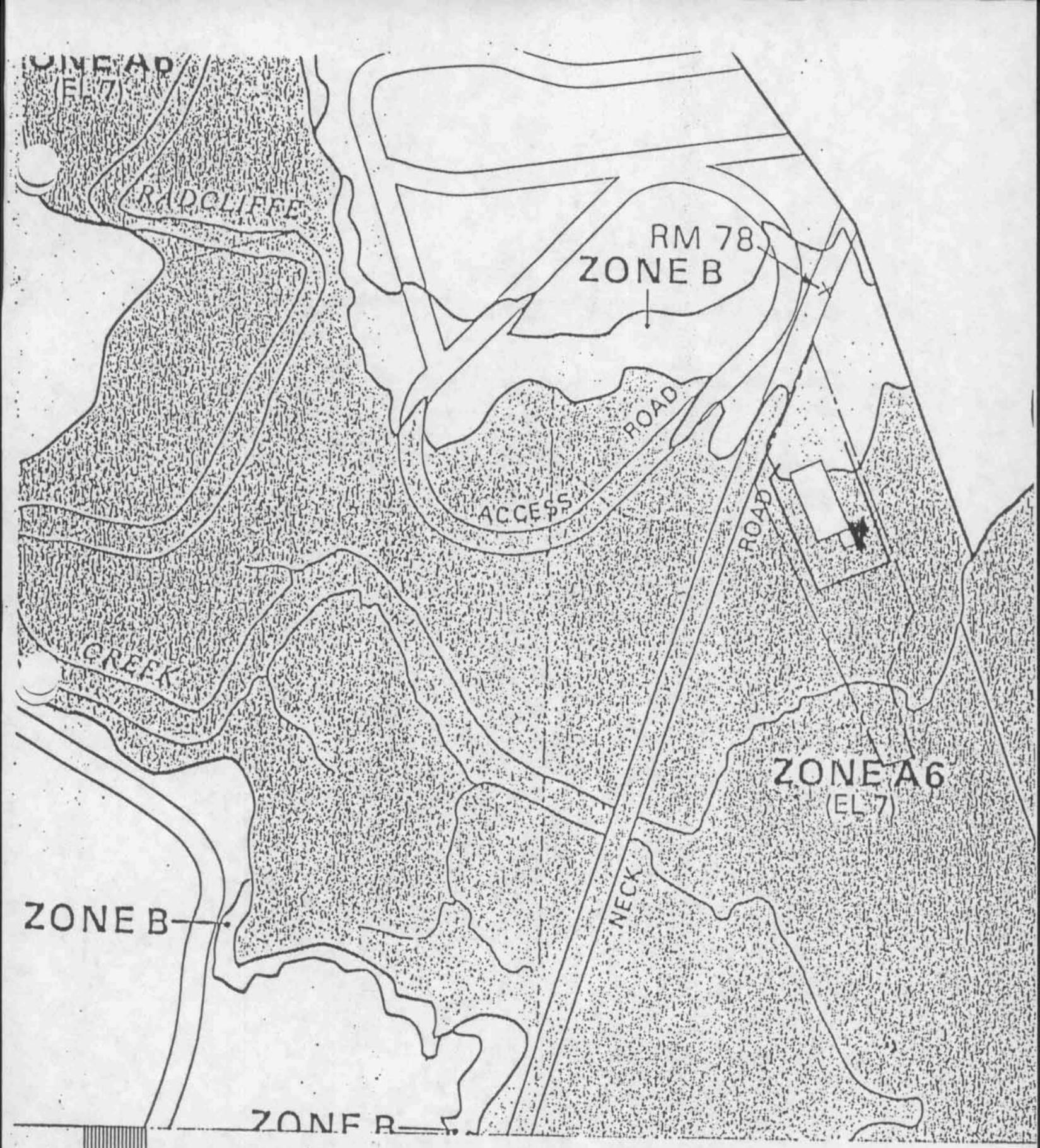
(7) Step 7: Findings and Public Explanation. Since it has been determined that siting within the floodplain is the only practicable alternative, the proponent agency is required to prepare and circulate a notice containing an explanation of why the action is proposed to be

located in the floodplain.

Prepared By: John S. Murphy
Civil Engineer

1. COMPONENT	FY 19___ MILITARY CONSTRUCTION PROJECT DATA	2. DATE
3. INSTALLATION AND LOCATION		
4. PROJECT TITLE		5. PROJECT NUMBER





COMMUNITY-PANEL NUMBER
240045 0175 B

EFFECTIVE DATE:
DECEMBER 4, 1985

LEGEND:

- PROP. LINE
- FLOOD WALL
- EXISTING ARMORY AND OMS
- PROPOSED ADDITION

STATE OF MARYLAND
MILITARY DEPARTMENT
FIFTH REGIMENT ARMORY
BALTIMORE, MARYLAND 21201-2288
April 4, 1990

Ms. Mary Abrams, Director
State Clearinghouse
Maryland Department of State Planning
301 West Preston Street
Baltimore, MD 21201

Dear Ms. Abrams:

Enclosed is a copy of the Early Public Review Notice for Executive Order 11988 Floodplain Management regarding a proposed project for Addition/Alterations to the Chestertown Armory in Kent County.

Also enclosed are a vicinity map and a site plan showing the location of the facility and the general scope of work which is proposed. Please send comments to me at: Maryland Military Department, Fifth Regiment Armory, Baltimore, MD 21201-2288.

Sincerely,

Arthur W. Pulket
Lieutenant Colonel, MDARNG
Director, Facilities Engineering

Enclosures

Copy Furnished:

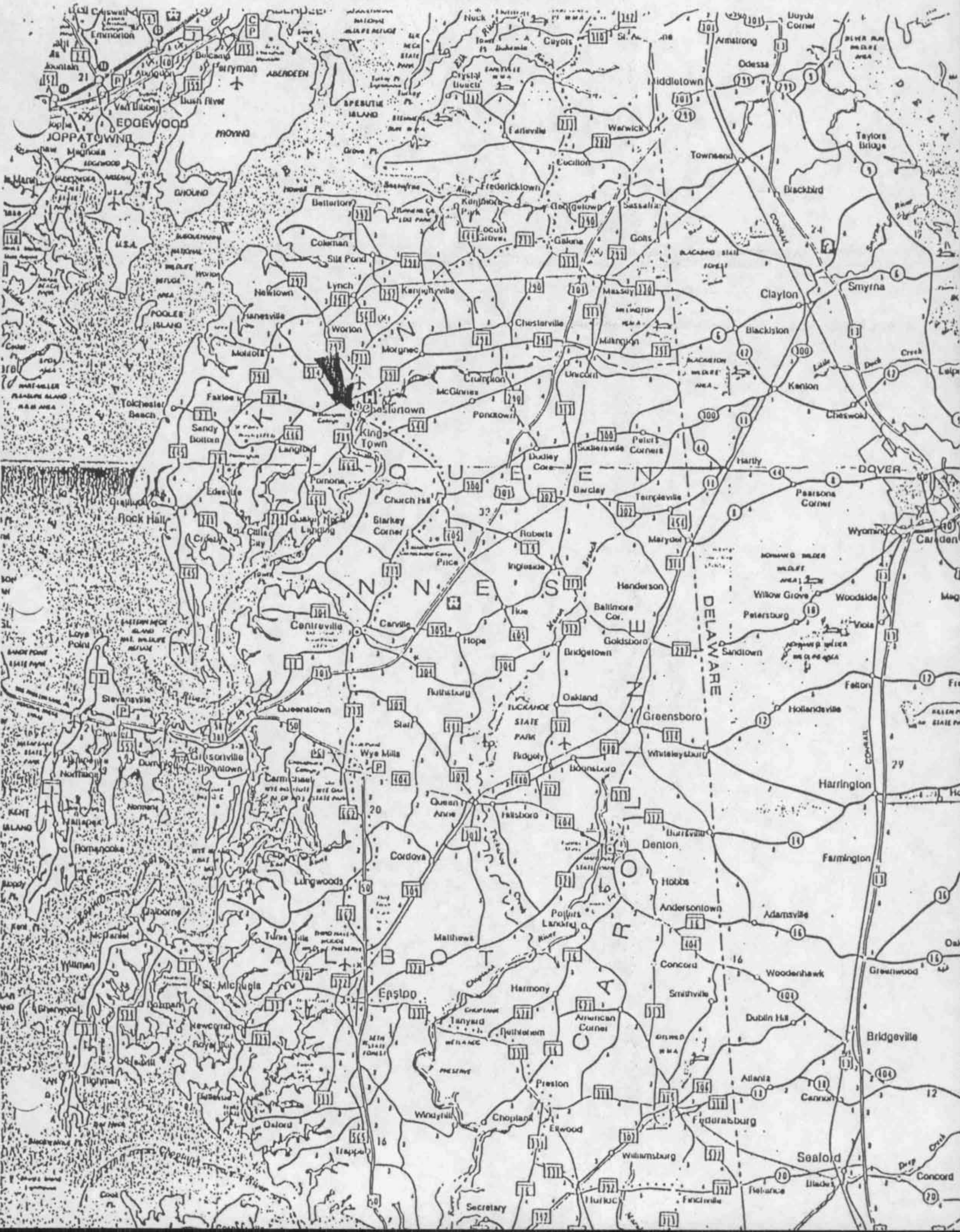
Phil Townsend, DGS

App. C

EARLY PUBLIC REVIEW NOTICE FOR EXECUTIVE ORDER 11988 FLOODPLAIN MANAGEMENT

The State of Maryland has received notice that Army National Guard Military Construction funds are available to support a large portion of the cost of extensive renovation and construction of an addition to the Chestertown National Guard Armory, subject to compliance with the provisions of Executive Order 11988. The existing facility, which is on the National Register of Historic Places, is located in the 100-year Floodplain, as is the proposed addition.

Consistent with the Floodplain Management requirements of Executive Order 11988, the Maryland Military Department invites comments on the proposed action to be sent to LTC Arthur W. Pulket, Fifth Regiment Armory, Baltimore, MD 21201-2288, postmarked no later than April 25, 1990.



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Aberdeen
Bush River
Edgewood
Joppatown
Magnolia
Spesutie Island
Pooles Island
Middletown
Odessa
Armstrong
Townsend
Blackbird
Taylors Bridge
Crystal Beach
Earleville
Warwick
Cecilton
Fredericktown
Georgetown
Sassafras
Betterton
Locust Grove
Galena
Golts
Coleman
Still Pond
Lynch
Kennedyville
Newtown
Worton
Massey
Millington
Chesterville
Morgnec
Smyrna
Clayton
Blackiston
Kenton
Cheswold
Hartly
Dover
Camden
Wyoming
Chestertown
Kingstown
McGinnes
Crumpton
Unicorn
Pondtown
Tolchester Beach
Fairlee
Sandy Bottom
Langford
Rock Hall
Edesville
Pomona
Church Hill
Sudlersville
Peters Corners
Dudley Corner
Barclay
Templeville
Marydel
Pearsons Corner
Roberts
Ingleside
Starkey Corner
Price
Henderson
Centreville
Carville
Hope
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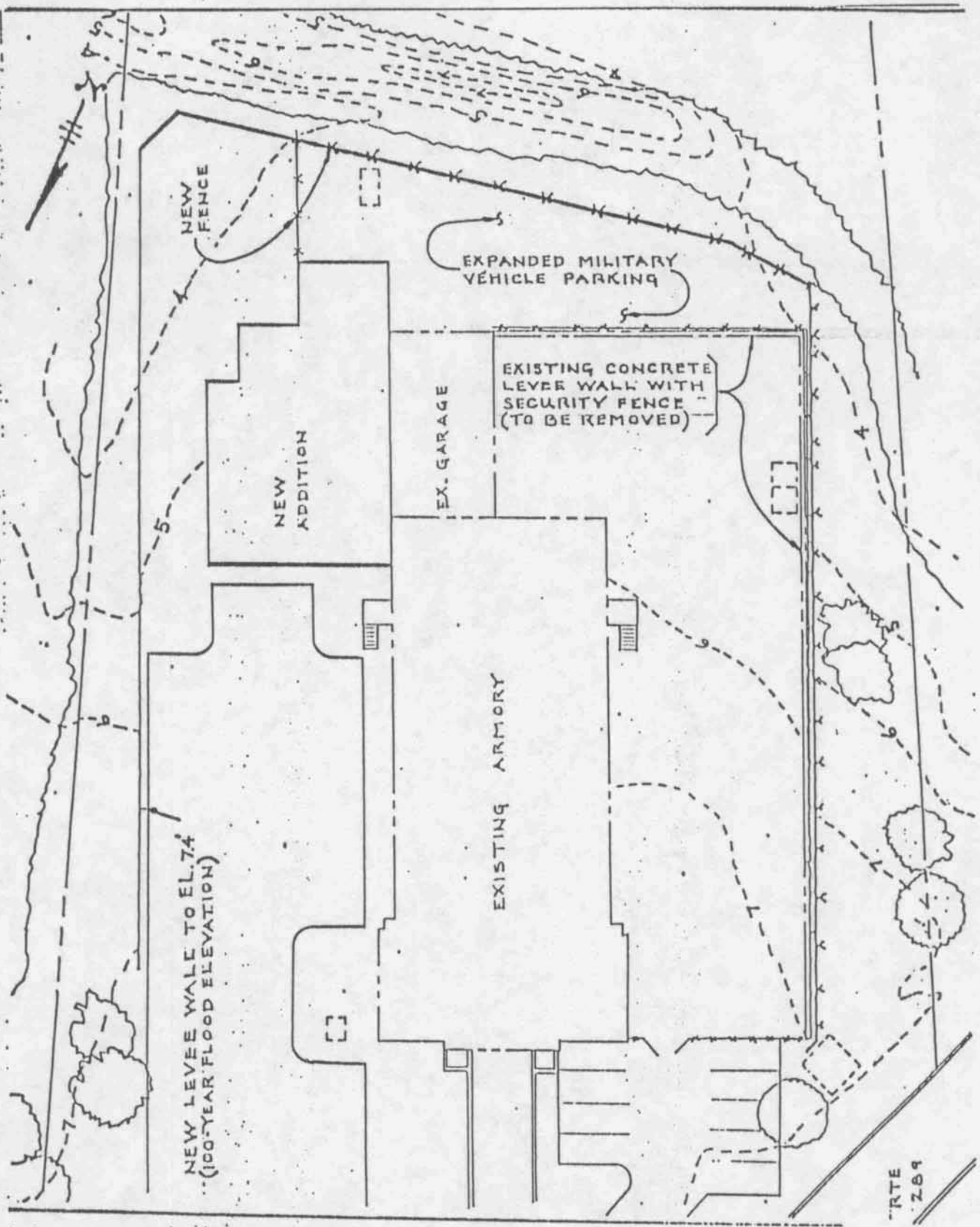
Baltimore Cor.
Goldsboro
Bridgetown
Sandtown
Willow Grove
Woodside
Petersburg
Viola
Love Point
Kent Island
Stevensville
Queenstown
Ruthsburg
Oakland
Greensboro
Hollandsville
Felton
Tuckahoe State Park
Grasonville
Wye Mills
Ridgely
Whiteleysburg
Harrington
Queen Anne
Hillsboro
Denton
Burrsville
Farmington
Romancoke
Cordova
Hobbs
Andersontown
Adamsville
Longwoods
Claiborne
McDaniel
Wittman
Matthews
Potters Landing
Concord
Woodenhawk
Greenwood
St. Michaels
Easton
Harmony
Smithville
Dublin Hill
Bridgeville
Tanyard
Bethlehem
American Corner
Sherwood
Newcomb
Royal Oak
Preston
Atlanta
Cannon
Federalsburg
Choptank
Ellwood
Windyhill
Oxford
Trappe
Williamsburg
Seaford
Blades
Reliance
Finchville
Hurlock
Secretary
K E N T
Q U E E N   A N N E ' S
T A L B O T
C A R O L I N E
DELAWARE


Landing Strip
PENN CENTRAL
WASHINGTON COLLEGE
High Sch
Chestertown Cem
CHESTERTOWN
(BM 22)
Barroll Pt
Hope
Long Pt
CHESTER
RIVER
Swimming Pool
Kingstown
BM 23
Gasoline
Chester River Country Club
QUEEN



SITE PLAN

CHESTERSTOWN ARMORY

ADDITIONS AND ALTERATIONS

The Intergovernmental Monitor

A weekly summary of selected federal and state financial assistance and regulatory activities. For additional information, please contact this office.

Published by the State Clearinghouse for Intergovernmental Assistance

301 West Preston St.
Baltimore, MD 21201
301-225-4490

MARYLAND *Office of Planning*

WILLIAM DONALD SCHAEFER
Governor

RONALD M. KREITNER
Director

I. FEDERAL REGISTER ANNOUNCEMENTS 3/27/90 - 4/5/90
(Vol. No.-Page)

GRANTS AVAILABLE

ENERGY AND ENVIRONMENT

55:65-12551 Financial Assistance Program Eligible for Review. Purpose: To improve the quality and thus the utility of the Toxic Release Inventory (TRI) data by building at the State level the capacity to evaluate and assure the quality of facility submissions and the data base created from them. The TRI data represent a significant new source of information concerning toxic chemical releases into the environment and transfers from facility sites to other locations. EPA believes these data will prove invaluable in the development and implementation of State toxic substance control programs, particularly when analyzed in conjunction with other sources of environmental, chemical, and permit compliance data. Eligible Applicants: The 50 states and U.S. territories. Letters of intent are due by May 4, 1990. Application Deadline: 7/3/90. Available Funds: $1.0 million. EPA Contact: Linda Wunderlich, (202) 382-3960.

55:66-12725 Exploratory Environmental Research Centers; Solicitation for Proposals. Purpose: To establish four university-based exploratory environmental research centers in subjects directly related to EPA's long range research strategy. Application Deadline: 7/17/90. Available Funds: $1 million. Eligible Applicants: State-accredited academic institutions which comprise more than one undergraduate college, confer baccalaureate degrees, and offer advanced degrees in more than one subject area. EPA Contact: Karen Morehouse, (202) 382-5750.

EDUCATION

55:60-11499 American Studies Winter Institute; Bureau of Educational and Cultural Affairs; Grant Program; Winter Institute In American Studies. Contingent upon the availability of funds, the Bureau of Educational and Cultural Affairs of the United States Information Agency (USIA) is soliciting proposals for a graduate-level American studies institute to take place from January 3 to February 16, 1991. The institute is designed for approximately 30 highly motivated secondary school educators in English language, American literature, government, history, society and culture, and geography. Participants will come principally from countries in Latin America and Africa. USIA is asking for detailed proposals from institutions which have an acknowledged reputation in American Studies and related fields with special expertise in handling cross-cultural programs. Application Deadline: 6/17/90. USIA Contact: Katherine Passias, (202) 485-2568.

RULES AND REGULATIONS

HOUSING AND COMMUNITY DEVELOPMENT

55:59-11133 Community Programs Guaranteed Loans. Interim rule. This interim rule defines the community facilities loan guarantee program and establishes the procedures for members of the public and lending institutions to use in applying for loan guarantees for the Farmers Home Administration (FmHA) to follow in administering the program. Effective Date: 3/27/90. Comments must be submitted on or before April 26, 1990. FmHA Contact: James C. Alsop, (202) 382-1490.

55:60-11556 Community Development Block Grants; Miscellaneous Revisions of Part 570. Proposed rule. This proposed rule would revise the Community Development Block Grant program to implement certain changes made in the Housing and Community Development Act of 1987 and in the Department of Housing and Urban Development-Independent Agencies Appropriations. Comments are due May 29, 1990. HUD Contact: James R. Broughman, (202) 755-5965.

ENERGY AND ENVIRONMENT

55:60-11384 Conservation and Environmental Programs. Proposed rule. This proposed rule would clarify the calculation of the maximum cost-share percentages for the Emergency Conservation Program (ECP) and revises the Agricultural Conservation Program, the ECP, and the Forestry Incentives Programs so that they will be uniform. Comments must be received on or before April 27, 1990. USDA Contact: James R. McMullen, (202) 447-6221.

VI. PROPOSALS RECEIVED FOR INTG. FOR PURPOSES 04-05-90 THROUGH 04-10-90

STATE IDENTIFIER NUMBER	REVIEW PERIOD OPEN/ CLOSE	APPLICANT	DESCRIPTION	ACTIVITY LOCATION	APPROVAL AGENCY/ CAT. NO.	PROPOSED FUNDING FEDERAL STATE LOCAL OTHER	NOTIFICATION RECIPIENTS
900307-147	MAR 2	DOE	FONSI/EA--INNOVATIVE CLEAN COAL TECHNOLOGY PROGRAM COKE OVEN GAS CLEANING DEMO. AT BETH. STEEL CORP., S.P.	BALTIMORE CO.	DOE	-	INFO--MDE DNR
900314-167	MAR 14	DOI	SCOPING DOCUMENT--GENERAL MGT. PLAN FOR ANTIETAM NAT'L. BATTLEFIELD	WASHINGTON CO.		-	INFO--MHT DNR MDOT MDE
900103-244	APR 3	DHHH	PARTNERSHIPS IN INJURY PREVENTION	GARRETT, ALLEGANY, QUEEN ANNE'S & TALBOT COUNTIES	HHS 13.110	139,754 - -	INFO
900104-247	APR 4	MDOT	FY 1991 BALTIMORE REGION UNIFIED TRANSPORTATION PLANNING WORK PROGRAM	BALTIMORE REGION	DOT	23,613 - - -	INFO--MHT DNR MDE OP OHI
900103-218	APR 4	MDOT	EA--DORSEY RD. COMMUTER RAIL STATION	HOWARD CO.	DOT	- - -	INFO--MHT MDE DNR OP BRCOG
900103-219	APR 5	WASHINGTON COUNTY	CDBG--DUTF FOR HIGHFIELD CASCADE-PLN MAR COMMUNITY	WASHINGTON CO.	DHCD	- 500,000 777,804 -	INFO--MHT DN MDE OP TCCOMD
900103-240	APR 5	DNR	E.O. 11988--ADDITION/ ALTERATIONS TO THE CHESTERTOWN ARMORY	KENT CO.	HUD	- - - -	INFO--MHT DNR MDE MDOT OP KENT CHESTERTOWN
900103-254	APR 6	SPINA BIFIDA ASSOC. OF AMERICA	DEVELOP & DEMONSTRATE NATIONAL MENTOR SUPPORT PROGRAM	NATIONAL	USDE 84.158	148,070 - - 27,660	INFO
900107-262	APR 9	ALLEGANY COUNTY	HEAD START PROGRAM--VARIED ATTENDANCE & HOME BASED	ALLEGANY CO.	HHS 13.600	550,057 -	INFO

MARYLAND *Office of Planning*

William Donald Schaefer
Governor

Ronald M. Kreitner
Director

April 23, 1990

Lieutenant Colonel Pulket
State of Maryland
Military Department
Fifth Regiment Armory
Baltimore, MD 21201

Dear Col. Pulket:

The Upper Eastern Shore Regional Office of the Maryland Office of Planning has received the Early Public Notice concerning proposed improvements to the Chestertown Armory. We see no reason you should not proceed with this project.

Thank you for the opportunity to comment.

Cordially,

Mark Gradecak

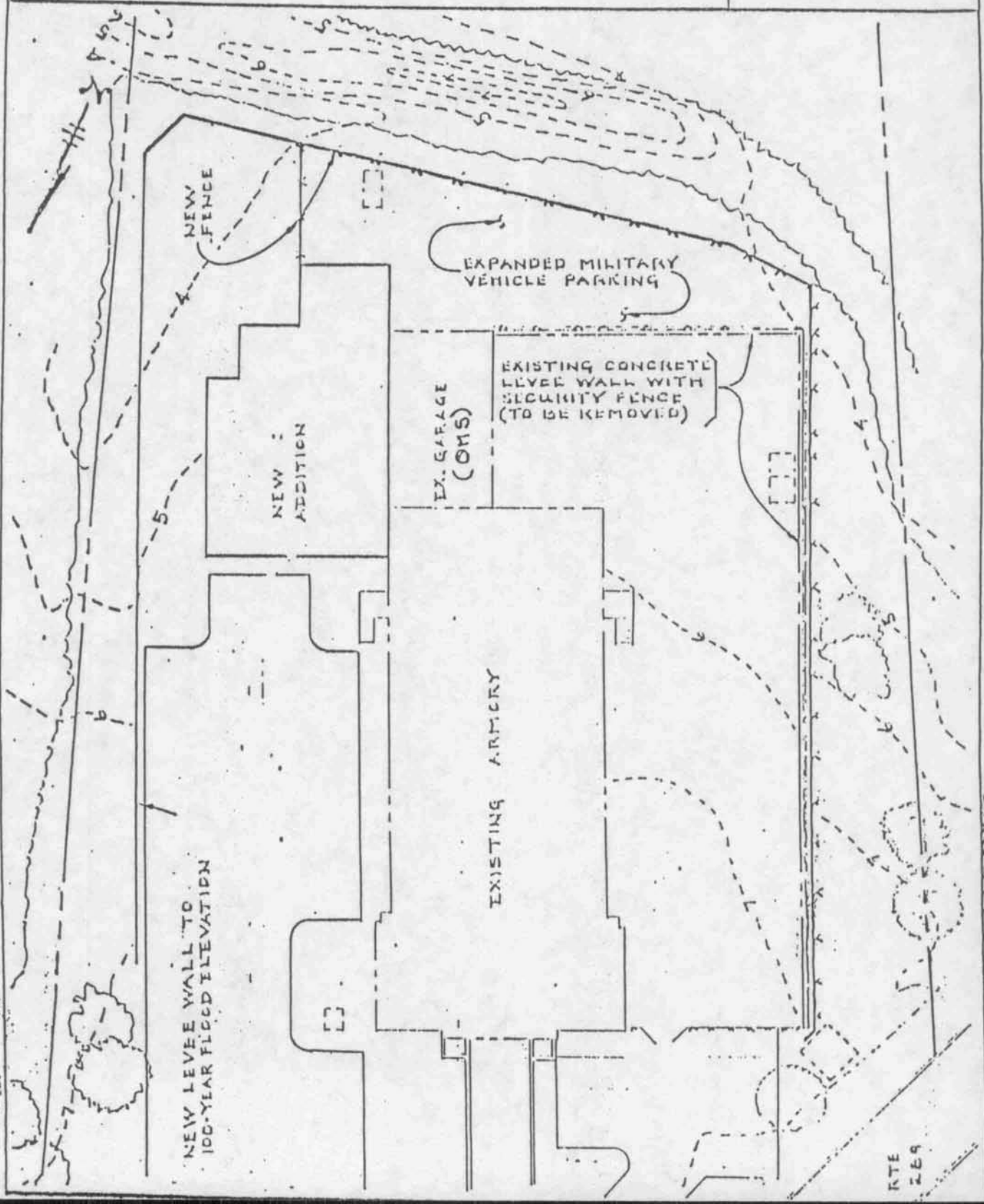
Mark Gradecak
Regional Planner

cc: Daily File
Clearinghouse File-Kent Co.

Upper Eastern Shore Regional Office
120 Broadway • Centreville, Maryland 21617
Telephone: (301) 758-2175 MARCOM: 758-2188

App. F

1. COMPONENT	FY 19__ MILITARY CONSTRUCTION PROJECT DATA	2. DATE
3. INSTALLATION AND LOCATION		
4. PROJECT TITLE		5. PROJECT NUMBER



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

June 5, 1990

MEMORANDUM

TO: Judge North
Sarah Taylor

FROM: Ren Serey
Claudia Jones

RE: Queenstown Harbour Golf Links

The purposes of this memorandum are to provide:

1) an update on the application of the Washington Brick and Terra Cotta Company to develop a golf course within the Resource Conservation Area in Queen Anne's County, and

2) background information on staff recommendations made to the panel on April 23, 1990 and contained in the public hearing record. The staff report to the panel is attached.

STATUS OF APPLICATION

The panel has completed its public hearing. Testimony was taken in two sessions, April 23rd and May 21, 1990, at the Queen Anne's County Office Building in Centreville. Panel members Bill Corkran, Chairman, Kay Langner and John Griffin sat for both sessions. Joe Elbrich attended the first session, but will not participate in the panel's deliberations or its

recommendations. Tom Deming is meeting with the panel and assisting the members in sorting through the extensive record - 15 hours of testimony and numerous documents.

BACKGROUND AND RECOMMENDATIONS

As you know, we discussed with you prior to the public hearing several staff concerns regarding the applicant's proposal to develop a golf course within the Resource Conservation Area as an RCA-compatible use. Discussions with you and several current and former staff members, and independent staff review of the literature and interviews, led to the considerations and recommendations presented to the panel. The staff did not recommend approval or denial, but instead presented conditions which should be imposed if approval is granted. These are discussed below:

Residential Development - The staff believes that construction of a golf course on land intended to retain its RCA designation should preclude all future residential development, even at a density of one dwelling unit per 20 acres.

Construction of a golf course represents significant alteration of the landscape. Massive grading and contour shaping is required. The finished course must be intensely managed to maintain its character and appearance. Land use is changed to a degree significantly more intense than the Criteria definition of the RCA: "characterized by nature - dominated environments (that is, wetlands, forests, abandoned fields) and resource-utilization activities (that is, agriculture, forestry, fisheries activities, or aquaculture)". If the Commission approves the Queenstown Harbour project as a RCA use, it should recognize the special circumstances of development and management, and should restrict further disturbance of the site. The acreage of the site in the Critical Area would yield 19 dwellings. To permit these 19 dwellings in addition to the golf course would be to sanction a level of development far beyond the conservation of resources presumed in the Criteria. The development capacity of the site as Resource Conservation Area should be considered exhausted by construction of the golf course.

Water-Dependent Facilities - The Queenstown Harbour site contains a boat house and dock area. The staff is concerned about the use of this facility in conjunction with the public operation of the golf course. We believe that public use of the dock represents a type of activity inconsistent with RCA status for private lands. The golf course is not intended to operate as a

facility of the Queen Anne's County government. If it were, public docking facilities could be viewed as an enhancement of the golfing experience or as a means of providing additional shoreline access. However, as a private development project in the RCA, human disturbance should be kept at the minimum level possible. In addition, it may be difficult to justify increased use of the existing facility due to the need to protect the nearby great blue heron rookery and the reported poor water quality of Queenstown Creek.

Environmental Impacts Associated with Golf Courses - The decision being made on the Queenstown Harbour Golf Course could be a precedent-setting one as far as locating new golf courses within Resource Conservation Areas. Golf courses, even though providing large expanses of "open space", are for the most part intensely managed artificial environments. There are environmental impacts associated with golf courses that you should be aware of. Primarily these impacts are related to the grading and general disturbance that is part of the initial construction and the possible sedimentation associated with this; alteration of existing habitats and ecosystems; the presence of large numbers of people; and direct and indirect impacts to wildlife and water quality stemming from the use of certain pesticides and fertilizers.

The Queenstown site is at present partially farmed with 198 acres now existing as agricultural land within the Critical Area out of a total of 394 acres. Therefore, the issues relating to a total ecosystem change do not pertain. However, there are some particular concerns related to the Queenstown site from a wildlife standpoint. The Chester River in this vicinity is a historic migratory and wintering ground for waterfowl, particularly Canada Geese and Black Duck. In addition, the Eastern Neck National Wildlife Refuge is located across the river from the property. In other words, there is an abundance of wildlife in the vicinity, especially waterfowl.

Golf courses in general tend to attract many species of birds for feeding and nesting due to the wide expanse of greens, ponds, and the general diversity of habitat. This is cause for concern because of the intense management associated with golf courses. To obtain the cosmetic appearance demanded on golf courses in this country, label rates for use of pesticides can be three times as great as those for agricultural use. Many documented poisonings have occurred on golf courses and other turfgrass operations due to the use of certain pesticides. It is understood that the applicant proposes an Integrated Pest Management Plan (IPM) using

a variety of methods to control pests in addition to chemicals. However, it is our understanding that even at best, with existing technology, implementation of IPM will only reduce the amount of pesticides used by 50%.

There is further concern over the list of pesticides that would be used on the project. The list, provided in January of 1990 as part of the Environmental Assessment for the project, contains several chemicals that are a threat to wildlife. One of these, diazinon, was banned for use on golf courses in March of 1988 by the Environmental Protection Agency. Yet, it was still included as part of an Integrated Pest Management Plan. However, even after diazinon is removed from the list there are other pesticides proposes for use that could pose a threat to wildlife.

Isophenphos, and insecticide on the applicant's list is placed in Toxicity Class I (the most toxic) by the U.S. Fish and Wildlife Service. (Certain pesticides have been rated from Toxicity Class I, most toxic, to Toxicity Class V, least toxic, in relation to their effects on wildlife.) According to laboratory tests, isophenphos has a moderate to high acute oral toxicity in test mammals and bobwhite quail. The U.S. Fish and Wildlife Service states that not enough data exist to predict the overall avian and mammalian toxicity of isophenphos. Partly because there are no data on the effects of field application and field tests on wildlife, the fate of isophenphos in the environment is largely unknown. However, there is documentation of bird kills associated with the use of this pesticide. More information is needed on this chemical because of its apparent high acute toxicity.

Chlorpyryphos, also on the list, is in Toxicity Class II. There have been reports of geese found dead on golf courses treated with chlorpyryphos in addition to mortalities of ground-feeding songbirds such as robins. Chlorpyryphos is considered to be toxic to fish, crustaceans, and bees.

Of additional concern is the use of carbofuran, an insecticide, that is reported as being used on the agricultural portion of the property. Approximately thirty acres will remain in agricultural use within the Critical Area. Carbofuran has been responsible for killing birds such as Canada geese,pintail duck, hawks, and great blue herons to name a few and is suspected in the mortalties of small mammals. It is listed in Toxicity Class I in the above referenced U.S. Fish and Wildlife Service publication. Even though it is not proposed for use on the golf course, it will be used within the Critical Area in close proximity to any species that are attracted to the golf course.

Generally it has been assumed that if a pesticide is registered and used according to its label restrictions, it will cause no adverse impacts to wildlife. This has been found in many instances not to be true. The Environmental Protection Agency bases most of its assessment of pesticides on the risks associated with exposure to humans. Impacts to wildlife are expected to be "minimized" by labeling. In many cases the studies have not been done to determine what impacts will occur with exposure to mammals other than humans or to aquatic life.

Other environmental impacts associated with golf courses include possible contamination of groundwater or surface water from pesticides and fertilizers. There seem to be discrepancies between the Environmental Assessment and the testimony provided at the adjudicatory hearing as to the amount of surface water that would be directed to ponds constructed to hold run-off or directed to tidal waters, versus the amount of this water that would infiltrate. Without knowing where the water will end up, it is not possible to predict environmental impacts. It seems to be agreed that the shallow groundwater at this site probably discharges into tidal waters rather than into deeper drinking water aquifers, therfore, human health issues are not as much of a concern. However, the additional input of nutrients into the Chesapeake Bay, particularly nitrogen in this case, and the possible input of pesticides into the surrounding waterbodies is of concern.

Also of concern is the human disturbance factor associated with golf courses, the physical disturbance and noise associated with groups of people. There are some species, such as bald eagles, black duck, and blue heron that tend to avoid areas where human activity is present to any great extent, particularly with regard to nesting. For example, there is concern that a blue heron rookery may be impacted by the human activity on the site once the golf course is in place. Species that have used portions of the site in the past may not return with an increase in human activity.

RECOMMENDATIONS

If the Critical Area Commission approves the proposed golf course as a permitted use in the Resource Conservation Area, the following conditions should apply:

1. Dwellings shall not be developed within the Critical Area;

2. The existing dock area on Queenstown Creek shall not be used in conjunction with the public operation of the golf course;

3. An analysis shall be performed to determine potential impacts to surface and groundwater quality. This shall be used as a basis to develop a monitoring program;

4. Monitoring of groundwater shall be conducted for pesticides and nitrates and the ponds shall be monitored for pesticides to ensure that concentrations do not exceed EPA water quality criteria. The monitoring program shall be developed by a qualified expert approved by the Critical Area Commission Chairman. This monitoring shall include a baseline study before any changes to the property occur.

5. An updated Integrated Pest Management Plan shall be reviewed by the Commission staff along with any future changes that occur. Chlopyryphos and Isophenphos shall be deleted from the pesticides to be used on the golf course. Carbofuran shall not be allwed for use on the portion of the property that is farmed within the Critical Area. (We recommend that it not be used on the site at all.)

6. The golf course shall not be lighted for nighttime use.

REFERENCES

Edmondson, Jolee. 1987. "Hazards of the Game." Audubon, National Audubon Society. p. 25-37.

Bohmont, Bert L. 1990. The Standard Pesticide User's Guide. Prentice Hall, Inc. Englewood Cliffs, N.J.

Pesticide Use and Toxicology in Relation to Wildlife: Organophosphorus and Carbanate Compounds. U.S.

Fish and Wildlife Service. Resource Publication 170. Washington, D.C.

Rottier, Barbara et al. 1988. Evaluation of Pesticide Impacts on Golf Course Wetlands and Riparian Habitats. New York State Adirondack Park Agency. Ray Brook, N.Y.

Stone, W.B. 1980. Bird Deaths Cause by Pesticides Used on Turfgrass. N.Y.S Turfgrass Conf. Proc. 4:58-62.

Stone, W.B. 1979. Poisoning of Wild Birds by Organophosphate and Carbanate Pesticides. N.Y. Fish Game J. 26:37-47.

Stone, W.B. and Peter B. Gradoni. 1987. Poisoning of Birds by Cholinesterase Inhibitor Pesticies. N.Y.S. Dept of Env. Cons. Delmar, N.Y.

CHESAPEAKE BAY CRITICAL AREA COMMISSION

Public Hearing - Queen Anne's County
April 23, 1990

Staff Summary and Recommendations

The Washington Brick and Terra Cotta Company has proposed development of a golf course in Queen Anne's County. The portion of the site within the Chesapeake Bay Critical Area is designated Resource Conservation Area (RCA).

Queen Anne's County implements its Critical Area Program through an overlay system. Existing zoning categories and their permitted uses and densities apply, but are controlled and limited by Critical Area provisions. The site of the proposed golf course is zoned Countryside (CS). This zone permits certain institutional uses by right. Institutional uses include outdoor recreational facilities, such as golf courses.

The County's Critical Area Program prohibits commercial and industrial uses in the RCA. The program specifically requires the Chesapeake Bay Critical Area Commission to determine if institutional uses, permitted in the underlying zone, are actually commercial or industrial by nature, and therefore, prohibited.

The applicant's proposed golf course is the first institutional use, as defined by Queen Anne's County, submitted to the Commission for such a determination.

Summary of Proposal Within Critical Area

Critical Area designation underlying zone	RCA Countryside
golf course holes (standard) par 3 holes	27 9
acres in Critical Area existing acres in agricultural use agricultural acres to remain	394 198 30
existing acres in forest forest acres to be removed forest acres to be planted within Buffer	80 7 29
acres to be disturbed acres of impervious surface	232 4 (1.1%)

Considerations

1. The proposal appears to meet the technical requirements of the Queen Anne's County Critical Area Program for development within the RCA, including provisions for a 300-foot Buffer and 50% afforestation with the Buffer.

2. The applicant does not propose buildings, roads or parking areas within the Critical Area.

3. The Chesapeake Bay Foundation, in a letter to the Commission dated April 26, 1989 (attached), outlined factors it considered relevant to an analysis of golf courses in the RCA. These factors are:

   "(1) whether developing the course would require a significant change in land features;

   (2) whether the proposed golf course would be located adjacent to areas that are already developed and have infrastructure to accommodate its use;

   (3) whether the golf course would incorporate best management practices; and

   (4) whether the proposed golf course would provide for public use and access to the Critical Area."

4. When the Commission reviewed local Critical Area Programs, certain golf courses were designated RCA. Others were designated as Limited Development Areas (LDAs). Generally, the distinction focused on the amount and intensity of development (buildings, impervious areas, sewer and water facilities, etc.) adjacent to and within each particular golf course. Those courses located in rural areas, with low levels of adjacent development were designated RCA. Where adjacent development was primarily LDA, and infrastructure existed to service future development, the Commission approved the golf course as LDA. The Commission did not base original mapping designations of golf courses on the degree of land disturbance which had occurred or the intensity of land management practices.

5. Certain chemicals on the applicant's list of

fertilizers and pesticides may pose a risk to water quality, aquatic resources and wildlife. For example, one substance, Diazinon, has been prohibited by the Environmental Protection Agency for use on golf courses particularly because of its role in waterfowl kills.

6. If the panel and Commission determine that the golf course proposed by the Washington Brick and Terra Cotta Company is a permitted use in the RCA, the staff recommends the following conditions:

(a) Dwellings shall not be developed in the Critical Area, except through the use of Growth Allocation.

(b) Existing water-dependent facilities on Queenstown Creek shall not be used or expanded for access to the golf course.

(c) The applicant shall provide to the Commission for its approval:

(1) a revised list of fertilizers and pesticides to be used;

(2) a summary report of the chemicals in (1) above which specifies application rates and timing of applications;

(3) an analysis of potential impacts to surface and groundwater quality and fish, plant and wildlife habitat;

(4) a revised, more detailed program of Best Management Practices including a program of Integrated Pest Management, which minimizes effects on water quality, aquatic resources and wildlife.

(d) Stormwater shall be managed for quality and quantity before reaching existing tidal and nontidal wetlands.

(e) In order to assure protection of the Great Blue Heron nesting area, final site plans for the par 3 course and the driving range shall be submitted to the Maryland Forest, Park and

Wildlife Service. It is not clear from the applicant's Environmental Assessment that impacts from the par 3 course and driving range were considered in relation to the nesting area. Recommendations of the Forest, Park and Wildlife Service shall be incorporated into the site plan. Copies of all correspondence shall be forwarded to the Commission.

(f) The Commission should make specific findings that:

(1) its decision pertains solely to the golf course proposed by the applicant at this site;

(2) the Commission is not precluded from denying or imposing conditions on a golf course proposed at a different site where the Commission determines that water quality and fish, plant and wildlife habitat would be adversely affected.

Staff Contacts: Dr. Sarah J. Taylor
Mr. Ren Serey

Chesapeake Bay Foundation

"Environmental Defense - Environmental Education - Land Conservation"

162 Prince George Street • "The Church" • Annapolis, Maryland 21401
301-268-8816 (Annapolis) 269-0481 (Baltimore) 261-2350 (Washington, D.C.)

April 26, 1989

RECEIVED

APR 27 1989

DNR
CRITICAL AREA COMMISSION

Mr. Robert R. Price, Sr., Esq.
Acting Chairman
Maryland Critical Area Commission
West Garrett Place, Suite 320
275 West Street
Annapolis, MD 21401

Dear Mr. Price:

At its April meeting the Critical Area Commission discussed the issue of when golf courses in the Critical Area should be classified as LDA or RCA, and it is our understanding that a committee of the state Commission will address this policy issue on the third of May. We believe that it is appropriate for the state Commission to establish guidelines governing this issue and we would appreciate its consideration of the following comments.

The difficulty of this issue is reflected in the different classifications that counties have given to golf courses thus far, with some having classified them as Resource Conservation Area (RCA) while others have classified them as Limited Development Area (LDA).

In our view, the designation of new golf courses should hinge on consideration of the following factors: (1) whether developing the course would require a significant change in land features, (2) whether the proposed golf course would be located adjacent to areas that are already developed and have infrastructure to accommodate its use, (3) whether the golf course would incorporate best management practices and (4) whether the proposed course would provide for public use and access to the Critical Area.

With respect to the first of these considerations, concerning changes to land features, we believe it would not be appropriate to classify a golf course as RCA if its development would rely predominantly on clearing forested areas in the Critical Area or major topographical alterations in the Critical Area. If, on the other hand, land has already been cleared and if

land is currently cultivated for agricultural purposes, its conversion to a golf course may actually reduce the sedimentation, nutrient enrichment and toxic runoff that reach the Bay or its tributaries. The extent of a golf courses impacts would also depend on whether best management practices are incorporated in its development.

In order to apply these general principals, the Commission and local governments would have to review each proposal on a case-by-case basis to make a factual determination of its likely impact and to impose conditions on its development, as necessary. It would assist such a review for the state Commission to adopt guidelines for what constitutes best management practices for golf courses.

The first three considerations listed above tie into basic thrusts of the Critical Area Criteria, i.e. minimizing disturbance to the RCA and concentrating development in or near areas with existing infrastructure. The fourth consideration, concerning public access and recreation, does not directly stem from the criteria but indirectly supports the dominant thrust of the Critical Area Program, as explained below.

Many of the land use restrictions that apply to the RCA and even to the LDA have the effect of reducing the density of residential development. We believe this is appropriate and have always supported these policies. However, we believe that alternative provisions should be made for the public at large to use the Critical Area and to have access to the Bay. It is worth noting in this regard that the 1987 Bay Agreement, signed by the Governors of Virginia and Pennsylvania as well as Maryland, identifies increased public access and recreation as a major goal of the Bay restoration effort.

Public golf courses, that is golf courses the use of which is not restricted to private members, provide a form of public access and recreation in the Critical Area. We support such use as a matter of policy provided that the other considerations listed above are fully complied with.

We appreciate the Critical Area Commission's consideration of these comments.

Sincerely,

Saunders C. Hillyer
Director Lands Program

SCH:pb
cc: Sarah Taylor, Ph.D.

STAFF REPORT

June 6, 1990

APPLICANT

State Military Department

PROJECT

Chestertown Armory Expansion

RECCOMENDATION

APPROVAL with conditions.

PROJECT DESCRIPTION

The State Military Department is requesting Commission approval to expand its existing armory in Chestertown. Presently located at the site is an existing armory building, a garage, and some parking. There is a flood wall in place immediately behind the existing facility. Proposed for the site is an additional building, new military parking at the rear of the building, and additional parking for private cars along one side of the existing building. Also proposed is a flood wall to the rear and sides of the facility.

The entire site is within The Critical Area and most of the site is within the 100 year floodplain. The majority of the proposed building addition and the military parking at the rear of the site are within the Buffer. There will be 7,769 square feet impacted within the Buffer. New impervious area within the Critical Area will be increased by a little over half an acre. No non-tidal wetlands will be impacted by the project. Tidal wetlands will be only minimally impacted by a stormwater outlet.

A 10% reduction in pollutant loadings from the site is required. The applicant proposes the use of a detention chamber to remove sediments, oils and greases before discharge into the wetland. To offset the encroachment into the buffer, the applicant has proposed the planting of 8,184 square feet with trees. These plantings would be on the property within or adjacent to the

buffer. Part of the planting will be located inside the floodwall and part outside of the wall.

The reason given by the applicant of project need is to bring the Chestertown Armory into compliance with current criteria for Army National Guard facilities. The initial proposal for this project placed the addition out of the floodplain and the buffer, however, the Maryland Historical Trust determined that the addition would have to be moved to the back corner of the existing armory so as not to obscure the historical facade of the exising building.

Other alternatives considered by the applicant included construction of a new facility outside of the floodplain (determined to be too expensive) and no action (determined to be not acceptable from an operational viewpoint). The applicant has not documented reduction of impacts on the existing site.

CONDITIONS

The staff recommends that alternatives be considered to reduce development within the Buffer:

This would include renewed dialog with the MD Historical Trust on character of the existing building, yet, locate the addition out of the Buffer.

Also to consider is a reduction in the amount or location of parking spaces, including utilization of parking sites across the road from the site or elsewhere out of the Critical Area.

After these alternatives have been considered the applicant should submitt any revised plans or addtional documentation to the Commission for approval by the Subcommittee.

STAFF CONTACT

Claudia Jones

no wetlands

STAFF REPORT FOR THE
CRITICAL AREA COMMISSION MEETING, JUNE 6, 1990

SUBJECT: Maritime Zone Amendment to the Port Deposit Critical Area Program

COMMISSION ACTION: Vote by 7-30-90 to approve or deny

DESCRIPTION: The Town of Port Deposit has submitted an amendment to their Zoning Ordinance adding a Maritime Zone, which is an amendment to the Critical Area Program. The Maritime Zone language describes permitted uses in the new zone and requirements for development including road access, parking, sanitary facilities, storage of gasoline, setbacks, height limits, and landscaping. An 800-slip marina is currently proposed for the site.

The addition of the new zone is proposed within 17 acres of the Intensely Developed Area section of the Critical Area of Port Deposit. The site is also a buffer exemption area, so it must follow the requirements of the buffer exemption program outlined in the Port Deposit Critical Area Program, rather than maintaining a 100-foot minimum shoreline buffer. In the buffer exemption program, water-polluting activities are prohibited, including, but not limited to, storage of vehicles, fuel, or chemicals (Zoning Ord., Section 6, #13, Part 3.b.). Expanding or redeveloping existing structures cannot increase the total impervious area by more than 25%, nor can existing structures be expanded towards the water. [Zoning Ord., Section 6, #13, Part 3.c.(1)]. When an existing structure is removed or destroyed, it may be replaced no closer than 100 feet from the water or wetland edge, insofar as possible; if a setback line is defined by existing structures on adjacent land, the structure cannot be replaced shoreward of that setback line [Zoning Ord., Section 6, #13, Part 3.c.(2)]. New development must minimize the shoreward extent of development, never closer than the required Town setback [Zoning Ord., Section 6, #13, Part 3.c.(3)]. New impervious surfaces must be offset by planting twice the extent of the impervious area in a Buffer Exemption Offset Area, or fees-in-lieu paid [Zoning Ord., Section 6, #13, Part 3.c.(4)]. Shoreward of the development or redevelopment, the land must remain in or be established and maintained in natural vegetation (ibid).

Requirements for developing a marina in an Intensely Developed Area include reducing pollutants in runoff from the site by 10%, and assessing the environmental impact of the proposed marina on water quality and aquatic resources such as fish spawning areas and shellfish beds. New marinas are required to include pump-out facilities for boat sewage holding tanks. No Habitat Protection Areas are on the immediate site, but some submerged aquatic vegetation beds have been mapped just downriver from the parcel.

These requirements are not specifically mentioned in the new zoning language, but will be required for any new development or redevelopment through the overlay zone, already implemented in the

Zoning Ordinance. In the new Maritime Zone, the site plan review requires consideration of all applicable federal, state, and local laws, but does not give a list or examples. The local procedure for site review is described, but the requirement to send in plans to the Critical Area Commission is not mentioned explicitly. However, the Zoning Inspector is required by state regulation to send in any site plans for development in the buffer or plans that call for disturbing more than 15,000 square feet.

The public hearing was held on May 29, 1990.

STAFF RECOMMENDATION: Approval

STAFF REPORT
June 6, 1990

Jurisdiction: Charles County

Issue: Captain Billy's Restaurant - pending Building Permit for an addition (steamroom) to the restaurant, which was completed without any applicable State or County or federal permits, and without local Critical Area Review.

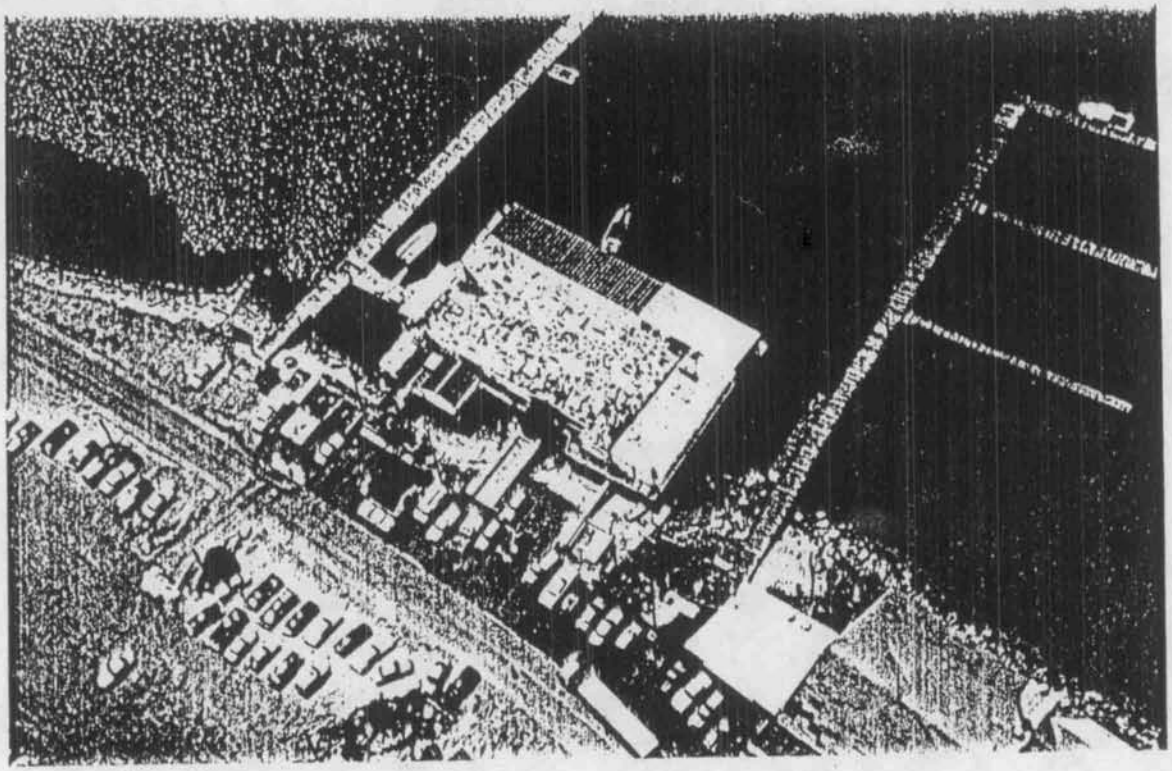
Location: Tax Map 73, Grid 19, Parcel 41, adjacent to the Pope's Creek Natural Heritage Area, along the eastern shore of the Potomac River.

Site Description/History: Captain Billy's restaurant was in existence as early as 1971, as is indicated on an aerial, infrared photograph taken of the area at that time. The restaurant was built atop piers over the water, disconnected physically with the shore. An aerial photograph taken in 1985 reveals that the area between the shoreline and the restaurant had been filled and a covered walkway, connecting the restaurant with on-shore parking areas, was been built within this filled area. Recent (1990) aerial photographs of the site indicate that several additions (including the steamroom) have been made to the restaurant since the 1985 aerial photo was taken. These additions have been built toward open water from the original restaurant structure, as it existed in 1985. The expansion of Captain Billy's Restaurant came to the Commission's attention through information forwarded from DNR-Water Resources Administration, Enforcement & Services Program, as an investigation is being conducted of apparent violations of DNR regulations. A U.S. Army Corps of Engineers permit has not been issued for he construction of these structures, in addition to a County Building Permit not having been issued. According to photographs taken on-site recently, erosion control measures have been constructed south of the restaurant. These measures consist of telephone poles and large pieces of concrete rubble placed along the shoreline.

A meeting was scheduled on Wednesday May 30, 1990 in reference to this matter. Bill Burgess, DNR-WRA, Enforcement & Services Program, was in attendance along with additional DNR staff involved in the investigation of this site. Judge North and Sarah Taylor were also present. Based on the photographs presented at the meeting, and the lack of permits for construction completed, Judge North is sending a letter to the Charles County Commissioners asking for additional information in reference to the future issuance of a building permit for the addition, and clarification of the local Critical Area review of the entire site. Compliance with the local Critical Area program is in question should a building permit for the addition be issued without following the variance provisions in the local ordinance.

Staff Contact: Susan L. Barr

(1)



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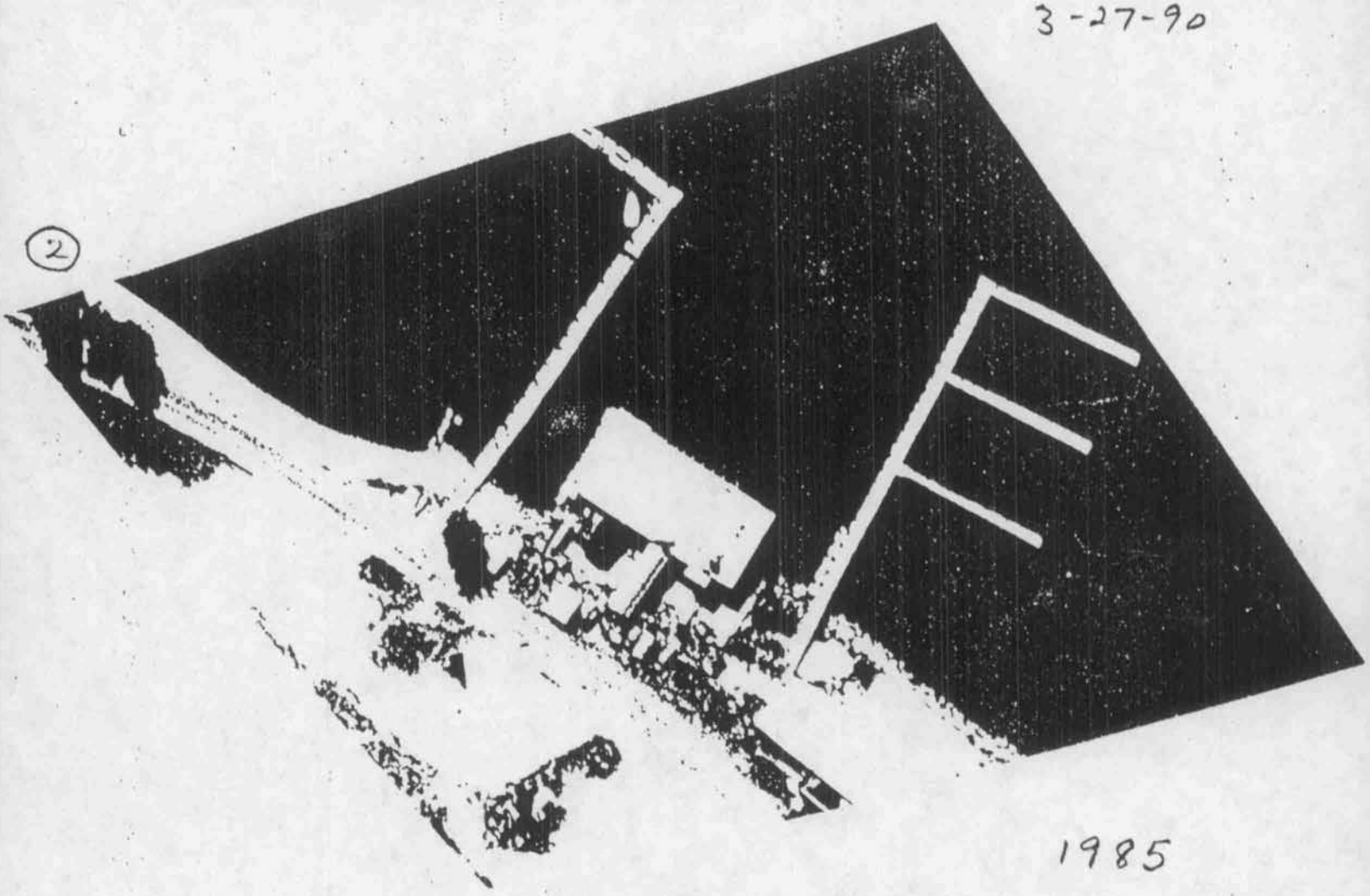

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CRITICAL AREA COMMISSION
STAFF REPORT

June 6, 1990

Project: University of Maryland, Horn Point Laboratory, Seawater Pumping Station

Discussion: The seawater project will be an upgrade of an existing river water delivery system which draws water from the Choptank River for use by various aquatic research laboratories at the University's Horn Point facility in Cambridge. The project includes a concrete water intake and pumping structure located along the shoreline. The pumping structure will deliver river water at 4,500 gallons per minute through underground plastic piping to the different laboratories. The channel bottom of the Choptank will be dredged to a depth of 8 feet below Mean Low Water to provide a free flow of water to the pump. The system will use existing as well as new piping, where needed. A filtration structure (metal building) will be established for finfish and shellfish hatcheries. The project also includes bulkheading, stone revetment and reinforcement of an existing stone groin to stabilize the significantly eroding shoreline and protect structures.

Notable aspects of the project include:

- The 2 buildings and most of the pipeline will be located in clear areas. If it is necessary to remove trees for the pipeline, all trees will be replaced in the 100-foot Buffer.
- Existing sediment ponds will be regraded and used to receive discharge water.
- Existing dredged material disposal sites will be regraded and used to receive newly dredged material. Previously dredged material will be spread and stabilized in sites outside of the Buffer.
- The net increase of impervious surface on Horn Point acreage will be negligible.
- The seawater pump is "water-dependent".
- All Corps of Engineers and DNR permits have been obtained for dredging and disposal, regrading of existing ponds and shoreline erosion structures. The project was determined to not have a significant impact on SAV, anadromous fish or shellfish.
- There will be no adverse effects to HPAs.

Staff Recommendation: Approval with the conditions of tree replacement and final review of sediment erosion control and stormwater management plans by MDE.

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

June 18, 1990

Mr. Joe Stevens
Planning Director
Dept. of Planning & Zoning
208 N. Commerce Street
Centreville, MD 21617

Dear Mr. ~~Stevens~~ Joe:

With regard to the letter from the Queen Anne's County Commissioners to Ren Serey dated May 22, 1990, the County has two options on how to address the amendment in question (addition of heliports and airports to uses not allowed in the RCA). Prior to July 1, 1990, this addition would have to be addressed by the Critical Area Commission as a Program amendment, with the required public hearing and Commission review.

As a result of the passage of HB 1062, after July 1, 1990 the County may submit the proposed change to the Critical Area Commission as a refinement, thereby foregoing the need for the lengthy amendment process and public hearing. HB 1062 was supported by the Joint Oversight Committee as a means of simplifying the amendment process. This was in response to testimony given by the local jurisdictions at the regional hearings held by the Joint Oversight Committee last summer.

As soon as we get a "clean" copy of the signed bill in this office, we will be sending it out to all the jurisdictions notifying them of the change in process for amending their Critical Area Programs. Enclosed for your information is a final copy of the bill I had in my files.

Since July 1 is very close, the easiest way for the County to proceed is through the refinement process. Please let me know how you wish to handle this matter. Also, if you have any questions, please let me know.

Sincerely,

Pat Pudelkewicz

Patricia J. Pudelkewicz, Chief
Program Implementation Division

PJP:msl

Enclosure

cc: County Commissioners of
Queen Anne's County
Dr. Sarah J. Taylor
Mr. Ren Serey