

Commission Meetings & Corresp.

Oct 1990

NWA-51932-75

**AGENDA**

October 3, 1990

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

1:00 - 1:15 Approval of the Minutes of Judge John C. North, II  
September 5, 1990. Chairman

**PROGRAM AMENDMENTS**

1:15 - 1:40 Growth Allocation - William Bostian,  
Worcester County - Panel Chairman  
Fulton Property Thomas Ventre, Planner  
RCA to LDA

1:40 - 2:30 Request for Map Change based Joseph Elbrich, Jr.,  
on Mistake - Harford County Panel Chairman  
Bata Project Anne Hairston, Planner

2:30 - 2:45 Town of Easton- Thomas Ventre, Planner  
Refinement

**UPDATES**

2:45 - 3:00 1) Wharf at Handy Point Tom A. Deming, Assist.  
Attorney General & Staff  
Pat Pudelukewicz for  
Handy Point  
2) Sylvain Pool Anne Hairston for  
Sylvain Pool

3:00 - 3:15 Old Business Judge John C. North, II  
Chairman

Maryland Stadium Authority Dawnn McCleary  
Mr. Chapin, MSA

CHESAPEAKE BAY CRITICAL AREA COMMISSION

Minutes of Meeting Held  
September 5, 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 North with the following Members in attendance:

Ronald Adkins	Russell Blake
Samuel Y. Bowling	Victor K. Butanis
William Bostian	Parris Glendenning
Joseph J. Elbrich, Jr.	Ronald Hickernell
James E. Gutman	William H. Corkran, Jr.
Thomas L. Jarvis	Shepard Krech, Jr.
Kathryn D. Langner	G. Steele Phillips
Albert W. Zahniser	Roger W. Williams
Louise Lawrence	Larry Duket for
of DOA	Ronald Kreitner, MOP
Deputy Secretary Griffin	Deputy Secretary Cade
of DNR	of DCHD
Assistant Secretary Naylor	Robert Schoeplein of DEED
of DOE	

The Minutes of the Meeting of August 1, 1990 were approved as written.

Chairman North asked Ms. Anne Hairston, Natural Resources Planner, to report on a request for a program amendment by Harford County to adjust the growth allocation for Riverside Business Park.

Ms. Hairston reported that 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. She said that a 0.74-acre area was proposed for IDA status, while a 0.88-acre piece was reverted to RCA status and would not be disturbed. Ms. Hairston said that both pieces of land were in mature forest and adjacent to nontidal wetlands.

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

Ms. Hairston reported that the 0.74 acres which would become IDA was adjacent to a nontidal wetland, and grading was expected to disturb ~1,300 sq. ft. within the County's required 75-foot buffer to nontidal wetlands. She stated that temporary disturbance such as grading was not normally allowed in buffers

but 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 considered the plan, submitted by the developer, Bata Land Company, acceptable. She said that the project would not affect the 25-foot Buffer that the State Criteria requires around nontidal wetlands. She said that no runoff would be allowed to sheet flow over the area of the nontidal wetland buffer, including where disturbed by grading and that the edge of the parking lot would be curbed and guttered, and stormwater runoff would be treated for quality.

Ms. Hairston said that a public hearing was held on Wednesday, August 29th and that no public attended, although several representatives of the developer were available to answer questions from the panel and Commission staff. She stated that no written comment was received.

Ms. Hairston said that the panel and staff recommended approval of the amendment.

Mr. Gutman asked the size and number of trees for the reforestation and the time of reforesting. He also inquired as to the quality of replacement for the loss.

Ms. Hairston answered that two-year old tree seedlings, as a minimum size, would be planted in a 10 x 10 foot spacing with 436 trees per acre. She said that certain trees were selected because of their wildlife value, i.e. sweetgum, black locust, Virginia pine, and red maple. She said that there will also be white pine, loblolly pine, and yellow poplar. Ms. Hairston stated that there was a good survival rate for seedlings and that the habitat provided would be excellent.

Mr. Thomas Jarvis asked for a description of the treatment for the runoff.

Ms. Hairston explained that a stormwater pond would be utilized.

A motion was made and seconded to approve the request for a boundary adjustment for Riverside Business Park. The vote was carried unanimously.

Chairman North announced that Mr. John Wolf of Department of Natural Resources Land Planning Service would make a presentation on the Public Access Study.

Mr. Wolf stated that he, as well as Mr. Robert Beckett, Director of Land Planning Services and DNR's Assistant Secretary Michael Nelson, served as Maryland's representatives to the Public Access Subcommittee of the Chesapeake Bay Program. He stated that the Chesapeake Bay agreement for public access was to require the states (Maryland, Pennsylvania, D.C., Virginia, and the Federal participants) to do two things, 1) by December of

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1988 develop a Comprehensive Inventory of existing public access opportunities around the Bay, and 2) as a result of that accomplishment, by December of 1990, the States subsequently would be required to come up with a strategy for increasing the opportunities for public access around the Bay.

He stated that the goal was to come up with as comprehensive a plan as possible, realizing that there are substantial differences among the States and the District and Federal partners. He further stated that the ideal was to have as consistent a document as possible recognizing that Maryland, among these jurisdictions, was very unique in water recreation and Critical Area Planning, Natural Resources Planning, and that by recognizing each jurisdiction individually, the plan could be developed in more detail as regards the Critical Area, Open Spaces, etc. He stated that the recommendations of the 2020 Commission would be incorporated in the plan and tailored to the existing Critical Area plans and regulations.

Mr. Wolf said that there would be more of a blanket approach to anything proposed pursuant to the Critical Area regulations. He described the document which would highlight each county individually showing existing public and private access opportunities.

Mr. Wolf stated that the section on Maryland Action Strategies, in addition to just noting where a present deficiency in certain types of waterfront access existed needed strategies particularly within the Department of Natural Resources, but also at the local levels and within other state agencies for implementation. He explained that there would be a narrative to explain the Critical Area Program in the implementation section and regulatory Program section. He said that a companion document, a technical assistance report, would explain how a site could be developed minimizing the environmental impacts on it once a need was identified.

Mr. Gutman asked for a clarification of the process when a specific use was identified for an acquisition; and, how would the Critical Area Commission become involved.

Mr. Wolf explained that when a water-dependent facility was developed on DNR property there would be Critical Area regulations that would apply to State lands.

Mr. Gutman asked if the acquisition of land followed the

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determined use of the land.

Mr. Wolf said that from a DNR perspective, typically, a Citizens Advisory Committee was relied on for input for a plan. He stated that acquisitions would be evaluated as they become available while the criteria was being established.

Mr. Zahniser stated that he believed a qualification of the access was appropriate.

Mr. Wolf agreed there would have to be limitations on types of access.

Mr. Robert Beckett, DNR, said that the Bay Access Study existed as being a collection of what the local counties had already developed in their open-space and recreation plans pursuant to public hearings and the Critical Area requirements already emplaced. He said that the document would be viewed as a general guide that would show where the unmet Bay access needs were and to determine what recreational uses may be appropriate on properties in the general area.

Mr. Gutman stated that he believed the Critical Area should be recognized, and was unclear as to whether it was recognized before or after an acquisition.

Mr. Beckett said that he thought that an appropriate time of involvement for the Critical Area for evaluation was after a concept plan had been developed.

Chairman North asked Mr. Ren Serey to report on the Talbot County proposed changes.

Mr. Serey stated that there were two types of changes proposed and submitted to the Commission by the County after going through public hearings. He said that the staff recommendation upon initial review to Judge North was that he determine that the changes be refinements to the County program not amendments. Judge North determined that they were refinements and that was how they were being presented.

Mr. Serey explained that the changes were complex and he proceeded to clarify the requests. He said that:

- 1) County Bill No. 391 - to amend Section 19-41, Subsection

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II.B.2. The County's Table of Uses lists "home occupations" as accessory uses in two categories: Residential and Services. The County stated that the double listing was a mistake which had caused administrative difficulties. The County proposed to delete the listing under Residential, thereby regulating "home occupations" solely under the Services category. The use remained accessory.

The Table of Uses, referenced above, listed "waterfront structures" as a principal use under Water-Dependent Facilities. Waterfront structures included piers, docks and wharves. The County proposed 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.

He said that the staff considered 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 appeared to eliminate confusion while providing the same level of regulation as originally intended. Although in the Service category, "home occupations" remained "incidental and secondary" to the use of a dwelling for residential purposes.

Mr. Serey said that the staff considered the determination of piers, docks and wharves as principal accessory uses to rest properly with the local government. The Criteria did not address this situation and would seem not to be affected by either method. The staff recommended 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. He said that the County's Program required an applicant to prove a "change or mistake" in the Critical Area designation in order to receive Growth Allocation. It also required a one-year waiting period to refile for Growth Allocation if the request was initially denied. The County maintained that these requirements were improper and proposed the following changes:

- elimination of the "change or mistake" requirement for Growth Allocation;
- elimination of the one-year waiting period to

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refile for Growth Allocation;

- corrective language which separated Growth Allocation from rezonings, and further specified that a rezoning which changes a Critical Area designation must be based solely on "mistake" in the original designation.

Mr. Serey said that although the proposed changes significantly affected the manner in which the County awarded Growth Allocation and approved rezonings, they were 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 appeared to represent refinements to the County Program.

He explained that, however, as the table below indicates, the staff did not believe the proposed language clearly carried out the County's intentions.

<u>Proposed Language</u>	<u>Possible Interpretation</u>
"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."	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."	It is not clear which rezonings, or if all rezonings, must be consistent, specifically with the Critical Area Program. Possibilities include: <ul style="list-style-type: none"><li>- Growth Allocation</li><li>- underlying zoning changes which require a change in Critical Area designation</li><li>- underlying zoning changes which do not require a change in Critical Area</li></ul>



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designation.

"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

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.

Mr. Serey said that the staff recommended the Commission return to the County the proposed Program refinement contained in County Bill No. 382, for changes which clarify its meaning.

Mr. Bowling asked if it was the intention that no one would be able to construct a pier or dock, accessory use, unless the primary use was already there.

Mr. Serey replied, yes.

Chairman North said that it was a local policy issue.

Chairman North introduced Mr. David Chapin with the Maryland Department of Transportation, Maryland Stadium Authority, and Mr. John d'Epagnier a consultant with RK & R Engineering firm who gave a presentation on the Baltimore City Stadium.

Mr. Chapin introduced Mr. Bruce Hoffman, Executive Director for the Stadium Authority who stated that the stadium project was moving along and was being acclaimed as an architectural breakthrough in stadiums, one which was a state-of-the art facility capturing the old-fashioned look of baseball.

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Ms. Kim McCalla, Assistant Project Manager for the Stadium Authority showed slides of the project with explanation. She said that the goal was to make sure the stadium fit within the existing neighborhoods and the historic buildings that surround it. She said that the design was begun in 1988 and was just awarded the main stadium contract. She said that most of the property was covered by buildings and pavement with very little greenery throughout the site. Ms. McCalla said that the stadium would be below the surface about 18 feet more than the current levels and will be sitting on concrete cylinders. She said the amount of parking space would depend on whether domes were put in after the second phase of the construction which would involve a football stadium.

Mr. Chapin said that the Critical Area was primarily at the southern end of the site for the stadium. He said that the site was largely industrial, there were no woodlands on the site, no wetlands and the 100 year floodplain was entirely off-site. He reported that the project disturbs approximately 100 acres of land, but the stadium itself was less than that. He said that in the actual 98 acres disturbed, none were within the 100 foot Buffer of the Middle Branch; that 11.6 acres, or 12%, lie within the 1000 foot Critical Area zone which meets the IDA, and the 10% rule, therefore the Stadium Authority was responsible for reducing stormwater pollutants loadings going into the Middle Branch by 10% comparing previous conditions to post development. He said that approximately 10.6 acres, or 91%, of the 11.6 acres disturbed, were impervious. Mr. Chapin reported that the proposed conditions would be 8.8 acres, or 76% of the total of the 10.6 acres, impervious surface south of the 1000 foot Buffer and that this would be a 17% reduction in impervious surface within the 1000 foot area. Mr. Chapin said that they were working with the Department of Environment to develop the stormwater management plan and that there would be periodic vacuuming or sweeping of all parking lots to pick up the debris, dust and dirt. He said all the parking lots drain towards the Middle Branch through the storm drains that are already emplaced, so there would be no change in the drainage pattern. All paving would be asphalt paving because of the underlying clay and fill material in areas that make it unacceptable or impractical to drain water through porous pavement and because of problems with freezing and thawing which might break up the pavement which is also the reasons for not using wetponds for drainage. He said that dry retention ponds, if used, would mean a reduction in the parking area.

Mr. Hickernell asked how the 10% could be documented.

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Mr. d'Epagnier said that he went through the 10% guidelines worksheet and with a 17% reduction in impervious areas, a negative pollutant removal requirement was their basis for saying they were meeting the criteria of 10%.

Mr. Corkran stated that the 17% reduction occurred only within the Critical Areas and he wanted to know what the reduction was for the entire site.

Mr. Chapin said that the calculation done for stormwater management plan for the Department of the Environment about four months ago showed there was about 12% reduction in impervious area throughout the entire site which included the 1000'.

Mr. Corkran asked if and when the football stadium was completed what the calculation would be in reduction.

Mr. Chapin stated that no calculation was done based on the football stadium as there was no commitment to build it and they would have to come back to the Critical Area Commission and treat it as a separate project.

Chairman North recapped their calculations being predicated solely upon reduction of impervious surfaces and asked if they had made a study as to the affect of the overall change in character and utility of the site and what affect it would have on runoff.

Mr. Chapin replied no, they had not made a study and the planning department in Baltimore City did not have good detailed information on the quality of runoff.

Mr. Gutman asked if some of the green area would be lost when the stadium design was completed and if there was a risk that maybe water quality would not be improved.

Mr. Chapin stated that he could see no reason why any green permeable areas would be lost in the design of a football stadium.

Mr. Gutman asked if the process of identifying the net gain in water quality was completed in detail, the full 9 step process with Alternative Best Management Practices options using the screening tools.

Mr. Chapin said, no.

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Mr. Gutman asked if that could be done.

Mr. Chapin replied that they could work with the Commission staff to make a determination of whether or not the reduction in impervious area was sufficient, and if it was found that it was not, then they would take another look at the calculations.

Mr. Gutman stated that he believed that they should go through all the nine steps if they were following the guidelines of the criteria produced.

Mr. Parris Glendening commented that because the subsoil was clay to the depth that there would normally be an on-site retention pond, and the ability and absorption being practically zero, why would they be required to follow the nine steps if the net effect of the on-site retention pond would not work anyway.

Mr. Bostian clarified that a retention pond was appropriate in a clay soil situation because it tries to slow the water down and lets the silt drop out of it and the water then continues to flow out of it, whereas a detention pond was not appropriate.

Mr. Gutman asked if they would be dependent upon the vacuum cleaning process to achieve any of the water quality improvement that was required.

Mr. Chapin said that his understanding was that the reduction in impervious area alone would be sufficient to meet water quality, so, they would not rely upon it but it was noted to be beneficial.

Mr. Gutman stated that he believed that a BMP should not rest on a maintenance process, but should represent a capital project such as an infiltration trench or pond, something in operation 7 days a week, 24 hours a day, continuously.

Mr. d'Espagnier stated that a formal calculation has not been done for the Critical Area yet. He also stated that he would go over with the Critical Area staff exactly what they would require and provide the Commission with the information as soon as possible.

Mr. Gutman asked how they planned to deal with snow removal and if there were any chemicals for reduction of snow involved.

Mr. Chapin replied that there were no plans for removal as yet, but they have not ruled out using salt.

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Chairman North asked Mr. Tom Deming, Assistant Attorney General to update the Commission on the Queenstown Golf Course, Carson Property (Hammock Pointe), Sylvain Pool, and the Cambridge Country Club.

Mr. Deming stated that the Queenstown Golf Course, pursuant to the Commission's directions at the last meeting, did note an appeal and there have been serious discussions with the developers and Queen Anne's County to take the wishes of the Commission as expressed in its original decision last May and get them in a form that was both enforceable and would be with this property for so long as it was designated as Resource Conservation. He said that the developer's representatives were at the meeting, heard the point made by the Commission of converting to an appropriate set of conditions or restrictions to make it binding as long as it was listed RCA.

Mr. Deming said that he was instructed by the Commission at the last meeting to withdraw the appeal. It has not be done yet but would be done.

He said that the Sylvain pool was scheduled for a hearing before the A.A. County Board of Appeals on September 25, 1990.

Mr. Deming said the approach on the Cambridge Country Club was to note an appeal but to open discussion with the owners of the Club and both courses of actions were being pursued. He asked Mr. Tom Ventre to report on the Country Club.

Mr. Ventre stated that as of September 4, 1990 the staff of Dorchester County delivered to the Clerk of the Circuit Court for Dorchester County a transcript of a hearing which took place on June 21, 1990 in Cambridge. He said that there has been no change in the positions of either the Critical Area Commission or the Country Club in either discussion or negotiations with Cambridge Country Club, Inc.

Chairman North refreshed the Commission's recollection of the Country Club issue of the last meeting by reading a letter which he directed on August 15th to Mr. Bill Harrington, President of the Country Club. "I am writing you regarding the Cambridge Country 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

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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 Country 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 Commission at its next meeting."

Mr. Bill Harrington stated that Dorchester County was an impoverished County, has a poor economic environment, had thought it not feasible to build an additional 9 holes until two years ago when they tried to buy some addition land. He said that there was no land available therefore, they went to a golf course architect to design something. He stated that they had filed a "shotgun" request to the Zoning Board to see if there would be any potential costly repercussions that may preclude the development of the golf course. He said that upon learning of the objections of the Critical Area Commission, Mr. Tom Ventre was invited for a site visit because he would be able to determine that it was already a golf course under turf management. He also stated that even if the Club passed the permit process, the club was so poor that it may not even be able to develop the other 9 holes. He said as far as the Critical Area, all they wanted to do was to change the type of grass that grows there. He said that they had no recourse in another placement of the 10th green. They could not move the graveyard, they can't buy more land, can't do much about the county road and so therefore, they can't change the plan because of the distances involved in golf course design. He said that there were no other choices and they were prisoners of their own land constraints.

Mr. Harrington stated that there would be minimal disturbance to the land. He explained that most of the green lies outside of the 100' setback and the 25' non-tidal buffer. He said that they could not diminish the green by 40% because there was only about 1,200 square feet of land and it would not be enough adequate distance for hitting a golf ball. Also, from the standpoint of public safety, there were space restrictions of proximity.

Mr. Harrington listed the Club's rebuttal of the issues raised:

1) He said that the Club had demonstrated to the Dorchester County Board of Appeals that there was indeed

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hardship, altho not to the Critical Area Commission.

2) He said that the second point raised by the Commission was that the Club was not deprived of rights that were typically available to other similar properties in the same district. He said that the Club contends they would be deprived of rights that would be available to other similar properties for growing and nurturing and maintenance of grasses which might be growing on their properties.

3) He said that the Commission raised the issue that they were not informed of the hearing in a timely fashion. The Club maintains that was the error of the Dorchester County Planning and Zoning and not the Cambridge Country Club's fault and not under their control.

4) He stated that as far as the Club's not being a water-dependent activity, the Club had never taken the position that it was a water-dependent activity, but the Club was not in agreement that it precludes the placement of golf course lands within the Critical Area because the law in Dorchester County specifically provides for "passive recreational use" in the Critical Area and golf was defined as a passive recreational use.

Chairman North reminded Mr. Harrington that the issue was the Buffer, not the lands of the Critical Area, which are the lands within 1,000 feet of tidal waters.

Mr. Greg Moore, of Andrews, Miller Associates of Cambridge, stated that Mr. Harrington was addressing Section 151 of the County Zoning Code, an amendment to the actual zoning code made pursuant to the approval of the Dorchester County Critical Area Program. He read Section 155-47.1, Item J, in Volume 2, the actual amendments to each of the zoning ordinances of the county, "tidewater Buffer: the following regulations shall apply to the tidewater Buffer area." Item 10 under that section says that "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." Point: the 10th tee is passive recreation without any structures being built and therefore meets zoning requirements.

Mr. Gutman asked what passive recreation was.

Mr. Moore said that there was no definition in the Code according to their local planning and zoning office. He stated

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that they defined passive recreation being based on any changes to the contour of the land or any cutting of trees.

Mr. Gutman stated that was the first time he had ever heard of defining passive recreation as dependent on what was being done to the land.

Mr. Moore stated that the Critical Area did not provide a definition to Dorchester County when they approved their program.

Mr. Moore continued to make a point under the same section, "the following regulations shall apply: (under item 14) new development activity included structures, roads, parking areas and other impervious surfaces, mining and related facilities or septic system are not permitted in the Tidewater Buffer except as otherwise provided for in this chapter." He stated that based on their examination of that statement, not being such, the request was permitted by the Dorchester County zoning code under the Critical Area Program.

Mr. Bostian pointed out, by way of illustration on maps, that there were nontidal wetlands which would filter out any pollutants from the green.

Mr. Moore stated that they were planning to emplace a berm around the edge of the nontidal wetlands in grass, and would have specific areas in low points where water could filter through the berm into the wetland areas so that any water flowing off the green would be trapped by the berm, be retained behind the berm, and any pollutants or sediments would settle and the water would filter through the existing nontidal wetlands into the tidal area minimizing impact to water quality with no change in water quality.

Mr. Moore said that no earth would be removed or filled in; that they were proposing to remove only 3 trees, with a mitigation of 5-1.

Mr. Gutman asked if there were no hardship proven and approval was given for the request of the Country Club, what precedent would the Commission be setting.

Mr. Tom Ventre answered that the issue was not the golf course per se, but two or three spots on the golf course and their relationship to the tidewater Buffer and to the nontidal wetland Buffer. He stated that these were existing facilities and there would be no precedent as far as golf courses.



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Mr. Zahniser moved to rescind the appeal since it appeared that it was almost a redevelopment situation involving planting grasses and removing three trees, with a mitigation of 5-1. He believed that the 18th hole should be moved back the 26 feet necessary to get out of the Buffer and that the developer in this area do an adequate job of creating filtration in the replanted area to filter the ditch which drains down the road in compensation for the use of the green.

Mr. Bowling said that he would second the motion if it was agreed to reposition the 10th hole (inside or outside the dogleg).

Mr. Ventre reminded him that where he wanted it placed was an existing cemetery which would prevent it.

Mr. Bostian seconded the motion without that condition.

Dr. Krech said that he agreed to reconsider the appeal because Mr. Blake's golf course in Pocomoke was all in Resource Conservation with greens and tees all well within the 100 foot Buffer.

Mr. Steele Phillips stated, for the record, that there was a nutrient management plan and IPM plan at the golf course.

Chairman North offered a further modification of the motion to the extent that an appropriate agreement be formalized that would meet with the approval of the Chesapeake Bay Critical Area Commission's counsel to accomplish what was suggested by Mr. Zahniser and Mr. Bostian.

Mr. Zahniser affirmed an acceptance of the modification and added that it should not mean that tees and greens would be permitted the Buffer for a new project, but this situation involves an existing, developed golf course, and basically it was a redevelopment program in this particular area well compensated by mitigation.

Mr. Bowling stated that in the future Dorchester County Board of Appeals considering something in the Critical Area should provide a documented record of what they are basing their decision on.

Chairman North agreed.

Mr. Gutman asked if there should be some statement to reflect in this case that there was a hardship under our

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interpretation as opposed to the County.

Chairman North said that it was not necessary in view of the pending motion , the reason being beside the point, and he called the question.

The vote was unanimously in favor.

Chairman North asked for an update on the Oil and Gas Regulations.

Dr. Sarah Taylor [sitting in for an absent Liz Zucker] reported that at the last Commission meeting an amendment to the Draft resolution was made by Mr. Glendening that the wording of the resolution include "directional drilling" as the alternate method for obtaining oil and gas from the Critical Area. It was included in the last two paragraphs: "whereas the Commission was informed by representatives of the Maryland Geological Survey in the oil and gas industry that technology was available to reach hydrocarbon reserves under the Critical Area through directional drilling and 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 hydrocarbon from reservoirs under the Critical Area and that surface drilling activity for the purposes of oil and gas exploration and production be prohibited on lands within the Chesapeake Bay Critical Area. "

Dr. Taylor said that this was a resolution that developed as result of the Commission developing its regulations and providing for drilling and exploration in the Critical Area. The status of the regulations are that they are joining the Maryland Geological Survey regulations and will be submitted on time in Draft form. She said that the resolution was something that the Commission noted that should go forward in addition to the regulations being promulgated for consideration by the House of Delegates Environmental Matters Committee and the Senate Economic and Environmental Affairs Committee. She said that if the resolution meets with the Commission's satisfaction in concept and in wording, the staff proposed to move the resolution forward into the discussion mode with the Chairman of the Environmental Matters Committee and the Chairman of the Senate Economic and Environmental Affairs Committee.

A motion was made and seconded to accept the resolution as proposed.

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Mr. Bostian asked if those that opposed the original legislation had been contacted to see what has changed since the legislation has passed and why was the information not available to the Legislature a year and a half ago when they presumably had considered it.

Dr. Taylor stated that a year and a half ago when the Bill became law instructing the Commission to develop its regulations for surface drilling in the Critical Area, the General Assembly did consider the prohibition of drilling in the Critical Area and the technique of slant drilling to acquire oil and gas reserves and they purposely decided at that time to not go along with the prohibition but to direct the Commission to develop the regulations. She said that in going back to the General Assembly there was a two-pronged approach and one was the Commission's regulations as being instructed under law and second that it was believed by the Commission that they should ask the General Assembly to reexamine their decision of a year and a half ago subject to the discussions that were had with the various technical committees and the members of the Commission themselves. (Requesting the General Assembly to reconsider their decision because it has been explored as an alternative while developing the regulations.)

The vote was 16 in favor, with Mr. Bill Bostian opposing and Deputy Secretary Ardath Cade abstaining. (Deputy Secretary Griffin had left the meeting; Mr. Butanis and Mr. Larry Duket were not present in the conference room.)

Chairman North asked for an update on Criteria Changes on Shore erosion - grandfathering.

Dr. Sarah Taylor said that the Oversight Committee had been in contact with the Critical Area Commission staff on proposed legislation for the upcoming General Assembly. She said that it was the intent of the staff to pursue discussions with the Oversight Committee as to how changes to the criteria could be effectuated. She said that right now, there was no method to accomplish this. Dr. Taylor said that the legislation proposed last year in the General Assembly failed because there were differences between the House and Senate, therefore the proposal, with the support and endorsement of the Commission, was to begin discussions with the Oversight Committee as well as with leadership to permit the Commission to make changes to its criteria through a series of public hearings and the use of the Administrative, Executive and Legislative Review Committee. She said that this legislation was not different from the bill that

Chesapeake Bay Critical Area Commission  
Minutes - September 5, 1990

was introduced last year; therefore, staff was seeking the endorsement of the Commission in concept of this approach to begin the discussions with the Oversight Committee and to have legislation introduced into the General Assembly in this regard.

Mr. Bowling asked why the bill failed last year.

Dr. Taylor replied that the failure was because of the difference between some people on the Oversight Committee as to what approach the General Assembly would support. It had the House full vote for the Administrative, Executive and Legislative Review support but the day before the last day of the session, the Senate Committee reported it out requiring the Commission to make changes to the Criteria as it originally had developed the criteria - a series of 17 public hearings and introducing a resolution to the General Assembly to receive full up or down vote by the General Assembly in order to have changes made. She said that the difference at such a late stage in the process killed the Bill.

A motion was made and seconded to proceed along the lines outlined with this report.

The vote was 18 in favor with Mr. Bostian opposed. (Deputy Secretary Griffin and Larry Duket had left.)

Dr. Taylor reported three potential areas where legislation might be introduced. One was dealing with shore erosion. She said that there were a couple of developers that have land that was eroding at a significant rate, in the RCA with the densities of 1/20 per acre, and that there was difficulty on the part of the developers to get money to put into shore erosion structures necessary to stop the erosion process. She said legislation to be introduced would allow higher densities to be emplaced along the eroding shoreline areas which would provide the money necessary to construct the shore erosion devices.

Dr. Taylor said that a second piece of legislation was that of "grandfathering". She said that there had been concern that subdivisions which are being built now are following the "in-so-far-as-possible" aspect of the criteria and the "in-so-far-as-possible" had created a lot of concern on the part of citizens who believe, particularly with regard to the Buffer, that anything less than 100 feet should not be allowed and that "grandfathering" had caused the development in the Critical Area not be to the standards that it ought to be and there was talk of

Chesapeake Bay Critical Area Commission  
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legislation that may be introduced that would eliminate "grandfathering" completely. She said that this could have some significant implications both in local and State government and that basically there may be a lot of cases introduced into the system claiming taking.

Thirdly, she said was the area of compensation. Last year there were approximately eight pieces of legislation, four bills on each side of the General Assembly, that dealt with compensation in various forms. She said that those bills would probably be introduced this year.

Ms. Kay Langner asked if the Commission had any authority regarding the federal government's decisions which impact land in the Critical Area.

Dr. Taylor said that the recourse would be through the Coastal Zone Program. She stated that the federal consistency clause of the Federal Coastal Zone Management Act required that all federal agency activities as well as projects come under review of the Coastal Zone Management Program. She said that the Critical Area Criteria was incorporated in 1987 into the Maryland Coastal Zone Management Program, therefore federal entities are required to follow the criteria, not the local governments Critical Area Program, but the Criteria.

OLD BUSINESS

Chairman North asked if there was any old business to be considered and there was none.

NEW BUSINESS

Chairman North asked Ms. Dawnn McCleary to report on the Lady Maryland Foundation.

Ms. McCleary informed the Commission members of a site visit to the Lady Maryland Foundation Maritime Institute offered by Bob Hewett, the Baltimore City Critical Area Coordinator, to view its offset for providing mitigation on Pier 8 in downtown Baltimore.

Approximately 7 Commission members expressed interest in the visit. Ms. McCleary said that she would send notices to the members regarding the date and time.

There being no further business, the meeting was adjourned.

New Business

1. Designate Talbot County  
Panel for Growth Allocation
2. Announce meeting of November  
to be at Drayton Manor,  
outside Chestertown

Attendees  
Chesapeake Bay Critical Area Commission Meeting  
October 3, 1990

Blake, Russell W.  
Bostian, William J.  
Bowling, Samuel Y.  
Butanis, Victor K.  
Cade, Ardath  
Corkran, William H. Jr.  
Elbrich, Joseph J. Jr.  
Glendening, Parris  
Gutman, James E.  
Hickernell, Ronald  
Jarvis, Thomas L.  
Krech, Dr. Shepard Jr.  
Langner, Kathryn D.  
Lawrence, Louise  
Naylor, Richard P.  
Whitson, Michael J.  
Zahniser, Albert W.

Carolyn Watson  
Pat Pudelkewicz  
Thomas Ventre  
Anne Hairston  
Ren Serey  
Jennifer Delve  
Tom Deming  
Robey Hurley  
Jenny Plummer  
Sarah J. Taylor  
John C. North, II  
Hugh Smith, PAO Officer  
George Gay, Atty. Gen.  
Richard Hall  
Kelly Henry  
Andy Meyer  
Paul Gilbert

PROPOSED LOCAL PROGRAM AMENDMENT

FILE NO: WO - A1

JURISDICTION: Worcester County

TYPE: Growth Allocation/Land Reclassification for a  
Commercial Use (Snow Hill Christian Nursery School/  
Fulton)

ALLOCATION: 2.7 acres requested

RECLASSIFICATION: RCA to LDA

REASON: To allow development of a day care/nursery school  
facility on the site

LOCAL STATUS: Award of growth allocation approved July 3, 1990  
by Worcester County Commissioners, upon recommendation  
of the County Planning Commission

DESCRIPTION: The Worcester County Commissioners requested this  
Commission's review of a local proposal to amend the  
local Critical Area Program maps by an award of  
Growth Allocation from the Worcester County Growth  
Reserve, and the reclassification of affected acres  
from RCA to LDA.

A Critical Area Commission staff member visited the  
site. There appear to be no Habitat Protection  
issues. The site is presently mowed field. CAC  
staff directed the County to correspond with Forest,  
Park and Wildlife Service regarding any habitat  
protection areas in the vicinity and with the Bay  
Forester for that region regarding landscaping and  
afforestation.

The entire site is 10.75 acres; 10.53 acres is  
within the Critical Area. The County Commissioners  
approved an allocation of 2.7 acres of the site to  
be reclassified as LDA with the remaining portion of  
the property remaining as RCA. The 2.7 acres of  
disturbed area contains the building footprint,  
septic reserve area, stormwater management, parking  
and driveway area.

OVER



SITE VISIT: August, 1990

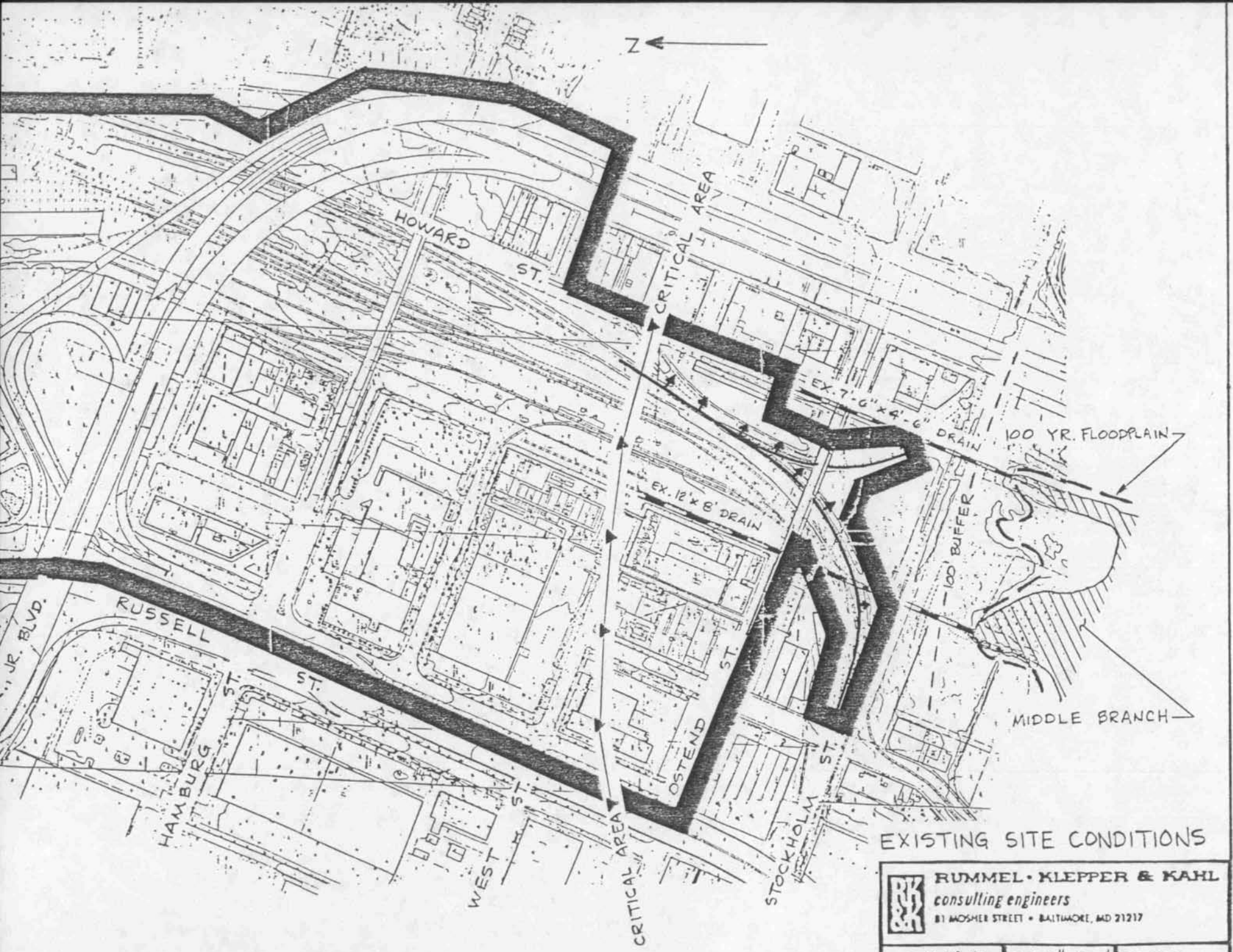
LOCAL PANEL

HEARING: Monday, September 10, 1990/Snow Hill

CBCAC ACTION BY: October 13, 1990

PANEL  
RECOMMENDATION: [ ]

STAFF: Claudia Jones, Tom Ventre



EXISTING SITE CONDITIONS

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

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

## STAFF REPORT

PROJECT: Wharf at Handy Point  
Kent County

DESCRIPTION: 1. This project proposes the expansion of an existing marina for land storage of boats and overflow parking. This project will necessitate clearing and extensive grading of 2 acres of forested Buffer located on steep slopes.

Expansion is possible only within the existing Limited Marine District, which is entirely within the Buffer

Applicant attempted, through rezoning, to locate these proposed uses outside of the Buffer; however, the rezoning was denied last year.

2. The existing marina is zoned Limited Marine District (LMD). LMD zoning extends 185 feet back from shore. Current uses include piers, fuel dock, travel lift, parking, loading areas, marina office, boat storage and marina shop. The remaining undeveloped portion of this LMD zone lies within a forested, steeply sloped Buffer. The 100-foot Buffer has been expanded to up to 260 feet due to steep slopes ranging from 15-50%. The slopes are stable and protected by an adjacent marsh.

This project proposes to clear approximately 2 acres of forested Buffer on steep slopes of up to 60 feet in height for overflow parking and boat storage (nonwater-dependent uses). Expansion at the marina is possible only within the Limited Marine District, which is entirely within the Buffer. The applicant attempted, through rezoning, to locate these proposed uses outside of the Buffer; however, the rezoning was denied.

### CRITICAL AREA CONCERNS:

1. Buffer: The Buffer has been expanded on this site to an additional 120-160 feet to include adjacent steep slopes over 15 percent. The expanded Buffer encompasses all of the remaining LMD land. This project proposes to grade and clear the Buffer, and put in nonwater-dependent uses.

2. Steep Slopes: Applicant proposes to grade and clear steep slopes, averaging over 25% slope. The site is forested and stable. The slope is afforded considerable protection from erosion by an adjacent marsh.

Development on steep slopes (> 15%) is prohibited in LDA unless it is the only effective way to maintain or improve the stability of the slope.

3. Forest Clearing: The applicant proposes to clear 2 acres of steeply sloped, forested Buffer; clearing in the Buffer should only be permitted to gain access to water-dependent facilities.

Applicant proposes to clear 49% of existing forest on the site. In the LDA, a maximum of 30% of existing forest land may be cleared.

4. Forest Interior Dwelling Birds: Forested area proposed for clearing is potential FIDB habitat.
5. Threatened and Endangered Species: Presence of water dock, a rare plant species, has been documented in the marsh as late as 1987.

**KENT COUNTY  
ACTION:**

Kent County Planning Commission granted preliminary site plan approval to Wharf at Handy Point on August 2, 1990. Final site plan approval is proposed for October 4, 1990.

**CRITICAL AREA  
COMMISSION ACTION:**

1. Letter of May 25, 1990, from Ren Serey to Elinor Gawel opposing project.
2. CAC staff appeared before Kent County planning Commission to oppose preliminary site plan approval.
3. Chairman North and staff met with Kent County Planning Commission after their vote of preliminary approval to express our concern.
4. If the Kent County Planning Commission grants final site plan approval, we will seek a "stay of action" and appeal final site plan approval.

**STAFF CONTACT:** Pat Pudelkewicz

*A Brief  
Sketch  
  
of the  
  
History  
  
of the  
  
Manor House*

*Drayton  
Retreat Center*

*Worton, Maryland*

Reverend Dr. Pamela J. Lardear  
Resident Director

A Ministry of the  
Peninsula Annual Conference  
  
of the  
  
United Methodist Church



# DRAYTON RETREAT CENTER

Worton, Maryland

The Drayton Retreat Center began as Drayton Manor, a land grant given by the King of England to Charles James Bearing on August 14, 1667. The name Drayton appears in the original document, and is thought to have been derived from a town in England which bears that name.

The original house was built of brick about 1670, on the same site of the present Manor. A second house was built in 1790, and was destroyed by fire in 1861. A third house was built on the site in the mid 1860's. Pictures of that house are still in existence from various periods during its 80 years of use. Owners of the estate during this period included Charles W. Geekie; J. Hall Pleasants; Carson W. Harris, Sr. (father of Carson W. Harris, Jr. of Cacaway Farms near Chestertown, Maryland); Mrs. Carson W. Harris, Sr.; and Henry W. Catlin.

In 1937, Wayne Johnson, an attorney and politician from New York City, whose career is briefly sketched in "Who's Who in America", bought the estate which then included about 2000 acres. Mr. Johnson built Drayton Manor as it exists today. He incorporated the existing farmhouse, built in the 1860's, into the present mansion. The older structure forms what is today the library, front hallway, and formal dining room. The exterior walls of the old house now form interior walls of the library and formal dining room.

On July 14, 1949, the Baltimore Evening Sun reported that the Drayton estate had been sold, following the 1947 death of Mr. Johnson, to Mr. Frank L. LaMotte of Towson, Maryland, head of the LaMotte Chemical Products Company of Chestertown, Maryland.

The estate was again sold in 1965. The new owner, who has requested to remain anonymous, arranged to give Drayton Manor to the Peninsula Conference of the United Methodist Church.

Today, the Drayton Manor Retreat Center includes 36 acres of rolling lawns and wooded areas, with the large manor house, an annex originally used to house farmhands, a parsonage for the resident director, a formal garden, a large outdoor swimming pool with bath houses, a tennis court and trellised gazebo. The Center is situated on Cooper's Lane near Worton, Maryland, approximately nine miles from Chestertown.

It lies on a small peninsula formed by Churn and Still Pond Creeks less than one half mile east of the Chesapeake Bay.

The primary building of the Retreat Center is the impressive brick Georgian Manor House which was built in 1937. The house includes 24 rooms, large hallways, pegged oak and teak floors, solid mahogany doors and 15 baths. The main entrance is comprised of a Doric doorway, with the fan shaped window which has become Drayton's hallmark. The central foyer contains an early American curving stairway with spindled balustrade, and wallpaper designed by Nancy McClelland, Inc. of New York. The woodwork in the foyer and dining room is hand-carved (circa 1790), and was brought from the Waterman House in Warren, Rhode Island. The hand-blocked wallpaper in the formal dining room was made in France by artist Joseph deFur in 1816. This wallpaper was recently restored by a painting conservationist.

Moving east, one passes through the library to a lower foyer, and into the large drawing room, which overlooks a rolling lawn sloping to the waters of Still Pond Creek. A picture of the drawing room appears in the book entitled, "One Hundred Most Beautiful Rooms in America," compiled by Helen Comstock, and published in 1958 by Viking Press. This room contains the original gold draperies, and the Wellsford Mantel which came from the Greist family of Carlisle, Pennsylvania, and which bears in relief, a depiction of the battle of Lake Erie. Above the fleet of ships are the opening words of Commodore Perry's famous dispatch: "We have met the enemy, and they are ours." The cut glass Waterford candle chandelier also in this room (circa 1785) came from the Isle of Guernsey.

A slightly less formal room is the downstairs conference room, which contains two of the nine working fireplaces. The floors of this room are pegged teak and the walls are knotty pine. A full-sized bowling alley is located adjacent to the room.

Articles about Drayton have appeared in numerous publications. In the April, 1954 issue of The National Geographic Magazine, Drayton is included in an article entitled, "Roving Maryland's Cavalier Country". Also, the October 1948 issue of Town and Country magazine featured Drayton.

Drayton Manor began its operation as a Retreat Center on October 1, 1965 with the Reverend Omro M. Todd as the first Resident Director. This bold venture in faith has continued to grow in service to many people. Drayton Retreat Center is dedicated to the renewal of Christian faith and life, and has gained wide acceptance and appreciation by the diversity of people who have experienced for themselves the peace, inspiration, and renewal offered by this setting of graceful beauty. Both groups and individuals are welcomed at Drayton.

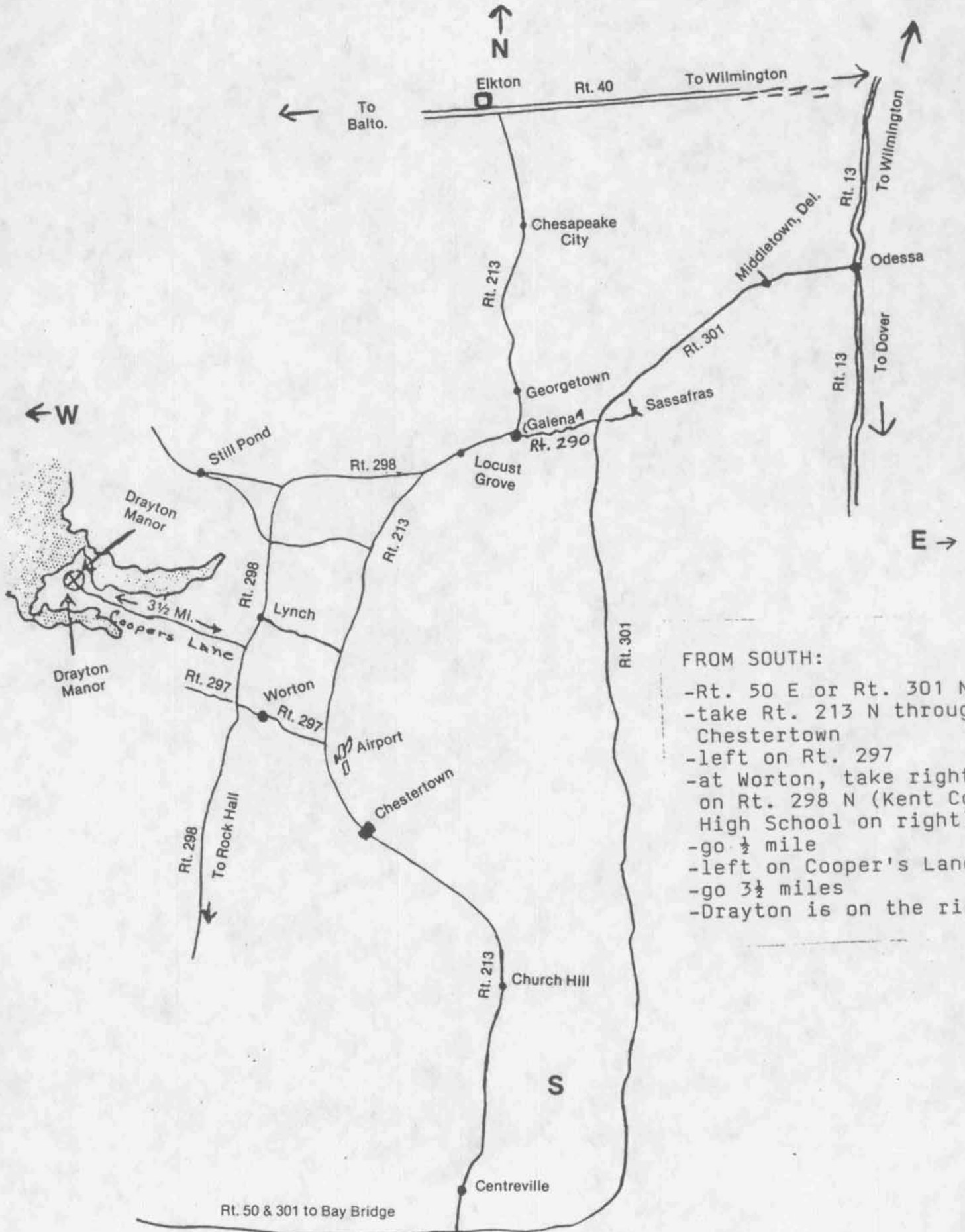
The purpose of the Drayton Manor Retreat Center is to provide a facility and the resources for the strengthening of the spiritual and intellectual lives of Christians of all denominations. The facility can accommodate up to 50 persons overnight, and provides a setting in which individuals and groups can effectively plan and experience renewal. Programs in spiritual formation and continuing education are offered regularly. Leaders from across the Church facilitate the presentation of workshops and seminars on a wide variety of subjects. The current Resident Director is Reverend Dr. Pamela J. Lardear, who is available for program leadership and consultation.

The facilities are open year-round to any group on a space available basis. Advance reservations are necessary. Requests for any date(s) or further information should be directed to the Drayton Retreat Center, Cooper's Lane, Worton, Maryland 21678, or call 301-778-2869. Individuals and families are also welcome for times of renewal and retreat.

The time that any person spends at Drayton is time well invested. The benefits of retreat, either individual or corporate are long lasting, and provide a support upon which to build the activities and tasks and concerns of one's life. It is always the intention of the staff to provide the most gracious welcome and the most hospitable and comfortable surroundings.

# DIRECTIONS FOR REACHING DRAYTON CENTER

Worton, Maryland  
Telephone: 778-2869



### FROM SOUTH:

- Rt. 50 E or Rt. 301 N
- take Rt. 213 N through Chestertown
- left on Rt. 297
- at Worton, take right on Rt. 298 N (Kent Coun High School on right)
- go 1/2 mile
- left on Cooper's Lane
- go 3 1/2 miles
- Drayton is on the right



PROPOSED LOCAL PROGRAM AMENDMENT

FILE NO: EA-A3

JURISDICTION: Town of Easton

TYPE: Program Refinement

ALLOCATION: N/A

RECLASSIFICATION: N/A

REASON: Formal recognition of two recent Town annexations of County Lands, amend local program maps accordingly

LOCAL STATUS: The annexation process has been completed; the annexations have been formally recorded by the State of Maryland

DESCRIPTION: Parcel One: 6.08 acres located in the northwest quadrant of the intersection of Maryland Route 322 (Easton Bypass) and Port Street, on the west side of Easton; open land, agricultural field. Critical Area classification: originally classified by Talbot County as "IDA"; this classification remains unchanged. Town zoning is "A-1" (agricultural).

Parcel Two: 24.82 acres in the southwest quadrant of the same intersection above; open agricultural field. Originally classified by County as RCA; this classification continues. Proposed Town zoning is "R-7A" (residential).

These parcels lie within larger areas in the Town of Easton or on its western fringe that were identified in the Easton Critical Area Program as areas in which growth and development were anticipated, and to which they would be directed by cooperative critical-area policies of the Town and the County respectively.



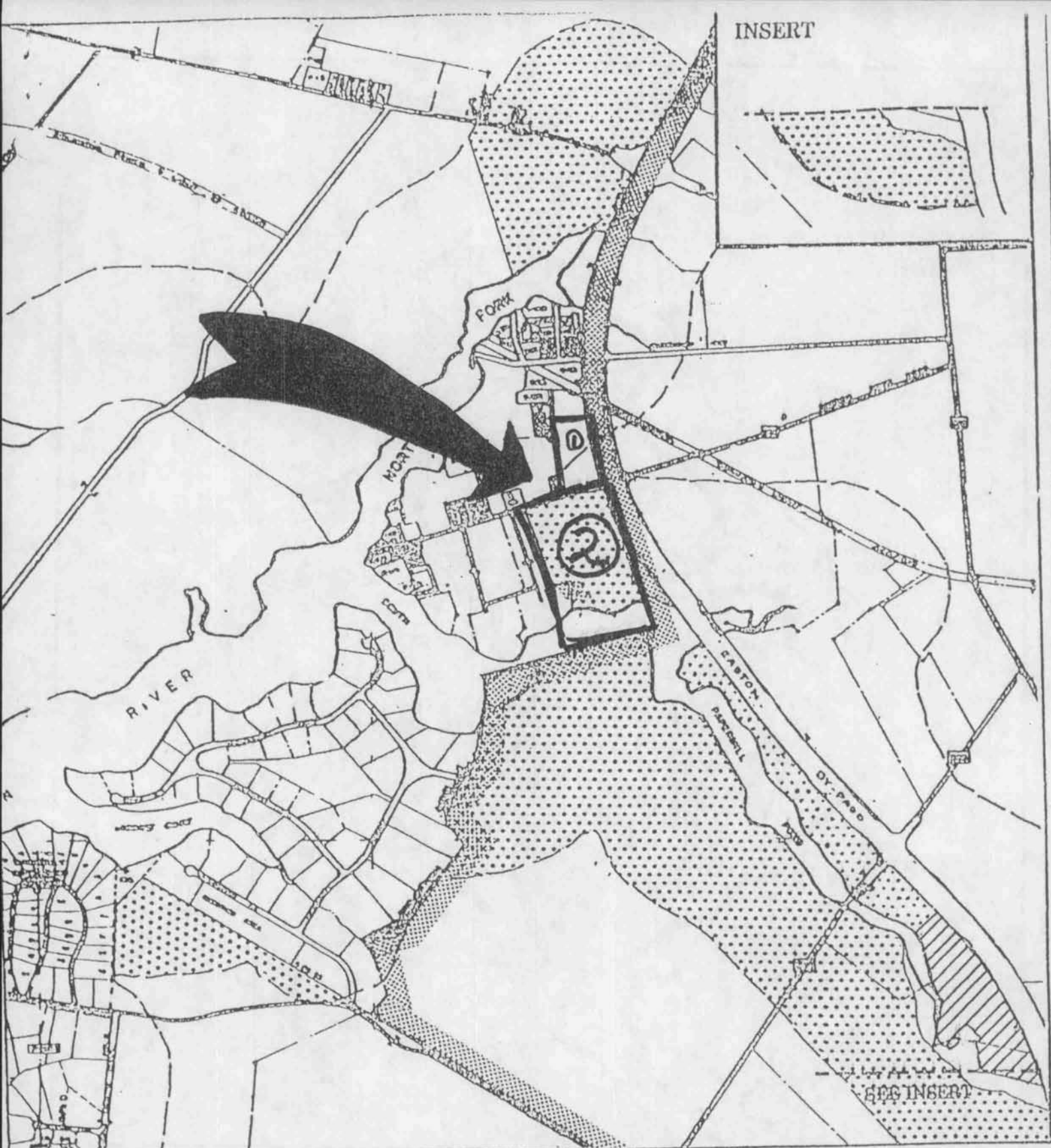
SITE VISIT: No

LOCAL PANEL  
HEARING: N/A

CBCAC ACTION BY: October 13, 1990

PANEL  
RECOMMENDATION: Chairman's determination of "refinement"

STAFF: Tom Ventre, Pat Pudelkewicz





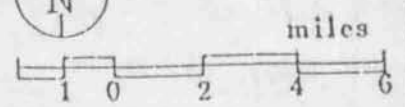
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SEE INSERT

Area Allocated for Town Development

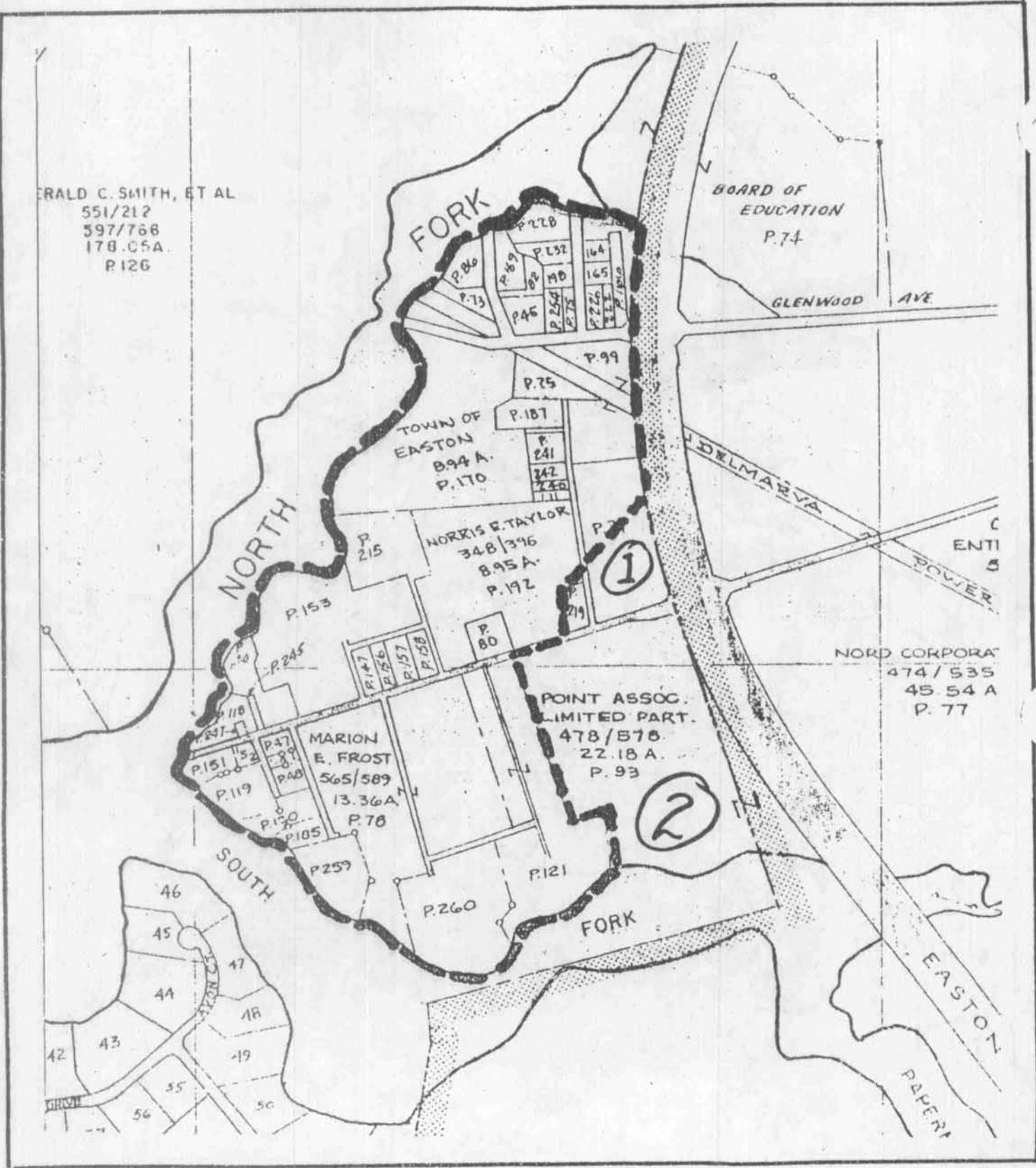
**TOWN OF EASTON**  
Talbot County, Maryland

-  RCA for Annexation or Rezoning
-  LDA for Rezoning



Map No 1  
Wiles Dailey Pronske  
Reston Va Sarasota, Fla.

RALD C. SMITH, ET AL  
551/212  
597/768  
178.05A.  
P.126



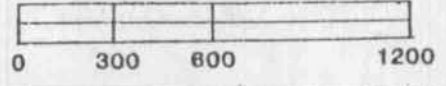
IDA # 25

TAX MAP # 34

TALBOT COUNTY MARYLAND



SCALE IN FEET



Critical Area Commission Meeting  
October 3, 1990

**SUBJECT:** Harford County Amendment: Map Change by Mistake for Riverside Business Park

**DESCRIPTION:** This amendment concerns Riverside Business Park, part of a Planned Unit Development owned by Bata Land Company, in Harford County. It repeals the growth allocation which has been awarded to the property, and changes the Critical Area designation from Resource Conservation Area (RCA) to Intensely Developed Area (IDA) on the basis of a mapping mistake.

**COMMISSION ACTION NEEDED:** Vote to approve or deny by Nov. 18

**BACKGROUND:** In May, 1989, Bata Land Company applied for growth allocation for the easternmost portion of Riverside Business Park, where they wish to develop 29 acres within the Critical Area. In July of that year, Bata Land Company applied for a map change from RCA to IDA by reason of mistake for the same area of their property. The growth allocation received final approval from the Critical Area Commission on February 7, 1990, after going through the County review and approval process, so the property is currently IDA. The boundary of the area receiving growth allocation was adjusted to conform to current development plans by a map amendment approved at the September, 1990 meeting.

We are now considering the mistake issue. The Harford County government is divided in support of this issue. The County Council passed the amendment over the veto of the County Executive and against the recommendation of the Planning Board. The County Administration remains opposed to the amendment. The public hearing was held on September 26th. No public other than representatives of the developer was present.

The land use of the Critical Area portion of the property as of December 1, 1985, the basis for Critical Area mapping, was farmland, forest, and wetlands. The area was designated RCA because it met the RCA criteria of being an area of nature-dominated environments and resource-utilization activities (e.g., agriculture, forestry). Riverside Business Park was zoned General Industrial, and had a Concept Plan Approval for the Planned Unit Development (PUD). However, these considerations were not part of the mapping criteria.

The criteria for IDA require at least one of three features:

- 1) Housing density equal to or greater than 4 d.u./ac.
- 2) Industrial, institutional, or commercial uses are concentrated in the area, or
- 3) Public sewer and water collection and distribution systems are currently serving the area, and housing density is greater than 3 d.u./ac.

In the staff's opinion, the Critical Area portion of Riverside Business Park does not meet the specific conditions of the IDA criteria, even though it is on the same large parcel as the existing portion of Riverside Business Park. Riverside Business Park does not meet items one or three, because those are aimed at residential property. For item two, there was no industrial development on or adjacent to the Critical Area portion of the site.

The County Department of Planning and Zoning believes that the area was correctly and consistently mapped. The County policy used in Critical Area mapping for determining whether or not an area is considered served by sewer and water is that the area must have had water and sewer services actually in place on or immediately adjacent to the site as of December 1, 1985. The County Department of Public Works considers that the Critical Area portion of the site did not have water or sewer at that time. The County refined on the Criteria's mapping rules by defining "area" as being 25 acres or more, under which the Critical Area portion of Riverside Business would be a separate area, to be mapped according to prevailing land use. Harford County notified all landowners in the Critical Area by mail at the time of mapping, including Bata Land Company, and no comments were received for Riverside Business Park.

The panel feels that because the area does not meet the specific conditions of the criteria, as interpreted and uniformly applied by Harford County, this amendment should be denied, and that the growth allocation which has been awarded is the appropriate channel to convey an IDA designation to the area.

PANEL RECOMMENDATION: Deny the amendment.

STAFF: Anne Hairston and Dawnn McCleary



HARFORD COUNTY GOVERNMENT

January 30, 1990

MEMORANDUM

TO : Harford County Council

FROM : William G. Carroll *Will G. Carroll*  
Director of Planning

SUBJECT : Critical Area Argument for Mistake During Initial Mapping - Bata Land Company/Riverside Business Park

The Department of Planning and Zoning received one request for a map change of the Critical Area boundaries on the basis of a mistake during the original mapping. We reviewed this request and presented our report to the Planning Advisory Board on January 18, 1990. At that meeting, by a unanimous vote, the Board endorsed the recommendations of staff in finding that the argument for mistake in the initial mapping was not justified. I have attached our staff report and a copy of the applicants report for your review.

According to the County's Critical Area Program, the Council must make the final local determination regarding a request for land use change based upon a mistake in the original mapping. Upon the applicants request, this item has been scheduled for Council review and action on Tuesday, March 6, 1990.

If you have any questions, please contact myself or Rich Hall at extension 103.

Thank you.

WGC/AM/jw

cc: Habern Freeman  
Victor Butanis  
Stoney Fraley  
Arden Holdredge  
Andy Meyer



# STAFF REPORT: BATA LAND'S CRITICAL AREA ARGUMENT FOR MISTAKE DURING INITIAL MAPPING (RIVERSIDE BUSINESS PARK)

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## SUMMARY

**Recommendation:** *Denial*

**Reason:** *Land within the Critical Area was designated as either Intensely Developed Area (IDA), Limited Development Area (LDA), or Resource Conservation Area (RCA). This was done according to the Critical Area Criteria, and based on what existed on the land as of 12-1-85. The piece of land in question was undeveloped and contained wetlands as of 12-1-85, therefore, it was classified as RCA; according to the standards in the State Critical Area Criteria, and those used by Harford County in the land use designation and mapping process.*

## I) Introduction

In July of 1989, Bata Land Co. Inc. submitted an Argument for Mistake During Initial Mapping and Designation of Chesapeake Bay Critical Area Land Management Areas (see attached application). The area in question is a portion of the Riverside Business Park (see Figures 1 and 2) which is designated as Resource Conservation Area (RCA). Bata Land claims that this land should have been designated as Intensely Developed Area (IDA). Bata Land wants to change 29 of the 42 acres of RCA classified land to IDA.

A Growth Allocation request was also made for this same piece of property in May, 1989. This Growth Allocation request is seeking a change in land management area designation from RCA to IDA; this is basically making the same request as the Mistake Argument. However, criteria used to determine the appropriateness of a Growth Allocation request versus an Argument for Mistake are quite different. A Growth Allocation request deals with changing the existing designation of the land from RCA to IDA. This process is reserved for highly desirable projects with special circumstances, and on a competitive basis. By contrast, the Mistake Argument process was developed for situations where land may have been designated incorrectly during the initial mapping procedure undertaken in 1986.

Land use management areas were delineated according to specifications developed by the State, and further refined by the County, for each type of area (i.e., IDA, LDA, and RCA) based on what was existing on the land as of 12/1/85. Considerations such as zoning, concept plans, attractiveness of the proposed development, etc., had no bearing regarding the initial mapping process. In other words, if development was not on the ground as of 12/1/85, then it was not taken into consideration during the mapping process. The land which Bata Land contends was mistakenly mapped does not coincide with the criteria developed by the Critical Area Commission and the County for IDAs. The criteria for RCA areas, which the land in question was originally designated, directly applies to this piece of land (see below).

The remainder of this report analyzes each of Bata Land's five basic arguments for the "mistake" in relation to relevant sections of the Critical Area Criteria and the County policies which dictated how land use management area delineations were made. These Criteria and policies are then discussed in relation to the site in question.

## IV Bata Land's Arguments And Comments On Each

The following are Bata Land's five statements to support their argument for mistake (Statements A through E), with comments from the Department of Planning and Zoning on each (numbered below each of the Statements).

### Statement (A)

*The Riverside Business Park was zoned GI (General Industrial), and had a Concept Plan approval during the initial mapping period.*

- 1) Zoning was not a component of the land use management area designation process used either by the State or by Harford County.
- 2) Although Concept Plan approval may have been granted to this area, this does not enter into the picture from an initial mapping perspective. The Concept Plan Approval letter (C3-84) does not support the "Mistake Argument". Phases I and II-A were given concept plan approval on 9-26-84 for 1,213 residential units via the letter mentioned above. More importantly, the Critical Area Criteria (see relevant excerpted sections below) stated that existing land use is the primary criterion for delineating land use management areas; not planned land use.

### Statement (B)

*The Business Park (the Park) had a substantial amount of infrastructure directly adjacent to the portions of the Business Park which lie within the Critical Areas. U.S. Route 40 and the Baltimore & Ohio Railroad act as a physical boundary of the Business Park from the headwaters of the Bush River. In addition, public roads and railways existed in the remainder of the Park. Public sewer and water lines were present within the Route 40 right-of-way as well as within the existing Park itself.*

- 1) Sewer lines were in the general area (closest point approximately 200 feet away from the piece of land in question), but they did not serve the area in question as of 12-1-85; the date on which existing land uses for the initial mapping period were based. Water lines were also not serving the area at that time. The County policy for determining whether or not an area is considered "served" by sewer and water is that the area must have had water and sewer services actually in place on or immediately adjacent to a site as of 12-1-85. In addition, it is the County Department of Public Works' opinion that the piece of land in question did not have sewer or water service as of 12-1-85.
- 2) The fact that Route 40 and the Baltimore & Ohio Railroad run through the area does not support the argument for IDA designation. This type of infrastructure is not mentioned in the Critical Area Criteria as a standard for IDA designation. Furthermore, if this held true, then a strip of some undetermined width along the whole length of the road and railroad, should have been classified as IDA.
- 3) The Baltimore & Ohio Railroad and US Route 40 do not necessarily "act as a physical boundary for the Business Park from the headwaters of the Bush River". Based upon observation of aerial photographs of the area, and a site visit, the two areas are hydrologically connected via Greys Run as it goes through a pipe under the road and railroad.



### Statement (C)

*A significant portion of the site within the Critical Area has been disturbed and was in open field or under cultivation during the initial mapping period.*

- 1) Upon inspection of the State mandated Critical Area Criteria and the related County policies (see below), "cultivation" (agriculture) and "open field" are land uses which were appropriate for RCA designation.

### Statement (D)

*In a letter dated July 11, 1986 from Bob Lynch to George Shehan, 47.6 acres of land identified as residential and contained within the Critical Area had been reserved a growth allocation by the Department of Planning and Zoning (see Appendix A of the accompanying report). This letter does not make reference to the 42 acres of RCA Critical Area contained within the Park. It is Bata Land's understanding that, until the time of preparation of the Growth Allocation Application, neither Bata Land nor its consultants realized the imposition of the RCA designation in the Park.*

- 1) The above mentioned letter was written before the County's Critical Area Program was in place, and even before the State had completed the Critical Area Criteria. Therefore, the comments to which Bata Land refers were made before the Program was implemented. At present, under the County's approved program only the County Council and Critical Area Commission can grant a Growth Allocation or Argument for Mistake. In addition, in 1987 all landowners in Harford County affected by the Critical Area Act were notified by mail that their land would come under the provisions of the County's program, and comments regarding the land use management area designations were requested at that time. Bata Land made no comments at that time.

### Statement (E)

*Both the County and Bata Land worked together during the Critical Areas regulatory process. Throughout this process both parties used 200 scale topographic, concept plans, prepared by Bata Land's consultants. Those concept plans clearly illustrated Bata Land's intentions to fully develop the Park by identifying proposed roadway systems, and approximate open space areas. These intentions are reinforced by the Department of Planning and Zoning granting Concept Plan approval for the Park.*

- 1) This argument is basically redundant to Statement (A).

### III) Application of the Critical Area Criteria and Related County Policies to the Parcel in Question

By applying the specifications of the Criteria for IDAs to the land in question, one will find that there is no congruence between the two. The Criteria state that IDAs are areas "...where residential, commercial, institutional, and/or industrial developed land uses predominate, and where relatively little natural habitat occurs." (COMAR 14.15.02.03.A.). As of 12-1-85, the date that the existing land use management area delineations were to be based on, residential, commercial, institutional, and/or industrial developed land uses did not predominate on this site. Land uses which did dominate the land in question are those which are listed under RCA land classification criteria (i.e., agriculture, forest, wetlands, and barren land). In addition, the County's program states that "Contiguous undeveloped areas of 25 acres or greater were designated as Resource Conservation Areas."

The Criteria give more specific requirements for IDA designation which also do not apply to the land in question. The Criteria state that IDAs shall have at least one of the following features:

- (1) Housing density equal to or greater than four dwelling units per acre;
- (2) Industrial, institutional, or commercial uses are concentrated in the area; or
- (3) Public sewer and water collection and distribution systems are currently serving the area and housing density is greater than three dwelling units per acre. ((COMAR 14.15.02.03.A.(1) - (3)).

The first two requirements clearly did not apply to the land in question as of 12-1-85. Bata Land mentioned in their arguments that "Public sewer and water lines were present within the Route 40 right-of-way as well as within the existing Park itself." Regardless of whether or not the land in question was considered to have public sewer and water service as of 12-1-85, it actually does not matter since there was not a housing density greater than three dwelling units per acre as of 12-1-85; which is also part of the third requirement mentioned above.

The specifications for RCAs in the Criteria clearly applied to the land in question as of 12-1-85. The Criteria state the following for RCAs:

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

- (1) Density is less than one dwelling unit per 5 acres; or
- (2) Dominant land use is in agriculture, wetland, forest, barren land, surface water, or open space. (COMAR 14.15.02.05).

These Critical Area Criteria for RCAs directly apply to the piece of land in question. Although these are the state criteria, they are incorporated into the Harford County Critical Area Management Program as well. Within the County's Program, the methodology for delineating the three different types of land management areas is spelled out (pages 2-6 through 2-8 of the County's Critical Area Management Program, also attached). In addition to specifying how aerial photographs and maps were used along with the Criteria to delineate areas, this methodology section also states that "Contiguous undeveloped areas of 25 acres or greater were designated as RCA".

Bata Land is claiming through this Argument for Mistake During Initial Mapping that the section of land in question should have been designated as IDA based on the circumstances in the area on 12-1-85. Upon inspection of the Critical Area Criteria and the County policies used for delineating the three different land use management areas, and the existing circumstances which surrounded the piece of land as of 12-1-85, it becomes obvious that designating this area as IDA would have not been appropriate and would have been in direct conflict with the Criteria and policies. What would have been appropriate was RCA designation; which was the case for this piece of land. Therefore, the Department of Planning and Zoning recommends that the County Council deny the request for Mistake During the Initial Mapping Period.

## IV) Relevant Sections of the Critical Area Criteria

### COMAR 14.15.03 Intensely Developed Areas

A. Intensely Developed Areas are those areas where residential, commercial, institutional, and/or industrial developed land uses predominate, and where relatively little natural habitat occurs. These areas shall have at least one of the following features:

- (1) Housing density equal to or greater than four dwelling units per acre;
- (2) Industrial, institutional, or commercial uses are concentrated in the area; or
- (3) Public sewer and water collection and distribution systems are currently serving the area and housing density is greater than three dwelling units per acre.

B. In addition, these features shall be concentrated in an area of at least 20 adjacent acres, or that entire upland portion of the Critical Area within the boundary of a municipality, whichever is less.

### COMAR 14.15.04 Limited Development Areas

A. Limited Development Areas are those areas which are currently developed in low or moderate intensity uses. They also contain areas of natural plant and animal habitats, and the quality of runoff from these areas has not been substantially altered or impaired. These areas shall have at least one of the following features:

- (1) Housing density ranging from one dwelling unit per 5 acres up to four dwelling units per acre;
- (2) Areas not dominated by agriculture, wetland, forest, barren land, surface water, or open space;
- (3) Areas meeting the conditions of Regulation .03A, But not .03B, above;
- (4) Areas having public sewer or public water, or both.

### COMAR 14.15.05 Resource Conservation Areas

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

- (1) Density is less than one dwelling unit per 5 acres; or
- (2) Dominant land use is in agriculture, wetland, forest, barren land, surface water, or open space.