

Commission Meetings & Corresp.

Sept 1990

MSA - 51832 - 74

AGENDA

September 5, 1990

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

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

PROGRAMS AMENDMENTS AND REFINEMENTS

1:10 - 1:40 Harford Co. - Growth Allocation - Boundary Adjustment - Bata Property Anne Hairston
Natural Resource Planner

→ *Talbot County 2 refinements = 1) language of handling growth allocation & map amendments - 2) consistency refinement on home occupation industry presented in 2 tables*
PRESENTATIONS AND UPDATES

1:40 - 2:15 Land Planning Services - DNR - Public Access Study John Wolf
Planner

2:15 - 2:45 Stadium Authority Baltimore City Stadium David Chapin - MDOT/Md. Stadium Authority
John d'Epagnier - RK & R Engineering

2:45 - 3:15 Updates on:
1) Queenstown Golf Course
2) Carsen Property (Hammock Pointe)
3) Sylvain Pool
4) Cambridge Country Club

Tom A. Deming, Assist. Attorney General /and appropriate staff as needed
Rep. Sereij

3:15 - 3:20 Update: Oil and Gas Regulations Elizabeth Zucker
Scientific Advisor

3:20 - 3:40 Update: Criteria Changes *Shore Erosion Handfathering* Sarah Taylor,
Executive Director

3:40 - 4:00 Old Business John C. North, II
Chairman

New Business
Announce site visit of Lady Maryland Foundation view 10% criterion - good example
Dawnn McCleary

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4) Cambridge Country Club

4:15 - 4:25	Update: Oil and Gas Regulations	Elizabeth Zucker Scientific Advisor
4:25 - 4:40	Update: Criteria Changes	Sarah Taylor, Executive Director
4:40 - 4:50	Old Business New Business	John C. North, II Chairman

CHESAPEAKE BAY CRITICAL AREA COMMISSION

Minutes of Meeting Held
August 1, 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 Chairman John C. North, II with the following members in attendance:

Samuel Y. Bowling	Victor K. Butanis
William H. Corkran, Jr.	Joseph J. Elbrich, Jr.
Parris Glendening	Thomas L. Jarvis
Kathryn D. Langner	G. Steele Phillips
Michael J. Whitson	W. Roger Williams
Albert W. Zahniser	John Griffin of DNR
Louise Lawrence of DOA	Dr. Shepard Krech
James E. Gutman	Ronald Adkins
Robert R. Price, Esquire	

The minutes of the meeting of July 11th were approved as written.

Chairman North asked Ms. Pat Pudelkewicz to report on the Town of Betterton Program Refinement.

Ms. Pudelkewicz reported that a request was received for Growth Allocation for the Town of Betterton for the project Rigbie Bluff II. She said that the request came in after the effective date of the new legislation, July 1, 1990, enacted this year on amendments and refinements. She described the project as a residential/commercial development on 2.181 acres in the Betterton Critical Area and the request to change LDA to IDA. Ms. Pudelkewicz said that it entails multifamily residential townhouse units (18 du) and a retail restaurant/deli. She said there were no buffer issues and that the underlying zoning was a C-1-Commercial Marine District.

She explained the justification for the refinement in that the growth allocation project does meet the requirements for a proposed amendment to be designated a refinement. Ms. Pudelkewicz said that according to the newly-adopted HB 1062, program refinement includes the use of growth allocation in accordance with an adopted Program. She explained other considerations regarding the project as:

- 1) the parcel of land on which the project will be built was designated as a site for future growth allocation in the Betterton Critical Area Program;
- 2) the growth allocation has been approved by the Betterton Planning Commission and the Mayor and Council;
- 3) the project was consistent with the underlying C-1 zoning and the Betterton Comprehensive Plan; and
- 4) requirements of the Betterton Critical Area Program and Zoning Ordinance have been met.

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She said that at the first Commission meeting where a quorum was present after the determination of the Chairman that a program amendment can be a refinement, the full Commission has the power (according to the newly enacted legislation) to override that determination if it so chooses. Ms. Pudelkewicz said that the issue before the Commission was to give them the opportunity to override the refinement. She said that at the subcommittee meeting that morning, August 1, 1990, a concurrence with the Chairman's determination of a program refinement was recommended.

Mr. Robert Price asked if a public hearing had been held.

Ms. Pudelkewicz replied that the Planning Commission had held public hearings with the Mayor and Council present. She added that after the determination of the Chesapeake Bay Critical Area Commission, one more public hearing will be held before the Planning Commission will give final site plan approval.

Chairman North affirmed that there was no objection to the determination of a program refinement for the Town of Betterton. The Commission held in favor of the Chairman's refinement determination.

Chairman North asked Ms. Susan Barr to report on the amendments for the Calvert County program, specifically Halle Marina map revision, Ship's Point Research Park map amendment, Tax Map 8 amendment, Revision of Text in definition of amendments for "forest" and "developed woodlands," and a map amendment for the first district.

Ms. Barr stated that there were five map amendments requested as a result of mistakes in original mapping. She said that they did not match the tidal wetlands maps, or had been incorrectly designated, and that Calvert County was working on correcting all of their maps to comply with the legal base of tidal wetlands.

Ms. Barr said that the amendment to Ship's Point was due to an oversight; a portion of the property was shown as LDA and the rezoning would show it to be IDA as originally intended, with those parcels adjacent to it as LDA.

Ms. Barr explained that Halle Marina's buffer exemption area designation has been intensely utilized as a marina and public recreation area, has no existing vegetation, and should have been exempted from the Buffer requirements as were other similar properties pursuant to Section 4-4.07C.3.

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Ms. Barr said that for Tax Map 8, the amendment is for conformance to the State wetland map in the area just north of the Chesapeake Beach Town Center. She said that the Critical Area line was supposed to be 1,000 feet back from State wetlands which would place the line farther east when corrected, closer to the Chesapeake Bay, removing a piece of land that was erroneously included in the Critical Area.

She said that the revision of the definitions of "Forest" and "Developed Woodlands" are being implemented to bring small lots into the replacement requirements of tree clearing in the Critical Area, and that the request to amend the adopted Calvert County Critical Area line was to bring into conformance with the State wetlands maps the entire first district and small portions of the second district of Calvert County. Ms. Barr said that the recommendation of the Commission panel was to approve the amendments with the condition that the proposed map changes, which are based on the State tidal wetland maps, would be approved subject to Commission verification for accuracy.

Mr. Bowling stated, for the record, that all the amendments were without opposition in all hearings which were held. He made a motion to approve the requests as a group, contingent upon there being no negative written entry from a hearing that was held Monday, July 30, 1990. The motion was seconded and the vote was carried unanimously.

Chairman North asked Ms. Pat Pudelkewicz to give an update on the Sylvain Pool Appeal in Anne Arundel County.

Ms. Pudelkewicz said that at the last meeting of the Commission, Ms. Hairston reported on the Sylvain Pool variance that had been granted in Anne Arundel County for a swimming pool in the Buffer. She said that the Attorney General's office had filed an appeal and a hearing had been scheduled for September 25, 1990. Ms. Pudelkewicz reported additional information had been received by the Critical Area Commission on the issue which was in Mr. Deming's office.

Chairman North asked Mr. Tom Ventre to update the Commission on the Carson Property, Hammock Pointe in Crisfield.

Mr. Ventre restated the Carson Property issue presented in Easton at the July Commission meeting (detailed by himself and Chairman North) as being a residential lot in a residential subdivision in Crisfield for which the owner, Mr. Carson, had applied for a variance from the Buffer requirements for the construction of a house, garage and driveway.

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He stated that the staff reviewed the proposal and sent comments to the Board of Zoning appeals. He said that since there was no hardship that could be demonstrated because of alternative site designs which could have accommodated all the structures outside the Buffer, it was believed that a variance was not warranted or justifiable. He said that the Board of Zoning appeals did not agree with the Commission panel's assessment and they granted the variance. An appeal was filed in Somerset County.

Mr. Ventre informed the Commission that he had written a Memorandum to Chairman North with his recommendation regarding this issue after reconsidering the facts and his recommendation was that the appeal not be pursued. He said that a certain Memorandum could be submitted to the Somerset County Circuit Court before August 11th, 1990 and that advice to Counsel should be expedient because of the deadline.

Chairman North stated that he had been over the issue in some detail as well as visiting the property with Mr. Ventre prior to the July meeting and that there were a variety of factors weighed in the balance. He stated agreement with Mr. Ventre's recommendation.

Mr. Larry Duket asked if there was any concern that Crisfield may consider it a precedent that economic hardship justifies variances.

Chairman North responded that he believed that, because an appeal was filed, Crisfield recognized the matter had been considered seriously. He stated, however, the conclusion was arrived at rather reluctantly and haltingly after intensive review.

Mr. Deming stated that his concern was the justification offered by the Hearing Officer which was reflected in the attitude and the decision of the hearing panel in Crisfield, and the Hearing Officer in Anne Arundel County which was one of total disdain for the existence of the Critical Area law. He said that the Hearing Officer opined that since the owner had planned to do something since 1984, that should be recognition of hardship and that notwithstanding, the adoption of the Critical Area statute, the Criteria and the Anne Arundel County Program alone was sufficient for a variance. Mr. Deming said that while there was no written decision in this case, it appeared that the primary factor taken into account by the Board was aesthetics for the placement of the garage. He stated that local programs must begin to view the issue of granting variances in the Critical Area to be more than "business as usual" and that if the Commission decides to end the appeal, this point should be made.

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Mr. James Gutman asked Mr. Deming how that could be accomplished in an appropriate way to convey that message to the local jurisdictions, either by letter or perhaps to proceed with the appeal.

Mr. Deming said that because the underlying factors don't justify going forward with the appeal and the burden of that would be without purpose, a better way would be to come up with a vehicle to demonstrate a way to inform the Boards of Appeals as to how to interpret the criteria for a variance.

Mr. Gutman asked if there was any other local opposition beyond the Critical Area Commission.

Mr. Ventre replied "no."

Mr. Joseph Elbrich recapped his understanding of the decision in that the Hearing Officer did not give a basis for the decision rendered and perhaps the Commission was looking at penalizing the property owner who sought the variance for a fault made by the Hearing Officer. He said that he would not want to be in the position of penalizing a property owner for a faulty decision rendered by a Hearing Officer.

Mr. Deming said that part of the problem was in having only 30 days to make a decision after receiving the Hearing Officer's opinion. He said that sometimes information comes in after the decision period has expired and, even if there was a justifiable variance, information which comes in after that time results in the property owner being the person penalized.

Mr. Ronald Adkins said that he doubted that most of the Boards interpret variances any more distinctly than from zoning variances and that although the Commission can say it is wrong, the approach of the Commission should not be to scold them but to give them direction in interpretation.

A motion was made and seconded to dismiss the appeal.

Chairman North called the question. The vote was unanimously in favor.

Chairman North asked Mr. Tom Ventre to give an update on the Cambridge Country Club in Dorchester County.

Mr. Ventre said that this was the only golf course in Dorchester County and that it was a private nine hole course. He told the Commission that he had met with the president of the Cambridge Country Club, a local businessman, and was informed that

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the Country Club had just bought some adjoining land to expand the course to a full 18-hole golf course. He told the Commission that the variance issue involved variances from the Buffer. He said the specific issues were the location of 2 greens and a new tee. He said the reason for the request to expand was to promote Dorchester County economically.

He stated that the site for the proposed 10th tee and green was the issue because it was in an area which had been maintained and mowed for years and that 1/3 of the property drains into tidal wetlands. Mr. Ventre said that he did raise the issue of water quality because of the chemicals used by golf courses and he suggested relocation to the west side of the course. He said that the rebuttal was architectural design interference because of all the considerations of golf course tee, hole and fairway distance placements, and to avoid an old existing burial ground.

He said that because of their reluctance to relocate, he suggested mitigating the Buffer infringement as well as mitigating the potential stormwater runoff. Cambridge Country Club agreed that was a possibility perhaps in design with bunkers and sandtraps to offset potential adverse impacts from the development.

Mr. Ventre said that in his initial response to the Board of Appeals, he pointed out that according to the Dorchester Code, structures are specifically not allowed in the Buffer and the only development that was allowed were water-dependent facilities. He said that he emphasized that a tee and green are not, obviously, water-dependent. He said that because of the constraints of the property, the requirements of golf course design as they see it, Cambridge Country Club maintains that they have no alternatives and the Dorchester Board of Appeals agreed with that. Mr. Ventre said that the Chesapeake Bay Critical Area Commission has filed an appeal.

Mr. Gutman asked if there was opportunity for the Club to acquire other property to expand this course as an alternative.

Mr. Ventre replied "no." He explained that the Club was purportedly strapped for funds and therefore the justification for hardship. Mr. Ventre said that the Club recently sold a right to the river's edge in the past year to the Horn Point Environmental Center.

Ms. Carolyn Watson asked how far into the Buffer the Country Club project was going.

Mr. Ventre replied about 20 feet.

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Mr. Corkran commented that if Mr. Ventre was concerned regarding insecticides in that area, they could be managed very well if there were to be a condition involved. He stated that after being exposed to many hours of testimony regarding environmental impacts where golf courses are concerned, he believed that golf courses do not necessarily have to impact environment, and that they could be beneficial. He asked Mr. Ventre to interpret "structure."

Mr. Ventre said that the Blue Regulations refer to "development activities" as well as structures and that the Dorchester Ordinances refer only to structures in the context of the Buffer.

Dr. Shepard Krech took exception to Mr. Corkran's contention that a golf course could positively impact the environment, stating that he objected to golf courses being in the Critical Area period, let alone invading the 100 foot Buffer and that the Commission should not allow it.

Mr. Steele Phillips said that there was a tidal marsh area in the Buffer that would act as a filter if pesticides were mismanaged and that this was an economically important project to Dorchester County and he would like to see a favorable vote from the Commission.

Mr. Gutman was concerned about the people factor being introduced into the wetlands and disturbing the habitat.

Mr. Ventre concurred that yes, golf carts and people could be going into the wetlands to retrieve golf balls.

Mr. Ronald Adkins stated he believed that the County was not following their own program and that he doesn't believe that the Commission knows what the basis was for the decision of the Board.

Mr. Gutman asked if their situation was one of economic hardship for the granting of the variance.

Mr. Ventre replied that is the principal test of granting variances, and that according to the regulations there must be a demonstrable hardship, presumably economic.

Mr. Gutman then asked the direct question of whether the staff position was that economic hardship was indeed the situation in this case.

Mr. Ventre replied that it certainly was part of the consideration but it was not a documented basis, only verbally

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expressed to Mr. Ventre that the Club would lose membership and go into decline if they can't expand.

Chairman North summarized the Commission discussion by saying although the Commission was not unsympathetic to the objectives of the Dorchester County proposal, it was believed that in order to approve the variance, it would be necessary to relocate the single hole out of the Buffer.

The Commission agreed with the summary of discussion and a motion was made to notify the Dorchester County Country Club by letter stating that although the Commission was not unsympathetic to the Club's desire to expand their golf course, the Commission believed that no part of the expansion should be within the Buffer and that the plans should be modified; that in consideration of their agreement to move the green that was already in the Buffer and their being amenable in the future to refrain from having any construction in the Buffer, then the Commission would be inclined to withdraw the appeal.

The motion was seconded and the vote was 15 in favor with Mr. Steele Phillips abstaining.

Chairman North asked Ms. Claudia Jones to report on the State Railroad Administration Rehabilitation of Hunting Creek Bridge in Caroline and Dorchester Counties.

Ms. Jones stated that the State Railroad Administration proposes to rehabilitate the railroad bridge at the Caroline/Dorchester County line where it crosses Hunting Creek. She said that the work included replacement of three piers and repairs to another, replacement of longitudinal and diagonal timber braces and replacement of retaining walls at both abutments. Ms. Jones said that there would be no change in alignment.

Ms. Jones said that there would be minimal surface area disturbance of approximately 1,000 square feet with the volume of excavated material less than 100 cubic yards. She said that a portion of the stream would have to be diverted to replace the piers which would probably be done with sandbags.

Ms. Jones reported the width of Hunting Creek to be approximately 50 feet across and said that it was a tributary of the Choptank River and spawning of several species of anadromous fish have been documented downstream of the project site. She said that the Department of Natural Resources will put a time of year restriction on any instream work of February 15 - June 15 to avoid construction impacts to these fish.

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She said that the Staff recommendation was for approval.

A motion was made to approve the request as proposed and seconded. The vote was unanimously carried.

Chairman North asked Ms. Theresa Corless to report on the Maryland-National Capital Park and Planning Commission Colmar Manor Nature Study Area.

Ms. Corless said that the M-NCPPC proposes to develop a nature study area in Anacostia River Park in Bladensburg, in Prince George's County. She said that the nature study area would consist of an interpretive nature trail, an observation platform that would overlook Dueling Creek and its tidal marsh, and a boardwalk from the nature trail to a dock on Dueling Creek providing canoe access to the area.

Ms. Corless said that the proposed area was home to a remarkable diversity of wildlife. She described the project in conjunction with construction of the dock, that Dueling Creek would be dredged to allow canoe access and approximately 852 cubic yards of sediment would be piped and deposited outside the Buffer in an approved disposal site for dredge spoils, in pond #1. She said that this pond had been used as a disposal site for dredge spoils from the Bladensburg Marina.

Ms. Corless said that a time of year restriction on the dredging was being considered by the Corps of Engineers to avoid disturbance to anadromous fish during spawning season. She said that the existing dirt hiking trail would be upgraded with gravel and woodchips, with boardwalks over wet areas as necessary and that there would be handicap access to both the observation platform and the boardwalk down to the dock by a handicap equipped van.

Ms. Corless stated that the staff recommendation was for approval with conditions as follows:

1. Clean-up of dumped articles and trash in the area, possibly by the Maryland Conservation Corps.
2. The pipe for the dredge spoils from Dueling Creek would initially follow the Floodplain Trail in the 100 foot Buffer, but would follow the trail outside the Buffer when possible. At the end of the trail, the pipe would continue along the toe of the slope outside the buffer and then up the slope to the disposal site in pond #1.

Note: A preferred alternative route for the dredge spoil pipe was for the pipe to come up through the marsh

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on Dueling Creek in the area of the proposed dock and boardwalk. The pipe would then follow the hiking trail around to the access road and follow the road down to the disposal site. The only disturbance to the Buffer would be where the pipe crosses the marsh. This area would be disturbed by the construction of the dock and boardwalk, and then revegetated. Thus, if routed through this area, the dredge pipe would cause no additional disturbance to the Buffer.

Mr. Steve Lotspeich from M-NCPPC, with the aid of a graphic plan reiterated the proposal. He said that the entire site was within the Critical Area, with the 100 foot Buffer extending along the river and Dueling Creek. He stated that M-NCPPC has a CORPS permit; that there would be replanting for mitigation on a 1:1 basis with supplemental reforestation in the Critical Area but outside the Buffer, and that there are no SAV in the Creek because of turbidity.

Chairman North asked how the spoil would be disposed.

Mr. Lotspeich said that there was a dredge disposal area used for the Bladensburg Marina.

Mr. Zahniser asked if motorized craft could use the facility.

Mr. Lotspeich replied no, it was not intended for motorized craft.

A motion was made to approve the request as proposed with conditions, including the preferred alternative route for the dredge pipeline. The motion was seconded and the vote was unanimously in favor.

Chairman North then asked Ms. Elizabeth Zucker to give a status report to update the Commission on the Oil and Gas Proposed Resolution.

Ms. Zucker said that there were two issues to discuss. The first was the status report of the draft regulations, and the second was a proposal for the resolution to go forward to the General Assembly for consideration of the possibility of prohibiting surface drilling for the exploration and production of oil and gas within the Critical Area. She said that the proposal for the resolution was initiated at the June meeting of the Critical Area Commission by Mr. Ronald Hickernell (who was absent at the July meeting).

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With respect to the draft oil and gas regulations, Ms. Zucker stated that the Commission had voted to go forth with the regulations at the June meeting; however, the regulations are still in the Assistant Attorney General's office waiting for review for legal consistency. She explained that there were five months to promulgation of the regulations and her concern was to meet the deadline of January 1, 1990. Ms. Zucker requested that Mr. Deming give the Commission a report on the status of his review of the draft regulations.

Mr. Deming stated that there are two sets of regulations, the ones developed by the Critical Area Commission and the ones that would apply Statewide, developed by Dr. Schwartz of the Maryland Geological Survey. He said that the two are linked by the statute procedurally and that they must be intertwined. It is his office's goal to not go forward with either set of regulations until they are both ready to appear in the same issue of the Maryland Register. He said the process was still on schedule and would be completed by January 1st, unless there is a need for a significant rewrite.

Mr. Gutman asked Mr. Deming if the work that has been done by the Critical Area staff was of legal sufficiency.

Mr. Deming replied that it was sufficient and that the Commission's regulations have been put on hold while waiting for the MGS regulations to be revised.

Mr. Gutman then asked Dr. Weaver if he needed more than a month to finish his draft.

Dr. Weaver stated that his draft was in the Attorney General's office.

Mr. Gutman indicated that September 1st is the target date for publishing the regulations in the Maryland Register.

Mr. Deming said that the regulations would go to the Register on or possibly before September 1.

Ms. Zucker then addressed the issue of the resolution of oil and gas. She said that the technology was available to reach the reserves underneath the Bay with directional drilling and that by moving the surface location of a rig another 500 feet was an insignificant request which should not present a hardship to the industry with respect to technology. She said that this conclusion was reached after discussions with MGS and representatives from the oil and gas industry who had served on the Technical Advisory Committee.

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Ms. Zucker stated that the concern of Mr. Hickernell was the possibility of spills and blowouts. She stated that even though such events are infrequent, an occurrence could be devastating, particularly to the Chesapeake Bay because it is a relatively shallow estuary with poor flushing capabilities and because there are many wetlands and aquatic resources that would be greatly affected by a well-site accident. She stated that by moving the surface drilling out of the Critical Area there would be a further assurance of protection for the lands and waters of the Critical Area, as mandated under the statute, by either greatly minimizing the effects or avoiding the potential effects from a spill or blowout event.

She stated that the Commonwealth of Virginia has a two-year moratorium on oil and gas drilling (both vertical and directional) in their Tidewater area. She stated that the draft regulations devised for drilling in the Critical Area could certainly be used by DNR when they review proposals for oil and gas exploration in places outside the Critical Area and she encouraged MGS to incorporate the standards into their set of regulations.

Mr. Robert Price asked if the prohibition against drilling would eliminate the need for the regulations or did it apply to storage, off-shore shipping, etc.

Ms. Zucker replied that the Commission would still go forth with its regulations which apply to storage, off shore shipping, etc., but there was a separate process to go forth with the resolution (regarding the prohibition of surface drilling in the 500 feet further setback).

Mr. Griffin stated that at the General Assembly a couple of years ago they discussed the question of whether to ban surface drilling altogether in the Critical Area and made the decision to not ban it categorically.

Dr. Kenneth Weaver stated that he agreed with Ms. Zucker that the transportation and storage kinds of activities are of more concern relative to the environment than the drilling, especially in an off shore area, which is forbidden in Maryland. He said that the spillage in ocean drilling was about 1.2% of oil spills and transportation of oil was about 26% per tanker. He stated that he agreed with Ms. Zucker's analysis that it did not make much sense to drill in the Critical Area when you are only talking about 500 feet. He said that there was a world's record for drilling up to 3 miles directional drilling, so 500 feet was nothing to industry. He said that he didn't think industry would be interested in drilling in the Critical Area anyway because of possible adverse

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effects. Dr. Weaver said that he had no problem with a resolution and rather than prohibiting something, it should be regulated very severely so as not to legislate it out of existence, as a personal opinion.

Mr. James Gutman proposed a motion to urge the General Assembly to reconsider their position to prohibit surface drilling in the Critical Area for oil and gas.

Dr. Krech asked if it was limited to drilling and not to exploration.

Mr. Gutman replied that if one explores with a drill, then that was limited, whereas seismic was not drilling.

Ms. Zucker stated that the resolution proposes that both exploration and production drilling be prohibited.

Mr. Griffin asked if the current statute directing the Commission to develop its regs gave the Commission the authority to deal with directional drilling if it was outside the Critical Area.

Mr. Deming replied, yes.

Mr. Parris Glendening suggested that the motion be made in a more positive way by saying "that direct surface drilling is prohibited and would be limited to directional drilling only."

Mr. Griffin asked if an unintended result could be encouraging the regs of 1001 feet outside the Critical Area.

Mr. Zahniser said that DNR has a set of regs and it may happen in any event even with our regulations being more stringent than DNR's.

Mr. Deming informed the members that a joint resolution can't amend the law, and the law right now says that you can drill in the Critical Area. He said the form of it would have to be changed and made a resolution of the Critical Area Commission recommending to the General Assembly that legislation be introduced to prohibit drilling in the Critical Area.

Mr. Gutman declined to restate the motion and requested Mr. Glendening do so with his amendment.

Mr. Glendening restated the motion that surface drilling for the purpose of gas and oil exploration and production be prohibited on land within the Chesapeake Bay Critical Area but be permitted through directional drilling.

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Mr. Zahniser seconded the motion as amended. The vote was unanimously in favor.

OLD BUSINESS

Chairman North asked Liz Zucker to report on the Queenstown Golf Course.

Ms. Zucker stated that on July 12, 1990, the Queen Anne's County Planning Commission held their public meeting and approved the final site plan for the Queenstown Golf Course. (She said that she filled in for Mr. Ren Serey who was on vacation at that time.)

Ms. Zucker said that she presented the Commission's five recommendations at the hearing. The Queen Anne's County staff indicated at the hearing that Queen Anne's County did not have the ability through their ordinances to impose the recommendations as conditions on a site plan approval.

She said that for the first condition (no residential 1/20 be allowed), Queen Anne's County would not put this condition on because in their staff report they said that no residential development has been proposed for this site, however if it were proposed, it would be sent to the Critical Area Commission and we could deal with it at that point.

Ms. Zucker said the second condition dealt with the existing water-dependent facilities on the Creek. The Commission recommended that these facilities not be permitted to be expanded or used for access to the golf course because of a compounding of uses. She said that the Q.A.'s County Planning Commission indicated that if the dock in Queenstown Creek were to be expanded for the golf course, it would constitute a commercial marina, which was prohibited in the RCA; therefore, it would not be permitted.

She said that the third condition was that the County develop a binding and enforceable integrated pest management program (IPM) to protect groundwater from the leaching of nutrient pesticides and other contaminants. She said the Commission staff would be available to assist Queen Annes's County in devising such a condition; and that the applicant previously expressed a willingness on a voluntary basis to present an integrated pest management plan and conduct water quality monitoring. She said that the IPM was submitted to the Commission.

Ms. Zucker said that the fourth condition was for the County to pursue with Queenstown the proposal to spray-irrigate effluent from the sewage treatment plant onto the golf course. She said that the applicant was pursuing this recommendation.

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She said the last condition was that before project approval was granted, the final golf course layout would be reviewed by the Critical Area staff as well as the nongame and urban wildlife program of the FPWS to ensure the protection of the heron rookery as well as other HPA's. She said the final site plan was the one reviewed by the Critical Area Commission as well as Forest, Parks and Wildlife Service. However, FPWS had originally recommended that the short course be moved away from the heron rookery. Ms. Zucker reported that the applicant said that Glen Therres, of FPWS, had been contacted and agreed that the short course could be developed, with use restrictions to be imposed if the herons returned to the area.

She said the Planning Commission accepted the final plan without any conditions.

Mr. Bowling asked if the Commission would be notified if dwellings were proposed at the RCA density.

Judge North said that we would receive notification of it but would have no control over it.

Mr. Griffin said that many hours had been invested in deliberation on the conditions and he believed that appropriate action should be taken to see that the conditions were pursued.

Mr. Deming read letters from Mr. Murray and Mr. Murphy reiterating their positions after the County hearing on July 12th. Mr. Murphy's letter to Judge North, dated July 24, 1990, asked the Commission to use intervention powers if the conditions are not made binding. He also asked to be permitted to make another presentation to the Commission at the August meeting. Mr. Murray's response to Mr. Murphy's letter to Judge North, dated July 26th stated that all the concerns represented by the Critical Area Commission recommendations were considered and evaluated by Queen Anne's County. He asked for rebuttal time at the August meeting if Mr. Murphy were allowed to speak.

Mr. Bowling asked the Chairman what are the options of the Commission.

Chairman North stated that the Commission can reconsider, intervene, suggest that the conditions originally recommended be required to be incorporated by the Queen Anne's County authority, or do nothing.

Mr. Griffin said that the issues regarding the dock as water access to the site, some clear way to enforce the integrated pest management agreement, and some basis to restrict further

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development were still unaddressed. He, therefore, made the motion to intervene as the appropriate measure according to law, and to try to negotiate a resolution with the Planning Commission to the 3 conditions which were placed on the approval and have not been adequately addressed.

Dr. Krech stated that he had received a letter from Mr. John Lee Carroll explaining that there were at least 7 other factors to the decision which had not been disclosed. He said that he believed that the conditions should be pursued.

Mr. Joseph Elbrich asked if the Commission conditions were merely recommendations or were they mandatory.

Chairman North said that they were not mandatory but it was the general feeling that they would be adopted, looked upon favorably and would be incorporated in the findings and determination that was made, which was not the case.

Mr. Corkran reminded the Commission that at the meeting in June the owners agreed to every condition. He said he believed that it should be sent back to the County.

Chairman North said he remembered their agreement as being the same and that a copy of the minutes would reflect that.

Mr. Deming suggested asking the Planning Commission to reconsider its action and to impose the conditions. He stated that the Commission should imply that if the County doesn't include them, then the Commission might take the next step - intervention.

Mr. Chris Drummond, representing Queen Anne's County Planning and Zoning Commission, said that the conditions were understood clearly to be recommendations and were taken seriously by the Planning Commission. He said that in his judgment, the Queen Anne's County Planning Commission does not have the authority under the zoning ordinance to impose conditions on site plan approval for hypothetical uses.

Mr. Glendening asked whether the conditions could have been made part of the approval if the applicant had submitted the application with the provisions that they had agreed to before the Commission.

Mr. Drummond said, yes an applicant could voluntarily restrict property.

Mr. Drummond said that the simplest way to impose restrictions on the use of the land is by recording such restrictions among the

Chesapeake Bay Critical Area Commission
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land records.

Mr. Glendening stated that he remembered the owners of the golf course agreeing to the conditions at the June meeting.

Mr. Drummond said that he doesn't know of any specific objection to the conditions from any representative of Washington Brick and Terra Cotta Company, but they may have sidestepped having to say it affirmatively to the Planning Commission by saying they didn't think the Planning Commission has the power to impose them.

Mr. Drummond said that if the Critical Area Commission intervened in litigation in Queen Anne's County arguing that the Planning Commission had the power and perhaps the duty to impose the recommendations as conditions, then the County would have to litigate over the power of the Planning Commission.

Mr. Glendening asked if the Planning Commission was the final planning authority.

Mr. Drummond said it has final authority over subdivisions and over site plans.

Mr. Adkins asked if other permits were required. Mr. Drummond replied that probably a grading permit from the Soil Conservation District and a building permit would be needed.

Mr. Drummond said he was told that the owners of the property did not intend to do residential building, but he did not know what would happen in the future or whether the Critical Area law would be around then.

Mr. Glendening explored a basis for appeal in that Washington Brick and Terra Cotta Company may have misrepresented their intentions to the Commission by agreeing to the conditions at the meeting in June but not to the Planning Commission.

Mr. Deming informed the Commission if that was the course of action then it must come within 30 days after the hearing on July 12th which left only 11 days to file an appeal.

Mr. Corkran said that because the owners agreed to all five conditions before the Commission, he felt a motion to appeal was appropriate.

Mr. Serey stated that in the many discussions that he had with the applicants, he did not recall that they said they would never build houses on the site and would agree to the conditions, but the answer he did get was that "we have no plans to ever build houses

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on the site" - which is a clear distinction.

After much discussion, and relying on Roberts Rules of Order, it was decided that an appeal was in order to keep the issue alive if there was no resolution to the matter before August 11th. Mr. Corkran seconded the motion to appeal and the vote was 16 in favor with Mr. Elbrich abstaining.

Chairman North asked Dr. Sarah Taylor to update the Commission on legislation.

Dr. Taylor distributed copies of the final signed bills - #1062 or Chapter 649 on program amendment and program refinement; and #1050 or Chapter 648 on impervious surface limitation. She said that the bills as well as letters of explanation would be mailed to all the local jurisdictions.

NEW BUSINESS

Mr. Bowling asked to have a resolve to the term "institutional usage." He volunteered to head up a panel for such a resolve with Ms. Kay Langner, Mr. James Gutman and Mr. John Griffin.

Ms. Dawnn McCleary announced a site visit to the stadium, 7 acres of which are in the Critical Area. The major issue would be stormwater runoff. She said that the site visit was scheduled for August 29th at 11:00 a.m. with all participants meeting at the Commission offices on West Street and leaving at 9:00 a.m.

Chairman North announced plans for a retreat for the Commission members. Dr. Taylor explained that with new members on the Commission a retreat would provide an opportunity to discuss new issues which have arisen and some types of project designs that the Criteria do not cover, as well as policy and organization.

There being no further business, the meeting was adjourned.

An ACT concerning

Chesapeake Bay Critical Area Criteria
Amendment Process

FOR the purpose of authorizing on or after a certain date the Chesapeake Bay Critical Area Commission to adopt regulations that propose certain amendments to the criteria for program development under the Chesapeake Bay Critical Area Protection Program; requiring certain hearings, notices to certain local jurisdictions, certain time period, and certain procedures for adopting certain regulations; making stylistic changes; and generally relating to the process by which criteria for program development under the Chesapeake Bay Critical Area Protection Program can be amended.

BY repealing and reenacting,
Article - Natural Resources
Section 8 - 1808 (d)
Annotated Code of Maryland
(1983 Replacement Volume and 1989 Supplement)

Preamble

WHEREAS, Chapter 794 of the Acts of 1984 created the Chesapeake Bay Critical Area Commission and established guidelines under § 8 - 1808 (d) of the Natural Resources Article that required the Commission to draft criteria on or before December 1, 1985 for program development and approval and to hold regional public hearings in the State; and

WHEREAS, after the Commission held the requisite hearings and published the criteria in COMAR 14.15.01 through .11, the General Assembly, under the authority of Section 3 of Chapter 794 of the Acts of 1984, affirmed the proposed criteria as reasonable and acceptable by passage of Joint Resolutions 36 and 37 of the 1986 Session; and

WHEREAS, Both Chapter 794 of the Acts of 1984 and Title 8, Subtitle 18 of the Natural Resources Article are silent on the process to be used to amend the criteria for any reason, including problems encountered by the local jurisdictions in implementing the criteria; and

WHEREAS, Because of the far-reaching potential impact on land use that regulations in this subject area can have, the General Assembly has determined that a longer period of review and a more extensive hearing process before the adoption of regulations in this subject area are necessary; now, therefore,

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article - Natural Resources

8 - 1808

(d) (1)

(I) The Commission shall promulgate by regulation on or before December 1, 1985, criteria for program development and approval, which are necessary or appropriate to achieve the standards stated in subsection (b) of this section. [Prior to] BEFORE developing its criteria and also [prior to] BEFORE adopting its criteria, the Commission shall hold at least 6 regional public hearings, one in each of the following areas:

1. Harford, Cecil, and Kent counties;
2. Queen Anne's, Talbot, and Caroline counties;
3. Dorchester, Somerset, and Wicomico counties;
4. Baltimore City and Baltimore County;
5. Charles, Calvert, and St. Mary's counties; and
6. Anne Arundel and Prince George's counties.

(II) During the hearing process UNDER PARAGRAPHS (1)(I) AND (2) OF THIS SUBSECTION, the Commission shall consult with each affected local jurisdiction.

(2) ON OR AFTER JULY 1, 1990, THE COMMISSION MAY PROPOSE BY REGULATION ANY AMENDMENT TO THE CRITERIA ADOPTED UNDER THIS SUBSECTION THAT THE COMMISSION CONSIDERS NECESSARY AND APPROPRIATE. IN ADDITION TO THE REQUIREMENTS OF TITLE 10, SUBTITLE 1 OF THE STATE GOVERNMENT ARTICLE, BEFORE ADOPTING ANY REGULATION TO AMEND THE CRITERIA, THE COMMISSION SHALL:

(I) PRESENT THOSE REGULATIONS AT A PUBLIC HEARING OF THE COMMISSION;

(II) WITHIN 90 DAYS AFTER THE PRESENTATION HEARING, HOLD AT LEAST 6 REGIONAL PUBLIC HEARINGS, ONE IN EACH OF THE FOLLOWING AREAS:

1. HARFORD, CECIL, AND KENT COUNTIES;
2. QUEEN ANNE'S, TALBOT, AND CAROLINE COUNTIES;
3. DORCHESTER, SOMERSET, WICOMICO AND WORCESTER COUNTIES;
4. BALTIMORE CITY AND BALTIMORE COUNTY;
5. CHARLES, CALVERT, AND ST. MARY'S COUNTIES;
AND
6. ANNE ARUNDEL AND PRINCE GEORGE'S COUNTIES;

- (III) AT LEAST 10 DAYS BEFORE THE APPROPRIATE REGIONAL PUBLIC HEARING, NOTIFY EACH LOCAL JURISDICTION OF THE SPECIFIC AMENDMENTS TO THE CRITERIA; AND
- (IV) NOT LESS THAN 120 DAYS AFTER THE PRESENTATION HEARING, HOLD A PUBLIC HEARING TO VOTE ON WHETHER TO PROPOSE THOSE REGULATIONS FOR ADOPTION.
- (3) AFTER COMPLETING THE HEARING PROCESS REQUIRED UNDER PARAGRAPH (2) OF THIS SUBSECTION, THE COMMISSION, IN ACCORDANCE WITH THE REQUIREMENTS OF TITLE 10, SUBTITLE 1 OF THE STATE GOVERNMENT ARTICLE, MAY ADOPT REGULATIONS.
- (4) WITHIN 6 MONTHS AFTER THE ADOPTION OF AMENDED CRITERIA, EACH LOCAL JURISDICTION SHALL SEND TO THE COMMISSION PROPOSED PROGRAM AMENDMENTS OR PROGRAM REFINEMENTS THAT ADDRESS THE AMENDED CRITERIA, OR SHALL SEND TO THE COMMISSION A STATEMENT DESCRIBING HOW ITS ADOPTED PROGRAM CONFORMS TO THE AMENDED CRITERIA AND CERTIFYING THAT THE ADOPTED PROGRAM IS CONSISTENT WITH THE AMENDED CRITERIA.
- (5) IF A LOCAL JURISDICTION FAILS TO SUBMIT A TIMELY PROGRAM AMENDMENT OR PROGRAM REFINEMENT, OR FAILS TO SATISFACTORILY SUBMIT A CERTIFICATION OF CONSISTENCY UNDER PARAGRAPH (4) OF THIS SUBSECTION, THE COMMISSION SHALL PREPARE AND ADOPT ANY NECESSARY CHANGES FOR THE LOCAL JURISDICTION IN ACCORDANCE WITH § 8 - 1810 OF THIS SUBTITLE.
- (6) The President of the Senate and the Speaker of the House shall appoint 5 senators and 5 delegates respectively to serve as the Joint Committee on Chesapeake Bay Critical Areas. The Joint Committee shall be staffed by the Department of Legislative Reference. The Commission shall meet with the Joint Committee on Chesapeake Bay Critical Areas periodically as the Committee requests to review development and implementation of the criteria for program development.
- (7) The Joint Committee may study and make recommendations to the Legislative Policy Committee on any other area of the Chesapeake Bay Critical Area Protection Program it considers appropriate.

SECTION 2. AND BE IT FURTHER ENACTED, that this Act shall take effect July 1, 1991.

STAFF REPORT

September 5, 1990 meeting of the Critical Area Commission

Subject: Harford County Amendment to Adjust the Growth Allocation for Riverside Business Park

Commission Action needed: Vote by 11-14-90 to approve or deny the program amendment

Description of Issue: The program amendment makes a small adjustment in the area of the Riverside Business Park parcel given growth allocation, with a net gain of 0.14 acres of RCA. A 0.74-acre area is proposed for IDA status, while a 0.88-acre piece is reverted to RCA status and will not be disturbed. Both pieces of land are in mature forest and adjacent to nontidal wetlands.

The growth allocation was originally approved by the Critical Area Commission on February 7, 1990. The developers have found that the final building design for the site is unexpectedly constrained by technical limitations associated with railroad access, and now requires disturbance outside the area originally designated IDA. The building is larger than anticipated and needs a longer straight length of rail track.

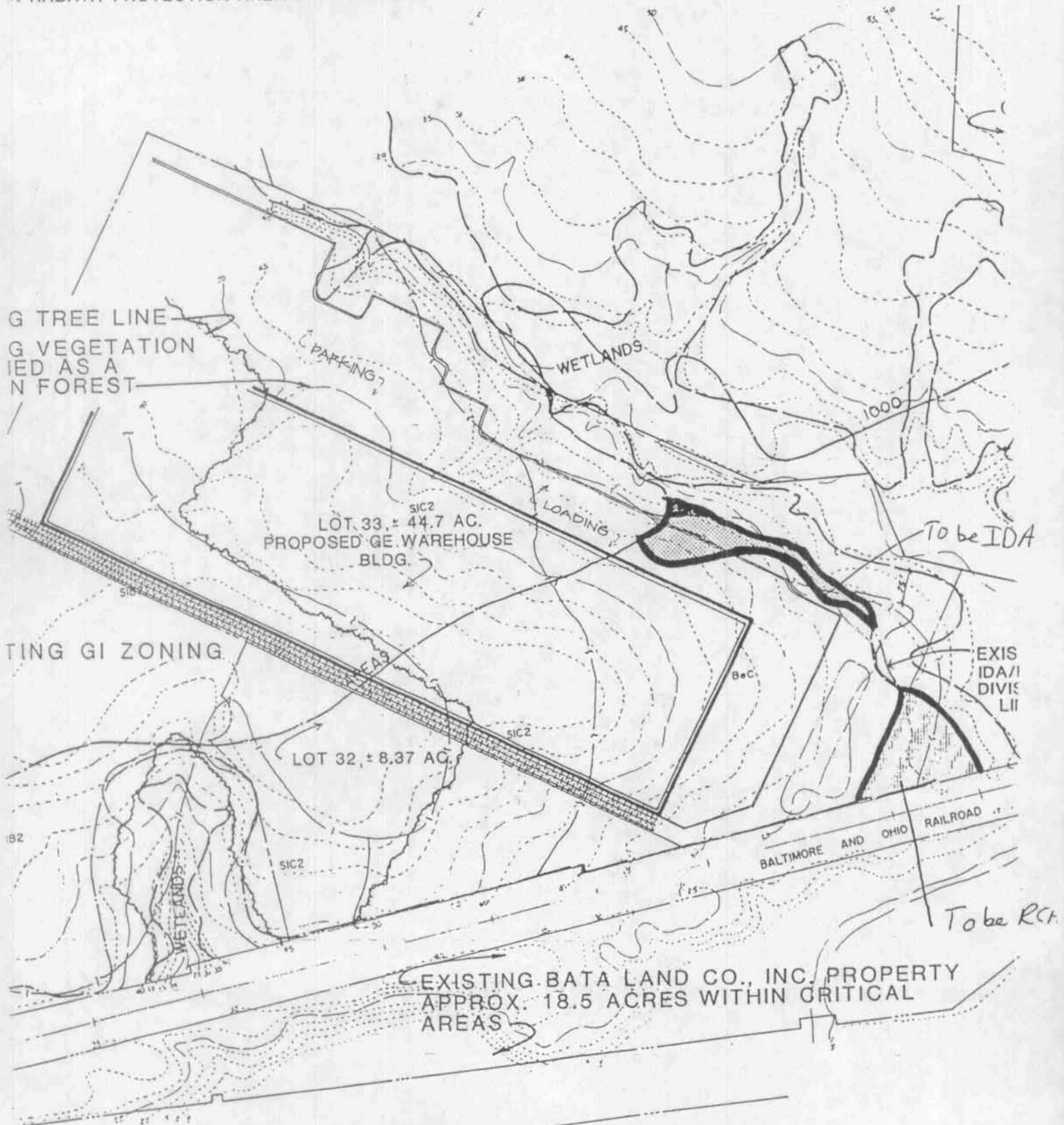
The 0.74 acres to be IDA is adjacent to a nontidal wetland, and grading is expected to disturb ~1,300 sq. ft. within the County's required 75-foot buffer to nontidal wetlands. The graded area would be revegetated and reforested. The developer, Bata Land Company, has submitted a copy of the reforestation plan for the entire project. Temporary disturbance such as grading is not normally allowed in buffers. Because of the unique aspects of the situation, including a net decrease in IDA, reforestation for forest removed in the IDA, and full revegetation of the buffer, the County considers the plan acceptable. The project will not affect the 25-foot buffer that the State Criteria require around nontidal wetlands. No runoff from the building and parking lot will be allowed to sheet flow over the area of the nontidal wetland buffer, including where disturbed by grading. The edge of the parking lot will be curbed and guttered, and stormwater runoff will be treated for quality.

A public hearing was held on Wednesday, August 29th, at 7PM at the County Administration Building in Bel Air, MD. No public attended, although several representatives of the developer were available to answer questions from the panel and Commission staff. No written comment was received.

Panel Recommendation: The panel recommends approval of the amendment.

Staff contact: Anne Hairston and Dawnn McCleary

- 1000 FT. CRITICAL AREA SETBACK AND DESIGNATION
- SOIL LINES
- WETLANDS LIMITS
- TREE CANOPY
- LIMIT OF DISTURBANCE
- ▨ AREA CONVERTED FROM IDA TO RCA DESIGNATION 0.88 AC.
- ▨ AREA CONVERTED FROM RCA TO IDA DESIGNATION 0.74 AC.
- ▨ HABITAT PROTECTION AREA INFRINGEMENTS 0.03 AC.



September 5, 1990

CAMDEN YARDS SPORTS COMPLEX

GENERAL SUMMARY

- o The Camden Yards Sports Complex is being developed by the Maryland Stadium Authority (MSA) in two phases.
- o Phase I development (currently underway) includes demolition of existing structures, relocation and construction of railroads, construction of the baseball park, construction of approximately 5,000 on-site parking spaces.
- o Phase II development (time schedule unknown at this time) includes construction of a Football Stadium on the southern half of the site and possible construction of additional surface and/or structured parking to replace up to approximately 2,500 parking spaces which could be displaced by the football stadium.
- o The baseball park is on schedule to be operational for opening day April, 1992.
- o The limit of disturbance for this project is approximately 98 acres. 90 acres are owned by the MSA. The remainder is owned by the City of Baltimore and CSX Railroad.
- o Prior to development of the Sports Complex, this area was primarily industrial. These now abandoned industries included a chemical plant, a sign painting shop, a steam generating facility, a food processing plant and several manufacturing facilities.
- o Analysis of existing and proposed site conditions is based on the best information available at this time.



RUMMEL · KLEPPER & KAHL *consulting engineers*

CAMDEN YARDS SPORTS COMPLEX

CRITICAL AREA SUMMARY

- o The Camden Yards Sports Complex project will disturb 11.6 acres of land in the 1000' Critical Area Zone. This includes 1.9 acres south of Ostend Street owned by CSX Railroad.
- o This area is classified as an "Intensely Developed Area" and therefore is subject to the "10% Rule".
- o The site drains into the Middle Branch of the Patapsco River via existing closed storm drain systems. (These include the 12' x 8' Fremont Avenue drain and the 7.5' x 4.5' Howard Street drain). The Middle Branch is approximately 250 feet south of the limit of disturbance.
- o There are no wetlands within the limit of disturbance.
- o There is no 100 year floodplain within the limit of disturbance.
- o In the pre-development condition, 0.9 acres of land within the critical area was on slopes greater than 15%. Less than half of this area was vegetatively stabilized. After development, approximately 3 acres of land will be on slopes greater than 15%. All of this area will be either vegetatively stabilized or covered with newly placed rip-rap and railroad ballast.
- o Proposed landscaping will reduce the impervious area within the Critical Area by 17%. (Existing impervious area is 10.6 acres, proposed impervious area is 8.8 acres). This considerable reduction produces a negative pollutant removal requirement as calculated using the "10% Rule" criteria.
- o We believe the reduction of impervious area (a best management practice per Table 1.1 of the "10% Rule" guidelines) by 17% allows this project to satisfy the Critical Area requirements.
- o In addition to the reduction of impervious area, MSA will conduct weekly vacuum sweeping of all vehicular traffic areas.



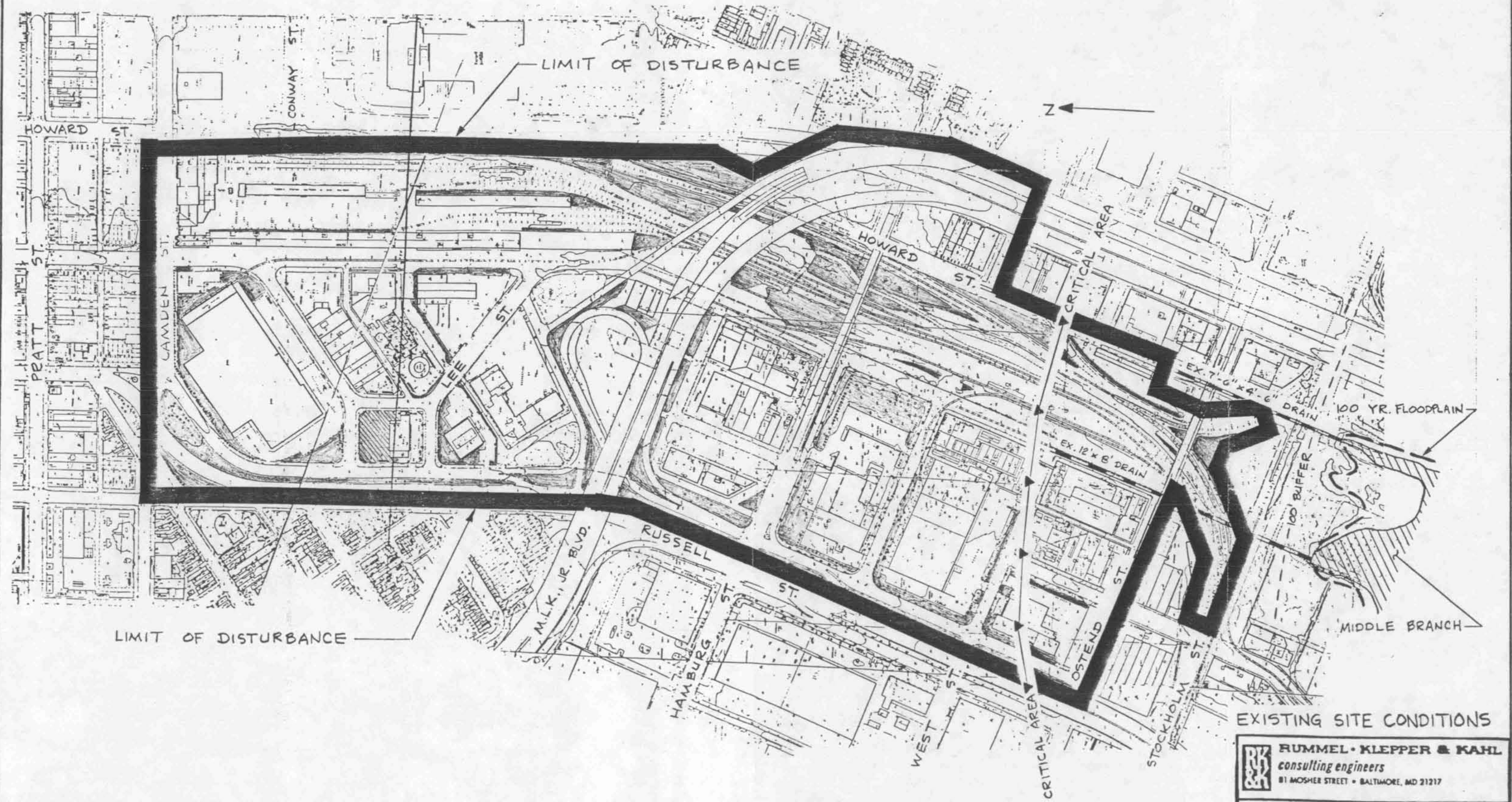
CAMDEN YARDS SPORTS COMPLEX

STORMWATER MANAGEMENT SUMMARY

- o RK&K developed a stormwater management report addressing water quantity and water quality issues for the Phase I development. A separate report will be developed for Phase II development.
- o The Phase I report was submitted to the Maryland Department of the Environment (MDE) on May 18, 1990.
- o RK&K's analysis recommends a waiver of stormwater quantity controls due to the stable conveyance via closed storm drain systems to tidewater (Middle Branch of the Patapsco River).
- o RK&K's analysis recommends weekly vacuum sweeping of vehicular traffic areas. This in combination with a negligible change in impervious areas and removal of highly industrial facilities will ensure improved water quality.
- o RK&K has received a verbal approval of the Phase I stormwater management recommendations from MDE.



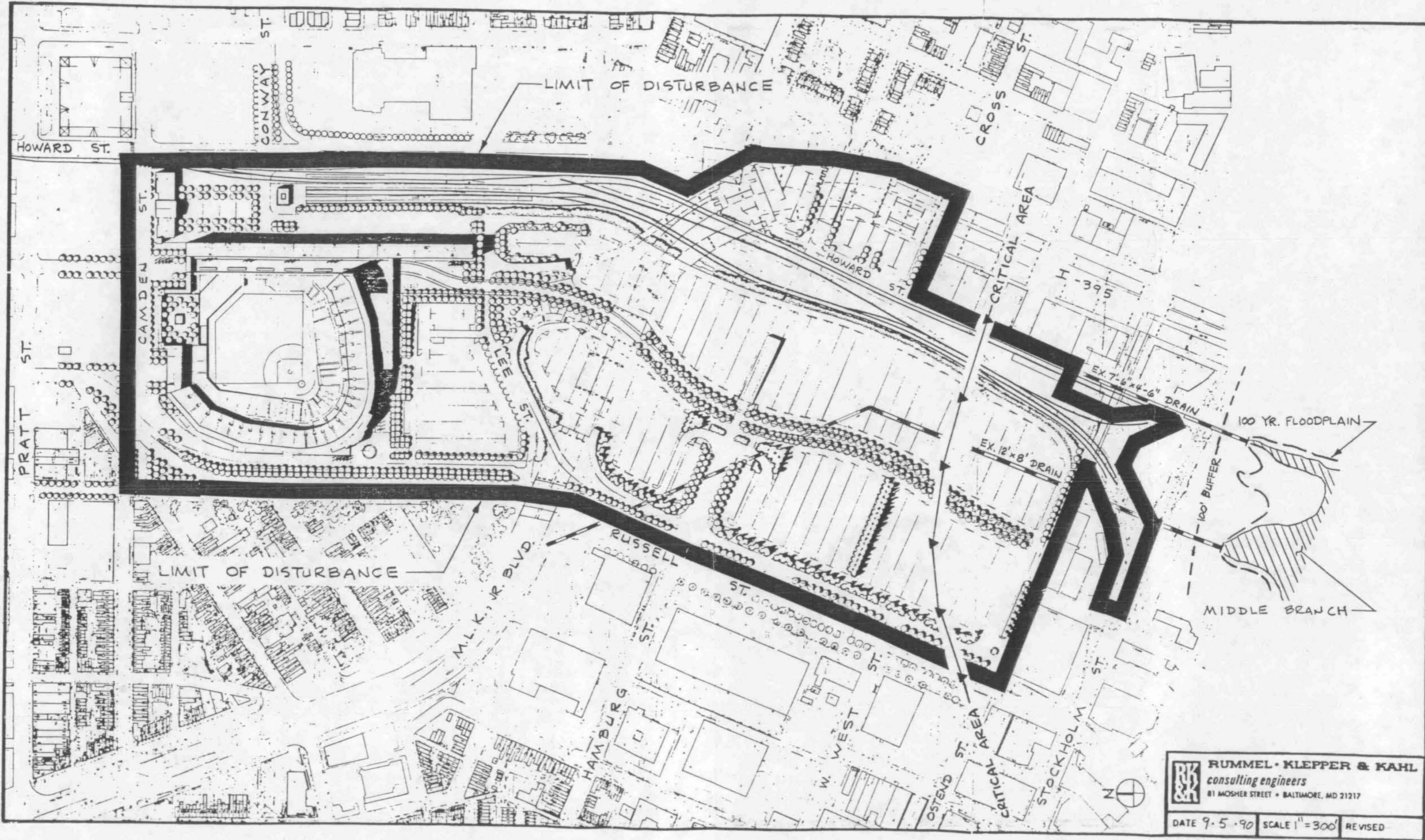
INDICATES EXISTING PERVIOUS AREA



EXISTING SITE CONDITIONS

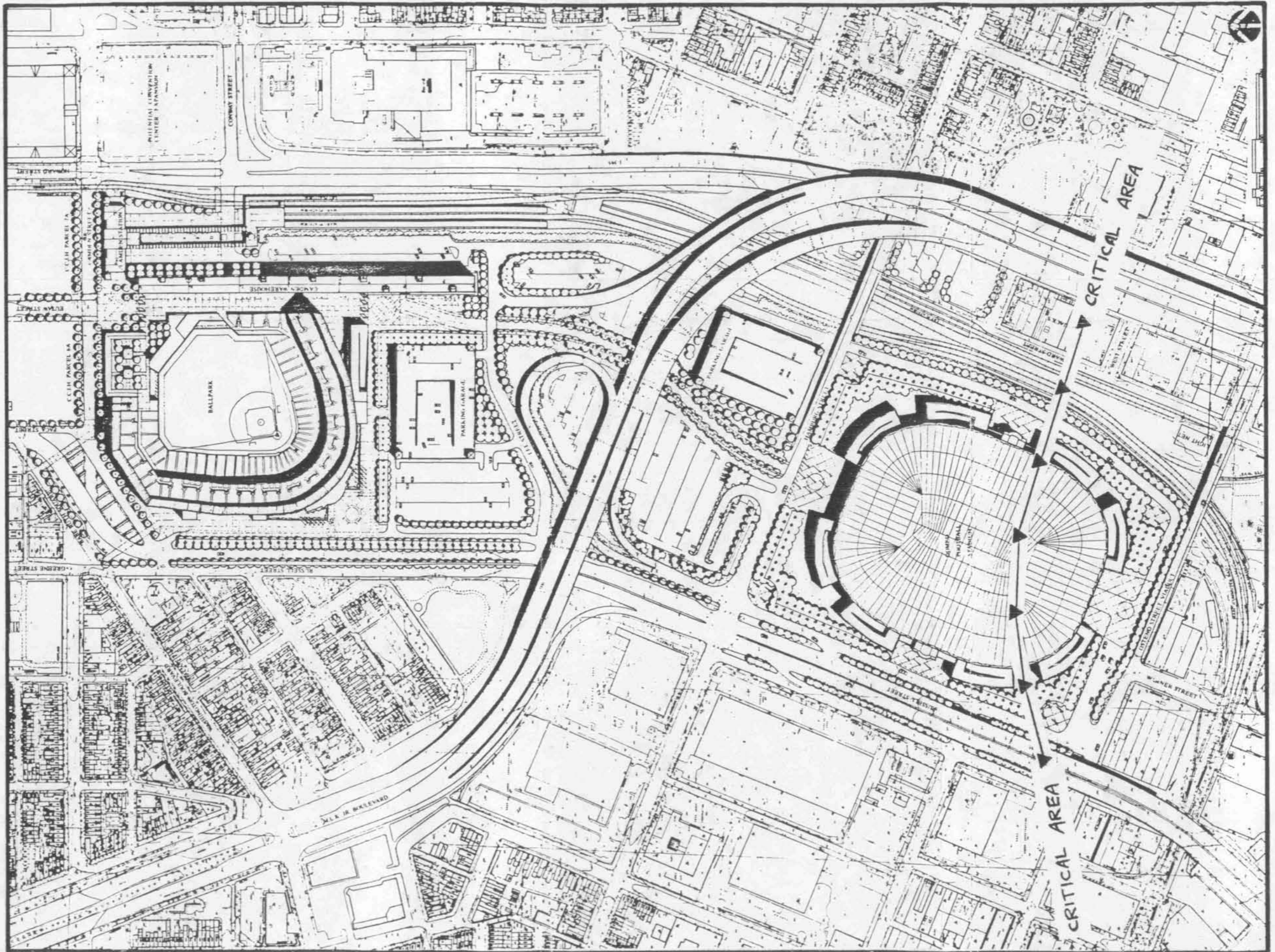
RUMMEL • KLEPPER & KAHL
consulting engineers
81 MOSHER STREET • BALTIMORE, MD 21217

DATE 8-28-90 SCALE 1" = 300' REVISED




	RUMMEL • KLEPPER & KAHL consulting engineers 81 MOSHER STREET • BALTIMORE, MD 21217	
	DATE 9-5-90	SCALE 1" = 300'

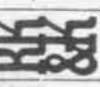
PHASE 1 SITE LAYOUT MAP



PHASE 2 SITE LAYOUT MAP



 CAMDEN YARDS SPORTS COMPLEX



 MARYLAND STADIUM AUTHORITY

 BALTIMORE, MARYLAND

STAFF REPORT

September 5, 1990

Jurisdiction: Talbot County

Issue: Changes to Critical Area Program

Previous Action: Chairman determined proposed changes are Program refinements

Recommendation: APPROVAL of refinements to Table of Uses, County Bill No.391

RETURN for changes, refinements to Growth Allocation and rezoning processes, County Bill No.382

Discussion:

Talbot County proposes the following amendments to its Critical Area ordinance:

1) County Bill No.391 - to amend Section 19-41, Subsection II.B.2. The County's Table of Uses lists "home occupations" as accessory uses in two categories: Residential and Services. The County states that the double listing was a mistake which has caused administrative difficulties. The County proposes to delete the listing under Residential, thereby regulating "home occupations" solely under the Services category. The use remains accessory.

The Table of Uses, referenced above, lists "waterfront structures" as a principal use under Water-Dependent Facilities. Waterfront structures include piers, docks and wharves. The County proposes to designate these structures as accessory. This change would require the existence of a principal use in order to locate a pier, dock or wharf on site.

The staff considers the changes contained in County Bill No.391 to be of minor significance. The County's proposed deletion of "home occupations" from the Residential category of uses appears to eliminate confusion while providing the same level of regulation as originally intended. Although in the Service category, "home occupations" remain "incidental and secondary" to the use of a dwelling for residential purposes.

The staff considers the determination of piers, docks and wharves as principal or accessory uses to rest properly with the local government. The Criteria do not address this situation and would seem not to be affected by either method. The staff recommends approval of the Program refinement contained in County Bill No.391.

2) County Bill No.382 - to amend Section 19-41, Subsection IV.A.2. The County's Program requires an applicant to prove a "change or mistake" in the Critical Area designation in order to receive Growth Allocation. It also requires a one-year waiting period to refile for Growth Allocation if the request was initially denied. The County maintains that these requirements are improper and proposes the following changes:

- elimination of the "change or mistake" requirement for Growth Allocation;
- elimination of the one-year waiting period to refile for Growth Allocation;
- corrective language which separates Growth Allocation from rezonings, and further specifies that a rezoning which changes a Critical Area designation must be based solely on "mistake" in the original designation.

Although the proposed changes significantly affect the manner in which the County awards Growth Allocation and approves rezonings, they are essentially corrections to those processes, intended to bring the County Program in line with the Critical Area Law and Criteria. Growth Allocation would be difficult, or impossible, to award under the "change or mistake" rule. Thus, in concept, the changes appear to represent refinements to the County Program.

However, as the table below indicates, the staff does not believe the proposed language clearly carries out the County's intentions.

Proposed Language

"Requests for map amendments (or growth allocation) shall not be considered based on the Findings for Reclassification, Section 15.04, or on the Repeated Application for Reclassification, Section 15.07 of the County Zoning Ordinance."

Possible Interpretation

All map amendments and Growth Allocation requests are exempt from the "change/mistake" rule and from the one-year waiting period for refiling.

"Rezoning requests shall be consistent with the goals and policies of the Talbot County Comprehensive Plan, specifically those sections concerning the Chesapeake Bay Critical Area."

"In addition, the following criteria and procedures* shall be used, except for map amendments where the applicant claims there is a mistake in existing zoning classification, then only paragraph a.** shall be used."

*relating to Growth Allocation

**rezoning requests for areas outside of towns and possible annexation areas

It is not clear which rezonings, or if all rezonings, must be consistent, specifically with the Critical Area Program. Possibilities include:

- Growth Allocation
- underlying zoning changes which require a change in Critical Area designation
- underlying zoning changes which do not require a change in Critical Area designation.

This sentence appears to relate Growth Allocation to the appropriate filing and location requirements. However, the sentence contains the only Program reference to the "mistake" standard for rezonings. This sole reference to the requirement that rezonings be based upon "mistake" may not be sufficiently clear because the Growth Allocation Procedures also use the term "rezoning." Therefore, the County may be proposing to presume a Growth Allocation request when an applicant for rezoning does not claim mistake.

The staff recommends that the Commission return to the County the proposed Program refinement contained in County Bill No.382, for changes which clarify its meaning.

Staff Contacts: Pat Pudelkewicz
Liz Zucker
Ren Serey

RS:msl

PUBLIC ACCESS - PHASE II

Draft Text Outline

- 1.0 INTRODUCTION TO ACCESS STUDY
 - 1987 Chesapeake Bay Agreement
 - 1988 Chesapeake Executive Council Public Access Strategy
 - Report Format
- 2.0 DISTRICT OF COLUMBIA
- 3.0 MARYLAND
 - 3.1 Executive Summary
 - 3.2 Statewide Water Access Issues
 - Status of Existing Access Opportunities (State, Local and Federal)
 - SCORP - Demand for Public Access (Population/Demographic Issues)
 - Maryland 2020 Commission
 - Role of the Private Sector
 - Sensitive Areas Protection
 - 3.3 Geographic Plan (includes Maps and Matrices) - opportunities for additional public access by region and county
 - 3.3.1 Southern Maryland (Prince George's, Charles, St.Mary's and Calvert)
 - 3.3.2 Baltimore Region (Anne Arundel, Baltimore City, Baltimore County, Harford)
 - 3.3.3 Upper Eastern Shore (Cecil, Kent, Queen Anne's, Talbot, Caroline)
 - 3.3.4 Lower Eastern Shore (Dorchester, Somerset, Wicomico, Worcester)
 - 3.4 Maryland Action Strategies
 - 3.5 Implementation Programs
 - Program Open Space (State and Local Land Acquisition and Development, Bay Access Funding)
 - Land and Water Conservation Fund
 - Waterway Improvement Program
 - Small Urban Waterfront Program
 - Coastal Zone Management Program
 - DNR Lands - Capital Budget/Master Planning Process
 - Shore Erosion Control
 - Sport Fishing License Funding
 - Enterprise Development (public/private partnerships)
 - Chesapeake Bay National Estuarine Research Reserve System
 - Handicapped Accessibility

3.6 Regulatory Programs

- Chesapeake Bay Critical Area Program
- Coastal Zone Consistency
- Local Zoning/Health Department Regulations
- Permitting Authorities (U.S. Army Corps of Engineers, DNR-WRA, MDE, Boat Pumpout Requirements)

4.0 PENNSYLVANIA

5.0 VIRGINIA

6.0 REVIEW PROCESS

7.0 PUBLIC ACCESS SIGNAGE PLAN

Companion Document - TIDEWATER TECHNICAL ASSISTANCE REPORT

DRAFT

CHESAPEAKE BAY PUBLIC ACCESS PLAN MARYLAND ACTION STRATEGIES

(Ideas for Consideration - selected strategies will be described in detail within Plan text)

- IMPLEMENT THE RECOMMENDATIONS OF THE MARYLAND 2020 COMMISSION - TARGET ACCESS OPPORTUNITIES TO DESIGNATED GROWTH AREAS AND AWAY FROM SENSITIVE RESOURCE AREAS
- HIGHLIGHT AND IMPROVE ON STATE AND LOCAL "PROGRAMS" THAT ATTRACT PEOPLE TO THE BAY ("PARTY ON THE BAY", "BAYFEST", ETC.)
- ESTABLISH FIXED POS BAY ACCESS FUNDING LEVEL - GIVE PRIORITY TO USE OF POS LOCAL LAND TRUST GRANT FUNDS TO BAY-RELATED PROTECTION PROJECTS
- DIRECT A SPECIFIC AMOUNT OF POS CAPITAL FUNDS ANNUALLY TO STATE PARKS AND OTHER DNR LAND UNITS ON THE BAY AND TIDAL TRIBUTARIES (E.G., - GREENWELL, BLACK MARSH, PURSE)
- ACCELERATE LOCAL BAY ACCESS; "CHALLENGE" LOCAL GOVERNMENTS TO MATCH STATE WITH POS ACQUISITION AND CONSTRUCTION FUNDS, WATERWAY IMPROVEMENT FUNDS, CZM MONIES, ETC. (E.G., - QUIET WATERS FARM)
- IDENTIFY ONE OR MORE BAY-RELATED GREENWAY PROJECTS AND FOCUS RESOURCES TO COMPLETE (E.G., - LOWER PATAPSCO, PATUXENT CORRIDOR, POCOMOKE CORRIDOR, FT. HOWARD/BLACK MARSH/HART-MILLER/ROCKY POINT/HOLLY NECK/ABERDEEN P.G./GUNPOWDER)
- ACCELERATE ACQUISITION OF PRIORITY WETLANDS ON BAY AND TIDAL TRIBUTARIES (E.G., - PARKER CREEK, ZEKIAH SWAMP)

- ENCOURAGE MET TO TARGET SELECTED BAY AREAS FOR EASEMENTS, FORMATION OF LOCAL LAND TRUSTS, AND USE OF POS LOCAL LAND TRUST GRANT FUNDS
- EVALUATE ALL DNR WATERFRONT PROPERTIES FOR COOPERATIVE MANAGEMENT POSSIBILITIES (E.G., - KINGS LANDING); CONSIDER PUBLIC-PRIVATE DEVELOPMENT/MANAGEMENT OPPORTUNITIES AS WELL
- EXPLORE PUBLIC ACCESS OPPORTUNITIES WITH FEDERAL LAND MANAGEMENT UNITS, AND CONSIDER DNR LEASE/MANAGEMENT ARRANGEMENTS
- ENCOURAGE LOCAL GOVERNMENTS TO OFFER PLANNING/ZONING BONUSES AND INCENTIVES TO DEVELOPERS IN RETURN FOR THE PROVISION OF PUBLIC ACCESS OPPORTUNITIES. FOCUS THIS EFFORT WITHIN IDA'S AND LDA'S - NOT RCA'S
- HAVE BOATING ADMINISTRATION EVALUATE BOATING ACCESS AND USE ON SELECTED WATERWAYS AND DIRECT PLANS, REGULATIONS, AND FUNDING TO THOSE AREAS AS APPROPRIATE
- DEVELOP REGIONAL BROCHURES/PROGRAMS TO PROMOTE BAY ACCESS AND TOURISM, AND TO INCREASE USE OF EXISTING FACILITIES.
- WHERE POSSIBLE, ACQUIRE LIMITED PUBLIC ACCESS SUCH AS TRAILS, RESEARCH OPPORTUNITIES ON PRIVATE PROPERTY
- ENCOURAGE LOCAL GOVERNMENTS TO IMPLEMENT "BLUEBELTING" STRATEGIES FOR WATER DEPENDENT USES (I.E., - PREFERENTIAL PROPERTY TAX FOR BOATING FACILITIES, DEFERRED TAXATION FOR CONVERSION OF CERTAIN WATERFRONT AREAS TO NON-WATER DEPENDENT USES, RESTRICTIVE USE AGREEMENTS TO RETAIN WATERFRONT PROPERTY FOR WATER DEPENDENT USE, EXCLUSIVE USE ZONING FOR WATER DEPENDENT USES, PURCHASE OF DEVELOPMENT RIGHTS - LIMITING AN AREA TO USE AS A BOATING FACILITY)

PUBLIC ACCESS

GOAL: *PROMOTE INCREASED OPPORTUNITIES FOR PUBLIC APPRECIATION AND ENJOYMENT OF THE BAY AND ITS TRIBUTARIES.*

Interest in and Commitment to the Chesapeake Bay and its tributaries are greatly affected by personal contact with that natural system. Consequently, improved opportunities for access to the shores and waters of the system are essential if public awareness and support are to be maintained and increased.

OBJECTIVES

- Improve and maintain access to the Bay including public beaches, parks and forested lands.
- Improve opportunities for recreational and commercial fishing.
- Secure shoreline acreage to maintain open space and provide opportunities for passive recreation.
- Secure necessary acreage to protect unique habitat and environmentally sensitive areas.

COMMITMENT

TO ACHIEVE THIS GOAL WE AGREE:

- to intensify our efforts to improve and expand public access opportunities being made available by the federal government, the states, and local governments, by developing a strategy, which includes an inventory of current access opportunities by *July 1988*, which targets state and federal actions to secure additional tidal shorefront acres by *December 1990*, along the Bay and its tributaries.
- by *December 1988*, to prepare a comprehensive guide to access facilities and the natural resource system for the tidal Chesapeake Bay.

Chesapeake Executive Council

- Public Access Strategy

Chesapeake Bay Program

Agreement Commitment Report

July 1988

Public Access Strategy

An Agreement Commitment Report from
the Chesapeake Executive Council

Annapolis, Maryland
July 1988

ADOPTION STATEMENT

We, the undersigned, adopt the report, **Public Access to the Chesapeake Bay**, in fulfillment of Public Access Commitment Number 1 of the 1987 Chesapeake Bay Agreement:

"...to intensify our efforts to improve and expand public access opportunities being made available by the federal government, the states, and local governments, by developing a strategy, which includes an inventory of current access opportunities by July 1988..."

We recognize that this report is a dynamic document and direct the Implementation Committee to periodically update the report to take into account new sites that are acquired for the purpose of providing public access opportunities for the Chesapeake Bay.

The report will be used as guidance, along with other information, to help refine and improve Chesapeake Bay Agreement programs designed to "promote increased opportunities for public appreciation and enjoyment of the Bay and its tributaries." The implementation strategies that are incorporated into this report can guide land managers at all levels to strive to acquire and make available adequate resources to improve and maintain access to the Bay including public beaches, parks, and forest lands.

The Implementation Committee will report to the Executive Council annually on the effectiveness of the strategies identified in the Bay-wide goals described in the 1987 Chesapeake Bay Agreement.

For the Commonwealth of Virginia

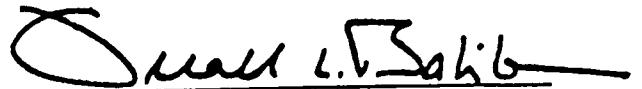
For the State of Maryland

For the Commonwealth of Pennsylvania

For the United States of America

For the District of Columbia

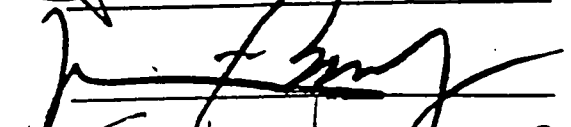
For the Chesapeake Bay Commission

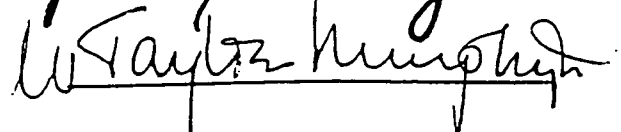

Donald L. Sahib


William Donald Schaefer


Robert Rouse


Lee H. Brown


[unclear]


W. Taylor Murphy

PUBLIC ACCESS

In December 1987, the Governors of Virginia, Maryland, and Pennsylvania, the Mayor of the District of Columbia, the Administrator of the Environmental Protection Agency (EPA) and the Chairman of the Chesapeake Bay Commission signed the Chesapeake Bay Agreement. One of the major initiatives of the Agreement is to improve public access to the Chesapeake Bay and its tributaries. The implementation of this initiative involves a two-stage approach. Stage one is the development of an inventory of public access sites on the Bay and its tributaries. This inventory includes all publicly owned sites, developed or undeveloped, which provide access for boating, beach use, fishing, nature study, crabbing, etc. Stage two, based on the completion of the inventory, is to consist of a series of strategies aimed at increasing appropriate opportunities for public access.

For purposes of this inventory, public access has been divided into three major types. First are those sites which provide only boating access. Second are the sites which provide boating access in concert with other types of facilities such as trails, beaches, picnic grounds, etc. This latter category would include most water-oriented park facilities. The third category includes publicly owned sites that provide any form of boating access. This category includes marshes and natural areas, as well as undeveloped public lands which could have potential for increased access opportunity.

Development of the inventory and strategy document is a joint venture of the states of Virginia, Maryland, Pennsylvania, the District of Columbia, and several interested federal agencies (National Park Service, Department of Defense, U.S. Fish and Wildlife Service and EPA). An inventory form was developed which was used by all of the participants to ensure that the data collected would be compatible. The inventory includes all publicly owned lands in the Bay area which border on the Chesapeake Bay, its tidal tributaries and portions of the Susquehanna River. Each individual state compiled the inventory for areas under its jurisdiction. This information was then merged into one computer file for the entire Bay area.

As a result of the inventory effort, there is a much clearer understanding of the amount and type of existing public access to the Chesapeake Bay and major tributaries. In the Bay area inventoried, there are 735 publicly owned access sites encompassing approximately 123,037 acres. Of these sites, 61 are in federal ownership, 207 in state ownership and 467 in local ownership. The sites range in size from less than an acre to over 2,500 acres. While there are a few sites with fairly large amounts of frontage on the Bay or its tributaries, the total amount of publicly owned waterfront is quite small. In fact, less than 1% of the entire Chesapeake Bay and tidal tributaries shoreline is in public ownership.

Further analysis of the inventory data shows that approximately 25% of the sites are undeveloped or provide no facilities for use by the public. It would appear that many of these sites would be excellent candidates for development, thereby improving public access to the Bay area. Another point of interest is that 60% of the sites offer some type of boating access to the Bay and its major tributaries.

Concurrent with the collection of inventory data, a number of public meetings on the Chesapeake Bay were held throughout the study area. One of the topics discussed at these meetings was public access. As a result of the public meetings and review comments provided by the Citizens Advisory Committee, the following access-related concerns were identified:

- o Increased public access should also include increased public education on importance of Bay and proper stewardship.
- o When public access areas are provided, money should be budgeted for their care and maintenance.
- o Access inventory information should be made available to the public.
- o To help reduce public sector costs, consideration should be given to allowing the private sector to develop the facilities on public lands.
- o An environmentally sensitive Bay-wide access plan should be developed which identifies specific areas where additional access is desirable. The private sector should be given the opportunity to develop and operate the needed access sites prior to public acquisition.
- o Development of existing undeveloped areas and of new sites should be sensitive to the sites' natural character and preserve as much as possible.

As a result of these comments and a review of the inventory data, the following broad strategy areas applicable to Virginia, Maryland, Pennsylvania and the District of Columbia have been developed:

1) Guide for public access: One of the major problems faced by the public wishing to access the Bay or its tributaries is knowing where to go. Based on the inventory data, a guide to the access points will be developed. This guide will include all available public access areas with information on what type of access (fishing, boating, swimming, nature study, etc.) is available and how the site may be found. The document will be completed in December of 1988 and will be in a booklet or magazine style format. Interspersed with the access information will be educational material about the significance of the Chesapeake Bay and the users' responsibility in caring for it.

2) Access point signage: Another significant problem noted with the public's use of the Bay is the lack of proper signage. It is often difficult for people who are searching for a specific access area to find it. Many publicly owned sites are unmarked and known only to locals. Others are inadequately signed and difficult for someone not familiar with the area to locate. Proper road signs and site signs will greatly improve this situation and provide better utilization of existing areas.

3) Plan for needed access areas: Once the inventory data are placed on maps, it will be possible to tell where the major access needs are located. An environmentally sensitive plan can then be developed showing access needs by type, (swimming, boating, beach use, etc.) for each state. Once completed,

this plan should provide a mechanism for encouraging private development of access facilities as well as ensure the best use of limited state and local resources in providing access opportunities.

4) Cooperative agreements: It appears that there are numerous publicly owned properties which have potential for access but are not currently used for that purpose. A case-by-case analysis of these sites may lead to the development of cooperative management-agreements. Such agreements could allow, for example, a locality to manage either a federal or state piece of property as an access area. Similar agreements may also be developed on private land owned by large corporations. The intent of this proposal would be to increase public opportunities on the existing public estate or on privately held lands at low cost.

5) Funding: A successful funding strategy must cover two areas of concern. First would be funding for the development of existing sites already in the public estate, many of which only lack facilities to make them usable by the public. The second area of concern is funding for the acquisition of new sites in areas of high need. Such acquisition should not only include the cost of any needed developments, but also allow for necessary maintenance and operation. To stretch public funds to the greatest extent possible, the private sector should be encouraged to develop access opportunities in harmony with the access plan. In addition, an examination will be made of the various mechanisms available for providing additional access areas. This information will be used to identify, by July 1, 1989, funding needs and tools to be used for the provision of such sites.

6) Federal Estate: Large tracts of publicly owned properties border on the Bay and its major tributaries. In total, these lands include more than 50,000 acres (with exception of not inventoried portions of military lands) the majority of which are either restricted from public use or provide only limited access opportunity. Federal land managers in concert with the respective states should carefully evaluate their holdings to determine where agreements could be established for increased opportunities.

In addition to the general strategies identified above, the following specific strategies have been developed by the states:

MARYLAND

1) Continue to provide Bay Access Funds, Waterway Improvement Funds, and Land and Water Conservation Funds from the Department of Natural Resources through Program Open Space at the state and local level. In addition, funding for land acquisition will continue through the capital budget. This would continue in an equitable manner with no impact to nontidal areas based on a distribution criteria.

2) Continue to provide corridors for limited recreation uses, such as bicycling, hiking, etc., which relate to tidal streams, shorelines and unique resource areas maintaining naturalness of the sites.

3) Where needs have been expressed by the public and/or local government, encourage the placement of boat ramps and related facilities in less urbanized areas. Placement of these facilities is to be based on careful consideration of disturbance to the effected eco-system.

4) Control shoreline development along the Bay through the implementation of the Chesapeake Bay Critical Area Local Programs.

5) Encourage the development of a comprehensive Bay oriented program which would publicize access areas as a "string of rural and urban parks, inns, and boat landings" through an integrated system of common signage. This program would represent both public and private areas as part of a total Maryland system and would attempt to relate one area to another for the purpose of providing unique cultural and educational experiences.

6) Consider incentives to private landowners to increase access.

7) Analyze surplus state and federal properties to determine whether they can be used as access areas to the Chesapeake Bay. Also analyze the use of potential surplus corporate land holdings for additional passive or active access areas.

8) Enter into cooperative agreements with quasi-public and private enterprises, such as power companies and public utilities for joint projects for access and recreational opportunities.

VIRGINIA

1) Special emphasis will be placed on providing Virginia Outdoors Funds, both grants and loans, to local outdoor recreation projects which provide access to the Bay and its tributaries.

2) In addition to development of its own sites, the Department of Game and Inland Fisheries will provide matching funds to localities for the acquisition and development of boating access areas.

3) Through the Public Beach Board, grants will be made to localities for the development of public beach access and beach improvements.

4) The Virginia Natural Heritage Program will identify key natural resources in the Chesapeake Bay area and work to protect the most significant sites.

5) Encourage the use of public access criteria as a part of shoreline development.

6) Apply Coastal Zone Management (CZM) funds to the development and improvement of public areas.

7) Enter into cooperative agreements with public and private entities for access and recreational opportunity.

8) Develop a program to improve signage to Bay area public access and recreation sites.

9) Continue the process of inventorying and analyzing potential access sites and direct acquisition and development efforts towards the vest identified sites.

PENNSYLVANIA

1) Establish a long-term access area acquisition program which targets potential development sites based upon public demand, undeveloped potential and an attractiveness factor.

2) Continue to conduct inventory of the current total boating demand on the Susquehanna River.

3) Continue efforts to secure funding to satisfy the projected access development needs of the fishing and boating public.

4) Provide assistance to local municipalities and sportsmen groups for the acquisition, development and management of access sites.

5) Encourage private landowners to disperse properties suitable for fishing and boating access to the Susquehanna River.

6) Continue to promote the access area development program through distribution of printed literature and recreational maps, educational seminars and signage.

7) Seek the support of other state resource agencies to develop and promote the resource.

8) Promote public awareness of the importance of protection and care of the natural resource.

THE DISTRICT OF COLUMBIA

The water quality improvements in the Potomac River and the planned improvements in the Anacostia River have increased the need for public access. They also provide for a unique opportunity to develop an access system for urban residents while increasing the appreciation and understanding of the aquatic environment.

1) The District of Columbia, in cooperation with the U.S. Fish and Wildlife Service, is constructing a boat launching ramp on the Anacostia to alleviate the acute shortage of facilities in the Washington area.

2) An aquatic education center is being established on the tidal Anacostia to provide information and education for Washington metropolitan residents with special emphasis on the District's youth.

3) Artificial reef habitat enhancement projects are being initiated to provide more productive experience for bank anglers.

4) Handicapped access is being explored and encouraged through a variety of nonprofit and industrial groups.

CONCLUSION

Implementation of the strategies outlined above will provide increased public access to the Chesapeake Bay and its major tributaries. The two key aspects of this process are: (1) necessary funding to carry out the acquisition and/or development of identified areas, and (2) sensitivity in the selection and development of sites which will assure that proper access is provided while conserving the natural integrity of the Bay. Another important factor is the continued cooperation of those involved in the provision of access, including the private sector. It is only through a continuation of the efforts begun in this process that current and future needs relating to the Bay will be met.



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

August 15, 1990

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Mr. Bill Harrington, President
Cambridge Country Club
c/o Andrews, Miller & Associates
508 Maryland Avenue
Cambridge, MD 21613

Dear Mr. Harrington:

I am writing you regarding the Cambridge County Club. As you know, there is currently an appeal against the Dorchester County Board of Zoning Appeals for issuing a variance from the Critical Area Buffer requirements to the country club.

The Commission discussed the project and appeal at its monthly meeting on August 1, 1990. It was the consensus of the Commission members that a golf course, as a nonwater-dependent facility, should not be allowed to expand into the Critical Area Buffer, the specific issue being the location of two new greens and a new tee.

The Commission requested that a letter be sent to you stating that they are not unsympathetic to the objectives of the Cambridge County Club proposal, but in order to withdraw our appeal all new development of the golf course should be located outside of the buffer.

If you wish, you or your consultants may address the Chesapeake Bay Critical Area Commission at its next meeting on September 5, 1990 in Annapolis.

Very truly yours,

Judge John C. North, II
Chairman

CABINET MEMBERS

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

JCN:msl

RATIONALE

At its meeting on August 1, 1990, the Critical Area Commission voted to recommend to the General Assembly that directional drilling activities be utilized to obtain hydrocarbons from reservoirs under the Chesapeake Bay and that surface drilling for oil and gas be prohibited in the Critical Area. The decision for the proposed prohibition was based on the following factors:

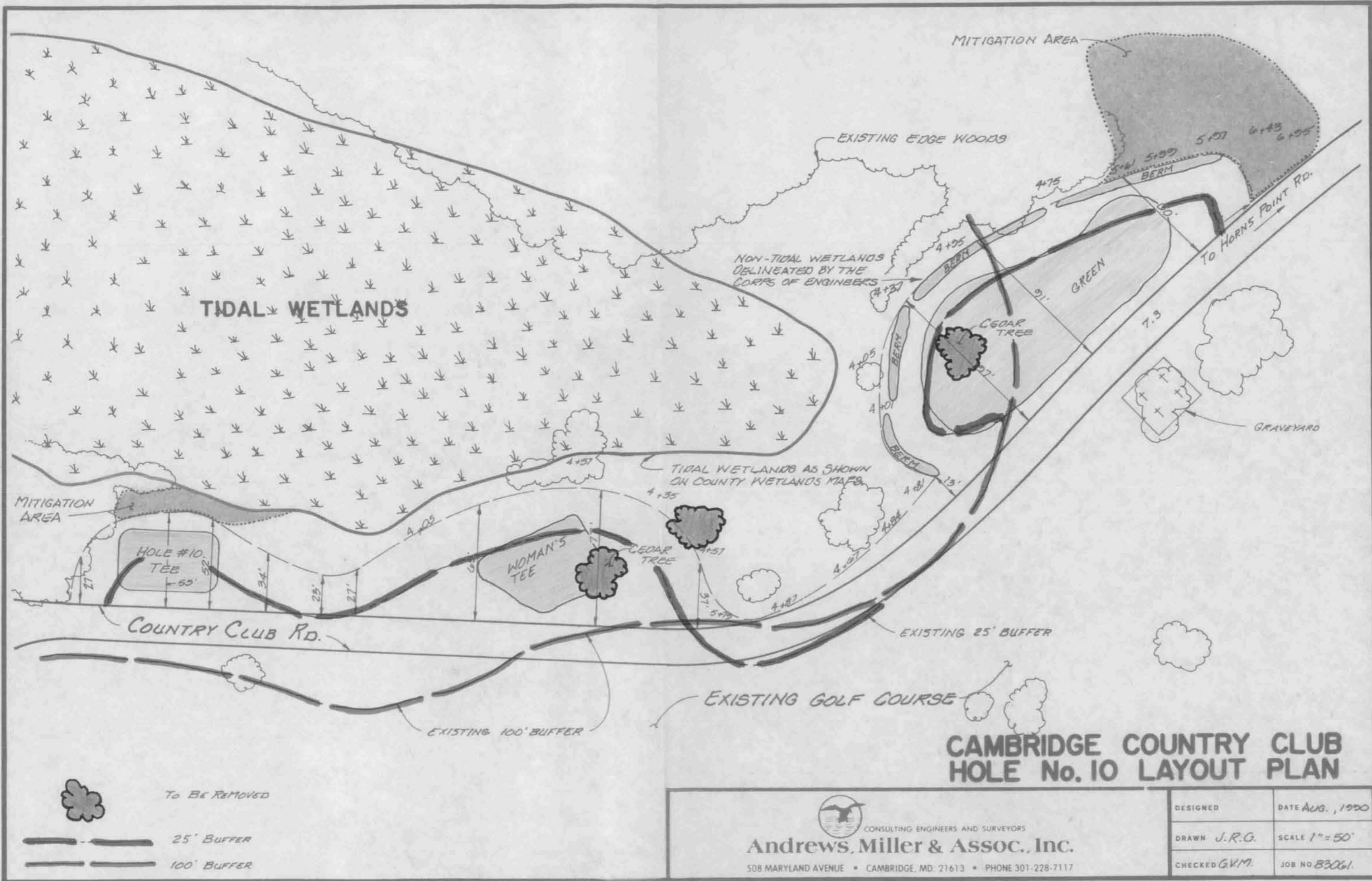
--Even though spills and blowouts of hydrocarbons and drilling fluids are relatively uncommon during drilling operations, the Chesapeake Bay contains unique and sensitive ecosystems that could be devastated by a single spill or blowout event. The Bay system characteristically is relatively shallow with 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 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 the Maryland Geological Survey (MGS) and representatives from the oil and gas industry who served on the Critical Area Commission's Technical Advisory Committee. Hydrocarbons, therefore, can be obtained from reservoirs under the Critical Area through directional drilling. However, it should be noted that the Commission will require that an assessment of potential adverse environmental effects be conducted prior to permitting directional drilling in the Critical Area.

--It is far easier and less expensive to prevent natural resource degradation than it is to correct it.

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 analyzed 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 that surface exploration and production drilling activities be prohibited in the Critical Area, and that directional drilling, where found to be environmentally safe, be used to obtain hydrocarbons from reservoirs located under the Chesapeake Bay.



CAMBRIDGE COUNTRY CLUB HOLE No. 10 LAYOUT PLAN

-  To Be Removed
-  25' Buffer
-  100' Buffer

 CONSULTING ENGINEERS AND SURVEYORS Andrews, Miller & Assoc., Inc. 508 MARYLAND AVENUE • CAMBRIDGE, MD. 21613 • PHONE 301-228-7117	DESIGNED	DATE AUG., 1990
	DRAWN J.R.G.	SCALE 1" = 50'
	CHECKED G.V.M.	JOB NO. 83061

STANDARD PROJECTS, INC. 1991 4/20/90 4.1

HOUSE OF DELEGATES

01r1401

No. 1062

M1

By: Delegate Weir (Chairman, Joint Committee on Chesapeake Bay Critical Areas)

Introduced and read first time: February 2, 1990

Assigned to: Environmental Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 16, 1990

APPROVED
BY THE GOVERNOR

CHAPTER 649

MAY 29 '90

- 1 AN ACT concerning
- 2 **Chesapeake Bay Critical Area Protection Program – Program Amendments and**
- 3 **Program Refinements**
- 4 FOR the purpose of authorizing certain local jurisdictions to propose certain
- 5 amendments and refinements to their local Chesapeake Bay Critical Area
- 6 Protection Program; providing for a process by which certain amendments and
- 7 refinements can be approved for inclusion into local Chesapeake Bay Critical
- 8 Area Protection Programs; providing certain requirements for zoning map
- 9 amendments; authorizing the Chesapeake Bay Critical Area Commission to adopt
- 10 certain regulations; providing for notifications and hearings; authorizing the
- 11 chairman of the Commission to make certain determinations concerning local
- 12 Chesapeake Bay Critical Area Protection Programs; providing certain powers and
- 13 duties for the Commission; providing for the use of growth allocation by a local
- 14 jurisdiction; requiring certain local jurisdictions to send certain information to the
- 15 Commission; defining certain terms; making technical and stylistic changes;
- 16 clarifying the meaning of “project approval”; and generally relating to program
- 17 amendments and program refinements for local Chesapeake Bay Critical Area
- 18 Protection Programs.
- 19 BY renumbering
- 20 Article – Natural Resources
- 21 Section 8-1808.1(b) and (c), respectively
- 22 to be Section 8-1808.1(c) and (d), respectively
- 23 Annotated Code of Maryland
- 24 (1983 Replacement Volume and 1989 Supplement)
- 25 BY adding to
- 26 Article – Natural Resources

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

1 Section 8-1808.1(b)
2 Annotated Code of Maryland
3 (1983 Replacement Volume and 1989 Supplement)

4 BY repealing and reenacting, with amendments,
5 Article - Natural Resources
6 Section 8-1802(a) and 8-1809
7 Annotated Code of Maryland
8 (1983 Replacement Volume and 1989 Supplement)

9 Preamble

10 WHEREAS, The Joint Committee on Chesapeake Bay Critical Areas was
11 created in 1984 to meet with the Chesapeake Bay Critical Area Commission and to
12 review the development and implementation of the criteria for program development in
13 the areas of the State subject to the Critical Area Law; and

14 WHEREAS, Chapter 234 of the Acts of 1988 expanded the authority of the Joint
15 Committee on the Chesapeake Bay Critical Areas to include, among other things, a
16 determination of whether the criteria need to be strengthened in any area to make the
17 Chesapeake Bay Critical Area Protection Program more effective in the protection of
18 the water quality and habitat of the Chesapeake Bay and its tributaries; and

19 WHEREAS, During the 1989 Interim, the Joint Committee on Chesapeake Bay
20 Critical Areas held open meetings on the upper and lower Eastern and Western Shores
21 of the Chesapeake Bay in Cambridge, Chestertown, Prince Frederick, and Towson and
22 gathered public comments from representatives of counties and municipalities having
23 land within the critical areas, landowners in the critical areas, and other interested
24 parties; and

25 WHEREAS, After due consideration of the issues raised, the Joint Committee on
26 Chesapeake Bay Critical Areas developed a legislative program to address some of the
27 problem areas encountered in its study during the 1989 Interim; now, therefore,

28 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
29 MARYLAND, That Section(s) 8-1808.1(b) and (c), respectively, of Article - Natural
30 Resources of the Annotated Code of Maryland be renumbered to be Section(s)
31 8-1808.1(c) and (d), respectively.

32 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
33 read as follows:

34 **Article - Natural Resources**

35 8-1802.

36 (a) (1) In this subtitle the following words have the meanings indicated.

37 (2) "Commission" means the Chesapeake Bay Critical Area Commission
38 established in this subtitle.

1 (3) "Development" means any activity that materially affects the condition
2 or use of dry land, land under water, or any structure.

3 ~~(4) "DEVELOPMENT AREA DESIGNATION" MEANS THE~~
4 ~~DESIGNATION OF LAND IN THE CHESAPEAKE BAY CRITICAL AREA AS~~
5 ~~INTENSELY DEVELOPED AREAS OR DISTRICTS, LIMITED DEVELOPMENT~~
6 ~~AREAS OR DISTRICTS, OR RESOURCE CONSERVATION AREAS OR~~
7 ~~DISTRICTS, UNDER CRITERIA ADOPTED BY THE COMMISSION.~~

8 (5) (4) "GROWTH ALLOCATION" MEANS THE AMOUNT
9 NUMBER OF ACRES OF LAND IN THE CHESAPEAKE BAY CRITICAL AREA
10 THAT A LOCAL JURISDICTION MAY USE TO CREATE NEW INTENSELY
11 DEVELOPED AREAS AND NEW LIMITED DEVELOPMENT AREAS, BASED
12 ON 5 PERCENT OF THE TOTAL RESOURCE CONSERVATION AREA IN A
13 COUNTY, AT THE TIME OF THE ORIGINAL APPROVAL BY THE
14 COMMISSION OF THE LOCAL JURISDICTION'S PROTECTION PROGRAM,
15 THAT IS NOT TIDAL WETLAND OR OWNED BY THE UNITED STATES
16 GOVERNMENT.

17 [(4)] (6) (5) "Includes" means includes or including by way of
18 illustration and not by way of limitation.

19 (6) "LAND CLASSIFICATION" MEANS THE DESIGNATION OF
20 LAND IN THE CHESAPEAKE BAY CRITICAL AREA IN ACCORDANCE WITH
21 THE CRITERIA ADOPTED BY THE COMMISSION AS AN INTENSELY
22 DEVELOPED AREA OR DISTRICT, A LIMITED DEVELOPMENT AREA OR
23 DISTRICT, OR A RESOURCE CONSERVATION AREA OR DISTRICT.

24 [(5)] (7) "Local jurisdiction" means a county, or a municipal corporation
25 with planning and zoning powers, in which any part of the Chesapeake Bay Critical
26 Area as defined in this subtitle, is located.

27 [(6)] (8) "Program" means the critical area protection program of a local
28 jurisdiction including any amendments to it.

29 (9) (I) "PROGRAM AMENDMENT" MEANS ANY CHANGE TO
30 AN ADOPTED PROGRAM THAT THE COMMISSION DETERMINES WILL
31 RESULT IN A USE OF LAND OR WATER IN THE CHESAPEAKE BAY
32 CRITICAL AREA IN A MANNER NOT PROVIDED FOR IN THE ADOPTED
33 PROGRAM.

34 (II) "PROGRAM AMENDMENT" INCLUDES A CHANGE TO A
35 ZONING MAP THAT IS NOT CONSISTENT WITH THE METHOD FOR
36 ~~DEDUCTING USING THE~~ GROWTH ALLOCATION CONTAINED IN AN
37 ADOPTED PROGRAM.

38 (10) (I) "PROGRAM REFINEMENT" MEANS ANY CHANGE TO
39 AN ADOPTED PROGRAM THAT THE COMMISSION DETERMINES WILL
40 RESULT IN A USE OF LAND OR WATER IN THE CHESAPEAKE BAY
41 CRITICAL AREA IN A MANNER ~~ALREADY PROVIDED FOR IN~~ CONSISTENT
42 WITH THE ADOPTED PROGRAM.

(II) "PROGRAM REFINEMENT" INCLUDES:

1. A CHANGE TO A ZONING MAP THAT IS CONSISTENT WITH THE DEVELOPMENT AREA DESIGNATION OF AN ADOPTED ~~AND APPROVED~~ PROGRAM; AND

2. THE USE OF THE GROWTH ALLOCATION IN ACCORDANCE WITH ~~THE METHOD FOR DEDUCTING GROWTH ALLOCATION CONTAINED IN AN ADOPTED AND APPROVED~~ AN ADOPTED PROGRAM.

[(7)] (11) (I) "Project approval" means the approval of development, other than development by a state or local government agency, in the Chesapeake Bay Critical Area by the appropriate local approval authority.

(II) [The term] "PROJECT APPROVAL" includes:

1. [approval] APPROVAL of subdivision plats and site plans;

2. [inclusion] INCLUSION of areas within floating zones;

3. [issuance] ISSUANCE of variances, special exceptions, and conditional use permits; and

4. [issuance of zoning permits] APPROVAL OF REZONING.

(III) [The term] "PROJECT APPROVAL" does not include building permits.

8-1808.1.

(B) THE GROWTH ALLOCATION FOR A LOCAL JURISDICTION SHALL BE CALCULATED BASED ON 5 PERCENT OF THE TOTAL RESOURCE CONSERVATION AREA IN THE LOCAL JURISDICTION AT THE TIME OF THE ORIGINAL APPROVAL OF THE LOCAL JURISDICTION'S PROGRAM BY THE COMMISSION, NOT INCLUDING TIDAL WETLANDS OR LAND OWNED BY THE FEDERAL GOVERNMENT.

8-1809.

(a) Within 45 days after the criteria adopted by the Commission under § 8-1808 of this subtitle become effective, each local jurisdiction shall submit to the Commission a written statement of its intent either:

(1) To develop a critical area protection program to control the use and development of that part of the Chesapeake Bay Critical Area located within its territorial limits; or

(2) Not to develop such a program.

(b) If a local jurisdiction states its intent not to develop a program or fails to submit a timely statement of intent, the Commission shall prepare and adopt a program for the part of the Chesapeake Bay Critical Area in that local jurisdiction.

1 (c) If a local jurisdiction states its intent to develop a program, it shall prepare
2 a proposed program and submit it to the Commission within 270 days after the effective
3 date of the criteria adopted under § 8-1808 of this subtitle. However, if the local
4 jurisdiction submits evidence satisfactory to the Commission that it is making
5 reasonable progress in the development of a program, the Commission may extend this
6 period for up to an additional 180 days. Before submission of a program to the
7 Commission within the time allowed by this subsection, a local jurisdiction shall hold at
8 least one public hearing on the proposed program, for which 2-weeks notice shall be
9 published in a newspaper of general circulation in the local jurisdiction.

10 (d) (1) Within 30 days after a program is submitted, the Commission shall
11 appoint a panel of 5 of its members to conduct, in the affected jurisdiction, a public
12 hearing on the proposed program.

13 (2) Within 90 days after the Commission receives a proposed program
14 from a local jurisdiction, it shall either approve the proposal or notify the local
15 jurisdiction of specific changes that must be made in order for the proposal to be
16 approved. If the Commission does [neither] NEITHER, the proposal shall be deemed
17 approved.

18 (3) A changed proposal shall be submitted to the Commission in the same
19 manner as the original proposal, within 40 days after the Commission's notice. Unless
20 the Commission approves a changed proposal or disapproves a changed proposal and
21 states in writing the reasons for its disapproval within 40 days, the changed proposal
22 shall be deemed approved.

23 (e) Within 90 days after the Commission approves a proposed program, the local
24 jurisdiction shall hold hearings and adopt the program in accordance with legislative
25 procedures for enacting ordinances. If the governing body of the local jurisdiction
26 wishes to change any part of the approved proposal before adoption, it shall submit the
27 proposed change to the Commission for approval. Unless the Commission approves the
28 change or disapproves the change and states in writing the reasons for its disapproval
29 within 30 days after it receives the change, the change shall be deemed approved. A
30 changed part may not be adopted until it is approved by the Commission.

31 (f) Within 760 days after criteria adopted by the Commission become effective,
32 there shall be in effect throughout the Chesapeake Bay Critical Area programs
33 approved or adopted by the Commission.

34 (g) Each local jurisdiction shall review ITS ENTIRE PROGRAM and propose
35 any necessary amendments to its ENTIRE program, including local zoning maps, at
36 least every 4 years BEGINNING WITH THE 4-YEAR ANNIVERSARY OF THE
37 DATE THAT THE PROGRAM BECAME EFFECTIVE AND EVERY 4 YEARS
38 AFTER THAT DATE. [Amendments shall be submitted to and acted on by the
39 Commission in the same manner as the original program.] EACH LOCAL
40 JURISDICTION SHALL SEND IN WRITING TO THE COMMISSION, WITHIN 60
41 DAYS ~~OF~~ AFTER EACH 4-YEAR ANNIVERSARY, THE FOLLOWING
42 INFORMATION:

1 (1) A STATEMENT CERTIFYING THAT THE REQUIRED REVIEW
2 HAS BEEN ACCOMPLISHED;

3 (2) ANY NECESSARY REQUESTS FOR PROGRAM
4 AMENDMENTS, PROGRAM REFINEMENTS, OR OTHER MATTERS THAT
5 THE LOCAL JURISDICTION WISHES THE COMMISSION TO CONSIDER;

6 (3) AN UPDATED RESOURCE INVENTORY; AND

7 (4) A STATEMENT QUANTIFYING ACREAGES WITHIN EACH
8 LAND CLASSIFICATION, THE GROWTH ALLOCATION USED, AND THE
9 GROWTH ALLOCATION REMAINING.

10 (H) (1) AS OFTEN AS NECESSARY BUT NOT MORE THAN 4 TIMES
11 PER CALENDAR YEAR, EACH LOCAL JURISDICTION MAY PROPOSE
12 PROGRAM AMENDMENTS AND PROGRAM REFINEMENTS TO ITS
13 ADOPTED PROGRAM.

14 (2) (I) EXCEPT FOR PROGRAM AMENDMENTS OR PROGRAM
15 REFINEMENTS DEVELOPED DURING PROGRAM REVIEW UNDER
16 SUBSECTION (G) OF THIS SECTION, A ZONING MAP AMENDMENT MAY BE
17 GRANTED BY A LOCAL APPROVING AUTHORITY ONLY ON PROOF OF A
18 MISTAKE IN THE EXISTING ZONING.

19 (II) THE REQUIREMENT IN PARAGRAPH (2)(I) OF THIS
20 SUBSECTION THAT A ZONING MAP AMENDMENT MAY BE GRANTED
21 ONLY ON PROOF OF A MISTAKE DOES NOT APPLY TO PROPOSED
22 CHANGES TO A ZONING MAP THAT:

23 1. ARE WHOLLY CONSISTENT WITH THE
24 ~~DEVELOPMENT AREA DESIGNATIONS~~ LAND CLASSIFICATIONS IN THE
25 ADOPTED PROGRAM; OR

26 2. PROPOSE THE USE OF ~~GROWTH ALLOCATION~~ A
27 PART OF THE REMAINING GROWTH ALLOCATION IN ACCORDANCE WITH
28 THE ADOPTED PROGRAM.

29 [(h)] (I) A program may not be amended except with the approval of the
30 Commission. [Except for amendments developed during program review under
31 subsection (g) of this section, an amendment to a zoning map may be granted by a local
32 approving authority only on proof of a mistake in the existing zoning.]

33 [(i)] (J) The Commission shall approve programs and PROGRAM
34 amendments that meet:

35 (1) The standards set forth in § 8-1808(b)(1) through (3) of this subtitle;
36 and

37 (2) The criteria adopted by the Commission under § 8-1808 of this
38 subtitle.

39 [(j)] (K) Copies of each approved program, as it is amended OR REFINED

1 from time to time, shall be maintained by the local jurisdiction and the Commission in
2 a form available for public inspection.

3 (L) (1) IF THE COMMISSION DETERMINES THAT AN ADOPTED
4 PROGRAM CONTAINS A CLEAR MISTAKE, OMISSION, OR CONFLICT WITH
5 THE CRITERIA OR LAW, THE COMMISSION MAY:

6 (I) NOTIFY THE LOCAL JURISDICTION OF THE SPECIFIC
7 DEFICIENCY; AND

8 (II) REQUEST THAT THE JURISDICTION SUBMIT A
9 PROPOSED PROGRAM AMENDMENT OR PROGRAM REFINEMENT TO
10 CORRECT THE DEFICIENCY.

11 (2) WITHIN 90 DAYS AFTER BEING NOTIFIED OF ANY
12 DEFICIENCY UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE LOCAL
13 JURISDICTION SHALL SUBMIT TO THE COMMISSION, AS PROGRAM
14 AMENDMENTS OR PROGRAM REFINEMENTS, ANY PROPOSED CHANGES
15 THAT ARE NECESSARY TO CORRECT ~~ANY DEFICIENCY OF WHICH THE~~
16 ~~LOCAL JURISDICTION IS NOTIFIED BY THE COMMISSION~~ THOSE
17 DEFICIENCIES.

18 (3) LOCAL PROJECT APPROVALS GRANTED UNDER A PART OF
19 A PROGRAM THAT THE COMMISSION HAS DETERMINED TO BE
20 DEFICIENT, ~~AFTER NOTICE OF THE DEFICIENCY,~~ SHALL BE NULL AND
21 VOID AFTER NOTICE OF THE DEFICIENCY.

22 (M) (1) THE COMMISSION MAY ADOPT REGULATIONS THAT
23 PRESCRIBE THE PROCEDURES AND INFORMATION REQUIREMENTS FOR
24 PROGRAM AMENDMENTS AND PROGRAM REFINEMENTS.

25 (2) IN THE ABSENCE OF REGULATIONS UNDER PARAGRAPH
26 (1) OF THIS SUBSECTION, A LOCAL JURISDICTION MAY PROPOSE
27 CHANGES TO ADOPTED PROGRAMS. WITHIN ~~14~~ 10 WORKING DAYS OF
28 RECEIVING A PROPOSAL UNDER THIS PARAGRAPH, THE COMMISSION
29 SHALL:

30 ~~(I) ACCEPT THE PROPOSAL FOR PROCESSING; OR~~

31 (I) MAIL A NOTIFICATION TO THE LOCAL JURISDICTION
32 THAT THE PROPOSAL HAS BEEN ACCEPTED FOR PROCESSING; OR

33 (II) RETURN THE PROPOSAL AS INCOMPLETE.

34 (N) A LOCAL JURISDICTION MAY SPECIFY WHETHER IT INTENDS A
35 PROPOSED CHANGE TO BE A PROGRAM AMENDMENT OR PROGRAM
36 REFINEMENT. HOWEVER, THE COMMISSION SHALL TREAT A PROPOSED
37 CHANGE AS A PROGRAM AMENDMENT; UNLESS THE CHAIRMAN
38 DETERMINES THAT THE PROPOSED CHANGE IS A PROGRAM
39 REFINEMENT.

40 (O) (1) FOR PROPOSED PROGRAM AMENDMENTS, A COMMISSION

1 PANEL SHALL HOLD A PUBLIC HEARING IN THE LOCAL JURISDICTION,
 2 AND ~~A QUORUM OF~~ THE COMMISSION SHALL ACT ON THE PROPOSED
 3 PROGRAM AMENDMENT WITHIN 90 DAYS OF THE COMMISSION'S
 4 ACCEPTANCE OF THE PROPOSAL. IF ACTION BY THE COMMISSION IS NOT
 5 TAKEN WITHIN 90 DAYS, THE PROPOSED PROGRAM AMENDMENT IS
 6 DEEMED APPROVED.

7 (2) THE LOCAL JURISDICTION SHALL INCORPORATE THE
 8 APPROVED PROGRAM AMENDMENT INTO THE ADOPTED PROGRAM
 9 WITHIN 120 DAYS OF RECEIVING NOTICE FROM THE COMMISSION THAT
 10 THE PROGRAM AMENDMENT HAS BEEN APPROVED.

11 (P) (1) PROPOSED PROGRAM REFINEMENTS SHALL BE
 12 DETERMINED AS PROVIDED IN THIS SUBSECTION.

13 (2) ~~ON BEHALF OF THE COMMISSION AND (1)~~ WITHIN 30 DAYS
 14 OF THE COMMISSION'S ACCEPTANCE OF A PROPOSED PROPOSAL TO
 15 CHANGE TO AN ADOPTED PROGRAM, THE CHAIRMAN, ON BEHALF OF
 16 THE COMMISSION, MAY DETERMINE THAT THE PROPOSED CHANGE IS A
 17 PROGRAM REFINEMENT. THEN THE CHAIRMAN IMMEDIATELY UPON
 18 MAKING A DETERMINATION UNDER THIS PARAGRAPH, THE CHAIRMAN
 19 SHALL NOTIFY THE COMMISSION OF THE CHAIRMAN'S THAT
 20 DETERMINATION.

21 (II) IF A PROPOSED CHANGE THAT WAS SPECIFICALLY
 22 SUBMITTED AS A PROGRAM REFINEMENT ~~WAS~~ IS NOT ACTED ON BY THE
 23 CHAIRMAN WITHIN THE 30-DAY PERIOD, THE COMMISSION SHALL
 24 NOTIFY THE APPROPRIATE LOCAL JURISDICTION THAT THE PROPOSED
 25 CHANGE HAS BEEN DEEMED TO BE A PROGRAM AMENDMENT.

26 (3) (1) THE COMMISSION MAY VOTE TO OVERRIDE THE
 27 CHAIRMAN'S DETERMINATION ONLY IF A MAJORITY OF THE MEMBERS
 28 WHO ARE PRESENT AND ELIGIBLE TO VOTE AT THE FIRST COMMISSION
 29 MEETING WHERE A QUORUM IS PRESENT FOLLOWING THE CHAIRMAN'S
 30 DETERMINATION CONCUR IN OR VOTE FOR THE ACTION.

31 (II) IF THE CHAIRMAN'S DETERMINATION IS
 32 OVERRIDDEN, THE PROPOSED CHANGE IS DEEMED A PROGRAM
 33 AMENDMENT, WHICH SHALL BE DECIDED BY THE COMMISSION IN
 34 ACCORDANCE WITH THE PROCEDURES FOR PROGRAM AMENDMENTS
 35 PROVIDED IN THIS SECTION, ~~NOTWITHSTANDING THE PROVISIONS OF~~
 36 ~~THIS SUBSECTION OR SUBSECTION (O) OF THIS SECTION,~~ EXCEPT THAT
 37 THE COMMISSION SHALL ACT ON THE PROGRAM AMENDMENT WITHIN 60
 38 DAYS, ~~IF THE COMMISSION VOTES~~ AFTER A VOTE TO OVERRIDE THE
 39 CHAIRMAN.

40 (III) IF THE CHAIRMAN'S DETERMINATION IS NOT
 41 OVERRIDDEN, WITHIN 10 WORKING DAYS AFTER THE OPPORTUNITY TO
 42 OVERRIDE THE CHAIRMAN'S DECISION UNDER ITEM (1) OF THIS
 43 PARAGRAPH THE CHAIRMAN, ON BEHALF OF THE COMMISSION, SHALL:

1 1. APPROVE THE PROPOSED PROGRAM
2 REFINEMENT ~~WITHIN 10 WORKING DAYS OF THE FIRST COMMISSION~~
3 ~~MEETING WHERE A QUORUM IS PRESENT FOLLOWING THE CHAIRMAN'S~~
4 ~~DETERMINATION, AND SO AND NOTIFY THE LOCAL JURISDICTION; OR~~

5 2. DENY THE PROGRAM REFINEMENT; OR

6 ~~2.~~ 3. SEND THE PROPOSED PROGRAM
7 REFINEMENT BACK TO THE LOCAL JURISDICTION ~~FOR THE MAKING OF~~
8 WITH A LIST OF SPECIFIC CHANGES TO BE MADE.

9 (IV) WITHIN 44 10 WORKING DAYS OF RECEIVING A
10 CHANGED PROGRAM REFINEMENT CHANGED IN ACCORDANCE WITH
11 ITEM (III)3 OF THIS PARAGRAPH, THE CHAIRMAN SHALL APPROVE OR
12 DENY THE PROGRAM REFINEMENT.

13 (4) A LOCAL JURISDICTION SHALL INCORPORATE AN
14 APPROVED PROGRAM REFINEMENT INTO ITS ADOPTED PROGRAM
15 WITHIN 120 DAYS OF RECEIVING NOTICE FROM THE CHAIRMAN THAT
16 THE PROGRAM REFINEMENT HAS BEEN APPROVED.

17 (Q) AS NECESSARY, A LOCAL JURISDICTION MAY COMBINE ANY OR
18 ALL PROPOSED PROGRAM AMENDMENTS OR PROGRAM REFINEMENTS
19 REQUIRED FOR A SPECIFIC PROJECT APPROVAL INTO A SINGLE
20 REQUEST TO THE COMMISSION FOR PROGRAM AMENDMENT, PROGRAM
21 REFINEMENT, OR BOTH. APPROVAL BY THE COMMISSION OF A
22 PROGRAM AMENDMENT, PROGRAM REFINEMENT, OR BOTH DOES NOT
23 AFFECT THE COMMISSION'S AUTHORITY TO RECEIVE NOTICE OF OR
24 INTERVENE IN A PROJECT APPROVAL THAT WAS NOT SPECIFICALLY
25 APPROVED BY THE COMMISSION AS PART OF ITS APPROVAL OF A
26 PROGRAM AMENDMENT OR PROGRAM REFINEMENT.

27 (R) WITHIN 6 MONTHS AFTER THE ADOPTION OF AMENDED
28 CRITERIA, A LOCAL JURISDICTION SHALL SEND TO THE COMMISSION:

29 (1) PROPOSED PROGRAM AMENDMENTS OR PROGRAM
30 REFINEMENTS;

31 ~~(2) CHANGES TO ADOPTED PROGRAMS THAT ADDRESS THE~~
32 ~~AMENDED CRITERIA; OR~~

33 ~~(3)~~ (2) A STATEMENT DESCRIBING HOW THE ADOPTED
34 PROGRAM CONFORMS TO THE AMENDED CRITERIA AND CERTIFYING
35 THAT THE ADOPTED PROGRAM IS CONSISTENT WITH THE AMENDED
36 CRITERIA.

37 (S) IF THE COMMISSION ADOPTS A REGULATION CONCERNING THE
38 ~~DEDUCTION USE OF THE GROWTH ALLOCATION, THE USE OF ANY USE~~
39 OF THE GROWTH ALLOCATION MUST BE IN ACCORDANCE WITH ~~THE~~
40 THAT REGULATION FOR THE CHANGE TO BE CONSIDERED A PROGRAM
41 REFINEMENT.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
2 effect July 1, 1990.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.

HOUSE OF DELEGATES

0lr1404

No. 1060

M1

By: Delegate Weir (Chairman, Joint Committee on Chesapeake Bay Critical Areas)

Introduced and read first time: February 2, 1990

Assigned to: Environmental Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 16, 1990

**APPROVED
BY THE GOVERNOR**

CHAPTER **648**

MAY 29 '90

1 AN ACT concerning

2 **Chesapeake Bay Critical Area - Impervious Surfaces Limitation**

3 FOR the purpose of providing an exception, under certain conditions, for certain lots in
4 the Chesapeake Bay Critical Area from certain impervious surfaces limitations
5 greater than certain amounts; restating and revising current requirements for
6 stormwater runoff and impervious surfaces limitations; altering certain dates;
7 requiring certain local jurisdictions to amend by a certain date their Chesapeake
8 Bay Critical Area Protection Programs; providing for the application of this Act;
9 and generally relating to impervious surfaces limitations in the Chesapeake Bay
10 Critical Area.

11 BY repealing and reenacting, with amendments,
12 Article - Natural Resources
13 Section 8-1808.3
14 Annotated Code of Maryland
15 (1983 Replacement Volume and 1989 Supplement)
16 Preamble

RECEIVED

JUN 6 1990

**DNR
CRITICAL AREA COMMISSION**

17 WHEREAS, The Joint Committee on Chesapeake Bay Critical Areas was
18 created in 1984 to meet with the Chesapeake Bay Critical Area Commission and to
19 review the development and implementation of the criteria for program development in
20 the areas of the State subject to the Critical Area Law; and

21 WHEREAS, Chapter 234 of the Acts of the General Assembly of 1988 expanded
22 the authority of the Joint Committee on the Chesapeake Bay Critical Areas to include,
23 among other things, a determination of whether the criteria need to be strengthened in
24 any area to make the Chesapeake Bay Critical Area Protection Program more effective

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

1 in the protection of the water quality and habitat of the Chesapeake Bay and its
2 tributaries; and

3 WHEREAS, During the 1989 Interim, the Joint Committee on Chesapeake Bay
4 Critical Areas held open meetings on the upper and lower Eastern and Western Shores
5 of the Chesapeake Bay in Cambridge, Chestertown, Prince Frederick, and Towson and
6 gathered public comments from representatives of counties and municipalities having
7 land within the critical areas, landowners in the critical areas, and other interested
8 parties; and

9 WHEREAS, After due consideration of the issues raised, the Joint Committee
10 on Chesapeake Bay Critical Areas adopted a legislative program to address some of the
11 problem areas encountered in its study; now, therefore,

12 SECTION. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
13 MARYLAND, That the Laws of Maryland read as follows:

14 Article - Natural Resources

15 § 8-1808.3.

16 (a) This section applies notwithstanding:

- 17 (1) Any other provision of this subtitle; or
18 (2) Any criteria or guideline of the Commission adopted under this
19 subtitle.

20 (b) This section controls over any other requirement concerning impervious
21 surfaces limitations IN LIMITED DEVELOPMENT AREAS AND RESOURCE
22 CONSERVATION AREAS in the critical area.

23 [(c) For stormwater runoff, man-caused impervious areas shall be limited to 15
24 percent of a parcel to be developed. However, impervious surfaces on any lot not
25 exceeding 1 acre in size in a subdivision approved after June 1, 1986 may be up to 25
26 percent of the lot.]

27 (C) ON OR BEFORE DECEMBER 31, 1990, A LOCAL JURISDICTION
28 SHALL AMEND ITS LOCAL CRITICAL AREA PROTECTION PROGRAM TO
29 MEET THE PROVISIONS OF THIS SECTION.

30 (D) (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION
31 FOR STORMWATER RUNOFF, ~~PEOPLE-CAUSED~~ MAN-MADE IMPERVIOUS
32 SURFACES ARE LIMITED TO 15% OF A PARCEL OR LOT.

33 (2) IF A PARCEL OR LOT ONE-HALF ACRE OR LESS IN SIZE WAS
34 IN RESIDENTIAL USE ON OR BEFORE DECEMBER 1, 1985, THEN
35 ~~PEOPLE-CAUSED~~ MAN-MADE IMPERVIOUS SURFACES ASSOCIATED WITH
36 THAT USE ARE LIMITED TO 25% OF THE PARCEL OR LOT.

37 (3) IF A PARCEL OR LOT ONE-FOURTH ACRE OR LESS IN SIZE
38 WAS IN NONRESIDENTIAL USE ON OR BEFORE DECEMBER 1, 1985, THEN
39 ~~PEOPLE-CAUSED~~ MAN-MADE IMPERVIOUS SURFACES ASSOCIATED WITH

1 THAT DEVELOPMENT ARE LIMITED TO 25% OF THE PARCEL OR LOT.

2 (4) IF AN INDIVIDUAL LOT 1 ACRE OR LESS IN SIZE IS PART OF
3 A SUBDIVISION APPROVED AFTER DECEMBER 1, 1985, THEN
4 ~~PEOPLE CAUSED~~ MAN-MADE IMPERVIOUS SURFACES OF THE LOT MAY
5 NOT EXCEED 25% OF THE LOT. HOWEVER, THE TOTAL OF THE
6 IMPERVIOUS SURFACES OVER THE ENTIRE SUBDIVISION MAY NOT
7 EXCEED 15%.

8 (E) THIS SECTION DOES NOT APPLY TO A TRAILER PARK THAT WAS
9 IN RESIDENTIAL USE ON OR BEFORE DECEMBER 1, 1985.

10 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
11 effect July 1, 1990.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.

CHESAPEAKE BAY CRITICAL AREA COMMISSION
275 West Street, Suite 320
Annapolis, Maryland 21401

August 1, 1990

MEMORANDUM

TO: Members of the Critical Area Commission
FROM: Ren Serey, Staff
SUBJECT: Commission Meeting - August 1, 1990

Attached are staff reports covering items on the agenda for today's Commission meeting.

RS:msl

Attachments

STAFF REPORT

JURISDICTION: Betterton

PROGRAM REFINEMENT: Growth Allocation - Rigbie Bluff II
2.181 acres; LDA to IDA

PROJECT DESCRIPTION: Rigbie Bluff II is a residential/commercial development on 2.181 acres in the Betterton Critical Area. It entails multifamily residential townhouse units (13 du) and a retail restaurant/deli. The site is currently designated LDA; the Town proposes that this parcel of land be designated IDA. The parcel is located greater than 400 feet from the Sassafras River, thus eliminating any buffer issues. The underlying zoning is C-1-Commercial Marine District.

JUSTIFICATION FOR REFINEMENT: This growth allocation project meets the requirements for a proposed amendment to be designated a refinement. According to the newly-adopted HB 1062, which became effective July 1, 1990, program refinement includes the use of growth allocation in accordance with an adopted Program. (Rigbie Bluff II meets this requirement.) Other considerations regarding this project follow:

- 1) The parcel of land on which this project will be built is designated as a site for future growth allocation in the Betterton Critical Area Program;
- 2) The growth allocation has been approved by the Betterton Planning Commission and the Mayor and Council;
- 3) The project is consistent with the underlying C-1 zoning and the Betterton Comprehensive Plan;
- 4) Requirements of the Betterton Critical Area Program and Zoning Ordinance have been met:
 - the area of disturbance for non-residential development has been limited to no more than 60% of the site;
 - no HPAs occur on-site;
 - the planting plan meets the recommendations of the Bay Watershed Forester for multilayering of mixed evergreen and deciduous native plants;

Staff Report

Page 2

- approximately 1.2 acres, or 55 percent of the site, will remain as permanently vegetated; and
- the 10% pollutant reduction calculations have been submitted to the Town Engineer for review.

STAFF CONTACT: Pat Pudelkewicz

Critical Area Commission
Staff Report
August 1, 1990

Subject: (5) Calvert County Program Amendments

Description: A public hearing was held on July 30, 1990 in reference to the following proposed amendments. No public comment or opposition was heard at that hearing. The proposed amendments have not been controversial throughout the local public hearing and approval process. Justifications for the proposed amendments follow each description.

CAA-2

Warren Halle, Halle Marina, Breezy Point, Tax Map 19, Parcel 60; Rezoning Case 89-1, County Public Hearing held 8-29-90. Amend one of the sections of the Zoning Ordinance pertaining to buffer exemption, Section 7-4.07C.3, by adding subsection "i" as follows: "i. Halle Marina (Breezy Point)" and by altering Map No. 3 of the Critical Area regulations to reflect buffer exempt status for Halle Marina.

"The subject property has been intensely utilized as a marina and public recreation area for many years and consequently has virtually no existing vegetation within the designated Buffer. As an intensely developed and utilized facility, the subject site should have been exempted from the Buffer requirements as were other similar properties pursuant to Section 4-4.07C.3."

CAA-3

Chesapeake Beach/North Beach, Tax Map 8, Rezoning Case 89-7, County Public Hearing held 3-6-90. Amend the Calvert County Critical Area Map to conform to the State wetland map in the area just north of the Chesapeake Beach Town Center.

Amendment to line north of Chesapeake Beach: The actual State wetlands are smaller than were shown on the original Critical Area Maps. The Critical Area line is supposed to be 1,000 feet back from State wetlands. Therefore, the correct line is farther east, closer to the Chesapeake Bay. This rezoning would remove the piece of land that was erroneously included in the Critical Area.

NOTE: This amendment will have an effect on the development potential of the Chesapeake Lighthouse Town House development which would possibly allow further development of the property.

CAA-4

Amendment to Ship's Point: The entire property of the Ship's Point Industrial Facility on Tax Map 44A was supposed to have been shown as IDA on the Critical Area Maps. Due to an oversight, a portion of the property was shown as LDA. This rezoning would designate the entire Ship's Point Industrial Facility IDA and those parcels adjacent to it as LDA as originally intended.

Ship's Point Research Park, Lusby, Tax Map 44A, Rezoning Case 89-7, County Public Hearing held 3-6-90. Correct the Calvert County Critical Areas Map to designate the entire Ship's Point Research Park as Intensely Developed Area (IDA), redesignate those parcels adjacent to the Ship's Point Research Park that were incorrectly mapped as IDA as Limited Development Area (LDA) and, to be consistent with Section 4-4.07C.3 of the Zoning Ordinance, alter Map No. 3 of the Critical Area regulations to reflect buffer exempt status for Ship's Point Research Park .

CAA-5

Revise the definitions of "Forest" and "Developed Woodlands" and amend Section 4-8.07A.4 of the Calvert County Zoning Ordinance (Rezoning Case 89-11, County Public Hearing held 3-6-90). Revise the definitions of "Forest" and "Developed Woodlands" to:

1

Developed Woodlands - Those areas of [1 acre] 1,000 sq. ft. or more in size which predominantly contain trees and natural vegetation and which also include residential, commercial, or industrial structures and uses.

Forest - A biological community dominated by trees and other woody plants covering a land area of [1 acre] 1,000 sq. ft. or more. This also includes forest that have been cut, but not cleared. Areas commercially harvested of forest cover in the Critical Area will be considered forested for development purposes.

Amend section 4-8.07A.4 to read:

For the replacement of forest and developed woodland, if more than 20 percent is removed from forest use, the following formula shall apply: a developer may clear or develop more forest than otherwise permitted to be disturbed, if the total forest area removed

1

Brackets indicate existing wording to be removed and underlining indicates wording to be added.

from forest use is not increased by more than 50% of the area permitted to be disturbed in 4-8.07A(3)(c), provided that the afforested area shall consist of 1.5 times the total surface acreage of the disturbed forest or developed woodland area, or both. The total allowable amount of land to be removed from forest cover is 5,000 square feet or 30%, whichever is greater. Permitted clearing of 5,000 sq. ft. or less of forest will require replacement on only a one-to-one basis, independent of the percent cover removed.

Currently, all wooded lots less than one acre are exempt from the forest clearing regulations. Therefore, in the Critical Area, whole forests in old subdivisions can be reduced to 15% of the original area without replacement or fees-in-lieu. In addition, clearing without a permit is not penalized by the three-times replanting regulation unless greater than one acre.

Further Justification for the Proposed Changes to the Critical Area Forest Clearing Regulations

1000 sq. ft. limit to the Definition of Forest

Without a set size limit the definition of a forest becomes ambiguous, difficult to implement and difficult to defend. One must define a biological community which may be open to interpretation. In LDA areas outside of the buffer, property owners are allowed to remove a tree for personal use without a permit and without replacement. If someone takes down two trees adjacent to each other, have they removed a biological community? The 1000 sq ft cut off was proposed as it is the area of an average sized house (25' by 40') and as it would create a noticeable opening in the forest canopy.

The 5000 sq ft exemption from the 30% maximum regulation was proposed to protect small (less than 1/2 acre) lots from too restrictive limitations for lot clearing and from excessive fees. It is assumed that approximately 5000 sq ft would be required to build a reasonable sized house with driveway and septic system. Independent of the area cleared, 15% of the lot area must remain or be established in forest cover.

The present Calvert County Critical Areas Program regulations do not meet the LDA/RCA goal of no net loss of forest as 85% of existing lots less than an acre can be cleared without replacement. The present proposal would do much to solve this problem by requiring replacement or fees-in-lieu for replanting for all areas cleared that are greater than 1000 sq ft.

IMPACT OF CHANGE IN FOREST DEFINITION AND 5000 SF EXEMPTION

ACRES	LOT SF	20% SF	30% SF	85% SF*	COST 20%	COST 30%	COST 5000 SF	% OF LOT
5	217800	43560	65340	---	871	22651	100	2
1	43560	8712	13068	---	174	4530	100	11
1/2	21780	4356	6534	18513	87	2265	100	23
1/4	10890	2178	3267	9257	44	1133	100	46
1/8	5445	1089	1634	4628	22	566	100	92

* PRESENTLY, IF UNDER AN ACRE OF FOREST, NO REPLANTING OR FEES-IN-LIEU ARE REQUIRED AND 85% OF THE LOT AREA CAN BE CLEARED

CAA-6

Amend the adopted Calvert County Critical Area line to conform to the State wetland maps in the entire first district and small portions of the second district of Calvert County (County Public Hearing held 5-15-90). Amend the Critical Area line on Tax Maps 25, 28, 30-40, 42-45 and 47 to conform to the State Wetland Maps.

Panel Recommendation: The Calvert County Commission Panel recommends approval of the amendments with the condition that the proposed map changes, which are based on the State tidal wetland maps, will be approved subject to Commission verification for accuracy.

STAFF REPORT

August 1, 1990

Applicant: State Railroad Administration

Project: Rehabilitation of Bridge over Hunting Creek
at Caroline/Dorchester County Line

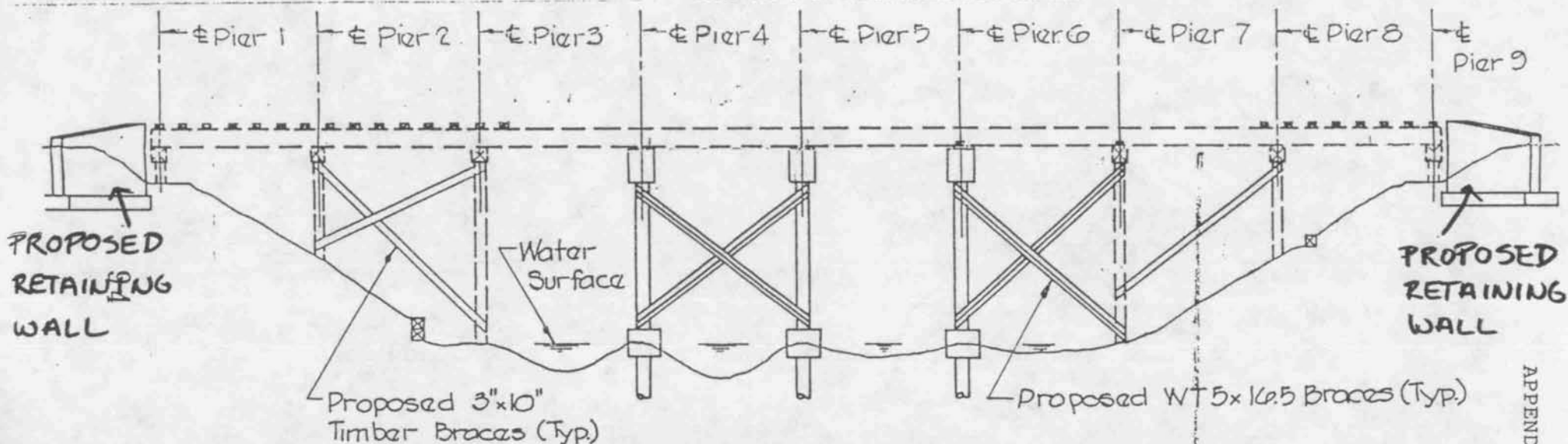
Recommendation: Approval

Project Description:

The State Railroad Administration proposes to rehabilitate the railroad bridge at the Caroline/Dorchester County line where it crosses Hunting Creek. The work includes replacement of three piers and repairs to another, replacement of longitudinal and diagonal timber braces and replacement of retaining walls at both abutments. There will be no change in alignment.

There will be minimal surface area disturbance of approximately 1,000 square feet. The volume of excavated material should be less than 100 cubic yards. A portion of the stream will have to be diverted to replace the piers. This will probably be done with sandbags. It will be up to the contractor to obtain the necessary permits.

The width of Hunting Creek at this point is approximately 50 feet across. Hunting Creek is a tributary of the Choptank River and spawning of several species of anadromous fish (yellow perch, white perch, herring) has been documented downstream of the project site. The Department of Natural Resources will put a time of year restriction on any instream work of February 15 - June 15 to avoid construction impacts to these fish.

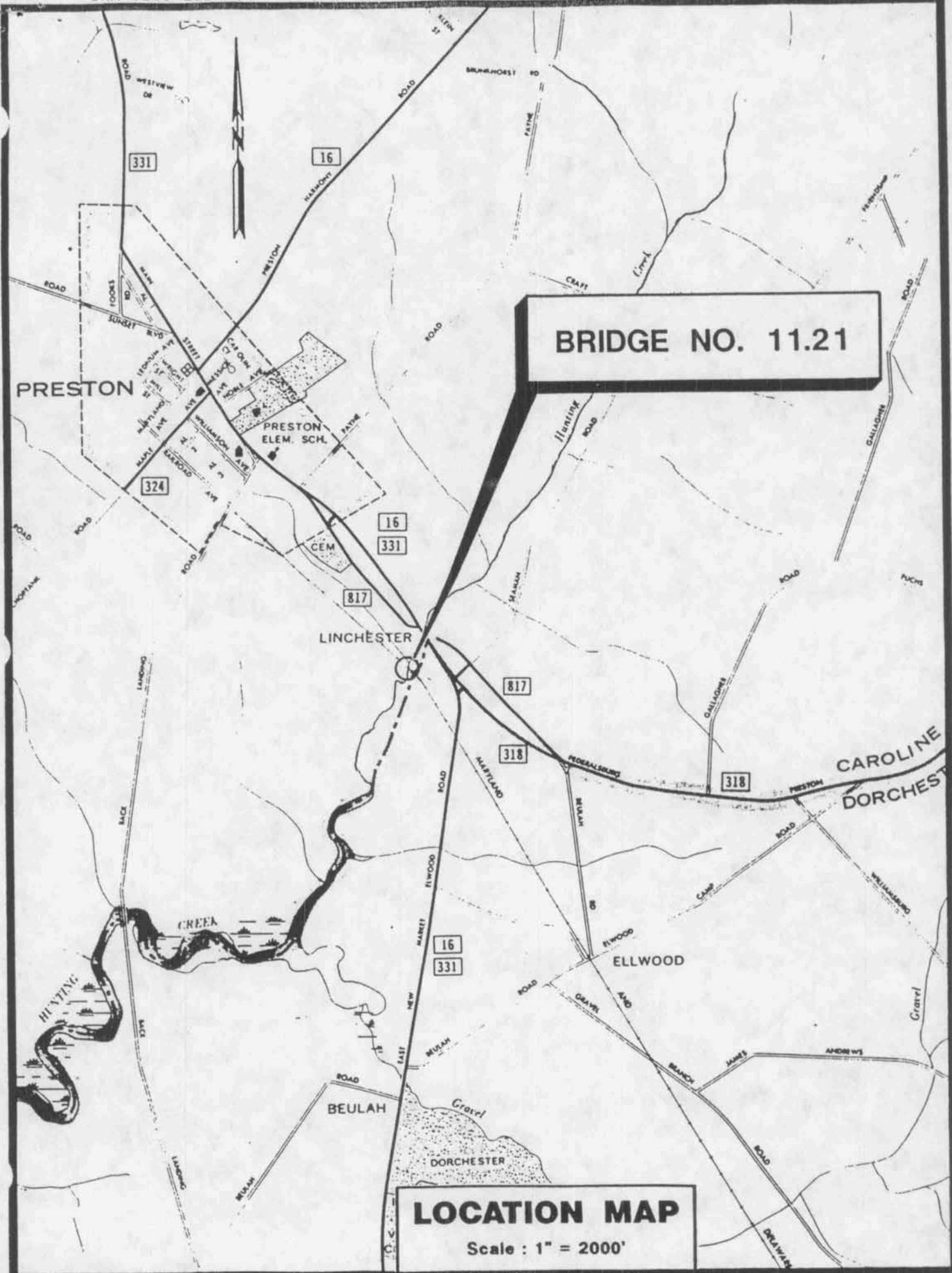


SOUTH ELEVATION

Scale: $\frac{3}{32}'' = 1'-0''$

Note: All ground surfaces, disturbed during construction operations, shall be stabilized with Soil Stabilization Matting.

Note: Portions of Existing Structure to Remain are shown in dashed lines.



BRIDGE NO. 11.21

LOCATION MAP

Scale : 1" = 2000'

SUBCOMMITTEE REPORT

August 1, 1990

Applicant: Maryland-National Capital Park and Planning Commission

Project: Colmar Manor Nature Study Area - Anacostia River Park

Recommendation: APPROVAL with conditions

Discussion:

M-NCPPC proposes to develop a nature study area in Anacostia River Park. The nature study area will consist of an interpretive nature trail, an observation platform overlooking Dueling Creek and its' tidal marsh, and a boardwalk from the nature trail to a dock on Dueling Creek providing canoe access to the area. The proposed area is home to a remarkable diversity of wildlife including: ducks, geese, several species of herons, kingfisher, red shoulder hawk, ospreys, and a variety of song birds. Small animals in the area include: red fox, rabbits, chipmunks, raccoons, beavers, muskrat, and opossum. In conjunction with construction of the dock, Dueling Creek will be dredged to allow canoe access and approximately 852 cubic yards of sediment will be piped and deposited outside the Buffer in an approved disposal site for dredge spoils, in pond #1. This pond has been used as a disposal site for dredge spoils from the Bladensburg Marina. A time of year restriction on the dredging is being considered by the Corps of Engineers to avoid disturbance to anadromous fish during spawning season. The existing dirt hiking trail will be upgraded with gravel and woodchips, with boardwalks over wet areas as necessary. There will be handicap access to both the observation platform and the boardwalk down to the dock by a handicap equipped van.

Recommended Conditions:

1. Clean up of dumped articles and trash in the area, possibly by the Maryland Conservation Corps.
2. The pipe for the dredge spoils from Dueling Creek will initially follow the Floodplain Trail in the 100 foot Buffer, but will follow the trail outside the Buffer when possible. At the end of the trail the pipe will continue along the toe of the slope outside the buffer and then up the slope to the disposal site in pond #1.

Contact person: Theresa Corless

STATE OF MARYLAND
CRITICAL AREA COMMISSION
WEST GARRETT PLACE, SUITE 320
275 WEST STREET
ANNAPOLIS, MD 21401
(301) 974-2426

TO: Judge North

FROM: Tom Ventre 

SUBJECT: Carson Variance Appeal
Crisfield Critical Area

DATE: August 1, 1990

The Assistant Attorney General assigned to our appeal of the recent Carson variance decision in Crisfield has informed us that the Commission is required to file its B-Rule Memorandum with the Circuit Court for Somerset County by August 11, 1990.

In view of this imminent deadline, and in light of the Commission's sentiment expressed at its July meeting that the matter be left to the "Chairman's judgement", I have reviewed the salient facts of this matter, in the hope of arriving at a conclusion and recommendation.

Briefly, the facts are these:

Variations of 50 feet and 70 feet from local Buffer requirements were requested by a lot owner, Mr. Carson, for his property at Hammock Pointe in the Crisfield Critical Area. The variations were requested in order to accommodate a new house and garage that Mr. Carson proposes to build there.

In this instance, the 100-foot Buffer is demarcated from the upland edge of an adjacent tidal wetland, lying to the south and southeast of the Carson lot.

This office reviewed the request, and determined that a variance based on hardship was not justified, as there was adequate area on the lot outside of the Buffer to partially accommodate the proposed house and to accommodate entirely the proposed garage and driveway.

The Crisfield Board of Zoning Appeals conducted an advertised public hearing on the Carson request. According to the minutes of that hearing and according to a letter from the Board's Chairman to Commission staff subsequent to the hearing, the Board agreed that staff's siting recommendation "was not appropriate for Mr. Carson's lot". The Board was unanimous in its agreement with the applicant regarding the preferred location of structures on the site. The Board also noted that "...by virtue of utilities being on the property...and the probable cost that would be incurred...if plans were changed, it was deemed not economically feasible to relocate the dwelling." This, apparently, is the basis of their finding of justifiable hardship.

This particular subdivision has been troubled with difficulties, misunderstandings and errors almost from its

inception, and these have contributed to the present matter.

Initially, the Buffer was never demarcated properly or shown correctly on plats, thus misleading prospective lot owners as to the extent of allowable buildable areas on individual lots.

The site was a dredge spoil area, and the City has actively encouraged and promoted its development. This former spoil dump is now considered a community asset, with good reason.

The entire parcel of the subdivision is bordered directly to the south, southeast and east by the Jersey Island Marsh, an extensive tidal wetland. From the edges of the Carson lot, the marsh stretches more than two-thirds of a mile to the south and southeast, and more than one-half mile to the east. Along those sides, the berm that originally contained the spoil-disposal area and separated it from the marsh is still visible.

The developed lots are served by on-site storm drain catch basins and sediment traps to collect and contain runoff, and to reduce the amount of runoff from the site.

The Board of Zoning Appeals granted this variance with the stipulation that a pervious-surface driveway be required, and that the remainder of the property be naturalized through the planting of shrubs, trees and ground covers. The Board noted that these stipulations were based on the recommendations of Commission staff.

To be sure, this is a difficult decision, but after considering all of these facts, as well as intangible factors, I recommend that we withdraw our appeal of this variance decision, and that we direct our counsel accordingly.

/jjd

JOHN LEE CARROLL

515 MADISON AVENUE

32ND FLOOR

NEW YORK, N. Y. 10022

(212) 688-3353

July 6, 1990

ANS
7/26/90

Dr. Shepard Krech
White House Farm
Easton, MD 21601

Dear Dr. Krech,

Further to my phone call after the June meeting of the Critical Area Commission, I would like to express my appreciation of your "nay" vote in the decision on the golf course at Queenstown.

This decision represented the culmination of a 5-year effort on the part of myself and others to prevent Queenstown Creek from becoming, in the words of your colleague Mr. Gutman, "another St. Michaels." Since Arthur Birney's original proposal for a 60-room hotel and 100 boat slips, I have watched as he probed and probed to find the combination that would unlock the Queenstown dollar potential. Unfortunately, an important tumbler fell into place on June 6th.

My copy of the panel's report shows that it was sent on June 4th by Federal Express to the Commissioners who therefore could have had barely 24 hours to review its 27 pages, to say nothing of the nearly 500 page record. As of interest, here are some aspects of the record that the panel brushed aside in its report:

1. It did not disclose that by granting the golf course without permanently restricting other uses, the developer may possibly, by use of small amounts of growth allocation, be able to create a large multi-use resort in a piecemeal fashion.
2. It did not disclose the opposition of the Maryland Environmental Trust and that of a number of private environmental organizations.
3. It did not disclose the 1,600 acres of easements that were offered by the other landowners on Queenstown Creek if My Lords Gift were restricted to 1/20 residential development.
4. It did not disclose the letter from Orlando Ridout, copy of which I enclose, or its unusual nature.
5. The testimony of Ned Gerber as to the wildlife habitat was badly misrepresented in the panel's summary. There are bald eagles nesting on my farm, less than 1-1/2 miles from the proposed golf course, which use the entire region as a feeding ground. Gerber also gave extensive and unrefuted commentary with respect to waterfowl, which golf courses are notoriously hard on.

6. The panel's characterization of the effect of 40,000 people per year (pages 21-22) was disingenuous to a degree. 2 persons per acre is 40 person per 20 acres, far more than is allowed by residential development, and the quibble over the word "can" amounts to a repudiation of positions previously taken by the commission.

7. It did not disclose potential damage done to the Critical Area Law by the totally convoluted interpretation of it, necessitated by the need to explain away some very plain language excluding golf courses. This is one way in which laws become unraveled, as I'm sure you know, and there are a lot of people who have been waiting for this to happen.

The posture of the Chesapeake Bay Foundation has troubled me greatly. It would have been highly appropriate for them to have requested the Commission to establish guidelines for golf course construction and management before giving approval to one, and indeed their letter to the CAC of 4/26/89 hinted at this. We asked them repeatedly to make such a request, and their abject silence in the matter coupled with the care they took to attend the hearings left us mystified, if that is the right word.

I enclose some clippings from the Baltimore Sun which you may not have seen. If the Commission can make good on its recommendations to the County, it is possible that the damage to the Bay, to Queenstown Creek, and to the Critical Area Law itself will be contained.

Finally, Coster Gerard, with whom I share this office, has just come in, and asked me to send you his regards.

Sincerely,



JLC:lz
Enc.

Baltimore Sun
6/30/90

Golf Links by the Bay

The Chesapeake Bay Critical Area Commission made a close call in approving a golf course on a historic farm along Queenstown Creek and the Chester River. The panel correctly refused the developer's request to also build a marina and a country inn. Heavy boat and tourist traffic already threaten this delicate shoreline.

The Maryland Environmental Trust opposed any recreational use of the historically significant land, which is still producing colonial and prehistoric archaeological finds. Approval of the golf course could cost the trust credibility with neighboring Queenstown farmers, whose land the trust wishes to preserve.

The Chesapeake Bay Foundation, the most effective watchdog group trying to protect the bay for future Marylanders, commended the Critical Area Commission. It pointed out that the 27-hole public golf course would bring more citizens to the bay, and would add 22 acres of woodlands and nine ponds, which will enhance the environment.

All that is fine for now. But the panel may have

to remind the developer, Washington Brick and Terra Cotta Co., of the limitations it accepted — if it renews requests for a marina and inn. The 1,000-foot-deep zone protected by the commission winds around Chesapeake. Preserving this shoreline is vital to the bay's health.

Queen Anne's County has developed rapidly as a community just a short drive across the Kent Narrows and bay bridge from Annapolis. Its leaders fought creation of the Critical Area Commission with its power to restrict local growth, where necessary, to protect the bay. Though the commission approved the Queenstown Harbour Golf Links, it demanded tough requirements of its owners. They must provide "best management practices." They also must assure that the golf course land slopes inward from the water, that insecticides and pesticides be used only when necessary and that there be minimum tree loss.

If the requirements are met, the Chesapeake should be fully protected. It will be up to the state's oversight commission to make sure it happens.

The Sun 6-7-90

Controversial golf course OK'd for historic Shore farm

By James Bock
Sun Staff Correspondent

ANNAPOLIS — Despite objections from two state agencies, the Chesapeake Bay Critical Area Commission ruled yesterday that a Washington developer can build a 27-hole golf course on a historic farm along Queenstown Creek and the Chester River.

The decision paves the way for the Queen Anne's County commissioners to grant expected final approval to the Washington Brick and Terra Cotta Co.'s project at the junction of Routes 50 and 301.

"I think this is the best for all the different factions," said Wheeler R. Baker, president of the Queen Anne's County commissioners. "It provides recreation and open space for the county, and the [developers] hopefully will make money on it."

Bol H. Grant Dehart, director of the Maryland Environmental Trust, which opposed the project, said the ruling would disrupt his agency's plans to preserve neighboring Queenstown (population 387) as one of seven "rural historic villages" in the state. He said it would scuttle the trust's negotiations with landowners



SUN GRAPHICS

to preserve 1,500 acres surrounding the village as farmland.

Mr. Dehart said he was "certain" the developers would use the golf course as a springboard to put a hotel and marina there, something Washington Brick denies.

John C. Murphy, a lawyer for the opponents, said: "It's going to cause a real problem because it's going to at-

tract boats. If you go to Queenstown now, there is nothing there, not even a gas pump on a dock. Queenstown is strategically located, right across the Chesapeake Bay from Annapolis. If Queenstown harbor becomes commercialized, the water quality would deteriorate very badly."

Oriando Ridout V of the Maryland Historical Trust said the 708-acre farm, known since the mid-1600s as My Lord's Gift, is an "exceptional archaeological site." It has yielded finds from the Colonial period and from prehistoric cultures dating back 10,000 years, he said.

"I saw artifacts picked off the surface of the field that I've never seen in comparable situations except for areas of St. Mary's City and Jamestown. This is really hot stuff," Mr. Ridout said.

John F. Murray, a lawyer for the developers, said Washington Brick was willing to explore conducting an archaeological survey before building the Queenstown Harbour Golf Links.

But he said it was "pretty odd" that the historical trust hadn't talked to the developers directly, adding, "You have to question the credibility of that kind of thing when it only comes in at the last minute."

The Critical Area Commission, which regulates the waterfront around the bay, brushed aside the broader concerns of the two state agencies as outside its purview. It focused on the question of whether the golf course should be allowed within a conservation zone.

The commission decided, after a panel of three of its members heard nearly 15 hours of testimony, that a golf course might harm the land and water less than the corn and soybean farming now done there.

A properly managed course need not pollute ground water if fertilizers and pesticides are applied judiciously, and it might control runoff into Queenstown Creek and the Chester River better than farming does, the panel said.

It also found that the golf course, by creating nine ponds and a net gain of 22 acres in woodlands, could provide a better habitat for wildlife.

Finally, the commission decided that if 40,000 golfers use the course annually, as projected, the environment will not suffer.

The commission backed the golf course by a voice vote. Two members, James E. Gutman and Shepard Krech, Jr., voted against it.

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.

Maryland

The Honorable John C. North
May 18, 1990.
Page 2

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.

The Honorable John C. North
May 18, 1990
Page 3

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
Chief, Office of Research,
Survey and Registration

ORV:dlt

bcc: Mr. John Murphy

Route 1 Box 682A
Chestertown, MD 21620
September 18, 1989

Dear Mr. Tuttle,

I have compiled a list of colonial and Native American artifacts that were found or that exist on that area of land known as My Lords Gift Farm in Queenstown, Maryland. During the fourteen years that my family and I lived on My Lords Gift Farm, we collected a great amount of artifacts and posed many questions about them as well.

The Native American artifacts were found over virtually the entire farm. The beaches produced the majority of arrow heads and fishing related pieces while the fields produced items such as scrapers, mortars and pestles and other household tools. These artifacts along with a great numbers of lodge pits are conclusive evidence that a large Indian community existed along the Chester River until they were force out by an expanding colonial population.

Native artifacts include; arrow heads from various periods including a flaming arrow tip and shaft fragment; spear heads, ceremonial and functional; tobacco pipes; jewelry; fishing net weights; celts; axe heads; pottery; and approximately 50 lodge pits (as determined by one Smithsonian Historian).

My Lords Gift Farm gets its name from a thumb grant, a transaction made by Lord Baltimore to Sir William de Coursey by which all land that his thumb could cover on a given map would become his. I do not have the specific date of this transaction at this time but a date would not be hard to find at any library.


Colonial artifacts include; gunflints; long-stem clay pipe fragments, 1620-1820; assorted grape and musket rounds of .69-.78 calibre; clay pottery of differing date of which the most prized is bellarmine, a salt glazed pottery that dates from 1580-1699. There is more bellarmine in our collection than was found at the Governors Palace in Williamsburg, Virginia.

There are rumors that a pub once stood in the feild that is between Coursey House and the Millers house. This could explain the presence of the great amounts of pottery that can be seen in this area.

During the War of 1812, Queenstown was full of activity. Earthworks be found on both sides of the creek. These were constructed to defend the town from the British as the Kings Army advance to the site of "Slippery Ridge", near the present Bennets Point.

You may contact Judy Jull at (301) 228-9224. She is an archeologist involved at a dig at Horn Point on the Eastern Shore. Other places to contact could be the National Geographic Society or the Smithsonian Institute for help. You may contact me for further assistance at (301) 778-2605 at any time.

Sincerely yours,



Kirk Ross

An ACT concerning

Chesapeake Bay Critical Area Criteria
Amendment Process

FOR the purpose of authorizing on or after a certain date the Chesapeake Bay Critical Area Commission to adopt regulations that propose certain amendments to the criteria for program development under the Chesapeake Bay Critical Area Protection Program; requiring certain hearings, notices to certain local jurisdictions, certain time period, and certain procedures for adopting certain regulations; making stylistic changes; and generally relating to the process by which criteria for program development under the Chesapeake Bay Critical Area Protection Program can be amended.

BY repealing and reenacting,
Article - Natural Resources
Section 8 - 1808 (d)
Annotated Code of Maryland
(1983 Replacement Volume and 1989 Supplement)

Preamble

WHEREAS, Chapter 794 of the Acts of 1984 created the Chesapeake Bay Critical Area Commission and established guidelines under § 8 - 1808 (d) of the Natural Resources Article that required the Commission to draft criteria on or before December 1, 1985 for program development and approval and to hold regional public hearings in the State; and

WHEREAS, after the Commission held the requisite hearings and published the criteria in COMAR 14.15.01 through .11, the General Assembly, under the authority of Section 3 of Chapter 794 of the Acts of 1984, affirmed the proposed criteria as reasonable and acceptable by passage of Joint Resolutions 36 and 37 of the 1986 Session; and

WHEREAS, Both Chapter 794 of the Acts of 1984 and Title 8, Subtitle 18 of the Natural Resources Article are silent on the process to be used to amend the criteria for any reason, including problems encountered by the local jurisdictions in implementing the criteria; and

WHEREAS, Because of the far-reaching potential impact on land use that regulations in this subject area can have, the General Assembly has determined that a longer period of review and a more extensive hearing process before the adoption of regulations in this subject area are necessary; now, therefore,

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article - Natural Resources

8 - 1808

(d) (1)

(I) The Commission shall promulgate by regulation on or before December 1, 1985, criteria for program development and approval, which are necessary or appropriate to achieve the standards stated in subsection (b) of this section. [Prior to] BEFORE developing its criteria and also [prior to] BEFORE adopting its criteria, the Commission shall hold at least 6 regional public hearings, one in each of the following areas:

1. Harford, Cecil, and Kent counties;
2. Queen Anne's, Talbot, and Caroline counties;
3. Dorchester, Somerset, and Wicomico counties;
4. Baltimore City and Baltimore County;
5. Charles, Calvert, and St. Mary's counties; and
6. Anne Arundel and Prince George's counties.

(II) During the hearing process UNDER PARAGRAPHS (1)(I) AND (2) OF THIS SUBSECTION, the Commission shall consult with each affected local jurisdiction.

(2) ON OR AFTER JULY 1, 1990, THE COMMISSION MAY PROPOSE BY REGULATION ANY AMENDMENT TO THE CRITERIA ADOPTED UNDER THIS SUBSECTION THAT THE COMMISSION CONSIDERS NECESSARY AND APPROPRIATE. IN ADDITION TO THE REQUIREMENTS OF TITLE 10, SUBTITLE 1 OF THE STATE GOVERNMENT ARTICLE, BEFORE ADOPTING ANY REGULATION TO AMEND THE CRITERIA, THE COMMISSION SHALL:

(I) PRESENT THOSE REGULATIONS AT A PUBLIC HEARING OF THE COMMISSION;

(II) WITHIN 90 DAYS AFTER THE PRESENTATION HEARING, HOLD AT LEAST 6 REGIONAL PUBLIC HEARINGS, ONE IN EACH OF THE FOLLOWING AREAS:

1. HARFORD, CECIL, AND KENT COUNTIES;
2. QUEEN ANNE'S, TALBOT, AND CAROLINE COUNTIES;
3. DORCHESTER, SOMERSET, WICOMICO AND WORCESTER COUNTIES;
4. BALTIMORE CITY AND BALTIMORE COUNTY;
5. CHARLES, CALVERT, AND ST. MARY'S COUNTIES;
AND
6. ANNE ARUNDEL AND PRINCE GEORGE'S COUNTIES;

- (III) AT LEAST 10 DAYS BEFORE THE APPROPRIATE REGIONAL PUBLIC HEARING, NOTIFY EACH LOCAL JURISDICTION OF THE SPECIFIC AMENDMENTS TO THE CRITERIA; AND
- (IV) NOT LESS THAN 120 DAYS AFTER THE PRESENTATION HEARING, HOLD A PUBLIC HEARING TO VOTE ON WHETHER TO PROPOSE THOSE REGULATIONS FOR ADOPTION.
- (3) AFTER COMPLETING THE HEARING PROCESS REQUIRED UNDER PARAGRAPH (2) OF THIS SUBSECTION, THE COMMISSION, IN ACCORDANCE WITH THE REQUIREMENTS OF TITLE 10, SUBTITLE 1 OF THE STATE GOVERNMENT ARTICLE, MAY ADOPT REGULATIONS.
- (4) WITHIN 6 MONTHS AFTER THE ADOPTION OF AMENDED CRITERIA, EACH LOCAL JURISDICTION SHALL SEND TO THE COMMISSION PROPOSED PROGRAM AMENDMENTS OR PROGRAM REFINEMENTS THAT ADDRESS THE AMENDED CRITERIA, OR SHALL SEND TO THE COMMISSION A STATEMENT DESCRIBING HOW ITS ADOPTED PROGRAM CONFORMS TO THE AMENDED CRITERIA AND CERTIFYING THAT THE ADOPTED PROGRAM IS CONSISTENT WITH THE AMENDED CRITERIA.
- (5) IF A LOCAL JURISDICTION FAILS TO SUBMIT A TIMELY PROGRAM AMENDMENT OR PROGRAM REFINEMENT, OR FAILS TO SATISFACTORILY SUBMIT A CERTIFICATION OF CONSISTENCY UNDER PARAGRAPH (4) OF THIS SUBSECTION, THE COMMISSION SHALL PREPARE AND ADOPT ANY NECESSARY CHANGES FOR THE LOCAL JURISDICTION IN ACCORDANCE WITH § 8 - 1810 OF THIS SUBTITLE.
- (6) The President of the Senate and the Speaker of the House shall appoint 5 senators and 5 delegates respectively to serve as the Joint Committee on Chesapeake Bay Critical Areas. The Joint Committee shall be staffed by the Department of Legislative Reference. The Commission shall meet with the Joint Committee on Chesapeake Bay Critical Areas periodically as the Committee requests to review development and implementation of the criteria for program development.
- (7) The Joint Committee may study and make recommendations to the Legislative Policy Committee on any other area of the Chesapeake Bay Critical Area Protection Program it considers appropriate.

SECTION 2. AND BE IT FURTHER ENACTED, that this Act shall take effect July 1, 1991.

July 31, 1990

MEMORANDUM

TO: SARAH, PAT AND REN

FROM: TERA

SUBJ: SUBCOMMITTEE ATTENDANCE LIST

ATTACHED ARE SUBCOMMITTEE ATTENDANCE LIST. I HAVE MADE THESE SHEETS UP BECAUSE OF THE WAY THE SUBCOMMITTEE MEMO HAS BEEN DONE. VERONICA NEEDS TO HAVE A LIST OF PERSONS ATTENDING THE SUBCOMMITTEES FOR JUSTIFICATION FOR THE LUNCHEON. PLEASE FILL THEM OUT TO THE FULLEST (COMMISSIONERS & STAFF MEMBERS ATTENDING) AND RETURN THEM TO ME OR PEGGY.

THIS WILL HELP US TO KEEP TRACK OF THOSE ATTENDING SUBCOMMITTEES AS WELL HELP WITH THE JUSTIFICATION FOR THE LUNCHEONS.

THANK YOU FOR YOUR ASSISTANCE IN THIS MATTER.

Tera answered. 8/7/90
SP

SUBCOMMITTEES ATTENDANCE LIST

MOU WITH MDOT

Sarah Taylor
Claudia Jones

COMMISSION MEMBERS:

STAFF MEMBERS:

James E. Hutman
Cady's Watson for Parris Blending
Bill Cookman
Shes Kresh
Shel Zahrisse
John Bowling

SPECIAL ISSUES

Sarah Taylor
Liz Zucker

COMMISSION MEMBERS:

STAFF MEMBERS:

James E. Hutman
Shel Zahrisse
Cady's Watson for Parris Blending
Bob Price Jr.
Louise Lawrence

SUBCOMMITTEE ATTENDANCE LIST

PROJECT EVALUATION

COMMISSION MEMBERS:

Key Langner
Sam Bowling
Tom Jarvis
Steele Phillips
Bill Corkran

STAFF MEMBERS:

Ren Serey
Dawn McCleary
Claudia Jones
Theresa Corless
Jenny Plummer - Off. of Planning
Steve Lotspeich - MNRPAC

SUBCOMMITTEE ATTENANDCE LIST

PROGRAM AMENDMENTS

COMMISSION MEMBERS:

~~Joseph Edbrich Jr~~
MICHAEL WITBON
Victor BUTANS
Garry Dukast (for Ron Kreitner)
Lou Allen
Step Knech

STAFF MEMBERS:

Susan Bass
Pat Tudelkeuery

LAW OFFICES

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

(301) 625-4828

RECEIVED

JUL 25 1990

DNR
CRITICAL AREA COMMISSION

July 24, 1990

The Honorable John C. North, Chairman
Chesapeake Bay Critical Areas Commission
275 West Street
Annapolis, Md. 21401

Re: Queenstown Harbor Golf Links

Dear Judge North:

When it approved the Queenstown Golf Course, the Commission listed "minimum conditions which Queen Anne's County should require if the project is approved". At the meeting of the Queen Anne's County Planning Commission on July 12, 1990, the County approved the project without any conditions. Specifically, the Critical Areas Commission had stated that the land should not be used for dwellings because this 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". The Critical Areas Commission stated that existing water dependent uses "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". Finally, the Commission asked for a "binding and enforceable requirement that assures integrated pest management" for the pesticide and fertilizer use.

Please reconsider your decision approving the golf course. It is now apparent that there can be no assurance that additional houses will not be constructed, the pier used for water access, or integrated pest management practices followed. In the absence of any binding conditions placed upon the approval by the County, there is no legal basis to tell this landowner or a future landowner that these conditions must be followed. Your staff will confirm that at the County hearing the representatives of the landowner argued against the imposition of the conditions stated above. The absence of the conditions means, in the Commission's words, that "serious questions" exist about the project. The health of the Chesapeake Bay is too important for a project to be approved which has "serious questions" about it. The Commission should re-formulate its decision and impose the conditions in mandatory terms.

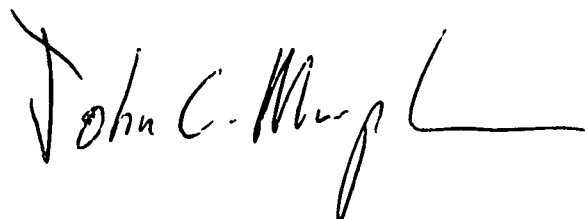
In the alternative, please exercise your intervention power and appeal the County's approval. It was the Commission's determination that the recommended conditions were the minimum

standards consistent with the approval of the golf course as a resource conservation use. Since the minimum standards have not been met, the County should not have approved the project.

In view of this development, and to protect their interests, my clients instructed me to appeal the Commission's determination as set forth in your letter of June 25, 1990, and I am enclosing a copy of the Notice of Appeal which has been filed with the Circuit Court.

I request the opportunity to make a presentation on this matter at your meeting of August 1, 1990.

Sincerely,

A handwritten signature in black ink, reading "John C. Murray". The signature is written in a cursive style with a long horizontal line extending to the right.

JCM/vb

cc: Citizens for the Preservation of Queenstown Creek, Inc.
John H. Murray, Esq.

CITIZENS FOR THE PRESERVATION
 OF QUEENSTOWN CREEK, INC.
 Queenstown, Md. 21658
 and
 JOHN LEE CARROLL
 Queenstown, Md. 21658
 and
 MARGARET TALIAFERRO
 Queenstown, Md. 21658
 Appellants
 v.
 CHESAPEAKE BAY CRITICAL
 AREAS COMMISSION
 275 West St.
 Annapolis, Md. 21401
 Appellee

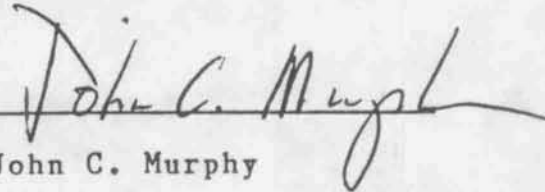
* IN THE
 * CIRCUIT COURT FOR
 * QUEEN ANNE'S COUNTY
 * Case No.
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RECEIVED
 JUL 25 1990
 DHR
 CRITICAL AREA COMMISSION

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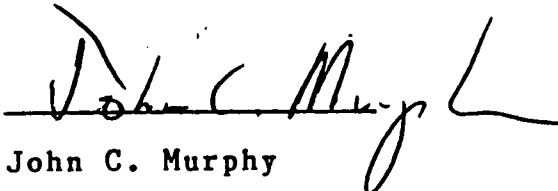
ORDER FOR APPEAL

Please enter an appeal on behalf of Citizens for the
 Preservation of Queenstown Creek, Inc., John Lee Carroll, and
 Margaret Taliaferro, to the Circuit Court for Queen Anne's County
 from the decision of the Chesapeake Bay Critical Areas Commission
 as set forth in the letter dated June 25, 1990 attached hereto.


 John C. Murphy
 516 N. Charles St.
 Baltimore, Md. 21201
 301-625-4828
 Attorney for Appellants

CERTIFICATE OF SERVICE

I hereby certify that on this 24 day of Dec, 1990, I mailed a copy of the foregoing Order for Appeal to Chesapeake Bay Critical Areas Commission, 275 West St., Annapolis, Md. 21401.


John C. Murphy

LAW OFFICES

MILES & STOCKBRIDGE
101 BAY STREET
EASTON, MARYLAND 21601

TELEPHONE 301-822-5280
FAX 301-822-5450

22 WEST JEFFERSON STREET
ROCKVILLE, MARYLAND 20850

600 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

1701 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20006

10 LIGHT STREET
BALTIMORE, MARYLAND 21202

11350 RANDOM HILLS ROAD
FAIRFAX, VIRGINIA 22030

30 WEST PATRICK STREET
FREDERICK, MARYLAND 21701

JOHN H. MURRAY

July 26, 1990

RECEIVED

JUL 27 1990

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

CRITICAL AREA COMMISSION

Re: Queenstown Harbor Golf Links

Dear Judge North:

This is in response to John Murphy's letter to you dated July 24, 1990. Mr. Murphy's statement that the Queen Anne's County Planning Commission approved the project "without any conditions" is inaccurate and misleading. As evidenced by the attached Planning and Zoning Staff Report, all of the concerns represented by the Critical Areas Commission's recommendations were considered and evaluated by Queen Anne's County.

The County has determined that Washington Brick & Terra Cotta Company will develop and maintain an integrated pest management program monitored by the County, which will consult with the Critical Areas Commission Staff. The monitoring wells are already in place and the base line data is being compiled. The County also determined that Forest, Park and Wildlife Service input was received and fully satisfied.

The remaining three recommendations were not imposed on Washington Brick by the Planning Commission because the Planning Commission concluded that imposing such conditions was beyond the scope of its authority, unnecessary and/or already satisfied under existing laws and regulations. Washington Brick is pursuing the Critical Area's Commission's request for further discussions with Queenstown about taking its sewage effluent. Such talks are occurring and hold much promise. Neither dwellings on or water access to the golf course is sought by Washington Brick. Moreover, any such development would require Critical Areas Commission and Planning Commission approval. The Planning Commission felt that existing laws and procedures provide adequate protection against misuse of the RCA and that it would be inappropriate to impose additional restrictions on hypothetical future uses in perpetuity.

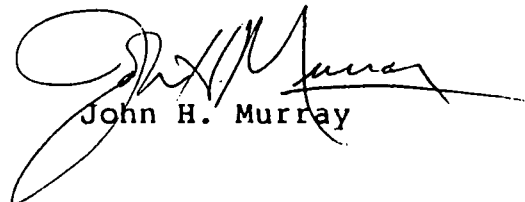
The Honorable John C. North
July 26, 1990
Page 2

Mr. Murphy has requested the Critical Areas Commission to (1) reconsider its decision, (2) intervene in and appeal the Planning Commission's action and (3) permit him to make a presentation to the Critical Areas Commission on August 1, 1990. Everyone recognizes that this process has been exhaustively thorough. The Critical Areas Commission made recommendations which the Planning Commission carefully considered and deemed to be satisfied. There is nothing to be gained by replowing the same ground. The Planning Commission's approval of the golf course is not inconsistent with the Critical Areas law or regulations, and it realistically addresses the Critical Areas Commission's concerns, so there is no reason for the Critical Areas Commission to instigate or intervene in any additional proceedings.

For the foregoing reasons, I respectfully ask that Mr. Murphy's requests be denied. In the event that Mr. Murphy is allowed to make a presentation to the Critical Areas Commission about the golf course project, I request to be notified and given an opportunity to be heard in response.

Thank you for your attention to this matter. Please let me know if you have any questions.

Sincerely,



John H. Murray

JHM/bmf
cc: Thomas A. Deming, Esq.
Sarah J. Taylor, PhD
Arthur A. Birney, Sr.
John C. Murphy, Esq.

jhmwbt25.1tr

JUL 25 '90 10:20 HOBBS WASHINGTON DC

PLANNING AND ZONING STAFF REPORT

PROJECT NAME: Queenstown Harbor Golf Links FILE NUMBER: NASP490-04

APPLICANT: Washington Brick & Terra Cotta Co. AGENT: Rauch, Walla & Lane
Bill Crowding and
Jim Wright

PROJECT DESCRIPTION: Major Site Plan proposing Pro Shop and Golf Course.

LOCATION: Map 51, Block 19, Parcel 10.

EXISTING ZONING: CS (Countryside)

SIZE OF EXISTING PARCEL: 708.29 acres.

EXISTING NATURAL RESOURCES: Nontidal and tidal wetlands.
wood land, shore buffer, drainageways.

REQUESTED ACTION: Final site plan approval.

ISSUES TO BE ADDRESSED:

All issues have been addressed.

Department of Public Works has approved the stormwater management plan.

Department of Environmental Health has approved the site plan. A water appropriation permit has been issued.

Soil Conservation Service signed and approved plat on June 26, 1990.

Comments made by Mr. Glenn Therres of the Nongame & Urban Wildlife Program have been satisfied.

State Highway Administration had no objection to approval.

Significant archeological sites have been incorporated into the development plan and will not be disturbed.

Critical Areas Commission recommendations as addressed by the Department of Planning and Zoning.

Critical Areas Commission asked that residential development be restricted within the Critical Area. No residential development has been proposed for this site; however, should this ever be proposed, it will be sent to Critical Areas for review as a site plan.

If the dock on Queenstown Creek were to be expanded for the golf course, it would fall under a commercial marina. Commercial marinas are prohibited in the RCA; therefore, this could not be developed.

JUL 25 '90 10:21 HOBBS WASHINGTON DC

A revised ^{Rest} ~~Best~~ Management Plan has been submitted addressing the concerns posed in the Critical Areas staff report. As recommended by the Commission, the Dept. of Planning and Zoning is willing to work with the applicant in developing an update system as the plan is implemented.

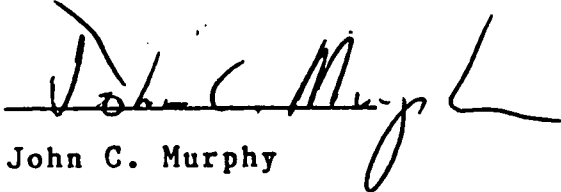
The Critical Areas Commission has reviewed the final golf course layout as well as the Forest, Park & Wildlife Service.

**ACTION RECOMMENDED FROM
STAFF: Approval.**

DATE: July 9, 1990

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John C. Murphy

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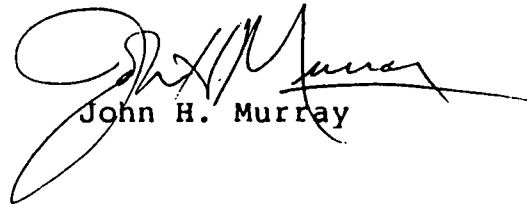
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jhmwbt 25.11r

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(301) 625-4828

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July 24, 1990

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Dear Judge North:

When it approved the Queenstown Golf Course, the Commission listed "minimum conditions which Queen Anne's County should require if the project is approved". At the meeting of the Queen Anne's County Planning Commission on July 12, 1990, the County approved the project without any conditions. Specifically, the Critical Areas Commission had stated that the land should not be used for dwellings because this 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". The Critical Areas Commission stated that existing water dependent uses "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". Finally, the Commission asked for a "binding and enforceable requirement that assures integrated pest management" for the pesticide and fertilizer use.

Please reconsider your decision approving the golf course. It is now apparent that there can be no assurance that additional houses will not be constructed, the pier used for water access, or integrated pest management practices followed. In the absence of any binding conditions placed upon the approval by the County, there is no legal basis to tell this landowner or a future landowner that these conditions must be followed. Your staff will confirm that at the County hearing the representatives of the landowner argued against the imposition of the conditions stated above. The absence of the conditions means, in the Commission's words, that "serious questions" exist about the project. The health of the Chesapeake Bay is too important for a project to be approved which has "serious questions" about it. The Commission should re-formulate its decision and impose the conditions in mandatory terms.

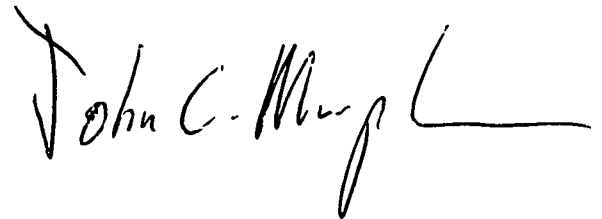
In the alternative, please exercise your intervention power and appeal the County's approval. It was the Commission's determination that the recommended conditions were the minimum

standards consistent with the approval of the golf course as a resource conservation use. Since the minimum standards have not been met, the County should not have approved the project.

In view of this development, and to protect their interests, my clients instructed me to appeal the Commission's determination as set forth in your letter of June 25, 1990, and I am enclosing a copy of the Notice of Appeal which has been filed with the Circuit Court.

I request the opportunity to make a presentation on this matter at your meeting of August 1, 1990.

Sincerely,

A handwritten signature in black ink that reads "John C. Murray". The signature is written in a cursive style with a long horizontal line extending to the right.

JCM/vb

cc: Citizens for the Preservation of Queenstown Creek, Inc.
John H. Murray, Esq.

PLANNING AND ZONING STAFF REPORT

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The Critical Areas Commission has reviewed the final golf course layout as well as the Forest, Park & Wildlife Service.

**ACTION RECOMMENDED FROM
STAFF: Approval.**

DATE: July 9, 1990

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.

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--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.

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

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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

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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.

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--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.

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

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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

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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:

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--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.

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--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.

JOINT RESOLUTION

A Joint Resolution concerning

Prohibition of Surface Drilling of Oil and Gas in the
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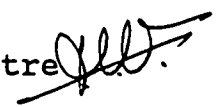
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(301) 974-2426

TO: Judge North

SUBJECT: Carson Variance Appeal
Crisfield Critical Area

FROM: Tom Ventre 

DATE: August 1, 1990

The Assistant Attorney General assigned to our appeal of the recent Carson variance decision in Crisfield has informed us that the Commission is required to file its B-Rule Memorandum with the Circuit Court for Somerset County by August 11, 1990.

In view of this imminent deadline, and in light of the Commission's sentiment expressed at its July meeting that the matter be left to the "Chairman's judgement", I have reviewed the salient facts of this matter, in the hope of arriving at a conclusion and recommendation.

Briefly, the facts are these:

Variations of 50 feet and 70 feet from local Buffer requirements were requested by a lot owner, Mr. Carson, for his property at Hammock Pointe in the Crisfield Critical Area. The variations were requested in order to accommodate a new house and garage that Mr. Carson proposes to build there.

In this instance, the 100-foot Buffer is demarcated from the upland edge of an adjacent tidal wetland, lying to the south and southeast of the Carson lot.

This office reviewed the request, and determined that a variance based on hardship was not justified, as there was adequate area on the lot outside of the Buffer to partially accommodate the proposed house and to accommodate entirely the proposed garage and driveway.

The Crisfield Board of Zoning Appeals conducted on advertised public hearing on the Carson request. According to the minutes of that hearing and according to a letter from the Board's Chairman to Commission staff subsequent to the hearing, the Board agreed that staff's siting recommendation "was not appropriate for Mr. Carson's lot". The Board was unanimous in its agreement with the applicant regarding the preferred location of structures on the site. The Board also noted that "...by virtue of utilities being on the property...and the probable cost that would be incurred...if plans were changed, it was deemed not economically feasible to relocate the dwelling." This, apparently, is the basis of their finding of justifiable hardship.

This particular subdivision has been troubled with difficulties, misunderstandings and errors almost from its

inception, and these have contributed to the present matter.

Initially, the Buffer was never demarcated properly or shown correctly on plats, thus misleading prospective lot owners as to the extent of allowable buildable areas on individual lots.

The site was a dredge spoil area, and the City has actively encouraged and promoted its development. This former spoil dump is now considered a community asset, with good reason.

The entire parcel of the subdivision is bordered directly to the south, southeast and east by the Jersey Island Marsh, an extensive tidal wetland. From the edges of the Carson lot, the marsh stretches more than two-thirds of a mile to the south and southeast, and more than one-half mile to the east. Along those sides, the berm that originally contained the spoil-disposal area and separated it from the marsh is still visible.

The developed lots are served by on-site storm drain catch basins and sediment traps to collect and contain runoff, and to reduce the amount of runoff from the site.

The Board of Zoning Appeals granted this variance with the stipulation that a pervious-surface driveway be required, and that the remainder of the property be naturalized through the planting of shrubs, trees and ground covers. The Board noted that these stipulations were based on the recommendations of Commission staff.


To be sure, this is a difficult decision, but after considering all of these facts, as well as intangible factors, I recommend that we withdraw our appeal of this variance decision, and that we direct our counsel accordingly.

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SUBJECT: Carson Variance Appeal
Crisfield Critical Area

FROM: Tom Ventre 

DATE: August 1, 1990

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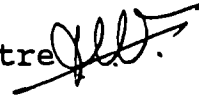
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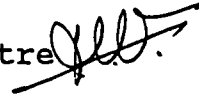
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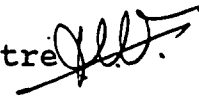
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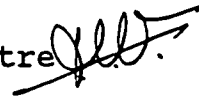
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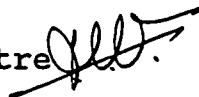
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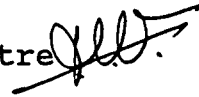
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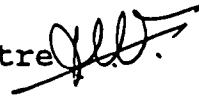
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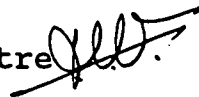
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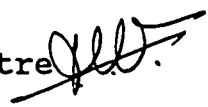
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Crisfield Critical Area

DATE: August 1, 1990

The Assistant Attorney General assigned to our appeal of the recent Carson variance decision in Crisfield has informed us that the Commission is required to file its B-Rule Memorandum with the Circuit Court for Somerset County by August 11, 1990.

In view of this imminent deadline, and in light of the Commission's sentiment expressed at its July meeting that the matter be left to the "Chairman's judgement", I have reviewed the salient facts of this matter, in the hope of arriving at a conclusion and recommendation.

Briefly, the facts are these:

Variations of 50 feet and 70 feet from local Buffer requirements were requested by a lot owner, Mr. Carson, for his property at Hammock Pointe in the Crisfield Critical Area. The variations were requested in order to accommodate a new house and garage that Mr. Carson proposes to build there.

In this instance, the 100-foot Buffer is demarcated from the upland edge of an adjacent tidal wetland, lying to the south and southeast of the Carson lot.

This office reviewed the request, and determined that a variance based on hardship was not justified, as there was adequate area on the lot outside of the Buffer to partially accommodate the proposed house and to accommodate entirely the proposed garage and driveway.

The Crisfield Board of Zoning Appeals conducted an advertised public hearing on the Carson request. According to the minutes of that hearing and according to a letter from the Board's Chairman to Commission staff subsequent to the hearing, the Board agreed that staff's siting recommendation "was not appropriate for Mr. Carson's lot". The Board was unanimous in its agreement with the applicant regarding the preferred location of structures on the site. The Board also noted that "...by virtue of utilities being on the property...and the probable cost that would be incurred...if plans were changed, it was deemed not economically feasible to relocate the dwelling." This, apparently, is the basis of their finding of justifiable hardship.

This particular subdivision has been troubled with difficulties, misunderstandings and errors almost from its

inception, and these have contributed to the present matter.

Initially, the Buffer was never demarcated properly or shown correctly on plats, thus misleading prospective lot owners as to the extent of allowable buildable areas on individual lots.

The site was a dredge spoil area, and the City has actively encouraged and promoted its development. This former spoil dump is now considered a community asset, with good reason.

The entire parcel of the subdivision is bordered directly to the south, southeast and east by the Jersey Island Marsh, an extensive tidal wetland. From the edges of the Carson lot, the marsh stretches more than two-thirds of a mile to the south and southeast, and more than one-half mile to the east. Along those sides, the berm that originally contained the spoil-disposal area and separated it from the marsh is still visible.

The developed lots are served by on-site storm drain catch basins and sediment traps to collect and contain runoff, and to reduce the amount of runoff from the site.

The Board of Zoning Appeals granted this variance with the stipulation that a pervious-surface driveway be required, and that the remainder of the property be naturalized through the planting of shrubs, trees and ground covers. The Board noted that these stipulations were based on the recommendations of Commission staff.

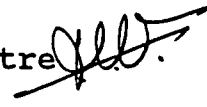
To be sure, this is a difficult decision, but after considering all of these facts, as well as intangible factors, I recommend that we withdraw our appeal of this variance decision, and that we direct our counsel accordingly.

/jjd

STATE OF MARYLAND
CRITICAL AREA COMMISSION
WEST GARRETT PLACE, SUITE 320
275 WEST STREET
ANNAPOLIS, MD 21401
(301) 974-2426

TO: Judge North

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DATE: August 1, 1990

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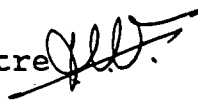
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/jjd

JOHN LEE CARROLL
515 MADISON AVENUE
32ND FLOOR
NEW YORK, N. Y. 10022

(212) 688-3353

July 6, 1990

ANS
7/20/90

Dr. Shepard Krech
White House Farm
Easton, MD 21601

Dear Dr. Krech,

Further to my phone call after the June meeting of the Critical Area Commission, I would like to express my appreciation of your "nay" vote in the decision on the golf course at Queenstown.

This decision represented the culmination of a 5-year effort on the part of myself and others to prevent Queenstown Creek from becoming, in the words of your colleague Mr. Gutman, "another St. Michaels." Since Arthur Birney's original proposal for a 60-room hotel and 100 boat slips, I have watched as he probed and probed to find the combination that would unlock the Queenstown dollar potential. Unfortunately, an important tumbler fell into place on June 6th.

My copy of the panel's report shows that it was sent on June 4th by Federal Express to the Commissioners who therefore could have had barely 24 hours to review its 27 pages, to say nothing of the nearly 500 page record. As of interest, here are some aspects of the record that the panel brushed aside in its report:

1. It did not disclose that by granting the golf course without permanently restricting other uses, the developer may possibly, by use of small amounts of growth allocation, be able to create a large multi-use resort in a piecemeal fashion.
2. It did not disclose the opposition of the Maryland Environmental Trust and that of a number of private environmental organizations.
3. It did not disclose the 1,600 acres of easements that were offered by the other landowners on Queenstown Creek if My Lords Gift were restricted to 1/20 residential development.
4. It did not disclose the letter from Orlando Ridout, copy of which I enclose, or its unusual nature.
5. The testimony of Ned Gerber as to the wildlife habitat was badly misrepresented in the panel's summary. There are bald eagles nesting on my farm, less than 1-1/2 miles from the proposed golf course, which use the entire region as a feeding ground. Gerber also gave extensive and unrefuted commentary with respect to waterfowl, which golf courses are notoriously hard on.

Baltimore Sun
6/30/90

Golf Links by the Bay

The Chesapeake Bay Critical Area Commission made a close call in approving a golf course on a historic farm along Queenstown Creek and the Chester River. The panel correctly refused the developer's request to also build a marina and a country inn. Heavy boat and tourist traffic already threaten this delicate shoreline.

The Maryland Environmental Trust opposed any recreational use of the historically significant land, which is still producing colonial and prehistoric archaeological finds. Approval of the golf course could cost the trust credibility with neighboring Queenstown farmers, whose land the trust wishes to preserve.

The Chesapeake Bay Foundation, the most effective watchdog group trying to protect the bay for future Marylanders, commended the Critical Area Commission. It pointed out that the 27-hole public golf course would bring more citizens to the bay, and would add 22 acres of woodlands and nine ponds, which will enhance the environment.

All that is fine for now. But the panel may have

to remind the developer, Washington Brick and Terra Cotta Co., of the limitations it accepted — if it renews requests for a marina and inn. The 1,000-foot-deep zone protected by the commission winds around Chesapeake. Preserving this shoreline is vital to the bay's health.

Queen Anne's County has developed rapidly as a community just a short drive across the Kent Narrows and bay bridge from Annapolis. Its leaders fought creation of the Critical Area Commission with its power to restrict local growth, where necessary, to protect the bay. Though the commission approved the Queenstown Harbour Golf Links, it demanded tough requirements of its owners. They must provide "best management practices." They also must assure that the golf course land slopes inward from the water, that insecticides and pesticides be used only when necessary and that there be minimum tree loss.

If the requirements are met, the Chesapeake should be fully protected. It will be up to the state's oversight commission to make sure it happens.

The Sun 6-7-90

Controversial golf course OK'd for historic Shore farm

By James Bock
Sun Staff Correspondent

ANNAPOLIS — Despite objections from two state agencies, the Chesapeake Bay Critical Area Commission ruled yesterday that a Washington developer can build a 27-hole golf course on a historic farm along Queenstown Creek and the Chester River.

The decision paves the way for the Queen Anne's County commissioners to grant expected final approval to the Washington Brick and Terra Cotta Co.'s project at the junction of Routes 50 and 301.

"I think this is the best for all the different factions," said Wheeler R. Baker, president of the Queen Anne's County commissioners. "It provides recreation and open space for the county, and the [developers] hopefully will make money on it."

But H. Grant Dehart, director of the Maryland Environmental Trust, which opposed the project, said the ruling would disrupt his agency's plans to preserve neighboring Queenstown (population 387) as one of seven "rural historic villages" in the state. He said it would scuttle the trust's negotiations with landowners



SUN GRAPHICS

to preserve 1,500 acres surrounding the village as farmland.

Mr. Dehart said he was "certain" the developers would use the golf course as a springboard to put a hotel and marina there, something Washington Brick denies.

John C. Murphy, a lawyer for the opponents, said: "It's going to cause a real problem because it's going to at-

tract boats. If you go to Queenstown now, there is nothing there, not even a gas pump on a dock. Queenstown is strategically located, right across the Chesapeake Bay from Annapolis. If Queenstown harbor becomes commercialized, the water quality would deteriorate very badly."

Orlando Ridout V of the Maryland Historical Trust said the 708-acre farm, known since the mid-1600s as My Lord's Gift, is an "exceptional archaeological site." It has yielded finds from the Colonial period and from prehistoric cultures dating back 10,000 years, he said.

"I saw artifacts picked off the surface of the field that I've never seen in comparable situations except for areas of St. Mary's City and Jamestown. This is really hot stuff," Mr. Ridout said.

John F. Murray, a lawyer for the developers, said Washington Brick was willing to explore conducting an archaeological survey before building the Queenstown Harbour Golf Links.

But he said it was "pretty odd" that the historical trust hadn't talked to the developers directly, adding, "You have to question the credibility of that kind of thing when it only comes in at the last minute."

The Critical Area Commission, which regulates the waterfront around the bay, brushed aside the broader concerns of the two state agencies as outside its purview. It focused on the question of whether the golf course should be allowed within a conservation zone.

The commission decided, after a panel of three of its members heard nearly 15 hours of testimony, that a golf course might harm the land and water less than the corn and soybean farming now done there.

A properly managed course need not pollute ground water if fertilizers and pesticides are applied judiciously, and it might control runoff into Queenstown Creek and the Chester River better than farming does, the panel said.

It also found that the golf course, by creating nine ponds and a net gain of 22 acres in woodlands, could provide a better habitat for wildlife.

Finally, the commission decided that if 40,000 golfers use the course annually, as projected, the environment will not suffer.

The commission backed the golf course by a voice vote. Two members, James E. Gutman and Shepard Krech, Jr., voted against it.

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.

Maryland

The Honorable John C. North
May 18, 1990
Page 2

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.

The Honorable John C. North
May 18, 1990
Page 3

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
Chief, Office of Research,
Survey and Registration

ORV:dlt

bcc: Mr. John Murphy

Route 1 Box 682A
Chestertown, MD 21620
September 18, 1989

Dear Mr. Tuttle,

I have compiled a list of colonial and Native American artifacts that were found or that exist on that area of land known as My Lords Gift Farm in Queenstown, Maryland. During the fourteen years that my family and I lived on My Lords Gift Farm, we collected a great amount of artifacts and posed many questions about them as well.

The Native American artifacts were found over virtually the entire farm. The beaches produced the majority of arrow heads and fishing related pieces while the fields produced items such as scrapers, mortars and pestles and other household tools. These artifacts along with a great numbers of lodge pits are conclusive evidence that a large Indian community existed along the Chester River until they were force out by an expanding colonial population.

Native artifacts include; arrow heads from various periods including a flaming arrow tip and shaft fragment; spear heads, ceremonial and functional; tobacco pipes; jewelry; fishing net weights; celts; axe heads; pottery; and approximately 50 lodge pits (as determined by one Smithsonian Historian).

My Lords Gift Farm gets its name from a thumb grant, a transaction made by Lord Baltimore to Sir William de Coursey by which all land that his thumb could cover on a given map would become his. I do not have the specific date of this transaction at this time but a date would not be hard to find at any library.

Colonial artifacts include; gunflints; long-stem clay pipe fragments, 1620-1820; assorted grape and musket rounds of .69-.78 calibre; clay pottery of differing date of which the most prized is bellarmine, a salt glazed pottery that dates from 1580-1699. There is more bellarmine in our collection than was found at the Governors Palace in Williamsburg, Virginia.

There are rumors that a pub once stood in the field that is between Coursey House and the Millers house. This could explain the presence of the great amounts of pottery that can be seen in this area.

During the War of 1812, Queenstown was full of activity. Earthworks be found on both sides of the creek. These were constructed to defend the town from the British as the Kings Army advance to the site of "Slippery Ridge", near the present Bennets Point.

You may contact Judy Jull at (301) 228-9224. She is an archeologist involved at a dig at Horn Point on the Eastern Shore. Other places to contact could be the National Geographic Society or the Smithsonian Institute for help. You may contact me for further assistance at (301) 778-2605 at any time.

Sincerely yours,



Kirk Ross

CHESAPEAKE BAY CRITICAL AREA COMMISSION
275 West Street, Suite 320
Annapolis, Maryland 21401

August 1, 1990

MEMORANDUM

TO: Members of the Critical Area Commission
FROM: Ren Serey, Staff
SUBJECT: Commission Meeting - August 1, 1990

Attached are staff reports covering items on the agenda for today's Commission meeting.

RS:msl

Attachments

Critical Area Commission
Staff Report
August 1, 1990

Subject: (5) Calvert County Program Amendments

Description: A public hearing was held on July 30, 1990 in reference to the following proposed amendments. No public comment or opposition was heard at that hearing. The proposed amendments have not been controversial throughout the local public hearing and approval process. Justifications for the proposed amendments follow each description.

CAA-2

Warren Halle, Halle Marina, Breezy Point, Tax Map 19, Parcel 60; Rezoning Case 89-1, County Public Hearing held 8-29-90. Amend one of the sections of the Zoning Ordinance pertaining to buffer exemption, Section 7-4.07C.3, by adding subsection "i" as follows: "i. Halle Marina (Breezy Point)" and by altering Map No. 3 of the Critical Area regulations to reflect buffer exempt status for Halle Marina.

"The subject property has been intensely utilized as a marina and public recreation area for many years and consequently has virtually no existing vegetation within the designated Buffer. As an intensely developed and utilized facility, the subject site should have been exempted from the Buffer requirements as were other similar properties pursuant to Section 4-4.07C.3."

CAA-3

Chesapeake Beach/North Beach, Tax Map 8, Rezoning Case 89-7, County Public Hearing held 3-6-90. Amend the Calvert County Critical Area Map to conform to the State wetland map in the area just north of the Chesapeake Beach Town Center.

Amendment to line north of Chesapeake Beach: The actual State wetlands are smaller than were shown on the original Critical Area Maps. The Critical Area line is supposed to be 1,000 feet back from State wetlands. Therefore, the correct line is farther east, closer to the Chesapeake Bay. This rezoning would remove the piece of land that was erroneously included in the Critical Area.

NOTE: This amendment will have an effect on the development potential of the Chesapeake Lighthouse Town House development which would possibly allow further development of the property.

CAA-4

Amendment to Ship's Point: The entire property of the Ship's Point Industrial Facility on Tax Map 44A was supposed to have been shown as IDA on the Critical Area Maps. Due to an oversight, a portion of the property was shown as LDA. This rezoning would designate the entire Ship's Point Industrial Facility IDA and those parcels adjacent to it as LDA as originally intended.

Ship's Point Research Park, Lusby, Tax Map 44A, Rezoning Case 89-7, County Public Hearing held 3-6-90. Correct the Calvert County Critical Areas Map to designate the entire Ship's Point Research Park as Intensely Developed Area (IDA), redesignate those parcels adjacent to the Ship's Point Research Park that were incorrectly mapped as IDA as Limited Development Area (LDA) and, to be consistent with Section 4-4.07C.3 of the Zoning Ordinance, alter Map No. 3 of the Critical Area regulations to reflect buffer exempt status for Ship's Point Research Park .

CAA-5

Revise the definitions of "Forest" and "Developed Woodlands" and amend Section 4-8.07A.4 of the Calvert County Zoning Ordinance (Rezoning Case 89-11, County Public Hearing held 3-6-90). Revise the definitions of "Forest" and "Developed Woodlands" to:

1

Developed Woodlands - Those areas of [1 acre] 1,000 sq. ft. or more in size which predominantly contain trees and natural vegetation and which also include residential, commercial, or industrial structures and uses.

Forest - A biological community dominated by trees and other woody plants covering a land area of [1 acre] 1,000 sq. ft. or more. This also includes forest that have been cut, but not cleared. Areas commercially harvested of forest cover in the Critical Area will be considered forested for development purposes.

Amend section 4-8.07A.4 to read:

For the replacement of forest and developed woodland, if more than 20 percent is removed from forest use, the following formula shall apply: a developer may clear or develop more forest than otherwise permitted to be disturbed, if the total forest area removed

1

Brackets indicate existing wording to be removed and underlining indicates wording to be added.

from forest use is not increased by more than 50% of the area permitted to be disturbed in 4-8.07A(3)(c), provided that the afforested area shall consist of 1.5 times the total surface acreage of the disturbed forest or developed woodland area, or both. The total allowable amount of land to be removed from forest cover is 5,000 square feet or 30%, whichever is greater. Permitted clearing of 5,000 sq. ft. or less of forest will require replacement on only a one-to-one basis, independent of the percent cover removed.

Currently, all wooded lots less than one acre are exempt from the forest clearing regulations. Therefore, in the Critical Area, whole forests in old subdivisions can be reduced to 15% of the original area without replacement or fees-in-lieu. In addition, clearing without a permit is not penalized by the three-times replanting regulation unless greater than one acre.

Further Justification for the Proposed Changes to the Critical Area Forest Clearing Regulations

1000 sq. ft. limit to the Definition of Forest

Without a set size limit the definition of a forest becomes ambiguous, difficult to implement and difficult to defend. One must define a biological community which may be open to interpretation. In LDA areas outside of the buffer, property owners are allowed to remove a tree for personal use without a permit and without replacement. If someone takes down two trees adjacent to each other, have they removed a biological community? The 1000 sq ft cut off was proposed as it is the area of an average sized house (25' by 40') and as it would create a noticeable opening in the forest canopy.

The 5000 sq ft exemption from the 30% maximum regulation was proposed to protect small (less than 1/2 acre) lots from too restrictive limitations for lot clearing and from excessive fees. It is assumed that approximately 5000 sq ft would be required to build a reasonable sized house with driveway and septic system. Independent of the area cleared, 15% of the lot area must remain or be established in forest cover.

The present Calvert County Critical Areas Program regulations do not meet the LDA/RCA goal of no net loss of forest as 85% of existing lots less than an acre can be cleared without replacement. The present proposal would do much to solve this problem by requiring replacement or fees-in-lieu for replanting for all areas cleared that are greater than 1000 sq ft.

IMPACT OF CHANGE IN FOREST DEFINITION AND 5000 SF EXEMPTION

ACRES	LOT SF	20% SF	30% SF	85% SF*	COST 20%	COST 30%	COST 5000 SF	% OF LOT
5	217800	43560	65340	---	871	22651	100	2
1	43560	8712	13068	---	174	4530	100	11
1/2	21780	4356	6534	18513	87	2265	100	23
1/4	10890	2178	3267	9257	44	1133	100	46
1/8	5445	1089	1634	4628	22	566	100	92

* PRESENTLY, IF UNDER AN ACRE OF FOREST, NO REPLANTING OR FEES-IN-LIEU ARE REQUIRED AND 85% OF THE LOT AREA CAN BE CLEARED

CAA-6

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Panel Recommendation: The Calvert County Commission Panel recommends approval of the amendments with the condition that the proposed map changes, which are based on the State tidal wetland maps, will be approved subject to Commission verification for accuracy.

STAFF REPORT

JURISDICTION: Betterton

PROGRAM REFINEMENT: Growth Allocation - Rigbie Bluff II
2.181 acres; LDA to IDA

PROJECT DESCRIPTION: Rigbie Bluff II is a residential/commercial development on 2.181 acres in the Betterton Critical Area. It entails multifamily residential townhouse units (13 du) and a retail restaurant/deli. The site is currently designated LDA; the Town proposes that this parcel of land be designated IDA. The parcel is located greater than 400 feet from the Sassafras River, thus eliminating any buffer issues. The underlying zoning is C-1-Commercial Marine District.

JUSTIFICATION FOR REFINEMENT: This growth allocation project meets the requirements for a proposed amendment to be designated a refinement. According to the newly-adopted HB 1062, which became effective July 1, 1990, program refinement includes the use of growth allocation in accordance with an adopted Program. (Rigbie Bluff II meets this requirement.) Other considerations regarding this project follow:

- 1) The parcel of land on which this project will be built is designated as a site for future growth allocation in the Betterton Critical Area Program;
- 2) The growth allocation has been approved by the Betterton Planning Commission and the Mayor and Council;
- 3) The project is consistent with the underlying C-1 zoning and the Betterton Comprehensive Plan;
- 4) Requirements of the Betterton Critical Area Program and Zoning Ordinance have been met:
 - the area of disturbance for non-residential development has been limited to no more than 60% of the site;
 - no HPAs occur on-site;
 - the planting plan meets the recommendations of the Bay Watershed Forester for multilayering of mixed evergreen and deciduous native plants;

- approximately 1.2 acres, or 55 percent of the site, will remain as permanently vegetated; and
- the 10% pollutant reduction calculations have been submitted to the Town Engineer for review.

STAFF CONTACT: Pat Pudelkewicz

STAFF REPORT

August 1, 1990

Applicant: State Railroad Administration

Project: Rehabilitation of Bridge over Hunting Creek
at Caroline/Dorchester County Line

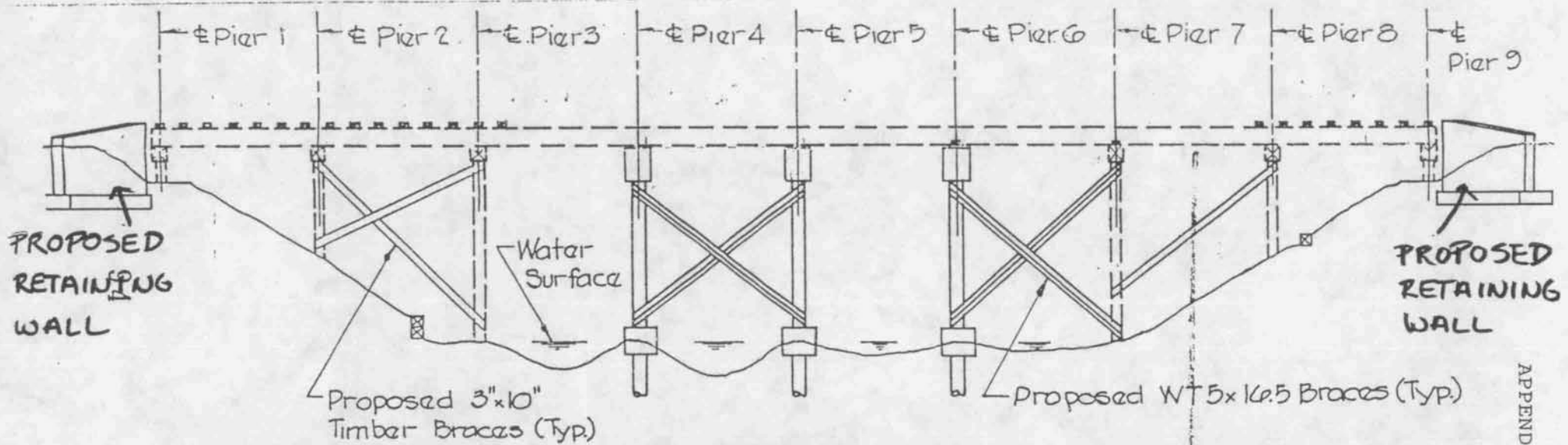
Recommendation: Approval

Project Description:

The State Railroad Administration proposes to rehabilitate the railroad bridge at the Caroline/Dorchester County line where it crosses Hunting Creek. The work includes replacement of three piers and repairs to another, replacement of longitudinal and diagonal timber braces and replacement of retaining walls at both abutments. There will be no change in alignment.

There will be minimal surface area disturbance of approximately 1,000 square feet. The volume of excavated material should be less than 100 cubic yards. A portion of the stream will have to be diverted to replace the piers. This will probably be done with sandbags. It will be up to the contractor to obtain the necessary permits.

The width of Hunting Creek at this point is approximately 50 feet across. Hunting Creek is a tributary of the Choptank River and spawning of several species of anadromous fish (yellow perch, white perch, herring) has been documented downstream of the project site. The Department of Natural Resources will put a time of year restriction on any instream work of February 15 - June 15 to avoid construction impacts to these fish.



Note: All ground surfaces, disturbed during construction operations, shall be stabilized with Soil Stabilization Matting.

SOUTH ELEVATION

Scale: $\frac{3}{32}'' = 1'-0''$

Note: Portions of Existing Structure to Remain are shown in dashed lines.



BRIDGE NO. 11.21

LOCATION MAP

Scale : 1" = 2000'

SUBCOMMITTEE REPORT

August 1, 1990

Applicant: Maryland-National Capital Park and Planning Commission

Project: Colmar Manor Nature Study Area - Anacostia River Park

Recommendation: APPROVAL with conditions

Discussion:

M-NCPPC proposes to develop a nature study area in Anacostia River Park. The nature study area will consist of an interpretive nature trail, an observation platform overlooking Dueling Creek and its' tidal marsh, and a boardwalk from the nature trail to a dock on Dueling Creek providing canoe access to the area. The proposed area is home to a remarkable diversity of wildlife including: ducks, geese, several species of herons, kingfisher, red shoulder hawk, ospreys, and a variety of song birds. Small animals in the area include: red fox, rabbits, chipmunks, raccoons, beavers, muskrat, and opossum. In conjunction with construction of the dock, Dueling Creek will be dredged to allow canoe access and approximately 852 cubic yards of sediment will be piped and deposited outside the Buffer in an approved disposal site for dredge spoils, in pond #1. This pond has been used as a disposal site for dredge spoils from the Bladensburg Marina. A time of year restriction on the dredging is being considered by the Corps of Engineers to avoid disturbance to anadromous fish during spawning season. The existing dirt hiking trail will be upgraded with gravel and woodchips, with boardwalks over wet areas as necessary. There will be handicap access to both the observation platform and the boardwalk down to the dock by a handicap equipped van.

Recommended Conditions:

1. Clean up of dumped articles and trash in the area, possibly by the Maryland Conservation Corps.
2. The pipe for the dredge spoils from Dueling Creek will initially follow the Floodplain Trail in the 100 foot Buffer, but will follow the trail outside the Buffer when possible. At the end of the trail the pipe will continue along the toe of the slope outside the buffer and then up the slope to the disposal site in pond #1.

Contact person: Theresa Corless

Critical Area Commission
Staff Report
August 1, 1990

Subject: (5) Calvert County Program Amendments

Description: A public hearing was held on July 30, 1990 in reference to the following proposed amendments. No public comment or opposition was heard at that hearing. The proposed amendments have not been controversial throughout the local public hearing and approval process. Justifications for the proposed amendments follow each description.

CAA-2

Warren Halle, Halle Marina, Breezy Point, Tax Map 19, Parcel 60, Rezoning Case 89-1, County Public Hearing held 8-29-90. Amend one of the sections of the Zoning Ordinance pertaining to buffer exemption, Section 7-4.07C.3, by adding subsection "i" as follows: "i. Halle Marina (Breezy Point)" and by altering Map No. 3 of the Critical Area regulations to reflect buffer exempt status for Halle Marina.

"The subject property has been intensely utilized as a marina and public recreation area for many years and consequently has virtually no existing vegetation within the designated Buffer. As an intensely developed and utilized facility, the subject site should have been exempted from the Buffer requirements as were other similar properties pursuant to Section 4-4.07C.3."

CAA-3

Chesapeake Beach/North Beach, Tax Map 8, Rezoning Case 89-7, County Public Hearing held 3-6-90. Amend the Calvert County Critical Area Map to conform to the State wetland map in the area just north of the Chesapeake Beach Town Center.

Amendment to line north of Chesapeake Beach: The actual State wetlands are smaller than were shown on the original Critical Area Maps. The Critical Area line is supposed to be 1,000 feet back from State wetlands. Therefore, the correct line is farther east, closer to the Chesapeake Bay. This rezoning would remove the piece of land that was erroneously included in the Critical Area.

NOTE: This amendment will have an effect on the development potential of the Chesapeake Lighthouse Town House development which would possibly allow further development of the property.

CAA-4

Amendment to Ship's Point: The entire property of the Ship's Point Industrial Facility on Tax Map 44A was supposed to have been shown as IDA on the Critical Area Maps. Due to an oversight, a portion of the property was shown as LDA. This rezoning would designate the entire Ship's Point Industrial Facility IDA and those parcels adjacent to it as LDA as originally intended.

Ship's Point Research Park, Lusby, Tax Map 44A, Rezoning Case 89-7, County Public Hearing held 3-6-90. Correct the Calvert County Critical Areas Map to designate the entire Ship's Point Research Park as Intensely Developed Area (IDA), redesignate those parcels adjacent to the Ship's Point Research Park that were incorrectly mapped as IDA as Limited Development Area (LDA) and, to be consistent with Section 4-4.07C.3 of the Zoning Ordinance, alter Map No. 3 of the Critical Area regulations to reflect buffer exempt status for Ship's Point Research Park .

CAA-5

Revise the definitions of "Forest" and "Developed Woodlands" and amend Section 4-8.07A.4 of the Calvert County Zoning Ordinance (Rezoning Case 89-11, County Public Hearing held 3-6-90). Revise the definitions of "Forest" and "Developed Woodlands" to:

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Developed Woodlands - Those areas of [1 acre] 1,000 sq. ft. or more in size which predominantly contain trees and natural vegetation and which also include residential, commercial, or industrial structures and uses.

Forest - A biological community dominated by trees and other woody plants covering a land area of [1 acre] 1,000 sq. ft. or more. This also includes forest that have been cut, but not cleared. Areas commercially harvested of forest cover in the Critical Area will be considered forested for development purposes.

Amend section 4-8.07A.4 to read:

For the replacement of forest and developed woodland, if more than 20 percent is removed from forest use, the following formula shall apply: a developer may clear or develop more forest than otherwise permitted to be disturbed, if the total forest area removed

1

Brackets indicate existing wording to be removed and underlining indicates wording to be added.

from forest use is not increased by more than 50% of the area permitted to be disturbed in 4-8.07A(3)(c), provided that the afforested area shall consist of 1.5 times the total surface acreage of the disturbed forest or developed woodland area, or both. The total allowable amount of land to be removed from forest cover is 5,000 square feet or 30%, whichever is greater. Permitted clearing of 5,000 sq. ft. or less of forest will require replacement on only a one-to-one basis, independent of the percent cover removed.

Currently, all wooded lots less than one acre are exempt from the forest clearing regulations. Therefore, in the Critical Area, whole forests in old subdivisions can be reduced to 15% of the original area without replacement or fees-in-lieu. In addition, clearing without a permit is not penalized by the three-times replanting regulation unless greater than one acre.

Further Justification for the Proposed Changes to the Critical Area Forest Clearing Regulations

1000 sq. ft. limit to the Definition of Forest

Without a set size limit the definition of a forest becomes ambiguous, difficult to implement and difficult to defend. One must define a biological community which may be open to interpretation. In LDA areas outside of the buffer, property owners are allowed to remove a tree for personal use without a permit and without replacement. If someone takes down two trees adjacent to each other, have they removed a biological community? The 1000 sq ft cut off was proposed as it is the area of an average sized house (25' by 40') and as it would create a noticeable opening in the forest canopy.

The 5000 sq ft exemption from the 30% maximum regulation was proposed to protect small (less than 1/2 acre) lots from too restrictive limitations for lot clearing and from excessive fees. It is assumed that approximately 5000 sq ft would be required to build a reasonable sized house with driveway and septic system. Independent of the area cleared, 15% of the lot area must remain or be established in forest cover.

The present Calvert County Critical Areas Program regulations do not meet the LDA/RCA goal of no net loss of forest as 85% of existing lots less than an acre can be cleared without replacement. The present proposal would do much to solve this problem by requiring replacement or fees-in-lieu for replanting for all areas cleared that are greater than 1000 sq ft.

IMPACT OF CHANGE IN FOREST DEFINITION AND 5000 SF EXEMPTION

ACRES	LOT SF	20% SF	30% SF	85% SF*	COST 20%	COST 30%	COST 5000 SF	% OF LOT
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1	43560	8712	13068	---	174	4530	100	11
1/2	21780	4356	6534	18513	87	2265	100	23
1/4	10890	2178	3267	9257	44	1133	100	46
1/8	5445	1089	1634	4628	22	566	100	92

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Amend the adopted Calvert County Critical Area line to conform to the State wetland maps in the entire first district and small portions of the second district of Calvert County (County Public Hearing held 5-15-90). Amend the Critical Area line on Tax Maps 25, 28, 30-40, 42-45 and 47 to conform to the State Wetland Maps.

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STAFF CONTACT: Pat Pudelkewicz

STAFF REPORT

August 1, 1990

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Project: Rehabilitation of Bridge over Hunting Creek
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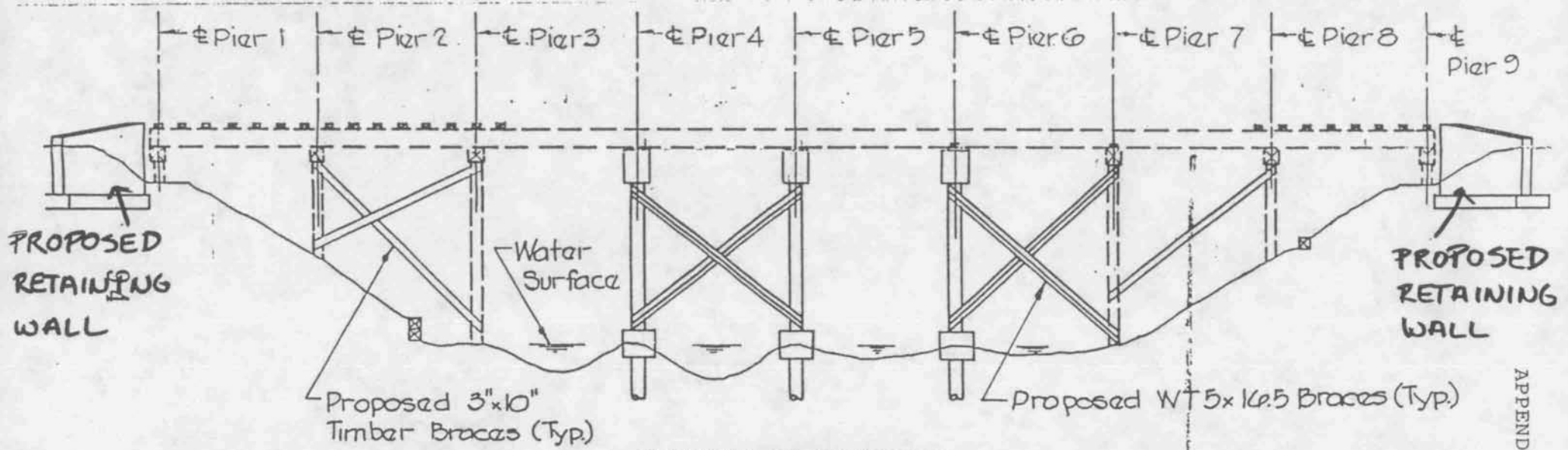
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August 1, 1990

Applicant: Maryland-National Capital Park and Planning Commission

Project: Colmar Manor Nature Study Area - Anacostia River Park

Recommendation: APPROVAL with conditions

Discussion:

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Contact person: Theresa Corless

CHESAPEAKE BAY CRITICAL AREA COMMISSION
275 West Street, Suite 320
Annapolis, Maryland 21401

August 1, 1990

MEMORANDUM

TO: Members of the Critical Area Commission
FROM: Ren Serey, Staff
SUBJECT: Commission Meeting - August 1, 1990

Attached are staff reports covering items on the agenda for today's Commission meeting.

RS:msl

Attachments

STAFF REPORT

JURISDICTION: Betterton

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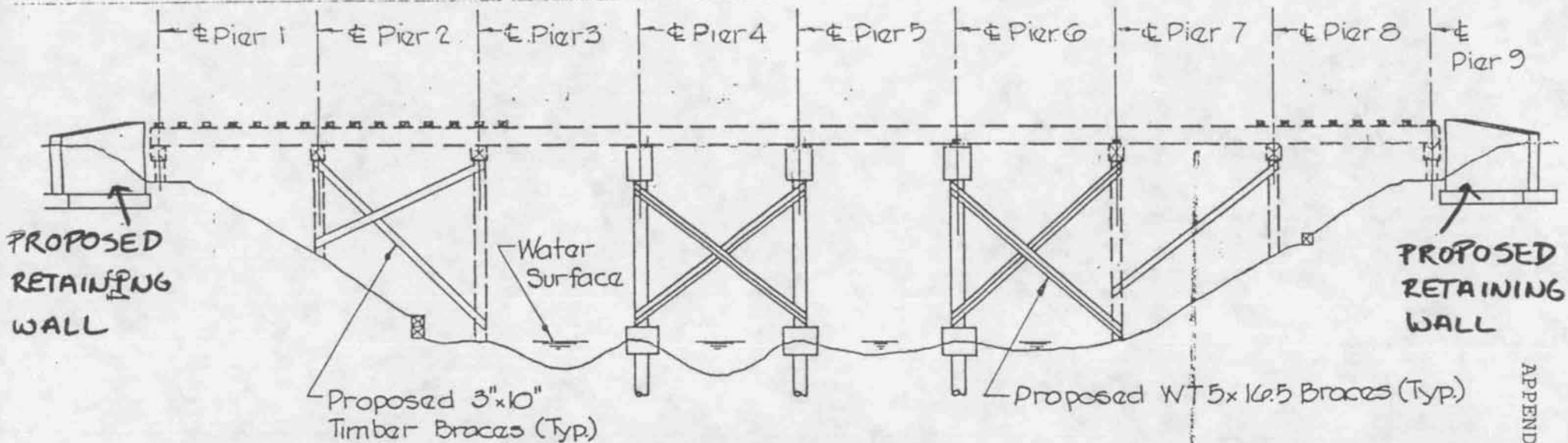
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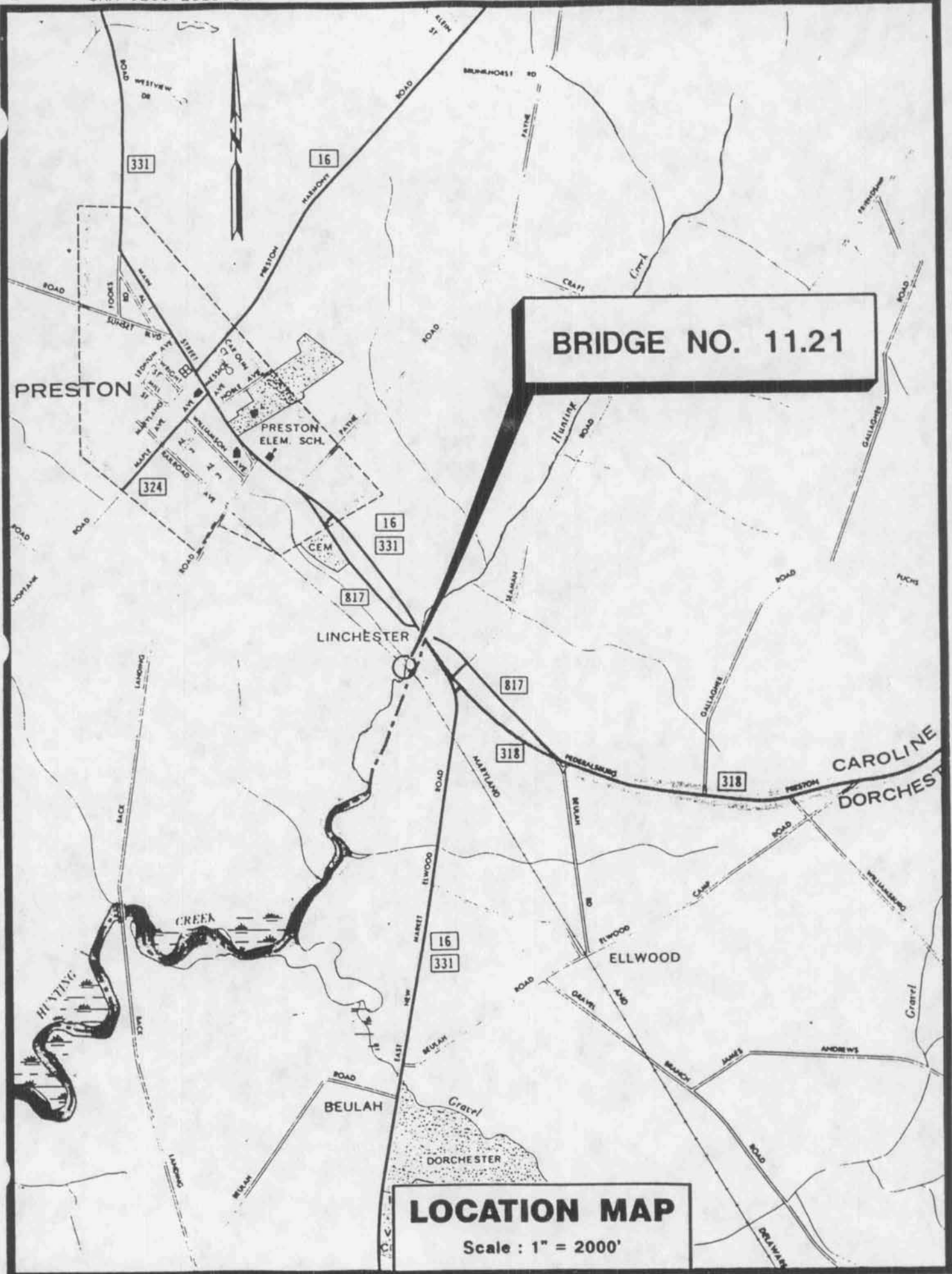


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BRIDGE NO. 11.21

LOCATION MAP
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August 1, 1990

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Recommended Conditions:

1. Clean up of dumped articles and trash in the area, possibly by the Maryland Conservation Corps.
2. The pipe for the dredge spoils from Dueling Creek will initially follow the Floodplain Trail in the 100 foot Buffer, but will follow the trail outside the Buffer when possible. At the end of the trail the pipe will continue along the toe of the slope outside the buffer and then up the slope to the disposal site in pond #1.

Contact person: Theresa Corless

Critical Area Commission
Staff Report
August 1, 1990

Subject: (5) Calvert County Program Amendments

Description: A public hearing was held on July 30, 1990 in reference to the following proposed amendments. No public comment or opposition was heard at that hearing. The proposed amendments have not been controversial throughout the local public hearing and approval process. Justifications for the proposed amendments follow each description.

CAA-2

Warren Halle, Halle Marina, Breezy Point, Tax Map 19, Parcel 60, Rezoning Case 89-1, County Public Hearing held 8-29-90. Amend one of the sections of the Zoning Ordinance pertaining to buffer exemption, Section 7-4.07C.3, by adding subsection "i" as follows: "i. Halle Marina (Breezy Point)" and by altering Map No. 3 of the Critical Area regulations to reflect buffer exempt status for Halle Marina.

"The subject property has been intensely utilized as a marina and public recreation area for many years and consequently has virtually no existing vegetation within the designated Buffer. As an intensely developed and utilized facility, the subject site should have been exempted from the Buffer requirements as were other similar properties pursuant to Section 4-4.07C.3."

CAA-3

Chesapeake Beach/North Beach, Tax Map 8, Rezoning Case 89-7, County Public Hearing held 3-6-90. Amend the Calvert County Critical Area Map to conform to the State wetland map in the area just north of the Chesapeake Beach Town Center.

Amendment to line north of Chesapeake Beach: The actual State wetlands are smaller than were shown on the original Critical Area Maps. The Critical Area line is supposed to be 1,000 feet back from State wetlands. Therefore, the correct line is farther east, closer to the Chesapeake Bay. This rezoning would remove the piece of land that was erroneously included in the Critical Area.

NOTE: This amendment will have an effect on the development potential of the Chesapeake Lighthouse Town House development which would possibly allow further development of the property.

CAA-4

Amendment to Ship's Point: The entire property of the Ship's Point Industrial Facility on Tax Map 44A was supposed to have been shown as IDA on the Critical Area Maps. Due to an oversight, a portion of the property was shown as LDA. This rezoning would designate the entire Ship's Point Industrial Facility IDA and those parcels adjacent to it as LDA as originally intended.

Ship's Point Research Park, Lusby, Tax Map 44A, Rezoning Case 89-7, County Public Hearing held 3-6-90. Correct the Calvert County Critical Areas Map to designate the entire Ship's Point Research Park as Intensely Developed Area (IDA), redesignate those parcels adjacent to the Ship's Point Research Park that were incorrectly mapped as IDA as Limited Development Area (LDA) and, to be consistent with Section 4-4.07C.3 of the Zoning Ordinance, alter Map No. 3 of the Critical Area regulations to reflect buffer exempt status for Ship's Point Research Park .

CAA-5

Revise the definitions of "Forest" and "Developed Woodlands" and amend Section 4-8.07A.4 of the Calvert County Zoning Ordinance (Rezoning Case 89-11, County Public Hearing held 3-6-90). Revise the definitions of "Forest" and "Developed Woodlands" to:

1

Developed Woodlands - Those areas of [1 acre] 1,000 sq. ft. or more in size which predominantly contain trees and natural vegetation and which also include residential, commercial, or industrial structures and uses.

Forest - A biological community dominated by trees and other woody plants covering a land area of [1 acre] 1,000 sq. ft. or more. This also includes forest that have been cut, but not cleared. Areas commercially harvested of forest cover in the Critical Area will be considered forested for development purposes.

Amend section 4-8.07A.4 to read:

For the replacement of forest and developed woodland, if more than 20 percent is removed from forest use, the following formula shall apply: a developer may clear or develop more forest than otherwise permitted to be disturbed, if the total forest area removed

1

Brackets indicate existing wording to be removed and underlining indicates wording to be added.

from forest use is not increased by more than 50% of the area permitted to be disturbed in 4-8.07A(3)(c), provided that the afforested area shall consist of 1.5 times the total surface acreage of the disturbed forest or developed woodland area, or both. The total allowable amount of land to be removed from forest cover is 5,000 square feet or 30%, whichever is greater. Permitted clearing of 5,000 sq. ft. or less of forest will require replacement on only a one-to-one basis, independent of the percent cover removed.

Currently, all wooded lots less than one acre are exempt from the forest clearing regulations. Therefore, in the Critical Area, whole forests in old subdivisions can be reduced to 15% of the original area without replacement or fees-in-lieu. In addition, clearing without a permit is not penalized by the three-times replanting regulation unless greater than one acre.

Further Justification for the Proposed Changes to the Critical Area Forest Clearing Regulations

1000 sq. ft. limit to the Definition of Forest

Without a set size limit the definition of a forest becomes ambiguous, difficult to implement and difficult to defend. One must define a biological community which may be open to interpretation. In LDA areas outside of the buffer, property owners are allowed to remove a tree for personal use without a permit and without replacement. If someone takes down two trees adjacent to each other, have they removed a biological community? The 1000 sq ft cut off was proposed as it is the area of an average sized house (25' by 40') and as it would create a noticeable opening in the forest canopy.

The 5000 sq ft exemption from the 30% maximum regulation was proposed to protect small (less than 1/2 acre) lots from too restrictive limitations for lot clearing and from excessive fees. It is assumed that approximately 5000 sq ft would be required to build a reasonable sized house with driveway and septic system. Independent of the area cleared, 15% of the lot area must remain or be established in forest cover.

The present Calvert County Critical Areas Program regulations do not meet the LDA/RCA goal of no net loss of forest as 85% of existing lots less than an acre can be cleared without replacement. The present proposal would do much to solve this problem by requiring replacement or fees-in-lieu for replanting for all areas cleared that are greater than 1000 sq ft.

IMPACT OF CHANGE IN FOREST DEFINITION AND 5000 SF EXEMPTION

ACRES	LOT SF	20% SF	30% SF	85% SF*	COST 20%	COST 30%	COST 5000 SF	% OF LOT
5	217800	43560	65340	---	871	22651	100	2
1	43560	8712	13068	---	174	4530	100	11
1/2	21780	4356	6534	18513	87	2265	100	23
1/4	10890	2178	3267	9257	44	1133	100	46
1/8	5445	1089	1634	4628	22	566	100	92

* PRESENTLY, IF UNDER AN ACRE OF FOREST, NO REPLANTING OR FEES-IN-LIEU ARE REQUIRED AND 85% OF THE LOT AREA CAN BE CLEARED

CAA-6

Amend the adopted Calvert County Critical Area line to conform to the State wetland maps in the entire first district and small portions of the second district of Calvert County (County Public Hearing held 5-15-90). Amend the Critical Area line on Tax Maps 25, 28, 30-40, 42-45 and 47 to conform to the State Wetland Maps.

Panel Recommendation: The Calvert County Commission Panel recommends approval of the amendments with the condition that the proposed map changes, which are based on the State tidal wetland maps, will be approved subject to Commission verification for accuracy.

- approximately 1.2 acres, or 55 percent of the site, will remain as permanently vegetated; and
- the 10% pollutant reduction calculations have been submitted to the Town Engineer for review.

STAFF CONTACT: Pat Pudelkewicz

STAFF REPORT

JURISDICTION: Betterton

PROGRAM REFINEMENT: Growth Allocation - Rigbie Bluff II
2.181 acres; LDA to IDA

PROJECT DESCRIPTION: Rigbie Bluff II is a residential/commercial development on 2.181 acres in the Betterton Critical Area. It entails multifamily residential townhouse units (13 du) and a retail restaurant/deli. The site is currently designated LDA; the Town proposes that this parcel of land be designated IDA. The parcel is located greater than 400 feet from the Sassafras River, thus eliminating any buffer issues. The underlying zoning is C-1-Commercial Marine District.

JUSTIFICATION FOR REFINEMENT: This growth allocation project meets the requirements for a proposed amendment to be designated a refinement. According to the newly-adopted HB 1062, which became effective July 1, 1990, program refinement includes the use of growth allocation in accordance with an adopted Program. (Rigbie Bluff II meets this requirement.) Other considerations regarding this project follow:

- 1) The parcel of land on which this project will be built is designated as a site for future growth allocation in the Betterton Critical Area Program;
- 2) The growth allocation has been approved by the Betterton Planning Commission and the Mayor and Council;
- 3) The project is consistent with the underlying C-1 zoning and the Betterton Comprehensive Plan;
- 4) Requirements of the Betterton Critical Area Program and Zoning Ordinance have been met:
 - the area of disturbance for non-residential development has been limited to no more than 60% of the site;
 - no HPAs occur on-site;
 - the planting plan meets the recommendations of the Bay Watershed Forester for multilayering of mixed evergreen and deciduous native plants;

STAFF REPORT

August 1, 1990

Applicant: State Railroad Administration

Project: Rehabilitation of Bridge over Hunting Creek
at Caroline/Dorchester County Line

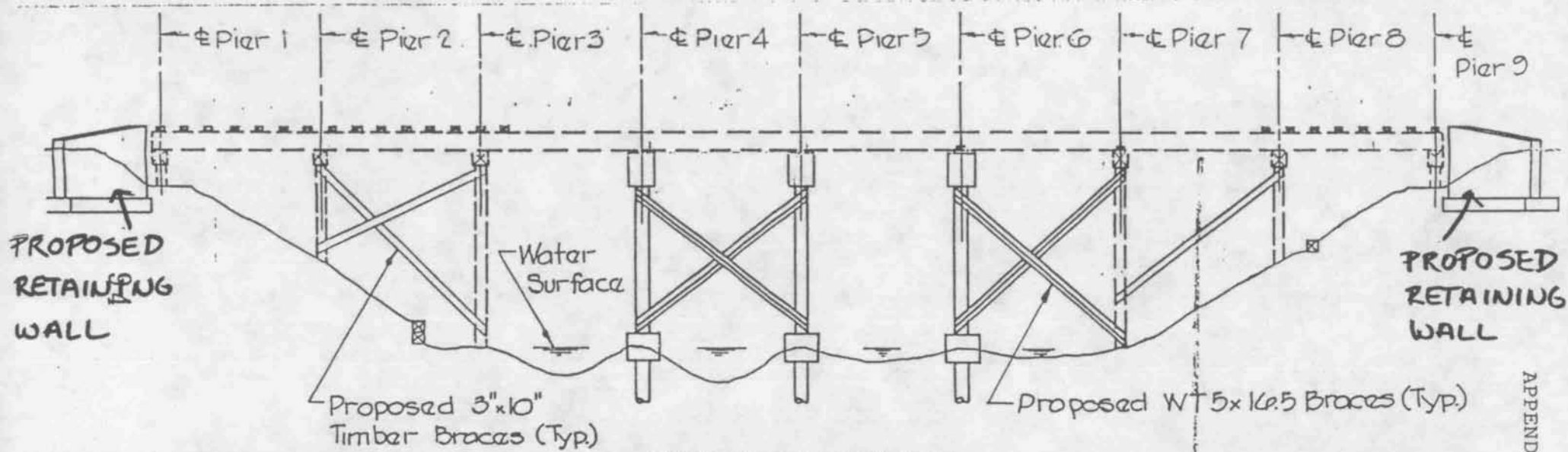
Recommendation: Approval

Project Description:

The State Railroad Administration proposes to rehabilitate the railroad bridge at the Caroline/Dorchester County line where it crosses Hunting Creek. The work includes replacement of three piers and repairs to another, replacement of longitudinal and diagonal timber braces and replacement of retaining walls at both abutments. There will be no change in alignment.

There will be minimal surface area disturbance of approximately 1,000 square feet. The volume of excavated material should be less than 100 cubic yards. A portion of the stream will have to be diverted to replace the piers. This will probably be done with sandbags. It will be up to the contractor to obtain the necessary permits.

The width of Hunting Creek at this point is approximately 50 feet across. Hunting Creek is a tributary of the Choptank River and spawning of several species of anadromous fish (yellow perch, white perch, herring) has been documented downstream of the project site. The Department of Natural Resources will put a time of year restriction on any instream work of February 15 - June 15 to avoid construction impacts to these fish.



SOUTH ELEVATION

Scale: $\frac{3}{32}'' = 1'-0''$

Note: All ground surfaces, disturbed during construction operations, shall be stabilized with Soil Stabilization Matting.

Note: Portions of Existing Structure to Remain are shown in dashed lines.

SUBCOMMITTEE REPORT

August 1, 1990

Applicant: Maryland-National Capital Park and Planning Commission

Project: Colmar Manor Nature Study Area - Anacostia River Park

Recommendation: APPROVAL with conditions

Discussion:

M-NCPPC proposes to develop a nature study area in Anacostia River Park. The nature study area will consist of an interpretive nature trail, an observation platform overlooking Dueling Creek and its' tidal marsh, and a boardwalk from the nature trail to a dock on Dueling Creek providing canoe access to the area. The proposed area is home to a remarkable diversity of wildlife including: ducks, geese, several species of herons, kingfisher, red shoulder hawk, ospreys, and a variety of song birds. Small animals in the area include: red fox, rabbits, chipmunks, raccoons, beavers, muskrat, and opossum. In conjunction with construction of the dock, Dueling Creek will be dredged to allow canoe access and approximately 852 cubic yards of sediment will be piped and deposited outside the Buffer in an approved disposal site for dredge spoils, in pond #1. This pond has been used as a disposal site for dredge spoils from the Bladensburg Marina. A time of year restriction on the dredging is being considered by the Corps of Engineers to avoid disturbance to anadromous fish during spawning season. The existing dirt hiking trail will be upgraded with gravel and woodchips, with boardwalks over wet areas as necessary. There will be handicap access to both the observation platform and the boardwalk down to the dock by a handicap equipped van.

Recommended Conditions:

1. Clean up of dumped articles and trash in the area, possibly by the Maryland Conservation Corps.
2. The pipe for the dredge spoils from Dueling Creek will initially follow the Floodplain Trail in the 100 foot Buffer, but will follow the trail outside the Buffer when possible. At the end of the trail the pipe will continue along the toe of the slope outside the buffer and then up the slope to the disposal site in pond #1.

Contact person: Theresa Corless

An ACT concerning

Chesapeake Bay Critical Area Criteria
Amendment Process

FOR the purpose of authorizing on or after a certain date the Chesapeake Bay Critical Area Commission to adopt regulations that propose certain amendments to the criteria for program development under the Chesapeake Bay Critical Area Protection Program; requiring certain hearings, notices to certain local jurisdictions, certain time period, and certain procedures for adopting certain regulations; making stylistic changes; and generally relating to the process by which criteria for program development under the Chesapeake Bay Critical Area Protection Program can be amended.

BY repealing and reenacting,
Article - Natural Resources
Section 8 - 1808 (d)
Annotated Code of Maryland
(1983 Replacement Volume and 1989 Supplement)

Preamble

WHEREAS, Chapter 794 of the Acts of 1984 created the Chesapeake Bay Critical Area Commission and established guidelines under § 8 - 1808 (d) of the Natural Resources Article that required the Commission to draft criteria on or before December 1, 1985 for program development and approval and to hold regional public hearings in the State; and

WHEREAS, after the Commission held the requisite hearings and published the criteria in COMAR 14.15.01 through .11, the General Assembly, under the authority of Section 3 of Chapter 794 of the Acts of 1984, affirmed the proposed criteria as reasonable and acceptable by passage of Joint Resolutions 36 and 37 of the 1986 Session; and

WHEREAS, Both Chapter 794 of the Acts of 1984 and Title 8, Subtitle 18 of the Natural Resources Article are silent on the process to be used to amend the criteria for any reason, including problems encountered by the local jurisdictions in implementing the criteria; and

WHEREAS, Because of the far-reaching potential impact on land use that regulations in this subject area can have, the General Assembly has determined that a longer period of review and a more extensive hearing process before the adoption of regulations in this subject area are necessary; now, therefore,

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article - Natural Resources

8 - 1808

(d) (1)

(I) The Commission shall promulgate by regulation on or before December 1, 1985, criteria for program development and approval, which are necessary or appropriate to achieve the standards stated in subsection (b) of this section. [Prior to] BEFORE developing its criteria and also [prior to] BEFORE adopting its criteria, the Commission shall hold at least 6 regional public hearings, one in each of the following areas:

1. Harford, Cecil, and Kent counties;
2. Queen Anne's, Talbot, and Caroline counties;
3. Dorchester, Somerset, and Wicomico counties;
4. Baltimore City and Baltimore County;
5. Charles, Calvert, and St. Mary's counties; and
6. Anne Arundel and Prince George's counties.

(II) During the hearing process UNDER PARAGRAPHS (1)(I) AND (2) OF THIS SUBSECTION, the Commission shall consult with each affected local jurisdiction.

(2) ON OR AFTER JULY 1, 1990, THE COMMISSION MAY PROPOSE BY REGULATION ANY AMENDMENT TO THE CRITERIA ADOPTED UNDER THIS SUBSECTION THAT THE COMMISSION CONSIDERS NECESSARY AND APPROPRIATE. IN ADDITION TO THE REQUIREMENTS OF TITLE 10, SUBTITLE 1 OF THE STATE GOVERNMENT ARTICLE, BEFORE ADOPTING ANY REGULATION TO AMEND THE CRITERIA, THE COMMISSION SHALL:

(I) PRESENT THOSE REGULATIONS AT A PUBLIC HEARING OF THE COMMISSION;

(II) WITHIN 90 DAYS AFTER THE PRESENTATION HEARING, HOLD AT LEAST 6 REGIONAL PUBLIC HEARINGS, ONE IN EACH OF THE FOLLOWING AREAS:

1. HARFORD, CECIL, AND KENT COUNTIES;
2. QUEEN ANNE'S, TALBOT, AND CAROLINE COUNTIES;
3. DORCHESTER, SOMERSET, WICOMICO AND WORCESTER COUNTIES;
4. BALTIMORE CITY AND BALTIMORE COUNTY;
5. CHARLES, CALVERT, AND ST. MARY'S COUNTIES;
AND
6. ANNE ARUNDEL AND PRINCE GEORGE'S COUNTIES;

- (III) AT LEAST 10 DAYS BEFORE THE APPROPRIATE REGIONAL PUBLIC HEARING, NOTIFY EACH LOCAL JURISDICTION OF THE SPECIFIC AMENDMENTS TO THE CRITERIA; AND
- (IV) NOT LESS THAN 120 DAYS AFTER THE PRESENTATION HEARING, HOLD A PUBLIC HEARING TO VOTE ON WHETHER TO PROPOSE THOSE REGULATIONS FOR ADOPTION.
- (3) AFTER COMPLETING THE HEARING PROCESS REQUIRED UNDER PARAGRAPH (2) OF THIS SUBSECTION, THE COMMISSION, IN ACCORDANCE WITH THE REQUIREMENTS OF TITLE 10, SUBTITLE 1 OF THE STATE GOVERNMENT ARTICLE, MAY ADOPT REGULATIONS.
- (4) WITHIN 6 MONTHS AFTER THE ADOPTION OF AMENDED CRITERIA, EACH LOCAL JURISDICTION SHALL SEND TO THE COMMISSION PROPOSED PROGRAM AMENDMENTS OR PROGRAM REFINEMENTS THAT ADDRESS THE AMENDED CRITERIA, OR SHALL SEND TO THE COMMISSION A STATEMENT DESCRIBING HOW ITS ADOPTED PROGRAM CONFORMS TO THE AMENDED CRITERIA AND CERTIFYING THAT THE ADOPTED PROGRAM IS CONSISTENT WITH THE AMENDED CRITERIA.
- (5) IF A LOCAL JURISDICTION FAILS TO SUBMIT A TIMELY PROGRAM AMENDMENT OR PROGRAM REFINEMENT, OR FAILS TO SATISFACTORILY SUBMIT A CERTIFICATION OF CONSISTENCY UNDER PARAGRAPH (4) OF THIS SUBSECTION, THE COMMISSION SHALL PREPARE AND ADOPT ANY NECESSARY CHANGES FOR THE LOCAL JURISDICTION IN ACCORDANCE WITH § 8 - 1810 OF THIS SUBTITLE.
- (6) The President of the Senate and the Speaker of the House shall appoint 5 senators and 5 delegates respectively to serve as the Joint Committee on Chesapeake Bay Critical Areas. The Joint Committee shall be staffed by the Department of Legislative Reference. The Commission shall meet with the Joint Committee on Chesapeake Bay Critical Areas periodically as the Committee requests to review development and implementation of the criteria for program development.
- (7) The Joint Committee may study and make recommendations to the Legislative Policy Committee on any other area of the Chesapeake Bay Critical Area Protection Program it considers appropriate.

SECTION 2. AND BE IT FURTHER ENACTED, that this Act shall take effect July 1, 1991.

HOUSE OF DELEGATES

0lr1404

No. 1060

M1

By: Delegate Weir (Chairman, Joint Committee on Chesapeake Bay Critical Areas)
Introduced and read first time: February 2, 1990
Assigned to: Environmental Matters

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 16, 1990

APPROVED
BY THE GOVERNOR

CHAPTER ~~648~~

MAY 29 '90

1 AN ACT concerning

2 **Chesapeake Bay Critical Area - Impervious Surfaces Limitation**

3 FOR the purpose of providing an exception, under certain conditions, for certain lots in
4 the Chesapeake Bay Critical Area from certain impervious surfaces limitations
5 greater than certain amounts; restating and revising current requirements for
6 stormwater runoff and impervious surfaces limitations; altering certain dates;
7 requiring certain local jurisdictions to amend by a certain date their Chesapeake
8 Bay Critical Area Protection Programs; providing for the application of this Act;
9 and generally relating to impervious surfaces limitations in the Chesapeake Bay
10 Critical Area.

11 BY repealing and reenacting, with amendments,
12 Article - Natural Resources
13 Section 8-1808.3
14 Annotated Code of Maryland
15 (1983 Replacement Volume and 1989 Supplement)
16 Preamble

RECEIVED

JUN 6 1990

DNR
CRITICAL AREA COMMISSION

17 WHEREAS, The Joint Committee on Chesapeake Bay Critical Areas was
18 created in 1984 to meet with the Chesapeake Bay Critical Area Commission and to
19 review the development and implementation of the criteria for program development in
20 the areas of the State subject to the Critical Area Law; and

21 WHEREAS, Chapter 234 of the Acts of the General Assembly of 1988 expanded
22 the authority of the Joint Committee on the Chesapeake Bay Critical Areas to include,
23 among other things, a determination of whether the criteria need to be strengthened in
24 any area to make the Chesapeake Bay Critical Area Protection Program more effective

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

1 in the protection of the water quality and habitat of the Chesapeake Bay and its
2 tributaries; and

3 WHEREAS, During the 1989 Interim, the Joint Committee on Chesapeake Bay
4 Critical Areas held open meetings on the upper and lower Eastern and Western Shores
5 of the Chesapeake Bay in Cambridge, Chestertown, Prince Frederick, and Towson and
6 gathered public comments from representatives of counties and municipalities having
7 land within the critical areas, landowners in the critical areas, and other interested
8 parties; and

9 WHEREAS, After due consideration of the issues raised, the Joint Committee
10 on Chesapeake Bay Critical Areas adopted a legislative program to address some of the
11 problem areas encountered in its study; now, therefore,

12 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
13 MARYLAND, That the Laws of Maryland read as follows:

14 Article - Natural Resources

15 § 8-1808.3.

16 (a) This section applies notwithstanding:

17 (1) Any other provision of this subtitle; or

18 (2) Any criteria or guideline of the Commission adopted under this
19 subtitle.

20 (b) This section controls over any other requirement concerning impervious
21 surfaces limitations IN LIMITED DEVELOPMENT AREAS AND RESOURCE
22 CONSERVATION AREAS in the critical area.

23 [(c) For stormwater runoff, man-caused impervious areas shall be limited to 15
24 percent of a parcel to be developed. However, impervious surfaces on any lot not
25 exceeding 1 acre in size in a subdivision approved after June 1, 1986 may be up to 25
26 percent of the lot.]

27 (C) ON OR BEFORE DECEMBER 31, 1990, A LOCAL JURISDICTION
28 SHALL AMEND ITS LOCAL CRITICAL AREA PROTECTION PROGRAM TO
29 MEET THE PROVISIONS OF THIS SECTION.

30 (D) (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION
31 FOR STORMWATER RUNOFF, ~~PEOPLE CAUSED~~ MAN-MADE IMPERVIOUS
32 SURFACES ARE LIMITED TO 15% OF A PARCEL OR LOT.

33 (2) IF A PARCEL OR LOT ONE-HALF ACRE OR LESS IN SIZE WAS
34 IN RESIDENTIAL USE ON OR BEFORE DECEMBER 1, 1985, THEN
35 ~~PEOPLE CAUSED~~ MAN-MADE IMPERVIOUS SURFACES ASSOCIATED WITH
36 THAT USE ARE LIMITED TO 25% OF THE PARCEL OR LOT.

37 (3) IF A PARCEL OR LOT ONE-FOURTH ACRE OR LESS IN SIZE
38 WAS IN NONRESIDENTIAL USE ON OR BEFORE DECEMBER 1, 1985, THEN
39 ~~PEOPLE CAUSED~~ MAN-MADE IMPERVIOUS SURFACES ASSOCIATED WITH

1 THAT DEVELOPMENT ARE LIMITED TO 25% OF THE PARCEL OR LOT.

2 (4) IF AN INDIVIDUAL LOT 1 ACRE OR LESS IN SIZE IS PART OF
3 A SUBDIVISION APPROVED AFTER DECEMBER 1, 1985, THEN
4 ~~PEOPLE CAUSED~~ MAN-MADE IMPERVIOUS SURFACES OF THE LOT MAY
5 NOT EXCEED 25% OF THE LOT. HOWEVER, THE TOTAL OF THE
6 IMPERVIOUS SURFACES OVER THE ENTIRE SUBDIVISION MAY NOT
7 EXCEED 15%.

8 (E) THIS SECTION DOES NOT APPLY TO A TRAILER PARK THAT WAS
9 IN RESIDENTIAL USE ON OR BEFORE DECEMBER 1, 1985.

10 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
11 effect July 1, 1990.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.

HOUSE OF DELEGATES

No. 1062

01r1401

M1

By: Delegate Weir (Chairman, Joint Committee on Chesapeake Bay Critical Areas)
Introduced and read first time: February 2, 1990
Assigned to: Environmental Matters

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 16, 1990

APPROVED
BY THE GOVERNOR

CHAPTER **649**

MAY 29 1990

1 AN ACT concerning

2 **Chesapeake Bay Critical Area Protection Program - Program Amendments and**
3 **Program Refinements**

4 FOR the purpose of authorizing certain local jurisdictions to propose certain
5 amendments and refinements to their local Chesapeake Bay Critical Area
6 Protection Program; providing for a process by which certain amendments and
7 refinements can be approved for inclusion into local Chesapeake Bay Critical
8 Area Protection Programs; providing certain requirements for zoning map
9 amendments; authorizing the Chesapeake Bay Critical Area Commission to adopt
10 certain regulations; providing for notifications and hearings; authorizing the
11 chairman of the Commission to make certain determinations concerning local
12 Chesapeake Bay Critical Area Protection Programs; providing certain powers and
13 duties for the Commission; providing for the use of growth allocation by a local
14 jurisdiction; requiring certain local jurisdictions to send certain information to the
15 Commission; defining certain terms; making technical and stylistic changes;
16 clarifying the meaning of "project approval"; and generally relating to program
17 amendments and program refinements for local Chesapeake Bay Critical Area
18 Protection Programs.

19 BY renumbering

20 Article - Natural Resources

21 Section 8-1808.1(b) and (c), respectively

22 to be Section 8-1808.1(c) and (d), respectively

23 Annotated Code of Maryland

24 (1983 Replacement Volume and 1989 Supplement)

25 BY adding to

26 Article - Natural Resources

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

1 Section 8-1808.1(b)

2 Annotated Code of Maryland

3 (1983 Replacement Volume and 1989 Supplement)

4 BY repealing and reenacting, with amendments,

5 Article - Natural Resources

6 Section 8-1802(a) and 8-1809

7 Annotated Code of Maryland

8 (1983 Replacement Volume and 1989 Supplement)

9 Preamble

10 WHEREAS, The Joint Committee on Chesapeake Bay Critical Areas was
11 created in 1984 to meet with the Chesapeake Bay Critical Area Commission and to
12 review the development and implementation of the criteria for program development in
13 the areas of the State subject to the Critical Area Law; and

14 WHEREAS, Chapter 234 of the Acts of 1988 expanded the authority of the Joint
15 Committee on the Chesapeake Bay Critical Areas to include, among other things, a
16 determination of whether the criteria need to be strengthened in any area to make the
17 Chesapeake Bay Critical Area Protection Program more effective in the protection of
18 the water quality and habitat of the Chesapeake Bay and its tributaries; and

19 WHEREAS, During the 1989 Interim, the Joint Committee on Chesapeake Bay
20 Critical Areas held open meetings on the upper and lower Eastern and Western Shores
21 of the Chesapeake Bay in Cambridge, Chestertown, Prince Frederick, and Towson and
22 gathered public comments from representatives of counties and municipalities having
23 land within the critical areas, landowners in the critical areas, and other interested
24 parties; and

25 WHEREAS, After due consideration of the issues raised, the Joint Committee on
26 Chesapeake Bay Critical Areas developed a legislative program to address some of the
27 problem areas encountered in its study during the 1989 Interim; now, therefore,

28 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
29 MARYLAND, That Section(s) 8-1808.1(b) and (c), respectively, of Article - Natural
30 Resources of the Annotated Code of Maryland be renumbered to be Section(s)
31 8-1808.1(c) and (d), respectively.

32 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
33 read as follows:

34 **Article - Natural Resources**

35 8-1802.

36 (a) (1) In this subtitle the following words have the meanings indicated.

37 (2) "Commission" means the Chesapeake Bay Critical Area Commission
38 established in this subtitle.

1 (3) "Development" means any activity that materially affects the condition
2 or use of dry land, land under water, or any structure.

3 (4) ~~"DEVELOPMENT AREA DESIGNATION" MEANS THE~~
4 ~~DESIGNATION OF LAND IN THE CHESAPEAKE BAY CRITICAL AREA AS~~
5 ~~INTENSELY DEVELOPED AREAS OR DISTRICTS, LIMITED DEVELOPMENT~~
6 ~~AREAS OR DISTRICTS, OR RESOURCE CONSERVATION AREAS OR~~
7 ~~DISTRICTS, UNDER CRITERIA ADOPTED BY THE COMMISSION.~~

8 (5) (4) "GROWTH ALLOCATION" MEANS THE AMOUNT
9 NUMBER OF ACRES OF LAND IN THE CHESAPEAKE BAY CRITICAL AREA
10 THAT A LOCAL JURISDICTION MAY USE TO CREATE NEW INTENSELY
11 DEVELOPED AREAS AND NEW LIMITED DEVELOPMENT AREAS, BASED
12 ON 5 PERCENT OF THE TOTAL RESOURCE CONSERVATION AREA IN A
13 COUNTY, AT THE TIME OF THE ORIGINAL APPROVAL BY THE
14 COMMISSION OF THE LOCAL JURISDICTION'S PROTECTION PROGRAM,
15 THAT IS NOT TIDAL WETLAND OR OWNED BY THE UNITED STATES
16 GOVERNMENT.

17 [(4)] (6) (5) "Includes" means includes or including by way of
18 illustration and not by way of limitation.

19 (6) "LAND CLASSIFICATION" MEANS THE DESIGNATION OF
20 LAND IN THE CHESAPEAKE BAY CRITICAL AREA IN ACCORDANCE WITH
21 THE CRITERIA ADOPTED BY THE COMMISSION AS AN INTENSELY
22 DEVELOPED AREA OR DISTRICT, A LIMITED DEVELOPMENT AREA OR
23 DISTRICT, OR A RESOURCE CONSERVATION AREA OR DISTRICT.

24 [(5)] (7) "Local jurisdiction" means a county, or a municipal corporation
25 with planning and zoning powers, in which any part of the Chesapeake Bay Critical
26 Area as defined in this subtitle, is located.

27 [(6)] (8) "Program" means the critical area protection program of a local
28 jurisdiction including any amendments to it.

29 (9) (I) "PROGRAM AMENDMENT" MEANS ANY CHANGE TO
30 AN ADOPTED PROGRAM THAT THE COMMISSION DETERMINES WILL
31 RESULT IN A USE OF LAND OR WATER IN THE CHESAPEAKE BAY
32 CRITICAL AREA IN A MANNER NOT PROVIDED FOR IN THE ADOPTED
33 PROGRAM.

34 (II) "PROGRAM AMENDMENT" INCLUDES A CHANGE TO A
35 ZONING MAP THAT IS NOT CONSISTENT WITH THE METHOD FOR
36 ~~DEDUCTING~~ USING THE GROWTH ALLOCATION CONTAINED IN AN
37 ADOPTED PROGRAM.

38 (10) (I) "PROGRAM REFINEMENT" MEANS ANY CHANGE TO
39 AN ADOPTED PROGRAM THAT THE COMMISSION DETERMINES WILL
40 RESULT IN A USE OF LAND OR WATER IN THE CHESAPEAKE BAY
41 CRITICAL AREA IN A MANNER ~~ALREADY PROVIDED FOR IN~~ CONSISTENT
42 WITH THE ADOPTED PROGRAM.

(II) "PROGRAM REFINEMENT" INCLUDES:

1. A CHANGE TO A ZONING MAP THAT IS CONSISTENT WITH THE DEVELOPMENT AREA DESIGNATION OF AN ADOPTED ~~AND APPROVED~~ PROGRAM; AND

2. THE USE OF THE GROWTH ALLOCATION IN ACCORDANCE WITH ~~THE METHOD FOR DEDUCTING GROWTH ALLOCATION CONTAINED IN AN ADOPTED AND APPROVED~~ AN ADOPTED PROGRAM.

[(7)] (11) (I) "Project approval" means the approval of development, other than development by a state or local government agency, in the Chesapeake Bay Critical Area by the appropriate local approval authority.

(II) [The term] "PROJECT APPROVAL" includes:

1. [approval] APPROVAL of subdivision plats and site plans;
2. [inclusion] INCLUSION of areas within floating zones;
3. [issuance] ISSUANCE of variances, special exceptions, and conditional use permits; and
4. [issuance of zoning permits] APPROVAL OF REZONING.

(III) [The term] "PROJECT APPROVAL" does not include building permits.

8-1808.1.

(B) THE GROWTH ALLOCATION FOR A LOCAL JURISDICTION SHALL BE CALCULATED BASED ON 5 PERCENT OF THE TOTAL RESOURCE CONSERVATION AREA IN THE LOCAL JURISDICTION AT THE TIME OF THE ORIGINAL APPROVAL OF THE LOCAL JURISDICTION'S PROGRAM BY THE COMMISSION, NOT INCLUDING TIDAL WETLANDS OR LAND OWNED BY THE FEDERAL GOVERNMENT.

8-1809.

(a) Within 45 days after the criteria adopted by the Commission under § 8-1808 of this subtitle become effective, each local jurisdiction shall submit to the Commission a written statement of its intent either:

(1) To develop a critical area protection program to control the use and development of that part of the Chesapeake Bay Critical Area located within its territorial limits; or

(2) Not to develop such a program.

(b) If a local jurisdiction states its intent not to develop a program or fails to submit a timely statement of intent, the Commission shall prepare and adopt a program for the part of the Chesapeake Bay Critical Area in that local jurisdiction.

1 (c) If a local jurisdiction states its intent to develop a program, it shall prepare
2 a proposed program and submit it to the Commission within 270 days after the effective
3 date of the criteria adopted under § 8-1808 of this subtitle. However, if the local
4 jurisdiction submits evidence satisfactory to the Commission that it is making
5 reasonable progress in the development of a program, the Commission may extend this
6 period for up to an additional 180 days. Before submission of a program to the
7 Commission within the time allowed by this subsection, a local jurisdiction shall hold at
8 least one public hearing on the proposed program, for which 2-weeks notice shall be
9 published in a newspaper of general circulation in the local jurisdiction.

10 (d) (1) Within 30 days after a program is submitted, the Commission shall
11 appoint a panel of 5 of its members to conduct, in the affected jurisdiction, a public
12 hearing on the proposed program.

13 (2) Within 90 days after the Commission receives a proposed program
14 from a local jurisdiction, it shall either approve the proposal or notify the local
15 jurisdiction of specific changes that must be made in order for the proposal to be
16 approved. If the Commission does [neither] NEITHER, the proposal shall be deemed
17 approved.

18 (3) A changed proposal shall be submitted to the Commission in the same
19 manner as the original proposal, within 40 days after the Commission's notice. Unless
20 the Commission approves a changed proposal or disapproves a changed proposal and
21 states in writing the reasons for its disapproval within 40 days, the changed proposal
22 shall be deemed approved.

23 (e) Within 90 days after the Commission approves a proposed program, the local
24 jurisdiction shall hold hearings and adopt the program in accordance with legislative
25 procedures for enacting ordinances. If the governing body of the local jurisdiction
26 wishes to change any part of the approved proposal before adoption, it shall submit the
27 proposed change to the Commission for approval. Unless the Commission approves the
28 change or disapproves the change and states in writing the reasons for its disapproval
29 within 30 days after it receives the change, the change shall be deemed approved. A
30 changed part may not be adopted until it is approved by the Commission.

31 (f) Within 760 days after criteria adopted by the Commission become effective,
32 there shall be in effect throughout the Chesapeake Bay Critical Area programs
33 approved or adopted by the Commission.

34 (g) Each local jurisdiction shall review ITS ENTIRE PROGRAM and propose
35 any necessary amendments to its ENTIRE program, including local zoning maps, at
36 least every 4 years BEGINNING WITH THE 4-YEAR ANNIVERSARY OF THE
37 DATE THAT THE PROGRAM BECAME EFFECTIVE AND EVERY 4 YEARS
38 AFTER THAT DATE. [Amendments shall be submitted to and acted on by the
39 Commission in the same manner as the original program.] EACH LOCAL
40 JURISDICTION SHALL SEND IN WRITING TO THE COMMISSION, WITHIN 60
41 DAYS ~~OF~~ AFTER EACH 4-YEAR ANNIVERSARY, THE FOLLOWING
42 INFORMATION:

1 (1) A STATEMENT CERTIFYING THAT THE REQUIRED REVIEW
2 HAS BEEN ACCOMPLISHED;

3 (2) ANY NECESSARY REQUESTS FOR PROGRAM
4 AMENDMENTS, PROGRAM REFINEMENTS, OR OTHER MATTERS THAT
5 THE LOCAL JURISDICTION WISHES THE COMMISSION TO CONSIDER;

6 (3) AN UPDATED RESOURCE INVENTORY; AND

7 (4) A STATEMENT QUANTIFYING ACREAGES WITHIN EACH
8 LAND CLASSIFICATION, THE GROWTH ALLOCATION USED, AND THE
9 GROWTH ALLOCATION REMAINING.

10 (H) (1) AS OFTEN AS NECESSARY BUT NOT MORE THAN 4 TIMES
11 PER CALENDAR YEAR, EACH LOCAL JURISDICTION MAY PROPOSE
12 PROGRAM AMENDMENTS AND PROGRAM REFINEMENTS TO ITS
13 ADOPTED PROGRAM.

14 (2) (I) EXCEPT FOR PROGRAM AMENDMENTS OR PROGRAM
15 REFINEMENTS DEVELOPED DURING PROGRAM REVIEW UNDER
16 SUBSECTION (G) OF THIS SECTION, A ZONING MAP AMENDMENT MAY BE
17 GRANTED BY A LOCAL APPROVING AUTHORITY ONLY ON PROOF OF A
18 MISTAKE IN THE EXISTING ZONING.

19 (II) THE REQUIREMENT IN PARAGRAPH (2)(I) OF THIS
20 SUBSECTION THAT A ZONING MAP AMENDMENT MAY BE GRANTED
21 ONLY ON PROOF OF A MISTAKE DOES NOT APPLY TO PROPOSED
22 CHANGES TO A ZONING MAP THAT:

23 1. ARE WHOLLY CONSISTENT WITH THE
24 ~~DEVELOPMENT AREA DESIGNATIONS~~ LAND CLASSIFICATIONS IN THE
25 ADOPTED PROGRAM; OR

26 2. PROPOSE THE USE OF ~~GROWTH ALLOCATION A~~
27 PART OF THE REMAINING GROWTH ALLOCATION IN ACCORDANCE WITH
28 THE ADOPTED PROGRAM.

29 [(h)] (I) A program may not be amended except with the approval of the
30 Commission. [Except for amendments developed during program review under
31 subsection (g) of this section, an amendment to a zoning map may be granted by a local
32 approving authority only on proof of a mistake in the existing zoning.]

33 [(i)] (J) The Commission shall approve programs and PROGRAM
34 amendments that meet:

35 (1) The standards set forth in § 8-1808(b)(1) through (3) of this subtitle;
36 and

37 (2) The criteria adopted by the Commission under § 8-1808 of this
38 subtitle.

39 [(j)] (K) Copies of each approved program, as it is amended OR REFINED

1 from time to time, shall be maintained by the local jurisdiction and the Commission in
2 a form available for public inspection.

3 (L) (1) IF THE COMMISSION DETERMINES THAT AN ADOPTED
4 PROGRAM CONTAINS A CLEAR MISTAKE, OMISSION, OR CONFLICT WITH
5 THE CRITERIA OR LAW, THE COMMISSION MAY:

6 (I) NOTIFY THE LOCAL JURISDICTION OF THE SPECIFIC
7 DEFICIENCY; AND

8 (II) REQUEST THAT THE JURISDICTION SUBMIT A
9 PROPOSED PROGRAM AMENDMENT OR PROGRAM REFINEMENT TO
10 CORRECT THE DEFICIENCY.

11 (2) WITHIN 90 DAYS AFTER BEING NOTIFIED OF ANY
12 DEFICIENCY UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE LOCAL
13 JURISDICTION SHALL SUBMIT TO THE COMMISSION, AS PROGRAM
14 AMENDMENTS OR PROGRAM REFINEMENTS, ANY PROPOSED CHANGES
15 THAT ARE NECESSARY TO CORRECT ~~ANY DEFICIENCY OF WHICH THE~~
16 ~~LOCAL JURISDICTION IS NOTIFIED BY THE COMMISSION~~ THOSE
17 DEFICIENCIES.

18 (3) LOCAL PROJECT APPROVALS GRANTED UNDER A PART OF
19 A PROGRAM THAT THE COMMISSION HAS DETERMINED TO BE
20 DEFICIENT, ~~AFTER NOTICE OF THE DEFICIENCY,~~ SHALL BE NULL AND
21 VOID AFTER NOTICE OF THE DEFICIENCY.

22 (M) (1) THE COMMISSION MAY ADOPT REGULATIONS THAT
23 PRESCRIBE THE PROCEDURES AND INFORMATION REQUIREMENTS FOR
24 PROGRAM AMENDMENTS AND PROGRAM REFINEMENTS.

25 (2) IN THE ABSENCE OF REGULATIONS UNDER PARAGRAPH
26 (1) OF THIS SUBSECTION, A LOCAL JURISDICTION MAY PROPOSE
27 CHANGES TO ADOPTED PROGRAMS. WITHIN ~~44~~ 10 WORKING DAYS OF
28 RECEIVING A PROPOSAL UNDER THIS PARAGRAPH, THE COMMISSION
29 SHALL:

30 ~~(1) ACCEPT THE PROPOSAL FOR PROCESSING; OR~~

31 (I) MAIL A NOTIFICATION TO THE LOCAL JURISDICTION
32 THAT THE PROPOSAL HAS BEEN ACCEPTED FOR PROCESSING; OR

33 (II) RETURN THE PROPOSAL AS INCOMPLETE.

34 (N) A LOCAL JURISDICTION MAY SPECIFY WHETHER IT INTENDS A
35 PROPOSED CHANGE TO BE A PROGRAM AMENDMENT OR PROGRAM
36 REFINEMENT. HOWEVER, THE COMMISSION SHALL TREAT A PROPOSED
37 CHANGE AS A PROGRAM AMENDMENT; UNLESS THE CHAIRMAN
38 DETERMINES THAT THE PROPOSED CHANGE IS A PROGRAM
39 REFINEMENT.

40 (O) (1) FOR PROPOSED PROGRAM AMENDMENTS, A COMMISSION

1 PANEL SHALL HOLD A PUBLIC HEARING IN THE LOCAL JURISDICTION,
2 AND ~~A QUORUM OF~~ THE COMMISSION SHALL ACT ON THE PROPOSED
3 PROGRAM AMENDMENT WITHIN 90 DAYS OF THE COMMISSION'S
4 ACCEPTANCE OF THE PROPOSAL. IF ACTION BY THE COMMISSION IS NOT
5 TAKEN WITHIN 90 DAYS, THE PROPOSED PROGRAM AMENDMENT IS
6 DEEMED APPROVED.

7 (2) THE LOCAL JURISDICTION SHALL INCORPORATE THE
8 APPROVED PROGRAM AMENDMENT INTO THE ADOPTED PROGRAM
9 WITHIN 120 DAYS OF RECEIVING NOTICE FROM THE COMMISSION THAT
10 THE PROGRAM AMENDMENT HAS BEEN APPROVED.

11 (P) (1) PROPOSED PROGRAM REFINEMENTS SHALL BE
12 DETERMINED AS PROVIDED IN THIS SUBSECTION.

13 (2) ~~ON BEHALF OF THE COMMISSION AND (1)~~ WITHIN 30 DAYS
14 OF THE COMMISSION'S ACCEPTANCE OF A ~~PROPOSED~~ PROPOSAL TO
15 CHANGE ~~TO~~ AN ADOPTED PROGRAM, THE CHAIRMAN, ON BEHALF OF
16 THE COMMISSION, MAY DETERMINE THAT THE PROPOSED CHANGE IS A
17 PROGRAM REFINEMENT. ~~THEN THE CHAIRMAN~~ IMMEDIATELY UPON
18 MAKING A DETERMINATION UNDER THIS PARAGRAPH, THE CHAIRMAN
19 SHALL NOTIFY THE COMMISSION OF ~~THE CHAIRMAN'S~~ THAT
20 DETERMINATION.

21 (II) IF A PROPOSED CHANGE THAT WAS SPECIFICALLY
22 SUBMITTED AS A PROGRAM REFINEMENT ~~WAS~~ IS NOT ACTED ON BY THE
23 CHAIRMAN WITHIN THE 30-DAY PERIOD, THE COMMISSION SHALL
24 NOTIFY THE APPROPRIATE LOCAL JURISDICTION THAT THE PROPOSED
25 CHANGE HAS BEEN DEEMED TO BE A PROGRAM AMENDMENT.

26 (3) (I) THE COMMISSION MAY VOTE TO OVERRIDE THE
27 CHAIRMAN'S DETERMINATION ONLY ~~IF A MAJORITY OF THE MEMBERS~~
28 ~~WHO ARE PRESENT AND ELIGIBLE TO VOTE~~ AT THE FIRST COMMISSION
29 MEETING WHERE A QUORUM IS PRESENT FOLLOWING THE CHAIRMAN'S
30 DETERMINATION ~~CONCUR IN OR VOTE FOR THE ACTION~~.

31 (II) IF THE CHAIRMAN'S DETERMINATION IS
32 OVERRIDDEN, THE PROPOSED CHANGE IS DEEMED A PROGRAM
33 AMENDMENT, WHICH SHALL BE DECIDED BY THE COMMISSION IN
34 ACCORDANCE WITH THE PROCEDURES FOR PROGRAM AMENDMENTS
35 PROVIDED IN THIS SECTION. ~~NOTWITHSTANDING THE PROVISIONS OF~~
36 ~~THIS SUBSECTION OR SUBSECTION (O) OF THIS SECTION~~, EXCEPT THAT
37 THE COMMISSION SHALL ACT ON THE PROGRAM AMENDMENT WITHIN 60
38 DAYS, ~~IF THE COMMISSION VOTES AFTER A VOTE TO OVERRIDE THE~~
39 CHAIRMAN.

40 (III) IF THE CHAIRMAN'S DETERMINATION IS NOT
41 OVERRIDDEN, WITHIN 10 WORKING DAYS AFTER THE OPPORTUNITY TO
42 OVERRIDE THE CHAIRMAN'S DECISION UNDER ITEM (I) OF THIS
43 PARAGRAPH THE CHAIRMAN, ON BEHALF OF THE COMMISSION, SHALL:

1 1. APPROVE THE PROPOSED PROGRAM
2 REFINEMENT ~~WITHIN 10 WORKING DAYS OF THE FIRST COMMISSION~~
3 ~~MEETING WHERE A QUORUM IS PRESENT FOLLOWING THE CHAIRMAN'S~~
4 ~~DETERMINATION, AND SO AND NOTIFY THE LOCAL JURISDICTION; OR~~

5 2. DENY THE PROGRAM REFINEMENT; OR

6 ~~3.~~ 3. SEND THE PROPOSED PROGRAM
7 REFINEMENT BACK TO THE LOCAL JURISDICTION ~~FOR THE MAKING OF~~
8 WITH A LIST OF SPECIFIC CHANGES TO BE MADE.

9 (IV) WITHIN 44 10 WORKING DAYS OF RECEIVING A
10 CHANGED PROGRAM REFINEMENT CHANGED IN ACCORDANCE WITH
11 ITEM (III)3 OF THIS PARAGRAPH, THE CHAIRMAN SHALL APPROVE OR
12 DENY THE PROGRAM REFINEMENT.

13 (4) A LOCAL JURISDICTION SHALL INCORPORATE AN
14 APPROVED PROGRAM REFINEMENT INTO ITS ADOPTED PROGRAM
15 WITHIN 120 DAYS OF RECEIVING NOTICE FROM THE CHAIRMAN THAT
16 THE PROGRAM REFINEMENT HAS BEEN APPROVED.

17 (Q) AS NECESSARY, A LOCAL JURISDICTION MAY COMBINE ANY OR
18 ALL PROPOSED PROGRAM AMENDMENTS OR PROGRAM REFINEMENTS
19 REQUIRED FOR A SPECIFIC PROJECT APPROVAL INTO A SINGLE
20 REQUEST TO THE COMMISSION FOR PROGRAM AMENDMENT, PROGRAM
21 REFINEMENT, OR BOTH. APPROVAL BY THE COMMISSION OF A
22 PROGRAM AMENDMENT, PROGRAM REFINEMENT, OR BOTH DOES NOT
23 AFFECT THE COMMISSION'S AUTHORITY TO RECEIVE NOTICE OF OR
24 INTERVENE IN A PROJECT APPROVAL THAT WAS NOT SPECIFICALLY
25 APPROVED BY THE COMMISSION AS PART OF ITS APPROVAL OF A
26 PROGRAM AMENDMENT OR PROGRAM REFINEMENT.

27 (R) WITHIN 6 MONTHS AFTER THE ADOPTION OF AMENDED
28 CRITERIA, A LOCAL JURISDICTION SHALL SEND TO THE COMMISSION:

29 (1) PROPOSED PROGRAM AMENDMENTS OR PROGRAM
30 REFINEMENTS;

31 ~~(2) CHANGES TO ADOPTED PROGRAMS THAT ADDRESS THE~~
32 ~~AMENDED CRITERIA; OR~~

33 ~~(3)~~ (2) A STATEMENT DESCRIBING HOW THE ADOPTED
34 PROGRAM CONFORMS TO THE AMENDED CRITERIA AND CERTIFYING
35 THAT THE ADOPTED PROGRAM IS CONSISTENT WITH THE AMENDED
36 CRITERIA.

37 (S) IF THE COMMISSION ADOPTS A REGULATION CONCERNING THE
38 ~~DEDUCTION USE OF THE GROWTH ALLOCATION, THE USE OF ANY USE~~
39 OF THE GROWTH ALLOCATION MUST BE IN ACCORDANCE WITH ~~THE~~
40 THAT REGULATION FOR THE CHANGE TO BE CONSIDERED A PROGRAM
41 REFINEMENT.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
2 effect July 1, 1990.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.

Sarah:

A few notes to assist in Oil/Gas status report at CAC meeting.

1. Need to inform Commission that we are no longer "linked" up with M&S
2. Maybe get a date from Tom as to when we go into the ~~reg~~ Md Register?
3. Handout Proposed resolution
~~See~~ The Commission's suggestions from August meeting are incorporated, ^{in the draft.} ~~mainly~~ ~~that~~ P. Blendenning's request that we word the ~~that~~ resolution to include directional drilling as ^{the} alternate method for obtaining oil/gas from Critical Area. This was included in draft.

Thanks

liz

PROPOSED RESOLUTION

A Proposed 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 to the Maryland General Assembly.

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; and

WHEREAS, the Commission was informed by representatives of the Maryland Geological Survey and the oil and gas industry that technology is available to reach hydrocarbon reserves under the Critical Area through directional drilling; now, therefore, be it

RESOLVED, That the Critical Area Commission proposes to the General Assembly that directional drilling, where found to be environmentally safe, be used to obtain hydrocarbons from reservoirs under the Critical Area and that surface drilling activities for the purposes of oil and gas exploration and production be prohibited on lands within the Chesapeake Bay Critical Area.

August 22, 1990

RATIONALE

At its meeting on August 1, 1990, the Critical Area Commission voted to recommend to the General Assembly that directional drilling activities be utilized to obtain hydrocarbons from reservoirs under the Chesapeake Bay and that surface drilling for 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 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 the Maryland Geological Survey (MGS) and representatives from the oil and gas industry who served on the Critical Area Commission's Technical Advisory Committee. Hydrocarbons, therefore, can be obtained from reservoirs under the Critical Area through directional drilling. However, it should be noted that the Commission will require that an assessment of potential adverse environmental effects be conducted prior to permitting directional drilling in the Critical Area.

--It is far easier and less expensive to prevent natural resource degradation than it is to correct it.

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 analyzed 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 that surface exploration and production drilling activities be prohibited in the Critical Area, and that directional drilling, where found to be environmentally safe, be used to obtain hydrocarbons from reservoirs located under the Chesapeake Bay.

- (a) These water-dependent facilities may not offer food, fuel or other goods and services for sale, and shall provide adequate sanitary facilities.
 - (b) The facilities are community owned, and established and operated for the benefit of the residents of a recorded riparian subdivision.
 - (c) The facilities are associated with an approved residential development and are consistent with all state criteria and local regulations for the critical area.
 - (d) Disturbance to the buffer is the minimum necessary to provide a single point of access to the facilities.
 - (e) If community piers, slips or moorings are provided as part of the new development, private piers in the development are not allowed.
- (9) Public beaches or other public water-oriented recreation or education areas, including but not limited to publicly owned boat launching and docking facilities and fishing piers, are permitted in the tidewater buffer. In the case of public recreation areas within limited development areas and resource conservation areas, all of the following conditions must be met:
- (a) Adequate sanitary facilities exist.
 - (b) Service facilities are located, to the extent possible, outside of the buffer.
 - (c) Permeable surfaces are used to the extent practicable, if no groundwater degradation would result.
 - (d) Disturbance to natural vegetation is avoided.
- (10) Areas for passive recreation are permitted in the tidewater buffer within resource conservation areas, provided that service facilities for these uses are located outside the buffer.
- (11) Water-dependent research facilities or activities operated by federal, state or local agencies or by educational

institutions are permitted in the tidewater buffer, provided that non-water-dependent structures or facilities associated with these projects are located outside the buffer.

- (12) Commercial water-dependent fisheries facilities, including but not limited to structures for crab picking and shedding, fish off-loading docks, shellfish culture operations and shore-based facilities necessary for aquaculture operations and fisheries activities, are permitted in the tidewater buffer in all development areas.
- (13) New intensely developed areas and limited development areas in the resource conservation area should be located at least three hundred (300) feet beyond the landward edge of tidal waters or tidal wetlands.
- (14) New development activities, including structures, roads, parking areas and other impervious surfaces, mining and related facilities or septic systems, are not permitted in the tidewater buffer except as otherwise provided for in this chapter.

K. Nontidal wetlands. The following regulations shall apply to nontidal wetlands:

- (1) Development activities which may affect nontidal wetlands or the wildlife contained therein shall be prohibited in or within twenty-five (25) feet of such wetlands, unless it can be shown that these activities will not adversely affect the wetlands.
- (2) Development activities or other land disturbance within the drainage area of a nontidal wetland shall minimize alterations to the surface or subsurface flow of water into and from the wetland, and shall not impair the water quality, plants and wildlife or habitat value of the wetland.
- (3) Proposed development activities or operations which are water dependent or demonstrated to be of substantial economic benefit, but which will cause necessary and unavoidable impacts to nontidal wetlands, will be allowed

only upon approval of a wetland mitigation plan. The requirements for content, submittal, review and approval of the wetland mitigation plan are as follows:

- (a) Plan requirements. A person may not develop nontidal wetlands without an approved wetland mitigation plan. The plan must meet the requirements of the Dorchester Soil Conservation District, the Dorchester County Critical Area Protection Program and this section.
- (b) Content of plans. The wetland mitigation plan shall contain information and drawings sufficient to evaluate the environmental characteristics of the affected areas, the potential impact of the proposed development on water resources, and the effectiveness and acceptability of compensatory measures. The plan shall describe how nontidal wetlands will be managed or replaced.
- (c) The wetland mitigation plan shall specify mitigation measures that will provide water quality benefits and plant and wildlife habitat equivalent to the wetland destroyed or altered. Mitigation shall be accomplished on the project site or near the affected wetland.
- (d) The wetland mitigation plan shall be prepared by the person proposing to develop the site, in consultation with the Dorchester Soil Conservation District, Maryland Water Resources Administration, Maryland Forest, Park and Wildlife Service and other appropriate agencies.
- (e) Review and approval of plans. The applicant shall submit the wetland mitigation plan to the Dorchester County Planning and Zoning Office for initial review. The Planning and Zoning Office shall forward the plan, together with any comments, to the Dorchester Soil Conservation District for approval.