

Commission meetings @ Groves

Aug 1990

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JOHN C. NORTH, II  
CHAIRMAN

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

WEST GARRETT PLACE, SUITE 320  
275 WEST STREET  
ANNAPOLIS, MARYLAND 21401  
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SARAH J. TAYLOR, PhD  
EXECUTIVE DIRECTOR

COMMISSIONERS

Thomas Osborne  
Anne Arundel Co.

James E. Gutman  
Anne Arundel Co.

Ronald Karasic  
Baltimore City

Ronald Hickernell  
Baltimore Co.

Albert W. Zahniser  
Calvert Co.

Thomas Jarvis  
Caroline Co.

Kathryn D. Langner  
Cecil Co.

Samuel Y. Bowling  
Charles Co.

G. Steele Phillips  
Dorchester Co.

Victor K. Butanis  
Harford Co.

Wallace D. Miller  
Kent Co.

Parris Glendening  
Prince George's Co.

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

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

Ronald D. Adkins  
Somerset Co.

Shepard Krech, Jr.  
Talbot Co.

William Corkran, Jr.  
Talbot Co.

William J. Bostian  
Wicomico Co.

Russell Blake  
Worcester Co.

July 24, 1990

Dear Commission Member:

The August 1st meeting of the Critical Area Commission will be held at 1:00 P.M. in the Commission offices at 275 West Street, Suite 320, Annapolis, Maryland.

Enclosed for your review are the Minutes of the July 11th meeting and the Preliminary Agenda for next month.

Please bring your calendars with you as we will need to decide upon a retreat date for the Commission if the members decide on a retreat. I look forward to seeing you on August 1st.

Very truly yours,

Judge John C. North, II  
Chairman

JCN\p gm

CABINET MEMBERS

Wayne A. Cawley, Jr.  
Agriculture

Robert Schoepflein  
Employment and Economic Development

Robert Perciasepe  
Environment

Ardath Cade  
Housing and Community Development

Torrey C. Brown, M.D.  
Natural Resources

Ronald Kreitner  
Planning

## AGENDA

August 1, 1990

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

1:00 - 1:15 Approval of Minutes of July 11, 1990 John C. North, II  
Chairman

### AMENDMENTS/REFINEMENTS

1:15 - 1:30 Town of Betterton - Program Refinement - Vote on:  
Rigby Bluff II - Growth Allocation Pat Pudelkewicz

1:30 - 2:00 Calvert County Program Amendments - Vote on:  
1) Halle Marina Susan Barr  
2) Tax Map 8 - Map Amendment  
3) Ship's Point Research Park  
Map Amendment  
4) Revision of Text -Definition  
Amendments for "forest" and  
"developed woodlands"  
5) Map Amendment - First District

### LOCAL PROJECTS

2:00 - 2:15 Anne Arundel County Update on Sylvain Pool Appeal Pat Pudelkewicz

2:15 - 2:30 Somerset County - Updates Crisfield, Hammock Pointe,  
Carson Property Tom Ventre

2:30 - 2:45 Dorchester County - Update Cambridge Country Club Tom Ventre

### STATE PROJECTS

2:45 - 3:00 State Railroad Adminis. Rehabilitation of Hunting  
Creek Bridge (Caroline and Dorchester Counties) Claudia Jones

### REGULATIONS/LEGISLATION

3:00 - 3:15 Oil and Gas Proposed Resolution Liz Zucker

3:15 - 3:30 Old Business John C. North, II  
Chairman

3:30 - 3:45 New Business Commission Retreat Subcommittee Updates John C. North, II  
Chairman  
Chairmen of Subcommittees

CHESAPEAKE BAY CRITICAL AREA COMMISSION

Minutes of Meeting Held  
July 11, 1990

The Chesapeake Bay Critical Area Commission met at the Rustic Inn Restaurant in the Talbottown Shopping Center, Easton, Maryland. The meeting was called to order by Chairman John C. North, II with the following members in attendance:

Ronald Adkins	William J. Bostian
Samuel Y. Bowling	Victor K. Butanis
William H. Corkran, Jr.	Joseph J. Elbrich, Jr.
Parris Glendenning	Thomas L. Jarvis
Kathryn D. Langner	G. Steele Phillips
Michael J. Whitson	W. Roger Williams
Albert W. Zahniser	Ardath Cade of DHCD
Louise Lawrence of DOA	Robert Schoeplein of DEED

The minutes of the meeting of June 6th were approved as written with the modification (that it was the Commission members' understanding and decision to further discuss the proposed oil and gas resolution as an Agenda item for a future meeting) that a clarification of the vote be made on the oil and gas regulations taken at the meeting of May 2nd.

Chairman North asked Ms. Liz Zucker to give her interpretation of what transpired at the last meeting.

Ms. Zucker stated that her understanding was that there were two issues concerning the Draft oil and gas regulations: one was the issue of approving the Draft regulations for promulgation and the other, initiated by Mr. Hickernell, was the possibility of going to the General Assembly with a resolution of perhaps prohibiting surface drilling in the Critical Area. She said that there were two votes taken during that discussion. The first vote (pg. 14 of the minutes of June 6th) was on the motion to initiate the promulgation process for the oil and gas regulations. The motion for that vote was made by Mr. Gutman. After the first vote there was a discussion initiated by Mr. Hickernell regarding a resolution for prohibiting drilling in the Critical Area. The discussion was then followed by a vote (pg. 17 on the June 6th minutes) which carried unanimously. However, after listening to the tape of the June meeting, it was not clear whether a formal motion had been made about the resolution.

Mr. Joseph Elbrich suggested asking Mr. Ronald Hickernell to see if he was actually making a motion or discussing it as a motion. (Mr. Hickernell was not in attendance at the July 11th meeting). He also stated that it was his recollection that it was something that would be discussed in an upcoming meeting as a definite Agenda item.

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Mr. Samuel Bowling stated that he recalled that the vote was to put the issue on Agenda for discussion vs. endorsing an actual resolution.

Mr. William Corkran agreed with Mr. Bowling's recollection of the events.

Mr. William Bostian concurred with Mr. Corkran and Mr. Bowling.

Ms. Zucker recommended that further discussion of the resolution be deferred until the August meeting, as the Department of Natural Resources was not represented at the July meeting.

A motion was made and seconded to approve the minutes as presented with the modification (that it was the Commission members' understanding and decision to further discuss the proposed oil and gas resolution as an Agenda item for a future meeting) and the vote was carried unanimously.

Chairman North made presentations of Certificates of Recognition to persons who were formerly with the Critical Area Commission but no longer involved. Certificates were presented to Charlie Davis, former planner with the Critical Area Commission; Lee Epstein, former Assistant Attorney General to the Critical Area Commission; Constance Leider, former Secretary of Department of State Planning; Senator Frank Raley, Jr., former Senator for St. Mary's County and Critical Area Commission original member; Ronald Karasic, Baltimore City Solicitor and former Commission member; Thomas Osborne, former Anne Arundel County Planning and Zoning Director.

Chairman North then asked Ms. Claudia Jones to report on the Maryland Department of Transportation Bridge Repair over Fishing Creek on Maryland Rt.335 in Dorchester County.

Ms. Jones said that the Maryland Department of Transportation proposes to replace an existing swing bridge that is in poor condition with a 22' wide fixed span bridge. She said that at present, the 20' wide bridge is signalized, allowing one-way traffic down the center of the roadway. She said that the proposed re-placement structure is to be constructed to the west of the existing structure. Ms. Jones stated that the total area of anticipated disturbance is approximately 2.13 acres and includes construction of the approach roadways, access driveway paving and bridge abutments and of this, approximately .52 acres is tidal wetland.

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Ms. Jones said that other environmental concerns include disturbance to the stream bottom during construction and removal of the piers. She reported that there is an oyster bar within 500 yards of the proposed construction as well as submerged aquatic vegetation (SAV) within the shallow water areas of Fishing Creek. She said that a time-of-year restriction will be placed on any instream work to protect both the oyster bar and the SAV from impacts due to sedimentation by the Division of Tidal Wetlands. She also said that Highway Administration is proposing to mitigate for wetland losses by creating a tidal wetland of similar character and they are presently trying to locate a site in the vicinity of the impact that would be appropriate.

She said that the staff recommended approval of the project with the condition that MDOT provide Commission staff with the opportunity to comment on the mitigation plans.

Mr. Samuel Bowling made a motion to approve the panel's recommendation subject to Commission review of the mitigation proposal, any further DNR restrictions that may be imposed and further, ask that a review of possible recreational use of the existing bridge be made.

Mr. Schoepflein seconded the motion.

Chairman North called the question. The vote was carried unanimously.

Mr. Bostian requested that it be noted for the record, that he opposed the part of the motion for nontidal wetland mitigation as being impractical in a part of Dorchester County that is replete with nontidal and tidal wetlands, but is in favor of the project itself.

Ms. Claudia Jones then reported on the William Preston Lane Jr. Memorial Bridge - U.S. 50/301 (Bay Bridge) Administration Building, Weigh Station, & Toll Plaza Modifications. She said that the Maryland Transportation Authority in Anne Arundel County proposes several projects in the vicinity of the toll plaza at the Chesapeake Bay Bridge. She stated that they want to add two new toll booths with the associated pavement; to reactivate the weigh stations on the east and west sides and to add a scale house to each of those and remove the existing garage and maintenance building and replace it with a new one in the same location with only a small amount of additional impervious surface. She stated that there would only be a resultant 3.6 acres of new impervious surface with proposed stormwater management in the form of vegetative plantings. She stated that the staff recommendation was

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to approve the request.

Mr. Joseph Elbrich asked if it is known how much of the project area drains into the grass area.

Mr. Keith Durling, Deputy Engineering Director for MTA, introduced Ms. Susan Rudy of Greiner, Inc. consultant, who did the environmental design for the area and explained the design for runoff.

Ms. Rudy stated that west of the project there was space to create a vegetated buffer strip in an area that varies from 80 feet to about 30 feet. She said that the buffer strip would have a 20 foot wide grass filter strip on the edge which would not be mowed, and then shrubs would be planted in rows diagonally so that the water will run off, be diverted into the shrub hedge which would be backfilled with mulch - a kind of temporary infiltration trench with pin oak and loblolly pines in back of the infiltration strip.

A motion was made to approve the panel recommendation as proposed; it was seconded and the vote carried unanimously.

Chairman North asked Mr. Tom Ventre to report on Hammock Point in Crisfield regarding an Appeal of a Local Grant of Variance.

Mr. Ventre said that a Grant of Variance was given on an individual lot in a subdivision known as Hammock Pointe in Crisfield by the Crisfield Board of Zoning Appeals. He said that the City notified the Critical Area Commission of the request for variance; it was examined and the conclusion was that a variance to the site, as presented, was not justifiable because there were reasonable alternatives available for the site (house and a garage). He said that the staff wrote back to the Board of Appeals noting the findings and opinion of the staff that a Grant of Variance was not completely justified. Nevertheless, Mr. Ventre said that the Board of Zoning Appeals did vote unanimously to grant the variance to the Buffer setback. He said that the issue is the integrity of the regulations and guidelines, both the State mandates and the local ordinances and the awards of variance when there is no demonstrable hardship.

Mr. Samuel Bowling asked if there were any buildings in the Buffer.

Mr. Ventre replied that there were no buildings there yet. He said that it is a residential subdivision of 29 lots and that the one in question is one of four that have been sold and there is no construction yet. Mr. Ventre said that everything was being

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done according to the requirements and regulations as far as the Critical Area is concerned. He described the residence and garage proposed to be erected on a triangular lot and with a buffer on two long sides of the triangle, located at the end of a cul-de-sac. He said that the house is partially in the Buffer and the garage is entirely in the Buffer. He demonstrated to the Commission how he had drawn modifications on an overlay to indicate to the Board of Zoning Appeals how the garage could be relocated so that it was entirely outside the Buffer.

Mr. Bowling asked if Mr. Carson wanted to put the garage between the house and the water.

Mr. Ventre replied that was one of the things he had pointed out and had discussed with Mr. Buddy Carson, the property owner, as far as aesthetics go, but aesthetics, per se, are not in the Criteria.

Chairman North stated that when he and Mr. Ventre visited Mr. Carson, he appeared very sympathetic generally to the Critical Area Program and wished to comply with the Commission's suggestions and requirements. Chairman North stated that he was entirely cooperative and congenial, and that it seemed to be simply a question of working out a layout that is in accord with the Critical Area requirements and what suits Mr. Carson's aesthetic taste.

Mr. Adkins asked what the reduction in the Buffer would be.

Mr. Ventre replied that it was 30 feet.

Mr. Bowling asked if there were any trees there.

Mr. Ventre replied there were none and that the entire subdivision used to be an old dredged spoil site .

Mr. Adkins asked how much tidal wetlands were beyond where the house will be placed.

Mr. Ventre said that there is extensive wetland on South Jersey Island.

Mr. Adkins asked whether he was not coming within 35 feet of the open water with his structure but maybe coming within 35 feet of tidal wetlands, maybe several hundred feet away from open water at that site in the Buffer.

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Chairman North said that there is an enormous amount of tidal wetlands adjacent to and near the property.

Mr. Adkins asked if there was any discussion about incorporating the garage into the house.

Mr. Ventre said that Mr. Carsen doesn't want that design because he has worked with his architect on the design he wishes to have.

Mr. Jarvis asked how many other lots will come under this same situation if this one is on a cul-de-sac.

Mr. Ventre said that of the three others which have been sold there has been construction on two, but the construction was outside the Buffer.

Mr. Bowling stated that when the Commission was considering an exclusion for Chesapeake Beach, credit was allowed for the expanse of non-tidal wetlands that were adjacent to property for filtering action and an allowance was made for exclusion. He asked if there was an allowable gain could we allow Mr. Carson some credit for the filtering action of that tidal wetland, and the buffering action of nontidal wetland.

Mr. Elbrich asked if the subdivision was approved by the Critical Area.

Mr. Ventre replied that in 1985, the subdivision was hurried through before a deadline and approved and recorded in November; however, subsequent to that, the City misunderstood - grandfather status notwithstanding, Buffer provisions still apply. So, the Buffer was not demarcated, or was incorrectly demarcated on the entire site. He stated that he had worked it out with the city that the demarcations would have to be redone to correctly reflect the setbacks from the Annessex on the one side and the tidal wetlands to the southeast, clearly demarcated on the State tidal wetlands maps. However, in that interval 4 lots were sold and one to this individual known as Mr. Carson.

Mr. Bowling asked if the Attorney General had looked at this and what he thought of it.

Mr. Ventre replied, yes he had and he thinks that on the principle of inconsistency and ignoring ones own rules, that there is something "appealable".

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Mr. Zahniser stated that if the Board of Appeals are not doing their job then the Commission in this case should intervene.

Mr. Thomas Jarvis asked whether someone else had already built in that development would have liked to have had a variance but didn't ask for a it.

Mr. Ventre said that the two properties he was familiar with did go ahead and build and did not request a variance.

Mr. Jarvis then asked if there was the potential for further building of properties in the Buffer.

Mr. Ventre answered that there could be because when the Buffer line was re-demarcated, corrected by the engineer and the new developer, the buildable area on some of the lots would be considerably reduced.

Mr. Zahniser stated that there are houses being built throughout the State that are being built in the Buffer but they are having to prove hardships to their local Board of Appeals. In this case, the owner had no hardship. He stated that the driveway could be located accordingly because it is not a previously built on lot.

Mr. Ventre said that there is the matter of precedence but there is also a mitigating situation in that the wetlands nearby are so enormous. He said that the site has sewerage and water.

Mr. Zahniser said that if the Board of Appeals had the wetlands as a consideration in their findings, then he could go along with it but if this wetland is accepted what happens in in the future when there is an infringement into the Buffer.

Mr. Bowling recapped it by saying that they violate their own rules.

Mr. Ronald Adkins stated that since it is not a known fact that they violated their own rules because it is not known how they made the decision, then the Commission doesn't know for sure if there was a hardship - because the findings of fact you use to base whether there was evidence of hardship is not available; therefore, Mr. Adkins stated that he thinks it is unfair to say that they violated rules.

Mr. Adkins stated that what they did do is disregard the Commission's advice. He said that the crux of the problem is the issue of design of the house because there is apparently Buffer on

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at least 2 sides of the lot and it is only a three sided lot resulting in a hardship based on the shape of the lot. He summarized the problem as the placement of the garage on the street side as opposed to the water side.

Mr. Bowling said that he believed that the negligence is against the Board of Appeals and not the property owner.

Mr. Bostian asked if it was possible to go back to the BOA informally and get them to write a set of facts and findings instead of the Commission intervening with the Circuit Court of Somerset County against the City of Crisfield.

Chairman North, Mr. Bowling and Mr. Adkins expressed agreement with Mr. Bostian's suggestion and Chairman North asked if the matter should be passed over for future deliberations at another time.

Ms. Cade stated that it be left to the Chairman's judgement.

Mr. Elbrich recommended that negotiations be made with the property owner to see if there was a mutually acceptable "better location" with less impact.

Chairman North said that was already done with no headway.

Chairman North asked Ms. Anne Hairston to report on the Variance Appeal of Ronald Sylvain in Anne Arundel County.

Ms. Hairston said that the variance request is for an inground swimming pool within 56' of the water. She said that it is on an existing developed lot in Anne Arundel County and that the existing house has a covered porch, walkway and gazebo all entirely in the Buffer already and that the pool is requested for the side of the yard, even with the edge of the house (not closer to the water). She said that Anne Arundel County law prohibits pools in the front yard, which is the water side of a waterfront lot.

Ms. Hairston said that the County does not intend to appeal the case and is satisfied with the finding of facts that were filed. She said that the lot is a little over 1/2 acre and that there was enough land behind the buffer to place a pool, but sewer and water lines and overhead power lines are in that area. She outlined the reasons cited for granting the variance which were that the applicant had always planned a pool and that they would not have purchased the property if he had known that he could not have had the pool; and the property owner had utility lines routed to avoid the proposed pool location.

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Ms. Hairston said that a sketch plan was submitted in 1986 and the Office of Planning and Zoning had no problems with it then. The variance was approved by the Board of Appeals on May 30, 1990 with two conditions: 1) that the applicant must undertake the actions to preserve water quality presented at the hearing; and 2) because the impervious surface would exceed 15%, an area of the buffer equal to that disturbed for the pool must be revegetated in trees.

Mr. Bowling said that he doesn't believe the Commission has enough information to make a determination on whether or not the variance was justified.

Ms. Hairston agreed that enough information was not available and she did not have all the information which showed the layout of utility lines.

Mr. Elbrich stated, for the record, that most variances for swimming pools have been denied and when approved are usually for health reasons.

Chairman North recognized a motion to defer further consideration pending additional information being submitted. The motion was seconded.

Mr. Elbrich asked if in deferring judgement if there were any time deadlines for intervention.

Chairman North suggested that it be scheduled for final determination at the next monthly Commission meeting.

The vote was taken, Mr. Elbrich abstained, 15 were in favor.

Chairman North asked Mr. Ventre to report on the Local Grant of Variance from Buffer Requirements for Cambridge Country Club golf course in Dorchester County.

Mr. Ventre said that Dorchester County, as a matter of procedure, submitted to the Chesapeake Bay Critical Area Commission for review and comment a request for a variance being sought by the Cambridge Country Club to allow a variance from the Buffer requirements in order to enlarge the golf course and to construct new tees and greens within the demarcated 100-foot Buffer. He said that after reviewing the documentation and the Dorchester County ordinance, which expressly prohibits non-water dependent uses from the water front Buffer, the variance could not be justified. He reported that comments were sent back to Dorchester County in time

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for the Board of Appeals hearing on the case and the Board granted the variance without conditions.

Mr. Ventre recited comments from the letter telefaxed to the Board of Appeals: the conclusion of the Commission that a variance in this case is not justifiable is based on the following: a) there is no evidence or demonstration that an application of Dorchester County's Critical Area requirements and regulations would result in a hardship to the applicant, furthermore - redesign and realignment of proposed tees, greens and fairways may offer reasonable alternatives outside the Buffer; b) a golf course is not a water-dependent activity according to the definition of same in the Dorchester code at Section 155-47C; Only water-dependent activities may be approved for the Buffer; and, c) stormwater runoff in Resource Conservation Areas, is an issue that was not addressed at all in any documentation submitted by the County.

Mr. Bill Bostian asked if there were already tees and greens in the golf course?

Mr. Ventre replied, as far as he knew, no.

Mr. Steele Phillips stated that the Dorchester Planning Commission recommended the Board of Appeals not grant the variance.

Mr. Ventre said that documentation was not in the records.

Mr. Corkran said that according to his recollection there are no tees or greens.

Mr. Ventre stated that the decision of June 21, 1990 has not been appealed by the Commission to date.

Ms. Cade asked if the Commission had corresponded with the County to again suggest that it appears that the decision is not in conformance with their regulations.

Mr. Ventre said that he did not reiterate it in subsequent correspondence as he felt the initial correspondence stated it very clearly.

Ms. Langner asked if a panel should investigate.

Mr. Bowling stated that it seemed to him to be almost confrontational and Chairman North agreed that it did appear that way without a lot of negotiating room.

Mr. Ventre said that it is described as an additional 9 hole golf course with a total acreage of 133.78 acres, total in the

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Critical Area of 67 (+) or (-) acres.

Mr. Williams said that it has been planned for about 15 - 20 years.

Mr. Ventre said that a Special E.exception was requested in 1989 and therefore a file does exist on this property, that everything is procedurally correct but the outcome is the issue.

Mr. Bowling stated that it appeared that the County was ignoring its own law, to which Chairman North agreed.

Mr. Adkins clarified the situation by stating that the point of being in the Buffer, once they vary the Buffer, is what they determine the Buffer to be, so that by reducing it to wherever the point is, then that is the remainder of the Buffer. He further stated that the real issue is the Variance itself and the need to have it there to begin with because of the hardship and any appropriate cause it may make.

Mr. Adkins said that the Commission's response in the suit is that they have not made the appropriate findings to make the decision favorable. He said that it is not known that they have identified hardship issues, but if they do vary the Buffer, then the buffer is a 100 feet no longer but it is whatever they vary it to be.

Mr. Ventre said that he did raise that point saying that a redesign could eliminate the whole problem and the need to go through the Variance procedure. He stated that the issue is not the golf course per se, or golf courses in RCA, but a very clear and obvious violation of the local Buffer rule regarding construction in buffers which clearly states that it must be a water-dependent use.

Mr. Elbrich asked if the Special Exception in 1989 showed the golf reconfiguration, because if the Special Exception was approval of a golf course then we may have a problem taking an appeal on something we have tentatively approved when commenting on something in the buffer when it may have been approved already.

Mr. Ventre said that he believed that the Special Exception was to allow a golf course in an R2 Zone.

Mr. Bowling asked if a Special Exception was approved for an R2 Zone, could it be approved without attention to the Buffer.

Mr. Ventre said that he could not make that determination

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based on what was submitted in 1989, it looked like a generalized site plan.

Mr. Schoepflein said that he believed more specific information was required.

Mr. Greg Moore, from Andrews, Miller and Associates represented the applicants, Cambridge Country Club, in processing that appeal of the Buffers. The one request for the variance to 0 from the 25 point nontidal setback was done on the 10th green which has already been filled, adjacent to a roadway designated by COE as an already filled area and the golf course wishes to use that area for a green. The appeal wording may sound like the golf course intends to go up to the limits of nontidal wetlands which is not the case. The other areas asking exemption from tidal, or wetland buffers of 100 feet are in areas that are already farmed which will not encroach the 100 foot Buffer. He said that the layout of the golf course is essentially the same as it was in 1989 when the Special Exception was granted.

Mr. Bowling asked if the Special Exception would carry with it the condition of a 100 foot setback at all times.

Mr. Moore replied that the Special Exception gave the golf course the right to exist in that zone and had nothing to do with Critical Area. The RCA issue was completely separate from that Special Exception. The Special Exception was necessary even without the Critical Area law which was passed.

Mr. Bowling said that the Special Exception seems to require that everything be setback 100 feet and if that is true nothing would be in the Buffer.

Mr. Moore stated that the County zoning regulation that require greens and tees be 100 feet back from public right of ways and any disturbance has to be 100 feet from tidal wetlands, buffers or 25 feet from nontidal. He said that the V.variance is asking for two things, a Variance from the Critical Area and the County zoning code.

Mr. Corkran stated that he believed there was insufficient information to make a decision.

Mr. Zahniser asked about the 30 day time frame.

Chairman North said that there were 30 days to make an appeal.

Mr. Zahniser made a motion to give intervention authority to

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Chairman North to take action as deemed appropriate in his judgement to meet the 30 day deadline.

Mr. Corkran seconded the motion and the vote carried unanimously.

Mr. Ventre informed the Commission that an appeal would have to be filed before July 21, 1990.

Chairman North instructed Mr. Ventre to notify Mr. Tom Deming, Assistant Attorney General, of the intent to file appeal.

Chairman North asked Mr. Ventre to report on the Proposed Local Program Amendment in Dorchester County known as the Vaughan property.

Mr. Ventre stated that Dorchester County, File No. DC-A, has requested a Growth Allocation/Land Reclassification for a residential subdivision known as Beagle Run. He said that the request is for 6.3 acres reclassified from RCA to LDA. Mr. Ventre said that the Commission staff did visit the site and found no issues of habitat, Buffer or nontidal wetlands. He also said that a local public hearing was conducted and an award of growth allocation was granted by the Dorchester County Commission.

Mr. Schoepflein, the panel Chairman, said there were no comments on this request expressed at the hearing and none from the Commission staff. He said that the recommendation was to approve the request. He made a motion to approve the request for Growth Allocation/Land Reclassification for a Residential Subdivision, DC-A-15, in the Dorchester County critical area, awarded by the Dorchester County Commissioners for 6.3 acres for the Subdivision known as Beagle Run. The motion was seconded and the vote carried unanimously.

Mr. Ventre reported on the Proposed Local Program Amendment in Dorchester County known as the Frey property.

Mr. Ventre stated that Dorchester County, File DC-A 16 has requested a Growth Allocation/Land Reclassification for a Residential Subdivision known as Sherman's Landing. He said that the request is for 30.58 acres reclassified from RCA to LDA. Mr. Ventre said that the Commission staff visited the site and found a strip of wetland but no issues of habitat, Buffer or nontidal wetlands. He said that a panel hearing was held in Cambridge and they recommended approval of the request.

Mr. Schoepflein made a motion to approve the growth allocation

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award and reclassification of 30.58 acres known as Sherman's Landing. It was seconded and the vote was carried unanimously.

Mr. Ventre reported on the Proposed Local Program Amendment in Dorchester County known as the Pallas property.

Mr. Ventre stated that Dorchester County, File DC-A 17 has requested a Growth Allocation/Land Reclassification for an interim subdivision. He said that the request is for 30.5 acres reclassified from RCA to LDA. Mr. Ventre said that the Commission staff visited the site and found no issues of habitat, Buffer, nontidal wetlands, forest or woodland habitat. Mr. Ventre said that a panel hearing was held and the panel recommendation was to approve the request.

Mr. Schoeplein stated there were no negative comments regarding this property and he made a motion to approve the request for growth allocation and reclassification in Dorchester County for 30.5 acres identified as the Spiros Pallas property.

Mr. Glendenning commented that it is the right of a local jurisdiction to use its growth allocation in any way that it wants provided that it is consistent with the State law and the approved plan. He cautioned the Commission that the growth allocations just presented are being formally recognized as requests and not technically approved because that is decided by the local process that is consistent with the State law and the adopted and approved local plan and therefore, the Commission doesn't have the right to deny that growth allocation.

Chairman North called the question. The vote carried unanimously.

Chairman North asked Ms. Claudia Jones and Mr. Tom Ventre to report on the growth allocation request in Somerset County.

Mr. Ventre reported that Somerset County, File No. SO A-2 has requested a Growth Allocation/Land Reclassification for residential subdivision known as Megan's Lots. He said that the request is for 20,000 square feet, reclassified from RCA to LDA. Mr. Ventre said that the Commission staff visited and found no habitat, Buffer or nontidal wetlands issues. He said that a local panel hearing was held and the recommendation is to approve the request.

Mr. Bostian made a motion to approve the local award for growth allocation and land reclassification in Somerset County in the Vessey Subdivision of Megan's Lots. The motion was seconded and the vote carried unanimously.

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Chairman North asked Mr. Schoeplein and Mr. Ventre to report on the Reconsideration of Growth Allocation for the McCauley Property in Dorchester County.

Mr. Schoeplein announced that he had summary comments and at the conclusion the motions that he will make are: 1) a motion to rescind action by the Commission at the May meeting of a "do not approve growth allocation of this interim property subdivision with Dorchester County". Assuming approval of the first motion he said that he would then make a motion that this Commission "approve the request for growth allocation for the McCauley property in Dorchester County".

Mr. Schoeplein said that the Dorchester County panel with others revisited this property on June 11, 1990. He said that a total of seven Commissioners, three members of the Commission staff, and four professionals representing the Maryland Department of the Environment, Dorchester County Soil Conservation Service and a private engineering consultant were at the site.

Mr. Schoeplein stated that the issue with the McCauley property was an appropriate concern by the panel regarding water quality, specifically sewage effluent. He said that subsequent to the decision of the May meeting, the Commission was provided with the report of the Dorchester County Health Department which indicated that the Health Department did, prior to the initial visitation of the property, approve the location and the square footage of a sewage area as indicated on the plat maps as being both necessary and sufficient for subdivision plat approval and a request for growth allocation. He stated that in consideration of the nature of the McCauley property, the Dorchester County Health Department will require that the engineering specifications for the sewerage disposal system be presented to the Health Department for review and approval prior to the issuance of a building permit.

Mr. Schoeplein stated that the Commission members who attended the second site visit learned from the professionals that a sewerage septic field would be periodically covered in part or whole by Bay waters during times of exceptionally high tide. He said that they were informed that there is a specified construction method that is used which includes tiling because of the high water table and a 6 - 8 inch cap of clay together with a vent pipe that rises approximately 3 feet above the clay area such that when Bay waters go over that field there will be no mingling of the waters during the time that the field would be partially or wholly submerged.

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Mr. Bowling stated that he would agree only because the area is void of most life, realizing that Mr. McCauley has done everything legally that he must do, but he believes this is the type of land that the Commission was charged to protect.

Mr. McCauley, as a citizen, commended the Commission members for the very thorough job in their review.

Mr. Schoepflein made a motion that the Critical Area rescind its vote of May 2, 1990 on the motion "not to approve a local award of growth allocation and land reclassification on the McCauley Property in Dorchester County." The motion was seconded and the vote was 15 in favor with Mr. Bowling abstaining.

Mr. Schoepflein made a motion that the Commission approve the local award of growth allocation and reclassification of land on 10.3 acres in Dorchester County within the Critical Area for the McCauley Property. The motion was seconded by Mr. Zahniser.

Chairman North called the question. The vote was 15 in favor with Mr. Bowling abstaining.

Chairman North commended the Commission on its conscientiousness and its courage in reconsidering a previous vote which showed signs of being in error. Saying that we can all make mistakes and be in error, he commended the Commission members again for a conscientiousness reexamination of an issue which it had at one time closed.

Chairman North asked Mr. Ventre to report on the Somerset County proposal for Text Changes.

Mr. Ventre described the long history of the Somerset County Program as being tentatively approved in 1988 with one of the conditions of approval that certain outstanding issues remaining between the County and the Commission be resolved through negotiation. He said that since that time, throughout all of 1989 there have been negotiations at the staff level culminating in the final sticking point of growth allocation. He said that all seven issues have been resolved and the recommendation of the panel is to approve the redrafted Somerset County Critical Area Protection Program which incorporates all changes which were to be made.

A motion was made to approve the redrafted local Somerset County Program, File No. SOA-3, which incorporates all the changes negotiated between the County and the Critical Area Commission. The motion was seconded and the vote carried unanimously.

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Chairman North announced that the discussion of the Proposed Resolution for the FY 91 Session of the General Assembly on Prohibition of Surface Drilling will be deferred because there was no representative from Department of Natural Resources in attendance. He said the matter would be carried forward to the next meeting.

Old Business

There being no old business, the meeting continued.

New Business

Chairman North announced the receipt of a letter from Queen Anne's County relative to the Queenstown Golf Links Project. He read the letter which described four farm houses that exist on the golf course site. The letter was to request whether the Critical Area Commission had any objection to the construction of new houses to replace the old ones in the Critical Area.

Ms. Cade asked what the impervious surface increase would be.

Chairman North said that the intent is that the same surface would be covered.

Mr. Glendenning said that he believed the request is a reasonable one if there is no change in environmental impact.

Mr. Corkran suggested that the staff take a look at the location for moving the houses to or where the new ones would be built.

Chairman North, upon examination by the staff and a recommendation to him regarding the houses, would frame an appropriate response to Queen Anne's County Department of Planning and Zoning.

Chairman North asked for volunteers for a panel for the Calvert County Amendments.

Mr. Bowling, Mr. Whitson, Mr. Schoeplein and Ms. Louise Lawrence volunteered for the panel.

There being no further business, the meeting was adjourned.

## JOINT RESOLUTION

A Joint Resolution concerning

Prohibition of Surface Drilling of Oil and Gas in the  
Chesapeake Bay Critical Area

FOR the purposes of prohibiting the surface exploration and production of oil and gas on lands of the Critical Area as recommended by the Chesapeake Bay Critical Area Commission pursuant to Natural Resources Article, Section 6-104.2.

WHEREAS, In 1984, the Maryland General Assembly passed the Critical Area Protection Law (Natural Resources Article, Sections 8-1801-1816) to provide for the continued protection of the water quality and natural habitats of the Chesapeake Bay through the management of land use activities within the Critical Area; and

WHEREAS, Under the Critical Area Protection Law, the Chesapeake Bay Critical Area Commission was established to implement the purposes of the Law; and

WHEREAS, In 1988, the Maryland General Assembly directed the Critical Area Commission to establish criteria to assure the protection of land and water resources of the Chesapeake Bay from oil and gas exploration and production activities within the Chesapeake Bay Critical Area under Natural Resources Article, Section 6-104.2; and

WHEREAS, The Critical Area Commission, in the process of developing criteria mandated under Section 6-104.2, examined the public benefits along with the environmental risks associated with surface drilling in the Critical Area with assistance from governmental agencies and private organizations representing both oil and gas industry and environmental interests; and

WHEREAS, The Commission, following a series of meetings and discussions, concluded that the potential adverse environmental risks to the Chesapeake Bay Critical Area including its water quality, natural habitats, and related commercial and recreational opportunities outweigh the public benefits derived from allowing surface oil and gas drilling activities within the Critical Area; now, therefore, be it

RESOLVED, That surface drilling for the purposes of oil and gas exploration and production is prohibited on lands within the Chesapeake Bay Critical Area.

## RATIONALE

At its meeting on June 6, 1990, the Critical Area Commission voted to recommend to the General Assembly that surface drilling of oil and gas be prohibited in the Critical Area. The decision for the proposed prohibition was based on the following factors:

--Even though spills and blowouts of hydrocarbons and drilling fluids are relatively uncommon during drilling operations, the Chesapeake Bay contains unique and sensitive ecosystems that could be devastated by a single spill or blowout event. The Bay system characteristically is relatively shallow with poor flushing capabilities. It provides for vast areas of wetlands and substantial populations of wildlife, waterfowl and aquatic resources. Water quality and natural habitat of the Chesapeake Bay could be irreversibly affected by a wellsite accident.

--A surface location of a wellsite that is greater than 1000 feet from tidal waters and wetlands can help to avoid or greatly minimize potential effects to Bay ecosystems from a spill or blowout event. As an example, a minimum drilling restriction of 1000 feet from Puget Sound, another large and valuable estuary, has been implemented in the State of Washington.

--If it is within the public's interest to obtain hydrocarbons from reservoirs under the Critical Area, the technology is available to reach Bay reservoirs from a wellsite surface location outside of the Critical Area. This was confirmed by representatives from the oil and gas industry.

--It is far easier and less expensive to prevent natural resource degradation than it is to correct it (if correction is possible).

In the process of devising criteria for oil and gas activities in the Critical Area under Section 6-104.2, Natural Resources Article the Commission analysed numerous techniques and management practices for avoiding or minimizing environmental effects from surface drilling operations. It was as a result of this analysis that the Commission determined that the most effective means available to assure protection of the water quality and natural habitats of the Chesapeake Bay from drilling activities is to recommend a complete prohibition of surface exploration and production drilling activities from the Critical Area.

CHESAPEAKE BAY CRITICAL AREA COMMISSION

275 West Street, Suite 320  
Annapolis, Maryland 21401

July 25, 1990

TO: Program Implementation Subcommittee

Victor Butanis, Ch./Joe Elbrich/Ron Adkins/MichaelWhitson/  
Larry Duket/Shepard Krech/Ron Hickernell/Roger Williams

FROM: Pat Pudelkewicz

PJP

SUBJ: Subcommittee Meeting - August 1, 1990 - 10:30 a.M.

AGENDA

1. Role of Subcommittee in Amendments/Refinements process.

Staff proposes that subcommittee review amendments and refinements, and make recommendations to full Commission on whether to override the Chairman's determination of a refinement (as called for in HB 1062).

2. Betterton Program Refinement - Rigbie Bluff II Growth Allocation
3. Issue of annexations - amendments or refinements
4. Update on enforcement issues

Hope to see you at the Subcommittee meeting. If you are unable to attend, please let the office know.

Thank you.

/jjd

cc: Dr. Sarah Taylor